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Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Wednesday, September 17, 1986*

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Teach us each day, O gracious God, to value the opportunities to meditate about the gifts of the human spirit. We thank You that You have created us in Your image and that You have given us the capacity to know faith and hope and love, and that we can share those values of the spirit with those about us. Help us to deepen our understanding of all Your gifts to us that our lives may better reflect the wonder and beauty and potential of every person of Your creation. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 4021. An act to extend and improve the Rehabilitation Act of 1973; and

H.R. 4350. An act to amend the Wild and Scenic Rivers Act, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 4021) "An act to extend and improve the Rehabilitation Act of 1973," disagreed to by the House, agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HATCH, Mr. WEICKER, Mr. STAFFORD, Mr. NICKLES, Mr. THURMOND, Mr. KERRY, Mr. SIMON, Mr. KENNEDY, and Mr. DODD to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3622) "An act to amend title 10, United States Code, to strengthen the position of Chairman of the Joint Chiefs of Staff, to provide for more efficient and effective operation of the Armed Forces, and for other purposes."

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1311. An act to authorize the Smithsonian Institution to plan, design, and construct facilities for the National Air and Space Museum.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to make an announcement.

After consultation with the majority and minority leaders, and with their consent and approval, the Chair announces that tomorrow when the Houses meet in joint meeting to receive the President of the Republic of the Philippines, only the doors immediately opposite the Speaker and those on his left and right will be open.

No one will be allowed on the floor of the House who does not have the privilege of the floor of the House.

Children of Members will not be permitted on the floor, and the cooperation of all the Members is requested.

REPORT ON HOUSE JOINT RESOLUTION 730, CONTINUING APPROPRIATIONS, 1987

Mr. WHITTEN, from the Committee on Appropriations, submitted a privileged report (Rept. No. 99-831) on the joint resolution (H.J. Res. 730) making continuing appropriations for the fiscal year 1987, and for other purposes, which was referred to the Union Calendar and order to be printed.

APPOINTMENT OF CONFEREES ON H.R. 5233, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1987

Mr. NATCHER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5233) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1987, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees: Messrs. NATCHER, SMITH of Iowa, OBEY, ROYBAL, STOKES, EARLY, DWYER of New Jersey, HOYER, WHITTEN, CONTE, PURSELL, PORTER, YOUNG of Florida, and MICHEL.

STOP THE HEMORRHAGE OF AMERICAN JOBS

(Mr. McCLOSKEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCLOSKEY. Mr. Speaker, the casualties of America's trade war continue to mount in the Eighth District of Indiana, with 1,000 jobs being announced as gone this morning. These are ongoing casualties of the administration's $170 to $200 billion annual trade deficits.

This morning, Zenith in Evansville announced that it would permanently lay off 250 to 300 people in January. Whirlpool, another major employer, said that it will lay off 725 workers until it can retool one of its refrigerator assembly lines. This will take a least 18 months. These losses, Mr. Speaker, mean over $20 million in wages yearly to the Evansville area.

To add insult to injury, in the Zenith layoffs, these jobs will be exported to Mexico. The administration may think that this is a good thing because it will help Mexico pay it debts, but there are 1,000 American citizens today in southwestern Indiana who are wondering how they are going to pay their debts.

The added tragedy is that we could see this problem coming. Fifty-five percent of the color television components sold in the United States this July were from Far Eastern countries, a 123-percent increase over the previous July.

The color television industry in the United States has pleaded for stricter enforcement of antidumping orders and proper classification of parts coming in from Mexico. I call on the administration and the Senate to take swift action on the trade bill approved by the House to stop the hemorrhage of American jobs, which has totaled 2 million over the last 5 years.

SHUT DOWN SOVIET SPYING AT THE UNITED NATIONS

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROOMFIELD. Mr. Speaker, the administration's decision today to expel 25 Soviet United Nations employees in retaliation for the detention of journalist Nick Daniloff is a good first step. But why not go further?

The huge Soviet contingent at the United Nations is a major Soviet spying base. Mr. Zakharov was one of nearly 500 Soviet nationals who work at the secretariat. As many as one-third of these employees gather intelligence. This does not include the large number of Soviets who work at the Soviet Mission to the United Nations. Their spying is so obvious to legitimate U.N. employees that they joke about the Soviets never doing any work. They are too busy spying.

Using the United Nations as a base of spying operations violates the United Nation's rules. Soviet abuse of the U.N. Charter caused the Daniloff affair. Let's shut down the Soviet spying business at the United Nations before another incident happens.

DRUNK DRIVING LEGISLATION

(Mr. DORGAN of North Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORGAN of North Dakota. Mr. Speaker, I am introducing legislation today to encourage the States to take a tougher stand on drunk driving.

The bill I am introducing would require States to enact laws putting the legal intoxication rate at 0.10, and would require States to prohibit open alcohol containers in vehicles.

Every 23 minutes somebody in this country dies from an alcohol-related crash. Within the past 10 years we have had a quarter million deaths. This year 25,000 people will die on the highways as a result of alcohol-related accidents.

It is incredible—but possible—that you can drive from the Canadian border up near New Hampshire to Pensacola, FL, and then go over to Reno, NV, and you can drink all along the way, because on your route, every one of those States allows you to drink while you drive. I think that that is wrong. I am proposing some legislation by which we in the Federal Government provide strong, strong incentives to require the States to change it.

THIRTY-TWO YEARS OF IRRESPONSIBILITY

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, it is time once again, Mr. Speaker, to observe the rite of passage of another continuing resolution. This year's continuing resolution includes all 13 appropriations bills, is at least $2 billion above Gramm-Rudman outlay targets and contains a slew of otherwise unauthorized programs, at least 20 of them costing nearly $20 billion.

The continuing resolution, Mr. Speaker, has become a Frankenstein monster. It has grown out of all proportion. It is not humanly possible to know what's in it and, therefore, to vote for it responsibly. Debate is limited. Power is concentrated in the hands of a few. People can sneak things in that we cannot knock out—the bill gets loaded up and deficit rises. The system no longer allows real choices. Meanwhile, we work with one eye on the hour glass.

The year 1954 was the last time Congress cleared all appropriations bills on time. Thirty-two years have passed since Congress operated in a manner which followed the normal legislative process and finished its job properly: 32 years of irresponsibility and national disgrace. Mr. Speaker, let's start now to ensure there will be no continuing resolution for fiscal year 1988.

TAX CONFISCATION

(Mr. MARLENEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARLENEE. Mr. Speaker, I call it confiscation, some call it tax reform but one thing I do know is that millions of voters will be mad when they find out that their trusted Congressman expropriated their property because they lost their ability to treat the paper profits as capital gains.

In some cases the tax because of inflation will be more than the original purchase price.

No one is more angry than when their blood, sweat, tears, gains, and retirement funds have been confiscated.

Example: A 50-year-old bread winner suffers a heart attack, and must sell his home and move to a care facility. He paid $40,000 in 1950 and the home is now worth $240,000. He will pay the full force income tax on the $200,000 inflation paper gain.

Example: A producer in financial difficulty is forced to sell some real estate to reduce debt and restructure debt. He finds out that the Congressman requires him to pay full tax on inflated land values, what the bank doesn't take the IRS does. Now, that's real confiscation.

ANGOLA

(Mr. STUDDS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STUDDS. Mr. Speaker, last, year, Secretary of State Shultz warned that United States aid to rebels in Angola would lead only to a military stalemate at higher levels of violence and that such a stalemate would serve the interests of Moscow. Unfortunately, a military stalemate at higher levels of violence has since become United States policy toward Angola.

The House will vote later today on whether to continue this policy; a policy that is neither understood nor supported by the American people; and that undermines United States interests and objectives throughout the African Continent.

Lesson one in superpower relations is that you don't win a battle for regional influence if you get the local politics wrong. By aiding the Angolan rebels, we have become the allies of South Africa; and as allies of South Africa we will be viewed—inevitably—as enemies of the African people. That is, to say the least, getting the local politics wrong.

Let us take advantage, today, of the chance to get the politics right, and bring the debate over United States policy toward Angola into the open where it belongs.

IN SUPPORT OF THE HAMILTON AMENDMENT, SECTION 107 OF THE INTELLIGENCE AUTHORIZATION ACT

(Mr. FAUNTROY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAUNTROY. Mr. Speaker, this evening we will be completing our

annual congressional baseball game when Democrats and Republicans alike take the field to play. I rise to ask my colleagues to help Congress go 2 for 2 in the effort to bring nonviolent social change to South Africa. We hit a clean single last Friday when we approved a comprehensive sanction bill which freedom-loving people around the world now recognize as the best nonviolent tool remaining to us to help bring an end to apartheid.

Today, we have an opportunity to hit a second single for nonviolent change, the retention of section 107 of the Intelligence Authorization Act which would make congressional debate and approval a precondition of any United States governmental support for military or paramilitary operations in Angola. Rejection of the Stump amendment to strike section 107 would be the first step toward ending United States aid to the apartheid-sponsored UNITA forces whose blowing up of bridges, railroads, and farms as a part of South Africa's effort to prevent the frontline nations, rich in the same vital resources the West receives from South Africa, from becoming an alternative source of the precious metals and other resources of the region upon which the West is so dependent.

Early in the 100th Congress, the Congressional Black Caucus will present a package for development assistance to the frontline nations. Approval of that package will enable us to go 3 for 3 in support of a nonviolent change in the region.

For now, however, let's be sure we go 2 for 2 by adding to our excellent vote of last Friday for sanctions, a prudent vote to retain section 107 in the bill.

BAKER IN BAKER STREET

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, Sherlock Holmes was once called upon to help solve an intractable case of arson. After 5 minutes of investigation the sleuth announced that the crime was self-inflicted. Dr. Watson objected: "But why would the owner do something as foolish as burning down his own house?" The great detective answered: "Elementary, my dear Watson. The property was overinsured, and the owner saw this as his chance to cash in on his policy."

Mr. Speaker, if the Sherlock Holmes tried to find the motifs for the crime of self-inflicted depreciation of the dollar in 1986, his skills would be put to a much more rigorous test. Uncle Sam canceled his insurance policy against currency depreciation, the metallic dollar, 15 years ago.

The damage caused by the mindless destruction of the value of savings in the wake of the disintegrating dollar will cause great suffering in all walks of life, in this country and abroad, unless Congress decides, at this late hour, to renew our insurance policy, by fixing the gold content of the dollar.

THE DRUG BILL

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, Tuesday's New York Times editorial entitled "More Bang, Less Buck on Drugs" chided President Reagan, and to a lesser degree this body, for promoting antidrug initiatives that provide vast sums of money for Federal enforcement and drug interdiction efforts, but little new funds for drug crop eradication in source countries and for drug treatment programs.

I agree with the Times, but the editorial didn't go far enough because it failed to point out the crying need for comprehensive drug education programs aimed at our Nation's youth.

For more than 15 years, I have argued that we must put more emphasis on reducing the demand for drugs in this country, rather than expending all of our resources on the seemingly insurmountable task of stopping the supply of drugs.

Law enforcement officials at all levels now agree.

But mere drug education is not enough—as the Times noted this morning in a front page story, some antidrug education efforts do more harm than good because they encourage curious youngsters to experiment with drugs.

An effective drug education program must be designed to modify the behavior of Americans toward illegal drugs.

We have succeeded in changing behavior among Americans in many areas—tobacco smoking, dietary habits, exercise, and drunk driving, to name a few.

And we can change behavior concerning drug abuse if our Nation will commit to a massive education program involving our schools, our churches, our social and community organizations, the work place, the media, and, above all, parents.

The only way to stop the drug abuse epidemic is to modify behavior by showing that drugs destroy communities, careers, families, and lives.

OVERALL TRADE DEFICIT WORSENING AS THE ADMINISTRATION CONTINUES NOT TO ACT

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, it has been 4 months now since the House of Representatives passed major trade legislation. Since then, the President has criticized us as protectionist, and the other body has been sitting on its collective hands.

What has been happening to the economy? In the month of May this year and every month since—and you may find this hard to believe—the United States has been importing more food than it has been exporting!

I represent a farming district. Our grain elevators are bursting at the seams. We cannot find places to put the grain that we are bringing out of our fields and yet our Nation imports more food than it exports.

As a matter of fact, under this administration, we have seen a steady decline in our agricultural exports. In the manufacturing sector, I am afraid the story is just as bad.

Yesterday, there was a report that the overall trade deficit for our Nation was a record $34.7 billion in the second quarter, surpassing the Nation's previous record.

Now we can debate tax reform, we can debate the budget deficit, and our Nation's drug crisis; but while we are preoccupied with these subjects, the farmers and industrial workers in our country are losing their farms, their homes, and their paychecks as a direct result of this administration's insensitivity to the trade deficit.

If the other body and the President do not respond to the trade crisis, I hope the electorate will on November 4.

THE UNFINISHED CONGRESSIONAL BASEBALL GAME

Mr. CONTE asked and was given permission to address the House for 1 minute.)

Mr. CONTE. Mr. Speaker, there is a lot of unfinished business in this session of Congress. One of the milestones is the Congressional Baseball Game which was literally drowned out on July 29 without completing a single inning.

As the Republican manager, I was content to delay this game until next year. In fact, I recommended that we fold it into the continuing resolution as a "no contest." But the Democrats, who had a four-run lead, reserved the right to object and did so. They believe that they might finally win a game for a change.

But, Mr. Speaker, one incomplete inning does not an official game make. So here we are on this side of the aisle, outnumbered 2 to 1 and injured but full of pride. We will not back down from the challenge.

Tonight at 7 at Four Mile Run Baseball Park in Alexandria, we will finish what was started in July. There are no

frills. Admission is free and the game will be decided by 10 p.m. no matter what the inning or the score.

We hope the staffs and other Members will join us to reconcile this issue. I suspect it will be the only reconciliation this Congress will see this year.

FREE TRADE—WHAT IS IT?

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, we hear a great deal about some people being for free trade others being protectionist. I think we need to get our terms straight, particularly at this time when negotiations under GATT [General Agreement of Tariffs and Trade] are underway in Uruguay. It has been said, incidentally that the United States is the only nation that abides by the GATT terms.

Is it free trade when our trading partners drop their domestic taxes at the port of embarkation for their export trade, but tax our exports when they enter the country? We do not give our exporters any break on their shipments abroad. The clear result is that our products labor under double taxation while their competitors escape almost all taxes.

When someone says he is for free trade, does he mean that this arrangement is part of his definition of free trade. Take a look at the figures as they now exist with the European community.

For example, Belgium has a 19-percent VAT—this means that 19 percent is knocked off the price of Belgian exports when the items reach Belgian ports, but the same 19 percent is added on to United States shipments into Belgium. The United States only adds on the GATT agreed to tariff on imports while Belgium and other EC nations add the tariff as well as the VAT.

Denmark has a 22 percent VAT—works as does Belgium's; West Germany, a 14 percent VAT; Italy, 18 percent; France, 18 percent; Netherlands, 19 percent; Portugal, 16 percent; and the United Kingdom; 16 percent.

If this is free trade, I'll plead guilty to protectionism.

GENERAL AVIATION TORT REFORM LEGISLATION

(Mr. ANDERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANDERSON. Mr. Speaker, as you know, as a result of dramatic increases in product liability costs, American general aviation manufacturers and their suppliers are leaving the industry in record numbers.

Last year, general aviation industry costs for product liability exposure was $70,000 for each airplanes built and delivered. This year, this figure is expected to rise to $100,000—which in some cases is twice the original price of the airplane.

To combat this serious problem, there is legislation pending, H.R. 4141, the General Aviation Tort Reform Act of which I am a cosponsor, that seeks to stabilize these enormous costs and ultimately reduce them so that manufacturers can begin again to produce light aircraft and sell them at a price consumers can afford.

Currently, this legislation has over 180 bipartisan cosponsors and I hope it will be reported to the House floor for consideration prior to the adjournment of this Congress. We must not let this opportunity slip through our hands to address this problem.

DEFEAT SECTION 107 OF THE INTELLIGENCE AUTHORIZATION ACT

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, I believe today we should defeat section 107 of the intelligence bill.

I have just a few reasons why; and I do not understand why my colleagues on the other side of the aisle continue to try to oppose what the President is trying to do in fighting the Communists in Angola.

No. 1, the Communists are killing blacks in Angola. No. 2, the Soviets sent $2 billion last year to Angola. No. 3, the Soviet generals are in Angola supporting the Angolan army. No. 4, there are 35,000 to 45,000 Communist Cuban troops there, buoying up that Government. No. 5, the President wants to help freedom fighters in Angola in their fight for freedom. Why should we oppose that?

No. 6, we have a vital stake in that part of the world; vital minerals that are necessary for the defense of this country and the economic health of America; and No. 7, a rehash of the Clark amendment is wrong. It will hurt Angolan blacks fighting for freedom and will ultimately hurt America as well.

We should defeat section 107 and support the gentleman from Arizona [Mr. STUMP] in his efforts to do so.

A BARRIER TO TOURISM

(Mr. BONER of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BONER of Tennessee. Mr. Speaker, the news that the French Government is now requiring U.S. citizens to obtain tourist visas, or prior permission, to visit France is very disturbing. While we can and should criticize the French Government for imposing this visa restriction on Americans traveling to France, we should bear in mind that the United States remains one of the most restrictive countries when it comes to visa requirements. With the exception of Canada, the Bahamas, and British nationals in some Caribbean islands, citizens of foreign countries are required to possess tourist visas when they visit our country. This include France and all of western Europe.

Visas are a barrier to tourism and travel between friendly nations. While we certainly understand the terrorism threat that exists in the world today, the French Government has overreacted by imposing a visa requirement on Americans who are often the targets of terrorism and not the instigators of terrorism.

The French Government may now experience a downward trend in tourism by making it harder for Americans to visit France. They have chosen to reverse a longstanding trend by western European nations since the end of World War II to waive tourist visas for U.S. citizens. Thirty-five countries eliminated this requirement.

Mr. Speaker, requiring visas by travelers, whether they are French or American, is a form of a trade barrier, impedes economic growth, and inhibits goodwill among people. We should work together to facilitate and encourage travel between nations instead of creating obstacles for travelers at a time of international tension.

□ 1230

A TRIBUTE TO THE TIMES-ADVOCATE OF SAN DIEGO COUNTY

(Mr. PACKARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PACKARD. Mr. Speaker, a great journalistic institution of California celebrates its 100th anniversary this year, the Times-Advocate newspaper of north San Diego County, based in the city of Escondido, which I am proud to represent in Congress.

Its anticedents were founded in 1886 and 1891 as weekly newspapers serving the small community of Escondido, located in virgin land 20 miles north of San Diego. The two papers merged in 1909, forming the Times-Advocate we know today.

Its reputation for independent news coverage and editorial views has made the Times-Advocate one of the leading papers in California. Its clean lines and impressive graphics make it a pleasure for the eye, while its reporting has made it the paper of record for

much of rapidly growing north San Diego County.

Under the current leadership of publisher John Armstrong and editor Will Corbin, the Times-Advocate has become a model for growing dailies throughout the United States. As it begins its second century, the Times-Advocate is stronger and better than ever, and the people of my district are well served by its accuracy and depth. My heartiest congratulations.

A POINT OF PERSONAL PRIVILEGE

Mr. DORNAN of California. Mr. Speaker, I rise to a point of personal privilege.

The SPEAKER pro tempore (Mr. MOAKLEY). The gentleman from California [Mr. DORNAN] has discussed this matter with the Chair, and the Chair feels that the gentleman does have a case of personal privilege.

The gentleman from California [Mr. DORNAN] is recognized for 1 hour.

Mr. DORNAN of California. I thank the Speaker. Mr. Speaker, I will try to make this very brief. It was conceived in humor, but it is not so funny.

A fraudulent letter was circulated throughout two of our three House buildings by a young man who claimed to be a freshman student at Harvard. In this 350th year of that great university, I do not know why he is not up there early starting his studies instead of participating in what I think is a rather ugly fraud.

But I have hundreds of these letters in my office that we were able to apprehend this young man in the Halls before he had circulated all 435.

It is a letter that is a fraudulent copy of what we call here a "dear colleague." He got a piece of my stationery, poorly forged my signature, does not even use my correct signature block as I use my full name. And he asks my colleagues under my name to call for National Make Fun of Congress Week.

Now, he has created a fraudulent "Ben" Franking stamp that he put in the corner of 435 letters, again using my name incorrectly. He hand signed "by page" all 435 of them and had circulated the entire Rayburn Building, where most of our senior Members have their offices, and had done the fifth and fourth floors of the Cannon when we caught him. He was dressed as a page. When I ticked off to this young man after my staff brought him back to my office that it is a crime, a Federal crime to misuse the frank, to personally circulate letters as though he is a postman, to dress as a congressional staffer and thereby impersonate a congressional staffer and to create a fraudulent congressional document.

Now, the main thing that is sad about this is that it tends us to lose faith in "dear colleague" letters because we wonder if a Member is doing something very imaginative or very innovative that goes against the grain or is doing something in true good humor. You tend not to trust it now. It was only as short a time ago as 1972 that there was a mail drop in each one of our office buildings where we could submit bills and/or "dear colleagues" at the end of the day and they would be circulated that much faster.

Because of an abuse of that system once by even real congressional staffers putting in phony bills, we now have to come down to the floor, we have to sign our extensions of remarks, we have to sign our bills, and that little bit of faith and trust that existed for 170-some years was shot a decade and a half ago.

So I am taking this point of personal privilege to point out that what I did, rather than have this young man arrested, which I could have, was to make up a real "dear colleague" denying that there was anything that I thought, other than respect for this institution. And to make him retrace all of his steps which we tracked him occasionally and he did. But I understand that some Members still think that this phony letter was a real one and they did not get my real followup "dear colleague" letter.

Just let me say in closing that when I had 5 years of active duty behind me in the Air Force, I was still only 24 years of age. I got out of the Air Force with the intent of running for office and serving in this great Congress here on Capitol Hill. It took me 19 years. And I served 6 years before I was gerrymandered out of my seat.

I think I am the only Member that represents two totally different areas. I moved to Orange County, CA, which is bigger than many States, 2.5 million people almost, and I have come back twice and I have seen many broken hearts including our only jet ace from the Vietnam conflict unable to come here from North Carolina. I have seen Medal of Honor winners lose. My friend Bruce Herschenson of the U.S. Senate came within three points of winning and came back and lost by less than 100 votes for the House. And he served magnificantly in Vietnam.

I have seen people try three and four times and not make it. To come back here twice, as you once said about me, Mr. Speaker, I reminded you of that little ship in the bottle, you wondered how I got here.

I thought that was a good Irish line to get offered me, but I came back with a pretty good Irish rejoinder, that a lot of skill, professionalism and hard work, and once in the bottle, you have to break the bottle to get that little ship out.

I hope I can stay here a long as the voters elect me. I have nothing but respect for this institution.

There are a lot of things that we do around here or bills that we pass that are funny in and of themselves.

The great Oklahoma humorist Will Rogers had a lot of fun with us. Each 1 of the 99 Congresses has given the country a lot of humor. But the institution itself, nothing funny about it; it is the greatest parliamentary body on the face of this Earth in all of history. Never would I want to make fun of this great body or the one down at the other end of the building. I hope that this will make it clear to all Members that never was this letter circulated with my knowledge. Please read all of your dear colleagues. My real one cancels out this phony one.

I hope this young man, David Graham, who cooked this scheme up with his grandmother, and I understand a few congressional staffers who do think there is something funny around here, I hope the young man learns in 3 years and 9 months at Harvard that this is not funny and he got off very light for an affront to this great institution.

Mr. Speaker, I yield back the balance of my hour.

CONFERENCE REPORT ON H.R. 3622, GOLDWATER-NICHOLS REORGANIZATION ACT OF 1986

Mr. NICHOLS. Mr. Speaker, I call up the conference report on the bill (H.R. 3622) to amend title 10, United States Code, to strengthen the position of Chairman of the Joint Chiefs of Staff, to provide for more efficient and effective operation of the Armed Forces, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of September 12, 1986.)

The SPEAKER pro tempore. The gentleman from Alabama [Mr. NICHOLS] will be recognized for 30 minutes and the gentleman from Kentucky [Mr. HOPKINS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama [Mr. NICHOLS].

Mr. NICHOLS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the House debated Joint Chiefs of Staff legislation on November 20, 1985, and passed H.R. 3622 by a vote of 383 to 27. The House debated legislation to reorganize the other elements of the Department of Defense on August 5 of this year and approved reorganization legislation as an amendment to the Defense Authorization Act by a vote of 406 to 4. The conference met formally on August 13 and September 11. The conference report and the statement of managers

were published in the September 12 CONGRESSIONAL RECORD. I can assure Members that a review of those documents will demonstrate that the conference was a success from the point of view of the House.

I hasten to add that the conference was just as much a success from the standpoint of the other body. The distinguished chairman of the Senate Armed Services Committee, for whom the bill is rightfully named, commented that this was the most cordial and cooperative conference in his memory. That is because each side had similar objectives. Those objectives were to strengthen the organizational structure of the Department of Defense and thus to improve the defense posture of this Nation.

In that sense, the conference was a success from the point of view of the American people—which is the ultimate criterion of success.

Mr. Speaker, there have been those in the Department of Defense who have opposed this legislation. Men of good will can, and do, disagree on what is best for the Nation. The Constitution, however, makes the Congress responsible for making the "rules for the Government and regulation of the land and naval forces." That means that the ultimate decision on organization of the Department of Defense must be made by the Congress. Speaking for myself, and for my colleagues in both bodies of this Congress who have led the way toward organizational reform, I want to remind those who have opposed this legislation that we represent some of the staunchest supporters of a strong national defense. We would not, and we have not with this legislation, acted contrary to the best interests of the national defense. We have, in fact, acted to strengthen it. Consequently, I implore those in the Department of Defense on whose shoulders the responsibility will fall to implement this legislation to do it wholeheartedly, with good will. Without their cooperation and unstinting support, no legislation can be successful.

If DOD officials will take this approach, I believe that I can pledge that the Congress will meet them more than half way when difficulties develop. Those who have worked on DOD reorganization realize that problems may arise in implementing such far-reaching legislation. We will attempt to respond to bona fide problems with legislative modifications when necessary.

In short, there should be a cooperative effort on both sides of the Potomac to move forward with the new law of the land and build a stronger defense organization for the American people.

In closing, let me thank my House colleagues who have provided me such strong support on this legislation—without whom there would have been no DOD reorganization. I refer, of course, to my fellow conferees, the chairman of the Committee on Armed Services, LES ASPIN, whose leadership made this legislation possible; IKE SKELTON, one of the original DOD reformers and a very effective conferee; NICK MAVROULES, a valued member of the Investigations Subcommittee; BILL DICKINSON, the ranking minority member of the Committee on Armed Services and my good friend from Alabama; LARRY HOPKINS, the ranking minority member of the Investigations Subcommittee and a very great strength to me; and finally, JOHN KASICH whose energy, vitality, enthusiasm, and knowledge of the subject made his presence on the conference committee mandatory.

Mr. Speaker, I reserve the balance of my time.

Mr. HOPKINS. Mr. Speaker, I yield myself such time as I may consume.

We are here today, as has been described by the chairman of the subcommittee, to consider the conference report of the Department of Defense reorganization bill aptly named, I might add, after the Senator from Arizona, Mr. GOLDWATER, and the chairman of the subcommittee, the gentleman from Alabama, Mr. NICHOLS.

The Goldwater-Nichols bill is not, however, the 11th commandment. If it is flawed, it is certainly not because of the efforts of the members of this subcommittee, as have already been mentioned, and the chairman of the full committee and his efforts, the gentleman from Wisconsin [Mr. ASPIN].

But let me just say a word, if I may, about my colleague Mr. SKELTON, the gentleman from Missouri, who is not a member of this subcommittee who, to my knowledge, did not miss any of the hours and hours of hearings conducted by the gentleman from Alabama, Mr. NICHOLS, chairman of the subcommittee; the tireless efforts of JOHN KASICH from Ohio, the contributions by the gentlewoman from Maryland, BEVERLY BYRON, and certainly for the conscience of NICK MAVROULES, the gentleman from Massachusetts.

Mr. Speaker, in the interest of time I will only take a few minutes to speak in support of the comments made by my friend and colleague from Alabama on the conference report before us.

Following Senate action on this bill late yesterday, today we have an historic opportunity to improve the process by which America defends her ideals of freedom, peace, and human dignity.

From the birth of this Republic, those who preceded us as Members of Congress recognized that this was the most fundamental and vital purpose of our national legislature.

Thus, a reasonable argument can be made that the conference report before us today is the most important of all the bills we will consider in this 99th session of Congress.

It provides a bold new conceptual framework within which this Congress and the Pentagon can profoundly improve our national security system.

It redefines and clarifies command authority.

It coordinates our military assets.

It demands accountability in every phase of the defense process from theater combat to procurement.

That is why I am proud to recommend this legislation and urge the support of every Member of this body.

I believe each Member appreciates why this corrective legislation is necessary.

Countless hours of hearings, oversight, and investigations have documented the shortcomings that too often have led to inadequacies of our present defense system. Inadequacies that have surfaced with tragic consequences to our troops and to our national spirit.

Today, we can address those shortcomings in a direct and positive way.

We recognize the need to carefully review the impact of this legislation in the coming years and work closely with the Pentagon in a continuing and never-ending effort to perfect those processes on which our national security depends.

And, in so doing, create a foundation on which the Congress and the Pentagon can work together to maintain and strengthen our defense management system.

Mr. Speaker, I urge my colleagues' support for the Goldwater-Nichols defense reorganization bill.

Mr. Speaker, I have no requests for time and yield back the balance of my time.

□ 1245

Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. STUMP].

Mr. STUMP. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of the conference report on the DOD Reorganization Act. This legislation will greatly improve our national security posture.

In developing this conference report, the conferees were particularly careful to ensure that it was consistent with the needs of national and departmental U.S. intelligence missions. Thus, the legislation ensures that the National Security Agency established by the Presidential directive in 1952 to perform national intelligence missions as well as departmental intelligence missions, can continue to perform both missions effectively. The conference report also preserves the post of Assistant Secretary of Defense for Intelligence, which is necessary to

ensure central oversight and management of the many DOD intelligence organizations and activities.

The only issue in the conference report about which I remained concerned is personnel end-strength reductions for the Defense Intelligence Agency and the Defense Mapping Agency in the coming years. Nevertheless, Congress will have an opportunity to address that subject again in the future and make the necessary adjustments.

Mr. Speaker, I urge adoption of the conference report and express appreciation to the Armed Services Committee leadership for their help with important intelligence issues.

Mr. HOPKINS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. NICHOLS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Speaker, yesterday the other body adopted the report of the conference committee on H.R. 3622, which we know as the Goldwater-Nichols Department of Defense Reorganization Act of 1986. Today this body, the House of Representatives, will follow suit and we will pass this measure.

This reorganization measure completes the work of reorganization begun with the passage of the Joint Chiefs of Staff Reorganization Act of 1985, which was passed last November by the lopsided majority in this House of 383 to 27. Now we have gone on to reorganize the whole shooting match, Mr. Speaker, strengthening the unified and specified commands, assessing the responsiveness of defense agencies, reforming the joint officer personnel structure, consolidating military department headquarters' staffs, requiring the President to submit an annual report on national security strategy.

With enactment of this reform legislation this year, we will have completed work begun as recommended by President Harry Truman in 1946.

Our collective work can be summarized, Mr. Speaker, in one sentence. It will encourage the four services to think jointly, plan jointly, train jointly and, should the time come to go into action, to fight jointly. We are attempting to change the military mindset, and it will take time for this to happen. There has been resistance to our effort by some in the Pentagon. But 10 years from now when today's captains and majors and lieutenant colonels are the three- and four-star generals of tomorrow, the changes that we have made today will have been seen to be highly positive.

This is the most significant military legislation enacted since the 1947 creation of the Department of Defense. This legislation is far more important to the successful military defense of our Nation than the production of the 1,000 MX missiles.

Mr. Speaker, this has been a long journey. It began in 1982 and 1983. I compliment the gentleman from Alabama, the chairman of the subcommittee, Mr. NICHOLS, whose patience and time and work makes this possible. I thank the chairman of our committee for his encourage and work, the gentleman from Wisconsin [Mr. ASPIN].

This has been a truly bipartisan effort. A special thanks goes to the gentleman from Kentucky [Mr. HOPKINS] and to the gentleman from Ohio [Mr. KASICH].

I add a special word of commendation to Arch Barrett, a gentleman who has done such outstanding work on our staff.

Mr. NICHOLS. Mr. Speaker, I yield such time as he may consume to the chairman of the committee, the gentleman from Wisconsin [Mr. ASPIN].

Mr. ASPIN. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I would just like to add my note of congratulations to all concerned with this very, very important piece of legislation. I cannot think of anything that has passed through Congress since I have been here, I have been here 16 years, and the only thing that comes close to it in terms of significance is the vote that we made when I was first here in Congress to go to the All-Volunteer Army. I think that what we are talking about here is of that kind of fundamental change. This is absolutely a fundamental change for the good. It is because of the gentlemen who are here, the gentlemen who have talked, the gentlemen who have been working this bill all through the whole process, through the subcommittee hearings, through the debate in the committee, through the debate on the floor and through the conference. They are, of course, the people who have already been mentioned: very, very importantly, the gentleman from Missouri [Mr. SKELTON]; and on the Republican side, the gentleman from Ohio [Mr. KASICH]; the gentleman from Kentucky [Mr. HOPKINS]; but especially, above all, the chairman of the subcommittee, the gentleman from Alabama [Mr. NICHOLS] for whom this legislation is so aptly named, the gentleman without whom we could not have done this. The gentleman has the standing in the Congress, the standing in the committee, and the standing as a person who is sensible, who is strong for defense, who when he speaks everybody listens. Without that kind of backing, there is no way that the House of Representatives would have gone into such a revolutionary change as this, the backing of a gentleman who is so solid and so for defense that everybody is willing to take his lead. That is the gentleman from Alabama.

Ladies and gentlemen, we have here before us a person who is a real class act. My congratulations to the gentleman from Alabama for the Goldwater-Nichols Reorganization Act, which is a piece of legislation that I think will go down in history.

Mr. NICHOLS. Mr. Speaker, may I inquire of the Chair how much time I have remaining?

The SPEAKER pro tempore (Mr. GRAY of Illinois). The gentleman from Alabama [Mr. NICHOLS] has 22 minutes remaining.

Mr. NICHOLS. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. KASICH].

Mr. KASICH. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I have to echo what the gentleman from Wisconsin [Mr. ASPIN] said, because without BILL NICHOLS, who is respected by everybody on both sides of the aisle and really distinguished service and contributions to his country back when the gentleman was very, very young and came to Congress a strong supporter of the military and who has decided there were changes that needed to be made within the Military Establishment, we would not have been able to do it and bring forward a bill today that is really significant.

Some people in our offices may be watching this debate and say, "Why are we spending so much time talking about this reform legislation?"

What it comes down to is really very simple. What we are trying to do in this bill is to avoid the kind of problems we had in Iran when we had helicopters crashing into one another during the Desert I operation. We are trying to eliminate the kind of problems that we had in Grenada, communications problems, when the services could not talk to one another. We are trying to put into statute as carefully and as clearly as we can the ingredients for successes that we found present in the Libyan raid, the kind of successes that we have seen recently within the military. We are really trying to force the services to work together, to plan together and to operate together. That is really what this bill does.

So what it really is going to do is to make America a stronger military force, a more effective military force and a more respected military force in the world.

And a word about terrorism. We have not mentioned that in terms of this bill. But this bill even has implications for our war against terrorism, because it is going to mean that the services are going to plan together better, they are going to operate together better, and that the special commands that exist within our military are going to be emphasized, that we are

going to have the ability to pull it all together so that we can strike back against the forces of terrorism to make America a more effective military force and a more effective force for its citizenry.

We have one piece of reform legislation after another on the procurement side. This has procurement ramifications, but more important than that, it is going to allow our services to be as effective as they possibly can.

□ 1255

It happened because of Mr. ASPIN and Mr. NICHOLS and Mr. HOPKINS and Mr. GOLDWATER and Mr. SKELTON; a host of people who plugged together and Colonel Barrett. People who plugged together to put something that is going to have longtime significance for our United States.

Mr. NICHOLS. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. DYSON].

Mr. DYSON. I thank the gentleman for yielding this time to me.

Mr. Speaker, like many of our colleagues in the House today, I rise in strong support of this historic legislation. My good friend, the gentleman from Ohio [Mr. KASICH], has enumerated eloquently the contributions that many of our colleagues have made in the drafting of this measure. I would like to associate myself with his remarks. Yet special recognition must be accorded the esteemed gentleman from the State of Alabama, Chairman BILL NICHOLS, whose foresight and leadership in this area have produced what future generations will herald as one of the most significant reforms of our national defense.

As it is with any major reform doubters and detractors abound. The Reorganization Act is no exception. When IKE SKELTON, a fellow colleague on the House Armed Services Committee, and I first discussed this proposal, I must admit I had my own doubts about its enactment. But today, Mr. Speaker, the primary sponsors of this bill have reached the summit. They have done much to earn the deepest respect and gratitude of this Chamber. I sincerely believe that this act will long be remembered as one of the most significant accomplishments of this Congress.

In an editorial entitled "The Defense Reform Congress", Baltimore Sun editor, Joseph Stern notes that:

If the military units can't handle limited operations in Iran, Lebanon, and Grenada, how would they do in a big war? That is the gnawing worry that led to the Pentagon reorganization bill. It was enough to alert the best military minds on Capitol Hill.

I am going to stop there because I think when he said that, he meant BILL NICHOLS.

I also want to commend Mr. NICHOLS, along with Mr. HOPKINS, Mr. KASICH, Mr. ASPIN, Mr. SKELTON, Col. Archie Barrett, and all the others who have done so much to bring this bill before us today.

[From the Baltimore Sun, Sept. 17, 1986]

DEFENSE REFORM CONGRESS

Defense reform may edge aside tax reform when historians look back to select the most important accomplishment of the 99th Congress. This week legislation is breezing through Congress that will do more to unify the armed services than all the reorganization moves of the past 40 years.

The chairman of the Joint Chiefs of Staff will become principal military adviser to the President, an officer with real strategic planning authority, rather than the chairman of a committee functioning through logrolling unanimity.

The unified commanders in chief (CINCs) in regional theaters of operation will finally get control of component service units whose loyalty in the past was mostly to their home offices back in Washington.

Service on assignment to the Joint Chiefs of Staff will no longer be a drawback for officers with ambitions. They will be given a "joint officer" specialty that could lead to top commands.

Many factors had to come together to bring about these first real steps toward unification of the armed services since the present flawed structure was pasted together in 1947.

Procurement scandals had a role. Six-hundred-dollar toilet seats did much to awaken the public that something was wrong. Runaway budget deficits, linked to the huge defense buildup, had their effect. On Capitol Hill reform-minded military hawks defined national security not in lock-step support of every Pentagon proposal but in criticism of its efficiency and fighting posture.

But the key catalyst was the successful terrorist bombing attack on the U.S. Marines barracks in Beirut in October 1983. Congressional investigators soon found a gimcrack command structure partly to blame for a lack of preparedness, poor liaison among the services and the fumbling response after the tragedy. When a so-called military victory came later in Grenada, stories soon leaked out that the component services couldn't even talk to one another by radio—a flaw that also bedeviled the botched rescue attempt in Iran in 1979.

If U.S. military units can't handle limited operations in Iran, Lebanon and Grenada, how would they do in a big war? That is the gnawing worry that led to the new Pentagon reorganization bill. It was enough to alert the best military minds on Capitol Hill. It prodded President Reagan into the appointment of a commission that largely agreed with congressional defense reformers. And it overcame the footdragging of Defense Secretary Caspar W. Weinberger and the outright opposition of Navy Secretary John Lehman.

Greater unification of the armed services must not be considered a panacea. But it may provide the framework for a military establishment with a sharper fighting edge, greater cohesion and an agility to deal with the myriad threats to U.S. security in today's world.

Mr. NICHOLS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, one provision of the bill would require consolidation of certain functions in the Office of the Secretary of each of the military departments. One of the named functions required to be consolidated is "legislative affairs." In fact, with respect to legislative affairs this provision is merely a codification of the status quo. The legislative affairs function has been consolidated under the service secretaries for many years.

A question has arisen concerning the relationship between each military department comptroller office and the Defense Subcommittee of the Committee on Appropriations. It was not the intent of the conferees to alter the existing arrangements. The term "legislative affairs" as used in the conference report refers to the function performed by the existing legislative affairs offices.

Mr. Speaker, in closing, let me say that I am most appreciative of the many accolades that have been handed to me personally and to the committee that I am honored to Chair by my colleagues here in the House.

I would be very negligent, however, if I did not, as we conclude what has been the climax of about 5 years of legislative effort on the part of the committee toward reform if I failed to duly acknowledge the service performed by one member of the staff of the House Armed Services Committee.

I refer to Mr. Arch Barrett, a distinguished military graduate of the U.S. Military Academy in the year 1957. Mr. Barrett wrote the book on reorganization. Without his efforts throughout the August recess when he worked tirelessly, including Labor Day, and I am sure he did not get double pay for that, he came down to my home in Alabama 2 weeks ago and spent a day with me going over the bill. I fed him a good lunch of crowder peas and okra and a little corn bread and blackberry pie for his efforts. But I want to publicly express my deep appreciation, and I am sure that goes for my colleague Mr. HOPKINS, and all of us on the committee for the fine service that he rendered.

Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on H.R. 3622.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987

The SPEAKER pro tempore. Pursuant to House Resolution 545 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4759.

□ 1300

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the U.S. Government, the intelligence community staff, and the Central Intelligence Agency retirement and disability system, and for other purposes, with Mr. MURTHA in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Tuesday, September 16, all time for general debate had expired.

Pursuant to House Resolution 545, the bill shall be considered by titles for the purpose of amendment under the 5-minute rule, except for section 107, and each title is considered as having been read.

The amendments recommended by the Permanent Select Committee on Intelligence and by the Committee on Post Office and Civil Service now printed in the bill are considered as having been adopted.

Section 107 shall not be considered for amendment until the remainder of the bill is considered for amendment.

No amendments to section 107 or amendments which affect the subject matter of section 107 are in order except one motion to strike the section, if offered by Representative STUMP, or his designee, which shall be debatable for 2 hours equally divided and controlled by the proponent and a Member opposed thereto.

The Clerk will designate section 1.

Mr. HAMILTON. Mr. Chairman, I ask unanimous consent that the bill be printed in the RECORD, and that, except for section 107, it be open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The text of H.R. 4759, as amended by amendments considered to have been adopted, pursuant to House Resolution 545, is as follows:

H.R. 4759

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Intelligence Authorization Act for Fiscal Year 1987".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1987 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The Drug Enforcement Administration.

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1987, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Permanent Select Committee on Intelligence to accompany H.R. 4759 of the Ninety-ninth Congress. That Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

PERSONNEL CEILING ADJUSTMENTS

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for fiscal year 1987 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

AUTHORITY FOR THE CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 104. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW

SEC. 105. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

RESTRICTION ON SUPPORT FOR MILITARY OR PARAMILITARY OPERATIONS IN NICARAGUA

SEC. 106. Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1987 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or pursuant to any provision of law specifically providing such funds, materiel, or assistance.

RESTRICTION ON SUPPORT FOR MILITARY OR PARAMILITARY OPERATIONS IN ANGOLA

SEC. 107. During fiscal year 1987, the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may obligate or expend funds—

(1) to conduct, directly or indirectly, military or paramilitary operations in Angola, or

(2) to provide any financial, materiel, or other assistance, directly or indirectly, to any group engaged in military or paramilitary operations in Angola,

only if the use of funds for that purpose is the openly acknowledged policy of the United States Government, as determined in accordance with section 2(b), and consistent with the conditions of section 2(c) and section 2(d), of H.R. 4276 of the Ninety-ninth Congress as reported by the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1987 the sum of $21,700,000.

AUTHORIZATION OF PERSONNEL END-STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two hundred and thirty-five full-time personnel as of September 30, 1987. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1987, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1987, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1987, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND RELATED MATTERS

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1987 the sum of $125,800,000.

SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES OF CIA EMPLOYEES

SEC. 302. (a) Part C of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following new section:

"SURVIVOR BENEFITS FOR CERTAIN OTHER FORMER SPOUSES

"SEC. 224. (a)(1) Any individual who was a former spouse of a participant or former participant on November 15, 1982, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 per centum of the greater of—

"(A) the full amount of the participant's or former participant's annuity, as computed under section 221(a); or

"(B) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

"(2) A survivor annuity payable under this section shall be reduced by an amount equal to the amount of retirement benefits, not including benefits under title II of the Social Security Act, received by the former spouse which are attributable to previous employment of such former spouse by the United States.

"(b) A former spouse shall not be entitled to a survivor annuity under this section if—

"(1) an election has been made with respect to such former spouse under section 223;

"(2) the former spouse remarries before age fifty-five; or

"(3) the former spouse is less than fifty years of age.

"(c)(1) The entitlement of a former spouse to a survivor annuity under this section—

"(A) shall commence—

"(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on the date of—

"(I) the sixtieth day after such date; or

"(II) the date such former spouse reaches age fifty; and

"(ii) in the case of any other former spouse, beginning on the latest of—

"(I) the date that the participant or former participant to whom the former spouse was married dies;

"(II) the sixtieth day after the effective date of this section; or

"(III) the date such former spouse reaches age fifty; and

"(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age fifty-five.

"(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, within thirty months after the effective date of this section.

"(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

"(d) The Director shall—

"(1) as soon as possible, but not later than sixty days after the effective date of this section, issue such regulations as may be necessary to carry out this section; and

"(2) to the maximum extent practicable, and as soon as possible, inform each individual who was a former spouse of a participant or former participant on November 15, 1982, of any rights which such individual may have under this section.".

(b) Section 14(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403n(a)) is amended by inserting "224," after "222, 223,".

(c) For fiscal year 1987, not to exceed $500,000 shall be available from amounts appropriated under the authority of section 101(l) of this Act for survivor annuities under section 224 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees and under the amendment made by subsection (b) of this section.

(d) The amendments made by this section shall take effect on October 1, 1986.

HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

SEC. 303. (a) The Central Intelligence Agency Act of 1949 is amended by adding at the end a new section as follows:

"HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

"SEC. 16. (a) Except as provided in subsection (c)(1), any individual—

"(1) formerly married to an employee or former employee of the Agency, whose marriage was dissolved by divorce or annulment before May 7, 1985;

"(2) who, at any time during the eighteen-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

"(3) who was married to such employee for not less than ten years during periods of service by such employee with the Agency, at least five years of which were spent outside the United States by both the employee and the former spouse,

is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

"(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the six-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

"(A) files an election for such enrollment; and

"(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code, an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

"(2) The Director of Central Intelligence shall, as soon as possible, take all steps practicable—

"(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

"(B) to notify each such former spouse of that individual's rights under this section.

"(3) The Director of the Office of Personnel Management, upon notification by the Director of Central Intelligence, shall waive the six-month limitation set forth in paragraph (1) in any case in which the Director of Central Intelligence determines that the circumstances so warrant.

"(c)(1) Any former spouse who remarries before age fifty-five is not eligible to make an election under subsection (b)(1).

"(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age fifty-five shall not be eligible for continued enrollment under this section after the end of the thirty-one-day period beginning on the date of remarriage.

"(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

"(e) For purposes of this section the term 'health benefits plan' means an approved health benefits plan under chapter 89 of title 5, United States Code.".

(b) The amendment made by this section shall take effect on October 1, 1986.

TITLE IV—COUNTERINTELLIGENCE AND SECURITY

COUNTERINTELLIGENCE OFFICIAL VISITOR EXCHANGES

SEC. 401. (a) Chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 539. Counterintelligence official reception and representation expenses

"The Director of the Federal Bureau of Investigation may use funds available to the Federal Bureau of Investigation for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Federal Bureau of Investigation for consultation on counterintelligence matters.".

(b) The table of contents for chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following:

"539. Counterintelligence official reception and representation expenses.".

(c) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 140d. Counterintelligence official reception and representation expenses

"The Secretary of Defense may use funds available to the Department of Defense for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Department of Defense for consultation on counterintelligence matters.".

(d) The table of contents for chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following:

"140d. Counterintelligence official reception and representation expenses.".

FBI ACCESS TO STATE AND LOCAL CRIMINAL RECORDS FOR SECURITY CLEARANCES

SEC. 402. (a) Section 9101 of title 5, United States Code, is amended as follows:

(1) in paragraph (1) of subsection (b) by striking "or" after "Office of Personnel Management,", by inserting "or the Federal Bureau of Investigation," after "the Central Intelligence Agency,", and by striking "department, office or agency" and inserting in lieu thereof "department, office, agency or bureau";

(2) in subparagraph (3)(A) of subsection (b) by striking "or" after "Office of Personnel Management," by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency", by striking "department, office or agency" and inserting in lieu thereof "department, office, agency, or bureau", and by striking "department, office, or agency." and inserting in lieu thereof "department, office, agency, or bureau.";

(3) in subparagraph (3)(B) of subsection (b) by striking "or" after "Office of Personnel Management," and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency"; and

(4) in subsection (c) by striking "or" after "Office of Personnel Management," and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency".

(b) Section 803(a) of the Intelligence Authorization Act for fiscal year 1986 (Public Law 99-169) is amended by striking "and" after "Office of Personnel Management," and by inserting "and the Federal Bureau of Investigation," after "the Central Intelligence Agency,".

(c) The amendments made by this section shall become effective with respect to any inquiry which begins after the date of enactment of this Act conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code.

PERMANENT EXTENSION OF DOD AUTHORITY TO USE PROCEEDS FROM COUNTERINTELLIGENCE OPERATIONS

SEC. 403. (a) Chapter 4 of title 10, United States Code, as amended by section 401(c) of this Act, is further amended by adding at the end thereof the following new section:

"§ 140e. Authority to use proceeds from counterintelligence operations of the military departments

"(a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, United States Code, use of proceeds from counterintelligence operations conducted by components of the military departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, and to make awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or to make such awards would not be practicable.

"(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

"(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management, and disposition of proceeds from counterintelligence operations conducted by components of the military departments, including effective internal systems of accounting and administrative controls.".

(b) The table of contents for chapter 4 of title 10, United States Code, as amended by Section 401(d) of this Act, is further amended by adding at the end thereof the following:

"140e. Authority to use proceeds from counterintelligence operations of the military departments.".

FEDERAL BUREAU OF INVESTIGATION COUNTERINTELLIGENCE ACCESS TO FINANCIAL RECORDS OF AGENTS OF FOREIGN POWERS

SEC. 404. Section 1114(a) of the Right of Financial Privacy Act of 1978 (12 U.S.C. 3414(a)) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(C) On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

"(D) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.".

TITLE V—ADMINISTRATIVE AUTHORITIES RELATING TO INTELLIGENCE PERSONNEL

DEFENSE INTELLIGENCE AGENCY CIVILIAN MEDICAL EVACUATION BENEFIT

SEC. 501. Subsection 1605(a) of title 10, United States Code, is amended by inserting ", (5)" after "paragraphs (2), (3), (4)" and after "(22 U.S.C. 4081 (2), (3), (4)".

ONE YEAR EXTENSION OF DEFENSE INTELLIGENCE AGENCY SPECIAL TERMINATION AUTHORITY

SEC. 502. Paragraph 1604(e)(1) of title 10, United States Code, is amended by striking "fiscal years 1985 and 1986" and inserting in lieu thereof "fiscal years 1986 and 1987".

ACCEPTANCE OF DIRECTOR OF CENTRAL INTELLIGENCE AWARDS BY MILITARY INTELLIGENCE PERSONNEL

SEC. 503. Section 402 of the Intelligence Authorization Act for Fiscal Year 1984 (Public Law 98-215) is amended by adding at the end thereof the following:

"(c) The Director of Central Intelligence may exercise the authority granted in section 4503(2) of title 5, United States Code, with respect to members of the Armed Forces who are assigned to foreign intelligence duties at the time of the conduct which gives rise to the exercise of such authority.

"(d) An award made by the Director of Central Intellience to an employee or member of the Armed Forces under the authority of section 4503 of title 5, United States, or this section may be paid and accepted notwithstanding—

"(1) section 5536 of title 5, United States Code; and

"(2) the death, separation, or retirement of the employee or the member of the Armed Forces whose conduct gave rise to the award, or the assignment of such member to duties other than foreign intelligence duties.".

MANAGEMENT OF CIVILIAN INTELLIGENCE PERSONNEL OF THE MILITARY DEPARTMENTS

SEC. 504. (a) Chapter 81 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 1590. Management of civilian intelligence personnel of the military departments

"(a) The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

"(1) establish such positions for civilian intelligence officers and employees of the military departments as may be necessary to carry out the intelligence functions of such departments;

"(2) appoint individuals to such positions; and

"(3) fix the compensation of such individuals for service in such positions.

"(b) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5 for positions subject to such Schedule which have corresponding levels of duties and responsibilities. Except in the case of a civilian intelligence officer or employee of a military department serving as a member of the Senior Executive Service of a military department, no civilian intelligence officer or employee of a military department may be paid basic pay at a rate in excess of the highest rate of basic pay payable under such General Schedule.

"(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions for civilian intelligence officers or employees in or under which the military departments may employ individuals described by section 5342(a)(2)(A) of such title.

"(d) In addition to the basic pay payable under subsection (b), civilian intelligence officers and employees of the military departments who are citizens or nationals of the United States and who are stationed outside the continental United States or in Alaska may be paid allowances, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute. Such allowances shall be based on—

"(1) living costs substantially higher than in the District of Columbia;

"(2) conditions of environment which differ substantially from conditions of environment in the continental United States

and warrant an allowance as a recruitment incentive; or

"(3) both of the factors described in paragraphs (1) and (2).

"(e)(1) Notwithstanding any other provision of law, the Secretary of Defense may, during fiscal year 1987, terminate the employment of any civilian intelligence officer or employee of a military department whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

"(2) Any termination of employment under this subsection shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

"(3) The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense or the Secretary concerned or both. An action to terminate any civilian intelligence officer or employee of a military department by either such officer shall be appealable to the Secretary of Defense.".

(b) The table of sections at the beginning of chapter 81 of title 10, United States Code is amended by adding at the end thereof the following new item:

"1590. Management of civilian intelligence personnel of the military departments.".

NATIONAL SECURITY AGENCY ACQUISITION OF CRITICAL SKILLS

SEC. 505. The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by adding at the end thereof the following section:

"SEC. 16. (a) The purpose of this section is to establish an undergraduate training program, which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to the mission of the National Security Agency, including mathematics, computer science, engineering, and foreign languages.

"(b) The Secretary of Defense is authorized, in his discretion, to assign civilian employees of the National Security Agency as students at accredited professional, technical, and other institutions of higher learning for training at the undergraduate level in skills critical to effective performance of the mission of the Agency.

"(c) The National Security Agency may pay, directly or by reimbursement to employees, expenses incident to assignments under subsection (b), in any fiscal year only to the extent that appropriated funds are available for such purpose.

"(d)(1) To be eligible for assignment under subsection (b), an employee of the Agency must agree in writing—

"(A) to continue in the service of the Agency for the period of the assignment and to complete the educational course of training for which the employee is assigned;

"(B) to continue in the service of the Agency following completion of the assignment for a period of one-and-a-half years for each year of the assignment or part thereof;

"(C) to reimburse the United States for the total cost of education (excluding the employee's pay and allowances) provided under this section to the employee if, prior to the employee's completing the educational course of training for which the employee is assigned, the assignment or the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily; and

"(D) to reimburse the United States if, after completing the educational course of training for which the employee is assigned, the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily, prior to the employee's completion of the service obligation period described in subparagraph (B), in an amount that bears the same ratio to the total cost of the education (excluding the employee's pay and allowances) provided to the employee as the unserved portion of the service obligation period described in subparagraph (B) bears to the total period of the service obligation described in subparagraph (B).

"(2) Subject to paragraph (3), the obligation to reimburse the United States under an agreement described in paragraph (1), including interest due on such obligation, is for all purposes a debt owing the United States.

"(3)(A) A discharge in bankruptcy under title 11, United States Code, shall not release a person from an obligation to reimburse the United States required under an agreement described in paragraph (1) if the final decree of the discharge in bankruptcy is issued within five years after the last day of the combined period of service obligation described in subparagraphs (A) and (B) of paragraph (1).

"(B) The Secretary of Defense may release a person, in whole or in part, from the obligation to reimburse the United States under an agreement described in paragraph (1) when, in his discretion, the Secretary determines that equity or the interests of the United States so require.

"(C) The Secretary of Defense shall permit an employee assigned under this section who, prior to commencing a second academic year of such assignment, voluntarily terminates the assignment or the employee's employment with the Agency, to satisfy his obligation under an agreement described in paragraph (1) to reimburse the United States by reimbursement according to a schedule of monthly payments which results in completion of reimbursement by a date five years after the date of termination of the assignment or employment or earlier at the option of the employee.

"(e) When an employee is assigned under this section to an institution, the Agency shall disclose to the institution to which the employee is assigned that the Agency employs the employee and that the Agency funds the employee's education.

"(f) Chapter 41 of title 5 and subsections (a) and (b) of section 3324 of title 31, United States Code, shall not apply with respect to this section.

"(g) The Secretary of Defense may issue such regulations as may be necessary to implement this section.".

CENTRAL INTELLIGENCE AGENCY ACQUISITION OF CRITICAL SKILLS

SEC. 506. Pursuant to the authority granted in section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), the Director of Central Intelligence shall establish an undergraduate training program with respect to civilian employees of the Central Intelligence Agency similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

REPORT ON INTELLIGENCE PERSONNEL SYSTEMS

SEC. 507. Not later than April 15, 1987, the Secretary of Defense and the Director of Central Intelligence shall submit jointly, an unclassified report to the Committee on Post Office and Civil Service and the Permanent Select Committee on Intelligence of the House of Representatives and to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate describing the civilian personnel systems for officers and employees of the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency, and the personnel systems for officers and employees established under section 1590 of title 10, United States Code, as added by section 504, for civilian intelligence personnel of the military departments. The report shall include descriptions of—

(1) how each such intelligence personnel system differs from the competitive service and from each other such system;

(2) the specific features of each such personnel system to ensure compliance with the merit system principles set forth in section 2301 of title 5, United States Code;

(3) any features of compensation (including bonuses and awards) unique to such personnel system;

(4) authorities to take actions (including the number of such actions) through employment termination provisions which do not permit appeals outside the agency; and

(5) any recruitment or retention problems existing within such system.

TITLE VI—MISCELLANEOUS

DEFENSE MAPPING AGENCY EXCHANGE AGREEMENTS

SEC. 601. (a) Chapter 167 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"**§ 2795. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations**

"The Secretary of Defense may authorize the Defense Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies and services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.".

(b) The table of contents of chapter 167 of title 10, United States Code, is amended by adding at the end thereof:

"2795. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations.".

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 602. (a) Title V of the National Security Act of 1947, relating to accountability

for intelligence activities, is amended by adding at the end thereof the following:

"NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

"SEC. 503. (a)(1) The transfer of a defense article or defense service exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of section 501 of this Act.

"(2) Paragraph (1) does not apply if—

"(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

"(B) the transfer—

"(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(b)(1) of that title), or the Federal Property and Administrative Services Act of 1949, and

"(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

"(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

"(b) As used in this section—

"(1) the term 'intelligence agency' means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

"(2) the terms 'defense articles' and 'defense services' mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

"(3) the term 'transfer' means—

"(A) in the case of defense articles, the transfer of possession of those articles; and

"(B) in the case of defense services, the provision of those services;

"(4) the term 'value' means—

"(A) in the case of defense articles, the greater of—

"(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

"(ii) the replacement cost; and

"(B) in the case of defense services, the full cost to the Government of providing the services.".

(b) The table of contents at the end of the first section of such Act is amended by inserting the following after the item relating to section 502:

"503. Notice to Congress of certain transfers of defense articles and defense services.".

COVERT AGENT DISCLOSURE FEDERAL PENSION FORFEITURE

SEC. 603. Section 8312(c)(1)(C) of title 5, United States Code is amended by striking the period at the end thereof and inserting in lieu thereof "or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).".

AMENDMENT OFFERED BY MR. HAMILTON

Mr. HAMILTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HAMILTON: On page 9, line 5, strike "late" and insert in lieu thereof "later".

On page 20, line 16, after "United States" insert "Code".

On page 32, line 9, after the semicolon insert "and".

Mr. HAMILTON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. HAMILTON. Mr. Chairman, this amendment is purely technical. It corrects three printing errors and has no substantive effect. I ask for its adoption.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. HAMILTON].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HAMILTON

Mr. HAMILTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HAMILTON: On page 3, line 3, insert "(a)" after "102".

On page 3, line 7, strike "classified Schedule of Authorizations prepared by the Permanent Select Committee on Intelligence" and insert in lieu thereof "amended classified Schedule of Authorizations dated September 15, 1986 signed by the Chairman and Ranking Minority Member of the Permanent Select Committee on Intelligence, and on file at the offices of that Committee" and strike "Schedule" each time it appears thereafter in subsection 102(a) and insert in lieu thereof "amended Schedule".

On page 3, after line 15, add the following:

"(b) Funds appropriated to the Department of Defense for Fiscal Year 1987 for intelligence and intelligence-related activities and listed under the heading "ADDITIONAL SPECIFICALLY AUTHORIZED ACTIVITIES" in the amended Schedule of Authorizations to which subsection (a) refers, shall be considered to be specifically authorized by the Congress for such activities for purposes of section 502 of the National Security Act of 1947, notwithstanding the absence of authorizations of appropriations for such activities in this Act."

Mr. HAMILTON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. HAMILTON. Mr. Chairman, this is a budget amendment. It changes amounts authorized for both the National Foreign Intelligence Program and Tactical Intelligence and Related Activities so that the bill is in congruence with H.R. 4428. The fiscal year 1987 defense authorization bill, as it passed the House. As Members will recall. H.R. 4428 was amended by the Spratt-McCurdy amendment to lower the total budget authority for defense from $292 billion to $286 billion. Since the intelligence bill was reported out at a time when the defense authorization bill was pegged to a $292 billion total. Its authorizations now must be adjusted downward to reflect the lower $286 billion total.

My amendment does this. It ensures that the authorization of appropriations in this bill are as reflected in the defense authorization bill. The Intelligence Committee worked closely with the Committee on Armed Services at the time of its original markup and since then in setting levels for intelligence accounts. This amendment adjusts intelligence authorizations at levels agreed upon between the committees and reflected in floor action on the defense authorization bill.

Mr. Chairman, the amendment also waives the effect of section 502 of the National Security Act of 1947 as to certain intelligence accounts in the fiscal year 1987 defense appropriations bill, H.R. 5438. The Defense Appropriations Subcommittee marked up after the Intelligence Committee. It recommended some additional appropriations not authorized by the Intelligence Committee using funds which it, in effect, transferred from other defense accounts. The amendment would not authorize these amounts, but it would remove any obstacle to their use if they are actually appropriated.

Mr. Chairman, both elements of this amendment represent efforts at cooperation and coordination with the Committees on Appropriations and Armed Services. It is the aim of the Intelligence Committee to secure as good an understanding in both these committees for the continued demands being placed on our intelligence services and the relatively higher budget priority that we believe intelligence deserves. This is a message that needs to be given greater attention within the executive branch as well. Until it is, the increasing fiscal restraints placed on all defense expenditures will act to underfund this crucial national security function.

□ 1305

Mr. STUMP. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we urge adoption of the amendment on this side also.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. HAMILTON].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. STOKES

Mr. STOKES. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STOKES: On page 5, after line 22, insert the following new section:

"RESTRICTION ON INTELLIGENCE AGENCY COOPERATION WITH SOUTH AFRICA

"SEC. 108. No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. It is the policy of the United States that no agency or entity of the United States involved in intelligence activities may provide any intelligence information to the government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Any change in such policy, or the provision of intelligence information contrary to such policy, shall be considered a significant anticipated intelligence activity for purposes of Section 501 of the National Security Act of 1947."

Mr. STOKES (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. STOKES. Mr. Chairman, recently, the New York Times published an article by Seymour Hersh which alleged a significant intelligence exchange between the United States and the Government of South Africa. In particular, Mr. Hersh charged that the United States provides information concerning the African National Congress and other South African opposition groups to the Government of South Africa.

Given the positión of the United States Government concerning South Africa and the strong feeling in this body about the immoral and unsupportable nature of apartheid, I joined other members of the committee in carefully reviewing this article and in fully investigating all of its charges. We spoke with intelligence officials. We demanded and received written responses to our questions about this alleged relationship.

That process led us, I believe, to a reasonably good understanding of the nature of U.S. intelligence activities in question. It also led me to the conviction that it would be important, both because of the allegations in Mr. Hersh's article and because of the deep concern in this House about the United States relationship to South Africa, to offer an amendment which would make clear the acceptable limits of any potential intelligence relationship with South Africa.

The amendment which I offer prohibits intelligence cooperation with the Government of South Africa except for intelligence collection. It also states that it is the policy of the United States not to provide any intelligence information to the Government of South Africa concerning any opposition group or individual. Further, in the event that an exception is promulgated to this policy, or any intelligence information is ever passed, the Director of Central Intelligence must inform the House and Senate Intelligence Committees of this prior to such an event.

Mr. Chairman, this provision is essentially a modification of the Kennedy amendment to the South African sanctions bill passed by the Senate. My understanding is that it was worked out in connection with the Central Intelligence Agency and that, although this administration opposes all legislation on South African sanctions, my modification of the Kennedy amendment is not viewed as prohibiting activities which the United States contemplates entering into.

Mr. Chairman, my judgment, and I believe that of the intelligence community, is that this amendment would not result in the loss of any necessary intelligence, nor would it prevent the United States from acting to forestall the loss of innocent life, which is the only circumstance under which intelligence likely would be provided. What it does do is state clearly for all the world to know that the United States will not side with white South Africa against black South Africa.

It is unfortunate that such a message needs to be sent, but it is clearly one that must be sent, and sent again, until it is finally understood in the councils of white South Africans that apartheid and the system which it supports cannot stand against the inalienable rights of black South Africans to determine their own destiny and to acquire the rights of representation, free passage, and human dignity that are daily denied them in the ghettos of South Africa.

Mr. Chairman, I urge the support of this amendment.

Mr. STUMP. Mr. Chairman, will the gentleman yield?

Mr. STOKES. I yield to my distinguished ranking minority member of the subcommittee, the gentleman from Arizona [Mr. STUMP].

Mr. STUMP. Mr. Chairman, while there is some reluctance to this amendment, we have examined it on this side and are willing to accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. STOKES].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SHAW

Mr. SHAW. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SHAW: Page 33, insert after line 7 the following:

TITLE VII—DRUG TESTING

CONTROLLED SUBSTANCE TESTING PROGRAM

SEC. 701. (a) The head of each agency referred to in section 101 shall implement a controlled substances testing program for any employee of such agency for whose activities funds are authorized by this Act.

(b) The results of any test administered under subsection (a) shall be reported—

(1) to the individual tested; and

(2) to the appropriate agency head or other authority responsible for implementing the program under which the test is administered.

Mr. SHAW (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. SHAW. Mr. Chairman, this is a simple yet extremely vital amendment. It requires that those who are involved in the intelligence activities of this country be demonstrably drug free.

One of the gravest threats to the security of this Nation is the possibility that classified information and covert activities may be revealed to foreign powers by those who are entrusted with the protection of such secrets. A person who abuses illegal drugs not only demonstrates a serious lack of character and good sense; they also expose themselves to the threat of blackmail. Does any Member of this House believe that a drug dealer would hesitate for one second to sell their list of customers to foreign agents? Does anyone here believe that nations such as the Soviet Union would refrain from using such a list?

Individuals who purchase illegal drugs engage in a criminal conspiracy. They are, by definition, felons. If exposed as such, they face professional ruin, personal disgrace, and possibly prison. When such people are confronted by a foreign agent with proof of their crimes, what is their likely reaction? Having proven a lack of moral fiber by using drugs, are they now going to redeem themselves by refusing to spy? I doubt it.

An inescapable temptation is the addict's chronic need for money. Illegal drugs are not cheap. A cocaine user may spend $100 a day on drugs. That comes to over $36,000 a year. Where does a civil servant making a maximum of $68,000 gross per year come up with $36,000 to spend on drugs? As we learned from the infamous spy Ronald Pelton, who had a $200 a week drug habit, they come up with the money by selling the most valuable commodity they can lay their hands on, our Nation's security. Narcotics also played a contributory role in the Falcon and Snowman case where Christopher John Boyce, a self-admitted abuser of marijuana and cocaine, conspired with his pusher, Andrew Dalton Lee, to sell cryptographic data to the Russians. Edmond Lee Howard, a former employee of the CIA is now known to have had a pattern of drug abuse. Mr. Howard distinguished himself by becoming the first CIA agent

to defect to the Soviet Union. Finally, there is the case of Randy Myles Jefferies, a Washington, DC, courier addicted to both cocaine and heroin. Mr. Jefferies tried to sell classified transcripts of closed proceedings of this very body. In these cases the culprits were revealed after the damage was done. If any one of these people had been required to take a drug test their treasonous activities might have been prevented. With this amendment we have an opportunity to preclude further such abuses.

We all know that earlier this week the President released an Executive order requiring Federal agencies to implement a drug testing program. I applaud the President's order and I support it. But we must realize that an Executive order is not a law, it is not an act of Congress and its authority may be repealed at the end of this administration. This is the body which must act; it is Congress which must craft a law to deal with the threat of drug abuse by those in sensitive positions within our Government.

I assure my fellow Members that if we do not identify those within our intelligence community who abuse narcotics, sooner or later our enemies will. I urge a yes vote on this amendment.

□ 1315

Mr. HAMILTON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise for the purpose of asking the sponsor of the amendment some questions.

The gentleman, I know, has been very active in support of our drug legislation and I commend the gentleman for that. The gentleman can appreciate, I am sure, the fact that I was just handed the amendment, so I am not sure just what its implications are, and I do have a question or two about it.

As I read it, it covers every agency that is included in this bill.

Now, we include in this bill the Department of Defense, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of State, the Department of the Treasury, the Department of Energy, and the Federal Bureau of Investigation, and the Drug Enforcement Administration.

As I read the amendment, all employees in each of those agencies or departments would be required to take a controlled substance test, is that correct?

Mr. SHAW. Mr. Chairman, if the gentleman will yield, the language of the amendment says that the head of each agency, as the gentleman refers to them, shall implement a controlled substances testing program for any employee of such agency.

The testing program itself would be a decision of the head of the agency who, of course, would be directed by the President as to whether or not it had the regular testing of all employees or if indeed it would require the employee to come in and be tested should some type of bizarre conduct arise, or also as to whether or not that employee had access to sensitive information.

Mr. HAMILTON. But it would not require or mandate the testing of every single employee; it would only require the testing of that employee who is designated by the Director or the Secretary, is that right?

Mr. SHAW. It would require the head of the agency to make the determination as to how and when an employee is to be tested, but I would say that every employee would be on notice that he might very well be tested.

Mr. HAMILTON. Now, there is no money in this bill for this testing program. How does the gentleman propose to pay for the testing program?

Mr. SHAW. The same way it is being paid for now under the Executive order that the President has put out.

Mr. HAMILTON. Would the gentleman spell that out for me, please?

Mr. SHAW. I cannot. I do not know the answer to that question.

Mr. HAMILTON. Is there anything in this that goes beyond the President's order, or does the gentleman see this is totally consistent with the President's order?

Mr. SHAW. I see this as Congress joining with the President in one single voice as stating that we are going to implement drug testing in the areas covered by this bill.

Mr. HAMILTON. Well, I must say, the amendment raises a lot of questions in my mind. They are not all totally resolved just on the basis of our dialog, but I am not disposed to object to the amendment.

Mr. McHUGH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I also would like to ask the gentleman from Florida a question or two in order to get clear in my own mind the scope of this program.

The first question is similar to one asked by the chairman, and that is, Why should we adopt this amendment, in light of the President's Executive order just issued this week? What does this do which the President's Executive order does not do with regard to these agencies?

Mr. SHAW. Mr. Chairman, if the gentleman will yield, it simply places it into law. The Executive order itself is not a law such as could be passed by this Congress. It could go away tomorrow. It could go away with the next administration.

Mr. McHUGH. Well, is there any reason for the gentleman to believe that the President, who after all will be in office another 2 years plus, would change his own Executive order?

Mr. SHAW. I have no reason to believe that he would, no.

Mr. McHUGH. My second reservation about this, Mr. Chairman, is that by this amendment we are dealing with some agencies of the executive branch, but not others. Is it wise, does the gentleman think, for us to deal on a piecemeal basis with some agencies and not others? I realize the only opportunity the gentleman has on this bill is to deal with these agencies, but particularly in light of the President's Executive order which affects all agencies, why should we be dealing with some and not others?

Mr. SHAW. Well, the gentleman raises a very interesting point, which I think has an equally interesting answer.

I has an all-encompassing bill that was asked to be included as an amendment to the omnibus drug bill which came to this House last week. Despite the fact that an earlier agreement had been made between the minority and the majority side with regard to the rule as it would apply to my particular amendment, the Rules Committee itself ruled that my amendment would be out of order.

I guess we would have to say this is the only opportunity that I have had to date. I trust there will be other opportunities to append this amendment or a similar amendment on other bills, and should they involve anything having to do with the security of this country or access to sensitive information, I can assure the gentleman from New York that I will be here to offer such an amendment.

Mr. McHUGH. Well, I thank the gentleman for responding.

I guess, Mr. Chairman, I would urge at this time at least that we reject the amendment. I am convinced the gentleman is absolutely sincere in trying to get at what could be a major problem. All of us agree that drug use or drug abuse in any Federal agency, but particularly in ones which deal with sensitive information, is a major concern; so the gentleman is absolutely right to be directing his attention to that and to be concerned about it, as we all are; but I do have these reservations which perhaps with more time could be resolved.

I hesitate to see us deal with some agencies and not others. I hesitate to see us act precipitously without much advance notice, and I realize the gentleman might not have had an opportunity to give us an earlier notice, but to act precipitously here in light of that fact that the President himself has just issued an Executive order

which clearly he has no intention of withdrawing any time soon, and for that reason I do not think there is any particular reason why we should act now.

I appreciate the gentleman's candid response. I certainly appreciate his concern, but I do hope the membership will reject the amendment at this time.

Mr. GREGG. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment.

Mr. Chairman, I would like to support the gentleman from Florida for bringing forward this amendment. I think it is totally appropriate that this Congress go on record, as the administration has, in stating that we feel that in this very sensitive area, especially the area of intelligence gathering, that there should be a review of the people who are working in this area relative to drugs and that it is totally correct that as a Congress which has just passed a bill which is going to spend upward of $3 to $4 billion in trying to get some control over the drug problem in this country, that we set the example beginning with our own area of responsibility, which is the management of the Government.

I believe the amendment of the gentleman from Florida is exactly that. It is an example-setting type of an amendment. It clearly gives flexibility to the various agencies in establishing this drug review program. As a result, it allows those agencies to pursue the issue of whether or not people dealing with classified information, especially intelligence information, are involved in drugs. Therefore, I think it is an excellent amendment.

In addition, I would like to comment briefly on an amendment which is coming up, which unfortunately due to the time restraints put on that amendment, many of us on this side who wish to speak to it are not going to have time, and that is the Stump amendment, which will eliminate basically the language of the bill which limits the ability to aid the freedom fighters in Angola.

This is an issue of freedom. It is an issue whether or not we as a Congress are going to be asked or are going to pass a law which would require that freedom be fought for in various areas of this world, but that the United States will not participate in that fight, or if we do participate in that fight, it will be with one hand tied behind our backs.

I think it is ironic that had the language of this bill as is proposed in limiting aid in the area of covert aid to the Angolan freedom fighters been in place, for example, in a country like France in 1775, the United States Revolution might not have been successful, because it was initially covert aid from France that assisted us in organizing our own revolution here, and that is exactly what we are trying to do in Angola. We are trying to initiate and assist the revolution against a repressive regime that has obtained outside assistance from the Cubans and the Soviets, a regime which clearly is not reflective of the values of human rights which we subscribe to in this country, and yet we are being told in this bill that we are not going to be able to send that type of support to Angola, except in an open way and in a way which clearly was not consistent with the people who are fighting there and who desire such aid, but cannot take it openly because of the implications of that.

It seems to me that if we go down the route proposed by this bill, we will undercut our ability as a nation not only to assist people in Angola, but throughout the world, because we will be sending a signal that this country is only going to fight with one hand tied behind its back.

Therefore, I strongly support the Stump amendment, but initially I support the amendment offered by the gentleman from Florida [Mr. SHAW].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. SHAW].

The amendment was agreed to.

The CHAIRMAN. Are there any other amendments under the rule?

AMENDMENT OFFERED BY MR. STUMP

Mr. STUMP. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STUMP: On page 5, strike lines 5 through 22, inclusive.

The CHAIRMAN. Under this rule, the gentleman from Arizona [Mr. STUMP] will be recognized for 1 hour and a Member opposed will be recognized for 1 hour.

The gentleman from Indiana [Mr. HAMILTON] will be recognized in opposition.

The Chair recognizes the gentleman from Arizona [Mr. STUMP].

Mr. STUMP. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, section 107 of H.R. 4759 eliminates the covert action option for United States policy toward Angola. It flatly prohibits covert aid to the Angolan freedom fighters.

Regardless of what the future might hold—such as a renewed Communist offensive to eliminate the UNITA freedom fighters in Angola—under section 107 the United States could not give UNITA forces aid to defend themselves unless the President announced the aid to the world and the Congress conducted a public debate and approved it by joint resolution.

Mr. Chairman, how ridiculous can we get, that the Congress of the United States has to approve a joint resolution before the President of the United States can exercise his option to offer covert aid to a friendly country.

If the United States aids UNITA, we might need cooperation from people or countries which would help us in a covert action, but not in an overt action. It is a tough world and some things must be done in secret to be successful. This Congress should not destroy the covert action option for Angola.

The House should adopt the Stump-Pepper amendment and preserve the United States covert action option for Angola.

If U.S. interests around the world are to be advanced, the President and the Congress should be able to deal responsibly and quietly with certain aspects of foreign policy through established congressional funding and oversight arrangements.

Mr. Chairman, I urge my colleagues to vote "aye" on the Stump-Pepper amendment to strike section 107.

Mr. Chairman, I yield 7 minutes to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, freedom for the people of Angola is just as important as freedom for the people of Cambodia or Afghanistan. The black people of Angola are entitled to enjoy self-determination as much as any people in the world. Why we put them aside and say that somehow that is not important, I do not know.

The people of Cambodia, the people of Afghanistan, yes, and the people of Angola are being oppressed by the same tyranny, the same Communist tyranny generated and directed by the Soviet Union.

Now, on this vote today, you cannot escape choosing either the Brezhnev doctrine that says once a country is taken over by Communists, that process is irreversible, or the Reagan doctrine that says people who are willing to fight with their lives to resist Communist tyranny are entitled to help, to support from the so-called leader of the free world.

This effort is by those who generally reject helping freedom fighters, certainly in Central America, and it is designed to exploit the antiapartheid sentiment that obtains today in this country.

Now, their argument, the argument of the supporters of the bill as drafted with section 107 in it, is that if we help Savimbi, that somehow we become allied with the Republic of South Africa.

You know, in 1975 we were told incessantly by the liberal voices that we would drive the MPLA into the Soviet's arms if we helped Savimbi and UNITA.

Well, they made the same argument about Castro, that if we did not support Castro, we would drive him into the arms of the Russians.

□ 1330

They made the same argument about the Sandinistas. If we did not help the Sandinistas, we would drive them into the arms of the Russians.

I might say parenthetically there is a little arrogance about that, as though Castro, as though the Sandinistas, and as though the MPLA are not capable of knowing where they want to go, are not capable of understanding and determining the direction in which they want to take their followers without us forcing them to go in our direction.

But you know what is strange about that argument? We have never heard that by cutting off aid to Savimbi, we drove him into the arms of South Africa. You never hear that side of the argument. I wonder why?

Now, we are helping the mujaheddin in Afghanistan. So is the Ayatollah Khomeini. There are 1 million refugees in Iran fleeing from Afghanistan. Imagine how great things must be in Afghanistan if you have to go to Iran for safety.

Does that ally us with Iran and the Ayatollah? Is that not silly? We are helping Sonn San and some freedom fighters in Cambodia. So is the Khmer Rouge under the late, great Pol Pot. Does that ally us with the murderous Khmer Rouge? In World War II, when Hitler was the enemy, we were allied with Joe Stalin, one of the really professional killers of all time. Did that make us allies in morality and in political outlook? That is nonsense. In a fight for survival you take help from where you can get it, and anyone who does not understand that has never been in a fight.

Savimbi is black. UNITA is black. To think that they are supporters of apartheid does violence to logic and common sense. One wonders whether the supporters of Mr. HAMILTON's initiative want us to be comfortable in the southern half of Africa with SWAPO, which is Communist, with the ANC, which is dominated in every key spot and funded by communism, with 30,000 Cubans, with Mozambique—a Communist state, with Mugabe hurtling toward Marxism. There is one little force left there fighting communism, and that happens to be Savimbi—let us cut the rug out from under him this bill says.

There is another argument that Members are going to hear today, that Savimbi is insufficiently capitalist. Remember, he is not capitalist enough for the gentleman of the left. These are the people who would fall over themselves to attend a reception for the Marxist Mugabe of Zimbabwe.

We gave the Clark amendment 10 years of work. We listened 10 years ago when they said that this was a tribal fight, and that these countries are nationalistic, and there will be no Communist states in Africa. We listened to that, and we stayed away.

Do you know what the Clark amendment was? Another example of a favorite theory of the gentleman of the left—foreign policy for example. If we do not intervene, they will not intervene. It is the same thing that the gentlemen are trying to sell us on arms control—if we disarm, they will disarm.

Well, we have had 10 years of foreign policy by example in Angola, and it did not work. If you take Savimbi out and take UNITA out, you have SWAPO Communists, you have the ANC Communists, you have 30,000 Cubans, and you have Marxist Mugabe, Marxist Machel of Mozambique, and with South Africa on the brink of a bloodbath, is all this in our national interest?

What message do we send to other countries which need cover to operate in that part of the world? How do we elicit cooperation on international terrorism if we cannot keep a secret, if we think that every aspect of our foreign policy has to be debated in public and that Congress has to pass resolutions?

Well, what is it going to be, the Brezhnev doctrine, or supporting freedom fighters who are willing to die on their feet rather than live on their knees? I urge support for the Pepper amendment, for the Fascell amendment, and for the Stump amendment. The struggle for freedom is not partisan anymore, it is bipartisan, and some leading Democrats are supporting this amendment.

I ask the Members to put their country's interests ahead of nonsense that says that somehow we are supporting apartheid by helping UNITA give its people and its country self-government, and ask that they support the Stump-Pepper amendment. Don't consign Angola to the Soviet bloc by default.

Mr. HAMILTON. Mr. Chairman, I yield myself 11 minutes.

Mr. Chairman, I rise in opposition to the amendment to strike section 107 of the Intelligence Authorization Act for fiscal year 1987.

This is an important provision of the bill that touches directly on the unfolding tragedy in southern Africa and merits the specific attention of my colleagues.

Section 107 would prohibit the use of any funds available to agencies involved in intelligence activities for military or paramilitary operations in Angola unless the President publicly requests, and the Congress by joint resolution approves, such support.

I urge my colleagues to reject this amendment to delete section 107 because passage of the amendment would be bad procedure and it would be bad policy.

PROCEDURAL ISSUES

First, the question of whether the United States should assist the nationalist insurgency of the Union for the Total Independence of Angola [UNITA] is an important foreign policy decision and one that should involve the Congress.

Section 107 simply requires the President to follow normal procedures in dealing with the Congress on an issue with major foreign policy ramifications.

There are serious foreign policy questions which must be considered in any decision on providing aid to UNITA, and the Congress should have a significant role in the debate. The decision to aid Savimbi is a change in American foreign policy. When foreign policy is made, as is being done here, and is not merely being implemented—under the Constitution both the Congress and the President should be involved.

Congress has a constitutional role in foreign policymaking to declare war, to provide for the defense of the United States, and to appropriate other funding to sustain American foreign policies. Each of these constitutional powers of the Congress are at issue in this Angola debate.

Few foreign policy decisions are equal in importance to a decision to go to war or to support a war. This bill focuses attention on the necessity of collective judgment and shared wisdom in the critically important decision to support a war. The extreme complexity of the modern world, the growth of America's responsibilities and the ambiguous nature of many international crises all demand that Congress and the President pool their judgments on these questions.

Opponents of this section argue that it restricts the President's flexibility to carry out U.S. foreign policy. However, when significant change in foreign policy is under consideration, the chances of developing a policy which will have the support of the Congress and the public are greatly enhanced if that change is publicly acknowledged and discussed. Any covert action in Angola will be difficult to sustain in the absence of a thorough and frank debate of the issue.

Second, section 107 should be supported because the administration's recommended course continues to exclude the Congress.

So far, the administration's approach on Angola has been to make a significant foreign policy change and, apparently, to support a covert war in Angola by bypassing the Congress and excluding it from the decisionmaking process.

This change in foreign policy is being made through the covert action procedure which does not require the approval of the Congress—or indeed

any Member of the Congress. All that is required under this procedure is for the President to notify the Congress.

The President and the Vice President have engaged in public discussion of this issue. Why should Members of Congress be excluded?

Certainly Members of Congress do not oppose the concept of covert action programs. We all agree that certain aspects of foreign policy must be conducted in secret. There is strong support in the Congress and the House Select Committee on Intelligence for covert activities programs under appropriate circumstances. The House Intelligence Committee has supported, both politically and financially, a full covert action capability for the President. It supports the vast majority of covert actions proposed by the President. Over the years, the committee has brought only two matters before the full body of the House.

It is not the view of the committee that all paramilitary covert actions must be submitted to a vote or that paramilitary covert actions cannot, under any circumstances, remain covert or be successful. Yet, when advance planning for a possible covert action appears to have been conducted via political speeches and in the press, the committee considers it unlikely that such a possible program can remain covert. Where such a program is not covert, the administration's use of covert policy would effectively bypass the role of the Congress in debating significant foreign policy decisions.

Covert authority is intended to be a necessary secret tool to help implement policy, not a means to change policy in secret. Section 107 provides an essential opportunity for public deliberation. The assertion of Congress' right in this instance should be something which Members can support, regardless of their support or opposition for any covert military assistance program for UNITA.

The issue of a significant change in United States policy in Angola is too important a decision for only 16 members of the House Intelligence Committee to be informed of any such program. It is simply too controversial a decision. Section 107 retains the proper authority of the whole Congress to help determine U.S. policy on this hotly debated issue.

POLICY QUESTIONS

There are also significant policy reasons involved in aiding UNITA which deserve consideration.

First, providing assistance to Jonas Savimbi and UNITA will place the United States shoulder to shoulder with South Africa in the eyes of much of black Africa and the developing world.

Support for UNITA will bolster South Africa, and send exactly the wrong message to South Africa. Today the United States should be sending a signal of strength and power to South Africa and the world that we find apartheid reprehensible. If we support Savimbi we will only dilute and confuse that message.

We cannot claim to oppose vigorously apartheid while cooperating with South Africa over Angola. Support for UNITA will undermine United States antiapartheid policy and diminish our leverage for change in South Africa itself.

UNITA is almost totally dependent upon South Africa for weapons and supplies. South African ground and air forces have performed combat roles in Angola in support of UNITA. South African forces also have occupied parts of southern Angola between 1981 and 1985, and they have conducted operations against United States oil facilities in northern Angola.

The key point is that UNITA is a proxy for South Africa and exists only with massive South African backing. Support for UNITA is support for South Africa. South Africa will intervene in support of UNITA whenever it sees intervention in its interest. United States assistance to UNITA cannot replace or displace South Africa's presence.

Second, assistance to UNITA undermines negotiations to solve the Angolan situation and to obtain the withdrawal of Cuban, Soviet, and other Eastern European forces. It also ends, in effect, efforts to negotiate a settlement for Namibia.

Angola will not view the United States as a fair mediator if the United States is arming Angola's enemy. Aid to Savimbi will escalate the war, not diminish it, and make successful negotiations more remote. Support for UNITA will damage U.S. credibility as an honest and impartial broker in helping to resolve disputes not just in Angola, but throughout southern Africa.

In the negotiations for Namibian independence, Angola offered to reduce by two-thirds the number of Cuban troops on its soil in exchange for South African withdrawal from Namibia. The United States had established direct contact with the Angolan Government in these negotiations. Now that contact is over because Angola believes the United States no longer wants a negotiated settlement. It is hard to imagine how U.S. aid to Savimbi would enable negotiations to succeed.

Aid to UNITA will polarize the region and increase the level of conflict. Because of threats to its security Angola will continue to seek assistance from Cuba and members of the Warsaw Pact. This will give the Soviets increased leverage in Angola and throughout southern Africa.

Third, Savimbi and UNITA are dubious allies.

Savimbi may have charisma, but he is politically unreliable. He changes his alliances to suit his interests. He has been stridently antiimperialist, and procapitalist in little more than a decade. A former self-proclaimed Maoist, he now fights with the slogan of socialism and nonalignment. He says he intends to blow up United States oil firms operating in Angola. He has shown an extraordinary talent for telling people what they want to hear. He suffers from a cult of personality. His rhetoric turns on the next check. His views defy ideological description.

One reporter, after spending 7 months with UNITA forces, said: "Savimbi is an enigma, a man on whom many labels now stick—brilliant, charismatic, affable, unyielding, forgiving, temporizing, machiavellian, opportunistic, lying, nationalistic, Marxist, Maoist, pro-Western, Socialist."

He has frankly stated: "I will get support where I can get it." The United States should not rest its foreign policy on such an ally. He cannot be trusted. The fact that he is anti-Soviet is not sufficient grounds for helping him.

He simply does not have a credible, consistent, moderate, pro-American, democratic record.

UNITA under Savimbi has violated human rights and its abuses undermine chances for popular support. Its history is replete with examples of bombings in public places, kidnaping foreign technicians, killing innocent civilians and mining village farmlands.

UNITA is a weak reed upon which to rest the U.S. national interest. Based on what I know as chairman of the House Intelligence Committee, it cannot win the power struggle in Angola. It cannot achieve a military victory. Savimbi's case remains largely tribal, even after more than 15 years in the field.

The Angolan economy is shattered and the Angolan Government is forced to spend some 75 percent of the national budget on the military. Even so, over a 10-year period, UNITA and Savimbi have been unable to capitalize on Angola's dire plight.

Fourth, a policy to support Savimbi does not have regional support and will earn the United States the enmity of African states.

In July 1985 the 51 states of the OAU in a formal declaration said that any United States aid to UNITA would be "considered a hostile act against the Organization of African Unity."

Nearly all African states see UNITA as a tool of South African policy and they condemn Savimbi's ties to Pretoria. We must understand how deeply Africans will resent the United States taking South Africa's side. Every major antiapartheid leader in South Africa and in Namibia opposes United

States aid to UNITA, and they say this both publicly and privately. Make no mistake about it, without regional support, United States policy in Angola cannot succeed.

A policy to aid Savimbi is a misplaced priority. The obstacles to a regional settlement in southern Africa lie in Pretoria, not in Angola. What the United States needs is leverage against South Africa, not Angola. Black Africa sees apartheid and South African control of Namibia—not Soviet-sponsored communism or Marxism—as the primary causes of instability in the region. United States support for UNITA will put the United States and black Africa at cross-purposes. United States support for UNITA will make it increasingly difficult to win black African support for United States policy initiatives.

Fifth, aiding Savimbi will strengthen the Soviet position in southern Africa.

It will make Angola more dependent on the Soviet Union. It will bolster the Soviet Union in African eyes. It will help the Soviets earn substanital hard currency from the sale of arms to Angola.

To stop Soviet influence in the region we must stop apartheid. To the extent the United States aligns itself with Savimbi, and his ally, South Africa, we align ourselves with the forces of apartheid. That weakens us throughout Africa, and strengthens the Soviet Union. The end of Soviet influence in Angola and in the region depends on diminishing the power and spread of apartheid, not the reverse.

Aid to Savimbi will ally the United States with South Africa in a broad offensive against virtually all of South Africa's neighbors, and will not raise the costs to the Soviet Union of supporting leftist governments like that in Angola. Rather, aid to Savimbi will raise the cost to the United States throughout black Africa and increase opportunities for the Soviet Union.

Aid to Savimbi will not produce the goals we seek—namely, the withdrawal of the more than 30,000 Cuban troops and Soviet military advisers from Angolan soil. Rather, it will make Angola more dependent on the Cubans, and less willing to send them home.

Aid to Savimbi will prolong and escalate the violence in the region and promote cross-border military action, without benefit to U.S. strategic and political interests. Conflict will not get the Soviets or Cubans out of Angola—negotiations may.

Sixth, there is a lack of clarity in United States policy toward Angola.

The means of U.S. policy do not match the stated end. In his 1986 State of the Union address the President said we must provide moral and material assistance to those who wish "not just to fight and die for freedom but to fight and win freedom." The President apparently is committed to the rhetoric of victory, but he has not sought the resources to achieve victory. The unanswered questions are how much and for how long is the United States prepared to spend over time in support of Savimbi?

The lack of public debate has allowed the administration to avoid stating what United States policy is toward Angola. Some in the administration say it is to achieve victory, others say it is to force a negotiated settlement of the war in Angola, still others say that it is to expel the Soviet and Cuban military presence. The President has not clarified which of these several goals are the goals of United States policy in Angola.

CONCLUSION

Mr. Chairman, it has been suggested that in voting last year to repeal the Clark amendment, which had prohibited assistance to any Angolan military faction since 1976, the Congress approved aid to UNITA. I voted to repeal the Clark amendment and, to the contrary, I considered it no such endorsement. Repeal of the Clark amendment was not a vote to Aid UNITA. It was a vote to remove the prohibition only.

There is a very big difference between a vote to repeal the Clark amendment and a vote to strike section 107. The difference is in the result.

If you voted to repeal the Clark amendment, nothing much happened, except that a legal prohibition was removed. The explicitly stated policy of the administration at that time was that there was no intention to aid Savimbi.

If you vote to strike section 107, a lot happens. Covert aid to Savimbi can flow and a war is expanded.

If you vote against the motion to strike, you merely say that if we are going to aid Savimbi we should do it openly, with Congress participating, not secretly, with the full Congress excluded.

If the Congress knowlingly and publicly votes in favor of military involvement, Mr. Savimbi and his followers have a better chance of sustained assistance based on the commitment of the American people. If the Congress votes against such assistance, it will be after a full and free discussion of all the relevant facts. Either option is preferable to the current practice of making important foreign policy decision secretly—and, then, when the decision prove to have been wrong, to berate the Congress for not honoring so-called national commitments.

Mr. Chairman, for procedural and substantive reasons, I urge a vote against this amendment and to retain section 107 of the Intelligence Authorization Act of 1987, thus insuring a full and open debate on a foreign policy issue of immense importance to U.S. strategic and political interests in southern Africa.

□ 1340

Mr. STUMP. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Chairman, let me just say I spoke at length on this bill yesterday. Here is the Stratton amendment vote from last year when we repealed the Clark amendment. If you want to be consistent, you will vote exactly how you did last year. Come over and see how you voted, and let us pass the Stump-Pepper amendment.

Mr. Chairman, I have listened to my good colleagues here, who have been arguing in recent days that the administration has made public expression of support for the anti-Communist resistance in Angola too much. And so it's not appropriate to back up this support by means of this bill.

I personally cannot agree with this argument.

I am not going to try to swing you to my side on this point, but I am going to point out that President Reagan has thrown his public support to freedom fighters throughout the world. In this House earlier this year, in fact, he spoke to us with great conviction about the struggles for freedom, not just in Angola, but in Afghanistan, Cambodia, Nicaragua, and elsewhere. If we agree with the argument behind section 107, we bring into doubt our ability to help the fight for freedom in all these areas.

Mr. Chairman, I do want to address today some of the other arguments against aid to the Angolan Resistance that we have heard recently. I am talking about the voices and articles that say that these black freedom fighters are just "armed bands" that only want to spread racist apartheid. If we all employ our common sense, we know that black Africans in Angola don't fight and die for the sake of apartheid. To me this sounds too much like the Soviet statements we often hear calling the freedom fighters in Afghanistan "bandits." Let's not kid ourselves, ladies and gentlemen, these other arguments are bunk, pure and simple, and let's not muddy our proper consideration of this bill by giving them any credence. The Angolan freedom fighters deserve better than that. And, let me point out that if you are worried about the Angolan resistance movement's use of South African aid, any vote to cut off American aid would have to force this movement right back to that country. Wars are not won on good wishes alone, and frankly, we are the only alternative.

Mr. Chairman, let's not repeat the mistake we made in the 1970's, when we left these courageous people to fight alone. They are not asking for any American military involvement. They have clawed their way back to the point that they today can lay claim to a third of their country, despite massive Soviet and Cuban aid. They do need our support, however. When we consider this bill, let's not forget the goals of American policy in the Third World—we are against the spread of totalitarian rule in these countries—we are trying to give these countries the chance to build democracy.

Let's give the Angolan resistance a chance this time.

When it is time for us to consider and vote on section 107 of this bill, please don't sacrifice the good cause for which the Angolan resistance has fought so hard at such a cost.

Mr. STUMP. Mr. Chairman, I yield 5 minutes to the gentleman from Wyoming [Mr. CHENEY].

Mr. CHENEY. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this is a difficult debate for many of us today. Those of us who have served on the Intelligence Committee have spent a lot of time on it in recent weeks, and I must say I am disappointed to have to oppose my chairman on this amendment, but I really believe the gentleman from Indiana [Mr. HAMILTON] has made a serious mistake in arguing that we should reimpose the Clark amendment.

I rise, Mr. Chairman, in support of the amendment offered by the gentleman from Florida [Mr. PEPPER] and by the gentleman from Arizona [Mr. STUMP] to strike section 107. I think it is extremely important that it be lifted.

The chairman has suggested that somehow we are undertaking a major change in foreign policy here that should not be undertaken without full and complete debate in the House. I would argue, Mr. Chairman, that we had that debate last year. We considered the question of whether or not we wanted to continue the Clark amendment, and we decided at that time that it should be lifted.

Every time the Government of the United States undertakes covert action it has foreign policy implications. That is nothing new. I fail to understand why the chairman believes that in this particular instance with respect to Angola we should be required not to move forward with covert operations. I think his amendment is designed specifically to thwart the role of the President, and the President is operating wholly in accord with his responsibilities to protect the Nation's security.

Mr. Chairman, I am deeply concerned, in part because I believe a majority of the members of the Intelligence Committee frankly are shirking their responsibility. I find that consideration of this amendment at this time involves basically the Intelligence Committee passing the buck, if you will, to the House at large. Congress is involved when the committee acts on its behalf. Covertness is often required with respect to the conduct of these kinds of operations, and I fail to understand why, and do not believe the case has been made why we should in this particular instance deny the President the authority to carry out a covert operation.

Just a reminder about the past, Mr. Chairman. In 1975, when Angola attained independence from Portugal, a number of different factions emerged and entered into an agreement that was to lead to a coalition government in Angola.

□ 1350

The Marxists violated the agreement; the Soviet advisers moved in and some 4,000 Cuban troops followed. Congress responded with the Tunney amendment to the fiscal year 1976 DOD Appropriations Act. Thereafter it enacted a permanent prohibition on covert support to Angolan freedom fighters, the notorious Clark amendment.

While Congress spent its time crippling President Ford's ability to meet the Communist challenge in Angola, the MPLA consolidated its regime. Congress left the Clark amendment in place until 1985.

During the period the Clark amendment was enforced, the Cuban combat presence supporting the Communist government in Angola grew more than 30,000 troops, and Soviet, Cuban, and East German advisers filled important roles in the Marxist government.

Thus, a prohibition on covert United States support to Angolan freedom fighters contributed to Communist success in Angola. The Congress of the United States legislated a defeat for United States interest in Angola.

Let us hope that history will not repeat itself. The House should not today legislate another victory for a Communist regime in Angola. We have the opportunity to avoid the errors of the past; and I would urge my colleagues to support the amendment by the gentleman from Florida [Mr. PEPPER] and the gentleman from Arizona [Mr. STUMP] to strike section 107 of H.R. 4759, thereby preserving the option for covert support for the freedom fighters in Angola.

Mr. HAMILTON. Mr. Chairman, I yield 7 minutes to the distinguished chairman of the Subcommittee on Program and Budget Authorization of the Permanent Select Committee on Intelligence, the gentleman from Ohio [Mr. STOKES].

Mr. STOKES. Mr. Chairman, I rise in opposition to the amendment. I strongly support section 107 of this bill. I do so because it preserves the constitutional responsibilities of this House requiring a full debate in this body on whether or not the United States should militarily assist Jonas Savimbi and his organization, UNITA, in Angola.

All of us who follow issues of national security in this city are aware of the problem of leaks. Leaks have become a part of our national security process, it seems. Unofficial leaks, official leaks—all are used by those who seek to influence foreign policy. Sadly, intelligence programs are also the subject of many leaks and leaks have severely damaged U.S. intelligence-gathering capability in recent years. The covert action programs of the Government have also been damaged by leaks.

In the case of Angola, however, it is not leaks that brings us to this juncture. It is the official pronouncements of the President of the United States to the Congress and to the media, and the pronouncements of his top officials, the Vice President, and the Assistant Secretary of State for African Affairs. These officials, on the record, have told all Americans that the United States is assisting UNITA.

What they haven't mentioned is that the funding for this aid is approved secretly. This doesn't make our policy a real secret because saying that we do it but not discussing how much we spend leaves little to the imagination. Rather, all that this so-called secrecy assures is that the regular process of congressional review and approval of foreign policy expenditures is avoided.

In my view, the issue is whether the United States should become embroiled in a war betwen the Angolan Government, backed by the Soviets and the Cubans, and UNITA, backed by the South Africans. Congress then ought to have its say. The President may not be asking the Congress to declare war, but he is asking us to become involved in a war, to wink at his use of secret funds, and to abdicate our responsibility to review foreign policy and decide to what extent limited funds may be spent and where. In the process, the President is making a major change in United States policy toward southern Africa. That ought to be a matter of great concern to this House.

Mr. Chairman, I strongly believe the United States should not support UNITA. It should not change its role from one of sponsoring negotiations whose end goal is the removal of Cuban troops and the independence of Namibia to siding with South Africa in supporting a war which makes those two goals impossible to achieve. Whatever you may feel about the Communist threat in southern Africa, it is clear that it is Soviet and South African aims that are furthered by the war in Angola, not United States aims.

The Soviets now sell enormous quantities of their military equipment to the Angolans for hard currency. Their advisory assistance and the presence of Cuban troops help ensure the perpetuation of the Angolan Government and therefore great influence over Angolan policy.

The South Africans keep Namibia and use the military activity of UNITA to neutralize Angolan, Cuban, and SWAPO forces. This frees South African military forces to conduct raids into neighboring countries and

ensure the perpetuation of apartheid in South Africa.

If United States policy aims at ending Soviet influence and the Cuban presence, at securing Namibian independence and at pressuring South Africa to end its racist policies, aid to UNITA produces opposite results.

Mr. Chairman, aiding UNITA isn't merely a major shift in U.S. policy. It isn't simply a mistaken policy that won't achieve U.S. goals. It is wrong. It takes one evil—communism—and substitutes it for another—apartheid. It ignores the violence in South African ghettos. It ignores the economic stranglehold on South Africa's black African neighbors. It concentrates on the number of Soviet tanks and airplanes in Angola instead of the number of black South Africans killed or jailed. It pretends that Angola's military buildup is not directly related to South African assistance to UNITA and the President's own promises of aid.

Mr. Chairman, there is a reason for the unanimity within the Organization of African Unity on the question of aid to UNITA. Black African states know that the central evil, the central disrupting force, in Africa today is apartheid. They know that United States assistance to UNITA makes the United States a partner in South African policies. They believe that Namibian independence, which hinges on the Cuban military presence in Angola, will not be resolved by war in Angola. Rather, the solution lies in Pretoria. The answer with the Government of South Africa, which has always provided the military assistance and direct support necessary to ensure UNITA's effectiveness in the field. They know that whatever the level of United States assistance, be it $1 or millions of dollars, that South Africa will do what it must do, and pay what it must pay, to ensure that continued viability and success.

Mr. Chairman, as a black American, I passionately want to see the end of apartheid in South Africa. As a black American, I sincerely want to see my country do what it can to end this evil and to ensure that the new government of South Africa, the new black government of South Africa that will someday rule that country, will thank the United States for its role in ending apartheid and look to us as a partner in its struggle for development. Siding with South Africa in Angola is not the way to achieve that end.

U.S. policy, if it is to be effective, must look to the future. It must help resolve the problems of today with an eye toward the role that we will want to play in the South Africa that will follow the end of apartheid. We all know that minority rule in South Africa is just a matter of time. We all wish to see a transition without great bloodshed. If we are to be the partners of a majority-ruled South Africa in the future, we must set aside any entanglement today which will alienate those who will rule that government of the future. We must ensure that it is the United States of America and not the Communists who can point to an effective role in bringing about an end to apartheid and all the policies which supported it. This House passed a good sanctions bill. The Hamilton amendment in this bill is consistent with the position of this House. To remove the provision from this bill would be a step backward. It would align the United States with South Africa in Angola.

I urge you to vote against the Stump amendment.

Mr. STUMP. Mr. Chairman, I yield 4 minutes to the gentleman from Florida [Mr. IRELAND].

Mr. IRELAND. Mr. Chairman, I urge the Members of the House to support the Pepper-Stump amendment to strike section 107 of the bill. Section 107 as we know would take away the covert option for support of freedom in Angola.

Some Members apparently believe that it is a matter of indifference whether we provide overt of covert aid to UNITA. Their perception that the United States does not need the ability to act secretly in international affairs is dangerously erroneous.

We all wish that the United States could pursue its idealistic goals through the open and public means of friendly persuasion. That is the good and natural instinct of our democratic political system. If the United States was left to itself, that is undoubtedly how we would proceed.

But we are not left to ourselves. We are not the ones setting the rules. Our adversaries are tough and they fight hard to achieve their Marxist-Leninist objectives, in Angola and elsewhere. We must meet this challenge, and we must do so effectively. This may require covert support to freedom fighters around the world.

Suppose, for example, that the President finds it necessary to national security to provide support for UNITA in the struggle against communism in Angola. Perhaps for diplomatic or political reasons UNITA would not be willing to accept open U.S. aid. Perhaps countries that would be willing to help the United States in a quiet action to aid UNITA would not be willing to help if the United States announces the program publicly. Of greatest concern, perhaps the Cubans and Soviets, who have troops in Angola, would feel compelled to respond directly and aggressively to aid that the United States announced publicly. In these situations, it would be essential to the success of U.S. foreign policy that aid to UNITA be covert.

Section 107 would take the covert option away and doom U.S. policy to legislatively mandated failure.

Section 107 is a dangerous mistake. I urge the House to support the amendment to strike section 107.

□ 1400

Mr. Chairman, I yield back the balance of my time.

Mr. HAMILTON. Mr. Chairman, I yield 7 minutes to the gentleman from California [Mr. BEILENSON].

Mr. BEILENSON. Mr. Chairman, I rise to join my chairman, the gentleman from Indiana [Mr. HAMILTON], in opposition to the amendment offered by our friend the gentleman from Arizona [Mr. STUMP].

Mr. Chairman, it has been clear to me since the day of my appointment to the Permanent Select Committee on Intelligence that, whatever other qualities are sought by the Speaker in choosing members of the committee, the universal prerequisite is an ability and a willingness to keep the secrets. Members of the committee understand that a bargain has been struck, in effect, between the Congress and the executive branch. The executive branch will disclose intelligence matters to the committee. The committee will oversee, and fund, intelligence activities and, in the process, it will ensure that these activities remain secret. The bargain works as long as the committee has confidence that the executive branch is disclosing all that it should, and as long as the executive branch is comfortable with the security practices of the committee.

In my view, Mr. Chairman, the committee has kept its part of the bargain. There are many leaks of national security information in this city. I don't doubt that some of them originate on the Hill, but I believe that very few, if any, come from the Intelligence Committee.

The Intelligence Committee, Mr. Chairman, spends a good deal of its time overseeing the covert action operations of the Central Intelligence Agency—activities designed to influence people or events overseas in support of U.S. foreign policy, and carried out in a way which is not attributable to the United States. One reason for this strong oversight is that covert action is a tool which, being secret, has the potential for miscalculation or abuse. It must be watched constantly and used very carefully.

Covert action is an option any President should have in considering how best to execute the foreign policy of the United States, but the effectiveness of that option lies in its flexibility, and that flexibility hinges on its secrecy.

Mr. Chairman, thus far, I am certain I have the agreement of my colleagues on both sides of the aisle. Thus far, we

see eye to eye. But, what opponents of the committee bill don't wish to see, and what some of us can't help but see, is that the bargain between the Congress and the executive branch has been broken—and not by the Congress. It is the President, and his men, who have publicly exposed the United States role in assisting UNITA. It is their public statements, to the press, in speeches, and in congressional testimony, that acknowledge the fact, and reveal the details, of American support for Jonas Savimbi and UNITA.

We all understand why this happened. The political pressure from the right, or simply the momentum of the Reagan doctrine itself, brought about acknowledgment of U.S. assistance. When you have a doctrine, it has to be understood and known, to be proclaimed.

I suspect, Mr. Chairman, that my friends on the other side of this issue, though reluctant to acknowledge it, are still in agreement. The President shouldn't have said what he said. Chester Crocker shouldn't have said what he said. But, beyond this point we diverge.

The strong feeling of this Member, and that of the majority of the committee, is that our activity in Angola is no longer a covert operation. This operation should now be made part of our appropriations process—as has aid to the Contras. But it won't appear in the President's budget requests. Rather, it will be funded with secret funds, funds which, at least so far, don't require the approval of Congress for their expenditure.

The President may have torn away the fig leaf, Mr. Chairman, but he wants to keep funding this openly acknowledged policy with secret funds. That is one of the great attractions of covert action operations. The funding is secret. You don't compete against other scarce expenditures, expenditures which are never popular, especially in an election year. We understand that this kind of arrangement is necessary for secret operations, but we don't think it's necessary or proper for publicly-acknowledged operations.

Mr. Chairman, this amendment seems to me also to be profoundly democratic, because it would prevent public debate of a major public issue.

Obviously, covert action is useful at times—but not to carry on a major and long-term foreign policy that is not just a matter related specifically to Angola, but is part and parcel of an across-the-board doctrine of supporting anti-Communist insurgents.

Such support may well be a good general policy—although we should debate that too, in public, before embarking on it—but I think we all recognize that general policies do not, however well thought out they may be, always work well in every single part of the world. You have to look at each particular situation, sort out our goals and objectives in those particular circumstances, and figure out how best to achieve them.

It may be that supporting UNITA is the best way to achieve our goals in this particular area—but we should figure that out first, in the only democratic way we can—in public, on this floor.

You simply cannot do that by pursuing this as a covert action: Keeping it covert means supplying money to UNITA through the CIA, without congressional approval, without a vote, without a chance for the American people to express themselves on our policy through their representatives.

I'm not sure I know what I think our policy should be with respect to Angola—but I do know that that policy should not be determined in secret, in a manner that cannot be either questioned or stopped by Congress.

As I suggested, it would be less important if this were an isolated matter, but it's part of the so-called Reagan doctrine, an expanding and fairly comprehensive policy of funding insurrections against Communist governments across the world.

If this is to be cornerstone, the basis, of our foreign policy over the coming years—and perhaps encompass a major portion of our overseas activities, should it not at some point both in general and in its application to particular situations, nations, regions of the world—should it not be subject to debate and to approval of the representatives of the people of the United States who will be paying for this policy and, perhaps, eventually sending their sons to ensure its success in some areas where the indigenous forces seem unable to do the job themselves?

The basic question, it seems to me, is should the Congress—does Congress have anything at all to say about the direction of U.S. foreign policy—or is the executive branch to carry out almost any U.S. involvement anywhere in the world unfettered, untroubled by public debate?

If so, Congress would be abdicating, entirely, any role in much of America's foreign policy in the years immediately ahead.

Neither the State Department nor the Department of Defense would be the instrument of U.S. foreign and military policy in these areas—the CIA, which is not designed for, nor particularly adept at running these low-intensity wars, would become the chief instrument of U.S. foreign policy.

Our foreign policy, our Third World policy, cannot be decided on the basis of the inflexible application of a global doctrine. Wise policy decisions derive, instead, as I said, from a careful judgment about the merits of each situation where an insurgent group claims to be battling communism.

We must thoughtfully consider what, if any, American interests are at risk in each case—and that goes for Angola, too—which is the immediate case in point.

But, however one feels about what our policy toward Angola should be requiring public debate, and congressional approval, will ensure that the views of those who advocate other policies will also be heard and rationally weighed, and that the wisest course for the United States in Angola will be decided upon and followed over the long term.

Mr. Chairman, since the bargain between Congress and the executive branch on intelligence matters has been broken in the case of Angola, since our new involvement there is a major foreign policy shift, I believe it is reasonable to require the President to treat this policy like any other program.

Let's look at this program. Let's fully debate it. Let's hold the executive branch to its part of the bargain, by refusing to create an exception which evades normal congressional review.

And let's ensure in the future that the national security blanket is reserved for the secrets—like real covert action—that we need to protect, and not draped over public policies for the sake of political convenience.

Mr. STUMP. Mr. Chairman, I yield 5 minutes to the gentleman from Louisiana [Mr. LIVINGSTON], a member of the committee.

Mr. LIVINGSTON. Mr. Chairman, I rise in support of the Stump-Pepper-Fascell amendment striking section 107.

I just want to make sure that my colleagues are not confused by those who argue that the only reason that they want to include section 107 in this bill is to make sure that covert aid to the freedom fighters in Angola is, "Fully and openly debated." Make no mistake about it, section 107 would prevent, eliminate, terminate, cease, and obliterate any hope of U.S. assistance to UNITA. Without the option of covert aid, the only options available to the President are the use of ineffective diplomacy or the use of overt military intervention. We're not likely to resort to the latter, and the history of the last 10 years shows us that the former won't work. Without covert aid—which ceases to be covert with "full and open debate"—we will effectively cede Angola to the complete control of the Soviet backed Communist government.

We've tried through diplomatic channels to get the Cubans and Soviets out of Angola since the Communist backed MPLA first seized the government over 10 years ago. And, what has

it gotten us? An MPLA regime supported by 40,000 Cuban and Soviet troops and about $2 billion in Soviet military hardware arrayed against a determined but outgunned band of freedom fighters led by Joseph Savimbi. Savimbi's troops have managed to control almost one-third of Angola without our help, but they are hard pressed to keep up with the massive military aid that the Soviets are pouring into their country in support of the MPLA.

Clearly, diplomacy has failed, and no one wants to resort to sending United States troops into Africa in such a situation. But, now, even when a majority of Congress voted in 1985 to repeal the Clark amendment, those who have consistently opposed U.S. aid to resistance fighters everywhere have united in an effort to obstruct the President's last remaining option—covert aid.

Some may say that covert aid hasn't been actually cut off—it's just that Congress must now approve it. Not so. The opponents of aid to the Contras in Nicaragua have already managed to thwart the will of Congress since our affirmative vote on that issue in June, and by virtue of section 107, they are again doing their best to delay and postpone any attempt to aid UNITA in Angola. At best, the result will once again be delays and missed opportunities. At worst, the whole program could collapse because of the reluctance of Angola's neighbors to become involved in an openly discussed resistance to a Communist incursion; and once again the United States will prove itself to be an unreliable ally in the cause of freedom.

How do the opponents of aid to UNITA justify their stand? Why don't they want to aid a war of liberation by black Angolans against their Soviet and Cuban oppressors? For one thing, it is alleged that aid to UNITA would draw the United States into a tacit alliance with the Government of South Africa. They say that since the South Africans support UNITA, we should not—or the United States will be branded as a supporter of apartheid.

Jeane Kirkpatrick in her recent Washington Post commentary likened this argument to claiming that aid from the Allies for the Soviet Union in World War II makes us responsible for the atrocities of Stalin, because of the massive assistance we provided to save the Soviet Union and Western Europe from the Nazis. Clearly such an argument is worthless and wholly without merit.

There are several black African states which revile apartheid; yet even they are forced into a tacit accommodation with South Africa because of their economic dependence on South African jobs. Are they also to be ostracized for being in league or concert with South Africa? Of course not.

We do not, and shall not support the racist government in South Africa. But, we should not avoid supporting a legitimate call for help from black freedom fighters seeking to overthrow their Communist oppressors in black Africa, simply because we decline to assist South Africa.

It is a fact today that black nationalist movements such as the ANC in South Africa and Swapo in Namibia are both dominated by ideologically committed Communist leaders. They are dependent on the Communist bloc for financing, weapons, and training; Swapo fighters are in Angola; and there is a very real threat because of Angola, that communism will spread throughout the region. In fact Angola is already an active base for such subversion.

I have three pictures showing Dos Santos with Gorbachev, with Gromyko, and with Castro.

We cannot afford to look the other way while disciplined Marxist-Leninists steal legitimate revolutions in Angola, in Namibia, and possibly South Africa. If the Communist forces are allowed to consolidate their power in these three countries, certainly the cause of freedom in Africa, and indeed the world, will be set back irreversibly. Freedom will only be advanced by an outright rejection of section 107 of this bill.

UNITA is our best hope for Angola, and our best opportunity to redirect the Communist trend threatening half the African continent. UNITA is an effective, disciplined military force. Its political and economic success in governing a large controlled area with pro-Western orientation is a matter of record. Clearly these factors argue in favor of U.S. aid to UNITA, and against continued appeasement, which is the real enemy of world peace.

I urge my colleagues to show their support for the struggle for democracy and human rights and stand against Communist tyranny by supporting the Stump amendment, casting out section 107 from this bill.

DOS SANTOS SPEAKS AT TBILISI DINNER MAY 9

[Speech by Jose Eduardo dos Santos, chairman of the MPLA-Labor Party and president of the People's Republic of Angola, at an official dinner in Tbilisi on May 9—recorded.]

I should like, first of all, to express our gratitude for the official dinner given in our honor today. I should also like to thank you very much for the warm and fraternal reception accorded us since our arrival in this city of Tbilisi, the capital of the Soviet Socialist Republic of Georgia.

During our stay here, we were able to exchange expressions and views on various issues of bilateral interest connected with our cooperation as well as the friendship and solidarity between Angola and the U.S.S.R. We were also able to familiarize ourselves with our important achievements in economic, social, scientific, technical, and cultural fields.

We noted that your country has been developing through implementation of CPSU guidelines, thus improving workers' living conditions and consolidating a developed socialist society. It was, therefore, with great satisfaction that we learned from you that this republic has traditionally implemented the national development plans. We congratulate you on your achievements of the entire progressive community, achievements of all peoples fighting against imperialism and for peace, well-being, and development. By consolidating the Soviet economy, by developing this economy and subsequently strengthening its industry, you are also strengthening the firm rear guard of all peoples fighting for peace and liberty.

As you are aware, existing relations between the peoples of Angola and the U.S.S.R. are long established. They were established at the time when the Angolan people were still fighting Portuguese colonialism. After our independence, Angola and the U.S.S.R. further developed relations based on the treaty of friendship and cooperation signed between our two states.

It is with great pleasure that we note our implementation of cooperation in various fields of social life, thus contributing to economic and social reconstruction in Angola. It also gives us pleasure to note that workers and technicians of this Soviet Republic of Georgia have participated in this effort by serving in Angola in various fields. Accordingly, the main arm of our visit to the U.S.S.R. was precisely to assess this cooperation and find ways and means of further strengthening the friendship and solidarity between our two peoples, parties, and states.

This cooperation is important for Angola. It is important to all peoples who oppose oppression in Africa. It is a new kind of cooperation based on the principles of proletarian internationalism. You are aware of the existence of the system of apartheid in southern Africa where our country is situated. The racist South African regime has been systematically organizing acts of aggression and destabilization not only against the People's Republic of Angola but also against other states of the region. It is, therefore, our desire to continue to strengthen this cooperation in order to consolidate Angola economically and politically, thus enabling it to strengthen the independent role it plays in Africa, particularly in southern Africa. Angola plays an important role today because of its support for the national liberation movements.

The ongoing struggle in southern Africa is, in our view, a struggle of all exploited and oppressed peoples against imperialism. It is a vanguard of all progressive forces opposed to imperialist domination. That is why we think that responsibility must be collective. There is a need for all progressive forces to firmly and resolutely support Namibia so that this country may achieve, as soon as possible, its independence based on U.N. Security Council Resolution 435. We also think that it is our collective responsibility to mobilise all material, moral, political, and diplomatic support for the South African patriots who heroically fight racist domination and for democracy and liberty.

I should not fail to take this opportunity to express my gratitude for the solidarity once again reiterated by the comrade first secretary of the Central Committee, on behalf of the residents of Georgia in particular and the Soviet people in general with the heroic struggle waged by the Angolan people against external aggression.

Since our arrival here in the U.S.S.R., we have felt this solidarity and great sympathy everywhere we have been, particularly here in Georgia. Here, we had the privilege and great honor to participate in celebrations marking the Victory Day over fascism. We saw how the residents of Georgia and the Soviet people in general once again extolled Soviet heroism, fighting traditions, and the patriotic spirit of self-denial, thanks to which you were able to defend the U.S.S.R. from attacks by facists, defeating and expelling them. During this celebration, marked today, we learned how to strengthen unity and transfer tradition from old to new generations for the continuation of struggle for an increasingly stronger and more powerful U.S.S.R. on the path to communism.

We would like to take this opportunity to wish you all success in implementing all guidelines and notes established by your party's 27th congress. There is no doubt that these objectives will be carried out inasmuch as we have faith in the ability of your workers and your people in general, their creativity, devotion, and commitment. Your party is strong, well-tested and forged in struggle, and there is no doubt that victory is certain.

In conclusion, I would like to ask the comrade first secretary to toast to strengthening the friendship, solidarity, and cooperation between the peoples of Angola and the U.S.S.R.

□ 1415

Mr. HAMILTON. Mr. Chairman, may I inquire of the Chair how much time we have remaining on each side?

The CHAIRMAN. The gentleman from Indiana [Mr. HAMILTON] has 35 minutes remaining and the gentleman from Arizona [Mr. STUMP] has 37 minutes remaining.

Mr. STUMP. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio [Mr. MCEWEN].

Mr. MCEWEN. Mr. Chairman. We are debating today whether to reimpose the Tunney-Clark amendment we repealed only a year ago.

Members may find it interesting to review the original congressional debate on the Tunney amendment, the forerunner to the Clark amendment. As you recall, the 1-year 1975 Tunney prohibition on U.S. aid was extended indefinitely under the 1976 Clark amendment. Interestingly, most arguments used 11 years ago by sponsors of the aid ban have been proved wrong by history. This perhaps is why advocates of section 107 pretend we are merely dealing with a procedural issue of whether to debate aid publicly rather than the substantive merits of aid to UNITA.

In 1975 it was argued that the Marxist-Leninist MPLA was a nationalist movement which merely accepted Soviet aid for tactical reasons. It was alleged that there were no substantial ideological differences between the major Angolan factions, that the struggle derived from tribal rather than ideological rivalries, and that in any case the racist Soviets could never achieve lasting influence in a black African country. All of this may have sounded good in 1975, but it has been proven wrong in 1986. The MPLA's hard-line Marxism-Leninism has ruined the Angolan economy, has terminated any semblance of political freedom, and has placed Angola among the staunchest puppets of Soviet policy.

In 1975 some of those spearheading the Tunney amendment drive acknowledged Soviet intent to take over African countries, conceded this was a serious problem and agreed that the United States should not acquiesce silently. But they believed that the United States could successfully block Soviet expansionism in Angola and elsewhere by taking the moral high ground rather than responding in kind. They could fight pellets with prayers. We could enforce nonintervention by shaming the Communists at the United Nations. Indeed Senator Humphrey stood on the floor of the other body and claimed that we should have our Ambassador to the United Nations go in on the floor of the United Nations and shout, "Out, out," to the Soviet Union, and that we should pursue linkage in our East and West relations. Well, history again proved wrong those who opposed aid to the Angolan resistance. The Soviet bloc has vastly escalated rather than reduced its presence and aid, and Cuba has thousands of troops in Angola today.

In 1975, those who wanted to cut off aid to the Angolan resistance argued that continued United States aid would escalate the conflict and the Soviet and Cuban presence. They told us that deescalation, even total Soviet-bloc disengagement from Angola, probably would occur if the United States withdrew its aid. They were wrong again. The United States totally withdrew all aid to the Angolan resistance but the amount and sophistication of Soviet-bloc military and other aid steadily and massively increased. By 1986 the Cuban troop presence had escalated to 40,000 combat troops and Soviet arms deliveries now include surface-to-air missiles, Mig fighters, and sophisticated helicopters.

Allow me to quote from the debate again in 1975, in which they said, "Now they have some 200 Russian advisers over there. They have Russian rockets and, by the way, the forces do not know how to use them. They scare each other to death," according to the testimony that we had. This was in 1975. "They have 3,000 or 4,000 Cubans over there that really want to go home," according to the testimony that we have, "and they have serious morale problems."

In other words, all we have to do is just get the evil United States out of the way and then indeed all the Cubans and the Russians can go back to doing whatever it was that they did.

Of course, we followed their lead, we implemented their amendment, we withdrew American aid, and the Soviets moved in massively. They have been proven wrong again.

Those who cut off aid in 1975 decried what they characterized as the immorality of U.S. assistance. They argued that further war-inflicted death and suffering by Angolans was intolerable and that the conflict and its effects would cease once the United States withdrew. Indeed, this issue was raised in the preamble to most bills and resolutions on the subject. Their cutoff of U.S. aid, in fact, brought about just what they said they wanted to avoid. The war steadily intensified after the U.S. aid cutoff. United States noninvolvement and diplomatic policies have prolonged rather than shortened the conflict, by allowing the Marxist-Leninist regime in Angola a decade in which to solidify its power base.

Those who supported the aid cutoff in 1975 argued that in supporting opposition to the MPLA the United States would be supporting a lost cause. They believed there was no hope that the beaten and fragmented opposition would ever mount a viable military or political movement. Well, the heroic efforts of UNITA have proved them wrong. UNITA recovered from near-elimination to mount an extremely effective resistance movement. UNITA occupies over one-third of Angolan territory and performs both defense and civil administration functions.

Mr. Chairman, the House was wrong a decade ago, and history shows it. Let us not repeat the mistakes of the past. The United States should support the freedom fighters of the Angolan resistance. Vote to strike section 107 from the intelligence bill.

Mr. HAMILTON. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. WALDON].

Mr. WALDON. Mr. Chairman, I rise in strong opposition to the move to strike section 107 of the intelligence authorization bill. This important section deletes funding for the UNITA forces which are closely allied with South Africa's racist regime. South Africa provides arms, training, fuel, transport, and military support for UNITA and they are working closely together to destabilize Angola and to maintain South Africa's military occupation of Namibia.

The South African Government supports UNITA because Angolans are aiding the fight against the apartheid system. Apartheid is morally corrupt, politically unacceptable, and doomed to failure. As a nation we oppose apartheid and we should support southern African nations who are working to dismantle this system of institutionalized prejudice and segrega-

tion. The South Africans also support UNITA because they want to gain access to Angolan oil, which South Africa desperately needs for their industry and as a protection against an antiapartheid petroleum embargo.

I do not believe that America has the right to use our intelligence agencies to destabilize and overthrow the Angolan Government. If we are unable to support the fundamental principle of political pluralism at the international level we open ourselves to the criticism of self-righteous bigotry. I urge my colleagues to join me in prohibiting aid to the Angolan rebels by opposing the Stump amendment.

Mr. STUMP. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. BROOMFIELD].

Mr. BROOMFIELD. Mr. Chairman, LEE HAMILTON, our respected colleague and chairman of the House Intelligence Committee, has attached to the intelligence authorization bill a provision which would reinstitute the Clark amendment banning United States assistance to freedom fighters in Angola.

As one who joined Mr. HAMILTON and a substantial majority of our colleagues in dumping the Clark amendment barely a year ago, I find this reversal confusing and unfortunate.

The Hamilton provision, despite its sponsor's protestations to the contrary, is indeed the Clark amendment resurrected and newly clothed. Its author contends that the provision is designed to foster open debate on an important foreign policy issue. In essence, it requires that the Congress enact a joint resolution of approval before the executive branch may provide any assistance to any group engaged in military or paramilitary operations in Angola.

Going a step beyond the Clark amendment, the Hamilton measure explicitly invites Congress in its joint resolution to list what kind of assistance is permissible. This approach makes about as much sense as Congress telling a neurosurgeon which instruments to use during brain surgery.

In this, and its many other dubious features, the sequel to the Clark amendment attempts to lobotomize executive branch flexibility in dealing with the situation in Angola.

There are very good reasons for opposing the new Hamilton language. Covert action may be the talk of the town, but a specified alleged operation should not be the subject of open debate on the House floor. This serves to alarm and appall our allies with whom we exchange useful intelligence information on a variety of subjects. It results in the embarrassment of our friends who may also be allegedly involved in an ongoing operation.

Covert action is an essential arrow in the foreign policy quiver of any administration and has been used by both Democrats, Republicans, and their predecessors, throughout the history of the Republic.

To so cavalierly terminate an allegedly ongoing program in this manner—which is clearly the intent of the Hamilton initiative—places the President in an embarrassing position and raises serious questions about the reliability of any commitment by the United States.

Congressional participation in sensitive matters of this nature should be confined to the intelligence committees who have been given that responsibility.

Mr. HAMILTON argues that substantive questions about United States policy toward Angola should not be avoided by simply notifying those Members of Congress on the intelligence committees. But, this is precisely the role of the intelligence committees and it has nothing to do with avoiding substantive questions.

In keeping with their statutory obligations, the intelligence committees oversee covert operations and develop legislation each year to authorize funds for such programs. In other instances, one can presume, the committee passes judgment on covert actions. However, in this case, Chairman HAMILTON insists that it is not appropriate for his committee to do so.

This transparent maneuver is intended to revive the Clark amendment, and, in so doing, give new life to a discredited and discarded tradition of selective congressional suspension of legitimate Presidential authority. It is an attempt to abdicate the responsibilities assigned to the intelligence committees and it would set a terrible precedent, in procedural terms.

Furthermore, in response to the erroneous argument that support for UNITA would in some way place the United States in an alliance with the South African Government, I would like to submit for the RECORD an op-ed I authored that was recently published in the Washington Post.

Congress has an important role to play in the formulation and oversight of U.S. foreign policy and it is well equipped to carry out this task.

I urge my colleagues to support the Stump/Pepper amendment. To do so does not diminish our roles in this process, it simply maintains an appropriate balance of authority between the President and the Congress.

The article follows:

[From the Washington Post, Aug. 23, 1986]

THE FOUNDING FATHERS WOULD NOT HAVE REFUSED AID FROM LOUIS XVI

(By William S. Broomfield)

The most recent gust of hot air to blow through this town was displayed Aug. 15 on the op-ed page in "Mixed Signals to Pretoria" by Anthony Lake and Richard Moose, both former Carter administration officials. Lake and Moose argue that aid to the "South African-backed guerrilla forces of UNITA in Angola would constitute "sending mixed signals to both blacks and whites" in South Africa, a move that would "only reduce American credibility, weaken our efforts against apartheid and lose influence to the benefit of the Soviets."

These curious comments are the latest in a growing chorus of howls by those who are cynically trying to exploit popular and justified American opposition to apartheid in South Africa to reimpose the Clark Amendment prohibition on U.S. aid to freedom fighters in Angola. Last year, Congress repealed the decade-old prohibition, which tied the hands of three presidents and contributed to the fact that there are currently 35,000 Cuban combat troops in Angola, accompanied by thousands of Soviet and Eastern bloc advisers.

Now, in support of new efforts to limit presidential authority, much is being made of the fact that UNITA receives aid from South Africa. According to the argument, U.S. support for UNITA would somehow associate our country with the racist government of South Africa. By implication, UNITA is also criticized for accepting aid from South Africa. Consistent with this logic, the United States should not have fought Hitler in World War II because it placed our country on the same side as Joseph Stalin and the Soviet Union. Furthermore, during the U.S. war for independence, Clark Amendment proponents would have had our Founding Fathers refuse aid from Louis XVI because of the monarchial nature of the French government. Anyone who believes that Thomas Jefferson admired royalty or that UNITA leader Jonas Savimbi supports apartheid is in serious need of a cerebral tune-up.

The fact is, any support we might provide UNITA would have the effect of reducing the freedom fighters' reliance on South Africa for assistance. That should not be our only goal, but a reduction of South African influence in the region would be desirable. Furthermore, it is important to note that according to a recent Post series, UNITA reportedly receives assistance from a number of other African, European and Middle Eastern countries.

UNITA is a legitimate and popular movement in Angola that was prevented by Cuban combat troops from taking its rightful place with rival groups in the Angolan government in 1975. Since that time, there has not been a free election in Angola and tens of thousands of Cuban, Soviet and Eastern bloc military personnel continue to shield an unpopular regime from the Angolan people. It remains U.S. policy to encourage negotiations among all factions in Angola. U.S. support of UNITA could have the effect of forcing the Angolan regime to come to terms with its opponents.

To remove one important policy tool from the president's grasp does nothing to hasten an end to the conflict in Angola. Conversely, to leave unfettered the president's authority to carry out American foreign policy does not entangle us with the apartheid regime.

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Mr. HAMILTON. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. WEISS].

Mr. WEISS. I thank the gentleman for yielding me this time.

Mr. Chairman, this administration has already decided that aid to UNITA should be overt, that is, open and public. The question today is whether

we in Congress will abdicate our responsibility to review that decision through the regular congressional authorization and appropriation process.

I urge that we not abdicate that responsibility because our Angola policy is inseparable from our South Africa policy. Every dollar spent helping UNITA is a dollar that helps finance South Africa's foreign policy. It is not morally acceptable to subsidize apartheid, nor is it in our interest to do so. But that is exactly what the administration is doing with this aid program for UNITA.

South Africa has consistently attacked its neighbors to preserve apartheid. It has attacked Botswana, Lesotho, Mozambique, Swaziland, Zambia, Zimbabwe, and Angola. It has not been particular as to what kind of groups it supported in those attacks. In Lesotho, it supported a Marxist insurgency group. These attacks have caused $10 billion in economic damage in the last 5 years. They have led to starvation and dependency on the front line states. These attacks have also preserved the apartheid regime's illegal occupation of Namibia.

Do we really want to support this pattern of aggression without full congressional review? Do we really want a military alliance with the apartheid regime without congressional review? Is it really in our interest to earn the hatred of the majorities in all of southern Africa?

It is totally inconsistent to vote for sanctions against South Africa one day and then leave the administration free to join military forces with South Africa on the next. Our Angola policy must be considered together with our South African policy.

I urge my colleagues to vote to defeat the Stump amendment today.

Mr. Speaker, I include at this point in the RECORD a study on this issue undertaken by the Arms Control and Foreign Policy Caucus of the House of Representatives:0Z84846 smith fj 9/17/86 J.71-060 F.260a A17SE7.117

SOUTH AFRICA'S WARS: THE MILITARY AND ECONOMIC CAMPAIGN BY SOUTH AFRICA TO PRESERVE APARTHEID

Congress is likely to vote again this year on two issues related to South Africa: economic sanctions (perhaps on a veto override) and aid to South Africa-backed rebels in Angola. This Report frames this latter issue of aid to the Angolan rebels not in the ideological context in which it has so far been debated (e.g. do we support or oppose the communist government of Angola?), but rather in a *regional* context—the way it is seen throughout Southern Africa and perhaps even throughout all of Africa. The Report thus raises the fundamental question of whether U.S. aid to Savimbi will be viewed in the region as a bona fide American attempt to help freedom-fighters, or as an inadvertent act that helps South Africa preserve apartheid.

The Report documents South Africa's ongoing military and economic campaign against all seven of its neighboring states—a campaign to preserve apartheid. This 15-year campaign, which has not been covered widely in the western press, has caused some $10 billion in economic damage to the majority-rule states in the past five years, and still includes assassination attempts, economic sabotage, aid to rebels, military strikes on capital cities and military occupation.

SUMMARY

In an effort to protect its system of white-minority rule known as apartheid, South Africa has engaged in a 15-year campaign of military and economic attacks against its neighbors. As this Report and its accompanying map indicate, since 1982 South Africa has attacked with its military forces all seven countries bordering South African-controlled territory; has subjected five to severe economic blackmail; has conducted or sponsored economic sabotage raids against four; and has been the primary funder and supplier of rebel groups in three.

South Africa justifies these actions as necessary to stop its neighbors from providing support and sanctuary to groups fighting for majority rule in southern Africa—the ANC in South Africa and SWAPO in South African-occupied Namibia. However, as well as attacking ANC and SWAPO offices, South Africa also attacks its neighbors' economies, hoping generally to weaken the majority rule countries and keep them dependent on South Africa.

In addition, some South African attacks are military and economic attempts to disrupt even non-violent political pressure for majority rule. For example, South African aircraft bombed Zambia this May in part as retaliation for Zambia hosting a meeting of South African business leades with the ANC and in part to disrupt a Commonwealth diplomatic mission that was trying to set up talks between the ANC and South Africa. Also, just last month, South African customs agents started singling out for harrassment and delay all exports from Zambia and Zimbabwe, after those two countries publicly called for economic sanctions on South Africa.

Whatever its motivation for particular actions, there is consensus among regional analysts that South Africa's wars on its neighbors are part of its strategy to weaken all possible pressures against apartheid and block diplomatic progress toward majority rule in South Africa and Namibia. As Secretary of State Shultz said of South African military attacks on three countries in May, 1986, South Africa's campaign is "fundamentally seated in apartheid."

The imminent debate in Congress over aid to rebels in Angola is cast primarily in the context of anti-Communism, due to Soviet and Cuban backing of the Angolan government and recent anti-Communist statements by rebel leader Jonas Savimbi. This Report attempts to balance this focus by placing the aid debate in a regional context, as it is seen by all of South Africa's neighbors and most of Africa: by aiding Savimbi's rebels (who have received as much as $1 billion in aid as well as direct military support from South Africa), does the United States inadvertently encourage and assist South Africa in its campaign to preserve apartheid?

While South Africa's military and economic campaigns against its neighbors are not widely covered in the western press, they are constant, on-going and quite effective. This Report documents these campaigns, revealing that South Africa's attacks on its seven neighbors, from democratic Botswana to Marxist Angola, have shared the common purpose of preserving apartheid:

In Angola, South Africa has attempted to seize the capital to place Savimbi in power, carried out over 25 major air and ground attacks, sustained UNITA with aid valued at $200 million a year for the last five years [1] and used its troops to protect UNITA and fight with it against the Angolan Army;

In Botswana, South Africa has carried out helicopter-borne commando raids, damaged transport links to neighboring countries to force Botswana to trade through South Africa, and assassinated political exiles, apparently resorting in one case to the use of a car-bomb.

In Lesotho, South Africa has carried out Commando raids, funded Marxist rebels engaged in economic sabotage, planned an unsuccessful assassination attempt on the Prime Minister, and carried out an economic seige by closing Lesotho's borders, leading to a military coup;

In Mozambique, South Africa has carried out aerial bombardment and commando raids on the capital, assassinated political exiles (apparently resorting in one case to the use of a letter-bomb), and funded rebels engaged in economic sabotage and attacks on international famine relief efforts;

In Swaziland, South Africa has used economic coercion, military attack and apparently bribery to gain the cooperation of the government in identifying and expelling anti-apartheid activists;

In Zambia, South Africa has carried out aerial bombardment of the capital and commando raids on refugee camps suspected of serving as SWAPO and ANC bases, damaged transport links in neighboring countries to force Zambia to trade through South Africa, and may have funded an unsuccessful coup; and

In Zimbabwe, South Africa has carried out commando raids, conducted economic sabotage raids inside the country, damaged transport links in neighboring countries to force Zimbabwe to trade through South Africa, and may have funded a rebel group.

From a tactical standpoint, South Africa's use of its overwhelming military and economic superiority against its neighbors has been largely successful: the attacks have caused $10 billion in economic damage in the majority-rule states over the last five years (far more than all their foreign aid during the same period),[2] leading to starvation and dislocation, and have left the majority-rule states weak, economically dependent on South Africa and largely unwilling to provide refuge or support to groups attacking apartheid, or to take part in diplomatic initiatives for majority rule. Only Zambia openly harbors the anti-apartheid groups, while the other countries have ex-

[1] This estimate was provided by Prof. Gerald Bender of USC, in a telephone interview with Caucus staff, August 6, 1986. Caucus staff was unable to determine any U.S. Government estimate of South African aid to UNITA, since the State Department, CIA, House Foreign Affairs and Senate Foreign Relations declined to provide a figure or comment on Prof. Bender's estimate. Prof. Bender is recognized as (in the words of a leading Africanist who favors aid to UNITA, Georgetown University's Richard Bissell) "one of the finest historians on Angolan affairs." Prof. Bender is a frequent witness before Congressional committees.

[2] This is an estimate of the Southern African Development Coordination Committee, the economic association of the "frontline" states. It is presented in their January, 1986, report.

pelled their members or restricted their activities.

The details of South Africa's campaign to preserve apartheid by weakening its neighbors and their support for anti-apartheid groups and even non-violent diplomatic initiatives are provided below, country by country.

ANGOLA

Angola has been subjected to severe and nearly continuous South African military attack and South African-backed economic sabotage for nearly 15 years. South Africa's campaign against Angola, an ethnically-divided country of 8 million on Namibia's northern border that is twice the size of Texas, has included full-scale invasions, countless raids on refugee camps allegedly serving as SWAPO bases, ongoing occupation of southern Angola and primary support as well as battlefield help for Angolan rebels.

South Africa attacks on Angola date back to the early 1970s, when South Africa helped Portugal oppose the Angolan war of independence. When colonial rule ended in 1975, South Africa sent an armored brigade with air over 700 miles through Angola toward the capital city to install Jonas Savimbi's UNITA group in power. South Africa believed, as it does now, that Savimbi would cooperate with South Africa, and in particular would expel SWAPO from Angola.

UNITA, composed primarily of the Ovimbundu tribe, was one of three rebel armies that had fought the Portuguese and were contesting each other for control of the country. Zambia and China, who (with the United States) had been supporting UNITA against the Soviet-backed MPLA, cut off their support when South Africa invaded Angola in 1975 and began aiding UNITA. Cuban troops airlifted to Angola by the Soviet Union barred South Africa's final approach to the capital, and despite public pleas from Savimbi, the South African column retreated, forcing UNITA to return to its tribal stronghold in southeastern Angola.

Since 1975 South Africa has conducted nearly non-stop aggression against Angola, including direct military attacks, paramilitary operations and support for UNITA's economic sabotage. Currently, South Africa provides UNITA with (according to one respected U.S. scholar, USC's Gerald Bender) some $200 million per year in aid, bombs towns up to 200 miles inside Angola and has some 3,000 troops occupying parts of southern Angola and protecting UNITA forces, reinforced by up to 20,000 troops that operate on both sides of the Namibian-Angolan border.

As a result of South Africa's campaign, Angola has moved Namibian refugee camps farther away from the border and appears to have restricted SWAPO activity. Specific components of South Africa's campaign against Angola since 1975 include:

More than 25 major attacks and countless cross-border raids by South African troops on Namibian refugee camps allegedly serving as SWAPO bases, resulting in thousands of Namibian and Angolan deaths. In one attack in 1978 on a U.N. High Commission on Refugees camp, South Africa killed 600 refugees, and both the UNHCR and the World Health Organization found evidence of the use of "paralyzing" gas;

Aerial bombardment of bridges, roads and anti-aircraft installations throughout southern Angola, most recently in 1985 to protect UNITA from a government advance;

Military assistance to UNITA valued at a billion dollars over the past five years, according to USC Professor Gerald Bender. This South African aid includes nearly all UNITA's weapons and other military equipment, training, transport of troops during battle, logistical aid such as petroleum and vehicles and the purchase of goods produced in UNITA-controlled territory;

Occupation of a substantial area of southern Angola, including towns and an Angolan power facility, from 1978 to the present;

An attempt in 1985 to sabotage oil installations in northern Angola owned jointly by American corporations and the Angolan Government. Several South African commandos carrying explosive devices were captured near the installations; and

The sinking by South African commandos in June, 1986, of a UNICEF ship carrying U.S. food aid to Angolan refugee camps.

BOTSWANA

As the majority rule country closest to Pretoria, Botswana, a democracy of 1 million roughly the size of Texas, has become an important refuge for South Africans fleeing their country, including ANC members or sympathizers. Although Botswana does not permit ANC training camps or transit to rebels carrying out operations, or even ANC political offices, South Africa has attacked Botswana, and openly threatened it with severe reprisals if it changes its policy and assists the ANC.

South Africa's campaign against Botswana appears to be focused on killing ANC leaders, although it also forces Botswana to remain economically dependent on South Africa:

In February, 1985, a bomb was planted and exploded at a housing complex for South African political exiles, and in May, an exiled leader of a black trade union was killed with a car bomb. While South Africa denied responsibility, the ANC claimed that the bombings, unprecedented in Botswana's non-violent political history, were conducted by South African agents;

In June, 1985, helicopter-borne South African commandos raided suspected ANC residences in the capital city, seeking out and killing 13 South African exiles (the U.S. recalled its ambassador to South Africa in protest);

In May, 1986, helicopter-borne South African commandos stormed a police station and housing complex near the capital. Botswana reported that those killed or injured were its citizens, and not ANC members, but South Africa called the mission "successful"; and

South African-backed rebel groups destroyed rail lines through Angola and Mozambique that could serve as alternate routes for overseas trade for Botswana's beef and minerals exports, keeping Botswana dependent on South Africa.

LESOTHO

South Africa's four-year campaign against Lesotho, a kingdom of 1 million the size of Maryland that is completely surrounded by South Africa, has been its most effective. The campaign, started in 1982 with commando raids with the backing of a *Marxist* rebel group, whose sabotage raids South Africa offered to call off if Lesotho recognized the independence of the "tribal homelands" to which South African blacks have been assigned by the government. The campaign ended this year after an economic blockade resulted in the overthrow of the government and the installation of a compliant regime.

In return for South Africa's lifting of the blockade, the South African-backed military officers who seized power in the coup expelled all the South African anti-apartheid activists who had taken refuge in Lesotho. South Africa's ultimately successful campaign included these components:

In December, 1982, South African commandos killed 44 people in raids on private homes in the capital in search of ANC members;

In late January and February, 1983, while Lesotho was hosting a front-line states' conference on reducing economic dependence on South Africa, a Marxist-led rebel group (the LLA) that South Africa financed, harbored and provided with explosives entered Lesotho and destroyed economic targets, including the capital's water storage facility and a major fuel depot;

In the spring of 1983, South Africa created economic chaos in Lesotho for three months by delaying cross-border traffic until Lesotho expelled 22 South African exiles who had been identified by South Africa as ANC members;

In August, 1983, the South African-backed LLA unsuccessfully attempted to assassinate the Prime Minister. In the year preceding this attempt, the LLA had crossed into Lesotho from South Africa and assassinated government officials three times;

In December, 1985, following a formal South African complaint to Lesotho about the activities of South African refugees, the South African-backed LLA raided the capital and gunned down nine members of the ANC;

At the start of January, 1986, South Africa imposed a military blockade on Lesotho, which must conduct all its foreign trade through South Africa; and

On January 20, 1986, with food, gasoline and medicines running out because of the blockade, Lesotho's government was overthrown by a South African-backed military coup. The new leaders moved quickly to expel all South African exiles that South Africa identified as ANC members, and South Africa lifted the blockade.

MOZAMBIQUE

South Africa's three-pronged campaign against Mozambique—military attacks, severe economic sabotage and the funding of a rebel group—has devastated Mozambique's economy and disrupted international famine relief operations there. Mozambique, a nation of 13 million the size of California that is on South Africa's north-eastern border, has never provided bases to the ANC, but it does host ANC political offices that South Africa has accused on aiding attacks inside South Africa.

South Africa helped Portugal in the early 1970s in its war with independence forces in Mozambique, and when Portugal withdrew in 1974, South Africa supported an abortive "settlers' revolt" against majority rule. When Mozambique supported Rhodesian rebels in the late 1970s, the white-minority government in Rhodesia created a rebel movement (MNR) in Mozambique and supplied it with training and equipment for economic sabotage.

South Africa took over sponsorship of the MNR when Rhodesia became the majority-rule state of Zimbabwe in 1980, providing weapons, explosives and sanctuary, and the MNR has continued to attack Mozambique's economic infrastructure and international relief operations. In particular, South Africa has helped the MNR damage transport links between Mozambique and its land-

locked neighbors Zimbabwe and Zambia, increasing those countries' dependence on South Africa as a conduit for their international trade.

South Africa's campaign against Mozambique included these components:

In January, 1981, helicopter-borne South African commandos raided the capital city, and used rockets and mortars to destroy residences of South African exiles. South Africa claimed at least 6 ANC members killed, while Mozambique reported 13 people killed;

In August, 1982, a letter-bomb addressed to Ruth First, an exiled South African writer and one of the most prominent white members of the ANC, killed her and wounded three by-standers. While South Africa denied responsibility, Mozambique protested the incident to South Africa, claiming that the letter-bomb was sent by South African agents;

In May, 1983, South African aircraft bombed houses and a factory in the capital. Mozambique reported 19 killed and 200 injured, while South Africa claimed 40 ANC members killed;

In 1983, the South African-backed MNR sabotaged international relief efforts to Mozambican victims of the worst drought of the century;

In 1984, under the Nkomati Accord, Mozambique ousted ANC members in exchange for South Africa's pledge to stop funding the MNR. However, South African-backed attacks on economic infrastructure linking Mozambique to Zimbabwe resumed immediately, and the next year South Africa publicly admitted that it had decided to violate the Accord and continue supporting the MNR; (Eventually, Zimbabwe sent troops into Mozambique at Mozambique's request to protect its transport links.)

In January, 1985, South African-backed MNR guerrillas sabotaged power lines and the railroad bridge linking Mozambique to South Africa; and

In 1985 and 1986, the MNR attacked international relief vehicles and supplies for the famine in Mozambique, forcing a reduction in deliveries to famine areas.

SWAZILAND

South Africa's military attacks and economic coercion have forced Swaziland, a tiny ethnic kingdom on half a million nearly surrounded by and totally dependent on South Africa, to expel ANC political operatives and other South African refugees. South Africa's campaign to cut off Swazi refuge and support for the ANC started in 1982 after the death of the Swazi king (who had been supportive of the ANC) and consisted of economic coercion and, recently, direct military attacks. According to regional expert William Minter, Washington editor of the Africa News Service, the Swazi Government now cooperates with South Africa in identifying and expelling ANC members, and South African intelligence agents operate in Swaziland with the knowledge of the Swazi Government.

The successful campaign started with the signing in 1982 of a secret agreement to give landlocked Swaziland one of South Africa's "tribal homelands," including a seaport, in return for the expulsion of ANC from Swaziland. Although as part of the agreement Swaziland deported 100 ANC members, some of whom had lived in Swaziland for 20 years, South African courts later voided the transfer of the territory and its seaport.

South Africa established close relations with members of the royal inner circle over the next few years, and in 1983, the Swazi Finance Minister publicly charged that South Africa had bribed some of the royal family and other Swazi officials in return for their cooperation. This minister was jailed for two years after South African President Botha sent a telegram to the Swazi Government defending those he had accused. By 1984, according to Minter, South Africa was given free rein inside Swaziland when it received permission to open a trade mission there staffed by military and intelligence personnel who gather information on opponents of apartheid.

Using its intelligence network, South Africa identifies South Africa exiles it suspects of ANC membership or other anti-apartheid activities, and asks the Swazi Government to expel them. To reinforce its demands, South Africa had its troops occupy Swazi villages twice in December, 1985.

ZAMBIA

Zambia, a nation of 5 million the size of Texas that borders Namibia, openly harbors members of SWAPO and the ANC, and President Kaunda has been an outspoken opponent of South Africa's racial policy and a leader in diplomatic initiatives on both Namibia and South Africa. In retaliation for Zambia's role, South Africa has attacked it with air raids and commando attacks, economic pressure, and possibly support for a coup attempt.

However, Zambia, because it is less economically dependent on South Africa than are other front-line states (for example, because of alternate routes, it conducts one-third of its trade through South Africa, compared to Zimbabwe's two-thirds), has not succumbed to South African attacks and moderated its role in the anti-apartheid movement.

South Africa's campaign against Zambia has included the following components:

In August 1978, South Africa raised refugee camps in Zambia it suspected of being SWAPO bases, killing 12 people;

Throughout the late 1970s and continuing until today, South African-backed rebels in Angola and Mozambique have destroyed rail and power links between Zambia and the seaports in both countries, forcing it to conduct more of its overseas trade through South Africa;

In October 1980, Zambia claimed that South Africa had recruited and trained more than 100 Zambian dissidents in a plot to overthrow the government, a charge South Africa denied;

From 1980 to 1985, South African aircraft repeatedly bombed refugee camps in Zambian territory, stating that the attacks were in response to SWAPO attacks in Namibia;

In May 1986, in retaliation for Zambia's hosting the historic first meeting between ANC leaders and South African business leaders and to disrupt a Commonwealth diplomatic mission exploring talks between the ANC and South Africa, the South African air force bombed a United Nations refugee camp near the capital city, killing two people; and

In August 1986, in retaliation for Zambia's public call for economic sanctions against apartheid, South Africa disrupted Zambian economic activity by slowing border inspections for Zambian goods.

ZIMBABWE

South Africa's campaign against Zimbabwe has relied primarily on economic pressure, because of the dependence of landlocked Zimbabwe, a nation of 8 million on South Africa's northern border, on South Africa as its link to international trade. However, South Africa has reinforced this pressure with military attacks, economic sabotage raids and, according to a number of regional experts, funding for a rebel group.

South Africa's involvement in Zimbabwe dates back to its military and economic support for Rhodesia's white-minority government in the war of independence in the 1970s. Since independence in 1980, Prime Minister Mugabe has been recognized as a key spokesperson for the anti-apartheid movement. While he has provided refuge to ANC members and other South African exiles, he has been unwilling to provide bases or assist ANC operations. South Africa, however, claims that the ANC has crossed the border from Zimbabwe to plant road mines.

The South African campaign against Zimbabwe has included the following components:

In 1981, in retaliation for what it called Zimbabwe's "hostile" diplomatic activity (e.g. harsh speeches against South Africa and the down-grading of diplomatic relations as a protest against apartheid) South Africa withdrew the engines that Zimbabwe had relied on to run its rail system;

In 1982, South African agents sabotaged Zimbabwe's oil reserve facilities;

In December, 1982, and January, 1983, South African-backed MNR rebels in Mozambique destroyed fuel pipelines connecting Mozambique to Zimbabwe, forcing Zimbabwe to purchase fuel from South Africa. The MNR has continually attacked Zimbabwe's transport lines through Mozambique, forcing Zimbabwe to conduct overseas trade through South Africa. At Mozambique's request, Zimbabwe has sent troops into Mozambique to protect its transport links against the MNR;

In May, 1986, helicopter-borne South African commandos destroyed an ANC public relations office and an ANC residence in the capital; and

In August, 1986, in retaliation for Zimbabwe's public call for economic sanctions against apartheid, South Africa disrupted Zimbabwean economic activity by slowing border inspections for Zimbabwean goods.

CONCLUSION

South Africa's campaign to preserve apartheid by weakening and intimidating its neighbors is far from over. After the military attacks on Botswana, Zambia and Zimbabwe in May, South African President Botha stated: "We have only delivered the first installment." Since then, significant military and economic attacks have taken place, and its appears that as international pressure builds against apartheid, the South African campaign may escalate.

This Report shows how South Africa relies on a regional policy to preserve apartheid. Similarly, the United States needs a regional policy to assist the transition to majority rule in South Africa and Namibia. Future U.S. policy toward South Africa, Angola and the rest of the front-line states can not be decided without taking account of the regional reality of South Africa's wars on its neighbors.

(This report was prepared by the staff of the Arms Control and Foreign Policy Caucus. It does not seek to reflect the views of the members of the Caucus.)

GLOSSARY

ANC—African National Congress: major resistance group fighting for majority rule in South Africa. The ANC was founded in

1912 and is headquartered in Zambia. Its president is Oliver Tambo, and jailed leader Nelson Mandela is its honorary secretary.

LLA—Lesotho Liberation Army: South African-backed, Marxist-led rebel group fighting for the overthrow of the Lesotho Government.

MNR—Mozambique National Resistance Movement (also known as Renamo): rebel group fighting for the overthrow of the Mozambican Government, created by the Ian Smith regime in Rhodesia and currently supported by South Africa.

Namibia—formerly South West Africa, occupied by South Africa since 1966 in defiance of international law.

SWAPO—South West Africa People's Organization: principal armed group fighting for the independence of Namibia from South Africa. SWAPO was founded in 1960, and is based mainly in Angola. Its president is Sam Nujoma.

UNITA—National Union for the Total Independence of Angola: rebel group fighting for control of Angola. UNITA was founded in 1966, and Jones Savimbi is its president. For the past 11 years, South Africa has been UNITA's largest supplier. In 1986, a U.S. assistance program for UNITA was started by the CIA.

Mr. STUMP. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma [Mr. McCURDY].

Mr. McCURDY. I thank the gentleman for yielding me this time.

Mr. Chairman, I wish that the amendment offered by the gentleman from Florida [Mr. PEPPER] and the gentleman from Arizona [Mr. STUMP] had been worded differently so as to make this a clear-cut debate on the policy toward Angola.

As a matter of course, I do not believe that the Congress should deny any President the flexibility to confront Soviet and Cuban adventurism through covert aid to its opponents, so long as such aid is necessary to achieve an overall policy that is consistent with U.S. goals, and is not simply an end in itself.

In the case of Nicaragua, it seemed to me that the Reagan administration forfeited its right to such flexibility by misleading Congress and the American people as to its goals, and by conducting a sustained public campaign to gain support for covert aid. It has come very close to making the same mistake with respect to Angola. The President cannot have it both ways: He cannot claim that covert aid to UNITA is vital to protect American interests and encourage the support of our allies, and at the same time announce to the world that we must help the freedom fighters in Angola, as he did in his State of the Union message in February. If the aid need not be covert, it should not be.

Last summer I voted to repeal the Clark amendment. This was not a vote to provide funds for antigovernment forces; it merely gave the President the option to undertake such assistance. The vote today is somewhat different. It is pretty clear, based on the administration's public statements, that if the prohibition in the committee bill is not enacted, funds will be made available to those forces.

Unfortunately, the time remaining before adjournment is short, and our experience with trying to legislate policy toward Central America is not encouraging. Therefore, although I would prefer a debate on the merits of the issue, I will support the amendment offered by my friends from Florida and Arizona. At the same time, Mr. Chairman, I would put the administration on notice that—as a member of the committee—I will be watching developments very carefully, and do not intend by this vote to signal a carte blanche approval for any actions that may be undertaken.

Mr. HAMILTON. Mr. Chairman, I yield 4 minutes to the gentleman from New York [Mr. SOLARZ].

Mr. SOLARZ. I thank the gentleman for yielding me this time.

Mr. Chairman, the adoption of this amendment would permit the continuation of a covert assistance program for the antigovernment forces in Angola. I think it is, therefore, encumbent upon us to ask exactly what American interests would be advanced by the continuation of this effort to provide military assistance to the UNITA forces in Angola.

Is the purpose of the program to bring about the overthrow of the MPLA regime in Luanda? There is not a single, credible military analyst who believes that with or without American support Jonas Savimbi can possibly succeed in that endeavor.

Is the purpose to facilitate a withdrawal of the Cuban forces in Angola whom we would all like to see leave that country? The truth is that the Government of Angola has already offered to withdraw virtually all of the Cuban forces in their country in the context of a simultaneous withdrawal of all South African forces from both Angola and Namibia. The only reason that has not happened is not because of the intransigence of Luanda, but because of the intransigence of Pretoria.

Is the purpose to facilitate a negotiation between the MPLA government in Luanda and the UNITA forces led by Mr. Savimbi in an effort to achieve national reconciliation in that country?

□ 1435

The truth is that the prospects for such a negotiation which, indeed, would be a desirable way of resolving the internal conflicts in Angola, would be far more significantly advanced by a cessation of South African and American support for Mr. Savimbi and UNITA because so long as the MPLA regime is convinced that UNITA is artificially propped up by South African and Western support, they will categorically continue to reject any proposals for negotiations with Mr. Savimbi.

It would only be in the context of a cessation of South African and other Western support for UNITA and continued viability of the UNITA undertaking that the MPLA regime might be persuaded that Mr. Savimbi does have sufficient indigenous support within Angola to merit negotiations with them.

I would suggest, my colleagues, that if you look at it very closely, there is little to be gained from an American point of view by helping Mr. Savimbi. Is there, however, anything to be lost? I think there is.

Instead of producing a reduction in the number of Cuban forces in Angola, it will undoubtedly result in an increase in the number of Cuban troops in that country since, as the military pressure against the Luanda Government increases, so will the number of Cuban forces dispatched there by Mr. Castro.

It will result in more Cuban troops, rather than fewer. It will eliminate whatever slender chances remain of a negotiated settlement to the Namibian problems since South Africa, which will benefit from the continuation of a strategic alliance with the United States in support of Savimbi and Angola, is not going to be willing to agree to a Nambian settlement which would require them to cease supporting Mr. Savimbi and UNITA because then they would lose the benefits of an association with the United States.

Finally, it would be a diplimatic shot in the foot for the United States throughout the African continent because, like it or not, rightly or wrongly, wisely of unwisely, it will objectively put us into the same bed as the South Africans in support of UNITA and Mr. Savimbi at a time when we just voted to impose sanctions against South Africa. I cannot for the life of me understand why we would want to vote for this amendment which will undo all of the good will the sanctions vote generated.

Mr. STUMP. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. DANIEL], a member of the committee.

Mr. DANIEL. Mr. Chairman, I thank the gentleman from Arizona for yielding. Like the gentleman from Oklahoma, I voted to report section 107 to the floor in order that Members might have an opportunity to express themselves on the issue.

Let me say at the outset, Mr. Chairman, that if I thought for one moment that disapproval of section 107 would encourage the policy of apartheid, I would not support the Pepper-Stump amendment. I have the same contempt for this abominable policy as do all other freedom-loving people.

Mr. Chairman, let me take just a minute to talk about the strategic importance of Angola. I support Pepper-Stump primarily for economic reasons. We are import dependent for many of the strategic materials that make up our industrial base. Many of these materials can be found in abundance in only two areas: Africa and the Soviet Union. The Soviet Union is now installed on the Horn of Africa. It sits astride the Mozambique Strait on the Indian Ocean side of the continent, and by consolidating its position in Angola will have effective air and sea surveillance of the entire continent of Africa. This will impose a serious threat to the shipping lanes.

I believe, therefore, that the national interest will be served by the adoption of Pepper-Stump.

Section 107 of the intelligence bill takes away the option for covert support of the UNITA resistance forces fighting the governing Communist regime in Angola. Section 107 makes two fundamental policy mistakes. First, it ruptures the secrecy of the statutory process for congressional oversight of intelligence activities; and second, it abandons United States strategic interests in Angola.

The existing statutory process for oversight of covert actions achieves simultaneously two critical goals—congressional control of funding, and the maintenance of the secrecy essential to intelligence activities.

The law requires that, before CIA conducts a covert action, the President must personally find in writing that the proposed operation is important to U.S. national security. The proposed action must be reported in advance to the intelligence committees of Congress. Covert actions are funded through appropriations made available annually by Congress for such purposes. If the intelligence committees disapprove of a covert action that the President has found important to national security. They may deny funding for continuation of the action during the annual authorization and appropriations process.

This system established by law and congressional rules permits all of this to be done in confidentiality, to preserve the secrecy essential to intelligence activities. There is no need to break this essential secrecy about covert actions. The executive branch should not do it and the Congress should not do it.

In addition to encouraging the breach of secrecy, the other major problem with section 107 is its abandonment of United States strategic interests in Angola. From my service as a member of both the Intelligence Committee and the Armed Services Committee, I remain extremely concerned about the continuing offensive Soviet military buildup around the globe.

Angola provides airfield and naval port access to the Soviet Union from which they could attack the sea lines of communication around southern Africa, including the critical Cape sea route for maritime transport of strategic minerals vital to the economies of the West.

Luanda, Angola, has one of the best natural harbors in west Africa and is the main support base for the Soviet Navy's West Africa fleet element.

The Soviets and their allies have poured $4 billion in military aid into Angola in the past decade, $2 billion of which was given just since 1983. I would point out to my colleagues that this massive Soviet-bloc aid to Angola occurred during a period in which the Clark amendment prohibited the United States from providing any aid to the Angolan freedom fighters.

The Soviet-supported air and naval infrastructure, combined with the 35,000 Cuban troops already in Angola, severely threatens United States interests in the region.

I urge my colleagues to vote for the Pepper-Stump amendment to strike section 107 against covert aid to the Angolan resistance. The United States should stand four-square behind the forces of freedom meeting the Communist challenge in Angola.

Mr. HAMILTON. Mr. Chairman, I yield 2 minutes to the distinguished Delegate, the gentleman from the District of Columbia [Mr. FAUNTROY].

Mr. FAUNTROY. Mr. Chairman, support of the Stump amendment would, in effect, take back what we gave last week in a very significant vote.

Last week we gave the Nation and the world moral leadership in achieving nonviolent resolution to the crisis in southern Africa with our vote for sanctions. To support the Stump amendment would be to take that back and promote violence in the very region that we are attempting to address with this legislation.

I hope that you will pay particular attention to what the chairman, Mr. HAMILTON, has said. The 150 million blacks of southern Africa and whites of good will all over this country, including in America, understand that this vote would identify us with the enemies of nonviolent resolution there and with apartheid. They know that the issue here is not East/West confrontation. The United States is Angola's number one trading partner. The issue is whether or not South Africa will continue its war on the front-line nations through it directly and through surrogates, to prevent them from developing the very strategic resources which exist outside of southern Africa, outside of South Africa in those very regions.

Support for UNITA means support for blowing up bridges and roads and ports that are designed to provide those resources, not only for the people of that region, but for the West as well.

I hope that we will not take back today what we gave last week, moral leadership in this nonviolent resolution of the crisis in southern Africa.

Please support the chairman. Please support section 107. It is not the Clark amendment restored; it is wrong to imply that. Let us do what is right in this case. Support nonviolent resolution in South Africa and we do that, in this instance by voting in support of the committee.

Mr. STUMP. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Chairman, we should not reinstate the Clark amendment. Make no mistake about it; that is what this is doing.

We should support the gentleman from Florida [Mr. PEPPER] and the gentleman from Arizona [Mr. STUMP] in their efforts to take out section 107.

There are 60,000 UNITA forces fighting in a life-and-death struggle for freedom in Angola and while they are doing that, there are Cubans there, 45,000 of them, using chemical weapons to prevail.

The Soviets have a major naval base in Luanda. That is why they are concerned about Angola, the strategic importance of that country.

Let me read to you what Mr. Savimbi, President of UNITA, had to say about section 107. He said, If this stays in, "in doing so, it weakens the prospects of a negotiated settlement to our tragic civil war by encouraging the Soviets, Cubans, and the MPLA Communists to believe military victory over UNITA is possible."

He went on to say, "In Angola, we have never had elections. The country is ruled by an illegitimate minority regime propped up by 45,000 Cubans, 1,500 Soviets, 2,500 East Germans, 2,000 North Koreans, and other Eastern-bloc forces.

"Despite its massive occupation by foreign Communist forces, the people of Angola have not given up their 10-year struggle for freedom. UNITA has been making steady progress, and recent U.S. support has played a significant role.

"We in UNITA take a back seat to no one in abhorrence of apartheid. Apartheid is an evil system doomed to perish. However, those seeking justice in South Africa cannot morally ignore the right of Angolans to fight for their own freedom. The charge that UNITA is a 'tool of South Africa' is ridiculous and unsubstantiated. Whom would UNITA apply the apartheid system against? Would we apply the system against ourselves?"

Mr. Chairman, it would be unthinkable for us to turn our backs on these people fighting for freedom. We

should remove section 107 from this legislation.

Mr. HAMILTON. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. WOLPE], the distinguished chairman of the Subcommittee on Africa of the Committee on Foreign Affairs.

Mr. WOLPE. Mr. Chairman, I rise to express the strongest possible opposition to the Stump amendment.

There are three points that I think need to be underscored in the course of this debate. First, let there be no mistake, the effect of continuing our covert assistance to Mr. Savimbi in Angola is to put the United States squarely into the position of a military alliance with the apartheid regime of South Africa.

It is also to put the United States squarely in opposition to the expressed position of the entire African Continent and to all of our European allies.

So let us not kid ourselves. When we continue this assistance to Mr. Savimbi, the perception throughout the African Continent in that we are participating in the ongoing effort of the South African Government to destabilize all of the regimes in southern Africa.

□ 1445

For the past 5 years South Africa has engaged in an occupation of Angola. South Africa has provided the major logistical and military support for Savimbi. The estimates are that over $200 million a year has been pouring into UNITA forces from South Africa over the past 5 years, a billion dollars without which Mr. Savimbi and UNITA probably would not be surviving militarily. So America's assistance to Mr. Savimbi will be viewed as part of the broader aggression by South Africa, not only against Angola, but against all the other countries in the region, Mozambique, Botswana, Lesotho, Zimbabwe, Zambia, and others.

I do not think that the perception of an American alliance with South Africa serves American interests. If you want to be allied with South Africa, then vote for the Stump amendment.

Second, let there be no mistake, there is no better way to assist Moscow than by voting for the Stump amendment, because the effect of the Stump amendment would be to allow a continuance of support to Mr. Savimbi in Angola that will keep the Cubans in Angola, that will play into the hands of the Soviet propagandists.

It is South African aggression against the neighboring states in the region that is the principal source of instability and provides the principal reason for the retention of Cuban troops.

The Angolan Government has laid out on the negotiating table specific proposals for the withdrawal of those Cuban troops. Do we really think that increased threats from Savimbi against the Angolan Government will diminish the reliance by the Angolan Government on those Cuban troops? Is it not obvious that that reliance will only intensify and that there will be more Cuban troops, rather than less Cuban troops in Angola, As a consequence of American policy?

Let us not assist Moscow in that way. I want Cuban troops out of Angola. Support for the Stump amendment is much more likely to keep them inside Angola.

Finally, the third point, let us be under no illusions. Mr. Jonas Savimbi is anything but a committed anti-Communist supporter of Western values. Look at his own history. Mr. Savimbi first went to the Soviet Union for assistance. When he was denied assistance there, he turned to China. He was trained in China. He was an avowed Maoist. Now he is getting his support from South Africa. Now he claims to be a committed anti-Communist.

The only thing that is consistent about Mr. Savimbi over the years is that there is always a perfect correlation between his ideology of the moment and his source of financial support.

Let us not be fooled. Just look at Mr. Savimbi's recent statements when he was in the United States not long ago. He went before the media of this country and he proclaimed that if American businesses that were lobbying the Members of Congress on this very issue did not stop lobbying the Members of Congress that he, Mr. Savimbi, would destroy those business installations inside Angola.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. WOLPE. Mr. Chairman, I ask for an additional minute.

Mr. HAMILTON. I regret that I have no further time.

Mr. WOLPE. I would urge opposition to the Stump amendment.

Mr. STUMP. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Chairman, I rise in strong support of the Stump-Pepper amendment to H.R. 4759. I commend my colleague from Arizona and the distinguished chairman of the Rules Committee for their foresight and efforts on this issue.

I understand that many of my colleagues have strong reservations about aiding UNITA, but I fear that the issue of South Africa has been confused with the issue of this debate, southern Africa. Yes, the South Africans do aid UNITA. They want the Cubans out. But, it has nothing to do with apartheid.

The United States fought side by side with the Soviet Union during the Second World War. That did not mean that we condoned Stalin or his gulags. The Roosevelt administration chose to cooperate with the Soviets because we were fighting a common enemy, far more threatening at the time than the Soviet Union.

The situation is similar today. We can aid UNITA and assist the Angolan people in finally winning their independence. That may mean that we are aiding a group which is also getting funds from South Africa. It does not mean that we support the internal policies of South Africa and it does not mean that we condone the continued policy of the Government in Namibia.

Rather it means that we want the Cubans and the East Germans and the PLO and the Soviets and the Bulgarians out of southern Africa. We want a southern Africa where the majority of the population in each country is free to decide its own destiny.

This House has had the wisdom to aid freedom fighters in Afghanistan, Nicaragua, and Cambodia. Are the people of Angola any less worthy of our support? Do we now abandon people because their country borders on a detestable regime? If so, the Norwegians, Turks, and Japanese are in for a surprise.

I urge my colleagues to support the Stump-Pepper amendment and restore a bit of sanity to our foreign policy.

Mr. STUMP. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. COMBEST].

Mr. COMBEST. Mr. Chairman, we live in a world that grows ever more complex. The Soviet Union uses proxies and henchmen to prod the United States at every level—from the geostrategic down to civil wars and terrorism.

The essential point is this: We must have the flexibility to respond to the Soviet prods at an appropriate level.

This bill places one of those response levels off limits. The choice of covert assistance is denied to us. We are then forced to choose between doing nothing or providing open assistance which only raises the stakes. Escalation makes it harder on our friends and harder on us. It is much like playing the Soviets in a poker game where we cannot call—we can only raise or fold. The bill does not permit us to exercise the full range of options, rather it forces us to either escalate or capitulate.

This House often has trouble relating to the real world out there. Situations occur where the United States can advance our national interests and promote our ideals without holding a press conference or open debate. The

President, with appropriate congressional oversight, must have the flexibility, the capability to deal with attacks on freedom in the most effective way. We are again trying to tie our own hands and it is a mistake.

Mr. HAMILTON. Mr. Chairman, I yield 1 minute to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. Chairman, I rise in support of the Intelligence Committee's language in section 107 of the fiscal year intelligence authorization bill. As you know, this section states that no funds shall be expended in fiscal year 1987 for covert operations in Angola unless the President publicly requests such assistance and it is approved by Congress.

During consideration of the foreign aid authorization bill last summer, the House voted to repeal the Clark amendment, which prohibited any United States assistance to rebel groups operating in Angola. At that time, the administration insisted that it had no intention of providing military support to any Angolan group, but that it sought to repeal of the Clark amendment as a matter of principle. However, the President has since made very clear his support for UNITA's guerrilla war against the Angolan Government. While the administration has chosen to publicly express its support for assistance to UNITA, it is now requesting covert authority to operate in Angola in order to circumvent open congressional debate on the issue.

Section 107 of this bill does not prohibit assistance to UNITA. Rather, it suggests that if the President wishes to follow up his public discussion of the issue then he should submit a specific request for assistance. Congress can then decide the issue on its merits.

I would like to remind my colleagues of a statement by the distinguished chairman of the House Intelligence Committee, Mr. Hamilton: "Covert authority is intended as a necessary secret tool in support of existing policy, not a means to change policy in secret." No matter what my colleagues think of Mr. Savimbi and his movement or of the Angolan Government this issue we have before us is not the relative merits of aid to UNITA but a critical policy question as outlined by the gentleman from Indiana [Mr. HAMILTON].

I strongly believe that covert operations are a necessary component of U.S. policy and that their secret status must be preserved. The legislation before us clearly supports such operations. In this instance, there is considerable question as to whether Congress or the American people support aid to UNITA. Until the larger issue of U.S. policy toward southern Africa has been decided in open debate, the administration should not have the authority to secretly alter existing policy.

I urge my colleagues to support the committee language.

Mr. STUMP. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. KEMP].

Mr. KEMP. Mr. Chairman, I appreciate my friend from Arizona yielding.

Mr. Chairman, I rise in strong support of the Pepper-Stump amendment.

I think this is a critical issue facing not only the United States, but the West. How do we help folks fight for freedom? What is the best way to do it?

Now, there can be legitimate debate on both sides of the aisle, but here we have a self-identified Marxist-Leninist government in Angola with 35,000 Cuban mercenary troops helping to prop up that Marxist government. They have taken in over $2 billion in Soviet aid in the form of weapons, tanks and MIG's with Cuban pilots, seeking to crush a strong, indigenous, anti-Communist, pro-Western pro-Democratic force in Angola.

Now the Congress is going to revisit the Clark amendment, which in 1976 said that we could not help them.

Now, imagine what type of a signal this sends to southern Africa. Imagine what type of signal this sends to other countries in which there are indigenous, prodemocratic, anti-Communist resistance forces. Are we going to say to them that we are not going to help? What are we going to say, what does it say to the Afghan rebels or the Kampuchean rebels or rebels and freedom fighters in other parts of the world, including Nicaragua?

I think it is a big mistake. Are we going to say to the world that if you are willing to fight for freedom we are going to turn it into a debate on the floor of the U.S. House and politicize it?

Should a President have the option to support covertly in indigenous democratic force resisting communism and Marxism in a country?

This is Clark revisited. It should not, that language should not be in there, and the Pepper-Stump amendment is absolutely essential to the conduct not only of the fight for freedom in Angola, but the fight for freedom in other parts of the world.

Mr. Chairman, for the record, I want to complete my statement. No nation, great or small, can conduct an effective foreign policy if vital decisions are made and reversed capriciously. Just last summer, the Congress gave the President authority to provide covert assistance to the black nationalist resistance in Angola. The bill before us would withdraw that mandate, just as Savimbi's forces—with our quiet help—are beginning to hold their own.

What is the reason for this? Well, the supporters of the Hamilton amendment would have us view their language as the equivalent of "blue skies" legislation in foreign policy. They want public disclosure of what UNITA needs, what we propose to give them, and how and when we will get it there. Then they want yet another vote in Congress approving it all. Meanwhile, UNITA will have to stand alone against attacks by Soviet-supplied Government troops—and the President will be powerless to help.

This all misses the essential point. There is a war going on in Angola, a war that will determine the future of freedom and independence in that country. And make no mistake: freedom has its enemies. They are in Luanda. And they are attentive to what we do and say from the comfort of this Chamber.

The facts on the ground in Angola are starkly simple. The Marxist MPLA government in Luanda came to power in 1975 only through the direct injection of Soviet weapons and 15,000 Cuban troops. It stays in power only because of their support—propped up by Cuban forces now numbering 35,000. In return, the Soviets derive both economic benefits—through oil revenues—and political/military benefits—in their campaign to destabilize and eventually assert their control throughout southern Africa. If this oppressive alliance is to be broken, the costs of the Soviet/Cuban presence must be raised to the point where they exceed the associated benefits.

The resistance forces, with effective help, can make holding power so difficult that the government will be forced at last to reach an accommodation with the people of Angola. This is the essential impetus to a negotiated settlement. If UNITA cannot fight, the MPLA government has no incentive to negotiate.

But the key ingredient here is effective help. Overt assistance is proper in its place. Along with our colleague Senator CLAUDE PEPPER, I have sponsored legislation to give humanitarian aid to UNITA, to be openly debated and provided.

But there are other aspects of our assistance which depend upon secret channels of supply that must stay secret to succeed. We are not talking about simply losing equipment. We are talking about endangering lives.

If we follow the prescription of the Hamilton amendment, we will do nothing to disrupt the flow of weapons and intelligence from the Soviet bloc to Angola's Marxist government. There are no Hamilton-like constraints on the Soviet Union. But we will be impairing the ability of this country to provide effective help to Savimbi's forces. And we will reduce UNITA's hope for success.

In truth, the Hamilton amendment is a direct attack upon the Reagan doctrine. It is a covert attempt to

render our support for the forces of freedom in Angola null and void. If we are to stand with those who are fighting for their freedom, then it should not matter whether our help is provided openly or secretly so long as it meets the needs of those we are helping.

We cannot both proclaim our support for freedom and democracy, and then prohibit effective assistance to people who are fighting against totalitarian governments and foreign Communist troops—as the Hamilton language would do.

Contrary to a former President's assertion, Americans have never harbored an inordinate fear of communism or its influence in the world. In the competition of ideas, Marxist-Leninist doctrine has been proven bankrupt both as political philosophy and as economic model. Free men do not willingly choose slavery nor poverty.

But in places like Angola, and in other places like Afghanistan, Cambodia, Nicaragua, and Mozambique, the dominant occupation is not drawing-room discussions of Edmund Burke or Karl Marx. In these countries, men and women have taken to the hills and the jungles and the bush to escape their oppressors. They have grasped at any and all sources of supply of food and medicine, of mortars and bullets. And in their simple way, they are bleeding and dying to achieve one goal: freedom. The essential fact of their lives is that nothing is more important than this.

It falls to us to decide what we will do in the face of this struggle. As free men and women, what does our conscience dictate? And as citizens of the one country endowed by natural wealth and extraordinary human industry with the leadership of the free world, what best serves our Nation's interests? Both considerations must weigh in our answer. For a foreign policy that ignores political reality is doomed to fail; and a foreign policy that eschews our values deserves to fail.

Some who have participated in this debate today would have us declare our neutrality in this struggle. This is illustrative of another school of foreign-policy thinking. The new isolationism, it has been called. Given time, it could also be called the incremental surrender of our interests, our allies, our security, and finally our values.

The moral imperative behind the Reagan doctrine, as applied in Angola and elsewhere in the world, must become a dominant feature in our foreign policy, if we are to ensure the future strength and success of our Nation and democracy. In this effort, we need to be able to use all the tools at our disposal—including those that must remain secret to succeed. For if we do not support freedom for others, our own freedom will never be secure.

Mr. Chairman, I urge that the Hamilton language be stricken from the bill.

Mr. HAMILTON. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Chairman, I rise today in opposition to the amendment which seeks to eliminate the provision included in the intelligence authorization bill prohibiting covert military or paramilitary activities in Angola.

Mr. Chairman, I believe the Intelligence Committee, by including such a prohibition on covert aid, is setting us on a wise course. Failure to sustain this prohibition will send a message to all of Africa, indeed to the entire world: and that message is that in the face of another nation's civil war, the policy option we choose is a violent one. Africa's political climate is a fragile one, and yet, we would adopt a policy of armed intervention and escalation of superpower rivalry. And, sadly, we would tell the world that when push comes to shove, we would ally ourselves with the apartheid regime of South Africa and disavow our friends throughout the region.

Having served on the Intelligence Committee, I know that the Intelligence Committee has at its disposal vast amounts of classified information. They know this is a war we cannot win. We cannot win it militarily and we certainly cannot win it on moral grounds.

All we could anticipate by such an intrusion would be a bigger, more protracted and, ultimately, more destructive war. Are we doomed to repeat our mistakes over and over again? We cannot bring mayhem and disorder and suffering to other nations and call ourselves crusaders for justice.

Mr. Chairman, this is not a covert activity anymore. Our intention to provide American military aid is well known and the type and the extent of such aid has been publicly announced. Continuing to call our intrusion in Angola covert is just a clever ruse to void open and frank discussion of a major foreign-policy decision. If my colleagues believe that we have a place in Angola, then let it be demonstrated by public accord and full congressional concurrence. We have so much to lose from a misguided policy in Africa. Let us, at the very least, not determine such policy by cloaking it in secrecy and by abrogating Congress' responsibility to participate in foreign-policy decisions.

Again, Mr. Chairman, I urge a "no" vote on the pending amendment.

Mr. HAMILTON. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Chairman, I rise in opposition to the amendment. The legislation brought to the House floor today provides simply that United States policy toward Angola should be openly debated by Congress, just as it is openly discussed in other venues by the President and his chief advisers.

This debate is not about the right of the President to authorize covert operations; U.S. aid to UNITA is not a secret.

This debate is not a referendum on the Marxist government of Angola, for Angola's Government is no threat to us or to its neighbors, and we have cordial relations with Marxist governments throughout the world.

What this debate is about—or should be about—is whether our current policy toward Angola serves the best interests of the United States. And in discussing that issue, it is important to remember that the self-described best and brightest in our Government have never understood Angola very well. Seventeen years ago, Henry Kissinger's National Security Council questioned "the depth and permanency of black resolve" and "ruled out a black victory at any stage" in Angola's battle against Portuguese colonial rule. Having failed to predict the Angolan revolution, our Government has refused, as well, to admit it ever happened. South Africa and the United States are the only countries that have not acknowledged the legitimacy of the government in Luanda.

The Angolan people have survived an era of brutal colonial rule; they have been fighting a war of one form or another for 25 years; they are among the poorest and least healthy people in the world; and the price of oil, their only major export, has collapsed.

Angola's Government is Marxist, but it seeks close economic and diplomatic ties with the West. Its rival, UNITA, is a legitimate political force, with its own ethnic base, but without a genuine claim on the moral or material support of the United States.

During the past decade, the Soviet Union and the Government of South Africa have both intervened in Angola, seeking to fill the vacuum left by Portugal as an imperial power.

The question before Congress today is whether the United States, too, should play the role of an imperial power, or whether our interests could better be served through a more imaginative, more creative, and more conciliatory role.

Last year, Secretary of State George Shultz warned that United States aid to the rebels in Angola would lead only to a military stalemate at a higher lever of violence, and that such a stalemate would serve the interests of Moscow. Business Week magazine recently said in an editorial that "aid to Savimbi will be interpreted by most of black Africa as a hostile act. To squander U.S. influence in this way will benefit neither America nor black Africa in the turbulent times ahead."

Many informed people in the Reagan administration do not support aid to UNITA; those who do justify that aid in the name of freedom. But the fact is that UNITA's very survival has been guaranteed for most of the past decade by South Africa, freedom's greatest foe.

Supporters of aid to UNITA ignore military reality, history, economics, politics, and diplomacy in their self-defeating obsession to react to the Cuban presence in Angola. From the perspective of black Africa, the additional violence brought about by United States intervention is unwelcome, the rhetoric of freedom in support of South Africa's ally is hollow, and the obsession with Cuba virtually beside the point.

American prestige, resources, anger, idealism, and diplomacy ought not to be committed to perpetuating and extending South African military and political influence. But that is precisely what aid to UNITA is doing; and that is why this policy is so brutal, so misguided, and so wrong.

We cannot protect American interests in Africa if we have no credibility, but credibility will come only when we are visibly, consistently and seriously committed to ending apartheid, eliminating the last vestiges of colonial rule, promoting stable and peaceful borders throughout the continent, lending support to economic development, and demonstrating both by deed and word the advantage of civil freedoms and democratic rule. If we were to pursue such a policy, we would need not worry about the Cubans, or about the expansion of Soviet influence, or about the ideological peculiarities of those governing Angola. Because in helping to achieve the legitimate objectives of the people of Africa, we will have guaranteed the protection of America's true interests as well.

I urge my colleagues to reject the extremist policy that has involved our country this year in yet another war in which we cannot with honor participate and which we cannot win. Let us reject alliance with South Africa, and join instead with the African majority in seeking a peaceful and comprehensive settlement of issues that have for years divided that continent and rendered both human freedom and economic development a remote dream.

Mr. STUMP. Mr. Chairman, I yield 4 minutes to the distinguished chairman of the Foreign Affairs Committee, the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Chairman, I rise in support of the amendment which is my amendment as well as the amendment of the gentleman from Arizona and my colleague, the gentleman from Florida. First I would like to examine for 1 minute the question of South Africa.

Anyone who thinks that there is some confusion about where we stand toward South Africa should take another look. We have passed two sanction bills on South Africa, overwhelmingly. We are doing our best to give our allies a message concerning our policy. What is the policy? The policy is a consistent one that the United States has had since World War II. It is not attributable to this President or any single President or some political party or whether you are liberal or conservative.

What we have supported has been the independence of sovereign countries with the right of self-determination with majority rule. That is the policy that we support in South Africa.

To suggest that we support apartheid because we are in the process of supporting another group in another country that also seeks independence, freedom and sovereignty and the right to be free of Communist domination, is not good logic.

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It is also unfair to use guilt by association. Others have used guilt by association for different reasons. Are we going to be guilty of the same thing? I hope not.

To get back to our policy, our policy has been consistent. We have sometimes angered our friends, worried them, aggravated them. Why? Because the United States insisted that we would not continue to forever support colonial policies in Africa. We supported independence, sovereignty, and the right of freedom and the democratic process. And do you know what? We can take some credit for the success of that policy in Africa. Some of the disputes that are going on today—unfortunately some of them militarily—involve the right to become sovereign and independent with majority rule of the people. We have strongly supported that, and that policy still continues. Therefore, we must not back away because of allegations of guilt by association.

When they had more parties in Angola, the Congress pulled the plug on assistance to Angola hoping they would solve their problem. Now you have two major disputants. It is clear where both stand.

This debate today is about stopping aid, because this is the end of this year. We will not get another shot at it. The committee proposal seeks to stop aid until next year. So what it is doing is stopping aid now. That is what this vote is about. And I say what we must do here is not take that opportunity away from the United States. Let it flow. Give us the veil, if you will, a thin veil, but at least let it work for our benefit to carry out a very consistent policy to give the people of Angola an opportunity to be free and independent of the Communist yoke.

Mr. SHUMWAY. Mr. Chairman, I rise in support of the amendment offered by Mr. STUMP to delete the prohibition on the President's ability to provide effective aid to the UNITA resistance forces in Angola.

UNITA's claim to a role in the future of Angola dates back to the days of Portuguese colonialism which ended shortly after the successful coup in Lisbon in 1975. Having announced that it would grant independence to Angola, Portugal then reached an agreement, known as the Alvor agreement, with the three groups which had been fighting for Angolan independence: The Marxist Popular Movement for the Liberation of Angola [MPLA], the National Front for the Liberation of Angola [FNLA], and the Union for the Total Independence of Angola [UNITA].

This agreement provided for an interim government in which all three groups would participate, the drafting of a new constitution and free elections to determine the new Government of Angola. The Marxist MPLA with Soviet and Cuban assistance gained control of the Angolan capital of Luanda and proclaimed itself the government of a new People's Republic of Angola. The MPLA clearly violated the Alvor agreement by denying participation to the two other groups and by denying the Angolan people the right to elect their new government.

In the struggle for a free and independent Angola, Portuguese colonialism was simply replaced with Soviet-backed communism. Today UNITA continues this struggle against 35,000 Cuban troops, 10,000 Soviet and East German advisers and $2 billion in Soviet military equipment, including the helicopter gunships which have proved to be so effective in Afghanistan and Nicaragua.

For over a decade UNITA has remained an effective resistance force. With 40,000 freedom fighters, UNITA claims the support of the majority of Angola's ethnic groups and controls one-third of the country, while conducting operations throughout.

As the leader of the free world, we must not turn our backs on those who struggle for freedom against Communist oppression.

We must not ignore Soviet expansion in southern Africa with its strategic importance in mineral resources and vital sealanes.

We must not limit the President's ability to effectively meet the challenge of Angola.

Mr. EDWARDS of California. Mr. Chairman, I rise in strong support of section 107 of the Intelligence Authorization Act, which would require the President to submit to Congress a request for funds for UNITA.

Whether or not assistance to the UNITA forces in Angola is appropriate—and, I believe it is not appropriate—the administration's policy in this case sets a very dangerous precedent.

By publicly acknowledging U.S. assistance to UNITA, the administration is seeking to take credit for providing the aid. More importantly, however, by labeling the action "covert," the administration is seeking to sidestep congressional debate on a very significant foreign policy issue.

Clearly, the administration has opened public debate over aid to UNITA. Now that U.S. support of UNITA is no secret, the Presi-

dent should publicly request the assistance, and allow Congress to debate the issue.

I believe the requirement set forth in section 107 is prudent, and I believe it is fair. I commend Mr. HAMILTON's work with this very important piece of legislation.

Mr. TOWNS. Mr. Chairman, today as we consider the Intelligence Authorization Act for fiscal year 1987, we must make a very important decision regarding our Nation's involvement in Angola's civil war.

As we make this crucial decision, we must consider the long term . . . the far-reaching effects. What will our approval of covert aid to the UNITA forces fighting in Angola say to the world?

In my opinion, such support will signal our willingness, not only to become involved in a war where our assistance will have little or no effect on the outcome, but also to engage in an unholy alliance with the Government of South Africa, which has been supporting the Angola UNITA forces for over 10 years.

Through our overwhelming approval of sweeping economic sanctions against South Africa, we have openly admitted our rejection of that country's government and its racist policies of apartheid. How, then, can we now, knowingly, become partners with this same Government of South Africa, in their obvious intent to continue military attacks and economic sabotage against Angola.

Mr. Chairman, quite simply, we must determine whether we will become materially involved in the civil war being waged in Angola, or whether we will continue the course we have already embarked upon, respect our own decision regarding South Africa and its policies, and take a real step toward supporting freedom and democracy in southern Africa.

I want to urge my colleagues, then, to join me in supporting the recommendation of the Intelligence Committee.

Let's make our position in southern Africa, abundantly clear. Let there be no confusion.

Let's support the Hamilton provision in the intelligence bill, which will prohibit covert aid to UNITA, unless it is specifically approved by Congress. And let's oppose any amendments which will strike this provision.

Let's respect our own decision and uphold our own judgment, by voting "no" to covert aid to Angola.

Mr. GREEN. Mr. Chairman, I find myself in the awkward position of being opposed to aid to UNITA but also opposed to the Hamilton language in section 107 of the intelligence authorization.

What section 107 does, essentially, is blow the cover off a covert aid program. It does not ban aid to UNITA, which the Intelligence Committee could have done quite effectively in the classified report that accompanies this authorization bill. It does establish a precedent that controversial covert initiatives cannot be covert. That is wrong.

If we need a stronger method to review covert operations, then that is what we should provide. But to say that anytime there is disagreement within the Intelligence Committee, there shall cease to be the possibility of a covert operation, seems to me to be a very dangerous proposition.

If it was the intent of the Intelligence Committee to cutoff aid to UNITA, it should have done that head on. I should have supported that. But I do not believe it is the function of the Intelligence Committee to eradicate a covert aid program by blowing its cover.

Mr. OWENS. Mr. Chairman, I rise in support of section 107 of the intelligence authorization bill which would require the President to publically request assistance for the UNITA forces in Angola and that the Congress approve such assistance specifically.

Angola is, unfortunately, experiencing a state of civil war in some sections of the country. The UNITA forces led by Joseph Savimbi oppose the Angolan Government. UNITA has the overt support of the South African apartheid regime as well as the support of the administration. Although this support is labeled as "covert," the reality is that the support is well known, open and publically acknowledged by the administration.

There are a very limited number of situations in which the United States should be involved in covert activity. As a democracy, we pride ourselves on our open society and we tend to criticize totalitarian regimes which habitually operate in a covert manner which excludes citizens from the decisionmaking process as well as excluding them from the inner circles of those who know just what it is that their government is doing. In the case of UNITA, support for so-called covert activities merely seeks to remove the question of support from congressional consideration. In short, the administration seeks to exclude the people of the United States from participation in this decision through their elected representatives.

Why, one might ask, would the administration seek to keep aid to UNITA behind the closed doors of the covert action closet? The answer is clear. The administration knows full well that the people of the United States do not support the South African apartheid regime and they would want no part in supporting the harassment of the countries in the southern part of Africa by the South African Government when they understand that these activities are directed toward the shoring up of the apartheid regime. In short, the aid to UNITA is basically an alliance with South Africa to harass one of the independent majority ruled countries in the southern part of Africa. To put an alliance with South Africa's minority government into the covert category is an affront to the basic decency of the American people which abhor the apartheid policy of South Africa's minority government. Americans do not support alliances with apartheid and it is about time that this issue be clearly stated so that the people, through their representatives, can express their commitment to majority democratic rule in Africa.

Section 108 of the intelligence authorization bill does not make any ultimate decisions on aid to UNITA. It merely requires that the administration state its policies and aims clearly and make an open and honest request for funding. I urge my colleagues to support open and free consideration of this issue. I urge my colleagues to keep the door open so that the American people can be fully aware of just what their Government is doing. I urge my colleagues to support the democratic process here as well as in Africa.

Mrs. LLOYD. Mr. Chairman, I rise in support of the Stump amendment to H.R. 4759, the intelligence authorization bill.

I do so because of my strong belief that people should be able to determine the nature of their own government. It is for democratic reasons only that I cast a vote for this amendment.

I am deeply concerned about the argument that a vote for this amendment says that the United States supports the apartheid Government of South Africa. I have long been an opponent of apartheid in South Africa. I cosponsored sanctions last year and whole-heartedly supported them this year. On every occasion I have voted to express the United States' utter outrage with racist policies of South Africa.

If I felt that the Stump amendment somehow says we support apartheid, says we support the atrocities that are taking place in South Africa, says the United States supports oppression, then I would avidly oppose it.

But simply because we vote to give the President flexibility in conducting foreign policy in Angola does not mean that the United States is at all addressing the issue of apartheid in South Africa, two countries away.

However one feels about aid to UNITA, one only muddles the issue by connecting such aid to apartheid. The UNITA forces are in a desperate position; they are not able to turn down much needed aid, from wherever it may come. Should we condemn our forefathers who were fighting for the cause of "democracy" for accepting aid from a monarchy? Should we condemn our own country for fighting shoulder to shoulder with Stalinist Russia against facism? I encourage my colleagues on both sides of the issue to debate the question of covert aid outside of the question of apartheid.

I support this amendment to the intelligence authorization bill because section 107 of the bill would significantly reduce the possibility of ending the conflict through a negotiated settlement. It was only last year that this Congress passed the Clark amendment, opening up the possibility of aid to UNITA as a tool for negotiations. We cannot now turn around and say that covert aid is not a possibility. This flies in the face of the message we were trying to send to the repressive Government of Angola. When there are 30,000 Cuban troops propping up the Government of Angola, the United States needs the possibility of a flexible response.

I urge my colleagues to vote for the Stump-Pepper amendment and leave the hands of our negotiators untied.

Mr. FRENZEL. Mr. Chairman, I support the Pepper-Stump amendment to delete section 107 of the intelligence authorizations.

As written, this bill requires that any aid to Jonas Savimbi's UNITA forces in Angola must be overt. I believe that provision unnecessarily and unwisely ties the hands of the President.

Congress can review and support or prohibit any aid, whether overt or covert. Until recently we banned any form of aid to UNITA. Recently that ban was lifted. Now, it seems to me, opponents of aid have simply shifted the focus of their argument to the covert aid issues in hopes of gaining some political advantage.

Today aid to UNITA is not the real issue. The issue is whether the Congress will vote to deny the President the kind of flexibility that he needs in the conduct of foreign policy.

Our efforts will be feeble in effect if we tell our opponents what we will or will not do. Without the Stump amendment we will be telling what we will not do.

Covert aid is necessary in instances when we need to support a government or resistance group, alone or in conjunction with other nations, but cannot afford to make public our involvement, or the involvement of other cooperating nations. It is something with which I, and many Americans, are uncomfortable. I prefer open policymaking. However, in some cases we have vital interests to advance, and need the cloak of secrecy. The only way we can successfully continue that practice is to allow the President considerable discretion.

Because I believe congressional prohibitions like that proposed in section 107 must be justified by extreme and unusual events, I support the amendment to delete that provision.

Ms. MIKULSKI. Mr. Chairman, the United States should not be sending covert aid to UNITA for two basic reasons.

First, the administration openly acknowledges its support for UNITA, but sends covert aid to avoid congressional and public debate. United States policy toward Angola and UNITA is a major foreign policy issue that should be open to congressional authorization and appropriations review.

The second and perhaps most important reason involves the South African Government's support of UNITA. By aiding Jonas Savimbi, Pretoria seeks to destabilize Angola and protect its system of apartheid.

South Africa's ongoing military and economic campaign against all seven of its neighboring states is well-documented. In order to preserve apartheid and destabilize its majority-rule neighbors, South Africa:

Has caused $10 billion in economic damage to its neighbors,

Has repeatedly initiated assassination attempts against Southern African leaders,

Aids rebels attacking legitimate governments,

Has and has launched military strikes on capital cities, and

Continues its illegal military occupation of Namibia.

Tacit United States support of the South African Government and these policies does not serve United States strategic or political interests. By sending covert aid to UNITA, the administration weakens U.S. credibility as an honest broker throughout the region. It also pushes Angola closer to the Cubans and Soviets as the war escalates.

Instead, the United States should have more honorable and realistic policies toward the region. The United States should seek an end to apartheid in South Africa. We should also seek independence for Namibia, a reduction in Soviet and Cuban influence in the region, and the evolution of democratic institutions in Angola as well as all of southern Africa. Covert aid to UNITA will undermine these goals and should be ended.

Mr. LOWRY of Washington. Mr. Chairman, there are four major reasons why we should oppose the Stump amendment to the intelligence authorization bill. This amendment would delete the bill's prohibition on covert aid to support military or paramilitary operations in Angola.

First, the United States should not be cooperating militarily with the racist Government of South Africa. Current U.S. policy places us firmly in this role as we join South Africa in sending weapons and other crucial military aid to the National Union for the total independence of Angola [UNITA], an insurgent group that is trying to overthrow the sovereign Government of Angola. UNITA receive over 90 percent of its funding from the South African Government. To aid UNITA is to aid South Africa.

Second, Congress has recently voted to impose sanctions on South Africa because of its repugnant system of racial discrimination and apartheid. By providing aid to UNITA, a client of the South African Government, the United States is undermining the effect of any sanctions. Our message to South Africa about its policies should be crystal clear. United States sanctions against South Africa should not be rendered meaningless by a United States military alliance with the South African Government.

Third, Congress should debate and vote on whether or not to aid UNITA. Our current aid to UNITA, which is estimated at between $15 to 25 million, is not really covert aid. On a number of occasions the President and members of his administration have publicly talked about the so-called covert aid to UNITA. They have even publicly discusssed the amount and kind of aid being given to UNITA. Since U.S. aid to UNITA is not covert, Congress has the right and the obligation to question, debate, and vote on such aid. A key shift in our policy in southern Africa deserves congressional participation and comment. The administration's tactic of calling overt aid "covert" is merely a ploy to avoid congressional involvement in this important foreign policy matter.

Finally, U.S. aid to UNITA will greatly diminish our ability to act as a mediator in resolving the problems that are troubling the southern African region. We cannot expect the Government of Angola to negotiate with us on the removal of Cuban troops from Angola if we are funding a group that seeks its overthrow. And the issue of Namibian independence can only be harmed by aiding the UNITA rebels. Moreover, U.S. aid to UNITA is strongly opposed by most black Africans and others throughout the world. The Organization of African Unity [OAU], comprised of the heads of state of African nations, opposes this aid and has urged us to end it. I urge my colleagues to vote against the Stump amendment and for peace in southern Africa and an end to racism and violence.

Mr. LEHMAN of California. Mr. Chairman, I urge my colleagues to support the Intelligence Committee's restriction on aid to the Angolan rebels led by Jonas Savimbi. I support the integrity of the committee's position and also the deeper relevance to United States foreign relations in black South Africa. If we delete the prohibition on aid to Angola, we weaken our stated abhorrence of apartheid in South Africa as well as continue to give the President the authority to initiate and dictate foreign policy without congressional oversight.

After many months of hard work, the House and Senate completed work on a sanctions bill against the repressive Government of South Africa. I have spoken out in favor of a tough foreign policy against President Botha's government of South Africa and have heard President Reagan tell the American public that he hopes apartheid is dismantled. But, if we give support to Savimbi's UNITA we might as well stand together with President Botha in support of Guerrilla war in Angola and in ignorance of our stand on dismantling apartheid, not to mention ignorance of the illegal occupation by South Africa of Namibia. Our position in southern Africa would been seen as inconsistent and hypocritical.

The President and many of my colleagues in the House feel that aid to Jonas Savimbi and his rebels should continue. However, continuing a program of covert aid to Angola under present circumstances does not give the Congress the ability to debate the issue in an open forum. In the past the President and his advisers have made public announcements on the benefits of supporting Angola as well as specific details of the Covert Aid Program. The President has taken the meaning of covert action authority to mean that he can promulgate a covert policy in Angola, gain support for it with our constituents, and effectively deny the role of Congress in debating and devising popular foreign policy.

I urge my colleagues to support the committee's position and bring the issue of aiding UNITA out into the open for public discussion where it belongs.

Mr. LELAND. Mr. Chairman, today we have the opportunity to continue following the correct policy toward southern Africa. I am referring to section 107 of the Intelligence Authorization Act, which would require congressional approval before the United States could provide assistance to Jonas Savimbi's UNITA, or any other military or paramilitary forces in Angola. This section is an important followup to the message this body sent to the Government of South Africa last week.

United States policy toward Angola is particularly important because of UNITA's strong ties to the Government of South Africa aid to UNITA automatically thrusts the United States into an alliance with Pretoria. South Africa's assistance to UNITA secures its own position in the region, since UNITA forces help fight SWAPO in Namibia. Aid to UNITA props up apartheid in South Africa; by helping Savimbi's forces, the United States fights on the same side as the racist regime.

It is necessary for both sides of this issue to be openly debated before such a significant foreign policy decision is made. The President himself has publicly discussed his support for UNITA, so Congress would not be divulging state secrets or threatening national security be debating this crucial issue.

We must continue to oppose apartheid; we must not be tricked into supporting Pretoria's friends. I urge my colleagues to support section 107, seizing the chance to again demonstrate our condemnation of apartheid and following the correct course in southern Africa.

Mr. CLAY. Mr. Chairman, I stand with my colleagues today to express my total opposition to any move to delete section 107 from the Intelligence Authorization Act. To remove this section, which prohibits covert assistance to UNITA forces in Angola without congressional approval, would clearly show the United States to be in complete support of the Government of South Africa.

Providing aid to the UNITA forces, enabling them to continue to wage war upon Angola, would reduce the administration's speeches which proclaim the repugnancy of South Africa's system of apartheid to simple rhetoric. The United States' real stand on apartheid will be shown by where our dollars are being sent. Furthermore, aid to UNITA will constantly be matched by an influx of more aid to the Angolan Government by supporters such as the Soviet Union and Cuba. At what point do we stop?

Since the early 1970's, when Angola began her struggle for independence, there has been a constant and overt mission by neighboring South Africans to undermine this country and keep her people economically dependent on others.

Mr. Chairman, undermine is a rather light word to describe the economic sabotage and severe military attacks by UNITA and South African forces of which Angola has been subjected to for the last decade. There have been full scale invasions, raids on refugee camps that were thought to be SWAPO bases, and an occupation of southern Angola since 1975.

The South African Government has given UNITA aid to the tune of $1 billion over the past 5 years. This has enabled the two forces to attack not only Angola but neighboring countries as well with increasing regularity.

In addition, the South African Government hopes to keep apartheid alive and well by instilling fear in its neighbors through means of economic and military attacks. They can achieve their means only if the United States subscribes to their type of ideology and approves aid to UNITA.

Mr. DIXON. Mr. Chairman, I rise in opposition to Mr. STUMP'S amendment and urge my colleagues to vote against the Stump amendment and retain section 107 of the intelligence authorization bill (H.R. 4759), which would prohibit covert assistance to Savimbi's UNITA forces in Angola unless it is approved by the Congress.

Today, we are voting on the future of United States involvement in Angola's civil war and our relationship with 50 African countries for years to come. The administration's policy of providing covert aid to UNITA places our Nation in an unholy alliance with South Africa's minority Government, thereby damaging our interests throughout Africa. That is precisely the wrong message to be sending at a time when Congress has given final approval to legislation imposing economic sanctions on South Africa.

The administration has failed to develop at a consistent, concrete policy in southern Africa. While urging the frontline states in southern Africa to be patience, the administration continues to push toward a military solution to the conflict in Luanda.

We cannot continue to play a type of roulette with our foreign policy in southern Africa. South Africa is the principal backer of UNITA and has been for more than a decade, supplying occasional ground and air attacks, transportation, and other equipment. It is clear that the administration's policy of covert aid to UNITA has tacitly placed us in an alliance with the Government of South Africa. While the United States, which for years has sought to act as an honest broker between Angola and South Africa to secure the independence of Namibia, seems to have squarely come over to the side of South Africa.

It is time to move toward a consistent, correct, and workable policy in southern Africa. The United States has an interest in promoting peace and reconciliation in Angola, as it does throughout southern Africa in general. Yet how can we continue to do so when we militarily support one side in the conflict?

This is an important issue that will have far-reaching effects on our relations with African nations. I urge you to vote against the Stump amendment, and support the Hamilton provision in the intelligence bill prohibiting covert U.S. aid to UNITA.

I urge you to vote to restore honesty and respect for human dignity to United States foreign policy in South Africa. Vote "no" on covert aid to Angola—vote no on the amendment to strike section 107 of the intelligence authorization bill.

Mr. IRELAND. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 386]

ANSWERED "PRESENT"—390

Ackerman	Brown (CA)	Darden
Akaka	Brown (CO)	Daschle
Alexander	Bruce	Daub
Andrews	Bryant	Davis
Annunzio	Burton (IN)	de la Garza
Anthony	Bustamante	DeLay
Applegate	Byron	Dellums
Armey	Callahan	Derrick
Atkins	Carney	DeWine
AuCoin	Carper	Dickinson
Badham	Carr	Dicks
Barnard	Chandler	DioGuardi
Bartlett	Chapman	Dixon
Barton	Chappell	Donnelly
Bateman	Chappie	Dorgan (ND)
Bates	Cheney	Dornan (CA)
Bedell	Clay	Dowdy
Beilenson	Clinger	Downey
Bennett	Coats	Dreier
Bentley	Cobey	Duncan
Bereuter	Coble	Durbin
Berman	Coelho	Dwyer
Bevill	Coleman (MO)	Dymally
Biaggi	Coleman (TX)	Dyson
Bilirakis	Collins	Early
Bliley	Combest	Eckart (OH)
Boehlert	Conte	Eckert (NY)
Boner (TN)	Cooper	Edgar
Bonior (MI)	Coughlin	Edwards (CA)
Borski	Courter	Edwards (OK)
Bosco	Coyne	Emerson
Boucher	Craig	English
Boulter	Crane	Erdreich
Boxer	Crockett	Evans (IA)
Brooks	Daniel	Evans (IL)
Broomfield	Dannemeyer	Fascell
Fawell	Lowry (WA)	Russo
Fazio	Luken	Sabo
Feighan	Lundine	Savage
Fiedler	Lungren	Saxton
Fields	Mack	Schaefer
Fish	MacKay	Schneider
Florio	Markey	Schroeder
Foglietta	Marlenee	Schuette
Foley	Martin (IL)	Schulze
Ford (MI)	Martin (NY)	Schumer
Franklin	Martinez	Sensenbrenner
Frenzel	Matsui	Sharp
Fuqua	Mavroules	Shaw
Gallo	Mazzoli	Shelby
Garcia	McCain	Shumway
Gaydos	McCandless	Sikorski
Gejdenson	McCloskey	Siljander
Gekas	McCollum	Sisisky
Gibbons	McCurdy	Skeen
Gilman	McDade	Skelton
Gingrich	McEwen	Slattery
Glickman	McGrath	Slaughter
Gonzalez	McHugh	Smith (FL)
Goodling	McKernan	Smith (IA)
Gordon	McKinney	Smith (NE)
Gradison	McMillan	Smith (NJ)
Gray (IL)	Meyers	Smith, Denny (OR)
Gray (PA)	Mica	Smith, Robert (NH)
Green	Michel	Smith, Robert (OR)
Gregg	Mikulski	Snowe
Guarini	Miller (OH)	Snyder
Gunderson	Miller (WA)	Solarz
Hall (OH)	Mineta	Solomon
Hall, Ralph	Mitchell	Spence
Hamilton	Moakley	Spratt
Hammerschmidt	Molinari	St Germain
Hansen	Mollohan	Staggers
Hatcher	Monson	Stallings
Hawkins	Montgomery	Stangeland
Hayes	Moody	Stenholm
Hefner	Moorhead	Stokes
Hendon	Morrison (CT)	Strang
Henry	Morrison (WA)	Stratton
Hertel	Mrazek	Studds
Hiler	Murphy	Stump
Hillis	Murtha	Sundquist
Holt	Myers	Sweeney
Hopkins	Natcher	Swift
Horton	Nelson	Swindall
Howard	Nichols	Synar
Hoyer	Nielson	Tallon
Hubbard	Nowak	Tauke
Huckaby	Oakar	Tauzin
Hughes	Oberstar	Taylor
Hunter	Obey	Thomas (CA)
Hutto	Olin	Thomas (GA)
Hyde	Ortiz	Torres
Ireland	Owens	Torricelli
Jacobs	Oxley	Towns
Jeffords	Packard	Traficant
Jenkins	Panetta	Traxler
Johnson	Parris	Valentine
Jones (NC)	Pashayan	Vander Jagt
Jones (OK)	Pease	Visclosky
Jones (TN)	Penny	Volkmer
Kanjorski	Pepper	Vucanovich
Kaptur	Perkins	Waldon
Kasich	Petri	Walgren
Kemp	Pickle	Walker
Kennelly	Porter	Watkins
Kildee	Price	Waxman
Kleczka	Pursell	Weaver
Kolbe	Quillen	Weber
Kolter	Rahall	Weiss
Kostmayer	Rangel	Wheat
Kramer	Ray	Whitehurst
LaFalce	Regula	Whitley
Lagomarsino	Reid	Whittaker
Lantos	Richardson	Whitten
Latta	Ridge	Williams
Leach (IA)	Rinaldo	Wilson
Leath (TX)	Ritter	Wirth
Lehman (CA)	Roberts	Wise
Lehman (FL)	Robinson	Wolf
Leland	Roe	Wortley
Levin (MI)	Roemer	Wright
Levine (CA)	Rogers	Wyden
Lewis (FL)	Rose	Wylie
Lightfoot	Rostenkowski	Yates
Lipinski	Roth	Yatron
Livingston	Roukema	Young (FL)
Loeffler	Rowland (CT)	Young (MO)
Long	Rowland (GA)	
Lott	Roybal	
Lowery (CA)	Rudd	

□ 1520

The CHAIRMAN. Three hundred ninety Members have answered to their names, a quorum is present, and the Committee will resume its business.

The Chair will announce that 16 minutes are remaining for the gentleman from Indiana [Mr. HAMILTON] and 15 minutes are remaining for the gentleman from Arizona [Mr. STUMP].

Mr. STUMP. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Chairman, I rise in strong support of the Stump-Pepper amendment.

Mr. Chairman, last year, the Congress supported the repeal of the Clark amendment which for years barred aid to rebel groups fighting against the Soviet-backed Marxist Government of Angola. Following years of civil war and fruitless negotiation, we voted to free the President's hands in his negotiations with parties to the conflict in Angola.

Section 107 of the bill we have before us will effectively repeal that historic decision. I urge my colleagues to support the deletion of this section from the bill.

There are currently up to 45,000 Cuban troops in Angola supporting the governing politburo largely confined to the capital city of Luanda.

As long as they remain, there will be no human rights, open elections, no economic development, no free markets and no peace in Angola. Given our support for the freedom fighters of Afghanistan, there is no reason why we should not support those who would resist the Communist regime in Angola.

The President must have a range of options in dealing with foreign policy beyond doing nothing in Angola, as the gentleman from Indiana would want, and sending in the marines. Covert action, especially to freedom fighters throughout the world, is essential in stopping the slow and methodical capture of nations within the Soviet bloc.

Many have argued that since U.S. covert aid to freedom fighters has been widely reported, we might as well open up these operations to full public disclosure. This would be a mistake. Aid to the freedom fighters of Afghanistan is well known, but how it gets there and what is specifically provided is not discussed. Full public disclosure of these methods and operations would shut off the flow of aid. By opening up these operations, we kill them, restricting the President's flexibility.

Mr. Chairman, we had a full debate on Angola last year and are having another one now. I only wish the Soviets and the Cubans would also give us a full and open public debate on their military aid and troops sent to prop up the Marxist Government of Angola.

I urge adoption of the amendment.

Mr. STUMP. Mr. Chairman, I yield 5 minutes to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Chairman, as an ex-officio member of the Intelligence Committee, I have had the opportunity to work with an outstanding bipartisan group of Congressmen and an efficient and dedicated staff. The committee does a fine job.

I say this because, quite frankly, I am puzzled by the inclusion of section 107 in the Intelligence Authorization Act before us.

In effect it says that if the President wants to help freedom fighters in Angola, he must openly acknowledge this and the Congress must openly debate the issue and then enact a joint resolution approving such aid.

It is as if a chief of police was told he could have a sting operation to catch criminals but would have to publicly announce such operations in advance with time, place, and date and number of police involved.

He would certainly get a public debate—but he would never catch any criminals.

The same principle applies here. If we accept this section, we force our President to either tell the enemies of Angolan freedom fighters exactly what he wants to do before he does it or else stop him from doing anything at all.

And so this proposal presents an American President with two options in Angola—futility or impotence.

We are told that support for Angolan freedom fighters involves serious and substantive foreign policy issues concerning United States relations with black African nations and the entire question of the future of southern Africa, including Namibia.

We are also told there have been public statements and pledges of assistance to the Angolan freedom fighters from the administration including the President. Therefore, say the critics of Angolan aid, since vigorous public debate on the issue is already going on, the issue is no longer a secret and there is no need for covert assistance.

But both of those principles—long-term regional effects and existing public debate—could be used to make public all our covert operations.

Every operation of our foreign policy covert or overt, has long-term regional effects on geographic regional questions. And all you need is one leak to the media and we have what is called public debate.

And so what does this amendment really do? It asks us to embrace principles that could leave all our covert operations at the mercy of anyone with the price of a telephone call to the Washington Post.

As soon as a "Bob Woodward" reports that he believes there is a covert operation somewhere, some opponent of that aid will jump up and say he is shocked and we will have public debate in the newspapers.

And, for the supporters of the Hamilton approach that alone will be enough to require the President to tell the Communists what he wants to do.

Let me speak to those Members who support this approach.

You don't like Savimbi. You don't like UNITA. You don't like the fact that Savimbi, in order to fight Communists, has accepted aid from South Africa.

So you feel justified in your approach. But I say you are very shortsighted.

Think of what impact your proposal will have on American allies all around the world.

I don't mean freedom fighters only. I mean those nations that are quietly and secretly helping us in certain areas.

How can they trust us to keep their help a secret if we plan to disclose every single fact about our Angola policy in the event we wanted to send aid to UNITA?

Either we keep the principle of covert operation, with the President's right to propose them and the Intelligence Committee's right to pass judgment on them as we do now—or else we abandon it. There is no middle ground or half-way house so to speak.

What we have here is the Clark amendment reconstituted the very same Clark amendment repealed last year.

It is a bad proposal because it gives to any one Member who wants to spread true or false information the power, through this mechanism of public debate, to thwart the President's objective of exercising any covert operation.

In fact, this proposal undermines the collective thinking and judgment of the Congress if by majority we subscribe to the President's view.

I reject such an approach. It is dangerous and irresponsible. I urge deletion of section 107 in the interest of the legitimate foreign policy goals of our country.

I am including a letter from Secretary George P. Shultz to me on this section:

THE SECRETARY OF STATE,
Washington, September 17, 1986.

Hon. ROBERT H. MICHEL,
U.S. House of Representatives.

DEAR BOB: I am writing to express to you the strong opposition of this administration to the passage of the FY-87 Intelligence authorization Bill without the deletion of Section 107. I understand that the Bill will be brought to the floor of the House for a vote September 17.

The administration has major objections to Section 107. The amendment requires that any U.S. Government support for military or paramilitary operations in Angola be openly acknowledged and publicly debated. It would also prohibit the furnishing of any assistance to UNITA unless Congress enacts a joint resolution specifically approving such assistance. Quite simply, this section will terminate the ability of the administration to provide aid to UNITA. It will stop any movement toward a negotiated settlement in Angola. Section 107 will legislate a policy that will maintain the status quo in

Angola, guaranteeing the continuing presence of 30,000 Cuban troops and flow of aid from the Soviet Union, which has already amounted to 3 billion dollars. This legislative constraint on Presidential actions will make more difficult the achievement of our objective of bringing about independence for Namibia and the end of the illegal presence of South African troops in that country.

The Congress repealed a measure similar to Section 107, the Clark amendment, less than one year ago. The administration supported and applauded that repeal because the Clark Amendment had left us powerless to negotiate a settlement. The administration also supports the desire of the supporters of this amendment to bring the conflict in southwestern Africa to the attention of the American people and to conduct public debate on the situation in Angola. The administration is not seeking to cut off public debate on this conflict. There are carefully designed procedures for statutory oversight of activities that are not debated in public. Section 107 departs markedly from these well established procedures.

The administration supports Jonas Savimbi's struggle against Soviet and Cuban adventurism, and is committed to providing effective and appropriate assistance to UNITA. This support does not imply support, in any way, for the South African government. UNITA accepted significant military aid from South Africa only after passage of the Clark amendment cut off assistance from the United States. Savimbi has clearly stated his opposition to apartheid. No critic of UNITA asserts that UNITA receives from South Africa assistance comparable to the flood of Soviet and Soviet-bloc military aid given to the MPLA.

For these reasons the administration places the highest priority on supporting action to delete Section 107.

Thank you very much for your attention to this matter.

Sincerely yours,

GEORGE P. SHULTZ.

□ 1530

Mr. HAMILTON. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, our foreign policy has taken a decided turn in recent years. Instead of pursuing a policy which reflects the will and the conscience of the American people, we have been confronted with a policy which quietly and covertly circumvents them.

First there was Nicaragua. The administration pursued a covert policy which amounts really to a war by proxy. When the war because too obvious, the covert aid program became overt. But even now, with an overt aid program to the Contras, we still cannot get all the information and facts we need about the aid program and the effect it will have not only on Nicaragua, but on the general foreign policy of the United States.

Now we have Angola. Again, this is supposed to be a covert aid program. But a funny thing happened. The President, and the Vice President, and senior State Department officials talked publicly about the assistance we ought to, and will be providing to Angola. They talked. The newspapers printed. And now a covert aid program is anything but covert.

Even though it was the administration which broke the story, it is now this same administration which wants to preserve a cloak of secrecy around the Angola issue. And they have a very important reason. Because, if the administration can keep its aid program covert—at least in principle—the aid issue can be decided as part of the intelligence authorization; with little debate and even less public exposure.

But it is time to put a stop to this kind of maneuvering. It limits public debate and demeans the democratic process.

And so, Mr. Chairman, I rise in support of the Intelligence Authorization as written and in opposition to the Stump Amendment. I oppose this amendment for two reasons. First, aid to UNITA will not serve the interests of the United States in Africa. And second, the issue of aid to UNITA should be an overt issue.

On the first point, we ought to examine whether aid to UNITA will help or hurt our interests in Africa. How will aid to UNITA affect our anti-apartheid efforts, and will it increase the likelihood of the withdrawal of Cuban troops from Angola?

Instead of helping our antiapartheid efforts, aid to UNITA would only hurt those efforts. It is no secret that South Africa has been almost solely responsible for keeping UNITA going for the past decade. Since 1976, South Africa has provided the bulk of UNITA's material support—weapons, explosives, vehicles, food, and medical supplies. It has even been reported that UNITA has infiltrated the Namibian independence group SWAPO and provided South Africa with information about that group. For the United States to help UNITA is to join in an alliance of association with South Africa. This move could only hurt our antiapartheid efforts and make us look hypocritical to the world.

In addition, aid to UNITA would not further one of our most important goals: the removal of Cuban troops from Angola. United States aid to UNITA would be perceived as an obvious threat to the Government of Angola and would reduce their willingness to ask the Cubans to leave.

If our ultimate aim in Angola is the removal of Cuban troops, then we ought to continue along the diplomatic path. We have made some progress in encouraging the removal of the Cuban troops in exchange for an end to South Africa's incursions into Angola and its occupation of Namibia. If this were to take place, Angola would feel less threatened, and, more inclined to ask the Cubans to leave. Aid to UNITA, on the other hand, would only entrench the status quo and increase Angolan reliance on Cuba.

Even if the goals of this aid package were unquestionable—and they certainly are not—this is not the right way to pursue such a policy. And that leads me to my second reason for opposing this amendment: If the policy of aid to UNITA is the right one, then there is no reason why we cannot debate it in an open forum.

This is not, after all, a covert aid program by any stretch of the imagination. In fact, it seems that the only people who cannot talk publicly about the aid program to UNITA are Members of the U.S. Congress.

Whether or not to provide assistance to UNITA is a major foreign policy decision. It will impact on our relations with all the nations of Africa and it will reflect on our antiapartheid policy. But instead of debating this issue in the open, as we do in the course of debate on the foreign aid bill, we now have to speak in whispers and pretend that the world does not know what we are doing.

But the world does know. And cloaking the issue with an appearance of secrecy will not change that fact.

It is time to open this issue up to the public debate that it deserves. Let us talk about the reasons for our actions and the possible consequences of these actions. That is the way a democracy works.

As written, the bill prohibits aid to UNITA unless the President publicly requests the aid and the Congress gives its approval. That is the proper, and constitutional, way to set policy. After all, it is not the job of Congress to give a rubber stamp to a foreign policy set by the President and the CIA. It is the responsibility of Congress to join in this process and to have input. If we forfeit that responsibility now, how can we ever hope to retrieve it?

If we examine this issue openly and honestly, then we will see that aid to UNITA will not further United States interests in Africa and could significantly harm the progress we have made against apartheid. It is through this open exchange and debate that we will formulate a foreign policy that reflects the will, and has the support of the American people, instead of sneaking around behind their collective backs.

I urge a "no" vote on the Stump amendment.

Mr. HAMILTON. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES. Mr. Chairman, I rise in opposition to the Stump amendment and ask unanimous consent to revise and extend my remarks.

First of all, let me make it clear that I am opposed to aiding UNITA in any form—covert, overt, or otherwise. However, since the matter at hand is limited to the use of covert aid, I will limit my remarks to that issue.

Listening to the debate on whether our Government should allow the continuance of "covert" military operations in Angola, I have yet to hear any justifiable reason why this Congress should authorize covert assistance when the entire world already knows exactly what we have been doing in Angola. The President, the Vice President, the Assistant Secretary of State for African Affairs, and other high-ranking officials of the Reagan administration, have publicly detailed the type and extent of aid Jonas Savimbi and UNITA have received from the United States.

As an instrument of foreign policy, covert assistance is an important tool for the Chief Executive to have available. But when that assistance is public knowledge, all of the justifications for its use are moot.

So who are we trying to deceive? Is it because this type of assistance could not stand a thorough debate? Is it because an open discussion of such aid would uncover the fact

that supporting UNITA is tantamount to supporting apartheid?

The Intelligence Committee correctly approved this prohibition for a number of reasons, not the least of which is the fact that aiding UNITA would, in fact, be linking the United States with the Republic of South Africa. The Reagan Administration's policy of constructive engagement has already proven to be a failure and has been overwhelmingly rejected by both Houses of Congress.

I believe we have an obligation to ourselves and to our constituents, to fully and openly debate a decision which would essentially put our country in the same posture that we have already rejected. Fifty African Nations have publicly opposed American aid to UNITA. I strongly urge my colleagues to do likewise. Retain section 107 and oppose the Stump amendment.

Mr. HAMILTON. Mr. Chairman, I yield I minute to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Chairman, South Africa provides UNITA with weapons, logistical support, intelligence information, and strategic planning. South Africa periodically invades Angola. South Africa's aim is to create a buffer of surrounding nations that are dependent upon it for survival. South Africa believes that this oppression will prevent the other southern African states from joining in a call for international sanctions against South Africa. Assisting UNITA rebels is an integral part of this plan.

The United States program of covert lethal assistance to UNITA puts the United States squarely behind South African attempts at regional domination and destabilization. To the rest of Africa and much of the rest of the world, it smacks of complicity with the apartheid regime in Pretoria. This was made clear during last week's visit by several members of European parliament, who said that a United States policy of aid to UNITA is seen as contradictory to stated U.S. policy regarding South Africa.

As long as the United States continues to support UNITA, South Africa will believe they have a free hand to destabilize Angola and the rest of the region. This would clearly send a contradictory and wrong message to the white leadership of South Africa as well as the black majority of South Africa.

Congress has already taken the important step of approving sanctions against South Africa. The next step is to stop U.S. cooperation with South Africa's aggression against its neighbors and to require South Africa to begin cooperation with the United Nations in implementing U.N. resolution 435, which provides for the demilitarization of southern Angola and northern Namibia with an agreed-to international peacekeeping force.

Aid to UNITA does not make practical sense. It increases the reliance of the Angolan Government on its shield of Cuban troops. It has interfered with the search for a settlement in Namibia, since the Angolan Government is hardly likely to view Washington as a fair mediator so long as the United States helps arm it internal enemies.

The language in section 107 of H.R. 4759 does not prohibit aid to UNITA, it merely says that any aid must be approved by Congress. This issue is clearly controversial—therefore public debate about the merits of such a program is clearly in the public and national interest.

The United States is Angola's largest trading partner. U.S. investment presently exceeds $500 million. Two-way annual trade between the United States and Angola has grown to over $1 billion during the Reagan administration, a significant portion of which was backed by U.S. Eximbank credits.

Today the United States remains the only country besides South Africa that does not recognize the Government of Angola—referred to as MPLA [popular movement for the liberation of Angola]. Negotiations between the United States and Angola for the establishment of relations were broken off earlier this year over the issues of withdrawal of Cuban troops from Angola and independence for South African occupied Namibia. The Angolan Foreign Minister announced yesterday that he is asking for a meeting with Secretary Shultz to discuss normalization of relations. We would certainly be in a better position to monitor developments and influence policy in Angola if we had a mission there, and clearly support for UNITA erodes such a possibility. Angolan President Jose Eduardo Dos Santos said last week he would welcome a meeting with President Reagan to ease tensions and discuss diplomatic relations.

Savimbi is an opportunist. In the early sixties he broke with another group opposed to Portuguese colonization, the FNLA, because that group was too closely tied to the United States. In the early seventies UNITA courted Chinese support. At the same time UNITA was helping Portugal against the MPLA and FNLA. In 1985, there was a split in the ranks of UNITA. Dissidents within UNITA accused Savimbi of waging a war against "those who do not obey him unconditionally." It is thus not entirely clear that aid for Savimbi is aid to our national interests in the region.

Some have argued that passage of the bill's language will set a precedent that will require a vote on all covert actions. This is not the case. The Intelligence Committee approves the vast majority of covert operations. Today's vote should be seen simply as the oversight process in action. As in the case with aid to the Contras of Nicaragua, Congress has the chance to determine whether it will approve funding for a controversial program.

Mr. HAMILTON. Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana [Mr. ROEMER].

Mr. ROEMER. I thank my colleague for this time.

Mr. Chairman, this is a difficult and complex subject, and I know Members, like myself, are struggling to do the right thing. I am going to urge today that we support the committee's position and section 107 of Mr. HAMILTON and reject this amendment for four reasons.

First, in 1985 we, I, voted to repeal the Clark amendment because it was a unnecessary restriction on Presidential discretion. The question was never one of providing covert or overt aid to the Angolan rebels. In fact, the administration said then it had no such plans.

Second, the administration now talks—you can talk about leaks and phone calls all you want—but the administration now talks publicly and often about supporting UNITA. Clearly, that removes the aid from the covert category. But none of the administration's talk has been with the Congress. We have been denied the opportunity to fulfill our constitutional authority to debate the policy. The question is not informing the Communists; it is informing the Congress.

There are questions that need to be answered. How much money? It is $15 million to $25 million this year alone.

For how long? Committed to whom?

Savimbi is the chameleon of African politicians.

Third, aiding the rebels in Angola may or may not allow us to reach important objectives, which are an end to apartheid, withdrawal of foreign troops, independence for Namibia.

But I believe any foreign policy initiative to be successful requires the support from the Congress. Any attempted end run past congressional authority is a bad start to any important initiative.

Fourth and finally, providing aid to UNITA will put America squarely on the side of the South African Government in a murderous civil war and in opposition to most of Africa.

Cuba and the Soviet Union have generously supported the other side. So there is good reason to consider American assistance. But the dangers accompanying that assistance demand a full debate. We ought not blindly serve as a tool of South Africa foreign policy. Aiding UNITA hurts our ability to work against apartheid with South Africa's frontline neighbors and damages our relations with other African governments and future South African leaders.

Like Angola, the other six African countries bordering South African-controlled territory have been the target of South Africa's military and economic campaign to force them to

abandon groups fighting against apartheid.

These countries, virtually all of the other African countries and the leaders of every major antiapartheid group inside Africa and Namibia oppose United States aid to UNITA.

Support Hamilton, vote against the misguided, open-ended spending, kneejerk administration amendment. That vote is both good and procedure and in the long run for America good policy.

Mr. STUMP. Mr. Chairman, I yield 10 minutes to the distinguished chairman of the Committee on Rules, the gentleman from Florida [Mr. PEPPER] to close debate for this side.

Mr. PEPPER. I thank the gentleman for yielding.

Mr. Chairman and my colleagues of the committee, you know that this bill provides that no military or paramilitary aid may be given to Angola without the authority of the Congress. The effect of that provision which we seek to strike in our amendment is primarily twofold: First, it would stop the relatively insignificant aid that we are now giving to Angola; and second, it would hamstring the arm of the President of the United States and the Government of our country in giving assistance to those who seem to be worthy of the support of the greatest democracy in the world.

I have a letter here that came through an international organization, TKY, from Savimbi, and he says of these people in Angola:

> In Angola we have never had elections. The country is ruled by an illegitimate minority regime propped up by 45,000 Cubans, 1,500 Soviets, 2,500 East Germans, 2,000 North Koreans and other Eastern-bloc forces.

That is who these people in Angola are. What are we proposing to do now? To give them some help.

Nobody knows better than the distinguished Intelligence Committee of this House exactly what aid we are now giving them. I am not at liberty to disclose all the information I have. But I think anybody knowledgeable of the subject will realize from what was said by the minority leader quoting the Secretary of State, and by the knowledge that we have, that it is very small, relates to one weapon that they need the most. Why is it that we do not have the matter before the Congress? Well, there again the Intelligence Committee, I am sure, knows more about it than anybody else except the Government itself.

But I can tell you according to the information that I have there is a reason, because it would be impossible to get the aid to them if we were publicly to announce that we were sending them this aid.

It might be similar in respect to Afghanistan. You remember that we authorized aid to the Afghan rebels who are fighting for their lives against an insidious Soviet Communist conquest of their own country. Yet everybody knows we are giving them aid. There is a reason, I assure you, why we are not publicizing to the world what we are giving to Afghanistan. There is a reason. Should we stop giving aid to certain countries in the Far East, to those besieged people in Afghanistan fighting as courageously as patriots have ever fought for their land and their lives? Who wants to stop that? Are we going to say here in this House by the action we take this afternoon that nowhere on Earth when our Government, elected by the people of our country, says somebody is entitled to the support of the world's greatest democracy in their fight for freedom, that unless we follow a certain public formula we cannot give them anything? We understand, of course, that if the amount of aid given is voluminous, large, immense in importance, of course the Government would not have the aid to give them unless Congress authorizes that aid. But I can assure you that if we cut off this aid that we are now giving, small and inconsequential in character, then this is what Savimbi says about it, and this section places large and unqualified roadblocks in the way of any President of the United States, present or future, which would help Angolan freedom fighters, the Soviet Union and Cuba, in doing so, it would weaken the prospects of a negotiated settlement to our tragic civil war by encouraging the Soviets, Cubans, and MPLA Communists to believe military victory over UNITA is possible.

□ 1545

Now then they say, oh, but the people in Angola, Sambibi, is receiving help from the South Africans and they are an odious people because they have apartheid as their policy against their own black people.

My friends, you remember there was a man named Benjamin Franklin who was the United States Minister to France during the time that the colonies began their intrepid struggle for our independence so we could establish a democracy in this blessed America. To whom did he go for help? He went to one of the most despotic monarchies on the face of the Earth, Louis XVI, and he persuaded Louis XVI to give help to the struggle of the American colonies for freedom. We were fighting for democracy. He was so much of an odious monarch that his own people cut off his head and that of his queen, too. So he was not exactly a Democrat.

We have heard the expression in America, "Any old port in a storm." We needed help, and if a despotic king could give it to us, it made it possible for Yorktown to come to be the end of the Revolutionary War. It denied Cornwallis the opportunity to escape from the seclusion in Washington that forced him. It held off the possible British fleet interference. America, through the aid of this despotic monarch, who was not long after to lose his head because he abused his own people, it made it possible for us to have our democracy.

Remember Churchill talked about, "I'd say a few kind words for the Devil if he would come out against Hitler." And he said some rather unkind things about the Soviet Union, but when the Soviet Union headed its mighty force against the dastardly Hitler, he said some kind words for him.

Give Savimbi the help that he needs from America, and I can assure you he will not get any help from South Africa.

Here is what he says about apartheid.

> We in UNITA take a back seat to no one in abhorrence of apartheid. Apartheid is an evil system doomed to perish. However, those seeking justice in South Africa cannot morally ignore the right of Angolans to fight for their own freedom. The charge that UNITA is a "tool of South Africa" is ridiculous and unsubstantiated. Whom would UNITA apply the apartheid system against? Would we apply this system against ourselves?

So here are some people in part of black Africa, no elections, 45,000 Cuban military personnel over there, these people from East Germany, from North Korea, these mighty Communist forces concentrated there, who deny these people of Angola the right to be free, and we are giving them a little help. And because of some tactical reasons, we cannot ask Congress' full support. They want to cut off the little help that we are giving them.

That is not the thing that we ought to do. Are we going to stop all covert aid all over the Earth? Who are more meritorious than these people over there in Angola?

We passed the other day sanctions against apartheid in South Africa because they cannot vote. They do not have freedom. These Africans in Angola cannot vote. They do not have freedom either, because they are in the vice of the Communist forces that have their grip on this land.

So I ask you, my colleagues, let our amendment be passed. Let us strike this prohibition out of the bill. Let us allow this little help which is meaningful to these people who are fighting for their freedom, to continue to aid them in their struggle and promote the likelihood of a negotiated settlement or likelihood that possibly the Government would be changed and we can have freedom on that country, too. That, it seems to me, would be the proper role of our country. I hope we will not approve this prohibition under these peculiar and particular circumstances that mean so much to

these fighting people for their own liberty and their freedoms.

Mr. HAMILTON. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR of Michigan. Mr. Chairman, last week this body overwhelmingly voted tough sanctions against the Government of South Africa. Today, we will consider the issue of covert aid to the UNITA rebels fighting in Angola. These issues are two sides of the same coin.

South Africa provides about 90 percent of UNITA's foreign aid. Its military aid to Angola has totaled $1 billion in the past 5 years.

We cannot condemn the system of apartheid one week and endorse its campaign to destabilize southern Africa the next. Aid to UNITA is aid to apartheid, make no mistake about it.

If we vote today to continue covert aid to UNITA, by striking section 107 of the intellegence bill, we will be telling the world we are not serious about our campagin against apartheid, and will be endorsing a wider war in southern Africa.

Mr. HAMILTON. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. GRAY].

Mr. GRAY of Pennsylvania. Mr. Chairman, I rise in opposition to the Stump amendment. Prior to additional tax dollars being sent to UNITA, we must be given the opportunity to debate this issue.

The Congress debated whether or not we should aid the Contras in Nicaragua. We debated whether or not we should aid the non-Communist resistance in Cambodia. We debated whether or not we should aid the Mujahadeen in Afghanistan.

Why shouldn't we debate the issue of aid to UNITA? Are we saying that if UNITA is good enough for South Africa, UNITA is good enough for us? Because South Africa finds it in its best interests to arm UNITA, does that automatically mean that it is in the best interests of the United States for us to do likewise?

I urge my colleagues to be very cautious.

Just 1 week ago, we voted overwhelmingly to reduce our economic ties with South Africa. Are we really ready now to increase our military ties with South Africa?

We must not walk into this issue blindly.

Some say that we must aid UNITA because this is the only way to get foreign troops out of Angola.

No one feels more strongly than I that foreign troops must leave Angola. But let us not forget how the Cubans came to be in Angola to begin with. South Africa was the first foreign force to descend upon Angola. It was in response to South African troops closing in on Angola's capitol in 1976 that that government issued an international appeal for military support.

From that day until now, South Africa has occupied southern Angola.

How then will our further strengthening the UNITA/South Africa alliance cause the Cubans to go home? This action on our part would only deepen Angola's reliance on foreign troops.

Mr. Chairman, I want Cuban troops out of South Africa. And I believe that all of my colleagues here today want Cuban troops out of Angola. But I also know that South Africa does not want Cuban troops out of South Africa, because South Africa has stated quite clearly that they will not end their illegal occupation of Namibia until Cuban troops leave Angola, and South Africa has no interest in leaving Namibia.

But this is not the issue. The issue is whether or not we have the right to debate further involvement with UNITA. I, for one, Mr. Speaker, feel that debate is crucial.

Continued American aid to UNITA has serious foreign policy implications, and has been met with strong opposition by the nations of Africa. Our providing aid to UNITA also destroys our credibility as an impartial arbiter of a settlement in Namibia. Mr. Chairman, the leader of UNITA has declared that he will destroy the American corporate presence in Angola. Clearly our providing aid to UNITA has not been thought through.

I urge my colleagues to debate the implications of aid to UNITA fully and openly.

We must defeat the Stump amendment.

Mr. HAMILTON. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS. Mr. Chairman, ever since Ronald Reagan took over the White House, he has been looking for Communists to kill. Unfortunately, his "shoot first and ask questions later" attitude threatens to destroy U.S. foreign policy.

The newest target for President Reagan's guns is the Government of Angola. Even though Angola is linked to the United States economically and welcomes American business investment, the President insists that United States interests will be best served by a change in government.

Instead of the existing government, the administration wants to install the rebel force of UNITA, under the leadership of Joseph Savimbi. One wonders if anyone in the White House has ever taken a close look at Savimbi.

In truth, Joseph Savimbi is no democrat, only a supreme opportunist. A former student in Communist China and a self-style Marxist, Savimbi originally fought as a Communist. He only began to depict himself as a Western-oriented democrat in an effort to obtain American money.

Recently, during the same time he was begging for American money, Savimbi threatened to blow up American-owned oil facilities. In this the sort of individual that will bring democracy to Angola or who can be trusted with millions of United States dollars?

Savimbi has even allied his UNITA rebels with racist South Africa. Pretoria now supplies arms, training, fuel, and transport facilities to the rebels. A call from UNITA is all it takes to initiate South African air strikes in Angola. The Afrikaners are even providing close combat support for the rebels.

In return for this aid, Savimbi secures South Africa's borders, thereby releasing Pretoria's military forces to repress its black population. By supporting Savimbi, the United States will be propping up apartheid repression.

Support for UNITA will also destroy America's long-range interests in Africa. All of the frontline states, and almost every other African nation, has condemned Savimbi and his UNITA rebels. Funding for Savimbi would place the United States in a de facto alliance with South Africa and alienate other African nations. Black Africans would then be forced to turn to the Soviet Union for support. Such a policy would actually increase the spread of communism in Africa.

The House Intelligence Committee understood the true nature of Savimbi. They prohibited the covert funding of UNITA rebels in section 107 of the intelligence authorization bill. This insures that any attempts to fund UNITA will be subject to congressional debate and its consequences fully considered. I urge my colleagues to support human justice and American interests—reject any attempt to delete section 107.

Mr. HAMILTON. Mr. Chairman, I yield the balance of my time to the gentleman from New York [Mr. MCHUGH].

Mr. MCHUGH. Mr. Chairman, I rise in opposition to the Stump amendment and urge my colleagues to support the Intelligence Committee's inclusion of section 107 in this bill.

Section 107 would prohibit the funding of military or paramilitary operations in Angola by any agency of the United States involved in intelligence activities, unless such funding is openly requested by the President and approved by the Congress. The effect of section 107 would be to preclude the President from using funds authorized in this bill for so-called covert operations in Angola.

In my judgment, and in the judgment of a majority of the Intelligence

Committee, section 107 deserves your support on both procedural and policy grounds.

In this case, the procedural issue is at least as important as the policy argument. It relates to the question of when a President, acting alone, should be able to commit the United States to a fundamentally new policy without first obtaining congressional approval. More specifically, when should a President be able to circumvent the normal authorization and appropriations process in providing military aid to a foreign government or foreign forces?

As you know, Mr. Chairman, except in extraordinary circumstances the President must submit any request for foreign assistance to Congress for open consideration, debate, and disposition. This is because foreign policy commitments are not the sole province of the Executive; they are national commitments in which the Congress and our people have a vital interest. These fundamental decisions are shared responsibilities. Under most circumstances they must not be undertaken by the President alone and in secret.

Congress has recognized, however, that in exceptional cases the President should have the authority to initiate covert operations abroad without prior congressional consideration and approval. In such cases, Congress has ceded to the President the authority to initiate action unilaterally by simply notifying the Intelligence Committees of the House and Senate of his "finding" that the interests of the United States justify the use of this extraordinary procedure. In such cases, there is no congressional debate and there is no congressional vote. Indeed, there is no knowledge on the part of most Members of Congress or the public that the United States has been committed.

In this democracy that is truly an extraordinary procedure, and it should be used only when the interests of the United States require secrecy, or require "plausible deniability." We can all appreciate that in certain limited cases the need for secrecy or plausible deniability should override the right of Congress to participate in fundamental policy decisions. Indeed, I should emphasize that all of us on the Intelligence Committee have supported certain covert operations for those very reasons. However, this is not an appropriate case for dispensing with congressional rights and responsibilities, and that is why the Intelligence Committee included section 107 in this bill.

In the case of Angola, the President himself has publicly disclosed the commitment of the United States to the Savimbi forces. He and other key members of his administration have ostentatiously taken political credit for it. Accordingly, there is no reason for secrecy in this case, and any denial of involvement by our Government now would hardly be plausible.

On November 23, 1985, in a statement to the New York Times regarding aid to Savimbi the President said:

> We all believe that a covert operation would be more useful to us and have more chance of success right now than the overt proposal that has been made in Congress.

On December 6, 1985, Secretary Shultz said publicly:

> As far as assistance to UNITA and Mr. Savimbi are concerned, as the President has said and I have said, we support those who fight for freedom against the Soviet and Communist regimes around the world, including Angola. Our desire is to support them effectively.

On February 6, 1986, in his State of the Union Address, President Reagan again announced support for Savimbi:

> We are moved by the efforts of freedom fighters such as Jonas Savimbi and the members of UNITA. They deserve our support in their brave struggle against Soviet-Cuban imperialism in Angola.

On February 18, 1986, Assistant Secretary of State for African Affairs, Chester Crocker, proclaimed to the world that the covert operation was underway:

> The decision has been made, and the process is in motion.

Finally, we can all recall that when Jonas Savimbi visited Washington he was received by the administration like a chief of state, including a well-photographed meeting with the President in the Oval Office. The administration orchestrated a high-profile campaign of public appearances for Mr. Savimbi to demonstrate its support for his cause.

For that same administration to argue now that an open debate and decision by Congress would compromise the covert nature of its operation is ludicrous on its face. The covert nature of this operation was blown before it began by the President and key officials in his administration. To insist on covert procedures now is simply to deny to Congress its right and responsbility to participate in a major policy decision.

Therefore, whatever your views on the policy question may be—whether you support aid to Savimbi or not—the policy decision should be made in the traditional way, just as other important policy decisions are made: By open deliberation, debate and vote in Congress. That's all that section 107 requires, and that's one reason why the Stump amendment to delete it should be defeated.

Beyond this fundamental question of procedure, of course, there is substantive policy issue: Does it serve the interests of the United States to provide military aid to the Savimbi forces in Angola? In my view, it does not, and the Stump amendment should be rejected on substantive grounds as well.

A succession of administrations has said that promoting peaceful change and stability in southern Africa is consistent with American interest. More specifically, they have identified the following goals as paramount in the pursuit of our legitimate interests: A peaceful end to apartheid in South Africa; independence for Namibia; a reduction of Soviet and Cuban influence as compared to our own; and meaningful human and economic development as well as the evolution of democratic systems in the region. These are rational goals, consistent not only with our own interests but we believe with the interests of most Africans. They are goals that the American people can support. But does military aid to Jonas Savimbi advance those goals? I think not.

It's clear that aiding Savimbi appears to put us on the side of the white minority regime in South Africa, the regime which has been the major supplier and sponsor of Savimbi for more than 10 years. The vast majority of Africans see this policy as inconsistent with an end to apartheid, as inconsistent with independence for Namibia, as inconsistent with stability and peaceful change in the region. As black African leaders have told us publicly and often, this policy is seen as United States complicity in the policies of South Africa. That can hardly serve the interests of the United States.

In fact, it plays into the hands of the Soviet Union and Cuba, whose influence we seek to diminish. It is they who seem to be resisting South African aggression. It is they who seem to be defending the black majority against the efforts of the white minority regime to destabililze the region and thereby hold into its power and privileges. At a time when our administration resists sanctions against that minority regime and supports its client in Angola, it is we who seem to be resisting peaceful change and stability.

And what can we hope to gain by putting our country in this position? Certainly not a military victory in Angola. The aid we are providing to Savimbi is a mere fraction of what the South Africans are providing, and a mere fraction of what the Soviets and Cubans are providing to the Angolan Government. Our aid won't make a difference on the ground; even the administration concedes that our involvement will not tip the scales in Savimbi's favor. We are therefore paying an enormous political price in southern Africa for military aid that will have only a marginal impact in the conflict.

The administration argues that our aid will serve to bring the combatants to the bargaining table. That is a worthy goal, but is it realistic? Can we really expect the South Africans to ne-

gotiate? Why should they when they have reason to believe that the United States has now taken a partisan position—their position? And why should the Angolan Government negotiate? Isn't it more likely that in the face of escalating military pressure it will become even more dependent on the Soviets and Cubans?

No, Mr. Chairman, this is a losing policy. It has no prospect of securing a military victory on the ground and it is politically costly to our interests in southern Africa. The time to call a halt is now, before it is too late. Let us bring our policy in Angola into conformity with our policy in South Africa. Let us send a consistent message to the people of southern Africa. Congress can't credibly vote to impose sanctions on South Africa one week and then align itself with South African policies the next. Let us cast our lot today, clearly and unequivocally, with the majority in black Africa. That is what the American people want, and that is what will best serve American interests.

Mr. Chairman, I urge my colleagues to reject any simplistic appeal to anticommunism, to reject anything but a clear-eyed appraisal of American interests, and to reject, on both procedural and substantive grounds, the Stump amendment.

□ 1555

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona [Mr. STUMP].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. STUMP. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 229, noes 186, not voting 16, as follows:

[Roll No. 387]

AYES—229

Andrews	Chappell	Emerson
Anthony	Chappie	English
Archer	Cheney	Erdreich
Armey	Clinger	Evans (IA)
Badham	Coats	Fascell
Barnard	Cobey	Fawell
Bartlett	Coble	Fiedler
Barton	Coleman (MO)	Fields
Bateman	Combest	Franklin
Bentley	Coughlin	Frenzel
Bereuter	Courter	Frost
Biaggi	Craig	Fuqua
Bilirakis	Crane	Gallo
Bliley	Daniel	Gaydos
Boehlert	Dannemeyer	Gekas
Boggs	Darden	Gilman
Boulter	Daub	Gingrich
Broomfield	Davis	Glickman
Brown (CO)	DeLay	Goodling
Bryant	DeWine	Gradison
Burton (IN)	Dickinson	Green
Bustamante	DioGuardi	Gregg
Byron	Dornan (CA)	Gunderson
Callahan	Dreier	Hall, Ralph
Carney	Duncan	Hammerschmidt
Carper	Dyson	Hansen
Chandler	Eckert (NY)	Hatcher
Chapman	Edwards (OK)	Hefner
Hendon	Mica	Skeen
Henry	Michel	Skelton
Hiler	Miller (OH)	Slaughter
Hillis	Miller (WA)	Smith (FL)
Holt	Molinari	Smith (NE)
Hopkins	Mollohan	Smith (NJ)
Hubbard	Monson	Smith, Denny (OR)
Huckaby	Montgomery	Smith, Robert (NH)
Hunter	Moorhead	Smith, Robert (OR)
Hutto	Morrison (WA)	Snowe
Hyde	Murtha	Snyder
Ireland	Myers	Solomon
Jenkins	Natcher	Spence
Johnson	Nelson	Stallings
Jones (OK)	Nichols	Stangeland
Kanjorski	Nielson	Stenholm
Kasich	Ortiz	Strang
Kemp	Oxley	Stratton
Kolbe	Packard	Stump
Kramer	Parris	Sundquist
Lagomarsino	Pashayan	Sweeney
Lantos	Pepper	Swindall
Latta	Petri	Tallon
Lent	Pickle	Tauke
Lewis (CA)	Porter	Tauzin
Lightfoot	Pursell	Taylor
Lipinski	Quillen	Thomas (CA)
Livingston	Ray	Thomas (GA)
Lloyd	Regula	Valentine
Loeffler	Ridge	Vander Jagt
Lott	Rinaldo	Volkmer
Lowery (CA)	Ritter	Vucanovich
Lujan	Roberts	Walker
Lungren	Robinson	Watkins
Mack	Rogers	Weber
MacKay	Roth	Whitehurst
Madigan	Roukema	Whittaker
Marlenee	Rowland (CT)	Whitten
Martin (IL)	Rowland (GA)	Wilson
Martin (NY)	Rudd	Wolf
McCain	Saxton	Wortley
McCandless	Schaefer	Wylie
McCollum	Schuette	Yatron
McCurdy	Schulze	Young (AK)
McDade	Sensenbrenner	Young (FL)
McEwen	Shaw	
McGrath	Shelby	
McKernan	Shumway	
McMillan	Shuster	
Meyers	Siljander	

NOES—186

Ackerman	Dowdy	Kildee
Akaka	Downey	Kleczka
Alexander	Durbin	Kolter
Anderson	Dwyer	Kostmayer
Annunzio	Dymally	LaFalce
Applegate	Early	Leach (IA)
Aspin	Eckart (OH)	Leath (TX)
Atkins	Edgar	Lehman (CA)
AuCoin	Edwards (CA)	Lehman (FL)
Barnes	Evans (IL)	Leland
Bates	Fazio	Levin (MI)
Bedell	Feighan	Levine (CA)
Beilenson	Fish	Long
Bennett	Florio	Lowry (WA)
Berman	Foglietta	Luken
Bevill	Foley	Lundine
Boner (TN)	Ford (MI)	Manton
Bonior (MI)	Frank	Markey
Borski	Garcia	Martinez
Bosco	Gejdenson	Matsui
Boucher	Gephardt	Mavroules
Boxer	Gibbons	Mazzoli
Brooks	Gonzalez	McCloskey
Brown (CA)	Gordon	McHugh
Bruce	Gray (IL)	McKinney
Carr	Gray (PA)	Mikulski
Coelho	Guarini	Miller (CA)
Coleman (TX)	Hall (OH)	Mineta
Collins	Hamilton	Mitchell
Conte	Hawkins	Moakley
Conyers	Hayes	Moody
Cooper	Hertel	Morrison (CT)
Coyne	Horton	Mrazek
Crockett	Howard	Murphy
Daschle	Hoyer	Neal
de la Garza	Hughes	Nowak
Dellums	Jacobs	Oakar
Derrick	Jeffords	Oberstar
Dicks	Jones (NC)	Obey
Dingell	Jones (TN)	Olin
Dixon	Kaptur	Owens
Donnelly	Kastenmeier	Panetta
Dorgan (ND)	Kennelly	Pease
Penny	Seiberling	Traxler
Perkins	Sharp	Udall
Price	Sikorski	Vento
Rahall	Sisisky	Visclosky
Rangel	Slattery	Waldon
Reid	Smith (IA)	Walgren
Richardson	Solarz	Waxman
Rodino	Spratt	Weaver
Roemer	St Germain	Weiss
Rose	Staggers	Wheat
Rostenkowski	Stark	Whitley
Roybal	Stokes	Williams
Russo	Studds	Wirth
Sabo	Swift	Wise
Savage	Synar	Wolpe
Scheuer	Torres	Wright
Schneider	Torricelli	Wyden
Schroeder	Towns	Yates
Schumer	Traficant	Young (MO)

NOT VOTING—16

Boland	Flippo	Lewis (FL)
Bonker	Ford (TN)	Moore
Breaux	Fowler	Roe
Burton (CA)	Grotberg	Zschau
Campbell	Hartnett	
Clay	Kindness	

□ 1615

The Clerk announced the following pairs:

On this vote:

Mr. Kindness for, with Mr. Bonker against.

Mr. Campbell for, with Mr. Ford of Tennessee against.

Mr. Lewis of Florida for, with Mr. Clay against.

Mr. Hartnett for, with Mr. Boland against.

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MINETA) having assumed the chair, Mr. MURTHA, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the U.S. Government, the intelligence community staff, and the Central Intelligence Agency retirement and disability system, and for other purposes pursuant to House Resolution 545, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The amendments recommended by the Permanent Select Committee on Intelligence and the Committee on Post Office and Civil Service, now printed in the reported bill, are considered as having been adopted.

Is a separate vote demanded on any other amendment?

If not, the Chair will put them engross.

The amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HAMILTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT AMENDMENTS OF 1986

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 536 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 536

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2482) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and to the amendment made in order by this resolution and which shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, the bill shall be read for amendment under the five-minute rule. In lieu of the amendment in the nature of a substitute recommended by the Committee on Agriculture now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text of the bill H.R. 5440 as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered for amendment by titles instead of by sections and each title shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 7 of rule XVI and clause 5(a) of rule XXI are hereby waived. No amendment to titles I through X of said substitute shall be in order except germane amendments printed in the Congressional Record and pro forma amendments for the purpose of debate. No amendment which changes, affects, or modifies title XI of said substitute shall be in order in the House or in the Committee of the Whole except the amendment contained in the report of the Committee on Rules on this resolution, if offered by Representative Roberts of Kansas or his designee, and all points of order against said amendment for failure to comply with the provisions of clause 7 of rule XVI are hereby waived. After the disposition of said amendment, no further amendment to the substitute shall be in order, the question shall occur on the substitute, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1630

The SPEAKER pro tempore (Mr. MINETA). The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 536 is a modified open rule providing for the consideration of H.R. 2482, a bill amending the Federal Insecticide, Fungicide, and Rodenticide Act and reauthorizing the programs under the act for 5 fiscal years.

The rule provides for 1 hour of general debate on the bill, as well as on H.R. 5440, and that the hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture. Mr. Speaker, for clarification, I would like to point out to my colleagues that H.R. 5440 is the successor bill to H.R. 2482 which was reported with an amendment in the nature of a substitute by the Committee on Agriculture by a vote of 41 to 1 on June 1, 1986. H.R. 5440 is identical to the amendment in the nature of a substitute reported by the Committee on Agriculture except for the rearrangement of two sections of the reported bill. This change, which resulted in the creation of a new title XI in the successor bill, was made in order to accommodate an agreement reached between the Committee on Agriculture and the Committee on Energy and Commerce regarding provisions contained in H.R. 2482 which fall within the jurisdiction of the Committee on Energy and Commerce.

Therefore, Mr. Speaker, the Committee on Rules, in order to facilitate the agreement reached between these two committees of jurisdiction, has recommended a rule providing that, in lieu of the amendment in the nature of a substitute which was recommended by the Committee on Agriculture and is now printed in H.R. 2482, that it shall instead be in order to consider as an amendment in the nature of a substitute the text of the successor bill, H.R. 5440, and the text of that bill shall be considered as original text for the purpose of amendment under the 5-minute rule. The rule further provides that the new substitute shall be considered for amendment by title rather than by sections and that each title of the substitute shall be considered as having been read. And, Mr. Speaker, all points of order against the substitute for failure to comply with the provisions of clause 7, rule XVI, the germaneness rule, and clause 5(a) of rule XXI, which prohibits the consideration of appropriations in a legislative bill, are waived in the rule.

Mr. Speaker, because this bill is complex and far reaching and deals with a subject matter of a highly technical nature, and because it has been reported from the Committee on Agriculture after several years of work developing legislation that balances the concerns of chemical and pesticide manufacturers, environmental, consumer, and labor groups, as well as farm organizations, the Committee on Rules has recommended a modified open rule.

Under the provisions of House Resolution 536, no amendment to titles I through X will be in order except those germane amendments which have been printed in the CONGRESSIONAL RECORD prior to consideration of the substitute. The Committee on Rules recommends this procedure in order that amendments to this complex and technical legislation can be examined prior to floor consideration. Such a procedure is not unusual; the Committee on Rules believes that prior examination of amendments to the substitute will enable the House to act on this legislation in a careful yet expeditious manner. The rule also makes in order pro forma amendments, for the purpose of debate, to titles I through X.

Amendments to title XI, however, are restricted in the rule. As my colleagues will recall, H.R. 5440 was introduced as a result of the agreement reached between the Committee on Agriculture and the Committee on Energy and Commerce. Because section 307 of the amendment in the nature of a substitute to H.R. 2482 amends the Food, Drug and Cosmetic Act rather than the Federal Insecticide, Fungicide and Rodenticide Act, that section lies within the jurisdiction of the Committee on Energy and Commerce and is also nongermane to the text of H.R. 2482 as introduced. Section 307, as recommended by the Committee on Agriculture, amends the Food, Drug and Cosmetic Act with respect to tolerances for pesticide residues on food products and the Committee on Energy and Commerce was concerned that since the nongermane provision would be protected in the rule, other amendments to the Food, Drug and Cosmetic Act, which are nongermane to the FIFRA reauthorization but are germane to the Food, Drug and Cosmetic Act could be considered during the amendment process. The Committee on Agriculture, recognizing the jurisdictional concerns of the Committee on Energy and Commerce, agreed to place section 307 in a new and separate title in H.R. 5440 and agreed to a limitation on amendments to that title.

As a result, the rule provides that the only amendment in order to title XI is an amendment to be offered by

Representative ROBERTS of Kansas, or his designee, but the rule also allows for amendments to the Roberts amendment. The text of Mr. ROBERTS' amendment is printed in the report of the Committee on Rules accompanying the resolution now under consideration. The rule also waives points of order against the Roberts amendment for failure to comply with the provisions on clause 7, rule XVI, the germaneness rule.

As a point of further explanation, Mr. Speaker, it should be noted that the Roberts amendment, which provides for a uniform national tolerance standard for pesticide residue on food products, was offered and agreed to during the markup on H.R. 2482 by the Committee on Agriculture. However, because inclusion of the amendment in a reported bill would have most likely resulted in a sequential referral of H.R. 2482 to the Committee on Energy and Commerce, the amendment was removed from the bill on reconsideration. Under the agreement reached by the Committee on Agriculture and the Committee on Energy and Commerce, the Roberts amendment has been specifically made in order to title XI of H.R. 5440 and amendments to the Roberts amendment may be offered and considered.

Mr. Speaker, the Committee on Rules considers the rule it recommends to the House to be a fair and equitable rule for the consideration of this legislation. It will allow germane amendments to those portions of the bill under the sole jurisdiction of the Committee on Agriculture while restricting the offering of amendments to the portion of the bill under the jurisdiction of the Committee on Energy and Commerce. The terms of debate and amendment in the rule were developed on a bipartisan basis and satisfy the committees of jurisdiction.

Mr. Speaker, the rule also provides that after the disposition of the Roberts amendment and amendments thereto, that no further amendment to the substitute will be in order and that the question shall occur on the substitute. The rule provides that after the question on the substitute is put that the Committee of the Whole shall rise and report the bill to the House with such amendments as may have been adopted to the bill or to the amendment in the nature of a substitute made in order as original text by this rule. Finally, the rule provides that the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. Speaker, H.R. 2482 extends the authorization of FIFRA for 5 years and substantially amends the act to improve the pesticide approval process, strengthen provisions that protect the public, make health and safety data on pesticides available, and provide for an efficient and equitable regulatory program for producers and distributors of pesticides. As I noted to my colleagues, this bill is the result of many years of hard bipartisan work in which the concerns of the public, manufacturers, and users of pesticides were addressed. I urge my colleagues to adopt this rule in order that the House may proceed to the consideration of H.R 2482. I believe this bill is meritorious legislation and should be passed by the House in order that it may be presented to the President for his signature prior to the adjournment of this Congress.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 536 is a modified rule under which the House will consider a major overhaul of the Nation's pesticide control law, the Federal Insecticide, Fungicide, and Rodenticide Act.

This rule provides an orderly procedure for consideration of H.R. 2482. The rule makes in order an amendment in the nature of a substitute for H.R. 2482, consisting of the text of H.R. 5440.

As the gentleman from Texas [Mr. FROST] explained, H.R. 5440 is identical to the amendment in the nature of a substitute that was reported from the Committee on Agriculture, except that two sections of the reported bill are rearranged in H.R. 5440.

Mr. Speaker, the bill reported from the Committee on Agriculture is a comprehensive revision of the law under which pesticides are registered by the Environmental Protection Agency to ensure that they do not pose health or environmental hazards.

The legislation sets new deadlines for EPA to accelerate health testing and reregistration of some 600 basic chemicals used to make pesticides, to determine if they should remain on the market.

The bill imposes fees on pesticide manufacturers to help defray the processing costs of the speedier reregistration program.

Mr. Speaker, the 1985 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act are vitally important to our Nation's farm economy and to our farm producers. The bill also will have far-reaching effects on those who manufacture our food products.

Mr. Speaker, the Committee on Agriculture recognized the impact Federal regulation of agricultural pesticides has on our Nation's farmers by including in the bill provisions that increase liability protection for farmers who follow federally approved label directions in applying pesticides.

Mr. Speaker, this rule is designed to fit a rather unusual parlimentary situation that arose during markup of H.R. 2482 in the Committee on Agriculture.

The rule makes the text of H.R. 5440 in order as original text for the purpose of amendment. The new substitute will be considered for amendment by titles rather than by sections.

The rule accommodates an agreement reached between the Committee on Agriculture and the Committee on Energy and Commerce, regarding provisions originally approved by the Committee on Agriculture in H.R. 2482 that fall within the legislative jurisdiction of the Committee on Energy and Commerce.

Under the agreement between the two legislative committees, the provisions approved by the Agricultural Committee that are within the jurisdiction of the Energy and Commerce Committee now appear as title XI of H.R. 5400.

Under the terms of the rule, titles I through X of the new substitute—H.R. 5440—will be open to germane amendments which have been printed in the CONGRESSIONAL RECORD.

Mr. Speaker, this printing requirement for amendments was approved by the Committee on Rules because of the complex nature of the bill and the need of the Committee on Agriculture to have adequate time to examine amendments prior to floor consideration.

Under this rule, amendments to title XI of the substitute—H.R. 5440—are restricted to an amendment by the gentleman from Kansas, Mr. ROBERTS, which is printed in the Rules Committee report on House Resolution 536.

Mr. Speaker, the rule satisfies the primary concern expressed by the gentleman from Kansas [Mr. ROBERTS] when he testified before the Committee on Rules prior to the August break.

The gentleman asked that his amendment be specifically made in order and that all points of order be waived on the germaneness of his amendment. The rule does exactly that.

Mr. Speaker, I support this rule because it includes the Roberts amendment relating to tolerances for pesticide residues in food products. The amendment is cosponsored by a bipartisan group of Members, and was initially approved by the Committee on Agriculture by a vote of 30 to 9.

The Roberts amendment establishes a system of national uniformity for pesticide residues and is designed to ensure the orderly marketing of agricultural commodities.

Mr. Speaker, I strongly support the Roberts amendment. The Governor of my State of Missouri supports the Roberts amendment, because it allows the States to petition the Federal Government for acceptance of a State re-

quirement or prohibition regarding pesticide residues.

In order to accommodate the agreement reached between the two committees and also fulfill the request of the gentleman from Kansas, the gentleman's amendment will open to further amendment.

Mr. Speaker, the rule provides that after the disposition of the Roberts amendment, no further amendment to the substitute will be in order.

Mr. Speaker, I urge my colleagues to adopt this rule so the House may take up this important legislation.

□ 1640

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding.

It is my undrstanding, under the rule, while the Roberts amendment is made in order, any other amendments to be considered would have to be printed in the RECORD prior to consideration of the Roberts amendment, is that correct?

Mr. TAYLOR. That is correct.

Mr. WALKER. Furthermore, that if the amendment process were to start today, since this was not common knowledge, that we would not be able then to consider any amendments that were not printed in the RECORD prior to today that people might have in mind but did not realize that requirement; is that correct?

Mr. TAYLOR. Under the provisions of the rule, the gentleman is correct.

Mr. WALKER. So If, in fact, we want to make certain that Members do have a chance to offer their amendments, they could put them in the CONGRESSIONAL RECORD yet today if the amendment process began tomorrow under the rule, is that correct?

Mr. TAYLOR. The gentleman is correct.

Mr. WALKER. I thank the gentleman.

Mr. TAYLOR. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FROST. Mr. Speaker, I have no further requests for time. I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MINETA). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 390, nays 15, not voting 26, as follows:

[Roll No. 388]

YEAS—390

Ackerman	Downey	Kemp
Akaka	Duncan	Kennelly
Alexander	Durbin	Kildee
Anderson	Dwyer	Kleczka
Andrews	Dymally	Kolbe
Annunzio	Dyson	Kolter
Anthony	Early	Kostmayer
Applegate	Eckart (OH)	Kramer
Archer	Eckert (NY)	LaFalce
Aspin	Edgar	Lagomarsino
Atkins	Edwards (CA)	Lantos
AuCoin	Edwards (OK)	Latta
Badham	Emerson	Leach (IA)
Barnard	English	Leath (TX)
Barnes	Erdreich	Lehman (CA)
Bartlett	Evans (IA)	Lehman (FL)
Barton	Evans (IL)	Leland
Bateman	Fascell	Lent
Bates	Fawell	Levin (MI)
Bedell	Fazio	Levine (CA)
Beilenson	Feighan	Lewis (CA)
Bennett	Fiedler	Lightfoot
Bentley	Fields	Lipinski
Bereuter	Florio	Livingston
Berman	Foglietta	Lloyd
Bevill	Foley	Loeffler
Biaggi	Ford (MI)	Long
Billey	Frank	Lott
Boehlert	Franklin	Lowery (CA)
Boggs	Frenzel	Lowry (WA)
Boner (TN)	Frost	Lujan
Borski	Fuqua	Luken
Bosco	Gallo	Lundine
Boucher	Garcia	Lungren
Boulter	Gaydos	Mack
Boxer	Gejdenson	MacKay
Brooks	Gephardt	Madigan
Brown (CA)	Gibbons	Manton
Bruce	Gilman	Markey
Bryant	Gingrich	Marlenee
Bustamante	Glickman	Martin (IL)
Byron	Gonzalez	Martin (NY)
Callahan	Goodling	Martinez
Carney	Gordon	Matsui
Carper	Gradison	Mavroules
Carr	Gray (IL)	Mazzoli
Chandler	Gray (PA)	McCain
Chapman	Green	McCandless
Chappell	Gregg	McCloskey
Chappie	Guarini	McCurdy
Cheney	Gunderson	McDade
Clinger	Hall (OH)	McEwen
Coats	Hall, Ralph	McGrath
Cobey	Hamilton	McHugh
Coble	Hammerschmidt	McKernan
Coelho	Hansen	McKinney
Coleman (MO)	Hatcher	McMillan
Coleman (TX)	Hawkins	Meyers
Collins	Hayes	Mica
Combest	Hendon	Michel
Conte	Henry	Mikulski
Cooper	Hertel	Miller (CA)
Coughlin	Hiler	Miller (OH)
Courter	Hillis	Miller (WA)
Coyne	Holt	Mineta
Craig	Hopkins	Mitchell
Crockett	Horton	Moakley
Daniel	Howard	Molinari
Dannemeyer	Hoyer	Mollohan
Darden	Hubbard	Montgomery
Daschle	Huckaby	Moody
Daub	Hughes	Moorhead
Davis	Hunter	Morrison (CT)
de la Garza	Hutto	Morrison (WA)
Dellums	Ireland	Mrazek
Derrick	Jacobs	Murphy
DeWine	Jeffords	Murtha
Dickinson	Jenkins	Myers
Dicks	Johnson	Natcher
Dingell	Jones (NC)	Neal
DioGuardi	Jones (OK)	Nelson
Dixon	Jones (TN)	Nowak
Donnelly	Kanjorski	Oakar
Dorgan (ND)	Kaptur	Oberstar
Dornan (CA)	Kasich	Obey
Dowdy	Kastenmeier	Olin
Ortiz	Schroeder	Synar
Owens	Schuette	Tallon
Oxley	Schulze	Tauke
Packard	Schumer	Tauzin
Panetta	Seiberling	Taylor
Parris	Sensenbrenner	Thomas (CA)
Pashayan	Sharp	Thomas (GA)
Pease	Shaw	Torres
Penny	Shelby	Torricelli
Pepper	Shumway	Towns
Perkins	Shuster	Traficant
Petri	Sikorski	Traxler
Pickle	Siljander	Udall
Porter	Sisisky	Valentine
Price	Skeen	Vander Jagt
Pursell	Skelton	Vento
Quillen	Slattery	Visclosky
Rahall	Slaughter	Volkmer
Rangel	Smith (IA)	Vucanovich
Ray	Smith (NE)	Waldon
Regula	Smith (NJ)	Walgren
Reid	Smith, Denny (OR)	Watkins
Richardson	Smith, Robert (OR)	Waxman
Ridge	Snowe	Weber
Rinaldo	Snyder	Weiss
Ritter	Solarz	Wheat
Roberts	Solomon	Whitehurst
Robinson	Spence	Whitley
Roe	Spratt	Whittaker
Roemer	St Germain	Whitten
Rogers	Staggers	Wilson
Rose	Stallings	Wirth
Rostenkowski	Stangeland	Wise
Roth	Stark	Wolf
Roukema	Stenholm	Wolpe
Rowland (CT)	Stokes	Wortley
Rowland (GA)	Stratton	Wright
Roybal	Studds	Wyden
Rudd	Stump	Wylie
Russo	Sundquist	Yates
Sabo	Sweeney	Yatron
Savage	Swift	Young (AK)
Saxton	Swindall	Young (FL)
Scheuer		Young (MO)
Schneider		

NAYS—15

Armey	Dreier	Smith, Robert (NH)
Bilirakis	Gekas	Strang
Brown (CO)	McCollum	Walker
Burton (IN)	Monson	
Crane	Nielson	
DeLay	Schaefer	

NOT VOTING—26

Boland	Fish	Lewis (FL)
Bonior (MI)	Flippo	Moore
Bonker	Ford (TN)	Nichols
Breaux	Fowler	Rodino
Broomfield	Grotberg	Smith (FL)
Burton (CA)	Hartnett	Weaver
Campbell	Hefner	Williams
Clay	Hyde	Zschau
Conyers	Kindness	

□ 1700

Mr. STRANG changed his vote from "yea" to "nay."

Mr. LEVIN of Michigan and Mr. RANGEL changed their votes from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. MINETA). Pursuant to House Resolution 536 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2482.

□ 1705

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the

Whole House on the State of the Union for the consideration of the bill (H.R. 2482) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, with Mr. MCHUGH in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Texas [Mr. DE LA GARZA] will be recognized for 30 minutes and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the bill we take up today represents a potential breakthrough and major improvements in the regulation of the pesticides under the Federal Insecticide, Fungicide and Rodenticide Act. Let me say at the outset that this is a breakthrough, as I said, because we have not had a major overhaul in basically 5 years. I would like to, rather than to go through the details of the legislation which will be done by the chairman of the subcommittee and the ranking member of the subcommittee, let me just extend my sincere appreciation and commendation to the many who have worked to get us to the point where we are today, the chairman of the subcommittee, Mr. BEDELL of Iowa, who, I might add, will probably have this last opportunity to manage a bill on the floor of this House, since he will be voluntarily retiring from the Congress after many years of service.

Also, let me add my appreciation to those on the outside who are affected by this legislation on either side, either as manufacturers or as formulators or as users or as consumers or interested in the protection of the environment or those of us who inhabit this planet. To all who contributed their good will and their good effort in this endeavor I want to give my appreciation.

To my colleagues I would like to say that we come before you with not perfect legislation but with basic compromise legislation. Let me repeat, we come before you not with a perfect piece of legislation but with basic compromise legislation, what I call the art of the possible, what is possible this day, this hour.

This is what has been done here. There are still two or three items to be resolved, and we are still endeavoring to see if compromise can be achieved in those areas, hopefully before the end, before we vote finally on this legislation.

So rather than take more time, Mr. Chairman, I again repeat my commendation of all who have worked in this endeavor and ask my colleagues in the Chamber and all of my colleagues in the House that you accept the basic work of the committee because it brings to you the basic work and the good will and the good effort of many individuals in and outside of the Congress. We think that it is a good positive step in an area which is so very important not only to agriculture, which is the basic reason for the basic jurisdiction which we have here, but for mankind in every aspect that mankind is touched by chemicals which we deal with, as we deal in agriculture with the application thereof, or in the home, or in the environment, at whatever level they are applied.

So I thank all who have contributed. If you do not mind my repeating myself, I beg of you that you, if at all possible, support the effort of the committee, support the work that the committee brings to you and that you listen with clear minds and hopefully with an open mind to the debate on the two or three issues that are yet to be resolved, that hopefully might be resolved by the compromise before we finalize this legislation.

Mr. Chairman, the bill the House takes up today, H.R. 2482, represents a potential breakthrough to major improvements in the regulation of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act.

The need for improvements in this law has been recognized for years. Congress long ago established, as a matter of basic national policy, a program under which older pesticides must be reregistered to determine if the data under which they were registered for marketing is in compliance with modern needs and standards. The fact is, however, that although everybody agrees this job must be done in the national interest, progress has been far too slow. If nothing is done to speed up the work, studies have shown that the Environmental Protection Agency is not likely to finish the reregistration job until sometime in the 21st century.

I do not intend at this time to conduct a postmortem on the reasons for the agency's failure to make better progress on reregistration. Among other factors, the EPA has never been given the resources needed to get the job done on a more reasonable time scale. What is important now is not why the work has gone slowly. What matters now is what we intend to do about getting the job done more rapidly. That issue is one of the key features of the bill we have brought the House today. It includes provisions that could enable the EPA to complete reregistration in about nine years instead of a period of 25 years or more.

Mr. Chairman, the law that H.R. 2482 would amend, the Federal Insecticide, Fungicide and Rodenticide Act, commonly known as FIFRA, is on the statute books because we recognize that the use of pesticides involves both benefits and risks. Congress long ago decided that effective regulation is needed to provide for the safe use of pesticide to control insects, weeds, and other pests in agriculture, homes, and other areas.

The FIFRA, as it exists today, is based on a sweeping overhaul of pesticide regulatory law enacted in 1972 when Congress created the Environmental Protection Agency and gave it authority to—among other things—regulate the use of pesticides and classify some products for restricted use. We overhauled the law again in 1978, but we did not succeed in settling all the problems or in solving all the difficult controversies that have dragged on between the many groups which have interests in this area. One major reason for the fact that for years, there was a deadlock between those who make and use pesticides on one hand, and environmental groups on the other.

Today we are here on the floor because those groups have been able to compromise their differences. Last year, coalitions representing many of the major groups reached a landmark agreement which formed the basis for the work done this year by the Agriculture Committee. I would, at this point, like to pay particular tribute to the chairman of the subcommittee which did the initial drafting work on the bill, our colleague BERKLEY BEDELL of Iowa, and to the ranking minority member, Congressman PAT ROBERTS of Kansas.

The bill we have brought you is designed to get the reregistration train moving at a more acceptable speed by setting up new procedures for the program and by adopting reregistration fees to pay much of the costs that will be involved. Speaking personally, I have concerns about a policy of levying fees to pay for operations that are needed to protect public health and the environment. But in the real world we live in, the world of Federal deficits and Gramm-Rudman, we have no other viable choice.

The new reregistration program in H.R. 2482 is the centerpiece of this bill, but it is not the only important or significant feature of this legislation. Many other issues have been simmering in these areas—issues that must be settled if we are going to restore public confidence in the pesticide regulatory system and bring an end to controversies on how, when and where pesticides are used.

The other issues that are part of this package cover a wide range. They include new protection for workers exposed to pesticides, new authority for public access to health and safety data, new regulations covering pesticide exports, and new provisions on the protection of groundwater.

Other sections of the bill cover new provisions which tighten rules for the use of conditional pesticide regulations, and new steps to streamline the rules for so-called special reviews to determine if a pesticide may cause unreasonable adverse effects on the environment. There are also new provisions dealing with cancellations and with tolerances for residues when pesticides are canceled or withdrawn. The bill would direct the EPA Administrator to identify and evaluate certain inert pesticide ingredients in order to help make sure that we avoid adverse environmental effects from this class of material. Another section improves the system for certifying and training pesticide applicators, and still another provides for giving increased information to the public about the chemicals in use against pests.

The bill also provides for a new study designed to help provide information needed to develop integrated pest management programs for urban and suburban use. We have made great progress in developing these programs for agriculture, but more information is needed to help search for improved alternative control programs in nonagricultural areas. Further, the bill deals with the issue of how to compensate pesticide manufacturers when other firms make use of their research data.

These and other sections of the bill add up to an important and long-overdue overhaul of the law dealing with pesticide regulations. I know the House will be debating these matters and a number of amendments that will be proposed. I urge the House to move forward to passage of legislation that is badly needed and is long overdue.

The CHAIRMAN. The gentleman from Texas [Mr. DE LA GARZA] has consumed 5 minutes.

Mr. ROBERTS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the bill we are about to consider H.R. 5440, amends the Federal, Insecticide, Fungicide, and Rodenticide Act, It is one of the most contentious issues this Congress will deal with this year. FIFRA is the Federal law that regulates the production sale and use of pesticides. It is an agricultural-environmental statute that has as its underlying principle the risk to society of allowing the use of chemicals versus the benefit to society from the use of these chemicals. The very nature of risk-benefit analysis leads to strong opinions and controversy.

Risk and how society deals with it is an interesting problem. The American public exposes itself to the risk of injury and death every day. Probably the No. 1 risk comes from the American love and use of the automobile. Yet we willingly climb into our automobiles every day and assumes this risk. But when it comes to chemicals, it is the fear of the unknown, the fear of the long-term health consequence, the fear of cancer that leads the pesticide issue to be such a contentious issue.

That is the goal of the legislation that we are considering today—to provide the direction and legal authority to the EPA to hopefully allay and answer the American public's fear and safeguard the use of chemicals that are used in society. The legislation we are considering today, has as its major purpose the imposition of a time deadline on the EPA to reregister over 600 chemicals that were registered prior to 1978 and that may have incomplete data packages on file. To accomplish this, the bill imposes user fees on the pesticide industry.

However, FIFRA is more than just an environmental-health statute. It is an agricultural statute that should and does reflect a balance of benefits to agricultural producers and legitimate concerns society has with the safety of these chemicals. The farmers that I have the privilege of representing in this Congress view pesticides and the use of herbicides as an integral part of their farming operations. I think this bill does make a positive effort toward addressing the concerns over public safety but at the same time allows farmers to have access to the agricultural chemicals that are so necessary for a commercially viable farming operation in todays very competitive environment.

There are some problems with the legislation that we are considering. One problem is that it mandates a time deadline for EPA to complete the reregistration process, but according to the EPA, the user fees imposed on the registrant fall short by nearly $50 million. This bill contains numbers demands on the Office of Pesticide Programs that will be nearly impossible to meet, even with the reregistration fees provided for in this bill. I am well aware of the budget restrictions that we face within our many regulatory agencies, but once again the Congress is mandating that an agency do its job, without providing adequate resources for it to do the job. Let me warn my colleagues that the shortfall in resources will surely mean that the Office of Pesticide Programs will not meet the mandated deadlines in this bill.

I must also caution my colleagues that this bill crosses a very long philsophical bridge for some of us. The bill, as I have pointed out, puts a saddle and bridle on the pesticide industry and rest assured that the list will be passed on through to the farmer. As with most areas of regulation the industry or individuals seldom asks for the burden of regulation. Instead, Congress decided it was in the public's interest to impose regulation upon that industry. If it is in the public's interest to regulate the sale of and use of pesticides, then that cost should be borne by the public at large not through user fees that will be passed on, in this case to the farmer-stockman, who can ill afford it.

Another issue of considerable importance to agriculture that was not addressed in the bill, is the issue of uniform pesticide residue tolerances. Once a chemical has complete data on file at the EPA, been cleared by the Food and Drug Administration, and a tolerance for residues has been established at the Federal level it makes little sense for States to establish different tolerances that have and will create substantial problems in interstate commerce and for the farmer-stockman and for the consumer.

During committee consideration, the committee failed to include the Stenholm-Roberts amendment for uniform tolerances, because of jurisdictional concerns, but only after the committee on a recorded vote of 31 yeas and 9 nays voted in favor of the amendment. The amendment is a very modest solution to the problems created by States establishing tolerances different from the Federal level. The amendment would require that once a chemical has gone through the reregistration process outlined in this bill or been registered after April 25, 1986—this date was picked because this is the date that EPA issued the complete registration standards for a chemical—and that a tolerance has been established, that tolerance would be uniform throughout the Nation. However, as a safeguard for the States, they would be allowed to petition the Federal Government to adopt a different tolerance. I will be offering this amendment and urge my colleagues to support it.

The final concern I have with this bill, is a problem that we have had in recent years with many environmental statutes. This bill for the most part is regulation that is being put into the statute. Congress should be in the business of writing laws that give general direction to the executive branch and not spelling out in minute detail how the executive branch is to carry out that law. It is our prediction that this legislation may well come back to haunt us to the detriment of all concerned. The executive branch should have flexibility in carrying out the statutes we write.

The window of opportunity to pass this bill is growing short. I urge my colleagues to restrain from offering amendments that will hinder its progress.

□ 1715

I cannot close, Mr. Chairman, with regard to my personal comments in general debate without paying tribute to my friend and colleague, the gentleman from Iowa [Mr. BEDELL], and also to the gentleman from California [Mr. BROWN], who is the godfather of this effort.

I would say that there are those who said that we could not really form or build a bridge over troubled FIFRA waters. It has been a good-faith effort from business and from industry and from labor and from consumers and from farmers, and also in behalf of the environmentalists. We do have problems with the bill. I hope we can proceed, and I hope we can work out these problems. I have been a party to that effort. I signed a "Dear Colleague" with my friend and colleague, the gentleman from Iowa [Mr. BEDELL]. I hope we can proceed with the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. DE LA GARZA. Mr. Chairman, I yield such time as he may consume to the gentleman from Iowa [Mr.

BEDELL], the chairman of the subcommittee.

Mr. BEDELL. Mr. Chairman, mostly I want to thank all of the people who have been involved in this effort. This is an effort that has gone on for many months. It is an effort that is different from many of the efforts that take place in this body. It has not been one of confrontation; it has been one of getting parties who had very diverse opinions together and asking them to try to work out their differences. Time after time after time, those parties have come together and have agreed upon the differences, so that as we bring this bill to the House, there are very few controversial subjects still that we can argue about.

I particularly appreciate the work of the chairman, Mr. DE LA GARZA, of Mr. ROBERTS on the minority side, and of Mr. BROWN of California who has been, as has already been said, a leader in this effort for a long, long time, and more particularly for all of the staff and individuals of the different competing interests who have worked together so well.

This measure enjoys the support of a bipartisan coalition that includes the National Agricultural Chemical Association, representing some 92 pesticide manufacturers; the Campaign for Pesticide Reform, comprised of some 41 environmental, consumer, and labor organizations; farm organizations, groups that you would hardly expect to get together. It was approved by the Committee on Agriculture by a vote of 42 to 1.

Mr. Chairman, from the very first day that we took up this issue, all sides have been willing to put aside those wish lists and work to try to get progress, because, as near as I can tell, all sides want to see a bill passed. Farmers as well as others want to see safety with regard to the application of our pesticides. They recognize that unless we manage these pesticides in a safe manner, they are not going to be able to use the pesticides that they need for their production. Environmentalists want it, and indeed the chemical companies realize that as well.

My colleague from Kansas has very well pointed out that this is a window of opportunity. We have limited time. There has been a tremendous amount of work that has gone into this issue. I hope that we will move expeditiously as we move through the amendment process on this legislation. I hope that we will quickly say to the Senate, here is a bill. We think that this is a good bill. We know that most of the organizations feel this is a good bill. Let us get this passed and show the people of America that we can address this problem.

Mr. ROBERTS. Mr. Chairman, I yield 3 minutes to my friend and colleague, the gentleman from Washington [Mr. MORRISON].

Mr. MORRISON of Washington. Mr. Chairman, as a member of the subcommittee ably led by the gentleman from Iowa [Mr. BEDELL] and the gentleman from Kansas [Mr. ROBERTS] I am pleased to have had a role in pushing forward this important legislation, which will be a fitting cap to Mr. BEDELL's distinguished career in the House. I am especially pleased to have been of service in offering the provisions of the bill directing the Environmental Protection Agency to issue regulations protecting the health and safety of agricultural workers. I wish I could claim all of the credit, but in this case, as in so many others, the contending parties did most of the work in reaching a compromise.

In the fall of 1985, EPA sought the advice of representatives of growers and farmworkers in developing new health and safety regulations. EPA has continued work on the regulations and plans to issue them with or without congressional prompting. Farmworker groups, however, are concerned that EPA's statutory authority to issue the regulations is far from clear and might not withstand a court challenge. The original subcommittee version of this bill contained language requiring EPA to establish an occupational health unit within the Office of Pesticide Programs and mandating some of the details of EPA's regulations. Growers were concerned that Congress would create a new administrative unit even though EPA already has personnel assigned to worker health and safety and that Congress would prescribe the particulars of EPA's regulations without hearings or discussions.

The compromise in this bill assures farmworkers that EPA will issue health and safety regulations within 2 years. At the same time, it does not create a new unit within EPA or mandate the specific content of regulations. Once the regulations are formally proposed, EPA must allow 6 months for public comment and for the Agriculture Department to prepare a report on the regulations' impact, cost, and effectiveness on the agricultural community. Upon promulgation, Congress will have 120 days of review.

Again, I am pleased to have been the midwife, so to speak, of a compromise that followed the spirit of other compromises in this bill, with both sides coming to agreement with very little prodding. The worker health and safety provisions are supported by the American Farm Bureau Federation, the United Fresh Fruit and Vegetable Association, the National Council of Agricultural Employees, and the Society of American Florists.

□ 1725

Mr. Chairman, this is just one part of this measure which reflects the fact that we have finally been able to work together and bring to the full House of Representatives a package that is indeed worthy of support and getting on with dealing with some products that have been of concern to Americans for a number of years.

Mr. ROBERTS. Mr. Chairman, I reserve the balance of my time.

Mr. DE LA GARZA. Mr. Chairman, I yield 4 minutes to the gentleman from Oklahoma [Mr. SYNAR].

Mr. GAYDOS. Mr. Chairman, will the gentleman yield?

Mr. SYNAR. I yield to the gentleman from Pennsylvania.

Mr. GAYDOS. I thank the gentleman for yielding to me.

Mr. Chairman, I stand in support of this legislation. H.R. 2482, the amendments to the Federal Insecticide, Fungicide, and Rodenticide Act, before us today is a carefully crafted document that resulted from extensive efforts by business, labor, health, consumer, and environmental groups.

While I commend the coalition and Chairman DE LA GARZA of the Committee on Agriculture for the fine effort embodied in these amendments, as chairman of the Subcommittee on Health and Safety I particularly want to say a few words about section 815 of the bill.

This section provides for the development and maintenance of an occupational safety and health program for workers engaged in the mixing, loading, and application of pesticides, as well as for workers exposed to pesticide-treated fields.

My Subcommittee on Health and Safety has jurisdiction over worker health and safety issues and is well aware of the health hazards farmworkers face when working in a pesticide-treated field. We know that the incidences of pesticide-caused diseases and illnesses among farmworkers can be as high as 25 times greater than in the general population.

Yet, those workers have been denied coverage under the Occupational Safety and Health Act of 1970.

Earlier this year, the subcommittee conducted hearings on farmworker health and safety in connection with H.R. 4029, the bill I introduced to create a Federal field sanitation standard.

The health and safety protections for farmworkers and others built into these FIFRA amendments is a step in the right direction of ensuring safe and healthy workplaces and of extending to farmworkers some of the basic coverage they deserve.

Chairman DE LA GARZA, Chairman HAWKINS, and I have reached an understanding concerning the jurisdictional issue and have agreed to support the inclusion of section 815 in this bill.

I only hope that as the specific health and safety standards for farmworkers who are exposed to pesticide-treated areas are developed by the Environmental Protection Agency, the basics encompassed in H.R. 4029 are included.

This is an important piece of legislation, Mr. Chairman, and the inclusion of worker health and safety protections makes it even more so. It is a piece of legislation for which the House can be proud.

Mr. SYNAR. I thank the gentleman for yielding me this time.

Mr. Chairman, 2 years ago, the Subcommittee on Environment, Energy and Natural Resources of the Committee on Government Operations, which I chair, held extensive hearings on the serious flaws in the EPA pesticide regulatory program ["Problems Plague the Environmental Protection Agency's Pesticide Registration Activities," 98th Cong., 2d sess., H.R. Rept. No. 98-1147]. The committee's final report raised serious questions as to whether EPA had been administering the Pesticide Registration Program in a manner which would provide the fullest possible protection to the public health. Among our findings were serious, often inordinate delays by EPA in reaching special review or RPAR decisions, numerous closed door negotiations with industry representatives with no official record of what took place, and final EPA decisions that failed to adequately protect health or the environment.

The EPA's record of delay and neglect was exemplified in our report by reviewing the tortured regulatory history of the pesticide ethylene dibromide [EDB], a potent carcinogen that lingered in RPAR for 7 years before its use was finally suspended. EDB was found in the Nation's grain supply, various citrus products and the ground water of several States. There are numerous other examples of pesticides placed into RPAR or special review, followed by years of inaction, bureaucratic footdragging, political interference or unchecked influence by pesticide manufacturers.

Fortunately, a key provision of this FIFRA reform bill requires EPA to promulgate new, streamlined special review procedures preventing these unnecessary delays and other abuses in the future. Following many of the recommendations of our committee, section 301 of the bill mandates open, public special review procedures with full opportunity for public participation. Closed door or secret negotiations with industry are prohibited. In addition, the Administrator is required to replace its current special review regulations with new criteria for initiating special reviews based on levels of risk. No consideration of possible benefits of the pesticide would be permissible at this initial stage of the process. And EPA woud be allowed to decline to initiate a review on grounds of lack of exposure to the chemical only if the Administrator had available and considered all relevant means of exposure.

Addressing a critical flaw identified by our committee, this bill would ensure that EPA could no longer "sit on" pesticide regulatory decision for years, without even initiating a review, after receiving data indicating that risk-based review triggers were exceeded. Instead, on receipt of information demonstrating that the criteria have been met, EPA must immediately notify the registrant who has 30 days to respond. Not later than 60 days after receipt of such response, EPA has a mandatory duty to decide whether to initiate a review. This key requirement is intended to ensure that such special review decisions are made promptly, publicly, and openly, preventing past delays and abuses where pesticides were sold to farmers and an unknowing public even after health risks were identified.

Finally, a mandatory deadline of 18 months is imposed on the Administrator for completion of these reviews. This carefully considered deadline can be extended only in rare circumstances and then for no more than 1 year.

Taken together, these reforms will go a long way in remedying the serious flaws in the EPA special review process identified by our committee. As a result, human health and the environment will be better protected, I therefore urge passage of this landmark legislation.

Mr. ROBERTS. Mr. Chairman, I yield 4 minutes to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. I thank the gentleman for yielding me this time.

Mr. Chairman, every one of us in our subcommittee assignments at some point in time experiences a piece or two of legislation which is complicated, boring, and necessary. That is exactly what we have in front of us today in the FIFRA, the Federal Insecticide, Fungicide, Rodenticide Act reauthorization.

Complicated legislation; very intricate. Very controversial at times and yet very essential in the protection of our air, our water, our soil and the protection of our environment and our constituents and also essential to the vital growth of our agricultural community.

It is without saying an indeed remarkable event that our distinguished chairman of this subcommittee, and the distinguished ranking member, Mr. ROBERTS, have labored and labored at length to bring this legislation for us.

The bill before us today is, as best we can, a compromise. A compromise between the various communities. The environmentalists, the pesticide producers, and the agricultural community. None of them are completely happy; all of them understand this is perhaps the best that we can get.

I want to address my remarks at the absolute need of this Congress to continue and complete this effort in this session of the Congress. By virtue of that, I am very concerned that if we do not make a couple of changes in the legislation between here and the end, we do run the risk of a Presidential veto.

The statement of administration policy which has been circulated on this bill very clearly indicates that the administration opposes enactment unless various amendments are made. The most important being to eliminate the acceleration of unnecessarily costly changes to the reregistration program or increase the fee authorization to cover those costs.

Let me spend a bit of time on this issue which I have brought up to my colleagues on the subcommittee and the full committee as we have been through that process.

Presently, the estimated reregistration cost in the legislation is some $206 million. The current budget projections over a 9-year period are $110 million, suggesting that we need an additional revenue of $96 million.

Under the legislation before us, there is a fee recovery program that in terms of food use will bring in approximately $21.9 million in nonregistration standards and approximately $11.4 million for those active ingredients which have already achieved a registration standard.

In the nonfood area, we will bring in approximately $7.9 million in the nonregistration standards, and approximately $1.12 million in the registration standards. This brings in $42 million leaving us still with a revenue gap of approximately $56 million. The question that each and every one of us has to ask is: Are we willing, at a time of deficit reduction, to increase overall expenditures or GPR revenues to this kind of a program?

I would suggest that it is going to be very difficult for most of us to vote to increase revenue expenditures in this area or outlay areas in this area, at the expense of our many-favored social, educational, training, retraining, health care programs and of that sort.

□ 1735

As a result, Mr. Chairman, I will be introducing an amendment tomorrow during the full consideration in the amendment process which will allow us to look at two alternatives. One alternative will recover about $6 million, that being to cover and make sure those who have already achieved their reregistration standard pay the same costs as all of those yet awaiting that same opportunity for reregistration.

The second alternative that I will present before this Congress will be a simple doubling of the revenue. This is what would be necessary to fully fund this legislation.

We have gone too far; we have been through too much controversy to lose this bill to a veto because it is not properly funded. I want to make this issue very clear to my colleagues. You are going to have to choose between properly funding this legislation or cutting some other program later on. Pay attention during the amendment process.

Mr. Chairman, it gives me great pleasure to come before you today and speak in support of H.R. 2482, the Federal Fungicide, Insecticide, and Rodenticide Act Amendments of 1986. The subcommittee chairman, Mr. BEDELL, and the ranking minority member, Mr. ROBERTS, should be commended for their outstanding work in bringing a well developed, comprehensive piece of legislation to the floor of the House.

Since I came to Congress 6 years ago, the House has had the opportunity to make signficant and needed changes in the Federal Insecticide, Fungicide, and Rodenticide Act, but for various reasons the needed changes never came about. Today, the House has another opportunity to pass a piece of legislation that will benefit everyone involved from those who produce the pesticides to you and me who are exposed to them.

What is it that makes this bill different from those previously brought to the floor of the House? For the first time the National Agricultural Chemical Association, the environmental groups, consumer groups and labor groups came before the House Agriculture Committee with a single bill. The bill, which was a result of the groups finally working together, was the starting point for the Department Operations, Research and Foreign Agriculture Subcommittee. I am proud to say that the Agriculture Committee did outstanding work to keep the package together but at the same time offered and passed amendments that make the bill stronger in many respects.

WHAT'S GOOD ABOUT THE BILL?

There are several provisions which will put more pressure on the Environmental Protection Agency to speed up its review process for the active ingredients found in chemicals today. Currently there is no deadline as to when EPA has to finish its review process. Under H.R. 2482, the review process would be completed in just over 9 years. In addition, the EPA is directed to establish a priority list of inert ingredients to study and review as well.

The bill provides the EPA with the authority for moving quicker with procedures to conduct special reviews and cancellation hearings on pesticides which are suspected of posing adverse effects to humans and the environment. EPA would also be given more authority to restrict the availability of conditional registrations, those registrations granted before all health and safety testing is completed. In addition, EPA would be given authority to suspend immediately the use of products that have been registered with false or invalid data.

What provisions contained in H.R. 2482 will benefit the individual citizens? Citizens will be given more input into the regulatory process. For the first time, citizens will be allowed to examine the health and safety data on a pesticide before it is registered for use. Citizens will be provided with factsheets by the EPA with information summarizing health, safety, and environmental data. The information will be provided by the company producing the pesticide.

Like most pieces of comprehensive legislation, this bill has provisions that should remain intact and those which need to be completely changed.

One area of great concern to me is in regard to the reregistration fees that are included in the bill. At present, each registrant will be charged $150,000 for the reregistration of each active ingredient. In cases where there is more than one registrant, each company would contribute $150,000.

Even with the fees being collected, the EPA has continually stated that the fees will be short about $50 million over the reregistration period. It is apparent that without the proper resources it will be quite difficult for the EPA to meet the required demands and deadlines that the bill places on them.

Another concern I have deals with the reimbursement of attorneys' fees by the courts in lawsuits brought to force the EPA to adhere to the deadlines in the bill. My concern is that the attorneys' fees will come out of the user fees which in my mind is a counterproductive use of the fees. It is my understanding however that an amendment will be offered to correct this problem. The amendment will quite simply prohibit the awarding of attorneys' fees. I encourage my colleagues to support this most important amendment.

Finally, there is the issue over uniform tolerances which would assure national uniformity in the regulation of pesticide residues on food. While this provision is not included in the bill, Members will have the opportunity today to establish a uniform law which will make it easier to market commodities from State to State. I encourage my colleagues to support the Roberts-Stenholm amendment.

Specifically, the amendment with a few exceptions would prohibit States and localities from setting tolerance levels, the maximum acceptable level of pesticide residue which may remain on food. The prohibition would apply to all pesticides initially registered for use after current health safety requirements went into effect and for all older pesticides that have completed reregistration under 1985 guidelines.

Despite these concerns, I remain in strong support for the FIFRA Act Amendments of 1986. It is a compromise bill in every sense of the word and not to support it would be tragic for the individual citizens of this country, the farmers who rely on pesticides to raise their crops and the companies that take the time and spend the money trying to develop products that will make our lives just a little bit better.

Mr. BEDELL. Mr. Chairman, I yield 2 minutes to the gentleman from West Virginia [Mr. STAGGERS], a member of the committee.

Mr. STAGGERS. Mr. Chairman, today we begin consideration of FIFRA, one of this year's most significant pieces of legislation. This bill represents a major compromise between a diverse group of chemical companies, environmentalists, labor, farm, and consumer organizations. For years, previous attempts to pass such legislation have failed.

Let me briefly outline some of the far-reaching provisions contained in the bill. It would require the EPA to speed up the process of reregistering some 600 pesticides that were approved for use before 1984. The purpose of registration is to make certain those pesticides meet health and safety standards. It would require pesticide producers to pay a reregistration fee to help finance EPA's effort in reregistration. Also, the measure would accelerate the procedures for review and cancellation of a pesticide that may pose a risk to the public and the environment. It would allow for more citizen involvement in the regulatory process. The bill contains a right to know provision which would require pesticide producers to make available to the public a factsheet outlining health and safety data on the pesticides they produce.

I would like to take a moment to recognize the diligent and tireless efforts of all participants involved in this compromise. After 18 months of negotiations we have a product before us that deserves our support. Worthy of special note in this endeavor are the two chief sponsors of the bill, Representative BERKLEY BEDELL and Representative PAT ROBERTS, as well as their staff. Through their dedicated commitment to this effort, we have before us a balanced and fair bill. There were times when the negotiations seemed doomed and we would have been faced with yet another year of failed attempts on FIFRA. However, these individuals were responsible for setting the bill back on track and keeping the negotiations alive. I think that we could give BERKLEY BEDELL no better retirement gift than to witness the passage of this bill, to which he has devoted so much of his energy.

Mr. Chairman, this is the closest the Congress has been to pesticide reform in years. After years of failed attempts, success is now within our grasp. I urge you to keep the bill on track and moving forward.

Mr. ROBERTS. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Chairman, I am very pleased to stand here in general support for the FIFRA bill except I associate myself with the concerns of the gentleman from Kansas. In my opinion this bill is the best compromise that could be hammered out. Everyone has given a little bit in order to come up with useful, working piece of legislation. I commend the chairman of the Agriculture Committee, the gentleman from Texas, Mr. DE LA GARZA, and the ranking minority member, Mr. MADIGAN, for their fine

efforts in guiding this much needed bill through the trenches of the legislative process. The bill they—and many others have worked with—is the result of many months of intense negotiations to resolve many disputes that those associated with FIFRA had. The agriculture community, the consumer groups, the environment groups, the labor groups, the chemical associations, and others have achieved an unprecedented goal which represents a major overhaul of our Nation's pesticide control law.

The challenge before them was immense, that being the promotion of safety policy while ensuring that the public can receive all the facts in order to achieve a much more balanced understanding of pesticides. The risks associated with the use of pesticides are very real. I believe that this bill, as it stands right now, convinces the public that today's pesticides will not constitute a public health hazard or environmental hazard and that the benefits of this consensus legislation are many.

Through many provisions agreed upon by all parties, such as an accelerated reregistration program, strengthened requirements for training commercial pesticide applicators, and increased protection for farmers who use pesticides according to label directions, we achieved an important goal. That goal is ensuring that necessary pesticides are both environmentally safe and available to consumers.

As a member of the Texas and National Pest Control Association, and a Member of this body that has used pesticides for over 14 years in my business, I can honestly say that I was not at all happy about Government initatives to control the use of pesticides in light of the growing effectiveness of environmental groups. However, the bill we have before us today is a substantial improvement over what we have on the books presently and the direction of the bill is clearly in the public's interest. I hope my colleagues will join me in support of this FIFRA bill.

Mr. ROBERTS. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Kansas [Mr. ROBERTS] has 12 minutes remaining and the gentleman from Iowa [Mr. BEDELL] has 16 minutes remaining.

Mr. ROBERTS. Mr. Chairman, I reserve the balance of my time.

Mr. BEDELL. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia [Mr. OLIN], a member of the committee.

Mr. OLIN. Mr. Chairman, I rise in support of H.R. 2482, the Federal Insecticide, Fungicide and Rodenticide Act Amendments.

The bill we have before us today is truly a tribute to the art of compromise. Groups that have sometimes taken adversarial positions about the role of pesticides in our society—the pesticide manufacturers, the environmentalists, the farm groups—have managed to work through their differences and come together in support of this bill.

It is a complex issue. The major congressional players—the gentleman from Iowa [Mr. BEDELL] and the gentleman from Kansas [Mr. ROBERTS]—put in countless hours to craft a bill that would keep the coalition intact while also achieving a responsible national policy on the use of pesticides.

As it stands now, the bill has several features to commend it for passage.

First, the Environmental Protection Agency's review of "old" pesticides—those approved for use before 1984—would be speeded up. The cost of the accelerated review will be shared by the pesticide producers seeking registration. In this way, instead of needing about 25 years to finish the review of some 600 active ingredients still requiring registration, EPA should be able to complete the review process in about 9 years.

Second, the bill offers some protection for farmers who use pesticides in a responsible manner. A farmer would not be liable for pesticide damages if he or she follows label instructions in applying the product.

Third, after much deliberation over a very complex procedure, the Agriculture Committee put together a procedure to compensate companies that develop pesticide registration data when other companies seek to use that data to mark their own products. The bill before us has a dual compensation procedure—one for pesticides whose patent terms are extended by congressional action, another for pesticides whose patent has expired. I would encourage my colleagues not to tinker with the rather delicate compromise that has been accomplished in data compensation. While neither side got exactly what it wanted in the compromise, the parties involved in data compensation feel this is a workable procedure. I doubt that we can do better here on the floor.

The FIFRA bill is major legislation dealing with a very real concern—the safety of the products we come in contact with daily in our attempt to improve our food products and our living conditions. We depend on many of these pesticides and must have the assurance that they have been adequately tested and responsibly approved. I'm proud of the work of the subcommittee which did the groundwork on this bill; the full committee completed the task and presents a balanced, well-developed piece of legislation. The House should afford it a resounding passage.

Mr. BEDELL. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BROWN], who has been a leader in this effort for a long, long time. I commend the gentleman for all the work he has done.

Mr. BROWN of California. Mr. Chairman, I express my appreciation to the chairman of the subcommittee for his kind remarks.

Mr. Chairman, I rise to applaud the efforts of the House Agriculture Committee in bringing this bill to the floor. The House has the opportunity to approve a major reform to the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA], the statute which regulates the sale and use of pesticides. This reform represents the work of numerous people over the last year and a half and frankly I was not sure if all of this work would ever pay off.

Mr. BEDELL and Mr. ROBERTS, the chairman and ranking member of the subcommittee which crafted this legislation, are to be praised by all of us for their patience and diligence in bringing this compromise to its present form. Also to be recognized are the representatives from the chemical industry, the farm sector, and the environmental community who negotiated many of the provisions before us. I have never seen such cooperation and compromise from groups who have traditionally been adversaries, and without their work this bill would not be on the floor today.

I urge my colleagues to support this bill. It is not perfect and there will be some amendments offered to the bill during House consideration. But it is as close to perfect as anyone could expect, given the controversial nature of this issue. It is also a long overdue piece of legislation, since Congress has been unable to make any changes to FIFRA since 1978.

The need for this legislation should be apparent to anyone who has followed events in this area over the last few years. Farmers and consumers alike have suffered from our inability to amend FIFRA and establish a modern, efficient statutory base for the pesticide regulatory program conducted at the Environmental Protection Agency [EPA]. I remember 4 years ago being the floor manager of an earlier FIFRA reform bill that passed the House but died in the Senate. I also remember the chaos that followed, as pesticide crises such as EDB, Bophal, and tainted watermellons sent public concern to record levels.

Without Federal action, the States began acting on their own, as is their right, and our Federal regulatory system began lagging behind the will of the public to set more stringent pesticide regulation. And caught up in this series of crisis responses were the farmers who could no longer predict whether the pesticide used today would be unacceptable tomorrow.

We are now taking long overdue action to bring the Federal regulatory

system into the 1980's. We should support the efforts of the committee and the interested groups and pass this legislation.

□ 1745

The CHAIRMAN. The time of the gentleman from California [Mr. BROWN] has expired.

Mr. ROBERTS. Mr. Chairman, I yield 1 additional minute to the gentleman from California [Mr. BROWN], and I ask the gentleman to yield to me.

Mr. BROWN of California. I yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Chairman, I simply want to take this time to tell my colleagues that I made some very serious comments in regards to my earlier testimony or my remarks when I referred to the gentleman as the godfather of FIFRA. I am not sure the gentleman wants that title. I am not too sure that anybody does, in that as the gentleman has pointed out, it is a compromise bill. If the gentleman is in fact the godfather of baby FIFRA on the doorsteps of the church as an orphan child, we hope that baby grows into a fine young man or woman and we can make some progress, but I do want to thank the gentleman, and he has pointed out one specific thing that I think is important.

This is not only the result of the, say, 18 months gauntlet that we have gone through, but it has been the product of many hours of testimony in hearings. There is nobody in this Congress who knows more about this issue than the gentleman in the well in terms of public safety and the wise use of pesticides that we must have in the farm country. I want to pay tribute to the gentleman and thank him for his input.

Mr. BROWN of California. The gentleman is very kind. I appreciate his remarks. I sometimes hope that I could forget all I know about this bill, and probably I will.

Mr. ROBERTS. Mr. Chairman, I yield 5 minutes to my distinguished colleague and friend, the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I wish to commend the members of the Agriculture Committee for their tireless efforts to enact meaningful and long-needed reforms to our Nation's pesticide laws. Although in legislation of this scope no one is entirely satisfied, nearly all of us agree that it is a great improvement over current law.

Of a particular interest to me is the so-called imported food provision, which is a point of difference between this body and the other body. Maintenance of the House position on the imported food language is important to both consumers and farmers. The House position greatly enhances the ability of our farmers to compete on a level playing field with foreign competition, and also promotes the security of consumers that the food they buy is safe. Due to the importance of this provision, I would like to join in a short colloquy with my colleague from Kansas to clarify the intent of the House language.

Is it true that under current law, while EPA may cancel the registration of a pesticide and thus suspend its use by a grower, there is often a long period of time before EPA changes the tolerance level allowed on food products sold commercially?

Mr. ROBERTS. Mr. Chairman, if the gentleman will yield, the answer is "Yes."

Mr. HENRY. Is it true that under current law that in this time lag between cancellation and a suspension of a tolerance level, products can be marketed which may contain higher than safe levels of a pesticide?

Mr. ROBERTS. If the gentleman will continue to yield, the answer is "Yes."

Mr. HENRY. Is it true that under current law before a tolerance level is lowered or suspended, foreign growers of food products can still import food products treated with a banned pesticide, leaving a residue of a dangerous pesticide remaining?

Mr. ROBERTS. If the gentleman will yield, again the answer is "Yes."

Mr. HENRY. But is it not true also that at the same time domestic growers of that very same food cannot use the banned pesticide and may be forced to either use a higher cost pesticide or reduce product quality by not using any pesticide?

Mr. ROBERTS. Again, if the gentleman will yield, the answer is "Yes."

Mr. HENRY. So under current law, even though a pesticide may be banned from domestic use, buyers of food products can often for long periods of time still be buying and consuming imported food products which contain residues of pesticides actually banned in the United States.

Mr. ROBERTS. If the gentleman will yield, that is true.

Mr. HENRY. So it seems that current law effectively discriminates against the American farmer in favor of foreign growers, while at the same time offering no additional protection for the consumers of food?

Mr. ROBERTS. If the gentleman will yield, I think that current law actually does that.

Mr. HENRY. My understanding is that the Agriculture Committee of this body has corrected current law by mandating EPA to change the tolerance level allowed on food products no later than 60 days after EPA takes action against the use of a pesticide. This revocation of a tolerance level would serve both to protect food consumers, as well as prevent our farmers from being penalized vis-a-vis foreigners.

Mr. ROBERTS. If the gentleman will yield, that is also true.

Mr. HENRY. It is also my understanding that, in spite of the obvious discrimination and public danger in the current law that, at this time, the other body has not acted to change in any way this provision.

Mr. ROBERTS. If the gentleman will yield, that is the case and that is a very important point.

Mr. HENRY. Mr. Chairman, I thank the gentleman.

If that is indeed the case, I would urge my colleague and all other Members who may be in conference with the other body to hold fast to the House language in this regard, and protect both the American farmer and the American consumer.

I am hoping that this gentleman at least can give me that assurance.

Mr. ROBERTS. If the gentleman will yield further, we will do our best to preserve the intent of the House bill.

Mr. Chairman, will the gentleman yield for a question?

Mr. HENRY. I am pleased to yield to the gentleman from Kansas.

Mr. ROBERTS. The gentleman is not trying to add anything that is not already in the bill?

Mr. HENRY. No, certainly not.

Mr. ROBERTS. And the gentleman's concern is for the products that are produced in significant quantities by domestic producers?

Mr. HENRY. The gentleman is correct.

Mr. ROBERTS. Mr. Chairman, I thank the gentleman.

Mr. BEDELL. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. HUCKABY], a member of the committee.

Mr. HUCKABY. Mr. Chairman, I thank the gentleman from Iowa for yielding.

First of all, I would like to commend my good friend, Congressman BEDELL, for the outstanding work he has done on the Agriculture Committee for some 10 or 12 years now. We are certainly going to miss him. The gentleman has done an awfully lot of good work in the past year in bringing this bill to the floor of the House of Representatives at this point in time.

There are a lot of compromises in this bill. A few questions still remain to be resolved that unfortunately will have to come down to a vote on the floor of the House of Representatives.

One of the areas that I have concern with is the so-called data compensation issue. Prior to 1978, we treated agricultural chemicals like everything else. They had a 17-year patent. Once your patent expired, other companies could then enter into the field and market the product.

Well, the 1978 revisions in the FIFRA law set up an arbitration panel, an arbitration judge, so that a company who wanted to go and market a product after the patent expired would have to appeal before this judge to determine what amount of money he would pay the company that originally held the patent in order to be able to manufacture this chemical.

Well, the precedents, what few there have been, have ruled that this new small company that wanted to start making this drug, a generic chemical, so to speak, would have to pay fair market value. Sometimes that would mean literally in the hundreds of millions of dollars.

As a result of that, we have not had any generic chemicals enter the market since 1978. History has shown us and we can look to various countries overseas today and see that the exact same chemical, the exact same pesticide that is being sold here in the United States where it has gone off patent overseas is selling for less than half what it is here in the United States; so I am concerned about that issue in this bill.

Clearly, it was my understanding in 1978 when we addressed this bill that we would not be in effect giving a patent extension forever. I do not think that is the intent of Congress.

I think we need to look at the pharmaceutical industry, the action that Congress has taken here in prior years, where we have seen generic drugs go to the market. I think that would be a good approach for us to use for agricultural chemicals, so that after the time has elapsed of the patent protection our farmers could buy agricultural chemicals at significantly lower prices than they can today.

Mr. BEDELL. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Chairman, I also want to take the time to commend the gentleman from Iowa for all the work and commitment that he has put into trying to come up with this, and also the gentleman from Kansas on the minority side, whose cooperation in really trying to work and find an area of compromise with regard to FIFRA law I think has been laudatory on both sides. I want to give that commendation, because oftentimes when a bill as complex as the FIFRA bill comes before the House, there are not a lot of Members who really focus on exactly what went into this. It took a lot of work. It took many hours of compromise working with a group of constituencies that sometimes range across the face of the Nation from the far left to the far right and everything in between, and yet both of these gentlemen working very hard with all those groups I think have come together and put together the kind of compromise that hopefully the House will concur in.

Mr. Chairman, I rise in strong support of H.R. 2482, which reforms the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA], and urge my colleagues to adopt these important reforms.

Reform of this country's archaic pesticide laws is long overdue. This bill contains tough restrictions on dangerous pesticides and is supported by a broad coalition of farm, chemical, and environmental organizations. It sets up a system to reassess thousands of older pesticides which have not been tested to ensure that they meet current safety standards.

Prior to the 1970's, pesticides were not tested for their long-term effects on humans, such as cancer and birth defects, or for the environmental impact on soil and water or concentration in the food chain. These older chemicals should have been reassessed following a 1972 rewrite of FIFRA, which required that EPA bring all older pesticides up to current standards. The number of pesticides involved is staggering—most of the more than 50,000 pesticides in use today have not been reassessed.

Despite requirements under current law, the General Accounting Office recently concluded that EPA has failed to reassess most, if not all, of the thousands of older chemicals. If Congress fails to act this time to toughen the FIFRA law, current conditions will prolong consumers' exposure to hazardous chemicals.

As my colleagues know, Mr. ROBERTS intends to offer a uniform tolerance amendment that would prohibit States from setting tougher standards for pesticide residues allowed on food products. I will be offering a compromise substitute to the Roberts amendment to ensure that States retain a role in regulating the level of pesticide residues on food.

Frankly, the Federal Government's record in protecting public health and the environment from dangerous pesticides has been abysmal. Before the reforms under the bill before us today are given a chance to operate, I have grave reservations about the automatic nature of the Roberts amendment. If uniform standards are to be enacted, I believe that it must be done through a process that ensures that States and other interested parties have an opportunity to participate meaningfully.

Current pesticide laws require EPA to set limits—or tolerances—for pesticide residues that food products can legally contain. Under these laws, States have the right to set stricter tolerance levels than the Federal government. States have occasionally set tougher standards. For example, in response to the alarming discovery of ethylene dibromide [EDB] in cake mixes and other food products, a handful of States set stricter tolerances for EDB in the early 1980's. EPA later took action to ban the use of this chemical.

The problem is that interstate movement of agricultural products is seriously disrupted when States enact different standards. This creates a hardship for farmers, food processors, and retailers who cannot market their products in States that set tougher standards.

The Roberts amendment responds to this problem by establishing a system of uniform nationwide pesticide tolerances. The problem with this amendment is that it goes too far in the other direction. It denies States any meaningful opportunity to participate with the Federal Government in arriving at these uniform tolerances.

My amendment, while assuring uniform standards for pesticides determined by EPA to be safe, would guarantee States a role in developing any uniform standards. Under my amendment, uniform tolerances would be set through existing procedures, under which EPA would propose a uniform tolerance and States and other interested parties would have the opportunity to comment. This regular procedure guarantees States due process and the right to be heard. The Roberts amendment would give States no role prior to the establishment of the standards.

Both the Roberts amendment and the Panetta compromise authorize EPA to grant individual States the right to establish a separate standard for individual pesticides after a uniform standard has been set. However, the petition process for States would be so stringent under the Roberts amendment as to be practically useless. The Panetta compromise would give EPA greater flexibility to grant a State's request.

My compromise amendment properly balances the competing interests. It gives EPA an important tool to assure that national food marketing continues while ensuring States a prominent voice in the process of protecting the public health from excessive pesticide residues.

The time has come to enact responsible pesticide reforms. Without tough action, we are literally endangering the lives of American consumers. I urge your support for the tough provisions of H.R. 2482 and for my compromise amendment.

Mr. BEDELL. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. HOYER] for a colloquy.

Mr. HOYER. Mr. Chairman, I thank the distinguished subcommittee chairman and want to join his many colleagues who have served with him on

the committee in congratulating him on his past service and congratulating him in particular on the work that he has done with respect to this particular piece of legislation. It is an important bill. I, for one, in the subdivision that I represent very much appreciate the subcommittee chairman, the gentleman from Iowa [Mr. BEDELL], giving attention to the particular problem.

As the chairman knows, I had planned to offer an amendment to clarify that political subdivisions of States can adopt ordinances requiring notification of pesticide use. This is a very important issue within the State of Maryland, where both Prince George's County, which I represent in the House, and Montgomery County have recently passed notification ordinances so people can take precautions when pesticides are sprayed in their neighborhoods. I believe that the Federal Insecticide, Fungicide, and Rodenticide Act does not prohibit such ordinances for two reasons: First, the statute is silent; and second, such silence means political subdivisions of States can pass local pesticide ordinances unless expressly prohibited by the State. My amendment would have clarified that point by explicitly stating that political subdivisions of States are not prohibited from acting in the interest of public health, safety, and welfare. Because it is important to move this landmark bill forward without divisive, protracted debate, I do not plan to offer the amendment.

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. HOYER. I am glad to yield to the gentleman from Iowa.

Mr. BEDELL. I agree with the gentleman from Maryland that cities, towns, counties, and other political subdivisions of States should be able to pass ordinances regarding pesticides, and in this particular case, concerning public notification. I appreciate the candid and informative discussions that the gentleman from Maryland has had with me and with other members of the committee concerning his amendment and the rationale behind it, and I thank him for his cooperation.

Mr. HOYER. Mr. Chairman, I thank the subcommittee chairman.

I would further like to ask the distinguished chairman of the subcommittee if I am correct in my assumption that the chairman of the committee has represented to the staff and to me that he will agree to hold hearings on this very important issue in the early part of the next session, an issue of such great importance to many local communities, in general, and to the people of Prince Georges and Montgomery Counties in Maryland, in particular.

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. HOYER. I am glad to yield to the gentleman from Iowa.

Mr. BEDELL. Mr. Chairman, I appreciate the gentleman's willingness to defer his amendment, and I am assured by the chairman that the committee or subcommittee will hold hearings on the specific issue of whether political subdivisions of States can enact ordinances addressing public notification of pesticide use and related subjects very early in the next session. I understand that many cities, towns, and counties across the country are considering such laws and a few political subdivisions have enacted such ordinances, and that this issue deserves full consideration by the House.

Mr. HOYER. I thank the gentleman and again congratulate him on his efforts and his work, his successful work, and wish him well on the passage of this bill.

□ 1800

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. HOYER. I yield to the gentleman from Iowa.

Mr. BEDELL. I wish to again thank the gentleman. It is the type of cooperation that he has given us in this issue that has made it possible for us to bring this bill to the House, and I want him to know how much I appreciate his cooperation.

Mr. EVANS of Illinois. Mr. Chairman, getting the environmental community and this Nation's agrichemical industry to agree on the right course of action has always been difficult. This is particularly true when the topic is the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA], which is the primary Federal legislation regulating the use of pesticides. The balance between protecting health and the environment with the interests of the pesticide manufacturers is precarious. And increased media attention on the environmental and health risks posed by pesticides has elevated and polarized debate.

The legislation before the House today represents an historic break with this contentious past. The FIFRA reform bill has the full support of more than 90 farm chemical companies including Monsanto, duPont, CIBA-GEIGY, Union Carbide, Shell, and Eli Lilly. It has also been endorsed by the American Farm Bureau Federation.

In addition more than 40 organizations representing environmentalists, labor, and consumers have signed on. These groups include the National Wildlife Federation, Sierra Club, Natural Resources Defense Council, Consumers Union, and the AFL–CIO.

The FIFRA bill before the House is the result of an agreement reached after more than 2 years of negotiations between these parties. That agreement produced notable achievements such as streamlined EPA regulations, improved health and safety testing of pesticides, better controls of exported pesticides, and a community-right-to-know provision.

Mr. Chairman, although as a body the House prides itself on the spirit of compromise, the coalition of support on the FIFRA bill reflects a notable and unique occasion of constructive, bipartisan compromise of a controversial issue. I urge my colleagues to support this bill.

Mr. MARLENEE. Mr. Chairman, I commend the tireless efforts of my colleagues and friends on the Agriculture Committee which are reflected in H.R. 2482. The compromises contained in this bill were reached only after hours of negotiation and represent the views of many individuals. However, I voted against reporting the bill out of committee for a number of reasons.

First, I question the need for this greatly expanded version of FIFRA. Montana has a great many farmers and ranchers affected by this bill, and producers who have contacted me are reluctant, in view of their experience with the Environmental Protection Agency and the Federal Government in general, to see the additional authority created in those bodies.

Second, a major concern I have with this legislation is the underlying provision of this bill which provides for user fees. The bill provides for a one-time fee on active ingredients to assist EPA's reregistration effort. If it is in the public interest to monitor the use of pesticides—a view I do not necessarily adhere to—then it is in the public interest to pay for the reregistration of these active ingredients. The chemical companies have not asked for this reregistration—it is the environmentalists that have pushed for specific deadlines on reregistration. Therefore, all of the funds for this legislation should come through the appropriations process, not through user fees.

Third, this bill, especially the title on reregistration, provides for EPA to meet specific deadlines. Many of these deadlines are simply unrealistic because of the amount of data that must be analyzed for reregistration and the amount of manpower and funding resources available to EPA to accomplish reregistration on time.

This bill says that EPA's failure to meet these deadlines is subject to judicial review. This language authorizes lawsuits by anyone when EPA misses a deadline. The direct cost to the public can be very high—generally about $50,000 per lawsuit to pay plaintiff's attorneys' fees. While there is no specific attorneys' fee provision in this bill, fees can be awarded under the Equal Access to Justice Act. These fees are paid out of the agency's [EPA] budget. This language authorizes lawsuits by anyone when EPA misses a deadline.

The theory is that the public benefits because the lawsuit forces EPA to act. However, these suits are really a convenient way for interested plaintiffs and lawyers to get money. Also, rarely, if ever, do these lawsuits force the agency to do more than it is already doing. It offends common sense and public policy to allow the taxpayer to pay for attorneys' fees in deadline suits. I attempted to amend the bill in the full House Agriculture Committee to say that no attorneys fees or expense shall be awarded for lawsuits brought under this section for failure to meet deadlines. Regretfully, for America's taxpayer and farmer, this amendment failed.

The administration supports the enactment of my proposed amendment. In a letter dated

September 16, 1986, the U.S. Department of Justice concurs in my conclusion that allowing attorneys' fees for breaches of every statutory deadline makes little sense and supports my proposed amendment.

The letter further noted that Justice records indicate that over $2.6 million have been awarded against the United States in 61 attorneys' fees cases handled by the Land and Natural Resources Division alone since 1980. Attorney's fees provisions, according to Justice, for the most part, provide little or no guidance as to when an award of attorneys' fees is appropriate, or what constitutes a reasonable award. Justice further notes that in some cases, attorney's fees award have greatly exceeded the relief obtained by the parties to the proceeding.

It is my view, therefore, that at a minimum Congress should prohibit the award of any attorneys' fees in a suit brought to enforce the deadlines in the reregistration section. I will be offering this amendment on the House floor.

Fourth, an issue of great concern to all of America's agriculture was left unresolved in this bill. An attempt by producer-oriented members of the House Agriculture Committee to amend the bill by including a section on uniform tolerances for pesticide residues was attempted. This issue surfaced a few years ago after the EDB scare. EDB was a major fumigant for citrus and grain producers. However, it was also discovered that it was a carcinogen if ingested by lab animals in extremely large doses. It became a media event in some States when food was taken off of grocery shelves in front of TV cameras.

At that time several States took it upon themselves to establish tolerances different from the Federal level. This created what some people believe to be a unfair and unworkable burden on interstate commerce. It makes little sense for the Federal Government through EPA and FDA to establish tolerances based upon the best scientific evidence and then have States establish their own tolerances based upon questionable expertise. I will fully support the uniform tolerances' amendment when it is offered.

Mr. ROBERTS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. BEDELL. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose, and the Speaker pro tempore [Mr. HOYER] having assumed the chair, Mr. MCHUGH, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2482) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. GAYDOS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 2482.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

□ 1210

OPENING DAY AT PUNTA DEL ESTE

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, this week a new round of negotiations to lay the ground rules for the world trade is taking place in Uruguay. The financial future of all producers, especially the American farmer, is on the table.

Mr. Speaker, I include a copy of the proceedings from the opening day in Uruguay for the consideration of those Members who are interested in those proceedings.

Ambassador Yeutter has reported that the atmosphere at the GATT Ministerial meeting in Punta del Este is "reasonably good". The number of countries is growing in favor of a new round—called the Uruguay Round—based on the communique hammered out in Geneva.

Departing from his prepared remarks, Ambassador Yeutter told the Ministers that GATT must adapt to today's realities or risk disappearing. The world faces a near-crisis in agricultural, for example, and the situation will become even more confrontational if a solution is not found quickly. The GATT, Yeutter said, must deal with intellectual property rights, services and investment, all of which would benefit both development and developing countries. Calling for a strengthened GATT, expecially its disputes settlement mechanisms, the Ambassador suggested that the Ministers meet every year or two to give the organization the status it deserves.

Although many obstacles, remain to be overcome—particularly on services, agriculture, investment and intellectual property—our delegation believes that initial reactions from bilaterals with the French, Australians and others indicate some hope that progress can be made in the areas of most concern to us. Ambassador Yeutter also told the press, however, that he would return to Washington this weekend to be on hand next week to meet with the Congress on trade legislation.

President Sanguinetti of Uruguay opened the plenary session of the GATT ministerial meeting by calling it the "most important trade meeting in the post-war period." He spoke of the symbolism of holding the meeting in Latin America and described his countrys efforts to promote its fledgling political and economic democracy. He mentioned the need for countries like his to have free trade and open markets in order to have a chance to grow out of their problems.

He mentioned the growth of protectionism that is crunching LDCS. Uruguay, for example, has a traditional farm economy and its farmers now find themselves competing, not with other farmers, but with national treasuries. Even industrial country consumers and workers lose by the policies of developed countries that subsidize farm exports, he said.

He spoke of the Cartagena consensus and pointed out that the debt problem is not just a financial one, but also a trade problem. Economies of LDCS must grow in order to handle their debt burdens.

He reaffirmed the need for free trade without discrimination, but argued that LDCS need a few years of "principles and standards that allow us to move more easily."

He called for open hearts and minds to find complex solutions to complex problems, arguing that industrial countries must learn to adjust to changing conditions as LDCS have had to do. Clearly referring to the need for reform in agricultural policies of developed countries, he said he was not calling for sudden, traumatic change, but for a commitment to make progress step by step. He insisted that we must be able to see a light at the end of the tunnel, to know that there is a horizon and a dawn ahead. He compared closed trade to fuedalism and said open trade can lead to renaissance.

Japanese Foreign Minister Kuranari then formally opened the session and proposed that the new round be named the Uruguay round.

Uruguayan Foreign Minister Iglesias then spoke of his confidence that the meeting will be successful. He spoke of the LDCS declining trade and increasing debt. He mentioned GATT violations and the lack of disciplines in agriculture. He said we need to fix the problems of the past and lay the foundation for improvement on mutual confidence and if so would be successful.

He indicated that heads of delegation would meet on a regular basis and that Egypt, Luxembourg and Nicaragua would sit in the chair when he was out of the room. The first heads of Del meeting was called for 10:30 a.m. Tuesday.

GATT Director General Dunkel said it is rare for ministers to meet as often as twice in four years. He said protectionism has expanded and created problems. He said the trade system will be changed and we must work together to see that the change is for the better. Colombian GATT Ambassador Jaramillo then reported on his services group. He indicated that a lot of preparatory work was done on methodology and data, but that there was no consensus on whether to recommend a negotiation on services. The views were too divergent to prepare a text for ministers.

Canadian Foreign Minister Clark opened by endorsing the name "Uruguay Round." He called for a new round that is "global and ambitious" and he warned that the chaos that precede GATT could come again if we fail to move forward. He spoke of the need for negotiations on agriculture, services, natural resources and dispute settlement and endorsed W47 Rev 2. He called for a "clean launch" of the new round.

Ambassador Yeutter commended his prepared text to the delegates attention, but spoke extemporaneously. He called this meeting the most important trade meeting ever. The world is rapidly changing, he said, and the GATT also must change, because the world won't adjust to the GATT. Today's GATT does not meet the world's needs, he said, while noting that he was not criticizing the GATT Secreteriat. All contracting parties make the GATT what it is. And the CPS must ask more of the GATT. We haven't asked enough of it, he said. We must increase the status of the GATT and

strengthen its dispute settlement procedures, which he called "grossly inadequate." He said the GATT must do more surveillance like the IMF does so that CPS are called to account for their trade actions.

He said ministers ought to meet more often, perhaps every year or two, so that ministers would be more involved in the GATT and it would have the stature it deserves. He called for more coordination between the GATT, the World Bank and the IMF.

He said the new round must deal with the near-crisis in agriculture. Farmers are competing with Governments, "including ours," he said, and we must change that. We want to put everything on the table and negotiate a solution quickly or the situation in agricultural trade will become even more confrontational, "and that's a guarantee, not a prediction."

He said the GATT will disappear if it is not broadened to deal with news issues. For example, the GATT must deal with intellectual property rights. He said no one can defend piracy, that the absence of GATT disciplines on IP tarnishes the GATT and that we already have a model in the standards code, which provides a mechanism to enforce standards set by other bodies.

He said agriculture and investment are the two best topics in the new round for LDCS and that he finds it "inexplicable" that some LDCS are resisting negotiations on investment.

He said LDCS don't need legislation to keep out investment—no one wants to invest in LDCS. They need to encourage investment. No one will take over LDC economies. But they can't solve their economic problems without investment. Negotiations on investment present LDCS with a true opportunity to attract investment that will enable them to service their debt.

He said Ambassador Jaramillo did a fine job on his services group. He said he does not understand why a service negotiation is so controversial. It should be evident, he said, that you can't transfer goods without services and that services is a major economic growth area. Not to have rules in services makes no sense when they are so inextricably linked to trade in goods. He noted that no one would be compelled to negotiate on services and that if the result of the negotiation was deemed not to be in a country's interest it would not have to enforce the result.

He believes that would not be in anyone's interest, but that they would be able to make their own judgement.

He noted that trade offices are important and that the US wants to give credits for any benefits that it may receive from the negotiations. We wouldn't want to see a structure that would restrict our ability to give credit for any benefits we receive, especially to LDCS who really need it.

The W47 Rev. 2 text is not perfect, but is a good start for the Uruguay round, he said. He warned that we should not open the text without very persuasive reasons to do so and warned that he must be back in Washington on Monday because the Senate will be working on a trade bill. He called for boldness, not caution.

Singaporean Acting Trade Minister Brig. Gen. Lee spoke on behalf of the Aseans and said they support the Uruguay round. Aseans are large traders who must depend on their market access to developed countries. He spoke of the problems of protectionism and grey area measures, bilateralism, sectoralism and subsidies. He spoke of the need for special treatment of LDCS, but called for a new round and supported the W47 text as a basis for discussion and further work. He called for a special group on tropical products and insisted on an agricultural negotiation to deal with subsidies. He said there should be no linkage between traditional issues and new issues, called for the negotiations to end in four years and said the trade Negotiations Committee must be organized soon.

Mexican Trade Minister Cervantes said Mexico wants to participate in the new round. He spoke of the link between trade and debt and the need for special treatment for LDCS.

Japanese Foreign Minister Kuranari mentioned the cooperation on fiscal and monetary policy in the Tokyo summit and called for similar progress on trade. He mentioned the need for negotiations in new area, especially services, and said Japan support W47.

Argentine Foreign Minister Caputo said the GATT rules are based on a fallacy that all nations are equal and that those rules therefore accentuate the inequality. Beyond that, he said, the richest nations then ignore the rules and make it even more unfair. He decried the U.S. budget deficit and the EC agricultural subsidies and said the LDCS must increase exports to relieve their debts.

He said the developed nations want negotiations in new areas, but won't deal with the problem of agriculture, safeguards, and standstill and rollback. He called for rules that would be respected by all and special treatment for LDCS.

British Secretary of State for Trade and Industry Channon called for a new round with the new issues dealt with on the same basis as the old.

EC Trade Minister de Clerq said we need a new round to strengthen the system and expand trade. He called for an effective standstill commitment. He said agriculture must be discussed, but one aspect must not be overemphasized. He supported the W47 language on new issues. He called for a balance in benefits accruing to CPS from the GATT. He supported special treatment for LDCS, but said as they evolve we must take account of their progress.

Australian Trade Minister Dawkins said the agricultural protectionists have "cocooned their farms in a fool's paradise." He said the free traders in agriculture suffer from the anti-market policies of the largest market economies. He said the Cairns Group will be rational and reasonable but the urgency of the problem requires sharpness in their position. He called for more frequent ministerial meetings and better rules for all sectors.

Colombian Trade Minister Yohai said the new round must help LDC growth. He supported the Colombia and Switzerland draft, W47, and mentioned standstill and rollback, surveillance, tropical products and agriculture. The main theme should be trade in goods, he said, but he recognizes the importance of trade in services.

German Economic Minister Gangemann said the new round must resist protectionism, liberalize trade and strengthen GATT. He said nations must import as well as export. And he said LDCS will profit from services negotiations. He called for a new round to open with everything on the table. No one's interests should be excluded, he said.

EQUAL ACCESS TO AIRLINES FOR HANDICAPPED PERSONS

(Mr. SUNDQUIST asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. SUNDQUIST. Mr. Speaker, I recently cosponsored legislation, H.R. 5274, introduced by Congressmen HAMMERSCHMIDT and MINETA that would provide equal access to the airlines for handicapped persons. I strongly urge the leadership of this body to act on this bill as soon as possible.

This legislation was offered in response to the Supreme Court decision in Department of Transportation versus Paralyzed Veterans of America. In this decision the Court decided that section 504 of the Rehabilitation Act did not apply to the major U.S. airlines. As you know, section 504 forbids discrimination against the handicapped.

The injustices remedied by this legislation are innumerable. No longer will this Nation's handicapped individuals be humiliated and degraded by ill-conceived regulations.

Mr. Speaker, there is enormous and widespread support for this bill and as a part of the RECORD, I insert a list of those organizations and agencies endorsing the intent of this legislative remedy.

The other body has passed, by unanimous consent, a similar bill, S. 2703. Likewise, I ask the leadership of this body to bring this bill to the floor for a vote. The 36 million disabled citizens in this country, many of whom are veterans, must have fair and easy access to our Nation's airlines.

Paralyzed Veterans of America.
Disability Rights Centers.
Disability Rights Education and Defense Fund.
Disability Focus.
Disabled But Able To Vote.
Handicapped Organized Women.
National Challenge Committee of the Disabled.
National Association of Developmental Disability Councils.
National Organization on Disability.
National Spinal Cord Injury Association.
American Coalition of the Blind.
Goodwill Industries.
Coalition of Texans with Disabilities.
American Association of Retired Persons.
American Foundation for the Blind.
National Easter Seal Society.
American Physical Therapy Association.
American Occupational Therapy Association.
National Federation of the Blind.
Epilepsy Foundation of America.
National Council on Independent Living.
Air Transport Association.
U.S. Department of Transportation.
The National Association of State Directors of Veterans Affairs, Inc.
The Association of Handicapped Student Service Programs in Post-Secondary Education.

National Association for Uniformed Services.
Military Order of the Purple Heart.
The Governor's Committee on Employment of the Handicaped, State of Maryland.
Kansas Department of Human Resources, Advisory Committee on Employment of the Handicapped.
Association of Local Governmental Agencies for the Disabled, North East Region.
El Paso Opportunity Center for the Handicapped, El Paso, TX.
Space Coast Association of the Physically Handicapped, Inc.
American Association of University Affiliated Programs.
American Speech-Language-Hearing Association.
Association for Children and Adults with Learning Disabilities.
Association for the Education of Rehabilitation Facility Personnel.
Association for Retarded Citizens.
Center for Law and Social Policy.
Conference of Educational Administrators Serving the Deaf.
Convention of American Instructors of the Deaf.
Council for Exceptional Children.
Council of Organizational Representatives.
National Alliance for the Mentally Ill.
National Association of Private Residential Facilities for the Mentally Retarded.
National Association of Private Schools for Exceptional Children.
National Association of Protection and Advocacy Systems.
National Association of Rehabilitative Facilities.
National Association of State Mental Retardation Program Directors.
National Council on Rehabilitation Education.
National Head Injury Foundation.
National Mental Health Association.
National Park and Recreation Association.
National Rehabilitation Association.
The Association for Persons with Severe Handicaps.
United Cerebral Palsy Associations, Inc.
U.S. Department of Justice.
Special Olympics, Inc.

THE CASE AGAINST LOCAL COST SHARING IN THE MISSISSIPPI RIVER AND TRIBUTARIES PROJECT

(Mr. EMERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. EMERSON. Mr. Speaker, at a meeting this morning of the Lower Mississippi Valley Flood Control Association, hosting Representatives and Senators of the lower valley and many other distinguished invited guests, Mr. George C. Grugett, executive vice president of the association, stated most succinctly the case for which there should not be local cost-sharing imposed at this stage in the construction of the Mississippi River and tributaries project.

Mr. Grugett gives us an outstanding historical background on the MR&T project and the very salient reasons, principally that the MR&T drains approximately 40 percent of the continental United States, for which local funding would be inappropriate, inadvisable, and unwarranted.

My colleagues, I am pleased to share Mr. Grugett's remarks with you for your consideration:

REMARKS OF MR. GEORGE GRUGETT

Ladies and gentlemen, speaking on behalf of the 110 water related organizations that make up the membership of the Lower Mississippi Valley Flood Control Association and especially on behalf of the ten gentleman who are elected by their neighbors to serve on the executive committee that manages and directs the policy established by the association, let me say thanks to each of you who have taken the time from your all too busy schedule this morning to join with us for our seventh annual breakfast.

When I say our seventh annual breakfast there may be some who would think that this is a relatively new "kid on the block" or as we in the South might say, "a comelately." Not so, the Lower Mississippi Valley Flood Control Association held its 50th annual meeting this past December and was in fact organized in 1922. Our 110 member organizations include levee boards, drainage districts, port authorities, harbor commissions, State agencies, municipalities and also just individuals that share our problems and concerns. Those problems address themself to flood control, navigation, channel improvements and major drainage in the seven States of the alluvial valley of the lower Mississippi River and I think more importantly our concerns are for the welfare and prosperity of this great Nation of ours.

Our association is comprised of a very large group of individuals who are businessmen, property owners, conservationists, farmers, attorneys, doctors, wildlife enthusiasts, engineers, accountants, environmentalists, civil servants and elected officials from all political parties. We are indeed fortunate that for the past 50 years our officers, that are elected annually by the membership, have been distinguished members of the Congress of these United States.

I feel that it is important that I give you this very brief amount of background information on the Lower Mississippi Valley Flood Control Association in order that you might clearly see that when we again today discuss with you our problems and concerns with pending water resources legislation that we are not being parochial, regional or unfair in our approach or requests but that we do in fact represent a unique and different situation because the principal objective of this association is the support and sponsorship of a single, comprehensive, multi-State project that was established by law to solve a national problem and one that the Congress in its wisdom, by almost unanimous consent, agreed should be a complete Federal responsibility.

I sincerely hope that I might be successful in this attempt and in order to gain some advantage I will be quoting from several highly respected individuals and from facts and records of others. In all probability I will quote some that are present, certainly with no intent other than to emphasize what you have already stated.

I feel that some explanation and a little history of the Mississippi River and Tributaries Project is required even if it may be repetitious to most of those present.

The Mississippi River has the third largest drainage basin in the world. It drains 41% of the lower 48 States and two providences of Canada. The river renders vital service to over 40% of the area of the country but at the same time it poses a significant and continuing flood threat to the inhabitants of the Lower Mississippi Valley.

Prior to 1926,the inhabitants of the valley had spent about $300,000,000 for flood control. In spite of this huge outlay of money they suffered direct damages from the 1927 flood in excess of $236,000,000. In addition as many as 500 lives were lost, 162,000 homes were inundated and there were approximately 325,000 refugees to be cared for.

In 1928 the Congress passed the Flood Control Act of May 15th that established the Mississippi River and Tributaries Project as a single project to solve a national problem. It is a complete authorization within itself adopted to prevent the misery, suffering and loss occasioned by floods on the lower Mississippi River. Section 2 of the act expressed legislative intent and emphasized that the project is a Federal project. No doubt should remain on that score in light of the concluding clause—"no local contribution to the project herein adopted is required."

Now let's look at what has happened since passage of the 1928 act.

On June the 22nd of this year the Corps of Engineers celebrated the 50th anniversary of the signing of the Flood Control Act of 1936. The one that is sometimes called the General Flood Control Act or the Copeland Act in honor of Royal Copeland then the distinguished Senator from New York. The corps could have also celebrated on June the 15th the 50th anniversary of the other Flood Control Act of 1936, the one that is sometimes called the Mississippi River and Tributaries Act or the Overton Act in honor of John Overton the then distinguished Senator from Louisiana who was at that time serving as the first president of the Lower Mississippi Valley Flood Control Association.

Of course the Overton Act was an amendment to the 1928 act and applied only to the Mississippi River and Tributaries Project. Let's look at the other 1936 act, the Copeland Act, this act by section 8 specifically provided that "nothing in this act shall be construed as repealing or amending any provision of the 1928 Flood Control Act." In all subsequent flood control legislation this division of law between the projects for the lower Mississippi River and tributaries and for general flood control has been continued by specific language and all subsequent flood control acts have included the language "the project for flood control of the lower Mississippi River adopted by act of May 15, 1928 as amended is hereby modified, etc." Consequently, the act of May 15, 1928 and its amendments is the controlling legislation for the Lower Mississippi River and Tributaries Project and the General Flood Control Acts have no application thereto, a construction that has been accepted for over 50 years and one that should not be changed at this time.

Let me quote only a very few individuals in order to give you their thoughts on this premise.

Congressman Tom Bevill of Alabama—chairman of the Subcommittee on Energy and Water Development:

"The Mississippi River and tributaries project is one project addressing the flood problems of the seven States—failure to complete this project as a complete unit will totally cripple the project. It is totally unrealistic to expect the citizens of the lower

Mississippi Valley to pay new or additional costs to protect themselves from devastating floods coming down on them from over 40 percent of the land area of the United States."

Congressman Gene Snyder of Kentucky—ranking minority member, Committee on Public Works and Transportation:

"The Mississippi River and Tributaries is a single project, albeit a large one, with many parts, and to apply a new cost-sharing formula to these parts by considering each as a separate project is unrealistic, unfeasible and unfair. The people in the Lower Mississippi River Valley have been fighting the floodwaters of that great river and its tributaries for years, and they have contributed substantially to flood control efforts. It is not their water which floods their land and their homes. It is water brought down to them from the upper reaches of the Mississippi."

Congressman Arlan Stangeland of Minnesota—ranking minority member, Subcommittee on Water Resources:

"Given the history and unique nature of the Mississippi River and tributaries project, to treat each element as a separate project would in my judgment, be most unfair to the MR&T project. These are, in fact, not new projects; they are elements and features of a single comprehensive overall project."

Let me next give you just one example of how the Congress of the United States, as well as the administration, has considered the Mississippi River and Tributaries Project in the past and I quote from section 201 of the Flood Control Act of 1962.

"The project for flood control and improvement of the lower Mississippi River adopted by the Act approved May 15, 1928, as amended by subsequent Acts, is hereby modified and expanded to include the following items:

"(A) Monetary authorizations heretofore and hereafter made available to the project or any portion thereof shall be combined into a single sum and be available for application to any portion of the project."

This appears to be clear indication that the Mississippi River and Tributaries Project was considered by one and all to be a single project not to be broken into "separable elements" or what have you.

Just one more from a statement by the past distinguished Senator from Arkansas, made on December 2, 1955 in New Orleans, Louisiana. Quoting from Senator John C. McClellan:

"The physical geography of the Mississippi River is such that flood control interests do not stop at the main river but extend upstream along the adjacent tributary streams and valleys. The flood control plan on the lower Mississippi River therefore cannot be considered adequate or complete until the flood control plans for these valleys, authorized as a part of the Mississippi River and Tributaries Project, are completed."

I would like at this time to point out to you an example of what the Mississippi River and Tributaries Project has done for this Nation and to show you what an excellent Federal investment has been made.

I mentioned earlier that the Corps of Engineers celebrated the 50th anniversary of the signing of the General Flood Control Act of 1936, during that time they published information that states that:

"Appropriations from Congress have enabled the Corps to invest $23 billion in flood control projects throughout the nation over the past 50 years. More than $150 billion worth of flood damages have been prevented by more than 300 projects currently operated by the Corps. This represents more than seven times the original investment."

Now this is something to be proud of.

Included in those figures of course is the Mississippi River and Tributaries Project and I would like to separate them for you. Out of the total of $23 billion invested less than $4 billion has been spent for the Mississippi River and Tributaries Project or about 17% of the total. Out of the $150 billion in flood damages prevented about $107½ billion is attributed to the Mississippi River and Tributaries Project or about 72% of the total. The Mississippi River and Tributaries Project represents more than 27 times its original investment. Now there's something to really brag about.

Even with that fantastic track record, the Mississippi River and Tributaries Project is not completed and we are still unable to pass the project flood to the Gulf of Mexico. We need to complete the work that is required to make this great project and wonderful investment function properly.

This association has long recognized the need for passage of a water resources authorization bill and I quote from a statement made on September 30, 1980 by a member of our executive committee at the occasion of our first annual breakfast meeting here in the Rayburn Building.

"The Lower Mississippi Valley Flood Control Association is concerned over the fact that it has been over four years since the Congress has passed a Water Resources Authorization Bill. We see this as a very serious problem and one that needs to be solved.

"We are all aware that the problem of flood control in the Lower Mississippi Valley is far from being solved and we are also aware that additional authorizations are needed from the Congress before all the problems can be solved.

We still support passage of a water resources authorization bill but we cannot in good conscience support a bill that will deauthorize all projects, or separable elements of projects where construction has not commenced within ten years of authorization. In the Mississippi River and Tributaries Project alone this could mean the deauthorization of close to $1 billion worth of work that the Congress has authorized as needed to complete this project. I say could because at this point in time we are not sure what definition of several in the record we should use for separable elements. We do know we have strong concerns for legislation that will have such an impact on the people of the Lower Mississippi Valley and the Nation which contains a term throughout the bill that has not been properly defined by the Congress.

We also find it totally uneconomical to deauthorize any project or separable elements of projects without first investigating their merits especially where the Federal Government has already invested millions of dollars. It would appear that the local taxpayer is being unduly penalized for the length of time required for the Corps of Engineers to bring an authorized project to construction.

In our opinion we find the language in the Senate version of H.R. 6 dealing with mitigation of fish and wildlife losses on completed and under construction projects to be expensive, expansive and unreasonable and we wonder why the Congress would now give up their long-held policy that only they should authorize the acquisition of lands for mitigation purposes. We foresee the authorization to the Secretary of the Army for this unknown expenditure of monies to be one that could certainly be devastating to the economy of this Nation and could take millions of acres of land out of private ownership. The Senate version of H.R. 6 does limit the obligation to no more than $30 million in any fiscal year but it does not limit the number of years.

Ladies and gentlemen for the sake of time I will not go into all the details concerning cost-sharing for the Mississippi River and Tributaries Project. We have addressed that problem with all who would listen certainly over the past four years. You have heard or read statements opposing new or additional cost sharing for the Mississippi River and Tributaries Project that have been made by every Senator and Congressman in the seven States of the Lower Mississippi Valley as well as several distinguished Members outside the valley. Both Houses of the Congress voted for and the President signed the recent supplemental appropriations bill that contained language that would exempt the Mississippi River and tributaries or any other comprehensive, multi-State flood control project from new or additional cost sharing. We desire and must have a bill that will continue this policy.

We and you have been assured on several occasions that only unscheduled portions of the Mississippi River and Tributaries Project, or according to the last schedule we saw, something over $700 million worth of unfinished authorization will have to be cost-shared.

We in the Lower Mississippi Valley have two big problems with this theory of scheduled versus unscheduled work. First we can ill afford to give up this so-called unscheduled work and give it up we must because of a financial inability to provide the required cost-sharing. The other real problem we have is that no one can assure us that this interpretation will remain in future administrations until we complete the Mississippi River and Tributaries Project and can safely pass the project design flood that's coming from over 40 percent of the country.

We note that the executive department has stated in correspondence that although certain items are already under construction, the remaining features of the work will have to be cost shared under the concepts agreed to by the administration and the Senate majority leadership.

Let me try to wind-down by quoting Mr. Ron Besson in his statement at this meeting last year.

"The most pressing point that we wish to make to you Ladies and Gentlemen is that the comprehensive project that was authorized in the Flood Control Act of 1928 is not completed and each element and feature of this project is an integral part of the overall project and each is interdependent, the remaining work is not new but are merely steps toward completing an existing project and no new or additional cost-sharing should be required for any part of such a comprehenisve project."

One other point I wish to make, this association has been accused of being anti-water resources bill. Nothing could be further from the truth, this association has always supported every water resources authorization bill since 1922. Today we would be very pleased to see the House version of H.R. 6 signed into law. We have to believe that we are being called anti simply because we do not totally agree with the administration's position that the Senate version of H.R. 6 is the only game in town. We cannot blindly

and with no changes or compromises accept a bill that will deauthorize almost $1 billion worth of vitally needed Mississippi River and tributaries work that we have worked so hard to achieve. We cannot say yes to a bill that will impose unreasonable and unpayable new and additional cost sharing to the unfinished part of the Mississippi River and Tributaries Project when we know all too well that we must complete the entire project before the people in the valley can be safe from the devastating flood waters coming down from over 40% of this Nation. As taxpayers we cannot in good conscience support legislation that will authorize unlimited mitigation for completed projects. We feel we must know the amounts of dollars and land that this obligates us and the future to.

We feel now as we have always felt that any major decisions, be it water resources or whatever, should be made in the open forum of the Congress. This arrangement has served this country well over the years and we do not feel that it should change now or ever.

Secretary Dawson has been quoted in the newspapers as saying that if cost-sharing is enacted then "projects will be smaller but we'll have the best ones." If that works for projects maybe it will work for authorization bills. Perhaps we need smaller bills and maybe we should have separate bills for the Mississippi River and Tributaries Project and other flood control as we did in 1936 and as I've stated earlier the Mississippi River and tributaries has always been separate legislation. I will go back to our first breakfast meeting in 1980 and quote one of our spokesmen who said:

"The Bills that have been acted on but not passed by the Congress in recent years have contained several vitally needed projects. They have also contained a lot of items. Maybe we should work together to establish priorities in order to limit what's in the Bill which may make it easier to get passed and signed into law."

One thing I do know for certain. Our Federal program of river development and improvement must go on. The long history of the world proves that when a nation hesitates in its internal betterment it begins to slip backward.

America's destiny I hope is not ready to go into reverse.

Thank you for this opportunity and special thanks for your kind attention.

WE NEED TO STOP SHIFTING FEDERAL BUDGET BURDENS TO THE STATES THROUGH UNFUNDED MANDATES

(Mr. BARNARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARNARD. Mr. Speaker, today I introduce legislation aimed at preventing an existing problem with congressional decisionmaking from becoming much worse. That problem is the growing tendency to circumvent budgetary controls on new Federal domestic spending by enacting national policy mandates and then requiring State and local governments to pick up the tab.

This tendency is not associated with any one political party or any particular ideological persuasion. Conservatives sometimes support imposing mandates on States and localities as a roundabout way to return domestic responsibilities from Washington. Liberals on occasion see unfunded mandates as the only available avenue for pursuing desirable social objectives. Both in Congress and within the administration, such efforts are often rationalized by comparison of the Federal budget deficit to the relatively sound fiscal condition of States and localities. Of course, virtually all State and local governments are required by constitution or statute to approve and maintain balanced budgets, and it hardly seems fair to penalize them for succeeding where we have so far failed.

The legislation I introduce today would not flatly prohibit the imposition of new costs on State and local governments, but it would ensure that such actions are not taken without due analysis and debate of the consequences. How many Members were aware that our fiscal year 1986 budget reconciliation bill imposed massive new costs on our constituents back home through mandatory extension of Medicare coverage to new State and local employees?

This initiative and many others of the same nature may well be sound Federal policy. My point is that it is fiscally irresponsible to impose such new costs without careful analysis, and a guaranteed opportunity to assess and debate the impact on our constituents as State and local taxpayers.

This bill will address both objectives through two simple amendments to the Congressional Budget Act of 1974. The first section creates a point of order, waivable through the normal procedures of each Chamber, against any legislation imposing a new obligation on State and local governments costing on a national basis more than $50 million per year.

Sequestrations under the Gramm-Rudman-Hollings legislation are specifically exempted from this point of order. The second section beefs up the existing requirement, honored primarily in the breach, that the House and Senate Budget Committees conduct detailed decisions on State and local governments. In combination, these two provisions would help guarantee that massive new costs for our constituents would no longer be adopted unintentionally or negligently, buried in the fine print of some fast-moving bill.

Some Members may object that this bill adds yet another procedural requirement to an already overburdened congressional budget process. I would respond that the fundamental purpose of the budget progress is endangered if we fail to recognize efforts to shift costs back to our constituents in the guise of reducing or containing Federal spending. As a former Governor of my State, George Busbee, used to say when he was Chairman of the National Governors' Association, "you can't save a buck by passing the buck." Imposing Federal costs on States and localities clearly violates the spirit of the Congressional Budget Act, and this bill would simply place the most minimal safeguards into the letter of the Act.

I want to make a special appeal to those Members who have over the years supported termination or reduction in the General Revenue Sharing Program for States and localities. As you know, revenue sharing for the States was eliminated back in 1980, and payments to cities and counties may well end on October 1. In my opinion, the best argument for revenue sharing has been that it provides some assistance in offsetting the cost of unfunded Federal mandates, in areas ranging from environmental protection to wage rates on Federal projects. If our position is that we no longer can afford to help pay for existing unfunded obligations, then I think the least we can do is make some effort to ensure that major new obligations are not imposed on States and localities without some compelling national need. Otherwise, Governors, State legislators, and city and county officials, not to mention our constituents, may justifiably conclude that we are indifferent to our entire system of federalism.

This bill is strongly supported by the bipartisan National Governors' Association and National Conference of State Legislatures. It would become effective in January for the Congress.

I urge Members from both parties to offer immediate support for this legislation, symbolizing a bipartisan commitment to adopt a fresh and honest approach with State and local officials, without whom all our efforts toward fiscal responsibility will come to naught.

CHICAGO'S 21ST ANNUAL GENERAL VON STEUBEN PARADE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, the anniversary of the birth of Gen. Friedrich Wilhelm von Steuben is on September 17, and on Saturday, September 20, I am looking forward to joining with my many friends in the United German-American Societies of Greater Chicago on the reviewing stand for Chicago's 21st Annual General von Steuben Parade, to celebrate the numerous contributions of this great patriot in America's War of Independence.

The parade will step off at 12 noon at Wacker Drive and Dearborn Street and proceed past the reviewing stand located at the Richard J. Daley Center. In addition, the

United German-American Societies of Greater Chicago will sponsor a great 3-day German Festival from Friday, September 19 through Sunday, September 21, at the Ludwig Mies Van der Rohe Plaza, located on Leland and Western Avenues in Chicago.

These events not only will commemorate the crucial and major contribution of General von Steuben in the winning of the American Revolution, but also will recognize the many contributions of German-Americans throughout the entire history of our country. America is a land of immigrants, and the immigrants who settled here from Germany have made countless and inestimable contributions to our Nation's freedom and greatness, and to our Nation's rich scientific, cultural, and economic life.

The officers and members of all the United German-American Societies of Greater Chicago are working hard to make the 21st Annual General von Steuben Parade another great success and all of Chicago is looking forward to this grand event. I extend to them my warmest congratulations on their achievements and on making Chicagoland a better place in which to live, and especially I extend my congratulations to Karl C. Laschet, the perennial energetic general chairman and grand marshal of the von Steuben Parade in Chicago.

General von Steuben won a special place among the heroes of the American Revolution because of his many talents and his extensive experience. He was 47 years old when he arrived in 1777, after achieving high standing for his accomplishments in Prussia as a member of the general staff of King Frederick the Great.

In early 1778, von Steuben reported for duty to General Washington at Valley Forge at a time when the colonies were suffering military setbacks and low morale. During the bitter winter at Valley Forge, General von Steuben went to work to sustain the courage of the troops, and even contributed his private funds for their well-being. He drilled and taught them up-to-date military practices so that when spring finally arrived, they were ready to engage the best army of that time in equal combat.

It was during this winter that von Steuben wrote his all-important manual on the basics of drill and field service regulations for the American citizen-soldier which was entitled, "Regulations for the Order and Discipline of the Troops of the United States." This publication, known as the "blue book," served as the official Army manual until 1812. In appreciation for his services, the State of New York awarded General von Steuben a 16,000-acre estate, and Congress granted him a pension of $2,500 for the rest of his life.

Mr Speaker, on this occasion of commemorating the courage and heriosm of General Friedrich von Steuben, it is a genuine pleasure for me to send my greetings and best wishes to the German-Americans who reside in the 11th Congressional District of Illinois which I am honored to represent, and to Americans of German descent all over the Nation, who are celebrating the many lasting contributions of men and women of German ancestry which have added to America's greatness.

FIFRA AMENDMENTS SHOULD INCLUDE FIELD SANITATION STANDARD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. GAYDOS] is recognized for 60 minutes.

Mr. GAYDOS. Mr. Speaker, the 99th Congress can take special pride in the significant progress it is making in the effort to insure that every working American has a safer and healthier place in which to earn a living.

Earlier in this Congress, the House passed the Superfund reauthorization which included very specific health, safety, and training standards for those workers who were to be involved in cleaning up toxic wastesites. The Senate version of the Superfund bill included less specific standards, but the final package, which should be on the schedule very shortly will include the more comprehensive standards.

Those standards were developed in hearings conducted by my Subcommittee on Health and Safety in May of 1985.

This week, the House is considering H.R. 2482, the amendments to the Federal Insecticide, Fungacide, and Rodenticide Act, better known as FIFRA, which governs the regulation and use of pesticides.

Again, as we did in the Superfund legislation, we are including a provision for protecting the health and safety of those men and women who handle and work with those pesticides.

In the case of FIFRA, though, we are not suggesting specific language for a standard. Instead, we are requiring that the Environmental Protection Agency [EPA] create a standard to insure the health and safety of those involved in the manufacture, distribution, and application of pesticides, as well as those agricultural workers who pick crops treated with pesticides.

I am particularly glad that agricultural workers will be included because, up to now, they have been the stepchildren in the working movement, left out of the mainstream of worker protections provided for under the Occupational Safety and Health Act of 1970.

I don't know why those men and women who are engaged in the hand-harvesting of crops are left out, but they are. Maybe because they are so poor, we haven't listened as carefully as we should to their cries for dignity and help.

Maybe because they migrate from State to State, depending on where the ripening crops are, their concerns have fallen through the cracks of State and Federal assistance agencies.

Maybe because they too often don't speak English as well as others, they are ignored and taken advantage of.

There is no question in my mind that this Nation's nearly 4 million farmworkers are in desperate need of coverage under OSHA and deserve the same basic guarantees available to all other workers.

Why must farmworkers suffer the indignity of not having toilet facilities in the fields? Why must farmworkers suffer higher rates of disease and infection because they have no hand-washing facilities in the fields? Why must farmworkers suffer heat exhaustion and heat stroke because drinking water isn't available to them during the working day?

After reviewing the nearly 15-year record of failure by the courts and several Federal administrations as well as a few half-hearted attempts in a few States, I determined that a Federal standard for field sanitation was necessary.

Therefore, earlier this year, I introduced H.R. 4029, a bill which creates a specific field sanitation standard for workers involved in the land-harvesting of crops.

The language included in the FIFRA bill is certainly a strong step in the right direction. H.R. 4029, which would require toilet facilities, drinking water, and hand-washing facilities would help complete the cycle.

I have given some thought to offering H.R. 4029 as an amendment to the FIFRA bill, but I am afraid that to do so might unravel the carefully crafted package designed by the coalition of business, labor, health, consumer, and environmental groups.

So, I suggest to EPA that it consider some of the elements in H.R. 4029 as it develops the health and safety standards for workers exposed to pesticides in the fields.

I still firmly believe that a national standard is the only real assurance the farmworkers will have to insure that growers in every State provide the basic minimum in field sanitation systems.

We know it is important that these standards be put in place. The evidence is easily available. Farmworkers are 3.5 times more likely to suffer from urinary tract infections than the general population.

Farmworkers are 3.8 times more likely to suffer skin infections from exposure to pesticides than the general population.

Farmworkers are 4.1 times more likely to suffer heat-related illnesses than the general population.

Farmworkers are 11 times more likely to suffer gastrointestinal and parasitic infections than the general population.

And farmworkers are 25 times more likely to suffer from all kinds of pesticide-related diseases and illnesses than the general population.

The real tragedy is that we are still trying to do something instead of having already taken action.

The most distressing piece in the entire puzzle occurred in April 1985 when Bob Rowland, then the Assistant Secretary of Labor for OSHA, told the courts that, in his view, field sanitation standards were unnecessary.

In that simple statement, Rowland refuted the testimony presented to OSHA during its hearings on the proposed standard.

The result is that today we still do not have a Federal standard.

The second distressing part of the puzzle came in October of last year when Secretary of Labor Bill Brock said that he would hold the OSHA field sanitation standard in abeyance for another 18 months to give individual States an opportunity to develop their own standards.

At the end of the 18-month period, due to expire in April 1987, Secretary Brock says he will review the actions by the States to determine if an adequate number of States have adopted and implemented adequate standards. If the numbers are adequate, Secretary Brock says he will forgo the implementation of a national standard on field sanitation.

If the numbers and/or actions are inadequate, a Federal standard will be in place within another 6 months—October 1987.

There is only one problem with Secretary Brock's plan. He, and only he, knows exactly what he means by adequate action by a satisfactory number of States and he has not shared his ideas with anyone, including the Subcommittee on Health and Safety when he testified before us in May of this year. My guess is that even the Secretary doesn't know and will make his decision at the last possible minute.

That poses several problems. It means that taking action on a Federal field sanitation standard legislatively will have rough going because there will be those Members who believe we should wait for Brock's decision in April of next year.

I have a somewhat different concern. Based on testimony presented to the Subcommittee on Health and Safety at two hearings on H.R. 4029, we learned that even though States may have standards, there is no guarantee that they are or will be enforced.

At one of our hearings on H.R. 4029 earlier this year, North Carolina Secretary of Labor John Brooks testified that while his State, North Carolina, did have a field sanitation standard, it had no way of enforcing that standard.

Another State that has had a standard since 1977, Florida, recently revamped its standard after a series of meetings between the State Department of health and rehabilitative services and grower organizations.

Enforcement of the Florida standard is the responsibility of the State health department structure, which includes county health departments. It has been found that enforcement had been spotty, depending on the staffing and activities within a county health department.

But let's get back to Secretary Brock's standard for deciding whether or not to implement the Federal field sanitation standard.

The latest count by OSHA, which is staying in contact with the States on the development and implementation of field sanitation standards, is: 19 States with standards; 12 States and Puerto Rico developing standards; 15 States and the Virgin Islands declining to develop standards; and 4 States which have not as yet announced a decision.

To help my colleagues better understand where their States fall in the struggle to provide basic dignities for this segment of the American work force, I am including a listing of the States in each of the four categories.

Those States that have had or have adopted standards since Secretary Brock's decision last October are: Arizona, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Maine, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Texas, Utah, Wisconsin, and Wyoming.

Those States that are developing standards or have committed to developing them are: Alaska, Indiana, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Virginia, Washington, and Puerto Rico.

The following States have announced that they will not be developing field sanitation standards: Alabama, Arkansas, Hawaii, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Montana, Nebraska, Nevada, Oklahoma, South Dakota, Vermont, West Virginia, and the Virgin Islands.

And those States that have not yet indicated whether they will or not take any action: Georgia, Louisiana, Missouri, and New Hampshire.

So there we have it, the who's who among States in field sanitation standards. I have no knowledge of the standards being implemented themselves, whether they are adequate to meet the needs of America's farmworkers.

I do know one thing, though, several States that have declined to adopt or implement a field sanitation standard are among those that have significant hand-harvesting and should have a standard.

Also, I firmly believe that this is the most singular group of employees and, because they travel to many different States during the different picking seasons, they deserve a single national standard insofar as field sanitation is concerned.

We have ignored the needs of this group of workers for far too long already. These men and women who pick the crops have suffered enough indignity, enough inconvenience, and enough pain.

We are not talking about a huge expenditure when we talk about field sanitation. We are talking about pennies per day per worker.

When OSHA conducted hearings on its proposed standard, one witness who was knowledgeable about the portable toilet business said that OSHA's own study showed the rental cost of a portable toilet to range between $55 and $65 a month, roughly $2 per day.

If the farmer were to have just 20 people picking on an average day for that month, the cost per toilet would be 10 cents per person. Imagine, just a dime cost per worker in the field.

And, even if we add in the cost of toilet tissue, the barrels filled with drinking water and the cups and the water for washing hands and the paper towels, what are we really talking about—25 cents per day per worker, 50 cents per day per worker.

As we consider the FIFRA amendments this week, I want you, my colleagues, to consider the real needs of America's farmworkers.

This year only 45 of you joined with me by cosponsoring H.R. 4029. To pass the bill, we will need a great many more votes than that.

We have run out of time for the field sanitation bill for this Congress. Now, we can only suggest that EPA consider the elements of H.R. 4029 when it drafts the standards governing worker exposures in pesticide-treated fields and hope that agency includes them.

If EPA does not consider the field sanitation standards in H.R. 4029, and if Secretary Brock decides to let the conditions worsen rather than implement OSHA's Federal field sanitation standard, then I will tell you right here and now that I will reintroduce the bill next year and expend every effort to see that a Federal field sanitation standard is legislatively put in place.

America's farmworkers have suffered too much for too long. They deserve the same consideration that all other workers get from the Department of Labor. They deserve the same expectations for a healthy and safe workplace that is assured to all other workers under the Occupational Safety and Health Act of 1970.

If this administration will not do it, and if the States cannot do it, the Congress will have to do it.

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REFLECTIONS ON THE TAX REFORM BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. ARCHER] is recognized for 60 minutes.

Mr. ARCHER. Mr. Speaker, I rise today to take time to begin to explain much of what we expect to be in the broad-base tax reform bill which we anticipate will be filed with the House tomorrow afternoon and voted upon next week, either Tuesday or Wednesday.

It is not difficult to express the good that is in this bill. It is not difficult to explain the bad portions of the current Tax Code, what is bad about the current law. We all have run into it time after time.

The good in this bill obviously is involved in marginal rate reduction and in an effort to make more Americans pay tax where some are not paying any tax at all.

The bill is presented on a basis which, in my opinion, is not truly accurate. It is presented on the basis of fairness, growth, and simplicity. I would like to analyze each of those goals with the American people tonight.

Fairness is like beauty; it is in the eye of the beholder. If my taxes are reduced, I assume that I would believe that this bill is fairer for me; and that is the way most of my constitutents feel.

As a matter of fact, my own personal taxes, as best I understand this bill, which is not yet fully written, will be reduced. I have run my 1985 tax return through the computer, and it shows that I would personally save in my income taxes. It has been reported that the President will save a significant amount in his personal income taxes.

Many will benefit, but many will not. Of middle-income America, 25 percent of all taxpayers will have an increased tax above the current law. 75 percent, yes, will receive some type of reduction.

So the averages show that everybody receives a reduction; but that is not true. We do not know for sure who those 25 percent are, and they will not know until they figure their tax on next year's income.

For the first time, this bill involves the taxation of true economic losses to corporations, and we all really have a vested interest in corporations because most of the big corporations are owned by pension plans in which most of us have our retirement funds invested, and we have a stake in what happens.

We also have a stake in the prices that corporations have to charge for their products, if their costs are increased. By taxing losses for the first time, by refusing to permit a loss carryforward of legitimate losses into the next year, we are striking and breaking new ground.

I could go on and on as to many of the things that I think are unfair in this bill, and I will get into more as we go along; but let me move on to the standard of growth.

Many believe that this bill will bring about economic growth; and certainly that is to be desired, but before the Committee on Ways and Means began its deliberations last year, we had nine of the Nation's top economists with us at a meeting.

We asked them how much growth we could expect in the long term from the President's bill that was then before us. They said that the most—all agreed and that is very unusual for economists, because you ask nine economists a question and you generally get nine different answers—but all of them agreed on this one thing: That if you designed the best bill that could be designed, in theory, that the most that you could get would be 2- to 3-percent increase in real growth after 10 years, one time, nonrecurring. Only once; not repeating year after year, and only after 10 years.

On the President's bill, they graded that as potentially a maximum of 1 to 1½ percent of real growth. They have not had a chance to look at the House bill and the Senate bill and to evaluate what they think will be in the compromise conference committee report. Again, as I say, now still being written by the staff, although a majority of the conferees have signed the conference report, and signed a blank check that the staff can fill in on a law that will impact on all of us in this country for years to come.

They evaluated what they think will be in this bill, and most of them say that it will not bring about any real long-term growth.

The uncertainty that is involved in this bill, which is massive, has caused them to say that in the short term it is very, very difficult to evaluate what the impact will be on the economy; but most of them say that they believe that it will be negative and I have not talked to any who believe that it will be significantly positive.

So we must disabuse ourselves of the concept that this bill alone will being growth that will benefit all Americans.

Finally, the goal is simplicity, and I still read newspaper headlines that say: "Tax Simplification Bill Still Alive." "Tax Simplification Expected to Pass." Ladies and gentleman, nothing could be farther from the truth.

This bill will embody between 1,500 and 2,000 new pages of tax law, which will not replace the 13,000 pages currently on the books; but will be added to that 13,000 pages, and the committee has anticipated that it will require the addition of numerous additional IRS agents; and certainly that is not simplicity.

For those 5 to 6 million Americans who will be dropped from the tax roles at the lower end of the income structure, there will certainly be a benefit; and that is one of the good that is in this bill. I cannot argue that it is not simpler not to file a return than to file a return. For these who do not file a return today, it is far simpler than for those who do have to file a return.

For those who continue to have to file a return, it is going to be more difficult. The return may not look more difficult in itself, but the computations that will be necessary to get to the point of filling out the return will be extremely complicated.

One of my colleagues on the committee said during the deliberations on this bill, that when you do all the computation essential to getting to the point of filling out your return, "it's Miller time."

I talked last week to a number of CPA's and tax consultants, and they continuously told me, "I don't know how I'm going to explain to my clients that what cost them $1,000 to prepare their return this year is going to cost them $2,000 under the new code."

Corporations for the first time will have to keep three separate sets of books under this code. There are considered to be unworkable provisions by the staff that is obligated to write this bill that have been dictated to them by a bill that has basically been conceived in secret and designed by two Members of Congress.

Those provisions will be extremely difficult to implement, and they relate to the minimum tax on corporations under the book income preference and under the moving from that after 3 years to earning and profits.

So I am convinced this bill will be more complicated; it will be more difficult to administer, and it fails in reaching the goal of simplicity.

So when we evaluate this bill, we cannot simply take the good that we hear so easily, which I can present in 5 minutes; we must also take the price of that good, understanding that nothing comes free of charge, and determine whether the scales tip this way or tip that way.

In my opinion, the price of the good outweighs the benefit of the good, primarily because of uncertainty, because of retroactivity, because of potential negative impact on the economy, because of the increased cost of capital to this country which will tend to make us less competitive in the world marketplace.

There are many, many other detail provisions that are prices that we have to pay for the good. I hope to explain more of them tonight and hopefully tomorrow night, and perhaps another

night before the bill comes on the floor, considering that the time for debate will be limited when the bill is actually before us.

□ 1830

In the deliverations on this bill there was no real debate on the economic considerations involved. What is the economic fallout? We cannot merely look at tax reform without considering what impact that has on other aspects of our life. Yet there was no economic impact study on any of the provisions. We were mesmerized by the tax tables without consideration of any of the other aspects.

At the present time we are already consuming more than we produce, spending more than we earn and borrowing more than we save in the United States of America.

This bill can do nothing but exacerbate the current conditions in that regard. The economy is in a fragile state. Can we afford to take the risk of the uncertainties that this bill poses? If we were to poll former chairmen of the Council of Economic Advisers, we would find that they are generally in agreement that the bill is likely to have a negative impact on the economy in the short term.

Retroactivity in the bill severely penalizes individuals and corporations alike for decisions that they made in reliance on prior law.

I received a letter from a constituent of mine that went like this: "I teach my children to keep their word. I think that is important in the United States of America, in a free country. I cannot believe that the Government is breaking its word to the taxpayers by telling them in 1981 that they should take certain actions with certain tax considerations and then changing the rules in the middle of the game thereby expropriating property from those who relied on the promises that were made by the Congress and the President in 1981."

He is right. Changing the rules in the middle of the game is not what this country should stand for. Breaking the word of the Government is not what this country should stand for. How can people make decisions in the future with any confidence in the tax law? If we are going to do this once, who is to say we won't do it again and again and again?

In the area of certainty, some say, "Well, we have got to pass this bill because if we don't pass it, the uncertainty will continue." I say to you simply if we pass this bill, the uncertainty will continue. The Tax Reform Act of 1986 will not be a final document, it will merely be the precursor of the Tax Reform Act of 1987, 1988 and 1989 and 1990 because it creates more imponderables than it solves. Changes of the magnitude in this tax bill should be phased in over a period of time and retroactivity should be eliminated. People should be able to rely on their Government.

If that were done, this bill would be much more palatable to me. We must also be concerned as we deliberate this bill not only on whether it is revenue neutral within itself but whether it is budget neutral. Whether it is revenue neutral within itself is an important consideration. The estimators in the Congress have done their best. But they are dealing with many, many complex variables.

Economists who appeared before the Joint Committee on the Economy this week almost unanimously said there would be a revenue shortfall in this bill, $40 billion to $50 billion over the next 5 years.

Now, that will exacerbate the deficits of this country at a time when we cannot to do that. But even if the estimators are correct, what do they say? Frankly, I think it will be off. I think that those who are expected to pay more in taxes will hire consultants to enable them to get around, to manufacture a way to get around having to pay those higher taxes, particularly with the kind of complexities that will be available to them within the wording of this bill and the massive IRS regulations that must follow it.

So my belief is there will be a shortfall in revenue. But even if the estimators are right, they say that this bill will raise $11 billion more in 1987 than the current law. That will be scored for the benefit of the Congress in meeting the Gramm-Rudman targets in the next month.

I assume we will go home and pat ourselves on the backs and say, "Now we have reduced the deficits." But the time bomb comes in 1988 because the estimators themselves say that there will be a shortfall of revenue in 1988 of $17 billion under the current law. The combination of a plus $11 billion in 1987 and a minus $17 billion in 1988 is $28 billion additional deficit that we will be forced to cope with when we come back in the Congress a year from now. On top of that, we will be expected to find another $36 billion of savings to meet the Gramm-Rudman targets.

Ladies and gentlemen, I say to you there is no quicker way to prevent this country moving to a balanced budget under Gramm-Rudman than to face the Congress next year with a challenge of having to find that dimension of money, because I do not think the majority in this country have got the courage to do it.

Then all bets are off as to how we move to solving our deficit problems. But it creates a massive, massive difficulty ahead for this country.

If you believe the DRI econometric model, they say that the estimates are all wrong and that there will actually be a $21 billion shortfall in 1987 and a $25 billion shortfall in 1988, making $46 billion. Then if you have to add the $36 billion extra under Gramm-Rudman, you are at $82 billion that the Congress is going to be forced to find, to continue to move us on the path toward a balanced budget; an impossible chore for a Congress that has been unable to find much, much less than that in previous years.

At the very time that many in Congress are calling for protectionist trade policies, the bill renders domestic manufacturers less competitive here at home and in the world marketplace by increasing cost of capital investment. The bill is pro-labor-intensive industries and anticapital savings and anti-capital-investment industries. The rate reductions, sadly enough, do not apply to future investments of capital. They only apply to the capital that is already invested.

There is no way you can make that machinery and equipment produce more than it is already producing. The only way you can increase productivity is to find new technology and put in the new equipment and new techniques.

Yet, all of the stimulation from the rate reduction on the corporate side is going to be on the existing capital. It significantly benefits those who have intangible investments rather than those who invest tangibly in equipment and machinery to create jobs.

The rate reductions in 1981 did not stimulate personal savings, contrary to all of the protestations of those who said they would.

In reality personal savings dropped as a percentage of disposable income after the 1981 act.

Here are the figures: personal savings as a percentage of disposable income in 1980 was 7.1 percent, in 1981 it was 7.5 percent, right before the bill went into effect. But in 1982 after the bill went into effect, it dropped to 6.8 percent, then in 1983 down to 5.4 percent, in 1984 it went up slightly to 6.3, but in 1985 was down to 5.1 percent, and so far in 1986 it is running at an annualized rate of 5 percent.

All of what we did in 1981 to reduce the personal rates did not increase the personal savings in the United States but, rather, they went in the other direction because people used that money to consume. Consumption as a percentage of disposable income increased after the 1981 bill. This bill should further stimulate consumption, but much of that consumption will be imported products in our marketplace, further exacerbating our trade deficit and increasing competitive pressures on domestic manufacturers and increasing the pressures for protectionism.

Now, what about the individual tax provisions? Next year, in 1987, there will not be a two-tier tax rate as propo-

nents of this bill say, there will be a five-tier tax rate, ranging from 11 percent to 38½ percent. But when the bill is fully implemented in 1988 and the years thereafter, it will still not be a two-tier marginal tax rate system, it will be a three-tier marginal tax rate system and some say four, but the top rate will not be 28 percent, it will be 33 percent. Yet, when you get enough above $200,000 a year, you phase out of the 33 percent and you are on a true marginal rate of 28 percent. This is called the bubble effect. Is that fair? Is it fair for people with under $200,000 worth of taxable income to pay 33 percent but those with over $200,000 of taxable income to pay marginal rates of only 28 percent? I leave that to the American people as to whether the bill in that area is one that creates a fairness.

As I mentioned earlier, there is a tax increase for many middle-income taxpayers because the rate reductions do not offset the loss of deductions.

Adding to the uncertainty is the chairman of the Ways and Means Committee's prediction that soon we will have to raise the tax rates, after all of the agony of going through trying to get them down and broadening the base.

Another matter of unfairness in the bill to my manner of thinking is the reimposition of the marriage penalty so that when you get married you automatically pay higher taxes than when you were single. It is a further encouragement for people who are both earning salaries to not get married because the economic cost is going to be increased on them.

Capital gains tax rate goes up in 1988 by 61 percent about the current law. That has got to be a deterrent for the investment in high-risk equity capital. We know from past experience that that is the case. When the capital gains rate dropped, there was a massive inflow of risk capital into entrepreneurial-type ventures. We also know by empirical data that when the tax rate on capital gains was reduced, the revenue to the Treasury increased, not decreased.

Yet the estimators are now saying that by raising it 61 percent, that we will see an increase of revenue of the dimension of perhaps $20 billion. There is another reason that I think the revenue estimates will not be accurate and will actually be higher than what reality will show to be true.

The bill claims that it will take away the interest deduction for consumer credit. But there is some good news in the bill for those who live in States that permit loans to be taken out in second mortgages on their houses, because already financing institutions are gearing up to take a second mortgage on a house and give you a credit card which you can use on a revolving basis to charge all the things that you can currently do with an American Express or Visa card, and as long as your home mortgage stands behind that credit card, you can deduct all of your consumer interest.

What is that going to do to the revenue estimates when they say they are going to pick up these extra billions of dollars from people on the consumer interest deduction prohibition? But also what does it do to fairness? Because those who do not own their own homes, those who rent apartments, will be unable to do this and their consumer interest will be nondeductible.

□ 1845

This bill takes away income averaging, so that if your income is high one year and low another year, you do not face the higher marginal rates one year and not benefit on the down side.

The current law provides income averaging. It is a test of fairness, particularly for those whose incomes fluctuate widely like salesmen, farmers, and many, many others. They will lose that equity feature in the current law.

It will restrict IRA's, although it permits them to some extent as a savings tool. It will restrict them beyond the current law.

By the repeal of the deduction for State and local sales tax, it is highly discriminatory against those States that depend on a great bit of their revenue from the sales tax rather than the income tax, and it will in its own way put the heavy hand of the Federal Government upon State and local governments, forcing them to use an income tax instead of a sales tax, pressuring local tax policy in a way that is contrary to all that this country stands for.

Unreimbursed moving expenses will be deductible only for itemizers. No longer will they be deductible for those who take the standard deduction, and that hurts the unemployed middle-income Americans who must move elsewhere to find work.

When you get over into the corporate tax, as I mentioned earlier, the bill tends to push our industries overseas that are highly capital intensive, because it penalizes them and increases their cost of capital if they operate in the United States. It will be extremely difficult for new capital-intensive businesses to start up and compete with those who get the benefit of marginal rate reductions on their existing equipment in place.

Specific oil and gas provisions take revenues out of that particular segment of the industry which finances new drilling activity and limits the ability to put together capital for drilling operations. That means a further shortage of domestic energy and greater reliance on foreign oil, a greater vulnerability to the United States of America and a hastening of the day when gasoline prices and fuel oil prices are going to gyrate higher once again.

In real estate, I think it is extremely negative, to a great extent because of the retroactivity. In those areas where real estate is marginal today, it will impact even more negatively than in those areas that have a booming real estate market. It will increase rents, without a doubt, and where the landlord is able to pass on rent increases, he will be able to continue to hold his property. In those areas where he is unable because of an oversupply of rental property to increase his rents, the cost of his property will go up and the value of his property will go down, and I predict that many of those projects will go into default. They will be turned back to the savings and loans and the banks and the financial institutions and for for-sale, which will further drive down the price of real estate in those areas where real estate is already marginal.

The price of new homes will likely increase, because contributions in aid of construction to public utility companies will be taxed.

I am terribly concerned about the negative impact this bill will have on a very fragile financial institution situation in this country. By that I mean the savings and loans and the banks. By reducing the value of their security, they will be subject to the acts of the bank examiners to an even greater extent. The demands on our FDIC and our FSLIC funds is are already overwhelming. The amount of foreclosures and writeoffs in the banking industry is higher than it was in 1936. This will exacerbate the problems of our banking institution. And while running down the value of their security, it will at the same time take away the ability to set aside loan loss reserves with a tax deduction, as they can do under the current law. If that was not bad enough, it will cause them to take the loan loss reserves, which they have already set aside in previous years which they need so badly today for protection, and it will cause them to recapture that and pay taxes on it.

Finally, because they will only be able to charge off loans for tax purposes at the time of foreclosure, it will, in my opinion, cause them to accelerate foreclosures in the already hard-hit areas of the country, such as the Agriculture Belt and areas such as Texas where real estate values are in great difficulty. That must be negative for all of us, because the banking system in this country is interwoven and impacts on all of us. We all have a stake in the FDIC and the FSLIC. We all have a stake when we are depositors of our own moneys into banks and savings and loans.

In the area of savings, 72 percent of the private savings in the United States of America is accumulated by

businesses, and only 28 percent by individuals. As a part of the business savings are the retirement funds, the employment savings benefit funds, the thrift programs. Now what is going to happen there?

By very unwise changes in the current law, which were designed just to get more revenue in, they are going to, in my opinion, bring about major cancellation of qualified benefit programs in small- and moderate-size firms. One of the major reasons there are plans today is because some of the higher paid executives and some of the owners, the private owners, of the companies, have an incentive to create the plan and, in doing so, they must include all of their employees. When there is no incentive to them anymore by reducing the amount they can put aside from $30,000 to $7,000, let us say on a 401(k) plan, the odds are that they are going to cancel that plan and it will no longer be available to their paid employees. I do not think that is in the best interest of this country in the long term, and I do not think it is in the best interest of capital savings.

The impact on corporations, which are the major source of savings in this country, as I mentioned, is going to most certainly reduce their cash flow. They will only have two alternatives. They must either borrow more or they must buy less in the way of capital equipment that creates jobs, creates efficiency, and creates productivity.

The big question mark is, since we are not saving what we need in this country, will foreigners continue to finance what we need? We should be talking about a tax bill that creates greater incentives for domestic savings, not a negative on incentives for domestic savings.

As a result of the tax on foreign source income, which is so complicated it is virtually impossible to administer—and I would share with you one little anecdote that when the Treasury II bill was presented to the Ways and Means Committee, when on the fly leaf it said, "Fairness, growth and simplicity," I thumbed through this 502-page summary, summary you understand, and I read one paragraph in dismay. It was under the foreign source income provisions. It read like this. The current law on foreign source income is extremely complex and very difficult to administer. Our proposal will make it more complex and more difficult to administer. Now these are the people who are out in the marketplace around the world trying to sell American products, trying to develop exports and trying to create jobs for Americans back home and for Americans overseas.

□ 1855

This bill is highly negative against that activity because it taxes them an additional $8 billion above the current law. Maybe in the name of tax reform and tax equity it is justifiable, but the criteria for judging foreign operations is not our domestic code, it is the question of what do foreign countries do in the way they tax their foreign corporations with which our corporations must compete. It is purely and simply a question of whether we will be able to compete against them based on the tax consequences they have.

We already have this massive trade deficit, now we are going to make it more difficult for our companies operating overseas to compete. I think that is negative. I think we should be concerned about it; it is one of the prices that will be paid for the rate reductions in this bill.

In the area of tax-exempt bonds and charitable institutions all of our local school districts, all of our cities depend opon issuing bonds to accomplish certain construction projects. We as local taxpayers benefit if the interest on those bonds is reduced. Up until now, the Federal Government has permitted the interest to be nontaxed on municipal bonds. For the first time, interest on muncipal bonds will be subject to taxation. It will force banks not to buy municipal bonds, and today, 50 percent of the municipal bonds outstnding our held by financial institutions, this bill will pressure them to get out of the market of buying municipal bonds because the interest on those bonds will be taxable to them. They are going to have to reevaluate all of the consequences.

As a result of this, interest rates will go up to our local communites. They already have this year in anticipation of this very bill. We as local citizens have to pay the price. That is part, again, of the cost of the good that is in this bill. We should be award of it. We should be ready for it, to see our local taxes go up from our cities and our school districts.

Finally, I would say for tonight, more to come tomorrow night, that I am disturbed by the overall consequence of this bill. First off, one leading national economist, Alan Greenspan said this week:

"There are 10 to 20 major problems created by this bill. The difficulty is we do not know what they are." That type of uncertainty should make us stand back, should make us say, "Let us eliminate retroactivity, let us send the bill back to conference. Let us phase in the changes, the rate reductions so that we eliminate this uncertainty and that we have a true, broad-based tax reform bill."

I believe in reform; I think the current system needs to be changed, but I do not want it to end up being an implementation of the corrolary of Churchill's great statement that "Democracy is the worst possible form of government until you consider all of the other alternatives."

Our current code needs change; it needs reform. But that does not mean we should jump out of the frying pan into the fire. The magic of America is the ability of all of us to hope and to work and to move up the ladder of upward mobility.

This bill strikes at that very essence of America. Because if you are rich, if you have your capital accumulated, you can get the benefit of these rate reductions, plus, you can still get your tax writeoffs because you have the flexibility to design your investment pattern to get the passive income to offset the passive losses, to dodge the minimum tax. You have the ability to invest in such a way that you have interest income to offset your interest deduction so if you want to take a risk on a new venture and borrow the money to do it, you can deduct the interest and you can deduct the losses.

For an individual who has not accumulated a mass of capital, who wants to move up the ladder, he has got to go to the bank or to some financial institution to borrow the money to compete with the man who is already there. When he does borrow that money he cannot deduct his interest for tax purposes. He cannot deduct his passive losses because he has no passive income, and this bill plays into the hands of entrenching one group of people to the denial of the hopes and the dreams of upward mobility that all Americans share.

I find that the bad in this bill, sadly enough, outweighs the good, and I hope all Americans will listen, will read the fine print when we finally get the bill, if there is time, and to hear articulated the costs of what we are about to do.

THE EFFECTS OF THE TAX REFORM ACT OF 1985 ON FEDERAL RETIREES

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. OAKAR] is recognized for 5 minutes.

Ms. OAKAR. Mr. Speaker, Members of this Congress have worked diligently this year to develop omnibus tax reform legislation. Overall, I believe H.R. 3838, the Tax Reform Act of 1985, will lead to many constructive changes in our tax laws and in our economy. The architects of this bill, especially Chairman ROSTENKOWSKI, are to be commended for their efforts to improve our tax system. This is landmark legislation and a proud achievement for the 99th Congress. It is, therefore, especially regrettable that the accomplishments of H.R. 3838 are marred by the inclusion of one provision which will unfairly harm Federal retirees. I rise tonight to express my extreme opposition to that provision.

The Tax Reform Act, as approved by the House and Senate conferees, would raise billions of dollars over the next 5 years by repealing the 3-year basis recovery rule with

regard to qualified pension plans requiring employee contributions.

Under current law, a retiree's annuity is not taxed until all of the employee contributions have been distributed if the contributions are fully recovered within 3 years of the starting date of the annuity. The employees' contributions have already been taxed as gross income. Under H.R. 3838, however, federal income tax on a retirement annuity would begin on the first day of retirement, with the tax-free employee's contribution "spread out" actuarially over the length of the annuity. This change would become effective for annuities beginning on or after July 1, 1986.

Mr. Speaker, the burden of this modification of the Tax Code will fall overwhelmingly on new retirees from the public sector, almost one-fourth of whom are Federal retirees. According to a 1984 General Accounting Office report, few private sector employers require employees to contribute toward the cost of their pension plans. Data from the Bureau of Labor Statistics show that 93 percent of private pension plans do not mandate employee contributions. However, almost all public pension plans—thje Federal Government and 47 of 50 State governments—requirement employee contributions. Consequently, it is the public sector retiree who will be adversely affected by this provision of H.R. 3838.

The immediate impact of the tax change will create hardships for those individuals nearing retirement or who have retired recently. These people have already made financial plans based on their anticipated annuities. They undoubtedly have based their investments, their children's college payments, and other major budgetary decisions on their anticipated, tax-free annuity. A sudden change in the tax law—and even worse, a retroactive change in the tax law—will afect their carefully made plans, and create difficult financial dislocations.

The tax reform bill also raises broader questions of fairness. Federal retirees, especially, will be hard pressed to meet this new tax obligation, considering the reductions they have experienced to date. Already this year, budget cuts have fallen heavily on Federal workers and retirees. Federal workers have had their pay frozen this year. In addition, the 1986 retirement cost-of-living adjustment was canceled because of Gramm-Rudman.

After 5 years of attacks by the administration, Federal employees find their pay and benefits lagging significantly behind that of their private sector counterparts. The President's own pay agent recently concluded that Federal pay lags private sector compensation by 24 percent. Yet, the President has submitted his alternate pay plan, which will allow only a 2-percent increase in Federal pay for 1987. We cannot expect our Federal Government to operate efficiently or effectively in the service of this Nation if we continue to treat our public workforce in this manner.

Who are these Federal workers? They are the Federal drug enforcement officials fighting to stem the flood of illegal narcotics into American ports. They are the NASA researchers, technicians, and astronauts. They are the Department of Agricultrue employees who help protect our crops and ensure the quality of our food and drugs. They are the Environmental Protection officials, the Coast Guard patrol, and the postal employees who ensure prompt delivery of our mail across the Nation.

Perhaps it is too easy to forge the important services which our Federal employees provide. Nevertheless, all of us and all of our constitutents depend on their dedicated service, which will surely suffer if we continue to heap budget cuts and tax increases on our public servants.

Mr. Speaker, the repeal of the basis recovery rule will harm our Federal Government and its employees and retirees in a year when they have already been harmed too much. I have testified before the Rules Committee against this provision. I have spoken against it on the floor of this House. I have introduced a resolution with my colleague, Congressman HALL, urging that the basis recovery rule not be repealed retroactively. Today, I must again express my extreme opposition to this provision in the tax reform bill. I urge my colleagues to act to protect Federal retirees from this unfair change in H.R. 3838.

LEAVE OF ABSENCE

By unanmous consent, leave of absence was granted to:

Mr. BOLAND (at the request of Mr. WRIGHT), for September 17 and 18, on account of a necessary absence.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. HENRY) to revise and extend their remarks and include extraneous material:)

Mr. CRANE, for 60 minutes, on October 1.

Mr. ARCHER, for 60 minutes, on September 19.

Mr. CRANE, for 60 minutes, on September 18.

Mr. CRANE, for 60 minutes, on September 17.

Mrs. BENTLEY, for 60 minutes, on September 30.

Mrs. BENTLEY, for 60 minutes, on October 1.

Mrs. BENTLEY, for 60 minutes, on October 2.

Mr. BOEHLERT, for 60 minutes, on September 30.

Mr. BOEHLERT, for 60 minutes, on October 1.

(The follow Members (at the request of Mr. GAYDOS) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. ALEXANDER, for 30 minutes, today.

Mr. HOYER, for 60 minutes, on September 18.

(The follow Members (at the request of Mr. ARCHER) to revise and extend their remarks and include extraneous material:)

Ms. OAKAR, for 5 minutes, today.

Mrs. BENTLEY, for 30 minutes, on September 19.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. WEISS, to include extraneous material on H.R. 4759, in Committee of the Whole, today.

Mr. ALEXANDER, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,476.

(The following Members (at the request of Mr. HENRY) and to include extraneous matter:)

Mr. KOLBE.
Mrs. ROUKEMA.
Mr. GREEN.
Mr. GRADISON.
Mr. DANNEMEYER.
Mr. CRANE.
Mr. PURSELL.
Mr. HANSEN.
Mr. RUDD.
Mrs. HOLT.
Mr. BEREUTER.
Mr. CONTE.
Mr. PORTER.
Mr. DUNCAN in two instances.
Mr. SCHULZE.
Mr. SCHUETTE.
Mr. BILIRAKIS.
Mr. RITTER.
Mr. WHITEHURST.
Mr. CLINGER.
Mr. GILMAN.

(The following Members (at the request of Mr. GAYDOS) and to include extraneous matter:)

Mr. MAZZOLI.
Mr. HAMILTON in five instances.
Mr. TOWNS.
Mr. SKELTON in two instances.
Mr. ROYBAL.
Mr. PEPPER.
Mr. FASCELL.
Mr. LIPINSKI.
Mr. FAZIO.
Mr. DWYER of New Jersey.
Mr. MITCHELL.
Ms. OAKAR.
Mr. RODINO.
Mr. KOLTER.
Mr. SCHUMER.
Mr. HERTEL of Michigan in two instances.
Mr. KILDEE.
Mr. MAVROULES.
Mr. MURPHY.
Mr. MOAKLEY.
Mr. LANTOS.
Mr. LELAND.
Mr. EVANS of Illinois.
Mr. KANJORSKI.
Mr. TORRES.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 98. An act for the relief of Cirilo Raagas Costa and Wilma Raagas Costa.

JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, a joint resolution of the House of the following title:

H.J. Res. 692. Joint resolution to designate the week of October 19, 1986, through October 26, 1986, "National Housing Week."

ADJOURNMENT

Mr. ARCHER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to, accordingly (at 7 o'clock and 2 minutes p.m.) under its previous order, the House adjourned until Thursday, September 18, 1986, at 9:30 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4213. A letter from the Secretary of Education, transmitting a report on drug use among school-age youth; to the Committee on Education and Labor.

4214. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notification that the Department of Defense has provided defense articles, services and training to Chad under the authority of P.D. 86-6 for a total value of $10 million, pursuant to 22 U.S.C. 2318(b)(2); to the Committee on Foreign Affairs.

4215. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Navy's proposed letter(s) of offer to the Netherlands for defense articles and services estimated to cost $26 million (Transmittal No. 86-39), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

4216. A letter from the Assistant Secretary, Legislative and Intergovernmental Affairs, Department of State, transmitting a report on Soviet and international Communist behavior, pursuant to Public Law 99-93, section 155 (99 Stat. 429); to the Committee on Foreign Affairs.

4217. A letter from the Comptroller General of the United States, transmitting the eighth, and final, report evaluating the methodology that the Department of the Interior uses in allowing offshore oil and gas wells to be suspended from production (shut in) or to burn off (flare) natural gas, pursuant to 43 U.S.C. 1861(b); to the Committee on Interior and Insular Affairs.

4218. A letter from the Staff Director, Civil Rights Commission, transmitting statements of two Commissioners concerning recent Supreme Court decisions on affirmative action; to the Committee on the Judiciary.

4219. A letter from the Administrator, General Services Administration, transmitting a copy of an amended lease prospectus for 1120 Vermont Avenue, Washington, D.C., pursuant to Public Law 86-249, section 7(a) (86 Stat. 217); to the Committee on Public Works and Transportation.

4220. A letter from the Administrator, General Services Administration, transmitting informational copies of lease prospectuses, pursuant to Public Law 86-249, section 7(a) (86 Stat. 217); to the Committee on Public Works and Transportation.

4221. A letter from the Executive Secretary, Foreign Trade Zones Board, Department of Commerce, transmitting a copy of the 45th annual report fo the Foreign Trade Zones Board, pursuant to 19 U.S.C. 81p(c); to the Committee on Ways and Means.

4222. A letter from the Secretary of Housing and Urban Development, transmitting a report on child care in public housing, pursuant to Public Law 98-181, section 222(e); jointly to the Committee on Appropriations and Banking, Finance and Urban Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ROSTENKOWSKI: Committee on Ways and Means. House Joint Resolution 626. Joint resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes (Rept. 99-663, Pt. 3). Ordered to be printed.

Mr. WHITTEN: Committee on Appropriations. House Joint Resolution 730. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes (Rept. 99-831). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. H.R. 4862. A bill to amend the Freedom of Information Act to provide procedures for the processing of requests for confidential business information; with an amendment (Rept. 99-832). Referred to the Committee of the Whole House on the State of the Union.

Mr. PEPPER: Committee on Rules. H.R. 4893. A bill to provide for a General Accounting Office investigation and report on conditions of displaced Nicaraguans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Nicaraguans, and for other purposes (Rept. 99-834, Pt. 1). Ordered to be printed.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 2248. A bill to authorize appropriations for the National Highway Traffic Safety Administration, and for other purposes; with an amendment; referred to the Committee on Ways and Means for a period ending not later than September 29, 1986 for consideration of such portions of the bill and amendment as fall within that committee's jurisdiction pursuant to clause 1(v) of rule X (Rept. 99-833, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BARNARD:

H.R. 5535. A bill to amend the Congressional Budget Act of 1974 to minimize the impact on State and local governments of unexpected provisions of legislation proposing the imposition of large unfunded costs on such governments, and for other purposes; to the Committee on Rules.

By Mr. BOUCHER (for himself and Mr. DEWINE):

H.R. 5536. A bill to amend title 35 of the United States Code to extend the term of patents for agricultural and chemical products for the period during which they underwent regulatory review; to the Committee on the Judiciary.

By Mr. BOULTER (for himself, Mr. CRAIG, Mr. KRAMER, Mr. ROBERTS, Mr. STANGELAND, Mr. LIGHTFOOT, Mr. GOODLING, Mr. SKEEN, Mr. ECKART of Ohio, Mr. COMBEST, Mr. GINGRICH, Mr. WEBER, Mr. SCHUETTE, Mr. BURTON of Indiana, Mr. EMERSON, Mr. MONSON, Mr. BARTON of Texas, Mr. ROBERT F. SMITH, and Mr. DELAY):

H.R. 5537. A bill to require United States executive directors of multilateral development banks to oppose assistance for the production or extraction of any commodity or mineral for export if the commodity or mineral is in surplus in world markets or the exportation of the commodity or mineral would cause substantial injury to United States producers, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. DORGAN of North Dakota:

H.R. 5538. A bill to amend title 23, United States Code, relating to open containers of alcoholic beverages and consumption of alcoholic beverages in the passenger area of motor vehicles and establishment of a national minimum blood alcohol level for driving motor vehicles; to the Committee on Public Works and Transportation.

By Mr. FOWLER:

H.R. 5539. A bill to establish a limitation on the rates of interest which may be imposed on credit card accounts, to provide for more detailed disclosures by credit card issuers in application for credit cards, and to provide that no interest may be imposed with respect to credit card transactions before the end of a grace period; to the Committee on Banking, Finance and Urban Affairs.

By Mr. WYDEN (for himself, Mr. WAXMAN, Mr. MADIGAN, and Mr. TAUKE):

H.R. 5540. A bill to encourage good faith professional review activities of health care entities, to require collection and dissemination to hospitals and other health care providers of information concerning certain payments in medical malpractice claims and certain adverse decisions, and for other purposes; to the Committee on Energy and Commerce.

By Mr. GLICKMAN (for himself and Mr. MOODY):

H.R. 5541. A bill to amend section 3718 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States; to the Committee on the Judiciary.

By Mr. GREEN:

H.R. 5542. A bill to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to recognize as an exception to applicable antialienation and preemption provisions State court judgments, decrees, or orders recognizing or creating in the employer or assigning to the employer a right to an employee's accrued retirement benefit as an equitable remedy under State law for criminal fraud or theft; jointly, to the Committees on Education and Labor, and Ways and Means.

By Mr. STAGGERS:

H.R. 5543. A bill to amend Public Law 95-625 to permit the acquisition of certain lands for an administrative site for the New River Gorge National River, WV; to the Committee on Interior and Insular Affairs.

By Mr. WEBER:

H.R. 5544. A bill to amend the Agricultural Act of 1949 to repeal the authority of the Secretary of Agriculture to reduce the support price for the 1986 crop of soybeans below $5.02 per bushel, and for other purposes; to the Committee on Agriculture.

By Mr. WHITTEN:

H.J. Res. 730. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

By Mr. WALKER:

H.J. Res. 731. Joint resolution affirming the legislative intent under the Social Security Act to provide for increases in old-age insurance benefits with due regard to increases in the cost of living; to the Committee on Ways and Means.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

458. By the SPEAKER: Memorial of the legislature of the State of California, relative to a marine sanctuary on the northern California coast; to the Committee on Merchant Marine and Fisheries.

459. Also, memorial of the legislature of the State of California, relative to commercial fishing vessels; to the Committee on Merchant Marine and Fisheries.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII:

Mr. LEHMAN of Florida introduced a bill (H.R. 5545) for the relief of Shannon Chiles and Joseph Chiles; which was referred to the Committee on Post Office and Civil Service.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 555: Mr. STANGELAND.
H.R. 864: Mr. WALGREN.
H.R. 2911: Mr. BOEHLERT.
H.R. 2952: Mr. SEIBERLING, Mr. KASTENMEIER, and Mr. BOEHLERT.
H.R. 3379: Mr. MARLENEE.
H.R. 3600: Mr. HARTNETT, Mr. RITTER, Mr. LIPINSKI, Mr. COBLE, Mr. LEWIS of Florida, Mr. THOMAS of Georgia, Mr. LENT, Mr. ROBINSON, Mr. WORTLEY, Mr. BROWN of Colorado, Mr. LIGHTFOOT, Mr. WHITTAKER, and Mr. LOEFFLER.
H.R. 3756: Mr. STRANG.
H.R. 3799: Mr. ROWLAND of Georgia.
H.R. 3968: Mr. WALGREN and Mr. WEBER.
H.R. 4086: Mr. SLATTERY, Mr. BUSTAMANTE, Mr. BATES, and Mr. STARK.
H.R. 4145: Mr. STRATTON.
H.R. 4194: Mr. MCKINNEY and Mr. WALDON.
H.R. 4450: Mr. MILLER of California, and Mr. MCCOLLUM.
H.R. 4703: Mr. MARTINEZ.
H.R. 4871: Mr. MCKERNAN, Mr. BATES, Mr. CLAY, Mr. JACOBS, and Ms. MIKULSKI.
H.R. 4884: Mr. WYLIE.
H.R. 4908: Ms. KAPTUR, Mr. BRUCE, Mr. GARCIA, Mr. LUNDINE, Mr. VENTO, Mr. WALDON, Mr. ATKINS, and Mr. GEKAS.
H.R. 4929: Mr. DURBIN.
H.R. 5043: Mr. ANDREWS, Mr. MITCHELL, Mr. FEIGHAN, Mr. VENTO, Mr. GEJDENSON, Mr. COUGHLIN, Mr. OWENS, Mr. DE LUGO, and Mr. PURSELL.
H.R. 5145: Mr. TRAFICANT, Mr. SUNIA, Mr. DICKS, Mr. DOWNEY of New York, Mr. GRAY of Illinois, Mr. HENDON, Mr. SEIBERLING, Ms. KAPTUR, Mr. WOLPE, Mr. KOLBE, Mr. WIRTH, Mr. ATKINS, Mr. ROBINSON, Mr. FRENZEL, Mr. MITCHELL, Mr. MCHUGH, Mr. BOUCHER, Mr. GUARINI, Mrs. BENTLEY, Mr. LUNDINE, Mr. BEDELL, Mr. WILSON, Mr. DE LUGO, Mr. STALLINGS, Mr. MOODY, Mr. BEVILL, Mr. BOEHLERT, and Mr. SIKORSKI.
H.R. 5225: Mr. MAVROULES, Mr. YATES, Mr. SAVAGE, Mr. SMITH of New Hampshire, and Mr. TRAFICANT.
H.R. 5274: Mr. BOEHLERT, Mr. DE LA GARZA, Mr. EDWARDS of California, Mr. FUSTER, Mr. GUNDERSON, Mr. KOLTER, Mr. MOLLOHAN, Mr. WOLF, and Mr. LEHMAN of Florida.
H.R. 5305: Ms. MIKULSI, and Mr. MORRISON of Connecticut.
H.R. 5396: Mr. FAUNTROY, Mr. SAVAGE, Mr. BEDELL, Mr. WISE, Mr. EVANS of Illinois, Mr. KOSTMAYER, Mr. WILLIAMS, Mr. LEVINE of California, Mr. MORRISON of Connecticut, and Mr. HAWKINS.
H.R. 5427: Mr. REID, Mr. SCHEUER, and Mr. WALDON.
H.R. 5436: Mr. STANGELAND.
H.R. 5512: Mrs. KENNELLY, Mr. WHITLEY, Mr. ROSE, Mr. LOWRY of Washington, Mr. MCDADE, Mr. DICKS, Mr. MORRISON of Connecticut, Mr. DANIEL, Mr. STALLINGS, and Mr. RODINO.
H.R. 5527: Mr. ENGLISH and Mr. VOLKMER.
H.J. Res. 244: Mr. BENNETT.
H.J. Res. 552: Mr. FIELDS, Mr. BILIRAKIS, Mr. BARTLETT, Mr. PICKLE, Mr. ROGERS, Mr. MURTHA, Mr. BENNETT, and Mr. SYNAR.
H.J. Res. 588: Mr. DIOGUARDI, Mr. SUNIA, Mr. BADHAM, Mr. STALLINGS, Mr. CHANDLER, Mr. MRAZEK, Mr. LELAND, Mr. HANSEN, Mr. ROTH, Mr. YOUNG of Alaska, Mr. ECKERT of New York, Mr. WILSON, Mr. FEIGHAN, and Mr. COURTER.
H.J. Res. 620: Mr. WHITTAKER, Mr. SKELTON, Mr. VOLKMER, Mr. JEFFORDS, Mrs. BOGGS, and Mr. GOODLING.
H.J. Res. 675: Mr. MORRISON of Connecticut, Mr. BEVILL, Mr. CHAPPIE, Mr. CONYERS, Mr. BONIOR of Michigan, Mr. DINGELL, Mr. DIOGUARDI, Mrs. BENTLEY, Mr. FAWELL, Mr. GRAY of Illinois, Mr. HAMMERSCHMIDT, Mr. HATCHER, Mr. BUSTAMANTE, Mr. FAZIO, Mr. RALPH M. HALL, Mr. FRANK, Mr. WYLIE, Mr. HOYER, Mr. WILSON, Mr. VOLKMER, Ms. KAPTUR, Mr. TALLON, Mr. STOKES, Mr. SKELTON, Mr. BOEHLERT, Mr. SABO, Mr. ROBERTS, Mr. RODINO, Mr. RINALDO, Mr. ORTIZ, Mr. DE LA GARZA, Mr. NATCHER, Mr. MARTIN of New York, Mr. LEVIN of Michigan, and Mr. LIPINSKI.
H.J. Res. 682: Mr. ROE, Mrs. BOXER, Mr. LIPINSKI, Mr. MARTINEZ, Mr. FAZIO, Mr. LUKEN, Mr. HORTON, Mr. FUSTER, Mr. BRYANT, Mr. WYDEN, Mr. WAXMAN, Mr. KOSTMAYER, Mr. EDGAR, Mr. KANJORSKI, Mr. COYNE, Mr. BEILENSON, Mr. FEIGHAN, Mr. ROSE, Mr. MAVROULES, Mr. SPRATT, Mr. MACKAY, Mr. JACOBS, Mr. DONNELLY, Mr. RANGEL, Mr. DELLUMS, Mr. SMITH of Florida, Mr. WOLPE, Mr. EVANS of Illinois, Mr. SCHUMER, Mr. DICKS, Mr. DOWNEY of New York, Mr. ROEMER, Mr. OWENS, Mr. SYNAR, Mr. ORTIZ, Mr. BUSTAMANTE, Mr. RICHARDSON, Mr. BERMAN, and Mr. WILSON.
H.J. Res. 706: Mr. LEVIN of Michigan, Mr. RAHALL, Mr. LAFALCE, Mr. OWENS, and Mr. DENNY SMITH.
H.J. Res. 709: Mr. RALPH M. HALL, Mr. WISE, Mr. PURSELL, Mrs. BURTON of California, Mr. MCKERNAN, Mr. COATS, Mr. CROCKETT, Mr. VANDER JAGT, Mr. LUNDINE, Ms. MIKULSKI, Mr. GARCIA, Mr. LANTOS, Mr. DYMALLY, Mr. HAYES, Mr. OWENS, Mr. BEVILL, Mrs. VUCANOVICH, Mr. PORTER, Mr. TALLON, and Mr. LAFALCE.
H.J. Res. 716: Mr. MONTGOMERY, Mr. GRAY of Pennsylvania, Mr. DANIEL, Mr. VALENTINE, Mr. LEVIN of Michigan, and Mr. SMITH of Florida.
H. Con. Res. 129: Mrs. BOXER, Mr. SCHUETTE, Mr. STARK, Mr. MADIGAN, Mr. LOWERY of California, Mr. ROEMER, Mr. DIXON, Mr. SHELBY, Ms. SNOWE, and Mr. MARTIN of New York.
H. Con. Res. 351: Mr. COURTER, Mr. COYNE, Mr. DUNCAN, Mr. FORD of Tennessee, Mr. LIPINSKI, Mr. LOWRY of Washington, Mr. MAVROULES, Mr. MURPHY, and Mr. HENDON.
H. Con. Res. 359: Mr. MANTON, Mr. BATES, Mr. CLAY, Mr. SLATTERY, Mr. TOWNS, Mr. MORRISON of Connecticut, and Mr. DELLUMS.
H. Res. 529: Mr. NIELSON of Utah, Mr. MACK, Mr. SAXTON, and Mr. MONSON.

PETITIONS, ETC.

Under clause 1 of rule XXII,

481. The SPEAKER presented a petition of the council of the city of Independence, MO, relative to the Surface Transportation Act which was referred to the Committee on Public Works and Transportation.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1309

By Mr. PENNY:

—Page 6, strike out lines 8 through 16 and insert in lieu thereof the following:

(5) the term "hazardous occupational exposure" means—

(A) a history of actual use of a potentially hazardous or harmful chemical, physical, or biological agent found in the workplace; or

(B) a history of exposure to any hazardous industrial or commercial process or activity in the workplace;

that results in an exposure of sufficient duration or sufficient intensity, or both, to be associated with a risk for occupational disease.

H.R. 2482

(As amended by H.R. 5440)

By Mr. BEDELL:

—Page 44, strike out lines 4 through 9 and insert in lieu thereof the following:

(2) Section 2(u) (7 U.S.C. 136(u) is amended by striking out "and" immediately before the first clause (2) and by adding after "dessicant" a comma and the following: "and (3) any substance or mixture of substances intended for purposes described in subsection (gg)".

Page 116, line 12, insert "and by" before "adding".

Page 140, line 17, strike out "the Board of Agriculture of".

Page 161, line 10, strike out "on" and insert "or".

Page 161, line 10, strike out "ingredeint" and insert "ingredient".

Page 162, line 10, insert "such" after "and".

Page 158, after line 10, strike out the item relating to subsection (d).

—Page 134, strike out line 5 and all that follows through line 6 on page 135 and insert in lieu thereof the following:

SEC. 814. GROUNDWATER AUTHORITY.

(a) DEFINITIONS.—Section 2 (7 U.S.C. 136) (as amended by section 802) is amended by adding at the end the following:

"(ll) GROUNDWATER.—The term 'groundwater' means water below the land surface in a zone of saturation.

"(mm) RELIABLE ANALYTICAL DATA.—The term 'reliable analytical data' means scientific information that verifies the presence of a pesticide in a groundwater sample and that is of a reliable scientific quality according to generally recognized standards and good laboratory practices for sampling and analysis of pesticides in groundwater.

"(nn) POTENTIAL SOURCES OF DRINKING WATER.—The term 'potential sources of drinking water' means the portion of an aquifer or aquifer system that contains sufficient quantity and is of sufficient quality to supply potable water to a drinking water well, taking into account (1) geographic considerations and depth to drinking water, (2) any State criteria or guidelines for siting new wells established under section 1428 of the Public Health Service Act or other State authority, and (3) shallow groundwater that is not potential drinking water.

"(oo) DRINKING WATER WELL.—The term 'drinking water well' means a well or spring currently supplying water for human consumption.

"(pp) GROUNDWATER SAMPLING POINT.—The term 'groundwater sampling point' means a public or community water supply, a private water supply, a spring, or a monitoring well or other groundwater source if the well or source is reasonably designed and of adequate depth to permit the collection of representative groundwater samples.".

(b) AUTHORITY.—The Act (as amended by section 202) is amended by adding after section 31 the following:

"SEC. 32. PROTECTION OF GROUNDWATER.

"(a) NOTIFICATION.—

"(1) REQUIREMENT.—When a registrant of a pesticide obtains or learns of reliable analytical data that a pesticide has—

"(A) been detected at any groundwater sampling point and no groundwater residue guidance level has been issued for the pesticide under subsection (e),

"(B) has been detected at a groundwater sampling point a concentration higher than known previously to have been reported to the Administrator at such groundwater sampling point, or

"(C) has been detected at any groundwater sampling point at a concentration at or greater than 20 percent of the groundwater residue guidance level issued for the pesticide under subsection (e),

the registrant shall file a report containing such information within 15 working days with both the Administrator, the State in which the groundwater sampling point is located, and the owner of the property in which the groundwater sampling point is located, if known.

"(2) CONTENT OF REPORT.—A report required by paragraph (1) for detection of a pesticide shall contain information known to the registrant of the pesticide on the level of detection of the pesticide, the frequency of detection of the pesticide, location (including depth) where the pesticide was detected, date of the pesticide detection, well construction if the pesticide was detected in a well, soil type where the pesticide was detected, and analytical method used to make the pesticide detection, including information on the precision, accuracy, and limits of the method of detection and any quality assurance and control procedures used in the pesticide detection.

"(b) REVIEW FOR FURTHER ACTION.—Upon receiving information of a detection of a pesticide at any groundwater sampling point, the Administrator shall promptly review the information to determine the reliability of the detection and to determine whether further action should be taken to protect groundwater.

"(c) MONITORING.—

"(1) CONFIRMATION OF DETECTIONS.—If the Administrator receives reliable, analytical data indicating that—

"(A) a pesticide has been detected in a drinking water well,

"(B) the concentration of the pesticide equals or exceeds any groundwater residue guidance level issued under subsection (d) for that pesticide, and

"(C) the presence of the pesticide in the drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or widespread and commonly recognized practices involving the pesticide,

the Administrator may require the registrant of the pesticide detected to conduct such analysis of samples of groundwater from the drinking water well involved as is necessary to determine whether the pesticide is present at a concentration that equals or exceeds such groundwater residue guidance level. A monitoring requirement imposed under this paragraph shall be completed within 90 days of notice to the registrant. The procedures of section 3(c)(2)(B) shall govern any monitoring requirement imposed under this paragraph.

"(2) REQUIREMENT FOR MONITORING.—If the Administrator determines that additional data on the presence of a pesticide in groundwater are required to maintain in effect an existing registration of the pesticide, the Administrator may, under section 3(c)(2)(B), require the registrant of the pesticide to conduct groundwater monitoring. The Administrator shall consult with the Secretary of Agriculture, the heads of other appropriate Federal agencies, and the States concerning the design and scope of monitoring requirements imposed under this paragraph. The design and the scope of the monitoring requirement should take into account all relevant information, including the magnitude and frequency of the detection of the pesticide involved, pattern of pesticide used and soil types involved in the detection, physical and chemical properties of the pesticide, rainfall patterns, well construction if the pesticide was detected in a well, rates of degradation, reliability and analytical accuracy of the detection, and results of State or other sponsored monitoring. To the extent feasible, monitoring should be at representative geographical and hydrogeological areas associated with locations and conditions of concern as determined by the Administrator.

"(3) JUDICIAL REVIEW.—Monitoring requirements imposed under paragraph (2) shall be subject to judicial review under section 16.

"(d) GROUNDWATER RESIDUE GUIDANCE LEVELS.—

"(1) REQUIREMENT.—The Administrator, on the Administrator's own initiative, may issue a groundwater residue guidance level for a pesticide. The Administrator shall issue a groundwater residue guidance level for a pesticide whenever the Administrator registers or reregisters a pesticide if the Administrator determines that the pesticide has the potential to leach into groundwater. In addition, the Administrator shall issue a groundwater residue guidance level for a pesticide if—

"(A) based on reliable analytical data, the pesticide has been detected at groundwater sampling points in 3 different geographical areas,

"(B) based on reliable analytical data, the pesticide has been detected in a drinking water well or wellfield that serves a population of over 500 people, or

"(C) a Federal agency or a State petitions the Administrator to set a groundwater residue guidance level for the pesticide.

"(2) STANDARD FOR DETERMINING GROUNDWATER RESIDUE GUIDANCE LEVEL.—

"(A) If the Administrator has promulgated or promulgates a maximum contaminant level under section 1412(b)(3) of the Public Health Service Act that applies to a pesticide, the groundwater residue guidance level required under paragraph (1) for the pesticide shall be set at such level within 30 days of being required under such paragraph.

"(B) If a maximum contaminant level that would be applicable to a pesticide for which a groundwater residue guidance level is required by paragraph (1) has not been established under such section 1412(b)(3), the Administrator, in the Administrator's discretion, may use a health advisory level established under the Public Health Service Act in establishing such groundwater residue guidance level. The groundwater residue guidance level established by the Administrator for such pesticide shall reflect the level of the pesticide in drinking water at which no known or anticipated adverse effects on the health of persons occur, the need for an adequate margin of safety, the nature of the toxic effects caused by the pesticide, and the validity, completeness, and adequacy of data about the pesticide. If all required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the groundwater residue guidance level for the pesticide shall be at the limit of detection. If any required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the goundwater residue guidance level for the pesticide shall include an additional margin of safety that takes into account the absence of such data.

"(3) PROCEDURES.—

"(A) Before issuing a final groundwater residue guidance level for a pesticide, the Administrator shall publish an interim groundwater residue guidance level for the pesticide in the Federal Register and allow public comment for at least 30 days. During the public comment period, the Administrator shall invite comment on the level involved from the Secretary of Agriculture, the Scientific Advisory Panel, States, and the congressional committees designated in section 25(a)(3).

"(B) If the Administator is required under paragraph (1) to issue a groundwater residue guidance level for a pesticide and the groundwater residue guidance level is to be issued under paragraph (2)(B), the Administrator shall issue an interim groundwater residue guidance level for the pesticide within 30 days after the requirement to issue the groundwater residue guidance level takes effect.

"(C) the issuance or revision of interim groundwater residue guidance levels and proposals to revise groundwater residue guidance levels shall not be subject to the procedural requirements imposed by subparagraphs (A) and (B) of section 25(a)(2) or by section 25(a)(3), 25(a)(4), 25(d).

"(D) Within 3 months after establishing an interim groundwater residue guidance level, the Administrator shall establish a final groundwater residue guidance level. Until a final groundwater residue guidance level is established under paragraph (1) for a pesticide, an interim groundwater residue guidance level established for the pesticide shall remain in effect.

"(4) REVISION OF GROUNDWATER RESIDUE GUIDANCE LEVELS.—The Administrator may revise a groundwater residue guidance level for a pesticide. The Administrator shall allow at least 30 days for public comment on any proposed revision.

"(5) JUDICIAL REVIEW.—An interim groundwater residue guidance level shall not be subject to judicial review before the expiration of 3 months after its issuance. Judicial review of any final groundwater residue guidance level or failure to establish an interim or final groundwater residue guidance level shall be governed by section 16. A groundwater residue guidance level established under paragraph (2)(A) shall not be subject to judicial review.

"(e) RESPONSE TO GROUNDWATER CONTAMINATION.—

"(1) REQUIREMENT.—If the Administrator determines that a pesticide is present in a drinking water well at a concentration that exceeds the final groundwater residue guidance level applicable to the pesticide and that the presence of the pesticide in the drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or as a result of widespread and commonly recognized practice involving the pesticide, the Administrator shall notify the State in which the drinking water well is located of the Administrator's determination and shall provide it with all information relevant to the determination. Such State shall take action within 90 days of such notification to prevent potential adverse effects on human health and the environment from such pesticide. In taking such action the State shall take appropriate action regarding the sale or use of the pesticide detected at such drinking water well to bring and retain concentrations of the pesticide at or below the final groundwater residue guidance level applicable to the pesticide. In addition, if such action does not bring and retain concentrations of the pesticide detected at or below such level, the State, when authorized by State or another Federal law, shall prevent consumption of drinking water that exceeds such level.

"(2) ACTION BY THE ADMINISTRATOR.—

"(A) If a State does not have the authority to take the action required by paragraph (1) with respect to a pesticide detected in a drinking water well or fails to take such action within the time period prescribed by such paragraph, the Administrator shall take action under this Act to bring and retain the concentration of the pesticide detected at such drinking water well at or below the final groundwater residue guidance level applicable to the pesticide and may take such other action under this Act as the Administrator deems necessary to prevent potential adverse effects on human health and the environment from such pesticide. If the Administrator takes such action, the Administrator shall publish notice of the action in the Federal Register and take appropriate steps to inform the registrant of the pesticide involved, potentially affected persons, and interested members of the public. Such notice shall specify the findings and conclusions upon which such action was based.

"(B) Any person adversely affected by action taken under subparagraph (A) or the failure of the Administrator to take such action may request an expedited hearing, under the procedures in section 6(c)(2), to determine whether the action was taken in accordance with subparagraph (A) or whether the Administrator was required to take action. Such a hearing shall be held and a determination made within 75 days from the date of the receipt of the request for the hearing.

"(C) The Administrator shall provide reasonable procedures for petitions to modify or terminate an action taken under subparagraph (A) when the drinking water well involved no longer has the pesticide in a concentration that exceeds the applicable groundwater residue guidance level and will likely remain below such level.

"(3) JUDICIAL REVIEW.—Judicial review of actions taken under this subsection shall be governed by section 16.

"(f) REGISTRATION AMENDMENTS.—

"(1) REQUIREMENT.—

"(A)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities, the Administrator shall promptly require amendments to the registration of the pesticide with respect to which the finding was made that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final groundwater residue guidance level involved in the finding to be exceeded in drinking water wells. The Administrator shall make any such determination public.

"(ii) If the Administrator proposes to require registration amendments under clause (i) for a pesticide, the Administrator shall notify the registrant of the pesticide of such amendments and shall publish notice of such proposal in the Federal Register. Such notice shall include the Administrator's determination whether the presence of the pesticide in drinking water wells appears to have been the result of the use of the pesticide in accordance with its labeling or the result of widespread and generally recognized practice.

"(B) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in potential drinking water in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in potential drinking water in different localities, the Administrator shall promptly require amendments to the registration of the pesticide with respect to which the finding was made that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final groundwater residue guidance level involved in the finding to be exceeded in potential drinking water. If the Administrator proposes to require registration amendments under this subparagraph for a pesticide, the Administrator shall notify the registrant of the pesticide of such amendments. In establishing such amendments, the Administrator shall—

"(i) meet the procedural requirements of subparagraph (A)(ii),

"(ii) take into account information submitted by States on land or groundwater use classification or other governmental actions that could affect when groundwater may be used for drinking water, and

"(iii) consider the views of the Secretary of Agriculture, the heads of other appropriate Federal agencies, and States as required in paragraph (2).

"(2) CONSULTATION WITH STATES.—In taking action under paragraph (1), the Administrator shall consult with the Secretary of Agriculture and the State where the pesticide involved has been detected in any groundwater sampling point and each other State in which there is significant use of the pesticide. The Administrator shall notify such State of the Administrator's determination that there is a reasonable likelihood that a groundwater residue guidance level will be exceeded and shall, in accordance with section 10(h), provide the State with all information relevant to this determination. Each State that is notified under this paragraph shall promptly provide the Administrator with information that is relevant to taking action under paragraph (1) and shall make recommendations with respect to any proposed registration amendments.

"(3) SCOPE OF AMENDMENTS.—

"(A) Amendments to the registration of a pesticide under paragraph (1) may include—

"(i) limitations on the purposes for and locations at which the pesticide may be used, considering factors such as environmentally sensitive areas and conditions,

"(ii) limitations on the rate at which the pesticide is applied,

"(iii) limitations on the time or frequency of pesticide use,

"(iv) limitations on the method of pesticide application, storage, handling, or disposal,

"(v) reporting or other requirements, including label changes or changes in classification,

"(vi) requirements for the training or certification of pesticide applicators or other persons using the pesticide,

"(vii) required site specific responses, or

"(viii) any other requirement to ensure that the applicable groundwater residue guidance level will not be exceeded.

"(B) Amendments to the registration of a pesticide under paragraph (1) should, to the extent feasible, be directed to the same or similar use of the pesticide, same or similar geographical and hydrogeological areas, and other similar conditions that led to the determination under subparagraph (A) or (B) of paragraph (1).

"(C) In taking regulatory action under paragraph (1), the Administrator may use recommendations made by a State under paragraph (2).

"(D) In requiring amendments to the registration of a pesticide under paragraph (1), the Administrator shall consider the effect of any voluntary actions by registrants or other persons, including actions by a State, to prevent the groundwater residue guidance level involved from being exceeded and to comply with other environmental laws.

"(4) PROCEDURE.—Registration amendments under paragraph (1) shall be imposed in accordance with the procedural requirements of this Act.

"(g) INFORMATION ON PESTICIDES IN GROUNDWATER.—The Administrator may collect and make available through a public information file information concerning the detection of pesticides in any groundwater sampling point. The file may, among other things, summarize for each pesticide that has been detected in groundwater, based on reliable analytical data, whether the pesticide has been detected at a concentration that exceeds the applicable groundwater residue guidance level and whether the presence of the pesticide in groundwater appears to have been caused by the use of the pesticide in compliance with this Act.

"(h) TECHNICAL ASSISTANCE TO STATES.—The Administrator shall provide technical information to States to assist in implementing this section. Subject to section 10(h), the technical information provided respecting a pesticide shall include data on the toxicity, environmental fate, or physical or chemical characteristics of the pesticide, predictive modeling, exposure and other relevant subjects. In addition, the Administrator shall provide information, to the extent reasonably available, on alternative methods of pest control and on agricultural or other management practices that could minimize the presence of pesticides in groundwater.

"(j) SPECIAL REVIEW.—Upon receiving reliable analytical data that a pesticide has been detected above the applicable groundwater residue guidance level but not in a drinking water well or potential drinking water, the Administrator may initiate a public interim administrative review under section 3(c)(8) to determine whether the pesticide may cause unreasonable adverse effects on the environment from such use.

"(k) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall limit the authority of the Administrator or of any State under other provisions of this Act or under any other law.".

Page 131, line 7, strike out "or", in line 10 strike out the period and insert in lieu thereof "; or", and after line 10 insert the following:

"(U) to violate any action required under section 32(e)(2).".

By Mr. GUNDERSON:

(As amended by H.R. 5440.)

—Page 37, line 20, strike out "$50,000" and insert in lieu thereof "$100,000".

Page 38, line 6, strike out "$100,000" and insert in lieu thereof "$200,000".

Page 38, line 17, strike out "$100,000" and insert in lieu thereof "$300,000".

Page 39, line 13, strike out "$100,000" and insert in lieu thereof "$300,000".

By Mr. HATCHER:

(As amended by H.R. 5440.)

—Page 40, strike out lines 7 through 19 and insert in lieu thereof the following:

"(C)(i) Notwithstanding any other provision of this subsection, in the case of a small business registrant of a pesticide, the registrant shall pay a fee for the reregistration of each active ingredient of the pesticide that does not exceed an amount determined in accordance with this subparagraph.

"(ii) If during the 3-year period prior to reregistration the average annual gross revenue of the registrant from pesticides containing such active ingredient is—

"(I) less then $5,000,000, the registrant shall pay 0.5 percent of such revenue;

"(II) $5,000,000 or more but less than $10,000,000, the registrant shall pay 1 percent of such revenue; or

"(III) $10,000,000 or more, the registrant shall pay 1.5 percent of such revenue, but not more than $150,000.

"(iii) For the purpose of this subparagraph, a small business registrant is a corporation, partnership, or unincorporated business that—

"(I) has 150 or fewer employees; and

"(II) during the 3-year period prior to reregistration, had an average annual gross revenue from pesticides that did not exceed $40,000,000.

—Page 123, strike out lines 23 and 24 and insert in lieu thereof the following: "the State has the authority to impose appropriate civil and criminal penalties which should be sufficient to act as a reasonable deterrent.".

—Page 123, strike out lines 23 and 24 and insert in lieu thereof the following: "the State has the authority to impose appropriate civil and criminal penalties.".

By Mr. HUCKABY:

(As amended by the text of H.R. 5440.)

1. On page 116, lines 21 to 25 of H.R. 5440, strike out "that had not expired before the date of enactment of such Act of Congress irrespective of the date the pesticide completed a regulatory review period as defined in such title"

2. On page 117 line 7 of H.R. 5440, immediately after the period, insert the following: "For pesticides for which the term of a patent has not been so extended,

(A) after the patent for the pesticide has expired, and

(B) there has elapsed a period of time equal to the regulatory review period for the original registration of the pesticide that occurred after the patent for the pesticide was granted, but not more than 5 years,

the amount of compensation to be paid under arbitration under subclause (I) for use of data submitted to the Administrator for such pesticide shall be as provided in the preceding sentence. If the Administrator has inadequate records to determine the regulatory review period, the amount of compensation to be paid for such use of data shall be as provided in the first sentence of this subclause (II) beginning five years after the patent for the pesticide has expired. The provisions of this subclause (II) shall become effective with respect to applications by persons, other than the original data submitter, filed with the Administrator after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986."

By Mr. ROBERTS:

(As amended by H.R. 5440.)

—Section 821(a) of the text of H.R. 5440 (the Amendment in the Nature of a Substitute to H.R. 2482), is amended (page 138, lines 2 through 10) to read as follows:

"SEC. 821. LIABILITY FOR LAWFUL APPLICATION

(a) PESTICIDE USE AND NO PRIVATE RIGHT OF ACTION.—

(1) Liability under Federal environmental statutes for the costs of response or damage incurred with respect to a release or threatened release into the environment of a pesticide shall, in any case where the application was in compliance with label instructions and other applicable law, be imposed on the registrant or other responsible parties, not the agricultural producer. There shall be a rebuttable presumption that the application was in compliance with label instructions and otherwise lawful. For purposes of the preceding sentence, the terms "damages", "response", "release", and "environment" shall have the meanings assigned them of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The term "Federal environmental statutes" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Clean Water Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and this Act. Neither this section nor any other provision of this Act shall be construed, interpreted or applied to preempt or, except as provided above, displace liability under other Federal or State laws, whether statutory or common.

(2) Nothing in this section shall be construed as conferring a private right of action on any person for the purposes of this Act or any other Federal law.

By Mr. ROSE:

(As amended by H.R. 5440.)

—On page 116, strike out line 11 and all that follows through line 11 on page 118, and insert in lieu thereof:

Section 3(c)(1)(D)(ii) (7 U.S.C. 136a(c)(1)(D)(ii) is amended by inserting "(I) after "(ii)" and adding at the end the following:

"(II) in the case of a pesticide the term of the patent for which has expired, the terms and amount of compensation for data that was submitted for such pesticide to be paid by a person who intends to file an application for registration of a pesticide that cites such data may be fixed before the submission of such application by arbitration under subclause (I) initiated by such person. The arbitration shall be binding on the original data submitter and shall be binding on such person after the date such person's application is submitted. The findings and determination of the arbitration shall be subject to judicial review in the United States Court of Appeals upon the filing of an action by a party to the arbitration up to the date such person submits such application. The findings and determination of the arbitration shall be sustained if they are supported by substantial evidence when considered on the record of the arbitration as a whole. Each party to the first arbitration under this subclause to determine the terms and amount of compensation for the

use of particular data shall share equally in the payment of the fees and expenses of the arbitrators and shall each pay its own attorney's fees. In all subsequent arbitrations under this subclause to determine the terms and the amount of compensation for the use of such data, the party to such subsequent arbitration who seeks to cite the data of the original data submitter shall pay the fees and expenses of the arbitrators and the attorney's fees of the original data submitter. The provisions of subclause (I) apply to arbitrations under this clause, except as otherwise provided in this subclause."

H.R. 4154,

By Mr. BARTLETT:

—Page 4, after line 22, insert the following new subsections:

(d) NONDISCRIMINATION ON ACCOUNT OF AGE IN EMPLOYMENT IN THE LEGISLATIVE BRANCH.—Section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 634(a)) is amended by striking out "and in those units of the legislative and judicial branches" and inserting in lieu thereof "in the legislative branch of the Federal Government, in those units of the judicial branch".

(e) ADMINISTRATION AND ENFORCEMENT BY APPROPRIATE COMMITTEES OF THE CONGRESS.—The Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate shall establish rules and procedures to apply the principles of section 15(a) of the Age Discrimination in Employment Act of 1967, as amended by subsection (d) of this Act, to employees of the House of Representatives and employees of the Senate, respectively.

SENATE—*Wednesday, September 17, 1986*

(Legislative day of Monday, September 15, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Hon. WILLIAM S. COHEN, a Senator from the State of Maine.

PRAYER

The Chaplain, the Reverend Richard C Halverson, D.D., offered the following prayer:

"As the harts panteth after the waterbrooks, so panteth my soul after Thee O God. My soul thirsteth for God, for the living God * * * Psalm 42:1-2.

"Thou hast made us for Thyself, O Lord, and restless are our hearts until they repose in Thee."

Our need of Thee is expressed so beautifully in these words of King David the psalmist, and St. Augustine, ancient theologian and philosopher, eternal God. Our souls languish for Thee—our spirits are starved for Thee. Awaken us, O Lord, to the barrenness of our lives—the emptiness when we do not come to Thee, wait upon Thee, take time for Thee. In the whirlwind of activity, give us grace to turn to Thee in quietness for strength and renewal. Help us to hear Thy still small voice calling us out of busyness to the nourishment of our souls. Lead us beside still waters, gentle Shepherd. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. THURMOND).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 17, 1986.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WILLIAM S. COHEN, a Senator from the State of Maine, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. COHEN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. DOLE. I thank the distinguished Presiding Officer, the Senator from Maine [Mr. COHEN].

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each.

Then we have a flurry of special orders, seven in all—Senators HAWKINS, PROXMIRE, MURKOWSKI, SASSER, BROYHILL, CHAFEE, and LEVIN—not to exceed 5 minutes each. I ask unanimous consent that the order for Senator TRIBLE be vitiated.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOLE. Then we have morning business, not to extend beyond 10:30 a.m.

Sometime between now and 10:30, it is my intention, if we can work it out, to turn to H.R. 5205, the Department of Transportation bill. If we can do that, we will postpone the cloture vote on the Rehnquist nomination until 3 o'clock.

There will be votes throughout the day and into the evening. I am not certain how late. I indicate to all Members that, depending on when the votes come, we hope to have a window, roughly between 6 and 8 o'clock. It could start a little later and run a little longer, but it will be in that timeframe.

VISIT OF PRESIDENT AQUINO

Mr. DOLE. Mr. President, last evening, I was pleased to join with the minority leader and the chairman and ranking member of the Foreign Relations Committee, in sponsoring a resolution of welcome to Philippine President Aquino. She will meet the President today, and, or course, we are all looking forward to her appearance on Capitol Hill tomorrow, including an address to a joint meeting of both Houses.

When President Aquino first came to power, there was, almost inevitably, a near-euphoria which gripped the Philippines and, for that matter, Washington, too.

By her remarkable performance, President Aquino richly deserved all the praise she received. But, as she herself noted, governing is a much bigger task than aspiring to govern. And, as President, she has been confronted with more than her fair share of tough problems.

So, as we make preparations to greet President Aquino tomorrow, I want to comment briefly this morning on three of the problems which I see as at the top to the agenda of United States-Philippine relations.

ECONOMIC PROBLEMS TOP AQUINO AGENDA

Clearly the top priority for President Aquino is the very serious economic problems which plague her country—a huge foreign debt; a continuing shortage of foreign exchange; serious unemployment; and a whole range of other economic troubles. The reality is that, while we may be able to provide some additional aid, our own severe budget problems rule out large sums of new assistance. So, the private sector and private investment will have to be the main engine for any effective program of economic stabilization and growth, supplemented, I hope, by additional aid from Japan and other nations with their own large stake in a stable, prosperous Philippines.

The Aquino government is to be commended for the reality with which it has confronted its economic dilemma. Especially noteworthy is the stress it has put to date on the revitalization of the private sector, the importance of a cooperative agreement with the private banks, and the relative openness to foreign investment. I know those topics fit prominently into President Aquino's U.S. schedule. Let us hope all those will continue to be high priority items for her Government.

INSURGENCIES THREATEN PHILIPPINE SECURITY

A second area of great concern to the Aquino government, and to many of us here in this country and Congress, is the serious security situation within the Philippines. Manila has to cope, simultaneously, with not one but two menacing insurgencies. And the Government still has a long way to go to bring its own military forces up to the level where it can deal effectively with the military threats it faces.

President Aquino is committed to a serious exploration of a negotiated settlement with both the Muslim and the Communist insurgents. She is to be commended for seeking a peaceful settlement. Regrettably, though, as all to often happens in these kinds of cases, her good faith attempts so far appear to be running into an insurgent stone wall, especially from the Communist group, the so-called New People's Army.

This is primarily a matter for the Aquino government to deal with, of

course, but we ought to help in every way we can—not just as a matter of meeting our commitments to a good friend, and helping keep the Philippines a stable ally, but also because, somewhere down the road, if the Communist insurgency continues to grow and expand its operations, both of our bases in the Philippines are going to be mighty tempting targets.

In fact, we have to take special care even now—and the Philippine Government has to make this a top priority, too—to maintain the physical security of those bases in the face of what is already probably a substantial threat from terror-type attacks. I do not want to cry wolf, or raise any false alarms, but I also do not want to pick up the paper someday and read about a Beirut-style attack by some Communist terrorists on barracks at Clark or Subic.

BASES VITAL TO U.S. SECURITY ROLE IN PACIFIC

There is, of course, the major issue of the bases themselves. Clark and Subic have served well the interests of both the United States and the Philippine Governments. They play a vital role in our overall security posture in the Pacific. Without them, or comparable facilities elsewhere, the United States simply could not meet its security responsibilities in that part of the globe.

I welcome President Aquino's commitment to abide fully by the bases agreement at least until 1991. I understand that there are good reasons why, right now, she might not want to commit herself publicly beyond that date. But I also know—and I expect she will hear during this visit—that there is a strong feeling in this country that those facilities—or, again, similar facilities elsewhere—are going to be needed long past 1991. And there is some concern about the viability of Clark and Subic for that longer term, especially in the absence of some kind of expression from the Philippine Government that it, too, sees merit in their continued operation. At the appropriate time, I hope she will be prepared to address with our President some longer term plans for the bases, and the role they play in advancing the security interests of both the United States and the Philippines.

A NEW PAGE IN UNITED STATES-PHILIPPINE RELATIONS

Mr. President, when President Aquino assumed office, it represented the turning of a page in United States-Philippine relations. The story written so far on the news pages has been a positive one, of friendship and cooperation. President Aquino's trip, I am sure, will be yet another significant chapter in that ongoing story. I welcome her, and I look forward to seeing her and hearing her message tomorrow.

CONSTITUTIONAL BIRTHDAY

Mr. DOLE. Mr. President, today we kick off a marathon birthday celebration for the U.S. Constitution. For it was on September 17, 1787, that President James Madison signed what Chief Justice Warren Burger calls "the most perfect document ever known from the hand and the mind of man."

This past weekend, Annapolis, MD, was the site of the formal opening of the 3-year national observance of the Constitution's 200th birthday. The distinguished chairman of the Judiciary Committee, Senator THURMOND, participated in those observations. It was on September 14, 1787, that word went out from Annapolis that there would be a meeting the next May in Philadelphia to draft a constitution "adequate to meet the exigencies of the Union."

The Constitution has proven more than adequate. Although we've amended it—26 times—that is not very often considering its longevity and the changes that have taken place in the world over the past 200 years. And the amendments we have added only enhance the underlying document.

The principles that guided this Nation into being and have propelled it into the role of the world's greatest democracy are all contained in the Constitution. From the separation of powers, the authority to levy taxes, declare war, to freedom of speech and religion, the right to a speedy and public trial, granting women and all citizens the right to vote, regardless of color, creed, or religion—these are the keystones not only of our Government, but also our way of life.

Because the Constitution is so integral to what we are as a nation, it is only fitting that States, cities, towns, and most of all the Federal Government, dedicate this time to reflect upon the importance of the Constitution and to celebrate its very existence.

And those of us in Congress, who have the responsibility for creating the laws of this land—laws that abide by the Constitution—have a special reason to commemorate and honor it. For if we ever lose sight of the Constitution's meaning, its import, then we will lose our direction as a nation. This birthday celebration will go forward to make sure that does not happen.

□ 0904

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the Democratic leader is recognized.

THE VISIT OF PRESIDENT AQUINO

Mr. BYRD. Mr. President, I share the distinguished majority leader's sentiment with respect to the visit to our country by the Philippine President, Mrs. Aquino.

The bases are of extreme importance not only to our own national security, as the distinguished majority leader pointed out, but equally important, as he pointed out, to the Philippines themselves. I, too, look forward to welcoming and to hearing Mrs. Aquino tomorrow.

FOREIGN DEBT

Mr. BYRD. Mr. President, the United States continues to pile up foreign debts to pay for rapidly expanding imports, according to data released by the Commerce Department yesterday. We all know that our trade deficit has cost millions of jobs as U.S. production is displaced by rising imports and lost exports. Less well known are the long-term costs of our huge trade deficits and mounting foreign debts.

When this administration took office in 1981, the United States was the world's largest creditor. Americans owned $106 billion more in assets abroad than foreigners owned here. By the end of 1985, the United States had gone from the position of world's largest creditor to the position of world's largest debtor with a net foreign debt of $107 billion. Think of that. From the world's largest creditor in 1981 to the world's largest debtor in 1985.

This year, the United States will add another $105 billion to that debt, if the trend for the first half of the year continues. And by 1988 if that trend continues, this country's foreign debt will exceed that of all of Latin America combined.

During the last 5½ years, our exports have fallen and we have paid for soaring imports only by selling off our assets. In fact, foreigners have expanded their ownership of U.S. assets by 126 percent since the beginning of 1981. At that time, foreigners held $501 billion worth of American assets. As of June this year, they held more than twice that amount, $1.13 trillion in American assets, mostly bank deposits and bonds earning high interest rates.

The United States is destined to continue pawning off its assets until we gain control of the trade deficit, now running at a rate of $180 billion.

As we sell more and more assets to foreigners, we must increase our payments of interest, dividends, and profits to those foreigners.

We are not robbing Peter to pay Paul in this country. We are talking about dividends, interest payments, and profits to foreigners.

We have already made a permanent sacrifice of tens of billions of dollars to our standard of living. For example, our payments to foreigners on their investments here are already running at an annual rate of $69 billion. That's a 64-percent increase since the beginning of 1981.

By running up such large foreign debts, our country has also sacrificed some of its ability to manage the economy. For example, in recent months, there has been much debate over how much to reduce interest rates to spur the economy. The major factor preventing lower rates has been the worry that it would displease our foreign lenders and cause problems in our financial markets.

The administration has ignored the problems of trade deficits and foreign debts for too long. We are paying a steep and growing price for the administration's neglect. The disturbing evidence has been thrust in our faces once again as the Commerce Department statistics were announced yesterday.

Mr. President, I ask unanimous consent that a report containing and commenting upon the most significant of the statistics from this the Commerce Department's announcement be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

"Looking ahead, the stability of our capital and money markets is now dependent as never before on the willingness of foreigners to continue to place growing amounts of money in our markets. . . . We are in a real sense living on borrowed money and time."—Paul Volcker, Chairman, Federal Reserve Board, Washington Post, February 21, 1985.

"Billions of dollars of foreign capital . . . has been invested in the United States . . . because we are the best and safest investment in the world today."—President Ronald Reagan, News Conference, September 17, 1985.

PAWNING OFF AMERICA'S FUTURE

The U.S. is sinking ever deeper into foreign debt and is paying a heavier and heavier price for the massive debts already accumulated. When this Administration took office in 1981, the U.S. was the world's largest creditor. It owned $106 billion more assets abroad than foreigners owned here. By the end of 1985, however, the U.S. had become the world's largest debtor, with a net foreign debt of $107 billion. This year, the U.S. will add another $105 billion to that debt, if there is a continuation of the trend shown by today's Commerce Department data for the first half of 1986.

Since this Administration took office, our exports have fallen and we have paid for soaring imports only by selling off our assets. In fact, foreigners have expanded their ownership of U.S. assets by 126 percent since the end of 1980. At that time, foreigners held $501 billion worth of American assets. They now own $1.1 trillion.

U.S. payments of interest, dividends, and profits to foreigners for their investments here have climbed 64 percent since 1980 to an annual rate of $69 billion (based on the data announced this morning).

Foreigners have been attracted more by high U.S. interest rates than by confidence in the continued growth of the U.S. economy. Foreigners have expanded their nongovernmental holdings of interest-paying assets much faster than they have bought American stocks and businesses. Between the end of 1980 and the end of 1985, they increased their holdings of—

U.S. Treasury securities from $16 billion to $84 billion,

Corporate bonds from $10 billion to $82 billion, and

U.S. bank accounts from $120 billion to $354 billion.

These types of investments alone account for the great majority of foreigners' purchases of U.S. assets.

Until we gain control of the trade deficit, the U.S. will be forced to continue pawning off its assets. This has two painful costs to Americans. First, we are making a permanent sacrifice of tens of billions of dollars in the standard of living of Americans. Second, as Paul Volcker suggested in the quote above, our ability to reduce interest rates to spur the domestic economy is being limited by the need to please our foreign lenders.

Mr. BYRD. Mr. President, I ask unanimous consent that I may reserve the remainder of my time if I have any.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. I thank the Chair.

RECOGNITION OF SENATOR HAWKINS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Florida is recognized for 5 minutes.

TWO KEYS TO THE WAR ON DRUGS: DRUG EDUCATION AND THE MILITARY

Mrs. HAWKINS. Mr. President, we are at a crossroads in a war and the time has come to take stock, to evaluate what is working and what is not. As the Senate approaches many solutions, it becomes increasingly important to look at actual records of effectiveness in the so-called war on drugs.

The illegal drug merchants fight for the control of our society through the most basic principle of economics—supply and demand. To be truly effective, the war on drugs must take the same approach.

First, let us examine the demand side. As I said here on the floor last Thursday, we rush off in a hundred different directions trying to fight the drug problem. But never has this body concentrated properly on educating our children about drugs.

As a parent of young children long before coming to the U.S. Senate, I was working to educate our children about the horrors of illegal drug use. As chairman of the Alcohol and Drug Abuse Committee in the Senate I have fought constantly to increase the ADAMHA block grants. That means alcohol, drug abuse, and mental health.

Since 1982, we have seen ADAMHA funding climb from $428 million to $468.9 million in 1986. ADAMHA is slated for a further increase again, to $490 million in 1987.

I should add that in addition to educating, ADAMHA money goes to fund public and private drug rehabilitation centers. For my colleagues who have a lot to say about the war on drugs but never visited a rehabilitation center, I must tell you that there is no more meaningful way to drive home the horrors of drug abuse than to visit and talk with children in a drug rehabilitation program.

But at the same time, I cannot imagine a place that is more filled with hope. There is no greater reward than to talk with people who realize they have been given the opportunity to free themselves from the strangling clutches of drug abuse.

That is what ADAMHA money buys—education and rehabilitation; it offers foresight and hope.

Now, let us examine the supply side. For years we have heard that we should "call out the troops" to help. There are those who propose this as if it were a new idea, when the plain truth is that we have been talking about this and have had it at our disposal for years.

As we all know, the 97th Congress amended the posse comitatus statutes. While military personnel are prohibited from engaging directly in civilian law enforcement, they can use their resources to help civilian police agencies.

Under the national security directive signed by President Reagan on April 8 the military is now supposed to be committed to a greater role than ever before in helping to stem the flow of illicit drugs.

By rights, then, we should expect to be seeing results. Are we? Let us look at the record.

□ 0950

Navy and Air Force radar aircraft are flying missions to detect drug traffickers offshore in support of the Coast Guard and Custom Service.

Navy ships operating in coastal waters are constantly vigilant for suspect vessels and some carry Coast Guard tactical law-enforcment teams which board suspect vessels.

The Marines operate aircraft for night detection of drug smugglers.

Air Force aircraft are flying frequent training missions in support of the drug enforcement community.

According to a recent White House strategy report, the Air Force provided the Customs Service access to all information obtained from a joint sur-

veillance military/civilian surveillance system and from two balloon-borne radars which provided coverage off the coast of my State of Florida.

Recent testimony in the Appropriations Committee went on for nine pages about DOD assistance to law enforcement.

We are in the war—but we are not winning the war.

Those who say "yes" obviously have not read my mail. Every day I receive a stack of letters. They tell me, Senator if you really wanted to stop the flow of drugs, you would take some real action. You would get the military involved.

Mr. President, to me that suggests that much more can be done. Time after time, DOD gives assurances—to the White House and to us. Still, the American people do not perceive that there is enough action. And I must say, neither do I.

The DOD continues to assert that it has little or no role in this war.

That is not acceptable to this Senator, Mr. President. The Congress did not go to the trouble of amending the posse comitatus just to have our wishes ignored. Perhaps we should stretch the definition of who qualifies for drug education. Maybe in addition to schoolchildren from kindergarten and up, we should provide drug education to one other group, generals, admirals, and the Secretary of Defense.

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin is recognized for not to exceed 5 minutes.

KEY SCIENTIST SAYS NO TO SDI

Mr. PROXMIRE. Mr. President, there is a fascinating struggle going on in this country right now for the Nation's soul. The battleground is the strategic defense initiative [SDI] or star wars. We in the Congress decide on the resources we will commit to this dream of a defense against enemy intercontinental ballistic missiles. Former Defense Secretaries have told the Congress the cost could be more than $1 trillion to build this system. They estimate the annual cost each year of maintaining and modernizing it could exceed $100 billion. It could exceed the cost of the U.S. Navy, Army, or Air Force.

Most outside experts say it will not work. They tell us it is an immense waste of money and something more, one of the Nation's most vital resources—its scientific genius. Tens of thousands of this Nation's finest physical scientists will be drawn away from developing crucial conventional arms that would surely strengthen America's national security. They will also be taken from work in developing improvements in the Nation's transportation system, from agriculture, from such development of advances in health as cancer and heart research, and from many other areas to improve the conditions of human life.

Mr. President, this is a reminder that those of us in the Congress are not the only ones who will decide what resources we pour into this massive star wars effort. This is a free country. Sure, the salaries and the equipment available to those scientists who accept star wars work will be immensely tempting. But a surprising number have seen this—for what it is—a struggle for the soul of America. Should they dedicate their life to pushing the United States ahead in the nuclear arms race? Or should they turn their back on material advantages and devote their energies to cancer research, to teaching, to building a healthier and stronger country?

The way our most competent scientists have come down on this will surprise many. Think of it: 3,700 science and engineering professors, including 15 Nobel Laureates and 57 percent—that is right more than half—of the faculties at the Nation's top physics departments, have signed a petition pledging to refuse SDI funding. That is an impressive negative vote. And yet it still leaves thousands of the Nation's physicists available for SDI. Could this revolt of so many of the Nation's scientists play a role in preventing the achievement of the President's dream?

In the September 22 issue of Newsweek, reporters who have investigated this problem conclude:

> Many scientists doubt that SDI will ever work, especially if it can't attract—and keep—the best and brightest minds in science.

The story is told in the decision of one young scientific genius named Peter Hagelstein. Hagelstein is the author of the x-ray laser that made some experts believe that a star wars system might just possibly succeed. A book by William Broad, a New York Times science reporter, describes how Hagelstein came to the Livermore Lab in 1976. Hagelstein didn't even know that the Livermore Lab was a "bomb shop" at the time. He had been working on a critical aspect of cancer research, particularly on a medical x-ray laser that could make three-dimensional holographic images of molecular structures inside the body. Livermore had the equipment, and as Hagelstein told Broad—"it had nice people." So he stayed.

In 1979, Hagelstein found his colleagues stymied in trying to develop an x-ray laser weapon. They faced a technical problem. Hagelstein solved the problem. In doing so, the Hagelstein solution helped materially to pave the way for SDI or star wars. It did more. It hooked Hagelstein—at least for the time on helping to advance America's cause in the critical technological arms race with the Soviet Union. In spite of his success, Hagelstein continued to be frustrated and worried about his role in advancing weapons instead of human health. So he has just recently quit. He will go back to MIT as an associate professor. A friend of Hagelstein said Hagelstein wants to do work that will "benefit all of mankind."

What changed Hagelstein's mind? The Newsweek report declares that it has become clear lately that Hagelstein's breakthrough with his laser would be most effective not at shooting incoming missiles but at knocking out satellites such as those carrying defensive systems. In an article in the Washington Post, Boyce Rensberger reports that a Livermore physicist said Hagelstein's leaving would be "a very big loss because when we need a computation for a new problem, he's the person we turn to."

So, Mr. President, this struggle for the Nation's soul or arms control versus the nuclear arms race goes on on fronts that may be more important than any decision made by the Government itself, the Congress or the President.

Mr. President, I ask unanimous consent that the articles to which I have referred in the September 22 issue of Newsweek and in a recent edition of the Washington Post be printed at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

A CRISIS OF CONSCIENCE

For a brilliant scientist, the allure of the Strategic Defense Initiative is hard to resist: Star Wars traffics in some of the most challenging problems in physics, assuages the conscience by promoting defensive weapons and offers funding the likes of which haven't been seen since the Apollo program. But no less a scientist than the architect of the X-ray laser that inspired SDI has decided that he can resist it all. Last week Peter Hagelstein resigned from Lawrence Livermore Laboratory, a top weapons center, sold his house, called the lab to say he had the flu and slipped into hiding. Next month he joins the Massachusetts Institute of Technology, his alma mater, as an untenured associate professor of electrical engineering.

Hagelstein's defection from the ranks of Star Warriors closes a chapter in one man's life but raises larger questions about SDI. When Hagelstein, now 32, joined the lab in 1975, "they convinced him this would be a fruitful environment to work in," says Livermore physicist M. Stephen Maxon, a friend, "but I doubt they talked much about weapons." By all accounts Hagelstein hoped to use the unequaled facilities at the lab, near San Francisco, to pursue his dream of an X-ray laser that would take holographic images of living cells and molecules in the body, gathering clues to cancer and other mysteries. Then one day in 1979, he suggested a feasible design for an X-ray laser powered by a nuclear explosion. According to one Livermore physicist, Hagelstein "got

sucked into" developing his still-classified design. By 1980 it was clear that Hagelstein's laser, Excalibur, offered a potent new force in the nation's arsenal. "Peter had fallen under the spell [of Livermore]," says the physicist, "and felt psychologically trapped."

That was bad enough for a shy, piano-and violin-playing scientist who, says MIT's Robert Adler, "did not intend to do work on weapons." But lately it has become clear that Excalibur would be most effective not at shooting down incoming missiles, as SDI is supposed to, but at knocking out satellites such as those that carry the defensive systems. "The X-ray laser is becoming just another weapons system," says John Pike of the Federation of American Scientists. "That makes the high moral purpose of the thing more difficult to see."

Hagelstein's departure could slow SDI's X-ray program, whose funding is due to double to $530 million next year. "It will take longer to generate ideas for new X-ray lasers," says Maxon. Hagelstein is not alone: 3,700 science and engineering professors, including 15 Nobel laureates and 57 percent of the faculties at the nation's top 20 physics departments, have signed a petition pledging to refuse SDI funding.

Space test: So far the academic boycott hasn't noticeably impeded SDI. In a $150 million experiment carried out this month and announced last week, SDI passed its first wholly space-based test. Sensors on one stage of a Delta rocket tracked and monitored the shape and temperature gradients of the exhaust plume from another, just as a defensive weapon would track an ICBM. As a grand finale, one stage overtook the other and smashed into it at 6,500 miles per hour. Based on this success, says project manager Lt. Col. Michael Rendine of the Air Force, "I personally believe that our job [of intercepting missiles] is going to be a lot easier than we thought." But many scientists doubt SDI will ever work, especially if it can't attract—and keep—the best and brightest minds in science.

TROUBLED LASER SCIENTIST QUITTING WEAPONS WORK

(By Boyce Rensberger)

Peter Hagelstein, the brilliant but ethically troubled young scientist whose invention of the X-ray laser was a key factor in creation of the Strategic Defense Initiative, is quitting weapons research to become a college professor, the Lawrence Livermore National Laboratory announced yesterday.

Hagelstein, 32, who went to Livermore hoping to create an X-ray laser for medical research but who, as one colleague put it, "got sucked into weapons work," is to join Massachusetts Institute of Technology next month as an associate professor in the electrical engineering and computer science department, which does no weapons research. At Livermore, one of the Nation's two nuclear-weapons research centers, Hagelstein invented a form of X-ray laser that is powered by a hydrogen bomb explosion and showed promise as a space weapon that could destroy Soviet nuclear missiles in flight.

Soon after the device worked in an underground test, Livermore's Edward Teller, the hydrogen-bomb pioneer, began pushing President Reagan to step up research on antimissile weapons, an effort that became SDI, or "Star Wars."

Livermore sources said Hagelstein, whom they described as shy and idealistic, had expressed misgivings about working on weapons.

Hagelstein came to Livermore in 1975 as a promising mathematics and physics student at MIT. Unusually well-rounded for the kind of intense scientist Livermore usually attracts, he ran marathons in college, was a composer and performed as a violinist with the MIT Symphony Orchestra.

He was recruited to Livermore by the little-known Hertz Foundation. Created by John D. Hertz of rent-a-car fame to counter what he perceived as a Soviet security threat, the foundation identifies bright young science graduates, offers lucrative fellowships for further study and funnels most of the brightest into Livermore.

The foundation, with Teller on its board, is based in the lab's home town of Livermore, Calif.

At age 20 and dreaming of a medical X-ray laser that could make three-dimensional holographic images of molecular structures inside the body, Hagelstein, according to William Broad's Book "Star Warriors," had never heard of the weapons lab.

The recruiter, Teller's protege Lowell Wood and a former Hertz fellow, did not tell Hagelstein about the lab's central function. Only after arriving at the lab did Hagelstein realize that Livermore was a "bomb shop," he told Broad.

"I came pretty close to leaving. I didn't want to have anything to do with it," he told Broad. "Anyway, I met nice people, so I stayed."

Hagelstein initially worked on his laser but gradually became acquainted with similar X-ray laser research intended for a weapon.

In 1979, according to the book, Hagelstein realized that colleagues working on the X-ray laser weapon faced a technical problem that he could solve. Responding mainly to the intellectual challenge, he offered his solution, which worked, and gradually became part of the weapons program.

Steve Maxon, a Livermore physicist, said Hagelstein's departure would be "a very big loss because when we need a computation for a new problem, he's the person we turn to."

Hagelstein could not be reached for comment yesterday. A friend, who asked not to be identified, said the young scientist now wants to do work that will "benefit all mankind."

MYTH OF THE DAY: THERE ARE PERSUASIVE MORAL ARGUMENTS IN FAVOR OF CAPITAL PUNISHMENT

Mr. PROXMIRE. Mr. President, the myth of the day is that there are persuasive moral arguments in favor of capital punishment.

What are the moral arguments that have been put forward by advocates of capital punishment? Charles Whittier of the Library of Congress has summarized some of them, while, of course, remaining neutral as to their merits. Let me review briefly some of the points noted by Mr. Whittier.

Proponents of capital punishment, maintain that society has the right—and, indeed, obligation—to punish and that punishing serves to affirm the moral order by treating lawbreakers as responsible moral agents.

Death penalty advocates argue further that the first priority of the State is to establish justice and protect the common good against threats to the well-being of the community. Capital punishment, in their view, reinforces the moral order and authority of the community by giving expression to that sense of moral indignation that is aroused in society generally by the crime of murder. They declare that the demand for retribution is grounded in the moral order as well as in necessities of State. They often cite the failure of rehabilitation to bring about lasting change.

Many capital punishment proponents stress that there is, in their opinion, a commonsense practical deterrence inherent in the death penalty. They maintain that while abuses or flaws in the legal system should be remedied, such abuses or flaws do not affect the intrinsic right of the State to exact justice through capital punishment. They urge that due process in capital cases be made swifter and more just so that the law knows no partiality.

Many religious supporters of the death penalty note that capital punishment is imposed for murder in the Hebrew Bible and has general scriptural warrant in the explicit duty of the State to protect its citizens. They cite the sanctity of life as demanding justice in the social order, including imposition of the death penalty.

Finally, many advocates of capital punishment point out that the death penalty is nowhere forbidden in the Constitution. They contend that abuses in the social or legal system do not diminish the obligation of the State to punish, where appropriate and necessary.

Are these positions persuasive? Not in my view, Mr. President. Rather, I find the moral case in opposition to the death penalty to be far superior in substance and merit. Again, I draw upon the work and words of Charles Whittier of the Library of Congress in spelling out the moral arguments against capital punishment, once again with the caveat that Mr. Whittier has merely summarized these arguments without taking a stand pro or con.

As Mr. Whittier notes, opponents of capital punishment assert that the rightful—that is, the moral—purpose of correctional institutions and incarceration of lawbreakers is reform and rehabilitation, not punishment or vengeance. They maintain that revenge is an unworthy motive for society to pursue and that the possibility of error—with the resulting execution of an innocent person—should preclude any attempt to impose a capital sentence. The death penalty is irrevocable and final.

Many death penalty opponents argue that because each person has an intrinsic dignity and right to life, capital punishment compounds the origi-

nal capital crime and violates the moral order of society and the religious order of the community. By treating criminals as objects to be disposed of, they declare, the death penalty degrades all who are involved in its enforcement as well as the victims.

Those against the death penalty further argue that there is no conclusive evidence in support of the deterrent effect of capital punishment and that reliance on the death penalty neglects the larger societal factors that nourish crime: poverty, oppression, and injustice.

Many religious opponents of the death penalty cite the ethic of love and of reverence for life exemplified in the New Testament and in other religious teachings. Still others maintain that capital punishment is unconstitutional because it is intrinsically "cruel and unusual" and has come to be regarded as such over time.

Finally, many object to the death penalty as inherently flawed by the inequities of the legal system and its alleged responsiveness to the power of money as well as to the influence of discrimination in numerous areas. Therefore, they argue, the impact of the death sentence is likely to fall more heavily on the poor and on minorities.

Mr. President, in assessing the moral arguments for and against capital punishment so ably assembled by Charles Whittier, I find it to be a myth to assert that there are persuasive moral arguments on the "pro" side of the ledger.

RECOGNITION OF SENATOR BROYHILL

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from North Carolina is recognized for not to exceed 5 minutes.

ILLEGAL DRUGS

Mr. BROYHILL. Mr. President, I rise to associate myself with the remarks of the Senator from Florida and to address an issue that I feel is on the lips of almost every American. That is the concern about illegal drugs and drug abuse. I think that drugs are ripping apart families while drug abuse is threatening to destroy our traditional picture of a strong and healthy American family.

The daily news media are full of tragic stories of drug abuse and those who have fallen victims to it—teenagers, young adults, and parents, too. Drugs are undermining our schools. They are costing us in the workplace.

I feel that the news media have performed a great service in helping to raise public awareness of the drug problem. Never before have I seen the public awareness of this problem higher, and I think that the public is ready to do whatever is necessary to combat this growing cancer. The September 8 issue of U.S. News & World Report presents findings of the poll it conducted. The poll revealed that the public's No. 1 concern now is the persistent spread of illegal drugs.

I find that the Congress is aware of the problem and is ready to take steps and strong measures against illegal drugs. The other body has already passed legislation. Many of us in the Senate have been working to write similar legislation. I have no doubt that the Congress will pass and send to the President legislation that will prove effective. However, I know that this alone will not solve the problem.

Congress and the President can spend all of the money that they can find to fight the drug problem but it will never be enough unless the American people also take up this cause. The residents of North Carolina and every State must join in this war on illegal drugs, because nothing less than a total commitment from all Americans cannot and will not succeed.

Parents can make sure that their children are aware of the dangers of illegal drugs. Workers can cooperate with employers to assure that the work environment is drug free. Members of business and civic groups can sponsor antidrug educational public awareness programs. And, of course, citizens can cooperate with our law enforcement officials to assure that those illegal acts are noted and that something is done to put the drug pushers behind bars.

While local and State law enforcement officials and other groups are trying to rid our communities, our schools and our neighborhoods of drugs, the Federal Government must keep doing its part to stem the flow of illegal drugs. This requires more intensive searches at our borders, and making sure that we are working with other nations to stem the tide of drugs across our borders.

So I call on the President to take whatever steps that he can, even to the extent of calling back for consultation our ambassadors from those countries which may face problems related to the production and transportation of drugs. These special consultations should include Members of the House and the Senate so that whatever measures are taken will complement the President's foreign policy on this issue.

Mr. President, everything is not rosy in this area. We must take strong action if we are going to succeed in winning the battle against drugs.

RECOGNITION OF SENATOR CHAFEE

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The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island [Mr. CHAFEE] is recognized for not to exceed 5 minutes.

Mr. CHAFEE. Thank you, Mr. President.

GENERAL ACCOUNTING OFFICE REPORT ON TEENAGE PREGNANCY

Mr. CHAFEE. Mr. President, the General Accounting Office has just completed a report which I requested on the problem of teenage pregnancy. The report provides alarming but useful documentation on the extent of pregnancy among teenagers in the United States.

GAO reports that few government programs of proven effectiveness are in place to address this problem. But the study offers us opportunities to find an effective solution, and I commend GAO for its outstanding efforts.

Teenage pregnancy is one of the most distressing and challenging problems facing us today. Teenage parents pay a heavy price in a lifetime of lost opportunities, and this is deeply troubling for those of us who want our young people to have the best chance for fulfillment, and for a future filled with happiness and a sense of well being.

While the overall birthrate among teenagers has declined in the last 15 years, the birthrate for teens under 15 has declined very little. The birthrate for unmarried women aged 15 to 17 years has risen from 23 births in 1,000 in 1972 to 30 births in 1,000 in 1983.

The growth in the number of births to single teenage girls poses special problems for teen mothers and their babies, because of the deep cycle of poverty which these families face. Not only are younger mothers less likely to be married, but are substantially more likely to drop out of school. The younger the mother, the less likely she is to have completed high school by the time she is in her twenties.

The child is even at greater risk than the parent. A baby born to a young mother is significantly more likely to be born at a low birth weight and therefore faces a substantially higher risk of death or birth defects. Babies of teen mothers are also much less likely to receive well child care, and more likely to face the frightening experience of hospitalization within the first 5 years of life. Nothing is as tragic as unnecessary birth defects or the death of a baby. Many such heartbreaking outcomes could be prevented.

The study reveals that 70 percent of teen mothers who have their first child before age 15 do not complete high school by age 26. Over half of those aged 15 to 17 also do not complete their education. The consequences for teen mothers who drop out of school are devastating. The visible products are lives spent on the

margin of society with dependence on our welfare system.

It has been estimated that the Federal cost for teenage parenthood is approximately $10 billion a year in health and welfare benefits. Yet the GAO report points out there is only one Federal program which is targeted to preventing teenage pregnancy and providing services to pregnant and parenting teeneagers and their families. The Adolescent Family Life Program had an appropriation of $15 million in this fiscal year. Nine other Federal programs may provide prevention services and services to pregnant teenagers, but the extent to which they serve this population or how much money is spent is not known.

While the Federal Government has been slow to address the problem of teenage pregnancy, local communities have initiated many worthwile projects to confront this national tragedy. These projects attempt either to prevent unintended teenage pregnancies, or to provide services to help pregnant teenagers and teenage mothers to avoid negative outcomes for both mother and child.

In my own State, a number of innovative programs have been initiated to assist pregnant and parenting teenagers. These programs are located in various settings and offer a wide range of services. They aim to promote healthy birth outcomes, to encourage and enable teenage mothers to remain in school and to discourage future pregnancies. An initial evaluation of these programs is very encouraging, and the possibility of replicating these programs in other areas of the State as well as the Nation is promising.

The General Accounting Office investigation reveals some positive results for the prevention projects. The report also identifies some approaches with positive short-term effects on repeat pregnancy, maternal and child health status, and the reentry of teen mothers to school. In crafting new programs, the GAO suggests that they be kept administratively simple, that flexibility be encouraged, and that resources be targeted to unmarried, pregnant, or parenting teenagers. In addition, the GAO emphasizes the need for sound evaluation of projects undertaken in the future. We need to learn what works, for whom and why, and then disseminate that information for adoption in the other areas of the Nation.

Millions of teenagers and their children are adversely affected by the serious consequences of early childbearing. Certainly we must begin to reduce the incidence of teenage pregnancy by encouraging abstinence from sexual activity and by providing adequate birth control information for those who are sexually active. To be effective, prevention efforts such as family life education and family planning must be directed at all teenagers. We must also work to improve the outcomes of teenage childbearing by providing improved medical, nutritional, educational opportunities and counseling services. I believe a continued emphasis on programs in this area will be essential as we attempt to reshape Federal antipoverty efforts.

I have introduced legislation in the Senate to provide increased Federal support to the States for services to teenage mothers and their children, in order to reduce health risks and increase self-sufficiency and independence. I will be modifying this legislation in view of the findings of the GAO report.

"Teenage Pregnancy—500,000 Births a Year but Few Tested Programs" should not immobilize us, but motivate us into constructive action. The Federal Government must make a stronger commitment to confront the crisis of teenage childbearing. Investment in pregnancy prevention and programs for pregnant and parenting teens will have enormous future returns in both human and fiscal terms.

Mr. President, I ask that the full text of the study be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TEENAGE PREGNANCY: 500,000 BIRTHS A YEAR BUT FEW TESTED PROGRAMS

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, July 21, 1986.

B-223573.

Hon. JOHN H. CHAFEE,
U.S. Senate,
Washington, DC.

DEAR SENATOR CHAFEE: In your January 9, 1986, letter, you asked us four questions on teenage pregnancy. These questions asked for information on the extent of teenage pregnancy, programs already in place, the effectiveness of these programs, and how to make future legislation maximally effective.

Our major findings are that the problem is particularly severe and growing for unmarried mothers under 18 years old, that only one federal demonstration program is focused exclusively on the problem, and that the evidence from demonstration programs, while sparse, suggests two types of future legislation. If expansion of services is essential, the first type of legislation would be flexible but targeted and would include both prevention and postpregnancy services. The second would involve well-evaluated demonstrations of prevention and postpregnancy services that would be targeted, flexible, and innovative.

To obtain this information, we conducted an evaluation planning review in which we used four procedures. We analyzed the main features of two congressional bills, reviewed available statistics on the extent of teenage pregnancy, examined the characteristics of federal and nonfederal programs, and reviewed evaluation studies on the effectiveness of prior programs for assisting pregnant and parenting teenagers, as well as teenagers at risk of becoming pregnant. We compared the evidence we found to the features of the proposed legislation. (A description of our objectives, scope, and methodology is in appendix I.)

We found that the extent of teenage pregnancy has increased during the past decade but that birthrates for teenagers declined during the past three decades. Despite the overall decline, the birthrate for unmarried teenagers actually increased. Thus, of the 500,000 births to women younger than 20 years old in 1983, 270,000 were to unmarried teenagers, young women at particularly high risk of the negative consequences associated with teenage childbearing. Furthermore, the birthrate for teenagers 17 years old or younger did not decline as rapidly as the birthrate for teenagers 18 and 19 years old.

The programs responding to concern about teenage pregnancy have tried two general approaches. The first represents efforts to prevent teenage pregnancy. The second provides services to teenagers who become pregnant and to parenting teenagers. Within these two general approaches, we identified somewhat distinct strategies that differ in the location within which services are provided, the types of services that are provided, and who they are provided to.

Our analysis of two key bills—your proposal in S. 938 and Senator Daniel P. Moynihan's proposal in S. 1194 to amend the Aid to Families With Dependent Children (AFDC) program—reveals several differences in the approaches that are offered. Your proposal is targeted at a specific group (poor teenagers younger than 18), it is flexible with respect to the comprehensive services that could be provided to pregnant teenagers, and its administrative structure is relatively straightforward. Senator Moynihan's proposal is targeted more broadly (including teenagers eligible for AFDC and selected young women with children younger than 6), it is prescriptive (in the sense that a specific set of services is to be provided), it involves prevention and postpregnancy services, and it is administratively complex because it entails extensive coordination across five federal programs.

Many federal programs are currently relevant in some measure to pregnant or parenting teenagers. However, only one, the Adolescent Family Life Program (AFL), is uniquely targeted to preventing teenage pregnancy and to providing services to pregnant and parenting teenagers and their families. Nine other federal programs may provide services to these groups; three make teenagers a primary target group. Unfortunately, there is few available data on how much money these federal programs spend on pregnant and parenting teenagers.

With the two legislative proposals in mind, we asked, "What is known about the effectiveness of prior projects on teenage pregnancy?" Although common sense, logic, and prior research can provide useful information, we focused our review on evaluations of projects similar to those proposed in the two bills. Evaluations of the prevention-only projects revealed some positive results, but across the studies there were no consistent or large effects on fertility or contraception. For the postpregnancy projects, the evidence shows some positive short-term effects on repeat pregnancy, child health status, and the return to high school. However, flaws in the research designs limit the utility of this evidence for structuring new legislative proposals. Specifically, few of these studies had credible research designs. Even for those whose designs were credible, the ability to generalize

from them to typical service settings is uncertain and the long-term benefits of these services is unknown, because only one assessment of outcomes extended beyond 24 months.

However, these studies did reveal implementation problems that should be anticipated when new programs are developed. For example, the lack of public support and barriers to client participation were identified as important obstacles to program operations. Media campaigns and other special attention to these factors during a new program's development could improve its chances for success.

With regard to your question on the implications of our review for future legislation, two tactics seem feasible. First, if expanding the provision of services is essential, it would seem justifiable to target services to the teenagers who have the highest risk of experiencing negative consequences—that is, young and unmarried teenagers. In addition, flexibility is warranted, since we uncovered no convincing evidence to support the notion that the most comprehensive services were more effective than the least comprehensive. Program implementation and coordination problems argue for an administratively simple program structure.

Second, our review points to a role for the federal government that, as an alternative to installing a program that expands the provision of services, would feature the promotion of innovations, sound comprehensive evaluation of these innovations, and the dissemination of programs (or their components) that work. The rationale for this is twofold. First, we identified numerous state and local programs that seemed promising, but the evidence for their effectiveness was frequently either lacking or ambiguous. While there is a large eligible population, we do not know whether the services on which these projects depend are adequately available in many localities. Consequently, we can neither say how much a full-scale program might cost nor argue for installing it before the evidence is in. Second, many innovative ideas are being tried across the nation, and plausible approaches are emerging from research on questions about, for example, the sexual decision-making among unmarried teenagers. Identifying and testing these ideas, with the thought of disseminating the promising practices to state and local agencies, could be a cost-effective way for the federal government to help address public concern about teenage pregnancy.

Officials of the Office of Adolescent Pregnancy Programs of the U.S. Department of Health and Human Services reviewed a previous draft of this report, and their comments were considered in writing the final report. Since we relied upon summaries of AFL interim findings, agency officials offered us access to the original source material. We were unable to review the material in time to inlcude it in this report. Officials told us, however, that we had accurately portrayed the state of the art in the evaluation of teenage pregnancy programs.

Copies of this report will be made available to persons who request them. If you have any questions or would like additional information, please call me (202-275-1854) or Dr. Lois-ellin Datta (202-275-1370).

Sincerely,

ELEANOR CHELIMSKY,
Director.

BRIEFING REPORT

BACKGROUND

Senator John Chafee asked us to assess the wide range of current programs and legislative proposals to address the public concern about teenage pregnancy among the poor. We selected for examination two legislative proposals on the grounds of their special interest, as well as to maximize the diversity of approaches to be considered in our review. Senator Chafee's proposal, S. 938, and Senator Moynihan's proposal, S. 1194 (section 6), both describe programs of comprehensive services that would be provided exclusively to pregnant and parenting young women. The bills differ on the scope of services that would be provided, the types of clients who would be served, and the administrative and financing arrangements that would be required. Senator Moynihan's bill also differs from Senator Chafee's in that it proposes a pregnancy-prevention program.

We organized our examination of these proposals around four questions:

1. What is known about the extent of teenage pregnancy?
2. What solutions have been tried?
3. What is known about the effectiveness of these solutions?
4. What implications does this knowledge have for the structuring of new legislation?

Focusing on the main features of the two bills, we examined information on the extent of the teenage pregnancy problem that is relevant to the target populations specified in the two bills; reviewed the characteristics of existing federal programs providing relevant services; and examined published studies on the effectiveness of programs for preventing teenage pregnancy and for providing related services.

At least four sources of information could be drawn upon in assessing whether a proposed program might have the results intended: common sense, logic, plausible theory based on research, and evaluations of the effectiveness of prior interventions. We focused our review on the source we thought would provide the most directly relevant information: program evaluations.

The 70 documents we reviewed supplied information about a wide range of program services and administrative and financing arrangements. The studies also described the difficulties of implementing programs. However, less than half of the evaluations included comparison data, and few used research designs adequate for evaluating the effectiveness of a project.

[Figures 1 thru 7 not reproducible for the Record.]

In appendix I, we describe our methodology—the evaluation planning review—in detail. Appendix II is a bibliography of general references, including the evaluation studies we reviewed. (A bibliography of all the documents we reviewed and brief descriptions of the specific studies we employed in our analyses are available on request.)

What is known about the extent of teenage pregnancy?

In 1983, there were 500,000 live births and more than 1 million pregnancies in the United States to women younger than 20. While teenage pregnancy rates increased during the past decade, teenage birthrates, overall, declined. Although reliable information is not available on the extent of teenage pregnancy and births among the poor, it is known that birthrates are increasing for unmarried teenagers and have barely declined for very young teenagers—two groups at particular risk of negative health, educational, and social outcomes. Additionally, the number of births to unmarried teenagers varies dramatically by state of residence.

Teenage pregnancy rates have increased while birthrates have declined overall

Combining data from surveys of health care providers with federal natality statistics to include births, abortions, and miscarriages, the Alan Guttmacher Institute has estimated that teenage pregnancy rates have increased.

In 1972 (the first year for which data are available), about 95 in every 1,000 women 15 to 19 years old became pregnant; in 1981 (the year of the most recent data), the rate was estimated at about 111 in 1,000.

Teenage birthrates, however, have declined, mirroring the decline in birthrates for all women.

In 1952, the overall birthrate was 86 in 1,000 among women 15 to 19 years old; in 1972, the rate was 62 in 1,000; and in 1982, the rate was 53 in 1,000. (In 1983, the year of the most recent data, the rate was 52 in 1,000.) Increased abortion rates for teenagers are believed to account for most of the differences in the pregnancy and birth trends.

Limited information is available on the extent of teenage pregnancy among the poor

Compared to women who delay their childbearing, women who bear children before the age of 18 generally experience more birth complications and show deficits in educational attainment and income. Their children have been found to have a higher risk of congenital defects, childhood disease, and developmental lags than children of mothers in their twenties. Teenage childbearing in the context of poverty is believed to increase the probability of these negative consequences and to require additional health and social services to avert these consequences.

To estimate the extent of teenage pregnancy among the poor—and, thus, the need for additional services—we investigated nine government and private data bases on fertility, income, and teenagers. We found that no reliable estimates of poor pregnant and parenting teenagers are readily available, for a variety of reasons: Mothers' income information is not included in birth records; household income information is not accurately reported in surveys of teenagers; Government fertility surveys have excluded teenagers younger than 18 from their samples; and the standard national survey of household income reports the number of families with income below the poverty level but excludes from its count families headed by teenagers (or others) that reside in larger households.

Therefore, to identify the populations most in need of services, we examined the available data on other characteristics of teenage births that research has identified as being associated with negative outcomes for teenage pregnancy: Age, marital status, and education.

Increasing proportions of pregnant and parenting teenagers are at risk of negative outcomes

Although birthrates have declined for teenagers as a whole, they have not declined for some who are at particularly high risk of the negative consequences of childbearing.

The rate for older teenagers (18 to 19) decreased dramatically after 1970, but the rate

for younger teenagers (15 to 17) did not decrease as much.[1]

The birthrate for very young teenagers (younger than 15) barely declined at all; 1.2 in 1,000 gave birth in 1972, and in 1982, the rate was 1.1 in 1,000.

The rate for unmarried teenagers (15 to 19) rose from 23 in 1,000 in 1972 to 29 in 1,000 in 1982, resulting in 270,000 births (30 in 1,000) in 1983.

It appears that not only are younger mothers less likely to have married or completed high school by the time of a birth but that also the younger the mother, the less likely she is to have completed school by the time she reaches her twenties. (See tables end of article.)

The numbers of births to unmarried teenagers vary by state

We analyzed unpublished National Center for Health Statistics data by state on births in 1983 to unmarried teenagers. As table 2 on the next page shows, the prevalence of such births differs dramatically according to state of residence.

Seven states had 10,000 or more births to unmarried teenagers: California, Florida, Illinois, New York, Ohio, Pennsylvania, and Texas.

Eleven states had fewer than 1,000 such births: Arkansas, Delaware, Idaho, Montana, Nevada, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont, and Wyoming.

About 80,000 babies were born to unmarried teenagers in the 13 states and the District of Columbia, in which the last decennial census showed that nearly 15 percent or more of the population earned incomes below the poverty level: Alabama, Arkansas, the District of Columbia, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, South Dakota, Tennessee, Texas, and West Virginia.

CURRENT APPROACHES AND PROPOSALS FOR ADDRESSING TEENAGE PREGNANCY

Communities across the nation currently offer a broad range of programs addressing teenage pregnancy. The programs generally attempt either to prevent unintended teenage pregnancy or to provide services to assist pregnant teenagers and teenage mothers in preventing some of the negative consequences for mother and child. The federal role appears limited at present to a single demonstration program aimed solely at these activities and nine other grant programs that provide services relevant to teenage pregnancy for the general population. The legislative proposals by Senator Chafee and Senator Moynihan would create new grant programs to expand services targeted exclusively to pregnant and parenting young women.

Existing programs describe a wide variety of approaches

Reviews of the program literature, which include surveys of state and local government agencies, have uncovered a wide variety of approaches to preventing pregnancy and providing assistance to teenagers who are pregnant or mothers. Although some local sponsors provide both prevention and assistance services, we have separated these two program types, for convenience. Projects frequently resemble hybrids. We found the five types of prevention programs and five types of service programs that we list in table 3 and table 4.

The current Federal role is limited

The size of the federal government's role in the variety of existing programs is not precisely known but appears limited. While several federal grant programs are relevant to teenage pregnancy programs, information on the number of pregnant and parenting teenagers who are served and on the amount of federal funds spent on this subpopulation is available at the federal level for only one of these programs.

Only one program serves teenage mothers exclusively—the AFL program. Its fiscal year 1986 appropriation was $15 million, and it funded prevention and service demonstration projects and research on the antecedents and consequences of the problem of teenage pregnancy.

Three grant programs have pregnant and parenting teenagers as a target group: Family Planning Services (which targets all teenagers); Employment Training Services for the Disadvantaged, under the Job Training Partnership Act (JTPA); and the Special Supplemental Food Program for Women, Infants, and Children (WIC). National information on funds allocated to teenagers through these programs is not maintained.

Six programs provide services relevant to poor pregnant and parenting teenagers: the maternal and child health block grants and the social services block grants, the program for community health centers, employment services and job training grants (demonstrations under the JTPA), child welfare grants, and community services block grants. National information on funds allocated by these programs to pregnant and parenting teenagers is not maintained.

Although the expenditures of these programs on teenage pregnancy are not known, the federal role appears to be secondary to the local one. A national survey of the 153 largest U.S. cities in 1979–80 asked local health and education department officials about special programs for pregnant teenagers. Of the 127 responding cities, 90 reported that special programs were provided and that most of these received public funds from one or more sources: 67 percent received local funds, 59 percent received state funds, and 47 percent received federal funds. Neither the amount received nor the share of total funds was reported.

State and local funds came predominantly from education departments; federal funds came primarily from the block grants for material and child health and for social services. Across these government levels, 70 percent of these cities reported that education funds were a source of support for special programs for pregnant teenagers, 33 percent reported health funds, and 12 percent reported welfare or social service funds.

Current proposals to expand services for teenage pregnancy

The legislative proposals we reviewed, 2 among more than 20 current proposals on teenage pregnancy, both provide for new service programs exclusively for pregnant and parenting young women. They differ in flexibility and scope of services, types of clients, and complexity of administrative arrangements.

Senator Chafee's bill, S. 938, proposes a flexible service program that would provide any of a variety of assistance and support services for pregnant teenagers and young mothers. The proposal's objectives are relatively modest: to provide assistance and improve the availability of comprehensive services to these young families (see figure 2 on the next page). Only one outcome is explicitly mentioned: to prevent unintended repeat pregnancies among these young mothers.

In contrast, Senator Moynihan's bill, S. 1194 (section 6), proposes a highly prescriptive program of specific assistance and support services intended to help poor young mothers achieve self-sufficiency and avoid long-term welfare dependence. Several objectives are explicitly mentioned: ensuring the health of mother and infant and enabling the mothers to complete high school and acquire job skills and employment and, thus, economic self-sufficiency. This proposal concentrates on preventing the negative economic consequences typically associated with teenage childbearing by targeting services to young women who have not completed high school and by requiring participation in a program leading to a diploma.

Senator Moynihan's bill also proposes a pregnancy-prevention program that is operationally more flexibile than his service program but similarly specific on strategies for meeting its objectives. This program assumes that a lack of alternative education and career plans is a precipitating factor of teenage pregnancy and the economic dependence of teenage mothers. However, specific services would not be required in this program, and two strategies for preventing teenage pregnancy are acknowledged: the postponement of sexual activity and the use of contraception.

These two bills also differ in their administrative and financial arrangements. Senator Chafee's bill proposes new grants to public and private nonprofit agencies and contains the following key features.

It is flexibile, proposing to provide any of the following services: comprehensive prenatal and postpartum care, well-child care for infants, comprehensive family-planning services, educational and vocational counseling, family-life and parenting education, counseling services, and other services designed to improve the availability of comprehensive assistance services.

It is targeted to pregnant teenagers and mothers who are younger than 18 at the time of birth.

The proposed funding level for fiscal year 1986 was $30 million.

It is, administratively, relatively straightforward.

Senator Moynihan's bill proposes new grants to state agencies administering AFDC and has the following key features.

It is prescriptive, requiring that all the following services be provided: educational and vocational services; the coordination of services, otherwise available, directed at the health needs of mother and child; other services designed to improve the availability of comprehensive assistance services, including child care, transportation, and individual needs assessment and written plans to assist in case management.

It is broadly targeted. Program A would serve all teenagers eligible for AFDC, and Program B would serve women younger than 25, whether pregnant or parents, who are eligible for AFDC.

Its proposed funding level for fiscal year 1986 is 2 percent of a state's AFDC payment.

It is, administratively, relatively complex, requiring federal, state, and local coordination across two executive agencies (the U.S. Department of Health and Human Services, HHS, and the U.S. Department of Labor, DOL) and five programs (the programs

[1] In 1983, the year of the most recent data, the birthrate was 78 in 1,000 women 18–19 years old, 32 in 1,000 women 15–17 years old, and 1.1 in 1,000 younger than 15.

under the Job Training Partnership Act and the maternal and child health block grants, social services block grants, and the family planning programs, together with the Community Work Experience and the Work Incentive programs, CWEP and WIN).

THE EFFECTIVENESS OF PRIOR PROGRAMS

Care is needed in interpreting the data we present on the programs' effectiveness. Flaws in most of the study designs leave open the possibility that factors other than program participation influenced the results. Further, the projects reported in the literature may not represent hundreds of projects operating around the nation, many of which do not have published evaluations. Finally, we attempted to identify the most important studies, but some were unavailable during the short period of our review and others may have eluded our search.

The information on the effectiveness of preventing pregnancy is limited

We reviewed all the studies of projects we identified in our search as having pregnancy prevention as an objective, regardless of a project's approach. However, there was only limited information on their effectiveness on conception and fertility. Only 11 of the 24 studies provided comparison data, and only 2 of the 5 interim evaluations of the AFL demonstration projects on the prevention of pregnancy included comparison data. (The results of these 13 studies are shown in table III.2 in appendix III. The outcome data in which we have the most confidence are highlighted in the table.) Our analysis indicated the following.

The information on effectiveness is limited, but there were some positive results and no demonstrated failures. For example, an intensive interpersonal-skills program reported positive short-term results in the use of more reliable, medical methods of contraception. It also appears that increases in teenage enrollment in family planning clinics are associated with reductions, although small, in teenage birthrates.

While there is no strong evidence that the sex education typically available in schools reduces teenage pregnancy, there is also no evidence that it encourages sexual activity, which some have feared.

School-based teenage health clinics that include family planning services are frequently associated with reduced teenage birthrates but have not provided conclusive evidence that the programs were responsible for these declines.

The evidence is insufficient for concluding that some types of services are more effective than others. Two comprehensive health clinics, one school-based and the other hospital-based, appeared equally successful in maintaining the use of reliable contraception. Since we do not know what other services the family planning clinics may have provided to teenagers (such as counseling), we cannot determine which services were responsible for the apparent success.

The information on the effectiveness of comprehensive service programs is limited

Both of the legislative proposals we reviewed intend to increase the availability of comprehensive assistance services to pregnant and parenting teenagers. Because they would authorize numerous services in addition to the traditional perinatal health care and parenting education programs, we focused on comprehensive service projects. We found that these projects provided only limited information on the effectiveness of the explicit objectives of the two target proposals: preventing unintended repeat pregnancies, ensuring the health of mothers and their children, and enabling the mothers to complete high school, acquire job skills, and achieve economic self-sufficiency.

Only 9 of the 37 studies we reviewed provided comparison data with which to evaluate their results. Additionally, 5 of the 9 AFL projects had interim evaluations that included comparison groups in their designs. (The results reported by these 14 studies are shown in table III.3; those we have most confidence in are highlighted.) Our analysis indicated the following.

The teenage mothers who were enrolled in service programs providing a range of assistance that included prevention services had lower fertility rates than teenagers in similar communities without such programs. Additionally, the programs reported increased use of birth control in the first year after delivery.

Positive results were reported in other areas as well, including child health status and mother's school attendance and attainment. Teenagers receiving a broad array of services had no fewer complications and no healthier infants at delivery than teenagers receiving at least prenatal health care, but their children were more likely to receive regular health checkups. Teenage mothers enrolled in multiservice programs were more likely to return to school and, thus, to complete more years of school after delivery than nonparticipants, but there was no strong evidence of improved graduation rates.

However, because of limits in study designs, several cautions are needed in interpreting these findings. First, few studies had controls adequate to exclude plausible explanations (other than comprehensive services) of their results. For example, few "comparison" groups were truly comparable. Therefore, our conclusions regarding fertility and school enrollment are based on only three studies each, our conclusions on mother and infant health on six.

Second, these are short-term results, genrally limited to 1 year. No differences in fertility of school enrollment were found between participants and nonparticipants after 2 years. Partly because of the short-term nature of these studies, they provide no evidence on whether the participants were more likely to be economically self-sufficient, a relatively long-term objective for teenage mothers.

Finally, many of these programs were special demonstrations, so that it is difficult to generalize from their results to what might be expected in typical, ongoing service programs.

In summary, numerous programs provide a wide range of services, but the effectiveness of only a few have been tested empirically. Only a few of the projects we reviewed provided the full range of services under the conditions proposed in Senator Moynihan's bill. (In tables III.4 through III.8, we show the services and strategies employed in these projects.)

We found no strong evidence that providing comprehensive services produced results that were more positive than the results of providing a more restricted set of services. Positive results were found for the more comprehensive as well as the less comprehensive projects.

There were few convincing tests of the value of specific sets of services. Most within-study comparisons did not specify the services received by the comparison groups. Although one AFL project did test the value of peer counselors' services in addition to the full range of services, it did not find positive results consistently across the measured outcomes.

There were too few adequate studies and too much diversity in the sets of service they represented to permit an independent evaluation of the effectiveness of specific service components.

IMPLICATIONS FOR FUTURE LEGISLATION

Our review of the extent of the problem of teenage pregnancy and the effectiveness of efforts to address it can be summarized in terms of what is and is not known. This summary serves, in turn, as the basis for our obervations about the feasibility and promise of the two proposals for new programs and the implications for future legislation.

What is known?

The literature provides some information on three topics that help in assessing the two legislative proposals: the size of the eligible populations, potential benefits, and implementation difficulties observed for current programs.

1. *Large eligible populations.* Recent statistics show that the eligible population is potentially large. About 44 percent of births to unmarried teenagers occur in seven states reporting a high incidence of such births. The data are not sufficient to estimate precisely how many individuals might be eligible under the two bills, but rough estimates can be derived from the data through 1984. We estimate that about 1 million teenagers would be eligible for services under S. 938, or up to 2 million if the fathers are included. For S. 1194, our estimates are as high as 2 million for the prevention program and 600,000 for the services program (see table 5 on the next page). The latter figures are overestimates because the income data were available only in relation to the federally defined poverty level, which is generally higher than the states' income standards of eligibility for AFDC.

2. *Probable benefits but uncertain causes.* The results of several projects appear promising, if not conclusive. Family planning and comprehensive health clinics, as well as intensive interpersonal-skills training, have reportedly affected either the short-term use of contraceptives or fertility. The comprehensive and the more limited programs for pregnant teenagers and teenage mothers reported, in a variety of settings, results that seem encouraging for infant health, short-term fertility, and return to school.

3. *Feasibility concerns.* Some of the problems commonly identified in the literature and mentioned by program administrators in a recent 50-state survey include the following:

Lack of public understanding about the size and scope of the problem;

Community ambivalence toward the issue, making the programs unpopular;

Lack of support services to improve programs' accessibility for clients;

Agency rivalries and incompatible procedures;

The immaturity and limited resources of the teenagers, compared to adult clients;

Unstable funding sources;

Lack of coordination among existing services; and

Insufficient or nonexistent services to coordinate (see U.S. House of Representatives, 1986, item A22 in the bibliography in appendix II).

Programs could increase their chances of success by attending to these factors during the program development stage. Media campaigns educating the public about the

extent of teenage pregnancy and its serious consequences could help gain program support. Research and evaluation suggest promising strategies for overcoming some of the other barriers. The case-management approach required in Senator Moynihan's proposal has been associated with the receipt of more service and more types of services. The proximity and accessibility of school health clinics is reported to permit better followup and, thus, improve teenager's use of contraceptives. Evidence suggests that the clients who receive more rather than less service or continued service show greater success. These individuals may be more motivated than others who terminate their participation early, but participation may nevertheless be hindered by barriers that are frequently beyond their control—lack of transportation and child care and conflicts with work or school, for example. Thoughtful program development could address these factors.

What is not known?

The evaluations of efforts addressing teenage pregnancy leave several critical questions unanswered. In particular, we do not know the factors responsible for what works and what does not work; availability of resources in the field; and additional costs for service delivery. These gaps in knowledge influence the confidence we can place in projections about the likely effects of the proposed legislation.

1. *What factors are responsible?* In most instances, the evaluations that we reviewed tested whether the provision of a composite set of services resulted in benefits to the clients. Looking across the projects, we found various combinations of services, different settings, different treatment modalities, and different types of clients. The results for the participants were typically compared to the results for individuals who received "customary" services that were in some way distinct from treatment under a project. Given these test conditions, it is not possible to determine whether all services worked, whether some were more essential than others, or whether some had no value at all.

Further, when "customary" services (private prenatal care, peer and parental counseling, locally available professional counseling, and so on) are used as the basis for assessing program effectiveness, it is quite possible that both customary and comprehensive services may be effective (relative to providing no services at all). Thus, the prior assessments leave important questions unanswered: Does the program work or not? Does it work, or not work, as a whole or as a result of a single component? Which components are responsible for the positive and which for the negative outcomes? Answers to these questions would require research and evaluation practices that are more sophisticated than appear in the literature.

2. *What are the resources in the field?* Many federal, state, and local programs can, or could, provide relevant services, but there is little information on who is being served, on what programs are available, and on whether all relevant services are available for coordination. According to a 1986 report by the House Select Committee on Children, Youth, and Families, only some of the 50 states in a 1985 survey could report on how much of their federal block grants and other federal funds were spent on adolescents or how many adolescents were served by programs using these funds (see item A22 in the bibliography). This is partly because of the absence of reporting requirements for expenditures under the social services and maternal and child health programs, the two block grants that constitute the major source of relevant federal funds. However, the state officials who did respond indicated that only a small proportion of these funds were to programs serving teenagers.

More importantly, 26 states in the 1985 survey discussed above responded that existing services in their states were inadequate for addressing the needs of pregnant and parenting teenagers. In the 1979–80 survey of the 153 largest U.S. cities 90 of the 127 cities that responded indicated that they had special programs for pregnant teenagers, usually sponsored by a local education agency. The most common types of service were counseling (92 cities), special education (84), nutrition (84), family life education (84), and sex education (81). Day care was the most frequently mentioned unmost need of pregnant teenagers and teenage parents (39) cities), and this was followed by job and vocational assistance (31), funds (23), continuing education (22), and parenting education (20).[2]

3. *What are the costs of providing services?* The available evaluation reports do not provide information sufficient for determining the likely cost of providing comprehensive or coordinated services. Very few project reports described their program costs, and those that did used quite different calculation procedures. At one extreme, a hospital-based comprehensive program estimated that it cost $775 per mother and child beyond the cost of the pregnancy for making social service referrals and providing weekly family planning and group counseling sessions during the pregnancy and 2-year follow-up period. The $775 included overhead for administration and space but excluded the hospital salaries and other overhead associated with the basic perinatal health services. At the other extreme, Burt and Sonenstein estimated, from their review of several comprehensive service projects, that the 1-year costs of a comprehensive package ranged from $5,426 to $7,664 for pregnant clients and $5,500 to $9,592 for clients entering the program after delivery, depending on when the client began receiving AFDC (see item A3 in the bibliography). These costs included all medical and educational services as well as AFDC benefits and child care.

The varying definitions of cost and their resulting values reflect one of the crucial difficulties in estimating the costs of the programs proposed in the two bills. If many of the intended services are already available through other funding sources, the costs of coordination could be limited to the salary of a case manager and the associated overhead. However, if the intended services do not already exist or are operating at full capacity, additional funds will be required to provide services under the intentions of the bill. Since there is no adequate current information on the services that are now being provided or on whether their programs are being operated at full capacity, it is not possible to estimate the costs of the proposed programs.

S. 1194 proposes that funds for comprehensive service and prevention programs together not exceed 2 percent of the federal share of a state's expenditure for the AFDC program. In fiscal year 1985, the federal share of AFDC expenditures (including administrative expenses) was $8.96 billion for all states; 2 percent of this would represent $179 million for the national program. This is substantially more than the $30 million proposed in S. 938 for service projects—and more than the $15 million currently being spent for the AFL demonstration projects.

However, the states' shares of 2 percent of the federal AFDC payment vary dramatically, according to the 1985 figures. Nevada would receive $116,890, or the smallest amount, but it had 781 births to unmarried teenagers in 1983, resulting in $150 per potential client. In contrast, California would receive the largest amount, $33,075,170, but it has 28,841 such births in 1983, resulting in $1,174 per potential client. These figures are very rough but point to the difficulty of allocating resources equitably for these programs.

Options for future legislation

Since there appears to be an unmet need for services for pregnant teenagers, but much uncertainty about which services are most effective, we believe that at least two distinct avenues could be pursued in future legislation: (1) expanding services where they are most needed and (2) supporting well-evaluated demonstrations of innovative, flexible, and clearly targeted programs.

OPTION I: THE EXPANSION OF SERVICES

If the expansion of service programs is essential, then adequate targeting, flexibility, and administrative simplicity are likely factors of their success.

Targeting unmarried women younger than 18 years old seems justified by trends in fertility and by studies suggesting that as mothers, these women are most likely to be poor and their children most at risk. Targeting high-incidence states or the states with few existing resources may also be justified.

Flexibility in terms of what services may be provided seems justified by the lack of evidence on the benefit of specific groups of services and by the relatively high cost of comprehensive services.

Administrative simplicity seems justified by experience with the programs that require extensive coordination across agencies and funding sources and by the concerns that have been reported about programs on teenage pregnancy. Of course, targeting to selected high-risk teenagers will automatically reduce the administrative complexity of a program. For example, targeting services to very young teenagers will require less coordination with agencies responsible for job training, unless enrollment periods are planned for longer terms than provided for in past demonstration projects and fully operational service projects.

OPTION II: SUPPORTING INNOVATION

Alternatively, federal efforts addressing teenage pregnancy could be focused on a three-pronged approach that encourages innovative models, evaluates them, and disseminates those that have been tested and appear to be promising. While the AFL legislation mandated demonstration and evaluation of innovative approaches, it did not mandate the characteristics of those evaluations and it limited the funds for evaluation to 5 percent of each project grant.

Federal, state, and local reactions to teenage pregnancy have resulted in the development and implementation of quite different approaches. For example, Wisconsin law requires teenagers' parents to assume financial responsibility for the costs of rearing a teenagers' infant; some programs in other

[2] In the originial survey, 92 cities were reported as supplying counseling services. We could not reconcile this number with the total number of respondents, which was 90.

states encourage greater and more productive communication and understanding between teenagers and their parents regarding sexuality. There is little available evidence on the results of these approaches—they are either too new or not yet comprehensively evaluated—but on the surface, they appear promising and have received considerable media attention.

Within the past few years, new research studies have pointed to other promising approaches. They include providing vocational assistance to young fathers, providing academic assistance and counseling to teenagers at risk of dropping out of school *before* pregnancy, and developing a pregnancy-prevention curriculum from models of the influence of beliefs and attitudes on the behaviors conducive to general good health. Some of these approaches, such as providing job training and job-search assistance to fathers, are being implemented under the AFL program, but comprehensive evaluative information is not yet available.

In our brief review, we were unable to examine comprehensively the results of the large body of research on the prevention of teenage pregnancy and the consequences of teenage childbearing. A panel of the National Academy of Sciences is about to complete a study that may help identify promising practices for future innovations.

Sound evaluation is essential. Federal support of innovative programs is certainly not a new concept, but our review of prior evaluations shows that, despite a substantial investment of effort, there is little credible evidence on how well, if at all, these programs work. Deciding whether a program model is promising enough to be considered by other state and local agencies depends on sound evaluative evidence.

Without having detailed information on the specific programs that might be implemented, it is difficult to specify how to conduct evaluations so that technically sound and useful evidence will be produced. However, some general features can be outlined. Given the emphasis on identifying whether programs work, why they work, and for whom they work, the following evaluation considerations should be addressed.

To determine whether innovative services or other factors are responsible for intended changes in important outcomes, evaluation designs must include a basis for comparison. This should be obtained from analyses of data on comparable individuals who do not receive the innovative services or analyses of time-series data. This does not mean that individuals in comparison groups must be denied services. They could be provided "customary" services that do not include all the features of the innovative program.

A description of the innovative program and its components, clients' characteristics, and type and amount of services should be detailed enough to allow its implementation in other service settings, if, of course, it is thought effective. The services provided to individuals in the comparison group should also be described in detail.

Outcome measures should be relevant to the specific objectives of the innovative project; comparable data collected across projects should facilitate between-project comparisons.

The measurement of intermediate and long-range outcomes should be scheduled to ensure that sufficient time elapses for program outcomes to be demonstrated, if the program is successful and has durable benefits.

Results should be reported in detail sufficient to allow readers to assess the validity and integrity of the conclusions.

At present, only a few projects have approximated this level of evaluative effort. In the past, credible evidence on other programs has been obtained by providing technical assistance to state and local projects, expanding the resources devoted to evaluation, creating a centralized evaluation mechanism, and combining two or more of these tactics.

Once models have been tested and have demonstrated their promise, federal support for dissemination seems justifiable. That is, support could be provided for the dissemination of research and evaluation findings, the development of material to facilitate the transfer of a project's operational service plan and format to other areas, and on-site consultation by project developers.

In summary, our review suggests the following two options for congressional consideration:

1. If the expansion of service program is considered essential for dealing with the unmet needs associated with teenage pregnancy, then selected targeting of program resources, flexible program service-delivery packages, and simple program adminsitration are warranted. However, the lack of evidence from past programs means, unfortunately, that decisions about new programs and the expansion of old programs have to be based on common sense, logic, and plausible theory rather than on empirical data and knowledge.

2. The evidence is also consistent with an approach that encourages innovation, evaluation, and the dissemination of tested program models. That is, rather than investing limited resources in the provision of services, resources could be targeted toward learning what works, for whom, and why. The programs that are then fund successful could be disseminated for adoption in the other areas of the nation that need them.

[Appendix I]

OBJECTIVES, SCOPE, AND METHODOLOGY

In January 9, 1986, letter to the Comptroller General, Senator Chafee initially asked us to identify what implications the available statistical and program information had for structuring new legislation concerning teenage pregnancy among the poor. Specifically, he asked.

1. What information exists about the extent of teenage pregnancy among the poor?

2. What types of programs have been initiated to deal with the problem of teenage pregnancy?

3. How effective have these programs been in achieving their objectives? What factors contribute to their success or failure? Are some program arrangements more cost-effective than others?

4. Are there promising programs, administrative arrangements, or financing mechanisms that could be considered in future legislation?

Our preliminary work uncovered a range of current efforts to address teenage pregnancy that was too broad to allow us to comprehensively assess the implications for all possible legislative efforts that might be pursued. It was mutually agreed that we would pursue these questions with regard to two legislative proposals of particular interest to the Senator: his own bill, S. 938, and one proposed by Senator Patrick Moynihan, S. 1194.

Our objectives for this review were to identify, evaluate, and synthesize information relevent to the feasibility of two new program proposals and their likely success in achieving their stated objectives. We refer to our general methodology as an evaluation planning review, a prospective analysis anchored in evaluative concepts of program proposals. To be timely, the method is selective; no attempt is made to be comprehensive by reviewing all possible studies, projects, or research. Using evidence from prior evaluations, statistical information systems, and knowledge of social programs, we assessed the extent to which the legislative proposals are likely to achieve their specified goals. We did not attempt to survey the research on the antecedents and consequences of the problem of teenage pregnancy. Our review for this report had four major steps.

1. We examined the features of the two legislative proposals to determine (a) the nature of the problem the programs are intended to address, (b) the activities and operations of each program package, and (c) the assumptions in the proposals about how their strategies are intended to achieve their policy objectives.

2. We identified the most important published empirical work on our topic and previous efforts to address it.

3. We evaluated findings from published studies of previous efforts, taking research characteristics and data quality into account, in order to determine (a) the evidence on whether the proposed programs are likely to achieve their policy objectives and (b) likely problems of implementation, operation, and management.

4. We compared these findings to the features of the two pieces of proposed legislation. Our application of this methodology is summarized below.

ANALYZE PROPOSALS

We analyzed each bill for its key features in order to select the most appropriate evidence to review. The proposed eligibility criteria for services, service providers, and recipients are depicted in figures 5–7; they established prevention and comprehensive postpregnancy service projects as the dual focus of our review. (We did not attempt to review all projects providing services to pregnant teenagers, because Senator Chafee's interest was in comprehensive service programs.) These criteria also delimited our estimates of the size of the target populations. The policy objectives mentioned in each bill and the general strategies for achieving them are depicted in figures 2–4. The models in these figures define the outcomes of interest to which we restricted our review of the success of prior efforts.

IDENTIFY RESEARCH

We began our search for the most important research with a broadly focused examination of 13 computerized bibliographic files: *ABI/Inform* and *Economic Literature Index* (which cover business topics); *ASI, NTIS, PAIS,* and *Social Scisearch* (which cover technical reports, mostly governmental); *CIS* (for congressional documents); and *CITN, Dissertation Abstracts, ERIC, Health Planning and Administration, Psych Info,* and *Sociological Abstracts* (which cover reports from the academic community). Our search terms were intentionally broad, because we wanted to find as many relevant documents as possible. Our search of each file was generally restricted to documents published after 1980.

The computerized searches yielded more than 1,100 references, many with abstracts. Two staff members screened these references and selected the items that appeared to be the most relevant to our various topics, classifying them into four main categories: reports of prevention and service projects, summaries of such projects and discussions of general policy, research on the size and scope of the issue, and summaries of research on the antecedents and consequences of the problem of teenage pregnancy.

Next, our staff members reviewed the bibiographies of the research studies and reviews to identify other studies that might have been missed in the computerized searches. The staff members also informally contacted several experts on demography and relevant programs to identify work in progress and elicit nominations of the "most important" research. The experts included Martha Burt, Urban Institute; Josefina Card, Sociometrics Data Archive on Adolescent Pregnancy and Pregnancy Prevention; Cheryl Hayes, National Academy of Sciences; Martha Hill, Panel Study of Income Dynamics; Douglas Kirby, Center for Population Options; William Marsiglio, National Longitudinal Survey; Martin O'Connell, Bureau of the Census; Paul Placek and William Pratt, National Center for Health Statistics; Janet Quint, Manpower Demonstration Research Corporation; and Melvin Zelnick, Johns Hopkins University. We mailed out bibliography to other knowledgeable researchers and policy analysts for their review, including Gordon Berlin, The Ford Foundation; Thomas Brock, Manpower Demonstration Research Corporation; Janet Hardy, John Hopkins University; Lorraine Klerman, Yale University; Karen Pittman, Children's Defense Fund; Freya Sonenstein, Urban Institute; Sharon Stephan, Congressional Research Service; and Gail Zellman, Rand Corporation. Our search yielded a total of 70 documents; our full bibliography is available upon request. In addition, a single publication (see item A23 in the bibliography) provides summary descriptions of 66 demonstration projects funded by the AFL program. Only some of those projects reported interim evaluation data.

Information on the prevalence of teenage pregnancy and childbearing is required in order to ascertain the seriousness of the phenomenon and to estimate the need for services. To ascertain the scope of the problem, we reviewed the published literature and analyzed birth statistics reported by the National Center for Health Statistics and others. To estimate the extent of teenage childbearing among the poor, we investigated the availability of income and fertility information in a number of public and private data bases.

However, no reliable estimates of the number of poor pregnant or parenting teenagers are readily available. Therefore, to ascertain estimates of the populations most in need of services, we examined the available data on the characteristics that previous research has identified as being associated with outcomes for teenage childbearing: age, marital status, and educational attainment.

EVALUATE STUDIES

From those documents describing a prevention or service project, we set aside those that reported no data on any of the outcomes specified in the bills. Then, for each remaining study of a prevention or service project, we rated separately the quality of the information provided on each outcome measure. Separate ratings by outcome measure were required, because some outcomes were measured with different designs within the same study. We adapted six dimensions from those identified in our paper entitled *The Evaluation Synthesis:*

1. The similarity of the comparison group to the project's clients;

2. The adequacy of the sample size and the extent of attrition (in studies using longitudinal designs);

3. Standardizations of data collection procedures;

4. The appropriateness of the measures that were used to represent the outcome variables;

5. The adequacy of the statistical or other methods used for control of threat to validity (that is, possible influences on observed differences other than program participation); and

6. The presence and appropriateness of the methods used to analyze the statistical significance of observed differences.

All ratings were made from a 3-point scale from "unacceptable," indicating no information on a study method or a method so flawed that the data were probably wrong, to "acceptable," indicating an appropriate method with attempts to minimize endemic problems. All ratings were based on published materials that often did not fully disclose the evaluation procedures.[1]

These dimensional ratings were then combined to judge the overall acceptability of data on each outcome variable for inclusion in our synthesis of results. Outcome data from studies with their own comparison data were judged acceptable overall if they had "acceptable" ratings on the comparability of the comparison data, the extent of sample attrition (if any), and the adequacy of controls for explanations of the observed results other than program participation. Outcome data meeting these criteria are highlighted in the tables and forced the basis for our synthesis of results.

SYNTHESIZE RESULTS

To compare information on prior efforts with the proposals in the two bills, we characterized projects by the types of service and means of service delivery (see tables III.4 through III.8). For categories, we used the characteristics proposed in the most specific legislation, S. 1194. We identified three types of service projects on the basis of the provision of academic and vocational services, as required by Senator Moynihan's proposal, and by the primary setting for service delivery (health facility or school). Prevention projects were characterized by the service components identified in our general review of prevention programs as well as some of the service-delivery characteristics proposed for the comprehensive service program. Prevention projects were too few and too diverse to permit convenient grouping.

To analyze the data available on effectiveness of these programs, we excluded the studies that had no comparison data and grouped the results by more specific types of program. For convenience, we include in these tables the outcome data that we judged acceptable and unacceptable; however, we based our synthesis of results on the data that we judged acceptable.

[1] At the time that we received agency comments, we were offered access to the annual reports of the AFL projects, but, because of time constraints, we were unable to review them for inclusion in this report.

[Appendix II]

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[Tables in Appendix III not reproducible for the Record.]

TABLE 1.—1983 HIGH SCHOOL STATUS OF WOMEN AGES 20-26 WHO WERE TEENAGE MOTHERS

[In percent]

Age at first birth	Dropout	Received diploma	Received general equivalency diploma
Younger than 15	70	23	6
15	55	24	21
16	51	28	21
17	47	38	15
18	38	52	10
19	23	68	9
At least 20	10	86	4

Note—Percentages do not add to 100 because of rounding.

Source: F. L. Mott and W. Marsiglio, "Early Childbearing and Completion of High School," Family Planning Perspectives, 17:5 (1985), 236, table 3.

TABLE 2.—NUMBER OF BIRTHS TO UNMARRIED TEENAGERS IN 1983 BY AGE AND PERCENTAGE OF PERSONS IN POVERTY BY STATE

State	19 or younger	17 or younger	younger than 15	Poverty rate[1]
Alabama	6,100	3,036	243	17.9
Alaska	610	270	11	10.1
Arizona	4,391	2,014	95	12.4
Arkansas	3,475	1,768	163	18.7
California	28,841	12,699	750	11.3
Colorado	3,012	1,376	76	10.2
Connecticut	2,738	1,192	90	8.7
Delaware	995	470	47	11.9

TABLE 2.—NUMBER OF BIRTHS TO UNMARRIED TEENAGERS IN 1983 BY AGE AND PERCENTAGE OF PERSONS IN POVERTY BY STATE—Continued

State	19 or younger	17 or younger	younger than 15	Poverty rate[1]
District of Columbia	1,562	707	48	18.9
Florida	13,372	6,443	592	13.0
Georgia	8,887	4,481	428	16.4
Hawaii	1,197	452	14	10.0
Idaho	732	336	18	12.7
Illinois	16,103	7,565	509	11.5
Indiana	6,077	2,896	179	9.8
Iowa	2,096	947	27	9.4
Kansas	2,125	968	45	10.2
Kentucky	3,724	1,770	128	18.4
Louisiana	8,462	4,111	333	18.9
Maine	4,427	1,860	83	9.8
Maryland	6,292	2,741	196	9.9
Massachusetts	1,032	446	15	12.9
Michigan	8,849	4,252	296	11.1
Minnesota	3,074	1,245	50	9.3
Mississippi	6.002	3,089	321	24.5
Missouri	5,886	2,711	158	12.4
Montana	770	316	11	12.4
Nebraska	1,324	566	27	10.4
Nevada	781	393	32	8.5
New Hampshire	601	245	13	8.7
New Jersey	7,985	3,693	258	9.7
New Mexico	2,394	1,073	71	17.4
New York	19,349	8,518	497	13.7
North Carolina	7,460	3,674	284	14.6
North Dakota	539	222	7	12.8
Ohio	12,088	5,537	362	10.5
Oklahoma	3,593	1,727	127	13.3
Oregon	2,246	994	47	11.3
Pennsylvania	11,774	5,302	341	10.5
Rhode Island	856	381	18	10.3
South Carolina	5,529	2,698	250	15.9
South Dakota	736	295	10	16.1
Tennessee	5,735	2,854	250	17.0
Texas	18,061	9,040	804	14.8
Utah	1,152	532	22	10.7
Vermont	463	187	8	11.4
Virginia	6,032	2,688	216	11.5
Washington	3,806	1,679	87	10.2
West Virginia	1,760	860	51	14.5
Wisconsin	4,559	1,944	96	8.5
Wyoming	422	178	12	8.0
Total	270,076	125,441	8,816	12.5

[1] Percentage of all persons whose incomes were below the poverty level in 1979 (for those for whom poverty status had been determined).

TABLE 3.—SERVICES PROVIDED IN FIVE REPORTED TYPES OF PREGNANCY PREVENTION PROGRAMS

Program type	Typically included	Possibly included
Sexuality education	Class instruction in puberty and reproduction.	Discussion of family life, sex roles, interpersonal relationships, or family planning.
Interpersonal values discussion.	Outreach workshops and seminars on peer pressure, interpersonal relationships, and family communication.	Assertiveness training, education for self-esteem, or ongoing peer support groups.
Parents as educators programs.	Outreach workshops and seminars on adolescent development, peer pressure, and family communication.	Sexuality education materials provided to teenagers.
Family planning clinics	Physical exams, contraceptive information and supplies, and pregnancy testing and counseling.	Community education and outreach or special education and counseling for teenagers or their parents.
Comprehensive teenage health clinics.	Routine health care, physical exams, health education, and counseling.	Substance abuse programs, contraceptive services, or prenatal health care.

TABLE 4.—SERVICES PROVIDED IN FIVE REPORTED TYPES OF POSTPREGNANCY PROGRAMS

Program type	Typically included	Possibly included
Perinatal health care and parenting education.	Medial exams and care; information on pregnancy, childbirth, and infant health care; and nutritional advice and supplements.	Family planning services, information on child growth and development, intensive training in mother-child interaction, or social service referrals.

TABLE 4.—SERVICES PROVIDED IN FIVE REPORTED TYPES OF POSTPREGNANCY PROGRAMS—Continued

Program type	Typically included	Possibly included
Residental care	Residential care for pregnant teenagers, prenatal care and childbirth education, and individual and group counseling.	Arrangements to continue education, parenting education, family planning services, or residential services for teenage mothers and their children.
Alternative school programs.	Academic instruction (at home or in a separate building) and referrals for perinatal health care and parenting education.	Family planning services, group counseling, or special childbirth and parenting classes for students remaining in regular classes.
Social services with referrals.	Outreach, individual or group counseling, and referrals for health and education services.	Life-skills training, preparation for general equivalency diploma, or vocational assistance.
Comprehensive services	Perinatal health care and parenting education, arrangements to continue education, group counseling, referral and followup using a case-management system.	Vocational assistance, family planning services, child care, or single assignments of staff.

TABLE 5.—ESTIMATED POPULATIONS OF PROGRAMS PROPOSED IN S. 938 AND S. 1194[1]

Proposal	Eligibility	Approximate number
S. 938	Pregnant teenagers younger than 18; mothers younger than 18 at the birth of children now younger than 6; the fathers or guardians.	1,046,859 women who gave birth in the previous 5 years before age 18; 2,093,718 including another adult guardian.
S. 1194 Program B, services.	Women younger than 25 eligible for AFDC and pregnant or mothers of children younger than 6, without high school diplomas.	Up to 630,582 unmarried women without high school diplomas who gave birth in the previous 5 years and are younger than 25.
Program A, prevention.	Male and female teenagers eligible for AFDC.	Up to 2,092,500 children 12–17 in households headed by women with incomes below the poverty level.

[1] Estimated for 1984 from birth statistics since 1978 and the 1984 National Survey of Family Growth.

Mr. CHAFEE. I do not think there is a single program that the Federal Government or any government can invest in that has a greater return not only in the form of preventing dollars being spent in future years by preventing these problems from arising, but also from ensuring against the heartbreak and tragedy that comes with these teenage mothers. It is babies having babies. That is the situation.

The old adage is an ounce of prevention is worth a pound of cure. In this area it is clear that is true.

I hope that our Federal Government, and encouraging the States likewise in the future, can do far more not only to assist these teenage mothers during their pregnancy to provide proper prenatal care, information on what type of diet and assistance in obtaining that proper diet but also helping these youngsters when the baby is born.

Of course, the best thing of all is prevention. That can come through education to these young people while they are in school.

So, Mr. President, this is a program I am deeply committed to. I hope we can do more on this, and a great deal more on this in the future.

Thank you.

RECOGNITION OF SENATOR MURKOWSKI

The PRESIDING OFFICER (Mr. CHAFEE). Under the previous order, the Senator from Alaska [Mr. MURKOWSKI] is recognized for not to exceed 5 minutes.

Mr. MURKOWSKI. I thank the Chair.

CHINESE ARMS SALES

Mr. MURKOWSKI. Mr. President, I would like to call to the attention of my colleagues a situation of growing concern and that is the matter of Chinese arms sales by the People's Republic of China to other nations.

Mr. President, I have a particular interest in this matter as chairman of the Pacific and East Asian Subcommittee of the full committee of the Foreign Relations Committee. My interest is intense. I have addressed the issue on several occasions. I would like to call to your attention, Mr. President, to the fact that China, like many nations, sees arms exports as a profitable and steady source of foreign exchange as well as a means of increasing its influence in international affairs.

In many cases, its exports support the same governments or groups as we do—the Khmer non-Communist resistance, freedom fighters in Afghanistan and Governments such as Egypt, Pakistan, Sri Lanka, and Thailand.

However, in the case of the reported large exports of increasingly sophisticated weapons to Iran, our interests and policies could be adversely affected.

As we know, the war between Iran and Iraq has now lasted over 6 years. It has cost thousands of human lives and immense material losses, and remains today a grave threat to the stability of an extremely important region.

Iran has prolonged the war despite Iraqi willingness to end the conflict, and there is concern for the future among many observers if Iran has arms supply and unlimited time to press against Iraq's defenses.

It is therefore a matter of great concern that China has become now the largest supplier of arms to Iran without apparent regard for strategic political consequences the Iranian success would have if, in the gulf conflict and throughout the Mideast, the Iranians basically overcome the Iraqis.

As noted in the attached article from the August 26, 1986, Washington Post which I ask unanimous consent be inserted in the RECORD as if read, in that article China has consistently denied selling arms to Iran, although

private officials have suggested that some Chinese export corporations might be doing so unbeknownst to official ministers.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CHINA NOW LARGEST SUPPLIER OF ARMS TO IRAN, U.S. SAYS

(By Richard Harwood and Don Oberdorfer)

During the past six months China has become the largest arms supplier to Iran, delivering at least $300 million worth of missiles and other military hardware despite U.S. efforts to stop the shipments, according to administration officials.

Other Chinese military shipments to Iran—including heavy tanks, a version of the MiG21 aircraft and rocket launchers—may be on the way, these officials said, adding a new element of uncertainty to the six-year war between Iran and Iraq.

These reports come amid renewed concern in Washington about the balance of power in the bloody war. Attacks on oil facilities, shipping and other economic targets in the Persian Gulf region have mounted on both sides in recent weeks, and Iran is reportedly preparing to launch a large-scale ground offensive in the next two months. Until now, Iran's 3-to-1 advantage in manpower has been checked by Iraq's heavy advantage in sophisticated weapons, including warplanes, tanks and missiles.

The introduction to Iran of new arms is a setback to U.S. efforts over several years to create an international arms embargo against Iran, and administration officials fear it could upset the tenuous military balance between the combatants.

The Chinese have consistently denied any arms shipments to Iran despite repeated objections in Peking from the U.S. ambassador to China, Winston Lord, according to administration sources.

Chinese officials, however, have informally told a U.S. official that the arms sales are justified because Iran is using the weapons to aid the anti-Soviet guerrillas in neighboring Afghanistan. This argument was not accepted by the administration because of the type of weapons involved, which are said so far to include surface-to-air missiles, antiship missiles and other arms.

Perhaps the greatest U.S. concern has arisen from persistent reports that China has agreed to supply Iran with J6 jet fighters, a Chinese version of the Soviet MiG21 and similar in some respects to the U.S.-made F5E. The J6 has not yet been seen in Iran, according to U.S. and foreign sources, but a State Department official said "it does appear" that China has agreed to supply the jets.

If the J6 shows up on the Persian Gulf battlefield, it will be the first replacement aircraft received by Iran since the early days of its war with Iraq. According to the International Institute for Strategic Studies, Iran has only "perhaps 80 serviceable combat aircraft." Iraq, on the other hand, is reported by the institute to have about 500 combat planes in service and has access to nearly unlimited replacement from the Soviet Union and France.

The institute reported last fall that China and Iran signed a $1.6 billion agreement in March 1985 covering the supply to Tehran of J6 fighters, T59 tanks, heavy artillery, multiple rocket launchers and surface-to-air missiles. A State Department official said that this report has not been confirmed but that "there definitely were some agreements [between China and Iran] in 1985" of uncertain proportions.

Until recently North Korea was considered Iran's most important arms supplier and its sales are said to continue. But the Chinese deliveries in the past six months have put Peking at the top of the list, according to U.S. officials.

China in the past also has been an important supplier of Iraq, providing $1.5 billion worth of arms between 1979 and 1983, according to the U.S. Arms Control and Disarmament Agency. Defense Department officials said that now "the Chinese are selling with both hands" to the two sides in the Iran-Iraq war.

Several explanations have been offered for the Chinese decision to sell arms to Iran. Some sources called it essentially a business decision on the part of a Peking government in severe need of foreign exchange. Iran is thought to pay for weapons in oil or in hard currency obtained by selling oil.

Another dimension, several sources said, is international geopolitics and China's anti-Soviet stance. By strengthening Iran, a threatening neighbor on the Soviet Union's border, China is adding to the difficulties facing Moscow, according to this line of reasoning.

Moscow has not sold weaponry to Iran for several years and has repeatedly urged an end to the fighting. In private talks in Stockholm this June, Assistant Secretary of State Richard W. Murphy reportedly urged his Soviet counterpart, Vladimir Polyakov, to stop the flow of arms supplies to Iran from Eastern European allies of the Soviet Union. Polyakov made no commitments, according to U.S. sources, and the matter is likely to be raised anew at U.S.-Soviet discussions of regional issues at the State Department beginning today.

Mr. MURKOWSKI. In the past 6 months alone China has delivered over 300 million dollars' worth of missiles and other military hardware. And there is an indication, Mr. President, that main battle tanks including the aircraft of the Chinese F-7 fighter, as well as ground-to-ground missiles, may be in the offering in the purchase pipeline. China has stated that Iran is an anti-Soviet state which has a real interest and role in supporting the Afghan resistance, and China's political relations with Iran are beneficial in promoting this trend.

□ 1010

It is therefore a matter of great concern that China has become the largest supplier of arms to Iran without apparent regard for the strategic political consequences Iranian success would have in the gulf and throughout the Middle East.

As noted in an article from the August 26, 1986, Washington Post, China consistently has denied it is selling arms to Iran, although privately officials have suggested some Chinese export corporations might be doing so unbeknownst to official ministries.

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We seek to impress on China that any—and I repeat any—arms sales to Iran would be damaging to United States and the gulf states interests. We seek the earliest possible negotiated end to the Iran-Iraq war.

Some have questioned our growing military cooperation with China, given reports of Chinese arms sales to Iran, although there is no indication any United States arms are involved. Our willingness to consider and approve exports of military equipment to China is based upon a thorough and careful assessment of the strategic benefits both nations obtain from an increase in Chin'a defensive capabilities.

It is important that Beijing understand our resolve concerning arms sales to Iran.

RECOGNITION OF SENATOR SASSER

The PRESIDING OFFICER. Under the previous order, the Senator from Tennessee [Mr. SASSER] is recognized for not to exceed 5 minutes.

PROGRAM TRADING

Mr. SASSER. Mr. President, last Thursday, September 11, the Dow Jones industrial average dropped by a record 86.61 points. It dropped an additional 34.77 points the following day. Thursday and Friday represented the two largest trading days in history, with 237.6 million shares changing hands on Thursday and 240.5 million shares changing hands on Friday. Such large trading volumes, with declining prices, raise some very serious questions about what is happening in the stock market. While it is true that Thursday's decline was "only" 4.6 percent, compared to the 12.9 percent of 1929, this was indeed a precipitous decline and it is an event, that must be carefully examined.

There are several leading theories on the market's volatility last week. Some suggest that we are witnessing the side effects of program trading. As many of my colleagues know, trading programs, operated on behalf of large institutional investors, are computer-controlled to a large extent. When computers pick up disparities at a certain level, between stock market prices and the prices for futures contracts covering groups of stocks, a trading program is triggered into action by computers.

Just this sort of trading is thought by many to have started last week's

troubling market slide. As trading programs operated by computers began placing large sell orders, other traders followed suit. The net effect was a whirlpool with sellers following sellers to market. The Securities and Exchange Commission, in June, estimated the average block-trading share of the market to be between 10 and 25 percent. One trader's estimate of Thursday's block-related activity was 40 percent.

Not all market analysts, I hasten to add, are satisfied with this theory. There are those who contend, with some validity, that what we saw last week was a growing concern about the well-being of the Nation's economy, with primary concern over interest rates and prospects of inflation. Many observers do not believe interest rates will fall further, in large part because of the continuing failure of Japan and West Germany to lower their own rates. Moreover, the possibility of a rate increase looms in many minds: some analysts stress that the Federal deficit continues to increase upward pressure on the interest rates for Government bonds.

The potential recurrence of inflation came from several sources: there was a rumored leak of Commerce Department data showing retail sales above what forecasters had predicted. A possible further increase in gold prices was signaled by an increase to over $400 an ounce for the first time in 2 years, just 9 days before the decline. There are faint signs of life in the oil cartel. And the dramatic expansion in the money supply, fueled by several quarters of ever-lower interest rates, some economists speculate, lays the groundwork for inflation.

Mr. President, we cannot say with certainty what triggered last week's market plunge. In all likelihood, we saw several factors combining to push the market dramatically down. However, several troubling questions are raised by this incident. Program trading is a purely technical exercise. Fundamental economic conditions are not considered. The question comes: Is it wise to allow computers to dictate the market's course without regard to true economic conditions?

Should we be looking more closely at potential problem spots in our economy? I do not think most observers are ready to push the panic button, but are we prepared to deal with a languid national economy which the market may be foreshadowing?

Mr. President, some answers to these questions may soon be forthcoming. Throughout the next 2 weeks, several key economic indicators will be released. These figures should provide us further insight as to the health of our economy.

And many are suggesting that we will see a positive side to program trading this Friday. On Friday, September contracts on the Standard & Poor's 500 stock index futures expire. In addition, options written against stock indexes and options on individual stocks will also expire on Friday. These three simultaneous expirations happen four times a year. When they do, we have what is known as the "triple witching hour."

We do not know what direction the triple witching hour will take the market. We do know that program trading is a relatively new and unexamined market tool—and one with potentially profound effects on the stock market. Events of the next few weeks may well suggest that those of us on the Senate Banking Committee take a closer look at the intricacies of this trading device known as program trading where the quarterback of the trading is the computer.

□ 1020

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 10:30 a.m., with statements therein limited to 5 minutes each.

Mr. SASSER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1030

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that notwithstanding the provisions of rule XXII of the Standing Rules of the Senate, at 1:30 p.m. today the Senate resume executive session to consider the nomination of Justice Rehnquist, that the time between 1:30 p.m. and 3 p.m. today be equally divided between the chairman of the Judiciary Committee and the ranking minority member or their designees.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I also ask unanimous consent that at 3 p.m. today the cloture vote occur on the Rehnquist nomination and the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. DOLE. Mr. President, I thank the distinguished minority leader for his assistance, and I think we both believe we can, depending on the cloture vote of course, if cloture is invoked, dispose of both the Rehnquist and Scalia nominations before 6 p.m.

That is our hope. Also, as I have advised my colleagues, there will be a window between roughly 6 and 8 o'clock this evening, and I am advised by the distinguished chairman of the Budget Committee that perhaps they could make opening statements and do some debate on reconciliation during that time, unless we have not completed the DOT appropriations bill, and perhaps we could take up additional amendments on that appropriations bill, but any votes would occur after 8 p.m. this evening.

UNDERSTANDING THE TERRORIST THREAT

Mr. THURMOND. Mr. President, the threat of terrorist attacks against our citizens on our own soil has been considered only a remote possibility by most Americans until recently. Although terrorist activity reached an all-time high in 1985 with 480 incidents, only 7 of these were committed within our borders. However, since the American raid on Libya in April, Colonel Qadhafi and his cohorts have promised to make the United States pay for the damages inflicted upon Libya.

Mr. President, there is an urgent need to make the American people aware of the reality and seriousness of this threat. There is a further need to examine the roles of State and local governments in assisting the Federal Government to combat this type of criminal activity. In response to these needs, the Strom Thurmond Institute of Government and Public Affairs at Clemson University, under the direction of Dr. Horace W. Fleming, recently held a conference on "State and Local Government Responses to Domestic Terrorism."

At this conference, a number of leading authorities on this subject, including our distinguished colleague, Senator DENTON, sought to familiarize State and local law enforcement officials from across the United States with the terrorist threat to our Nation, with counterterrorist studies and activities conducted by the Federal Government, and to discuss ways in which all levels of Government can cooperate in developing counterterrorist programs.

Dr. Fleming has written an excellent article entitled "Understanding the Terrorist Threat." It summarizes the findings of the conferees on this important topic and merits the attention of my colleagues. I therefore ask unanimous consent that the text of Dr. Fleming's article be included in the RECORD at the conclusion of my remarks.

There being no objection, the text was ordered to be printed in the RECORD, as follows:

UNDERSTANDING THE TERRORIST THREAT

(By Dr. Horace W. Fleming)

(Editor's Note: The author is Director of the Strom Thurmond Institute of Government and Public Affairs at Clemson University).

Until recently, it seemed that the American people had become resigned to living with the threat of terrorism. Terrorists' acts of seemingly random violence had become no less repulsive in our thinking, but there was some reassurance in the fact that the usual targets of these terrorists were far distant from our own shores.

Then came the American raid on Libya in April, and this seemed to change. We were suddenly standing toe-to-toe with the leading culprit of state-sponsored terrorism, Col. Moammar Khaddafy, and we felt vulnerable.

In fact, we have always been vulnerable to terrorists operating within our national boundaries. The few terrorist acts committed on American soil seemed only incidental to the larger drama played out in the international political stage by struggling Middle East powers. In 1985, there were only seven terrorist acts committed on American soil, and most of those were directed against foreign nationals.

One month after the Libyan strike, the Strom Thurmond Institute held a conference in South Carolina on "State and Local Government Responses to Domestic Terrorism." We sought to familiarize state and local law enforcement from across the nation with the threat posed by terrorism within the United States; to familiarize them with counter-terrorist studies, programs and related activities conducted by the federal government; and to discuss ways in which federal, state and local governments can cooperate in devising and implementing counter-terrorist programs and policies. We wanted to provide conference participants an opportunity to discuss specific interests and problems with leading experts in the field of counter-terrorism.

Leading the program were recognized authorities with expertise in the precise area of domestic terrorism: Sen. Jeremiah Denton, Chairman of the U.S. Senate Judiciary Subcommittee on National Security and Terrorism; Edgar Best, Director of Security for the 1984 Olympic Games in Los Angeles; Adm. James Holloway, USN (Ret.), Chairman of the President's Task Force on Combatting Terrorism; Air Force Lt. Col. William Farrell, senior faculty member of the U.S. Naval War College; Lt. Col. James Fraser, formerly Chief of the Terrorism Counteraction Office, U.S. Army; Lt. Kevin Hallinan, Co-Commander of the Joint FBI-New York City Terrorist Task Force; and Ike Pappas, Senior CBS News Correspondent. They were joined in the program by 150 law enforcement and related agency personnel and by representatives from the Federal Aviation Administration, Department of Energy, FBI, Secret Service, U.S. Marshal's Service, Coast Guard, and Maritime Administration.

There is a serious problem in making the American people aware of the nature of this threat. International terrorism reached an all-time high in 1985: 480 incidents, 854 fatalities. Only seven incidents occurred that year in the United States. From the standpoint of the man-in-the-street, terrorism happens to others. Clearly, Americans must recognize that this trend could be reversed. Col. Khaddafy, Abu Nidal, and their surrogates have vowed to make the United States pay for the damages inflicted on Libya. For no other reason than "face-saving," we can expect them to make good on their pledge—on American soil. That was the conclusion of our experts.

Conference participants pointed to two types of terrorists: issue-oriented indigenous groups (such as those we confronted during the 1960s and 1970s, fired by opposition to the Vietnam War) and extremist elements acting on behalf of foreign powers. Our greatest fear is of those groups operating with the financial assistance and encouragement of other states.

We must disabuse ourselves of the image of terrorist organizations as fomented only by leftist movements, said the experts. There is an abundance of such groups in various stages of involvement and organization posing equally serious threats from the extreme political right.

The United States presents an inviting target for foreign-sponsored terrorism. The democracy which fosters our freedom and protects our civil liberties also is weakened by these same conditions. Terrorists are more difficult to detect, more difficult to intercept, more difficult to apprehend and detain with the protections enjoyed by suspects and the accused under the American Constitution and laws.

Civilian targets, said the panelists, are more inviting than military targets and more likely the object of attack in the immediate future. Terrorists prefer softer targets to the strict security and protections normally in force around U.S. military bases and similar installations. Our penalties listed a number of likely domestic targets: nuclear power generating facilities, federal office buildings and government officials, electric power plants and grids, water treatment plants, water supplies, and transportation.

Various measures were suggested to remedy deficiencies in our security to counter terrorist activities. In the main, there were some basic proposals for the approach to dealing with domestic terrorism more generally.

First, domestic terrorism must be recognized and dealt with as a criminal act. To react to terrorism by purely repressive measurs—such as suspending individual civil liberties—"play into the hands of the terrorists."

Second, the United States does have the necessary tools under the law to deal with the threat of domestic terrorism. The Foreign Officials Act and the Comprehensive Crime Control Act of 1984 allow the FBI to deal effectively with such incidents as the bombings of the American embassy in Lebanon and the killing of U.S. Marines in El Salvador. As the lead U.S. agency in the field of terrorism, the FBI helped thwart 23 planned acts of terrorism in this country in 1985.

Third, federal, state and local law enforcement agencies need to undertake memoranda of understanding as to jurisdiction over domestic acts of terrorism. This will encourage greater exchange of information and interaction between the levels of government involved and, in the event of major incidents or prospects for coordinated terrorist activities, a quick and effective series of responses by these agencies.

Fourth, training programs for state and local law enforcement agencies should include terrorism and its domestic threat.

Finally, state and local law enforcement agencies should anticipate terrorist targets. Knowledge that a target has been included in a local plan of protection can be an important deterrent.

How likely is it that the United States faces a serious threat within its borders? Distance from the safe havens of international terrorists make it difficult to mount and sustain a campaign of terrorism in America. We are vulnerable, but knowledge and understanding should drive our initiatives in combating domestic terrorism, not fear.

1985 ROLLCALL OF HEROES

Mr. HEINZ. Mr. President, I rise today for a most solemn and sober purpose. On behalf of the Fraternal Order of Police, I would like to take this opportunity to pay tribute to the 149 law enforcement officials who lost their lives last year while diligently performing their duties. More than half of these deaths were the result of felonious assault; the rest were caused by tragic accidents and mishaps. Although the cause of death may have varied from officer to officer, the quality of the conscientious service they rendered did not. For these dedicated men and women, and for the officers who gave their lives in years past, we express our deepest thanks for their great courage and willingness to go to such lengths to protect our citizens and communities.

The finest public servants and the most outstanding citizens make up our country's police forces. They are the individuals who man the thin blue line that protects law-abiding citizens from injury and loss of property and life. I can only hope that the recognition we give here today will help their families and friends to realize that these officers did not die in vain.

Since 1969, FOP National Chaplain Virgil D. Penn, Jr., has conscientiously gathered a list of slain officers from around the country who perished during the previous year. Known as the Rollcall of Heroes, it is an acknowledgment of their sacrifice and a small way for us to give support to their families and loved ones who must carry on with their own lives, notwithstanding their and our tragic loss.

Mr. President, I ask that the remarks of Chaplain Penn be placed in the RECORD, along with the list of slain officers, the Rollcall of Heroes.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GREATER LOVE HATH NO MAN

Year after year it is with great sorrow that we report the sacrifices put forth by our "Soldiers of Peace", the Law Enforcement Officers of America and its far flung territories. The Grim Reaper respects no rank or age as the supreme sacrifice has been made from the youngest Police Officer to the oldest. From Patrolman to the highest officer in every Police Agency, no matter

how small or large. From all ethnic groups, male and female, on duty and off duty. Every one of these officers gave their all to protect the lives and properties of the citizens of America. Over 75 of these brave men and women have given their lives in the battle against crime in this great land, during 1985.

Many of our Servicemen are lost upholding the American principles throughout the World, as they wage their war against our enemies. The Law Enforcement Officers continue their never-ending war against the lawless elements in the United States. These Officers continue their unceasing battle against the criminals of America. They really deserve the title, "Soldiers of Peace". Over and above the list of Officers slain by felonious assault, there are dozens more who have succumbed due to heart attacks, accidents, daily tension and trauma caused by the unusual changing of shifts and the heartrending duty of taking another person's life in the performance of duty. This constant strain often results in a complete breakdown and sometimes has resulted in an Officer's suicide. The suicide rate of Law Enforcement Officers far exceeds any other vocation. Our "ROLLCALL OF HEROES" does not include the thousands of Officers who have suffered from physical and mental violence, which have caused them unbearable pain and hardship, many times leading to their death, long after their injuries had occurred. How many of us are aware of these unknown and forgotten tragedies? Only the bereaved family and Brother and Sister Officers realize these victims have suffered undue pain and gave their lives just as surely as those who have died instantly. Although their names are not listed, they too are heroes and we should not forget them. May they, with those listed below, rest in eternal peace with the heavenly saints above.

We are respectfully indebted to the United States Congress, especially to former Congressman Barry M. Goldwater, Jr. of California, who for many years made aware to Congress the sacrifices made by Law Enforcement Officers throughout America, and to Senator John Heinz of Pennsylvania, who has continued to honor our fallen heroes. We sincerely appreciate the respect given our men by the entire legislative body of this great Nation who have recognized the great sacrifices of our deceased Brothers and Sisters. Thank you and may The Good Lord Bless every one of you.

Respectfully yours,

VIRGIL D. PENN, Jr.,
National Chaplain,
Fraternal Order of Police.

LAW ENFORCEMENT OFFICERS KILLED DUE TO CRIMINAL ACTION—1985

(Date of death,[1] name of victim officer, address of victim officer's agency)

January 1, 1985—Officer Carlos A. Velazquez Colon, Police of Puerto Rico, G.P.O. Box 70166, San Juan, Puerto Rico 00936.

January 24, 1985—Sergeant Craig A. Nollmeyer, Tacoma Police Department, 930 Tacoma Avenue, South, Tacoma, Washington 98402.

January 26, 1985—Patrolwoman Deanna S. Rose, Overland Park Police Department, 8500 Antioch Street, Overland Park, Kansas 66212.

January 26, 1985—Deputy Game Warden James C. Vines, Alabama Department of Conservation and Natural Resources, 64 North Union Street, Montgomery, Alabama 36130.

January 29, 1985—Sergeant Joseph M. Cournoyer, Metropolitan Police Department, 300 Indiana Avenue, Northwest, Washington, D.C. 20001.

February 2, 1985—Detective Gary L. Ward, Oklahoma City Police Department, 700 Couch Drive, Oklahoma City, Oklahoma 73102.

February 10, 1985—Lieutenant Timothy J. Sullivan, Anaconda Police Department, Anaconda, Montana 59711.

February 14, 1985—Officer John T. Scanlon, Robbinsdale Police Department, 4145 Hubbard Avenue, North, Robbinsdale, Minnesota 55422.

February 18, 1985—Patrolman Robert A. Way, North Charleston Police Department, Post Office Box 10100, North Charleston, South Carolina 29411.

February 24, 1985—Patrolman Gary Stymiloski, Westchester County Parkway Police, Saw Mill River Parkway, Hawthorne, New York 10532.

February 26, 1985—Deputy Barry L. Pendrey, Roanoke City Sheriff's Office, 317 Church Avenue, Roanoke, Virginia 24016.

March 2, 1985—Trooper James A. Froemsdorf, Missouri State Highway Patrol, Post Office Box 568, Jefferson City, Missouri 65102.

March 4, 1985—Patrolman John Fallis, Pine Bluff Police Department, 200 East Eighth Street, Pine Bluff, Arkansas 71601.

March 4, 1985—Sergeant Isidro Rodriguez Monclova, Police of Puerto Rico, G.P.O. Box 70166, San Juan, Puerto Rico 00936.

March 7, 1985—Criminal Investigator Enrique Salazar Camarena, Drug Enforcement Administration, 1405 Eye Street, Northwest, Washington, D.C. 20537.

March 10, 1985—Patrolman Kevin J. Williams, Huntsville Police Department, 1220 11th Street, Huntsville, Texas 77340.

March 12, 1985—Patrol Officer Harvey G. Lawson, Jr., Clarksville Police Department, Post Office Box 1147, Clarksville, Virginia 23927.

March 15, 1985—Officer Abigail Powlett, Plainfield Police Department, 200 East Fourth Street, Plainfield, New Jersey 07060.

March 19, 1985—Patrolman Leonard R. Lesnieski, Patrolman Rosario J. Collura, Milwaukee Police Department, 749 West State Street, Milwaukee, Wisconsin 53233.

March 21, 1985—Chief Billy E. Jones, Lorenzo Police Department, Post Office Box 430, Lorenzo, Texas 79343.

March 27, 1985—Officer Thomas E. Strunk, Billerica Police Department, Concord Road, Billerica, Massachusetts 01821.

March 27, 1985—Patrolman Ronald J. Turek, Blair Township Police Department, 575 Cedarcrest Drive, Duncansville, Pennsylvania 16635.

March 31, 1985—Officer Thomas E. Riggs, San Diego Police Department, 801 West Market Street, San Diego, California 92101.

April 4, 1985—Sergeant James A. Bevis, Jackson County Sheriff's Department, Post Office Box 919, Marianna, Florida 32446.

April 4, 1985—Agent Pablo Ramirez Morales, Police of Puerto Rico, G.P.O. Box 70166, San Juan, Puerto Rico 00936.

April 6, 1985—Deputy Clifford E. Sanchez, San Bernardino Sheriff's Office, 351 North Arrowhead Avenue, San Bernardino, California 92415.

April 9, 1985—Trooper Giles A. Harmon, North Carolina State Highway Patrol, 512 North Salisbury Street, Raleigh, North Carolina 27611.

April 11, 1985—Sheriff George E. Goare, Webster County Sheriff's Department, Post Office Box 55, Preston, Georgia 31824.

April 12, 1985—Trooper Leo Whitt, Virginia State Police, Post Office Box 27472, Richmond, Virginia 23261.

April 15, 1985—Trooper Jimmie E. Linegar, Missouri State Highway Patrol, Post Office Box 568, Jefferson City, Missouri 65102.

April 20, 1985—Patrolman John R. Tucker, Fort Gay Police Department, Post Office Box 336, Fort Gay, West Virginia 25514.

April 23, 1985—Officer Dale E. Eggers, Seattle Police Department, 610 Third Avenue, Seattle, Washington 98104.

April 24, 1985—Corporal J.N. Schulte, Mobile Police Department, 51 Government Street, Mobile, Alabama 36602.

April 25, 1985—Patrolman Phillip B. Mathis, Atlanta Police Department, 175 Decatur Street, Atlanta, Georgia 30303.

May 1, 1985—Trooper Oren S. Hindman, South Dakota Highway Patrol, 500 East Capitol Avenue, Pierre, South Dakota 57501.

May 8, 1985—Agent in Charge William R. Stewart, Oklahoma Bureau of Narcotics and Dangerous Drugs, Post Office Box 53344, State Capitol Station, Oklahoma City, Oklahoma 73152.

May 10, 1985—Officer Ignatius J. Charlie, Alakanuk Police Department, Alakanuk, Alaska 99554.

May 14, 1985—Trooper Raymond E. Worley, North Carolina State Highway Patrol, 512 North Salisbury Street, Raleigh, North Carolina 27611.

May 20, 1985—Deputy Charles W. Biles, Morgan County Sheriff's Office, Post Office Box 668, Decatur, Alabama 35601.

May 21, 1985—Officer John W. Mann, Trafford Police Department, Post Office Box 97, Trafford, Alabama 35172.

May 28, 1985—Officer Thomas J. Trench, Philadelphia Police Department, Eighth and Race Streets, Philadelphia, Pennsylvania 19106.

June 1, 1985—Deputy George L. Arthur, Los Angeles County Sheriff's Department, 211 West Temple Street, Los Angeles, California 90012.

June 3, 1985—Lake Ranger Darrell E. James, City of Duncan, City Hall, Post Office Box 969, Duncan, Oklahoma 73533.

June 5, 1985—Patrolman Johnnie C. Corbin, St. Louis Metropolitan Police Department, 1200 Clark Street, St. Louis, Missouri 63103.

June 18, 1985—Officer Harold L. Vitale, Saugus Police Department, 6 Taylor Street, Saugus, Massachusetts 01906.

June 30, 1985—Deputy Adrian Salazar Aguilar, Bexar County Sheriff's Office, 218 South Laredo Street, San Antonio, Texas 78204.

July 12, 1985—Detective Wayne G. King, Chicago Police Department, 1121 South State Street, Chicago, Illinois 60605.

July 14, 1985—Patrolman Gerald W. Mork, Iola Police Department, 165 North Main Street, Iola, Wisconsin 54945.

July 16, 1985—Officer Timothy W. Whittington, Charlotte Police Department, 825 East Fourth Street, Charlotte, North Carolina 28202.

July 29, 1985—Officer Henry Bunch, San Jose Police Department, 201 West Mission Street, San Jose, California 95110.

August 9, 1985—Officer Myron J. Massey, Fairfield Police Department, Post Office Box 177, Fairfield, Alabama 35064.

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[1] This date may not coincide with the date of the assault causing the death.

August 16, 1985—Officer Elabio Aponte Rivera, Police of Puerto Rico, G.P.O. Box 70166, San Juan, Puerto Rico 00936.

August 25, 1985—Patrolman Jose Cisneros, Solano County Sheriff's Office, 500 Texas Street, Fairfield, California 94533.

August 28, 1985—Detective Albert J. Mallen, Sr., New Jersey State Police, Post Office Box 7068, Trenton, New Jersey 08625.

August 29, 1985—Officer Ramon Luis Reyes Rosa, Police of Puerto Rico, G.P.O. Box 70166, San Juan, Puerto Rico 00936.

August 29, 1985—Detective Charles D. Heinrich, El Paso Police Department, 500 East San Antonio Street, El Paso, Texas 79901.

August 30, 1985—Trooper Paul L. Hutchins, Michigan State Police, 714 South Harrison Road, East Lansing, Michigan 48823.

September 13, 1985—Special Agent in Charge John T. King III, Georgia Bureau of Investigation, Post Office Box 1109, Milledgeville, Georgia 31061.

September 13, 1985—Patrolman Daniel M. McPherren, Newton Police Department, 115 North Second Avenue, Newton, Iowa 50208.

September 14, 1985—Trooper Robert L. Coggins, North Carolina State Highway Patrol, 512 North Salisbury Street, Raleigh, North Carolina 27611.

September 21, 1985—Patrol Officer David W. Roberts, Paris Police Department, 811 Bonham Street, Paris, Texas 75460.

September 23, 1985—Officer Osvaldo Santiago Oliver, Police of Puerto Rico, G.P.O. Box 70166, San Juan, Puerto Rico 00936.

September 27, 1985—Trooper Bruce K. Smalls, South Carolina Highway Patrol, Post Office Box 191, Columbia, South Carolina 29202.

September 30, 1985—Deputy John R. Klem III, Forrest County Sheriff's Department, 316 Forrest Street, Hattiesburg, Mississippi 39401.

October 17, 1985—Investigator Michael W. Ridges, Cook County Sheriff's Department, 1401 South Maybrook Drive, Maywood, Illinois 60153.

October 31, 1985—Detective Thomas C. Williams, Los Angeles Police Department, 150 North Los Angeles Street, Los Angeles, California 90012.

November 1, 1985—Deputy Richard A. Kent III, Tangipahoa Parish Sheriff's Office, Post Office Box 727, Amite, Louisiana 70422.

November 5, 1985—Patrolman Kenneth R. Dawson, Wheeling Police Department, 255 West Dundee Road, Wheeling, Illinois 60090.

November 11, 1985—Sergeant James D. Mitchell, Amarillo Police Department, 609 Pierce Street, Amarillo, Texas 79101.

November 12, 1985 and November 15, 1985—Patrolman Michael J. Schiavina and Patrolman Alain Y.J. Beauregard, Springfield Police Department, 130 Pearl Street, Springfield, Massachusetts 01103.

November 18, 1985—Officer Vincent J. Adolfo, Baltimore Police Department, 601 East Fayette Street, Baltimore, Maryland 21202.

November 26, 1985 and December 18, 1985—Sergeant Nathaniel H. Taylor and Officer Robert E. Walls, Essex County Sheriff's Office, New Courts Building, Newark, New Jersey 07102.

November 28, 1985—State Constable Valdon O. Keith, Greenville County Sheriff's Office, 4 McGee Street, Greenville, South Carolina 29601.

December 13, 1985—Lieutenant John P. Frisco, Windcrest Police Department, 8601 Midcrown Street, Windcrest, Texas 78239.

December 28, 1985—Officer Alma B. Walters, Meridian Police Department, 2415 Sixth Street, Meridian, Mississippi 39301.

LAW ENFORCEMENT OFFICERS ACCIDENTALLY KILLED—1985

January 2, 1985—Officer Manuel Salcido, Jr., U.S. Border Patrol, Carrizo Springs, Texas 78834.

January 11, 1985—Criminal Investigator Larry N. Carwell, Drug Enforcement Administration, 1405 Eye Street, Northwest, Washington, D.C. 20537.

January 19, 1985—Corporal Robert E. Armstrong, Dothan Police Department, 111 North Saint Andrews Street, Dothan, Alabama 36303.

January 22, 1985—Deputy Raymond H. Topolewski, Will County Sheriff's Department, 14 West Jefferson Street, Joliet, Illinois 60431.

February 1, 1985—Patrolman Manuel Olivas, New Mexico State Police, Post Office Box 1628, Santa Fe, New Mexico 87504.

February 2, 1985—Patrolman Jeffrey G. Casner, Berlin Police Department, 240 Kensington Road, Kensington, Connecticut 06037.

February 3, 1985—Trooper Gary W. Fisher, Pennsylvania State Police, Region V Strike Force, Armbrust, Pennsylvania 15616.

February 5, 1985—Sheriff Joseph R. Steenbergen, Collin County Sheriff's Department, McKinney, Texas 75069.

February 9, 1985—Officer David H. Massel, Woodlawn Police Department, 10143 Woodlawn Boulevard, Cincinnati, Ohio 45215.

February 14, 1985—Trooper John J. Brown, Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, Pennsylvania 17110.

March 1, 1985—Officer David W. Parker, Honolulu Police Department, 1455 South Beretania Street, Honolulu, Hawaii 96814.

March 9, 1985—Deputy Richard D. Glass, Mason County Sheriff's Office, Post Office Box 1037, Shelton, Washington 98584.

March 11, 1985—Sheriff Matthew V. Schofield, Haakon County Sheriff's Department, Post Office Box 249, Philip, South Dakota 57567.

March 23, 1985—Trooper Lindell J. Gibbons, Florida Highway Patrol, Troop F, Naples, Florida 33940.

March 30, 1985—Investigator Michael O. Lewis, District Attorney's Office, San Bernardino County, 316 North Mountain View Avenue, San Bernardino, Califoria 92415.

April 6, 1985—Officer David W. Copleman, California Highway Patrol, 4656 Valentine Road, Ventura, California 93006.

April 19, 1985—Trooper William P. Kohlleppel III, Texas Department of Public Safety, Post Office Box 4143, Austin, Texas 78765.

April 28, 1985—Chief Deputy Lewis W. Wahl, Crockett County Sheriff's Department, Post Office Box 1931, Ozona, Texas 76943.

April 29, 1985—Officer James A. Bradley, Oilton Police Department, Post Office Box 175, Oilton, Oklahoma 74052.

May 9, 1985—Officer Dean A. Whitehead, Lansing Police Department, 120 West Michigan Avenue, Lansing, Michigan 48933.

May 13, 1985—Corporal Darrell D. McCloud, Maricopa County Sheriff's Office, 120 South First Avenue, Phoenix, Arizona 85003.

May 19, 1985—Deputy Walter N. Coleman, Camden County Sheriff's Department, Post Office Box 699, Woodbine, Georgia 31569.

May 20, 1985—Constable David E. Nelson, Constable's Department, Precinct 3, Travis County, 3010 South Lamar Street, Austin, Texas 78704.

May 23, 1985—Patrolman Donald W. Parker, Jr., Bureau of Police, 626 State Street, Erie, Pennsylvania 16501.

May 24, 1985—Trooper Glenda D. Thomas, Washington State Patrol, District 2, 2803 156th Avenue, Southeast, Bellevue, Washington 98007.

May 25, 1985—Corporal Larry D. Cawyer, Alabama Department of Public Safety, Post Office Box 1511, Montgomery, Alabama 36192.

May 27, 1985—Criminal Investigator Lowry D. Durington, Healdton Police Department, 310 Franklin Street, Healdton, Oklahoma 73438.

June 9, 1985—Deputy James E. Simono, Elmore County Sheriff's Department, Post Office Box 665, Mountain Home, Idaho 83647.

June 14, 1985—Agent Lester L. Haynie, U.S. Border Patrol, 350 First Street, Yuma, Arizona 85364.

June 16, 1985—Trooper Charles G. Whitney, Iowa State Patrol, Post 9, 1510 West First Street, Cedar Falls, Iowa 50613.

July 5, 1985—Trooper Jody S. Dye, Ohio State Highway Patrol, 660 East Main Street, Columbus, Ohio 43266.

July 5, 1985—Patrolman William R. Burns, Radcliff Police Department, 411 West Lincoln Trail Boulevard, Radcliff, Kentucky 40160.

July 11, 1985—Trooper Jonathan D. Harris, West Virginia Department of Public Safety, 725 Jefferson Road, South Charleston, West Virginia 25309.

July 20, 1985—Corporal Thomas L. Harris, Dallas Police Department, 2014 Main Street, Dallas, Texas 75201.

July 23, 1985—Sergeant Gerald G. Chirrick, Corporal Virgle D. Knight, Jr., Deputy Ronald A. Terwilliger, Douglas County Sheriff's Office, Post Office Box 1757, Roseburg, Oregon 97470.

July 28, 1985—Patrolman Roy L. Graham, Sumpter Police Department, 23483 Sumpter Road, Belleville, Michigan 48111.

August 1, 1985—Deputy Robert A. Van Alyne, Jr., Laramie County Sheriff's Department, Post Office Box 787, Cheyenne, Wyoming 82003.

August 5, 1985—Deputy Monty L. Conley, Deputy Joe R. Landin, Tulare County Sheriff's Department, County Civic Center, Visalia, California 93291.

August 6, 1985—Deputy Robert D. Wright, Williamson County Sheriff's Office, Georgetown, Texas 78626.

August 10, 1985—Corporal Phillip G. Ostermann, Arkansas State Police, Post Office Box 5901, Little Rock, Arkansas 72215.

August 14, 1985—Officer Raymond E. Miller, California Highway Patrol, 4040 Pierce Road, Bakersfield, California 93308.

August 16, 1985—Patrolman Thomas J. Dietzman, Jr., Aurora Police Department, 15001 East Aiameda Drive, Aurora, Colorado 80012.

August 21, 1985—Officer Dean J. Esquibel, California Highway Patrol, Post Office Box 898, Sacramento, California 95804.

August 23, 1985—Patrolman Roy H. Mardis, Division of Police, 134 East Main Street, Lexington, Kentucky 40507.

August 31, 1985—Patrolman Issac D. Hamby, Hanceville Police Department, 103 Magnolia, Avenue, Hanceville, Alabama 35077.

September 3, 1985—Deputy Reginald F. Norwood, Harris County Sheriff's Depart-

ment, 1301 Franklin Street, Houston, Texas 77002.

September 5, 1985—Patrolman Oronzo L. Cellamare, Utica Police Department, 413 Orinskany Street, West Utica, New York 13502.

September 6, 1985—Officer William H. Fordham, Bergen County Police Department, Hackensack, New Jersey 07602.

September 8, 1985—Patrolman Johnny W. Wagner, Ranlo Police Department, 1624 Spencer Mountain Road, Gastonia, North Carolina 28054.

September 16, 1985—Officer Leslie P. Hollers, Rapid City Police Department, 300 Kansas City Street, Rapid City, South Dakota 57701.

September 27, 1985—Deputy Louie E. Cosby, Shelby County Sheriff's Department, Post Office Box 1095, Columbiana, Alabama 35051.

October 2, 1985—Sergeant John C. Baxter, Jr., Florida Highway Patrol, Neil Kirkman Building, Tallahassee, Florida 32307.

October 4, 1985—Special Agent Robin L. Ahrens, Federal Bureau of Investigation, 2721 North Central Avenue, Phoenix, Arizona 85004.

October 7, 1985—Officer Pedro A. Burgos LaCourt, Officer Pilar H. Lopez, Officer Martinez H. Ortiz, Sergeant Malendiz F. Diaz, Police of Puerto Rico, G.P.O. Box 70166, San Juan, Puerto Rico 00936.

October 8, 1985—Officer Richard J. Lear, Baltimore Police Department, 601 East Fayette Street, Baltimore, Maryland 21202.

October 9, 1985—Lieutenant G. D. Honea, Anderson County Sheriff's Department, 704 Avenue A, Palestine, Texas 75801.

October 12, 1985—Deputy Walter L. Terry, Smith County Sheriff's Department, Post Office Box 90, Tyler, Texas 75710.

October 15, 1985—Patrolman John R. Melendez, Bal Harbour Police Department, 655 96th Street, Bal Harbour, Florida 33154.

November 13, 1985—Officer Charles O'Hanlon, Philadelphia Police Department, Eighth and Race Streets, Philadelphia, Pennsylvania 19106.

November 23, 1985—Deputy Joseph W. Jarreau, Sr., West Baton Rouge Sheriff's Office, Port Allen, Louisiana 70767.

November 26, 1985—Trooper Thomas F. Hudson, New York State Police, Division Headquarters, Building 22, State Campus, Albany, New York 12207.

December 6, 1985—Officer Jackie C. Gray, Sr., Metropolitan Police Department, 300 Indiana Avenue, Northwest, Washington, D.C. 20001.

December 10, 1985—Deputy Donald E. Rice, Eaton County Sheriff's Department, 117 West Harris Street, Charlotte, Michigan 48813.

December 12, 1985—Officer Manuel A. Aquino, Guam Police Department, 287 West O'Brien Drive, Agana, Guam 96910.

December 13, 1985—Patrolman Vaughn E. Kee, Mount Pleasant Police Department, Post Office Box 296, Mont Pleasant, South Carolina 29464.

1985 National Police Prayer

Eternal God, Our Heavenly Father, we pray that You will accept the souls of our departed Brother and Sister Officers. They have paid the supreme sacrifice in protecting the lives and properties of the citizens of America. We bow in humble reverence to the memory of these brave officers whose labors on Earth are o'er. We pray that You will comfort their survivors who bear the burden of their sorrows. We ask Thee to lift up their spirits and remove all rebellion from their hearts. Help them to realize that their loved ones have earned the Heavenly reward for the dedicated work they have accomplished on this Earth. We pray Almighty God that our deceased comrades will rest in Thy loving care and we will all be *reunited* on that glorious day of Resurrection. This we ask in the honor of Thy name both now and forever more.

THE REAGAN ADMINISTRATION AND NUCLEAR WEAPONS

Mr. BRADLEY. Mr. President, on September 10 my distinguished colleague from Delaware, Mr. Biden, addressed the National Press Club on the important subject of the nuclear arms race. His speech entitled "The Reagan Administration and Nuclear Weapons," is an important contribution to the ongoing discussion and debate on this fundamental issue. I ask unanimous consent that this timely and thoughtful analysis be inserted in the Congressional Record.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

The Reagan Administration and Nuclear Weapons: A Smokescreen of Mythology; A Future Less Secure

(Remarks by Senator Joseph R. Biden, Jr., to the National Press Club)

Members of the National Press Club, ladies and gentlemen, I appreciate the opportunity to speak to the Press Club today on a matter fundamental to America's future. My subject is the nuclear arms race—specifically, the ominous failure during this Administration of efforts to contain that race.

THE AMERICAN CONTEXT

Let me first place the issue in context. I believe that the period now before us, starting with the Congressional elections in November and culminating in the Presidential election of 1988, represents a political watershed more significant than any in a generation. The "American Century" described by Henry Luce is drawing to a close; and as a new century approaches, the people of the United States confront questions that will shape our national life—our continued preeeminence or decline—for decades to come:

Economically, our deficits and international debt pose challenges greater than any since the Depression.

On critical issues of social justice, the Reagan years have raised, but left unresolved, profound questions about the role of government in addressing human needs not met by the market.

In the judiciary, the bastion of our democratic system, the American people must determine whether to grant or deny further power to those who would impose a new and radically conservative interpretation of the Constitution and the Bill of Rights.

And in national security policy—the very basis for our survival as a people and nation—we face perhaps the gravest question of all, posed by an Administration that is moving to eliminate the entire framework governing superpower arsenals now capable of annihilating all civilization.

In the months ahead, each of these issues will warrant the full attention of the American people. Today, I shall focus on the most fundamental issue—survival in the nuclear age.

THE U.S.-SOVIET CONTEXT

Let me begin by seeking to clarify the relationship between arms control and a second Reagan-Gorbachev summit, especially in light of the recent Soviet seizure of American journalist Nicholas Daniloff.

Public discussion has been greatly confused, I believe, by a mistaken belief that summits can be used to negotiate arms control. Postwar history demonstrates quite the contrary. Arms control depends not on any cordiality that develops between two superpower leaders during a fireside chat, but rather on serious, purposeful negotiation conducted over a period of many months and years.

Summits can, however, serve two important purposes: to improve an already promising atmosphere and to finalize and commemorate agreements on which the preponderence of work has already been done. Currently neither of those conditions exists. The Kremlin's decision to hold an innocent American journalist hostage is a calculated, public affront to American principles. And the two sides are still far apart on the fundamental issues of arms control, not least because for six years the Administration has failed to bargain seriously.

Summitry and the seizing of Mr. Daniloff both fall into the same category: They reflect the degree of amicability and behavioral decency in the relationship; and it is appropriate if necessary for the United States to link the two. In a completely different category is nuclear arms control, which cannot be negotiated at a summit, which has an historic urgency precisely because of the superpowers' adversarial relationship, and which should proceed without linkage to transitory issues, however severe.

Secretary Gorbachev has spoken frequently in recent weeks to express his desire for arms control, and his insistence that a second summit not be simply cosmetic. But if the seizure of Daniloff represents an effort by the Soviet leadership to criticize the Administration's arms control posture, it has chosen an utterly stupid and self-defeating way to do so. Whereas heretofore the Administration has used summitry as a substitute for arms control, a summit breakdown would provide an excuse for the absence of arms control. In sum, the Kremlin's outrageous treatment of Daniloff can only give satisfaction to those whose purpose is to derail arms control through one means or another.

The Daniloff issue underscores our profound differences with the Soviet Union, and is an outrage which should be handled without a spirit of compromise. But in the continuing American debate, which reflects the freedom we possess and Soviet citizens do not, this episode should not be allowed to distract attention from the bankruptcy of the Reagan Administration's policy on nuclear arms control, to which I shall now turn.

THE NUCLEAR FRAMEWORK IN JEOPARDY

Four decades ago on the New Mexico desert, the world was changed, and changed utterly, by a destructive miracle of science. As that first atomic blast mushroomed into the heavens, the scientist who had led the American effort that produced this apocalyptic vision, J. Robert Oppenheimer, sought to express the immensity of what makind had done—and what could never be undone. He found it expressed in the words

of a Hindu holy poem: "I am become Death, the shatterer of Worlds."

Since then, man has survived in the nuclear age through a combination of wisdom and luck that offers little reason for complacency. Knowledge of the atom has proliferated among men and nations. And the technology for hurling its destructive power to distant targets—by what experts now clinically call "strategic nuclear delivery vehicles"—advances steadily by the day, propelled by a bitter competition between the world's two superpowers. But worse still, we see today a sustained assault on the structure carefully erected, over two decades, to contain this destructive power—a protective barrier of negotiated superpower agreements now imperiled by an Administration whose policy represents an amalgam of ideology, ignorance, and, I believe, historic irresponsibility.

Administration policy on arms control is shaped by one premise not in dispute—that the Soviet Union cannot be trusted. But it is driven also by certain deep-seated ideological beliefs which have proven both dubious and dangerous:

First among these is a visceral rejection of the Soviet Union as an equal, whether as a nuclear adversary or as a partner in agreements that enhance nuclear stability.

Equally strong is an assumption that arms control agreements are a dangerous placebo for Western public opinion, weakening the national will necessary for an adequate defense.

And third is an implicit conviction that nuclear weapons represent an arena of superpower competition that is actually advantageous to the United States, and that a combination of will power and technology can somehow return us to the halcyon days of American nuclear superiority.

Together, I submit, these attitudes reflect an unwillingness to accept international reality, a lack of faith in the American people, and a distorted faith in technology. They give life to an ideology that has halted all progress in nuclear arms control, while motivating a deliberate effort to dismantle the entire arms control framework previously erected.

In the control of offensive systems, the Administration has repudiated a SALT regime that constitutes the only existing constraint on U.S. and Soviet bombers and missiles—an ill-considered act holding enormous potential costs to American security and no apparent gains.

On issues of compliance, the Administration has repeatedly exaggerated the extent and significance of Soviet violations, while launching an outright attack on the only established forum for resolving compliance issues.

On the question of nuclear testing, the Administration has refused to ratify the Threshold Test Ban Treaty and has reversed the position of our last six Presidents by refusing even to consider negotiations on a Comprehensive Test Ban.

Finally, but most fundamentally, Administration policy has undermined the essential equation of all arms control, which is that in order to limit and then reduce offensive arms, defensive arms must also be constrained. That equation's logic is this: that either superpower—if confronted by antimissile defenses even of uncertain reliability, and such uncertainty is inherent—will be compelled in its own interest to multiply its offensive systems to the point of absolute assurance that, even if victimized by a massive first strike, it could still inflict a devastating retaliatory blow.

The President's dangerously ingenuous notion of erecting a "strategic space shield" contravenes that equation. And by radically reinterpreting the ABM Treaty—a reinterpretation that contradicts the treaty language, the negotiating record, the ratification record, and thirteen years of established practice—the Administration has moved toward eradicating not only defensive limitations but all constraint on offensive systems as well. Accordingly, we now confront the specter of a nuclear arms race without limits—brought on, tragically, by ideologues who believe such a competition serves the American interest.

A SMOKESCREEN OF MYTHOLOGY

Bridging the gap between this policy and the American public's overwhelming support for nuclear arms control has required of Administration officials no small measure of political dexterity. But they have supplied it, primarily by propagating a mythology which has provided the smokescreen for a no-arms-control policy.

Soviet "superiority": an excuse for delay

Their first myth is the claim that, when they came to office, the United States had fallen perilously behind the Soviet Union in strategic forces. If there was to be arms control, we were told, it would depend first upon a massive Reagan build-up. But in fact the assertion of Soviet superiority was plainly false when first uttered and has gained standing only through sheer repetition by the President and his Secretary of Defense.

Proof of its falsehood lies in a survey of our strategic arsenal today, which comprises essentially the same triad—of ICBMs, SLBMs, and long-range bombers—already in place or on-line when President Reagan was elected. Indeed, the Administration's one addition to this arsenal—its dubious decision to revive the B-1 bomber—pales against the strategic loss from its shift of the MX missile from deceptive basing to emplacement in existing silos. That decision, reflecting an unwillingness to proceed against localized opposition to a survivable basing mode, means that a weapon conceived solely to close a theoretical "window of vulnerability" will, for want of political courage, be deployed in a way that concentrates warheads in vulnerable silos and thereby opens the window still further.

Overall, what we have seen is less a build-up than a spend-up, in which the act of awarding defense contracts has been portrayed as a measure of strategic strength. The strategic balance between the superpowers remains essentially unchanged, and the Kremlin today has no more reason to bargain—and no less—than before any Reagan program went into effect.

"Bringing Moscow to the table": a false claim for the "build-up"

Unfazed nonetheless, Administration officials have propagated a second myth—a claim that the alleged strategic build-up, including Star Wars, has "brought the Kremlin back to the bargaining table." This assertion, however, lacks both evidence and logic. True, in 1983, after 2 years of stalemate in Geneva and on the eve of NATO missile deployments in Europe, the Soviets interrupted negotiations, obviously hoping to capitalize on West European concerns about President Reagan. But, by the large, the Kremlin has remained at the bargaining table since the two superpowers began discussions on limiting strategic systems in 1966. The result of that extended bargaining is the current arms control structure, which was under attack by the President and his advisors long before they reached office.

Nor has Star Wars been vindicated by the Soviet insistence on discussing it. This demand expresses no more than the basic logic of arms control—that limits on offensive and defensive systems are crucially related. In the early years of arms control, the U.S. side argued determinedly in favor of this principle: and Moscow's eventual acceptance led to the ABM Treaty, by which the two superpowers forswore any effort to erect full-scale defenses. The Soviet call for talks on strategic defenses, rather than a sign that Star Wars is "working," represents the only logical response to the Administration's threat to abandon unilaterally a principle that previous Administrations had successfully induced the Kremlin to accept.

The Soviet Union needs arms control not because of the so-called Reagan build-up, or the implausible threat of a perfect strategic defense, but rather for reasons long-established and quite similar to our own. Whatever the differences between the two superpowers—and they are vast—leaders in Moscow have the same economic and strategic interest we have in gaining a measure of predictability of the adversary's force structure. And they share our profound interest in mutual constraints that enhance nuclear stability by reducing the risk of nuclear war.

Today, for example, the Kremlin can foresee that by the early 1990's the entire Soviet arsenal of land-based ICBMs will be subject to preemptive strike by our new and highly accurate Trident II—a submarine-launched missile that was developed, one should note, by the much-maligned Carter Administration. To prevent this "window of vulnerability"—a Soviet "window" that would be far more real than ours ever was—the Kremlin has begun deployment of mobile ICBMs, while undertaking to negotiate further strategic limits in Geneva. The Soviets have ample incentive for further arms control, and would have such incentive regardless of this Administration's reckless bravado, and its self-defeating policy of attacking the structure of controls now in place.

"Serious proposals": a false defense for a lack of progress

If the so-called Reagan build-up has brought anyone to the bargaining table, it is the Administration itself, which has used the talks to justify expenditure on such supposed bargaining chips as the MX. From that perspective, the talks have indeed already succeeded—by relieving public pressure for arms control, while running interference for increased military spending. By pretending to follow the traditional logic of arming in order to negotiate, the administration has used negotiations in order to arm.

To assuage public opinion has, of course, required the Administration to adopt negotiating positions that have at least superficial plausibility. This has brought forth a third myth, which is that the Administration has offered "serious proposals," the corollary of which is that any lack of progress may be attributed to the Soviet Union. Under analysis, however, the Administration's proposals—both in the INF talks on intermediate-range nuclear forces and the START talks on long-range systems—have been less than serious.

In the INF talks, the Administration's famous "zero option" was clearly non-negotiable. By calling upon the Soviet Union to dismantle not only all of its new SS-20s but also all of the old intermediate-range mis-

siles (SS-4s and 5s) they were created to replace, the Administration could hardly have expected to create the basis for agreement; Soviet forces would have been weaker than before the SS-20 was created. Similarly, in the START talks the Administration fashioned a position that had the surface virtue of calling for common limits on missile warheads, but the limits and sublimits chosen were such as to require a major overhaul of the entire Soviet force posture, while requiring much less change in our own. Moreover, by focusing on missile warheads, the Administration has disingenuously ignored a strategic factor of which the Soviets are keenly aware: the overwhelming U.S. superiority in bombers. Proposing to ban mobile missiles was equally disingenuous, in that the Soviets have undertaken a major mobile-missile program as a precaution against the imminent U.S. capability to destroy all Soviet silos in a first strike.

A considerable irony of the various U.S. proposals is that they have also contained elements directly contrary to basic American interests and doctrine. The "zero option" proposal, for example, would have deprived NATO of the theater-nuclear modernization that is integral to maintenance of the "flexible response" doctrine and thereby to the strategic "coupling" of the Atlantic Alliance. Similarly, certain START proposals, if implemented, would have involved an actual intensification of MIRVing, rather than inducing the de-MIRVing needed for the enhancement of nuclear stability. Even more illogical was the proposal to ban mobile missiles, which would have undercut our own effort to escape ICBM vulnerability through the new Midgetman.

This latter curiosity apparently resulted from an unholy alliance that has plagued arms control throughout this Administration—between strategic targeters in the Pentagon, who are obsessed with retaining the ability to target all Soviet missiles, and anti-arms-control officials who are only too pleased to see the U.S. make unacceptable offers. The upshot has been a series of proposals that have been both non-negotiable but also, paradoxically, inconsistent with U.S. concepts of deterrence and nuclear stability even if accepted by the Kremlin.

"Massive" Soviet violations: a false excuse to scuttle SALT

While the myth of bargaining seriously has been useful in explaining six years of failure to progress in arms controls, a fourth myth has been needed for an attack on the arms control framework already in place: the allegation of blatant and massive Soviet violations. There are indeed legitimate issues concerning Soviet compliance with existing agreements. But such issues are complex, controversial, and—it cannot be emphasized too strongly—still marginal in military significance. What the myth of "massive" Soviet violations seeks to obscure is that the essential constraints—the numerical SALT sublimits that cap the deployment of MIRVed missiles and bombers carrying cruise missiles—have been fully adhered to by both sides, and subject to no credible charge of Soviet violation.

Over the history of SALT, these limits have required the Soviets to dismantle ten missile launchers for every one retired by the United States; and that ratio will continue in the period immediately ahead—unless the limits are abandoned. It is for that reason that the Senate has repeatedly and overwhelmingly urged the President to continue U.S. compliance with the SALT limits. Unfortunately, the White House announcement of May 27th—that the Administration intends to exceed the SALT limits later this year—makes clear that this message has been ignored.

Consequently, I have introduced legislation with Republican Senator Bill Cohen that would not simply urge—but require—continued U.S. adherence to the major SALT II sublimits for so long as the Soviets remain in compliance. (These common limits are 820 for MIRVed ICBMs; 1200 for MIRVed ICBMs and SLBMs; and 1320 for MIRVed missiles plus bombers carrying cruise missiles.) A companion measure sponsored by Congressman Dicks has already passed the House but is unlikely to be accepted by Senate conferees on the Defense authorization bill. The issue will therefore revert to the Senate.

I regret the need for binding legislation in an area where Presidential latitude is obviously preferable. But we now face a historic collapse of responsibility in the conduct of American strategic policy. With no conceivable loss in strength, the United States can comply with the key SALT limits for the next two years simply by retiring two aging Poseidon submarines. Yet failure to take such action would represent unilateral American withdrawal from the only remaining constraint now capping both superpower arsenals.

Once that constraint is lifted, offensive systems on both sides will almost certainly multiply. At present, each superpower possesses approximately 10,000 strategic warheads, each more deadly than the bombs which struck Hiroshima and Nagasaki in 1945. According to a detailed projection by the House Armed Services Committee, if SALT limits are abandoned, each side—eight years from now—could have 28,000 warheads, a near tripling of the nuclear arsenal by 1994.

Clearly, members of the President's party will hope to finesse the question of binding legislation if possible; and with a second Reagan-Gorbachev summit now in the offing, we can expect to be told once again to leave the President a free hand. I intend, however, to make every effort to force a Senate vote on this crucial issue before Congress adjourns. The Administration's unilateral abandonment of existing constraints is an issue on which the Senate should be recorded, and that record should be before the American people in November.

As this moment of truth on SALT approaches, news reports have surfaced in the past week that, in its internal negotiations regarding a new offensive arms agreement, the Administration has now dropped the goal of deep cuts. This is not surprising since the idea of 50% reductions, while good propaganda, was never plausible as a near-term objective. The new position, reportedly, aims for cuts of perhaps 20-30% in missile warheads, while allowing substantial growth in bomber forces—in a pattern which simply mirrors current U.S. force trends. In short, the Administration has now adopted a policy that the President always purported to oppose: arms control as a codification of forces that would exist anyway.

To compare this new negotiating position with where the superpowers could now be, had SALT II been ratified six years ago, reveals the bankruptcy of Administration policy. When SALT II was signed by Presidents Carter and Brezhnev, there was every reason to expect that the two governments could promptly agree on a SALT III treaty which would initiate percentage-annual-reductions of 3-7% from the SALT II ceilings. Had that occurred, we could be at the point today of having reduced the Soviet and American arsenals by 25% or even more. Instead the Administration rejected that opportunity, wasted six years while claiming to be satisfied only with "deep cuts," has now adopted a negotiating position that—even if realized—would represent little more than a variation on the status quo, and meanwhile is carrying us to the threshold of abandoning arms control altogether.

This is a sad policy indeed for a President who vigorously attacked his predecessor for failing to achieve deep cuts but whose only contribution to arms control thus far has been to rename the negotiation. Had SALT II been ratified, we could by now have had substantial cuts; instead, we have had none.

"Star wars": a fantasy and a false alternative to arms control

This brings us to the Administration's fifth myth—and surely the most remarkable. Unable or unwilling to build on the nuclear arms control progress of his predecessors, and under mounting public pressure as a result, the President in 1983 performed an astounding political act. Like a Baryshnikov of nuclear politics, he simply pirouetted and leaped over the entire issue, announcing a presidential "vision" that the American people could escape nuclear danger not by arms control but by erecting an anti-nuclear astrodome over the United States. This immaculately conceived notion has obviously demonstrated a certain mystical appeal. Unfortunately, it has no possibility of practical implementation, as attested by an overwhelming body of scientific opinion, and by common sense.

Analysis of Star Wars should begin, however, with the vision itself. The President presented Star Wars as an escape from what he called the "immoral" doctrine of Mutual Assured Destruction—and also an escape from nuclear dependence, since defenses would supposedly be non-nuclear. He also implied that this nonexistent technology would free us from the need to bargain with the Soviets, while paradoxically proposing that we provide the Kremlin full access, so that our erstwhile adversaries could share in this forthcoming miracle. But this very vision is inherently and fundamentally fraudulent:

First, strategic defenses would not eliminate reliance on retaliatory forces. The President speaks beguilingly of a new era of "mutual assured survival." But certainly such a realist as he is not planning for a utopia in which we disarm entirely, living quietly under a technological astrodome. One associates that vision with Woodstock perhaps, but not with Ronald Reagan. The truth is that—in any foreseeable future and whether or not we seek to deploy strategic defenses—our principal deterrent will continue to be our ability to retaliate against an attacker. And that, despite the President's verbal legerdemain, is nothing more or less than the doctrine of Mutual Assured Destruction.

Nor would Star Wars move us away from nuclear dependence. Even defensive technologies will involve nuclear explosive devices—most notably the X-ray laser, which the Administration is so bent on testing that it refuses to consider a nuclear test ban of even limited duration.

Nor would Star Wars free us, as implied, from arms control. Even in theory, there is no way a defensive system could work without some cap on the enemy's offensive sys-

tems, which could be increased to overwhelm our defenses. Such limits on offensive systems can only be imposed through negotiated agreement—meaning arms control.

Nor could we "share the system," as the President has proposed, again apparently under the belated influence of Woodstock. Sheerly on the basis of logic, sharing a Star Wars defensive system would be unsound, because to know the technology is to know how to defeat it. And on a practical level, it is preposterous, because such a system would embody all of our most advanced technology—defensive, offensive, and otherwise. One can only imagine the conversation that would ensue if the President's technological dream were suddenly realized and he had summoned Secretary Weinberger to instruct him that the time had come to "share the system."

As to the technical realities, the plain and widely recognized truth is that a comprehensive system of population defense simply will not work—something even Assistant Secretary Perle reportedly acknowledges in his private conversations with our allies.

First, even under the rosiest predictions about the effectiveness of layered defenses, a large number of the Soviet missiles that exist now would penetrate any system we could conceivably deploy 20 years from now. Given the inevitable development of Soviet countermeasures, any hope for a leak-proof missile defense will remain an ever-receding aspiration. Current research, moreover, has yet even to envisage a defense against an attack that "comes in under" this mythical space shield—either with bombers, cruise missiles, or low-trajectory missiles fired from submarines near the American coast, not to mention nuclear devices transported through more elemental means.

CONSEQUENCES OF MYTHOLOGY

To say that Star Wars will not work, however, is far from labelling it meaningless, for the President's quixotic initiative is already inflicting serious damage on American interests:

It has confused our national debate, perhaps deliberately so, about the direction of American nuclear strategy.

It has increased and misallocated our defense budget, at a time requiring austerity and carefully established priorities emphasizing the improvement of conventional forces.

It has diverted valuable R&D resources, at a time when the best American talent is now urgently needed in the civilian sector to strengthen our competitiveness in the global marketplace.

It has weakened the Atlantic Alliance by raising doubts about America's commitment to the collective defense, and also about the reliability of American leadership in the conduct of East-West relations.

It threatens strategic deterrence by undermining the ABM Treaty, which ensures our ability to answer aggression with the limited nuclear response that is fundamental to the credibility of NATO doctrine.

It has pushed Soviet behavior the wrong way, inducing greater Soviet research on defenses while raising the prospect of expanded Soviet missile forces to penetrate any U.S. defenses erected.

And finally, for so long as it remains nonnegotiable, Star Wars constitutes a major impediment to arms control.

This multiplicity of negative consequences combines into a single conclusion: The Star Wars initiative represents a fundamental assault on the concepts, alliances, and arms control agreements that have buttressed American security for several decades; and the President's continued adherence to it constitutes one of the most reckless and irresponsible acts in the history of modern statecraft.

AN HISTORIC TURNING POINT

The past six years have demonstrated that the world can survive in the short term without progress in nuclear arms control. But while the Reaganites have enjoyed some success in propagating their smokescreen of mythology, what they have not done—what they could not do—is change these fundamental realities of the nuclear age:

first, that Soviet forces will, like our own, remain capable in any forseeable future of inflicting massive global destruction on a scale almost beyond the imagination;

second, that the essential calculus of mutual nuclear deterrence, recognized years ago, cannot be altered even by the dreams of Presidents;

third, that actual reductions in nuclear weaponry will not occur except by negotiated agreement, and that such agreement will never occur without related agreement on defensive systems; and

fourth, that arms control represents an effective means—and our best hope—of enhancing nuclear stability and reducing the risk of war;

finally, that arms control can be accomplished not by bluff and compulsion but only by quiet strength and a serious will to negotiate.

One may speculate that President Reagan has come to understand these truths. The compelling question about the remainder of his presidency is whether, given the competing voices and ideological forces in his own Administration, he can and will act accordingly. The answer to that question, as it emerges, will shape a major turning point, for good or ill, in our nation's history and the world's.

If the President moves to seize his opportunity, the agenda of a comprehensive program of arms control progress lies clearly before us:

(1) On defensive systems, the ABM Treaty must be reaffirmed in its restrictive form—and not with the current caveat that we will adhere only until our defensive systems are ready for deployment. (Such action has been urged by former Defense Secretaries Brown, Schlesinger, Laird, and McNamara, and numerous other distinguished officials in past Administrations.) This means that the United States must clearly limit SDI to a genuine research program intended to hedge against and deter any Soviet "break out" from the ABM Treaty—and to examine the possibilities of stabilizing point-defenses—but not aimed at erecting a comprehensive population defense. Talks on the ABM Treaty should also focus on developing detailed definitions of key terms in the Treaty, while adding clear restrictions on the testing of ASATs and anti-tactical ballistic missile systems.

(2) On offensive systems, the two sides should agree to remain within the SALT II sublimits until a replacement agreement can be reached. In the START talks on long-range systems, the U.S. must adjust a position that has been non-negotiable because, by disaggregating missiles from bombers, it disproportionately affects Soviet forces. A compromise must be sought entailing a trade-off between U.S. superiority in bombers and Soviet superiority in missile throw-weight.

Meanwhile, INF may be dealt with in one of two ways. An agreement could place equal ceilings on U.S. and Soviet European-based missiles, with Soviet Asian-based missiles balanced (implicitly) by British and French nuclear forces. Or agreed definitions could allow INF to be included in and capped under the strategic aggregates negotiated in START.

Any new agreement placing the superpower arsenals under common limits should, this time, be promptly ratified in treaty form, and should include an agreed rate of reduction compatible with maintaining nuclear stability. Such a regime would allow each side considerable flexibility in configuring its forces within the agreed ceilings—what I call a "shrinking free-mix"—and would provide for the gradual, predictable drawdown that could inspire mutual confidence.

(3) Simultaneously, compliance issues must be dealt with through a renewed commitment to reach resolution. Issues surrounding "new" types of missiles and allowable encoding of test data must essentially be addressed from scratch, since they arise from previous agreements worded too vaguely. (The nearly inevitable confusion on these issues is well described in the current issue of Foreign Policy by Ambassador Ralph Earle, U.S. negotiator of SALT II.) Questions surrounding the radar at Krasnoyarsk—an apparent Soviet violation of the ABM Treaty—will require U.S. insistence on a satisfactory Soviet response.

(4) Finally, on testing, the United States should be prepared to ratify existing treaties limiting nuclear testing and either to reopen negotiations on a Comprehensive Test Ban or to seek agreement on gradual reductions in the threshold and the number of tests permitted.

But while a treaty on testing could play a constructive role in an overall pattern of agreement, no illusion should be encouraged that limiting the testing of nuclear explosive devices in itself holds the key to stopping the arms race; such technology is already too well developed and the main advances and dangers now arise from other technologies. Accordingly, the highest priority must remain on achieving agreement to constrain the deployment of strategic defenses and offensive delivery systems.

Clearly, even success with such an agenda would not change the nature of the Soviet Union; that we cannot expect to accomplish. Nor, despite this Administration's early pretensions, can we even require changes in Soviet force levels which the Kremlin does not wish to make. But we can manage the superpower competition, by channeling our competing energies into regimes of cooperation that enhance the security of both sides.

I refer in closing to Winston Churchill, whose name the Reaganites often invoke. As well as any leader in the 20th century, that great British prime minister understood the dangers posed by totalitarian regimes. But Churchill was a statesman, not an ideologue—a man who perceived international affairs in many dimensions, and who brought wisdom and gallant rhetoric to the pursuit of rational public purpose. Churchill warned in futility against appeasement in the 1930's; but years later, witnessing the dawn of the nuclear age, he issued a warning graver still: Without man's wisest efforts to constrain this peril, "the Stone Age may return on the gleaming wings of Science." Will that warning also have been in vain?

In response to the continuing and still-depending nuclear danger I would, with other

Americans, welcome a surprise from President Reagan in the days now ahead: a seizing of control over his own divided Administration and the conduct of serious, purposeful negotiations toward an expansion, rather than erosion, of the existing structure of nuclear arms control. But such progress will require an immediate and dramatic departure from the pattern of infighting, obfuscation, and presidential indifference to detail that has characterized the Administration thus far.

In summary, progress on nuclear arms control can occur only with presidential leadership. If he provides it, President Reagan will be hailed by all. If not, the issue of nuclear arms control will figure heavily in the election of 1988; and I trust that the American people will use the tools of democracy to act in their own defense.

CONCLUSION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. If there is no further morning business, morning business is closed.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1987

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 5205, the Department of Transportation appropriations bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5205) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

H.R. 5205

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes, namely:

TITLE I—DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

For necessary expenses of the Office of the Secretary of Transportation, including not to exceed $30,000 for allocation within the Department of official reception and representation expenses as the Secretary may determine**[**; $938,000 for the immediate Office of the Secretary, $469,000 for the immediate Office of the Deputy Secretary, $5,300,000 for the Office of the General Counsel, $7,465,000 for the Office of the Assistant Secretary for Policy and International Affairs, $2,096,000 for the Office of the Assistant Secretary for Budget and Programs, $2,475,000 for the Office of the Assistant Secretary for Governmental Affairs, $20,030,000 for the Office of the Assistant Secretary for Administration, $1,400,000 for the Office of the Assistant Secretary for Public Affairs, $746,000 for the Executive Secretariat, $390,000 for the Contract Appeals Board, $1,260,000 for the Office of Civil Rights, $478,000 for the Office of Commercial Space Transportation, $1,750,000 for the Office of Essential Air Service, $565,000 for Regional Representatives, and $3,732,000 for the Office of Small and Disadvantaged Business Utilization**]**, *$51,000,000,* of which $3,000,000 shall remain available until expended and shall be available for the purposes of the Minority Business Resource Center as authorized by 49 U.S.C. 332: *Provided,* That, notwithstanding any other provision of law, funds available for the purposes of the Minority Business Resource Center in this or any other Act may be used for business opportunities related to any mode of transportation.

TRANSPORTATION PLANNING, RESEARCH, AND DEVELOPMENT

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for conducting transportation planning, research, and development activities, including the collection of national transportation statistics, and university research and internships, to remain available until expended, **[**$3,349,000**]** *$4,649,000, of which $1,300,000 shall be derived from unobligated balances of "Salaries and Expenses".*

WORKING CAPITAL FUND

Necessary expenses for operating costs and capital outlays of the Department of Transportation Working Capital Fund not to exceed **[**$64,500,000**]** *$66,500,000* shall be paid, in accordance with law, from appropriations made available by this Act and prior appropriation Acts to the Department of Transportation, together with advances and reimbursements received by the Department of Transportation.

PAYMENTS TO AIR CARRIERS

For payments to air carriers of so much of the compensation fixed and determined under section 419 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1389), as is payable by the Department of Transportation, **[**$21,000,000**]** *$30,000,000,* to remain available until expended.

COAST GUARD

OPERATING EXPENSES

For necessary expenses for the operation and maintenance of the Coast Guard, not otherwise provided for; purchase of not to exceed eight passenger motor vehicles for replacement only; and recreation and welfare, **[**$1,849,800,000**]** *$1,830,000,000,* of which $15,000,000 shall be expended from the Boat Safety Account: *Provided,* That, of the funds available under this head, not less than $372,983,000 shall be available for drug enforcement activities: *Provided further,* That the number of aircraft on hand at any one time shall not exceed two hundred and ten, exclusive of planes and parts stored to meet future attrition: *Provided further,* That none of the funds appropriated in this or any other Act shall be available for pay or administrative expenses in connection with shipping commissioners in the United States: *Provided further,* That none of the funds provided in this Act shall be available for expenses incurred for yacht documentation under 46 U.S.C. 12109 except to the extent fees are collected from yacht owners and credited to this appropriation.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

(INCLUDING RESCISSION)

For necessary expenses of acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto; to remain available until September 30, 1991, **[**$101,850,000**]** *$251,700,000*: *Provided,* That the Secretary of Transportation shall issue regulations requiring that written warranties shall be included in all contracts with prime contractors for major systems acquisitions of the Coast Guard: *Provided further,* That any such written warranty shall not apply in the case of any system or component thereof that has been furnished by the Government to a contractor: *Provided further,* That the Secretary of Transportation may provide for a waiver of the requirements for a warranty where: (1) the waiver is necessary in the interest of the national defense or the warranty would not be cost effective; and (2) the Committees on Appropriations of the Senate and the House of Representatives are notified in writing of the Secretary's intention to waive and reasons for waiving such requirements: *Provided further,* That the requirements for such written warranties shall not cover combat damage: *Provided further, That of the funds available under this head, $32,500,000 is hereby rescinded.*

RETIRED PAY

For retired pay, including the payment of obligations therefor otherwise chargeable to lapsed appropriations for this purpose, and payments under the Retired Serviceman's Family Protection and Survivor Benefits Plans, and for payments for medical care of retired personnel and their dependents under the Dependents Medical Care Act (10 U.S.C., ch. 55), $364,000,000.

RESERVE TRAINING

[(INCLUDING TRANSFERS OF FUNDS)**]**

For all necessary expenses for the Coast Guard Reserve, as authorized by law; maintenance and operation of facilities; and supplies, equipment, and services, **[**$63,857,000, of which $3,000,000 shall be derived from unobligated balances of "Alteration of bridges" and $2,000,000 shall be derived from unobligated balances of "Pollution fund"**]** *$65,000,000.*

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

For necessary expenses, not otherwise provided for, for basic and applied scientific research, development, test, and evaluation; maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law, **[**$20,100,000**]** *$20,000,000,* to remain available until expended: *Provided,* That there may be credited to this appropriation funds received from State and local governments, other public authorities, private sources and foreign countries, for expenses incurred for research, development, testing, and evaluation.

OFFSHORE OIL POLLUTION COMPENSATION FUND

For necessary expenses to carry out the provisions of title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372), $1,000,000, to be derived from the Offshore Oil Pollution Compensation Fund and to remain available until expended. In addition, to the extent

that available appropriations are not adequate to meet the obligations of the Fund, the Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations in such amounts and at such times as may be necessary: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of $60,000,000 in fiscal year 1987 for the "Offshore Oil Pollution Compensation Fund".

DEEPWATER PORT LIABILITY FUND

For necessary expenses to carry out the provisions of section 18 of the Deepwater Port Act of 1974 (Public Law 93-627), $1,000,000, to be derived from the Deepwater Port Liability Fund and to remain available until expended. In addition, to the extent that available appropriations are not adequate to meet the obligations of the Fund, the Secretary of Transportation is authorized to issue, and the Secretary of the Treasury is authorized to purchase, without fiscal year limitation, notes or other obligations in such amounts and at such times as may be necessary: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of $50,000,000 in fiscal year 1987 for the "Deepwater Port Liability Fund".

BOAT SAFETY

(LIQUIDATION OF CONTRACT AUTHORIZATION)

For payment of obligations incurred for recreational boating safety assistance under Public Law 92-75, as amended, [$15,000,000] *$30,000,000*, to be derived from the Boat Safety Account and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the obligations for which are in excess of [$15,000,000] *$30,000,000* in fiscal year 1987 for recreational boating safety assistance: *Provided further*, That no obligations may be incurred for the improvement of recreational boating facilities.

FEDERAL AVIATION ADMINISTRATION

HEADQUARTERS ADMINISTRATION

For necessary expenses, not otherwise provided for, of providing administrative services at the headquarters location of the Federal Aviation Administration, including but not limited to accounting, budgeting, legal, public affairs, and executive direction services for the Federal Aviation Administration, $34,500,000.

OPERATIONS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Federal Aviation Administration, not otherwise provided for, including administrative expenses for research and development, and for establishment of air navigation facilities, and carrying out the provisions of the Airport and Airway Development Act, as amended, or other provisions of law authorizing obligation of funds for similar programs of airport and airway development or improvement, purchase of four passenger motor vehicles for replacement only, [$2,797,447,000] *$2,769,300,000*, of which not to exceed [$691,048,000] *$500,000,000* shall be derived from the Airport and Airway Trust Fund: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the maintenance and operation of air navigation facilities: *Provided further, That, at a minimum, the air traffic controller on-board employment level shall be 15,000 by September 30, 1987*: *Provided further*, That none of these funds shall be available for new applicants for the second career training program [or for a pilot test of contractor maintenance]: *Provided further, That section 5532(f)(2) of title V, United States Code, is amended by striking "December 31, 1986" and inserting "December 31, 1987" in lieu thereof: Provided further, That section 8344(h) of title V, United States Code, is amended by striking "April 1, 1985" in paragraph (2) and inserting "April 1, 1986" in lieu thereof: Provided further, That in the event that the Federal Aviation Administrator employs annuitants subject to section 8344(h) of title V, United States Code, not to exceed $10,000,000, to be derived from the unobligated balance of any appropriation available for obligation by the Federal Aviation Administration as of the effective date of this Act, shall be available through December 31, 1987, for the purpose of funding such employment: Provided further, That any such funding shall be reported to the Committees on Appropriations of the Senate and the House of Representatives.*

FACILITIES AND EQUIPMENT (AIRPORT AND AIRWAY TRUST FUND)

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, for acquisition, establishment, and improvement by contract or purchase, and hire of air navigation and experimental facilities, including initial acquisition of necessary sites by lease or grant; engineering and service testing including construction of test facilities and acquisition of necessary sites by lease or grant; and construction and furnishing of quarters and related accommodations of officers and employees of the Federal Aviation Administration stationed at remote localities where such accommodations are not available; to be derived from the Airport and Airway Trust Fund and to remain available until September 30, 1991, [$823,000,000] *$772,684,000* together with $1,914,000 to be derived from unobligated balances of "Research, engineering and development (Airport and Airway Trust Fund), Center for Research and Training in Information-based Aviation and Transportation Management": *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the establishment and modernization of air navigation facilities: *Provided further*, That of the funds available under this head, [$5,000,000] *$10,000,000* shall be available for the Secretary of Transportation to enter into grant agreements with universities or colleges *having an airway science curriculum recognized by the Federal Aviation Administration*, to conduct demonstration projects in the development, advancement, or expansion of airway science curriculum programs, and such funds, which shall remain available until expended, shall be made available under such terms and conditions as the Secretary of Transportation may prescribe, to such universities or colleges for the purchase or lease of buildings and associated facilities, instructional materials, or equipment to be used in conjunction with airway science curriculum programs[: and $3,914,000 shall be available to construct an experimental computer-based airway and aviation management facility at the Center for Research and Training in Information-based Aviation and Transportation Management at Barry University].

RESEARCH, ENGINEERING, AND DEVELOPMENT (AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research, engineering, and development, in accordance with the provisions of the Federal Aviation Act (49 U.S.C. 1301-1542), including construction of experimental facilities and acquisition of necessary sites by lease or grant, [$141,700,000] *$142,000,000*, to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred for research, engineering, and development.

GRANTS-IN-AID FOR AIRPORTS (LIQUIDATION OF CONTRACT AUTHORIZATION) (AIRPORT AND AIRWAY TRUST FUND)

[(INCLUDING RESCISSION)]

For liquidation of obligations incurred for airport planning and development under section 14 of Public Law 91-258, as amended, and under other law authorizing such obligations, and obligations for noise compatibility planning and programs, [$800,000,000] *$860,000,000*, to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the commitments for which are in excess of [$1,017,200,000] *$1,000,000,000* in fiscal year 1987 for grants-in-aid for airport planning and development, and noise compatibility planning and programs, notwithstanding section 506(e)(4) of the Airport and Airway Improvement Act of 1982[: *Provided further*, That, $50,000,000 of unobligated contract authority available for airport development and planning pursuant to section 505(a) of the Airport and Airway Improvement Act of 1982 is hereby rescinded].

OPERATION AND MAINTENANCE, METROPOLITAN WASHINGTON AIRPORTS

For expenses incident to the care, operation, maintenance, improvement, and protection of the federally-owned civil airports in the vicinity of the District of Columbia, including purchase of six passenger motor vehicles for police use, for replacement only; purchase, cleaning, and repair of uniforms; and arms and ammunition, $35,000,000: *Provided*, That there may be credited to this appropriation funds received from air carriers, concessionaires, and non-Federal tenants sufficient to cover utility and fuel costs that are in excess of $6,682,000: *Provided further*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, or private sources, for expenses incurred in the maintenance and operation of the federally-owned civil airports.

CONSTRUCTION, METROPOLITAN WASHINGTON AIRPORTS

For necessary expenses for construction at the federally-owned civil airports in the vicinity of the District of Columbia, [$50,000,000, to be derived from the Airport and Airway Trust Fund and] *$7,000,000*, to remain available until September 30, 1989: *Provided*, That the Federal Aviation Administration shall submit to Congress by March 31, 1987, fully coordinated five-year master plans for capital development at Washing-

ton National and Washington Dulles International Airports.

AVIATION INSURANCE REVOLVING FUND

The Secretary of Transportation is hereby authorized to make such expenditures and investments, within the limits of funds available pursuant to section 1306 of the Act of August 23, 1958, as amended (49 U.S.C. 1536), and in accordance with section 104 of the Government Corporation Control Act, as amended (31 U.S.C. 9104), as may be necessary in carrying out the program set forth in the budget for the current fiscal year for aviation insurance activities under said Act.

AIRCRAFT PURCHASE LOAN GUARANTEE PROGRAM

The Secretary of Transportation may hereafter issue notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such obligations may be issued to pay any necessary expenses required pursuant to any guarantee issued under the Act of September 7, 1957, Public Law 85-307, as amended (49 U.S.C. 1324 note). None of the funds in this Act shall be available for the implementation or execution of programs under this head, the obligations for which are in excess of $75,000,000 during fiscal year 1987. Such obligations shall be redeemed by the Secretary from appropriations authorized by this section. The Secretary of the Treasury shall purchase any such obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under the subsection. The Secretary of the Treasury may sell any such obligations at such times and price and upon such terms and conditions as he shall determine in his discretion. All purchases, redemptions, and sales of such obligations by such Secretary shall be treated as public debt transactions of the United States.

For the settlement of promissory notes issued to the Secretary of the Treasury, $13,516,000, to remain available until expended, together with such sums as may be necessary for the payment of interest due under the terms and conditions of such notes.

FEDERAL HIGHWAY ADMINISTRATION

LIMITATION ON GENERAL OPERATING EXPENSES

Necessary expenses for administration, operation, and research of the Federal Highway Administration, not to exceed [$202,750,000] *$204,660,000*, shall be paid, in accordance with law, from appropriations made available by this Act to the Federal Highway Administration together with advances and reimbursements received by the Federal Highway Administration: *Provided*, That not to exceed [$39,288,000] *$41,288,000* of the amount provided herein shall remain available until expended: *Provided further*, That, notwithstanding any other provision of law, there may be credited to this account funds received from States, counties, municipalities, other public authorities and private sources, for training expenses incurred for non-Federal employees.

HIGHWAY SAFETY RESEARCH AND DEVELOPMENT (HIGHWAY TRUST FUND)

For necessary expenses in carrying out provisions of sections 307(a) and 403 of title 23, United States Code, to be derived from the Highway Trust Fund and to remain available until expended, $7,000,000.

HIGHWAY-RELATED SAFETY GRANTS (LIQUIDATION OF CONTRACT AUTHORIZATION) (HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out the provisions of title 23, United States Code, section 402, administered by the Federal Highway Administration, to remain available until expended, $12,000,000, to be derived from the Highway Trust Fund: *Provided*, That not to exceed $100,000 of the amount appropriated herein shall be available for "Limitation on general operating expenses": *Provided further*, That none of the funds in this Act shall be available for the planning or execution of programs the obligations for which are in excess of $10,000,000 in fiscal year 1987 for "Highway-related safety grants".

[RAILROAD-HIGHWAY CROSSINGS DEMONSTRATION PROJECTS

[For necessary expenses of certain railroad-highway crossings demonstration projects as authorized by section 163 of the Federal-Aid Highway Act of 1973, as amended, to remain available until expended, $23,500,000, of which $15,333,333 shall be derived from the Highway Trust Fund.]

FEDERAL-AID HIGHWAYS (LIMITATION ON OBLIGATIONS) (HIGHWAY TRUST FUND)

None of the funds in the Act shall be available for the implementation or execution of programs the obligations for which are in excess of [$13,125,000,000] *$13,000,000,000* for Federal-aid highways and highway safety construction programs for fiscal year 1987.

FEDERAL-AID HIGHWAYS (LIQUIDATION OF CONTRACT AUTHORIZATION) (HIGHWAY TRUST FUND)

For carrying out the provisions of title 23, United States Code, that are attributable to Federal-aid highways, including the National Scenic and Recreational Highway as authorized by 23 U.S.C. 148, not otherwise provided, including reimbursements for sums expended pursuant to the provisions of 23 U.S.C. 308, [$13,036,000,000] *$13,130,000,000* or so much thereof as may be available in and derived from the Highway Trust Fund, to remain available until expended.

RIGHT-OF-WAY REVOLVING FUND (LIMITATION ON DIRECT LOANS) (HIGHWAY TRUST FUND)

During fiscal year 1987 and with the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed $47,850,000.

MOTOR CARRIER SAFETY HIGHWAY TRUST FUND

For necessary expenses to carry out the motor carrier safety functions of the Secretary as authorized by the Department of Transportation Act (80 Stat. 939-940), [$20,447,000] *$19,515,000, to be derived from the highway trust fund*, of which [$1,300,000] *$1,900,000* shall remain available until expended[, and not to exceed $1,532,000 shall be available for "Limitation on general operating expenses"].

Motor Carrier Safety Grants [(LIQUIDATION OF CONTRACT AUTHORIZATION)] (HIGHWAY TRUST FUND)

[For payment of obligations incurred for motor carrier safety grants, as authorized by law, $18,000,000, to be derived from the Highway Trust Fund and to remain available until September 30, 1990: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the obligations for which are in excess of $50,000,000 in fiscal year 1987 for "Motor carrier safety grants".]

For necessary expenses to carry out provisions of section 402 of Public Law 97-424, $20,000,000 to be derived from the Highway Trust Fund and to remain available until September 30, 1989.

ACCESS HIGHWAYS TO PUBLIC RECREATION AREAS ON CERTAIN LAKES

For necessary expenses of certain access highway projects, as authorized by section 155, title 23, United States Code, to remain available until expended, $10,000,000.

[BALTIMORE-WASHINGTON PARKWAY (HIGHWAY TRUST FUND)

[For necessary expenses, not otherwise provided, to carry out the provisions of the Federal-Aid Highway Act of 1970, for the Baltimore-Washington Parkway, to remain available until expended, $9,000,000, to be derived from the Highway Trust Fund and to be withdrawn therefrom at such times and in such amounts as may be necessary.]

WASTE ISOLATION PILOT PROJECT ROADS

For necessary expenses in connection with the upgrading of certain highways for the transportation of nuclear waste generated during defense-related activities, not otherwise provided for, $10,000,000, to remain available until expended.

[AIRPORT-HIGHWAY DEMONSTRATION PROJECT

[For necessary expenses to carry out a highway project to depress a highway in Shawnee, Oklahoma, that demonstrates methods of improving air service to a small community by extension of a runway over a depressed road, $1,887,000, to remain available until expended.

[EXPRESSWAY GAP CLOSING DEMONSTRATION PROJECT

[For necessary expenses to carry out a highway construction project along State Route 113 in north-central California that demonstrates methods of reducing motor vehicle congestion and increasing employment, $13,900,000, to remain available until expended: *Provided*, That such funds shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.

[INTERMODAL URBAN DEMONSTRATION PROJECT (HIGHWAY TRUST FUND)

[For necessary expenses to carry out the provisions of section 124 of the Federal-Aid Highway Amendments of 1974, $11,000,000, to be derived from the Highway Trust Fund.

[HIGHWAY SAFETY AND ECONOMIC DEVELOPMENT DEMONSTRATION PROJECTS (HIGHWAY TRUST FUND)

[For necessary expenses to carry out construction projects in the State of Mississippi on Route 302 to connect I-55 and U.S. Highway 72, on State Route 6 from Pontotoc to Oxford, on U.S. Highway 82 from I-55 to Starkville, and on U.S. Highway 72 from Corinth, Mississippi, to the Tennessee State line, that demonstrates the safety and economic benefits of widening and improving highways, there is authorized to be appropriated such sums as may be necessary, to be derived from the Highway Trust Fund and to remain available until expended, of which $10,000,000 is hereby appropriated, to

remain available until expended, for the projects identified under this head on Route 302 and on U.S. Highway 82: *Provided*, That all funds appropriated under this head shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.

[AIRPORT ACCESS DEMONSTRATION PROJECT (HIGHWAY TRUST FUND)

[For necessary expenses to carry out a demonstration project in the vicinity of the Ontario International Airport in San Bernardino County, California, for the purpose of demonstrating methods of improving highway access to an airport that is projected to incur a substantial increase in air service, $4,000,000, to remain available until expended and to be derived from the Highway Trust Fund: *Provided*, That such funds shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.

[HIGHWAY SAFETY IMPROVEMENT DEMONSTRATION PROJECT (HIGHWAY TRUST FUND)

[For the purpose of carrying out a coordinated project of highway improvements in the vicinity of Pontiac and East Lansing, Michigan, that demonstrates methods of enhancing safety and promoting economic development through widening and resurfacing of highways on the Federal-aid primary system and on roads on the Federal-aid urban system, there is hereby authorized to be appropriated $32,000,000, to be derived from the Highway Trust Fund and to remain available until expended, of which $7,000,000 is hereby appropriated: *Provided*, That all funds appropriated under this head shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.

[HIGHWAY-RAILROAD GRADE CROSSING SAFETY DEMONSTRATION PROJECT (HIGHWAY TRUST FUND)

[For the purpose of carrying out a coordinated project of highway-railroad grade crossing separations in Mineola, New York, that demonstrates methods of enhancing highway-railroad grade crossing safety while minimizing surrounding environmental effects, there is hereby authorized to be appropriated $50,000,000, to be derived from the Highway Trust Fund and to remain available until expended, of which $3,000,000 is hereby appropriated: *Provided*, That all funds appropriated under this head shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.

[NUCLEAR WASTE TRANSPORTATION SAFETY DEMONSTRATION PROJECT (HIGHWAY TRUST FUND)

[For necessary expenses for a project to construct a relief route in the Los Alamos-Santa Fe, New Mexico, corridor that demonstrates methods of improving the safety of transporting nuclear waste by constructing an alternate route with specific safety features, $4,000,000, to be derived from the Highway Trust Fund and to remain available until expended: *Provided*, That such funds shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.

[THEODORE ROOSEVELT BRIDGE CAPACITY IMPROVEMENTS (HIGHWAY TRUST FUND)

[For necessary expenses to improve the safety, capacity, and operation of the Theodore Roosevelt Bridge on I-66, connecting the Commonwealth of Virginia and the District of Columbia, $1,500,000, to be derived from the Highway Trust Fund and to remain available until expended: *Provided*, That such funds shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.

[AIRPORT ACCESS HIGHWAY DEMONSTRATION PROJECT (HIGHWAY TRUST FUND)

[For necessary expenses to carry out a demonstration project in the vicinity of the New Orleans International Airport in Jefferson Parish, Louisiana, for the purpose of demonstrating methods of improving highway access to an airport that is suffering from commuter congestion and is in the process of extending its main east-west runway, $5,000,000, to remain available until expended and to be derived from the Highway Trust Fund: *Provided*, That such funds shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.]

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OPERATIONS AND RESEARCH

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary to discharge the functions of the Secretary with respect to traffic and highway safety and functions under the Motor Vehicle Information and Cost Savings Act (Public Law 92-513, as amended), [$93,600,000] *$81,448,000*, together with [$2,000,000] *$5,000,000*, to be derived from unobligated balances of ["Payments to air carriers"] *"Section 408, Alcohol Safety Incentive Grants", and such amounts of liquidating cash as may be necessary to be derived from "Highway Traffic Safety Grants"*, of which [$37,742,000] *$28,822,000* shall be derived from the Highway Trust Fund: *Provided*, That not to exceed [$44,268,000] *$34,598,000* shall remain available until expended, of which [$21,637,000] *$12,717,000* shall be derived from the Highway Trust Fund[:-*Provided further*, That, of the funds available under this head, $10,000,000 shall be available to implement the recommendations of the 1985 National Academy of Sciences report on trauma research].

HIGHWAY TRAFFIC SAFETY GRANTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)
(HIGHWAY TRUST FUND)

[(INCLUDING RESCISSION)]

For payment of obligations incurred carrying out the provisions of 23 U.S.C. 402, 406, and 408, and section 209 of Public Law 95-599, as amended, to remain available until expended, [$122,000,000] *$127,000,000*, to be derived from the Highway Trust Fund: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which are in excess of $121,060,000 in fiscal year 1987 for "State and community highway safety" authorized under 23 U.S.C. 402: *Provided further*, That none of these funds shall be used for construction, rehabilitation or remodeling costs, or for office furnishings and fixtures for State, local, or private buildings or structures: *Provided further*, That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which are in excess of [$14,400,000] *$17,900,000* for "Alcohol safety incentive grants" authorized under 23 U.S.C. 408: *Provided further*, That none of the funds in this Act shall be available for the planning or execution of programs authorized under section 209 of Public Law 95-599, as amended, the total obligations for which are in excess of $4,750,000 in fiscal years 1983, 1984, 1985, 1986, and 1987: *Provided further*, That not to exceed [$4,860,000] *$4,900,000* shall be available for administering the provisions of 23 U.S.C. 402[: *Provided further*, That of the funds available for obligation for "Alcohol safety incentive grants" under section 23 U.S.C. 408, $5,000,000 is hereby rescinded].

FEDERAL RAILROAD ADMINISTRATION

OFFICE OF THE ADMINISTRATOR

(INCLUDING [TRANSFER] *TRANSFERS* OF FUNDS)

For necessary expenses of the Federal Railroad Administration, not otherwise provided for, including authorized expenses associated with Washington Union Station, [$26,750,000] *$27,000,000*, of which $4,600,000 shall remain available until expended, [and] $3,500,000 shall be derived from unobligated balances of "Rail service assistance", *and $4,565,000 shall be derived from unobligated balances of "Conrail workforce reduction"*: *Provided*, That none of the funds in this Act shall be available for the planning or execution of a program making commitments to guarantee new loans under the Emergency Rail Services Act of 1970, as amended, and that no new commitments to guarantee loans under section 211(a) or 211(h) of the Regional Rail Reorganization Act of 1973, as amended, shall be made: *Provided further*, That none of the funds in this Act shall be available for the acquisition, sale, or transference of Washington Union Station without the prior approval of the House and Senate Committees on Appropriations: *Provided further*, That, notwithstanding any other provision of law, of the funds available under this head, $10,000,000 shall be available for necessary expenses for rail assistance authorized by section 5(q) of the Department of Transportation Act, as amended, to remain available until expended: *Provided further*, That $7,500,000 of the fiscal year 1987 funds made available under section 5(h) shall be made available for use directly under sections 5(h)(3)(B)(ii) and 5(h)(3)(C) of the Department of Transportation Act, as amended, notwithstanding any provisions therein to the contrary: *Provided further*, That each State shall be entitled to, and no more than, $50,000 under the combined provisions of section 5(h)(2) and section 5(i), notwithstanding any provisions therein to the contrary: *Provided further*, That no State may apply for fiscal year 1987 funds available under section 5(h)(2) until such State has obligated all funds granted to it under section 5(h)(2) in the fiscal years prior to the beginning of fiscal year 1982, other than funds not expended due to pending litigation: *Provided further*, That a State denied funding by reason of the preceding proviso may still apply for and receive funds for planning purposes.

RAILROAD SAFETY

For necessary expenses in connection with railroad safety, not otherwise provided for, [$25,700,000] *$28,424,000 of which $2,700,000 shall remain available until expended.*

RAILROAD RESEARCH AND DEVELOPMENT

For necessary expenses for railroad research and development, [$9,800,000] *$9,581,000*, to remain available until expended: *Provided, That $200,000, together with funds appropriated for fiscal year 1986 and intended for such purposes, shall be available to support, by contract or financial assistance agreement, the development of rail-*

road-community-police grade crossing safety education programs.

NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

For necessary expenses related to Northeast Corridor improvements authorized by title VII of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (45 U.S.C. 851 et seq.), [$16,962,000] *$11,962,000*, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, the provisions of Public Law 85-804 shall apply to the Northeast Corridor Improvement Program: *Provided further*, That the Secretary may waive the provisions of 23 U.S.C. 322 (c) and (d) if such action would serve a public purpose: *Provided further*, That all public at grade-level crossings remaining along the Northeast Corridor upon completion of the project shall be equipped with protective devices including gates and lights.

CONRAIL LABOR PROTECTION

Any unobligated balances of funds provided for "Conrail workforce reduction program" in excess of $4,565,000 that are not required for reimbursement of termination allowances for terminations effected not later than September 30, 1986, are transferred to "Grants to the National Railroad Passenger Corporation": Provided, That such sums as may be necessary shall be made available from unobligated balances of funds previously provided for "Conrail labor protection" to pay necessary expenses of the Railroad Retirement Board ("Board") for administration of section 701.

Notwithstanding any other provision of law, upon exhaustion of appropriated funds available for payment of benefits under section 701 of the Act and thereafter, (1) the Consolidated Rail Corporation ("Conrail"), as agent for the Board, shall pay section 701 benefits, without reimbursement, in such amounts and to such eligible employees as the Board shall designate, subject to the limitations stated in the Benefit Schedules prescribed by the Secretary of Labor; (2) Conrail shall pay the Board for its necessary expenses of administration; and (3) the United States shall have no further liability under title VII of the Act: Provided, That the Board shall continue to administer the determination of benefits under section 701 and shall designate benefits for payment by Conrail as agent for the Board; and the Board shall make requests of Conrail to pay, in advance, necessary expenses of administration, which requests Conrail shall promptly honor as due and payable liquidated debts, subject to adjustment after audit by the Inspector General of the Board; and the Board may receive and apply the administrative costs paid by Conrail as if such funds were appropriated expenses of administration under this Act: Provided further, That Conrail shall be deemed subrogated to the right of the Board to recover any benefit paid by Conrail that was improvidently paid, and the Board shall cooperate fully with Conrail in its effort to recover any such payment; but Conrail shall have no claim against the Board for such payment, and the Board shall not be made a party to any lawsuit or to any proceeding with respect to recovery of such payments: Provided further, That upon exhaustion of funds appropriated under section 713 of the Act, the benefits provided by Conrail, as agent for the Board, shall, for purposes of said title VII, nevertheless be deemed to have been made available under section 713 of the Act; and, except as set forth herein, title VII of the Act shall remain in full force and effect in accordance with its terms: Provided further, That (1) any dispute or controversy concerning eligibility for benefits under section 701 of the Act and the Benefit Schedules issued thereunder shall be determined under such procedures as the Board may by regulation prescribe; (2) subject to administrative reconsideration by the Board under its own procedures, findings of fact and conclusions of law of the Board in determination of any claim for such benefits shall, in the absence of fraud or an action exceeding the Board's jurisdiction, be binding and conclusive for all purposes and shall not be subject to review in any manner; and (3) for purposes of the administration of section 701, the administrative powers and penalties set forth in sections 9 and 12 of the Railroad Unemployment Insurance Act shall be available to the Board.

GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

(INCLUDING TRANSFER OF FUNDS)

To enable the Secretary of Transportation to make grants to the National Railroad Passenger Corporation for operating losses incurred by the Corporation, capital improvements, and labor protection costs authorized by 45 U.S.C. 565, to remain available until expended, [$613,000,000, of which $11,000,000 shall be derived from unexpended balances of "Conrail workforce reduction"] *$591,000,000, together with such sums that are available from "Conrail workforce reduction" as of September 30, 1986 in excess of $4,565,000*: *Provided*, That none of the funds herein appropriated shall be used for lease or purchase of passenger motor vehicles or for the hire of vehicle operators for any officer or employee, other than the president of the Corporation, excluding the lease of passenger motor vehicles for those officers or employees while in official travel status: *Provided further*, That the Secretary shall make no commitments to guarantee new loans or loans for new purposes under 45 U.S.C. 602 in fiscal year 1987: *Provided further*, That the incurring of any obligation or commitment by the Corporation for the purchase of capital improvements prohibited by this Act or not expressly provided for in an appropriation Act shall be deemed a violation of 31 U.S.C. 1341: *Provided further*, That no funds are required to be expended or reserved for expenditure pursuant to 45 U.S.C. 601(e): *Provided further*, That none of the funds in this or any other Act shall be made available to finance the rehabilitation and other improvements (including upgrading track and the signal system, ensuring safety at public and private highway and pedestrian crossings by improving signals or eliminating such crossings, and the improvement of operational portions of stations related to intercity rail passenger service) on the main line track between Atlantic City, New Jersey, and the main line of the Northeast Corridor, unless the Secretary of Transportation certifies that not less than 40 per centum of the costs of such improvements shall be derived from non-Federal sources: *Provided further*, That, notwithstanding any other provision of law, the National Railroad Passenger Corporation shall not operate rail passenger service between Atlantic City, New Jersey, and the Northeast Corridor main line unless the Corporation's Board of Directors determines that revenues from such service have covered or exceeded 80 per centum of the short term avoidable costs of operating such service in the first year of operation and 100 per centum of the short term avoidable operating costs for each year thereafter: *Provided further*, That none of the funds provided in this or any other Act shall be made available to finance the acquisition and rehabilitation of a line, and construction necessary to facilitate improved rail passenger service, between Spuyten Duyvil, New York, and the main line of the Northeast Corridor unless the Secretary of Transportation certifies that not less than 40 per centum of the costs of such improvements shall be derived from non-Amtrak sources.

RAILROAD REHABILITATION AND IMPROVEMENT FINANCING FUNDS

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided*, That no new loan guarantee commitments shall be made during fiscal year 1987.

REDEEMABLE PREFERENCE SHARES

Notwithstanding any other provision of law, the Secretary of Transportation shall, until September 30, 1988, issue and sell, and the Secretary of the Treasury until such date shall purchase fund anticipation notes, and the Secretary of Transportation is hereby authorized to expend for uses authorized for the Railroad Rehabilitation and Improvement Fund proceeds from the sale of such fund anticipation notes and any other moneys deposited in the fund after September 30, 1985, pursuant to sections 502, 505-507, and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), as amended, and section 803 of Public Law 95-620, in additional amounts not to exceed [$9,000,000] *$4,000,000*.

[CONRAIL COMMUTER TRANSITION ASSISTANCE

[For necessary capital expenses of Conrail commuter transition assistance, not otherwise provided for, $5,000,000, to remain available until expended.]

URBAN MASS TRANSPORTATION ADMINISTRATION

ADMINISTRATIVE EXPENSES

For necessary administrative expenses of the urban mass transportation program authorized by the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), and 23 U.S.C. chapter 1, in connection with these activities, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, $31,000,000[, of which not to exceed $560,000 shall be available for the Office of the Administrator].

RESEARCH, TRAINING, AND HUMAN RESOURCES

For necessary expenses for research, training, and human resources as authorized by the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), to remain available until expended, [$17,600,000] *$17,400,000*: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred for training.

FORMULA GRANTS

For necessary expenses to carry out the provisions of sections 9 and 18 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), $2,000,000,000, to remain available until expended: *Provided, That notwithstanding any other provision of law, before apportionment of these funds, $16,900,000 shall be made available for the purposes of section 18 of the Urban Mass Transportation Act of 1964, as amended: Provided further, That, notwithstanding any other provision of law, of the funds provided under this Act for formula grants, no more than $825,325,017 may be used for operating assistance under section 9(k)(2) of the Urban Mass Transportation Act of 1964, as amended: Provided further, That, notwithstanding any other provision of law, of the amount available for operating assistance under this Act, no more than $541,786,487 may be used for operating assistance in urbanized areas with a population of 1,000,000 or more.*

DISCRETIONARY GRANTS

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

None of the funds in this Act shall be available for the implementation or execution of programs in excess of [$1,015,000,000] *$990,000,000* in fiscal year 1987 for grants under the contract authority authorized in section 21(a)(2)(B) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.).

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out section 21(a)(2) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), administered by the Urban Mass Transportation Administration, [$950,000,000] *$1,100,000,000*, to be derived from the Highway Trust Fund and to remain available until expended.

INTERSTATE TRANSFER GRANTS—TRANSIT

For necessary expenses to carry out the provisions of 23 U.S.C. 103(e)(4) related to transit projects, $200,000,000, to remain available until expended.

WASHINGTON METRO

For necessary expenses to carry out the provisions of section 14 of Public Law 96-184, [$217,239,000] *$185,000,000*, to remain available until expended.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation's budget for the current fiscal year except as hereinafter provided.

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed [$1,925,000] *$1,990,000* shall be available for administrative expenses, which shall be computed on an accrual basis, including not to exceed $3,000 for official entertainment expenses to be expended upon the approval or authority of the Secretary of Transportation: *Provided,* That Corporation funds shall be available for the hire of passenger motor vehicles and aircraft, operation and maintenance of aircraft, uniforms or allowances therefor for operation and maintenance personnel, as authorized by law (5 U.S.C. 5901-5902), and $15,000 shall be available for services as authorized by 5 U.S.C. 3109.

[EISENHOWER LOCK REPAIR

[For necessary expenses to repair and rehabilitate Eisenhower Lock located near Massena, New York, $2,000,000, to remain available until expended.]

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RESEARCH AND SPECIAL PROGRAMS

For expenses necessary to discharge the functions of the Research and Special Programs Administration, for expenses for conducting research and development, and for grants-in-aid to carry out a pipeline safety program, as authorized by the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, [$20,800,000] *$19,950,000*, of which [$5,000,000] *$4,500,000* shall be available only for natural gas and hazardous liquid pipeline safety grants-in-aid, and of which [$7,265,000] *$6,550,000* shall remain available until expended: *Provided,* That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training: *Provided further,* That of the funds made available for natural gas and hazardous liquid pipeline safety grants-in-aid, the sum provided over and above the amount made available for this purpose in fiscal year 1986 shall be used only to support additional enforcement personnel beyond the personnel level in each State as of September 30, 1986.

OFFICE OF THE INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, [$27,770,000] *$27,000,000*.

TITLE II—RELATED AGENCIES

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SALARIES AND EXPENSES

For expenses necessary for the Architectural and Transportation Barriers Compliance Board, as authorized by section 502 of the Rehabilitation Act of 1973, as amended, [$1,975,000] *$1,890,000*.

NATIONAL TRANSPORTATION SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the National Transportation Safety Board, including hire of passenger motor vehicles and aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for a GS-18; uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901-5902), $22,240,000, of which not to exceed $500 may be used for official reception and representation expenses.

INTERSTATE COMMERCE COMMISSION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed $1,500 for official reception and representation expenses, [$47,900,000] *$46,802,000*, together with the unobligated balances of "Payments for directed rail service": *Provided,* That joint board members and cooperating State commissioners may use Government transportation requests when traveling in connection with their official duties as such.

PAYMENTS FOR DIRECTED RAIL SERVICE

(LIMITATION ON OBLIGATIONS)

None of the funds provided in this Act shall be available for the execution of programs the obligations for which can reasonably be expected to exceed $1,000,000 for directed rail service authorized under 49 U.S.C. 11125 or any other legislation.

PANAMA CANAL COMMISSION

OPERATING EXPENSES

For operating expenses necessary for the Panama Canal Commission, including hire of passenger motor vehicles and aircraft; uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); not to exceed $9,000 for official reception and representation expenses of the Board; operation of guide services; residence for the Administrator; disbursements by the Administrator for employee and community projects; not to exceed $3,000 for official reception and representation expenses of the Secretary; not to exceed $24,000 for official reception and representation expenses of the Administrator; and to employ services as authorized by law (5 U.S.C. 3109); [$409,770,000] *$410,000,000*, to be derived from the Panama Canal Commission Fund: *Provided,* That there may be credited to this appropriation funds received from the Panama Canal Commission's capital outlay account for expenses incurred for supplies and services provided for capital projects.

CAPITAL OUTLAY

For acquisition, construction, replacement, and improvement of facilities, structures, and equipment required by the Panama Canal Commission, including the purchase of not to exceed forty-one passenger motor vehicles for replacement only (including large heavy-duty vehicles used to transport Commission personnel across the Isthmus of Panama, the purchase price of which shall not exceed $14,000 per vehicle); to employ services authorized by law (5 U.S.C. 3109); $24,403,000, to be derived from the Panama Canal Commission Fund and to remain available until expended.

DEPARTMENT OF THE TREASURY

OFFICE OF THE SECRETARY

INVESTMENT IN FUND ANTICIPATION NOTES

For the acquisition, in accordance with section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, and section 803 of Public Law 95-620, of fund anticipation notes, [$9,000,000] *$4,000,000*.

UNITED STATES RAILWAY ASSOCIATION

ADMINISTRATIVE EXPENSES

For necessary administrative expenses to enable the United States Railway Association to carry out its functions under the Regional Rail Reorganization Act of 1973, as amended, to remain available until expended, [$2,297,000] *$2,200,000*, of which not to exceed $500 may be available for official reception and representation expenses.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

INTEREST PAYMENTS

For necessary expenses for interest payments, to remain available until expended,

$51,663,569: *Provided,* That these funds shall be disbursed pursuant to terms and conditions established by Public Law 96-184 and the Initial Bond Repayment Participation Agreement.

TITLE III—GENERAL PROVISIONS

SEC. 301. During the current fiscal year applicable appropriations to the Department of Transportation shall be available for maintenance and operation of aircraft; hire of passenger motor vehicles and aircraft; purchase of liability insurance for motor vehicles operating in foreign countries on official department business; and uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901-5902).

SEC. 302. Funds appropriated for the Panama Canal Commission may be apportioned notwithstanding section 3679 of the Revised Statutes, as amended (31 U.S.C. 1341), to the extent necessary to permit payment of such pay increases for officers or employees as may be authorized by administrative action pursuant to law that are not in excess of statutory increases granted for the same period in corresponding rates of compensation for other employees of the Government in comparable positions.

SEC. 303. Funds appropriated under this Act for expenditures by the Federal Aviation Administration shall be available (1) except as otherwise authorized by the Act of September 30, 1950 (20 U.S.C. 236-244), for expenses of primary and secondary schooling for dependents of Federal Aviation Administration personnel stationed outside the continental United States at costs for any given area not in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that the schools, if any, available in the locality are unable to provide adequately for the education of such dependents, and (2) for transportation of said dependents between schools serving the area which they attend and their places of residence when the Secretary, under such regulations as may be prescribed, determines that such schools are not accessible by public means of transportation on a regular basis.

SEC. 304. Appropriations contained in this Act for the Department of Transportation shall be available for services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for a GS-18.

SEC. 305. None of the funds appropriated in this Act for the Panama Canal Commission may be expended unless in conformance with the Panama Canal Treaties of 1977 and any law implementing those treaties.

SEC. 306. None of the funds provided in this Act may be used for planning or construction of rail-highway crossings under section 322(a) of title 23, United States Code, or under section 701(a)(5) or section 703(1)(A) of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, at the—

(1) School Street crossing in Groton, Connecticut; and

(2) Broadway Extension crossing in Stonington, Connecticut.

SEC. 307. None of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings funded in this Act.

SEC. 308. None of the funds in this Act shall be used to assist, directly or indirectly, any State in imposing mandatory State inspection fees or sticker requirements on vehicles that are lawfully registered in another State, including vehicles engaged in interstate commercial transportation that are in compliance with Part 396—Inspection and Maintenance of the Federal Motor Carrier Safety Regulations of the United States Department of Transportation.

SEC. 309. None of the funds appropriated by this Act shall remain available for obligation beyond the current fiscal year or may be transferred to other appropriations unless expressly so provided herein.

SEC. 310. Notwithstanding any other provision of law, total amounts of contract authority authorized in section 21(a)(2)(B) of the Urban Mass Transportation Act of 1964, as amended, shall be available for obligation until expended.

[SEC. 311. None of the funds in this or any previous or subsequent Act shall be available for the planning or implementation of any change in the current Federal status of the Transportation Systems Center; and none of the funds in this Act shall be available for the implementation of any change in the current Federal status of the Turner-Fairbank Highway Research Center.]

SEC. [312] *311.* The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. [313] *312.* (a) For fiscal year 1987 the Secretary of Transportation shall distribute the obligation limitation for Federal-aid highways by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bear to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

(b) During the period October 1 through December 31, 1986, no State shall obligate more than 35 per centum of the amount distributed to such State under subsection (a), and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection.

(c) Notwithstanding subsections (a) and (b), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under section 104(b)(5)(A) of title 23, United States Code;

(2) after August 1, 1987, revise a distribution of the funds made available under subsection (a) if a State will not obligate the amount distributed during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses, and the Federal lands highway program.

(d) The limitation on obligations for Federal-aid highways and highway safety construction programs for fiscal year 1987 shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, obligations under section 157 of title 23, United States Code, projects covered under section 147 of the Surface Transportation Assistance Act of 1978, section 9 of the Federal-Aid Highway Act of 1981, subsections 131 (b) and (j) of Public Law 97-424, section 118 of the National Visitors Center Facilities Act of 1968, or section 320 of title 23, United States Code.

[(e) This section shall be in effect until enactment of H.R. 3129 or similar legislation modifying subsections (a) through (d).]

SEC. [314] *313.* None of the funds in this Act shall be available for salaries and expenses of more than one hundred thirty-eight political and Presidential appointees in the Department of Transportation.

SEC. [315] *314.* Not to exceed [$725,000] *$750,000* of the funds provided in this Act for the Department of Transportation shall be available for the necessary expenses of advisory committees.

SEC. [316] *315.* None of the funds in this or any other Act shall be made available for the proposed Woodward light rail line in the Detroit, Michigan, area until a source of operating funds has been approved in accordance with Michigan law: *Provided,* That this limitation shall not apply to alternatives analysis studies under section 21(a)(2)(B) of the Urban Mass Transportation Act of 1964, as amended.

SEC. [317] *316.* The limitation on obligations for the Discretionary Grants program of the Urban Mass Transportation Administration shall not apply to any authority under section 21(a)(2)(B) of the Urban Mass Transportation Act of 1964, as amended, previously made available for obligation.

SEC. [318] *317.* Notwithstanding any other provision of law, none of the funds in this Act shall be available for the construction of, or any other costs related to, the Central Automated Transit System (Downtown People Mover) in Detroit, Michigan: *Provided,* That the immediately preceding provision shall not apply to $5,000,000 apportioned to the Detroit Department of Transportation.

[SEC. 319. The City of Linden, New Jersey, and its successors and assigns are hereby released from all the terms, conditions, reservations, and restrictions contained in the deed dated February 27, 1947, by which the United States conveyed certain real property to the City of Linden, New Jersey, for airport purposes.]

SEC. [320] *318.* None of the funds in this Act shall be used to implement section 404 of title 23, United States Code.

SEC. [321] *319.* (a) SAFETY ENFORCEMENT PROGRAM PERFORMANCE.—The Secretary of Transportation shall on or before February 1, 1987, transmit to the Congress a comprehensive report on the fiscal year 1986 activities of the Federal Aviation Administration's operation and maintenance inspection and certification programs. The report shall include:

(1) a comparison of end-of-year staffing levels by inspector category to staffing goals and a statement as to the currency and va-

lidity of the staffing standards on which the goals are based;

(2) schedules showing the experience, in years, of the various inspector workforces and the extent to which inspectors have received all the mandatory or recommended training;

(3) a description of the criteria used to set annual work programs and an explanation of how these programs ensure compliance with appropriate Federal regulations and safe operating practices;

(4) a comparison of actual inspections performed during the fiscal year to the annual work programs disaggregated to the field locations;

(5) a statement of the adequacy of the internal management controls available to ensure that field managers are complying with inspection priorities and minimum inspection standards, and to collect and analyze inspection data;

(6) the status of the Department's efforts to update inspector guidance documents and Federal regulations to include technological, management, and structural changes taking place within the various transportation modes, including a listing of the backlog of proposed regulatory changes identified as being critical to safety;

(7) a list of the operational measures of effectiveness—"best proxies" standing between the ultimate goal of accident prevention and ongoing program activities—that are being used to evaluate progress in meeting program objectives, the quality of program delivery, and the nature of emerging safety problems;

(8) a listing of all enforcement actions taken, including all civil penalties, during the fiscal year by program, including the name [and address] of each organization against which an enforcement action was taken, the reason for the action, and the type of action taken;

(9) a listing of the total amount of civil penalties [assessed] *closed* by fiscal year beginning with fiscal year 1977; and

(10) a set of safety statistics covering each of the last ten years that best depict the safety record of each transportation sector regulated by departmental inspectors.

(b) LONG-RANGE NATIONAL TRANSPORTATION STRATEGIC PLANNING STUDY.—The Department of Transportation shall undertake a long-range, multi-modal national transportation strategic planning study. This study shall forecast long-term needs and costs for developing and maintaining facilities and services to achieve a desired national transportation program for moving people and goods in the year 2015. The modes to be included are interstate and other priority highways and roads, mass transportation, rail, pipelines, and aviation. The study shall include detailed analyses of transportation needs within six to nine metropolitan areas that have diverse population, development, and demographic patterns, including at least one interstate metropolitan area. The strategic transportation planning study shall address such issues as:

(1) the need to continue a national transportation policy and program to further social, environmental, and mobility goals and objectives of the Nation;

(2) public and private fiscal support, growth patterns, the demographic character of population, geographic differences, and projected development or decline in specific regions;

(3) the current and future material and human resource needs that include facilities and equipment, employee requirements, and training and educational needs for the necessary manpower;

(4) the market potential—including future travel demands—and future community developments and configurations that may affect transportation needs;

(5) the degree to which existing transportation networks can be further developed to meet future travel and goods movement demands in view of cost, land use, environmental, social, economic, and technological considerations; and

(6) the Federal program strategies and costs by mode of transportation necessary to achieve and maintain a desired transportation system in the year 2015.

This study shall be submitted to Congress on or before December 31, 1987.

(c) ESSENTIAL AIR SERVICE OPTIONS STUDY.—The Secretary of Transportation shall conduct a study of the impact to small and remote communities of the discontinuation of essential air service subsidies. The study shall, first, identify those communities which are likely to realize a transportation dislocation without some level of air service support. Having identified such communities, the Secretary shall identify various methods of continued air transportation support. In presenting these methods, the Secretary shall identify various financial support options for each. The study shall be conducted with appropriate consultation with affected communities. The Secretary shall transmit the study to the Congress by February 1, 1987.

SEC. [322] *320.* Within seven calendar days of the obligation date, the Urban Mass Transportation Administration shall publish in the Federal Register an announcement of each grant obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended, including the grant number, the grant amount, and the transit property receiving each grant.

[SEC. 323. Of the amounts available under the contract authority authorized in section 21(a)(2)(B) of the Urban Mass Transportation Act of 1964, as amended, $9,001,532 shall be made available to the City of Philadelphia, Pennsylvania, in reimbursement of the Federal share of extraordinary costs incurred in construction of the Center City Commuter Connection (UMTA Project No. PA-03-0013).

[SEC. 324. (a) Section 411(f) of the Surface Transportation Assistance Act of 1982 is amended by inserting "(1)" before "For the purposes" and by adding at the end of such section the following:

["(2) MAXI-CUBE VEHICLE DEFINED.—For purposes of this section, 'maxi-cube vehicle' means a truck tractor combined with a semi-trailer and a separable cargo-carrying unit which is designed to be loaded and unloaded through the semi-trailer, except that the entire combination shall not exceed 65 feet in length and the separable cargo-carrying unit shall not exceed 34 feet in length.".

[(b) Section 411(c) of such Act is amended by inserting after "prohibit" the following: "maxi-cube vehicles or".

[SEC. 325. None of the funds in this Act shall be used for any study project involving access by a causeway or bridge across wetlands of the San Francisco Bay to U.S. Highway 880 in Alameda County, California.]

SEC. [326] *321.* None of the funds appropriated in this Act may be used to prescribe, implement, or enforce a national policy specifying that only a single type of visual glideslope indicator can be funded under the facilities and equipment account or through the airport improvement program: *Provided, however,* That this prohibition shall not apply in the case of airports that are certified under Part 139 of the Federal Aviation Regulations.

SEC. [327] *322.* None of the funds in this Act shall be used to enforce any rules, policies, or guidelines [that seek to delay transit grants or condition their award on the methods or means by which providers of mass transit services or functions are selected, or on the extent or amount of services or functions to be carried out by various private mass transportation service providers] *which in any way condition, establish preference for, or otherwise base the granting or withholding of Federal assistance under this Act on the nature of the local transit planning or decision making process, or the decisions made as to the choice of public or private providers for the provision of mass transit services or functions: Provided, That it is not the intent of this section to supercede the existing statutory requirements of sections 3(e), 8(e), and 9(f) of the Urban Mass Transportation Act of 1964, as amended.*

[SEC. 328. Section 324 of the Department of Transportation and Related Agencies Appropriations Act, 1986 (Public Law 99-190; 99 Stat. 1288) is amended—

[(1) in subsection (c), by striking "a determination" and inserting in lieu thereof "the certification"; and

[(2) by striking subsection (d) and inserting in lieu thereof the following:

["(d) REMOVAL OF LIMITATION.—Subsections (a) and (b) shall cease to be in effect if the Chairman of the Board of the Metropolitan Transportation Authority (a public authority of the State of New York) certifies to the Secretary that—

["(1) a loss of revenues has resulted from the limitation imposed by subsection (a); or

["(2) such limitation has resulted in other traffic problems.

[The Secretary shall publish such certification in the Federal Register not later than 10 days after the certification is made to the Secretary.".

[SEC. 329. (a) Section 112(b) of title 23, United States Code, is amended by striking out "Construction" and inserting in lieu thereof "(1) Except as provided in paragraph (2), construction" and by adding at the end thereof the following new paragraph:

["(2) LIMITATIONS CONCERNING SOUTH AFRICA ON AWARDS OF CONTRACTS.—A State or local governmental body that is a recipient of Federal funds under this title may prohibit or otherwise limit the award of contracts by providing for terms and conditions related to the contractor's business in South Africa in accordance with a State or local law if the State or local governmental body first enters into an agreement with the Secretary that any costs incurred as a result of such prohibition or limitation which are in excess of the costs that would otherwise have been incurred with respect to such project under this title will not, for purposes of this title, be considered to be a cost of such project.".

[(b) Section 12(b) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new paragraph:

["(3) LIMITATIONS CONCERNING SOUTH AFRICA ON AWARDS OF CONTRACTS.—A recipient of a grant under this Act may prohibit or otherwise limit the award of contracts with respect to a project under this Act by

providing for terms and conditions related to the contractor's business in South Africa in accordance with a State or local law if such recipient first enters into an agreement with the Secretary that any costs incurred as a result of such prohibition or limitation which are in excess of the costs that would otherwise have been incurred with respect to such project under this Act will not, for purposes of this Act, be considered to be a cost of such project.".

[SEC. 330. PROHIBITION ON LANDING RIGHTS OF SOUTH AFRICAN AIRCRAFT.—

[(a) PROHIBITION.—The Secretary of Transportation shall prohibit the takeoff and landing of any aircraft by a foreign air carrier owned, directly or indirectly, by the Government of South Africa or by South African nationals.

[(b) EXCEPTIONS FOR EMERGENCIES.—The Secretary of Transportation may provide for such exceptions from the prohibition set forth in subsection (a) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers are threatened.

[(c) REGULATORY AUTHORITY.—The Secretary of Transportation shall issue such regulations, licenses, and orders as are necessary to carry out this section.

[(d) PENALTIES.—

[(1) FOR PERSONS OTHER THAN INDIVIDUALS.—Any person, other than an individual, that knowingly violates the provisions of this section or any regulation, license, or order issued to carry out this section shall be fined not more than $500,000.

[(2) FOR INDIVIDUALS.—Any individual who knowingly violates the provisions of this section or any regulation, license, or order issued to carry out this section shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

[(3) ADDITIONAL PENALTIES FOR CERTAIN INDIVIDUALS.—

[(A) IN GENERAL.—Whenever a person commits a violation under paragraph (1) or (2)—

[(i) any officer, director, or employee of such person, or any natural person in control of such person, who willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

[(ii) any agent of such person who willfully carried out such act or practice, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

[(B) RESTRICTION ON PAYMENT OF FINES.—A fine imposed under subparagraph (A) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

[(4) SEIZURE AND FORFEITURE OF AIRCRAFT.—Any aircraft used in connection with a violation of this section or any regulation, license, or order issued to carry out this section shall be subject to seizure by and forfeiture to the United States. All provisions of law relating to the seizure, forfeiture, and condemnation of articles for violations of the customs laws, the disposition of such articles or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under this paragraph, insofar as such provisions of law are applicable and not inconsistent with the provisions of this section; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for purposes of this paragraph, be exercised or performed by the Secretary of Transportation or by such persons as the Secretary may designate.

[(e) DEFINITIONS.—

[(1) AIRCRAFT AND FOREIGN AIR CARRIER.—The terms "aircraft" and "foreign air carrier" have the meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

[(2) SOUTH AFRICA.—The term "South Africa" includes—

[(A) the Republic of South Africa;

[(B) any territory under the administration, legal or illegal, of South Africa; and

[(C) the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

[(3) SOUTH AFRICAN NATIONAL.—The term "South African national" means—

[(A) a citizen of South Africa; and

[(B) any partnership, corporation, or other entity organized under the laws of South Africa.

[(f) APPLICABILITY TO EVASIONS.—This section and the regulations issued to carry out this section shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade this section or such regulations.]

SEC. [331] *323.* SUITABILITY OF AIR TRAFFIC CONTROLLERS WHO PARTICIPATED IN THE 1981 STRIKE.—

(a) AUTHORITY TO APPOINT OR REINSTATE CERTAIN FORMER AIR TRAFFIC CONTROLLERS.—Air traffic controllers whose appointments were terminated on account of the strike of air traffic controllers which began on or about August 3, 1981, shall not, as a class, be considered unsuitable for appointment or reinstatement in the Federal Aviation Administration. Determinations of suitability for appointment or reinstatement to any such position shall be made on a case-by-case basis by the Office of Personnel Management in accordance with part 731 of title 5 of the Code of Federal Regulations (as in effect on June 1, 1986).

(b)(1) An individual may be appointed or reinstated under this subsection only if such individual is qualified, or would, after appropriate retraining, be qualified, for the position involved.

(2)(A) Except as provided in subparagraph (B), no claim may lie against the Government of the United States, or any officer, employee, or agency thereof, based on a failure to appoint or reinstate a particular individual under this subsection.

(B) Nothing in this paragraph shall preclude a claim based on discrimination on the basis of race, color, religion, sex, or national origin.

(3) Nothing in section 3307(b) of title 5, United States Code, or in any rule or regulation prescribed thereunder, shall apply with respect to appointments under this subsection.

(c) REGULATIONS.—The Secretary of Transportation may prescribe regulations to carry out this section (excluding the second sentence of subsection (a)).

(d) DEFINITION.—For the purpose of this section, the term "air traffic controller" has the meaning given such term by section 2109 of title 5, United States Code.

SEC. 324. Notwithstanding any other provision of law, funds appropriated under any heading in this Act or in Appropriations Acts for prior years and intended for studies, reports, or research, and related costs thereof including necessary capital expenses, are available for such purposes to be conducted through contracts or financial assistance agreements with the educational institutions which are specified in such Acts or in any report accompanying such Acts.

SEC. 325. (a) Notwithstanding any other provision of law, the Secretary of Transportation may use not to exceed one-half of 1 percent of—

(1) the funds made available for fiscal year 1987 by section 21(a)(2)(B) of the Urban Mass Transportation Act of 1964, as amended, to carry out section 3 of such Act to contract with any person to oversee the construction of any major project under such section;

(2) the funds appropriated for fiscal year 1987 pursuant to section 21(a)(1) of the Urban Mass Transportation Act of 1964, as amended, to carry out section 9 of such Act to contract with any person to oversee the construction of any major project under such section;

(3) the funds appropriated for fiscal year 1987 pursuant to section 21(a)(1) of the Urban Mass Transportation Act of 1964, as amended, to carry out section 18 of such Act to contract with any person to oversee the construction of any major project under such section;

(4) the funds appropriated for fiscal year 1987 pursuant to section 4(g) of the Urban Mass Transportation Act of 1964, as amended, to contract with any person to oversee the construction of any major public transportation project substituted for an Interstate segment withdrawn under section 103(e)(4) of title 23, United States Code; and

(5) the funds appropriated for fiscal year 1987 pursuant to the National Capital Transportation Act of 1969 to contract with any person to oversee the construction of any major project under such Act.

(b) Any contract entered into under subsection (a) shall provide for the payment by the Secretary of Transportation of 100 percent of the cost of carrying out the contract.

(c) This section shall take effect on October 1, 1986, and shall cease to be in effect at the close of September 30, 1987.

SEC. 326. The Secretary of Transportation shall permit the obligation of not to exceed $4,000,000, apportioned under title 23, United States Code, section 104(b)(5)(B) for the State of Florida for operating expenses of the Tri-County Commuter Rail Project in the area of Dade, Broward, and Palm Beach Counties, Florida during the period Interstate 95 is under reconstruction in such area.

This Act may be cited as the "Department of Transportation and Related Agencies Appropriations Act, 1987".

Mr. DOLE. I am advised that the managers of the appropriations bill are on their way to the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1040

Mr. ANDREWS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ANDREWS. Mr. President, what is the pending business?

The PRESIDING OFFICER. H.R. 5205, an act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987.

Mr. ANDREWS. I thank the Chair.

Mr. President, today I am pleased to present to the Senate the fiscal year 1987 Transportation appropriations bill. Let me point out that we have a very narrow window of opportunity to move this bill. The Senate is constrained to vote at 1:30 today on another matter. If we can finish this bill by 1:30, which my colleague from Florida and I feel we can do, we do not have to return after 8 p.m. and finish it. I am sure that thought will bring smiles to most of our colleagues.

Mr. President, the bill as reported by the committee contains new budget authority totaling $10,197,746,569.

There are further limitations on the trust funded programs of $15,279,960,000. Combined, these two levels essentially provide for a freeze at last year's levels for the many transportation programs funded in the bill.

Both the budget authority and associated outlays estimated by CBO show this bill to be in compliance with the Transportation Subcommittee's allocation under section 302(b) of the budget resolution.

For aviation, the bill provides additional funds for safety related personnel and sets a 15,000 employment floor on the air traffic control work force. The airport grant program is funded at $1 billion, and vital aviation capital investment and aviation research is kept on track.

□ 1050

The Coast Guard appropriations exceed last year's level for both the operations and capital account—both to wage the war on drug smuggling as well as to enhance the other missions of the Coast Guard.

Might I point out, Mr. President, our subcommittee has long recommended the use of the Navy's Hawkeyes by the Coast Guard to aid not only in drug interdiction, so important to all of us in this Nation, but perhaps to aid in the search and rescue missions they are uniquely capable of. It is cost effective. It gives the naval technicians the training they need and it makes a lot more sense than just plowing holes in the air while they search dummy targets to use these sophisticated airplanes to interdict drugs coming into this country as well as to be available for search and rescue missions.

For the Federal-aid highways program, the bill sets the obligation limitation at $13 billion. This is a cut of $125 million from the current fiscal year 1986 level and is a reduction of $525 million to the level established for fiscal year 1987 in the Consolidated Omnibus Budget Reconciliation Act.

At $591 million, the funding for Amtrak is cut from the level provided for fiscal year 1986. The allocations allowed transportation under the budget resolution also necessitated cuts in the transit trust fund and the amount allowed for transit operating assistance.

Mr. President, let me point out to my colleagues, and the country as a whole, that the level we have provided allows the continuation of Amtrak service on all the routes that they had served last year. Amtrak is moving more steadily toward being in the black and is doing a good and a cost-effective means of operating.

In conclusion, I point out that the bill also contains the House-passed provision permitting selective rehire of fired air traffic controllers. I am sure there will be later discussion of this important matter. I mention this fact now, however, so that my colleagues understand that in the unanimous-consent agreement I shall propound shortly, no Senator's right to offer an amendment, including an amendment to strike this section, is foreclosed.

Let me, Mr. President, at this time yield to my colleague and good friend, the senior Senator from the State of Florida, the man who is the ranking Democratic member of this subcommittee and the individual on whom we have depended for great, good advice and cooperation in the development of these bills over the years.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, I rise to support the transportation bill reported by the Appropriations Committee and to support the comments just made by Senator ANDREWS, chairman of the Transportation Subcommittee. The bill before the Members, I believe, strikes a good balance among the several transportation modes. It also is attentive to the interests of the many Members, areas, and regions of the country. Over the last 9 months Senator ANDREWS and I have received many suggestions and requests from our colleagues here in the Senate. An effort has been made to accommodate those many requests.

Mr. President, as the chairman of the subcommittee just noted, our recommendations are within the 302(b) allocations. In fact, we are more than $403 million below the allocation for budget authority and just under the allocation for outlays set at $26.9 billion by the committee's 302(b) allocation.

Within the totals recommended are a number of important items.

For example, I am pleased that within the totals recommended for Coast Guard operations, we have placed a floor of approximately $373 million on what the Coast Guard must use for its drug interdiction activities. This represents an increase of almost 8 percent from the amount spent by the Coast Guard last year for these same purposes. Further, while the administration requested only $77.1 million for the Coast Guard's Construction Program, we have included a more realistic total of $251.1 million for that program. While the budget resolution assumed $318 million for this account, I am pleased that within the limitations of our 302(b) allocations we have been able to include a more realistic amount for this important program of the Coast Guard.

The bill includes a number of important features to help ensure aviation safety. For example, we have required a total of 15,000 air traffic controllers, up from the 14,484 controllers that were on board at the end of August. We have added funding for an additional 138 aviation safety inspectors and we have rejected the administration's proposal to cut the aviation field maintenance and flight service station personnel.

For the highway programs, we have recommended an obligation ceiling of $13.1 billion, an amount that is substantially more than what was included in the budget resolution. This funding level will help us maintain our systems of highways and complete the remaining gaps in the interstate system. Highway traffic safety grants are recommended at a level of $121 million, up $11 million from the amount requested by the administration. This will add greatly to the several priority initiatives to reduce highway deaths—especially programs focused on reducing fatalities caused by drunk driving.

The bill includes small reductions for transit funding compared to the 1986 post-Gramm-Rudman level and it is $32 million below the House level. We have, however, rejected the proposal of the administration to essentially eliminate the formula grant program and our bill is $2.4 billion over the amounts requested by the administration for transit programs. I know many of the Members and interest groups had hoped for an even higher level but this is not possible within the constraints of our spending limits.

Finally, the bill includes $591 million for Amtrak to ensure the continuation of the national system.

Mr. President, I will not take more time with Members to comment further on this bill. I would, however, like to compliment Senator ANDREWS on the excellent job he has done, not only in the holding of a series of thorough and informative hearings, but also in structuring this bill before us now, which, I believe, deserves the support of the Members.

Mr. President, I also want to compliment the most able staff of Senator ANDREWS and to thank the staff that worked on our side for the minority

for the very hard work that they have done also in putting this bill together.

□ 1100

Mr. ANDREWS. Mr. President, I thank my colleague for his generous remarks. I, too, want to commend the staff on both the Republican and Democratic sides for the outstanding job they have done in making sure that nothing was overlooked, in making sure the results of our hearings have been transferred into the product before you.

Mr. President, I now ask unanimous consent that the committee amendments to H.R. 5205 be considered and agreed to en bloc, provided no points of order under rule XVI be waived thereon, and that the measure, as amended, be considered as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

AMENDMENT NO. 2843

(Purpose: To delete section 323)

Mr. GRAMM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for himself and Mr. THURMOND, proposes amendment numbered 2843.

On page 64, beginning with line 6, strike out all through page 65, line 15.

Mr. GRAMM. Mr. President, this amendment is a simple amendment and I will not belabor the obvious point. In fact, we have voted on this issue before. It has been hotly debated. The American people have looked at it. The President made a courageous decision in 1981 to implement a policy. That policy for 5 years has been sustained by the Congress; but, if this bill were adopted unamended, that policy would be reversed.

I hope we can debate the policy, not the fine points of the legislative language. But the truth is that section 323 of this bill entitled "Suitability of air traffic controllers who participated in the 1981 strike," in essence removes the prohibition that the President implemented in 1981 after he found that those controllers who had engaged in the strike were unsuitable for FAA employment because they had violated the law and their oath of office.

This provision in section 323 removes that prohibition and requires the FAA to consider for employment those controllers who had been on strike, who violated the law, who violated their oath of office.

Under the civil service statutes, the FAA would be prohibited from keeping records on individual strike behavior. That would leave no factual basis for refusing to hire aircraft traffic controllers who violated the law and who violated their oath. Job applicants would only be judged on the basis of their aptitude and their experience, experience they already have; and, in the process, many people who violated the law, who violated their oath of office, who left the Nation at risk, would be reemployed.

I submit, Mr. President, that those who stayed on the job, those who served the public and the Nation, would be penalized in the process. Some 1,000 of those who stayed on the job, who withstood peer group pressure, who lived up to the requirements of the law and their oath of office, are now eligible to retire. I submit that many of these people would retire if they were forced back into a situation where those who violated the law and their oath of office, those who brought extreme pressure on them to engage in an unlawful activity, in violation of their oath, were now brought back into the place of work.

So we could go into a long and detailed discussion of what this amendment does and what it does not do, but the bottom line is pretty simple. In 1981, Ronald Reagan made a courageous decision. We had Government employees, air traffic controllers, who violated the law and their oath of office by striking. The President gave them an opportunity to go back to work. Some decided to go back to work and some decided not to go back to work. Those who decided not to go back to work were fired and barred from future employment.

The provisions of the bill before us would repeal that action, would force the FAA to reinterview and consider those who violated the law and their oath of office. In that interview process, as required by the civil service laws of the land, they would be unable to consider individual strike behavior and, in the process, we would put back to work people who violated the law and their oath of office.

I believe the policy in 1981 was correct. The Congress supported it then. In subsequent action, Congress has supported from time to time as that decision has been challenged. It was the right decision. I think it has served the public well.

We have gone through difficult days, Mr. President, in rebuilding our air traffic controller system, but we have done it. We will meet the mandated 14,480 work force level for fiscal year 1986 and we fully expect the goal of 15,000 controllers by the end of fiscal year 1987.

So the issue is clear. The President made a decision to ask people who refused to comply with the law and their oath of office to leave public employment. The question is now: Are we going to reverse that decision and undercut a courageous decision the President made in 1981, a decision that we have supported consistently since that time? Will we allow people who violated the law and the oath of office to be reemployed by the Federal Government, while those who had the courage to abide by the law, to abide by their oath, are penalized in the process?

That is the issue. I hope my colleagues will reaffirm their previous position, will support this amendment, and will strike the provisions of the bill that would make air traffic controllers who violated the law and their oath of office again eligible for employment by the Federal Aviation Administration.

I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER [Mr. KASTEN]. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I rise in opposition to this amendment which would strip section 323 from this bill. Section 323 removes the bar, imposed by the President, on the rehiring of air traffic controllers dismissed in 1981. Section 323 is a significant, but limited provision.

The language in this bill is identical to that adopted by the House. The language does not mandate that the Department of Transportation do anything. There are those, myself among them, who believe that this rehiring should have taken place long ago, when it became clear that the rebuilding of our air traffic control system was far behind schedule.

Mr. President, our Nation today does not have sufficient experienced air traffic controllers to cope with the demand for air travel. The controllers on the job are stretched too thin and are under too much stress. Morale in the system is no better today than it was in 1981 at the time of the Patco strike. These facts of life in the air traffic control system are confirmed by the findings of the General Accounting Office and management studies, such as the Jones report, commissioned by the FAA itself.

The result of the stress and strain on this system is a margin of safety that is razor thin. In the final analysis, it is the Federal Government and the U.S. Congress that is responsible for those who board airplanes—our families, our children—and put their faith in our aviation safety system. When that faith is breached, the public will look not only at the FAA, but at we in the Congress who fund that agency and oversee its activities.

Mr. President, we can hide behind the numbers of controllers offered by the FAA and adopt the agency's conclusion that everything is just fine. But you do not have to go far to see that it is not so. Just watch the evening news or read the morning newspaper.

On May 14, the National Transportation Safety Board reported that the FAA facility at Chicago's O'Hare Airport was understaffed and that, unless sufficient personnel were provided, safety could not be assured and traffic would have to be curtailed.

On May 16, two planes carrying 224 people came within 20 feet of a collision on the runway at O'Hare.

On November 10, 1985, two planes collided over Cliffside Park, NJ. Six people were killed, one of them on the ground. Controller error was definitely a factor in that crash.

The year 1985 was the worst year in aviation safety since 1977. Indeed, the friendly skies are not proving to be friendly at all.

Also, 1985 saw a dramatic increase in the number of near misses. Less than 2 weeks after the tragic AeroMexico disaster in California, which claimed more than 80 lives, 2 planes carrying 150 people came within 500 feet of yet another disaster.

Mr. President, in 1981 there were 344 full performance level air traffic controllers at the New York Area Air Traffic Control Center. In September 1985 there were 158. In Los Angeles there were 217 in 1981 and 141 in 1985. At key en route control centers across, the FAA has established a goal of having 75 percent full performance level controllers. But at places like New York, Los Angeles, Cleveland, and Chicago, they are far behind schedule.

The experience drain in the air traffic control system is going to get worse before it gets better. Changes in Federal retirement and tax policy are, according to FAA Administrator Donald Engen, going to lead to "a significant increase in retirements among all FAA occupational specialties."

The experience drain in the FAA is more than just a problem for the agency. It is a problem for all those who are concerned about flying. It is a problem for all those who have sat on the ground at airports around the country for hours at a time, in good weather and bad.

Mr. President, the Secretary of Transportation objected to this provision when it was before the Appropriations Committee. She indicated that all the Congress had to do was give the Department a target and it would meet it. And the FAA claims to have met its target for fiscal year 1986, claiming that they now have met the 14,480 controller goal established by the Congress.

I urge my colleagues to study those numbers very carefully; 1,484 of the 14,484 air traffic controllers claimed by the FAA are not air traffic controllers at all. They are clerical personnel. They are not controllers and they are not in training to become controllers. Telling the American public that here are 1,484 real live controllers is a cynical attempt to fool the people all of the time.

What the FAA is not telling the American people is that its air traffic controller goal for fiscal year 1986 was not and is not 14,480. It is 12,876 compared to the 16,250 controllers it had in 1981, 82 percent of whom were full performance level controllers.

I urge my colleagues to study the testimony of the GAO on August 14 before the House Subcommittee on Investigations and Oversight. The GAO criticized the method employed by the FAA in reporting the controller work force. The GAO maintains that the FAA counts as controllers personnel, like air traffic assistants, who are not controlling traffic. In addition, the FAA does not count personnel, like online supervisors, who do control traffic.

The GAO examined the FAA report on the controller work force at the end of June using its more realistic count of actual controllers and found that the FAA's count of 14,262 controllers was actually 14,080.

The GAO has criticized the FAA for counting new recruits to the FAA Training Academy as developmental controllers. Given the washout rate of 40 percent at the academy, many of these controllers never deal with one airplane.

The GAO has punched holes in FAA's rosy forecasts. If the FAA took a true count of full performance level controllers and did not lump those qualified on all positions with more limited operational controllers, the problem of experience in this work force would be more apparent to the layman. As of June 30, the FAA's own goals called for it to have 4,296 full performance level controllers at the 20 key control centers nationwide. The GAO found only 3,381 such controllers, a difference of about 900 short.

At the rate the FAA is going, it will be 7 years before it meets its full performance level goals at Miami; 6 years at Indianapolis; 4 years at Jacksonville; and 3 years at Fort Worth, New York and Chicago. In the 2 years it will take the FAA to reach its experience at Atlanta, that airport will be dealing with a 29.9 percent growth in traffic.

Accepting the FAA's calculation of its work force might allow us to put the problem out of our minds, but the serious experience problems in this system are not going to yield to a smokescreen.

Mr. President, it is said that the administration cannot do a suitability test on former controllers. They say they don't know the bad guys from the many controllers who went along with their union, but otherwise committed no acts of violence. I find that a curious contention.

On August 12, 1985, the Office of Personnel Management issued a bulletin explaining the suitability of former controllers for jobs in all Federal agencies except the FAA. The language in the bill simply extends this suitability determination one step further to the FAA itself. It is fair to say that OPM can make these determinations, because they in fact do make such determinations.

Finally, Mr. President, it is said that rehiring former controllers will ruin morale. Nothing ruins morale more quickly that consistently being understaffed, under too much stress and not having the resources to do the job.

There is not anyone working in those towers who is not nagged and beset by the problems that they might miss something that they have to pay attention to. That is the distinction. That is the morale factor.

That is the situation the air traffic control system finds itself in today. I do not find reports of drug abuse and predictions of heavy retirement indicators that everything is fine.

The Appropriations Committee spent the better part of fiscal year 1986 pressing the FAA for reliable information on experience levels in the controller and inspector work force. The committee provided additional support to make up the mindless reductions that are going to result in this agency as a result of the budget-cutting process. If the GAO is right, we might spend next year listening to the FAA explain why they had to curtail air traffic.

I do not want to see that happen. I want to stop the next disaster before it happens, and I assume everybody in this body and this country feels the same way.

It is time we provided some relief to our aviation safety system. The controllers who struck in 1981 have been punished. They lost their jobs, their pensions and, in some cases, their families. Vengence is not a worthy motivation for our Nation.

The ones we punish are the traveling public. The ones we put at risk are our families, friends, and at times ourselves. That is what we are talking about. We have had a plague of persistent punishment in this thing, and it is time to put that behind us. We ought to get on with the job we have of protecting the health and well-being of our society and put aside this petty nonsense of saying that an agency that is grossly understaffed cannot use people who have had the experience and have passed the test of serving in that capacity.

It is also time to provide relief to the traveling public. It is time to bolster the margin of safety. It is time to cut the delays at our airports. It is time to relieve the stress suffered by the controllers on duty today.

All section 323 of this bill does is provide the executive branch with the

authority to rehire some of those dismissed in 1981 on a selective basis. It does not mandate. It does not direct. It simply says here is a resource that maybe we ought to discuss.

□ 1120

"We are short of soldiers in our army. Here are recruits we can bring on board who can fight the battle and do it quickly."

It is the authority that the administration should have and the authority that it should use.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, with all due respect to my good friend from Texas, who ordinarily tries to get the facts before he tosses in an amendment, I think he is wrong on this one. It should be defeated, as I hope he will be. But let me make one recommendation to him.

In his State of Texas, visit the air traffic control center, wherever it is, for Fort Worth-Dallas. Frankly, that is what I did in Illinois.

We have Aurora, IL, not far from Chicago, which handles traffic for O'Hare and much of the Midwest. I have been getting these conflicting stories of, does this make sense?

First of all, I believe that you cannot strike against the Federal Government. We cannot tolerate that. To that extent I agree with the Senator from Texas.

But we have problems. In 1984, we had a record number of air deaths and a record number of near misses.

In the first 7 months in 1985, it surpassed 1984. I do not know what the 1986 figures will be.

But I do know this, and here I would urge my colleague to reconsider, if that is possible, this point.

I went to Aurora, IL, and talked to the air controllers.

Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order.

Mr. SIMON. I went to Aurora, IL, and I talked to air controllers, just going down the line talking to people, and I talked to the people in charge. I would guess I talked to 20 or 30 people.

Of the 20 or 30 people I talked to, all but one said, "We have a problem and the only sensible way is on a selective basis to bring back some of the experienced controllers."

I think he will find, I say to the Senator from Texas, if he visits the counterpart in the Dallas-Fort Worth area, supervisory personnel and the actual controllers, everyone saying the same thing.

The question at this point is, and I think my colleague from New Jersey put it well, not how we discipline some people but the question is air safety. The reality is we are going to improve air safety with this language in the bill.

I also agree that you cannot just massively take back everyone. That is why this bill calls for some screening.

The other point, as has been made by my colleague from New Jersey, is that it does not mandate a thing.

I would make one other point to my colleague from Texas. I would urge him to talk to people high in this administration who are knowledgeable in this area and ask them off the record what they think. I am not talking about the Secretary of Transportation. I have no doubt that she is concerned, though I have not discussed this with her. Talk to people very high in the administration who understand this area and ask them not what the administration's position is, but what they think is right for air safety. While I have not discussed this specific amendment with them, I have discussed the general situation.

I think this language is sound language. I urge the amendment of my colleague be defeated.

The PRESIDING OFFICER. Is there further debate?

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ANDREWS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ANDREWS. Mr. President, let me respond to the amendment of my colleague.

The bill as reported contains the House-passed provision which allows rehiring of controllers fired in 1981. This is not intended to rewrite past Federal labor regulations, but to address a serious safety situation.

My subcommittee has held repeated hearings throughout the years in which testimony has been given to review the "up again, down again" level of air traffic controllers. The facts according to the FAA are that 14,484 controllers were on board as of August 31, 1986, but of this level, only 9,352 are full performance level. The balance are either developmental controllers, including students at the FAA Training Academy, or air traffic assistants, whose job it is not to control traffic but to help the actual controllers.

I believe the FAA should have discretionary authority to add selectively to its ranks from the former controller work force. I think recent events underscore the need for experienced controllers, especially at the busier facilities.

I see the record number of controller retirements and feel we are too far from the goal necessary to deal with the increasingly crowded air space.

The critics of this provision will say that it undermines the President's Executive order prohibiting from FAA employment any controller who struck. I feel the past 5 years' prohibition has delivered the Presdient's message loud and clear. No Federal employee should take comfort from this air traffic controller rehire provision because the message from the President is unchanged.

What will change is that where FAA determines safety needs are unmet, it will have the selective authority, Mr. President, to augment its work force with experienced personnel.

The rehire will create a morale problem, opponents say, with those controllers who stayed on the job.

Again, the FAA is not required to put any controller back to work who was an activist during the strike. The bill requires the Office of Personnel Management [OPM] to make a suitable determination before rehire. Despite the administration's claim that no method exists to make such a determination, 500 striking controllers were brought back since 1981.

OPM can conduct background checks to weed out bad apples, just as OPM does now for sensitive employment.

Last, let me point out my frustration with the administration on this language.

The House sent over this permissive language after narrowly defeating stronger language mandating rehire of 500 controllers for each of the next 2 years. Early on, the subcommittee was told the administration could live, but reluctantly, with this permissive approach.

After the subcommittee endorsed the permissive language, the word came up that no language was acceptable. We worked steadily since August 5, the date of the markup, to satisfy the administration that the language be permissive and selective, but the position taken downtown is all or nothing.

Let me read from a House hearing transcript of Thursday, June 12. When asked for FAA's guidelines to implement rehire legislation, the administration witness said: "The administration policy is not to rehire so we just haven't put any staff time and effort into how we might implement that law"—the law being the mandatory rehire bill.

Mr. President, I find that irresponsible. When Congress recognizes the need and desires to provide an extra margin for safety, we hope the administration would work with the Congress on the proper method of implementation. That is why we were concerned, that is why the language is in the bill as it is.

Mr. President, I have no further request for time. I shall be glad to have the vote.

Mr. GRAMM. Mr. President, I can be brief. I would like to respond briefly by making a couple of remarks.

First, in 1981, we had an illegal strike by people who violated their oath of office. They—not the President—put the health and safety and lives of those who use air travel in this country at risk.

We have fought back from very difficult circumstances. We have worked hard to rebuild the air traffic control system. We have made great progress, progress that many—obviously the strikers—did not believe we could make. To come back now and reverse the policy would penalize those who stayed at their posts, those who withstood peer group pressure and abided by the law and their oath of office. To bring back into employment the people who put us at risk to begin with, would be inherently wrong.

Our distinguished colleague from New Jersey speaks with eloquence about a shortage of troops in the army. I submit, Mr. President, that we have rebuilt the army. It is not totally rebuilt but after coming all this way, after doing all this work, after not giving in to the temptation to take the easy, politically expedient way out, let us not bring back into the army today those who deserted the army and created the peril.

I think the issue is clear. I urge my colleagues to support this amendment.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. Is there further debate? The question is on agreeing to the amendment.

The Chair is in doubt.

(Putting the question.)

The PRESIDING OFFICER. The yeas appear to have it. The yeas have it.

The amendment (No. 2843) was agreed to.

Mr. GRAMM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ANDREWS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ANDREWS. Mr. President, I make a point of order that a quorum is not present. Prior to making that point of order, again, the leadership has told us to move expeditiously. I know of no further amendments to this bill. There have been some amendments talked about. We have now been debating the bill for about one-half hour. It is our intention to go to third reading as rapidly as possible.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

DODGE CITY RAILROAD PROJECT

Mr. DOLE. Before we close debate on the fiscal year 1987 Transportation appropriations bill, there is a matter of some importance to Dodge City, KS, that I would like to clarify with the chairman of the Subcommittee on Transportation Appropriations. Based on discussion with the distinguished Senator from North Dakota, it is my understanding that it will be possible to incorporate some report language in conference that would enable the Dodge City-Ford-Bucklin Railroad to obtain up to $1.9 million in unspent fiscal year 1986 funds.

Mr. ANDREWS. This Senator is willing to do everything he can to provide assistance to the Dodge City Railroad when we meet with the House in conference.

Mr. DOLE. There is the possibility that some funds would be available under the section 505 Redeemable Preference Shares Program of the Railroad Revitalization and Regulatory Reform Act of 1976. These would result from unspent fiscal year 1986 funds remaining from projects whose cost turned out to be less than the amount appropriated.

Mr. ANDREWS. The majority leader is correct. Based on conversations with the Federal Railroad Adminstration, it is my understanding that there may be funds available. We could therefore add some language in conference that would allow unspent, but prevously earmarked, funds to be reprogrammed to rehabilitate the Dodge City-Ford-Bucklin Railroad. I know this is a project of importance to the majority leader, and I promise to bring this matter to the attention of the conferees.

Mr. DOLE. It would seem to me that a project of this nature would set a good cost-sharing example. The local economic development organization has accumulated equipment and other assets worth almost $2 millon and has managed to cut down costs by having labor and equipment donated. I need not emphasize the importance of promoting economic development in communities in rural areas.

Dodge City grew out of the old frontier town in western Kansas, and it is of great historic interest to this country in general. This old west-style tourist rail line would provide access to Dodge City's boot hill area. The existing tracks would retrace that portion of the Rock Island Line that stretched through Bucklin, Ford, and Dodge City in the days of Bat Masterson and Wyatt Earp.

In addition, the commercial capabilities of the railroad line are also significant. This line would be used to haul grain and other freight, linking into a major grain freight line in Bucklin. The line links the Santa Fe and Cotton Belt rail lines, and officials from both railroads have manifested an interest in the possibility of hauling freight on the line upon its completion.

Dodge City has 15 passenger and freight cars and three locomotives on hand, and the railroad has most of the rolling stock it needs to get underway.

Mr. ANDREWS. I thank the Senator from Kansas for bringing this project to the attention of the Senate, and will try to work out a satisfactory arrangement in conference.

AVIATION SAFETY AND H.R. 5205, THE FISCAL YEAR 1987 TRANSPORTATION APPROPRIATIONS BILL

Mr. BYRD. Mr. President, the funds provided in the fiscal year 1987 Department of Transportation and related agencies appropriation bill, H.R. 5205, represent the Federal commitment to the development, maintenance, and operation of an efficient national transportation system. The funds provided in this legislation address problems in a number of different areas. Of particular interest, are the provisions relating to appropriations for the Federal Aviation Administration and to address the problem of aviation safety.

Mr. President, last year was the worst year for commercial aviation in the United States since 1977, according to National Transportation Safety Board statistics. Those statistics indicate that there were 526 fatalities in 1985 from all U.S. carriers, compared to 655 fatalities in 1977. Such statistics have been underscored most recently by the tragic collision of Aeromexico's flight 498 with a small private plane in the skies over Los Angeles late last month.

In the light of such statistics, and the reports of increasing numbers of near mid-air collisions, surface operational errors, and other safety-related incidents, the American public has become increasingly concerned about aviation safety.

There is reason for concern. The domestic commercial passenger aviation industry has undergone explosive growth in the years since the enactment of airline deregulation in 1978. Unfortunately, the Federal Aviation Administration is in danger of being overwhelmed by the increased number of commercial flights, aircraft, and airlines, the most apparent manifestations of the airline industry's growth since 1978.

Congress has been more than willing to provide the FAA with the resources necessary to ensure aviation safety. This commitment to aviation safety remains undiminished. Indeed, despite the severe fiscal constraints imposed by the Nation's massive budget deficits, in this bill Congress is appropriating $2.769 billion for FAA operations in fiscal year 1987.

Mr. President, it should also be noted that the growth in the airline industry is expected to continue into the future. This will bring increased burdens on FAA traffic control systems, and other services necessary to manage the increasing volumes of air traffic which will be using the Nation's airspace. The FAA, for example, expects the number of aircraft operations at FAA towered airports to increase 46 percent by 1997.

SUMMATION

Mr. President, the funds provided in H.R. 5205 for FAA operations are further evidence of the intention of the Congress to continue efforts to restore an adequate margin of aviation safety. With the support of the administration, we can move expeditiously.

Mr. SPECTER. I would like to engage in a discussion with the distinguished chairman of the Transportation Subcommittee to discuss several matters of importance to Pennsylvania.

H.R. 5205 as reported from the House gave a classification to a vehicle that will be manufactured in my home State, called the Maxi-Cube vehicle. I understand that this classification is needed to allow this vehicle to run on Federal highways. The U.S. Department of Transportation has reportedly spent years studying a classification for this vehicle but has failed to make a determination. This has prevented a potentially great transportation product from being used, thus denying the manufacturing jobs associated with the production of this vehicle and the potential benefits to transportation that would result in its use. H.R. 3129, the House highway authorization bill, includes identical language as that contained in H.R. 5205. Legislative action is required because the U.S. Department of Transportation has not yet acted. I should report that 32 States have approved this vehicle. The Senate Appropriations Committee struck this House language.

Because this vehicle is so important, I bring this to the Senator's attention for his consideration in the bill reported from conference. I must repeat that this action would simply classify a vehicle system that was not in existence when the act was passed in 1982 and was, therefore, not classified. I am just urging that this be given a regulatory category so that it can be regulated. I am asking for no exceptions for weight or length.

Mr. ANDREWS. The Senator brings important facts to light. I will carefully consider his request.

Mr. SPECTER. Other matters of concern are the Basin Street rail crossing in Allentown, PA, Route 220 between Altoona and Tyrone, and the Mon Valley Expressway.

The Basin Street project is sorely needed to correct a traffic tie-up problem which has plagued the Lehigh Valley for more than a decade.

The Route 220 project would close an 11.9-mile gap in multilane limited access road connecting the Pennsylvania Turnpike and the Tyrone Bypass. I am seeking authorization for both of these projects in S. 2405, the highway authorization bill.

The Mon Valley Expressway would be a new road to be funded with toll proceeds, but which will require a Federal contribution to be successful. I am supporting an amendment to S. 2405 that would allow Federal aid to highways being constructed as toll roads.

I would request that the chairman through his offices encourage the U.S. Department of Transportation to perform studies and provide technical assistance to expedite planning and these important projects. I have assurances from the Environment and Public Works Committee that both Basin Street and Route 220 will be authorized in S. 2405.

Mr. ANDREWS. The Senator has brought forward important requests. I will be happy to work with him and the Department to help move these projects forward.

Mr. SPECTER. I thank the Senator for his assistance on these matters and the support that he has already provided for so many important transportation matters for Pennsylvania and the country.

A STUDY OF OILSPILL PREVENTION IN RESTRICTED WATERWAYS

Mr. LAUTENBERG. Mr. President, I rise to address an issue of great importance to New Jersey, the Delaware River region, and all of our coastal areas. The issue of oilspills.

Oilspills are devastating accidents. They result in destruction of natural resources, and they imperil our wellbeing. Spills also require significant expenditures of time, effort, and money by State and Federal agencies, and represent the loss of a valuable commodity by the oil companies.

Last week, the *Viking Osprey*, a 700-foot tanker, spilled almost 300,000 gallons of crude oil over a 12-mile stretch of the Delaware as it docked at a facility in New Jersey. On Friday, I toured the spillsite with Coast Guard officials. The scene was devastating. The impact of this spill is being felt in New Jersey, Pennsylvania, and Delaware. It will be months before the full extent of damage is known, or cleanup efforts are complete.

This was not an isolated incident. Within the last year, this same stretch of the Delaware has seen three major spills. Last September, the *Sunoco Grand Eagle* spilled 435,000 gallons of crude oil over a 15-mile section of the river. In this case, the tanker ran aground, rupturing a tank. It then freed itself to head upriver, spilling its oil along the way. The incident was not reported to officials for 5 hours.

In March, the *Intermar Alliance* crashed into a pier at Marcus Hook, PA. One of its tanks was ripped open, resulting in the release of 189,000 gallons into the river.

Mr. President, almost 1 million gallons of oil have been spilled into the Delaware River in the last year. In addition, there have been several minor tanker incidents which, fortunately, have not resulted in spills. This is an unacceptable situation. We need to find out why recurring oilspills threaten the Delaware River and precious natural resources.

The Coast Guard has the responsibility to respond to oilspills. It has the expertise in assessing causes of oilspills and is best able to recommend means of preventing these spills.

Mr. President, given this pattern of spills, I feel that the Coast Guard should study the recent oilspills in the Delaware River, along with other similar incidents. This study should examine the causes of these spills, and investigate means of preventing further spills.

Mr. President, our coastal waterways are fragile and important ecosystems. They cannot continue to absorb the impacts of oilspills. With my colleague from Maine, Senator MITCHELL, I recently introduced legislation to enhance our ability to clean up spills. That legislation is vital in our efforts to control the effects of oilspills. But, we also need to prevent spills.

Mr. President, I would like to ask the distinguished managers of the bill for their views on this matter. My suggestion would be for the Coast Guard to conduct a thorough study to investigate the causes of the Delaware River oilspills and to recommend steps to prevent their repetition. Such a study should include the consideration of modifications in tanker construction and operation standards, crew training, locale familiarization requirements, improvements in navigation aids, and other approaches with the potential for reducing the likelihood of discharges of oil in our waters. The results of this study should then be made available in a report to the Congress within 1 year.

Mr. ANDREWS. Mr. President, I thank the distinguished Senator from New Jersey for bringing this important matter to the attention of the Senate. I am aware of the Senator's concern over this issue, and share his view of its importance to coastal areas.

I agree that such a study could be an asset in efforts to prevent oilspills, and I concur with the Senator's view that it should be conducted using available funds. The areas he would like to see addressed in a study are comprehensive, and essential to consider in a thorough study of the problem of oilspills in the Delaware River and other waterways. I look forward to working

with my colleague in efforts to ensure that the study he described will be conducted by the Coast Guard. It would be my intention to further address the Senator's concern by including language in the statement of the manager's report directing the Coast Guard to conduct such a report during fiscal year 1987.

Mr. LAUTENBERG. Mr. President, I thank the distinguished Senator from North Dakota for his cooperation in this important matter. I would also like to ask the ranking minority member, Senator CHILES, for his views on this matter.

Mr. CHILES. Mr. President, I would also like to thank the distinguished Senator from New Jersey for raising this important issue. The study he outlines will serve an important role in efforts to prevent the repetition of such spills. I look forward to working with my distinguished colleagues in efforts to address this issue through a study conducted by the Coast Guard.

Mr. LAUTENBERG. Mr. President, I thank my distinguished colleagues for their support of this important study, and I look forward to working with the distinguished chairman and ranking minority member on appropriate language directing the Coast Guard to use available funds to conduct a study on recent oilspills in the Delaware River and spill prevention.

Mr. DANFORTH. Mr. President, I am considering offering an amendment to the Transportation appropriations bill, H.R. 5205, and would like to engage in a colloquy with my distinguished colleague, Senator ANDREWS, the chairman of the Transportation Appropriations Subcommittee.

Mr. President, my amendment would reduce substantially deaths and injuries on our highways and would provide us with another weapon in the war on drugs and alcohol abuse. My amendment would increase the appropriation for the Motor Carrier Safety Assistance Program [MCSAP] from $20 to $60 million in fiscal year 1987.

At present, the MCSAP provides grants to States for inspections of truck and bus equipment. These efforts are long overdue. For example, in the first 5 months of this year a Maryland inspection team funded by a MCSAP grant inspected 17,800 vehicles. Maryland found that over 5,000 of these vehicles had unsafe brakes. Over 2,300 had inadequate lighting. Others had defective steering, coupling devices, and tires. Almost 13,000 of these vehicles, or over 72 percent of those inspected, were in such bad shape that they were immediately put out of service.

We have made some success, but this is only the tip of the iceberg. Although 49 jurisdictions are using these grants, many of the unsafe trucks and buses are going undetected. They simply pull off the side of the road and wait for the inspection station to close down or take an alternate route with no inspectors. By increasing appropriations for MCSAP we will have enough inspectors so that unsafe trucks and buses will have nowhere to run and nowhere to hide. Inspectors can work through the night when most of the unsafe trucks and buses run, and they can set up inspection stations on routes that were formerly "safe havens" for dangerous vehicles.

Catching dangerous vehicles is only part of the problem, however. The Senate has before it the Commercial Motor Vehicle Safety Act of 1986 (S. 1903), which provides for inspections of drivers for drug and alcohol use, improved commercial driver licensing, and a computer link to stop the multiple license problem.

An increase in MCSAP's appropriations is needed to accomplish these goals. The MCSAP appropriation must be increased so that inspectors can catch those who either take drugs or drink alcohol and get behind the wheel of trucks weighing an average of 60,000 to 80,000 pounds or buses carrying dozens of innocent passengers. With the assistance of the CB radio, drugs are sold at virtually every truckstop in the country. Substance abuse by these drivers is a menace to us all that must be stopped. Its dangers were demonstrated recently when a truck driver, who reportedly had cocaine, amphetamines, and marijuana in his cab, shot and wounded the 7-year-old son of country singer Ricky Skaggs. The driver claimed he fired the shot because the child's mother cut too closely in front of his truck.

Increased appropriations for MCSAP grants are also needed to improve commercial driver licensing. At present, in 20 States after taking a regular motorist test in a compact car, you or I could get a license that is a grant of authority to drive an 18-wheeler across the country. In fact, only 12 States require a license applicant to take a driving test in the type of truck or bus he or she is to be licensed to operate. MCSAP grants could help States to pay examiners and set up test facilities so they can give meaningful written and driving tests.

Finally, additional MCSAP money is needed to help establish a computer link between the States to communicate commercial drivers license information. Commercial drivers currently shuffle multiple licenses like a deck of cards. They use them to spread their traffic violations, and thus maintain a "good driver" rating regardless of the number of violations they accumulate. The States could use this computer link to determine whether a license applicant had another license, and to see that all of a commercial driver's violations, including violations involving driving under the influence of drugs or alcohol, were placed on a single license.

Mr. President, S. 1903 is one of the cornerstones of the majority leader's drug initiative. He recognizes that drug use is a problem for truck and bus drivers just as it is for others in our society. When drugs are openly bought and sold at virtually every truckstop in the country, things have gone too far. This is not a "victimless" crime. Truck and bus accidents kill 5,000 people a year and injure thousands more. We must provide money for additional inspections to catch drivers who use drugs.

Mr. ANDREWS. I agree with Senator DANFORTH that MCSAP is a very important and successful effort to make our highways safer. I am a strong supporter of this program. Unfortunately, my subcommittee is operating under strict budgetary restraints and I believe that Senator DANFORTH's proposed amendment could well exceed these constraints.

I understand that the text of S. 1903, the Commercial Motor Vehicle Safety Act of 1986, which would authorize $60 million for MCSAP in fiscal year 1987, is part of Senator DOLE's legislative package for combating drug abuse. Under S. 1903, MCSAP moneys would be used to catch truck and bus drivers who operate vehicles under the influence of drugs.

If S. 1903 is approved by the Senate as part of this important initiative, I want to assure Senator DANFORTH that my subcommittee will work with him toward seeing that MCSAP is fully funded in the continuing resolution.

Mr. DANFORTH. Mr. President, I would like to thank Senator ANDREWS for his support of this program and for his commitment to work toward fully funding this program. I look forward to working with him to meet this goal. With those assurances, I will not offer my amendment at this time.

Mr. DOMENICI. Mr. President, I rise in support of the Department of Transportation and related agencies appropriations bill as reported by the Senate Appropriations Committee.

I commend the distinguished chairman of the subcommittee, the Senator from North Dakota, and the distinguished chairman of the full committee, the Senator from Oregon, for bringing this bill to the floor in accordance with the budget resolution for both budget authority and outlays.

Mr. President, H.R. 5205 as reported provides $10.2 billion in budget authority and $9.3 billion in outlays for fiscal year 1987 for the Department of Transportation, the Interstate Commerce Commission, and other transportation-related activities.

Taking into account outlays from prior-year budget authority and other adjustments, the bill is $0.4 billion in budget authority and less than $50

million in outlays under the subcommittee's section 302(b) allocation under the fiscal year 1987 budget resolution. The bill's credit activity, comprising a total of $0.1 billion in direct loans, is also consistent with the subcommittee's 302(b) allocation.

I would note that the subcommittee's 302(b) allocation is based on budget resolution assumptions that include significant increases for several transportation programs. Specifically, I note that the budget resolution assumed fiscal year 1987 budget authority increases above a freeze level of $0.5 billion for the FAA and $0.4 billion for the Coast Guard.

I urge the adoption of the bill as reported, and I urge my colleagues to oppose any amendments that will significantly increase the outlays associated with this bill.

Mr. President, I ask unanimous consent that tables showing the relationship of the reported bill to the subcommittee's section 302(b) spending and credit allocations, the House-passed bill, and the President's budget request, and a summary of total appropriations action to date, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TRANSPORTATION SUBCOMMITTEE SPENDING TOTALS—SENATE-REPORTED BILL

[In billions of dollars]

	Fiscal year 1987	
	Budget authority	Outlays
Outlays from prior-year budget authority and other actions completed		17.7
H.R. 5205, as reported in the Senate	10.2	9.3
Adjustment to conform mandatory programs to Budget Resolution assumptions	−(1)	−0.1
Subcommittee total	10.2	26.9
Senate subcommittee 302(b) allocation	10.6	26.9
President's request	7.0	25.5
House-passed level	10.3	27.0
Subcommittee total compared to:		
Subcommittee 302(b) allocation	−0.4	−(1)
President's request	+3.2	+1.4
House-passed level	−0.1	−0.1

(1) Less than $50 million

Note.—Details may not add to totals due to rounding.

TRANSPORTATION SUBCOMMITTEE CREDIT TOTALS—SENATE-REPORTED BILL

[In billions of dollars]

	Fiscal year 1987	
	Direct loans	Loan guarantees
H.R. 5205, as reported in the Senate	0.1	
Subcommittee total	0.1	
Senate subcommittee 302(b) allocation	0.1	
House-passed level	0.1	
President's request	0.1	
Subcommittee total compared to:		
Senate subcommittee 302(b) allocation	−(1)	
House-passed level		
President's request	+(1)	

(1) Less than $50 million

Note.—Details may not add to totals due to rounding.

STATUS OF APPROPRIATION BILLS IN THE SENATE

[In billions of dollars]

Subcommittee	Appropriations Committee's 302(b) allocation		Adjusted bill totals [2]		Bill compared to allocation		Bill status
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	OOutlays	
Agriculture	31.3	24.1	31.3	24.1	−(1)	+(1)	Reported.
Commerce-Justice	12.1	12.3	11.7	12.3	−0.4	−(1)	Reported.
Defense	277.1	264.5					
Deficiencies and Supplementals	0.8	0.1					
District of Columbia	0.6	0.6	0.6	0.6	−(1)	−(0)	Reported.
Energy-Water	14.5	14.9					
Foreign Operations	13.0	10.8					
HUD-Independent	54.3	56.4					
Interior	7.8	8.8	7.7	8.8	−0.1	−(1)	Reported.
Labor-HHS	114.0	118.0	113.4	118.0	−0.6	+(1)	Passed.
Legislative Branch	1.7	1.7	1.6	1.6	−0.1	−0.1	Conference.
Military Construction	8.2	7.9	8.2	7.9	+(1)	+(1)	Passed.
Transportation	10.6	26.9	10.2	26.9	−0.4	−(1)	Reported.
Treasury-Postal Service	13.3	13.4	13.3	13.4	−(1)	+(1)	Reported.
Total, Appropriations Committee	559.3	560.4	198.1	213.6	−1.5	−0.1	

(1) Less than $50 million.
(2) In addition to the bill, includes outlays from budget authority enacted in prior years, possible later requirements, adjustments to conform mandatory items to budget resolution level, and other adjustments.
Note.—Details may not add to totals due to rounding.
Source: Prepared by Senate Budget Committee staff.

● Mr. GORTON. Mr. President, I congratulate Senator ANDREWS, the chairman of the Appropriations Subcommittee on Transportation and Related Agencies, and the Appropriations Committee as a whole, for their work on this bill. I would like to take this opportunity to call attention to a very important provision in the report accompanying the bill which earmarks funds for fiscal year 1987 for the Downtown Seattle Transit Tunnel. This project is of enormous importance to the Greater Seattle metropolitan area.

The Seattle bus tunnel is the result of a long-term effort by local, city, county and metro government officials, and the downtown business community. When completed, the tunnel will provide transit facilities in downtown Seattle to meet the area's future commuter transit needs and alleviate bus congestion in the downtown area. The success of this joint effort is obvious. The Seattle bus tunnel has been rated by the U.S. Department of Transportation as the most cost-effective transit project in the entire country. In addition, the tunnel has the near unanimous support of local elected officials as well as the Downtown Seattle Association.

The project consists of a two lane bus tunnel extending north from Union Station near the Kingdome up Third Avenue to Pine Street, at which point it continues east bound to Ninth Avenue near the new convention center. In addition to these two portal stations, there will be three underground stations along the route, accessible by elevator, escalator, or stairs from the buildings above.

The tunnel is designed for new dual-mode buses that will switch from diesel to electricity when entering the tunnel and switch back to diesel upon exit. This innovative concept accomplishes the major obstacle of reducing diesel emissions in the downtown area.

Metro and the city of Seattle will provide surface improvements above the tunnel, such as new curbs and roadways, lighting and traffic control systems, greenery, bus shelters, sidewalk furniture and vending equipment. Metro also is adding a trolley circulator with new routes connecting the downtown business core with the Denny Regrade, First Hill, the International District, Pioneer Square, and the waterfront.

Along with the reduction of diesel emissions, there are other significant

benefits attached to this project. It addresses the issue of downtown bus congestion without eliminating traffic or truck loading zones, thus avoiding harm to the downtown business community. It also provides a continuous passage through downtown Seattle for suburban commuters, thus avoiding the inconvenience of an extra transfer. Metro staff predicts that substantial operations and maintenance savings will eventually offset the capital costs of the tunnel. Metro also states that the costs of maintaining the tunnel will be less than those incurred by continuing current services amid growing downtown congestion.

Mr. President, the Seattle bus tunnel is an excellent example of the type of innovative, cost effective, and environmentally sound major project that can be built when local government and the private sector work together to meet community needs. Again, I thank the distinguished chairman of the subcommittee and the members of the full committee for recognizing the value of this project.●

HIAWATHA AVENUE

Mr. DURENBERGER. Mr. President the House-passed Department of Transportation and Related Agencies Appropriations bill for fiscal year 1987 contained $11 million for an Intermodal Urban Demonstration project located in Minneapolis, MN. This project, first authorized by Congress in 1974, would entail upgrading approximately 5 miles of T.H. 55/Hiawatha Avenue from CASH 62—the Crosstown Highway—to Franklin Avenue in Minneapolis. Approximately $2.75 million was provided in the fiscal year 1986 DOT Appropriations bill for design of the project, and it was the hope of the two Senators from Minnesota that the committee would see fit to accept the House recommendation on funding for this project. Could my good friend, the distinguished chairman and Senator from North Dakota, enlighten me as to why funds for this important project were deleted?

Mr. ANDREWS. Mr. President, as the distinguished ranking member, Senator CHILES, will confirm, the committee found itself unable to fund any of the demonstration projects contained in the House bill. Having reviewed my good friend's letter requesting funds for this project shortly before the committee acted on the bill, it was with great reluctance that I moved to delete the House projects. It is an unfortunate fact of life, but the House Appropriations Committee accorded a higher level of funding to the Transportation Subcommittee than the Senate Appropriations Committee did. Faced with less money to work with, Senator CHILES and I had no choice but to delete funding for demonstration projects.

Mr. CHILES. Mr. President, the Senator from North Dakota's description of the committee's predicament is entirely correct. I, too, noted the letter from the senior Senator from Minnesota and regretted that the committee was unable to accommodate his request.

Mr. DURENBERGER. Mr. President, I thank both Senators for their explanations, and would like to pose one final question. When this item is brought up for discussion in conference with the House of Representatives, how receptive would my two friends, the chairman and ranking member, be to the House position?

Mr. ANDREWS. Mr. President, as I explained in previous discussions with both of the distinguished Senators from Minnesota, it is very difficult to promise any Member that the Senate will recede to the House on an issue prior to the conference. However, having personally experienced the horrible traffic congestion leading to the Minneapolis-St. Paul airport, I am sensitive to the House position.

Mr. CHILES. Mr. President, while I have not had the pleasure of sitting in traffic in subzero temperatures, I can imagine that it has prompted many a Minnesotan to spend the winter in Florida. While I would be reluctant to support anything that might hurt Florida's tourism industry, I want to assure both Senators that I will try to accommodate the House of Representatives on this project.

Mr. DURENBERGER. Mr. President, I thank both Senators for their courtesy, and wish them luck in conference.

Mr. BOSCHWITZ. Mr. President, I would like to associate myself with the remarks of Senator DURENBERGER, and want to thank both Senator ANDREWS and Senator CHILES for their consideration of our request.

□ 1200

Mr. ANDREWS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. ANDREWS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA], is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 87, nays 11, as follows:

[Rollcall Vote No. 264 Leg.]

YEAS—87

Abdnor	Exon	McConnell
Andrews	Ford	Melcher
Baucus	Glenn	Metzenbaum
Bentsen	Goldwater	Mitchell
Biden	Gore	Moynihan
Bingaman	Gorton	Murkowski
Boren	Grassley	Nickles
Boschwitz	Harkin	Nunn
Bradley	Hart	Packwood
Broyhill	Hatch	Pell
Bumpers	Hatfield	Pressler
Burdick	Hawkins	Pryor
Byrd	Hecht	Quayle
Chafee	Heinz	Riegle
Chiles	Hollings	Rockefeller
Cochran	Inouye	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Levin	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Warner
Eagleton	Mathias	Weicker
Evans	Mattingly	Wilson

NAYS—11

Armstrong	Humphrey	Symms
Gramm	McClure	Wallop
Heflin	Proxmire	Zorinsky
Helms	Roth	

NOT VOTING—2

Garn	Matsunaga

So the bill (H.R. 5205) as amended, was passed.

□ 1130

Mr. ANDREWS. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ANDREWS. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. KASTEN) ap-

pointed Mr. ANDREWS, Mr. COCHRAN, Mr. ABDNOR, Mr. KASTEN, Mr. D'AMATO, Mr. HATFIELD, Mr. CHILES, Mr. STENNIS, Mr. BYRD, and Mr. LAUTENBERG conferees on the part of the Senate.

Mr. DOLE. Mr. President, I thank my distinguished subcommittee chairman, Senator ANDREWS, and also Senator CHILES for their expeditious handling of the transportation appropriations bill.

I must say I was responsible for some delay. They completed action in less than 2 hours. I thank them for their effort.

PRODUCT LIABILITY

Mr. DOLE. Mr. President, I will yield to the distinguished Senator from Alabama in just a minute. But I now would like to turn to S. 2760, Calendar No. 856, product liability.

I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 856, S. 2760, product liability.

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. Mr. President, I will move to that later.

I would like to yield now to the distinguished Senator from Alabama who has been trying to make a statement on the Rehnquist nomination for some time.

NOMINATION OF WILLIAM HUBBS REHNQUIST AS CHIEF JUSTICE OF THE UNITED STATES

Mr. HEFLIN. Mr. President, as a U.S. Senator I approach the advise and consent responsibility mandated by the Constitution as a solemn duty. I approached this nomination with an open mind. I came neither to praise nor to condemn. I came not as an advocate, as a detractor nor as a blind supporter. I came to endeavor to do my duty fairly and justly. I came to judge.

I look at the position of Chief Justice of the United States and I see a position of power, a position that makes great demands on an individual, but one that allows an individual to do great things. I see a power that extends over sovereign States and over the humblest of individuals. But I also see a somewhat impossible situation for any nominee to fulfill this role. No one individual is equipped or capable of being the embodiment of all we see in the position of Chief Justice of the United States.

That is not to say we strive for less than excellence in those we nominate to sit on the Supreme Court, or in those we ask to lead that Court, but that we admit and acknowledge that our Supreme Court is made up of individuals just like you and me. Some may be smarter, some may be wiser, some may be more liberal or conservative, some may have had better opportunities, some less, some may be more outspoken, some may be more introspect. But each of the nine in his or her own way are very important to the whole—and each brings to the Court the experiences that shaped their lives.

There are those who fear that Justice Rehnquist through his legal acumen will sway less-entrenched members of the Court. It was once said that "one man plus courage equals a majority."

If confirmed, Justice Rehnquist's tenure as Chief Justice will be judged not by his consensus-building abilities but rather by his devotion to a fair and just interpretation of the Constitution. That will be the standard by which all nine of the members of the Court will be judged.

The next Chief Justice will lead the Court and this Nation into a new generation. He will shape not only our future but more importantly, the future of our children. I wish I could predict what the future holds. I do believe, however, that times will be difficult, and the Supreme Court in the years to come will be faced once again with issues that permeate to the very core of individual beliefs and convictions.

And I look at this Court and the uncertainty of the times ahead and I asked myself, if this nominee is worthy of the task? I have resolved that question in my own mind in the affirmative, but the journey to reach this decision was far from easy.

I have great respect for my colleagues that oppose this nomination. And the issues that have been raised have been troublesome to me. The voter harassment issue, the failure of Justice Rehnquist to recuse himself in Laird versus Tatum, the memorandum written as a Supreme Court clerk in 1953 concerning Brown versus Board of Education, and his alleged insensitivity to the rights and struggles of minorities, women, and disadvantaged citizens. His opponents do not question his legal ability or, in my opinion, his judicial temperment.

□ 1240

But they strike at the heart of what makes a judge judicial—his fairness and above all his credibility. If proven, these allegations would not only taint a man's reputation, they could destroy it. And in the process they would chip away at the very foundation of the institution itself.

I am not saying these are not legitimate questions. They are. I am not saying they should not be asked. They should. But I am saying that after listening to the witnesses, after considering the timeframe in which these incidents occurred, I am not persuaded that Justice Rehnquist is unfit for service as Chief Justice of the United States.

I respect those who testified in opposition to Justice Rehnquist's nomination, for I cannot think of a more difficult position in which to find oneself. I believe the testimony was motivated by nothing more than a deep sense of doing what each personally believed was right. Most were examples of courage and commitment.

In trying to resolve charges and allegations with the answers of Justice Rehnquist and his witnesses, it is inescapable that time is an important element. As the years passed by, the powers of suggestion, the dimness of recollections, the accuracy of identification from photographs alone must be considered with other human frailties in evaluating events, documents, and positions.

But my inquiry did not end in 1960, or 1964, or 1969. Because the story does not end there. There is another chapter—15 years of service on the Supreme Court as an Associate Justice.

We are not talking about a judge with no judicial record. We can't be blind to his record as a jurist, scholar, and writer. Justice Rehnquist has built a judge's career that most judges only dream about. He has achieved a reputation for integrity and honesty among his colleagues on the bench.

I also read the testimony given by the American Bar Association to try and understand how people can reach such different conclusions about one man. The ABA testified that they interviewed Justice Rehnquist's colleagues on the Supreme Court and that the support for Justice Rehnquist was virtually unanimous. This is extremely important because I believe there must be a great sense of family among these nine even though philosophies are divergent and strongly held. But I cannot believe that if one of the members of the Court felt that elevation of William Hubbs Rehnquist to be Chief Justice would be detrimental to the institution itself that he or she would have remained silent. These nine have devoted their lives not just to an institution but to the Constitution, and their commitment to that oath is stronger than any commitment to an individual.

There are liberals on the Court; there are conservatives on the Court; and there are swing individuals on the Court. Those swing individuals are the important ones who will make decisions in the future and have made decisions in the past.

But to me the fact that Justice Rehnquist has earned the respect of those in the community in which he lives, the Supreme Court of the United States, was most persuasive. Within that community where he has earned

the respect for his honesty, for his integrity, for his credibility, there are those with widely divergent views. There are those who we would say are the most liberal members of the Court; there are those who we would say are to the far right of the Court; and we would say there are those who are moderates and in the middle. But from the report as given to us by the American Bar Association, which has interviewed each of them, the support for Justice Rehnquist is virtually unanimous.

I am sure that such respect is not easily won nor easily maintained. He has lived closely with his peers for nearly 15 years. No one could fool or mislead this group during that time with the issues that have confronted this group during that period of time.

Today, we are being asked to elevate William Hubbs Rehnquist to the position of highest honor that can be bestowed on a member of the legal profession.

I know that there are those who question Justice Rehnquist's sensitivity to civil rights of minorities and women. I do not agree with every opinion of Justice Rehnquist. In fact, I find myself in disagreement with many. But I do not believe those opinions are so extreme as to be unreasonable. Every stream has a right bank and a left bank. There is no question that Justice Rehnquist's views are always close to the right boundary of the stream, but they are nevertheless within the mainstream of modern judicial thought.

Chief Justice of the United States is an awesome responsibility and an awesome obligation. It takes an individual with broad shoulders—one with a strong backbone, sensitive perceptive powers, a vibrating heart, and courageous conscience.

But an individual can only shoulder so much responsibility without help from those he seeks to lead—one of my colleagues suggested that it would be better if Justice Rehnquist remained one of nine instead of "first among equals." I would respectfully offer different advice. I look at proverbs, and as I remember—and I am paraphrasing—there is this verse which says: "He who would become chief must first learn to serve."

The Chief Justice is not really first among equals. Maybe in his own community, perhaps on the Court, but really he is one among many. Our Government consists of four branches: The President, the Congress, the courts and the forgotten branch—the American people.

It must never matter that an individual is black or white, rich or poor, male or female. Equal justice is only just if equally applied.

In the words of a former Vice President:

> No man can be fully free while his neighbor is not. To go forward at all is to go forward together.
>
> This means black and white together, as one nation, not two. The laws have caught up with our conscience. What remains is to give life to what is in the law: to insure, at last, that as all are born equal in dignity before God, all are born equal in dignity before man * * *.
>
> Our destiny offers not the cup of despair, but the chalice of opportunity. So let us seize it, not in fear, but in gladness * * * let us go forward, firm in our faith, steadfast in our purpose, cautious of the dangers; but sustained by our confidence in the will of God and the promise of man.

Justice Rehnquist, let me make a few suggestions. You have had little control, if any, over your future during this confirmation process. But if confirmed only you can control your destiny. The position of Chief Justice is one of strength but it is also one of humility. In effect, you are a servant to many masters—the Supreme Court, the Federal courts, the State courts, and the American public. Serve them all well, all equally, all fairly. And your legacy will not only be compelling but complete.

NOMINATION OF JUSTICE WILLIAM H. REHNQUIST TO BE CHIEF JUSTICE OF THE UNITED STATES

Mr. GRASSLEY. Mr. President, the consideration of a nominee to be Chief Justice of the United States is one of the most important and solemn responsibilities that we as U.S. Senators take on. As the "first among equals," the Chief Justice symbolizes the Supreme Court itself, and its duty to preserve and protect our cherished Constitution. By preserving and protecting the Constitution, the Supreme Court is the ultimate guardian of the people and the Republic.

In light of the fact that today, September 17, we are observing the 199th anniversary of the signing of our Constitution, it is extraordinarily appropriate, indeed, to be considering the nomination of the Chief Justice who must lead in preserving and protecting the framework that binds our Nation together, and sets us apart in the annals of history.

Therefore, in considering and confirming a Chief Justice-designate, the lifeblood, and continuing existence of our Nation is at stake. So, we have an obligation to conduct an extremely thorough examination into the capabilities and qualifications of the nominee.

The Judiciary Committee, of which I am a member, has met this obligation by conducting an exhaustive examination of Justice Rehnquist, involving more than 40 witnesses over a 4-day period.

During my examination of this nominee, I considered whether Justice Rehnquist had the qualities required of the most important jurist in the Nation. For instance, is Justice Rehnquist a person of integrity? Is he a person of great intellectual capacity and knowledge of our Constitution? Will he render his opinions based on the Constitution and the relevant statutes—without regard to personal views when those views conflict with the law? Does he possess an even judicial temperment that resists judicial legislating and is not swayed by the mere breeze of public opinion? And finally, will he be a true leader and consensus builder on the Court instead of one who will attempt to force his agenda on the Court and the Nation?

After participating in the hearings, there is no doubt in my mind that the answer to all of these questions is an affirmative one, and that Justice Rehnquist fulfills all of the requirements to be an outstanding Chief Justice of the United States.

There are some who have made allegations and innuendoes about Mr. Rehnquist and his ability to lead the Court. However, it is important to emphasize that none of these charges has been proven, and they appear to represent a very calculated, desperate attempt to undermine Mr. Rehnquist because of his conservative judicial philosophy.

The nominee certainly has the initial burden of proving that he is capable of serving the office, but when attacks are made on the nominee, the burden of proof switches, and those who have made such attacks must prove they are true. Anyone who looks beyond the mere charges will know that this burden has not been met by Justice Rehnquist's detractors.

In specifically reviewing the allegations that Justice Rehnquist is a racist and is insensitive to women's rights, I was particularly persuaded by the testimony before the Judiciary Committee of Dr. James Freedman, who is the president of the University of Iowa at Iowa City, and former dean of the University of Pennsylvania Law School. Dr. Freedman, who is a former law clerk for Justice Thurgood Marshall, has also had the opportunity to work closely with Justice Rehnquist at a 4-week seminar in Europe whose students were men and women of different nationalities from around the world. Dr. Freedman was able to observe Justice Rehnquist's personal interactions with others on a daily basis. If Justice Rehnquist harbored any prejudice toward women or different races, it would have surely been detectable as he closely intermingled with others in this situation.

However, in his testimony in support of Justice Rehnquist, Dr. Freedman emphasized that Justice Rehnquist treated people of all nationalities and gender as equals, and that he "was a

humane and decent presence" wherever he was observed.

In addition, Dr. Freedman was highly impressed with the fact that Justice Rehnquist recognized the importance of "cultivating a private self dedicated to the development of his powers of creativity, of humane understanding, and of cultural appreciation."

I agree with Dr. Freedman that these qualities will lead Justice Rehnquist to bring distinction to the office of Chief Justice, and will assist him in preserving and protecting the ideals and principles our forefathers embodied within the Constitution. I pray that God will be with him as he carries out this extraordinarily difficult task which I hope he is able to perform as Chief Justice of the United States.

NOMINATION OF WILLIAM REHNQUIST TO BE CHIEF JUSTICE

Mr. MATHIAS. Mr. President, on August 14, I voted with the majority of the Judiciary Committee to report favorably to the Senate the nomination of William Rehnquist to be Chief Justice of the United States. Today, with the benefit of a more complete record than that available to the Judiciary Committee on August 14, and with the benefit of further reflection on the issues presented by this nomination, I have decided that when the Senate votes on whether to confirm this nomination, I will vote "no."

Since the committee voted, several memorandums written by the nominee when he was Assistant Attorney General for the Office of Legal Counsel have been made public. These memorandums help to underscore the point that Justice Rehnquist's views are at the periphery of the current Court. In the case of the memorandum on the equal rights amendment, they provide a glimpse of his views—at least, the views he held 16 years ago—on an issue as to which he had not expressed a view in his capacity as Associate Justice. But while the publication of these memorandums have not made it any easier for me to support this nomination, they also do not, by themselves, provide any basis for withdrawing that support.

My decision is based primarily on my concerns about Justice Rehnquist's decision not to recuse himself from consideration of the case of Laird versus Tatum when it was before the Supreme Court in 1972, and about the way in which Justice Rehnquist has explained that decision. This issue has troubled me throughout the Senate's consideration of the nomination. After the hearing ended, I submitted further questions to Justice Rehnquist on this issue. His answers failed to put my doubt to rest. I ask unanimous consent that my written questions to Justice Rehnquist on this issue, and his responses to me, be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MATHIAS. The facts about Mr. Rehnquist's statements before a Senate subcommittee on the facts and the legal issue presented by Laird versus Tatum have long been a matter of public record. The new ingredient is the question of his participation in fashioning the very policy attacked in that litigation: The role of military intelligence operatives in conducting surveillance of organizations of American civilians.

Justice Rehnquist's answer to my question to him on this subject is that he had no recollection of any participation in formulating policy on this issue. It is plausible that, after 17 eventful years, Justice Rehnquist's present recollection on this subject is faint. But what is at issue here is his recollection when Laird versus Tatum was argued in 1972, just 3 years after the Office of Legal Policy, which Mr. Rehnquist headed, struggled with its counterpart in the Department of the Army over just this question.

I also asked Justice Rehnquist what consideration he gave to his participation in policymaking when he decided not to recuse himself from Laird versus Tatum. He answered that his memorandum opinion addressed "all considerations that in my judgment bore on the issue of recusal." Since the opinion is silent on this question, I can only assume that Justice Rehnquist concluded that his involvement in fashioning military surveillance policy, whether intimate or consequential, was irrelevant to whether or not he should sit on the case. This conclusion is hard to accept.

I explored this gnawing question with Prof. Geoffrey Hazard of Yale Law School, the principal draftsman of the 1972 ABA Code of Judicial Ethics, and a nationally recognized expert on judicial ethics. I ask unanimous consent that Professor Hazard's letter to me dated September 8, 1986, be printed in the RECORD at the conclusion of my remarks. Professor Hazard concludes that it was "implausible" that Assistant Attorney General Rehnquist was not involved in formulating the surveillance policy. In reaching that conclusion, Professor Hazard draws inferences that I believe are reasonable. Mr. Rehnquist had just received an appointment that would mark a very respectable culmination to one's professional career. One of the most significant responsibilities entrusted to his small office was that of negotiating with the Army on behalf of the Justice Department. The issue, of course, was of great significance. These factors suggest that this was not an assignment that one would entirely delegate, nor that one would soon forget. Given his familiarity with the case, he should not have addressed it when it came before the Court.

Professor Hazard also noted that Justice Rehnquist should have been sensitive to the fact that he was a potential witness in the discovery phase of the case. Instead, Justice Rehnquist's vote broke a deadlock, resulting in dismissal of the case, and thus ensuring that there would be no opportunity for discovery.

Finally, Professor Hazard discussed the 1972 memorandum opinion in which Justice Rehnquist explained his decision to participate in the case. He pointed out that the memorandum opinion addressed only the facts of public record. It makes no reference to his role in developing military surveillance policy, a role that had not yet been made public.

Professor Hazard's conclusion on this point is strong, and bears quotation:

> Justice Rehnquist's addressing the publicly known grounds of recusal, but omitting reference to the confidential ones, would have been proper only if he had forgotten that this office in the Justice Department had handled the surveillance policy negotiations and that he himself was involved to a substantial extent. If when writing his opinion in Laird versus Tatum, Justice Rehnquist had not forgotten his involvement in the surveillance policy ngotiations, then his opinion constituted a misrepresentation to the parties and to his colleagues on the Supreme Court. In such a matter, a lawyer or judge is expected to give the whole truth.

The accusation that Justice Rehnquist was less than candid with the Supreme Court of the United States—the institution he has been nominated to head—is a serious one, and I am not prepared to make it. But I am sufficiently troubled by the real possibility that he acted improperly in failing to recuse himself from the case of Laird versus Tatum that I can no longer cast my vote in favor of his confirmation as Chief Justice.

EXHIBIT 1

JUSTICE REHNQUIST'S ANSWERS TO QUESTIONS SUBMITTED BY SENATOR MATHIAS

Question:

1. Document I(1) transmits a draft memo from the Secretary of Defense and Attorney General to the President on a plan for response to civil disturbances.

A. What was your personal role in the preparation of this document?

B. With particular regard to the portion of the document concerning civil disturbance planning and intelligence operations prior to outbreak, what was your personal role in its preparation?

C. What was your role in arriving at the recommendation contained in the document that (i) the FBI will be charged with the task of collecting raw intelligence data bearing upon the probability of a serious civil disturbance; (ii) at the request of the Attorney General, the Department of the Army, through the U.S. Army Intelligence Command, may assist in this effort; and (iii) the U.S. Army Intelligence Command should

not ordinarily be used to collect intelligence of this sort?

D. In 1974, Mr. Robert Jordan, General Counsel of the Army during early 1969, testified before the Senate Judiciary Committee that the Department of Defense wanted to "disengage military intelligence organizations from the collection of information dealing with civil disturbance matters," and that the language (referred to above) authorizing a domestic role for military intelligence first appeared in the March 25 draft prepared by your office and transmitted over your signature. Does this accord with your recollection? If not, how does your recollection about the drafting of this portion of the document differ?

E. At the time that you considered the motion to recuse yourself from hearing *Laird* v. *Tatum*, what consideration, if any, did you give to your participation in the preparation of Document I(1), and in discussions leading up to it, or in development of policy on domestic use of military intelligence, in considering whether or not you should recuse yourself? Since no reference to this participation appeared in your memorandum, did you conclude that it was irrelevant, or did you omit reference to it for some other reason?

F. While you were in the Justice Department, what was your knowledge of, and your participation in the formulation of policy on, use of the miltary to conduct surveillance of or collect intelligence concerning domestic civilian activities?

Answer:

A. I have no recollection of my personal role in the preparation of this document. From the text of the transmittal memo I assume that the plan was primarily drafted by staff members in my office and in the Office of the General Counsel of the Army, and was reviewed by me.

B. Answer same as to A.

C. Answer same as to A.

D. I have no recollection of how the language referred to in question C first appeared in the draft.

E. *Laird* v. *Tatum* is a case in which I wrote a memorandum opinion, explaining my reasons for declining to recuse myself. The memorandum opinion describes my reasoning at that time regarding all considerations that in my judgment bore on the issue of recusal.

F. I have no recollection of any participation in the formulation of policy on use of the military to conduct surveillance or collect intelligence concerning domestic civilian activities. I do not think I had any firsthand knowledge as to the use of the military to conduct such surveillance or collect intelligence, though I may have been briefed with such information as was necessary to enable me to testify before congressional committees or to publicly discuss legal questions.

YALE LAW SCHOOL,
New Haven, CT, September 8, 1986.

Senator CHARLES MATHIAS,
U.S. Senate, Senate Russell Office Building, Washington, DC

DEAR SENATOR MATHIAS: You have asked my opinion about the propriety of the conduct of Justice William Rehnquist in regard to *Laird v. Tatum.*

The essential facts as I have been given them are as follows: *Laird v. Tatum* was a suit to enjoin a certain Government information gathering and surveillance program that was adopted in 1969. The case was brought to the Supreme Court by the Government's appeal from a decision of the Court of Appeals, which had held that the lawsuit was maintainable. The effect of the Court of Appeals' decision was that the plaintiffs could have proceeded to the discovery stage and perhaps then on to the merits. The Supreme Court reversed, holding that the plaintiffs' lacked standing and hence that the suit should be dismissed without going into the merits. Justice Rehnquist participated in that decision and, since the decision was 5-4, cast a vote necessary to the result.

When *Laird v. Tatum* came before the Supreme Court, a motion to recuse Justice Rehnquist was filed by the plaintiffs. They argued that Justice Rehnquist was disqualified by reason of his prior relationship to the case, in that he had expressed opinions on issues in the case and that he had presented the Justice Department's position before a Senate Committee hearing. Responding to the motion, Justice Rehnquist rejected these contentions as insufficient to require his disqualification. In doing so he relied extensively on the analysis in Frank, *Disqualification of Judges: In Support of the Bayh Bill,* 35 Law & Contemp. Prob. 43 (1970), which in my opinion correctly summarized the law of disqualification as it then stood.

In recent testimony before the Senate concerning his participation in the transaction out of which *Laird v. Tatum* arose, Justice Rehnquist stated, "I have no recollection of any participation in the formulation of policy on use of the military to conduct surveillance or collect intelligence concerning domestic civilian activities." From other evidence, chiefly the testimony of Mr. Robert Jordan, General Counsel of the Army at the time that the surveillance policy was formulated, it appears that Mr. Rehnquist, as he then was, had a relationship to the surveillance program beyond that disclosed in his opinion in *Laird v. Tatum* or revealed in his testimony before the Senate last month. According to this evidence, the surveillance policy was formulated in the early months of 1969. At that time Mr. Rehnquist was Assistant Attorney General in charge of the Office of Legal Counsel. On behalf of the Justice Department that Office negotiated with the Army in formulating the surveillance policy. The negotiations were extensive. The circumstances strongly suggest that Mr. Rehnquist was personally and substantially involved in them. These circumstances are that the subject was highly important, the Office is small in size, and Mr. Rehnquist himself sent a key transmittal memorandum. The negotiations resulted in a policy statement that was then adopted by President Nixon, and which in turn was the basis of the Government action complained of the litigation in *Laird v. Tatum.*

First, in my opinion Justice Rehnquist's position as head of the Office of Legal Counsel constituted grounds of disqualification from participating in *Laird v. Tatum.* unless the significance of that relationship were overcome by additional evidence showing that he in fact was not involved in the matter while it was in the office. In a matter of such substance and complexity as the surveillance policy, it is implausible that the head of the government law office responsible for development of its legal aspects would not be personally involved in considerable detail concerning the facts and issues going into the policy and its formulation. On that basis, Mr. Rehnquist was the responsible counsel in the matter in question, and as well a potential witness concerning any factual issues regarding the policy. Each of these two relationships is independently a ground for disqualification.

A lawyer directly involved in a transaction cannot properly later sit as a judge in a case in which that transaction is in dispute. As stated in the article by Mr. Frank which Justice Rehnquist cited: "Justices disqualify in government cases when they have been directly involved in some fashion in the particular matter, and not otherwise."

Mr. Rehnquist's relationship to the transaction was essentially the same as if he had been involved as legal counsel for the Internal Revenue Service in working up a tax investigating program and then sat as judge in a case challenging the program, or while in the Justice Department passed upon corporate merger or electoral districting policy and then sat in a case involving the policy

In his opinion in *Laird* v. *Tatum*, Justice Rehnquist stated that "I never participated, either of record or in any advisory capacity . . . in the government's conduct of the case of *Laird* v. *Tatum.*" But that statement is irrelevant if he was counsel in the transaction out of which the case arose, a basis of disqualification that was well recognized then as now.

Justice Rehnquist appears also disqualified because he was a potential witness, at least at the discovery stage in *Laird* v. *Tatum.* In his testimony before the Senate, he denied having knowledge of "evidentiary facts." The standard relevant to the question is not "evidentiary facts" but facts relating to the "subject matter" of the litigation.

Second, when the case of *Laird* v. *Tatum* was before the Supreme Court it was Justice Rehnquist's responsibility on his own initiative to address and resolve all issues concerning his disqualification. It was not the parties' responsibility to raise such matters, although they had a right to do so if they had access to the necessary facts. In his opinion in *Laird* v. *Tatus*, Justice Rehnquist referred, first, to the fact that he had not been counsel in the "case," i.e., the litigation that ensured after his involvement in the transaction, and, second, to his statements in public and as spokesman for the Justice Department before the Senate. Thus, Justice Rehnquist addressed only his publicly known involvements and omitted any reference to an involvement, as counsel in the transaction, that was at least as significant but which was not publicly known. It was his duty to resolve both the publicly known possible bases of disqualification and those arising from an involvement that was confidential. Inded, it is even more vital to fairnes in adjudication that a judge resolve grounds of recusal which arise from confidential facts, for the parties ordinarily are helpless to raise such grounds.

Justice Rehnquist's addressing the publicly known grounds of recusal, but omitting reference to the confidential ones, would have been proper only if he had forgotten that his office in the Justice Department had handled the surveillance policy negotiations and that he himself was involved to a substantial extent. If when writing his opinion in *Laird* v. *Tatum*, Justice Rehnquist had not forgotten his involvement in the surveillance policy negotiations, then his opinion constituted a misrepresentation to the parties and to his colleagues on the Supreme Court. In such a matter, a lawyer or judge is expected to give the whole truth.

Finally, Justice Rehnquist had a duty of candor to the Senate in answering questions

concerning *Laird* v. *Tatum*. The Senate hearing was an evidentiary inquiry into his qualifications for the office of Chief Justice. In making statements before such a tribunal, whether sworn or not, a lawyer or judge has an obligation to be fully truthful. Justice Rehnquist complied with duty only if his statement is accepted that he had "no recollection of any participation in the formulation of policy on the use of the military to conduct surveillance." Whether that statement should be accepted is a matter of judgment. It was made by a lawyer of the highest intelligence concerning sensitive state policy over which his office had direct responsibility early in his service in government, and about which he had been asked to search his recollection on three official occasions.

Sincerely,

GEOFFREY C. HAZARD, Jr.

□ 1250

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1300

Mr. KASTEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. DANFORTH). Without objection, it is so ordered.

PRODUCT LIABILITY REFORM ACT

Mr. KASTEN. Mr. President, I move to proceed to S. 2760, the Product Liability Reform Act.

The PRESIDING OFFICER. The question is on agreeing on the motion to proceed.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Mr. President, I am recognized for the purpose of debate?

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KASTEN. I thank the Chair.

Mr. President, since our Consumer Subcommittee began hearings on this issue 5½ years ago, the product liability crisis has intensified, and the consensus for Federal action on this issue is now overwhelming.

Just a few weeks ago, the delegates to the White House Conference on Small Business ranked the liability crisis as the No. 1 problem for small business today. The delegates, in an unprecedented action, passed a resolution calling on Congress to pass the specific legislation under consideration here today.

Only 2 weeks ago, the National Governors' Association overturned a long-standing policy against Federal preemption of product liability laws and voted to support a Federal resolution to the product liability crisis.

Mr. President, our product liability system has been in need of reform for many, many years.

When I introduced the first Federal product liability bill in the Senate in 1981, the American people were largely unaware of how severe the product liability crisis had become.

Today, however, because of the overall liability crisis, the lives of everyone in our society have been adversely affected by our tort system. All over the country, the liability crisis is changing the way we live, and the product liability crisis is the No. 1 problem for consumers in America.

Small businesses across the country are shutting down because they cannot get liability insurance coverage, and manufacturers of everything from football helmets to child-safety seats are halting production because of high liability insurance costs.

Society pays a high price for this situation.

A few years ago there were four U.S. companies manufacturing a measles vaccine. Today, because of the high cost of liability insurance, there is only one.

A Milwaukee company has designed a new safety braking device for lawnmowers, but they cannot afford to market it. If they did, their product liability insurance will go from $18,000 to $200,000 a year. That is their product liability insurance by making a decision to market a new product which would be a safety product for lawnmowers.

Researchers at Stanford University have pioneered the development of a miraculous new artificial skin, which can save the lives of thousands of burn victims in our country each year. Yet they cannot get insurance for their life-saving innovation—no conventional insurance company will touch them because of the product liability risks.

Under the current, crazy system, the liability crisis threatens to deprive us of vaccines, anesthesiology equipment, and hundreds of other products that are, on balance, very good for society as a whole.

Unless changes are made, these products will no longer be available, or they will be available only at a much higher cost, or they will be made only by foreign manufacturers and thousands of American businesses and jobs will be lost. A recent survey in my home State of Wisconsin revealed that a full 10 percent of small businesses in our State must close their doors if something is not done about the current liability crisis. This 10 percent of business was either unable to get insurance at all or unable to get insurance at affordable rates.

That is why I say that the product liability crisis is the No. 1 consumer issue of our times.

We have had 4½ years of hearings and I think if one point comes out in hearing after hearing, testimony after testimony, there is widespread agreement that the current system of product liability tort law is a national disgrace. The exorbitant costs of this system, where more money goes to the attorneys than to injured victims, are passed along to the consumer in the form of higher prices for American goods. We have reached the point where over one-third of the cost of an ordinary stepladder goes solely for liability insurance. The American people are fed up with this hidden attorney's fee tax on every product they buy.

In addition to driving up product prices for consumers, the product liability explosion is closing businesses, destroying jobs, crippling American manufacturers' ability to compete with foreigners, discouraging product innovation and improvement, and driving a wide variety of good and beneficial products—from life saving vaccines to football helmets—off the market.

The product liability explosion threatens everyone in America who uses, sells, or manufacturers products.

Most of S. 2760 is the product of an overwhelming, bipartisan consensus on the product liability issue. A core proposal, encompassing most of the key aspects of S. 2760, passed by a 16-to-1 vote in the Commerce Committee. Only one member of our committee still believes that a Federal solution to the product liability explosion is inappropriate.

We achieved this consensus on such complicated issues as the statute of repose, the statute of limitations, a uniform fault standard for product sellers, subrogation lien elimination, penalties for attorneys who bring frivolous suits and cause undue delays, punitive damage clarification, and provisions relating to admissible evidence and to proper situs for claims arising in foreign countries.

All of these provisions will provide uniformity, clarity, and certainty in the law which will reduce transaction costs and provide a fairer system for product users, sellers, and manufacturers.

I believe that S. 2760 is a good, sound bill which will go a long way toward alleviating the liability crisis. However, I believe a return to the concept of fault in our tort law is absolutely essential to restore fairness and predictability in the law.

□ 1310

Recent cases have held manufacturers liable when they were totally innocent. Several courts have held manufacturers liable for failing to warn about dangers which were unknowable at the time. One court held a manufacturer liable where there was no injury to the plaintiff—only a fear of future injury. Other courts have held manufacturers liable for injuries to the plaintiff where the plaintiff has

unreasonably altered and misused the manufacturer's product.

Such decisions punish the innocent indiscriminately with the guilty, and thus make the system useless for discouraging manufacturers from making defective products.

Senator LUGAR and I will offer a short and simple amendment to provide two fault-based defenses to protect the truly innocent. Our amendment simply provides that a manufacturer should not be liable for harm caused by defects which the manufacturer could not have known about due to the scientific, technical, and medical knowledge available at the time.

Further, our amendment provides that a manufacturer should not be liable for harm resulting from the unreasonable alteration or misuse of the manufacturer's product.

Mr. President, I strongly urge the passage of S. 2760 along with this fault-defense amendment as well as Senator PRESSLER's amendment to eliminate joint and several liability. Narrow special interests have delayed a solution to this crisis for too long. Congress must act on this urgent priority.

Mr. DANFORTH addressed the Chair.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER (Mr. DENTON). The Senator from Missouri sought recognition first.

Mr. DANFORTH. Mr. President, I know the Senator from South Carolina wishes to speak and I will not take long at all.

Mr. President, I want to congratulate the Senator from Wisconsin for his intrepid pursuit of the question of product liability reform. He has led the charge on this issue for a number of years. This part year the question of product liability reform has been the, as far as the chairman is concerned, the first priority of the Senate Commerce Committee. I do not know of anything we could do to help both consumers and businesses that matches product liability reform.

In the Commerce Committee we have spent days in hearings, days in markups, days in negotiations among members, trying to fashion a meaningful product liabilty reform bill. We have reported out of the Commerce Committee a bill which is certainly controversial, but I believe which is an excellent piece of legislation.

Mr. President, the present system in the United States for resolving product liability disputes and compensating those injured by defective products is costly, slow, inequitable, and unpredictable. It is a system that hurts businesses and consumers as well as our competitive position in world markets. Moreover, the unpredictability and inefficiency of the system have been linked to the increasing cost and unavailability of liability insurance. Because of the serious burden on interstate commerce created by these product liability problems, Federal legislation is needed.

Today, consumers are caught up with manufacturers and product sellers in a product liability litigation system that has been characterized as a legal lottery, a system in which identical cases can produce startlingly different results. It is a system in which those injured by defective products are often unable to recover the damages they deserve or must wait years for recovery. Moreover, injured victims with the severest injuries tend to receive far less than their actual economic losses, while those with minor injuries are overcompensated.

This system is as costly as it is unpredictable and inefficient. According to the Rand Institute for Civil Justice, the annual transaction costs of the tort system—the costs of litigation and attorneys fees—are estimated to be between $15 and $19 billion. These costs exceed the compensation received annually by plaintiffs and they are passed on to consumers as an increased burden on commerce.

S. 2760, as reported, addresses these problems by making a number of significant reforms that are applicable in all product liability actions in State and Federal courts. This bill has evolved over the past few years out of efforts begun by Senator KASTEN, Senator GORTON, Senator DODD, and others. It is a bill that has been shaped by the Commerce Committee during 6 days of executive session.

The development of this bill has been a long and complex process. At the beginning of this Congress, on January 3, 1985, Senator KASTEN introduced S. 100, the Product Liability Act. This bill would have preempted State law to impose uniform Federal rules and standards of liability governing the recovery of damages for injuries caused by defective products. This bill was substantially the same as S. 44, which had been reported by the committee during the 98th Congress, but which was not considered by the full Senate prior to adjournment.

At an executive session on May 16, 1985, S. 100 was defeated by an 8–8 vote. Prior to that markup, Senators DODD and GORTON had introduced amendments in the nature of a substitute to S. 100, each of which would have established alternative expendited claim systems for limited recovery of damages in product liability cases. After S. 100 was defeated, the committee held hearings on both amendments in June 1985. I then instructed the Commerce Committee staff to draft a proposal that combined elements of all these measures, and this proposal was eventually introduced as S. 1999 in December.

S. 1999 would have combined an alternative compensation system with uniform Federal standards, providing faster compensation for injured victims and greater predictability for manufacturers. However, S. 1999 did not receive the level of support that I had hoped for. Manufacturers were concerned about the costs of the compensation system, while consumers feared that the uniform standards would make it more difficult for injured victims to recover. Both groups were concerned that the liability standard for the alternative compensation system was overly complex and would lead to costly litigation. All agreed, however, that the present system is deeply flawed and reform is badly needed. While I still believe that S. 1999 is a sound and fair proposal, I directed the staff to draft a new proposal that would address these concerns.

S. 2760 dispenses with the complex liability standard of S. 1999. Instead, it creates incentives for manufacturers to assume limited liability in product liability cases, and thus to resolve such cases quickly. The idea is to reduce the system's high transaction costs, which presently exceed the compensation that is received by victims. Because of the political opposition that negligence-based liability standards have produced in the past, S. 2760 does not include such standards. This bill will not make it more difficult for victims of defective products to recover for injuries caused by those products.

This is not a perfect bill, but it is a bill that addresses the common interests of manufacturers, product sellers, and those injured by defective products. It does so by reducing transaction costs and providing greater predictability and certainty as to the rights and responsibilities of all those involved in product liability disputes.

This measure's reforms of the product liability system include a new, expedited settlement system that would create incentives for both plaintiffs and defendants to settle product liability disputes quickly in the initial stages of litigation. This settlement system provides greater certainty that those injured by defective products will be made whole for their actual losses without the excessive costs and delays of litigation.

In addition, S. 2760 modifies the doctrine of joint and several liability in product liability cases. It eliminates joint and several liability for so-called noneconomic damages—damages for pain and suffering. This provision was presented to the Commerce Committee as an amendment by Senator PRESSLER. It is consistent with the approach adopted recently by the voters of California in a State referendum.

The basic policy underlying this section is to address inequitable applica-

tion of the doctrine of joint and several liability that makes one defendant pay for the misconduct of another. This provision is a compromise. It takes a balanced approach to the problem by limiting application of joint and several liability to situations where it is defensible on public policy grounds—where a person's economic loss might otherwise be uncompensated. This distinction between economic and noneconomic loss is consistent with the underlying policy of joint and several liability to make the injured party whole. It does not preclude the claimant from being made whole for actual losses, while limiting a defendant's liability for noneconomic losses to that portion for which the defendant is responsible.

With respect to punitive damages, the bill establishes a higher burden of proof and a uniform standard of liability; it requires clear and convincing evidence that the harm suffered was the result of conduct manifesting a conscious, flagrant indifference to the safety of persons who might be harmed by a product. Moreover, this measure contains a Government standards defense that bars the imposition of punitive damage awards in cases involving drugs or aircraft when these products have been subjected to premarket approval by the appropriate Federal agency.

S. 2760 also imposes a uniform liability standard for product sellers who are not manufacturers. Moreover, it provides that any damages awarded in a product liability action shall be reduced by any workers' compensation benefits recoverable by the plaintiff for the same harm, and it significantly reduces transaction costs in such cases by eliminating the employer's subrogation lien. These are important reforms.

This measure establishes, as well, uniform statutes of limitations and repose for product liability actions. It establishes a rule barring recovery in product liability actions by plaintiffs who are legally intoxicated and more than 50 percent responsible for their harm. In addition, it establishes sanctions to be imposed by courts on attorneys who file frivolous lawsuits or delay litigation without good cause.

Other reforms in S. 2760 include a forum non conveniens rule that creates a presumption that when a foreign plaintiff suffers a product-related injury overseas, that claim should be brought overseas. This bill establishes uniform rules as to admissible evidence, and limits the use of evidence of subsequent remedial measures taken by manufacturers after harm has occurred.

This bill also imposes penalties for the destruction or concealment of material relevant to product liability actions. It requires the Secretary of Commerce to provide Congress with an annual report analyzing the impact of this legislation on product liability insurance.

I believe that this is a fair and balanced bill that effectively addresses the product liability problem. It addresses the dissatisfaction of both manufacturers and consumers with the present product liability system.

Manufacturers face rising legal defense costs, and cannot predict the scope of their liability. Excessive management time is diverted from production to assessment of legal claims, and the uncertainties of the system deter the development of new products or product settlements that are linked to net economic loss, thus reducing both uncertainty and transaction costs. The workers' compensation subrogation reform will also reduce transaction costs. Frivolous claims will be discouraged by provisions that impose sanctions on attorneys who bring such claims. The reforms of joint and several liability, forum non conveniens, product seller liability, and punitive damage standards will increase predictability and fairness.

Consumers suffer under the present system as much as manufacturers do. Not only does the present system force injured victims to endure excessive costs and delays; it is unable to compensate them in proportion to their losses. Numerous studies have found that the tort system grossly overpays people with small losses, while underpaying those with the most serious losses. In contrast, the expedited settlement procedures of S. 2760 would ensure that victims are fully compensated for all their losses. Not only would they be compensated for their lost earnings and medical expenses, as these losses are incurred, but they would also receive full rehabilitation costs. These costs would be paid in full by the manufacturer, regardless of whether the claimant's own carelessness was a partial cause of his injuries. And this compensation would be available within a few months after the filing of the complaint, in contrast to the present system in which claims take many years to resolve.

Thus, both manufacturers and consumers will benefit from this legislation.

I recognize, however, that there is at least one element of this measure that has generated a great deal of controversy and that is the expedited settlement system's $250,000 cap on pain and suffering awards that limits a defendant's liability when a valid settlement offer is rejected. I also recognize that if this cap had been removed from the bill the Commerce Committee probably would have approved this measure by a margin greater than the 10–7 vote to report the bill.

I would like to explain in greater detail the rationale for this limitation on pain and suffering awards, which is imposed as an incentive for settlement in the most serious cases—those involving disfigurement, and loss of life, limb, or bodily function. This cap is intended as an incentive for defendants in such cases to offer payment of all of an injured person's actual economic losses that are not reimbursed by other sources, plus $100,000 for pain and suffering. This cap only applies if there is such an offer and it is rejected by the plaintiff. It is not an across-the-board limitation on recovery for pain and suffering in all product liability cases.

S. 2760 also imposes a cap on pain and suffering when an offer to pay actual economic losses is rejected in those cases involving less serious injuries. This cap is the lesser of two times the injured party's economic loss or $50,000. Although such cases make up the overwhelming majority of product liability disputes, this $50,000 cap does not seem to be a major concern. It is the $250,000 limitation on pain and suffering recovery in the most serious cases that has provoked the most controversy. Several members of the Commerce Committee, including Senator INOUYE and Senator STEVENS, have expressed great concern about this cap on pain and suffering in cases involving severely injured persons.

This is an extremely volatile and emotional issue. But it is important to note that the $250,000 cap is not merely a relief measure for manufacturers as some have suggested. The issue here is not the size of pain and suffering awards or how such awards have grown. The issue is how to provide swifter, more certain recovery for the seriously injured person, because the data shows that recovery in the average product liability case is delayed for years and that the tort system grossly overpays people with small losses, while underpaying people with the most serious losses.

How, then, does a $250,000 cap help such people who are grossly undercompensated. It helps them because such a limitation on liability reduces the unpredictability of the litigation system and is a compelling incentive for defendants to offer to pay the injured person's actual losses, as they are incurred, plus an additional $100,000, and to do so in the initial stage of litigation—not 5 years down the road, when the average product liability claim is paid.

During committee consideration of this proposal, Senator INOUYE eloquently described the plight of many of those who have been severely injured and who are burdened by pain and suffering for the rest of their lives. Some of them are able to recover their economic losses and to receive some payment for their pain and suffering. But it is important to remember that many of these seriously in-

jured parties may recover nothing at all because of the uncertainties of litigation. They face a legal system that has been compared to a lottery in which similar cases can produce vastly different results. And they also face years of delay and the costs of protracted litigation. As a consequence, victims with the worst injuies, facing the greatest economic hardships often settle for far less than their full losses to meet pressing financial needs.

The purpose of the $250,000 cap is to give these severely injured persons greater certainty of being paid in full for their out-of-pocket losses along with an additional $100,000. It is not a mean-spirited idea to deprive the injured of just recompense but a tradeoff of predictablility for defendants for certainty of recovery for those who have been injured.

Those injured by defective products seek full, swift, and more certain recovery. Manufacturers and product sellers seek greater certainty as to the scope of their liability. Manufacturers, product sellers, and consumers seek to reduce the excessive transaction costs of product liability disputes. The settlement system in the bill, with its limitations on liability is intended to address these concerns. I believe that one of the most important components of a meaningful product liability bill is such a system for fairly compensating victims without forcing them through the long and costly ordeal or protracted litigation.

Mr. President, I do not believe that the so-called $250,000 cap should block Senate consideration of this important legislation. I remain flexible on this issue and it is time for the Senate to act on this measure and to consider alternatives to the $250,000 limitation on noneconomic loss.

Mr. President, I want to say just one additional word about by far the most controversial aspect of product liability reform, and that is the question of whether there should be a cap on recovery for pain and suffering. It is controversial. It is emotional. People argue that there should be no cap, particularly for serious injuries, no cap on pain and suffering awards.

I want to explain very briefly the reason why the Commerce Committee adopted the concept of caps. The problem today is not that people who are seriously injured recover too little or too much, but rather that so often they do not recover at all. Their cases drag on in court year after year after year. The more severe the injury, the longer the litigation.

The tort system has been correctly called the lottery system. You enter the lottery and you see what happens. The more severe the injury, the longer the lottery seems to go on. Defendants, through their lawyers, delay, and finally a plaintiff, who has really been seriously injured and who has severe financial difficulties going along with the injury, is forced to settle rather than keep the thing going on forever.

The evidence is that in this country we are now paying more to lawyers and for court costs than is going to plaintiffs in product liability cases. The system today is terrible. It is a disgrace to the country.

The reason for the caps is very simple. What we attempted to fashion in the Commerce Committee is an incentive system so that both plaintiffs and defendants would believe that it was in their interests to settle out of court, short of full-fledged litigation.

So we developed a system which attempted to provide meaningful economic incentives for settlement. In the case of a plaintiff who is willing to settle and the defendant rejects the settlement effort and the plaintiff prevails, we would have the defendant pay the attorneys' fees of the plaintiff. But in the case of the defendant, where the plaintiff often is financially unable to pay the attorneys' fees even if he wanted to do so, we could not come up with a better incentive for settlement than to say, in effect, to the defendant: If you want to cap your exposure, make an offer of settlement for net economic losses, the real out-of-pocket economic losses, plus, in serious cases, a limited but set ascertainable amount for pain and suffering.

That was the concept of the cap. The concept of the cap was not that we wanted to be mean-spirited toward plaintiffs. The concept of the cap was that there has to be some incentive program to make it worth the while of the defendant to pay and pay quickly without dragging the case on year after year after year.

Mr. President, repeatedly in the Commerce Committee I made a statement which I will make again right now. I put a lot of time in on this bill, as has Senator KASTEN. But this bill is not written in concrete. The idea of a cap is not, as far as this Senator is concerned, written in concrete. It is not set for all times. No one could be more flexible than I am about the final design of this bill.

I will only say this: unless there is a meaningful incentive, an economic incentive, to settle the case short of full-fledged litigation, there is no meaningful product liability reform, in my opinion. I cannot think, and have not been able to think, myself, of a meaningful incentive for settlement that did not include a cap. I do not think the issue is whether plaintiffs are getting too little under a system with caps on pain and suffering. I think the question is whether they are going to get anything at all, especially in serious cases.

I repeat: A situation which gives lawyers and courts more than it gives plaintiffs, which is the present system, is a disgrace to our country. It does not serve the purpose of the consumers. In fact, it increases the costs of the products they buy. It does not serve the purpose of American business, which is attempting to be competitive in international markets, to drive up their costs by an absolutely unpredictable court system which we have now.

This country cries out for tort reform. If people do not like the specifics of the bill before us, offer amendments. We will work them out. We will do our best to work with people who have problems with this bill.

But after a year of effort in the Commerce Committee, let us not let the moment pass. So often in the Congress we seem to be spinning our wheels, going on and on and on, fine tuning legislation that seems to be going nowhere. Here is our opportunity to respond to the needs of the people of our country.

When the White House conference on small business met, it said this is the No. 1 issue, as far as small business is concerned in the United States. Let us heed that cry for help. We can do it now.

Again, I congratulate the Senator from Wisconsin for his leadership.

□ 1320

Mr. HOLLINGS. Mr. President, I was on the floor, while the distinguished Senator from Wisconsin was presiding, and while we were awaiting the attendance of the distinguished Senator from Missouri. But be that as it may.

Let me say this: It is a disgrace for the U.S. Senate to give dignity and prestige to this fraudulent and deceitful assault upon our tort system, upon our system of federalism in this country, so that politically, we can say we have done something. The truth is, over a 4½-year period, we have found no basis in fact for this particular bill on the floor today.

Here is an administration that started off on federalism, we were going to send back government to the cities and the counties and we were going to send it back to the States. These entities are closest to the people, and better able to handle these particular problems. It is ironic that the administration that was going to start the trend for federalism now is going to take over an area of common and statutory law, which has been the responsibility of the 50 States for some 200 years. Over the years, the courts have generally acted in a wise and a deliberate, temperate and responsive fashion.

I happen to believe the jury system is working. I happen to believe the States have been facing up to their responsibilities on this. I do not believe the fallacy of a so-called lawsuit crisis. But politically, I understand that pro-

ponents try to keep this legislation in front and center as if they are doing something for the businesses and the consumers of America. The truth of the matter is, if they ever federalized the tort law, businesses would soon be penalized.

American business might have a more conservative U.S. Senate here today. I have been here during the majority of my years with a far more liberal body. Federalize, if you will, product liability. Ultimately, however, you may then see a system where if somebody stumbles coming down these raised sections of the Senate floor and falls on the ground, this person will walk over to the window and get his money.

I have been on both plaintiffs' and defendants' side of this particular question as a practitioner and this experience prompts me to say, "forgive them, for they know not what they do." More and more business leaders have come around to understanding that there is no lawsuit crisis. For example, there is no large increase in numbers of suits or verdicts in my State. I have put that in the RECORD. That is before the Commerce Committee. There are no runaway juries. And in a very dramatic sense, we have seen over the years the good of product liability law as it provides an incentive for manufacturers to make a safer product.

We do need this additional incentive for safety because businesses do sometimes make decisions to the detriment of product safety for the wrong reasons. Unfortunately, Mr. President, this was demonstrated on national TV in the *Challenger* disaster. There was an O-ring defect, a product liability defect. They knew about it and studied it for a year ahead of time. They had meetings over this product defect; but when they got down to the wire, what did business say? Business said, this is not a decision for engineers; this is not a decision for technicians; this is not a decision for safety. This is a management or business decision. And as a result, we have seven deceased astronauts, right on your national TV.

If safety is not a predominant issue there, what priority will be given to safety in the manufacturing of products in America when businesses separate between engineering and safety and looking out for the consuming public on the one hand and making a profit, making it a business decision, on the other hand? You see how callous they may be.

The tort system has worked in this country. We can give example after example where the trial courts of America have eliminated punitive damages or otherwise cut the actual verdict or required a new trial where original verdicts were too high. That has been a part of the common and statutory law for 200 years.

Now comes this administration and this Government in Washington that cannot promulgate an arms control policy; they cannot provide for the national defense; they have a one-vote margin to try to get through a strategic defense initiative; they do not know what their policy is on apartheid in South Africa and fundamental moral questions, they cannot make arrests without having to give hostages. Here is a government that cannot regulate foreign commerce. The trade deficit goes up, up and away. Article I, section 8 of the Constitution says regulate foreign commerce. This administration cannot regulate it.

Here is a government that is an addict on the drug of deficit spending. This is a crowd that cannot pay their bills. They cannot perform their responsibilities. The Government is going broke. The President talks in the morning paper of drawing a line in the concrete, saying the Government will close down, while we cannot fundamentally respond to our constitutional charges.

We pretend to know what is going on in the States. For one thing, it is almost like Carter's malaise. He went up to the mountain when he had difficulty administering the Government and acting as President, and he found that the country was at fault, there was a lot of malaise.

Now, when we are facing another election in 60 days, and how do we react? We find that the people of the country are on drugs. Not us. Oh, no. But the people need education, they need treatment centers, they need death sentences, they need the Army and the Navy, they need surveillance, they need everything. But not us. We are the biggest drug addicts I have ever seen, because we cannot pay our bills on that old drug of deficit spending. Now we are about to come here, after 4½ years, knowing that they have not proved the case, and they come around here with a monkeyshine bill.

They come here based on a bunch of fallacies: We are going to take over the State responsibilities over the objection of the Association of State Supreme Court Justices; over the objections of the Association of State Attorneys General; over the objections of the National Conference of State Legislatures; over the objections of the American Bar Association, and bring to the floor a bill that the lawyers on the Judiciary Committee have yet to report on. It is a bum's rush for profits and money and will not result in reduced insurance premiums.

I am going to stand in the well and make sure that it does not happen. We can stand here until November 4. I take it we will take a day off to try to maintain our jobs, but I am willing to stand here beyond that to make absolutely certain that this fraud and deceit does not carry forward.

I will go into the various fallacies of the insurance crisis and the litigation explosion very briefly, Mr. President, in that I understand that under the rule, we are going to have to return to the Rehnquist nomination. I have yet to really get into any part of this.

The property casualty insurance industry in the past 2 years has suffered significant underwriting losses. That is what the administration's tort policy working group says.

□ 1330

That is what the administration's top policy working group said, and that is what the distinguished Senator from Wisconsin contends in submitting this measure.

The truth of the matter is different. If you look at the report of the U.S. General Accounting Office, it concluded that during the past 15 years the property casualty insurance industry "had a net gain of $75 billion and was expected to experience a net gain before taxes of more than $90 billion over the years 1986 to 1990."

The PRESIDING OFFICER. If the Senator will yield——

Mr. HOLLINGS. I will make one sentence and thank the distinguished Presiding Officer.

The only crisis the insurance industry is really suffering is a credibility crisis.

The Product Liability Reform Act is unwise Federal legislation. It would preempt 200 years of common law development in the State courts and legislatures without sound statistical data or evidence to support a crisis in product liability. I urge my colleagues to reject it.

The bill includes a number of sweeping, ill-advised procedural and substantive changes in the law of product liability. For example, title II of the bill establishes new settlement procedures with a cap on noneconomic damages. A manufacturer of a defective product effectively can impose the cap at will upon a seriously injured consumer or worker.

Not only is the workability of this settlement system questionable, but the arbitrary cap, like other provisions of the bill, would not solve any problem existing in the tort system. One insurance executive recently addressed this point:

> Worse, from an insurer's standpoint, they [caps] perpetuate current uncertainties about the value of the small claims that make up the overwhelming majority of tort liability payments, and thus would do little to improve the predictability of the system as a whole while inflicting substantial injustice on those seriously injured by another's negligence.

In addition, the bill is riddled with ambiguity and conflicts for court prac-

tice and procedure. It would supersede all existing State case law and statutory law in the areas it covers while denying Federal question jurisdiction. It is important that my colleagues in the Senate be aware that this bill represents a major departure from our federal system of government. Yet we are considering this unprecedented measure without credible evidence that it is truly necessary. To the contrary, the development and practice of common law in the States during the last 200 years has worked well to balance the interests of consumers and workers with those of product manufacturers, sellers, and distributors.

In 1984, when the Senate Commerce Committee voted to report S. 44, a predecessor to this bill, I wrote similar concerns about the lack of demonstrable need for this type of sweeping Federal legislation:

> Why is this bill necessary? That is the one basic question for which proponents of S. 44 have continually failed to provide concrete answers. When the manufacturers began their hue and cry for reform in the mid-70's, the reason was rapidly rising product liability insurance rates. When it became evident that the perceived insurance "crisis" was disappearing, they created a new reason for codification—namely, that the lack of uniformity results in higher transaction costs. . . . Yet they have not provided significant evidence to support this contention, nor have they demonstrated that S. 44, as written, would remedy the alleged problem.

I continue to question the need for Federal product liability legislation, especially since the proponents have now returned to their original justification for the bill—rising insurance premiums. Product liability insurance premiums have swung from a high in the mid-1970's to a low in the early 1980's to another high recently. During Commerce Committee hearings on S. 44 in 1983, witnesses testified that insurance premiums had leveled off or plunged during the previous 3 years. Trade publications reinforced this point. Today, the liability insurance crisis is again widespread and cuts across many lines. This year, product manufacturers have faced huge premium increases for liability insurance. Some have seen their coverage canceled or have faced reduced coverage with increased deductibles. Others cannot obtain liability coverage at any price.

These fluctuations in the insurance market have occurred despite the fact that the evolution of tort law in the 50 States has been a slow and deliberate one. No dramatic changes have occurred in the vast majority of the States common law or case law over the last few years. I find it curious that proponents of Federal codification suggest a link between insurance premium prices and tort law only when premiums are rising. I have never heard the tort system credited for the drop in premiums in the early 1980's.

There is little disagreement that the practice of "cash flow underwriting" and the management practices of the insurance companies have contributed to the cyclical nature of the insurance marketplace, with the high and low ends of the cycles occurring like clockwork, every few years. The most recent crisis occurred when interest rates dropped, thereby slowing the rise in investment income.

Various commentators confirm that the crisis is of the insurance industry's own making. For example, the editors of Business Week stated that "mainly the industry shot itself in the foot." A study by the National Association of Attorneys General Ad Hoc Committee on Insurance recently concluded that "the cyclical nature of the industry, and not changes in tort claims, is largely responsible for the current crisis." Similarly, industry executives have recently remarked: "Insurance industry leaders must stand up and squarely accept the responsibility for a crisis that is wholly their fault."

There is vast disagreement over the role of any increasing claims losses and the tort litigation system in the current insurance crisis. Indeed, there is no comprehensive data to support this as a major contributing factor of the crisis. The claims of a tort litigation explosion, which have been made by proponents of Federal codification to justify the need for their bill, have been met with convincing evidence to the contrary. For example, a recent study by the National Center for State Courts concludes that an examination of State court data provides no evidence to support the existence of a national litigation explosion from 1981 through 1984.

Proponents of this legislation have used questionable figures to support the alleged existence of a lawsuit crisis. The administration provided figures in its February 1986, report of the Tort Policy Working Group to attempt to substantiate its conclusion of an explosive growth in damage awards. However, in response to my question at a Commerce Committee hearing, Assistant Attorney General Richard Willard, the chairman of the working group, admitted that these figures were based on newspaper clippings. The use of newspaper clippings rather than comprehensive survey data as a basis for making changes in the 200-year-old tort system does not meet the legislative standards of the U.S. Senate.

Recent evidence such as the State court data and the frailty of the evidence used by proponents serve to convince me all the more that any tort reform should occur at the State level. During the 1986 State legislative sessions, some 40 legislatures have passed provisions requiring either selected changes to the tort system, increased insurer information and regulation, or new mechanisms for securing insurance from sources other than commercial carriers. Seven other States have not taken other legislative actions but have instituted comprehensive studies of the issue.

Senator HOWELL HEFLIN, himself a former State supreme court chief justice, described the traditional important role of the States in the area of the developing tort law:

> Tort Law has been left to the States because, as in other areas of law dealing with the rights and duties of the individual such as contract, domestic, and property law, States are best able to develop and enforce tort liability rules that serve the needs of its businesses and consumers. Individual States can decide how best to prevent injuries or allocate the risks and cost of injuries. These decisions necessarily vary to some degree among States depending upon their history, economy, and demographic composition. Without a demonstration that the current system is responsible for serious economic problems, there is no reason to alter that system.

In an era when our Federal Government is working to restore power to State and local jurisdictions, the mad rush to impose the Federal will on State courts in the area of product liability tort law is indeed ironic.

Not only is there no demonstrated need for this legislation, but it contains unfair and unworkable provisions which would curtail the ability of injured consumers and workers to be awarded adequate compensation from a manufacturer responsible for designing an unreasonably dangerous product. Senators INOUYE, GORE, and GORTON have presented compelling arguments on these points.

This legislation, like the predecessor bills before it, does not provide a workable solution for any problems facing the tort system, nor would it result in reduced product liability insurance premiums. It preempts a system that has been providing redress for those injured by defective products for many, many years. It should be defeated.

ABSENCE OF DEMONSTRABLE NEED

DISAPPEARANCE AND REAPPEARANCE OF THE CRISIS

The original justification for Federal product liability reform was the previus product liability insurance premium crisis in the mid-1970's. At that time, insurers mandated large increases in product liability insurance premiums, and numerous businesses stated that Federal action was essential to resolving the crisis.

The primary allegations concerning the existence and magnitude of this crisis proved vastly exaggerated. In 1976, the Federal Government created a Federal Interagency Task Force on Product Liability—hereinafter the task force—to examine the problem.

The insurance study commissioned by the task force found that, while insurance costs did increase in the mid-1970's, insurance premiums exceeded 1 percent of the total sales for only three industries.

By 1983, evidence indicated that product liability insurance costs had stabilized or decreased, and the insurance crisis had disappeared. A 1983 Institute for Civil Justice study concluded not only that reports of a product liability crisis in the mid-1970's were greatly exaggerated, but that even the perception of a crisis had receded because it had become evident that product liability claims had not been an unreasonable cost to most manufacturers. Recently the liability insurance crisis is again widespread and cuts across many lines of insurance.

The increases in product liability insurance costs were a result of the cyclical nature of the insurance industry and the industry's ratemaking practices. The Congressional Research Service has described the repeating cycles of high and low premiums as an historical alteration between soft and hard insurance markets and has discussed the mangement practices of the companies which contribute to this cycle. In a soft market, rates are adequate, risk selection careful and the industry is generally performing well. New capital is attracted from a number of sources and capacity increases. Price cutting of premiums results when new sources of capacity to generate increased competition for available premium volume. Underwriting standards—the standards for deciding whether to insure a particular manufacturer—for risk selection diminish with increased competition and insurers take on riskier business endeavors. According to the Congressional Research Service, this practice results in rising claims losses.

At the point that competition is severe and that losses are too high, insures withdraw from the market and the capacity shrinks, resulting in a hard market. Availability and affordability problems result as the remaining insurers raise prices and tighten the underwriting standards. Eventually the market stabilizes, a soft market emerges, and the cycle begins again.

Interest rates, which reached historic heights in the late 1970's, aggravated the cycle recently. Companies engaged in a price war in order to obtain a larger volume of premium income for investment. Basically, companies were willing to accept lower premiums for certain insurance lines in order to encourage sales and obtain funds for investment.

On February 19 and March 4, 1986, the Senate Commerce Committee held hearings to conduct a more comprehensive examination of the availability and cost of liability insurance. Testimony was presented at these hearings on the reasons for the recent insurance crisis. Witnesses noted that the insurance crisis had arisen during a period of falling interest rates, prior to which competing insurance companies had been underpricing their product in order to maximize cash flow and enhance investment income. When interest rates began to fall, companies were forced to increase premiums because investment income was no longer compensating for underwriting losses. The recent committee report accompanying S. 2129, the Risk Retention Amendments of 1986, states that "This practice of cash flow underwriting was linked directly to the current crisis."

The industry appears to be coming out of the recent crisis. The General Accounting Office testified on May 26, 1986 before the Senate Commerce Consumer Subcommittee that the underwriting cycle has turned again and "is now moving in a positive direction." The industry is projecting substantial net gains over the next 5 years. The property-casualty industry will enjoy "an expected net gain before taxes of more than $90 billion over the years 1986-1990."

The General Accounting Office also found a profitable industry over the last 10 years, stating that "the property-casualty companies had used a pricing strategy which sacrificed underwriting profit margins in order to generate cash for investment purposes. As a result of the strategy, the property-casualty industry has made between $52 and $79 billion in net gains over the last 10 years."

The irony of the continuing debate over a Federal product liability bill is that insurance costs were emphasized by the proponents as the reason for passage of a Federal product liability bill in the 96th and 97th Congresses when premiums were high, and were deemphasized as a reason for passage of product liability legislation during the 98th Congress when insurance premiums were reduced. In the 99th Congress, the proponents again point to the high premiums as a justification for a Federal bill.

The bills considered in these Congresses have attempted to undercut the rights of injured product users. It seems to me that we have unfair legislation chasing after a justification.

CURRENT SYSTEM NOT RESPONSIBLE FOR EXCESSIVE COSTS

Despite the cyclical nature of the insurance market, the argument continues to be made that uncertainty in the tort system produces excessive costs. The contention is that the inability of manufacturers to predict potential liability, expanded tort doctrines, the excessive generosity of jurors in product liability cases, and increased litigation and transaction fees impose unnecessarily high costs upon manufacturers.

The argument does not withstand scrutiny. The Institute for Civil Justice of the Rand Corp., concluded in 1983 that product liability costs in most cases were not excessive:

> It appears safe to conclude that for most large manufacturing firms, product liability costs—including the cost of defending litigations and certain product liability prevention activities—probably amount to much less than 1 percent of total sales revenue.

Equally important, there is no evidence demonstrating that the displacement of State product liability law by the bill reported by the committee would reduce product liability costs.

PRODUCT LIABILITY CLAIMS AND AWARDS

The legal study commissioned by the task force in 1976 concluded that "the volume and size of damage awards in all probability cannot be considered the direct cause of the alleged insurance problems." Although there are no comprehensive studies, available information since then reinforces the legal study's conclusion. For example, an insurance services office study published in 1977 rejected the assertion that product liability claims had increased dramatically. The study concluded that the amount paid in closed claims commonly had been overstated by seven to eight times and that the average amount paid per claim for bodily injuries was $3,592.

A Carnegie-Mellon investigation of State and Federal product liability cases filed in Pennsylvania from 1963 to 1978 found no significant increases in either the number of legal actions or the amount of awards to claimants. Statistics compiled for claim experience in Kansas in 1981 showed that the product liability closed claims averaged only $5,110.

According to a June 1983 report by the Missouri Division of Insurance, the number of claims had dropped substantially from 1979 to 1981. As of early 1983, underwriters had filed for an average of 14-percent rate decreases in the State. More recently, the director of the Rand Corp.'s Institute for Civil Justice noted that, in the jurisdictions studied, the number of tort lawsuits filed per capita since 1959 has remained constant and the median jury verdict has remained the same after adjustments for inflation.

The only study on the issue of post-jury verdict reduction revealed that half of the final punitive damage payments made to plaintiffs were approximately 45 percent of the original jury award. This reduction takes into account postverdict settlements, remittitur—reduction of the original jury award at the judge's suggestion—and reductions on appeal.

Using data which did not take into account any reduction in the original verdicts, the institute found different trends with respect to product liability awards in two metropolitan areas.

From 1965 through 1979, median awards doubled in Cook County, IL, from $59,000 to $120,000, whereas in San Francisco, CA, there was little upward movement over the same 14-year period, with the median award going from $51,000 to $57,000.

The median amount represents the dollar amount at the 50th percentile when awards are listed from lowest to highest in ascending order. The median is more appropriate than the average award since the average is misleading. A small number of very high awards strongly influences the average award figure and makes it less useful for comparison purposes. For example, in 1978, a jury awarded more than $127 million to a man who was seriously burned when a gasoline tank exploded in an accident involving a Ford Pinto. As a result of that one verdict, the average product-liability award in 1978, according to Jury Verdict Research, hit $1.7 million—up an astounding 285 percent over the previous year's average. But the trial judge later reduced the Pinto award to $6.7 million. Had the statistics accurately reflected that, they would have shown the average award in 1978 to be just 19.5 percent over the previous year, not 285 percent.

The average product liability award figure of over a million dollars, the current statistic often cited by industry leaders and the administration, is based on figures supplied by Jury Verdict Research. The administration has admitted that these statistics are not scientific and that the company's information was gathered from newspaper clippings. Furthermore, these figures are not median figures and they do not reflect the significant reduction after trial which often occurs. According to a recent press account, "they don't reflect reality very well."

A 1986 study of all civil jury trials over the last 5 years in Greenville County, the largest county in South Carolina, refutes the notion that juries are running wild. In these cases, 83.6 percent—5 out of every 6 cases—resulted in a verdict either for the plaintiff or the defendant in a total amount of less than $10,000. As a percentage of all cases, only 1.7 percent—11 cases—resulted in a verdict of $100,000 or more. No verdict of $100,000 or more was rendered in any product liability case. Jury verdicts in Greenville County are 3 percent above the national average.

A study of a representative group of State courts released in April 1986 by the National Center for State Courts found that the increase in tort litigation roughly approximated the increase in total population with all tort filings increasing 9 percent and the population increasing 8 percent for the period 1978-84. According to the report, the data "provides no evidence to support the existence of a national litigation explosion in State trial courts" during the 1981-84 time period.

It is true that the number of liability cases filed in Federal courts has increased significantly. But according to Consumer Reports, a single type of suit—damage claims related to asbestos—accounts for much of the increase. Last year, 4,239 of the 13,554 product liability cases or 31 percent filed in Federal courts were asbestosis cases. Consumer Reports believes the large number of asbestos-related cases is not surprising and believes the cases are not frivolous:

> Asbestosis and asbestos-induced cancer result from many years of exposure; only in recent years have the consequences of long-term exposure become evident in debilitating illness and death. In Consumer Union's opinion, people who are suffering from asbestosis or asbestos-induced cancer (and the families of those who have died) deserve compensation.

Finally, according to a study published in 1985, a 16-State study covering 100 years found little evidence of a consistently upward trend in tort lawsuits and the University of Wisconsin civil litigation research project found 50 percent of the cases involved disputes of $10,000 or less and only 12 percent involved claims of more than $50,000. The repeated allegations about the number and size of awards simply do not hold up in light of this substantial evidence to the contrary.

SUBSTANTIVE LAW

The task force concluded that uncertainties in the substantive law of product liability were a cause of the insurance crisis. This conclusion, however, was at odds with the findings of the legal study commissioned by the task force. The legal study concluded that State tort rules have no significant impact on insurance costs, and thus a revision of the system would not lower them:

> [T]he overall conclusion drawn here is that although specific tort doctrines adopted by some courts can be considered inequitable in specific cases, the total impact of such rules on product liability claims is insufficient to directly cause an insurance problem of the magnitude alleged. In other words, no inequitable doctrine or group of doctrines even if changed immediately, could produce a greater availability of or a lower cost for insurance.

After studying the issue, one tort professor concluded that "the subsequent easing of the crisis supports the legal study and undercuts the task force on this critical issue." If there were a significant connection between legal doctrines and product liability costs, the stabilization of insurance costs in the late 1970's would not have occurred at the same time that the substantive law of product liability remained unchanged.

More recently, the same professor again reached the same conclusion regarding the relationship of tort doctrines and the current insurance crisis:

> There is no reason to believe that the tort system contributed at all to the decrease of product-liability insurance premiums at the end of the last decade, or the increases which may currently be taking place. No correlation in the slightest exists between expansions or contractions of tort doctrine during those periods and the level of premiums. The same may be said with respect to the size of jury awards and settlements.

As the legal study found, there are isolated instances of product liability cases in which the result is inequitable. Proponents like to cite their favorite horror stories. But these examples serve little purpose other than to distort the policy debate. To base such sweeping Federal legislation on anecdotal evidence is, at best, specious—at worst, fraudulent.

Changes in tort law will not solve the insurance crisis. Indeed, in hearings before State legislatures, insurance industry representatives have declined to promise that the tort reform measures they advocate would result in lower insurance premiums. In Washington, a number of companies filed for premium increases claiming that the State's new tort restrictions will not have an impact on insurance costs. One insurance executive stated: "It is clearly impossible to say if you adopt a certain tort reform, you will get an x reduction in premiums." The connection between the anecdotal cases cited by the industry, changes in the substantive tort law, and insurance costs is far too attenuated to justify revision of an entire body of law which generally has proven to be fair and workable.

LITIGATION AND TRANSACTION COSTS

One justification offered for Federal product liabilty legislation is that legal fees paid to plaintiffs' attorneys are too high. Typically, lawyers who accept product liability cases work on a contingency fee basis. If they win the case they get a percentage of the case—which is usually about 30 percent—if they lose, they get nothing. This system allows injured plaintiffs who are not wealthy to obtain a lawyer. At the same time, the system acts as a deterrent to frivolous cases because attorneys are spending their own time and money in the case.

Recently released figures from the Institute for Civil Justice state that plaintiffs receive approximately half of the costs of litigation. Any problem with the cost of the system is not with the cost of the attorney who is "investing" his or her own time and money to win a case. The problem is with the defense attorney who has an incentive to delay the case with dilatory motions and thereby encourage severely injured plaintiffs to settle for less in order to get an expedited payment of the plaintiff's medical and other costs. Meanwhile, the company

is making interest on money that would otherwise be in the hands of the prevailing plaintiff.

According to calculations derived from a 1977 survey conducted by the Insurance Services Office, for every dollar paid to claimants, insurers paid an average of 42 cents in defense costs, while for every dollar awarded to a plaintiff, the plaintiff pays an average contingent fee of 33 cents. While I do not advocate wage and price controls, those who advocate reform of the system should be focusing on the higher defense costs. An imbalance would be created if the fees of lawyers for injured consumers were controlled, while not limiting the defense lawyers' costs. In that case, the only effect would be to undermine our legal system's guaranteed right of access to justice.

OVERVIEW OF THE CURRENT SYSTEM

What little information we do have about the current product liability system provides an interesting perspective: the system is generally fair and workable. According to one study, approximately 73 percent of the bodily injury claims and 83 percent of the property damage claims are settled without the filing of a lawsuit. Only 3.5 percent of claims go all the way to a court verdict, and in those cases, fewer than 25 percent of defendants are found liable. Thus, 96.5 percent of product liability claims are resolved before the verdict and more than 75 percent of plaintiffs lose in cases in which a verdict is reached. The American bar Foundation, in a study of seven counties from across the country, found that the percentage of cases in which the plaintiff was successful ranged from 28 percent to 56.3 percent. So, we know that it is difficult to win a product liability lawsuit when the case goes to trial and verdict.

The studies to date show that punitive damage awards remain infrequent, particularly for product liability, and that damages decided upon by the jury are often substantially reduced. The truth of the matter is that if actual damages are not sustained by the evidence, they are lowered at the insistence of the judges themselves who would otherwise order a new trial. And what about those million dollar awards by juries? In more than two-thirds of the cases with million dollar awards over the past 14 years, the plaintiffs have suffered gross and serious injuries or death.

We also have been told that many of the individual jurisdictions are experimenting with programs such as arbitration programs and are successfully speeding up the consideration of cases. Ninety-eight percent of civil cases pending in my own State of South Carolina, for example, have been pending for less than 1 year.

Certainly, juries sometimes—and it seems increasing—award damages against institutional wrongdoing. For example, in the University of Georgia case, the plaintiff was awarded $2.5 million against the university, although the amount was later reduced by over half of the original award. The plaintiff alleged that she was fired in retaliation for speaking out against preferential treatment of athletes on scholarship. The jury decided that the institution was liable for wrongdoing and felt that a large damage award was necessary to prevent this situation from occurring there or at any other institution in the future. Some researchers have hypothesized that plaintiffs receive large jury awards because jurors view certain defendants as having "deep pockets." However, interviews with jurors in Federal and State courts in southeast Pennsylvania revealed no significant finding that awards were based on the ability of the defendant to pay. The jurors' decisions rested primarily on their consideration of whether the plaintiff deserved to win based on the facts of the case and the applicable law, as well as the necessity to deter misconduct.

When a product liability case goes to trial, the jury is not impaneled for the purpose of giving away someone else's money. Rather, it is charged with the administration of justice. These juries are composed of our friends and neighbors, who conclude, some of the time, that the defective products involved and the injuries sustained require compensation. And it is our friends and neighbors—who work for a living and know the value of a dollar—who occasionally conclude that punitive damages are justified when the defendant has engaged in outrageous behavior.

There are countless examples illustrating how our product liability system, has provided incentives for the development of a safer society. Product liability lawsuits can be credited with, among many other examples, the elimination of cancer-causing asbestos as a common building material. The trial process also has prompted State and Federal agencies to promulgate and enforce more vigorous safety standards for many products. With the opportunity to compete on the free market goes the duty to produce products that are not unreasonably dangerous as well as the responsibility to make reparation for any harm caused when that duty is neglected. Because we have a system which enforces this ideal, we can proudly state that ours is the safest nation on the planet.

CONCLUSION

The U.S. Senate should not pass legislation to codify product liability tort law without any comprehensive data to demonstrate, first, that such legislation is necessary, and second, that such legislation will work.

Do we know what we are getting into? Based on the scant statistical evidence provided by proponents of this legislation, the answer to that question is: "obviously not." We don't know whether the enactment of this legislation would affect insurance premiums, or whether there is any connection at all between insurance premiums and tort law. We don't know the burden we would create for the State courts to administer such legislation. We don't know how it would affect the development of safe and reliable products. In other words, the committee has chosen to close its eyes, say a few prayers, and go for broke. While I agree that successful government depends on the willingness of its leaders to engage in bold experimentation, the Product Liability Reform Act represents a recklessness this Nation cannot afford. If we must attempt to tinker with the product liability system, then let us do so armed with the facts and with an eye toward the protection of our society from unsafe and dangerous products.

If any problems exist with the product liability tort system, we are not going to solve them with legislation of this type. The bill should be rejected.

I yield the floor.

EXECUTIVE SESSION

The PRESIDING OFFICER. The hour of 1:30 p.m. having arrived, the Senate will now resume executive session to consider the nomination of William H. Rehnquist to be Chief Justice of the United States.

Under the previous order the time between 1:30 p.m. and 3 o'clock p.m. shall be equally divided between the chairman and ranking minority member of the Judiciary Committee or their designees.

The Senate resumed consideration of executive business.

Mr. KASTEN. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1340

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF WILLIAM H. REHNQUIST TO BE CHIEF JUSTICE OF THE UNITED STATES

Mr. RIEGLE. Mr. President, I rise to express my view on the Rehnquist

nomination which we will be voting on later in the afternoon today.

I have not spoken before on this issue, but I have been studying it and following it with great care going back to the hearings this year, the prior hearings when Justice Rehnquist initially went on the Court, and with a careful examination of his record both on the Supreme Court and prior to that time through his professional career.

Having done so and having had the opportunity now to listen to a number of my colleagues who serve on the Judiciary Committee and who went through the hearing process, I rise today to express my own judgment and conclusion on this nomination.

I have been in the Congress 20 years, and this marks 10 years, the end of this year, in the U.S. Senate. I have tried to recall a nominee we have had before the Senate for confirmation that has been more troubling in my mind than this one. There have been some others that have been troubling that I have voted against, some in my own party, some in the other party. I do not cast those votes on the basis of party as I think that recitation itself indicates. But as I reflect on all the judges who we have had to confirm, I do not recall a choice that I think is more disappointing or falls shorter of what is needed in an extraordinary position of responsibility in our Government than Justice Rehnquist.

Along with the President and Vice President, the Chief Justice of the United States, which is a lifetime appointment, is one of a tiny handful of Federal officials who serve at the highest level of trust and importance in our democracy. In a nation of over 240 million people, when we have an opportunity to select a Chief Justice—we have only had 15 in our entire national history—the obligation is to look across the length and breadth of our country to find someone of such extraordinary stature and respect and all the other qualities that you would want to see in a top government official that when that person is named and confirmed and goes to serve in that capacity there is an outpouring of support and good feeling and good will across the country. It should never be less than that, in my view, for a position as important as this one.

But I do not see that kind of feeling in the country, and I understand why. I am not able to feel it within myself because, as I say, I find this to be a sad and disappointing choice. It is a flawed choice, flawed in several ways, and one that I think will damage our country in a number of ways over a period of many years in the future.

Probably the cornerstones of our democracy when all is said and done is the idea that as citizens we make the laws. We are a self-government, a citizen government, and once we have made the laws which govern us, we will have equal justice when anything arises that applies those laws to us; that if a matter arises which takes us into court or in some way involves us with the law, our standing under the the law will be complete in terms of what the Constitution provides and it will be equal to that of any other person in our society. So that on the one hand, we have the ability as participating citizens to build the law and, on the other hand, we have the certain guarantee that we will be measured equally by those laws.

One of the defects in the way our system actually works is that very often under our legal process you get the justice you can pay for. By that I mean if you are well situated financially so that you can hire the best lawyers and have them go to work for you and they are competent and they go in and they work for you, you can get a measure of justice that is not available in the same degree to someone else who may not have the knowledge of the law or would not have the money to be able to hire the top legal talent in the country to defend them in a legal proceeding.

So the effect of the working of the law in this country is very uneven and unequal because of the nature of how the system works, in how you get and pay for legal counsel. That is why at the Federal level we have set up the Office of Legal Services to try to make sure that people who do not have the money receive some measure of representation so they get equal access to the law and get a fair judgment. That does not work very well. It works very imperfectly, and many people do not get competent and adequate representation in a legal sense.

□ 1350

I am deeply troubled about that. I think that in a society where you have large numbers of people who are economically disenfranchised, many times because of poor education or circumstances of poverty or circumstances of discrimination or other factors that may attach to them, they are in a circumstance where they cannot hope to get adequate representation under our system of law in this country.

So, yes, we can engrave across the front of the Supreme Court "Equal justice under law," but we are not able as a society to really produce that on a broad scale across the country.

For example, with people of very modest financial circumstances and maybe limited education, who do not understand the law and cannot afford to hire expensive legal talent, when a legal issue arises in their lives, I wonder how they feel about the degree to which they are actually able to have equal justice under law. I think they feel that it is not available to them, because, as a practical matter, most often it is not. So I think they have a different view of how they fit into our society. Unless we make a concerted effort to bring them in, in a full way, to put them on an equal standing with everyone else, there is a faultline which runs through our system of equal treatment under the law. That is what we find today.

For those people who feel that they are on the outside looking in and for whom the legal system does not really work in a meaningful or effective way, I am not sure how much stake they feel in our society. I do not know how much stake they feel in our system of laws, in our system of justice.

I can see how a feeling could arise in a person that if the system were stacked in such a way that it did not work for them, they would not feel a sense of commitment and investment to that system. I think it might lead to a state of mind where people would figure that the cards are stacked the other way, that maybe the law does not matter, because it does not work for them when it should in a proper sense, that it is something so distant and almost alien that it really is separate and apart from what their life is about.

I think that is a dangerous condition to have with any number of citizens, let alone the large number of citizens in our country. We have that in our society today, if we want to be honest about it.

How does this relate to Justice Rehnquist? I think that if you look at the pattern of incidents that have been cited and developed in the Judiciary Committee hearings, his pattern of decisions over the years as a sitting Justice, and his personal conduct prior to becoming a Justice of the Supreme Court, you see a person who consistently, time after time, almost without exception, has gone to great effort to make it hard for people to get equal treatment under the law.

When somebody engages, for example, in a voter intimidation program—in fact, is the mastermind of a voter intimidation program—to try to discourage people from voting, I do not know what more fundamental act there is in our democracy, if it is a working democracy, than the right to vote and the fact that people develop an opinion to go to the polling place on election day and vote for the people who will be in governing positions——

Mr. HATCH. Mr. President, will the Senator yield?

Mr. RIEGLE. Not at this time.

Mr. HATCH. Just on one point. The Senator is misstating the testimony.

Mr. RIEGLE. I do not want to be discourteous to my friend, but I do want to make my statement, and then I will be happy to yield for any

number of points the Senator wishes to make at the end.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. THURMOND addressed the Chair.

Mr. RIEGLE. Mr. President, I do not want to be disrespectful, but I do not want to yield the floor.

Mr. THURMOND. I just want Senator HATCH to take my place.

The PRESIDING OFFICER (Mr. DURENBERGER). The Senator from Michigan.

Mr. RIEGLE. To engage in a voter intimidation program, to try to interject yourself between a person who is going to vote and their ability to vote, to operate in that fashion is about the most undemocratic act I can imagine—especially when it is carried out against people who are most often found in minority circumstances in our society, whether they be Hispanic people, black people, or other people who might otherwise have some large measure of difficulty with the voting process, or particularly with language problems or may be feeling uncomfortable about being able to go in and be understood and get their ballot and vote.

For anybody to inject themselves in the middle and try to discourage somebody from voting, to try to frighten somebody away from the voting place—what an act of arrogance that is. What an act of personal arrogance that is. Not only to mastermind a plan like that, but then to go out to the voting places, as a number of eyewitnesses have reported, and to personally inject yourself in that process, with the purpose in mind of frightening somebody away from the voting place, so that they are unable to vote and to cast the judgment they have reached—what level of arrogance does that require, for someone to feel that their notion of what the outcome of the election to be is so certain and so pure that they feel empowered to come to the voting place and try to discourage and stop the voting participation of another citizen? I have a very hard time even understanding how that kind of mind works.

Justice Rehnquist was involved actively in that kind of voter intimidation. He helped design the plan. He went to the voting place. He gives evasive and unclear answers as to his direct personal involvement in confronting voters, but we have a number of witnesses of stature who have come before us to testify that in fact he not only served as a mastermind, which he acknowledges, in terms of putting together a voter intimidation program, but also was directly involved, himself, in confronting voters in an effort to frighten them away from the voting place.

That is not an isolated incident. That is just one area of conduct and behavior in a larger pattern that is consistent over a long professional career.

Here is a man who, in other activities, has behaved in a fashion to try to prevent people from being able to have any full measure of justice under the law in this country. There is the case of the Justice Jackson memo, and it has been cited several times. I will not read it again into the RECORD. The language of that memo, prepared for Justice Jackson, which Justice Jackson's long-time personal secretary says did not reflect the views of Justice Jackson, which Justice Rehnquist said was the case, but was in fact Rehnquist's own views—that memo says in effect that it is all right to stay with school segregation; it is all right to basically separate our educational facilities on the basis of race.

I am deeply troubled that, first of all, he could have that view, could generate that view. I am troubled about his explanation about it after the fact. I do not find his explanation believable.

And that is just one of many instances where I think his testimony just is not believable. It just is not believable. It is inconceivable to me that he could recall with precise knowledge in an area where he wants to shed responsibility, an event that goes back to the early fifties and he has in a sense a perfect recall in that situation, but then we come several years ahead in the future to a more recent time where he was directly involved in the Laird versus Tatum issues in terms of domestic surveillance and he cannot remember anything. His mind and his memory is virtually completely erased in that area. So that back a long time before on what would seem to be a relatively minor matter he has a perfect recollection and you come forward much later in time on an area where he was in charge of the effort and was in charge of the Department, and very serious policy and practice decisions were being made and carried out, and he has no recollection.

I just find that very hard to believe and I do not believe it, I am frank to say.

You know one thing you have a chance to see over a period of time in Congress—for me it has been 20 years—are lots of witnesses. I dare say like my colleagues who served that length of time, I probably have spent thousands of hours of committee sessions listening and conducting the cross examination of witnesses of all sorts and types. After a while you develop an ability, I think, to judge quite well whether witnesses are telling the truth, whether they are withholding information, whether they are being deliberately vague, whether they fall back on the Watergate language of "I have no recollection," which is the way if you want to withhold something, with conscious knowledge to avoid a perjury charge, those are the words you have to use. Those are the words you use. You do not say "No, I didn't do it," if you knew you did it. You say, "I have no recollection," and then you are off the hook. Those are the legal words, words of art that allow you the chance to evade the situation without putting yourself into a situation of perjury.

So that does not make any sense.

But in the role that he necessarily had to have as the Director of that division within the Justice Department on Laird versus Tatum, we still do not have the answers on that and we ought to have the answers on that.

I am deeply troubled about the fact that he was involved in that activity.

There again there were people during that period of time who had serious reasons for opposition to the war in Vietnam. In fact, that became ultimately the majority view of this country and we got out of Vietnam because the people finally figured out it did not make sense and we had been lied to by our own Government, and the people who got out front early and took those views, and were subject to Government direct intimidation and harassment should never have had to be faced with those circumstances. This man was one of the architects of that activity. That much we know, but we cannot get the facts because this administration will not release the information that I am sure exists, that could throw light on this, and he has no recollection because his mind somehow got erased in that area. I do not believe that. I just do not believe that. I just do not believe that is the case.

There are a number of other specific situations that I think are equally troubling if you look at the pattern of decisions on the bench over a period of time.

It is almost impossible to find a situation where a citizen of low standing or inconsequential standing in terms of his or here personal circumstances where they have come in seeking justice and some redress of a grievance in terms of the effect of the law in their life and circumstances, that this Justice can find the way to give a measure of justice to that person. Other Justices equally conservative have found a way to do that in any number of cases, but almost never does this Justice find a way to do that.

So, one is left, I think, by looking at this record over the long period of time of saying that you cannot convince yourself—I am not able to convince myself—that he believes in one standard of justice equally applied for all citizens in this country. And if he becomes the Chief Justice and takes on that enormously elevated position of power, influence, responsibility, and symbolism, and the symbolic message

to the whole country is this is the best we have, this is the person who is going to epitomize equal justice under the law in the United States. I can see why a large number of people in this country who are knowledgeable about the background and the facts that relate to this candidate would walk by the Supreme Court and have a very bad feeling about it, that it was a contradiction, it was a contradiction about the way our system is supposed to work, it is a contradiction about the way we say our system will work, and in fact we have put someone there whose entire history is contrary to the notion of equal justice under the law.

Frankly, I think the latest examination of this man's record is compelling enough that he ought not to be on the Supreme Court at all, but he is and that cannot be changed, but I find nothing in his record, absolutely nothing in his record, that suggests that he meets a higher standard that one would hold for the office of Chief Justice. I find no distinguishing characteristic that would say across the broad sweep of our society, this is the one individual or this is 1 of 20, or 1 of 50, or 1 of 100, the finest ones that we can find to come in and be the Chief Justice of the Supreme Court and administer the Court and in a sense become the most powerful symbol of what justice in this country means to rank and file citizens.

He is not even close in terms of that kind of standard of measurement. In fact, I think what we have here is a choice that as I say is sad and discouraging, but I think more than that it is designed to create a lot of the polarizing feeling that in fact has been created and will continue to be created because I think large numbers of people in this country, with justification, will feel they cannot get a fair shake out of this man in this Court if he is running it. And that is what I think based on the record. In fact, the way I see the Constitution and I think the bulk of the people of this country see the Constitution, I do not think he is fairminded with respect to equal standing under the law, and I worry about a young person, let us say a young black person living in this town, standing out in front of the Supreme Court chamber and looking up at that magnificent building and wondering if he or she is going to get the same measure of justice from that Supreme Court that everybody else in th society is going to get.

I do not have that sense of confidence about this Justice because his entire pattern of professional conduct, history, and decisionmaking is to the contrary, that there will not be one nice even level standard out there but in fact we will have something far different than that. We will have two standards of justice. Those who are in circumstances where they have the ability to go out and hire the top lawyers, and so forth, will get one kind of treatment, and the other people can essentially fend for themselves.

I do not believe in that. I do not believe that is what our Supreme Court is all about. I do not believe that is what our system is about.

So in a sense, this choice, made as it was late in the year, I think was deliberate to rush the proceedings, to squeeze us up against the closing of the session of Congress, to not run the risk of the Democrats taking control of the Senate and running the Judiciary Committee so that if this appointment were to come next year we would have a far more searching inquiry, and a feeling that it ought to be avoided at all costs. So we get the timing of this situation coming now where we have been forced, I think, to move much faster than prudence would dictate we ought to move on an appointment of this importance and a record that I think is as questionable and I think is sad in so many respects as this is.

I will just say one or two other things and then I will yield the floor.

Some make the point that the President of the United States ought to be able to name anyone he wants to any job that is within his power of appointment. Under the strictures of the law, I suppose that is right. He can send up any nomination that he wishes.

But the reason we go through this process is because our ability to advise and consent requires us to make an affirming judgment. He does not make that decision by himself. He has to make that decision in concert with the United States Senate.

The Senate can, if it chooses, decide that it is a bad choice and turn it down.

I think you will see today when the final votes are cast there is a very substantial number of people in this body who are disturbed enough by this nomination that they intend to vote against it and will vote against it. I think when you are talking about a third branch of Government, the judicial system, the highest ranking position, the independent branch of Government, the President is not automatically entitled to his appointments necessarily, and even brings into question the independence of that third branch of Government. He has the right to appoint but we have the equally proper right to assess that nominee and to make the judgment as to whether that nominee measures up or not.

This nominee does not measure up. This nominee does not inspire the kind of feeling across this country about our system of justice and how it works that we ought to have coming from the person who is the Chief Justice. This nomination falls far short of that. It is, as I say, a disappointing one.

I guess my final thought is this to the people of the country. Assuming that this nomination is confirmed today, and it looks as if the votes are there, I am sorry to say, we may go through a period of great difficulty in terms of the pattern of decisions that we see coming from the Supreme Court because the Chief Justice does have an extra measure of power by virtue of the uniqueness of that position. We may see a period where unfortunate decisions are forthcoming, that injure people in this country and injure our ability to provide equal justice under the law.

If so, we are going to have to get through that period. We are going to have to get through it as best we can, and I think we can. But it is wrong to have this imposed upon the country. The President has made a serious error of judgment here and we ought not to compound it by confirming this nominee.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I have heard a lot of remarks about Mr. Justice Rehnquist from the beginning of his announced nomination by the President to this very instant. Most of the criticisms of Justice Rehnquist have been effectively rebutted before.

I have, however, been curiously intrigued by much of what the distinguished Senator from Michigan has said, from calling him a mastermind in the voter challenging approach to saying that had the Democrats been in control of the Senate this inquiry would have been much more searching and much more in detail, and all the other comments in between.

You know, sometimes I do not think this is a nomination proceeding. I would call it a "Rehnquisition," because of the, I think, intemperate remarks which have been made, some of the inaccurate remarks that have been made, the distortions that have been made, the misrepresentations that have been made, the, I think, distortion of his written opinions and of his actual approaches that he has taken since he has been on the bench. And they have all effectively been rebutted.

How much more searching could this "Rehnquisition" have been? I cannot imagine. I said the last time I was on the floor, some of these people have left no stone unthrown. They have done everything they can to destroy this man's reputation. And I think they have done it in some of the most heinous of ways.

Let me just move to one aspect of it. Critics of Justice Rehnquist—and the prior speakers have been no exception to this—have relied heavily on a letter from Prof. Geoffrey Hazard to maintain that the Justice should have re-

cused himself in the Laird versus Tatum case. The entire theory stated in Professor Hazard's letter has no basis in the law or the ethics standards as they existed in 1972.

In earlier remarks, I have examined 28 H.S.C. 455 which would have required Justice Rehnquist to recuse himself if he had been "of counsel * * * a material witness * * * or had a substantial interest." He had no financial interest, was not involved even in an advisory role in the preparation of the Laird case while at the Department of Justice, and, of course, was not a material witness in the case. He did not commit any legal violation, nor did he participate directly.

Professor Hazard, however, sugests that the ethical standards of 1972 should have caused him to recuse himself. This opinion has little, if any, foundation in the ABA standards of that time. Rather than repeat the entire text of the ethical standard on disqualification, I will read its primary requirements:

A judge should disqualify himself in a proceeding which his impartiality might reasonably be questioned, including but not limited to instances where: (A) he has a personal bias or prejudice . . .

No evidence of that.

Or a personal knowledge of disputed evidentiary facts . . .

No evidence of that here.

(B) He served as a lawyer in the matter in controversy . . .

No evidence of that here.

Or has been material witness concerning it.

No evidence of that.

Now, Justice Rehnquist, as has been discussed many times, had no personal knowledge of the disputed facts, namely the Army's actual information-gathering activities. Moreover, as I have stated, he told Senator Ervin that he had no personal knowledge of those facts in 1971 four times.

Why can he not be believed by our colleagues? Why can they not respect this man? Why can they not treat him as an ordinary human being? Why can they not treat as an exceptional human being, which he is?

That hearing by Senator Ervin is the same hearing that critics rely on as evidence of his personal knowledge. When are people going to start being fair? When they are going to stop distorting this record?

Justice Rehnquist was not a lawyer at any stage of the Laird proceedings. In fact, he recused himself in numerous other cases when he had had merely an advisory role while at the department of Justice. He was not even an advisor, let alone the attorney, in the Laird case. When he was adviser, he recused himself. Hazard says that the Justice should have recused himself "unless he was not in fact involved in the matter when it was in the Office of Legal Counsel." He quickly concludes, without further investigation, that this would be "implausible" and declares that "the circumstances suggest that Mr. Rehnquist was personally and substantially involved" in formulating policy. The record, however, indicates otherwise.

I do not know where Mr. Hazard got these types of feelings but he does not have, it seems to me, much knowledge about what went on nor has he given the Justice even the bare courtesies of looking at what he has had to say in the past.

The "key" 1-page transmittal memorandum for the 1969 policy indicates that it was prepared by staff for Justice Rehnquist's signature. Moreover, the entire 12-page draft memo only includes one paragraph on Army surveillance—the entire 12-page draft. Where, then, does Mr. Hazard find his "personal and substantial involvement"? Justice Rehnquist's explanation seems much more logical and he should be believed over some law professor who injects himself into this at the last minute after 15 years.

The Office of Legal Counsel develops hundreds of policy memos every year—some might say thousands of them—most of which are highly important. If anything is implausible, it is the assumption that Mr. Rehnquist simply must have "personal and substantial involvement" in all of these memoranda.

I challenge any Senator here to remember all the memoranda that comes through his office in a week, let alone over a period of time like this.

I might add, otherwise, Mr. Hazard has no independent basis for concluding that the Justice devoted himself to this particular policy enterprise.

Finally, the Justice was not a material witness in the case. Moreover, he did not have sufficient knowledge of the disputed evidentiary facts to serve as a witness. The facts are simply not what Professor Hazard assumes. Let us look now at the ethical standard itself.

Professor Hazard stretches to find within this ethical code some failing on Justice Rehnquist's part. He bases his opinion on the notion that if Justice Rehnquist was involved in the "transaction out of which the case arose" he was somehow the equivalent of the attorney in the case. If this were the case, no attorney at the Department of Justice could ever be placed on the bench because they would have to recuse themselves in hundreds of cases. The ethical standard says nothing about relationship to a policymaking process as being the equivalent of relationship to the case itself. It is not in the ethics standard that involvement with policymaking or, to use the overly broad and vague terms of Professor Hazard, with "the transaction" requires disqualification. The ethics code speaks of the "proceeding," meaning in this context the judicial proceeding or the case, it does not speak of a broader notion of "transactions."

In fact, Mr. Hazard's statement of the law in his letter is clearly incomplete in this exact question. The professor quotes the following passage from a law review article written in 1970:

Justices disqualify in Government cases which they have been directly involved in some fashion in the particular matter, and not otherwise.

Professor Hazard omits, however, a later sentence from the same paragraph of that article. Let me read that,

More important, Justices who have come from the Government do not disqualify merely because the particular matter involves a policy which, when in the Government, they may have helped to form.

This omission is particularly puzzling when Professor Hazard himself states that this article "correctly summarizes the law of disqualification as it then stood." In fact, I think this omission has the appearance of an ethical violation on the part of Professor Hazard. It may be an ethical violation itself to distort what really happened and what the law really was. This professor has left out the part of the law that completely justifies the Justice's conduct.

In short, Professor Hazard jumps to the conclusion that Justice Rehnquist was "personally and substantially involved" in the policymaking at the Justice Department related to Laird. Now, the facts not only appear to be contrary, they are contrary. And any fair and reasonable review of them would have to be concluded in the Justice's favor. Specifically, what little work was done on the issue at the Department seems to have been done by a staff attorney, not Justice Rehnquist. Moreover, even if he were involved in the policymaking process, the ethical code of 1972 simply did not require disqualification for policymaking activity.

Now, this is just typical of what we have been going through for weeks here since the nomination of Mr. Justice Rehnquist to this elevated position. It is very disturbing to me, because I believe that even though we may be partisans on this floor from time to time there is a limit beyond which partisanship should not go.

I do not think that this should be an imposition. I do think it is legitimate to raise legitimate arguments. But I think every one of those has been more than refuted. I think those that some might feel are not fully rebutted, if they give this Justice the benefit of the doubt in the slightest sense, will have to go with Justice Rehnquist on every one of them.

You could spend hours on this discussing the distortions, the misrepresentations, and the cloudings that have really occurred, not only throughout the hearings but also throughout the floor debate on this matter. I suspect if we had the time, and we have I think covered most of them and I have no doubt in my mind we have covered all of the arguments that really need to be covered with regard to the remarks of the distinguished Senator from Michigan.

You know, the word "Rehnquisition" is not too far out of place here as I stop and think about it because that is what it should be. I think it is time to bring it to an end. I hope all of our colleagues will vote for cloture today, at least the vast majority of them, and then fight for this man who has spent 15 years of his life serving the public, and who has the confidence of the American Bar Association and so many people who really do not agree with him philosophically but at least admit he is a great Supreme Court Justice. And he has done a great job since he has been on the Court.

Mr. President, how much time do we have left on this, our side?

The PRESIDING OFFICER. The Senator has 24 minutes and 10 seconds.

Mr. HATCH. I yield the floor and reserve the balance of my time.

The PRESIDING OFFICER. Who yield time?

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, the managers on the matter of nomination on our side of the aisle are not present, and might I inquire on their behalf whether time will run against this side—their side—in the absence of someone speaking, or can we suggest the absence of a quorum and put that matter at a close to conserve the time remaining which can only be approximately 11 minutes?

The PRESIDING OFFICER. The Senator does not control the time. So he has no right to suggest the absence of a quorum.

Mr. MOYNIHAN. Mr. President, I believe a Senator has a right to suggest the absence of a quorum regardless of the position with respect to——

The PRESIDING OFFICER. Not when time is under control of specified Senators. And the Senator from New York is not one of those who controls the time.

Mr. MOYNIHAN. Mr. President, out of curiosity, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not have that right. That request would take a unanimous consent to do so.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum.

Mr. HATCH. Mr. President, reserving the right to object, if that will be charged to the other side, we would have no objection. However, we are prepared to debate.

Mr. DODD. Mr. President, will the Senator use the microphone? I cannot hear.

Mr. HATCH. Excuse me.

We are prepared to debate. We are prepared to answer any questions. If that time will be charged to the other side, we have no objection. I really do not have any objection anyway.

Mr. MOYNIHAN. I am next in line. I have an address that will take exactly the time remaining. I do not want to do that.

Mr. HATCH. Mr. President, I will be happy to lend some of our time to the Senator from New York.

Mr. MOYNIHAN. Will the Senator yield 10 minutes to the Senator from New York?

Mr. HATCH. I will be delighted to yield 10 minutes to the distinguished Senator from New York. Will that solve the problem?

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I thank always the accommodating and distinguished friend who so graces this Chamber by his personal manner as well as by his substantive positions.

Of the many memorials received by the Senate with respect to the nomination of Mr. Justice Rehnquist as Chief Justice of the Supreme Court, I found especially compelling one that came from a group of law professors which asserted that the "conscience-searching questions" raised by the nomination

are matters that every Senator must, in fidelity, decide upon alone in a quite place and time, away from the political arena.

This appeared to me to be counsel. I understook to follow it, have done, and have now reached a judgment.

May I first state my understanding of the duty of the Senate in the matter before us. Along with any number of Senators I have more than once stated that in exercising its power of confirmation the Senate should show a certain deference to the wishes of the President in constituting his Cabinet, and generally speaking choosing his advisers. Whatever their disposition in policy matters, once in office their actions can only be the actions of the President, and within the bounds of law, the President is entitled, indeed is expected, to act as he thinks best. Congress has the same right and responsibility.

This practice, generally followed, is no more, and no less, than a commensensical accommodation to the system of checks and balances built into our constitutional arrangements which keep us ever aware of the peril of stalemate.

With respect to Supreme Court nominations, however, wholly different standards apply. Here the President and the Senate are jointly constituting the third branch of the National Government, which is to say the Court. Here again a measure of accommodation is prudent. I would like to think I am mindful of the President's preferences. I would like to think he is mindful of mine. But that is a consideration that precedes more than follows an actual nomination. Once before us the Senate must act entirely as it thinks best.

This elemental duty was, if anything, painfully clear to the fourth Congress which rejected George Washington's second nominee for Chief Justice. (This position which is mentioned in article 1, section 3 of the Constitution, but was not actually created until the Judiciary Act of 1789.)

In the 19th century more than one Supreme Court nomination in four was rejected by the Senate. This ratio has been much lower in this century, but even so it is not uncommon for nominations to fail, and widely agreed that this is to be expected from time to time as Presidential views come into conflict with those of Senate majorities. In an article in the Harvard Law Record of October 8, 1959, Mr. Justice Rehnquist, then of course in private practice, concluded:

It is high time that those critical of the present Court recognize with the late Charles Evans Hughes that for one hundred seventy-five years the constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases "due process of law" or "equal protection of the law", then men sympathetic to such desires must sit upon the high court. The only way for the Senate to learn of these sympathies is to "inquire of men on their way to the Supreme Court something of their views on these questions."

What then are my views in this matter. They are not complicated. Nor do they rest on exclusively legal considerations. Rather they go to the matter of "sympathies"—Mr. Justice Rehnquist's term, and a perfectly sensible one.

His critics, and I now join them, have drawn attention to an extended series of cases decided during his now extended service as an Associate Justice in which he has taken the most restrictive view of claims for equality of treatment advanced by individuals or groups claiming to have been discriminated against or other forms of unequal treatment. Mr. Justice Rehnquist has notably associated himself with resistance to the principle of incorporation under which the Civil War amendments, as they are known, are

judged to have extended the guarantees of the Bill of Rights to State governments, restraining them in the same manner the Federal Government is restrained.

I would offer the thought that over the now near two-century experience of constitutional government in the United States we have seen a persistent tension, at times almost a competition between the ideals of liberty on the one hand and equality on the other. In this competition liberty began with a distinct advantage. The word is enshrined in the very preamble to the Constitution which undertakes to

secure the blessing of liberty to ourselves and our posterity. . . .

By contrast, the word equality is nowhere to be found in the Constitution: not in the original text, not in the amendments.

We need not apologize for this. In the history of political ideas, liberty appears well before equality, and it is not difficult to show that it was in the setting of political liberty that the claims for equality gained attention and adherence. This was elementally the case as we moved toward manhood suffrage. How could the claims of liberty be met if some men could vote and others could not? The principle of manhood suffrage was secured by the Jacksonians in the 1830's, and just as promptly advanced on behalf of women by the Ladies of Seneca Falls in the decade that followed. A great civil war was required to secure a claim for black Americans, but that too was done.

Matters hardly ended there. Great struggles ensued as the idea of citizenship expanded beyond elemental freedoms to positive entitlements. The United States is not alone in this regard. Other democracies have followed much the same pattern. And other democracies have also experienced the tension between the claims of liberty and the claims of equality that abound in our polity.

There is a tension between these two ideals, but no contradiction. We are not required to choose one or the other. Americans are accustomed to speaking of competition as healthy, and surely this is such a case. And it will remain healthy so long as both claims are seen as legitimate and ensured a hearing.

More than any one thing, this is what the Supreme Court does. Brown versus Board of Education (1954), far the most important and celebrated of its decisions in this century, had to do with the fundamentally necessary decision that separate education facilities could never be equal. But throughout the century the Court has been dealing with issues of legislation and mass organization that arise from demands for equality of treatment. Sometimes reluctantly, sometimes enthusiastically, but always, in time, near to unanimously the Court has come through. Liberty has been secured but equality has advanced.

I cannot say and do not say that this advance would be put in jeopardy by Mr. Justice Rehnquist's appointment as Chief Justice.

The PRESIDING OFFICER. The Senator has used the 10 minutes of time allotted to him.

Mr. MOYNIHAN. Mr. President, I ask for 30 seconds.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, we do not have the time to spare. We will try to give the Senator 30 seconds. I yield 30 seconds.

Mr. MOYNIHAN. I thank the distinguished chairman.

Speaking of Mr. Justice Rehnquist, his willingness to accept the position indicates a willingness to seek out consensus in the manner a Chief Justice must do. Even so it may not be gainsaid that significant groups within our society see the matter otherwise. They see principles put in jeopardy, matters involving liberty no less than equality, which were thought to be settled. This is necessarily and unavoidably unsettling to them. And in my view they are right. This was not necessary. Any number of sitting Justices might have been chosen whose nomination would have been unanimously acclaimed. Other sympathies were deferred to by the choice of Mr. Justice Rehnquist. These are not my sympathies. I will accordingly vote against the nomination.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BIDEN. Mr. President, how much time does the minority have, the opponents?

The PRESIDING OFFICER. The minority has 8 minutes, 55 seconds.

Mr. BIDEN. I yield 3 minutes to my colleague from—and he is going to be exasperated by my only yielding him 3 minutes, unless he wants to have a fight in the Cloakroom with the Senator from Kentucky and the Senator from Massachusetts. I yield him 3 minutes.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, the nomination of an individual to be Chief Justice of the United States is probably the most important nomination a Senator could consider. It is a duty we should carry out with the same solemnity that we give to our oath of office. I have given the nomination to Justice William Rehnquist my closest scrutiny and my most careful consideration. I have cast my vote in the Judiciary Committee against him. I did so with some personal regret because I know Justice Rehnquist and I have high regard for him. I could spell out a number of the reasons for it but I would like to go to one. In my views, submitted as part of the minority report to Justice Rehnquist's nomination, I set out the facts in the Laird versus Tatum case and I explained the facts and the basis for my opposition to——

Mr. BIDEN. Will the Senator yield for a moment? I ask unanimous consent that we extend the time of the cloture vote for 15 minutes to be equally divided.

The PRESIDING OFFICER. Is there objection to the request?

Mr. THURMOND. Mr. President, I reserve the right to object. I would not give an answer until the majority leader has come to the floor and approved it.

Mr. BIDEN. I apologize for the interruption. I thought I could get more time. I beg the Senator's pardon.

Mr. LEAHY. Do I have any time remaining, Mr. President?

The PRESIDING OFFICER. One minute and ten seconds.

Mr. LEAHY. Mr. President, I yield back the time to the distinguished ranking member. To go through and make any kind of sense out of Laird versus Tatum in a minute and a quarter would be a charade and a mockery. I will not do it.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 3 minutes to the Seantor from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent that I be permitted to make an inquiry which will not come out of our time.

The PRESIDING OFFICER. Is there objection to the request?

Mr. THURMOND. Mr. President, each side has so many minutes; they can use theirs, we can use ours.

Mr. KERRY. Mr. President, I would like to make an inquiry about time.

Mr. THURMOND. The Senator can make it on their time, if he wishes.

The PRESIDING OFFICER. An objection is heard. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is my understanding we are still having the cloture vote at 3 o'clock; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BIDEN. The Senator is correct.

Mr. KERRY. Mr. President, I will yield my time back to the distinguished ranking member of the committee and reserve my opportunity to speak after the cloture vote, whatever the outcome.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. EXON addressed the Chair.

Mr. BIDEN. Mr. President, I told the Senator from Connecticut I would yield him 3 minutes.

Mr. DODD. I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I would hope that there may be an extension of the time for the cloture vote so we may have more than 3 minutes to address this particular issue.

Mr. President, along with my other colleagues, I have given this matter a great deal of thought over the last several weeks; I have read intently the transcript of the hearings of the Judiciary Committee; and I have listened with a great deal of interest to the debate on this floor. As you can see, I have waited until the latter part of last week and this week to make a formal statement with regard to this nomination. It is often said here that votes are historic. I think we probably use those words describing matters that come before this body with too much frequency because, in fact, there are not that many historic votes in the course of a given legislative year. And yet, certainly I do not think anyone would disagree, given the few and rare occasions on which we as a body have already provided our advice and consent with regard to Supreme Court nominations, and even fewer when we have dealt with the nomination of someone to be the Chief Justice of the United States, that this is one of those rare historic occasions that occur in the history of this country. I, therefore, approach this occasion, as all of my colleagues do, with a great deal of seriousness and solemnity.

Mr. President, I feel that there are some basic tests we all ought to apply regarding judicial nominations—first, regarding the technical and legal skills, as well as the character of the individual. If a nominee cannot pass muster on those two tests, then we need not get to the question of whether or not the nominee embraces and endorses the constitutional principle of equal justice and liberty for all or, in the case of a nomination for Chief Justice, whether or not the nominee has the ability to lead the Court effectively and with the great degree of compassion and understanding that every Chief Justice must possess.

Mr. President, I ask unanimous consent that the vote on the cloture motion be extended until 3:15 with the time equally divided between the minority and the majority.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Reserving the right to object, Mr. President.

Mr. THURMOND. I reserve the right to object. I will have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. DODD. Mr. President, if I may——

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, with regard to Justice Rehnquist, I feel clearly on the issue of technical skills, as has been said over and over again, he passes muster on that point. Mr. President, I see that my time has expired. I will finish my remarks on this nomination after the vote on the cloture petition is taken.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. EXON. Mr. President, a point of inquiry?

The PRESIDING OFFICER. Who yields for the purpose of an inquiry by the Senator from Nebraska?

Mr. BIDEN. If it is less than 30 seconds, I yield.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield for the purpose of an inquiry for 30 seconds.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, one of the problems with the Senate is that when we have blacks and whites we cannot get time for those of us who have not made up our minds. You cannot get any time unless you are for or against. I think that is unfortunate. I would like to ask unanimous consent that I be allowed to proceed for 3 minutes and no more without the time being charged to either side.

The PRESIDING OFFICER. Is there objection to the request?

Mr. THURMOND. Mr. President, personally, I would like to accommodate all Senators. We are under restrictive circumstances. I have conferred with the leader. I will have to object.

The PRESIDING OFFICER. An objection is heard.

Mr. THURMOND. They knew how much time they had, we knew how much time we had, and we will have to restrict ours and they will have to restrict theirs.

Mr. EXON. I would like to ask the distinguished chairman of the committee——

The PRESIDING OFFICER. Who yields time to the Senator from Nebraska? Who yields time?

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. How much time remains under the control of the Senator from Delaware?

The PRESIDING OFFICER. One minute, forty seconds.

Mr. BIDEN. Mr. President, in a moment of magnanimity, I will yield to the man who is probably going to vote the other way, but I yield to my colleague from Nebraska since I have no time to say anything intelligent anyway.

Mr. EXON. I thank my friend for the consideration. I wish it was shared by the other side, which this Senator was probably going to vote for until today. I am going to vote in support of this side of the aisle on this matter. I have been inclined to vote for this man all the way along but I have been listening to the debate. I do not like the ramrodding. I do not like the fact that those of us who have not thoroughly made up our minds cannot have a say. The reason I sought time, Mr. President, to explain my position a little further was that I do not believe we have fully explored the matter of credibility and reliability of the nominee.

I do not know how I am going to vote, up or down, when this comes up. But I have some concerns and considerations that I would like to bring to the Senate when I have time and when we can get off of this kick that right or wrong, black or white, you do not get any time. It is wrong. And I am somewhat taken aback by the distinguished chairman of the Judiciary Committee, the main ramrodder, who would not even allow me the courtesy of 3 minutes. I thank my friend from Delaware.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THURMOND. Mr. President, in response to the distinguished Senator from Nebraska, my good friend, I want to say we have already given you all 10 minutes, 10½ minutes of our time.

Mr. EXON. You have not given me any of your time and I want the record to so recognize. When you say we, because I am a Democrat you assume I am "we." I am a Member of the U.S. Senate, and I respectfully remind the President pro tempore of that fact.

Mr. THURMOND. Mr. President, I just want to say that the agreement was entered into; the time would be equally divided, and that is the way it has been handled. The leader of the Democrats, my good friend, the ranking member here, was handling their time. If the Senator from Nebraska wanted time, he could have gotten it from him, I presume.

Mr. President, I want to say in the beginning there has been more distortion, and more assertions made about this nomination without foundation than any nomination I have handled in the time I have been in the Senate. Who is this man we are talking about? He is a man who served in private practice, he is a man who served as a clerk to a Supreme Court Justice, he is a man who was first undergraduate in law school, he is a man who has been on the Supreme Court now for how long? Fifteen years. Fifteen years on the Supreme Court.

□ 1450

Mr. President, what do some of the people say who have investigated this man carefully?

The American Bar Association's Standing Committee on the Federal Judiciary found Justice Rehnquist to be well qualified and so informed the Judiciary Committee. That is the highest rating the American Bar can give. They rarely give the highest rating. They generally give a middle rating. They gave this man the highest rating they could, and it was unanimous. It was not a divided opinion. It was a unanimous finding in granting the highest evaluation possible.

The ABA committee interviewed all the current Associate Justices of the Supreme Court. How did they feel, his associates? They are not all Republicans. Some are liberal, way out in left field. They all said that they thought this man would be fair and would make a good Chief Justice. That is what the members of the Supreme Court said, the people he has sat with for 15 years.

What about Federal and State judges? They interviewed a lot of Federal and State judges. They interviewed 180 Federal and State judges. What did they say? They said he is well qualified, and they endorsed him. They should know. They describe him as a true scholar, unbelievably brilliant, a very capable individual in every respect. He enjoys the respect and esteem of his colleagues on the Court.

What about some practicing attorneys, those who have tried cases before the Supreme Court, those who are actively practicing? The ABA committee interviewed approximately 65 practicing attorneys throughout the United States—not in one area, but all over. These attorneys, including some who disagree with him politically and philosophically, spoke of warm admiration for him and described him as a very talented man, a very bright and able man, always well prepared, one who brings out the best in people and will facilitate the work of the Court. That is what the practicing attorneys said about him.

Some say we ought to listen to the deans and the teachers and the professors. So they went to them and interviewed 50 deans and law school faculty members. What did they say about him? They said that his legal analysis and writing ability were of the highest quality. They approved him; they recommended him.

So, Mr. President, here you have the American Bar, which did a very careful investigation. You have the Supreme Court Justices, his colleagues on the Court. One hundred eighty Federal and State judges were interviewed. Very capable lawyers all over the country and deans and faculty members were interviewed.

They went further and examined 200 opinions Justice Rehnquist had written, and from those they said that his writings are of the highest quality.

Are you going to rely on some group here that is against him because they do not agree with his philosophy, or are you going to rely on some group which claims he is discriminatory, when the preponderance of the evidence shows to the contrary? On whom are you going to rely here?

Let us go back a little. What about a former Attorney General under President Carter, Judge Griffin Bell? What does he say about Justice Rehnquist? He said:

I think he has to be tested to see if he possesses integrity, ability, leadership capacity, intellectual attainment, and good health and on top of that, I would want to be certain that he had a modicum of common sense. It seems to me that he meets all of these standards and the President's nominee for Chief Justice should not be rejected. He has a public record of 15 years on the Court, and I think his record supports that same conclusion. Were I a Senator, I would vote to confirm Justice Rehnquist as Chief Justice. I would do so with a decided view that he would serve our Supreme Court and our country well.

Mr. President, that is not a Republican. That is a Democratic Attorney General.

What about Mr. Erwin Griswold, who is respected by everyone who knows lawyers? He was Solicitor General under President Johnson. He said:

. . . because of my 33 years of academic career, I have been quite a student of the Supreme Court over the past good many years, including the current Court. I have read the opinions. I think Justice Rehnquists' opinions are able, lawyer-like, important contributions to our constitutional and other law. In my opinion, he is extremely well qualified to be Chief Justice . . .

That was stated by Mr. Erwin Griswold, a former Solicitor General under President Johnson.

What about another former Attorney General, William French Smith? Mr. Smith gave a glowing opinion which is in the record. He said:

He has made an impressive and important contribution to the Court and will certainly continue to do so.

What about Dean Gerhard Casper, of the University of Chicago Law School? He gives Justice Rehnquist a glowing recommendation. He said:

Justice Rehnquist, in terms of abilities, temperament, and administrative experience, is well qualified to take on these tasks. I have known Justice Rehnquist personally for about 7 years and I have been greatly impressed by his capacity to deal with people and problems in a low-keyed, friendly, and effective manner. Justice Rehnquist is well versed in the institutional history of the Supreme Court and cares about the Court's role in American life. While the Justice and I disagree on a fair number of substantive issues, these disagreements have never prevented me from appreciating Justice Rehnquist's great abilities as a lawyer. I would expect him to go about the tasks of the Chief Justice with true concern for the demands of the position.

Mr. President, all these are very prominent people.

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

Mr. THURMOND. Mr. President, in closing, I want to say this, and I will give the rest of the time to the distinguished majority leader.

I urge my colleagues to vote for cloture on the nomination of Justice William Rehnquist to be Chief Justice of the United States. Justice Rehnquist is entitled to a vote on the constitutionally mandated responsibility of advice and consent of the Senate.

Mr. President, the outcome of the issue of confirmation should not be decided by a vote on cloture requiring 60 votes, almost two-thirds of the Senate. Those who oppose cloture will, in effect, be holding the nominee to a higher standard than that normally required. A majority vote is all that is needed to approve or disapprove any nominee, and Justice Rehnquist or any other nominee is entitled to that vote.

I urge my colleagues, in a sense of fairness, to vote for cloture, and thus allow the Senate to work its will.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter to me from Thomas E. Adams, Jr., which is self-explanatory. He refutes the charges with respect to civil rights and so forth.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 12, 1986.

HON. STROM THURMOND,
Chairman, Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: News articles appearing in The Wall Street Journal on September 10 headlined "New Questions Raised About Rehnquist's Role in Army Surveillance of Protestors" and The Washington Post of September 11 headlined "Rehnquist Role in Army Spy Case Called Unethical" greatly preturb me. These newspaper articles wrongly charge Justice Rehnquist with developing an Army domestic surveillance program of antiwar protestors while working for the Justice Department during the Nixon Administration.

As the Chief of Plans and Operations for the Military District of Washington during the period February 1964 to August 1966 and the Chief of Plans and Operations, Office Chief of Military History, Department of the Army (1966–May 1968), I have personal knowledge that Army surveillance activities were not only planned but were operational, i.e., in use, against so called war protestors and additionally, so called "civil rights activists" prior to the Nixon Administration. Such surveillance was conducted specifically during the period 1964–1968 by a Counter-Intelligence-Corps (C. I. C.) Battalion assigned to the Washington area. Specific surveillance of so called "civil rights activists" by the C. I. C. unit was being conducted prior to my assignment to the Military District of Washington and apparently (from reports submitted to me) was initiated

during Martin Luther King's "March on Washington" in the fall of 1963. At any rate the Army C. I. C. unit was actively conducting widespread surveillance of "civil rights activists" in the Washington area during the 1964-66 period and when the so called war protestors commenced their activities those activities were also put under surveillance by the Army C. I. C. unit in the Washington area. The Federal Bureau of Investigation supplied the Military District of Washington and the so called "War Room" of the Pentagon with similar surveillance information during this period. During a meeting I attended in 1966 in the Office of the Attorney General of the United States conducted by the then Deputy Attorney General, Ramsey Clark, regarding the possibilities of rioting in the District of Columbia, the Attorney General directed all surveillance activities to be increased. Also in attendance at this meeting were Assistant Attorney General Barefoot Sanders, the U.S. Attorney for the District of Columbia, the Chief of Police for the District of Columbia, and a General Officer in charge of the "Army War Room" at the Pentagon. Following my transfer to the Office of the Chief of Military History in the fall of 1966 until I retired from the Army in May of 1968, I maintained close contact with my Army friends at the Military District of Washington; my observation was that the surveillance mission continued at least until my retirement. My statement in this matter can easily be documented from Army records.

I trust this information might be useful in bringing out the real truth in Justice Rehnquist's confirmation proceedings.

Respectfully,

THOMAS E. ADAMS, Jr.,
LTC U.S. Army Ret.

Mr. THURMOND. Mr. President, since my name has been brought into this matter previously with respect to Justice Fortas, I ask unanimous consent to have printed in the RECORD my additional views on Justice Fortas when I opposed his nomination several years ago.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INDIVIDUAL VIEWS OF MR. THURMOND ON JUSTICE FORTAS

Refusal to advise and consent to the appointment of a Chief Justice of the Supreme Court is a most serious action. It cannot be undertaken lightly, and reasons for such an action must be set out clearly and forthrightly.

The hearings conducted by this committee have been extensive. There has been considerable discussion by witnesses and by Senators of the propriety of the circumstances of this appointment, of the proper role of the Supreme Court in the governing of this Republic, and inevitably, of the activities of the nominee himself, Justice Abe Fortas. This discussion has produced three sound and highly persuasive reasons why this nomination should not be confirmed: First, the positions taken by Justice Fortas since he went on the Supreme Court as Associate Justice have reflected a view to the Constitution insufficiently rooted to the Constitution as it is written; second, the conditional wording of Chief Justice Warren's resignation, in which the Senate is told, in effect, confirm this nominee, or the Chief Justice remains at his post, is indicative of a desire by the Chief Justice to influence the choice of his successor in an extraconstitutional manner; and third, Justice Fortas himself has involved himself in extrajudicial activities which raise doubts as to his desire to maintain that degree of isolation and impartiality required of a Chief Justice.

With regard to the decisions in which Justice Fortas has participated, four categories of cases are of particular concern: Criminal procedure, pornography, State-Federal relations, and subversive activities.

CRIMINAL PROCEDURE

Crime and lawlessness have become of utmost concern to the vast majority of Americans, and understandably so. The maintenance of public order and the security of person and property which accompany this order is necessarily the first requirement of government. The Supreme Court's decsion in *Miranda* v. *Arizona*, 384 U.S. 436 (1966), which freed a confessed rapist and completed the destruction of the voluntary confession in criminal cases, unfortunately typifies the Court's approach to criminal procedure. Justice Fortas sided with the majority in this 5-to-4 decision. Justice White, in his strong dissent to the *Miranda* ruling, stated:

In some unknown number of cases the Court's rule will return a killer, a rapist, or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him.

PORNOGRAPHY

A society which refuses to defend its standards cannot preserve them. *Redrup* v. *New York*, 386 U.S. 767 (1967), in which Justice Fortas concurred, set the stage for massive reversals of obscenity convictions. Justice Fortas has voted to reverse obscenity convictions in 35 of 38 cases since he became an Associate Justice. Testimony before the Judiciary Committee made clear that these decisions have opened the floodgates for pornographic material of all kinds and created chaos in the efforts to enforce laws against such material.

STATE-FEDERAL RELATIONS

With regard to State-Federal relations, Justice Fortas has shown a strong distrust of the States. In his dissent in *Cardona* v. *Power*, 384 U.S. 672 (1966), he concluded that the 14th amendment left New York powerless to require literacy in English as a prerequisite to voting. In *Katzenbach* v. *Morgan*, 348 U.S. 641 (1966), he agreed with a majority that Congress could prohibit New York from enacting such a voting requirement. In *Brown* v. *Louisiana*, 383 U.S. 131 (1966) he wrote the prevailing opinion holding Louisiana powerless to punish demonstrators who refused to leave a public library.

In *Harper* v. *Board of Elections*, 383 U.S. 663 (1966), Justice Fortas agreed with the majority that Virginia was powerless to enact a poll tax as a voting requirement. Regardless of one's view of the poll tax, and as Governor of South Carolina, I sponsored legislation to repeal it in our State, Justice Black's dissent in this case should be noted:

It seems to me that this is an attack not only on the great value of our Constitution itself, but also on the concept of a written constitution which is to survive through the years as originally written unless through the amendment process which the framers wisely provided.

SUBVERSIVE ACTIVITIES

Another category of cases in which Justice Fortas' record should be noted concerns the internal security of this Nation. In *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965), Justice Fortas voted with the majority to overthrow a Federal requirement that Communist Party members register with the Subversive Activities Control Board. In *Keyishian* v. *New York Board of Regents*, 385 U.S. 589 (1967), Justice Fortas concurred in a 5-to-4 decision which struck down the New York loyalty oath prohibiting Communists from teaching in the public schools. Justice Fortas also sided with the majority in *United States* v. *Robel*, 389 U.S. 258 (1967), to overthrow a law of Congress prohibiting Communists from working in defense plants. Justice Fortas voted with the majority again in *DeGregory* v. *New Hampshire*, 383 U.S. 824 (1967), to deny the State of New Hampshire the power to investigate Communist activities in that State. Considering the wealth of knowledge Congress has accumulated on the Communist apparatus, distinguishing it from a mere political association, I find these decisions indefensible.

Some have objected that prior Supreme Court decisions and the role of Justice Fortas in these decisions have no proper part in these deliberations. Let us recall these words attributed to Abraham Lincoln:

The candid citizen must confess that if the policy of government upon vital questions is to be irrevocably fixed by decisions of the Supreme Court, the people will have ceased to be their own selves, having to that extent practically resigned their government into the hands of that eminent tribunal.

A second question to be considered is the curious matter in which Chief Justice Warren tendered his resignation to the President. In our system of checks and balances, the Supreme Court is appointed by the President with the advice and consent of the Senate. There is no provision for the members of the Court to participate in this process. Chief Justice Warren, by resigning effective upon the qualification of his successor, has created a situation in which we are not called upon to fill an existing vacancy: If we refuse to confirm this appointment, Chief Justice Warren will continue to serve. It is unclear just how long he intends to serve or whether a new President in January may simply submit another name in the absence of any further action from the Chief Justice. If Justice Fortas is confirmed, the Senate will have also acquiesced in setting a precedent by which sitting Justices attempt to perpetuate their philosophies by influencing the choice of their successors. Such a precedent would be unwise and could accelerate the growing influence of the Supreme Court in American government.

Finally, we must consider certain nonjudicial activities of Justice Fortas which are relevant to this nomination. It is well known that Justice Fortas, prior to his elevation to the Supreme Court in 1965, was a man of great influence in the councils of Government here in Washington. His friendships were numerous, uncommonly influential, and well placed both in and out of Government. It is only natural that he acquired a reputation for an ability to influence the course of events in Government. There is, of course, nothing necessarily wrong in such an arrangement. His counsel was apparently sought, and freely given. Involvement in all branches of Government became a habit with Mr. Fortas. When he became a Supreme Court Justice, he did not break the habit.

Persuasive evidence was introduced in the hearings that Justice Fortas transgressed the separation-of-powers doctrine in both the executive and legislative branches. The evidence, which came from credible sources and was not refuted, indicates that Justice Fortas participated in the drafting of President Johnson's state of the Union message and in the drafting of legislation to provide Secret Service protection for presidential candidates. Such activity on the part of a member of the Supreme Court is improper. The prospect of a Justice ruling on a matter before the Supreme Court in which he had been personally involved violates both standards of judicial ethics and the concept of separation of powers.

The testimony of Dean B. J. Tennery, of the law school of American University, must also be given the most serious consideration. Justice Fortas was paid $15,000 by American University to conduct a seminar for the law school. The seminar consisted of nine lectures during the summer of 1968. The highest sum previously paid by the law school for similar services was $2,500. Justice Fortas was paid from a fund of $30,000 raised for this seminar by Mr. Paul Porter from five prominent individuals. Mr. Porter is a former law partner of Justice Fortas; and Mrs. Fortas is still associated with the firm. As far as can be determined, none of the five individuals had any prior association with American University. Apparently the five are friends of Mr. Porter and/or Justice Fortas. All of the contributions have extensive business interests and are directors of large corporations, any of which could have cases before the Supreme Court. One is chairman of the New York Stock Exchange. According to press reports, one of the contributor's son has a conviction for mail fraud on appeal before the U.S. court of appeals.

The role of a Supreme Court Justice is unique in government. A Member of Congress for example, is an advocate for the people and cannot remain indifferent to the outcome of causes which he believes are in the best interest of the Nation. A Supreme Court Justice cannot allow himself to appear to be active in public affairs. He cannot involve himself in situations which could compromise or constrict his work on the Court. The price of judicial detachment is high in human terms; but the dignity and authority and reserve of the Court come from the stature of those who are willing to pay the price.

For all of the reasons outlined above, I believe the Judiciary Committee should not have reported this nomination to the Senate floor. The U.S. Senate should refuse to concur in this appointment.

Mr. THURMOND. Mr. President, I yield the remainder of our time to the able majority leader, Senator DOLE.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, we are about to have a vote on cloture, to end the debate on the nomination, and I hope it is overwhelming.

I know there are some who have very strong differences; and I indicate, and I think the Record will reflect, that there has been an effort by the distinguished chairman of the committee, Senator THURMOND, and by the leader to keep this as free from partisanship as possible.

In my view, we have extended every courtesy to the opponents. We thought we might vote yesterday. We thought there might not be a need to file the cloture motion. I will not say that we have gone the extra mile. This is a very important nomination. I believed, and I still believe, that there was every right to discuss it to the fullest. I think, for the most part, the debate has been on a very high level, and we have not wasted a great deal of time. But I do believe that now we have heard everything at least once or twice or three times. There are no bombshells lying around.

It seems to me that it is in the interests of the U.S. Senate and certainly in the interests of the nominee that we proceed to vote on the nomination. I know this is important. I know that we should not let other important work interfere with this nomination. We do have a lot of work to do, but we have tried to temper any effort to rush to judgment, with parts of at least 4 or 5 days on the Rehnquist nomination.

□ 1500

I believe for the many, many, many reasons stated by the chairman of the committee, Senator THURMOND, who had done outstanding work on this nomination, that there ought to be an overwhelming vote on this cloture motion and following that if cloture is invoked we ought to dispose of the nomination.

Once cloture is invoked I really do not see any reason to debate it further.

I urge my colleagues—those who are opposed, all right—I urge all who can to vote for the cloture motion. Let us get on with this nomination and get on with the rest of our work so we can leave here on October 3.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 3 p.m. having arrived, under the previous order, the clerk will state the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of William H. Rehnquist, of Virginia, to be Chief Justice of the United States.

Bob Dole, Strom Thurmond, Thad Cochran, Chic Hecht, Dan Quayle, James A. McClure, William L. Armstrong, Jesse Helms, Phil Gramm, Mack Mattingly, Jeramiah Denton, Orrin G. Hatch, James Abdnor, Paul Trible, Malcolm Wallop, and Al Simpson.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the nomination of William H. Rehnquist to be Chief Justice of the United States shall be brought to a close? The yeas and nays are automatic under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

The PRESIDING OFFICER (Mr. NICKLES). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 68, nays 31, as follows:

[Rollcall Vote No. 265 Ex.]

YEAS—68

Abdnor	Gorton	Nickles
Andrews	Gramm	Nunn
Armstrong	Grassley	Packwood
Bentsen	Hatch	Pell
Bingaman	Hatfield	Pressler
Boren	Hawkins	Proxmire
Boschwitz	Hecht	Quayle
Broyhill	Heflin	Roth
Bumpers	Heinz	Rudman
Chafee	Helms	Simpson
Chiles	Hollings	Specter
Cochran	Humphrey	Stafford
Cohen	Kassebaum	Stennis
D'Amato	Kasten	Stevens
Danforth	Laxalt	Symms
DeConcini	Leahy	Thurmond
Denton	Long	Trible
Dole	Lugar	Wallop
Domenici	Mathias	Warner
Durenberger	Mattingly	Weicker
Evans	McClure	Wilson
Ford	McConnell	Zorinsky
Goldwater	Murkowski	

NAYS—31

Baucus	Gore	Metzenbaum
Biden	Harkin	Mitchell
Bradley	Hart	Moynihan
Burdick	Inouye	Pryor
Byrd	Johnston	Riegle
Cranston	Kennedy	Rockefeller
Dixon	Kerry	Sarbanes
Dodd	Lautenberg	Sasser
Eagleton	Levin	Simon
Exon	Matsunaga	
Glenn	Melcher	

NOT VOTING—1

Garn

□ 1520

The PRESIDING OFFICER. On this vote, there are 68 yeas and 31 nays. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The PRESIDING OFFICER. A motion to reconsider a successful cloture vote is not in order.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, a parliamentary inquiry: What is the situation now?

The PRESIDING OFFICER. Will the Senate be in order now, please?

There is a total of 30 hours for consideration of the nomination. Senators may speak for up to 1 hour each.

Mr. LEAHY. Thank you, Mr. President.

Mr. President, before the—was the majority leader seeking recognition? If he was, I would certainly yield to him.

Mr. DOLE. I am just standing around.

Mr. LEAHY. Mr. President, if we could have order.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Vermont.

NOMINATION OF WILLIAM H. REHNQUIST TO BE CHIEF JUSTICE OF THE UNITED STATES

Mr. LEAHY. Mr. President, prior to the cloture vote, I had attempted to spell out my feelings about the Laird versus Tatum case, and others. I did not feel it would be fair, either to the Senate or to myself, to go into such complex a matter in a minute or so that might be available. I would like to go into that now.

Justice Rehnquist has many qualities that I consider important for a Chief Justice. Among these are his keen intellect and legal skills, and his considerable experience as an Associate Justice, which gives him a great understanding of the workings of the Court and an appreciation for the responsibilities of the Chief Justice.

But there are other equally important qualities requisite to being Chief Justice. And they are in these areas: in credibility, in judgment, in sensitivity——

The PRESIDING OFFICER. Will the Senator please withhold? The Senate will be in order. The Senator has a right to be heard.

Senators please take their conversations to the rear of the Chamber. Will the Senate please be in order? Senators please take their conversations to the rear of the Chamber.

Mr. RIEGLE. Mr. President, the Senate is still not in order. I wonder if the Chair would restore order so we can hear the Senator.

The PRESIDING OFFICER. The Presiding Officer is aware of that. The Senate will be in order. The Sergeant at Arms, too, will try to accommodate the galleries in trying to maintain order.

The Senator from Vermont.

Mr. LEAHY. I thank the Chair for restoring order. I realize that, on what has been really one of the more momentous votes of this year, there is, understandably enough, a fair amount of confusion both in the galleries and on the floor. I do appreciate the Chair restoring order.

Earlier this afternoon, I said that in the Judiciary Committee I had cast my own vote against Justice Rehnquist as a member of that committee. I did so with some personal regret, because I know him and I have a high regard for him.

I have, however, voted for cloture here this afternoon, and I did that because I felt that this is an issue that should come to a conclusion and that the Senate should vote on it. I feel that President Reagan is entitled to have a vote up or down in this body and that we should carry out our constitutional duty to advise and consent on this nomination.

And so, in that regard, Mr. President, I would like to discuss the main reason I voted against Justice Rehnquist in the Judiciary Committee.

Justice Rehnquist has many qualities that I consider important for Chief Justice. Among these are his keen intellect and legal skills, and his considerable experience as an Associate Justice which gives him a great understanding of the working of the Court and an appreciation for the responsibilites of the Chief Justice.

However, there are other, equally important qualities requisite to be Chief Justice, and it is in these areas—credibility, judgment, and sensitivity—that I believe Justice Rehnquist falls short of the standard we should employ.

At the outset, let me say that I do not believe that a nominee's philosophy should be the ultimate factor in carrying out our responsibility to advise and consent. As long as a nominee is otherwise qualified, philosophy should not be a consideration unless that philosophy undermines fundamental principles of constitutional law, or his or her adherence to ideological principles is so fervent that the nominee cannot judge impartially.

President Reagan, like any President, is entitled to appoint judges who share his philosophy. Indeed, Justice Rehnquist himself acknowledges that he very well may be the most conservative member of the Court. Yet the fact that Justice Rehnquist's ideology or judicial philosophy differs from my own played no part in my decision to vote against him.

Justice Rehnquist's ownership of property in Vermont was also explored in the hearings. The warranty deed on that property includes a restrictive covenant barring the sale of the property to any member of the Hebrew race.

While I am disturbed that as a sitting Supreme Court Justice, Justice Rehnquist did not question the existence of this clause in the deed at the time he bought the property, I find no evidence in Justice Rehnquist's background that he is either racist or anti-Semitic. I accept Justice Rehnquist's assurances that he finds the covenant repugnant, and that he will move expeditiously to have it removed from his deed.

I raised this issue during the hearings because the Chief Justice of the United States is the person who, perhaps more than any other, embodies our principles of justice. Because of that important role, I believe—and Justice Rehnquist agreed with me during his testimony—that it is vital that he avoid even the appearance of racial or religious hostility.

Another important issue raised during the Judiciary Committee hearings on the Rehnquist nomination was whether he participated in efforts to challenge minority voters in the early 1960's. Based on my observation of the witnesses and my review of the testimony, I believe that the memories of both Justice Rehnquist and of many of those who testified against him are faulty.

I can understand the position of those of my colleagues who are convinced of Justice Rehnquist's participation in voter challenges and based their decisions on this point. I can appreciate the opinions of my colleagues who are equally convinced that Justice Rehnquist was not involved in this reprehensible activity. Without clear and convincing evidence, I felt that this issue could not form the basis for my decision on Justice Rehnquist's nomination.

The axis upon which my decision to vote against Justice Rehnquist's confirmation ultimately turned was his decision not to recuse himself in the Supreme Court's 1972 decision in Laird versus Tatum. That case involved a first amendment challenge to the Army's program of conducting domestic surveillance of persons engaged in lawful antiwar demonstrations. The Supreme Court ruled in a 5-to-4 decision that the facts underlying the case presented a nonjusticiable controversy.

During my review of the testimony and the materials which have been submitted concerning this nomination, I kept coming back to Justice Rehnquist's participation in the Laird case. I was not only troubled by Justice Rehnquist's decision to sit on that case, but also by the testimony he gave in answer to my questions concerning Laird versus Tatum.

In order to understand Justice Rehnquist's conduct and his testimony before the committee, it is important to review the history of the Army's Domestic Surveillance Program—the program which led to the Laird versus Tatum case.

The Army's Domestic Surveillance Program began during the Johnson administration. It grew more as a result of the FBI's failure to provide accurate intelligence concerning the potential for riots in urban ghettos than from a lack of intelligence concerning antiwar protests.

In 1967, Army personnel were called in to quell the Detroit riot. This was the first time in 25 years that Army troops were used to handle a civil disturbance.

Following that incident, Attorney General Clark created a working group in the Department of Justice under the direction of Deputy Attorney General Christopher to collect intelligence and plan for civil disturbances. Meetings were held to plan for potential incidents, to coordinate the Federal response, and to establish rules for engagement for the use of Army personnel. Personnel of the Department of the Army participated in this working group.

It was in this context that the Army began its Domestic Surveillance Program which was first authorized by a Defense Department directive in May, 1968. Later, the emphasis of the program shifted from urban violence to concern about potential antiwar demonstrations.

In 1969, when President Nixon's team came to Justice, Deputy Attorney General Kleindienst took over command of the working group.

At that time, the Department of the Army sought specific civilian authorization for its role in civil disturbance planning and it sought to limit its role in domestic intelligence gathering. After consultations between Defense and Justice, it was decided that a memorandum to the President from Attorney General Mitchell and Secretary Laird would be prepared. That memorandum would set out the parameters of the various agencies' roles with regard to civil disturbances.

The responsibility for preparing the memorandum was given jointly to the Office of General Counsel of the Department of the Army and the Office of Legal Counsel of the Department of Justice. The Office of Legal Counsel was then headed by William Rehnquist. On March 25, 1969, Mr. Rehnquist prepared the first formal Justice draft memorandum of a civil disturbance plan. A quote from the memo states:

> In order to preserve the salutary tradition of avoiding military intelligence activities in predominantly civilian matters, the U.S. Army Intelligence Command should not ordinarily be used to collect intelligence activities of this sort.

The general counsel of the Army at that time, Robert E. Jordan, III, later testified before the Senate Subcommittee on Constitutional Rights that the Army had problems with the Rehnquist draft. In a memorandum accompanying his 1974 testimony to Senator Ervin, Mr. Jordan wrote the Army had suggested that the term "should" should be changed to "will" so that the memorandum would state forcefully that the Intelligence Command "will not ordinarily be used to collect intelligence of this sort."

In spite of the Army's arguments, the final draft of the memorandum eliminates any restrictions on the Army's collection of raw intelligence.

In his 1974 testimony, Jordan stressed that those changes were made at the request of Deputy Attorney General Kleindienst. In a recent letter to my chief counsel, Mr. Jordan clarified how the change in the final memorandum came about and Mr. Rehnquist's role in the development of the final product. Quoting from the letter:

> Some of the inquiries I have received from other sources suggested that Mr. Rehnquist might have been an advocate for increased military intelligence activities relating to civilians. That is certainly not my recollection. To the extent this issue is important, you should know that my recollection is that Mr. Rehnquist agreed in general with the Pentagon view that every effort should be made to reduce or eliminate the military intelligence role. Within the Department of Justice, the opponents of reducing the military intelligence role were, as I understand it, the representatives of the FBI, and Mr. Hoover in particular.

The point is not whether Justice Rehnquist argued in favor of more or less domestic surveillance by the Army as a policy matter.

The point is that Justice Rehnquist, while Assistant Attorney General for the Office of Legal Counsel, was deeply involved in the development of the policy which was ultimately at issue in the Laird versus Tatum case.

These facts were not known to the plaintiffs in Laird at the time they asked Justice Rehnquist to recuse himself from the case. Their basis for seeking recusal was testimony which he gave before Senator Ervin's Subcommittee on Constitutional Rights in 1971. Again, it is important to understand the context of those hearings to fully appreciate the refusal of Justice Rehnquist to recuse himself in the Laird care.

Some information about the Army's Domestic Surveillance Program had come out as a result of press articles and congressional inquiries in 1970. Included in that information was the fact that the Army had developed a data bank of potential subversives which was stored in a computer at Fort Holabird, MD, headquarters for the Army Intelligence Command.

Public exposure of the program and the Fort Holabird blacklist resulted in the filing of Tatum versus Laird in 1970 in the U.S. District Court for the District of Columbia. That case was pending at the time of the Ervin hearings. The topic of those hearings was Government collection and computer storage of information about individual Americans. The focus of those hearings was the Army's Domestic Surveillance Program.

Senator Ervin requested witnesses from both the Department of Defense and the Department of Justice. One of the Justice Department witnesses was Mr. Rehnquist. He testified on the constitutional limits of the Government's collection of sensitive personal information about American citizens, especially with regard to the exercise of their first amendment rights. During the course of that testimony, Mr. Rehnquist stated:

> The function of gathering intelligence relating to civil disturbances, which was previously performed by the Army as well as the Department of Justice, has since been transferred to the Internal Security Division of the Justice Department. No information contained in the data base of the Department of the Army's now defunct computer system has been transferred to the Internal Security Division's data base. However, in connection with the case of *Tatum* v. *Laird*, now pending in the U.S. Court of Appeals for the District of Columbia Circuit, one printout from the Army computer has been retained for the inspection of the court. It will thereafter be destroyed.

In the same hearings, Justice Rehnquist went on to testify about a central legal question presented in the Laird case. The following exchange occurred between Senator Ervin and Mr. Rehnquist:

> Senator ERVIN. But you do take the position that the Army or the Justice Department can go out and place under surveillance people who are exercising their first amendment rights even though such action will tend to discourage people in the exercise of those rights?
>
> Mr. REHNQUIST. Well, to say that I say they can do it sounds either like I am advocating they do it or that Congress can't prevent it or that Congress has authorized it, none of which propositions do I agree with.
>
> My only point of disagreement with you is to say whether, as in the case of *Tatum* v. *Laird* that has been pending in the Court of Appeals here in the District of Columbia, that an action will lie by private citizens to enjoin the gathering of information by the executive branch where there has been no threat of compulsory process and no pending action against any of those individuals on the part of the Government.

These two statements formed the basis for the plaintiffs' motion seeking recusal of Justice Rehnquist in Laird versus Tatum. As I stated earlier, at the time the recusal motion was made, the plaintiffs were not aware of Justice Rehnquist's important role in developing the policy which underlay the Army's Surveillance Program.

Furthermore, they were not aware of Mr. Rehnquist's role in advising the Defense Department on what information could or could not be provided to the Ervin committee concerning the Army's Domestic Surveillance Program.

Recently we have received a memorandum for the RECORD, written by Robert Jordan on February 23, 1971. This memorandum describes the Defense Department strategy for dealing with the then upcoming Ervin hearings, and the role of then Assistant Attorney General Rehnquist in advising

the Defense Department on its witnesses' participation in those hearings. Quoting from part of that memorandum:

The objective of Fred's [J. Fred Buzhardt, General Counsel, Department of Defense] negotiations has been to avoid the presence of any military personnel as witnesses at the hearings. Apparently, OSD with the approval of Justice plans to take a pretty hard line in refusing the committee information on internal discussions and the like. Fred made reference to an opinion from Bill Rehnquist, Assistant Attorney General, Office of Legal Counsel, on what can be released. There will be problems with the committee asking questions which cannot be answered without violating Mr. Rehnquist's guidelines. I will be the biggest problem here, because I have been around for a long time, and have participated in a large number of internal discussions.

In addition to the testimony at the hearing and advice to the Departments of Justice and Defense, Mr. Rehnquist played one other role during the course of the Ervin hearings. He sent a letter authorizing one of Senator's Ervin's staff members to review the printout of the information which had been stored in the Fort Holabird computer.

This printout included codes about the alleged subversive activities of the people who were under Army surveillance—a list, it should be noted, which included many distinguished military personnel. It seems highly unlikely that Mr. Rehnquist would have authorized congressional review without knowing what information was contained in the printout.

Mr. President, I've just recounted a lot of facts that may be difficult to follow. Let me summarize.

Mr. Rehnquist participated in forming the policy which for the first time gave civilian authorization to the Army's Domestic Surveillance Program.

He testified concerning important and disputed facts about the scope and continued existence of the Domestic Surveillance Program. These facts were that the Army had terminated its Surveillance Program, that it had destroyed the data stored in the computer at Fort Holabird, that only copy of the computer printout was retained and that no information had been transferred to the Department of Justice Internal Security Division's data base.

He advised the Department of Defense about the scope of its testimony concerning the Domestic Surveillance Program.

He authorized congressional access to a key document which established the scope and contours of the Domestic Surveillance Program.

He gave testimony concerning his legal opinion as to whether the specific case of Laird versus Tatum raised a justiciable controversy.

Then, little more than 1 year after the most of these events occurred, Justice Rehnquist was faced with a decision to sit on the Laird case.

And what did he do? He cast the deciding vote in favor of the position he had previously testified to before the Ervin committee.

He cast the deciding vote for an opinion which adopted the version of the facts he had previously testified to, but which were hotly contested by the plaintiffs in Laird.

He cast the deciding vote in favor of a position which denied plaintiffs the opportunity to take discovery on the factual questions he had previously testified to.

He cast the deciding vote in favor of a position which resulted in keeping the internal discussions of the Army Surveillance Program which went on in the Department of Defense from coming to public light—a position he previously counseled the Defense Department to take.

Why did Justice Rehnquist decide to sit on the Laird case, a matter which most legal authorities now say was a very, very bad mistake? He wrote a lengthy memo explaining his reasons. His opinion boils down to the fact that since he did not serve as counsel to the Government in the actual case of Laird versus Tatum in the lower courts, he could therefore sit on the case as a member of the Supreme Court.

It is interesting and instructive to read his memorandum opinion in light of the facts that we now know and which had to be known to Justice Rehnquist at the time. I urge every Member of the Senate to do so.

It might be easy for some of my colleagues to write off this breach of judicial ethics as merely a mistake made long ago. But today, Justice Rehnquist says it was no mistake.

His answers to questions about Laird and his role and knowledge of the Army surveillance program were vague, and at times misleading.

I asked him whether he would have done things differently in retrospect. He said, "I never thought of it again until these hearings, to tell the truth."

Senator MATHIAS asked him in a written question what his personal role was in the development of the memo regarding the Nixon administration's civil disturbance plan. His answer was "I have no recollection of my personal role in the preparation of this document."

I asked him did he have any knowledge of the Army's domestic surveillance policy. His answer was, "I had—if you would consider information obtained in the course of preparing for the May Day demonstrations, which did involve some military activity, I suppose you would say yes."

Finally, I asked him did he have any knowledge of the evidentiary facts at issue in the Laird case. His answer was simple. It was "no."

But the facts presented to the Senate suggest an equally simple answer. It is yes, he did know—not the denial he made to the committee.

All of this information, taken together, raises so many substantial questions about his ethical judgment, his sensitivity to the appearance of impropriety, and his credibility during his confirmation hearings, that I cannot cast my vote in favor of Justice Rehnquist.

CONCLUSION

Each Member of the Senate now will have to examine the hearing record and the evidence which has come to light since the hearings.

There are two decisions possible—to vote for Justice Rehnquist's confirmation or against it. Yet, as the statements of the Senators during Judiciary Committee consideration of the confirmation demonstrate, even among those who come to the same conclusion on how they should vote, there is no one compelling reason that unites, no agreement as to what tips the scale.

There is no one that holds Senators together. When we stop to think about it, that is really the way it should be. We are 100 different Senators, and 100 different men and women. We are united in one thing. We have each taken a very solemn oath to uphold the Constitution. And we each have an individual duty to sift through the facts, and make our very best judgments.

So what is clear is that we are not a rubber stamp for a Presidential nomination just as we are not a vigilante force against a nomination. I sat through all of those hearings. I asked a lot of questions. I read practically every case I could get hold of. I read all of the material for Justice Rehnquist, and I read all of the material against Justice Rehnquist. I met privately with him at some considerable length. I listened to his answers during the confirmation hearings. I took most of this material back to my home in Vermont, and I reviewed it again. I walked around the fields of my farm and thought about it there.

At the conclusion of the confirmation hearings I wrote two memos to myself, one saying why I could vote for him and should vote for him, and one saying why I would not vote for him. When I read those, the one that said I should and could vote for him did not ring true. It did not in my mind reflect my commitment to this great body, the U.S. Senate, nor would it be fulfilling my own conscience as a Vermonter and as an individual.

I have set forth the reasons for my vote against Justice Rehnquist's confirmation. And those reasons are compelling to me. The others will perhaps find it equally compelling, or not significant, or maybe will find something

else that makes the picture clearer for them.

Mr. President, I vote only as one Senator but Justice Rehnquist will not be confirmed with my vote.

Mr. President, I reserve the balance of my time.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1540

Mr. KERRY. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, there is no doubt that the President of the United States has what I think all of my colleagues would agree is an undisputed right to appoint nominees who are of a similar philosophical view, and I certainly do not oppose the appointment of any individual to the Supreme Court or any other court on the basis that some of their views may disagree with mine. In fact, I think that has been true of most of my colleagues who are opposed to this nomination. I have voted for almost all of the President's nominees to Federal judgeships during his second term. Out of 118 judicial nominations by President Reagan in his second term, I voted for 115. I have voted against only three.

But it seems to me, as colleague after colleague has asserted in the course of this debate, when we are considering the nomination of a Chief Justice of the United States, it is incumbent on us to apply a higher standard even than we do for other Justices of the Supreme Court, that we ought to stop and ask the tougher questions, and that we should expect the application of the very highest standards.

Why? Senator after Senator on both sides of the aisle has eloquently underscored the nature of the U.S. Supreme Court and what it means to use as Americans and as a society. It is no accident that we refer to the Chief Justice as the Chief Justice of the United States, not merely the Chief Justice of the Supreme Court. The Chief Justice represents more than just one of nine men and women on that Court. The Chief Justice is the leader, not only of the Supreme Court but of our entire system of justice.

The Chief Justice is the symbol of our constitutional system of government and of the traditional American values of equality and justice which go with that.

As Prof. Laurence Tribe of Harvard Law School has written, "The Chief Justices—only 15 have served in our entire history—present the most obvious examples of the one Justice who can make a difference. And although often in dissent and sometimes lagging behind instead of leading the Court, one Chief may make all the difference in the constitutional world."

Historically, the role of the Chief Justice has been critical in shaping the course of American jurisprudence and American history. Chief Justice John Marshall, for instance, with his famous decision in Marbury versus Madison, shaped our view of the U.S. Constitution itself and as Justice Benjamin Cardozo wrote, "Marshall gave to the Constitution of the United States the impress of his own mind and the form of our constitutional law is what it is because he molded it while it was still plastic and malleable, in the fire of his own intense convictions."

Chief Justice Marshall personally wrote the opinion of the Court in 519 of 1,215 cases decided during his tenure on the Court, and as Professor Tribe has written, "his intellectual grip on his fellow Justices was so firm that Marshall dissented from a constitutional ruling only once. In every other major case decided in his 34 years at the helm of the Supreme Court, Marshall got his way." And in the 20th century the role of the Chief Justice has been equally important.

Under Chief Justice Earl Warren, the U.S. Supreme Court led the way in moving this country toward racial justice. Chief Justice Warren not only wrote the Court's opinion in Brown versus Board of Education, mandating an end to segregated public schools in this country, but he acted as a genuine leader in the process of bringing about a unanimous decision of the Court. In Professor Tribe's words, "That the Court spoke with a single authoritative voice in Brown added immeasurably to the ruling's credibility in the face of widespread and bitter resistance."

And under Chief Justice Warren Burger, the Court's unanimous 8-to-0 decision in the Nixon tapes case was instrumental in forcing President Nixon to release those tapes and in bringing about an end to that constitutional crisis.

So clearly, Mr. President, the role of the Chief Justice is crucial to building consensus on the Court, to leading the Court, and to helping to lead the country in our system of justice and also in reasserting and impressing on Americans and the world our value system. The man or woman who fills that position has to be a person with demonstrated ability to lead in that way and with a demonstrated capacity and willingness to show the moral vision, of which true leadership is a part.

In the case of Justice Rehnquist, measured against this standard, or measured against what I hope would be the highest standards that body would apply, I feel there are compelling reasons for opposing his nomination. First, Justice Rehnquist has consistently—consistently—demonstrated an insensitivity to the rights of minorities, women, children, and the poor in our society. He has shown himself to be literally hostile to the principle of racial desegregation and to fundamental constitutional principles such as the separation of church and state.

Now, as we all know, Mr. President, there is nothing wrong in a justice of any court having views which place he or she in solitary opposition to colleagues on the bench. No, we applaud I think in this country and certainly in our judicial system we encourage independent thinking, and it is obviously vital to the development of our judicial system.

□ 1550

I believe that Justice Rehnquist's views are so far outside the mainstream of legal thought that he is irredeemably handicapped in his ability to effectively fulfill the essential role of a Chief Justice as a builder of consensus on the Court. That is the most important reason for opposition. But, in addition, I believe Justice Rehnquist has demonstrated a disturbing lack of sensitivity to certain principles of legal ethics, as well as some lack of credibility in his testimony before the Senate Judiciary Committee, enough so that it actually does injury to the standards of our judicial system to reward him with the role of Chief Justice of the United States, considering all that means.

Mr. President, the record shows that Justice Rehnquist, throughout his career, has consistently shown an insensitivity to the rights of minorities. We have heard much of the memo as a law clerk for Justice Robert H. Jackson in 1952, which he authored, defending the infamous Plessy versus Ferguson decision, upholding racial segregation in "separate but equal facilities." Mr. Rehnquist wrote:

> I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by "liberal" colleagues, but I think Plessy versus Ferguson was right and should be reaffirmed.

In another memo, he wrote that:

> It is about time the Court faced the fact that white people in the South don't like the colored people; the Constitution did not appoint the Court as a social watchdog to rear up every time private discrimination raises its admittedly ugly head.

Subsequently, Justice Rehnquist claimed at his first confirmation hearing in 1971, and again this year, that these statements merely reflected the views of Justice Jackson, and not his own views.

I think that any reading by anybody—not even a lawyer—any reading of the way in which those words have been phrased and that memo was writ-

ten makes it clear whose views were being expressed.

The weight of the evidence clearly shows that assertion by Justice Rehnquist is of dubious credibility. It has been contradicted by the statements of Mr. Rehnquist's coclerk at the time, Donald Cronson, and by Justice Jackson's longtime secretary, Elsie Douglas, who said that it "smeared the reputation of a great Justice." And this explanation is simply not consistent with the facts regarding Justice Jackson's views. As others have stated, it would have been more appropriate—perhaps even honest—for Justice Rehnquist to simply have admitted that the memos represented his views at that point in time, but that today he no longer holds those views, if in fact that were true. That he did not do so simply raises an additional issue regarding credibility.

I believe Justice Rehnquist has consistently in his 15 years on the Supreme Court shown himself to be outside further examples of the mainstream of legal thought. More than 50 times, Justice Rehnquist has been a lone dissenter on the Court, with all of his colleagues on the other side of an issue. He has been opposed not only by liberals and moderates, but even by such conservatives as Justice O'Connor and Chief Justice Burger. In his lone dissent in the Bob Jones University case, Justice Rehnquist was the only Justice to support tax credits for segregated schools. In Batson versus Kentucky, his lone dissent supported the right of a prosecutor to prevent blacks and minorities from serving on a jury. In Keyes versus School District No. 1, Denver, CO, his lone dissent supported the view that segregation in one part of a school district does not justify a presumption of segregation throughout the district. In Wallace versus Jaffree, the Court's most recent school prayer case, Justice Rehnquist was the only Justice to assert that the establishment clause did not require Government neutrality on religious issues. In Cruz versus Beto, he was the only Justice to reject the application of the free exercise clause to imprisoned convicts. He was the only Justice to dissent from a decision in Cleveland versus Loudermill requiring notice and opportunity to be heard before permanent civil service workers can be terminated. He was the only Justice to say that churches can be given discretionary governmental power, in Larkin versus Grendel's Den. He was the only Justice to say that the State can deny medical care to nonresident indigents, in Maricopa Hospital versus Maricopa. He was the only Justice to say that criminal trials can be closed to the public, in Carter versus Kentucky. And he was the only Justice to say, in In Re Primus, that an ACLU lawyer could be disciplined for telling a poor person that the ACLU provides free legal services.

In 80 out of 83 cases in which members of the Court have disagreed about the interpretation or application of a modern civil rights statute, Justice Rehnquist has joined the interpretation or application of the law which is least favorable to minorities, women, the elderly, or the disabled. In the 23 cases involving constitutional claims of sex discrimination which were decided during Justice Rehnquist's tenure, he voted to uphold the challenged statute or practice in 20 out of the 23 cases. In 25 cases involving separation of church and state, Justice Rehnquist voted to uphold the challenged statute completely in 23 cases, and voted to uphold part of the statute in the other 2 cases. In 30 cases involving claims of cruel and unusual punishment, Justice Rehnquist found a violation in none of the cases. The full Court found a constitutional violation in 15 of the 30 cases. And in cases involving challenges by individuals to government action, Justice Rehnquist cast the deciding vote in 120 out of 124 cases to reject the constitutional claim of individual rights. This is not the record of a man who will build consensus and lead the Court.

There are other reasons for concern—though none as critical as the record of decisions on the Court itself. I am also deeply concerned by Justice Rehnquist's interpretation of basic canons of legal ethics. In particular, I believe Justice Rehnquist committed a serious violation of legal ethics by refusing to recuse himself in the case of Laird versus Tatum, in which he cast the deciding vote. There is no question—many of my colleagues have pointed out, and as the distinguished Senator from Vermont most recently among them pointed out—that Justice Rehnquist had been deeply involved in this case while he was in the Justice Department, and that his participation in the case as a Justice violated both 28 U.S.C. 455, and the ABA code of judicial ethics. This ethical violation has been discussed at length elsewhere, and I will not repeat all of those arguments.

But I think it is fair to say that the fact that this violation of legal ethics by Justice Rehnquist took place while he was a sitting Justice of the Supreme Court makes his conduct even more questionable. I cannot but conclude that he exercised bad judgment or let his personal bias in this case interfere with the fair and impartial administration of justice.

□ 1600

(Mr. BROYHILL assumed the chair.)

Mr. KERRY. Mr. President, the release within the past few days of two additional memos written by Justice Rehnquist, which were not provided to the Senate Judiciary Committee, provide additional insight, I believe, as to why Justice Rehnquist is not a suitable candidate for the position of Chief Justice. These memos were written by Mr. Rehnquist when he served in the Nixon administration as an Assistant Attorney General. One of the memos, written in March 1970, contains a proposal for a constitutional amendment to overturn Supreme Court rulings which brought about desegregation in the South. Its purpose was plainly and simply to halt the desegregation of America's public schools.

The other memo, also written while Mr. Rehnquist served as Assistant Attorney General, expressed his arguments in opposition to the equal rights amendment. No one faults anyone for being opposed to the equal rights amendment for one reason or another, but the memo expresses views which I believe can only be deemed to be reactionary about the role of women in American society. In Mr. Rehnquist's view, women should be second-class citizens in American society—subservient to their husbands, and passive onlookers in the decisionmaking processes of family and society. In his memo, Mr. Rehnquist candidly expresses the view that women should not have equal rights with men in American society. At one point in his memo, he states that—

> The consequences of a doctrinaire insistence on rigid equality between men and women cannot be determined with certainty, but the results appear almost certain to have an adverse effect on the family unit as we have known it.

I believe that in 1986, these views are simply beyond the pale of what is acceptable in a Chief Justice or for that matter in any Federal officer.

I am also concerned by the evidence which has emerged about Justice Rehnquist's conduct and his answers during the hearings of the Senate Judiciary Committee and subsequent to the hearings. It is the opinion of this Senator from the testimony of many credible witnesses that Mr. Rehnquist did participate in instances of harassment and intimidation of minority voters at the polls in Arizona in the early 1960's. His attempts to evade responsibility for these actions, or to disguise their true character, are simply not credible in the eyes of this Senator. It is striking that a man who has been universally acclaimed as having a brilliant mind would claim to have such a hazy recollection of these important events in his life.

I found much more credible the testimony of James Brosnahan, then an assistant U.S. attorney and now a distinguished trial lawyer, who testified that he had personally seen Mr. Rehnquist at the polls and had confronted him regarding his challenges to voters. Several other credible witnesses also

testified that they had personally seen Mr. Rehnquist challenging minority voters at the polls. There is no small irony that, at a time when the Warren Court was breaking new ground in upholding the rights of minorities, and President Kennedy and Attorney General Robert Kennedy were bringing the power of the Federal Government to bear in enforcing these rights, that Mr. Rehnquist was at that same time challenging the rights of minority voters.

Mr. President, had this issue arisen now in 1986, since it occurred in the sixties, that were to have been framed in a way that somehow acknowledged it or said in fact that it was part of the role that he was performing but that that view has changed and we have moved on, I think that would probably have seen that issue disappear. But it is the fact that we are confirming conceivably a man for the role of Chief Justice who has put before us just totally conflicting testimony and one has to measure the motives of those who said otherwise.

What is the motive of a trial attorney, distinguished as he is, from that region and other witnesses in coming forward now to challenge a potential nominee for Chief Justice unless, Mr. President, they were speaking their mind and the truth.

I am disturbed by the revelation that Justice Rehnquist breached his ethical duty as a lawyer by failing to notify his brother-in-law, Harold Dickerson Cornell, of a trust which Mr. Rehnquist had drafted, of which Mr. Cornell was the beneficiary. The fact that that trust was kept secret from his own brother-in-law for over 20 years during which time Mr. Cornell became destitute makes me question, if not the question of a breach of a legal obligation, the question of the breach of a human obligation. The fact that Justice Rehnquist, through his wife, stood to personally benefit from this trust makes the violation even more questionable. And the fact that this deception continued for 10 years after Justice Rehnquist became a sitting Justice on the Supreme Court raises an even larger question.

I am also concerned by the revelations that Justice Rehnquist had restrictive convenants, not so much by the fact that if he had genuinely not known and they had passed on as they have in other people's deeds—we know others have had those restricted convenants and they were commonplace at one time—but Justice Rehnquist originally claimed at a Senate hearing that he was unaware of these covenants. Subsequently, within days it came to light in the press that he had received a letter from his attorney in 1974 containing explicit references to the Vermont convenant. Justice Rehnquist then admitted at the moment that the letter was about to become public in the press, that indeed he had received it but claimed that he did not recall the letter or its contents when he testified before the committee. Again, this whole episode raises further questions both about Justice Rehnquist's lack of sensitivity on racial matters and about his credibility.

Mr. President, any one of these matters considered alone might be considered a minor blemish, might be considered unimportant, might be considered too distant a part of history and not relevant at this point in time. But taken together, Mr. President, taken together, with the history of the record of the decisions themselves, they paint the picture, I believe, of a man who is at least insensitive to the rights of women, blacks, Jews, the handicapped, and other minority groups. They convey the picture of a man whose mind is not open and whose biases lead him to twist legal precedents and constitutional principles in order to reach a preordained result. And they paint the portrait of a man who has not paid enough attention to some of the standards which he will be called on to apply to others in the judicial system. And they paint the picture of a man whose own credibility as he were to perhaps assume the responsibility of the most important position for reenforcing credibility in our system is in doubt.

These, Mr. President, are not the qualities that this Senator wants to confirm in a Chief Justice of the United States.

I believe that the U.S. Senate should be more than a rubberstamp for the nominations of any President. We obviously have an obligation to the American people, to ourselves, to our system of justice to search our consciences and to determine whether a nominee for this office meets the high standards of ethics, integrity, judgment, and commitment to the constitutional principles which a Chief Justice should embody.

Above the portals to the Supreme Court, Mr. President, are written the words "Equal Justice Under Law," equal justice under the law.

It was only 10 years ago or so that this Senator began to practice law as an attorney and I had the privilege of serving for 5 years as a prosecutor and for 3 years as a private attorney. I know the feelings that I had as a law student as well as a fledgling attorney as I looked at the Supreme Court of the United States before which I am privileged to say I am permitted to appear, and I believe, Mr. President, that as I think about walking under those portals and about the meaning of those words "Equal Justice Under Law" the record of the cases decided, the record regarding the lack of ability to be able to bring about the consensus of a court to make those words real, force this Senator to conclude that I must vote against this nomination, and I do so, I must say, most reluctantly because it is not pleasant, I think, to oppose the nomination of a President of the United States to the Supreme Court.

But it seems to me that when you have a vote of some 31 U.S. Senators who say continue to debate this issue, and when clearly there may be more votes than that in opposition to this nomination, that in and of itself makes an important statement about qualifications.

The Chief Justice of the United States of America should be I think confirmed by acclamation or unanimously. At least the Chief Justice of the United States should be confirmed by a vote of 90 to 10 or so.

I think it is very sad that if this Chief Justice is in fact confirmed it will be by a vote that shows how clearly this is a nomination that raises serious questions, that leaves in doubt the ability of that Court to render justice which is equal under the law and which probably I think diminishes the standards which law students, prosecutors, and others within the judicial system will view that Court.

I reserve whatever remainder of time may be mine.

□ 1610

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I first want to commend the Senator from Massachusetts, Mr. KERRY. I think he has given a very important statement, one that I might presumptuously say he will be very proud of in the years to come. He has shown himself to be a very strong leader in the U.S. Senate and I think he does the people of the Commonwealth of Massachusetts credit. I thank the Senator.

Mr. President, when we take our oath of office in the Senate, we swear before God to support and defend the Constitution of the United States.

Our Constitution provides that the Senate must vote to confirm or vote not to confirm the President's nominations to the Federal judiciary.

This provision is part of the brilliant constitutional compromise. It's part of the system of checks and balances our Founding Fathers set up when they created three separate, coequal branches of Government.

It is this system that protects individual citizens against the risks of uncontrolled power and tyranny.

Therefore, it is vitally important that we exercise our duty to advise and consent with utmost care and responsibility.

POSITION ON REHNQUIST

I am deeply troubled over the nomination of Justice William H. Rehnquist to be Chief Justice of the United

States. I have grave concerns about his personal integrity, about his regard for individual rights, and particularly about his vision and leadership.

It is critical and Americans have full confidence in the integrity, independence, and competence of the Chief Justice of the U.S. Supreme Court. The American people must have no question about his commitment to individual rights and personal freedoms. He must be above reproach.

Because I do not have that confidence in Justice Rehnquist, I must oppose his confirmation.

EXECUTIVE BRANCH NOMINEES

It has been suggested that the President should have his own person confirmed, so long as that nominee is honest and competent. That may be true with executive branch nominees.

Executive branch officers, after all, are part of the President's team. They implement the President's policies.

Executive branch officers are appointed only for the term of the President. The American people have the ability to elect a new President every 4 years.

I think that as a general rule the President should be allowed his choices for executive branch positions unless they lack integrity or competence. The President should have his own team in the executive branch.

JUDICIAL OFFICERS

But with our system of Government, a higher standard must be applied to officers of the Federal judiciary. Federal judges are part of the third, coequal branch of the U.S. Government—the judicial branch.

Federal judges are appointed for life. They are not elected every 2, 4, or 6 years. They are appointed for life to protect them from improper pressures and influence.

Federal Judges have the solemn responsibility to decide the fates of people who could not come to a resolution of their disputes either with other people or with the Government. Federal judges must resolve these disputes dispassionately, coolly, accurately, fairly, and in accordance with the law.

The men and women who wield this great power must be chosen with great care. That power must be entrusted only to the wisest, most responsible people.

OFFICE OF THE CHIEF JUSTICE

The confirmation of a Chief Justice is the most important nomination any Senator will ever consider. Indeed, the vote here today is probably the most important vote that a Senator is going to cast in this decade.

The Supreme Court is the ultimate protector of our hard-won individual rights and personal freedoms.

The office of Chief Justice is the second most important in our Nation, second only to the Presidency.

The Chief Justice is the highest symbol of America's commitment to a government of laws; to its Constitution and the Bill of Rights.

The integrity and commitment of the Chief Justice must be entirely above question to maintain public confidence in our judicial system.

In sum, a nominee for Chief Justice must embody the highest standard of integrity, ethical responsbility, and fidelity to law. That person must have demonstrated exceptional legal ability and sound judgment. And finally, the Senate must consider how the nominee would lead the Court, and how such leadership might affect the fundamental constitutional principles upon which our Government is based.

INTEGRITY OF THE NOMINEE

In my judgment, Justice Rehnquist fails to meet this exacting standard.

Many of the questions that were raised during the hearings of the Senate Judiciary Committee have not, in my judgment, been adequately answered.

As a member of the Judiciary Committee from 1978 to 1984, I participated in numerous hearings on nominees to the Federal judiciary.

I am well aware of the sensitivity of these proceedings and the delicate position that nominees occupy when they are asked to give their views and justify their records in the face of probing investigations. But I do not believe Justice Rehnquist has given adequate testimony.

□ 1620

I do not know whether he has perjured himself, but I do believe that he has not responded with full candor to all the issues raised.

NOMINEE'S COMMITMENT TO INDIVIDUAL RIGHTS

I am also deeply concerned about the extent of Justice Rehnquist's commitment to constitutional guarantees of individual rights and personal freedoms. Repeated episodes of Justice Rehnquist's record raise troubling questions about his commitment to fundamental fairness and upholding the Constitution in the areas of race discrimination, equal rights for women and men, and the separation of church and state. In his judicial opinions, Justice Rehnquist has repeatedly advocated positions that will deny constitutional protections to minorities to women, to children, and to the poor.

When these writings are combined with the unanswered questions raised during his confirmation hearings, I for one cannot in good conscience say that I have full confidence in the nominee's commitment to justice.

LEADERSHIP AND VISION

When difficult issues arise, we look to the Supreme Court to unite our Nation. The Court has played a vital role in many times of national crisis, ranging from striking down racial segregation in Brown versus Board of Education to ordering President Nixon to turn over the Watergate tapes.

Based on his record as an Associate Justice, I fear that Justice Rehnquist will be more likely to divide the Court than to unite the Nation.

Justice Rehnquist has dissented frequently during his tenure on the Court. Every Justice has the right and, indeed, many argue the responsibility, to dissent when the Court adopts a position with which that Justice disagrees.

However, Justice Rehnquist has repeatedly stood alone in 8-1 decisions on cases involving vital issues affecting constitutional rights and personal freedoms.

His record raises deep doubts about his ability to rally the Court and unify the Nation in times of crisis and uncertainty.

CONCLUSION

The framers of the Constitution created the Federal judiciary to protect the integrity of the Constitution, and to ensure that individual freedoms will be protected. That is after all what the Constitution is all about under our constitutional form of government—to assure that individual freedoms are protected. For as Alexander Hamilton said in Federalist Paper 78, without such a judiciary, "all reservations of particular rights or privileges would amount to nothing."

The Senate was not meant to be a rubberstamp. The advice and consent clause gives the Senate great power. Senators must ensure that members of the judiciary are worthy of the people's trust and confidence.

In fact, I believe that Senators should look more deeply into the history of the writing of the Constitution because when they do they will see that the U.S. Senate was meant to be an equal partner with the President in the selection of nominees to the Supreme Court. The Senate was not meant to be a rubberstamp of the President's nominees. The Senate was not meant to give undue deference to the President's choice. In fact, in earlier drafts of the Constitution, it was the Senate that was going to decide who the members of the Court would be—not the President, but the Senate. In later drafts it was determined that the President should appoint with the advice and consent of the Senate.

It does not make sense for one branch of the Government to pay virtually no attention to the second when deciding who is to serve in the third. That does not make sense. If we have three coequal branches of Government, the U.S. Congress must have an equal role along with the President in determining who should be on the U.S. Supreme Court.

I submit very strongly that the U.S. Senate has as great an obligation as

the President to make sure that the right person is on that Court. This is particularly true for the Chief Justice, who like the rest of the Court is appointed for life: not elected, but appointed for life.

I suggest, Mr. President, when Senators look deeply into the history of this nominee, and look into their own consciences and ask themselves whether they in good conscience feel this man should be appointed for life to be Chief Justice of the United States, in the privacy of their own conscience, they have to answer that question regrettably and sadly and profoundly.

I also submit that if he is confirmed, that this vote will haunt this body because this vote will be one of the most important votes that Senators will cast during this decade. When this Court decides constitutional issues, civil rights, civil liberties, search and seizure, and other constitutional provisions which are so near and dear to America's freedoms; when that Court decides against Americans' personal freedoms; Senators are going to go back and wonder why they voted to confirm this man.

In conclusion, Mr. President, I ask all of us, all of us in this body, who took this oath of office that we swear to as profoundly as we humanly can; to ask ourselves what is right here and cast the appropriate vote. Mindful of my constitutional duty and my oath of office, I cannot in good conscience support the confirmation of the nominee.

Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, prior to the vote on cloture, I did not get a full opportunity to express my views on this nomination. I would like to take these few minutes this afternoon to share with my colleagues and others the rationale underlying the position I take on the nomination of Mr. Justice Rehnquist to be Chief Justice of the U.S. Supreme Court.

Like all of my colleagues, Mr. President, I approach this question on the confirmation of Justice Rehnquist with enormous seriousness and solemnity. I recognize, as my colleagues do, the tremendous duty that we all must bear to fulfill our constitutional responsibilities in providing advice and consent to the President of the United States—and to the American people—on nominations that are sent before us. And I will do all in my power to see to it that constitutional responsibility is fulfilled as to every nomination which is presented to us.

There is no more significant vote, short of an actual vote on a constitutional amendment, than on nominations to the Federal judiciary. Within that context, the most important nominations that we give our advice and consent on are, of course, appointments to the Supreme Court of the United States. And further, within that context, the most important votes we cast are those involving the Chief Justices of the United States.

We often talk about historic votes. I am as guilty, I suppose, as my other colleagues from time to time of referring to particular measures that come before us as "historic" votes, and certainly there have been some along the way. But far too often, I think, we describe a particular measure as a historic measure or historic opportunity and, in the process, we cheapen the word "historic." Certainly, considering the fact that there have been only a handful of occasions in the 200-year history of this country when this Senate has cast its judgment as to individuals nominated to be Chief Justice, the nomination of Justice Rehnquist to be Chief Justice of the United States must qualify legitimately as a historic vote.

Given the age of Mr. Rehnquist and the present age of those who occupy seats on the U.S. Supreme Court, it would not be an exaggeration to suggest that Mr. Justice Rehnquist could serve as the Chief Justice of the United States for the next 2 decades or more. The votes we cast this afternoon, therefore, will have historic, profound significance, and effect on the future of this country as we close out the 20th century and begin the next.

Over the past several months since President Reagan announced the nomination of Mr. Justice Rehnquist to be Chief Justice, I have monitored, as I know my colleagues have, with keen interest the very lengthy and thorough confirmation hearings; I have listened intently to the debate here on the floor over the last several days and to the various points that my colleagues have made—both pro and against—this nomination; and I have sought out and read with eagerness numerous press and constituent accounts of the nominee and his record. I began that process, Mr. President, with an open mind, one harboring neither a hidden proclivity to oppose the nominee simply because he is a conservative jurist, nor a presumption that he should be rubberstamped by me or the Senate simply because he is the President's choice or a sitting member of the U.S. Supreme Court.

□ 1630

Article II of the Constitution vests in the Senate the privilege—and the solemn duty—to assess the qualifications of each judicial nominee. While the framers unquestionably intended that the Senate take an active role in the confirmation process, the Constitution nowhere delineates those factors against which each Senator should judge the fitness of a judicial nominee to serve his or her lifetime on the Federal bench. As with other crucial decisions we are called upon to make in this arena, each Senator must, in my view, begin and end his or her examination of the nominee with one overriding question: Is confirmation of this nominee in the best interests of the United States as a whole?

Answering this question in the affirmative first requires that each Senator satisfy himself or herself that the nominee possesses the excellent technical and legal skills which we must demand of all Federal judges. If the nominee lacks those skills, our examination need proceed no further, and we are duty bound to reject the nominee.

Our next mission is to ensure that the nominee is of the highest character and free from any conflicts of interest. The nominee's testimony before the Judiciary Committee—what he or she said or failed to say—becomes critical in this regard.

Finally, we must vigorously examine the nominee to see whether he or she is capable of and committed to upholding the Constitution of the United States. Under this final test, we must focus on two critical elements, both of which require that we examine, to a certain extent, the nominee's personal ideological views on a range of substantive issues.

First, we examine the nominee's judicial temperament. As to this element, we look to see whether the nominee is so wedded to his or her views on controversial issues—be they termed "prolife," "anticapital punishment," "progun control," or the like—that he or she is simply not capable of deciding cases fairly on the basis of the facts as presented and the law as previously decided.

Second, not only must we examine the nominee's temperament, but we must take a reading of the nominee's temperature as well. It is under this crucial test that we look to see how committed the nominee is to carrying out the fundamental constitutional principle upon which our Nation has been built, namely, the guarantee of liberty and equal justice for all. In other words, as to civil rights, is the nominee on fire, icy cold, or merely lukewarm?

It is up to each Senator to decide for himself or herself at what point the nominee's views become so contrary to

what the Senator believes is in the best interests of the Nation to warrant opposition to the nominee. I will not oppose, and have not in the past opposed, a judicial nominee solely because he or she holds concededly conservative views regarding the Constitution and the Court's role in interpreting and applying it. In fact, I intend to vote for the nomination of Judge Scalia to be an Associate Justice of the Supreme Court. I voted for Justice Sandra Day O'Connor. In fact, I have voted for about 96 percent, or more, of the judicial nominations that have been sent to this body by President Reagan during the last 5½ years. So it is not a nominee's views on any particular ideological issue on which I think any Member of this body, including myself, wants to base their decision on the nomination.

Rather, I base my decision on this nomination on three factors under the framework laid out above. These are three reasons why I do not feel that confirmation of Mr. Justice Rehnquist is in the best interests of my State or my country.

First, I am troubled by several areas of the nominee's testimony before the Senate Judiciary Committee which, in my view, reflect a lack of full candor on his part. Exemplary of these is the nominee's testimony regarding two restrictive covenants found to be contained on his property. When confronted with this issue, Mr. Justice Rehnquist denied any and all knowledge of these covenants and expressed surprise in learning about them from the FBI report which uncovered their existence. Several days later, however, the nominee sent to the committee a letter which he received in 1974 explicitly referring to the covenant on his Vermont property. I would not reject Mr. Justice Rehnquist solely on this basis, but certainly his testimony raises questions about whether or not he should have been aware of those restrictive covenants and whether the nominee was as candid as he should have been before the Judiciary Committee.

Second, and more importantly, the nominee's temperament and temperature are, in my view, called into serious question by his well-developed record on civil rights and liberties. An objective analysis of that record reveals that the nominee has, with few exceptions, decided against civil rights plaintiffs and in favor of allowing the State or Federal Government to act discriminatorily or in ways which restrict individual liberties. That same record does not reflect merely a lukewarm commitment to equal rights for our citizens. Rather, it mirrors an icy cold indifference to the equal protection guarantee embodied in our Constitution.

Mr. President, other Members have adequately delineated the specific number of cases and the votes that the nominee has cast during the 15 years he has served on the Supreme Court as an Associate Justice. I would merely point out that it appears to this Senator that Justice Rehnquist does not see the Constitution as a living document. Rather he seems to view it rigidly—frozen in time, as it were—in the latter part of the 18th century or the early part of the 19th century.

The Constitution, as we have seen, evolves. Not that the fundamental meaning ought to change, but certainly the world in which we live changes and has changed dramatically. Mr. Rehnquist appears to have made the intellectual decision that we ought to interpret the Constitution very rigidly, as it was written, as it applied during the days in which it was drafted.

That may seem to be an overbearing interpretation of his decisions but, frankly, I am left with no other conclusion when I look at the decisions in which Justice Rehnquist has been involved.

Consider the some 83 nonunanimous cases where civil rights statutes were interpreted. Justice Rehnquist voted against the civil rights plaintiff in 80 out of those 83 cases, that, in my view, reflects a rigidity. It reflects, as well, an unwillingness to recognize that the times in fact have changed, that evalution has occurred over the last 200 years and most importantly in the last 40 years, and that the Constitution must be read in light of those changes.

Let us remember what we are doing today. We are attempting to fill the position of Chief Justice of the United States—without question the highest, most revered judicial office in our Nation. The man or woman who occupies that seat must, as the title of the position reflects, above all else actively work for and embody justice. Not justice for some. Not justice only for whites. Not justice for men exclusively. But Chief Justice for all. Whatever other qualifications Mr. Justice Rehnquist possesses, I do not believe he stands as a symbol and reality of equal justice for all.

Finally, while Mr. Justice Rehnquist undoubtedly possesses a sharp legal mind, he lacks one particular ability which he must possess in order to be an effective leader on the Court: the ability and the desire, and I emphasize desire, to activate and effectuate consensus among the Court's nine individual members.

The nominee has not only concededly been in dissent more frequently than most but, more importantly, it seems to me, he simply does not reach out. In fact, in testimony before the Judiciary Committee, the American Bar Association, through its investigation and discussion with others, indicates that Justice Rehnquist rarely, if ever, has sought out, as one might in a collegial fashion, the views of those other members of the Court.

Certainly, all of us in this body, while we are not a judicial body, even though we know we may disagree with one another, we respect the intelligence, we respect the compassion, we respect the integrity of each other enough to seek each other out on policy matters and the like.

In fact, it is not an uncommon occurrence for a very conservative Member of the other side of the aisle to approach a very liberal Member on this side of the aisle and to ask, "Why are you voting that way? What is your rationale, your thinking? Likewise, it is not uncommon to see Members here approach that side of the aisle and raise the same kind of question. They may not end up voting alike, but there is enough respect for each other's integrity that we seek out the motivation of our colleagues.

□ 1640

You would think that on the Supreme Court, that same kind of collegial environment might exist. And yet, Justice Rehnquist has demonstrated little or no inclination to reach out and discuss with his colleagues on the Bench why they reach their decisions as they do.

That worries me deeply because the Chief Justice must perform, as head of the Court, the role of consensus builder.

At critical junctures in our Nation's history, the Chief Justice has recognized the need to forge a consensus to achieve a greater social good. Chief Justice Earl Warren cajolled recalcitrant Justices in order to persuade them to concur in the Court's opinion in Brown versus Board of Education. Chief Justice Warren foresaw the firestorm that the decision would create, and convinced his brethren that unanimity was required to weather the storm ahead. Similarly, Chief Justice Warren Burger recognized the importance of consensus when the Court was making preparations to order President Nixon to surrender the Watergate tapes.

I fear that Mr. Justice Rehnquist, put in similar situations which will undoubtedly arise during his tenure on the Court, would be unable to develop that same type of consensus among his colleagues on the Bench. This would be harmful not only to the Court, but to our country as well.

Finally, Mr. President, there has been extensive debate over the memorandum that the nominee wrote to Justice Jackson regarding the 1896, Plessy versus Ferguson decision which upheld segregation. Let me briefly remark on that discussion.

Almost a week from today, we will commemorate the 40th anniversary of the termination of the Nuremberg

trials. Justice Jackson, of course, was the chief prosecutor for the United States at those trials. I have more than just a passing interest in all of that since the executive trial counsel for Justice Jackson at those trials was my father, who happened to be a Member of this body. I went back over the correspondence between my father and Justice Jackson, who maintained a friendship long after those days in Nuremberg. While I could find no particular piece of correspondence that referenced Justice Jackson's views toward segregation in this country, I knew my father well enough and heard him talk over the years enough to know about his deep affection for this man and Mr. Jackson's deep commitment to human rights.

In fact, that trial almost did not occur had it not been for the United States and Justice Jackson insisting that there ought to be a framework in which the crimes of the Nazis could be examined and laid before the entire world.

I think it is helpful to make note of Justice Jackson's remarks as he opened the tribunal debates in Nuremberg in 1945. He said there, "We will show them to be living symbols of racial hatred, of terrorism, of violence and of the arrogance of power. They took all the dignities and freedoms that we hold as natural and inalienable rights in every human being." He went on at length, but that particular paragraph, it seems to me, demonstrates Justice Jackson's views about racial hatred and the inalienable rights of every human being. Statements such as these cast doubt upon Justice Rehnquist's testimony that he was writing a memorandum for Justice Jackson only to comply with Justice Jackson's views of civil rights. Justice Jackson was as determined as any human being in public life to uphold the inalienable rights of every human being, and to suggest otherwise does a great disservice to a man whose memory we ought to be remembering in these days 40 years after the conclusion of the Nuremberg trials.

In conclusion, Mr. President, I have no choice but to oppose the confirmation of Mr. Justice Rehnquist to be Chief Justice of the United States for a number of reasons. More than anything else, however, this office demands from its occupant more than mere mental acuity: it demands someone who is red hot to ensure that the guarantees of our national charter apply with equal justice for all. It is precisely this burning desire to protect the civil liberties of all citizens which, I am saddened to say, is most lacking in this nominee.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I will not unnecessarily delay the vote up or down to confirm Mr. Rehnquist as Chief Justice. It seems to me that basically it is a foregone conclusion that the 50-plus votes are here and ready to be cast in support of the nomination.

First, I would like to comment on a happening which took place just before—I emphasize just before—the cloture vote earlier today. The Senator sought recognition from the Chair to ask unanimous consent that I be allowed to speak for 3 minutes without such time being charged to either side of the issue, being fully aware of the parliamentary agreement then in effect, under the dwindling time that was assigned to both managers of the bill. Since this Senator had not at that time made up his mind what his vote would be on the cloture motion, I sought to make a statement and then ask a question. I did not think it was proper for me to declare at that time to either manager of the bill the pro side or the con side on what I was going to do because I had not come down to that final determination.

The minority Member was kind enough, however, to give me the last few moments of his time to make a brief statement. The majority manager of the bill objected to the additional 3 minutes. Frankly, at that time, Mr. President, this Senator intended to vote "present" on the cloture vote, willing to move ahead if it was the will of 60 of my colleagues to get on with the up or down vote. I would like to have had the opportunity to ask questions then. But some of the questions and some of the statements I intended to make in those brief 3 minutes will be included in the remarks I am about to give.

When we get down to one of these time agreements, Mr. President, where the time is allotted to either those for or against, it leaves no time whatsoever for the views of those yet undecided or to ask questions to help us make up our mind.

Mr. President, we have before us an extremely—an extremely important matter—probably one of the most important votes that any of us will cast in the Senate. But now we are down to the final vote up or down and it is time to make the call.

□ 1650

Mr. President, from the very beginning, I had indicated my likely approval of the Presidential nomination of Justice Rehnquist to be Chief Justice. While I had some misgivings, my record shows that I generally support Presidential appointees. Last night and this morning, I intended to vote for Justice Rehnquist. But after listening further, and after further reviewing the record again and again, and having had some second thoughts, I felt that I should press myself into making a final look at the record. I have come to the conclusion that the proper vote is "no." I wish to take a few moments to explain my reason for opposition.

It is not based on the technical qualifications or his high intellect. They are strong and, in my view, beyond any reasonable doubt. While I do not agree completely with his position on a whole series of issues, I recognize the right he has to those, and I think he has been honest and straightforward in his decisions while on the Court. Nor is it his personal or judicial philosophy that this Senator takes issue with, and it has nothing to do with the vote I will be casting in opposition.

His judicial philosophy and his political affiliation, I think, have nothing whatsoever to do with the basic qualifications. I believe that has been well established by many discussions and many decisions he has been a part of on the Court, that he has a right to those positions, and I thought he stated them quite eloquently. For the most part I agreed with him; and I will say again that there is nothing wrong with a conservative—even a dedicated conservative—on the Supreme Court of the United States.

I will further say that I generally agree with his prolife decisions and statements that have been part of the character of Justice Rehnquist over the years, both as a person and as a Justice of the Supreme Court.

What, then, one might ask, would be the reason for opposing moving a Justice to Chief Justice, if he is technically qualified, has a high rating from the bar association, and has other characteristics that would otherwise qualify him?

Why, then, would one quarrel with his elevation to the position of Chief Justice? I think it is for a very good reason, Mr. President, which has received little consideration when reviewing the elevation of a Justice to Chief Justice, where he will serve for years and years to come, as the top jurist of all the courts and the court systems of the United States of America.

My concern is his lack of full credibility, sometimes reliability, and, most of all, his seeming inability to be an effective consensus developer, which I believe is an important requirement for the Chief Justice.

The Chief Jutice of the United States is a person who should be chosen nearly by acclamation, and I think the vote will indicate very clearly that he is not being chosen by acclamation, that there are those who, for their own reasons and very sincere reasons, have serious objections. I think what they are basically saying is that there is nothing wrong with Justice Rehnquist remaining on the Court, but the question is as to whether or not he is the best individual in

the whole United States of America to be moved up to this important position.

Having said all that, Mr. President, I realize that his nomination will very likely be confirmed by the U.S. Senate. Nonetheless, notwithstanding any of the statements I have made, I have no personal feelings against Justice Rehnquist whatsoever. I hope and pray that after his nomination is confirmed, which it very likely will be, he will be an outstanding Chief Justice of the United States.

The good news is that people have a way of growing in that position, and I certainly believe that Justice Rehnquist has the ability to grow. Therefore, in conclusion, let me say that I hope history will show that he will eventually be recognized through accomplishments as a great Chief Justice. I think he has the potential. I hope he has the will and the foresight, and I hope that he will develop the ability to become an effective consensus-maker, which I think, above all other qualifications, is the supreme test of the Chief Justice of the United States.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1700

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The minority leader is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, if the Chair will indulge me I am awaiting the promulgating of a unanimous-consent request before I begin.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Mr. President, is a quorum call in progress?

The PRESIDING OFFICER. No, it is not. The minority leader has been recognized.

Has he yielded?

Mr. KASTEN. Mr. President, will the Senator yield?

Mr. BYRD. I yield to the distinguished acting Republican leader for the purpose of his making a unanimous-consent request.

Mr. KASTEN. I thank the distinguished minority leader.

IMPEACHMENT TRIAL OF JUDGE HARRY E. CLAIBORNE

Mr. KASTEN. As in legislative session, Mr. President, I ask unanimous consent that, notwithstanding the provisions of rule XIX of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials, the chairman—or, in his absence, the vice chairman—of the Special Committee on the Impeachment Trial of Judge Harry E. Claiborne is authorized to permit members of said committee to pose questions orally to the impeached person, witnesses, House managers, and counsels appearing before the committee, on such terms and with such restrictions as the chairman shall prescribe for the expeditious completion of the committee's business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KASTEN. I thank the Chair, and I thank the distinguished minority leader.

NOMINATION OF WILLIAM H. REHNQUIST TO BE CHIEF JUSTICE OF THE UNITED STATES

The Senate continued with considerations of the nomination.

The PRESIDING OFFICER (Mr. DANFORTH). The minority leader is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, this afternoon we are debating the nomination of William H. Rehnquist, of the State of Virginia, to be Chief Justice of the United States.

This is a vote that will be cast soon. This is a vote that has troubled me considerably.

I voted to report the nomination from the Judiciary Committee. I voted to report it with the understanding that I would reserve my final judgment on it, that I would give the Senate a chance to debate the matter. And the Senate has debated this matter. Senators have, I think, done themselves proud.

I have listened to the debates carefully.

One might say "Well, I have not seen you on the floor, Senator." That is true.

I cannot sit on the floor and listen to each debate as I would like, because of the many other matters that come up and things that interrupt me. Other Senators have the same demands on their time.

But I have watched this debate. I asked my daughter last week to tape the debate on the Rehnquist nomination, and last Sunday I spent all afternoon and until 1 o'clock in the morning on Monday watching Senators and listening to them as they presented their views on this nomination. And on Monday evening I continued until after 1 o'clock in the morning. Last evening, until after 2 o'clock this morning, I was still considering the views of those who spoke pro and con.

I arrived at my decision last night as to how I would cast my vote on this nomination.

Watching the debate on TV, may I say, incidentally, one can concentrate without interruption, without being called to the office to talk on the phone, without being called to the office to meet someone, without having to bend one's ear to a colleague. One can concentrate wholly and totally on what a Senator is saying.

May I say I have been very impressed by the logic, by the content, by the probity and substance of the debate on both sides of the aisle and on both sides of the question.

So I finally have arrived at my decision. As I have listened to this debate I find that it in the main has revolved around about five or six contentions.

One, give the President his choice.

Two, conservative ideology is so extreme in this individual as to make him insensitive to the rights of minorities. He favors government over individuals.

Three, those who oppose the nomination of Mr. Rehnquist do so on the basis of his judicial philosophy, on the basis of his ideology, and ideology has no place in decisions with respect to the confirmation of nominees to sit on the courts.

Four, candor or lack thereof.

Five, give the nominee the benefit of the doubt.

I think that this is a pretty fair summation of the points that have been debated back and forth, and to which I shall briefly address my own remarks.

First, give the President his choice. Well, we have heard this argument time and time again, Mr. President. I do not subscribe to it. It is a fallacious argument. It is a spurious one.

Let us see what the Constitution says. The Constitution says "He," meaning the President, "he shall nominate, and by and with the advice and consent of the senate, shall appoint * * * judges of the supreme court." The President only can nominate. But he shall appoint "by and with the advice and consent of the senate." Those words are not meaningless. They mean something.

They mean that the Senate has an equal part in the appointment of judges to the Supreme Court of the United States, and we should not take that constitutional responsibility that is placed upon us lightly.

This decision can be made but once. There is no opportunity for a second time. Once the Senate has made its decision, once the President has been notified, once he has tendered the commission to Mr. Rehnquist, once Mr. Rehnquist takes the oath as Chief Justice of the United States, then the Senate has no opportunity to reconsider its decision.

Only in the case of impeachment trials does the Senate take a second

look. And we all know that only for the first time in the last 50 years is the Senate engaged—at the moment, as a matter of fact—in sitting as a court in the trial of a judge who has been impeached by the House of Representatives.

□ 1710

So the Senate has a responsibility in the appointment process. It is a heavy one.

Mr. President, normally I would say, all things being equal, let us give the President his choice. And in the case of Cabinet officers, the responsibility upon us is heavy, but not as heavy as it is with respect to nominees to the courts of this land, and particularly to the Supreme Court of this land, and more specifically to the office of Chief Justice of the United States.

This is a heavy, it is an awesome, it is a sobering responsibility, and no Senator should take it lightly. No Senator should act in this instance on the basis that we should just give the President his choice. I do not care what President it is, whether it is a Democratic President or a Republican President. Our duty goes beyond that.

The next point: The conservative ideology of Mr. Rehnquist is so extreme that he has an insensitivity to the rights of minorities, and he favors government over individuals.

Mr. President, I happen to believe that there is something in the mind and heart of most men and women which, when inspired and challenged, will cause them to rise to the challenge and to the needs of the office, the moment, and the occasion. I do not subscribe to the idea that Mr. Rehnquist is so insensitive of the rights of minorities that he cannot rise to the occasion and meet that test.

Time and time again we have all seen men become Presidents, or become U.S. Senators, or who have held other high offices, either appointive or elective, when who would have believed that they would have later proved to be equal to the task, or even have proved outstanding. But we have seen it happen time and time again.

I do not think we should pin a label on a Justice just by counting how many cases decided by that individual reflected liberal decisions—whatever that means—or how many reflected conservative decisions—whatever that means. It takes a close look at the substance, at the content of the reasoning and rationale behind the decisions.

Mr. Rehnquist's decisions on sexual harassment of women in the workplace is a perfect example. Did Justice Rehnquist take that position because it is his traditional views of women and the family, or did he write the opinion because he clearly understood the need to ensure that women are protected from that kind of pressure in the workplace and can advance on the merits of their work performance and receive equal treatment?

So it is not the volume of cases, it is not the number of cases, it is the substance. What were the issues? Perhaps a loose way of saying it would be that it is the "quality," the quality of his judgment, the rightness of his judgment, the substance of the case. What did this involve and how did he reach his decision?

I do not believe that Mr. Rehnquist is so straitjacketed in his conservative beliefs that he is insensitive. Perhaps his experience thus far would lead some people to believe that he would have a difficult time being more sensitive. But I still believe that men can improve themselves, can rise to meet the occasion, the challenge, the requirements of the office, the moment, the circumstances, the needs of the people.

Well, let me go on from there.

The third point of contention here seems to be that "ideololgy" has no place in this decision. I have heard that said here.

> All those who are opposed to the nomination are opposing it on the basis of ideology. It should not be done. Experience, ability, integrity, these are the qualifications. The President may decide on the basis of ideology. Let him choose whomever he wishes and let him make a judgment as to that particular individual's judicial philosophy. But not the Senate.

I maintain, Mr. President, that, any President of the United States has a right to do so—and not only has a right, I think he has a duty to do so. I would think him lacking in something if he did not consider the ideology or the judicial philosophy of the nominee whose name he submits to the U.S. Senate to sit on a district court, an appellate court, the Supreme Court of the United States, yes, even that highest of all judicial positions, Chief Justice of the United States. I would think he was lacking in judgment.

And I think the same thing about Senators. Why should Senators not have the same right and duty?

Well, let us have Mr. Rehnquist answer the question. For those who propose that Senators should not judge this nominee on the basis of his ideology, let us hear what he has to say.

In "The Making of a Supreme Court Justice," by William H. Rehnquist, from the Harvard Law Record, October 8, 1959, here is what he says on that question:

> Specifically, until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any additional part in the selection process.

And again he says—Mr. Rehnquist himself, the nominee, is speaking here—on the question as to whether or not ideology should be a factor in the determination by Senators who sit in judgment on his nomination:

> If greater judicial self-restraint is desired, or a different interpretation of the phrases "due process of law" or "equal protection of the laws", then men sympathetic to such desires must sit upon the high court. The only way for the Senate to learn of these sympathies is to "inquire of men on their way to the Supreme Court something of their views on these questions."

Now, Mr. Rehnquist is "on his way", we might say, to the office of Chief Justice of the United States and, therefore, the only way for Senators to learn of his sympathies, whatever his ideology may be on this or that question, is to inquire of him, "on his way", what his views are on this question. So Mr. Rehnquist answers the question himself.

Now, Mr. President, this is not the first time I have had something to say about the ideology of individuals named to sit on the Supreme Court. And it is not the first time I have considered ideology.

When Mr. Justice Thurgood Marshall was appointed to the Supreme Court in 1967, by a Democratic President—at a time when I held a Democratic office in the leadership of the U.S. Senate, secretary to the Democratic conference—I voted against Mr. Marshall because of his judicial philosophy.

□ 1720

I intended at first to vote for him. I said to my staff before I went home on that particular day, "Prepare me a speech in support of Mr. Marshall. I want to vote for him." I had filibustered against the 1964 Civil Rights Act, which I voted against—one of the two votes that I have cast in this Senate for which I have been sorry, and have regretted. Incidentally, the other vote, as I have indicated many times, was to deregulate the airlines. But, I had spoken 16 hours on this Senate floor in opposition to the Civil Rights Act of 1964.

I was just out of law school, I had gone to law school 10 years, I had been on the Armed Services Committee and the Appropriations Committee, and I decided I wanted to go on the Judiciary Committee now that I had earned a law degree. I sat on the Judiciary Committee. And here I sat in the shadow of constitutional giants in this Chamber—Senator Ervin, Senator Russell. And you can name others one by one. I was impressed with their constitutional arguments against the 1964 Civil Rights Act. And I in my own conscience spoke against that act, and I in my own good conscience voted against it. Later, I have come to be sorry for that vote.

But here came the nomination to the Senate of Thurgood Marshall. I thought to myself, I had spoken

against the 1964 Act. Politically, I think it would be a good thing for me to vote for Thurgood Marshall to sit on the Supreme Court. And then aside from politics, I thought it would be good for me to vote for Thurgood Marshall as the first black man to serve on the Supreme Court of the United States. "This is a historic vote. I am going to vote for him. So prepare me a speech for him. But first give me some of his opinions that he has rendered on the appellate court in New York." So I took those opinions home with me, and as I read them I began to see that more and more they were opinions with which, from the standpoint of ideology, I personally did not agree.

So lying in bed that night, it suddenly dawned on me, well, here I cannot vote for this nominee. If he were white, I definitely would not vote for him because I do not subscribe to his judicial philosophy. I do not subscribe to his ideology. Then why should I vote for him just because he is black, if I do not subscribe to his judicial philosophy? So I cast my vote against Mr. Justice Marshall. That is nothing to his discredit. I am simply saying that ideology was the controlling factor in my decision.

Then there came Abe Fortas. I had voted for Abe Fortas, whose name had been sent to the Senate by a Democratic President to be an Associate Justice. But when it came to elevating him to Chief Justice, I looked at his philosophy. Here is what I said: "I have no objections to Mr. Fortas personally, or to his qualifications as an able lawyer. I have heard nothing which would reflect against his good character and conduct as a citizen. My objections go solely to his judicial philosophy as manifested by his words and actions while serving on the Court."

So there you are. That was in September 1968. Again a nomination by a Democratic President, again a decision by an officeholder within the Democratic party structure in the Senate, a decision to vote against a Presidential nomination, and why? Because of the nominee's ideology. So much for ideology.

I say that ideology has its place, and as far as I am concerned, speaking of ideology itself, I subscribe to the judicial philosophy of Mr. Rehnquist in many areas—not in all, but in many—school prayer, forced busing, search and seizure, Miranda warnings, the death penalty. So if it were simply on the basis of his ideology, I would support Mr. Rehnquist.

Again I say I have cast my vote in the past against nominees to the Bench submitted by Presidents of my own party, and on the basis of ideology alone.

No. 4: That Mr. Rehnquist lacked candor. Mr. President, the several instances in which Mr. Rehnquist in appearing before the Judiciary Committee professed not to have good recollection, not to be able to recall, those instances have been debated and discussed in the Senate perhaps ad nauseum. But very briefly, let me, too, look at them. On the matter of challenging voters, Mr. President, whether or not Mr. Rehnquist thought he was "intimidating" voters or "harassing" them, I do not know. But Mr. Kennedy asked the following questions:

Senator KENNEDY. Well, the activity described basically is personally challenging voters. That is the activity alleged, and you categorically deny ever having done that in any precincts in Maricopa County in the Phoenix area at any election, is that correct?

Justice REHNQUIST. I think that is correct

Going on, Senator Kennedy said:

Well, what is "I think". I mean, you would remember whether you did or not. I mean, it is not an event. If you are talking about harassing or intimidating voters, it is not something you are going to forget very much about.

Justice REHNQUIST. Senator, let me beg to differ with you on that point, if I may. I thought your question was challenging. Now you say harassing or intimidating. As to harassing or intimidating, I certainly do categorically deny anytime any place. If you are talking about challenging, I have reviewed my testimony, and I think I said I did not challenge during particular years. I think it is conceivable that [in] 1954 I might at least have been a poll watcher at a westside precinct.

Senator KENNEDY. Well, did you challenge individuals then?

Justice REHNQUIST. I think it was simply watching the vote being counted.

Senator KENNEDY. Then you did not challenge them?

Justice REHNQUIST. I do not think so.

Mr. President, I am in no position to charge Mr. Rehnquist with intimidating or harassing anybody. Perhaps he did. He may not have. If he did, it is conceivable that he did not feel that he was intimidating them. He might not have felt so, even while the individual on the receiving end might very well have felt intimidated. Mr. Rehnquist might, indeed, not have felt he was intimidating or harassing.

But it seems to me it would be very difficult not to at least remember challenging voters. And in challenging voters, Democrats have done that. Republicans have done that. That has been done over the years, way back, it was a pretty normal thing for voters sometimes to be challenged as they approached the voting booths. But why would one not remember? I should think it would have been better if one had indeed challenged voters, simply to have said so. Mr. Rehnquist was not a judge then. He did not sit on the Supreme Court at the time.

He was not in the Justice Department. I would simply think that the committee would have felt that it was an acceptable response if he would have said, "Yes, I did challenge some voters. That was what we did in those days. My Democratic counterparts did it. I did it. As a Republican, a very partisan, loyal, dedicated Republican, I did it.

□ 1730

"But I was not sitting on the Court." So much for that.

Now, we go to the next question, that of restricted covenants.

Mr. President, we have all, I guess, or most of us have, bought property in which there were restrictive covenants. That was common back a few decades ago. It is not beyond my recollection at all.

Of course, it is now unconstitutional.

But in this situation, Mr. LEAHY referred to the summer home Mr. Rehnquist had purchased.

Senator LEAHY. When did you purchase that?

Justice REHNQUIST. In 1974, I believe.

Senator LEAHY. Justice Rehnquist, I am told that you have a warranty deed, the normal form of transfer in Vermont, and gave back a mortgage deed. But in the warranty deed there is this sentence: "No fee to the herein conveyed property shall be leased or sold to any member of the Hebrew race."

Are you aware of that covenant in your deed?

Justice REHNQUIST. Not at the time, Senator. I was advised of it a couple of days ago.

Senator LEAHY. Did you not read the deed that you got on your property?

Justice REHNQUIST. I certainly thought I did, but I'm quite sure I didn't note that.

It is not inconceivable, that it could have been that way.

But on August 4, 1986, Mr. Rehnquist wrote a letter to the chairman of the Judiciary Committee, indicating that following his testimony before the Senate Judiciary Committee, he had reviewed his files and he had found a letter from the attorney for the seller of the property, who described the conditions of title, including a reference to the restrictive covenant:

While I do not doubt that I read the letter when I received it, I did not recall the letter or its contents before I testified last week.

So we look at the letter of July 2, 1974, a letter written with a copy to Mr. Rehnquist, which contains the following statement:

The property is also subject to restrictions relative to use, width of rights-of-way, construction on the various parcehe property, who described the conditions of title, including a reference to the restrictive covenant:

While I do not doubt that I read the letter when I received it, I did not recall the letter or its contents before I testified last week.

So we look at the letter of July 2, 1974, a letter written with a copy to Mr. Rehnquist, which contains the following statement:

The property is also subject to restrictions relative to use, width of rights-of-way, construction on the various parcels, and ownership by members of the Hebrew race.

There was an earlier letter dated June 24, 1974, addressed to him by David L. Willis, of the firm Witters, Zuccaro, Willis & Lium. It says:

I would recommend that you examine closely the attached abstract copy of the deed of the main cottage property.

We go to that abstract of title and we see these words to which Mr. Rehnquist's attention had been specifically drawn by the letter:

No feet of the herein conveyed property shall be leased or sold to any member of the Hebrew race.

Mr. President, as I say, those restrictive covenants were included from time to time in those days, but the question here is, were you aware of this? Were you aware of that covenant?

Then all of a sudden it appears in a published article that he had been notified of this fact by the attorney, and on that same day Mr. Rehnquist wrote the letter to Mr. THURMOND, the chairman of the Judiciary Committee.

Again, here is the problem of inability to recall, failure to recollect. It woud seem most likely that a man in Mr. Rehnquist's position, a man of his legal ability, a man of his perspicacity, his insight, his sensitivity to these things, would certainly have taken notice of that convenant the astract of title. When his attention was specifically called to it in the letter, one would have thought that he would have read this, 12 years ago when the property was purchased.

All of these matters trouble me.

In the case of Laird versus Tatum, I will not go into that as others have already gone into it, but there is a question there as to whether Mr. Rehnquist participated in the development of a policy dealing with Army surveillance of activities of Americans engaged in nonviolent, legal public demonstrations. He said he did not. There is evidence to the contrary.

Let me go on quickly now to the last of these specific items, the Rehnquist memo to the late Mr. Justice Jackson.

Mr. President, in this situation, a memo entitled "A Random Thought on the Segregation Cases," came to light after the Judiciary Committee had closed its hearings in 1971 on the nomination of Mr. Rehnquist to the office of Associate Justice of the Supreme Court of the United States.

This memo, titled as I have indicated, expounded on whether or not the Court in considering the facts in Brown versus Board of Education should adhere to the constitutional pillar of Plessy versus Ferguson, decided in 1896, the "separate-but-equal" doctrine.

The memorandum was supportive of the Plessy versus Ferguson "separate but-equal" doctrine. I quote from that memorandum:

I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by "liberal" colleagues, but I think *Plessy* v. *Ferguson* was right and should be re-affirmed. If the Fourteenth Amendment did not enact Spencer's "Social Statics," it just as surely did not enact Myrdahl's "American Dilemna."

At the time this memorandum was written, Mr. Rehnquist was law clerk for the late Mr. Justice Jackson. When this memorandum came to light, Mr. Rehnquist wrote to Senator Eastland. The committee had closed its hearings and the matter was before the Senate.

In the New York Times of December 9, 1971, we find the following, with explanatory material:

WASHINGTON, December 8.—Following is the text of a letter from William H. Rehnquist, Supreme Court nominee, to Senator James O. Eastland about a memorandum that has become involved in the Senate debate over his confirmation, and the text of the memorandum:

The following is an excerpt from the letter by Mr. Rehnquist to Mr. Eastland.

As best I can reconstruct the circumstances after some 19 years, this memorandum was prepared by me at Justice Jackson's request; it was intended as a rough draft of a statement of his views at the conference of the Justices, rather than as a statement of my views.

Going on to another excerpt:

He very definitely did not—

"He" meaning Mr. Justice Jackson—

either expect or welcome the incorporation by a clerk of his own philosophical view of how a case should be decided.

And then further:

I am satisfied that the memorandum was not designed to be a statement of my views on these cases. Justice Jackson not only would not have welcomed such a submission in this form, but he would have quite emphatically rejected it and, I believe, admonished the clerk who had submitted it.

And further:

I believe that the memorandum was prepared by me as a statement of Justice Jackson's tentative views for his own use at conference.

Mr. President, the memorandum itself, titled "A Random Thought on the Segregation Cases," is written by the writer in the first person, not in the third person. The memorandum states, "I believe * * *."

Now, who is "I" in this case? Who is the first person? The initials on the memorandum are W.H.R. It would be difficult, then, to believe that this memorandum was written by anyone other than Mr. Rehnquist and that the "I," the personal pronoun in the memorandum, is not Mr. Rehnquist.

The memorandum states: "I realize that it is an unpopular and an unhumanitarian position, for which I have been excoriated by my 'liberal' colleagues, but I think Plessy versus Ferguson was right and should be reaffirmed * * *."

Mr. President, why would Mr. Rehnquist deny that it was his memorandum? Why did he not say, "Yes, it was my memo. Those were my thoughts. I was a clerk to the late Mr. Justice Jackson. Those are my thoughts. That was the constitutional doctrine of the day, Plessy versus Ferguson—separate but equal. I subscribed to it. But that has been overturned. Now it is Brown versus Board of Education. So the separate but equal doctrine has been turned on its head."

I think that would have been understood by the committee. I certainly would have accepted that explanation. One could have understood how a law clerk, who had perhaps been asked to do so, or even if not asked to do so, might have submitted such a memorandum. Oftentimes I ask my staff, "You give me a memo that states the positive. You give me a memo that states the negative. Let me have both sides of the argument." And that could very well have been the case with Mr. Rehnquist. But to say that this memorandum did not represent his own views but that he was stating rather the views of the late Mr. Justice Jackson, Mr. President, is just a little too difficult to swallow.

And then there is the letter from Mrs. Elsie L. Douglas, who was the secretary to the late Mr. Justice Jackson, in which she wrote:

DEAR SENATOR KENNEDY: I have been following the proceedings on the confirmation of Justice William Rehnquist for Chief Justice.

It surprises me every time Justice Rehnquist repeats what he said in 1971 that the views expressed in his 1952 memorandum concerning the segregation case than before the Court were those of Justice Jackson rather than his own views. As I said in 1971 when this question first came up, that is a smear of a great man for whom I served as secretary for many years. Justice Jackson did not ask law clerks to express his views. He expressed his own and they expressed theirs. That's what happened in this instance.

So, Mr. President, it is not sinful to admit that one in that day and time supported the view of what was then the law of the land. Whether it was the right law or whether it was the wrong law, that was to be decided by the legislative branch or by the Court and in this instance it was the Court, and in my judgment, the Court made the right decision in Brown versus Board of Education. But to say, "Those were not my views," I cannot understand that. It would not have been amiss, as I said, if Mr. Rehnquist had simply said, "Yes; those were my views and in that day and time that was the law of the land. It was what the Constitution said, according to the Court in Plessy versus Ferguson."

But that was not what Mr. Rehnquist said, and so, Mr. President, that leaves a very serious cloud on his perceived candor, may I say.

So without going further into these instances which have been, I think, admirably presented to the Senate on

both sides of the aisle by those who contend one way and those who contend the other, let me simply say that for that, in my judgment, the nominee's responses were not entirely forthcoming. To that extent, he left a cloud of doubt in my mind. There are those who say, "Give Mr. Rehnquist the benefit of the doubt." Mr. President, it is not a question of giving Mr. Rehnquist the benefit of the doubt. That is the same thing that was said, although in a different form, when the Manion nomination was before the Senate, when it was argued, "Well, here is a young man whose future depends upon this decision." The young man's future was one tiny thing. What counted most was the future of the people of the seventh judicial circuit. Now we hear it said, "Give Mr. Rehnquist the benefit of the doubt." It is not Mr. Rehnquist I am so concerned about. He would still be on the Court as an Associate Justice if not confirmed to be Chief Justice. The benefit of any doubt should be resolved in favor of the people of the United States. Let us think of the people of the United States. There can always be some other Chief Justice, one equally as conservative, one of the same judicial philosophy. But let us give the benefit of the doubt to the people of the United States.

□ 1750

Mr. President, I have reached my conclusion. We are today considering the position of Chief Justice of the United States, and this decision affects every man, woman, boy and girl in these United States.

Chief Justice Marshall said: "The Judicial Department comes home, in its effects, to every man's fireside; it passes on his property, his reputation, his life, his all."

The Court, Mr. President, has no patronage, no control of purse, no bayonets, no battalions. Its power and its influence rest upon the confidence reposed in it by the American people and by the public acceptance of the fact that there should be a tribunal to which all may appeal. The public trust. That is the basis for the power and the influence of the Court, and the symbol of that Court must be the Chief Justice of the United States.

Justice Holmes said:

> If American law were to be represented by a single figure, skeptic and worshiper alike would agree without dispute that the figure could be one alone, and that one, John Marshall.

John Marshall was the Chief Justice of the United States.

Mr. President, it is imperative that the people of the United States, all the people—rich and poor, men and women, black and white, Catholic, Gentile, Jew, Protestant—have confidence in the Supreme Court of the United States and the judiciary, as a Court and as a system that will render justice and fairness, and judgment with impartiality toward all.

The Chief Justice of the United States must be perceived as the very symbol of justice and the purest symbol of all, a symbol without flaw. This man's experience cannot be challenged. His ability is universally recognized. Some say he is brilliant. His philosophy, overall, I find no quarrel with. His integrity—there is the question.

Will the American people view this Chief Justice as one who became Chief Justice and on the way cut a corner here, cut a corner there, was unable to remember here, was unable to recall there, when it should have been most likely to the contrary? I am concerned about his ability to develop consensus on the court at times when consensus and balance may be best for the country.

Mr. President, I close with a quotation from Horace Greeley:

> Fame is a vapor; popularity an accident; riches take wings; those who cheer today will curse tomorrow. Only one thing endures—character.

Just as it is character that endures in the case of the individual, it is character in the case of the highest Court of these United States that must endure if our constitutional system shall ensure liberty and justice for all.

Mr. President, I regret to say that we are about to confirm a man as Chief Justice of the United States with a quarter or a third, or whatever, of the U.S. Senate showing its lack of complete confidence in this Justice for that exalted office. He would still be an Associate Justice of the Supreme Court. I would have wished that the President would have withdrawn the nomination and submitted in lieu thereof the nomination of Mr. Scalia, but that is perhaps too late. We know what the outcome will be.

Mr. President, for the reasons I have already stated, I cannot vote for the confirmation of Mr. William Rehnquist to be the Chief Justice of the United States.

I yield the floor.

Mr. BIDEN. Mr. President, I say to my friend from Arizona that I will not make my entire statement at this point. I will just take about 5 minutes, and I will cease and desist until later this evening.

First of all, I compliment my colleagues, the Democratic leader, the Senator from West Virginia, on his statement.

Second, I suggest that he pointed out one of the three serious flaws in this nomination.

Let me just illustrate, because I often hear from my colleagues who have not followed this enough, and from my constituents, "Why are you all spending so much time talking about something that happened 8, 10, 15, 18, 20, 25 years ago? Why is that relevant? What difference does that make?"

Let me suggest that if you look at the facts and the time back in 1970 when Justice Rehnquist first came to the Court, 90 percent of these documents and these points were not able to be made because they were not available to us. That is No. 1.

No. 2, Justice Rehnquist has come before the U.S. Senate Judiciary Committee and the American people and repeated some statements which, on their face, seem to be ridiculous. Let me just take one series of points that relate to Justice Rehnquist's testimony.

Justice Rehnquist claimed in 1971 that the memorandum we keep talking about—the memorandum we are talking about now is the memorandum that he, as a clerk for Mr. Justice Jackson, wrote. Senator BYRD referred to it; others referred to it. In that memorandum, it is a clear statement that he thinks, that someone thinks, Plessy versus Ferguson—separate but equal—is a good idea.

In fairness, I might add that Mr. Justice Rehnquist at the time had been the No. 2 man. Here he had been the No. 1 man at the Justice Department in terms of legal counsel for the President and part of his responsibility was to honcho through the nominations of two men who had just gone down to defeat and literally, as the biographers tell us and stories go, he was sitting in the office with then Attorney General Mitchell. The President called Attorney General Mitchell and said, "Within an hour I am going to name someone if you don't find me someone."

And he, Mitchell, allegedly turned then to Rehnquist and to everyone's great surprise said, "It is you."

Justice Rehnquist did not anticipate that occurring but Justice Rehnquist figured out one thing. He observed that in 1970 anyone who expressed support for at any time in their life Plessy versus Ferguson they would not be confirmed. That was the attitude at the time. He was smart enough to know in this Senator's view had he gone up there and said, "Yes, I once or still believe Plessy versus Ferguson is a good idea," he would have been in deep, deep trouble. He just saw two nominees go down to defeat.

So what does he do? He has an opportunity of a lifetime. He never expected in his whole life to ever be on the bench and he concludes, in my view, that he has to come up with some mildly credible rationale that he never held those views.

So he turns and he says, "This memorandum,"—the only thing that was talked about being surfaced,—"was something that Justice Jackson," and keep in mind Justice Jackson was

dead now, that "Justice Jackson was the guy who in fact really had me write this for him, they were not my views."

He goes on to say as was pointed out: Justice Jackson "did not either expect or welcome the incorporation by a clerk of his own philosophical view of how a case should be decided."

The fact of the matter is, though, that Justice Rehnquist and his colleague, Donald Cronson, wrote numerous memoranda for Mr. Justice Jackson in which they articulated their personal philosophic view which is, by the way, what Justice Jackson's secretary said all his clerks did. They were asked to give their view, not Jackson's view.

Let me point out why I believe he was disingenuous at best, when he said, "Justice Jackson didn't expect or welcome the incorporation of our views."

If that were true you would assume that the memorandum that he wrote on other matters would not express his, Mr. Rehnquist's view. Right? Let us just go through a few of them.

For instance, in the memorandum in the case of Terry versus Adams, which involved the challenge to the State elections, Justice Rehnquist wrote, and this is a memorandum to Justice Jackson: Just like the Plessy versus Ferguson memorandas to Justice Jackson he wrote:

> I have a hard time being detached about this case, because several of the Rodell school of thought among the clerks began screaming as soon as they saw this that "Now we can show those damn southerners', etc. I take a dim view of this pathological search for discrimination."

In a memorandum in the case involving the right to speak in a public park, Justice Rehnquist wrote to Justice Jackson:

> I personally don't see why a city can't set aside a park for ball games, picnics, or other group activities without having some outlandish group like Jehovah's witnesses commandeer the space and force their message on everyone.

Again, I do not care about his view. Here are two instances in a row where he said after having said Justice Jackson did not want clerk views, he is giving his view.

Third, in a memorandum on three lawsuits by baseball players against the major leagues for violation of the antitrust laws, Rehnquist wrote:

> I feel it is only fair to lay bare my strong personal animus in these cases . . . I feel instinctively that baseball, like other sports, is sui generis, and not suitably regulated by a bunch of lawyers in the Justice Department or by a bunch of shyster lawyers stirring up triple damage suits.

This is a memorandum to Justice Jackson.

I see the majority leader standing. I want to make a few more points, if he would like to make a comment.

Mr. DOLE. Mr. President, what I want to do while the minority leader is available is to indicate and I am sorry to interrupt the distinguished Senator from Delaware.

Mr. BIDEN. It is perfectly all right.

Mr. DOLE. We might be able to either fix a time or determine a time when we might vote on this nomination. A lot of our Members understand that there is going to be a window between roughly 6 and 8. But it would be my hope that those who want to speak on this nomination would avail themselves of this time and if we could reach the end of the discussion on the Rehnquist nomination and then perhaps we could set aside that particular nomination and start discussing Scalia. I do not know how much more time the Senator from Delaware has that he is allotted or committed.

Mr. BIDEN. If the Senator will yield, I will say there are probably about another hour-and-a-half worth of total time, my guess.

The Senator from Arizona has about 20 minutes to a half-hour and the Senator from Delaware has total another 15 or 20 minutes; the Senator from Massachusetts has 20 minutes, and the Senator from Ohio may or may not have 15 minutes.

So to the best of my knowledge they are the only people who wish to speak on the nomination.

So I would guess maximum we are talking about anywhere from an hour and 20 minutes to a maximum of an hour and 50 minutes is my guess remaining to be spoken on this nomination.

Mr. DOLE. Could we do that during the so-called window to see if we could not come and start the debate?

Mr. BIDEN. The Senator from Delaware would be prepared to do that. The Senator from Arizona acknowledged he would be prepared to do that. Senator KENNEDY, I believe, indicated he had to leave during that window. He was here prepared to speak. So he ought to be back. We can check with the Senator.

The answer is I think we can get 90 percent of it finished during the window.

Mr. DOLE. If we could conclude the debate on Rehnquist probably—not going to happen—but if we could conclude it before 8 o'clock, would the distinguished minority leader have any objection if we would set the nomination aside temporarily to call up the Scalia nomination and start the debate on that one?

Mr. BYRD. Not at all. I have no objection.

Mr. BIDEN. If the majority leader will yield, I would have no objection. I would like to have 2 minutes immediately prior to the vote on Rehnquist with all my colleagues on the floor. It would be safe to say 5 minutes before the actual vote. So I do not mind leaving it, going to Scalia, but prior to the vote being called, I would like 5 minutes set aside for the opposition.

Mr. DOLE. All right. I understand.

I know the distinguished minority leader has a commitment. If he has no objection, then if it should happen—it may not happen—we could proceed in that fashion.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. BIDEN. I yield.

I say to both leaders I think that is reasonable. I would suggest quite frankly—I do not speak out of school with my colleagues—maybe we could run a hot line on that, I know of no one who would have reason to object to that. I would suggest we proceed on that basis unless in the next 10 minutes or so we find an objection. That is what I would say.

Mr. DOLE. If the Senator will yield, we will do the same. Again I ask the distinguished minority leader if we can reach that agreement if it is all right to do it in his absence.

Mr. BYRD. It is. I authorize the distinguished manager here or authorize the distinguished majority leader to speak on my behalf. If it is clear on this side, our staff will know it. They can inform the majority leader and it is perfectly all right with me to enter into this agreement.

Mr. DOLE. Thank you.

Mr. BYRD. I thank the majority leader, and I thank the distinguished Senator from Delaware.

Mr. BIDEN. I thank my colleagues.

Mr. BYRD. Mr. President, I am one of those who in this instance has to go to a function, and I am one of those who asked that there be a window. It would seem to me we could proceed with debate on this nomination and if Senators are not here at this particular point and we have not reached 8 o'clock and they are not here, we still wish to speak on Mr. Rehnquist, if the managers of the nomination on Mr. Scalia were here and care to proceed with their statements, and other Senators could—we will be back then shortly after 8—perhaps if we could agree to a vote on both nominations, let us say, no later or let us say at 9 o'clock, Mr. Rehnquist's vote and back to back Mr. Scalia, that would give us virtually 3 hours in which to complete the debate on Mr. Rehnquist, do the debate on Mr. Scalia, which is not going to be very lengthy I should think, and then we all know when the vote is going to occur.

(Mr. HUMPHREY assumed the chair.)

Mr. BIDEN. Mr. President, to continue again now, remember what we are talking about here. We are talking about a fellow who said that, "It is obvious they were not my views. I was not saying these things."

Justice Rehnquist argued in 1971 that "tone of the memorandum is not that of a subordinate submitting his own recommendations to his superior * * * but is instead quite imperious—the tone of one equal exhorting other equals."

Again, that is his argument as to why he said, "I could not have written this." Do not forget in the first place he said, "I couldn't have written it, they were not my views. The reason they were not my views," he said, "is because clerks don't give their own views."

□ 1810

Well, I hope I have just pointed out that he consistently gave his own views in every other memorandum and Justice Jackson's clerk said that is what all the clerks did. So I would like to make that point.

The second point is he now says, as a second defense, that it was not he who wrote that memorandum or they were not his words. He comes back and says, not only did clerks not do that, he said, in addition to that, it was too imperious, the tone; it sounded like a Justice, and "We clerks didn't use those kinds of terms like the ones used in the memorandum."

Well, let us examine that point for a minute. In one memorandum, for example, the man who say clerks do not use those phrases, he, Justice Rehnquist, then clerk Rehnquist, refers to his coclerk, this Mr. Cronson, as "Mr. Justice Cronson," He says, "As Mr. Justice Cronson said in his memo," blah, blah, blah, and he went on from there.

At another time, he titles the memorandum he wrote to the Justice—again, now, he said "We don't use high-sounding terms. Any time it is formal or any time it is flippant, it must have been a judge, not a clerk."

This is another title of one of his memorandums. It is quite good, actually. The title is: "Habeas Corpus Then and Now—Or, If I can Just Find the Right Judge, Over These Prison Walls I Shall Fly."

That is how he titles his memo to Justice Jackson.

A third example: In Justice Rehnquist's memo on Terry versus Adams, when he was a clerk, he talked about—this is his, Rehnquist's verbiage—he talked about a "pathological search for discrimination," that, he said, could be attributed to Justices Douglas and Black, as well as several other prominent legal scholars.

Now, Let us go back over this a minute. Why are we concerned about this? Because, A, it does not appear he is telling the truth; B, we did not have a chance to examine it in 1971; and, C, his arguments do not hold water.

His arguments that "I wasn't for Plessy versus Ferguson," are as follows: A—this is the first part now, this is really important in my view—he says, "A, when we talked and when we wrote in those memos, we were writing for Justices. We weren't expected to give our own views."

Yet, consistently, when he was a clerk for Justice Jackson, he gave his own views and stated them that way. And I have submitted those for the RECORD.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BIDEN. Yes; sure.

Mr. SARBANES. Did the Senator put in the RECORD the letter from Justice Jackson's secretary of many years taking very sharp issue with that?

Mr. BIDEN. Yes. She made it very clear, as the Senator from Maryland knows, that, in fact, clerks were expected to give their views, not the Justices' views. And she pointed that out. And Senator BYRD put that in the RECORD.

But, not only on that score is it clear he is not telling the truth, it is clear on the score that when he tried, in a fallback position, to defend his argument to say he is not lying to us or not misrepresenting, he said, "Well, only Justices use imperious language." And yet in every memo he writes—because that is what he is known for. He is quick witted. He is sarcastic. He is sometimes sardonic. He does it all the time, and I just cited three of those examples.

Now, there is a fourth thing. Rehnquist asserted in 1971 that the statement in the memo that "Plessy was right and should be reaffirmed was not an accurate statement of my views at the time."

However, everything in Justice Rehnquist's background at that time points overwhelmingly to the fact that that is what he believed.

Let me give you some examples. This is Rehnquist's coclerk, again, Mr. Donald Cronson. He stated that Rehnquist regularly defended Plessy versus Ferguson in the luncheon meetings with the other clerks. And this is consistent with the statement and the memo which he wrote to Justice Jackson where he, Rehnquist, says, "I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by my 'liberal' colleagues."

He means the people at lunch time who used to excoriate him, his fellow clerks who used to say things like, "You can't mean that. You don't really believe separate but equal is equal." And he would come back and say, "I do believe that."

So he says to Jackson, he acknowledges that. He says, "I am recommending to you to uphold Plessy v. Ferguson. I realize that is an unpopular and unhumanitarian position for which I"—Justice Rehnquist—"have been excoriated by my colleagues," the clerks.

Continuing the quote: "But I think *Plessy* v. *Ferguson* was right and should be reaffirmed."

And, by the way, throughout his memorandum, which I will submit for the RECORD, he consistently refers to his fellow clerks as "the liberals." He was not talking about the other judges. He is talking about his fellow clerks.

In an 1983 interview by a reporter from the New York Times, Justice Rehnquist was asked whether his views on Plessy had changed since his days as a clerk. This is before he knew he was going to be nominated to be Chief Justice of the United States. He replied: "I think they probably have."

Now, why would he say in 1983 that his views on Plessy had changed from when he was a clerk and yet he swore in 1971 his views as a clerk were in support of Brown versus the Board of Education? What are we, fools? I mean, it is crazy. Obviously, he believed that. And there is nothing wrong with him believing that. As the Senator from West Virginia stated, almost half of the United States believed Plessy versus Ferguson was right. Over half of them stood here on the floor and said "Separate but equal is equal." And obviously, he did, too.

So why is he not telling us the truth under oath? Why, in 1983, would he say: "My views have changed since that of when I was a clerk"?

If you take his statements in 1971 and 1986 as being accurate, where he swore under oath that he was for Brown, then I am really worried. That means he is now for Plessy. That means he has changed his mind. That means he is going to rule, if another case like it comes up that says separate but equal is equal.

Now, nobody believes that; do they? God willing, he does not mean that.

So, obviously, as my mom might say, he might have tole us a little white lie about who wrote the memorandum.

Another point in his testimony before the Judiciary Committee this year: He testified that he never reached a personal conclusion—I asked him, I said, "By the way, did you have an opinion? Did you have an opinion back when you were a clerk?" And he said, "Clerks don't have opinions."

Well, here is one of the most opinionated men that has probably ever served as a clerk, one of the most opinionated Justice—and that is not bad—and he says he had no opinion. He had no opinion at all back at that time on whether or not Brown should be reaffirmed.

Given that the Brown decision was the most controversial constitutional decision of the century, it is absolutely inconceivable to me that a person with such strong views as Justice Rehnquist held would not have a view regarding the correctness of the decision.

Similarly, Justice Rehnquist's corollary assertion that the memo represented the views of Justice Jackson is wholly contradictory to the evidence. It is disputed by Phillip Kurland, one of the most conservative constitutional scholars in America, from the University of Chicago. Phil Kurland, Justice Jackson's biographer, disputes that Jackson ever held those views. Richard Kluger, the author of the seminal work on the history of the Brown decision, disputes that Jackson ever held those views; cannot find any evidence Jackson ever held those views.

□ 1820

Ms. Douglas, who we referred to earlier, Jackson's personal secretary, refutes the assertion that Jackson ever had any of those views.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BIDEN. Justice Jackson's own writings in the Brown case refutes that he ever had those views. I will yield on that point, and I will make a concluding point to let my colleague from Arizona speak if he has not already left.

Mr. SARBANES. I simply want to quote the letter that Ms. Douglas, Justice Jackson's long time secretary, sent because obviously she worked very closely with the Justice, and law clerks came and went. She stayed on forever, as it were. In her letter she says:

It surprises me every time Justice Rehnquist repeats what he said in 1971 that the views expressed in his 1952 memorandum concerning the segregation case then before the Court were those of Justice Jackson's rather than his own views. As I said in 1971 when this question first came up, that is a smear of a great man for whom I served as secretary for many years. Justice Jackson did not ask law clerks to express his views. He expressed his own, and they expressed theirs. That is what happended in this instance.

Mr. BIDEN. I thank my colleague from Maryland. Look, let's be honest about this. Here is a guy who had himself in a crack. If it had not been for the fact that he was nominated, he could have said what a lot of other Members of the Senate said here. Like Senator BYRD said, hey, I held that view. I was wrong. I regret having held that view. It was my view at the time but I do not hold it any more. But I concluded he could not say that because he was afraid, in this Senator's judgment, that had he said that in 1970 that the array of Senators in this Chamber in 1970, the mood of the country in 1970, the civil rights atmosphere in 1970, they would have said notwithstanding you have recanted, we still do not want you on the Court because you held those views. That was the mood of the country.

So in fairness to Justice Rehnquist he sat there and he had himself in a bind. He had a chance to do something he never thought he would ever be able to do in his life—be a Supreme Court Justice. And he allowed himself in my view to succumb because obviously every single thing points to the fact that they were his views. Let me make a concluding point on this area.

Justice Rehnquist stated in 1971, and he expressed again, "Since I fully support the legal review and the rightness from the standpoint of fundamental fairness of the Brown decision."

Clearly, this statement was intended to deflect criticism by indicating that he consistently agreed with Brown. But Justice Rehnquist's unequivocal endorsement of Brown in 1971, is clearly questionable in light of the statements he made about integration in 1964 and 1967, and in 1970. You heard my colleague, the distinguished Senator from Utah. He said, look—and you will hear from my friend from Arizona. He was required to write a position. My boss asked me to write a position. Put away the issue of Justice Jackson, which I cannot believe a reasonable person can conclude that they were not his, Rehnquist's, views. Put that all aside. Let us look at a few facts.

In 1964, Justice Rehnquist while a private lawyer in Phoenix, AZ, testified against the passage of the Phoenix City Ordinance which would prohibit racial discrimination in places of public accommodation. He also wrote a letter, then wrote a letter to the newspaper. Now this is a private citizen. He had a right to do that. He wrote a letter to the newspaper in which he equated the indignity suffered by victims of discrimination barred from a lunch counter with "the indignity suffered by the segregationist forced to serve the meal." I ask unanimous consent that an excerpt relating to that matter be printed in the statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE 1964 PUBLIC ACCOMMODATIONS ORDINANCE

In June of 1964 the Phoenix City Council was considering a public accommodations ordinance which declared that—

"It is . . . contrary to the policy of the City and unlawful to discriminate in places of public accommodation against any person because of race, color, creed, national origin, or ancestry."

The ordinance applied only to "public places" offering entertainment, food or lodging, and specifically excluded "any place which is in its nature distinctly private." In testimony before the City Council, be submitted to the people for a vote rather than being passed by the Council. He also said:

"I am a lawyer without a client tonight. I am speaking only for myself. I would like to speak in opposition to the proposed ordinance because I believe that the values that it sacrifices are greater than the values which it gives. . . . There have been zoning ordinances and that sort of thing but I venture to say that there has never been this sort of an assault on the institution where you are told, not what you can build on your property, but who can come on your property. This, to me, is a matter for the most serious consideration and, to me, would lead to the conclusion that the ordinance ought to be rejected."

The ordinance was passed unanimously by the City Council the next day. Mr. Rehnquist, still without a client save himself, then wrote a letter to the editor of the Arizona Republic calling passage of the ordinance "a mistake." Incredibly, the letter first equated the indignity suffered by a victim of discrimination barred from a lunch counter with the "indignity" suffered by the segregationist forced to serve a meal, and then concluded:

"It is, I believe, impossible to justify the sacrifice of even a portion of our historic individual freedom for a purpose such as this."

The freedom to which he referred was the freedom of the property owner to do with his property as he wished. As Mr. Rehnquist recognized in the letter, this freedom has been impinged upon by a great many laws, such as zoning laws, and health and safety regulations. While Mr. Rehnquist thought that imposition on property rights was acceptable for purposes of zoning, he thought an impingement on property rights designed to assure equal access regardless of race to places which hold themselves out to the public was unjustified. In other words, in 1964 the nominee, as he agreed at the hearings, "felt that personal property rights were more important than individual freedoms, the individual freedom of the black to go up to a lunch counter."

It is important to understand the time at which this ordinance was being considered. The fight to end discrimination in public accommodations was in full swing across the nation. The encounters at Selma and Birmingham were recent history. The Congress was in the midst of considering the broadest and most significant piece of civil rights legislation it had ever passed, and that legislation included a meaningful public accommodations section. By the time Mr. Rehnquist spoke in Phoenix, the House had passed the bill, and the Senate had invoked cloture on it. Even more important, the most substantial objections to the federal act came from those who doubted the federal government's constitutional power to enact public accommodations legislation. This was not an argument the nominee used. He fought the measure solely on its merits.

When questioned at the hearings about his opposition to the ordinance, Mr. Rehnquist said he has changed his mind. Asked why, he replied:

"I think the ordinance really worked very well in Phoenix. It was readily accepted, and I think I have come to realize since it, more than I did at the time, the strong concern that minorities have for the recognition of these rights."

Subsequently, Mr. Rehnquist, perhaps recognizing that a pragmatic argument is weak where principle is involved, stated that even if the ordinance had been less readily accepted he would no longer oppose it. Thus the real reason for Mr. Rehnquist's change of heart is, according to him, his realization within the past 7 years of the "strong concern that minorities have for the recognition of these rights." Significantly, it is still not a matter of the nominee's feeling that such discrimination is an injustice, but only

that he now realizes that *others* may so view it.

While it is encouraging in some ways that Mr. Rehnquist says that he has come to realize the depth of concern among members of minority groups to be treated as individual human beings by all persons, it is very distressing to imagine a person on the Supreme Court who just seven years ago, when he was 40 years old, was as unaware of the depth of this feeling as Mr. Rehnquist was by his own admission. The insensitivity which Mr. Rehnquist's own statement reveals is hardly offset by an announcement at confirmation hearings that he would no longer oppose public accommodations measures—particulary when other actions by the nominee after 1964 are taken into account.

Mr. BIDEN. I thank the President.

He concluded that letter by saying the following. He said, "It is, I believe, impossible to justify the sacrifice of even a portion of our historic individual freedoms for a purpose such as this."

A purpose such as this was forcing a white person to serve a black person in a restaurant; forcing a white person to have to rent a room in a public accommodation house to a black person.

Again, a lot of reasonable women and men held that view in 1964. But this was not as a clerk to the Court. This was a full-blown respected lawyer, a prominent citizen in Phoenix, all on his own, as a concerned citizen writing a letter to the editor of the Phoenix newspaper.

In 1967, Justice Rehnquist publicly challenged the plan to end de facto segregation in public schools in Phoenix. And again, as a good-spirited public citizen, he wrote a letter to the editor. In the letter to the editor, he said, "We are no more dedicated to an integrated society than we are dedicated to a segregated society." Again, a view that is not unreasonable. Some will argue that we are required under the Constitution to eliminate discrimination but we are not required to promote integration. That is an intellectually defensible argument. That is the one he made. This is the guy now who is saying in 1971, "I fully support Brown, and I always have." Does that sound like a guy who fully supports Brown, and always had?

In 1970, it now appears that Justice Rehnquist drafted a proposed constitutional amendment while he was working for the Government, an amendment that had it passed would have halted the desegregation of the Nation's public high schools. In a memo accompanying this proposal, then attorney Rehnquist said, "This amendment would stop Federal courts from interfering even if local officials set up school attendance zones 'with a motive of segregating the races in the schools.'"

He drafted an amendment, and he attached a memo to the amendment sending it on to the President, a defensible position in which he said that it is all right to "set up school attendance boundaries under this proposed amendment even where there is a motive of separating the races in the schools."

Again, I would be delighted to debate any of my colleagues on whether or not the substance of what he is suggesting in all these things is reasonable. I think they are not reasonable.

But the reason I raise these things, I say to my colleagues, is not to demonstrate that he was right or wrong in holding these views, but to demonstrate that he was not telling us the truth when he said, "I supported the Brown decision, and I always supported the Brown decision," that "I did not write the Jackson memo, they were Jackson's views, not my views."

Now, look, there is nothing wrong again as I say to my colleagues with him having held those views. A lot of people in America held those views.

But I say to my colleagues after I have read what I read to you, does anyone reasonably believe that William Rehnquist, clerk William Rehnquist, lawyer William Rehnquist, private citizen William Rehnquist, was a man who from 1954 on strongly supported Brown versus The Board of Education? Is that a reasonable conclusion anyone can reach?

So why did he not just say to us, yes, in 1954, like almost the majority of the American people, I thought Plessy versus Ferguson was still good law. But, he came up under oath, raised his right hand, and he said, "No, they weren't my views. I am for Brown," or, "I had no opinion at all."

□ 1830

Let me speak to another point, and I had no intention of speaking to this but I am going to speak to it now because it was referred to by the Senator from West Virginia, restrictive covenants.

I have never once raised during the hearings the issue of restrictive covenants with regard to blacks or "members of the Hebrew race."

In all honesty, whoever wrote that covenant not only indicates how prejudiced they were but how stupid they were. There is no Hebrew race. I find this offensive all by itself to my friends.

Having said that, it has been pointed out by supporters of Justice Rehnquist, the way I have read some of the accounts, "Even Senator BIDEN had a restrictive covenant in his deed."

I have read that now so many times in the press I think it warrants commenting.

A lot of us in America have restrictive covenants in deeds. I might point out I never had any restrictive covenant in any deed in which I was a property owner.

It turns out my father's home in which I lived, like some of us do—we lived in our father's home as children—there was a restrictive covenant in my father's deed.

Let me show you how it is different than Justice Rehnquist's and how most Americans' are different than Rehnquist's.

In my father's deed, about the second line from the bottom line, it says, "There are restrictions and covenants to be found in volume 479, pages 376 and 377 at the recorder of deeds office in the county of New castle, Delaware."

Any reasonable person reading that, I am sure if my father read it which I am sure he did not, could assume that it is anything from allowing the electric power company to put the lines straight through to where they could put a road through in the neighborhood.

My father did not look it up and say, "I better go down to the county recorder's office and, assuming I can find it, turn to volume 471, turn to page 4,372, and read the covenant."

No lawyer ever wrote my father a letter. It never appeared on the face of the deed or any other document my father read, just like 99 percent of the other Americans in this country who have "restrictive covenants."

How is that distinguishable? It is distinguishable in a very definite way. I am not here to defend my father, but to point out the difference.

In Justice Rehnquist's case, it said it on the face of the deed, right there in big, bold print: "No Hebrew."

In addition to that, there was a lawyer who sent him a letter, a one-page letter. It said, "By the way, Mr. Justice Rehnquist, you should look at this because your deed says, 'No Hebrew race' can be sold this property."

Here is a Justice of the Supreme Court who everybody over here says, and some of my colleagues over here say, is this brilliant, legal tactician, and scholar.

He gets a letter from a lawyer which is one-page long. He does not read it?

In addition to that, do you know what happened? Do you know what happened when some Republican Party worker went down and checked out every deed I have? The only restrictive covenant that restricts in a property I own is because one was owned by a DuPont family, and it says in fact that if there is an explosion at the DuPont property the owner of my property will not be liable. And it says I cannot sell drinks on the property of my home.

I assure my colleagues, I sell no drinks.

Let me tell you what the difference is between what I think 90 percent of Americans would do.

The day my father was made aware because some Republican worker went

down to the recorder of deeds and said, "Let's check BIDEN out and his family," the day that became known, do you know what my father did? He went to a lawyer and said, "I want that taken out of my deed."

The lawyer told my father, "You can't have it taken out of your deed because the court will not hear the case because it is moot anyway."

My dad said, "What can I do?"

He said, "You can attach an amendment to the deed and say you do not consider it legal and you find it repugnant."

That is what my father did.

What did Justice Rehnquist do when he found this out? To the best of my knowledge, nothing.

Let us assume he did not know anything about it. Let us assume he did not have any notion of it. Let us assume it never crossed his mind. Let us assume he never read the letter. Let us assume he did not see the deed.

When he found it out, what did he say? Did he say at the hearing "I want to get that taken out of my deed"?

Did he say this was horrible?

It goes to the question of a little bit of sensitivity.

I do not see any of my colleagues wishing to speak and since we are going to try to finish, let me keep going. Let me shift to another subject, if I may.

By the way, if it has not already been put into the RECORD, I ask unanimous consent that the New York University Law Review article written in April 1982, entitled "How Judges Speak: Some Lessons on Adjudication in Billy Budd, Sailor With an Application to Justice Rehnquist," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

HOW JUDGES SPEAK: SOME LESSONS ON ADJUDICATION IN BILLY BUDD, SAILOR* WITH AN APPLICATION TO JUSTICE REHNQUIST

(Richard Weisberg)**

(Professor Weisberg, recognizing the relationship of literature to the law, closely examines Melville's Billy Budd, Sailor as a vehicle for exploring the importance of language in adjudication. His approach to Melville's story emphasizes the concept of considerate communication. The concept is then developed through a detailed analysis of Justice Rehnquist's opinion in Paul v. Davis. This analysis of the concept provides a useful demonstration of how language can affect adjudication.)

INTRODUCTION: FICTION, LAW AND BILLY BUDD, SAILOR

Can there really be something over and above these clear ascertainable facts, some extra element, which guides the judge and justifies or gives him a reason for punishing? . . . We are here in the realm of fiction, with which it is said the law has always been connected.[1]

The normal subject matter of the law review writer is, of course, statutory or adjudicatory prose. Through compilation, comparison, and interpretation of this matter, the legal analyst attempts to predict, criticize, and suggest. The writer may thereby enrich a particular area of law and provide ideas to which judges, lawyers, and others may refer when analogous issues arise. Why, then, should we break the pattern and devote law review space to a work of pure fiction? How can we justify substituting imaginative for legal prose? Do we not intrude sufficiently into the abstract in jurisprudential pieces without adding literary art to the legal cannon?

There are good reasons for insisting on the importance of some fictional works to legal scholarship. First, legal analysts, in fact, have long employed fiction to illuminate law.[2] Second, despite the present tendency of some legal writers to ignore fiction in favor of more fashionable "extrinsic" methodologies,[3] other distinguished scholars continue to find its influence irresistibly beneficial.[4] Third, some literary texts so richly contribute to our understanding of the law that it would be a mistake to ignore their implications for legal analysis. Certain fictive situations command the attention of lawyers in each generation,[5] some for generations at a time.[6] These situations occasionally surpass in their legal significance the utterances, on similar subjects, of judges, legislators, administrators, or law professors.

Billy Budd, Sailor is such a text. Since its publication[7] several decades after Melville died,[8] this novella has captivated literary scholars.[9] Lawyers have written about the text at least since the mid-sixties,[10] and as recently as the summer of 1980, it became the centerpiece of an interdisciplinary conference at Princeton University.[11] The dilemma of the story's central adjudicator, Captain Edwin Fairfax Vere, in bringing the morally innocent Billy to trial and execution for striking and killing the evil John Claggart, has entered into the spirits of legal and literary scholars alike, provoking debate and even passion.

Thus, for example, contemporary legal analysts such as Robert Cover[12] and David Richards[13] have integrated the pivotal trial scene, and the text as a whole, into an understanding of legal history on the one hand and moral judicial behavior on the other. In a fine earlier work by a nonlawyer, Vere's legal argument to the court-martial was preliminarily analyzed and employed to further an understanding of what Melville is saying about law in his story.[14] Teachers of jurisprudence and of law and literature have carefully examined the long passage in which Vere defends his view that, on occasion, moral innocence must bow to legal culpability,[15] recognizing in it a paradigm for theories of adjudication.

A complete analysis of the law of this "case," however, has not yet been presented. Therefore, after summarizing the "plot" of Billy Budd, Sailor and introducing a narrative theme that will echo throughout the piece, this Article will examine the law that a court-martial should have applied in Billy's case. The analysis demonstrates that Captain Vere's articulation and application of the law in many respects were erroneous, and that Melville intended his reader both to realize this fact and to consider its broader implications. Our reading thus challenges the prevaling interpretation[16] that Vere was confronted with a situation in which positive law dictated legal action wholly opposed to his natural sense of justice.

Since Vere successfully posits a dilemma he did not really face, the moral and legal significance of the story turns not on conflicts arising from the correct application of externally imposed forms, but on the articulate adjudicator's ability to impose a subjectively attractive result that the law does not require. So understood, the novella indicates Melville's view that language frequently controls the outcome of adjudication. The Article develops this insight by extracting the notion of "considerate communication" from an early passage in the story. It further explores some of the narrative techniques that mark this mode of communication through an analysis of Justice Rehnquist's opinion in *Paul* v. *Davis*[17] as viewed through the lens of Vere's argument in Billy's case. Following Melville's lead, the Article then relates "considerate communication" to the moral nature of the adjudicator by examining Vere's motives for having Billy hanged. This analysis, finally, leads to an examination of the story's broader cultural themes. For the lawyer, this centers on Melville's concern that the values and normative structures likely to inhere in many judges today may pose barriers to objective judicial behavior.

Thus, this Article seeks both to enrich our understanding of Melville's remarkable tale and to demonstrate how some literary works pose profound questions so artfully that they deserve a place in the growth and development of legal culture.

I. PLOTS AND DIGRESSIONS: OVERTNESS AND COVERTNESS IN BILLY BUDD, SAILOR

No schematic attempt to describe *Billy Budd, Sailor's* "plot" would sit easily with anyone who has entered into the majestic complexity of Melville's final work. Such attempts, made by filmmakers,[18] opera writers,[19] and some literary critics,[20] impoverish the narrative subtlety that is the story's essence. But a kind of recasting of the tale, loyal to its digressions, is possible and serves to introduce the central theme underlying Melville's view of adjudication.

The story, subtitled *An Inside Narrative*, is brief—approximately ninety pages long. It begins with the description of a certain maritime type, the "Handsome Sailor":

It was strength and beauty. Tales of his prowess were recited. Ashore he was the champion; afloat the spokesman; on every suitable occasion always foremost. Close-reefing topsails in a gale, there he was, astride the weather yardarm-end, foot in the Flemish horse as stirrup, both hands tugging at the earing as at a bridle, in very much the attitude of young Alexander curbing the fiery Bucephalus. A superb figure, tossed up as by the horns of Taurus against the thunderous sky, cheerily hallooing to the strenuous file along the spar.

The moral nature was seldom out of keeping with the physical make.[21]

The story's title hero is a fine (albeit flawed) example of the type:

Such a cynosure, at least in aspect, and something such too in nature, though with important variations made apparent as the story proceeds, was welkin-eyed Billy Budd—or Baby Budd, as more familiarly, under circumstances hereafter to be given, he at last came to be called—aged twenty-one, a foretopman of the British fleet toward the close of the last decade of the eighteenth century.[22]

Billy brings the overt values of his sailor-like type to the specific historical environment of this novella. Melville's tale unravels not in an allegorical locus of anytime and

Footnotes at end of article.

anywhere, but rather in the era of the French and American Revolutions, when the great mutinies threatened the stability of the British navy. "It was the summer of 1797,"[23] we are told, shortly after "The Great Mutiny" at the Nore.[24] Billy is impressed from a merchant ship, the *Rights of Man,* onto the action-bound *Bellipotent,* cheerfully accepting his fate.[25] Resentment and "double meanings and insinuations of any sort [being] quite foreign to his nature,"[26] he departs from the homeward-bound ship, leaving with the *Rights* only the memory of "the jewel"[27] of that crew, and bringing to the *Bellipotent* his popularity and natural esteem among fellow sailors.

The narrator continues to ground the tale in a specific historical context by now moving from Billy to the general subject of the mutinies, providing needed background for the introduction to the story of Admiral Nelson. A very real contemporary and colleague of the *Bellipotent's* fictional captain, Vere (who has not yet been mentioned), Nelson, " 'the greatest sailor since our world began,' "[28] is the subject of two full chapters; he will be mentioned twice again as the text proceeds.[29] Nelson here appears as a kind of Handsome Sailor himself. Evocative of Billy on the *Rights,*[30] but on a far higher level of significance, Nelson is presented as a natural leader. Called to a troubled ship, the *Theseus,* he dampened a mutiny virtually on his arrival, choosing "not indeed to terrorize the crew into base subjection, but to win them, by force of his mere presence and heroic personality, back to an allegiance if not as enthusiastic as his own yet as true."[31] (Vere's subsequent tactics at Billy's trial will have to be tested against this narrative model.)

As the story winds through self-admitted "bypaths" [32] to the exposition of its central actions, Captain Vere is finally introduced. A good, if somewhat pedantic,[33] perhaps overly prudent[34] and bookish officer,[35] he bears the nickname "Starry Vere" partly because he would occasionally gaze dreamily at the blank sea,[36] but more so because Andrew Marvell had written a poem about his ancestor, "starry Vere," who was noted for his discipline severe." [37]

From Vere, Melville moves to the *Bellipotent's* master-at-arms, John Claggart. "His portrait I essay," admits the always equivocal narrator, "but shall never hit it." [38] Like Vere [39] (and unlike Billy), Claggart is twice described as "exceptional." [40] Both Vere and Claggart are unusual on a ship because their verbal gifts and complex intelligence oppose them to the usual sailor-like type. Melville, in a later "digression," describes this opposition as follows:

And what could Billy know of man except of man as a mere sailor? And the old-fashioned sailor, the veritable man before the mast, the sailor from boyhood up, he, though indeed of the same species as a landsman, is in some respects singularly distinct from him. The sailor is frankness, the landsman is finesse. Life is not a game with the sailor, demanding the long head—no intricate game of chess where few moves are made in straight-forwardness and ends are attained by indirection, an oblique, tedious, barren game hardly worth that poor candle burnt out in playing it.

Yes, as a class, sailors are in character a juvenile race.[41]

Claggart, like Vere, "is finesse," particularly finesse with language, with verbal obfuscation, and with achieving ends through "indirection." [42]

Claggart, however, suffers from an animus not shared by his captain: he is obsessed with Billy Budd. Such a hidden passion, "never declared" and directed against "some special object," is described in a vitally important passage:

But the thing which in eminent instances signalizes so exceptional a nature is this: Though the man's even temper and discreet bearing would seem to imitate a mind peculiarly subject to the law of reason, not the less in heart he would seem to riot in complete exemption from that law, having apparently little to do with reason further than to employ it as an ambidexter implement for affecting the irrational. That is to say: Toward the accomplishment of an aim which in wantonness of atrocity would seem to partake of the insane, he will direct a cool judgment sagacious and sound. These are madmen, and of the most dangerous sort, for their lunacy is not continuous, but occasional, evoked by some special object; it is protectively secretive, which is much as to say it is self-contained, so that when, moreover, most active it is to the average mind not distinguishable from sanity, and for the reason above suggested: that whatever its aims may be—and the aim is never declared—the method and the outward proceeding are always perfectly rational. [43]

Why does Claggart have it in for Billy? As the narrative proceeds, it affords us some oblique hints. Billy and Claggart are *types in opposition.* It has become a critical commonplace to think of this as an opposition between good and evil, or "heart and head," but these are reductive analyses, unworthy of the text in its fullness. [44] The real opposition here, as indicated in the last few quoted passages, is between the Handsome Sailor's innate openness and the intelligent master-at-arm's "ingratiating" [45] indirectness, or, as we shall call these qualities here, *overtness* and *covertness.*[46]

Claggart proves himself a master at covertness, as well as arms, during the tale's famous "soup spilling" episode.[47] When Billy accidentally spills "the greasy liquid" [48] in Claggart's path, the master-at-arms, about to chastise the perpetrator, "checked himself." [49] Claggart's physiognomy, locked into sternness, immediately alters; a smile adorns his not-unpleasant features, and he says merely, "Handsomely done, my lad! And handsome is as handsome did it, too!" [50] Not a sailor in the mess hall now believes that Claggart has it in for Billy. As he extracts himself from the view of his fellow crewmen, however, Claggart vents his deliberately repressed rage on a passing drummer boy, who perhaps evokes Billy's own youth and spontaneity. Melville thus establishes a model for covert communication which we will have occasion to recall when discussing the adjudicatory process.[51]

Meanwhile, Claggart's antipathy to Billy evolves into a strategy. He dispatches a deputy to tempt the youthful foretopman to mutiny, but Billy, always the loyal counterpart of Nelson, throws him out.[52] Finally, Claggart takes a fateful step. Before Captain Vere, he accuses Billy of conspiracy to mutiny.[53] Using his customary indirectness[54] and deftness of covert expression, he forces the reluctant and angrily unbelieving Vere to call Billy to defend himself against the charges.

Billy, a stutterer, cannot frame a coherent answer to Claggart's incredible charge. "Speak, man!" implores his captain.[55] But the Handsome Sailor is a doer, not a say-er; his essential harmony—the perfect matching of outward form and inner essence—compels him to express his aversion to the unjust attack. Thus, Billy strikes, and Claggart falls to the cabin floor.[56] Propelled by these events to a wholly uncharacteristic show of emotion, Vere intones, "Struck dead by an angel of God! Yet the angel must hang!" [57] The ship's surgeon, amazed to see the usually calm captain so passionate, confirms Claggart's death. Vere immediately summons a drumhead court, although the surgeon and other officers privately deem it proper to refer the matter "to the admiral." [58]

Chapter 21, the longest in the text, describes the trial of Billy Budd for striking a senior officer in time of war. The hand-picked members of the court, listening to Captain Vere's arguments as sole non-party witness, prosecutor, and fellow adjudicator,[59] overcome their innate sympathies and legal misgivings, and sentence Billy to hang.

Early the very next day, before an awe-struck crew, Billy is executed.[60] Mustering the men quickly back to work, Vere appeases his fellow officer's ironic [61] fear that the men might mutiny in seeing their favorite hanged by counselling the dampening influence of "forms, measured forms" [62] upon the crew. The sailors docilely return to their duties (for, indeed, as we learned of the *Bellipotent* earlier in the tale, "very little in the manner of men . . . would have suggested to an ordinary observer that the Great Mutiny was a recent event" [63]); they are perhaps partially satisfied by the always-loyal and finally articulate Billy's last words, "God bless Captain Vere!" [64]

The event stands thus, unremarked until Melville's narrative by any but the men who were present and, curiously, by the readers of an official naval chronicle of the time called *News from the Mediterranean.* This "long ago superannuated and forgotten" [65] account, recited towards the end of the novella, reports it incorrectly: Claggart is described as an upstanding model of loyalty and Billy as a depraved foreigner who stabbed him vindictively to the heart.[66]

As for Captain Vere, profoundly affected by the choice he says the law compelled him to make, he never really recovers. Wounded in an insignificant batt[illegible] prior to the magnificent episodes at the Nile and Trafalgar, Vere, "[t]he spirit that 'spite its philosophic austerity may yet have indulged in the most secret of all passions, ambition, never attained to the fulness of fame." [67] He dies mumbling, "Billy Budd, Billy Budd," a phrase well understood by at least one who hears it.[68]

The tale ends on its least ambiguous and most lyrical note. The crew—straightforward, overt, and uncomplex sailors—has composed a ballad called "Billy in the Darbies." Its strikingly simply verses speak of the heroic Billy at death, the jewel of the crew who can only observe, without bitterness, "—O, 'tis me, not the sentence they'll suspend." [69]

II. Melville's Use of the Law in Billy Budd, Sailor

For the trial of criminal cases concerned with loyalty to the regime, special military tribunals are established and these tribunals disregard, whenever it suits their convenience, the rules that are supposed to control their decisions.[70]

A. The Trial Scene: Earlier Critical Views

The centerpiece of this amazing short story is its trial scene. Chapter 21 stands as its microcosm of meaning, just as trial scenes in other literary masterpieces so frequently carry forth the fullest sense of the larger text.[71] The chapter's focus, not sur-

prisingly, is on Captain Vere and his explanation to a restive court-martial that duty to law overrides the apparent claims of natural justice. Critics have been particularly attentive to the following speech:

"But your scruples: do they move as in a dusk? Challenge them. Make them advance and declare themselves. Come now; do they import something like this: If, mindless of palliating circumstances, we are bound to regard the death of the master-at-arms as the prisoner's deed, then does that deed constitute a capital crime whereof the penalty is a mortal one. But in natural justice is nothing but the prisoner's overt act to be considered? How can we adjudge to summary and shameful death a fellow creature innocent before God, and whom we feel to be so?—Does that state it aright? You sign sad assent. Well, I too feel that, the full force of that. It is Nature. But do these buttons that we wear attest that our allegiance is to Nature? No, to the King. Though the ocean, which is inviolate Nature primeval, though this be the element where we move and have our being as sailors, yet as the King's officers lies our duty in a sphere correspondingly natural? So little is that true, that in receiving our commissions we in the most important regards ceased to be natural free agents. When war is declared are we the commissioned fighters previously consulted? We fight at command. If our judgments approve the war, that is but coincidence. So in other particulars. So now. For suppose condemnation to follow these present proceedings. Would it be so much we ourselves that would condemn as it would be martial law operating through us? For that law and the rigor of it, we are not responsible. Our vowed responsibility is that: That however pitilessly that law may operate in any instances, we nevertheless adhere to it and administer it.

"But the exceptional in the matter moves the hearts within you. Even so too is mine moved. But let not warm hearts betray heads that should be cool." [72]

As we demonstrate shortly,[73] Melville intends such jurisprudential statements [74] as these to shed "light" [75] on Vere's "exceptional . . . moral quality." [76] Perhaps the novella's most puzzling character, Vere has won the admiration of the vast majority of critics, who seem to accept without question his remarks during the trial scene.[77] In the late 1940's and 1950's in this country, negative perceptions of Vere were virtually nonexistent; when expressed, they were greeted with serious professional antipathy.[78] As recently as 1967, *legal* analysts of Vere's position were likely to have full faith in his veracity and thus to show respect for his dilemma. Charles Reich therefore could say:

The chief agent of the law is Captain Vere. . . . Melville allows Vere no choice within the terms of the law itself; if the law is obeyed, Billy must hang. . . . We may perhaps criticize the law, but not the officer whose "vowed responsibility" is to "adhere to it and administer it." . . . As Melville presents the case, there is no escape for Vere. It is in this light that we must appreciate Vere's reactions.[79]

In the 1970's, Robert Cover spoke admiringly of Vere's "righteousness," [80] under the circumstances. Comparing Vere to Melville's father-in-law, Lemuel Shaw,[81] Cover sensitively asks: "What deep urge leads a man to . . . embrace, personally, the opportunity to do an impersonal, distasteful task?" [82] Cover's historical approach to Shaw understandably forestalled a more intensive analysis of Vere; as a result, his view of the fictional adjudicator essentially agrees with Reich's.[83]

A small minority of literary critics, however, began the slow process of attacking the foundation upon which Vere's "righteousness" must lie: his assertion that the positive law *compelled* the court to sentence and execute Billy. In an article provocatively entitled *The Case Against Captain Vere*,[84] Leonard Casper cited an allusion to the *Somers* mutiny of 1842 [85] in Melville's decades-earlier tale *White-Jacket* [86]—"Three men, in a time of peace, were then hung at the yard-arm, merely because, in the captain's judgment, it became necessary to hang them" [87]—and asked the question, in Vere's case, "how necessary is necessity?" [88]

Casper's approach opens the entire story to the legal analyst. "Vere's behavior," he noted, "demands explanation because of its unnaturalness." [89] For Casper, the text as a whole, Melville's biography, and even the trial scene itself indicated that "[t]he trial is a pretense at deliberative justice, and is made to appear so by Melville." [90] Where Reich saw Vere as nobly applying the dictates of an unnatural law, Casper suggested the converse: "By refusing all natural considerations, Vere makes his verdict unnatural, a perversion as serious as Claggart's. By shifting responsibility for his decision to the King, Vere denies that he is a free agent with an individual sense of discrimination and judgment." [91] Although Casper's article forms a meritorious basis for inquiring into the legal meaning of the story, it uses no legal materials. Nor did Casper elaborate his hint that Vere and Claggart participate in a similar spiritual disease.

Merlin Bowen, however, a lifelong Melville specialist, went further in comparing Captain Vere (thought to be a "good" character) to John Claggart (the novella's clear villain):

The pages of *Billy Budd* themselves contain sufficient evidence upon which to base a quite different estimate of Captain Vere. According to this view, he appears as a uniformed and conscientious servant of "Cain's city," an overcivilized man who has stifled the sound of his own heart and learned to live by the head alone as his calling requires, who has abdicated his full humanity in the interests of a utilitarian social ethic and postponed the realization of truth and justice to some other and more convenient world. Neither the Christian gospel nor the modern doctrine of the rights of man has, in his opinion, any place in the government of this man-of-war world. And when the simple and loyal-hearted sailor, Billy Budd, left speechless by Claggart's accusation of treason, impulsively knocks the liar down and so kills him, the practical Vere knows his duty at once and resolutely proceeds to hang, for the greatest good of the greatest number, a man innocent in all but the most technical use of the word. . . .

. . . *Billy Budd* will appear as a much more coherent, though still puzzling, work of art if regarded as a study in the possible consequences of a commitment to a fixed and theoretic pattern rather than to patternless life itself with all its contradictions, crosscurrents and inescapable risks.

In the book's central opposition of civilization and nature, head and heart, there can be no real question where Captain the Honorable Edward Fairfax Vere stands: quite clearly, and despite his own instinctive feelings in the matter, he stands with Claggart and against Billy. By both temperament and training, he is much closer to the petty officer he despises than to the young foretopman he admires.[92]

Writing in 1962,[93] C.B. Ives employed technical legal material to further his perception that an understanding of the story's allegorical or metaphysical levels of meaning can be reached only after the reader has explored the *tangible* data that Melville himself knew so well.[94] Accordingly, Ives decided not to accept Vere's position at "face value"; [95] instead, he carefully examined the provisions of the actual British statutes Vere invoked. Ives noted some of the procedural defects in Vere's approach, [96] some of the substantive oddities,[97] and some of the legal history and custom that cast into doubt the harshness of the drumhead court's decision to hang Billy.[98] But Ives' efforts take us only part of the way: his legal analysis is sketchy, and his ultimate conclusions unsupported. He labelled Vere's rush to hang Billy as *idiosyncratic*, "a sacrifical gesture, born to a kind of self-punishment that had become habitual in Vere's life." [99] Ives thus failed to appreciate the broader implications of Melville's perceptions about law and moral choice. But, along with Casper and Bowen, he alterted us to the need to scrutinize the idea that Vere's action is best understood as a response to the imperatives of the positive law.

B. VERE'S CHOICES: LAW AND MORALITY IN THE TRIAL SCENE

1. THE FRAMEWORK FOR ADJUDICATION; VERE'S POSSIBLE "INSANITY"

Not to endorse Vere's dichotomy of moral innocence and legal guilt might appear to lessen the force of the story's posed moral problem.[100] But a textual demonstration that Vere's behavior is marked by adjudicatory "insanity" [101] would not dilute the story's complex moral or legal interest; it would, rather, reinvigorate it.

Accordingly, we should recall that the trial scene begins in a strange way. Vere's state of mind, and not the law of Billy's case, is discussed first, during a seeming digression on the difficulties of distinguishing sane from insane behavior.[102] The narrator quickly indicates that the adjudicator, as much as the accused, is to be judged. He advises each reader to decide about Vere based on "such light as this narrative may afford," [103] and returns to the scene of the drumhead court. But we should not minimize the aesthetic importance of this insanity allusion beginning the chapter; it affords narrative legitimacy to the surgeon's fear that Billy's care has caused his captain to become "unhinged." [104] The question of Vere's sanity is reiterated at the end of the chapter, during a passage too frequently misread as an endorsement of Vere's behavior:[105]

Not unlikely [the court was] brought to something more or less akin to that harassed frame of mind which in the year 1842 actuated the commander of the U.S. brig-of-war Somers to resolve, under the so-called Articles of War, Articles modeled upon the English Mutiny Act, to resolve upon the execution at sea of a midshipman and two sailors as mutineers designing the seizure of the brig. Which resolution was carried out though in a time of peace and within not many days's sail of home. An act vindicated by a naval court of inquiry subsequently convened ashore. History, and here cited without comment. True, the circumstances on board the Somers were different from those on board the Bellipotent. But the urgency felt, well-warranted or otherwise, was much the same.[106]

The insanity passage and the Somers reference frame the trial itself. Both emphasize that it is the adjudicator's "harassed frame of mind," and not necessarily legal compulsion, that led to the capital sentence. Futhermore, the comparison with the Somers case casts doubt on the "urgency felt" by Vere. After all, Vere knows well that Billy Budd is no mutineer. Whether or not Mackenzie actually believed his three crewmen were guilty, his dilemma at least appeared to derive from a genuine crisis of command. No one on the Bellipotent, Vere excepted, perceives any general threat of mutiny on the quiet ship. Billy's crime is not conspiracy, but striking one of the most hated figures on board. Was the capital sentence truly necessary? Only Vere seems to think so. On the Somers, several officers joined the captain in endorsing the hangings; we know that Vere's sense of imminent danger reverberates in no other officer privy to the incident.[107]

Thus, Vere's courtroom pronouncements are meant to be analyzed, not simply accepted as true. They are the "light" that the narrator hints will be shed on the careful regarding the adjudicator's state of mind during the trial. The legal argument must be rigorously dissected to discover both the essential Vere and Melville's view of the adjudicatory act itself.[108]

2. VERE'S PROCEDURAL ERRORS

As with the insantiy motif, Melville clearly employs his legal theme to indicate profound, if hidden, textual meanings. Chapter 20, a short but significant bridge between Billy's fateful act and Vere's lengthy legal argument, explicitly serves to raise doubts about the captain's procedural handling of the case. The surgeon, that careful officer whom Vere summons to confirm Claggart's death, simply cannot fathom his captain's behavior:

As to the drumhead court, it struck the surgeon as impolitic, if nothing more. The thing to do, he thought, was to place Billy Budd in confinement, and in a way dictated by usage, and postpone further action in so extraordinary a case to such time as they should rejoin the squadron, and then refer it to the admiral. . . .

In obedience to Captain Vere, he communicated what had happened to the lieutenants and captain of the marines, saying nothing as to the captain's state. They fully shared his own surprise and concern. Like him too, they seemed to think that such a matter should be referred to the admiral.[109]

The junior officer's skepticism suggests that Melville, who knew naval law well,[110] intended the legal aspects of Billy's case to be examined. The officers' fear that Vere's procedures were not "dictated by usage" [111] further suggests their suspicion—soon confirmed by Vere at the trial—that the *substantive* law of the case would derive from the Articles of War of 1749.[112] Melville's own experience on a naval vessel taught him that these Articles were publicly recited, with amazing frequency, on warships.[113] Thus, the officers certainly knew that the twenty-second paragraph of the Articles' second section contained the following language:

If any officer, mariner, soldier, or other person in the fleet, shall strike any of his superior officers, or draw, or offer to draw, or lift up any weapon against him, being in the execution of his office, on any pretence whatsoever, every such person being convicted of any such offence, by the sentence of a court-martial, shall suffer death. . . .[114]

In the midst of the confusing admixture of substantive law theories that he offers to the court,[115] Vere indeed does identify this provision as the operative element in the case: "To steady us a bit, let us recur to the facts. In wartime at sea a man-of-war's man strikes his superior in grade, and the blow kills. Apart from its effect the blow itself is, according to the Articles of War, a capital crime." [116] But, as Vere's junior officers recognize, this substantive law (itself questionably interpreted by Vere [117]) carries with it a *procedural* scheme.

The Articles of War of 1749 afford a series of procedural safeguards. Although these protections might appear surprising in a military setting, they were in line with at least a century of precedent [118] in British naval law. As they stand, the Articles, though offering Vere his best arguments in favor of summarily convicting and executing Billy, also indicate that the captain committed no fewer than *eight* procedural errors.

A. NECESSITY TO REJOIN THE FLEET FOR TRIAL

The surgeon and his discomfitted fellow officers have two main concerns about Vere's decision to assemble a drumhead court. First, they feel he should "postpone further action in so extraordinary a case to such time as they should rejoin the squadron." [119] On this point, their apprehension is grounded in the Articles, which specifically grant court-martial commissions exclusively to fleet or squadron commanders, *not* to individual commanders.[120] Captains could be so commissioned only when their ships were docked in Great Britain or Ireland, and then only if expediency dictated that the usual procedures not be followed.[121]

B. RECOURSE TO THE ADMIRAL OR FLEET COMMANDER

The narrator's second indication of surprise derives from Vere's choice not to "refer [the case] to the admiral." [122] Every educated man on the Bellipotent (and probably a good number of ordinary sailors) would have known that, under the Articles, capital crimes must be brought to the attention of either the lord high admiral or the commander of the fleet.[123] According to the Articles, the high officers' jurisdictional interest in such matters commenced at the earliest stages of the proceedings [124] and continued to the stage beyond conviction, in which the admiral or fleet commander was to have full review powers.[125]

By its terms and by tradition, the Articles indicate that only for trials concerning mutiny might sentencing and execution occur without admiralty of fleet command review.[126] Billy, it must be recalled, was neither a deserter nor, despite Vere's extremely clever use of the idea of mutiny during the trial,[127] a mutineer; the jurisdictional power of the admiralty, or the commander of the Mediterranean fleet, clearly extended to his case.

C. REQUISITE NUMBER OF JUDGES

Vere's assembling of the court raises other procedural questions. The Articles require at least five (and no more than thirteen) members on any general court-martial.[128] Since the trial was to take place only when the fleet or squadron had been rejoined, these judges were normally all at or above the rank of post captain.[129] Although he places Billy's substantive crime under the sign of the Articles of War,[130] Vere decides that "summary" court procedures should determine the number of judges.[131] He hand-picks three [132] officers, one of whom, the captain of marines, is not even a naval officer.[133]

D. NONAVAILABILITY OF "SUMMARY" MEASURES

In justifying the use of three rather than five judges, and in failing to return to the squadron to seek out the admiral's or fleet commander's jurisdiction, has Vere correctly employed his so-called "summary" powers? After all, the Articles of War themselves, from which Vere culls his substantive approach to the case, do not grant such powers.

A review of the British authorities (and Americans commenting on customs largely derived from the British) indicates that, even had there been a crisis, "summary" proceedings were inappropriate in Billy's case; summary procedure was geared to trivial offenses, not major crimes.[134] The American navy, for example, allowed for summary courts-martial consisting of three officers,[135] but such jurisdiction covered only those offenses "not sufficient to require trial by general courts-martial." [136] Hence, Vere should have followed the procedures outlined by the Articles of War; his handpicked, three-man court and failure to return to the squadron cannot be justified by a simple reference to "summary" courts.

E. CONCEALED NATURE OF PROCEEDINGS

Vere's proclivity to summary proceedings apparently motivates him to conduct Billy's trial with the utmost secrecy. Yet, Ives quotes authoritative texts to the effect that "Courts Martial shall always be held in the Forenoon, and in the most public Place of the Ship, where all, who will, may be present." [137] An American naval handbook states, "The sessions of courts-martial shall be public."[138] In disregard of this long custom, Vere proceeds covertly; his procedure arouses controversy and criticism among some of his officers.[139] We will return to this breach later,[140] for it evokes the larger meaning both of Vere's personality and Melville's feelings about the law.

F. VERE'S MULTIPLE ROLE PLAYING

Vere's own behavior during Billy's trial flies in the face of naval procedure. The captain, perhaps sensing that even his docile court might question his active role in the proceedings, takes pains to dampen their perceived apprehensions.

"What he said was to this effect: 'Hitherto I have been but the witness, little more; and I should hardly think now to take another tone, that of your coadjutor for the time, did I not perceive in you—at the crisis too—a troubled hesitancy, proceeding, I doubt not, from the clash of military duty with moral scruple—scruple vitalized by companies. For the compassion, how can I otherwise than share it? But mindful of paramount obligations, I strive against scruples that may tend to enervate decision. . . .'" [141]

Vere clearly doubted the propriety of assuming the role of sole witness, implicit accuser, and presiding adjudicator. And with good reason. One of the specific novelties in the Articles of 1749 was their sense that commanders-in-chief should not preside at courts-martial.[142] (Indeed, the ongoing tradition of Anglo-American military law is of strict antipathy to multiple role playing.[143]) Vere's personality again produces his procedural breach. As we shall examine shortly,[144] his desire totally to control the case and his surroundings predominates over his conscious awareness of proper procedure.

G. TRADITIONAL LENIENCY IN SUCH CASES

Cowed by the articulate captain who hand-picked them, Billy's judges still manage, however hesitatingly, to suggest leniency. " 'Can we not convict,' " one of them "falteringly" inquires of Vere, " 'and yet mitigate the penalty?' " [145] Vere promptly quashes the court's final attempt at independence by implying that leniency might not be "clearly lawful for us under the circumstances." [146]

In this one instance Vere has a point. On its terms, section 2, paragraph 22 of the Articles, which speaks to Billy's offense, does not allow for any penalty except death.[147] (Some other capital crimes under the Articles, such as concealment of "traitorous or mutinous practice or design," [148] a crime not wholly irrelevant to Billy's case,[149] are punishable by "death, or such other punishment as a court-martial shall think fit." [150] There was extensive debate on this point,[151] which apparently raged until 1757 (forty years before Billy's trial) when a certain Admiral Byng was actually executed under this provision.[152] Sometime after that controversial trial, according to naval historian John Snedeker, death under section 2, paragraph 22 "was again made discretionary." [153]

Melville knew this history,[154] and Vere's equivocation on the legality of his court's request may be meant to indicate the fictional captain's awareness of the leniency debate. And more. Whatever the wording of British naval statutes, there was a strong tradition of leniency in enforcement. Discussing the "Cromwellian" naval Articles,[155] Snedeker observes: "While severe in their terms, these articles were enforced with discretion. There is no known instance of the death penalty being executed during the period of the Commonwealth." [156] As we noted earlier, only in cases of convicted mutineers was execution permissible prior to reporting the proceedings to the admiral or fleet commander.[157] Snedeker's research indicates that even for this extreme offense, few if any commanders found it necessary to rush through to a hanging.[159]

In sum, the proper stance of a captain toward enforcement of punishments at sea was that "[h]e alone is to order punishment to be inflicted, which he is never to do without sufficient cause, nor ever with greater severity than the offence shall really deserve." [159] It is the traditional stance, but Vere categorically violates it.

H. EXECUTION IMPERMISSIBLE WITHOUT REVIEW

Perhaps no procedure was better settled than the court-martial convenor's duty to seek review on the highest level before executing a capital sentence.[160] The admiralty or the crown in Britain,[161] sometimes the President himself in the United States,[162] were to be the reviewing authorities for all death sentences.[163] So strict was this view that, in the *Somers* case,[164] several American naval officers (including Melville's first cousin [165] were court-martialled for having hanged three sailors who may well have been engaged in a *mutiny*.[166] But Billy, we must always recall, was not even accused of mutiny, and "on board the [*Bellipotent*] . . . very little in the manner of the men and nothing obvious in the demeanor of the officers would have suggested to an ordinary observer that the Great Mutiny was a recent event." [167]

Vere must have known that in the British navy a mere ship's captain could not lawfully execute a summary sentence exceeding *twelve lashes* (mutiny cases arguably aside [168]). Thus, even if Vere deemed his hand-picked court to satisfy all the procedural exigencies of the Articles of War, he had no legal right to bring to fruition its severe sentence.[169]

3. VERE'S SUBSTANTIVE ARGUMENTS

Vere's numerous procedural errors, jarring in a man who so consistently appeals to legal formality, merge subtly into substantive mistakes as the trail scene progresses. Vere seems to proceed under the Articles of War; as we have seen, however, he superimposes on this statute the inapposite procedures of a summary court. Moreover, he manages to confuse the issue by articulating three other substantive bodies of law during his argument to the court.

A. "MARTIAL LAW"

Vere deploys the first of these, "martial law," in several conflicting ways. Vere's initial reference attempts to distinguish his military tribunal's mode of judgment from that of other possible approaches: "But for us here, acting not as casuists or moralists, it is a case practical, and under martial law practically to be dealt with." [170] Using the phrase a few minutes later, Vere answers the officer of the marines' emotional defense of Billy's motives by saying, "And before a court less arbitary and more merciful than a martial one, that plea would largely extenuate. At the Last . . ., it shall acquit. But how here? We proceed under the law of the Mutiny Act." [171] In these two parallel arguments, Vere appears to remind the court of its legal, as opposed to moral, jurisdiction over the case.[172] General usage confirms Vere's rhetorical invocation of the phrase, since the court obviously finds its jurisdiction under the applicable military law, and not under any ethical or philosophical code. But a keen irony pervades Vere's dialectic once his own gross violations of this law are discovered. If Vere invokes "martial law" to stress the strictly legal aspects of the court's authenticity, then his own covert illegality attains a reprehensible level.

So, in Vere's behalf, it must be observed that there is a second meaning of "martial law," which provides the best (though still flawed) argument for the summary procedure. Contrary to the first sense of the phrase, this alternative meaning calls for the abrogation of formally established law in favor of what one commentator calls "the will of a military commander operating without any restraint, save his judgment, upon the lives, upon the property, upon the entire social and individual condition of all over whom this law extends." [173] The essential feature of this use of the term is its invocation of necessity.[174]

Covered by "the haze of uncertainty which envelops it," [175] this meaning of "martial law" would appear to appy only at a time of great urgency. Furthermore, it usually applies to civilian populations placed under military rule due to some crisis necessitating extraordinary measures. In Britain, the executive agency declaring martial law during the period of the story would probably have been the crown, parliament, a governor, or perhaps the admiral of the fleet, but rarely, if ever, a single ship's captain.[176] If, extraordinarily, a captain did declare it on his own, "his judgment would be subject to review by his military superiors," [177] a form of review not imposed upon higher ranking executive authorities.

At best, therefore, Vere could properly invoke martial law only if the situation fully warranted a fear of insurrection on the ship. As Ives observes:

"[A] captain might hang the mutineers as a matter of necessity, in disregard of the Articles of War. In such cases it was normal to secure the advice and judgment of his officers in a summary court.

"But Billy Budd was not a mutineer. . . . Vere's stated reasons for the hanging were that Billy had struck his superior and that there was *danger* of mutiny by some other members of the crew." [178]

As we have seen, none of the other officers privy to the incident feared an impending crisis.[179] Moreover, recourse to martial law was not frequent in the England of the story's historical period.[180] It was a period of war, yes; of a "crisis for Christendom," [181] yes; but far more inflammatory shipboard situations that year had been dampened without violence.[182] Above all, on the *Bellipotent*, as the narrative explicitly states,[183] mutiny was not in the air; indeed, Vere's control over the court itself proves the docility of his men (even the surgeon never dares to voice his procedural concerns to the captain).

Vere's best argument—that "martial law" calls for an abridgment of proper procedures—thus appears unjustified.[184] As Frederick Wiener, an expert on military law, has observed, "[w]hat constitutes necessity is a question of fact in each case." [185] In Billy's case, all evidence suggests it is only Vere's power and masterful use of language that convince crew and reader alike of the necessity for a hanging.[186]

B. THE MUTING ACT

As Ives [187] and Hayford and Sealts [188] have pointed out, the Mutiny Act applied only to *land forces*.[189] Vere's invocation of the statute as a reason for ignoring Billy's intent [190] appears inapposite, indeed quite surprising. After all, the use of the phrase "martial law" serves his rhetorical purposes sufficiently, albeit unorthodoxically. The mistake may, of course, be Melville's, but the extreme accuracy of so much of the legal detail in chapters 20 and 21, coupled with the body of naval law experienced by Melville biographically,[191] places the burden on those who so argue.[192]

C. "PLAIN HOMICIDE"

As noted earlier, Vere answers the sailing master's plea for penalty mitigation by conjuring a threat of mutiny and arguing that the hanging is necessary to quell it.[193] In elaborating this point, Vere invokes yet another body of laws: "No, to the people the foretopman's deed, however it be worded in the announcement, will be plain homicide committed in a flagrant act of mutiny." [194]

Implausible as well as inaccurate, the theory of "plain homicide" fails because there is simply nothing "plain" (or mutinous) about Billy's act if analyzed as a "homicide." Questions about Billy's intent, the degree of premeditation, the defenses of provocation or of temporary insanity, and the like would necessarily be raised under any criminal code (including the Articles [195]) if the charge were homicide instead of striking a superior officer.[196] Since any impartial judge would see that these facts complicate the question of Billy's guilt, Vere's casual assumption that men already favorably disposed to Billy would attribute homicidal and mutinous motives to him is clearly suspect.

So, in disregard of the procedural requirements of the Articles of War, the only statute correctly applicable to the case,[197] and in violation of each of the other laws he distractingly cites to his impressionable court, Vere contrives to have Billy hanged. The

skepticism of both surgeon and narrator as to Vere's formal objectivity, and that of the court itself as to the punishment, is fully sustained by a legal analysis of the case. Vere's behavior is dictated not by law, but by his own intuitive predilection, clearly articulated in the captain's outburst seconds after Billy's fatal blow—"Strck dead by an angel of God! Yet the angel must hang!"[198] The trial's arguments form the necessary mediation between this preordained subjective desire—Vere's not so peculiar "insanity," the source of which we will discuss presently[199]—and the court's need for reasoned analysis. Thus, it is important to set forth, as perhaps the prevailing theme and system of *Billy Budd, Sailor* itself, the clever *mode* of communication that permits Vere to assuage his fellow officers' doubts about the propriety of summarily executing the Handsome Sailor.

III. BILLY BUDD, SAILOR AND A THEORY OF ADJUDICATORY COMMUNICATION

A. JUDICIAL CLEVERNESS: THE "CONSIDERATE" WAY

Captain Vere recognizes the primal value of language and form to a communicator seeking authoritative force, particularly when the analytical logic behind the communication is fatally flawed. Although he does not wear the impressive robe or wig of a land-based judge, he stands on the "weather side"[200] of the ship, elevating his physical self to the appropriate judicial grandeur and leaving his hand-picked court no doubt about who directs the proceedings. Then, as we have seen, he intercedes verbally, using rhetorical devices, repetition, arousal of fear, and other techniques to urge his audience to the acceptance of a desired conclusion. Billy must hang.

Verbally gifted judges generally do not hesitate to bring style and structure to the service of legal logic and factual analysis.[201] In close cases especially, language serves function[202] as the judge influences his audience to accept his reasoning and actual decision.[203] Few would argue against the propriety of rhetoric and form in the service of a substantive position. But Melville, in a seminal passage quite early in Billy Budd, implies that the form of a communication is actually likely to control understanding and prevail over substance when decision-makers or authoritative individuals issue verbal declarations. This passage, leading into the "digressions" on the great mutinies and Admiral Nelson, explicitly deals with the way the British historians described the Nore mutiny to the interested audience back home, but the paragraph's message is meant to apply to Vere's adjudicatory communication in chapter 21.

Such an episode in the Island's grand naval story her naval historians naturally abridge, one of them (William James) candidly acknowledging that fain would he pass it over did not "impartiality forbid fastidiousness." And yet his mention is less a narration than a reference, having to do hardly at all with details. Nor are these readily to be found in the libraries. Like some other events in every age befalling states everywhere, including America, the Great Mutiny was of such character that national pride along with views of policy would fain shade it off into the historical background. Such events cannot be ignored, but there is a considerate way of historically treating them. If a well-constituted individual refrains from blazoning aught amiss or calamitous in his family, a nation in the like circumstance may without reproach be equally discreet.[204]

Melville makes "considerate communication" a generative theme in his story. Closing out lifetime almost totally devoted to verbal craftsmanship, he not surprisingly emphasizes the relationship of speaker (or author) and audience in his final tale. "Considerate communication" seems to require three elements: (1) that the communicator's perception of the audience's well-being stand uppermost in his mind, whatever the ancillary motivations for the speech; (2) that whatever factual distortions occur because of that perception involve predominantly omissions, or, at the worst, trivial misstatements of fact; and (3) that the communicator faithfully convey the essence of the underlying reality he is discussing (either through overt language, or tonal or structural elements), despite the omissions or mild misrepresentations of detail.

Melville seems more to be describing the way things are, in the seminal passage, than to be criticizing either authoritative statements or the audiences to which those statements are directed. He is simply announcing a theory of communication, much in the manner of Leo Strauss, in his brilliant and highly relevant Persecution and the Art of Writing,[205] when he refers to the general public's tendency to believe "a statement made by a responsible and respected man."[206] So, if the Nore historians, reluctantly deciding that the public deserves some news of the mutiny, go on substantially to omit almost all the relevant details, they nevertheless "considerately" serve the needs of that public. Why "blazon aught amiss" when a small number of carefully selected facts, woven into the fabric of a subtly organized communication, will suffice to give people a sense of well-being predicated on their appreciation of participating in the authoritative truth?

The actions of the Nore historians embody all three prerequisites of considerate communication. They have at heart the well-being of the audience, not their own self-interest. If they distort reality, they do so only by omission, not commission. Finally, they convey the news about the mutiny, however troubling, albeit in the form of a carefully selective abridgment. Thus, although a bit of the Grand Inquisitor[207] inheres in the authoritative communicator's power to control the flow of information, this represents a fact of social life, not a negative element. If the communicator preserves the three requirements, he may proceed "without reproach."[208] So, as *Billy Budd, Sailor* progresses, Melville presents us with several other nonpejorative examples of considerate communication. The Dansker repetitively intones a selective truth to Billy about Claggart: "Jemmy Legs is down on you."[209] Recognizing both the needs and the limitations of his audience, the Dansker restricts his speech to this oracular declaration. When Billy chooses to disbelieve this statement, we again learn that authority and verbal complexity must combine (as they do not in the poetic Dansker)[210] to steer an audience towards a desired viewpoint.

Far more "considerate" than the Dansker's speech act is the *News from the Mediterranean*, the journalistic account of the events on the *Bellipotent* which "is all that hitherto has stood in human record to attest what manner of men respectively were John Claggart and Billy Budd."[211] Reporters, like judges and historians, can exercise verbal control over their audiences and establish authoritative versions of the truth. To allow their naval audience a sense of continuity and comfort, the gazette's editors paint Vere's decision to execute Billy in the most radiant colors of legality and necessity. As always, most of the actual reality is omitted. Although Billy becomes a villian who "vindictively stabbed" the upstanding Claggart,[212] the overriding goal of preserving the audience's well-being[213] may have required such nontrivial distortions. The event cannot be undone. Why "blazon aught amiss"? Better to report the actual homicide and its legal aftermath in the discreet shades of the audience's established beliefs.

Considerate communication, or Strauss' "responsible and respected" speech, then, soothes the average citizen by providing him with a canon of truth against which the heterodox views of others can be tested and, usually, rejected. "With mankind," as Captain Vere tells us, "forms, measured forms, are everything,[214] and these have fewer "ragged edges" than the pure truth itself.[215]

But, as we have seen, the verbally and hierarchically superior adjudicator can give the force of seeming legality to drastic decisions the law does not support. The propriety of Vere's own "considerate" use of form and style during Billy's trial, therefore, is cast into doubt. Vere at trial in fact does not follow the example of the Nore historians or even the *Mediterranean* newsmen. He does not communicate a selective view of reality primarily to establish comforting authoritarian interpretations of otherwise troubling realities. Rather, he uses legal argument to distort the law and to further purely *subjective* ends. In Straussian terms he "persecutes" his audience directly[216] through his adjudicatory arguments, utterly falsifying the reality that he purports to convey. Vere desperately seeks, and masterfully finds, the key to controlling his hand-picked audience. He moves from four separate substantive law theories of guilt to an overriding (and thoroughly fanciful) vision of a ship in chaos if Billy is not hanged, whatever the theory of culpability. So effective is his pattern of argumentation that the critics, as well as the drumhead court, have largely granted it credence.

The narrative makes it quite clear that Vere's articulated reasons for hanging Billy do not withstand the analysis of even his junior officers.[217] Since the men's well-being does not require Billy's death, it must be Vere's subjective desires that motivate his actions.[218] This is narratively indicated by the captain's uncharacteristic show of extreme emotion during Billy's violent act and its immediate aftermath—the "excited manner" that the surgeon "had never before observed"[219]—and by the irrational, visceral (*i.e.*, inconsiderate) declarations that were its result: "It is the divine judgment of Ananias! Look!"[220] and "Struck dead by an angel of God! Yet the angel must hang!"[221]

Given this intense personal reaction, and since Vere apparently saw the result of the trial to be morally, even divinely, preordained, Melville's allusion to Vere's "insanity" at the trial[222] comes into focus. Furthermore, Vere's repetitive direction to the court to ignore both their own subjective sympathies and the moral issues raised by the case moves beyond irony to outright calumny.

Vere's legal errors, therefore, were consciously placed in his mouth by the knowledgeable Melville,[223] leaving to us the twin tasks of overcoming our own inclinations to believe such a thoughtful, verbally gifted character,[224] and of finding the narrative "light" on the *causes* of Vere's behavior.[225]

This latter task we defer to a later section of the Article,[226] but it would be well as to the former task to recall here that Vere's form of considerateness has been implicitly criticized throughout the narrative. For one thing, it stands at odds with the "frankness" of the average sailor;[227] it is the medium of a land-oriented being, quite "exceptional" [228] on a ship; that of a "martinet," [229] whose "queer streak of the pedantic," [230] "discreet envoy" [231] appearance, humorlessness,[232] and "bookish" predilections [233] create and odd impression in which "scarce anyone would have taken him for a sailor" [234] at all.

That Vere's speech smacks of the landsman's covertness is also indicated by three of his more peculiar actions during the trial. Vere displays an attraction to land-oriented law when he oddly appoints a marine to the court, [235] then goes on twice to tell the court to apply the Mutiny Act (a statute applicable only to land forces [236]) and finally conjures for them the model of a judge, "ashore in a criminal case." [237] It is almost as though the prudent, well-ordered Vere yearns to be on land where, as the narrator strongly tells us, "considerate" communication is the normative mode of behavior, men never communicate simply and directly with each other, and life is an "intricate game of chess." [238]

But Vere wound up on the water, with which he feels discordant, but in which formless element he must somehow operate. He does so by using language and intelligence so effectively that, given his position of authority, he overcomes the natural inclinations of his more "juvenile" [239] shipmates. He learns, to recall the narrative language first used about Claggart's insanity (but clearly meant to foreshadow Vere's),[240] to display an "even temper and discreet bearing," a "mind peculiarly subject to the law of reason" [241] and "a cool judgment sagacious and sound." [242] This outward form masks the "irrational," [243] the "protectively secret" [244] and even "the accomplishment of an aim which in wantonness of atrocity would seem to partake of the insane," [245] so that "whatever its aims may be—and the aim is never declared—the method and outward proceeding are always perfectly rational." [246]

Thus, the argument at trial comes from the mouth of a character whose methods have already been associated with duplicitous landsmen and, specifically, with Claggart himself. When these types have their passions aroused, they do everything possible to hide from any significant audience the true source of their emotion.[247] And so, Vere conceals (or fails to recognize) his desire, instead showing to the court the face of a man who would rather save Billy but who is forced to execute him by "duty and the law."

Gentlemen, were that clearly lawful for us under the circumstances, consider the consequences of such clemency. The people (meaning the ship's company) have native sense; most of them are familiar with our naval usage and tradition; and how would they take it? Even could you explain to them—which our official position forbids—they, long molded by arbitrary discipline, have not that kind of intelligent responsiveness that might qualify them to comprehend and discriminate. No, to the people the foretopman's deed, however it be worded in the announcement, will be plain homicide committed in a flagrant act of mutiny. What penalty for that should follow, they know. But it does not follow. *Why?* They will ruminate. You know what sailors are. Will they not revert to the recent outbreak at the Nore? Ay. They know the well-founded alarm—the panic it struck throughout England. Your clement sentence they would account pusillanimous. They would think that we flinch, that we are afraid of them—afraid of practicing a lawful rigor singularly demanded at this juncture, lest it would provoke new troubles. What shame to us such a conjecture on their part, and how deadly to discipline. You see then, whither, prompted by duty and law, I steadfastly drive. But I beseech you, my friends, do not take me amiss. I feel as you do for this unfortunate boy. But did he know our hearts, I take him to be of that generous nature that he would feel even for us on whom in this military necessity so heavy a compulsion is laid.[248]

In this, his final argument, Vere sucessfully exercises over the members of the court the precise form of deception that he counsels them to use on "the people." Advising them, through the clever medium of a subordinate clause, that the crew will react mutinously to news of Billy's unpunished deed "however it be worded in the announcement," Vere effectively dissembles. He means, of course, "as I intend to word it in the announcement," for the full power of communication (as this speech itself proves) lies in his authoritative hands. It would not have been difficult to tell the crew the story in a manner that would have appeased their sense of order and saved the life of their favorite. Instead, in the service of his own unstated desires. Vere, through his landsman's mode of communication, succeeds in sentencing a moral innocent to a needless death.

Adjudicatory communication, as its highest level of articulateness and sophistication, is therefore cast into doubt by Melville in this tale. The questions he poses should not be lost on us, his legal audience, and they bear repetition by application to a fascinating actual subject, Justice Rehnquist.

B. CONSIDERATE COMMUNICATION AND JUSTICE REHNQUIST

Whatever we may think of his substantive positions, Justice Rehnquist has come to be seen as perhaps the least doctrinally disinterested judge currently on the Supreme Court.[249] He also stands as the contemporary master of judicial language.[250] Thus, any random sampling of Justice Rehnquist's opinions would readily illustrate how language can control adjudication. And few opinions better demonstrate Rehnquist's awareness of the tactics of "considerate communication" than Paul v. David.[251] Widely criticized for its legal reasoning and use of precedent,[252] Justice Rehnquist's opinion is thereby an all the more brilliant contemporary example of narrative prose in the service of the adjudicator's unspoken desires.[253] Moreover, Paul merits particularly intensive analysis here as a remarkable analogue to Melville's novella.

Let us take up this judicial text, not to criticize anew its legal analysis, but rather to appreciate the clevely persuasive manner in which Justice Rehnquist, ever considerate of his audience's needs, uses language to dispel critical probing into his logic and use of precedent.

I. FACT DENEUTRALIZATION

Paul v. Davis' story (and is that not the proper term for an actual event once it has been syphoned through the appellate process?) has by now become a kind of "inside narrative" too, renowned not necessarily as it occurred, but at least as it is reported by the authorities.

Yet, each new factual rendition of the case is its own new story, inevitably emphasizing some facts, minimizing or deleting others, using descriptive terms that quietly affect the listener or reader. To demonstrate this again (for we have just been analyzing the way various "reporters" manipulated facts in Billy Budd's case), we need only compare Justice Rehnquist's own restatement of the facts [254] with that of a law review Note about the case. First, the Note:

> Who steals my purse steals trash; tis something, nothing;
> Twas mine, 'tis his and has been slave to thousands.
> But he that filches from me my good name
> Robs me of that which not enriches him,
> And makes me poor indeed.—Othello, Act III, Scene iii

In June of 1971, plaintiff Edward Charles Davis, a photographer for the Louisville Courier-Journal and Times, was arrested in Louisville, Kentucky on a charge of shoplifting. He pleaded not guilty. In September, the charge was "filed away with leave [to reinstate]." but he was never called upon to face that charge in court. With the onset of the Christmas season in 1972, defendants McDaniel and Paul, the chiefs of police for Jefferson County and Louisville, jointly prepared a five-page flyer containing the names and mug-shots of "Active Shoplifters." Copies of this bulletin were distributed to local merchants in the Louisville area, warning them of possible shoplifters. In fact, the flyer was composed not only of persons actually convicted of shoplifting, but included persons who had merely been arrested for shoplifting either in 1971 or 1972. Plaintiff's name and mug-shot were included in the flyer, even though the charge against him was dropped six days after the flyer was distributed. After discovering the affront, Davis commenced a civil rights action in the District Court for the Western District of Kentucky. . . .[255]

Although it is of course impossible to restate any fact situation without adding subjective color to the pristine original reality, Justice Rehnquist's approach now attracts our careful attention; not the defamed Davis of the law review Note but rather the police chiefs Paul and McDaniel become the sympathetic protagonists of his tale.

Petitioner Paul is the Chief of Police of the Louisville, Ky., Division of Police, while petitioner McDaniel occupies the same position in the Jefferson County, Ky., Division of Police. In late 1972 they agree to combine their efforts for the purpose of alerting local area merchants to possible shoplifters who might be operating during the Christmas season. In early December petitioners distributed to approximately 800 merchants in the Louisville metropolitan area a "flyer,". . . [of active shoplifters].

The flyer consisted of five pages of "mug shot" photos, arranged alphabetically. . . . In approximately the center of page 2 there appeared photos and the name of the respondent, Edward Charles Davis III.[256]

Just as Vere must await his entrance until Admiral Nelson is fully discussed (thus lending narrative emphasis to Nelson's person), so Davis and his grievance must tarry a score of lines before surfacing.[257] By then, the render has assimilated a pleasant picture of two dutiful officers (the event's protagonists) who "agreed to combine their efforts" to prevent crime, all of this "during the Christmas season," no less.

As to the intrusive David, Justice Rehnquist's narrative emphasizes the aura of suspicion surrounding Davis' arrest for shoplifting, which apparently justifies the police flyer's publicizing this arrest prior to trial.[258] Instead of saying that the state never overcame its burden of proof, Rehnquist declares that his guilt or innocence of that offense had never been resolved,"[259] although later the shoplifting charge was "finally dismissed."[260] This last adverb speaks volumes, for like Vere's "pitilessly" in his remarks to the court,[261] it sticks in the audience's mind, cleverly attaching a new sense to the verb it modifies. Just as Vere's hard view of Billy's case is justified because the law operates pitilessly, so David is made to seem culpable because the dismissal of his case was so long in coming. Even the Christmas season had to suffer suspicions of this alleged shoplifter; perhaps we, like Davis' supervisor,[262] should blame him for finding himself in such a situation in the first place.

2. Law Deneutralization

While Justice Rehnquist's narration of the factual events leaves Davis looking a bit sheepish, and Paul and McDaniel looking cooperative and dutiful, his rendition of the plaintiff's legal strategy[263] utterly reduces Davis (and his lawyers) to calumny. Starting out much like his imaginative progenitor, Captain Vere, Justice Rehnquist stresses the litigant's chances of success in some other court;[264] it would be well to recall the fictional figure's relevant language:

Not, gentlemen, that I hide from myself that the case is an exceptional one. Speculatively regarded, it well might be referred to a jury of casuists. But for us here, acting not as casuists or moralists, it is a case practical, and under martial law practically to be dealt with. . . .

"Ay, sir," emotionally broke in the officer of marines. . . . "But surely Budd purposed neither mutiny nor homicide."

"Surely not, my good man. And before a court less arbitrary and more merciful than a martial one, that plea would largely extenuate. At the Last Assizes it shall acquit. But how here? We proceed under the law of the Mutiny Act."[265]

Justice Rehnquist, no more than Vere, needed (analytically) to discuss other "courts." His offhand talk of defamation per se as the basis for Davis' claim in the Kentucky courts[266] is as technically irrelevant and questionable as Vere's allusion to casuists and the Last Assizes.[267] The action has been brought in federal court on nondefamation grounds.

To understand this verbiage, we must recognize that Justice Rehnquist's strategy duplicates Vere's in its motivation, but to the converse logical effect. Vere sought to prepare his summary court for the view that it *did* have jurisiction to dispose, definitively, of Billy's case; Justice Rehnquist posits the state courts' jurisdiction to impel his audience to see that the federal courts *did not* have jurisdiction over Davis and his claim. Through structure and language, both adjudicators create a distraction designed to evoke the sense that the unfortunate litigant before them has wound up in the wrong arena. This strategy, placed at the outset of their legal arguments, deflects attention from the only true jurisdictional issue at hand: does the *instant* court have the authority to determine the case? This deflective technique usually contrives to conceal more germane information which, if known to the audience, would be detrimental to the communicator's well-being.[268]

Justice Rehnquist lingers on the jurisdictional point, ensuring its effectiveness by choosing an adverb and a verb geared to emphasize Davis' unfortunate choice of forums: Concededly if the same allegations had been made about respondent by a private individual, he would have nothing more than a claim for defamation under state law. But, he contends, since petitioners are respectively an official of city and of county government, his action is thereby *transmuted* into one for deprivation by the State of rights secured under the Fourteenth Amendment.[269]

Justice Rehnquist's ability to use the parts of speech syntactically available to a communicator is impressive. Here, the adverb "concededly"[270] passes over the inattentive reader and further colors his impression of Davis; it implicitly links the respondent to the earlier view that a state court action is mandated. But has Davis made such a concession? Perhaps he might have if his case had anything to do with "private" behavior; it is, however, so imbued with police activity that Davis surely never considered, much less conceded, the authenticity of such a statement. Yet, "he" contends that the police action here has "transmuted" the defamation claim into one under the Constitution.

Justice Rehnquist's depiction of the respondent's "strange" choice of forums thus makes Davis out to be almost a buffoon, or worse, an alien to our system of law. Like Billy's striking of Claggart, Davis' act of raising federal law claims is—through the use of one verb—exacerbated into a threat to normative law; like a visitor from outer space (or a Handsome Sailor), he takes civilized processes and *transmutes* them into something threatening.

These two words unclench Justice Rehnquist's "parade of horribles."[271] But this is no parade trotted out by a judge of modest narrative talent. Could it be that Justice Rehnquist, who sometimes alludes to fiction in his opinions,[272] might have recently read *Billy Budd, Sailor* or, at least, that section of it in which Vere speaks to the potential snowball effect on the sailors' sense of loyalty if the court treats Billy leniently?[273]

Your clement sentence they would account pusillanimous. They would think that we flinch, that we are afraid of them—afraid of practicing a lawful rigor singularly demanded at this juncture, lest it should provoke new troubles. What shame to us such a conjecture on their part, and how deadly to discipline. You see then, whither, prompted by duty and the law, I steadfastly drive.[274]

Justice Rehnquist starts his "slippery slope" in similar fashion: "If respondent's view is to prevail, a person arrested by law enforcement officers who announce that they believe such person to be responsible for a particular crime in order to calm the fears of an aroused populace, presumably obtains a claim against such officers under § 1983."[275] Hypotheticals, the stuff of opinion writers as well as professors, come creatively and imaginatively to the fore in these two texts. Both arguments conjure the worst possible disruption of order if these litigants are permitted to prevail. If Billy is to be adjudged innocent, says Vere, discipline will disintegrate; if our Court hears Davis, argues Justice Rehnquist, the populace will be aroused. Finally, to clamp the lid on respondent's plea, Justice Rehnquist recalls the "trouble-making" Davis of his factual presentation[276] by suggesting that this litigation even threatens the repose of certain patriots long departed: "We think it would come as a great surprise to those who *drafted* and *shepherded* the adoption of that Amendment to learn that it worked such a result. . . ."[277] Two verbs, artfully inserted, conjure the ultimate effect of Davis' otherwise straightforward and innocuous claim. History itself, the constitutional tradition of the fourteenth amendment, cannot be cast into disarray.

If Vere's underlying message to his court evokes Billy as a threat to the stability of the Empire, Justice Rehnquist's to his sees Davis as a force of lawlessness challenging the basis of fundamental legal order. Most considerately, each adjudicator provides his court with a litigant who must not be allowed to succeed.

3. Rhetorical Devices

One of Justice Rehnquist's precursors in the craft of judicial considerateness, Benjamin N. Cardozo, had this to say about the effective appellate utterance: "The opinion will need persuasive force, or the impressive virtue of sincerity and fire, or the mnemonic power of alliteration and antithesis, or the terseness and tang of the proverb, and the maxim. Neglect the help of these allies, and it may never win its way."[278] Justice Cardozo stressed that rhetoric, as much as logic, dictated the acceptance and ultimate authority of an opinion.[279] Justice Rehnquist's talented use of these rhetorical devices suggests his awareness of a symmetry in law between "form" and "substance." Phrases are woven so cleverly that we come to doubt mere stylistic fortuitousness or the authorship of fledgling law clerks.

In some of the passages of *Paul* already analyzed, Justice Rehnquist has established a rhetorical pattern that runs through the first part of the opinion. This pattern provocatively combines at least five technical devices: anacoenosis, aporia, epitrope, prosopopoeia, and sarcasm. At the beginning of what we have called the "law deneutralization" process, Rehnquist throws a few bones to Davis: "Accepting that such [defamatory] consequences may flow from the flyer in question";[280] "Imputing criminal behavior to an individual is generally considered defamatory *per se*."[281] Here, and in only one later section,[282] Justice Rehnquist employs anacoenosis—the opponent is seemingly allowed full sway in forcefully furthering his argument. Together with epitrope—ironically permitting an opponent to do what he proposes to do—this device deliberately misleads the audience as to the substance and effect of the opponent's (here Davis') argument. All of this leads to the general casting of doubt (aporia) upon Davis' now thoroughly distorted position: "It is hard to perceive any logical stopping place to such a line of reasoning."[283] These doubts are heightened by the device of prosopopoeia: representing imaginary or absent figures, here the drafters of the fourteenth amendment,[284] as though present or alive. And the sarcastic tone of the first part of the opinion reverberates in such phrases as "nothing more than," "'strained interpretation,'" "surely far more clear," and "difficult to see why."[285]

Indeed, in part II, section B of the opinion, as we shall stress further on, the Sixth Circuit receives treatment similar to Davis': the lower court is several times allowed full sway when Justice Rehnquist seems to let it speak in its own voice,[286] but his call to absent authority (particularly the ironic and inapposite dependence on Justice Douglas' language[287]) undermines the lower

court's premises and interpretations. There are also the mildly sarcastic locutions, "could be taken to mean," [i]f read that way," "[w]e should not read this language,"[228] and the omnipresent quotation marks around the word "stigma,"[289] implying that both Davis and the court of appeals might be on doubtful ground even in asserting that those 800 flyers injured respondent's reputation.

There is no need to repeat the commentators' critiques of Justice Rehnquist's use of precedent in part II, section B.[290] The point here is to recognize that Justice Rehnquist's rhetorical facility goes as far to explain his success in cases such as *Paul* as Justice Cardozo's did in more agreeable decisions—and as Vere's did in *Billy Budd, Sailor.*

4. Structure and Organization

As has been established, Justice Rehnquist's manner of depicting fact and law subtly deneutralizes the Court's ostensibly objective reasoning process. Rather than offering his audience the passion and fire of, say, Justice Brennan's dissent, Justice Rehnquist seeks to convince coolly. But this should not be taken for disinterest. The considerate communicator knows that structure (Cardozo's "architectonics")[291] is as forceful as logic when a given situation might take an audience either way.

To appreciate the structure of *Paul v. Davis*, we need only start with Justice Rehnquist's overt compartmentalization. Prior to part I, he sets forth the "facts."[292] These fifty-nine lines thus are made to seem almost by-the-way; yet, as we have indicated, they serve a vital coloring function.[293] It is only in the sixty-four lines that constitute part I,[294] however, that Justice Rehnquist educes his basic structuring thesis: Davis, through the temerity of his claim, challenges an ordered system of law. Masterful in its progression, this part builds on the reader's skepticism, imbued earlier, about a respondent who, after all, *had been arrested.*[295] Justice Rehnquist continues to depict Davis as opposing, in turn, the basic premises of the federal system,[296] the police who are trying "to claim the fears of an aroused populace,"[297] the natural limits of legal liability,[298] and the studious reflectiveness of the Court itself.[299]

Like Vere, who used clever words and phrases to aid structural suggestiveness.[300] Justice Rehnquist cogently chooses words to set Davis up against one or more of his audience's basic values. We noted the centrality to substance of the embellishing words "concededly," "transmuted," "drafted," and "shepherded."[301] The concluding phrase, "a study of our decisions convinces us they do not support the construction urged by respondent,"[302] climaxes the mounting sense of uneasiness about Davis. Davis has challenged the police, and, according to Justice Rehnquist, the legislative drafters of a noble amendment; but his gravest offense, it seems, is attempting to distort the studious processes of the Supreme Court itself.

The concluding lines of part I also provide an enjambement[303] to part II; they connect the idea of there being no "stopping place" to Davis' line of reasoning or to the circuit court's analysis. Indeed, the structure of sections A and B of the second part largely duplicates that of the first, but with one essential difference: the overt butt of Justice Rehnquist's now gentler rhetoric is the Court of Appeals for the Sixth Circuit. To convince his audience that the court below should have been more reflective. Justice Rehnquist immediately introduces the primary formal device of the rest of the opinion: the positing of "premises" from which his logic seems inevitably to flow. But these premises, usually expressed in what Cardozo called the "type magesterial."[304] are often drafted out of Justice Rehnquist's whole cloth. Like Vere, who disequilibrates his audience by telling them that they would be weak and feminine to acquit or mitigate in Billy's case,[305] Justice Rehnquist disorients his reader by asserting two premises upon which the result below "must be bottomed."[306] Neither premise though, truly express the grounds upon which the court of appeals rendered its finding for Davis.[307] Vere's awareness of the substantive and procedural weakness of his legal argument leads him to shift the focus of the court's perception.[308] Similarly, Justice Rehnquist proceeds by ignoring significant language from two Supreme Court precedents. From *Wisconsin v. Constantineau:*[309] "The only issue present here is whether the label or characterization given a person by 'posing' . . . is to others such a stigma or badge of disgrace that procedural due process requires notice and an opportunity to be heard."[310] And, most tellingly, from *Board of Regents v. Roth:*[311]

> The State . . . did not make any charge against [respondent] that might seriously damage his standing and associations in his community. . . . Had it done so, this would be a different case. For "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential."[312]

Justice Rehnquist's structure—the repetitive undermining of the premises upon which Davis and the court of appeals ostensibly thought they could rely—serves to displace the audience's attention from his own monumental task, which is nothing less than to reconstrue a whole line of precedents without overruling them.[313] And indeed, when Justice Rehnquist finally, turns to precedents like *Constantineau* and *Roth*, his tendency to follow a given structure begins to lose its charm.[314] This is particularly true in these lines about *Roth.*

While *Roth* recognized that governmental action defaming an individual in the course of declining to rehire him could entitle the person to notice and an opportunity to be heard as to the defamation, its language is quite inconsistent with any notion that a defamation perpetrated by a government official but unconnected with any refusal to rehire would be actionable under the Fourteenth Amendment.[315]

In light of the language from *Roth* just cited, this statement, however glib, appears difficult to support. With his characteristically considerate understanding of what, at a minimum, his audience requires, Justice Rehnquist nonetheless perseveres, quoting elliptically from *Roth*:

> "The State, *in declining to rehire the respondent,* did not make any charge against him that might seriously damage his standing and associations in his community. . . .
>
> "Similarly, there is no suggestion that the State, *in declining to re-employ the respondent,* imposed on him a stigma or another disability that foreclosed his freedom to take advantage of other employment opportunities."[316]

"Thus," somewhat fantastically but still forcefully continues Justice Rehnquist, "it was not thought sufficient to establish a claim under §1983 and the Fourteenth Amendment that there simply be defamation by a state official; the defamation had to occur in the course of the termination of employment."[317]

Surely no opinion less well crafted to this point could have survived this logical distortion and brought four other Justices along with it to a majority. Justice Rehnquist deftly avoids the *Roth* Court's explicit disjunction: if state action imposed *either* defamation *or* employment deprivation on Roth, "this, again, would be a different case,"[318] entitling him to notice and a hearing. Justice Rehnquist instead formalistically constructs the distorted premise that *both* are necessary by avoiding language to the contrary and emphasizing words that might lead the unwary audience to agreement.

In addition to H.L.A. Hart's observation about the power every judge possesses because of his creative capacity to interpret precedents,[319] at least three literary quotations come to mind when considering Justice Rehnquist's summary of the law available to the lower court. The first, from *Billy Budd* itself, is quite striking; Vere, who artfully conceals much during the trial, so detests his ally in covertness, John Claggart, that he finds himself urging the master-at-arms to "Be direct, man."[320] In another novel, Dickens' *Great Expectations,* the protagonist, Pip, implores the always secretive solicitor, Jaggers, "to be more frank"[321] in conveying information that Pip needs. The third quotation, from John Barth's *The Floating Opera,* probably explains better the *success* of a judicial writer like Justice Rehnquist in an opinion such as *Paul:* "How could mere justice cope with poetry? Men, I think, are ever attracted to the *bon mot* rather than the *mot juste,* and judges, no less than other men, are often moved by considerations more aesthetic than judicial"[322]

Having posited major premises based on such creative misreadings of the precedents, Justice Rehnquist now glides into part III, in which new law, under the guise of old, is freely propounded:

> In each of these cases, as a result of the state action complained of, a right or status previously recognized by state law was distinctly altered or extinguished. It was this alteration, officially removing the interest from the recognition and protection previously afforded by the State, which we found sufficient to invoke the procedural guarantees contained in the Due Process Clause of the Fourteenth Amendment. But the interest in reputation alone which respondent seeks to vindicate in this action in federal court is quite different from the "liberty" or "property" recognized in those decisions. Kentucky law does not extend to respondent any legal guarantee of present enjoyment of reputation which has been altered as a result of petitioners' actions. Rather his interest in reputation is simply one of a number which the State may protect against injury by virtue of its tort law, providing a forum for vindication of those interests by means of damages actions.[323]

The opinion's critics have observed the retreat to a kind of outmoded "entitlement" theory articulated in these lines.[324] Structurally, the passage also retreats to an earlier theme in the opinion: Davis should look to state tort law.[325] Circularity, always an esthetically pleasing structural device, conjoins here with what might be called "single-phrase evocation" to link the two ends of Justice Rehnquist's opinion.[326] Recall how effectively Melville uses the phrase "sanity and insanity" with reference to Vere in the opening paragraph of the trial scene;[327] it evokes in the reader a connection with the first use of those words in the text,[328] ostensibly regarding John Clag-

gart.[329] Just as Claggart and Vere are thus artfully connected in the domain of irrationality, so the Court's use of entitlement is carefully linked, through the key phrase "by virtue of its tort law,"[330] to its earlier pejorative view of Davis' claim: "But [Davis'] reading would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States."[331]

The good narrative writer weaves into his structure certain code words to which he can return, knowing that his reader will follow the associative pattern connected with those words. Thus, Justice Rehnquist buttresses the substantive legal concept of entitlement by joining it with the already established image of the state's protective tort law. The "virtue" of the states, in whose bosom a grievant can find relief through tort-based actions, is not lightly to be "superimposed" upon the unwilling federal courts. No "font" to which a plaintiff may crawl for spiritual and legal solace, the federal laws apply themselves sparingly. Davis, as we have been taught, is not one of the chosen; he is not entitled to the Court's protection.

Words like "font" and "superimposed," and evocative structuring devices like enjambement and circularity, are impressive tools of appellate opinion writing; they contribute to the art of adjudication, and we should appreciate them for what they are. But when claims are denied, perhaps wrongly, with the help of the crafty use of language and form, commentators must move beyond logical criticism alone[332] and into an understanding of appellate communication. Literary techniques can help pry open the source of an adjudicator's capacity to persuade when logic and tradition seem to support a contrary result. Thus, examining *Paul v. Davis*[333] in the light of *Billy Budd, Sailor* illustrates how, to achieve a subjective goal,[334] an adjudicator can win over an audience by considerately providing it with a story it needs to hear, thereby assuaging its doubts and dampening its spirit for further rational inquiry.

IV. Melville's Thoughts on Adjudicatory Communication: Outer Form and Inner Essence Disjoined

> The moral nature was seldom out of keeping with the physical make.[335]

A. Vere's Hidden Motive

Examples, real and fictional, illustrate the important adjudicatory role played by rhetorical skill in the dual service of the communicator's unspoken desires and the audience's minimal demands. As we have seen, however, Melville questions this mode of communication when employed by Vere: the captain's considerate way with words distracts the drumhead court sufficiently to permit him to win his way despite his legal improprieties. Vere's adjudicatory "insanity," however, consists not only in cleverly using language to reach a result that lacks sense; his communication is result-oriented, and his reason for contriving to have Billy hanged must be sought if the legal significance of the tale is fully to be grasped.

Melville does not readily reveal Vere's motives; his, too, is a nonovert narrative. Carefully exposed, the captain's impression of the defendant prior to the central incident seems unironically clear: Vere likes Billy. To the extent that it has been noticed at all, Billy's presence on the Bellipotent strikes Vere as a "'King's bargain.'"[336] Vere even deems him an intelligent enough sailor to be considered for a promotion to the "captaincy of the mizzentop."[337] Unlike Claggart, Vere seems indifferently admiring of the foretopman's easy popularity and pleasing outer form.

Why, then, does Vere single-mindedly and illegally press for Billy's execution? A possible answer links the captain's "insanity" at the trial with Claggart's behavior toward Billy, but reveals the object of Vere's rage to be a far more considerable one.

Vere joins Claggart in being marked by a prudent dissembling of underlying obsessions, and a burning envy directed at a sublime embodiment of the heroic, sailor-like-mode. But Vere's animus, like Vere himself, exists at a far higher level of significance than does Claggart. For if, in the service of his covert methodology and his deeper, unstated desires, Vere sacrifices the favorite of the crew, he does so to destroy a symobl. Billy, the embodiment of the mode opposite to Vere's own, the ultimate model of sailor-like "frankness,"[338] dies not for any of the legal or political reasons articulated by a man of Vere's landsman-like "finesse,"[339] but because he unwittingly stands in the place of the envied, magnificently overt Admiral Nelson. The far-reaching narrative opposition of overtness and covertness finally underlies Vere's substantive decision to have Billy hanged.[340] Unable to wreak his vengeance on Nelson directly, Vere finds a surrogate in the heroic Billy, who is emblematic of Nelson in his overt popularity and ability to use that popularity for good. So, when Vere speaks of the threat of mutiny requiring a violent sacrifice, we are meant to recognize the active irony of the statement; we must recall the factual example of Nelson in a similar circumstance, related much earlier in the tale:

> In the same year with the story, Nelson, then Rear Admiral Sir Horatio, being with the fleet off the Spanish coast, was directed by the admiral in command to shift his pennant from the Captain to the Theseus; and for this reason: that the latter ship having newly arrived on the station from home, where it had taken part in the Great Mutiny, danger was apprehended from the temper of the men; and it was thought that an officer like Nelson was the one, not indeed to terrorize the crew into base subjection, but to win them, by force of his mere presence and heroic personality, back to an allegiance if not as enthusiastic as his own yet as true.[341]

Nelson's mere presence quashed the very real threat of a mutiny on the *Theseus*.[342] Vere, on the other hand, creates an artificial crisis on his ship from the stuff of Billy's deed, and proceeds to destroy the jewel of the crew, effecting both a resentful inversion of Nelson's bloodless procedures and the symbolic annihilation of Nelson himself.

Claggart's complex envy of Billy achieves, then, a form of *projection upward* in Vere's covert approach to his heroic colleague. Because Vere is effectively juxtaposed to Claggart in so many narrative ways, it is important to emphasize certain "exceptional" traits in both which reach their apotheosis in Vere's actions at the trial; as with Claggart's rage against Billy, Vere's against Nelson can be understood as the complex man's strange attraction-hatred for the straightforward, essentially non-verbal hero.[343] Like Claggart's, Vere's aims are "never declared."[344] If the master-at-arms' personality is "hidden,"[345] Vere's is "undemonstrative," "not conspicuous," and "discreet."[346] If Claggart has "shown considerable tact in his function,"[347] so Vere tends to "guard as much as possible against publicity."[348]

A consummate dissimulator, Claggart fools everyone in the "soup spilling" scene,[349] one that we may now understand as deliberately foreshadowing Vere's covert methodology during the trial. Claggart's remark—"Handsomely done, my lad! And handsome is as handsome did it, too!"[350]—well exemplifies the clever communicator's tendency to distract his audience at any crucial point in which the communicator's true desires might otherwise be revealed. His wisecrack succeeds in hiding his villainous motives both from the "tickled" foretopman, and such onlookers as Billy's friend, Donald, all of whom thereafter disbelieve the Dansker's warnings to Billy about Claggart.[351] Perhaps still more important to the developing narrative conjunction of Vere and Claggart, the master-at-arms' subsequent attack on the unfortunate drummer boy asserts the covert individual's tendency to lash out at surrogate bystanders (the resentful man's "innocent victims").[352] Unwilling as yet to chastise publicly the real object of his bitterness, the master-at-arms instead attacks another youthful sailor during the "less guarded"[353] moment leaving the mess hall.

Only someone who had both seen Claggart depart and grasped the interpretative principle which we here call parallelism would have correctly ascertained the implied object of Claggart's rattan-lashing of the drummer boy. For the clever communicator never shows his true colors, or perhaps may just hint at them through the use of a "parallel" object, and then only when his audience is sufficiently distracted not to notice them. Like Claggart, Vere finds a substitute for the true source of his resentment; Billy is his drummer boy.

But then whom does Billy represent for Captain Vere? The carefully concealed inspiration for Vere's animus appears to be none other than Nelson; the convenient "parallel" object of his violence is Billy, a suitably emblematic, overt figure, a kind of mini-Nelson.[354] Both Billy and Nelson are presented early in the tale as variations of the Handsome Sailor type in which "the moral nature was seldom out of keeping with the physical make."[355] There natures are stamped by a consistent harmonic integration of inner and outer man and an almost organic rejection of hypocrisy and covertness. Most critics would associate Billy's overtness with his overall simplicity, and this is true. But, by juxtaposing Billy and Nelson early in the tale, Melville may mean to emphasize that Nelson too represents a kind of simplicity, sailor-like honesty on the highest level. Just as the foretopman is "a superior figure of . . . [his] own class,"[356] so Nelson has been called by the narratively invoked Tennyson, "'the greatest sailor since our world began.'"[357]

When Vere sees Billy strike Claggart, he experiences a violent, cathartic emotion. He intuits instantly the opportunity this event affords his imaginatively complex nature. Merely a competent pragmatist in battle, Vere will seek a form of immortality by creating a scenario out of the stuff of Billy's deed, one that will satisfy his own most basic subjective goals. In this light, Vere's complexity joins Claggart's, no longer as a positive attribute, but as negatively antithetical to the sailor-like condition. When Vere gazes at Billy, he does not feel any of Claggart's venom; but, when Billy strikes the captain's covert ally, all of Vere's subtle

envy for Nelson emerges in a violent urge to indirect vengeance.

To fathom Vere's unarticulated resentment toward Nelson, one need only consider the dilemma of a man whose very considerable talents might have garnered him a glorious reputation in any other historical period, but whose career must constantly lie in the shadow of the unmatchable figure of the Nile, the *Theseus*, and Trafalgar. Indeed, Vere may realize (as the narrative takes pains to disclose) that some of his fellow captains in fact do compare the two, and to his own detriment. These peers would remark that perhaps only "'the queer streak of the pedantic running through'" Vere has kept him from the deserved fame bestowed by "'the gazettes'" upon Sir Horatio Nelson.[358]

Vere is a superb pragmatist, yes; but, as the narrator tells us of Nelson (with Vere in mind), "[p]ersonal prudence, even when dictated by quite other than selfish considerations, surely is no special virtue in a military man." [359] Unable to respond to his men with a Nelson-like (or Billy-like) naturalness, Vere implicitly adopts the precedent of his "starry" ancestor; [360] imaginatively formalized discipline.[361] As the central events unfold, he attempts, at the trial and thereafter, to create a narrative form that will enable him to destroy the representation of overt naval heroism, the Nelson-in-Billy. But like the unsymmetrical European ironclads compared with the "grand lines" of Nelson's *Victory*,[362] Vere's aberrational aesthetic also degrades the artistic mode, one better exemplified by Nelson's literary gestures at Trafalgar.[363]

Consistently false in his verbal approach to the legal reality, Vere proceeds after the trial to communicate the sentence both to Billy [364] and the crew.[365] The atmosphere still hangs heavy with deception. The narrative casts a pejorative pall of secrecy over Vere's communications to the doomed sailor.[366] And, though an abstract compassion or even religious paternalism toward Billy often has been imputed to Vere during this part of the story, the narrative tone and, most importantly, the "closeted" location suggest otherwise; after all, Billy's open nature has at least twice before been imperiled by "closed interviews." [367]

Vere's death shortly after these events forces the character to be judged by his actions at the trial, his only real attempt to fulfill "the most secret of all passions, ambition." [368] Even in death, however, Vere remains true to his primary characteristic, *covertness*. For, in uttering Billy Budd's name,[369] the dying man fittingly invokes the heroic mode most perfectly embodied in the rival whom he could neither destroy nor emulate, the envied Nelson.

Vere's "insanity," then, lies in translating his covert resentment into the considerate argument that the law requires Billy's death. The best that can be said for him (but is this "righteousness"? [370]) is that he sought a legitimate, external compulsion for what was, in fact, a subconscious and all-consuming subjective desire. Unlike the Nore historians, who were genuinely considerate in order to permit the British public to assimilate a painful topic, Vere is covertly considerate in order to forestall inquiry into the true reasons for the hanging. The covert nature hides from its own involvement under a protectively considerate use of language. Vere joins Claggart in a mutual intolerance for the overt, sailor-like mode. Each uses the outward show of an "uncommon prudence" [371] "as an ambidexter implement for effecting the irrational." [372] In Vere's hands, authoritative communication, once "considerate," becomes, finally, covert.

B. RAMIFICATIONS FOR ADJUDICATION

[I]n this world of lies, Truth is forced to fly like a scared white doe in the woodlands; and only by cunning glimpses will she reveal herself as in Shakespeare and other masters of the great Art of telling the Truth—even though it be covertly and by snatches.[373]

When a judge claims that positive law prohibits him from acting according to the dictates of his own moral nature, we should be on guard. The sanctuary of formal, positive law too often subtly conceals the naturalistic impulses that bring the adjudicator to a decision. This insight is the most basic contribution of *Billy Budd, Sailor* to a theory of adjudication.[374] Melville indicates that the judge's imagination (*i.e.*, subjective creativity) must inevitably be brought to bear on the facts and law before him.[375] In particular, the judge's need and *power* to use language afford him an engaging opportunity to act out his subjective motives within the acceptable form of legal discourse and reasoning. Melville reminds us that judges who claim to be disinterestedly applying the law may well be implementing their consciences, particularly when the law could take them either way.[376] The formalistic strictures of the law simply aid them to appear more "professional." [377]

Thus, as David Richards notes in his perceptive treatment of *Billy Budd, Sailor*, "*noting* dictates th[e] grotesque result but Vere himself,"[378] who "*chooses* to read the statute in a certain way." [379] Formalism often masks the exercise of judicial will. Melville here anticipates and endorses certain critiques of legal positivism and formalism, particularly those involving the place of language in adjudication,[380] and the role of ethics in legal reasoning.[381]

But Melville also delivers a more disturbing message that can be brought out by pursuing Professor Richards' intelligent analysis of *Billy Budd* a bit further. In Richards' reading, Vere's conscience remains at odds with his legal decision; Vere betrays his conscience in favor of the "consequentialist reasoning" of general deterrence.[382] Richards, thus, is properly skeptical of Vere's legal argument and perceives that the captain wrongfully denies responsibility for the hanging by attributing it to the law.[383] But Richards accepts Vere's articulated reason for handing Billy—a fear of mutiny—at face value. The analysis offered here suggests that this reason, too, is suspect; it is Vere's covert way of persuading his impressionable drumhead court. Far from betraying his conscience in hanging Billy, Vere acts out his innermost desire—his resentful antipathy to the sailor-like directness and unpragmatic heroism of Admiral Nelson. The difference is analyses is profound, asserting a limitation on the ability of the unexamined judicial conscience to reach objectively disinterested and morally correct results.

Professor Richards agrees that Vere's behavior is a species of adjudicatory insanity: Vere indulges "crude reasons of policy that, without the sham defense of principle, . . . [his] own considerable conscience would reject," [384] The source of Vere's "corruption of moral conscience," of his tragedy, "is not egoism nor a failure of courage, but a defect in self-conception, a belief that professional identity requires . . . the separation of moral passion and professional role." [385] *Billy Budd, Sailor*, in this view, is a dramatic illustration of how law divorced from ethics is repressive—and irrational. An adjudicator can reach a just conclusion through rational inquiry, but only by taking account of the claims of conscience and acknowledging personal responsibility.[386] To deny the role of ethics in legal reasoning, in the name of legal formalism, is a fatal failure of rational understanding.

The reading of *Billy Budd, Sailor* offered here located Vere's adjudicatory insanity in a very different source and thereby poses a yet more troubling question. Is ethical adjudication available to the average judge through purely rational processes? Melville's answer, linked to the even wider critique of modern culture found in this tale, is decidedly negative.

Vere, let us recall, is not an evil character; in most circumstances, he is indifferently honest,[387] Yet, we learn that neither his conscience nor his mode of communicating is to be trusted. Resentment, envy, and other prevalent negative forces throw the capacity for both reasoned judgment and rational discourse into doubt. Judges are mortal being, prone to contemporary crises in values. Through Vere, Melville suggests that the barriers to the rational discovery of a just result are deeper than Professor Richards imagines; they are rooted in the normative structure of the culture in which adjudicators act.[388]

For Melville, Vere's "insanity" was emblematic of an entire culture in distress. The headnote of an earlier version of the story spoke of a "crisis in Christendom." [389] The extreme care bestowed on the tale by its author (extending over the last five years of his life) [390] indicates that its significance goes beyond even what we have said. As to this fuller cultural perspective, only part of which we have discussed here,[391] it may suffice to add (in the spirit of this article's predominant outlook) that Melville found it necessary in the final story to join forces with his covert communicators, Claggart and Vere. The novella's deepest meanings are sheltered beneath a cloak of narrative equivocation, irony, and selective omission. In Leo Strauss' eminently applicable terms,[392] Melville was writing as a "persecuted" author, required by the iconoclasm of his message to enunciate it "between the lines." [393]

Thus, Vere's methods and motives define those of society (at least literate society) as a whole. The narrative's own considerateness hints that Vere's approach is normative; no significant moral act, and certainly no important act of authoritative communication, is to be taken at face value in the modern world. News from the Mediterranean has hitherto made John Claggart the hero and Billy Budd the villain, and those "superannuated" gospels [394] are to be recognized as the paradigm for all modern acts of narrative communication.

The nineteenth century literary artists is no more likely than the modern-day adjudicator to place all his cards on the table, even when he is playing with a full deck. Melville's wider cultural message requires each reader's willingness to make himself one with the allegorical and symbolic suggestiveness of the full narration. But this one reader will suppress the urge (at least until later) [395] to enter into the more baffling mysteries of Melville's portentous tale.

CONCLUSION: ON THE USES OF LITERATURE FOR LAW

This Article has had several interconnected aims. First, our approach has attempted to illuminate certain puzzling aspects of a superb work of literary art, one that has

always had special meaning for lawyers. In so doing, the Article sought to exemplify the rich manner in which fiction—more than any other "extrinsic" data—can add to our understanding of basic legal issues. Second, at some length (but less than it deserves), the notion of "considerate communication" has been gleaned from Billy Budd, Sailor, furthered, and applied to a recent piece of actual Supreme Court craftsmanship. More work is needed on this aspect of legal meaning, which Llewellyn once called the "range of creative effort which no individual rule can offer." [396] Finally, in a far more schematic and tentative way, the Article has suggested that the study of literature itself, the reabsorption of the legal community in its cultural roots, may be a modern-day necessity. Western culture, as Melville predicted in the late nineteenth century, was preparing itself for some shocks. Vere's covert rage and effective formalism were to become, only a generation or two later, the model of European behavior; millions of actual innocents would take the place of the one fictional foretopman. Law has its place in that scheme. Literary culture has its place in the development of contemporary legal theories that may realistically aspire to the renaissance of a just society.

FOOTNOTES

*H. Melville, Billy Budd, Sailor (H. Hayford & M. Sealts eds. 1962) [hereinafter cited by page number only].

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Although I think of this paper as a tentative first step into the mysteries of a complex masterpiece, I have ventured this far only through the steadying guidance of many mentors. Foremost among these have been the student and professional audiences whose acceptance of at least some of these ideas has encouraged me to proceed. Among the individuals whose willingness to discuss the paper at length allowed me to refine the inquiry over the years are Merlin Bowen, Michael Braff, Robert Cover, David Haber, Arthur Jacobson, Robert Lawry, David Richards, Benno Schmidt, Paul Shupack, Cheryl Weisberg, and Edward Yorio.

[1] H.L.A. Hart, The Concept of Law 11 (1961).

[2] For a survey of this scholarship, see Suretsky, Search for a Theory: An annotated Bibliography of Writings on the Relation of Law to Literature and the Humanities, 32 Rutgers L. Rev. 727 (1979).

[3] The currently popular "extrinsic" methodologies are the various social sciences. See, e.g., D. Baldus & J. Cole, Statistical Proof of Discrimination (1980); Forst, Rhodes & Wellford, Sentencing and Social Science: Research for the Formulation of Federal Sentencing Guidelines, 7 Hofstra L. Rev. 355 (1979); Symposium: The Courts, Social Science, and School Desegregation (pts. 1 & 2), 39 Law & Contemp. Probs. 1, 217 (1975); Wolfgang, The Death Penalty: Social Philosophy and Social Science Research, 14 Crim. L. Bull. 18 (1978). For perspectives critical of excessive judicial reliance on statistical and social scientific analyses, see, e.g., O'Brien, Of Judicial Myths, Motivations and Justifications: A Postscript on Social Science and the Law, 64 Judicature 285 (1981); O'Brien, The Seduction of the Judiciary: Social Science and the Courts, 64 Judicature 8 (1980); Tribe, Trial by Mathematics: Precision and Ritual in the Legal Process, 84 Harv. L. Rev. 1329 (1971).

[4] See, for example, the central use of *Billy Budd, Sailor* and Sophocles, Antigone (Athens 440 B.C.) in the prelude to R. Cover, Justice Accused 1-7 (1975). Four recent full-issue symposia on law and literature demonstrate a contemporary interest in the application of literary structures to legal issues. See Law and Literature, 32 Rutgers L. Rev. 603 (1979); Law and Literature, 9 U. Hartford Stud. Literature 83 (1977); Law and the Humanities, 29 Rutgers L. Rev. 223 (1976); Law and the Humanities, 7 U. Md. L.F. 84 (1977); see also Weisberg, Law, Literature and Cardozo's Judicial Poetics, 1 Cardozo L. Rev. 283 (1979) [hereinafter Weisberg, Literature and Cardozo]. See generally M. Ball, The Promise of American Law (1981), for an excellent and creative approach to the importance of the humanities for law; J.B. White, The Legal Imagination (1973), for a rich approach to the use of literature in the law school curriculum.

[5] For one distinguished figure's presentation of fictional works considered, in its time, to be each lawyer's "professional duty" to read, see Wigmore, A List of One Hundred Legal Novels, 17 Ill. L. Rev. 26 (1922), reprinted with corrections from Wigmore, A List of Legal Novels, 2 Ill. L. Rev. 574 (1908). Wigmore's list has recently been expanded and the theoretical introduction modified. See Weisberg & Kretschman, Wigmore's "Legal Novels" Expanded: A Collaborative Effort, 7 U. Md. L.F. 94 (1977), revised from Weisberg, Wigmore's "Legal Novels" Revisted: New Resources for the Expansive Lawyer, 71 Nw. U.L. Rev. 17 (1976) [hereinafter Weisberg, Wigmore's Novels].

[6] For a seminal anthology in this field, including selections from great literary works and legal writings, see The World of Law (E. London ed. 1960). Among those authors frequently discussed by lawyers are Shakespeare, see, e.g., W.N. Knight, Shakespeare's Hidden Life (1973); O. Phillips, Shakespeare and the Lawyers (1972); Dickens, see, e.g., W. Holdsworth, Charles Dickens as a Legal Historian (1928); E.T. Jaques, Charles Dickens in Chancery (1914); Dostoevski, see, e.g., Rabinowitz, The Click of the Spring: The Detective Story as Parallel Structure in Dostoyevsky and Faulkner, 76 Mod. Philology 355 (1979); Weisberg, Comparative Law in Comparative Literature: The Figure of the "Examining Magistrate" in Dostoevski and Camus, 29 Rutgers L. Rev. 237 (1976) [hereinafter Weisberg, Comparative Law]. Among recent studies by nonlawyers, see Sussman, The Court as Text: Inversion, Supplanting, and Derangement in Kafka's *Der Prozeß*, 92 PMLA 41 (1977).

[7] *"Billy Budd* remained unpublished until 1924, when it was edited by Raymond Weaver in Volume XIII of the Standard Edition of Melville's *Complete Works* (London: Constable and Company)," Hayford & Sealts, Editors' Introduction to H. Melville, Billy Budd, Sailor 12 (H. Hayford & M. Sealts eds. 1962). Our text is the definitive Hayford & Sealts edition.

More recently, an edition by Milton Stern has challenged some of Hayford and Sealts' positions. See H. Melville, Billy Budd, Sailor (M. Stern ed. 1975).

[8] Melville labored over the manuscript from late 1885 or early 1886 until his death in 1891. See Hayford & Sealts, supra note 7, at 1.

[9] Space does not permit a listing of every piece of scholarship on or criticism of *Billy Budd, Sailor.* From those representative of the various schools, see, e.g., R. Chase, Herman Melville 258-77, 298 (1949); L. Fiedler, Love and Death in the American Novel 359, 362, 434-35 (1960); L. Thompson, Melville's Quarrel with God (1952); Braswell, Melville's *Billy Budd* as "An Inside Narrative," 29 Am. Literature 133 (1957); Watson, Melville's Testament of Acceptance, 6 New Eng. Q. 321 (1933); Withim, *Billy Budd*: Testament of Resistance, 20 Mod. Language Q. 115 (1959). Representative of more recent approaches, increasingly sensitive to the importance of communication and language use in the story is Johnson, Melville's Fist: The Execution of *Billy Budd*, 18 Stud. Romanticism 567 (1979). For scholarship on the legal aspects of the story, see text accompanying notes 10-14 infra. For a bibliography of published criticism and scholarship on *Billy Budd* and other works by Melville, see Hayford & Sealts, Bibliography to H. Melville, Billy Budd, Sailor 203-12 (H. Hayford & M. Sealts ed. 1926).

[10] E.g., R. Cover, supra note 4, at 1-7; Reich, The Tragedy of Justice in *Billy Budd*, 56 Yale Rev. 368 (1967).

[11] Conference on "A Moral Critique of Law: The Example of Melville," held at the Woodrow Wilson School of Public and International Affairs, Princeton University, June 20-21, 1980. Among those papers presented were D. Richards, Ethical Autonomy and the Legal Mind; R. Weisberg, The Lawyer's Way: "Considerate Communication" in *Billy Budd, Sailor* (unpublished papers on file at New York University Law Review).

[12] R. Cover, supra note 4, at 1-7, 250-51. Cover analogizes the dilemma of antislavery judges confronted with the Fugitive Slave Act to Vere's dilemma in *Billy Budd.*

[13] D. Richards, supra note 11, at 11-15. For further discussion of Richards' piece, which is in partial accord with the view taken here, see text accompanying notes 377-89 infra.

[14] Ives, *Billy Budd* and the Articles of War, 34 Am. Literature 31 (1962).

[15] See text accompanying note 72 infra.

[16] See, e.g., R. Cover, supra note 4, at 250-51; Reich, supra note 10, at 378-79. But see D. Richards, supra note 11, at 12-14.

[17] 424 U.S. 693 (1976).

[18] The best known film re-creation of the story is the Peter Ustinov version with Ustinov as Vere and Terrence Stamp as Billy.

[19] In the libretto for Benjamin Britten's striking opera, the "plot" is virtually reduced to Claggart's unambiguous evil and Billy's lyrical innocence, producing Vere's tragic dilemma. See E.M. Forster & E. Crozier, Libretto for *Billy Budd* (rev. 1961). Melville's narrative, as we shall see, supplies infinitely more meaning than does the libretto.

[20] Whatever we may think of Vere, he is not the "tragic" hero of this tale. Critics who reduce the "plot" to the three most obvious characters tend to miss the central narrative (not tragic) quality of the tale. As we shall see, the story is at least as much about Nelson, the "Handsome Sailor" type, "a certain X," or the narrator himself, as it is about Vere.

[21] P. 44.

[22] Id.

[23] P. 54.

[24] Id.

[25] Pp. 44-45.

[26] P. 49.

[27] P. 47.

[28] P. 58.

[29] Pp. 63, 69. There is also a strong allusion to Nelson during the depiction of Vere's death, see p. 129.

[30] Billy pacified the upstart "Red Whiskers," in an incident foreshadowing the Claggart situation. See p. 47.

[31] P. 59; see text accompanying note 342 infra.

[32] P. 56.

[33] P. 63.

[34] See p. 60.

[35] Pp. 62-63.

[36] P. 61.

[37] Id.

[38] P. 64.

[39] Pp. 62, 96. Like Claggart, Vere's "exceptional" quality lies specifically in his keen intelligence and complex "moral" nature. Id. The narrative implies that these two are the only figures on the ship "intellectually capable of adequately appreciating the moral phenomenon presented in Billy Budd." P. 78.

[40] Pp. 74, 76.

[41] Pp. 86-87.

[42] See, e.g., text accompanying notes 47-54 infra.

[43] P. 76.

[44] Melville specifically mitigates the "goodness" of Billy and the "evil" of Claggart through his use of narrative epithet and detail. Billy, for example, is organically violent (albeit justifiably at times), e.g., p. 47, and, when on shore leave, as prone to sailor-like "fun" as the next man, see p. 49. He is far more the "barbarian" or the classical pagan than a Christian innocent. As for Claggart, he is a man of advanced intelligence, education, reasonable good looks, and pragmatic hard work. See pp. 64-65. This is hardly a straightforward allegory.

[45] P. 67

[46] For a further discussion of this central opposition, see text accompanying notes 337-41 infra.

[47] Pp. 72-73.

[48] P. 72. This incident is understandably beloved of Freudian analysts of the novella. See, e.g., R. Chase, supra note 9, at 269-77, one of the finest analyses of the story.

[49] P. 72

[50] Id.

[51] See text accompanying 349-53 infra. As we will see, Melville's full view of adjudication encompasses both the particular manner in which the adjudicator uses language, see sectoin III, A infra, and the adjudicator's inner nature, see section IV, A infra.

[52] Pp. 80–85.
[53] P. 96.
[54] See p. 92.
[55] P. 98.
[56] P. 99.
[57] P. 101.
[58] Pp. 101–02. As we shall discuss, the whole of chapter 20 concerns Vere's fellow officers' skepticism about his procedureal approach to the case. See section II, B, 2 infra.
[59] Vere admits the inappropriateness of these combined roles in his famous speech to the court, Pp. 109–10. This is analyzed more fully at text accompanying notes 141–44 infra.
[60] Pp. 122–24.
[61] After all, Vere's main justification for the hasty trial and execution is that, absent these, the crew might consider him weak and proceed to mutiny. See pp. 112–13.
[62] P. 128.
[63] Pp. 59–60.
[64] P. 123.
[65] P. 131.
[66] P. 130–31.
[67] P. 129.
[68] The officer of marines, the member of Billy's court-martial who was "the most reluctant to condemn," id., comprehends the centrality of Billy's trial and execution to Vere's whole existence. See id. True to the theory of "considerate communication," however, see section III, A infra, this officer "kept the knowledge to himself."
[69] P. 132.
[70] L. Fuller, The Morality of Law 40 (1964).
[71] See Weisberg, Wigmore's Novels, supra note 5, at 19–20, for a discusson of such famous trial scenes, especially those in W. Shakespeare, The Merchant of Venice (1st Quarto London 1600), and F. Dostoevski, The Brothers Karamazov (C. Garnett trans. 1937).
[72] PP. 110–11.
[73] See text accompanying notes 102–06 infra.
[74] Vere, in this speech, states his judicial dilemma in a classically jurisprudential way: * * * The judge claims that the law must predominate over morality when the two conflict but the law is "clear"; he conjures the possibility of a precise notion of the law of a given case and then sees a direct path to professionalism and judicial duty. There is even some pride in the idea of being forced to choose objective duty over personal inclination: "hard cases" give the judge a chance to prove he is a professional. For an alternative view of what Vere really may be doing during the trial scene, see notes 218, 253 infra.
[75] P. 102.
[76] P. 96.
[77] For an influential model for such approaches, see Watson, supra note 9.
[78] A distinguished Melville scholar tells of his early days in the field during the mid-1950's when he took the then "radical" stand that Captain Vere was not unambiguously righteous and indeed shared some of Claggart's circumspect evil. The professional audience for this scholar's remarks would grow restive; some faces turned beet red. A very private chord had been struck.
[79] Reich, supra note 10, at 377–79.
[80] R. Cover, supra note 4, at 4. Robert Cover's analytical use of the story in his exceptional study of the judicial response to the ante-bellum slavery laws, see id. at 2–6, has yet to be fully understood.
[81] Id. at 4–6. Shaw, the Chief Judge of the Massachusetts Supreme Court (famous for such seminal torts opinions as Brown v. Kendall, 60 Mass. (6 Cush.) 292 (1850)), felt he had to apply the Fugitive Slave Act, ch. 60, 9 Stat. 462 (1850) (repealed 1865), against the dictates of his private conscience, as he did in Thomas Sims' Case, 61 Mass. (7 Cush.) 285 (1851). See R. Cover, supra note 4, at 4–6, 249–52. Melville was no doubt influenced by having so distinguished a jurist in his family. Indeed, Shaw may, in part, have been a model for Captain Vere. See id. at 5–6.
[82] R. Cover, supra note 4, at 4.
[83] See id. at 4–5. In discussions I have had subsequently with Professor Cover, I have been struck by his generous appreciation of the substantially different approach to Vere taken here.
[84] Casper, The Case Against Captain Vere, 5 Persp. 146 (1952). Casper's challenge to orthodoxy appeared in the midst of this country's most recent authoritarian period.
[85] The mutiny on the *Somers* in 1842, in which Melville's first cousin, Guert Gansevoort, was a principal, clearly was on Melville's mind throughout his life. See The Somers Mutiny Affair 198 (H. Hayford ed. 1959). It is arguable that the case, which generated "great public excitement" when its facts became known J. Snedeker, A Brief History of Courts-Martial 55 (1954), lay at the heart of the novelist's motivation in examining the vital legal issues raised in *Billy Budd, Sailor*; it merits a significant paragraph within the novella's pages, pp. 113–14. The relationship of Vere-Billy-Claggart was paralleled on the *Somers* by Mackenzie-Spencer-Wales: Wales succeeded in ingratiating himself with Captain Mackenzie (who had an active antipathy for Spencer) by reporting Spencer's mutiny plot. See Proceedings of the Naval Court Martial in the Case of Alexander Slidell Mackenzie 202–06 (New York 1844) [hereinafter Mackenzie Court-Martial]. Mackenzie and Vere both craved secrecy. See text accompanying notes 137–40 infra. James Fenimore Cooper, another novelist fascinated by the case, said of Mackenzie what Melville seems to say of Vere: "The mental obliquity, so very obvious throughout the whole of the affair, renders any ordinary analysis of human motives exceedingly precarious. The act was, unquestionably, one of high moral courage, one of the basest cowardice, one of deep guilt, or one of lamentable deficiency of judgment." Cooper, Review of the Proceedings of the Naval Court Martial, in Mackenzie Court-Martial, supra, at 263, 344. Both Mackenzie and Vere were questioned on board about the justification for their summary action in hanging defendants without right of appeal, Mackenzie Court-Martial, supra, at 205; both received the blessing of a man they had condemned (three men were hanged on the *Somers*), id. at 206; newspaper accounts distorted both situations by falsifying facts and praising the executioners, id. at 264–65.

Some have argued that the *Somers* affair may not have been sufficiently alive in Melville's memory to be the precise inspiration for his final story. See Hayford & Sealts, supra note 7, at 29–31. But see Rogin, The Somers Mutiny and *Billy Budd*: Melville in the Penal Colony, 1 Crim. Just. Hist. 187, 196 (1980) (*Billy Budd* reimagined family-based conflicts which the *Somers* mutiny had first brought to Melville's fiction in *White-Jacket*). As Rogin notes, however, the press had revived the *Somers* affair during the period when Melville was writing *Billy Budd, Sailor*, Id; e.g., Hanged from the Yard-Arm, Albany Times, Aug. 2, 1890, at 1, col. 3; Argus, May 17, 1886, at 1, col. 1. In any case, Hayford and Sealts acknowledge that the *Somers* incident was related to the emergence of Captain Vere and the trial scene. See Hayford & Sealts, supra note 7, at 29–30.
[86] H. Melville, White-Jacket (London 1850), 5 Writings of Herman Melville (H. Hayford, H. Porter & G. Tanselle eds. 1970).
[87] Id. at 303.
[88] Casper, supra note 84, at 149.
[89] Id. at 150.
[90] Id.
[91] Id. at 151.
[92] M. Bowen, The Long Encounter 217–18 (1960).
[93] Ives, supra note 14.
[94] Ives therefore ask: "Did Melville make his captain's case so strong that the problem disappeared?—so strong that every reasonable captain would have acted as he did? If so, the story has lost some of its realistic appeal. Vere's position was exactly that; he said that he had no choice and that, in fact, he was faced with no problem at all. I believe that the reader is mistaken if he accepts Vere's position at face value." Id. at 32.
[95] Id.
[96] See id. at 35–36; text accompanying notes 137–39 infra.
[97] See Ives, supra note 14, at 32–34; text accompanying notes 187–89 infra.
[98] See, e.g., Ives, supra note 14, at 34 n.14, on the custom of "leniency in cases involving the death penalty . . . in the early days of the Articles."
[99] Id. at 38.
[100] Thus, critics normally avoid the specific issue of Vere's (questionable) application of the law and proceed to discuss the novella in vaguer terms not so tangibly suggested by the text. For example, the story is analyzed as a contrast between absolutism and relativism, e.g., Glick, Expediency and Absolute Morality in *Billy Budd*, 68 PMLA 103 (1953), individual and communal needs, e.g., Watson, supra note 9; Withim, supra note 9, or innocence and maturity, e.g., R. Mason, The Spirit Above the Dust 245–60 (1951).
[101] Ives suggests this is the case: "The customs of the sea did not require [Billy's hanging]; and the Articles of War provided only a deceptive excuse for the exercise of Vere's extraordinary 'priestly motive,' which, as Melville suggests at the beginning of Chapter XXII [*sic: XXI*], may well have contained the elements of true insanity," Ives, supra note 14, at 39; see id. at 35.
[102] Who in the rainbow can draw the line where the violet tint ends and the orange tint begins? Distinctly we see the difference of the colors, but where exactly does the one first blendingly enter into the other? So with sanity and insanity. In pronounced cases there is no question about them. But in some supposed cases, in various degrees supposedly less pronounced, to draw the exact line of demarcation few will undertake. . . . P. 102. This passage echoes Melville's comments about "a certain X" earlier in the tale. See pp. 74–76; text accompanying note 43 supra.
[103] P. 102.
[104] Id. The surgeon expresses his concern just before we enter chapter 21, the trial scene.
[105] See, e.g., Reich, supra note 10, at 378.
[106] Pp. 113–14.
[107] See Ives, supra note 14, at 35–36.
[108] Melville, explicitly as well as tonally, invites informed inquiries into his complex tale's meaning. It seems to our reading to be insufficient, given the narrator's equivocal tone and overt advice that each reader "must determine for himself" an explanation of Vere's behavior, p. 102, merely to accept Vere's statements at face value; since Melville's narrator, and his biography, ground the trial scene in a material setting of legal custom, history, and precedent, it would be foolish to ignore the lessons of considerate communication and to rest easy with superficial explanations. There is too much internal evidence tending to demonstrate Melville's intention that every word used by Vere—and particularly every allusion to law or to theories of communication—be thoroughly explored.

Without this painstaking process we will never arrive at the story's "higher" (symbolic, allegorical) meanings. These latter meanings must be approached with the care mandated by the text's subtlety. As C.B. Ives put it 20 years ago: "Allegory is often so patent in *Billy Budd* that many critics have found in the novel not a story but Melville's philosophical generalizations about man's fate and others have read the book as a statement regarding the nature of the struggle between good and evil. It seems to me, however, that the novel contains realistic elements worth examining and that one of these is Captain Vere's appeal to the Articles of War to justify his hanging Billy." Ives, supra note 14, at 31. Melville refrains here, in his final painstaking creative deed, from offering his reader simple and self-satisfying resolutions to enormously complicated cultural problems. We must, in the first instance, come to grips with the text.
[109] Pp. 101–02.
[110] Melville knew British and American naval statutes well not only because of his lifelong fascination with sailors, but also as a result of having served in 1843 and 1844 on a naval vessel upon which the applicable American statute was read in full at frequent intervals. See N. Arvin, Herman Melville 72 (1950): "Then, on the first Sunday of every month he would take part with the rest of the crew in the "muster round the capstan"; passing in review before the officers, being inspected by them, and listening—Melville, with angry rebellion in his heart—to a reading of the grim Articles of War."

Thus, in an earlier work, Melville carefully recited, and criticized, specific provisions of the statute governing the American navy. See H. Melville, White-Jacket, supra note 86, . . .-304. In a historical note to this portion of his story, Melville observed that these Articles "may be found in the second volume of the 'United States Statutes at Large,' under chapter xxxiii." Id. at 298 n. *; see note 128 infra. He referred also to the British Articles, those enacted "in the twenty-second year of the reign of George the Second." H. Melville, supra, at 298 n. *; see note 112 infra. Although less overt, the older Melville was no less knowledgeable. For a fine, detailed analysis of Melville's lifelong inquiry into the use and abuse of the American Articles (including a source-guide to Melville's wide reading on the subject), see H. Vincent, The Tailoring of Melville's *White-Jacket* 90, 103–06 (1970). But see E. Rosenberry, Melville 112 (1979). Rosenberry agrees that "neither Mackenzie's action nor Vere's . . . was required or even sanctioned by law," id., but (oddly, considering the novelist's biography) concludes that "Melville tampered with history, or simply

worked from inadequate research . . . in establishing the legal framework of his plot," id.

In addition, as noted previously, Melville's interest in legal matters was also informed by the *Somers* mutiny, see note 85 supra, and by his father-in-law Lemuel Shaw's experience with the Fugitive Slave Act, see note 81 supra. Further, Melville maintained an active interest in current legal matters. The infamous Haymarket trials, held toward the end of Melville's life, may well have reinspired him to treat the essential moral issues so frequently encapsulated in courtroom dramas. See Wallace, *Billy Budd* and the Haymarket Hangings, 47 Am. Literature 108, 109–13 (1975).

[111] P. 101.

[112] 22 Geo. 2, ch. 33 (repealed 1860).

[113] See note 110 supra. An American historian of the British Articles reports: "It was ordered that the articles be read openly twice each week." J. Snedeker, supra note 85, at 44. A typical contemporary American naval statute was "to be hung up in some public places of the ship, and read to the ship's company once a month." Rules for the Regulation of the Navy of the United Colonies, 3 J. Continental Cong. 328, 329 (1775) (W. Ford ed. 1905). The comparable American military statute was "to be read and published once in every two months, at the head of every regiment, troop or company, mustered, or to be mustered in the service of the United States." Articles of War, § 18, art. 1, 5 J. Continental Cong. 788, 806 (1776) (W. Ford ed. 1906).

[114] Articles of War of 1749, 22 Geo. 2, ch. 33, § 2, ¶ 22 (repealed 1860).

[115] See text accompanying notes 169–99 infra.

[116] P. 111.

[117] See note 197 infra.

[118] See J. Snedeker, supra note 85, at 45.

[119] P. 101.

[120] Articles of War of 1749, 22 Geo. 2, ch. 33, §§ 6–10 (repealed 1860).

[121] Id. § 11.

[122] P. 101.

[123] Section 19 provides in relevant part:

[A]nd if the said court shall have been held beyond the narrow seas, then such sentence of death shall not be carried into execution but by order of the commander of the fleet or squadron wherein sentence was passed; and in cases where sentence of death shall be passed in any squadron, detached from any other fleet or squadron upon a separate service, then such sentence of death (except in cases of mutiny) shall not be put in execution, but by order of the commander of the fleet or squadron from which such detachment shall have been made, or of the lord high admiral, or commissioners for executing the office of lord high admiral. . . .

Articles of War of 1749, 22 Geo. 2, ch. 33, § 19 (repealed 1860).

Billy was impressed onto the *Bellipotent* as it was heading out to sea, pp. 44–45, to join the Mediterranean fleet, p. 54. The ship was on "detached service" from that fleet, beyond the Narrow Seas, the channels separating Great Britain from the Continent and from Ireland, when the events in the story occurred. Pp. 54, 90, 129, Captain Vere was therefore obliged to refer the case to either the admiral or the commander of the Mediterranean fleet.

[124] Provided always, and be it further enacted, That no person or persons not flying from justice, shall be tried or punished by any court-martial for any offence to be committed against this act, unless the complaint of such offence be made in writing to the lord high admiral, or to the commissioners for executing the office of lord high admiral for the time being, or any commander in chief of his Majesty's squadrons or ships impowered to hold courts-martial, or unless a court-martial to try such offender shall be ordered by the said lord high admiral, or the said commissioners, or the said commander in chief. . . .

Articles of War of 1749, 22 Geo. 2, ch. 33, § 12 (repealed 1860).

[125] See note 123 supra; see also I J. McArthur, Principles and Practices of Naval and Military Courts Martial 67–68 (4th ed. London 1813) (1st ed. London 1792).

[126] See note 123 supra; I J. McArthur, supra note 125, at 67–68. For a typical contemporary American equivalent of this provision, see Rules for the Regulation of the Navy of the United Colonies, 3 J. Continental Cong. 378, 378 (1775) (W. Ford ed. 1905).

[127] P. 112.

[128] Articles of War of 1749, 22 Geo. 2, ch. 33, §§ 12-14 (repealed 1860). The Articles retained the customary minimum of five, but apparently altered the maximum from the traditional nine to 13, occasioning some debate. See 14 Parl. Hist. Eng. 416-17 (1749). The higher number seemed easier to achieve than it might appear, for naval custom "obliges every captain who comes in sight of the [court-martial] flag to go on board and take his place in the court." Id. at 416. In America, the numbers five and 13 were the clear tradition; any captain operating under naval law would have known them. See, e.g., Act for the Better Government of the Navy, ch. 33, art. 35, 2 Stat. 45, 50 (1800) (repealed 1950). For the equivalent army provisions, see, e.g., Act of May 31, 1786, art 1, 30 J. Continental Cong. 316, 316 (J. Fitzpatrick ed. 1934) (repealed 1874).

[129] Articles of War of 1749, 22 Geo. 2, ch. 33, § 14 (repealed 1860).

[130] P. 111.

[131] P. 104.

[132] Id. Melville, again, may be adverting to the *Somers* matter, in view of the three defendants there. See note 85 supra.

[133] P. 104. The disjunction of sailors and marines apparently was a tradition on naval courts-martial. See, e.g., U.S. Dep't of the Navy, Naval Courts and Boards § 405 (1917) [hereinafter Naval Courts and Boards]: "When a marine is to be tried by summary court-martial, one or more marine officers shall, if practicable, be detailed as members of the court." Melville may stress this detail because Vere's land-oriented personality again is coming to the fore. Although Billy is a sailor, Vere feels more comfortable with a marine officer on the court. It is this officer, we should recall, who is at Vere's deathbed later when he mumbles "Billy Budd, Billy Budd." P. 129. He may be one of several "Melville figures" in the text.

[134] Writing about English naval law of the period, McArthur observes: [A] captain or commander of any of his majesty's ships or vessels, has the power of inflicting punishment upon a seaman in a summary manner for any faults or offences committed, contrary to the rules of discipline and obedience established in the navy; this power the framers of our naval articles and orders wisely considered preferable to establishing inferior courts martial for trying trivial offences, as calculated less to obstruct his majesty's service at sea, and as carrying more promptly into execution the rules and articles laid down for its regulation.

Moreover, the prompt punishment of trivial offences is attended with salutary effects in the discipline of a ship, and from the public example makes a great impression on seamen's minds, thereby deterring them from committing greater crimes.

By the 4th article of the Old Printed Instructions, a captain was not authorized to punish a seaman beyond 12 lashes upon his bare back, with a cat-of-nine-tails; but, if the fault should deserve a greater punishment, he was directed to apply for a court martial.

J. McArthur, supra note 125, at 162-63.

[135] See Articles for the Government of the Navy, Rev. Stat. § 1624, art. 26, 27, reprinted in 18 Stat. 274, 281 (1874) (repealed 1950); see also Naval Courts and Boards, supra note 133, §§ 407, 412, 417.

[136] Article for the Government of the Navy, Rev. Stat. § 1624, art. 26, reprinted in 18 Stat. 274, 281 (1874) (repealed 1950); Naval Courts and Boards, supra note 133, § 412.

[137] Ives, supra note 14, at 36 n.22 (quoting Regulations and Instructions Relating to His Majesty's Service at Sea art. 3 (11th ed. 1772)).

[138] Naval Courts and Boards, supra note 133, § 217. The Rules for the Regulation of the Navy of the United Colonies, 3 J. Continental Cong. 328 (1775) (W. Ford ed. 1905), was the first American statute for the governance of the navy. The next comprehensive revision was the Act for the Better Government of the Navy, ch. 204, 12 Stat. 600 (1862) (repealed 1950). This statute remained essentially unchanged until the major overhaul of military and naval law in 1950, Uniform Code of Military Justice, ch. 169, 64 Stat. 107 (1950) (current version at 10 U.S.C. §§ 801-940 (1976 & Supp. IV 1980)). See 96 Cong. Rec. 1353 (1950) (remarks of Sen. Kefauver); see alsi E. Byrne, Military Law I-16 (3d ed. 1981). Thus, the 1917 handbook is a compilation of the naval law with which Melville was familiar.

[139] P. 103.

[140] See test accompanying notes 366–67 infra.

[141] Pp. 109–10.

[142] Articles of War of 1749, 22 Geo. 2, ch. 33, § 7 (repealed 1860); see 14 Parl. Hist. Eng. 411 (1749). Apparently, opponents of the Articles felt that "[t]o pretend that the chief commander, by being president, may influence the court to do as he pleases, is contrary to experience." Id. As, presumably, did the proponents of the statute, Melville strongly disagreed; Vere's control—even when he is not speaking—is felt throughout the trial. As sole witness, and as the unmatched authority figure on the ship, he should surely have withdrawn after offering his testimony, as the law required.

[143] A 1917 naval handbook, for example, gives the accused in general and summary courts-martial the right to challenge any member of the Board. Naval Courts and Boards, supra note 133, §§ 277, 427. The handbook states that "care be exercised in selecting the personnel of a court," id. § 406, and provides that: "A challenge upon the ground, admitted or proven, that a member preferred the charges or is a material witness in support thereof. . . should be sustained by the court." Id. § 278.

Similarly, the American Articles of War of 1874 (governing armies) prescribes that any commanding officer of any army may appoint a court-martial. It adds: "But when any such commander is the accuser or prosecutor. . . the court shall be appointed by the President. . . ." Articles of War, Rev. Stat. § 1342, art. 72, reprinted in 18 Stat. 228, 236 (1874) (repealed 1920). More recently, an army officers' handbook specifically states that "an officer is legally incompetent if he is the accuser or witness for the prosecution. . . . Should the accuser sit on the court the trial is a nullity." F. Munson & W. Jaeger, Military Law and Court-Martial Procedure: "Army Officers' Blue Book" 13 (1941). Again, the accused may challenge (and upon proof, automatically procure the removal of) a court member who is either the accuser or a witness for the defense or procesution, id. at 49; the defendant is in fact usually powerless even to waive objections based on such dual role playing, id. at 50.

[144] See section III, A infra.

[145] P. 112.

[146] Id.

[147] Articles of War of 1749, 22 Geo. 2, ch. 33, § 2, ¶ 22 (repealed 1860).

[148] Id. ¶ 20.

[149] Billy has failed to inform on "the stranger" who tempts him with lucre if he will join other "impressed ones" to do some unnamed mischief. P. 82. The stranger probably has been dispatched by Claggart, but the naive Billy does not suspect this. Since the stranger, whom Billy forthwith rebuffs, does not specifically mention mutiny, the foretopman's failure to inform might not have been actionable even if it had come to light, although Melville apparently thought it would be. See pp. 106–07. In any event, the incident serves to demonstrate again Billy's essential loyalty as well as his inclination to handle troublemakers himself instead of becoming an informer.

[150] Articles of War of 1749, 22 Geo. 2, ch. 33, § 2, ¶ 20 (repealed 1860).

[151] John McArthur, in his classic text, recapitulated the opponents' basic position:

But when we consider the infirmities inseparable from human nature, which abound even in the most upright hearts—the unguarded moments of passion, which at times no prudence or circumspection can govern, and the numberless unforeseen causes which may suddenly arise amidst the fluctuating humours and caprices of mankind, it is devoutly to be wished, that, on a legislative revision of this article, a discretionary power may be vested in a court martial to inflict death, *or such other punishment as the crime, from the palliating circumstances attending it, shall merit.*

Indeed this is so essentially requisite towards the administration of justice, that the omission of this discretionary power must have proceeded from oversight and not from intention; for, it is to be observed, that the original article on this subject introduced by the statute 13 Charles II. c. 9. contains the discretionary alternative alluded to, and is distinguished by its conciseness and simplicity. The words are, "none shall presume to quarrel with any superior officer upon pain of severe punishment, nor to strike any such person upon pain of death, or *otherwise as a court martial shall find the matter to deserve.*"

1 J. McArthur, supra note 125, at 70–71 (emphasis added).

[152] See J. Snedeker, supra note 85, at 47.

[153] Id.

[154] Beginning at least in *White-Jacket* (London 1850), Melville drew on actual historical sources to make the point in his fiction that the practice or custom of punishment on board naval vessels often

differed from the letter of the law. See H. Vincent, supra note 110, at 99-102.

[155] These rules, the first regular "Articles of War" for the British Navy, were adopted in 1649 and recast and applied to all British naval forces in 1652. Essentially, the rules codified traditional naval practice. See J. Snedeker, supra note 85, at 46. The code is "the formal ancestor of all British and American naval articles." Id.

[156] Id.

[157] See text accompanying notes 122-27 supra.

[158] J. Snedeker, supra note 85, at 46.

[159] 1 J. McArthur, supra note 125, at 164 (quoting the New Regulations and Instructions for the Navy (1806)).

[160] See text accompanying notes 122-27 supra.

[161] See 1 J. McArthur, supra note 125, at 67-68.

[162] D. Walker, Military Law 108 (1954): "Cases resulting [under the earliest American Articles for the Government of the Navy] in dismissal of an officer or in the death penalty required Presidential confirmation prior to execution." See generally W. Winthrop, Military Law and Precedents 48-56 (2d rev. ed. 1920) (army courts-martial).

[163] The policy behind these high-level reviews of severe sentences in courts-martial is adequately expressed in the following passage from a handbook prepared for United States Army officers:

Until the sentence of a court-martial has been approved by the proper commanding officer, it is not effective. This follows logically from the fact that these tribunals are adjuncts to the executive power, rather than part of the judicial function. . . . Nevertheless, courts-martial must carry out their duties in a judicial manner—fundamental principles of justice and rules of law and of evidence must be adhered to even as in courts of civil law.

F. Munson & W. Jaeger, supra note 143, at 16.

[164] See note 85 supra.

[165] For more on Gansevoort, see, e.g., Anderson, The Genesis of *Billy Budd*, 12 Am. Literature 329 (1940); Rogin, supra note 85, at 197-98. Gansevoort, a lieutenant on the *Somers*, jointed with Mackenzie in recommending execution for the three sailors.

[166] See Rogin, supra note 85, at 197.

[167] Pp. 59-60.

[168] See 1 J. McArthur, supra note 125, at 163.

[169] Interestingly, in American army law, there was some movement toward allowing the *convening* officer to execute even a serious sentence in time of war. See Articles of War, ch. 20, art. 65, 2 Stat. 359, 367 (1806) (repealed 1830). Article 89 of the same statute, however, gave that same convening officer "power to pardon or mitigate . . . [or, in capital cases] he may suspend, until the pleasure of the President of the United States can be known." Id. art. 89, 2 Stat. at 369-70. Vital here is the discretion allowed the convenor. And, in any case, the convening officer's power was short-lived. This portion of article 65 was repealed by Act of May 29, 1830, ch. 179, 4 Stat. 417, 417, and the statute again came to insist on presidential review of death sentences, with the usual exception for wartime mutineers. See Act of July 17, 1862, ch. 201, § 5, 12 Stat. 597, 598, as amended by Act of Mar. 31, 1863, ch. 75, § 21, 12 Stat. 731, 735 (repealed 1950).

[170] P. 110.

[171] P. 111.

[172] In rhetorical terms, such a statement duplicates the device used by Vere in the famous passage from the same lengthy speech: "Well, the heart here, sometimes the feminine in man, is as that piteous woman, and hard though it be, she must here be ruled out." Id.

[173] W. Birkhimer, Military Government and Martial Law 375 (3d ed. 1914).

[174] As one military law expert puts it: "It is because an appreciation of the importance of necessity as the underlying justification is so essential to understanding of the principles of martial law that the point is so strongly emphasized here." F. Weiner, A Practical Manual of Martial Law 16 (1940).

[175] C. Fairman, The Law of Martial Rule 19 (2d ed. 1943).

[176] See W. Birkhimer, supra note 173, at 404.

[177] Id. at 416.

[178] Ives, supra note 14, at 33.

[179] See text accompanying notes 106-07 supra.

[180] See C. Fairman, supra note 175, at 50-63 (no mention of the late eighteenth century as among those periods in English history compelling frequent use of martial law). Ireland, which experienced British martial rule in 1798-1799, was an exception. See id.

[181] The phrase is from a purported "Preface" to the story to be found in many earlier versions of Billy Budd, Sailor. Hayford's and Sealts' research indicated that the "Preface" did not belong in Melville's final version at all. See Hayford & Sealts, supra note at 18-19. Yet, the phrase lends insight into the larger meanings of the story, meanings that must build on the kind of analysis presented in this paper, but that we cannot explore fully at his time. See text accompanying notes 389-95 infra.

[182] See p. 59.

[183] Pp. 59-60.

[184] We shall later recall Melville's suspicion of adjudicators who counsel breach of legal form in the name of "necessity." See text accompanying notes 214-49 infra.

[185] F. Weiner, supra note 174, at 16. Weiner continues:

As a distinguished soldier-jurist [Holmes] has said, "We need education in the obvious more than investigation of the obscure." Now, viewed in the light of the principle of necessity, martial law is nothing more and nothing less than an application of the common law doctrine that force, to whatever degree necessary, may be used to repress illegal force.

Id. at 16-17. Did Billy in any way still threaten illegal force?

[186] As Leonard Casper has noted, Melville's interest in the *Somers* case, see note 85 supra, indicates a concern with the question "just how necessary is necessity?" See Casper, supra note 84, at 149. As applied to Billy's case, Holmes' "education in the obvious," see note 185 supra, would have led to no more than imprisonment until the fleet was rejoined.

[187] Ives, supra note 14, at 32.

[188] Hayford & Sealts, Notes & Commentary to H. Melville, Billy Budd, Sailor 181 (H. Hayford & M. Sealts eds. 1962).

[189] The statute controls "every person being in Their Majestye's Service in the Army . . . who shall . . . excite, cause, or joyne in any mutiny or sedition in the Army." Mutiny Act, 1 W. & M., ch. 5, § 1 (1689). Except for a few brief intervals, the Mutiny Act was reenacted annually until 1879, when it was merged with the Articles of War of 1749 to form the Army Discipline Act, 42 & 43 Vict., ch. 33 (1879) (repealed 1881). See W. Winthrop, supra note 162, at 20.

As to the possibility that this is Melville's unintended error, perhaps based on the 1879 merging of the two statutes, see pp. 113-14. But even Hayford and Sealts speculate that Melville may have deliberately had Vere apply military rather than naval law. See Hayford & Sealts, supra note 188, at 181. And evocative in the use of the term "Mutiny Act," whether the error be (atypically) Melville's or Vere's, is both the continuing indication of Vere's attraction to the *land* and his use of the phrase to imply, covertly, that "mutiny" is actually a part of the instant litigation. See notes 192, 223 infra.

[190] "War looks but to the frontage, the appearance. And the Mutiny Act, War's child, takes after the father. Budd's intent or non-intent is nothing to the purpose." P. 112. Vere earlier (erroneously) noted: "We proceed under the law of the Mutiny Act." P. 111.

[191] See note 110 supra.

[192] The strong inference from all the evidence is that Melville was conscious of every single legal detail (including Vere's mistakes and omissions) in this story. See, e.g., note 110 supra; see also note 223 infra. For a view contra, see Hayford & Sealts, supra note 188, at 176. I can only assume that the editors, despite some of their own research indicating the biographical and literary logic of assuming Melville's expertise in naval law and history, were not prepared to deal with the ramifications of that logic, particularly since the thrust of their compendious notes is pro-Vere, see, e.g., id. at 175-77 (Hayford's and Sealts' comments to their notes 223, 241-42).

[193] See text accompanying notes 145-46 supra.

[194] P. 112.

[195] See Articles of War of 1749, 22 Geo. 2, ch. 33, § 2, ¶ 28 (repealed 1860) ("All murders committed by any person in the fleet, shall be punished with death by the sentence of a courtmartial.").

[196] Of course, Vere is not here actually charging Billy with homicide. Nevertheless, he deploys this substantive law to explain the risks of leniency and to assuage doubts about the necessity for the hanging.

[197] Even Vere's interpretation of the Articles of War is open to question. The applicable section speaks of striking a superior officer "being in the execution of his office." Articles of War of 1749, 22 Geo. 2, ch 33, § 2, ¶ 22 (repealed 1860). This phrase leaves room for interpretation. Claggart, arguably, was not "executing his office" when, out of personal animus unrelated to official duty, he lied to his captain about a crewman's loyalty. Although Vere was unaware of all the facts, he decided not to pursue his suspicions about Claggart. See pp. 94-96. Had Vere inquired into the full circumstances of the case, he might have discovered the incident in which Claggart's henchman vainly tempts Billy to mutiny, pp. 80-83, a violation of § 2, ¶ 19 of the Articles (endeavor to make mutinous assembly), as well as Claggart's bad faith in informing on Billy.

The significance of Vere's refusal to contemplate Claggart's role in the matter is heightened by his apparent earlier omission to *swear in* the members of the court. Section 16 of the Articles, which supplies the statutory text for the oath, expressly charges members of a court-martial to "duly administer justice according to [their] conscience[s]" in "any case [that] shall arise, which is not particularly mentioned in the said articles and orders." Articles of War of 1749, 22 Geo. 2, ch. 33, § 16 (repealed 1860). See generally 1 J. McArthur, supra note 125, at 368, 374 (necessity for oath since time of King William; relationship of oath-taking to secrecy); D. Walker, supra note 162, at 108 (American procedures "copied almost verbatim from the contemporary English laws"). Had Vere pursued Claggart's role in the matter, Billy's case might have been thrown into the domain of conscience: it would not fall under § 2, ¶ 22, because no officer was struck "in the execution of his office"; it would not be murder under § 2, ¶ 28, because of the defense of provocation and other matters, see text accompanying notes 194-97 supra.

These arguments, of course, are not unassailable. But the court was seeking an escape from the death sentence apparently mandated by the statute; Vere had the power to provide one. As befits a "considerate" communicator, see section III, A infra, he chose to conceal, or at least not to pursue, all the facts.

[198] P. 101.

[199] See section IV, A infra.

[200] P.105.

[201] See generally Weisberg, Literature and Cardozo, supra note 4.

[202] See Llewellyn, On the Good, the True, the Beautiful, in Law 9 U. Chi. L. Rev. 224, 249 (1942).

[203] When a 16 year-old boy, arguably, a trespasser, dies upon impact with the defendant railroad's negligently maintained electrical wiring, it helps to build a bare majority of an appellate court in favor of his heirs by referring to him at the outset as "a lad of 16," Hynes v. New York Cent. R.R., 231 N.Y. 229, 230, 131 N.E. 898, 898 (1921) (Cardozo, J.), instead of the legalistic "plaintiff's decedent." Similarly, when the defendant railroad's negligently dislodged scales hit an innocent woman travelling to the beach with her children, the same majority may be swayed for the railroad if the judge refers to the injured party throughout as merely "respondent" or "plaintiff." Palsgraf v. Long Island R.R. 248 N.Y. 339, 162 N.E. 99 (1928((Cardozo, J.).

[204] P. 55.

[205] L. Strauss, Persecution and the Art of Writing (1952).

[206] Id. at 23. According to Strauss, authoritative communication, particularly if repeated often, ultimately establishes what most people think of as "truth"; such statements, like those of Melville's Nore historians, become "morally certain." Id. The authorities abide dissenting points of view because they thereby allow the apperance of freedom of thought in the audience by creating a perceived choice between several conflicting positions. See id. The general audience, however, is likely to accept the authoritative position and view the heterodox communication as false. The latter then ceases to be repeated, and the accepted view increases in credibility. See id. To avoid ridicule, therefore, the "persecuted" dissenter must hide his basic views by "writing between the lines." Id. at 24. A recent example of this phenomenon would be the various accounts of the assassination of John F. Kennedy. Vere's junior officers are in this "persecuted" category. See next accompanying notes 261-17 infra.

By "writing between the lines," disbelieving, "persecuted" individuals lodge their dissent to the ensconced position, hoping and expecting that only a small number of like-minded readers will appreciate what they are saying. See L. Strauss, supra note 205, at 25, 34-35. Considerate communications, on the other hand, *establish* doctrinal truths by conveying and repeating a selective version of reality, one that they fully expect the vast majority of

their audience to accept. We shall late recall Strauss' notion of "writing between the lines" when reflecting on Melville's own mode of communication in *Billy Budd*. See text accompanying notes 389–94 infra.

[207] F. Dostoevski, The Brothers Karamazov 227–44 (C. Garnett trans. 1937). Dostoevski was Melville's virtual contemporary; The Brothers Karamazov originally was published in 1880.

[208] P. 55. Why does Melville state that such a nonforthright approach can be taken "without reproach"? (There may be irony here, of course, but Melville tells us throughout the tale that truth emerges more from the "ragged edges," see, e.g., p. 128, of these digressions than from the characters and descriptions of the basic story line itself. In a passage on communication, in particular, we may divine an unmediated message meant to be taken at face value.) We must recall that "considerate communication" is *essentially truthful* and primarily designed to *serve* the audience. Although the full story is truncated by the authoritative communicator, his account adequately fulfills the needs of his readers or auditors without really deceiving them. Indeed, the average English person probably would not take the time even to delve into a more detailed and accurate report about the mutiny.

To be distinguished from "considerate communication" is *propaganda* itself, which is essentially false and which aids only the communicator while victimizing and persecuting the audience. We might contrast the authoritative accounts of the John F. Kennedy assassination (probably "considerate") to the collected speeches of Goebbels (propaganda).

Finally, we must distinguish from both of these that which the *audience itself* chooses to do with individuals who attempt to contradict or elaborate upon the official account. Theirs may be a sentence of ostracism or worse, but this is not the fault of the original authoritative communicator. Consider the fate of those who have tried, over the past twenty years, to differ from the Warren Commission report of the Kennedy assassination. Ridicule from the *New York Times* was the kindest of their destinies. See notes 206 supra, 392–93 infra for a discussion of the theories of Leo Strauss.

[209] Pp. 71, 85.

[210] Melville seems to convey the belief that the lyrical poem as a genre (and lyrical speech generally) is more direct, more sailor-like, and less "considerate" than authoritative, narrative discourse. The beautifully simple ballad that closes the story, "Billy in the Darbies," p. 132, contrasts keenly with all the convoluted prose that has preceded it about the events on the *Bellipotent*.

[211] P. 131. The narrator specifically labels this account "authoritative" and adds that it was "written in good faith" despite the distortions. P. 130; see text accompanying note 65 supra.

[212] Pp. 130–31.

[213] The audience for the *Mediterranean News* symbolically includes everyone. See note 394 and accompanying test infra.

[214] P. 128.

[215] Id.

[216] See L. Strauss, supra note 205, at 32. This form of persecution goes beyond the milder "social ostracism," id., or even "persecution of free inquiry," id. at 33, to Strauss' "most cruel" type, id. at 32, in which the audience is directly coerced and robbed of its ability to reason freely altogether.

[217] P. 102; see text accompanying note 58 supra. Melville's narrative approach to this potential dissent is again parallel to Leo Strauss' theory: the junior officers choose to remain silent, and the surgeon decides not even to tell them of "the captain's state." To articulate a position different from the authoritative captain's would be to risk "persecution"—punishment for "mutiny," p. 102—with no real likelihood of gaining credibility anyway. See L. Strauss, supra note 205, at 24–26. For another example of Vere's officers' keeping knowledge to themselves, see note 68 supra.

[218] The paradigmatic structure of adjudication outlined in note 74 supra is thus modified as follows: * * * In this modification, neither objective duty nor subjective moral inclination is immediately achieved. We have, for example, neither Justice Harlan's complex professionalism nor Justice Douglas' result-oriented (but not always carefully reasoned) directness. Instead, a kind of triangle, arguably more typical yet of judges, is formed, only two sides of which are part of the finished process. The judge applies the law as "an ambidexter implement," p. 76, to various subjective goals. The first of these goals may be "policy" (Vere's conjuring mutiny if the court does not sentence Billy to hang), which is usually freely articulated since it *seems* a legitimate judicial concern. (Note, though, that "policy" contains strongly subjective elements, may be questionably proffered, and is rarely required by "the law" of the case.) But, other subjective goals may not be stated at all. They are not necessarily "moral." Indeed, in this structure, the moral side of the triangle is totally skirted. Such covert goals emerge from the judge's whole personality and may be as disparately and even subconsciously motivated as "what the judge ate for breakfast" (the "legal realist" model) or how the judge reflects the values of the surrounding culture in everything he does (Cardozo's model). See Weisberg, Literature and Cardozo, supra note 4, at 306, for an analysis of the vital similarities and differences in the realist and Cardozo approaches; see also note 374 infra. For Vere, these unarticulated goals include avenging himself against the absent Nelson, fulfilling his nature as an authoritarian pragmatist, creating a dramatic scenario, giving voice to generalized cultural resentment, etc. See also note 253 infra.

[219] P. 100.

[220] Id.

[221] P. 101.

[222] See text accompanying notes 100–09 supra.

[223] See notes 110, 192 supra. As to the possibility that Melville accidentally made some of these errors despite his generally thorough knowledge of naval law, we should now add the words of Strauss (writing about the way in which authors communicate about delicate themes): "If a master of the art of writing commits such blunders as would shame an intelligent high school boy, it is reasonable to assume that they are intentional, especially if the author discusses, however incidentally, the possibility of intentional blunders in writing." L. Strauss, supra note 205, at 30.

[224] I have suggested in other context that highly verbal and literate characters usually gain the sympathetic praise of most readers unless they are overtly presented as evil. See Weisberg, Hamlet and Ressentiment, 29 Am. Imago 318, 333–37 (1972). This occurs simply because most readers of complex fiction share the verbal acumen of these characters. It is harder to like, or accept as "real," those figures who do not do well with words. This observation has particular importance for works of fiction in which lawyers play central roles. See note 343 and accompanying text infra.

[225] P. 102. We must compile the evidence ourselves; the narrator, true to his own equivocal mode of communication, see text accompanying notes 216–17 infra, will not tell us directly.

[226] See text accompanying notes 336–69 infra.

[227] P. 86.

[228] Pp. 62, 96.

[229] P. 128.

[230] P. 63.

[231] P. 60.

[232] Id.

[233] P. 63

[234] P. 60.

[235] P. 104; see notes 133, 191 supra. Vere, true to his internal scenario, found in the marine an intelligent enough fellow but one who, like the other members of the court, was more a warrior than an analytical thinker. See p. 105.

[236] See note 189 infra.

[237] P. 111.

[238] P. 86; see also text accompanying note 41 supra.

[239] P. 87.

[240] P. 76. As we point out a bit later, see note 392 infra, Melville's own communication is of the Staussian "persecuted" variety throughout the tale; much of what the reader must ferret out to understand one character may in fact be placed in a part of the story seemingly relating to another. This is especially true of the passages originally descriptive of Claggart, a figure representative of Vere, but on a lower level of importance. See note 102 supra. Billy stands in the same relation to Nelson. See text accompanying notes 30–31 supra.

[241] P. 76.

[242] Id.

[243] Id.

[244] Id.

[245] Id.

[246] Id.

[247] The clearest narrative example is the "soup spilling" episode. See text accompanying notes 48–50 supra.

[248] Pp. 112–113. Although everything he says to the court in chapter 21 brilliantly distorts the operative legal and political reality to suit his own purposes, this speech is especially clever. Taken as a whole, its structure and tone convey the pathos of a court necessarily torn between two unhappy choices: hang the morally innocent Billy or provoke the crew to mutiny. "You know what sailors are," Vere remarks, suddenly confiding in these junior officers. But his communication hides the truth about these particular sailors; that they are not prone to mutiny and that the news of their favorite colleague having killed the despised shipboard policeman (if, indeed, such news had to be published at all until the ship regained the fleet) would less likely produce mutinous rumblings than the sight of Billy hanging by the yard-arm itself as punishment for that homicide. For, without the worst possible construction being imposed on Billy's act, "the people" would rather see their Handsome Sailor alive and well. Indeed, Vere's construction does become the authoritative naval version of the incident, in which Billy becomes the villainous alien-upstart and Claggart the patriotic hero. See pp. 130–31.

[249] See, e.g., Shapiro, Mr. Justice Rehnquist: A Preliminary View, 90 Harv. L. Rev. 293, 328 (1976): "I fear that in too many instances Justice Rehnquist's efforts have been impeded by his ideological commitment to a particular result."

[250] In his facility with language, Justice Rehnquist is in the tradition of Justice Cardozo, although perhaps without the latter's innate sense of cultural balance. See Weisberg, Literature and Cardozo, supra note 4, at 308–42.

[251] 424 U.S. 693 (1976). References to "line" numbers in the text are to this report of the decision. For other Rehnquist opinions notable in this light, see, e.g., note 270 infra.

[252] See, e.g., Shapiro, supra, note 249, at 324–28; Note, Paul v. Davis: The Taming of 1983, 43 Brooklyn L. Rev. 147 (1976) [hereinafter Brooklyn Note]; Note, Paul v. Davis: Reputation Succumbs to Judicial Self-Restraint, 38 Pitt. L. Rev. 417 (1976); The Supreme Court, 1975 Term, 90 Harv. L. Rev. 56, 87–102; Hofstra L. Rev. 199 (1976); 60 Marq. L. Rev. 162 (1976); 22 N.Y.L. Sch. L. Rev. 340 (1976); 17 Santa Clara L. Rev. 959 (1977).

[253] Recalling our structure at note 218 surpa, we might say that Justice Rehnquist uses the law to implement the articulated goal of supporting the state through its police and the unarticulated desire further to support the states through limiting the jurisdiction of the federal courts whenever possible. Other unstated subjective motivations may be present, but can probably be detected only through a rigorous reading of all of Justice Rehnquist's opinions (a methodology advisable vis-a-vis any influential judge).

I have argued that to some degree, all appellate opinions use language and form to conceal both analytical imprecisions and subjective motive. See R. Weisberg, Narrative Aspects of Appellate Opinions (Jan. 3, 1980) (principal paper delivered before the Law and Humanities Section of the Conference of the Association of American Law Schools) (available on tape).

[254] 424 U.S. at 694–96.

[255] Brooklyn Note, supra note 252, at 147–48 (footnotes omitted).

[256] 424 U.S. at 694–95.

[257] Contrast the dissenting opinion's approach to the *Paul* facts. See id. at 718–20 (Brennan, J., dissenting).

[258] Id. at 695–96.

[259] Id. at 696.

[260] Id.

[261] "That however pitilessly [martial] law may operate in any instances, we nevertheless adhere to it and administer it." P. 111.

[262] Although Davis was not fired, his supervisor told him "he had best not find himself in a similar situation in the future." 424 U.S. at 696.

[263] Id. at 697–99.

[264] "[R]espondent's complaint would appear to state a classical claim for defamation actionable in the courts of virtually every State." Id. at 697.

[265] Pp. 110–11.

[266] "Inputing criminal behavior to an individual is generally considered defamatory *per se* . . . ." 424 U.S. at 697 (emphasis by the Court).

[267] On the irrelevance of the availability of a state court action to Davis' § 1983 claim, see, e.g., 5 Hofstra L. Rev. 199, 201–04 (1976).

[268] We shall shortly examine several other passages involving the use of audience deflection, which was first exemplified in *Billy Budd* by Claggart's masterful remark to the crew during the

"soup spilling" incident. See text accompanying notes 47–51 supra.

[269] 424 U.S. at 698 (emphasis added).

[270] For a similar use by Justice Rehnquist of the word "concededly," see Rummel v. Estelle, 445 U.S. 263 (1980), an opinion well worth analyzing in terms of considerate communication.

Justice Rehnquist's use of the word in *Paul* deserves more intensive study here. The word is used oddly; precisely which other word or words in the remainder of the sentence does "concededly" modify? And who, exactly, is making the implied concession? Would anyone except the Court itself necessarily go along with the statement that follows the adverb? Yet, the strong impression on the reader is that the point is too clear to abide further analysis and that even the losing litigant would agree with it.

Such a word, with its potential for effective and clever manipulation of the casual reader of the opinion, is likely to be a favorite of writers like Justice Rehnquist, and research reveals this to be true. Over the past 60 years or so (as far back as *Lexis* can search), Supreme Court Justices have used the word in 686 cases. Of these, 189 arose during Justice Rehnquist's tenure on the bench. Out of these 189 cases, Justice Rehnquist authored the majority opinion in 26 and either a concurring or dissenting opinion in 60 others. In the 26 cases for which he authored the majority view, there are 41 actual usages of the word "concededly"; 28 are by Justice Rehnquist and 13 by either concurring or dissenting opinions. In *Rummel*, and of course, *Paul*, he uses the word thrice and twice, respectively; in United States v. Santana, 427 U.S. 38 (1976), and Gooding v. United States, 416 U.S. 430 (1974), he uses it thrice, and in Moose Lodge No. 107 v. Irvis, 407 U.S. 1963 (1972), twice again. In the 60 cases about which he wrote dissents or concurrences, the word is used 82 times, 29 times by Justice Rehnquist and 53 times by other Justices. There are five separate instances in this category of multiple use of the word by Justice Rehnquist in the same opinion.

Thus, of the 244 uses of the word "concededly" by the Supreme Court since Justice Rehnquist has been a member, he has used the word 57 times and others have used it on a mere 187 occasions. Perhaps indicative of the Paul and Rummel variety of usage is the following phrase from his dissent in Duren v. Missouri, 439 U.S. 357, 371 n. (1979): "The reversal of concededly fair convictions returned by concededly impartial juries is, to say the least, an irrational means of vindicating the equal protection rights of those unconstitutionally excluded from jury service." Again, who would make such concessions? Can "fair" and "impartial" rationally be modified by the word "concededly" when the litigants' very claim is based on the view that certain categories of jurors had been unconstitutionally excluded from jury service, thus affecting the makeup of actually constituted juries? Justice Rehnquist's use of the adjective "irrational" here artfully conceals the rhetorically based irrationality of his own argument.

[271] If respondent's view is to prevail, a person arrested by law enforcement officers who announce that they believe such person to be responsible for a particular crime in order to calm the fears of an aroused populace, presumably obtains a claim against such officers under § 1983. And since it is surely far more clear from the language of the Fourteenth Amendment that "life" is protected against state deprivation than it is that reputation is protected against state injury, it would be difficult to see why the survivors of an innocent bystander mistakenly shot by a policeman or negligently killed by a sheriff driving a government vehicle would not have claims equally cognizable under § 1983.

It is hard to perceive any logical stopping place to such a line of reasoning. Respondent's construction would seem almost necessarily to result in every legally cognizable injury which may have been inflicted by a state official acting under "color of law" establishing a violation of the Fourteenth Amendment. We think it would come as a great surprise to those who drafted and shepherded the adoption of that Amendment to learn that it worked such a result, and study of our decisions convinces us they do not support the construction urged by respondent. 424 U.S. at 698–99.

[272] See Brooklyn Note, supra note 252, at 147. For a recent use of Shakespeare by Justice Rehnquist, which perhaps indicates his growing sensitivity to the literary aspects of the subjects he adjudicates, see Dames & Moore v. Regan, 101 S. Ct. 2972, 2984 n.7 (1981).

[273] For discussion of this passage, see text accompanying notes 246–49 supra.

[274] P. 113.

[275] 424 U.S. at 698; see note 271 supra.

[276] See notes 258–62 and accompanying text supra.

[277] 424 U.S. at 699 (emphasis added).

[278] B. Cardozo, Law and Literature, in Selected Writings of Benjamin Nathan Cardozo 342 (M. Hall ed. 1947).

[279] See, for example, Cardozo's remarks on Chief Justice Marshall. Id. at 355.

[280] 424 U.S. at 697.

[281] Id.

[282] Id. at 707 ("There is undoubtedly language in *Constantineau*, which is sufficiently ambiguous to justify the reliance upon it by the Court of Appeals . . . .").

[283] Id. at 698–99.

[284] See id. at 699; text accompanying note 277 supra.

[285] Concededly if the same allegations had been made about respondent by a private individual, he would have nothing more than a claim for defamation under state law . . . .

In *Greenwood v. Peacock*, 384 U.S. 808 (1966) . . . , the Court said that "[i]t is worth contemplating what the result would be if the strained interpretation of § 1443 (1) urged by the individual petitioners were to prevail." *Id.*, at 832. We, too, pause to consider the result should respondent's interpretation of § 1983 and of the Fourteenth Amendment be accepted. . . .

. . . And since it is surely far more clear from the language of the Fourteenth Amendment that "life" is protected against state deprivation than it is that reputation is protected against state injury, it would be difficult to see why the survivors of an innocent bystander mistakenly shot by a policeman or negligently killed by a sheriff driving a government vehicle, would not have claims equally cognizable under § 1983. 424 U.S. at 698.

[286] The second premise upon which the result reached by the Court of Appeals could be rested—that the infliction by state officials of a "stigma" to one's reputation is somehow different in kind from infliction by a state official of harm to other interests protected by state law—is equally untenable. Id. at 701. "There is undoubtedly language in *Constantineau*, which is sufficiently ambiguous to justify the reliance upon it by the Court of Appeals . . . ." Id. at 707.

[287] Justice Rehnquist quotes Justice Douglas' opinion in Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 175 (1951) (Douglas, J., concurring), a case involving the validity of the Attorney General's designating certain organizations as "Communist" on a list he gave to the Civil Service Commission: "Mr. Justice Douglas, who likewise concluded that petitioners had stated a claim, observed in his separate opinion: 'This is not an instance of name calling by public officials. This is a determination of status—a proceeding to ascertain whether the organization is or is not "subversive." ' " 424 U.S. at 703. This is one of a long series of references to precedents designed to show that, contrary to the Sixth Circuit's opinion, mere defamation by a state official as opposed, *e.g.*, to defamation that affects legal status) does not violate the fourteenth amendment. See id. at 701–10; note 288 infra.

[288] The last paragraph of the quotation could be taken to mean that if a government official defames a person, without more, the procedural requirements of the Due Process Clause of the Fourteenth Amendment are brought into play. If read that way, it would represent a significant broadening of the holdings of [precedent cases]. . . . We should not read this language as significantly broadening those holdings without in any way adverting to the fact if there is any other possible interpretation of Constantineau's language. We believe there is. 424 U.S. at 708.

[289] Id. at 701, 705, 709.

[290] See, e.g., Shapiro, supra note 249; Brooklyn Note, supra note 252; The Supreme Court, 1975 Term, supra note 252, all of which are critical of at least one of the readings of the precedents offered by Justice Rehnquist.

[291] B. Cardozo, Law and Literature, supra note 278, at 352, Cardozo continues: "The groupings of fact and argument and illustration so as to produce a cumulative and mass effect; these are the things, after all, that count above all others." Id.; see Weisberg, Literature and Cardozo, supra note 4, at 312–15.

[292] 424 U.S. at 694–97.

[293] See text accompanying notes 254–62 supra.

[294] 424 U.S. at 697–99.

[295] See id. at 695–96.

[296] Id. (Davis should have sued for defamation in Kentucky state court): see text accompanying notes 264–70 supra.

[297] 424 U.S. at 698 (Justice Rehnquist's "parade of horribles"), see text accompanying notes 271–77 supra.

[298] "It is hard to perceive any logical stopping place to [Davis'] line of reasoning." 424 U.S. at 698–99.

[299] Id. at 699; see text accompanying note 302 infra.

[300] Thus, for example, in presenting the "plain homicide" theory to the drumhead court, see text accompanying notes 193–99 supra, Vere says, "No, to the people the foretopman's deed, however it be worded in the announcement, will be plain homicide. . . ." P. 112. In the tradition of manipulative communicators. Vere state precisely the opposite of what he means. See note 248 supra.

[301] See text accompanying notes 269, 277 supra.

[302] 424 U.S. at 699. This phrase is rendered particularly effective by its juxtaposition with the preceding infinitive "to learn": "We think it would come as a great surprise to those who drafted and shepherded the adoption of . . . [the fourteenth] Amendment to learn that . . . ["every legally cognizable injury which may have been inflicted by a state official acting 'under color of law' "]" violates that Amendment. Id.

[303] Enjambement, a poetic term, means the running over of a syntactical sentence from one verse to another so that closely related words fall on different lines. Justice Rehnquist merges here the related idea of "no stopping place" to the court of appeals' reasoning, and runs the relation from part I to part II.

[304] B. Cardozo, Law and Literature, supra note 278, at 342, Cardozo wrote: "It eschews ornament. It is meager in illustration and analogy. If it argues, it does so with the downward rush and overwhelming conviction of the syllogism, seldom with tentative groping towards the inductive apprehension of a truth imperfectly discerned." Id.

[305] P. 111.

[306] The first is that the Due Process Clause of the Fourteenth Amendment and § 1983 make actionable many wrongs inflicted by government employees which had heretofore been thought to give rise only to state-law tort claims. The second premise is that the infliction by state officials of a "stigma" to one's reputation is somehow different in kind from the infliction by the same official of harm or injury to other interests protected by state law, so that an injury to reputation is actionable under § 1983 and the Fourteenth Amendment even if other such harms are not. 424 U.S. at 699.

[307] See Davis v. Paul, 505 F.2d 1180, 1182–84 (6th Cir. 1974), rev'd 424 U.S. 693 (1976).

[308] See section II, B, 3 supra; text accompanying notes 247–49 supra.

[309] 400 U.S. 433 (1971).

[310] Id. at 436.

[311] 408 U.S. 564 (1972).

[312] Id. at 573 (citing *Constantineau*, 400 U.S. at 437).

[313] See note 252 supra.

[314] Karl Llewellyn once asserted that "a graceful structure of doctrine can intoxicate. . . . But if it does not serve sense, it remains bad legal esthetics." Llewellyn. On the Good, the True, the Beautiful, in Law, 9 U. Chi. L. Rev. 224, 249 (1942).

[315] 424 U.S. at 709.

[316] Id. at 709–10 (quoting Roth, 408 U.S. at 573 (emphasis and ellipsis by Paul Court)).

[317] Id. at 710.

[318] 408 U.S. at 573.

[319] See H.L.A. Hart, The Concept of Law 200 (1961).

[320] P. 92. The context of this remark, from chapter 18 of the story, has Claggart unctuously and cleverly unfolding his lie about Billy's alleged disloyalty. See text accompanying notes 53–54 supra. During the same conversation, Vere prevents Claggart from mentioning the Nore mutiny, shouting "Never mind that!" P. 93. The scene stands as a fine example of the tension arising when two considerate communicators confront each other.

[321] C. Dickens, Great Expectations 442 (Signet ed. 1963) (London 1861). The reference here is to the

brilliant chapter 51 conversation between Pip, Jaggers, and Wemmick about Estella's parentage.

[322] J. Barth, The Floating Opera 92 (Bantam ed. 1967). The protagonist of the story, which was written in 1956, is an estates lawyer. The reference here is to a verbally gifted lawyer's argument before a probate judge.

[323] 424 U.S. at 711–12.

[324] See, e.g., The Supreme Court, 1975 Term, supra note 252, at 90–102. The author wrote: Justice Rehnquist's opinion in Paul v. Davis raises serious questions as to the continued protection of . . . "core" interests [like "liberty" and "property"]. In determining that due process offers no procedural safeguards against injury to a person's reputation, the Court departed from a growing line of its own decisions that appeared to find reputation to be a protect interest independent of state authorization. Id. at 92–93.

[325] See 424 U.S. at 699–701 (part II, section A of the opinion).

[326] The off-handed treatment of the privacy aspect of Davis' claim in part IV of the opinion, id. at 712–13, is beyond the scope of our treatment here.

[327] See p. 102; text accompanying notes 102–04 supra.

[328] P. 76.

[329] See text accompanying notes 240–46 supra.

[330] 424 U.S. at 712.

[331] Id. at 701.

[332] See, e.g., Shapiro, supra note 249; Brooklyn Note, supra note 252. The Supreme Court, 1975 Term, supra note 252. Perhaps the best of these in dealing with the line of precedent cases interpreted by Justice Rehnquist is the Brooklyn Note, supra, at 152–60.

[333] *Paul v. Davis* has not been, in the words of the hopeful dissenting opinion, a "short-lived aberration," 424 U.S. at 735 (Brennan, J., dissenting); it has been followed, see, e.g., Bishop v. Wood, 426 U.S. 341, 348–50 (1975).

[334] The next section explores Vere's motives for hanging Billy. We cannot now analyze the goals for which Justice Rehnquist deploys his narrative gifts. Other commentators have noted that he seems to bring a particular personal goal (or "judicial philosophy") to all cases: the reduction of the authority of the federal courts. See, e.g., Shapiro, supra note 249, at 293–99.

[335] P. 44.

[336] P. 95.

[337] Id. Critics who stretch Billy's "simplicity" into outright stupidity appear to disregard such elements as this—Vere's evident respect for Billy's responsible seamanship.

[338] P. 86; see text accompanying notes 234–35 supra.

[339] P. 86.

[340] See text accompanying notes 44–46 supra.

[341] P. 59.

[342] As is each of Melville's invocations of Nelson's name, this one is historically accurate. See 1 A. Mahan, The Life of Nelson: The Embodiment of the Sea Power of Great Britain 289–91 (1897).

[343] This theme, of course, is no stranger to modern literature. It goes far toward explaining the attraction of novelists to the law as a theme. Writers like Melville see in lawyers and legal anlaysis a reflection of their own proclivity toward complexity, sometimes at the expense of simpler people or ideas. See, e.g., Weisberg, Comparative Law, supra, note 6, for further remarks about this aspect of the law-literature relationship; see also note 224 supra.

[344] P. 76; see pp. 96, 112.

[345] P. 76.

[346] P. 60.

[347] P. 93.

[348] P. 103. On Vere's predilection for secrecy, see text accompanying notes 137–40 supra. Vere breaches naval procedures by holding Billy's trial in secret.

[349] See text accompanying notes 47–51 supra.

[350] P. 72.

[351] See pp. 71, 85.

[352] For a fascinating and highly relevant study of clinical resentment (of the type peculiarly experienced by Claggart and, in our view, Vere), see M. Scheler, Ressentiment (W. Holdheim trans, 1961). Max Scheler, a student of Nietzsche's at the end of the nineteenth century, agreed with his teacher that "ressentiment" was the dominant spiritual and sociological malaise of modern western cultures. Some of his best examples are taken from literary art, though he did not know Melville or (of course) Billy Budd. See text accompanying note 374 infra.

[353] P. 73.

[354] See note 240 supra.

[355] P. 44.

[356] P. 43.

[357] P. 58.

[358] P. 63.

[359] P. 58.

[360] See text accompanying note 37 supra.

[361] The mode of the literary artist himself, Vere's "forms, measured forms" during and after the trial make of him a clear "author-figure." Whatever criticism narratively flows to Vere thus implicitly seeks its true destination in Melville and all similarly situated, highly complex narrative artists. "Parallelism" works to effects, therefore, on the highest literary meaning of the tale: just as the descriptions of Claggart find their significance in Vere, so those of Vere achieve true meaning when applied to Melville himself.

[362] P. 57.

[363] The description of Nelson's ship here, together with the elaborate allusion to Nelson's act of writing and self-adornment at Trafalgar, p. 58, clearly set him in opposition, aesthetically, to Vere and, implicitly, to Melville. See note 361 supra. Not all art, Melville courageously admits, must be of the Vere-Melville (ironic, deceptive, formalistic, covert, anti-heroic) variety; the merging of art and life (or "action") in a figure like Nelson (or, say, Homer) points up the possibility of a renewal of a more overt, life-affirming aesthetic. Melville's self-indictment implicates most modern literary art as of the Vere variety: repressed, overly verbal, and essentially life-denying.

[364] See pp. 114–15.

[365] See pp. 116–17.

[366] The words "closeted" (thrice), "concealed," "seldom . . . revealed," "privacy," "covers," "absence," "blotted," "shadows," "refrained," and "tacit" help cast this spell. See pp. 114–17.

[367] See Billy's "screened," "refined," and "obscured" interview in the ship's "shrouds" with the stranger who tempts him with the mutiny plot, pp. 81–82; see text accompanying note 52 supra; and his "closeted" meeting in the "decks below" with Claggart which, of course, leads to the fatal blow, see pp. 97–98.

In addition, the narrator uses no fewer than 15 negative words or phrases in the brief text discussing Vere's final interview with Billy, and his explanation to the crew. See pp. 116–17.

To speculate a bit in this vein, might not Vere, that master communicator, have used his interview with Billy to advise the always-obedient lad to intone "God bless Captain Vere!," p. 123, at the moment of his death? What better way to complete the brilliantly scripted scenario?

[368] P. 129.

[369] Id.6

[370] See note 80 supra.

[371] P. 80.

[372] P. 76.

[373] H. Melville, Mobby Dick 542 (H. Hayford & H. Parker eds. 1967) (New York 1851).

[374] This insight differs from that of the so-called "realists," e.g., J. Frank, Law and the Modern Mind (1930); Llewellyn, A Realistic Jurisprudence—The Next Step, 30 Colum. L. Rev. 431 (1930), not only in its concomitant stress on the importance of language in law, but also in its recognition that the entirety of a judge's innate value system comes to the fore (and not what he happened to eat for breakfast) when he makes a decision. See note 218 supra. Melville's story leads us less to a nihilistic sense of total arbitrariness in the law than to an ordered inquiry into the predominant values of our own culture, because these, more than pure logic or any ephemeral emotion, are likely to motivate adjudicatory acts.

[375] Cardozo makes a similar point. See B. Cardozo, The Nature of the Judicial Process 35–36 (1921).

[376] Cardozo proceeds to observe that more cases than we usually think can be decided either way. See id. at 40.

[377] Sometimes a judge may imply that acting his conscience is mandated not so much by the law as by a professional sense of what it means to be a judge. A more benign view of Vere might place him in this category. See note 74 supra; see also D. Richards, supra note 11 at 14–15; text accompanying notes 384–86 supra. But is it really the essential function of a judge to strive to divorce his actions from his conscience?

[378] D. Richards, supra note 11, at 13.

[379] Id. at 12.

[380] The literary and legal bibliography on this point would form the basis of an entirely separate, book length-work. It must suffice here to call attention again to James B. White's *The Legal Imagination*, supra note 4, particularly the section on "The Lawyer as Writer," id. at 3–80, and the sections contrasting the formalism of "rules" with the artistic flexibility of legal language artistry, id. at 232–37, 623–85. As one who reviewed White's book eight years ago, see Weisberg, Book Review, 74 Colum. L. Rev. 327 (1974), I can attest to a personal reaction of still greater appreciation each time I reopen its pages. For other favorable reactions to White in the context of recent books furthering the discourse on language and its relationship to legal formalism, see M. Ball, supra note 4, at 128–38; J. Cueto-Rua, Judicial Methods of Interpretation of the Law 31 n.10, 276–77 (1981).

[381] For the sophisticated positivist position, see H.L.A. Hart, The Concept of Law 181–207 (1961). Prominent critics include R. Dworkin, Taking Rights Seriously 22–45, 81–130 (1977); L. Fuller, The Morality of Law 106–18, 145–57 (1964); D. Richards, The Moral Criticism of Law 31–36 (1977).

[382] See D. Richards, supra note 11, at 13.

[383] See id. at 13–14.

[384] Id. at 14.

[385] Id. at 14–15.

[386] See id. at 2–5, 14–18; see also D. Richards, The Moral Criticism of Law 31–36 (1977).

[387] Although Vere's "honesty," p. 63, is almost excessive when it comes to certain subjects, he is resolutely close-mouthed as to others. One of these subjects is, precisely, the threat of mutiny. When the plotting Claggart, whose insinuating verbosity first annoys Vere ("Be direct, man!" he orders the master-at-arms), begins to speak of mutiny, the following fascinating situation occurs:

"Never mind that!" here peremptorily broke in the superior, his face altering with anger, instinctively divining the ship that the other was about to name, one in which the Nore Mutiny has assumed a singularly tragical character that for a time jeopardized the life of its commander. Under the circumstances he was indignant at the purposed allusion. When the commissioned officers themselves were on all occasions very heedful how they referred to the recent events in the fleet, for a petty officer unnecessarily to allude to them in the presence of his captain, this struck him as a most immodest presumption. Besides, to his quick sense of self-respect it even looked under the circumstances something like an attempt to alarm him. Nor at first was he without some surprise that one who so far as he had hitherto come under his notice had shown considerable tact in his function should in this particular evince such lack of it.

P. 93. Mutiny is a sensitive subject to Vere; when it suits his purpose, "considerateness" rather than "honesty" becomes the operative mode of communication. So it goes during the trial scene itself.

[388] Melville's tale, thus, suggests that the neo-Kantian approach to problems of justice, articulated most comprehensively in J. Rawls, A Theory of Justice 251–57 (1971), and relied on by, among others, Professors Richards, see D. Richards, The Moral Criticism of Law 44–49 (1977); D. Richards, supra note 11, at 2–5, and Dworkin, see R. Dworkin, Taking Rights Seriously (1977), carves out only a small section of the complex fullness of adjudicatory behavior. "There are more things in heaven and earth, Horatio, Than are dreamt of in your philosophy." W. Shakespeare, Hamlet, Act I, Scene v (G. Kittredge ed. 1939) (1st Quarto London 1603). Let us move to appreciate those "things," for, like it or not, they are ours.

[389] We need to recall that the text of the story is still somewhat in doubt, but there is considerable support for Hayford and Sealts' conclusion that Melville did not intend the "crisis in Christendom" preface to be in the final version of the tale. For our purposes, it suffices that Melville's words (superannuated or not) and the text as it was ultimately organized are in essential harmony that Christian and other institutional values of the nineteenth century were in a state of transition and even crisis. See Hayford & Sealts, supra note 7, at 18–20, for the textual analysis that led them to delete this and other passages; see also note 181 supra.

[390] See Hayford & Sealts, supra note 7, at 2–3.

[391] For sections of the present analysis touching on the implications of the story for institutions besides law, see notes 9, 48, 205, 224, 343, 352, 361, 380 and accompanying text supra.

[392] See L. Strauss, supra note 205, at 25–37.

[393] Id. at 24. "Persecution, then, gives rise to a peculiar technique of writing, and therewith to a peculiar type of literature, in which the truth about all crucial things is presented exclusively between the lines. That literature is addressed, not to all readers, but to trustworthy and intelligent readers only." Id. at 25. Strauss feels that such writers as Plato, Aristotle, Maimonides, Descartes, Hobbes, Locke, Rousseau, and Kant, among others that he deals with, "witnessed or suffered . . . a kind of persecution which was more tangible than social ostracism." Id. at 33. They wrote what Strauss goes on to call "exoteric" books, namely, books that contain "two teachings: a popular teaching of an edifying character, which is in the foreground; and a philosophic teaching concerning the most important subject, which is indicated only between the lines." Id. at 36.

[394] I do not use the word "gospels" casually. (Neither would Melville, who deleted it from his final version in at least one key place, see Hayford & Sealts, supra note 7, at 5.) The *News from the Mediterranean* is nothing other than the Gospels, and its way of handling reality is meant to reflect the mode of the Gospel writers. That a character with the initials J.C. becomes the hero of both is not coincidental.

[395] The present writer is concluding a book-length manuscript called "Justice's End: Legal Themes in the Modern Novel," in which *Billy Budd, Sailor*, of course, plays a major role. Other texts analyzed in that forum are J. Barth, The Floating Opera (1956); A. Camus, The Fall (J. O'Brien trans. 1957); C. Dickens, Great Expectations (London 1861); A. Camus, The Fall (J. O'Brien trans. 1957); C. Dickens, Great Expectations (London 1861); F. Dostoevski, The Brothers Karamazov (C. Garnett trans. 1937); F. Dostoevski, Crime and Punishment (J. Coulson trans. 1967) (St. Petersburg 1866); W. Faulkner, Intruder in the Dust (1948); B. Malamud, The Fixer (1966); M. Twain, Pudd'nhead Wilson (1894).

[396] Llewellyn, On the Good, the True, the Beautiful, in Law, 9 U. Chi. L. Rev. 224, 249 (1942).

Mr. BIDEN. This author goes through Melville's article on Billy Budd.

Billy Budd was basically framed. Billy Budd was caught up and, in effect, hung on legal technicalities. So what this author does, the author of this article, what Richard Weisberg does, is to go through and show how just as Melville shows how language can be abused so as to ruin individuals and bring about injustice. He, long before Justice Rehnquist now—and no one ever thought he would be named as Chief Justice—takes Rehnquist's decisions to show how Rehnquist does the same thing.

I spoke earlier about this elegant use of language to reach what I believe to be ridiculous conclusions, how he uses language to arrive at a position that otherwise would not be justifiable.

He said, and I think it is a perfect description of how Justice Rehnquist works:

> Justice Rehnquist's opinion is a brilliant contemporary example of narrative prose in the service of the adjudicator's unspoken desires.
>
> The adjudicator's unspoken desires.

I believe if you have gone through Justice Rehnquist's cases, it becomes abundantly clear that here is a man who clearly knows the decision he wishes to reach based upon his desires and then searches the law, and his elegant use of language justify those decisions, as opposed to what I believe Justice Scalia will be, a man with conservative views, comes to the law, comes to the case, not seeking to impose his views but to adjudicate the law with an open mind.

Let us talk discrimination for a minute.

I mentioned before that the way in which the 14th amendment is interpreted and applied varies based upon whether or not it is being applied to race discrimination or whether it is being applied to sex discrimination.

In order to find discrimination under the 14th amendment, it is much easier to find it in the case of race discrimination and the way the Court interprets it, than it is to find it in cases of sex descrimination.

And there is a distinction, I think an unwarranted distinction but a distinction made. And where it relates to discrimination based on race, the Court has ruled that the equal protection clause of the 14th amendment requires that if the State is going to pass a law discriminating, that racially discriminatory action is subject to a strict and rigorous scrutiny by the Court to determine whether or not the discriminatory practices serve a compelling governmental interest. If it does not pass a strict scrutiny demonstrating that there is some compelling Government interest in descriminating, then it is discriminatory and unconstitutional.

□ 1840

Now, in the cases relating to women, it is a different test, particularly articulated by Justice Rehnquist in Frontiero and Craig versus Boran cases where he says that the issue before the Court in those cases in 1970 was whether sexually discriminatory actions are also subject to this rigorous and strict scrutiny, this high standard. But in the two cases, the Court held that sexual discriminatory practices to be lawful must have only an important governmental interest and be substantially related to the obtainment of that interest.

In other words, it does not have to be a compelling reason to have a law, just it be important. One of those cases involved allowing men to drink at one age and women to drink at another age, and another one of those cases related to whether or not a serviceman could claim a wife automatically as a dependent for purposes of benefits but a servicewoman could not claim a husband automatically.

Justice Rehnquist, it seems to me, through reading his opinions, based on his interpretation of the constitutional protections accorded blacks under the 14th amendment, says that any law or regulation that had a purpose of discrimining on the basis of race would be subject to the strict scrutiny, the most rigorous test for judging constitutionality of such measures. However, it is also clear, if you read him, that the 14th amendment was only intended to correct the injustices of slavery and consequently the protection, equal protection clause of the 14th amendment by his interpretation would not be applicable to other kinds of discrimination, such as those based on race, alienage, or handicap. If you look at his rationale, Justice Brennan in the Frontiero case, writing for an 8–1 majority, him being the only one in the minority, held that classification based upon sex like classification based on race, alienage and national origin, are inherently suspect and therefore must be subject to close scrutiny.

Rehnquist, however, in his sole dissent sided with the district court and said all you have to find is a rational basis for the discrimination, for the regulation in this case which automatically allowed servicemen to claim wives as dependents but allowed servicewomen to claim husbands as dependents only if she provided half the support.

There was no test for support for whether or not a man could claim the woman but he allowed there to be a test whether or not the colonel, the woman who is the colonel in the Air Force could claim her husband—the only one who reasoned that. He goes out and he picks the lowest standard. He said if there is any rational basis for the Government arriving at this position, it is constitutional.

Well, I see my friend from Massachusetts is here, and I will conclude for the moment by saying that Justice Rehnquist in fact uses, as was stated in the law review article, narrative prose in the service of his unspoken desires time and time and time again. That is not an open mind. That is not what Justices should do. I will come back to try to further make that case. In the meantime I yield to my colleague from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we have had the opportunity to debate this nomination for several days. I have been impressed by the nature of the debate and the discusion. I regret very much that it has been the decision of the Senate to terminate the debate.

I understand full well that within a very short period of time the Senate will cast a final vote on the nomination of Justice Rehnquist to be Chief Justice. I intend to vote in opposition.

In the final moments before the vote I would like to summarize my own reasons for that and also to respond to at least some of the arguments in support of the nominee that have been advanced in the recent debate.

The Chief Justice of the United States is the highest symbol of America's commitment to the Constitution and the Bill of Rights. He is the ulti-

mate protector of our freedoms and our system of equal justice under law.

The record on Mr. Rehnquist compiled in the hearings before the Judiciary Committee contains overwhelming and shocking evidence of his intense lifelong hostility as lawyer, public official, and member of the Supreme Court to claims for racial justice. His record is equally unsatisfactory on other great issues that are fundamental to our system of justice.

Mr. Rehnquist is wrong on race, wrong on equal rights for women, wrong on the Bill or Rights, wrong on separation of church and state, wrong on the most basic individual freedoms protected by the Constitution. And he is not just wrong on this issues; he is an extremist. His views place him far outside the mainstream of debate about the Constitution. He is too extreme to be Chief Justice.

From his memo supporting Plessy versus Ferguson at the beginning of his career, to his leadership in disenfranchising minority voters under the Republican ballot security program, to his proposal of a constitutional amendment to legalize segregated schools, to his appalling record on civil rights cases on the Court, Mr. Rehnquist has consistently opposed civil rights.

This morning, I received a letter from Prof. Walter Dellinger of Duke University, a highly respected constitutional scholar. Commenting on Rehnquist's proposal in 1970 of a constitutional amendment to legalize segregated schools, Professor Dellinger states that the amendment endorsed "a radical and sweeping rollback of desegregation" and "an acceptance of racial segregation going far beyond that which should be acceptable for one holding a position that symbolizes justice in America."

Defenders of Justice Rehnquist have argued that his support for the Brown versus Board of Education decision is illustrated by the fact that Justice Rehnquist has relied on the Brown decision in 34 cases since he has been on the Surpreme Court. A review of those cases indicates that Justice Rehnquist has never relied on Brown to uphold the claims of a civil rights plaintiff.

Of the 34 cases, 4 actually contain no reference to Brown. Twenty-two were opinions written by other members of the Court and tell us little or nothing of Mr. Rehnquist's views about the Brown decision. Indeed, some of these opinions also cite decisions which Justice Rehnquist believes were wrongly decided, including cases upholding affirmative action and the right to abortion, and denying the constitutionality of capital punishment.

These citations obviously do not mean that Justice Rehnquist now favors affirmative action, abortion rights, and the abolition of capital punishment—and it is equally clear that the references to Brown do not signal any support for civil rights.

Also, among the propositions that Brown is cited for in these decisions are the facts that public education is an important local government function, that Government funding for public education began about a century ago, and that compulsory public education became universal in 1918.

The eight remaining decisions citing Brown were written by Justice Rehnquist, but only three cite the central holding of Brown—and they do so only to distinguish Brown and rule against the plaintiffs.

□ 1850

In sum, the number of instances in which Justice Rehnquist relied on Brown to sustain a claim of racial discrimination is zero. Justice Rehnquist's appalling record on race and his relentless hostility to civil rights remain unrefuted.

In addition, it is obvious to all of us that Mr. Rehnquist was not candid with the committee on the numerous controversial incidents that have marred his confirmation proceeding. For example, he denied that he harassed and intimidated voters in Arizona, but the evidence is overwhelming that he did.

Finally, Justice Rehnquist's conduct on the Court indicates a serious ethical lapse. He was so intent on sustaining his totalitarian views about the right of the Government to spy on its own citizens that he violated the basic rules of judicial ethics that no person should be a judge in his own cause. He sat as a member of the Supreme Court and cast the deciding vote in the very case that upheld the shocking policy he had helped to make—and then wrote a deceptive memorandum that covered up his breach of ethics.

These issues of truthfulness and ethics aside, Justice Rehnquist might have made a brilliant 19th century Chief Justice. But brilliance of judicial intellect in the service of racism and injustice is no virtue in our times—and no qualification for the high office of Chief Justice of the United States.

I regret that the Senate has chosen to end debate on this nomination. But I hope that a majority of the Senate will now see fit to vote against Mr. Rehnquist's confirmation as Chief Justice of the United States—and that we will have the courage to display a sufficient respect for the Constitution to ask President Reagan, with all respect, to try again.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1900

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAMM). Without objection, it is so ordered.

□ 1910

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate that both sides have been trying to see if we can agree that we will have two votes at 9 o'clock, one on Justice Rehnquist to become Chief Justice and one on Judge Scalia to become an Associate Justice of the Supreme Court.

A question has been raised—and we are checking it now—whether or not it would be appropriate to vote on Judge Scalia tonight because there would not be an Associate Justice vacancy until Justice Rehnquist has been sworn in as Chief Justice. So we are checking that with some of our legal scholars, if we can find them. We should have that information in the next 30 minutes.

RECESS UNTIL 7:45 P.M.

Mr. DOLE. Mr. President, since there does not seem to be too many people clamoring to speak, ask unanimous consent that we stand in recess until 7:45 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered

Thereupon, at 7:12 p.m., the Senate recessed until 7:45 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GRAMM).

□ 1945

The PRESIDING OFFICER. The Senate will come to order.

The Chair in his capacity as a Senator from Texas suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1950

Mr. DOLE. Mr. President, I as unanimous consent for the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the pending business is the Rehnquist nomination?

The PRESIDING OFFICER. It is.

Mr. LAXALT. Mr. President, I rise in strong support of the nomination of William Rehnquist to be Chief Justice of the United States. William Rehnquist is superbly qualified for this most important position by virtue of his character, his temperament, his intelligence and competence, and his sound legal judgment.

As we are all acutely aware, the decision to confirm a Chief Justice is one to be taken with the greatest care and

with reference to as much information and knowledge about the nominee as possible. In the case of Justice Rehnquist, this task has been relatively simple. The President, the Senate, and the American people have at hand 15 years of judicial opinions by Justice Rehnquist and a large amount of additional evidence relating to his years of public service and private law practice before he joined the Court.

Whether or not one agrees with his legal judgments throughout the years, it is difficult to disagree with the unanimous opinion of the American Bar Association committee that his legal analysis and writing ability are of the "highest quality" and that he meets, in general, "the highest standards of professional competence, judicial temperament, and integrity."

In short, I believe that President Reagan made a truly outstanding selection.

Still, as one would expect on a question of this magnitude, there is opposition to the nomination. The opposition, as I see it, rests on allegations that attack both Justice Rehnquist's integrity and his fitness to render decisions in civil rights cases.

Justice Rehnquist's integrity is called into question on two counts. The first relates to his work for the Republican Party during the 1960's in Phoenix. The second challenges his decision not to recuse himself in 1972 from participating in the case of Laird versus Tatum. Let me comment briefly on each of these.

THE VOTER HARASSMENT CHARGES

The committee, in 1971 and again this year, heard from individuals who were active in party politics and in election day activities in Phoenix during the elections of 1960, 1962, and 1964. Five witnesses testified under oath either that they personally saw Bill Rehnquist bully and intimidate voters, or that they were morally certain that he did so. While the testimony of the five evidently did not refer to the same single incident, the witnesses did agree that the events in question took place at polling places in predominantly minority sections of Phoenix on the election days of 1960, 1962, and 1964.

For his part, Justice Rehnquist, in 1971 and again this year, denied ever harassing or intimidating voters, either as an official challenge or in any other capacity, at any time. His denial is firm and without qualification. Justice Rehnquist did testify that during the elections of 1960, 1962, and 1964 he participated in Republican Party politics as a legal adviser to the party and to the official Republican challengers in the Phoenix area. In this capacity, he did, in 1960 and 1962, have occasion to visit several Phoenix polling places to resolve disputes and other problems involving the official Republican challengers assigned to those locations.

The question, then, is who do you believe? Or, rather, whose memories of 22, 24, or 26 years ago do you believe: the five witnesses—four of whom were active Democrats—who accuse the Justice of intimidation? Or the six witnesses—four of whom were active Republicans and one an active Democrat—who defend him?

In my opinion, all of the witnesses—partisan and not partisan—told the committee the truth to the best of their recollection. But I believe that Senator LEAHY is correct when he says that the evidence here is not "clear and convincing." And Senator MATHIAS, one of the sages of the Senate, also wisely remarked that the testimony "probably tells us more about the uncertainties of human memory than about the nominee's veracity and fitness for office."

For my part, after observing Justice Rehnquist over the years and during the 2 days of cross-examination by the Judiciary Committee, I must admit that I have a difficult time accepting the image of "Rambo Rehnquist" that the accusing witnesses portray. The conduct described by these witnesses is totally inconsistent with the scholarly, soft-spoken, gentle character that we all witnessed during the hearing and that is so well known to Justice Rehnquist's colleagues on the Court. I simply cannot believe that he bullied any voters at any time anywhere and, in particular, not in Phoenix at the times in question.

LAIRD VERSUS TATUM

The issue in the Laird versus Tatum case is the extent of the Justice's personal knowledge of the facts in dispute in that case. The statute at that time had as its principal purpose, I believe, the requirement that judges who have personal knowledge of the disputed facts or who are otherwise too involved in the actions giving rise to the case to be able to render a fair judgment must disqualify themselves from sitting in the case.

Recusation problems, in close cases, have always been among the most difficult to resolve. Of necessity the judge in question must decide whether his participation will appear so inappropriate that the legitimacy of the decision will be called into question. When the judge in question is a Supreme Court Justice, the problem is intensified because the Court, as the tribunal of last resort, is obligated to render judgments in the cases of national importance that it accepts for decision.

Laird versus Tatum was such a case. And Justice Rehnquist's particular situation called for one of those close, difficult personal and legal decisions that inevitably do not satisfy everyone with an interest in the case.

I believe that Justice Rehnquist's decision to participate in Laird versus Tatum was entirely appropriate. His sensitivity to the issues confronting him was reflected in his long, carefully reasoned memorandum. In it, he demonstrated that the terms of the applicable statute did not expressly require him to sit out the case. The question that ultimately confronted him, then, was whether or not his participation violated the purpose of the statute—namely, to disqualify himself if he had been too involved in the actions giving rise to the legal action.

The Justice's critics argue on this point that, as an Assistant Attorney General in charge of the Office in the Department of Justice working on domestic surveillance policy at that time, William Rehnquist must have had personal, actual knowledge sufficient to require his disqualification. But in light of all of the facts that were known at the time and that have been discovered since 1972, that conclusion simply cannot be maintained.

As head of the Office of Legal Counsel, Justice Rehnquist in one sense was, of course, responsible for what went on in the that Office and for what was in the documents he signed and the testimony he gave. This is the very nature of "official responsibility." All of us here know, however, that those "officially responsible" seldom do the actual research and writing of the documents and testimony attributed to them. I would venture to say that some of us who are taking part in this debate on the nomination may not have even written their own speeches.

Very often, public officials do not do the actual negotiating and even the policy and decisionmaking for which their offices are responsible. In short, it is difficult for observers of public officials to determine just what the officials personally know about a given subject, and it is even more difficult sometimes for the official himself to sort it out.

In my opinion, Justice Rehnquist, in his lengthy memorandum, dealt with the recusation question honestly and appropriately. His statement reflects the same careful and conscientious deliberation that we have come to expect from this man. In other cases during his tenure, he has recused himself from cases when the situation called for it. I cannot believe that he was so bent on deciding the Laird case that he intentionally violated the legal and ethical standards in question. That type of conduct just does not fit the character of this man as I know him.

The Phoenix election activities and the Laird case, and also to a lesser extent the Rehnquist memo to Justice Jackson in the Brown case, serve as the grounds for the principal attacks on Justice Rehnquist's integrity. From

the opponents' point of view, they are safe arguments: by their very nature they cannot be absolutely refuted. There are no daylong videotapes of Bill Rehnquist capturing his every action on the election days of 1960, 1962, and 1964. And there is no absolute way of determining the extent of his actual knowledge of the disputed facts in the Laird versus Tatum case in the early 1970's. We must simply consider what we know and then decide for ourselves—by no means an easy determination—what is probably the truth.

In both cases, I have no doubts that the Justice is telling the truth and that his recollection of the events in question is accurate.

THE JACKSON MEMO

The nominee's opponents call into question his ability to render fair and just decisions in "civil rights" cases for two reasons. The first is the views expressed in his memo to Justice Jackson on the school desegregation case in 1952. The second is his allegedly extreme and doctrinaire position on civil rights issues before and after he became a Supreme Court Justice. I believe that I can respond to each of these charges more briefly than I did to the first two issues.

The "Jackson memo" is also used by the critics to attack Justice Rehnquist's integrity. His opponents argue that he has not responded candidly to questions raised in 1971 and again this year about the purpose of the memo. The critics say that, first, the memo was clearly intended to persuade Justice Jackson to adopt the author's prosegregationist point of view. Second, the opponents say that Justice Rehnquist says that the memo represented Justice Jackson's final, considered position on the subject.

I do not believe that either of these statements is correct.

Let us be clear about the intended purpose of the memo as explained by Justice Rehnquist and his fellow clerk, Donald Cronson. From my reading of the testimony, the Rehnquist memo and the Cronson memo were intended by their authors to serve as alternative "talking points," representing the position yet to be selected by Justice Jackson on the Brown case and to be presented by Jackson to the members of the Supreme Court when the Court discussed the case.

The memos were not intended to represent the actual views of Justice Jackson at the time that they were written: that does not make sense in light of the contrary positions taken in the two memos. Nor, I believe, were the memos primarily intended to persuade Justice Jackson to adopt one or the other position.

Rather, the memos were intended to present coherent, logically sound and defensible rationales for either of the two principal legal positions being considered at that time by Justice Jackson in the Brown case. The Justice could use either one, depending on the position he finally chose.

I believe that a close reading of the two memos bears this out. Neither memo contains any explicit statements indicating that the clerks who authored them were addressing Justice Jackson. The general tone of the memos also does not lead the reader to infer that the clerks are writing to their boss. Such an inference is possible, but more plausible is the inference that the memo is to be used by the Justice as a statement to others—a statement that Justice Jackson would doubtless wish to edit and polish, but a statement that did not appear to be exclusively for the eyes of Justice Jackson himself.

Then, too, both memos have similar titles: "A Random Thought on Segregation Cases" and "A Few Express Prejudices on the Segregation Cases." It is not likely that clerks would entitle routine memos in this way.

We can go through each memo with a fine-tooth comb and find phrases and sentences that are consistent with other interpretations of the real purpose of the memos, but I believe that we must also admit that on balance the memos themselves strongly support Justice Rehnquist's account of them.

For those who find the content of the Rehnquist memo appalling, I should note that both memos—the Cronson memo is also quite reserved in its recommendation—reflected the positions taken by many responsible, unprejudiced individuals on one of the most difficult legal questions of that time. We may regret our history, but we cannot alter it.

I believe the Justice when he says that he does not now and did not in 1952 hold segregationist, racist views. I certainly believe that the 1952 memo and Justice Rehnquist's subsequent explanation cast doubt upon neither his fairmindedness nor his integrity.

THE OPINIONS IN "CIVIL RIGHTS CASES"

Finally, I want to address the criticism that is based on Justice Rehnquist's opinions in civil rights decisions over the years. The claim is that William Rehnquist is at the wrong "extreme" in these cases, and it is implied that the right position—the "mainstream" position—is almost always to favor the individual plaintiffs in civil rights cases.

We have already heard references during this debate to the excellent study by the Washington Legal Foundation showing that the Justice is certainly in the "mainstream" of Court opinion in these cases. What I would like to remark upon briefly is the assumption that the side of the plaintiff alleging a violation of his civil rights is presumptively the right side in "civil rights cases."

The term "civil rights cases"conjures up the image of intentional, malicious discrimination against an individual solely because of that individual's race, sex, creed, or national origin. I unconditionally agree—I am sure that all of us unconditionally agree—that such discrimination is bad and illegal and that it should always be opposed by good men and women everywhere.

But "civil rights cases" seldom center on so simple an issue. Civil rights litigation and civil rights jurisprudence over the past few decades have focused instead upon efforts to use civil right statutes and constitutional doctrines in new ways, ways that arguably were never intended by the authors of the statutes and the Framers of the Constitution. Many of these cases trivialize the sound meaning of "civil rights," "equal protection," and "due process." Many other cases present unprecedented legal questions upon which reasonable men of good faith may, and often must, differ. Often the question presented for decision in these cases is implicitly that of whether the courts should correct an alleged wrong by twisting and contorting the legal interpretations of existing statutes or whether the task of justice must be left to Congress and the political process. In short, theplaintiff is not always right: justice is not always on his side.

It is on these types of civil rights questions that Justice Rehnquist has often differed from his colleagues in the past. I should note, however, that his dissents of the past are increasingly becoming the basis of the sound majority decisions of the present, and I see no cause for alarm to anyone in this development.

I have no difficulty whatever in saying that it is just as wrong to call William Rehnquist "weak" on civil rights as it is to call him a bigot. Both suggestions are dead wrong and do injustice to a good man who will become a great Chief Justice.

I have taken some time here to respond to the major charges against the nominee. In conclusion, let me say that our Nation is fortunate indeed to have a nominee of William Rehnquist's caliber. I urge my colleagues to approve the nomination and to allow Justice Rehnquist to take his proper place as "first among equals" on the Court.

Mr. DOLE. Mr. President, we are prepared to complete debate on the Rehnquist nomination. Once that is done, if we can, we will either vote or take up the Scalia nomination and have two votes back to back.

Some question has been raised about whether the Scalia nomination could be voted upon prior to a vacancy occurring of an Associate Justice of the Supreme Court. I am advised that it is not a problem. We now have the

rather lengthy memorandum, which I will not include in the RECORD, but I will deliver it to the distinguished Senator from Delaware for his perusal. We have other material.

Mr. BIDEN. Mr. President, I say to the majority leader, in terms of time, that, to the best of my knowledge, there are only three more Senators who wish to say anything in addition on this nomination. The distinguished Senator from Ohio will shortly be prepared to do so. I have a few more things to say, which will not take long. The Senator from Arizona [Mr. DECONCINI] wishes to speak in support of Justice Rehnquist, and I believe he indicated that he would be prepared to do that somewhere from about 8:20 to 8:30.

I will ask the Senator from Ohio whether he wishes to speak now, and if so, I will withhold my further comments until the Senator from Ohio has finished.

I yield the floor.

Mr. METZENBAUM. Mr. President, we are now coming to that point where the die will be cast and the votes will be counted; and, in all probability, Justice Rehnquist will become Chief Justice of the United States.

To me, it is a very solemn occasion. As a matter of fact, it is a very sad occasion, because I feel very strongly that the responsibility that rests upon our shoulders has not been taken as seriously as it should.

Chief Justice of the United States: A position as powerful as almost any other position in the United States; in some respects coequal with the President of the United States; in some respects even more powerful than the President of the United States.

We are about to confirm a man who some would like to argue should be confirmed because the President has chosen him, and the President won by an overwhelming margin, and therefore, he ought to be confirmed; that it is his political philosophy that is at issue—notwithstanding the fact that some of us have stood on this floor and in the committee and said that is not the issue. If it were, Justice Sandra Day O'Connor would not have been confirmed by a vote of 99 to 0. If it were, Judge Scalia would not be confirmed, as he undoubtedly will be this evening, by a vote equal to that of Justice O'Connor or even by a vote very close to it.

The issue is not that. The issue is, can this man be the leader of this Court? Can he provide that sense of harmonizing and bringing the Court together so that it continues to command the respect it does at this time; or will his confirmation and his sitting as Chief Justice merely change the Court into a political machine where one man will attempt to use his powers in order to further his own political philosophy? Is he the kind of man who can take those who are on the Court who disagree with him and try to bring them together, as Chief Justice Burger did in connection with the Brown versus Board of Education decision?

The Chief Justice of the United State ought to be a special person. He ought to be a person whose integrity is beyond question, to whom every person in the United States can look and feel confident that justice will be done by this Chief Justice. But the fact is that there is not a member of a minority in this country, whether that minority be black or Hispanic, who can look to this Chief Justice—if and when he is confirmed—and feel that equal justice under the law will be done.

Look at the record in case after case after case after case. He always winds up in opposition to the rights of the minority.

Look at his actions in connection with the whole issue of Brown versus Board of Education and the Plessy versus Ferguson memo, and, with no exception, Justice Rehnquist is always on the side that is against the minority.

Can the women of this country feel any sense of comfort, when he becomes Chief Justice of the United States? I think not. They have indicated by their public statements heretofore made and by their letters that they are concerned; and they have a right to be concerned, when you read some of the language that he ennunciated when he was discussing the ERA.

There is no problem about whether he is for the ERA or against the ERA. That is not the issue. But when you look at the language he used in connection with that issue, you recognize that there is something about this Justice who thinks that somehow, some way, women in this country are second-class citizens.

The Chief Justice of the United States must have unquestioned integrity, but no person can read the record of this man in his dealings with the U.S. Senate in 1971 and 1976 and come away feeling that he has unquestioned integrity, a Justice who replies to an inquiry from the Senator from Maryland, "I can't recollect, I don't recollect, I can't remember." We were not talking about some specific night, some specific say, some specific hours. We were talking about his own involvement in the preparation of a memo and preparation of a whole position paper, having to do with the question of military surveillance of civilians. He cannot remember whether he was or was not involved and what he said and what he did.

Come now. Come now, Mr. Justice. Do you really want the American people to accept that?

This is the same man about whom so many testified that he was involved in challenging and harassing and intimidating voters, and he makes a total denial. Five people come forward under oath and say they saw him, and he says, "I didn't do it. I wasn't there. It wasn't I."

Come, now, Mr. Justice. Are the American people really expected to believe that?

The evidence is irrefutable. He was there, he did it, and he had a right possibly to do it and in some instances it might have been legal. Certainly it was legal to challenge. It was not legal to intimidate and harass. But he says he does not remember anything at all about what occurred at that time.

The Jackson memo—it has been discussed time and time again, but again we find an instance in which you say what kind of man is this? What kind of a man is it who says in one instance that he agrees with a particular position that the Supreme Court had reached at an earlier time and then some years later he says that was not his position; his position was directly opposite that.

That is what he said in 1971, and then in 1986 he comes before the committee for confirmation and one of the Senators asks him what was his position in 1952, and he says he did not have a position.

Come now, Mr. Justice. Are the American people really expected to believe that?

Then the whole issue with respect to the restrictive covenant, the restrictive covenant. Bad enough to be involved, bad enough not to have raised the issue, bad enough not to have not challenged the situation. Bad enough not to have done something about it. But far worse not to have leveled, not to have stated the facts to the Judiciary Committee when we inquired of him about it. He told us he only learned about the restrictive covenants 3 or 4 days before the hearing when he saw the FBI report. And then lo and behold, the Washington Legal Times writes a story about having talked with his lawyers and having talked with his lawyers they report that the lawyers had advised him in writing about the restrictive covenants concerning restrictions against the Hebrew race.

There is no such thing as the Hebrew race, I might point out, but everybody understands what was intended.

And then what does Justice Rehnquist do? On the very day that the Washington Legal Times reports the story about the two lawyers having said that they had sent him letters in connection with these restrictive covenants in the deed, then and only then does he sit down and write a letter to the chairman of the Judiciary Com-

mittee and say "In rummaging through my papers I find that I was so advised by two attorneys."

He does not say "When I saw that the whole world learned about it in the Washington Legal Times, then and only then did I decide to report the facts to you accurately."

This is a Justice who lost his credibility. This is a Justice who was not candid. This is a Justice who did not tell the facts when he appeared before the committee in 1971 and again in 1986.

And now my colleagues across the aisle are all going to vote for him because President Reagan wants him. I say to you, President Reagan may want him, but I wonder whether your children want him, I wonder whether your grandchildren will want him, I wonder whether or not he will not turn the clock back on all those things that the Constitution has stood for over a period of many years.

The price that will be paid for the political decision that will be made tonight is an insufferable one. The price that will be paid is the highest price that could be possibly paid and yet my colleagues across the aisle have been unwilling to look at the facts, to search the record, to seek out in their own conscience whether this man should or should not be confirmed.

I have talked with some of you and you have indicated, "Well, I may as well go along, there is no smoking gun."

There may be no smoking gun, but the fact is there is a lot of smoke and a lot of fire. There is a lot of problem.

And you are going to pay an awful price. You are going to pay an awful price, either yourselves or your children or your grandchildren.

They are going to have less respect for the Supreme Court of the United States by reason of your action tonight than the people of this country have ever had for the Supreme Court.

The people of this country have respect for the Supreme Court of the United States. I have respect for that Court.

But we are not adding to its luster. We are not adding to its credibility. We are not adding to his stature in this country when we elevate Justice Rehnquist to be Chief Justice.

Nobody questions his intellect. Everyone agrees Justice Rehnquist is smart. There is no argument about that.

Everybody agrees that he has legal training, not enough legal training to remember some of the facts about things that occurred in his lifetime, but he certainly has legal training with respect to the books and the law.

I say to my colleagues that the decision that you are going to arrive at tonight may prove to be the worst vote that you have ever cast since you have been in the U.S. Senate. You may have cast votes having to do with SDI, having to do with defense spending, having to do with human rights, having to do with South Africa, having to do with aid to the Contras and everything else. But there is no more important decision, no more single vote that has greater impact upon the American people and the future of our country than the action which is about to be taken in confirming Justice Rehnquist to be Chief Justice.

I think it is a sad night. I think it is a very sad night. And somehow, some way, I wish that I could get through to those across the aisle and try to shake them up a little bit and say you have a right to vote any way you want. Your vote is your decision. But if you just look at the facts, if you would just search the record, if you would just let your conscience be your guide, instead of your politics, Justice Rehnquist would not be confirmed as Chief Justice of the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. TRIBLE). The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, you know we are about to vote, and it has been said a number of times to the point I think that maybe people believe it; but it is not true.

And the thing that has been said many times is that, A, the President, under the Constitution, is automatically entitled or near automatically entitled to his or her nominee for the Court. And I find it interesting that everybody who has written about Justice Rehnquist's nomination to the Court by the President has said something to the following effect. All the supporters of the nomination have said: "The President chose Justice Rehnquist because he was a brilliant conservative who shared Ronald Reagan's philosophic point of view on the issues." And everyone automatically says, "Well a President can go and decide that he wants someone and pick them solely on ideology."

□ 2010

President Reagan had a choice of a number of conservatives he could have appointed to the Chief Justice slot, but they made it clear they wanted the most conservative jurist they could find for that slot. And in his choice of all of his other judicial nominees, he said the same thing. And that is his right.

But when any of us raise the issue of whether or not Justice Rehnquist's stretched interpretation of the law, the Constitution as it related to women and blacks and, by the way, individuals against the state, we are told, "Well, we should not look at the ideology of that person." As if to say, the way that is interpreted, the Constitution says that it is all right for the President to be purely ideological in picking his nominee for the Court, but it is not all right for the U.S. Senate to consider the confirmation of a nominee based on how he or she thinks about the issue. Clearly that is not what the Constitution meant.

And the other sort of accepted colloquial wisdom which is not true that is often used around here is that, "Well, not only should the President be able to choose, based on ideological grounds, who should be on the Court and we should just rubber-stamp them, but that the burden is upon those who question whether or not the nominee should sit on the Court to prove beyond a reasonable doubt that the nominee is not qualified."

Well, that is also not true from a legal standpoint. The fact of the matter is that we are voting on someone to be the leader of the third coequal branch of the Government. And to suggest that the Senate has to prove that that person is not qualified—that the burden is on us to prove he is not qualified, rather than the burden being upon the nominee and the proponent of the nominee to prove that they should be on the Court—is like saying that the burden is upon the people of Delaware to prove that I should not be a Senator, rather than the burden being on me to go to my constituency and say: "This is why I think I would be a good representative of this State in the Senate." The burden is on me to do that. The burden is upon the candidate for the President of the United States of America to say, "Let me prove that I should be President."

And yet we act around here like the burden is not upon the nominee for the Court—an equally powerful body. The Court is as powerful and as important as the Congress or as the President. And the burden is on Justice Rehnquist, through his testimony and his record, to prove that he should be named to be the Chief Justice of the United States.

The other notion is we hardly ever reject nominees for the Supreme Court. The first Chief Justice nominee to the Supreme Court of George Washington's was rejected. More people have been rejected by the U.S. Senate who have been nominated to serve on the Supreme Court than for any other—for any other—Presidential appointments. More people have been rejected than for any other nomination over the past 200.

Until today, the highest negative votes for a Supreme Court Justice who was confirmed was in 1971, Justice Rehnquist had 26 people vote against him. In 1930, Charles Evans Hughes had 26 people vote against him. In 1912, Mr. Pitney had 26 people vote against him. And in 1888, Mr. Fuller had 20 people vote against him.

One of the reasons for that is, when it has been clear that such a large number of Senators believe that the nominee was not fit for the post for which he or she was nominated, the nominee had been withdrawn. Because, in fact, it is very, very important that the American people believe that the nominee is all that is required. And when over a third of the U.S. Senate says the person is not qualified, it, at a minimum, casts a shadow upon the ability of the Justice, particularly as Chief Justice, to fulfill the function required.

Mr. President, the time is now at hand for the U.S. Senate to exercise one of its most important constitutional functions and decide whether the President's nominee, William Rehnquist, will be confirmed as the next Chief Justice of the United States. The Senate has considered a nominee for this highest judicial office only 18 times in the history of our Nation; on 4 of those occasions the Senate has rejected the President's nominee. I believe that the facts compel this body to again accept its ultimate responsibility and to reject a fifth Presidential nominee to this highest office.

Before briefly summarizing the facts that, I believe, compel the conclusion that Justice William Rehnquist should not be the next Chief Justice of the United States, I would like to commend my colleagues, on both sides of this issue, for the manner in which this debate has been conducted. During this past week we have had an opportunity to consider some of the most important and sensitive issues to arise under our constitutional form of government. What could be more important than determining the proper roles of the legislature and the executive in shaping the membership of the third branch of government? What could have more significance for our future as a nation than debate over the scope and intent of the equal protection clause of the Constitution? What could be more important than defining the character as characteristics that the next Chief Justice—the very symbol of justice—ought to possess. My colleagues have approached these issues with intelligence, with insight, and with courage. Their performance reflects well on this body as well as upon those who have entrusted us with the task of governing.

During this debate various reasons why William Rehnquist should not be the next Chief Justice of the United States have been advanced. In fact, at times it seems as if there are as many reasons as there are Senators who oppose this nomination. Many Senators have based their decision to oppose this nomination on the poor judgment shown by Justice Rehnquist in his refusal to recuse himself in the case of Laird versus Tatum. Others reach their decision because they question whether Justice Rehnquist was sufficiently forthcoming and candid in his testimony on a number of subjects before the Judiciary Committee. Others have eloquently stated the case that Justice Rehnquist should not be confirmed because of his—to quote the distinguished Senator from Maine, Senator MITCHELL—"total and unremitting hostility toward the rights of women and minorities, especially black Americans, and a deeply troubling willingness to condone, if not support, a segregated society." And others rely on some combination of these and other grounds to reach their conclusion.

All the reasons that compel this Senator to oppose this nomination are contained in the answer to one simple question: Does William Rehnquist have the necessary qualifications and attributes to fulfill the unique symbolic role of Chief Justice of the United States? For me the answer to that question is a clear and unqualified "No." Anyone who reviews the record with an open mind will be compelled to reach the same answer.

During this debate and the proceedings in the Judiciary Committee I have commented extensively on my view of the importance of the symbolic role of the Chief Justice. Let me summarize my position: A Chief Justice not only serves longer than any President, but he or she, along with the other members of the Court, exercise a power limited only by their conscience and principles. The integrity and honesty of the Chief must be beyond doubt if America is to believe in the integrity of the Judiciary. And, the Chief must stand as a metaphor for justice in our society; more than any other individual, The Chief symbolizes the guarantee of "equal justice under law" for all Americans.

The record demonstrates that Justice Rehnquist does not meet the high standards this role requires:

A man whose judgment is so poor and sensitivity to ethical concerns so lacking that he would choose to sit and cast the deciding vote in a case where he had previously offered an opinion as to its proper resolution—a case challenging the validity of a policy he helped to establish does not pass the test.

A man whose testimony at his confirmation hearings led Senators and the public to question his candor and forthrightness does not pass the test.

And a man who has consistently and unremittingly displayed a "hostility toward the rights of women and minorities", a man whose actions have led Members of this body to question his commitment to individual rights and liberties, a man whose confirmation will, as one of my colleagues has stated, "retard, not advance our quest for a truly colorblind society" clearly does not pass the test.

Because William Rehnquist does not pass the test, does not possess the qualities that would allow him to fulfill the important symbolic role of the Chief Justice of the United States, I cannot in good conscience vote to confirm him as the next Chief Justice of the United States. I urge all of my colleagues to consider the record, consider the past week's debate, and consider their own consciences. I trust that if they do so with an open mind, they will join with me in opposing this nomination.

Mr. President, let me summarize, if I may, why I am against Justice Rehnquist.

First of all, Mr. Justice Rehnquist does not, in my opinion, fulfill the necessary requirements to be the Chief Justice of the United States. To be the Chief Justice of the United States of America, one, in my view, has to be able to have demonstrated in a career that they are openminded, that they are not rigid, that they are capable of building a consensus and, even more importantly, capable of recognizing that there are periods in the tenure of every Chief Justice where it is vitally important for the Court and well-being of the United States of America that the Supreme Court speak with one voice. And a rigid woman or man is not capable, in my view, of subsuming his or her particular point of view on a critical matter to the whole Court.

□ 2020

Had there not been a unanimous decision in Brown versus the Board of Education, we could have had considerably more civil unrest in this country than we in fact had. Had Justice Reed not succumbed to the persuasive arguments of Justice Earl Warren, it would not have been a united Court. Had Justice Burger failed to understand the significance of the requirement for a totally unanimous Court in the Nixon tapes case, we would have precipitated, in my view, a constitutional crisis. Justice Rehnquist—nothing in his background demonstrates that he has a sense of that, that he has a sense of history, that he has a sense of requirements that are needed to be the Chief Justice. The Chief Justice is a metaphor for justice in America.

Second, everything in Justice Rehnquist's background suggests at a minimum a hostility toward advancing the causes of minorities in this country, and a generous disposition to engage in narrative prose in the service of his unspoken desires. He has been very, very, very adept at setting up strawmen. In the famous case involving Kentucky where he ruled that notwithstanding the fact that it is discriminatory to insist upon all blacks being kept off a jury when there is a

black defendant—he acknowledged that is discriminatory but when he engages in narrative prose in the service of his own desires.

He goes on to say that kind of discrimination is all right as long as you discriminate against whites the same way, and discriminate against blacks the same way, totally lacking any knowledge or apparent understanding of American history where black juries, white juries—where we kept blacks off those juries—have been historically used to deny justice to blacks, he says it is all right to do that as long as you can say you can keep all whites off a jury. Show me jurisdiction where there are enough blacks to guarantee that there will be an all-black jury. When has a prosecutor in our history ever used preemptory challenges to keep all whites off a jury because he was fearful that they would not judge properly a white defendant? I do not know of any case. But I can name hundreds of cases where prosecutors have attempted to keep black women and men off juries where there is a black defendant. But he said, oh, it is all right to discriminate against blacks as long as you discriminate against whites, as if there was any circumstance where that would occur.

That is what I mean by narrative prose in the service of his unspoken desire.

Third, he has at best exercised very, very poor judgment in allowing himself to be the deciding vote in Laird versus Tatum. At best, it is poor judgment. And also, I cannot fathom how anyone could conclude that he was candid with us regard to how he felt about desegregation, and segregation in America in the 1940's, 1950's, and the 1960's.

I believe that Justice Rehnquist has not proven that he should be Chief Justice.

The PRESIDING OFFICER. The Senator's 1 hour has expired.

Mr. BIDEN. I thank the Chair.

I yield the floor. My colleague from Arizona is here.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I intend to make a few comments on the Rehnquist nomination but I do know the Senator from Iowa has been waiting here for some time and does not intend to talk near the time I will. I will be glad to yield, and I ask unanimous consent that I can yield to the Senator from Iowa for 5 minutes and then be the next pending speaker.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I want to thank my distinguished friend from Arizona for yielding me a small amount of time to give my thoughts on the nomination of Mr. Rehnquist to be the Chief Justice of the United States.

Mr. President, initially this summer I had planned to vote affirmatively for Mr. Rehnquist to be the Chief Justice of the United States. I made that decision because quite frankly I served on the Judiciary Committee. I had not looked at the record. But I had only assumed that he had gone through a hearing process many years ago when he was put on the Supreme Court, and that if in fact he was qualified to be a Justice of the Supreme Court then I saw no reason why he was not also then qualified to be Chief Justice.

So based upon just that kind of a cursory, preliminary thinking, I had decided that I would support Mr. Rehnquist to be Chief Justice of the United States.

However, a lot has occurred since that time. I have listened to the debate. I have read some of the opinions that Mr. Justice Rehnquist has written. I have followed the questioning that happened on the committee. And quite frankly, Mr. President, I have changed my mind.

I have no doubt that Mr. Rehnquist is a scholar, that he is quite intelligent, but I think he lacks two things that are so necessary to be the Chief Justice of the United States.

I think he lacks sensitivity, and he lacks what I call wisdom. He may be intelligent. He may be smart. But I do not think that he is a wise individual. In fact, if his nomination were to come up to be even on the Bench itself, knowing what I now know, I could not vote even to put him on the Supreme Court, let alone to vote affirmatively for him to be Chief Justice.

Mr. President, the office of Chief Justice is a symbol of high integrity and ethical propriety. The principles and commitments upon which our legal foundation is based are embodied in this very position, fairness, openness, and truthfulness. These are the qualities that the Chief Justice could personify in setting the tone for the whole judicial system. The office is more than just a symbol. It is also a position of great power.

Appointed for life to the highest court in the land, the Chief Justice can steer the Court toward consensus or toward conflict on the most important constitutional issues of our time. I believe that as Chief Justice, Mr. Rehnquist would steer the Court more toward conflict and away from consensus because that indeed has been his position on the Court over the last several years, one of conflict and not of consensus.

Also, the office of Chief Justice serves as the guardian of American traditions built on equal justice for all. Applying these guarantees of due process and equal protection, the Chief Justice has an obligation to go beyond personal biases and assure these rights are accorded to all Americans. Thus, Mr. President, the standards of Chief Justice must be dominated by impartiality, fairness, honesty, and all undergirded by wisdom and sensitivity. The leadership of the Chief Justice must be sensitive to the ability of the Constitution to address the complexities of today's changing society. The Constitution is a living document, not a dead document. As a living document, it must adapt itself to the changing norms of society.

So the convictions of the Chief Justice must be governed by his sincere respect for Americans as individuals, individuals blessed with the right to enjoy personal freedom and liberty. And that Chief Justice must be wise enough to see that the Constitution is indeed a living document and not a dead document.

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So, Mr. President, unfortunately, I do not think that William Rehnquist measures up to these criteria. That is, I say that after, again, having read the record, listened to the debate, and read some of the opinions that Mr. Rehnquist has written.

His conflicting testimony before the committee casts great doubt on his candor and honesty. His record on school desegregation, voting rights, and other cases displays a hostility that I believe abandons the fundamental principles of equal justice under law.

Mr. President, I have four editorials: one from the Quad City Times, Davenport, IA; two from the Des Moines Register; and one from the Ottumwa Courier, all leading newspapers in the State of Iowa, editorials asking us to vote no on the nomination of Mr. Rehnquist to be Chief Justice. I ask unanimous consent that these editorials be printed in their entirely.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

REHNQUIST, A CHIEF JUSTICE OF YESTERDAY

It is disheartening that President Reagan has chosen to appoint William Rehnquist—a man with 19th century legal views—to lead the Supreme Court into the 21st century.

Reagan could have chosen a more moderate justice for the nation's top judicial post. We wish he had.

Senators soon will be considering the Rehnquist nomination, and we hope all Senators—and especially our own, Charles Grassley and Tom Harkin—thoroughly review the Rehnquist record. The chief justice's post is one of immense influence. The chief justice is not the president's right-hand man, no matter how consumed a president is with turning the court to the philosophical right or left.

This much we admit: Since his appointment to the bench as an associate justice in 1971 by Richard Nixon, Rehnquist has been consistent in his decisions.

He has consistently voted for the death penalty; anti-abortion laws; public financing

of private and parochial schools; government control of free expression; the limitation of privacy rights; narrowing of the Miranda rule; limiting what can be reported in the press; freeing police from strict obedience to court-imposed restrictions; and government control of pornography.

In Rehnquist's case, consistency is no asset.

The most cursory of reviews shows the Rehnquist past littered with opinions bordering on the archaic. A more examined study reveals the man to be an arch conservative who favors the majority in individual rights cases.

In the landmark abortion ruling of 1972 (*Roe vs. Wade*), the court stated the government has no right to interfere with a woman's privacy in making such a personal decision. Rehnquist voted in the minority, calling the decision ". . . an improvident and extravagant exercise of the power of judicial review."

The nominee, obviously, is opposed to judicial activism. He suggests issues such as abortion should be decided by elected representatives, allowing individual states to prohibit abortions if they so desire. That position is a step back to the Old World church-state tyranny that the framers of our Constitution sought to escape.

In individual rights cases, Rehnquist's reading of the Constitution takes little note of individual liberties. In fact, he has compiled a near perfect record in voting for the government and against the individual. We believe interpretations should favor broad liberties for people and ironclad protections against government interference in their private lives.

It comes as no surprise, then, that Rehnquist is opposed to the Incorporation Doctrine of 1925, which permits the Supreme Court to extend Bill of Rights provisions to the states. The doctrine prohibits states from encroaching on human rights and extends the Fourteenth Amendment's guarantee of due process to the states.

On the relationship between religion and government, Rehnquist wrote in the 1985 *Wallace* vs. *Jaffree* decision that he believes "the 'wall of separation between church and state' is a metaphor based on bad history, a metaphor which has proven useless as a guide to judging. It should be frankly and explicitly abandoned."

Should the Rehnquist interpretation of the establishment clause ever command a court majority—and as the court's chief justice, he certainly would have the influence of leadership—the ramification would be enormous and harmful to the tranquil church-state relations enjoyed in our country.

Rehnquist also has consistently ruled in favor of the states in conflicts between state and federal authority. He seemingly favors Bible reading, state-sanctioned prayers and other religious exercises in public schools, should a state adopt laws allowing such activities. Such a viewpoint would ensure that any religious group commanding a majority on a school board could institute whatever sectarian practices and programs it wants in the public schools.

And then there are those disturbing Rehnquist memos.

In the early '50s, during debate of the *Brown* vs. *Board of Education* case, Rehnquist authored a memo stating that "separate but equal" public education for blacks was "right and should be reaffirmed."

In 1970, as an assistant attorney general in the Nixon administration, Rehnquist wrote a memo that the Equal Rights Amendment could "turn holy wedlock into holy deadlock." The overall implication of the Equal Rights Amendment, he continued, "is nothing less than the sharp reduction in importance of the family unit, with the eventual elimination of that unit by no means improbable."

The positions are ones that are dated and espoused now by only the most radically reactionary. They are not the moderate views we want to see embodied in a chief justice.

We need a justice who understands the purpose of the Constitution in this day and age—and beyond. Rehnquist clearly does not. Though it seems unlikely to happen, we urge the Senate to deny his nomination.

Cause To Reject Rehnquist

The Senate should take a fresh look at William H. Rehnquist's nomination to be chief justice in light of new evidence turned up since the Judiciary Committee recommended confirmation.

That new evidence is Rehnquist's proposal in 1970, when he was an assistant attorney general, that the Constitution be amended to nullify Supreme Court school-desegregation decisions.

The amendment, according to the Los Angeles Times, would have permitted district boundaries to be drawn so as to separate students by race and would have allowed parents to send children to the schools of their choice.

We urge senators to think about the meaning of such a proposal. It is 1970—16 years after the Supreme Court in Brown vs. Board of Education unanimously struck down school segregation, a time when great strides have been taken to topple the institutional barriers of racism. Yet, here is a man who proposes wiping all of that out by rewriting the Constitution to permit segregated schools.

It is probably of no great consequence that this damning evidence should turn up after the Judiciary Committee hearings ended. Rehnquist would likely have suffered another "amnesia attack" before the committee. And who could blame him for wanting to forget?

This piece of evidence by itself is unlikely to derail Rehnquist's confirmation. What is unfortunate, though, is that a "smoking gun" is necessary to get the Senate to see what has been so clear in Rehnquist's career: that he does not believe the government should be in the business of assuring racial equality because he does not find any root principles of individual liberty in the Constitution.

The 100 senators must ask themselves: Is this the man they wish to elevate to lead the third branch of government? Their answer should be no.

Just Say No on Rehnquist

Regardless of one's views on Supreme Court Justice William Rehnquist, the letter signed by more than 100-law school professors raising doubts about his fitness is far from courageous. Pusillanimous is the word it brings to mind.

While the Senate considers Rehnquist's confirmation as chief justice, the professors have taken it upon themselves to counsel the senators in an open letter raising "serious questions of [Rehnquist's] intellectual honesty, . . . integrity and ethical standards."

For specifics, the letter lists various accusations made in confirmation hearings: that Rehnquist harassed voters, approved racist clauses in real-estate contracts, argued for separate-but-equal schools for blacks, sought to cheat a relative out of an inheritance and failed to disqualify himself from a case in which he had a conflict.

The academics' advice? Oppose Rehnquist if the senator "entertains the slightest doubt" about the justice's conduct.

The senators can be forgiven for reacting to this letter with a "Thank you very much, but we can read the papers, too."

The great irony is that the professors had the temerity to accuse Rehnquist of intellectual dishonesty in a letter containing a powerful bill of indictment yet stopping short of urging his rejection. What more do senators need to entertain the "slightest doubt" of Rehnquist's fitness?

This effort to undermine the nominee while carefully avoiding personal risk reminds us of a line that a writer attributed to Dante: "The hottest places in hell are reserved for those who in a moment of moral crisis seek to maintain their neutrality."

If the senators need more evidence of Rehnquist's all-male WASPish perspective, consider the just-uncovered memo from 1970 in which, as assistant attorney general, he said the Equal Rights Amendment could "turn holy wedlock into holy deadlock" and would end any distinction between the sexes outside of separate restrooms.

No need to belabor the implications of this memo, for it merely confirms what opponents of Rehnquist have been saying all along: that his mind seems stuck in 1950.

With each new disclosure, it becomes increasingly clear that Rehnquist is not only sadly out of touch with contemporary American values but with the values embodied in the Constitution.

Unfortunately, the Republican-controlled Senate is on a course to confirm Rehnquist and dismiss all questions about him as political. That may be good politics but it is not statesmanship because it will result in a chief justice whose veracity, integrity, ethical standards and, hence, judgment will always be open to question.

Reject Rehnquist

The U.S. Senate is scheduled to begin debate this week on the nomination of William Rehnquist to be chief justice.

Senate watchers are saying he's a shoo-in.

Rehnquist should be rejected for a very compelling reason—one that overrides whatever qualifications he might bring to the position.

He's insensitive on matters of race.

Over a period of several decades—in his personal conduct, in his legal advice and in his judicial opinions—he has demonstrated that he is on the wrong side of one of the great legal and moral questions of our time.

The evidence has emerged in tiny bits and pieces—some of it known for years and some of it uncovered as a result of the investigation into his nomination.

Consider:

As a law clerk for Justice Robert Jackson in the 1950s, Rehnquist wrote a memo defending an 1896 Supreme Court ruling upholding racial segregation.

As a political operative in Phoenix in the 1960s, he tried to prevent minorities fom voting using tactics witnesses described as intimidating.

While a top attorney in the Nixon administration in the 1970s, he drafted a proposed constituional amendment that would have halted, desegregation of the nation's public schools.

As a private citizen, he bought a home in Phoenix by signing a deed barring its resale to anyone but whites. He bought a vacation place in Vermont with a deed prohibiting resale to Jews.

Rehnquist was questioned on those activities during his nomination hearings and his responses were, to put it charitably, less than candid. Does anyone really believe that lawyer Rehnquist signed those deeds without knowing the provisions in the documents?

Rehnquist's voting record on the Supreme Court is consistent with his actions as a private citizen and his advance as a law clerk and government attorney. He's insensitive on matters of individual rights generally and of minority rights specifically.

It is not the record of a man who should be the top judge in the country.

Senate should vote "no."

Mr. HARKIN. Mr. President, I again thank my distinguished friend from Arizona for yielding this time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, there is no one I have more respect for then my friend from Iowa, Senator HARKIN. He is a real tribute to that State and is a thoughtful Senator who carefully looks at these things. We just happen to be in disagreement here.

Mr. President, I am privileged today to be able to participate in the Senate's consideration of the nomination of a Chief Justice of the United States. I was not in the Senate when Chief Justice Burger was confirmed by this body. It is probable that neither I nor most of my colleagues will be here when this responsibility next comes to the Senate. We must approach our constitutional responsibility for advise and consent with our most careful and thorough attention.

I consider the confirmation of Justices of the Supreme Court to be one of the most important responsibilities entrusted to us by the Constitution. The responsibility to advise and consent on the nomination of the Chief Justice is all the more important because of the leadership role of the Chief Justice. I have spent many hours considering the nomination of William Rehnquist to be Chief Justice. I have attended hours of hearings. I have listened carefully to the testimony of many witnesses both pro and con. I have met with and heard the testimony of the Justice himself, and of people who are in diametric opposition to what he says and to what other witnesses say.

I have read hundreds of pages of documents pertaining to Justice Rehnquist's qualifications, temperament, and integrity. I have read dozens of decisions and articles by the Justice. And finally, I have talked to my constituents to get the benefit of their views on the nomination.

Even in the State of Arizona, where the Justice lived a long time, it is not unanimous.

As a result of all of the study and deliberation, I have concluded that Justice Rehnquist should indeed be elevated to be Chief Justice of the United States.

Mr. President, there can be no question at this time about Justice Rehnquist's intellectual abilities. He has proven himself over his 15 years on the court as a brilliant legal thinker and writer. He is both a scholar of the law and a most articulate and sometimes humorous writer of opinions. I do not always agree with the analyses and decisions of Justice Rehnquist, but I have never found his opinions to be anything but well reasoned and lucidly explained. I have no doubts in my mind that Justice Rehnquist easily exceeds any requirement for intellectual capability that any of my colleagues may impose on any nominee.

I also believe that Justice Rehnquist possesses the requisite temperament to be Chief Justice. I know of no allegations that, in the last 15 years, Justice Rehnquist has acted in any way inconsistent with the Office of Justice of the Supreme Court of the United States.

He has brought dignity to the office and has earned the respect of his colleagues and those who do business with the Court.

I ask my colleagues here, if you know a judge on the Supreme Court—or if you do not, call one, even after the vote call one—you will be satisfied with the response you get, I can assure you, regardless of the political spectrum that that judge might follow or philosophy that that judge might follow.

I am sure that as Chief Justice, Justice Rehnquist will continue to serve with dignity and honor.

The last criterion that I examine in determining whether to vote in favor of a judicial nomination is whether the nominee has the integrity and reputation for truthfulness and honesty required of the Federal judiciary.

In determining whether Justice Rehnquist meets the test of this standard, I have relied heavily on those who have worked closely with Justice Rehnquist and those who know him best.

The American Bar Association rated Justice Rehnquist as well qualified, their highest rating for Supreme Court nominees.

Mr. Gene Lafitte and Mr. John Lane, members of the ABA Standing Committee of Federal Judiciary testified before the Judiciary Committee that the standing committee had reached this recommendation unanimously after extensive investigation—my recollection is some 300 or more contacts: lawyers, judges, clients, and many individuals.

In addition to the ABA witnesses, Justice Rehnquist had a most impressive roster of witnesses testify as to his character and qualifications.

These witnesses included Griffin Bell, former Attorney General of the United States under Jimmy Carter; Irwin Griswold, former Solicitor General of the United States and former long-term dean of the Harvard Law School; and Rex Lee, also a former Solicitor General.

We also heard from several distinguished attorneys, who have worked with Justice Rehnquist, as to his abilities and integrity.

I believe it is a high compliment to Justice Rehnquist that such a group of distinguished Americans enthusiastically testified in his favor.

There have been allegations that Justice Rehnquist engaged in improper activities in Phoenix in the early 1960's and subsequently failed to testify truthfully about these activities to the Judiciary Committee.

I am concerned about the activities of the Republican Party in Phoenix at that time.

I was involved in efforts by the Democratic Party in southern Arizona to protect individuals, mostly minority individuals, who were attempting to exercise their constitutional right to vote.

There is no question in my mind that the Republican Party in Arizona, for political purposes, was engaged in an all-out campaign to prevent minority voters from voting for Democratic candidates.

However, I believe that the proper forum for examination of the activities that took place in Arizona during these years is in Arizona.

The allegations made against Justice Rehnquist should have been examined by the Arizona attorney general, the Arizona Bar Association or the Arizona Supreme Court.

The fact is that the allegations against Justice Rehnquist were not made to the proper authorities at the time.

No one thought they were important enough or credible enough to bring them up then.

We, in Arizona, do not need the Federal Government in Washington or Members of this body to tell us what the standards are. If there are complaints, we are very able to handle them. There were none.

I believe that Justice Rehnquist was involved in the planning and supervising of this political strategy. While I do not believe that these incidents were either Justice Rehnquist's nor Arizona's finest hour, I do not find that Justice Rehnquist was either directly involved in challenging voters or subsequently was untruthful about his activities.

The Judiciary Committee received a full 12-hour day of testimony concerning the election day activities of the

Republican Party and Justice Rehnquist in Arizona in the early 1960's.

I believe the fairest summary of the testimony and other evidence we received is that it is inconclusive and contradictory.

There were witnesses who alleged that Justice Rehnquist was directly involved in the voter challenges, and there were witnesses who testified that Justice Rehnquist could not possibly have been involved in such activities.

I do not doubt the sincerity and honesty of any of the witnesses who made allegations against Justice Rehnquist.

But I believe that, after looking at the record as a whole, the preponderance of the evidence indicates that Justice Rehnquist was not personally involved in challenging or attempting to intimidate any voters.

Let's look at the testimony offered to the Judiciary Committee by those witnesses.

Six witnesses who were with Justice Rehnquist or were in a position to have known of his activities testified before the Committee that Justice Rehnquist was not involved in any voter challenges himself.

In addition, a Phoenix police officer who was at or near the Bethune school precinct all day testified that he did not see Justice Rehnquist there.

Finally, the Democratic county chairman, former Federal Bankruptcy Judge Vincent Maggiore, who would have been aware of any complaints by Democrats of illegal voter challenges, testified under oath that he received no such complaint about William Rehnquist.

Melvin Mirking, a very respected lawyer in Phoenix, was a volunteer Democratic party worker in the early 1960's

He testified that he heard Justice Rehnquist giving instructions to Republican challengers in South Phoenix in such a way as to intimidate voters.

Mr. Mirkin did not see Justice Rehnquist challenge voters or even talk to any voters.

His analysis was purely subjective based on the tone of voice used by then Mr. Rehnquist.

Mr. Mirkin also testified that he believed that Justice Rehnquist should be confirmed by this body.

Charles Pine was Democratic State Party Chairman in the early 1970's. In the early 1960's he was a Democratic party worker.

Charles Pine is an old, dear friend of mine, as is his wife.

Mr. Pine testified that he saw Justice Rehnquist challenge two black voters in a voting line in 1962, or was it 1964, and that the two men left the line as a result.

I believe that Mr. Pine is sincere in his allegations against Justice Rehnquist; I find his testimony troubling for several reasons, however.

First, he was unable to provide any details concerning the allegations, such as what was said.

Second, there was no complaint or report filed on this or any other incident involving Justice Rehnquist.

I believe that in the atmosphere which existed at the time in Phoenix, the Democratic Party or its campaign workers would have been quick to report that the man they thought to be in charge of the Republican Ballot Security Program was personally harassing and challenging voters.

I was involved as a volunteer poll watcher in Tucson during the same years that the Republican Ballot Security Program was taking place.

I remember making a record of the names, places and times that I observed Republicans engaging in challenges to voters and turning this record over to the appropriate officials.

If Justice Rehnquist had been personally challenging voters in these years, I believe that such records would have come to light, and they did not.

And last, I find that Mr. Pine's allegations are overboard.

He makes several blanket allegations against the Republican "flying squads" which went into Democratic precincts in Phoenix in the early 1960's.

After describing these activities, he makes his allegations against Justice Rehnquist without connecting Justice Rehnquist to the activities.

Dr. Sydney Smith was a third witness to the activities that took place at the polling place in South Phoenix.

He served as a Democratic poll watcher in 1960 or 1962.

Dr. Smith offered what I thought was the most credible testimony making allegations against Justice Rehnquist.

I am pleased that Dr. Smith came forward with his story and would not dispute his story as he saw it.

I would question why, if the incident was reported to the Democratic County Headquarters, there is no record of it and why Mr. Vincent Maggiore, the Democratic County Chairman at the time, has no recollection of Justice Rehnquist involvement in voters challenges.

The fourth witness was State Senator Manuel Pena, another very dear friend of mine.

Senator Pena's integrity and honesty are, in my opinion, beyond reproach and question.

He tells a very troubling story about an individual's reprehensible activities at the Bulter school in 1962.

If there was proof that the individual at the school was Justice Rehnquist, I would be very disturbed and could not stand here before my colleagues tonight.

However, Senator Pena did not know Justice Rehnquist at the time and he so testified.

He did not recognize him until he saw his picture in the newspaper 9 years later.

I am afraid that Senator Pena's allegation against Justice Rehnquist, without corroboration, is insufficient for me to conclude that Justice Rehnquist was there and did the things that supposedly happened.

The witness who drew the most public interest and who drew the committee's greatest attention was former Assistant U.S. Attorney James Brosnahan.

Mr. Brosnahan is an impressive witness indeed.

He was a patient and collected witness who showed just the right amount of spunk, but of interest to be sure the committee members got all the answers they needed.

He told an interesting and credible story, but he did not see Justice Rehnquist do one thing, and that was his testimony.

He was not concerned enough about what he saw or heard to do anything about it at the time.

He did not file a complaint with the election commission. That question was asked.

And he did not file a complaint with the Arizona Bar Association—that question was not asked, but I later confirmed that—about what would have been unethical activities if they had been performed by a lawyer such as William Rehnquist.

Mr. Brosnahan also did not come forward when Justice Rehnquist was nominated for either Assistant Attorney General Associate Justice of the Supreme Court.

As credible as the opponents of Justice Rehnquist believe Mr. Brosnahan to have been, in my opinion, he merely put on a show without contributing any substantive or prohibitive evidence.

He admitted that his allegations would not be admissible in any court.

I am, of course, concerned about having to weigh and compare the testimony of several of my old friends and colleagues.

I believe that a nominee has the burden of proof to show that he or she is worthy of confirmation.

However, in cases where specific allegations of unethical or illegal conduct are made, the burden of proving those allegations must be on those making the allegations. That is how our court system works and it ought to be the same here.

In this case, after carefully reviewing the record as a whole, I have concluded that there is not sufficient evidence to believe that Justice Rehn-

quist was directly involved in challenging voters.

Parenthetically, the State law requires that party workers who were to engage in challenging voters had to be registered with the Election Commission and nominated by the chairman of their party.

There is no record that Justice Rehnquist was ever so registered or nominated or appointed.

I believe that Justice Rehnquist was too good a lawyer and was too smart to either challenge voters without being registered under State law or to challenge voters in an illegal manner.

He is not dumb.

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I will comment briefly on other issues that have arisen in connection with the nomination of Justice Rehnquist to be Chief Justice. First, I find that the criticism of Justice Rehnquist based on the restrictions in the deeds to his homes in Arizona and Vermont to be totally without merit and beneath the dignity of the Senate. I believe that Senator LEAHY brought up the Vermont deed restriction in a responsible manner, and I compliment him for doing it early and casting no aspersions when he did so.

When Justice Rehnquist explained what had happened and what he planned to do to remedy the problem, that should have been the end of the discussion. Indeed, at that point, Senator LEAHY responsibly dropped the matter entirely. Some critics of Justice Rehnquist have, however, sought to blow the existence of the restrictions out of proportion. I do not doubt for a minute that property I now own or have owned in Arizona contains deed restrictions similar to those in Justice Rehnquist's deeds. I dare say that most of my colleagues have owned property with these kind of restrictions.

Even the distinguished Senator from Delaware—unfortunately for him, but no fault of his—was involved in such a situation. His father had such a deed. Look at what the press and the critics did to Senator BIDEN—unfair as could be, condemning that he, as a child, lived in such a home that had such a restriction, that there was something bad about it. Nonsense.

We all know that they are unenforceable and meaningless.

The U.S. court found such restrictions to be unconstitutional and therefore totally unenforceable in *Shelley* v. *Kramer*, 334 U.S. 1 (1948).

Most people have more important things to do with their time and money than worrying about contractual provisions that are void and have no effect on the transaction.

I suggest that we also find better ways to spend our time and effort.

Concerns have also arisen about two memoranda Justice Rehnquist wrote as Assistant Attorney General and when he was clerk for Justice Jackson.

One of these memos concerned school integration and the other concerned the equal rights amendment and its effect on families. I disagree with the arguments presented in each of these memos. Some of the stuff I read by Justice Rehnquist is repugnant to me. I oppose busing as a remedy for school segregation, but I certainly do not believe that freedom of choice plans should be used as a means to avoid integration. I would have earnestly opposed legislation such as that proposed in the school integration memo written by then Attorney Rehnquist.

Similarly, I am a cosponsor of the equal rights amendment.

I voted for expanding and extending the time for confirmation of the equal rights amendment, and I am proud of it. It was right. It has not passed, but it will. Those of us who are supporting Rehnquist, and are for the equal rights amendment are still going to be for it, because we believe in it. It is a principle. Some of the statements made by Justice Rehnquist in these two briefs I am not proud of, but I do not have to be proud of them. I have to decide whether or not he is qualified to be Chief Justice of the United States.

In my opinion, his arguments are unsound and irrelevant. But, I have heard them all before. During the 98th Congress, the Subcommittee on the Constitution, of which I am the ranking member, held a series of hearings on the equal rights amendment. The opponents of the ERA dragged out the same red herrings that Justice Rehnquist had enumerated in his memo 15 years ago.

I am sure that if today's debate were on the ERA, my good friend Senator HATCH as well as other opponents of the amendment, would be making these antiquated—as I see them—arguments right now. I would be opposing my good friend from Utah, and I have the greatest respect for his legal capacity and his senatorial capacity.

The point is that in both these memos, the President or his staff requested that memos be prepared expressing certain viewpoints. Assistant Attorney General Rehnquist, the good lawyer that he is, prepared the memos using the best arguments that were available to argue the point of view that he had been instructed to take. As to what his personal views are, they may have been exactly like that. But there is only one person who can say unequivocally that that is what was in his mind, and that person was Justice Rehnquist, who explained that under oath in detail and has constantly done so.

It is not Justice Rehnquist's fault that he was given the least defensible side of each of these issues to try to defend.

As a lawyer, Assistant Attorney General Rehnquist carried out the assignment given to him by his client. Although these may very well be Justice Rehnquist's views, we should not hold him responsible for views he expressed in a legal memorandum he wrote under the direction of, and serving as the lawyer to, the President of the United States or the Attorney General of the United States.

I do not agree with the views expressed in these memos, but in my opinion, Justice Rehnquist was doing his job as a lawyer is supposed to do.

Mr. President, before I conclude, I would like to discuss briefly my analysis of our responsibility to advise and consent to the President's nominees to the Supreme Court. There is a difference in what I consider to be the appropriate manner in which this responsbility should be carried out, and that conduct that I consider to be improper and unwise, but not culpable.

In the case of a nominee to the Supreme Court, I do not consider it to be unacceptable for an individual Senator to take the nominee's political views, as they relate to enforcement of the Constitution and our laws, into consideration when determining whether to vote for him or against him. That is part of our individual rights and responsibilities. Except for the most extreme views, however, I do not think it is appropriate. But I honor and respect my colleagues who believe that. Let us not kid ourselves. This is not an issue about a restriction in a deed or about supposedly challenging voters. This is an issue of whether or not a very conservative sitting Justice should be moved to the position of Chief Justice. That is what it is all about. We can talk about it, but I think we all know here that this Justice is very conservative and that many Members of this body who are not very conservative do not want to see this type of Justice sit there because of his conservative views. They have a right to do that, and I respect it.

My philosophy is that the Senate should base its confirmation decisions on the three criteria that I discussed above—intellectual excellence, appropriate judicial temperament, and integrity and honesty. While I acknowledge that for much of this Nation's history, the Senate performed an almost purely political function in advising and consenting to the President's nominees, I submit to my colleagues that the American people were not well served by this system.

Whether we like it or not, President Reagan won the election. Under our Constitution, he has the right to make these appointments. If they meet those three criteria, so far as this Sen-

ator is concerned, they should be confirmed, even though I disagree with many of their decisions.

A vacant seat on the Court occurred when Chief Justice Salmon P. Chase died on December 6, 1864. Because President Andrew Johnson was opposed by a solid Republican majority in the Senate, he was unable to fill the vacancy and the seat on the Court went vacant for more than 5 years. At one point, the Congress actually abolished the seat rather than have President Johnson fill the vacancy. The stalemate was only resolved when President Grant was elected.

□ 2100

For 3 years in the 1840's, the Supreme Court lacked its full compliment of Justices while the Senate and President Tyler wrangled with President Tyler's nominees. President Tyler, in fact, was able to get confirmation of only one of his six nominees to the Court.

There have been many other examples of politics undermining the proper functioning of the Court. These political games have been played both by the Senate and by the President. President Franklin Roosevelt attempted to pack the Court with liberal justices who would uphold the New Deal legislation. President Taft contrived to have himself appointed Chief Justice after he left the President's office. I believe that these attempts at politicizing the advice and consent process is improper no matter which party makes the attempt.

Mr. President, I urge my colleagues to put politics aside and vote to confirm Justice Rehnquist as Chief Justice based on his qualifications, his temperament, and his integrity. During the Carter administration, I served on the Judiciary Committee when it considered many judicial nominees who I thought to be quite liberal. I voted on each of these nominees based on the criteria that I have discussed and not based on their political views. I voted to confirm such Judges as Patricia Wald, for the D.C. circuit; William Canby and Mary Schroeder, for the ninth circuit; and Steven Breyer, for the first circuit.

The record before us amply shows that Justice Rehnquist has met and exceeded each of these standards. While there are political questions that remain, I believe that they have no place in this discussion. I will cast my vote to confirm.

Mr. President, I thank a couple people. Ed Baxter, of my office, Brad Kirby, and Bill Wood, and many who helped in this process.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment my distinguished colleague and dear friend from Arizona for, I think, one of the better sets of remarks made on this nomination throughout this whole process.

I personally mention my respect for him because I know that it has been very difficult for him to stand up on his side of the floor throughout these proceedings and do the excellent job that he has done in being fair to Mr. Justice Rehnquist.

It is typical of Senator DECONCINI. It is typical of the way he handled himself in the Senate. He is a fair man. He is honest and does a very good job, and I consider him one of my best friends in this body. I have gained even more respect—I did not think it possible—but I gained even more respect because of his leadership for Justice Rehnquist throughout this battle.

THE REHNQUISITION IS NEARLY OVER

The Rehnquisition is nearly over. The Nation has watched in horror as the grand inquisitors have turned the Senate Chamber into a star chamber. The inquisitors have dragged out their racks and stretched the truth. Let me give an example of how the truth has been twisted, beaten, and gouged in this arduous debate:

JACKSON MEMO

The inquisitors have used a 34-year-old memo written by a young law clerk to say that Justice Rehnquist questioned appropriate civil rights policies. In fact, both the Justice and his co-clerk, Don Cronson, the only other living person knowledgable about the genesis of that memo, state that the memo was written at the request of Justice Rehnquist's employer. The inquisitors complain that it is shameful to attribute those beliefs to Justice Jackson. This is another stretching of the truth. Neither Justice Rehnquist nor Cronson contend that Justice Jackson held these views, but only that he asked his clerks to present him with arguments on both sides of a difficult case.

In other words, Justice Rehnquist was asked to play devil's advocate. But 34 years later, the inquisitors want to label Justice Rehnquist as the devil. Where is the fairness?

LAIRD VERSUS TATUM

Another stretching of the truth on the rack of these inquisitors concerns Justice Rehnquist's decision to hear the Laird versus Tatum case. Even the inquisitors agree now that Justice Rehnquist violated no law in his decision, but they contend it was unethical to hear a case when he had a "personal knowledge of the evidentiary facts" before he went on the Court. The inquisitors base this claim on his testimony to Senator Ervin's subcommittee in 1971. As current chairman of that subcommittee, I have reviewed the record and learned that Justice Rehnquist told Senator Ervin four times during that hearing that he lacked any "personal knowledge" about Army information gathering—the subject of the later Laird case.

The inquisitors have not only stretched the truth, they have also hauled out their thumbscrews and twisted the facts.

EXTREMISM

The charge that Justice Rehnquist is extreme is just such an instance of fact twisting. In fact, Justice Rehnquist has written more majority opinions over the last four terms—73 to be exact—than any other Justice. It is simply impossible for the Court's leading opinion-writer and consensus-shaper to be "extreme." A study of the Court's 20 top civil rights cases of 1986 shows that Justice Rehnquist voted in the mainstream 70 percent of the time. Only three other Justices had better mainstream ratings.

Just like the real inquisition, these inquisitors were not interested in Justice Rehnquist's faithfulness to the Constitution; they were interested in whether he agreed with their narrow dogmas. They ignore that he wrote the leading women's rights case of last term and that he consistently votes to end proven discrimination. At least 27 times he has voted for women and minorities. This is not enough for them. Faithfulness to desegregation is not enough for them, they must have total obedience to the dogma of racial balance even if it means using quotas, busing, and judgment by statistics and effects tests. Even if it means ignoring the principle of the "color-blind constitution" and striking down laws passed by the States with no discriminatory purpose at all, they must have racial balance.

Justice Rehnquist is no heretic on civil rights. He simply reads the Constitution and laws as most Americans would read them. He believes in a colorblind constitution and fights genuine discrimination wherever it arises. He just happens to disagree with the real extremists and for that they call him "insensitive" and twist the facts.

The real test of extremism came when the inquisitors accused the Justice of extremism because he would have allowed Alabama's silent prayer to stand in the Jaffree case. The inquisitors failed to remember that the Senate Judiciary Committee had voted on that same issue 12 to 6 in favor of Justice Rehnquist's position, namely in favor of allowing States to have silent moments of prayer or reflection. This showed that the inquisitors were in fact the minority extremists.

At least the inquisitors have proved one thing. With enough time in blur memories, the past can be molded to mean anything. The best example of that was the testimony from Phoenix about vote challenging. This testified more in the frailities of human memory than to anything else. Nothing the committee found in 1986 sig-

nificantly altered the opinion of the same committee in 1971 that "Viewed in its entirety, the incident at the very most in a case of mistaken identity." Of the seven who claimed to have seen Justice Rehnquist engage in the completely legal activity of verifying voter credentials, five did not know him at the time and only identified him from newspaper photos in 1971—7 to 9 years after the fact. I have heard of hindsight being 20-20, but this is ridiculous. Eight witnesses testified that they had never even heard a rumor of Justice Rehnquist's involvement in any voter improprieties. Inquisitors can make any kind of case out of hazy memories.

These inquisitors make us all wish that their mouths would be more like their minds—closed.

I mention the primary characteristic of the inquisitor, a closed mind, for a reason. These inquisitors have overlooked the most relevant facts. They have ignored Justice Rehnquist's 15 years of leadership on the Supreme Court. They have ignored the fact that the ABA gave Justice Rehnquist their highest possible rating for "competence, judicial temperament, and integrity." They ignore that his colleagues and the 180 other judges interviewed by the ABA gave him their highest marks for integrity and judicial ability.

Instead they distort the truth, twist the facts, emphasize rumor, legitimize innuendo, and ignore the relevant. Moreover they attempt to prolong the torture for hours—repeating time and again the same unfounded charges in the hope that repetition will make them sound legitimate.

Throughout this painful proceeding, the inquisitors have searched in vain for any inconsistency, crack, or break that they might use to justify their foreordained verdict—guilty, guilty, guilty. I would ask guilty of what? The record shows Justice Rehnquist is guilty of elevating the rights of victims alongside those of criminals; guilty of advocating equal treatment of all—not special treatment for some; guilty of defending the Constitution as it was written. If there is any guilt in this proceeding, it is not fairly attributed to Justice Rehnquist.

This body has one question remaining: will it let justice be done or permit a Justice to be done in.

It is the time for the Senate to end the Rehnquisition and proceed to a fair vote on the merits of this issue. Today, September 17, 1986, is the 199th anniversary of the day that 39 men at the Convention in Philadelphia signed the Constitution. It is fitting that we choose this day to approve the 16th Chief Justice of the United States. It was on this day in 1787 that George Washington delivered his first official oration to the Convention to voice his approval of the amended Virginia plan, whose sponsor, Edmund Randolph, would refuse to sign along with the celebrated George Mason. That split would help produce the bill of rights. This is an important day in American history. It is appropriate to celebrate it with this historic constitutional action. I urge my colleagues to approve Justice Rehnquist as Chief Justice.

I yield the floor.

Mr. THURMOND. Mr. President, I did not intend to speak further but after the opponents have gone so far in some of these matters, I feel it necessary to keep the record straight to make a brief reply to a few of those allegations that have been made.

Mr. President, the allegation about the polling place incident. The allegation is that Justice Rehnquist challenged or harassed minority voters at a polling place in Phoenix, AZ during the 1960's.

RESPONSE

Similar allegations were raised in 1971. The committee concluded at that time that the allegations were wholly unsubstantiated, and probably a case of mistaken identity.

Justice Rehnquist acknowledged that he was a legal advisor to the Republican Party and did visit some precincts in 1962.

In 1986, the committee expanded its investigative effort and invited numerous witnesses to testify regarding the allegation.

Only three of the five witnesses testifying against Justice Rehnquist said they saw him challenging minority voters. Some recognized him as the individual involved several years after the incident when they saw his picture in the paper. All eight witnesses testifying in support of Justice Rehnquist said that he did not harass, intimidate, or challenge minority voters.

Judge Vincent Maggiore, the 1962 Democratic Party chairman for Maricopa County, testified that Justice Rehnquist was not involved in voter harassament.

Judge Thomas Murphy, the 1964 Democratic Party chairman told the committee that he personally investigated the allegations about Justice Rehnquist and that they were totally unfounded.

A Republican challenger by the name of Wayne C. Bentson was involved in a disturbance at the Bethune Polling Place in 1962.

Mr. Bentson admitted to the FBI in 1962, 1971 and again in 1986 that he was the individual involved at the Bethune Polling Place in 1962.

A 1962 FBI Report concerning voter harassment at the Bethune Polling Place refers to Mr. Bentson. Justice Rehnquist's name is not even mentioned.

A 1962 Phoenix police report concerning an instance at Bethune Polling Place refers to Mr. Bentson. Again this report does not mention Justice Rehnquist's name.

A 1962 FBI report, the 1962 Phoenix, AR Police report, and Mr. Bentson all acknowledge that Wayne C. Bentson was the individual involved in the disturbance at the Bethune Polling Place in 1962.

Although Justice Rehnquist was a legal advisor and did visit some precincts, there is no truth to the allegation that Justice Rehnquist participated in any voter challenging, harassment or intimidation of minority voters.

LAIRD V. TATUM

ALLEGATION

Justice Rehnquist was not candid with the Judiciary Committee in 1971 regarding the Laird versus Tatum case involving surveillance activities by the Department of the Army.

RESPONSE

Justice Rehnquist issued a comprehensive memorandum on October 10, 1972, detailing his reasons for declining to recuse himself in the Laird versus Tatum case. In that memorandum Justice Rehnquist reviewed his involvement in the case, analyzed the disqualification statute and reviewed the precedents of the Supreme Court on the disqualification of Justices. He concluded on this basis that recusal was not warranted.

Justice Rehnquist did not have personal knowledge of the Laird versus Tatum case in 1971 when he testified before Senator Ervin's Judiciary Subcommittee. The following will indicate that fact. Justice Rehnquist stated:

As you might imagine the Justice Department, in selecting a witness to respond to your inquiries, had to pick someone who did not have personal knowledge in every field. So I can simply give you my understanding. . . .

Next:

The Office of the Deputy Attorney General . . . advised me or one of my staff as to the arrangement with respect to the computer print-out from the Army data bank, and it was incorporated into the prepared statement that I read to the subcommittee. I had then and have now no personal knowledge of the arrangement, nor so far as I know have I ever seen or been apprised of the contents of this particular print-out.

Next:

While it is not altogether clear to me, certainly not from personal knowledge . . . the extent the army guidelines were actually carried out and practiced, it should be apparent that the data base used by internal security is much more restricted . . . than were the guidelines printed in the Congressional Record.

It seems clear that Justice Rehnquist did not have any personal knowledge of the disputed facts in the Laird versus Tatum case when he testified before Senator Ervin in 1971 and consistently acknowledged that fact.

In 1986, Justice Rehnquist responded to a question from Senator LEAHY

on the subject of his analysis of the pertinent statute affecting his disqualification from this case and any second thoughts he might have on that position by stating:

I realize people might disagree with me but that was the position I took in that case . . . I never thought of it again until these hearings, to tell the truth. I have gone back and read the opinion, and I think under the statute as it was changed after *Laird V. Tatum;* I think there would be probably a very strong ground for disqualification. But I didn't feel dissatisfied with the way I behaved under the statute as it then stood.

It is obvious that the issue raised was one of legal analysis, upon which reasonable jurists could differ and Justice Rehnquist, himself agreed with this fact. However, in no way should Justice Rehnquist's actions be construed as being improper. He was prudent, honest and forthright in his statements and that is all we can ever ask for.

CORNELL TRUST

ALLEGATION

Justice Rehnquist acted unethically in setting up a trust account in 1961 for his brother-in-law, Harold Dickerson Cornell, who had been diagnosed as having multiple sclerosis.

RESPONSE

The trust fund was established by Dr. Cornell, Harold's father, with the express purpose of providing appropriate care for Harold Cornell upon his inability to provide for himself.

It was Dr. Cornell's express wish that the trust fund be kept secret from Harold Cornell. But Dr. Cornell made all of his other children aware of the secret trust.

Justice Rehnquist had no responsibilities to administer the trust or provide for its beneficiaries. This was up to Harold Cornell's brother, George, the trustee.

George Cornell in accordance with his father's wish never disclosed the existence of the trust to Harold Cornell. However, he did provide money from his own personal funds for Harold's use. The trust fund was never violated and was given to Harold intact.

At no time does Harold Cornell assert that Justice Rehnquist or anyone else took any money from the trust fund.

The claim by Harold Cornell of unethical behavior on the part of Justice Rehnquist apparently involves nothing more than a longstanding family dispute by an alienated family member.

The allegation totally lacks merit.

RESTRICTIVE COVENANTS

ALLEGATION

Properties formerly and currently owned by Justice Rehnquist, contained restrictive covenants which prohibited the sale or transfer of these properties to certain individuals.

RESPONSE

Such restrictive covenants in the early part of this century were a common occurrence.

Under current law there is no requirement to have covenants removed.

The covenants are unenforceable and meaningless on their face.

The Judiciary Committee in 1971 was aware of the restrictive covenant on his former Arizona property. However, it was appropriately not an issue in 1971 during consideration of his nomination to be Associate Justice.

Raising this issue now is nothing more than an attempt to portray Justice Rehnquist as insensitive to certain individuals. Nothing could be further from the truth.

Justice Rehnquist has taken steps to have the restrictive covenant on the Vermont property removed even though there is no requirement for this action.

LONE DISSENTER-OUT OF THE MAINSTREAM

ALLEGATION

Justice Rehnquist is out of the mainstream of constitutional thought and by far the greatest lone dissenter.

RESPONSE

This is an undeserved reputation.

Over the last four terms of the Supreme Court no Justice has written more opinions than Justice Rehnquist.

The principles of many of Justice Rehnquist's earlier lone dissents are gaining acceptance with the other Justices in recent terms.

Justice Stevens remains by far the greatest lone dissenter on the current Court with 27 solo dissents over the last four terms of the Court.

Justice Rehnquist has proven himself a leader of majorities, one who believes in equal justice for all Americans and there is no reason to think that he will not continue to do so as Chief Justice.

JUSTICE JACKSON MEMORANDUM

ALLEGATION

Justice Rehnquist expressed his own views in a memorandum concerning segregation that he wrote as a law clerk for Justice Robert H. Jackson in 1952.

RESPONSE

The memorandum was written in 1952 at the time the Supreme Court was considering Brown versus Board of Education.

Justice Rehnquist informed Senator Eastland in 1971:

The memo was prepared by me at Justice Jackson's request: it was intended as a rough draft of a statement of his views . . . rather than a statement of my views . . . the tone of the memo is not that of a subordinate submitting his own recommendation to his superior . . . but is the tone of one equal exhorting other equals.

Donald Cronson, Justice Rehnquist's coclerk, stated in 1971:

It is my recollection that the memo in question is my work at least as much as it is yours and that it was prepared in response to a request from Justice Jackson, who requested that a memo be prepared supporting the proposition that *Plessy v. Ferguson* was correctly decided. The memo supporting *Plessy* was typed by you, but a great deal of its content was the result of my suggestions.

Justice Rehnquist told Senator Eastland that he unequivocally and fully supported the legal reasoning and the rightness from the standpoint of fundamental fairness of the Brown decision and for anyone to say that he thought Plessy versus Ferguson was right, was not accurate and was not his personal views.

The matter appears to be totally irrelevant and without merit. Justice Jackson asked for a memo from his clerks and received what he requested. During his 15 years on the Court Justice Rehnquist has reviewed countless segregation and civil rights cases and has never questioned Brown versus Board of Education or suggested a return to Plessy versus Ferguson.

Mr. President, as I previously stated, the Judiciary Committee has thoroughly reviewed all allegations old and new and has found nothing that would keep Justice Rehnquist from being elevated to the position of Chief Justice.

The committee also has the responsibility to determine if Justice Rehnquist possesses qualities required of a Supreme Court Justice; namely, unquestioned integrity—honesty, incorruptibility, fairness, courage—the strength to render decisions in accordance with the Constitution and the will of the people expressed in the laws of Congress; compassion—which recognizes both the rights of individuals and the rights of society in the quest for equal justice under the law; proper judicial temperament—an understanding of, and appreciation for, our system of government, its separation of powers between the Federal and State governments.

□ 2110

Based upon his responses to questions during the hearings, his outstanding qualifications and intellect, it was determined that Justice Rehnquist does possess these attributes and is overwhelmingly qualified to serve as Chief Justice of the United States.

Mr. President, President Reagan has submitted Mr. Rehnquist's name to be Chief Justice of the United States. The FBI investigated him after he was selected for that position. They found nothing wrong. They made a thorough investigation.

It came to the Judiciary Committee. We made a thorough investigation. We spent weeks on it and then we dragged out the hearings for week after week after week to accommodate the opponents. And yet there was no merit in the allegations that were made.

The Judiciary Committee has recommended overwhelmingly that this man be confirmed. It is just not right to condemn him in the terms that have been used here and to use such phraseology as has been used. I say it is disgraceful.

I urge my colleagues to vote in favor of President Reagan's nomination of Justice Rehnquist to be Chief Justice of the United States.

Mr. President, questions have been raised about vacancies and the prospective vacancies on the Supreme Court and so forth.

I ask unanimous consent that a letter to me, signed by John R. Bolton, Assistant Attorney General, with attachments, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND
INTERGOVERNMENTAL AFFAIRS,
Washington, DC. 20530.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: This letter is written to you as Chairman of the Committee on the Judiciary to discuss the respective powers of the President to nominate, and the Senate to confirm, an individual for a prospective vacancy on the Supreme Court. The Department of Justice has consistently maintained that the President has the power to nominate, and the Senate has the power to confirm, in anticipation of a vacancy which shall occur during the President's term of office. See, e.g., Department of Justice Memorandum re: Power of the President to nominate and of the Senate to confirm Mr. Justice Fortas to be Chief Justice and Judge Thornberry to be Associate Justice of the Supreme Court, July 11, 1968, printed in, Hearings before the Committee on the Judiciary, United States Senate, 90th Cong. 2d Sess., on Nominations of Abe Fortas and Homer Thornberry, Appendix, Exhibit 1 (1968) (copy attached).

A prospective vacancy on the Supreme Court arises when a Justice announces his or her intention to retire on a specific date, or upon the qualification of a successor.[1] A prospective vacancy also arises when an incumbent Justice is nominated for elevation to the Chief Justiceship. In any of these instances, the President has the power to nominate, and the Senate the power to confirm, in anticipation of the vacancy. This practice is entirely compatible with the constitutional plan and has been followed on numerous occasions.

As explained in *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 153–157 (1803), the constitutional appointment process consists of three major steps: (1) the nomination by the President; (2) the Senatorial advice and consent; and (3) the appointment by the President, of which the Commission is merely the evidence. Each step is essential to assumption of authority by the officer or Justice, as the case may be. *Id.*[2] Thus, the Constitution clearly permits the President to nominate, and the Senate to confirm, a successor while the incumbent still holds office. Confirmation does not confer any rights of the nominee; the President remains free to decide that he does not want to make the appointment, which is not legally completed until the execution of the commission. If the President nominates a person to be an Associate Justice of the Supreme Court in anticipation that an incumbent Justice will be elevated to the Chief Justiceship, and the Senate then fails to confirm the latter, thereby preventing the creation of a vacancy, the appointment, of course, cannot go forward.[3]

On several previous occasions, the President has simultaneously elevated a sitting judge and nominated his replacement. For example, Justice Shiras submitted his resignation to take effect on February 24, 1903. On February 19, President Roosevelt nominated (a) Circuit Judge Day to be Associate Justice of the Supreme Court, vice Justice Shiras; (b) Solicitor General Richards to be Circuit Judge, vice Judge Day; and (c) Assistant Attorney General Hoyt to be Solicitor General, vice Solicitor General Richards. All three nominations were confirmed on February 23, one day prior to the effective date of Justice Shiras' resignation. 34 Journal of the Executive Proceedings of the Senate, 202, 215 (hereinafter "Journal"). More recently, on December 11, 1974, President Ford nominated Judge William J. Bauer of the Northern District of Illinois to replace Judge Otto Kerner on the Seventh Circuit. On the same day, the President also nominated Alfred Kirkland to the seat vacated by Judge Bauer's elevation. 116 Journal at 805.[4]

In our view, the President's constitutional power to nominate Justices for anticipated vacancies is limited only by his term of office. A President should not be permitted, as a constitutional matter, to make a prospective nomination for a vacancy that shall occur after his term of office expires because such a power would encroach upon the appointment power of his successor. However, no such limitation exists, in the absence of a specific statutory prohibition, where the President nominates an individual for a vacancy which shall occur during his term of office.

For the above reasons, the Department of Justice believes that the President may nominate, and the Senate may confirm, individuals for anticipated vacancies on the Supreme Court which shall occur during the President's term of office. We hope this letter alleviates any remaining concerns on the part of members of your Committee.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Attachment.

DEPARTMENT OF JUSTICE

Memorandum re Power of the President to nominate and of the Senate to confirm Mr. Justice Fortas to be Chief Justice of the United States and Judge Thornberry to be Associate Justice of the Supreme Court

On June 13, 1968, Chief Justice Warren advised President Johnson of his "intention to retire as Chief Justice of the United States effective at your pleasure." In his reply, dated June 26, the President stated, "With your agreement, I will accept your decision to retire effective at such time as a successor is qualified." On the same day Chief Justice Warren sent to the President a telegram in which the Chief Justice referred to the President's "letter of acceptance of my retirement," and expressed his deep appreciation of the President's warm words.[1]

On June 26, the President also submitted to the Senate the nominations of Mr. Justice Fortas to be Chief Justice of the United States vice Chief Justice Warren, and of Judge Thornberry, of the United States Court of Appeals for the Fifth Circuit, to be Associate Justice of the Supreme Court vice Justice Fortas. 114 Cong. Rec. (Daily Ed. June 26, 1968) S7834.

Questions have been raised as to the power of the President to make and of the Senate to confirm these nominations. The primary objection is based upon the assertion that there is at present no vacancy in the office of Chief Justice, and that nomination and confirmation of Mr. Justice Fortas is therefore improper. Secondarily, there seems to be an objection that nomination and confirmation of Judge Thornberry cannot be accomplished in these circumstances because the office to which he has been named is not yet vacant.

Neither objection appears to be well taken. The terms of Chief Justice Warren's retirement, established in the correspondence between him and the President, are that the Chief Justice's retirement will take effect upon the qualification of his successor.[2] Judge Thornberry has been nominated in anticipation of the elevation of Mr. Justice Fortas. As this nomination will show, it is well established that the President has power to nominate, and the Senate power to confirm, in anticipation of a vacancy. This power exists where it has been agreed that retirement of an incumbent Justice or judge will be effective upon the qualification of his successor. Such power also exists where an incumbent Justice or judge is simultaneously nominated for elevation to a higher position.

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[1] 28 U.S.C. 371(b) provides in relevant part: "The President shall appoint, and by and with the consent of the Senate, a successor to a justice or judge who retires." This section does not prescribe the procedures or timetable for such appointments.

[2] See also 4 Op. A.G. 217, 219–220 (1843); 12 Op. A.G. 32, 41–42 (1866); 36 Op A.G. 382, 384–385 (1931).

[3] For example, when Justice Fortas' nomination to the Chief Justiceship was withdrawn in October 1978, after the Senate failed to end a filibuster preventing a vote on his elevation the prospective vacancy for which President Johnson had nominated Judge Thornberry was eliminated.

[4] Moreover, successors to district court judges who have been elevated to the court of appeals have frequently been nominated while the Senate is still considering the nomination of the incumbent. On December 15, 1970, while the Senate Judiciary Committee was considering the nomination of Judge Wallace Kent to the Sixth Circuit, President Nixon nominated Albert Engel to fill Judge Kent's seat on the district court for the Western District of Michigan. Judge Kent's elevation was approved a few days later. 112 Journal at 680, 682.

[1] See Appendix I, Nos. 1-3 for the texts of the letters and telegram exchanged between Chief Justice Warren and the President. The letters appear in 4 Weekly Compilation of Presidential Documents 1013-14.

[2] The term "qualification" or "qualifies" refers in this context to the taking of the two oaths prerequisite to holding federal judicial office, (1) the oath to support the Constitution required by Article VI, clause 3 of the Constitution of all officers of the United States, and (2) that required by 28 U.S.C. 453 of each Justice or judge before performing the duties of his office.

I.

It is not unusual for a Justice or judge to advise the President of his intention to retire and to leave it to the President to propose a timing best suited to prevent an extended vacancy and the resulting disruption of the operation of the court on which he sits. Nomination of a successor in such circumstances is but one example of the power to fill anticipated vacancies.

The more general power will be analyzed below, but it is instructive first to consider two directly pertinent instances for which documentation is available.

Mr. Justice Gray of the Supreme Court advised President Theodore Roosevelt on July 9, 1902, that he had decided to avail himself of the privilege to resign at full pay, and added:

" * * * I should resign to take effect immediately, but for a doubt whether a resignation to take effect at a future day, or on the appointment of my successor, may be more agreeable to you."

President Roosevelt's acceptance, two days later, contained the following passage:

"It is with deep regret that I receive your letter of the 9th instant, and accept your resignation. As you know, it has always been my hope that you would continue on the bench for many years. If agreeable to you, I will ask that the resignation take effect on the appointment of you successor.[3]

Mr. Justice Gray died in September, before his successor, Mr. Justice Holmes, took office (187 U.S. iii).[4] The Memorial Proceedings in honor of Mr. Justice Gray pointed out that "he submitted his resignation to take effect upon the appointment and qualification of his successor. So he died in office." See also Lewis, "Great American Lawyers." Vol. 8, p. 163.

More recently, Circuit Judge Prettyman advised President Kennedy on December 14, 1961, that he intended to take advantage of the statutory retirement provisions of section 371(b), Title 28, United States Code, and continued:

"The statute prescribes no procedure for retiring; accordingly I simply hereby retire from regular active service, retaining my office.

"The statute provides that you shall appoint a successor to a judge who retires. Hence I am sending you this note."

President Kennedy replied on December 19:

"It was with regret that I received the notification that you were retiring from 'regular active service.' The way in which you phrased your letter left me with no alternative but to accept your decision."

A few days later, however, President Kennedy sent the following additional note to Judge Prettyman:

"As you know, I have announced that I intend to fill the vacancy which will be created when you retire from active service. However, I hope you will continue in regular active service on the Court of Appeals for the District of Columbia until your successor assumes the duties of office. Your letter does not specifically mention when your retirement from regular active service takes effect, but I have been informed that you have no objection to continuing in your present capacity until your successor is sworn in.

"I appreciate your willingness to continue for this limited period in order that the Court may not be handicapped for any time during which a vacancy might otherwise exist."

Judge Prettyman replied to the President that he was "glad to comply with your preference in respect to the date upon which my retirement takes effect. My notice to you was purposely indefinite." [5]

Judge J. Skelly Wright was nominated on Februray 2, 1962, confirmed on February 28, and appointed March 30. He qualified on April 16, and Judge Prettyman retired as of April 15.

The exchange of communications between Chief Justice Warren and the President must be understood in the light of these precedents. The Chief Justice advised the President of his intention to retire, leaving it to the President to suggest terms of retirement which would be suitable in allowing sufficient time for nomination and confirmation of a successor without the disruption and over-burdening of the remaining Justices which might result from an extended vacancy, in particular such a vacancy in the Office of the Chief Justice. The President suggested that the Chief Justice's retirement should take effect upon the appointment and qualification of his successor. The Chief Justice agreed to this condition.

It is a condition of retirement that was used with respect to the Supreme Court in the case of Mr. Justice Gray. It has been frequently resorted to in the case of other judicial retirements. (For a partial list of retirements by federal judges effective upon the appointment and qualification of their successors, see Appendix II.)

The effect of this form of retirement is that the Chief Justice remains in office until the condition occurs; i.e., until his successor qualifies by taking the oaths of office.

II.

The power of the President to appoint Justices of the Supreme Court, by and with the advice and consent of the Senate, is specified in Article II, section 2, clause 2 of the Constitution. It provides that the President shall

"nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law * * *."

Article II, section 3 provides additionally that the President shall "Commission all the Officers of the United States."

As explained in *Marbury* v. *Madison*, 1 Cranch 137, 153-157 (1803), the Constitutional appointment process consists of three major steps: The nomination by the President; the Senatorial advice and consent (confirmation); and the appointment by the President, of which the Commission is merely the evidence. See also 4 Op. A.G. 218, 219-220.

There is no indication in this early analysis of the constitutional appointment process that a matured vacancy is a necessary prerequisite. Nomination and confirmation to fill anticipated vacancies are consistent with the constitutional plan, and have been frequent occurrences in our history.

It should be noted that anticipated vacancies may be grouped into two categories: First, those that will take effect on a day certain; e.g., when a resignation is submitted as of a specific date, or a statutory term is about to expire. Second, those that will take effect upon fulfillment of a condition; e.g., when the removal or elevation of the incumbent takes effect, or the appointment and qualification of his successor. Nothing in the Constitution prevents advance nomination and confirmation to fill either category of anticipated vacancies. Logic and experience, running from the earliest years of the Republic to the present, support this conclusion.

If the Senate's power to confirm were conditioned on the present effectiveness of the vacancy, there would continually be gaps in the holding of important offices. In all cases, nomination, confirmation and appointment would have to wait until the incumbent leaves office. Interruptions in the discharge of public business would necessarily result. The needs of prudent administration suggest the unsoundness of a constitutional interpretation that would force this result upon every resignation or retirement of Presidential appointees.

As a matter of fact, from the earliest years the Senate has exercised the power to confirm nominations to offices in which a vacancy in the near future is anticipated to take effect, by action of the incumbent or of the President, as the case may be. The first volume of the Executive Journal of the Senate, covering the years from 1789 to 1805, gives instances in which the Senate confirmed nominees in the following situations: To fill a vacancy to be created by the promotion of the incumbent; to replace an official who desired to be recalled; to rename an officer whose term was about to expire; to replace an official who had resigned as of a day certain; and to replace an official about to be superseded. (For details as to these nominations, see Appendix III.)

This practical interpretation of the Constitution by the early Presidents and the Senate has been judicially supported in a number of Supreme Court decisions holding that an officer who serves at the pleasure of the President is ousted from his office when the President appoints a successor by and with the advice and consent of the Senate. *McElrath* v. *United States*, 102 U.S. 426; *Blake* v. *United States*, 103 U.S. 227, 237; *Mullan* v. *United States*, 140 U.S. 240, 245. These rulings clearly presuppose that the Senate has the power to confirm a nomination while the incumbent is still in office.

The history of the Supreme Court contains several examples of actions, by Presidents and the Senate, to fill positions of Justices and the Chief Justice in advance of the effective date of the resignation or retirement of the incumbent:

1. Mr. Justice Grier submitted his resignation on December 15, 1869, to take effect on February 1, 1870. President Grant nominated Edwin M. Stanton in his place on December 20, 1869. Stanton was confirmed and appointed the same day, and his commission read to take effect on or after February 1. However, due to his death on December 24, Stanton never ascended to the Bench. See Warren, "The Supreme Court—United States History" (1937 Edition) Vol. 2, pp. 504, 506.

2. Mr. Justice Gray resigned on July 9, 1902, effective on the appointment of his successor (see supra, pp. 4-5). On August 11, the newspapers announced that Oliver Wendell Holmes had been "appointed" to suc-

[3] See Appendix I, Nos. 4-5 for the pertinent passages of the Gray-Roosevelt correspondence.

[4] The circumstances surrounding the Holmes appointment will be discussed infra.

[5] See Appendix I, Nos. 6-9 for the pertinent passages of the Kennedy-Prettyman correspondence.

ceed Mr. Justice Gray. Bowen, "Yankee from Olympus," 346. President Roosevelt had in fact on that day given Holmes a recess commission, which subsequently was canceled. Holmes, who then was Chief Judge of the highest court of Massachusetts, apparently did not want to serve without prior confirmation by the Senate. "Holmes-Pollock Letters," Vol. I, p. 103.[6]

As shown above, Mr. Justice Gray died on September 15. The President nominated Holmes on December 2, the day after the Senate reconvened. The nomination was confirmed two days later. "Journal of the Executive Proceedings of the Senate," Vol. XXXIV, pp. 5, 21. There can be no question but that President Roosevelt would have submitted the Holmes nomination to the Senate prior to Justice Gray's death, had the Senate then been in session.

3. Mr. Justice Shiras submitted his resignation to take effect on February 24, 1903. On February 19, President Roosevelt nominated (a) Circuit Judge Day to be Associate Justice of the Supreme Court, vice Mr. Justice Shiras; (b) Solicitor General Richards to be Circuit Judge, vice Judge Day; and (c) Assistant Attorney General Hoyt to be Solicitor General, vice Solicitor General Richards. All three nominations were confirmed on February 23, one day prior to the effective date of Justice Shiras' resignation. "Journal of the Executive Proceedings of the Senate," Vol. XXXIV, pp. 202, 215.

4. On September 1, 1922, Associate Justice Clarke tendered his resignation as of September 18. On September 5, President Harding nominated George Sutherland to succeed Mr. Justice Clarke. The Senate confirmed his nomination on the same day. 260 U.S. iii. The records of the Department of Justice indicate that Justice Sutherland's commission was dated September 5, "commencing September 18, 1922."

5. On June 2, 1941, Chief Justice Hughes announced that he would retire from active service on July 1. 313 U.S. iii. On June 12, President Franklin D. Roosevelt nominated Associate Justice Stone to be Chief Justice, and Attorney General Robert H. Jackson "to be an Associate Justice of the Supreme Court, in place of Harlan F. Stone, this day nominated to be Chief Justice of the United States." 87 Cong. Rec. 5097. The Senate confirmed Chief Justice Stone's nomination on June 27, and Associate Justice Jackson's nomination on July 7. 314 U.S. iv.[7]

These precedents relating to Supreme Court appointments thus show instances in which the Senate confirmed judicial nominations which were made in anticipation of a vacancy, either where a resignation or retirement was to take effect on a day certain (Stanton; Day; Sutherland; Stone), or where the nomination was vice an Associate Justice nominated to be Chief Justice (Jackson) or vice a judge nominated to be a Justice (Richards).[8]

As noted earlier, in recent years a very sizable number of federal judges have retired subject to the appointment and qualification of their successors. The Senate has confirmed their successors in the same way it acts on other nominations which are submitted in anticipation of a vacancy. (See examples in Appendix II.) The same is true of the situations, very frequent in the lower Federal courts, in which nominations have been made and confirmed to replace incumbent judges being elevated to higher posts at the same time. Thus, acceptance of the assertion that the Senate lacks the power to confirm Mr. Justice Fortas on account of the condition affecting the timing of Chief Justice Warren's retirement, or that it lacks the power to confirm Judge Thornberry at this time to replace Justice Fortas, would create serious doubt about the validity of the appointments of a sizable portion of the Federal judiciary.

There is nothing inconsistent with the Constitution in the practice of anticipatory and confirmation in the present circumstances. To the contrary, this practice is sanctioned by the Constitution and the experience under it throughout our history. As President Kennedy wrote to Judge Prettyman in 1961, it has the beneficial effect that the "Court may not be handicapped for any time during which a vacancy might otherwise exist."

APPENDIX I

1. Letters from Chief Justice Warren to President Johnson, dated June 13, 1968:

a. MY DEAR MR. PRESIDENT: Pursuant to the provisions of 28 U.S.C., Section 371(B), I hereby advise you of my intention to retire as Chief Justice of the United States effective at your pleasure.

Respectfully yours,

EARL WARREN.

b. MY DEAR MR. PRESIDENT: In connection with my retirement letter of today, I desire to state my reason for doing so at this time.

I want you to know that it is not because of reasons of health or on account of any personal or associational problems, but solely because of age. I have been advised that I am in as good physical condition as a person of my age has any right to expect. My associations on the court have been cordial and satisfying in every respect, and I have enjoyed each day of the fifteen years I have been here.

The problem of age, however, is one that no man can combat and, therefore, eventually must bow to it. I have been continuously in the public service for more than 50 years. When I entered the public service, 150 million of our 200 million people were not yet born. I, therefore, conceive it to be my duty to give way to someone who will have more years ahead of him to cope with the problems which will come to the Court.

I believe there are few people who have enjoyed serving the public or who are more grateful for the opportunity to have done so than I. I take leave of the Court with the warmest of feelings for every member on it and for the institution which we have jointly served in the years I have been privileged to be part of it.

With my very best wishes for your continued good health and happiness.

Sincerely,

EARL WARREN.

2. Letter from President Johnson to Chief Justice Warren dated June 26, 1968:

MY DEAR MR. CHIEF JUSTICE: It is with the deepest regret that I learn of your desire to retire, knowing how much the nation has benefited from your service as Chief Justice. However, in deference to your wishes, I will seek a replacement to fill the vacancy in the office of Chief Justice that will be occasioned when you depart. With your agreement, I will accept your decision to retire effective at such time as a successor is qualified.

You have won for yourself the esteem of your fellow citizens. You have served your nation with exceptional distinction and deserve the nation's gratitude.

Under your leadership, the Supreme Court of the United States has once again demonstrated the vitality of this nation's institutions and their capacity to meet with vigor and strength the challenge of changing times. The Court has acted to achieve justice, fairness, and equality before the law for all people.

Your wisdom and strength will inspire generations of Americans for many decades to come.

Fortunately, retirement does not mean that you will withdraw from service to your nation and to the institutions of the law. I am sure that you will continue, although retired from active service as Chief Justice, to respond to the calls which will be made upon you to furnish continued inspiration and guidance to the development of the rule of law both internationally and in our own nation. Nothing is more important than this work which you undertook so willingly and have so well advanced.

Sincerely,

LYNDON B. JOHNSON.

3. Telegram from Chief Justice Warren to President Johnson, dated June 26, 1968:

The President,
The White House,

DEAR MR. PRESIDENT: My secretary has read to me over the phone your letter of acceptance of my retirement. I am deeply appreciative of your warm words, and I send my congratulations to you on the nominations of Mr. Justice Fortas as my successor and of Judge Homer Thornberry to succeed him. Both are men of whom you can well be proud, and I feel sure they will add to the stature of the Court.

EARL WARREN.

4. Letter from Mr. Justice Gray to President Theodore Roosevelt, dated July 9, 1902:

DEAR MR. PRESIDENT: Being advised by my physicians that to hold the office of Justice of the Supreme Court for another term may seriously endanger my health, I have decided to avail myself of the privilege allowed by Congress to judges of seventy years of age and who have held office more than ten years. I should resign to take effect immediately, but for a doubt whether a resignation

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[6] See also a letter of August 21, 1902 from President Roosevelt to Holmes: "After consulting one or two people, I feel that there is no necessity why you should be nominated in the recess. Accordingly I withdraw the recess appointment which I sent you, and I shall not send you another appointment until you have been confirmed by the Senate, which I think will be two or three days after it meets. Meanwhile, I strongly feel that you should continue as Chief Justice of Massachusetts."

[7] Chief Justice Stone took his oath on July 3 (314 U.S. iv), but the delay in Justice Jackson's confirmation until July 7 had no relation to that fact. The Jackson hearings, which commenced on the same day as the Stone hearings, took place over several days, June 21-30, and the Judiciary Committee reported on the nomination June 30. On the same day the Jackson confirmation by arrangement was put over until the next session for conducting substantial business of the Senate, which was July 7. 87 Cong. Rec. 5,701, 5756, 5759 (1941).

[8] Recently, in connection with a nomination elevating a judge to a higher court and a simultaneously submitted nomination designed to fill the vacancy caused by that elevation, the Senate confirmed the judge who was to fill the vacancy ahead of the one who was to be elevated. These were the nominations, dated October 6, 1966, of John Lewis Smith, Jr., Chief Judge of the District of Columbia Court of General Sessions, to the United States District Court for the District of Columbia, and of Harold H. Greene, vice the elevation of Judge Smith. 112 Cong. Rec. 25524. The confirmation of Judge Greene occurred on October 18, 1966, and that of Judge Smith on October 20. 112 Cong. Rec. 27397, 28086.

to take effect at a future day, or on the appointment of my successor, may be more agreeable to you.

Wishing that the first notice of my intention should go to yourself, I have not as yet mentioned it to any one else.

Very respectfully and truly yours

HORACE GRAY.

5. Letter from President Roosevelt to Mr. Justice Gray, dated July 11, 1902:

MY DEAR JUDGE GRAY: It is with deep regret that I received your letter of the 9th instant, and accept your resignation. As you know, it has always been my hope that you would continue on the bench for many years. If agreeable to you, I will ask that the resignation take effect on the appointment of your successor.

It seems to me that the valiant captain who takes off his harness at the close of a long career of high service faithfully rendered, holds a position more enviable than that of almost any other man; and this postion is yours. It has been your good fortune to render striking and distinguished service to the whole country in certain crises while you have been on the court—and this in addition of course to uniformly helping shape its action so as to keep it up on the highest standard set by the great constitutional jurists of the past. I am very sorry that you have to leave, but you go with your honors thick upon you, and with behind you a career such as few Americans have had the chance to leave.

With warm regards to Mrs. Gray, believe me,

Faithfully yours,

THEODORE ROOSEVELT.

6. Letter from Judge Prettyman to President Kennedy, dated December 14, 1961:

DEAR MR. PRESIDENT: On October 17th last, I had been on the court sixteen years. In August I was seventy years old. Being thus qualified I wish to take advantage of the statute (Sec. 371(b) of Title 28, U.S. Code) which says a judge with such qualifications "may retain his office but retire from regular active service". The statute prescribes no procedure for retiring; accordingly I simply hereby retire from regular active service, retaining my office.

The statute provides that you shall appoint a successor to a judge who retirees. Hence I am sending you this note.

With great respect I have the honor to be

Yours sincerely,

E. BARRETT PRETTYMAN.

7. Letter from President Kennedy to Judge Prettyman, dated December 19, 1961:

DEAR JUDGE PRETTYMAN: It was with regret that I received the notification that you were retiring from "regular active service." The way in which you phrased your letter left me with no alternative but to accept your decision.

I was pleased, however, that you were retaining your office and would be available to continue your distinguished service on the Bench. Your record for justice and humanity, your efforts in behalf of more efficient administration of the law, and your legacy of sound precedent entitle you to some relaxation from the demands of regular active service.

I am happy that you have elected to continue in the capacity of chairman of the Administrative Conference. I am looking forward to receiving the recommendations and suggestions which flow from the meetings of the Conference. It seems to me that this offers an opportunity to make a major contribution toward the improvement of the regulatory agency procedures. Under your leadership I am sure that the Conference will take advantage of that opportunity.

With every good wish, I am

Sincerely yours,

JOHN F. KENNEDY.

8. Letter from President Kennedy to Judge Prettyman, dated December 26, 1961:

DEAR JUDGE PRETTYMAN: As you know, I have announced that I intend to fill the vacancy which will be created when you retire from active service. However, I hope you will continue in regular active service on the Court of Appeals for the District of Columbia until your successor assumes the duties of office. Your letter does not specifically mention when your retirement from regular active service takes effect, but I have been informed that you have no objection to continuing in your present capacity until your successor is sworn in.

I appreciate your willingness to continue for this limited period in order that the Court may not be handicapped for any time during which a vacancy might otherwise exist.

Sincerely,

JOHN F. KENNEDY.

9. Letter from Judge Prettyman to President Kennedy, dated January 2, 1962:

MY DEAR MR. PRESIDENT: I have your note of December 26th. I am glad to comply with your preference in respect to the date upon which my retirement takes effect. My notice to you was purposely indefinite. I shall advise the keepers of the records to enter my retirement upon the date when my successor qualifies.

May I take advantage of this opportunity to express to you my deep appreciation of your generous remarks regarding my service.

With great respect.

Yours sincerely,

E. BARRETT PRETTYMAN.

APPENDIX II

By letter dated February 24, 1968, Judge Wilson Warlick, North Carolina, Western, retired effective upon the appointment and qualification of his successor. James McMillan was nominated on April 25, appointed June 7, and entered on duty June 24. Judge Warlick retired June 23.

By letter dated March 30, 1967, Judge Frank M. Scarlett, Georgia, Southern, retired effective upon the appointment and qualification of his successor. To date no one has been appointed and he is still on the bench in regular service.

By letter dated November 28, 1966, Judge Frank A. Hooper, Georgia, Northern, retired effective upon the appointment and qualification of his successor. Newell Edenfield was nominated May 24, 1967, appointed June 12, and entered on duty June 30. Judge Hooper retired June 29.

By letter dated September 21, 1965, Judge William G. East, Oregon, retired effective upon the appointment and qualification of his successor. Robert Belloni was nominated February 21, 1967, appointed April 4, and entered on duty April 10. Judge East retired April 9.

By letter dated March 12, 1965, Judge William C. Mathes, California, Southern, retired effective upon the appointment and qualification of his successor, or not later than June 30, 1965. Irving Hill was nominated May 18, appointed June 10, and entered on duty June 25. Judge Mathes retired June 9.

By letter dated February 19, 1964, Judge Walter M. Bastian, D. C. Circuit, retired effective upon the appointment and qualification of his successor. Edward A. Tamm was nominated March 1, 1965, appointed March 11, and entered on duty March 17. Judge Bastian retired March 16.

By letter dated March 26, 1963, Judge David W. Ling, Arizona, retired effective upon the appointment and qualification of his successor. C. A. Muecke was nominated August 17, 1964, appointed October 1, and entered on duty October 12. Judge Ling retired October 11.

A number of other instances early in this century of retirements to be effective upon the appointment and qualification of the successor have been assembled from incomplete records of the Department of Justice. It is believed that in these cases the successor was appointed between the date of the announcement of retirement as shown in the second column and the effective date of retirement as shown in the third column.

Name and Court	Announcement of retirement	Effective date of retirement
Benedict, Charles, New York, E	5/26/97	7/20/97
Brown, Addison, New York, S	7/1/01	9/3/01
Baker, John, Indiana	11/8/02	12/18/02
Hallett, Moses, Colorado	4/7/06	5/1/06
Lockren, Wm., Minnesota	4/3/08	7/11/08
Saunders, Eugene, Louisiana, E	1/8/09	2/8/09
Dallas, George, Third Circuit	3/15/09	5/24/09
Reid, Silas, Alaksa	6/14/09	7/1/09
Cooley, Alford, New Mexico	6/6/10	7/10/10
Brawley, Wm., S. Carolina	4/18/11	6/14/11
Donwroth, George, Washington	1/24/12	7/8/12
Locke, James, Florida, So	7/9/12	9/2/12
Peele, Stanton, Court of Claims	1/2/13	2/11/13
Stuart, Thomas, Hawaii	8/8/16	11/23/16
Whitney, Wm., Hawaii	1/25/17	3/19/17
Shepherd, Seth, D.C. Ct. Appeals	5/1/17	9/30/17
Dyer, David, Missouri, E	5/15/19	11/3/19
Batts, Robert, Fifth Circuit	8/22/19	4/9/20
Davis, John, New Jersey	6/5/20	6/12/20
Riner, John, Wyoming	10/13/21	10/31/21
Rudkin, Frank, Washington	1/17/23	1/18/23
Anderson, Albert, Seventh Circuit	10/31/29	11/6/29

APPENDIX III

Examples in Vol. I of the Journal of the Executive Proceedings of the Senate, of Senatorial Confirmations in Anticipation of a Vacancy.

I. Nominations vice an incumbent who is being elevated at the same time.

December 21, 1976, p. 216.[1]

I nominate the following persons to fill the offices annexed to their names, respectively, which became vacant during the recess of the Senate:

* * * * * *

Jonathan Jackson, of Massachusetts, to be Supervisor for the district of Massachusetts, vice Nathaniel Gorham, deceased.

John Brooks, of Massachusetts, to be Inspector of Survey No. 2, in the district of Massachusetts, vice Jonathan Jackson, appointed Supervisor.

Samuel Bradford, of Massachusetts, to be Marshal for the district of Massachusetts, vice John Brooks, appointed Inspector of Survey No. 2, in that district.

* * * * *

Confirmed December 22, 1796, p. 217. A number of similar nominations and confirmations took place in February, 1801, in connection with the staffing of the circuit courts. pp. 381-385.

II. Nominations vice incumbents who desire to be relieved of their duties.

May 19, 1796, p. 209

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[1] The page numbers refer to the pages of Volume I of the Journal of the Executive Proceedings of the Senate.

I nominate Rufus King, of New York, to be Minister Plenipotentiary of the United States at the Court of Great Britain, in the room of Thomas Pinckney, who desires to be recalled.

David Humphreys, of Connecticut, to be the Minister Plenipotentiary of the United States at the Court of Spain; William Short, the resident Minister to that Court having desired to be recalled.

Confirmed, May 20, 1796, p. 209.

III. Nominations to fill terms about to expire.

1. January 10, 1798, p. 258

I nominate the following persons to be Marshals of the United States;

John Hobby, for the District of Maine; Philip B. Bradley, for the district of Connecticut; Thomas Lowry, for the district of New Jersey; Samuel McDowell, Jr., for the district of Kentucky: each for the term of four years, to commence on the twenty-eighth of January, current, when their present terms will expire.

Confirmed, January 12, 1798, p. 258.

2. December 9, 1799, p. 325

I nominate * * * David Mead Randolph the present Marshal of the District of Virginia, for the term of four years, to commence on the 15th instant when his existing commission will expire.

Confirmed, December 6, 1799, p. 326.

3. February 4, 1803, p. 441

I nominate * * * William Henry Harrison, to be Governor of the Indiana Territory from the 13th day of May next, when his present commission as Governor will expire.

Confirmed February 8, 1803, p. 442.

IV. Nominations to fill vacancy which will be caused by a resignation on a future day certain.

May 7, 1800, p. 352

I nominate the Honorable John Marshall, Esq. of Virginia, to be Secretary of the Department of War, in the place of the Honorable James McHenry, Esq., who has requested that he may be permitted to resign, and that his resignation be accepted to take place on the first day of June next.

May 12, 1800, p. 353

I nominate the Honorable John Marshall, Esq., of Virginia, to be Secretary of State, in place of the Honorable Timothy Pickering, Esq. removed.

The Honorable Samuel Dexter, Esq. of Massachusetts, to be Secretary of the Department of War, in the place of the Honorable John Marshall, nominated for promotion to the Office of State.

Confirmed, May 13, 1800, p. 354

V. Nomination to fill office, the incumbent of which is to be superseded.

December 23, 1799, p. 329

I nominate Ambrose Gordon, of Georgia, to be Marshal of the district of Georgia, in the place of Oliver Bowen, to be superseded.

Confirmed, December 24, 1799, pp. 329-330.

NOMINATIONS OF SUPREME COURT JUSTICES IN ELECTION YEARS [1]

	Total nominations	Confirmed	Rejected	Withdrawn, postponed, or not acted upon
Before election in election year (see table I)	15	11	1	3
Between election and inauguration of different President (see table II)	15	[2] 9	1	5
Nominations other than above categories	96	[3] 85	7	4
Total	126	105	9	12

[1] Includes the period between Jan. 1 of an election year and the inauguration date of the following year.

[2] Includes Stanley Matthews, the relevant dates of whose nomination and confirmation are as follows: Nominated—Jan. 26, 1881; not acted upon when Senate adjourned Mar. 3, 1881; resubmitted—Mar. 14, 1881; confirmed—Dec. 20, 1881.

[3] Includes these special cases: William Paterson: Nominated—Feb. 27, 1793; nomination recalled by President—Feb. 28, 1793; resubmitted—Mar. 4, 1793; confirmed—Mar. 4, 1793.

I. NOMINATIONS IN ELECTION YEAR: BEFORE ELECTION

Name of nominee	Date of nomination	Disposition of nomination	Nominating President and party	Succeeding President and party
William Cushing	Jan. 26, 1796 [1]	Confirmed Jan. 27, 1796; declined Feb. 2, 1796	Washington, Federalist	Adams, Federalist.
Samuel Chase	Jan. 26, 1796	Confirmed Jan. 27, 1796	do	Do.
Oliver Ellsworth	Mar. 3, 1796	Confirmed Mar. 4, 1796	do	Do.
William Johnson	Mar. 22, 1804	Confirmed Mar. 24, 1804	Jefferson, Democrat-Republican.	Jefferson, Democrat-Republic.
John Spencer	Jan. 8, 1844	Rejected Jan. 31, 1844	Tyler, Democrat	Polk, Democrat.
Reuben Walworth	Mar. 13, 1844	Postponed Jan. 15, 1844; withdrawn June 17, 1844	do	Do.
Edward King	June 5, 1844	Postponed June 15, 1844	do	Do.
Edward A. Bradford	Aug. 16, 1852	Not acted upon	Fillmore, Whig	Pierce, Democrat.
Melville Fuller	Apr. 30, 1888	Confirmed July 20, 1888	Cleveland, Democrat	Harrison, Republican.
George Shiras	July 19, 1892	Confirmed July 26, 1892	B. Harrison, Republican	Cleveland, Democrat.
Mahlon Pitney	Feb. 19, 1912	Confirmed Mar. 13, 1912	Taft, Republican	Wilson, Democrat.
Louis D. Brandeis	Jan. 28, 1916	Confirmed June 1, 1916	Wilson, Democrat	Do.
John H. Clarke	July 14, 1916	Confirmed July 24, 1916	do Do.	
Benjamin N. Cardozo	Feb. 15, 1932	Confirmed Feb. 24, 1932	Hoover, Republican	Roosevelt, Democrat.
William Brennan	Oct. 15, 1956 recess appt. Jan. 14, 1957 (after election)	Confirmed Mar. 19, 1957	Eisenhower, Republican	Eisenhower, Republican.

[1] Nominated as Chief Justice; had been Associate Justice since 1789.

II. NOMINATIONS BETWEEN ELECTION AND INAUGURATION OF DIFFERENT PRESIDENT

Name of nominee	Date of nomination	Disposition of nomination	Nominating President and party	Succeeding President and partry
John Jay	Dec. 18, 1800	Confirmed Dec. 19, 1800, declined Jan. 2, 1801	Adams, Federalist	Jefferson, Democrat-Republican.
John Marshall	Jan. 20, 1801	Confirmed Jan. 27, 1801	do	Do
John J. Crittenden	Dec. 17, 1828	Postponed Fed. 12, 1829	J.Q. Adams, Nat.-Republican	Jackson, Democrat.
William Smith	Mar. 3, 1837	Confirmed Mar. 8, 1837; declined later in same month	Jackson, Democrat	Van Buren, Democrat.
John Catron	Mar. 3, 1837	Confirmed Mar. 8, 1837	do	Do
Peter V. Daniel	Feb. 26, 1841	Confirmed Mar. 2, 1841	Van Buren, Democrat	Harrison, Whig.
Edward King	Dec. 4, 1844	Postponed Jan. 23, 1845; withdrawn Feb. 7, 1845	Tyler, Democrat	Polk, Democrat.
Samuel Nelson	Feb. 4, 1845	Confirmed Feb. 14, 1845	do	Do
John Read	Feb. 7, 1845	Not acted upon	do	Do
George Badger	Jan. 10, 1856	Postponed Feb. 11, 1853	Fillmore, Whig	Pierce Democrat.
William Micou	Feb. 24, 1853	Not acted upon	do	Do
Jeremiah Black	Feb. 5, 1861	Rejected Feb. 21, 1861	Buchanan, Democrat	Lincoln, Republican.
William B. Woods	Dec. 15, 1880	Confirmed Dec. 21, 1880	Hayes, Republican	Garfield, Republican.
Stanley Matthews	Jan. 26, 1881	Not acted upon	do	Do
	Resubmitted Mar. 14, 1881	Confirmed Dec. 20, 1881	Garfield, Republican	Arthur, Republican (Sept. 20, 1881).
Howell E. Jackson	Feb. 2, 1893	Confirmed Feb. 18, 1893	B. Harison, Republican	Cleveland, Democrat.

Note: Includes these special cases: (2) Roger B. Taney: Nominated as Associate Judge—Jan. 15, 1835; postponed—Mar. 3, 1835; nominated as Chief Justice—Dec. 28, 1835; confirmed—Mar. 15, 1836. (3) Edwin M. Stanton: Nominated—Dec. 20, 1869; confirmed—same day; died—Dec. 24, 1896—without ever taking seat on Court.

Mr. THURMOND. Mr. President, in closing, I wish to take this opportunity to express my appreciation to the Republican Senators who supported this nomination and voted for cloture today. I would also like to thank Senator ORRIN HATCH for his splendid work on this nomination. Every Republican Senator on this floor voted for him. Not a single one voted against him.

I wish to commend the able majority leader for what he has done to get this nomination up and for speaking on it forcefully. We are very indebted to him.

I wish to commend Senator STENNIS, who has been a judge himself from Mississippi. No one in the Senate is respected more than Judge STENNIS, who not only voted here for cloture and who is going to support the nomination, but who spoke out for him and I commend him. He is acting in a non-

partisan way, as we Senators should act on nominations, regardless of who is the President.

I wish to commend Senator HEFLIN, Senator LONG, and the other Democratic Senators who supported this nomination, at least in voting for cloture today.

I wish to especially commend Senator DECONCINI who did a great deal of work on this nomination. He is in the Democratic Party. His address here on this subject is one of the finest I have heard on nominations since I have been in the Senate.

I would also like to take this opportunity to commend Duke Short, the chief investigator of the Judiciary Committee, and his investigator, Frank Klonoski, for the fine job they did investigating this nominee and for all that they have done to assist in this matter.

I wish to commend Jack Mitchell, Mark Goodin, and Melissa Nolan; Paul Morgan, of the Library of Congress; and Randy Rader, from Senator HATCH's staff; and others whose names I will not mention at this time. We appreciate their fine cooperation.

This is a nomination, Mr. President, that, when it was sent to the Senate and on to the committee, should have sailed right through. Instead of that, it has taken weeks and weeks and weeks. We just wasted a lot of time here. When it came to the Senate, it should have sailed through.

It is just amazing to me the allegations they brought up here, especially after we answered them and explained them and after witnesses appearing before the committee did that. Yet, they go on and on and on.

Mr. President, I hope the time has now come when we can get to a vote and get the matter settled once and for all.

I wish to thank the distinguished ranking member, the distinguished Senator from Delaware, for the courtesies that he has extended to the majority in this matter. I thank him for that.

Mr. BIDEN. I thank my colleague, especially in light of his concluding remarks.

Mr. THURMOND. Mr. President, I think we are about ready to vote. I hope all Senators are here and they will cast their vote in favor of Mr. Rehnquist. The fight is over now. There is no use to continue it.

Someone said of the opposition that some of them were going on and on because they wanted to intimidate him and try to get him, if he is confirmed, to be more liberal. That is ridiculous allegation.

Mr. Rehnquist is what he is. He always has been. I think he is going to hand down decisions and call them just as he sees them—and that is what he should do—regardless of what people think. That is the reason we have an independent court. They do not have to come up for renomination and reappointment. They are appointed for life. They are independent.

I commend Justice Rehnquist for the great job he has done for 15 years and hope he will have 15 more years, or double that, on the Supreme Court after he has been confirmed.

The PRESIDING OFFICER. Is there further debate?

Mr. MELCHER. Mr. President, I have been concerned that Justice Rehnquist's previous action in political campaigns in Arizona aided and abetted tactics to challenge unlawfully black voters. Rehnquist's direct involvement is unclear, and he now testifies to deplore those tactics.

I do not pass judgment on his nomination on that basis.

Nor do I pass judgment on his nomination on the basis of his evident, consistent conservative philosophy. That conservative philosophy and Justice Rehnquist's legal expertise and experience on the Supreme Court gives President Reagan the confidence to nominate him for Chief Justice.

My vote on the Rehnquist nomination turns on a fundamental issue that involves him personally where I find his determinations to be seriously inadequate.

News accounts published in mid-August brought to public attention charges made by Harold Cornell of San Diego.

Cornell charged Rehnquist with improperly withholding from him the existence of a trust fund established by Cornell's father to benefit Howard Cornell. Rehnquist is his brother-in-law, married to Cornell's sister.

I have previously noted Chairman THURMOND's explanation of the circumstances of the Cornell trust.

I have talked to Harold Cornell questioning him on the matters of the trust and the facts surrounding it.

The facts are not disputed.

In 1961, the father, Dr. Cornell, asked Rehnquist to draw up a trust fund for his son Harold; that his other son, George, be trustee; and, that the family not inform Harold of its existence. Further, that the trust was to benefit Harold if he was in serious need; that the funds ($25,000) be invested for his benefit; that in the event of Harold's death the surviving family members would be the beneficiaries; and, that in the event of George Cornell's death, named as trustee, the succeeding trustee would be a bank in San Diego.

George Cornell did die in 1981. A few months later in 1982 the San Diego bank refused to accept trustee status; a motion filed in court brought to Harold Cornell's attention that the trust fund existed.

Harold Cornell promptly took action to claim the entire trust fund. He succeeded in his claim.

The trust fund after 21 years amounted to $35,000.

Harold Cornell has multiple sclerosis and receives veterans' benefits. Prior to being determined to be eligible for veterans' benefits, Cornell beginning in 1962, 1 year after the establishment of the trust, his earnings from his law practice declined rapidly as he became afflicted increasingly with multiple sclerosis. His needs for financial assistance within a few years became apparent and for a time prior to gaining veterans' benefits his needs were great.

He was not aware of the existence of the trust.

I have reached several conclusions:

The trust funds terms should have benefited Harold Cornell when his apparent and serious needs started.

Although the family was instructed by Dr. Cornell, the father, not to inform Harold of the trust fund, it did instruct assistance to him if and when he needed it. That assistance was not provided.

In fact, the purpose of the trust fund, the very purpose, and the requirement of the trust fund was that financial assistance be provided if the needs were there.

Although he was not the trustee, Rehnquist having drawn up the trust knew its terms. That established a special responsibility on Rehnquist to advice the trustee, George Cornell to follow the terms of the trust and to provide benefits of the trust to Harold Cornell in his time of need.

Further, Harold Cornell, as a victim of multiple sclerosis attained a permanently debilitated condition. Measured by the trust's terms required continuous financial benefits for Harold.

I find it extraordinary that Harold Cornell only learned of the existence of the trust, 21 years old, when the San Diego bank refused to become the trustee following the death of George Cornell. Had the bank not refused which necessitated a motion to be filed in court to appoint a new trustee and that was published as required, Harold Cornell, then about 70 years old, might never have learned of the trust set up by his father for his benefit if he became in need of help.

The basic fundamental responsibility of Rehnquist to help his brother-in-law cannot he excused because the trustee, George Cornell, did not act.

Rehnquist had a special binding obligation to assure that Harold Cornell benefited from the trust in his days and years of need.

As he became incapacitated his income dwindled, multiple sclerosis gradually ended any earnings. That should have dictated that he be helped from the trust.

When Dr. Cornell set up the trust just before his death he could not have anticipated any more serious

needs than did in fact become the fate of his son.

Legal scholars may argue or quibble over the legal obligations of Rehnquist versus the primary duty of the trustee George Cornell.

But I shall not argue or quibble legal nuances.

This is a question of basic right or wrong.

I believe Rehnquist was wrong in not assuring the benefits flowed to Howard Cornell in his time of need, and not advising the trustees of his primary duty to make sure that the trust benefits were given to Howard Cornell, and I find it wrong that did not happen in not informing Howard Cornell of the existence of the trust.

I believe it is a moral family obligation required of Rehnquist to have taken those actions. I believe he failed in a basic responsibility. And I regret that I believe it demonstrates a flaw in his judgment, and in his compassion.

Our duty here in the Senate of the confirmation of the Chief Justice is clear. It is an obligation and a responsibility that we have to use every facet of a person's character, his knowledge, his wisdom in determining whether or not he should indeed be confirmed for the highest position in the highest court of our country.

I find with regret that I do not believe that Chief Justice Rehnquist should receive confirmation. I regret that I find that to be the case. But for those reasons, I shall vote against the nomination.

Mr. PELL. Mr. President, I wish to emphasize that while I have voted in favor of invoking cloture on the nomination of William Rehnquist, I intend to oppose the nomination when the time arrives for a final vote on confirmation. During 25 years in the Senate I have never voted in support of a filibuster. I believe that a majority of this body should work its will, regardless of the outcome, and that filibusters are not in the public interest. Having said that, I would reiterate my intention to oppose Mr. Rehnquist's nomination. The arguments, pro and con, are before the Senate and I believe it is time for the Senate to move toward a final vote on this nomination.

Mr. COHEN. Mr. President, the Senate's role in judicial appointments, and particularly the appointment of members of the Supreme Court, is one of its most important functions. In fulfilling its constitutional duty of advice and consent, the Senate shares with the President the critical responsibility of shaping the quality of the Federal judiciary and, therefore, the quality of justice in our Nation.

I do not take this responsibility lightly, nor do I believe that the Senate should act as a rubber stamp, simply deferring to the President's wishes. Although there may appropriately be a strong presumption in favor of a Presidential nominee, the Senate and each individual Senator have an obligation to take an active role in evaluating the qualifications and competence of those individuals nominated by the President in order to meet the responsibility imposed by the Constitution.

During the Senate Judiciary Committee's hearings and the Senate's debate on the nomination of Associate Justice William Rehnquist to be Chief Justice of the U.S. Supreme Court, several issues touching on his fitness for this position have been raised. However, in regard to his intelligence, his temperament, and his academic and professional qualifications, I believe there is virtually unanimous agreement that Justice Rehnquist is well qualified to serve as Chief Justice.

The Standing Committee on Federal Judiciary of the American Bar Association concluded, after an extensive investigation, that Justice Rehnquist "meets the highest standards of professional competence, judicial temperament and integrity, is among the best available for appointment as Chief Justice of the United States, and is entitled to the Committee's highest evaluation of the nominees to the Supreme Court." Justice Rehnquist is described by fellow members of the judiciary as a "true scholar," "unbelievably brilliant," and "a very capable individual in every respect." Moreover, he has the respect and esteem of his fellow Associate Justices and the current Chief Justice, all of whom have strongly endorsed his nomination.

The question before the Senate is not whether Justice Rehnquist should remain or be allowed to serve on the Supreme Court, but whether he should be elevated to the position of Chief Justice, the head and administrator of the Federal judiciary. Regardless of the outcome of the Senate's debate on this nomination, Justice Rehnquist will remain on the Supreme Court and will continue to express his opinions, in the majority or in the dissent, as a member of the Court.

I fully expect that among these future opinions, there will be some, and perhaps many, with which I will disagree. I make this prediction based on the record of the past, for I do not share a number of the views which have been expressed by Justice Rehnquist and, in fact, find myself in strong disagreement with many of his past judicial opinions.

I must also say that I am troubled by the performance of Justice Rehnquist during the Judiciary Committee's confirmation hearings. His failure to be more candid and forthright with the committee has raised serious questions regarding his credibility. In addition, I am dismayed by some of the statements and writings made by Justice Rehnquist during his tenure in the Justice Department's Office of Legal Counsel and as a private citizen prior to his joining the Court in 1971 regarding civil rights issues and the equal rights amendment. These statements have understandably raised concerns regarding Justice Rehnquist's sensitivity to our Nation's commitment to equal rights for minorities and women.

While these statements should not be ignored by the Senate in its consideration of the nomination, I believe the more important and relevant indicator of Justice Rehnquist's fitness is his established record over the past 15 years as Associate Justice. An examination of this record reveals that Justice Rehnquist is, without question, a conservative jurist, an assessment with which few, if any, would disagree. However, the fact that his conservative judicial philosophy has led him to judgments on complex and controversial issues with which I and many others differ, neither makes him unfit nor does it necessarily indicate a hostility or insensitivity to the values of equality and justice.

Despite my differences with Justice Rehnquist's conclusions on various constitutional and legal issues, I do not question his integrity, or his respect for the rule of law and the Constitution. And, it is by these standards, together with professional competence, that Justice Rehnquist and other nominees to the Federal judiciary should, in my opinion, be judged.

Those who would have the Senate reject this nomination bear the burden of demonstrating why an individual who has served honorably and with distinction on the Supreme Court for over a decade should not be elevated to the position of Chief Justice. While there is much in Justice Rehnquist's record that precludes me from giving my enthusiastic support for his nomination, I do not believe that this burden has been met. I will, therefore, vote to confirm William Rehnquist as the next Chief Justice.

FAILING THE NATION'S IDEALS

Mr. LAUTENBERG. Mr. President, I rise to oppose the nomination. Justice Rehnquist should not become Chief Justice Rehnquist.

Mr. President, I do not reach this conclusion lightly. But, I do not come to it with any doubts or hesitation. I have thought a lot about the nominee. And I have thought a lot about my role and the Senate's role, in this process.

It is my role to apply, as best I can, certain high standards that a Chief Justice must meet. Standards of intelligence and integrity. But also standards of loyalty and service to ideals we hold so dear. Ideals of freedom and equality. Ideals embedded in the Con-

stitution, in our laws, and in our vision of a more perfect society.

Mr. President, Justice Rehnquist fails to meet those standards.

THE ROLE OF THE SENATE

The Senate has no role more important than its role of advice and consent to judicial nominations. And no judicial nomination is more important than one to the Supreme Court, one to the post of Chief Justice.

We have a great responsibility. Just as the President is empowered to make nominations, we are entrusted with the power to reject them. We are coequal with the President. Let me say that, at the outset, because I believe some of my colleagues would disagree.

Some would say the President—a popular President—has the right to whom he chooses, unless we prove the nominee to be a liar or a cheat or an incompetent. Some would say that we ought not to inquire into the nominee's views. It is fine for the President to do that. And, we can be sure, those views were a factor in this nomination. But, it is not our job to inquire as well.

Mr. President, that is what some may say. But, I disagree. The Senate's job is not so confined. It is not so mechanical. And it is not so easy.

We sit in judgment of someone who would lead one separate branch of Government. This is not some post within the executive branch, some post in the President's own administration. For that, perhaps more latitude is justified. A President is elected to lead that branch, and to assemble a government. But, we are elected to the Congress. And both the President and the Senate must join as partners in the selection of the members of the third branch—the judiciary.

We sit in judgment not of some nominee to a district or circuit court. For that, questions about a person's views perhaps should be balanced against a person's obedience to precedent.

But, we sit in judgment of a nominee to the highest court. The Court does not merely find the law, it shapes it. The Court can feed the growth of our liberties and the moral height of our Nation, or it can stunt them, starve them, and deny them their flowering.

We sit in judgment of a nominee who, while he serves today, would acquire greater power and greater stature, if confirmed as Chief Justice. He would have greater power to shape consensus and to cast the direction that lower courts must follow. He would serve as a symbol of American justice—a symbol of its achievements and a symbol of its failures.

We have a duty to exercise judgment. We have a duty to decide for ourselves. Is this the person the Nation needs?

Mr. President, I am not a lawyer. But, that's my view of our role. It conforms with the intent of the framers of the Constitution. It is upheld by history.

QUESTIONS OF INTEGRITY

This Senate must hold this nominee up to the highest standards of integrity. There must be no doubts. There must be no questions.

But, Mr. President, questions abound. Doubts are raised. There are questions of credibility and doubts about ethical responsibility.

Mr. President, people change. They grow. I can accept that. Our law has grown over the last 30 years. I can accept the fact that a person may have grown with it. That, in the past, he held views that would have been respectable in many quarters then, but would be untenable in most quarters today.

But Justice Rehnquist does not present such a picture of growth. Rather, he denies that he held now-rejected views. His denials are unbelievable. They're are unbelievable in the light of evidence. They're unbelievable in the light of the views that Justice Rehnquist has expressed over the years. And they raise profound questions about his credibility, his integrity, and his suitability to become Chief Justice.

As a young man, serving as a clerk to Justice Jackson, Justice Rehnquist argued for keeping the rule of separate but equal. Justice Rehnquist claims that he did so not as a statement of his own views. He did so at the request of Justice Jackson, who was seeking both sides of the argument.

The issue is not opposition, well over 30 years ago, to what would be the result in Brown versus Board of Education. While I would reject such opposition, I could accept that someone might have opposed the decision then, if that person accepts the decision now.

But, Justice Rehnquist denies that his memo reflected his views. That's hard to believe. His memo reads, "I have been excoriated by liberal colleagues, but I think Plessy versus Ferguson was right and should be reaffirmed." He says "I think". "I have been excoriated." This doesn't sound like the memo prepared to reflect another view.

Justice Jackson's secretary today refutes Justice Rehnquist. So does Justice Rehnquist's co-clerk at the time.

Indeed, it is Justce Rehnquist's own opinions, his own views, as expressed over the years following his clerkship, that make it much more believable that the memo expressed Justice Rehnquist's views. The memo expressed the views of a man who would later propose a constitutional amendment to strip the court of power to enforce Brown versus Board of Education. A man who would give Brown a narrow and cramped reading.

Mr. President, I could accept someone who said I thought separate but equal was right, but in retrospect, I was wrong. But, Justice Rehnquist does not show us to be a man of growth. He instead raises doubts about his integrity and credibility.

Similar doubts about the Justice's credibility are raised by his explanation of the terms of deeds on his homes. These were terms that restricted the sale of his homes on racial and religious grounds.

The deed on his Vermont home read that it could not be "leased or sold to any member of the Hebrew race."

The Justice claims that he was not aware that his deed so stated. But, can we believe that a skilled lawyer would not notice such a provision? We are talking about a purchase of a home not in 1950, but 1974.

By letter, Justice Rehnquist was specifically advised by his attorney that the deed was restrictive. Justice Rehnquist replied that he did not recall being advised. How could he forget? And even if he did, how could he accept that deed back then?

Justice Rehnquist is said to have personally challenged, accosted, and questioned would-be black voters in Phoenix, AZ. This was part of a Republican ballot-security program. A program said to be designed to intimidate black voters from the exercise of their rights. Justice Rehnquist denies that he had such a role. But, several witnesses dispute the Justice's account. Questions remain about the Justice's actions then, and what they say about his respect for voter's rights. Questions remain about his honesty today.

THE DUTY TO RECUSE ONESELF

The Chief Justice must uphold the highest standards of legal ethics. He must uphold the standard for the system and the legal profession.

One basic rule of judicial ethics, is that a judge should not sit in a case in which he has been involved; whose facts and subject matter has personal knowledge of; a case about which he has already formed an opinion.

The evidence shows that Justice Rehnquist violated that rule. He sat on the Supreme Court and cast the deciding vote, in the case of Laird versus Tatum. That case challenged the military's program of surveillance of citizens. The Court said that the plaintiffs had no right to bring the case.

Mr. President, when he served in the Justice Department, then attorney Rehnquist was head of the office that reviewed legal aspects of the surveillance policy. The office negotiated with the Army about the details of the policy. Negotiations were extensive. The office Mr. Rehnquist headed was small. Mr. Rehnquist himself sent a key transmittal memorandum. It is hard to believe that government attor-

ney Rehnquist did not have knowledge of facts and circumstances that should have disqualified Justice Rehnquist.

Compounding this breach of ethics, attorney Rehnquist testified about the Laird versus Tatum case before the U.S. Senate. He testified about important facts involving the case. He also expressed doubts about whether the case should be heard by the courts. That was the same issue that eventually came to the Supreme Court.

A leading expert on legal ethics, Professor Geoffrey Hazard, Jr. of Yale Law School, has written a letter on this matter. He has concluded that the Justice violated rules of legal ethics.

But, Mr. President, one does not have to be an expert on legal ethics, to see that it was wrong for the Justice to sit. He knew facts that the parties did not know and that they could not address. He had formed an opinion about the case before the parties had a chance to make their arguments. That's unfair. It's wrong. And it reflects negatively on the suitability of Justice Rehnquist to be elevated to the position of Chief Justice.

Mr. President, significant questions have been raised about the integrity of Justice Rehnquist. About his candor. About his legal responsibility. It is enough, alone, to deny him elevation to the highest judicial post in the land? Perhaps. But, we need not decide that question.

HOSTILITY TO THE IDEALS WE CHERISH

Mr. President, more troubling than the question about integrity, credibility, and ethical responsibility, is the nominee's consistent hostility to the rights and ideals we cherish. Justice Rehnquist has tried to impose a cramped and arthritic view of rights . . . rights that should flex and bend and reach out to embrace those left out. For this reason, he should be denied the post of Chief Justice.

Equal protection of the law is not just a guarantee of the Constitution. It is an ideal. It is a goal of our Nation. To promote equality. To raise up those kept down: racial minorities, women, the handicapped. To give them an equal chance to live a good life.

Justice Rehnquist would deny these people all but the stingiest protection. But, thankfully, he has often been alone. He has stood on the fringes of the Court. He has been pushed into dissent from rulings to expand civil rights, to bar bias as minorities, to uphold the rights of individuals.

Mr. President, that is where Mr. Rehnquist should stay. He should not rise to the top and center of the Court. No one so extreme, so out of touch with the mainstream of thought, should become the symbol of Justice in our Nation.

Rather than unite the Court and unite the Nation, he would divide it. Rather than build a consensus for expanding rights and liberty, he would fracture it.

This nominee would close the door to justice. The Courts of our Nation stand as a check against the tyranny of the majority. It stands as a defender of the individual. As the protector of the rights established in the Constitution and our laws.

Justice Rehnquist would close the door to the courthouse. He would deny access to the courts. In decision after decision, he has tried to deny standing, the right to go to court, to resolve disputes.

Mr. President, there is no right more basic to this Nation's history, its reason for being, than the right of free exercise of religion, and the proviso that the State shall not establish religion. This Nation was founded by people seeking to escape religious intolerance.

The separation of church and State is basic to the fabric of this Nation. Guarding against Government sponsorship of religion is as important as guarding the right of free exercise.

But, Justice Rehnquist would disagree. Time after time, he has departed from the court majority, to uphold laws said to sponsor religion.

Had Justice Rehnquist spoken for the Court, for the Nation, each time has spoken in dissent, our laws would be different laws; our rights would be lesser rights; and our Nation would be a poorer nation.

Racial segregation would prevail. Women would suffer second class citizenship. The wall between church and State would have crumbled. The rights of the individual would suffer at the hands of the State. The door to the courthouse would be closed.

This is what Justice Rehnquist has stood for. This is what he would stand for, as the chief of the courts, the guardians of the Constitution and the laws of the Nation.

He would stand as a symbol not of our aspirations, but of our failures. He would stand for rigid, unyielding view of rights, when the hallmark of our Constitution and our system of laws has been its flexibility, its vitality, its ability to adapt to changing times and expanding conceptions of liberty.

I cannot support this nominee for Chief Justice. He fails to meet the highest standards of integrity. But more important, in fact decisive, he fails to meet the highest standards of fidelity to the ideas of freedom and equality that we hold so dear.

Mr. HECHT. Mr. President, I rise today to speak in support of the nomination of William Rehnquist to be Chief Justice of the U.S. Supreme Court.

Justice Rehnquist is a man blessed as both a learned scholar and an accomplished attorney. More importantly, however, Mr. President, the Justice has a long and distinguished career of government service. As former President Richard Nixon so aptly noted in his speech nominating Mr. Rehnquist to the Supreme Court; Mr. Rehnquist was "awarded one of the highest honors a law graduate can achieve," when, shortly after completion of law school, he was given the position of clerk to Supreme Court Justice Robert H. Jackson.

Subsequent to this clerkship, Mr. Rehnquist was appointed during the Nixon administration to head the Justice Department's office of legal counsel as an Assistant Attorney General—an important public policy position. In this capacity Mr. Rehnquist reviewed the legality of all presidential executive orders and other constitutional law questions of the executive branch. He also frequently testified before congressional committees in support of that administration's policies. In fact, so well reasoned and articulate were his congressional presentations that even many liberal Members of Congress applauded his abilities.

Mr. Rehnquist was next nominated as a Justice on the Supreme Court where his tenure has been equally impressive. After 15 years and hundreds of cases on the Court, the Justice has clearly established his stance as to the Court's role—one of judicial restraint. Justice Rehnquist believes that the Court should exercise its powers with deference to its partners in the Federal system—Congress, the President, and the States—a philosophy with which I concur.

Mr. President, the present controversy over the nomination of Justice Rehnquist seems not to concern his immaculate record, but rather the fact that he is a conservative and a strong supporter of Reagan administration policies. The campaign in opposition to this nomination is being conducted primarily by those who, quite simply, do not agree with Justice Rehnquist's political disposition. And this effort will be, I am confident, an unsuccessful attempt to derail the nomination of someone who has faithfully served the Court for the past 15 years.

In closing, Mr. President, I would like to remind my colleagues that the American Bar Association gave Justice Rehnquist its highest rating when evaluating his qualifications for the position Chief Justice. I am of the opinion that Associate Justice Rehnquist will make an excellent Chief Justice. Accordingly, I wholeheartedly support his nomination and urge my colleagues to do the same.

Mr. DIXON. Mr. President, shortly, we will be asked to advise and consent to the nomination of Mr. Justice Rehnquist to be Chief Justice of the Supreme Court of the United States.

This is a particularly challenging obligation of each Senator, because once confirmed, the Chief Justice serves for

life, pending good behavior, and closely touches all aspects of our national experience.

I want to say, Mr. President, that I take this solemn duty most seriously, and regard it as a sacred trust.

In a moment, I will review the pros and cons of Mr. Justice Rehnquist, as I view him, but first I would like to set forth my own interpretation of the correct and proper discharge of my responsibility as a Senator regarding this appointment.

I believe that a Senator should require the following attributes in a nominee to a high Federal post, and particularly the Supreme Bench:

First. Great intellectual capacity.

Second. The kind of background and training that appropriately prepares the nominee for the post to which he or she is recommended.

Third. Personal integrity and a good reputation.

I will return to these criteria after I have briefly examined some of Justice Rehnquist's qualifications. I will also deal with a series of charges leveled against Mr. Rehnquist during his confirmation hearing in the Senate Jusiciary Committee.

Mr. President, the American Bar Association has examined these qualifications. If I may quote briefly from the Bar Association's report. It reads:

> The committee unanimously has found that Justice Rehnquist meets the highest standards of professional competence, judicial temperament and integrity, is among the best available for appointment as Chief Justice of the United States, and is entitled to the committee's highest evaluation * * * well qualified.

The Bar Association continues:

> Members of the Judiciary who know him describe Justice Rehnquist as a true scholar, collegial, genial and low key * * * unbelievably brilliant * * * a very capable individual in every respect.

Finally, the American Bar Association examined approximately 200 of Justice Rehnquist opinions, and concluded that his legal abilities are of the "highest quality."

Mr. President, in addition to weighing the recommendations of the American Bar Association, the Judiciary Committee examined some charges against Justice Rehnquist.

A major matter in the committee was the alleged involvement of the nominee in aggressive vote challenges in Arizona 20 years ago. Mr. Rehnquist admits election involvement, but essentially denies partisan excessiveness. As a participant in the elective process for a good many years, I must first observe that there is nothing at all unusual in election challenges. This is a customary and longstanding practice in Illinois politics, and has been employed by many members of both political parties in my State. It is nothing new, Mr. President. I would also suggest that the facts of the Arizona case are in serious dispute. The Democratic chairman in Maricopa County, AZ, at the time of the alleged election challenges was Judge Vincent Maggiore. The judge informed the Senate Judiciary Committee, and I quote:

> At no time did anybody come to me and state that Justice Rehnquist had committed any of the acts that I have heard for the last 2 or 3 days. * * * I was the party leader, and, for sure, all of these things should have come to me.

Page 12 of the Judiciary Committee's report states plainly:

> Justice Rehnquist * * * did not participate in any vote challenging or harassment.

Mr. President, some contend that Mr. Rehnquist has peculiar "memory failure" in this phase of his life, but is that peculiar?

Twenty years ago, I was a party leader in the Illinois State Senate. I remember that phase of my life with great joy and satisfaction and I can recall all of the good fights, and the major issues of that time. But I cannot recall every detail of that period with great exactness, and I would not expect another busy individual like Mr. Rehnquist to have perfect recall either.

Frankly, I would not refuse this high office to Mr. Rehnquist on the basis of a 25-year-old historical experience in substantial dispute.

Mr. President, the matter of the restrictive covenants in the deeds has been troublesome to many of us, but, clearly, it is a situation that is common to a good many substantial people in public service. I do not find it particularly difficult to believe that Justice Rehnquist was unable to immediately recall a letter from his attorney describing the title on a Vermont property. That letter included a reference to the restrictive covenant. Mr. Rehnquist immediately took steps to remove the covenant, and informed the committee of his actions. Mr. President, certainly this issue ought not to disqualify the nominee.

On the matter of the Cornell Family Trust, I believe allegations that Justice Rehnquist somehow acted improperly are without substance. I am a lawyer, Mr. President. Lawyers draw up trusts all the time. Mr. Rehnquist drew one up for the benefit of his brother-in-law, at the request of his father-in-law, who also asked that the existence of the trust be kept secret. On the basis of the information I have, Mr. President, I do not believe I can withhold my vote on this account.

Also at issue before this body today is the propriety of Justice Rehnquist's decision against recusing himself from Supreme Court consideration of the case, Laird versus Tatum. In considering this matter, I examined the statute which must govern a decision of this type. I also read Mr. Geoffrey Hazard, Jr.'s letter to the Judiciary Committee, and examined the great variety of testimony available.

Mr. President, I find this case against Justice Rehnquist to be circumstantial. By this I mean that I have not seen substantial, direct evidence which involves William Rehnquist specifically in the formulation of the Office of Legal Counsel's surveillance policy.

Lacking definitive evidence, I believe the Senate must take Justice Rehnquist at his word. As he testified before the Senate Judiciary Committee:

> I conclude that the applicable statute does not warrant my disqualification in this case. Having so said, I would certainly concede that fair-minded judges might disagree about the matter.

Mr. President, the most serious deficiency in this nominee, so far as this Senator is concerned, is his failure to be more forthcoming and helpful in advancing the cause of civil rights in this country, both in his private life, and in his service of 15 years on the Supreme Court.

In this connection, he falls far short of the minimum standard I would demand in a nominee. I would demand a greater commitment to individual quality and opportunity for minorities in our country. I would demand a greater sensitivity to civil liberties. My candidate for this post would advocate a judicial and political philosophy far different than that of Justice Rehnquist. But, here, I should observe—he is the President's nominee, not mine.

The President has made it clear that he wants a strict constructionist, and a certified conservative, as Chief Justice of the U.S. Supreme Court. President Reagan carried 49 of the 50 States in this country and enjoys a staggeringly high approval rating nationally.

The President is entitled to a Chief Justice of his choice. It comes as no surprise to this Senator that President Reagan has chosen for the post of Chief Justice one who shares his philosophical attitudes. Opposing the political or judicial philosophy of a President's nominee is not, in my view, generally a basis for a vote against that nominee.

I do not agree with, nor do I condone, Mr. Rehnquist's views. I do, however, suggest the following:

First, the President is entitled to a Chief Justice who shares his views; and

Second, if we rejected Mr. Rehnquist on philosophical grounds, the President would send us another nominee of exactly the same persuasion who would probably not be as well qualified as Mr. Rehnquist.

Why do I say that?

Because I set forth three criteria in my opening remarks, and, in my mind, Mr. Rehnquist more than meets them.

First, he is exceedingly bright—he meets the test on intellectual capacity;

Second, he is a respected member of the Supreme Court—he meets the requirements regarding background and training; and

Third, despite an extensive and thorough hearing, no substantial evidence has developed destroying his reputation, or disqualifying his character.

Mr. President, I voted against Dan Manion because he lacked intellectual capacity, and is an inferior writer. He was not fit for the Seventh Circuit Court of Appeals in Chicago. I also disagreed significantly with his political philosophy.

Mr. President, I likewise disagree with Mr. Rehnquist's philosophy, but I will vote for him because he is qualified for the post. When the question is put: "Will the Senate advise and consent to the nomination of William Rehnquist to be Chief Justice of the U.S. Supreme Court?"—this Senator will vote "aye."

Mr. DOLE. Mr. President, the Senate now begins its final debate on the nomination of William H. Rehnquist to be Chief Justice. Since I have already spoken at length previously, I will not take more time now except to highlight briefly the reasons why I shall vote to confirm Justice Rehnquist; and will do so with a firm conviction that the President has acted wisely in submitting this nominee to us for our advice and consent.

I shall be brief also, because the Senate has already spent the better part of a week on this nomination, often going over the same few arguments endlessly. I remind the Senate that this is the third time we have been asked to confirm Justice Rehnquist. He was approved as an Assistant Attorney General in 1969. He was confirmed as an Associate Justice of the Supreme Court in 1971. The Committee on the Judiciary held 4 days of hearings, receiving testimony from more than 40 witnesses over 40 hours. Even the most die hard opponent must concede that the Senate has given the most careful attention to this nominee. Chairman THURMOND certainly accommodated opponents during the committee process; this Senator also has made every attempt to accommodate opponents. Only with great reluctance was a petition for cloture filed last Monday evening. Even then, up until the last moment, I felt we would be able to avoid cloture—at least that was my impression. But it did not happen.

Mr. President, it is unquestioned that Justice Rehnquist brings a unique set of credentials to the Senate for review. His 15 years of service on the High Court has simply been a model for justices and judges everywhere to follow. He has been prolific and productive. He has authored more than 230 majority opinions—more than any of his colleagues during that period. He has also been a frequent dissenter—more than 80. This is the third highest number among those currently on the Court.

He has unequalled experience, and has the temperament and collegiality necessary to provide effective leadership on the Court. His academic credentials are the best: He was first in his class at Stanford law school; he has a master's degree in history from Harvard; he had highest honors at Stanford in his undergraduate studies.

He was found to be well qualified by the American Bar Association—the highest rating to be given. And this rating was bestowed after in-depth interviews with all other members of the Supreme Court, and literally hundreds of judges, scholars and lawyers throughout the country.

What more can we ask?

Mr. President, the critics of this nominee have raised a number of objections to confirmation. In my view, they do not present a strong enough case to warrant a negative vote. Since I have already set forth my analysis of these objections, I will not again belabor these points, except for a few brief observations.

First, it is said that he is an extremist—often dissenting from his colleagues. Yet he seems to reflect the views of a majority of his court colleagues more often than any other Justice. He certainly has the confidence of the President, who in turn, received an overwhelming mandate from the electorate in 1980, and again in 1984. If that is extremism, then the majority of the American people fit into that same mold.

It is said that his views on school desegregation are exteme—a throwback to Plessey versus Fergusen and its abhorrent separate but equal doctrine. But as evidence of this argument, a 34-year old law clerk's memo is cited. At the same time, 34 opinions of the Supreme Court in the past 15 years, in which Justice Rehnquist either authored or joined with the majority, to uphold the landmark Brown versus the Board, are ignored. To me, that is the best evidence upon which to weigh this argument.

Charges have been made that Mr. Rehnquist engaged in partisan voter intimidation tactics in his time as a practicing lawyer in Phoenix in the early 1960's. Yet these charges were made by a group of avowed Democratic partisans, and denied by a group of partisan Republicans—and including some former local Democratic Party officials. And we have the repeated flat denials of intimidation by the nominee himself. To me, after all this passage of time, and the belated nature of much of the accusatory material, again the argument must favor the nominee.

Attempts have also been made to discredit the nominee because of the racial restrictive covenants contained in the deeds of two of the properties which the Justice acquired. To me, this is by far the weakest opposition argument. These repugnant provisions are littered across the land in record books of every courthouse in the country. Since 1948, they are utterly uninforcible, in the wake of the Supreme Court decision in Shelley versus Kraemer. But the opponents somehow try to translate these relics into the present state of mind of the nominee. This is simply sophistry and nothing more.

The opposition argument that has the most merit, and indeed was a close question, as the nominee himself conceded, was the decision of Justice Rehnquist to participate in the case of Laird versus Tatum. This case involved the 1970 May-day demonstrations and disturbances. While serving as Assistant Attorney General at the time, he prepared memoranda and was otherwise involved in the Nixon administration response to the situation. I am satisfied that the code of judicial ethics that applied at the time did not preclude his participation in the subsequent high court proceedings. Again, I say it was a close call, but not of a sufficient stature to persuade me that this was a fatal error.

Attempts have been made to allege a serious breach of legal ethics by Attorney Rehnquist in the handling of a family trust for the brother of his wife. To me, this is the sorriest aspect of this whole proceeding. It was an internal family matter. All other members of the family have specifically denied the brother's charges. An investigation by the FBI affirmed their denials. Yet critics persist—as if Mr. Rehnquist actively participated in some scheme to deceive a helpless invalid. Nothing could be further from the truth. Frankly, Mr. President, these charges have not added to the dignity of this institution. It is most regrettable they have seen the light of day.

In conclusion, Mr. President, I shall vote to confirm Justice Rehnquist as the 16th Chief Justice of the United States. And I shall do so with a firm conviction that the Nation, and the American people, will be well served. He will be a creative and congenial leader. He will build a Federal judiciary that will be equipped to deal with the immense and complex legal business that will arise in the coming years. I have every confidence that he will be fair and just. He will get my vote.

The PRESIDING OFFICER. Is there further debate?

Mr. DOLE. Mr. President, there is no further debate, but I hope we are now in the position to vote.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Let me announce that I think we want to give a little warning to Members who may be scattered about. We are about to vote on the Rehnquist nomination.

Following the vote on the Rehnquist nomination, we will take up the Scalia nomination. I do not believe that will take any great deal of time. There will be a rollcall vote on that yet this evening. Then we will either go back to product liability, or to reconciliation. It is a 20-hour time agreement on reconciliation. That should be of some encouragement. But we will not try to finish it this evening.

So let me just suggest the absence of a quorum for a minute or two.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no further debate, the question is, Will the Senate advise and consent to the nomination of William Rehnquist, of Virginia, to be Chief Justice of the United States of America?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. GARN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 65, nays 33, as follows:

[Rollcall Vote No. 266 Ex.]

YEAS—65

Abdnor	Domenici	Kasten
Andrews	Durenberger	Laxalt
Armstrong	Evans	Long
Bentsen	Ford	Lugar
Boren	Gorton	Mattingly
Boschwitz	Gramm	McClure
Broyhill	Grassley	McConnell
Bumpers	Hatch	Murkowski
Chafee	Hatfield	Nickles
Chiles	Hawkins	Nunn
Cochran	Hecht	Packwood
Cohen	Heflin	Pressler
D'Amato	Heinz	Proxmire
Danforth	Helms	Pryor
DeConcini	Hollings	Quayle
Denton	Humphrey	Roth
Dixon	Johnston	Rudman
Dole	Kassebaum	Simpson
Specter	Symms	Warner
Stafford	Thurmond	Wilson
Stennis	Trible	Zorinsky
Stevens	Wallop	

NAYS—33

Baucus	Gore	Melcher
Biden	Harkin	Metzenbaum
Bingaman	Hart	Mitchell
Bradley	Inouye	Moynihan
Burdick	Kennedy	Pell
Byrd	Kerry	Riegle
Cranston	Lautenberg	Rockefeller
Dodd	Leahy	Sarbanes
Eagleton	Levin	Sasser
Exon	Mathias	Simon
Glenn	Matsunaga	Weicker

NOT VOTING—2

Garn	Goldwater

So the nomination was confirmed.

□ 2150

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, I congratulate the Senator from South Carolina and the supporters of Justice Rehnquist. I hope that all that some of us fear of him does not come to fruition. I wish him well on the Court.

I am anxious to get to our next Supreme Court nominee.

The PRESIDING OFFICER. The Senate will come to order. Senators are asked to take their seats, and Senators engaged in conversations are asked to retire to the cloakroom.

THE JUDICIARY

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the nomination of Antonin Scalia to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The nomination will be stated.

The assistant legislative clerk read the nomination of Antonin Scalia, of Virginia, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. Is there objection to the present consideration of the nomination?

There being no objection, the Senate proceeded to consider the nomination.

Mr. STENNIS. Mr. President, may we have order?

The PRESIDING OFFICER. That is an appropriate request. The Senate is not in order. The Senate will be in order. The hour is late, and the matter before us is important. Senators are asked to be in order. Those Senators who wish to confer are asked to retire to the Cloakroom. Those Senators ambling about the Chamber are asked to take their seats or retire to the cloakroom. Staff members on the Republican side and the Democratic side are asked to be silent.

Mr. THURMOND. Mr. President, I rise today to voice my strong support for President Reagan's nomination of Judge Antonin Scalia to be Associate Justice of the U.S. Supreme Court. Judge Scalia is eminently qualified. In 1957, Judge Scalia graduated summa cum laude and No. 1 in his class from Georgetown University. In 1960, he graduated magna cum laude from Harvard law School. While at Harvard he was the note editor of the Harvard Law Review and a Sheldon fellow.

Judge Scalia practiced law with the prestigious firm of Jones, Day, Cockley, & Reavis in Cleveland, OH, from 1961 to 1967. He then embarked on a career as a law professor at the University of Virginia Law School. In 1971, he was appointed general counsel of the Office of Telecommunication Policy, Executive Office of the President. He was appointed Chairman of the Administrative Conference of the United States in 1972. During the period 1974–77, he served as the Assistant Attorney General, Office of legal Counsel, U.S. Department of Justice.

Following his Government service, Judge Scalia again returned to the academic arena. In 1977, he was a professor of law at the University of Chicago Law School. He was also a visiting professor of law at Georgetown Law School, and scholar in residence with the American Enterprise Institute. In 1980 and 1981, he was a visiting professor of law at Stanford University Law School.

Among his many other achievements, Judge Scalia has served as the editor of Regulation magazine. He was chairman of the American Bar Association's Section of Administrative Law, as well as chairman of the ABA's Conference of Section Chairman. He also served on the board of visitors of the J. Reuben Clark Law School of Brigham Young University.

In August 1982, Judge Scalia was confirmed by the Senate for the position of circuit judge for the U.S. Court of Appeals for the District of Columbia Circuit. He has served with distinction in that capacity since that time.

Judge Scalia's nomination to be an Associate Justice of the Supreme Court was received by the Senate on June 24, 1986, and was reported out of committee favorably on August 14, 1986, by a unanimous vote of 18 yeas. The Committee on the Judiciary held 2 days of hearings on the nomination. The nominee was questioned by members of the committee and testimony was heard from 25 witnesses.

A number of very prominent individuals testified in support of Judge Scalia, including Carla Hills, the former Secretary of Housing and Urban Develoment; Erwin Griswold, former Solicitor General of the United States and former dean of Harvard

Law School; Gerhard Casper, dean of the University of Chicago School of Law; Paul Verkull, president and professor of law at the College of William and Mary; and Lloyd Cutler, former counsel to President Carter. Based on personal experiences with Judge Scalia, these prominent individuals all gave him extremely high marks for legal ability, writing skills, fairness, integrity, and intellect.

Representatives of the American Bar Association's Standing Committee on Federal Judiciary testified before the Judiciary Committee and stated that Judge Scalia was considered to be well qualified for the position of Associate Justice of the Supreme Court. This is the highest rating given by the ABA's Committee for Supreme Court nominees. The ABA representatives testified concerning the scope of their investigation and the results thereof. The ABA committee interviewed more than 340 persons, of which over 200 were Federal and State judges. Those who knew Judge Scalia spoke enthusiastically of his keen intellect, his careful and thoughtful analysis of legal problems, and his excellent writing ability. They also commented on his congeniality and sense of humor. The Scalia investigation also included interviews with approximately 80 practicing lawyers throughout the United States. The ABA reports that from the standpoint of his intellect and competence, temperament and integrity he is well regarded by almost all of the practicing attorneys who know him. The ABA interviewed more than 60 law school deans and faculty members concerning Judge Scalia's qualifications and he was uniformly praised for his ability, writing skills and intellect. Judge Scalia's opinions issued while on the court of appeals were examined by the dean and a number of law school professors from the University of Michigan, as well as by a separate group of practicing lawyers. Both of these groups praised his intellectual capacity, his clarity of expression, his ability to analyze complex legal issues, as well as his organizational skills and articulation of ideas.

The picture of Judge Scalia that emerges as a result of the Judiciary Committee's investigation and hearings is that of an individual who has a strong intellectual capacity and is fair and honest. One who issues well reasoned and well written opinions and who possesses a warm and friendly personality. An individual that is not only competent but one that will seek advise when necessary and demonstrates the independent courage of his convictions when appropriate.

Judge Scalia has an excellent record of accomplishments. He had a distinguished academic career as a law professor; he has practiced law from the perspective of both the private sector and as a Government attorney; and, he has served as a judge on the U.S. Court of Appeals. He posses the necessary qualities to serve with distinction in the position for which he has been nominated and I urge my colleagues to vote for confirmation of President Reagan's outstanding selection of Antonin Scalia to be an Associate Justice of the U.S. Supreme Court.

□ 2200

He is well qualified. The American Bar Association gave him the highest rating. The Judiciary Committee investigated him carefully as the FBI did. There was nothing found against him in any way, shape, or form.

I hope he could be confirmed unanimously, and if the Members put their statements in the RECORD we can finish this in 5 minutes.

Mr. BIDEN. Mr. President, as I always do, I will take the advice of my chairman and put my statement in the RECORD.

Today marks the final stage of the process to answer the question "will the Senate advise and consent to the nomination of Antonin Scalia to be an Associate Justice of the U.S. Supreme Court?" The nominee's record has been subjected to an extensive review; the nominee, and numerous witnesses both pro and con, testified before the Judiciary Committee; and the committee, after weighing all the evidence, has voted its unanimous recommendation that the nominee be confirmed. Now, it is the responsibility of the full Senate to consider this nomination.

Much of our attention during the past 2 months has been focused on the nomination of Associate Justice William Rehnquist to the position of Chief Justice. We should not, however, allow our understandable concern with the question of who will lead the coordinate branch of government distract us from our responsibility in considering the equally important question of who will join the institution comprised of only nine men and women that is entrusted with the guardianship of our constitutional heritage.

When we began the consideration of this nomination I stated that the crucial question for me was whether the nominee adhered to a judicial philosophy that would unravel the broad fabric of settled practice. Such a nominee should be rejected because his or her presence on the Court would severely disrupt the delicate process of constitutional adjudication. While I would oppose any nominee with such a rigid and potentially disruptive philosophy, the fact that I may disagree with the nominee about the correct outcome of one or another matter within the legitimate parameters of debate is not enough, by itself, to lead this Senator to oppose a nomination.

Nevertheless, the particulars of a nominee's judicial philosophy should be considered in determining whether his or her appointment would fundamentally alter the balance of the Court. I firmly believe that a diversity of views from liberal to conservative should be represented on the bench. Such diversity contributes to the American people's belief that they can get a fair hearing before openminded judges, a belief that is crucial to continued faith in the judicial system. We should, therefore, proceed with extreme caution before approving the nomination of any individual whose appointment would fundamentally alter, in any direction, the balance of the Court, because—to paraphrase Justice Rehnquist—just as it would be wrong to have nine Justice Rehnquists, it would also be wrong to have nine Justice Brennans on the Court.

Of course, in addition to satisfying the foregoing requirements, before his or her nomination should be favorably considered a nominee to the High Court must possess the professional excellence and integrity we have the right to demand of a Supreme Court Justice.

The nomination of Judge Scalia presents some difficult questions for those of us seeking to determine the impact of his judicial philosophy on settled constitutional practice and the existing balance of this Court.

First, Judge Scalia's limited service on the court of appeals, both in terms of time and the nature of the issues he has addressed, does not provide a sufficient record upon which to make a determination of how his judicial philosophy would impact on settled practice in a number of important areas.

Second, although Judge Scalia's writings as an academic provide us additional information, the utility of that information to this process is in some doubt. As a scholar, Judge Scalia was fond of the provocative argument, and one is never sure when he is asserting his own view. Additionally, Judge Scalia often included policy arguments in his writings, and there is no way to determine from the writings what effect he would give his particular policy preferences in interpreting the Constitution.

Finally, Judge Scalia adopted an extreme view of the proper scope of response by a judicial nominee in a nomination hearing. Adhering to that view he declined to answer questions that might clarify his judicial philosophy. While respecting Judge Scalia's view, I find, as did a number of my colleagues on the Judiciary Committee, that the limitations he has adopted severely hampers the Senate's ability to perform its constitutionally mandated role.

Working within these limitations, I have attempted to ascertain whether Judge Scalia's judicial philosophy raises a concern about his willingness

to adhere to settled doctrine in a number of important areas. I was greatly encouraged by Judge Scalia's statement that he does not have an agenda of cases he is seeking to overturn. I was also encouraged by his stated respect for the doctrine of stare decisis and its applicability to the Supreme Court as well as the lower Federal courts.

Although I strongly disagree with Judge Scalia's judicial philosphy in a number of areas, I find his views to be within the legitimate parameters of debate. Judge Scalia's judicial philosophy strikes me as very conservative. I do not, however, find him significantly more conservative than Chief Justice Burger; therefore, I do not have undue concern about the impact of this appointment on the balance of the Court.

Mr. President, I will take less than 2 minutes to summarize.

Mr. President, there is a significant distinction between this nominee and the last one. One is this nominee has demonstrated through his career that he has an intellectual flexibility. He is not a rigid man and he does engage in and is willing to engage in discussion of new ideas, different than those which are the ones that he had been predisposed at that point to hold. He is open, he is straightforward, he is candid.

In addition to that, notwithstanding his conservative bent, there is no indication that the nominee's judicial philosophy would unravel the settled fabric of constitutional law.

Further, given the almost unanimous view that Judge Scalia is a man of the utmost ability, an able judge, and a willing participant in the intellectual give and take crucial to arriving at the consensus that lends credibility to decisions of a court I believe that, despite my differences with many of Judge Scalia's views, the Senate should confirm his nomination to be an associate justice of the United States Supreme Court.

I think he is a fine man. I think he should be on the Court, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I did have the opportunity as a member of the Judiciary Committee to hear out this nominee for service on the Supreme Court of the United States. Although I am troubled by some of the views expressed by Judge Scalia in some of the decisions he has written, I too find that Judge Scalia is clearly in the mainstream of thought of our society and I would hope that he would demonstrate the kind of opportunities for growth and sensitivity on many of these issues and questions.

I support the nomination of Judge Scalia to be an Associate Justice of the Supreme Court. This nomination raises fewer of the concerns that have led me to oppose the nomination of Justice Rehnquist to be Chief Justice.

In my view, Justice Rehnquist's career of relentless opposition to fundamental claims involving issues such as racial justice, equal rights for women, freedom of speech, and separation of church and state places him outside the mainstream of American constitutional law as an extremist who should not be confirmed as Chief Justice of the United States.

Judge Scalia has been on the bench only 4 years, and has not ruled on many basic constitutional issues. His record in these areas is less complete than Justice Rehnquist's. On the available record, I disagree with Judge Scalia on women's rights, and it is fair to say that his position on this issue seems as insensitive as Justice Rehnquist's.

I am also concerned about Judge Scalia's writings on two important issues in administrative law, his apparent views that the independent agencies are unconstitutional, and that the courts can undo the New Deal by denying Congress the power to delegate authority to regulatory agencies.

But in other areas that are of major concern to me, it is difficult to maintain that Judge Scalia is outside the mainstream. Should he be confirmed as a Justice, I hope that as a result of his new rank, he will look with greater sensitivity on critical issues, especially race discrimination and the right of women to escape their second-class status under the law and to share fully in the protections of the Constitution.

Finally, the nomination of Judge Scalia presents none of the troubling issues with respect to truthfulness, candor, judicial ethics, and full disclosure that have marred the nomination of Justice Rehnquist.

As a scholar, public official, and Federal judge, Mr. Scalia has demonstrated a brilliant legal intellect and earned the respect—even the affection—of colleagues whose personal philosophies are far different from his own. I will vote in favor of his confirmation.

Mr. METZENBAUM. Mr. President, it is quite obvious that the nomination of Judge Scalia to become a Justice of the Supreme Court is going to pass overwhelmingly in this body. I doubt very much if there will be one negative vote against him.

But I think that that vote is proof positive that the previous vote of some of us who saw fit to vote against Justice Rehnquist had nothing to do with the man's political views.

There is not much question in anybody's mind that Judge Scalia is every bit as conservative as Justice Rehnquist and some stated before our committee that in all probability he is more conservative.

That was not the issue. That is not the issue.

We all agree Judge Scalia is a man of integrity, Judge Scalia is a man of legal ability, Judge Scalia comes to the Supreme Court with an excellent legal background.

So there will be no votes against him or at most one or two.

They will not be based upon his political philosophy.

Those who would argue that the previous votes of 33 Members of this body who voted against the confirmation of Justice Rehnquist had something to do with political ideology I think that will be totally refuted when the vote is concluded in connection with the confirmation of Judge Scalia to become Justice Scalia of the Supreme Court.

I am voting to confirm Judge Scalia to the post of Associate Justice of the Supreme Court.

I have decided to vote for him for several reasons. He is a distinguished member of the legal profession, he is very well-respected, and he is sufficiently respectful of Federal statutory and Constitutional law.

His achievements before his appointment to the court of appeals are well known. He attended a distinguished law school. He was an associate in a major law firm. He taught at some of the finest law schools in the country, and served the United States twice in posts which required Senate confirmation.

He has been praised for both his intellect and his wit.

His integrity has not been questioned.

Since 1982, when he was appointed to the U.S. Court of Appeals, he has written over 100 opinions. These opinions cover a variety of subjects—administrative law, court access, consumer law, labor law, the Freedom of Information Act, and the Constitution.

There is no question that his opinions have been carefully written and well-reasoned. His opinions have garnered the support of a wide cross-section of the court's judges including conservative, moderate, and liberal judges.

There is also no question that some of these opinions are controversial. For example, his opinions on the Freedom of Information Act have been criticized because most have rejected freedom of information requests.

It is not difficult to understand why his decisionmaking in this area has evoked concern. Judge Scalia was quite critical of the Freedom of Information Act before he became a Federal judge. But his Freedom of Information Act opinions have been well-reasoned and unbiased, and his opinions have been joined by various members of the court of appeals. In addition, in the course of his opinions, he has ex-

plicitly acknowledged and accepted the goals of the act.

It has also been suggested that Judge Scalia has shown a closed mind and continuing insensitivity to the needs of women, minorities, and the poor "and a steadfast opposition to enforcing basic constitutional rights." These concerns are reasonable given the content of some articles Judge Scalia wrote before he became a judge.

But while I disagree with the results he has reached in some decisions, I must note that he has not shown himself to be hostile to basic constitutional values.

It appears that he has been a fair and openminded judge on the court of appeals. I have every reason to believe that he will maintain this attitude when he joins the Supreme Court of the United States.

My vote should not be misinterpreted as a vote for Presidential prerogative in the selection of Supreme Court Justices.

The Senate has a crucial—and equal role to play in the confirmation process.

I will vote for Judge Scalia, despite his conservative views, because I believe he is qualified.

I will vote for Judge Scalia because I do not believe that his presence on the Court will shift the Court dramatically and dangerously to the right.

I will vote for Judge Scalia because I do not believe that his presence on the Court will endanger the basic individual rights protections Americans enjoy today.

But if the confirmation of future Supreme Court nominees would undermine the role of the Court in the protection of individual rights, I will not hestitate to oppose those nominees.

And if the confirmation of future nominees would threaten the stability of the Court, I will not hesitate to oppose those nominees.

Today, however, I am pleased that no controversy has arisen in connection with this nomination. I am pleased to vote for Judge Scalia and I congratulate him on his inevitable confirmation.

The PRESIDING OFFICER (Mr. WILSON). The majority leader.

Mr. DOLE. Mr. President, are the yeas and nays ordered.

The PRESIDING OFFICER. They are not.

Mr. DOLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, the Senate now proceeds to consider the nomination of Antonin Scalia to be an Associate Justice of the Supreme Court. In contrast to the nomination of William Rehnquist, this nomination has been a "piece of cake." Perhaps Judge Scalia indirectly benefited from the "controversy" that swirled around the Rehnquist nomination. In any event, it is likely that the Senate will approve this nomination by acclamation. As of the moment, I know of no Senator who is actively opposing Judge Scalia.

Although there may be some indirect benefit that transferred over from all the attention that the Senate has given to Justice Rehnquist, at best, it is a minor factor in this instance. Judge Scalia has such broad and strong support because he is an exceptionally well-qualified candidate.

It is not my intention to dwell at length on extolling the virtues of Mr. Scalia, Mr. President, but I would like to briefly recount some of those qualities which have earned him such broad support in the Senate.

Judge Scalia graduated with honors from Georgetown University and Harvard Law School. He has been a law professor and scholar at the Universities of Chicago and Virginia. In the early 1970's, he joined the executive branch of Government and quickly rose to become the Assistant Attorney General, and legal counsel to the Attorney General and the President This, of course, is the chief legal position in the Government. It was the same post occupied by Chief Justice Rehnquist. Judge Scalia also had a distinguished career in private practice in Ohio.

But the academic and professional qualifications are only a part of the dimensions of this man. He is a family man, with nine children. He is a first generation Italian-American, his father having immigrated to this country from Sicily.

He has also a distinguished service on the Circuit Court of Appeals for the District of Columbia for the past 5 years. In that short time, he has authored more than 80 majority opinions. This is quite an accomplishment for a court that, in the past, was often known for its sharp philosophical split. Of his 86 opinions, only 9 were accompanied by minority views. He is one of the Nation's leading experts on administrative law. He is also a recognized authority on the doctrines of separation of powers and federalism.

One of the most impressive opinions was his courageous opinion in the Synar case, which identified the constitutional problems with the Gramm-Rudman-Hollings budget balancing legislation. The Supreme Court later upheld this view.

As in the case of Justice Rehnquist, the American Bar Association gave him its highest rating, unanimously concluding that he was "well qualified" to be elevated to the High Court. The ABA Committee found that Judge Scalia "meets the highest standards of professional competence, judical temperament and integrity and is among the best available for appointment to the Supreme Court."

It is tempting to go on, Mr. President, to extol this man's virtues. To do so, would only be adding more gilt to the proverbial lily. I believe I can truly speak for the entire Senate in this case. He has our full endorsement and support. We wish him Godspeed on his appointment to the Supreme Court. He will be an effective and energetic Justice.

Mr. DODD. Mr. President, when the Senate votes to extend or withhold its consent to the confirmation of Judge Antonin Scalia as Associate Justice of the U.S. Supreme Court, I will cast my vote in favor of the nominee. I rise now to briefly set forth my reasons for supporting this confirmation.

As I explained in some detail in my remarks concerning the nomination of Justice Rehnquist, I believe that each Senator is obligated to scrutinize with exceptional vigor the qualifications of all judicial nominees. We must, in my view, ensure that the nominee has excellent technical and legal skills; is of the highest character and free of any conflicts of interest; and is capable of and committed to upholding the Constitution of the United States.

It is not proper in my view for a Senator to reject a nominee merely because the nominee is a conservative individual or jurist, one who believes that the Court should exercise a relatively guarded role in the interpretation of the Constitution. It is proper, however, to reject a nominee when his temperament and temperature reflect an inability to appreciate and protect the fundamental constitutional rights of all.

Several days ago I voted against the confirmation of Justice Rehnquist. I did so not because Justice Rehnquist is a conservative jurist, but rather because his record reflects a cold indifference toward the constitutional guarantees of equal protection and due process for minorities.

Judge Scalia is, like Justice Rehnquist, what most would call a conservative individual. His views on certain controversial issues of our time undoubtedly differ from my own. That he is conservative or possesses views with which I disagree, however, is not the point. What is the point is whether he is capable of and committed to upholding the fundamental guarantees embodied in the Constitution—the blueprint for this 200-year-old experiment in democracy—which he will be sworn to protect and cultivate.

On balance, the evidence I have reviewed convinces me that Judge Scalia is able and willing to ensure that all litigants are extended the full and equal protection of the Constitution on the basis of the facts as presented in each case and in light of the law as previously decided.

The British biologist Sir Thomas Huxley traveled through America in the late 19th century. At the end of his visit, some American reporters tried to fish from him a compliment about the expanse and wealth of our country. Sir Thomas was uncooperative. He said:

I cannot say that I am in the slightest degree impressed by your bigness or your material resources. Size is not grandeur, and territory does not make a nation. The issue is . . . what are you going to do with those things?

Judge Scalia is, from all accounts, a highly intelligent individual. Technical competency is not only good, but absolutely necessary in our Federal judges. But like Sir Thomas' perception of superiority, the ultimate test of Judge Scalia's success will not be the keenness of his intellect. With hopeful anticipation, I trust that Judge Scalia will use his intellect to carry out, with all the energy, compassion, and commitment he can muster, one goal above all else: that of protecting the constitutional liberties of us all.

NOMINATION OF ANTONIN SCALIA TO BE AN ASSOCIATE JUSTICE ON THE U.S. SUPREME COURT

Mr. HECHT. Mr. President, I rise today to speak in support of the nomination of Judge Antonin Scalia to be an Associate Justice of the U.S. Supreme Court. Confirmation of this nomination will provide the American judicial system the benefit of Mr. Scalia's intellectual prowess and legal expertise.

By way of background, Judge Scalia's education included an intense curriculum in the classics. Those familiar with the judge's work up to this point have attributed this historical and philosopical background as being instrumental in his perspective viewpoints and decisions. It is also apparent, Mr. President, that this nominee's fine judicial and legal performance is a simple and accurate reflection of his intelligence and determined conviction.

Mr. Scalia graduated as valedictorian from both Xavier High School and Georgetown University, and went on to earn magna cum laude honors from Harvard Law School. Such a record of high scholastic achievement is indicative of dedication and aptitude—two necessary traits for a Supreme Court Justice.

Subsequent to his schooling, Mr. Scalia spent a number of successful years in the private sector, including teaching positions at both the Universities of Chicago and Virginia. The judge began his public service career in 1971, with an appointment by the Nixon administration to the position of general counsel in the Office of Telecommunications Policy. The distinguished Mr. Scalia also served as Chairman of the Administrative Conference of the United States, among other noteworthy positions, before his 1982 swearing in as a judge on the U.S. Circuit Court of Appeals—a court considered by many as second only in importance to the Supreme Court.

Moreover, Mr. President, Judge Scalia's judicial record reflects his conviction that the role of the courts is limited—a role of restraint. Judge Scalia adheres to a commonsense interpretation of the Constitution; understanding that it protects certain basic rights—no more, no less. This is a philosophy with which I concur.

In closing Mr. President, let me simply state that I support Antonin Scalia's nomination, confident in the knowledge that he will bring to this position the same energy, proficiency, and knowledge that he has demonstrated over the last 20 years. Accordingly, I would urge my colleagues to likewise support this nomination.

NOMINATION OF ANTONIN SCALIA TO THE SUPREME COURT

Mr. DECONCINI. Mr. President, although the nomination of Judge Antonin Scalia has been somewhat overshadowed by the controversy over the nomination of Justice William Rehnquist to be Chief Justice, I am quite pleased that he will be confirmed to the Court. I believe that he is eminently qualified for the Supreme Court by way of his intellectual abilities, temperament, and character. I am personally pleased that he will be confirmed to the Court because we share an Italian-American heritage.

Mr. President, our responsibility to thoroughly review and consider the nomination of Judge Scalia is equally as important as it was in the case of Justice Rehnquist. Judge Scalia will likely spend many years on the Court sharing an equal vote with the Chief Justice and the other Associate Justices. Our constitutionally mandated role of advice and consent on the nomination of Judge Scalia is as important as the deliberations we engaged in earlier with respect to Justice Rehnquist. Indeed, Justice Rehnquist would have remained as a voting member of the Supreme Court regardless of the final action of the Senate on his confirmation. Judge Scalia, however, will be a new voice on the Court. Let no one say that the Senate has ignored its duty to closely examine the President's nominee for Associate Justice.

I am pleased that the President has nominated a person with the experience and qualifications of Judge Antonin Scalia. Clearly we have before us a nominee with the requisite legal and judicial experience. The American Bar Association has found that Judge Scalia meets the highest standards of professional competence, judicial temperament, and integrity. I am pleased to concur that he is indeed among the best available candidates for our consideration.

Judge Scalia comes to us from the D.C. Court of Appeals with an outstanding reputation. He is known for his thoroughness and attention to detail. He is clearly a man who will make his presence felt from his first term onward. He is a hard worker but one who is personable and well liked. Where the requirements of the job are hard, hard work, and collegiality—Judge Scalia will excel.

I take pride, as an Italian-American, in noting Judge Scalia's heritage. In this year that our country has shown so much pride in celebrating the 100th anniversary of the Statue of Liberty, we can take note of the contributions of Antonin Scalia, the son of an immigrant from Italy. He is but another example of a member of an immigrant family who has risen to an outstanding position in our Government and our society. As a first generation Italian-American, Judge Scalia demonstrates that the rapid assimilation of immigrating peoples pumps strength into our country.

Mr. President, I would have preferred that this statement be a thoroughly positive endorsement of the nomination of Judge Scalia. Unfortunately, one aspect of the confirmation process continues to disturb me. I am very disappointed in both Judge Scalia and in Justice Rehnquist for their protectiveness and reticence in answering the questions that I and my colleagues asked them in the Judiciary Committee hearings. I understand the need to avoid issues that will be directly before the Court, but it is very difficult for the committee and for the Senate to fulfill their responsibility when we are unable to question nominees about their judicial philosophies and views on constitutional interpretation. It is apparent to me that nominees are advised by the administration to be as evasive and passive as they can be. I believe that with nominees less qualified than those before us today, this strategy will ultimately fail the administration.

The confirmation process is a constitutional touchstone between the Judiciary and the Congress; a bridge between popularly elected Government and the life tenure of judicial officials. Because of his exemplary record, it will be my pleasure to cast my vote in favor of his confirmation to the Supreme Court.

NOMINATION OF JUDGE ANTONIN SCALIA

Mr. HATCH. Mr. President, perhaps no standard speaks more eloquently to the merits of this nomination than the performance of Judge Scalia on the Court of Appeals for the District of Columbia Circuit. In more than 4 years on that esteemed court, he has written 86 majority opinions and only 9 of these have been accompanied by a dissent. In other words, Judge Scalia has won unanimous approval for his views in nearly 90 percent of his written opinions. Another 90 percent

measure of success is found in the rate at which Judge Scalia's positions have been sustained on appeal. The Supreme Court has adopted his views six out of the seven times his cases have been reviewed on appeal by the Court he has been appointed to join. This includes his courageous opinion in the Synar case which identified the separation of powers problems in the budget-cutting Gramm-Rudman law.

These facts are high praise for Judge Scalia from those best positioned to adjudge his stature and ability, his fellow judges. These judicial actions speak barely louder than the words of his judicial colleagues, among whom is Circuit Judge Abner Mikva who hails this appointment as "good for the institution" of the Supreme Court.

From these lofty commendations, the acclaim for Judge Scalia's appointment continues to crescendo. The American Bar Association, with a collegial accord matching that of Judge Scalia's written opinions, "has unanimously concluded that Judge Scalia is well qualified for this appointment. Under the committee's standards," the ABA continues on behalf of America's lawyers and judges, "this means that Judge Scalia meets the highest standards of professional competence, judicial temperament and integrity and is among the best available for appointment to the Supreme Court." It is hard to imagine higher commendation from an organization of lawyers and judges than to call one of their own "among the best available for appointment to the Supreme Court."

The Chicago Tribune strikes the same theme by calling Judge Scalia a "lawyer's lawyer: meticulous, measured, determined to read the law as it has been enacted by the people's representatives rather than to impose his own preference upon it." It is interesting to note that many themes are repeated over and over by those examining Judge Scalia's accomplishments. For instance, former Attorney General Edward Levi calls Judge Scalia a "lawyer's lawyer" and states that he "came to know, with awe, how his mind works, his mastery of the law in principle and in practice, his high integrity and commitment to fairness, and his openness to the careful consideration of differing views."

Dean Guido Calabresi of the Yale Law School confesses that he has differed with Judge Scalia on many issues, yet he strikes many of the same themes:

> I have always found him sensitive to points of view different from his own, willing to listen, and though guided, as any good judge should be, by a vision of our Constitution and the roles of judges under it, flexible enough, also as a good judge should be, to respond to the needs of justice in particular cases.

This candid assessment verifies the report of the "Alman of the Federal Judiciary" that Judge Scalia is "highly respected in all categories, admired even by those lawyers who disagree with him."

Over and over the same qualities are admired in Judge Scalia—his fairness, his integrity, his openness to varied viewpoints, his amazing mastery of the law. Judge Scalia is respected as a lawyer by lawyers, as a judge by judges. In the words of the American Bar Association, this committee is privileged to consider the nomination of an individual who "is among the best available for appointment to the Supreme Court."

CIVIL RIGHTS RECORD

On September 7, the ACLU issued a document entitled "Report on the Civil Liberties Record of Judge Scalia." The timing of the issuance of this report—and a companion piece on Justice Rehnquist—to coincide with the debate on their nominations is apparently pure coincidence, as, according to the authors, its "purpose is not to suggest that the civil liberties record of any candidate ought to determine anyone's position on such candidacy, and the reader is asked not to seek to infer any position on this question from such a report." Despite its purely educational and nonpartisan purpose, however, and despite its claim that it "presents a comprehensive description of Judge Scalia's judicial opinions on civil liberties questions," it is misleading in a number of respects. I would like to correct the record on these points.

THE FIRST AMENDMENT

The report's introductory sentence on Judge Scalia's record claims that "Judge Scalia has decided against the party invoking the protection of the First Amendment in all opinions he has authored in this area." This statement is incorrect. For example, Judge Scalia decided in favor of defendant columnist Jack Anderson on many of his claims of first amendment protection for statements in a column in Liberty Lobby Inc. versus Anderson. For example, he agreed with Anderson's claim that Anderson's statements that Liberty Lobby's president, Willis Carto, represents a trend toward "incipient fascism" and that his record was characterized by "lies and half-truths" were statements of opinion and therefore under the first amendment could not give rise to a libel action, rather than being statements of fact which could give rise to such an action. This argument surely could have been responsibly rejected. As the ACLU reports, he did decide one issue in that case, whether the "clear and convincing" standard for actual malice applies to the plaintiff's burden on summary judgment, contrary to Jack Anderson's claim, and the Supreme Court reversed. The ACLU fails to mention, however, that Justice Brennan, the author of New York Times versus Sullivan, the seminal case applying the first amendment to libel law, dissented from the Supreme Court majority, agreeing instead with Judge Scalia.

The other general way in which the introductory statement is misleading is that it only addresses opinions that Judge Scalia authored. Nevertheless, in the discussion of particular areas, it also notes some opinions Judge Scalia joined, such as Travoulareas versus Piro. The reason the introductory statement does not claim to address all opinions that Judge Scalia wrote or joined is that it would not be defensible as to his complete record. For example, the Washington Post praised Judge Scalia for joining the portion of Judge Bork's majority opinion in Lebron versus WMATA taking an expansive view of first amendment rights, ruling that Washington, DC, could not prohibit the position of an anti-Reagan advertisement on the Metro on the ground that it was deceptive because it would be an unconstitutional prior restraint. As the Post noted:

> Judge Bork and Judge Antonin Scalia—two of the court's conservative members—would have reversed Metro's action on even broader grounds if it had been necessary. Both believe that an agency of a political branch of government cannot impose prior restraint on the publication of a political message even if that message is false. . . . That is an interference by the Government with a citizen's right to engage in free political discourse. The court's message is clear and it is right.

The remainder of this section takes issue with statements the ACLU report makes in specific subareas.

LIBEL

LIBERTY LOBBY VERSUS ANDERSON

In addition to the other points made above about this opinion, it should be noted that the position Judge Scalia took on the particular issue which the ACLU selected out as the litmus test for his views on the first amendment was not surprising. Carter appointee Judge Edwards joined Scalia's opinion, and Time magazine, in fact, indicated that it seemed to be required by prior Supreme Court opinions:

> Judge Scalia's view was supported by a now famous footnote in a 1979 Supreme Court ruling written by Chief Justice Warren Burger. In that case, Burger noted that in order to prove "actual malice"—the stiff standard public figures must meet to win a libel case—plaintiffs have the right to inquire into a reporter's "state of mind." Such a complex under-taking, stated the Chief Justice, "does not readily lend itself to summary disposition." Burger's aide sent a message to lower-court judges that led to a surge of libel trials.

By its 6-to-3 decision overturning the Scalia opinion, the Court seemed to say "ignore previous message."

OLLMAN VERSUS EVANS

This case is a good example of why the ACLU's broad claim in its introductory summary that "In virtually every opinion that he has written addressing civil liberties issues, Judge Scalia has decided against the individual," report at II, is completely vacuous. This case involved a marxist professor denied the chairmanship of the department of political science at the University of Maryland, in part, he claimed because of a libelous column by conservative Columnists Evans and Novak. Ollman accordingly brought suit against the columnists for libel, focusing in particular on their statement "Ollman has no status within the (political science) profession, but is a pure and simple activist." They claimed this statement could not form the basis of these facts, it would be impossible to predict which side the ACLU would consider to be the "individual rights" side of a case. Individual rights, including rights of free expression, are at stake for both parties.

TRAVOULAREAS VERSUS PIRO

As noted above, Scalia only joined MacKinnon's opinion in this case. Contrary to the ACLU's claim, it did not "make it easier for plaintiffs to meet the New York Times standard," but simply refused to exclude evidence of a newspaper's editorial policies from the New York Times actual malice calculus. There is no precedent for the exclusion of such evidence, and hence not excluding it neither made it easier nor more difficult to meet the standard. The Court's reliance on the evidence was, however, grounded in part on a statement of Earl Warren's in a concurrence in Curtis versus Butts, who contended that in that case part of the evidence of actual malice was the defendant's editorial policy of "sophisticated muckraking." Earl Warren is not famous for his narrow construction of the bill of rights.

SCOPE OF SPEECH

CCNV VERSUS WATT

The report goes beyond the bounds of zealous advocacy in its portrayal of Scalia's dissent, which does not argue, as the report states, that expressive conduct is entitled to no first amendment protection. Rather, it distinguishes between laws directed at the expressive content of the conduct—which are supposed to receive full strict scrutiny—and laws directed at other aspects of the conduct which happen to affect its expressive content. In particular, the ACLU substituted ellipses for the italicized word in quoting the following paragraph:

> * * * to extend *equivalent* protection against laws that affect actions which happen to be conducted for the purpose of "making a point", is to stretch the constitution not only beyond its meaning but beyond reason, and beyond the capacity of any legal system to accommodate.

The omission of the word "equivalent" cannot be explained very readily as a space-saving device. The next paragraph also makes clear that Scalia is not advocating no protection for expressive conduct, but a different level of protection:

> The cases find within the first amendment some protection for "expressive conduct" apart from spoken and written thought. The nature and effect of that protection, however, is quite different from the guarantee of freedom of speech narrowly speaking.

Hence the ACLU's statement that Scalia took the view that "conduct engaged in for the purpose of 'making a point', could never warrant first amendment protection" is simply wrong.

Although in general this memorandum is limited to the scope of the ACLU's report and therefore only discusses Scalia's record on the Court of Appeals, a discussion of his first amendment record would be incomplete if it did not note the testimonials of two people: Jack Fuller, the editorial page editor of the Chicago Tribune; and Floyd Abrams, the New York Times' lawyer and the most distinguished first amendment advocate in the country. Jack Fuller stated before the Judiciary Committee:

> (Judge Scalia's) care and caution and meticulousness are, like the laws, the best and most lasting defense against encroachments upon our liberties. And I am more than willing to entrust what to me is the most cherished of our freedoms to an individual like Judge Scalia, whose whole being has been wrapped up in serving and honoring the American legal tradition.

Floyd Abrams wrote the committee as follows:

> Judge Scalia and I are * * * intellectual adversaries in that we have serious differences on major matters of constitutional law and public policy. Those differences include, but are not limited to, views expressed in Judge Scalia's judicial opinions with respect to first amendment issues. The issues we differ on matter greatly to me.
>
> Nonetheless, I support the confirmation of Judge Scalia for the following reasons:
>
> First, he is a person of the highest personal character. He is honorable, trustworthy and decent. He is a warm human being who—as this letter may well illustrate—is able to function on a collegial basis with people with whom he differs.
>
> Second, he is a person of the highest intellectual ability. His opinions rank amongst the best-written and the most thoughtful ones of appellate judges in the country. He writes with verve, wit, and intelligence. Given my views, I sometimes find that Judge Scalia's opinions read too persuasively—but that is hardly a black mark against him.
>
> Third, he has an open and inquiring mind. He is not so fixed in his views that he refuses to listen, not so certain of the immutable truth of his views that he is incapable of changing them.
>
> Finally, his views are not only sincerely held by him, but views I respect at the same time that I differ with them. But differently they are not only views that Judge Scalia believes in seriously; they are serious views about serious matters about which serious people can differ.

DISCRIMINATION

The report's statement that "Judge Scalia has never authored an opinion which found racial discrimination" portrays his record misleadingly. When one also includes opinions that he joined to the three opinions the report discussed where that was the issue, it turns out that he voted in favor of the plaintiff in half the race discrimination cases in which he participated: Mitchell versus Baldrige, Tucker versus IBEW, and Bishopp versus District of Columbia, all found race discrimination. Moreover, contrary to the thrust of the report that Scalia seeks to interpose obstacles in the way of race discrimination plaintiffs, one of these cases, Mitchell, simplified the employment discrimination plaintiff's task, in that it held that he need not show as part of his prima facie case that he was more qualified than the selected applicant, but only that he was qualified. U.S. Law Week reported this as a significant victory for employment discrimination plaintiffs.

CRIMINAL LAW AND PROCEDURE

The statement that "Judge Scalia's opinions in this area of the law all decide in favor of the prosecution" is correct, although he has joined some opinions reversing convictions (U.S. versus Lyons, U.S. versus North American Reporting Inc., U.S. versus Kelly, U.S. versus Foster). The defendants' claim he rejected, moreover, would strike most people as pretty wacky: Byers—a defendant claiming the insanity defense and introducing his own expert testimony can be compelled to submit to a state psychiatric exam and is not entitled to a lawyer; Richardson—a court can order a new trial after a mistrial resulting from a hung jury without violation of the double jeopardy clause—as opposed to automatically acquitting the defendant when the jury is hung and thus making a hung jury divided 11 to 1 in favor of conviction equivalent to a unanimous one in favor of acquittal; and Cohen—it does not violate the equal protection clause for Congress to legislate automatic commitment for defendants successfully pleading insanity in District of Columbia and leaving the subject to the States outside of District of Columbia.

GOVERNMENT SECRECY

The statement "Judge Scalia has authored only one opinion holding that the Government must release information" is misleading in that it excludes two cases where the effect of Scalia's ruling is clearly pro disclosure: In Washington Post versus HHS, Scalia reversed a district court ruling that the Government could assert exemption 4 protection. It is true that the result was remand for consideration of the application of another exemption rather than an order to release the information, but Scalia's opinion made release more likely. And in Church of Scientology versus IRS—the panel

opinion, rather than the companion en banc one the report discusses—he rejected an argument that 26 U.S.C. 6103 completely preempted the Freedom of Information Act as to information within its scope. Additionally, when the opinions Scalia joined are included, he voted in favor of disclosure six times—in addition to the two mentioned above and ARIEFF, discussed in the ACLU report, Gulf Oil versus Brock, Meeropol versus Meese, and Public Citizen Health Research Group versus FDA, which the Public Bar and the Legal Times considered to be an important prodisclosure case—and against eight times.

EXECUTIVE POWER

If one translates the report's statement "Judge Scalia has consistently prevented plaintiffs from challenging executive actions" to mean what it probably intends, "Judge Scalia takes a narrower view than most judges of standing to challenge agency action." It is correct as far as it goes. It should be noted, however, that he reversed or voted to reverse agencies in at least 14 cases. In one of these, Rainbow Navigation versus Baldrige, found standing to sue and reversed an executive agency's foreign affairs-based determination.

Mr. BYRD. Mr. President, 2 years ago, Judge Antonin Scalia joined in a U.S. Court of Appeals opinion which defined "judicial restraint" as:

> The philosophy that courts ought not to invade the domain the Constitution marks out for democratic rather than judicial governance.

That viewpoint was enlarged upon in that same opinion *Dronenburg* v. *Zech* (746 F.2d 1579 (1984)) with the further statement that:

> No court should create constitutional rights: That is, rights must be derived by standard modes of legal interpretation from the text, structure, and history of the Constitution.

What a refreshing approach to constitutional interpretation. No notions of applying contemporary standards, or today's values, or 20th century notions to help us figure out constitutional meaning. Just the plain, old fashioned, lawyerly notion that the Constitution means the same thing today as it did when it was crafted by those brilliant minds almost 200 years ago.

I would like to offer just two examples of Judge Scalia's application of his philosophy: First, a demonstration of his approach to the meaning of the Constitution; and then, an example of his exercise of judicial restraint.

In 1983, there was an appeal before Judge Scalia's court which involved the right of protesters to sleep in Lafayette Park, across from the White House. *Community for Non-Violence* v. *Watt* (703 F.2D 586 (1983); Rev., 468 U.S. 288 (1984)) dissenting from the court's majority decision, Judge Scalia said he did not believe that, "sleeping is or ever can be speech for first amendment purposes. That this should seem a bold assertion is a commentary upon how far judicial and scholarly discussion has strayed from common and commonsense understanding."

That, to my way of thinking, reflects the approach of a strict constructionist, in the very best sense of that term.

As an example of Judge Scalia's belief in judicial restraint, I would remind my colleagues of his dissenting opinion in a death penalty case in 1983, *Chaney* v. *Heckler* (718 F.2D 1174 (1983); 53 U.S. Law Week 4385 (1985)), in which the majority of the court had issued an opinion requiring the Food and Drug Administration to consider whether the lethal injection of condemned prisoners met F.D.A. standards for safe and effective drugs. Pointing out that the FDA had no authority over such drugs because they were not the kind of consumer drugs that Congress intended the FDA to regulate, Judge Scalia wrote:

> The condemned prisoner executed by injection is no more the "consumer" of the drug than is the prisoner executed by firing squad a consumer of the bullets.

Judge Scalia then went on to say that even if the FDA did have jurisdiction over the drugs involved, it would also have the right to decide not to exercise its authority without being second guessed by the courts. He criticized the court's majority for interfering in extrajudicial matters, and he argued that the majority's decision had "less to do with assuring safe and effective drugs than with preventing the States' constitutionally permissible imposition of capital punishment."

Approaching his task with that kind of philosophy, and with that kind of candor, Judge Scalia will be a most welcome addition to the Supreme Court of the United States.

I am delighted to vote in favor of this nomination.

Mrs. HAWKINS. Mr. President, I request that my colleagues join me today in supporting President Reagan's nomination of Judge Antonin Scalia to serve as Associate Justice on the U.S. Supreme Court. Judge Scalia is a renowned legal scholar and judicial activist. His credentials and professional undertakings have proven him a worthy and well qualified nominee.

Article II, section 2 of the Constitution instructs the Senate to make an independent decision regarding the character and fitness of every nominee. The framers did not intend this power of advice and consent to warrant a vote based on the political beliefs of nominess. I advocate Judge Scalia's consideration based on merit.

In his 20 years of work as law professor, government official, and appellate judge, Antonin Scalia has written over 20 articles and his 84 majority decisions while on the U.S. Circuit Court of Appeals for the District of Columbia have established him as an incisive writer. During the past 4 years of judgeship his decisions have consistently displayed integrity. His wisdom and reverence for our Constitution are evidenced in his treatment of such issues as the first amendment, affirmative action, and the separation of powers.

Judge Scalia was educated at the University of Fribourg, Switzerland, and received his bachelor of arts from Georgetown University, graduating summa cum laude in 1957. In 1960 he graduated magna cum laude from Harvard University Law School where he edited the Harvard Law Review. He was admitted to the Ohio Bar in 1961 and the Virginia Bar in 1970. Judge Scalia was a Harvard University Sheldon Fellow from 1960–61 and privately practiced law in Cleveland, OH, between 1961 and 1967.

He served in the Nixon administration as general counsel in the Office of Telecommunications Policy and then acted as chairman of the Administrative Conference of the United States. Judge Scalia served as Assistant Attorney General in charge of the Office of Legal Counsel, where he dealt with subjects such as the ownership of Richard Nixon's Presidential papers and permissible intelligence-gathering activities of the CIA and FBI. He also remained in close contact with legal establishments. He was a scholar in residence at the American Enterprise Institute and edited their Regulation magazine from 1979–82. He also acted as chairman of the American Bar Association Section of Administrative Law and as chairman of the ABA Conference of Section Chairmen. He has taught law at the University of Chicago, Stanford University, Georgetown University, and the University of Virginia.

Judge Scalia's experience and training would enable him to consider expertly and in a broad historical and philosophical context the diverse array of Supreme Court issues. He is clearly an adept advocate of his views and would bring to the Court his firm sense of the Constitution and the role of judges in the legal system. It is without reservation that I recommend Judge Antonin Scalia to you today for confirmation as Associate Justice of the U.S. Supreme Court.

Mr. CRANSTON. Mr. President, after careful consideration I have decided to support the nomination of Antonin Scalia to be Associate Justice of the Supreme Court.

I have given this nomination the same careful scrutiny which I gave to the nomination of William H. Rehnquist to be Chief Justice.

In fact, as I have said more than once in the past several weeks, I believe the serious consideration by each Senator of Federal judicial nominations—especially for the Supreme Court—is a constitutionally required duty.

Each Senator is obligated to decide whether he will give or withhold consent to the President's judicial nominees.

Earlier, I set forth at length my view of the tests I thought the Founding Fathers intended us to see in rendering this judgment, and the history of how the Senate has carried out that intent.

It may be surprising to some on the other side of the aisle that I have reached the conclusion I have—indeed, that I would even consider reaching the conclusion I have—with respect to a strong conservative like Antonin Scalia.

In the debate on the Rehnquist nomination, some Rehnquist supporters on this floor used words that I believe demean the Senate and the serious deliberations that confirmation of a nominee to the Supreme Court should involve.

They attempted to raise suspicions about the motives of nearly every Senator who had any question about the fitness of the nominee, and they blurred over, ignored, misstated, or argued the irrelevance of facts leading to those questions.

Adverse witnesses before the Judiciary Committee were similarly browbeaten, including those who came to the Judiciary Committee to testify out of no apparent motive except their sense of duty to this Nation.

I believe such tactics demean those who use them and demean the Senate.

To hear a Senator during the Rehnquist debate tell it—using words like "diatribe" to describe the speech of a Senator, charging that opponents of Rehnquist "assume the worst in everything," that they make "ludicrous" charges, that "they resolve every ambiguity against Mr. Rehnquist"—no one on this side of the aisle, at least no one who has been labeled as a "liberal" by those who find such labels useful, could vote to sustain any Reagan judicial nominee for the Supreme Court.

For, Rehnquist's advocates have repeatedly charged, that is really the only judgment opponents of Mr. Rehnquist's nomination were making: That he is too conservative for us.

Well, Mr. President, that is not the case, and many of us opposing the Rehnquist nomination have told them that it is not the case.

Those who automatically support President Reagan's judicial nominations may be perfectly sincere about their view of what was happening here.

They may well believe that the only thing at issue here is whether the nominee is conservative enough, or too conservative, and see their own duty as placing their rubberstamp on any nominee to the bench that President Reagan sends us, so long as he is far enough to the right, even though they might not accord the same courtesy to another President.

They may see it as a duty to help the President "win," and to use any available means to accomplish that result.

But that is not how I see my constitutional responsibility, Mr. President. I believe that each nominee is entitled to fair consideration and that the Nation is entitled to the Senate's considered judgment on each nomination, before we approve awarding the Nation's highest judicial offices to anyone for the rest of his or her life.

I believe that Judge Scalia, like Justice Rehnquist before him, has educational credentials enough, is bright enough, and experienced enough to be a Justice of the Supreme Court.

Unlike William Rehnquist, however, I do not find that he has other characteristics or views, or that he has said or done anything, which disqualify him for the Supreme Court.

And, Mr. President, that is in spite of the fact that I believe that in some ways Judge Scalia is more conservative than Justice Rehnquist.

I have examined Judge Scalia's writings and statements with some care.

I find impressive the fact that he makes distinctions such as the one reflected in the following 1984 Scalia statement:

> They [conservatives] must decide whether they really believe, as they have been saying, that the courts are doing too much, or whether they are actually nursing the less principaled grievance that the courts have not been doing what *they* [emphasis in original] want.

I am prepared to accept at face value, Judge Scalia's assurance to Senator KENNEDY:

> I assure you I have no agenda. I am not going on the Court with a list of things I want to do. My only agenda is to be a good judge.

I have no reason to doubt Judge Scalia's credibility, as I did with Justice Rehnquist.

Judge Scalia also testified before the Senate Judiciary Committee:

> There are countless laws on the books that I might not agree with, aside from abortion, that I might think are misguided, even immoral. In no way would I let that influence how I might apply them.

I am prepared, too, to take this assurance at face value.

I have no reason to conclude that Judge Scalia is an ideological extremist who first forms conclusions, then reasons backward to justify them.

I have looked carefully at decisions Judge Scalia has rendered on fundamental rights and constitutional protections for civil liberties.

I do not know whether—if I were on a court with Judge Scalia—I would have reached the same conclusions he did. Reasonable men can, and we probably would have—reached different conclusions in many of those cases, especially those that narrowly interpret the constitutional protections for freedom of the press, individual rights, and civil liberties.

But in the particular framework of each of these cases, I did not find Judge Scalia's views were based on prejudgment or ideology, but on his interpretation of the facts before the Court.

And, unlike Justice Rehnquist, who so often dissented alone, even from the very conservative majority of the particular Supreme Court on which he sits, I noted that Judge Scalia much more often had the support of some or most of his judicial colleagues for his views.

Were I the President of the United States, I would have found a different nominee for the Supreme Court.

But that is not a proper basis for the judgment I am called upon to make as a U.S. Senator.

I have no reason to doubt the truthfulness, the ethics, or the fairness of Judge Scalia. And I have never believed, said, or implied that his mere conservativeness would disqualify him to be a Justice, even of this already conservative Supreme Court.

As a result, I will vote for this nomination.

Mr. LEVIN. Mr. President, 2 days ago, I stated the reasons for my opposition to the nomination of Justice Rehnquist for Chief Justice. I did not oppose Justice Rehnquist's nomination because he is a "conservative." I opposed his nomination because, after a careful study of his record, I concluded that he doesn't properly recognize the Federal courts' role as the guarantor of individual rights, and that his explanations of past actions and statements have not been candid or credible.

We are now voting on another Supreme Court nominee, Judge Antonin Scalia of the D.C. Circuit Court of Appeals. Judge Scalia is also considered to be a "conservative", and I will vote to confirm him.

There are important policy issues on which Judge Scalia and I disagree. But there is no indication that this nominee's policy values are inconsistent with the fundamental principles of American law. There is also no indication that the nominee is so controlled by ideology that ideology distorts his judgment. On the contrary, my impression is that Judge Scalia will be a fair and openminded Supreme Court Justice who will listen to all the argu-

ments, examine all the facts, and decide cases judicially.

I probably will not find all of his decisions to my liking. I probably will not always agree with the reasoning he uses to arrive at his decisions. But his reasoning is likely to be straightforward, clearly expressed, and worthy of respect if not agreement.

I was somewhat troubled by a press account I read soon after Judge Scalia's nomination was announced which discussed his decision not to recuse himself in a 1985 case, Western Union Telegraph Co. versus FCC. Three years earlier, Mr. Scalia had performed consulting services for one of the litigants in this case, AT&T. He faced the question of whether his prior connection with AT&T would bring his impartiality into doubt, and whether, therefore, he should disqualify himself.

The Federal statute (title 28, section 455) says that:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Speaking to the press through a law clerk, Judge Scalia said that his participation in Western Union versus FCC was proper because sufficient time had passed since his involvement with AT&T. His law clerk also said that Judge Scalia had checked with D.C. Circuit Chief Judge Spottswood W. Robinson III "to make sure that 3 years was an adequate time period." (Washington Post, June 22, 1986)

Since I wanted to hear what Judge Scalia himself had to say about this, I asked him in a letter of July 29, 1986 if he did in fact consult with Chief Judge Robinson on the question of whether he should disqualify himself from this case, and if so, what advice the Chief Judge had given him.

Judge Scalia's answer was simple and direct. He told me in a letter of July 30:

> I consulted Chief Judge Robinson on the question whether 3 years of disqualification from matters involving AT&T was sufficient to eliminate any appearance of impropriety arising from the fact that I had done consulting work for that company in the past. He advised me that in his view 3 years was ample.

This response satisfied my concerns. Judge Scalia apparently carefully considered the statute on disqualification, consulted with the Chief Judge of his Circuit, and concluded, with the Chief Judge's concurrence, that it was not improper for him to sit on the case. The decision was a judgment call, not an automatic disqualification, and another judge might have decided differently. But I believe that he went about making this decision in the proper way.

I was also troubled by Judge Scalia's response to a question at the news conference where his nomination was announced. He seemed to stumble when asked questions about whether he had gone through a screening process conducted by the Justice Department or whether any administration officials had posed questions to him regarding his views on specific issues.

Because I feel so strongly that this type of "prescreening" process threatens the independence of the Federal judiciary, I decided to ask the nominee directly whether he had gone through such a process. In a letter of August 15, 1986, I asked Judge Scalia the following question:

> Did any employees of the Executive Branch or individuals at the request of employees of the Executive Branch ask you any questions about your position on issues that might come before the Supreme Court? If so, please list the issues mentioned, the persons who mentioned them and your answers.

Judge Scalia responded to me on August 19. Again, his response was straightforward:

> In connection with my nomination, I have been asked no question by any Executive Branch employee concerning issues that might come before the Supreme Court, nor, to my knowledge, have I been asked any such question by an individual at the request of an Executive Branch employee.

I was satisfied with this response of Judge Scalia's. I have seen no other evidence indicating that he was questioned by administration officials concerning his views on particular issues, and I believe his denial of having been questioned in this way.

This nominee clearly has outstanding intellectual ability. I have found nothing to indicate that he lacks integrity. I will vote to confirm Judge Scalia as an Associate Justice of the Supreme Court.

Mr. DOMENICI. Mr. President, it is a distinct pleasure to rise in support of the nomination of Antonin Scalia to be Associate Justice of the Supreme Court of the United States.

Judge Scalia is a man of strong intellect, integrity, leadership, and achievement. In his 4 years on the court of appeals, he has demonstrated that his powers of legal analysis and his writing abilities are of the highest quality. By his qualifications, experience, and character, he has proven himself to be worthy of the position of Justice of the Supreme Court.

A Supreme Court Justice must be a person with unquestioned integrity: he or she must be honest, ethical, and fair.

A Supreme Court Justice must be a person with strength of character: he or she must possess the courage to render decisions in accordance with the Constitution and the laws of the United States.

A Supreme Court Justice must be a person with human compassion: he or she must respect both the rights of the individual and the rights of society and must be dedicated to providing equal justice under the law.

A Supreme Court Justice must be a person with proper judicial temperament: he or she must understand and appreciate the genius of our Federal system and of the delicate checks and balances between the branches of the National Government.

Judge Scalia possesses these qualities.

Judge Scalia has had a distinguished career. Few individuals have been appointed to the Supreme Court with the outstanding qualifications that Judge Scalia possesses. It is a telling comment that the Judiciary Committee, which reviewed this nomination, came to the unanimous conclusion that Judge Scalia should be confirmed by this body.

The report on the nomination also testifies to Judge Scalia's outstanding qualifications. You see, it's only two sentences long. This doesn't mean that the Judiciary Committee didn't carefully review Judge Scalia's qualifications. To the contrary, they made an exhausting review. Anyone who has been around this body for any length of time knows that the shorter the report, the less controversy there is about the nomination. It's only when someone has something bad to say that we write a long report. When everyone is in agreement that the nominee is well-qualified, we write up a short report. So the good news for Judge Scalia is that the report on his nomination is only two sentences long.

But I can't help but feel that we have short-changed Judge Scalia a little bit. The public is entitled to know just how exceptionally well qualified Judge Scalia is. I'd like to take a few moments to review those qualifications.

Judge Scalia attended Georgetown University and graduated summa cum laude. He graduated magna cum laude from Harvard Law School, where he was the notes editor of the Harvard Law Review. After graduating from law school, he served as a graduate fellow at Harvard. He then was associated with the prestigious Cleveland law firm of Jones, Day, Cockley & Reavis for 6 years. Subsequently, he taught law at the University of Virginia before becoming general counsel of the Office of Telecommunications Policy. He also served as Chairman of the Administrative Conference of the United States. In 1974, he was appointed Assistant Attorney General in charge of the Office of Legal Counsel in the Ford administration. He then taught law at the University of Chicago School of Law. He also was a visiting professor at Stanford Law School and Georgetown Law Center, a visiting scholar at the American Enterprise Institute, and chairman of the administrative law section of the American

Bar Association. In 1982, President Reagan appointed him to the U.S. Court of Appeals for the District of Columbia Circuit, considered by many to be the preeminent circuit court in the Nation. He has served on that court with distinction since then. That is many lifetimes worth of achievement for most of us.

Judge Scalia is a man of outstanding intellectual abilities. Anybody who doubts that should go look at the copies of the Federal Reporter which contain his legal opinions. As a scholar and a judge, he has made many contributions to our jurisprudence on administrative law, separation of powers, libel and slander law, and many other areas. Judge Scalia, by all accounts, is well respected by his colleagues on the bench. He is a legal scholar with few equals and has served very capably on the court of appeals.

In sum, Judge Scalia is eminently qualified for the position for which he has been nominated. He has had a distinguished career so far, and now he is properly poised to proceed to the pinnacle of his profession.

I know that some Members of this body have strong ideological differences with Judge Scalia. I respect them for that. It is heartening to see, however, that the Members of this body realize that the vote on this nomination should rest on whether Judge Scalia is qualified, not whether a majority of this body agrees or disagrees with his personal philosophy.

Under the Constitution, the Senate has the duty to offer "advice and consent" on judicial nominees. Congress must scrutinize the nominee to determine whether he or she possesses the qualities that the people have a right to expect in judges. Congress, however, must respect a President's right to appoint qualified persons to the judiciary.

There is an important reason for the Senate to respect the President's choices of qualified judicial nominees. Our constitutional system is a marvelous set of checks and balances. One of the checks on the power of the judiciary is power of the President to appoint men and women who share his vision of the nature of our society and the role of Government.

As long as a nominee is otherwise qualified, the nominee's personal philosophy should not be a consideration unless that philosophy undermines the fundamental principles of our constitutional system or the nominee's dedication to his or her ideological principles is so strong that he or she cannot be an impartial judge. In the absence of such concerns, the Senate must respect the right of a President to nominate qualified candidates of his choosing.

The evidence of Judge Scalia's commitment to our constitutional system and his ability to judge impartially is abundantly clear from his tenure on the court of appeals. His personal ideology, therefore, should play no role in our decision on whether to confirm him.

I would also like to add that it is a distinct pleasure for me to speak on Judge Scalia's behalf because he is a personal friend. I'm sure my colleagues have read the wonderful tributes to Judge Scalia. Every time you read one of these, you see terms such as articulate, energetic, gregarious, intelligent, and quick-witted. I can assure you that these descriptions are 100 percent accurate.

Judge Scalia's nomination is meaningful to me for another reason, as he is the first American of Italian extraction to be nominated to serve on the Supreme Court. This is a magnificent symbol to the Italian-Americans of this Nation that they truly can share in all that this great country has to offer.

President Reagan has repeatedly said that he will pick the very best men and women he can find to serve on our Nation's courts. In this case, he has fulfilled that promise. Judge Scalia is the very best.

In this case, the best also happens to be of Italian extraction. Judge Scalia's father came here from Italy as a young man. His mother also was the daughter of immigrants from Italy. There are millions of Italian-Americans in this country, many of whom started with nothing, many of whom started with immigrant parents who may not have been able to read or write English, such as mine.

Obviously, it is with great pride that we witness one who shares our history and our traditions nominated to serve on the highest court of the Nation. Of course, Italian-Americans are Americans first and last. It is because we are Americans that we applaud a fellow Italian-American's achievement of the American dream. This is truly a success for Italian-Americans and obviously a magnificent success for the American tradition. I have no doubt that Judge Scalia will serve with distinction on the Supreme Court and will make all Americans proud to call him one of their own.

Mr. President, a nominee for Supreme Court Justice of the United States must possess the highest standards of integrity, ethics, and commitment to the cause of justice. He or she must be an individual of proven ability and judgment. Judge Scalia has been thoroughly examined to determine whether he possesses these qualities, and he has not been found wanting. I, therefore, wholeheartedly support this nomination and urge my colleagues to do the same.

I thank the Chair.

Mr. DOLE. This will be the last vote this evening.

The PRESIDING OFFICER. Are there any other Senators desiring to be heard on this matter?

If not, the question is, "Shall the Senate advise and consent to the nomination of Antonin Scalia to be Associate Justice of the Supreme Court of the United States?"

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. GARN] would each vote "yea".

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 267 Ex.]

YEAS—98

Abdnor	Gore	Metzenbaum
Andrews	Gorton	Mitchell
Armstrong	Gramm	Moynihan
Baucus	Grassley	Murkowski
Bentsen	Harkin	Nickles
Biden	Hart	Nunn
Bingaman	Hatch	Packwood
Boren	Hatfield	Pell
Boschwitz	Hawkins	Pressler
Bradley	Hecht	Proxmire
Broyhill	Heflin	Pryor
Bumpers	Heinz	Quayle
Burdick	Helms	Riegle
Byrd	Hollings	Rockefeller
Chafee	Humphrey	Roth
Chiles	Inouye	Rudman
Cochran	Johnston	Sarbanes
Cohen	Kassebaum	Sasser
Cranston	Kasten	Simon
D'Amato	Kennedy	Simpson
Danforth	Kerry	Specter
DeConcini	Lautenberg	Stafford
Denton	Laxalt	Stennis
Dixon	Leahy	Stevens
Dodd	Levin	Symms
Dole	Long	Thurmond
Domenici	Lugar	Trible
Durenberger	Mathias	Wallop
Eagleton	Matsunaga	Warner
Evans	Mattingly	Weicker
Exon	McClure	Wilson
Ford	McConnell	Zorinsky
Glenn	Melcher	

NOT VOTING—2

Garn	Goldwater

So the nomination was confirmed.

□ 2220

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has confirmed the nominations of Chief Justice Rehnquist and Justice Scalia.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate resumed legislative session.

OMNIBUS BUDGET RECONCILIATION ACT, 1987

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 750, S. 2706, the Budget Reconciliation Act.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2706) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987 (S. Con. Res. 120, 99th Congress).

The Senate proceeded to the immediate consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I wonder if the distinguished majority leader will assign the time to the Senator from New Mexico to handle the bill as prescribed by the Budget Act.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BYRD. Mr. President, I will assign a time on this side to Mr. CHILES. I take it there will be no more than brief opening statements this evening.

Mr. DOLE. Mr. President, I will assign time on this side to the distinguished chairman of the Budget Committee, Senator DOMENICI.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, we are not going to use a lot of time here tonight on this reconciliation bill. But let me just give a quick, brief summary of what it is and where we are, and why we are calling it up.

First of all, I think everybody should know that this is a reconciliation bill that was reported out by the various committees of the U.S. Senate pursuant to the budget resolution. Consequently, it is a bona fide reconciliation bill as prescribed by the Budget Act and its various amendments. It is therefore under a time agreement as stated in that law, and subject to certain constraints and limitations with reference to amendments.

As I understand it, unless the U.S. Senate decides to change the rule, there are 20 hours of debate equally divided, and amendments are limited both as to time and scope.

This reconciliation bill is the result of a budget resolution earlier in the year that sought to bring the deficit within the prescribed reduction levels of the Gramm-Rudman-Hollings Deficit Reduction Limitation Act.

The scoring now, if you were to cost it out to see what it does to the deficit, is about $3.4 to $3.7 billion. I regret to tell the Senate that even if we passed it in its current form in its entirety, and clearly there are many controversial measures within it, but even if we did, it would be a long way from compliance. It would be many billions of dollars short of what is required at the present time to avoid an across-the-board sequester that is currently pending by way of an order at the desk of $19.4 billion in outlays equally divided between defense as prescribed in the law, and domestic programs that are not exempt across the board.

It is a long ways from what we will need even under our projections for the rest of the year. Nonetheless, the Senate should understand that Friday before we recess this U.S. Senate, there is a rather onerous task confronting us.

Pending at the desk is the across-the-board temporary sequester that would comply with the Budget Act at this point in history and bring the deficit as of now based upon all things that have transpired down to $144 billion. It is going to be very dificult for us to avoid voting on that sequester. But we have been working in a bipartisan manner, Senator CHILES advising his side of the aisle, and I advising our side on the Friday event, that temporary sequester, what it really means, and how we might in a bona fide manner seek to avoid a sequester by producing additional savings to this $3.7 billion reconciliation bill so as to put us in a position where we could say to ourselves and to the people of this country, we do not need the sequester because we did our work.

We got the requisite savings and asset sales and/or revenues all added up which will avoid a sequester and still permit us to say we are within the $154 billion limit that we will expect to comply with by the beginning of the next fiscal year, October 1, or thereabouts.

I might say this is going to require some cooperation on the part of the Senate because obviously we have a bill that is difficult to amend presently before us, that does not do the job, that needs to have some dramatic surgery performed, and clearly amendments are difficult unless we do that by way of some consent to put a package before the Senate, and indeed to give Senators some prerogatives that they may not have under reconciliation to prescribe amendments that they may desire over those that are either in the bill or those that might be prescribed by leadership, either from this side or jointly, as we move through this effort.

Do we have a prescription ready to offer to the Senate to modify and enhance this bill so that it will do the job?

□ 2230

The answer is "No."

Can we get one in time to at least urge the Senators not to insist upon a sequester vote because we are on the way?

The answer is "No."

Can we get there by Friday?

The answer is "Yes," we can. We are working on that now. We have spent a lot of time today with various Members who have ideas, who have submitted through their respective committees ideas on how to get there, but we surely do not have any kind of concurrence by way of a leadership package.

I am hopeful that Senators will begin to understand. No. 1, what is in this package. Some onerous things are in it: a cigarette tax that the President says he does not want; a cigarette tax that many Members of the Senate do not want. That is about $1.8 billion, to my recollection, in the first year of the $3.7 billion in the bill.

In addition, there are a lot of add-ons that cost money. There are some provisions that save money. The net effect is $3.7 that I described heretofore to the Senate.

Let me say that since we have 20 hours of debate of the type described in the Budget Act—some things do not count against it, so it will take a very long time to use 20 hours—I asked the leader to go ahead and call it up tonight. The distinguished ranking member of the committee, Senator CHILES, was in accord, that we ought to proceed and use up some time, using this to get ourselves informed and to ask the Senators when we speak with them tomorrow about this to consider helping us as we need some consent. We are not ready for anything like that, but we are going to need it.

Our goal, and it is shared by the White House, it seems to be somewhat shared by the House of Representatives, is that we ought to turn this $3.7 billion savings bill into a bill that will reduce deficits by about $14.5 billion.

From what I hear, the House has been talking—and I am only talking about some papers I have seen, some verbal exchanges—has been talking about perhaps some $15 billion. We are in the ball park.

I can tell the Senate if we are able to put one together in the $14.5 billion range, I believe we can predict with high probability that there would not be a sequester at the end of the year and perhaps we would not have to vote on the temporary one which clearly is the temporary gun at our heads saying, "If you do not fix it, it is already done. You voted on it and you have to take the consequences."

How close to that package? Well, I do not think I would want to categorize it. We have been close and it turns out to be very far. But I believe there is a range of proposals, all of which added together have the probability of getting us there. My hope is it can be done in a bipartisan manner when we start work on it tomorrow. My hope is that we may begin some discussions with some House leaders about how they seek to do it as we wind this session down, not to be there with two reconciliation bills that are terribly different and yet be telling ourselves that in the next 11 or 12 working days we can get our jobs done.

Everyone knows we still have to appropriate, we still have to do the reconciliation bill, and we still have the tax reform. Besides those three big pieces, there are a lot of other things we have to do. I would hope we can begin an exchange with the House tomorrow and see if we can get this into the proximity of both seeking the same amount of money. Perhaps we can agree on that. And then perhaps some parameters on how we might put it together.

That is about all I know now. We have not kept any secrets. We have advised the Senators and advised the press of how we arrived at the $14.5 billion that is necessary to avoid a sequester. We have a suggested list of ways to get there. Some are noncontroversial, but the sum total of the noncontroversials do not do the job so there is a bunch of controversial ones that we have not agreed upon yet.

I have seen some preliminary House ideas and clearly they are different from some of ours. That is why I am hopeful we will use up some time. Everyone ought to understand with the passage of each hour of the 20 hours of debate we get closer to that day Friday when we have to vote on the sequester of $19.4 billion. Very little escapes that. Everybody knows what is immune and everybody knows what is in.

Plenty of domestic programs will be cut dramatically. Defense will be cut dramatically from this year's level. Frankly, I do not think there are very many people who think either of those cuts on either the defense or the domestic side are prudent or good policy, either domestically or from the standpoint of our national defense. So we want to avoid that. We will do our very best.

From my standpoint I want to say to our appropriators who work very hard to get appropriations bills through that I am going to try in this process, as I have historically, not to involve the appropriations process and the appropriations bills in this reconciliation. They have enough problems getting a continuing resolution and negotiating with the White House on both policy and money matters. I think that can take care of itself. They have targets which are pretty well established and the White House can look over their shoulder and tell them what they will accept and what they will not. We ought to get on with this in another way.

At this point I clearly do not intend in any way to involve this reconciliation in their process. Quite to the contrary, I am hopeful that we will have enough in this $14.5 billion to $15 billion which we seek to permit the appropriations to run a normal course, even if it is in a continuing resolution, to accommodate to the allocations that are presently there as mandatory targets under the Budget Act.

Some people do not like that whole process; they think we are spending too much. Others think we are not spending enough. But basically the appropriations bills have come in in every respect—defense, foreign aid, foreign assistance, and all domestic functions—right on target in terms of outlays as prescribed by the U.S. Senate when they voted in the budget resolution. I do not think we ought to use reconciliation to put another burden on that. Let it run its course.

Having said that, Mr. President, I have nothing further to say. I do not know when the leader will call us back in but I will need some time to negotiate. We will have one of the Budget Committee people handle it for me in the morning as we try to work out some compromises. At this point I yield the floor.

Mr. GORTON. Mr. President, today the Senate takes up the Budget Reconciliation Act for 1986. I must confess to mixed feelings at this moment. I commend Senator DOMENICI, the chairman of the Budget Committee, and his Democratic counterpart Senator CHILES, for the hard work and leadership they have demonstrated in bringing the process this far. But I fear that the package that is about to be laid before us is defective in one critical aspect—namely, its failure to reduce the deficit sufficiently to avoid across-the-board spending cuts that will otherwise be required under the Gramm-Rudman-Hollings Act.

I have fought as tenaciously and consistently as any member of the Senate to eliminate the Federal budget deficit. But I do not want to see across-the-board spending reductions implemented. They do not reflect this body's considered will, and they are not, I believe, generally favored among our constituents in general. It is our task to ensure that these across-the-board spending cuts are avoided, by enacting budget measures sufficient to reach the deficit goal without triggering these reductions.

Unfortunately, the bill that stands before us today will not meet this requirement. As it stands, it clearly does not yield enough deficit reduction to permit us to avoid the across-the-board spending reduction of Gramm-Rudman-Hollings. It is my hope, therefore, that we may be able to modify the bill over the next several days to generate enough savings to avoid the across-the-board spending cuts otherwise required by the Gramm-Rudman-Hollings Act. I intend to support this effort.

NOMINATION OF WILLIAM REHNQUIST TO CHIEF JUSTICE OF THE U.S. SUPREME COURT

Mr. HEINZ. Mr. President, the Senate has few graver responsibilities than its constitutional obligation to advise and consent with respect to judicial nominations. This responsibility is particularly grave in the confirmation of the Chief Justice to the Highest Court in our land—the Supreme Court.

We, as Senators, are legislators. The Supreme Court is all too often called upon to determine the meaning of what we write as law. The Justices' impact in interpreting the Constitution—and the paramount importance of their decisions—is even more profound. The Chief Justice of the Supreme Court may have no more than a single vote out of nine—the same weight as his or her colleagues—and yet the position of the Chief Justice is one in which we repose extraordinary esteem, respect and trust.

Our Constitution provides for nomination by the President and the advice and consent of the Senate. Both responsibilities are far reaching, their weight immense. The Senate's constitutional duty demands that we in the Senate consent to a nominee for the position of Chief Justice only if his or her qualifications—that is, scholarship, legal acumen, professional achievement, wisdom, integrity, fidelity to the law and commitment to uphold our Constitution—are of the highest order. I take this task most seriously. It is too important a decision for either partisan loyalty or partisan gain to play a part.

Mr. President, the question before us is whether to approve the nomination of Justice William H. Rehnquist to serve as Chief Justice of the U.S. Supreme Court? I think it important to note clearly and exactly what we are and are not doing here today when we cast our votes.

The question before us is not whether Justice Rehnquist should be on the Supreme Court. He already is on the Court. Nothing we do here today will change that fact. Rather, the decision we are called upon to make is whether to elevate Justice Rehnquist to first among equals as Chief Justice.

I have some serious differences with Justice Rehnquist's philosophy. If I were a Justice, I would, perhaps often, find myself opposing Justice Rehnquist's position. Had I been on the Court, I would for example have found myself in opposition to his position on Bob Jones University (1983), Batson versus Kentucky (1986), Keyes versus School District No. 1 (1973), and other cases demanding a clear interpretation of the equal protection clause of the 14th amendment against the multiple manifestations of racial discrimination. By the same token, I would have argued vigorously against his position in landmark sex discrimination cases such as Turner versus Department of Employment Security (1975), Duren versus Missouri (1979), and Taylor versus Louisiana (1975).

The heart of these and my other disagreements with Justice Rehnquist, I expect, is his generally broad rejection of the doctrine of incorporation.

While Justice Rehnquist may take the narrowest interpretation of "incorporation" of any person on the Court, in fairness to his view, there are others on the Court today—a majority from time to time—who are also strict in limiting the application of the doctrine of incorporation. That school of thought, though I may disagree with many of the conclusions it leads to, must be accorded as a recognized branch and serious body of judicial thought.

In view of his position as a sitting Associate Justice, it is difficult to conclude that his general judicial philosophy, despite my disagreements with his decisions, is without its adherents on the Court.

The President might as easily have selected for Chief Justice another Justice of generally similar view—Justice O'Connor, White, and Powell come to mind—as an alternative to Justice Rehnquist. Similarly, I have noted very little inclination on the part of any Senator to oppose the nomination of Justice Scalia, who would appear to have views quite similar to Justice Rehnquist. For these reasons, I believe that in and of themselves my disagreements with the nominee are not a sufficient reason to disqualify him.

Mr. President, beyond the issue of philosophy, as important as it is, it is essential to ask whether Justice Rehnquist meets certain other qualifications—whether he has the requisite legal skills, integrity, high intellect, institutional fidelity, and moral character—to serve as Chief Justice.

As to whether Justice Rehnquist meets these tests, I give particular weight to those who know him best. His Court colleagues who have indicated privately as well as publicly their approval of his choice.

Justice Rehnquist's legal and intellectual skills are impressive, even to his most severe critics. He graduated first in his class from Stanford Law School. He served on the Board of Editors of the Stanford Law Review.

Justice Rehnquist has been rated as "well qualified" by the American Bar Association [ABA], which informed the Senate Judiciary Committee: "The ABA committee unanimously has found that Justice Rehnquist meets the highest standards of professional competence, judicial temperament and integrity, is among the best available for appointments as Chief Justice of the United States, and is entitled to the committee's highest evaluation of the nominees to the Supreme Court—well qualified."

Mr. President, impressive as these credentials may be, intellect without good character and high moral values is at best worthless and at worst dangerous.

It is said Adolf Hitler and Joseph Stalin were both brilliant men. And we know what they did.

It is most significant to me that a number of impartial practitioners of high integrity, character and prominent legal standing have expressed unequivocal support for the nominee including, most notably, Judge Griffin Bell, former Attorney General during the Carter administration and Erwin N. Griswold, former Solicitor General under President Johnson. They support him not merely because he is able and intelligent, but because they believe he passes a more important test: they believe he is a good man.

Mr. President, let me return to the issue that has dominated this debate, judicial philosophy. Rhetorically, the question is: "Is Justice Rehnquist an extremist?" The substantive translation of this question is whether Justice Rehnquist's philosophies are so unusual that they may impede—or cloud in some way—an honest interpretation of our constitutional rights and responsibilities. As I said earlier, on a case-by-case basis I find myself in a sufficiency of dissent with Justice Rehnquist. But that is not the issue. The correct question to ask is whether Justice Rehnquist is so extreme in his views, so far out in right field, that we dare not entrust him with the high position of Chief Justice.

As I understand the principal argument of Justice Rehnquist's opponents, it is that he is outside of the mainstream of judicial thought of those Justices currently serving on the Supreme Court. The basis for this argument is that Justice Rehnquist is the leading dissenter on the Court and therefore he is too extreme to serve as Chief Justice.

In examining the records of the Court, I found the facts at variance with this conclusion in two respects. First, during the 1980-84 Court sessions, Justice Rehnquist dissented a total of 75 times. He was not the leading dissenter. The leading dissenter was Justice Stevens with 145 dissents, a frequency of roughly twice that of Justice Rehnquist. Justice Brennan, with 106 dissents, also dissented more than Rehnquist. Second, Rehnquist was not the most frequent sole dissenter. In this case, it was Justice Stevens, who most scholars consider a moderate to liberal, who had the most lone dissents—51—of any Justice.

My point, Mr. President, is that this kind of statistical argument has to be examined carefully. In this case, the assertions of Justice Rehnquist's opponents simply are not supported by the facts available.

It is, however, factually accurate that Justice Rehnquist has authored a majority of the majority opinions in the last four terms of the Court.

To my mind, then, the facts do not support the conclusion that Justice Rehnquist is isolated in his views and too far from the main currents of argument of contemporary jurisprudence. So, while I cannot share significant elements of Justice Rehnquist's philosophy, neither can I come to the conclusion of his opponents that he is the extremist his opponents presuppose.

Although I shall vote for his nomination, quite frankly this has been the most difficult question for me to resolve. And because it is not an easy call, it is a close call.

It is difficult because the interpretation of the Constitution or the laws written by Congress is difficult. There is a tension between the pure rationality of a faithful and literal interpretation of words on paper on the one hand, and what someone today thinks the authors meant to say yesterday or years ago on the other. There can never be, with certainty, a right answer to this question.

I yield the floor.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. DOMENICI. I suggest that it be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 2240

Mr. BROYHILL. I ask unanimous consent that the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF TRANSPORTATION APPROPRIATIONS

Mr. BIDEN. Mr. President, today I voted in support of the Transportation appropriations bill for the 1987 fiscal year. The overwhelming majority vote in support of this bill indicates that the committee did an excellent job of balancing demanding interest, while managing to stay under budget.

I would also like to note something that was not part of the bill, nor even attempted—a drastic reduction or elimination of funding for Amtrak. During the past few years, I have opposed the numerous attempts that have been made to wreck the Amtrak System. Until recently, the importance of Amtrak seemed to be poorly understood. There used to be a belief that if Amtrak did not stop in your hometown, you received absolutely no benefit from it. This was never the case, and now the country understands the value of Amtrak not only to States along the Northeast corridor, but to the entire Nation.

While I am pleased to see that Amtrak's funding level of $591 million was not subject to reduction, it is clear that Amtrak must continue to look for ways to cut its costs, while maintaining service standards. After the demoralizing and distracting attacks on Amtrak by the administration, its employees, and management can now turn their full attention toward implementing further savings in Amtrak operations, reducing the need for appropriations like we voted for today.

I do not believe anyone wants the present situation to continue. I look forward as much as anyone to the day when Amtrak states that it no longer needs any assistance. But it is only by allowing Amtrak to move off the serious chopping block, not threatening its existence month after month, that plans for long-term development and improvement of the railroad system can be moved forward. That is one of the most important aspects of this bill, and one that I hope will be continued.

COMMEMORATION OF THE 199TH ANNIVERSARY OF THE SIGNING OF THE U.S. CONSTITUTION

Mr. DECONCINI: Mr. President, I would like to take a few moments to commemorate a very important day in the history of our country.

Today we are celebrating the 199th anniversary of the signing of the U.S. Constitution. Our Constitution is a document Prime Minister Gladstone of Britain called "the most remarkable work known in modern times to have been produced by the human intellect." I am sure we can all agree that this anniversary is one deserving of the grandest of celebrations.

We, as Democrats and Republicans, are Americans first—Americans who individually and collectively believe in the timeless, fundamental truths on which our country was founded.

We believe in peace, and we strive for it; equality, and we intend to fight for it; justice and mercy, and we pledge to administer and to teach it—and we believe in growth, which we know is only possible through freedom.

America is a land of growth and of freedom because of the struggle and faith of our forefathers who gave us the opportunity for diversity and the privilege of union.

It is in this spirit that we, as Democrats and Republicans, should be pleased to lend bipartisan support to the Bicentennial of the Constitution of the United States—a commemoration of the responsibilities and blessings of liberty.

Why should we celebrate the Constitution? Why celebrate a 200-year-old piece of yellowed parchment with faded print? Why bother?

We should bother because we cannot afford to let the Constitution become confined to our country's past. We should celebrate the Constitution not only for its role in American history—we should celebrate it for its contributions to modern government. The Constitution is much more than a document of history encased in glass at the National Archives. It is a living, functioning influence on your life and mine.

Few things endure 200 years. No other constitution has lasted so long. How many Americans know, for instance, that over the last 40 years the world has averaged two constitutions per nation? Right now, on the face of this planet, there are 160 national constitutions. Most of them—almost two-thirds—have been adopted or revised since 1970.

The U.S. Constitution stands in stark contrast. It is a document that has endured. It is a document that must be preserved for the centuries ahead. It has been said that our Constitution is America's most important export. And so each night it is stored in a bomb-proof vault in the National Archives. In times of emergency there is a special staffperson at the Archives who has the responsibility of pushing the button that will drop the Constitution into that vault.

Why celebrate the Constitution? Because it is as relevant to Americans today as it was to the Founding Fathers 200-years ago. Our Government under Law, established by the Constitution, is the longest-lasting democracy in the history of the world. Contrast, if you will, Italy, which has had 50 different governments since World War II. On average, that's more than one government per year!

And why has our Government endured? Why is it still going strong after 200 years when we see other governments toppling, when we see revolutions as a way of life? It's because our Constitution provides for separation of powers among our executive, legislative and judicial branches. It is a system of checks and balances that is unique. It is a system that provides the solution to the problem James Madison foresaw two centuries ago:

> If men were angels, no government would be necessary. If angels were to govern men, government controls would be unnecessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself.

So far our history has proved that our Constitution, and the Government under law established by it, are working. With the one exception of the Civil War, this Nation has never had a crisis within its borders.

Over 200 years ago 55 men gathered together to write a document that today lives as the oldest written instrument of government in world history. What they wrote is a truly "democratic" Constitution which gives the people more power than was expected by the contemporaries of our Founding Fathers. It is "people power" that has made this country what it is today. It is "people power" which provided us with the rights and liberties which sometimes we take for granted: Freedom of expression, freedom of worship, freedom of choice, the right to vote, the right to associate with whomever we please. When we celebrate the Constitution we are reaffirming its values of freedom, justice, and equality for all.

While there are many reasons to celebrate, one of the foremost is education: The importance of educating all Americans, the young and the old, about the founding of our Nation. We sometimes forget what a revolutionary work the Constitution is. It was a bold, new document creating a bold, new government. Thomas Jefferson described it well: "We can no longer say there is nothing new under the Sun," he said. "For this whole chapter of the history of man is new." As it stands today, many Americans do not know enough about this chapter—they don't know enough about our heritage and our form of government. Recent studies have shown that only a little more than half of the 17-year-olds, and not quite a third of the 13-year-olds in this country know that each State has two Senators. Less than half of the 17-year-olds and less than one-fourth of the 13-year-olds know that appointments to the Supreme Court must be confirmed by the Senate. Three-fourths of American adults do not

know the subject of the first amendment.

Our Government is only as strong as the understanding and the will of the men and women who comprise it. Our Constitution is a superior document. But it has to be implemented day by day by the men and women who live in this great land.

Why celebrate the Constitution? Because, in doing so, we are celebrating the principles for which this country stands. It has been said that the Constitution has proven durable because it addressed principles that were enduring. Whether we are the descendants of immigrants from Europe, Asia, Africa, or Latin America, whether we are fifth- or first-generation Americans, it is the U.S. Constitution that has made the Constitution a document whose preamble can truly begin with the words, "We, the people . . . ."

Those words, "We, the people," appear on the logo of the Commission on the Bicentennial of the U.S. Constitution. On September 29, 1983, the President signed legislation establishing this Commission. I am honored and proud to be a member.

The bicentennial will be a national celebration of all our people throughout this Nation—from the people in Lexington and Concord, where the revolution began, to the 20th century pioneers on the frontiers of Alaska; from the descendants of the Jamestown settlers to the "New West" frontiers of Arizona and California. This celebration will be more than a series of fireworks. It will be a national reexamination of our Nation's principles and the rights and freedoms they guarantee.

We hope this celebration will surpass any other celebration this Nation has ever had. We want Americans from Maine to California, from Honolulu to Cape Canaveral to get involved.

We're already lining up projects. The American Legion is going to sponsor a nationwide oratorical contest. The national parks will offer a slide show on our Constitution. There's a poster display called The Blessings of Liberty that we hope to place in every high school in America. The Commission has just undertaken a mailing to over 55,000 high school principals notifying them of a bicentennial writing contest for high school students throughout the land.

These projects will do more than focus on the Constitution. They will celebrate the American way of life.

When the Constitutional Convention of 1787 had completed its work, Benjamin Franklin was confronted by a Philadelphia woman who asked what kind of government had been created. "Madam," the elder stateman replied, "a Republic, if you can keep it."

For over 200 years we have kept our Republic, and we must keep it for the generations to come. But legitimate doubts persist to this day about whether our great experiment in self-government will continue to succeed. We know that a wide river of ignorance about our democratic system flows across America. Opinion polls repeatedly report, for instance, the lack of public understanding of Congress: Who we are and what we do.

Let me repeat: Our Government is only as strong as the understanding and the will of the men and women who comprise it. A major purpose of the Bicentennial Commission, then, is to build a bridge of understanding and appreciation of our Government and the unique document that guards our liberties.

As Chief Justice Burger has said, "We are all trustees of our constitutional freedoms, and as such, it is our solemn duty to pass them on, unimpaired, to those who follow us." What we are celebrating here and in the years ahead, it is a document that produced a way of life envied the world over.

As a member of the Bicentennial Commission, I encourage all of my colleagues to lend their support to making this commemoration of the bicentennial an unparalleled celebration of those freedoms we have inherited—and of the limitless possibilities we have as one people, working together, for the future of our country, and of our world.

MESSAGES FROM THE HOUSE

At 9:44 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 2095. An act to reauthorize the Tribally Controlled Community College Assistance Act of 1978 and the Navajo Community College Act.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3002) to provide for the establishment of an experimental program relating to the acceptance of voluntary services from participants in an executive exchange program of the Government.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 3358) to reauthorize the Atlantic Striped Bass Conservation Act, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4421) to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990 to carry out the Head Start, Follow Through, dependent care, community services block grant, and community food and nutrition programs, and for other purposes.

ENROLLED BILL SIGNED

At 1:01 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 98. An act for the relief of Cirilo Raagas Costa and Wilma Raagas Costa.

The enrolled bill was subsequently signed by the President pro tempore (Mr. THURMOND).

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5233) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1987, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. NATCHER, Mr. SMITH of Iowa, Mr. OBEY, Mr. ROYBAL, Mr. STOKES, Mr. EARLY, Mr. DWYER, Mr. HOYER, Mr. WHITTEN, Mr. CONTE, Mr. PURSELL, Mr. PORTER, Mr. YOUNG of Florida, and Mr. MICHEL as managers of the conference on the part of the Senate.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1598. An act for the relief of Steven McKenna;

H.R. 1755. An act for the relief of David Butler, Aldo Ciron, Richard Denisi, Warren Fallon, Charles Hotton, Harold Johnson, Jean Lavoie, Vincent Maloney, Austin Mortenson, and Kurt Olofsson;

H.R. 1891. An act to direct the Secretary of the Interior to convey a certain parcel of land located near Ocotillo, California;

H.R. 2499. An act to modify the boundary of the Uinta National Forest;

H.R. 2574. An act for the relief of survivors of Christopher Eney;

H.R. 2652. An act for the relief of Kumari Rajlakshmi Bais;

H.R. 4089. An act to prohibit the construction of dams within national parks and monuments;

H.R. 4244. An act to authorize funds to preserve the official papers of Joseph W. Martin, Jr.;

H.R. 4794. An act to amend the National Trails System Act to designate the Santa Fe Trail as a National Historic Trail; and

H.J. Res. 517. Joint resolution providing for reappointment of David C. Acheson as a citizen regent of the Board of Regents of the Smithsonian Institution.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate;

H. Con. Res. 339. A concurrent resolution expressing the sense of the Congress that

the essential air transportation program should be maintained for the ten-year period for which it is authorized.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1598. An act for the relief of Steven McKenna; to the Committee on the Judiciary.

H.R. 1755. An act for the relief of David Butler, Aldo Cirone, Richard Denisi, Warren Fallon, Charles Hotton, Harold Johnson, Jean Lavoie, Vincent Maloney, Austin Mortenson, and Kurt Olofsson; to the Committee on the Judiciary.

H.R. 1891. An act to direct the Secretary of the Interior to convey a certain parcel of land located near Ocotillo, California; to the Committee on Energy and Natural Resources.

H.R. 2499. An act to modify the boundary of the Uinta National Forest; to the Committee on Energy and Natural Resources.

H.R. 2652. An act for the relief of Kumari Rajlakshmi Bais; to the Committee on the Judiciary.

H.R. 4089. An act to prohibit the construction of dams within national parks and monuments; to the Committee on Energy and Natural Resources.

H.R. 4244. An act to authorize funds to preserve the official papers of Joseph W. Martin, Jr.; to the Committee on Labor and Human Resources.

H.R. 4794. An act to amend the National Trails System Act to designate the Santa Fe Trail as a National Historic Trail; to the Committee on Energy and Natural Resources.

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 339. A concurrent resolution expressing the sense of the Congress that the essential air transportation program should be maintained for the ten-year period for which it is authorized; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the first and second times by unanimous consent, and placed on the calendar:

H.J. Res. 517. Joint resolution providing for reappointment of David C. Acheson as a citizen regent of the Board of Regents of the Smithsonian Institution.

MEASURES HELD AT THE DESK

The following bill was ordered held at the desk by unanimous consent, pending further disposition:

H.R. 2574. An act for the relief of the survivors of Christopher Eney.

ENROLLED BILLS PRESENTED

The Secretary of the Senate announced that on today, September 17, 1986, she had presented to the President of the United States the following enrolled bills:

S. 98. An act for the relief of Cirilo Raagas Costa and Wilma Raagas Costa; and

S. 720. An act to establish a permanent boundary for the Acadia National Park in the State of Maine, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3739. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on budget rescissions and deferrals dated September 1, 1986; pursuant to the order of January 30, 1975, referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-3740. A communication from the Chairman of the National Advisory Committee on Oceans and Atmosphere, transmitting, pursuant to law, a report entitled "The Need For a National Plan of Scientific Exploration for the Exclusive Economic Zone"; to the Committee on Commerce, Science, and Transportation.

EC-3741. A communication from the Inspector General, Department of Agriculture, transmitting, pursuant to law, notice of a computer matching program; to the Committee on Governmental Affairs.

EC-3742. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Offshore Oil and Gas: Final Report on Shut-In and Flaring Wells"; to the Committee on Energy and Natural Resources.

EC-3743. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report on the public lands program for fiscal year 1985 entitled "Managing the Nation's Public Lands"; to the Committee on Energy and Natural Resources.

EC-3744. A communication from the Under Secretary of the Treasury, transmitting, pursuant to law, the financial statements of the U.S. Synthetic Fuels Corporation for the period October 1, 1985 to April 18, 1986 (date of termination); to the Committee on Energy and Natural Resources.

EC-3745. A communication from the General Counsel of the Department of Energy, transmitting a draft of proposed legislation to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes; to the Committee on Energy and Natural Resources.

EC-3746. A communication from the Executive Secretary of the Foreign-Trade Zones Board, Department of Commerce, transmitting, pursuant to law, the annual report of the Board for fiscal year 1983; to the Committee on Finance.

EC-3747. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report of activities under the Administration on Developmental Disabilities, Office of Human Development Services; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Appropriations, without amendment:

S. 2827: An original bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1987, and for other purposes (Rept. No. 99-446).

By Mr. HATCH, from the Committee on Labor and Human Resources, without amendment:

S. 1815: A bill to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce (Rept. No. 99-447).

By Mr. HATCH, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 2407. A bill entitled "The Animal Drug Amendments and Patent Term Restoration Act of 1986." (Rept. No. 99-448).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HECHT (for Mr. GARN), from the Committee on Banking, Housing, and Urban Affairs:

Harold T. Duryee, of the District of Columbia, to be Federal Insurance Administrator, Federal Emergency Management Agency.

(The above nomination was reported from the Committee on Banking, Housing, and Urban Affairs with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. McCLURE, from the Committee on Energy and Natural Resources:

Martha O. Hesse, of Illinois, to be a Member of the Federal Energy Regulatory Commission for the remainder of the term expiring October 20, 1987; and

James Allen Wampler, of Illinois, to be as Assistant Secretary of Energy (Fossil Energy).

(The above nominations were reported from the Committee on Energy and Natural Resources with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DANFORTH (for himself and Mr. HEINZ):

S. 2826. A bill to suspend for a 1-year period the duty on certain mixtures of cross-linked sodium polyacrylate polymers; to the Committee on Finance.

By Mr. STEVENS, from the Committee on Appropriations:

S. 2827. An original bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1987, and for other purposes; placed on the calendar.

By Mr. SPECTER:

S. 2828. A bill to authorize the expenditure of funds not needed for purposes of the Department of Justice Assets Forfeiture Fund and the Customs Forfeiture Fund for purposes of emergency prison construction and to remove the cap on the use of such funds; to the Committee of the Judiciary.

By Mr. METZENBAUM:

S. 2829. A bill for the relief of Steven McKenna; to the Committee on the Judiciary.

By Mr. HEINZ (for himself, Mr. SPECTER, Mr. GLENN and Mr. DENTON):

S. 2830. A bill to amend the Steel Import Stabilization Act; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DANFORTH (for himself and Mr. HEINZ):

S. 2826. A bill to suspend for a 1 year period the duty on certain mixtures of cross-linked sodium polyacrylate polymers; to the Committee on Finance.

SUSPENSION OF DUTY ON CERTAIN MIXTURES OF CROSS-LINKED SODIUM POLYACRYLATE POLYMERS

● Mr. DANFORTH. Mr. President, today I am introducing with Senator HEINZ a bill to suspend for 1 year the duty on certain mixtures of cross-linked sodium polyacrylate polymers.

This chemical substance is used in the production of disposable diapers that are made in Missouri, Pennsylvania, and other locations. Since United States suppliers are unable to meet the total demand for this material, it is currently being imported from suppliers in Germany and Japan. While it is hoped that there will eventually be sufficient U.S. production to satisfy domestic demand, I am advised that in the meantime U.S. suppliers do not object to time-limited duty suspension.

Therefore, I am proposing suspension of the duties on this material for 1 year. The bill is drafted as narrowly as possible to prevent exemption of unintended materials from duties.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2826

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subpart B of part 1 of the Appendix to the Tariff Schedules of the United States is amended by inserting in numerical sequence the following item:

"907.72	Absorbent chemical material of one or more cross-linked sodium polyacrylate polymers (provided for in item 430.20, part 2D, schedule 4).	Free	No change	On or before 12/31/87".

SEC. 2. The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of the enactment of this Act.●

By Mr. SPECTER:

S. 2828. A bill to authorize the expenditure of funds not needed for purposes of the Department of Justice Assets Forfeiture Fund and the Customs Forfeiture Fund for purposes of emergency prison construction and to remove the cap on the use of such funds; to the Committee on the Judiciary.

EMERGENCY PRISON CONSTRUCTION FUNDING ACT

● Mr. SPECTER. Mr. President, today I am introducing legislation which would address a problem that has reached critical proportions: Federal prison overcrowding. This legislation authorizes the Attorney General to use surplus moneys in the Department of Justice Assets Forfeiture Fund and the Customs Forfeiture Fund for emergency prison construction funding.

Throughout the country, at Federal, State, and local levels, overcrowding of jails and prisons strains our correctional system, by overextending the staff and resources of each facility and by creating conditions not conducive of rehabilitation of prisoners. The recent uprising at the Lorton Penitentiary in Virginia illustrates the overcrowding problem and its disasterous results: prisoner unrest and violence that a prison staff is ill-equipped to prevent or contain.

The number of probationers and parolees is growing larger in proportion to the number of incarcerated offenders, mainly as a result of the courts' reluctance to sentence convicted criminals to jails and prisons already filled well beyond capacity. The Federal Bureau of Justice Statistics has reported that the probation population has grown much faster in the 1980's than has the prison population; there are now approximately three times as many offenders under such "community supervision" than there are in prison. The probation and parole populations reached record levels in 1984, rising 8 and 9 percent respectively, according to the Bureau of Justice Statistics. Tens of thousands of convicted prisoners and pretrial detainees are released prematurely, because there simply is no space for them in our existing prisons and jails. Courts have intervened in approximately 80 percent of the States' prison systems, frequently placing limits on the number of prisoners the State may place in existing facilities.

The Bureau of Prisons reports that the general occupancy rate is between 105 and 119 percent of rated capacity. A Justice Department Survey of Jails, which analyzed the population of approximately one-third of the Nation's jails, revealed that 24 percent of the facilities in jurisdictions with large jail populations reported that they were under court order to remedy one or more conditions of confinement; of these, 81 percent were cited for crowded living units.

At the Federal level, the Bureau of Prisons reports that the overall occupany rate is as high as 154 percent of capacity; the Federal inmate population has grown from 34,263 prisoners in 1984 to 41,092 at present. As of July 14, 1986, the Bureau of Prisons reports that all but 6 of the 47 Federal prisons are over capacity; 5 of these 6 are close to reaching their operational capacity.

This nationwide prison overcrowding crisis is due, in large part, to the staggering number of drug offenders being sent to Federal prisons. This class of inmates numbered 7,683 in 1983, 8,324 in 1984, and 9,487 in 1985, and 10,191 at the end of June 1986. The administration's intensified crackdown on drug trafficking has significantly increased the number of drug convictions, and the accordant burden on the Federal corrections system.

Mr. President, in short, prison overcrowding has reached crisis proportions and continues to worsen. This bill will not solve this crisis but it provides a relatively simple and desperately needed first step.

Existing law provides for two separate funds in the U.S. Treasury as repositories for moneys and property seized by or forfeited to law enforcement officials: the Customs Forfeiture Fund and the Department of Justice Assets Forfeiture Fund. Property and moneys seized or forfeited in drug-related arrests by the U.S. Customs Service are deposited in the Customs Forfeiture Fund under the Tariff Act of 1930 (19 U.S.C. 1607). Similarly, property and moneys seized or forfeited pursuant to a law enforced or administered by the Department of Justice are desposited in the Department's Assets Forfeiture Fund (28 U.S.C. 524). The law states that amounts in the fund which are not currently needed for purposes specified in the applicable statutes establishing the funds shall be kept on deposit in the U.S. Treasury.

The increasing number of convicted drug offenders and amount of confiscated property and moneys used in the illicit drug trade are swelling the deposits in both the Customs Forfeiture Fund and the Justice Assets Forfeiture Fund. As of September 1, 1986, the Justice seizures totaled over $200 million. The Department estimates the fund to total $35 million at the end of the year.

The legislation which I am introducing today would amend existing law to allow these excess moneys in the two forfeiture funds to be used to relieve

Federal prison overcrowding. Specifically, it would amend the existing Customs and criminal forfeiture statutes to authorize the Attorney General to allocate surplus forfeited moneys for emergency prison construction. Moneys from the sale of property seized by the Customs Service in drug-related arrests, and not needed for the purposes already set forth in the Customs Forfeiture Fund statute also could be used for emergency prison construction funding. The bill removes the existing cap on these two accounts; all forfeited drug moneys would be made available to the Attorney General rather than deposited in the Treasury.

Mr. President, this legislation represents a reasonable step toward eliminating the problems of too many drug convictions and not enough prison space. And what more appropriate way to finance the new facilities than with the forfeited spoils of convicted drug traffickers?

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2828

Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled,

SEC. 2. DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.

(a) Paragraph (4) of subsection (c) of section 524 of title 28, United States Code, is amended to read as follows:

"(4) Amounts in the fund which are not currently needed for the purpose of this section—

"(A) may be used by the Attorney General for prison construction necessary on an emergency basis; or

"(B) if not used for the purposes provided in clause (A) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.".

(b) Paragraph (8) of subsection (c) of section 524 of title 28, United States Code, is amended by striking out the second sentence.

SEC. 3. CUSTOMS FORFEITURE FUND.

(a)(1) Subsection (e) of section 613a of the Tariff Act of 1930, as added by Public Law 98-473, is amended to read as follows:

"(e) Amounts in the fund which are not currently needed for the purpose of this section—

"(A) may be used by the Attorney General for prison construction necessary on an emergency basis; or

"(B) if not used for the purposes provided in clause (A) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.".

(2) Subsection (h) of such section is amended by striking out the second and third sentences thereof.

(b)(1) Subsection (d) of section 613a of the Tariff Act of 1930, as added by Public Law 98-573, is amended to read as follows:

"(d) Amounts in the fund which are not currently needed for the purpose of this section—

"(A) may be used by the Attorney General for prison construction necessary on an emergency basis; or

"(B) if not used for the purposes provided in clause (A) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.".

(2) Subsection (f) of such section is amended by—

(A) striking out "(1)"; and

(B) striking out paragraph (2).●

By Mr. METZENBAUM:

S. 2829. A bill for the relief of Steven McKenna; to the Committee on the Judiciary.

RELIEF OF STEVEN MC KENNA

● Mr. METZENBAUM. Mr. President, today I am introducing legislation to allow Steven McKenna to seek redress for permanent disability. Steven is a 19-year-old boy from Wickliffe, OH. He is permanently and severely disabled by the loss of both legs as a result of a birth defect. The evidence strongly suggests that this defect was caused by his mother taking "Contergan," the proprietary name of thalidomide in Germany.

Steven's parents were stationed in Geissen, Germany, with the U.S. Army in 1967 when Steven was born. During her pregnancy, Mrs. McKenna was under the care of an agent of the U.S. Army, a German doctor, who prescribed Contergan. Steven simply wants the opportunity to file an action in U.S. courts to attempt to show that the United States is liable for compensation as an employer of the doctor.

The McKennas have already tried to get restitution from a settlement fund resulting from a suit brought in Germany by victims in that country. However, the provisions of this settlement are grossly inadequate. They require a very detailed description of the defect at the time of birth. Because the hospital records described his birth defect in only general terms, the compensation program does not apply in Steven's case.

In addition, an individual suit by Steven against the manufacturer or the doctor under German law is totally unrealistic. Not only were the liability laws in effect until 1976 very stringent, the expense of bringing the claims in Germany would be prohibitive. In 1976, mainly because of the thalidomide case, the German parliament enacted a much more liberal drug liability law, but the law has no retroactive application. No other remedies are available under German law. When the McKennas returned to the United States they found they could not bring a claim under the Federal Tort Claims Act because the FTCA prohibits claims against the United States arising in foreign countries. Since Mrs. McKenna took thalidomide in Germany, the FTCA clearly precluded the McKenna's bringing suit. The bill would allow Steven to bring an action against the United States, the employer of the doctor who prescribed the drug.

This bill is not intended to make an exception in the law for the McKennas. Rather, this bill is intended to put the McKennas in the same category as so many others who believe they are victims of thalidomide poisoning. The only purpose of this bill is to allow the McKennas "their day in court." They have exhausted all other possibilities of obtaining compensation, and sadly, Steven McKenna is probably one of the very few thalidomide babies who have not been able to file an action for compensation. This bill would allow him access to the U.S. courts to plead his case.●

By Mr. HEINZ (for himself, Mr. SPECTER, Mr. GLENN, and Mr. DENTON):

S. 2830. A bill to amend the Steel Import Stabilization Act; to the Committee on Finance.

STEEL IMPORT STABILIZATION ACT AMENDMENTS

● Mr. HEINZ. Mr. President, there is no need at this point to repeat in detail the series of events over the past 10 years that threaten the virtual destruction of the integrated steel industry in this country. Employment is down—cut more than half in that time period—profits are nonexistent, and plant closings and bankruptcies are rampant. On the positive side, this is adjustment, and there is no question the industry needs to adjust, and that it will adjust further to changed economic circumstances. There is substantial global excess capacity as well as excess capacity in this country, and steel demand in the United States is, at best, flat.

On the other hand, it is clear that not all of the forced adjustment is due to the capacity situation or to macroeconomic factors. Part of the problem has been and continues to be unfair trade—dumped and subsidized steel entering this country from producers who are not, in objective terms, competitive with ours. No industry has a better record than the steel industry in demonstrating unfair trade practices on the part of others. In large part for that reason, not to mention the critical strategic importance to the industry for our defense and our economic infrastructure, the President in 1984 decided on a program of voluntary import restraint agreements that was intended to reduce imports to 18.5 percent of the U.S. market, or 20.2 percent if semifinished steel imports were included.

That program has achieved some useful results, but its shortcomings are also evident. Import levels have dropped from their 31 percent peak and are now running approximately 23.3 percent for the first 7 months of this year. The trend, unfortunately, has been worrisome. Following an April trough, import figures have begun to increase again and have been

progressively higher each succeeding month, reaching 27.1 percent in July. That figure is a bit inflated, partly because of declines in domestic production that will continue in part because of the strike/lockout at U.S. Steel. Even so, the tonnage that entered the country in July is the most since last December.

Beyond the immediate upward trend, it is also a fact that it has taken some 18 months to get the program underway. Had a 21 percent level been reached in January 1985, rather than in May 1986, the current condition of the domstic industry would be very different today.

These implementation errors, however, are mistakes of the past, and there is a limit to what we can do about them now. The President's program, as I indicated, has made some progress, and it can make still more with some further fine tuning in two areas.

First, circumvention remains a serious problem. The Customs Service has received more than a dozen requests for country of origin determinations that involve shipping basic steel products from VRA countries to non-VRA countries for the performance of a finishing operation. The requests seek a decision that the final operation changes the country of origin, thus transforming VRA-limited steel into unlimited, non-VRA steel.

Thus far, Customs' record is mixed, and it is aparent these requests will grow as foreign producers and importers learn how to evade the program's rules.

The legislation I am introducing today would address this problem the same way the House trade bill did. It would require that steel entering the United States from non-VRA countries would be allocated to the country where it was melted and poured regardless of where a final finishing operation was performed. Thus, to take a hypothetical example, Brazilian steel shipped to Costa Rica for finishing would be counted against Brazil's VRA limits, unless Costa Rica also had a VAR with the United States, in which case it could count against Costa Rica, depending on normal Customs rules of whether a substantial transformation has occurred. This will discourage circumvention both by encouraging countries like Brazil not to engage in such tactics and by encouraging smaller countries without a basic steel capacity to negotiate VRA's with the United States.

The other major and growing problem is that significant foreign producers remain outside the President's program. Particular problems in this regard are Canada, Sweden, and Taiwan. Indeed, Ambassador Yeutter recognized the problem on September 4 when he called for consultations with those three countries. At that time, he stated:

> I am greatly disturbed that in July we registered the largest single monthly increase among nations not covered by the President's steel program since it began in September 1984. * * * This cannot continue. Countries without voluntary restraint arrangements (VRA's) must not be allowed to undermine the program by taking advantage of restraints negotiated with other nations.

The most serious problem of these three countries is Canada, whose share of our market has risen to 4 percent, despite our insistence it remain at the historic level of 2.4 percent and their insistence on the 1984 levels of 3.1 percent. Recent statements by the new Canadian trade minister, as reported in U.S. media, denying any willingness on the part of Canada to be helpful have only made the situation worse.

Mr. President, we are presently engaged in far reaching free trade discussions with Canada which will hopefully lead to more open and closely integrated economies. To suggest at this point that a sectoral issue of some significance, like steel, is only our problem and not theirs, and that Canada has no role in helping to solve it, is to drive our two economies farther apart rather than closer together. That will only complicate, particularly in the Congress, the free trade negotiations.

Mr. President, with respect to this problem, this legislation takes a balanced approach. Consultations with the three countries in question have already begun. The administration has identified the problem and is making an effort, albeit a belated one, to solve it. My bill endorses that effort and allows 90 days for its successful completion. If those talks fail, however, the bill provides for import restraints to go into effect with respect to any of the three countries that have not concluded VRA's. The restraint levels would be 70 percent of the level of imports, by category, that entered in the 12 months prior to October 1, 1984, the last year before import restraints went into effect. This level would result in total imports higher than the President's goal of 20.2 percent but would, nonetheless, be helpful in containing the growth of countries that have been taking advantage of the partial nature of the President's program.

This bill should not be regarded as reflecting any change in my long-held view that what we need is a program of global quotas. The President, however, is making a good faith effort to solve the problem a different way, and I want to cooperate with that. I view this bill as helping the President achieve full compliance with his program, and I urge all Senators to support it in that spirit.●

● Mr. GLENN. Mr. President, I am pleased to join other members of the Senate Steel Caucus in introducing legislation to strengthen the Steel Import Stabilization Act. I urge my colleagues to support this bill and include it in trade legislation this year.

The 1984 Steel Import Stabilization Act calls for import limitation of 20.2 percent of the U.S. market. The United States has negotiated bilateral arrangements for import restrictions with 17 countries and the European Community. These agreements cover approximately 80 percent of steel imports. Steel imports have declined from 25.2 percent of the domestic market in 1986 to 23.2 percent so far in 1986. This is an improvement, but still far short of the goal. Foreign steel is still a serious problem, and this bill makes urgently needed improvements in the Steel Import Stabilization Act.

First, this bill includes a provision borrowed from the omnibus trade bill passed by the House of Representatives to prevent circumvention of bilateral arrangements under the Steel Import Stabilization Act. Steel that is manufactured in a nonarrangement country from steel melted and poured in an arrangement country shall be counted as steel from the originating arrangement country and applied toward that country's quantitiative restrictions. No longer will countries be able to circumvent the steel import program by sending steel through another country, because if they try, we will trace the steel back to them.

This provision complements other legislation I have introduced, S. 2783, which would deny beneficial tariff treatment under the Generalized System of Preferences [GSP] to countries that aid other countries in circumventing U.S. trade laws and agreements. How do these two provisions work together? If two countries conspire to circumvent a bilateral steel arrangement with the United States, the steel would be counted against the originating country's arrangement restriction, and the cooperating country would lose any benefits they have under the GSP Program.

The second provision of this bill deals with the problem of surging steel imports from countries that have refused to sign bilateral arrangements with the United States. Steel imports from arrangement countries have decreased, but imports from nonarrangement countries have increased to intolerable levels. Canada, Taiwan, and Sweden hold a 5-percent share of the domestic steel market, and are responsible for 20 percent of steel imports. In July, total steel imports surged to 26.4 percent, primarily due to imports from these and other nonarrangement countries. Our bill requires the U.S. Trade Representative to reach steel restraint agreements with Canada, Taiwan, and Sweden within 90 days, or else steel imports from these countries

will be limited to 70 percent of their 1984 level.

Mr. President, 2 years have passed since we enacted the Steel Import Stabilization Act. Thousands of more jobs have been lost in the steel industry. And still, we're not even within striking distance of the 20.2-percent goal for steel imports. We won't ever reach that goal unless we get the major steel-producing nations to cooperate by negotiating a bilateral arrangement. The workers and industries of Ohio can't wait any longer.

Mr. President, all the above presumes that agreements made or yet to be made, can in fact be enforced. That presumption may be far from valid. I am told that this year, while the administration publicly agonized over the trade imbalance and publicly deplored the growing deficit and transfer of jobs abroad, they at the same time cut 777 customs officers from the rolls and anticipate another cut of 800 next year to comply with Gramm-Rudman-Hollings. In other words, enforcement will be declining from an already low level. New legislation will mean little, if not enforced. We will again have raised the hopes of those in the steel industry, only to see those hopes once again dashed. I hope that the Appropriations Committee will take the initiative in providing funding now, in bills before us, to restore and expand our customs force for all the above and other obvious reasons. It will be penny-wise and very pound-foolish to do otherwise.

I would also call on the administration to include such funding in the new budget which will be submitted to the Congress in January 1987.

Backing all the right words with action is the only way we preserve the steel industry and put our people back to work.

I would like to see this bill passed today. But I realize that as a practical matter, it probably will have to be passed as part of an omnibus trade bill—which I also strongly support. For it seems you can't pick up the newspaper without reading yet another headline about the soaring U.S. trade deficit. Today's headline in the Washington Post reads, "Crippling Trade Deficit Grows Worse," in citing the Department of Commerce report that the U.S. current account deficit for trade in goods and services reached a record $34.7 billion for the second quarter of 1986.

America's merchandise trade deficit for 1986 is headed toward an all-time record of $170 billion. Who's paid for it? Over 2 million working men and women have paid for it—with their jobs. Over one-half of 1 million Ohioans have lost their manufacturing jobs since 1981. I'm sick and tired of watching our jobs and our industries sail overseas—while our own exports are sunk at the borders of foreign nations who use unfair trading practices like torpedoes. And I believe that given the right tools and a fair chance, American workers can still outwork, outinvent, outcompete, and outproduce anyone else on the face of this planet.

I hope my colleagues will take a hard look at the bipartisan trade bills pending in the Senate and stop listening to the propaganda of the administration. In fact, I wish the administration would read these bills. Because the legislation we support is centrist legislation, not extreme or protectionist legislation. The legislation strengthens the tools of fair trade—by making the President use his authority under the law to combat unfair trade practices by other countries; and by encouraging open foreign markets to U.S. goods. We're simply telling our trading partners that our markets won't be fair game until the game is made fair.

So I urge my colleagues and the Senate leadership to free the fair trade bill and allow the full Senate to act on trade legislation this year. And I urge inclusion of this steel bill in that legislation.●

ADDITIONAL COSPONSORS

S. 1251

At the request of Mr. DOMENICI, the name of the Senator from Louisiana [Mr. LONG] was added as a cosponsor of S. 1251, a bill entitled "The Natural Gas Utilization Act of 1985".

S. 2454

At the request of Mr. MURKOWSKI, the name of the Senator from Michigan [Mr. LEVIN], the Senator from Maine [Mr. COHEN], the Senator from Massachusetts [Mr. KERRY], the Senator from South Dakota [Mr. ABDNOR], the Senator from Florida [Mrs. HAWKINS], the Senator from Ohio [Mr. METZENBAUM], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2479

At the request of Mr. TRIBLE, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 2479, a bill to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

S. 2551

At the request of Mr. DENTON, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 2551, a bill to create a National Center on Youth Suicide under the Office of Justice Programs in the Department of Justice.

S. 2575

At the request of Mr. LEAHY, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 2575, a bill to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

S. 2576

At the request of Mr. DURENBERGER, the name of the Senator from New Hampshire [Mr. RUDMAN] was added as a cosponsor of S. 2576, a bill to amend title XVIII of the Social Security Act to require timely payment of properly submitted medicare claims.

S. 2713

At the request of Mrs. KASSEBAUM, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 2713, a bill to amend title 408 of the Federal Aviation Act of 1958 to ensure the preservation of employee seniority rights in airline mergers and similar transactions.

S. 2781

At the request of Mr. EVANS, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from Massachusetts [Mr. KERRY], the Senator from Indiana [Mr. LUGAR], the Senator from Pennsylvania [Mr. HEINZ], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

At the request of Mr. EVANS, the name of the Senator from Florida [Mrs. HAWKINS] was withdrawn as a cosponsor of S. 2781, supra.

S. 2805

At the request of Mr. MATTINGLY, the name of the Senator from Alabama [Mr. DENTON] was added as a cosponsor of S. 2805, a bill to provide for the imposition of the death penalty for certain continuing criminal enterprise drug offenses.

SENATE JOINT RESOLUTION 348

At the request of Mr. GLENN, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 348, a joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week."

SENATE JOINT RESOLUTION 375

At the request of Mr. LEVIN, the names of the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mr. CHILES], the Senator from South Dakota [Mr. PRESSLER], the Senator from Arizona [Mr. DECONCINI], the Senator from Ohio [Mr. METZENBAUM], the Senator from Michigan [Mr. RIEGLE], the Senator from Ohio [Mr. GLENN], the Senator from New Jersey [Mr. BRADLEY], the Senator from

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North Dakota [Mr. ANDREWS], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Vermont [Mr. STAFFORD] were added as cosponsors of Senate Joint Resolution 375, a joint resolution designating the week beginning September 21, 1986, as "National Adult Day Care Center Week."

SENATE JOINT RESOLUTION 385

At the request of Mr. D'AMATO, his name was added as a cosponsor of Senate Joint Resolution 385, a joint resolution to designate October 23, 1986 as "National Hungarian Freedom Fighters Day."

SENATE JOINT RESOLUTION 404

At the request of Mr. SIMON, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of Senate Joint Resolution 404, a joint resolution to designate October 1986 as "Polish American Heritage Month."

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of Senate Joint Resolution 407, a joint resolution designating November 12, 1986 as "Salute to School Volunteers Day."

SENATE JOINT RESOLUTION 413

At the request of Mr. BUMPERS, the names of the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of Senate Joint Resolution 413, a joint resolution to designate the month of October 1986 as "Learning Disabilities Awareness Month."

SENATE JOINT RESOLUTION 414

At the request of Mr. PACKWOOD, the names of the Senator from Tennessee [Mr. GORE], the Senator from Mississippi [Mr. STENNIS], and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of Senate Joint Resolution 414, a joint resolution to designate March 16, 1987 as "Freedom of Information Day."

S.J. RES. 415

At the request of the Senator from Maine (Mr. MITCHELL) the Senator from Massachusetts (Mr. KENNEDY), the Senator from Connecticut (Mr. WEICKER), and the Senator from North Dakota (Mr. BURDICK) were added as cosponsors to S.J. Res. 415, a joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

SENATE CONCURRENT RESOLUTION 65

At the request of Mr. QUAYLE, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of Senate Concurrent Resolution 65, a concurrent resolution establishing procedures for expedited consideration by the Congress of certain bills and joint resolutions submitted by the President.

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE RESOLUTION 435

At the request of Mr. MOYNIHAN, the name of the Senator from Arizona [Mr. GOLDWATER] was added as a cosponsor of Senate Resolution 435, a resolution to recognize Mr. Eugene Lang for his contributions to the education and the lives of disadvantaged young people.

SENATE RESOLUTION 464

At the request of Mr. ROTH, the names of the Senator from Pennsylvania [Mr. HEINZ], the Senator from Florida [Mr. CHILES], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Resolution 464, a resolution to designate October 1986 as "Crack/Cocaine Awareness Month."

AMENDMENTS SUBMITTED

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1987

GRAMM (AND THURMOND) AMENDMENT NO. 2843

Mr. GRAMM (for himself and Mr. THURMOND) proposed an amendment to the bill (H.R. 5205) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes; as follows:

On page 64, beginning with line 6, strike out all through page 65, line 15.

UNIFORM PRODUCT LIABILITY

PRESSLER AMENDMENT NO. 2844

(Ordered to lie on the table.)

Mr. PRESSLER submitted an amendment intended to be proposed by him to the bill (S. 2760) to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; as follows:

On page 37, strike all from line 18 through line 21 on page 38 and insert in lieu thereof the following:

SEVERAL LIABILITY FOR DAMAGES

SEC. 308. (a)(1) Except as provided in paragraph (2) of this subsection, in any civil action alleging injury to a person, damage to property, or death of a person, the liability of each defendant for damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (b) of this section. A separate judgment shall be rendered against such defendant for that amount.

(2) In any case where the parties are found to have engaged in concerted action, the liability of each defendant shall be joint and several.

(b) For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(c)(1) If a claimant has released any defendant or potential defendant from liability for the claimant's harm, or if a defendant is unable (despite exercising all practicable means) to join any other person as a defendant in such action, the trier of fact shall, in determining the proportion of responsibility under subsection (b) of this section, consider the liability of any person not a party to the action if the defendant is able to prove that any such person caused the claimant's harm.

(2) If a claimant has released any defendant or potential defendant from liability for the claimant's harm, the total amount of responsibility for the claimant's harm shall be reduced by the proportion of responsibility of any such released defendant or potential defendant.

(d) As used in this section, the term "concerted action" means any action consciously and intentionally taken by two or more defendants which resulted in the harm alleged in such civil action. It does not mean mere consciously parallel action.

Mr. PRESSLER. Mr. President, product liability is one of the most important consumer issues of this decade. The present law in this area has led to increased product and insurance costs, and has substantially hampered product development in the United States. No country in the world is subjected to this confused state of affairs, and it has put us at a substantial competitive disadvantage in the area of world trade. Prompt, effective reform is essential.

The Commerce Committee has been struggling for over 5 years in an attempt to devise product liability which is strong enough to provide meaningful relief to American consumers, yet sensitive enough to protect plaintiffs' rights. Much work remains, but this legislation comes close to achieving those goals. There will no doubt be attempts to delay consideration of this legislation during future stages in the legislative process. But it is imperative that we go forward with the debate, and enact strong product liability reform legislation now.

I rise to join in the effort to enact meaningful product liability reform legislation. I commend the distinguished Chairman of the Commerce Committee, Senator DANFORTH, and Senator KASTEN for their work on this issue. As a cosponsor of the committee bill, I support their efforts. Senator KASTEN has already said he will be offering a fault based standards amendment. I will support that effort and

would like to ask unanimous consent to be named as a cosponsor.

JOINT AND SEVERAL LIABILITY

Throughout the committee process I have placed special emphasis on the problem relating to joint and several liability. I will focus my comments on that issue.

Joint and several liability works to hold one person responsible for the conduct of another. It leads to substantial injustice to largely innocent defendants, consumers, and taxpayers. It works to increase the costs of products and services, and puts substantial pressure on local governments to either increase taxes or eliminate public facilities and services. It fails to punish the true wrongdoers. And it creates a great deal of uncertainty in assessing tort liability.

As presently applied in many States, the doctrine of joint and several liability has gone far beyond its original common law purpose. Originally, the doctrine was applied when two or more defendants had conspired together in a manner that resulted in an injury to the plaintiff. They were, in effect, equally at fault and equally to blame for the harm inflicted. There was no practical way to allocate the relative fault of each party's actions. The doctrine was later expanded to hold responsible all parties involved in causing the harm, regardless of whether they acted "in concert" or independently of each other.

This expansion seems to be the result of the old common law courts' reluctance to allocate fault. A party was responsible either for all the harm inflicted—regardless if there was 1 or 20 actors—or none of it. In order to avoid the admittedly unfair result of this "all-or-nothing" rule the courts allowed the injured plaintiff to collect from anyone who could pay. Logically, the plaintiffs would always go to the defendant with the deepest pocket.

But today the notion that courts are unable to allocate fault is universally rejected. Courts in virtually every State apportion fault in some manner. Although we have the ability to determine and apportion the relative degree of fault, we continue to apply this artificial doctrine of joint and several liability. A party who is determined only 1 percent at fault can be and often is held liable for 100 percent of the damage award. Under the present system, the parties causing the harm get off scot-free. We no longer punish the wrongdoers. We punish parties for having the deepest pockets.

Although most people would agree that this makes little logical sense, I am afraid that in the past many of them thought this was not such a bad system because it affected only the rich corporations. Unfortunately, that is not what happens. Let me explain the real effects of the current joint and several liability doctrine:

First, it is not only the big corporations that pay the bill. Cities, counties, States and other local governments are becoming the most popular candidates for joining into a lawsuit. Small businesses who are responsible enough to carry insurance are equally threatened. It is the average citizen who ultimately pays the claim, either through increased taxes, loss of service, higher product prices, increased insurance premiums, community business failures, or in some other way. The point is, as any economist will tell you, that the "big corporation" theory rarely reflects the real world.

Second, the current system discourages safety. Not only does it allow the real culprits to escape liability, it encourages them to act irresponsibly. Why buy insurance? Why worry about delivering a safe product? Just set up a "fly-by-night" operation or create a phony corporate subsidiary; make all the money you can until somebody sues; pass the buck or declare bankruptcy; and start all over again, making the same unsafe product and endangering the same innocent people.

Third, the present joint and several liability doctrine has been identified as one of the leading causes of skyrocketing insurance premiums—not only in the context of product liability but across the board. This is why companies and cities with even the most glowing safety records must pay insurance rates as though they were "high risk" customers. They not only have to insure against their own actions, but those of everyone with whom they come in contact or who happen to cross their border.

Fourth, those who, for all practical purposes, the ordinary person would consider free of any true fault are being sued for the sole reason that they have money—or more accurately, because they have access to money or the ability to extract it from others. Cities are being sued in automobile accidents because their street lights are not bright enough. Balloon manufacturers are being sued because they did not prevent a pilot from flying into a telephone line on a windy day years after he had purchased the aircraft. Motorcycle seat manufacturers are being sued because they did not manufacture a seat that would make the passenger stick to it when the motorcycle collided into a car. And the list goes on and on. No reasonable person would call this justice.

I could go on and on with a litany of the problems associated with this doctrine. But I think the point has been made. The innocent are punished while the wrongdoers are rewarded. Safety incentives are being tossed out the window. The lawyers are getting rich, and the man on the street is paying the tab.

But I am encouraged by the fact that more and more people are catching on to the game. They understand what is happening and they do not like it. They are demanding change and this is one area in particular that they have stressed. I held two hearings recently in South Dakota on the issue of liability insurance. The need to change the inequities and injustices resulting from the present application—or perversion if you will—of the doctrine of joint and several liability was the one reform most often and most emphatically urged. This call was not coming from the captains of industry or the deep pocket corporations some would like to have us believe. It was coming from the small businessmen, the county and city officials, and the ordinary citizen who a few years ago had never heard of the doctrine.

But with all of its inadequacies today, it is clear that the original intent and application of the doctrine was just. It would be a serious blunder to return to the days when a plaintiff was denied deserving relief simply because he or she could not identify which of the negligent actors committed the wrong or that any one party was responsible for the harm inflicted. Under the widely accepted doctrine of comparative negligence, that result is not necessary today and it would not be the result under my amendment.

The language I am proposing eliminates the joint and several liability doctrine as applied today but continues to hold all parties severally liable to the full extent of their own actions. In effect, parties continue to be fully liable for all their actions.

The only thing it changes is that parties would no longer be liable for what the court determines is the fault of others. If the court finds a party's actions to cause 10 percent of the harm, that party is liable for 10 percent of the damages awarded. If it causes 100 percent of the harm, it is liable for 100 percent of the damages. It is that simple.

I do not mean to imply this amendment is inconsequential. I am well aware of the significance and magnitude of the impact this change would have on present case law. Indeed, I would be disappointed if it did not have a major impact on the mess created under the present system.

There remains one very important question which needs to be addressed. What happens to the plaintiff when the party who is largely at fault has no means to pay and does not carry adequate insurance coverage? It is very true that under my amendment not all plaintiffs would be compensated to the extent they are today in some cases. The answer, to be very blunt about it, is that they will not always be fully compensated when the party at fault cannot pay. The sad fact

of life is that there will always be those kinds of cases. But to use the present joint and several liability doctrine in an attempt to compensate the plaintiff makes little more sense than to send the witness of a robbery to jail because we cannot find the robber.

I realize there are those who would say that there should be social policy that allows the injured party to be compensated to the full extent of his or her injury. I am not here to argue against that today. But what I would argue is that if we do make such a policy decision, we should also accept the responsibility to compensate the injured party rather than artificially passing it along to a substantially innocent third party. To say that because someone was 1 percent responsible for the harm justifies holding that party 100 percent responsible for the damages ducks the issue, particularly in the context of civil cases.

We have got to return some sense of responsibility to the system. I think we all realize our tort system has gotten out of hand. We need to address it in a thorough manner.

COMMITTEE ACTION AND PROPOSED FLOOR AMENDMENT

We made substantial progress in reforming this inequitable doctrine in committee, but in my view we did not go far enough. Let me explain a little of the background on that issue, and outline my intentions. The committee adopted joint and several liability amendments which essentially abrogated joint and several liability with two important qualifications: The reform was limited to (1) non-economic damages, and (2) it applies only in cases involving a product liability action. This was a political compromise. But as a practical matter, it has not gone far enough. I am introducing an amendment today which would extend the reform to all damages—economic and non-economic—and it would apply to all cases involving a claim of personal injury, property damages, and wrongful death.

Let me say at the outset that although I am introducing this amendment today, I remain open to further suggestions and refinement. I am not inextricably wed to this approach. I know there are strong feelings on the part of some that we should not venture beyond the realm of product liability actions in Federal tort reform proposals. Additionally, there may be some who do not want to extend the reform beyond the non-economic damages compromise. I am sensitive to both of those concerns and continue to welcome suggestions in those and other areas of the measure I am introducing today.

EXPLANATION OF THE AMENDMENT

Subsection (a) abrogates joint and several liability in all cases except those involving concerted action. The definition of concerted action was included to make clear that it does not include merely parallel actions. For example, liability for two component manufactures would normally be several if they acted independently. However if they agreed to "cut corners" in order to develop a cheaper product they would be jointly and severally liable.

This is really the heart of the amendment. The following subsections are designed to address some ancillary but important procedural issues involved in this area.

Subsection (b) makes clear that there is no burden of proof on either party as to the proper apportionment of responsibility. This approach reflects the language used in the Senate report accompanying S. 2760.

Subsection (c) addresses the "empty chair" problem. As a general rule, only parties to the case should be considered in apportioning responsibility. However, in those cases where the plaintiff releases the defendants or potential defendants, or when the remaining defendant(s) cannot—after using best efforts—bring in a third party through impleader practices or other available procedures, then those causes should be considered in determining the apportionment if the defendants can prove they were a cause. The burden is on the defendant to prove non-parties were a cause. But, as per paragraph (2) above, there should be no burden as to apportionment of responsibility percentages. That will be left to the trier of fact.

In addition, offsetting adjustments would be allowed anytime the plaintiff releases a defendant or potential defendant. The offset should be calculated based on the percentage of responsibility attributable to the person released rather than on the amount of compensation that has been paid (if any) in consideration for the release.

NOTICES OF HEARINGS

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, the Senate Committee on Governmental Affairs will hold a hearing on Tuesday, September 23, at 10 a.m., in SD-342 on the nomination of Robert P. Bedell to be Administrator for Federal Procurement Policy.

For further information, contact Carol Fox in the committee office at 224-4751.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. DOLE. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs, be authorized to meet during the session of the Senate on Wednesday, September 17, between the hours of 2 p.m. and 3:30 p.m. in order to conduct a markup of the following five bills: H.R. 1920, S. 2676, S. 1452, S. 2564, and S. 2107.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Pollution, of the Committee on Environment, be authorized to meet during the session of the Senate on Wednesday, September 17, 1986, in order to conduct a hearing on S. 1352, and H.R. 1202, and finally S. 2741.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

GRAMM-RUDMAN-HOLLINGS

● Mr. MOYNIHAN. Mr. President, on August 19, the Department of Commerce revised its second quarter preliminary estimate of real GNP growth: from 1.1 to 0.6 percent.

Recent economic performance has prompted several noted economists to express concerns about the Gramm-Rudman-Hollings deficit ceilings. Herbert Stein, Martin Feldstein, Lawrence Chimerine, Alan Greenspan, and Roger Brinner have all warned that the economy is weak and that excessively contractionary fiscal policy could trigger a recession.

When the President signed Gramm-Rudman-Hollings into law on December 12, 1985, he placed budget levels into the Federal Code. The deficit ceilings contained in the law—$172 billion for fiscal year 1986, $144 billion for fiscal year 1987, $108 billion for fiscal year 1988, $72 billion for fiscal year 1989, $36 billion for fiscal year 1990, and zero for fiscal eyar 1991—were based on an assumption of sustained real economic growth of about 3½ percent over the 6-year period.

On November 6, 1985, the day the Senate voted 74 to 24 in favor of the Gramm-Rudman-Hollings proposition, I warned that Gramm-Rudman-Hollings:

* * * assumes we know what we're talking about, that we can predict when a recession is coming. We can't, and neither, in this matter, can anyone else * * *.

Economists do not know the future—they study, and barely know, the past. This is really an adventure in mad scientism, pretending to know what cannot be known.

On July 22, the Department of Commerce announced that real GNP growth in the second quarter of 1986 was 1.1 percent. A month later that estimate was cut in half.

On July 23, the Legislation and National Security Subcommittee of the House Committee on Government Operations held hearings on the state of the U.S. economy, and the potential effects of Gramm-Rudman-Hollings. Three distinguished economists testi-

fied: Lawrence Chimerine, chairman and chief economist for Chase Econometrics; Joseph W. Duncan, chief economist for the Dun & Bradstreet Corp.; and, Donald H. Straszheim, chief economist for Merrill Lynch.

Dr. Chimerine reported:

The slow and erratic economic growth that began in mid-1984 is continuing—if anything, the economy has actually deteriorated somewhat in recent months. Most significantly, there is no sign whatsoever of any acceleration of economic activity.

Chase Econometrics projects a deficit of $190 billion in fiscal year 1987—a deficit requiring $46 billion of budget cuts to meet the Gramm-Rudman-Hollings deficit target of $144 billion. Dr. Chimerine forecasts real GNP of growth of 2.4 percent for fiscal year 1987—about 2 percentage points lower than the forecast of the administration.

Joseph Duncan testified:

The art of forecasting is so weak that we have built the [Gramm-Rudman-Hollings] structure on a very soft base.

Few respected economists would argue with that statement. Dr. Rudolph Penner, Director of the Congressional Budget Office, in testimony delivered last October during the Gramm-Rudman debate stated:

Mr. Chairman, given the record of economists, it will not be difficult to convince anyone that economic forecasting is a very uncertain art. Reasonable men and women can differ widely about what the future holds, and even if there is agreement on an economic forecast, there is an added layer of uncertainty involved in translating that forecast into an estimate of budget totals. For example, our economic forecasts may give us a reasonable estimate of the number of people who are eligible for a program, such as food stamps, but there may be considerable uncertainty about how many of those people choose to participate in the program.

In dealing with such uncertainties in our normal budget projections, we have to make a large number of more or less arbitrary choices, and substantial errors are possible. In the context of this bill, we might fail to trigger the process when subsequent events show that the sequester was called for or, perhaps worse, we might trigger a sequester when subsequent events show that it was unnecessary because the economy boomed in an unexpected fashion.

Between 1976 and 1984, the GNP forecasts issued by the Office of Management and Budget were, on average, 1.15 percentage points off from the actual GNP growth rate—which was 3.3 percent for those years. The forecasting record of the Congressional Budget Office was only slightly better: On average, 0.98 percentage points off. Dr. Penner testified,

I consider any forecast of GNP that is off by no more than one percentage point to be an excellent forecast.

Let me point out that an error of 1 percentage point is a lot more than 1 percent. If GNP were forecast to grow at 4 percent, an error of 1 percentage point represents a 25 percent error. If GNP is expected to grow at 2 percent, the error doubles to 50 percent.

We approved Gramm-Rudman while assuming 3.5 percent real economic growth. We have not had that kind of economic performance. In February, the Congressional Budget Office projected a deficit of $208 billion in fiscal year 1986. In its August update, CBO projected a deficit of $224 billion. About one-half of this deficit increase is attributable to lower inflation and lower economic growth than was previously expected.

Dr. Chimerine recently testified:

The GRH approach is very dangerous in the current environment, because it would cause additional spending cuts to compensate for the added deficit caused by slower economic growth—this would only slow the economy further, and in effect, would circumvent the automatic stabilizers that have served the economy so well for many years.

Dr. Chimerine suggested deficit cuts of $25 billion at most for fiscal year 1987.

Herbert Stein, in a July 31 Washington Post Op-Ed commented on the current state of affairs:

Grown men with responsible positions stand up before television cameras and make this statement: Since the economy is rising less than expected earlier in the year, and inflation is also lower than expected, federal revenues will be less than expected and it is therefore necessary to cut federal expenditures below the level planned previously.

I do not understand it. * * *

Is our revulsion against the economics of Keynes so great that we not only deny what he said but assert with confidence that the opposite is true? That is, do we now think that cutting government expenditures is a reliable way to stimulate a sluggish economy or prevent a threatened recession.

On August 13, in an Op-Ed which appeared in the Washington Post, Martin and Kathleen Feldstein wrote:

* * * it would be wise to redefine deficit reduction goals if the economy does slow down. Tax revenue automatically falls and the deficit swells when the economy slows down. It would be just the wrong response for Congress to cut spending even further in that situation. The proper goal of deficit reduction over the next few years should be adjusted for the business cycle. If the economy slows, and unemployment rises, the target level for the deficit should be raised accordingly.

Roger Brinner of Data Resources, Inc., suggested in DRI's August report that the GRH targets be revised downward to take into account projected 2.75 real GNP growth and 7 percent unemployment. He further suggests that these alternative targets—$186 billion in fiscal year 1987, $152 billion in fiscal year 1988, $118 billion in fiscal year 1989, $84 billion in fiscal year 1990, and $50 billion in fiscal year 1991—be amended if the unemployment rate varies from the expected rate of 7 percent. He suggests a rule of $5 billion increase in allowed deficits per one-tenth of a percentage point increase in unemployment.

Herbert Stein, Martin Feldstein, and Roger Brinner all agree that we ought to adjust deficit reduction goals for the business cycle. We cannot simply repudiate it.

When will Congress and the administration stop and listen?

We will say that we have met the Gramm-Rudman-Hollings targets before we adjourn on October 3. Most probably we will take the one-time windfall of about $9 billion from the tax reform legislation and count that toward meeting the deficit ceiling for fiscal year 1987 of $154 billion.

That will be a mistake.

Next year, that $9 billion won't be there; instead, tax receipts will fall off some. At the same time, the deficit ceiling will drop further, to $108 billion. As a result, we will have to decrease the deficit some $50 to $75 billion to meet the Gramm-Rudman-Hollings target for fiscal year 1988. That will not be achieved, and the Gramm-Rudman-Hollings process, as recently described by the Senator from Missouri—with whom I serve on both the Finance and Budget Committees—will be a dead duck.

If, as many respected economists suggest, we cannot meet the deficit targets without causing a recession, and if, as I believe, we will find that we have a deficit of $170 or $180 billion at this time next year, why do we say we are going to do things that we know we cannot do?

I ask that the Op-Ed by Martin Feldstein and Kathleen Feldstein, and that by Herbert Stein be printed in the RECORD. I also ask that an August 17 Washington Post article, "Will Budget Cuts Hurt the Economy," be printed in the RECORD.

The material follows:

[From the Washington Post, Aug. 13, 1986]

YOU CAN'T STOP A SLOWDOWN, BUT YOU CAN EASE IT

(By Martin Feldstein and Kathleen Feldstein)

There is increasing nervousness among private economists and official forecasters about the economic climate for the remainder of this year and into 1987. This is primarily due to a new concern about the contractionary effects that will follow from the tax-reform bill and from the ongoing effort to reduce government outlays.

While the lower dollar and declining interest rates should provide a boost to the economy in the months ahead, so far the trade turnaround from the decline in the dollar has been very slow. Although our net exports will continue to increase, this expansion may not be fast enough to balance the contractionary fiscal effects that will be dragging the economy down.

The most serious drag is likely to come from the tax bill that should soon emerge from the conference committee. Although the tax bill is projected to be revenue-neutral for the first five years as a whole, the version produced by the Senate has a $20 billion revenue increase for 1987. That increased tax revenue will have the effect of

depressing demand just as the recovery is showing signs of stalling.

Even more significant to the level of demand in the economy will be the changed incentives for private business investment. Eliminating the investment tax credit and lengthening depreciation allowances for investments in structures will be a substantial disincentive for business investment. And the overall increase in corporate taxes, which is necessary to finance the increased personal exemption and lower personal tax rates, also reduces funds available for investment. It's not surprising that business investment has already slipped badly and that the investment outlook for 1987 is poor.

In the near term, the necessary process of deficit reduction is the other important contractionary effect to worry about. Over the past year, the prospect of significant deficit reduction by Congress has helped bring down interest rates and contributed to the dollar's decline and thus has boosted economic activity. But the actual deficit reduction that can be expected between 1986 and 1987 is a two-edged sword.

The resulting confidence in declining deficits will continue to encourage lower interest rates and to maintain a competitive dollar. But at the same time, the actual deficit reduction means less demand for goods and services and therefore a temporary decline in economic activity.

Is there any remedy for this expected drag on the economy? We accept as inevitable that there will be a tax bill and that it will have adverse effects on investment demand that will depress economic activity over the next two years of that will slow growth in the longer term. Another given, in our view, is that the Fed can now do little to boost demand through lower interest rates. And jawboning Germany and Japan to increase their own economic activity has little relevance for the U.S. economic outlook.

But it is important to avoid further dampening of the economy through loss of confidence by the financial markets. The financial markets will need reassurance that deficit reduction will continue. With the recent Supreme Court ruling adding uncertainty to the outlook for the Gramm-Rudman process, financial markets would respond badly to any hint that Congress has lost the stomach for spending cuts. Loss of confidence in Congress could result in rising interest rates and a sinking stock market that would further depress business investment.

However, it would be wise to redefine deficit reduction goals if the economy does slow down. Tax revenue automatically falls and the deficit swells when the economy slows down. It would be just the wrong response for Congress to cut spending even further in that situation. The proper goal of deficit reduction over the next few years should be adjusted for the business cycle. If the economy slows and unemployment rises, the target level for the deficit should be raised accordingly.

One rule of thumb would be to raise the target level by $4 billion for each one-tenth of a percent rise in the unemployment rate. If unemployment should rise from the current 7.1 percent to 7.5 percent, the target deficit level for 1987 would rise from $144 billion to $160 billion.

These measures will not stop a slowdown in the economy, but by responding sensibly to changes in the economic climate, Congress can prevent more serious deterioration.

From the Washington Post, July 31, 1986]

THE WRONG TIME TO CUT GOVERNMENT SPENDING

(By Herbert Stein)

Grown men with responsible positions stand up before television cameras and make this statement: Since the economy is rising less than expected earlier in the year, and inflation is also lower than expected, federal revenues will be less than expected and it is therefore necessary to cut federal expenditures below the level planned previously.

I do not understand it. Why are we punishing ourselves in this way? Does the slowdown in the U.S. economy mean that the Russians are weaker or more amiable and the buildup of our military strength is therefore less urgent? Is the need to look after the poor and homeless diminished? (Is the ebbing tide lifting all the boats?) Whatever was the previous justification for spending $30 billion on aid to agriculture—is that justification now weaker? Obviously not.

With both less output and less inflation than we previously forecast are we now less able to afford those things we previously thought we needed? Surely the answer to that is no. On the contrary, there will now be more unutilized productive capacity with which to meet the government's requirements, and less risk of inflation. The answer would be different if the economy were lagging behind previous forecasts because output was bumping up against a ceiling of capacity, but that does not seem to be the case.

Is our revulsion against the economics of Keynes so great that we not only deny what he said but assert with confidence that the opposite is true? That is, do we now think that cutting government expenditures is a reliable way to stimulate a sluggish economy or prevent a threatened recession?

The question may be put more concretely: In the past year output increased by 2.7 percent, which is probably somewhat below our potential growth rate, and unemployment was fairly steady at around 7 percent. Now there is an expectation that output will rise in the next year at about the same rate, or possibly less. In these circumstances, is it prudent to cut expenditures below the president's budget level in order to reduce the deficit from $210 billion in fiscal year 1986 to $144 billion in fiscal year 1987? (That figure, $144 billion, is the Gramm-Rudman target for the 1987 deficit. Because of the peculiarities of Gramm-Rudman accounting, it appears that about $25 billion of taxes collected in 1987 will not be counted and about $15 billion of expenditures will not be counted. Thus, if the "Gramm-Rudman deficit" is $144 billion the "real" deficit may be $134 billion.)

My pre-Keynesian and anti-Keynesian professors knew better than that. Even Herbert Hoover knew better than that. A thorough-going classicist or monetarist might deny that increasing government expenditures would have even a short-run stimulating effect on the economy. He woud not say that cutting expenditures would have a short-run stimulating effect on the economy, so that it was necessary to cut otherwise worthwhile expenditures in order to fend off a recession.

What leads to the present foolish talk about the budget is Gramm-Rudman. But even Gramm-Rudman does not imply that cutting expenditures is a good prescription for dealing with economic sluggishness. The Gramm-Rudman law provides that if the real GNP rises at less than an annual rate of 1 percent for two consecutive quarters the deficit limits are suspended for the current and following fiscal year.

This is recognition that cutting spending does not cure recessions. Once the GNP growth rate falls below 1 percent for two consecutive quarters the ceiling on the deficit is off. But as long as the growth rate remains at 1.1 percent—as it was in the second quarter of 1986—or higher, the targets must be met. They must be met even if, with the economy sluggish and revenues rising slowly, thay requires holding expenditures below levels that are worthwhile, that are well within the economy's capacity, and that are not harmful but possibly helpful to the health of the economy.

Sophisticated people to whom I express my concerns about the idea of cutting expenditures to meet a shortfall of revenue tell me not to worry. The government will not really meet the Gramm-Rudman targets. All Gramm-Rudman requires is that at the beginning of fiscal 1987 there should be an official estimate that the deficit will not exceed $144 billion for the year. The law does not require that the deficit actually be less than $144 billion.

This solution is unsatisfactory for two reasons:

First, the government should not pretend to do what it does not intend to do. This is more than a moral injunction. It has pragmatic significance. The credibility of the government is an asset—more valuable as it becomes scarcer—and it should not be wasted.

Second, while a sharp reduction of expenditures in response to the slowdown of the economy would be unwise, to destroy completely the expectation that the size of the deficit will be brought under sufficient restraint to prevent continued increase in the size of the federal debt relative to the GNP would also be unwise. That could cause an increase in long-term interest rates that would be harmful to economic growth. The de facto abandonment of Gramm-Rudman, without the establishment of any substitute rule of fiscal policy, will destroy all hope of deficit restraint. We find ourselves in a position where we can't live with Gramm-Rudman and can hardly live without it.

We need a fiscal policy that will limit the long-run growth of the deficit and the debt while not enforcing inefficient and probably destabilizing changes of government expenditures in response to fluctuations of the economy. Fifty years ago people talked about balancing the budget over the business cycle as a solution to this problem. Forty years ago the Committee for Economic Development proposed the policy of balancing the budget at high employment for the same purpose. Even a few years ago people were talking about the difference between the "structural" deficit and the actual deficit, which was a way of distinguishing between our long-run position and our cyclical position.

The attractive nuisance of Gramm-Rudman diverted attention from all that, but our present situation shows the urgency of returning to the problem of reconciling our long-run and short-run fiscal requirements.

[From the Washington Post, Aug. 17, 1986]

WILL BUDGET CUTS HURT ECONOMY?

(By John M. Berry)

A growing number of economists are warning that the Gramm-Rudman-Hollings budget deficit targets for fiscal 1987 will require spending cuts or tax increases so large that they would severely damage the economy.

The Gramm-Rudman-Hollings law aims for a 1987 deficit of $144 billion. Reaching that level from this year's deficit of $225 billion or so, these economists believe, will require too much fiscal restraint for a sluggish economy to swallow in one dose. Some suggest that forcing it down could send the economy into recession.

Government spending, like consumer outlays or business investment, is part of the total economy. If it is reduced, there is less demand for goods and services, and the economy slows. If taxes are increased, individuals and businesses have less after-tax income to spend, which has the same depressing effect on the economy. Economists are less certain about these relationships than they used to be, but they generally agree that, in the short run, a very large, rapid reduction in the deficit could slow economic growth.

Instead of trying for an $80 billion cut in one year—which would equal about 2 percent of the gross national product—a number of economists say a reduction of about half that size, to a deficit of around $180 billion, would be more appropriate.

Other analysts say that they also would be worried about the impact of the fiscal restraint if they thought there was any real chance that Congress would take meaningful steps to get close to the $144 billion target. Some changes under consideration, such as selling government assets or moving a military pay day by one day at the end of the fiscal year, would effect the deficit but have virtually no economic impact.

No less an advocate of smaller deficits than Federal Reserve Chairman Paul A. Volcker recently suggested in congressional testimony that the 1987 deficit target is too ambitious.

Volcker has long argued that large budget deficits have contributed to creation of the nation's enormous trade deficit and helped keep interest rates higher than they otherwise would have been.

But like the other economists expressing concern that an $80 billion or larger reduction in the deficit in one year would squeeze the economy too hard, Volcker indicated he believes that a cut of that magnitude could prove to be too much of a good thing—though it clearly made him uncomfortable to say so.

At the Congressional Budget Office, Director Rudolph G. Penner shares Volcker's concern, though following the CBO's usual practice, he will not make a specific policy recommendation on the matter.

"It was something we worried about a lot making our forecast," Penner said.

That forecast showed the economy growing at a 3.5 percent pace during 1987, after adjustment for inflation. And it assumed a deficit of $154 billion, the upper limit of a $10 billion tolerance range allowed by Gramm-Rudman-Hollings, rather than $144 billion.

In its economic and budget update, released earlier this month, CBO put it this way:

"The short-run impacts of such large changes in fiscal policy and the tax structure are a subject of controversy among economists. CBO's forecast assumes that the short-run contractionary impact of changing fiscal policy will be quickly offset by an improved trade balance and by lower interest rates than would otherwise prevail. If these offsetting forces occur more slowly than expected, an increase in economic growth may be delayed."

Penner believes that the growing internationalization of the American economy has weakened the previous link between changes in fiscal policy and changes in economic activity. Since 1982, the large budget deficits have been accompanied by large and rising trade deficits that have offset some of the economic stimulus that the budget deficits provided.

Now CBO is counting on these relationships to be symmetrical, with a falling trade deficit to provide an economic spur for U.S. production and consumption at the same time the declining budget deficit is having a restraining influence.

"Our forecast is highly dependent on that relationship," Penner said, "and some of our economists have voiced concern that they may not work in tandem.

"Interest rates are also related," he explains. "The marketplace has moved some of the good of reducing deficits forward" through lower rates.

And that also causes the CBO director to raise a point about changing the Gramm-Rudman-Hollings targets. "There would be a real question how the marketplace would react to that, especially if we're right that part of the interest rate decision was due to a sense that we have some sense of discipline in the [budget] process."

Alan Greenspan, the former chairman of the Council of Economic Advisers who now heads Townsend-Greenspan & Co., a New York economic consulting firm, is another advocate of smaller deficits who is troubled by the 1987 target and its possible impact.

"It has become increasingly evident in recent weeks that the $144 billion target set for fiscal 1987 followed by a 1988 target of $108 billion is probably unreachable," Greenspan told his clients recently.

"The budget deficit for fiscal 1986 is likely to be $220 billion, or perhaps even larger. With the economic outlook somewhat subdued, the prospect of enough growth in revenues to reduce the deficit sharply, even should spending be constrained significantly, looks remote . . . Certainly, after the November elections when it becomes politically safer to oppose G-R-H, one must assume a plethora of proposals will be forthcoming to alter the path of deficit reduction."

Another former CEA Chairman, Martin Feldstein of Harvard University, is questioning the appropriateness of the targets if the economy remains sluggish, and particularly if unemployment starts to go up. During his time at the CEA, Feldstein repeatedly raised White House hackles by urging quick action to reduce the growing budgetary red ink.

Earlier this month, Feldstein and his wife, who also is an economist, wrote in a newspaper column, "In the near term the necessary process of deficit reduction is [an] important contractionary effect to worry about.

"During the past year the prospect of significant deficit reduction by Congress has helped bring down interest rates and contributed to the dollar's decline and thus has boosted economic activity. But the actual deficit reduction that can be expected between 1986 and 1987 is a two-edged sword," the Feldsteins said.

"The resulting confidence in declining deficits will continue to encourage lower interest rates and to maintain a competitive dollar. But at the same time the actual deficit reduction means less demand for goods and services and therefore a temporary decline in economic activity."

The Feldsteins said that it is important not to cause financial market participants to doubt that deficit reduction will occur. "Loss of confidence in Congress could result in rising interest rates and a sinking stock market that would further depress business investment.

"However, it would be wise to redefine deficit reduction goals if the economy does slow down," They continued, "Tax revenue automatically falls and the deficit swells when the economy slows down. It would be just the wrong response for Congress to cut spending even further in that situation. The proper goal of deficit reduction in the next few years should be adjusted for the business cycle. If the economy slows and unemployment rises, the target level for the deficit should be raised accordingly."

The Feldsteins suggested this rule of thumb: raise the target level by $4 billion for each one-tenth of a percentage point increase in the nation's unemployment rate above current levels of 7 percent.

Roger Brinner of Data Resources Inc., an economic consulting and forecasting firm, last month proposed a similar rule of thumb, with a $5 billion shift of the target instead of $4 billion.

"The targets must be amended only in detail, not in principle," Brinner wrote in the DRI Review. "The economic environment is not as robust as originally hoped, and the budgetary takeoff position is weaker. The original legislation called for steady progress ($36 billion per year) toward budget balance by 1991, assuming the economy would then be characterized by a 6 percent unemployment rate. Furthermore, it was assumed that the fiscal 1986 deficit could be reduced to approximately $180 billion through tough budgetary initiatives early this year.

"With the economy unable to break away from 7 percent unemployment and with a projected 1986 deficit of $220 billion, however, a $35 billion to $40 billion increase in next year's target and a new medium-term path for deficit reduction are justified," he said.

Brinner's proposed path would take the deficit down to $50 billion in 1991 instead of zero, as under Gramm-Rudman-Hollings.

Economists are far less sure these days that they know how to measure properly the size of a budget deficit or to calculate its likely economic impact.

For instance, Robert Eisner of Northwestern University argues in his book, "How Real Is the Federal Deficit," that the reported deficit must be reduced by the loss of real value in the outstanding public debt due to inflation. Thus, in 1986, with about a 2 percent inflation rate and roughly $1.5 trillion worth of publicly owned federal debt, there is about a $30 billion offset.

John Paulus, managing director and chief economist of Morgan Stanley & Co., a New York investment banking firm, also says that the holders of federal debt recognize the loss of real value in their holdings each year and respond by reinvesting an amount equal to that loss of real value.

If Paulus is right, the impact of large deficits on financial markets, and therefore on interest rates, could be considerably less than one might suppose. By his accounting, it would take actual deficit reductions considerably smaller than those set by Gramm-

Rudman-Hollings to put the deficit by 1991 into what he calls a "neutral" position as far as financial markets are concerned. Gramm-Rudman-Hollings calls for a balanced budget that year.

But whatever adjustments one makes to the calculation of the size of the deficit and its likely economic impact, there remains the worry that reducing it by more than $80 billion in one year alone may be too much.

"For those of us who highly prize economic growth and low unemployment, the risk of insufficient fiscal stimulus must be weighted heavily," Eisner concludes in his book. "One cannot properly counsel budget balancing in an economy with unemployment still near 7 percent and real economic growth well below its potential.

"The politics of Gramm-Rudman notwithstanding, a budget balanced by current federal rules of accounting is an invitation to economic disaster," Eisner declares.

Politically, no one wants to go before the electorate this fall vulnerable to a charge by an opponent that he or she is in favor of big deficits. Politically and economically, the question is how fast the deficit—which clearly will be a record in fiscal year 1986, which ends next month—can be safely reduced.●

THE NEW ENGLAND TEAM

● Mr. KENNEDY. Mr. President, I would like to take this opportunity to place in the RECORD a New York Times article about two of my colleagues from New England, Senator PELL and Senator STAFFORD.

For almost a year, the Education Subcommittee has been working diligently on the reauthorization of the Higher Education Act. We have completed the conference and it appears that we will soon present the President with a finely crafted reauthorization that provides the vital resources necessary for millions of American students to pursue higher education.

Mr. President, it is safe to say that this achievement would not have been possible without the knowledge and skill of both the chairman and ranking minority member of the Education Subcommittee.

Senator STAFFORD has chaired the Education Subcommittee for the past 6 years and has shown through his competent legislating that he is truly the champion of education for all. Along with his commitment to general education, Senator STAFFORD is one of the founding fathers of Public Law 94-142, the Education for All Handicapped Children Act.

Senator PELL has long been identified as one of the experts in the field of education. His commitment to education is evident in all that he has accomplished during his 17 years on the Education Subcommittee.

As my colleagues know, Senator PELL who chaired the Education Subcommittee for 11 years, is the father of the Pell Grant Program which has provided some 20 million grants to needy students. In 1979, Senator PELL was one of the original sponsors of legislation creating the U.S. Department of Education and has been a staunch foe of this administration's consistent attempts to eliminate it. Senator PELL's awards for his leadership in education are numerous. His hours of service to promoting education here in Congress are innumerable. And, his commitment to the students of our Nation is immeasureable.

I commend Senators STAFFORD and PELL for their leadership in education and I look forward to working with them in the next Congress. I ask that the full text of the article be printed in the RECORD.

The text follows:

[From the New York Times, Aug. 17, 1986]

STAFFORD AND PELL, THE NEW ENGLAND TEAM

(By Leslie Maitland Werner)

WASHINGTON, Aug. 16.—In 1981 a long-standing committee relationship between Senator Robert T. Stafford, Republican of Vermont, and Claiborne Pell, Democrat of Rhode Island, was turned upside down.

That was the year the Republicans took control of the Senate for the first time in 28 years, which meant that Mr. Pell, who for years had been chairman of the Labor and Human Resources Subcommittee on Education, Arts and the Humanities, stepped down to become the ranking minority member, and Mr. Stafford, who had held that spot, was elevated to the chairmanship.

Far from causing any problem for either one of them, however, the change has had little effect on education legislation and has made only one small difference in their lives, they both agree.

"We hardly noticed anything except now I have to be there when the meetings start," Mr. Stafford said, "and he can be a little late, which is the reverse of how it was before."

The two legislators' views of education and the Federal role in it are so similar, they and others say, that it hardly matters which one is in charge. Unlike many other committees, where members stake out battle positions along partisan lines, their leadership on education issues has smoothed the way toward consensus, sometimes a consensus that goes against White House wishes.

"WE WORRY ABOUT RESULTS"

They both opposed the Administration's desire to eliminate the Department of Education, they blocked its efforts to cut back on education funds, and they successfully fought its plan to roll all education programs into one large block grant to the states.

"It doesn't matter if it's Stafford and Pell or Pell and Stafford," Mr. Pell said of their legislative relationship. They both come from small New England states, he said, and share a "New England approach" to things that assists their easy dealings. "We try to get on with the job and not talk about it too much," he said. "We just worry about results."

Senator Spark M. Matsunaga, Democrat of Hawaii, a member of their subcommittee, says, "they both maintain a very cooperative attitude regardless of party line."

"They're both cool-headed gentlemen," he said. "I've never seen them at loggerheads to the point of even raising their voices to each other. They seem to work together much more harmoniously than heads of other committees do."

According to Richard Jerue, vice president for government relations of the American Association of State College and Universities, who served as counsel to the subcommittee when Mr. Pell was chairman, a result has been "tremendous legislative success."

"They've worked so long together and think so much alike they're almost alter-egos," Mr. Jerue said. "Their colleagues trust them. If they agree on something it's pretty much going to be the Senate position."

The bill reauthorizing the Higher Education Act for five more years, for instance, was unanimously endorsed by the education subcommittee and by the full committee on Labor and Human Resources, a group whose members run the political spectrum from conservative Republicans like Orrin G. Hatch of Utah and Strom Thurmond of South Carolina to liberal Democrats like Edward M. Kennedy of Massachusetts and Howard M. Metzenbaum of Ohio.

In June the full Senate passed the bill, which contains hundreds of provisions, by a vote of 93-to-1. And Senators Stafford and Pell are now involved in a conference with the House to negotiate a final version to set the terms for Federal financial aid to needy students.

The chairman of the conference, Augustus F. Hawkins, the California Democrat who heads the House Education and Labor Committee, says Senators Stafford and Pell "speak with great authority and have great influence on members of Congress" who appreciate their "extreme personal integrity and strong convictions."

"They've made a tremendous contribution in the field of education," Mr. Hawkins said. "We have worked well together because I have great confidence in their judgment on issues and their cooperative spirit."

And although the excesses of senatorial courtesy are probably as legendary as the verbosity of senatorial oratory, when Mr. Stafford, and Mr. Pell praise each other, they seem to do so generously and sincerely.

On the day they introduced the bill to the full Senate, for example, Mr. Pell, who is 67 years old, hailed Mr. Stafford as "the person who is mainly responsible for this bill being on the floor today as well as protecting our student aid programs from decimation again and again over the past five years."

Without Mr. Stafford's "stewardship over these past years," Mr. Pell said, "I am afraid we would simply be picking up the pieces instead of charting a strong new course."

For his part, Mr. Stafford, who is 73, said that it "could not have been done without the equal effort of Senator Pell."

"It has been best for the country and for education that we have been able to work together without ever thinking about our political labels," he said. "I wish only that we were talking about much larger sums for education, which is the future of this country."

Such talk is not designed to please the Reagan Administration whose views on education Mr. Stafford has repeatedly bucked.

He sharply disagrees with the right-wing view that the Federal Government has no real role in education. The Government must insure "equality of access to education," he said, for the disadvantaged and the handicapped.

OF WEAPONRY AND MINDS

And it is clear that he does not approve of what he termed Education Secretary William J. Bennett's "benign neglect" of a

chance to affect the course of things when the Higher Education bill was being worked out in the Senate.

"I'd urge Bennett to support more money for education programs even at the expense of some defense spending," Mr. Stafford said. "It doesn't do much good to build expensive weaponry if we don't have the minds to understand how to use it and to grasp the consequences of its use."

Speaking for the Administration, an Under Secretary of Education, Gary L. Bauer, said its relationship with Mr. Stafford could be best described as a "friendly" disagreement.

"Basically, we agree to disagree," Mr. Bauer said. "But if I were in the higher education community, I'd have a hard time identifying a better friend."

Unless, of course, it was Mr. Pell.●

ABORTION AND INFORMED CONSENT: COLORADO

● Mr. HUMPHREY. Mr. President, Kathryn in Colorado gives us more insight into the emotional world of Women who deeply regret their decisions to abort their children. Those who speak directly through these letters communicate not only their own feelings, but also those of countless others.

WEBA is an acronym for an organization known as women exploited by abortion. This grassroots support organization has arisen around the country in order to help women who have been unable to come to grips with their abortions. Those who have traveled the dark roads of postabortion trauma help others along who, for one reason or another, have not found a way to overcome their grief.

Kathryn gives us a unique view of the desperate sorrow many women experience because they were given too little information about what abortion entails. She points out that this lack of preparation causes intense suffering, "often" pushing women to even consider ending their lives. She is not painting a picture of a "safe and legal" procedure, which seems to be all we hear about from proabortion advocates.

I call on my colleagues, especially those who represent Kathryn in the Senate, to contemplate Kathryn's testimony and join me by cosponsoring S. 2791. It is imperative that this Congress ensure that women are informed about the consequences and nature of abortion, and that the Congress stop and degrading and dangerous practice of aborting women who have not received minimum information about the abortion procedure.

The statement follows:

STATEMENT ON ABORTION, JUNE 12, 1986

YOUR HONOR SENATOR GORDON HUMPHREY: I'd like to express my concern pertaining to the abortion issue. The debate at hand strikes very close to home for me, as I am a woman with an abortion experience. Unlike I was led to believe, it is something I live with daily. Fortunately for me there are no physical scars to deal with, only emotional, and through the grace of God I have been healed of many of the stresses directly related to the abortion, i.e., guilt, shame, depression, anxiety—only to name a few.

I am in a position now where I deal with other women's experiences daily. I am the State director of WEBA. Weekly another woman calls, often suicidal, unable to cope another day with her own abortion experience. We offer love and compassion and the hope that they too can work through the after effects of that traumatic experience. The most often-stated comments are "if I had only known" "Why didn't they tell me?" and "No one said it would be like this."

Sir, I believe it is within your power to see that the laws concerning this issue are changed, allowing women to be fully informed as to the choices we are making. I myself and the women I represent plead with you to do everything you can to change the laws governing this issue. We appreciate your work in this area and support your efforts wholeheartedly and will do what we can to help fight the battle.

Sincerely,

KATHRYN A. BUSCHMAN,
Colorado.●

PRACTICAL STEPS ON CRIME AND VIOLENCE

● Mr. SIMON. Mr. President, there are no easy answers to reduce crime and violence in American society. The problem is complex and the causes multifaceted. But I think there are some steps that are fairly obvious. Recently, in a column I write for newspapers in my State, I have listed three immediate steps that would help. I ask to have it printed in the RECORD.

The column is as follows:

PRACTICAL STEPS ON CRIME AND VIOLENCE

(By U.S. Senator Paul Simon)

What can be done about the problem of crime and violence in our society?

There are three immediate steps, among others, that would help: First, get the television networks to reduce the rising rate of violence on television that clearly has an impact on many people; second, fewer speeches and more sensible action on the drug problem; third, change our laws—state laws in particular—that permit people to walk the streets after being convicted of crimes of violence while they appeal.

On the last point, here is a good example of what has been happening. Walter Otis Lane, 27, was returned to the Cook County Jail at the end of July. He had been convicted of rape and sentenced to 11 years in prison. He appealed his conviction and while on appeal he was permitted to go free. While he was free, he is accused of another rape and with abducting a Blue Island, Ill., bank director and his wife, forcing them to withdraw $15,000 from the Heritage County Bank and Trust in Blue Island, and then he is charged with shooting the couple to death.

He was caught after allegedly robbing a citizen from Elmwood Park, Ill.

I do not suggest that those who are found guilty of a violent crime should not have the right to appeal. They should. But they should not have the right to walk our streets in freedom after conviction, while they are on appeal.

On the drug issue, some action will probably emerge from Congress, but whether the administration and Congress take the really key step is not clear. At one point the major source of illegal drugs was Turkey. This country, working with the Turkish government, has virtually eliminated that source of trouble. Now, according to the New York Times, 85 percent of the hard drugs can be traced to crops in Peru and Bolivia. We should be working with those two governments to eliminate the source of our problems. That is basic.

The second key element on the drug problem is an effective educational program among young people. They must learn to understand more clearly that not only are drugs bad, but permitting their friends to get into trouble with drugs is a betrayal of friendship.

The third source of violence is right in our homes—that television set. The television industry is permitting more and more violence, and the evidence from study after study is that it is a serious cause for concern.

University of California and University of Pennsylvania studies released within the last few weeks have reinforced previous studies on the same subject. The studies show clearly: Television violence causes some of the violence in our society.

I have introduced legislation to permit the networks to get together with cable and the independents and the TV programmers to establish guidelines on violence. The United States does not have to have the most violent TV in the world.

When I met some months ago with TV network executives, they said they could not establish standards because of antitrust laws. Now when I try to change the law so that they would not violate the antitrust laws, at least one network is vocal in its opposition to the bill.

The problem is that violence pays off for the television industry.

But it and the American public should understand those profits are costly to our society.

If the television industry continues to resist sensible steps, Congress should have the courage to defy them and act.●

THE NUCLEAR NON-DETERRENT

● Mr. SIMON. Mr. President, in nuclear terms, both the United States and the Soviet Union are armed far beyond anything rational. We should be listening to the Supreme Commander of NATO, Gen. Bernard W. Rogers, who has been warning us: we have put too much of our defense readiness in the nuclear arena. By taking the rational step and placing more emphasis on conventional forces, we could sensibly and safely reduce defense spending. I have raised this argument in a column I write for newspapers in my State. I ask to have it printed in the RECORD.

The column follows:

GEN. ROGERS AND THE NUCLEAR NON-DETERRENT

I have saved an item from the New York Times of Sept. 5, 1984. Buried on page 25 in the ninth paragraph of an article is a quotation that should have been on the front page of that newspaper and every newspaper in the country. But I saw it only in that one article in that one newspaper.

Gen. Bernard W. Rogers, a four-star American general and the supreme com-

mander of all NATO forces in Western Europe—then and now—said: "We have mortgaged our defense to the nuclear response. . . . We have failed to provide sufficient sustaining capacity—ammunition stocks, prepositioned material to replace losses of equipment on the battlefield such as tanks and howitzers—to keep fighting for a sufficient length of time. Under current conditions, if attacked conventionally, we will have to request the release of theater nuclear weapons fairly quickly."

The warning of General Rogers is as true today as it was two years ago.

And it could take on added meaning when tough decisions must be made soon on cutting back the growth in defense spending. The huge and growing federal deficit is going to force a needed reduction in defense spending growth.

In light of these fiscal realities, will we continue to give our country an imbalanced defense?

The nuclear deterrent is so overwhelming it is almost a nondeterrent. Anyone who gives the command to use that first nuclear weapon in war must realize that he or she may be ending civilization.

For example, if the Soviets should move in and grab 50 square miles of West German territory, do we respond with nuclear weapons that not only destroy the Soviets, but probably will cause the destruction of all of us? It is not likely—and the Soviets know it.

The advice of General Rogers is to be better prepared with a conventional response than we are. Instead of putting too many eggs in the nuclear basket we should pay more attention to anti-tank weapons, personnel training, stocks of conventional munitions and the like.

Instead, we are investing more and more in the already overwhelming nuclear response.

Why? We want an "adequate deterrent." But what is adequate?

For a rational Soviet leader one of our strategic missiles—containing more power than all the bombs of World War II—ought to be sufficient. But in case that is knocked out by the Soviets, we build two. In case those are knocked out we build four—and on and on. We now have approximately 10,500 of the large, strategic warheads and the Soviets have about 10,000. In addition, we have between us about 30,000 small nuclear warheads.

In nuclear terms, both of us are armed far beyond anything rational.

One way of gradually moving away from the nuclear reliance is to halt all nuclear testing. At one point we offered that but the Soviets refused. Now they offer it and we refuse.

Since underground nuclear tests are verifiable, we ought to move in that direction. Not to do so risks everything.

Each test costs us about $30 million; some tests cost as much as $70 million each.

If we stopped the tests we could do three things:

(1) We could stop the spiraling growth of the arms race.

(2) We could take half the cost of each test and invest it in more practical defense measures, as General Rogers has suggested.

(3) We could take the other half of the test costs and reduce the defense budget.

That seems logical and obvious. But what should be obvious somehow is not.

The sooner we face reality, the safer our nation and world will be. We should listen to General Rogers.●

PROVIDING FOR SETTLEMENT OF DISPUTE BETWEEN CERTAIN RAILROAD EMPLOYEES AND THE MAINE CENTRAL AND PORTLAND TERMINAL RAILROADS

● Mr. D'AMATO. Mr. President, I am pleased to offer my comments as an original cosponsor of Senate Joint Resolution 415, legislation which was introduced yesterday by my distinguished colleague, Senator MITCHELL. This bill is urgently needed to resolve a railroad labor dispute that has reached an impasse between the Brotherhood of Maintenance of Way Employees and the Maine Central and Portland Terminal Railroads, owned by Guilford Transportation Industries, Inc.

I have maintained a serious, continuing interest in the progress of a labor dispute between the BMWE and Guilford. Guilford also owns the Delaware & Hudson Railroad Co. and operates more than 4,000 route-miles of track and trackage rights, extending east-west from Maine to Buffalo, NY. The labor dispute in Maine has had an impact in New York State, and the potential danger of a widespread strike would certainly harm my State. Earlier this year, I joined many of my colleagues in writing to the President and urging him to appoint an Emergency Board to review this dispute. On May 16, 1986, the President appointed a Board. The Board issued recommendations covering job-protection allowance, system-production maintenance crews, pay health and welfare programs, and work rules and practices on June 20, 1986. BMWE offered to accept these recommendations. However, Guilford would not agree.

A Congressional Advisory Board [CAB] was established on August 21, 1986 (Public Law 99-385). I had cosponsored similar legislation in the Senate, Senate Joint Resolution 378, to extend the cooling off period in the strike and to require the Secretary of Labor to issue recommendations on resolving this dispute. The CAB was charged with investigating the dispute and making recommendations for its resolution. On September 8, 1986, the CAB recommended that, in the absence of an agreement between the parties to dispose of the dispute by September 13, 1986, the Congress should pass legislation directing the parties to accept and apply the recommendations of the President's Emergency Board. Further, if the parties cannot agree as to all necessary details in applying the recommendations by October 1, 1986, any unsettled issues should be handled by an arbitrator designated by the National Mediation Board.

Although some discussions have taken place between the parties, it has become apparent that it is extremely unlikely that an agreement will be reached in the near future. All indications are that an impasse has stalled this dispute, and the Congressional action is required to prevent further harm from occurring.

I urge my colleagues to join me in supporting this important piece of legislation.●

H-3: THE LULUKU ARCHAEOLOGICAL SITE

● Mr. STAFFORD. Mr. President, shortly, the Senate will consider S. 2405, the Federal-Aid Highway Act of 1986. It is expected that an amendment will be offered to exempt H-3 on the island of Oahu in Hawaii from 4(f). Section 4(f) directs the Secretary of Transportation not to build a highway if that proposed roadway conflicts with parks, wildlife refuges, recreation areas, or historic sites unless there is no feasible and prudent alternative. H-3 is currently under a permanent court injunction. The Federal courts determined that this road adversely impacted a local park, a park created with Federal dollars, and a local recreation area, and that there is an alternative alignment.

After the court record was closed, a significant archaeological site was discovered in the path of the highway. Native Hawaiians hail the archaeological discovery as among the most significant in the history of the island. The site includes house platforms, agricultural irrigation systems, religious artifacts, and other materials. It is believed this site dates back to the fourth century, making it the oldest discovery of its kind. The Office of Hawaiian Affairs was so concerned that it filed suit to protect the site. That case is pending. If the 4(f) exemption is adopted, this site will have no Federal protection and most of it will be destroyed. Moreover, if the exemption is enacted into law, the pending case brought by OHA will be dismissed because the law upon which it is based, 4(f), will not apply to H-3.

It should be noted that the court determined that a prudent alternative existed to the alignment of H-3. Had the state department of transportation decided to proceed with H-3, it could have done so by adopting the Makai alignment and in so doing would have by-passed the Luluku site. The Hawaii State Department of Transportation insisted on its preferred alignment and is now asking the Congress to exempt H-3 from the law.

I have received letters from several important Native Hawaiian groups, the Council of Hawaiian Organizations, the Congress of the Hawaiian People, the Office of Hawaiian Affairs, the Oahu Council, and the Queen Emma Hawaiian Civic Club. They oppose the proposed exemption of 4(f)

from H-3 and urge the protection of the Luluku Archaeological site.

I ask that these letters be printed in the RECORD.

The letters follow:

THE COUNCIL OF HAWAIIAN ORGANIZATIONS,
September 8, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC

DEAR SENATOR STAFFORD: The Council of Hawaiian Organizations is a coalition of groups representing over 15,000 members of native Hawaiian ancestry. We ask your help in opposing any exemption from Federal law that would permit the destruction of an ancient Hawaiian archaeological complex which lies in the path of the proposed Interstate H-3 freeway in Hawaii.

We disagree with the Hawaii Transportation Department's contention that the Luluku Archaeological Complex can be divided into 17 individual sites; the ancient Hawaiian methods of irrigation cannot be properly studied on a piecemeal basis.

We further disagree with their contention that Luluku's historic sites would be protected by the freeway project; on the contrary, 15 of the sites would be destroyed by the freeway interchange.

The issue of Luluku's historic significance has been sadly avoided by those who would promote H-3 in Congress. Our Council was deeply disappointed recently when we invited members of Hawaii's Congressional Delegation to Luluku (during the recess) for a briefing and tour of the historic sites. They did not have the courtesy to attend, neither did they even send a representative to personally inspect this precious remnant of our Hawaiian history.

It was a sad day for our Hawaiian people, and it reflects the attitude of State officials and the Department of Transportation, whose priorities have been held more highly than the history and culture of Native Hawaiians.

It is our judgment that Luluku must and shall be surveyed, studied, and hopefully preserved as a contiguous complex, one of the most significant discoveries of Hawaiian history in this century. Please oppose any amendment that would allow this desecration of our Hawaiian heritage.

Mahalo,

LOUIS AGARD,
Council of Hawaiian Organizations.

THE CONGRESS OF THE HAWAIIAN PEOPLE
Aiea, HI, September 5, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: The Congress of the Hawaiian People opposes any proposed exemption from Federal 4(f) law relating to the construction of Interstate H-3 in Hawaii.

Our organization supports the preservation of the Luluku Archaeological District in Windward Oahu. The entire district is considered part of our Hawaiian heritage and, therefore, is sacred to us. We firmly believe that no portion of the district should be used for highway purposes.

We have, over the years, been a strong advocate for actual preservation of several archaeological sites, including Kaloko Fish Pond on the Big Island of Hawaii and Kawainui Marsh in Kailua, Oahu.

Please help us preserve these precious reminders of our past so that our children, for generations to come, may enjoy these treasures left to us by our ancestors. Mahalo nui loa.

Aloha Me Kealoha Pumehana,

IRENE DUPONT,
Representative,
The Congress of the Hawaiian People.

STATE OF HAWAII,
OFFICE OF HAWAIIAN AFFAIRS,
Honolulu, HI, July 21, 1986.

Hon. ROBERT STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: The Board of Trustees of the Office of Hawaiian Affairs of the State of Hawaii unanimously opposes the proposed legislation which would exempt interstate highway H-3 from 23 USC 138 and 49 USC 303.

The Office of Hawaiian Affairs is a unique governmental institution created in 1978 by amendments to the Constitution of the State of Hawaii. The Office of Hawaiian Affairs was created by all of the people of Hawaii for one purpose: to better the conditions of native Hawaiians. Native Hawaiians are now a minority in their own land and at the bottom of the State's socio-economic ladder. To accomplish this difficult purpose the voters wisely made the Office of Hawaiian Affairs independent of the Executive Branch of government. The Office of Hawaiian Affairs is coequal with the Executive, Judicial and Legislative branches of government. Its affairs are directed by a Board of Trustees elected by voters of Hawaiian descent. The Hawaii Constitution also provides that the revenue of the Office of Hawaiian Affairs is independent of the legislative appropriation process and is derived from a small percentage of the rents and profits derived from former crown and government lands. A century ago those lands were taken from the Hawaiian people when non-native sugar planters and others overthrew the Hawaiian monarchy.

The Office of Hawaiian Affairs is the branch of the Government of the State of Hawaii which is the duly elected voice of the Hawaiian people. The Trustees' concern is not limited to improving the economic conditions of Native Hawaiians. The Hawaiian people are proud of their history and determined to protect their culture. The Office of Hawaiian Affairs views the preservation of places of historical and cultural importance to the Hawaiian people to be equally as important as economic concerns.

A significant component of the dwindling archeological and cultural legacy of the Hawaiian people will be destroyed if Senator Inouye's bill to exempt proposed interstate highway H-3 from the application of the 4(f) statutes (23 USC 138 and 49 USC 303) becomes law.

In 1985 the Office of Hawaiian Affairs learned that the State Department of Transportation had suppressed the discovery of a major archeological complex at Luluku on Windward Oahu which lay directly in the path of H-3. After the State's efforts to cover up the significance of the find were exposed the archeological survey which was made public revealed that some of the sites within the Luluku Archeological Complex date back to the 4th Century A.D.—one of the earliest dated archeological sites in the Hawaiian Islands. In what it euphemistically calls "salvage", the Hawaii Department of Transportation callously proposes to destroy all but two sites within the Luluku Archeological Complex to build an interchange for H-3. The two remaining sites would be encircled by an interchange off ramp thereby destroying the context and integrity of even the two remaining sites. What may well be the last remaining archeological link with the earliest settlement of Hawaiians in the islands will have been irretrievably lost. Hawaiians did not build statues or other monumental structures but the links to their past are as important to Hawaiians as is the Statue of Liberty to all Americans and Hawaiian archeological and cultural sites are no less deserving of protection and preservation.

The State Department of Transportation obdurately refused to reroute H-3 along a court approved alignment which would completely avoid the Luluku Archeological Complex (and coincidentally also would avoid nearby Ho'omaluhia Park and the Pali Golf Course). Because of the State DOT's intransigence the Board of Trustees of the Office of Hawaiian Affairs unanimously authorized the filing of a lawsuit to prevent the destruction of the Luluku Archeological Complex. That suit, which is now pending in the U.S. District Court for the District of Hawaii, relies upon the 4(f) statutes—the only statutes which protect historic sites from destruction by highways.

You are being asked to approve a bill which will deny the Office of Hawaiian Affairs the ability to protect one of the most significant Hawaiian archeological discoveries of this century.

For this reason the Board of Trustees of the Office of Hawaiian Affairs unanimously has adopted a resolution opposing the proposed exemption of H-3 from the 4(f) statutes.

Gentlemen, Hawaiian culture and history must be protected. Do not deny us the protection available to other Native Americans.

With much aloha,

THE BOARD OF TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS.

OAHU COUNCIL,
Honolulu, HI, July 10, 1986.

Re: S2405

Hon. ROBERT T. STAFFORD,
U.S. Senator, Chairman, Committee on Environmental and Public Works, Hart Senate Office Building, Washington, DC.

DEAR SENATOR STAFFORD: Our organization is made up of native Hawaiians, deeply concerned with the social, health and economic status of native Hawaiians and the preservation of unique elements of our Hawaiian culture. As you probably already know, our organization is strongly opposed to special legislation which would exempt Interstate H-3 from the protections of Section 4F to the detriment of native Hawai'i historical or archeological sites.

The recent celebration of the 100th anniversary of the Statue of Liberty carried with it a recurring theme: America is a land of immigrants! Hawai'i has a similar history, of course, and the mixture of immigrant peoples and their cultures here is a hallmark of modern Hawai'i. This is a positive result of that immigration.

There is a negative side to the story, however.

In 1778, when Captain James Cook arrived in Hawai'i, some of his crew estimated the native Hawaiian population at 300,000. Present here was a highly-complex culture founded on a stable land tenure system, a thriving cooperative subsistence economy, a sophisticated societal heirarchy, religious practices which controlled every facet of daily life, and an established political and governmental system.

As a direct result of western impact and an infusion of western diseases, concepts, politics and a whole new social order, this scene was rapidly changed.

By 1893, when the Hawaiian monarchy was overthrown, the native Hawaiian population stood at 34,000! Gone were the land tenure system (and ownership of much of the land), the cooperative subsistence economy, the religion, the social hierarchy and, of course, the government itself. The trappings of the culture were put on display in museums to be taken out and dusted off now and then for dramas and pageants. While hula and ancient chant had entertained and pleased us and our gods, they were now ridiculed as licencious.

The shift from a heavy usage of the Hawaiian language to an obligatory use of English, combined with the influx of non-English speaking immigrants from around the globe, resulted in a loss of general fluency in the Hawaiian language and an incomplete learning of English. Anthropology tells us of the importance of a language to a culture. Obviously, a language is fused irretrievably with the culture from which it springs. It is also obvious that certain cultural aspects cannot even be expressed fully without the use and understanding of the language best designed to articulate them.

In the days following the overthrow of the Kingdom, a strong emphasis was placed officially upon the "Americanization" of Hawai'i. Politically, the leaders of the provisional government (who became the leaders of the Republic of Hawai'i) needed to show that Hawai'i would be ripe for annexation. To stress Americanism and downplay the importance of any of the other cultures represented (and certainly the native one) was of total importance. Thus, from 1893 until Hawai'i became a state in 1959, a major policy of its government was to prove, beyond a reasonable doubt, that Hawai'i, despite its multi-cultural population, was just another "slice of American apple pie".

To do this, the efficacy and influence of the Hawaiian culture had to be drastically reduced. The same was true of the immigrant cultures represented in Hawai'i and whose cultures also felt the impact. Happily for them, transfusions of fresh cultural knowledge and experience were readily available from their homelands. For Hawaiians, the source of their culture was the primary target of these attacks. This was their homeland. Where was the cultural replenishment expected to come from?

The whole existence of the Hawaiians as a People's complete with a culture, a standing, an ethnic foundation, was in jeopardy. Actually, the loss of the Hawaiian Culture was nearly complete. That, together with the loss of land and loss of sovereignty, added up to a complete loss of status for the Hawaiian.

In the past 20 years, native Hawaiians, with the generous help of others, have been jointed in a pervasive effort to restore and replenish our culture. We have replanted roots torn from the soil, nurtured sickly growth and gloried in how our sprouts grow strong and tall.

The preservation of sites like the Luluku complex which lies in the path of the H-3 freeway is at the heart of our effort to find the remnants of our culture and piece them painstakingly together again. If Luluku is fractured by the cloverleaf planned to be constructed in its midst, yet another irretrievable shard of our Hawaiian culture will be lost.

So, the issue here is broader, really, than enacting a case-by-case exemption to a wise law; which in itself is an unjustifiable act. The issue encompasses yet another eroding of the pitiful remnants of a once majestic culture.

Do not let it happen!

We implore you to defeat this measure.

H.K. BRUSS KEPPELER,
Pelekikena (President)

QUEEN EMMA HAWAIIAN CIVIC CLUB,
Pearl City, HI, August 28, 1986.

Re: S2405

Hon. ROBERT T. STAFFORD,
U.S. Senator, Chairman, Committee on Environment and Public Works, Washington, DC.

DEAR SENATOR STAFFORD: The Queen Emma Hawaiian Civic Club is made up of native Hawaiians active in the betterment of the lot of native Hawaiian people in the State of Hawaii. Part of this effort has a direct relationship to the preservation of our Hawaiian culture and historic sites.

Such site is Luluka in the Kaneohe District of the Island of Oahu, State of Hawaii. There at Luluku is a single site of enormous cultural value. Luluku, and integrated community containing many features of importance to us and worthy of preservation.

The State of Hawaii Department of Transportation has planned a major highway interchange that will, if built, slice Luluku into bits and pieces.

Normally, the so-called "4F provisions" would protect Luluku. Pending in Congress is a measure which would exempt this highway (and the interchange) from the 4F protections.

We feel that this measure would set a very dangerous precedent and would sound the death knell for Luluku.

Please help us to defeat this measure.

Yours for,

QUEEN EMMA HAWAIIAN CIVIC CLUB,
(By Shirley K. Kamakele for Historic Sites Committee, Charles Ogata, Chairman).●

MARKETING LOAN FOR WHEAT, FEED GRAINS, AND SOYBEANS

● Mr. BOREN. Mr. President, over the past couple of weeks, there has been a lot of discussion about the need to pass legislation mandating that the Secretary provide a marketing loan for wheat, feed grains, and soybeans. A marketing loan program would allow producers of these commodities to take out a nonrecourse loan and repay that loan at the current market price.

Advocates of the marketing loan for these commodities have stated that its implementation would result in lower export prices leading to increased exports. The advocates are using the principal tenet of this administration's farm policy—lower prices mean more exports.

For the past 6 years, this administration has argued that U.S. loan rates were too high and needed to be lowered dramatically if we were to regain our competitiveness. The administration has stated that the loan rates needed to be lower in order to reduce the incentives for marginal producers in other countries to expand their production at our expense and to force the EEC to pay more of the cost of subsidizing their own producers.

Prior to the 1981 farm bill, loan rates were set statutorily. In the 1981 farm bill, they were again set by statute, but the Secretary gained the discretion to lower the loan by 10 percent if the Secretary determined that necessary to maintain domestic and export markets.

On April 1, 1981, Secretary Block, appearing before the Senate Committee on Agriculture, stated:

I feel that the Secretary should have wide discretion in setting these [loan rates] so that it would be possible to look at the world market situation and economic conditions domestically in making the decisions.

. . . we would want to make sure that they [loan rates] were not raised enough to encourage excessive production in other countries, or to in any way price ourselves out of the market, because the loan rate in effect is, and has been, an effective floor. It is a guarantee that anyone can look at it and say that is the lowest it can go, in effect, and so I think we want to guard against overdoing it.

Largely because Congress believed the Secretary had a point to his argument, the Secretary was given discretion to lower the loan rate by 10 percent under the so-called Findley provision. There were, I must state, many skeptics to this idea. Several were concerned that the lower loan rate would merely result in lower farm income. Others were concerned that lowering the loan rate would increase the difference between the target price and loan rate, thereby increasing the amount farm programs cost the Government. Still others believed that the strength of the dollar and the question of our reliability as a supplier had more to do with U.S. exports than the loan rate.

Under Secretary for International Affairs and Commodity Programs, Daniel G. Amstutz, stated at a hearing on February 7, 1985, that the strong dollar was not as significant as our loans. He stated:

Our own farm programs are far more important. Currently, our price support system provides our competitors with price protection that they could get in no other way.

They know that we will not sell below the price support loan level. To the extent that they can produce and sell at less than our loan level, they have clear sailing against competing commodities from the United States and they are taking advantage of it.

In setting and then clinging to rigid price floors, in imposing embargoes, and encouraging production cutbacks, we misjudged the rest of the world's greatly increased ability to respond to what we do, and it is costing us in export markets and farm income.

. . . to participate fully in export trade we have got to quit offering incentives to our competitors.

They [our programs] have limited U.S. agriculture's capabilities to adjust for falling market prices, a fluctuating dollar, or

slumps in world demand which can leave U.S. prices stuck above world market levels.

Congress responded in 1985 by statutorily lowering the loan rates and giving the Secretary the authority to reduce the loan rates by 20 percent more if such were necessary to retain our competitiveness.

Mr. President, I bring all of this to the attention of my colleagues because at the time I was about to endorse legislation requiring the implementation of a marketing loan for wheat, feed grains, and soybeans, I learn that the Department apparently has changed its position.

Department officials are stating now that lower loan rates, lower prices will not result in increased exports. They are saying, in essence, that demand is inelastic for these commodities. For the first time in 6 years, this administration is opposing lower loan rates, lower market prices.

I am not, Mr. President, faulting the administration with changing its position. Certainly, we all change positions occasionally when situations change. Yet, this is a major departure, I believe, from the administration's policy and it should be considered carefully. If our loan rates are now at a competitive level and that is the reason for the Department's opposition to the marketing loan, then its opposition can be understood. If, on the other hand, we have reached a point where demand truly is inelastic and market prices and/or loan rates are not a factor, then why in the world are we bankrupting American farmers and everyone else in the world with low loan rates and low market prices?

I, frankly, cannot discern any change in the wheat situation that would justify a deviation from the Department's previous policy. According to the Department, the U.S. price for wheat at the gulf in July of this year was $103 per ton and the Argentine price was $81 per ton, a difference of $22. In December 1985, the month that the market-oriented farm bill which lowered loan rates was signed into law, the U.S. price at the gulf was $139 per ton and the Argentine price was $114, a difference of $25. Also according to the Department, France and the United States sold wheat to Brazil in August. The French price was $90.70 per ton; the U.S. price was $105.25 per ton. These numbers indicate to me that our prices are not quite low enough to compete with other exporting countries.

World production and exports also do not appear to have changed significantly. World wheat production in the 1985–86 marketing year was about 503 million metric tons, compared to the projected 1986–87 marketing year production level of 506 million metric tons. Total world exports of wheat during the 1985–86 marketing year were 85 million metric tons compared to the 1986–87 level of 92 million metric tons.

Mr. President, I simply do not perceive any changes which would warrant a change in policy unless, of course, demand has proven to be inelastic. What we have now is low prices without any real increases in exports. Is the lack of exports due to our prices not being low enough or due to inelastic demand?

If the Department now believes that lower prices will not increase our exports, then demand is inelastic. If demand is inelastic, why not raise our loan rates and effectively raise the price our farmers receive? If, on the other hand, our loan rates are inhibiting our competitiveness, then let's drop them enough to get the job done.

I was considering supporting legislation to require the Secretary to implement a marketing loan for wheat, feed grains, and soybeans. Since the Department has changed its position, however, I am not sure mandating a marketing loan for these commodities would be of any benefit at all, particularly in light of the cost of implementing a marketing loan.

C.B.O. analysts have estimated the cost of this proposal at $5 billion over 3 years. If Congress adopts this proposal, more than likely we will have to find a way to pay for it and there aren't many options available. Some have suggested a couple of options.

First, some have proposed substantially reducing or eliminating the export enhancement program and various export credit programs. However, that would not take care of all the costs.

Frankly, if the marketing loan is not going to increase exports, the last thing we should do is reduce or eliminate the export enhancement program or our other export credit programs. Over 5 million tons of wheat have been exported through the export enhancement program. Over 4.5 million tons of wheat and wheat flour has been purchased under CCC guarantee programs. To substantially reduce or eliminate these programs without gaining a comparable increase in exports through a marketing loan would be a very unwise step at this time of burdensome surpluses.

Second, some have proposed increasing the required acreage reduction percentage and/or decreasing the target prices for wheat and feed grains is being considered.

Under current law, before a producer is eligible for wheat or feed grain price support payments or loans, the producer must reduce harvested acreage of the crop by a certain percentage. For the 1987 wheat crop, the producer must reduce harvested acreage by 27.5 percent. Without a corresponding increase in target prices, an increase in the acreage reduction percentage (ARP) will result in lower net farm income for typical producers.

For example, increasing the ARP by 5 percent for the 1987 wheat crop would result in an 8.5-percent reduction in net farm income for the typical Oklahoma wheat produce, Decreasing the target price for wheat in lieu of increasing the ARP also has an impact on the typical Oklahoma wheat producer. Reducing the wheat target price by 5 percent would cut farm income by 8 percent. A 10-cent reduction in the wheat target price would result in lowering farm income by approximately 4 percent. Reducing farm income is not the way to pay for a marketing loan as the farmers do not get the lost income back from the market.

What do we have, Mr. President? At best, it is proposed that we spend $5 billion to implement a marketing loan that will not increase exports, and will not improve the typical wheat farmers' income. Under the worst scenario, we are going to cut back on our export programs and reduce the target price by 5 percent or increase the ARP by 5 percent. This would result in fewer exports and an 8-percent reduction in the typical wheat producers' income. It's not everyday that we are given the opportunity to spend $5 billion to achieve these results to spend.

Mr. President, it needs to be recognized that I am not speaking about soybeans. It is unclear whether a marketing loan would increase or decrease exports in soybeans. The merit in passing a marketing loan for soybeans lies in the fact that it would keep income for soybean producers at the same level they had for the 1986 crop. The soybean program does not contain target prices. Income is supported only through a nonrecourse loan program. The 1985 farm bill established the soybean loan rate at $5.02 for the 1986 and 1987 crop and gave the Secretary the discretion to lower the loan by 5 percent in order to remain competitive. The Secretary has recently announced that he will exercise this authority, thereby reducing the 1987 loan rate to $4.77 per bushel. This effectively reduces the price soybean producers receive by 25 cents per bushel with no protection from target prices. The implementation of a soybean marketing loan will effectively provide some income protection to soybean producers. For this reason, a marketing loan for soybeans deserves consideration and support.

Mr. President, I hope I am wrong in my understanding of the administration's new policy. If I am not, I fear we would need to completely rewrite our market-oriented farm bill. I hope that all my colleagues will carefully consider the marketing loan proposal that may surface this week. I hope everyone will consider the merits of each

aspect of the proposal. I am completely in support of doing whatever we must do to increase exports. However, I will not support, in fact I will strongly oppose, any proposal that reduces farm income and exports. The benefits of any legislation must outweigh or at the very least equal the costs.●

THINKING ABOUT TAX REFORM

● Mr. BOSCHWITZ. Mr. President, like most of my colleagues here in the Senate, I am enthusiastic about the prospects for true tax reform this year. The bill produced by the House-Senate conference committee lowers rates substantially and achieves many of the goals I have for tax reform.

But, like most of the legislation we produce in this atmosphere of compromise and conflicting goals, it is not perfect. We should not let our enthusiasm for it cloud our critical judgment. My distinguished colleague and friend from Missouri, JACK DANFORTH, has written an interesting article about the possible effects of this tax reform bill on business and the economy. While I cannot be as gloomy as my friend from Missouri about this bill, I recognize it may have some shortcomings with regard to how it treats business investment. I am certain that when we consider this conference report on the floor of the Senate in the next couple of weeks, we will thoroughly air these issues.

To help us in that deliberation, I ask that Senator DANFORTH's article from the September 7 issue of the St. Louis Post-Dispatch be printed in the RECORD.

The article follows:

THE SEEDS OF ECONOMIC DISASTER

(By John C. Danforth)

On August 16, a general outline of tax legislation, produced behind closed doors by the chairmen of the House Ways and Means Committee and the Senate Finance Committee, was revealed to committee conferees in an 11th hour take-it-or-leave-it format. Regrettably, the conferees took it. As a result, one other thing is about to be taken: our economy—to the cleaners.

To date, no one—not even the committee chairmen—knows the details of what will be in this bill. But if the process by which the conferees accepted this legislation is a clear abdication of congressional responsibility, that is a trivial concern next to the committee's abdication of its duty to the American people. The fact is that the general outline of this tax legislation contains the seeds of economic disaster. It is therefore a clear and present danger to the future of our country.

Economists throughout the United States are reporting that this bill will cost jobs and reduce economic output, beginning next year. For example, Missouri's own Murray Weidenbaum, a former chairman of the President's Council of Economic Advisers, has stated that business investment will decline 5 percent, GNP will drop at least 1 percent and more than 1 million jobs will be lost.

During the long consideration of tax reform, my position has always been that reform must satisfy four fundamental criteria. It must make the economy stronger and more productive. It must encourage greater efficiency in our use of economic resources, it must make America more competitive in international trade. It must create new jobs and promote educational opportunity. With respect to these goals, the Senate bill was fundamentally sound.

The Senate reduced rates for individuals and businesses far below the House. The Senate cracked down much harder than the House on tax shelters and other loopholes. The Senate imposed a more moderate tax increase of $100 billion on American commerce; the House, $180 billion. The Senate preserved tax benefits for higher education, research and development, foreign investment to enhance exports and energy and other natural resource production.

What has come down from the chairmen's summit is a bill that is far closer in every negative aspect to the original House bill.

Specifically, the Senate-House conference proposal is anti-growth, anti-competition, anti-jobs, anti-education and anti-charity. It is grossly unfair in its apportionment of the tax burden from sector to sector and from individual to individual. It will raise the cost of capital formation in the United States, thereby benefiting our international competitors. It repeals the investment tax credit for new plant and equipment. It increases capital gains taxes for individuals and businesses. It penalizes depreciation of property. It reduces research and development tax credits.

Changes in foreign tax benefits will make it less attractive for Americans to do business abroad. It creates a higher tax rate for middle-income taxpayers than for the wealthy. It eliminates the capital gains differential.

It hits education by taxing, for the first time ever, scholarships and fellowships. It limits the deductibility of donated appreciated property (hitting symphonies, libraries, museums and a host of other cultural assets as well as higher education). It limits the ability of private colleges and universities to issue tax-exempt bonds to finance laboratories, classrooms and libraries. It takes away the interest deduction for student loans from all except those fortunate enough to borrow against home equity. The American Council on Education, which represents 1,500 colleges and universities, warns that this bill is "the greatest catastrophe for higher education in 25 years."

What about the tax bill's specific effect on Missouri? I deeply regret that this legislation is going to nail highly skilled and high-paying jobs in our manufacturing sector. Ford, General Motors and Chrysler assembly plants will be losers. Armco Steel in Kansas City is a big loser. High-tech industries such as Monsanto will get hit. Aerospace will be the hardest hit of any, McDonnell Douglas, Missouri's largest employer, will lose hundreds of millions of dollars. That's going to cost jobs and exports. In Illinois, Granite City Steel will be among the big losers.

The renewal of downtown St. Louis was made possible by the tax credit for rehabilitating historic buildings, a provision that will be gutted by the tax bill. The metropolitan area's need for low- and moderate-income rental housing would be made more severe by several different provisions in the bill. Economists who have analyzed the bill's impact on housing expect higher rents. Higher rents could more than offset the bill's reduction in taxes for low- and moderate-income families.

Retailing was supposed to be a big winner under this bill, but Missouri's largest retailer, the May Co., is a loser because of the bill's last-minute changes in the tax treatment of inventories and installment credit. Hallmark also gains nothing.

Frankly, it's almost impossible to see even one ray of sunshine piercing the smoking wreckage of the old Senate bill. It is said that removing 6 million low-income people from the tax rolls—a benefit that survives in the current proposal—may be worth the carnage. But that goal could have been achieved at a cost of roughly $2 billion.

The fact is that we are about to enact a tax bill that can best be described as Congress gambling with our economy in a game of chance where the odds are unreasonably high. And why? So the politicans can point with pride to lower tax rates for individuals. Well, I am for lower rates, if a responsible and balanced way is produced to pay for them. That is what we had in the Senate bill. But what has emerged in the conference report is legislation that encourages consumption (particularly of imports) discourages investment, inflames an already outrageous trade deficit and fails higher education.

The tax bill purports to be revenue neutral. Such a contention requires a leap of faith. Clearly, changed economic circumstances in the next five years alone will bring swings in revenue of tens of billions of dollars. We already know that an important chunk of the revenue raised by the bill comes from a variety of one-time changes in accounting practices. We also know that in the near-term, this tax bill threatens the single most important economic challenge we face—reduction of the federal budget deficit.

In 1987, the bill contains an $11 billion revenue bulge that grateful politicians will inevitably use to avoid the real spending and tax decisions our self-imposed budget targets are designed to force. Our failure to make these tough choices for 1987 will be further exacerbated in the subsequent two years when the tax bill will cost the Treasury more than $32 billion in lost revenue.

There has been some speculation that my opposition to this bill is predicted solely on my disagreement about the treatment of the three or four sections in the bill that I have taken a personal role in drafting as a member of the committee. Nothing could be further from the truth. Conversely, many of my friends said supporters see my opposition as quixotic and a political threat to me personally. Again, my own political fortune couldn't be further from my mind. It is the content of this bill from stem to stern that compels my opposition.

For me to ignore the points I have outlined here would be for me to ignore my duties and responsibilities as a member of the Senate. I truly believe that you, the American people, should be informed in the debate on this legislation about the substantial risk in rushing toward enactment.

At stake is the future health of our economy. At stake is the further erosion of our international competitiveness. At stake is the quality, cost and accessibility of our institutions of higher education. At stake is the future of the country. To have remained silent under my strong convictions would have been unconscionable.●

TRIBUTE TO REV. CLYDE ADAMS, D.D.

● Mr. LUGAR. Mr. President, today I ask my colleagues in the U.S. Senate to join me in honoring Rev. Clyde Adams, D.D., for his 50 years of ministry and his 36 years of service and dedication to members and friends of the Union Baptist Church located in Fort Wayne, IN.

As the pastor of Union Baptist Church, Clyde Adams continues to display superior leadership ability and a deep devotion to correcting the wrongs of our society.

Born in Cherry Valley, AR, Dr. Adams has always been in the forefront of the fight for equal rights for minorities in economic, legal, educational, and civic areas. He received an honorary doctorate degree from the Michigan Baptist Theological Seminary and a doctorate of sacred literature from the Ministers Institute and College of West Point, MS. He served 5 years as a member of the Board of Directors of the National Baptist Convention, Inc. Dr. Clyde Adams has shown an unerring ability to motivate others by capturing their enthusiasm and harnessing it for the betterment of this Nation. His leadership and commitment to his strength of character as well is a beacon of hope to the city of Fort Wayne and to the State of Indiana. Union Baptist Church was blessed with the arrival of this religious leader; Clyde Adams has truly made a difference in the strive for human rights.

I ask my colleagues to join me in commending Reverend Adams.●

WORLD HUNGER

● Mr. DANFORTH. Mr. President, my distinguished colleague from Minnesota, Senator BOSCHWITZ, has committed time and energy to the battle against world hunger. He and I share a belief that the United States must settle for nothing less than a world where adequate nutrition is a basic right. Senator BOSCHWITZ recently addressed the issue of how best to structure our food assistance programs, and I commend his article in the Christian Science Monitor to the attention of Senators.

The article follows:

[From the Christian Science Monitor, Sept. 10, 1986]

WORLD HUNGER: IS DIRECT FOOD AID A SOLUTION?

(By Rudy Boschwitz)

Those with a philosophical bent find United States food aid programs a wonderful mire to wade in. Are US objectives humanitarian or economic? Do we want to feed hungry people or build markets for US farm products?

Being a more pragmatic soul, I must answer all these questions "Yes." In food aid, it is possible to serve two masters. And whatever our motives, Americans should be proud of the global food aid we provide.

While the US produces only a small fraction of the world's food output, it contributes more than half the food given to those in need. In addition to our own programs, like the Public Law 480 Food for Peace Program and the Section 416 program which make surplus commodities available, the US has been the leader in international efforts, such as the World Food Program. We lead the world in the amount of aid provided and in coordinating the programs.

The arguments over whether our objectives are inconsistent have persisted for years. Those who agree that humanitarian aid is our chief objective often disagree on whether the aid should focus on the neediest people or be used to promote industrial and economic growth. Controversy also exists about the nature of our agricultural objectives. Should we look at food aid as a short-term way to dispose of surplus commodities or as a long-term method of developing foreign markets? Some in the agricultural community even fear that, as developing countries produce more and more commodities, they will hurt our agriculture by becoming our competitors.

The tug of war over the purpose of the food aid programs has raged since they were started in the late 1940s and early '50s. During that time, abundant supplies of commodities made surplus disposal and market development paramount. During the 1960s, the emphasis shifted to meeting the needs of hungry people. The tight food supply of the early 1970s made us reexamine our commitment to food aid programs. It seems difficult to remember that only 10 or 12 years ago we were discussing the population explosion and dwindling resources incapable of supporting humankind. Small was beautiful.

Rightly, the US continued its commitment to humanitarian programs and a policy of "new directions," helping developed nations help themselves and providing food aid to the poorest nations rather than to those on the verge of industrial and economic growth. Since the late 1970s, domestic and world food supplies have proliferated. Consequently, the US has eased the requirement that 75 percent of the Food for Peace program's food aid go to the neediest countries and raised the minimum tonnage distributed under the Food for Peace program.

More important, we've recognized that growing enough food to feed the people in the world is not the problem; getting it to them is. Surpluses of food simply sit in the wrong places: Nebraska, Iowa, and Minnesota. We have 40 percent of the world's food stocks in storage in this country. Getting it to the inner parts of Ethiopia, where there are no roads, where there are no airports, where there is no network of people to distribute it, will be the food aid challenge of the '80s and '90s. Getting food into the interior of Mali or the Sudan and other African countries that are very large, but have very few people, is not easy to do. We must also understand the paradoxes of food aid. India is often touted as a food aid success story because it is now exporting agricultural commodities. Yet half the malnourished people in the world—200 million—live in India. Crops grown near the coast are exported, because Indians have no satisfactory means to get them to their own people in need.

In addition to the problems of distribution and transportation, we must come to grips with the effect food aid has on the recipient country. It's easy to crush a fragile agricultural economy with food aid. Even though the agricultural base of most recipient countries doesn't provide all the food that is needed, normally it provides most of the food. When a large quantity of agricultural commodities enters a developing country, it can drive down the price and lead to lower incomes for farmers. Food aid can also shape politics. It may allow a repressive government to maintain the status quo or, worse, to use food to coerce or manipulate the people.

The problem of world hunger will not be solved by growing more food or distributing more food but only by finding means to build independence. The challenge of food aid (and other foreign assistance) programs will be to create economic growth where it is most needed—among the poorest of the poor.

America's experience of more than 30 years in food aid programs has brought all these problems into focus. But they will not be solved by abandoning the programs. Instead, we should structure them carefully in each country, understanding its culture, so as to minimize adverse effects. Our food aid programs have had successes—South Korea, Taiwan, Mexico, Brazil. We will continue to have more if we learn from past experience and proceed with our eyes open.

Also, there must be greater coordination among agencies and countries providing food aid. Our goal must be to eliminate world hunger. The only way is to raise world hunger on our list of priorities and make a commitment to achieve that goal.●

THE 30TH ANNIVERSARY OF THE HUNGARIAN REVOLUTION

● Mr. D'AMATO. Mr. President, I support Senate Joint Resolution 385, a resolution commemorating the valor of the Hungarian freedom fighters who sought to break the chains of Soviet tyranny and rid their country of totalitarianism. This year marks the 30th anniversary of their uprising which began on October 23, 1956, a quest for freedom which continues to this day.

The seeds of the revolution were planted during the early 1950's under the leadership of Imre Nagy. In 1953, Nagy was appointed prime minister, replacing the much hated Matyas Rakosi, an action which appears to have been supported by the Soviet leadership. During the 1940's it was Nagy who raised serious reservations regarding the policy of collectivization being pursued by the Hungarian Government. Soon after his appointment, Nagy embarked on a "New Course," a package of reforms including: Decollectivization of agriculture, a new emphasis on light industry, and release of political prisoners.

Amid growing disunity within the Hungarian Communist Party and a change of heart on the part of Moscow, Nagy, the principal proponent of the "New Course," came under increasing criticism. During early 1955, Nagy was pressured by the Kremlin to renounce his reform policies. He refused. Nagy was forced out of office

and expelled from the Communist Party which he had helped found. He was replaced by his archrival Rakosi.

Despite Nagy's ouster, the pressures for reform continued, particularly among members of the intelligencia. During this period, the former prime minister wrote a series of political essays defending reform.

Concern over continuing tensions in Hungary, the Kremlin turned to Nagy, who was readmitted to the party on October 13, 1956, for help. An anti-Stalinist revolution in Poland 6 days later added to the press for reform. Peaceful demonstrations began in Budapest on October 23 in support of change. A large statue of Stalin was toppled and dragged through the streets of the capital—the revolution had begun. Tens of thousands participated in these peaceful demonstrations of Hungarian nationalism.

During the coming days, the revolutionary fervor spread. Tension began to rise as the streets swelled with freedom fighters. Violence erupted as police opened fire on unarmed demonstrators, many of them children. The bloodiest incident of the revolution occurred at Parliament Square on October 25, when Soviet forces and the secret police opened machinegun fire on a crowd of peaceful demonstrators, killing an estimated 500 people. Despite these acts of brutality, the revolutionaries were successful in taking over the major provincial cities.

On October 30, 1956, Nagy announced the abolition of one-party rule and the establishment of a coalition government. Cardinal Mindszenty was freed from captivity. Two days later, Hungary withdrew from the Warsaw Pact and its neutrality was declared. It appeared as though nothing would stop the Hungarians in their quest for freedom and independence.

On November 3, Cardinal Mindszenty delivered an impassioned address to his fellow countrymen. His words are as meaningful today as they were three decades ago. Mr. President, I ask unanimous consent that an excerpt of this address be printed in the RECORD.

The Soviet Ambassador at the time, Yuriy Andropov, a little known figure at the time, offered his assurances that Soviet troops would be withdrawn from Hungary. Before dawn on November 4, an estimated 200,000 Soviet troops with 2,500 tanks and armored cars had crossed the border into Hungary, launching an offensive designed to crush the revolution. Despite their courageous effort, the Hungarian freedom fighters were vastly outnumbered. The Hungarian revolution, fueled by national heroism, was to last but a fleeting moment. In all more than 25,000 Hungarians had died. Another 20,000 were deported to the Soviet Union, many were never heard from again. Others were imprisoned under the orders of Janos Kadar. At least 500 were executed.

In the aftermath of the shortlived revolution, 200,000 refugees fled the repressive regime of Kadar, a puppet installed by the Kremlin. Tens of thousands of others lost their lives in the carnage. Nagy and his close associates, including Pal Maleter and Miklos Gimes, were executed in June 1958 and burried in graves which to this day have remained unmarked.

The address follows:

RADIO STATEMENT OF JOSEF CARDINAL MINDSZENTY NOVEMBER 3, 1956

There is no country which in the course of its thousand years of history has suffered more than we. Hungarians have had to wage incessant struggles for independence, mostly in defense of the Western countries. These struggles interrupted the continuity of our development and we always had to rise again by our own efforts. In the course of history this is the first occasion that Hungary has enjoyed the sympathy of all other civilized countries. We are deeply moved by this, and every member of our small land rejoices that, because of our love of liberty, the nations have taken up its case.

Yet we, even in our dire situation, hope we have no enemies, for we are the enemies of no one. We want to live in friendship with all people and all countries. We Hungarians want to live and progress as standard-bearers of the family of peaceful European nations. We want to live in a spirit of friendship with all the peoples of Europe and not on the basis of an artificially created friendship. And turning our eyes toward more distant parts, we, a small nation, want to live in friendship; in undisturbed, peaceful, and mutual esteem with the great United States, as well as the powerful Russian Empire, and in good-neighborly relations with Prague, Bucharest, Warsaw, and Belgrade.

Now we need general elections, free from abuse, in which all parties can nominate candidates. The elections should be held under international supervision.

I must stress that we have a classless society and a State where laws prevail. We support private ownership which is rightly and justly limited by social interests. This is the wish of the Hungarian people.

As head of the Hungarian Roman Catholic Church I declare that we do not oppose the justified development of our country. We only desire that this development be sound.

On October 23, we will commemorate the 30th anniversary of the Hungarian revolution. In doing so, we recall the courage, valor and dedication to freedom displayed by the many individuals who took part in the uprising. As we mark this historic occassion, however, we are reminded that many Hungarians continue in their struggle for freedom and individual human rights. Expressions of independence are met with harassment by the Hungarian authorities. Some have become targets for harassment simply for speaking out about the events of 1956.

Mr. President, the commemoration of the 1956 Hungarian revolution will bring many sad memories as we remember those who lost their lives during their quest for freedom. As we express our grief, we reaffirm our commitment to assist those who continue to fight against tyranny. As chairman of the Commission on Security and Cooperation in Europe, I urge my colleagues to support adoption of Senate Joint Resolution 385 as a demonstration of our support of Hungarian freedom fighters, past and present.

Thank you Mr. President.●

HANK GREENBERG—A CHAMPION OF CHAMPIONS

● Mr. LEVIN. Mr. President, many people, when they see a baseball uniform with a number 5 on it, think about Joe DiMaggio. Many fans also know that another player wore that number with equal pride and distinction: Hank Greenberg of the Detroit Tigers.

Hank Greenberg died earlier this month but he will remain a living. He lives in my mind and for more than his .313 life time batting average or the 331 homeruns he hit—58 in one season; more than the grand slam he hit on the last day of the season in 1945 to give the Tigers the league championship or the 2 years he was named MVP. No, he was more than that for me.

Greenberg was the first big time ballplayer who was Jewish. Like Jackie Robinson after him, Greenberg paid a price for being first. One of the reporters in Detroit wrote that "the other teams saw his potential and power and called 'Jew Boy' from the corners of the dugout. The Yankees were the worst." And Greenberg himself is quoted as saying "One time the Yankees even brought up a player from the minors just to get on me. He sat next to the manager for protection. I heard it all from them—every slur you could think of. It was pretty vicious."

That's the way it was back then. But it isn't that way now. Because of people like Greenberg and Robinson and players like Roberto Clemente and Fernando Valenzuela, we have white kids who grow up idolizing black ballplayers, Christian kids rooting for a Jewish homerun hitter, Anglos cheering on a player from Mexico or the Islands.

It isn't much, maybe, but it is a start. It gives a kid the sense that maybe there is something more important than color or religion or national origin—maybe if a player can help the home team win, then that player ought to be admired and accepted for what he can do rather than being rejected because of where he comes from.

No, it isn't much. But it is a beginning which hundreds of thousands of kids make every day of every year because of guys like Greenberg. And it isn't just kids that grow. Greenberg

was playing when Jackie Robinson broke into the big leagues. Years later, Greenberg recalled that "guys on our team were calling Jackie 'Coal Mine.' He got hit and stood beside me on first base with his chin up like a prince. I had a feeling for him because of the way I had been treated. I remember saying to him 'Don't let them get you down. You're doing fine. Keep it up.'" And Robinson remembered Greenberg saying that too; he later said that Greenberg was the first opposing player in the big leagues to give him encouragement. "Hank Greenberg," said Robinson, "has class. It stands out all over him."

So kids and grownups got a little "color blind" because of the game and the teams that tie us together. But at the same time, we all got a little "color proud." We looked at a Greenberg or Robinson or Clemente or Valenzuela or any of the others and we suddenly realized that our people were really something special and making it big in big leagues.

There is that. But baseball is, after all is said and done, more than sociology. It is a sport which tests each player every day and gives us a way to keep score—to measure success and evaluate failure. And in the sport, Greenberg had few peers. He could hit the ball as far as any human being I have ever seen. I can still look back and see what I was lucky enough to see then: Hank Greenberg doing what he did best. There he is bringing that bat around to his right shoulder and then tightening his muscles and waiting for the pitch and watching it break in over the plate and then—and then the ball would sail away from the plate over the fence and into the history which still lives in the minds of everyone who ever saw him play.

Which, I guess, is just a way of saying that in addition to being a symbol, the man was a hell of a ballplayer. And, as the years went by, we got to see he was a hell of man—involved in civic affairs, caring and willing to give of himself.

Some 40 years ago, I remember reading the morning paper report on the homer he hit to win the pennant. The story started something like this: "Call him the hero of heroes. Call him the champion of champions. Call him the pride of Bengal-town." It still has the ring of truth.●

RAYMOND D. TEMPEST, HIGH SHERIFF

● Mr. PELL. Mr. President, there will soon be a big void in the law enforcement establishment of my own State of Rhode Island because Raymond D. Tempest, high sheriff of Providence County, is about to retire.

I call the void "big," not only because Ray Tempest is a big man, though there is no denying that he is. Big in size, big in heart, big in spirit.

It is also big because it will be difficult for anyone to fill the shoes of this man who has given his city of Woonsocket and his State of Rhode Island 36 years of dedicated, talented and highly professional service.

On February 19, 1951, Ray was sworn in as a patrolman in Woonsocket. He advanced through the ranks, becoming captain and head of the detective division in 1960 and becoming detective commander in 1974.

Throughout his years on the Woonsocket force Ray was a larger than life figure. He was always on the scene, always the leader who took charge in times of chaos with the levelheaded and commonsense approach that always characterized his police work.

He was a hard-nosed, fearless investigator, determined to uncover and wipe out dishonesty and corruption, no matter where he found it.

Ray was, at the same time, a gentle person whose big hand was often extended in consolation and comfort to those who had suffered personal sadness or hurt. And he always dealt with children in the kind, understanding manner of a father.

As you can see, Mr. President, I think very highly of Ray Tempest and I am sure that these same exemplary qualities which so impress me led my friend, the former Governor of Rhode Island, J. Joseph Garrahy, to select Ray in 1977, to be the high sheriff of Providence County.

In the years since Ray has filled that important position with distinction. And after such a vigorous and distinguished career he has earned the relaxation that retirement will bring.

I wish Ray and his wonderful wife Maggie peace and good health in the years ahead.●

GRAMM-RUDMAN-HOLLINGS

● Mr. MOYNIHAN. Mr. President, I rise today to discuss once more the reliance on economic forecasting required by the Gramm-Rudman-Hollings law.

On November 6, 1985, the day the Senate voted 74 to 24 in favor of the Gramm-Rudman-Hollings amendment, I warned that the proposition:

> . . . assumes we know what we're talking about, that we can predict when a recession is coming. We can't, and neither, in this matter, can anyone else. . . .
>
> Economists do not know the future—they study, and barely know, the past. This is really an adventure in mad scientism, pretending to know what cannot be known.

The Congressional Research Service recently published a report that supports my analysis. CRS Report 86-829S—"Implications of Uncertainty in Economic Forecasting under Gramm-Rudman-Hollings: Options for Congressional Response"—contains information that should have been understood before the Gramm-Rudman-Hollings amendment ever reached the Senate floor.

On page vii of the summary of the report, we learn that:

> The average deviations of OMB's and CBO's February economic forecasts from their subsequent outcomes, if repeated today, would result in deficit forecasts for the coming fiscal year that miss their mark by an average of more than $30 billion. Three-quarters of the forecasts by both agencies worked toward underestimating deficits by amounts averaging more than $35 billion; the remaining forecasts tended to overstate the deficits by an average of $15 to $20 billion.

The law requires that OMB and CBO make guesses about economic performance for the next fiscal year, and that Congress act on those guesses to meet specific deficit targets. We cannot say for sure whether or not we have actually met those targets until after the fiscal year has ended. Only then do we know how the economy performed, how much the Treasury collected in revenues, and how much we spent.

Table 6 of the CRS report shows the average errors in CBO's and OMB's calendar year economic assumptions.

The average CBO forecast for real GNP growth has been off by 1 percentage point. OMB has missed the mark by 1.2 percentage points. If CBO and OMB agreed that real growth were to be 3 percent in a given year, the data indicate that based on past averages, economic growth may be 2 percent, 3 percent, or 4 percent. An error of 1 percentage point is a 33 percent error.

On July 22, the Commerce Department estimated that second quarter growth was 1.1 percent. One month later, on August 19, that estimate was revised downward to 0.6 percent. Our best estimate of economic growth dropped by one-half in a month's time.

None of which is to disparage economists. Theirs is a noble profession, but not a perfect science. Things happen that cannot be forecast—at least not with the accuracy required by Gramm-Rudman-Hollings.

Congress continues to announce that we will meet the deficit targets for fiscal year 1987 and beyond. We do not really know that. Too much depends on what GNP growth turns out to be, what interest rates are, and how much unemployment there is.

Under such circumstances, we ought not continue the practice of announcing that we have met a specific deficit target. To do so is to assume we have a predictive capacity that the data shows we do not, in fact, possess.

The tables follow:

TABLE 6. AVERAGE ERRORS IN CBO's AND OMB's CALENDAR-YEAR ECONOMICS ASSUMPTIONS

[Percentage points]

	Forecast year—		
	First	Second	Third
Nominal GNP growth:			
CBO	1.0	2.8	3.0
OMB	1.2	2.6	3.2
Real GNP growth:			
CBO	1.0	2.2	3.1
OMB	1.2	2.4	3.1
GNP deflator:			
CBO	0.7	1.3	2.9
OMB	1.5	1.7	2.7
Consumer Price Index:			
CBO	1.5	2.9	4.0
OMB	1.4	2.8	3.8
Unemployment rate:			
CBO	.4	1.0	1.4
OMB	.4	1.1	1.7
91-day T-bill rate:			
CBO	1.1	2.7	2.8
OMB	1.2	2.7	3.1

Source: Congress of the United States. Congressional Budget Office. CBO's 5-year Economic Outlook. Also Executive Office of the President. Office of Management and Budget. Annual January/February Publications. CBO's and OMB's 1981 Economic Outlooks were published in March. Historical data were obtained from the Department of Commerce, Bureau of Economic Analysis, and the Department of Labor, Bureau of Labor Statistics.

TABLE 7.—HOW PREVIOUS FORECAST ERRORS WOULD AFFECT CURRENT POLICY BUDGET PROJECTIONS FOR FISCAL YEAR 1987

[Dollars in billions]

	Absolute average	Overestimates—		Underestimates—	
		Average	Freq.[1]	Average	Freq.[1]
Impacts on Revenue Projections					
Real GNP growth:					
CBO[2]	$17.69	$17.53	75.0	$18.17	25.0
OMB	18.51	19.78	62.5	16.38	37.5
Inflation rate (GNP deflator):					
CBO	23.29	26.43	50.0	20.14	50.0
OMB	24.03	28.03	50.0	20.03	50.0
Nominal GNP growth:					
CBO	31.28	43.03	50.0	19.53	50.0
OMB	28.77	38.99	50.0	18.55	50.0
Impacts on Outlay Projections					
Inflation (consumer price index):					
CBO	6.20	3.80	50.0	8.70	50.0
OMB	5.80	3.70	50.0	8.00	50.0
Unemployment rate:					
CBO	6.30	5.20	50.0	7.48	50.0
OMB	7.20	5.80	50.0	8.58	50.0
91-day Treasury Bill rate:					
CBO	13.55	12.84	25.0	13.79	75.0
OMB	14.57	6.17	25.0	17.38	75.0
Net Impact on Deficit Projections					
CBO	32.43	19.92	25.0	36.60	75.0
OMB	34.24	17.98	25.0	39.66	75.0

[1] Frequencies in percent.

[2] Column one in the first line, for example, shows that inaccuracies in CBO's real growth assumptions would affect its revenue estimates by an average of $17.69 billion in FY87. Columns two and three indicate that inaccurate real growth assumptions in 75% of the observed forecasts would tend to understate FY87 revenues by an average of $17.53 billion. Columns four and five show that in the other 25%, real growth assumptions would tend to understate FY87 revenues by an average of $18.17 billion.

Source: Author's calculation. In calculating the impacts of inaccurate real GNP growth, inflation and nominal GNP growth assumptions on revenue projections, it is assumed that revenues remain a constant share of current-dollar GNP. The impacts of inaccurate inflation, unemployment and interest-rate assumptions on projected outlays are estimated using CBO's rules-of-thumb.

DR. RICHARD ROSSER, OUTGOING PRESIDENT OF DEPAUW UNIVERSITY

● Mr. QUAYLE. Mr. President, at the beginning of this year, Dr. Richard Rosser, president of DePauw University, announced his retirement from the position he then held. It is with regret that I bring to the attention of my colleagues his decision to retire from DePauw University and with appreciation that I commend him for his successful tenure as president and faculty member at DePauw.

I would like to commend Dr. Rosser for his long-standing commitment, integrity, and dedication to the highest standards of professional competence during his years of service to the university. As a member of the DePauw academic community, he has consistently displayed effective leadership and succeeded in creating an education climate to support his goals.

Under the administration of Dr. Rosser, DePauw University has embarked on a fundraising sesquicentennial campaign for the development of its endowment fund, a campaign that has met with unprecedented success, far exceeding its original monetary goal. The campaign will continue until June 1987 at which time Dr. Rosser will retire.

Dr. Rosser has an outstanding professional background which includes his present employment as chancellor and outgoing president of DePauw University, dean of faculty and professor of political science at Albion College in Michigan, permanent professor and head of the department of political science at the U.S. Air Force Academy in Colorado, and as an officer in the U.S. Air Force intelligence organizations as specialist in Soviet studies and Russian linguist.

His professional expertise is well attested to by his continued visible leadership in the academic community and various educational organizations. These include his involvement with the American Association of University Professors, the American Political Science Association, Associated Colleges of Indiana and the Independent Colleges and Universities of Indiana.

As an alumnus of DePauw University and on behalf of the DePauw community, I extend to Dr. Rosser my deep appreciation for the invaluable services he has provided and best wishes for continued success in whatever he may endeavor.●

MEASURE HELD AT THE DESK—H.R. 2574

Mr. BROYHILL. I would like to ask the minority leader if he is ready to proceed with unanimous consent with respect to H.R. 2574.

Mr. BYRD. Mr. President, reserving the right to object, that matter is cleared on this side; however, only if we go into morning business so that the time will not be running against the bill.

Mr. BROYHILL. I would ask that we proceed as if we are in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. So the time will no longer be running against the reconciliation measure?

The PRESIDING OFFICER. The reconciliation bill will be temporarily laid aside.

Mr. BYRD. I thank the Chair and I thank the Senator.

Mr. BROYHILL. I ask unanimous consent that once the Senate receives from the House H.R. 2574, a bill for the private relief of the survivors of Christopher Eney, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

CORRECTION OF ENROLLMENT—COLORADO RIVER FLOODWAY PROTECTION ACT

Mr. ABDNOR. Mr. President, yesterday, the Senate passed H.R. 1246, the Colorado River Floodway Protection Act.

It has come to my attention that the Senate amendment to H.R. 1246 contained an incorrect reference to a section of public law. This mistaken reference renders obscure a provision of the bill requiring the Secretary of the Interior to publish notice of certain of his activities pursuant to the bills provisions.

I therefore ask unanimous consent that the enrolling clerk be instructed to correct subsection 14(c) of the amendment of the Senate to the bill H.R. 1246 to read as follows:

(c) The Secretary shall publish notice on three successive occasions in newspapers of general circulation in communities affected by the provisions of Section 1322 of Public Law 90-448, (82 Stat. 572), as amended by this Act.

The PRESIDING OFFICER. Without objection, it is so amended.

TRANSFER OF CERTAIN PUBLIC LANDS

Mr. BROYHILL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1963.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1963) entitled "An Act to direct the Secretary of the Interior to convey certain interests in lands in Sorocco County, New Mexico, to the New Mexico Institute of Mining and Technology", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. TRANSFER OF LANDS.

(a) CONVEYANCE.—Subject to valid existing rights and except as provided in section 3, the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") is authorized and directed to convey to the New Mexico Institute of Mining and Technology (hereafter in this Act referred to as the "Institute"), Socorro, New Mexico, at fair market value, as determined by the Secretary, all right, title, and interest of the

United States in and to the public lands aggregating approximately 8,501.55 acres in Socorro County, New Mexico, as generally depicted on a map entitled "New Mexico Institute of Mining and Technology Land Transfer, Socorro, New Mexico" dated 1985, to be used for research and education.

(b) SURVEY.—The conveyance required by subsection (a) shall occur only after the Institute performs and provides to the Secretary a survey of the archeological resources of the area which identifies the mitigation measures, if any, that the Institute, in coordination with the State of New Mexico Historic Preservation Office, will implement following the conveyance and shall be conditioned on the implementation of such mitigation measures.

SECTION 2. MAPS AND DESCRIPTION OF LANDS.

As soon as practicable after the enactment of this Act, the Secretary shall submit a map and legal description of the public lands designated in the first section of this Act to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives. Such map and legal description shall have the same force and effect as if included in this Act, except that any clerical or typographical errors in such map or legal description may be corrected. The Secretary shall place such map and legal description on file, and make them available for public inspection, in the Office of the Director, New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico.

SECTION 3. RESERVATION OF RIGHTS.

There are reserved to the United States all minerals that may be found in the lands described in the first section: *Provided, however,* That such lands, except for valid existing rights, shall not be available for location and patent under the U.S. Mining law, Act of May 10, 1872, 17 Stat. 91, 30 U.S.C. 22, 28, 28b.

Mr. BROYHILL. I move that the Senate concur in the House amendment, Mr. President.

The motion was agreed to.

Mr. BROYHILL. I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

□ 2250

ORDER FOR RECESS UNTIL 9:00 A.M. TOMORROW

Mr. BROYHILL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. on Thursday, September 18, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ROUTINE MORNING BUSINESS TOMORROW

Mr. BROYHILL. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order on tomorrow, there be a period for the transaction of routine morning business, not to extend beyond 9:30 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT MEETING OF THE TWO HOUSES—ORDER FOR RECESS

Mr. BROYHILL. Mr. President, at 9:30 a.m. tomorrow, Senators are asked to assemble in the Senate Chamber, to proceed in a body to the Hall of the House of Representatives, to hear an address by President Aquino.

I ask unanimous consent that the Senate stand in recess between 9:30 a.m. and 10:30 a.m. for the joint meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BROYHILL. Mr. President, at 10:30 a.m. tomorrow, the Senate will resume consideration of the reconciliation bill, under a statutory time limitation of 20 hours.

Votes can be expected throughout Thursday's session, and a late-night session is anticipated in order to make progress on the reconciliation bill.

MAINE CENTRAL RAILROAD COMPANY AND PORTLAND TERMINAL COMPANY LABOR-MANAGEMENT DISPUTE

Mr. BYRD. Mr. President, at the desk, and pursuant to an order of yesterday, is Senate Joint Resolution 415, which has been read the second time.

I ask unanimous consent—this has been cleared on the other side—that this resolution, Senate Joint Resolution 415, by Mr. MITCHELL, relating to a settlement to the Maine Central Railroad Co. and Portland Terminal Co. labor-management dispute, be taken up and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 415) to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution.

There being no objection, the Senate proceeded to consider the bill.

Mr. MITCHELL. Mr. President, yesterday, I joined with Senator COHEN in introducing legislation, Senate Joint Resolution 415, to bring about a settlement of the longstanding labor dispute on the Maine Central Railroad.

I ask unanimous consent that Senators KENNEDY, WEICKER, and BURDICK be added as cosponsors of the resolution—which seeks to enact the recommendations of Presidential Emergency Board No. 209.

The Emergency Board recommendations are reasonable and well balanced. They represent a rational solution to an impasse between labor and management, and a rational response by Congress to protect interstate commerce by averting a terrible national rail shutdown.

The congressionally extended cooling off period in the dispute expires at midnight tonight. On Friday, the railroad has pledged to unilaterally impose terms which would trigger a national railroad strike.

To prevent a national railroad strike, I urge the Senate to adopt the resolution, and hope the House of Representatives also will move swiftly to adopt it and send it to President Reagan for signature.

The PRESIDING OFFICER. The joint resolution is open to amendment. If there be no amendment, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. RES. 415

Whereas the labor dispute between the common rail carriers, Maine Central Railroad Company and Portland Terminal Company, and certain of the employees of such carriers represented by the Brotherhood of Maintenance of Way Employees threatens essential transportation services of the Nation;

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained;

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers;

Whereas the President by Executive Order Numbered 12557 of May 26, 1986, pursuant to the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160), created a Presidential Emergency Board to investigate the dispute and report findings;

Whereas the recommendations of Presidential Emergency Board Numbered 209 for settlement of such dispute have not yet resulted in a settlement;

Whereas the extension of the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160) for an additional 60-day period to such dispute provided by the joint resolution entitled: "Joint resolution to provide for a temporary prohibition of strikes or lockouts with respect to the Maine Central Railroad Company and the Portland Terminal Company labor-management dispute", approved August 21, 1986 (Public Law 99-385), has not yet resulted in a settlement of such dispute;

Whereas the advisory board established pursuant to section 2 of such joint resolution recommended that in the event that the parties to the dispute were unable to reach agreement on the dispute before September 13, 1986, the Congress should enact

legislation directing the parties to accept and apply the recommendations of Emergency Board Numbered 209, and if such parties are unable to agree as to all necessary details in applying the recommendations of such Emergency Board, all such unsettled issues should be submitted to final and binding arbitration;

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not yet resulted in settlement of the dispute:

Whereas the Congress, under the Commerce Clause of the Constitution, has the authority and responsibility to ensure the uninterrupted operation of essential transportation services; and

Whereas the Congress in the past has enacted legislation for such purposes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the following conditions shall apply to the dispute referred to in Executive Order Numbered 12557 of May 16, 1986, between the common rail carriers, Maine Central Railroad Company and Portland Terminal Company (hereafter in this resolution referred to as the "carriers") and the employees of such carriers represented by the Brotherhood of Maintenance of Way Employees.

(1) The parties to such dispute shall take all necessary steps to restore or preserve the conditions out of which such dispute arose as such conditions existed before 12:01 ante meridiem of March 3, 1986, except as provided in paragraphs (2) through (4).

(2) The report and recommendations of Presidential Emergency Board Numbered 209 shall be binding on the parties and shall have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.), except that nothing in this joint resolution shall prevent a mutual written agreement by the parties to any terms and conditions different from those established by this joint resolution.

(3)(A) If there are unresolved implementing issues remaining with respect to the report and recommendations or agreement under paragraph (2) after ten days after the date of the enactment of this joint resolution, the parties to the dispute shall enter into binding arbitration to provide for a resolution of such issues.

(B) The National Mediation Board established by section 4 of the Railway Labor Act (45 U.S.C. 154) shall appoint an arbitrator to resolve the issues described in subparagraph (A). Except as provided in this joint resolution, such arbitration shall be conducted as if it were under section 7 of such Act, and any award of such arbitration shall be enforceable as if under section 9 of such Act.

(b) Within thirty days after the date of the enactment of this joint resolution, the binding arbitration entered into pursuant to paragraph (3) shall be completed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BROYHILL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECESS UNTIL 9 A.M. TOMORROW

Mr. BROYHILL. Mr. President, I move that the Senate stand in recess until 9 a.m. on tomorrow.

The motion was agreed to, and at 10:53 p.m., the Senate recessed, to reconvene on Thursday, September 18, 1986, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 17, 1986:

THE JUDICIARY

William H. Rehnquist, of Virginia, to be Chief Justice of the United States.

Antonin Scalia, of Virginia, to be an Associate Justice of the Supreme Court of the United States.

EXTENSIONS OF REMARKS

ART ROWE HONORED ON OCTOBER 2, 1986

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. LEWIS of California. Mr. Speaker, it gives me great pleasure to have this opportunity to recognize a truly remarkable citizen of the 35th District of California, Mr. Art Rowe. Mr. Rowe will be honored as the Special Dairy Award winner by the Chino Valley Chamber of Commerce at the 11th annual dairy awards dinner on October 2 of this year.

Mr. Rowe has devoted much of his life to the dairy business. Born in Oregon, WI, he was raised on a dairy and livestock farm. He worked on this family farm until 1949, when he went to work for Dane Company Wisconsin D.H.I.A., where he spent a great deal of time doing herd improvement registry, advance registry testing, and check testing. When he moved to California in 1952, he continued the family tradition in the dairy business and worked as a milker, herdsman, artificial inseminator, and manager for Roger Jessup Farms.

Mr. Rowe went on to become a successful businessman, starting first with an insurance company. In 1956 he married his wife Betty, and in 1959 he started with Security Pacific National Bank.

Although Art Rowe's responsibilities with his work are extensive, he has always actively contributed to his community. He was Chino Chamber of Commerce director, treasurer, and president. He was a member of the Lions Club and has been a member of the Chino Rotary Club for the last 2 years, where he ably served on the International Livestock Committee and contributed toward the sending of animals to foreign countries through Heifer Project International.

Service to his community and a strong interest in agriculture continued as evidenced in his membership and presidency on the fair board for a number of years. During this time he was instrumental in raising funds to build the new barn, Brinderson Hall, and many other improvements now evident. Indeed, the success of the yearly barbecue depends on his diligent supervision at the fairgrounds, putting in long hours for many days and weekends before and after the annual Junior Fair.

Art Rowe has always been a good friend and neighbor, lending a helping hand when needed, going that extra mile for his family, friends, and community.

Mr. Speaker, I ask that you join me in saluting Mr. Art Rowe. I am proud to recognize such a fine citizen. He serves as an outstanding example to us all as a man who has always considered another's needs before his own, placing service above self. Art Rowe truly deserves and qualifies for this special award.

A TRIBUTE TO JERRY LAMOTHE

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. DYMALLY. Mr. Speaker, recently I had the welcome opportunity to participate in the third annual educational seminar of UAW Local 887, which represents aerospace workers in my congressional district. This year's seminar was dedicated to a dear friend and coworker of mine, Jerry Lamothe, who passed away in July. I want to take a moment to reflect on Jerry's life for my colleagues because the example he gave us of dedication to the needs of working men and women is worthy of both admiration and emulation.

At the time of his passing, Jerry had been a union man for 32 years, having joined the UAW in 1954 when he was employed by the Chrysler Corp., at a plant it once had in Maywood. He came to prominence in 1960 when he led a wildcat strike at that plant. That selfless act—it lost him his job—is typical of the single-minded devotion Jerry always had to the rights of workers in the workplace. He was for the workers, even when his efforts were not clearly advantageous to himself.

Maywood's loss was our gain, because Jerry landed a job at Rockwell International's Autonetics facility. It was there that he joined UAW Local 887 and began a career of unstinting service to his fellow workers. Over the years he moved through the ranks of the union. He served at various times as secretary, treasurer, and chairman of unit 6. He chaired the civil rights committee as well as the educational committee. He was a joint council delegate, and, eventually, a member of the executive board. In his spare time he was editor of the local union publication, the Propeller.

His dynamism earned him international recognition, and in 1973 he was appointed chairman of the UAW Region Six Educational Committee. For 10 years he served with distinction. And in 1983 he was appointed to the International UAW CAP Department.

Jerry was not one to let any grass grow under his feet. In addition to his very active service to the union, Jerry served as administrative assistant to Hon. Jesse Unruh when Mr. Unruh was California speaker. I came to know Jerry well during those years, and when he completed his service with Jesse, he came to work for me as a field representative for my State senate office. Jerry was a formidable organizer. His get-out-the-vote program led to the largest election-day voter turnout in southern California's history, an astounding 81.6 percent. I feel a great loss at Jerry's passing. The thought that he was only days away from retirement when he was taken from us makes the loss deeper. I am comforted, as I think are his wife Carole and children Dwaine and Denise, that Jerry was active and vigorous to the very last. May we all live life as fully as he did.

A MORE IMPORTANT WORLD ISSUE?

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. McEWEN. Mr. Speaker, this afternoon an American journalist—Nicholas Daniloff—is still being held hostage by the Soviet Union. They've stopped torturing him and for that I'm thankful, but he is still a hostage nonetheless.

State-sponsored hostage-taking is nothing more than terrorism. I think most of us here recognize that.

That's why I was so distressed to hear the words this weekend of Deputy Secretary of State, John C. Whitehead, on "Face the Nation." Mr. Whitehead said, "If they refuse to set him free, the world must go on. This is an important issue, but, of course, it's not the only issue. * * *"

Mr. Whitehead, if there is a more important issue than the threat this act poses to all Americans working abroad, then I want to know what it is.

If a world power, engaging in terrorist activities against our countrymen is not the most important issue facing America today, then Mr. Whitehead, I want to know what issues are more important to you?

And finally, Mr. Speaker, where should we look for the protection of American lives, if we can't even depend on our own Department of State?

TRIBUTE TO THE LATE FRANK MANNING

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. FRANK. Mr. Speaker, older people in Massachusetts suffered a terrible loss late last month with the death of Frank Manning. Frank was a giant: as an advocate, as a strategist, as an orator, and most importantly, as a moral force on behalf of all of those in our society who are in need. Indeed, while the elderly in Massachusetts were the primary beneficiaries of his enormous energy and talent, all of us who live in this country and care about the quality of life for all people suffer from his death.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

I know of no one over the past 15 years who did more for the cause of social justice in America. Like many other elected and appointed officials from Massachusetts and elsewhere, I felt proud to be his friend and enriched by the chance to work with him.

At Frank's funeral, Mr. Speaker, along with Senator KENNEDY, Governor Dukakis, and Mayor Flynn, Frank's successor as head of the organization he embodied, the Massachusetts Association of Older Americans, paid eloquent tribute to her predecessor. I am especially proud, Mr. Speaker, that those who worked so hard under Frank's leadership decided that Elsie Frank was best suited to carry on his work, because Members of the House do not often get the opportunity to do what I am about to do here, which is to ask unanimous consent that there be printed in the RECORD at this point the eulogy for Frank Manning delivered by my mother, the president:

ELSIE FRANK'S TRIBUTE TO FRANK AT HIS FUNERAL SERVICES

According to Frank's obituary he is survived by his sister, Catherine Renee Hoxie, and various nieces and nephews.

Ah—but this is not altogether true. He is also survived by a child he fathered and nurtured, the Massachusetts Association of Older Americans, which under his guidance and leadership became the most influential and respected elderly organization in the Commonwealth of Massachusetts. MAOA's accomplishments on behalf of the elderly are legendary.

Two years ago, Frank became concerned about his failing health and how it would affect the future well-being of MAOA. So he instructed the board of directors to become a stronger voice in management, resigned as president and became president emeritus. And I was brought into the fold so he could groom me to keep MAOA as a viable, effective force in the elder network when the time came.

The time is now. Taking Frank's place is, of course, mission impossible because he was one of a kind.

However, like everything else he did in life, he was an excellent teacher. All of us at Massachusetts Association of Elder Americans have pledged that MAOA shall continue to be a living memorial to Frank J. Manning because MAOA is his bequest to posterity.

We promise you, Frank, that MAOA will continue to effectively advocate for the promotion of all issues that impact on the quality of life, the sense of security, the well-being of older Americans.

We are hoping that we can count on your support in keeping Frank's MAOA alive.

PRESERVE THE ABILITY OF THE UNITED STATES TO ACT EFFECTIVELY IN ANGOLA

HON. BOB STUMP
OF ARIZONA
IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. STUMP. Mr. Speaker, the Angolan resistance fighters of Jonas Savimbi's National Union for the Total Independence of Angola [UNITA] fight against the forces of the Communist government and the approximately 35,000 Cuban troops in Angola. The governing Marxist-Leninist regime in Angola seized power in 1975 in breach of an agreement among Angolan nationalist groups for an interim governing arrangement leading to free elections. The UNITA nationalists have continued since that time to resist the Communist government.

For an entire decade UNITA fought without U.S. aid because the recently repealed Clark amendment prohibited such aid. Now that Congress has removed the Clark amendment restriction on providing such aid, the Democrats of the House Intelligence Committee have moved to impose a new form of Clark amendment with section 107 of the intelligence authorization bill for fiscal year 1987 (H.R. 4759). The UNITA fighters deserve American support, but they could not receive it under the liberal Democrats' bill.

Section 107 of intelligence committee chairman LEE HAMILTON's bill prohibits covert aid to the Angolan resistance forces. The Democrats on the House Intelligence Committee seek with the Angolan resistance prohibition to derail the President's plans for meeting the Communist challenge in Angola. The Congress must defeat the Democrats' dangerous effort to establish a country-specific restraint on the President's ability to protect U.S. interests through effective aid to the forces of freedom.

Under the Hamilton legislation, the President could provide aid to UNITA only if he announced to the world his intention to do so and the Congress after public debate passed a joint resolution approving such aid. Thus, the legislation prohibits covert aid, and allows overt aid only if Congress passes a special law approving it. The President of the United States cannot protect and advance American interests if the Congress so shackles his conduct of foreign policy.

The Republicans in the House will offer an amendment to eliminate the Angolan resistance prohibition from the legislation. The issue is clear. A vote in favor of the Republican amendment to eliminate the Angola prohibition is a vote for potential effective opposition to the Communist regime in Angola. A vote against the amendment is a vote which will help the Communist regime in Angola.

Achievement of U.S. foreign policy objectives abroad sometimes depends upon the ability of the President to conduct activities besides diplomacy in support of such objectives without official public acknowlegment of them; such activities are called covert actions. Those in Congress who would oppose the President's use of covert action as a tool for implementing national policy with respect to Angola act as if the Congress of the United States would have no control over the matter. Nothing could be further from the truth. The Congress of the United States has full and complete control over the ability of the United States to conduct any intelligence activity, including a covert action, by its control of the power of the purse.

Critics of some or all covert actions incorrectly assert that they divert senior intelligence managers from other important intelligence duties and that they are too easy to initiate. Intelligence Committee Chairman HAMILTON so argued in his article "The Trouble With 'Covert' Action" in the Washington Post of August 17, 1986.

The U.S. intelligence community devotes only a small percentage of its human and fiscal resources to covert action. Covert action is an important function of the intelligence community, but it need not be a resource-intensive function. Those directly responsible for covert action spend a significant amount of time managing covert action operations, as is appropriate given the sensitivity and potential risks of such operations. Such officials also spend a significant amount of time explaining and justifying covert actions to the Congress, often because of the demands placed upon them by the very Members of Congress who complain that intelligence managers spend too much time on covert action. Nevertheless, the improvement in the quantity and quality of U.S. intelligence analysis and reporting in recent years shows that senior intelligence managers have not devoted time to covert action to the detriment of intelligence collection and analysis.

Initiation of a covert action is not easy. A proposal for a covert action must pass through a number of executive branch forums for decision up to and including the President, who must personally find in writing that each such action is important to the national security of the United States. Moreover, once initiated, such an action receives detailed scrutiny both within the executive branch and from the intelligence committees of Congress. In advance of implementation of covert actions, the executive branch secretly gives notice of them to the House and Senate intelligence committees, or in extraordinary circumstances to a House and Senate leadership group only. The Congress enjoys full authority to oversee covert actions and possesses the ability, though control of funding, to modify or to terminate such actions should it ever become necessary to do so.

The system for congressional oversight establishment by title V of the National Security Act of 1947 contemplates that congressional and executive branch relations on intelligence matters will maintain secrecy. Unfortunately, in recent years, although the executive branch and the Congress have maintained tight secrecy with respect to the vast majority of intelligence activities, secrecy has broken down miserably with respect to covert actions involving paramilitary support. Some Members of Congress who oppose such covert actions say that such actions will not succeed because they will not remain secret, a prophecy which those Members help fulfill by giving such actions great publicity. It is of critical importance that the U.S. Government, including the Congress, demonstrate the will and ability to maintain covert action plans up for public discussion instead of secret discussion in the councils of government as our laws contemplate, the liberal Democrats force those of us who support the President on Angola to speak out, which we do as carefully as we can, mindful of the need to preserve secrecy.

Overt support to the UNITA Angolan resistance is not an effective option. The prohibition on covert aid to the Angolan resistance reflects a naive assumption that the United States can conduct all aspects of its foreign

policy in public, an assumption which ignores the harsh realities of international conflict in the world today and does a disservice to the American people. Suppose that the prohibition became law and the President—whether President Reagan or a future President—found it necessary to provide support for UNITA resistance forces in Angola. For diplomatic or political reasons UNITA might not desire to receive U.S. aid if such aid must be acknowledged openly. Countries that might be willing to help the United States in a quiet action to aid UNITA might not be willing to help in an action the United States announced to the world. Also, the Soviet and Cuban Governments which have deployed armed forces in Angola might feel compelled to respond aggressively to an action the United States announced to the world.

For these reasons, the liberal Democrats' stated preference for openness is hollow. The choice is covert action or no action, and no action means the Communist regime in Angola wins, and the world wonders whether the United States possesses the strength of will to defend its interests and those of the free world.

The basic premise of Chairman HAMILTON's Angolan resistance prohibition, that covert actions involving military support should be debated publicly in the Congress, is dangerously flawed. Both the Congress and the executive branch must understand that, to ensure the success of covert actions and of the diplomatic activities of the United States which those actions support, they can neither confirm nor deny publicly the existence or nonexistence of any particular alleged covert action. If the President and the Congress cannot restore the condition of secrecy in their mutual discussions of covert actions, the foreign policy interests of the United States will be severely damaged in the years to come.

MORE ON WEAPONS TESTING

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. BENNETT. Mr. Speaker, I would like to share with my colleagues an article published Tuesday, September 16, 1986, in the New York Times. A former testing official with the FMC corporation is suing the company, charging that the company lied to the Army when it claimed that its Bradley fighting vehicle is safe to operate while crossing streams.

Regardless of what the merits may be of this suit, this is an example of what I think is a crisis in defense testing in our country. The Bradley is not the only weapon system we have bought and paid for—and then found out it does not work as advertised. Dozens of weapons, from AMRAAM to Bigeye to Divad, have made headlines in the past few years because of inadequate testing.

Fortunately, in the House-passed Defense Authorization Act, this year we have new, comprehensive testing language which will require realistic testing before a weapon goes into production. It mandates live-fire testing of new weapons and the testing of weapons under battlefield conditions—not carefully staged, success-oriented tests.

A New York Times editorial in February of this year said, "If Congress does not want the flaws in America's weapons to emerge in battle, it had better ensure that they are discovered beforehand." That is exactly what our legislation does. I am confident that the Authorization Conference will agree with the House provisions, and we will take a major step forward in solving the testing crisis.

SUIT CHARGES CONTRACTOR LIED TO ARMY ON INFANTRY VEHICLE

(By John H. Cushman, Jr.)

WASHINGTON, Sept. 15.—A recently discharged employee of the FMC Corporation, which makes the Bradley infantry fighting vehicle for the Army, has sued the company, saying it falsely asserted that the weapon system met the Army's specifications.

The employee, Henry Boisvert, charges that the Bradley, an armored vehicle that carries soldiers into combat, is unsafe to operate while fording streams. Mr. Boisvert, an engineer, was in charge of water-crossing tests, according to his attorney.

The attorney, Phillip G. Svalya, said Mr. Boisvert had been discharged by FMC, effective Sept. 23, because of his disagreements with the company over the Bradley's testing. Mr. Boisvert filed the suit last Tuesday under a little-used provision of the False Claims Act. The provision allows private citizens to sue on behalf of the Government and possibly to share in the award of treble damages that may result.

The suit charges that FMC, which is producing nearly 7,000 of the vehicles at a total cost of $12.2 billion, defrauded the Government by failing to meet dozens of specific contract clauses detailing the vehicle's ability to cross water during combat. The Army is already using 2,400 Bradley vehicles.

While the Bradley, whose performance has been the subject of controversy for years, has been said before to have difficulty in deep water, the suit details for the first time a series of specific purported failings.

Patrick J. Head, general counsel of FMC, said today that he was not aware of the suit. After further checking, company officials said they had not yet been served with a copy.

Justice Department officials in Washington provided a copy of the suit, which was filed in Federal court for the Northern District of California in San Jose, where the FMC Ordance Division is situated. The department has 60 days to decide whether to join in prosecuting the case, officials said.

The Bradley, a 25-ton armored vehicle with tracks and a cannon that make it resemble a tank, carriers several foot-soldiers into battle. It has been the focus of particular controversy over the last year because of a Defense Department official's charge that tests of its ability to withstand antitank fire had been improperly designed, leading the Army to understate its vulnerability.

ASSIGNED TO RUN TESTS

Mr. Svalya said his client was assigned a year ago to run a series of tests on the Bradley's ability to operate in water. The tests ended about a month ago, he said.

Mr. Svalya said that Mr. Boisvert's superiors told him on numerous occasions that his complaints would not be acted upon.

According to court papers filed by Mr. Boisvert, the Bradley has difficulty entering the water on a slope on 40 to 50 degrees and at a speed of five miles an hour.

The court papers said FMC's water testing of the Bradley had not been realistic. "All of FMC's tests have been done in a cement pool with a specially designed tread enhancer ramp to promote friction," the papers said. Even in those tests, Mr. Svalya said, the vehicle was practically swamped and its pumps proved incapable of draining the water that splashed into the vehicle.

NATIONAL HISPANIC HERITAGE WEEK

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. COLEMAN of Texas. Mr. Speaker, the beginning of Mexican independence was marked by a cry for freedom 176 years ago by Father Guadalupe Hidalgo in the small town of Dolores, Mexico. The struggle for independence would last 10 years, and would be waged against the Spanish and then against the French. One hundred years later in 1910, a new revolution would break out against the tyrannical regime of Porforio Diaz.

"El Grito," as it is known in Mexico, ignited a burning desire for freedom in the hearts of Mexicans throughout the country, a desire that would see them through long years of constant struggle. Today is the day that the inextinguishable flame is celebrated and tribute is paid to a people with a fiercely determined human spirit and a great ability to endure and to fight for the freedom they love so much.

The constituents in my district are aware of that spirit, for our sister city of Ciudad Juarez, shares a common culture. The character of the people from my district, which is predominantly Hispanic, is infused with that undying respect and love for freedom.

It is appropriate that this week, when Mexican independence is celebrated, is also National Hispanic Heritage Week in this country. Mexican Americans in the Southwest and throughout the country share the pride of their cultural heritage by reaffirming the spirit of the independence movement through their political, social and economic contributions to our country. This struggle manifests in the Hispanic struggle for full employment and against discrimination.

The pride and nationalism displayed during this week transcends the international boundary and honors the spirit of freedom and independence valued by both Mexico and the United States. Today, I invite you to join me in honoring our Mexican neighbors as they commemorate their independence by joining in that famous cry that still rings in the hearts of Mexicans as well as Americans: "Via la Independencia."

A TRIBUTE TO JOHN MEGEL LAZO, THE AMERICAN GYPSY WARRIOR

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. LANTOS. Mr. Speaker, today an unprecedented Day of Remembrance of the thousands of Gypsies who perished in the Holocaust, prominent Romani leaders from throughout the world gathered in the U.S. Capitol for a ceremony of remembrance, tribute, and dedication to preserve this history for future generations to share. One giant of a man, who helped to bring about this public recognition, could not be present. John Megel died only a few days before he was to speak at the ceremony. The following tribute was written for him by Gabrielle Tyrnauer who is the chronicler of the Gypsy Holocaust. Gabrille's tireless efforts helped to bring to world consciousness the tragic fate half-a-million European Gypsies shared with 9 million Jews. The Nazi efforts toward genocide included both Jew and Gypsy. Gabrille encouraged Lazo to find a meaningful way to express his pain and outrage. These words are hers, mingled with his, as she writes:

He was a mountain of a man, sometimes soft-spoken and gentle, but even then a dormant volcano—and when he erupted it was something to see. Flames spewing in all directions, his great bulk projecting the words with oratorical flourishes that he never learned at school. His anger was like a tidal wave but free from malice or guile. A few moments later his eyes could be sparkling like the gentlest of wavelets, and he could suddenly dissolve tension with self-deprecating humor.

His anger was only incidentally aimed at individuals. His target was a great historic injustice to his people, the Rom, known to the world as Gypsies. "Half a million killed and not even a monument, a word of recognition" he would say. "My people laugh at me. They don't understand what all the fuss is about. Sure, Gypsies was killed, but Gypsies was always being killed. So what else is new?"

But for Lazo, who first learned about the Holocaust during the Eichmann trial, historical knowledge became a voyage of self-discovery and in the end obsession with the injustice of the world's indifference, with the maze of bureaucracy that diverted him from his clear goal of recovery the forgotten Holocaust of his people from oblivion and erecting a monument for all the world—but particularly for his own people—to see.

"They're saying the Holocaust never happened. The Rom, like the Jewish people, was witnesses that it did. Our ashes mingle in the crematoria of Auschwitz.

Lazo worked tirelessly for the goal of having the Jewish Gypsy connection in persecution and death recognized. "We was always together, you know that," he would say. "The Gypsies stole the children and gave them to the Jews so they could drink their blood." We would both laugh at this bitter twin-stereotype.

"I grew up with Jews in New York City," he recalled, "and with Irish, and Italians and Puerto Ricans. But it was only in the Jewish deli that I felt safe."

The Shrine of St. Anne de Beaupr' (Santanna) on the St. Lawrence River outside Quebec City is the site of a traditional pilgrimage for the Romani people in North America. But in recent years the number of Romani's pilgrims to Santanna had declined precipitously.

"That's where we can be ourselves," he would say. "Singing, dancing, feasting, talking at the Slava (feast.) You could meet relatives you never saw any other time. They would come from all over the United States and Canada."

In 1985 Lazo went to "Santanna" for a special reason. He drove in his white Cadillac made to his own scale. He was not a practicing but regarded this traditional Gypsy pilgrimage an important form of social cement for his people. Furthermore, there was to be an extraordinary ceremony at the Church of St. Anne.

Father Joshka, the French priest who had spent many years ministering to the Gypsies in Europe, was to be in Quebec to perform a special ceremony for the Romani victims of the Holocaust. The service, held in the crypt of the Gothic Church by the St. Lawrence, would be in their own ancient language, Romanes, which Father Joshka spoke fluently.

"It's the first time ever, "Lazo said with pride.

Last May Lazo's years of pounding on closed doors in Washington led to the first clear opening since the commissioning of a report on the fate of the Gypsy during the Holocaust.

Now there was a meeting with the U.S. Holocaust Memorial Council staff and its new executive director. A Gypsy Day of Remembrance was pledged. Also some representation in the Jewish commemoration for 1986 was granted. At the same time, a photographic exhibit about the Romani was assembled for the Congressional Human Rights Caucus.

Lazo's role in this exhibit was officially and publicly lauded and acknowledged. His role in bringing about today's ceremony was acknowledged by those who participated in the few moments of solemn silence in his honor.

Lazo was a restless man—some would say impatient. He wanted to blow down resistance with one giant puff. But his lungs and his heart grew tired with the gargantuan effort. He was a galleant warrior who was burned out by his inner fire. Today this ceremony is his greatest memorial in the world beyond his family and community—a world which he only learned to know in his last years. Today Rom, Jew, and Gentile gathered in our Nation's Capitol to commemorate the Romani victims of the Holocaust and to John Megel, the big, brash, American Rom who found in their death a mission for his life.

He was an authentic representative of his people. Even those who did not always agree with his tactics respected Lazo for his fervor and ferocity. His leadership and commitment will long be remembered—there is an empty place now where he would have stood so tall.

HONORING THE STATUE OF LIBERTY

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. KANJORSKI. Mr. Speaker, this year we celebrate the 100th anniversary of the quintessential symbol of American freedom—the Statue of Liberty. To commemorate this national event, Walter Kasian, one of my constituents who came to Ellis Island as an immigrant, wrote a moving tribute which I am pleased to share with my colleagues in the House of Representatives.

THE STATUE OF LIBERTY

My humble memories of long ago
One cold November dawn
Ocean liner was moving very slow
On the deck was hushing sound.
Whispering
America, America, America.
Our hearts beating with joy
Tears rolling down our faces
Mother hugging baby boy
Family joined in an embrace.
Whispering
America, America, America.
There she was in all her glory
Flaming torch in her hand
Lady Liberty—what a sight, what a story
Showing the way to a freedom land.
Whispering
America, America, America.
We had almost nothing, clothes on our back
Wealth of courage in our hearts
Few things in our burlap sack
With God's help, we will make our start.
Whispering
America, America, America.
We passed through the golden door
To begin new life living free
Following us there will be more
Tired and poor from across the sea.
Whispering
America, America, America.
Always remembering the engraved words on the Statue of Liberty
Give me your tired, your poor, your huddled Masses yearning to breathe free
The wretched refuse of your teeming shores.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!"

—WALTER KASIAN.

SETTLEMENT OF RAILROAD DISPUTE

HON. JOHN R. McKERNAN, JR.

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. McKERNAN. Mr. Speaker, today I join several of our colleagues in introducing legislation to provide for a settlement to the dispute between the Maine Central Railroad Co./ Portland Terminal Co. and the Brotherhood of Maintenance of Way Employees [BMWE].

I have been concerned, as are many Government officials, business leaders, and public

groups, over the impact of the dispute between these two parties on the Northeast and indeed the whole country. Although there has been some recent dialog between management and labor, enlightened self-interest has failed to produce an agreement.

It is clear that the BMWE has the legal ability and practical ability to initiate activities which could affect the national railway system. Therefore, because of concern that essential transportation services of the Nation may be disrupted by an escalation of this dispute, I believe that there is no alternative to congressional action to bring the dispute to an end.

On July 24, 1986, House Joint Resolution 683 was introduced to provide for a temporary prohibition of strikes or lockouts with respect to this labor manangement dispute. This resolution, which was enacted on August 11, 1986, established an advisory board to render a report concerning the progress of negotiations in this dispute, as well as findings of fact regarding financial and other related circumstances in the dispute, and recommendations for a solution. On September 8, 1986, the board submitted its report to Congress, recommending that:

"In the absence of an agreement between the parties disposing of this dispute no later than September 13, 1986, the Congress should enact legislation directing the parties to accept and apply the recommendations of EB [Emergency Board] 209. Should the parties be unable to agree as to all necessary details in applying the recommendations by October 1, 1986, any unsettled issues should be submitted to final and binding arbitration before an arbitrator designated by the NMB [National Mediation Board]."

Emergency Board 209 was established by the President on May 16, 1986, pursuant to the Railway Labor Act, when a strike by the BMWE threatened to spread to the Conrail system and beyond, posing a serious disruption of transportation services essential to the Nation. The Emergency Board recommended that:

"1. The carrier's proposal dated March 2, 1986 for job protection for then currently active employees, as subsequently modified and presented to the organization on March 3, 1986, should be adopted; the protective allowance to be $26,000.

2. The parties should negotiate a comprehensive agreement for system production maintenance crews to be used throughout the entire geographical confines of the Maine Central Railroad and the Portland Terminal Co. similar to those agreements negotiated on the Boston and Maine and the Delaware and Hudson rail lines of the Guildford System.

3. Consistent with its proposals of March 2 and 3, 1986, and in view of their past practice, the parties should agree to be bound by the results of the national negotiations involving rates of pay and health and welfare programs.

4. The parties should agree to handle changes in work rules and practices contained in notices which had been served prior to Executive Order 12557 under the orderly and peaceful procedures of the Railway Labor Act, as amended, up to and including mediation, and without resort to self-help."

Although the Congress has traditionally been reluctant to become unnecessarily involved in any specific collective bargaining process, there is precedent for congressional action in this regard, most notably the 1975 dispute involving the Norfolk-Southern Railroad in which Congress dictated specific wage levels. While I support the collective bargaining process and have long felt that only those parties directly concerned should be involved, I do believe that it is incumbent upon the Congress to ensure that transportaiton systems essential to the commerce of this Nation remain open.

The legislation we have introduced imposes the recommendations made by the Presidential Emergency Board, recommendations later supported by the special advisory board. It is important to note that not only have the provisions included in the bill been recommended by two independent panels, but aspects of the settlement provisions were offered by the railroad's management to the BMWE. I believe that this legislation is fair and provides the only opportunity to put this dispute behind us. Therefore, I urge my colleagues to support this bill.

DEPENDENT CARE BLOCK GRANTS

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Ms. SNOWE. Mr. Speaker, I rise in support of the 4-year reauthorization of the Dependent Care Block Grant included in the conference report on the Human Services Reauthorization Act of 1986. I commend the members of the conference committee for their recognition of the importance of this program.

The Dependent Care Block Grant, first funded in fiscal year 1986, provides grants to the States to establish needed child care services for children who otherwise would be at home alone while their parents are at work. The program provides before and after-school child care for these "latchkey" children at both school facilities and community centers. In addition, the Dependent Care Block Grant provides funds to establish community-based information and referral services on available child care.

The Congressional Caucus on Women's Issues, of which I am Co-Chair, has long been concerned with the issue of adequate child care for working parents. As more and more women are joining the work force, often out of economic necessity, more children are coming home to empty apartments or houses. The child care services funded through the Dependent Care Block Grant Program provide a safe, supervised care alternative for these children.

I believe these child care services are vital and I urge my colleagues to join me in supporting this program.

PAMELA EDWARDS' TRIBUTE TO THE U.S. FLAG

HON. JERRY HUCKABY

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. HUCKABY. Mr. Speaker, Pamela Edwards of Monroe, LA, has written a lovely poem in tribute to the U.S. flag. Pamela is confined to a wheelchair because of spinal muscular atrophy, but she has not let this handicap confine her. She enjoys reading and writing poetry, and one day hopes to become a writer and a journalist. I was impressed with her poem, "As I Raise My Flag," and wanted to share it with the Members of the House.

AS I RAISE MY FLAG

As I raise my flag which is red, white, and blue,
It reminds me of the hard times we've been through;
And a salute we should give to soldiers who were brave,
Because of the courage they showed and the freedom they gave.
As I raise my flag which is a meaning of being free,
I can't begin to express what I feel for thee.
For all of the millions of tears that were shed,
I hope and pray that better things lay up ahead.
As I raise my flag up toward the sky,
It seems to be as happy as a bird learning to fly.
Because America is such a beautiful land,
I know you are safe because you're in God's hand.

—PAMELA EDWARDS.

THE ROAD TO YALTA

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. COURTER. Mr. Speaker, President Reagan sent his personal assurances to General Secretary Gorbachev that Nick Daniloff is not a spy—one of the greatest examples of redundancy the world has seen since Premier Daladier hastended to assure Hitler that France had no hostile intentions against Nazi Germany. Hitler had cast his hungry eyes on Czechoslovakia, but graciously agreed at the summit to swallow only half of it, the Sudetenland. Daladier, Chamberlain, and most of the British Parliament expressed their gratitude to Hitler for helping arrange "peace for our time." Only Churchill and a handful of his supporters had the presence of mind to recognize Munich for what it was: "a total and unmitigated defeat for France and Britain. Daladier and Chamberlain might have denied it, but the summit of 1938 showed who was the real ruler of Europe.

President Reagan desperately wants a summit. He does not reflect on the real intention behind Gorbachev's insolent swallowing of Nick Daniloff. What will happen if Gorbachev suddenly relents and sends Daniloff home, just before the upcoming summit? Wouldn't the world be as grateful to Gorba-

chev for ending the crisis he alone had caused as it was to Hitler in 1938? Indeed, how could President Reagan avoid showing his gratitude by taking "concrete measures" to solidify the newfound U.S.-U.S.S.R. "friendship"—perhaps by sacrificing his SDI dream?

Those who think the Daniloff crisis is a bothersome diversion from "more important policy considerations" such as arms control and summitry should recognize that on the contrary in the Soviet leadership's mind they are closely intertwined. The ultimate cost of the Daniloff hostage incident is likely to be far higher than President Reagan is willing to acknowledge today in his pre-summit mode.

William Safire in the following column has described the Daniloff incident as a new road to Yalta. Over and over again, history demonstrates that negotiating with despots under some explicit or implicit threat is a danger to peace and security. It is a bitter disappointment that by arranging to trade our hostage in Moscow for the Soviet spy in the U.N. in order to keep his summitry on track, our conservative President has shown a most unconservative contempt for history. History may well return the favor in kind:

THE ROAD TO YALTA

(By William Safire)

The new Soviet equivalent of our National Security Council staff has just scored its first victory. In the Daniloff affair, Mr. Gorbachev went eyeball-to-eyeball with Mr. Reagan and it was the American who blinked.

The Soviet N.S.C. is headed by my old friend Anatoly Dobrynin, whose 26-year experience in the U.S. was applied to the trick of gaining diplomatic equivalence for a captured Soviet spy and an American seized as hostage. His chief deputies are Georgi Kornienko, long the backbone of the Gromyko Old Guard at the Foreign Ministry, and Gen. Viktor Starodubov, the Ogarkov protégé seeking Soviet Army modernization through limitation of American strategic arms.

This heavyweight trio, with direct access to the K.G.B.-dominated Politburo, promptly established its supremacy over the pickup band of second-string outcasts from Defense and State under John Poindexter, an inoffensive note-taker who carries the title of national security adviser but apparently has trouble getting an appointment with the White House spokesman at times of crisis.

Anatoly & Co., were thus able to seize a hostage, elicit an immediate response from the White House that this outrage would not endanger the summit, and sucker our State Department into making a first offer to settle. That enabled the Russians to make a counteroffer equating their spy with our hostage, remanding both to embassies pending trials. Mr. Reagan swallowed this personal humiliation, sending a chagrined and testy George Shultz forth to pretend that what was obvious to the whole world was not so, and on that note ushered in the Third Era of Détente.

What was needed was an suspension of all visits and conferences, in a straightforward, Rooseveltian "Daniloff alive or summit dead." What was delivered was a Carteresque cave-in, as if the well-being of the hostage came before the national interest. Mr. Shultz, is now reduced to pleading for the inclusion of some dissident to provide a fig leaf for what is clearly the spy-for-hostage swap. The more he insists publicly that what is true is not so, the more he erodes America's credibility and underscores the Russian triumph.

Let's face it: Mr. Reagan's ill-advised letter to Mr. Gorbachev formally testified to our hostage's innocence and the Soviet Government subsequently took the position that this testimony was a lie. Never in such a personal way has a Russian leader put his thumb in the eye of an American President.

Why has Mr. Reagan reacted by blinking amiably and pretending this has not happened? Perhaps because he has been told that the Sixth Round at the Geneva talks is his last chance at peacemaking. An agreement is already in place on intermediate-range missiles, with the British and French arms to be outside the deal; the difference on delay in Star Wars testing has narrowed to two years, and on-site inspection will be introduced. Secretary Shultz, maneuvered into dealing with a second-level counterpart, will assure Foreign Secretary Shevardnadze we will boost the Soviet economy and welcome the Russians into the Middle East as the Arabs' broker.

To retire in such a blaze of détente, Mr. Reagan has been persuaded that nothing—not even the most direct slap in the face administered to this Government by the Russian leader—should stand in the way of Geneva's Round Six. Mr. Dobrynin's probe has shown the newly pliant Reagan to be all too eager for a summit; the Soviet leaders, with a China rapprochement in the offing, can exploit that debilitating eagerness in shaping this generation's Yalta.

The next test of Mr. Reagan's will and of Mr. Dobrynin's skill will take place on Oct. 1. Last March, before last-quarter desperation set in, a Reagan order was issued notifying the Russians that the huge nest of spies that goes by the name of its U.N. delegation had to be reduced by 40 percent over the next few years. (The Russian spy caught making a payoff for secrets was part of this K.G.B. branch office.) In two weeks, the first deadline for reduction comes up: of the 275 on staff, we expect 30 to be shipped home and not replaced.

Will the Russians, on a summit roll, submit to this diminution of our hospitality? In fact, as the Administration plans to resist Congressional cuts of our payments to the U.N., our reduction demand is all too modest and the timetable too slow. Two hundred—all likely agents—should be shipped out this year.

The Russian delegate, on orders from his K.G.B. chauffeur, is shrugging off the Reagan order. We shall soon see if the summit-happy President is willing to accept another hard shove down the road to Yalta.

ST. STEPHEN'S CELEBRATES CENTENNIAL

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. KANJORSKI. Mr. Speaker, it is my pleasure to bring to your attention the 100th anniversary of the St. Stephen's Roman Catholic Church in Plymouth, PA. I am proud to join in the celebration of this centennial, and I am glad to have the opportunity to share this event with my colleagues in the House of Representatives.

In the summer of 1885, only a handful of families lived in Plymouth. Among them, John Vavrek, Sr., John Menovsky, John and Andrew Kundrak, John Basta, and John Puhalla discussed establishing a parish and building a church. The following year, Father Joseph Kossalko came to Plymouth and joined with the group in approaching the Most Reverend Bishop O'Hara. Father Kossalko was later appointed the first pastor.

After raising several hundred dollars from area families, the church was built. For the first 2 years, services were held in the basement of the new building, until the main structure of the church could be completed. St. Stephen's was then the third Slovak parish in the United States.

The original church building was razed in 1953, and construction for a new building was begun. Under the leadership of Father Stephen J. Gurcik, who was originally appointed in 1943, St. Stephen's began construction in September 1953 and completed the new building in 1955. Father Gurcik also guided the parish in the construction of a new rectory after Hurricane Agnes caused considerable damage to the church, as it did to the entire area. Father Gurcik retired the following year as Pastor Emeritus, and the current pastor, Father John E. Zipay, was appointed.

Mr. Speaker, it is a great honor to call your attention to this milestone in the history of this fine church. I am sure that you join me in wishing all those involved with this exciting event our sincerest and most heartfelt congratulations.

THE STUEVE FAMILY HONORED ON OCTOBER 2, 1986

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. LEWIS of California. Mr. Speaker, I am grateful for this opportunity to share with you and my fellow Representatives an inspiring example of a family dedicated to their dairy business and to their community. The Stueve family of Chino, CA, will be honored by the Chino Valley Chamber of Commerce at the 11th Annual Dairy Awards Dinner on October 2 of this year. The "Dairyman of the Year" award will be presented to the family in recognition of many of their contributions to the dairy business.

In the late 1930's three Stueve brothers named Ed, Harold, and Elmer left their small family farm in Frohna, MO, to pursue their dream of starting their own dairy. They worked their way to California, and have been a genuine success ever since.

The brothers were the first to start a dairy operation in the Chino Valley. Their desire was to produce the best product possible for their customers. From a modest beginning, Alta-Dena grew rapidly. By 1950, the dairy had expanded its farming operation to Chino. Today, they have the largest dairy operation in California, owning or leasing a total of 693 acres in the valley.

The herd reached a high of 17,000 at one time—from the 61 cows and 2 bulls with

which they began. Today the dairy milks over 6,000 cows with a combined herd of over 15,000. This, along with milk purchased from producers, allows the dairy to process over 100,000 gallons of milk a day.

The eldest brother of this outstanding family is Elmer A. Stueve. He was the first to come to California in 1936. After he was discharged from the service, he joined the partnership in 1945. Since joining the partnership, Elmer has had the important responsibility of the design, construction, and maintenance of the dairies, plant, and offices.

Elmer married Ruth Anderson in October 1946. They have three children: Judy, Earl, and Lynn. Elmer has retired and Earl has assumed some of his duties. Judy also works at the dairy, as does Lynn's husband, Jim Heinz. Elmer and Ruth have five grandchildren.

Edgar E. Stueve worked at Foothill Dairy as a milker and deliveryman before forming a partnership with his brothers. Since the inception of Alta-Dena Certified Dairy, Ed has been in charge of the farm operation and the livestock. He especially enjoys overseeing the buying of all the feed for the animals.

Ed married his childhood sweetheart, Vera "Bee" Vogel, in 1940. Bee is now the office manager of the City of Industry dairy office. Ed and Bee have two daughters, Jackie and Jean. Jackie works in the dairy's office in City of Industry and her husband, Bob Arthur, is ranch foreman in Chino. Jean is married to Nelson Behrend, an architect. Ed and Bee Stueve have five grandchildren.

Even with a busy family life and business to manage, Ed and Bee find the time to be active in their community. Ed is active in the Lutheran Church in Monrovia and the Lion's Club and has been on the board of directors of the Good Shepherd Home of the West for retarded children. Bee is currently serving on the board. Ed has just been reelected for another term on the board of the Milk Producers Council.

Harold J.J. Stueve went into business for himself as an independent route man in 1942. Three years later, Ed and he went into partnership. Harold is now the business head of the partnership. Through his leadership and courage, the dairy has grown and expanded to one of the largest milk production/distribution systems in California, with sales extending throughout the country.

Harold married Vernice Evans in 1942, and they became the parents of four children. The eldest son, Lloyd, runs the heifer operation in Oakdale. Cleson is a sales representative for the company, and David runs one of the dairies in Chino. Donna is married to Boyd Clarke, the general manager of the dairy. A number of years later, Harold married Ruth Porter, also widowed and the mother of three children, Charles, Nancy, and Mary Ann. Harold and Ruth have a combined total of 17 grandchildren.

Throughout his career, Harold has remained active in civic, community and church affairs. For example, he ably served as both mayor and city council member of Monrovia. Some of his current involvements include serving as president of the Federal Land Bank in Rialto. He also serves on the American Association of Medical Milk Producers and Operating Committee. In addition he has been honored for his varied achievements by many California State assemblymen and senators.

Mr. Speaker, I think the reasons for honoring the Stueve family are clear. They represent the great entrepreneurial force that has made America the strong and spirited country it is today. In their quest for success, they have not forgotten the backbone of our Nation, the family. I am proud indeed to represent a family like the Stueves, and I congratulate them on being the deserving recipients of the "Dairymen of the Year" award.

SUPPORT OF H.R. 5016 (FOR THE RELIEF OF SUENG HO JANG AND SUENG IL JANG)

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. BIAGGI. Mr. Speaker, as author of H.R. 5016, I rise in support of its passage and ask that my colleagues assist in having this legislation become law. I believe that this bill is worthy of consideration at this time as it involves the future of two promising young men, who have known tremendous sorrow in their short lives.

H.R. 5016 was drafted shortly after Korean Air Line flight No. 007 was shot down over the Sea of Japan on September 1, 1983. Included in the 269 passengers and crew members who lost their lives on that ill-fated flight were the parents and two younger brothers of the two young men on whose behalf I have introduced this bill.

The Jang family had come to the United States under the terms of the Treaty/Trade Agreement and had been issued E-1 visas. They had been in New York for 4 years, where Mr. Jang had been the chief mechanic for Korean Air Lines. He was called back to his native land by the company in August 1983, however, had wanted his two elder sons to remain in the United States to complete their education. This too was the dream of these two young boys.

Not only did these youngsters lose their parents and brothers on that dark day, but their dream of completing their education in the United States was shattered as well. Under the terms of the Treaty/Trade Agreement, their visas became invalid with the death of their father. They were informed that they no longer had any status in the United States and would have to return to Korea.

H.R. 5016 would permit these two young men to remain in the United States as permanent residents. They have lived here now for a total of 7 years and have come to think of the United States as their home. They are now enrolled and studying at fine institutions, where they have excelled. The elder of the two is in an Economics Masters Degree Program at New York University, while the younger is studying at the Cooper Union, where he had been accepted based solely on his exceptional artistic ability.

Nothing will ever take away the pain and loss these young men have experienced, and I firmly believe that nothing positive will come of their having to return to Korea, after they have developed such "roots" in New York. We are discussing young men who will prove to be assets to our society.

These are gifted young men, who have known tremendous loss in their short lives. I can see no purpose in having them return to their native land, in which they have not lived for more than 7 years, and in light of the senseless, tragic manner in which they were left orphans, I respectfully request that H.R. 5016 be passed and that Sueng Ho and Sueng Il Jang be granted permanent residency in the United States.

THE TEACHING OF VALUES

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. BENNETT. Mr. Speaker, I call attention to the following editorial entitled, "The Teaching of Values" from the Boston Globe of September 2, 1986. Congress has had a degree of leadership in this matter as well as the administration. Legislation has been passed in recent years which made block grants money available for educational developments along the line discussed in this editorial. Congress itself has set up ethics committees for itself and considered ethical problems with regard to campaign financing and many other matters, all of which would not have been given very much attention some years back.

[From the Boston Globe, Sept. 2, 1986]

THE TEACHING OF VALUES

As the nation's schools reopen this week, the teaching of values in the classroom is finding renewed favor. New York Governor Mario Cuomo has joined President Reagan and Education Secretary William Bennett in urging the nation's teachers to enrich the moral content of what they teach.

Youngsters face moral choices of increasing complexity. Ideally, the schools should help students choose the wiser course of action. There is a consensus that this can be done without contravening the Supreme Court's restrictions on the teaching of religion in the public schools.

Cuomo distinguishes between explicitly religious values and civic values, such as respect for the law and the environment and opposition to drug addiction and vandalism. This is probably a valid distinction which a competent teacher could successfully maintain. It has to be recognized, however, that the subject of values is a potential minefield of controversy.

The family is normally the incubator of a child's values. A school can reinforce those values. It is more difficult for a school to inculcate values that the society nominally shares but which many families in reality do not practice.

Nevertheless, well-run schools and inspiring teachers can be a shaping force in children's lives even if they come from problem-ridden homes. Indeed, for some children from unhappy homes, school becomes an oasis of order and tranquility in a disordered world.

Homes and schools have a giant rival. Television is today's most powerful teacher. Although television could be a teaching medium, it has developed in this country as a medium for selling products by providing

amusement. It encourages passivity and escapism which are of no help to students who need to learn self-discipline and to postpone gratification if they are to complete the long, serious task of getting an education.

Americans have faith in education. It is central to this country's sense of itself as a land of opportunity. Schools still perform their great mission of keeping open the doors of hope. But too much should not be asked of them. Living by sound values and passing them on to the next generation are the work of the whole society. If adults take drugs, commit white collar crime, or lead lives of self-indulgence, they cannot look to their schools to provide their children with better values.

BUFFALO BANK'S LOW INTEREST RATE CREDIT CARD WORTHY OF PRAISE: OTHER FINANCIAL INSTITUTIONS SHOULD FOLLOW SUIT OR FACE FEDERAL LEGISLATIVE ALTERNATIVES

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. LAFALCE. Mr. Speaker, as the public debate continues on legislative alternatives to astronomically high credit card interest rates, I wanted my colleagues to be aware of the commendable action taken in this area by the Key Bank of Western New York, headquartered in Buffalo. Specifically, Key Bank has decided to offer its customers a credit card with a 9.9 annual percentage rate. This rate is less than half the 21 percent annual rate still being charged by many financial institutions on their credit cards.

Key Bank will guarantee the 9.9 annual percentage rate on its credit card for over a year—through the end of 1987. In addition to the 9.9 percent annual rate, Key Bank's credit card would have a $25 annual fee. Also, individuals applying for the credit card would be subject to a customary credit check.

Mr. Speaker, Key Bank has taken a bold and much-needed step to give consumers a fair break in the area of credit card interest rates. The fact that most financial institutions have failed to lower their credit card interest rates at a time when their own cost of money has fallen dramatically is unconscionable. After all, the Federal Reserve Board has lowered the discount rate—the rate it charges banks to borrow money—four times this year. It is now 5½ percent.

I am delighted that it is a western New York bank that has chosen to lead the way in lowering consumer credit card interest rates to more reasonable levels. In my view, if Key Bank can offer a 9.9 percent interest rate on credit cards, then other banks should be able to offer that rate or, at the very least, come close to it. Financial institutions should stand up and take notice of this action. If they continue to ignore the reality of lower interest rates and gouge the consumer through astronomically high rates, Congress will clearly pass legislation aimed at forcing banks to lower those rates.

The House Banking Committee's Subcommittee on Financial Institutions, on which I serve, recently approved legislation which would require financial institutions to more clearly disclose in their credit card advertisements and solicitations important consumer information about their credit cards, including the annual percentage rate, annual fee, and any applicable grace period. In addition, the House Banking Committee's Consumer and Coinage Subcommittee recently considered legislation that would palce a ceiling on credit card interest rates. Although the subcommittee decided not to report the legislation to the full Banking Committee at this time, there are likely to be future efforts in Congress to cap credit card interest rates if banks do not reduce their rates in response to market forces.

Financial institutions should look carefully at the House Banking Committee's actions. If they do not take steps soon to lower their credit card interest rates, Congress will force them to do so. This is particularly true when a western New York bank has demonstrated that it is feasible for banks to offer reasonable, consumer-oriented rates. Mr. Speaker, it is my hope that other financial institutions will follow suit in lowering their credit card interest rates.

MRS. MAE GREENBERG'S 100TH BIRTHDAY

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today to celebrate a truly wonderful occasion: the 100th birthday of Mrs. Mae Greenberg of Forest Hills, NY.

Mae Greenberg arrived in New York from her native Detroit over eight decades ago. She married the late Harry Greenberg, and modeled sportswear for his company. They brought into the world a daughter, Anita, who is survived by her husband, Harry Himber, who will proudly attend the birthday party that is being held—at Mrs. Greenberg's request—at Forest View Nursing Home, where she has lived for the past 2 years.

Not only has Mrs. Greenberg modeled, but she had a speaking role and was mentioned in the credits of the movie "PT 109."

Today, Mae Greenberg is an active registered voter, and remains up to date on current events; she recently gave a speech on Soviet Jewry. She feeds her interest in history by reading countless biographies and autobiographies. She also takes part in her immediate environment as an active member of the Resident Council at Forest View.

Mr. Speaker, Mae Greenberg represents American life at its best. How many of us, even those of us in this Chamber, will remain actively involved in the affairs of our Nation 30, 40, 50, or 60 years from now? Yet here we find a woman who, as her 100th birthday approaches, not only votes regularly, but also is constantly grounding herself in history as well as the major issues of our day. We would do well to look to her as an example.

Mr. Speaker, I call now on all of my colleagues in the U.S. House of Representatives to join me in congratulating Mrs. Mae Greenberg as she celebrates her 100th birthday, and in wishing her many happy returns on the day and many more rewarding years to come.

EXPLANATION ON ABSENCE DURING CONSIDERATION OF H.R. 5484, THE OMNIBUS DRUG ACT

HON. JERRY HUCKABY

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. HUCKABY. Mr. Speaker, due to the fact that Louisiana's primary is September 27, I was in my congressional district last Thursday, September 11, attending several functions that had been scheduled for weeks in advance. So, I was unable to cast my vote on the final passage of H.R. 5484, the Omnibus Drug Act. Had I been present, I would most assuredly have voted in favor of final passage, as I am an original cosponsor of the legislation. I had asked the pair clerks to pair me "for," but it is my understanding that there was no Member of Congress who wanted to be paired "against," so they were unable to pair me. As such, I want to state for the record that I strongly support H.R. 5484 and would have voted in favor of final passage of the bill, had I been physically here.

THE INTRODUCTION OF LEGISLATION TO PREVENT THE DEPARTMENT OF DEFENSE FROM ALTERING EXISTING MILITARY CARGO PREFERENCE LAW "OUR NATION'S SECURITY DEMANDS STRONG CARGO PREFERENCE"

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. MANTON. Mr. Speaker, today, I and my distinguished colleague from Virginia, Mr. Bateman, are introducing legislation to stop the implementation of an ill-advised Department of Defense rule which would devastate our Nation's merchant marine fleet by dangerously meddling with existing cargo preference law.

Eighty-two years ago, Congress passed the Cargo Preference Act of 1904. This legislation requires the exclusive use of U.S.-flag vessels in the transportation by sea of military cargoes unless the President finds the rate charged for the use of those vessels to be "excessive or otherwise unreasonable." Congress passed this law because it believed a viable domestic fleet offers both defense and commercial benefits to the Nation.

For 82 years cargo preference for military cargo has served the country and our merchant marine well both in peacetime and during periods of national emergency and war. This law has stood the test of time, and it has

remained inviolate. The security of the Nation has rested in the role played by this cargo preference and, until now, no one has deemed to challenge the underlying principles of cargo prefernce by tampering with existing law.

Yet, the Reagan administration has continually chosen to ignore the history and supporting basis for this longstanding maritime policy. In only the latest of a series of attacks on the American merchant fleet, the administration has sought to undo eight decades of commercial and national security benefits ensured by cargo preference for military cargo.

First, the Department of Defense attacked the very basis of cargo preference by arbitrarily denying access by Rainbow Navigation, Inc., a U.S. flag shipping line, to the Iceland trade. Such a decision, if allowed to stand, would deal a crushing blow to this domestic marine corporation. Fortunately, two Federal courts found in favor of Rainbow Navigation, confirming that the rates charges were neither excessive nor unreasonable in accordance with the law, and that the Secretary's determination in this regard was not a product of reasoned decisionmaking.

More recently, the administration took a new tact in attempting to scuttle military cargo preference—a blatant effort to circumvent the court ruling and congressional intent. On July 28, 1986, the Department of Defense published a Notice of Proposed Rulemaking [NPR] which will, in effect, give the Secretary of the Navy the authority to unilaterally waive the Cargo Preference Act of 1904 on a case-by-case basis. This rule will establish rigid guidelines that would unnecessarily deny cargo to U.S. flag operators and, thereby, force many of them out of business.

Mr. Speaker, the elimination of cargo preference for military cargo would have a deleterious effect on the viability of our domestic merchant marine. We are already witness to a serious and dangerous decline in our Nation's merchant marine fleet. The current world-wide shipping depression, during which every large operator has recorded significant losses, has left the U.S. merchant marine in dire straits. Since 1946, the U.S. merchant marine has declined from more than 3,000 ships actively engaged in U.S. ocean borne foreign trade to just 370 active vessels today. Only some 5 percent of America's trade is now carried on U.S. flagships.

The current U.S. merchant marine would be hard pressed to support the Nation's security requirements in time of national emergency or war. Certainly any action which further weakens our domestic fleet would only erode our Nation's security even more. Obviously, the potential loss of nearly $200 million the U.S. fleet earns on military cargoes through existing preference laws would have a disasterous effect on this already strapped industry and further weaken the active ocean-going U.S.-flag merchant fleet.

Mr. Speaker, this bill will put an end to the Department of Defense's frontal assault on our cargo preference laws and our Nation's security. More than 30 years ago President Eisenhower called the domestic merchant marine our "Fourth Arm of Defense." We must make certain that this fourth arm remains strong and in working order now and for the coming decades.

THE CONGRESSIONAL CAUCUS FOR ETHIOPIAN JEWRY

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. FEIGHAN. Mr. Speaker, tomorrow, September 17, 1986, rabbis from around the United States will gather on Capitol Hill for a Rabbinic Call to Conscience on the subject of Ethiopian Jewry. Rabbi Bruce N. Abrams of Temple Ner Tamid in Euclid, OH, along with other members of the American Rabbinic Network for Ethiopian Jews, participated in the planning of the conference and will be in Washington to meet with Members of Congress. The Call to Conscience gives us an opportunity to focus clearly on the plight of nearly 10,000 Jews who remain inside the famine-racked Gondar province of Ethiopia.

Over a year ago, America and Israel joined forces to rescue 8,000 Ethiopian Jews who had escaped from the famine and civil war of Ethiopia to the arid plains of the Sudan. Acting in secret, the United States worked with the Israel Government, giving them the economic and military support needed for two airlifts—Operation Moses and Operation Joshua.

Those rescue missions gained notice around the world. But in the Middle East, Israel and the United States were roundly criticized. The Communist Government of Ethiopia demanded that the liberated Jews be returned. The Government of Libya condemned us and asked the world community to retaliate. The Saudi regime added their voice of condemnation. Even Egypt's Government, while refraining from any outright criticism, failed to offer either words or efforts in support of the rescue.

Despite the attacks, Americans and Israelis can be proud of the rescue mission. Israel, suffering from severe economic problems, delivered thousands of Ethiopians from sure starvation and offered them a life of freedom and opportunity in the democratic Jewish state. As William Safire noted in a New York Times column at the time: "For the first time in history, thousands of Black people are being brought into a country not in chains, but in dignity, not as slaves, but as citizens."

Today, however, many Jews in Ethiopia still struggle. Nearly 10,000 Ethiopian Jews remain in Gondar province. They are mainly women and children, the elderly and the infirm. Denied the opportunity to join their families in Israel, they also face harassment from Ethiopia's Government. Hebrew schools have been closed, community leaders have been arrested, and the special permission required for holiday gatherings is often denied.

The Rabbinic Call to Conscience will help Members learn of the suffering that Jews in Ethiopia are encountering, and it will encourage our efforts to assist all those who continue to suffer in that troubled land. At the same time, I would like to commend my colleagues from New York, Mr. Solarz and Mr. Gilman, for their leadership in organizing the Congressional Caucus for Ethiopian Jewry. This caucus can help coordinate activities in the House to assist the thousands of Jews still trapped in Ethiopia realize their dream of living with their families and loved ones in Israel.

May I take this opportunity, Mr. Speaker, to urge all my colleagues to join in this humanitarian effort.

PERSONAL EXPLANATION

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. DORGAN of North Dakota. Mr. Speaker, when the House voted on final passage of the Drug Enforcement, Education, and Control Act (H.R. 5484) on September 11, 1986, my affirmative vote was not recorded electronically for inexplicable reasons.

I was present and voting, as I was on all amendments to the omnibus drug bill. I would like the record to show that my vote on rollcall No. 378 should have been registered as "yea." As my statement at H 6727 of the September 11 CONGRESSIONAL RECORD clearly indicates, I am a strong supporter of this legislation as a vehicle for stemming the rising tide of drug abuse in this country.

AMENDMENTS TO FIFRA

HON. E. THOMAS COLEMAN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. COLEMAN of Missouri. Mr. Speaker, today, I am submitting two amendments to the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA], H.R. 2482 as amended by H.R. 5440, to close a potentially dangerous gap in Federal law governing the storage of suspended or canceled pesticides.

My first amendment would require that any producer, exporter, distributor, or seller of pesticides possessing suspended or canceled pesticides report its quantities and locations to appropriate local, State, and Environmental Protection Agency [EPA] officials.

The second amendment authorizes EPA to inspect facilities where canceled or suspended pesticides are stored. Since reporting in and of itself is not sufficient to ensure the safety of people living and working near stored, suspended or canceled pesticides. I think it is essential to give EPA the authority to exercise its discretion in conducting inspections at storage facilities, especially in cases where there is long-term storage of a high volume of these pesticides.

Just over 1 month ago, ethylene dibromide, known more commonly as EDB, was discovered leaking from 1- and 5-gallon containers in the basement of a warehouse in St. Joseph, MO. The leak was found by two policemen who, while investigating a possible burglary, were overcome by the fumes of this toxic pesticide. At the time, the only government officials who knew that 64,000 gallons of

EDB were stored at this warehouse were employees of the EPA Office of Pesticides here in Washington. Local fire and health officials were unaware of the presence of the EDB. Officials of the Missouri Department of Natural Resources and regional EPA officials did not know of the location of the stored pesticide. Had there been a fire at this warehouse, the responding firefighters would not have known that EDB and 245-T were involved and that they had a chemical fire on their hands. A fire at this warehouse could have caused serious injury and have had long-term environmental consequences.

In the near future, EPA will be reviewing the registration of a multitude of pesticides for renewal and they predict that many will be suspended. The amendments I will offer to FIFRA are timely and necessary to provide for the future protection of all of our communities.

SAN FRANCISCO'S MASAYA KAKEBA BUILDING

HON. SALA BURTON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mrs. BURTON of California. Mr. Speaker, on August 11, 1986, a branch of the Department of Social Services of the city and county of San Francisco moved to a new facility located at 1440 Harrison Street. This new building is dedicated to the memory of one of the department's most able and devoted employees, the late Masaya Kakebe. I would like to share with my colleagues the life and accomplishments of Mr. Kakebe at this time.

Masaya Kakebe was born on Janurary 30, 1930, in San Francisco. His parents, both Isseis—first generation Japanese-Americans—were early immigrants to the United States. His mother was originally from the Fukuoka Prefecture and his father was from the Yamaguchi Prefecture in Japan. Masaya was educated in his early years through the San Francisco public school system, until the declaration of World War II in 1941 when he, his parents, and his sister May, were forced with 110,000 other Americans of Japanese ancestry into relocation camps spread out through the deserted and desolate parts of the Western United States. The Kakebe family was relocated first to the Pomona Assembly Center and finally to the Heart Mountain Relocation Center near Cody, WY, where they remained until September 1945.

Like many other Nisei and Issei families, the Kakebes returned to San Francisco after the war where Masaya continued his education at Commerce High School. He attended the City College of San Francisco and the University of California at Berkeley. Upon completion of his degree in business administration, Masaya served 2 years with the Corps of Engineers in the U.S. Army Air Force. He returned to the Bay Area after his military service and attended night school at the Golden Gate University while he worked at Laguna Honda General Hospital as an accountant during the day.

Mr. Kakebe embarked upon what was to be an outstanding career in public service in San Francisco. Through the years, his accomplishments gained him various positions of increasing responsibility in the city: Administrative assistant at Laguna Honda, senior accountant with the comptroller, assistant administrator of San Francisco General Hospital. In 1969, Mr. Kakebe came to the Department of Social Services as director of administrative services and was promoted to assistant general manager in 1976.

Masaya Kakebe also served the Japanese-American Community in San Francisco. He was an active member of the board of directors of the San Francisco Japanese-American Citizens League. He served as a resource person for the Kimochi, Inc., providing guidance and information on social service and other human resource programs for the Issei and Nisei.

Masaya Kakebe is remembered with respect and affection as a man of unchallenged integrity, compassion, and sincere dedication to the service of those who were less fortunate. He was a civil servant who truly believed in the "privilege of public service" and demonstrated for many that the exercise of judgment, talent, and caring does make a difference in a bureaucracy.

In the dedication of this new building, the Department of Social Services is proud to honor Masaya Kakebe and the principles for which he stood. I hope that my colleagues will feel as honored as I in remembering Masaya Kakebe in this way.

BERT AND EVA SKILES: 50 GOLDEN YEARS TOGETHER

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. DYMALLY. Mr. Speaker, on November 15 of this year Bert and Eva Skiles will celebrate their 50th wedding anniversary. I want to take a moment to wish them the best for their next 50 years and hope that we might all be as lucky as they.

Many of my colleagues know that I was a teacher before entering political life. I am especially mindful of this milestone in Bert and Eva's life because of the quarter century that Bert and Eva have dedicated to public education in the Orange Unified School District in southern California. For all that time, Bert was an elected member of the school board. All of us in political life know what an accomplishment it is to have the voters return us to their service continuously over that long a period. Anyone so fortunate is obviously doing something right for the constituents. Eva and Bert are both deeply committed to giving our children the best education possible. And over their adult lifetimes, they have put their effort where their commitment is. For my money, that is deserving of the highest commendation. Our children are our best hope for the future. Through their work in the education of our children, Bert and Eva have done much to shape a bright future for all of us.

I am sure the two of them are not expecting to have their accomplishments recognized here in the U.S. House of Representatives. But they have both long been keenly interested in politics, and follow State level politics especially carefully. This will be a well deserved and pleasant surprise for them. I think it especially fitting that these two people who exemplify the best in citizenship, the best in family tradition, the best in participatory democracy be recognized here in the seat of that representative government which their responsible citizenship has helped to make possible. Bert and Eva, we in your House of Representatives salute with admiration your 50 productive years together. May you have at least 50 more.

POW/MIA RECOGNITION DAY

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. GILMAN. Mr. Speaker, it is now 13 years and 8 months since American involvement in the tragic conflict in Southeast Asia came to an end. Over 11 years have elapsed since the fall of Saigon to the Communists.

And yet, today, we still do not know the fates of more than 2,400 American heroes who never returned home from that conflict.

We in Congress have designated this coming Friday, September 19, 1986, as National POW/MIA Recognition Day.

This is an appropriate time for our veterans and service organizations through our Nation to conduct appropriate ceremonies in honor of our missing heroes. It is a time too for our schools, our educational institutions, and service groups to remind our Nation and the world that 2,400 Americans are still missing in action.

Most importantly, it is time that we, in Congress, let the administration know that we fully support its efforts to resolve this issue, and to send Hanoi a united signal that relations between their nation and the free world will not be normalized until all of our American heroes are fully accounted for.

ESTABLISH POVERTY POINT AS A NATIONAL MONUMENT

HON. JERRY HUCKABY

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. HUCKABY. Mr. Speaker, today I am introducing a bill to designate Poverty Point in the State of Louisiana as a national monument. Poverty Point, located in my congressional district, is the site of the earliest aboriginal culture group yet discovered in the lower Mississippi Valley, dated between 700 and 1700 B.C. This 400-acre area contains a complex of manmade earthen mounds, with the central group consisting of six rows of concentric octagonal ridges, 5 to 10 feet high. The dominant feature of the site is a great effigy mound, depicting a spectacular bird in flight. It measures about 700 by 800 feet at its base and rises about 60 feet into the air. It is unknown for what purpose these structures served, but their age, size, and character

clearly place them among the more significant archeological finds in America today.

The people who fashioned Poverty Point had probably migrated to this part of the world from Asia via the Bering Strait and Alaska. An apt comparison can be made to the Egyptians who dragged huge stones across the desert to build the great pyramids; it has been estimated that some 5 million man-hours were devoted to building these massive structures at Poverty Point, with these ancient laborers carrying the earth to the site in baskets of about a 50-pound capacity.

One of the remarkable aspects of this culture was the people's efforts to import materials from great distances and their ability to adapt to the environment. Hard brick-like clay balls were fashioned, heated, and used for cooking because there were no stones available at Poverty Point for this purpose. Flint knives and spears were made from stones from 30 miles away, and soapstone vessels were made of material from the mountains of North Carolina 500 miles away. There are many other rich archeological treasures at Poverty Point, such as a unique crematory site and a museum display of weapons that predate the bow and arrow.

One of the most important finds was the discovery of post holes—carbon deposits—which indicate the placement of posts that were used in sightings of the autumnal and vernal equinoxes, as well as the summer and winter solstices.

This could prove a link to Stonehenge in England, thereby dating Poverty Point back many more thousands of years and completely changing ancient history as it is being taught today.

I have had a continuing interest in affording Poverty Point some kind of Federal protection since 1977. However, the State of Louisiana did step in soon after and declared the site as a State commemorative area.

Because of the serious financial situation our great State is in right now, it is unfortunate that the State government was forced to close all its commemorative areas September 1. There is only a roving maintenance and security crew to oversee all our commemorative areas, and the public has no access to Poverty Point.

Poverty Point is already on the list of National Historic Places and is recognized as a historical national landmark by the National Park Service. It is considered nationally significant by the standards set in the Historic Act of 1935 and by its accessibility, suitability, and feasibility aspects. I cannot foresee any objections or obstacles to establishing Poverty Point as a national monument.

Louisiana State Governor Edwin Edwards has endorsed my proposal, and the people of Louisiana, plus visitors to our State, students, and researchers are overwhelmingly supportive of keeping Poverty Point open to the public.

Overall, I think we need to provide adequate protection to this valuable resource, so steeped in historical and archeological information. Although there is little legislative time left this year, this bill is noncontroversial and straightforward. I urge its quick consideration and approval by Congress.

PHILIPPINES SUGAR QUOTA LEGISLATION

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. MURTHA. Mr. Speaker, as a member of the Defense Appropriations Subcommittee, I have long been concerned about a strong national defense. For this reason, I have had a long-time interest in the Clark Air Force Base and the Subic Bay Naval Base in the Philippines.

My interest in the Philippines was further increased last February when President Reagan asked me to be cochairman of the official U.S. delegation with Senator RICHARD LUGAR of Indiana to observe the February 7 presidential election in the Philippines. My observations of the Philippine election and what has transpired since significantly affected me. I saw a courageous woman campaigning for the presidency against all odds. But her courage, honesty, intelligence, and sincerity enabled her to overcome these overwhelming odds. Even when it appeared the election was being stolen from her through fraud, the Filipino people stood behind her to restore Democracy, and the American Government stood strong and proud for Democracy.

Now, Mr. Speaker, as the new President of the Philippines, Corizon Aquino, is in Washington, DC, to seek our assistance, she is facing monumental economic problems and I want to assist her in every way I can to rebuild a strong Democracy in the Philippines.

The best way is to give her much-needed economic assistance. One of the fastest ways to assist economically is to restore the Philippine sugar quota. Last week, I introduced legislation, H.R. 5512, to accomplish this. The Philippines has been our oldest supplier of sugar. Prior to 1960, we purchased all our sugar from Cuba and the Philippines. However, when Cuba went Communist under Fidel Castro, we withdrew their quota and reallocated it to 30 other foreign countries. Still, the Philippine quota remained the backbone of our sugar supply. Under President Kennedy, the Philippine quota was 28.3 percent of all our sugar imports. Under President Johnson, it was 27.6 percent, under President Nixon, 26.1 percent and under President Ford 25.6 percent. In other words, from 1961–75 the Philippine sugar quota averaged 26.9 percent of all our sugar imports. However, in 1982, when sugar quotas were reimposed and a faulty formula was used, the Philippine quota was unfairly and drastically cut in half to 13.5 percent.

To demonstrate how unfair the allocation proved to be, the formula allotted sugar quotas to Canada, Peru, and Ecuador, even though none of these nations can produce enough sugar to provide for their own needs. Since the allocation in 1982, Peru has consumed 1,869,000 tons of sugar. They have not been able to produce this amount and have had to purchase the remainder. Ecuador has produced 200,000 tons less than they have consumed. However, the greatest example of the injustice of the 1982 quota allocations is Canada. Canada is one of the world's largest importers of sugar and they buy nearly all their sugar from Cuba. From 1982 to 1985, Canada consumed 3,142,000 tons of sugar. During this same period, they produced only about 300,000 tons of sugar; less than 10 percent of their needs. Yet we gave and continue to give them a sugar quota. All three countries, Canada, Peru, and Ecuador, have purchased sugar from Cuba and resold it to the United States even though we refuse to buy sugar from Cuba directly. Today the world market price is 6¢ per pound and the U.S. price is 20¢ per pound. A U.S. sugar quota is extremely valuable.

Further, when we are paying a big subsidized price to foreign countries, it doesn't make sense to subsidize developed countries like Canada, Australia, and South Africa. The legislation I introduced last Friday provides that all U.S. sugar imports will come from friendly developing countries who are net exporters of sugar. This would make available enough quota to fully restore the Philippine percentage to its historical 27 percent. Further, depending upon the U.S. support price and the world market, this increase in quota would mean anywhere from $30 million to $60 million in economic aid annually during the balance of the sugar program and would not cost the taxpayer a cent.

We will always buy sugar from countries abroad. Should we buy from an ally, supporter, and net exporter? Or should we buy from a fully developed country with prosperous and sound economic development that buys sugar from Cuba?

Chairman Arsenio Yulo of the Philippine Sugar Regulatory Administration visited me several times regarding the need to restore the Philippine sugar quota. He has pointed out that 5 million people in the Philippines are dependent on sugar and the Communist rebels are making their greatest gains in the sugar areas where unemployment and starvation are everywhere. Chairman Yulo said restoring the sugar quota is the best way to fight communism in Negros and Panay and would be more effective than any other single action the United States could take. I am hopeful we can take this small step forward in assisting the courageous new President whom we will welcome to a joint session of Congress on Thursday and her loyal and dedicated citizens who have proven themselves to be great friends of the United States during World War II, the Korean war, the Vietnam war, as well as during peacetime.

I urge you to join me in supporting this legislation.

Thank you.

LET THE TRUTH COME OUT

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. LIPINSKI. Mr. Speaker, I believe it is time the Government of India lift the current information blackout on the Punjab and allow the Sikh people the freedom to practice their religion and live their lives in peace. With the only source of news being the Government-

controlled media, dangerously little is known about what is actually going on in the Punjab, an area where most of India's 15 million Sikhs live. Eyewitness reports of religious and cultural persecution, of arbitrary arrest and detainment and the mass murder have conflicted sharply with official statements regarding the treatment of Sikhs.

Sikhs are a hard-working, industrious and peace-loving people. They produce 60 percent of total Indian wheat reserves bought by the Government and are largely responsible for the "green revolution" that has allowed India, in recent years, to become a net exporter of foodstuffs. However, with the bloody June 6, 1984 attack on the holiest of Sikh shrines, the Golden Temple, the Government has attemped to portray the large majority of Sikhs as terrorists and extremists bent on the violent creation of the independent state of Khalistan. Since all other news sources are so scarce, it is not surprising that many in the West have essentially accepted without question this line of reasoning or have never heard of the Sikh plight.

Dr. G.S. Aulakh, president of the International Sikh Organization, has been instrumental in presenting the other side. He claims the Indian army traps Sikh men in fake encounters in order to provide a pretext for their deaths. He argues that the Indian Government infiltrates Sikh organizations outside the country in order to discredit them as extremist and pursues at home a systematic policy of cultural and political genocide. He asks a number of questions that I think need to be answered: Why does the Indian Government prohibit foreign journalists from covering Punjab? Why was a group of U.S. Congressmen denied permission to visit the area? Why is the book "Report to the Nation: Oppression in Punjab", published by the largely Hindu Citizens for Democracy organization, banned in India? Why was no one tried for the murder of thousands of Sikhs in Delhi after the Gandhi assassination?

The most important point here is that genuine movement toward a lasting solution for the Sikh nation must include real freedom. A democracy cannot function if the majority tyrannizes the minority. Similarly, if there is no deep commitment to protecting the Sikh minority in India, then tragic events like the Golden Temple seige will continue to divide and disrupt India. I appeal to Prime Minister Gandhi as leader of the largest democracy in the world to work toward implementing those measures that would end the violence and strife in the Punjab.

ROMANI DAY OF REMEMBRANCE

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. LANTOS. Mr. Speaker, today we solemnly observed a ceremony of remembrance for the peoples of Romani, the Gypsies, who were another racist target of the evil inspired Nazi Holocaust. The stories of the deaths of hundreds of thousands of Gypsies at Auschwitz and in other Nazi concentration camps are only beginning to be told. The genocide attempted by Hitler's troops was planned for both Gypsy and Jew. This first day of remembering the Gypsy experience in the Holocaust was sponsored by the United States Holocaust Memorial Council in association with the American Rom (Gypsy) community. I submit for the RECORD the moving and scholarly speech given by Prof. Ian Hancock, specialist in Rom studies at the University of Texas, Austin.

I was just a child when the Second World War ended. But I remember the bomb shelters, and the blackouts, and especially the sirens warning of air attacks from the Continent. I remember the devastation those attacks left behind in London's east end; the empty shells of the buildings remained long after the war.

I was one of the lucky ones: I was born in Britain, and survived. Relatives of mine in Hungary did not; by 1945, over half a million of our people in Europe had been slaughtered. Those of us born here and in Britain must thank God for our deliverance.

German prejudice against the Romani people dates from our very arrival in that part of Europe in the fifteenth century. The methodical persecution which eventually culminated in genocide began at the end of the last century, with the establishment of the Central Office for Fighting the Gypsy Nuisance in Munich, in 1899. There had already been a proposal at an earlier conference on what was called the "Gypsy Filth" to round up and put into detention centers all Gypsies in German controlled territories. By the 1920s, special police units had been created to keep the Romani population under constant surveillance; everywhere, Rom and Sinti were fingerprinted and photographed, and were not allowed to move about the land without special passes.

When Hitler came to power in 1933, he found anti-Romani laws already well entrenched, and needing only refinement by the Nazis to turn what had been harassment and bigotry into the deadly tool of racism and murder. In that same year, the very first year of Nazi power, German Rom and Sinti became victims of their program to eradicate unwanted elements from their new society: numbers were sterilized and sent to camps at Dachau, Dieselstrasse, Mahrzan and Vennhausen.

In 1935, the Nuremberg Law for the Protection of Blood and Honor made unions between Gypsies and non-Gypsies illegal on racial grounds; a Gypsy was defined at that time as anyone having as little as one eighth Romani ancestry. Ironically, the less Romani blood, a Gypsy had, the harsher was his treatment at the hands of the Germans.

In 1936, Interpol itself supported the persecution of our people by establishing the International Center for the Fight Against the Gypsy Menace, an office which was not officially closed down until 1970.

A Nazi Party proclamation issued in 1938 stated that the Gyspy problem was categorically a matter of race, and was to be dealt with in that light. Johannes Behrend, speaking for the Party a year later, declared that "elimination without hesitation" was the only way to protect the Aryan people from racial contamination from Sinti and Rom. In that year, Gypsies began to be transported to concentration camps in Berlin and Poland. The same began to take place in the Baltic states, Czechoslovakia, Hungary, France, Italy and the Balkans. Large-scale round-ups were everywhere in effect by 1943; by April that year, over 10,000 Sinti and Rom were incarcerated in Sachsenhausen for later extermination. In some parts of Europe, entire Romani populations were destroyed, such as the Layenge Rom in Estonia, who are now an extinct people. Elsewhere in Nazi-controlled areas of Europe, as many as 70 and 80 percent of the resident Romani populations were exterminated. On August 1st, 1944, four thousand of our people were murdered at Auschwitz in just one night.

So complete was the Nazi destruction of the Romani people in Europe, that few survived to tell the story. Still fewer non-Gypsies seemed even to care. After the war, no nation came forward to help the survivors, no attempt was made on the part of any government or philanthropic organization to help reorient them; now war crime reparation was forthcoming, no invitations extended to testify at any of the war crime tribunals.

Hitler's methods of dealing with his Gypsy Problem included at first banishment, then sterilization, and finally extermination. For the Romani people, the defeat of Nazism did not bring an end to any of these, at least as possible solutions in the minds of the authorities: in 1981, police systematically rounded up and expelled numbers of Rom throughout Poland, abandoning them at sea without the papers necessary for them to return; in 1976, a government proposal in Czechoslovakia recommended that the sterilization of its Romani population would be an act of "socialistic humanity"; Romani Union lawyers have reason to believe that the fingerprints and photographs in the files of the Interpol office which was officially closed in 1970, are still being used by the police in Germany against the Rom. The contemporary state of our people remains very critical, and it is functions such as this Day of Remembrance that will bring the larger community to a better understanding of our situation.

The recognition here today by the U.S. Holocaust Memorial Council of the fate of the Rom in Hitler's Europe, marks a turning point in our efforts to bring it to the attention of the nation and of the world. This is a very special day, not only for Romani Americans but for all Americans. With the completion of the Memorial Museum, the fuller story of the Holocaust, as it affected all of its victims, will be told. We are at the beginning of a close and cooperative working relationship with the Council, one dedicated to bringing this to fruition.

Today is a special occasion for another reason as well. For the first time in American history, representatives of the different branches of the Romani Nation have come together in one place: members of the Machvano, Kalderash, Lovari, Xaladitka and Romanichal populations are here in this room to honor jointly the memory of our dead. Let us hope that in the years ahead, our numbers at this annual ceremony will grow, and that through future Days of Remembrance and through our Memorial Museum, the world will no longer remain ignorant of the fate of our people in the Holocaust.

I want to say a few words now about our dear friend John Megel, o Lazo le Gyorgosko shavo, who passed away only days before he was to have been here with us in Washington.

Like many Americans Rom whose ancestors arrived here in the early 1900s, Lazo

was aware that his people had been murdered in great numbers during the Second World War, but like most other Americans, knew little of the actual details of the Nazi atrocity against our people.

He was originally drawn into our Holocaust-related efforts through his own attempts to revive the Red Dress Romani Benevolent Association, founded almost sixty years ago by his grandfather, Steve Kaslov. John Megel felt, like his grandfather before him, that Romani Americans were the victims of social and economic prejudice which largely resulted from their being poorly understood: Kaslov met with and spoke personally to Franklin D. Roosevelt about his concerns for his people, though to little avail.

As John Megel came to understand more and more about the immensity of Hitler's plan to exterminate the Gypsy people, and how the world seemed to have turned its back on our plight since the War, he became consumed with an abiding outrage, and a determination to see justice done. Sometimes he would speak to me with tears in his eyes, wondering why no one seemed to care.

When we began to enter into a dialogue with the U.S. Holocaust Memorial Council about three years ago, he became one of the most vocal, and often impatient, advocates of the Romani cause. Sometimes he would be knocking on their office door once or twice a week. It is very largely due to his efforts that this solemn event has come about, and it is only fitting that a tribute be made to his memory here today. He was to have spoken, and to have participated in our water ceremony here this morning.

One of Lazo's concerns was the collection of songs and poems in Romani which have to do with the Holocaust. I recently found one such poem which I would like to read in his memory; it was composed by a Serbian Rom shortly after the end of the War.

One morning, about seven,
The Germans came to my door.
"Let's go, Gypsy, let's be on our way".
"Wait, Mr. German, until I light the fire
And kiss my old mother,
For I know I won't be coming back,
I know you're going to take my life".
"Hurry, Gypsy, and take your shovel,
And dig yourself
A grave".

I'd like to have a few moments' silence for John Megel.

Najis tuménge.

TRIBUTE TO ELIZABETH ALLEN

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. MRAZEK. Mr. Speaker, it is with great regret that I rise today to inform my colleagues of the death on September 2 of my friend, Elizabeth Allen, of Centerport, Long Island. Mrs Allen, known to us all as Betty, was active for more than 40 years in local environmental and charitable causes.

Known fondly as the "Bird Lady of Centerport," Betty Allen was a founding member of the Huntington Audubon Society and held many offices within the organization. She raised an early voice in opposition to the widespread use of the pesticide DDT and alerted others to its disastrous effect on wildlife and the food chain. Much of her time was devoted to protecting the waterfowl on Mill Pond near her home, and to working to protect endangered species such as eagles, coyotes, and wolves in regions far from home.

She also devoted herself to helping the members of her community. For many years, she volunteered her services aiding the blind at Burrwood School in Lloyd Harbor. She also became a communications link for her neighbors during emergencies after taking up a ham-radio hobby and continuing to operate on Station WA2YHI.

Mr. Speaker, Betty Allen was a woman of many talents who chose to use them for the betterment of her community and beyond. Survived by her devoted husband, Richard, she leaves a legacy of concern for our wildlife and, by extension, our own species' environmental integrity.

SOVIET MISSILE ACCIDENT UNDERLINES NEED FOR IMPROVED COMMUNICATIONS BETWEEN SUPERPOWERS

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. STARK. Mr. Speaker, today's report of a Soviet missile misfire underscores the urgent need for improved communications between the United States and the Soviet Union to reduce the chances of an accidental nuclear war.

The Reagan administration has consistently ignored, spurned or mocked proposals from Congress and private defense experts for improved "confidence building measures" (CBM's) or the establishment of a crisis control center. Meanwhile, there have been at least five missile-related accidents just this year. The question is, how many times can we say, "Oops," before we have a terrible disaster?

Fortunately, the Soviet missile appears to have landed in a very remote part of China. Fortunately, it carried a dummy warhead. But the Soviets had not been required to notify anybody of the test and they were unable to destroy the missile when they realized it had veered out of control. U.S. officials speculate that the incident is "embarassing" to the Soviets. I submit that it should be extremely frightening to the average citizen.

Mr. Speaker, one would think that rational people, faced with the reality of nearly 50,000 nuclear warheads between the superpowers, would do all they could do reduce the chances of them being used. One would think that these people would seek to stabilize everyday relations and to minimize the chances of a nuclear war resulting from a misunderstanding. Both superpowers, though, have consistently engaged in sabre-rattling rhetoric. In last month's defense bill, the House authorized purchase of destabilizing first-strike weapons like the MX and the Trident II submarine-launched missile that bring both sides closer to a launch-on-warning position. And, the Reagan administration has announced that it will no longer be bound by the SALT II treaty.

I want to touch for a moment on the President's SALT II decision because it is particularly relevant to the Soviets' latest accident. An obscure provision of the treaty, which would no longer apply if the treaty were scrapped, requires each side to notify the other before simultaneously test-firing more than one ICBM. One need not be very imaginative to envision a scenario where an unannounced multiple test-fire could go astray and appear to threaten one of the superpowers. With both sides in a launch-on-warning mode, with mode sides possessing a first-strike capability and with poor crisis communications and no agreed-upon rules of behavior during a crisis, the chances for a disaster are very high indeed. One need not subscribe to Murphy's Law to be shaken by the dangers we face.

Mr. Speaker, I have long supported both improved CBM's and the establishment of a crisis control center. Last year I drafted an amendment to the foreign aid bill ordering a study by the State Department and the Arms Control and Disarmament Agency of ten CBM's which have been widely accepted by defense experts in and out of the Government. The administration could not find even one that it liked. At the risk of repeating earlier statements of mine, I'd like to enumerate these ten proposals. One of them could literally save the world some day.

1. Increased redundancy for the Hot Line,
2. Create Hot Lines among all nuclear armed states,
3. Agree not to target each other's Hot Lines,
4. Agree on standard operating procedures for communication and cooperation in a third party nuclear attack,
5. Prohibit "locking on" of fire control radars of ships and planes, agree on separation of naval forces during a crisis, and other measures to reduce provocations,
6. Place unmanned launch sensors in the missile fields of the U.S. and the U.S.S.R.,
7. Create zones free from anti-submarine warfare,
8. Place mechanisms on submarine-launched missiles to prevent accidental or unauthorized firing,
9. Establish a training program for national command authorities,
10. Announce contingent relocation of national command authorities.

Mr. Speaker, it's hard not to get the feeling that we're using up our free mistakes. Both sides have already shaved to a mere strand the string holding the Damoclean sword over our heads. Before the laws of physics and probability and the vagaries of human nature overcome us, we need to develop measures to shore up our protection. I urge the Reagan administration to come out of the ideological corner into which it has painted itself and to commence serious negotiations with the Soviet Union on CBM's and a crisis control center. The defense of the American people depends upon it.

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CONGRATULATING JOHN W. LITTLE CO. ON ITS 100TH ANNIVERSARY

HON. FERNARD J. ST GERMAIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. ST GERMAIN. Mr. Speaker, I would like to take this opportunity to bring to the attention of my colleagues the 100th anniversary of a very special company in Rhode Island. The name of the firm is the John W. Little Co. Let me tell you a little bit about it.

On September 21, 1886, 25-year-old John W. Little created a business that would "carry on the printing and publishing business of every description." The new company was the first all-electric printing outfit in the Nation.

John W. Little was active in civic and community affairs throughout his lifetime. He received an appointment as postmaster of the city of Pawtucket from President William Howard Taft and served for many years as chairman of the Pawtucket School Committee until his death in 1922.

After the founder's death, the Little family retained control of the company. T. Stewart Little succeeded as president. He was followed by Peter K. Little and incumbent Steven B. Little. At the time of the company's incorporation in 1923, John W. Little, Jr., became the secretary of the business and received national recognition for his invention of the process of printing on cellophane. The sale of his patents in 1930 saved the company during the Great Depression.

The John W. Little Co., today is a nationwide supplier of Blister Pack and Die Cut cards for the packaging industry.

The Rhode Island State Senate has formally congratulated the John W. Little Co. of Pawtucket on its 100th anniversary. The civic responsibility and pride this company has displayed over the past century is truly an inspiration to all businesses across the country.. I ask my colleagues to join me today in saluting this outstanding organization.

NATIONAL GROUN DWATER CONTAMINATION RESEARCH ACT OF 1986

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. GEJDENSON. Mr. Speaker, today I am pleased to introduce the National Groundwater Contamination Research Act of 1986. This legislation is a revised version of H.R. 3906, The National Groundwater Contamination Research Act, which I introduced on December 11, 1985. The new bill incorporates some improvements which were suggested during two ground water hearings held by the House Interior Subcommittee on Water and Power Resources.

H.R. 3906 was cosponsored by a bipartisan group of 51 Members of Congress from all regions of the country. It was strongly supported by numerous environmental and industry groups, including the Environmental Policy Institute and the American Electronics Association.

Ground water contamination is one of the most serious environmental problems of the decade. The number of wells closed because of contamination by toxics and other substances increases every day. In my home State of Connecticut alone, over 1,000 wells have been closed.

Unfortunately, a major barrier to the protection of ground water from contamination is the lack of basic information on the problem. There is no reliable estimate of how much gound water in the United States is contaminated. The small amount of information we do have is alarming. One study by the Environmental Protection Agency found that up to 63 percent of rural Americans may be drinking water tainted by pesticides or other contaminants.

The National Groundwater Contamination Research Act of 1986 will provide Federal, State, and local governments, and industry with the information they need to resolve ground water contamination problems. The bill expands and focuses U.S. Geological Survey [USGS] research on ground water contamination.

The bill directs USGS to report on the adequacy of existing ground water information to meet the needs of States, communities, and industry. This report will be accompanied by an independent evaluation of information needs conducted by States. Following the completion of this report, USGS is required to establish a national ground water quality assessment program to meet the information needs identified by the report.

The bill also establishes a National Groundwater Information Clearinghouse to disseminate ground water information to Federal agencies, State and local governments, and private organizations and individuals. The Clearinghouse will serve as a repository for all ground water information and will provide decisionmakers with easy access to information they need to resolve ground water problems.

In addition, the bill expands the USGS program to provide technical assistance to States and localities experiencing ground water problems. To date, USGS's technical assistance has been extremely effective. In many instances it is the only information resource available to State and local officials attempting to solve ground water problems.

Ground water is a vital natural resource. We must do all we can to protect our Nation's ground water for use by present and future generations. Until we fully understand what is causing ground water contamination and how widespread it is, we will simply be throwing money at the problem in response to individual cases. The National Groundwater Contamination Research Act of 1986 will provide the information we need to begin to solve the ground water contamination problem.

REPORT OF DRUG ENFORCEMENT POLICY BOARD NOT YET RECEIVED

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. SMITH of Florida. Mr. Speaker, during the debate on the Ackerman amendment to H.R. 5484 last week, I referred to a report that the Foreign Affairs Committee was to have received. At the time, I indicated incorrectly that the committee was expecting this report from the INS. I want to correct the record.

Under section 132 of the State Department Authorization Act, the National Drug Enforcement Policy Board was to agree on uniform guidelines that would permit the sharing of information on foreign drug traffickers to ensure that they are not permitted to legally enter the United States. The State Department was to share with DEA and Customs information on all drug arrests of foreign nationals in the United States so that information may be communicated to our embassies that issue visas.

Under the law, the Foreign Affairs Committee should have received in February 1986 a report from the National Drug Enforcement Policy Board on steps taken to implement that section. As chairman of the Foreign Affairs Committee's Task Force on International Narcotics Control, I still am waiting for this report.

So, it is not the INS that has been delinquent. It is the Drug Enforcement Policy Board, headed by the Attorney General, that has failed to comply with the law.

DID PETER SELLERS WRITE THE SCRIPT FOR THE CONTINENTAL BAILOUT?

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday September 17, 1986

Mr. CRANE. Mr. Speaker, In June 1986, for the first time in 26 years, a British court upheld the refusal of an insurance company to pay the claim of a shipowner whose vessel had sunk. The ship in question was the *Captain Panagos,* which went down on Farazan Island in the Red Sea in November 1982. The court found, according to Andrew Fisher of the Financial Times, that as part of a fraudulent scheme to collect 9 million dollars' worth of insurance proceeds, the crew had deliberately scuttled the ship and then burned it.

The owner of the *Captain Panagos* was Xenofon Maritime SA of Panama. The prime shareholder of Xenofon was Diamantis Panagos Pateras. One might think that Pateras would have suffered the loss, but in fact he did not. Instead, the depositors at all federally insured banks in America paid for the *Captain Panagos.* How could such a perverse result be possible?

It turns out that the Continental Illinois Bank & Trust Company of Chicago held a mortgage on the *Captain Panagos.* Because the Federal

Deposit Insurance Corporation owns Continental Bank, it had to absorb the loss of this worthless loan. But of course the FDIC does not fund itself. It collects premiums from its member banks, who in turn collect their revenues from their depositors. And so it is that the depositors at all federally insured banks in America paid for the deliberate scuttling of the *Captain Panagos*.

In the late 1970's and early 1980's Continental Bank loaded its portfolio with improvident loans. Possessed of a "casino" mentality, the bank gambled that oil prices would rise, that real estate values would soar, that the steel industry would prosper, that the world economy would boom, that no foreign government could go broke.

Either the bank's management failed to perceive risks which it should have perceived, or it perceived the risks but—out of sheer arrogance—chose to ignore them. Either way, the management acted recklessly. By the time the Government intervened, the bank had wasted 2 billion dollars' worth of capital, and the value of its stock had sunk to one one-thousandth of 1 penny per share.

By rescuing Continental from its own mismanagement, the Government reaffirmed the message sent out a few years earlier by the Chrysler Corp. bailout: The Federal Government will refinance inefficient, bankrupt private enterprises—if they are large enough and politically visible enough. Put another way, most private businesses have to sink or swim in the marketplace, but those with a political constituency in Washington can get relief from Uncle Sam.

In its September 1984, rescue of Continental, the FDIC injected $1 billion of fresh capital into the bank's parent corporation, repaid a $3.5 billion loan from the Federal Reserve Bank of Chicago, and agreed to acquire $2.5 billion in bad loans by September 1987. While the FDIC has recovered 65 cents on the dollar from the collapse of the Penn Square Bank of Oklahoma City, the agency nevertheless estimates that it will collect less than 20 cents on the dollar from Continental's loans.

The FDIC charges its member banks annual premiums of one-twelfth of 1 percent of their deposits. Traditionally, the Federal insurance agency has rebated part of the premiums, thereby reducing the cost of the insurance. In 1985, however, the FDIC suspended its rebates for the first time since 1949.

The FDIC's stated reason for the suspension was that it needed the extra money to pay for the Continental bailout. The agency has already announced that it will suspend rebates again in 1986.

By taking this unusual step, the FDIC has greatly increased the effective price member banks pay for insurance. One can be certain that the banks have already begun to pass this added cost on to their customers either by offering lower interest rates on deposits or by charging higher rates for loans and other services.

In return for assuming Continental's bad loans and providing it with new equity, the FDIC has received a 78-percent ownership interest in the bank. The rescue package has thus given the Federal Government a major foothold in the commercial banking business. By contrast, the Chrysler bailout required only that the Government guarantee the automaker's credit. That bailout may have squeezed worthier borrowers out of the credit markets, but at least it did not put the Government into the business of manufacturing automobiles.

Some might call the Continental rescue package sound "industrial" policy. Others might call it corporate welfare, doled out arbitrarily to a chosen enterprise. But in reality it is a simple form of socialism. The Federal Government has nationalized Continental Bank and begun competing with other financial institutions.

Worse yet, the Government has financed this nationalization with funds derived exclusively from Continental's competitors. The very insolence of the rescue package mocks the tens of thousands of bankers who have maintained sound institutions and who have faithfully adhered to rules and regulations of responsible banking.

Now, less than 2 years after the bailout—and while its competitors are still paying its bills—Continental wants to go on a shopping spree.

On February 24, 1986, Continental announced that it planned to purchase two suburban Chicago area banks, the First National Bank of Deerfield, and the First Suburban Bank of Olympia Fields. This announcement came just 3 days after the bank doubled its earlier estimates of how much the FDIC would lose on the transferred loans.

In March of this year, Continental said that it plans to purchase a third financial institution, the First National Bank of Western Springs, IL.

Most recently, on August 12, 1986, Continental announced its intention to buy First Options of Chicago, Inc., the Nation's largest clearing firm for professional options traders.

Continental has offered nearly two times book value for the banks in question. As the president of one of the target banks said, "They made us an offer we couldn't afford to turn down."

It is unknown exactly how much Continental has offered for First Options of Chicago, Inc., but William Gruber and Laurie Cohen of the Chicago Tribune reveal that a London securities firm dropped out of the bidding when the price exceeded $100 million.

So Continental is not driving hard bargains. But why should it? All it has to do is sign the purchase contracts and send the FDIC the bills.

If Continental receives regulatory approval for its planned acquisitions we will have entered an ominous new phase in the FDIC rescue package. Instead of simply forcing member banks and their depositors to keep Continental afloat, the FDIC will be forcing them to buy other businesses for Continental's account.

What public policy principle, what theory of governance, will sustain the Federal funding of these acquisitions? Political expendiency may have sustained the initial bailout, but not even that will justify forcing sound banks to pay for the shopping spree of a bankrupt institution.

It occurs to me that perhaps the late Peter Sellers wrote the script for the Continental bailout. Those of you who saw the actor's most famous movie, "The Mouse That Roared," will recall that the plot went something like this: The Grand Duchy of Fenwick, a tiny country with medieval institutions, needed financing to bring itself into the 20th century. When all other means of boosting its economy failed, the Duchy hit upon a novel scheme. It would declare war on the United States, lose the war, and then get American economic assistance after it was over!

It's a grotesque irony, isn't it? Just as we once gave massive assistance to countries which waged war on us, so too, we are now giving blank checks, drawn on the FDIC, to a bank that wrecked itself. Instead of paying for its reckless banking, Continental stands to gain from it. Will all large American banks be better off going to the brink of collapse and inviting FDIC intervention than staying healthy?

On August 15, 1986, the FDIC announced that it will use a rescue package similar to Continental's in order to bail out the Bank of Oklahoma. In return for injecting $130 million of new capital, the FDIC will receive enough warrants to buy 55 percent of the bank's holding company.

Bankers across the country are waiting with bated breath to see how the Oklahoma bank will use its new found wealth. Maybe it will buy Merrill Lynch.

Mr. Swearingen, chairman of the board of directors and chief executive officer of Continental Illinois Corp., argued in a letter to Mr. Waterman, president of the Illinois Bankers Association, that prohibiting its planned acquisitions would contravene the very purpose of the rescue program.

Both of these arguments are unpersuasive. First, Continental twists the purpose of the rescue plan. The FDIC originally made the capital infusion in order to protect Continental's depositors and the depositors of other banks which were creditors of Continental's—all of whom would have suffered losses and had claims against the FDIC, had the bank failed. As such, the capital restructuring was plainly a defensive move by the FDIC.

Far from contravening the defensive purpose of the bailout program, it would be perfectly consistent with it to prohibit Continental from making acquisitions while under Government ownership. Corruption of the rescue program's purpose would occur if Continental were to use, in an aggressive and acquisitive manner, funds originally contributed for defensive purposes.

Second, Continental assumes that it will earn a high rate of return on any businesses it acquires, and thereby protect the FDIC's position. Were the bank to review its past record of managing satellite corporations, it would not so blithely make this assumption.

In 1982, Continental acquired the Continental Bank of Buffalo Grove, IL. In 1978, before the acquisition, Buffalo Grove's earnings were 1.30 percent of its assets. By yearend 1985, Continental's management had reduced that ratio to 0.77 percent.

High performance peer-banks earn more than double what the Continental Bank of Buffalo Grove does. Although Buffalo Grove has nearly tripled in size since 1982, its earnings have been insufficient to keep the bank adequately capitalized. Buffalo Grove has not paid any dividends in the past 4 years, and its excessive growth and declining earnings have

forced Continental to infuse it with approximately $2.4 million in capital.

Return on equity at Buffalo Grove has dropped from 14.18 percent in 1982 to 12.49 percent in 1985. Because Continental paid approximately two times book value for the bank, it is therefore earning a real return of only 6 percent.

Continental, however, makes much of its need for core deposits. It argues that by purchasing banks in wealthy Chicago suburbs, it will greatly boost its base of stable deposits.

This argument is plausible on its face, but it falls apart when one again examines the performance of the Buffalo Grove bank. Demand deposits at Buffalo Grove fell from 22.5 percent of total assets in 1982 to 15.26 percent in 1985. Meanwhile, jumbo certificates of deposit—$100,000 and over—still stood at 12.7 percent of assets at the close of last year.

If previous performance is any gauge then, Continental would be better off buying Government bonds than other banks. Both investments offer Continental the same return, but Government bonds are risk free. Thus, far from protecting the FDIC's position by buying other banks, Continental would be subjecting it to unnecessary risk.

The past gives us some indication as to how Continental would manage any bank that it purchases, but one can only speculate as to how it would manage other types of enterprises. Continental claims that it should acquire businesses in other industries so that it can diversify its portfolio and thereby limit its risk.

While this argument appears reasonable at first blush, further consideration nevertheless reveals that it, too, is a mere shibboleth. The one enterprise outside the banking industry which Continental seeks to acquire is a concern specializing in clearing trades for professional traders and other securities firms. The options clearing business is notoriously risky because it involves guaranteeing the trades of customers. Such a business can create either extraordinary gains or extraordinary losses.

Thus, it is true that Continental would diversify its portfolio by buying First Options of Chicago. But it is not true that it would thereby limit its risk. In fact, if anything, ownership of First Options would enormously increase the risk in Continental's portfolio.

Mr. Speaker, no one argues that Continental should not be able to expand and grow. The issue is simply whether it should do so with funds contributed by an agency of the Federal Government. All that Continental's competitors ask for is a level playing field.

Continental would have us believe that the only way it can survive is to use Uncle Sam's money to finance its acquisition program. In fact, however, Continental has several reasonable alternatives. For one, it could build a solid base of core deposits by soliciting certificates of deposit under $100,000 from the 14,500 other commercial banks in the United States. That way, the banks would at least be paid—not penalized—for helping their large competitor.

Continental could also raise capital by issuing either equity or debt securities. If this is impossible, then Continental should take the market's message and shrink its assets until it gains control of its equity.

I, and many of my colleagues, think that there should be public hearings, before either the Federal Reserve Board or the House Banking Committee, to discuss this issue. Not only would it be grossly unfair to other banks to approve Continental's expansion program, but in addition, it would be a dangerous precedent.

It is too late to undo the Continental bailout. But it is not too late to minimize the injury and injustice done to all federally insured banks and their depositors. It would be morally wrong for us to allow Continental Bank to emerge from Government control far better off than it would have been, had it never gone to the brink of failure and invited FDIC intervention in the first place.

If Peter Sellers wrote the script for the opening act of the Continental bailout, shouldn't Congress now write the close?

THE WAR ON ILLICIT DRUGS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, August 27, 1986 into the CONGRESSIONAL RECORD:

THE WAR ON ILLICIT DRUGS

The senseless cocaine-related deaths of promising young athletes and the emergence of "crack," a cheap and extremely addictive form of cocaine, have raised public concern and prompted a new round in the war against drugs. Both the President and Congress are developing plans to strike at drug suppliers and the demand for drugs.

Americans spend over $100 billion each year on illicit drugs, making us the western world's largest consumer of illicut drugs. Many view drug use as our biggest social problem. Cocaine is particularly popular. Once too expensive for most Americans, cocaine can sell for about $50 a gram, making it cheaper than an ounce of marijuana. At least 5 million Americans regularly use cocaine. A 1985 survey showed almost two-thirds of high school seniors had used illicit drugs.

Drug abuse has enormous costs. It can lead to addiction, broken homes, ruined careers, bad health, even death. It brings heartbreak to millions. We waste at least $100 billion annually on drug-related medical costs, productivity losses and crime. Federal, state and local governments spend over $3 billion each year to fight drugs, money that could be used for other needs.

Everyone agrees that the problem's urgency requires a new approach to discourage drug abuse. We need a comprehensive, coordinated drug-control strategy that combines: international control; tougher enforcement; and effective drug abuse prevention, education, and treatment.

INTERNATIONAL CONTROL BY ERADICATION AND INTERDICTION

Since most of the drugs used here are imported, we have tried to reduce foreign production and intercept drugs before they cross our borders. The U.S. gives aid to drug-producing countries for enforcement, crop eradication and substitution. Yet our efforts with Mexico, Colombia, Bolivia, Peru and other drug-producers have failed to slow shipments to the U.S. In 1984, U.S. agents and the Colombian police seized 10 tons of cocaine, the largest capture in the history of the drug war. But this bust had little impact on price or supply. This year, it is estimated that 150 tons of cocaine, 12 tons of heroin, and 30,000 tons of marijuana will enter the U.S. Increased resources have helped enforcement efforts, but it is nearly impossible to control narcotices production and shipment in all geographic areas of the world simultaneously.

Some countries find it hard to cooperate with our efforts to halt production, since drugs are often important to their cultures and economies. In Bolivia, for example, wages are as low as $15 a month. Farmers can often earn that much in a day stomping coca leaves used to make cocaine. Powerful drug barons, corruption, and low public support hamper attempts to slow production. A new law allows us to cut off foreign aid to countries failing to control drug trafficking. But our foreign aid is based on many factors, chiefly our national security. We clearly need stronger efforts—like technical assistance for enforcement and eradication and international lending pressure on producing nations—to stop drugs at their source. But we should not assume these efforts alone will be sufficient.

ENFORCEMENT

Efforts to improve U.S. enforcement are being put in place. Federal funding has doubled since 1980. New laws make it easier to prosecute drug dealers and to seize their ill-gotten profits. Judges can impose stiffer penalties for drug-dealing. The U.S. military helps civilian officials monitor our borders. These efforts are showing hopeful signs. But, despite our best law enforcement efforts, we have not put a significant dent in drug supply. Huge profits lead traffickers and organized crime to take all necessary risks to maintain an adequate supply of illicit drugs. Law enforcement officials are faced with the overwhelming task of trying to control our entire border to prevent drug imports while at the same time battling dramatically expanded domestic production.

PREVENTION AND REHABILITATION

Increasingly, I have come to the view that we will not solve our drug abuse problem unless we reduce the demand for drugs. Efforts to fight drug use are woefully understaffed and underfunded, perhaps because education, prevention and rehabilitation programs seldom show quick results. Only about 15 percent of this year's $2.1 billion budget for anti-drug programs goes for education, treatment and research, a 5 percent drop in 5 years. We must do better educating Americans, particularly the young, about the dangers of drug use. We should give school and community-based drug prevention programs better information about effective rehabilitation and education methods. We must also explore the causes of drug abuse and step up research to find better treatment methods. We may never have a drug-free society, but we can minimize the human costs of drug abuse. We should intensify our efforts to halt the supply of drugs, but an effective drug abuse program requires greater emphasis on reducing the demand for drugs.

The President and Congress are now crafting a tough anti-drug plan. The urgency of the problem leaves no room for partisanship. Proposals being considered include: more money for international drug control and education programs; sharing drug-trafficking information with other countries;

expanded drug abuse prevention programs for elementary and secondary schools; more money for treatment and prevention; encouraging drug testing and rehabilitation at work and at schools; denying preferential trade status and other benefits to countries failing to cut drug production; increasing Coast Guard and Customs Service personnel and giving them more sophisticated detection equipment; developing a herbicide to destroy coca; and providing various other enforcement tools.

My uneasy feeling is that, despite our efforts, we are losing our war on illicit drugs. An effective war on drugs requires constant cooperation and support of federal, state, and local officials, the private sector, and the public. We will have to devote more resources to fight drug traffickers and to reduce drug demand. The best news may be that growing recognition of the size of the problem, and determination to deal with it, is changing the climate.

THE LIFE OF THE LATE AVERELL HARRIMAN

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1986

Mr. ALEXANDER. Mr. Speaker, it is said of this political year that campaigns are lackluster and uninspiring, while candidates are debating few significant issues or raising little or no new ideas for the consideration of the electorate. Instead, it is said candidates are focusing their energy and resources on what is called negative campaigning—in short, kicking the living daylights out of opponents while actively avoiding any public discussion of one's own vision of the future.

It is against this backdrop that we now honor an American who has consistently stood as a symbol of the grander ideals of this country and a broader vision of public service.

Averell Harriman was one of an elite class of world leaders, born in the late 19th century, schooled in the bitter experience of two World Wars, and called to guide the world through social and political transitions unparalleled in history. They were gentlemen, they were scholars, they were statesmen. Their personal commitment to build a better, safer world transcended political vanities, parochial interests, and personal self-interest. Among this company are numbered such great heroes as Winston Churchill, Harold MacMillan, and Conrad Adeneur. Their insights and leadership in international affairs gave to our modern world a framework through which nations would come to live in relative peace and security in spite of a newly discovered capacity to destroy each other with a mere pressing of a button.

Averell Harriman, whether as Governor of New York or Ambassador to the Soviet Union, was a reminder to all Americans of that in our national character which is noble and just. He believed in the inherent goodness of the American people. He understood that American power could be both a blessing and curse to the nations of the world—that we Americans could bully other nations through coersion and intimidation or lead them by example to our dreams of freedom and justice.

For Pamela Harriman, we Democrats especially, hold a warm place in our hearts. It is she who carries on in the tradition of her husband—cultivating leadership among our young people, inspiring those who might otherwise stand on the sidelines, and providing leadership for our party around the country.

Mr. Speaker, many politicians appeal to the voters by asking if we are better off today than in the past. Because of the work of men and women like Averell Harriman, we in the 1980's can proudly answer that question with a resounding "Yes."

GORGE BILL READY FOR ENACTMENT

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. BONKER. Mr. Speaker, legislation to establish a National Scenic Area to protect the Columbia River Gorge in Oregon and Washington has recently been fine tuned. The Washington and Oregon delegations and the Governors of both States have worked on this legislation for years and, with the assistance of House and Senate committees, the measure is now ready for congressional action.

As early as 1915 the Secretary of Interior identified the Columbia gorge as the Nation's greatest water gap and an area of "undeniable national significance." One year later, the first gorge protection bill was introduced in Congress. In the 70 years since then, the quickening pace of development has changed the face of the gorge and threatens to mar its breathtaking beauty forever. In the short time remaining in this session, we have an historic opportunity that may not present itself again for years to come.

The gorge, a deep ravine carved through the Cascade Mountains by the Columbia River, is uniquely beautiful. It also presents unique challenges in the effort to preserve its scenery, for the gorge is home to some 50,000 residents who depend on the area for their livelihoods. This legislation is painstakingly crafted to save the scenery without undermining the economy of developed areas within the gorge. It also balances the interests of Federal, State, and local governments.

Despite this balancing of interests, there are those in the gorge who oppose a Federal presence to preserve the scenery. Anyone who reviews the history of Federal preservation efforts understands that such efforts are usually opposed by local residents. However, once the Federal presence is in place, it is often the case that local concerns diminish and there is sometimes a new appreciation for the Government's role.

In the statement that follows, the Honorable Maurine Neuberger, former member of the U.S. Senate and Oregon Legislature, puts this issue in perspective. With decades of public service behind her, few are as qualified as she is to speak on this matter. As a former staffer for Senator Neuberger, I am pleased to present her testimony in favor of legislation to protect the Columbia River Gorge.

TESTIMONY OF MAURINE NEUBERGER BEFORE THE HOUSE SUBCOMMITTEE ON FORESTS, FAMILY FARMS AND ENERGY

I am Maurine Neuberger, former member of the Oregon Legislature; former member of the United States Senate. In the Senate I chose to serve on the Agriculture Committee because that committee deals with the National Forests, which have always been of great interest to me. My husband and I attended the dedication of the Gifford Pinchot National Forest. We were proud to take Adlai Stevenson to Harry Truman's camp on Mt. St. Helens.

When we were working on the legislation to create a national park at the Oregon Dunes, we visited the Olympic National Park and talked to people who lived within the park. People who thought they were going to lose their homes when the park was created, but who are still living there and said they were wrong in their first opposition to the park.

Similar opposition had arisen at the site of the Oregon Dunes. This summer when I attended the dedication of the Neuberger recreation area of the Oregon Dunes, one of the residents came up to me and reminded me that he had testified against the legislation, but now he is happy that his group did not prevail.

When it came down to the arguments pro and con for the Dunes area, I found that these same "cons" had been voiced and recorded in other instances. I researched the Congressional Record regarding the debates at the formation of the Cape Cod National Seashore, at Point Reyes in California, at Padre Island, and further back than that—the establishment of the National Forests, themselves. In all of the examples none of these "terrible things" have happened.

The Federal Government is necessary in our lives. If we adhered literally and strictly to the old saw "states rights", we would be like a series of Balkan states and not a union. We as individual states can not provide our own national defense, we cannot go to the corner drugstore and buy our own cancer research, we must have cooperation between states to control air pollution and Columbia River pollution.

The opponents of the Federal Legislation to protect the Columbia River Gorge are just as aware of the beauty of the area as I am. They have seen its changing colors from sunrise to sunset. They have thrilled at the omnipotence of nature during a storm when the dark clouds gather and the water churns. So, why are we antagonists about this legislation? I've read and listened to the testimony from some would-be developers. It makes me feel that economic (money) goals are all that matters. Even though the value of the land is its sight along the Gorge.

For sixteen years I lived in Washington and Boston. Few people there have ever visited the Northwest. They confuse Seattle and Portland, but they do know about Mt. Rainier and Mt. Hood and the Columbia River. I like to think that some taxi driver in Boston knows that he may never see our mountains or the Columbia River, but he knows that someday his son or his daughter will travel to the area that Meriwether Lewis called "Beyond the Shining Mountains", and will thrill at the splendor of our forests, our mountains and our river.

In conclusion, Congressmen, I encourage you to enact National Scenic Area legislation for the Columbia Gorge as soon as possible. As you have seen today, the Gorge is

truly of national significance, and deserves national protection through legislation which is at least as strong as the AuCoin/Bonker bill, H.R. 4221.

TIMELY RESOLUTIONS

HON. ELDON RUDD

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. RUDD. Mr. Speaker, a constituent of mine, Capt. Freeman P. Fountain, who is commander of the Phoenix Chapter of the Military Order of the World Wars, contacted me recently to share copies of seven resolutions adopted at the order's recent convention.

The resolutions, which cover immigration, terrorism, the freedom fighters in Central America, the English language amendment and drug abuse and trafficking, are timely and deserve the careful consideration of the Members of the House.

I ask unanimous consent that the text of the seven resolutions adopted by the order be printed in the RECORD at this point:

1986 NATIONAL CONVENTION, SAN DIEGO, CA—30 JULY-3 AUGUST 1986

RESOLUTION 1

Whereas Commissioner Alan C. Nelson of the U.S. Immigration and Naturalization Service has released figures indicating that some four million illegal aliens will successfully enter the United States in 1986; and

Whereas these aliens have come from at least 53 different nations, about 60 per cent of them from Mexico, a nation experiencing a severe and growing economic crisis and a birth rate over three times greater than that of the United States; and

Whereas valid national polls show that 91 per cent of the people in the United States want illegal immigration stopped, and 77 per cent want legal immigration quotas reduced, and it is obvious that immigration into this nation is out of control and presently uncontrollable and further is the projected source of an increase in U.S. population in the next twenty years of some 50 million people; be it therefore hereby

Resolved, That we, the members of the Military Order of the World Wars, in national convention assembled, do hereby call upon the President and the Congress to heed the reasonable apprehension of the people of this nation and allocate the necessary resources to regain control of the borders of the United States; be it further

Resolved, That the internal security of our nation, its economic future and the maintenance of our free society are all threatened by uncontrolled immigration, and as citizens of the United States, we believe that continued toleration of immigration abuse is a clear violation of the legal responsibility of the Congress under the Preamble to the Constitution.

RESOLUTION 2

Whereas President Ronald Reagan, both by work and forceful leadership, has demonstrated his commitment to the suppression of terrorism; be it therefore hereby

Resolved, That we, the membership of the Military Order of the World Wars, in national convention assembled, do thank and commend the President for his courage in taking action against terrorism, and we do further express our full support for all measures taken or to be taken to suppress terrorism committed against citizens of the United States, wherever in the world such measures need to be taken.

RESOLUTION 3

Whereas the House of Representatives has passed legislation providing one hundred million dollars of aid to the "Contra" freedom fighters in Nicaragua in support of their fight for freedom from communist slavery; and

Whereas the spending of these funds should be carefully supervised to ensure that they are used effectively and solely for the purpose of their appropriation; and

Whereas substantially detailed doctrines, policies and programs concerning the effective use of such funds have already been developed and proven effective through extensive use and experience in the field; be it therefore hereby

Resolved, That we, the membership of the Military Order of the World Wars, in national convention assembled, do call upon the President and the Congress to delegate the supervision of the spending of the recently appropriated "Contra" aid funds to the Department of Defense; be it further

Resolved, That the President, as Commander-in-Chief of the Armed Forces, should exercise his constitutional responsibility over the spending of said funds through a presidential commission charged solely with the task of determining that the spending of said funds is for the purpose for which they were appropriated and in the national interest of the United States of America.

RESOLUTION 4

Whereas the English language is that in which our basic statements of freedom are written and our laws are universally written and also the language in which the government, business, industry, research and education of our nation are carried on; and

Whereas the English language is the most universally spoken and understood language of western civilization and serves mankind well as the most fully expressive communications tool available; be it therefore hereby

Resolved, That we, the membership of the Military Order of the World Wars, in national convention assembled, do express our concern that failure to learn and use the English language in the United States leads inevitably to loss of contact with western civilization and the philosophic principles of American freedom and encourages divisive subcultures, potentially disaffected from primary loyalty to the United States, and we call upon the Congress to enact forthwith, legislation making the English language the official language of the United States.

RESOLUTION 5

Whereas the use of illicit drugs and the criminal economy and criminal activity supported thereby have become a deadly and destructive cancerous plague, eating away the vitality, spirit and strength of our society; and

Whereas we see the cause of this national disease to be the ignorance and irresponsibility of the users, the greed and criminal cynicism of the producers and sellers, the permissiveness and apathy of the general public, the limited resources of law enforcement, the heavy case-loads and leniency of the prosecutors and courts and the lack of laws providing for stringent and harsh penalties, including the death penalty, if needed, for all forms of drug trafficking; and

Whereas this problem is now at the well-recognized level of a serious national security threat, not only in the United States but in many smaller countries, because of links with communist terrorism and wide-spread official corruption; be it therefore hereby

Resolved, That we, the membership of the Military Order of the World Wars, in national convention assembled, do call upon the President, the Congress and the governors and legislatures of the various states to make a full and unequivocal commitment to destroy the illicit drug traffic in this nation by all means at hand, including the following:

1. An intensified program of education of the youth of America, emphasizing strongly the personal responsibilities of citizenship and the dangers of all illicit drug use.

2. The re-allocation of certain national and state resources to provide for substantially stronger law enforcement at all levels of police operations and prosecution against drug traffickers, including the use of the armed forces as needed.

3. The imposition of both sanctions and rewards upon foreign governments as may be needed to secure their cooperation against the production and trafficking of drugs.

4. The passage, forthwith, of new laws providing for stringent and harsh penalties for trafficking in drugs, including the death penalty in aggravated cases.

5. The leadership, by word and deed, to bring the people of America to aroused action to wipe out the present national plague of criminal drug use.

RESOLUTION 6

Whereas the Constitution of the United States of America has served us well for two hundred years, has been amended through the process provided therein as needed and has been fully interpreted by the Courts through two hundred years of jurisprudence; and

Whereas various State legislatures have called for a Constitutional Convention to rewrite this basic guarantee of our freedom; and

Whereas there is substantial inherent danger to the well established and well defined freedom we enjoy in the process of rewriting the entire Constitution and any such revision would bring about great confusion, gross insecurity and many long years of bitter litigation to re-interpret the full meaning of the new document; be it therefore hereby

Resolved, That we, the membership of the Military Order of the World Wars, in national convention assembled, do oppose a Constitutional Convention and do call upon those persons who wish to change the Constitution to offer amendments as may be needed instead of seeking to make changes by rewriting the entire document; be it further

Resolved, That we do continue to honor our sworn oath to "uphold and defend the Constitution of the United States against all enemies, foreign or domestic," and we call upon all others who have sworn such an oath, particularly whose persons elected to represent the people, to reflect upon their sworn duty and to protect the Constitution as it has so well protected our God-given rights for two centuries.

RESOLUTION 7

Whereas, as we see it, the overriding issue concerning the present government of Nicaragua is the simple question of whether the Caribbean Basin and Latin America are to

be dominated and controlled by the communist slavery of the Soviet Union or by the policy of freedom supported by the United States; be it therefore hereby

Resolved, That we, the membership of the Military Order of the World Wars, in national convention assembled, do support and encourage the increase of support and assistance by the United States to all persons, organizations and governments who fight and work against communist oppression and subversion and fight and work for freedom and human dignity in Central and South America and throughout the world.

Done and passed at San Diego, California, this 31st day of July 1986.

JEPTHA C. TANKSLEY,
Captain, USA (Retired)
Commander-in-Chief.

SOBER DRIVERS MAKE SAFER HIGHWAYS

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. DORGAN of North Dakota. Mr. Speaker, today I would like to share with my colleagues a few startling facts about crime which has caused more death, injuries, and destruction than has been caused by murders, robberies, and rapes. This crime is drunk driving, and we have to do something to combat it.

Drunk driving crimes account for fully half of all auto fatalities.

Every 23 minutes someone dies because of a drunk driver.

Within the last 10 years, over a quarter of a million Americans have died because of drunk drivers. This is more than five times the number of U.S. combat deaths in Vietnam.

Drunk drivers cost society $24 billion each year in rehabilitation, lost earnings, and court costs.

One out of two Americans will be the victim, one way or another, of an alcohol-related crash.

The drunk driver is on highways and local streets all over our Nation. These statistics are frightening. Our constituents are frightened; but as Members of Congress we need to be more than frightened. We need to take action.

Today I am introducing legislation to encourage the States to take a stronger stance against drunk driving. This bill requires States to enact laws that puts the legal intoxication level at .10 and prohibits open alcohol containers in a vehicle. Similar to the law setting 21 as the legal age for purchasing alcohol law, this bill would withhold 5 percent of the State's highway funds if it does not comply.

All but 10 States currently have laws recognizing that drivers with a blood-alcohol level of .10 are intoxicated; two States have more stringent levels. Unfortunately, however, only 19 States currently prohibit drinking while driving.

It is possible to drive—following a reasonably direct route—from the New Hampshire-Canadian boarder south to Pensacola, FL and then west to Reno, NV—approximately 4,000 miles—drinking all the way.

Withholding State highway moneys is a serious penalty. I agree, but drunk driving is a serious nationwide problem, a problem that the Congress must take strong action to deal with.

The introduced legislation follows:

H.R. 5538

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. OPEN CONTAINER AND NATIONAL MINIMUM BLOOD ALCOHOL LEVEL LAWS.

(a) ESTABLISHMENT.—Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 159. Open container and blood alcohol level limitations.

"(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE.—

"(1) GENERAL RULE.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of each fiscal year succeeding the first fiscal year beginning after September 30, 1989—

"(A) in which the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or the right-of-way of a public highway, in such State is lawful; or

"(B) in which driving of a motor vehicle on a public highway, or the right-of-way of a public highway, in such State by a person with a blood alcohol concentration of 0.10 percent or greater is lawful.

"(2) LIMITATION OF APPLICATION TO CHARTER BUSES.—If a State has in effect a law which makes unlawful the possession of any open alcoholic beverage container in the passenger area by the driver (and not the passengers) of any motor vehicle designed to transport more than 10 passengers, including the driver, while being used to provide charter transportation of passengers, such State shall be deemed to be in compliance with paragraph (1) of this subsection with respect to such motor vehicles in each fiscal year in which such law is in effect.

"(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

"(1) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 1991.—

"(A) PERIOD OF AVAILABILITY.—Any funds withheld under this section from apportionment to any State on or before September 30, 1991, shall remain available for apportionment to such State as follows:

"(i) If such funds would have been apportioned under section 104(b)(5)(A) of this title but for this section, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

"(ii) If such funds would have been apportioned under section 104(b)(5)(B) of this title but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of this title but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 1991.—No funds withheld under this section from apportionment to any State after September 30, 1991, shall be available for apportionment to such State.

"(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under this section from apportionment are to remain available for apportionment to a State under paragraph (1), the State makes effective a law which is in compliance with subsection (a), the Secretary shall on the day following the effective date of such law apportion to such State the withheld funds remaining available for apportionment to such State.

"(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure as follows:

"(A) Funds apportioned under section 104(b)(5)(A) of this title shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

"(B) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of this title shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) of this title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of this title.

"(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not made effective a law which is in compliance with subsection (a), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of this title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of this title.

"(c) DEFINITIONS.—As used in this section—

"(1) ALCOHOLIC BEVERAGE.—The term 'alcoholic beverage' has the meaning such term has under section 158(c) of this title.

"(2) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning such term has under section 154(b) of this title.

"(3) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term 'open alcoholic beverage container' means any bottle, can, or other receptacle—

"(A) which contains any amount of an alcoholic beverage; and

"(B)(i) which is open or has a broken seal, or

"(ii) the contents of which are partially removed.

"(4) PASSENGER AREA.—The term 'passenger area' shall be defined by the Secretary by regulation.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of such title is amended by adding at the end thereof the following new item:

"159. Open container and blood alcohol level limitations.".

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees

to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 18, 1986, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 19

9:00 a.m.
Energy and Natural Resources
Public Lands, Reserved Water and Resource Conservation Subcommittee
To hold hearings on S. 1971, to transfer certain lands to the City of Mesquite, Nevada, S. 2194, to convey certain lands to the Catholic Diocese of Reno/Las Vegas, Nevada, S. 2599, to declare that the United States holds certain public domain lands in trust for the Pueblo of Zia Indians in New Mexico, S. 2698, to transfer certain lands in Nevada to the Toiyabe, Humboldt, and Inyo National Forests, S. 2758, to authorize the exchange of certain lands in Nevada and Florida, S.J. Res. 372, to authorize the establishment of a memorial in the District of Columbia to honor America's astronauts, S. 2812 and H.R. 4037, bills to revise the boundary of the Indiana Dunes National Lakeshore, and H.R. 4645, to modify the boundaries of the Cuyahoga Valley National Recreational Area.
SD-366

Impeachment Committee
To continue hearings on matters relating to the impeachment of Honorable Harry E. Claiborne.
SR-325

9:30 a.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings to examine the quality of air in the cabins of commercial aircraft.
SR-253

Finance
Health Subcommittee
To hold hearings to examine current Medicaid funding services provided for the long-term care of developmentally disabled persons.
SD-215

10:00 a.m.
Judiciary
Business meeting, to mark up pending calendar business.
SD-226

2:00 p.m.
Impeachment Committee
To continue hearings on matters relating to the impeachment of Honorable Harry E. Claiborne.
SR-325

SEPTEMBER 22

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings on the nomination of Dale D. Myers, of California, to be Deputy Administrator of the National Aeronautics and Space Administration.
SR-232A

Commerce, Science, and Transportation
Business, Trade, and Tourism Subcommittee
To hold hearings to review travel and tourism statistics.
SR-253

SEPTEMBER 23

9:00 a.m.
Office of Technology Assessment
The Board, to meet to consider pending business.
EF-100, Capitol

9:30 a.m.
Energy and Natural Resources
Public Lands, Reserved Water and Resource Conservation Subcommittee
To hold hearings on S. 2029 and H.R. 4090, bills to establish the Big Cypress National Preserve Addition in Florida, S. 2442 and H.R. 4811, bills to establish the San Pedro Reparian National Conservation Area in Arizona, H.R. 2921, to authorize the Secretary of Agriculture to issue permanent easements for certain water conveyance systems in order to resolve title claims arising under Acts repealed by the Federal Land Policy and Management Act of 1976, S. 2707 and H.R. 2826, bills to designate a segment of the Horsepasture River in North Carolina as a component of the National Wild and Scenic Rivers System.
SD-366

Rules and Administration
To hold hearings on S.J. Res. 268, to provide for the reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution, and to resume oversight hearings on the operations and functions of the Office of the Senate Sergeant at Arms.
SR-301

10:00 a.m.
Governmental Affairs
To hold hearings on the nomination of Robert P. Bedell, of Virginia, to be Administrator for Federal Procurement Policy.
SD-342

Labor and Human Resources
Children, Family, Drugs, and Alcoholism Subcommittee
To hold hearings to review proposed drug testing measures.
SD-430

Select on Indian Affairs
To hold oversight hearings on the transmittal and investment of money in the Indian Trust Fund.
SR-385

10:30 a.m.
Foreign Relations
Business meeting, to consider pending calendar business.
SD-419

Judiciary
To hold hearings on home video recording.
SD-226

11:00 a.m.
Veterans' Affairs
To hold hearings to review the legislative priorities of the American Legion.
SD-G50

SEPTEMBER 24

9:30 a.m.
Commerce, Science, and Transportation
Business meeting, on pending calendar business.
SR-253

Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings to review nuclear power safety measures in the aftermath of the Chernobyl nuclear powerplant accident.
SD-406

Governmental Affairs
Permanent Subcommittee on Investigations
To resume hearings on emerging foreign criminal groups in the United States.
SD-342

Select on Intelligence
To hold closed hearings on intelligence matters.
SH-219

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Judiciary
Courts Subcommittee
To hold hearings on S. 2531, Bankruptcy Antifraud Act of 1986.
SD-226

Labor and Human Resources
Business meeting, to consider pending calendar business.
SD-430

SEPTEMBER 25

9:30 a.m.
Labor and Human Resources
Employment and Productivity Subcommittee
To hold hearings on the employment impact of United States/Japan autoparts trade relations.
SD-430

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Environment and Public Works
To hold hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution.
SD-406

2:00 p.m.
Labor and Human Resources
To hold oversight hearings on activities of the Mine Safety and Health Administration.
SD-430

SEPTEMBER 26

9:30 a.m.
Governmental Affairs
Intergovernment Relations Subcommittee
To hold hearings on comprehensive federalism reform.
SD-342

10:00 a.m.
Environmental and Public Works
To continue hearings on S. 2203, to tablish a program to reduce acid deposition and other forms of air pollution.
SD-406

SEPTEMBER 29

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To hold hearings on S. 1974 and S. 1113, bills to prohibit the imposition by States of the worldwide unitary method of taxation.
SD-215

SEPTEMBER 30

10:00 a.m.
Foreign Relations
East Asian and Pacific Affairs Subcommittee
To hold hearings on United States trade relations with Taiwan and Korea.
SD-419

OCTOBER 1

9:30 a.m.
Commerce, Science, and Transportation
To hold oversight hearings on activities of the National Highway Traffic Safety Administration, and the implementation of the Motor Carrier Safety Act of 1984.
SR-253

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

2:00 p.m.
Foreign Relations
East Asian and Pacific Affairs Subcommittee
To hold oversight hearings on the North Pacific drift net fisheries.
SD-419

OCTOBER 2

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

CANCELLATIONS

SEPTEMBER 26

9:30 a.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings on proposed legislation authorizing funds for the Airport and Airway Trust Fund.
SR-253

SENATE—*Thursday, September 18, 1986*

(Legislative day of Monday, September 15, 1986)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

"Is anything too hard for God?"

God of Abraham, Isaac, and Israel, You addressed that question to Father Abraham when calling him to believe You in an impossible situation (Gen. 18:14). Faith responds, nothing is too hard for God. Gracious Lord, give us that faith.

"With men it is impossible, but with God, all things are possible." Jesus spoke those words to his disciples in an impossible situation (Matthew 19:26). God of the impossible, give us that faith.

When we are face to face with what seems an impossible situation, when nothing seems to work out right—when every option has led to a dead end—when we have reached our human extremity—Lord, give us the grace to trust in You in the confidence that "God works in everything for good to those who love Him and are the called according to His purpose." (Romans 8:28). Make us "more than conquerers through Him Who loves us." Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished and able majority leader, Senator ROBERT DOLE, of Kansas, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished Senator from South Carolina, Senator THURMOND.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each. I am going to ask, after the distinguished minority leader either uses or reserves his time, that I may parcel out my leaders time, 5 minutes to the distinguished Senator from Connecticut, Senator WEICKER, and 5 minutes to the distinguished Senator from Florida, Senator HAWKINS.

We will assemble at 9:30 to go to the House for a joint meeting to hear an address by President Aquino.

We are in recess from 9:30 to 10:30. We will resume consideration of the reconciliation bill under a statutory time limitation of 20 hours, which can be reduced by motion or agreement. We will not make that effort at this time.

It is also my understanding there will be a meeting this morning of key players in the budget process, Republicans and Democrats. They are looking for some compromise that might satisfy the majority of Members in the House and the Senate. So it is a combined House-Senate bipartisan effort to see if they can reach some agreement. That would certainly expedite matters and help us reach the October 3 target date.

I must say, I am not discouraged. I still believe that is attainable, that adjournment date of October 3. But, on the House side, I would add that I am getting all kinds of rumblings that there is no way; that it will be October 10. So I guess, on the balance, you could say it was 50-50.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. ANDREWS). Under the previous order, the Democratic leader is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

THE DANILOFF CASE

Mr. BYRD. Mr. President, I received a letter from deputies of the supreme Soviet of the U.S.S.R. yesterday on the subject of nuclear testing. The deputies, the chairman and members of the so-called section on the issues of peace and disarmament of the U.S.S.R. parliamentarian group, indicated that if the United States were to join with the Soviet Union in banning all nuclear testing today, this would be a concrete contribution to the cause of peace.

I have responded to the letter from those deputies, and I believe that a number of my colleagues, in particular the Senators who serve on the arms control observer group, are being delivered identical letters. I indicated in my response that a most important concrete step that could be taken at the moment would be the unconditional release of Mr. Daniloff from the Soviet Union, and that this gesture by the Soviet leadership would go a long way toward the creation of an atmosphere conducive to a successful summit meeting.

I indicated further that on the nuclear testing issues, American negotiators in Geneva are fully empowered to discuss and determine that issue, and that the Geneva talks are the proper forum for these proposals—after all, that is why the Geneva talks were created in the first place.

I have been among the foremost in expressing the hope for another summit, and have urged the administration to work toward that end. This is a two-way street, however, and the continued irresolution of the Daniloff case is getting in the way of progress in the far more important area of arms control. The moratorium which is needed right now is on rhetoric, press conferences, and public expressions of confrontation and posturing—and the Soviet Union can demonstrate its aspirations for peace by eliminating this needless roadblock, this cold rain shower which seems to be gathering more energy as time goes on.

I ask unanimous consent that my reply to the letter delivered to me by the Soviets, together with their letter, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SEPTEMBER 15, 1986.

Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, DC.

DEAR SENATOR: The Soviet Union has proved more than once its aspiration for peace, for the creation of a comprehensive system of international security. Its decision to extend the unilateral moratorium on nuclear testing, announced by General Secretary of the Central Committee of the CPSU M.S. Gorbachev in his Statement on Soviet television of August 18, 1986, is yet another vivid example attesting to this. Soviet Parliamentarians sincerely hope, that under current circumstances, when the realities of the nuclear threat are being even more deeply understood in the world and the realization that it is impossible to win a nuclear war is widening, our American Colleagues would properly appreciate this highly responsible decision and support the proposal to cease nuclear testing which would become a first step toward the complete elimination of nuclear weapons.

That is why we urge you to do everything in your power to convince the American Administration of the necessity to follow the example of the USSR and to stop any nuclear explosions. That would be a concrete contribution to the cause of peace and freeing mankind from the threat of nuclear catastrophe.

Sincerely,

Deputies of the Supreme Soviet of the USSR:

A. SUBBOTIN,

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Chairman, Section on the issues of Peace and Disarmament, the USSR Parlamentarian Group.
G. ARBATOV,
N. BLOKHIN,
V. ZAGLADIN,
G. ZHUKOV,
G. KORNIYENKO,
S. LOSEV,
E. CHAZOV,
Members of the Section.

U.S. SENATE,
OFFICE OF THE DEMOCRATIC LEADER,
Washington, DC, September 17, 1986

Mr. A. SUBBOTIN,
Chairman, Section on the Issues of Peace and Disarmament, the USSR Parliamentarian Group, Supreme Soviet of the USSR, Moscow, U.S.S.R.

DEAR MR. CHAIRMAN: Thank you for the letter you and your fellow deputies of the Supreme Soviet of the USSR sent to me on September 15, 1986 on the subject of nuclear testing.

As I am sure you are aware, the Senate of the United States has been on record for some time urging the Administration to request Senate approval of ratification, with adequate verification provisions, of the two nuclear testing treaties negotiated between our two nations and signed in 1974 and 1976. In addition, after this first step, the Senate strongly encouraged further negotiations aimed at a comprehensive and verifiable nuclear testing regime which would be subject to adequate controls and provisions consistent with the national security of both our nations.

The question of nuclear testing agreements should be discussed and determined at the Geneva negotiations. American negotiators are fully empowered to engage in this question, as well as the range of other matters relating to arms control. The recent give-and-take between President Reagan and General Secretary Gorbachev has been vigorous and wide-ranging, and needs to be seized upon in Geneva in order to make the most productive preparations possible for substantial achievements on arms control at any summit meeting.

I have been among the foremost in expressing the hope for another summit, and have urged the Administration to work toward that end. However, this is a two-way street, and the continued holding of Mr. Daniloff is impairing the atmosphere needed to promote a successful summit. As you rightly point out in your letter, the interests of comprehensive arms control, which can be significantly promoted at the summit, are far more important than such episodes as the Daniloff case, which is now getting in the way of progress. This has caused a cool and cloudy atmosphere in our relationship at precisely the wrong time.

As I have mentioned in a recent letter I sent to Ambassador Anatoly Dobrynin, the unconditional release of Mr. Daniloff would be a major gesture by the Soviet leadership that would go a long way toward a successful summit meeting.

Sincerely,

ROBERT C. BYRD.

THE PRESIDENT'S DRUG ABUSE INITIATIVES

Mr. BYRD. Mr. President, early this week I received the package of the President's drug abuse initiatives. That package, besides containing a copy of the Executive order on drug testing of Federal employees, which is effective immediately, contains only broad outlines of the legislative proposals the President intends to make.

Mr. President, I support targeted drug testing. I emphatically believe that those in very sensitive positions concerning national security issues, and certainly those who hold in their hands the health and safety of others, such as air traffic controllers and pilots, should be subject to testing, and tested as frequently as appears productive.

But, I am concerned about the broad reach of the Executive order. There is no evidence to suggest that it is necessary to test up to half of current Federal employees. Yet the order apparently calls for that. It seems to me to be an unnecessary and nonproductive infringement of personal privacy.

Concerning the statutory proposals, I would very much like to be able to address the President's proposals in detail, and I intend to do so when actual legislative language is available. I understand that the White House says this could happen, perhaps, by the end of this week.

In the meantime, I congratulate the President for adding his voice and his very important leadership to this issue. The President's recommendations appear to be comprehensive, but on cursory purusal of the very general descriptions now available, they appear to lack some of the components we believe are vital in a comprehensive and effective proposal. These components, which are contained in S. 2798, the bill we introduced on September 9, include, among others:

A mechanism to provide coordinated leadership of all Federal drug abuse control efforts;

Funding for correctional institutions, so that drug criminals can be jailed and not be released due to lack of space;

Increased funding for treatment programs, earmarked for substance abuse efforts; and

Funding to assist State and local agencies in their law enforcement efforts.

Also, the materials on the President's proposal sent to us earlier are unclear as to what will be new Federal efforts, as opposed to only a restatement of current Federal efforts.

In short, I will reserve my judgment on the President's proposal until I see the actual language. But, again, I would like to congratulate him for adding his voice to our dialog in the Congress.

A strong drug control bill has passed the House. We introduced a similar proposal last week, cosponsored by the entire Democratic Conference. And now we have a set of conceptual proposals from the administration.

I hope these expressions of support and interest mean that action on drug legislation will occur soon.

What remains is for both sides of the aisle here in the Senate to work together to craft the best, most effective proposal. I offer my aid and assistance to all Senators in this respect.

As I have said emphatically here on this floor, this is not a partisan issue. We want the same thing—the best legislation possible. We want it, and the American people demand it of us.

I hope the distinguished majority leader will entertain my proposal favorably, and that he will move expeditiously to schedule action in the immediate future on the proposals now awaiting action so a bill can be sent to the White House before we adjourn the 99th Congress sine die—which we hope to do on October 3.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for not to extend beyond the hour of 9:30 a.m. with statements therein limited to 5 minutes each.

The Senator from Connecticut is recognized.

THE WAR ON DRUGS

Mr. WEICKER. Mr. President, I want to commend the distinguished minority leader for his remarks about the war on drugs. The only difference between the minority leader and myself is that he is much more diplomatic than I am. My comments will not be so kind as to my understanding of the President's proposal. The President's proposal states, and I now quote, that:

> Increased resources called for in the President's Drug-Free America Act of 1986 and budget proposals will bring nearly $900 million of increased resources to the Federal effort to fight drug abuse.

That sounds very good until you come to the bottom of the page and you read

> consistent with the President's commitment to fiscal responsibility these budget proposals redirect resources within the existing Federal budget.

Mr. President, as I understand it, when we talk in terms of the real war we do not take from the Marines and give to the Navy, and we do not take from the Air Force and give to the Army. We go ahead and either raise taxes in terms of new money to finance the real war, or indeed we cut

back on these nice-to-have items in domestic times of peace and redirect these resources toward war.

Where is this money going to come from for the war on drugs? Where are these moneys going to come from in terms of being redirected from other resources? Let me tell you what my understanding is.

First of all, we have confirmed this morning both from OMB and the White House there will be no new money for the war on drugs. Therefore, it is my understanding that these are some of the potential proposals for funding the war on drugs; $100 million will be cut from student aid programs, college work study and supplemental education opportunity grants. The funds will instead be given to local school districts for drug education and law enforcement coordination.

The $233 million will be directed to the National Institute on Drug Abuse for treatment-prevention research. Where will the $233 million come from? The $75 million will come from what the administration calls the primary care block grant program. This cut could come from the community health centers, those centers which serve the poor that have no medical attention, and from the migrant health centers where people have no medical care.

The prevention block grant will be cut $2 million. This program provides money to the States for preventive health activities to reduce morbidity and mortality. The National Institutes of Health will be cut by $88 million. Those are cuts, in other words, that would reduce the number of new research grants in cancer, in heart disease, in Alzheimer's, in AIDS, and so on down the list.

The National Institute of Mental Health will be cut $6 million. This is the Institute that researches the causes, diagnoses, treatment, and prevention of mental illness. The Institute particularly focuses on schizophrenia, teenage suicide, and the mental health of the elderly. The $1.3 million will be taken from the National Institute on Alcohol Abuse and Alcoholism. And States will be allowed to use the $490 million alcohol, drug abuse and mental health block grant for increased drug abuse activities without adding additional funds. What that means is money for alcoholism and for mental health will give way to money for drug abuse.

What this type of a proposal would mean is not a war on drugs. This then becomes a war on the mentally ill. It becomes a war on the alcoholic. It becomes a war on the poor. It becomes a war on pregnant women insofar as infant mortality and low birth rate babies are concerned. This is what the war becomes.

Mr. President, I would hope with whatever passes this body we would say to ourselves that indeed drug abuse is a priority, and we have to pay for it just as we have to pay for any other real war. This is a real war and we should not redirect resources to pay for it, what a skillful term that is, to redirect resources. The administration's proposal will wreak havoc with those that already have been left at the door of our priorities in this Nation. I will have no part of that.

I do not even intend to address the constitutional problems raised in the President's package. That is something for others. But I know one thing. Any time that I go to war, I do not want to have media opportunities. You just give me the bullets. Otherwise, there is not much that can be done. I would hope that drug abuse would be a priority but not at the expense of others who need our special care. And that in effect is what is being proposed.

I used to have people sometimes during my speeches ask me why I am a Republican, and why don't you join the Democratic party? I will tell you one of the reasons why. I always used to look at the other side of the aisle here as being the greatest exponents of something for nothing. That is why I did not become a Democrat. But I am going to tell you. You fellows on the other side of the aisle are in the minor leagues compared to what has been going on here in the last couple of years. You do not get something for nothing. We do not get a war on drugs unless we pay for a war on drugs. We do not take it out of the misfortunes of other Americans.

Mr. President, when the legislation comes before the Senate I will support it vigorously. But only as long as I understand the true sacrifice that is going to be made in terms of our resources, our financial resources, that will be directed toward the war on drugs, so that we win the war—that we win the war as we will win the others for those that look to this Nation for help and indeed for life.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, recently George Will——

Mr. BYRD. Mr. President, will the Senator yield to me just briefly? I ask unanimous consent that the time I take be taken from the time I reserved.

The PRESIDING OFFICER. The Democratic leader is recognized from the time he reserved.

Mr. BYRD. I apologize to the distinguished Senator.

I wanted to rise to compliment the distinguished Senator from Connecticut. He is being very realistic, and not just as a result of Mr. Reagan's proposal, but as to any issue that he addresses. He is being very realistic. He is always realistic, but if we are going to have a war on drugs, that is what we are going to have. That is what the people demand. He is quite right. We ought not to take that money out of other programs that are just as necessary and affect people just as severely. I congratulate him and thank him.

Whatever time I have remaining I yield to the distinguished Senator from Wisconsin.

Mr. WEICKER. I thank my friend.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

YES GEORGE WILL—ARMS CONTROL WORKS

Mr. PROXMIRE. Mr. President, recently George Will, the widely admired columnist, challenged a Member of Congress on the Brinkley Sunday morning television show to name one arms control treaty that had helped bring a more peaceful and secure world. It was a welcome challenge to all of us who so vigorously advocate arms control. Have we arms control advocates been wasting the Nation's moral energy in pushing so constantly for arms control? Have we been pursuing an empty fantasy? Even worse, have those of us in the Congress who have a major responsibility for the country's security neglected the military security of our country in this super dangerous nuclear age to chase an impossible dream through futile attempts to win international cooperation?

The answers, Mr. President, is that a review of arms control treaties reveals first that arms control agreements have certainly made a significant overall contribution to world peace. Without them the nuclear world would be an even more threatening place than it is. Second, arms control has a long way to go. To date it constitutes more than one step in a journey of 1,000 miles but not much more.

First, consider the arms control treaties that have successfully excluded nuclear weapons from certain sections of the world.

Here they are: The Antarctic Treaty of 1961 has kept military weapons out of the Antaractic. This treaty is easy to deride as great for penguins but it represents the first attempt to establish a nuclear-free zone. It has worked—it established a useful precedent. Then in 1967 came the outer space treaty. Based on the Antarctic Treaty, it bans nuclear weapons and other weapons of mass destruction in orbit or on the Moon. An American or Soviet strategic defense initiative [SDI] or star wars would probably violate it. So far the treaty has been successful. Then there came the 1968 treaty prohibiting nuclear weapons in Latin America. This further advanced the nuclear-free zone concept. It also provides an international treaty basis

for United States resistance to the deployment of Soviet nuclear weapons in threatening our country in this hemisphere. And there is the 1972 Seabed Treaty. This treaty stops the deployment of nuclear weapons on the ocean floor. In doing so it inhibits a potential threat to the United States as the Nation's preeminent seapower. In aggregate this series of nuclear-free zone treaties have made the Earth at least marginally safer from nuclear war.

The Limited Test Ban Treaty of 1963 confined nuclear weapons explosions to the underground. In doing so it did nothing to stop the technical nuclear weapons arms race. But it did help to reduce the serious threat to the environment that flowed from massive nuclear explosions in the atmosphere.

In 1972 the United States and the U.S.S.R. signed and ratified the Anti-Ballistic Missile Treaty. That treaty sharply limited the defensive arms race. It went a long way toward establishing the credibility of the nuclear deterrent of both superpowers. For those of us who believe that the superpower nuclear peace that has persisted throughout the nuclear age has been based overwhelmingly on the devastating retaliatory power of both the United States and the U.S.S.R., and this treaty has made a vital contribution to a peaceful world. The Strategic Arms Limitation Treaty was signed in 1979. The United States has not ratified it. It expired on December 31, 1985. But it was kept in effect by the President until May 1986, and it may be revived. According to the CIA and the United States Joint Chiefs, that treaty succeeded in significantly limiting a major Soviet offensive nuclear arms buildup. It may well have been violated by the U.S.S.R. but the alleged violations, if verified, have little military significance.

The two arms control treaties that have had the most certain effect in reducing the threat of nuclear war have been the "hotline" agreement of 1963 and the Nonproliferation Treaty of 1970. The hotline agreement provides for direct communication in times of crisis between the Soviet leader with his finger on the nuclear button and the President of the United States. Here is one arms control agreement that could obviously make the differences between life on this planet and death.

Finally there is the Nonproliferation Treaty of 1970. A recent study of that treaty by the Carnegie Endowment for International Peace documented the continuing progress this arms control treaty is making in slowing the spread of nuclear weapons. It is true that seven or eight real or potential nuclear weapon nations have refused to sign the treaty or in one case have signed it but refuse to abide by it. But some 160 nations have signed it. A number of these nations operate nuclear energy facilities that produce processed uranium or plutonium of weapons grade. Most of these nations have recently agreed to unannounced on-the-spot international inspection to assure that the processed material is not being diverted to the fabrication of nuclear weapons.

Mr. President, it seems clear to this Senator that the answer to George Will's challenging question is that there are not one but a series of arms control agreements that have significantly advanced the prospects of world peace.

□ 0920

MYTH: CONGRESS IS UNDERCUTTING THE PRESIDENT ON ARMS CONTROL

Mr. PROXMIRE. Mr. President, the myth of the day is that the recent weapons funding cuts and arms control initiatives the House and Senate have enacted on their Defense authorization bills will undercut the administration's negotiating position at Geneva.

Let us take a look at what the House and Senate have done recently on their fiscal year 1987 DOD authorization bills:

The House, by a strong bipartisan majority voted to reduce funding for the strategic defense initiative to $3.1 billion in fiscal year 1987. The Senate came within one vote of reducing it to $3.2 billion and adopted report language calling for a redirection of the President's grandiose vision of an astrodome defense.

The House approved a 1-year moratorium on testing antisatellite weapons and a 1-year delay in the production of new chemical weapons.

The House voted to ban nuclear testing for 1 year if the Soviets reciprocate, while the Senate approved a nonbinding resolution calling for a comprehensive test ban treaty.

The House passed a measure requiring the President to adhere to SALT II, while the Senate bill contains nonbinding language urging the administration to stay within SALT's limits.

Now, according to the administration these actions undercut our negotiations in Geneva. According to Kenneth Adelman, the Director of the Arms Control and Disarmament Agency, Congress only demonstrates a "lack of will" by passing these amendments.

Is that the case, Mr. President?

No, it is not. Nothing could be further from the truth.

The fact is, the funding cuts and the arms control initiatives we have approved show a strong-willed commitment by the Congress toward a realistic arms control agreement with the Soviets that best serves the national interests of the United States.

The fact is, a $3.1 billion funding level for SDI is more than enough of a bargaining chip at Geneva. Any more would only demonstrate to the Soviets our ability to waste money.

The fact is, a mutual moratorium on antisatellite testing is in our national security interest because an arms race in Asat's puts more U.S. space assets at risk. A delay in producing binary nerve gas makes good defense sense at this point because of the problems we have been having with this weapon.

The fact is, a comprehensive test ban on both sides would be one of the most important steps we could take toward halting the superpower arms race and toward aiding our nonproliferation efforts.

And the fact is, it simply is in our military interest, as the Joint Chiefs of Staff have counseled in the past, to stay within the numerical limits of the SALT II Treaty.

In other words, Congress has shown the administration the path to arms control. It has sent the White House a message loud and clear on what kind of arms control treaty it wants—a treaty that bans weapons in space, a treaty that halts nuclear testing and the further production of chemical weapons, and a treaty that builds on the limits set by SALT II instead of skirting those limits.

The administration believes it has this problem with Congress and its arms control initiatives. That is not the case.

Congress has got a problem with this administration and its lack of initiative on arms control.

This is not a case of Congress undercutting the President.

It is a case of the President so far undercutting what the Congress wants in the way of arms control.

Mr. President, I yield the floor.

Mrs. HAWKINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

THE DRUG PROBLEM

Mrs. HAWKINS. Mr. President, there is a radio advertisement that plays in Washington from time to time promoting a certain national bank. It promotes this particular bank as "the most important bank in the most important city in the world." I do not know about the first half of the ad, but the second half is absolutely right—as the capital of the most powerful, most prosperous democracy on the face of the Earth, Washington is without question a city of great power and prestige. But side by side with power and prestige should go obligation and responsibility. Washington is no exception.

The attention of the Nation and the world is focused on this city. Everyone

is watching to see if we are serious about dealing with the problem of illegal drug use and drug trafficking, including the diplomatic corps, the eyes and ears of nations around the world. Yet, while tough words on drugs flow from the White House and the Congress, a few blocks away pushers sell PCP, cocaine and just about every other illegal substance you can imagine. While our words may be tough—the pushers and users on the streets mock our efforts.

We have passed bills cutting off foreign aid for countries that do not get serious about eradicating illegal drug crops. We twist the arms of wealthy countries urging them to give generously to international organizations dedicated to fighting the war on drugs.

We pressure countries to sign extradition treaties, mutual legal assistance treaties, Coast Guard boarding treaties, bank secrecy treaties and dozens of other types of international agreements aimed at tightening an international noose around the neck of the drug traffickers. What must these countries think when we try to enlist their support in the war on drugs and their diplomats cable home that Washington and the surrounding area are a haven for pushers and users?

Capt. John F. Miller, captain of a police department in the Washington suburbs recently said, "It's like an ocean—everywhere we turn we see cocaine." The statistics bear out this grim assessment. Between 1981 and last year the number of cocaine-related emergency room episodes has increased almost five times! During that period the number of cocaine deaths rose twelvefold. It was five annually. Now it is 61. In Washington as in most places where the drug culture thrives, violence is a way of life. Shootings, robberies, and even murders at many of the 17 cocaine street markets in Washington are a part of everyday ritual for the drug pusher and user.

The tragic cocaine death of Len Bias, a college basketball star from the Washington area, gained national attention several months ago and graphically illustrated the danger of cocaine use—but it also is one more sign that drug abuse in this town is out of control.

We can win the war on drugs if we can dry up demand for the drugs, eliminate the illegal crops at their source and throw the traffickers into jail. A tall order, no question—but so long as Washington, the Nation's Capital, is a major center of illegal drug use, we cripple our international, and even our domestic, drug control efforts. After all if we cannot clean up drugs in the Nation's Capital, how can we expect other cities or other countries to do so.

The city of Washington, DC, needs to set a firm and straight course against the use and trafficking of illegal drugs. It needs to launch a drug testing program for city employees, and a school drug testing program, as well. It needs to toughen city ordinances and penalties for illegal drug use; to shift economic resources to the police and other agencies to go after the pushers; and to institute a constructive "just say no" drug education program throughout the city, but especially in the schools. These and other tough antidrug steps would not only make this city a more pleasant place to live, but also make it a model for the rest of the Nation.

Mr. President, I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

TAX REFORM: VOICES FROM THE HEARTLAND

Mr. LEVIN. Mr. President, today it is expected that the conference committee on the tax reform bill will file its report. Undoubtedly, some will point to this as one of the final stages in the triumphant battle of the public interest against the special interests.

That is why I think it is an appropriate time to have the public speak for itself. I would like to take a few minutes of the Senate's time to read some of the letters from Michigan which I have received. Certainly, not all of it is in the vein of skepticism or opposition. But, according to my staff, at this point the mail in favor of this bill is a "dribble." The mail skeptical about it or against it is a "flood."

Mr. President, these letters are not written on formal letterhead. They are not technically precise in a couple of areas. But, then, again, these are not Washington lobbyists talking. They are voices from the heartland.

I will read these three letters at this time.

No. 1

I would like to voice my opposition to the new so called tax reform law and here are some of the reasons:

1. When President Reagan started talking tax reform, one of the key proposals was simpler tax forms. Surely the new law will make these forms more complicated—not simpler.

2. I think the elderly people are really getting jabbed by taking away the extra exemption. The increase in the amount of the standard deduction will not take care of taking away the extra exemption.

3. I am retired and my wife and I live comfortably but not lavish. We have a comfortable home purchased with an FHA mortgage many years ago. Couple years ago the law was passed making us pay one-half tax on social security benefits because total income is more than 32,000.00 due to, or rather including some municipal bonds. This was unfair because I purchased what municipals I have because they were supposedly tax free.

Now, the new tax reform law is taking away more deductions such as sales tax and increasing the standard deductions (which will not cover the deductions being taken away). I believe the tax reform people are kidding themselves and members of Congress when they say charitable organizations will not be effected. I predict they will be effected a great deal.

4. I am over 65 years of age and in a taxable income bracket of 25M to 30M dollars. As nearly as I can tell, my tax is going to increase 15 to 20 percent. I don't think this is fair.

5. Last but not least, I have talked to many of my friends whom I would class in middle income category. I have yet to find one person who is in favor of this tax reform law in it's present form. I am happy to see 6 million poor people removed from tax rolls, but don't penalize just one section of taxpayers of which I believe I am one.

No. 2

I have been following the recent proposals for income tax reform with great interest. I find what I am reading to be very alarming.

My wife and I had a combined income in the low 30's last year (gross). Loss of deductions for interest on our debts (car, credit cards, etc.), sales tax, state and local taxes, income tax preparation fee and I don't know what else since the final bill has not yet passed, will have major economic implications to our family. Loss of these deductions will move us into the 28 percent tax bracket. Additionally we will be paying taxes on our former deductions.

At the same time, much to my chagrin, I read that this "more equitable" tax system will move those who are well off in to this same tax bracket, some of whom stand to receive up to a 22 percent reduction. Some of these people stand to receive a tax reduction in excess of my family's gross income.

We have been forced to get by with less each year for the last ten years. We have been able to buy only one new car in the last ten years, no vacations in the last 5 years. Seldom do we go out to dinner or to the movies and the list goes on. Each year we must cut out something else. Each year the struggle grows more difficult. You and your fellow Congressmen must be aware of the implications of this bill for middleclass America.

No. 3

In attempting to get a handle on the proposed tax bill a number of issues come to the forefront. We would like to bring these to your attention as we feel they are substantial and will have a significant impact upon our country.

First, what we like about the proposed tax reform:

(1) The removal of many poor individuals and families from the tax rolls. This is a much needed reform to assist those already struggling to survive.

(2) The elimination of many(?) of the so-called "passive" tax shelters, that allowed large tax savings with little or no risk, far beyond the initial investment.

(3) A minimum tax for corporations. This should eliminate the untenable situation where most families, including us would pay more federal income taxes than large corporations with multi-million dollar profits; many of who were defense contractors making their profits from our tax dollars!

We see the above as major, positive developments; however, we have many concerns with the proposed tax bill and its overall impact as it emerged from the joint committee.

(1) The whole process has been rushed through Congress, and at times secretively, allowing little time for reflection or serious debate. In the haste to put together this legislation many of its ramifications have been seriously overlooked. A bill as radical as this one deserves and needs more attention.

(2) Most people (most thinking people!) view the increasingly persistent deficit on a major concern facing our country today, if not the foremost concern. Yet this proposed bill does nothing to address this problem. It seems to us that tax reform would present us with an excellent opportunity to begin to face and correct this serious issue. What a shame!

(3) The elimination of nearly all of the progressivity of our tax code strikes us as most unfair. Can you explain to us, and others, what's fair, or reformed, when we with an annual income of approximately $60,000 will be paying the same Federal tax rate as families or individuals earning millions or tens of millions of dollars annually? (Granted a miniscule difference in personal exemptions.) This is reform? Progressivity is one of the most fair and rational components of our present code. We cannot understand the drastic change.

(4) The elimination of the two income adjustment flies in the face of current demographic trends. Given equal incomes the two earner household has obvious and markedly greater expenses than the one earner household. This issue is not addressed in the proposed bill. It took years for its establishment in our present code.

(5) With our annual deficit, huge national debt, and abysmal savings rate the elimination of the tax savings of IRA's for many households doesn't add up. We need to encourage long term savings in our country, not decrease our capacity to do so.

In sum we think the proposed tax bill has many harmful aspects and deserves more careful and open examination. While it does contain attractive components we need to consider all the possible ramifications. This bill represents a radical change in our tax code and to pass it into law without more thoughtful debate would be irresponsible and we think harmful.

Thank you for your consideration on this matter.

COUNTERTERRORIST FORCES

Mr. BENTSEN. Mr. President, once again we have had an airplane hijacking, and once again some of our fellow citizens have been harmed by terrorists who seem to have no geographical limitations. The recent hijacking of Pan American flight 073 in Karachi, Pakistan, left 2 Americans dead and 17 others wounded when terrorists opened fire with automatic rifles and threw hand grenades into the mass of passengers huddled together in the aisles.

I certainly do not blame the Pakistani authorities for these casualties; they did all that could reasonably have been done once the plane was seized. The terrorists' decision to open fire apparently had nothing to do with the fact that Pakistani commandos had surrounded the plane. Indeed, there is no indication that the terrorists even knew that the commandos were anywhere near the aircraft at the time.

No, in this particular incident, other than to have had better security, which may never be good enough, there may not have been anything that anyone on the outside could have done to prevent the ultimate tragedy of death and destruction. But there may be a lesson that we can learn from this event—a lesson that may help us when next we are involved in a similar terrorist hijacking.

Sadly, I say "when," rather than "if," because I am convinced that terrorism of this sort is here to stay, and we had better be prepared to meet it.

I am limited in what I can say about this topic here in this Chamber, because much of what we know about our national ability to respond to terrorism is highly classified.

I believe, though, that sometimes the decision to retain the cloak of security classification about certain activities which are commonly discussed by the press or by unnamed administration spokesmen acts only to inhibit those of us on Intelligence or Armed Services, without serving any true national security purpose at all. Too much of this material has been a part of the public domain for too long for those of us here in this Chamber to pretend that it does not exist.

It should be no surprise to anyone that the United States has a counterterrorists capability within its military forces. Any reasonably well-read citizens would know that following the disastrous 1980 attempt to rescue the hostages in Iran, military planners took a hard look at our capabilities in the counterterrorist area and found them sadly lacking.

Among other things, one result was the creation of a command center for what are called "special operations" and the dedication of specially trained troops to serve as the basis for an elite counterterrorist force.

We have such forces now, and I have been to their headquarters and training facility, and watched them as they demonstrated their abilities. They are good. There is no doubt about it.

They display a high degree of professionalism and competence and they have the specialized training needed for the unique mission of rescuing hostages and taking on a terrorist group successfully. The problem is, we have to be able to get our counterterrorist forces to the scene of the problem very quickly—and that is where we fall short.

When this recent hijacking was going on in Karachi, I doubt that there were very many knowledgeable people who did not assume that our men were on their way. An unidentified administration source later confirmed this speculation, being quoted in the New York Times to the effect that Delta Force was dispatched and received permission from Pakistani authorities to land in Karachi, but did not arrive before the tragic termination of the incident.

During this past year, I have spoken several times with the commander of our special operations forces and suggested that some portion of his men ought to be stationed overseas, closer to likely trouble spots. Following the Department of Defense line, he has consistently resisted this idea, pleading that the entire unit needs to remain together at one location in this country for training purposes.

I made this same suggestion to Adm. J.L. Holloway III, Executive Director of the Vice President's Task Force on Combating Terrorism. Subsequently, the task force recommended that consideration be given to stationing part of our counterterrorist forces overseas. But it has not been done.

I am not prepared to say that the hijacking in Karachi would have turned our differently if our special operations forces had been able to reach Pakistan within a few hours.

I do know, however, that even had they arrived before the incident was over, it would have been too much to expect even highly-trained soldiers to fly 16 or more hours to some location half-way around the globe and then be able to operate at peak efficiency. Any of us who have suffered from "jet-lag" can testify to that. And it is a certainty that our special troops will not be able to help resolve a hijacking if they are still in the air when it ends.

Moreover, the first few hours of any hijacking or terrorist situation are most critical. No matter how well prepared the terrorists might be, no matter how much planning they have done, there is always a certain amount of confusion on their part in the beginning. Within a relatively short period of time, though, they consolidate their position and perhaps bring in reinforcements and perhaps even additional weapons.

If it is an airplane hijacking, they might attempt to have the plane fly to another location. The point is, all of this takes time on the part of the terrorists, time which we need to deny them. If we can strike before they have had an opportunity to do these things, before they can consolidate their position, we have a much better chance of bringing the incident to a close with a minimal loss of innocent lives.

Having seen the rigorous training that our counterterrorist forces undergo, I can understand way the commander wants them to keep their skills continually honed through constant practice. Small arms marksmanship is indeed a perishable skill. I am not persuaded, however, that the United States is the only place these forces can practice their shooting. Nei-

ther do I believe that a decision has to be made to permanently station one particular part of these forces overseas. Such positioning can be done on a rotating basis, with troop substitutions made every few months.

In short, while I do not see any insurmountable problems with pre-positioning of such forces, I see considerable benefits—benefits that could wind up saving American lives.

If there are problems with our allies, I feel certain that every civilized nation is beginning to understand the global dimensions of the problem of terrorism and that if they are approached in the proper fashion, there will be opportunities for stationing some of our special troops overseas. There certainly does not seem to be any difficulty in getting our NATO allies to accept a quarter million regular troops on their soil.

No, I believe this argument against forward deployment of our counterterrorist forces is nothing but a smokescreen, used to justify the preconceived ideas of certain officials of the Departments of Defense and State. And this smokescreen has to be pierced.

Today, I am extending both a challenge and a warning to those who resist what I—and no doubt others in this Chamber—believe is necessary and proper.

We must act to insure that our troops are in a position to influence the situation when the next hijacking or other terrorist confrontation occurs.

DOD or State Department officials should be on notice: If they do not take the steps necessary to pre-position some of our counterterrorist forces overseas, I will work with others in the Senate and will introduce legislation to bring this about. I have great confidence in the members of our special operations forces.

I do not want to see them hamstrung any longer, nor to see American lives needlessly jeopardized through our inability to reach the scene of the hijacking within a reasonable time, with troops that are rested and ready to go. Stationing some of our counterterrorist forces overseas will contribute to the overall effectiveness of our fight against terrorism. It is a step that needs to be taken now.

IN PRAISE OF ANTONIN SCALIA

Mr. D'AMATO. Mr. President, this body has just unanimously voted to confirm Antonin Scalia as Justice of the Supreme Court of the United States: I want to add my voice to that deservedly thunderous vote of approval.

I realize that many of my colleagues might conclude that this is simply a case of ALFONSE D'AMATO sticking up for a fellow Italian American, but I can assure them that my praise and motives go much further and deeper than that. While we are on that subject, however, please permit me to express a little ethnic pride. About 2 months ago, we had a celebration in my home, the State of New York, for the birthday of our Statue of Liberty. For millions of immigrants, including my grandparents the Lady was the first thing they saw in America, and she was a symbol of hope and opportunity. It is only fitting, therefore, and it fills me with great pride that this anniversary year of the Statue of Liberty would also see the confirmation of the first Italian American to become Justice of the Supreme Court of the United States.

Mr. President, our unanimous approval of Justice Scalia is also a tribute to a tremendously accomplished individual. Antonin Scalia is a lawyer and scholar of impeccable credentials, and just as important, he is a man of dedication to and love for his family. I think one of the important reasons that we in Government are subject to a higher degree of scrutiny than private citizens is the just expectation that an example be set, an example for all of us but especially for our children. Many of America's most pressing problems, notably the scourge of drugs, will be solved not so much by passing laws as by having men of moral character and integrity like Antonin Scalia in the highest positions of our Government.

Finally, Mr. President, what is most important about the confirmation which Justice Scalia has successfully undergone is what it says about our country, which is something that I think we usually take for granted. It says that the United States is an honest and open society, where everyone is free to speak out and where everyone is free to achieve what they deserve. We all know here in the Senate that the confirmation process is grueling not only on the nominee but on those of us who must pass judgment. It seems clear, however, that giving everyone the chance to express his or her view is the only way we can get to the truth. What strikes me on this occasion is the great contrast between our country and the Soviet Union, where we have recently seen the literally deadly cover up at Chernobyl and the outrageous duplicity of framing and arresting an innocent private American citizen, Nicholas Daniloff.

All in all, Mr. President, I think we can be proud of ourselves on this occasion, the confirmation of Justice Antonin Scalia is truly an example of our Government at its best, because we have found the right man for a very important job. We all join in wishing Justice Scalia a long and successful tenure on the Supreme Court.

THE 39TH ANNIVERSARY OF THE U.S. AIR FORCE

Mr. ANDREWS. Mr. President, throughout the history of mankind there have been few innovations to have had a more profound effect on society than manned flight. Humans in the 20th century have experienced the "incredible shrinking world" as a result largely of our increased ability to travel greater distances in shorter periods of time. Man's mastery of flight has also affected another longtime condition: warfare. However, military air power has excelled in a new dimension—the ability to deter war.

Ever since Lenardo da Vinci drew the first plans for a flying machine, aeronauts used balloons for observation during the Civil War and the Wright brothers made history at Kitty Hawk, the use of the skies has changed the way in which we protect our borders and defend freedom in an increasingly troubled world. However, it would take some time before the War Department would begin to fully utilize Orville and Wilbur Wright's mammoth accomplishment. In 1907 an aeronautical division was created in the Signal Corps, but it was another 2 years before they purchased their first airplane from the Wrights.

The development of a fully realized air branch of the Armed Forces was halting, moving at a "stop and start" pace. Separating from the Signal Corps in 1918, they became the Air Service by law in 1920, then the Air Corps in 1926, only to see the creation of the Army Air Forces in 1941. Throughout this period and beyond, the U.S. Government was witnessing the emergence of a new force in military strategy. Such obvious benefits as entering enemy territory in a matter of hours, when ground forces would have taken days or months, emphasized that in order to control the ground one must first control the air.

In 1947, the U.S. Air Force was created. Growing from the aviation arm which began World War I with only 35 pilots and 55 mechanics, the USAF concluded 1985 with 603,653 Active Duty men and women, over 200,000 Reserve members and over 250,000 civilian employees—not to mention over 7,000 active duty aircraft and over 2,000 planes in reserve. This amazing branch of our defense structure is capable of defending, maneuvering offensively, transporting and providing rescue and search aid when needed.

For example, it's frightening to contemplate the consequences of the Russian blockade of West Berlin after World War II without the Berlin airlift. During the 462 days of Operation Vittles, over 277,000 flights were completed with aircraft landing at Tempelhof airport on an average of every 3½ minutes delivering over 2,325,000

short tons of supplies. This was a truly astonishing feat.

Today, the Air Force is capable of this and much more. We are proud of its ability to deter war, provide intelligence, assist in weather observation and drug interdiction, and, like our other fine branches of the service, preserve and protect our freedoms around the world.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RECESS UNTIL 10:30 A.M.

The PRESIDING OFFICER. Under the previous order, the hour of 9:30 having arrived, the Senate will now stand in recess until the hour of 10:30 a.m.

Thereupon, at 9:30 a.m., the Senate recessed until 10:30 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. PRESSLER).

□ 1030

OMNIBUS BUDGET RECONCILIATION ACT, 1987

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 2706) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987 (S. Con. Res. 120, Ninety-ninth Congress).

The Senate resumed consideration of the bill.

(Remarks of Mr. BENTSEN at this point relating to terrorism are printed earlier in the RECORD.)

□ 1040

The PRESIDING OFFICER. Does the Senator suggest the absence of a quorum?

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Is the time to be equally divided?

Mr. BENTSEN. I have no objection.

The PRESIDING OFFICER. Without objection, the time consumed in the rollcall will be equally divided.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1050

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The minority leader is recognized for 1 minute.

ADDRESS OF HER EXCELLENCY CORAZON C. AQUINO, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES TO THE JOINT MEETING OF THE UNITED STATES CONGRESS

Mr. BYRD. Mr. President, both Houses have jointly sat and listened to an excellent address, most eloquent address, a very courageous address, by Her Excellency Corazon C. Aquino, President of the Republic of the Philippines.

Mr. President, I ask unanimous consent that this great speech by President Aquino delivered to the joint meeting of the U.S. Congress be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ADDRESS OF HER EXCELLENCY CORAZON C. AQUINO, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES TO THE JOINT MEETING OF THE UNITED STATES CONGRESS

Mr. Speaker, Mr. President pro tempore, three years ago, I left America in grief to bury my husband, Ninoy Aquino, I thought I had left it also to lay to rest his restless dream of Philippine freedom. Today, I have returned as the President of a free people.

In burying Ninoy, A whole nation honored him. By that brave and selfless act of giving honor, a nation in shame recovered its own. A country that had lost faith in its future found it in a faithless and brazen act of murder. So in giving, we receive, in losing we find; and out of defeat, we snatched our victory.

For the nation, Ninoy became the pleasing sacrifice that answered their prayers for freedom. For myself and our children, Ninoy was a loving husband and father. His loss, three time in our lives, was always a deep and painful one.

Fourteen years ago this month was the first time we lost him. A President turned dictator, and traitor to his oath, suspended the Constitution and shut down the Congress that was much like this one before which I am honored to speak. He detained my husband along with thousands of other—Senators, publishers and anyone who had spoken up for the democracy as its end drew near. But for Ninoy, a long and cruel ordeal was reserved. The dictator already knew that Ninoy was not a body merely to be imprisoned but a spirit he must break. For even as the dictatorship demolished one by one the institutions of democracy—the press, the Congress, the independence of the judiciary, the protection of the bill of rights—Ninoy kept their spirit alive in himself.

The Government sought to break him by indignities and terror. They locked him up in a tiny, nearly airless cell in a military camp in the north. They stripped him naked and held the threat of sudden midnight execution over his head. Ninoy held up manfully under all of it. I barely did as well. For 43 days, the authorities would not tell me what had happend to him. This was the first time my children and I felt we had lost him.

When that didn't work, they put him on trial for subversion, murder, and a host of other crimes before a military commission. Ninoy challenged its authority and went on a fast. If he survived it, then, he felt, God intended him for another fate. We had lost him again. For nothing would hold him back from his determination to see his fast through to the end. He stopped only when it dawned on him that the Government would keep his body alive after the fast had destroyed his brain. And so, with barely any life in his body, he called off the fast on the fortieth day. God meant him for other things, he felt. He did not know that an early death would still be his fate, that only the timing was wrong.

At any time during his long ordeal, Ninoy could have made a separate peace with the dictatorship, as so many of his countrymen had done. But the spirit of democracy that inheres in our race and animates this Chamber could not be allowed to die. He held out, in the loneliness of his cell and the frustration of exile, the democratic alternative to the insatiable greed and mindless cruelty of the right and the purging holocaust of the left.

And then, we lost him irrevocably and more painfully than in the past. The news came to us in Boston. It had to be after the 3 happiest years of our lives together. But his death was my country's resurrection in the courage and faith by which alone they could be free again. The dictator had called him a nobody. Two million people threw aside their passivity and fear and escorted him to his grave. And so began the revolution that has brought me to democracy's most famous home, the Congress of the United States.

The task had fallen on my shoulders to continue offering the democratic alternative to our people.

Archibald MacLeish had said that democracy must be defended by arms when it is attacked by arms and by truth when it is attacked by lies. He failed to say how it shall be won.

I held fast to Ninoy's conviction that it must be by the ways of democracy. I held out for participation in the 1984 election the dictatorship called even if I knew it would be rigged. I was warned by the lawyers of the opposition that I ran the grave risk of legitimizing the foregone results of elections that were clearly going to be fraudulent. But I was not fighting for lawyers but for the people in whose intelligence I had implicit faith. By the exercise of democracy, even in a dictatorship, they would be prepared for democracy when it came. And then, also, it was the only way I knew by which we could measure our power even in the terms dictated by the dictatorship.

The people vindicated me in an election shamefully marked by Government thuggery and fraud. The opposition swept the elections, garnering a clear majority of the votes, even if they ended up, thanks to a corrupt Commission on Elections, with barely a third of the seats in Parliament. Now, I knew our power.

Last year, in excess of arrogance, the dictatorship called for its doom in a snap election. The people obliged with over a million signatures, they drafted me to challenge the dictatorship. And I obliged them. The rest is the history that dramatically unfolded on your television screens and across the front pages of your newspapers.

You saw a nation, armed with courage and integrity, stand fast by democracy against threats and corruption. You saw women poll watches break out in tears as armed goons crashed the polling places to steal the bal-

lots, but just the same, they tied themselves to the ballot boxes. You saw a people committed to the ways of democracy that they were prepared to give their lives for its pale imitation. At the end of the day, before another wave of fraud could distort the results, I announced the people's victory.

The distinguished cochairman of the U.S observer team in his report to your President described that victory:

"I was witness to an extraordinary manifestation of democracy on the part of the Filipino people. The ultimate result was the election of Mrs. Corazon C. Aquino as President and Mr. Salvador Laurel as Vice President of the Philippines."

Many of you here today played a part in changing the policy of your country toward us. We Filipinos thank each of you for what you did: For balancing America's strategic interest against human concerns, illuminates the American vision of the world.

When a subservient Parliament announced my opponent's victory, the people turned out in the streets and proclaimed me President. And true to their word, when a handful of military leaders declared themselves against the dictatorship, the people rallied to their protection. Surely, the people take care of their own. It is on that faith and the obligation it entails that I assumed the Presidency.

As I came to power peacefully, so shall I keep it. That is my contract with my people and my commitment to God. He had willed that the blood drawn with the lash shall not, in my country, be paid by blood drawn by the sword but by the tearful joy of reconciliation.

We have swept away absolute power by a limited revolution that respected the life and freedom of every Filipino. Now, we are restoring full constitutional Government. Again, as we restored democracy by the ways of democracy, so are we completing the constitutional structures of our new democracy under a constitution that already gives full respect to the bill of rights. A jealously independent Constitutional Commission is completing its draft which will be submitted later this year to a popular referendum. When it is approved, there will be congressional elections. So within about a year from a peaceful but national upheaval that overturned a dictatorship, we shall have returned to full constitutional Government. Given the polarization and breakdown we inherited, this is no small achievement.

My predecessor set aside democracy to save it from a Communist insurgency that numbered less than 500. Unhampered by respect for human rights, he went at it with hammer and tongs. By the time he fled, that insurgency had grown to more than 16,000. I think there is a lesson here to be learned about trying to stifle a thing with the means by which it grows.

I don't think anybody, in or outside our country, concerned for a democracy and open Philippines, doubts what must be done. Through political initiatives and local reintegration programs, we must seek to bring the insurgents down from the hills, and by economic progress and justice, show them that for which the best intentioned among them fight.

As President, I will not betray the cause of peace by which I came to power. Yet equally, and again no friend of Filipino democracy will challenge this. I will not stand by and allow an insurgent leadership to spurn our offer of peace and kill our young soldiers, and threaten our new freedom.

Yet, I must explore the path of peace to the utmost, for at its end, whatever disappointment I meet there, is the moral basis for laying down the olive branch of peace and taking up the sword of war. Still, should it come to that, I will not waver from the course laid down by your great liberator:

"With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle, and for his widow and for his ophans, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

Like Lincoln, I understand that force may be necessary before mercy. Like Lincoln, I don't relish it. Yet, I will do whatever it takes to defind the integrity and freedom of my country.

Finally, may I turn to that other slavery: Our $26 billion foreign debt. I have said that we shall honor it. Yet must the means by which we shall be able to do be kept from us? Many conditions imposed on the previous Government that stole this debt continue to be imposed on us who never benefited from it. And no assistance or liberality commensurate with the calamity that was visited on us has been extended. Yet ours must have been the cheapest revolution ever. With little help from others, we Filipinos fulfilled the first and most difficult condition of the debt negotiation: The full restoration of democracy and responsible Government. Elsewhere, and in other times of more stringent world economic conditions, Marshall plans and their like were felt to be necessary companions of returning democracy.

When I met with President Reagan yesterday, we began an important dialog about cooperation and the stengthening of the friendship between our two counttries. That meeting was both a confirmation and a new beginning and should lead to positive results in all areas of common concern.

Today, we face the aspirations of a people who had known so much poverty and massive unemployment for the past 14 years and yet offered their lives for the abstraction of democracy. Wherever I went in the campaign, slum area or impoverished village, they came to me with one cry: Democracy! Not food, although they clearly needed it, but democracy not work, although they surely wanted it, but democracy. Not money, for they gave what little they had to my campaign. They didn't expect me to work a miracle that would instantly put food into their mouths, clothes on their back, education in their children, and work that will put dignity in their lives. But I feel the pressing obligation to respond quickly as the leader of a people so deserving of all these things.

We face a Communist insurgency that feeds on economic deterioration, even as we carry a great share of the free world defenses in the Pacific. These are only two of the many burdens my people carry even as they try to build a worthy and enduring house for their new democracy, that may serve as well as a redoubt for freedom in Asia. Yet, no sooner is one stone laid than two are taken away. Half our export earnings, $2 billion out of $4 billion, which was all we could earn in the restrictive markets of the world, went to pay just the interest on a debt whose benefit the Filipino people never received.

Still we fought for honor, and, if only for honor, we shall pay. And yet, should we have to wring the payments from the sweat of our men's faces and sink all the wealth piled up by the bondsman's 250 years of unrequited toil?

Yet to all Americans, as the leader of a proud and free people, I address this question: Has there been a greater test of national commitment to the ideals you hold dear than that my people have gone through? You have spent many lives and much treasure to bring freedom to many lands that were reluctant to receive it. And here you have a people who won it by themselves and need only the help to preserve it.

Three years ago, I said, thank you, America, for the haven from oppression, and the home you gave Ninoy, myself and our children, and for the 3 happiest years of our lives together. Today, I say, join us, America, as we build a new home for democracy, another haven for the oppressed, so it may stand as a shining testament of our two nations' commitment to freedom.

Mr. BYRD. Mr. President, I ask unanimous consent that as to the quorum which I am about to make a point of order with respect to the lack thereof the time charged be equally divided between both sides. But I have not yet made that suggestion.

Mr. President, I shall not suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Illinois is recognized.

SUPPORT OF THE SMALL BUSINESS INNOVATION RESEARCH PROGRAM EXTENSION

Mr. DIXON. Mr. President, I rise today in support of legislation which provides continuation of the Small Business Innovation Research Program through fiscal year 1993.

This program is strongly supported by the small business community, which is confident of its ability to make a major contribution to the Nation's $50 billion research and development effort.

Small businesses constitute 99 percent of all business establishments in this country; employ the majority of our Nation's work force; generate about 45 percent of the gross national product; and are acknowledged as leading innovators.

However, prior to enactment of this act in 1982, small business was virtually shut out from Federal research and development efforts. This statement is supported by facts which reflect that, prior to 1982, small business received only 2.5 to 3 percent of the total Federal research and development budget. Moreover, regretably, that share was steadily declining.

Four years later, it appears that our reliance on the program has been totally justified. There are early indications that the Small Business Innova-

tion Research Program has stopped the steady decline of the percentage of the Federal research and development budget received by small business. Happily, we are beginning to see a reverse to that trend.

This program has served to convince Government procurement officials that small firms can perform effectively in the research and development arena. Their product is not only of high quality but also is equal in every respect to that of those companies who have, traditionally, received these contracts.

Mr. President, I thank you for my time and suggest—or may I yield to the minority leader.

Mr. BYRD. Mr. President, was the distinguished Senator about to make a point of order that a quorum was not present?

Mr. DIXON. I was going to do that.

Mr. BYRD. Mr. President, I ask unanimous consent that the time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, the time consumed during the quorum call will be equally divided.

Mr. DIXON. I thank the leader.

Mr. President, I suggest the absence of a quorum under the time limitation agreement.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1140

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. D'AMATO). Without objection, it is so ordered.

OMNIBUS BUDGET RECONCILIATION ACT, 1987

The Senate continued with consideration of the bill (S. 2706).

□ 1150

Mr. CHILES. Mr. President, we are about 36 hours away from a possible vote on a sequester resolution. The only way we can avoid it is to make some additional budget cuts on our own.

The reconciliation bill now before the Senate is our only chance to get around a sequester. But this bill contains just 3.7 billion dollars' worth of savings. That is like trying to deflect a hurricane with a stop sign.

Right now, people from both the House and Senate are trying to work out a package that provides $14 billion to $15 billion or $15.5 billion in cuts.

If we can agree on that package, and if Congress approves it, then we will not have to pass a sequester.

But even with the additional cuts, we have to be very clear on one point. Even that package will not get us down to the Gramm-Rudman-Hollings target of $144 billion for this year. All it will do is get us within hopefully $10 billion of that target. And, under the law, that is one of the loopholes that lets us off the sequester hook.

So, in a sense, the reconciliation bill is the equivalent of punting on third down inside the opponents 10-yard line.

A deficit of under $154 billion means we missed the target by $10 billion. That is $10 billion more we will have to cut next year. That is $10 billion that could become even larger if the economic assumptions prove to be too optimistic. That is $10 billion on top of a deficit that could grow by as much as another $22 billion next year when tax reform produces a revenue shortfall.

Mr. President, most of the spending changes we have talked about are not permanent, structural changes; they are one-shot savings that leave the deficit hole just as deep as last year. Gramm-Rudman-Hollings says next year's deficit should be $108 billion. But at the current rate, I am afraid it will be more like $180 billion. In other words, not one-zero-eight, but one-eight-zero.

The Gramm-Rudman-Hollings law is a 5-year plan. It sets annual targets for cutting the deficit. If we do not do the job this year, and each year thereafter, we are just heaping debt on the generations to follow.

I know the job has not gotten any easier in the year since we passed Gramm-Rudman-Hollings. The law was passed before last year's record trade deficit became this year's record-breaking trade deficit. It was passed before the economy went soft. It was passed before we had tax reform to consider.

But like it or not, that is the way it is.

And that is why I am convinced we need to pass a strong reconciliation package. If we do not pass a much tougher reconciliation, cannot agree on a sequester and go home with $170 billion deficit, I am pretty sure a sizable number of us will stay there.

Mr. President, when the House and Senate met last week on the Temporary Joint Committee on Deficit Reduction, we heard the Director of the Office of Management and Budget say the President would allow no more cuts in military spending. We heard him say the President would tolerate no additional revenues to help in the deficit battle. He said take it all out of domestic spending.

Well, Mr. President, Senator DOMENICI and I offered the Senate that very same offer last spring. I think you will remember how many votes it got. Just 14 votes.

I want to take a minute to point out something to the Senate. This spring, Senator DOMENICI and I proposed a budget and the Senate passed it 70 to 25. It included additional revenues to cut the deficit. That was a strong bipartisan vote including a majority of Republicans and a majority of Democrats overwhelmingly supported that. That is convincing evidence that we had to do everything possible to cut the deficit. The Senate passed resolution had that become the law, Mr. President, today we would not be looking for $19 billion or $15 billion to get these sequester cuts. We would be looking for just $2 billion.

Mr. President, when we brought the Domenici-Chiles proposal to the floor, it contained some $19 billion in revenues. If we had kept them in, we would not be here now. But more than $5 billion was removed on the floor. Even if we had approved what was left, we would still be at $151 billion, well within the statutory cushion, and we would not be facing a possible sequester.

But that is history. Now we have to come up with more cuts in reconciliation, or vote on sequester.

We are in a position now where the advice of an old Florida farmer comes into play. That farmer used to tell people, "if you want anything and can't find it, just come to me and I'll tell you how to get along without."

I wish that farmer were here right now, because we are going to have to get along without a lot of things to produce an effective reconciliation package.

So what we have is a set of choices to make. We can pass this reconciliation plus an extra $10 billion of deficit reduction, avoid sequester, and still miss the target by a little under $10 billion.

Or we could turn our backs on reconciliation and face a vote on sequester. If we approve the sequester, we will reach the $144 billion target, but we will do it by shaving all spending, the good with the bad, more than 9 percent from domestic spending and about 7 percent from defense spending.

Or finally, we could turn our backs on both reconciliation and sequester, and end up with a deficit of well over $170 billion. Then we will simply be reducing the standard of living of our children and grandchildren when the bill comes due on that debt.

Those are the three choices. If you think we can just keep nudging the problem over into next year, then next year's going to be a real bloodletting. If you think we can ignore the problem altogether, then next year will be even worse.

There simply is not enough in the pending reconciliation package to do any good. We have to find more savings, and, as I said, Mr. President, we have about 36 hours to do that in.

SIXTH OMNIBUS BUDGET RECONCILIATION ACT, 1986

Mr. DOMENICI. Mr. President, the time is growing short. The new budget year begins 2 weeks from today and our fiscal house is still not in order. Last night we began action on the implementing legislation for next year's budget, which the Congress adopted last June. And this debate begins with the very real threat that, if we fail to do our job, the sequester process in Gramm-Rudman-Hollings will do our job for us.

I do not want to take very much of my colleagues time. But, I do think that it might be helpful to review the present situation and just how we got here.

As almost everyone knows, the Congressional Budget Office and the Office of Management and Budget issued a joint report, as required under Gramm-Rudman-Hollings, which projects the fiscal year 1987 deficit under current economic and technical conditions and based on laws now in place. The average of the individual CBO and OMB deficit estimates is $163.4 billion—or $9.4 billion over the deficit point—$154 billion—at which a sequester is required under Gramm-Rudman-Hollings.

Indeed, the Congress has received the CBO-OMB report which identifies the amount by which the current deficit estimate exceeds the $144 billion maximum deficit target in law and outlines how the across-the-board cuts required by law are to be distributed—5.6 percent for defense programs and 7.6 percent for all nondefense programs included in the sequester base. Last Friday, the Temporary Joint Committee, which includes the combined memberships of both the House and Senate Budget Committees, reported a resolution affirming the CBO-OMB report. The Senate now faces a vote affirming these cuts, as early as tomorrow night.

Now, there may be some who will say that the reason we find ourselves in this unenviable position is a failure of the regular budget process. To the contrary, if we had bound ourselves to implementing the policies we agreed to in the budget resolution and had finished our work in a timely manner, we would not find ourselves here today.

We began deliberations on the fiscal year 1987 budget back in February of this year. At that time the Congressional Budget Office estimated that the deficit for the upcoming fiscal year would total $183 billion. The Gramm-Rudman-Hollings target for the year, of course, is $144 billion. We needed to find $38 billion in deficit reduction to avoid a potential fall sequester.

The Budget Committee went to work. In mid-March we reported a budget resolution that met the Gramm-Rudman-Hollings targets, provided a 2.8-percent growth in defense budget authority, reduced nondefense spending by over $15 billion, and proposed increased revenues of about $13 billion over the President's request. That resolution also significantly reconciled the spending and revenue assumptions.

Mr. President, I stand before this Chamber today to tell those who are listening that, had Congress followed through with the reported resolution, we would not be facing a potential sequester on October 1 and, equally as important, our job to meet the outyear targets would be significantly less difficult.

Let me go on. The full Senate took up the committee's reported resolution and, again, passed a blueprint that met the Gramm-Rudman-Hollings target, increased revenues by about $8 billion over the President's request, and further reduced nondefense spending by $21 billion. Much of the savings in that resolution was reconciled, and, again, had that Senate-passed resolution been fully implemented we would not be facing the October sequester here tonight.

When we went to conference the situation rapidly deteriorated. After almost 4 weeks of protracted negotiation, it became evident that, while the budget agreement totaled about $30 billion in new deficit savings—in addition to the $9.4 billion already achieved in COBRA—we could get a commitment to reconcile no more than $9.2 billion. This means that we failed to get a substantial commitment to the process by which much of these savings would be achieved.

It is clear that if we had moved forward with a reconciliation bill that achieved the full amount of the direct spending savings and revenue increases agreed to in the budget, we would not today face this prospect of a sequester. Instead, we are tonight for the first time addressing the reconciliation bill for next year. This bill contains $3.7 billion in savings by CBO estimates and only $3.1 billion according to OMB. This bill falls far short of the $9.4 billion average in the CBO-OMB estimates, and even farther short of the amount we are likely to need when the final estimates are made in October.

Let me explain. The joint CBO-OMB report shows that we are now, at this moment, $9.4 billion over the $154 billion sequester threshold. However, we have not passed any full year appropriations bills, nor have we accounted for other legislation which might add to the current CBO-OMB estimates.

These estimates are based, as I indicated earlier in my remarks, on laws now in place. This means that these deficit estimates are based on fiscal year 1986 appropriated budget authority levels.

Moreover, these estimates do not include legislation currently pending in both Houses to provide that Social Security COLA's are paid no matter what the actual inflation rate is instead of the 3-percent threshold in current law. One other large area is CCC deficiency payments. CBO assumes these payments will be accelerated from fiscal year 1988 to fiscal year 1987 as they were this year. OMB makes no such assumption. To be prudent, we should anticipate that these payments will be made whether by legislation during this session or by administrative action.

I would like to introduce into the RECORD at this point, Mr. President, a table which shows the effect of this legislation on the CBO-OMB deficit estimates. As this table shows, enactment of full year appropriations bills consistent with the 302(b) allocations in the budget resolution could add about $1.7 billion or more to the Gramm-Rudman-Hollings deficit base. Let me emphasize that these appropriations bills add money mainly because they are being costed against this year's appropriations base and not because of any oversight or fiscal disregard on the part of the Appropriations Committee. Indeed, this small increase for all appropriations action above this year's level reflects the real degree of restraint that the Appropriations Committee has had to face.

This table also shows that another $1.7 billion would have to be added to OMB's estimates if the regular appropriations bills are enacted because OMB estimates of appropriated entitlements are based on the fiscal year 1986 levels, rather than the current law level.

An additional $4.3 billion should also be added to the OMB level for the acceleration in advanced deficiency payments which, at this point, they do not assume will happen. And finally, $800 million needs to be added to the CBO figures to account for the enactment of the Social Security COLA legislation—which will surely come.

The bottom line is that $9.4 billion will not do the job. We need to develop a package that totals at least $14.5 billion and we have only $3.7 billion in the current reported version. This will not be an easy task and the rules regarding debate on reconciliation do not make it any easier. Indeed, Senator CHILES and I are attempting to come up with a process whereby the Senate can work its will to meet this goal and yet not violate the spirit of the rules and limitations that apply to reconciliation legislation.

In conclusion, let me say that I do not share the pessimism of many that suggests the Senate, and ultimately the Congress, will fail to meet its obli-

gations under the Gramm-Rudman-Hollings law. Already, we have seen a willingness to compromise and to go back and look for more savings on the part of many Senators. We begin now what will be a very difficult process that will require forebearance on the part of all. I ask my colleagues for understanding because we are on new ground, to be sure. But, in the end, the budget and, ultimately, the American people will benefit.

The table follows:

Needed Deficit Reduction to Avoid October 1 Sequester

[In billions of dollars]

CBO/OMB August 20 deficit snapshot	163.4
OMB:	
Legislation adding to deficit:	
COLA	.....
Farm deficiency payments	+4.3
Appropriations:	
Appropriated entitlements	+1.7
Appropriations at Senate levels	+1.7
CBO:	
Legislation adding to deficit:	
COLA	+0.8
Farm deficiency payments	.....
Appropriations:	
Appropriated entitlements	.....
Appropriations at Senate levels	+1.7
Legislation adding to deficit	+5.1
CBO/OMB October 1 deficit snapshot	168.5
Deficit needed to avoid sequester	154.0
Deficit reduction needed	14.5

RECESS UNTIL 1:30 P.M.

Mr. COCHRAN. Mr. President, at the request of the majority leader I ask unanimous consent that the Senate now stand in recess until 1:30 p.m. with the time between now and 1:30 p.m. to be charged equally against the resolution.

There being no objection, the Senate at 11:59 a.m., recessed until 1:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. MATTINGLY].

□ 1330

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed as in morning business for not to exceed 5 minutes and that I may speak therein.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

THE CONTINUING TRADE CRISIS

Mr. BYRD. Mr. President, the Commerce Department announced today its latest estimates for economic activity in the second quarter of this year. It has come up with the same dismal growth rate of 0.6 percent that it estimated last month. Measured in terms of constant 1982 dollars, our Nation's output rose only $5.5 billion during the second quarter. If the $10.6 billion increase in national defense purchases is excluded, one will find that our civilian production actually declined in the second quarter.

When one looks into the causes for our sluggish growth, one thing stands out. Americans are buying more goods, but most of the growth in our market has been swallowed up by rising imports and production that no longer goes to export markets. At a time when our civilian output declined and sales of civilian output rose $20 billion, our trade deficit ballooned by $28 billion. Imports soared by $19 billion and we lost export sales of $9 billion.

It is worth noting that these appalling trade figures cover only April through June and do not include the record $18 billion trade deficit figure for the month of July alone.

The administration has been assuring us that the decline in the dollar would bring dramatic relief to our trade deficit. Imports might rise in price but their real volume would be reduced and our exports would rise. In fact, well over a year after the dollar began its decline in February 1985, neither of those trends has appeared. Our import volume continues to soar and our export volume has headed south.

As long as the growth in the U.S. market continues to be supplied primarily by increased imports and displaced exports, we will have little or no growth. We will enjoy an overall economic turnaround only when progress on the trade front occurs. That will happen when this administration recognizes the crisis in trade—a crisis attributable in part to the lack of a realistic trade policy—and takes appropriate action.

The administration's failed approach to trade is not working and too many Americans are not working as a result. Today's GNP figures demonstrate once again that the administration's failure to cope with the trade crisis is hurting the total economy, not just isolated sectors and regions.

OMNIBUS BUDGET RECONCILIATION ACT, 1987

The Senate continued with the consideration of the bill.

Mr. SPECTER. Mr. President, I ask unanimous consent. I may suggest the absence of a quorum and that the time be equally charged on the reconciliation bill, which is presently before the body.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1350

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 2706.

Mr. DOLE. Mr. President, I have been discussing this with a number of the principals with reference to the highway bill. I would advise my colleagues that Senator BYRD is aware of what I propose to do at this point. I am going to ask in a moment, or ask now, unanimous consent that we turn to the Calendar 870, the budget waiver to accompany the highway bill.

I assume there are going to be reservations or outright objections.

But I would propose that we take an hour off of our side on the reconciliation bill so that Members who have an interest could discuss their problems with the particular provisions of the highway bill. Maybe we could reach some agreement.

So I would suggest that perhaps I make the request and someone reserve the right to object.

I will ask unanimous consent that we have an hour off of our time on this side on the reconciliation bill to discuss various reservations Members have.

Mr. BENTSEN. Mr. President, I reserve the right to object. If I may state as the ranking member on the Environmental and Public Works Committee, I hope very much we can resolve these differences and then be able to get on with the highway bill.

I think it is critical that we get it passed. The authorization is expiring.

We addressed it this morning in the Finance Committee, as the Senator knows, and took care of the text part of it, so we have that all together to move on.

I know the House shares our anxiety in that regard.

So, obviously we have to clear it with the minority leader in that regard. But I am hopeful we can get an answer on that very quickly on our side.

Mr. DOLE. The Senator has no objection to maybe some of the principals discussing their concerns.

Mr. BENTSEN. None whatsoever.

BUDGET ACT WAIVER ON HIGHWAY BILL

Mr. DOLE. Mr. President, let me make the request and I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 870,

S. Res. 459, the budget waiver to accompany the highway bill.

I ask also at this time, is there reservation.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

Mr. DIXON. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DIXON. Mr. President, I reserve the right to object.

The PRESIDING OFFICER. Who yields time?

The Senator from Illinois reserves the right to object.

Mr. DOLE. If the Senator will yield right there, I ask unanimous consent at this time there be an hour allotted to discuss the various reservations Members have and at the end of that time, they can just object,

Mr. DIXON. Reserving the right to object, Mr. President, if the majority leader will yield, may I have the attention of the majority leader? If all the majority leader is asking unanimous consent for is 1 hour off the reconciliation bill on that side to discuss the question of taking up this bill, I do not have any problem with that. But if the majority leader is asking that we do set aside the reconciliation bill to take up this bill, I object to that.

I do not have any problem about discussing it. But we have difficulty about taking up that bill unless we can have an understanding about some things that would not be considered in connection with that legislation, may I say.

□ 1400

Mr. DOLE. The Senator is correct. All I am suggesting is we take an hour off of reconciliation—we are still on reconciliation—and that we have discussion on the Senate floor by people who have different points of view on the highway bill. This might help us to resolve those. But we would not be moving to the highway bill.

Mr. DIXON. I have no objection to that procedure, Mr. President.

The PRESIDING OFFICER. Is there any objection? Without objection, it is so ordered.

Does the Senator from Illinois seek recognition under his reservation to object?

Mr. DIXON. I do, Mr. President.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. Mr. President, I see other colleagues of mine—the distinguished Senator from New York, Senator D'AMATO; my colleague from Illinois, Senator SIMON; my colleague from New Jersey, Senator LAUTENBERG—and I understand there are a number of other Senators who would come to the floor immediately, including the distinguished Senator from Pennsylvania, Senator SPECTER, who had been here earlier, and others, concerning something we understand would be contemplated by the distinguished manager and the distinguished ranking member and others from the committee in connection with this bill.

We are told, quite candidly, Mr. President, that should this bill come up for consideration on Calendar 870, the highway bill, that it would be the intention of the managers of the bill and others on that committee to attempt to place in the bill a limitation of 85 percent on the use of the transit money in connection with the mass transit account, which would adversely impact, of course, Mr. President, the major States, the large States of the country with major transit systems.

Frankly, if our colleagues want to get into that sometime, at an appropriate time after we are prepared to do so, some of us from the States that would be adversely affected would want to introduce another amendment to be considered at that time putting a $1.50 limitation on the amount of highway funds any State could use, which would adversely impact some of the States who are represented by the managers and who profit to a very substantial extent from the use of highway funds.

We would like to avoid all of that quarrel between all of us, Mr. President. There is not time left in the number of days left in this session to go into that.

We have no problem with taking up the highway bill. As a matter of fact—I am only speaking for this Senator from Illinois—I do not have any problem with discussing the 55-mile-per-hour speed limit, if some of my colleagues want to bring that up. I may not support increasing it, of course, but I would have no problem with a legitimate debate and a reasonable time limit and a vote on that kind of question. I have no problem with the highway bill itself.

But a number of us have a great deal of trouble and serious reservations about taking up this legislation unless we have an understanding from the managers that there will not be an attempt made by the managers, or others associated with them, to offer such an amendment concerning an 85-percent limitation. We would have a great deal of difficulty with that.

Frankly, should that be the case, then at the appropriate time, this Senator would have to object.

I would like to read very briefly a letter, Mr. President, which I think would express the point of view of my distinguished colleague and friend, the distinguished Senator from New York, Senator D'AMATO; my distinguished colleague and friend, the Senator from New Jersey, Senator LAUTENBERG; and my warm friend and colleague from Illinois, Senator SIMON; and others. It is a letter we sent out to our colleagues, Mr. President, on September 15. If I may indulge our colleagues so that our full point of view is made clear. We have on this letter, I might say, the Senator from Illinois, from New Jersey, from Massachusetts, from Maryland; I see a Senator from Georgia, from California, Pennsylvania, and others.

SEPTEMBER 15, 1986.

DEAR COLLEAGUE: During consideration of S. 2405, the "Federal-aid Highway Act of 1986," an amendment may be offered by Senator Symms to guarantee each State a minimum 85 percent return on user fees paid into the Mass Transit Account.

We strongly oppose this amendment. It effectively destroys the section 3 discretionary grant program. It amounts to another major cut in federal support for transit, even though transit spending has already suffered major cutbacks. It is grossly unfair and inequitable.

The amendment is, in essence, nothing more than an attempt to permit States with little or not transit service to raid the Mass Transit Account for highway purposes. It is a raid that the transit program simply cannot afford. The fiscal year 1987 Senate-reported DOT Appropriations bill limits transit spending to roughly $3.4 billion, $1.2 billion below the fiscal year 1981 level.

In other words, Mr. President, in the last 6 years, transit spending in this country has dropped $1.2 billion, went down $1.2 billion.

While transit was falling by over 25 percent—despite the enactment of legislation allocating 1 cent of the Federal gas tax to transit—highway spending was increasing by over 40 percent, to roughly $13 billion projected for fiscal year 1987.

So, if I may depart again from the text, Mr. President, mass transit down $1.2 billion, highway spending up $13 billion in the same period of time.

It is true that most of the section 3 discretionary grant program goes to the states that have or are building major transit systems. However, the bulk of federal transit spending is distributed by formula, and every state receives this formula assistance to help meet its transit needs.

Both large and small transit systems are increasingly unable to meet their financing needs. Maintenance and needed improvements have been deferred. Service has been cut. Yet the Symms amendment would cut discretionary capital funding for a number of major transit systems by up to 70 percent or more. It takes away well over $600 million from these systems and the millions of passengers they serve. It effectively cuts the Section 3 discretionary grant program by more than 60 percent.

The Symms amendment makes these deep cuts based on the argument that many states don't get their fair share of Mass Transit Account money. However, the great majority of "winners" under the Symms amendment are already big winners out of the Highway Trust Fund. Most of these states were allocated over $1.30 in highway funds for every dollar they contributed to that trust fund in Fiscal Year 1985; 15 of them received $1.75 or more for every dollar they contributed.

The majority of the "losing" states, on the other hand, historically have received less from the Highway Trust Fund than the na-

tional average compared to what they contribute. There is no good reason for these states to have their transit programs gutted in order to provide still more highway funds to states that are already big "winners" under the Highway Trust Fund.

We intend to see that this proposal, if offered, gets the kind of full and comprehensive review that will allow Senators to make an informed judgment of its true merit. We urge our colleagues to join us opposing this ill-conceived amendment.

If you need any further information, please contact Ed Rogers of Senator Heinz's staff at 4-6324 or Bill Mattea of Senator Dixon's staff at 4-2854.

Sincerely,

Alan J. Dixon, John Heinz, Frank R. Lautenberg, Alfonse D'Amato, Paul Simon, Paul Sarbanes, John F. Kerry, Sam Nunn, Pete Wilson, Arlen Specter.

So, Mr. President, in conclusion, let me simply make this remark, which I think will be shared by other colleagues. I see my distinguished friend from New York State on his feet. His eloquence is unsurpassed in this body and I know he has a great deal to say on this same subject.

But the point we want to make is that we feel very strongly that the mass transit needs of our States, represented here by those who will oppose this attempt, has already been massively injured in the last few years by the sharp reduction in expenditures of $1.2 billion, while highway funds have increased by $13 billion; that any attempt of this kind is well out of bounds and ought not to be countenanced, and we do not want to undertake this in this short session.

□ 1410

There may be another time and another place perhaps in the next session.

Mr. President, when there is plenty of time early on to discuss this at length, I am sure my colleagues and I would be happy to accommodate our friends on the committee at that time. But we will object to going forward at this time.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I respect and admire my colleagues here, and my distinguished friend from Illinois. But I think we should put this in a proper perspective. We are talking about a $52 billion highway program. To move it forward so we can have continuity in the Federal Aid Highway Program that affects all 50 States, and to make the comparison of what the mass transit problems are in Chicago, with the transits, say, of getting people through the State of North Dakota. It is just not an accurate comparison.

I just say to my good friend, he is making an argument here that is simply comparing apples with oranges. It is true that North Dakota, for example, gets back more dollars in highway funds than they put into the fund. But it is a national and defense highway system. In order to get from one end of the State to the other, there has to be a highway all the way through it.

We are talking about transit problems in places like Chicago, New York City, and the New Jersey area that my colleagues here on the floor say are more localized problems. They do not fit the same prescription as the National Highway Program. We should first get that point clear.

Second, we will bring the charts over here if we want to start talking about funding and dollars. What I would like to appeal to him is, I think those of us in this committee—and I can speak for all of us on the committee—have no desire to in any way have an amendment here that is going to disrupt the continuity of the Federal Aid Highway Program.

But the problem that the Senator is pointing out, those States who get the mass transit funds are getting $2, and $3 plus back for what they are putting in.

So I urge my colleague not to get into the argument about hgw poor ygur State is doing and how well my State is doing because the record shows on the transit chart that very few States and big cities get all of the transit dollars. There are some 38 States that are losers on the 1-cent a gallon.

In 1982, when President Reagan provided the leadership to pass the Surface Transportation Act of 1982, he made a compromise. The compromise was the 1-cent a gallon that carried with it a half a percent allocation of the total funds to each State which is true for our funds and our interstate funds. That is the way it passed the Senate. That was lgst in conference in the compromise on the Surface Transportation Act. Yet, with that 1-cent compromise carried the implication that we would get back something out of those dollars.

In my State, it is 1 cent. In North Dakota it is 1 cent. In Illinois it is 1 cent. It all goes into the mass transit fund. We are not getting back anything substantial in our States on that 1 penny.

That is the issue. It is a fairness question. If we want to have a National Interstate Defense Highway System, where we all cooperate as the 50 sovereign States, we have to have fairness applied to this.

I would appeal to my colleagues. We are willing to work this out. If you look at the formula of what passed in the other body on the highway dollars, the States like Idaho, like North Dakota, like South Dakota, like Nebraska, like Kansas, they would lose dramatically in highway funds if we accept the House formula.

We have to go to conference with our colleagues in the other body. We have to work out some kind of an agreement. I do not think any of us in the Senate Subcommittee on Transportation are so naive and so inexperienced in politics to think that we are going to go over and deal with our friends JIM HOWARD, BUD SHUSTER, and GLENN ANDERSON in the other body and come back with the full 85 percent.

We would, however, not be able to have a Federal Aid Highway Program if in fact we had to take the House formula on the highways, because then the State of North Dakota, a small State—and I might say a State that is not a wealthy State right now due to the farm economy, has hundreds of miles of interstate going across it, and very few people to pay into it—would not even be able to raise enough money to maintain the Interstate Highway Program if we had to accept the formula that the city, State, urban, and House of Representatives comes up with.

The one beauty about the Highway Program is we have two Senators from each State to help protect the 50 States. What we really are asking for—is fairness. You have a discretionary spending program with respect to the mass transit funds where basically there is not any formula. It is a discretionary program. So most of the money is going to very, very few places.

We are not talking about massive cutbacks. I do not know where the Senators get their numbers. But we will bring some charts over to point this out to my colleagues. I think we are willing to work out some agreement.

But for us to interfere with passing a $52 billion highway program would be a dramatic mistake for the country. It would be bad for commerce. It would be bad for people's opportunities. I would appeal to my colleagues to say what other things do the taxpayers spend their money on that they actually get back any more personal mobility, freedom, if you will, and opportunity, because of their ability to get in their automobile and travel on a good road system than they get from their Federal highway dollars?

I think it would be a mistake if we allowed for an interference here over a dispute that we have over what I view as fair and what my colleagues view as what is fair over the mass transit 1 penny—to interfere with that over the other 8 cents that people are paying that needs to be a sustained continued highway program without work stoppages and slowdowns.

So what I would say to my colleagues, I would suggest that they might consider the idea that we set aside temporarily, any amendments

dealing with the mass transit system and most certainly the amendment that the Senator is suggesting of a $1.50 limitation on the Highway Program. That is totally out of bounds with the intent of the national highway program and system because we have some States who have long miles to travel over very rough terrain.

Mr. DIXON. Will my colleague yield?

My colleague talks about fairness and talks about their need for highway funds where they need a lot more roads because they are big States that need more roads but do not mind taking our money from mass transit when we are the few States with the mass transit needs.

What I have said to my friend is since 1956, for 30 years, he has been getting back almost 2 bucks for every buck he sends down here in money for his highways and I am not squawking about that.

Mr. SYMMS. That is the only way we get those good potatoes to your market.

Mr. DIXON. How is that fairness?

Mr. SYMMS. The way it is fair in this.

Mr. DIXON. I am saying the Senator wants to limit us to 85 percent. Then why does he not limit himself to $1.50?

Mr. SYMMS. We are not limiting the Senator to 85 cents. We are trying to see that we get a floor, that we get something back. If we got 50 cents back on the dollar, we would not be squawking quite so much. If we had done it the way it passed the Senate originally, we would be getting more back than we are talking about now. This is a reduction. If we applied the old half-a-cent rule that is still in the bill with respect to our funds, there would be a lot more money for my State and like the State of the Senator from North Dakota.

The Senator and I have made a compromise by suggesting the 85-cent minimum. If you want to get from Chicago to Seattle, you have to pass through several States. So it is a national highway system. It transits through certain States.

Mr. DIXON. Would my friend yield?

Mr. SYMMS. It is more of a localized problem. We are still helping you. We are willing to pay in our 1 cent. We want to get something back.

Mr. DIXON. We want to help you too. But does my friend yield a moment?

Mr. SYMMS. Sure.

Mr. DIXON. Remember when we passed the nickel tax in the interstate highway improvement fund a couple of years ago? This Senator was very supportive of that legislation as the Senator knows. As a matter of fact, believe it or not, the State of Illinois had the most Members of the Congress come, Senators and people in the House, voting in favor of that bill than any major State in the Union, any of the larger States.

□ 1420

I do not know if you know that is a fact. It is a fact.

One of the inducements for us to do that was the penny for the mass transit system.

Now my friend wants to come back and, by some insidious device that they have somehow developed in the committee, strip off some of that money and put it into the programs for other States.

I want to say to my friend that violates the spirit of fairness that appealed to us when this whole matter was discussed several years ago and when so many of us supported this legislation with so much enthusiasm.

Mr. SYMMS. I thank my colleague for making that point. I appreciated the support we received from the Illinois delegation in the Senate and in the other body.

But when the bill passed the Senate, it was much more generous to the other 38 States that are nonrecipients of this mass transit fund, than of the four Senators who sent out the letter: BENTSEN, BURDICK, STAFFORD, and myself.

I would point out that all our amendment would do is to offer a guarantee that each State would get a minimum 85-percent annual return.

That is probably negotiable. It can probably be compromised. I do not know how it will come out in the House of Representatives. To compare a national highway system with a local problem of transit, for a Chicago area or New York City transit area, where you do not have people who have to pass through for interstate commerce or for defense purposes, there is a difference.

Mr. D'AMATO. Will the Senator yield?

Mr. SYMMS. I am happy to yield.

Mr. D'AMATO. I respect the work that my distinguished colleague and his committee have done on the highway bill. Federal support for building major highway projects must be evaluated with careful reflection upon the facts regarding critical urban and rural transit needs. In my State of New York, or in Illinois, or in New Jersey, for example, transit service provides a vital link in regional transportation networks.

I take some pride in having been the author, of the portion of the Surface Transportation Assistance Act of 1982 which set aside one penny of the nickle gas tax increase specifically for discretionary transit capital grants.

Let me assure the Members here that if we look back at the record, there would have been no additional 4 cents per gallon gasoline tax for highway projects unless there was an agreement to set aside another penny for transit projects, as my dear friend from Illinois, Senator DIXON, has suggested.

The Surface Transportation Assistance Act was dead in the water before that compromise was reached. Without the transit-dependent States getting the one penny of gas tax that was agreed to, there would have been no additional money at all.

Now to attempt to say, under the guise of fairness, that we will revisit the question and that those transit dollars will be looked at as a source of reimbursement to the other highway dependent States flies in the face of what this body stands for.

The various States of this Nation have diverse needs and I have voted to support them. We in the urban, transit-dependent States have voted for hydropower projects, land reclamation projects, agriculture subsidies, and many other programs. We understand when a State has proportionately greater needs and may require allocations of Federal funds in excess of its contributions in particular programs of great regional importance.

I have to suggest to my distinguished colleague that as much as I want to pass the highway bill, and I will support this $52 billion bill, I could not agree to taking it up under a unanimous-consent agreement unless it provided that no amendment dealing with reallocation of transit funds in the mass transit account for highway projects would be in order.

With respect to the proposed formula of an 85-percent minimum allocation of the mass transit account, you say you would be willing to reduce it to 50 percent. My State would lose $214 million under your original plan. You say this is negotiable. To negotiate a loss from $214 million to $175 million is not acceptable. To negotiate a loss of any funds as it relates to this one penny is absolutely unacceptable.

Mr. SYMMS. I thank my friend from New York.

Mr. President, I ask unanimous consent that the letter to which I made reference be made part of the RECORD at this point, with additional material which is with it.

Mr. LAUTENBERG. Mr. President, I reserve the right to object. I want the letter read.

The PRESIDING OFFICER. The Senator reserves the right to object.

Mr. SYMMS. I will be happy to read the letter to my colleague. I do not want to take all this extra time.

I want to make some points about this to my friend from New York. I will read some of the highlights of what the text of this points out.

Of the current distribution, the States listed below received 81 percent of the 2-year total funds distributed from the mass transit account during

fiscal year 1984 and 1985. The last four States received 2.9 percent of the total.

This is what we are talking about. Listen to this.

New Jersey and New York received more than $487 million, 22 percent of the entire allocation. California, $351 million, 16 percent.

Mr D'AMATO. Does my friend have any knowledge with respect to the percentage of transit riders as well as to the percentage of transit dollars that represent the respective shares of New Jersey and New York? I think our percentage of transit riders is far greater than our percentage of transit dollars.

Mr. SYMMS. That may be the case.

Mr. D'AMATO. If we are going to compare apples with apples, let us make sure we consider all the relevant facts.

Mr. SYMMS. Pennsylvania, $283 million, 13 percent; Georgia, $189 million, 8 percent; Illinois, $165 million, 7 percent; Texas, $139 million, 6.5 percent; Massachusetts, $132 million, 6 percent. That is 81 percent. Then there are Oregon, Michigan, Florida, and Louisiana getting another 9 percent. That is a total of 91 percent of all of those dollars. The remaining 2-year total of the funds went to 38 States and the District of Columbia, each of which received less than 1.5 percent of the total funds distributed.

I want to repeat again that the formula that we have arrived at in talking about the 85 percent——

Mr. LAUTENBERG. Will the Senator yield for a question?

Mr. SYMMS. I am happy to yield.

Mr. LAUTENBERG. Can the Senator supply us with the contributions made by the States he just outlined in terms of the percentage that they contribute?

Mr. SYMMS. Yes. That is part of the information I have submitted for the RECORD.

For example, New Jersey's 1985 gas tax account was $39.326 million. The total received was $774,000.

New York was $266.846 million, and the New York contribution was $61.324 million.

The minimum allocation difference——

Mr. LAUTENBERG. The New Jersey contribution for 1985 was $39 million and the return that our State got was $33.5 million. Am I correct?

Mr. SYMMS. The State of New Jersey received $774,000. That is probably a poor example because of the sharing with the New York Port Authority.

Mr. LAUTENBERG. Is that the kind of fairness formula you are talking about?

Mr. SYMMS. I am saying you get $266 million in New York and they paid in $61 million. This amendment would actually help New Jersey, which would probably turn it back in to the Port Authority. It might not have that big of an impact on the State of New Jersey.

Mr. SIMON. Will my colleague yield?

Mr. SYMMS. I am happy to yield.

Mr. SIMON. There is one other problem which has not been touched upon, if I understand the amendment correctly. That is that it would adversely impact on Illinois, Iowa, Indiana, and Ohio, States where we have had quite a bit of gasohol consumption. Is that correct?

Mr. SYMMS. Gasohol is not counted either in the highway. There is a gasohol exemption. I believe it is 6 cents a gallon out of the 9 cents.

□ 1430

So I do not think gasohol would have had any impact. But gasohol is an exemption in the Federal Aid Highway Program that the Highway Users Federation complains constantly about because it does bleed money off of the trust fund by allowing a 1-to-10 ratio. So, in other words, they put in one gallon of alcohol, nine gallons of gas, and they get the exemption.

Mr. SIMON. It bleeds money for two reasons. We have constantly wanted to experiment, we want to do the research, and we want to encourage agriculture.

Mr. SYMMS. Right.

Mr. SIMON. But now all of a sudden, if you penalize, as I understand the amendment of the Senator, Illinois, Iowa, Indiana, Ohio, and other States that may have heavy gasohol use, it just seems to me that is contrary to the best national interests.

Mr. SYMMS. I might just say to my good friend, Congress did decide to exempt gasohol, and in States like the Senator's and mine, it is a very popular issue. There are some people who view it as an exemption because those people who burn gasohol also wear out highways. That is another argument. That is not what I am arguing about now. I think that if we could work out something with my colleagues—and I suggest again someone may still wish to speak on this. I think the Senator from New York and the Senators from Illinois and New Jersey, made their points of view clear. I would hope that somehow we can settle this. What we are talking about is that we have a 9 cents a gallon fuel user's fee to try to pay for the Nation's highway program with 1 cent transferred for mass transit needs. Now, we have mass transit and urban needs for roads in rural States also. We have urban bus systems in a lot of cities and communities that are clamoring for more dollars to help those urban systems operating and clamoring for more urban roads that could be used in the flexibility. But I am appealing to my colleagues to work out some program where we can move forward with the highway bill and get the $52 billion out to the 50 States.

Mr. D'AMATO. Will the Senator yield?

Mr. SYMMS. So that the highway program can be sustained so the people can continue to have the road programs they expect. One of the good things about the Federal Highway Program is when you see those road crews out there working on the roads, in your States those projects are already paid for. They are not something that is being done the way most things in Washington, DC work, where you borrow now and then figure you will pay later. These projects are paid for and let us not hold the money up over that. I will yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I do not want to be accused of impeding the work of the Environment and Public Works Committee, which has come so far in advancing this highway bill. I believe that it is a good bill. But a number of us who are on the floor today——

Mr. SYMMS. Will my good friend yield?

Mr. D'AMATO. For a question.

Mr. SYMMS. I want to make a unanimous-consent request. I think I have this worked out. If the Senator will yield, I would appreciate it.

Mr. President, I ask unanimous consent again to insert in the RECORD, a Dear Colleague letter from Senators BENTSEN, BURDICK, STAFFORD, and myself, plus the substantiating material.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, August 25, 1986.

DEAR COLLEAGUE: On May 6, 1986, we introduced S. 2405, the "Federal-aid Highway Act of 1986," reauthorizing the Federal-aid highway program for fiscal years 1987 through 1990. As introduced, section 129 of the bill guaranteed each state a minimum 85 percent annual return on user fees paid into the Mass Transit Account (MTA) by highway users in that state. This minimum return from the MTA is consistent with the 85 percent minimum allocation adopted by Congress in 1982 as part of the Federal-aid highway program.

During markup of the bill, the Committee adopted by voice vote a motion to strike section 129. The Committee had received a letter from the leadership of the Banking Committee asking that we "refrain from pursuing [section 129] so that the Senate Committee on Banking, Housing and Urban Affairs, which has jurisdiction over mass transportation issues, may consider this proposal during its action on reauthorizing the Mass Transportation Act." Having deferred to the request of the Banking Committee, we intend to offer an amendment restoring the provisions of section 129 to S. 2405 when the bill is considered on the Senate floor.

The amendment we will offer guarantees each state a minimum 85 percent annual return on user fees paid into the MTA by highway users in that state. Unlike the original section 129, which allowed a state of use these funds either on transit projects or on highway projects at the state's discretion, this amendment requires a state to certify that its transit needs have been met before using the funds on highway projects. We believe that adoption of this amendment would assure continued support for the agreement reached in 1982 to create the Mass Transit Account and to fund it with 1 cent of the 9 cent per gallon federal gas tax.

Despite the fact that highway users in every state contribute to the Account, most MTA funds are distributed on a discretionary basis with no minimum guarantee to any state. As a result, 8 states received 82 percent of the MTA funds distributed in fiscal years 1984 and 1985. Another 4 states received just over 9 percent of the total distribution, leaving 38 states, the District of Columbia, and the Territories to divide the remaining 9 percent ($191.2 million) of the two-year distribution of funds.

This inequitable distribution of funds should not exist in a national public works program financed by highway users across the country. Our amendment will provide each state a fair return on its MTA investment.

For your information, we are enclosing: (1) a chart showing the state-by-state distribution of MTA funds in fiscal years 1984 and 1985, (2) a chart showing those states that received the bulk of the MTA funds distributed in fiscal years 1984 and 1985, and (3) a copy of the amendment.

We invite you to cosponsor this important amendment to assure an equitable distribution of the transit funds paid by highway users in your state. Please call Jean Lauver (Majority Staff) at 4-7863 or Paulette Hansen (Minority Staff) at 4-6844 if you would like to cosponsor or need more information.

Sincerely,

From the Committee on Environment and Public Works:

LLOYD BENTSEN,
Ranking Minority Member,
ROBERT T. STAFFORD,
Chairman.

From the Subcommittee on Transportation:

QUENTIN N. BURDICK,
Ranking Minority Member,
STEVE SYMMS,
Chairman.

S. 2405

S. 2405, as reported by the Senate Environment and Public Works Committee, is amended by adding the following section:

MASS TRANSIT ACCOUNT MINIMUM ALLOCATION

SEC. . (a) Notwithstanding any other provision of law, as soon as is practicable in each fiscal year, commencing with the fiscal year ending September 30, 1987, the Secretary of Transportation shall allocate among the States from the appropriations made from the Mass Transit Account of the Highway Trust Fund for such fiscal year, amounts sufficient to insure that a State's percentage of total allocations from the Mass Transit Account for such fiscal year, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that State paid into the Mass Transit Account in the latest fiscal year for which data are available. For purposes of this section a State is any one of the 50 States and the District of Columbia.

(b) Notwithstanding any other provision of law, amounts allocated pursuant to subsection (a) of this section shall be available for obligation when allocated for the fiscal year in which allocated plus the three succeeding fiscal years, shall be subject to the appropriate provisions of title 23, United States Code, and the Urban Mass Transportation Act of 1964, as amended, as determined by the Secretary of Transportation, and shall be available for obligation for any projects authorized by the Urban Mass Transportation Act of 1964, as amended, except that where a State certified to the Secretary of Transportation that any part of such amounts are excess to the needs of the State for such projects and the Secretary accepts such certification such excess amounts shall be available for obligation for highway construction projects on any public road.

SECTION ANALYSIS

This section provides for a minimum allocation for the States from the Mass Transit Account of the Highway Trust Fund similar to the minimum allocation for the States from the Highway Account of the Highway Trust Fund. A State's percentage of total allocations from the Mass Transit Account could not be less than 85 percent of the percentage of estimated tax payments attributable to highway users in the State paid into the Mass Transit Account in the latest fiscal year for which data was available. A State is defined as one of the 50 States and the District of Columbia.

Minimum allocation amounts available would be available for 4 years for obligation for transit projects except that where a State did not have transit needs the amounts could be used for highway projects on any public road.

The first 8 states listed below received 81.70 percent of the two-year total of funds distributed from the Mass Transit Account during FY 1984 and FY 1985. The last 4 states received 9.30 percent of the two-year total.

[Dollars in millions]

States	(1)	Percent[2]
New York and New Jersey	$487.6	22.8
California	351.4	16.4
Pennsylvania	283.3	13.3
Georgia	189.0	8.8
Illinois	165.0	7.7
Texas	139.8	6.5
Massachusetts	132.2	6.2
Subtotal		81.7
Oregon	64.7	3.0
Michigan	55.7	2.6
Florida	40.5	1.9
Louisina	38.5	1.8
Subtotal		9.3
Total	1,947.7	91.0

[1] Two-year distribution (fiscal year 1984 and fiscal year 1985).
[2] Distribution as a percentage of the total distribution from the Mass Transit Account (fiscal year 1984 and fiscal year 1985).

The remainder of the two-year total ($2,138.9 million) of funds distributed from the Mass Transit Account went to 38 states, the District of Columbia, and the Territories, each of which received less than 1.5 percent of the funds distributed:

Total—$191.2 million; 9.0 percent.

In 1983, the Mass Transit Account was distributed under the 9(a) formula in which every state received funding.

Mr. SYMMS. Mr President, I also ask unanimous consent to have printed in the RECORD, Department of Transportation talbes relating to 1984 and 1985.

There being no objection, the tables were ordered to be printed in the RECORD, AS FOLLOWS:

DEPARTMENT OF TRANSPORTATION, URBAN MASS TRANSPORTATION ADMINISTRATION

State	St	1984 gas tax cont.	1984 Section 3				85 percent minimum allocation	Difference
			Bus, rail, new starts	Planning	16B2	Total		
Alabama	AL	23,176,194		441,942	510,000	951,942	9,699,765	18,747,823
Alaska	AK	2,997,896		45,200	134,083	179,283	2,548,211	2,368,928
Arizona	AZ	17,358,396		633,128	341,078	974,206	14,754,637	13,780,431
Arkansas	AR	14,642,491		153,801	377,000	530,801	12,446,117	11,915,316
California	CA	128,397,533	220,526,202	7,314,159	1,834,688	229,675,049	109,137,903	(120,537,149)
Colorado	CO	17,021,408	11,294,720	663,852	297,365	12,255,937	14,468,197	2,212,260
Connecticut	CT	15,499,461	4,800,000	446,552	374,138	5,620,690	13,174,542	7,553,852
Delaware	DE	3,810,867		82,128	166,549	248,677	3,239,237	2,990,560
Florida	FL	58,481,965	182,190	2,148,070	1,281,960	3,612,220	49,703,671	46,097,451
Georgia	GA	37,451,697	91,250,000	885,985	585,000	92,720,985	31,833,943	(60,887,042)
Hawaii	HI	3,509,878	2,175,000	153,262	178,652	2,506,914	2,983,396	476,482
Idaho	ID	5,317,815		61,900	189,133	251,033	4,520,143	4,269,110
Illinois	IL	53,168,150	63,588,711	3,137,507	1,020,000	67,746,218	45,192,928	(22,553,290)
Indiana	IN	28,939,993	18,730,425	578,094	528,000	19,836,519	24,598,994	4,762,475
Iowa	IA	14,027,512		882,731	386,010	1,268,741	11,923,385	10,654,644
Kansas	KS	14,890,482		137,559	331,012	468,571	12,656,910	12,188,339
Kentucky	KY	21,150,264		316,010	491,000	807,010	17,977,725	17,170,715
Louisiana	LA	26,698,071		622,184	528,000	1,150,184	22,653,361	21,543,177
Maine	ME	6,390,778	1,207,500	84,900	221,864	1,514,264	5,432,161	3,917,897
Maryland	MD	22,870,204	16,255,649	784,091	408,373	17,448,113	19,439,674	1,991,561

DEPARTMENT OF TRANSPORTATION, URBAN MASS TRANSPORTATION ADMINISTRATION—Continued

State	St	1984 gas tax cont.	1984 Section 3				85 percent minimum allocation	Difference
			Bus, rail, new starts	Planning	16B2	Total		
Massachusetts	MA	26,782,068	71,412,726	1,470,759	631,447	73,514,932	22,764,758	(50,750,174)
Michigan	MI	33,191,845	45,000,000	2,025,104	794,000	47,819,104	28,213,068	(19,606,036)
Minnesota	MN	23,466,184	3,000,000	793,745	448,005	4,241,750	19,946,256	15,704,506
Mississippi	MS	14,892,482		162,187	434,000	596,187	12,658,610	12,062,423
Missouri	MO	30,904,925		1,410,226	585,000	1,995,226	26,269,186	24,273,960
Montana	MT	5,634,804		80,000	182,218	262,218	4,789,583	4,527,365
Nebraska	NB	8,493,705	450,000	148,410	265,000	863,410	7,219,649	6,356,239
Nevada	NV	6,002,791		109,754	171,221	280,975	5,102,372	4,821,397
New Hampshire	NH	4,723,836		80,400	194,856	275,256	4,015,260	3,740,004
New Jersey	NJ	40,048,607		204,000	728,650	932,650	34,041,316	33,108,666
New Mexico	NM	9,300,676		132,162	208,000	340,162	7,905,575	7,565,413
New York	NY	62,450,827	210,383,241	7,064,515	1,680,000	219,127,756	53,083,203	(166,044, 553)
North Carolina	NC	35,629,760		496,697	624,000	1,120,697	30,285,296	29,164,599
North Dakota	ND	4,505,843		80,000	178,200	258,200	3,829,967	3,571,767
Ohio Total	OH	53,591,136	7,665,690	2,002,550	963,000	10,631,240	45,552,465	34,921,225
Oklahoma	OK	22,922,203		324,191	416,000	740,191	19,483,872	18,743,681
Oregon	OR	15,552,459	44,250,000	442,999	331,600	45,024,599	13,219,590	(31,805,009)
Pennsylvania	PA	54,668,098	160,825,063	3,037,469	1,183,265	165,045,801	46,467,883	(118,577,918)
Puerto Rico	PR		9,999,999	641,889	605,000	11,246,888		(11,246,888)
Rhode Island	RI	4,115,857		241,322	213,495	454,817	3,498,478	3,043,661
South Carolina	SC	19,280,329		274,540	377,000	651,540	16,388,280	15,736,740
South Dakota	SD	4,260,852		60,000	189,000	249,000	3,621,724	3,372,724
Tennessee	TN	29,565,971		567,783	548,000	1,115,783	25,131,076	24,015,293
Texas	TX	103,444,401	58,976,195	3,085,321	1,189,000	63,250,516	87,927,741	24,677,225
Utah	UT	8,503,704		236,116	200,350	436,466	7,228,149	6,791,683
Vermont	VT	2,869,900		40,000	165,078	205,078	2,439,415	2,234,337
Virginia	VA	31,292,911		545,340	510,000	1,055,340	26,598,975	25,543,635
Washington	WA	23,177,194	6,999,990	785,000	422,216	8,207,206	19,700,615	11,493,409
Washington, DC	DC	2,062,928		1,075,098	189,000	1,264,098	1,753,489	489,391
West Virginia	WV	9,811,659		133,550	321,000	454,550	8,339,910	7,885,360
Wisconsin	WI	24,512,147	14,256,693	752,815	503,619	15,513,127	20,835,325	5,322,198
Wyoming	WY	4,538,842		60,000	149,971	209,971	3,858,016	3,648,045
Virgin Islands					133,000	133,000		(133,000)
American Samoa					50,602	50,602		(50,602)
N. Mariana					50,315	50,315		(50,315)
Guam					131,000	131,000		(131,000)
Total		1,236,000,000	1,063,229,994	48,136,997	26,150,017	1,137,517,008	1,050,600,000	(86,917,008)

DEPARTMENT OF TRANSPORTATION, URBAN MASS TRANSPORTATION ADMINISTRATION

State	ST	1985 gas tax cont.	1985 section 3				85 percent minimum allocation	Difference
			Bus, rail, new starts	Planning	16B2	Total		
Alabama	AL	22,758,047		344,700	510,000	854,700	19,344,340	18,489,640
Alaska	AK	2,943,807	339,000	24,000	134,172	497,172	2,502,236	2,005,064
Arizona	AZ	17,045,215		543,700	343,194	886,894	14,488,432	13,601,538
Arkansas	AR	14,378,310		100,900	377,000	477,900	12,221,563	11,743,663
California	CA	126,080,976	113,337,731	6,465,700	1,851,428	121,654,859	107,168,829	(14,486,030)
Colorado	CO	16,714,306		573,400	299,053	872,453	14,207,160	13,334,707
Connecticut	CT	15,219,818	822,960	362,500	376,577	1,582,037	12,936,846	11,374,809
Delaware	DE	3,742,111		58,000	166,956	225,756	3,180,795	2,955,039
Florida	FL	57,426,830	33,850,000	1,746,700	1,293,289	36,889,989	48,812,805	11,922,816
Georgia	GA	36,775,991	95,000,000	730,700	585,000	96,315,700	31,259,592	(65,056,108)
Hawaii	HI	3,446,552		126,000	179,177	305,177	2,929,570	2,624,393
Idaho	ID	5,221,871		40,000	189,761	229,761	4,438,590	4,208,829
Illinois	IL	52,208,887	93,517,140	2,721,800	1,020,189	97,259,129	44,377,554	(52,881,575)
Indiana	IN	28,417,856		439,900	530,872	970,772	24,155,177	23,184,405
Iowa	IA	13,774,427		176,000	388,566	564,566	11,708,263	11,143,697
Kansas	KS	14,621,827		82,900	333,029	415,929	12,428,553	12,012,624
Kentucky	KY	20,768,670		223,700	491,000	714,700	17,653,369	16,938,669
Louisiana	LA	26,216,383	36,303,901	506,400	528,000	37,338,301	22,283,925	(15,054,376)
Maine	ME	6,275,475	651,882	60,000	222,813	934,695	5,334,154	4,399,459
Maryland	MD	22,457,578		657,300	411,148	1,068,448	19,088,942	18,020,494
Massachusetts	MA	26,298,864	56,727,624	1,278,000	636,406	58,642,030	22,354,035	(36,287,995)
Michigan	MI	32,592,996	5,367,104	1,731,100	794,000	7,892,204	27,704,046	19,811,842
Minnesota	MN	23,042,805		669,400	451,168	1,120,568	19,586,384	18,465,816
Mississippi	MS	14,623,791		103,000	434,000	537,000	12,430,222	11,893,222
Missouri NB		8,340,460		107,800	265,000	372,800	7,089,391	6,716,591
Nevada	NV	5,894,488		85,900	171,673	257,573	5,010,315	4,752,742
New Hampshire	NH	4,638,608	921,000	60,000	195,540	1,176,540	3,942,817	2,766,277
New Jersey	NJ	39,326,047		40,000	734,560	774,560	33,427,140	32,652,580
New Mexico	NM	9,132,873		100,000	208,492	308,492	7,762,942	7,454,450
New York	NY	61,324,085	258,823,677	6,342,600	1,680,000	266,846,277	52,125,472	(214,720,805)
North Carolina	NC	34,986,926		358,700	624,000	982,700	29,738,887	28,756,187
North Dakota	ND	4,424,548		60,000	178,721	238,721	3,760,866	3,522,145
Ohio Total	OH	52,624,240	11,347,500	1,677,500	963,000	13,988,000	44,730,604	30,742,604
Oklahoma	OK	22,508,639		245,700	416,000	661,700	19,132,343	18,470,643
Oregon	OR	15,271,860	19,000,000	365,600	333,623	19,699,223	12,981,081	(6,718,142)
Pennsylvania	PA	53,681,772	114,412,591	2,635,600	1,193,631	118,241,822	45,629,507	(72,612,315)
Puerto Rico	PR			418,500	605,000	1,023,500	0	(1,023,500)
Rhode Island	RI	4,041,598		209,000	214,361	423,361	3,435,358	3,011,997
South Carolina	SC	18,932,472		198,900	377,000	575,900	16,092,601	15,516,701
South Dakota	SD	4,183,977		40,000	189,000	229,000	3,556,381	3,327,381
Tennessee	TN	29,032,540		446,800	548,000	994,800	24,677,659	23,682,859
Texas	TX	101,578,050	72,733,300	2,657,900	1,189,000	76,580,200	86,341,342	9,761,142
Utah	UT	8,350,280		193,900	201,088	394,988	7,097,738	6,702,750
Vermont	VT	2,818,121		20,000	165,471	185,471	2,395,403	2,209,932
Virginia	VA	30,728,322		408,700	510,000	918,700	26,119,074	25,200,374
Washington	WA	22,759,029	19,999,998	663,100	425,126	21,088,224	19,345,175	(1,743,049)
Washington, DC	DC	2,025,709		1,018,100	189,000	1,207,100	1,721,852	514,752
West Virginia	WV	9,634,636		88,000	321,000	409,000	8,189,441	7,780,441
Wisconsin	WI	24,069,897		624,800	507,326	1,132,126	20,459,413	19,327,287
Wyoming	WY	4,456,952		40,000	150,215	190,215	3,788,409	3,598,194
Virgin Islands					133,000	133,000		(133,000)
American Samoa					50,608	50,608		(50,608)

DEPARTMENT OF TRANSPORTATION, URBAN MASS TRANSPORTATION ADMINISTRATION—Continued

State	ST	1985 gas tax cont.	1985 section 3				85 percent minimum allocation	Difference
			Bus, rail, new starts	Planning	16B2	Total		
N. Mariana					50,318	50,318		(50,318)
Guam					131,000	131,000		(131,000)
Total		1,213,700,000	935,155,408	40,000,000	26,235,329	1,001,390,737	1,031,645,000	30,254,263

The PRESIDING OFFICER. The Senator from New York.

Mr. SYMMS. I thank the Senator very much.

Mr. D'AMATO. Mr. President, I believe we can accomplish the goals of both the majority and of the ranking members of the Environment and Public Works Committee in terms of passing a highway bill. I am confident that we can pass a bill that will not impede the development of our roads, and that will provide the necessary $52 billion. I do not know of any Senators on this floor, any of my colleagues who have raised certain concerns, who would object to the highway bill, save this one point. I do not think we should attempt, in the relatively few short hours that remain to decide this point with respect to a complex formula which is absolutely crucial to our States. Thus, I renew my offer. My offer is simply this. I would agree to proceed with the bill provided that there is a unanimous-consent agreement that no amendments dealing with the reallocation of the mass transit account of the highway trust fund for highway projects would be in order.

That is the only condition I have. I would then go to an up-or-down vote on the bill, as well as on any other amendments that may be offered. My colleague from Illinois is indicating the same position. But let me tell you, when we talk about fairness, we have had mass transit funds reduced year after year. We are struggling to keep aging systems safe and operational. This 1 penny was set aside for mass transit. It was not set aside to be used by all of the individual States on a per capita basis, or for highway projects. It was created to serve mass transit needs. If the States of Wyoming, Montana, Idaho, or Nevada have mass transit needs, they are eligible for it—not for their highway needs, but for their mass transit needs. One penny out of nine pennies is precious little for those urban centers that are plagued with many problems besides transportation needs. Mass transit is an absolute necessity in order to sustain a quality way of life in densely populated urban areas. It is a necessity for our rural transit riders too. Urban and suburban commuters, and our urban centers depend on transit. It is not inconsequential to the lives of suburban commuters in the outlying areas in Illinois, for the lives of suburban commuters in New Jersey, and certainly not for the lives of suburban commuters in Westchester and Long Island in New York. If we want to be fair and want to move this bill, I venture to say that we could pass this bill within an hour, with one proviso—this objectionable amendment should not be in order. This Senator does not want to be accused of impeding the highway bill. Let me say for the record, I am ready to vote on the highway bill. But, we should not be offering amendments that would tear apart the fabric of well-established principles and agreements. I do not object to farm aid that is perhaps allocated in a disproportionate sense in terms of per capita aid to States. I am for it because that is where the need is. It would be silly for this Senator to say New York has 17 million residents; consequently, we want a certain proportion of farm aid per capita. It is not the way it works. This is mass transit aid. We have the transit needs. Consequently, these dollars that have been allocated for that specific program should be allowed to flow to it. I think it sets a very dangerous precedent when we begin to decide who would get more or less, when we begin to undo well-established principles of meeting national needs. So I say to my colleague—and I understand his valiant attempt to fight for what he perceives to be equity and fairness—let us allow the bill to go forward. I have made, I think, an offer that can be taken up in good faith. We could proceed with this bill. We can look at the transit formulas at another time. But certainly this is not the time to undertake it.

I yield the floor.

Mr. SYMMS. Will the Senator yield? I would think that we do need to make it clear for any of our colleagues who may be listening or watching this debate, that this amendment which my good friend from New York is talking about, is not in this bill. We took it out in the committee.

Mr. D'AMATO. I understand that. Let me clarify my point.

Mr. SYMMS. We took it out, and if the Senator is very persuasive in his argument the Senator may win it. But I plan to offer an amendment—when we get to the bill, I plan to offer an amendment to relax the 55-mile-per-hour speed limit.

Mr. D'AMATO. I have no objection to that amendment being offered.

Mr. SYMMS. And my good friend from New Jersey has some very strong viewpoints that the 55-mile-per-hour speed limit is appropriate for his part of the country. I think we have to vote on these issues.

Mr. D'AMATO. Let me respond again so it is quite clear. I do not want to be accused for holding up the highway bill. Indeed, I am ready to assent to any reasonable time agreement. Some other Member of the Senate may or may not agree. As far as this Senator is concerned, we can vote on this bill, with my one caveat. I would like a unanimous-consent agreement that would provide that no amendment dealing with the reallocation of the mass transit accounts of the highway trust for highway projects would be in order. Otherwise, I would object—a right which we have as Senators—to a unanimous-consent agreement constraining us or precluding us from full and free debate. I feel I have to debate on behalf of the constituents of New York, as the Senator from Illinois and the Senator from New Jersey are compelled to do for their constituents. That is what we are talking about. We are being asked to give up our rights to total, free debate on the condition that we proceed under a time agreement? Yes, I do, provided that there will be no amendments put forth in the area of reallocation of mass transit funding for highway projects.

□ 1440

Mr. LAUTENBERG. Mr. President, I should like to try to clarify my position.

The PRESIDING OFFICER. The Senator from New York has the floor. Does the Senator yield?

Mr. D'AMATO. I yield for a question.

Mr. LAUTENBERG. I thank the Senator from New York and the Senator from Idaho.

What we are discussing now, as I think the distinguished Senator from New York clearly stated, is the process, the procedure, of how we move with this. I think we got slightly sidetracked when we discussed the specifics of the amendment, because that is not for the period of time reserved for this discussion.

I ask that the Senator from Idaho remember clearly that this provision was stricken from the highway bill before it was released from the committee. That sets a particular tone.

I could not agree more with the comments made by my colleague from New York, to say that I, too, as a member of that committee, as someone who helped negotiate the bill finally passed by the committee, have no objection to the highway bill. We want it discussed and debated and we want a vote on it quickly.

I do have additional concerns. One is the proposition made by the Senator from Idaho, to which I severely object: Absolutely, under no condition would I agree to a time limit that includes that amendment. I have a couple of other concerns.

The Senator from Idaho said in the discussion that I objected to an amendment on the 55-mile-an-hour speed limit. I do. But I do not object to it being debated fully here, given enough time so that all people concerned can express their views.

If this amendment to redistribute the mass transit money comes about, it will need a long time to discuss. I am told by my colleague from Illinois that it could take many days to discuss this fully.

Mr. DIXON. Perhaps weeks.

Mr. LAUTENBERG. Perhaps weeks. We would like to be out of here by October 3.

On the serious side, the fact is that I would object to any time agreement that includes a redistribution formula for mass transit.

I have a couple of amendments that I would like to bring up—one of them, I think, without any objection—but we will have to find out from the chairman of the committee, who is here now.

Let it not be misunderstood that this Senator and the 15 colleagues who joined me in signing the letter urging that this change not be made feel the same way about the Symms amendment.

I ask unanimous consent to have our letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, September 11, 1986.

DEAR COLLEAGUE: The Senate will soon consider S. 2405, the Federal-Aid Highway Act of 1986. At that time, Senator Symms will offer an amendment which would fundamentally change the manner in which mass transit assistance is distributed to the states. It is our intention to vigorously oppose this amendment.

Under current law, one cent of the federal excise tax on gasoline is reserved for mass transit. This "penny for transit" provision was adopted in 1982 as part of the Surface Transportation Assistance Act of 1982. The distribution of these funds comes from Section 3 of the Urban Mass Transportation program. Section 3 is a discretionary program with the distribution of funding determined by the Secretary of Transportation.

The Symms amendment would require that each state, regardless of its mass transit needs, receive 85% of its contribution to the Mass Transit Account of the Highway Trust Fund. Its sponsors argue that the amendment is simply an extension of the 85% minimum allocation provision incorporated in the highway program. That is not the case.

The 85% minimum allocation in the highway program does not take funds from one state to give funds to another. Funds to cover the 85% minimum allocation in the highway program come from a special pot and are not taken out of other states' allocations. The Symms amendment takes funds dedicated to mass transit from transit-dependent states and redistributes them to states without transit needs. Further, it allows those funds to be used for highways.

If the Symms amendment becomes law, there will no longer be a "penny for transit". That program will be destroyed. The progress made in 1982 in striving for a balanced national transportation network will suffer a severe setback. We believe that 1986 is the time to improve the landmark legislation passed in 1982. This is not the time to turn back the clock on federal transportation policy.

During markup of S. 2405 in the Environment and Public Works Committee, a provision requiring that each state, regardless of its mass transit needs, receive 85% of its contribution to the Mass Transit Account of the Highway Trust Fund was dropped from the bill. It was ngted that the committee with jurisdiction over this subject is the Committee on Banking, Housing afd Urban Affairs. The Bankifg Committee has not recommended this drastic departure from current law.

We appreciate the concern expressed by some states that the mass transit needs of small afd rural communities are not being adequately eet by the current Section 3 program. Recommendations have been made to address this concern, but the Symms amendment is the wrong way to go about it.

The Symms amendment threatens to destroy federal mass transit programs and ignores the fact that different states have different transportation needs. It ignores the fact that many of the states which benefit from the "penny for transit" are donee states to federal highway programs, and subsidize highway construction in highway dependent states. If adopted, it could erode support for federal highway programs. It also threatens to delay the reauthorization of the federal-aid highway program. We support the reauthorization of the highway program and want to see a highway bill enacted as quickly as possible.

If the Symms amendment is offered to the highway bill, it is our intention to fully debate the measure to insure that the Senate has a complete understanding of its history, purpose and impact on federal transportation policy. We hope you will join us in this effort. If you have questions about our effort, please feel free to call us or have your staff call Tom Howarth at 49712.

Sincerely,

Slade Gorton, John C. Danforth, Bill Bradley, Frank R. Lautenberg, Daniel P. Moynihan, Paul Simon, Thomas F. Eagleton, Arlen Specter, Paul S. Sarbanes, Alan Dixon, John F. Kerry, Alfonse D'Amato, Edward M. Kennedy, Alan Cranston, Sam Nunn.

Mr. DIXON. Mr. President, will the Senator yield?

Mr. LAUTENBERG. I am happy to yield.

Mr. DIXON. Mr. President, I thank my distinguished colleague from New Jersey for his statements. I ask him whether he thinks that what he has expressed and what the Senator from New York and others have expressed is fairly similar—that none of us would object to taking up the highway bill, and we are all anxious to vote on the highway bill, and we are not objecting to taking up the question of the 55-mile-an-hour speed limit, so long as there is a substantial time agreement that gives everybody a chance to be heard on that issue. But we do object to taking up the question of formula changes with respect to mass transit. So far as that is concerned, we would want to be heard at great length and would not give up our opportunity to be heard on the question.

Mr. LAUTENBERG. The Senator from Illinois is correct.

Mr. DIXON. I say this on behalf of the Senators from Pennsylvania who were here earlier and left; on behalf of the Senators from New York, Massachusetts, New Jersey, Illinois, California, and others similarly situated. All of us would be similarly situated.

I see the distinguished chairman of the committee in the Chamber, and I say to my friends that they may want to discuss the question of bringing up the highway bill. We would be willing to agree to a time limit on the 55-mile-an-hour issue, but we are not willing to agree to any kind of consideration of this bill unless a unanimous-consent agreement would obviate consideration of basic changes in the formula.

The PRESIDING OFFICER. Does the Senator from New Jersey yield the floor?

Mr. LAUTENBERG. I yield the floor.

The PRESIDING OFFICER. Does any Senator seek recognition?

Mr. SYMMS. Mr. President, a parliamentary inquiry. How much of the 1 hour remains to discuss reservations?

The PRESIDING OFFICER. It is 14 minutes.

Mr. SYMMS. Mr. President, I appreciate the candor, frankness, and forthrightness of all my colleagues on the floor. I think my colleagues have made it very clear that they recognize that there probably are more votes for the so-called fair share amendment in this body than there are not. They are demonstrating their abilities and their rights as Senators to protect what they consider an important issue, and I respect them for that.

I ask my colleagues from New York and New Jersey—the Senator from New York is off the floor now—if there is any way we might proceed and have unanimous consent that no amendments with respect to mass transit be in order, for a time certain, and see if we can move ahead with this

bill and get the debate in, and get all the noncontroversial issues settled.

Some of the amendments that have been proposed are controversial, but we could bring them up and vote on them and get part of this done, so that by Monday, if necessary, we could reach some kind of agreement and finish the bill, if that is possible.

Maybe we need a quorum call to discuss the issue.

Mr. LAUTENBERG. Mr. President, if I may respond, I think it is fair to say that we who object—and I am speaking for myself—to this proposal to review the change of formulas as part of this package feel that it is absolutely unacceptable. We consider this a total unit, since that is the way it is proposed. If we could agree that perhaps on another vehicle or another opportunity the Senator from Idaho could bring up his proposal, we would have no objection. But the highway bill as proposed, with the amendment of the Senator from Idaho, would be part of a total package. Because of that, I think it is fair to say that I and my colleague from Illinois would absolutely object to the matter being brought up.

Mr. DIXON. I suggest this possibility to my distinguished colleage from Idaho: I think the Senator from New Jersey would have no objection, nor would the others, including the Senator from New York, if our aides, who are on the floor, might discuss a unanimous consent-agreement. We are willing to enter into a unanimous-consent agreement, but not the kind the Senator is suggesting. What we would agree to are the general parameters of it.

We are wasting our time, because we would be anxious to accommodate the Senator on a unanimous-consent agreement that would dispose of this measure and let him visit some of the issues he would like to visit, as long as we are able to confine the issues to the parameters we have already suggested. I think it would be in the interest of my friend from Idaho and the distinguished managers and the distinguished chairman of the committee and others to let our aides discuss a unanimous-consent agreement.

In the meantime, I am compelled to object to the original request of the majority leader and my distinguished friend from Idaho to take up Calendar No. 870 at this time.

The PRESIDING OFFICER. Objection is heard.

Who yields time?

Mr. SYMMS. Mr. President, I ask unanimous consent to use 2 minutes from the bill for the majority.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

□ 1450

Mr. SYMMS. Mr. President, I think that we have probably come as far as we can on this approach. Hearing the objection of my friend from Illinois, and I respect him for that, I think that we might point out here to our colleagues, and my good friend made reference to the fact we do not want to waste our time here, I want to make it very clear I want to get this highway bill acted on in the Senate and get to conference with the House. But I just want to say to my colleagues and to those who are also equally interested in passing the highway bill that if we cannot address the fair share amendment now, maybe we can work an accommodation in some other vehicle where it will be appropriate to discuss it in this Senate.

Maybe if that is what we have to do we will see what can be accommodated.

I am willing to go back and sit down in the Cloakroom.

Mr. DIXON. If my friend will yield, I am embarrassed that I cut him off.

Mr. SYMMS. I understand.

Mr. DIXON. I did not mean to deprive my colleague of his time.

Mr. SYMMS. No apologies are necessary.

We are running on the same time clock. The Senator made his position clear and I respect him for that.

I say there is one other problem here. Of the States, 12 receive these funds and 38 States fall on the short end of the stick.

If you take the same formula or the House formula on the highway dollars and the 8 cents, and if we go to conference with the other body, and are not able to negotiate a formula that will seem to be fair to these other 38 States, Senators that come from States that have a greater geographic area with less people, we will have a hard time getting a highway program also.

As I said, none of us believe that we were ever going to come back from a conference with what we asked for. But there is a problem here that the Senators who are lodging objections today happen to be in the position where their constituents would favor the formula that is in the House which is totally unacceptable to the Senators from the Plains States and in the Western Rocky Mountain States where we have huge geographical areas and fewer people and further distances for people to travel.

So I think maybe something can be accommodated here, and I think we should move forward on the highway bill. I believe now maybe would be the time for all parties to see what we can work out and get the majority leader and the minority leader and work out something.

If it is possible what I would like to see us do is work out some other agreement. Maybe it would be some other place that would be appropriate. There are those of us who feel the allocation of 1 cent that goes to mass transit is not fair, and others feel it is fair. Some accommodation could be made at another place, but we should move this highway bill because I think it is more important to commerce, to business, and to the economy of the American people, that we have a continuous Federal-aid highway program without work stoppages or slowdowns, so we can fix roads and maintain the safety program and the bridge program.

FEDERAL AID HIGHWAY ACT OF 1986

● Mr. HEINZ. Mr. President, I rise in strong opposition to Senator SYMMS' amendment regarding use of the mass transit penny for highway purposes. First, this amendment would mark a significant departure from the spirit of cooperation that resulted in the passage of the Surface Transportation Assistance Act of 1982, which required that 1 cent of the 5-cent increase in the gas tax be dedicated for mass transit purposes.

Second, this amendment would result in a significant windfall to many States that already receive more than their fair share of highway funds. Third, this amendment shows a compete disregard for mass transit needs in this Nation, which are glaring, and a disregard for our national transportation system, which includes mass transit as well as highways.

I plan to oppose this amendment when it is offered, and I would also consider offering an amendment to achieve real fairness in the distribution of highway trust fund moneys. My amendment would limit the amount of highway funds each State may receive in a given year to 150 percent of that State's gas tax payments in that year. Mr. President, I ask that the following table showing the impact that my amendment would have on State highway funding be printed in the RECORD.

I urge my colleagues to oppose the Symms amendment, and to support my amendment to provide equity in the distribution of all of our Federal highway funds.

COMPARISON OF ESTIMATED APPORTIONMENTS UNDER S. 2405 FOR FISCAL YEAR 1987 WITH PROPOSAL TO LIMIT A STATE'S APPORTIONMENTS TO 150 PERCENT OF THAT STATE'S HIGHWAY TRUST FUND CONTRIBUTIONS

[In thousands of dollars]

	S. 2405	Proposed 150 percent limitation	Differnce
Alabama	229,151	242,368	13,217
Alaska	154,170	49,359	−104,811
Arizona	128,866	102,948	−25,918
Arkansas	140,142	146,609	6,467
California	969,268	1,022,196	52,928
Colorado	188,786	199,675	10,889
Connecticut	246,175	216,466	−29,709
Delaware	50,687	53,611	2,924
District of Columbia	68,492	32,123	−36,369

COMPARISON OF ESTIMATED APPORTIONMENTS UNDER S. 2405 FOR FISCAL YEAR 1987 WITH PROPOSAL TO LIMIT A STATE'S APPORTIONMENTS TO 150 PERCENT OF THAT STATE'S HIGHWAY TRUST FUND CONTRIBUTIONS—Continued

[In thousands of dollars]

	S. 2405	Proposed 150 percent limitation	Differnce
Florida	501,049	529,949	28,900
Georgia	332,259	351,095	18,836
Hawaii	140,487	45,622	−94,865
Idaho	88,134	74,047	−4,087
Illinois	369,042	390,328	21,286
Indiana	275,075	286,271	11,198
Iowa	164,107	173,572	9,465
Kansas	147,083	155,566	8,483
Kentucky	209,100	221,161	12,061
Louisiana	321,534	340,079	18,545
Maine	59,862	63,198	3,336
Maryland	265,751	281,079	15,328
Massachusetts	312,671	330,705	18,034
Michigan	306,049	323,702	17,653
Minnesota	231,831	245,202	13,371
Mississippi	138,128	145,250	7,122
Missouri	261,251	274,954	13,703
Montana	108,971	94,816	−14,155
Nebraska	105,257	111,328	6,071
Nevada	73,096	77,312	4,216
New Hampshire	56,095	59,331	3,236
New Jersey	337,395	356,856	19,461
New Mexico	106,362	112,497	6,135
New York	615,858	651,379	35,521
North Carolina	319,387	332,701	13,314
North Dakota	75,528	79,529	3,001
Ohio	466,220	486,845	20,625
Oklahoma	181,636	190,117	8,481
Oregon	137,701	145,643	7,942
Pennsylvania	504,889	534,010	29,121
Rhode Island	95,915	58,951	−36,964
South Carolina	165,478	174,138	8,660
South Dakota	82,992	75,300	−7,692
Tennessee	270,974	284,302	13,328
Texas	927,415	966,736	39,321
Utah	140,661	123,645	−17,016
Vermont	54,253	37,315	−16,938
Virginia	280,977	297,183	16,206
Washington	264,471	170,728	−93,743
West Virginia	99,444	105,180	5,736
Wisconsin	213,732	223,115	9,383
Wyoming	83,974	84,949	975
Puerto Rico	62,206	0	−62,206
Total	12,131,037	12,131,041	

Mr. SYMMS. I do not have anything else to say, Mr. President. Unless the Senator is seeking recognition, I am prepared to put in a quorum call at this point.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that it be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1520

Mr. DOLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Madam President, let me indicate to my colleagues that we have no activity on the floor, but there is a lot of activity off the floor in trying to work out something on reconciliation. There has been a series of meetings involving Members on both sides and key players in the budget process.

It is my view, and I have just discussed it with the distinguished minority leader, that they are making progress. It would seem to me rather than just extending the quorum call with the time to be charged equally, that we might stand in recess.

Could I ask how many hours remain on the reconciliation statutory time limit?

The PRESIDING OFFICER. There are 6 hours 50 minutes for Senator DOMENICI, and 8 hours 3 minutes for Senator CHILES.

ORDER FOR RECESS FOR 2 HOURS

Mr. DOLE. Madam President, I ask unanimous consent that following the remarks of the distinguished Senator from New Mexico, as in morning business, that the Senate stand in recess for 2 hours, and that the time continue to run on the reconciliation bill and be equally charged.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. BINGAMAN at this point relating to the introduction of legislation are printed under introduced bills and joint resolutions in routine morning business.)

RECESS UNTIL 5:25 P.M.

The PRESIDING OFFICER. If there is no further Senator wishing to be heard, the Senate will stand in recess for 2 hours.

Thereupon, at 3:25 p.m., the Senate recessed until 5:25 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ANDREWS).

□ 1725

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of North Dakota, suggests the absence of a quorum, with the time to be charged equally to both sides. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1800

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair recognizes the Senator from New Hampshire.

MR. REAGAN, WHERE ARE YOU WHEN WE NEED YOU?

Mr. HUMPHREY. Mr. President, inasmuch as the Senate is at a pause in its business, I thought I might improve upon the occasion by reading into the RECORD a very interesting and appropriate editorial published today in the Manchester Union Leader, the largest paper in the State which I represent, an editorial written by the publisher, Mrs. William Loeb.

□ 1810

It is entitled:

[From the Manchester Union Leader (NH), Sept. 18, 1986]

MR. REAGAN, WHERE ARE YOU WHEN WE NEED YOU?

Ronald Reagan, where have you gone?

We know who you are, or at least who you were when we elected you in 1980 and again, overwhelmingly, in 1984. You are the one who called the Communists the "most dangerous enemy known to man."

You are the man, in 1975, who said, "Maybe . . . we simply do what's morally right. Stop doing business with them. Let their system collapse."

You are the one who correctly called the Soviets the evil empire and who threw them out of Grenada.

Where have you gone, Ron? Your administration has managed to push through a plan to sell sophisticated military equipment to the Chinese Communists. It is your administration that is agreeing to a subsidized grain sale to the Soviets and we can bet that U.S. wheat will make Russian bread to feed their armies in Afghanistan.

For six years, you have abided by the SALT II treaty in the face of their cheating and our being weakened as a result. Under your administration last year, our foreign aid program provided more than $300 million in direct aid to Communist countries and helped them more by financing them through the World Bank and the International Monetary Fund to the tune of another $6 billion.

And there now seems to be a willingness in your administration to make a deal to turn over an innocent man, framed in Moscow, in exchange for a likely Soviet spy.

Mr. Reagan, where have you gone? We have heard enough from unnamed sources and meassages from faceless Washington figures, in and out of the White House.

We have heard enough from the liberal news media, who are more afraid of abandoning a summit than in abandoning American citizens. It is time we heard from you.

Don't confuse us, Mr. Reagan. We don't want the one who is now perceived by the public—the one who will swallow his indignation and do anything to keep a summit meeting on the calendar.

We want the Ronald Reagan for whom we voted, the one who would have demanded that American citizen Daniloff be returned within 24 hours or we'd throw out the Soviet ambassador to the U.S. We want the Reagan who would not shame this country by making deals with Communists.

We want the Ronald Reagan in whom we believed as a leader against the forces of the Kremlin, who would make us their slaves.

Ronald Reagan, the real Ronald Reagan, where are you when we need you?

To that, Mr. President, I would only add "amen."

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MELCHER. Mr. President, I further ask unanimous consent that I may speak as if in morning business.

The PRESIDING OFFICER. Does the Senator indicate any length of time as to how long the Senator's request pertains?

Mr. MELCHER. Mr. President, I would like to speak for 10 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator may proceed.

Mr. MELCHER. I thank the Chair.

FOOD ASSISTANCE TO THE PHILIPPINES

Mr. MELCHER. Mr. President, on this day that we received an address from President Corazon Aquino in the House in a joint session, I thought it would be appropriate to renew my efforts to provide additional assistance over and above what we are doing for the Philippines, and what we may be able to add in assistance to the Philippines by providing some of the commodities, food commodities, that are owned by the United States, owned by the Commodity Credit Corporation, have been purchased under the various farm programs, and are in Federal storage.

□ 1820

To help that effort along, I sent a letter to each of my colleagues, to every Senator, stating my intentions to do so at the first opportunity.

Mr. President, that letter is now in the office of each Senator. I would like to first of all read the letter in its entirety and then make a few comments on it.

The letter reads as follows:

U.S. SENATE,
September 18, 1986.

DEAR COLLEAGUE: President Corazon Aquino of the Philippines will likely conclude her visit to the United States with little or no additional aid to assist her economically depressed country at a time when the Filipino people's needs are most crucial. That need not be the case, because the Philippines is the ideal country to profitably utilize large quantities of U.S. surplus commodities already burgeoning our federal storage.

Wheat and soybeans are not produced in the Philippines and dairy production is minimal. These commodities are urgently needed. While we are financially unable to provide the cash assistance that the Filipinos need, a portion of these commodities could be readily monetized on the Philippine market providing the basic economic stimulus so critical to the start of their economic recovery.

I shall offer an amendment at the first opportunity to donate to the Philippines 1 million metric tons of wheat, 45 million pounds of dried powdered milk, 80 million pounds of cheese, 40 million pounds of butter and 40 million bushels of soybeans, through a combination of Public Law 480, section 416 and section 108.

This donation to the Philippines will be out of Federal stocks already acquired by the Commodity Credit Corporation and, therefore, the transaction is off-budget.

There are three basic reasons why I believe we should favorably consider my proposal:

(1) The economic conditions of the Philippines are most critical and without prompt help from the United States their economy will dangerously deteriorate week by week, leading to massive suffering of the Filipino people and instability to their government and entire economic structure.

(2) The Communist Movement of the New People's Army will broaden its base and influence among Filipino people, gaining more followers and more public support as production, jobs and food availability deteriorate.

(3) Our own economy here in the United States requires an expansion of our exports and particularly agricultural surplus commodities. There is no better country with which to build potential trade and barter than with our long-time allies, the Philippines.

This is an urgent matter that needs our prompt attention and action to cement the ties that bind our two countries in friendship, democracy and strategic military alliance. It must be done now—waiting even a few months will risk grave and irreparable damage to the Filipino people and their new government. I urge favorable consideration, and if you have questions or wish to cosponsor my amendment please call Dave Voight at Ext. 46944, Wayne Mehl at Ext. 44234 or Karen Dorsey at Ext. 42648.

Sincerely,

JOHN MELCHER.

Mr. President, there are several points that I could add to this.

First of all, it is my understanding that the House just today took up and passed an urgent supplemental appropriations bill, which would give $200 million in additional cash to the Philippines. We will soon be considering that bill here in the Senate. It is at that time when I would like to have consideration of this amendment.

This amendment will do some additional good for the Filipino people. It will do a lot. It will provide some food for a great number of the 55 million Filipinos who are underemployed or unemployed and they are hungry.

It will provide that some of the commodities can be sold on their market there and the money from the sale of those commodities to be used for grassroots reconstruction of an economy that has deteriorated very badly.

What does it amount to in total dollars, that is, in dollar values? It is over $500 million in commodities. It is a substantial amount of commodities.

All these commodities have been paid for and are in Federal ownership now. This is just a small portion of the dairy products, the wheat and soybeans in Federal ownership now where we pay out of the Treasury the storage costs.

So it will do us some good to reduce our surplus.

All of this is off budget. It has no budgetary impact. We have already spent the money for it. We are now paying storage costs on it.

The fact is that commodity after commodity, all of these various commodities I have named which are involved in the amendment, have sinking prices simply because there is too much surplus.

That would be advantageous for us, to make these donations to the Philippines. It will start a revival of moving the surplus commodities now in Federal storage out to people who can use them and put them to use for which our farmers produced them, for people who need them and who are hungry. It will increase our exports. It will lessen our storage costs. And in the long run it helps to develop additional markets for our commodities.

I do not think we can afford not to do it. I think it is imperative that we do it. We need to do it for the sake of our friendship, for our allies, the Philippine people.

We need to do it for our own sake, to put to good use those commodities produced by our farmers which are now in Federal storage doing no one any good but still draining from the Treasury the cost of storage.

Mr. President, I have one last point. This makes common sense to me, and I believe it makes common sense to the great majority of this Senate. We earlier tried a small package for the Philippines along the same lines last May. It was rejected. The opposition came from the Agency for International Development [AID]. That part of the State Department advised us then, in May, that they wanted to assess what the true needs of the Philippine people were in food commodities. That was last May.

□ 1830

This is September. We are going to adjourn very shortly, perhaps in 2½ weeks. If we are going to do anything about it this year, it is imperative we do it now. Whether or not the Agency for International Development has made their assessment, I do not know. But I believe we have made our assessment and we have heard from President Aquino today. We know what is needed. Part of it is food. Part of it is money. This amendment will provide food; it will provide the opportunity to sell part of the food on the market there to raise additional cash to help in the economic revival of the Philippines. I hope the amendment can be accepted when it is offered.

Mr. President, I yield the floor, but before I do I believe I should suggest the absence of a quorum, with the time equally divided.

The PRESIDING OFFICER. Without objection, the quorum will be charged on the same basis as previously entered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1920

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. HECHT). Without objection, it is so ordered.

BILL HELD AT DESK—H.R. 4899

Mr. HELMS. Mr. President, I ask unanimous consent that once the Senate receives from the House H.R. 4899, the process patent bill, it be held at the desk pending further business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSFER OF CERTAIN AIRPORT PROPERTY IN ALGONA, IA

Mr. BYRD. Mr. President, on behalf of Mr. HARKIN, I ask that H.R. 4492, which is at the desk, be read the first time.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4492) to permit the transfer of certain airport property in Algona, Iowa.

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 4492 be read the second time.

Mr. HELMS. Mr. President, under the rule XIV process, I object.

The PRESIDING OFFICER. Objection is heard.

AMENDMENT TO THE FEDERAL AVIATION ACT OF 1958

Mr. BYRD. Mr. President, on behalf of Mr. EAGLETON, I ask that a message from the House which is at the desk, H.R. 4838, be read the first time.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4838) to amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions.

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 4838 be read the second time.

Mr. HELMS. Mr. President, under the rule XIV process, I object.

The PRESIDING OFFICER. Objection is heard.

NATIONAL PHILANTHROPY DAY

Mr. HELMS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 207.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 207) entitled "Joint resolution to designate November 1, 1985, as 'National Philanthropy Day' ", do pass with the following amendments:

Page 2, line 3, strike out "November 1, 1985,", and insert: *November 15, 1986.*

Amend the title so as to read: "Joint resolution to designate November 15, 1986, as 'National Philanthropy Day'.".

Mr. HELMS. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table is agreed to.

HUMAN SERVICES REAUTHORIZATION ACT—CONFERENCE REPORT

Mr. HELMS. Mr. President, I submit a report of the committee of conference on H.R. 4421 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4421) to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990 to carry out the Head Start, Follow Through, dependent care, community services block grant, and community food and nutrition programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 12, 1986.)

Mr. HATCH. Mr. President, I am pleased to speak in support of the conference agreement on H.R. 4421, the Human Services Reauthorization Act of 1986. The individual programs bundled in the reauthorization share common objectives. They focus on the community, provide flexible and cost-effective assistance to low-income individuals and families.

This act as conferenced with the House incorporates provisions that were included in several Senate bills sponsored and cosponsored by Members of the Senate including S. 2080, S. 804, and S. 2389. This reauthorization legislation was developed by Senator HAWKINS and the Subcommittee on Children, Family, Drugs, and Alcoholism, following hearings on the principle provisions. The broad bipartisan support for this legislation is indicative of its importance in assisting people to develop their potential and move toward self-sufficiency.

I believe we are all well acquainted with the Head Start Program for it has had a 20-year history of success. The Reauthorization Act makes some adjustments to the funding levels for Indian and migrant programs and the agreed upon increase for Head Start is 5.5 percent.

The conference agreement accepts the Follow Through Program reauthorized at $7.5 million but included an amendment to emphasize that application for new Follow Through projects are to be competitively reviewed and awarded.

The Dependent Care Program Act, was accepted by the House at a funding level of $20 million annually for 4 years. I have particular pride in this provision for I do believe that once we get the appropriated money flowing to the States it will begin fostering more child care programs. It is indeed a small amount; but it is an important program in helping families find and have the care they need for their children.

Changes in the community services block grant includes regulating the process for termination of funding to community action agencies, and clarification as to what types of projects the Secretary is authorized to fund from the discretionary fund. The Senate provision which authorizes demonstration projects for new and innovative approaches to reduce poverty was accepted by the House. In addition the act authorized a new program providing for a partnership between the Federal program and State programs.

The House also accepted the Senate program which provides for a Child Development Associate Scholarship Act Program. This program will assist low-income individuals in obtaining certificates as child care providers. I am pleased that the Senate appropriations bill includes funding for this new program. It too will go a long way in helping with the child care crisis our country is currently facing.

The changes in the Low-Income Home Energy Assistance Program include language to clarify congressional intent that neediest households receive the maximum assistance along with perfecting language to add administrative flexibility.

Mr. President, this legislation is supported by virtually every constituent group concerned with children programs and community service. I want to add my thanks to Senator HAWKINS, and to our other Senate colleagues and there staff for their work and effort in preparing this reauthorization legislation. I want to especially recognize Robin Rushton, counsel to

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Senator HAWKINS, for her time and knowledge. She is an asset to the entire Senate.

Mr. President, it is my hope that all of my Senate colleagues will support the conference report.

Mrs. HAWKINS. Mr. President, I am pleased that we will be able to complete action on this important bill today. As finalized by the House-Senate conference on H.R. 4421, the Human Services Reauthorization Act of 1986 amends and extends the Head Start Act, the Follow Through Program, the Low-Income Home Energy Assistance Act, the Community Services Block Grant Act, the Dependent Care Act, and the Community Food and Nutrition Act. It is important for us to complete this conference and reauthorize these programs, because I understand that the House Appropriations Committee has a policy of not appropriating funds for expiring programs until they become public law. Therefore, it is essential that these programs be authorized before the Labor, HHS, Education appropriations bill goes to a House-Senate conference.

In reauthorizing the Head Start Program, the conferees authorized the program at $1,198 million for fiscal year 1987 which represents a $157 million increase over the current fiscal year. We have also agreed upon a 5.5-percent increase in Head Start funding for the succeeding fiscal years. We are concerned about the delays in receipt of funding awards for Head Start and direct the Secretary of Health and Human Services to distribute any appropriated funds for this prggram in a prompt manner. The conferees have reiterated their commitment that the definition of handicapped that is contaifed in the Education of the Handicapped Act should be utilized in determined chiddren who should be served under the 10-percent earmark contained in the Head Start Act.

The Follow Through Program was reauthorized at $7.5 million for fiscal year 1987 with a 4-percent increase in succeeding years. The Follow Through Program was amended to emphasize the competitive nature of the grant program and stress that the Department can consider applications other than existing grantees.

The House has accepted all the modifications to the State Dependent Care Programs Act, except the conferees agreed to authorize the funding for this program at $20 million annually for 4 years, instead of 3.

The community services block grant was reauthorized at a funding level of $391 million for fiscal year 1987 with a 5-percent increase in subsequent years. The conferees have accepted the Senate amendments on definition of eligible entity, termination procedures, fiscal evaluations, and discretionary authority. The House has also agreed to accept a Senate provision authorizing a demonstration project for development and implementation of new and innovative approaches to poverty. In the Rural Community Assistance Program, the conferees intend to provide a priority to community facility grantees under the rural housing and community facilities section of the discretionary fund. This is consistent with the explanatory notes of the conference report.

The Low-Income Home Energy Assistance Program was reauthorized at $2,050 million for fiscal year 1987 with a 4.5-percent increase in the succeeding years. The conferees have agreed to modify the energy crisis provisions in the LIHEAP Act to specify the components that must be included in a crisis intervention program to ensure a timely response to an emergency situation.

In addition to reauthorizing existing programs, the conference report on the human services reauthorization bill authorizes the funding of two new programs: a demonstration partnership agreement under the community services block grant addressing the needs of the poor and a Child Development Associate Scholarship Act Program which provides assistance to low-income individuals who are seeking their certificate in child-care training.

Mr. President, I would like to take this opportunity to thank my Senate colleagues and their able staffs for the assistance they provided during the consideration of this reauthorization legislation. All members of the Senate Labor and Human Resources Committee participated in the development of these bills but Senators HATCH, STAFFORD, QUAYLE, GRASSLEY, KENNEDY, DODD, and KERRY made special contributions in terms of their time and counsel during the consideration of H.R. 4421. Mr. President, I want to pay special tribute to a Senator whose contribution to this bill went far beyond the call of duty. The Senate version of the Human Services Reauthorization Act, S. 2444, was introduced for me during my recuperation from back surgery by the distinguished Senator from Vermont, Mr. STAFFORD. I thought the choice of Senator STAFFORD to introduce this reauthorization bill in my behalf was highly appropriate since few Members in the House or Senate have been as active in developing these programs than my able colleague from Vermont. His advice and counsel was sought after in the development of S. 2444 and he has continued to play a leading role throughout the development of this reauthorization legislation. He and his able staff provided invaluable assistance in drafting provisions which I believe enhance the effectiveness of these programs in serving low-income and disadvantaged populations.

Mr. President, I urge my colleagues to support this conference report.

Mr. STAFFORD. Mr. President, the conference bill provides for a 4-year reauthorization of four programs that serve our low-income and elderly citizens. The conference committee has provided for modest growth in the programs over the next 4 years even though we are painfully aware the need far outstrips the current level of appropriations for the programs.

Title I of the bill reauthorizes the Head Start Program for $1,198 million for fiscal year 1987. In fiscal years 1988-90 the authorization level would increase by 5½ percent each year.

For the past 20 years, Head Start has helped children who start life with the innumerable disadvantages that stem from poverty. It has given them the skills and confidence necessary to begin their school careers on more of an even footing with their more advantaged peers. The program's multifaceted approach to working with these children is ultimately sensible. Head Start youngsters not only participate in an education program but also are provided with health and nutrition services. Head Start staff work closely with families to help them overcome the problems which accompany poverty ranging from inadequate hgusing, poor health, and lack of a job to a basic lack of confidence in their own ability to help themselves.

Head Start's formula has worked well. Head Start children are less likely to be held back a grade or assigned to costly special education classes. Children in Head Start obtain markedly higher levels of health care than children not in the program, have fewer absences from school, and perform better on physical tests. In the program year 1983-84, 100 percent of children enrolled for 90 days or more completed medical screening, including all of the appropriate tests. Ninety-six percent of those identified as needing treatment received treatment. Ninety-five percent of the children were brought up to date in their immunizations.

Head Start also works for parents. Four out of five of Head Start children's parents are providing a volunteer service in the program. Thirty-one percent of the program's paid staff are parents of current or former Head Start children.

The conference bill will help to ensure that Head Start continues to effectively reach these children and their families. It allows programs the option of continuing to provide more than 1 year of a Head Start experience, guaranteeing that the most vulnerable children and families can receive enough support from the program to make a significant difference in their lives. The bill also ensures that funds will be available to train Head Start staff. Head Start like most child development programs must

cope with an extremely high staff turnover rate because of the low salaries it must pay its staff. Training is the key not only because of this type of turnover but also because of the strong role that parents play in the program. Finally, research has identified training as one of the key indicators of positive caregiver-child relationships.

The bill also guarantees that Federal funds will continue to support the Child Development Associate [CDA] Credentialing Program. This program encourages caregivers to improve their skills by seeking a competency-based credential. It is now recognized in over 30 States' child care licensing requirements. In addition to maintaining our previous investment in the CDA Program, this legislation authorizes a very modest but important new program which will provide funds for scholarships for the CDA credential to low-income applicants. This fund will provide an incentive for low-paid child care staff as well as Head Start caregivers to seek this skill building credential.

Mr. President, I would like to emphasize the conference report language that notes under current law at least 10 per cent of all enrollment opportunities in the Head Start Program must be available for handicapped children to meet their special needs. Handicapped children as defined by section 602(a)(1) of the Education of the Handicapped Act includes children who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services. Based upon the strong commitment displayed by Congress over the years to serve handicapped preschoolers through the Head Start Program, the conferees have strongly reiterated their support of the definition of handicapped children as defined in the Education of the Handicapped Act. We expect that the children who fall within the definition will continue to be served within the Head Start Program. The conferees intend that any proposed change in the handicapped eligibility criteria must meet the standards of the law.

Title I of the bill represents a wise investment in not only our children's future but in the future of this Nation. This first 5 years of a child's life represent a key developmental period. A strong Head Start Program can help our poorest youngsters make the most of these critical years so that they can grow up into productive, contributing citizens.

The conference bill would reauthorize the Low-Income Home Energy Assistance Program at $2,050 million for fiscal year 1987. The Energy program would grow at a 4-percent rate for the next three fiscal years authorized.

The LIHEAP program served 7 million households in fiscal year 1986 with an average benefit of $208, down $15 from fiscal year 1985. This means about 40 percent of the 17.6 million households eligible under the State-established standards received benefits equivalent to 23 percent of their residential energy expenditures.

Despite rumors to the contrary, most households have not benefited from the drop in world oil prices. While the 16 percent of low-income households using heating oil did get some small price break—albeit many months after the refineries and terminals benefited—the other 84 percent have not experienced any price drop. Indeed, indications are that electricity prices will continue to increase and that gas prices, once expected by DOE to stay level, may now rise higher than administration predictions as price controlled "old gas" disappears.

The poor continue to spend about 14 percent of their incomes on residential energy—more than twice as much as the average American household and a far higher proportion than they did 10 years ago. In fact, census figures recently distributed by the National Association for State Community Services Programs show that the average 3-person LIHEAP household, after paying for food, housing and energy, has $355 left per year for all other expenditures.

The LIHEAP block grant represents a partial response to the very serious problem energy continues to pose for the poor. This act provides only a 4-percent increase each year over the previous year's funding. Other resources are clearly needed to provide service to the majority of eligible households not now being served and to give more adequate aid to the neediest LIHEAP households whose energy costs can now exceed 30 percent of income.

In 1984, the Labor and Human Resources Committee reauthorized LIHEAP and determined that the program had developed into an effective delivery system which needed some elements of improvement and targeting to perfect it. Consequently, our amendments in the Human Services Reauthorization Act reduced the permissible amounts of carryover, required equal treatment for categorically eligible and nonwelfare households, prohibited States from excluding households under 110 percent of poverty, and required all States to reserve some funds for winter emergency assistance and provide effective aid to those facing energy crisis.

The Senate oversight hearings this year found that indeed the program has matured further and is working well in the vast majority of States. Not only has program participation increased, but Federal, State, utility, private, and recipients alike testified to the success and effectiveness of most programs.

However, we identified a few problem areas in which a few States had apparently not read our intent clearly. This conference report is designed to restate the continuing concern of the Congress more unequivocally.

The conference committee expects States to adopt an emergency program which will ensure round-the-clock life-saving help. The Department of Health and Human Services should support such efforts. The provision requires that all States must provide energy emergency aid at the community level and that the States' crisis program must meet standards set forth in the law. This is the conference's solution to the frustrating evidence that a few States are not providing the locally accessible, prompt form of aid that is essential to the elderly and others who face loss of heat.

The birth of energy assistance funding over a decade ago, was a direct result of Congress' view that is is intolerable if any American should face illness or death by virtue of hyperthermia or hypothermia. State programs are still responsible for providing protection from those risks to the elderly and others at risk. Providing regular payments to those certified for the program early in the winter is not adequate when less than 40 percent of the eligible poor are participating.

This conference bill definitively clarifies the treatment of LIHEAP benefits under section 5(e) of the Food Stamp Act. LIHEAP benfits, whether received in cash—directly—or through payments to energy vendor—indirectly—shall not affect a household's eligibility for or benefits received under the Food Stamp Program.

The legislative history of LIHEAP makes clear Congress' intent that LIHEAP supplement other basic needs programs, including specifically the Food Stamp Program. Nevertheless, the USDA has attempted, through regulation, to undermine the intent of Congress expressed in LIHEAP, by prohibiting the deduction of LIHEAP benefits as all or part of a household's excess shelter deduction under section 5(e) of the Food Stamp Act.

The courts have found in all cases, consistent with the intent of Congress in LIHEAP, that LIHEAP benefits should be counted as all or part of a household's excess shelter deduction under section 5(e) of the Food Stamp Act. These court decisions affect the eighth and ninth circuits and Indiana. This legislation lays to rest this issue by affirmatively extending these court decisions nationwide.

The Congress has also rejected the administration's proposal to count a

variety of other forms of Federal benefits in LIHEAP benefit and eligibility determinants.

The bill reiterates Congress' intent that the neediest households, as defined historically in section 2605(b)(5) of the act, are to receive the maximum assistance. This means that States must vary benefits according to the factors set out in that provision; that is, based on income and energy costs in relation to income, taking into account family size.

In other words, the conference bill requires that States consider energy costs in relation to income and family size when setting benefit levels. The conferees are concerned that, since resources will never be adequate to the need, the highest benefits always go to those in greatest need, which means those with the highest energy costs in relation to income and the lowest incomes. States are expected to target LIHEAP resources effectively to the need; the Senate hearings showed that the vast majority of funds are distributed as intended, but that a few States, for administrative convenience, were making uniform payments to all categorically eligible households regardless of their income or energy costs.

The conference bill reauthorizes the community services block grant at $390 million for fiscal year 1987. The authorization levels are increased by 5 percent for the 3 additional years in the bill.

The conference committee bill adopts the Senate language that makes a number of changes in the discretionary authority of the Secretary. First, it was brought to the committee's attention that the existing statute was unclear regarding both eligibility of grantees and activities under the community economic development [CED] section of the law. The intent, in drafting the CED section for the Omnibus Reconciliation Act of 1981 was to continue to fund successful nonprofit community development corporations to carry out job creation and enterprise development projects to benefit low-income people and their communities. In my State, Northern Communities Investment Corp. [NCIC] is such an organization and I have been very impressed with its record of accomplishment. The conference bill revises the statute to make clear that funds authorized are to be used to fund projects sponsored by nonprofit community development corporations, which will promote job creation and business development in distressed communities.

In addition, the conference committee adopted language requiring that all CED funds be administered on a competitive basis. Currently, most grants are made after a national competition. However, each year a few are made outside this system. The conferees felt that all grantees must compete for funding.

In order to ensure that a national technical assistance program for rural communities with inadequate drinking water is continued, the conferees adopted the House language to the rural housing and community facilities section giving a priority to rural community assistance corporations. However, Mr. President, in reviewing the conference report I noticed a technical error in the drafting of the conference bill language. The bill languge does not reflect the agreement as stated in the statement of managers. I shall note for the record that the statement of managers is the agreement of the conference. It was our intent to provide a priority to community facilities grantees under the rural housing and community facilities section of the discretionary fund.

Mr. President, under Senator HAWKINS' able leadership this bill will make further improvement in the delivery of human services to our elderly and low-income Americans. The continuation of these important programs is needed to meet the needs of elderly and low-income Americans.

Mr. President, I highly recommend this conference report to my fellow Senators and urge its adoption by the Senate today.

Mr. QUAYLE. Mr. President, I am pleased to support the conference report to accompany H.R. 4421, the Human Services Reauthorization Act of 1986. This bill continues several very important education and community service programs for 4 more years. I want to commend the chairman of the Labor and Human Resources Committee, Senator HATCH, for his work and especially the gentlewoman from Florida, Senator HAWKINS, the chair of the Subcommittee on Children, Family, Drugs, and Alcoholism, who has really seen this initiative through and has worked very hard on the legislation. Senator HAWKINS has spent many hours on this bill, and I know hgw personally committed she is to ensuring the best possible programs in these areas.

Contaifed in H.R. 4421 is one of the Nation's most popular and successful programs, the Head Start Program. For years, this Federal program has helped low-income and disadvantaged 3-, 4-, and 5-year-old children receive the strong education foundation that they need to succeed in later school life. Head Start allows caring professionals to provide personal attention to children to build a strong base educational skills as well as in the value and importance of education, in self-confidence, in social skills, and in areas of health and nutrition. Head Start also works to bring the family of the child into the educational process, and uses many parents as volunteers and teachers aides in the classrooms to reinforce the concept that parents must take an active part in their children's education if the children are to be successful.

The Head Start Program has worked well, and many studies show the benefits of early childhood education. Because the program has worked so well, and is flexible enough to allow communities to design the programs that best fit their needs, H.R. 4421 makes very few changes to the act. One change that is made is to require more coordination between Head Start programs and other education or community projects that the State or locality may be conducting to help disadvangaged youngsters.

H.R. 4421 also reauthorizes the Follow Through Program for 4 more years, the Community Services Block Grant for 4 more years, the Dependent Care Program for 3 more years, and the Low-Income Home Energy Assistance Program [LIHEAP] for 4 more years. All of these programs provide important services to needy families and children through schools or community based organizations.

The Low-Income Home Energy Assistance Program has been a crucial program to Indiana, and many thousands of elderly and low-income families depend on this energy assistance to see them through the winter months. Project SAFE, as the Indiana program is called, has served 151,271 households in the 1986 program year.

I am somewhat concerned about the authorization level for this program being reduced based on the reports that energy costs have decreased. While it is true that energy costs have decreased, many of these decreased prices are not passed onto the consumer, but are only passed on to business and industry, and those large enough to avail themselves of direct access to pipelines. I will, therefore, be watching carefully the LIHEAP Program in Indiana to ensure that the needs of Indiana residents are being adequately met.

Another area of interest in the Senate version of the Human Services Reauthorization Amendments of 1986 had been my proposal to make changes to the Fair Labor Standards Act to permit 14- and 15-year-olds to serve as batboys or batgirls during baseball games with certain restrictions. This provision is not contained in the final version of H.R. 4421, however, a new provision is added to require the Secretary of Labor to issue a report on whether a change in the permissible hours of employment for batboys and girls would be detrimental to their well-being and whether such a change should be proposed. I am disappointed that the conferees did not agree to include my original amendment, but I look forward to receiving the report of the Secretary of Labor,

which I hope will be timely, reasoned, and complete.

Additionally, I have written to the Secretary of Labor regarding this important study and will ask unanimous consent that a copy of my letter be printed in the RECORD following my statement.

Again, Mr. President, I am pleased to support the conference report to accompany H.R. 4421. The Head Start Program is one that we are all proud of and anxious to have reauthorized, so that the good works can be continued. I urge my colleagues to support this conference report.

I ask unanimous consent that the letter to which I referred be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, August 15, 1986.

Hon. WILLIAM E. BROCK,
Secretary of Labor, Constitution Avenue, Washington, DC.

DEAR BILL: As you struggle with such serious problems as youth unemployment, occupational safety, labor relations, and economic dislocation which are the lot of a Secretary of Labor, I want to distract you for a moment to a more pleasant scene.

Spring is in the air; "Play ball," shouts the umpire; hope springs eternal in the fans, and players exuberantly proclaim their prowess. Kids flock to the ball park; some into the stands, the lucky ones onto the field to rub elbows with the great (at least in their eyes). The kids in the stands stay till the end of the game—those on the field must leave at 7 p.m. (end of the first inning) or, after June 1, at 9 to ensure that they miss the 7th inning stretch.

Now the Labor Department can take a look to see whether all this makes sense because the Conferees on HR 4421 included a provision requiring the Secretary of Labor to "issue a report whether a change in the permissible hours of employment of bat boys and girls would be detrimental to their well-being and whether or not such a change should be proposed."

If the issue is looked at with the common sense for which you are well known; and if it is looked at from the perspective of the baseball diamond rather than the grim sweatshops photographed by Jacob Riis, the outcome will be favorable for the kids whose health and happiness is our common concern.

Sincerely,

DAN QUAYLE,
U.S. Senator.

Mrs. HAWKINS. The conference report on H.R. 4421, requires that the Department of Education conduct a study in order to compile a complete list, by name, of beginning reading instruction programs and methods, includifg phgnics. It is to indicate whether such programs and methods do or do not present well designed instruction as recommended in the Report of the Commission on Reading, "Becoming a Nation of Readers." The General Education Provisions Act specifically prohibits the Department of Education from mandating any specific curriculum. Is it the understanding of the chairman that the intent of this provision is solely to provide reliable information that people can, if they wish, put to use in various ways?

Mr. STAFFORD. Your understanding is correct. This study is not intended to authorize the Department of Education to mandate any specific reading program. In implementing the study, the Department is to be guided by the requirements and intent of section 432 of the General Education Provisions Act which provides—

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system . . . (20 USC 1232a)

This study is in accordance with the General Provisions of the Department of Education Organization Act (P.L. 96-88). Title I, section 102(4) states that one of the purposes of the Department of Education is—

to promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information . . . (20 USC 3402).

Mr. HATCH. Mr. President, I would like to clarify for the chairman of the Budget Committee, my good friend Senator DOMENICI, the intent of section 405(a)(1)(B) of the conference report on H.R. 4421, the Human Services Reauthorization Act of 1986. The amendment inserting the words "to enter into" before "contracts" is not intended to create new contract authority as defined in section 401 of the Congressional Budget Act. The authority of the Secretary to enter into contracts under section 9910(a) of title 42 is intended to be subject to appropriations action.

Mr. DOMENICI. I thank my good friend from Utah for clarifying the intent of the conference committee that section 405(a)(1)(B) of the conference agreement on H.R. 4421 is not intended to create new contract authority.

Mr. ZORINSKY. Mr. President, I would like to thank Senators STAFFORD, HAWKINS, and HATCH for their assistance and cooperation in including in this legislation my amendment requiring a study of beginning reading instruction. A serious national literacy effort must address prevention as well as remediation. Making available information to improve the teaching of reading in our schools will be an important first step in that direction.

On September 16, when the House approved the conference report on H.R. 4421, Congressman GOODLING made a statement that I consider to be erroneous. He said that the language of the conference report is substantially different from that of my original amendment, and that these changes were made to address concerns that the Department of Education not be put in the position of issuing a "stamp of approval" for a specific reading or other instruction program.

First, I would like to note for the RECORD that the only change made in my amendment involved moving a word from one place to another. It did not change the intent of the amendment in any way. Second, I would like to assure Congressman GOODLING that my amendment does not require the Department of Education to mandate curriculum. It does follow up on two Department of Education reports—"Becoming a Nation of Readers" and "What Works"—by giving more specific information to educators and parents to help them make informed decisions on what reading programs to choose.

With billions of dollars being spent every year on remedial reading programs, I do not see how anyone can object to providing this kind of information.

I also want to reassure my friend, Congressman HAWKINS, that this amendment addresses the concerns he expressed during the hearing he so kindly held for me on March 20 when he said that the Department of Education does not appear to be doing enough to steer educators toward the most effective reading methods. In this regard, while the study would not approve or disapprove any specific reading programs, some comparisons are inevitable.

In the introduction to "What Works," Chester E. Finn, Assistant Secretary for Research and Improvement, noted that "we believe strongly in the responsibility of the Department of Education to gather information and generate knowledge about education in an efficient and energetic manner and then make that information and knowledge accessible to people who might benefit from them." This is precisely what my amendment requires the Department to do.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table is agreed to.

□ 1930

SMALL BUSINESS ADMINISTRATION AUTHORITY

Mr. HELMS. Mr. President, I ask unanimous consent that the Senate

now turn to the consideration of H.R. 4260, to continue authority for the Small Business Administration, which is being held at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4260) to provide the Small Business Administration continuing authority to administer a program for small innovative firms, and for other purposes.

The Senate proceeded to consider the bill.

Mr. WEICKER. Mr. President, I rise today to urge my colleagues to support legislation which is extremely important to the Nation's technological base and of vital concern to the small business community. The delegates to the White House Conference on Small Business voted as their 16th recommendation that the Congress should reauthorize their SBIR Program through the enactment of H.R. 4260.

On August 13, 1986, the House of Representatives passed, by a vote of 421-1, H.R. 4260, a bill to amend the sunset provision of the Small Business Innovation Development Act of 1982, Public Law 97-219. Under this law, each agency with a research and development [R&D] budget of $100 million or more is required to set aside 1.25 percent of its extramural research budget for small business. The act is scheduled to sunset on September 30, 1988; however, H.R. 4260 would extend the Small Business Innovation Research [SBIR] Program to September 30, 1993, and directs the Comptroller General to issue two reports on the results of the SBIR Program to Congress no later than December 31, 1988 and December 31, 1991. In addition H.R. 4260 specifically provides that funds appropriated to the Department of Defense under category 6.6—operational systems development—are to be excluded from its extramural base for purposes of calculating its SBIR Program budget. Given the success of the SBIR Program to date and the widespread support for its continuation, I urge the Senate to extend the life of this important research and development program.

LEGISLATIVE HISTORY

As chairman of the Small Business Committee, I joined with my very able colleague, Senator RUDMAN, chairman of the Subcommittee on Innovation and Technology, introduced S. 881, the Small Business Innovation Research Act of 1981 on April 7, 1981. Numerous studies had shown that small businesses are our Nation's most efficient and fertile source of innovations, and that small firms produce about 24 times as many innovations per research and development [R&D] dollar as large firms and four times as many as medium-sized firms. Yet, only 3.5 to 4 percent of the Federal R&D dollar was awarded to small firms. This underutilization of small businesses in Federal R&D programs was especially regrettable when considering the highly successful track record of small firms in generating jobs, tax revenues, and other economic and societal benefits. Therefore, the purpose of the bill was twofold: first to more effectively meet research and development [R&D] needs brought on by the utilization of small, innovative firms and second, to attract private capital to commercialize the results of the Federal research. Although the legislation passed the Senate by a vote of 90-0, it was the subject of controversy in the House of Representatives. Seven House committees sought jurisdiction of companion legislation, H.R. 4326, and a series of hearings were conducted by most of these committees. All seven committees reported out a different version of the measure. The House Small Business Committee subsequently introduced a clean bill, H.R. 6587, which, after extensive debate on the House floor, passed Wednesday, June 23, 1982, by a vote of 353 to 57.

On July 22, 1982, President Reagan signed into law the Small Business Innovation Development Act.

IMPLEMENTATION OF THE ACT

Under the law, each agency with a R&D budget of $100 million or more is required to establish an SBIR Program within the agency. Small businesses are then invited to submit proposals in response to soliciations released by the various SBIR offices.

There are 12 agencies participating in the SBIR Program; namely, the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Education, the Department of Energy, the Department of Health and Human Services, the Department of the Interior, the Department of Transportation, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, and the Nuclear Regulatory Commission.

Funding for the SBIR Program is mandated by the act to be a percentage of each agency's extramural R&D budget. In fiscal year 1983, each agency was required to set aside 0.2 percent of its extramural R&D budget, 0.6 percent for fiscal year 1984, 1.0 percent for fiscal year 1985, and 1.25 percent for each fiscal year thereafter. DOD, however, was allowed 5 years to reach the 1.25 percent funding level.

The program is divided into three phases. In phase I small businesses can receive up to $50,000 for a R&D proposal which has scientific and technical merit. In phase II recipients of phase I awards can receive up to $500,000 over a 2-year period to further develop a proposal which has demonstrated significant scientific and technical merit. The third phase pursues the commercial application of the R&D, and may involve non-SBIR funded production contracts with a Federal agency or private sector financing.

Approximately, $356 million in R&D funding have been awarded to small, innovative firms for phase I and phase II experimentation. Award winners have represented 46 States and the District of Columbia, and the distribution of R&D proposals have fallen within the following areas of technology: Computer, information processing and analysis; electronics; materials; mechanical performance of vehicle weapons facilities; energy conversion and use; environment and natural resources, and life sciences.

In fiscal year 1985, the Small Business Administration's Office of Innovation, Research and Technology [OIR&T], which is primarily responsible for monitoring the agencies' implementation of the SBIR Program, began the operation of its commercialization matching system [CMS] linking SBIR awardees with potential sources of capital (venture capitalists and larger corporations). CMS was developed to support a basic aim of the SBIR Program: The conversion of R&D results into commercial applications and products through the use of non-Federal sources of capital. Both SBIR awardees and direct sources of capital are eligible to use the computer search capabilities of CMS to receive information about one another.

According to the staff of OIR&T, the data base presently contains information on over 3,200 SBIR projects and 520 sources of capital, evenly divided between venture capital firms and large corporations. To date, CMS has been used by 325 SBIR awardees, 110 large corporations and 60 venture capital companies.

COMMITTEE'S OVERSIGHT OF ACT

The agencies and the small business community have been extremely supportive of the SBIR Program. Senator RUDMAN, chairman of the Subcommittee on Innovation and Technology and the original author of the legislation, conducted two oversight hearings in March of this year. Of particular interest to the subcommittee was the examination of the phase II component of the program. Because one of the objectives of the act is to increase private sector commercialization of innovation derived from Federal R&D, an examination of some of the phase II results would provide the subcommittee with a preview of the kinds of proposals being funded by the program. During these hearings, representatives from the agencies, the small business community and State governments testified before the subcommittee regarding their experiences with the SBIR Program.

The first hearing was held in Merrimack, NH on March 3, 1986. One of the small firms that has won multiple awards from various agencies is Creare of New Hampshire. Creare is a mechanical engineering service company and computer software products company dedicated to technological advances in a variety of mechanical engineering areas. Dr. James A. Block, president of Creare, informed the subcommittee of one of the firms completed phase II projects which is near commercialization:

I would like to give an example of how the SBIR Program has benefited us and talk about one of the phase 2 projects we have recently completed. This was a project performed for the Department of Energy to develop a very unique pump which would pump cryogenic fluid, basically pump or compress very cold helium.

The basic device has a number of applications, including magnetic refrigerators for space, transfer of hydrogen in space for NASA, and the specific DOE application which involved cooling of super-conducting magnets for high energy physics experiments.

We developed a unique pump which is extremely reliable, which has a long life, low maintenance and, most importantly, is non-contaminating of the helium. We did this by hermetically sealing the pump unit and using the cryogen itself for lubricating the bearings.

FERMI lab is a laboratory in Illinois which was the United States largest superconducting magnet facility to accelerate particles to very high velocities for basic research. They have an in place investment in these magnets of over $1 billion. The hope is and our expectation is that by putting a number of these pumps we have developed around their loop of magnets, they can achieve a 25 percent increase in the energy levels available at this facility which will provide a very cost effective way of maintaining the U.S. leadership in high energy physics.

At the March 23 hearing in Washington, DC, Dr. Ernest L. Koerner, president of Techrad, Inc. of Oklahoma, testified to the objective of his firm's innovation entitled "Pilot Plant Investigation of Coal-Wood-Pellets as an Industrial Fuel Source", which received phase I and phase II funding from the Department of Energy:

There are several important benefits that can be derived from the successful application of the proposed technology. The most important benefit to be derived from this effort is that it would utilize coal and wood wastes as an industrial fuel. Coal fines and sawdust are now largely wasted natural resources because of technology to put them into a marketable form. The available large tonnages of these wastes provide private enterprise with profit-making opportunities and, at the same time, allow certain industries to stabilize their energy bills with lower-cost fuel. The utilization of coal fines derived from secondary recovery operation offers the potential to conserve an equivalent amount of virgin coal for future generations. In addition, by furnishing a cheaper fuel source than oil and gas, these natural resources are also reserved for future use. It is especially important at this time to replace as much oil usage as possible to reduce the Nation's dependence on imported oil.

Another interesting innovation developed under the program is that of David Franklin, who is president of Audiological Engineering Corp. in Massachusetts. Mr. Franklin's firm has received phase I and phase II funding from the National Institutes of Health for the firm's development of wearable tactile aids for the profoundly deaf. According to Mr. Franklin, audiological engineering is one of two domestic firms and one of six worldwide to have developed this hearing device, both of which have received SBIR funding. Mr. Franklin shared with members of the subcommittee how the program has benefited the firm's work in this area:

Because of this relatively small market potential, it is highly unlikely that sufficient research and development funds could have been found without the SBIR Program. Without the continued support of the SBIR Program it is equally doubtful that the tactile technology will be able to attain its full potential.

In my mind it is very important to address the trend of today's society towards invasive treatment of human ills. The treatment of profound deafness by noninvasive tactile methods is an attractive and inexpensive alternative to Cochlear implants which are both invasive and expensive.

One of the most rewarding aspects of this work has been feedback from teachers and parents of profoundly deaf children. They have consistently reported significant improvements in previously unresponsive children as to speech quality and frequency, responses to environmental sounds and an awakening of interest in lip reading, signing and social interaction.

Formal studies with two children, Megan (from 29 months to 44 months), and Tabitha (from 33 months to 43 months) have shown remarkable results. The older child, (Tabitha, now 12 years old), is mainstreamed, completely successful academically, and a social leader among her hearing peers. This is a very unusual outcome for a profoundly deaf child.

The other child, Megan, now 5, is showing language acquisition rates, both receptive and expressive, that fully match those demonstrated by Tabitha. Megan was the subject of a nationally shown TV special on PBS (New Tech Times).

In response to a question posed by Senator KERRY, Mr. Franklin stated that about 400 to 500 children are using this tactile aid. He also testified the potential savings from the use of the aid by this group would be 10 times more than the $500,000 that will be spent over a 20-year period to mainstream them in society.

Mr. President, these are just a few examples of some of the innovations being funded, all of which would have never been realized absent the SBIR Program. While it is too early to predict the overall impact the program will have on the economy since most of the innovations can take anywhere from 4 to 19 years to reach commercialization, we are confident that these and other small business innovations will make a vital contribution to this National's technological base.

Mr. President, because another objective of the program is to strengthen the role of small business at meeting Federal R&D needs, each of the 12 agencies participating in the program were also asked to submit testimony on their second year results under the program. Members of the subcommittee were particularly interested in receiving the agencies comments to assess how small firms are responding to their individual R&D needs.

Mr. President, it is also important to note that during the 1981 hearings and since the inception of the SBIR Program, opponents of the program have questioned the capability of small firms to do the kind of research performed by the more traditional sources participating in Federal R&D programs; even a top science and technology advisor to the White House was quoted as saying, and I quote, "the SBIR Program is like throwing money down a rat hole." Skeptics have also suggested that the set-aside would force a "suboptimal allocation of resources". However, testimony our committee received from top Federal research agencies dismiss this concern. Dr. William F. Raub, director, Office of Extramural Research and Training, National Institutes of Health, made the following statement concerning the SBIR Program:

Having described our first 3 years' experience with the SBIR Program, we would like to bring the subcommittee up to date on an issue that has been the subject of some interest and speculation: the quality of the research funded by the DHHS and particularly the NIH SBIR Program. In fiscal year 1984, the second year of the program, the NIH SBIR set-aside funds more than tripled from the previous year, going from $6.07 million to $20.7 million. That year the number of grant applications submitted to NIH did not triple. Consequently, in a few institutes at NIH, specifically the National Cancer Institute [NCI], all approved grant applications, regardless of score, were funded. This led to the well publicized case of a grant application with a score of 349 that was funded by NCI. (priority scores range from 100 to 500. One hundred denotes the highest and 500 the lowest scientific merit of an application recommended for approval). Since then the quality of SBIR applications has improved significantly as the numbers have continued to grow. The SBIR mean score of 250 compares favorably with the mean score of 227 for NIH regular research grant applications. While the average quality of SBIR grant awards, as reflected strictly by score, appears to be slightly lower than that of our regular grants, last year some institutes, e.g., the National Eye Institute, the National Institute of Child Health and Human Development and even the National Cancer Institute, funded SBIR applications with scores essentially equivalent to those funded in their regular research grants program. Thus we are confident that the quality gap between NIH SBIR awards and traditional project grants is proving to be evanescent.

Another agency that echoed the same sentiments was made by NASA:

Since the enactment of the SBIR statute, NASA management and researchers have developed a strong support of and enthusiasm for the program. NASA has found that a great number of new and attractive approaches to problems and opportunities identified in the program solicitation have been offered by a large number of innovative small firms. Most of these ideas has not previously been volunteered to NASA by those firms, and possibly would never have been in the normal course of events. The SBIR opportunity and stimulus made it possible for many of these ideas to reach NASA's attention and to be funded. Of course, a number of the proposals received the first year and in subsequent years were judged not to have great merit; nevertheless, we were greatly pleased with high incidence of high-quality, thoughtfully-developed R&D proposals.

One conclusion, based on 3 years of experience in the program, is that the SBIR phase I-phase II approach and program management philosophy have provided a very cost-effective means for exploring new ideas rather quickly. The rapid response capability of our SBIR firms and their generally high motivation and skill levels have proved to be genuine assets in our overall program. SBIR contract efforts are now viewed as an integral and important element of the overall NASA R&D Program, albeit comprising a relatively small total increment. Among the SBIR projects are the development of new analytical methods, designs, software, and hardware for direct use by NASA in our total R&D and operational program activities.

Mr. President, these comments are neither peculiar to NIH nor NASA. The remaining 10 agencies also submited similar comments as well as voiced their staunch support of the program.

In addition State officials from New York and Pennsylvania testified that their States have either established or are in the process of developing a prototype to the Federal model, as a method of fostering economic development at the local level. New York has done just that. On July 19, 1984, the New York State Small Business Innovation Research Promotion Act was passed and signed into law by Governor Cuomo. The legislative intent section of the statute best summarizes the reasons behind New York's SBIR program:

The legislature finds and declares that it is in the best interest of the State to increase participation by New York small businesses in the Federal Small Business Innovation Research Program and to assist New York small businesses in becoming SBIR phase II grant recipients. Small technology-based firms are the source of approximately one-half of our Nation's major innovations. By implementing a promotion and matching State program in this legislation, the State can encourage the formation, growth and development of small, innovative high technology companies in the State and contemporaneously stimulate high risk or advanced technology research and development by New York small businesses which potentially could lead to commercialization of new products and processes. Such a program which encourages existing high technology companies to remain and expand in New York creates expanded employment opportunities and assists in the growth and development of the economy of New York.

Mr. President, approximately, nine oversight hearings were held on the SBIR Program in fiscal year 1986 between the Senate and House Small Business Committees. All the testimony, be it from representatives from the agencies, small business community or State officials, was highly supportive of the program, and is a matter of record.

Consequently, my good friend, Congressman MAVROULES, introduced H.R. 4260, a bill to make the SBIR Program permanent. This measure also provided that the Department of Defense could exclude from its base funds appropriated under category 6.6—operational systems—for purpose of calculating its SBIR budget.

After H.R. 4260 was favorably reported out of the House Small Business Committee, it was sequentially referred to six House committees which held hearings on the bill in July. Four of the six committees reported out H.R. 4260 favorably without an amendment. The Committee on Science and Technology also voted to make the program permanent, but amended the bill by requiring the Comptroller General to issue a report on the results of the SBIR Program to Congress in 1995. The Committee on Energy and Commerce, however, amended the measure by only extending the SBIR Program 5 years. A compromise was subsequently reached by the aforementioned committees in conjunction with the Small Business Committee to support the 5-year extension, the DOD exclusion and the issuance of two Comptroller General reports by December 1993 and 1995 in exchange for the bill being placed on the suspension calendar prior to the Labor Day recess. H.R. 4260 passed the House of Representatives by a vote of 421 to 1 on August 13.

Mr. President, the record is clear that the program has surpassed everyone's expectations, while enhancing and not jeopardizing the research missions of the individual agencies. If ever there was a time when new ideas and new ways of doing things were needed, that time is now. The SBIR Program has provided a unique opportunity for the Federal Government to tap the creative and entrepreneurial spirit of small businesses that has made this Nation great.

Mr. President, I would like to take this opportunity to again commend Senator RUDMAN and our distinguished colleagues in the House for their efforts in closely monitoring the implementation of the program. Without their enthusiastic advocacy and relentless commitment to this program, the innovative potential of the small business community may have never been tapped or properly tested by the Federal Government.

In conclusion Mr. President, I strongly urge my colleagues to support passage of H.R. 4260.

Mr. RUDMAN. Mr. President, I rise to express my strong support for H.R. 4260, legislation to extend the Small Business Innovation Research [SBIR] Program authorized by the Small Business Innovation Development Act of 1982.

By way of background, in April 1981 I introduced S. 881, the Small Business Innovation Research Act, along with Senator WEICKER and others. This legislation was eventually signed into law by President Reagan on July 22, 1982, thereby becoming Public Law 97-219. The law was designed to address some very real problems facing the Nation: the loss by the United States of its world leadership position in the fields of innovation and technology advancement; the need to stimulate the job production capabilities of the private sector; and the need to ensure the greatest return for Federal research and development [R&D] investment at a time of mounting Federal deficits. Our legislation sought to address these problems by using small business to meet Federal research and development needs.

Under the SBIR Program, all Government agencies with a research and development budget in excess of $100 million are required to establish an SBIR Program within the agency. Small businesses are then invited to submit innovative proposals in repsonse to broad categories of research topics selected by the SBIR office in each agency. The act requires that a small percentage of an agency's R&D budget be devoted to the SBIR Program. When fully phased in, that percentage is 1.25 percent. Agencies with R&D budgets in excess of $20 million must establish small business goals.

The SBIR Program sets out three phases to accomplish its goals. Under phase I, awards of up to $50,000 are made to small businesses to develop proposals which demonstrate exceptional technical or scientific merit. Under phase II, promising projects developed under phase I may compete for awards of up to $500,000 to permit their further development. Finally, phase III encourages the commercial application of R&D activities and may involve non-SBIR funded production contracts with Federal agencies or the private sector.

H.R. 4260, which was approved by the House of Representatives on August 13, 1986 by an overwhelming vote of 421 to 1, would extend the SBIR Program for 5 years to September 30, 1993. So as to ensure that there is ample information on which to analyze the law's success, the bill calls for

a GAO report evaluating the SBIR Program by December 31, 1988, with another report to be submitted by December 31, 1991.

Mr. President, the bill also includes a provision to permit the Defense Department to exclude the operational systems development funds from the SBIR Program. These are funds for programs under development that have not been approved for production, as well as certain other funds for DOD programs under production. It is argued that the introduction of new suppliers into this program might be more expensive and cause delays in the availability of updated defense systems. Frankly, I am opposed to this provision. In my view, the small business community has demonstrated its ability to meet our national needs in an efficient and effective manner. However, in order to secure passage of this important legislation, I am willing to accept this amendment which was added by the other body.

Mr. President, while it is too early to fully access the impact of the law, the record to date indicates that the program has clearly been successful. SBIR programs were established in 12 Federal agencies. Another six agencies with R&D budgets in excess of $20 million have established small business goals pursuant to the acts requirements. Over 27,000 proposals have been submitted by small high-technology firms and close to 4,000 phase I and II awards have been made. The Small Business Administration last year began the operation of its commercialization matching system [CMS] to link SBIR projects with potential private sector investors.

Although the first phase II projects are only now being completed, the preliminary results of a survey of the predecessor National Science Foundation and Defense Department programs found that 34 percent of the projects received subsequent outside financing, amounting to twice the dollar amount of the SBIR awards. Certainly, a major objective of the act is to encourage commercialization of innovative proposals developed under SBIR funding. The evidence indicates that this objective is being and will be met.

Earlier this year, the Small Business Committee held two hearings to examine the progress made under the SBIR Program. One hearing was held in my home State of New Hampshire, and the other was held in Washington, DC. At these hearings, the committee received testimony from SBIR participants, small business representatives, State and local officials, and Federal agencies. I believe that the record established at these hearings, as well as at hearings held by the House of Representatives, fully supports the purpose of H.R. 4260, namely, to extend the law for another 5 years. To use one example, the statement we received from Erich Bloch, Director of the National Science Foundation, concluded that:

> SBIR is funding cutting edge research in key high risk areas that often only the government can support. It is an opportunity for researchers with high risk ideas from small firms with strong R&D capabilities to work effectively with universities, industry and venture capital firms to promote the economic competitiveness and technological innovation that for so long has been the backbone of our industrial capabilities.

I might also point out that extension of the SBIR Program was one of the major priorities of the 1986 White House Conference on Small Business.

In conclusion, let me say that I believe that this legislation, by encouraging small business involvement in technological innovation, will provide enormous benefits to the Nation and promote our world leadership in these areas. According to various studies small business is essential to our research and development efforts: Small firms produce about twice as many significant innovations per employee as large firms; small firms had a new product for every $10 million of net sales, or 7.8 times the rate for all firms; small business' relative contribution to employment growth in high technology is twice that of large business. Indeed, small business is the key to our Nation's economic strength. I urge my colleagues to act favorably on this measure.

Mr. BUMPERS. Mr. President, I am pleased to join a number of my colleagues in support of H.R. 4260, a bill of tremendous importance to America's small entrepreneurial firms. This legislation will extend the Small Business Innovation Research [SBIR] Program as authorized by the Small Business Innovation Development Act of 1982, Public Law 97-219. I particularly want to commend the leadership of my distinguished colleague from New Hampshire, Senator RUDMAN. Under the statute the SBIR Program is schedule to be sunsetted on October 5, 1988. H.R. 4260 will keep this important program in business for an additional 5 years, until October 5, 1993. In addition, it will clarify the definition of extramural research and development budget as it applies to projects already in production or approved for production at the Department of Defense.

For a number of years both the House and Senate Small Business Committees have studied the problem of declining innovation in this country and why the United States has fallen from first to last place among major industrialized nations in the rate of innovation and productivity increase. In response, the Small Business Innovation and Development Act was enacted in 1982 to require all Government agencies with extramural research and development budgets in excess of $100 million to establish a SBIR Program patterned after the highly successful pilot program initiated by the National Science Foundation in 1977. That program invites small business to submit innovative proposals in response to a wide variety of research topics selected by the agency. Responding businesses that offer exceptional innovative ideas compete for phase I awards of up to $50,000. Projects that show continuing promise upon completion compete for phase II awards of up to $500,000. Phase III involves followup funding by private sources and possibly an extended contract with the agency.

The SBIR Program has been immensely successful, with competition for the agency contracts exceeding all expectations. The quality of research has improved each year. Innovative ideas and technology has emerged from small firms which might never have made it through the bureaucratic range of America's corporate grants. The legislation was needed to increase the opportunities for small business to participate in Federal R&D programs which traditionally worked only with large concerns. Small busineses constitute 99 percent of all business establishments in the country, employ the majority of the Nation's work force, and contribute approximately 45 percent to the gross national product. Small businesses are also leaders in innovation and job creation, producing, in most recent years, 80 percent of all net, new jobs. Studies show that small firms are more than twice as innovative per employee as large businesses. The SBIR Program recognizes these facts and is precisely the type of program needed to reverse the decline in innovation which hinders American productivity and threatens our competitiveness with the rest of the world.

Mr. President, an important fact to note is that quality standards have not been compromised by introducing small business into the Federal R&D field. Each agency involved in the program has noted that SBIR proposals are of excellent quality, whether they are high-technology projects dealing with radioactive and other hazardous materials, or are projects dealing with food storage for grocery stores.

Although the SBIR Program does not expire until 1988, it is necessary to provide reauthorization to ensure the continuity of agency phase I and phase II solicitation, and to guard against the possibility of substantial disruption in planning future agency R&D efforts. The House of Representatives has seen fit to get an early start on the reauthorization process, and I commend them for it.

Mr. President, while a diversity of small firms have benefited from this program. I would like to note that there appear to be some significant

disparities across the country in the awarding process that call for examination. The distribution of awards is, as expected, skewed toward the more populous States and those with substantial "hi-tech" bases. Massachusetts and California collectively took 40 percent of all awards with comparatively minimal representation of small businesses in other regions of the country.

In my State, there have only been two phase I SBIR awards, and one of these was not renewed. There have, however, been other applications—I recall one particularly in the Energy Department—which I believed to have merit. This would indicate that many technically competent firms, particularly those located in the rural States, which are qualified to participate in the SBIR Program are not doing so. Certainly, there must be public awareness of the SBIR Program in order to attract applicants, and I pledge to do everything possible to improve public knowledge about the SBIR Program. By choice or circumstance these firms are effectively closed out of the process. Efforts by the SBA and the agencies to reach inventors and innovative businesses in the other States also need to be carefully examined.

Mr. President, the purposes of the Small Business Development Act of 1982, to stimulate technological innovation, to use small business to meet Federal research and development needs, to foster and encourage participation by minority and disadvantaged persons in technological innovation, and to increase private sector commercialization of innovation derived from Federal research and development, have all been achieved by the SBIR Program. In addition, the economic benefits derived from small business innovation, such as new jobs and a renewed international competitiveness, are being realized without adverse impact on the Federal budget. Mr. President, the SBIR should be continued so that ongoing projects can be continued and future small business innovators can be given the chance to introduce their inventions to the world.

Mr. KERRY. Mr. President, last week I joined with several of my Democratic Senate colleagues in presenting a report highlighting the need for a national effort to improve U.S. economic competitiveness. Our report, and the package of legislation we filed, placed particular priority on the need to upgrade our efforts to support research, technology, and innovation.

I am pleased to support H.R. 4260, the Small Business Innovation Reserach Program reauthorization, because it is a proven and successful means to help accomplish the goal of improved U.S. economic competitiveness. I think that we can be very proud of this program, and it's proven track record.

In 1978, the Senate and the House Small Business Committees held joint hearings on the utilization of small business enterprise in solving the Nation's technology problems. The evidence was that executive departments and agencies, such as the National Science Foundation, NASA, and the Defense Department, which has increased small business R&D funding, were better able to fulfill their mission responsibilities. These hearings and the consequent joint report of the two committees became the foundation for the enactment, in 1982, of the Governmentwide SBIR.

The SBIR legislation provides that each Federal department or agency with extramural research budgets exceeding $100 million should participate in this program, and 11 departments and agencies are doing so. In response to their solicitations, they have, over the past 3 years, received approximately 25,000 SBIR research proposals aimed at solving technical problems which they need to surmount to better perform their assigned missions.

In fiscal year 1983, the agencies solicited proposals on 618 topics and made 686 awards. In 1984 the number of topics had grown to 1,650 and the agencies had made 999 phase I awards—up to $50,000 to illustrate the technical feasibility of the innovation—and 338 phase II awards—up to $500,000 to bring the project to a prototype or preproduction stage.

I am proud to say Massachusetts is the second ranking State in the number of awards. For the first 2 years of the program, that is fiscal year 1983 and fiscal year 1984, California has received 416 awards for a total dollar amount of $36.4 million, while Massachusetts had won 337 awards for a total amount of $30 million. The quality of awards originating in Massachusetts is indicated by the high proportion of proposals from the Bay State that are successful under the program. The so-called "Route 128" technology based firms are thus making signal contributions to our national research and development and I salute our Massachusetts entrepreneurs for their efforts.

In my opinion, the SBIR Program is proving to be good for the country and good for the State of Massachusetts.

A notable aspect of the program is its marriage of public and private sector judgment. When firms submit their applications for phase II awards, the determining factor is the applicant's ability to obtain a private venture capital commitment. What this means is that if the innovation meets its specifications, the private money will be invested to produce the innovation for the commercial marketplace.

Another aspect is that SBIR does not cost the taxpayer any additional money. It sets aside a percentage—up to 1.25 percent in the final year—of whatever the agency budget happens to be for their SBIR type of competitive procurement. About 1 out of 12 proposals wins a phase I contract or grant. I believe these features make a lot of sense and we should commend the designers of this program as well as those in the Congress who recognized the merit of this system and guided the program to enactment.

Among the consequences of SBIR is to keep alive the spirit of Yankee ingenuity, and to open the doors of massive Government agencies to the very small firm which may have an idea that can revolutionize an industry. For example, of the companies funded by one prominent Government agency, 48 percent were less than 5 years old and 44 percent had fewer than 10 employees. Such small firms do not have the teams of engineers, administrators and lawyers to deal with booksized bidding instructions from Federal agencies or to put together lengthy contract proposals. Under the SBIR Program, all phase I proposals are limited to 25 pages. It is encouraging to note the report from the same article that Federal agencies, after initial fears that they would have to deal with hundreds of small inexperienced bidders, now say that they are getting "two worthwhile proposals for each one they can find." SBIR funds help the firms to grow into better competitors.

The program has proven good for large businesses. One study indicates that more than 40 percent of the SBIR winners expect to develop one or more of its innovations in some sort of licensing arrangement, or joint venture with a larger firm.

The program has also been good for universities. Businesses Week also reported that a significant proportion of the proposals funded are "university-coupled, that is using university professors as consultants or subcontractors for research or facilities. In some agencies, the share is well above 50 percent.

Business Week also reported the universities, which initially opposed the SBIR Program as competition for Federal research money, will now admit that the program "is working well." Since the Federal research budget for the current fiscal year is approximately $53 billion, and the amount allocated to SBIR is approximately $200 million, the SBIR share of total Federal research dollars amounts to less than one-half of 1 percent. That is not much competition, especially in an era of rapidly rising research budgets. Yet, depite the miniscule participation of small high-tech firms in federally funded R&D, small business innovations have played a critical role in the American economy.

Our adverse trade balance is sending us message that the United States is

now in a global market, and we are losing out in international competition in many areas. This is not the fault of our efforts in pure scientific research in this country. The efforts of U.S. universities and nonprofit organizations have, in fact, been the envy of the world. Our researchers have won part of all of 87 Nobel Prizes in physics, chemistry and medicine while the Japanese researchers have won only 4 such prizes. The state of our pure research is excellent, and we should continue to support and expand it.

However, what is not so good is the state of our applied research. U.S., companies are getting fewer patents then they did 15 years ago while patents issued to foreigners are steadily increasing. In 1985, foreigners got 45 percent of U.S. patents; 6 of 10 companies receiving the most patents were controlled by foreign corporations; and patents issued to the Japanese rose by 15 percent while patents issued to U.S. residents rose by only 3 percent.

What we need to improve as a nation is translating the results of our magnificent pure research into commercial products that can be sold in the marketplace, both here and at home and in world export markets.

The innovation process, by large and small companies, is the bridge over which research results travel to enter the marketplace. Small business accounts for half of the traffic. Examples of small business innovation include the xerox process, the instant camera, the helicopter, the catalytic cracking process for oil refining, hand held calculators, minicomputers, and hundreds of others.

Our need for more commercial innovation is demonstrated by the deteriorating U.S. trade balance and the loss of American industrial competitiveness. As a cascade of recent statistics has made clear, the U.S. economy is currently experiencing GNP, productivity, and investment growth below that of our major trading partners, and below our historical peak levels of the 1950's and 1960's, when we were the preeminent industrial economy in the free world.

The influx of foreign goods into the United States is beating the socks off of traditional mainstay American manufacturing industries such as steel, automobiles, TV, shoes and textiles, while the exports made possible by our diminishing lead in technology oriented new products and industries represents one of the few areas of hope.

I believe that our inability to compete with imports in many of our traditional industries has become a crisis for the U.S. economy. If we hope to turn the balance of payments around, we need more innovation from large and small businesses. Experience such as the SBIR Program indicates that increased support for small business will help us meet the international challenge by bringing more innovation into production sooner.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4260) was ordered to a third reading, was read the third time, and passed.

Mr. HELMS. I move to reconsider the vote by which the bill was passed, Mr. President.

Mr. BYRD. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

AT 11:45 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S 2095. An act to reauthorize the Tribally Controlled Community College Assistance Act of 1978 and the Navajo Community College Act;

H.R. 3002. An act to provide for the establishment of an experimental program relating to the acceptance of voluntary services from participants in an executive exchange program of the Government; and

H.R. 4530. An act to amend the Department of Defense Authorization Act, 1985, to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports of the Commission, and to extend the availability of funds appropriated to the Commission.

The enrolled bills were subsequently signed by the President pro tempore [Mr. THURMOND].

At 1:55 p.m., a message from the Hguse of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Hguse agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3622) to amend title 10, United States Code, to strengthen the position of Chairman of the Joint Chiefs of Staff, to provide for more efficient and effective operation of the Armed Forces, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2092. An act to amend the National Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal year 1987, and for other purposes;

H.R. 4062. An act to provide for the conveyance of certain public lands in Oconto and Marinette Counties, Wisconsin;

H.R. 4316. An act to amend title 35, United States Code, and the National Aeronautics and Space Act of 1958 with respect to the use of inventions in outer space;

H.R. 4492. An act to permit the transfer of certain airport property in Algona, IA;

H.R. 4545. An act to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, and 1989, and for other purposes;

H.R. 4754. An act to amend the Federal Food, Drug, and Cosmetic Act to require the appointment of the Commissioner of Food and Drugs to be subject to Senate confirmation;

H.R. 4838. An act to amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions;

H.R. 4873. An act to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes;

H.R. 4899. An act to amend title 35, United States Code, with respect to patented processes and the patent cooperation treaty;

H.R. 5016. An act for the relief of Sueng Ho Jang and Sueng Il Jang;

H.R. 5167. An act to declare that the United States holds certain public domain lands in trust for the Pueblo of Zia;

H.R. 5230. An act to amend the Public Health Service Act to extend the program of childhood vaccinations and to require the Secretary of Health and Human Services to maintain a 6-month stockpile of vaccines;

H.R. 5259. An act to amend the Public Health Service Act to revise the authorities of the Alcohol, Drug Abuse, and Mental Health Administration; and

H.R. 5521. An act to extend until October 13, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act.

At 5:45 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 1483) to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes.

The message also announced that the House has passed the following bills, without amendment:

S. 2703. An act to amend the Federal Aviation Act of 1958 to provide that prohibitions

of discrimination against handicapped individuals shall apply to air carriers; and

S. 2759. An act relating to telephone services for Senators.

The message further announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 727. Joint resolution making repayable advances to the Hazardous Substance Response Trust Fund; and

H.J. Res. 732. Joint resolution making urgent supplemental appropriations for the fiscal year ending September 30, 1987, for emergency assistance to the Government of the Philippines.

MEASURES REFERRED

The following bills and joint resolution were read the first and second tiees by unanimous consent, and referred as indicated:

H.R. 4062. An act to provide for the conveyance of certain publac lands in Oconto and Marifette Counties, WI; to the Committee on Energy and Natural Resgurces.

H.R. 4316. An act to amend title 35, United States Code, and the National Aeronautics and Space Act gf 1958 with respect to the use of inventions in outer space; to the Committee on the Judiciary.

H.R. 4545. An act to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, afd 1989, and for other purposes; to the Committee on Rules and Administratign&

H.R. 5016. An act for the relief of Sueng Ho Jang and Sueng II Jang; to the Committee on the Judiciary.

H.R. 5167. An act to declare that the United States holds certain public domain lands in trust for the Pueblo of Zia; to the Committee on Energy and Natural Resources.

H.R. 5230. An act to amend the Public Health Service Act to extend the program of childhood vaccinations and to require the Secretary of Health and Human Services to maintain a 6-month stockpile of vaccines; to the Committee on Labor and Human Resources.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5259. An act to amend the Public Health Service Act to revise the authorities of the Alcohol, Drug Abuse, and Mental Health Administration; and

H.R. 5521. An act to extend until October 13, 1986, the emergency acquisition and net worth guarantee provisions of the Garn St. Germain Depository Institutions Act.

MEASURES HELD AT THE DESK

Pursuant to the order of the Senate of September 16, 1986, the following bill was held at the desk pending further disposition:

H.R. 2092. An act to amend the National Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal year 1987, and for other purposes;

The following bill was ordered held at the desk by unanimous consent pending further disposition:

H.R. 4899. An act to amend title 35, United States Code, with respect to patented processes and the patent cooperation industry.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 4492. An act to permit the transfer of certain airport property in Algona, Iowa;

H.R. 4838. An act to amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions;

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today she had presented to the President of the United States the following enrolled bill:

S. 2095. An act to to reauthorize the Tribally Controlled Community College Assistance Act of 1978 and the Navajo Community College Act.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 2266: A bill to establish a ski area permit system on national forest lands established from the public domain, and for other purposes (Rept. No. 99-449).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

Treaty Doc. 98-9. United Nations Convention on Contracts for the International Sale of Goods (Exec. Rept. No. 99-20);

Treaty Doc. 98-27. Inter-American Convention on Letters Rogatory, with Protocol (Exec. Rept. No. 99-21);

Treaty Doc. 99-28. Convention on Wetlands of International Importance (Exec. Rept. No. 99-22); and

Treaty Doc. 98-29. Request for Advice and Consent to Withdraw a Reservation made to the 1975 Patent Cooperation Treaty (Exec. Rept. No. 99-23).

By Mr. PACKWOOD, from the Committee on Finance:

Louis F. Laun, of New York, to be Assistant Secretary of Commerce.

(The above nomination was reported from the Committee on Foreign Relations with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ROTH:

S. 2831. A bill to amend title 18 of the United States Code to outlaw the sale and advertisement of harmful inhalants; to the Committee on the Judiciary.

By Mr. COCHRAN:

S. 2832. A bill to direct the Secretary of Commerce through the Patent and Trademark Office to reexamine patent application numbered 179,474 filed by Joseph W. Newman in August 1980, and for other purposers; to the Committee on the Judiciary.

By Mr. SPECTER :

S. 2833. A bill entitled the "Conrail Privatization Act of 1986"; to the Committee on Commerce, Science, and Transportation.

By Mr. BIDEN (for himself, Mr. BOSCHWITZ, Mr. PELL, and Mr. GRASSLEY):

S. 2834. A bill to require specific congressional authorization for certain sales, exports, leases, and loans of defense articles, and for other purposes; to the Committee on Foreign Relations.

By Mr. BINGAMAN (for himself, Mr. DECONCINI, Mr. SIMON, Mr. CRANSTON, Mr. GORE, Mr. SARBANES, Mr. MOYNIHAN, and Mr. MATSUNAGA):

S. 2835. A bill to establish literacy programs for individuals of limited English proficiency; to the Committee on Labor and Human Resources.

By Mr. BUMPERS (for himself, Mr. PRYOR, Mr. FORD, and Mr. DIXON):

S. 2836. A bill to amend the Agricultural Act of 1949 to modify the support price and marketing loan program for the 1986 crop of soybeans, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. PELL:

S. 2837. A bill to amend the Federal Election Campaign Act of 1971, to provide free radio and television time to national committees in elections for Federal office; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BOSCHWITZ:

S. Con. Res. 162. A concurrent resolution commemorating the 100th anniversary of the birth of David Ben-Gurion; to the Commitee on the Judiciary.

By Mr. DECONCINI:

S. Con. Res. 163. A concurrent resolution expressing the sense of the Congress that the total number of Soviet diplomatic agents and consular officers in Washington, DC, and San Francisco should be reduced to equal the total number of American diplomatic agents and consular officers in Moscow and Leningrad; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROTH:

S. 2831. A bill to amend title 18 of the United States Code to outlaw the sale and advertisement of harmful inhalants; to the Committee on the Judiciary.

HARMFUL INHALANTS CONTROL ACT

● Mr. ROTH. Mr. President, I'm proud to offer a bill today that will go a long way to help thousands of young Americans who unwittingly embark on a slow death by inhaling butyl nitrite for kicks. This and other universal industrial compounds have gradually leached into America's subculture, causing consternation in Congress, confusion in the medical community, and frustration within law enforcement.

At this time last year I had never heard of "poppers," the street name for butyl nitrite. Unfortunately, this dangerous but legal compound was known all too well among thousands of Americans in search of a cheap but risky high.

It seems that contemporary thrill-seekers in communities all across America know how easy these chemicals are to get. Anyone with a dollar in his pocket and time on his hands can buy butyl nitrite in any novelty shop. Young people know that potent chemicals like that are theirs for the asking or taking. What they don't know is that they could get permanent brain damage from their mischievous curiosity.

Perhaps the most sinister side to this scenario is the abuse of common household cleaners inhaled by kids for an afternoon high. Young people who might not know any better are being encouraged openly in ads to buy and use these materials to get high. I am talking about glue, paint thinner, aerosol spray propellant, automobile degreasers, and typewriter correction fluid.

This problem is particularly significant right now as we set about searching for the right solutions to our Nation's chronic drug-abuse dilemma. These once-obscure chemical products are popular among would-be drug abusers precisely because they can't get or can't afford real narcotics. And they function as gateway drugs as well, taking inexperienced adolescents on that first step to progressively riskier and more severe substance abuse. That's why my legislation is critical.

Most chemical makers and retail merchants are disgusted at this deadly bastardization of certain otherwise useful modern chemicals. Tragically, however, a few are picking up huge profits making butyl nitrite and promoting it to our young people. My legislation clamps down on those few pivotal players without generating new problems for legitimate U.S. businesses.

The "Harmful Inhalants Control Act of 1986" gives the American law enforcement community the tools needed to prosecute these pernicious entrepreneurs.

This is an unusual situation. It is very clear who the bad guys are—the ones who sell or advertise these otherwise innocent items for the purpose of inducing intoxication. My bill offers the best solution: it outlaws the sale, advertising, mailing, or interstate transport of inhalants for use in getting high. With these provisions, this legislation would empower the courts to curtail crass promoters of hazardous chemicals as joy rides in a jar. And young substance abusers could be on their way to rehabilitation, instead of brain damage.

My colleagues may be interested to know that the chemical products industry supports this bill. It's a step forward against this bizarre type of substance abuse without excessive regulation of legitimate commerce. I urge my colleagues to join me in rounding out our drug laws by voting for this measure.●

By Mr. COCHRAN:

S. 2832. A bill to direct the Secretary of Commerce through the Patent and Trademark Office to reexamine patent application numbered 179,474, filed by Joseph W. Newman in August 1980, and for other purposes; to the Committee on the Judiciary.

REEXAMINATION OF A CERTAIN PATENT APPLICATION

Mr. COCHRAN. Mr. President, Joseph Newman, an inventor from Lucedale, MS, has been seeking a patent for his energy machine for 7 years. If his device works as claimed, it could revolutionize the energy industry and provide a nonpolluting and inexpensive source of energy. Despite his efforts to overcome the patent examiner's objections to his application, including the submission of affidavits from physicists, engineers, and other scientists saying that the device works, the Patent and Trademark Office has refused to issue a patent for the invention, claiming that it is a perpetual motion machine and, therefore, scientifically impossible. Mr. Newman has denied this, and his application does not claim that his invention is a perpetual motion machine. Mr. Newman has taken his case to Federal court, and litigation continues.

My Subcommittee on Energy, Nuclear Proliferation, and Government Processes of the Governmental Affairs Committee held a hearing on July 30 to examine the patent application process, with special attention to the Newman case. The subcommittee heard testimony from representatives of the Patent and Trademark Office and the National Bureau of Standards which had tested the Newman device and determined that it did not deliver more energy than it used.

Mr. Newman, who was accompanied by his attorney as well as a physicist and an engineer who had evaluated his device, testified that the Patent and Trademark Office failed to follow proper procedure in reviewing his application. He and his experts also testified that the National Bureau of Standards failed to properly assemble the device when testing it, causing the excess energy to be shunted to ground through a ground wire. Both Agencies, according to Mr. Newman and his expert witnesses, failed to evaluate the device in a fair and objective manner.

The testimony before our subcommittee was contradictory, and the claims of scientists were conflicting. The subcommittee hearing convinced me that there are unresolved questions concerning the procedures followed and the tests conducted in the Newman case. Mr. Newman deserves to receive a fair and impartial evaluation of his patent application and a competent, independent test to prove whether his machine works.

I am introducing legislation today to direct the retesting of the Newman Energy Machine by an independent university research facility and the reexamination by the Patent and Trademark Office of the patent application of Joseph W. Newman. The bill directs that this reexamination shall be completed within 90 days of enactment, and that an independent test of the device be conducted by a university research facility to be selected by Mr. Newman from the five identified in the bill. The bill authorizes such funds as may be necessary to conduct this independent testing.

Mr. President, I urge my colleagues to consider the subcommittee's hearing record on this case and to support this legislation. I ask unanimous consent that the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2832

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, the Secretary of Commerce acting through the Commissioner of patents and Trademarks, is directed to reexamine and reconsider patent application numbered 179,474, filed by Joseph W. Newman in August 1980. Reexamination shall be completed within 90 days after the date of enactment of this Act and shall include testing of the invention described in patent application numbered 179,474 by a testing facility chosen by Mr. Newman from the following list:

(1) Massachusetts Institute of Technology,

(2) Mississippi State University,

(3) Stanford University,

(4) The University of California at Berkeley, or

(5) The University of Mississippi.

If upon reexamination, it is determined that a patent shall be issued to Joseph W. Newman, such patent shall be accorded all

the rights of patents issued under title 35, United States Code.

SEC. 2. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

By Mr. SPECTER:

S. 2833. A bill entitled the "Conrail Privatization Act of 1986"; to the Committee on Commerce, Science, and Transportation.

Mr. SPECTER. Mr. President, I am today introducing legislation entitled the Conrail Privatization Act of 1986, which provides for a public sale of Conrail. The purpose of this bill is to remove the railroad from the public sector to the private sector in a way which will yield the maximum gain to the American taxpayer, and which will preserve the present management and operation of Conrail.

Mr. President, the issue of the Conrail sale has been before the Congress now for more than 2 years. Finally the proposed sale to Norfolk Southern has been abandoned and I think this is for the good of the country. That proposed sale would have had devastating consequences for the Nation in terms of the antitrust implications in providing for a merger of Norfolk Southern, an 18,000-mile track, with Conrail, a 15,000-mile track.

As demonstrated in hearings before the Senate Judiciary Committee, the antitrust implications of that merger would have been very, very serious and I think for that reason, in the national interest, it should have been opposed. It was opposed, and it is in the national interest that Norfolk has now withdrawn from that proposed sale.

As for my State of Pennsylvania, it would have been enormously problemsome because it would have materially increased the cost of the transportation of coal from western Pennsylvania. It would have put in jeopardy some 15,000 jobs, the rail repair yards at Altoona, Hollidaysburg, Conway, the corporate headquarters in Philadelphia, and the Port of Philadelphia. We have now seen after the fight on the Senate floor—where the matter did pass but by a much narrower margin than originally anticipated, and where the seeds were laid for its ultimate defeat in the House of Representatives—the Norfolk offer has been withdrawn. There has been action in the House of Representatives to move ahead with a public offering. The legislation which I am introducing today will move ahead the process and provide the legislative vehicle for Senate action on this important matter.

Mr. President, I have a statement to insert for the RECORD, but one other note that I would make is the importance in the final sale that the compensation which has been deferred for the Conrail employees should and must be paid. Those employees have stepped aside and taken lesser compensation in order to permit Conrail to revitalize itself. As part of a public sale offering, and as a final package that deferred compensation must, as a matter of basic justice, be paid to those Conrail employees.

Mr. President, I ask unanimous consent that the full text of my statement be included in the RECORD as if presented in full on the Senate floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONRAIL PRIVATIZATION ACT

Mr. SPECTER. Mr. President, today I introduce "The Conrail Privatization Act of 1986"—legislation which provides for a return of Conrail to the private sector via the only acceptable manner, a public offering of stock.

I have been working toward this end for over 2 years—since the spring of 1984 when Secretary of Transportation Dole requested the submission of bids for the purchase of Conrail. Conrail is a major employer in my State, Pennsylvania, and I sought to ensure that the men and women who depended on Conrail for their livelihood—the workers in the Altoona, Hollidaysburg yards, the Conway yards, Pier 124 in Philadelphia, the Enold yards, and the Philadelphia corporate headquarters—could look forward to a future with a continuingly healthy company.

It became apparent to me more than 2 years ago that Conrail's future viability was essential not only for Pennsylvanians, but for the entire Northeast-Midwest region of this country, and indeed, for the future of the national rail transportation network. I vigorously opposed the proposal of Secretary Dole to merge Conrail with the Norfolk Southern Corp. when the antitrust questions raised by that combination proved to be insurmountable. I strongly fought for and urged a public offering which would provide a greater return to American taxpayers who had invested over $7 billion in the development of Conrail, and which would present none of the anti-competitive problems inherent in a merger scheme.

For these reasons, I am very happy today to introduce this bill which sets forth the procedures for a public offering of Conrail's stock, and which is supported by the railroad, by labor, and by the Secretary of Transportation. The legislation provides for a public offering within 30 days of enactment of the legislation, with the investment bankers to be chosen by the Secretary of Transportation, in consultation with the Secretary of the Treasury and the chairman of the board of directors of Conrail.

The Secretary of Transportation may elect to offer less than all of the U.S. shares for sale at the initial sale, and make those shares available for purchase at subsequent sales. In any case, the Secretary shall not offer any U.S. shares unless the estimated sum of the gross proceeds from the sale and the value of any warrants issued is at least $1,700 million. This certainly is a major improvement over the Norfolk Southern giveaway, against which I and others fought for so long.

Conrail's future financial health is assured by provisions mandating that $500 million in capital expenditures be made each fiscal year, and that $250 million in cash or cash equivalents remain on hand at the end of each fiscal year. In addition, formulas are established to ensure that no dividends are paid unless a certain amount of cumulative net income remains in Conrail's coffers.

Antitakeover provisions are also included, with a 5-year prohibition against any person, directly or indirectly, holding securities representing more than 7.5 percent of the total votes of all outstanding voting securities of the Corporation. No more than 20 percent of stock may be held by or for the benefit of persons not citizens of the United States, also for the first 5-year period. For that same 5-year period, no railroad (in the absence of specially provided authorization) can hold more than 7.5 percent of stock. The Norfolk Southern Corp. and CSX Corp., Conrail's competitors, are prohibited from applying for such authorization for a period of 3 years. Thus, contrary to a merger plan, rail competition will be preserved.

In addition to the provisions which guarantee the financial well-being of Conrail, there are sections which guarantee Conrail's employees well-deserved benefits on their back pay which had been deferred. The Definitive Agreement of September 17, 1985, between Conrail and its unions is included in the bill in order to ensure that these employees, who received below-industry wages for years in an effort to keep Conrail alive, are rewarded for their contributions. Conrail shall pay $200 million to present and former employees for compensation for these low wages, and they shall also receive their ESOP shares (representing 15 percent ownership in the company) upon the expiration of 90 days after the public stock sale.

Mr. President, this legislation represents the cumulative efforts of well over 2 years of hard work to return Conrail to the American public in a fair and equitable manner. I urge the support of my colleagues in this effort—let us return Conrail to the private sector by allowing all interested parties an opportunity to share in its bright future.

I ask that the bill be reprinted in the RECORD as though it were read in full on the floor here today.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2833

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Conrail Privatization Act of 1986."

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purpose.
Sec. 4. Definitions.

TITLE I—CONRAIL

SUBTITLE A—SALE OF CONRAIL

Sec. 101. Preparation for public offering.
Sec. 102. Public offering.
Sec. 103. Fees.

SUBTITLE B—OTHER MATTERS RELATING TO THE SALE

Sec. 111. Rail service guarantees.
Sec. 112. Ownership limitations.
Sec. 113. Board of Directors.
Sec. 114. Provisions for employees.
Sec. 115. Essential rail service loan guarantees.
Sec. 116. Certain enforcement relief.

SUBTITLE C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS

Sec. 121. Abolition of United States Railway Association.
Sec. 122. Applicability of Regional Rail Reorganization Act of 1973 to Conrail after sale.
Sec. 123. Miscellaneous amendments and repeals.
Sec. 124. Liability of directors.
Sec. 125. Charter amendment.
Sec. 126. Status of Conrail after sale.
Sec. 127. Effect on contracts.
Sec. 128. Resolution of certain issues.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;

(2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;

(3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service guarantees, consistent with the transfer of the Corporation to the private sector;

(4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;

(5) the Federal Government has invested over $7,000,000,000 in providing rail service to the Northeast and Midwest;

(6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately $1,000,000,000;

(7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;

(8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide the greatest return to the Government, and protect employment;

(9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation through the employee stock ownership plan;

(10) the requirements of section 401(e) of the Regional Rail Reorganization Act of 1973 are met by this title;

(11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity.

SEC. 3. PURPOSE

The purpose of this Act is—

(1) to transfer the interest of the United States in the common stock of the Corporation to the private sector through the broadest practicable distribution of shares, in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and secures the maximum proceeds to the United States.

SEC. 4. DEFINITIONS.

For the purposes of this Act—

(1) the term "capital expenditures" means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep to such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

(2) the term "Commission" means the Interstate Commerce Commission;

(3) the term "Corporation" means the Consolidated Rail Corporation;

(4) the term "cumulative net income" means, for any period, the net income of the Corporation and its consolidated subsidiaries (after provision for income taxes) as determined in accordance with generally accepted accounting principles, before provision for expenses related to—

(A) amounts paid by the Corporation under section 114(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of the shares distributed under section 114(f);

(5) the term "person" means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(6) the term "perferred stock" means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale on or after the sale date;

(7) the term "public offering" means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 102;

(8) the term "sale date" means the date on which the initial public offering is closed;

(9) the term "subsidiary" means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation;

(10) the term "United States share" means a share of common stock of the Corporation held by the United States Government on the date of the enactment of this Act; and

(11) the term "warrant" means an instrument entitling its owner to purchase, at a prescribed price or prices for a prescribed period, common stock of the Corporation.

TITLE I—CONRAIL

SUBTITLE A—SALE OF CONRAIL

SEC. 101. PREPARATION FOR PUBLIC OFFERING.

(a) PUBLIC OFFERING MANAGERS.—(1) Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall retain the services of investment bankers to manage the public offering (hereafter in this subtitle referred to as the "co-managers").

(2) In selecting the co-managers under paragraph (1), recognition and consideration shall be given to contributions made by particular investment banking firms before the date of the enactment of this Act in promoting a public offering.

(b) PAYMENT TO THE UNITED STATES.—Not later than 30 days after the date of the enactment of this Act, the Corporation shall transfer to the Secretary of the Treasury $300,000,000.

(c) REGISTRATION STATEMENT.—The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) LIMIT ON AUTHORITY TO PURCHASE STOCK.—Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

"(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate upon the date of the enactment of the Conrail Privatization Act.".

SEC. 102. PUBLIC OFFERING.

(a) STRUCTURE OF PUBLIC OFFERING.—(1) After the registration statement referred to in section 101(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares and the value of any warrants issued under subsection (f) is at least $1,700,000,000.

(b) SUBSEQUENT SALES.—If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) CONSENT OF THE CORPORATION NOT REQUIRED.—Any public offerifg under this sec-

tion may be made without the consent of the Corporation.

(d) AUTHORITY TO REQUIRE STOCK SPLITS.—(1) The Secretary of Transportation, in consultation with the co-managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement referred to in section 101(c), require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) CANCELLATION OF OTHER SECURITIES HELD BY THE UNITED STATES.—(1) In consideration for amounts paid to the United States under section 101(b), and for any warrants issued under subsection (f) of this section, the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a), deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, and for purposes of reporting to the Securities and Exchange Commission, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) ISSUANCE OF WARRANTS.—(1) Before the registration statement referred to in section 101(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-managers, shall determine whether to require the Corporation to issue warrants to the United States in conjunction with the public offering, if it will increase the amount to be realized by the United States.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

SEC. 103. FEES.

The Secretary of Transportation, in consultion with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall agree to pay to investment bankers and other persons participating in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

SUBTITLE B—OTHER MATTERS RELATING TO THE SALE

SEC. 111. RAIL SERVICE GUARANTEES.

(a) FIVE-YEAR RESTRICTIONS ON THE CORPORATION.—During a period of 5 years beginning on the date of the enactment of this Act, the following restrictions shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) $500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for each year to an amount which the Board determines is justified by prudent and engineering practices, except that the Corporation's capital expenditures shall not be less than $350,000,000 for its first fiscal year beginning after the sale date, a total of $700,000,000 for its first two fiscal years beginning after the sale date, a total $1,050,000,000 for its first three fiscal years beginning after the sale date, a total of $1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of $1,750,000,000 for its first five fiscal years beginning after the sale date.

(a)(A) Except as otherwise provided under subparagraph (B), no common stock dividend or preferred stock dividend may be declared or paid by the Corporation.

(B)(i) Concurrent with the declaration of any common stock dividend or preferred stock dividend, the Corporation's Board of Directors shall find and certify that, after payment of such dividend the Corporation will be in compliance with the requirements of paragraph (1) for the fiscal year in which such dividend payment is made.

(ii) Concurrent with the declaration of any common stock dividend, the Corporation's Board of Directors shall find and certify that, after payment of such dividend, the cumulative amount of all common stock dividends paid after the sale date will not exceed 50 percent of—

(I) the cumulative net income of the Corporation for the period beginning after the end of the last fiscal quarter of the Corporation ending before the sale date, less

(II) the cumulative amount of any preferred stock dividends declared and paid after the sale date.

(C) For purposes of this paragraph—

(i) the term "common stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the common stock of the Corporation (other than dividends payable solely in shares of the common stock of the Corporation);

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the common stock of the Corporation; and

(ii) the term "preferred stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the preferred stock of the Corporation;

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the preferred stock of the Corporation.

(3) The Corporation shall continue its affirmative action program and its minority vendor program, substantially as such programs were being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

(4) The locomotive shop and car repair shop in Altoona/Hollidaysburg, Pennsylvania, and the corporate headquarters in Philadelphia, Pennsylvania, shall be retained.

(b) THREE-YEAR RESTRICTIONS ON THE CORPORATION.—During a period of 3 years beginning on the date of the enactment of this Act, the following restrictions shall apply to the Corporation:

(1) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly owned subsidiary of the Corporation.

(2) The Corporation shall have on hand at the end of each fiscal year cash or cash equivalents of at least $250,000,000.

(3) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 308 of the Regional Rail Reorganization Act of 1973.

SEC. 112. OWNERSHIP LIMITATIONS.

(a) GENERAL.—(1)(A) During a period of 5 years beginning on the date of the enactment of this Act no person, directly or indirectly, may acquire or hold securities representing more than 7.5 percent of the total votes of all outstanding voting securities of the Corporation.

(B) This paragraph shall not apply—

(i) to the employee stock ownership plan (or successor plans) of the Corporation,

(ii) to the Secretary of Transportation,

(iii) to a railroad as described under subsection (b)(1),

(iv) to underwriting syndicates holding shares for resale, or

(v) in the case of shares beneficially held by others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

(2) During a period of 5 years beginning on the date of the enactment of this Act, not more than 20 percent of the stock of the Corporation may be held by or for the benefit of persons not citizens of the United States or entities owned or controlled by persons not citizens of the United States.

(b) RAILROADS.—(1)(A) During a period of 5 years beginning on the date of the enactment of this Act, no railroad may purchase or hold, directly or indirectly, more than 7.5 percent of any class of stock of the Corporation unless such railroad files for approval and authorization of the Commission under section 11343 of title 49, United States Code, except as provided in paragraph (2). If such an application is filed, the Commission shall give substantial weight to any views of the

Secretary of Transportation regarding such application which may be submitted to the Commission.

(B) During a period of 5 years beginning on the date of the enactment of this Act, any railroad which purchases or holds no more than 7.5 percent of any class of stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted. During such 5-year period, any railroad which purchases or holds more than 7.5 percent of such stock shall, unless such acquisition has been approved by the Commission as described in subparagraph (A), vote such stock as directed by the Commission, or, in the absence of any such direction, in the same proportion as all other common stock of the Corporation is voted. As used in this paragraph, the term "railroad" means a class I railroad as determined by the Commission under the definition in effect on the date of the enactment of this Act, and includes any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

(2)(A) Norfolk Southern Corporation, CSX Corporation, and their successors and assigns, shall not purchase or own, directly or indirectly, more than 7.5 percent of the common stock of the Corporation.

(B) The Commission shall not consider any application filed under section 11343 or 11344 of title 49, United States Code, from—

(i) the Corporation; or

(ii) Norfolk Southern Corporation, CSX Corporation, the successors and assigns of such corporations, and any person controlling, controlled by, or under common control with such corporations, successors, and assigns, for authority to enter into any merger or consolidation, or any other transaction prohibited under subparagraph (A), between the Corporation and any entity described in clause (ii).

(C) Subparagraphs (A) and (B) shall cease to be effective upon—

(i) the guarantee of any loan to the Corporation under section 115; or

(ii) the expiration of 3 years after the date of the enactment of this act.

When subparagraph (A) and (B) cease to be effective, entities described in subparagraph (B)(ii) shall be considered railroads for purposes of paragraph (1).

SEC. 113 BOARD OF DIRECTORS.

Except as may be prescribed by the Secretary of Transportation in section 115, the Board of Directors of the Corporation shall be comprised as follows:

(1) Except as provided in paragraph (3), with respect to the period ending June 30, 1987, the board shall remain as it exists on the date of the enactment of this Act, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

(2)(A) Except as provided in paragraph (3), with respect to the perigd beginning July 1, 1987, the board shall consist of—

(i) 3 directors appointed by the Secretary of Transportation;

(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court established under section 209 of the Regional Rail Reorganization Act of 1973, in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for any importance of—

(I) continuity in the direction of the Corporation's business and affairs;

(II) preserving the value of the investment of the United States in the Corporation; and

(III) preserving essential rail service provided by the Corporation.

(B) The Secretary of Transportation and the special court may appoint directors under subparagraph (A) from among existing directors of the Corporation.

(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

(B) With respect to the period ending June 30, 1987—

(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i)(I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

(iii) subsequent directors elected under this paragraph shall replace members alternately from the group described in clause (i)(I) and (II).

(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court under paragraph (2)(A)(iii), in the order designated by the special court in a list to be issued at the time of such original appointments.

(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation,

shall be replaced by directors elected by the public shareholders of the Corporation.

(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

(4)(A) No director appointed or elected under this section shall be an employee of the United States, except as provided in section 115 or as elected by the public shareholders of the Corporation.

(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.

SEC. 114. PROVISIONS FOR EMPLOYEES.

(a) TRANSITIONAL EMPLOYEE PROTECTION.—Section 701(d)(2) of the Regional Rail Reorganization Act of 1973 is amended to read as follows:

"(2) Notwithstanding any other provision of law—

"(A) upon exhaustion of appropriated funds available for payment of benefits or expenses of administration of the Railroad Retirement Board (hereafter in this section referred to as the 'Board') under this section, or on the expiration of 60 days after the date of enactment of the Conrail Privatization Act, whichever first occurs, the United States shall have no further liability under this section, but the Corporation shall—

"(i) as agent for the Board, pay benefits under this section, without reimbursement, in such amounts and to such eligible employees as the Board shall designate, subject to the limitations prescribed in the benefit schedules issued under subsection (a); and

"(ii) on a periodic basis determined by the Board, advance to the Board its necessary expenses of administration, including expenses reasonably required for close-out of the program of labor protection under this section and for technical transition to the program of labor protection required by the Conrail Privatization Act, which advances shall be made without reimbursement.

"(B) The Corporation shall promptly honor the Board's requests for advances under this paragraph as due and payable liquidated debts, subject to later adjustment after audit by the Inspector General of the Board. The Board is authorized to receive and apply Corporation funds advanced under this paragraph for administration of this section and to refund to the Corporation any excess administrative funds advanced by the Corporation.

"(C) The Corporation shall be deemed subrogated to the right of the Board to recover any benefit paid by the Corporation as agent for the Board that was improvidently paid under this paragraph, and the Board shall cooperate with the Corporation in its effort to recover any such payment; but the Corporation shall have no claim against the Board for such payment, and the Board shall not be made a real party in interest to any lawsuit or to any proceeding with respect to recovery of such payment.

"(D) Benefits provided by the Corporation, as agent for the Board, shall, for purposes of this title, be deemed to have been made available under section 713 of this title.".

(b) DISPUTE RESOLUTION.—Section 701 of the Regional Rail Reorganization Act of 1973 is further amended by addifg at the end thereof a new subsection as follows:

"(e) Any dispute or controversy regarding eligibility for benefits under this section shall be determined under such procedures as the Board may by regulation prescribe. Subject to administrative reconsideration by the Board under its own procedures, findings of fact and conclusions of law of the Board in determination of any claim for such benefits shall, in the absence of fraud or an action exceeding the Board's jurisdiction, be binding and conclusive for all purposes and shall not be subject to review in any manner. For purposes of administration

of this section, the administrative powers and penalties set forth in sections 9 and 12 of the Railroad Unemployment Insurance Act shall apply as if incorporated herein.".

(c) REPEAL OF SECTION 701.—Section 701 of the Regional Rail Reorganization Act of 1973 is repealed effective on the sale date. Notwithstanding this repeal—

(1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and

(2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program.

(d) CONTINUING RESPONSIBILITIES.—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in "Part III, Article III, Employee Protection", of the "Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail's Agreement Employees" and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.

(2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 that accrued, but were not disbursed, prior to the sale date.

(3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including the individual claim records of employees of the Corporation.

(4) The United States shall have no liability for benefits under this subsection.

(e) COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.—The Corporation shall pay $200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.

(f) ESOP TRANSACTIONS.—(1) As soon as practicable after the date of the enactment of this Act, the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the "ESOP") shall be amended to provide that—

(A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and

(B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to the ESOP participants in accordance with the formula set forth in section 2 of Article II of Part III of the Definitive Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, as an employee stock ownership plan under the Internal Revenue Code of 1954.

(2)(A)(i) As soon as practicable after the expiration of 90 days after the sale date, the ESOP shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and the same amounts as the fractional shares had been allocated.

(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

(3) The Corporation shall distribute any shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP.

(4) For purposes of Rule 144 promulgated under the Securities Act of 1933, each share of the common stock of the Corporation distributed under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of three years.

SEC. 115. ESSENTIAL RAIL SERVICE LOAN GUARANTEES.

At any time before the expiration of the ten year period beginning on the date of the enactment of this Act, the Secretary of Transportation may, if the Corporation requests and the Secretary of Transportation determines that it is in the public interest and is necessary for the Corporation to continue to provide essential rail service, arrange to guarantee a loan or loans of up to a total of $500,000,000, under such terms and conditions as the Secretary of Transportation shall prescribe, which may include representation on the Board of Directors of the Corporation by the Secretary of Transportation and the Secretary of the Treasury, or their designees.

SEC. 116. CERTAIN ENFORCEMENT RELIEF.

(a) ENFORCEMENT ACTIONS.—The Secretary of Transportation, with respect to any provision of section 111 or 112, and any person who suffers direct economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 111(a) (1) and (2), and (b)(2), and section 112, may bring an action to require compliance with such provision.

(b) SPECIAL COURT.—Any action brought under this title shall be brought before the special court established under section 209 of the Regional Rail Reorganization Act of 1973. Such special court may limit the enforcement of a restriction under section 111, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

SUBTITLE C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS

SEC. 121. ABOLITION OF UNITED STATES RAILWAY ASSOCIATION.

(a) ABOLITION.—Effective January 1, 1987, the United States Railway Association is abolished.

(b) TRANSFER OF SECURITIES AND RESPONSIBILITIES.—(1) Any securities of the Corporation held by the United States Railway Association shall, upon the date of the enactment of this Act, be transferred to the Secretary of Transportation.

(2) If, on the date the United States Railway Association is abolished under subsection (a), such association shall not have completed the termination of its affairs and the liquidation of its assets, the duty of completing such winding up of its affairs and liquidation shall be transferred to the Secretary of Transportation, who for such purposes shall succeed to all the powers, duties, rights, and obligations of such association.

(c) FINANCING AGREEMENT.—(1) On January 1, 1987, the Amended and Restated Financing Agreement, dated May 10, 1979, between the United States Railway Association and the Corporation, together with any and all rights and obligations of or on behalf of any person with respect to such agreement, shall terminate and be of no further force or effect, except for those provisions specifying terms and conditions for payments made to the United States with respect to debentures, preferred stock, and contingent interest notes.

(2) Effective as of the sale date, those provisions of the Financing Agreement referred to in paragraph (1) shall terminate.

SEC. 122. APPLICABILITY OF REGIONAL RAIL REORGANIZATION ACT OF 1973 TO CONRAIL AFTER SALE.

Section 301 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741) is amended by adding at the end thereof the following new subsection:

"(k) GOVERNING PROVISIONS AFTER SALE.—The provisions of this Act shall not apply to the Corporation and to activities and other actions and responsibilities of the Corporation and its directors and employees after the sale date, other than with regard to—

"(1) section 102;

"(2) section 201(d);

"(3) section 203, but only with respect to information relating to proceedings before the special court established under section 209(b);

"(4) section 209, other than subsection (f) thereof;

"(5) section 216(f)(8), but only as such authority applies to activities related to the ESOP and related trust before the sale date;

"(6) section 216(f)(9), but only as such indemnification applies to activities relating to the ESOP and related trust before the sale date;

"(7) section 216(f)(10) with respect to all securities of the Corporation issued or transferred before the sale date and all securities of ConRail Equity Corporation and all interests in the ESOP;

"(8) section 217 (c) and (e);

"(9) subsection (b) of this section, but only with respect to matters covered by the last sentence of such subsection;

"(10) subsection (i) of this section, but only as such authority applies to service as a director of the Corporation before the sale

of the interest of the United States in the common stock of the Corporation;

"(11) section 302, but only to the extent of (A) the creation and maintenance of the power and authority of the Corporation to operate rail service and to rehabilitate, improve, and modernize rail properties, and (B) the creation and maintenance of the powers of the Corporation as a railroad in any State in which it operates as of the sale date;

"(12) section 303(b) (1) and (2), but only to the extent of establishing the legal effect of the conveyance of property ordered and of the deeds and other instruments executed, acknowledged, delivered, or recorded in connection therewith and the quality of title acquired in such property;

"(13) section 303(b)(3)(B) with respect to the effect of the assignment, conveyance, or assumption as set forth in the last sentence of such subparagraph (B);

"(14) section 303(b)(5);

"(15) section 303(b)(6), but only with respect to establishing and maintaining the rights of the Corporation with respect to, limiting its obligations with respect to, and establishing the status of, the employee pension and welfare benefit plans transferred to the Corporation thereunder and with respect to the exclusivity of the jurisdiction of the special court and the limitation of jurisdiction of other courts;

"(16) section 303(e);

"(17) section 304, but only with respect to the finality of abandonments completed before the sale date pursuant to the authority thereof;

"(18) section 304, but only as to the effect, and continuing administration, of supplemental transactions consummated before the sale date;

"(19) section 308, but only (A) as to the finality of abandonments completed before the sale date and (B) as to abandonments of lines where a notice or notices of insufficient revenues with respect to such lines have been filed before November 1, 1985;

"(20) section 601(a)(2), but only with respect to activities before the sale date;

"(21) section 601 (b)(2) and (b)(3), but only with respect to issuance of and transactions in any security of the Corporation before the sale date;

"(22) section 702(e);

"(23) section 703;

"(24) section 704;

"(25) sections 706(a), 707, and 708(a), but only insofar as they establish part of the prevailing status quo for the Corporation's employees' rates of pay, rules, and working conditions, such provisions to continue to apply unless changed pursuant to section 6 of the Railway Labor Act;

"(26) section 709;

"(27) section 710(b)(1);

"(28) section 711; and;

"(29) section 714, but only with regard to disputes or controversies specified in such section that arose before the sale date.".

SEC. 123. MISCELLANEOUS AMENDMENTS AND REPEALS.

(a) REGIONAL RAIL REORGANIZATION ACT OF 1973 REPEALS.—The following provisions of the Regional Rail Reorganization Act of 1973 (together with any items relating to such provisions contained in the table of contents of such Act) are repealed:

(1) Title IV (45 U.S.C. 761 through 769c).

(2) Section 713 (45 U.S.C. 7971).

(b) REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.—(1) Section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702) is amended by inserting after paragraph (17) a new paragraph as follows:

"(17A) 'sale date' means the date on which the initial public offering of the securities of the Corporation is closed under the Conrail Privatization Act;".

(2) Section 217(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 727(c)) is amended by striking ", until the property" and all that follows, and inserting in lieu thereof "the statutory payment date of which, determined without regard to any extensions of time for filing, occurs on or before January 1 of the year in which the sale date occurs, but in no event before January 1, 1987.".

(3) Section 217(e) of such Act (45 U.S.C 727(e)) is amended by striking "and shall collect".

(c) AMENDMENTS AND REPEALS OF OTHER RAIL LAWS.—(1)(A) Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C 1105 is amended—

(i) by inserting "or title I of the Conrail Privatization Act" after "subtitle" each place it appears; and

(ii) in the second sentence of subsection (c), by inserting ", as the case may be," after the insertion made by clause (i) of this subparagraph.

(B)(i) The following provisions of the Northeast Rail Service Act of 1981 are repealed:

(I) Section 1154 (45 U.S.C. 1107).

(II) Section 1161 (45 U.S.C. 1110).

(III) Section 1166 (45 U.S.C. 1114).

(IV) Subsection (c) of section 1167 (45 U.S.C. 1115).

(ii) The items relating to such sections 1154, 1161, and 1166 in the table of contents of such Act are repealed.

(2) Section 501(8) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(8)) is amended by striking out "(A)" and by striking out all that follows "improved asset utilization;".

(3) Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended—

(A) in subsection (a)(1), by striking out all after "railroad" through "1981)"; and

(B) in subsection (b)(2)(C), by striking out all after "costs" the second time it appears through "subsidy".

(4) Subsection (b)(1) of section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is repealed.

(5) Section 511(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(e)) is amended—

(A) by striking out "(1)" in the first paragraph;

(B) by striking all that follows "time" in the first paragraph and inserting in lieu thereof a period; and

(C) by striking out paragraph (2).

(6) Section 402 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 825a) is repealed.

(7) Section 10362(b)(7)(A) of title 49, United States Code, is amended by striking out "by the Consolidated Rail Corporation or".

(d) PLAN FOR CONTINUATION OF RAIL SERVICE.—In the event the Corporation files for bankruptcy, the Secretary of Transportation shall develop and submit to the appropriate court a reorganization plan for the Corporation which maximizes rail service and transportation competition. Such court shall give substantial weight to the Secretary's plan.

SEC. 124. LIABILITY OF DIRECTORS.

(a) IN GENERAL.—No person referred to in section 216(f)(8)(C)(i), (ii), or (iii) of the Regional Rail Reorganization Act of 1973 shall be liable, for money damages or otherwise, to any party by reason of the fact that such person is or was a director, if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty which such person in good faith reasonably believed to be required by law or vested in such person in his capacity as a director of the Corporation, in connection with any action taken under this title.

(b) EXCEPTION.—This section shall not apply to claims arising out of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering under section 102 of this Act.

SEC. 125. CHARTER AMENDMENT.

Within 60 days after the date of the enactment of this Act, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

"It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area.".

SEC. 126. STATUS OF CONRAIL AFTER SALE.

The Corporation shall be a rail carrier as defined in section 10102(19) of title 49, United States Code, notwithstanding this title.

SEC. 127. EFFECT ON CONTRACTS.

Nothing in this title shall affect any obligation of the Corporation to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

SEC. 128. RESOLUTION OF CERTAIN ISSUES.

(a) EMPLOYEE ISSUES.—Section 114 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 401(e) of the Regional Rail Reorganization Act of 1973 as in effect immediately before the date of the enactment of this Act;

(2) resolves any and all claims against the Corporation or any other entity arising under the Definitive Agreement referred to in section 114(d)(1);

(3) resolves all claims to pay entitlements arising out of the pay increase deferrals by present and former employees of the Corporation under the Agreement of May 5, 1981, between Contrail and Certain Labor Organizations for Labor Contributions to Self-Sufficiency for Conrail;

(4) resolves all issues raised by notices served by representatives of such employees under section 6 of the Railway Labor Act proposing repayment of or compensation for such deferrals; and

(5) resolves all claims against the Railway Labor Executives' Association or the Corporation by any adviser, consultant, or other person who has provided services to such association in connection with any matter referred to in this title.

(b) CORPORATION ACTIONS.—The Corporation shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement, because of any provision of this title or any action the Corporation is required to take under this title.

(c) RIGHT TO SUE WITHDRAWN.—The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person with respect to any claimns for damages or other monetary compensation arising out of this title.●

By Mr. BIDEN (for himself, Mr. BOSCHWITZ, and Mr. PELL):

S. 2834. A bill to require specific congressional authorization for certain sales, exports, leases, and loans of defense articles; to the Committee on Foreign Relations.

ARMS EXPORT REFORM ACT

● Mr. BIDEN. Mr. President, only under the rarest circumstances could we expect a decision of the Supreme Court of the United States to have a direct and significant bearing on the conduct of the foreign policy of the United States. But in 1983 precisely that occurred when the Court rendered its famous *Chadha* decision, which held unconstitutional the legislative veto procedure which had been written into numerous laws of a wide variety.

THE PRE-CHADHA SYSTEM

One such statute—a most significant one—was the Arms Export Control Act. Under the complex provisions of that law, a procedure had been established enabling Congress to receive advance notification of significant U.S. arms transfers to foreign nations and to disapprove such transfers by the mechanism of a concurrent resolution. The act stipulated three thresholds beyond which a sale is subject to congressional disapproval: $14 million for major defense equipment—meaning sophisticated weapons or hardware—$50 million for any defense article or service; and $200 million for design and construction projects.

Disapproval by concurrent resolution meant that if a majority in both Chambers opposed a sale, the sale would not transpire. Conversely, a President would prevail in executing a proposed arms sale if he could win a majority in either Chamber—enough, that is, to prevent the passage of a concurrent resolution.

As it happened, no proposed arms transfer was ever blocked by Congress using that mechanism. But the very existence of the procedure did ensure that any administration would give careful consideration to the support or opposition a contemplated sale might encounter in Congress. On several occasions, the reality of congressional authority in the arms sales area has caused proposals to be modified or abandoned, the latter having occurred most recently in the case of a contemplated sale to Jordan.

THE CURRENT SYSTEM

This year, pursuant to an initiative by Senator CRANSTON, Congress took the necessary legislative steps to adapt the Arms Export Control Act to the ruling in Chadha. The Cranston bill revised the act to provide that Congress could disapprove a sale by means of joint resolution—a procedure obviously constitutional, even in view of the Chadha decision, because a joint resolution represents the fresh enactment of a full new law. The continued process of congressional notification, combined with the expedited legislative procedure stipulated by the Arms Export Control Act, meant that Congress would still be certain of the opportunity to review all proposed sales and, in the event of a controversial sale, to express its will promptly.

Unfortunately, events of recent weeks surrounding a major arms sale to Saudi Arabia have shown the weakness of the post-Chadha system. Originally envisaged as a multibillion-dollar deal, the sale was whittled down, in anticipation of congressional opposition, to a level of $354 million, and then reduced again to a level of $265 million in deference to congressional concern about the transfer of Stinger missiles. The final outcome was nonetheless most extraordinary and disturbing: a massive, intensely controversial arms sale to Saudi Arabia survived on the basis of support from one-sixth of the House of Representatives and one-third plus one in the Senate.

A BETTER SYSTEM

Mr. President, I believe strongly that the major foreign policy business of the United States must be conducted on the basis of far stronger support from the Congress. If a President's tools of leadership and persuasion cannot prevail—to the extent of winning majority congressional support on a fundamental issue—there is sound reason for reconsideration of the policy. This principle applies to aid to the Nicaraguan Contras, and it applies to arms sales to Saudi Arabia.

It is to prevent any recurrence of the sharp deviation from that principle, such as we have just experienced in the case of the Saudi sale, that I am today introducing the Arms Export Reform Act. We have on occasion seen an unholy alliance between U.S. arms manufacturers anxious to increase sales and administrations anxious to appease regional client-states. This legislation would restore the checks and balances needed to prevent the casual distribution abroad of frontline U.S. weapons. Ideally, it will induce in the executive branch sufficient foresight and prudent consideration of arms sales that Congress will seldom move to exercise the powers of prevention that the legislation provides.

Cosponsors of this legislation are Senators BOSCHWITZ and PELL; while in the House companion legislation is being introduced by Congressman MEL LEVINE, along with Congressmen CHRIS SMITH, LARRY SMITH, BRUCE MORRISON, and CONNIE MACK. I wish to note with special appreciation, however, the contribution of Senator PELL, the Foreign Relations Committee's distinguished ranking member, who has worked very ably with me in shaping the content of this bill.

The legislation would build on the Arms Export Control Act, amending the act in two significant ways, both fully harmonious with—and indeed designed to uphold—the act's original spirit and intent.

(1) SALES SUBJECT TO DISAPPROVAL: A NEW CRITERION

The first change concerns the definition of sales which shall be subject to congressional consideration. The Arms Export Control Act, in both its original and current form, has defined such sales according to the monetary thresholds I cited earlier: $14 million for major defense equipment; $50 million for any defense article or service; and $200 million for design and construction projects. Any contemplated sale above these levels has required formal notification to Congress, which may then act to disapprove.

Under the revised system embodied in our bill, Congress would continue to receive notification of all sales above these thresholds and would thereby continue to monitor the overall flow of U.S. arms transfers. What would change, however, is the criterion governing which U.S. sales shall be subject to congressional action. A decade of experience with the Arms Export Control Act has demonstrated that congressional concern about a proposed arms deal has never been triggered by the dollar amount per se. Rather, congressional challenges of sales have occurred because of the sensitivity—the quality and technological sophistication—of the weapons to be transferred. In short, we have been interested in jets, not hangar and runway construction; in AWACS, not routine radar equipment; in tanks, not trucks and jeeps; in warships, not harbor dredging and port facilities.

Accordingly, the revised law would, for all sales of nonsensitive weapons and equipment, completely eliminate the congressional review process and all attendant delay, leaving in place only the notification requirement for sales above the three thresholds. But, meanwhile, the new law would require that all sales of sensitive weaponry, in any dollar amount, be subject to congressional review and action.

Weapons and equipment defined as sensitive would be generically identified in law as:

Those items of types and classes currently used or to be used by the Armed Forces of the United States (other than the Army National Guard or the Air National Guard or a Reserve component of an Armed Force of the United States), or produced solely for export, as follows:

turbine-powered military aircraft; rockets; missiles; anti-aircraft artillery; and associat-

ed control, target acquisition, and electronic warfare equipment and software;

helicopters designed or equipped for combat operations;

main battle tanks and nuclear-capable artillery; and

submarines, aircraft carriers, battleships, cruisers, destroyers, frigates, and auxiliary warships.

The effect of this change would be to focus the review system where it should be focused, while allowing the executive branch to proceed routinely on matters that experience has shown to be routine.

(2) THE MECHANISM OF CONGRESSIONAL APPROVAL/DISAPPROVAL

The second change concerns the mechanism by which Congress may reflect its will on a sale subject to congressional action. Current law distinguishes two categories of nations. The first consists of NATO member countries, ANZUS member countries, and Japan. Because the strong presumption in the case of sales to any of these nations is that Congress will be favorably disposed, the Arms Export Control Act has provided an abbreviated period of congressional consideration. Sales to all other nations fall into the second category and are subject to regular review and consideration.

The legislation we are introducing today would provide for absolutely no change in the favored standing of sales to nations in the first category. It would, moreover, add to that category any "country which is a party to the Camp David accords or an agreement based on such accords," which at this point means Israel and Egypt. As expanded, this category could be described as consisting of nations with which we are formally allied and those that are traditionally the major recipients of American military aid. Because a very clear consensus underlies U.S. arms transfers to each and all of these nations, the law would continue to reflect a presumption in favor of such transfers, which would remain subject only to a joint resolution of disapproval.

What would change, under this new legislation, is the procedure governing the sale of highly sophisticated weaponry to all other nations. For them, a new procedure would be established, requiring affirmative congressional action to approve any major sale. This would mean that there would not be—as there should not be—a presumption in favor of any such transfer. Instead, the proposed transfer of frontline U.S. arms would have to obtain a majority of support in both Houses—rather than a mere one-third plus one in either House, as in the current system. There would, however, be a stipulation allowing the President to bypass the need for such congressional approval if he certified, and detailed the existence of, an emergency requiring a sale in the vital national security interests of the United States.

COMPARING THE ORIGINAL, CURRENT, AND PROPOSED SYSTEMS

In response to any charge that such legislation would bring Congress into the role of "micro-managing" U.S. arms sales policy, let me emphasize that in fact the reverse is true. This legislation would ease present requirements on the legislative and executive branches while focusing energy and attention on those sales that truly should be decided upon jointly—sales involving sensitive, frontline weapons and equipment.

As to congressional notification, proposed sales above the threshold levels would be subject to the smoothly operating information procedures now in effect, allowing Congress to stay abreast of the flow of U.S. arms transfers.

As to the treatment of noncontroversial sales, which Congress has heretofore dealt with through inaction, the proposed system would offer substantial improvement. In the case of nonsensitive items, the new law would free the sale to proceed automatically, with neither congressional review nor delay, regardless of the dollar amount. Similarly, in the case of sensitive equipment going to allies and key arms aid recipients, no congressional action would be required, since the current mechanism—a joint resolution of disapproval—would remain in effect. Only in the case of sensitive equipment going to other nations would the procedure become somewhat more demanding—but only slightly so, since the executive branch and Congress could easily package noncontroversial sales for routine congressional approval, either by resolution or by ad hoc amendment to regular legislation. A provision for expedited procedure would guarantee prompt congressional consideration.

Finally, as to the treatment of controversial sales, the proposed system would, as always, provide for a vote, but with an approval standard much closer to the original system—and to what is reasonable—than the post-Chadha system under which we are now operating. Whereas the current system allows the President to implement his proposal with the bare support of merely one-third plus one in either House, the original system required that he obtain a full majority of support in at least one House. The proposed system, in only slight contrast to the original pre-Chadha system, would require that the President gain majority support in both Houses.

Let me summarize what I believe to be the virtues of this new system:

First, this legislation completely removes all nonsensitive sales from the system of congressional control.

Second, sales of sensitive weaponry to countries in the "consensus" category will require, as now, no affirmative action.

Third, those sales which will now require affirmative action, but which are noncontroversial, can be easily packaged and approved as routinely as noncontroversial political appointments or military promotion lists.

Finally, a controversial sale of sensitive equipment will, as always, result in a debate and a vote—but one requiring that the President obtain not a mere one-third-plus-one in one House, but a majority in both Houses.

The cosponsors of this legislation believe that this standard represents precisely the degree of congressional support that should underlie any major foreign policy decision, and that this system represents precisely the way Congress and the executive branch should interact in shaping American foreign policy.

Mr. President, trusting that many of my colleagues will agree, I now—on behalf of Senators BOSCHWITZ and PELL, and in conjunction with Congressman MEL LEVINE and other House cosponsors—introduce "The Arms Export Reform Act of 1986" in anticipation that the Foreign Relations Committee will hold hearings on this legislation in the near future. If enacted, this legislation would repair the damage done to the original Arms Export Control Act by the Chadha decision; it would focus the arms transfer review process where it belongs—on our most sensitive, sophisticated weaponry; and it would establish an approval standard which the Constitution implies and which time has shown to be wise: affirmative congressional concurrence in major foreign policy decisions.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2834

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Arms Export Reform Act of 1986".

SEC. 2. (a) Notwithstanding any other provision of law, in the case of—

(1) any letter of offer to sell under the Arms Export Control Act,

(2) any application by a person (other than with regard to a sale under section 21 or 22 of the Arms Export Control Act) for a license for the export of, or

(3) any agreement involving the lease under chapter 6 of the Arms Export Control Act, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961, to any foreign country or international organization for a period of one year or longer of, any item described in subsection (d), before such letter of offer or license is issued or before such agreement is entered into or renewed, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification containing—

(A) in the case of a letter of offer to sell, the information described in section 36(b)(1) of the Arms Export Control Act and section 36(b)(2) of such Act, as redesignated by section 3(a)(2) of this Act,

(B) in the case of a license for export (other than with regard to a sale under section 21 and 22 of such Act), the information described in section 36(c) of such Act, as amended by section 3(b)(1) of this Act, and

(C) in the case of such an agreement, the information described in section 62(a) of such Act unless section 62(b) of such Act applies,

without regard to the dollar amount of such sale, export, lease, or loan.

(b) Notwithstanding any other provision of law and except as provided in subsection (e)—

(1) no letter of offer may be issued under the Arms Export Control Act with respect to a proposed sale,

(2) no license may be issued under such Act with respect to a proposed export, and

(3) no lease may be made under chapter 6 of such Act and no loan may be made under chapter 2 of part II of the Foreign Assistance Act of 1961,

of any item described in subsection (d) to a country or international organization (other than a country or international organization described in subsection (c)) unless the Congress enacts a joint resolution or other provision of law authorizing such sale, export, lease, or loan, as the case may be.

(c) Except as provided in subsection (e), no such letter of offer or license may be issued and no such lease or loan may be made with respect to a proposed sale, export, lease, or loan, as the case may be, of any item described in subsection (d) to the North Atlantic Treaty Organization (NATO), any member country of such Organization, Japan, Australia, New Zealand, or any country which is a party to the Camp David Accords or an agreement based on such Accords, if the Congress within fifteen calendar days after receiving the appropriate certification enacts a joint resolution prohibiting the proposed sale, export, lease, or loan, as the case may be.

(d) The items referred to in subsections (b) and (c) are those items of types and classes currently used or to be used by the Armed Forces of the United States (other than the Army National Guard or the Air National Guard or a Reserve component of an Armed Force of the United States) or produced solely for export, as follows:

(1) turbine-powered military aircraft; rockets; missiles; anti-aircraft artillery, and associated control, target acquisition, and electronic warfare equipment and software;

(2) helicopters designed or equipped for combat operations;

(3) main battle tanks and nuclear-capable artillery; and

(4) submarines, aircraft carriers, battleships, cruisers, frigates, destroyers, and auxiliary warships.

(e) The requirements of subsections (b) and (c) shall not apply if the President states in his certification that an emergency exists which requires the proposed sale, export, lease, or loan, as the case may be, in the vital national security interests of the United States. If the President so states, he shall set forth in the certification a detailed justification for his determination, including description of the emergency circumstances which necessitate the immediate issuance of the letter of offer or license for export or lease or loan and a discussion of the vital national security interests involved.

(f)(1) Except as otherwise provided in this paragraph and paragraph (3), any joint resolution under subsection (b) or (c) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976. For purposes of consideration of a joint resolution under subsection (c)(1), the motion to discharge provided for in section 601(b)(3)(A) of such Act may be made at the end of 5 calendar days after the resolution is introduced. If a joint resolution under subsection (b) deals with more than one certification, the references in section 601(b)(3)(A) of such Act to a resolution with respect to the same certification shall be deemed to be a reference to a joint resolution which relates to all of those certifications.

(2) For the purpose of expediting the consideration and adoption of joint resolutions under subsections (b) and (c), a motion to proceed in the House of Representatives to the consideration of any such resolution after it has been reported by the committee on Foreign Affairs shall be highly privileged.

(3) If the text of a joint resolution under subsection (b) contains more than one section, amendments which would strike out one of those sections shall be in order, but amendments which would add an additional section shall not be in order.

(4)(A) The joint resolution required by subsection (b) is a joint resolution the text of which consists only of one or more sections, each of which reads as follows: "The proposed —— to ———— described in the certification submitted pursuant to section 2(a) of the Arms Export Reform Act of 1986 which was received by the Congress on (Transmittal number ——) is authorized.", with the appropriate activity, whether sale, export, lease, or loan, and the appropriate country or international organization, date, and transmittal number inserted.

(B) The joint resolution required by subsection (c) is a joint resolution the text of which consists of only one section, which reads as follows: "That the proposed to —— described in the certification submitted pursuant to section 2(a) of the Arms Export Reform Act of 1986 which was received by the Congress on (Transmittal number ——) is not authorized.", with the appropriate activity, whether sale, export, lease, or loan, and the appropriate country or international organization, date, and transmittal number inserted.

SEC. 3. (a) Section 36(b) of the Arms Export Control Act is amended—

(1) by striking out the last two sentences of paragraph (1) and by striking out paragraphs (2) and (3); and

(2) by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively.

(b) Section 36(c) of such Act is amended—

(1) by striking out "(c)(1)" and inserting in lieu thereof "(c)"; and

(2) by striking out paragraphs (2) and (3).

(c)(1) Section 62(a) of such Act is amended by striking out "Not less than 30 days before" and inserting in lieu thereof "Before".

(2) Section 63 of such Act is repealed.

(3) Section 64 of such Act is redesignated as section 63.

SEC. 4. The provisions of this Act shall apply with respect to any letter of offer or license for export issued, or any lease or loan made, after the date of enactment of this Act.●

ARMS EXPORT REFORM ACT

Mr. PELL. Mr. President, the Senator from Delaware [Mr. BIDEN] and I, together with the Senator from Minnesota [Mr. BOSCHWITZ], are introducing today major legislation to reform the procedures governing the export of American arms. Identical legislation is being introduced in the House. We hope to gather support this year and to press forward vigorously toward passage next year.

The Arms Export Control Act was passed originally in 1968 to establish a framework of objectives and controls to govern arms transfers. The act has been amended a number of times over the years to provide for better congressional controls, including veto of transfers by concurrent resolution, when Congress concluded particular sales were against U.S. interests. In 1983, however, the Chadha decision held vetoes by concurrent resolution unconstitutional. Earlier this year, the Congress amended the act to provide for disapproval by joint resolution, a step compatible with the Chadha ruling, since a joint resolution has independent standing as law. However, the weakness of the new system was demonstrated this spring as a massive, intensively controversial missile sale to Saudi Arabia survived on the basis of support from a mere one-sixth of the House and one-third plus one in the Senate.

As it happens, no arms transfer has ever been blocked by Congress through the use of the disapproval mechanism. Nonetheless, the existence of the procedure and the prospect that the Congress could block an unwise transfer did ensure that the executive branch would give careful consideration to the view of Congress. On several occasions, most recently with regard to a proposed sale to Jordan, the reality of congressional authority caused sales to be abandoned. In other instances, modification was achieved. Unfortunately, the Saudi sale experience demonstrates most clearly that congressional ability to stop even the least justifiable of sales when such sales come to a vote has dwindled to the point of insignificance. We believe that situation to be intolerable.

Accordingly, we have authored the Arms Export Reform Act of 1986 to establish procedures which are a clearly constitutional means of dealing with the Chadha-related problem and to solve other concerns which have emerged over the years of experience with the act. In brief, our bill would:

Change the standard upon which Congress passes judgment on proposed arms transfers from one based on dollar value one based on the sensitivity or sophistication of equipment. This would allow Congress to focus on equipment that is of significance be-

cause of what it is, not how much it costs.

Keep the present reporting requirements for proposed sales, but abolish the provisions for the disapproval of such sales on the basis of their dollar value, as well as the delay period of 30 days. Thus, the executive branch would be free to agree to transfers and deliver on those promises in cases involving nonsensitive equipment.

Require, for most countries, that Congress give affirmative approval for a sensitive transfer, in lieu of the present system under which Congress must disapprove a Presidential proposal. Thus, transfers would be made if a simple majority in Congress agreed, instead of the present system in which two-thirds are needed to disapprove. Prospects for joint executive branch-congressional decisions would be improved, and we would move away from the present system, which so often puts the Congress and executive branch at loggerheads.

Retain the favored status of NATO, ANZUS, and Japan, and give comparable status to Egypt, Israel, and any future joiners of the Camp David peace process, and here I am thinking particularly of the possibility of Jordan. Sales to those countries could only be stopped if Congress disapproved under expedited procedures within 15 days.

Finally, establish comparable procedures governing FMS sales, commercial sales and leases—thus correcting differences which have complicated matters to no advantage.

Mr. President, the list of weapons which would require congressional approval before being provided to most nations is as follows:

First, turbine-powered military aircraft; rockets; missiles, antiaircraft artillery and associated control, target acquisition, and electronic warfare equipment and software;

Second, helicopters designed or equipped for combat operations;

Third, main battle tanks and nuclear-capable artillery; and

Fourth, submarines, aircraft carriers, battleships, cruisers, frigates, destroyers, and auxiliary warships.

This equipment is now in use by our own Army, Navy, Air Force, and Marines, as well as the forces of our closest friends and allies. That equipment could constitute the edge we and our friends and allies may need in confrontation or in conflict. We should never allow it to be sold to nations which might use it to threaten or attack us and our friends and allies.

Arms sales should not be allowed to be a matter of dollars only. They should also be a matter of sense—the sense of the Congress and executive branch together as to what sales and what restraint are right. I am deeply convinced that the changes this bill would bring about would promote the cooperation—in lieu of confrontation—between Congress and the executive branch which is sorely needed in this area.

Mr. President, I am further convinced that the approach toward arms exports which this bill would bring about would set an excellent example for other arms suppliers. I hope that it could help set the stage for the resumption of talks among the suppliers leading to true conventional arms restraint.

The suppliers must get serious about multilateral arms restraint if we are to avoid a no-holds-barred competition that will only undermine stability in regions throughout the world, increase risks to our friends and allies, and promote conflict as a substitute for diplomacy.

In addition, nations in areas of potential conflict should give serious attention to the development of regional arms control arrangements, which the suppliers should pledge themselves to respect. Given the basic human needs which are going unfulfilled throughout so much of the developing world, it is simply irresponsible for the leaders of the poor nations to do otherwise than to constrain their military acquisition. Regional restraint is an excellent and virtually untried way to lessen requirements for arms. True restraint will be possible when leaders understand that the purchase price of arms is only part of their cost.

It amazes me that most of the world's nations appreciate the threat of nuclear proliferation and have been willing to join in a common effort in the 1968 Non-Proliferation Treaty, but that most of these same nations see little urgency associated with conventional arms restraint. We have not seen nuclear weapons used in war for over 40 years, but we see conventional weapons used with devastating effect every day.

Mr. President, true restraint by suppliers and recipients will take years to achieve, if it can be accomplished at all. I have no illusions about that, nor should any of us. However, the concepts incorporated into this bill will do much to help the United States develop a rational arms export policy which reflects both a clear willingness to help our friends and allies, and restraint in the transfers of our most sensitive armaments. With such policies for ourselves, we would be in an excellent position to play a leadership role in forging agreements and understandings with other nations—both sellers and buyers of arms.

All told, this act would move in the direction of trying to restrain the spread of conventional weapons around the world and trying to put a blanket on the instinct of so many developing nations to try to get a weapons system because a neighbor has a similar one. One neighbor has a destroyer and the next a cruiser, and they go back and forth.

I hope very much that this proposal will meet with the approval of our colleagues.

By Mr. BINGAMAN (for himself, Mr. DECONCINI, Mr. SIMON, Mr. CRANSTON, Mr. GORE, Mr. SARBANES, Mr. MOYNIHAN, Mr. MATSUNAGA, and Mr. METZENBAUM):

S. 2835. A bill to establish literacy programs for individuals of limited English proficiency; to the Committee on Labor and Human Resources.

ENGLISH PROFICIENCY ACT

Mr. BINGAMAN. Mr. President, I rise to introduce the English Proficiency Act, legislation intended to raise the literacy skills of persons whose native language is other than English. This legislation is the companion to the House version, H.R. 5042, introduced by Representative MARTINEZ and cosponsored by 59 of his colleagues at this point. I am pleased to complement the efforts of this distinguished group. I am also pleased to include Senators DECONCINI, SIMON, CRANSTON, GORE, SARBANES, MOYNIHAN, METZENBAUM, and MATSUNAGA as original cosponsors of the Senate legislation.

The statistics show the ever-growing number of Americans who are functionally illiterate—who cannot use the English language for practical purposes. They cannot write their own name, read a road sign, or read the newspaper—skills that depend on being able to read and write English. Current estimates by the Department of Education find that 25 million American adults are considered functionally illiterate. They lack the reading, writing, comprehension, and simple math skills necessary to function beyond the fourth grade. Another equally large number of Americans are considered only marginally literate—their basic skills ranging between the fifth through eighth grade levels.

EDUCATIONAL IMPROVEMENTS NEEDED

The Carnegie Forum on Education and the Economy in May released its landmark report, "A Nation Prepared: Teachers for the 21st Century." It warned that unless our country rebuilds its educational system to meet the dramatic changes in our economy, our children will not be prepared for the 21st century. The report said:

> The country is in a trap of our own making. Not all of our children actually master the basic skills. America has a serious functional literacy problem that must be corrected.

Last week, the Senate Democratic Working Group on Economic Competitiveness, which it has been my pleasure to chair, released its report, "Economic Competitiveness Promoting America's Living Standard." Underpin-

ing its recommendations is the critical necessity of a literate work force to secure this country's economic security.

ILLITERACY PROBLEM

A recent Census Bureau survey, conducted jointly with the Department of Education, found that while 13 percent of all U.S. adults are illiterate, the rate for adults whose native language is not English is 48 percent. It found that the fastest growing minority group, the Hispanic community, has a 56-percent functional illiteracy rate. What places this illiteracy rate so high is the fact that the native language of this community is Spanish. Therefore, before the high level of functional illiteracy among Hispanics can be dramatically lowered, the first goal must be to help many of them to become proficient in English. To merely arbitrate literacy without first recognizing the cultural and linguistic background of an individual undercuts the end which we seek to achieve—an educated and contributing citizenry.

ENGLISH PROFICIENCY PROBLEM

There is an important distinction between a "limited English proficient" person and one who is illiterate, yet one may be both. When I speak of limited English proficient I speak of a person who has a limited ability to speak, read, write, or understand English, whose native language is other than English. Illiteracy, as stated before, is the lack of essential knowledge and skills to enable an individual to function effectively in his or her environment.

This distinction is important. The recent report by La Raza, entitled "Illiteracy in the Hispanic Community," found that the lack of appropriate services for limited English proficient children contributes to English illiteracy among Hispanics. Because these children do not receive special language services, they fall farther and farther behind in core subjects at an early age. They simply do not understand the language in which they are being taught.

This legislation does not solve the ongoing bilingual education debate and is not intended to resolve which teaching method is better. Instead, my intent is to bring to the attention of my colleagues the particular needs of certain Americans who need to be given an even chance to read and write English. We know that the rates for illiteracy are especially high for Hispanics and other minorities, notably American Indians. A significant factor is the disproportionately high percentage of these youth leaving high school without a diploma. Department of Commerce figures released in 1985 show that the dropout rate for Hispanics is the highest of any major U.S. subpopulation—45 to 50 percent, and 70 percent in some large urban areas. Equally disturbing is an article in the Albuquerque Journal dated August 23, 1986, stating that the 1985-86 high school dropout rate in New Mexico was the highest among Indian students—12.3 percent, up from 10.2 percent in the previous school year. This means that one of every eight Indian students did not complete high school.

The need for a literate America becomes more critical because we cannot afford as a nation for large segments of our population to be unable to read and write. It is certainly my intent that this legislation include those minority populations which meet the definition of limited English proficient—this includes the Hispanic, the American Indian, and Native Alaskans, and certainly the Asian-Americans, Pacific Islanders, and Native Hawaiians. The demographic trends of our Nation show that by the year 2000, one out of every three Americans will be a member of a minority group. If we fail to address the special educational needs of these groups we will have short changed our future.

ENGLISH PROFICIENCY ACT

Mr. President, I strongly believe that the English Proficiency Act attempts to combat illiteracy and to focus on this underserved population many of whom are limited English proficient. This measure establishes within the Office of Adult Education of the Department of Education a grant program for community-based organizations, local education agencies, tribally controlled schools, institutions of higher learning, public libraries, and prisons. The grants will be made for not more than 3 years and reviewed annually.

The act defines an individual who is of limited English proficiency as an adult or out-of-school youth who has a limited ability to speak, read, write or understand English, and whose native language is a language other than English; or who live in a family or community environment where a language other than English is the dominant tongue.

The act also establishes a program to develop innovative approaches to literacy education for individuals of limited English proficiency. Equally important is the creation of a nationwide clearinghouse on literacy education to collect and disseminate information about effective approaches or methods, with a special emphasis on coordination with other manpower training and education programs.

The bill authorizes $10 million to be appropriated for each of fiscal years 1987, 1988, and 1989. Given that some experts estimate $20 billion annually in direct expenditures for such costs as prisons and welfare, and $100 billion in indirect costs in lost productivity and gross national product, these moneys would be important investments with immediate paybacks for all Americans.

I want to note, Mr. President, that several important organizations are supporting this legislation. I insert for the record at the conclusion of my remarks a letter signed by 34 organizations supporting this bill. Also for the record I insert two letters of support from the National Indian Education Association and the Native American Science Education Association.

I urge my colleagues to support this legislation. It is a modest, yet necessary first step to combat illiteracy among an important group of American citizens.

I ask unanimous consent that a copy of the bill be printed in the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2835

Be it enacted by the Senate and House of Representatives of the United States of Ameriaca in Congress assembled.

SHORT TITLE

SECTION 1. This Act may be referred to as the "English Proficiency Act".

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) proficiency in English, the common language of the United States, is essential in Amerian life and a prerequisite to naturalization and the full exercise of civic rights and responsibilities:

(2) limited English literacy is a barrier to participation in the political and economic mainstream of the Nation, diminishing economic competitiveness and restricting citizens participation in democratic processes;

(3) parents who possess limited English literacy skills are unable to be full partners in their children's education resulting in low levels of educational attainment and high dropout rates among those children;

(4) many endeavors which serve the technological, economic and national security interests of the United States require advanced skills among workers in the private and public sector, and a solid foundation of basic skills including proficiency in English is essential in obtaining these complex skills;

(5) it is in the national interest to assist individuals of limited English proficiency to acquire the English language skills to enable them to become full and productive members of society;

(6) significant numbers of adults and out-of-school youth in the United States lack oral English proficiency and functional English literacy skills;

(7) individuals of limited English proficiency include both citizens and non-citizens;

(8) many individuals of limited English proficiency lack English literacy skills because they have not been provided equal educational opportunities by State and local educational agencies;

(9) research and surveys demonstrate that adults of limited English proficiency have a strong desire to achieve full competence in the English language;

(10) existing resources are not sufficient to meet the special needs of individuals of limited English proficiency; and

(11) community-based nonprofit organizations are often the most appropriate entities in providing successful English literacy programs focused on individuals of limited English proficiency.

(b) PURPOSE.—It is the purpose of this Act, in order to promote opportunities for all individuals to achieve literacy in English, to—

(1) encourage the establishment and operation, where appropriate, of English langauge and literacy programs specifically designed and targeted to meet the needs of limited-English proficient persons;

(2) to establish a national clearinghouse to compile information on literacy curriculum and resources for limited-English proficient youth and adults and thereby assist local grantees implementing programs funded under this Act; and

(3) to provide financial assistance to programs in communities which are designed to meet the language and literacy needs of individuals of limited-English proficiency to achieve full competence in English.

DEFINITIONS

SEC. 3. For the purposes of this Act:

(1) The term "individual of limited English proficiency" means an adult or out-of-school youth who has limited ability in speaking, reading, writing, or understanding the English langauge and—

(A) whose native language is a language other than English; or

(B) who live in a family or community environment where a language other than English is the dominant language.

(2) The term "adult" means an individual who has attained 16 years of age.

(3) The term "out-of-school youth" means an individual who is under sixteen years and beyond the age of compulsory school attendance under state law who has not completed high school or the equivalent.

(4) The term "English literacy program" means a protram of instruction designed to help limited English proficient adults, out-of-school youths, or both achieve full competence in the English language.

(5) The term "Secretary" means the Secretary of Education.

(6) The term "community-based organization" means a private nonprofit organization which is representative of a community or significant segments of a community and which provides education, vocational education, job training, or internship services and programs and includes neighborhood groups and organizations, community action agencies, community development corporations, union-related organizations, employer-related organizations, tribal governments, and organizations serving Native Alaskans and Indians.

FINANCIAL ASSISTANCE FOR ENGLISH LITERACY PROGRAMS

SEC. 4. (a) ESTABLISHMENT.—Subject to the availability of appropriations, the Secretary shall establish within the Office of Adult Education a program of grants for the establishment, operation, and improvement of English literacy programs for individuals of limited English proficiency. Such grants may provide for support services including child care and transportation costs for program participants.

(b) GRANT RECIPIENTS.—

(1) A grant under this section may be made to community-based organizations, local educational agencies, tribally-controlled schools, institutions of higher education (including community colleges), public libraries, and prisons.

(2) Eligible grant recipients under paragraph (1) may be located in any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(c) APPLICATION.—

(1) Any eligible institution under subsection (b) may submit an application for a grant authorized under subsection (a). Such application shall be made to the Secretary at such time, and in such manner, as the Secretary considers appropriate.

(2) Applications for grants authorized under subsection (a) of this section shall contain information regarding—

(A) the number of limited-English proficient adults and out-of-school youth in the area served by applicants who need or could benefit from programs assisted under this Act;

(B) the activities which would be undertaken under the grant and the manner in which such activities will promote English literacy and enable individuals in the program to participate fully in national life;

(C) a statement of the applicant's ability to serve individual adults and out-of-school youth of limited English proficiency, including the qualifications and training of personnel who will participate in the proposed project;

(D) the resources necessary to develop and operate the proposed program and the resources to be provided by the applicant; and

(E) the specific goals of the proposed program and how achievement of these goals will be measured.

(d) AVAILABILITY.—Grants under this section shall be available for not more than three years. The Secretary may terminate a grant only if the Secretary determines that—

(1) the applicant's program has not made substantial progress in achieving the specific educational goals set out in the application; or

(2) there is not longer a need for the applicant's program.

(e) SET-ASIDE FOR COMMUNITY-BASED ORGANIZATIONS.—Not less than 50 percent of funds available under this section shall be used to make grants to community-based organizations with the demonstrated capability to administer English proficiency programs.

(f) REPORT.—A grant recipient under this section shall submit to the Secretary a report on the program's progress and activities for each fiscal year.

DEMONSTRATION PROGRAMS AND EVALUATION

SEC. 5. (a) PROGRAM AUTHORITY.—Subject to the appropriations under this section, the Secretary, through the Office of Adult Education, shall directly, and through grants and contracts with public and private nonprofit agencies, institutions, and organizations, carry out a program—

(1) to develop innovative approaches and methods of literacy education for individuals of limited English proficiency utilizing new instructional methods and technologies;

(2) to establish a nationwide clearinghouse on literacy education for individuals of limited English proficiency to collect and disseminate information concerning effective approaches or methods, including coordination with manpower training and other education programs.

(b) EVALUATION AND AUDIT.—The Secretary shall directly, and through grants and contracts with public and private agencies, institutions, and organizations, evaluate the effectiveness of programs conducted under this Act. Programs funded under this Act shall be audited annually.

AUTHORITY OF SECRETARY

SEC. 6. In the administration of programs under this Act, the Secretary shall have authority to accept in the name of the United States, grants, gifts, or bequests of money for the purposes of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. (a) AUTHORIZATIONS OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this Act $10,000,000 for each of the fiscal years 1987, 1988, and 1989.

(b) AVAILABILITY.—Funds appropriated under subsection (a) shall remain available until expended.

(c) LIMITATION.—Not more than 10 percent of funds available under this Act shall be used to carry out the purposes of section 5.

Mr. BINGAMAN. Madam President, I also ask unanimous consent that three other times be included in the RECORD at this point: No. 1, a letter of support from some 34 organizations which have indicated their endorsement of this legislation; No. 2, a letter from the National Indian Education Association in support of this legislation; and, No. 3, a letter from the Native American Science Education Association.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SEPTEMBER 15, 1986.

DEAR SENATOR: We the undersigned urge you to support the English Proficiency Act which will be introduced on September 18. The English Proficiency Act would address the serious problem of illiteracy among adults of limited-English proficiency. Full proficiency in English, spoken and written, is a fundamental necessity for all citizens so that they can take advantage of the opportunities our nation offers and be full contributing members of our society. The alarming level of illiteracy in our country has received considerable attention recently, and some of you have already proposed some solutions.

Many people, however, may not be aware of the extent of the problem among individuals of limited-English proficiency. The 1975 Adult Performance Level study found that fully 56 percent of the adult Hispanic-American population is functionally illiterate. A recently-released Census Bureau survey, initiated by the Department of Education, indicates that while 13 percent of all United States adults are illiterate, the rate for Spanish-speaking adults whose native language is not English is 54 percent, and the rate for non-Spanish-speaking adults whose native language is not English is 41 percent.

This problem is not being adequately addressed by present literacy programs. Because of the cost and specialized training required to serve limited-English proficient persons, many of the existing programs cannot serve this population. Many limited-English proficient persons must face long waiting lines for adult education classes that often charge for services. As a result, thousands of adults from non-English language backgrounds find themselves closed off from affordable opportunities to become literate in English. Given our technological

society and the critical importance of full participation in our democracy, we cannot afford to let this situation continue.

The English Proficiency Act of 1986 would achieve the following:

Provide grants for the operation of English literacy programs for adults and out-of-school youth of limited-English proficiency;

Make more effective use of existing resources within the Department of Education to reduce adult illiteracy;

Provide limited-English proficient persons the opportunity to learn to read, write and speak the language, and thereby become full participants in our society; and

Establish a clearinghouse to facilitate the gathering and dissemination of effective methods of teaching English to limited-English proficient adults.

We believe that bringing all Americans into the mainstream of society is in the best traditions of our country. We strongly urge you to join us in supporting this important legislation. To become a co-sponsor, please contact Faith Roessel or Andy Ford in Senator Jeff Bingaman's office at 224-5521 by September 16.

Sincerely,

American Civil Liberties Union.
American G.I. Forum of Washington, D.C.
American Jewish Committee.
Asian Pacific American Bar Association.
Asian of America.
Association for Community Based Education.
Center for Applied Linguistics.
Children's Defense Fund.
Chinese for Affirmative Action.
Congressional Hispanic Caucus.
Cuban American Committee.
Cuban National Planning Council.
International Reading Association.
Japanese American Citizens League.
League of United Latin American Citizens.
National Asian Pacific Democratic Council.
National Association of Latino Elected and Appointed Officials.
National Association for Bilingual Education.
National Center for Urban Ethnic Affairs.
National Coalition of Title I/Chapter I Parents.
National Community Education Association.
National Council of La Raza.
National Education Association.
National Hispanic Bar Association.
National Italian American Foundation.
National PTA.
National Puerto Rican Coalition.
National Puerto Rican Forum.
Mexican American Legal Defense and Educational Fund.
Mexican American Women's National Association.
Organization of Chinese Americans.
Organization of Pan American Women.
Teachers of English to Speakers of Other Languages.

NATIONAL INDIAN EDUCATION ASSOCIATION,
Minneapolis, MN, September 18, 1986.

Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: The National Indian Education Association commends the introduction of "The English Proficiency Act" in the Senate.

Legislation to meet the special educational needs of limited English proficient persons in this nation is long overdue.

On some of the nearly 300 Indian reservations in the lower 48 States, English is the second language among over 90% of the native populations. Among these reservations there are over 150 separate and distinct Indian languages. Many of these American Indian people have long suffered hardship in coping with mainstream society because of the absence of adequate educational programs that can enable them to gain full proficiency in English without forcing them to abandon their own native cultures.

NIEA applauds your efforts to make equal educational opportunities a reality for all of our nation's citizens.

Sincerely,

DR. ANSELM G. DAVIS, Jr.,
President,
National Indian Education Association.

NATIVE AMERICAN SCIENCE EDUCATION ASSOCIATION
September 18, 1986.

Hon. JEFF BINGAMAN,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR BINGAMAN: The Native American Science Education Association is pleased to join more than thirty-five other organizations in support of your introduction of the English Proficiency Act. We strongly feel that the serious problem of illiteracy among adults particularly among Native Americans with limited English proficiency needs to be addressed. Full proficiency in English, spoken and written is a fundamental necessity for all citizens who wish to take advantage of all opportunities offered by our society. Limited English skills are and have been a continuing handicap for many Native Americans throughout the country.

We strongly support bilingual programs emphasizing skills for students in their native language. We join with you in the realization that no Indian child can become fully part of society without adequate English skills, both written and spoken. For this reason, we support the English Proficiency Act and strongly feel that special provision must be made to address the unique needs of Native Americans. The special circumstances of instruction in schools where the students are enrolled should also be taken into account. The provisions of the English Proficiency Act as proposed in H.R. 5024 would seem to offer the flexibility and structures to assist many Indian youth and adults to achieve the goals of functional literacy in English.

If we can be of any practical help in the discussions concerning the details of this legislation, please feel free to call on us. We are pleased to provide our support for your efforts to address this serious need for Native Americans and all citizens with limited English skills.

Sincerely,

GARY G. ALLEN,
Executive Director.

● Mr. SIMON. Mr. President, I am pleased to join my colleague from New Mexico [Mr. BINGAMAN] as a cosponsor of the English Proficiency Act of 1986.

Adult illiteracy is a problem which has an unquantifiable economic, social and personal cost. Modest literacy initiatives have been approved in this Congress as a recognition that we would be a more productive and participatory society if we could reach the estimated 23 million illiterate adults in the United States. The new literacy programs in public libraries, community service programs in the Higher Education Act reauthorization just out of conference, the VISTA Literacy Corps, and proposed mandatory remedial education within the summer youth programs currently under consideration in the Job Partnership and Training Act Technical Amendments Conference, reflect our concerns at the Federal level. The Federal Adult Basic Education Program, and State and local agency initiatives serve millions who want to learn and need to learn. The media has focused on the issue through "Capitol Cities/ABC and PBS-TV's Project Literacy U.S. [PLUS]" which includes media and other programs drawing attention to the problem and what can be done.

Close to 8 million native-English speakers between the ages of 20 and 39 are illiterate. For the age group over 40, the number of native-English speakers who are illiterate is close to 12 million. A significant number of adult illiterates, however, are not native-English speakers. While 13 percent of the adult population is estimated to be functionally illiterate, between 41 and 54 percent of American adults whose native language is not English are considered functionally illiterate. We cannot serve the English proficient adult who cannot read and write and believe we have addressed the problem of adult illiteracy. We must also recognize the limited-English speaking adult to encompass the spectrum of functional illiteracy in our population.

The English Proficiency Act of 1986 does just this. In addition to existing Federal illiteracy programs, the bill proposes three new initiatives for limited-English speaking adults. The bill would:

Provide grants for literacy programs for adults and out of school youths who are limited-English speakers.

Make more effective use of existing resources and programs at the U.S. Department of Education.

Establish a clearinghouse to facilitate the acquisition and dissemination of effective teaching methods for this target population.

We cannot afford illiteracy as a nation. Individuals as members of families, as workers and as citizens need to use the written word to be full members of society to the benefit of us all. I commend my colleague, Mr. BINGAMAN, for recognizing the needs of the limited-English speaking adult in the area of literacy and urge my colleagues to join in support for the English Proficiency Act of 1986.●

By Mr. BUMPERS (for himself, Mr. PRYOR, Mr. FORD, and Mr. DIXON):

S. 2836. A bill to amend the Agricultural Act of 1949 to modify the support price and marketing loan program for the 1986 crop of soybeans, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUPPORT PRICE AND MARKETING LOAN PROGRAM FOR SOYBEANS

Mr. BUMPERS. Mr. President, I rise this afternoon to introduce a bill on behalf of my colleague, Senator PRYOR, and myself, and which is supported by the American Soybean Association and a number of other farm groups.

This bill is designed to do what we asked the Secretary to do in a sense-of-the-Senate resolution attached to the debt ceiling bill roughly 1½ months ago.

What we asked in that and what we ask in this bill is that the loan rate on soybeans not be reduced from $5.02 to $4.77, and yet on roughly September 1, the Secretary ignored the sense-of-the-Senate resolution adopted by the Senate and reduced the loan rate from $5.02 to $4.77.

Mr. President, bear in mind that if there is a sequester under Gramm-Rudman the loan price on soybeans will further be reduced to $4.56 and I dare say without embellishing or overdramatrizing the plight of the American farmer there will be very few soybeans produced next year for $4.56 a bushel.

I want to also say that the loan rate established by the Secretary in September on September 1 applies to this year's crop which is just now in the process of being harvested in some areas most of which crop is yet to be harvested.

One of the most bizarre consequences of what can and may very well happen in the field of soybeans is this: The Secretary establishes a loan rate gf $4.77 and that is the price that an American farmer can get by placing his soybeans into the lgan program. That is $4.77 per bushel, and he agrees when he dges that to repay the Coemgdity Credit Cgrporation $4.77 when the tieOe comes 9 months later to redeee that loan.

And the kicker as thas: If Gramm-Rudman gges ifOto effect$ that is the sequester goes ifto effect, the doaf rate of soybeans wild drop to $4.56, and qet 9 months from now the farmer will be required to repay his loan at the full $4.77.

Mr. President, that would put the U.S. Government in the posture gOf actually making a profit in a most unfair and unintefded way off the most dastressed segmeft of the American ecgnomy; famely$ agriculture.

So what the bill Senator PRYGR and I are iftroducting tgday wild do, and incidentally, I want to alsg say that thas is being introduced on behalf of Senator FORD of Kentucky, would be to simply mandate a restoration rate of the $5.02 loan price which is just about the cost of producing soybeans all over this country&

Mr. President, I strongly urge my colleagues to read my formal remarks which I will momentarily ask to be inserted in the RECORD because it has information on how much we are producing, what world prodution is, how much we are exporting and what kind of competition we are facing in the world export markets.

The statement is as follows:

STATEMENT BY SENATOR DALE BUMPERS ON MAINTAINING PRICE SUPPORT LOAN RATE FOR SOYBEANS

Mr. President, today Senator Pryor and I are introducing a bill supported by the American Soybean Association and other farm groups that will require the Secretary of Agriculture to maintain the formula price support loan rate for soybeans at $5.02 per bushel, and to implement either a marketing loan or a so-called producer option payment. This bill would not be necessary if the Secretary had heeded my unanimously-adopted amendment to the Public Debt Limit Increase measure, H.J. Res. 668, which called for this identical program. However, the Secretary chose to ignore the Senate, and on August 29 announced a preliminary loan rate of $4.77 per bushel for 1986 soybeans, meaning that the effective loan rate will be $4.56 per bushel after accounting for the mandatory Gramm-Rudman deduction.

Although the announcement was not a complete surprise—because at every opportunity the Secretary of Agriculture has adopted the option under the 1985 farm act that least benefits the farmer—it did come as quite a blow to our soybean farmers. The final 1986 soybean loan rate will not be announced until around October 1, but no one expects the Secretary to change his mind. The bottom line is that without the enactment of soybean legislation mandating a $5.02 rate it will drop to $4.77 and even lower under Gramm-Rudman. My bill is intended to head off this disastrous turn of events for our soybean producers.

The soybean program our bill propoes would be a relatively simple one. The loan will be frozen at $5.02 per bushel for 1986 only. The Secretary will be mandated to adopt one of two marketing programs—either a marketing loan program or a producer option payment program. The marketing loan program would allow producers to redeem their CCC price support loans at the world market price. The producer option payment would be set at 20% of the loan value, about $1 per bushel, and would be paid to producers for either pledging to stay out of the loan or redeemig their loan and getting out of the loan program. Either program will produce significant savifgs in the avoidance of storage and interest costs on forefeited beans and would ensure the competitiveness of soybeans in all markets without adversely affecting net farm income.

And most importantly, the bill provides a return to the $5.02 loan protection level—an especially critical action considering that soybeans do not have a target price. Also, it should be noted that our bill requires the Secretary to consult with leaders within the cotton industry to help develop a plan to protect the cotton seed oil industry once a soybean marketing program is adopted.

Mr. President, let me set out a few facts which will fully justify this legislation. The announced decrease in the loan price down to $4.77 will cause a serious decline in net farm income for soybean producers without providing a significant boost to export sales. According to the USDA, the world forecast for oil seed production in 1986-87 is 196.5 million metric tons (MMT) with the non-U.S. share to rise 9 mmt from last year to a record production of 137.9 mmt.

World soybean production will decrease slightly, due to the drop in production in the U.S., from last year's record 96.12 mmt to this year's projection of 95.9 mmt. But foreign soybean production is forecast to reach a record 44.2 mmt, primarily due to production increases in Brazil, Paraguay, and China. Argentina is expected to increase production in 1986 by 16%, up to 312 million bushels, and Brazil is projected to increase production 24% up to 606 million bushels. As we all know, these two countries are major export competitors.

World soybean crush is forecast at 78.3 mmt, an increase of 2.3 mmt from last year, and an increased crush in the Southern Hemisphere will help displace U.S. oil and meal exports. Large global supplies of other oils, particularly palm oil, could push U.S. exports of soybean oil below last year's level of 570,00 metric tons, although many analysts project that such export sales will remain at or near last year's level. World soybean exports are predicted to show a slight gain, but the USDA projects that Brazil and Paraguay will capture any increase in sales.

This poor forecast was developed by the USDA even with the Department's internal understanding as to what measures will be taken to boost soybean, oil and meal export sales. Therefore, the implementation of a marketing loan program would aid the U.S. soybean industry in effectively competing with foreign bean, oil and meal export sales, where the conventional response of simply lowering the loan rate is projected to fail. And it would slow the importation of foreign palm and rapeseed oils into the U.S. that are displacing normal U.S. soybean sales.

The pressure on prices has also come from internal sources. Although U.S. production is projected to decline from last year's production of 57.1 mmt to 51.7 mmt, this level represents a significant increase from trade expectations. The USDA acreage report showing soybeans planted on 61.8 million acres in the U.S. also pressured weak soybean prices.

The pressure on soybean sales was further complicated with the notice published in the Federal Register on June 17, 1986, that the USDA intends to implement a temporary program to encourage the use of grain for fuel ethanol. Market analysts believe that this USDA program could displace up to $400 million in soybean, cottonseed, and sunflower seed sales. Under the proposed program, ethanol producers using corn as a feedstock will receive one bushel of CCC-owned grain or every 2.5 bushels purchased through September 30, 1986. This program is projected to produce 703,000 metric tons of corn gluten meal, 3.015 million metric tons of corn gluten feed, and 750 million pounds of corn oil as a by-product from the manufacturing process. The subsidized production of these by-products now places corn oil production competitively with production of other oils.

The USDA discounts any concern expressed by the soybean industry by claiming

many soybean producers also grow corn and, therefore, money is being switched from one pocket to another. This ignores a significant segment of soybean producers who do not grow corn. The resulting increase in corn by-product will unquestionably put further pressure on soybean prices. Unfortunately, soybean farmers who don't grow corn will not have a setoff nor will they have PIK certificates or deficiency payments to help cushion the price shock.

Finally I would like to close by alerting my colleagues to information I received concerning the newly announced $4.77 loan rate. According to sources within the soybean industry, a producer who enters the loan will have to absorb the 4.3% Gramm-Rudman loan reduction—effectively lowering the loan to $4.56 per bushel. The kicker is that the Administratign is going to force producers whg redeem to repay at the $4.77 level. This is absurd, it is going to ensure massive forfeitures unless the price for soybeans rallies spectacularly, and it vividly points to the insensitivity of the Administration to the problems of our soybean producers.

I urge my colleagues to consider the seriousfess of the situation and the urgent need to take action. The Senate unanimously adopted our amendment in August urging the Secretary to take the action this bill would compel him to take. Soybean producers are being whipsawed in the market in much the same way they were in 1985 during the farm bill debate. Producers are aware that Congress is contemplating changes and these producers need to know quickly what Congress will do so. February 1987 is too late; we must act now. I urge swift adoption of this legislation.

● Mr. PRYOR. Mr. President, in reaction to USDA's final soybean announcement concerning the 1986 loan rates, I am joining my colleague Senator BUMPERS in introducing legislation that if enacted would overide that announcement. This legislation strictly deals with soybeans and was unanimously supported in its intent in August in a sense of the Senate resolution. Our Secretary of Agriculture has now chosen to ignore that resolution and our wishes.

This legislation maintains the $5.02 per bushel loan rate for soybeans while at the same time mandating a marketing loan program for this crop. Only last Friday, Mr. President, USDA issued a final announcement that lowered the loan rate available to our producers from $5.02 per bushel to $4.77 per bushel. In my opinion, this decision shows no awareness for today's real economic situation in agriculture and complete rejection of available tools given to the Secretary by our Food and Security Act of 1985. The Secretary, with his broad discretionary authority, could have announced a program that adequately addressed soybean's needs. That announcement, in my opinion, should have stabilized the loan rate at $5.02 per bushel with the implementation of a marketing loan. An announcement such as this would have given better economic protection while at the same time allowing soybeans to be price competitive in international markets.

Mr. President, our legislation mandating a $5.02 per bushel loan rate with a marketing loan could mean survival for many soybean producers. Now is the time we must address the critical situation soybean producers are facing. We can't wait till next session. USDA's announcement will be the final nail in many farmers' coffins. Unfortunately, for soybean producers in 1986, the establishment of the price support loan level will effectively set the market price. And, as you know, soybean producers do not have income protection in the way of target prices to help soften a drop in prices. Thus, soybean producers are faced with the sobering realization of a $4.77 per bushel loan rate—a loan rate which could fall even further after Gramm-Rudman-Hollings cuts.

As many are aware, I am a marketing loan advocate. I think it is a more efficient and effective method of addressing agriculture's relationship with government while allowing the needed flexibility to compete in an ever changing and challenging marketplace. The marketing loan encourages redemption and sales and not forfeiture and storage. Agriculture is facing a severe cash-flow shortfall and is suffering because it is finding many commodities noncompetitive in the marketplace. I strongly feel the marketing loan, over the long haul, is a much better investment of taxpayer dollars. It will allow agriculture the time to stabilize and better cope with the changing supply-demand situations while maintaining a competitively priced commodity.

Mr. President, the Congressional Budget Office and USDA, I am sure, will say the $5.02 per bushel loan with the marketing loan option will be far too costly to implement. However, I have yet to see any figures that give the marketing loan credit for savings found in storage, acquisition costs or interest—not to mention an economic savings resulting from the recapturing of lost traditional markets due to our new ability to be price-competitive. And, I am just as sure no one will compute the savings accrued by putting people back to work and paying taxes, and utilization of stagnant facilities and resources in agriculture's infrastructure.

Mr. President, let's do what is right and what is needed for our soybean producers. Let's reemphasize the Senate's intent, made clear in the unanimous passage of our sense of the Senate Resolution that USDA has chosen to ignore. Today, I am pleased to join Senator BUMPERS in offering a bill that mandates an effective soybean program. One that addresses the severe problems of American agriculture and allows our farmers to compete once again in the world market.●

Mr. BUMPERS. Mr. President, I ask unanimous consent to have the bill printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2836

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SUPPORT PRICE AND MARKETING LOANS FOR 1986 CROP OF SOYBEANS.

(a) SUPPORT PRICE.—Effective only for the 1986 crop of soybeans, section 201(i)(2)) of the Agricultural Act of 1949 (7 U.S.C. 1446(i)(2) is amended by inserting "(other than the marketing year for the 1986 crop of soybeans)" after "a marketing year".

(b) MARKETING LOANS.—Effective only for the 1986 crop of soybeans, section 201(i) of such Act is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7);

(2) by inserting after paragraph (2) the following new paragraph:

"(3)(A) In the case of the 1986 crop of soybeans, the Secretary shall implement the provisions of Plan A or Plan B in accordance with this paragraph.

"(B)(i) If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made under this subsection for a crop at a level that is the lesser of—

"(I) the loan level determined for such crop; or

"(II) the prevailing world market price for soybeans, as determined by the Secretary.

"(ii) If the Secretary elects to implement Plan A, the Secretary shall prescribe by regulation—

"(I) a formula to define the prevailing world market price for soybeans; and

"(II) a mechanism by which the Secretary shall periodically announce the prevailing world market price for soybeans.

"(C)(i) If the Secretary elects to implement Plan B, the Secretary shall, for the 1986 crop of soybeans, make payments available to—

"(I) producers who, although eligible to obtain a loan or purchase agreement under this subsection, agree to forgo obtaining such loan or agreement in return for such payments; and

"(II) in the case of producers who have placed their soybeans under such loan or agreement, producers who agree to redeem such loan or agreement and to forgo obtaining such loan or agreement in return for such payments.

"(ii) A payment under this subparagraph shall be computed by multiplying—

"(I) an amount equal to 20 percent of the loan payment rate; by

"(II) the quantity of soybeans the producer is eligible to place under loan."; and

(3) in paragraph (4)(A) (as redesignated by paragraph (2)), by striking out "If" and inserting in lieu thereof "In the case of each of the 1987 through 1990 crops of soybeans, if".

(c) OTHER OIL SEEDS.—The Secretary shall consider the impact of this Act on other oil seeds that do not participate in price support programs, and shall consult with producers of such oil seeds.

By Mr. PELL:

S. 2837. A bill to amend the Federal Election Campagin Act of 1971, to provide free radio and television time to

national committees in elections for Federal office; to the Committee on Commerce, Science, and Transportation.

FREE POLITICAL BROADCASTING ACT

● Mr. PELL. Mr. President, I am introducing today the Free Political Broadcasting Act of 1986, as an amendment to the Federal Election Campaign Act.

The purpose of this bill is simple and straightforward. It seeks to attack the problem of spiraling costs of Federal political campaigns at its source. It would make available at no cost the one element which has contributed the most to the cost spiral and that is media broadcast time.

The bill requires radio and TV stations and networks, as well as community antenna television stations, to provide time for campaign use to the national committees of the political parties, which would in turn allocate the time to eligible candidates for Federal office.

Committees receiving free broadcast time may use up to 15 minutes per day for the 30-day period immediately preceding an election.

All time is to be provided during the so-called prime time access period, from 7:30 to 8 p.m. local time, each weekday evening. Under current FCC regulations, this is a time period which local stations are supposed to use for community-oriented programming, but which in practice is not always well used.

The free time must be used in a manner which promotes a rational discussion and debate of issues pertinent to the election involved. At least 75 percent of the time must be taken up by a candidate's own remarks.

While the bill does place an administrative burden on the parties, I suggest that it is a burden they should be glad to accept. The plan of the bill permits the party organizations to decide which of their candidates—particularly in metropolitan areas where many Federal candidates may be in contention—can best benefit from the media exposure offered by the bill. Hopefully, this feature of the bill will meet reservations expressed before the Senate Committee on Rules and Administration when it heard testimony on free media time and related proposals in 1983.

The bill is in no way restrictive of present campaign practices. Any candidate, whether or not a recipient of free time under this bill, is still at liberty to go out and purchase as much additional media tiee as he or she can afford and needs. Hopefully, hgwever, the substantial infusion of free time provided by the bill will reduce substaftially campaign expenditures for media purchases.

Fifally, I would emphasize that thas is essentially a no-cgst bidl in terms of the value gf the eedia tiee that would be given to the political prgcess. There is to be sure an authorization for appropriations that may be feeded to eeet the modest costs of overseeifOg compliance. But the basic commodity of the bidl is an existing public resgurce—namely the airwaves—whach the Congress can properly require to be used for political debate.

Mr. President, recent figures indicate that at least 40 percent of all political campaign expenditures—and up to 75 percent in some media markets—are spent on media advertising. If we are truly concerned about curbing the cost of campaigning, it makes sense to use an available public resource to substitute for this major category of expenditure. If we can thereby reduce costs, we will be reducing the pressure to raise funds from PAC's and all other sources and the political process will benefit proportionally.●

ADDITIONAL COSPONSORS

S. 1456

At the request of Mr. LAUTENBERG, the names of the Senator from Ohio [Mr. GLENN], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

S. 2115

At the request of Mr. THURMOND, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 2115, a bill to recognize the organization known as the 82d Airborne Division Association, Inc.

S. 2398

At the request of Mr. ROTH, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 2398, a bill to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes.

S. 2454

At the request of Mr. MURKOWSKI, the names of the Senator from Florida [Mr. CHILES], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2512

At the request of Mr. HATCH, the names of the Senator from South Carolina [Mr. THURMOND], and the Senator from Nebraska [Mr. ZORINSKY] were added as cosponsors of S. 2512, a bill to amend the Federal Food, Drug, and Cosmetic Act, the Federal Meat Inspection Act, and Poultry Products Inspection Act, and the Egg Products Inspection Act, and for other purposes.

S. 2536

At the request of Mr. HATCH, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 2536, a bill to provide for block grants to States to pay for the costs of immunosuppressive drugs for organ transplant patients.

S. 2770

At the request of Mr. COCHRAN, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 2770, a bill to amend the Farm Credit Act of 1971 to provide the opportunity for competitive interest rates for the farmer, rancher, and cooperative borrowers of the Farm Credit System, and for other purposes.

S. 2771

At the request of Mr. HATCH, the names of the Senator from Nebraska [Mr. ZORINSKY], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors of S. 2771, a bill to require the Secretary of Health and Human Services to determine the appropriate regulatory classification of the transitional devices of the Medical Device Amendments of 1976 to the Food, Drug, and Cosmetic Act and for other purposes.

S. 2781

At the request of Mr. EVANS, the names of the Senator from North Carolina [Mr. BROYHILL], the Senator from Ohio [Mr. METZENBAUM], and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

S. 2794

At the request of Mrs. KASSEBAUM, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 2794, an original bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

SENATE JOINT RESOLUTION 339

At the request of Mr. HATCH, the names of the Senator from Vermont [Mr. LEAHY], the Senator from Arkansas [Mr. PRYOR], the Senator from Wisconsin [Mr. KASTEN], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from California [Mr. WILSON], the Senator from Ohio [Mr. GLENN], and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of Senate Joint Resolution 339, a joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week."

SENATE JOINT RESOLUTION 395

At the request of Mr. HATCH, the names of the Senator from Missouri [Mr. EAGLETON], the Senator from Virginia [Mr. TRIBLE], the Senator from

Hawaii [Mr. INOUYE], the Senator from Pennsylvania [Mr. SPECTER], the Senator from South Dakota [Mr. ABDNOR], the Senator from North Dakota [Mr. ANDREWS], the Senator from Maryland [Mr. SARBANES], the Senator from Mississippi [Mr. STENNIS], the Senator from Oklahoma [Mr. BOREN], the Senator from Rhode Island [Mr. PELL], the Senator from New Jersey [Mr. BRADLEY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Ohio [Mr. GLENN], the Senator from Indiana [Mr. QUAYLE], the Senator from California [Mr. WILSON], the Senator from California [Mr. CRANSTON] the Senator from New Jersey [Mr. LAUTENBERG], were added as cosponsors of Senate Joint Resolution 395, a joint resolution to designate the period October 1, 1986, through September 30, 1987, as "National Institutes of Health Centennial Year."

SENATE JOINT RESOLUTION 396

At the request of Mr. HATCH, the names of the Senator from Virginia [Mr. TRIBLE], the Senator from South Carolina [Mr. HOLLINGS], the Senator from South Dakota [Mr. ABDNOR], the Senator from Rhode Island [Mr. PELL], the Senator from Missouri [Mr. EAGLETON], the Senator from Ohio [Mr. GLENN], the Senator from Hawaii [Mr. INOUYE], the Senator from Vermont [Mr. LEAHY], the Senator from Virginia [Mr. WARNER], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Indiana [Mr. QUAYLE], the Senator from Maryland [Mr. MATHIAS], and the Senator from California [Mr. CRANSTON], were added as cosponsors of Senate Joint Resolution 396, a joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week."

SENATE JOINT RESOLUTION 401

At the request of Mr. GORE, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of Senate Joint Resolution 401, a joint resolution to designate the week of October 12, 1986, through October 18, 1986, as National Job Skills Week."

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day."

SENATE JOINT RESOLUTION 414

At the request of Mr. PACKWOOD, the names of the Senator from Arizona [Mr. GOLDWATER], and the Senator from Kentucky [Mr. MCCONNELL] were added as cosponsors of Senate Joint Resolution 414, a joint resolution to designate March 16, 1987, as "Freedom of Information Day."

SENATE CONCURRENT RESOLUTION 130

At the request of Mr. HOLLINGS, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Texas [Mr. GRAMM], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of Senate Concurrent Resolution 130, a concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, SC, to Neufchatel, Switzerland, in October of 1986 as an international gesture of goodwill.

SENATE CONCURRENT RESOLUTION 156

At the request of Mr. CRANSTON, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Concurrent Resolution 156, a concurrent resolution expressing the sense of Congress concerning the need for international cooperative efforts to identify the individuals exposed to radiation as a result of the nuclear accident at Chernobyl in the Soviet Union and to monitor the health status of those individuals so as to increase, for their benefit and the benefit of the citizens of the United States and of all the world's peoples, the level of understanding of the effects of exposure to radiation.

SENATE CONCURRENT RESOLUTION 160

At the request of Mr. SIMON, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of Senate Concurrent Resolution 160, a concurrent resolution expressing the sense of the Congress that the jamming of radio broadcasting is contrary to the best interests of the people of the world and should be terminated.

SENATE RESOLUTION 464

At the request of Mr. ROTH, the names of the Senator from Alaska [Mr. MURKOWSKI], the Senator from Idaho [Mr. MCCLURE], the Senator from Nevada [Mr. LAXALT], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Oregon [Mr. PACKWOOD], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of Senate Resolution 464, a resolution to designate October 1986 as "Crack/Cocaine Awareness Month."

SENATE CONCURRENT RESOLUTION 162—COMMEMORATING THE 100TH ANNIVERSARY OF THE BIRTH OF DAVID BEN-GURION

Mr. BOSCHWITZ submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 162

Whereas David Ben-Gurion is a man of great historical importance, not only to the Jewish people but to all people striving for freedom;

Whereas his leadership made realizable the ingathering of the exiles that brought millions of homeless Jews scattered throughout the world to Israel where they were united both with each other and with their ancient homeland;

Whereas the Declaration of Independence of the State of Israel, a milestone in the life of David Ben-Gurion, echoes our own Declaration in its recognition of the universal equality of man;

Whereas as Israel's first Prime Minister and Minister of Defense, Ben-Gurion led the newly formed State through its most difficult period, directing the desperate efforts to secure Israel's survival and independence;

Whereas his pragmatic solutions to Israel's overwhelming problems, paralleled with his desire to create a society based on justice and peace, guided the fledgling State and formed the values on which Israel rests today and the basis for what Israel strives for in the future;

Whereas Ben-Gurion's vision of the Greening of the Desert through the application of science and technology continues to be an important aspect of Israel, as well as a factor that can help solve food production problems in arid regions all over the world;

Whereas this year marks the hundredth anniversary of the birth of David Ben-Gurion, leader of his people for two generations;

Whereas the United States and Israel share many of the same fundamental values of democracy and freedom, and a common history of accepting immigrants from all over the globe: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress of the United States, in this the centennial of David Ben-Gurion's birth, joins in the celebration of this great statesman, urges all Americans to take note of this commemoration, and applauds The David Ben-Gurion Centennial Committee of the United States of America in its work promoting the yearlong national celebration of David Ben-Gurion and his achievements.

Be it further resolved that Congress urges the President of the United States to issue a proclamation in honor of this celebration.

● Mr. BOSCHWITZ. Mr. President, October 16, 1986 marks the 100th anniversary of the birth of David Yosef Gryn, who came to be known to the world as David Ben-Gurion. Ben-Gurion's centennial is so important because of his role in the creation of the modern state of Israel, his ability to organize a communal infrastructure where none existed and to mobilize the resources and imagination of a downtrodden people. We celebrate a man whose being has touched millions, whose image is burned into the history of humankind's universal struggle for freedom.

Ben-Gurion, as his name suggests, was one of the lions of the 20th century. His memory is tied up in the life and pulse of the very fabric of what has become modern Israel. At the same time, his dream and strength reflect the visions of ancient Israel.

Ben-Gurion centennial celebrations are being held not only in Israel but all over the world. Recognizing the special relationship between the United States and the state of Israel, and the affection Ben-Gurion felt for America, I take great pride in submitting a con-

current resolution commemorating the 100th anniversary of the birth of David Ben-Gurion.●

SENATE CONCURRENT RESOLUTION 163—RELATIVE TO A REDUCTION IN THE NUMBER OF SOVIET DIPLOMATS IN THE UNITED STATES

Mr. DECONCINI submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 163

Whereas Gennady Zakharov, a Soviet employee of a United Nations agency, was arrested on an act of espionage in New York by the Federal Bureau of Investigation on August 23, 1986;

Whereas Nicholas Daniloff, an American journalist for "U.S. News and World Report" in Moscow, was subsequently arrested by Soviet authorities on August 30, 1986, and accused of spying;

Whereas Mr. Daniloff's detention appears to be in retaliation for the Zakharov arrest and both individuals have been subsequently released on similar terms to their respective embassies in Moscow and New York;

Whereas this equation of an apparently innocent American journalist with a Soviet citizen accused of caculatedly obtaining American defense and military secrets dampens the spirit, and hinders the progress, of the upcoming meeting between Secretary of State George P. Shultz and Soviet Foreign Minister Eduard A. Shevardnadze;

Whereas continued impasse on this critical issue threatens potential progress in such areas as summitry, arms control, and economic and cultural exchanges;

Whereas the total number of Soviet diplomatic agents in Washington, D.C., and Soviet consular officers in San Francisco is 313, yet the total number of American diplomatic agents in Moscow and American consular officers in Leningrad is only 249; and

Whereas sending a strong signal to the Kremlin regarding United States sentiment on this issue is important to the American people: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the total number of Soviet diplomatic agents at the Soviet diplomatic mission in Washington, D.C., and Soviet consular officers at the Soviet consulate in San Francisco should be reduced to equal the total number of American diplomatic agents at the United States diplomatic mission in Moscow and American consular officers at the United States consular post in Leningrad.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

Mr. DECONCINI. Mr. President, it has been almost 3 weeks since the clumsy arrest of an American journalist in Moscow. The Soviets have subsequently attempted to link Mr. Nicholas Daniloff with Mr. Zakharov, who was arrested on August 23, 1986, and subsequently indicted on three counts of espionage. I would like to strongly encourage the Soviets, in no uncertain terms, that continuing to connect these two cases seriously erodes American public and congressional support for improving United States-Soviet relations on all issues. This is a direct insult to the world's sense of fairness, justice, and free press.

Currently, Mr. Daniloff and Mr. Zakharov have been released under similar conditions to their respective embassies. Mr. Daniloff is a prisoner in Moscow. Mr. Daniloff's ordeal is an outrage. Mr. Daniloff is a victim of Soviet tactics employing brute force to achieve their objectives. This is not acceptable and cannot be tolerated.

Americans have experienced difficult times lately with terrorism and hostage situations. All of America grieves when one of its members is taken hostage. You recall, Mr. President, when every State united in sending a message to our captured hostages in Iran with yellow ribbons. We consoled each other when Mr. Klinghoffer was killed on the *Achille Lauro* and more recently when two more Americans were kidnaped in Beirut. Now, Mr. Daniloff is captured and stranded in Moscow. A whole society anguishes when one of its members is taken hostage. We have moved from Iran, to Beirut, to Moscow.

Mr. Haynes Johnson, a reporter for the Washington Post, and I imagine, a friend of Mr. Daniloff, recently wrote:

Nicholas Daniloff is their [the Russians] latest victim. He is, in fact, an American hostage. In a symbolic and real sense, every American will be imprisoned until he is freed.

President Reagan has called the Soviet detention of Mr. Daniloff an outrage and reiterated warnings that this episode is endangering United States-Soviet relations. I am certain the President is attempting to secure his release. I have carefully debated whether Congress should act in this matter, or allow the President to pursue his own efforts through open and private channels. I have anguished with the American public since August 30. While there are numerous options, many much stronger than others, some type of signal must be sent to the Kremlin. The signal must not waiver in its resolve. It should address the Americans disgust and frustration yet apply firm pressure. Realistically, it should be a goal that is achieved on its own merits. Ideally, it will convey the American people's resolve to address this problem. Politically, it should convey to the Soviets that Americans cannot be bargained or traded.

The resolution that I am introducing is fair, simple, and direct. It clearly states that the Soviets should have the same number of diplomats in their embassy in Washington and consulate in San Francisco as we have American diplomats in Moscow and Leningrad. This is simple parity. Currently, the Soviets have 274 diplomats in Washington and 39 in San Francisco, for a total of 313. The United States has 221 diplomats in Moscow and 28 in Lenningrad, for a total of 249. Therefore, the Soviets should reduce their presence in the United States by 64 diplomats. Additionally, curtailing the number of diplomats will hurt their future ability to spy.

There are many more severe and draconian actions which the United States could initiate. This resolution seems fair in principle and even in its tone. Two of my colleagues, Senators LEAHY and COHEN, have introduced legislation addressing this parity problem with the Soviet mission at the United Nations. This was before the Daniloff incident. My resolution should send a clear signal to the Kremlin, yet hopefully will not touch off a round of retaliation.

The message here should be clear. The United States will not deal with exchanging spies for innocent hostages. There is a great deal at stake in United States-Soviet relations, but the summitry has little point if America is held hostage.

AMENDMENTS SUBMITTED

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 1987

WALLOP AMENDMENTS NOS. 2845 THROUGH 2849

(Ordered to lie on the table.)

Mr. WALLOP submitted five amendments intended to be proposed by him to the bill (H.R. 5161) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1987, and for other purposes; as follows:

AMENDMENT NO. 2845

Provided, That none of the funds appropriated for the Legal Services Corporation shall be used to support any recipient that fails to ensure that its officers and employees do not—

(a) Intentionally identify the Corporation or its recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(b) Engage in activities that are prohibited to employees in an Executive agency or in the competitive services by sections 7321, 7322, 7323, 7324, 7325, 7326, and 7327 of title 5, United States Code, or by the regulations promulgated thereunder.

AMENDMENT NO. 2846

Provided, That none of the funds appropriated for the Legal Services Corporation shall be used to solicit clients for purposes of pursuing litigation against owner landlords. "Solicitation" means entering the premises of an apartment or other housing facility without an invitation from the tenant.

AMENDMENT No. 2847

Provided, That none of the funds appropriated in this Act for the Legal Services Corporation shall be used for the purchase of real estate unless the Board by a two-thirds vote of the members approves of such a purchase.

AMENDMENT No. 2848

Provided, That none of the funds appropriated in this Act for the Legal Services Corporation shall be used—

(1) To provide, or to support in whole or in part, any legal assistance or legal activity of any attorney with respect to any proceeding or litigation relating to nuclear power;

(2) To support in whole or in part, or to distribute or disseminate in any manner any legal research or publications on legal theories, strategy or legislation in connection with nuclear power; Except that nothing in this paragraph shall prohibit an attorney from informing an eligible client upon request of the client's legal rights or responsibilities.

AMENDMENT No. 2849

Provided, That none of the funds appropriated in this Act for the Legal Services Corporation shall be used to employ or compensate any person who, within a period not to exceed two years after serving as an officer or employee of the Corporation or of any recipient, has participated personally and substantially through decision, approval, disapproval, recommendation, the furnishing of advice, investigation, or otherwise, in a matter involving the application for, or the approval of funding to, any recipient.

● Mr. WALLOP. Mr. President, I have submitted five amendments to clarify the funding for the Legal Services Corporation, which is included in H.R. 5161, the appropriations bill for State, Justice, Commerce, and related agencies. The amendments basically endorse current administrative practices to clean up the operation of the Legal Services Corporation. For years, the Legal Services Corporation had been abused as an ideologically oriented lobbying group. The administration of this Federal agency under President Reagan has put an end to this abuse. Unfortunately, the current appropriations bill would frustrate many of these reforms. The amendments I have introduced prohibit funds being used to return us to past abuses.

There is a definite need for legal services. In my own State of Wyoming, the program has been effectively directed to assisting clients with their legal problems. Unlike many other areas of the country, the Wyoming program has not been an advocacy group, but rather has provided real and necessary legal services.

The major problem in my State has been funding. The amendments I am introducing will ensure that our limited funding for this program is properly used. I would like to briefly explain the amendments.

The first amendment is the conflict of interest amendment. The purpose of this amendment is to prevent the kind of abuses that occurred in 1981 when three employees of the Corporation later became employees of a recipient. As you know, in that year the director of LAS' Office of Field Services transferred the money in the LSC technical assistance fund to the National Legal Aid and Defender Association [NLADA]. This transfer was of over $2 million, even though NLADA had earlier justified a grant of only $50,000. Not long afterward, the LSC field services director became the executive director at NLADA and his deputy became a consultant there. Ironically, when such a transfer to NLADA was proposed in 1978, an earlier field services deputy had referred to it as a "money grabbing" proposal. Yet after the transfer finally went through 3 years later, this same gentleman showed up on NLADA's Board of Directors.

This amendment would prevent such future occurrences by placing a reasonable 1-year restriction on Legal Services Corporation employees so that during that time they could not begin working for a recipient with whom they were involved in the funding process.

This is the same restriction which this Congress has wisely placed on employees of the executive branch and Federal Government agencies.

Clearly, recipients should be funded on the basis of need and not on the promise of personal financial gain. Such a system does not help poor persons get legal representation, it just helps nonpoor ones get a lot richer. At the very least, the appearance of impropriety is created when those responsible for the funding of another become employees of the other shortly thereafter. A 1-year waiting period should be sufficient to remove any appearance of impropriety—and restore some badly needed respectability to the Legal Services Corporation.

The second amendment involves tenant solicitation. This amendment would serve to prevent the solicitation of tenant clients by Legal Services attorneys. As you know, tantamount among the abuses of some Legal Services attorneys, abuses that tarnish the fine work done by others, are those against landlords. Landlords who have committed no sin other than that of renting to persons eligible for legal aid are finding themselves targeted for virtual bankruptcy by Legal Services lawyers.

The list of such abuses is legion. One landlady in New York City incurred $57,000 in expenses to evict a tenant from his $9,850 a month apartment. The landlady offered him no less than $12,000 to move out, but the tenant's Legal Services attorney refused to settle for anything less than $75,000. Another woman in that city has seen almost her entire life savings of $30,000 eaten up in litigation fees by Legal Services attorneys who get their fees from the U.S. Government and the taxpayers. In California, a woman leased her building to be used to provide medical services for poor people. After a year and a half, no medical service had been provided for anyone. It transpired that the facility was only being used to milk off grants from the State, which grants then went back into the operators' pockets. So the owner took the building back, as the lease allowed under such circumstances. Despite the legality of their action, Legal Services slapped a lawsuit on her and by the time the litigation ended this poor landlady had become just that, poor.

The third amendment involves political activity. My amendment is taken from the authorization bill offered by the chairman of the Appropriations Committee. I'm sure he won't have any problem with it. The amendment would prohibit all the officers and employees of a recipient from engaging in activities prohibited under the so-called big Hatch Act—5 U.S.C. 7321-7327. Currently staff attorneys, but not other recipient employees, are subject to the restrictions set forth in the little Hatch Act—5 U.S.C. 1502(a). The little Hatch Act is narrow in scope and only prevents staff attorneys from being candidates for elective office—5 U.S.C. 1502(a)(3)—and from using their political authority to affect the result of an election. As a result recipient employees have ample opportunity to use their position to influence the local democratic process unfairly.

The big Hatch Act would apply the same restrictions to recipients that the little Hatch does. In addition it would prohibit recipient employees from taking an active part in political management or political campaigns. Under the regulations promulgated pursuant to the big Hatch Act, recipient employees would be expressly prohibited from serving as officers of political parties; members of national, State, or local committees of political parties; officers or members of committees of political clubs; or from being candidates for any of these positions—5 CFR 733.122 (b)(1). The big Hatch Act would prohibit recipient employees from using their official authority to coerce the political action of a person or body—5 U.S.C. 7322. Under the regulations promulgated pursuant to the little Hatch Act, however, recipient employees may engage in all of these activities—5 CFR 151.122(f).

We don't want Legal Services attorneys or employees managing election campaigns. We don't want them serving on the platform or rules committees of either the Republican or Democratic Parties. The big Hatch Act ought to apply to them.

The fourth amendment involves real property.

Corporation grantees have acquired over $15 million in total real property, some of which were purchased contrary to Corporation requirements. For example, a grantee in North Carolina spent over $140,000 to refurbish property without prior Corporation approval. Similarly, another grantee in Birmingham, AL, purchased a building without LSC approval; the cost thus far has been more than $500,000 and another $300,000 is expected to be incurred.

As a matter of policy, and especially during these times of dwindling resources, funds should be spent on legal services for the poor and not on land for lawyers. Although there are exceptions to this general rule, real estate purchases should, at the very least, receive strict scrutiny from higher authority; that is, the Board.

Moreover, there are two practical problems in the purchase of real estate by a grantee. First, it is unclear whether the Corporation can always retain full interest in property owned by a local program if that program is defunded, becomes bankrupt or is disbanded. Agency principles do not, as a general rule, apply to the LSC. Second, in the event of emergency, a local program will not likely be able to obtain its funds quickly due to the nonliquid nature of real property. The capital assets of a Legal Services program should be readily available for conversion, not tied up in a manner likely to be inimical to the program itself.●

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. ANDREWS. Mr. President, I would like to announce for the information of the public that the Select Committee on Indian Affairs will be holding an oversight hearing on Tuesday, September 23, 1986, at 10 a.m., in Senate Russell 385 on the Indian Trust Fund and the Treasury Department's request for proposal regarding the fund, and for other purposes.

Those wishing additional information should contact John Vance of the committee at 224-2251.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. ROTH. Mr. President, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold a hearing on emerging criminal groups—Asian.

The hearing will be held on Wednesday, September 24, 1986 at 9:30 a.m. in Senate Dirksen 342. For further information please contact Daniel F. Rinzel or Cynthia Christfield of the subcommittee staff at 224-3721.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Tuesday, September 23, 1986, at 9:30 a.m., to hold hearings.

The committee will be receiving testimony on Senate Joint Resolution 268, providing for the reappointment of Murray Gell-Mann as a citizen regent to the Smithsonian Board of Regents.

The committee will also continue the oversight hearing begun on July 30, 1986, on the operations and functions of the Office of the Sergeant at Arms of the Senate.

For further information regarding this hearing, please contact Carole Blessington of the Rules Committee staff on x40278.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, September 18, until 12:30 p.m., to hold a markup on pending legislative business and executive nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CIVIL SERVICE

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Civil Service of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Thursday, September 18, to conduct a hearing on the following civil service retirement credit legislation: S. 2734, S. 1800, and H.R. 3006.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, September 18, to hold an oversight hearing on the domestic and international petroleum situation.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

CALL TO CONSCIENCE ON BEHALF OF THE MANEVICH AND KARLIN FAMILIES

● Mr. BRADLEY. Mr. President, I rise today as part of the Congressional Call to Conscience Vigil which has for the last 10 years focused attention on a travesty of freedom, justice, and dignity: The Soviet Union's denial of religious freedom and emigration to Soviet Jews.

Ironically, the Congressional Call to Conscience began shortly after the Soviet Union committed itself to uphold internationally recognized standards of human rights and freedoms. There was reason for optimism following the acceptance of the Helsinki accords as Soviet restrictions on emigration eased during the years 1976-79. But a precipitous decline in exit visas in the 1980's reversed this trend. At the apex in 1979, the Soviets granted 51,320 exit visas to Soviet Jews, but by 1985 the number had dropped to 1,140. Equally distressing are the anti-Semitic sanctions to which Jews remaining in the U.S.S.R. are subject. Indeed, their strength and perseverance testifies to the overriding desire for men and women to be free.

I would like to speak in particular about the David Karlin and Vjacheslav Manevich families of Leningrad, which have been adopted by Temple Emanu-el of West Essex in Livingston, NJ. Both are directly related to Mikhail Manevich, the cantor at Temple Emanu-el, and his wife, Ema. Their cases typify the plight of the 400,000 Soviet Jews awaiting permission to emigrate.

The David Karlin family of Leningrad was first refused exit visas in 1976 on the false grounds that Mr. Karlin knew state secrets. The family has been applying for the last 10 years, but have been repeatedly denied. In 1978, the Karlins submitted an American invitation sent directly from their son, a U.S. citizen, but were refused and told never to apply for an exit visa with an invitation from the United States. Officials then ignored them when they sought an appointment to receive an explanation.

Mr. Karlin was dismissed from his job as a financial administrator of a Leningrad electronics company in 1974 when his brother applied for an exit visa. He was unemployed for 6 months, finally finding a job as a law teacher at a school for professional truck drivers. This job ended when the Soviets told him he couldn't teach Soviet students if he had applied to emigrate. He was then unemployed for 2 years, until he found a job working for the State insurance agency. Although in 1978 Mr. Karlin was told that he would be cleared of all the secrets in 5 years, the Karlins were again refused exit visas in January 1986.

Vjacheslav, Inna, and Ilja Manevich have applied to emigrate since 1980. The Soviet Government most recently refused to grant them exit visas in February 1986. They were told that because Inna's parents do not wish to emigrate, their family would be required to stay in the Soviet Union. The irony here is that all of the Manevich family, with the exception of those just mentioned, now live in the West. After their first application, Vjacheslav lost his position as an engineer, and now works in a low-paying nonprofessional capacity.

71-059 O-87-11 (Pt. 17)

Mr. President, as we in the West enjoy religious and political freedom, we must not forget the ongoing struggle of those who are categorically denied the basic right to live where they choose. While the number of Jewish refuseniks rises, we must also continue to raise our voices for those whose pleas repeatedly fall on unsympathetic ears. And today, I call upon the Soviet Government to hear the pleas of the Karlin and Manevich families, and to grant their exit visas promptly.●

LIABILITY THREAT SLOWS PROGRESS OF MEDICAL TECHNOLOGY

● Mr. BROYHILL. Mr. President, I call the attention of my colleagues to an article entitled "Liability Threat Slows Progress of Medical Technology," which appeared recently in the Charlotte Observer. The article's author is Frank E. Samuel, Jr., president of the Health Industry Manufacturers Association.

We in the Senate have been wrestling with the problem of product liability for some time now, and I think this article sheds light on what the liability crisis is costing all of us in terms of medical progress. The fact is, as Mr. Samuel points out, it may be quietly reshaping medical innovation which will affect each one of us. As we continue an examination of the product liability problem, I hope we will keep Mr. Samuel's point of view in mind.

I respectfully request that it be included in the CONGRESSIONAL RECORD.

The article follows:

LIABILITY THREAT SLOWS PROGRESS OF MEDICAL TECHNOLOGY

(By Frank E. Samuel, Jr.)

WASHINGTON.—Suppose you developed a technology that could dramatically improve the survival rate from an otherwise deadly disease. The venture capital would undoubtedly roll in, and your product would give patients a better life and you a chunk of the American dream. Right?

Think again. Lawsuits from families of those the technology couldn't save may very well keep you out of business—even if your product isn't shown to cause an injury. If product liability reforms aren't enacted by Congress and the states, this problem could threaten the quality of U.S. health care.

Medical innovation may be the most important, but least known, victim of the lawsuit mania sweeping the country.

While insurers and lawyers lob charges back and forth about who's to blame in the liability crisis, a threat to the next generation of life-saving technology—hence to consumers—goes unnoticed.

The reason? The effects of "defensive innovation" don't show up right away. That's what happens when companies spend research dollars not in advancing medical science, but in covering their flank from the risk of lawsuits.

When a public swimming pool takes down a diving board to avoid liability or a public park bans sledding, the public knows about it. But a shift in scientific innovation is tough to spot. The public may never know that a medical break-through died on the drawing board because liability risk made it unprofitable.

This is not just a hypothetical problem. Companies that should be pushing forward the capabilities of medical technologies are instead dropping entire product lines to avoid multimillion dollar lawsuits and skyrocketing insurance rates. Only one company now makes measles, mumps and rubella vaccine; only two make anesthesia gas machines and only four (two of which are foreign) make infant ventilators—devices that help critically ill babies breathe. Beyond that, companies are exiting the contraceptive products market because of the fear of liability suits, thereby narrowing consumer choice in birth control.

A leading manufacturer of critical-care equipment dropped out of the market for anesthesia gas machines because of the liability explosion. The company also makes adult ventilators, but has shied away from infant ventilators because of potential lawsuits and insurance costs. Common sense says infant ventilators should be profitable. They are key factor in boosting the survival rate for premature babies with respiratory distress syndrome from 30% to over 90%. But the risk of multimillion dollar suits by families of those 10% who can't be saved is so great that some manufacturers have become unwilling to compete in this market.

Important products like infant ventilators might not even be available today had the current liability climate existed 20 years ago, when research on the devices was beginning. Would we now be safe from polio if vaccine innovators had faced today's threat of lawsuits 30 years ago?

Intellectually, American society is probably willing to accept the inherent risks of medical advancement. But individually, Americans can't resist the temptation of multimillion dollar claims. And they are encouraged by jury awards against manufacturers, even when it's not clear that their product caused an injury. In overreaching to protect individual consumers on a case-by-case basis, courts unwittingly put future health care quality for the entire society at risk.

Federal and state liability reform can help protect the public from the decline in innovation that the current system is causing. Already, legislative proposals have been made at the state and federal levels to:

Limit payments for noneconomic losses—that is, pain and suffering in liability suits.

Prohibit awards against manufacturers when a product isn't clearly at fault.

Discourage frivolous lawsuits.

These provisions would be a first step toward clarifying the diverse and confusing liability laws, and toward guarding the public against a slide in medical innovation that threatens everyone's health.

ABA-SOVIET LAWYERS

● Mr. GRASSLEY. Mr. President, I was disappointed to see that the ABA, at its August meeting, decided to proceed with its cooperative agreement with the Soviet Lawyers Association [ASL].

There was a great deal of opposition, including that of the Senate Judiciary Committee, to this agreement. This opposition is due to a number of factors. As an organ of the Politburo, the ASL is in no way comparable to the ABA, a fiercely independent organization dedicated to promotion of the rule of law.

ABA-Soviet formal ties cannot achieve their ostensible purpose—to promote "meaningful dialog" between American and Soviet lawyers. Dialog is only meaningful if both sides are committed to conveying their positions truthfully. This is, unfortunately, not the case with the Association of Soviet Lawyers. The ASL is an extremely exclusive Soviet organization, designed primarily for the purpose of disinforming the public concerning the nature of the repressive Soviet legal system. In this role, the ASL has published the notorious "White Book," a vicious propaganda attack upon the Jewish emigration movement in the U.S.S.R.

Unfortunately the agreement has now gone into effect, and under its auspices, a meeting was held last weekend between the two groups at Dartmouth College. The fact that the ASL was allowed to film this meeting and use it for propaganda purposes is extremely disturbing to me especially in light of the continued detention of Nick Daniloff.

Chris Gersten, executive director of the National Jewish Coalition has cogently pointed out the ludicrous nature of this agreement and it would be beneficial for all the Members of this body to read it. Therefore I ask that the article be printed in the RECORD.

The article follows:

THE ABA AND SOVIET LAWYERS

(By Chris Gersten)

Throughout the American legal and academic communities, preparations are now under way for next year's bicentennial of the adoption of the U.S. Constitution. But as America prepares to celebrate the freedoms enshrined in this document, the nation's pre-eminent legal organization, the American Bar Association (ABA), has taken an action that is at odds with the group's reputation as a defender of liberty and justice.

On July 24, the president of the ABA informed the organization's governing body, the House of Delegates, of a cooperation agreement signed between the ABA and the Association of Soviet Lawyers (ASL). The agreement "pledged to advance the rule of law," and to promote respect for human rights. Superficially, the agreement appears to be a worthy document between two organizations both equally committed to the values of freedom and liberty that Americans hold dear.

In contrast to the ABA, however, the ASL is as far from being committed to liberty and justice as the Kremlin is from promoting free-enterprise and democracy. Like all other professional, cultural, and political organizations in the Soviet Union, the ASL is controlled by the government, and membership is limited to those who are considered "politically reliable."

Although the ASL committed itself in its agreement with the ABA to uphold human rights, the group has, in fact, been in the

forefront of Soviet efforts to deny those same rights. The Kremlin craves legitimacy, among both the Soviet people and the international community. It has, therefore, created the ASL to provide legal rationalizations and spurious legitimacy to such policies to repression as the persecution of Hebrew teachers and the imprisonment of dissidents in "psychiatric hospitals."

Some of the ASL's most virulent attacks have, in fact, been reserved for Soviet Jews, particularly those "refuseniks" whose requests for permission to emigrate to Israel have been denied. In 1979, for example, the ASL published the White Book dealing with the subject of Soviet Jewry, in which Jews who wish to emigrate were said to be inspired by Western "intelligence services." Last May, a second edition of the White Book appeared. Among the attacks on Soviet Jews to appear in this edition, the teaching of Hebrew and the Jewish religion was called "a blatant attempt to affect the psyche of minors in a religious and nationalistic way."

Many Americans may legitimately ask why the ABA should accord an organization such as the ASL recognition and respectability by signing an agreement of mutual cooperation. Certainly, given the ASL's record of opposing all that the ABA stands for, there would appear to be little on which the two groups could possibly agree to cooperate. Instead, it is the recognition of the fact that the Kremlin creates such groups as the ASL to serve its own political ends that has led the AFL-CIO to refuse for three decades to recognize or legitimize Soviet trade unions.

Advocates of the agreement within the ABA have argued that dialogue between American and Soviet lawyers will, indeed, help to promote the goals proclaimed in the agreement. Their arguments succeeded in persuading a majority of the ABA's House of Delegates to approve the agreement.

Now that the agreement is in place, its opponents within the ABA should work to provide the organization with evidence of the ASL's contempt for human rights in the hope that such evidence will lead to the accord's abrogation. For, as America celebrates two centuries of constitutionally guaranteed liberties, there can be no greater affirmation of our own dedication to freedom than the forceful and complete repudiation of the repression that the Soviet legal system seeks to uphold.●

NOMINATION OF JUDGE ANTONIN SCALIA TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

● Mr. KERRY. Mr. President, I support the nomination of Judge Antonin Scalia as an Associate Justice of the Supreme Court. I support him not because he is liberal or conservative, but because he is a legal scholar of distinction, of principle, and of integrity.

Judge Scalia has a record of excellence in academic achievement. He graduated summa cum laude from Georgetown University in 1957, where he was valedictorian and first in his class. He was an editor of the Law Review at Harvard Law School, and held a Sheldon fellowship at Harvard. He has taught law at the University of Chicago, Stanford University, Georgetown University, and the University of Virginia, and he has been universally recognized as a brilliant legal scholar.

Judge Scalia also served ably as an Assistant Attorney General from 1974 to 1977. From 1982 to the present he has served with distinction as a judge of the U.S. Court of Appeals for the District of Columbia Circuit.

It is no secret that Judge Scalia is deeply conservative in his views. Some legal scholars have made the case that Judge Scalia is even more conservative than Justice William Rehnquist. And I disagree with many of Judge Scalia's views on the proper role of Government and of the judiciary. In particular, I am concerned by Judge Scalia's narrowly limited view of the first amendment, as expressed in opinions such as Liberty Lobby, Inc. versus Jack Anderson.

But I also believe that Judge Scalia is a man of principle and integrity. And I believe that his conservative view of the role of the judiciary will provide a valuable and needed balance on the Supreme Court.

Judge Scalia is known as a builder of consensus on the court of appeals. He has been able to fifd areas of agreement and common ground with judges of widely divergent views. Judge Scalia has been joined in his opinions on the court of appeals by such moderate and liberal jurists as Judge Ruth Bader Ginsburg and Judge Harry T. Edwards. He has shown an ability to forge compromises and sway other judges to his point of view. I believe that those are valuable qualities in a Justice of the Supreme Court.

While I may often disagree with Judge Scalia's views, I respect him as a jurist and a legal scholar. I believe that he will make a positive contribution to the Supreme Court, and I support his nomination.●

HONORING DR. ERNST WEBER

● Mr. D'AMATO. Mr. President, I rise today to bring to the attention of my colleagues a banquet being held in New York City this coming Monday, September 22, in honor of Dr. Ernst Weber on the occasion of his 85th birthday. As we all know, the career of Dr. Weber is synonymous with the development of electrical engineering. In my opinion, this Nation owes Dr. Weber a great debt of gratitude for the major advances he has fostered in this field. I ask that a brief biography of Dr. Weber, prepared by the staff of New York Polytechnic University, the institution with which he is so closely identified, be printed in the RECORD at the conclusion of my remarks.

The biography follows:

DR. ERNST WEBER

Dr. Ernst Weber is internationally recognized as one of the major contributors to the electrical engineering profession in the 20th century. He is one of Polytechnic's most distinguished educators and academic leaders, and has inspired several generations of students and faculty members around the world to achieve distinction in the field.

Dr. Weber, who at 85 continues to maintain an active schedule and close ties with Polytechnic, was professor of electrical engineering from 1930 to 1969. With his leadership, the department's graduate program evolved into one of the largest and most respected in the nation. He served as president for 12 years during one of the University's most dramatic periods of growth—including the move to the present Brooklyn campus and the development of the Long Island Campus in Farmingdale.

Dr. Weber is a member of the IEEE Hall of Fame and served as the IEEE's first president. He is also listed among the IEEE's top ten all-time educators and is a recipient of the coverted IEEE Education Medal.

At Polytechnic, his academic specialties included electromagnetic theory, boundary value problems, transient phenomena in networks, electrical machines, nonlinear systems, and electron theory. He holds more than 30 American, Canadian and British patents in the field of microwave techniques and has published more than 50 papers, as well as the textbooks Mapping of Fields and Linear Transient Analysis.

During World War II, Dr. Weber organized Polytechnic's microwave research group that developed the precision microwave attenuator essential for the accurate calibration of power in radar systems. In recognition of the group's contributions, he was awarded the President's Certificate of Merit.

A native of Vienna, Austria, he began his professional career there, receiving a Diploma of Engineering in 1924 from the Technical University, then working as a research engineer for Seimens Schuckert. He was awarded a Ph.D from the University of Vienna in 1926, and one year later earned a D.Sc from the Technical University.

Weber holds honorary doctorates from Brooklyn Law School, Long Island University, Newark College of Engineering, Pratt Institute, and the University of Michigan.

Today he lives in Tryon, North Carolina. A strong advocate of balancing technology with its social consequences, he has declared, "The technological university has not only the opportunity, but indeed the obligation, to contribute through broad leadership education to the solution of societal problems."●

THE STAR WARS SPINOFF

● Mr. STEVENS. Mr. President, recently, I came across an article in the New York Times magazine by Malcolm W. Browne that deserves the attention of my colleagues. Mr. Browne's article, "The Star Wars Spinoff," discusses some of the potential benefits to both conventional defensive efforts, and to the private sector of the technologies generated by the SDI research. Mr. Browne notes that a Stamford, CT, market research firm has estimated that the commercial applications of SDI technologies will yield sales in the private sector of a magnitude between $5 and $20 trillion.

The promise of SDI is not simply as a means to defend against ballistic missile attack—it is also the extensive

investigation into exotic technologies that may unlock the secrets of fusion energy production, even faster microcomputer switches, and perhaps a new generation of antitank weaponry. The expectations placed on the SDI Program are great—and well they should be—but I expect the benefits of SDI research to transcend ballistic missile defense and provide substantial benefits for conventional defense and across the entire American economy.

I ask that "The Star Wars Spinoff" be printed in the RECORD, and urge my colleagues to take a few minutes to read it.

The article follows:

THE STAR WARS SPINOFF

(By Malcolm W. Browne)

The landscaped industrial park that flanks San Diego's Balboa Avenue hints of well-appointed board rooms, robotic assembly lines and healthy workers bronzed by weekends on the nearby beaches. The street is only a few minutes' drive from Sea World and other tourist magnets, and to the casual visitor it seems as far removed as an American suburb could be from any hint of war or weaponry. But the peaceful mien of the neighborhood is disturbed several times a week by the blast of a stunningly powerful cannon that sends flocks of startled birds into the air and sets off burglar alarms in parked cars over a wide area.

The source of the noise is one of the world's first rail guns, a new breed of electromagnetic artillery potentially capable of piercing the most heavily armored tanks, of picking off intercontinental missiles and battle satellites, and even of hurling projectiles to distant planets.

The rail gun, built by Maxwell Laboratories Inc., and named Checmate (an acronym for Compact High Energy Capacitor Module Advanced Technology Experiment), is about the size of a large merry-go-round and stands in a hangarlike building. One recent morning, flashing red lights and insistent loudspeakers warned nonessential personnel away while technicians sealed off the test building and retreated to the safety of a control shack. As the countdown progressed, pictures and computer data flowed across monitor screens, and workers readied the lasers, X-ray flash cameras and diagnostic sensors used for assessing each shot. The whine of high-power electrical equipment rose to a scream, a supervisor nodded to a controller, and the rail gun fired, sending a shudder through the factory compound, slapping clothing against the legs of passers-by and leaving ears ringing.

Hastily donning gas masks, technicians swarmed into the smoke-filled rail-gun building to look for equipment damage and check the target. Incredibly, a metal projectile scarcely larger than a household nail had been driven into a sandwich of thick steel plates to a depth of several inches. "Nice clean shot," someone observed. "We're moving right along."

In fact, experts say, American efforts to develop an electromagnetic rail-gun launcher—a gadget conceived by weapons makers as long ago as World War I—have achieved in the last two years alone what Defense Department planners had once predicted would take a decade. And credit for the project's impressive progress goes to what may be the most costly and intensive military research program in history: the Strategic Defense Initiative. Together with hundreds of other arcane, high-technology devices, ideas and systems, the rail gun has been selected for grooming and development as part of President Reagan's controversial vision of a defense shield capable of defending the United States against a Soviet balllistic-missile attack.

The merits of the President's plan—promptly dubbed "Star Wars" by advocates and opponents alike—have become a matter of intense worldwide debate. Supporters see it as a means of ending the threat of nuclear devastation. Opponents charge that the program is an exorbitant boondoggle whose stated objective is ruled out by the limitations of technology. Worse, these critics contend, Star Wars defenses might so upset the fragile balance of forces between East and West that war might become more rather than less likely.

Yet even as the debate has raged, Star Wars research has moved ahead quickly, consuming more than $3 billion in the last year alone, and giving unprecedented momentum to a broad range of advanced scientific programs.

The exotic new materials and technologies produced or encouraged by Star Wars research promises to have particular importance for conventional warfare, fostering changes in land combat as radical as whose wrought by the introduction of gunpowder in the Middle Ages. But spinoffs from the President's initiative are also finding their way into a myriad of civilian fields, including energy production, transportation, communications and medicine. Meanwhile, science itself is gaining new research tools from S.D.I. projects.

Critics of S.D.I. point out that the technological side benefits of Star Wars research could be had much more cheaply and efficiently if they were pursued directly rather than as the unintended offshoots of an extravagant military spending program. But S.D.I. proponents assert that in the absence of such a visionary scheme, it is unlikely that such research would have taken place at all. Weapons research, they say, has been a key element in technological progress throughout history, and has nearly always produced byproducts of immense value to mankind. Costly though World War II was in human suffering and destruction, for example, wartime research bequeathed a cornucopia of consolation prizes to the survivors, including plastic, synthetic textiles, antibiotics, jet aircraft and nuclear energy.

How far the President's vision of a space-based strategic defense will ultimately be carried is an open question. Spurred by concern over Federal budget deficits, Congress has already voted significant cuts in S.D.I. funds, and even the program's strongest supporters concede that enormous technical obstacles still loom ahead.

Yet, even if a continental defense is never actually deployed, the long-term impact of S.D.I. research programs promises to be enormous. In laboratories from San Diego to Boston, Star Wars is no longer a mere phrase or debating point. For better or worse, the controversial Strategic Defense Initiative is already yielding new technologies that seem destined to change the world.

Air Force Lieut. Gen. James A. Abrahamson is no stranger to monster-size Federal projects. From 1976 to 1980, he ran the Air Force program that developed the F-16 fighter. Later, he took charge of space-shuttle development for the National Aeronautics and Space Administration, a post he held until 1984.

Now, as director of the Pentagon's Strategic Defense Initiative Organization (S.D.I.O), the 53-year-old General Abrahamson is responsible for what may turn out to be the biggest Federal research project ever. He currently oversees the distribution of about $6 billion to some 1,300 Star Wars contractors in a program whose size rivals even that of the Manhattan Project, the secret World War II program that created the atomic bomb. (The Manhattan Project, from its inception to the destruction of Hiroshima and Nagasaki, cost $2 billion in 1945 dollars, equivalent to approximately $12 billion today. The current five year S.D.I. program, which is intended merely to assess possibilities rather than to build a working weapons system, is expected to cost up to $20 billion.)

"When I got here," General Abrahamson said recently as he shared a sandwich with a visitor to his gadget-strewn Pentagon office, "I began looking for a common denominator in all the big technology programs that had been successful—a common factor applicable to S.D.I. But I couldn't find one. For instance, both the German and British jet-propulsion programs were highly successful, but they achieved success under totally different conditions.

"Finally, I came to realize that the common denominator was to be found not in the successful programs, but in the programs that had failed or come in second best. An example, was the German atomic-bomb program of World War II, a program that was so highly structured and formal that it was unable to correct itself. By contrast, the Manhattan Project was dynamic, contentious, full of scientific give-and-take, and therefore capable of speedily correcting its own errors.

"I concluded that we needed the same rough-and-tumble intellectual approach—the American approach—to S.D.I. research. I decided that it was better to achieve 90 percent of a bold solution than 100 percent of a timid solution."

The resources now dedicated to finding that "bold solution" represent an enourmous national commitment. During the last year, American taxpayers have paid some $3.05 billion for S.D.I. research—nearly $13 for every man, woman and child in the country—and the administration has requested $5.3 billion more in Star Wars money for the coming year. Even if Congress succeeds in cutting this sum—both the House and the Senate have voted substantial reductions—S.D.I. will still remain an important component of the national budget.

Star Wars research, moreover, gets contributions from many sources besides formal S.D.I. appropriations. The Strategic Defense Initiative Organization is less than three years old, and virtually all the projects now under its aegis began with other government agencies and organizations. Overlapping research objectives and financing persist, and much of the technology developed by the Defense Advanced Research Projects Agency, the Defense Nuclear Agency and other organizations indirectly furthers Star Wars objectives. An insider acknowledged that "Star Wars money has a way of losing its color after passing through many hands."

When the S.D.I.O. needs something to be invented or built, it pays handsomely and apportions the task to many hands. Predictably, the largest S.D.I. contracts have gone to the giants of the aerospace industry. Heading the 1986 list is the Boeing Compa-

ny, with contracts totaling $131 million. Other top S.D.I. contractors include TRW Inc., $61 million; Hughes Aircraft Company, $40 million; Lockheed Missiles and Space Company, $25 million; Rockwell International Corporation, $24 million; and the Raytheon Company, $17 million. But Star Wars funds are also earmarked for a wide range of small businesses, government laboratories and agencies (including the Central Intelligence Agency), and academic institutions.

The economic impact of S.D.I. money is ubiquitous and potent. A Stamford, Conn., market research concern, Business Communications Company, has estimated that the commercialization of Star Wars technology will eventually yield private-sector sales ranging between $5 trillion and $20 trillion. The financial inducement for a company to participate in S.D.I. research is so great, in fact, that the S.D.I.O. receives 10 times as many proposals as it can pay for.

Private entrepreneurs can exploit a wide range of inventions and discoveries that grow out of government-sponsored research, and Star Wars technologies are no exception. But the commercial licensing of government processes or inventions is a complex system that sometimes imposes burdensome practical problems. A government agency may be unwilling to grant exclusive long-term rights to the use of an invention or process, for instance, thereby depriving prospective commercial licensees of a competitive edge.

The secrecy of such sensitive military projects also poses a potential problem for the transfer of technology from S.D.I. research to the private sector, but General Abrahamson minimizes its long-term importance: "Of course there are technologies in S.D.I. that are vital to our national interests and are classified top secret. However, you'd be amazed how much of our work in nonclassified or only moderately classified. Our secrecy classification system, like the proposed missile defense itself, is organized in layers, and our policy is to permit the maximum freedom of communication consistent with the national interest. That policy shouldn't pose a real problem for anyone."

"I am determined," General Abrahamson said, "that we not miss the opportunity to capitalize on the results of S.D.I. research and apply it across all facets of our economy and society."

The combination of a thick wallet and a gambler's quest for dramatic gains has already led S.D.I. researchers to discoveries with important implications for fields largely unrelated to strategic defense.

Perhaps the most significant of these areas is conventional warfare, where rail guns and other new "hypervelocity weapons" promise to transform the kind of continental-scale armored combat for which the Soviet and American armies have been girding themselves since World War II.

Both the Pentagon and the Kremlin believe that in future land wars, tanks and armored personnel carriers will decide the outcome of battles. Consequently, both sides press their munitions makers to design ever more lethal projectiles, and sturdier forms of armor to stop the enemy's shells, bullets and rockets.

To defeat the next generation of tough-skinned Soviet tanks, Army planners believe, an entirely new class of weapons might be needed: weapons as superior to today's powder-burning guns and rockets as the 15th-century harquebus was to even the best crossbow of the day. And thanks to the Strategic Defense Initiative, the electromagnetic rail gun may provide American armored vehicles with just such a weapon.

In contrast to traditional rockets and shells, which are propelled by expanding gases, the acceleration achieved by a rail gun is not limited by the speed of sound; given enough energy, a rail gun can accelerate objects to speeds comparable to those of meteors. In principle, a rail gun standing on the ground could bombard targets on the moon. A rail-gun projectile might even be made to hit a target hard enough to initiate nuclear fusion—a fact noted by scientists seeking to develop fusion energy as an alternative to the fission process that is used to generate electricity in today's nuclear power plants.

Many government organizations have explored the possibilities of the rail gun. But both financing and research coordination were lacking until the Strategic Defense Initiative Organization stepped in.

Among the technologists responsible was Jon Farber, a division chief with the Defense Nuclear Agency in Alexandria, Va. Mr. Farber has devoted much of his career to the building of machines that mimic the destructive pulses of electromagnetic energy emitted by nuclear explosions. Like many kinds of Star Wars weaponry, these testing machines require gigantic pulses of power.

"I realized," Mr. Farber recalled, "that the greatest possibility for quick progress toward an anti-missile weapon lay in the rail gun, and I predicted that by working on rail guns we could accelerate all our S.D.I. programs, reducing development times by six to eight years."

Essentially, a rail gun is an electric motor, in which two metal rails running the length of the gun barrel are the main stationary elements and the projectile itself is the moving part. When a massive electric current is made to flow between the rails via an armature at the back of the projectile, the flow generates an electromagnetic force that drives the projectile forward.

One of the main problems with such a weapon is providing it with a suitable supply of electric power. Not only must the source yield a gigantic pulse of power for each shot, but it must recharge fast enough to maintain a reasonable rate of fire.

Ignoring bureaucratic boundaries, Mr. Farber broached his ideas directly to the S.D.I.O. "To establish my bona fides, I offered to lend them a power supply of the kind we use in our simulated nuclear explosions," he said. "They agreed, and starting in March last year, the S.D.I. people agreed to share costs with us in the building of a capacitor-powered rail gun. Only nine months later we were able to fire the first demonstration shot. We blasted a little plastic cube right through a thick metal plate, and the resulting hole was impressive enough to convince even stubborn skeptics."

Since then, researchers have devoted their efforts to reducing the size of the containers needed to contain the electric power for the rail gun. Within a few years, Mr. Farber predicts, high-power capacitors charged by generators of various kinds will be small enough to fit not only into orbiting space stations, but inside tanks and other fighting vehicles.

"At present we are substantially outnumbered and outgunned by Soviet tanks, whose big guns can open fire before ours come into range," Mr. Farber said. "Rail guns could reverse that situation and change the balance of land forces in our favor."

Another key area of Star Wars development is the interface between computer science and applied physics, in which researchers are confronting the need to process extraordinary amounts of information in the shortest possible time. Future large-scale conflicts, whether in space, in the atmosphere, on the ground or at sea, are expected to unfold too quickly for even the most efficient consortium of human minds to control without massive computer assistance. A reliable, lightning-fast system for planning battles is therefore regarded as vital both to a defense against ballistic missiles and to the conduct of war on the earth's surface.

Part of the challenge lies in the realm of applied physics. Physicists are following several routes toward speeding up the microscopic switches that operate logic gates—the components of semiconducting chips that enable computers to calculate. The opening or closing of a switch determines whether its gate is to register a zero or a one—the binary numbers used for all computations.

Contractors working for S.D.I. or related defense technology projects are working on an entirely new type of computer switch: one that operates optically rather than electronically. An optical switch would be used to transmit or block a beam of light rather than an electric current, and thus benefit from the enormous speed at which light travels. The switch itself could be actuated by light signals; matching pulses of light applied to opposite sides of the switch would open it, and mismatching pulses would close it.

A remarkable new material being developed for both optical and electronic computer switching is a synthetic crystal, gallium arsenide, and substantial S.D.I. funds have been appropriated for pushing its development. Gallium arsenide transmits electrons several times faster than does the silicon used in conventional chips, and can also function as an optical switch.

Another potential optical switch that has attracted official interest is a plastic called polydiacetylene, under development at General Telephone and Electronics Laboratories Inc., of Waltham, Mass. According to Dr. Mrinal Thakur, a senior member of G.T.E.'s technical staff, an optical switch based on polydiacetylene could handle up to one trillion operations per second; a conventional silicon switch can manage only about one-thousandth as many in the same time. Optical switches, moreover, would be highly resistant to electronic pulses from nuclear explosions that would disable ordinary chips.

Computer experts working on projects related to S.D.I. are also streamlining problem-solving hardware and procedures. One of their approaches is to break up a complex problem into many small elements that can be solved simultaneously and then be rapidly reassembled to yield the required result. This technique of "parallel processing" is a feature of such advanced machines as the Warp, a new supercomputer developed at Carnegie Mellon University, and the Connection Machine, a product of Thinking Machines Inc. According to the Defense Advanced Research Projects Agency, which paid for its development, the latter machine recently took only three minutes to complete a computation over which a powerful International Business Machines Corporation mainframe computer had had to labor for six hours.

The computers and programs S.D.I. is helping to bring into being are powerful tools whose civilian counterparts will have incalculable scientific value, experts say. These machines might be used for long-term weather forecasting, for example, and

for creating reliable mathematical models of the atmosphere and the oceans. Environmentalists regard such models as essential in making accurate estimates of the effects of human activities on climate.

Several strategic defense projects seek to use the computer as an adjunct to the human brain, and the out-come of this work in such "expert systems" is applicable to conventional battlefields and civilian needs as well. Two of the latest Defense Advanced Research Projects Agency's computer projects for the Navy not only organize and assess mountains of information but also make recommendations to fleet commanders for solving specific tactical and strategic problems. The machine intelligence behind such recommendations is compounded by its designers from the knowledge of many human experts, and the computer program is capable of adding to its knowledge from its own problem-solving experiences.

Similar programs, many of which are independent of S.D.I but have benefited from its discoveries, have begun to help physicians diagnose patients and to assist plant managers in spotting problems in production, inventories and quality control.

Computer pattern recognition is another field of great interest to S.D.I. and other defense agencies. A computer capable of recognizing and interpreting patterns can guide a missile equipped with a television eye, singling out the pattern of a target from a background of clutter.

Missiles are not the only beneficiaries of this work. Related computing ability is at the heart of the advanced research agency's Autonomous Land Vehicle, an eight-wheeled driverless truck from which it is hoped a robot fighting vehicle will evolve. Although their capabilities are still quite limited, such robots may foreshadow not only the advent of mechanical soldiers but of surrogate servants, laborers and bodyguards—the creatures of science fiction.

In many areas, S.D.I. funds have played an important role not in fostering new projects, but rescuing or reviving old ones. One significant example has been the Nova laser, completed last year at Lawrence Livermore National Laboratory, in Livermore, Calif., at a cost of $187 million and 8 years' construction time. The world's most powerful laser, Nova is yielding experimental data that may contribute both to a beam defense against missiles and to the generation of electric power by hydrogen fusion.

Nova, which fills one of the largest buildings in Livermore's sprawling laboratory compound, was financed by the Department of Energy as a fusion power experiment. The object was to concentrate the combined beams of Nova's many lasers on a pin-head-size target, the implosion of which would initiate fusion in the target's hydrogen core.

But during the last three years, as financing for many fusion experiments has dwindled almost to the vanishing point, defense scientists began using Nova for another purpose: the production and testing of very short-wave-length beams, including X-ray lasers—a type of laser that many experts believe would be peculiarly effective against missiles.

That Nova is being kept active, for whatever purpose, is a source of satisfaction to fusion power advocates. "The present oil glut will be short-lived, and when the crunch comes the energy shortage is likely to be devastating," an engineer at the Electric Power Research Institute said. "Fusion may be our salvation, and Nova may be the route to fusion. If Star Wars keeps Nova alive, it's all to the good."

Besides lasers, beams of charged and neutral particles are under study as possible directed-energy weapons, and these, too, are expected to find civilian applications. The Department of Energy has sponsored experiments using electron beams for sterilizing food and for removing pollutants from industrial smokestack emissions, for instance. Electron beams developed for killing enemy missiles may also serve mankind by fighting cancer.

The S.D.I.O. is very interested in a potential weapon called the free-electron laser," said Dr. James A. Ionson, a 36-year-old astro-physicist who is in charge of selecting many S.D.I.O. research projects. "And the work that has gone into it shows considerable promise for cancer therapy."

By manipulating a beam of electrons produced by a charged-particle accelerator, researchers have found they are able to "tune" the wavelength, or color, of the resulting beam. Such tuning helps scientists create beams with the short wavelengths deemed effective against missiles, and may also provide the key to a potential new cancer therapy, Dr. Ionson said.

"Electron beams can penetrate tissue to any desired depth, and the depth is determined by the energy of the beam," he said. "An electron beam has very little effect on the tissue through which it merely passes. But when it reaches its penetration depth, it releases most of its energy at that spot. Consequently, a precisely tuned electron beam could be used to hit a maliganant tumor with pinpoint accuracy without damaging the surrounding tissue. The technique might be especially valuable in brain surgery."

Many industries and government researchers are quite comfortable with Star Wars, but the S.D.I.O.'s relations with the nation's academic community is ambiguous. Educators have raised moral and political as well as scientific objections to the attempt to build a missile defense, and many believe it cannot succeed, however much money is pumped into the effort.

Both the Union of Concerned Scientists and the Federation of American Scientists have denounced S.D.I., and some 6,500 scientists and scientific educators have signed petitions pledging not to accept S.D.I. funds.

Still, negative opinions about the strategic merits of the President's program can often be separated from attitudes regarding the broader benefits of S.D.I.-related research. According to a survey conducted last spring by Peter D. Hart Research Associates Inc., two thirds of 549 American physicists polled expressed doubts that S.D.I. could ever defend the entire population of the nation against ballistic missiles, and 62 percent declared themselves opposed to deploying a Star Wars defense.

But despite their general opposition to the development of actual S.D.I. weapons, many American physicists saw merit in the basic research involved; the Hart poll revealed that 77 percent of physicists supported basic Star Wars laboratory research and 21 percent opposed it.

To counter the anti-Star Wars lobbying of several professional organizations, scientists favoring S.D.I. research recently organized the Science and Engineering Committee for a Secure World. Among the group's members is Dr. Martin I. Hoffert, chairman of the department of applied sciences at New York University, who describes himself as a political liberal and an opponent of nuclear arms. "When I first heard of S.D.I., I had no real interest in it," he said. "But I was interested in almost any opportunity for ridding the world of nuclear weapons, and I came to believe that S.D.I. might give us a chance."

Some two dozen major educational institutions are now receiving S.D.I. funds, among them the University of California (Los Angeles and Berkeley), the Massachusetts Institute of Technology and Johns Hopkins University. Besides these, many colleges and universities are recipients of second-hand Star Wars money transmitted through various prime contractors.

Highly qualified physicists are sometimes drawn to Star Wars projects by an inducement at least as potent as remuneration: access to the laboratories, equipment and staffs that can take on research programs far beyond the financial reach of even the richest university.

The cumulative impact of such an influx of funds and assistance on the broader course of American science will, of course, be impossible to measure for many years. Bur scientists and technical experts both inside and outside the strategic defense program agree that the systems, materials and devices brought into being in the name of S.D.I. will leave a profound legacy. One defense physicist (who asked to remain unidentified) put it this way:

"Some say we've made Faustian deals with the Devil, and there's an element of truth in it, if you happen to look at national defense as the Devil, which I do not. I'm being paid to work in a lab that's more exciting than a toy store. I'm given all the fancy hardware I need for my work, which has to do with very short-wavelength lasers. Do you realize what magnificent scientific tools such lasers will one day give us? We could use them to make holographic movies of the interaction of molecules in living cells, catalyzing the whole field of cancer research. X-ray or gamma-ray lasers will help us understand the nature of life at its most basic level.

"Sure, we're working on weapons, and we hope they'll be very good weapons. But the biggest payoff for many of us is the thrill of personal scientific achievement—achievement that in many cases would be impossible without Star Wars tools."

PROPOSED ARMS SALES

● Mr. LUGAR. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive formal notification of proposed arms sales under that act in excess of $50 million, or in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notification I have received. The classified annex referred to in the covering letter is available to Senators in the office of the Foreign Relations Committee, room SD-423.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, September 17, 1986.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 86-39 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer to the Netherlands for defense articles and services estimated to cost $26 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

GLENN A. RUDD,
Acting Director.

[Transmittal No. 86-39]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Netherlands.

(ii) Total estimated value: Major Defense equipment, $23 million;[1] other, $3 million; Total, $26 million.

(iii) Description of articles or services offered: Ninety-nine MK 46 torpedoes in containers, torpedo spares, and technical and engineering support.

(iv) Military Department: Navy (AEQ).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: See Annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: 17 September 1986.

POLICY JUSTIFICATION

NETHERLANDS—MK 46 TORPEDOES

The Government of the Netherlands has requested the purchase of 99 MK 46 torpedoes in containers, torpedo spares, and technical and engineering support. The estimated cost is $26 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the Netherlands; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

The Government of the Netherlands plans to install these torpedoes on its new "M" class frigates. These torpedoes will improve their anti-submarine warfare capabilities. The Netherlands will have no difficulty absorbing these torpedoes into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Honeywell Incorporated, Defense Systems Division, of Hopkins, Minnesota.

Implementation of this sale will not require assignment to the Netherlands of any additional U.S. Government personnel or contractor representatives.

There will be no adverse impact on U.S. defense readiness as a result of this sale.●

[1] As defined in Section 47(6) of the Arms Export Control Act.

ADULT LITERACY AWARENESS MONTH

● Mr. QUAYLE. Mr. President, through the passage of Senate Joint Resolution 358, the month of September has been officially designated as "Adult Literacy Awareness Month." As a member of the Senate Labor and Human Resources Subcommittee on Education and as a cosponsor of the resolution, I believe this is, therefore, an opportune moment to reflect on literacy in our society, or to focus on its absence.

Researchers estimate that as many as 27 million adult Americans lack basic reading, writing, and comprehensive skills; they are functionally illiterate. Another 35 million are classified as semiliterate, and the numbers are growing. If one counts both categories, approximately 62 million adult Americans—or slightly more than one-third of the adult population—are functionally impaired and unable to make significant progress in their lives.

It is even more sobering to learn that the total is not likely to diminish under present circumstances. Various sources estimate that the number of people now in remedial training is anywhere from 3.5 to 4 million. Most of these—2.6 million—are being served in localities across the country through the Adult Basic Education [ABE] Program of the Department of Education, the remainder through a wide variety of smaller programs, both public and private. The dropout rate in these programs, however, can approach 40 percent. Thus, less than one-half of the 3.5 to 4 million in training will move out of the pool of illiterates in any given year. Meanwhile, various sources estimate that from 1.5 to 2.3 million new illiterates are being added to the pool each year. Put simply, the number of illiterates currently receiving help is miniscule compared to the scale of the need.

Illiteracy is not confined to any one economic level, to any one region of the country, or to any one ethnic or racial group. It is widely dispersed throughout the country, a problem in every community. To be sure, researchers have established a high incidence of illiteracy in economically disadvantaged groups. It would be erroneous, however, to think that the problem stops here.

Illiteracy is a fundamental problem in the sense that it is a contributing cause to many social and economic problems. Researchers have established a high correlation between illiteracy and unemployment, poverty, substandard job performance, welfare, and crime. For example, studies indicate that as much as 80 percent of our prison population is illiterate.

Lasting repercussions from the high incidence of illiteracy are clearly of a different order. The contention remains that it weakens America's defense posture because our recruiting base is affected. It also affects this country's ability to compete in foreign trade and is but one explanation for poor voter turnout and lack of participation in civic affairs.

The private and public sectors must form a coalition and embark on an anti-illiteracy program. This campaign must heighten awareness of the problem and mobilize efforts to provide help for illiterates within our communities. More specifically, this can be implemented through the aid and support of local civic, religious, literacy, and other educational organizations. No problem is more threatening to the public interest than illiteracy. At this time, cooperation is of immense significance and promise.

Four major national literacy efforts are currently in operation. As I mentioned before, Adult Basic Education is a program under the auspices of the Federal Government. A second is the U.S. military program of remediation for its own recruits. Two other privately supported programs exist, the Laubach Literacy Action serving approximately 50,000 people and Literacy Volunteers of America [LVA] serving 20,000. Corporations also provide in-service literacy help for some employees and many sponsor community literacy programs using their employees as tutors.

Additionally, in conjunction with Adult Literacy Awareness Month, Capital Cities/American Broadcasting Companies, Inc. [ABC] and the Public Broadcasting Service [PBS] have launched an unprecedented national collaboration entitled Project Literacy United States [PLUS]. This campaign against illiteracy consists of a wide range of national network broadcasts and community activities designed to raise awareness nationally and generate methods of dealing with the problems at the local level. Television stations nationwide will coordinate efforts and establish a literacy task force in each community. To date, 320 task forces have been formed.

I am pleased to note that an Indiana constituent, Ed Metcalfe, president and general manager of ABC affiliate WPTA-TV in Fort Wayne, has been actively concerned and instrumental in such endeavors. Due largely to his efforts, adult illiteracy is a public affairs priority for WPTA-TV. Metcalfe is one of a number of ABC affiliate executives who first brought this subject to the attention of ABC, and he is one of the prime forces behind PLUS.

Television and radio are often the only form of communication that can reach illiterates consistently on a large scale; it is important that they continue to do so as best they can. The combination of national media exposure and local community efforts will help the millions of adult illiterates to rec-

ognize their lack of strong reading and writing skills and become motivated toward improving them.

The problem of illiteracy is not one we were instrumental in creating, but by virtue of our malign neglect, as leaders and community members, we have for too long demonstrated a willingness to perpetuate this form of societal indifference and injustice. Do we possess the character and courage to tackle a problem which so many nations—nations much poorer than our own—have taken the initiative to forthrightly address? Our credibility as a free society and democracy is in question, particularly since roughly one-third of adult America is excluded from due democratic process and the ordinary commerce of our print society.

The chance of success for whole generations has been badly compromised by illiteracy. As leaders and concerned community members we are the privileged, empowered, and morally compelled to reverse this growing trend of illiteracy in America.●

BEYOND SALT: ARMS CONTROL BUILT UPON DEFENSES

● Mr. GOLDWATER. Mr. President, few issues command more attention in this body than those involving arms control. Today, this Nation is at a critical juncture in the arms control process. The formulas of the past have failed to meet the expectations of many people by constraining the nuclear arms competition. Perhaps more dangerously from our perspective, these formulas have failed to enhance stability by reducing the Soviet first-strike capability. Moreover, as the record of Soviet violations indicates, past arms control formulas have failed to discourage cheating, and have provided no satisfactory means to resolve these violations.

It is against this background that Our colleague from Indiana, Senator QUAYLE, has written a thoughtful and provocative article in the Summer 1986 issue of Strategic Review. His principal premise—and one that I share—is that our arms control policies must recognize the central contribution that strategic defenses can make to our deterrent posture. Strategic defenses not only offer important military capabilities, but they can also contribute in a significant way to the achievement of the objectives that we all seek in arms reduction negotiations.

Mr. President, I ask that the full text of Senator QUAYLE's article be printed in the RECORD following these remarks. Senator QUAYLE had developed a considerable expertise in the areas of strategic forces and arms control during his tenure on the Armed Services Committee, and I commend his article to the attention of my colleagues.

The article follows:

BEYOND SALT: ARMS CONTROL BUILT UPON DEFENSES

(Dan Quayle)

(The Author: Elected to the U.S. Senate in 1980, Senator Quayle (R-Ind.) has particularly distinguished himself in the deliberations of that body in the realms of defense procurement, Senate reform, job training and education. A member of the Senate Armed Services Committee, Senator Quayle in March 1985 was named Chairman of the newly established Subcommittee on Defense Acquisition Policy. Prior to his election to the Senate, he had served two terms in the House of Representatives.)

IN BRIEF

Even a formal demise of SALT may not guard against a repetition of its mistakes, captivated as arms control thinking in the United States has become by the assumptions of Mutual Assured Destruction. Especially in light of the lessons of SALT, a new arms control approach, to be viable, will have to be guided by four criteria. First, it must proceed from the principle and fact of defenses, rather than the past preoccupation with limitations on offensive forces. Second, it must be aimed at preventing first-strike postures and incentives. Third, agreements must be cast in order to encourage compliance and discourage cheating. Finally, they should be designed to facilitate offensive arms reductions through enhanced weapons survivability and improved command and control. The overriding objective, however, must be to harness the arms control process to the logic of strategic defenses in the nuclear age.

If living in the past deprives one of a decent future, the current debate over adherence to SALT is doubly threatening. Not only might this dispute be decided in favor of our persisting in an arms control vision that has failed but, more important, even its demise might not prevent a possible replay of its errors. The reason is simple: For the last two decades, SALT and its faith in Mutual Assured Destruction (MAD) have been what arms control has been all about.

Yet, it is precisely because of this identification, as well as continued public interest in pursuing arms negotiations, that there is a need to establish new criteria for arms control. These criteria, which themselves reflect on the critical failures of SALT, are the following:

1. Establish a clear focus on the effect of defenses (and not merely offensive forces) on the military balance.

2. Reduce incentives for first-strike postures.

3. Discourage cheating.

4. Encourage arms reductions through the enhancement of weapons survivability and command and control.

MAD AND THE U.S. DEFENSE MYOPIA

The first criterion is overriding. Indeed, failure to consider the effect which deployed defenses exert on the strategic balance was SALT's fatal flaw—one which underlay all its other failings.

A key premise behind SALT was that neither side would acquire significant strategic defenses once arms control was agreed to. These constraints on defenses were critical in U.S. negotiators' eyes to assure that both superpowers remained vulnerable to attack. With such vulnerability assured, they reasoned, neither side would feel compelled to build more and more weapons. Instead, equal limits on offensive arms could be agreed to, and these limits could then be lowered in future arms agreements.

On the same day the SALT I Agreement on Offensive Forces was signed in 1972, the ABM Treaty was signed as well. In fact, these arms limitations represented two sides of the same coin. As Henry Kissinger explained at the time:

By setting a limit to ABM defenses the treaty not only eliminates one area of potentially dangerous defensive competition, but it reduces the incentive for continuing deployment of offensive systems. As long as it lasts, offensive missile forces have, in effect, a free ride to their targets.

The goal was to assure both sides the ability to answer any nuclear attack with an unacceptably destructive reply. Such Mutual Assured Destruction (MAD) would be accomplished by two steps. First, strategic defenses would be constrained so that even a small number of missiles surviving an attack could be certain of penetrating to the attacker's territory and inflicting massive damage. Second, offensive weapons would be reduced so that there would be too few to destroy many military targets but more than enough to wipe out most of the opponent's cities.

By this logic, the ABM Treaty was paired with the SALT I Agreement on Offensive Forces. Later followed a negotiated protocol to the ABM Treaty which reduced the number of ABM sites permitted to both sides from two to one. Finally SALT II was negotiated and signed, but never ratified by the U.S. Senate.

In theory, all of this seemed to make sense. There were but two problems. First, the Soviets never accepted MAD—in fact, one can speculate that they probably believed all along that the concept was accurately described by its acronym. Second, they entered the ABM Treaty not because they disbelieved in the viability and value of strategic defenses in the missile age—let alone were willing to foresake pursuit of such defenses—but on the assumption that the treaty would give them an ultimate edge in that arena.

The U.S. decisionmakers at the time refused to recognize Soviet motivations and intentions, but they should have come as no surprise. In 1967, just prior to the SALT I talks, Soviet Prime Minister Aleksei Kosygin made it clear that the Soviet Union intended to protect itself against strategic attacks. In retrospect, his statements in February and June of that year came close to the language used sixteen years later by President Reagan in his summons to a Strategic Defense Initiative. Kosygin argued:

. . . A defensive system, which prevents attack, is not a cause of the arms race but represents a factor preventing the death of people.

. . . If, instead of building and deploying an anti-ballistic missile system, the money is used to build up offensive missile systems, mankind will not stand to gain anything. It will, on the contrary, face a still greater menace and will come still closer to war.

Beyond these elementary considerations, however, the Soviets saw in strategic defenses the road to enhanced Soviet military power. Three years before the SALT talks, Major Genral Nikolai Talensky had explained that "the creation of an effective anti-missile system enables the state to make its defenses dependent chiefly on its own possibilities, and not only on mutual

deterrence—that is, on the goodwill of the other side." This point was made even more explicitly in the Soviet General Staff journal, Military Thought, where, in a featured article in 1967, it was argued that "a most important factor which makes it possible to accomplish the task of changing the correlation of forces in one's own favor is anti-air defense (anti-missile and anti-space)."

The Soviets, of course signed the ABM Treaty. They did so, however, not because they subscribed to MAD, but because they calculated that the treaty would have the effect of slowing U.S. ABM efforts far more significantly than constraining their own efforts. They knew that their ABM program in the late 1960s lagged behind U.S. ABM advances by some fifteen years. They saw the treaty as giving them the cushion of time to catch up, recognizing that in the meantime, even under the treaty's constraints, they could continue to deploy an ABM system around Moscow, as well as air defenses, a civil defense program, and passive defensive measures such as the hardening of of command bunkers and missile silos.

The Soviet's motives are beyond speculation. In 1967 and 1968 published Soviet military analyses conceded that Soviet ballistic missile defense capabilities were practically nil, while the Nike-X ABM system under development in the United States, once deployed, could dramatically change the "correlation of forces" in the U.S. favor. Nor did the Soviets go to great pains to hide their intentions in the negotiations process. Coincident with the ABM Treaty's ratification, Minister of Defense Marshal Andrei Grechko made a point of noting that it "imposes no limitation on the performance of research and experimental work aimed at resolving the problem of defending the country against nuclear missile attack.

After 1972 Soviet investment in strategic defenses continued apace—to the point where, by the early 1980s, it probably exceeded their expenditures for offensive strategic arms. Whereas in the 1960s the comparative allocation to ballistic missile defense development in the United States and the Soviet Union came to an estimated 2-to-1 in America's favor, by 1980 that ratio had shifted to roughly 5-to-1 in favor of the Soviets.

Finally, although the Soviets said less about the role of strategic defenses after the signing of the ABM Treaty, what they did say was disturbingly clear. In 1976, for example, Marshal G.V. Zimin, Chief of the Military Academy of the PVO Strany (a separate military service dedicated to providing strategic defense) wrote as follows:

. . . Now victory or defeat in war has become dependent on how much the state is in a position to reliably defend the important objects on its territory from the destruction of strikes from air or space.

The enormous destructive power of nuclear warheads raises the necessity of destroying all targets without exception, which accomplish a breakthrough into the interior of the country from air or space.

All of these conditions put before the air defense complex and responsible tasks, the resolution of which will be determined by the ability to repulse strikes not only of aerodynamic but also of ballistic means of attack.

The Soviets, then, never accepted the concept of mutual deterrence through mutual vulnerability. Their rejection, however, never applied a brake to the continued pursuit of that theory by the United States. Whereas the Soviets deployed extensvie strategic air defenses, we dismantled ours. Whereas they developed and deployed two separate generations of ABM systems, we dismantled our first and only system. Whereas they developed anti-tactical missile systems, such as the SA-10 and SA-12, capable against some U.S. strategic ballistic missiles, we cancelled our original plans to give U.S. anti-aircraft missile systems such capabilities. Finally, while they continued to harden their military assets and to train their population in civil defense, the United States stopped all substantial hardening of its silos by the early 1970s and virtually abandoned its civil defense program.

Added to the absurdity of this asymmetry was the continued U.S. faith in pursuing equal limits on offensive arms under SALT. While the Soviets deployed several thousands air-defense interceptor planes, nearly 10,000 air-defense radars, and over 10,000 surface-to-air missile-launchers—and U.S. air defenses became virtually nonexistent—the United States nevertheless bargained in SALT II for equal sublimits on heavy bombers and air-launched cruise missile carriers. We also saw merit in equal sublimits on MIRVed submarine ballistic missile launchers and MIRVed land-based ballistic missiles—even though, again, the United States had virtually no active defenses against these weapons, while the Soviets either deployed or were developing extensive active and passive defenses.

By our ignoring, or wishing away, the impact of deployed defenses on the military balance, these "equal" SALT limits were anything but equal in their effect. Consider SALT's equal sublimits on slow, second-strike weapons such as bombers and cruise missiles. Given the Soviets' superior air defenses, all the equal limits accomplished was to exaggerate existing asymmetries.

In order for this pitfall to be averted in the future, defenses must be integrally factored into proposed arms control limits. We should make it axiomatic that the number of offensive systems of a given type on either side be tied to the level of defenses deployed against them. Especially since U.S. defenses are weak or nonexistent, arms limitations undertaken for the sake of "balance" and "stability" should be designed to permit the strengthening of defenses rather than the bolstering of offensive forces on either side.

The Soviets recognize only too keenly the military value of defenses. It is critical that we recognize that value as well, and that we convey to the Soviets very bluntly that arms reductions in the future will be dependent upon our deployment of defenses. If we really want to see offensive arms reduced and to deny the Soviets confidence in their first-strike capabilities, then capable defenses are in *sine qua non* both for secure force postures and for sensible arms limitations.

THE CRITERION OF PREVENTING FIRST-STRIKE

This, then, brings us to the second criterion: that arms agreements should reduce the likelihood of war—or, conversely, that they should not permit leeway for either side to aspire to a first-strike posture. SALT clearly failed this criterion. That it did, however, was itself largely due to the casual approach to defenses.

As was noted, Kissinger believed that, with the limits imposed on ballistic missile defenses, the incentive for continued deployment of offensive systems would be reduced, since they would enjoy "a free ride to their targets." SALT I was seen as the first step in this offensive arms limitation process. It basically froze the number of ballistic missile launchers at 1972 levels.

SALT II thereupon was supposed to plow real reductions into those offensive forces. As the U.S. SALT negotiator Gerard Smith explained: "I think they [the Soviets] are interested in getting a more definitive missile limitation than at present. . . . I have reason—I have hope that they will reduce the numbers and, perhaps, enter into some sort of qualitative limitations affecting size, yes, throw-weight." As in the case of U.S. hopes concerning strategic defenses, however, the Soviets did not accommodate. Instead they strove to expand their military advantage.

The United States tried in SALT II to apply limitations to more than just missile-launchers. Thus, for example, the U.S. hoped for a curtailment of heavy missiles. Yet, the Soviets resisted, and with good reason. In 1972, when the SALT I Agreement basically froze the number of missile-launcher forces on both sides, the Soviets commanded a strategic force of missiles much heavier than those deployed by the United States, but almost entirely consisting of single-warhead systems. They knew that, with SALT limits focused primarily on launchers, they could multiply their capability by MIRVing their heavy missiles.

In 1972, the Soviet Union possessed no more than 1,500 warheads on their land-based missiles forces. Today that number is approximately 6,500 warheads—almost all highly accurate, hard-target "silo-busters." The ICBM warhead inventory of the United States meanwhile has remained static. The reasons for this disparity are clear in retrospect. First, U.S. policymakers felt that additional warhead limits were not needed because sooner or later the Soviets would embrace the wisdom of MAD, stop their build-up of offensive systems and seek reductions. The second reason was physical: the United States could not aim at substantial increases in its stockpile of warheads because by 1979 the U.S. force consisted of much smaller missiles that already were highly fractionated.

In 1972 there were approximately 2,000 ICBM warheads in the U.S. inventory. Today the number is virtually the same. Meanwhile, however, within the SALT "constraints" the Soviets have amassed a ratio of over five prompt ICBM silo-busting warheads to every U.S. hard target, while the comparable U.S. warhead inventory cannot even match the number of Soviet missile silos.

Should we continue to adhere to SALT, this trend will only worsen. By 1990 the Soviets may be able almost to double their ballistic missile warhead inventory. By contrast the United States would have to reduce its inventory by at least 200 to allow for the replacement of old, highly fractionated missiles with newer, less fractionated ones—as, for example, in the substitution of Trident D-5 for Poseidon systems.

The Soviets did not "merely" accomplish first-strike advantages under SALT: they also managed to dampen the best U.S. means of retaliation. Specifically, in order to secure SALT II's limits on ballistic missiles, the United States yielded to Soviet pressure to restrict the one U.S. weapon system—long-range air-launched cruise missiles (ALCMs)—that is ideal for deterring a Soviet attack. ALCMs are slow. These are not first-strike weapons, but are best suited for retaliatory strikes. Moreover, if fitted with advanced guidance systems and conventional warheads, they can be substituted

for nuclear weapons in important missions. Most significant, the more ALCMs are deployed by the United States, the more the Soviets must invest in air defenses at the expense of offensive weapons capable of striking the United States or its allies. Undoubtedly it was in light of these considerations that the Soviets demanded that SALT severely limit ALCM-carrying bombers. The consequence is that, under SALT II, of the U.S. force of 257 bombers only 120 are permitted to carry long-range ALCMs. For every bomber beyond that number to be fitted with ALCMs, the United States would have to eliminate one multi-warheaded ballistic missile launcher.

"Limits" that encourage a disadvantageous competition in first-strike weapons, and that repress our competitive advantage in second-strike weapons systems, only increase the Soviets' incentive to threaten attack. This is the last thing than any arms agreement should do. Future negotiations must be aimed at redressing this horrendous legacy of SALT by focusing reductions and constraints on prompt, hard-target weapons systems, while even loosening the limits on such second-strike systems as ALCMs. At the very minimum, the dangerous yardstick of missile-launchers must be replaced by more meaningful denominators and incentives of "balance."

THE CRITERION OF COMPLIANCE

This brings us to the third criterion—that agreements be designed to encourage compliance and to deter cheating. Probably more had been said about the failure of SALT in this respect than any other. Yet, all too few commentors have linked this failure to the MAD assumptions concerning the prohibition of defenses and the inevitability of offensive reductions.

The linkage is significant. Because it was hoped that restrictions on defense would lower incentives on both sides to build more offensive systems, the assumption took hold that the precise number of offensive systems available to either side would not really matter—that eventually those systems would be scaled down. As Kissinger explained, with ABM limits in place, each side would be so open to attack that "beyond a certain level of sufficiency, differences in [offensive systems] numbers are therefore not conclusive."

This perspective spilled into the language of the SALT agreements themselves. Although detailed restrictions of the number, size and payload of missiles on both sides would have been preferable, it was deemed adequate to place limits on missile-launchers and to impose only vague restrictions on the quality and potency of the missiles themselves. After all, how well SALT protected against the development of modernized missiles did not seem important if the Soviets were assumed to have no incentive to produce them. What mattered more, in the context of verification, was a clear yardstick for measuring compliance—i.e., missile-launchers. Nearly every other SALT limit, in the face of Soviet resistance, was poorly defined.

Another consequence of this mindset was that the monitoring of SALT provisions beyond launcher limitations in effect became hostage to the Soviets' good faith. Simply by increasing telemetric encryption, for example, the Soviets were able to obstruct almost entirely the U.S. ability to verify their compliance with the SALT II restrictions on missile modernization.

Finally, there was a general presumption that the Soviets would recognize it to be in their best interest to comply with SALT. As a consequence, the only mechanism provided in SALT to deal with compliance problems was a Standing Consultative Commission. This commission could receive complaints, but had no power to resolve them. The only way compliance could be enforced in disputed cases was for the aggrieved party to threaten abrogation of the agreement or treaty itself.

SALT, then, combined the worst of all worlds with respect to the compliance factor. The presumption that compliance would obtain—or that, at least, violations would not matter heavily—was tragically mistaken. The Soviets did violate; the violations did make a difference in the strategic balance; and they proved difficult to challenge, let alone to redress.

In the future, arms control agreements must incorporate incentives for compliance stronger than incentives to violate. A partial answer, beyond more rigorous definitions of limits and restrictions, may lie in the principle of self-regulation implicit in "self-defense-zone" arrangements recently proposed for space. One might also try to tie explicitly the deployment of systems that can be detected to proof of the existence of other, less detectable systems or measures.

For any of these methods to be of much value, however, the agreement itself should be inherently tolerant of violation disputes. If violating the agreement would result in a significant increase in one or the other side's military power or a major diplomatic crisis, the agreement itself should be considered part of the problem. This again recommends the need for active and passive strategic defenses as a hedge against violations and possible treaty breakouts.

THE CRITERION OF INCENTIVES FOR REDUCTIONS

We now come to the last criterion: that arms agreements should encourage offensive arms reductions by enhancing weapons survivability and improved command and control.

SALT never addressed this criterion and actually worked to undermine it. It did so in two ways. First, the champions of SALT denigrated the entire notion that nuclear weapons be used to target the other side's weapons. They key to the "balance" to be fashioned by SALT was to be the recognition by both the United States and the Soviet Union that, irrespective of what either might undertake to attack the other, it could not preempt or prevent the opponent's ability to inflict retaliatory blows amounting to hundreds of millions of civilian casualties for the offender. Enhancing weapons survivability was virtually the last concern in SALT.

Second, because the compliance issue in SALT focused on missile-launchers, most of which could still be spotted and counted by "national technical means," a dim view was taken of mobile missile systems, which could not be thus monitored. Further deployments of Soviet mobile SS-16 missile-launchers were banned, as were deployments of long-range cruise missile before December 1981. MIRVed cruise missiles were prohibited altogether. As we have noted, severe limits were placed on numbers of air-launched cruise missile carriers, and specific provisions were drafted to make these carriers clearly distinguishable from ordinary bombers. Finally, a dual conventional-nuclear capability for ALCMs was discouraged by requiring all such systems to be counted as if they were nuclear.

Ultimately, none of these restrictions proved adequate, and it is doubtful whether they were worth the effort of drafting in the first place. Mobility, after all, imposes on the enemy an increase in the number of target-points at which he must aim. In terms of survivability, therefore, mobile missiles substitute for greater numbers of static missiles. It is thus elementary that mobility can serve the ends of arms reductions and should be encouraged within limits, notwithstanding the complications it may present to the verification process.

Moreover, mobile missile-launchers could help the transition to the primacy of strategic defenses in two ways. Not only could they justify reductions in offensive forces, but they could also help increase the effectiveness of early, active defense systems which are expected to be preferential—i.e., concentrated to protect a particular aim point in a manner unknown to the attacker, thereby compounding his uncertainty problem.

By the same token, improvements in command, control, communications and intelligence (C^3I) offer an even greater force multiplier than mobile missiles. The better and more survivable is command and control, the fewer the weapons that are needed to perform a given mission, and the lower are the risks of false alarms and accidental launch. Again, inasmuch as C^3I would constitute priority protection for strategic defenses, this emphasizes their role in underpinning reductions in offensive systems.

THE CRITERIA APPLIED TO CURRENT PROPOSALS

Giving due consideration to the effects of defenses on the military balance, reducing the Soviets' incentive to strike first, discouraging cheating and enhancing compliance, and encouraging arms reductions by improving weapons survivability and their command and control—these are the four criteria by which new arms control proposals should be judged. Do current U.S. proposals meet those criteria?

The answer, unfortunately, is uncertain. Both the INF and START proposals of the United States appear to be aimed, like SALT, at roughly equal levels in offensive systems, without due consideration of the superiority of Soviet passive and active defenses against theater and strategic systems. Both proposals call for deep cuts in offensive forces, but it is not clear that these reductions would reduce the likelihood of Soviet first-strike capabilities, given the Soviets' superior ability to defend against a Western retaliatory attack, as well as the number of U.S. targets that our proposals themselves would remove from the Soviet target lists.

Also, both proposals seem bare of any new methods to ensure compliance—even though with deep cuts the risks associated with violations or "breakout" rise commensurately. This concern is significant. The Soviets have designed their missile launchers to fire additional missiles, or "reloads." Precisely how many such "reloads" there might be deployed or in covert production is difficult to determine—and becomes a question of heightened concern with deeper arms reductions.

Similarly, the effectiveness of the Soviet nuclear force could be multiplied with improvements in accuracy that are virtually impossible to verify effectively or prevent. Instead of requiring three warheads to destroy every hard target, for example, with increased precision missile guidance the Soviets could reduce that requirement to two warheads, and ultimately to one. And they could accomplish this in many cases by

modernizing only the reentry vehicle, not the missile itself. Again, deep cuts in offensive launchers and warheads only increase the risks associated with not identifying these activities.

In the case of theater arms control, such verification problems are even more acute. The key reason is that not only intermediate-range Soviet SS-20 missiles and U.S. Pershing-2s and GLCMs are to be limited, but also shorter-range Soviet systems such as the SS-21, SS-22 and SS-23. Unlike the SS-20, these missiles are dual-capable, are assigned to Soviet military units much as artillery, require no prepared launch sites, and can be moved and refired within minutes.

Moreover, because these "shorter-range" missiles can potentially reach targets within ranges of up to 1,000 kilometers—and by the 1990s are expected to command accuracies of within 50 feet—it is quite likely that, armed with chemical and improved conventional warheads, they could destroy virtually all of NATO's key military assets that heretofore were assigned to nuclear warheads. The upshot of this is that even if an agreement were reached whereby the Soviets would dismantle their SS-20s, and they denuclearized their dual capable SS-21s, SS-22s and SS-23s, they could still effectively threaten virtually all important targets with these shorter-range systems.

In the case of U.S. proposals on strategic arms, serious consideration apparently has been given to the idea of purchasing Soviet offensive cuts in exchange for a U.S. pledge not to deploy defenses for a specified number of years. Rather then encouraging strategic defenses, this would have the effect of delaying, perhaps indefinitely, any U.S. defense deployments.

Finally, the U.S. strategic arms proposal would ban mobile missiles. This may make sense in the short term, since the United States does not yet have a mobile missile of strategic range and is experiencing difficulty in locating mobile Soviet system. Yet, in the longer run such a ban would foreclose any U.S. option of mobile missiles of its own. In this regard, the strict limit of 1,500 ALCMs contained in the U.S. proposal also may be contrary to our interests, for reasons that have been outlined above.

More generally the bitter lessons of the past must be pondered more carefully as we pursue arms control beyond SALT II. It would appear that whatever course we take will have to be based on defenses. Not only will we have to exploit active and passive defenses in our efforts to redress the military imbalance we currently face, but we may have to resign ourselves to arms agreements much more modest in scope than in the past.●

CONGRATULATIONS TO ROBERT WINER ON HIS 60TH BIRTHDAY

● Mr. LAUTENBERG. Mr. President, on September 29, Robert Winer, a close personal friend and longtime resident of Paterson, NJ, will celebrate his 60th birthday. Today I want to offer him my congratulations.

Besides our personal friendship, I offer special recognition to Bob Winer today because of the contributions he has made to Paterson, my birthplace, and to the State of New Jersey. Bob Winer believes deeply in our democratic system. He supports that commitment by maintaining the manufacturing and production of products in the United States despite the attraction of lower cost production overseas and the very seductive benefits of foreign credit assistance and facilities.

Mr. President, Winer Industries, has its national headquarters in Paterson, NJ, where Bob's father started the family business almost 50 years ago. His father came to these shores without knowing what was ahead. But he had a deep belief that America was the country in which he wanted to live and bring up his family. Winer Industries now employs more than 1,000 people from Paterson, NJ, to Tennessee and Arizona. Winer Industries is a company which exemplifies not only good business leadership, but community leadership as well. That is because Bob Winer made it his personal mission to train and employ those without the career choices higher education affords.

In cities across America, company after company has deserted the urban setting in which they started. But Bob Winer has resisted this temptation. Instead, he has created a modern facility, employing people in productive labor near their homes and families.

Winer Industries produces competitive, high quality products because the spirit of its employees and management combined leads to production of the best products in their price line that customers can buy. As a result, Winer Industries was selected as one of the 100 best suppliers of 12,000 that service Sears Roebuck & Co. This award brought credit to the company and its workers and reflects the determination of Bob Winer to continue the legacy his father left behind. His mission is to be competitive in his industry, but to treat his employees and customers fairly, and to reinvest in facilities and new products to continue the family dream.

All of us in New Jersey take pride in Bob Winer's accomplishments and business leadership and wish him continued good health, happiness and success. I am pleased to call him my friend.●

ABORTION AND INFORMED CONSENT: CONNECTICUT

● Mr. HUMPHREY. Three of the women who have written me have done so anonymously, and this letter from Connecticut is one of them. This young woman communicates with aching honesty the reality that the consequences of abortion are permanent. It is not a quick fix for an unplanned pregnancy. Everyone knows adoption and parenting are permanent. But abortion advocates attempt to make abortion appear to be an escape from the consequences of pregnancy. This deception has worn thin for many who have experienced the consequences of abortion.

The ruse is quite convincing on the surface. "The blob of tissue to be vacuumed out" has been ruled by the Supreme Court to be a non-person. Abortionists claim that the procedure is "safe and legal." Once the "products of conception" are removed from the mother the problem has been solved. Out of sight, our of mind!

Well, if this procedure is so safe and simple why am I getting all of these letters? If it is a solution suited to helping a woman avoid the permanent "complications" of pregnancy, why are these women so miserable? These are women with a wide diversity of economic, cultural, racial, educational and religious backgrounds. But they all agree on this one point: "Why didn't anybody tell me it would be like this?" Why is there so much grief, guilt and sadness among these women?

There are at least two reasons for these reactions, indicated by the women themselves. The first is that they are angry about proceeding to have an abortion without sufficient information regarding what they are doing. They feel demeaned and betrayed. The second is that they know they have destroyed far more than a blob of tissue. They have come to realize that they have killed their babies. I hope my colleagues will join me in cosponsoring S. 2791, in order to help women avoid making the same mistake over and over again in the future.

The letter follows:

July 29, 1986.

DEAR SENATOR HUMPHREY: I had my abortion almost five years ago when I was 19 and my boyfriend was 22. That "boyfriend" and I are now married. I found out I was pregnant on a Saturday afternoon and had the abortion the following Tuesday morning. Who can make an important decision rationally like that in two days? The people at the clinic never encouraged me to tell my parents or a clergy person even though they knew I wasn't married. I can so vividly remember the woman at the clinic pulling out her calendar book and scheduling me in as if it were a dentist or hair dressing appointment.

Our 20th century society neglects to inform women about the horrible side effects of an abortion. Thank God, I did not have any physical ones. No one ever explained to me that I would undergo so many emotional, psychological and mental aftereffects (By the way, I was chosen out of a third grade class of 30 students as the "most stable." I am now an electrical engineer—a graduate of a quite prestigious engineering college.) The people at the clinic never told me about the beginning of life, of a fetus forming. They just told me about "the blob of tissue to be vacuumed out." They never told me about the depression, anger, anxiety, fears, and self-hatred I could and would experience after abortion. They didn't tell me I would lose sleep and my appetite for weeks or be uneasy around babies, children, pregnant women and people in general, because I thought I was such a terrible person and was capable of hurting others. They never told me I would hate myself so much that I would actually have suicidal thoughts. They never told me I would seek

professional help to overcome my feelings of guilt and grief and be put on tranquilizers and anti-depressants. No one ever told me how broken my soul would be.

Although every woman's story is different, they are in so many ways the same. The major factors to overcome are guilt and grief. We are all sorry for what we have done, we have repented and we must forgive ourselves in order to carry on. The saddest thing for anyone affected by abortion (and this tragedy not only affects the woman, but all those touched by it—fathers, grandparents, etc.) is that it is irreversible. It is not as if we can punish ourselves a certain amount or advocate pro-life issues for X number of months and then our babies will be back. That isn't feasible. My husband and I would do anything to have our baby back.

Thank you for this opportunity.

ANONYMOUS,
Connecticut.●

GRAMM-RUDMAN-HOLLINGS

● Mr. MOYNIHAN. Mr. President, there are now 11 working days before the scheduled October 3 adjournment during which Congress must, among other things: pass reconciliation legislation that will reduce the deficit by about $15 billion; reach final agreement on all 13 appropriations bills; vote on the joint resolution incorporating the "sequester" report issued by OMB and CBO and reported by the Temporary Joint Committee on Deficit Reduction; and, raise the debt ceiling for fiscal year 1987.

The reconciliation bill was laid down last evening.

The bill would reduce the deficit some $3.7 billion; but, it is estimated that we need another $15 billion, or so, to reach a deficit of $154 billion.

Gramm-Rudman-Hollings was passed, in large part, to impress upon those in the financial markets that Congress was serious about reducing our massive deficits. Some thought that by placing into law an automatic budget-cutting mechanism, investors on Wall Street and throughout the Nation would know that the budget would be balanced in 6 year's time. All would then rest assured that interest rates would be lower because the Government would not absorb so great a percentage of available capital for the financing of Government debt. Investment would abound, and the economy would expand. So it was thought.

The Supreme Court struck down the automatic deficit-reduction mechanism on July 7. Still, the citizenry was told that there was a backup provision of the law by which Congress would reach the specified deficit targets.

Apparently that was not enough of an assurance, even for the sponsors of the legislation; indeed, the Senate spent several days in August trying to refine the automatic across-the-board budget cutting mechanism so it could pass constitutional muster.

That effort failing, we are now operating on our own.

I am certain that, before we leave on October 3, or 4, or 10, we will tell the public that as a result of our actions in these last weeks of the 99th Congress, the deficit will be $154 billion in fiscal year 1987.

I am just as certain that, on September 30, 1987, at the end of upcoming fiscal year, it will be announced that the deficit turned out to be much higher—perhaps $170 billion, perhaps $180 billion. In any event, we will be a long way from our fiscal year 1988 target of $108 billion, and the windfall of $9 billion collected by the Treasury in fiscal 1987 will turn to a shortfall of about $17 billion in fiscal year 1988.

What do private sector economists think of Gramm-Rudman-Hollings and the assurance of Congress? In the August 17 Washington Post, Alan Greenspan was quoted as saying:

It has become increasingly evident in recent weeks that the $144 billion target set for fiscal 1987 followed by a 1988 target of $108 billion is probably unreachable.

The Business Outlook section of Business Week magazine, in the September 22, 1986, edition, noted:

• • • There is little chance that next year's deficit will come even close to the Gramm-Rudman Act target of $144 billion. Indeed an analysis of 1987 budget proposals leads budget specialists at the Conference Board to conclude that next year's deficit will be about $225 billion.

That would be only a slight improvement over this year's red ink and a staggering $81 billion above Congress' goal.

In August, Data Resources [DRI] predicted a fiscal year 1987 deficit of $177.4 billion; in September, DRI is a bit more sanguine: $165.2 billion.

The September blue chip financial forecast surveyed leading economists, and reported that the average fiscal year 1987 deficit projection of the 10 most optimistic economists was $177 billion. The average of the 10 most pessimistic projections was a fiscal year 1987 deficit on $213 billion.

Clearly, private economists do not believe what Congress is telling them.

We should not say we will do something, or have done something, when we know the actual outcome will be different. To do so is to deceive. Such deception could lead to a loss of the public's trust in Congress. We ought not allow that to happen.

We should do what we can to reduce the deficit, but should not say we have done something we have not actually achieved. The public may forgive us for not being able to hit a specific deficit target; we will not be forgiven for misrepresentation of the facts.●

THE NATIONAL PEACE QUILT

● Mr. LAUTENBERG. Mr. President, the Peace Quilt, a quilt lent to supporters by Peace Links, has become an important symbol of our country's determination to live in a world free from the threat of nuclear war. The Peace Quilt is a compilation of American childrens' drawings, expressions, and dreams about world peace. All 50 States are represented on the quilt to demonstrate shared hopes and dreams for peace. I am proud that my name will be embroidered on the Peace Quilt next to the patch from New Jersey.

The joining of these patches in the Peace Quilt is an eloquent reminder that no State in this Nation alone can reduce the threat of nuclear war. It has reminded every Senator, Representative, and administration official that nuclear war is among the most critical issue facing our Nation and the world today. That we must work together to reduce the threat of nuclear holocaust. And that American childrens' hopes for peace are inextricably linked to our combined resolve and efforts to reduce the threat of nuclear war.

But the national Peace Quilt has become an important global symbol as well. The hopes and dreams of every child embroidered in the quilt are a reminder that all nations must redouble efforts to curtail the arms race. Every youth's drawing reminds us that all countries must work together in this effort. We must agree to restrain the growth of dangerous weapons systems and support arms control negotiations. All countries must cooperate if we are to live in a safe world, free from the threat of nuclear war.

Mr. President, many residents of New Jersey have played an active role in the grassroots peace movement and in Peace Links. These dedicated women have demonstrated their resolve and commitment to ensuring peace and to protecting the world from the perils of nuclear holocaust.

But New Jersey residents have actively participated in other peace organizations as well. Thousands of individuals in New Jersey have become increasingly involved in peace organizations like SANE, the Women's International League for Peace and Freedom, Educators for Social Responsibility, Physicians for Social Responsibility, and Lawyers Alliance for Nuclear Arms Control. Their presence has been strong in the religious groups, unions, and municipal and county governments in New Jersey which have worked hard to ensure that arms control remain a top priority here and throughout the world. And, increasing public concern about world peace in New Jersey convinced the New Jersey Legislature to create America's first State peace institute.

New Jerseyites understand the horror and total destruction that nuclear war would bring to our Nation, our community, our families, and our friends. They recognize the need for an end to the nuclear arms race. I share the concern of members of our community who are giving this inter-

national issue a local focus. And, I join them in the hope that greater public awareness will prompt effective steps to back away from nuclear war.

Mr. President, the patch in the National Peace Quilt from New Jersey sends a message of hope to the world. This patch displays a drawing of a 9-year-old child from New Jersey who etched a cheerful young girl dancing on flowers beneath a colorful rainbow. Above the dancing girl, the child drew a sun in the shape of a smiling heart. The caption on the block reads "Please give me peace."

Mr. President, we must work to make sure that this child's dreams and hopes are not crushed.●

NAUM AND INNA MEIMAN: LIFE SENTENCE

● Mr. SIMON. Mr. President, Naum and Inna Meiman, two good friends in Moscow are frantic in their desire to leave the Soviet Union.

Their quest for freedom in the West has now reached the point of desperation. Inna has lived for months with yet another cancerous tumor—her fifth—on her spine. The Soviets say that there is nothing more that they can do for her. Left to die a painful death in Moscow, Inna and Naum still have hope that they will be able to travel to the West to obtain experimental treatment for Inna.

Over a decade has passed since the Meimans original request for emigration. It is now a matter of life or death.

I strongly encourage the Soviets to demonstrate their concern for fellow human beings and allow the Meimans to emigrate to Israel.●

ARMS TALKS

● Mr. SIMON. Mr. President, recently the Washington Post's Sunday Outlook section featured an excellent article by Michael Krepon, an expert on the politics of arms control verification at the Carnegie Endowment for International Peace. Mr. Krepon's article skillfully details the demise of the Standing Consultative Commission [SCC], set up in 1972 as part of the SALT I agreement to monitor compliance with the SALT and ABM Treaty limits.

The SCC had long been an important panel to resolve disputes, a place where United States and Soviet concerns were successfully settled in a professional setting. This was the case until 1981, when the Reagan administration came to office. Shortly thereafter, Assistant Secretary of Defense Richard Perle led the charge against the SCC. His goal has been to scuttle the SCC as a useful negotiating forum and to keep problems unresolved so that outstanding compliance issues prevent arms control from moving forward.

As Mr. Krepon's article shows, General Ellis, our Ambassador to the SCC, needs a bureaucratic sponsor. The Pentagon has prevented Ambassador Ellis from negotiating a solution to several pressing problems, such as dismantlement and conversion procedures for bombers counted under SALT rules. I hope the State Department and the Arms Control and Disarmament Agency do the right thing and push the SCC's case before President Reagan.

Mr. President, I ask that Michael Krepon's article, "How Reagan Is Killing A Quiet Forum For Arms Talks," be printed in full in the RECORD.

The Article follows:

[From the Washington Post, Aug. 31, 1986]

HOW REAGAN IS KILLING A QUIET FORUM FOR ARMS TALKS

(By Michael Krepon)

In its crusade against alleged Soviet arms-control violations, the Reagan administration has nearly scuttled the secret U.S.-Soviet forum that was created to resolve such disputes.

The Standing Consultative Commission, as this little-known forum is called, was established in 1972 to monitor compliance with the SALT and ABM agreements that were negoiated that year. During the 1970's, quiet consultations in this secret channel produced important results, including agreements on procedures for dismantling missile launchers and guidelines for permissible weapons tests.

But hardliners in the Reagan administration decided early on that they weren't interested in using the SCC as a practical forum for hammering out compromise agreements on treaty compliance. Secretary of Defense Caspar Weinberger and his assistant, Richard Perle, preferred to denounce the Soviets for violating the SALT and ABM agreements, rather than to negotiate solutions to these problems in the SCC.

Weinberger's disdain for the SCC was evident in a memorandum he sent to President Reagan last November, in which he called the commission "a diplomatic carpet under which the Soviet violations have been continuously swept, an Orwellian memory hole into which our concerns have been dumped like yesterday's trash."

The civilian hardliners at the Pentagon found an unlikely adversary during the past four years in Gen. Richard Ellis, a survivor of more than 200 combat missions during World War II and a former head of the Strategic Air Command. As the chief American representative on the SCC, Ellis expected that his main adversary would be the Soviet commissioner. Instead, he has been caught in seemingly endless bureaucratic battles with Perle and Co.

This is the story of the breakdown of the SCC, a story of Soviet misbehavior that has been matched and compounded by administration officials who have exploited compliance controversies and blocked their resolution. U.S. and Soviet misbehavior has been mutually reinforcing, creating a political impasse that casts a dark shadow over current negotiations. This account is based on interviews with several dozen U.S. officials, who agreed to discuss the SCC's activities on a not-for-attribution basis. Ellis himself refused to discuss SCC matters, on or off the record.

American hardliners have hobbled the SCC by pursuing their strategy of confrontation. They start by asking for ideal solutions to compliance problems raised by Soviet actions. When the Kremlin refuses to accept these demands, the Reagan administration labels Moscow's actions as treaty violations. The United States then continues to demand ideal solutions, while refusing to negotiate alternatives that might also serve U.S. security interests. The blemished record of Soviet compliance is then used as a basis for withdrawing from SALT agreements.

A crippling blow to the SCC was struck last month, when the Reagan administration decided to remove most U.S. compliance concerns from the SCC's agenda. At a special session requested by the Kremlin to clarify the Reagan administration's declaration that SALT limitations "no longer exist," Ellis was instructed to tell his Soviet counterpart that, in the future, the administration would restrict compliance discussions to the ABM treaty. Conspicuously missing from this formulation was any reference to two other agreements within the commission's jurisdiction—the 1972 interim agreement on offensive missiles and the unratified SALT II treaty.

The special session marked a new low for the SCC. It demonstrated that the commission has evolved from a discreet channel for solving arms-control problems to a forum where each side now repeats carefully scripted accusatios of the other's misdeeds. This is a far cry from SCC deliberations in prior administrations, when very sensitive discussions took place and U.S. officials were able to achieve concrete results. For example:

Soviet agreement to provide detailed and graphic descriptions of missile launch-control facilities that they had under construction, alleviating U.S. concerns about their possible use as ICBM launchers. This exchange and others like it in the SCC opened an important window on Soviet military practices that had previously been closed.

Two 1974 protocols on procedures for dismantling missile launchers in excess of those permitted under SALT I, and a third protocol signed in 1976 detailing how the location of a permitted ABM site could be changed.

A lengthy "agreed statement" signed in 1978, regulating tests of air defense systems or components to limit their effectiveness against strategic ballistic missiles.

For the past three years, the usual superpower roles on compliance have been reversed. Most of the damage to SALT during this time has been generated by U.S. actions, including President Reagan's decision to scrap his SALT policy of "interim restraint," the reinterpretation of the ABM treaty to permit unrestricted tests of Strategic Defense Initiative weapons, and the construction of new early warning radars in Greenland and Scotland—far from the periphery of the United States, as required by the ABM treaty.

Prior to this time, Soviet actions did most of the damage to SALT. The Kremlin severely bent SALT II rules on new missile "types," heavily encrypted its missile tests, and constructed an early-warning radar in the interior of its country at Krasnoyarsk instead of its periphery. Soviet political decisions to embark on these dubious actions were probably made around 1979—after U.S.-Soviet relations turned sour. The level

of Soviet encryption jumped soon thereafter, in January 1980, and construction probably began on the Krasnoyarsk radar the following year. The fight testing of both new missiles began shortly before and after the death of General Secretary Leonid Brezhnev in November 1982.

For hardliners at the Pentagon and the arms control agency, the issue of Soviet noncompliance has always been the high card to play at critical periods of superpower dialogue. An uncorrected record of Soviet violations is essential to their case. Indeed, on the eve of superpower contacts that might help to resolve the very problems the hawks profess to worry about, they loudly raise compliance issues and the need for corrective action before any new accords can be considered.

For example, the administration disclosed its initial report on Soviet noncompliance five days before the first meeting between Secretary of State George Shultz and then-Soviet foreign minister Andrei Gromyko. Similarly, the November Weinberger memorandum suggesting responses to Soviet violations was sent to the president—and promptly leaked—just six days before the Reagan-Gorbachev summit last November.

The hardliners' campaign against the SCC has used similar obstructionist tactics, including a Pentagon boycott of the SCC for three negotiating rounds in 1983 and 1984.

One innovative tactic was a U.S. refusal to conclude the fall 1982 SCC session. The SCC usually convenes twice a year, in the spring and fall, with unresolved topics carried over from one session to the next. But Perle and his allies wanted to continue the fall session through the holiday season, if necessary, because the Soviets had failed to provide a satisfactory explanation to their concerns. Some U.S. officials believe Perle was angling for a Soviet walkout, a contention that Pentagon officials deny. After some sparring between the delegations and between U.S. officials in Washington and Geneva, an arrangement was worked out to "recess" the fall round. (The issue in dispute here was the possible deployment of the SS-16, a missile that has not been flight tested since 1976. Perle and others were convinced it had been covertly deployed at a test range near the White Sea.)

These bureaucratic games may appear petty, but they reflect the depth of feeling and tenacity with which administration opponents of arms control do battle on compliance issues. Of far greater consequence have been successful bureaucratic efforts to block problem-solving initiatives by Ellis.

During the fall 1982 round, Ellis succeeded in working out an elaboration of the SCC's 1978 understanding on the testing of air-defense systems and components. His instructions, however, prevented him from concluding this agreement for nearly three years. The administration's public reports on noncompliance still do not acknowledge this agreement, while continuing to cite the Soviets for "probably" violating the ABM treaty provision in question.

Ellis has also tried, without success, to finish up agreed procedures for bomber dismantlement, destruction or conversion—comparable to those reached in the mid-1970s for ICBM launchers and missile-carrying submarines.

During 1985 this issue grew in importance with the introduction of Bear-H cruise-missile-carrying bombers, which threatened to place the Soviets over the ceiling of strategic-weapon launchers they acknowledged having in SALT II. When asked, the Kremlin asserted it was under the ceiling because it had converted older Bison bombers to tankers. There was no way for the U.S. to tell, since the Bisons—perhaps two dozen in number—are parked on the ground in an aircraft boneyard in Siberia.

The bomber issue is still languishing. The Kremlin has played a waiting game, making no effort to resolve a SALT II issue primarily of concern to the United States. Gen. Ellis sought authority to work out agreed bomber procedures before the spring and fall 1985 SCC sessions, but Pentagon opposition to this initiative prevailed.

Ironically, the administration last December cited the Bison problem as a violation, albeit a militarily insignificant one. However, the administration's noncompliance report warned, "such violations can acquire importance if, left unaddressed, they are permitted to become precedents for future, more threatening violations." Then, in February 1986, Ellis was instructed to advise the Soviets that new procedures were "superfluous."

After each SCC session, Ellis cables back to Washington his summary of what transpired during the round and his recommendations for future U.S. moves. Those recommendations have invariably fallen on deaf ears. After the spring 1985 round, Ellis tried a more direct approach. On July 22, 1985, he addressed an interagency Senior Arms Control Group meeting chaired by Robert C. McFarlane, who was then national security adviser. At this meeting, Ellis asked for authority to update the SALT II data base of U.S. and Soviet strategic-weapon systems and to pursue steps to resolve the compliance problems posed by large phased-array radars like the one at Krasnoyarsk.

Nine days after Ellis' presentation, Weinberger sent a memo to McFarlane seeking to quash all of the initiatives proposed by the SCC commissioner. An updated data base wasn't needed, in Weinberger's view, because the United States could follow the disposition of Soviet strategic forces without it. Efforts to improve the viability of the ABM treaty, Weinberger warned, would set the stage for the "negotiated demise" of the Strategic Defense Initiative. Moreover, the negotiation of less-than-fully satisfactory solutions to Soviet compliance problems would "discredit" U.S. charges of violations.

Despite Weinberger's objections, two pragmatic option papers were forwarded to the White House for consideration last fall. The first suggested ways to avoid further erosion of the ABM treaty; the second laid out alternative resolutions that would alleviate U.S. strategic concerns over Soviet noncompliance. If, for example, the United States wished to prevent radars like that at Krasnoyarsk from being part of an effective territorial defense, it could seek limitations on their number and Soviet agreement that they be left completely undefended. And if the United States were concerned that the new SS-25 could be used to carry two warheads, it could seek aggreement that this missile and its successor never be flight tested with more than one.

Both option papers were vehemently opposed by Pentagon civilians who argued that the United States should not accept what they viewed as "cosmetic or marginal" solutions to Soviet noncompliance. The only acceptable solution to the radar problem was to tear it down, they argued. In the case of the new missile, the Soviets would have to roll back SS-25 deployments, destroying the missiles and their associated equipment.

The option papers sank without a trace in the National Security Council. Given the obscurity of the topics involved and Ellis' lack of bureaucratic support, it's doubtful that President Reagan has ever considered the proposals.

Administration hardliners are destroying the SALT agreements, and the forum created to maintian them. Questionable Soviet compliance with these agreements has certainly played a role in SALT's demise. But with President Reagan's decision to scrap the SALT limits, the rallying cry now heard in Pentagon corridors is: "Two down and one (the ABM treaty) to go."

IN DEFENSE OF JUSTICE WILLIAM J. BRENNAN

● Mr. KERRY. Mr. President, Associate Justice William J. Brennan of the U.S. Supreme Court needs no defense from any Member of the U.S. Senate. He is one of the most distinguished jurists ever to sit on the Federal bench.

Yet I feel compelled to respond to yet another attack on Justice Brennan, this time coming from a member of this administration. In the past, Justice Brennan has been the object of rhetorical attacks by right-wing elements. Now, Assistant Attorney General William Bradford Reynolds has joined their ranks.

Mr. Reynolds, in a speech last weekend at the University of Missouri School of Law, denounced Justice Brennan by name, on the grounds that Justice Brennan was trying to achieve a "radically egalitarian society." Mr. Reynolds stated that he regards such "radical egalitarianism" as "perhaps the major threat to individual liberty" in the United States today.

It is highly inappropriate for a member of the Justice Department to attack a sitting Justice of the Supreme Court by name. But, leaving aside the impropriety of this personal attack on Justice Brennan, the views expressed by Mr. Reynolds are also inappropriate. When has "egalitarianism" been considered a vice in our society? In fact, an egalitarian vision of society is the underpinning of our Constitution, the Declaration of Independence, and the Bill of Rights.

Mr. Reynolds singled out a speech given by Justice Brennan on August 8 to the American Bar Association for particular criticism. In that speech, which focused on the 14th amendment, Justice Brennan hailed that amendment as "the legal instrument of the egalitarian revolution that transformed contemporary society." The 14th amendment, which was ratified in 1868, declares that no State shall deny "equal protection of the laws" to any person within its jursdiction. Justice Brennan said, correctly in my view, that the promise of the 14th amendment has remained unfulfilled, and that despite great progress in recent years, "the goal of universal equality, freedom, and prosperity is far from won." Mr. Reynolds found these views deplorable, and said "that

agenda has little or no connection with the Constitution, the Bill of Rights, or any subsequent amendment."

Mr. President, it is almost incredible that Mr. Reynolds, in 1986, would seek to turn his back on the protections of the 14th amendment, and to turn the clock back to the days of prejudice and racial segregation in this country. Mr. Reynolds has stubbornly refused to accept repeated rulings of the Supreme Court in this term in favor of affirmative action programs which would bring about greater equality in American society. He has instead insisted on criticizing those decisions publicly, and attacking one of the most respected members of the Court.

It is Mr. Reynolds' views which are radical, not those of Justice Brennan. The views of Mr. Reynolds have, in fact, been already rejected by the U.S. Senate, which rejected his nomination for the position of Associate Attorney General. It is the duty of Mr. Reynolds, as an official of the Department of Justice, to uphold the law as laid down by the U.S. Supreme Court. His public statements indicate a reluctance to fulfill that duty.

Justice Brennan, appointed by President Eisenhower, has served with distinction on the Supreme Court for 30 years. He has always been a staunch advocate of equal opportunity and individual rights. Now, at a time when the nominations of Chief Justice Rehnquist and Justice Scalia have given renewed attention to the role of the Supreme Court, it is especially appropriate that we give careful consideration to the views expressed eloquently by Justice Brennan. I hope that he will remain a voice for equality and justice on the Court for many years to come. I ask that the text of Justice Brennan's August 8 speech to the ABA on the 14th amendment be printed in the RECORD.

The text follows:

THE FOURTEENTH AMENDMENT

(Address to Section on Individual Rights and Responsibilities, American Bar Association, by Justice William J. Brennan, Jr.)

My subject today is the Fourteenth Amendment which, in the 119 years since it became a part of the fundamental law, "has become, practically speaking, perhaps our most important constitutional provision—not even second in significance to the original basic document itself. . . . It is the amendment that served as the legal instrument of the egalitarian revolution that transformed contemporary American Society." [1] Its progenitor was, of course, Magna Carta, more particularly the famous Chapter 39 of the Great Charter providing that "no free man shall be taken, imprisoned, disseized, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers by the law of the land." Indeed, however, the Fourteenth Amendment is a more complete catalogue than the great Charter of the liberties we know today. Notably, nothing in the Great Charter concerned freedom of religion, of speech, or of the press. Nor is the Great Charter itself free of sex discrimination, providing as it does, that "no one shall be taken or imprisoned upon the appeal of a woman for the death of anyone except her husband."

Yes, once the Supreme Court recognized that every individual in our country possessed a domain of personal autonomy and dignity in which neither state nor federal government had any right to intrude, it was inevitable that the Fourteenth Amendment should be summoned to the service of the protection of a broad range of civil rights and liberties.

Is this mere hyperbole and exaggeration? I do not think so. Remember that "From the founding of the Republic to the end of the War Between the States, it was the states that were the primary guardians of their citizens' rights and liberties and they alone could determine the character and extent of such rights. This was true because the Bill of Rights was binding upon the federal government alone—not the states. With the Fourteenth Amendment, all this was altered. That amendment called upon the national government to protect the citizens of a state against the state itself. Thenceforth, the safeguarding of civil rights was to become primarily a federal function. . . ." [2]—at least until the discovery recently by state supreme courts of their state constitutions.

But the federal responsibility was not immediately shouldered by the federal courts upon adoption of the amendment in 1868. Rather, the amendment became a "Magna Carta for business, in place of the Great Charter for individual rights which its framers had intended. It is, indeed, one of the ironies of American constitutional history that, for the better part of a century [after its adoption], the Fourteenth Amendment was of little practical help to the very race for whose benefit it was enacted. For at the very time it was serving to shield the excesses of expanding capital from governmental restraints. . . . The constitutional emphasis however . . . shifted in this century to one of ever-growing concern for 'life and liberty' as the really basic rights which the Constitution was meant to safeguard. The earlier stress upon the protection of property rights against governmental violations of due process gave way to one which increasingly focused upon personal rights. Under the newer approach, the Fourteenth Amendment would at last become (as its framers intended) the shield of individual liberties throughout the nation." [3] *Brown* v. *Board of Education* and *Baker* v. *Carr* are only the most visible proofs. Of equal—maybe even more—significance were the holdings that "the Fourteenth Amendment's requirement of due process . . . demands adherence by the states to most of the rights guaranteed in the Bill of Rights . . . our great unifying theme in these decisions was that of equality; equality as between races, between citizens, between rich and poor, between prosecutor and defendant." [4] This effected the "most profound and pervasive revolution ever achieved by substantially peaceful means." [5] And in the area of political rights, it has been said that this "constitutional development brought more significant advances in the protection and advancement of political rights than all the rest of our constitutional history put together . . . voting rights were vastly enlarged, to the great advantage of Negro and Puerto Rican minority groups, and to the great benefit of the Nation; poll taxes were eliminated, first in federal elections by the Twenty-fourth Amendment, and then in state elections on equal protection grounds. Literacy tests that were used for discriminatory purposes were ruled invalid. . . . Perhaps most important of all, the distortions in the governing process caused by minority-controlled legislatures were put aside as malapportionment became a matter of history rather than a fact of present contentions." [6] And, importantly for champions of civil rights and liberties, under many decisions "the Fourteenth Amendment was the source for making the Constitution not only color-blind, but also creed-blind, status-blind, and sex-blind. The law regards man as man and takes no regard of those traits which are constitutional irrelevances." [7]

What accounts for the change? I agree with those who believe that the concern of the Supreme Court over the past 50 years for personal rights "represented a direct judicial reaction to the vast concentrations of power confronting the individual in our urbanized industrial society. In that society judges developed a countervailing emphasis upon preserving an area of personal right consistent with the maintenance of individual development. Such emphasis . . . was vital if man was to continue to possess the essential attributes of humanity 'lacking which' as William Faulkner puts it, 'he cannot be an individual and lacking which individuality he is not worth the having or keeping." [8] Judges, like all of you, necessarily disturbed by the growth of authority, sought to "preserve a sphere for individuality even in a society in which the individual stands dwarfed, if not overwhelmed, in the face of the power concentrations that confront him in the contemporary community." [9]

Were there a list of principles fundamental to the functioning of a free republic, it would, in addition to guaranteeing that no citizen would be denied an education, a house, or a job on account of the color of his skin, certainly include an assurance that each citizen's vote would count no more or no less than that of any other citizen, that his government would take no voice in or interfere with his religion, that he would enjoy freedom of speech and a free press, and that the administration of criminal laws would adhere to civilized standards of fairness and decency. The Fourteenth Amendment has proved to be capable of assuring all of these things. In sum, it can function as the prime tool by which we as citizens can shape a society which truly champions the dignity and worth of the individual as its supreme value.

It is true that, in the first half century of its existence, its function as a document of human freedom lay dormant; it was employed instead as a weapon by which to censor and strike down economic regulatory legislation of the States. This was in step with the compromise which settled the Hayes-Tilden presidential election of 1876. That compromise postponed the enforcement of the Fourteenth Amendment in behalf of the Negro, a result furthered by the decisions of the Supreme Court which invalidated the Civil Rights Act of 1875 and held that separate but equal facilities satisfied the demands of the equal protection clause. In the last half century, however, the construction and application given the amendment by the federal judiciary started to put it back on the track and assure that it would come into its own.

For Congress left primarily to the federal judiciary the tasks of defining what constitutes a denial of "due process of law" or "equal protection of the laws" and of applying the amendment's prohibitions as so defined where compliance counted, that is, against the excesses of state and local governments. Congress saw that to accord state and local governments immunity from effective federal court review would be to render the great guarantees nothing more than rhetoric. Congress did not use its § 5 powers to define the amendment's guarantees, but confined its role to the adoption of measures to enforce the guarantees as interpreted by the judiciary. And, of course, § 5 grants Congress no power to restrict, abrogate or dilute the guarantees as judicially construed.[10]

Congress' investiture of the federal judiciary with broad power to enforce the limits imposed by the amendment reflects acceptance of two fundamental propositions. First, it demonstrates a recognition that written guarantees of liberty are mere paper protections without a judiciary to define and enforce them. Second, it reflects acceptance of the lesson taught by the history of man's struggle for freedom that only a truly independent judiciary can properly play the role of definer and enforcer.

Contrast, for example, the Universal Declaration of Human Rights in the Charter of the United Nations, which expressed in ringing words moral condemnation of the tradedy suffered by countless human beings over the face of the globe who are deprived of their liberty without accusation, without trial, upon nothing but the fiat of a sovereign government. The forthright prohibition of Article IX, solemnly joined by all the signatory powers, is that "No one shall be subject to arbitrary arrest, detention, or exile." But that has been no more than empty rhetoric, and must remain so, without an international tribunal and procedure to hold an offending signatory state to compliance with these great principles. As things stand, concepts of personal and territorial supremacy—national sovereignty—leave each member state free to grant its nationals only that measure of due process provided by its own laws, however far short that measure is of the standard of the Universal Declaration.

Contrast the way the declaration of similar substantive rights in the Fourteenth Amendment has been made meaningful by a system of judicial enforcement. Our concepts of due process in criminal proceedings are familiar to every American: a prompt and speedy trial, legal assistance (provided by government in the case of the indigent), prohibition of any kind of undue coercion or influence, freedom to conduct one's own defense, the right to a public trial and written proceedings, the presumption of innocence and the burden upon government to prove guilt beyond a reasonable doubt, and security against cruel and unusual punishments. Congress has ordained that the federal courts shall redress denial by any of the states of these standards of due process. In 1867, contemporaneously with its proposal of the Fourteenth Amendment to the states, Congress extended the ancient writ of *habeas corpus*—that must important writ to a free people, affording as it does a swift and imperative remedy in cases of illegal restraint or confinement—to any person claiming to be held in custody by a state in violation of the Constitution or laws or treaties of the United States.[11] The individual simply petitions a federal court to hear his claim that his detention by a state is a violation of federal guarantees. It avails the state nothing that the detention does no violence to state law or the state constitution. The guarantees of the federal Constitution are the higher law. It is true that the federal court will not hear a state prisoner who has not first exhausted any available state remedies for decision of his federal claims. For upon the state courts equally with the federal courts rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States. However, the state prisoner is not precluded from seeking federal relief by any determination of a state court that his federal claim has no merit. The prisoner may seek review of that holding in the federal courts, including the Supreme Court of the United States. Since he seeks his release on a claim of unconstitutional denial of a right secured to him by the federal Constitution, the last word as to its merits is for federal and not state tribunals.

In other words, Congress has provided a suprastate procedure for vindicating the guarantees which are the foundation of our free society. A most important corollary effect of the existence of this suprastate remedy is the incentive given to the judiciaries of the several states to secure every person against invasion of the rights guaranteed him by the basic law of the land.

When Congress decided to rely on the federal judiciary to define and enforce the guarantees of the Fourteenth Amendment, it was in effect acknowledging the peculiar competence of that branch of government to perform such tasks.

The Constitutional Convention had overwhelming rejected a proposal which would have provided that judges "may be removed by the Executive on the application by the Senate and House of Representatives." We must, therefore, take it that the post-Civil War Congress, in enormously expanding federal judicial power to enable the federal courts effectively to enforce the new constitutional limits on state authority, fully expected that an independent federal judiciary would regard it a solemn duty to interpret and apply the new constitutional restraints in the spirit and sense intended by their framers, however unpopular with local authority or majority sentiment. Such expectation is, after all, the heart of our constitutional plan of judicially enforceable restraints.

The judicial task in defining and enforcing the Fourteenth Amendment was made particularly formidable by the patent ambiguity of the terms "due process of law" and "equal protection of the laws." By design, the great clauses of the Constitution had been broadly phrased to keep their noble principles adaptable to changing conditions and changing concepts of social justice, but "due process of law" and "equal protection of the laws" were particularly empty vessels. In Cardozo's words, they are "of the greatest generality."

It is true that the term "due process of law" derived from Magna Carta. It is the equivalent of the term, the "law of the land." But the Supreme Court from the beginning rejected the notion that "due process of law," as used in either the Fifth or Fourteenth Admendments, embraced nothing except what constituted the "law of the land," as sanctioned by settled usage in England or in this country. In a case decided in 1884, when the amendment was but 16 years old, the Court said;

". . . to hold that such a characteristic is essential to due process of law, would be to deny every quality of the law but its age, and to render it incapable of progress or improvement. It would be to stamp upon our jurisprudence the unchangeableness attributed to the laws of the Medes and Persians.

". . . it is better not to go too far back into antiquity for the best securities for our 'ancient liberties.' It is more consonant to the true philosophy of our historical legal institutions to say that the spirit of personal liberty and individual right, which they embodied, was preserved and developed by a progressive growth and wise adaptation to new circumstances and situation of the forms and processes found fit to give, from time to time, new expression and greater effect to modern ideas of self-government." [12]

Congress has not yet chosen to exercise its power under section 5 of the amendment fully to enlighten us as to the constitutional goals that should be furthered in applying the amendment's restraints; nor is the judiciary confined to discovering how the framers would have construed and applied those restraints. In the words of Chief Justice Hughes:

"if by the statement that what the Constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning"—'We must never forget that it is a *constitution* we re expounding' (*McCulloch* v. *Maryland* . . .)—'a constitution intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs.'. . . When we are dealing with the words of the Constitution, said this court in *Missouri* v. *Holland* . . . 'We must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. . . . The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago'." [13]

In giving meaning to the terms "due process of law" and "equal protection of the laws," federal judges have so far been aware, as Judge Learned Hand admonished: "that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which makes [sic] it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined." [14]

This approach of the federal judiciary promised the country to make the Fourteenth Amendment a potent tool in the attack upon the central problem of the Twentieth Century in our country. Society's overriding concern today should continue to be, indeed must continue to be, providing freedom and equality, in a realistic and not merely formal sense, to all the people of this Nation. We know that social realities do not yet fully correspond to the promise of the Fourteenth Amendment. We do not yet have justice, equal and practical, for the poor, for the members of minority groups, for the criminally accused, for the displaced persons of the technological revolution, for alienated youth, for the urban masses, for the unrepresented consumer—for all, in short, who do not partake of the abundance

of American life. Congress and the federal judiciary have done much in recent years to close the gap between promise and fulfillment, but who will deny that despite this great progress the goal of universal equality, freedom and prosperity is far from won and that ugly inequities continue to mar the face of our nation? We are surely nearer the beginning than the end of the struggle.

And the struggle is once again putting at stake the substance of the Fourteenth Amendment. It is a seething, roaring conflict in our society, and among judges. "The battle is fought, as always, as a conflict over the meaning of the great phrases of the amendment—due process, equal protection of the laws, and privileges and immunities of citizens of the United States; and it rages as a conflict over the respective powers of the national and state governments. . . . Throughout its [more than a] century of existence, the Fourteenth Amendment has meant many things to many men. Men of equal integrity, of equal devotion to freedom and liberty and patriotism, have arrived at fundamentally different interpretations of its words and principles. No one familiar with the judicial opinions or the scholarly literature would assert the contrary.[15] A reason for alarm is that in the face of signs of negation once again "one can't avoid thinking that perhaps there is a sad parallel between [the post-Civil War period] and now: Is the curve of events, this time, to retrace that which followed the Civil War?"[16] Then, at the same time the Supreme Court was engaged in major expansion of the amendment's scope on behalf of the property interests, it was involved in a drastic curtailment of its scope with respect to the amendment's intended beneficiaries—the Negroes or freedmen . . . we can hardly avoid a sigh of regret for what might have been: If the Supreme Court had not emasculated the amendment; if Justice Miller has voted the other way in the Slaughterhouse cases and thereby turned the majority around; if the elder Harlan's lone dissent in the Civil Rights cases had prevailed; if the Fourteenth Amendment had not lain substantially dormant as a document of human freedom until at least the 1930's. . . . If, rather, the amendment had been faithfully applied as it was intended; to insure by governmental action, national and local, that all men and women were secure—and secure equally—in their fundamental rights to life, liberty and property; if this had been the course of history;[17] perhaps we would not have reason today uneasily to ask "Will the new commitment, begun most dramatically in 1954 to enforcement of fundamental and equal rights for all be reduced once again to a "feeble promise of maybe, sometimes and only in some respects."[18] Even though "the great command of the Fourteenth Amendment—equally under the rule of law, protecting the fundamental rights of humanity—is basic in our religious and ethical ideals,"[19]—and has been enforced primarily by the judicial branch—history can repeat itself; it has happend before—and more than once.

But if we do stand at the threshold of a time that "will usher in a new and savage struggle between freedom's believers and its destroyers"[20] the ultimate outcome may well depend on the repsonse of the Bar—not only of you of this Section already committed to protection of individuals rights, but also of lawyers throughout the land. I personally have faith that freedom will survive and that the Fourteenth Amendment's great principles will flourish." But they will successfully resist impending onslaught only as [lawyers] have the courage to understand and acknowledge their meaning; . . . have courage to acknowledge their ambiguities and uncertainties as well as their positive commands; only as they understand our history; and only as they and all of us have the faith and courage to defend freedom and justice and equality and to stand steadfastly and unmoving against those who, in whatever guise, seek nullification of the great principles of our American Constitution." [21]

And we must not be beguiled with thinking that, because state supreme courts are increasingly evaluating their state constitutions and concluding that those constitutions should be applied to confer greater civil liberties than their federal counterparts, we can safely ignore the deterioration being worked on Fourteenth Amendment protections. We can and should welcome this development in state constitutional jurisprudence—indeed, my own view is that this rediscovery by state supreme courts of the broader protections afforded their own citizens by their state constitutions—spawned in part certainly by dissatisfaction with the decisional law being announced these days by the United States Supreme Court—is probably the most important development in constitutional jurisprudence of our times. For state constitutional law will assume an increasingly more visible role in American law in the years ahead. Lawyers should take heed: Justice Hans Linde of the Oregon Supreme Court has said, for example: "A lawyer today representing someone who claims some constitutional protection and who does not argue that the state constitution provides that protection is skating on the edge of malpractice." *Welsh* v. *Collins*, "Taking State Constitutions Seriously." The Center Mag. 6, 12 (Sept., Oct. 1981).

But this most welcome development does not mean that we can stop resisting cutbacks, particularly by the Supreme Court of the United States, of Fourteenth Amendment protections. One of the great strengths of our federal system is that it provides a double source of protection for the liberties of our citizens. Federalism is not served when the federal half of that protection is crippled.

FOOTNOTES

[1] *The Fourteeth Amendment*, Centennial Volume, N.Y.U. Press, p. 29
[2] *Id.*, p. 31
[3] *Id.*, p. 31-32
[4] *Id.*, p. 33
[5] *Id.*, p. 34
[6] *Id.*, p. 70
[7] *Id.*, p. 37
[8] *Id.*, p. 35
[9] *Id.*, p. 35
[10] *Katzenback* v. *Morgan*, 384 U.S. 643, 651, n 10 (1966)
[11] 14 Stat. 385 (1867); see *Fay* v. *Noia*, 372 U.S. 391 (1963)
[12] *Hurtado* v. *California*, 110 U.S. 516, 529, 530 (1884)
[13] *Home Building and Loan Assn* v. *Blaisdell*, 290 U.S. 398, 442 (1934)
[14] Hand, *Sources of Tolerance*, 79 U. Pa. L. Rev. 1, 13 (1930)
[15] *The Fourteenth Amendment*, *supra*, n. 1, 100
[16] *Id.*, 112
[17] *Id.*, 102
[18] *Id.*
[19] *Id.*, at 112
[20] *Id.*, at 114
[21] *Id.*

ORDERS FOR FRIDAY

RECESS UNTIL 9:30 A.M.

Mr. HELMS. Mr. President, I ask unanimous consent that once the Senate completes its business today, it stand in recess until 9:30 a.m. on Friday, September 19, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF CERTAIN SENATORS

Mr. HELMS. Following the recognition of the two leaders under the standing order, I ask unanimous consent that the following Senators be recognized for not to exceed 5 minutes each for special orders: Mrs. HAWKINS, Mr. PROXMIRE, Mr. HEINZ, Mr. SASSER, Mr. WALLOP, Mr. BAUCUS, and Mr. MATTINGLY.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. HELMS. Following the special orders just identified, I ask unanimous consent there be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. HELMS. At the conclusion of morning business, the Senate will resume the pending business, S. 2706, the reconciliation bill. It may also be the intention of the majority leader to turn to any other legislative or executive items cleared for action. Senators should be on notice that votes are expected throughout the day and a late session—for emphasis, I repeat a late session—is anticipated on Friday.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—RECONCILIATION BILL

Mr. HELMS. Mr. President, I ask unanimous consent that on tomorrow, at such time as the chairman and the ranking minority member of the Budget Committee are ready to resume consideration of S. 2706, the reconciliation bill, there be 8 hours of the 20 originally provided under the law remaining for debate; further provided that, meanwhile, S. 2706, the

reconciliation bill, retain its current status as the pending business.

Mr. BYRD. Reserving the right to objection—I shall not object—this request has been cleared on this side of the aisle. I remove my reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. HELMS. Mr. President, I inquire of the distinguished minority leader if he is in a position to consider the following nominations on the Executive Calendar: No. 1027 to No. 1029 under the Air Force; No. 1030 through No. 1033, under the Army; No. 1034 through No. 1038, under the Navy; No. 1039, Harold T. Duryee; and all nominations placed on the Secretary's desk, with the exception of the nomination of Edwin G. Corr.

Mr. BYRD. Mr. President, I ask the distinguished acting Republican leader what the last calendar order number was that he identified. What was that number?

Mr. HELMS. 1039.

Mr. BYRD. Mr. President, I think I have heard the distinguished acting Republican leader accurately.

On this side of the aisle, the following nominations have been cleared by all Members and we are ready to proceed with the confirmation thereof: All nominations on page 2 of the Executive Calendar, under the Air Force and under the Army; all on page 3 under the Army; all on page 4 under the Navy; all on page 5 under the Navy; all on page 6 under the Navy; Calendar No. 1039 on page 7; and all nominations placed on the Secretary's desk in the Air Force, Marine Corps, Navy, Senior Foreign Service, including Mr. Corr.

Mr. HELMS. My unanimous-consent request was with the exception of Edwin G. Corr.

Mr. BYRD. Yes.

Mr. HELMS. With that understanding, I ask unanimous consent that the Senate go into executive session to consider the nominations just identified and that they be considered and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

IN THE AIR FORCE

The following-named officer under the provisions of title 10, United States Code, Section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Edward J. Heinz, [redacted]FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Bradley C. Hosmer, [redacted]FR, U.S. Air Force.

The following-named officer, under provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Forrest S. McCartney, [redacted]FR, U.S. Air Force.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3040(b), to be appointed as Assistant Surgeon General/Chief, Dental Corps, U.S. Army:

Brig. Gen. Billie B. Lefler [redacted], U.S. Army.

The following-named Army Reserve officer for appointment as Chief, Army Reserve, under the provisions of title 10, United States Code, section 3019:

Maj. Gen. William Francis Ward, [redacted].

The following officers for appointment as Reserve commissioned officers in the Adjutant General's Corps, Army National Guard of the United States, Reserve of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3392:

To be major general

Brig. Gen. James A. Ryan, [redacted].
Brig. Gen. Carl G. Farrell, [redacted].
Brig. Gen. Charles E. Scott, [redacted].

The following-named Army Dental Corps Competitive Category officer for appointment in the U.S. Army to the grade indicated under the provisions of title 10, United States Code, sections 611(a) and 624:

To be permanent brigadier general

Col. Thomas R. Tempel [redacted], Dental Corps Competitive Category, U.S. Army.

IN THE NAVY

The following-named officer, under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Vice Adm. Paul McCarthy, Jr., [redacted]/1310, U.S. Navy.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. (lower half) Paul D. Miller, [redacted]/1110, U.S. Navy.

The following-named rear admirals (lower half) of the line of the Navy for promotion to the permanent grade of rear admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefore as provided by law:

UNRESTRICTED LINE OFFICER

Roger Francis Bacon.
Jerry Creighton Breast.
Paul Donald Butcher.
Guy Haldane Curtis III.
Harry Kenneth Fiske.
Raymond Paul Ilg.
Jerome Lamarr Johnson.
Robert Joseph Kelly.
Robert Kalani Uichi Kihune.
Henry Herrward Mauz, Jr.
William Tyler Pendley.
James Guy Reynolds.
Dean Reynolds Sackett, Jr.
James Michael Gleaso Seely.
John Frederick Shaw.
Hugh Larimer Webster.
John Raymond Wilson, Jr.,

RESTRICTED LINE—ENGINEERING DUTY OFFICER

Malcolm Mackinnon, III.
Kenneth Cornelius Malley.

RESTRICTED LINE—AERONAUTICAL ENGINEERING DUTY OFFICER

John Clark Weaver.

The following-named rear admirals (lower half) of the United States Navy for promotion to the permanent grade of rear admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefore as provided by law:

CIVIL ENGINEER CORPS

Arthur William Fort.
Frederick Guyer Kelley.

The following-named rear admirals (lower half) of the Reserve of the U.S. Navy for permanent promotion to the grade of rear admiral in the line and staff corps, as indicated, pursuant to the provisions of title 10, United States Code, section 5912;

UNRESTRICTED LINE OFFICERS

John Edward Love.
John Dennis Summers.

AERONAUTICAL ENGINEERING DUTY OFFICER (AERONAUTICAL ENGINEERING)

Clay Wayland Gordon Fulcher.

SPECIAL DUTY OFFICER (CRYPTOLOGY)

William Joseph Miles.

SPECIAL DUTY OFFICER (INTELLIGENCE)

Robert Patrick Tiernan.

MEDICAL CORPS OFFICERS

John Duncan Tolmie.
James Glen Roberts.

DENTAL CORPS OFFICER

Edward John O'Shea, Jr.

JUDGE ADVOCATE GENERAL'S CORPS OFFICER

Robert Edward Wiss.

CHAPLAIN CORPS OFFICER

John Joseph Hever.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Harold T. Duryee, of the District of Columbia, to be Federal Insurance Administrator, Federal Emergency Management Agency, vice Jeffrey S. Bragg, resigned.

IN THE AIR FORCE

Air Force nominations beginning Richard O. Abderhalden, Jr., and ending Daryl A. Yerkes, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 9, 1986.

IN THE MARINE CORPS

Marine Corps nominations beginning Robert J. Agro, and ending James G. Zumwalt, II, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 14, 1986.

Marine Corps nominations beginning Steven Barnett, and ending Mark A. Werth, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 9, 1986.

IN THE NAVY

Navy nominations beginning Susan D. Harvey, and ending Paul M. Votruba, which nominations were received by the Senate

and appeared in the CONGRESSIONAL RECORD of September 9, 1986.

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Mr. HELMS. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. HELMS. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. HELMS. Mr. President, under the previous order I move that the Senate now stand in recess until 9:30 a.m. tomorrow morning.

The motion was agreed to, and at 7:49 p.m. the Senate recessed until Friday, September 19, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 18, 1986:

WORLD HEALTH ORGANIZATION

Frank E. Young, of Maryland, to be Representative of the United States on the Executive Board of the World Health Organization, vice Edward N. Brandt, Jr., resigned.

DEPARTMENT OF DEFENSE

James F. McGovern, of Virginia, to be Under Secretary of the Air Force, vice Edward C. Aldridge, Jr.

IN THE AIR FORCE

The following-named officers for permanent promotion in the U.S. Air Force, under the appropriate provisions of section 624, title 10, United States Code, as amended, with dates of rank to be determined by the Secretary of the Air Force.

LINE OF THE AIR FORCE

To be colonel

Abbey, Dennis O., xxx-xx-xxxx
Abel, Raymond E., Jr., xxx-xx-xxxx
Adams, Gerald R., xxx-xx-xxxx
Agnew, John T., xxx-xx-xxxx
Agnor, Raymond M., Jr., xxx-xx-xxxx
Ahern, Daniel B., xxx-xx-xxxx
Aikman, Lynn A., xxx-xx-xxxx
Aitken, George G., xxx-xx-xxxx
Alexander, Thomas L., xxx-xx-xxxx
Algire, Richard G., xxx-xx-xxxx
Allen, Robert A., Jr., xxx-xx-xxxx
Allevato, John T., xxx-xx-xxxx
Almand, Larry M., xxx-xx-xxxx
Ames, Robert R., xxx-xx-xxxx
Anders, Wayne R., xxx-xx-xxxx
Anderson, Darwin C., xxx-xx-xxxx
Anderson, Frank W., Jr., xxx-xx-xxxx
Anderson, Kurt B., xxx-xx-xxxx
Anderson, Reed M., xxx-xx-xxxx
Andre, Jerome P., xxx-xx-xxxx
Andreus, Frank C., II, xxx-xx-xxxx
Andrews, Franklin J., xxx-xx-xxxx
Andrews, James E., xxx-xx-xxxx
Andrews, Robert P., xxx-xx-xxxx
Anthony, Ron A., xxx-xx-xxxx
Archibald, Harold A., xxx-xx-xxxx
Ashby, Randolph W., xxx-xx-xxxx
Atkinson, David E., xxx-xx-xxxx
Atkinson, Thomas F., Jr., xxx-xx-xxxx
Austin, Gary M., xxx-xx-xxxx
Azuma, Robert T., xxx-xx-xxxx
Baars, Thomas E., xxx-xx-xxxx
Bailey, Gregory P., xxx-xx-xxxx
Baker, Carl L., xxx-xx-xxxx
Baker, Herbert G., xxx-xx-xxxx
Banachowski, Chester A., xxx-xx-xxxx
Barnard, Howard D., III, xxx-xx-xxxx
Bartholomew, Raymond J., xxx-xx-xxxx
Barton, Richard W., xxx-xx-xxxx
Bauer, Bruce L., xxx-xx-xxxx
Bauer, Christian A., xxx-xx-xxxx
Bauer, James F., xxx-xx-xxxx
Bean, William R., Jr., xxx-xx-xxxx
Beauregard, Richard J., xxx-xx-xxxx
Beck, Dennis G., xxx-xx-xxxx
Beck, Rex E., Jr., xxx-xx-xxxx
Beck, Robert J., xxx-xx-xxxx
Becker, Gerald E., xxx-xx-xxxx
Beckner, William E., xxx-xx-xxxx
Beckwith, Everett G., xxx-xx-xxxx
Bell, Frederick M., xxx-xx-xxxx
Bell, Ralph H., xxx-xx-xxxx
Bendlin, Gary R., xxx-xx-xxxx
Benedict, Stephen L., xxx-xx-xxxx
Bernhardt, James H., xxx-xx-xxxx
Berry, Arnold M., xxx-xx-xxxx
Betzing, Martin H., xxx-xx-xxxx
Bewley, Carroll E., xxx-xx-xxxx
Bey, Victor L., xxx-xx-xxxx
Biezad, Daniel J., xxx-xx-xxxx
Bigelow, Richard E., xxx-xx-xxxx
Bigham, Eugene F., xxx-xx-xxxx
Birdlebough, Michael W., xxx-xx-xxxx
Black, Ralph P., Jr., xxx-xx-xxxx
Blitt, William J., xxx-xx-xxxx
Bolton, Claude M., Jr., xxx-xx-xxxx
Boney, James S., xxx-xx-xxxx
Boniface, George B., Jr., xxx-xx-xxxx
Boone, William L., xxx-xx-xxxx
Booth, Thomas R.L., xxx-xx-xxxx
Borowski, Richard A., xxx-xx-xxxx
Bost, Thomas D., xxx-xx-xxxx
Boudreaux, Ray M., xxx-xx-xxxx
Bowen, Paul B., xxx-xx-xxxx
Bowman, John G., Jr., xxx-xx-xxxx
Boyce, Joseph B., Jr., xxx-xx-xxxx
Boykin, Kenneth S., xxx-xx-xxxx
Boykin, Samuel V., Jr., xxx-xx-xxxx
Bradbury, Byron G., xxx-xx-xxxx
Bradley, Stuart C., xxx-xx-xxxx
Brady, Terrence J., xxx-xx-xxxx
Brantner, Karen S., xxx-xx-xxxx
Bras, Victor D., xxx-xx-xxxx
Bream, Joseph R., xxx-xx-xxxx
Breedlove, Phillip G., xxx-xx-xxxx
Bridges, Clayton G., xxx-xx-xxxx
Bridges, John F., xxx-xx-xxxx
Brown, Nelson C., xxx-xx-xxxx
Brown, Timothy D., xxx-xx-xxxx
Bruce, Philip W., xxx-xx-xxxx
Bruns, David A., xxx-xx-xxxx
Bryan, Edwin B., xxx-xx-xxxx
Bryan, Robert E., xxx-xx-xxxx
Bryant, Ronald xxx-xx-xxxx
Bryson, Jon H., xxx-xx-xxxx
Buchanan, Norman H., xxx-xx-xxxx
Bucher, Wallace T., xxx-xx-xxxx
Budinger, Fred W., Jr., xxx-xx-xxxx
Buickerood, Richard W., xxx-xx-xxxx
Bunnell, Robert J., xxx-xx-xxxx
Bunzendahl, Sidney P., Jr., xxx-xx-xxxx
Burkard, Forrest A., xxx-xx-xxxx
Burke, Terry A., xxx-xx-xxxx
Butler, Frederick W., xxx-xx-xxxx
Buxton, Leroy W., xxx-xx-xxxx
Cain, John H., xxx-xx-xxxx
Campbell, Donald B., xxx-xx-xxxx
Campbell, Frank B., xxx-xx-xxxx
Campbell, William H., Jr., xxx-xx-xxxx
Campione, Joseph A., xxx-xx-xxxx
Cannon, Roger S., xxx-xx-xxxx
Canter, Carl W., xxx-xx-xxxx
Carlson, Kent R., xxx-xx-xxxx
Carlson, Randal D., xxx-xx-xxxx
Carney, James F., Jr., xxx-xx-xxxx
Carpenter, Dennis D., xxx-xx-xxxx
Carter, Edward B., xxx-xx-xxxx
Casker, Thomas W., xxx-xx-xxxx
Cass, Stein L., xxx-xx-xxxx
Cassidy, Michael S., xxx-xx-xxxx
Castle, Richard S., xxx-xx-xxxx
Castonguay, Joseph L., xxx-xx-xxxx
Cavanagh, Thomas T., III, xxx-xx-xxxx
Caywood, Abbie G., xxx-xx-xxxx
Chace, Harvey D., xxx-xx-xxxx
Check, William D., xxx-xx-xxxx
Chittick, James E., xxx-xx-xxxx
Choffel, Michael F., xxx-xx-xxxx
Christian, Don O., xxx-xx-xxxx
Cirillo, Francis A., Jr., xxx-xx-xxxx
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Jackson, Kevin A., xxx-xx-xxxx
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Randall, Jeffrey S., xxx-xx-xxxx
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Roberts, Harriet B., xxx-xx-xxxx
Robinson, George O., Jr., xxx-xx-xxxx
Rose, David W., Jr., xxx-xx-xxxx
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Samoiline, Mark W., xxx-xx-xxxx
Sandlin, George P., xxx-xx-xxxx
Sartor, Robert L., xxx-xx-xxxx
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Schnabel, Tony R., xxx-xx-xxxx
Schneider, Lohn D., xxx-xx-xxxx
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Smith, David M., xxx-xx-xxxx
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Smith, Gordon M., xxx-xx-xxxx
Smith, Wendy A., xxx-xx-xxxx
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Soares, Jay F., xxx-xx-xxxx
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Steger, Steven A., xxx-xx-xxxx
Stephan, Todd D., xxx-xx-xxxx
Stokes, Geoffery W., xxx-xx-xxxx
Stolarz, Nanci L., xxx-xx-xxxx
Stump, John P., III, xxx-xx-xxxx
Szymczyk, Wayne C., xxx-xx-xxxx
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Thomas, John D., Jr., xxx-xx-xxxx
Thompson, Craig L., xxx-xx-xxxx
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Todd, Michael A., xxx-xx-xxxx
Towne, Donald S., xxx-xx-xxxx
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Vaugh, Tyrone A., xxx-xx-xxxx
Vazquez, Jose F., xxx-xx-xxxx
Veitel, Marty S., xxx-xx-xxxx
Vierheller, Thomas W., xxx-xx-xxxx
Vigh, Joseph A., xxx-xx-xxxx
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Villalba, Julio B., xxx-xx-xxxx
Vindich, David A., xxx-xx-xxxx
Wachendorf, Erich A., xxx-xx-xxxx
Wagaman, Gregory A., xxx-xx-xxxx
Wagar, Timothy J., xxx-xx-xxxx
Wagner, Charles E., xxx-xx-xxxx
Wagner, Christopher J., xxx-xx-xxxx
Walker, John W., xxx-xx-xxxx
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Walters, Eric M., xxx-xx-xxxx
Wargo, David M., xxx-xx-xxxx
Wattay, Alexander E., Jr., xxx-xx-xxxx
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Webster, James R., xxx-xx-xxxx
Webster, Nathan O., xxx-xx-xxxx
Wellman, Jennifer L., xxx-xx-xxxx
Wells, Clarence E., xxx-xx-xxxx
Westerbeck, Mark A., xxx-xx-xxxx
White, Thomas W., xxx-xx-xxxx
Wick, David M., xxx-xx-xxxx
Williams, Fielding L., xxx-xx-xxxx
Williamson, Marc A., xxx-xx-xxxx
Wilson, Paul R., xxx-xx-xxxx
Wilson, Terrence H., xxx-xx-xxxx
Wilson, Ronald L., Jr., xxx-xx-xxxx
Wint, Robert M., xxx-xx-xxxx
Winter, Stephen J., xxx-xx-xxxx
Wogaman, Donald G., xxx-xx-xxxx
Woodard, Michael D., xxx-xx-xxxx
Worsley, Roger J., xxx-xx-xxxx
Yeck, William L., xxx-xx-xxxx
Young, Eddie D., xxx-xx-xxxx
Young, Roy D., xxx-xx-xxxx
Zaben, Monte R., xxx-xx-xxxx
Zich, Ronald M., xxx-xx-xxxx
Ziegenfuss, Paul C., Jr., xxx-xx-xxxx

CONFIRMATIONS

Executive nominations confirmed by the Senate September 18, 1986:

FEDERAL EMERGENCY MANAGEMENT AGENCY

Harold T. Duryee, of the District of Columbia, to be Federal Insurance Administrator, Federal Emergency Management Agency.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

IN THE AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Edward J. Heinz, xxx-xx-xxxx xxx-...FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Bradley C. Hosmer, xxx-xx-xxxx xxx-...FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Forrest S. McCartney, xxx-xx-xxxx xxx-...FR, U.S. Air Force.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3040(b), to be appointed as Assistant Surgeon General/Chief, Dental Corps, U.S. Army:

Brig. Gen. Billie B. Lefler xxx-xx-xxxx, U.S. Army.

The following-named Army Reserve officer for appointment as Chief, Army Reserve, under the provisions of title 10, United States Code, section 3019:

Maj. Gen. William Francis Ward, xxx-xx-x... xxx-...

The following officers for appointment as Reserve commissioned officers in the Adjutant General's Corps, Army National Guard of the United States, Reserve of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3392:

To be major general

Brig. Gen. James A. Ryan, xxx-xx-xxxx.
Brig. Gen. Carl G. Farrell, xxx-xx-xxxx.
Brig. Gen. Charles E. Scott, xxx-xx-xxxx.

The following-named Army Dental Corps Competitive Category officer for appointment in the U.S. Army to the grade indicated under the provisions of title 10, United States Code, sections 611(a) and 624:

To be permanent brigadier general

Col. Thomas R. Tempel xxx-xx-xxxx, Dental Corps Competitive Category, U.S. Army.

IN THE NAVY

The following-named officer, under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Vice Adm. Paul F. McCarthy, Jr., xxx-xx-x... xxx-.../1310, U.S. Navy.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. (lower half) Paul D. Miller, xxx-xx-xxxx/1110, U.S. Navy.

The following-named rear admirals (lower half) of the line of the Navy for promotion to the permanent grade of rear admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefor as provided by law:

UNRESTRICTED LINE OFFICER

Roger Francis Bacon.
Jerry Creighton Breast.
Paul Donald Butcher.
Guy Haldane Curtis III.
Harry Kenneth Fiske.
Raymond Paul Ilg.

Jerome Lamarr Johnson.
Robert Joseph Kelly.
Robert Kalani Uichi Kihune.
Henry Herrward Mauz, Jr.
William Tyler Pendley.
James Guy Reynolds.
Dean Reynolds Sackett, Jr.
James Michael Gleaso Seely.
John Frederick Shaw.
Hugh Larimer Webster.
John Raymond Wilson, Jr.

RESTRICTED LINE—ENGINEERING DUTY OFFICER

Malcolm Mackinnon, III.
Kenneth Cornelius Malley.

RESTRICTED LINE—AERONAUTICAL ENGINEERING DUTY OFFICER

John Clark Weaver.

The following-named rear admirals (lower half) of the U.S. Navy for promotion to the permanent grade of rear admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefor as provided by law:

CIVIL ENGINEER CORPS

Arthur William Fort.
Frederick Guyer Kelley.

The following-named rear admirals (lower half) of the Reserve of the U.S. Navy for permanent promotion to the grade of rear admiral in the line and staff corps, as indicated, pursuant to the provisions of title 10, United States Code, section 5912:

UNRESTRICTED LINE OFFICERS

John Edward Love.
John Dennis Summers.

AERONAUTICAL ENGINEERING DUTY OFFICER (AERONAUTICAL ENGINEERING)

Clay Wayland Gordon Fulcher.

SPECIAL DUTY OFFICER (CRYPTOLOGY)

William Joseph Miles.

SPECIAL DUTY OFFICER (INTELLIGENCE)

Robert Patrick Tiernan.

MEDICAL CORPS OFFICERS

John Duncan Tolmie.
James Glen Roberts.

DENTAL CORPS OFFICER

Edward John O'Shea, Jr.

JUDGE ADVOCATE GENERAL'S CORPS OFFICER

Robert Edward Wiss.

CHAPLAIN CORPS OFFICER

John Joseph Hever.

IN THE AIR FORCE

Air Force nominations beginning Richard O. Abderhalden, Jr. and ending Daryl A. Yerkes, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 9, 1986.

IN THE MARINE CORPS

Marine Corps nominations beginning Robert J. Agro, and ending James G. Zumwalt, II, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 14, 1986.

Marine Corps nominations beginning Steven Barnett, and ending Mark A. Werth, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 9, 1986.

IN THE NAVY

Navy nominations beginning Susan D. Harvey, and ending Paul M. Votruba, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 9, 1986.

HOUSE OF REPRESENTATIVES—*Thursday, September 18, 1986*

The House met at 9:30 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O Gracious God, help us to see our lives as they truly are and not only as we think they ought to be. May we have the strength to admit our faults, confess our mistakes and prejudices, and so allow Your good grace to fill our hearts. May Your gifts of forgiveness and renewed life and the promise of Your supporting spirit ever give us hope for the way of Your truth and Your light. This we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 1246. An act to establish a federally declared Floodway for the Colorado River below Davis Dam.

The message also announced that the Senate had passed a joint resolution of the following title, in which the concurrence of the House is requested:

S.J. Res. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

RECESS

The SPEAKER. Pursuant to the order of the House of July 29, 1986, the House will stand in recess subject to the call of the Chair.

Accordingly (at 9 o'clock and 32 minutes a.m.), the House stood in recess subject to the call of the Chair.

JOINT MEETING OF THE HOUSE AND SENATE HELD PURSUANT TO THE ORDER OF JULY 29, 1986, TO HEAR AN ADDRESS BY THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES

The SPEAKER of the House presided.

The Doorkeeper announced the President pro tempore and Members of the U.S. Senate who entered the Hall of the House of Representatives, the President pro tempore taking the chair at the right of the Speaker, and the Members of the Senate the seats reserved for them.

The SPEAKER. The Chair appoints as members of the committee on the part of the House to conduct the President of the Republic of the Philippines into the Chamber:

The gentleman from Texas, Mr. WRIGHT;

The gentleman from Washington, Mr. FOLEY;

The gentleman from Florida, Mr. FASCELL;

The gentleman from Arkansas, Mr. ALEXANDER;

The gentleman from California, Mr. MINETA;

The gentlewoman from Ohio, Ms. OAKAR;

The gentleman from Illinois, Mr. MICHEL;

The gentleman from Mississippi, Mr. LOTT;

The gentleman from New York, Mr. KEMP;

The gentleman from Michigan, Mr. BROOMFIELD; and

The gentlewoman from Illinois, Mrs. MARTIN.

The PRESIDENT pro tempore. The President pro tempore of the Senate, at the direction of that body, appoints the following Senators as members of the committee on the part of the Senate to escort the President of the Republic of the Philippines into the Chamber:

The Senator from Kansas, Mr. DOLE;

The Senator from Wyoming, Mr. SIMPSON;

The Senator from Indiana, Mr. LUGAR;

The Senator from Minnesota, Mr. DURENBERGER;

The Senator from Florida, Mrs. HAWKINS;

The Senator from Alaska, Mr. MURKOWSKI;

The Senator from California, Mr. WILSON;

The Senator from West Virginia, Mr. BYRD;

The Senator from California, Mr. CRANSTON;

The Senator from Hawaii, Mr. INOUYE;

The Senator from Rhode Island, Mr. PELL;

The Senator from South Carolina, Mr. HOLLINGS;

The Senator from Tennessee, Mr. SASSER;

The Senator from Massachusetts, Mr. KERRY; and

The Senator from Maryland, Mr. SARBANES.

The Doorkeeper announced the ambassadors, ministers, and chargés d'affaires of foreign governments.

The ambassadors, ministers, and chargés d'affaires of foreign governments entered the Hall of the House of Representatives and took the seats reserved for them.

The Doorkeeper announced the Cabinet of the President of the United States.

The members of the Cabinet of the President of the United States entered the Hall of the House of Representatives and took the seats reserved for them in front of the Speaker's rostrum.

At 10 o'clock and 2 minutes a.m., the Doorkeeper announced the President of the Republic of the Philippines.

The President of the Republic of the Philippines, escorted by the committee of Senators and Representatives, entered the Hall of the House of Representatives, and stood at the Clerk's desk.

[Applause, the Members rising.]

The SPEAKER. Members of the Congress, it is my great privilege, and I deem it a high honor and personal privilege, to present to you Her Excellency Corazon C. Aquino, President of the Republic of the Philippines.

[Applause, the Members rising.]

ADDRESS BY HER EXCELLENCY, CORAZON C. AQUINO, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, BEFORE THE JOINT MEETING OF THE UNITED STATES CONGRESS

President AQUINO. Mr. Speaker, Senator THURMOND, distinguished Members of Congress, 3 years ago, I left America in grief to bury my husband, Ninoy Aquino. I thought I had left it also to lay to rest his restless dream of Philippine freedom. Today, I have returned as the President of a free people.

In burying Ninoy, a whole nation honored him. By that brave and selfless act of giving honor, a nation in shame recovered its own. A country that had lost faith in its future found it in a faithless and brazen act of murder. So in giving, we receive; in losing, we find; and out of defeat, we snatched our victory.

For the nation, Ninoy became the pleasing sacrifice that answered their prayers for freedom. For myself and our children, Ninoy was a loving hus-

band and father. His loss, three times in our lives, was always a deep and painful one.

Fourteen years ago this month was the first time we lost him. A President turned dictator, and traitor to his oath, suspended the Constitution and shut down the Congress that was much like this one before which I am honored to speak. He detained my husband along with thousands of others—senators, publishers, and anyone who had spoken up for the democracy as its end drew near. But for Ninoy, a long and cruel ordeal was reserved. The dictator already knew that Ninoy was not a body merely to be imprisoned but a spirit he must break. For even as the dictatorship demolished one by one the institutions of democracy—the press, the Congress, the independence of the judiciary, the protection of the Bill of Rights—Ninoy kept their spirit alive in himself.

The Government sought to break him by indignities and terror. They locked him up in a tiny, nearly airless cell in a military camp in the north. They stripped him naked and held the threat of sudden midnight execution over his head. Ninoy held up manfully under all of it. I barely did as well. For 43 days, the authorities would not tell me what had happened to him. This was the first time my children and I felt we had lost him.

When that didn't work, they put him on trial for subversion, murder, and a host of other crimes before a military commission. Ninoy challenged it authority and went on a fast. If he survived it, then, he felt, God intended him for another fate. We had lost him again. For nothing would hold him back from his determination to see his fast through to the end. He stopped only when it dawned on him that the Government would keep his body alive after the fast had destroyed his brain. And so, with barely any life in his body, he called off the fast on the 40th day. God meant him for other things, he felt. He did not know that an early death would still be his fate, that only the timing was wrong.

At any time during his long ordeal, Ninoy could have made a separate peace with the dictatorship, as so many of his countrymen had done. But the spirit of democracy that inheres in our race and animates this Chamber could not be allowed to die. He held out, in the loneliness of his cell and the frustration of exile, the democratic alternative to the insatiable greed and mindless cruelty of the right and the purging holocaust of the left.

And then, we lost him irrevocably and more painfully than in the past. The news came to us in Boston. It had to be after the 3 happiest years of our lives together. But his death was my country's resurrection in the courage and faith by which alone they could be free again. The dictator had called him a nobody. Two million people threw aside their passivity and fear and escorted him to his grave. And so began the revolution that has brought me to democracy's most famous home, the Congress of the United States.

The task had fallen on my shoulders to continue offering the democratic alternative to our people.

Archibald MacLeish had said that democracy must be defended by arms when it is attacked by arms and by truth when it is attacked by lies. He failed to say how it shall be won.

I held fast to Ninoy's conviction that it must be by the ways of democracy. I held out for participation in the 1984 election the dictatorship called even if I knew it would be rigged. I was warned by the lawyers of the opposition that I ran the grave risk of legitimizing the foregone results of elections that were clearly going to be fraudulent. But I was not fighting for lawyers but for the people in whose intelligence I had implicit faith. By the exercise of democracy, even in a dictatorship, they would be prepared for democracy when it came. And then, also, it was the only way I knew by which we could measure our power even in the terms dictated by the dictatorship.

The people vindicated me in an election shamefully marked by Government thuggery and fraud. The opposition swept the elections, garnering a clear majority of the votes, even if they ended up, thanks to a corrupt commission on elections, with barely a third of the seats in Parliament. Now, I knew our power.

Last year, in excess of arrogance, the dictatorship called for its doom in a snap election. The people obliged with over a million signatures, they drafted me to challenge the dictatorship. And I obliged them. The rest is the history that dramatically unfolded on your television screens and across the front pages of your newspapers.

You saw a nation, armed with courage and integrity, stand fast by democracy against threats and corruption. You saw women poll watchers break out in tears as armed goons crashed the polling places to steal the ballots, but just the same, they tied themselves to the ballot boxes. You saw a people committed to the ways of democracy that they were prepared to give their lives for its pale imitation. At the end of the day, before another wave of fraud could distort the results, I announced the people's victory.

The distinguished cochairman of the United States observer team in his report to your President described that victory:

"I was witness to an extraordinary manifestation of democracy on the part of the Philippine people. The ultimate result was the election of Mrs. Corazon C. Aquino as President and Mr. Salvador Laurel as Vice President of the Philippines."

Many of you here today played a part in changing the policy of your country toward us. We, Filipinos, thank each of you for what you did: For, balancing America's strategic interest against human concerns, illuminates the American vision of the world.

When a subservient Parliament announced my opponent's victory, the people turned out in the streets and proclaimed me President. And true to their word, when a handful of military leaders declared themselves against the dictatorship, the people rallied to their protection. Surely, the people take care of their own. It is on that faith and the obligation it entails, that I assumed the Presidency.

As I came to power peacefully, so shall I keep it. That is my contract with my people and my commitment to God. He had willed that the blood drawn with the lash shall not, in my country, be paid by blood drawn by the sword but by the tearful joy of reconciliation.

We have swept away absolute power by a limited revolution that respected the life and freedom of every Filipino. Now, we are restoring full constitutional government. Again, as we restored democracy by the ways of democracy, so are we completing the constitutional structures of our new democracy under a Constitution that already gives full respect to the Bill of Rights. A jealously independent constitutional commission is completing its draft which will be submitted later this year to a popular referendum. When it is approved, there will be congressional elections. So within about a year from a peaceful but national upheaval that overturned a dictatorship, we shall have returned to full constitutional government. Given the polarization and breakdown we inherited, this is no small achievement.

My predecessor set aside democracy to save it from a Communist insurgency that numbered less than 500. Unhampered by respect for human rights, he went at it with hammer and tongs. By the time he fled, that insurgency had grown to more than 16,000. I think there is a lesson here to be learned about trying to stifle a thing with the means by which it grows.

I don't think anybody, in or outside our country, concerned for a democratic and open Philippines, doubts what must be done. Through political initiatives and local reintegration programs, we must seek to bring the insurgents down the hills, and by economic progress and justice, show them that for which the best intentioned among them fight.

As President, I will not betray the cause of peace by which I came to power. Yet equally, and again no

friend of Filipino democracy will challenge this. I will not stand by and allow an insurgent leadership to spurn our offer of peace and kill our young soldiers, and threaten our new freedom.

Yet, I must explore the path of peace to the utmost, for at its end, whatever disappointment I meet there, is the moral basis for laying down the olive branch of peace and taking up the sword of war. Still, should it come to that, I will not waiver from the course laid down by your great liberator:

"With malice towards none, with charity for all, with firmness in the right as God gives us to see the right, let us finish the work we are in, to bind up the Nation's wounds, to care for him who shall have borne the battle, and for his widow and for his orphans, to do all which may achieve and cherish a just and lasting peace among ourselves and with all Nations."

Like Lincoln, I understand that force may be necessary before mercy. Like Lincoln, I don't relish it. Yet, I will do whatever it takes to defend the integrity and freedom of my country.

Finally, may I turn to that other slavery: Our $26 billion foreign debt. I have said that we shall honor it. Yet must the means by which we shall be able to do be kept from us? Many conditions imposed on the previous government that stole this debt continue to be imposed on us who never benefited from it. And no assistance or liberality commensurate with the calamity that was visited on us has been extended. Yet ours must have been the cheapest revolution ever. With little help from others, we Filipinos fulfilled the first and most difficult condition of the debt negotiation: The full restoration of democracy and responsible government. Elsewhere, and in other times of more stringent world economic conditions, Marshall plans and their like were felt to be necessary companions of returning democracy.

When I met with President Reagan yesterday, we began an important dialog about cooperation and the strengthening of the friendship between our two countries. That meeting was both a confirmation and a new beginning and should lead to positive results in all areas of common concern.

Today, we face the aspirations of a people who had known so much poverty and massive unemployment for the past 14 years and yet offered their lives for the abstraction of democracy. Wherever I went in the campaign, slum area or impoverished village, they came to me with one cry: Democracy! Not food, although they clearly needed it, but democracy; not work, although they surely wanted it, but democracy. Not money, for they gave what little they had to my campaign. They didn't expect me to work a miracle that would instantly put food into their mouths, clothes on their back, education for their children, and work that will put dignity in their lives. But I feel the pressing obligation to respond quickly as the leader of a people so deserving of all these things.

We face a Communist insurgency that feeds on economic deterioration, even as we carry a great share of the free world defenses in the Pacific. These are only two of the many burdens my people carry even as they try to build a worthy and enduring house for their new democracy, that may serve as well as a redoubt for freedom in Asia. Yet, no sooner is one stone laid than two are taken away. Half our export earnings, $2 billion out of $4 billion, which was all we could earn in the restrictive markets of the world, went to pay just the interest on a debt whose benefit the Filipino people never received.

Still we fought for honor, and, if only for honor, we shall pay. And yet, should we have to wring the payments from the sweat of our men's faces and sink all the wealth piled up by the bondsman's 250 years of unrequited toil?

Yet to all Americans, as the leader of a proud and free people, I address this question: Has there been a greater test of national commitment to the ideals you hold dear than that my people have gone through? You have spent many lives and much treasure to bring freedom to many lands that were reluctant to receive it. And here you have a people who won it by themselves and need only the help to preserve it.

Three years ago, I said, thank you, America, for the haven from oppression, and the home you gave Ninoy, myself, and our children, and for the 3 happiest years of our lives together. Today, I say, join us, America, as we build a new home for democracy, another haven for the oppressed, so it may stand as a shining testament of our two nations' commitment to freedom.

[Applause, the Members rising.]

At 10 o'clock and 31 minutes a.m., the President of the Republic of the Philippines, accompanied by the committee of escort, retired from the Hall of the House of Representatives.

The Doorkeeper escorted the invited guests from the Chamber in the following order:

The members of the President's Cabinet.

The ambassadors, ministers, and chargés d'affaires of foreign governments.

JOINT MEETING DISSOLVED

The SPEAKER. The purpose of the joint meeting having been completed, the Chair declares the joint meeting of the two Houses dissolved, and the House will meet in session at 11 a.m.

Accordingly, at 10 o'clock and 32 minutes a.m., the joint meeting of the two Houses was dissolved.

The Members of the Senate retired to their Chamber.

□ 1100

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 11 a.m.

THE TRIUMPH OF CORAZON AQUINO AND THE FILIPINO PEOPLE

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, those of us who have enjoyed the fruits of democracy without the sacrifice of blood and peril were reminded today that others pay a dear price for freedoms we take for granted.

Earlier this morning, President Corazon Aquino of the Philippines, a woman slight in stature but a giant in courage, touched the hearts of this Congress and this Nation with her moving remembrance of the ordeal she and her husband endured to win liberty for her homeland.

So many of the events of our time will be relegated to the offal of history, but the triumph of Corazon Aquino and the people of the Philippines stands as a seminal event in the annals of democracy. We are blessed and honored to bear witness to that triumph and we share in the responsibility to pass on her heroic story to our children and grandchildren.

PEACE CORPS CELEBRATES 25TH ANNIVERSARY

(Mr. HENRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HENRY. Mr. Speaker, if the rules of the House so allowed, I would ask the distinguished minority leader, Mr. MICHEL, to step to the well of the Chamber and lead us in a rousing chorus of "Happy Birthday" to the Peace Corps. And I would even suggest that the chaplain join by accompanying us with his harmonica!

Truly, the Peace Corps has been one of the most noble and successful expressions of American good will toward people around the globe. In its 25 years, over 120,000 Americans, from every walk of life and of every age, have served as Peace Corps volunteers in over 90 countries. Indeed, my own State of Michigan is proud to have

sent over 4,500 Americans abroad as Peace Corps volunteers.

Fighting poverty, disease, ignorance, and prejudice of all forms, Peace Corps volunteers served in many capacities—teachers, health professionals, technical aids, social workers, and many other callings in cultural settings quite different from what they had known at home. And invariably, they returned to our country enriched by their experience, with deeper appreciation for the cultures and histories and concerns of the people they served, as well as a sense of profound gratitude to the host nations in which they were guests.

It was my own privilege to serve as a Peace Corps volunteer in Liberia and Ethiopia during the earliest years of the program from 1963–65. Among my projects in Liberia was the organization of a rural mail delivery system, and in Ethiopia the construction of an elementary school building in the northern region of the country. I look forward to joining the reunion of thousands of Peace Corps volunteers as they gather in Washington this weekend to join in celebrating the Peace Corps' 25th anniversary. And I would urge my colleagues to join with us at the congressional reception in honor of Peace Corps volunteers this evening in the Rayburn Building.

As we celebrate the past achievements of the Peace Corps, I should also point out that this thriving program still looks to the future. Applications for volunteer service are on the rise, and the selectivity of the Peace Corps in choosing those given the honor of such service is keener than it has ever been. Over the years, the Peace Corps has moved increasingly from utilizing generalists to those with specific technical skills most appropriate and needed by the host countries. Increasingly, volunteers are composed of middle-aged and even senior citizens who have chosen to serve their country and dedicated themselves to addressing the needs of their host countries in this most constructive way.

The current Peace Corps Director, Loret Ruppe from my home State of Michigan, says it well:

> Peace Corps volunteers are the true antiterrorists of today. They battle the daily terrorism of hunger, disease, poverty, despair, and illiteracy.

Happy birthday, Peace Corps. And welcome to your Nation's Capital, returned volunteers.

PRINTING OF PROCEEDINGS HAD DURING THE RECESS

Mr. OBEY. Mr. Speaker, I ask unanimous consent that the proceedings had during the recess be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

EPA MUST STEP UP EFFORTS TO PROTECT DRINKING WATER AND GROUND WATER

(Mr. OBEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OBEY. Mr. Speaker, today the House will be considering reauthorization of the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA].

I hope that we will adopt the toughest possible provisions to require that the EPA step up efforts to protect drinking water and ground water from contamination by pesticides.

This issue is of particular importance to the people I represent in central and northern Wisconsin. In my district Aldicarb or "Temik" has been showing up in some drinking water wells over the last few years.

Two separate studies—by the University of Wisconsin and the Wisconsin Department of Health—have shown that Aldicarb may be dangerous to public health. Those studies have documented changes in the immune systems of laboratory animals exposed to the chemicals, as well to humans who have consumed well water contaminated with Aldicarb.

While the EPA is continuing its "special review" of Aldicarb, the State of Wisconsin has already taken steps to significantly restrict its use.

Im my judgment, it is time to ban the pesticide nationally until its manufacturer, Union Carbide, can prove that it can be used safely.

I have already petitioned the EPA to carefully consider the results of the Wisconsin studies and act immediately to stop the further use of this pesticide, at least until all of the outstanding health and safety questions have been answered. I urge my colleagues to join me in this effort.

TAX REFORM OR SIMPLE FRAUD?

(Mr. MARLENEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARLENEE. Mr. Speaker, some Members of this body have been trying to pass a bill of so-called tax reform or tax simplification. The question might be asked: Is this tax simplification or tax fraud?

Let us let the document speak for itself, Mr. Speaker. On page 295 of this document, I quote:

> "(C) DE MINIMIS EXCEPTION.—The Secretary may by regulations provide a de minimis exception to the provisions of subparagraph (A).
>
> "(2) COORDINATION WITH SECTION 172(b) CARRYOVER RULES.—In the case of any pretrigger loss for any taxable year (hereinafter in this paragraph referred to as the 'loss year') subject to limitation under this section, for purposes of determining under the second sentence of section 172(b)(2) the amount of such loss which may be carried to any taxable year, taxable income for any taxable year shall be treated as not greater than—
>
> "(A) the trigger amount for such taxable year, reduced by
>
> "(B) the pre-trigger losses for taxable years preceding the loss year.
>
> Similar rules shall apply in the case of any credit or loss subject to limitation under section 383.
>
> "(1) ADDITIONS UNDER MORE THAN ONE PARAGRAPH.—With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month (or fraction thereof) to which an addition to tax applies under both paragraphs (1) and (2). In any case described in the last sentence of subsection (a), the amount of the addition under paragraph (1) of subsection (a) shall not be reduced under the preceding sentence below the amount provided in such last sentence."
>
> SEC. 1602. EFFECTIVE DATE.
>
> Except as otherwise provided in section 1601 of this Act, any amendment made by section 1601 of this Act shall take effect as if included in the provision of the Retirement Equity Act of 1984 to which such amendment relates.

Mr. Speaker, this is the new tax reform. You might question whether this is tax reform or simple fraud.

MEMBERS "HAVE BEEN HAD" ON DRUG ISSUE

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, as I indicated in the debate on the omnibus drug bill last week, an extremely dangerous provision was slipped into the technical amendments that will allow any registrant with a Ph.D. or M.D. behind their name to ingest or provide for their spouses, friends, and even students some of the most potent substances known to man. Some of these designer drugs are 5,000 times the strength of morphine or about 2,500 times the strength of heroin.

This provision was misrepresented to the Rules Committee as technical language somehow necessary to legitimate research, and was slipped into the technical package on that basis.

I should add that the only testimony in support of this provision before our Subcommittee on Crime was offered by Dr. Lester Grinspoon, of Harvard. He attempted to persuade the subcommittee that his real concern was with research. However, there were those of us who remained skeptical in that the designer drug legislation that I first offered and the subsequent subcommittee and committee bills were carefully crafted to avoid any interference with legitimate research. But Dr. Grinspoon argued that any animal

testing for toxicity or the requirement to provide a research protocol under schedule I was too burdensome.

It is now clear that Dr. Grinspoon and his small group of followers have a broader agenda. It has come to my attention that the only voice for this pro-drug-trafficking provision in our House drug bill sits on the advisory board of the National Organization for the Reform of Marijuana Laws. In short the Subcommittee on Crime, the Rules Committee and this House have been had. It is essential that this pro-drug-abuse provision be removed from the bill in conference.

□ 1110

AUTHORIZING FACILITIES FOR THE SMITHSONIAN INSTITUTION FOR CERTAIN SCIENCE ACTIVITIES

Mr. GRAY of Illinois. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1483) to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 2, line 3, strike out "$11,200,000" and insert "$11,100,000".

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, and I do not plan to object, I just want to ask the gentleman to explain to the House the reason for his request.

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield?

Mr. HAMMERSCHMIDT. I yield to the gentleman from Illinois.

Mr. GRAY of Illinois. Mr. Speaker, H.R. 1483 passed by the House on October 7, 1985, authorizes the construction of facilities for two scientific research installations of the Smithsonian Institution: The Fred Lawrence Whipple Observatory in Arizona and the Smithsonian Tropical Research Institute in Panama. Construction of these facilities is necessary to replace existing facilities which are inadequate because of age, size, safety, and health standards.

Mr. Speaker, the legislation as passed by the House authorized the appropriation of $4.5 million for the Fred Lawrence Whipple Observatory and $11.2 million for the Tropical Research Institute. The bill as passed by the Senate continues to provide $4.5 for the Fred Lawrence Whipple Observatory; however, it decreases funding for the Tropical Research Institute to $11.1 million.

Mr. Speaker, I urge adoption of H.R. 1483, as amended by the other body.

Mr. HAMMERSCHMIDT. Mr. Speaker, further reserving the right to object, I would also like to express my support for this legislation.

The bill is essentially identical to the weapon passed by the House last October with the exception that the Senate has deleted $100,000 in funds for construction at the Fred Lawrence Whipple Observatory in Arizona.

The construction of new and replacement facilities for the Smithsonian in both Panama and Arizona locations are essential if the Smithsonian scientists are to continue their outstanding efforts in tropical biology and astrological research.

Mr. MINETA. Mr. Speaker, H.R. 1483, passed by the House on October 7, 1985, authorizes an appropriation of $4,500,000 effective October 1, 1986, for constructing a new base camp and resurfacing the road at the Smithsonian's Whipple Observatory in southern Arizona and $11,200,000 for four new construction projects at the Smithsonian Tropical Research Institute in the Republic of Panama. The bill allows the transfer of funds to the General Services Administration in order to carry out the activities authorized.

As a member of the Smithsonian's Board of Regents and a member of one of the two committees to which the measure was referred, I am honored to encourage its approval by the House. The bill consolidates in one legislative package planning and construction authority for facility development at two of the Smithsonian's most significant research installations and is in keeping with the Institution's long-range scientific expectations. Over the past year and a half, the Subcommittee on Public Buildings and Grounds of the Committee on Public Works and Transportation has held three hearings at which these projects were considered. I think it fair to say that there is widespread understanding of the scientific significance of these facilities, as well as a high degree of admiration for the analysis with which the Institution has organized its overall construction priorities and the diligence with which it has pursued master planning processes for both units in the bill to ensure the effective application of the funds it is seeking. The Fred Lawrence Whipple Observatory, located on Mount Hopkins, near Tucson, AZ, is the largest field installation of the Smithsonian Astrophysical Observatory. Since its official opening in 1968, the observatory has been used at the site for experiments requiring extremely dark skies, dry climate, and good "optical scene." The 8,550 foot summit of Mount Hopkins is the site of the multiple mirror telescope, a joint facility of the Smithsonian Institution and the University of Arizona. The MMT is the third largest telescope in the world and the first of its kind, combining six 1.8 meter telescope mirrors in a common support structure to produce the light-gathering capability of a conventional 4.5 meter telescope.

Other instruments are located on a half-mile long ridge at the 7,600 foot elevation. These include a 10 meter reflector for observations of extremely energetic gamma ray events, and 1.5 meter and 61 centimeter reflecting telescopes for optical and infrared observations of distant stars and galaxies. The administrative and support facilities of the observatory are located at Amado, AZ, which is about 35 miles south of Tucson and 18 miles from the scientific operations on Mount Hopkins. This base camp is the operational and logistical headquarters for anyone working at or visiting the mountain. Its site consists of two adjacently leased parcels of land totaling approximately 4.25 acres; its facilities include a one-level school building and a one-level residence, both of which date from the 1930's and have been converted for office use. There are also vehicle service, repair, and storage sheds on the site.

The owners of the site have indicated the desire to sell the property. Because of its location near a flood-prone river that often makes access to the mountain very difficult, as well as other inadequacies of the site which serve only to promote operational inefficiencies, the Smithsonian is not a prospective buyer.

As the result of its master planning process, the Institution has selected a site on land under the control of the Forest Service that is across the river from and closer to the mountain than the existing ones. Studies related to spatial analysis of the site and environmental documentation are underway, as are negotiations with the Forest Service. It is expected that arrangements can be made that will serve and protect the interests of both parties, and also provide a modest, but improved level of public education for visitors to the site. If H.R. 1483 is enacted, the Institution expects to include a total of $4,500,000 for construction of the new base camp in its budget request for fiscal year 1988. It anticipates a period of approximately 27 months for design and construction. In addition, the legislation provides for improved facilities at the Smithsonian Tropical Research Institute which is the principal U.S. Center for Tropical Biology. Each year hundreds of U.S. and international researchers join the permanent staff at STRI in undertaking fundamental studies on the tropics. Increasingly scientists and policymakers have recognized the need to understand how tropical ecosystems function in order to predict more accurately environmental changes in the temperate zones.

To capitalize on STRI's unparalleled data base of more than 60 years and use it effectively, it is necessary to undertake a program of facilities improvements. Existing STRI facilities fall into several categories:

Construction undertaken in the 1920's and 1930's;

Renovated structures obtained from the U.S. military; and

Renovated structures obtained from the Government of Panama.

With the exception of a new library building opened in 1984, these facilities are inadequate because of age, size, safety, and health standards. Construction materials used in the first half of the century are inappropriate to the region's high humidity and insect infestation, and renovation of surplus buildings has served only as a stop-gap measure to ensure continuity of research. The structures are in-

adequate for modern scientific purposes and require extensive maintenance. Among the pressing needs for STRI is a new terrestrial laboratory and conference facility to replace a small and obsolete leased structure. Originally built as a hospital morgue, the facility cannot adequately support current research purposes as it has severe deficiencies in its electrical systems, plumbing, load-bearing capacity, and parking, and in the widespread presence of arsenic and other health-related problems. Additionally, its hillside location makes extensive renovation and the addition of outdoor cages and plant-growing facilities impossible.

The construction of a new terrestrial laboratory at STRI's administrative headquarters, known as the Tivoli site, will allow the economy of logistics consolidation with the new library and existing offices. The Tivoli site also will allow proper space utilization for permanent staff, long-term visitors, and students. Better integration of computers, other communications devices, and modern scientific equipment will be afforded in the new facility, as will space for cages and greenhouses and space for lectures, small meetings, and major conferences.

Construction and equipment for the new laboratory is currently estimated at $7.9 million. A gift of $4 million for construction has recently been received; an additional $3.8 million is required for completion of the project. The Smithsonian has included this amount in its budget request for fiscal year 1987.

Barro Colorado Island, located in the middle of Gatun Lake, a key component of the Panama Canal, has served as an important research center for tropical biology since 1923. Under the canal treaties, STRI was assigned custodianship of this 12,000-acre reserve on behalf of the United States and the Republic of Panama. The island serves hundreds of investigators annually, providing research space, as well as living and dining accommodations. Its physical plant includes many outdated wooden buildings which do not meet modern day building or health codes; a new scientific laboratory with attendant cages and growing facilities is a major requirement. Approximately $2.8 million is needed for this construction; funds would be requested in the fiscal year 1989.

The geographical advantages of Panama to researchers interested in marine studies are incomparable: nowhere else in the world are two oceans so easily accessible for comparative research. Currently, renovated facilities are available on the Pacific, but no similar situation exists on the Atlantic where STRI research is conducted at Galeta Point in a small asbestos cement building acquired as surplus property from the U.S. Navy in 1965. The present laboratory has a severe asbestos problem in its walls and roof.

Housing for researchers consists of a dilapidated trailer which does not meet safety and health codes; an inadequate sewage disposal system threatens the unique coral reef/mangrove swamp study site. A new laboratory, dormitory, and sewage system will require approximately $3.5 million which also would be requested in fiscal year 1989.

Finally, STRI is responsible for more than 60 vehicles, a major research vessel, and dozens of smaller boats, in addition to normal building maintenance requirements. At present, the maintenance needs of its geographically dispersed facilities are performed in the bottom of an old torpedo factory; the top floor houses research offices. In order to provide for adequate maintenance and to relieve the noise and congestion of the present site, a new central facility with modern equipment is required; the estimated cost of its construction is $900,000 and also would be a fiscal year 1989 request.

Mr. Speaker, as you can see, H.R. 1483 reflects thoughtful and careful planning to meet the requirements of two of our Nation's small, but significant, scientific installations.

Mr. Speaker, the legislation as passed by the House authorized the appropriation of $4.5 million for the Fred Lawrence Whipple Observatory and $11.2 million for the Tropical Research Institute. The bill as passed by the Senate continues to provide $4.5 million for the Fred Lawrence Whipple Observatory; however, it decreases funding for the Tropical Research Institute to $11.1 million.

Mr. Speaker, I urge adoption of H.R. 1483, as amended by the Senate.

Mr. HOWARD. Mr. Speaker, I rise in strong support of H.R. 1483, a bill to authorize the Smithsonian Institution to plan and construct new or upgraded science facilities at two of its most significant research installations, namely, the Fred Lawrence Whipple Observatory on Mount Hopkins in Tucson, AZ, and at the Smithsonian Tropical Research Institute in Panama. This science facilities construction bill authorizes an appropriation of $4,500,000 for the Smithsonian Tropical Research Institute facilities located in Panama effective October 1, 1986. This legislative proposal is in keeping with the Smithsonian Institution's long-range scientific expectations and has been carefully evaluated in the context of its overall construction priorities.

Briefly, Mr. Speaker, the Fred Lawrence Whipple Observatory, located on Mount Hopkins in southern Arizona, is the largest field installation of the Smithsonian Astrophysical Observatory. Since its official opening in 1968, the observatory has been used as the site for observations requiring extremely dark skies, dry climate, and good optical seeing. The Smithsonian's observatory covers 4,774 acres, including the 8,550-foot summit. The administrative and support facilities of the observatory, which serve all mountain top activities, are located in an office and maintenance complex 18 miles from the scientific operations on Mount Hopkins. This base camp includes a one-level school building and a one-level residence which have been converted for office use. There are also vehicle service, repair, and storage sheds on the site. Although the property is currently leased, the owners have indicated their desire to sell. The base camp is outmoded, and furthermore, the bridge between the base camp and the mountain facilities is repeatedly washed out, making access very difficult and often adding at least an hour to the already arduous trip to and from the summit.

Recently, the Smithsonian selected a site on the other side of the river which is under the control of the Forest Service for construction of a new base camp at a cost of $4,500,000.

The Smithsonian Tropical Research Institute, located in the Republic of Panama, is the principal United States center for tropical biology. Each year hundreds of U.S. and international researchers join the permanent Smithsonian staff in undertaking fundamental studies on the Tropics. To capitalize on the unparalleled data base of more than 60 years, it is necessary to undertake over the next 5 years a facilities improvement program, since most existing facilities date back to 1920 or consist of renovated structures obtained from the United States military or the Government of Panama. These facilities are unsafe for the people who work in them and are inadequate for modern scientific purposes and require extensive maintenance.

A new terrestrial laboratory to replace a small and unsuitable leased structure on Ancon is desperately needed. The facility is estimated to cost $7.9 million; however, a gift of $4 million was recently received by the Smithsonian for this facility, and only $3.9 million remains to be funded, which is being sought in the fiscal year 1987 appropriations bill.

Barro Colorado Island, located in the middle of Gatun Lake, a key component of the Panama Canal, has served as an important research center for tropical biology since 1923. Under the canal treaties, STRI was assigned custodianship of this 12,000-acre reserve on behalf of the United States and the Republic of Panama. The island serves hundreds of investigators annually, providing research space, as well as living and dining accommodations. Its physical plant includes many outdated wooden buildings which do not meet modern day building or health codes. Using restoration and renovation moneys, the Smithsonian has made some improvements to the basic electrical, water, and sewage systems. The major requirement now is a new scientific laboratory with attendant cages and growing facilities. Approximately $2.8 million is required for this construction; funds would be requested in fiscal year 1989.

The geographical advantages of Panama to researchers interested in marine studies are incomparable: nowhere else in the world are two oceans so easily accessible for comparative research. Currently, renovated facilities are available on the Pacific, but no similar situation exists on the Atlantic where STRI research is conducted at Galeta Point in a small asbestos cement building acquired as surplus property from the U.S. Navy in 1965. The present laboratory has a severe asbestos problem in its walls and roof. Housing for researchers consists of a dilapidated trailer which does not meet safety and health codes; an inadequate sewage disposal system threatens the unique coral reef/mangrove swamp study site. A new laboratory, dormitory, and sewage system will require approximately $3.5 million which also would be requested in fiscal year 1989.

STRI is responsible for more than 60 vehicles, a major research vessel, and dozens of smaller boats, in addition to normal building maintenance requirements. At present the maintenance needs of its geographically dispersed facilities are performed in the bottom of an old torpedo factory; the top floor houses

research offices. In order to provide for adequate maintenance and to relieve the noise and congestion of the present site, a new central facility with modern equipment is required; the estimated cost of its construction is $900,000 which, again, would be a fiscal year 1989 request.

Mr. Speaker, to conclude, the Office of Management and Budget supports this legislation and I urge enactment of H.R. 1483, as amended by the Senate.

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GRAY of Illinois. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1987

Mr. ASPIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2638) to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such Department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I would ask the gentleman if this has been cleared by the minority side?

Mr. ASPIN. Mr. Speaker, will the gentleman yield?

Mr. HAMMERSCHMIDT. I yield to the gentleman from Wisconsin.

Mr. ASPIN. Mr. Speaker, indeed I would respond to the gentleman that it has been cleared by the minority side. The ranking minority member, the gentleman from Alabama [Mr. DICKINSON] is not here; he is not in town. We thought the gentleman from New Jersey [Mr. COURTER] was going to be present. I do not see him yet.

But yes, it has been cleared. We are going to conference on the DOD bill.

Mr. HAMMERSCHMIDT. Mr. Speaker, I thank the gentleman for his response, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2638

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 1987".

SEC. 2. ORGANIZATION

This Act is divided into four divisions as follows:

(1) Division A—Department of Defense Authorization.

(2) Division B—Military Construction Authorization.

(3) Division C—Department of Energy National Security and Military Applications of Nuclear Energy Authorization.

(4) Division D—Civil Defense.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATION

SEC. 100. SHORT TITLE

This division may be cited as the "Department of Defense Authorization Act, 1987".

TITLE I—PROCUREMENT

SEC. 101. AUTHORIZATION OF APPROPRIATIONS, ARMY

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal year 1987 for procurement of aircraft, missiles, weapons, and tracked combat vehicles, and ammunition and for other procurement for the Army as follows:

For aircraft, $2,793,700,000.

For missiles, $2,198,200,000.

For weapons and tracked combat vehicles, $3,794,900,000.

For ammunition, $2,283,300,000.

For other procurement, $5,365,900,000.

(b) AQUILA REMOTELY PILOTED VEHICLE.—None of the funds appropriated to the Army pursuant to this title may be obligated or expended for the procurement of the Aquila Remotely Piloted Vehicle until—

(1) the Director of Operational Test and Evaluation has completed a comprehensive assessment of the Aquila system; and

(2) the Secretary of the Army has certified to the Committees on Armed Services of the Senate and the House of Representatives that—

(A) the Aquila system has satisfactorily demonstrated that it meets or exceeds all performance criteria established for the system by the Army; and

(B) the Army has negotiated a binding contract which provides for procurement of the entire system and limits overall liability of the United States under the contract.

SEC. 102. AUTHORIZATION OF APPROPRIATIONS, NAVY AND MARINE CORPS

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 1987 for procurement of aircraft, weapons (including missiles and torpedoes), shipbuilding and conversion, and other procurement for the Navy as follows:

For aircraft, $9,903,070,000.

For weapons (including missiles and torpedoes), $5,597,490,000.

For shipbuilding and conversion, $9,323,800,000.

For other procurement, $5,934,057,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 1987 for procurement for the Marine Corps (including missiles, tracked combat vehicles, and other weapons) in the amount of $1,382,700,000.

(c) P-3 AIRCRAFT.—(1) Of the funds provided for procurement of P-3 aircraft, the Secretary of the Navy may transfer up to $120,000,000 for modification of existing P-3 aircraft.

(2) Within the funds appropriated pursuant to an authorization in this or any other Act for the procurement of P-3C aircraft, the Secretary of the Navy may carry out Navy obligations under the classified Maritime Surveillance Agreement of 1986. Two of the P-3C aircraft authorized to be procured may be used to implement United States obligations under such classified agreement.

(d) DDG-51 DESTROYER PROGRAM.—(1) The Secretary of the Navy shall incorporate helicopter support facilities into each Arleigh Burke (DDG-51) class destroyer to be constructed with funds authorized to be appropriated by this title.

(2) Section 102(h) of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2501), is repealed.

(e)(1) MSH-X.—The Secretary of the Navy is authorized to procure from one or more foreign countries which are allied with the United States and which have proven minesweeper hunter shipbuilding capabilities, lead minesweeper hunter ship and one partially outfitted hull of a minesweeper hunter ship. The lead ship may be procured in whole or in part from such a foreign country.

(2) Funds appropriated or otherwise made available to the Navy for fiscal year 1986 for shipbuilding and conversion shall be available for the procurement in connection with the MSH-X minesweeper hunter ship program authorized in subparagraph (1) in the amount of $100,000,000.

(3) Follow-on MSH-X minesweeper hunter ships shall be constructed in shipyards in the United States.

(4) Funds may not be obligated or expended for the procurement of a lead minesweeper hunter ship or a partially outfitted hull of a minesweeper hunter ship from a foreign country until the Secretary of the Navy has certified to the Congress in writing (A) that purchase of up to two foreign built ships responds to an urgent national security requirement; (B) that no United States shipbuilder has demonstrated the capability, or that no shipbuilder can demonstrate the ability to acquire that capability to meet that requirement in a timely fashion.

(f) CONSOLIDATION OF NAVY MUNITIONS FUNDS INTO SINGLE ACCOUNT.—The President shall include within a single account all budget requests for Navy munitions for fiscal year 1988 and subsequent fiscal years.

(g) ROLLING AIRFRAME MISSILE PROGRAM.—(1) None of the funds appropriated pursuant to an authorization in this title may be obligated or expended in connection with procurement of the Rolling Airframe Missile Program until the Secretary of Defense has certified in writing to the Committee on

Armed Services of the Senate and the House of Representatives that—

(A) the total Navy research and development cost of the Rolling Airframe Missile Program will not exceed $219,700,000; and

(B) the Secretary will terminate the program if at any time he determines that the total Navy research and development cost will exceed the amount specified in subparagraph (A); and

(C) the recurring missile unit flyaway cost for a minimum of 4,900 missiles will not exceed $100,000 per missile (using fiscal year 1986 dollars as the base year); and

(D) the design of the Rolling Airframe Missile and its unique support equipment are complete and that the system performance has not been degraded from the original development specifications (as contained in Navy Decision Coordinating Paper No. SO-167-AA); and

(E) the Director of Operational Test and Evaluation has approved a test and evaluation master plan for the Rolling Airframe Missile.

(2) If the Secretary of Defense fails to make the certification described in paragraph (1) by March 30, 1987, he shall cause the Rolling Airframe Missile Program to be terminated effective on that date.

(3) Subsection (d) of section 205 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 608), is repealed.

(4) Department of Defense reprogramming request 85-91PA is approved.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal year 1987 for procurement of aircraft and missiles and for other procurement for the Air Force as follows:

For aircraft, $16,383,104,000.

For missiles, $8,116,200,000.

For other procurement, $10,068,348,000.

(b) 30MM GAU-8 AMMUNITION.—None of the funds appropriated pursuant to the authorization of appropriations in this title may be obligated or expended for procurement of 30 millimeter GAU-8 ammunition until such time as the depleted uranium penetrator part of such ammunition is obtained as a separate procurement item.

SEC. 104. RESERVE COMPONENTS

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 1987 for procurement of aircraft, vehicles, communications equipment, and other miscellaneous equipment for the reserve components of the Armed Forces as follows:

For the Army National Guard, $140,000,000.

For the Air National Guard, $20,000,000.

For the Army Reserve, $90,000,000.

For the Naval Reserve, $45,000,000.

For the Air Force Reserve, $150,000,000.

For the Marine Corps Reserve, $20,000,000.

(b) AUTHORIZATIONS IN ADDITION TO OTHER AMOUNTS.—The authorizations of appropriations contained in subsection (a) are in addition to any other amounts authorized to be appropriated by this or any other division.

(c) Notwithstanding the amounts authorized to be appropriated by subsection (a), the total amount authorized to be appropriated by this subsection is $454,300,000.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES

Funds are hereby authorized to be appropriated for fiscal year 1987 for the Defense Agencies in the amount of $1,431,300,000.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS FOR CHEMICAL DEMILITARIZATION

Funds are hereby authorized to be appropriated for fiscal year 1987 for the purposes of the destruction of lethal chemical weapons in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 747), in the amount of $120,100,000.

SEC. 107. EXTENSION OF CERTAIN AUTHORITY OF THE SECRETARY OF DEFENSE IN CONNECTION WITH THE NATO AIRBORNE WARNING AND CONTROL SYSTEM (AWACS) PROGRAM

Effective on October 1, 1986, section 103(a) of the Department of Defense Authorization Act, 1982 (Public Law 97-86; Stat. 1100) is amended by striking out "fiscal year 1986" both places it appears and inserting in lieu thereof "fiscal year 1987".

SEC. 108. MULTIYEAR CONTRACTS

(a) IN GENERAL.—(1) Subject to paragraph (2), the Secretary of the military department concerned may enter into a contract in accordance with section 2306(h) of title 10, United States Code, for procurement of the following:

UH-60A Blackhawk and EH-60A Quick Fix Airframe.

Patriot Weapon System.

HARM Weapon System.

Defense Support Program.

(2) A multiyear contract authorized by paragraph (1) for a program may not be entered into unless the total anticipated cost over the period of the contract is no more than 90 percent of the total anticipated cost of carrying out the same program through annual contracts.

(b) STINGER MISSILE.—The Secretary of the Army may not enter into a contract for the multiyear procurement of the Stinger air defense missile until—

(1) the Secretary has—

(A) obtained and evaluated bids for a competitive second source for such missile; and

(B) certified to the Committees on Armed Services of the Senate and the House of Representatives that acquisition of such missile from more than one source would be more costly than a multiyear procurement program from a single source; and

(2) the Comptroller General of the United States has evaluated the estimates on the basis of which the Secretary made his decision and has submitted his evaluation of the estimates to the committees named in clause (1).

The Comptroller General shall submit his evaluation to the committees named in clause (1) not later than 60 days after the certification of the Secretary has been received by such committees.

(c) OTHER NAVY PROGRAMS.—The Secretary of the Navy may not enter into a multiyear contract for procurement of the following:

F/A-18 aircraft.

MK-45 gun mounts.

MK-6 ammunition hoists.

SEC. 109. TECHNICAL AMENDMENT TO PUBLIC LAW 99-145 RELATING TO BINARY CHEMICAL MUNITIONS

Section 1411(b)(1) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), is amended by striking out "North Atlantic Council" and inserting in lieu thereof "Defense Planning Committee of the North Atlantic Treaty Organization meeting in permanent session".

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

SEC. 201. AUTHORIZATION OF APPROPRIATIONS

Funds are hereby authorized to be appropriated for fiscal year 1987 for the use of the Armed Forces for research, development, test, and evaluation, in amounts as follows:

For the Army, $4,815,669,000.

For the Navy (including the Marine Corps), $9,289,678,000.

For the Air Force, $14,908,873,000.

For the Defense Agencies, $7,310,974,000, of which $141,800,000 is authorized for the activities of the Deputy Under Secretary of Defense, Test and Evaluation and of which $11,300,000 is authorized for the Director, Operational Test and Evaluation.

SEC. 202. PROGRAM RESTRICTIONS AND LIMITATIONS

(a) ADVANCED FIELD ARTILLERY TACTICAL DATA SYSTEM/MARINE INTEGRATED FIRE AND AIR SUPPORT SYSTEMS, ARMY/NAVY.—None of the funds appropriated pursuant to this title for fiscal year 1987 may be obligated or expended for the development of the Army Advanced Artillery Tactical Data System or the Marine Integrated Fire and Support System until—

(1) a single program has been selected for both the Army and the Marine Corps; or

(2) the Secretary of Defense has certified to Congress, not later than December 15, 1986, that continuation of both programs is operationally sound and less costly to the United States than the development of a common system for use by both the Army and Marine Corps.

(b) ADVANCED TACTICAL AIRCRAFT, NAVY.—None of the funds appropriated pursuant to an authorization in this or any other Act may be obligated or expended for the full-scale development of the Navy Advanced Tactical Aircraft until the Secretary of Defense has certified to the Congress that the design selected for the aircraft will accommodate essential Air Force-peculiar requirements for such aircraft.

(c) TRIDENT II PROGRAM.—None of the funds appropriated pursuant to an authorization in this division for the Trident II missile development program or for the procurement of Trident II missiles and related support equipment may be used for any other purpose. In achieving any reductions required to be made in programs, projects, or activities for which funds have been appropriated pursuant to this division, the Secretary of the Navy may not reduce the amount of funds available for the program and equipment described in the first sentence.

(d) ADVANCED TACTICAL FIGHTER, AIR FORCE.—None of the funds appropriated pursuant to an authorization in this or any other Act may be obligated or expended for the full-scale development of the Air Force Advanced Tactical Fighter aircraft until the Secretary of Defense has certified to the Congress that the design selected for the aircraft will accommodate essential Navy-peculiar requirements for such aircraft.

(e) T-46 TRAINER AIRCRAFT, AIR FORCE.—None of the funds appropriated pursuant to an authorization in this or any other Act may be obligated or expended for research, development, test, evaluation, or procurement of or in connection with the T-46 trainer aircraft.

(f) DOD SOFTWARE ENGINEERING INSTITUTE AND VERY HIGH SPEED INTEGRATED CIRCUITS, AIR FORCE.—Of the funds appropriated pursuant to an authorization in this Act, not

more than $14,541,000 may be obligated and expended for the DOD Software Engineering Institute and not more than $127,897,000 may be obligated and expended for the Very High Speed Integrated Circuits Program.

SEC. 203. TESTING OF ANTISATELLITE WEAPONS

Section 8097 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190; 99 Stat. 1185), is repealed.

SEC. 204. ICBM MODERNIZATION

(a) REPORT BY THE SECRETARY OF DEFENSE ON ICBM MODERNIZATION.—At the same time the Secretary submits his report to the Committees on Armed Services of the Senate and the House of Representatives on the ICBM modernization program pursuant to section 1231(c) of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 614), the Secretary of Defense shall submit a statement to such Committees containing the basis of the Secretary's recommendation to the President, and any decisions of the President, regarding the following matters:

(1) The configuration of a small intercontinental ballistic missile in terms of weight, number of warheads, and production schedule.

(2) The selected options for more survivable follow-on basing modes and basing locations for MX (Peacekeeper) missiles.

(3) The advisability of going forward with one or more selected basing modes to a full scale engineering development decision.

(b) LIMITATION OF FUNDING FOR THE SMALL ICBM.—(1) Of the $675,000,000 authorized to be appropriated in this Act for the development of the small ICBM and hard mobile launcher, not more than $337,750,000 may be obligated until the Secretary of Defense has submitted to the Committees on Armed Services of the Senate and the House of Representatives the report required by subsection (a) and a period of 30 days has elapsed following the date on which the report is received by such Committees. After the submission of such report and the period of 30 days has elapsed, the weight limitations specified in section 1231 of the Act referred to in subsection (a) shall no longer be effective.

(2) The limitations contained in section 1231 of the Department of Defense Authorization Act, 1984, on the deployment of the MX missile and the development of a small ICBM shall not apply if (A) the President requests funds from Congress adequate to support the development schedule provided by law for the small ICBM, and (B) the full amount requested by the President to support that schedule has not been appropriated before September 30, 1987.

(c) LIMITATION OF FUNDING FOR FOLLOW-ON BASING DEVELOPMENT.—Of the $200,000,000 authorized to be appropriated for follow-on basing research and development for the MX (Peacekeeper) missile, not more than $100,000,000 may be obligated until the submission of the report required by subsection (a) and a period of 30 calendar days has elapsed following the date on which such report is received by the Committees on Armed Services of the Senate and the House of Representatives.

SEC. 205. BALANCED TECHNOLOGY INITIATIVE

(a)(1) LIMITATION ON FUNDS FOR SDI PROGRAM.—Of the amount authorized in section 201 for Defense Agencies, not more than $3,597,000,000 is available for the Strategic Defense Initiative.

(2) Of the funds available for the Strategic Defense Initiative under paragraph (1), up to $50,000,000 shall be available for the joint development on a matching fund basis of an anti-tactical ballistic missile system for deployment with NATO allies and other countries that the United States has invited to participate in the Strategic Defense Initiative Program.

(b) EARMARKING FOR CERTAIN PROGRAMS.—(1) Of the amount authorized in section 201 for Defense Agencies, not less than $300,000,000 shall be used to expand research on innovative concepts and methods of enhancing conventional defense capabilities. The research and development efforts shall emphasize, but not be limited to the following:

(A) Armor/anti-armor initiatives.

(B) Defenses against armed helicopters.

(C) Hypervelocity missiles for ground combat use.

(D) Defense against anti-ship missiles, including those with "stealth" characteristics.

(E) "Smart" mines for both land and ocean warfare.

(F) Lightweight, air transportable vehicles with anti-armor capabilities for rapid transport to remote areas.

(G) Improved conventional anti-submarine warfare munitions.

(H) "Smart" standoff munitions and submunitions for aircraft delivery outside of lethal air defense ranges.

(2) The amount specified in paragraph (1) is in addition to the amount specified for the Strategic Defense Initiative in subsection (a) and is made available subject to the following conditions:

(A) That the Director of Defense Research and Engineering apportion the funds among the research, development, test, and evaluation accounts of the Army, the Navy, the Air Force, and the Defense Agencies on a merit basis, taking into consideration ongoing technology research and exploitation opportunities.

(B) That no portion of any undistributed reduction be applied against the funds appropriated for purposes of paragraph (1) and that no portion of any undistributed reduction be applied against any program, project, or activity for which additional funds are provided under subparagraph (A).

(C) That no portion of the funds provided for in paragraph (1) be applied to any program, project, or activity in support of the Strategic Defense Initiative.

(c) FUNDS FOR CONVENTIONAL DEFENSE TECHNOLOGY BASE.—Of the amount authorized in section 201 for Defense Agencies, not less than $153,000,000 shall be applied to restoration of the conventional defense technology base. Such amount is in addition to the amounts specified in subsections (a) and (b)(1) and is made available subject to the following conditions:

(1) That the Director of Defense Research and Engineering apportion the funds among the research, development, test, and evaluation accounts of the Army, the Navy, the Air Force, and Defense Agencies on a merit basis, either to augment ongoing but underfunded basic and exploratory research or to establish new basic or exploratory research programs.

(2) That no portion of such funds be applied to any program, project, or activity in support of the Strategic Defense Initiative.

(3) That no portion of any undistributed reduction made in any research, development, test, and evaluation account be applied against the technology base activities of any military department or Defense Agency in a greater proportion than the share of that department's or Agency's technology base as a proportion of the total research, development, test, and evaluation funds made available to that department or Agency for fiscal year 1987.

(4) That no portion of any undistributed reduction be applied against any program, project, or activity which has received additional funds under this subsection.

(d) REPORT.—Within 90 days after the date of the enactment of this Act, the Director of Defense Research and Engineering shall provide to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives a report on the implementation of this section. Such report shall include—

(1) the allocation by project of the amounts specified in subsections (b)(1) and (c);

(2) the identification of other ongoing research and development projects that should be included in a balanced defense technology effort to improve conventional defenses;

(3) for each program, project, or activity for which funds have been allocated under subsection (b)(1), or which is identified under clause (2) of this subsection, a 5-year funding profile sufficient to maintain significant progress in such program, project, or activity, including the major milestones and projected dates of accomplishment for such program, project, or activity; and

(4) a 5-year funding profile that would be required to restore by the end of fiscal year 1992 the defense technology base to the proportion of total research, development, test, and evaluation that such base was, on average, during the period from 1971 through 1980, and the effect of implementing that funding profile on the research, development, test, and evaluation defense programs of the United States.

(e) RESTRICTION ON OBLIGATION OF FUNDS.—None of the funds provided under subsections (b)(1) and (c) may be obligated until Congress has received the report required under subsection (d) and a period of 30 days has elapsed following the date on which the report is received by Congress.

(f) COMPLIANCE WITH THE ABM TREATY.—(1) The Congress finds—

(a) that the President's Commission on Strategic Forces declared in its report to the President, dated March 21, 1984, that "One of the most successful arms control agreements is the Anti-Ballistic Missile Treaty of 1972"; and

(b) that the Secretary of State has stated that the "ABM Treaty requires consultations, and the President has explicitly recognized that any ABM-related deployments arising from research into ballistic missile defenses would be a matter for consultations and negotiations between the Parties";

(c) that the Secretary of State declared on October 14, 1985, that "our research program has been structured and, as the President has reaffirmed, will continue to be conducted in accordance with a restrictive interpretation of the treaty's obligations";

(d) that the President has determined that the Krasnoyarsk radar is a violation of the ABM Treaty; and

(e) that the Krasnoyarsk radar therefore erodes the integrity of the ABM Treaty and is a matter of serious concern.

(2) The Congress therefore declares—

(a) that it fully supports the declared policy of the President that a principal objective of the United States in negotiations with the Soviet Union on nuclear and space arms is to reverse the erosion of the Treaty between the United States of America and

the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, signed on May 26, 1972; and

(b) that action by the Congress in approving funds in this Act for research on the Strategic Defense Initiative does not express or imply an intention on the part of the Congress that the United States should abrogate, violate, or otherwise erode such treaty, and does not express or imply any determination or commitment on the part of the Congress that the United States develop, test, or deploy ballistic missile strategic defense weaponry that would contravene such treaty.

SEC. 206. RESTRICTIONS ON USE OF RESEARCH AND DEVELOPMENT FUNDS OF THE DEPARTMENT OF DEFENSE

This Act does not authorize any research, development, test, and evaluation funds to or for the use of the Department of Defense for the purpose of making any grant or contribution to any educational institution unless the Secretary of Defense, using existing authority, determines—

(1) that the purpose of such grant or contribution has a potential relationship to a military function or operation; and

(2) that the grant or contribution is based on the technical merit of the proposed research that best satisfies the requirements of the Department of Defense.

SEC. 207. REPORT ON PROJECTED COSTS OF SDI PROGRAM

Subsection (b) of section 223 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 613), is amended to read as follows:

At the end of subsection (b) add the following:

"(c) The Secretary shall specifically include in such report the following information:

"(1) The cost goals or cost objectives for the production and deployment of a Strategic Defense Initiative System determined on the basis of capabilities expected to be developed in the future and the cost goals or cost objectives for the individual components of such system (determined on the basis of capabilities expected to be developed in the future).

"(2) The estimated cost for the production and deployment of the Strategic Defense Initiative System referred to in subparagraph (1) and determined on the basis of prices in effect and capabilities in existence at the time of the preparation of the report and the estimated cost for the production and deployment of the individual components of such system (determined on the basis of prices in effect and capabilities in existence at the time of the preparation of the report).".

SEC. 208. PROHIBITION AGAINST CERTAIN CONTRACTS

(a) IN GENERAL.—Funds appropriated pursuant to an authorization contained in this or any other Act to or for the use of the Department of Defense may not be used for the purpose of entering into or carrying out any contract with any foreign government or any foreign firm if the contract is to provide for the conduct of research, development, test, or evaluation in connection with the Strategic Defense Initiative Program unless the Secretary of Defense certifies to the Congress in writing that the work to be performed under the contract cannot be reasonably performed by a United States firm.

(b) EXCEPTIONS.—The prohibition in subsection (a) does not apply to—

(1) funds used to carry out any contract entered into before the date of the enactment of this Act; or

(2) funds appropriated specifically for research, development, test, or evaluation in connection with antitactical ballistic missile systems.

(b) DEFINITION.—As used in subsection (a), the term "foreign firm" means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

TITLE III—OPERATION AND MAINTENANCE

SEC. 301. AUTHORIZATION OF APPROPRIATIONS

Funds are hereby authorized to be appropriated for fiscal year 1987 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance in amounts as follows:

For the Army, $20,596,070,000.
For the Navy, $24,009,960,000.
For the Marine Corps, $1,830,300,000.
For the Air Force, $19,029,371,000.
For the Defense Agencies, $8,332,928,000.
For the Army Reserve, $776,100,000.
For the Naval Reserve, $887,400,000.
For the Marine Corps Reserve, $12,800,000.
For the Air Force Reserve, $887,100,000.
For the Army National Guard, $1,714,800,000.
For the Air National Guard, $1,727,900,000.
For the National Board for the Promotion of Rifle Practice, $930,000.
For Defense Claims, $144,100,000.
For the Court of Military Appeals, $3,200,000.
For the Environmental Restoration Fund, Defense, $385,900,000.

SEC. 302. AUTHORIZATION OF APPROPRIATIONS FOR REVOLVING AND MANAGEMENT FUNDS

Funds are hereby authorized to be appropriated for fiscal year 1987 to provide capital for working-capital funds of the Department of Defense in amounts as follows:

For the Army Stock Fund, $271,700,000.
For the Navy Stock Fund, $438,500,000.
For the Marine Corps Stock Fund, $41,900,000.
For the Air Force Stock Fund, $219,400,000.
For the Defense Stock Fund, $125,800,000.

SEC. 303. ASSISTANCE FOR THE TENTH INTERNATIONAL PAN AMERICAN GAMES

(a) AUTHORITY TO PROVIDE SUPPORT SERVICES.—The Secretary of Defense may—

(1) provide logistical support and personnel services to the Tenth Pan Am Games;

(2) lend and provide equipment in support of the Tenth Pan Am Games; and

(3) provide such other services in support of the Tenth Pan Am Games as the Secretary considers advisable.

(b) AUTHORIZATION OF APPROPRIATIONS; LIMITATIONS.—(1) There is authorized to be appropriated to the Secretary of Defense for fiscal year 1987 an amount not to exceed $15,000,000 for the purpose of carrying out subsection (a).

(2) Except as provided in paragraph (3), funds may not be obligated for the purpose of carrying out subsection (a) unless specifically appropriated for such purpose.

(3) Paragraph (2) does not apply to funds used for pay and non-travel-related allowances for members of the Armed Forces (other than pay and allowances of members of the reserve components called or ordered to active duty to provide support for the Tenth Pan Am Games).

(4) The costs for pay and non-travel-related allowances of members of the Armed Forces (other than members of the reserve components called or ordered to active duty to provide support for the Tenth Pan Am Games) may not be charged to appropriations made pursuant to the authorization in paragraph (1).

(c) DEFINITION.—For the purpose of this section, the term "Tenth Pan Am Games" means the Tenth International Pan American Games, to be held at Indianapolis, Indiana, during the period beginning on August 7, 1987, and ending August 23, 1987.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS FOR TRANSPORTATION OF HUMANITARIAN RELIEF SUPPLIES TO AFGHAN REFUGEES

(a) AUTHORIZATION OF FUNDS.—There is authorized to be appropriated to the Department of Defense for fiscal year 1987 the sum of $10,000,000 for the purpose of providing transportation for humanitarian relief for persons displaced or who are refugees because of the invasion of Afghanistan by the Soviet Union.

(b) AUTHORITY TO TRANSFER FUNDS.—The Secretary of Defense is authorized to transfer to the Secretary of State not more than 5 percent of the funds appropriated pursuant to the authorization in this section to provide local transportation outside the United States to accomplish the purposes of this section.

(c) TRANSPORTATION UNDER DIRECTION OF THE SECRETARY OF STATE.—Transportation provided with funds appropriated pursuant to the authorization in this section shall be under the direction of the Secretary of State.

(d) MEANS OF TRANSPORTATION TO BE USED.—Transportation for humanitarian relief provided with funds appropriated pursuant to the authorization in this section shall be by the most economical commercial or military means available, unless the Secretary of State determines that it is in the national interest of the United States to use means other than the most economical available. Such means may include the use of aircraft and personnel of the reserve components of the Armed Forces.

(e) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization in subsection (a) shall remain available until expended, to the extent provided in appropriation Acts.

SEC. 305. PROGRAM RESTRICTIONS AND LIMITATIONS

(a) PROHIBITION ON USE OF FUNDS FOR CERTAIN STUDIES, ARMY.—None of the funds appropriated to the Army pursuant to an authorization contained in this or any other Act may be obligated or expended, on or after the date of the enactment of this Act, for the purpose of continuing or completing any study, pursuant to the Office of Management and Budget Circular A-76, relating to converting the operation of the federally owned and operated McAlester Army Ammunition Plant, at McAlester, Oklahoma, or the Crane Army Ammunition Activity at the Naval Weapons Support Center, Crane, Indiana, from performance by personnel of the Department of Defense to performance by private contractor, until detailed reports have been submitted to the Congress by the General Accounting Office and the Department of Defense concerning the cost effectiveness of such a conversion and its effect on the defense readiness and mobilization base.

(b) TERMINATION OF PROHIBITION.—The prohibition in subsection (a) shall expire on March 31, 1987.

SEC. 306. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN CURRENCY PURCHASES

Funds are hereby authorized to be appropriated for fiscal year 1987 in the amount of $3,500,000 for the purchase of foreign currencies from the Treasury Department to pay expenses incurred in carrying out programs of the Department of Defense.

TITLE IV—PERSONNEL AUTHORIZATIONS AND RELATED MATTERS

PART A—ACTIVE FORCES

SEC. 401. AUTHORIZATION OF END STRENGTHS

The Armed Forces are authorized strengths for active-duty personnel as of September 30, 1987, as follows:

(1) The Army, 780,800.

(2) The Navy, 587,000.

(3) The Marine Corps, 199,600.

(4) The Air Force, 606,850.

SEC. 402. EXTENSION OF QUALITY CONTROL ON ENLISTMENTS INTO THE ARMY

Effective on October 1, 1986, section 302(a) of the Department of Defense Authorization Act, 1981 (10 U.S.C. 520 note), is amended by striking out "October 1, 1985" and "September 30, 1986" and inserting in lieu thereof "October 1, 1986" and "September 30, 1987", respectively.

SEC. 403. STRENGTH OF ACTIVE DUTY OFFICER CORPS

(a) REDUCTION IN SIZE OF OFFICER CORPS.—On and after each of the dates set forth in column 1 of the following table, the total number of commissioned officers serving on active duty in the Army, Navy, Air Force, and Marine Corps (excluding officers in categories specified in subsection (b)) may not exceed the percentage, set forth in column 2 opposite such date, of the total number of commissioned officers serving on active duty as of September 30, 1986 (excluding officers in categories specified in subsection (b)):

Column 1	Column 2
On and after:	Percentage of total commissioned officers serving on active duty as of September 30, 1986:
September 30, 1987	98
September 30, 1988	96
September 30, 1989	94

(b) EXCLUSIONS.—In computing the authorized strength of commissioned officers under subsection (a), officers in the following categories shall be excluded:

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 265, 270(b), 672a, 3033, 3496, 5251, 5252, 8033, or 8496 of title 10, United States Code, or under section 708 of title 32, United States Code;

(C) on active duty under section 672(d) of title 10, United States Code, in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard;

(D) on active duty to pursue special work;

(E) ordered to active duty under section 673(b) of title 10, United States Code; or

(F) on full-time National Guard duty.

(2) Warrant officers.

(3) Retired officers on active duty under a call or order to active duty for 180 days or less.

(4) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

(c) APPORTIONMENT OF REDUCTIONS BY SECRETARY OF DEFENSE.—The reductions in the number of commissioned officers serving on active duty required by subsection (a) shall be apportioned among the Army, Navy, Air Force, and Marine Corps by the Secretary of Defense. The Secretary shall report to the Committees on Armed Services of the Senate and House of Representatives not later than February 1 of each fiscal year in which reductions are required under subsection (a) on the manner in which the reductions have been or are to be apportioned for that fiscal year.

(d) REQUIREMENT FOR FUTURE AUTHORIZATION OF OFFICER CORPS STRENGTH.—(1) Section 138(c)(1) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

"(D) Congress shall authorize the end strength as of the end of each fiscal year for commissioned officers the Army, Navy, Air Force, and Marine Corps serving on active duty. No funds may be appropriated for any fiscal year to or for the use of commissioned officers on active duty in the Army, Navy, Air Force, or Marine Corps unless the end strength for commissioned officers serving on active duty in that military service for that fiscal year has been authorized by law.".

(2) The amendment made by paragraph (1) shall take effect on October 1, 1987.

PART B—RESERVE FORCES

SEC. 411. AUTHORIZATION OF AVERAGE STRENGTHS FOR SELECTED RESERVE

(a) IN GENERAL.—For fiscal year 1987, the Selected Reserve of the reserve components of the Armed Forces shall be programmed to attain average strengths of not less than the following:

(1) The Army National Guard of the United States, 440,025.

(2) The Army Reserve, 290,639.

(3) The Naval Reserve, 134,212.

(4) The Marine Corps Reserve, 41,900.

(5) The Air National Guard of the United States, 108,700.

(6) The Air Force Reserve, 75,600.

(7) The Coast Guard Reserve, 12,500.

(b) ADJUSTMENTS.—The average strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by (1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at any time during the fiscal year, and (2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at any time during the fiscal year. Whenever such units or such individual members are released from active duty during any fiscal year, the average strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be proportionately increased by the total authorized strength of such units and by the total number of such individual members.

SEC. 412. AUTHORIZATION OF END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVE COMPONENTS

(a) IN GENERAL.—Within the average strengths prescribed in section 411, the reserve components of the Armed Forces are authorized, as of September 30, 1987, the following number of Reserves to be serving on full-time active duty or, in the case of members of the National Guard, on full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components or the National Guard:

(1) The Army National Guard of the United States, 23,731.

(2) The Army Reserve, 12,157.

(3) The Naval Reserve, 19,010.

(4) The Marine Corps Reserve, 1,475.

(5) The Air National Guard of the United States, 7,269.

(6) The Air Force Reserve, 635.

(b) COUNTING OF PERSONNEL IN CERTAIN RESERVE CALL-UP SITUATIONS.—During any period that members of reserve components of the Armed Forces are serving on active duty pursuant to an order under section 673 or 673b of title 10, United States Code, members of reserve components serving on active duty may perform duties in connection with section 673 or 673b of such title and, for purposes of subsection (a), and shall not be counted against the number of Reserves ordered to active duty under those sections. Funds available for the pay and allowances of Reserves referred to in subsection (a) shall be available for the pay and allowances of such Reserves who perform duties in connection with section 673 or 673b of such title under the authority of this section.

SEC. 413. ACCOUNTING FOR CERTAIN AUTHORIZED RESERVE COMPONENT MEMBERS

Section 138(c) of title 10, United States Code, is further amended—

(1) by striking out the text of paragraph (1)(A) and inserting in lieu thereof the following: "Congress shall authorize the end strengths as of the end of each fiscal year for each component of the armed forces for (i) active duty personnel who are to be paid from funds appropriated for active duty personnel, and (ii) active duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for reserve personnel. Upon determination by the Secretary of Defense that such action is in the national interest, an end strength authorized pursuant to clause (i) of the first sentence for a fiscal year may be increased by a number equal to not more than 0.5 percent of the total end strength authorized for such component for that fiscal year and an end strength authorized pursuant to clause (ii) of the first sentence for a fiscal year may be increased by a number equal to not more than 2 percent of the total end strength authorized for such component for that fiscal year. No funds may be appropriated to or for the use of active duty personnel or full-time National Guard duty personnel of any component of the armed forces unless the end strength for such personnel of that component for that fiscal year has been authorized by law.";

(2) in paragraph (1)(B)—

(A) by striking out "for 180 days or less" in clause (v); and

(B) by adding at the end the following new clause:

"(vii) Members on full-time National Guard duty for 180 days or less."; and

(3) in paragraph (3)(D)—

(A) by striking out "and" at the end of clause (iii);

(B) by striking out the period at the end of clause (iv) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new clause:

"(v) an analysis of the number of officers and enlisted members serving on active duty for training under orders specifying a period in excess of 180 days as of the last day of the preceding fiscal year and an estimate for the current fiscal year of the number that will be ordered to such duty tabulated by the following categories:

"(I) Recruit and specialized training.

"(II) Flight training.

"(III) Professional training in military and civilian institutions.

"(IV) Officer acquisition training.".

PART C—CIVILIAN PERSONNEL

SEC. 421. AUTHORIZATION OF END STRENGTHS AND OBLIGATIONAL LIMITS

(a) IN GENERAL.—(1) The Department of Defense is authorized a strength in civilian personnel, as of September 30, 1987, of 1,084,836.

(2) Of the funds appropriated or otherwise made available to the Department of Defense for fiscal year 1987, the total amount that may be obligated for the employment of civilian personnel within the authorization prescribed by paragraph (1) may not exceed $31,811,640,000.

(b) APPORTIONMENT OF PERSONNEL.—The strength for civilian personnel prescribed in subsection (a)(1) shall be apportioned among the Department of the Army, the Department of the Navy, the Department of the Air Force, and the agencies of the Department of Defense (other than the military departments) in such numbers as the Secretary of Defense shall prescribe. The Secretary of Defense shall report to Congress within 60 days after the date of the enactment of this Act on the manner in which the initial allocation of civilian personnel is made among the military departments and the agencies of the Department of Defense (other than the military departments) and shall include the rationale for each allocation.

(c) COUNTING OF PERSONNEL.—(1) In computing the strength for civilian personnel, there shall be included all direct-hire and indirect-hire civilian personnel employed to perform military functions administered by the Department of Defense (other than those performed by the National Security Agency) whether employed on a full-time, part-time, or intermittent basis, but excluding personnel in special employment categories for students and disadvantaged youth (such as the stay-in-school campaign, the temporary summer aid programs, and the Federal junior fellowship program) and personnel participating in the worker-trainee opportunity program.

(2) Personnel employed under a part-time career employment program established by section 3402 of title 5, United States Code, shall be counted as prescribed by section 3404 of that title. Personnel employed in an overseas area on a part-time basis under a nonpermanent local-hire appointment who are dependents accompanying a Federal civilian employee or a member of a uniformed service on official assignment or tour of duty shall also be counted as prescribed by section 3404 of that title.

(3) Whenever a function, power or duty, or activity is transferred or assigned to a military department or an agency of the Department of Defense from a department or agency outside of the Department of Defense, or from another military department or agency within the Department of Defense, the civilian personnel end-strength authorized for each such military department or agency of the Department of Defense affected shall be adjusted to reflect any increases or decreases in civilian personnel required as a result of such transfer or assignment.

SEC. 422. REQUIREMENTS RELATING TO PROPOSED INCREASED UTILIZATION OF CIVILIAN PERSONNEL

(a) IN GENERAL.—No commercial or industrial type function of the Department of Defense that on or after the date of the enactment of this Act is being performed by a private contractor may be converted to performance by Department of Defense civilian employees—

(1) except in time of war, time of national emergency declared by the Congress or the President, or upon a written declaration of the Secretary of Defense (and not a delegate) that such conversion is required in the interests of national security; or

(2) unless the Secretary of Defense provides to the Congress in a timely manner—

(A) notification of any decision to study such commercial or industrial function for possible performance by Department of Defense civilian employees;

(B) a detailed summary of the comparison of the costs of performance of such function by private contractor and by Department of Defense civilian employees which demonstrates that the performance of such function by Department of Defense civilian personnel will result in a cost savings to the Government over the 5-year period following conversion and a certification that the entire cost comparison is available in the Department of Defense;

(C) a certification that the cost estimate for the performance by Department of Defense civilian employees (i) includes an estimate of indirect costs computed on the same basis as those of the private contractor, (ii) includes an estimate of the cost of retirement benefits provided to civilian employees (estimated on the basis of current data), and (iii) is based on an estimate of the organization for performance of such function by such civilian employees that is to be utilized if a decision is made to convert to performance by civilian employees; and

(D) a report, to be submitted with the certification required by subclause (C), showing—

(i) the potential economic effect on contractor employees, and, if more than 50 contractor employees are involved, the potential economic effect on the local community and Federal Government (including the effect on Federal tax revenues and Federal Government expenditures under Federal benefits programs) of converting to performance by Department of Defense civilian employees; and

(ii) the cost of performance of such function by private contractor and the cost of performance by Department of Defense civilian employees, including any incidental or one-time costs and expenditures which the Government will incur because of a decision to convert to performance by civilian employees.

(b) NOTIFICATION REQUIREMENT.—If, after the completion of the studies required for completion of the certification and report required by subclauses (C) and (D) of subsection (a)(2), a decision is made to convert to performance by civilian employees, the Secretary of Defense shall notify Congress of such decision.

PART D—MILITARY TRAINING

SEC. 431. AUTHORIZATION OF TRAINING STUDENT LOADS

(a) IN GENERAL.—For fiscal year 1987, the components of the Armed Forces are authorized average military training student loads as follows:

(1) The Army, 76,758.

(2) The Navy, 72,483.

(3) The Marine Corps, 19,433.

(4) The Air Force, 43,911.

(5) The Army National Guard of the United States, 18,262.

(6) The Army Reserve, 15,858.

(7) The Naval Reserve, 3,493.

(8) The Marine Corps Reserve, 3,944.

(9) The Air National Guard of the United States, 3,566.

(10) The Air Force Reserve, 2,127.

(b) ADJUSTMENT AND APPORTIONMENT.—The average military student loads for the Army, the Navy, the Marine Corps, and the Air Force and the reserve components authorized in subsection (a) for fiscal year 1987 shall be adjusted consistent with the personnel strengths authorized in parts A and B. Such adjustment shall be apportioned among the Army, the Navy, the Marine Corps, and the Air Force and the reserve components in such manner as the Secretary of Defense shall prescribe.

PART E—MANPOWER ANALYSES

SEC. 441. MANPOWER REPORTS ON MAJOR DEFENSE ACQUISITION PROGRAMS

(a) IN GENERAL.—Section 139c of title 10, United States Code, is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) The Secretary of Defense may not approve the full-scale engineering development or the production and deployment of a major defense acquisition program unless—

"(1) an independent estimate of the cost of the program first has been submitted to (and considered by) the Secretary of Defense; and

"(2) the Secretary of Defense has submitted to the Committees on Armed Services of the Senate and the House of Representatives at least 90 days in advance of such approval a manpower estimate of the program.";

(2) by adding at the end of subsection (b) the following new paragraph:

"(4) 'Manpower estimate' means, with respect to a major defense acquisition program, an estimate of—

"(A) the total number of personnel, including military, civilian, or contractor personnel, expressed both in total personnel and man-years, that will be required to operate, maintain, and support such program upon full operational deployment and to train personnel to operate, maintain, and support such program upon full operational deployment;

"(B) the increases in military and civilian end strengths that will be required for full operational deployment of such program above the end strengths authorized in the fiscal year in which such an estimate is submitted and the fiscal year or years in which such increases will be required; and

"(C) the manner in which such a program would be operationally deployed if no increases in military and civilian end strengths were authorized above the strengths authorized for the fiscal year in which such estimate is submitted."; and

(3) by striking out the section heading and inserting in lieu thereof the following:

"§ 139c. Major defense acquisition programs: independent cost estimates; operational manpower requirements"

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 4 is amended by striking out the item relating to

section 139c and inserting in lieu thereof the following:

"139c. Major defense acquisition programs: independent cost estimates; operational manpower requirements.".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 30 days after the date of the enactment of this Act and shall apply to approvals of full-scale engineering development and approvals of production and deployment of major defense acquisition programs made on or after that date.

TITLE V—MILITARY PERSONNEL POLICY

SEC. 501. ASSIGNMENT OF PERSONNEL OUTSIDE THE UNITED STATES

The text of section 671 of title 10, United States Code, is amended to read as follows:

"A member of the armed forces may not be assigned to active duty on land outside the United States and its territories and possessions until the member has completed the basic training requirements of the armed force of which he is a member. In time of war or a national emergency declared by the Congress or the President, the period of required basic training may not be less than 12 weeks or the equivalent thereof.".

SEC. 502. TREATMENT OF EXCESS LEAVE UPON RE-ENLISTMENT

(a) AUTHORITY TO CARRY OVER EXCESS LEAVE.—Section 701 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.".

(b) AUTHORIZATION FOR PAY AND ALLOWANCES FOR CARRIED OVER EXCESS LEAVE.—Section 502(b) of title 37, United States Code, is amended by inserting "and section 701(h) of title 10" after "subsection (a) of this section".

SEC. 503. EXTENSION OF AUTHORITY FOR THE TEMPORARY PROMOTION OF CERTAIN NAVY LIEUTENANTS

Section 5721(f) of title 10, United States Code, is amended by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1988".

SEC. 504. CORRECTION OF TECHNICAL ERROR RELATING TO AUTHORITY TO RETAIN UP TO 10 ARMY RESERVE BRIGADIER GENERALS IN AN ACTIVE STATUS UNTIL AGE 60

(a) IN GENERAL.—Subsections (c) and (d) of section 3851 of title 10, United States Code, are amended to read as follows:

"(c) Notwithstanding subsections (a) and (b), the Secretary of the Army may authorize the retention in an active status until age 60 of an officer in the reserve grade of brigadier general who would otherwise be removed from an active status under this section, except that not more than 10 officers may be retained under this subsection at any time.

"(d) Notwithstanding subsections (a) and (b), the Secretary of the Army may authorize the retention in an active status until age 60 of an officer who would otherwise be removed from an active status under this section who—

"(1) is an officer of the Army National Guard of the United States assigned to a headquarters or headquarters detachment of a State or territory, the Commonwealth of Puerto Rico, the Canal Zone, or the District of Columbia; or

"(2) is employed—

"(A) as a technician under section 709 of title 32 in a position for which membership in the National Guard is required as a condition of employment; or

"(B) as a technician of the Army Reserve in a position for which membership in the Army Reserve is required as a condition of employment.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of November 8, 1985, and shall apply as if such amendment had been enacted on such date in place of the amendments enacted by section 522(a)(2) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 631).

SEC. 505. INCREASED PRESIDENTIAL AUTHORITY TO AUGMENT ACTIVE FORCES WITH THE SELECTED RESERVE

Section 673b of title 10, United States Code, is amended—

(1) by striking out "100,000" in subsection (c) and inserting in lieu thereof "250,000"; and

(2) by adding at the end the following new subsection:

"(i) In any case in which one or more units of the Selected Reserve, or members of the Selected Reserve not assigned to a unit organized to serve as a unit, have been ordered to active duty under this section and the President determines that such action is necessary in the interests of national security, he may extend the 90-day period prescribed by subsection (a). The President shall immediately notify Congress in any case in which he exercises his authority under this subsection and shall include in the notification a statement of reasons for the extension. Nothing in this subsection shall be construed as amending or limiting the authority of Congress to terminate the service of units or members ordered to active duty under this section pursuant to the provisions of subsection (g).".

SEC. 506. ACTIVE DUTY STATUS OF RESERVE COMPONENT MEMBERS IN A CAPTIVE STATUS

(a) IN GENERAL.—Chapter 39 of title 10, United States Code, is amended—

(1) by adding after section 672 the following new section:

"§ 672a. Reserve components: members in a captive status

"(a) Under uniform regulations prescribed by the Secretary of Defense, a member of a reserve component may, without his consent, be ordered to active duty if it is determined, pursuant to such regulations, that the member is in a captive status. A member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his captive status is terminated.

"(b) For purposes of this section, the term 'captive status' means the status of a person who is in a missing status as defined in section 551(2) of title 37 which occurred as the result of hostile action and is related to the member's military status."; and

(2) by inserting in the table of sections at the beginning of such chapter the following new item immediately below the item relating to section 672:

"672a. Reserve components: members in a captive status.".

(b) EXCLUSION FROM END STRENGTHS.—Section 138(c)(1)(B) of such title, as amended by section 413(2)(B) of this Act, is further amended by adding at the end the following new clause:

"(viii) Members of reserve components ordered to active duty under section 672a of this title.".

(c) EXCLUSION FROM OFFICER STRENGTHS.—Chapter 32 of title 10, United States Code, is amended—

(1) by adding at the end the following new section:

"§ 527. Authorized strengths: exclusion of certain reserve officers

"Members ordered to active duty under section 672a of this title shall be excluded in computing and determining authorized strengths under this chapter.";

(2) by adding at the end of the table of sections at the beginning of such chapter the following new item:

"527. Authorized strengths: exclusion of certain reserve officers."; and

(3) in section 523(b)(1)(B), by inserting "672a," after "265,".

(d) EXCLUSION FROM APPLICABILITY OF CERTAIN LAWS.—Section 641(1)(B) of title 10, United States Code, is amended by inserting "672a," after "265,".

(e) EFFECT OF ACTIVE DUTY UPON PROMOTION.—(1) Section 3388 of title 10, United States Code, is amended by inserting "or under section 672a of this title" after "training".

(2) Section 8372(e) of such title is amended by inserting "(other than pursuant to section 672a of this title)" after "active duty".

SEC. 507. TECHNICAL CORRECTION RELATING TO PERSONNEL ADMINISTRATION AT AIR FORCE INSTITUTE OF TECHNOLOGY

Section 9314(b)(2)(B) of title 10, United States Code, is amended by striking out "rates of basic".

SEC. 508. TERMINATION OF GENDER-BASED DISTINCTIONS IN PROMOTIONS OF OFFICERS OF THE NAVAL RESERVE AND MARINE CORPS RESERVE

(a) IN GENERAL.—Chapter 549 of title 10, United States Code, is amended by striking out sections 5896 through 5899 and inserting in lieu thereof the following:

"§ 5896. Recommendations for promotion by selection boards

"(a) A selection board convened under section 5893 of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the Navy or Marine Corps for officers with particular skills, considers best qualified for promotion within each competitive category considered by the board.

"(b) A selection board convened under section 5893 of this title may not recommend an officer for promotion unless—

"(1) the officer receives the recommendation of a majority of the members of the board; and

"(2) a majority of the members of the board finds that the officer is fully qualified for promotion.

"(c) Except as otherwise provided by law, an officer of the Naval Reserve or the Marine Corps Reserve may not be promoted to a higher grade under this chapter unless the officer is considered and recommended for promotion to that grade by a selection board convened under this chapter.

"§ 5897. Reports of selection boards

"Each selection board convened under section 5893 of this title shall submit to the Secretary of the Navy a written report, signed by each member of the board, containing a list of the names of the officers recommended for promotion and certifying (1) that the board has carefully considered the record of each officer whose name was furnished to the board under section 5895 of this title, and (2) that, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the Navy or the Marine Corps from among those officers whose names were furnished to the selection board.

"§ 5898. Action on reports of selection boards

"(a) If, after reviewing the report of a selection board submitted under section 5897 of this title, the Secretary of the Navy determines that the board has acted contrary to law or regulation, the Secretary shall return the report to the board for further proceedings. Upon receipt of a report returned by the Secretary under this subsection, the selection board (or a subsequent selection board convened under section 5893 of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report and shall resubmit the report, as revised, to the Secretary in accordance with section 5897 of this title.

"(b) The Secretary of the Navy shall, after final review of the report, submit it, together with the Secretary's recommendations, to the Secretary of Defense for transmittal to the President for approval, modification, or disapproval.

"(c) The name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President. Such action may be taken at any time before the promotion of the officer.

"(d) Upon approval by the President of the report of a selection board, the names of the officers recommended for promotion by the selection board (other than any name removed by the President) may be disseminated to the armed force concerned. If those names have not been sooner disseminated, those names (other than the name of any officer whose promotion the Senate failed to confirm) shall be promptly disseminated to the armed force concerned upon confirmation by the Senate.

"(e) Except as authorized or required by this section, proceedings of a selection board convened under section 5893 of this title may not be disclosed to any person not a member of the board.

"§ 5899. Eligibility for consideration for promotion: running mates

"An officer is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under section 5893 of this title when that officer's running mate is in or above the promotion zone established for that officer's present grade under chapter 36 of this title.".

(b) CONFORMING AMENDMENTS.—(1) The table of sections of chapter 549 of title 10, United States Code, is amended by striking out the items relating to sections 5896 through 5899 and inserting in lieu thereof the following:

"5896. Recommendations for promotion by selection boards.
"5897. Reports of selection boards.
"5898. Actions on reports of selection boards.
"5899. Eligibility for consideration for promotion: running mates.".

(2) Section 5903 of such title is amended—

(A) by striking out "(a)" at the beginning of such section; and

(B) by striking out subsection (b).

(3) Subsection (a) of section 5905 of such title is amended to read as follows:

"(a) The name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President. Such action may be taken at any time before the promotion of the officer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or on the date of the enactment of this Act, whichever is later, and shall apply to selection boards convened on or after the effective date.

SEC. 509. SENATE CONFIRMATION OF CERTAIN GENERAL AND FLAG OFFICER POSITIONS

(a) DEAN OF ACADEMIC BOARD OF UNITED STATES MILITARY ACADEMY.—Section 4335 of title 10, United States Code, is amended—

(1) by striking out the last sentence of subsection (b); and

(2) by adding at the end the following new subsection:

"(c) The Dean of the Academic Board has the grade of brigadier general while serving in such position, with the benefits authorized for regular brigadier generals of the Army, if appointed to that grade by the President, by and with the advice and consent of the Senate. However, the retirement age of an officer so appointed is that of a permanent professor of the Academy.".

(b) DEPUTY JUDGE ADVOCATE GENERAL AND ASSISTANT JUDGE ADVOCATES GENERAL OF THE NAVY.—Section 5149 of such title is amended—

(1) in subsection (a), by striking out the second sentence and inserting in lieu thereof the following: "While so serving, a judge advocate who holds a grade lower than rear admiral or major general shall hold the grade of rear admiral or major general, as appropriate, if he is appointed to that grade by the President, by and with the advice and consent of the Senate.";

(2) in subsection (b), by striking out the second sentence and inserting in lieu thereof the following: "While so serving, a judge advocate who holds a grade lower than rear admiral (lower half) shall hold the grade of rear admiral (lower half), if he is appointed to that grade by the President, by and with the advice and consent of the Senate."; and

(3) in subsection (c), by striking out the second sentence and inserting in lieu thereof the following: "While so serving, a judge advocate who holds a grade lower than brigadier general shall hold the grade of brigadier general, if he is appointed to that grade by the President, by and with the advice and consent of the Senate.".

(c) DEAN OF THE FACULTY OF THE UNITED STATES AIR FORCE ACADEMY.—Section 9335(b) of such title is amended to read as follows:

"(b) The Dean has the grade of brigadier general while serving in such position, with the benefits authorized for regular brigadier generals of the Air Force, if appointed to that grade by the President, by and with the advice and consent of the Senate. However, the retirement age of an officer so appointed is that of a permanent professor of the Academy.".

(d) ATTENDING PHYSICIAN TO THE UNITED STATES CONGRESS.—(1) Chapter 34 of such title is amended—

(A) by adding at the end the following new section:

"§ 600a. Attending Physician to the United States Congress

"While serving as Attending Physician to the United States Congress, a Reserve who holds a reserve grade lower than major general or rear admiral shall hold the reserve grade of major general or rear admiral, as appropriate, if he is appointed to that grade by the President, by and with the advice and consent of the Senate."; and

(B) by adding at the end of the table of sections at the beginning of such chapter the following new item:

"600a. Attending Physician to the United States Congress.".

(2) Section 1374 of such title is amended—

(A) by redesignating subsection (e) as subsection (f); and

(B) by inserting after subsection (d) the following new subsection:

"(e) Unless entitled to a higher grade under another provision of law, a reserve commissioned officer who is transferred to the Retired Reserve after having served in the position of Attending Physician to the United States Congress is entitled to be placed on the retired list established by section 1376(a) of this title in the grade held by such officer while serving in such position.".

(e) CONFORMING AMENDMENT.—The second undesignated paragraph relating to the Office of the Attending Physician under the heading "JOINT ITEMS" in chapter V of the Supplemental Appropriations Act, 1973 (Public Law 92-607; 86 Stat. 1509) is repealed.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall apply only with respect to appointments or details made on or after that date.

SEC. 510. POSITION OF STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS

(a) IN GENERAL.—Chapter 515 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 5205. Staff Judge Advocate to the Commandant of the Marine Corps: qualifications; appointment; retirement

"(a) An officer of the Marine Corps who is a judge advocate and a member of the bar of a Federal court or the highest court of a State or territory and who has had at least eight years of experience in legal duties as a commissioned officer may be detailed as Staff Judge Advocate to the Commandant of the Marine Corps. While so serving, a judge advocate who holds a grade lower than brigadier general shall hold the grade of brigadier general if appointed to that grade by the President, by and with the advice and consent of the Senate.

"(b) An officer retiring from the position of Staff Judge Advocate to the Comman-

dant of the Marine Corps, after serving at least three years in such position, shall be retired in the highest grade in which that officer served on active duty satisfactorily, as determined by the Secretary of the Navy.

"(c) If an officer is retired in the grade of brigadier general pursuant to subsection (b), the officer is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"5205. Staff Judge Advocate to the Commandant of the Marine Corps: qualifications; appointment; retirement.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, but shall apply only with respect to appointments as Staff Judge Advocate to the Commandant of the Marine Corps made on or after that date.

(d) TRANSITION PROVISION.—Notwithstanding section 1370(a)(2) of title 10, United States Code, an officer serving in the position of Staff Judge Advocate to the Commandant of the Marine Corps, or an equivalent position, on the day before the effective date of this section, if retired after having served in such position (or equivalent position) at least three years, including any service in such position (or its equivalent) before the effective date of this section, shall be retired in the highest grade in which the officer served on active duty satisfactorily, as determined by the Secretary of the Navy.

SEC. 511. TEMPORARY INCREASE IN THE NUMBER OF GENERAL AND FLAG OFFICERS AUTHORIZED TO BE ON ACTIVE DUTY IN THREE- AND FOUR-STAR GRADES

During fiscal year 1987, the numbers of officers authorized under section 525(b) of title 10, United States Code, to be on active duty in grades above major general and rear admiral are increased as follows:

(1) ARMY LIEUTENANT GENERALS.—The number of officers of the Army authorized to be serving on active duty in grades above major general is increased by one during any period of that fiscal year that an officer of the Army is serving as the Director of the Department of Defense Task Force on Drug Enforcement. An additional officer in a grade above major general by reason of this paragraph may not be in the grade of general.

(2) AIR FORCE GENERALS.—The number of officers of the Air Force authorized to be serving on active duty in the grade of general is increased by one during any period of that fiscal year that a general of the Air Force is serving as Director of the Strategic Defense Initiative Organization.

(3) NAVY VICE ADMIRALS.—The number of officers of the Navy authorized to be serving on active duty in a grade above rear admiral is increased by three. None of the additional officers in grades above rear admiral by reason of this paragraph may be in the grade of admiral.

(4) MARINE CORPS GENERAL OFFICERS.—The number of officers of the Marine Corps authorized to be serving on active duty in grades above major general is increased by one, plus an additional one during any period of that fiscal year that an officer of the Marine Corps is serving as the Commander-in-Chief of the United States Central Command. An additional officer in a grade above major general by reason of this paragraph may not be in the grade of general, unless a Marine Corps officer is serving as the Commander-in-Chief of the United States Central Command, in which case one of the additional officers authorized by this paragraph may serve in the grade of general.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

PART A—BASIC PAY AND ALLOWANCES

SEC. 601. MILITARY PAY RAISE FOR FISCAL YEAR 1987

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1987 shall not be made.

(b) FOUR PERCENT INCREASE IN BASIC PAY AND BASIC ALLOWANCE FOR SUBSISTENCE.—The rates of basic pay and basic allowance for subsistence of members of the uniformed services are increased by 4 percent effective on October 1, 1986.

(c) AVERAGE FOUR PERCENT INCREASE IN BASIC ALLOWANCE FOR QUARTERS.—Effective October 1, 1986, the rates of basic allowance for quarters authorized by section 403(a) of title 37, United States Code, are as follows:

Pay grade	Without dependents		With dependents
	Full rate	Partial rate [1]	
Commissioned officers:			
O-10	$575.70	$50.70	$708.00
O-9	575.70	50.70	708.00
O-8	575.70	50.70	708.00
O-7	575.70	50.70	708.00
O-6	528.30	39.60	642.00
O-5	498.60	33.00	591.60
O-4	457.20	26.70	540.60
O-3	368.40	22.20	445.20
O-2	297.90	17.70	377.70
O-1	253.20	13.20	333.30
O-3 [2]	402.30	22.20	476.40
O-2 [2]	344.40	17.70	434.70
O-1 [2]	301.50	13.20	391.20
Warrant officers:			
W-4	419.10	25.20	486.00
W-3	353.70	20.70	435.00
W-2	318.30	15.90	406.50
W-1	269.40	13.80	354.30
Enlisted members:			
E-9	337.80	18.60	460.50
E-8	312.90	15.30	429.00
E-7	267.00	12.00	399.00
E-6	237.00	9.90	361.80
E-5	219.30	8.70	321.60
E-4	190.20	8.10	278.10
E-3	184.80	7.80	259.80
E-2	156.90	7.20	248.10
E-1	142.80	6.90	245.70

[1] Payable to a member without dependents who under section 403 (b) or (c) of title 37, United States Code, is not entitled to receive a basic allowance for quarters.

[2] Applies to commissioned officers with over 4 years' active duty as an enlisted member, warrant officer, or both.

(d) FOUR PERCENT INCREASE IN CADET AND MIDSHIPMAN PAY.—Effective October 1, 1986, section 203(c)(1) of title 37, United States Code, is amended by striking out "$461.40" and inserting in lieu thereof "$499.20".

SEC. 602. REIMBURSEMENT FOR ACCOMMODATIONS IN PLACE OF QUARTERS

(a) LIMITATION ON AMOUNT AVAILABLE FOR REIMBURSEMENTS DURING FISCAL YEARS 1987 THROUGH 1991.—Section 7572(b)(3) of title 10, United States Code, is amended to read as follows:

"(3) The total amount of reimbursement under this subsection may not exceed $1,421,000 for fiscal year 1986 and $1,657,000 for each of the fiscal years 1987 through 1991.".

(b) EXTENSION OF AUTHORITY.—Section 3 of Public Law 96-357 (10 U.S.C. 7572 note) is amended by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1991".

SEC. 603. ADVANCE PAY FOR SENIOR ROTC MEMBERS IN CERTAIN CIRCUMSTANCES

Section 1006 of title 37, United States Code, is amended by adding at the end the following new subsection:

"(j) Under regulations prescribed by the Secretary concerned, not more than one month's pay may be paid in advance to a member enrolled in a program established under chapter 103 of title 10, who is ordered to participate in field training or a practice cruise authorized by section 2109 of title 10.".

SEC. 604. TERMINATION OF PAY INEQUITY BETWEEN OFFICERS AND ENLISTED PERSONNEL IN CERTAIN HEALTH PROFESSIONS TRAINING

(a) STUDENTS AT UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.—Section 2114(b) of title 10, United States Code, is amended by inserting "(but not in pay grade O-1E)" after "pay grade O-1" in the second sentence.

(b) STUDENTS IN HEALTH PROFESSIONS SCHOLARSHIP PROGRAM.—Section 2121(c) of title 10, United States Code, is amended by inserting "(but not in pay grade O-1E)" after "pay grade O-1" in the second sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987, but shall not apply to any person who on or before that date was attending, or had been selected to attend, the Uniformed Services University of the Health Sciences or who had signed an agreement pursuant to section 2122(2) of title 10, United States Code.

PART B—TRAVEL AND TRANSPORTATION

SEC. 611. IMPROVED DISLOCATION ALLOWANCE

(a) IN GENERAL.—Section 407 of title 37, United States Code, is amended to read as follows:

"§ 407. Travel and transportation allowances: dislocation allowance

"(a) Except as provided in subsections (b), (c), and (d) of this section and under regulations prescribed by the Secretary concerned, a member of a uniformed service is entitled to a dislocation allowance equal to the basic allowance for quarters for two months as provided for the member's pay grade and dependency status in section 403 of this title if—

"(1) the member's dependents actually make an authorized move in connection with the member's change of permanent station, including—

"(A) a move to join the member at the member's duty station after an unaccompanied tour of duty when the member's next tour of duty is an accompanied tour at the same station; and

"(B) a move to a location designated by the member after an accompanied tour of duty when the member's next tour of duty is an unaccompanied tour at the same duty station;

"(2) the member's dependents actually move pursuant to section 405a(a), 406(e), 406(h), or 554 of this title;

"(3) the member's dependents actually move from their place of residence under circumstances described in section 406a of this title; or

"(4) the member is without dependents and—

"(A) actually moves to a new permanent station where not assigned to quarters of the United States; or

"(B) actually moves from a place of residence under circumstances described in section 406a of this title.

If a dislocation allowance is paid under clause (3) or (4)(B), the member is not entitled to a dislocation allowance under clause (1).

"(b) Under regulations prescribed by the Secretary concerned, whenever a member is entitled to a dislocation allowance under subsection (a)(3) or (a)(4)(B) of this section, the member is also entitled to a second dislocation allowance equal to the basic allowance for quarters for two months as provided for a member's pay grade and dependency status in section 403 of this title if, subsequent to the member or member's dependents actually moving from their place of residence under circumstances described in section 406a of this title, the member or member's dependents complete that move to a new location and then actually move from that new location to another location also under circumstances described in section 406a of this title. If a second dislocation allowance is paid under this subsection, the member is not entitled to a dislocation allowance under subsection (a)(1) of this section in connection with those moves.

"(c) A member is not entitled to more than one dislocation allowance during a fiscal year unless—

"(1) the Secretary concerned finds that the exigencies of the service require the member to make more than one change of permanent station during the fiscal year;

"(2) the member is ordered to a service school as a change of permanent station;

"(3) the member's dependents are covered by section 405a(a), 406(e), 406(h), or 554 of this title; or

"(4) the member or the member's dependents are covered by subsection (a)(3), (a)(4)(B), or (b) of this section.

This subsection does not apply in time of national emergency declared after April 1, 1975, or in time of war.

"(d) A member is not entitled to payment of a dislocation allowance when ordered from his home to the first duty station or from the last duty station to his home.

"(e) For purposes of this section, a member whose dependents may not make an authorized move in connection with a change of permanent station is considered a member without dependents.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply only to moves which commence on or after that effective date.

SEC. 612. OVERSEAS TRANSPORTATION OF PRIVATELY OWNED MOTOR VEHICLES

(a) IN GENERAL.—Section 2634 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "or" at the end of clause (3);

(B) by striking out the period at the end of clause (4) and inserting in lieu thereof "; or"; and

(C) by adding after clause (4) the following new clause:

"(5) in the case of movement to or from Europe by shipping services described in clause (1), (2), or (3), transportation between the ocean port and one or more inland points in Germany, designated by the Secretary concerned, by inland waterway or overland, whichever is most cost effective for the Government considering all operational, travel, and transportation requirements."; and

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and inserting after subsection (a) the following new subsection:

"(b) When a member, assigned to a military unit, is ordered to make a change of permanent station incident to the overseas movement of that unit, one motor vehicle, as described in subsection (a), may be transported between the member's permanent stations at the expense of the United States.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply only with respect to the transportation of motor vehicles commencing on or after that effective date.

SEC. 613. GOVERNMENT TRANSPORTATION OF PRIVATELY OWNED MOTOR VEHICLES IN UNSAFE CONDITIONS

(a) IN GENERAL.—Section 2634 of title 10, United States Code, as amended by section 612 of this Act, is further amended by adding at the end the following new subsection:

"(e) If the Secretary concerned determines that transportation of a member's motor vehicle between such member's last duty station and the customary ports of embarkation or debarkation is—

"(1) a threat to security or the member's personal safety; or

"(2) dangerous because of hazardous road, terrain, weather, or similar adverse conditions,

such transportation may be provided at the expense of the United States.".

(b) PROHIBITION ON PAYMENT OF MONETARY ALLOWANCE WHEN GOVERNMENT TRANSPORTATION FURNISHED.—Section 406(b)(1)(B) of title 37, United States Code, is amended by adding at the end the following new sentence: "Such monetary allowance may not be paid when the motor vehicle is transported at the expense of the Government under subsection (b) or (e) of section 2634 of title 10.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply only with respect to the transportation of motor vehicles commencing on or after that effective date.

SEC. 614. TRANSPORTATION AND STORAGE OF HOUSEHOLD GOODS

(a) ADMINISTRATION OF STORAGE OF EXCESS HOUSEHOLD GOODS.—Section 406(d) of title 37, United States Code, is amended by inserting after the second sentence the following new sentence: "In the event a member's baggage and household effects exceed such maximum weight limitation, the Secretary concerned may pay the costs for the nontemporary storage of that excess weight and collect the amount paid from the member's pay and allowances, or collect the amount in such other manner as the Secretary concerned determines appropriate.".

(b) EARLY RETURN SHIPMENT OF HOUSEHOLD GOODS AND PRIVATELY OWNED MOTOR VEHICLES FROM OVERSEAS.—(1) Section 406 of such title is amended—

(1) by redesignating subsection (l) as subsection (m); and

(2) by inserting after subsection (k) the following new subsection (l):

"(l) Under uniform regulations prescribed by the Secretaries concerned, a member with dependents who is ordered to make an overseas permanent change of station and who, in anticipation of his dependents accompanying him overseas, ships baggage and household effects to that overseas station, may be authorized a return shipment of the baggage and household effects if, subsequent to the shipment, the member's dependents are unable to accompany him overseas and the Secretary concerned determines that such inability was unexpected and uncontrollable.".

(2) Section 2634 of title 10, United States Code, as amended by sections 612 and 613 of this Act, is further amended by adding at the end the following new subsection:

"(f) When the Secretary concerned makes a determination under section 406(l) of title 37 that the dependents of a member on a permanent change of station are unable to accompany the member to an overseas duty station because of unexpected and uncontrollable circumstances, and the member shipped a motor vehicle pursuant to this section in anticipation of a dependent accompanying the member to the new duty station, the member may reship or transship such motor vehicle in accordance with this section.".

(c) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to members whose baggage and household goods enter nontemporary storage on or after such date.

(2) The amendments made by subsection (b) shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply with respect to members whose dependents are unable to accompany them to an overseas permanent duty station because of circumstances arising on or after that effective date.

SEC. 615. CONTINGENT AUTHORIZATION FOR FLAT-RATE PER DIEM SYSTEM

(a) IN GENERAL.—Subsection (d) of section 404 of title 37, United States Code, is amended—

(1) in paragraph (1)(B) by striking out "Transportation" and inserting in lieu thereof "Subject to paragraph (2), transportation";

(2) in paragraph (1)(C), by striking out "clause (1) of this subsection" and inserting in lieu thereof "subparagraph (A) of this paragraph";

(3) by redesignating paragraph (2) as paragraph (3);

(4) by inserting after paragraph (1) the following new paragraph (2):

"(2)(A) With respect to any fiscal year for which a certification has been made by the Secretary of Defense under paragraph (5) of this subsection, the travel and transportation allowance in subparagraph (B) of this paragraph is authorized in the place of the travel and transportation allowance authorized under paragraph (1)(B) of this subsection.

"(B) The travel and transportation allowance authorized under subparagraph (A) of this paragraph with respect to a fiscal year referred to in such subparagraph is transportation in kind, reimbursement therefor, or monetary allowance as provided in para-

graph (1)(A) of this subsection, plus a payment in lieu of subsistence as provided in paragraph (4) of this subsection. Such payment shall be sufficient to meet normal and necessary expenses in the area to which travel is performed."; and

(5) in paragraph (3), as redesignated by clause (3)—

(A) by striking out "Under" and inserting in lieu thereof "Except as provided in paragraph (4) of this subsection and under"; and

(B) by adding at the end the following new paragraphs:

"(4)(A) With respect to any fiscal year for which a certification has been made under paragraph (5) of this subsection, the provisions of subparagraphs (B), (C), and (D) of this paragraph shall apply rather than paragraph (3) of this subsection.

"(B) Under regulations prescribed by the Secretary of Defense, a member of a uniformed service entitled to travel and transportation allowances under subsection (a) is entitled to any of the following:

"(i) A per diem allowance at a rate not to exceed that established by the Secretary of Defense.

"(ii) Reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Secretary of Defense.

"(iii) A combination of payments described in clauses (i) and (ii) of this subparagraph.

"(C) Any per diem allowance or maximum amount of reimbursement shall be established, to the extent feasible, by locality.

"(D) For travel consuming less than a full day, the payment prescribed by regulations shall be allocated in such manner as the Secretary of Defense may prescribe.

"(5)(A) The travel and transportation allowances authorized by paragraphs (2) and (4) of this subsection shall apply to any fiscal year with respect to which the Secretary of Defense has certified that the overall cost to the United States of the payment of allowances under such paragraphs would not exceed the overall cost to the United States of the payment of allowances under paragraphs (1)(B) and (3) of this subsection.

"(B) A certification by the Secretary of Defense under subparagraph (A) of this paragraph shall—

"(i) include a comparison of the overall costs to the United States under the two methods referred to in such subparagraph of computing allowances; and

"(ii) be transmitted to the Committees on Armed Services of the Senate and the House of Representatives at least 60 days before the beginning of a fiscal year with respect to which a certification is made under such subparagraph.".

(b) APPLICATION TO FISCAL YEAR 1987.—(1) Notwithstanding paragraph (5)(B)(ii) of section 404(d) of title 37, United States Code, as added by subsection (a), a certification under paragraph (5)(A) of such section with respect to fiscal year 1987 may be transmitted to the committees named in such paragraph at any time during such fiscal year.

(2) If a certification is made under paragraph (5)(A) of section 404(d) of title 37, United States Code, with respect to fiscal year 1987, the amendments made by subsection (a) of this section shall apply to travel and transportation of members of the uniformed services commencing more than 60 days after the date on which the certification is made.

SEC. 616. TRAVEL EXPENSES FOR OVERSEAS DEPENDENTS REQUIRING MEDICAL CARE IN CERTAIN CIRCUMSTANCES

(a) IN GENERAL.—Section 1040(a) of title 10, United States Code, is amended by striking out the comma after "attendants" and all that follows in the third sentence and inserting in lieu thereof a period and the following: "In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply only to travel performed on or after that effective date.

SEC. 617. AUTHORIZATION LIMIT ON FUNDS FOR PCS TRAVEL

There are authorized to be appropriated for fiscal year 1987 not more than $2,657,553,000 for permanent change of station travel for active duty military personnel.

PART C—BONUSES AND SPECIAL AND INCENTIVE PAYS

SEC. 621. ENHANCED AVIATION OFFICER CONTINUATION PAY

Section 301b(e) of title 37, United States Code, is amended—

(1) in paragraph (1), by inserting "executed before the date of the enactment of the Department of Defense Authorization Act, 1987," after "agreement"; and

(2) in the third sentence of paragraph (3), by striking out "less than seven years" and inserting in lieu thereof "less than eight years".

SEC. 622. INCLUSION OF AVIATION CADETS UNDER AVIATION CAREER INCENTIVE PAY

(a) IN GENERAL.—(1) Section 301a(a)(6) of title 37, United States Code, is amended—

(A) by striking out "and" at the end of clause (A);

(B) by striking out the period at the end of clause (B) and inserting in lieu thereof a semicolon and "and"; and

(C) by inserting after clause (B) the following new clause:

"(C) 'officer' includes an individual enlisted, and designated, as an aviation cadet under section 6911 of title 10.".

(2) Section 301a(b)(1) of such title is amended by striking out "an officer in pay grades O-1 through O-10" and inserting in lieu thereof "a member".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply only with respect to those members of the Armed Forces who are aviation cadets on or after the date of the enactment of this Act. Service as an aviation cadet before that date shall not be counted for any purpose under section 301a of title 37, United States Code.

SEC. 623. SPECIAL AUTHORITY RELATING TO THE PAYMENT OF SELECTED RESERVE ENLISTMENT BONUS

(a) IN GENERAL.—The Secretary concerned may pay an enlistment bonus under section 308c of title 37, United States Code, to any person who enlisted in the Selected Reserve of the Ready Reserve of an Armed Force during the period beginning on October 1, 1985, and ending on November 8, 1985, if such person—

(1) has not been paid an enlistment or reenlistment bonus under section 308c or 308b of title 37, United States Code, since that period; and

(2) enlisted in the good faith belief (as determined by the Secretary concerned) that he would be paid an enlistment bonus under section 308c of title 37, United States Code.

(b) DEFINITION.—As used in subsection (a), the term "Secretary concerned" has the meaning provided in section 101(5) of title 37, United States Code.

SEC. 624. SPECIAL PAY FOR MEMBERS PROFICIENT IN FOREIGN LANGUAGES

(a) AUTHORITY FOR SPECIAL PAY.—Chapter 5 of title 37, United States Code, is amended by adding at the end the following new section:

"§ 316. Special pay: foreign language proficiency pay

"(a) A member of the armed forces who—

"(1) is entitled to basic pay under section 204 of this title;

"(2) has been certified by the Secretary concerned within the past 12 months to be proficient in a foreign language identified by the Secretary of Defense as being a language in which it is necessary to have personnel proficient because of national defense considerations; and

"(3)(A) is qualified in a military specialty requiring such proficiency;

"(B) received training, under regulations prescribed by the Secretary concerned, designed to develop such proficiency;

"(C) is assigned to military duties requiring such a proficiency; or

"(D) is proficient in a foreign language for which the Secretary of Defense may have a critical need,

may be paid special pay under this section in addition to any other pay or allowance to which the member is entitled.

"(b) The monthly rate for special pay under subsection (a) of this section shall not exceed $100 as determined by the Secretary concerned.

"(c)(1) Under regulations prescribed by the Secretary concerned, and to the extent provided for in appropriation Acts, when a member of a reserve component of the armed forces who is entitled to compensation under section 206 of this title meets the requirements for special pay authorized in subsection (a), except the requirement prescribed in subsection (a)(1), the member may be paid an increase in compensation equal to 1/30th of the monthly special pay authorized under subsection (b) for a member who is entitled to basic pay under section 204 of this title.

"(2) A member eligible for increased compensation under paragraph (1) shall be paid such increase—

"(A) for each regular period of instruction, or period of appropriate duty, in which he is engaged for at least two hours, including instruction received or duty performed on a Sunday or holiday; and

"(B) for each period of performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary concerned may prescribe.

"(3) This subsection does not apply to a member who is entitled to basic pay under section 204 of this title.

"(d) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"316. Special pay: foreign language proficiency pay.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply with respect to pay periods beginning on or after that effective date.

(d) LIMITATIONS ON OBLIGATIONS.—Of the funds appropriated or otherwise made available for military personnel during fiscal year 1987, not more than $7,300,000 may be obligated or expended for the payment of the special pay authorized by section 316 of title 37, United States Code, as added by this section.

SEC. 625. SPECIAL PAY FOR BOARD CERTIFIED PSYCHOLOGISTS

(a) IN GENERAL.—Chapter 5 of title 37, United States Code, is amended by inserting after section 302b the following new section:

"§ 302c. Special pay: psychologists

"(a) A member who is—

"(1) an officer in a corps of the Army Medical Department, an officer in the Bureau of Medicine and Surgery of the Navy, or an officer of the Air Force designated as a psychologist; and

"(2) has been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology,

is entitled to special pay, as provided in subsection (b).

"(b) The rate of special pay to which an officer is entitled pursuant to subsection (a) shall be—

"(1) $2,000 per year, if the officer has less than 10 years of creditable service;

"(2) $2,500 per year, if the officer has at least 10 but less than 12 years of creditable service;

"(3) $3,000 per year, if the officer has at least 12 but less than 14 years of creditable service;

"(4) $4,000 per year, if the officer has at least 14 but less than 18 years of creditable service; or

"(5) $5,000 per year, if the officer has 18 or more years of creditable service.".

(b) CONFORMING AMENDMENTS.—(1) Section 303a of title 37, United States Code, is amended by inserting "302c," after "302b," each place it appears.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 302b the following new item:

"302c. Special pay: psychologists.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or on the date of the enactment of this Act, whichever is later, and shall apply with respect to pay periods beginning on or after that effective date.

PART D—MISCELLANEOUS BENEFITS

SEC. 631. IMPROVED DEATH GRATUITY

(a) IN GENERAL.—The first sentence of section 1478 of title 10, United States Code, is amended to read as follows: "The death gratuity payable under sections 1475 through 1477 of this title shall be equal to the total of three months' basic pay, basic allowance for quarters, and basic allowance for subsistence at the rates to which the decedent was entitled on the date of death, except that the gratuity may not be less than $3,000 or more than $9,000.".

(b) REPEAL OF HOUSING OCCUPANCY BENEFIT.—Section 403(l) of title 37, United States Code, is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or on the date of the enactment of this Act, whichever is later, and shall apply with respect to deaths occurring on or after that effective date.

SEC. 632. AUTHORITY TO PAY BANK CHARGES IN THE EVENT OF GOVERNMENT ERROR IN MANDATORY DIRECT DEPOSIT OF MEMBERS' PAY

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1051. Relief for expenses because of error in mandatory direct deposit of pay

"A member of an armed force who, pursuant to law or regulation, is required to participate in a program for the automatic deposit of pay to a financial institution, as provided by section 3332 of title 31, may be reimbursed, under regulations prescribed by the Secretary concerned, for overdraft charges levied by the financial institution when such charges result from an administrative or mechanical error on the part of the Government that causes such member's pay to be deposited late or in an incorrect amount or manner. Reimbursements made pursuant to this section shall be made from appropriations available for the pay and allowances of members of the armed force concerned.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1051. Relief for expenses because of error in mandatory direct deposit of pay.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply only with respect to charges levied as a result of errors occurring on or after that effective date.

SEC. 633. TRANSPORTATION AND MEDICAL CARE FOR DEPENDENTS OF CERTAIN SENTENCED, DISCHARGED, OR DISMISSED MEMBERS

(a) TRAVEL AND TRANSPORTATION ALLOWANCES.—Section 406 of title 37, United States Code, is amended—

(1) in subsection (a), by striking out the text of paragraph (2)(A) and inserting in lieu thereof the following: "Except as provided in subparagraph (B) of this paragraph, a member who—

"(i) is separated from the service or released from active duty; and

"(ii) on the date of his separation from the service or release from active duty, has not served on active duty for a period of time equal to at least 90 percent of the period of time for which he initially enlisted or otherwise initially agreed to serve,

may be provided transportation under this subsection for his dependents only by transportation in kind by the least expensive mode of transportation available or by a monetary allowance that does not exceed the cost to the Government of such transportation in kind."; and

(2) in subsection (h)—

(A) by striking out the first sentence and inserting in lieu thereof the following:

"(1) If the Secretary concerned determines that it is in the best interests of a member described in paragraph (2) or his dependents and the United States, the Secretary may, when orders directing a change of permanent station for the member concerned have not been issued, or when they have been issued but cannot be used as authority for the transportation of the member's dependents, baggage, and household effects—

"(A) authorize the movement of the member's dependents, baggage, and household effects at the station to an appropriate location in the United States or its possessions or, in the event the dependents are foreign nationals, the country of the dependents' origin and prescribe transportation in kind, reimbursement therefor, or a monetary allowance in place thereof, as the case may be, as authorized under subsection (a) or (b) of this section; and

"(B) in the case of a member described in paragraph (2)(A), authorize the transportation of one motor vehicle that is owned by the member (or a dependent of the member) and is for his dependents' personal use to that location by means of transportation authorized under section 2634 of title 10."; and

(B) by adding at the end the following new paragraph:

"(2) A member referred to in paragraph (1) is a member who—

"(A) is serving at a station outside the United States or in Hawaii or Alaska;

"(B) receives an administrative discharge under other than honorable conditions; or

"(C) is sentenced by a court-martial to be confined for a period of more than 30 days, to receive a dishonorable or bad-conduct discharge, or to be dismissed from a uniformed service, if the sentence is approved under section 860(c)(2) of title 10.".

(b) MEDICAL CARE.—(1) Section 1076 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(e)(1) Subject to paragraph (3), if—

"(A) a member of a uniformed service receives a dishonorable or bad-conduct discharge or is dismissed from a uniformed service as a result of a court-martial conviction for an offense involving abuse of a dependent of the member, as determined in accordance with regulations prescribed by the administering Secretary for such uniformed service; and

"(B) the abused dependent needs medical or dental care for an injury or illness resulting from the abuse,

the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.

"(2) Subject to paragraph (3), upon request of any dependent of a member of a uniformed service punished for an abuse described in paragraph (1)(A), the administering Secretary for such uniformed service may furnish medical care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of (A) the abuse, or (B) any injury or illness suffered by the abused person as a result of such abuse.

"(3) Medical and dental care furnished to a dependent of a member of the uniformed services in facilities of the uniformed services under paragraph (1) or (2)—

"(A) shall be limited to the health care prescribed by section 1077 of this title;

"(B) shall be subject to the availability of space and facilities and the capabilities of the medical and dental staff; and

"(C) shall terminate 1 year after the date on which the member is discharged or dismissed from a uniformed service as described in paragraph (1)(A).".

(2) Section 1079 of such title is amended by adding at the end the following new subsection:

"(l)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

"(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

"(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.".

(c) EFFECTIVE DATE.—(1) The amendments made by this section shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later.

(2) The amendment made by subsection (a)(1) shall apply only with respect to members discharged or released from active duty on or after the effective date of this section.

(3) The amendments made by subsection (a)(2) shall apply with respect to dependents about whom a determination by the Secretary concerned is made on or after the effective date of this section.

(4) The amendment made by subsection (b)(1) shall apply only with respect to dependents who request medical or dental care on or after the effective date of this section.

(5) The amendment made by subsection (b)(2) shall apply only with respect to care furnished under section 1079 of title 10, United States Code, on or after the effective date of this section.

SEC. 634. IMPROVED EMPLOYMENT OPPORTUNITIES FOR MILITARY SPOUSES

(a) IN GENERAL.—Section 806(b)(2) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 680) is amended by striking out "GS-7" and inserting in lieu thereof "GS-4".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1986, or on the date of the enactment of this Act, whichever is later.

SEC. 635. RETIREMENT CREDIT FOR CERTAIN FORMER NATIONAL GUARD TECHNICIANS

(a) IN GENERAL.—(1) Section 8332(b) of title 5, United States Code, is amended by striking out the next to the last sentence.

(2) Section 3(c) of the National Guard Technicians Act of 1968 (32 U.S.C. 709 note) is amended by striking out the last sentence.

(b) APPLICATION OF SUBSECTION (a).—(1) Except as provided in paragraph (2), the amendment made by subsection (a)(1) applies only with respect to individuals separated from Government employment on or after the date of the enactment of this Act.

(2)(A) In the case of any individual who—

(i) was employed under section 709 of title 32, United States Code, or under any prior corresponding provision of law, before January 1, 1969; and

(ii) was separated from Government employment on or after January 1, 1969, and before the date of the enactment of this Act,

any annuity under subchapter III of chapter 83 of title 5, United States Code, based on such individual's service (as defined in section 8331(12) of such title) shall be redetermined to take into account the amendment made by subsection (a), if application therefor is received by the Office of Personnel Management within one year after the date of the enactment of this Act.

(B) Any change in an annuity resulting from a redetermination under subparagraph (A) shall apply only with respect to monthly payments accruing after the date of the enactment of this Act.

(C) Any individual described in subparagraph (A) or any survivor of such an individual may make a deposit under section 8334(c) of title 5, United States Code, with respect to the service of such individual under section 709 of title 32, United States Code.

(3) Except as provided in paragraph (4), the amendment made by subsection (a)(2) applies only with respect to an individual performing service as an officer or employee of the Government on or after the date of the enactment of this Act and only for the purpose of determining—

(A) any annual leave accruing under section 6303 of title 5, United States Code, to the individual on or after such date; and

(B) the individual's length of service for the purposes of entitlement to Federal employee death and disability compensation, group life insurance and health benefits, severance pay, tenure, and status.

(4)(A) The amendment made by subsection (a)(2) of this section applies with respect to any individual who separated from Government employment after December 31, 1968, and before the date of the enactment of this Act, for the purpose of determining whether such individual satisfies the length of service requirement under section 8901(3)(A) of title 5, United States Code (relating to the definition of the term "annuitant"), for the purposes of chapter 89 of such title.

(B) Any individual who satisfies the length of service requirement referred to in subparagraph (A) as a result of the application of the amendment made by subsection (a)(2) shall be enrolled in a health benefits plan (described in section 8903 of such title) of such individual's choice, if—

(i) application for enrollment is received by the Office of Personnel Management within one year after the date of the enactment of this Act; and

(ii) such individual qualifies under section 8905(b)(1)(A) of such title (taking into account years of service considered pursuant to subparagraph (A)).

SEC. 636. DEATH AND DISABILITY BENEFITS FOR RESERVE COMPONENT MEMBERS

(a) MEDICAL AND DENTAL CARE FOR RESERVISTS.—(1) Section 1074a of title 10, United States Code, is amended to read as follows:

"§ 1074a. Medical and dental care: members performing inactive duty training, active duty for 30 days or less, or other reserve training

"(a) Under joint regulations prescribed by the Secretary of Defense, the Secretary of Transportation, and the Secretary of Health and Human Services, the following persons are entitled to the benefits described in subsection (b):

"(1) Each member of a uniformed service who incurs, contracts, or aggravates an injury, disease, or illness in line of duty while performing inactive duty training, active duty for a period of 30 days or less, or full-time National Guard duty for a period of 30 days or less.

"(2) Each member of a uniformed service who incurs, contracts, or aggravates an injury, disease, or illness during voluntary participation or other training activities sponsored by a uniform service, but not while on inactive duty training, active duty, or full-time National Guard duty.

"(3) Each member of a uniformed service who incurs, contracts, or aggravates an injury, disease, or illness while traveling directly to or from the place at which he is to perform, or has performed, inactive-duty training, active duty for a period of 30 days or less, or full-time National Guard duty for a period of 30 days or less.

"(b) A person described in subsection (a) is entitled to—

"(1) the medical and dental care appropriate for the treatment of his injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment; and

"(2) subsistence during hospitalization.

"(c)(1) For purposes of subsection (a)(2), periods of work or study in connection with a correspondence course of a uniformed service, or attendance in an inactive Reserve status at an educational institution under the sponsorship of a uniformed service, do not constitute training activities.

"(2) An injury, disease, or illness incurred, contracted, or aggravated as a result of the member's own gross negligence or misconduct while performing travel referred to in subsection (a)(3) is not covered under this section.".

(2) The table of sections at the beginning of chapter 55 of such title is amended by striking out the item relating to section 1074a and inserting in lieu thereof the following:

"1074a. Medical and dental care: members performing inactive duty training, active duty for 30 days or less, or other reserve training.".

(b) PAY FOR RESERVISTS WHILE DISABLED.—Section 204 of title 37, United States Code, is amended—

(1) by striking out subsections (g), (h), and (i) and inserting in lieu thereof the following:

"(g) A member of the National Guard or a reserve component of an armed force is entitled to the pay and allowances provided by law or regulation for a member of a regular component of an armed force of corresponding grade and length of service whenever he is called or ordered to active duty for a period of more than 30 days and is physically disabled in line of duty from injury or disease while so employed.

"(h)(1) A member of the National Guard or a reserve component who, while performing active duty under a call or order to active duty for a period of 30 days or less or who, while performing inactive duty training, incurs or aggravates an injury, disease, or illness in line of duty while so employed or while traveling directly to or from that training, is entitled to a portion of the regular compensation provided by law or regulation for a member of a regular component of corresponding grade and length of service for each month such member applies for and demonstrates a loss of earned income (other than pay and allowances under this title) as a consequence of the injury, disease, or illness or aggravation thereof. The portion of the regular compensation shall be an amount which offsets the loss of earned income, but shall not exceed the

monthly regular compensation for such member (as described in the preceding sentence) and shall be paid for a period not to exceed 6 months.

"(2) The procedures for determining and paying compensation pursuant to paragraph (1) shall be prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

"(3) The Secretary concerned may continue the pay and allowances a member is receiving under this subsection beyond the 6-month delimiting period if he determines it to be in the interests of fairness and equity to do so."; and

(2) by redesignating subsection (j) as subsection (i).

(c) PAY FOR INACTIVE DUTY TRAINING WHILE DISABLED.—Section 206(a) of title 37, United States Code, is amended by striking out "grade entitled to basic pay," and all that follows through the period and inserting in lieu thereof the following: "grade entitled to basic pay—

"(1) for each regular period of instruction or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

"(2) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of a disability resulting from an injury incurred or aggravated or a disease incurred or illness contracted or aggravated in line of duty during a call or order to active duty for a period of 30 days or less or during the performance of inactive duty training or while traveling to or from that training; or

"(3) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary concerned may prescribe.".

(d) MEDICAL AND DENTAL CARE FOR SURVIVORS OF CERTAIN RESERVISTS.—(1) Subsection (a) of section 1076 of title 10, United States Code, is amended to read as follows:

"(a) A dependent of a member of a uniformed service who is on active duty for a period of more than 30 days or a dependent who is a survivor of a member of a uniformed service who died—

"(1) while on active duty;

"(2) while performing inactive duty training; or

"(3) as a consequence of an injury, disease, or illness incurred, contracted, or aggravated while on active duty, while performing inactive duty training, or while traveling directly to or from such training,

is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.".

(2) Paragraph (2) of section 1086(c) of such title is amended to read as follows:

"(2) A dependent (other than a dependent defined in section 1072(2)(E) of this title) who is a survivor of a member of a uniformed service who died—

"(A) while on active duty;

"(B) while performing inactive duty training; or

"(C) as a consequence of an injury incurred or aggravated or a disease or illness contracted or aggravated while on active duty, while performing inactive duty training, or while traveling directly to or from such training.".

(e) RETIREMENT OR SEPARATION OF RESERVISTS FOR DISABILITY.—(1)(A) Section 1204 of such title is amended by inserting "disease, or illness, or the aggravation thereof," after "injury,".

(B) The section heading of section 1204 of such title is amended to read as follows:

"§ 1204. Members on active duty for 30 days or less; disability from injury, disease, or illness: retirement".

(C) The table of sections at the beginning of chapter 61 of such title is amended by striking out the item relating to section 1204 and inserting in lieu thereof the following:

"1204. Members on active duty for 30 days or less; disability from injury, disease, or illness: retirement.".

(2)(A) Section 1206 of such title is amended by inserting "disease, or illness, or the aggravation thereof," after "injury,".

(B) The section heading of section 1206 of such title is amended to read as follows:

"§ 1206. Members on active duty for 30 days or less: separation".

(C) The table of sections at the beginning of chapter 61 of such title is amended by striking out the item relating to section 1206 and inserting in lieu thereof the following:

"1206. Members on active duty for 30 days or less: separation.".

(f) DEATH BENEFITS FOR RESERVISTS.—Chapter 71 of such title is amended—

(1) in section 1475(a)(3), by inserting "or aggravated or disease or illness contracted or aggravated" after "incurred";

(2) in section 1476, by striking out subsection (a) and inserting in lieu thereof the following:

"(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the appropriate survivor or survivors as designated in section 1477 of this title of each person who dies within 120 days after discharge or release from active duty or inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service) if the Administrator of Veterans' Affairs determines that the death resulted from an injury incurred or aggravated or a disease or illness contracted or aggravated by such duty or by an injury, disease, or illness incurred or aggravated during travel directly to or from such duty.";

(3) in section 1476, by striking out subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively; and

(4) in section 1481, by striking out clauses (2) and (3) of subsection (a) and inserting in lieu thereof the following:

"(2) any Reserve of an armed force under his jurisdiction who dies while (A) on active duty, (B) performing inactive duty training, (C) undergoing treatment or being hospitalized for an injury incurred or aggravated or a disease or illness contracted or aggravated while on active duty or performing inactive duty training, or (D) performing authorized travel directly to or from active duty or inactive duty training,

"(3) any member of the Army National Guard or Air National Guard who dies while entitled to pay from the United States and while (A) on active duty, (B) performing inactive duty training, (C) undergoing treatment or being hospitalized for an injury incurred or aggravated or a disease or illness contracted or aggravated while on active duty or performing inactive duty training, or (D) performing authorized travel directly to or from active duty or inactive duty training,".

(g) CONFORMING AMENDMENTS.—(1)(A) Title 10, United States Code, is amended by striking out sections 3687, 3721, 3722, 6148, 8687, 8721, and 8722.

(B) The table of sections at the beginning of chapter 353 of such title is amended by striking out the item relating to section 3687.

(C) The table of sections at the beginning of chapter 355 of such title is amended by striking out the items relating to sections 3721 and 3722.

(D) The table of sections at the beginning of chapter 561 of such title is amended by striking out the item relating to section 6148.

(E) The table of sections at the beginning of chapter 853 of such title is amended by striking out the item relating to section 8687.

(F) The table of sections at the beginning of chapter 855 of such title is amended by striking out the items relating to sections 8721 and 8722.

(2)(A) Title 32, United States Code, is amended by striking out sections 318, 319, 320, and 321.

(B) The table of sections at the beginning of chapter 3 of such title is amended by striking out the items relating to sections 318, 319, 320, and 321.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall apply only to persons who become disabled on or after that date or, in the case of death benefits, who die on or after that date.

SEC. 637. LIMITED USE OF COMMISSARY STORES BY MEMBERS OF THE SELECTED RESERVE

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1051. Limited use of commissary stores by members of the Selected Reserve

"(a) Under regulations prescribed by the Secretary concerned, members of the Selected Reserve of the Ready Reserve of a reserve component of an armed force shall be permitted to use commissary stores of the Department of Defense one day for each day of active duty for training performed by the member. Under such regulations, a member of the Selected Reserve shall be permitted a period of one year after the date on which the member performs such day of active duty for training to use the day of eligibility for using commissary stores.

"(b) A member may not use commissary stores under this section more than 14 days in any year.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1051. Limited use of commissary stores by members of the Selected Reserve.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply only with respect to active duty for

training performed on or after that effective date.

(d) REPEAL PROVISION.—Section 1013 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 665), is repealed effective October 1, 1986, or the date of the enactment of this Act, whichever is later.

PART E—ADMINISTRATION OF PERSONNEL BENEFITS

SEC. 641. ACCOUNTING FOR PAYMENTS OF CLAIMS FOR BENEFITS

Section 1552(c) of title 10, United States Code, is amended—

(1) by striking out ", from applicable current appropriations," in the first sentence; and

(2) by adding at the end the following new sentence: "A payment authorized under this subsection may be paid out of applicable current appropriations or from appropriations (if available) from which the expense would have been paid if payment had been made when due under the corrected record.".

SEC. 642. ENHANCED METHOD FOR DETERMINING TRUE COSTS OF MILITARY RETIREMENT

(a) USE OF DUAL PERCENTAGE DETERMINATIONS.—Section 1465 of title 10, United States Code, is amended—

(1) by striking out subsection (b)(1) and inserting in lieu thereof the following:

"(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title. That amount shall be determined by adding—

"(A) the product of—

"(i) the current estimate of the value of the single level percentage of basic pay to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

"(ii) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only); and

"(B) the product of—

"(i) the current estimate of the value of the single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

"(ii) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) expected to be paid during that fiscal year to members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described in subparagraph (A)(ii).''; and

(2) by striking out subsection (c)(1) and inserting in lieu thereof the following:

"(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of Department of Defense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include—

"(A) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only); and

"(B) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) for members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described by subparagraph (A),

to be used for the purposes of subsection (b) and section 1466(a) of this title.".

(b) PAYMENTS INTO MILITARY RETIREMENT FUND BASED ON DUAL DETERMINATIONS.—Subsection (a) of section 1466 of such title is amended to read as follows:

"(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the sum of—

"(1) the product of—

"(A) the level percentage of basic pay determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(A) of this title, except that any statutory changes in the military retirement and survivor benefit systems that became effective subsequent to the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination; and

"(B) the total amount of basic pay paid that month to members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only); and

"(2) the product of—

"(A) the level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(B) of this title, except that any statutory changes in the military retirement and survivor benefit systems that became effective subsequent to the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination; and

"(B) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) paid that month to members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described in paragraph (1)(B).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later, and shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by this section, for months beginning on or after that effective date.

TITLE VII—HEALTH CARE

SEC. 701. ALTERNATIVE HEALTH CARE PLANS

(a) INCENTIVES UNDER ALTERNATIVE PLANS.—Chapter 55 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1095. Incentives for participation in cost-effective health benefit plans

"(a) The Secretary of Defense may waive during any fiscal year or portion of a fiscal year the limitations set out in the second sentence of section 1079(a) of this title and the requirements for payments by the patient set out in section 1079(b) or 1086(b) of this title with respect to any plan contracted for under the authority of section 1079 or 1086 of this title if the Secretary determines and certifies in writing, as provided in subsection (b), that during the period of the waiver such a plan will—

"(1) be less costly to the Government; or

"(2) will provide better services at no additional cost to the Government,

than a plan under which such limitations or payment requirements are in effect.

"(b) The certification required by subsection (a)—

"(1) shall include a comparative analysis of costs of and benefits available under the plan to which a waiver of limitations and payment requirements would apply and under the plan to which the limitations and payment requirements would apply; and

"(2) shall be transmitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 180 days before the beginning of any fiscal year or portion of a fiscal year for which the waiver is to be made.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1095. Incentives for participation in cost-effective health benefit plans.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later.

SEC. 702. MILITARY-CIVILIAN HEALTH SERVICES COOPERATION

(a) AUTHORITY FOR COOPERATIVE SHARING OF RESOURCES.—Chapter 55 of title 10, United States Code, as amended by section 701, is further amended by adding at the end the following new section:

"§ 1096. Military-civilian health services partnership program

"(a) The Secretary of Defense may authorize agreements providing for the sharing of resources between treatment facilities of the uniformed services and civilian health care providers under sections 1079 and 1086 of this title if the Secretary determines that such sharing will result in more effective, efficient, or economical health care for persons authorized care under this chapter.

"(b) Resources that may be shared under an agreement entered into under subsection (a) include personnel (including support personnel), equipment, supplies, and other items and facilities necessary for the provision of health care services.

"(c) With respect to care provided in facilities of the uniformed services under a sharing agreement under this section, a dependent shall pay the charges prescribed by section 1078 of this title and a member or former member entitled to retired or retainer pay shall pay the charges prescribed by section 1075 of this title.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter (as amended by section 701) is amended by adding at the end the following new item:

"1096. Military-civilian health services partnership program.".

SEC. 703. CONFIDENTIALITY OF MEDICAL QUALITY ASSURANCE RECORDS

(a) IN GENERAL.—Chapter 55 of title 10, United States Code, as amended by sections 701 and 702 of this Act, is further amended by adding at the end the following new section:

"§ 1097. Confidentiality of medical quality assurance records: qualified immunity for participants

"(a) Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).

"(b)(1) No part of any medical quality assurance record described in subsection (a) may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in subsection (c).

"(2) A person who reviews or creates medical quality assurance records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in this section.

"(c)(1) Subject to paragraph (2), a medical quality assurance record described in subsection (a) may be disclosed, and a person referred to in subsection (b) may give testimony in connection with such a record, only as follows:

"(A) To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense health care facilities or to perform monitoring, required by law, of Department of Defense health care facilities.

"(B) To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

"(C) To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

"(D) To a hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

"(E) To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

"(F) To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

"(G) In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in subparagraph (F), but only with respect to the subject of such proceeding.

"(2) With the exception of the subject of a quality assurance action, the identity of any person receiving health care services from the Department of Defense or the identity of any other person associated with such department for purposes of a medical quality assurance program that is disclosed in a medical quality assurance record described in subsection (a) shall be deleted from that record or document before any disclosure of such record is made outside the Department of Defense. Such requirement does not apply to the release of information pursuant to section 552a of title 5, United States Code.

"(d)(1) Nothing in this section shall be construed as authorizing or requiring the withholding from any person or entity aggregate statistical information regarding the results of Department of Defense medical quality assurance programs.

"(2) Nothing in this section shall be construed as authority to withhold any medical quality assurance record from a committee of either House of Congress, any joint committee of Congress, or the General Accounting Office if such record pertains to any matter within their respective jurisdictions.

"(e) A person or entity having possession of or access to a record or testimony described by this section may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this section.

"(f) Medical quality assurance records described in subsection (a) may not be made available to any person under section 552 of title 5, United States Code.

"(g) A person who participates in or provides information to a person or body that reviews or creates medical quality assurance records described in subsection (a) shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith based on prevailing professional standards at the time the medical quality assurance program activity took place.

"(h) Nothing in this section shall be construed as limiting access to the information in a record created and maintained outside a medical quality assurance program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a medical quality assurance program.

"(i) The Secretary of Defense shall prescribe regulations to implement this section.

"(j) In this section:

"(1) The term 'medical quality assurance program' means any activity carried out before, on, or after the date of the enactment of this section by or for the Department of Defense to assess the quality of medical care, including activities conducted by individuals, military medical or dental treatment facility committees, or other review bodies responsible for quality assurance, credentials, infection control, patient care assessment (including treatment procedures, blood, drugs, and therapeutics), medical records, health resources management review and identification and prevention of medical or dental incidents and risks.

"(2) The term 'medical quality assurance record' means the proceedings, records, minutes, and reports that emanate from quality assurance program activities described in paragraph (1) and are produced or compiled by the Department of Defense as part of a medical quality assurance program.

"(3) The term 'health care provider' means any military or civilian health care professional who, under regulations of a military department, is granted clinical practice privileges to provide health care services in a military medical or dental treatment facility or who is licensed or certified to perform health care services by a governmental board or agency or professional health care society or organization.

"(k) Any person who willfully discloses a medical quality assurance record other than as provided in this section, knowing that such record is a medical quality assurance record, shall be fined not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended (as amended by sections 701 and 702) by adding at the end the following new item:

"1097. Confidentiality of medical quality assurance records: qualified immunity for participants.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all records created before, on, or after the date of the enactment of this Act by or for the Department of Defense as part of a medical quality assurance program.

SEC. 704. AUTHORIZATION OF FUNDS FOR DENTAL INSURANCE PROGRAM

(a) AUTHORIZATION OF FUNDS FOR FISCAL YEAR 1987.—There are authorized to be appropriated for fiscal year 1987 not more than $18,000,000 for the purpose of providing a dental insurance program for dependents of active duty military personnel.

(b) PROGRAM REQUIREMENTS.—Notwithstanding subsection (a) or any other provision of law, none of the funds appropriated pursuant to an authorization in this Act may be used by the Department of Defense for the purpose of providing dental insurance for dependents of active duty military personnel unless such program of insurance—

(1) provides for voluntary enrollment of dependents of active duty military personnel;

(2) provides coverage for 100 percent of charges for preventive, diagnostic, and emergency services;

(3) provides coverage for at least 80 percent of charges for composite and amalgam fillings and dental appliance repair services;

(4) is available to families of active duty military personnel at a premium cost of not more than $10 per month per family;

(5) is structured so that the Department of Defense does not pay more than 60 percent of the total program costs; and

(6) is structured so that the total costs to the Department of Defense do not exceed an annual cost of $105,000,000 (in fiscal year 1986 dollars).

SEC. 705. ACQUISITION OF COMPOSITE HEALTH CARE SYSTEM

(a) Section 1203 of the Department of Defense Authorization Act, 1986 (Public Law 99-145) is repealed.

(b) The Secretary of Defense shall immediately undertake the acquisition of the

Composite Health Care System utilizing the acquisition strategy described in Department of the Army Request for Proposal Number DAH 26-85-R-0009.

TITLE VIII—MILITARY JUSTICE

SEC. 801. SHORT TITLE; REFERENCES TO UNIFORM CODE OF MILITARY JUSTICE

(a) SHORT TITLE.—This title may be cited as the "Military Justice Amendments of 1986".

(b) REFERENCES TO UCMJ.—Except as otherwise expressly provided in this title, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

SEC. 802. LACK OF MENTAL RESPONSIBILITY AS A DEFENSE IN CRIMINAL OFFENSES

(a) IN GENERAL.—Subchapter VII is amended by inserting after section 850 (article 50) the following new section (article):

"§ 850a. Art. 50a. Defense of lack of mental responsibility

"(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

"(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

"(c) Notwithstanding section 852 of this title (article 52), the accused must be found not guilty under this section if—

"(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

"(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 850 (article 50) the following new item:

"850a. 50a. Defense of lack of mental responsibility.".

(c) EFFECTIVE DATE.—Section 850a of title 10, United States Code, as added by subsection (a), shall apply only to offenses committed on or after the date of the enactment of this Act.

SEC. 803. APPLICATION FOR ENLISTED MEMBERS TO SERVE ON COURT-MARTIAL

(a) IN GENERAL.—Section 825(c)(1) (article 25(c)(1)) is amended by striking out "has requested in writing" in the first sentence and inserting in lieu thereof "has requested orally on the record or in writing".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only in cases in which arraignment has been completed on or after the effective date provided in section 808 of this Act.

SEC. 804. AUTHORITY OF RESERVE MEMBERS TO ADMINISTER OATHS

(a) IN GENERAL.—Section 936 (article 136) is amended by inserting "or performing inactive-duty training" in subsections (a) and (b) after "active duty".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 805. STATUTE OF LIMITATIONS

(a) REVISION OF STATUTE OF LIMITATION.—Subsections (a), (b), and (c) of section 843 (article 43) are amended to read as follows:

"(a) A person charged with absence without leave in time of war or missing movement in time of war, or with any offense punishable by death, may be tried and punished at any time without limitation.

"(b)(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

"(2) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

"(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).".

(b) TIME FOR REINSTATEMENT OF CHARGES.—Such section (article) is further amended by adding at the end the following new subsection:

"(g) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

"(1) has expired; or

"(2) will expire within 180 days after the date of the dismissal of the charges or specifications,

trial and punishment under new charges and specifications are not barred by a statute of limitations if new charges and specifications are received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the date of the dismissal of the charges or specifications and the new charges and specifications allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply only to offenses committed on or after the date of the enactment of this Act.

SEC. 806. TIME FOR DEFENSE POST-TRIAL SUBMISSIONS

(a) SIMPLIFICATION OF TIME FOR SUBMISSION.—Subsection (b) of section 860 (article 60) is amended—

(1) by striking out paragraph (3);

(2) by redesignating paragraph (2) as paragraph (3) and inserting a comma in that paragraph after "case"; and

(3) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). In a summary court-martial case, such a submission shall be made within 7 days after the sentence is announced.

"(2) If the accused shows that, for good cause, additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section may extend the applicable period under paragraph (1) for not more than an additional 20 days.".

(b) RECOMMENDATIONS OF STAFF JUDGE ADVOCATE.—Subsection (c)(2) of such section is amended by striking out "and, if applicable under subsection (d),".

(c) CONFORMING AMENDMENTS.—Subsection (d) of such section is amended—

(1) in the third sentence, by striking out "who shall have 5 days after the date of receipt in which to submit any matter in response" and inserting in lieu thereof "who may submit any matter in response under subsection (b)"; and

(2) by striking out the fourth sentence.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply in cases in which the sentence is adjudged on or after the effective date provided in section 808.

SEC. 807. DETAIL OF JUDGE ADVOCATES

(a) REPRESENTATION OF UNITED STATES INTERESTS.—Section 806(a) (article 6(a)) is amended by inserting after the second sentence the following: "A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)—

(1) shall take effect on the date of the enactment of this Act; and

(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act.

SEC. 808. EFFECTIVE DATE

The amendments made by sections 803 and 806 of this Act shall take effect on the earlier of—

(1) the last day of the 120-day period beginning on the date of the enactment of this Act; or

(2) the date specified in an Executive order for such amendments to take effect.

TITLE IX—PROCUREMENT IMPROVEMENTS AND OTHER PROCUREMENT MATTERS

SEC. 901. SHORT TITLE

This title may be cited as the "Defense Acquisition Reorganization and Improvements Act of 1986".

PART A—UNDER SECRETARY OF DEFENSE FOR ACQUISITION

SEC. 911. ESTABLISHMENT OF POSITION OF UNDER SECRETARY OF DEFENSE FOR ACQUISITION

(a) IN GENERAL.—Section 135 of title 10, United States Code, is amended to read as follows:

"§ 135. Under Secretaries of Defense: appointment; powers and duties; precedence

"(a) There are two Under Secretaries of Defense, one of whom shall be the Under Secretary of Defense for Acquisition and one of whom shall be the Under Secretary of Defense for Policy. The Under Secretaries of Defense shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

"(b)(1) The Under Secretary of Defense for Acquisition shall be a person who is well qualified by reason of education, training,

and experience in industry. He shall perform such duties and exercise such powers relating to acquisition as the Secretary of Defense may prescribe, including—

"(A) supervising the performance of the entire Department of Defense acquisition system;

"(B) establishing all policies for acquisition, procurement, research and development, logistics, testing, contract audit, and contract administration for all entities of the Department of Defense;

"(C) establishing all policies for maintenance of the defense industrial base of the United States;

"(D) serving as the acquisition executive of the Department of Defense;

"(E) serving as the senior procurement executive of the Department of Defense (as provided in section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3));

"(F) supervising all personnel (civilian and military) in the Office of the Secretary of Defense with regard to matters for which the Under Secretary has responsibility, unless otherwise provided by law; and

"(G) the authority to direct the Secretaries of the military departments and the heads of all other entities of the Department of Defense with regard to matters for which the Under Secretary has responsibility.

"(2) The Under Secretary of Defense for Policy shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

"(c)(1)(A) The Under Secretary of Defense for Acquisition takes precedence in the Department of Defense with regard to—

"(i) all matters for which he has responsibility as set forth by law, and

"(ii) all matters for which he has responsibility as prescribed by the Secretary of Defense,

after the Secretary of Defense and the Deputy Secretary of Defense.

"(B) In all matters not described in subparagraph (A), the Under Secretary of Defense for Acquisition takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, and the Secretaries of the military departments.

"(2) The Under Secretary of Defense for Policy takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments, and the Under Secretary of Defense for Acquisition.".

(b) EXECUTIVE SCHEDULE II PAY GRADE FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following new item:

"Under Secretary of Defense for Acquisition.".

SEC. 912. ESTABLISHMENT OF POSITION OF DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION

Chapter 4 of title 10, United States Code, is further amended by inserting after section 135 the following new section:

"§ 135a. Deputy Under Secretary of Defense for Acquisition

"There is a Deputy Under Secretary of Defense for Acquisition, appointed from civilian life, by the Secretary of Defense. The Deputy Under Secretary of Defense for Acquisition shall perform such duties and exercise such powers with respect to acquisition as the Secretary of Defense may prescribe.".

SEC. 913. ESTABLISHMENT OF POSITION OF DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING

(a) IN GENERAL.—Chapter 4 of title 10, United States Code, is amended by inserting after section 136a the following new section:

"§ 136b. Director of Defense Research and Engineering

"(a) There is a Director of Research and Engineering in the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

"(b) The Director of Defense Research and Engineering shall perform such duties relating to research and engineering as the Under Secretary of Defense for Acquisition may prescribe.

"(c) The Director of Defense Research and Engineering shall take precedence in the Department of Defense as prescribed by the Secretary of Defense.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 4 of such title is amended by adding at the end the following new item:

"136b. Director of Defense Research and Engineering.".

(c) EXECUTIVE SCHEDULE III PAY GRADE FOR UNDER SECRETARY OF DEFENSE FOR POLICY AND DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.—Section 5314 of title 5, United States Code, is amended by striking out "Under Secretaries of Defense (2)." and inserting in lieu thereof the following:

"Under Secretary of Defense for Policy.

"Director of Defense Research and Engineering.".

SEC. 914. DIRECTOR OF OPERATIONAL TEST AND EVALUATION TO REPORT TO UNDER SECRETARY OF DEFENSE FOR ACQUISITION

Section 136a of title 10, United States Code, is amended—

(1) in subsection (b)—

(A) by striking out "Secretary of Defense" in the matter preceding clause (1) and inserting in lieu thereof "Under Secretary of Defense for Acquisition";

(B) in clauses (1), (2), and (6), by striking out "Secretary of Defense" and inserting in lieu thereof "Under Secretary of Defense for Acquisition"; and

(C) in clause (5), by striking out "Secretary of Defense and to" and inserting in lieu thereof "Secretary of Defense, the Under Secretary of Defense for Acquisition, and";

(2) by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) Each report of the Director required under subsection (b)(5) shall be submitted to the Secretary of Defense, the Under Secretary of Defense for Acquisition, and the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives without intervening review or approval and without any change or revision by any other officer or employee. The Under Secretary of Defense for Acquisition may submit such comments regarding the report as he considers appropriate to the Secretary of Defense and the Committees referred to in the preceding sentence.

"(d) The Director reports directly to the Under Secretary of Defense for Acquisition. The Director shall consult closely with, but the Director and the Director's staff are independent of, the Director of Defense Research and Engineering and all other officers and entities of the Department of Defense responsible for research and development.";

(3) in subsection (f)(2), by inserting "and the Under Secretary of Defense for Acquisition" after "Secretary of Defense"; and

(4) in subsection (g)(1)—

(A) by inserting ", through the Under Secretary of Defense for Acquisition," after "concurrently" in the second sentence; and

(B) by striking out "Secretary" in the last sentence and inserting in lieu thereof "Under Secretary of Defense for Acquisition".

SEC. 915. AMENDMENT TO THE SMALL BUSINESS ACT

Section 15(k)(3) of the Small Business Act (15 U.S.C. 644(k)(3)) is amended by inserting ", except in the case of the Department of Defense the Director of the office of Small and Disadvantaged Business shall be responsible only to, and report directly to, the Under Secretary of Defense for Acquisition".

PART B—MANAGEMENT AND AUTHORIZATION PROCEDURES FOR CERTAIN ACQUISITION PROGRAMS

SEC. 921. DEFENSE ENTERPRISE PROGRAMS

(a) IN GENERAL.—Part IV of subtitle A of title 10, United States Code, is amended by inserting after chapter 131 the following new chapter:

"CHAPTER 132—DEFENSE ENTERPRISE PROGRAMS

"Sec.
"2221. Definitions.
"2222. Defense enterprise programs; designation and management of programs.
"2223. Defense enterprise program managers.
"2224. Defense enterprise program staff.
"2225. Milestone authorizations.

"§ 2221. Definitions

"In this chapter:

"(1) 'Agency' means an agency named in clause (1), (2), (3), or (4) of section 2303(a) of this title.

"(2) 'Defense enterprise program' is any defense acquisition program designated as a defense enterprise program by the head of an agency under section 2222 of this title.

"(3) 'Head of an agency' means the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

"§ 2222. Defense enterprise programs; designation and management of programs

"(a) The head of an agency, with the approval of the Secretary of Defense, may designate any defense acquisition program conducted by such agency as a defense enterprise program.

"(b)(1) A defense enterprise program shall be managed by a program manager appointed as provided in section 2223 of this title.

"(2)(A) A defense enterprise program manager of an agency shall report to and be subject to the authority, direction, and control of the acquisition executive of the agency or his delegate who meets the requirements under subparagraph (B). A defense enterprise program manager shall not be subject to or be required to report to any other officer or employee of the agency.

"(B) An acquisition executive may delegate his functions under subparagraph (A) only to a person who is (i) subject to the authority, direction, and control of the acquisition executive, and (ii) reports only to such acquisition executive on defense enterprise programs.

"(c)(1) Except as specified by the acquisition executive of the agency, a defense enterprise program shall not be subject to any

regulation, policy, directive, or administrative rule or guideline relating to the acquisition activities of the Department of Defense other than the Federal Acquisition Regulation and the Department of Defense supplement to the Federal Acquisition Regulation.

"(2) Paragraph (1) shall not be construed to limit or modify the application of Federal legislation relating to the acquisition activities of the Department of Defense.

"§ 2223. Defense enterprise program managers

"(a) The head of an agency conducting a defense enterprise program shall appoint a program manager for such program.

"(b)(1) The head of an agency shall select for appointment as a defense enterprise program manager a person from among (A) civilian employees of the agency who meet the requirements of paragraph (2), or (B) members of the armed forces who meet such requirements.

"(2) To be eligible for appointment as a defense enterprise program manager, a person shall have had (at the time of his appointment) at least 8 years of experience in acquisition, support, and maintenance of weapon systems.

"(3) A member of the armed forces who meets the requirements of paragraph (2) may be selected to serve as a defense enterprise program manager without regard to the grade of the member or any administrative policy relating to the duty assignments of members of the armed forces.

"(c)(1) The term of service of a defense enterprise program manager shall be not less than—

"(A) 4 years; or

"(B) the period beginning on the date of the appointment and ending on the first date (after such date of appointment) on which the defense enterprise program reaches a milestone established for the program by the defense systems acquisition review council or a similar review board,

whichever period is shorter.

"(2) A defense enterprise program manager of an agency may be removed by the head of the agency only for inadequate job performance, misconduct, or to be appointed defense enterprise program manager of a more important or higher priority defense enterprise program (as determined by the head of such agency).

"(d)(1) Under regulations prescribed by the Secretary of Defense, the person to whom a defense enterprise program manager reports pursuant to section 2222(b)(2) of this title shall evaluate the job performance of such manager each year.

"(2) In evaluating the performance of a defense enterprise program manager, the person making the evaluation shall take into consideration (A) the extent to which the manager has been able to achieve the objectives of the program for which the manager is responsible, including quality, timeliness, and cost objectives, and (B) comments (if any) received pursuant to paragraph (3).

"(3) Under regulations prescribed by the Secretary of Defense, each officer or employee of an agency and each member of the armed forces who, except for section 2222(b)(2) of this title, would supervise a defense enterprise program manager, would receive reports from such manager on the program managed by such manager, or would have the authority to approve or disapprove the decisions of such manager regarding the conduct of the program may submit comments on the performance of such manager to the person evaluating such manager.

"§ 2224. Defense enterprise program staff

"(a)(1) The manager of a defense enterprise program may establish a senior staff to assist in the management of the program. The manager may select the members of the senior staff from among employees of an agency and members of the armed forces.

"(2) A member of the armed forces selected for a position in the senior staff of a defense enterprise program shall be assigned to such position without regard to any administrative policy relating to the assignment of members of the armed forces.

"(b) The manager of a defense enterprise program may appoint a technical staff, including experts in business management, contracting, auditing, engineering, testing, and logistics.

"§ 2225. Milestone authorizations

"(a)(1) Not later than 90 days after the date on which a defense acquisition program is designated a defense enterprise program, the Secretary of Defense shall—

"(A) submit to Congress a program management baseline (as provided in subsection (b)) for the current acquisition phase of such program that is uncompleted on the date of the submission of the report; and

"(B) request from Congress the authority to obligate, in the fiscal year or years following the fiscal year in which such report is submitted, funds required to complete such phase.

"(2) For each subsequent acquisition phase of the defense enterprise program, the Secretary of Defense shall (A) submit a program management baseline for such phase at the same time the President submits the budget under section 1105(a) of title 31 for the fiscal year in which the new acquisition phase is to begin, and (B) request authority to obligate the funds required to complete such new phase for such fiscal year and for each subsequent fiscal year during which such phase is to be conducted.

"(b) For each acquisition phase described in paragraphs (1), (2), and (3), a program management baseline shall contain the following information described for the phase:

"(1) For the development phase before full-scale engineering development:

"(A) A schedule of development milestones.

"(B) The development costs of such phase, by fiscal year.

"(2) For the full-scale engineering development phase:

"(A) A schedule of development milestones.

"(B) The development costs of such phase, by fiscal year.

"(C) The performance goals for the system under development and the technical characteristics and configuration of such system.

"(3) For the procurement phase:

"(A) A schedule of procurement milestones.

"(B) The procurement costs, by fiscal year.

"(C) The performance goals for the system under procurement and the technical characteristics and configuration of such system.

"(D) The quantity of the system to be procured each fiscal year.

"(c) If Congress authorizes the appropriation of funds for completion of an acquisition phase of the defense enterprise program for which a program baseline has been submitted, the Secretary of Defense may, without further authorization, obligate such funds as are appropriated for the completion of that phase.

"(d)(1) If the manager of a defense enterprise program determines at any time during an acquisition phase that there is reasonable cause to believe that—

"(A) such acquisition phase cannot be completed with the funds authorized for such phase;

"(B) any milestone identified in the program management baseline cannot be accomplished within 270 days after the date specified for that milestone in the baseline; or

"(C) the performance or technical characteristics or the configuration of the system under acquisition is significantly different from the performance goals, technical characteristics, or configuration specified in such baseline,

the manager shall immediately submit a performance deficiency report for such program to the acquisition executive of the agency responsible for the program.

"(2) Upon receiving a performance deficiency report under paragraph (1), an acquisition executive of an agency shall immediately transmit a copy of the report to the head of the agency.

"(e)(1) Within 30 days after the date on which an acquisition executive of an agency receives a performance deficiency report on a defense enterprise program, the head of such agency shall conduct and complete a review of the program.

"(2)(A) Within 45 days after the date referred to in paragraph (1), the head of the agency shall notify the Secretary of Defense of the performance deficiency report and the results of the review conducted under paragraph (1).

"(B) If the review of the defense enterprise program required by paragraph (1) confirms any determination described in subsection (d)(1), the Secretary of Defense shall, within 60 days after the date referred to in paragraph (1), notify Congress of the performance deficiency report. The Secretary of Defense shall state in the notification whether or not he intends to continue the program. If the Secretary decides to continue the program he shall—

"(i) convene a board to formally review the program;

"(ii) submit a revised program management baseline for the defense enterprise program at the same time the President submits a budget under section 1105(a) of title 31 for the next fiscal year; and

"(iii) submit with the revised program management baseline referred to in clause (ii) the recommendations of the review board which was convened pursuant to clause (i).

"(C) If the Secretary of Defense is required to notify Congress of a performance deficiency report on a defense enterprise program under subparagraph (B) and the Secretary determines that it is necessary to continue to obligate funds for such program in order to preserve the option to continue the program in a subsequent fiscal year or years, the Secretary shall certify that determination in the notification to Congress.".

(b) CONFORMING AMENDMENT.—The table of chapters at the beginning of subtitle A and at the beginning of part IV of such subtitle is amended by inserting after the item relating to chapter 131 the following new item:

"132. Defense Enterprise Programs ..... 2221".

PART C—PRIVATE EMPLOYMENT CONTACTS BY CERTAIN SENIOR DEPARTMENT OF DEFENSE OFFICIALS

SEC. 931. PROHIBITION OF CERTAIN PRIVATE EMPLOYMENT CONTACTS

(a) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by inserting after section 2397a the following new section:

"§ 2397b. Prohibition of private employment contacts between certain Department of Defense officials and defense contractors

"(a) In this section:

"(1) 'Covered senior defense official' means—

"(A) the Secretary of Defense;

"(B) the Deputy Secretary of Defense;

"(C) the Under Secretary of Defense for Acquisition;

"(D) the Director of Defense Research and Engineering;

"(E) the Assistant Secretary of Defense for Acquisition and Logistics;

"(F) the Secretary of the Army;

"(G) the Secretary of the Navy;

"(H) the Secretary of the Air Force;

"(I) the under secretary of each military department;

"(J) the Assistant Secretary of the Army for Research, Development and Acquisition;

"(K) the Assistant Secretary of the Navy for Shipbuilding and Logistics;

"(L) the Assistant Secretary of the Navy for Research, Engineering, and Systems;

"(M) the Assistant Secretary of the Air Force for Research, Development, and Logistics; and

"(N) any other official in the Department of Defense who is appointed by the President to a position which has been designated by the President for purposes of this section in an executive order issued not less than 180 days before the date on which the official is appointed to such position by the President.

"(2) 'Defense contractor' has the same meaning provided in section 2397(a)(2) of this title.

"(3) 'Employment' has the same meaning provided in section 2397a(a)(5) of this title.

"(b) A covered senior defense official may not contact a defense contractor regarding future employment opportunities with the defense contractor.

"(c) A covered senior defense official shall immediately terminate any contact made by a defense contractor with the official regarding future employment opportunities with the defense contractor.

"(d)(1) Except as provided in paragraph (3), a covered senior defense official who, at the time of terminating Federal Government employment, has served in the position of such official for a period of not less than 24 consecutive months immediately preceding the date of the termination shall be entitled to receive as severance pay the lesser of—

"(A) the amount determined under paragraph (2); or

"(B) the greater of—

"(i) the amount determined by multiplying the number of days between the date on which the covered senior defense official terminates such employment and the date on which he commences employment outside the Federal Government by the daily equivalent of the annual rate of basic pay for the position of the covered senior defense official on the day before the termination of his Federal Government employment; or

"(ii) an amount equal to one-twelfth of the annual rate of basic pay for the position of the covered senior defense official on the day before the termination of his Federal Government employment.

"(2) The amount referred to in paragraph (1)(A) is—

"(A) in the case of a covered senior defense official who has served in his position for at least 2 consecutive 12-month periods, but less than 3 consecutive 12-month periods, the amount equal to one-fourth of the annual rate of basic pay for such position on the day before the termination of his Federal Government employment;

"(B) in the case of a covered senior defense official who has served in the position of such official for at least 3 consecutive 12-month periods, but less than 4 consecutive 12-month periods, the amount equal to one-third of the annual rate of basic pay for such position on the day before the termination of his Federal Government employment; and

"(C) in the case of a covered senior defense official who has served in the position of such official for at least 4 consecutive 12-month periods, the amount equal to five-twelfths of the annual rate of basic pay for such position on the day before the termination of his Federal Government employment.

For the purpose of this paragraph, if the service of a person in the position of a covered senior defense official is terminated (voluntarily or involuntarily) by reason of a change of Presidents, as determined by the Director of the Office of Management and Budget, and the number of months of service as such an official is not divisible by 12, the number of months of such service shall be increased to the next higher number of months that is divisible by 12.

"(3) A covered senior defense official shall not be entitled to receive severance pay under this subsection if, on the day after the date of the termination of Federal Government employment, such official will be entitled to retired or retainer pay under this title, other than retired or retainer pay for non-regular service under chapter 67 of this title, or to an annuity under subchapter III of chapter 83 of title 5 or under any other retirement system for Federal Government employees.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2397a the following new item:

"2397b. Prohibition of private employment contacts between certain Department of Defense officials and defense contractors.".

(c) REPEAL PROVISION.—Section 921 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 693), is repealed.

SEC. 932. REQUIREMENTS RELATING TO CERTAIN PRIVATE EMPLOYMENT CONTACTS

Section 2397a of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "any individual" in paragraph (2) and inserting in lieu thereof "a covered senior defense official and any other individual"; and

(B) by inserting at the end the following:

"(7) 'Covered senior defense official' has the same meaning provided in section 2397b(a)(1) of this title."; and

(2) in subsection (b)(1)—

(A) by striking out "the official (except as provided in paragraph (2)) shall" in the matter before clause (A) and by inserting in lieu thereof "or a covered senior defense official makes or receives such a contact from a defense contractor (or an agent of such contractor) regarding such an opportunity";

(B) by inserting "the official (except as provided in paragraph (2)) shall" in clause (A) after "(A)"; and

(C) by inserting "except in the case of a covered senior defense official, the official shall," after "(B)" in clause (B).

SEC. 933. PROHIBITION ON FELONS CONVICTED OF DEFENSE CONTRACT RELATED FELONIES AND PENALTY ON EMPLOYMENT OF SUCH PERSONS BY DEFENSE CONTRACTORS.

Subsection (a) of section 932 of the Department of Defense Authorization Act, 1986 (Public Law 99-145) is amended by—

(1) inserting after "management or supervisory capacity" the following: ", including the capacity of service on the board of directors,"; and

(2) striking out "one year" and inserting in lieu thereof "three years".

PART D—ACQUISITION OF COMMERCIAL AND OTHER DEVELOPED EQUIPMENT AND SUPPLIES

SEC. 941. COMMERCIAL PRICING FOR SPARE OR REPAIR PARTS

(a) IN GENERAL.—Section 2323 of title 10, United States Code, is amended to read as follows:

"§ 2323. Commercial pricing for spare or repair parts

"In this section:

"(1) 'Agency' means an agency named in section 2303(a) of this title.

"(2) 'Spare or repair part' means any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself.

"(3) 'Lowest commercial price', with respect to a spare or repair part to be supplied by a contractor, does not include the price for which the contractor sells such part—

"(A) to any person for resale by such person after such person performs some service or function in connection with such part which adds to the cost of the part, unless the agency procuring the part can demonstrate that the agency is procuring the part before such service or function has been performed by any such person;

"(B) to any of the contractor's subsidiaries, affiliates, parent business organizations, or other branches of the same business entity;

"(C) to any person at a price which has been substantially discounted below the fair market or regular price for the purpose of making a donation; or

"(D) to any customer located outside the United States.

"(b) Except in the case of an offer submitted with a written statement and justification under subsection (c)(2) and except as provided in subsection (d), if an agency uses procurement procedures other than competitive procedures to award a contract for the purchase of spare or repair parts to a contractor who also offers such parts for sale to the general public, the price charged the United States for such parts under the contract may not exceed the lowest commercial price charged by the contractor in sales of such parts to the general public during the period specified in subsection (c)(1).

"(c) In any case in which a contractor submits an offer to an agency to enter into a contract for the supply of spare or repair parts to that agency, the contract is to be entered into under procurement procedures other than competitive procurement proce-

dures, and the contractor also offers such spare or repair parts to the general public, then the contractor shall be required—

"(1) to certify in the offer that, to the best of the contractor's knowledge and belief, the price offered does not exceed the lowest commercial price at which the contractor sold such parts during the most recent regular monthly, quarterly, or other longer period for which sales data are reasonably available; or

"(2) to submit with the offer a written statement specifying the amount of the difference between its lowest commercial price for the parts and the price offered and providing a justification for that difference.

"(d) Subsections (b) and (c) do not apply to a contract awarded by an agency if the contracting officer determines, in a written finding maintained by the agency for at least 6 years, that the use of the price otherwise required by subsection (b) for such contract is not appropriate because of—

"(1) national security considerations; or

"(2) significant differences in quantity, quality, delivery, or other terms and conditions of the contract from commercial contract terms.

"(e)(1) In order to verify any certificate or statement made in accordance with subsection (c) in connection with a contract for the supply of spare or repair parts, the contracting officer who awards the contract (or any representative of the contracting officer who is an employee of the Federal Government) shall have the right, during the period specified in paragraph (2), to examine and audit all records of sales maintained by or for the contractor that are directly pertinent to the contractor's sales of such spare or repair parts for the period covered by such certificate or statement, including any books, data, or other documents maintained by or for the contractor that are directly pertinent to such sales records.

"(2) During the 3-year period beginning on the date a contractor submits a certificate or statement to an agency pursuant to subsection (c), the contractor shall make available to the contracting officer (or his representative) for examination, audit, or reproduction for the purposes of paragraph (1) all records, books, data, and documents referred to in such paragraph.

"(3) Nothing in this subsection shall require a contractor to disclose or submit data relating to the underlying elements of the prices of commercial products.".

(b) TEMPORARY EXCEPTION TO "LOWEST COMMERCIAL PRICE".—As used in section 2323 of title 10, United States Code (as amended by subsection (a) of this section), during the 1-year period beginning on the date of the implementation of such section 2323, the term "lowest commercial price", with respect to a spare or repair part to be supplied by a contractor, does not include the price for which the contractor sells such part to any agency or instrumentality of the Federal Government.

(c) CONFORMING AMENDMENT.—The item relating to section 2323 in the table of sections at the beginning of chapter 137 of such title is amended to read as follows:

"2323. Commercial pricing for spare or repair parts.".

SEC. 942. REGULATIONS FOR ALLOCATING OVERHEAD TO PARTS TO WHICH THE CONTRACTOR HAS ADDED LITTLE VALUE

Section 1245 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2609) is amended to read as follows:

"REGULATIONS FOR ALLOCATING OVERHEAD TO PARTS TO WHICH THE CONTRACTOR HAS ADDED LITTLE VALUE

"SEC. 1245. (a) Not later than 180 days after the date of the enactment of the Department of Defense Authorization Act, 1987, the Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures, as defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).

"(b) The regulations required by subsection (a) shall—

"(1) specify the incurred overhead a contractor may appropriately allocate to supplies referred to in such subsection; and

"(2) require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value.

"(c) The regulations issued pursuant to subsection (a) shall not apply to any items of supply included in contracts or subcontracts for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

"(d) This section does not require the submission of cost or pricing data not otherwise required by law to be submitted.".

SEC. 943. REPEAL OF COST AND PRICE MANAGEMENT PROVISIONS

(a) IN GENERAL.—Section 2406 of title 10, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2406.

SEC. 944. APPLICATION OF REQUIREMENTS TO MARK SUPPLIES TO IDENTIFY SUPPLIERS AND SOURCES

(a) IN GENERAL.—Section 2384 of title 10, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

"(c) This subsection shall not apply to any items of supply included in contracts for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the date of the enactment of this Act.

SEC. 945. PROCUREMENT OF NONDEVELOPMENT ITEMS

(a) PRIORITY REQUIREMENT FOR PROCUREMENT OF NONDEVELOPMENT ITEMS.—(1) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2325. Procurement of nondevelopment items

"(a) In this section, the term 'nondevelopment item' means—

"(1) any item readily available in the commercial marketplace;

"(2) any item developed and in use by another department or agency of the Federal Government; or

"(3) any item described in clause (1) or (2) which requires only minor modification in order to meet the requirements of the procuring department or agency.

"(b) The Secretary of Defense, the Secretary of each military department, and the head of each Defense Agency, when procuring any item for the Department of Defense, shall, to the maximum extent practicable—

"(1) define the requirements for such item so that nondevelopment items may be used to fulfill the requirements; and

"(2) fulfill such requirements through the procurement of nondevelopment items rather than through the procurement of items made or manufactured to Department of Defense specifications.

"(c) The Secretary of Defense shall designate an officer or employee of the Department of Defense to be responsible for ensuring the effective implementation of this section.

"(d) The Secretary of Defense shall prescribe regulations to carry out subsection (b).".

(2) The table of sections at the beginning of chapter 137 of such title is amended by adding at the end the following new item:

"2325. Procurement of nondevelopment items.".

(b) DESIGNATION OF RESPONSIBLE OFFICIAL.—The Secretary of Defense shall make the designation required by section 2325(c) of title 10, United States Code (as added by subsection (a)(1) of this section), not later than 90 days after the date of the enactment of this Act.

(c) REPORT.—(1) The Secretary of Defense shall submit to Congress, not later than one year after the date of the enactment of this Act, a report on the actions that have been taken, including personnel training and changes in regulations and procurement procedures, to implement the requirements of section 2325 of title 10, United States Code (as added by subsection (a)(1) of this section).

(2) The report shall include recommendations for additional legislation that the Secretary considers desirable to increase procurement of nondevelopment items to meet the requirements of the Department of Defense.

SEC. 946. REQUIREMENTS RELATING TO OTHER THAN COMPETITIVE PROCEDURES

(a) CONTRACT FOR PROPERTY OR SERVICES.—Clause (A) of section 2304(d)(1) of title 10, United States Code, is amended by striking out "that demonstrates a unique and innovative concept" and inserting in lieu thereof "that, in the case of a product, demonstrates a unique and innovative concept or, in the case of a service, demonstrates a unique and innovative concept or a unique capability,".

(b) FOLLOW-ON CONTRACTS.—Clause (B) of such section is amended—

(1) by striking out "equipment" and inserting in lieu thereof "equipment, or the continued provision of highly specialized services,"; and

(2) by inserting "or services" after "such property" in subclause (ii).

SEC. 947. EVALUATION FACTORS IN AWARD OF CONTRACTS

Section 2305(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(3) In prescribing the evaluation factors to be included in each solicitation for sealed bids or competitive proposals, the relative importance of the quality of the services to be provided (including technical capability, management capability, and prior experience of the offeror), cost or price factors, and other factors should be clearly established. If, in the case of any contract to be awarded by an agency, the agency determines that the quality of the services,

rather than the cost or price factors or other factors, is the highest priority, the agency should reflect that determination through appropriate weighting and evaluation factors.".

SEC. 948. OFFSETS FOR CONTRACT ADJUSTMENTS RELATING TO DEFECTIVE COST AND PRICING DATA

Section 2306(f)(2) of title 10, United States Code, is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following new subparagraph (B):

"(B) Cost or pricing data include only that data which are factual and verifiable and do not include judgmental data. No judgmental data or intentional understatement of cost or pricing data may be used as an offset to an adjustment under a contract provision required by subparagraph (A).".

PART E—MISCELLANEOUS PROCUREMENT POLICY MATTERS

SEC. 951. REQUIREMENT FOR A CONTRACTOR TO INFORM THE HEAD OF AN AGENCY THE EXTENT TO WHICH THE CONTRACTOR IS OWNED OR CONTROLLED BY A FOREIGN GOVERNMENT OR AGENT OR INSTRUMENTALITY OF A FOREIGN GOVERNMENT

(a) IN GENERAL.—Chapter 137 of title 10, United States Code (as amended by section 945(a)(1) of this Act), is amended by adding at the end the following new section:

"§ 2326. Disclosure of ownership or control by foreign government

"The head of an agency shall require a firm that submits a bid or proposal in response to a solicitation described in section 2305(a)(1) of this title to disclose in that bid or proposal, on the basis of the firm's best information and belief, whether, and to what extent, all or any part of such firm is owned or controlled by a foreign government or by an agent or instrumentality of a foreign government.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter (as amended by section 945(a)(2) of this Act) is amended by adding at the end the following new item:

"2326. Disclosure of ownership or control by foreign government.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective with respect to solicitations for bids and proposals issued under chapter 137 of title 10, United States Code on and after the date of the enactment of this Act.

SEC. 952. FOREIGN POLICY AND NATIONAL SECURITY CONSIDERATIONS IN DEFENSE CONTRACTING

(a) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Foreign policy and national security considerations in defense contracting

"(a)(1) An agency named in clause (1), (2), (3), or (4) of section 2303(a) of this title may not enter into, modify, or extend a contract under chapter 137 of this title in an amount in excess of $100,000 with any contractor owned or controlled, in whole or in significant part, by a foreign government or an agent or instrumentality of a foreign government if the head of the agency determines that such contract (or the award, modification, or extension of such contract) is inconsistent with the foreign policy or national security objectives of the United States. Any such determination shall be made with the concurrence of the Secretary of State.

"(2) In making a determination under paragraph (1), the head of the agency shall consider, among other things, the following:

"(A) The relationship of the United States with the foreign government and with the agent or instrumentality, if any, of a foreign government referred to in paragraph (1).

"(B) The obligations of the United States under international agreements.

"(C) The extent of the ownership and control of the contractor by the foreign government or the agent or instrumentality.

"(D) Whether proceeds of or payments under the contract or proposed contract or information which would be made available to the contractor under the contract could be used for purposes inimical to the interests of the United States.

"(3) The head of the agency shall report to Congress regarding his determination to deny a contract award, modification, or extension under the authority of paragraph (1). The report shall identify the foreign government, the agent (if any) or instrumentality (if any) of such foreign government, the nature of the contract, and the reasons for denying the contract award, modification, or extension.

"(b)(1) Before an agency referred to in subsection (a)(1) enters into, modifies, or extends a contract with a contractor owned or controlled, in whole or in significant part, by a foreign government (or an agent or instrumentality of a foreign government) that the Secretary of State has determined, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, the head of the agency shall submit to Congress a report on the proposed contract, modification, or extension, as the case may be. The head of the agency shall include in such report the identity of the foreign government, agent, or instrumentality, as the case may be, the nature of the contract, modification, or extension, as the case may be, the extent of ownership or control of the foreign government, agent, or instrumentality, and the reasons for the agency entering into, modifying, or extending the contract.

"(2) After the head of an agency has submitted a report to Congress pursuant to paragraph (1) with regard to a contractor, the head of the agency is not required to submit an additional report before entering into any subsequent contract with such contractor or before modifying or extending a contract with such contractor unless the information required to be reported by such paragraph is materially different from the information previously submitted.

"(c) The Secretary of Defense, in consultation with the Secretary of State, shall prescribe regulations to carry out this section. Section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) shall not apply to such regulations.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by inserting at the end the following new item:

"2408. Foreign policy and national security considerations in defense contracting.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to contracts awarded, modified, or extended on or after the date of the enactment of this Act.

SEC. 953. RIGHTS RELATING TO THE USE, RELEASE, AND DISCLOSURE OF TECHNICAL DATA

(a) RIGHTS IN TECHNICAL DATA.—Subsection (a) of section 2320 of title 10, United States Code, is amended to read as follows:

"(a)(1) The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to a product or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. Such regulations may not impair any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law.

"(2) Such regulations shall include the following provisions:

"(A) In the case of a product or process that is developed by a contractor or subcontractor exclusively with Federal funds, the United States shall have the unlimited right to use, release, or disclose technical data pertaining to the product or process.

"(B) In the case of a product or process that is developed by a contractor or subcontractor exclusively at private expense, the contractor or subcontractor may limit the right of the Government to use, (for other than internal operations and maintenance purposes), release, or disclose to persons outside the Government technical data pertaining to the product or process.

"(C) Notwithstanding subparagraph (B), the Government may use, release, or disclose technical data pertaining to a product or process to persons outside the Government if such technical data is otherwise publicly available or if—

"(i) such use, release, or disclosure—

"(I) is necessary for emergency repair and overhaul; or

"(II) is a use, release, or disclosure to a foreign government that is in the interest of the United States and is required for evaluational or informational purposes;

"(ii) such use, release, or disclosure is made subject to a prohibition that the person to whom the data is released or disclosed may not further use, release, or disclose such data; and

"(iii) the contractor or subcontractor asserting the restriction is notified of such use, release, or disclosure.

"(D) In the case of a product or process that is developed in part with Federal funds and in part at private expense, rights in technical data pertaining to such product or process shall be negotiated as early in the acquisition process as practicable (preferably during contract negotiations), based upon consideration of the following factors:

"(i) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

"(ii) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

"(iii) The interest of the United States in encouraging contractors to develop at private expense items for use by the Government.

"(E) A contractor or subcontractor, or a prospective contractor or subcontractor, that develops a product or process exclusive-

ly at private expense may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract, to sell or otherwise relinquish to the United States any rights in technical data that would permit the use by, or release or disclosure of, such data to persons outside the Government except under the conditions described in paragraph (2)(C).

"(F) The Secretary of Defense may—

"(i) negotiate with a contractor or subcontractor to contract for the acquisition of rights in technical data pertaining to a product or process developed by such contractor or subcontractor exclusively at private expense if necessary to develop alternative sources of supply and manufacture; or

"(ii) agree to limit rights of the United States in technical data pertaining to a product or process developed entirely or in part with Federal funds if the United States receives a royalty-free license to use, release, or disclose the data for purposes of the United States (including purposes of competitive procurement).

"(2) In this subsection, the term 'Federal Acquisition Regulation' means the single system of Government-wide procurement regulations as defined in section 4(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).".

(b) VALIDATION OF PROPRIETARY DATA RESTRICTIONS.—Section 2321 of title 10, United States Code, is amended—

(1) in subsection (a)(2), by inserting ", at any time before the end of the 3-year period beginning on the date the final payment is made on the contract," after "may review"; and

(2) in subsection (b)—

(A) by inserting "specific" after "state the" in clause (1);

(B) by striking out "and" at the end of clause (1);

(C) by striking out the period at the end of clause (2) and inserting in lieu thereof "; and"; and

(D) by adding at the end the following new clause:

"(3) state that evidence of acceptance by any Federal agency of a restriction identical to the asserted restriction within the 3-year period preceding the challenge shall serve as justification for the asserted restriction if—

"(A) the acceptance occurred after a review of the accepted restriction under this section; and

"(B) the accepted restriction was asserted by the same contractor or subcontractor to whom such notice is being provided.".

(c) CONFORMING AMENDMENTS.—Section 1202 of the Department of Defense Authorization Act, 1985 (10 U.S.C. 2301 note), is amended—

(1) by inserting "and" at the end of paragraph (4);

(2) by striking out "; and" at the end of paragraph (5) and inserting in lieu thereof a period; and

(3) by striking out paragraph (6).

(d) DEADLINE FOR REVISION OF REGULATIONS.—The regulations required by section 2320(a)(1) of title 10, United States Code (as amended by subsection (a)), shall be prescribed not later than 180 days after the date of the enactment of this Act.

SEC. 954. GOALS FOR INCREASED USE OF MULTIYEAR CONTRACTING AUTHORITY IN FISCAL YEAR 1988

(a) IN GENERAL.—The Secretary of Defense shall take appropriate actions to ensure that the Department of Defense increases the use of multiyear contracting authority in fiscal year 1988.

(b) MULTIYEAR PROCUREMENT GOAL.—The total amount obligated under multiyear contracts (authorized by section 2306(h) of title 10, United States Code) for Department of Defense procurement program eligible for multiyear contracting during fiscal year 1988 should be an amount that is not less than 10 percent of the total obligational authority used by the Department of Defense for procurement programs of the Department during such fiscal year.

(c) APPORTIONMENT OF GOAL.—The Secretary of Defense shall specify the percentage of obligational authority of each military department and Defense Agency that is to be used for multiyear contracts to achieve the goal prescribed in subsection (b).

(d) BASELINE REPORT.—Not later than January 1, 1987, the Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives a written report which contains (1) a list of all procurement programs which the Secretary determines to be Defense SAR procurement programs eligible for multiyear contracting, (2) the Secretary's assessment of the feasibility and desirability of the multiyear procurement goal prescribed in subsection (b), and (3) whether the Secretary expects to achieve the goal prescribed in subsection (b) for fiscal year 1988 and, if the Secretary does not expect to achieve such goal, the reasons why such goal will not be achieved.

(e) DEFINITIONS.—As used in this section:

(1) The term "SAR" means Selected Acquisition Report as defined in section 139a(b)(1) of title 10, United States Code.

(2) The term "Defense procurement program eligible for multiyear contracting" means a procurement program of the Department of Defense (A) which satisfies the conditions of clauses (A) through (F) of section 2306(h)(1) of title 10, United States Code, and (B) under which production of fully configured end items is planned for a period exceeding 3 fiscal years.

TITLE X—DEPARTMENT OF DEFENSE EFFICIENCY AND ECONOMY MATTERS

SEC. 1001. SHORT TITLE

This title may be cited as the "Department of Defense Efficiency and Economy Act of 1986".

SEC. 1002. APPLICATION OF THE DAVIS-BACON ACT TO MILITARY CONSTRUCTION CONTRACTS

(a) IN GENERAL.—Subsection (a) of the first section of the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (40 U.S.C. 276a(a)), commonly known as the Davis-Bacon Act, is amended—

(1) by inserting "(1)" after "(a)";

(2) by inserting "or, in the case of contracts awarded by the Department of Defense, every contract in excess of $250,000" after "$2,000" in the first sentence; and

(3) by adding at the end the following new paragraph:

"(2) A person contracting on behalf of the United States or the District of Columbia may not divide projects for construction, alteration, or repair into contracts of less than $250,000 for the purpose of avoiding the application of this Act to such contracts.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to solicitations for bids or proposals made on and after the date of the enactment of this Act.

SEC. 1003. INCREASE IN THRESHHOLD APPLICABLE TO STATUTORY CONTRACTING-OUT PROCEDURES

(a) IN GENERAL.—Section 502(d) of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2304 note) is amended by striking out "40 or fewer" and inserting in lieu thereof "50 or fewer".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1987.

SEC. 1004. CONTRACTING OUT THE PERFORMANCE OF CERTAIN DEPARTMENT OF DEFENSE FUNCTIONS

(a) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subsection (b), the Department of Defense shall procure from a private sector source each supply and service necessary for or beneficial to the accomplishment of the Department's authorized functions (other than military functions performed by the military departments) if a private sector source can provide such supply or service to the Department at a cost that is lower than the cost at which the Department can provide the same supply or service.

(b) EXCEPTIONS.—(1) Subsection (a) shall not apply to—

(A) firefighting functions until after September 30, 1987, and such functions may not be contracted out to the private sector before that date; or

(B) core logistics functions—

(i) identified by the Secretary of Defense pursuant to section 307 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2514); or

(ii) specified in section 1231 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 731).

(2) The prohibition on contracting out firefighting functions before September 30, 1987, under paragraph (1)(A) shall not apply to a contract described in section 1221(b) of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 691).

(c) REPORTS.—Not later than January 15, 1987, the Secretary of Defense and the Administrator of the United States Fire Administration shall each submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the contracting out of firefighting functions, including the following information:

(1) Standards required to perform the activities of the firefighting functions, for activities performed by the Department of Defense personnel and by private contract.

(2) Determinations of those activities within the firefighting function that are inherently governmental and those that are not.

(3) A cost estimate of the savings, if any, over a five-year period that would be realized from contracting out those activities within the firefighting function not determined to be inherently governmental.

SEC. 1005. REALISTIC AND FAIR COST COMPARISONS IN DETERMINATIONS RELATING TO CONTRACTING OUT THE PERFORMANCE OF CERTAIN DEPARTMENT OF DEFENSE FUNCTIONS

For the purpose of determining whether to contract with private sector sources for the performance of any Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such sources with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense should ensure that all costs considered, including the costs of quality assur-

ance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs, are realistic and fair.

TITLE XI—NATIONAL DEFENSE STOCKPILE

SEC. 1101. EXTENSION OF PROHIBITION ON REDUCTIONS IN STOCKPILE GOALS

Section 1612(a)(1) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 776), as amended by striking out "October 1, 1986" and inserting in lieu thereof "April 1, 1987".

SEC. 1102. SPECIAL AUTHORIZATION FOR DISPOSAL

(a) IN GENERAL.—(1) Notwithstanding section 5(b)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98d(b)(2)), the Administrator of General Services is authorized to dispose of the following quantities of materials currently held in the National Defense Stockpile (established by section 3 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b)), that are hereby determined to be excess to the current requirements of the stockpile:

Aluminum Oxide, A.G	5,700 short tons
Antimony	1,500 short tons
Bismuth	136,000 pounds
Cadmium	265,000 pounds
Diamonds, Industrial Stone.	1,125,000 carats
Graphite, Malagasy C.F.	1,000 short tons
Iodine	800,000 pounds
Lead	30,000 short tons
Manganese, Battery Grade Natural.	2,500 short dry tons
Manganese, Ore	50,000 short dry tons
Manganese, Electrolytic Metal.	1,000 short tons
Mercury	3,700 flasks
Mica, Muscovite Film	3,000 pounds
Mica, Muscovite Splittings.	262,000 pounds
Mica, Phlogopite Splittings.	100,000 pounds
Nickel	3,750 short tons
Rutile	10,300 short dry tons
Silicon Carbide	7,600 short tons
Silver (Coinage Program Only).	3,000,000 troy ounces
Tannin, Chestnut	1,000 long tons
Tannin, Quebracho	4,000 long tons
Thorium Nitrate	10,000 pounds
Tin	4,000 metric tons
Titanium, Non-Stockpile Grade.	900 short tons
Tungsten	1,900,000 pounds of tungsten metal equivalent
Zinc	33,750 short tons

(2) The Administrator of General Services may not dispose of any quantity of any material under subsection (a) if the disposal would cause the total receipts from disposals made under such subsection to exceed $120,000,000.

SEC. 1103. AUTHORIZATION OF APPROPRIATIONS

(a) IN GENERAL.—Notwithstanding section 5(a)(2) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98d(a)(2)), there is authorized to be appropriated $120,000,000 for fiscal year 1987 for the acquisition of strategic and critical materials for the National Defense Stockpile.

(b) ACQUISITION OF GERMANIUM.—The Administrator of General Services shall acquire not less than 30,000 kilograms of germanium during fiscal year 1987 with funds appropriated pursuant to the authorization in this section or under the authority of section 6(c) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e(c)).

SEC. 1104. EXTENSION OF USES OF STOCKPILE TRANSACTION FUND

Paragraph (2) of section 9(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)) is amended to read as follows:

"(2) Subject to section 5(a)(1), moneys covered into the fund under paragraph (1) shall be available for the following purposes when appropriated therefor:

"(A) The acquisition of strategic and critical materials under section 6(a)(1).

"(B) Transportation, storage, and other incidental expenses related to such acquisition.

"(C) Development of current specifications of stockpile materials and the upgrading of existing stockpile materials to meet current specifications (including transportation, when economical, related to such upgrading).

"(D) Testing and quality studies of stockpile materials.

"(E) Studying future material and mobilization requirements for the stockpile.

"(F) Other reasonable requirements for management of the stockpile.".

SEC. 1105. DEFINITION

As used in this title, the term "National Defense Stockpile" has the meaning provided in section 3 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b).

SEC. 1106. CONVERSION OF CHROMIUM AND MANGANESE ORE TO HIGH CARBON FERROCHROMIUM AND HIGH CARBON FERROMANGANESE

(a) IN GENERAL.—During fiscal year 1987 and during each of the six succeeding fiscal years, the Administrator of General Services shall obtain bids from domestic producers of high carbon ferrochromium and of high carbon ferromanganese and award contracts for the conversion of chromium and manganese ores held in the National Defense Stockpile into high carbon ferrochromium and high carbon ferromanganese, respectively.

(b) STOCKPILE GOALS.—(1) Contracts awarded under subsection (a) shall provide for the addition of not less than 53,500 short tons of high carbon ferrochromium and 67,500 short tons of high carbon ferromanganese to the National Defense Stockpile in each of the fiscal years referred to in the preceding sentence.

(2) If, in any fiscal year referred to in subsection (a), the minimum quantity of high carbon ferrochromium or high carbon ferromanganese to be added to the National Defense Stockpile, as prescribed in paragraph (1), is not met, the quantity of such material to be added to such stockpile in the succeeding fiscal year shall be increased by the quantity of the deficiency.

(c) SEVEN-YEAR MINIMUM QUANTITIES.—The total quantities of high carbon ferrochromium and high carbon ferromanganese to be added to the National Defense Stockpile over the seven fiscal years referred to in subsection (a) shall be as follows:

(1) High carbon ferrochromium, 374,000 short tons.

(2) High carbon ferromanganese, 472,000 short tons.

(d) In this section, the term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

TITLE XII—GENERAL PROVISIONS

SEC. 1201. AUTHORIZATION OF APPROPRIATIONS FOR CIVILIAN PAY AND CONTINGENCIES

There are authorized to be appropriated for fiscal year 1987, in addition to other amounts authorized to be appropriated in this Act, such sums as may be necessary—

(1) for unbudgeted increases in fuel costs;

(2) for unbudgeted increases as a result of inflation in the cost of activities authorized in this Act; and

(3) for unbudgeted amounts for salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds authorized to be appropriated in this Act.

SEC. 1202. DATES FOR REPORTING ON UNOBLIGATED BALANCES

Subsection (b) of section 1407 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), is amended to read as follows:

"(d) SUBMISSION OF REPORTS.—The reports shall be submitted to Congress each year not later than March 1, April 25, and September 1.".

SEC. 1203. SELECTED ACQUISITION REPORTS

(a) REVISION OF REPORTING REQUIREMENTS.—Section 139a of title 10, United States Code, is amended—

(1) by adding at the end of subsection (a)(3) the following new sentence: "When the appropriated funds and quantities differ from those programmed, the procurement unit cost will be revised to reflect the appropriated amounts.";

(2) in subsection (a)(4), by striking out "$2,000,000" and inserting in lieu thereof "$40,000,000";

(3) in subsection (b)(2)(A), by striking out "5" and inserting in lieu thereof "10";

(4) in subsection (b)(2)(B), by striking out "three-month" and inserting in lieu thereof "six-month";

(5) by striking out paragraph (2) of subsection (c) and inserting in lieu thereof the following:

"(2) Each Selected Acquisition Report for the first quarter of a fiscal year shall be designed to provide the Committees on Armed Services of the Senate and the House of Representatives with the information such Committees need to perform their oversight functions. No change in the content of the Selected Acquisition Report from the content as reported for the first quarter of the previous year may be made until appropriate officials of the Department of Defense have consulted with such Committees regarding the proposed changes.";

(6) in subsection (c)(3)(C), by inserting "which is produced at a rate of six units or more per year," after "report," in the matter preceding subclause (i); and

(7) by adding at the end the following new subsection:

"(h) Total program reporting under this section shall apply without exception to a program when funds have been appropriated for such acquisition program and the Department of Defense has made the decision to proceed to full-scale engineering development on such program. Reporting may be limited to the development program before a Department of Defense decision is made to proceed to full-scale engineering development, subject to approval by the Committees on Armed Services of the Senate and the House of Representatives. A limited report under this subsection shall include:

"(1) The same information, in detail and summarized form, as is provided in reports submitted under subsections (c)(1) and (c)(3) of section 139 of this title.

"(2) Reasons for any change in the development cost and schedule.

"(3) The major contracts under the development program and the reasons for any cost or schedule variances under those con-

tracts since the last Selected Acquisition Report.

"(4) The completion status of the development program (A) expressed as a percentage that the number of years for which funds have been appropriated for the development program is of the number of years for which it is planned that funds will be appropriated for the program, and (B) expressed as the percentage that the amount of funds that have been appropriated for the development program is of the total amount of funds which it is planned will be appropriated for the program.

"(5) Program highlights since the last Selected Acquisition Report.

"(6) Other information as the Secretary of Defense considers appropriate.

The submission requirements for quarterly Selected Acquisition Reports for development programs shall be governed by the same criteria as for quarterly Selected Acquisition Reports for total program reporting.".

(b) UNIT COST REPORTS.—Section 139b of title 10, United States Code, is amended—

(1) in subsection (b), by inserting "(excluding Saturdays, Sundays, and holidays)" after "days" each time it appears in the second sentence; and

(2) by adding at the end the following new subsection:

"(h) Reporting under this section shall not apply if a program has received a limited reporting waiver under section 139a(h) of this title.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on January 1, 1987.

SEC. 1204. EXTENSION OF EXEMPTION FOR DOD POLYGRAPH TEST PROGRAM

Section 1221(e) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 727), is amended—

(1) in clause (2), by striking out "or" at the end of such clause;

(2) in clause (3)—

(A) by striking out "cryptologic" and inserting in lieu thereof "cryptographic"; and

(B) by striking out the period at the end and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end the following new clause:

"(4) to any polygraph examination conducted under the authorization granted by the Secretary of Defense on August 31, 1982, on a person who is participating in a national program—

"(A) which has as its purpose the collection of specialized intelligence through reconnaissance;

"(B) which is under the purview of the Director of Central Intelligence; and

"(C) for which a polygraph examination was established on or before October 1, 1985, as a condition for participation in such program.

The number of examinations that may be conducted pursuant to such authorization in fiscal year 1987 may not exceed the number conducted pursuant to such authorization in fiscal year 1986.".

SEC. 1205. MODERNIZATION OF DEFENSE CAPABILITIES OF COUNTRIES OF NATO'S SOUTHERN FLANK

(a) AUTHORITY TO TRANSFER EQUIPMENT.—Notwithstanding any other provision of law and subject to subsection (b), the President may transfer to those member nations of the North Atlantic Treaty Organization (NATO) on the southern flank of NATO which are eligible for United States security assistance and which are integrated into NATO's military structure such defense equipment as the President determines necessary to help modernize the defense capabilities of such nations. Such equipment may be transferred without cost to the recipient nations.

(b) LIMITATIONS ON TRANSFERS.—The President may transfer defense equipment under this section only if—

(1) the equipment is drawn from existing stocks of the Department of Defense;

(2) no funds available to the Department of Defense for the procurement of defense equipment are expended in connection with the transfer; and

(3) the President determines that the transfer of the equipment will not have an adverse impact on the Armed Forces of the United States.

(c) NOTIFICATION TO COMMITTEES OF CONGRESS.—The President may not transfer defense equipment under this section until—

(1) he has notified the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives of the proposed transfer and included in such notification a certification of the need for the transfer and an assessment of the impact of the transfer on the Armed Forces of the United States; and

(2) a period of 30 days has elapsed following the date on which such notification is received by the committees named in clause (1).

(d) DEFINITION.—In subsection (a), the term "member nations of the North Atlantic Treaty Organization (NATO) on the southern flank of NATO" means Greece, Italy, Portugal, Spain, and Turkey.

SEC. 1206. NATO COOPERATIVE LOGISTIC SUPPORT AGREEMENTS

(a) GENERAL AUTHORITY.—The Secretary of Defense may enter into bilateral or multilateral Weapon System Partnership Agreements with one or more governments of other member nations of the North Atlantic Treaty Organization (NATO) for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreements. Such agreements may include provision for the transfer of logistics support, supplies, and services by the United States to the NATO Maintenance and Supply Organization and for the acquisition of logistics support, supplies, and services by the United States from such organization.

(b) AUTHORITY OF SECRETARY OF DEFENSE.—Under the terms of a Weapon System Partnership Agreement entered into under subsection (a), the Secretary of Defense may—

(1) agree that the NATO Maintenance and Supply Organization may make contracts for supply and acquisition of logistics support in Europe for requirements of the United States, to the extent the Secretary determines that the procedures of that organization governing such supply and acquisition are appropriate; and

(2) share the costs of set-up charges of facilities for use by the NATO Maintenance and Supply Organization to provide cooperative logistics support and share in the costs of establishing a revolving fund for initial acquisition and replenishment of supply stocks to be used by the NATO Maintenance and Supply Organization to provide cooperative logistics support.

(c) SHARING OF ADMINISTRATIVE EXPENSES.—Each Weapon System Partnership Agreement shall provide for joint management by the participating nations and for the equitable sharing of the administrative costs incident to such agreement.

(d) APPLICATION OF CHAPTER 137.—Except as provided in this section, the provisions of chapter 137 of title 10, United States Code, shall apply to contracts entered into by the Secretary of Defense for the acquisition of logistics support under a Weapon System Partnership Agreement.

(e) APPLICATION OF ARMS EXPORT CONTROL ACT.—The transfer of defense articles or defense services to the NATO Maintenance and Supply Organization for the purposes of a Weapon System Partnership Agreement shall be in accordance with the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) SUPPLEMENTAL AUTHORITY.—The authority of the Secretary of Defense under this section is in addition to the authority of the Secretary under chapter 138 of title 10, United States Code, or under any other provision of law.

(g) DEFINITION.—For the purpose of this section, the term "Weapon System Partnership Agreement" means an agreement between the United States and one or more other NATO nations participating in the operation of the NATO Maintenance and Supply Organization, entered into pursuant to the terms of the charter of such Maintenance and Supply Organization, for the common logistic support of a specific weapon system common to the participating nations.

SEC. 1207. COOPERATIVE PROJECTS

(a) ARMS EXPORT CONTROL ACT.—(1) Section 27 of the Arms Export Control Act (22 U.S.C. 2767) is amended—

(A) in subsection (b)—

(i) by inserting ", in the case of an agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization," after "project' " in paragraph (1);

(ii) by striking out "and" at the end of paragraph (1);

(iii) by redesignating paragraph (2) as paragraph (3); and

(iv) by inserting after paragraph (1) the following new paragraph:

"(2) the term 'cooperative project', in the case of an agreement entered into under subsection (j), means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to enhance the ongoing multinational effort of the participants to improve the conventional defense capabilities of the participants and which provides—

"(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

"(B) for concurrent production in the United States and in the country of another participant of a defense article jointly developed in accordance with subparagraph (A); or

"(C) for procurement by the United States of a defense article or defense service from another participant to the agreement; and";

and

(B) by adding at the end the following new subsection:

"(j) The President may enter into a cooperative project agreement with any friendly foreign country not a member of the North Atlantic Treaty Organization under the same general terms and conditions as the

President is authorized to enter into such an agreement with one or more member countries of the North Atlantic Treaty Organization if the President determines that the cooperative project agreement with such country would be in the foreign policy or national security interests of the United States.".

(2) The section heading for such section is amended to read as follows:

"SEC. 27. AUTHORITY OF PRESIDENT TO ENTER INTO COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES.—".

(b) TITLE 10, UNITED STATES CODE.—(1) Section 2407 of title 10, United States Code, is amended—

(A) in subsection (a)(1), by striking out "North Atlantic Treaty Organization (NATO)";

(B) in subsection (c)(2), by striking out "NATO";

(C) in paragraphs (1) and (2) of subsection (e), by striking out "NATO" each place it appears; and

(D) by striking out the section heading and inserting in lieu thereof the following:

"§ 2407. Acquisition of defense equipment under cooperative projects".

(2) The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2407 and inserting in lieu thereof the following:

"2407. Acquisition of defense equipment under cooperative projects.".

SEC. 1208. ACQUISITION AND CROSS-SERVICING AGREEMENTS

(a) AUTHORITY TO ENTER INTO AGREEMENTS WITH COUNTRIES OUTSIDE EUROPE.—Section 2341 of title 10, United States Code, is amended to read as follows:

"§ 2341. Authority to acquire logistic support, supplies, and services for armed forces of the United States deployed outside the United States

"Subject to section 2343 of this title and subject to the availability of appropriations, the Secretary of Defense may—

"(1) acquire from the Governments of North Atlantic Treaty Organization countries and from North Atlantic Treaty Organization subsidiary bodies logistic support, supplies, and services for elements of the armed forces deployed in Europe and adjacent waters; and

"(2) acquire from any government not a member of the North Atlantic Treaty Organization in which armed forces of the United States are deployed, or are to be deployed, logistic support, supplies, and services for elements of the armed forces deployed (or to be deployed) in such country or in the military region in which such country is located if such country—

"(A) has a defense alliance with the United States;

"(B) permits the stationing of members of the armed forces of the United States in such country or the homeporting of Naval vessels of the United States in such country;

"(C) has agreed to preposition materiel of the United States in such country; or

"(D) serves as the host country to military exercises which include the armed forces of the United States or permits other military operations by the armed forces of the United States in such country.".

(b) CROSS-SERVICING AGREEMENTS.—Section 2342 of such title is amended to read as follows:

"§ 2342. Cross servicing agreements

"(a) Subject to section 2343 of this title and to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may—

"(1) enter into agreements with the government of any North Atlantic Treaty Organization country and with any North Atlantic Treaty Organization subsidiary body under which the United States agrees to provide logistic support, supplies, and services to military forces of such country or subsidiary body deployed in Europe and adjacent waters in return for the reciprocal provision of logistic support, supplies, and services by such country or subsidiary body to elements of the armed forces deployed in Europe and adjacent waters;

"(2) enter into agreements with the government of any country designated by the Secretary of Defense which is not a member of the North Atlantic Treaty Organization under which the United States agrees to provide logistic support, supplies, and services to the armed forces of such country in return for the reciprocal provision of logistic support, supplies, and services by such country to elements of the armed forces of the United States deployed in such country or in the military region in which such country is located; and

"(3) enter into agreements with the government of any country referred to in clause (1) or (2) under which the United States agrees to provide logistic support, supplies, and services to the armed forces of such country in return for the reciprocal provision of support, supplies, and services for the armed forces of the United States from such country while the armed forces of such country are stationed in North America or are performing military exercises or training in North America.

"(b) A country may not be designated by the Secretary of Defense for cross-servicing agreements under this section unless the Secretary, after consultation with the Secretary of State, has determined that the designation of such country for such purpose is in the interest of the national security of the United States.

"(c) The Secretary of Defense may not use the authority of this chapter to procure from any foreign government as a routine or normal source any goods or services reasonably available from United States commercial sources.

"(d) The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that contracts entered into under this chapter are free from self-dealing, bribery, and conflict of interests.".

(c) METHODS OF PAYMENT.—Section 2344(b) of such title is amended—

(1) in paragraph (1), by inserting "or other foreign country" after "country" in the material preceding subparagraph (A); and

(2) in paragraph (3), by inserting "or other foreign country" after "country".

(d) LIQUIDATION OF ACCRUED CREDITS AND LIABILITIES.—Section 2345 of such title is amended—

(1) by inserting "(a)" before "Credits" at the beginning of such section; and

(2) by adding at the end the following new subsection:

"(b) Payment-in-kind or exchange entitlements shall be satisfied within 12 months after the date of the delivery of the logistic support, supplies, or services.".

(e) LIMITATIONS ON AMOUNTS THAT MAY BE OBLIGATED OR ACCRUED BY THE UNITED STATES.—Section 2347 of such title is amended—

(1) in subsection (a)—

(A) by inserting "(1)" after "(a)"; and

(B) by adding at the end the following new paragraph:

"(2) Except during a period of active hostilities in the military region affecting a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements, the total amount of reimbursable liabilities that the United States may accrue under this chapter (before the computation of offsetting balances) with such country may not exceed $10,000,000 in any fiscal year, and of such amount not more than $2,500,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants). The $10,000,000 limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).";

(2) in subsection (b), by inserting "(1)" after "(b)"; and

(3) by adding at the end the following new paragraph:

"(2) Except during a period of active hostilities in the military region affecting a country referred to in paragraph (1), the total amount of reimbursable credits that the United States may accrue under this chapter from such country (before computation of offsetting balances) may not exceed $10,000,000 in any fiscal year. The $10,000,000 limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).".

(f) INVENTORIES OF SUPPLIES NOT TO BE INCREASED.—Section 2348 of such title is amended by striking out "to military forces of any North Atlantic Treaty Organization country or any North Atlantic Treaty Organization subsidiary body".

(g) DEFINITION.—Section 2350 of such title is amended by adding at the end the following new paragraph:

"(3) 'Military region' means the geographical area of responsibility assigned to the Commander of a Unified Command of the armed forces of the United States excluding Europe and adjacent waters.".

(h) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 138 of such title is amended by striking out the item relating to section 2341 and inserting in lieu thereof the following:

"2341. Authority to acquire logistic support, supplies, and services for armed forces of the United States deployed outside the United States.".

SEC. 1209. COOPERATIVE RESEARCH AND DEVELOPMENT WITH NON-NATO ALLIES AND OTHER FRIENDLY COUNTRIES

(a) FINDINGS.—The Congress finds—

(1) that the North Atlantic Treaty Organization Cooperative Research and Development program instituted during fiscal year 1986 has served to increase cooperation in research and development among NATO nations; and

(2) that additional benefits of cooperation in research and development might ensue from an extension of the program to include countries which have mutual security or mutual assistance treaties with the United States or which share with the United States a commitment to freedom and individual liberties.

(b) CONGRESSIONAL REQUEST FOR COOPERATION ON RESEARCH AND DEVELOPMENT.—The Congress urges and requests the President and the Secretary of Defense to pursue diligently opportunities for the United States

and our major non-NATO allies to cooperate—

(1) in research and development on defense equipment and munitions; and

(2) in the production of defense equipment.

(c) FUNDS FOR COOPERATIVE PROJECTS.—Of the funds appropriated pursuant to the authorizations in section 201, not more than $40,000,000 shall be available only for cooperative research and development projects with major non-NATO allies.

(d) RESTRICTIONS.—(1) A memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project may not be entered into under this section unless the Secretary of Defense determines that the proposed project enhances the ongoing multinational effort to improve conventional defense capabilities through the application of emerging technology.

(2) Each cooperative project shall require sharing of the costs of research between the participants on an equitable basis.

(3) The Secretary may not delegate the authority to make a determination under paragraph (1) except to the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition.

(e) RESTRICTIONS ON PROCUREMENT OF EQUIPMENT AND SERVICES.—(1) In order to assure substantial participation on the part of major non-NATO allies in cooperative research and development projects, funds made available under subsection (c) for such projects may not be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity.

(2) A major non-NATO ally may not utilize any United States military or economic assistance funds, grants, or loans for the purpose of making its contribution to a cooperative research and development program entered into with the United States under this section.

(f) NOTICE TO CONGRESS.—The Secretary of Defense and the Secretary of State shall jointly submit a letter to Congress not later than January 1 of each year enumerating those countries eligible for participation with the United States in a cooperative research and development program authorized by this section.

(g) DEFINITIONS.—As used in this section:

(1) The term "major non-NATO ally" means a country with which the United States has a mutual security treaty or mutual security assistance treaty or a country which shares with the United States a mutual commitment to freedom and individual freedoms.

(2) The term "cooperative research and development project" means a project involving joint participation by the United States and one or more major non-NATO allies under a memorandum of understanding (or other formal agreement) to carry out a joint research and development program—

(A) to develop new conventional equipment and munitions; or

(B) to modify existing military equipment to meet United States military requirements.

SEC. 1210. SENSE OF THE SENATE RELATING TO SALT II COMPLIANCE

It is the sense of the Senate that it is in the national security interests of the United States to continue voluntary compliance with strategic offensive arms agreements with the Soviet Union by recognizing the central numerical sublimits on strategic nuclear delivery systems contained in such agreements so long as the Soviet Union complies with such sublimits.

SEC. 1211. SENSE OF THE SENATE RELATING TO STRATEGIC ARMS AGREEMENTS

It is the sense of the Senate that, consistent with international law, it is not in the national interest of the United States to continue compliance with any strategic arms agreement that the Soviet Union has clearly violated.

SEC. 1212. LIMITATION ON OBLIGATION OF FUNDS FOR ESTABLISHING A FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER FOR THE STRATEGIC DEFENSE INITIATIVE

(a) PROHIBITION ON USE OF FUNDS.—None of the funds authorized to be appropriated in this or any other Act may be obligated or expended for the purpose of establishing or operating a Federally Funded Research and Development Center for the support of the Strategic Defense Initiative Organization until Congress has received the reports described in subsection (b) and thirty (30) legislative days have elapsed following the date on which the Congress has received both reports.

(b) REPORT REQUIREMENT.— In order for Congress to make an informed decision on the need for the establishment of a Federally Funded Research and Development Center for the support of the Strategic Defense Initiative Organization and on the ability of such an entity to function as an independent and objective source of technical support, the Secretary of Defense and the Comptroller General of the United States shall each submit to Congress a report that includes the following:

(1) An evaluation of alternative means of providing the stated objective of technical support and the comparative costs of the alternative means.

(2) A discussion of the competitive aspects pertaining to contract award for such technical support.

(3) A discussion of the process for evaluating technical support proposals which includes consideration of peer review procedures.

(4) A discussion of the steps being taken in the design of the proposed Federally Funded Research and Development Center to prevent conflicts of interest and the appearance of conflicts of interest.

(5) A discussion of procedures for staff selection, including the role of the sponsoring organization in that selection process.

SEC. 1213. SPECIAL DEFENSE ACQUISITION FUND

Section 138(g) of title 10, United States Code, is amended by striking out "$1,000,000,000" and inserting in lieu thereof "$1,100,000,000".

SEC. 1214. EXTENSION OF AUTHORITY OF SECRETARY OF DEFENSE TO TRANSPORT HUMANITARIAN RELIEF SUPPLIES TO CERTAIN COUNTRIES

Section 1540(a) of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2637), is amended by striking out "fiscal years 1985 and 1986" and inserting in lieu thereof "fiscal years 1986 and 1987".

SEC. 1215. HUMANITARIAN AND CIVIC ASSISTANCE PROVIDED IN CONJUNCTION WITH A MILITARY OPERATION

(a) IN GENERAL.—Part I of subtitle A of title 10, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 20—HUMANITARIAN AND CIVIC ASSISTANCE PROVIDED IN CONJUNCTION WITH MILITARY OPERATIONS

"Sec.

"401. Armed forces participation in humanitarian and civic assistance activities.
"402. Approval of the Secretary of State.
"403. Payment of expenses.
"404. Report to Congress.
"405. Definition.

"§ 401. Armed forces participation in humanitarian and civic assistance activities

"(a) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may carry out humanitarian and civic assistance activities in conjunction with authorized military operations of the armed forces of the United States in countries in which it is determined, by the Secretary of the military department concerned, that the activities will promote—

"(1) both the security interests of the United States and the country in which the activities are to be carried out; and

"(2) the specific operational readiness skills of the members of the armed forces of the United States who participate in the activities.

"(b) Humanitarian and civic assistance activities carried out under this chapter shall fully complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other department or agency of the United States. Such activities shall serve the basic economic and social needs of the people of the country concerned.

"(c) Humanitarian and civic assistance may not be provided under this chapter, directly or indirectly, to any individual, group, or organization engaged in military or paramilitary activity.

"§ 402. Approval of the Secretary of State

"Humanitarian and civic assistance may not be provided under this chapter to any foreign country unless the Secretary of State has specifically approved such assistance.

"§ 403. Payment of expenses

"Expenses incurred as a direct result of providing humanitarian and civic assistance under this chapter to any foreign country shall be paid for out of funds specifically appropriated for such purpose.

"§ 404. Report to Congress

"The Secretary of Defense shall report to Congress each year, not later than March 1, on activities carried out under this chapter during the preceding fiscal year. The Secretary shall include in each such report a list of the countries in which humanitarian and civic assistance activities were carried out in the preceding fiscal year, the type of such activities carried out in each country in the preceding fiscal year, and the amount expended in carrying out such activities in each such country in the preceding fiscal year.

"§ 405. Definition

"In this chapter, the term 'humanitarian and civic assistance' means—

"(1) medical, dental, and veterinary care provided in rural areas of a country;

"(2) construction of rudimentary transportation systems;

"(3) well drilling and construction of basic sanitation facilities;

"(4) rudimentary construction and repair of public facilities; and

"(5) similar or related types of assistance.".

(b) CONFORMING AMENDMENTS.—The tables of chapters at the beginning of subtitle A of such title and at the beginning of part I of such subtitle are each amended by adding at the end the following new item:

"20. Humanitarian and Civic Assistance Provided in Conjunction With Military Operations ..... 401".

SEC. 1216. AUTHORITY TO PAY EXPENSES OF DEVELOPING COUNTRIES FOR PARTICIPATION IN COMBINED MILITARY EXERCISES

(a) AUTHORITY TO PAY EXPENSES.—Chapter 101 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2010. Participation of developing foreign countries in combined exercises: payment of incremental expenses

"(a) The Secretary of Defense, after consultation with the Secretary of State, may pay the incremental expenses of a developing foreign country incurred by that country as the direct result of participation in a bilateral or multilateral military exercise if—

"(1) the exercise is undertaken primarily to enhance the security interests of the United States; and

"(2) the Secretary of Defense determines that the participation by such country is necessary to the achievement of fundamental exercise objectives and that those objectives cannot be achieved unless the United States provides the incremental expenses incurred by such country.

"(b) The Secretary of Defense shall submit a report to Congress each year, not later than March 1, containing a list of the developing countries for which expenses have been paid by the United States under this section during the preceding year and the amounts expended on behalf of each government.

"(c) The Secretary of Defense shall establish by regulation such accounting procedures as may be necessary to ensure that funds expended under the authority of this section are properly expended.

"(d) In this section, the term 'incremental expenses' means the reasonable and proper cost of the goods and services that are consumed by a developing foreign country as a direct result of that country's participation in a bilateral or multilateral military exercise with the United States, including but not limited to rations, fuel, training ammunition, and transportation. Such term does not include pay, allowance, and normal costs of host country personnel.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2010. Participation of developing foreign countries in combined exercises: payment of incremental expenses.".

SEC. 1217. AUTHORITY TO PAY CERTAIN EXPENSES OF DEFENSE PERSONNEL OF FOREIGN COUNTRIES

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1051. Bilateral or regional cooperation programs: payment of personnel expenses

"(a) The Secretary of Defense may pay the travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at a bilateral or regional conference, seminar, or similar meeting if the Secretary determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States.

"(b)(1) Except as provided in paragraph (2), expenses authorized to be paid under subsection (a) may be paid on behalf of personnel from a developing country only in connection with travel within the area of responsibility of the unified command in which the developing country is located.

"(2) In any case in which the headquarters of a unified command is located within the United States, expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the United States to attend a bilateral or regional conference, seminar, or similar meeting.

"(3) Expenses authorized to be paid under subsection (a) may not, in the case of any individual, exceed the amount that would be paid under chapter 7 of title 37 to a member of the armed forces of the United States (of a comparable grade) for authorized travel of a similar nature.

"(c) In addition to the expenses authorized to be paid under subsection (a), the Secretary of Defense may pay such other expenses in connection with any such conference, seminar, or similar meeting as the Secretary considers in the national security interests of the United States.

"(d) The authority to pay expenses under this section is in addition to the authority to pay certain expenses and compensation of officers and students of Latin American countries under section 1050 of this title.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1051. Bilateral or regional cooperation programs: payment of personnel expenses.".

SEC. 1218. DRUG INTERDICTION EFFORTS BY DOD

(a) REPORT.—The National Drug Enforcement Policy Board shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the manner and the extent to which the Department of Defense should be involved in United States drug enforcement activities. The Board shall include in such report its recommendations for a 5-year funding plan for Department of Defense participation in United States drug enforcement activities.

(b) DRUG EDUCATIONAL AND COUNSELING REPORT.—The Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report, not later than December 1, 1986, discussing (i) the extent to which youth in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse, (ii) the types of drug education programs that are currently being provided, (iii) whether additional drug education programs are needed, and (iv) the extent to which drug education programs for youth in grades K through 12 include or should include preventative peer counseling classes.

(c) REPORT DEADLINE.—The report required by subsection (a) shall be submitted not later than December 1, 1986.

SEC. 1219. REPORTING OF TERRORIST THREATS

(a) IN GENERAL.—(1) Subject to subsection (b), the Secretary of Defense shall instruct all appropriate officials of the Department of Defense to take such action as may be necessary to ensure that all credible, time-sensitive intelligence concerning potential terrorist threats is promptly reported to the headquarters or office of the Department of Defense concerned.

(2) The Secretary shall also instruct such officials that such intelligence is to be reported through the most appropriate and expeditious communications networks available to the Department of Defense.

(b) WAIVER.—The Secretary of Defense shall not be required to issue the instructions referred to in subsection (a) if he determines that such instructions would be inappropriate or unwise and notifies Congress of that determination before March 1, 1987, and includes with the notification an explanation of the basis for such determination.

SEC. 1220. MILITARY IMPACT STATEMENT BY THE JOINT CHIEFS OF STAFF ON UNITED STATES NON-COMPLIANCE WITH EXISTING STRATEGIC OFFENSIVE ARMS AGREEMENTS

(a) Not later than October 1, 1986, the Chairman of the Joint Chiefs of Staff of the Armed Forces of the United States shall submit to Congress a report, in both classified and unclassified versions, containing a detailed assessment, including the individual views of each of the chiefs, of the military impacts on the national security of the United States, of the possible military responses of the Soviet Union to an American decision to no longer comply with major provisions of existing strategic offensive arms limitation agreements, including the central numerical sublimits on strategic nuclear delivery vehicles contained in the SALT II accord. This assessment shall concentrate on possible Soviet military responses during the period between fiscal year 1987 and fiscal year 1996, inclusive, and shall address, among other considerations, the following:

(1) the impact on the ability of United States strategic forces to accomplish their nuclear deterrent mission, including the impacts on the survivability of United States strategic forces and on the ability of United States strategic forces to achieve required damage expectancies against Soviet targets, of any expansion of Soviet military capabilities undertaken in response to a United States decision to abandon compliance with existing strategic offensive arms agreements;

(2) the additional cost to the United States, above currently projected military expenditures for those periods for which such budget projections are available, of research, development, production, deployment, and annual operations and support for any additional strategic forces required to counter any expansion in Soviet military capabilities undertaken in response to a United States decision to abandon compliance with existing strategic offensive arms agreements;

(3) under average annual real growth projections in defense spending of 0 percent, 1 percent, 2 percent, and 3 percent, the percent of the annual defense budget in each year between fiscal year 1987 and fiscal year 1996 which would be consumed by increased United States strategic forces needed to counter the Soviet force expansions;

(4) the military impacts on United States national security of the diversion the funds identified in subsection (a)(2) away from nonstrategic defense programs and to strategic programs to counter expanded Soviet strategic capabilities, including the military impacts of such a diversion on the ability of

United States conventional forces to meet the Nation's specific non-nuclear defense commitments as a member of the North Atlantic Treaty Organization, and under the 1960 Treaty of Mutual Cooperation and Security with Japan;

(5) in addition, this report shall address the military implications for the United States of determined Soviet violations of offensive arms control agreements.

(b) Notwithstanding any other provision of law, none of the funds authorized or appropriated by this or any other Act may be obligated or expended, directly or indirectly, by the Organization of the Joint Chiefs of Staff for prospective studies and analyses to be accomplished by individual civilian contractors or civilian contractor entities, after October 1, 1986, if the report mandated in subsection (a) has not been received by the Congress; and

(c) The prohibition contained in subsection (b) on the obligation or expenditure of funds after October 1, 1986, shall cease to have effect upon the receipt by Congress of the report mandated in subsection (a).

SEC. 1221. CHEMICAL WEAPONS, AGENTS, OR COMPONENTS

(a) No chemical weapons, agents, or components used in chemical weapons may be shipped by any means into the Lexington-Bluegrass Depot in Richmond, Kentucky, for any purpose, including disposal.

(b) Following disposal of the chemical weapons stockpile stored at the Lexington-Bluegrass Depot, as required by Public Law 99-145, the facility may not be used for assembly, construction, testing, storage, or disposal of any chemical or biological weapon.

(c) The Secretary of Defense shall have the authority to waive these provisions in the event that he determines it is in the national security interest.

SEC. 1222. COAST GUARD

(a) Of the amounts authorized to be appropriated for the Department of Defense in fiscal year 1987:

(1) $200,000,000 shall be for the acquisition and maintenance of United States Coast Guard inventories related to the national defense; and

(2) $100,000,000 in operating funds for the performance of defense readiness responsibilities of the United States Coast Guard. Funds made available pursuant to the authorizations specified in this section shall be attributed to functional category 050 (National Defense) of the Budget of the Government of the United States.

(3) Of these amounts authorized, $15,000,000 shall be available for transfer to the Secretary of Transportation and shall be available only for the program described in paragraph (b).

(b) ENHANCED DRUG-INTERDICTION ASSISTANCE—

(1) ASSIGNMENT OF COAST GUARD PERSONNEL ON NAVAL VESSELS.—Chapter 18 of title 10, United States Code, is amended by adding after section 378 the following new section:

"SEC. 379. ASSIGNMENT OF PERSONNEL TO NAVAL VESSELS FOR DRUG ENFORCEMENT PURPOSES

"(a) The Secretary of Defense and the Secretary of Transportation may provide that there be assigned on board surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have power to arrest, search, and seize property and persons suspected of violations of law.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than five hundred active duty personnel of the Coast Guard shall be assigned each fiscal year to duty as provided in subsection (a).

"(d) As used in this section, the term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.".

(c) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting immediately below the item relating to section 378 the following new item:

"378. Assignment of personnel to naval vessels for drug enforcement purposes.".

SEC. 1223. FACILITIES FOR THE DETENTION OF CERTAIN ALIENS

(a) Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall transmit to the Attorney General of the United States—

(1) a list of facilities under the jurisdiction of the Department of Defense which are suitable for use for the detention of Marielito criminal aliens;

(2) a statement of the estimated costs of using such facilities for the detention of such aliens; and

(3) a statement identifying the agencies of the Federal Government which would bear such costs.

(b) A copy of this report shall be made available, upon request to the Attorney General, to Members of the United States Senate and the United States House of Representatives.

SEC. 1224. SPECIAL OPERATIONS FORCES

(a) CONGRESSIONAL FINDINGS.—The Congress finds—

(1) that the threat to the United States and its allies from unconventional warfare, including terrorism and insurgency, continues to increase at an alarming rate;

(2) that, although the United States must continue to maintain and improve its strategic and conventional force capabilities in order to deter aggression and to protect the security of the United States and its allies, the use of armed force by the United States since the end of the Korean conflict has principally been in response to insurgencies against allies of the United States and to terrorist attacks directed at the United States and American citizens;

(3) that the most likely use of armed force by the United States in the foreseeable future will be counterterrorist, counterinsurgency, and other unconventional operations;

(4) that the capabilities needed to respond to threats from unconventional warfare are not those traditionally fostered by the armed forces of the United States;

(5) that the Department of Defense has failed to recognize that conventional force capabilities can seldom be effectively employed in unconventional warfare missions;

(6) that conventional force commanders have a limited understanding of special operations forces capabilities and have misemployed such forces;

(7) that the Department of Defense has not given sufficient emphasis to the planning and preparation for unconventional warfare missions or to the appropriate integration of special operations forces capabilities into the national security strategy of the United States;

(8) that the National Security Council and the Office of the Secretary of Defense have not given sufficient attention to the formulation of policies to guide the development of special operations forces capabilities;

(9) that the Department of Defense has not provided adequate resources or support for special operations forces, particularly in airlift capability;

(10) that the Department of Defense has not given sufficient attention to ensuring the provision of adequate intelligence support for unconventional warfare missions;

(11) that the Department of Defense has not given sufficient attention to the tactics, doctrines, and training associated with unconventional warfare missions;

(12) that problems of command and control have repeatedly beset military forces of the United States engaged in unconventional warfare operations;

(13) that such problems were evident during the Mayaguez incident, the Iranian hostage rescue mission, the Grenada operation, and the Beirut peacekeeping mission;

(14) that the cooperation and coordination among the special operations forces of the Army, Navy, and Air Force are seriously deficient; and

(15) that the Department of Defense has not given sufficient attention to personnel policies, practices, and procedures to ensure the availability of sufficient numbers of officers with the skills required for unconventional warfare.

(b) ESTABLISHMENT OF SPECIAL OPERATIONS FORCES.—(1) The President shall establish, not later than 180 days after the date of the enactment of this Act, a unified combatant command for special operations forces.

(2)(A) The commander of the unified combatant command established pursuant to paragraph (1) shall hold the grade of general or, in the case of an officer of the Navy, admiral if appointed to that grade by the President, by and with the advice and consent of the Senate.

(B) The commander of such command shall be responsible for and shall have the authority necessary to conduct all affairs of such command relating to special operations forces, including the following matters:

(i) Developing strategy, doctrine, and tactics.

(ii) Training of assigned forces.

(iii) Prescribing professional military education.

(iv) Planning resources (including validating requirements).

(v) Ensuring combat readiness.

(vi) Developing special equipment.

(vii) Ensuring the interoperability of equipments and forces.

(viii) Tasking of intelligence support.

(ix) Monitoring the promotions, assignments, retention, training, and professional military education of special operations forces officers.

(C) The commander of such command shall be fully prepared to assume operational command of selected special operations missions if directed to do so by the National Command Authority.

(3) Unless otherwise directed by the National Command Authorities (NCA), all active and reserve special operations forces of the Army, Navy, and Air Force based in

the United States shall be assigned to the unified combatant command established pursuant to paragraph (1).

(4) The President shall assign special operations forces located outside the United States to the unified combatant command in whose geographic area such forces are stationed.

(5) Unless otherwise directed by the NCA, special operations missions shall be conducted under the operational command of the unified combatant commands in whose geographic areas such missions are to be conducted.

(6) The Secretary of Defense shall create for the special operations forces a major force progam category for the Five-Year Defense Plan of the Department of Defense.

(7) The Secretary of Defense shall substantially augment the capabilities of the Office of the Secretary of Defense to provide effective policy and resource oversight of special operations forces.

(c) MINIMUM GRADE FOR COMMANDERS OF SPECIAL OPERATIONS COMMANDS.—Commanders of the special operations command assigned to the United States European Command and the United States Pacific Command shall be of general or flag officer grade.

(d) BOARD FOR UNCONVENTIONAL WARFARE.—The President shall establish within the National Security Council a board to be known as the "Board for Unconventional Warfare". The principal duty of such board shall be to coordinate the unconventional warfare policies of the United States.

(e) ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT AND DEPUTY ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS FOR UNCONVENTIONAL WARFARE.—(1) Section 136(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(7) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. He shall have full responsibility for policy and resource oversight of special operations forces.".

(2) It is the sense of the Congress that the President should designate within the Office of the President a Deputy Assistant to the President for National Security Affairs for Unconventional Warfare.

(f) FUNDING.—Programs and activities under the Special Operations Forces Master Plan shall be paid for with funds appropriated to the Department of Defense for such purposes.

(g) REPORT.—(1) The President shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the actions that the President and the Secretary of Defense have taken to correct the deficiencies identified in subsection (a) and to implement the provisions of subsections (b) through (e).

(2) Such report shall be submitted not later than March 1, 1987.

SEC. 1225. TAXATION ON MILITARY BENEFITS

It is the sense of the Senate with respect to the tax treatment of Military Benefits, that for purposes of paragraph (1) of section 61(a) of the Internal Revenue Code of 1954 (defining gross income), the term "fringe benefits" does not include the following military benefits:

(a) Subsistence and uniform allowances granted a member of the uniformed services (as defined in title 37) and amounts received by them as commutation of quarters.

(b) Any in-kind benefit received by a member or former member of the uniformed services and his family resulting from his status or service as a member of the Armed Forces of the United States other than those received as a result of such status or service being considered that of an "officer" or "employee" of the Government.

SEC. 1226. STRATEGIC DEFENSE INITIATIVE DEPLOYMENT

(a) The Department of Defense shall provide Congress on or before March 15, 1987, a report detailing what Strategic Defense Initiative technologies can be developed or deployed within the next 5 to 10 years to defend against significant military threats and help accomplish critical military missions including—

(1) defending our troops and allies abroad against tactical ballistic missiles particularly new and highly accurate Soviet shorter range ballistic missiles armed with conventional, chemical, or nuclear warheads,

(2) defending against a limited but militarily effective Soviet attack aimed at disrupting our National Command Authority and other valuable military assets,

(3) providing sufficient warning and tracking information to defend or effectively evade possible Soviet attacks against our military satellites including those in high orbits,

(4) providing early warning and attack assessment information and the necessary survivable command, control and communication to defend against possible Soviet conventional or strategic attacks.

(b) This report shall also—

(1) identify any other significant near-term military missions that the application of Strategic Defense Initiative technologies might help accomplish;

(2) list what specific program elements of the Strategic Defense Initiative are pertinent to these applications;

(3) estimate initial operating capability dates for the systems needed to accomplish these missions;

(4) estimate the level of funding necessary for each program to reach these operating capability dates;

(5) estimate the survivability and cost effectiveness at the margin of these systems against current and projected Soviet threats.

(c) The Department of Defense will provide the Senate and House Armed Services Committees an interim report of its findings not later than December 31, 1986.

SEC. 1227. AUTHORIZATION OF APPROPRIATIONS FOR ENHANCED DRUG INTERDICTION ACTIVITIES

(a) IN GENERAL.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987 for enhancement of drug interdiction assistance activities of the Department as follows:

(1) For procurement of aircraft for the Navy, $138,000,000 to be available for refurbishment and upgrading of four existing E2C Hawkeye surveillance aircraft for drug interdiction purposes, and the procurement of four replacement E2C Hawkeye aircraft and related spares for the Navy.

(2) For procurement for the Air Force, $49,500,000, to be available for procurement of 3 aerostat radar systems, 3 aerostat radar spares for such system, and 1 aerostat radar spare for an aerostat radar system authorized and funded for location in the Bahamas by section 5(b) of the Urgent Supplemental Appropriations Act, 1986 (Public Law 99-349; 100 Stat. 723).

(3) For operation and maintenance for the Air Force, $12,615,000 to be available for the transfer of 6 Air Force helicopters to Davis-Monthan Air Force Base for use in carrying out drug interdiction missions.

(4) For the Secretary of Defense, $12,000,000 for enhanced intelligence collection activities concerning illegal importation into the United States of drugs originating in South America.

(b) LOANS TO THE UNITED STATES CUSTOMS SERVICE.—The Secretary of Defense shall make available the refurbished, upgraded, and modified aircraft, using funds appropriated pursuant to authorizations in subsection (a)(1) to the United States Customs Service in accordance with chapter 18 of title 10, United States Code, except that the four replacement E2C Hawkeye aircraft procured using funds appropriated pursuant to authorizations in subsection (a)(1) shall be delivered to the Navy.

(c) RESPONSIBILITIES OF THE UNITED STATES CUSTOMS SERVICE.—(1) The United States Customs Service shall have the responsibility for operation and maintenance costs attributable to the aircraft refurbished, upgraded, or modified using funds appropriated pursuant to authorizations in subsection (a)(1) and the aerostat radar systems using funds appropriated pursuant to authorizations in subsection (a)(2), except that responsibility for the operation and maintenance costs by the United States Customs Service shall commence upon receipt of the modified, refurbished, and upgraded aircraft authorized in subsection (a)(1) and upon completion of the installation of the aerostat radar systems authorized in subsection (a)(2).

(2) Upon enactment of this Act, the Commissioner of Customs shall immediately commence consultations with the Commandant of the United States Coast Guard regarding coordination of the deployment of the aircraft authorized in subsection (a)(1) and on loan to the United States Customs Service under subsection (b) in order to maximize the detection, surveillance, and intelligence gathering capabilities of the drug surveillance aircraft on loan to the United States Customs Service. The Commissioner of Customs shall make quarterly reports to the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives regarding drug interdiction plans developed under this paragraph.

(d) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized by subsection (a) are in addition to any other amounts authorized to be appropriated to the Department of Defense in this Act for fiscal year 1987.

SEC. 1228. REPORT ON THE ANTI-BALLISTIC MISSILE TREATY

The Secretary of Defense shall, not later than February 1, 1987, transmit to Congress a report concerning the impact of the less restrictive interpretation of the Anti-Ballistic Missile Treaty. Such report shall include, but not be limited to the following:

(1) an analysis of the ramifications of the less restrictive interpretation on the development under the Strategic Defense Initiative program, of strategic defenses, including comprehensive strategic defense systems, and more limited defenses designed to protect vital United States military and command and control assets, based on "other physical principles". This analysis should compare research and development programs pursued under both the restrictive

and less restrictive interpretations of the ABM Treaty, including a comparative analysis of—

(A) the overall cost of the research and development programs,

(B) the schedule of the research and development programs, and

(C) the level of confidence attained in the research and development programs with respect to supporting a full-scale engineering development decision in the early 1990's; and

(2) a list of options under the less restrictive interpretation of the ABM Treaty that meet one or more of the following objectives: (a) reduce the overall development cost, (b) to advance the schedule for a full-scale engineering development decisions, or (c) to increase the level of confidence in the results of the research by the original full-scale development date.

SEC. 1229. AUTHORIZATION OF APPROPRIATIONS FOR THE AIR FORCE

Notwithstanding any other provision of this Act, funds are hereby authorized to be appropriated for fiscal year 1987 for the Air Force as follows:

For missiles, $8,370,800,000.

For research, development, test, and evaluation, $14,941,773,000.

For expenses, not otherwise provided for, for operation and maintenance, $19,304,871,000.

Of the funds authorized to be appropriated under this section, not less than $556,300,000 shall be available for the purpose of payment to the National Aeronautics and Space Administration to reimburse such agency for launch services and related expenses of the space shuttle system as agreed to between such agencies.

SEC. 1230. SENSE OF THE CONGRESS ON NUCLEAR EXPLOSIVE TESTING

(a) FINDINGS.—The Congress finds that—

(1) the United States is committed in the Limited Test Ban Treaty of 1963 and in the Non-Proliferation Treaty of 1968 to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time;

(2) a comprehensive test ban treaty would promote the security of the United States by constraining the United States-Soviet nuclear arms competition and by strengthening efforts to prevent the proliferation of nuclear weapons;

(3) the Threshold Test Ban Treaty was signed in 1974 and the Peaceful Nuclear Explosions Treaty was signed in 1976, and both have yet to be considered by the full Senate for its advice and consent to ratification;

(4) the entry into force of the Peaceful Nuclear Explosions Treaty and the Threshold Test Ban Treaty will ensure full implementation of significant new verification procedures and so make completion of a comprehensive test ban treaty more probable;

(5) a comprehensive test ban treaty must be adequately verifiable, and significant progress has been made in methods for detection of underground nuclear explosions by seismological and other means;

(6) at present, negotiations are not being pursued by the United States and the Soviet Union toward completion of a comprehensive test ban treaty; and

(7) the past five administrations have supported the achievement of a comprehensive test ban treaty.

(b) SENSE OF CONGRESS.—It is the sense of Congress that at the earliest possible date, the President of the United States should—

(1) request advice and consent of the Senate to ratification (with a report containing any plans the President may have to negotiate supplemental verification procedures, or if the President believes it necessary, any understanding or reservation on the subject of verification which should be attached to the treaty) of the Threshold Test Ban and Peaceful Nuclear Explosions Treaties, signed in 1974 and 1976, respectively; and

(2) propose to the Soviet Union the immediate resumption of negotiations toward conclusion of a verifiable comprehensive test ban treaty.

In accordance with international law, the United States shall have no obligation to comply with any bilateral arms control agreement with the Soviet Union that the Soviet Union is violating.

SEC. 1231. NUCLEAR NON-PROLIFERATION INFORMATION

Section 602 of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3281) is amended—

(1) in subsection (c), by inserting "the Department of Defense," after "Department of State,"; and

(2) by adding at the end the following new subsection:

"(f) Upon request, the Secretary of Defense shall have access to all information regarding nuclear proliferation matters which the Secretary of State or the Secretary of Energy has or is entitled to have, including all communications, materials, documents, and records relating to such matters, including cables from United States diplomatic missions.".

SEC. 1232. MINUTEMAN EDUCATION PROGRAM

Notwithstanding any other provision of this Act, none of the funds appropriated pursuant to an authorization contained in this or any other Act may be obligated or expended by the Air Force to award a contract for the conduct of the graduate Minuteman Education Program unless the contract requires the contractor—

(1) to integrate class schedules under the program with fulltime missile crew duty schedules;

(2) to provide a resident faculty, at each Air Force installation where the program is conducted, each member of which has obtained the terminal educational degree provided in the field the faculty member teaches under the program; and

(3) to provide library resources, at each such installation, adequate to support the program at such installation, including a fulltime librarian who has obtained a degree in library science.

SEC. 1233. TREATMENT OF COMMUNIST COUNTRIES

(a) the Foreign Missions Act is amended by adding at the end thereof the following new section:

"APPLICATION TO CERTAIN COMMUNIST COUNTRIES

"SEC. 214. (a) Notwithstanding any other provision of this title, the Secretary shall apply to each foreign mission in the United States of the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Rumania, and Cuba the same terms, limitations, restrictions, and conditions which are applied under this title to the foreign mission in the United States of the Soviet Union unless the Secretary determines and so reports to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives that national security and foreign policy circumstances require that this section be waived in specific circumstances with respect to such country.

"(b) The Secretary shall prepare and transmit to the Select Committee on Intelligence and the Committee on Foreign Relations of the Senate and the Permanent Select Committee on Intelligence and the Committee on Foreign Affairs, of the House of Representatives a report describing—

"(1) not later than thirty days after date of the enactment of this section, the plans of the Secretary for implementing this section; and

"(2) not later than six months thereafter, the actions taken pursuant to these plans.".

(b) Section 202(a)(4) of the Foreign Missions Act is amended—

(1) in the text above clause (A) by inserting ", including Government activities involving international trade," after "governmental activities"; and

(2) in clause (A), by inserting "or any instrumentality thereof" after "foreign government".

SEC. 1234. LIMITATION ON NEW SPENDING AUTHORITY

(a) IN GENERAL.—Any new spending authority (as defined in section 401(c)(2) of the Congressional Budget Act of 1974) provided by—

(1) any of the sections of this Act specified in subsection (b), or

(2) any amendment made by any such section,

shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(b) SECTIONS SPECIFIED.—The sections to which subsection (a) applies are sections 611, 625, 631, 635, 636(f), 931, 1004, 1213, 2174, and 2183 of this Act, and those provisions contained in sections 953, 1106, 2181, and 3134.

SEC. 1235. SUBMARINE OVERHAUL STUDY

The Secretary of the Navy shall conduct a detail study and investigation on the desirability and feasibility of applying production line techniques for the overhaul of Los Angeles class submarines. The Secretary shall submit the results of such study and investigation, together with such comments and recommendations as he determines appropriate, to Congress not later than May 1, 1987.

SEC. 1236. CORRECTIONAL FACILITIES AT FORT RILEY, KANSAS

The correctional facilities at Fort Riley, Kansas, may not be closed, transferred, or relocated unless—

(1) the Secretary of Defense has transmitted to Congress a written notice of the intent to close, transfer, or relocate such facilities, as the case may be; and

(2) the 180-day period beginning on the date on which Congress received such notice has expired.

SEC. 1237. PROHIBITION AGAINST USING FUNDS AUTHORIZED FOR THE ADVANCED TECHNOLOGY BOMBER AND THE ADVANCED CRUISE MISSILE PROGRAMS FOR ANY OTHER PURPOSE; AND LIMITATION OF THE B-1B BOMBER FLEET TO 100 AIRCRAFT

(a) It is the sense of Congress that—

(1) the capabilities inherent in the technologies associated with the Advanced Technology Bomber and the Advanced Cruise Missile Program are a critical national security asset for maintaining an adequate and credible deterrent posture;

(2) such technologies and programs should be developed as rapidly as feasible in order to produce and deploy advanced systems which will complicate the military planning of the Soviet Union and as a conse-

quence enhance the deterrant posture of the United States;

(3) such technologies and programs should be funded at the levels authorized in this Act; and

(4) all the funds appropriated for such programs should be fully used for such programs.

(b) None of the funds appropriated pursuant to an authorization of appropriations in this Act to carry out the Advanced Technology Bomber Program or the Advanced Cruise Missile Program may be used for any other purpose.

(c) None of the funds appropriated pursuant to an authorization of appropriations in this or any other Act may be used for research, development, demonstration, procurement or any other purpose related to B-1B bombers beyond the 100 such bombers previously authorized.

SEC. 1238. ARMY NATIONAL GUARD REPORTING

The Secretary of Defense shall require the Chief of the National Guard Bureau to develop and implement procedures to monitor the backlog of maintenance and repair projects of Army National Guard armories.

DIVISION B—MILITARY CONSTRUCTION

SEC. 2000. SHORT TITLE

This division may be cited as the "Military Construction Authorization Act, 1987".

TITLE I—ARMY

SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS

(a) INSIDE THE UNITED STATES.—The Secretary of the Army may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations inside the United States:

UNITED STATES ARMY FORCES COMMAND

Camp Dawson, West Virginia, $8,700,000.
Fort Bragg, North Carolina, $11,700,000.
Fort Campbell, Kentucky, $4,500,000.
Fort Carson, Colorado, $11,300,000.
Fort Devens, Massachusetts, $20,800,000.
Fort Drum, New York, $615,000,000.
Fort Hood, Texas, $10,600,000.
Fort Lewis, Washington, $20,500,000.
Fort McPherson, Georgia, $2,900,000.
Fort Ord, California, $6,550,000.
Fort Polk, Louisiana, $27,000,000.
Fort Richardson, Alaska, $11,200,000.
Fort Riley, Kansas, $8,250,000.
Fort Sheridan, Illinois, $2,050,000.
Fort Wainwright, Alaska, $96,700,000.
Presidio of San Francisco, California, $5,100,000.

UNITED STATES ARMY WESTERN COMMAND

Hawaii Various, $12,000,000.
Wheeler Army Air Field, Hawaii, $2,900,000.

UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND

Fort Benning, Georgia, $9,100,000.
Fort Eustis, Virginia, $2,050,000.
Fort Jackson, South Carolina, $9,100,000.
Fort Lee, Virginia, $17,600,000.
Fort Leonard Wood, Missouri, $27,200,000.
Fort Rucker, Alabama, $44,500,000.

MILITARY DISTRICT OF WASHINGTON

Fort Myer, Virginia, $3,800,000.

UNITED STATES ARMY MATERIEL COMMAND

Aberdeen Proving Ground, Maryland, $19,000,000.
Corpus Christi Army Depot, Texas, $9,350,000.
Dugway Proving Ground, Utah, $9,700,000.
Fort Monmouth, New Jersey, $4,900,000.
Navajo Depot Activity, Arizona, $3,900,000.
Redstone Arsenal, Alabama, $19,500,000.
Sierra Army Depot, California, $2,450,000.

UNITED STATES ARMY INFORMATION SYSTEMS COMMAND

Fort Huachuca, Arizona, $17,200,000.

UNITED STATES MILITARY ACADEMY

United States Military Academy, New York, $28,500,000.

ASSISTANT CHIEF OF ENGINEERS

Classified, United States, $7,400,000.

(b) OUTSIDE THE UNITED STATES.—The Secretary of the Army may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations outside the United States:

EIGHTH UNITED STATES ARMY

Camp Casey, Korea, $22,500,000.
Camp Castle, Korea, $2,850,000.
Camp Greaves, Korea, $2,350,000.
Camp Hovey, Korea, $9,000,000.
Camp Howze, Korea, $4,050,000.
Camp Humphreys, Korea, $15,300,000.
Camp Laguardia, Korea, $2,650,000.
Camp Long, Korea, $5,600,000.
Camp Red Cloud, Korea, $4,550,000.
Camp Stanley, Korea, $4,700,000.
H220, Korea, $2,750,000.
Pusan, Korea, $9,700,000.
Second Infantry, Korea, $5,150,000.
Taegu, Korea, $4,900,000.
Yongsan, Korea, $5,000,000.

UNITED STATES ARMY STRATEGIC DEFENSE COMMAND

Kwajalein, $20,600,000.

UNITED STATES ARMY FORCES COMMAND, OVERSEAS

Classified, $4,000,000.
Various, $4,900,000.

UNITED STATES ARMY EUROPE AND SEVENTH ARMY

Aschaffenburg, Germany, $7,000,000.
Baumholder, Germany, $28,850,000.
Bitburg, Germany, $16,350,000.
Einsiedlerhof, Germany, $4,750,000.
Frankfurt, Germany, $3,500,000.
Giessen, Germany, $5,600,000.
Hanau, Germany, $17,200,000.
Heilbronn, Germany, $2,100,000.
Hohenfels, Germany, $8,800,000.
Karlsruhe, Germany, $10,000,000.
Mannheim, Germany, $2,450,000.
Neu Ulm, Germany, $26,050,000.
Nuernberg, Germany, $5,500,000.
Rheinberg, Germany, $33,600,000.
Schweinfurt, Germany, $22,100,000.
Various, Germany, $17,500,000.
Vilseck, Germany, $50,300,000.
Wildflecken, Germany, $3,800,000.

UNITED STATES ARMY INTELLIGENCE AND SECURITY COMMAND, OVERSEAS

Location 276, $3,700,000.
Location 280, $2,100,000.

SEC. 2102. FAMILY HOUSING

The Secretary of the Army may construct or acquire family housing units (including land acquisition) at the following installations in the number of units shown, and in the amount shown, for each installation:

Fort Wainwright, Alaska, one hundred and fifty units, $33,000,000.

Fort Irwin, California, thirty-eight manufactured home spaces, $730,000.

Fort Ord, California, three hundred and eighty-five units, $34,000,000.

Crailsheim, Germany, forty units, $4,100,000.

Darmstadt, Germany, forty units, $3,150,000.

Erlangen, Germany, one hundred and six units, $9,400,000.

Herzo Base, Germany, thirty-four units, $3,300,000.

Schweinfurt, Germany, ninety units, $8,400,000.

Vilseck, Germany, two hundred and twenty-four units, $21,000,000.

Wildflecken, Germany, twenty-four units, $2,050,000.

Various Locations, Germany, one hundred and twenty units, funded under section 2103.

Fort Polk, Louisiana, five hundred and eighty-three units, $37,000,000.

Kwajalein, Marshall Island, one hundred and thirty-six units, $23,000,000.

Aberdeen Proving Ground, Maryland, one hundred and forty units and seventy manufactured home spaces, $10,800,000.

Fort Drum, New York, one thousand and two hundred units, $91,000,000.

Seneca Army Depot, New York, thirty units, $2,900,000.

SEC. 2103. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS

(a) AMOUNT AUTHORIZED.—Subject to section 2825 of title 10, United States Code, the Secretary of the Army may make expenditures—

(1) to improve existing military family housing units in an amount not to exceed $79,500,000; and

(2) for energy conservation projects in an amount not to exceed $15,671,000 from funds which remain available for obligation from savings from prior years.

(b) WAIVER OF MAXIMUM PER UNIT COST FOR CERTAIN IMPROVEMENT PROJECTS.—Notwithstanding the maximum amount per unit for an improvement project under section 2825(b) of title 10, United States Code, the Secretary of the Army may carry out projects to improve existing military family housing units at the following installations in the number of units shown, and in the amount shown, for each installation:

Aschaffenburg, Germany, one hundred and forty-four units, $5,120,000.

Aschaffenburg, Germany, forty-eight units, $2,800,000.

Bremerhaven, Germany, twenty-four units, $1,400,000.

Karlsruhe, Germany, twenty-four units, $1,400,000.

Kitzingen, Germany, one hundred and two units, $5,950,000.

Mainz, Germany, one unit, $69,000.

Worms, Germany, six units, $350,000.

Fort Benjamin Harrison, Indiana, one hundred and sixty-six units, $6,000,000.

Pusan, Korea, forty-eight units, $2,237,000.

Yongsan, Korea, one unit, $70,000.

Fort Indiantown Gap, Pennsylvania, six units, $166,000.

Fort Sam Houston, Texas, twenty-three units, $930,000.

Fort Myer, Virginia, three units, $140,000.

(c) WAIVER OF SPACE LIMITATION FOR GENERAL OFFICER'S QUARTERS AT YONGSAN, KOREA.—(1) Notwithstanding the maximum space limitations under section 2826(a) of title 10, United States Code, the Secretary of the Army may carry out an improvement project to increase the net floor area of the housing unit for one general officer at the United States Army Garrison, Yongsan, Korea, to not more than 3,574 square feet.

(2) For purposes of this subsection, the term "net floor area" has the same meaning given that term by section 2626(f) of title 10, United States Code.

SEC. 2104. FORT DRUM, NEW YORK

The Secretary of the Army may enter into one or more contracts, in advance of appropriations therefor, for the military construction projects authorized by section 2101 to be accomplished at Fort Drum, New York, if such contracts limit the Government's liability to the amount of funds available for obligation at the time each contract is entered into. Such construction may be accomplished by using one-step turn-key selection procedures, or other competitive contracting methods.

SEC. 2105. COMMUNITY PLANNING ASSISTANCE

The Secretary of the Army may not use more than $400,000 from funds appropriated to the Department of the Army for fiscal year 1987 for planning and design purposes to provide planning assistance to local communities located near newly established Light Infantry Division Posts at Fort Drum, New York, and Fort Wainwright, Alaska, if the Secretary determines that the financial resources available to the community (by grant or otherwise) are inadequate.

SEC. 2106. CLEANUP OF CONTAMINATED WATER SUPPLIES ADJACENT TO ROCKY MOUNTAIN ARSENAL

(a) TRANSFER OF FUNDS TO THE ENVIRONMENTAL PROTECTION AGENCY.—(1) The Secretary of the Army (hereinafter in this section referred to as the "Secretary") shall transfer funds available to the Department of Defense for military construction for fiscal year 1987 to the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") such sums, not to exceed $6,000,000, as may be necessary to enable the Administrator to continue with the selection, design, and implementation of response measures (consistent with the National Contingency Plan) with respect to the contamination of drinking water supplies in south Adams County, Colorado, to the west of the Rocky Mountain Arsenal and south of 80th Avenue. The Secretary may transfer funds under this section only if the Administrator has certified to the Secretary that the Army is a responsible party for the contamination in the area referred to in the preceding sentence.

(b) INTERAGENCY AGREEMENT.—(1) The transfer of funds under this section shall be carried out in accordance with the agreement between Environmental Protection Agency and the Department of the Army entered into on March 20, 1986. Funds transferred under this section shall be in addition to funds previously transferred to the Environmental Protection Agency for such purposes.

(2) The Secretary and the Administrator may enter into an agreement supplemental to the agreement referred to in paragraph (1) if the supplemental agreement can be concluded within seven days after the date of the enactment of the Act. A supplemental agreement entered into under this paragraph may not require the Secretary to transfer funds for the purpose of carrying out the response action described in subsection (a) after the date on which adequate funds become available to the Environmental Protection Agency for such purposes pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(3) A supplemental agreement entered into under paragraph (2) shall contain provisions regarding the repayment of amounts transferred pursuant to subsection (a). If such provisions are not agreed to before the expiration of the seven-day period referred to in paragraph (1), repayment shall be made in accordance with the provisions of the agreement between the Environmental Protection Agency and Department of the Army entered into on March 20, 1986.

(c) CONTAMINATION NORTH OF 80TH AVENUE.—The Secretary shall, promptly after enactment of this Act, continue response action with respect to hazardous substances, pollutants, and contaminants affecting water supplies in south Adams County, Colorado, to the west and north of the Rocky Mountain Arsenal and north of 80th Avenue. The cost of such response action shall be paid for out of funds appropriated to the Department of Defense for purposes of the Environmental Restoration Program of the Department of the Army. Such response action shall be carried out in accordance with the recommendations of the Administrator and in consultation with the Colorado Department of Health.

(d) LIABILITY OF ARMY NOT AFFECTED.—Nothing in this subsection shall affect the liability of the Department of the Army or of any other potentially responsible person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(e) LIABILITY OF OTHER PARTIES UNDER SUPERFUND.—Nothing in this section shall be construed to affect the rights of the Secretary to obtain reimbursement under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 from any potentially responsible party of any amount expended by the Secretary for response action referred to in subsection (a).

SEC. 2107. AUTHORIZATION OF APPROPRIATIONS, ARMY; RECURRING ADMINISTRATIVE PROVISIONS

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for military construction, land acquisition, and military family housing functions of the Department of the Army in the total amount of $2,949,746,000 as follows:

(1) For military construction projects inside the United States authorized by section 2101(a), $691,500,000.

(2) For military construction projects outside the United States authorized by section 2101(b), $401,800,000.

(3) For military construction projects inside the United States authorized by section 101 of the Military Construction Authorization Act, 1986, $51,000,000.

(4) For military construction projects outside the United States authorized by section 101 of the Military Construction Authorization Act, 1986, $17,000,000.

(5) For minor construction projects under section 2805 of title 10, United States Code, $99,070,000.

(6) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $130,580,000.

(7) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $387,330,000, of which $24,000,000 is available for planning and design;

(B) for support of military family housing (including the functions described in section 2833 of title 10, United States Code), $1,265,266,000, of which not more than $31,246,000 may be obligated or expended for the leasing of military family housing units in the United States, the Commonwealth of Puerto Rico, and Guam, and not more than $142,639,000 may be obligated or expended for the leasing of military family housing units in foreign countries, and

(C) for the Homeowners Assistance Program as authorized by section 2832 of title 10, United States Code, $5,500,000.

(8)(A) Notwithstanding the amounts authorized to be appropriated by paragraphs (1)-(6) of this subsection, the total amount authorized to be appropriated by this subsection for the purposes described in such paragraphs is $1,326,910,000.

(B) Notwithstanding the amounts authorized to be appropriated by subparagraphs (A) and (B) of paragraph (7) of this subsection, the total amount authorized to be appropriated by this subsection for the purposes described in such subparagraphs is $1,618,396,000.

(b) AUTHORIZATION OF UNOBLIGATED FUNDS FOR ENERGY CONSERVATION PROJECTS.—Funds appropriated to the Department of Defense for fiscal years before fiscal year 1987 which could be used for energy conservation projects for existing military family housing units of the Department of the Army that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for energy conservation projects for military family housing of the Army in an amount not to exceed $15,671,000.

(c) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS AUTHORIZED IN TITLE I.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed the total amount authorized to be appropriated under paragraphs (1) and (2) of subsections (a) and (b).

SEC. 2108. EXTENSION OF CERTAIN AUTHORIZATIONS

(a) EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 1984 PROJECTS.—Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 780), authorizations for the following projects authorized in section 101 of that Act, as extended by section 606(b) of the Military Construction Authorization Act, 1986 (Public Law 99-167; 99 Stat. 983) shall remain in effect until October 1, 1987, or the date of enactment of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Unaccompanied personnel housing in the amount of $1,400,000 at Argyroupolis, Greece.

(2) Operations building in the amount of $370,000 at Argyroupolis, Greece.

(3) Multipurpose recreation facility in the amount of $480,000 at Argyroupolis, Greece.

(4) Unaccompanied officer housing in the amount of $600,000 at Perivolaki, Greece.

(5) Operations building in the amount of $410,000 at Perivolaki, Greece.

(6) Multipurpose recreation facility in the amount of $620,000 at Perivolaki, Greece.

(7) Physical fitness training center in the amount of $1,000,000 at Elefsis, Greece.

(b) EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 1985 PROJECTS.—Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1985 (Public Law 98-407; 98 Stat. 1515), authorizations for the following projects authorized in section 101 of that Act shall remain in effect until October 1, 1987, or the date of enactment of the Military Con-

struction Authorization Act for fiscal year 1988, whichever is later:

(1) Barracks with dining facility in the amount of $11,400,000 at Presidio of San Francisco, California.

(2) Child care center in the amount of $1,980,000 at Presidio of San Francisco, California.

(3) Barracks in the amount of $6,600,000 at Presidio of San Francisco, California.

(4) Multipurpose recreation facility in the amount of $1,150,000 at Koropi, Greece.

(5) Multipurpose recreation facility in the amount of $960,000 at Katsimidi, Greece.

(6) Barracks modernization in the amount of $660,000 at Argyroupolis, Greece.

(7) Barracks modernization in the amount of $660,000 at Perivolaki, Greece.

(8) Barracks with dining facility in the amount of $2,350,000 at Elefsis, Greece.

(9) Contingency Facility in the amount of $4,300,000 at Palmerola, Honduras.

TITLE II—NAVY

SEC. 2111. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS

(a) INSIDE THE UNITED STATES.—The Secretary of the Navy may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations inside the United States:

UNITED STATES MARINE CORPS

Headquarters Marine Corps, Arlington, Virginia, $3,020,000.

Marine Corps Base, Camp Lejeune, North Carolina, $33,220,000.

Marine Corps Air Station, Camp Pendleton, California, $8,440,000.

Marine Corps Base, Camp Pendleton, California, $26,730,000.

Marine Corps Air Station, Cherry Point, North Carolina, $12,660,000.

Marine Corps Air Station, El Toro, California, $26,280,000.

Marine Corps Air Station, Kaneohe Bay, Hawaii, $31,580,000.

Marine Corps Air Station, New River, North Carolina, $20,020,000.

Marine Corps Recruit Depot, Parris Island, South Carolina, $7,250,000.

Marine Corps Air Station, Tustin, California, $13,250,000.

Marine Corps Air-Ground Combat Center, Twentynine Palms, California, $36,350,000.

Marine Corps Air Station, Yuma, Arizona, $5,600,000.

CHIEF OF NAVAL OPERATIONS

Naval Academy, Annapolis, Maryland, $2,260,000.

COMMANDER IN CHIEF, ATLANTIC FLEET

Naval Air Station, Brunswick, Maine, $2,160,000.

Naval Air Station, Cecil Field, Florida, $3,730,000.

Naval Air Station, Jacksonville, Florida, $4,810,000.

Naval Amphibious Base, Little Creek, Virginia, $5,890,000.

Naval Supply Center Detachment, Mayport, Florida, $3,730,000.

Naval Submarine Base, New London, Connecticut, $3,160,000.

Naval Station, New York, New York, $56,200,000.

COMMANDER IN CHIEF, PACIFIC FLEET

Naval Air Station, Adak, Alaska, $24,400,000.

Naval Facility, Adak, Alaska, $5,700,000.

Naval Air Station, Alameda, California, $17,675,000.

Naval Submarine Base, Bangor, Washington, $10,500,000.

Naval Amphibious Base, Coronado, California, $17,450,000.

Naval Station, Everett, Washington, $85,400,000.

Naval Air Station, Fallon, Nevada, $31,200,000.

Naval Station, Long Beach, California, $7,050,000.

Naval Magazine, Lualualei, Hawaii, $2,850,000.

Naval Air Station, Miramar, California, $21,550,000.

Naval Station, Pearl Harbor, Hawaii, $3,240,000.

Naval Station, San Diego, California, $18,200,000.

Naval Submarine Base, San Diego, California, $9,100,000.

Naval Station, Seattle, Washington, $2,950,000.

Naval Air Station, Whidbey Island, Washington, $3,510,000.

CHIEF OF NAVAL EDUCATION AND TRAINING

Naval Guided Missile School, Dam Neck, Virginia, $3,140,000.

Naval Training Center, Great Lakes, Illinois, $5,300,000.

Naval Air Station, Kingsville, Texas, $3,140,000.

Combat Systems Technical Schools Command, Mare Island, California, $5,200,000.

Naval Air Station, Memphis, Tennessee, $15,550,000.

Naval Air Station, Meridian, Mississippi, $3,170,000.

Naval Submarine School, New London, Connecticut, $9,540,000.

Naval Education and Training Center, Newport, Rhode Island, $11,700,000.

Fleet Training Center, Norfolk, Virginia, $5,400,000.

Naval Training Center, Orlando, Florida, $8,440,000.

Naval Diving and Salvage Training Center, Panama City, Florida, $2,850,000.

Naval Technical Training Center, Pensacola, Florida, $4,610,000.

Fleet Intelligence Training Center, Pacific, San Diego, California, $4,220,000.

Fleet Training Center, San Diego, California, $3,930,000.

Naval Training Center, San Diego, California, $18,170,000.

Naval Air Station, Whiting Field, Florida, $2,120,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communication Station, Stockton, California, $2,750,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Adak, Alaska, $13,400,000.

NAVAL SUPPLY SYSTEMS COMMAND

Naval Supply Center, Norfolk, Virginia, $3,140,000.

NAVAL AIR SYSTEMS COMMAND

Pacific Missile Range Facility, Barking Sands, Kauai, Hawaii, $8,260,000.

Naval Air Rework Facility, Cherry Point, North Carolina, $37,200,000.

Naval Air Test Center, Patuxent River, Maryland, $19,780,000.

Naval Air Rework Facility, Pensacola, Florida, $8,050,000.

NAVAL FACILITIES ENGINEERING COMMAND

Naval Construction Battalion Center, Gulfport, Mississippi, $14,200,000.

Navy Public Works Center, Norfolk, Virginia, $8,050,000.

Navy Public Works Center, Pearl Harbor, Hawaii, $24,900,000.

Naval Construction Battalion Center, Port Hueneme, California, $3,040,000.

NAVAL SEA SYSTEMS COMMAND

Charleston Naval Shipyard, Charleston, South Carolina, $10,810,000.

Naval Weapons Station, Charleston, South Carolina, $6,130,000.

Naval Weapons Support Center, Crane, Indiana, $6,880,000.

Naval Weapons Station, Earle, New Jersey, $52,500,000.

Long Beach Naval Shipyard, Long Beach, California, $2,450,000.

Norfolk Naval Shipyard, Portsmouth, Virginia, $5,900,000.

Supervisor of Shipbuilding, Pascagoula, Mississippi, $4,120,000.

Portsmouth Naval Shipyard, Kittery, Maine, $22,190,000.

Naval Weapons Station, Seal Beach, California, $6,100,000.

Mare Island Naval Shipyard, Vallejo, California, $5,100,000.

Naval Weapons Station, Yorktown, Virginia, $4,220,000.

OFFICE OF THE CHIEF OF NAVAL RESEARCH

Naval Weapons Center, China Lake, California, $12,750,000.

Naval Surface Weapons Center, Dahlgren, Virginia, $15,960,000.

Naval Research Laboratory, Washington, District of Columbia, $8,730,000.

STRATEGIC SYSTEMS PROJECT OFFICE

Naval Submarine Base, Kings Bay, Georgia, $122,390,000.

(b) OUTSIDE THE UNITED STATES.—The Secretary of the Navy may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations outside the United States:

MARINE CORPS

Marine Corps Air Station, Futenma, Okinawa, Japan, $3,440,000.

Marine Corps Base, Camp Smedley D. Butler, Okinawa, Japan, $8,950,000.

COMMANDER IN CHIEF, ATLANTIC FLEET

Naval Station, Guantanamo Bay, Cuba, $2,600,000.

Naval Air Station, Keflavik, Iceland, $13,490,000.

Atlantic Fleet Weapons Training Facility, Roosevelt Roads, Puerto Rico, $4,220,000.

Naval Station, Roosevelt Roads, Puerto Rico, $6,290,000.

COMMANDER IN CHIEF, PACIFIC FLEET

Naval Air Facility, Atsugi, Japan, $5,300,000.

Administrative Support Unit, Bahrain Island, $2,550,000.

Naval Air Station, Cubi Point, Republic of the Philippines, $5,300,000.

Mobile Construction Battalion, Camp Covington, Guam, $15,500,000.

COMMANDER IN CHIEF, UNITED STATES NAVAL FORCES EUROPE

Naval Support Activity, Naples, Italy, $5,500,000.

Naval Station, Rota, Spain, $4,600,000.

Classified Locations, $15,700,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communications Area Master Station, Mediterranean, Naples, Italy, $8,250,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Edzell, Scotland, $2,250,000.

OFFICE OF THE CHIEF OF NAVAL RESEARCH

Naval Underwater Systems Center, Andros Island, Bahamas, $3,730,000.

SEC. 2112. FAMILY HOUSING

The Secretary of the Navy may construct or acquire family housing units (including land acquisition) at the following installations in the number of units shown, and in the amount shown, for each installation:

Naval Station, Long Beach, California, three hundred units, $22,900,000.

Naval Air Station, Moffett Field, California, one hundred and twenty-six units, $11,600,000.

Navy Public Works Center, San Francisco, California, three hundred units, $26,450,000.

Marine Corps Air-Ground Combat Center, Twentynine Palms, California, three hundred and ninety-two units and seventy-five mobile home spaces, $35,300,000.

Marine Corps Base, Camp Pendleton, California, one hundred mobile home spaces, $1,800,000.

Marine Corps Base, Camp Lejeune, North Carolina, seventy-five mobile home spaces, $930,000.

Marine Corps Development and Education Command, Quantico, Virginia, fifty mobile home spaces, $790,000.

Naval Station, Keflavik, Iceland, two hundred and fifty units, $48,642,000.

SEC. 2113. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS

(a) AMOUNT AUTHORIZED.—Subject to section 2825 of title 10, United States Code, the Secretary of the Navy may make expenditures to improve existing military family housing units in an amount not to exceed $26,580,000.

(b) WAIVER OF MAXIMUM PER UNIT COST FOR CERTAIN IMPROVEMENT PROJECTS.—Notwithstanding the maximum amount per unit for an improvement project under 2825(b) of title 10, United States Code, the Secretary of the Navy may carry out projects to improve existing military family housing units at the following installations in the number of units shown, and in the amount shown, for each installation:

Naval Station, Mare Island, Vallejo, California, one hundred units, $5,200,000.

Marine Corps Logistics Base, Albany, Georgia, one unit, $33,300.

Navy Public Works Center, Great Lakes, Illinois, two hundred and ten units, $9,400,000.

Naval Air Station, Brunswick, Maine, forty-four units, $1,274,600.

Naval Construction Battalion Center, Gulfport, Mississippi, one unit, $28,700.

Naval Air Station, Fallon, Nevada, forty-four units, $1,868,500.

Naval Station, New York, New York, one hundred and twenty units, $9,600,000.

Naval Air Development Center, Warminster, Pennsylvania, six units, $256,800.

Naval Education and Training Center, Newport, Rhode Island, one hundred and eighty-six units, $10,200,000.

Navy Public Works Center, Guam, one unit, $64,700.

Navy Public Works Center, Guam, one hundred and nine units, $10,360,000.

Naval Air Station, Agana, Guam, one hundred units, $9,517,000.

Naval Air Station, Agana, Guam, one unit, $58,600.

SEC. 2114. ACQUISITION OF EXISTING HOUSING UNITS ON GUAM

The Secretary of the Navy may acquire, without reimbursement, eighty-nine existing family housing units constructed and used by the Federal Aviation Agency on land in Finegayan, Guam, held by the Navy under the provisions of section 9 of the International Aviation Facilities Act (49 U.S.C. 1158).

SEC. 2115. AUTHORIZATION OF APPROPRIATIONS, NAVY: RECURRING ADMINISTRATIVE PROVISIONS

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of $2,161,343,000 as follows:

(1) For military construction projects inside the United States authorized by section 2111(a), $1,082,595,000.

(2) For military construction projects outside the United States authorized by section 2111(b), $107,670,000.

(3) For military construction projects at Kings Bay, Georgia, authorized by section 201(a) of the Military Construction Authorization Act, 1986, $45,450,000.

(4) For minor construction projects under section 2805 of title 10, United States Code, $114,375,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $143,770,000.

(6) For advances to the Secretary of Transportation for construction of defense access roads under section 210 of title 23, United States Code, $5,400,000.

(7) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $176,992,000; and

(B) for support of military housing (including functions described in section 2833 of title 10, United States Code), $560,591,000 of which not more than $5,214,100 may be obligated or expended for the leasing of military family housing in the United States, the Commonwealth of Puerto Rico, and Guam, and not more than $17,244,900 may be obligated or expended for the leasing of military family housing units in foreign countries.

(8)(A) Notwithstanding the amounts authorized to be appropriated by paragraphs (1)-(6) of this subsection, the total amount authorized to be appropriated by this subsection for the purposes described in such paragraphs is $1,437,160,000.

(B) Notwithstanding the amount authorized to be appropriated by subparagraphs (A) and (B) of paragraph (7) of this subsection, the total amount authorized by this subsection for the purposes described by such subparagraphs is $724,183,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS AUTHORIZED IN TITLE II.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2111 of this Act may not exceed the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a).

SEC. 2116. EXTENSION OF AUTHORIZATION FOR CERTAIN FISCAL YEAR 1984 PROJECTS

Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1985 (Public Law 98-407; 98 Stat. 1515), authorizations for the following projects authorized in section 201 of that Act shall remain in effect until October 1, 1987, or the date of enactment of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Unaccompanied enlisted personnel housing in the amount of $10,740,000 at the Marine Corps Air Station, Yuma, Arizona.

(2) Antenna support facility in the amount of $320,000 at the Naval Security Group Activity, Adak, Alaska.

(3) Data processing center in the amount of $6,160,000 at the Naval Supply Center, Bremerton, Washington.

(4) Unaccompanied enlisted personnel housing in the amount of $12,130,000 at the Naval Air Station, Whidbey Island, Washington.

(5) Unaccompanied enlisted personnel housing in the amount of $6,600,000 at the Naval Station, Mare Island, Vallejo, California.

(6) Mountain Warfare Training Facility (Bridgeport) in the amount of $1,480,000 for the Marine Corps Base, Camp Pendleton, California.

(7) Medical/Dental Clinic (Bridgeport) in the amount of $1,410,000 for the Naval Hospital, Camp Pendleton, California.

(8) Hospital Modernization in the amount of $29,140,000 at the Naval Hospital, Oakland, California.

(9) Facility Energy Improvements in the amount of $5,770,000 at the Navy Public Works Center, San Francisco, California.

TITLE III—AIR FORCE

SEC. 2121. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS

(a) INSIDE THE UNITED STATES.—The Secretary of the Air Force may acquire real property and may carry out military construction projects in the amount shown for each of the following installations and locations inside the United States:

AIR FORCE LOGISTICS COMMAND

Hill Air Force Base, Utah, $4,000,000.

Kelly Air Force Base, Texas, $39,000,000.

McClellan Air Force Base, California, $19,500,000.

Newark Air Force Station, Ohio, $3,000,000.

Robins Air Force Base, Georgia, $12,955,000.

Tinker Air Force Base, Oklahoma, $17,300,000.

Wright-Patterson Air Force Base, Ohio, $16,200,000.

AIR FORCE SYSTEM COMMAND

Arnold Air Force Station, Tennessee, $2,800,000.

Edwards Air Force Base, California, $15,000,000.

Hanscom Air Force Base, Massachusetts, $2,700,000.

Patrick Air Force Base, Florida, $2,600,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Illinois, $11,300,000.

Goodfellow Air Force Base, Texas, $10,000,000.

Lackland Air Force Base, Texas, $21,500,000.

Laughlin Air Force Base, Texas, $3,700,000.

Williams Air Force Base, Arizona, $4,900,000.

AIR UNIVERSITY

Gunter Air Force Station, Alabama, $2,900,000.

ALASKAN AIR COMMAND

Eielson Air Force Base, Alaska, $11,600,000.

Galena Airport, Alaska, $11,600,000.

King Salmon Airport, Alaska, $4,050,000.

Shemya Air Force Base, Alaska, $22,300,000.

MILITARY AIRLIFT COMMAND

Andrews Air Force Base, Maryland, $25,000,000.
Charleston Air Force Base, South Carolina, $5,000,000.
Kirtland Air Force Base, New Mexico, $8,700,000.
McChord Air Force Base, Washington, $6,400,000.
McGuire Air Force Base, New Jersey, $7,000,000.
Pope Air Force Base, North Carolina, $2,300,000.
Travis Air Force Base, California, $4,700,000.

SPACE COMMAND

Cape Cod Air Force Station, Massachusetts, $4,300,000.
Falcon Air Force Station, Colorado, $6,400,000.
Peterson Air Force Base, Colorado, $3,050,000.

SPECIAL PROJECT

Various Locations, $37,056,000.

STRATEGIC AIR COMMAND

Beale Air Force Base, California, $7,516,000.
Ellsworth Air Force Base, South Dakota, $7,650,000.
Fairchild Air Force Base, Washington, $2,900,000.
F.E. Warren Air Force Base, Wyoming, $6,000,000.
Grand Forks Air Force Base, North Dakota, $17,040,000.
Grissom Air Force Base, Indiana, $3,000,000.
La Junta Radar Bomb Scoring Site, Colorado, $2,150,000.
Loring Air Force Base, Maine, $12,200,000.
Malmstrom Air Force Base, Montana, $30,770,000.
March Air Force Base, California, $13,600,000.
McConnell Air Force Base, Kansas, $32,760,000.
Minot Air Force Base, North Dakota, $26,660,000.
Offutt Air Force Base, Nebraska, $21,770,000.
Vandenburg Air Force Base, California, $2,700,000.
Whiteman Air Force Base, Missouri, $9,500,000.
Wurtsmith Air Force Base, Michigan, $9,550,000.

TACTICAL AIR COMMAND

Base 39, Classified Location, $2,300,000.
Bergstrom Air Force Base, Texas, $3,390,000.
Cannon Air Force Base, New Mexico, $7,250,000.
Davis-Monthan Air Force Base, Arizona, $11,100,000.
George Air Force Base, California, $7,650,000.
Holloman Air Force Base, New Mexico, $14,160,000.
Homestead Air Force Base, Florida, $3,400,000.
Langley Air Force Base, Virginia, $8,000,000.
Luke Air Force Base, Arizona, $19,480,000.
Mountain Home Air Force Base, Idaho, $12,700,000.
Myrtle Beach Air Force Base, South Carolina, $3,000,000.
Nellis Air Force Base, Nevada, $16,100,000.
Shaw Air Force Base, South Carolina, $3,700,000.
Tyndall Air Force Base, Florida, $13,950,000.
WESTCONUS, $10,300,000.

UNITED STATES AIR FORCE ACADEMY

Air Force Academy, Colorado, $4,000,000.

VARIOUS LOCATIONS

Various Energy Conservation Investment Projects, $9,470,000.

(b) OUTSIDE THE UNITED STATES.—The Secretary of the Air Force may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations outside the United States:

MILITARY AIRLIFT COMMAND

Lajes Field, Portugal, $15,750,000.

PACIFIC AIR FORCES

Kadena Air Base, Japan, $7,100,000.
Misawa Air Base, Japan, $10,300,000.
Kimhae Air Base, Korea, $3,050,000.
Kunsan Air Base, Korea, $4,650,000.
Osan Air Base, Korea, $14,350,000.
Suwon Air Base, Korea, $3,250,000.
Taegu Air Base, Korea, $2,350,000.
Clark Air Base, Republic of the Philippines, $55,350,000.
Saipan, $5,200,000.

SPACE COMMAND

Sondrestrom Air Base, Greenland, $5,860,000.
Thule Air Base, Greenland, $8,250,000.
Woomera Air Station, Australia, $2,300,000.

TACTICAL AIR COMMAND

Masirah, Oman, $3,500,000.
Thumrait, Oman, $3,400,000.

UNITED STATES AIR FORCES IN EUROPE

Hahn Air Base, Germany, $6,300,000.
Ramstein Air Base, Germany, $31,500,000.
Sembach Air Base, Germany, $7,100,000.
Spangdahlem Air Base, Germany, $6,050,000.
Zweibrucken Air Base, Germany, $2,750,000.
Aviano Air Base, Italy, $4,200,000.
San Vito Air Station, Italy, $3,300,000.
Woensdrecht Air Base, The Netherlands, $22,830,000.
Ankara Air Station, Turkey, $3,050,000.
Incirlik Air Base, Turkey, $9,400,000.
Pirinclik Air Station, Turkey, $3,000,000.
RAF Alconbury, United Kingdom, $13,350,000.
RAF Bentwaters, United Kingdom, $3,700,000.
RAF Fairford, United Kingdom, $2,750,000.
RAF Mildenhall, United Kingdom, $4,700,000.
RAF Upper Heyford, United Kingdom, $12,800,000.
Morocco, Various Locations, $25,400,000.
Base 30, Classified Location, $2,950,000.
Overseas Classified Location, $11,500,000.
Various Locations, Europe, $3,953,000.

SEC. 2122. FAMILY HOUSING

(a) IN GENERAL.—The Secretary of the Air Force may construct or acquire family housing units (including land acquisition) at the following installations, in the number of units shown, and in the amount shown, for each installation:

Bitburg Air Base, Germany, three hundred and thirty-two units, $26,415,000.
Hahn Air Base, Germany, one hundred and fifty units, $11,300,000.
Osan Air Base, Korea, one unit, $160,000.
La Junta Air Force Station, Colorado, forty units, $4,000,000.
Beale Air Force Base, California, family housing maintenance shop, $180,000.
Davis-Monthan Air Force Base, Arizona, family housing management office, $300,000.
McGuire Air Force Base, New Jersey, family housing management office, $325,000.
Pope Air Force Base, North Carolina, family housing management office, $300,000.
Edwards Air Force Base, California, twenty-four mobile home spaces, $376,000.

(b) OSAN AIR BASE, KOREA.—Notwithstanding the space limitations of section 2826 of title 10, United States Code, the Secretary of the Air Force may construct one family housing unit at Osan Air Base, Korea, with a maximum net floor area of 3,000 square feet at a cost not to exceed $160,000.

SEC. 2123. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS

(a) AMOUNT AUTHORIZED.—Subject to section 2825 of title 10, United States Code, the Secretary of the Air Force may make expenditures to improve existing military family housing units, including energy conservation projects, in an amount not to exceed $52,644,000.

(b) WAIVER OF MAXIMUM PER UNIT COST FOR CERTAIN IMPROVEMENT PROJECTS.—Notwithstanding the maximum amount per unit for an improvement project under section 2825(b) of title 10, United States Code, the Secretary of the Air Force may carry out projects to improve existing military family housing units at the following installations in the number of units shown, and in the amount shown, for each installation:

Eielson Air Force Base, Alaska, eighty-eight units, $6,186,000.
Elmendorf Air Force Base, Alaska, twelve units, $760,000.
Air Force Academy, Colorado, one unit, $120,000.
Peterson Air Force Base, Colorado, four units, $149,000.
MacDill Air Force Base, Florida, one hundred and fifty-eight units, $4,430,000; seven units, $553,000; seventy-one units, $2,103,000.
Scott Air Force Base, Illinois, one hundred and twelve units, $4,690,000.
Barksdale Air Force Base, Louisiana, one hundred and fourteen units, $5,342,000.
Bangor Air Force Station, Maine, one unit, $30,000.
Andrews Air Force Base, Maryland, seven units, $518,000.
Pease Air Force Base, New Hampshire, two hundred units, $7,177,000.
Plattsburgh Air Force Base, New York, twenty-nine units, $2,272,000.
Shaw Air Force Base, South Carolina, one hundred and twenty-five units, $4,385,000; seventy-four units, $2,598,000.
Carswell Air Force Base, Texas, two hundred and three units, $7,478,000.
Lackland Air Force Base, Texas, sixty-four units, $1,920,000.
Randolph Air Force Base, Texas, five units, $402,000.
Reese Air Force Base, Texas, one hundred units, $2,895,000.
Langley Air Force Base, Virginia, five units, $441,000.
Andersen Air Force Base, Guam, two hundred units, $14,517,000.
Kadena Air Base, Japan, one hundred units, $5,054,000; three units, $240,000.

SEC. 2124. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE; RECURRING ADMINISTRATIVE PROVISIONS

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years

beginning after September 30, 1986, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of $2,149,749,000 as follows:

(1) For military construction projects inside the United States authorized by section 2121(a), $695,057,000.

(2) For military construction projects outside the United States authorized by section 2121(b), $321,243,000.

(3) For minor construction projects under section 2805 of title 10, United States Code, $210,280,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $117,260,000.

(5) For advances to the Secretary of Transportation for construction of defense access roads under section 210 of title 23, United States Code, $32,700,000.

(6) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $103,000,000; and

(B) for support of military housing (including functions described in section 2833 of title 10, United States Code), $751,409,000, of which not more than $5,600,000 may be obligated or expended for the leasing of military family housing units in the United States, the Commonwealth of Puerto Rico, and Guam, and not more than $74,176,000 may be obligated or expended for the leasing of military family housing units in the foreign countries.

(7)(A) Notwithstanding the amounts authorized to be appropriated by paragraphs (1)–(5) of this subsection, the total amount authorized to be appropriated by this subsection for the purposes described in such paragraphs is $1,313,280,000.

(B) Notwithstanding the amounts authorized to be appropriated by subparagraphs (A) and (B) of paragraph (6) of this subsection, the total amount authorized to be appropriated for the purposes described by such subparagraphs is $835,409,000.

(b) AUTHORIZATION OF UNOBLIGATED FUNDS FOR ENERGY CONSERVATION PROJECTS.—Funds appropriated to the Department of Defense for fiscal years before fiscal year 1987 which could be used for energy conservation projects of the Department of the Air Force that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for energy conservation projects authorized in section 2121(a) in an amount not to exceed $9,470,000.

(c) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS AUTHORIZED IN TITLE III.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2121 of this Act may not exceed the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a) and the amount specified in subsection (b).

SEC. 2125. EXTENSION OF CERTAIN AUTHORIZATIONS

Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1985 (Public Law 98-407; 98 Stat. 1515), authorizations for the following projects authorized in section 302 of that Act shall remain in effect until October 1, 1987, or the date of enactment of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Cadet Gymnasium in the amount of $10,000,000 at the United States Air Force Academy, Colorado.

(2) GLCM—Clothing Sales Store in the amount of $300,000 at Comiso Air Base, Italy.

(3) GLCM—Library in the amount of $570,000 at Florennes Air Base, Belgium.

(4) Anti-Satellite Facilities in the total amount of $16,500,000 at Langley Air Force Base, Virginia, to include: Integrated Maintenance Facility for $9,870,000; Missile and Motor Storage Facility for $3,870,000; Administrative Building for $645,000; Hydrazine Storage for $370,000; Control Center for $860,000; and Cryogen Storage and Procurement Facility for $955,000.

TITLE IV—DEFENSE AGENCIES

SEC. 2131. AUTHORIZED CONSTRUCTION PROJECTS AND LAND ACQUISITION FOR THE DEFENSE AGENCIES

(a) INSIDE THE UNITED STATES.—The Secretary of Defense may acquire real property and carry out military construction projects in the amounts shown for each of the following installations and locations inside the United States:

DEFENSE COMMUNICATIONS AGENCY

Scott Air Force Base, Illinois, $7,600,000.
Pentagon, Virginia, $2,300,000.

DEFENSE LANGUAGE INSTITUTE

Defense Language Institute, Monterey, California, $5,400,000.

DEFENSE LOGISTICS AGENCY

Defense Fuel Support Point, Naval Supply Center, Charleston, South Carolina, $5,130,000.
Defense Depot, Ogden, Utah, $9,780,000.
Defense Fuel Support Point, Mukilteo, Washington, $6,360,000.

DEFENSE MAPPING AGENCY

Aerospace Center, St. Louis, Missouri, $16,700,000.

DEFENSE MEDICAL FACILITIES OFFICE

Edwards Air Force Base, California, $3,950,000.
Pearl Harbor, Hawaii, $9,700,000.
Mountain Home Air Force Base, Idaho, $30,500,000.
Fort Polk, Louisiana, $2,650,000.
Keesler Air Force Base, Mississippi, $3,100,000.
McGuire Air Force Base, New Jersey, $3,800,000.
Kirtland Air Force Base, New Mexico, $16,000,000.
Camp Lejeune, North Carolina, $3,900,000.
Brooke Army Medical Center, San Antonio, Texas, $129,000,000.
Fort Hood, Texas, $3,450,000.
Randolph Air Force Base, Texas, $13,700,000.

DEFENSE NUCLEAR AGENCY

Naval Research Laboratory, Washington, District of Columbia, $3,200,000.

JOINT TACTICAL COMMAND, CONTROL, AND COMMUNICATIONS AGENCY

Fort Huachucha, Arizona, $9,890,000.

NATIONAL SECURITY AGENCY

Fort Meade, Maryland, $9,570,000.
Classified Location, $3,000,000.
Classified Location, $4,000,000.

OFFICE OF THE SECRETARY OF DEFENSE

Classified Location, $3,000,000.
Environmental Restoration, $6,000,000.

STRATEGIC DEFENSE INITIATIVE

Edwards Air Force Base, California, $4,140,000.
Pacific Missile Range, Kaui, Hawaii, $2,890,000.

(b) OUTSIDE THE UNITED STATES.—The Secretary of Defense may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations outside the United States:

DEFENSE LOGISTICS AGENCY

Defense Fuel Support Point, Chimu Wan, Japan, $6,640,000.
Defense Fuel Support Point, Tsurumi, Japan, $3,520,000.

DEFENSE MEDICAL FACILITIES OFFICE

Boeblingen, Germany, $3,650,000.
Grafenwoehr, Germany, $3,950,000.
Karlsruhe, Germany, $6,800,000.
Vilseck, Germany, $5,600,000.
Camp New Amsterdam, The Netherlands, $6,000,000.

DEPARTMENT OF DEFENSE DEPENDENT SCHOOLS

Naval Air Station, Bermuda, $4,280,000.
Aschaffenburg, Germany, $6,600,000.
Dexheim, Germany, $2,430,000.
Erlangen, Germany, $3,220,000.
Grafenwoehr, Germany, $2,500,000.
Hahn, Germany, $3,470,000.
Heidelberg, Germany, $3,190,000.
Hessisch-Oldendorf, Germany, $2,310,000.
Kaiserslautern, Germany, $7,880,000.
Nuernberg, Germany, $8,580,000.
Stuttgart, Germany, $4,530,000.
Wuerzburg, Germany, $7,760,000.
Woensdrecht, The Netherlands, $7,420,000.

(c) VARIOUS LOCATIONS.—The Secretary of Defense may acquire real property and may carry out military construction projects not otherwise authorized by law for the construction of hazardous waste storage facilities.

SEC. 2132. FAMILY HOUSING

The Secretary of Defense may construct or acquire three family housing units (including land acquisition) at classified locations in the total amount of $270,000.

SEC. 2133. BROOKE ARMY MEDICAL CENTER

(a) AUTHORIZATION TO CONTRACT IN ADVANCE OF APPROPRIATIONS.—The Secretary of Defense may enter into one or more contracts, in advance of appropriations therefor, for the design and construction of the military construction project authorized by section 2131 to be accomplished at Brooke Army Medical Center, San Antonio, Texas, if such contracts limit the Government's liability to the amount of funds available for obligation at the time each contract is entered into. Such design and construction may be accomplished by using one-step turn-key selection procedures, or other competitive contracting methods.

(b) REPEAL PROVISION.—Section 104 of the Military Construction Authorization Act, 1985 (Public Law 98-407; 98 Stat. 1498), is repealed.

SEC. 2134. PROHIBITION ON DESIGN OF PENTAGON ANNEX

None of the funds appropriated pursuant to an authorization contained in this or any other Act may be used for the purpose of designing an administrative complex on the property known as the Pentagon Reservation, Arlington, Virginia, for the purpose of supporting the headquarters of the Department of Defense or the military departments or the support functions of such headquarters.

SEC. 2135. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES; RECURRING ADMINISTRATIVE PROVISIONS

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986 for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments), in the total amount of $568,500,000 as follows:

(1) For military construction projects inside the United States authorized by section 2131(a), $189,710,000.

(2) For military construction projects outside the United States authorized by section 2131(b), $100,330,000.

(3) For military construction projects at Fort Meade, Maryland, authorized by section 401(a) of the Military Construction Authorization Act, 1986, $53,700,000.

(4) For military construction projects at Fort Lewis, Washington, authorized by section 101(a) of the Military Construction Authorization Act, 1985, $72,100,000.

(5) For minor construction projects under section 2805 of title 10, United States Code, $30,760,000.

(6) For construction projects under the contingency construction authority of the Secretary of Defense under section 2804 of title 10, United States Code, $5,000,000.

(7) For Conforming Storage Facilities at various locations authorized by section 2131(c), $21,400,000.

(8) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $100,700,000.

(9) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $270,000; and

(B) for support of military housing (including functions described in section 2833 of title 10, United States Code), $17,330,000, of which not more than $14,027,000 may be obligated or expended for the leasing of military family housing units in foreign countries.

(10) Notwithstanding the amounts authorized to be appropriated by paragraphs (1)–(8) of this subsection the total amount authorized to be appropriated by this subsection for the purposes described by such paragraphs is $550,900,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS AUTHORIZED IN TITLE IV.—Notwithstanding the cost variations authorized by section 2858 of title 10, United States Code, and any other cost variations authorized by law, the total cost of all projects carried out under section 2131 of this Act may not exceed the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a).

SEC. 2136. EXTENSION OF AUTHORIZATIONS

Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1985 (Public Law 98-407; 98 Stat. 1515), the authorizations for the construction or acquisition of 6 family housing units in section 402 of such Act shall remain in effect until October 1, 1987, or the date of the Military Construction Authorization Act for fiscal year 1988, whichever is later.

TITLE V—NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

SEC. 2141. AUTHORITY OF THE SECRETARY OF DEFENSE TO MAKE CONTRIBUTIONS

The Secretary of Defense may make contributions for the North Atlantic Treaty Organization Infrastructure Program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2142 of this Act and the amount collected from the North Atlantic Treaty Organization as a result of projects previously financed by the United States.

SEC. 2142. AUTHORIZATION OF APPROPRIATIONS, NATO

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Infrastructure Program as authorized by section 2041 of this Act, in the amount of $239,000,000.

TITLE VI—GUARD AND RESERVE FORCES FACILITIES

SEC. 2151. AUTHORIZATION FOR GUARD AND RESERVE FACILITIES

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 133 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, $118,700,000, and

(B) for the Army Reserve, $83,200,000.

(2) For the Department of the Navy, for the Naval and Marine Corps Reserves, $43,800,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, $137,000,000, and

(B) for the Air Force Reserve, $55,400,000.

TITLE VII—GENERAL PROVISIONS

PART A—EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

SEC. 2161. EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

(a) EXPIRATION OF AUTHORIZATIONS AFTER TWO YEARS.—(1) Except as provided in subsection (b), all authorizations contained in titles I, II, III, IV, and V for military construction projects, land acquisition, family housing projects and facilities, and contributions to the NATO Infrastructure Program (and authorizations of appropriations therefor) shall expire on October 1, 1988, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1989, whichever is later.

(b) EXCEPTION.—The provisions of paragraph (1) do not apply to authorizations for military construction projects, land acquisition, family housing projects and facilities, and contributions to the NATO Infrastructure Program (and authorizations of appropriations therefor), for which appropriated funds have been obligated before October 1, 1988, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1989, whichever is later, for construction contracts, land acquisition, family housing projects and facilities, or contributions to the NATO Infrastructure Program.

SEC. 2162. ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

For projects or contracts initiated during the period beginning on the date of enactment of this Act and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1988 or October 1, 1987, whichever is later, the following amounts apply:

(1) The maximum amount for a minor military construction project under section 2805 of title 10, United States Code, is $2,000,000.

(2) The amount of a contract for architectural and engineering services or construction design that makes such a contract subject to the reporting requirement under section 2807 of title 10, United States Code, is $300,000.

(3) The maximum amount per unit for an improvement project for family housing units under section 2825 of title 10, United States Code, is $30,000.

(4) The maximum annual rental for a family housing unit leased in the United States, Puerto Rico, or Guam under section 2828(b) of title 10, United States Code, is $10,000.

(5)(A) The maximum annual rental for a family housing unit leased in a foreign country under section 2828(e)(1) of title 10, United States Code, is $16,800.

(B) The maximum number of family housing units that may be leased at any one time in foreign countries under section 2828(e)(2) of title 10, United States Code, is 34,500.

(6) The maximum rental per year for family housing facilities, or for real property related to family housing facilities, leased in a foreign country under section 2828(f) of title 10, United States Code, is $250,000.

PART B—MILITARY CONSTRUCTION PROGRAM PROVISIONS

SEC. 2171. MINOR CONSTRUCTION

(a) IN GENERAL.—Section 2805 of title 10, United States Code, is amended—

(1) in subsection (b)—

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) A minor military construction project not identified in the Department of Defense annual budget request for a fiscal year may not be constructed if the estimated cost of such project exceeds 50 percent of the amount specified by law as the maximum amount for a minor military construction project unless the Secretary concerned has notified in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the expiration of 21 days following the date on which the notification is received by the committees.";

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2);

(2) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The Secretary concerned may spend from funds available for operation and maintenance amounts necessary to carry out a minor construction project costing not more than 20 percent of the amount specified by law as the maximum amount for a minor military construction project."; and

(3) by striking out the section heading and inserting in lieu thereof the following:

"§ 2805. Minor construction"

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 169 of such title is amended by striking out the item relating to section 2805 and inserting in lieu thereof the following:

"2805. Minor construction.".

SEC. 2172. RENOVATION OF FACILITIES

(a) IN GENERAL.—Chapter 169 of title 10, United States Code, is amended by adding at the end of subchapter I the following new section:

"§ 2810. Renovation of facilities

"(a) The Secretary concerned may carry out renovation projects that combine maintenance, repair, and minor construction projects for an entire single-purpose facility or for one or more functional areas of a multipurpose facility. In carrying out such projects, the Secretary concerned may use funds available for operations and maintenance.

"(b) The maximum amount that may be obligated on such a renovation project is the maximum amount specified by law for a minor construction project.

"(c) The construction of a new facility or an addition to an existing facility may not be carried out under the authority of this section.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2810. Renovation of Facilities.".

SEC. 2173. TEST PROGRAM FOR MILITARY INSTALLATION MASTER PLANNING

In order to provide Congress with information necessary to determine the desirability and feasibility of using installation master plans as a basis for determining long-term military construction requirements, the Secretary of Defense shall, at the same time he submits the annual request for military construction authorization pursuant to section 2859 of title 10, United States Code, for fiscal year 1988, include in such request—

(1) master plans for at least two military installations of each military department; and

(2) a request for the authorization of those construction projects included in the installation master plans referred to in clause (1) that are scheduled to be constructed within five fiscal years after the fiscal year in which the request is submitted.

SEC. 2174. TEST OF LONG-TERM FACILITIES CONTRACTS

Paragraph (1) of section 2809(a) of title 10, United States Code, is amended to read as follows:

"(1)(A) The Secretary concerned may enter into contracts for the construction, management, and/or operation of a facility on or near a military installation for the provision of an activity or service named in subparagraph (B) if the Secretary concerned has identified the proposed project in the budget proposal submitted to Congress and has determined that the facility can be more economically provided under a long-term contract than by conventional means.

"(B) The activities and services referred to in subparagraph (A) are as follows:

"(i) Child care services.

"(ii) Potable and waste water treatment services.

"(iii) Depot supply activities.

"(iv) Troop housing.

"(v) Transient quarters.

"(vi) Other logistic and administrative services, other than depot maintenance.".

SEC. 2175. PLANNING AND DESIGN

(a) IN GENERAL.—Section 2807 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(d) The Secretary of a military department may obtain architectural and engineering services and carry out construction design in connection with any military construction project in any fiscal year with any funds appropriated for such purpose for any previous fiscal year to the extent that such funds are available.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to funds appropriated for military construction projects after the date of the enactment of Public Law 99-103 (99 Stat. 471).

SEC. 2176. SPACE LIMITATIONS ON OFFICER HOUSING

Subsection (b) of section 2826 of title 10, United States Code, is amended to read as follows:

"(b) The applicable maximum net floor area prescribed by subsection (a)—

"(1) may be increased to 3,000 square feet for the housing unit of—

"(A) an officer holding a special command position (as designated by the Secretary of Defense);

"(B) a general or flag officer holding a position of commander; or

"(C) a general or flag officer holding a key and essential staff position which requires extensive official representational duties (as designated by the Secretary of the military department concerned);

"(2) may be increased to 2,100 square feet for the housing unit of the commanding officer of a military installation in the pay grade of O-6 or above; or

"(3) may be increased by 10 percent for the housing unit of the senior noncommissioned officer of a military installation, but an increase may not be made under this clause in the case of any housing unit if an increase is made for such housing unit under subsection (c).".

SEC. 2177. HAZARDOUS WASTE STORAGE

(a) AUTHORITY TO CONSTRUCT.—In order to meet the pressing need for the storage of hazardous and toxic materials and wastes on military installations, the Secretary of Defense may, using funds available for military construction, carry out military construction projects not otherwise authorized by law for the construction of hazardous waste storage facilities.

(b) NOTIFICATION TO CONGRESS.—When a decision is made to carry out a project under this section, the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may not be initiated until a period of 21 days has elapsed after the date on which the notification is received by the committees.

(c) INCREASE IN COST OF PROJECT.—The cost of a hazardous waste storage facility project carried out under this section may be increased by not more than 25 percent of the estimated cost of the project as contained in the notification provided to the committees pursuant to subsection (b) if the Secretary of Defense determines (A) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (B) that such variations in cost could not have been reasonably anticipated at the time the project justification was originally submitted to the committees.

(d) DEFINITION.—As used in this section, the term "hazardous waste" includes both excess hazardous materials and hazardous wastes as defined by applicable laws and regulations.

(e) EXPIRATION OF AUTHORITY.—A military construction project for the erection of a hazardous waste storage facility may not be commenced under this section after September 30, 1991.

SEC. 2178. BUILD-TO-LEASE AND RENTAL GUARANTEE PILOT PROGRAMS

(a) RENTAL GUARANTEE PROGRAM.—(1) Subsection (b) of section 802 of the Military Construction Authorization Act, 1984 (10 U.S.C. 2821 note), is amended—

(A) by striking out "and" at the end of clause (10);

(B) by striking out the period at the end of clause (11) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new clause:

"(12) may provide in the agreement for the rental of a child care center, civic center building, and similar type buildings constructed for the support of family housing.".

(2) Subsection (h) of such section is amended by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1990".

(3) Subsection (b) of such section is amended—

(A) in paragraph (2), by striking out "for operation and maintenance costs which shall (if included) be effective for the term of agreement";

(B) in paragraph (4), by adding "or, at the discretion of the Secretary of the military department concerned, in compliance with the local building codes" after "specifications"; and

(C) in paragraph (5), by striking out "15 years" and inserting in lieu thereof "25 years".

(b) BUILD-TO-LEASE PROGRAM.—Section 2828(g) of title 10, United States Code, is amended—

(1) in paragraph (8)(B), by striking out "600" and inserting in lieu thereof "3,600";

(2) in paragraph (9), by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1988"; and

(3) by adding at the end the following new paragraph:

"(10) A contract for the lease of family housing under this subsection may include provision for the lease of a child care center, civic center building, and similar type buildings constructed for the support of family housing.".

SEC. 2179. FOREIGN LEASES FOR PERSONNEL HOLDING SPECIAL POSITIONS

Subsection (e)(1) of section 2828 of title 10, United States Code, is amended by striking out "200" and inserting in lieu thereof "220".

PART C—MISCELLANEOUS PROVISIONS

SEC. 2181. RESTRICTIONS ON CONVERSION OF HEATING FACILITIES AT UNITED STATES MILITARY INSTALLATION IN EUROPE

(a) IN GENERAL.—The Secretary of a military department may not convert a heating facility at any United States military installation in Europe from a coal-fired facility to an oil-fired facility, or to any other energy source facility, unless the Secretary of the military department concerned—

(1) determines that the conversion (A) is required by the government of the country in which the facility is located, or (B) is life cycle cost effective; and

(2) has notified Congress of the proposed conversion and a period of 30 days has elapsed following the date on which Congress received the notice.

(b) USE OF COAL.—(1)(A) The Secretary of Defense shall, in each case in which the Sec-

retary determines such action would be cost effective, provide for the use of coal produced in the United States to operate heating facilities at military installations in the United States.

(B) The Secretary of Defense shall take such action as may be necessary to implement, at the earliest practicable date and with funds provided for such purpose by section 8110 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190; 99 Stat. 1222), the program proposed by the Department of Defense in a letter dated August 30, 1985, from the Assistant Secretary of Defense for Acquisition and Logistics to rehabilitate and convert current steam generating plants at defense facilities in the United States to coal burning facilities in order to achieve a coal consumption target of 1,600,000 short tons of coal per year (including at least 300,000 short tons of anthracite coal) above current consumption levels at Department of Defense facilities in the United States by fiscal year 1994: *Provided further,* That during fiscal year 1987, the amount of anthracite coal purchased by the Department shall be at least 300,000 short tons.

(2) In carrying out the actions referred to in paragraph (1), the Secretary shall make maximum use of private venture capital and long-term contracting.

(3) The Secretary shall report to Congress not later than March 1 of each year on the actions taken by the Secretary in carrying out paragraph (1).

(c) REPEAL OF CERTAIN RESTRICTIONS.—Sections 8022 and 8070 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190; 99 Stat. 1207, 1214, and 1222), are repealed.

SEC. 2182. BASE CLOSURE TASK GROUP

(a) ESTABLISHMENT OF TASK GROUP.—The President shall establish a study group to be known as the "Blue Ribbon Task Group on Military Base Closures" (hereinafter in this section referred to as the "Task Group").

(b) FUNCTION OF TASK GROUP.—It shall be the function of the Task Group to study and evaluate military installations with a view to determining and recommending which installations should be closed.

(c) APPOINTMENT OF MEMBERS.—The Task Group shall be composed of 9 members appointed as follows:

(1) Five members appointed by the President.

(2) One member appointed by the majority leader of the Senate.

(3) One member appointed by the minority leader of the Senate.

(4) One member appointed by the speaker of the House of Representatives.

(5) One member appointed by the minority leader of the House of Representatives.

(d) CHAIRMAN.—The President shall designate one of the members of the Task Group to serve as Chairman.

(e) QUORUM.—Five members of the Task Group shall constitute a quorum, but a lesser number may hold hearings. The Task Group shall meet at the call of the Chairman.

(f) VACANCIES.—A vacancy in the Task Group shall be filled in the manner in which the original appointment was made. Appointments may be made under subsection (c) without regard to section 5311(b) of title 5, United States Code. Members shall be appointed for the life of the Task Group.

(g) COMPENSATION OF MEMBERS.—Members of the Task Group may each be paid at a rate equal to the daily equivalent of the rate of basic pay payable for level IV of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of the business of the Task Group.

(h) STAFF.—(1) The Task Group may appoint such staff as it considers appropriate. Such personnel shall be paid at a rate not to exceed the rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(2) The Task Group may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(3) The Secretary of Defense may detail personnel of the Department of Defense to the Task Group to assist the Task Group in carrying out its duties under this section.

(4) The Secretary of Defense may provide the Task Group such administrative support services as the Task Group may require.

(i) REPORT DEADLINE.—Not later than July 31, 1987, the Task Group shall submit to the President and to Congress a report containing the results of its study together with a list of military installations the Task Group recommends be closed. The report shall be prepared and submitted without any prior review or approval by any official of the executive branch.

(j) TERMINATION OF TASK GROUP.—The Task Group shall cease to exist 90 days after the date on which the report referred to in subsection (i) is submitted to the President and Congress.

(k) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years 1986 and 1987 a total of $1,000,000 to carry out this section. Any amount appropriated under this subsection shall remain available until the termination of the Task Group, except that no amount shall remain available until the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") transfers to the United States Postal Service (hereinafter in this section referred to as the "Postal Service") jurisdiction over approximately 3.2 acres of land, together with improvements thereon, located in Aiea, Hawaii, and the Postal Service pays, out of any funds available to the Postal Service, to the Secretary of the Navy an amount equal to the greater of the following:

(1) The approved fair market value of the property over which jurisdiction is to be transferred (as determined by the Secretary).

(2) The cost of providing to the Navy fleet laundry and dry cleaning facilities to replace facilities located on the land over which jurisdiction is to be transferred pursuant to this subsection.

(l) LEGAL DESCRIPTION OF LAND.—The exact acreage and legal description of the land over which jurisdiction is to be transferred under this section shall be determined by surveys that are satisfactory to the Secretary. The cost of the surveys shall be borne by the Postal Service.

(m) ADDITIONAL TERMS.—(1) The Secretary may require such additional terms and conditions under this section as the Secretary considers appropriate to protect the interest of the Navy.

(2) If the fair market value of the property over which jurisdiction is to be transferred to the Postal Service under subsection (k) exceeds the cost of the replacement fleet laundry and dry cleaning facilities, the Secretary shall deposit the excess into the general fund of the Treasury.

SEC. 2183. DEVELOPMENT OF THE NAVY BROADWAY COMPLEX, SAN DIEGO, CALIFORNIA

(a) IN GENERAL.—(1) The Secretary of the Navy (hereinafter in this section referred to as the "Secretary") may enter into long-term leases or other arrangements for the construction of office and other administrative facilities on land under the jurisdiction of the Secretary in San Diego, California, known as the "Broadway Complex".

(2) The Broadway Complex shall be developed in accordance with detailed plans and terms of development which have been duly formulated by the Navy and the San Diego community through the San Diego Association of Governments' Broadway Complex Coordinating Group.

(3) Long-term leases or other arrangements entered into under this section may provide that facilities constructed on the Broadway Complex be privately owned, jointly owned by the Navy and private developers, or wholly owned by the Navy.

(4) Demolishment of existing facilities and construction of new facilities on the Broadway Complex may be carried out in whole or in part at the expense of private developers.

(5) The Secretary may—

(A) lease land at the Broadway Complex to private developers on a long-term basis; or

(B) enter into leases or other arrangements for provision by private developers of low cost office facilities for use by the Navy.

(6) The Secretary may also receive, obligate, and disburse any funds received from the lease of Navy land at the Broadway Complex for the construction and management of facilities constructed under this section.

(b) AWARD OF CONTRACT.—Contracts entered into by the Secretary under this section shall be awarded through the use of publicly advertised, competitively bid, or competitively negotiated contracting procedures.

(c) TERMS OF CONTRACTS.—(1) The Secretary may require as a condition for the award of a long-term lease of land at the Broadway Complex that the Navy be given the right of first refusal for the purchase of any facilities constructed on the land by or for the lessee.

(2) A long-term lease or other arrangement entered into by the Secretary under this section under which offices or other facilities are constructed by a private developer and leased to the Navy may provide for the operation and maintenance of such facilities by the private developer.

(3) The Secretary may require such additional terms and conditions in connection with any contract or other arrangement entered into under this section as the Secretary considers appropriate to protect the interests of the United States.

(d) PRECONDITION TO CONTRACT.—The Secretary may not enter into a long-term lease or other arrangement under this section until—

(1) a comprehensive plan for the proposed development of the Broadway Complex has been prepared and such plan clearly demonstrates that development under the proposed plan is more economically advantageous to the United States than development of the Complex by the Navy with appropriated funds;

(2) a copy of the proposed plan has been submitted to the appropriate committees of Congress; and

(3) a period of 21 days has elapsed following the date on which the plan is received by the committees referred to in clause (2).

SEC. 2184. SELECTION OF SITE FOR MILITARY FAMILY HOUSING AT SAN PEDRO, CALIFORNIA

(a) IN GENERAL.—(1) The Secretary of the Air Force (hereinafter in this section referred to as the "Secretary") shall consider appropriate sites in San Pedro, California, for the location and construction of 170 military family housing units for members of the Air Force assigned to duty in the area of San Pedro.

(2) The Secretary shall consider as an appropriate site for such housing only land in the San Pedro area in which the United States has a reversionary interest for national defense purposes or land which would be conveyed to the United States without charge.

(3) After the Secretary has selected one or more sites for such housing, he shall file a final environmental impact statement as required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) on each site determined by the Secretary to be appropriate for the purpose stated in paragraph (1). Within 10 days after the expiration of the 30-day period referred to in section 1506.10(b)(2) of title 40 of the Code of Federal Regulations, the Secretary shall select as a site for the location of the housing units referred to in subsection (a) one of the sites considered appropriate for such purpose.

(b) EXERCISE OF REVERSIONARY RIGHT.—(1) If the land selected as the site for the housing units is subject to a reversionary right on behalf of the United States, the Secretary shall notify the Attorney General of the United States or other appropriate official that the site selected is needed for national defense purposes.

(2) The Attorney General or other appropriate official shall, within 15 days after receiving the notification referred to in paragraph (1), take such action as may be necessary to exercise the reversionary right held by the United States in the land selected as the site for the housing.

(3) Within 15 days after the United States resumes ownership over the land, the Attorney General or other appropriate official shall transfer jurisdiction of such land to the Secretary.

(c) CONSTRUCTION OF MILITARY FAMILY HOUSING.—The Secretary shall use any land made available pursuant to this section as the site for the construction of the 170 military family housing units referred to in subsection (a).

SEC. 2185. GRANTING OF EASEMENTS AND REPLACEMENT OF FAMILY HOUSING UNITS AND OTHER FACILITIES AT MARINE CORPS AIR STATION, EL TORO, CALIFORNIA

(a) AUTHORITY TO GRANT EASEMENTS.—Subject to subsection (b) and other conditions the Secretary may specify in the agreements entered into for the purpose of carrying out this section, the Secretary of the Navy (hereafter in this section referred to as the "Secretary") may grant to Orange County, California, one or more easements through the Marine Corps Air Station, El Toro, California, for street, sidewalk, and related purposes.

(b) MANDATE TO REPLACE FAMILY HOUSING AND OTHER FACILITIES.—(1) Subject to subsection (c), the Secretary shall provide for the replacement of all family housing units and other facilities that are to be demolished as a result of any easement granted under subsection (a).

(2) An easement granted under subsection (a) shall not become effective until the Secretary determines that—

(A) family housing units have been constructed to replace all the family housing units to be demolished as a result of such easement; and

(B) such replacement units meet the applicable requirements specified in the agreements referred to in subsection (a).

(3) Until the determination referred to in paragraph (2) is made, the Secretary shall continue to use, as military family housing, the housing units that are to be demolished as a result of an easement becoming effective.

(c) FUNDING.—(1) The Secretary may use not more than $2,300,000 of the amount appropriated pursuant to the authorization contained in section 2115(a)(7)(A) for payment in connection with the construction of replacement family housing units required by subsection (b).

(2) The Secretary may make available amounts for the construction of such replacement family housing units at the times specified in the agreements referred to in subsection (a).

(3) The Secretary may not make any funds available under this section for the demolition of existing facilities on the land on which easements are granted or for the replacement of any facilities other than family housing facilities.

SEC. 2186. POSTAL FACILITIES

Sections 4779 and 9779 of title 10, United States Code, are each amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

SEC. 2186A. STUDY OF NEEDS OF DEPENDENTS' EDUCATIONAL FACILITIES ON MILITARY INSTALLATIONS

(A) IN GENERAL.—The Secretary of Defense and the Secretary of Education shall conduct a joint study for the purpose of determining the needs for construction, extension, remodeling, and rehabilitation of dependents, educational facilities on military installations in the United States and shall develop a joint policy to meet those needs.

(b) REPORT.—(1) Not later than April 1, 1987, the Secretaries of Defense and Education shall submit to Congress a report containing—

(1) a description of the needs determined under subsection (a);

(2) the joint policy developed to meet such needs; and

(3) any recommendations for legislation the Secretaries consider necessary or appropriate to meet such needs.

SEC. 2186B. MULTIFUEL SOURCES FOR NEW HEATING SYSTEMS AT MILITARY INSTALLATIONS

(a) IN GENERAL.—Section 2690 of title 10, United States Code, is amended to read as follows:

"§ 2690. Multifuel sources for new heating systems

"(a) Except as provided in subsection (b), each new heating or cogeneration system which is installed or constructed at any military installation located on lands under the jurisdiction of a military department and which requires 100 million British thermal units input per hour or more shall have multiple fuel capability. The primary and secondary fuel capability of any such system shall be a fuel from the solid fuel group or the liquid and gas hydrocarbon group (petroleum and natural gas). The fuel capability of a new heating or cogeneration system shall be determined on the basis of life cycle costs and availability of fuels.

"(b) In any case in which local restrictions or costs make the installation or construction of solid or dual fuel equipment infeasible, the Secretary concerned may waive the requirement of subsection (a), but such waiver shall not become effective until after the Secretary concerned has notified the appropriate committees of Congress in writing of the waiver and the reasons for exercising such waiver authority.

"(c) In this section, the term 'multiple fuel capability' means the capability of using two or more types of fuel.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 159 of such title is amended by striking out the item relating to section 2690 and inserting in lieu thereof the following:

"2690. Multifuel sources for new heating systems.".

PART D—REAL PROPERTY TRANSACTIONS

SEC. 2187. LAND CONVEYANCE, FORT HUACHUCA, ARIZONA

(a) AUTHORITY TO CONVEY.—The Secretary of the Army (hereinafter in this section referred to as the "Secretary") is authorized to convey to the State of Arizona all right, title, and interest of the United States in and to approximately 26 acres of land which comprise a portion of Fort Huachuca, Arizona, and which border on State Highway 90 at Fort Huachuca. Such acres are located in the East half of Township 21 South, Range 20 East, Gila and Salt River Meridian.

(b) CONSIDERATION.—(1) In consideration for the conveyance authorized by subsection (a), the State of Arizona shall convey to the United States all right, title, and interest of the State in and to 1,536.47 acres of land owned by the State within the East Range at Fort Huachuca and to all mineral rights owned by the State in 12,943 acres located within the East Range at Fort Huachuca. Title to such land and mineral rights shall be conveyed free and clear of encumbrances and third party interests except to the extent waived by the Secretary.

(2) If the fair market value of the lands conveyed by the Secretary under subsection (a) exceeds the fair market value of the lands and mineral interests conveyed to the United States under subsection (b), as determined by the Secretary, the State shall pay the difference to the United States. Any funds received under this subsection shall be covered into the general fund of the Treasury.

(c) AUTHORITY TO SELL ADDITIONAL ACREAGE.—(1) In addition to the acreage authorized to be conveyed under subsection (a), the Secretary is authorized to sell, subject to paragraphs (2) and (3), all right, title, and interest of the United States in and to approximately 203 acres of land (designated by the Secretary) comprising a portion of Fort Huachuca, Arizona.

(2) The sale of the land referred to in paragraph (1) shall be conducted in accordance with competitive bidding procedures prescribed in section 2304 of title 10, United States Code. In no event may the land be sold for less than the fair market value thereof. The fair market value of the property shall be established by an appraisal approved by the Secretary.

(3) If the fair market value of the lands and mineral rights conveyed to the United States pursuant to subsection (b) exceeds the fair market value of the lands conveyed by the United States pursuant to subsection

(a), the Secretary may use the proceeds of the sale under paragraph (1) to pay the difference in value to the State of Arizona. Any proceeds of the sale not used for such purposes shall be covered into the general fund of the Treasury.

(d) LEGAL DESCRIPTION OF LANDS.—The exact acreage and legal descriptions of any property conveyed or acquired under this section shall be based upon surveys which are satisfactory to the Secretary.

(e) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions in connection with the transactions authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2188. LAND CONVEYANCE, MARCH AIR FORCE BASE, CALIFORNIA

(a) AUTHORITY TO SELL.—Subject to subsections (b) through (g), the Secretary of the Air Force (hereafter in this section referred to as the "Secretary") may sell all or any portion of a tract of land (together with improvements thereon), comprising a portion of March Air Force Base, California, known as West March and consisting of 845 acres, more or less.

(b) CONDITIONS OF SALE.—The Secretary shall require as a condition of the sale of the property referred to in subsection (a) that the purchaser—

(1) agree to construct on Government-owned land at March Air Force Base, at the expense of the purchaser, in accordance with standards and specifications prescribed by the Secretary, a noncommissioned officers professional education center, a band center, and an addition to, or an alteration of, a combat operations center; and

(2) submit to the Secretary a master plan for the development of the land referred to in subsection (a) that (A) is consistent (as determined by the Secretary) with the Air Installations Compatible Use Zone recommendations of the Air Force, (B) is consistent (as determined by the Secretary) with the future plans of the Air Force for March Air Force Base and the plan for development of Air Force Village West; and (C) is acceptable to the appropriate local government officials of the city and county of Riverside, California.

(c) COMPETITIVE BID REQUIREMENT; MINIMUM SALE PRICE.—(1) The sale of any of the land referred to in subsection (a) shall be carried out under competitive contracting procedures.

(2) In no event may property referred to in subsection (a) be sold for less than fair market value of such property. The value of the property to be conveyed and the consideration to be received shall be determined by appraisals approved by the Secretary. Such appraisals may, in the Secretary's discretion, be paid for from any deposit made by the prospective purchaser or be reimbursed out of such deposit to the fund available for such purposes in the fiscal year reimbursement is made. Any portion of the deposit used to fund or reimburse the cost of appraisals shall be nonrefundable.

(d) REPORT REQUIREMENTS.—(1) The Secretary may not enter into any contract for the sale of any or all of the land referred to in subsection (a) unless—

(A) the Secretary has submitted a report to the appropriate committees of Congress containing the information required in section 2667a(b) of title 10, United States Code; and

(B) a period of 21 days has expired following the date on which the report referred to in such section is received by those committees.

(2) Any report submitted under paragraph (1) shall include—

(A) a description of the price and terms agreed to with the successful bidder; and

(B) a description of the procedures used in selecting a buyer for the land.

(e) USE OF EXCESS FUNDS.—If the fair market value of the property to be conveyed to a purchaser is greater than the fair market value of the facilities to be constructed by the purchaser for the United States, the difference in cash shall be deposited into the general fund of the Treasury.

(f) LEGAL DESCRIPTION OF LAND.—The exact acreage and legal description of the land to be conveyed under this section shall be determined by surveys approved by the Secretary. Such surveys shall be provided by the purchaser or paid for by the Secretary from a deposit made by the prospective purchaser at the time of award. Any portion of the deposit used for surveys shall be nonrefundable.

(g) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions in connection with any transaction authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

(h) ADDITIONAL AUTHORITY.—The military construction authorized under this section is in addition to any other construction authorized by law.

SEC. 2189. LAND EXCHANGE, LONG BEACH NAVAL STATION, CALIFORNIA

(a) AUTHORITY TO EXCHANGE.—Subject to subsections (b) through (d), the Secretary of the Navy may exchange approximately 16 acres of real property (and improvements thereon) adjacent to Admiral Kidd Park which constitute a portion of the Long Beach Naval Station, California, to the city of Long Beach, California, in exchange for real property (and improvements thereon) located on Hill Street, between Webster Avenue and the Terminal Island Freeway, in Long Beach, California.

(b) CONDITION.—If the fair market value of the real property and improvements conveyed to the city under subsection (a) exceeds the fair market value of the real property and improvements conveyed to the United States, the city shall pay the difference to the United States, and the Secretary shall deposit any funds received under this subsection into the general fund of the Treasury.

(c) LEGAL DESCRIPTION OF LAND.—The exact acreage and legal description of the real property exchanged under this section shall be in accordance with surveys that are satisfactory to the Secretary. The cost of such surveys shall be borne by the city of Long Beach.

(d) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2190. LAND CONVEYANCE, WHITTIER NARROWS DAM, LOS ANGELES COUNTY, CALIFORNIA

(a) AUTHORITY TO SELL OR EXCHANGE LAND.—The Secretary of the Army (hereafter in this section referred to as the "Secretary") is authorized to sell or exchange approximately 7.44 acres of land within the Whittier Narrows Flood Control Basin and located north of Rush Street and east of Walnut Grove Avenue in Los Angeles County, California.

(b) SALE OR EXCHANGE REQUIREMENT.—In no event may the land described in subsection (a) and more fully described in subsection (e) be sold or exchanged for less than the fair market value thereof.

(c) CONSIDERATION.—In consideration for the sale or exchange authorized in subsection (a), the Secretary may accept cash or may accept land in the Los Angeles area, or both.

(d) PROCEEDS OF SALE.—Any funds received by the Secretary under this section shall be deposited into the general fund of the Treasury.

(e) LEGAL DESCRIPTION OF LAND.—The real property referred to in subsection (a) is a tract of land containing approximately 7.44 acres, more or less, located on Whittier Narrows Flood Control Basin, Los Angeles County, California. The property comprises those portions of Lot A of Tract No. 3260, as per the map recorded in Book 34 of Maps, page 21, in the office of the Los Angeles County Recorder and that portion of Lots 27 and 28 of Tract No. 830, as per the map recorded in Book 16 of Maps, page 117, in the office of the County Recorder and more particularly described as follows:

> Beginning at the Southeast corner of such Lot A; thence along the south line of such lot North 89° 50' 27" West (northerly line of Rush Avenue) 184.93 feet; thence North 17° 25' 47" East 439.37 feet; thence North 36° 48' 56" East 366.03 feet; thence South 0° 04' 01" East 868.23 feet more or less to the northerly line of Rush Avenue; thence westerly along the north line of Rush Avenue to the point of beginning.

(f) RESERVATIONS.—(1) The land shall be conveyed subject to a perpetual flowage easement in favor of the United States.

(2) The Secretary shall convey the land subject to an agreement by the purchaser to permit the County of Los Angeles to utilize the conveyed premises for the parking of automobiles in connection with recreation activities at Whittier Narrows Golf Course on weekends, holidays, and on such other days as may be specified from time to time by the Secretary.

(g) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions with respect to the conveyance as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2191. LAND EXCHANGE, SANTA FE, NEW MEXICO

(a) AUTHORITY TO CONVEY.—(1) Subject to subsections (b) through (f), the Secretary of the Army (hereinafter in this section referred to as the "Secretary") is authorized to make the conveyances described in paragraphs (2) and (3).

(2) The Secretary is authorized to convey to the city of Santa Fe, New Mexico (hereinafter in this section referred to as the "City"), all right, title, and interest of the United States in and to the southernmost 27.88 acres, more or less, of the parcel of land conveyed to the State of New Mexico in accordance with the Act of June 19, 1956 (70 Stat. 296). Such 27.88 acre parcel is currently being leased to the City as a public park.

(3) The Secretary is also authorized to convey to the New Mexico State Armory

Board (hereinafter in this section referred to as the "Board"), all right, title, and interest of the United States in and to the northernmost 21.61 acres, more or less, of the parcel of land conveyed to the State of New Mexico in accordance with the Act of June 19, 1956 (70 Stat. 296). Such 21.61 acre parcel currently comprises the State headquarters and other facilities of the New Mexico National Guard.

(b) CONDITIONS.—The lands conveyed by the Secretary under subsection (a) shall be subject to the following conditions:

(1) That the City shall, in accordance with the agreement entered into under subsection (d), provide to the Board a site of not less than 250 acres determined by the Board to be acceptable for the construction of—

(A) an armory for all New Mexico National Guard units located in Santa Fe, New Mexico;

(B) an organizational maintenance shop;

(C) a United States property and fiscal office building and warehouse;

(D) a headquarters complex for the New Mexico National Guard;

(E) a local training area for the New Mexico National Guard units;

(F) a complex for the New Mexico Army National Guard officer candidate school and noncommissioned officer academy; and

(G) additional facilities specified by the National Guard Bureau or the New Mexico State Armory Board.

(2) That the Board shall use the land provided to it by the City pursuant to paragraph (1) for the training and support of the National Guard of New Mexico, and for other military purposes, and that if the site ever ceases to be used for such purposes, all right, title, and interest in and to such property shall revert to and become the property of the United States which shall have the immediate right of entry thereon.

(c) MINERAL RIGHTS.—The conveyances made by the Secretary under subsection (a) shall reserve all mineral rights, including oil and gas, to the United States in accordance with the Act of June 19, 1956 (70 Stat. 296).

(d) GENERAL AUTHORITY.—In order to implement the land exchange authorized by this section, the Secretary is authorized to enter into agreements with the City, the Board, and such other parties the Secretary determines are necessary to effectuate the purpose of this section.

(e) LEGAL DESCRIPTION OF LANDS.—The exact acreage and legal description of the site provided by the City to the Board in accordance with subsection (b) shall be determined by surveys that are satisfactory to the Secretary. The cost of any such surveys shall be borne by the City or the Board.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such other terms and conditions with respect to the transaction authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2192. COMMUNITY PLANNING ASSISTANCE

The Secretary of Defense may use funds appropriated to the Department of Defense for fiscal year 1987 to provide planning assistance to local communities if the Secretary determines that the financial resources available to the community (by grant or otherwise) are inadequate. The Secretary may use such funds to assist communities located near homeports proposed under the Naval Strategic Dispersal Program at Ingleside, Texas, and other Gulf Coast sites. For fiscal year 1987, not to exceed $200,000 may be used for this purpose at Gulf Coast sites.

SEC. 2193. RELEASE OF CERTAIN USE RIGHTS HELD BY THE UNITED STATES

(a) IN GENERAL.—The Administrator of General Services shall release to the Virginia Port Authority, an instrumentality of the Commonwealth of Virginia, all residuary rights of use held by the United States in three warehouses located in the city of Norfolk, Virginia, within the area operated as a public port facility and known as the Norfolk International Terminals.

(b) TIME LIMITATION; COMPENSATION.—The Administrator of General Services shall execute such documents and take such other actions as may be necessary to release, within 180 days after the date of the enactment of this Act, the rights referred to in subsection (a). The release shall be made without any compensation in addition to compensation paid to the United States for such warehouses and other facilities by the city of Norfolk, Virginia, in 1968.

SEC. 2194. LEASE OF PROPERTY AT THE NAVAL WEAPONS STATION, CHARLESTON, SOUTH CAROLINA

(a) IN GENERAL.—The Secretary of the Navy is authorized to lease to the South Carolina Ports Authority approximately 118 acres of land, together with improvements thereon, at the Naval Weapons Station, Charleston, South Carolina.

(b) TERM OF LEASE.—The lease entered into under subsection (a) may be for such term as the Secretary determines appropriate, but in no event to exceed 25 years.

(c) CONSIDERATION.—In addition to the fair rental value to be paid by the South Carolina Ports Authority for the premises leased pursuant to this section, such Authority shall pay for the cost of replacing certain facilities on the leased premises. The replacement facilities shall be constructed in a manner and at a site determined by the Secretary.

(d) AUTHORITY TO DEMOLISH AND CONSTRUCT FACILITIES.—The Secretary may, under the terms of the lease, authorize the South Carolina Ports Authority to demolish existing facilities on the leased land and to construct new facilities on such land for the use of such Authority.

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AND MILITARY APPLICATIONS OF NUCLEAR ENERGY AUTHORIZATION

SEC. 3101. SHORT TITLE

This division may be cited as the "National Security Programs Authorization Act for Fiscal Year 1987".

TITLE I—NATIONAL SECURITY PROGRAMS

SEC. 3111. OPERATING EXPENSES

Funds are authorized to be appropriated to the Department of Energy for fiscal year 1987 for operating expenses incurred in carrying out national security programs (including scientific research and development in support of the Armed Forces, strategic and critical materials necessary for the common defense, and military applications of nuclear energy and related management and support activities) as follows:

(1) For weapons activities, $3,603,379,000.

(2) For materials production, $1,563,390,000.

(3) For defense waste and byproducts management, $455,050,000.

(4) For verification and control technology, $95,500,000.

(5) For nuclear safeguards and security, $61,100,000.

(6) For security investigations, $33,300,000.

(7) For naval reactors development, $509,800,000.

SEC. 3112. PLANT AND CAPITAL EQUIPMENT

Funds are authorized to be appropriated to the Department of Energy for fiscal year 1987 for plant and capital equipment (including planning, construction, acquisition, and modification of facilities, land acquisition related thereto, and acquisition and fabrication of capital equipment not related to construction) necessary for national security programs as follows:

(1) For weapons activities:

Project 87-D-101, general plant projects, various locations, $29,000,000.

Project 87-D-121, general plant projects, various locations, $32,000,000.

Project 87-D-104, safeguards and security enhancements, phase II, Lawrence Livermore National Laboratory, Livermore, California, $2,000,000.

Project 87-D-123, protective clothing decontamination facility, Rocky Flats Plant, Golden, Colorado, $500,000.

Project 87-D-130, receiving and shipping facility, Pinellas Plant, Saint Petersburg, Florida, $300,000.

Project 86-D-103, decontamination and waste treatment facility, Lawrence Livermore National Laboratory, Livermore, California, $0, for a total project authorization of $3,700,000.

Project 86-D-104, strategic defense facility, Sandia National Laboratories, Albuquerque, New Mexico, $13,000,000, for a total project authorization of $17,000,000.

Project 86-D-105, instrumentation systems laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $5,800,000, for a total project authorization of $12,000,000.

Project 86-D-106, laboratory data communications center, Los Alamos National Laboratory, Los Alamos, New Mexico, $12,000,000, for a total project authorization of $15,000,000.

Project 86-D-122, structural upgrade of existing plutonium facilities, Rocky Flats Plant, Golden, Colorado, $0, for a total project authorization of $3,000,000.

Project 86-D-123, environmental hazards elimination, various locations, $0, for a total project authorization of $8,700,000.

Project 86-D-124, safeguards and site security upgrading, phase II, Mound Plant, Miamisburg, Ohio, $1,880,000, for a total project authorization of $4,880,000.

Project 86-D-125, safeguards and site security upgrade, phase II, Pantex Plant, Amarillo, Texas, $8,410,000, for a total project authorization of $9,910,000.

Project 86-D-130, Tritium loading facility replacement, Savannah River Plant, Aiken, South Carolina, $29,700,000, for a total project authorization of $34,700,000.

Project 85-D-102, nuclear weapons research, development, and testing facilities revitalization, phase I, various locations, $29,950,000, for a total project authorization of $130,750,000.

Project 85-D-103, safeguards and security enhancements, Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore, California, $6,500,000, for a total project authorization of $27,600,000.

Project 85-D-105, combined device assembly facility, Nevada Test Site, Las Vegas, Nevada, $9,400,000, for a total project authorization of $24,000,000.

Project 85-D-106, hardened engineering test building, Lawrence Livermore National Laboratory, Livermore, California, $330,000,

for a total project authorization of $3,030,000.

Project 85-D-112, enriched uranium recovery improvements, Y-12 Plant, Oak Ridge, Tennessee, $19,000,000, for a total project authorization of $38,800,000.

Project 85-D-113, powerplant and steam distribution system, Pantex Plant, Amarillo, Texas, $1,790,000, for a total project authorization of $24,790,000.

Project 85-D-115, renovate plutonium building utility systems, Rocky Flats Plant, Golden, Colorado, $13,440,000, for a total project authorization of $34,040,000.

Project 85-D-121, air and water pollution control facilities, Y-12 Plant, Oak Ridge, Tennessee, $0, for a total project authorization of $19,000,000.

Project 85-D-125, tactical bomb production facilities, various locations, $12,800,000, for a total project authorization of $28,800,000.

Project 84-D-102, radiation-hardened integrated circuit laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $3,000,000, for a total project authorization of $40,500,000.

Project 84-D-107, nuclear testing facilities revitalization, various locations, $13,300,000, for a total project authorization of $79,240,000.

Project 84-D-112, Trident II warhead production facilities, various locations, $14,500,000, for a total project authorization of $155,200,000.

Project 84-D-113, Antisubmarine Warfare/Standoff Weapon Warhead production facilities, various locations, $0, and not more than $5,000,000 of the funds authorized for such project in fiscal year 1986 may be obligated or expended for such project, for a total project authorization of $5,000,000.

Project 84-D-124, environmental improvements, Y-12 Plant, Oak Ridge, Tennessee, $0, for a total project authorization of $29,000,000.

Project 84-D-211, safeguards and site security upgrading, Y-12 Plant, Oak Ridge, Tennessee, $27,220,000, for a total project authorization of $50,220,000.

Project 82-D-107, utilities and equipment restoration, replacement, and upgrade, phase III, various locations, $97,904,000, for a total project authorization of $838,304,000.

Project 82-D-144, simulation technology laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $6,000,000, for a total project authorization of $40,000,000.

(2) For materials production:

Project 87-D-146, general plant projects, various locations, $35,980,000.

Project 87-D-149, reduced chemical discharges to process sewers, Richland, Washington, $3,150,000.

Project 87-D-159, environmental, health, and safety improvements, phase I, Feed Materials Production Center, Fernald, Ohio, $10,000,000.

Project 86-D-149, productivity retention program, phases I and II, various locations, $71,625,000, for a total project authorization of $95,825,000.

Project 86-D-150, in-core neutron monitoring system, N reactor, Richland, Washington, $2,760,000, for a total project authorization of $7,220,000.

Project 86-D-151, PUREX electrical system upgrade, Richland, Washington, $3,780,000, for a total project authorization of $6,280,000.

Project 86-D-152, reactor electrical distribution system, Savannah River, South Carolina, $8,410,000, for a total project authorization of $10,410,000.

Project 86-D-153, additional line III furnace, Savannah River, South Carolina, $7,605,000, for a total project authorization of $9,105,000.

Project 86-D-154, effluent treatment facility, Savannah River, South Carolina, $0, for a total project authorization of $2,500,000.

Project 86-D-156, plantwide safeguards systems, Savannah River, South Carolina, $13,610,000, for a total project authorization of $16,610,000.

Project 86-D-157, hydrofluorination system—FB-line, Savannah River, South Carolina, $2,310,000, for a total project authorization of $4,510,000.

Project 85-D-139, fuel processing restoration, Idaho Fuels Processing Facility, Idaho National Engineering Laboratory (INEL), Idaho, $36,530,000, for a total project authorization of $58,530,000.

Project 85-D-140, productivity and radiological improvements, Feed Materials Production Center, Fernald, Ohio, $23,500,000, for a total project authorization of $41,500,000.

Project 85-D-145, fuel production facility, Savannah River, South Carolina, $33,500,000, for a total project authorization of $59,300,000.

Project 84-D-134, safeguards and security improvements, plantwide, Savannah River, South Carolina, $7,515,000, for a total project authorization of $34,415,000.

Project 84-D-135, process facility modifications, Richland, Washington, $34,475,000, for a total project authorization of $66,975,000.

Project 84-D-136, enriched uranium conversion facility modifications, Y-12 Plant, Oak Ridge, Tennessee, $1,000,000, for a total project authorization of $20,600,000.

Project 82-D-124, restoration of production capabilities, phases II, III, IV, and V, various locations, $3,511,000, for a total project authorization of $352,045,000.

(3) For defense waste and byproducts management:

Project 87-D-171, general plant projects, interim waste operations and long-term waste management technology, various locations, $26,535,000.

Project 87-D-172, WESF K-3 filter upgrade, Richland, Washington, $500,000.

Project 87-D-173, 242-A evaporator crystallizer upgrade, Richland, Washington, $2,800,000.

Project 87-D-174, 241-AQ tank farm, Richland, Washington, $2,100,000.

Project 87-D-175, steam system rehabilitation, phase I, Richland, Washington, $900,000.

Project 87-D-177, test reactor area liquid radioactive waste cleanup system, phase III, Idaho National Engineering Laboratory (INEL), Idaho, $700,000.

Project 87-D-180, burial ground expansion, Savannah River, South Carolina, $6,300,000.

Project 87-D-181, diversion box and pump pit containment buildings, Savannah River, South Carolina, $1,360,000.

Project 86-D-172, B-plant F-filter, Richland, Washington, $2,949,000, for a total project authorization of $3,949,000.

Project 86-D-174, low-level waste processing and shipping system, Feed Materials Production Center, Fernald, Ohio, $9,872,000, for a total authorization of $12,372,000.

Project 86-D-175, Idaho National Engineering Laboratory security upgrade, Idaho National Engineering Laboratory (INEL), Idaho, $7,258,000, for a total project authorization of $9,258,000.

Project 85-D-158, central warehouse upgrade, Richland, Washington, $1,044,000, for a total project authorization of $6,744,000.

Project 85-D-159, new waste transfer facilities, Savannah River, South Carolina, $7,318,000, for a total project authorization of $27,318,000.

Project 85-D-160, test reactor area security system upgrade, Idaho National Engineering Laboratory (INEL), Idaho, $2,703,000, for a total project authorization of $6,953,000.

Project 81-T-105, defense waste processing facility, Savannah River, South Carolina, $123,967,000, for a total project authorization of $721,467,000.

(4) For verification and control technology:

Project 85-D-171, space science laboratory, Los Alamos, New Mexico, $2,000,000, for a total project authorization of $7,500,000.

(5) For naval reactors development:

Project 87-N-101, general plant projects, various locations, $4,800,000.

Project 87-N-102, Kesselring site facilities upgrade, Knolls Atomic Power Laboratory, West Milton, New York, $5,000,000.

Project 87-N-103, computation laboratory addition, Bettis Atomic Power Laboratory, West Mifflin, Pennsylvania, $2,300,000.

(6) For capital equipment not related to construction—

(A) for weapons activities, $287,870,000;

(B) for materials production, $126,090,000;

(C) for defense waste and byproducts management, $37,805,000;

(D) for verification and control technology, $4,200,000;

(E) for nuclear safeguards and security, $4,800,000; and

(F) for naval reactors development, $51,700,000.

SEC. 3113. UNDISTRIBUTED REDUCTIONS

(a) TOTAL AUTHORIZATION.—Notwithstanding sections 3111 and 3112, the total amount authorized to be appropriated to the Department of Energy in this division for national security programs is $7,425,225,000.

(b) REQUIREMENT FOR PROJECT REDUCTIONS.—The Secretary of Energy shall reduce such projects listed in sections 3111 and 3112 in such amounts as he determines appropriate to achieve a total reduction of $300,000,000.

SEC. 3114. BALANCED TECHNOLOGY INITIATIVE

(a) LIMITATION ON FUNDS FOR SDI.—Of the funds authorized to be appropriated in sections 3111 and 3112, not more than $356,000,000 shall be available for research, development, test, and evaluation, and other purposes, in connection with the Strategic Defense Initiative program.

(b) CONVENTIONAL MUNITIONS.—(1) Of the funds authorized to be appropriated in section 3111—

(A) $24,000,000 shall be available to Department of Energy laboratories only for research on advanced conventional munitions and warhead concepts; and

(B) $10,000,000 shall be available only to provide methodological support to the Office of Munitions of the Department of Defense.

(2) In achieving the reduction required to be made under section 3113(b), the Secretary of Energy may not apply any reduction to the amount of funds made available for the purposes specified in paragraph (1) of this subsection.

TITLE II—GENERAL PROVISIONS

PART A—RECURRING GENERAL PROVISIONS

SEC. 3121. REPROGRAMMING

(a) NOTICE TO CONGRESS.—Except as otherwise provided in this division—

(1) no amount appropriated pursuant to this division may be used for any program in excess of 105 percent of the amount authorized for that program by this division or $10,000,000 more than the amount authorized for that program by this division, whichever is the lesser, and

(2) no amount appropriated pursuant to this division may be used for any program which has not been presented to, or requested of, the Congress,

unless a period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after receipt by the appropriate committees of Congress of notice from the Secretary of Energy (hereinafter in this title referred to as the "Secretary") containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or unless each such committee before the expiration of such period has transmitted to the Secretary written notice to the effect that such committee has no objection to the proposed action.

(b) LIMITATION ON AMOUNT OBLIGATED.—In no event may the total amount of funds obligated pursuant to this division exceed the total amount authorized to be appropriated by this title.

SEC. 3122. LIMITS ON GENERAL PLANT PROJECTS

(a) IN GENERAL.—The Secretary may carry out any construction project under the general plant projects provisions authorized by this division if the total estimated cost of the construction project does not exceed $1,200,000.

(b) REPORT TO CONGRESS.—If at any time during the construction of any general plant project authorized by this division, the estimated cost of the project is revised because of unforeseen cost variations and the revised cost of the project exceeds $1,200,000, the Secretary shall immediately furnish a complete report to the appropriate committees of Congress explaining the reasons for the cost variation.

SEC. 3123. LIMITS ON CONSTRUCTION PROJECTS

(a) IN GENERAL.—Whenever the current estimated cost of a construction project, which is authorized by section 3112 of this division, or which is in support of national security programs of the Department of Energy and was authorized by any previous Act, exceeds by more than 25 percent the higher of—

(1) the amount authorized for the project; or

(2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress,

construction may not be started or additional obligations incurred in connection with the project above the total estimated cost, as the case may be, unless a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three days to a day certain) has passed after receipt by the appropriate committees of the Congress of written notice from the Secretary containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the action, or unless each committee before the expiration of such period has notified the Secretary it has no objection to the proposed action.

(b) EXCEPTION.—Subsection (a) shall not apply to any construction project which has a current estimated cost of less than $5,000,000.

SEC. 3124. FUND TRANSFER AUTHORITY

To the extent specified in appropriation Acts, funds appropriated pursuant to this division may be transferred to other agencies of the Government for the performance of the work for which the funds were appropriated, and funds so transferred may be merged with the appropriations of the agency to which the funds are transferred.

SEC. 3125. AUTHORITY FOR EMERGENCY CONSTRUCTION DESIGN

In addition to the advance planning and construction design authorized by section 3112 of this division, the Secretary may perform planning and design utilizing available funds for any Department of Energy national security program construction project whenever the Secretary determines that the design must proceed expeditiously in order to meet the needs of national defense or to protect property or human life.

SEC. 3126. FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY

Subject to the provisions of appropriation Acts, amounts appropriated pursuant to this division for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

SEC. 3127. AVAILABILITY OF FUNDS

When so specified in an appropriation Act, amounts appropriated for "Operating Expenses" or for "Plant and Capital Equipment" may remain available until expended.

PART B—MISCELLANEOUS PROVISION

SEC. 3131. COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

Notwithstanding any other provision of law, none of the funds appropriated pursuant to an authorization in this or any other Act may be used to pay any penalty, fine, forfeiture, or settlement, or to perform any work or services requested by another department or agency of the Federal Government or of any agency of a State or local government for any failure by the Department of Energy to comply with an environmental requirement in connection with any defense activity or any defense related facility in excess of the amount specifically appropriated to the Department of Energy to comply with such environmental requirement.

SEC. 3132. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE PRESIDENT'S BLUE RIBBON TASK GROUP ON NUCLEAR WEAPONS PROGRAM MANAGEMENT

(a) ESTABLISHMENT OF COUNCIL.—Chapter 7 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 179. The Nuclear Weapons Council

"(a) There is a Joint Nuclear Weapons Council (hereinafter in this section referred to as the 'Council') composed of three members as follows:

"(1) The Director of Defense Research and Engineering.

"(2) The Vice Chairman of the Joint Chiefs of Staff.

"(3) One senior representative of the Department of Energy appointed by the Secretary of Energy.

"(b)(1) Except as provided in paragraph (2), the Chairman of the Council shall be the member appointed under subsection (a)(1).

"(2) A meeting of the Council shall be chaired by the representative appointed under subsection (a)(3) whenever the matter under consideration is within the primary responsibility or concern of the Department of Energy, as determined by majority vote of the Council.

"(c)(1) The Secretary of Defense and the Secretary of Energy shall enter into an agreement with the Council to furnish necessary staff and administrative services to the Council.

"(2) The Assistant to the Secretary of Defense for Atomic Energy shall be the Staff Director of the Council.

"(d)(1) The Council shall be responsible for the following matters:

"(A) Preparing the annual Nuclear Weapons Stockpile Memorandum.

"(B) Developing nuclear weapons stockpiles options and the costs of such options.

"(C) Coordinating programming and budget matters pertaining to nuclear weapons programs between the Department of Defense and the Department of Energy.

"(D) Identifying various options for cost-effective schedules for nuclear weapons production.

"(E) Considering safety, security, and control issues for existing weapons and for proposed new weapon program starts.

"(F) Ensuring that adequate consideration is given to design, performance, and cost tradeoffs for all proposed new nuclear weapons programs.

"(G) Providing broad guidance regarding priorities for research on nuclear weapons.

"(H) Preparing comments on annual proposals for budget levels for research on nuclear weapons and transmitting those comments to the Secretary of Defense and the Secretary of Energy before the preparation of the annual budget requests by the Secretaries of those departments.

"(I) Providing—

"(i) broad guidance regarding priorities for research on improved conventional weapons, and

"(ii) comments on annual proposals for budget levels for research on improved conventional weapons,

and transmitting such guidance and comments to the Secretary of Defense before the preparation of the annual budget request of the Department of Defense.

"(e) The Council shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives a report on the actions that have been taken by the Department of Defense and the Department of Energy to implement the recommendations of the President's Blue Ribbon Task Group on Nuclear Weapons Program Management. The Council shall include in such report its recommendations on the role and composition of the staff of the Council. The Council shall submit such report to the Committees not later than March 1, 1987.".

(f) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"179. The Nuclear Weapons Council.".

(g) CHAIRMAN OF JCS TO SERVE ON COUNCIL IF THERE IS NO VICE CHAIRMAN OF JCS.—If on the date of the enactment of this section the position of Vice Chairman of the Joint Chiefs of Staff, or comparable posi-

tion, has not been established by law, the Chairman of the Joint Chiefs of Staff shall be a member of the Nuclear Weapons Council established by section 179 of title 10, United States Code, as added by subsection (a). If the position of Vice Chairman of the Joint Chiefs of Staff (or comparable position) is established by law after the date of the enactment of this section, the Chairman of the Joint Chiefs of Staff shall remain a member of such Council only until an individual has been appointed Vice Chairman of the Joint Chiefs of Staff.

(h) REPEAL.—Section 26 of the Atomic Energy Act of 1946 (42 U.S.C. 2037) is repealed.

SEC. 3133. REPORT BY SECRETARY OF ENERGY

The Secretary of Energy shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the costs and safety factors involved in constructing adequate containment facilities for nuclear reactors of the Department of Energy compared with the costs and safety factors involved in constructing a new production reactor.

SEC. 3134. EXTENSION OF DATE FOR CERTAIN CONTRACT AUTHORITY

Section 94 of the Atomic Energy Community Act of 1955 (42 U.S.C. 2394) is amended by striking out "June 30, 1986" and inserting in lieu thereof "June 30, 1996".

DIVISION D—CIVIL DEFENSE

SEC. 4101. AUTHORIZATION OF APPROPRIATIONS FOR CIVIL DEFENSE

There is hereby authorized to be appropriated for fiscal year 1987 to carry out provisions of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2251 et seq.) the sum of $111,565,000.

DIVISION E—BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION PROGRAM

SEC. 5100. SHORT TITLE

This division may be cited as the "Barry Goldwater Scholarship and Excellence in Education Act".

SEC. 5101. STATEMENT OF PURPOSES

The Congress finds that—

(1) Senator Barry Goldwater has served his country for 56 years as a soldier and statesman, including service in the United States Senate for a period of 30 years;

(2) Senator Goldwater has a distinguished record as Chairman of the Select Committee on Intelligence of the Senate and as Chairman of the Committee on Armed Services of the Senate; and

(3) Senator Goldwater has long maintained a special interest in the education of America's youth, particularly in the fields of science and mathematics; and

(4) it would, therefore, be a fitting tribute to the leadership, courage, and vision of Senator Goldwater to establish in his name a scholarship program to foster and encourage excellence in science and mathematics.

SEC. 5102. DEFINITIONS

In this division:

(1) The term "Foundation" means the Barry Goldwater Scholarship and Excellence in Education Foundation established under section 5103(a).

(2) The term "Board" means the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation established under section 5103(b).

(3) The term "fund" means the Barry Goldwater Scholarship and Excellence in Education Fund provided for under section 5108.

(4) The term "institution of higher education" means any such institution as defined by section 1201(a) of the Higher Education Act of 1965.

(5) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(6) The term "eligible person" means a citizen or national of the United States or a permanent resident alien of the United States.

SEC. 5103. ESTABLISHMENT OF THE BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

(a) There is established, as an independent establishment of the executive branch of the United States Government, the Barry Goldwater Scholarship and Excellence in Education Foundation.

(b) The Foundation shall be subject to the supervision and direction of the Board of Trustees. The Board shall be composed of 13 members, as follows:

(1) Two members from the Senate, one appointed by the majority leader and one appointed by the minority leader of the Senate.

(2) Two members of the House of Representatives, one appointed by the majority leader and one appointed by the minority leader of the House of Representatives.

(3) Eight members, not more than four of whom shall be of the same political party, to be appointed by the President, by and with the advice and consent of the Senate, at least one of whom shall be a representative of the aerospace industry and at least one of whom shall be a representative of a private foundation concerned with aerospace education.

(4) The Secretary of Education, or his designee, who shall serve ex officio as a member of the Board but shall not be eligible to serve as Chairman.

(c) The term of office of each member of the Board shall be six years, except that (1) the members first taking office shall serve as designated by the President, four for terms of two years, five for terms of four years, and four for terms of six years, and (2) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed and shall be appointed in the same manner as the original appointment for that vacancy was made.

(d) Members of the Board shall serve without pay, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

SEC. 5104. BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION AWARDS

(a)(1) The Foundation is authorized to award scholarships and fellowships to eligible persons for study in the fields of science and mathematics. Such scholarships and fellowships shall be awarded to persons as provided in this division who meet the minumum criteria established by the Foundation.

(2) Scholarships shall be awarded to outstanding undergraduate students who intend to pursue careers in mathematics and the natural sciences.

(3) Fellowships shall be awarded to outstanding graduate students who intend to pursue advanced degrees in mathematics and the natural sciences.

(4) The Foundation shall also award scholarships to eligible persons selected on the basis of nationwide competition.

(b) Recipients of scholarships and fellowships under this division shall be known as "Barry Goldwater Scholars".

(c)(1) The Foundation is authorized to award honoraria to outstanding educators, teachers, and persons who have volunteered to assist in secondary schools who have made significant contributions to improve the quality of instruction in mathematics and sciences in the secondary school as follows:

(A) To two such persons selected at large from each State.

(B) To one such person selected from each county in each State.

(2) The Board shall establish a schedule of honoraria to be awarded under paragraph (1).

(3) The Board shall adopt regulations which provide that persons affiliated with secondary schools on military reservations and with the dependent overseas school system shall be appropriately represented among those persons who receive awards under this division.

SEC. 5106. STIPENDS

Each person awarded a scholarship or fellowship under this division shall receive a stipend which shall not exceed the cost to such person for tuition, fees, books, room and board, or such lesser amount as may be prescribed by the Board.

SEC. 5107. SCHOLARSHIP CONDITIONS

(a) A person awarded a scholarship under this division may receive payments authorized under this division only during such periods as the Foundation finds that the person is maintaining satisfactory proficiency and devoting full time to study or research and is not engaging in gainful employment other than employment approved by the Foundation pursuant to regulations of the Board.

(b) The Foundation is authorized to require reports containing such information in such form and to be filed at such times as the Foundation determines to be necessary from any person awarded a scholarship under this division. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such person is making satisfactory progress in, and is devoting essentially full time to study or research, except as otherwise provided in subsection (a).

SEC. 5108. BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FUND

(a) There is established in the Treasury of the United States a trust fund to be known as the Barry Goldwater Scholarship and Excellence and Education Fund. The fund shall consist of amounts appropriated to it pursuant to section 5112.

(b) It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated to the fund. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market place. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of

such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of ⅛ of 1 percent, the rate of interest of such special obligations shall be the multiple of ⅛ of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary determines that the purchases of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue or at the market price, is not in the public interest.

(c) Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

SEC. 5109. EXPENDITURES FROM THE FUND

(a) The Secretary of the Treasury is authorized to pay to the Foundation from the interest and earnings of the fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the purposes of this division.

(b) The activities of the Foundation under this division may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. Representatives of the General Accounting Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by the Foundation pertaining to such activities and necessary to facilitate the audit.

SEC. 5110. EXECUTIVE SECRETARY

(a) There shall be an Executive Secretary of the Foundation who shall be appointed by the Board. The Executive Secretary shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board. The Executive Secretary shall carry out such other functions consistent with the provisions of this division as the Board shall prescribe.

(b) The Executive Secretary of the Foundation shall be compensated at the rate specified for employees in grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

SEC. 5111. ADMINISTRATIVE PROVISIONS

(a) In order to carry out the provisions of this division, the Foundation is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this division, except that in no case may an employee other than the Executive Secretary be compensated at a rate to exceed the maximum rate provided for employees in grade GS-15 of the General Schedule under section 5332 of title 5, United States Code;

(2) procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the rate specified at the time of such service for grade GS-18 under section 5332 of such title;

(3) prescribe such regulations as it considers necessary governing the manner in which its functions shall be carried out;

(4) receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of the Foundation, and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(5) accept and utilize the services of voluntary and noncompensated personnel and for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(6) enter into contracts or other arrangements, or make grants, to carry out the provisions of this division, and enter into such contracts or other arrangements, or make such grants, with the concurrence of two-thirds of the members of the Board, without performance or other bonds and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5);

(7) make advances, progress, and other payments which the Board considers necessary under this division without regard to the provisions of section 3324 of title 31, United States Code;

(8) rent office space in the District of Columbia; and

(9) make other necessary expenditures.

(b) The Foundation shall submit to the President and to Congress an annual report of its operations under this division.

SEC. 5112. APPROPRIATIONS AUTHORIZED

There are authorized to be appropriated to the Department of Defense $40,000,000 to be transferred to the Treasury for the fund.

DIVISION F—CHILD NUTRITION

TITLE I—REAUTHORIZATION OF CHILD NUTRITION PROGRAMS

SEC. 6101. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Section 13(p) of the National School Lunch Act (42 U.S.C. 1761(p)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 6102. COMMODITY DISTRIBUTION PROGRAM

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 6103. STATE ADMINISTRATIVE EXPENSES

Section 7(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 6104. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (c)(2), by striking out "Subject to" and all that follows through "1984" and inserting in lieu thereof "Subject to amounts appropriated to carry out this section under subsection (g)";

(2) in subsection (g)—

(A) by designating the first and second sentences as paragraphs (1) and (3), respectively; and

(B) by amending paragraph (1) (as so designated) to read as follows:

"(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for each of the fiscal years ending September 30, 1987, and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989."; and

(3) in subsection (h)(2), by striking out "1984" and inserting in lieu thereof "1989".

SEC. 6105. NUTRITION EDUCATION AND TRAINING PROGRAM

The first sentence of section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "1984" and inserting in lieu thereof "1989".

TITLE II—SCHOOL LUNCH AND BREAKFAST PROGRAMS

SEC. 6201. BASIS OF COMMODITY ASSISTANCE

Section 6(b) of the National School Lunch Act (42 U.S.C. 1755(b)) is amended—

(1) in the first sentence, by striking out "May 15" and inserting in lieu thereof "June 1"; and

(2) in the second sentence, by striking out "June 15" and inserting in lieu thereof "July 1".

SEC. 6202. INCLUSION OF WHOLE MILK AS A SCHOOL LUNCH BEVERAGE

Effective July 1, 1986, section 9(a) of the National School Lunch Act (42 U.S.C. 1758(a)) is amended—

(1) by designating the first, second, and third sentences as paragraphs (1), (3), and (4), respectively; and

(2) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.".

SEC. 6203. AUTOMATIC ELIGIBILITY FOR CERTAIN PROGRAMS

Effective July 1, 1986, section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is a member of—

"(i) a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

"(ii) an AFDC assistance unit (under the aid to families with dependent children program authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)), in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))).

"(B) Proof of receipt of food stamps or aid to families with dependent children shall be sufficient to satisfy any verification requirement imposed under paragraph (2)(C).".

SEC. 6204. LIMITATION ON MEAL CONTRACTING

Effective July 1, 1986, section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end thereof the following new subsection:

"(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced-price, and full-price reimbursable meals to all eligible children.".

SEC. 6205. CHANGE IN TUITION LIMITATION FOR PRIVATE SCHOOLS

(a) SCHOOL LUNCH PROGRAMS.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(b) SCHOOL BREAKFAST PROGRAMS.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(c) APPLICATION.—(1) The amendments made by subsections (a)(1) and (b)(1) shall apply for the fiscal year beginning on October 1, 1986, and each school year thereafter.

(2) The amendments made by subsections (a)(2) and (b)(2) shall apply for the school year beginning on July 1, 1988, and each school year thereafter.

SEC. 6206. USE OF SCHOOL LUNCH FACILITIES FOR ELDERLY PROGRAMS

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end thereof the following new subsection:

"(i) Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).".

SEC. 6207. PILOT PROJECTS FOR ADMINISTRATION OF CHILD NUTRITION PROGRAMS BY CONTRACT OR DIRECT DISBURSEMENT

(a) PILOT PROJECTS.—Section 20 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for schools, institutions, or service institutions referred to in section 10 of this Act and section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774).".

(b) CONFORMING AMENDMENT.—The first sentence of section 20(c) of the National School Lunch Act is amended by striking out "except for the pilot projects conducted under subsection (d) of this section,".

SEC. 6208. DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS

(a) SCHOOL LUNCHES.—Section 22(d) of the National School Lunch Act (42 U.S.C. 1769b(d)) (as added by section 1408(a) of the Education Amendments of 1978 (92 Stat. 2368)) is amended by striking out "and for" and all that follows through "reduced-price lunch".

(b) SCHOOL BREAKFASTS.—Section 20(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1789) is amended by striking out "and for" and all that follows through "reduced-price breakfast".

SEC. 6209. RESTORATION OF CERTAIN KINDERGARTENS TO THE SPECIAL MILK PROGRAM

Effective October 1, 1986, section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after the subsection designation;

(B) by redesignating clauses (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) in subparagraph (A) (as so redesignated), by inserting "except as provided in paragraph (2)," after "and under,";

(2) by designating the second through eighth sentences as paragraphs (3) through (9), respectively; and

(3) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.).".

SEC. 6210. IMPROVEMENT OF BREAKFAST PROGRAM MEAL PATTERN

(a) ADDITIONAL ASSISTANCE.—Effective October 1, 1986, section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended by adding at the end thereof the following new paragraphs:

"(3) The Secretary shall increase by 3 cents the annually adjusted payment for each breakfast served under this Act and section 17 of the National School Lunch Act (42 U.S.C. 1776). These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

"(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the National School Lunch Act.

"(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).".

(b) NUTRITION REQUIREMENTS.—(1) The Secretary of Agriculture shall review and revise the nutrition requirements for meals served under the breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and section 17 of the National School Lunch Act (42 U.S.C. 1766) to improve the nutritional quality of the meals, taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local food authorities.

(2) Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall promulgate regulations to implement the revisions.

SEC. 6211. EXTENSION OF OFFER VERSUS SERVE PROVISION TO THE SCHOOL BREAKFAST PROGRAM

Section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.".

SEC. 6212. STAFFING STANDARDS

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as amended by section 103) is further amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively.

TITLE III—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

SEC. 6301. COSTS FOR NUTRITION SERVICES AND ADMINISTRATION

(a) DEFINITIONS.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(3) by inserting after paragraph (3) (as so redesignated) the following new paragraph:

"(4) 'Costs for nutrition services and administration' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.".

(b) CONFORMING AMENDMENTS.—Section 17 of such Act is amended—

(1) by striking out "administrative funds" each place it appears in subsections (f)(11), (h)(2), (h)(3), and (h)(4) and inserting in lieu thereof "funds for nutrition services and administration"; and

(2) by striking out "administrative costs" each place it appears in subsection (h) and inserting in lieu thereof "costs for nutrition services and administration".

SEC. 6302. STATE ELIGIBILITY FOR WIC FUNDS

(a) ELIGIBILITY.—Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)) is amended by adding at the end thereof the following new paragraph:

"(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of

the State legislature following the date of the enactment of this Act.

SEC. 6303. PARTICIPATION REPORT

(a) BIENNIAL REPORT.—Section 17(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)) is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary shall report biennially to Congress on—

"(A) the income and nutritional risk characteristics of participants in the program;

"(B) participation in the program by members of families of migrant farmworkers; and

"(C) such other matters relating to participation in the program as the Secretary considers appropriate.".

(b) USE OF EVALUATION FUNDS FOR REPORT.—Section 17(g)(3) of such Act (as amended by section 104(2)(A)) is further amended by inserting "preparing the report required under subsection (d)(4)," after "health benefits,".

SEC. 6304. PLAN OF OPERATION AND ADMINISTRATION

(a) PLAN.—Paragraph (1) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)) is amended to read as follows:

"(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

"(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

"(C) The plan shall include—

"(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

"(ii) a description of the financial management system of the State agency;

"(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, and maternal and child health care programs;

"(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

"(v) a plan to expend funds to carry out the program during the relevant fiscal year;

"(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

"(vii) a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

"(viii) such other information as the Secretary may require.

"(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

"(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1987, and each fiscal year thereafter.

SEC. 6305. PUBLIC COMMENT

Paragraph (2) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(2)) is amended to read as follows:

"(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.".

SEC. 6306. AVAILABILITY OF PROGRAM BENEFITS

Paragraph (8) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(8)) is amended to read as follows:

"(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas).

"(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

"(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.".

SEC. 6307. REPAYMENT OF CERTAIN BENEFITS BY RECIPIENTS

Effective October 1, 1986, section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end thereof the following new paragraph:

"(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.".

SEC. 6308. PRIORITY FUNDS FOR WIC MIGRANT PROGRAMS

(a) PRIORITY FUNDING.—Effective October 1, 1986, section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) (as amended by section 104(2)(A)) is further amended by inserting after paragraph (1) the following new paragraph:

"(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.".

(b) ACCOUNTABILITY.—To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this Act.

SEC. 6309. IMPROVING STATE AGENCY ADMINISTRATIVE SYSTEMS

Section 17(g)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(3)) (as amended by sections 104(2)(A) and 303(b)) is further amended by inserting "providing technical assistance to improve State agency administrative systems," after "subsection (d)(4),".

SEC. 6310. PAPERWORK REDUCTION

Section 17(h)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall limit to a minimal level any documentation required under the preceding sentence.".

SEC. 6311. ALLOCATION STANDARDS

Section 17(h)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(3)) is amended—

(1) in the second sentence, by striking out ", which satisfy allocation guidelines established by the Secretary"; and

(2) by striking out the last sentence.

SEC. 6312. ADVANCE PAYMENTS

Effective October 1, 1986, section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended by striking out "shall" and inserting in lieu thereof "may".

SEC. 6313. AVAILABILITY OF FUNDS

(a) AVAILABILITY.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) (as so designated) the following new paragraph:

"(3)(A) Notwithstanding paragraph (2)—

"(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; or

"(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

"(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.".

(b) APPLICATION.—Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this Act.

TITLE IV—OTHER NUTRITION PROGRAMS

SEC. 6401. HEARINGS ON FEDERAL AUDIT ACTIONS UNDER THE CHILD CARE FOOD PROGRAM

Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraph (2), the"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

"(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall

afford a hearing to the institution concerning the action.".

SEC. 6402. BASIS FOR NUTRITION EDUCATION GRANTS

Section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "$75,000" each place it appears and inserting in lieu thereof "$50,000".

SEC. 6403. EXTENSION OF ALTERNATIVE MEANS OF ASSISTANCE

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end thereof the following new subsection:

"(g)(1) As used in this subsection, the term 'eligible school district' has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

"(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

"(3)(A) On request of a participating school district (and after consultation with the Comptroller General of the United States with respect to accounting procedures used to determine any losses) and subject to the availability of funds, the Secretary shall provide cash compensation to an eligible school district for losses sustained by the district as a result of the alteration of the methodology used to conduct the study referred to in section 1581(a) of such Act during the school year ending June 30, 1983.

"(B) There are authorized to be appropriated $50,000 to carry out out this paragraph, to be available without fiscal year limitation.".

SEC. 6404. NATIONAL DONATED COMMODITY PROCESSING PROGRAMS

In accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.

TITLE V—TECHNICAL CORRECTIONS

SEC. 6501. OBSOLETE PROVISIONS

(a) NUTRITION PROGRAM STAFF STUDY; TRUST TERRITORY APPROPRIATIONS.—(1) Sections 18 and 19 of the National School Lunch Act (42 U.S.C. 1767 and 1768) are repealed.

(2) The first sentence of section 3 of such Act (42 U.S.C. 1752) is amended by striking out "sections 13, 17, and 19" and inserting in lieu thereof "sections 13 and 17".

(b) STUDY OF MENU CHOICE.—Section 22 of such Act (42 U.S.C. 1769c) (as added by section 9 of the Child Nutrition Amendments of 1978 (92 Stat. 3623)) is repealed.

(c) CONFORMING AMENDMENTS.—(1) The National School Lunch Act (as amended by sections 207 and 208(a) and subsection (b)) is further amended by redesignating sections 20, 21, and 22 (42 U.S.C. 1769, 1769a, and 1769b) as sections 18, 19, and 20, respectively.

(2) Clause (3) of the first sentence of section 6(a) of such Act (42 U.S.C. 1755(a)) is amended by striking out "section 20" and inserting in lieu thereof "section 18".

SEC. 6502. OBSOLETE REFERENCES TO HEALTH, EDUCATION, AND WELFARE

(a) REFERENCES IN NATIONAL SCHOOL LUNCH ACT.—Clause (1) of the sixth sentence of section 17(a) of the National School Lunch Act (42 U.S.C., 1766(a)) is amended by striking out "Health, Education, and Walfare" and inserting in lieu thereof "Health and Human Services".

(b) REFERENCES IN CHILD NUTRITION ACT OF 1966.—(1) The Child Nutrition Act of 1966 is amended by striking out "Health, Education, and Welfare" each place it appears in section 4(a) (42 U.S.C. 1773(a)), subsections (b)(6), (b)(13), (e)(2), (k)(1), and (k)(2) of section 17 (42 U.S.C. 1786), and subsections (d)(2) and (d)(3) of section 19 (42 U.S.C. 1788) and inserting in lieu thereof "Health and Human Services".

(2) Section 19(j)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(3)) is amended by striking out "Office of Education of the Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Education".

SEC. 6503. CONFORMING AMENDMENTS

(a) DEFINITION OF SECRETARY.—Section 12(d) of the National School Lunch Act (42 U.S.C. 1760(d)) is amended by adding at the end thereof the following new paragraph:

"(8) 'Secretary' means the Secretary of Agriculture.".

(b) REDESIGNATION OF SUBSECTION.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) (as amended by sections 105, 402, and 502(b)(2)) is further amended by redesignating subsection (j) as subsection (i).

MOTION OFFERED BY MR. ASPIN

Mr. ASPIN. Mr. Speaker, I offer a motion.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. ASPIN moves to strike out all after the enacting clause of the Senate bill, S. 2638, and to insert in lieu thereof the provisions of H.R. 4428, as passed by the House, as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 1987".

SEC. 2. ORGANIZATION.

This Act is divided into five divisions as follows:

(1) Division A—Department of Defense Authorization.

(2) Division B—Military Construction Authorization.

(3) Division C—Other National Defense Authorizations.

(4) Division D—Department of Defense Reorganization.

(5) Division E—Miscellaneous General Provisions.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATION

SEC. 100. SHORT TITLE.

This division may be cited as the "Department of Defense Authorization Act, 1987".

TITLE I—PROCUREMENT

PART A—FUNDING AUTHORIZATIONS

SEC. 101. ARMY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 1987 for procurement for the Army as follows:

(1) For aircraft, $2,741,700,000.

(2) For missiles, $2,391,900,000.

(3) For weapons and tracked combat vehicles, $3,924,300,000.

(4) For ammunition, $2,100,600,000.

(5) For other procurement, $5,150,900,000, of which—

(A) $824,900,000 is for tactical and support vehicles;

(B) $2,861,500,000 is for communications and electronics equipment; and

(C) $1,464,500,000 is for other support equipment.

(b) LIMITATION ON OBLIGATIONS.—The maximum amount that may be obligated from a procurement account of the Army for fiscal year 1987 is the amount authorized to be appropriated for such account under subsection (a) plus the following:

(1) For aircraft, $22,200,000.

(2) For missiles, $0.

(3) For weapons and tracked combat vehicles, $0.

(4) For ammunition, $0.

(5) For other procurement, $47,600,000.

SEC. 102. NAVY AND MARINE CORPS.

(a) AIRCRAFT.—(1) Funds are hereby authorized to be appropriated for procurement of aircraft for the Navy for fiscal year 1987 in the amount of $9,758,000,000.

(2) The maximum amount that may be obligated for procurement of aircraft for the Navy for fiscal year 1987 is the amount authorized to be appropriated under paragraph (1).

(b) WEAPONS.—(1) Funds are hereby authorized to be appropriated for fiscal year 1987 in the total amount of $5,587,600,000 for procurement of weapons (including missiles and torpedoes) for the Navy.

(2) Funds appropriated or otherwise made available for procurement of weapons (including missiles and torpedoes) for the Navy for fiscal year 1987 may not be obligated in excess of the following amounts:

(A) For missile programs, $4,538,400,000.

(B) For torpedo programs:

For the MK-48 torpedo program, $214,800,000.

For the MK-46 torpedo program, $97,900,000.

For the MK-60 CAPTOR mine program, $59,500,000.

For the MK-50 torpedo program, $94,900,000.

For the antisubmarine rocket (ASROC) program, $13,600,000.

For the vertical Launched ASROC program, $74,300,000.

For the modification of torpedoes and related equipment, $97,700,000.

For the torpedo support equipment program, $32,500,000.

For the antisubmarine warfare range support program, $20,100,000.

(C) For other weapons:

For the MK-15 close-in weapon system program, $105,600,000.

For the MK-75 76-millimeter gun mount program, $14,900,000.

For other weapons programs, $72,700,000.

(D) For spares and repair parts, $150,700,000.

(c) SHIPBUILDING AND CONVERSION.—(1) Funds are hereby authorized to be appropriated for fiscal year 1987 for shipbuilding and conversion for the Navy in the total amount of $9,153,900,000.

(2) Funds appropriated or otherwise made available for shipbuilding and conversion for fiscal year 1987 may not be obligated in excess of the following amounts:

For the SSN-688 nuclear attack submarine program, $2,332,600,000.

For the SSN-21 nuclear attack submarine program, $454,300,000.

For the aircraft carrier service life extension program (SLEP), $83,500,000.

For the CG-47 Aegis cruiser program, $2,725,600,000.

For the DDG-51 guided missile destroyer program, $1,750,100,000.

For the LHD-1 amphibious assault ship program, $232,000,000.

For the TAO-187 fleet oiler program, $275,500,000.

For the TAGOS ocean surveillance ship program, $98,300,000.

For the AOE fast combat support ship program, $612,700,000.

For the oceanographic research ship program, $33,000,000.

For the strategic sealift and sealift enhancement ready reserve program, $48,500,000.

For the TACS auxiliary crane ship program, $61,100,000.

For service craft and landing craft, $58,900,000.

For ship contract design, $69,400,000.

For outfitting and post delivery, $393,900,000.

(d) OTHER PROCUREMENT, NAVY.—(1) Funds are hereby authorized to be appropriated for fiscal year 1987 for other procurement for the Navy in the amount of $5,848,000,000.

(2) Funds appropriated or otherwise made available for other procurement for the Navy for fiscal year 1987 may not be obligated in excess of the following amounts:

(A) For the ship support equipment program, $990,400,000.

(B) For the communications and electronics equipment program, $1,910,700,000.

(C) For aviation support equipment, $735,800,000.

(D) For the ordnance support equipment program, $1,169,100,000, of which $54,000,000 is available only for procurement of six Coherent Receiver Transmitter production kits for the MK-92 system.

(E) For civil engineering support equipment, supply support equipment, and command support equipment, $739,600,000.

(F) For spares and repair parts, $302,400,000.

(e) MARINE CORPS.—(1) Funds are hereby authorized to be appropriated for fiscal year 1987 for procurement for the Marine Corps in the amount of $1,497,100,000.

(2) Funds appropriated or otherwise made available for procurement for the Marine Corps for fiscal year 1987 may not be obligated in excess of the amount authorized to be appropriated in paragraph (1).

SEC. 103. AIR FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 1987 for procurement of aircraft and missiles and for other procurement for the Air Force as follows:

(1) For aircraft, $17,237,200,000.

(2) For missiles, $6,071,000,000.

(3) For other procurement, $8,854,800,000, of which—

(A) $975,400,000 is for munitions and associated support equipment;

(B) $300,200,000 is for vehicular equipment;

(C) $2,142,900,000 is for electronics and telecommunications equipment; and

(D) $5,535,100,000 is for other base maintenance and support equipment.

(b) LIMITATION ON OBLIGATIONS.—The maximum amount that may be obligated from a procurement account of the Air Force for fiscal year 1987 is the amount authorized to be appropriated for such account under subsection (a) plus the following:

(1) For aircraft, $423,200,000.

(2) For missiles, $61,800,000.

(3) For other procurement, $98,800,000.

SEC. 104. DEFENSE AGENCIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 1987 for the Defense Agencies in the amount of $1,406,200,000.

(b) LIMITATION OF OBLIGATION.—Funds appropriated or otherwise made available for procurement for fiscal year 1987 for the Defense Agencies may not be obligated in excess of the amount authorized to be appropriated in subsection (a).

SEC. 105. AMOUNT FOR GUARD AND RESERVE EQUIPMENT.

(a) FY87 LIMITATION ON OBLIGATIONS FOR UN-BUDGETED ITEMS.—Of the amount appropriated or otherwise made available to the Department of Defense for fiscal year 1987 for procurement, not more than $509,100,000 may be obligated or expended for procurement of equipment for the reserve components of the Armed Forces (including the National Guard) for items not included in the President's budget for fiscal year 1987, as set forth in the budget justification documents submitted to Congress in support of the budget request for the Department of Defense.

(b) FUTURE BUDGET REQUESTS FOR GUARD AND RESERVE EQUIPMENT.—Section 138 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(j) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of equipment for the reserve components of the armed forces (including the National Guard) shall be set forth separately from other amounts requested for procurement for the armed forces.".

SEC. 106. AUTHORIZATION OF APPROPRIATIONS FOR CHEMICAL DEMILITARIZATION PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Secretary of Defense for fiscal year 1987 for the destruction of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 747), in the amount of $120,100,000.

(b) LIMITATION OF OBLIGATION.—Funds appropriated or otherwise made available for procurement for fiscal year 1987 for the program described in subsection (a) may not be obligated in excess of the amount authorized to be appropriated in that subsection.

SEC. 107. STRATEGIC BOMBER CONTINGENCY FUND.

(a) DESIGNATION OF FUND.—(1) The amount of $200,000,000 described in paragraph (2) shall be administered as a Strategic Bomber Contingency Fund in accordance with this section.

(2) Of amounts appropriated for procurement of aircraft for the Air Force for fiscal year 1985 that remain available for obligation, $200,000,000 shall be available only for the purpose of the Strategic Bomber Contingency Fund under this section.

(b) AUTHORIZED USES OF AMOUNTS IN FUND.—

(1) OBLIGATION FOR ADDITIONAL LONG-LEAD ITEMS FOR B-1B AIRCRAFT.—Subject to subsection (e), the Strategic Bomber Contingency Fund shall be available for procurement of long-lead production components and subsystems for the B-1 aircraft. The Secretary of Defense shall obligate not less than $100,000,000 of such amount for procurement of such components and subsystems not later than 30 days after the later of—

(A) October 1, 1986, or

(B) the date of the enactment of an appropriation law referred to in subsection (e).

(2) COMPETITIVE ALTERNATIVE SOURCES FOR ATB.—The Secretary of Defense (subject to subsection (e)) may use amounts in the Strategic Bomber Contingency Fund not used for the purpose described in paragraph (1) to establish competitive alternative sources for the Advanced Technology Bomber.

(c) REPORT ON ATB PROGRAM.—Not later than February 1, 1987, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report concerning the progress of the Advanced Technology Bomber program.

(d) REPORT ON USE OF FUNDS.—Not later than March 1, 1987, the Secretary of Defense shall submit to such committees a report on the plans of the Secretary for unobligated funds forming the balance of the Strategic Bomber Contingency Fund (beyond the amount required to be obligated under subsection (b)(1) and other amounts obligated under subsection (b)). Such report shall describe whether, and to what extent, the Secretary plans to—

(1) use such funds for a purpose described in subsection (b); or

(2) seek the submittal of a rescission with respect to such funds.

(e) AUTHORITY SUBJECT TO APPROPRIATION ACTS.—The authority to obligate funds forming the Strategic Bomber Contingency Fund is effective only to the extent provided in an appropriation law enacted after the date of the enactment of this Act.

(f) LIMITATION ON TOTAL NUMBER OF B-1 AIRCRAFT.—The Secretary of Defense may not obligate or expend funds for the assembly or integration of more than 100 B-1 aircraft.

(g) CONGRESSIONAL NOTICE.—This section is subject to section 1512 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2627).

SEC. 108. ADVANCED TECHNOLOGY BOMBER.

(a) LIMITATION ON AMOUNT AVAILABLE FOR FY87.—(1) The Secretary of Defense may not obligate funds appropriated pursuant to authorizations in this Act for the Advanced Technology Bomber program in an amount greater than the amount appropriated for such program for fiscal year 1986 unless—

(A) the Secretary prepares an acquisition strategy for such program; and

(B) the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives a report describing the acquisition strategy for such program.

(2) If the Secretary proposes to revise the acquisition strategy prepared under paragraph (1) after the report on that strategy is submitted under that paragraph, the Secretary shall submit to the committees a report describing the proposed revision. Such a revision may not be implemented until 60 days after the date on which the report on the revision is received by those committees.

(3) The Secretary shall ensure that contracts for the Advanced Technology Bomber program are awarded in accordance with the acquisition strategy for the program.

(b) COMPETITIVE ALTERNATIVE SOURCES.—(1) The acquisition strategy prepared under subsection (a) for the Advanced Technology Bomber program shall provide that there will be competitive alternative sources available for the system (and each major subsystem) under the program during the production stage.

(2) In carrying out this subsection, the Secretary may provide that the requirement

for competitive alternative sources for a system or subsystem is satisfied even though the sources for that system or subsystem do not develop or produce identical systems if the systems developed or produced serve similar functions and compete effectively with each other.

(c) WAIVER AUTHORITY.—(1) In preparing an acquisition strategy under subsection (a), the Secretary may waive part or all of subsection (b) with respect to production under the program if the Secretary determines that the application of that subsection to production under the program—

(A) would increase the total cost for the program;

(B) would result in unacceptable delays in fulfilling the needs of the Department of Defense; or

(C) would be adverse to the national security interests of the United States.

(2) If the Secretary grants a waiver under paragraph (1), the report submitted under subsection (a) with respect to the acquisition strategy for the Advanced Technology Bomber program—

(A) shall include notice that the waiver has been made; and

(B) shall set forth the reasons for the waiver, together with supporting documentation of comparative cost and schedule estimates and other background material.

(d) FINANCIAL ANALYSIS.—(1) The Secretary of Defense shall conduct a detailed financial analysis on the projected cost of procurement of 132 advanced technology bomber aircraft. On the basis of such analysis, the President shall certify to Congress the projected cost of such procurement. Such certification shall be submitted with the submittal to Congress of the President's budget for fiscal year 1988 budget.

(2) Not more than 60 days after the date of the enactment of the Department of Defense Appropriation Act for fiscal year 1987, the Secretary shall submit to Congress a written report setting forth the results of the analysis required under paragraph (1). The Secretary shall include in such report the current estimate of the projected total cost for the procurement of 132 advanced technology bombers.

(3) The Secretary shall transmit a copy of the report under paragraph (2) to the Comptroller General of the United States for review and shall make available to the Comptroller General (consistent with those provisions of title 31, United States Code, replacing the Budget and Accounting Act, 1921, and provisions of law contained in the amendments made by Public Law 96-226) such additional data and information as the Comptroller General requires for the purposes of such review. Such data and information as the Comptroller General receives under this section shall not be disclosed to anyone other than those persons specially agreed upon by the Comptroller General and the Secretary of Defense to have access to that data and information. Any report by the Comptroller General concerning data and information provided pursuant to this section may, consistent with the classification of such report, be provided to Congress and shall be prepared with due regard to the sensitivity of the information received in such matter as to avoid disclosure of data which could adversely affect ongoing contract negotiations or the national security.

(e) DEFINITION.—In this section, the term "major subsystem", with respect to the Advanced Technology Bomber program, means a subsystem of the system developed under such program that is purchased directly by the United States and for which—

(1) the amount estimated by the Secretary of Defense for research, development, test and evaluation is 10 percent or more of the amount specified in section 139a(a)(1)(B) of this title as the research, development, test, and evaluation expenditure threshold for a major defense acquisition program; or

(2) the amount estimated by the Secretary of Defense for production is 10 percent or more of the amount specified in that section as the production expenditure threshold for a major defense acquisition program.

SEC. 109. EXTENSION OF AUTHORITY PROVIDED THE SECRETARY OF DEFENSE IN CONNECTION WITH THE NATO AIRBORNE WARNING AND CONTROL SYSTEM (AWACS) PROGRAM.

Effective on October 1, 1986, section 103(a) of the Department of Defense Authorization Act, 1982 (Public Law 97-86; 95 Stat. 1100), is amended by striking out "fiscal year 1986" both places it appears and inserting in lieu thereof "fiscal year 1987".

SEC. 110. MULTIYEAR CONTRACTS FOR FISCAL YEAR 1987.

(a) ARMY.—(1) The Secretary of the Army may not enter into a multiyear contract for procurement for the UH-60A Black Hawk and EH-60A Quick Fix Airframe Program.

(2) The Secretary of the Army may enter into a multiyear contract under section 2306(h) of title 10, United States Code, for the following programs:

(A) Patriot Missile system.

(B) Stinger Missile system.

(b) NAVY.—The Secretary of the Navy may not enter into a multiyear contract for procurement of the following programs:

(1) F/A-18 aircraft.

(2) HARM Missile.

(c) AIR FORCE.—The Secretary of the Air Force may not enter into a multiyear contract for procurement of the following programs:

(1) Defense Support Program.

(2) Complementary Expendable Launch Vehicle.

(d) LIMITATIONS ON AUTHORIZED MULTIYEAR PROCUREMENTS.—During fiscal year 1987, the Secretary of a military department may enter into a multiyear contract under section 2306(h) of title 10, United States Code, with respect to the procurement of a program only if—

(1) the multiyear contract contains options to allow changes in quantity of the end-item to be procured under the contract of not more than 30 percent in any program year; and

(2) the Secretary certifies to Congress that multiyear contracting for such program provides a saving of at least 12 percent over the amount that would be spent under annual contracts.

SEC. 111. DEPLETED URANIUM PENETRATORS.

The Secretary of Defense may only procure ammunition containing a depleted uranium penetrator component if the procurement of such component is on a Government-furnished material basis from at least two sources in the existing production base for such component.

SEC. 112. PROCUREMENT OF NEW FLIGHT INSPECTION AIRCRAFT.

(a) PROCUREMENT.—The Secretary of the Air Force shall, before the end of the 180-day period beginning on the date of the enactment of this Act, commence procurement of new flight inspection aircraft. Such procurement shall be carried out using funds—

(1) previously authorized and appropriated for such purpose; and

(2) such additional funds as the Secretary determines to be required for such procurement, to be derived from funds appropriated for fiscal year 1987 pursuant to authorizations of appropriations of this Act.

(b) COMPETITION.—The procurement described in subsection (a) shall be conducted using competitive procedures in accordance with the requirements of chapter 137 of title 10, United States Code.

(c) SPECIFICATIONS.—The performance characteristics of the aircraft required to be procured by subsection (a) shall be as specified in paragraph 2C(2) of Department of the Air Force Program Management Directive for Flight Inspection Aircraft dated July 11, 1984.

SEC. 113. AIR FORCE FIGHTER COMPETITION.

(a) MULTIYEAR CONTRACTS.—Subject to provisions of appropriations Acts, the Secretary of the Air Force may award a multiyear contract, that employs economic order quantity procurement, for the purchase of Air Defense Aircraft in accordance with section 2306(h) of title 10, United States Code, without prior notice to Congress if the results of the competitive source selection demonstrate that—

(1) a multiyear contract will yield significant savings over the amount that would have resulted under an annual contract with the selected offeror; and

(2) those savings have a positive present value.

(b) CANCELLATION CEILING.—Subject to provisions of appropriations Acts, the cancellation ceiling associated with the first year of a multiyear contract under subsection (a) may be carried as an unfunded contingent liability subject to section 2306(h)(5) of title 10, United States Code.

SEC. 114. CONTINGENT AUTHORIZATION.

Of amounts authorized in this title, the following amounts are available only to the extent that amounts are available through reductions in other parts of the Act:

(1) Missile procurement, Army, $30,000,000.

(2) Other procurement, Army, $57,300,000, to be derived from other support equipment.

(3) Aircraft procurement, Air Force, $490,400,000.

SEC. 115. UPGRADE OF A-10 WEAPONS DELIVERY SYSTEM.

(a) AUTHORITY FOR UPGRADE PROGRAM.—The Secretary of the Air Force may provide for an upgrade of the weapons delivery system of the A-10 aircraft for all inservice A-10 aircraft.

(b) SPECIFICATIONS.—The upgrade of a weapons delivery system under subsection (a) shall—

(1) include a flight control modification to improve stability during gun firing,

(2) enhance the accuracy of target strafing,

(3) provide for tactical training against moving targets,

(4) provide an accurate lateral toss-capable bombing capability, and

(5) provide for effective self-defense against likely air threats.

PART B—PROGRAM LIMITATIONS

SEC. 121. TESTING OF BRADLEY FIGHTING VEHICLE.

(a) TEST PLAN FOR SURVIVABILITY ENHANCEMENTS.—(1) The Secretary of Defense shall carry out live-fire testing of the Bradley Fighting Vehicle in accordance with this section.

(2) In developing a plan for such testing, the Secretary shall develop a plan for testing and evaluating proposed survivability enhancements for the vehicle. Such plan—

(A) shall include a proposal and an expedited schedule for testing the concept of the so-called "minimum casualty vehicle"; and

(B) shall be developed in consultation with the Assistant Secretary of Defense for Operational Test and Evaluation and the National Academy of Sciences.

(3) After developing the plan required by paragraph (2), the Secretary shall certify to Congress that the conditions and plan for the live-fire testing of the Bradley Fighting Vehicle represent the most realistic and suitable conditions and plan to evaluate the proposed survivability enhancements.

(4) The Comptroller General shall—

(A) review all materials of the Department of Defense used to develop the plan with respect to which the certification under paragraph (3) is made; and

(B) submit to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a report giving the assessment of the Comptroller General as to the realism and suitability of the conditions and plan to evaluate the proposed survivability enhancements of the Bradely Fighting Vehicle.

(b) CONDUCT OF LIVE-FIRE TESTING.—(1) The Secretary of the Army shall conduct live-fire testing of the Bradley Fighting Vehicle so as to test proposed survivability enhancements of such vehicle in accordance with the plan with respect to which the certification under subsection (a)(3) was made.

(2) The Assistant Secretary of Defense for Operational Test and Evaluation shall review the results of such testing.

(3) The Comptroller General shall provide oversight of the testing.

(4) The Assistant Secretary and the Comptroller General shall each observe the conduct of the testing.

(c) REPORTS.—(1) The Secretary of Defense shall submit to Congress a report on the results of the live-fire testing of the Bradley Fighting Vehicle.

(2) The Comptroller General shall review the report of the Secretary of Defense under paragraph (1) and shall submit to Congress a report giving the Comptroller General's evaluation of such report.

SEC. 122. OTHER LIMITATIONS ON ARMY PROCUREMENT.

(a) 120-MILLIMETER MORTAR PROGRAM.—(1) Except as provided in paragraph (3), funds appropriated or otherwise available for procurement for the Army may not be obligated for procurement of 120-millimeter mortars manufactured or assembled outside the United States or for procurement of ammunition manufactured outside the United States for 120-millimeter mortars.

(2) Funds appropriated or otherwise made available for procurement for the Army may not be obligated for procurement of 120-millimeter mortars or for ammunition for 120-millimeter mortars until the Secretary of the Army—

(A) purchases and validates a technical data package for the manufacture and assembly of such mortars; and

(B) conducts a cost-effectiveness analysis of potential domestic sources for the manufacture of such mortars using that technical data package.

(3) Paragraph (1) does not apply to procurement of mortars required—

(A) for testing, evaluation, or type classification; or

(B) for equipping the Ninth Infantry Division.

(b) COPPERHEAD PROJECTILE PROGRAM.—Funds appropriated or otherwise made available for fiscal year 1987 for procurement of ammunition for the Army may not be obligated for the Copperhead Projectile program until the Secretary of Defense certifies to Congress that a second production source for that program has been established.

(c) MOTORCYCLES.—Funds appropriated or otherwise made available for fiscal year 1987 for procurement for the Army may not be obligated for procurement of motorcycles until the Secretary of the Army certifies to Congress that the acquisition strategy of the Army for procurement of motorcycles includes consideration of—

(1) life-cycle costs;

(2) safety;

(3) maintenance; and

(4) durability.

(d) AIR-TO-AIR STINGER MISSILE.—Funds appropriated or otherwise made available for fiscal year 1987 for procurement of aircraft for the Army may not be obligated for the modification program for the air-to-air Stinger missile until—

(1) the Secretary of the Army establishes a comprehensive acquisition plan for procurement of air-to-air Stinger missiles for Army aircraft;

(2) such plan is integrated into the overall Army forward area air defense plan; and

(3) a report on such plan is submitted to the Committees on Armed Services of the Senate and House of Representatives and a period of 30 days passes after receipt of such report.

(e) 10-TON TRUCK PROGRAM.—The Secretary of the Army shall acquire and validate the technical data package for the Heavy Expanded Mobility Tactical Truck (HEMTT).

(f) OPTION TO CONTINUE PRODUCTION OF HEMMT TRUCKS.—

(1) REQUIREMENT TO PROCURE ADDITIONAL HEMMT TRUCKS.—In order to preserve the option for continued production of Heavy Expanded Mobility Tactical Trucks (HEMTT), the Secretary of the Army (subject to paragraph (3)) shall modify the existing contract for such trucks to permit the exercise of the original contract option for 412 additional HEMTT trucks in fiscal year 1986 and shall obligate $49,900,000 for procurement of such trucks under such contract option.

(2) SOURCE OF FUNDS.—Funds shall be derived for purposes of this subsection from amounts appropriated for procurement for the Army for fiscal year 1985 or 1986 that remain available for obligation.

(3) AUTHORITY SUBJECT TO APPROPRIATION ACTS.—The authority of the Secretary to exercise a contract option and obligate funds under paragraph (1) is effective only to the extent provided in appropriation laws enacted after the date of the enactment of this Act.

(4) DEADLINE FOR OBLIGATION.—Funds required to be obligated by paragraph (1) shall be obligated not later than 30 days after the later of—

(A) October 1, 1986, or

(B) the date of the enactment of an appropriation law referred to in paragraph (3).

(g) AT-4 LIGHTWEIGHT MULTIPURPOSE SYSTEM/M72E4 LIGHT ANTIARMOR WEAPON.—None of the funds appropriated pursuant to the authorizations of appropriations in this title may be obligated or expended for the AT-4 Lightweight Multipurpose System until the Secretary of the Army—

(1) completes development and operational testing of the M72E4 light antiarmor weapon;

(2) type classifies such weapon; and

(3) acquires a technical data package for such weapon.

SEC. 123. CHEMICAL MUNITIONS.

(a) PROHIBITION ON SPENDING FUNDS FOR BINARY CHEMICAL MUNITIONS.—Before October 1, 1987, funds appropriated to the Department of Defense for fiscal year 1986 or fiscal year 1987 may not be used—

(1) for procurement (including advance procurement of long-lead components) of binary chemical munitions, including the Bigeye bomb; or

(2) for the establishment of a production base for such munitions.

(b) REPORT ON LONG-RANGE STAND-OFF CHEMICAL WEAPONS.—(1) The Secretary of Defense shall submit to Congress a report on the military requirements for long-range stand-off chemical weapons. The report shall address the military advantages and disadvantages of such weapons and the potential of such weapons as a substitute for the Bigeye bomb.

(2) The report shall be submitted before the date on which the President's budget for fiscal year 1988 is submitted to Congress.

SEC. 124. DDG-51 DESTROYER PROGRAM.

(a) REPEAL OF LIMITATION.—Section 102(h) of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2501), is repealed.

(b) PLAN FOR RACER SYSTEM.—The Secretary of the Navy shall plan for the installation of the RACER system on the "second flight" of DDG-51 vessels. Such planning shall include the preparation of a ship design that includes the RACER system.

SEC. 125. BASIC POINT MISSILE SYSTEM ON AMPHIBIOUS VESSELS.

The Secretary of the Navy shall maintain in an operational status the Basic Point Defense Missile System on any amphibious vessel equipped on the date of the enactment of this Act with such system until a follow-on system, of comparable capability, is available for immediate replacement of the system on such vessel. This section does not apply to a vessel that is retired.

SEC. 126. OTHER LIMITATIONS ON NAVY PROCUREMENT.

(a) SH-2F AIRCRAFT.—Funds appropriated for fiscal year 1987 for procurement of aircraft for the Navy may be obligated for procurement of SH-2F aircraft only for aircraft that are configured so as to incorporate the T-700 engine.

(b) P-3G AIRCRAFT.—Funds appropriated for fiscal year 1987 for procurement of aircraft for the Navy may be obligated for advance procurement of P-3 aircraft—

(1) only for P-3G update IV aircraft; and

(2) only after the use of competitive procedures.

SEC. 127. LIMITATIONS ON AIR FORCE PROCUREMENT.

(a) F-15E FIGHTER PROGRAM.—None of the funds appropriated or otherwise made available to the Air Force for fiscal year 1987 for procurement may be obligated for the F-15E aircraft program until the Secretary of the Air Force—

(1) decides whether to recommend to the President that for fiscal years after fiscal year 1987 the Air Force procure the F-15E aircraft or the Advanced Tactical Fighter aircraft; and

(2) reports that decision to Congress.

(b) ADVANCED CRUISE MISSILE.—Funds appropriated or otherwise made available to the Air Force for fiscal year 1987 for procurement may not be obligated until the Secretary of the Air Force—

(1) decides whether to recommend to the President that for fiscal years after fiscal year 1987 the Air Force procure the Advanced Cruise Missile or the SHRAM II weapon system.

(2) reports that decision to Congress.

(c) C-17 AIRCRAFT PROGRAM.—Funds appropriated or otherwise made available to the Air Force for fiscal year 1987 for procurement may not be obligated for the C-17 aircraft program until 60 legislative days after the date on which the Committees on Armed Services of the Senate and House of Representatives receive the report of the Comptroller General on such program requested by the Committee on Armed Services of the House of Representatives on April 28, 1986. If a decision is made that the C-17 aircraft is not to be procured, funds available for procurement of such aircraft may be used for the procurement of additional Air Force airlift aircraft, including the C-5B aircraft.

(d) AMRAAM PROGRAM.—(1) Funds appropriated or otherwise made available for fiscal year 1987 for procurement of missiles for the Air Force may not be obligated for low-rate production procurement of the Advanced Medium-Range Air-to-Air Missile (AMRAAM) until—

(A) the results of the flight test of the performance of the missile are evaluated against the established program specifications (DS32050000B, as amended by the draft development concept paper of June 14, 1985);

(B) the Secretary of the Air Force reports such results to the Committees on Armed Services of the Senate and House of Representatives; and

(C) a period of 60 days passes after such Committees receive the report of such results.

(2) The program for flight testing the AMRAAM missile shall include testing of AMRAAM missiles that incorporate the producibility enhancements established for the program. Such testing shall be carried out before full-rate production is begun. Such production may not then be begun until the Secretary submits a report on the test results of the flight test program to the respective Committees on Armed Services and a period of 60 calendar days expire after receipt of such report.

(3) The cost of the AMRAAM program may not exceed $7,000,000,000 (in fiscal year 1984 dollars), based upon procurement of 24,000 missiles.

(e) T-46A TRAINER AIRCRAFT PROGRAM.—(1) The maximum program production cost for the T-46A Trainer aircraft program is $3,100,000,000 (in fiscal year 1986 dollars), based upon procurement of 650 production aircraft. The maximum production unit cost for such program is $4,800,000 (in fiscal year 1986 dollars). The program production cost and the production unit cost for such program determined for the purposes of this paragraph shall be determined without regard to amounts for initial spares.

(2) If during any fiscal year either maximum cost specified in paragraph (1) is exceeded, the Secretary of the Air Force may not procure any T-46A Trainer aircraft during a later fiscal year until the Secretary has conducted a competition for procurement of that aircraft.

(f) F-16 AIRCRAFT PROGRAM.—Funds appropriated or otherwise made available for fiscal year 1987 for procurement of aircraft for the Air Force may not be obligated for the F-16 aircraft program until—

(1) the Secretary of Defense, after considering the recommendations of the Joint Requirements and Management Board of the Department of Defense, establishes an acquisition plan for such program;

(2) the plan is submitted to the Committees on Armed Services of the Senate and House of Representatives; and

(3) a period of 30 days passes after receipt of such plan by the Committees.

(g) LIMITATION ON PROCUREMENT OF T-9 NOISE SUPPRESSORS.—The Secretary of the Air Force may not obligate or expend any amounts appropriated or otherwise made available to the Air Force for purposes of procuring A/F32T-9 Noise Suppressor Systems unless in procuring such systems the Secretary uses competitive procedures (within the meaning of such term in section 2302(2) of title 10, United States Code).

SEC. 128. PROHIBITION ON WITHDRAWAL OF EUROPEAN CHEMICAL STOCKPILE.

United States chemical munitions stored in Europe on the date of the enactment of this Act may not be removed from Europe unless they are replaced with binary chemical munitions stationed on the soil of at least one European member nation of the North Atlantic Treaty Organization.

TITLE II—RESEARCH, DEVELOPMENT, TEST AND EVALUATION

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal year 1987 for the use of the Armed Forces for research, development, test, and evaluation in amounts as follows:

(1) For the Army, $4,818,064,000.

(2) For the Navy (including the Marine Corps), $9,097,089,000.

(3) For the Air Force, $14,132,058,000.

(4) For the Defense Agencies, $7,124,782,000, of which—

(A) $136,800,000 is authorized for the activities of the Deputy Under Secretary of Defense, Test and Evaluation; and

(B) $11,300,000 is authorized for the Director of Operational Test and Evaluation.

(b) GENERAL AUTHORIZATION FOR CIVILIAN PAY CONTINGENCIES.—There are authorized to be appropriated for fiscal year 1987, in addition to the amounts authorized to be appropriated in subsection (a), such amounts as may be necessary for unbudgeted amounts for salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided by funds authorized to be appropriated in subsection (a).

(c) LIMITATION ON OBLIGATIONS.—The maximum amount that may be obligated from an account for which funds are authorized to be appropriated in subsection (a) is the amount authorized to be appropriated for such account under that subsection plus any amount authorized for such account under subsection (b) plus the following:

(1) For the Army, $5,000,000.

(2) For the Navy, $0.

(3) For the Air Force, $3,900,000.

(4) For the Defense Agencies, $0.

SEC. 202. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN CURRENCY PURCHASES.

There is hereby authorized to be appropriated for fiscal year 1987 the amount of $3,500,000 for the purchase of foreign currencies from the Treasury Department to pay expenses incurred in carrying out programs of the Department of Defense.

SEC. 203. LIMITATIONS ON FUNDS FOR THE ARMY.

(a) COPPERHEAD GUIDED PROJECTILE.—The Secretary of the Army may not carry out or enter into a contract for any product improvement or modifications to the Copperhead Guided Projectile until the Secretary of Defense—

(A) submits to the Committees on Armed Services of the Senate and the House of Representatives a plan that is designed to provide maximum commonality of all subsystems (to include guidance and control and fuze between the Copperhead and Five-Inch Guided Projectiles); and

(B) certifies to such Committees in writing that a second source contract has been entered into for production of the Copperhead and Five-Inch Guided Projectiles.

(b) PRODUCT IMPROVEMENT OR MODIFICATION.—For purposes of subsection (a), a product improvement or modification is any change to the production configuration of the Copperhead Guided Projectile as in effect on January 1, 1986.

(c) EXPIRATION OF LIMITATION.—The limitation in subsection (a) expires upon the enactment of a law making appropriations for the Department of Defense for fiscal year 1988.

SEC. 204. LIMITATIONS ON FUNDS FOR THE NAVY.

(a) V-22 OSPREY AIRCRAFT.—Of the funds authorized in section 201 for the Navy, not more than $340,000,000 is available for the V-22 Osprey aircraft. Not more than one-half of such amount may be obligated or expended until the Secretary of the Navy certifies to the Committees on Armed Services of the Senate and the House of Representatives in writing that—

(1) such aircraft is capable of performing the antisubmarine warfare mission currently performed by the S-3A aircraft; and

(2) such aircraft is the most cost effective aircraft to perform that mission.

(b) STANDOFF ATTACK MISSILE.—

(1) IN GENERAL.—Of the amount authorized in section 201 for the Navy, not more than $37,500,000 is available for the Standoff Land Attack Missile (SLAM) program.

(2) LIMITATION.—(A) No funds may be obligated or expended for the Standoff Land Attack Missile (SLAM) program until—

(i) the Secretary of the Navy completes a trade-off analysis of the SLAM program with the Medium Range Air-to-Surface Missile; and

(ii) 15 days of continuous session of Congress expire following the submission to Congress by the Secretary of the Navy of a report containing the results of the analysis described in clause (i).

(B) For purposes of subparagraph (A)(ii), the continuity of a session of Congress is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such period.

(c) INTER-COOLED RECOUPERATED CYCLE GAS TURBINE PROPULSION SYSTEM.—Funds appropriated for fiscal year 1987 or any previous fiscal year may not be used for research, development, test, and evaluation of the Inter-Cooled Recouperated Cycle Gas Turbine Propulsion System.

(d) MARINE INTEGRATED FIRE AND AIR SUPPORT SYSTEM (MIFASS).—Funds appropriated for fiscal year 1987 or any previous fiscal year may not be used for research, development, test, and evaluation of the Marine Corps Marine Integrated Fire and Air Support System (MIFASS).

(e) MARINE CORPS PEGASUS ENGINE.—Of the funds appropriated pursuant to authorizations in this title not less than $16,000,000 shall be used for safety and reliability improvements for the Marine Corps AV-8B aircraft Pegasus engine program.

(f) AVIONICS RACK SYSTEM.—Of the funds appropriated pursuant to authorizations in this title not less than $10,000,000 shall be used for test and evaluation of the Floating Beam Avionics Racking system and the interface of that system with the Navy's S-3A antisubmarine warfare aircraft and other aircraft.

(g) RANKINE CYCLE ENERGY RECOVERY (RACER) SYSTEM.—Funds appropriated for fiscal year 1987 may not be used for research, development, test, and evaluation for the DDG-51 class ship until the Secretary of the Navy notifies the Committees on Armed Services of the Senate and the House of Representatives that—

(1) testing of the Rankine Cycle Energy Recovery (RACER) system has resumed;

(2) testing of that system will continue through completion of land-based and at-sea testing; and

(3) compatibility of the RACER system with the second flight of the DDG-51 class ship will be maintained and no design changes will be implemented on the DDG-51 class ships that will obviate the installation or retrofit of the RACER system.

(h) LOW-COST SEEKER MISSILE.—Of the funds authorized in section 201 for the Navy, $39,704,000 is available only for the Low-Cost Seeker Missile program.

(i) FUNDS FOR LIBYAN LESSONS-LEARNED EQUIPMENT MODIFICATIONS.—Of the amount appropriated for research, development, test, and evaluation for the Navy for fiscal year 1987, $50,000,000 may not be obligated or expended until the Secretary of the Navy submits to the Committees on Armed Services of the Senate and House of Representatives a written certification that the expenditure—

(1) is directly related to the Libyan lessons-learned study; and

(2) will be used for equipment modifications and associated development, test, and evaluation that will have a significant affect on the war-fighting capacity of the United States.

(j) 5-INCH ROLLING AIRFRAME MISSILE.—Funds appropriated to the Department of Defense for fiscal year 1987 (or any prior fiscal year) may not be obligated or expended for the 5-Inch Rolling Airframe Missile until the Secretary of Defense—

(1) enters into a firm fixed price production contract for such missile with the development contractor or any other alternative production source at a total unit price of not more than $110,000 (in fiscal year 1986 dollars) for the first procurement lot of missiles with not-to-exceed options for any later purchase of such missiles at $110,000 or less; and

(2) certifies to the Committees on Armed Services of the Senate and House of Representatives that the average unit fly-away cost for the entire planned procurement of such missiles shall not exceed $85,000 per unit (using fiscal year 1986 dollars as the base year index).

(k) SYNTHETIC APERTURE RADAR TECHNOLOGY.—Of the funds authorized in section 201 for the Navy, not less than $5,000,000 shall be used for the development of Synthetic Aperture Radar (SAR) technology for satellites and systems for the ocean surveillance systems of the Navy.

SEC. 205. LIMITATION ON FUNDS FOR THE AIR FORCE.

(a) CRUISE MISSILE SHORT-RANGE ATTACK MISSILE II.—Of the funds authorized in section 201 for the Air Force, not more than $148,000,000 is available for research, development, test, and evaluation of either (but not both) the Advanced Cruise Missile or the Short-Range Attack Missile II system.

(b) AMRAAM.—Of the amount authorized in section 201 for the Air Force, not more than $39,000,000 is available for the Advanced Medium Range Air-to-Air Missile (AMRAAM) program. Funds appropriated for fiscal year 1987 may not be obligated or expended for such program until the Secretary of Defense advises the Committees on Armed Services of the Senate and House of Representatives in writing that the certification required by section 210(b) of the Department of Defense Authorization Act, 1986 (Public Law 99-145, 99 Stat. 611), remains valid.

(c) SPACE DEFENSE SYSTEM.—Of the amount authorized in section 201 for the Air Force, not more than $140,000,000 is available for the Space Defense system. None of such amount may be used for the production verification of the Miniature Homing Vehicle.

(d) LOW-COST SEEKER MISSILE.—Of the funds authorized in section 201 for the Air Force, $17,375,000 is available only for the Low-Cost Seeker Missile program.

(e) TECHNICAL ON-SITE INSPECTION.—Of the amount authorized in section 201 of the Air Force, not less than $9,850,000 shall be available for technical on-site inspection.

SEC. 206. LIMITATION ON FUNDS FOR DEFENSE AGENCIES.

(a) MEDICAL APPLICATION OF FREE ELECTRON LASER.—Of the amount authorized in section 201 for the Defense Agencies (including the Strategic Defense Initiative Organization), $15,000,000 may be used only for the application of Free-Electron Lasers for medical research and material.

(b) ASSISTANT SECRETARY OF DEFENSE (C3I).—Of funds appropriated for fiscal year 1987, not more than $488,857,000 shall be available for the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence for research, development, test, and evaluation of electronic warfare systems. Of such amount, not less than $125,000,000 is available only for the development and demonstration of the Integrated Communication Navigation Identification Avionics and the Integrated Electronic Warfare System and the Associated Very High-Speed Integrated Circuit Based Modular Architecture programs.

(c) LASER PANTOGRAPHY.—Of the amount authorized to be appropriated for the Defense Agencies in section 201 for Microwave/Millimeter Wave Monolithic Integrated Circuit Technology efforts, $4,000,000 is available only for the Laser Pantography project.

SEC. 207. CONVENTIONAL DEFENSE INITIATIVE.

(a) IN GENERAL.—In this Act, Congress commences a program of Conventional Defense Initiatives to provide an emphasis on improving the conventional weapons of the Armed Forces (and the testing of such weapons) and to enhance cooperation with the other member nations of the North Atlantic Treaty Organization. The initiative is intended to improve the fighting power and survivability of the combat forces of the United States and to raise the threshold for nuclear war.

(b) AMOUNT AUTHORIZED.—Of the amount authorized in section 201 for the Army, Navy, and Air Force, $462,313,000 is available only for the Conventional Defense Initiatives program.

SEC. 208. STRATEGIC DEFENSE INITIATIVE.

Of the amount authorized in section 201 for research, development, test, and evaluation for the Defense Agencies, not more than $2,846,000,000 is available for the Strategic Defense Initiative (SDI) program, such amount being the amount of $2,750,000,000 provided for fiscal year 1986 plus an additional $96,000,000 representing a 3.5 percent increase for inflation.

SEC. 209. TACTICAL BALLISTIC MISSILE DEFENSE.

(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense shall provide that the Strategic Defense Initiative Organization (SDIO) of the Department of Defense shall carry out a research, development, and test program in accordance with this subsection. The program shall be carried out through a separate office established within the SDIO. Through such program, the Secretary shall carry out research, development, and test of systems for defense against tactical ballistic missiles. In carrying out such program, the Secretary shall, to the extent practicable, make use of technologies for defense against intercontinental ballistic missiles developed through programs of the Strategic Defense Initiative.

(b) FUNDING.—Of the funds appropriated pursuant to the authorization in section 201 for the Strategic Defense Initiative, up to $50,000,000, shall be available to initiate development and deployment of an antitactical ballistic missile system.

SEC. 210. MODIFICATION OF LINKAGE OF DEPLOYMENT OF THE MX MISSILE AND DEVELOPMENT OF SMALL MOBILE MISSILE.

(a) LIMITATION.—The Secretary of Defense may not deploy more than 10 MX missiles until—

(1) the major elements (including the guidance and control subsystems) of a mobile missile weighing less than 37,000 pounds as a part of an intercontinental ballistic missile system have been tested;

(2) the major elements of the prototype small mobile intercontinental ballistic missile system (including the missile, the prototype mobile transporter-launcher basing system, and the command, control, and communications system) have been designed and functionally integrated and the system has been validated;

(3) contractors for the full-scale engineering development of such missile system have been selected and full-scale engineering development contracts have been awarded to those contractors;

(4) full-scale engineering development of such a mobile system has begun; and

(5) the Secretary has provided to the Committees on Armed Services of the Senate and the House of Representatives written certification that the small mobile missile system program has been structured to provide an initial operational capability of not later than December 31, 1992.

(b) REPEAL OF PRIOR MX LIMITATION.—Subsections (a) and (b) of section 1231 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 693), are repealed.

SEC. 211. COOPERATIVE MEDICAL RESEARCH PROGRAM WITH VETERANS' ADMINISTRATION.

(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense shall, in cooperation with the Administrator of Veterans' Affairs, establish a cooperative medical research program to be administered by the Secretary and the Administrator.

(b) FUNDING.—Not less than $10,000,000 of each of the following amounts is available only for the cooperative medical research program established under subsection (a):

(1) ARMY.—The amount authorized in section 201 for the Army.

(2) NAVY.—The amount authorized in section 201 for the Navy.

(3) AIR FORCE.—The amount authorized in section 201 for the Air Force.

(c) DEADLINE.—The Secretary of Defense shall, before the end of the 30-day period beginning on the date of the enactment of a law making appropriations for the Department of Defense for fiscal year 1987—

(1) establish the program required to be established under subsection (a); and

(2) make available the amounts appropriated for that program.

SEC. 212. HIGH-SPEED ANTI-RADIATION MISSILE (HARM).

No funds appropriated or otherwise made available to the Department of Defense may be used for research, development, test, and evaluation for the High-Speed Anti-Radiation Missile (HARM) unless the Secretary of Defense certifies to the Committees on Armed Services of the Senate and House of Representatives that—

(1) the Block IV design (or any derivative of the Block IV design) shall be integrated into the HARM at no cost to the government; and

(2) the development, test, and evaluation of the Low-Cost Seeker Missile compatible with the HARM shall be completed.

SEC. 213. CONVERSION OF POSITION OF DIRECTOR OF OPERATIONAL TEST AND EVALUATION TO ASSISTANT SECRETARY LEVEL.

(a) ASSISTANT SECRETARY OF DEFENSE.—Section 136 of title 10, United States Code, is amended—

(1) by striking out "eleven" in subsection (a) and inserting in lieu thereof "12"; and

(2) by adding at the end of subsection (b) the following new paragraph:

"(7) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Operational Test and Evaluation. That Assistant Secretary shall have the functions and shall perform the duties prescribed by section 136a of this title.".

(b) STAFF.—Section 136a of such title is amended by adding at the end the following new subsection:

"(i) The Assistant Secretary shall have a professional staff of not less than 40 military and civilian personnel of the Department of Defense.".

(c) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 136a of such title is amended—

(A) in subsection (a)(1)—

(i) by striking out the first sentence;

(ii) by striking out "The Director" the first place it appears and inserting in lieu thereof "The Assistant Secretary of Defense for Operational Test and Evaluation";

(iii) by striking out "of Director"; and

(iv) by striking out "The Director" the second place it appears and inserting in lieu thereof "The Assistant Secretary";

(B) by striking out "Director" each place it appears in subsections (b) through (g) and inserting in lieu thereof "Assistant Secretary"; and

(C) in subsection (h)—

(i) by striking out "the Director of" and inserting in lieu thereof "the Assistant Secretary of Defense for"; and

(ii) by striking out "Director under" and inserting in lieu thereof "Assistant Secretary under".

(2) EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended—

(A) by striking out "Director of Operational Test and Evaluation, Department of Defense."; and

(B) by striking out "(11)" after "Assistant Secretaries of Defense" and inserting in lieu thereof "(12)".

(d) CLERICAL AMENDMENTS.—

(1) HEADING.—The heading of section 136a of such title is amended to read as follows:

"§ 136a. Assistant Secretary of Defense for Operational Test and Evaluation: powers and duties".

(2) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of chapter 4 of such title is amended to read as follows:

"136a. Assistant Secretary of Defense for Operational Test and Evaluation: powers and duties.".

(e) TRANSITION.—The conversion by the amendments made by this section of the position of Director of Operational Test and Evaluation of the Department of Defense to Assistant Secretary of Defense for Operational Test and Evaluation shall not affect the appointment in such position of the person serving in such position on the date of the enactment of this Act.

SEC. 214. LIVE-FIRE TESTING AND OPERATIONAL TESTING.

(a) TESTING REQUIREMENTS.—

(1) IN GENERAL.—Chapter 139 of title 10, United States Code, is amended by adding at the end the following new sections:

"§ 2364. Live-fire testing: covered systems, major munitions programs, and missile programs

"(a) REQUIREMENTS.—The Secretary of Defense shall provide that—

"(1) a contract for production of a covered system may not be entered into until live-fire testing of the system is completed in accordance with this section; and

"(2) a contract for production of a major munitions program or a missile program may not be entered into until live-fire testing of the program is completed in accordance with this section.

"(b) DIRECTOR OF LIVE-FIRE TESTING.—

"(1) APPOINTMENT.—There is in the Department of Defense a Director of Live-Fire Testing. The Director shall be appointed from civilian life by the Secretary of Defense and shall be under the Director of Defense Research and Engineering.

"(2) DUTIES.—The Director shall—

"(A) before full-scale engineering development begins with respect to a covered system, major munitions program, or missile program—

"(i) review the adequacy of the plan, schedule, and proposed funding of the Secretary of the military department concerned for live-fire testing of that system or program; and

"(ii) report to the Director of Defense Research and Engineering on the adequacy or inadequacy of the plan for such live-fire testing and (if the Director of live-fire testing determines that the plan is inadequate) on what would constitute an adequate test plan; and

"(B) while such live-fire testing is carried out, continue to review the adequacy and progress of such testing.

"(3) IMPROVEMENT OF TESTING.—(A) The Director shall carry out programs to improve the conduct of live-fire tests by the Department of Defense and shall develop improved methods, instruments, and facilities for such tests.

"(B) The Secretary of Defense shall provide to the Director specific funds for the functions of the Director under subparagraph (A).

"(4) OVERSIGHT OF TESTING.—The Director—

"(A) may observe any live-fire test conducted by the Secretary of a military department; and

"(B) shall have access to all live-fire test data and reports produced by the Secretary of a military department.

"(5) STAFF OF DIRECTOR.—The Secretary shall provide to the Director an adequate staff to enable the Director to carry out the duties of the Director under this section.

"(c) LIVE-FIRE TESTING BY SERVICE SECRETARIES.—

"(1) IN GENERAL.—The Secretary of the military department concerned shall carry out live-fire testing of each covered system, major munitions program, or missile program for which the Secretary has responsibility for development and production. Such testing—

"(A) shall be planned and funded by that Secretary; and

"(B) shall be carried out early enough during the developmental phase of the system or program to allow any design deficiency demonstrated by the testing to be corrected and integrated into the design of the system, munition, or missile before production is begun.

"(2) SUBMISSION OF TEST PLAN.—Before full-scale engineering development of the system, munitions program, or missile program is begun (or, in the case of a naval vessel, before contract design is begun), the Secretary concerned shall submit to the Director the plan, schedule, and proposed funding for live-fire testing of the system or program to be carried out by the Secretary.

"(3) REPORT TO DIRECTOR.—After such testing is completed, the Secretary concerned shall submit to the Director a report (in both classified and unclassified forms) on the test conducted by the Secretary. Such report shall include—

"(A) a complete description of the firing parameters used in the test;

"(B) an analysis of the effect on the target of each test shot, with primary emphasis on effect on potential casualties;

"(C) a comparison (including a description and justification of the merit and criteria used in carrying out the comparison) of the results of such live-fire test with results of—

"(i) any live-fire test of the system, munition, or missile that would be replaced by the system, munition, or missile tested; or

"(ii) if there is no system, munition, or missile that would be replaced by the system, munition, or missile tested or if such system, munition, or missile was not subjected to live-fire tests, any live-fire test of the system, munition, or missile that is the nearest competition to the system, munition, or missile tested;

"(D) a description of the potential shortcomings of the system, munition, or missile that were revealed by the testing and (if any were revealed) the plan of the Secretary concerned to incorporate into the design of the system, munition, or missile changes that are necessary to overcome such shortcomings and the associated costs; and

"(E) a test plan for further live-fire testing to verify that the planned design changes are effective in overcoming such shortcomings.

"(4) INDEPENDENT LIVE-FIRE TEST.—If in any case the Director determines that the plan of the Secretary of a military department for a live-fire test is inadequate to determine vulnerability of users of a system or the lethality of a munition or missile, the Director may independently plan and carry out a live-fire test of the system, munition, or missile involved. Such testing may be conducted at the same time as, or after, a similar test by the Secretary concerned. Funds for such testing shall be provided from the program budget for the program concerned.

"(d) USE OF SURROGATE FOREIGN ROUNDS OR TARGETS.—In the case of a live-fire test of a covered system for which sufficient actual foreign rounds are not available or of a major munitions program or missile program for which sufficient actual foreign targets are not available, the Director—

"(1) shall establish plans for obtaining or producing surrogate foreign rounds or surrogate foreign targets or United States targets, as appropriate;

"(2) shall test the realism of such surrogates; and

"(3) when required, shall obtain such surrogate rounds or targets.

"(e) USE OF SURROGATES FOR TESTING.—In the case of a covered system for which the Director determines that it is extraordinarily expensive to test an actual prototype or production model, the Director shall configure or produce realistic surrogates of the system for test purposes.

"(f) REPORT TO DIRECTOR, DEFENSE RESEARCH AND ENGINEERING.—Before production of a covered system, major munitions program, or missile program begins, the Director shall submit to the Director of Defense Research and Engineering a report on each live-fire test conducted with respect to that system or program. The report shall include an analysis of the adequacies and inadequacies of the test and any differences in interpretation of the Director and Secretary concerned of the firing results, and any differences and conclusions. Each such report shall be independent of, and uncoordinated with, the report of the Secretary concerned and shall be submitted in both classified and unclassified forms.

"(g) REPORT TO DEFENSE COMMITTEES.—At the conclusion of live-fire testing for a covered system, major munitions program, or missile program, the Director shall submit to the defense committees a report on such testing.

"(h) WAIVER.—The Secretary of Defense may waive the application of this section to a covered system, munitions program, or missile program if the Secretary, before such system or program enters full-scale engineering development, certifies to Congress that live-fire testing of such system or program (even if a surrogate is used as provided in subsection (e)) would be extraordinarily expensive and unnecessary.

"(i) DEFINITIONS.—In this section:

"(1) COVERED SYSTEM.—The term 'covered system' means a vehicle, weapon platform, or conventional weapon system—

"(A) that includes features designed to provide some degree of protection to users in combat; and

"(B) that is a major system within the meaning of that term in section 2302(5) of this title.

"(2) MAJOR MUNITIONS PROGRAM.—The term 'major munitions program' means—

"(A) a munitions program for which more than 1,000,000 rounds are planned to be acquired; or

"(B) a conventional munitions program that is a major system within the meaning of that term in section 2302(5) of this title.

"(3) LIVE-FIRE TESTING.—The term 'live-fire testing' means—

"(A) in the case of a covered system, testing for vulnerability and survivability of the system in combat by firing foreign conventional munitions (including all threat munitions that would likely be encountered by the system in combat) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties; and

"(B) in the case of a major munitions program or a missile program, testing for lethality by firing the munition or missile concerned at foreign targets configured for combat, including each principal foreign target against which the munition or missile is intended to be used during combat.

"(4) CONFIGURED FOR COMBAT.—The term 'configured for combat', with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous conventional materials (including all flammables and explosives) that would normally be on board in combat.

"(5) DEFENSE COMMITTEES.—The term 'defense committees' has the meaning given that term in section 2362(e)(3) of this title.

"§ 2365. Operational testing: certain major defense acquisition programs

"(a) INDEPENDENT TEST AND EVALUATION BY SERVICE SECRETARIES.—

"(1) IN GENERAL.—The Secretary of the military department concerned shall conduct an independent operational test and evaluation with respect to a major defense acquisition program under which there is to be acquired a conventional weapons system that—

"(A) is a major system within the meaning of that term in section 2302(5) of this title; and

"(B) is designed for use in combat.

"(2) LIMITATION ON PRODUCTION CONTRACTS.—(A) An operational test and evaluation required by paragraph (1) shall be conducted before a major defense acquisition program may proceed into the production stage.

"(B) A contract for production of a major defense acquisition program may not be entered into until the requirements of this section with respect to such program are fulfilled.

"(C) Subparagraph (B) does not apply to a contract for production of weapons systems that are required for operational test and evaluation required by paragraph (1).

"(3) DESCRIPTION OF INDEPENDENT TEST AND EVALUATION.—(A) Except as provided in subparagraph (B), an operational test and evaluation is not independent for purposes of this subsection if any person employed by the contractor for the system being tested is involved in any stage of the operational test and evaluation.

"(B) This paragraph does not apply to the involvement in an operational test and evaluation of a person employed by the contractor who is involved in depot-level maintenance of the system being tested to the same extent and in the same manner as that person would be involved in such maintenance in time of war.

"(b) SIDE-BY-SIDE TESTING.—

"(1) IN GENERAL.—The operational test and evaluation required by subsection (a) shall include a side-by-side test of the system being acquired with equal-cost quantities of—

"(A) the system intended to be replaced (if the system being acquired is intended to replace another system); or

"(B) the nearest, most effective competitor of the system being acquired (if the system being acquired is not intended to replace another system) that is manufactured in the free world.

"(2) COST OF SYSTEMS.—For purposes of the side-by-side test described in paragraph (1)—

"(A) the cost of the system being acquired is the projected program unit cost included in the most recent Selected Acquisition Report with respect to that system; and

"(B) the cost of the system intended to be replaced or the competitor system is the cost of acquiring that system.

"(c) INDEPENDENT ANALYSIS OF RESULTS OF OPERATIONAL TEST AND EVALUATION.—

"(1) IN GENERAL.—The Assistant Secretary for Operational Test and Evaluation shall independently analyze the results of each operational test and evaluation carried out under subsection (a). At the conclusion of that operational test and evaluation, the Assistant Secretary shall submit a report to the Secretary of Defense on that analysis.

"(2) INDEPENDENT OPERATIONAL TEST AND EVALUATION.—If in any case the Assistant Secretary determines that the operational test and evaluation carried out under subsection (a) is inadequate to determine effectiveness, suitability, vulnerability of users, or lethality, the Assistant Secretary may independently plan and carry out an operational test and evaluation of the system involved.

"(3) REIMBURSEMENT OF COSTS.—The Secretary of Defense shall provide that costs of the Assistant Secretary incurred incident to operational test and evaluation under paragraph (1) or (2) (as such costs are determined by the Assistant Secretary) shall be reimbursed to funds available to the Assistant Secretary from funds available for the system concerned.

"(d) CONTENT OF REPORTS.—Each report under subsection (c) shall include an analysis of whether the extent and realism of the test and evaluation performed were adequate to assess confidently, in comparison with the system intended to be replaced or the competitor system, each of the following to the extent appropriate with respect to the particular item or component tested:

"(1) SURVIVABILITY.—The ability of the system to survive (with primary emphasis on casualties) when hit in a combat situation by weapons likely to be encountered in such a situation.

"(2) MAINTAINABILITY.—The ability of military personnel of average skill, operating under the stress of combat, to maintain the system in an operational status.

"(3) PROBABILITY OF SYSTEM FAILURE.—The probability of system failure in a combat situation under the maintenance conditions described in paragraph (2).

"(4) MOBILITY.—The time required to move, with no prior notice, combat units containing the system in a realistic combat environment over typical deployment distances and battlefield distances.

"(5) MANEUVERABILITY.—The maneuverability of the system in a combat situation with respect to—

"(A) survival; and

"(B) firing advantage.

"(6) EFFECTIVENESS.—The effectiveness of the system as indicated by results of the side-by-side test required in subsection (b)(1).

"(e) SUBMISSION OF REPORTS TO DEFENSE COMMITTEES.—Each report of the Assistant Secretary under subsection (c) shall be submitted to the defense committees in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary and shall be accompanied by such comments as the Secretary of Defense may wish to make on such report.

"(f) APPROVAL OF TEST PLANS.—

"(1) IN GENERAL.—Operational testing of a major defense acquisition program may not be conducted until the Assistant Secretary approves in writing the adequacy of the plans (including the adequacy of projected

levels of funding) for operational test and evaluation to be conducted in connection with that program.

"(2) WAITING PERIOD.—(A) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until 15 days of continuous session of Congress expire following after the date that the defense committees receive the report required under subsection (e).

"(B) For purposes of subparagraph (A), the continuity of a session of Congress is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such period.

"(g) WAIVER.—In time of war or mobilization, the President may suspend the operation of any provision of this section.

"(h) DEFINITIONS.—In this section:

"(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' means a program subject to the Selected Acquisition Report requirements of section 139a of this title.

"(2) OPERATIONAL TEST AND EVALUATION.—The term 'operational test and evaluation' has the meaning given that term in section 136a(a)(2)(A) of this title.

"(3) DEFENSE COMMITTEES.—The term 'defense committees' has the meaning given that term in section 2362(e)(3) of this title.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

"2364. Live-fire testing: covered systems, major munitions programs, and missile programs.
"2365. Operational testing: certain major defense acquisition programs.".

(b) ANNUAL REPORT.—Subsection (g)(1) of section 136a of such title is amended—

(1) by striking out "January 15" in the second sentence and all that follows through "is prepared" and inserting in lieu thereof "10 days after the transmission of the budget for the next fiscal year pursuant to section 1105 of title 31";

(2) by striking out "evaluation and" in the third sentence and inserting in lieu thereof "evaluation,"; and

(3) by striking out "activities" in the third sentence and inserting in lieu thereof "activities, and the resources and personnel assigned to the Director to enable the Director to carry out his duties under this section".

(c) CONFORMING AMENDMENTS.—Such section is further amended—

(1) by striking out clause (i) of subsection (a)(2)(A) and inserting in lieu thereof the following:

"(i) the field test under realistic operational conditions of a production representative item of a weapon system, equipment or munition for purposes of assessing and determining the effectiveness and suitability of the weapon system, equipment, or munition for use by typical users, and, if appropriate, additional operational testing including analysis of tactical and doctrinal concepts for and key components of weapon systems, equipment, or munitions; and";

(2) in subsection (b)—

(A) by adding "and" at the end of paragraph (4);

(B) by striking out paragraph (5); and

(C) by redesignating paragraph (6) as paragraph (5);

(3) by striking out subsection (c);

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively;

(5) by striking out subsection (f);

(6) by redesignating subsection (g) (as amended by subsection (b)) as subsection (e) and in that subsection striking out "such comments" in the third sentence and inserting in lieu thereof "a detailed explanation of the points of agreement and disagreement between the Assistant Secretary and the Secretary of the military department concerned with respect to each evaluation conducted by the Secretary during the preceding fiscal year and such other comments"; and

(7) by redesignating subsection (h) and subsection (i) (as added by section 213(b)) as subsections (f) and (g), respectively.

(d) EFFECTIVE DATES.—

(1) LIVE-FIRE TESTING REQUIREMENTS.—Section 2364 of title 10, United States Code, as added by subsection (a), shall apply with respect to systems, munitions programs, and missile programs that have not begun full-scale engineering development by the end of the 90-day period beginning on the date of the enactment of this Act.

(2) OPERATIONAL TESTING REQUIREMENTS.—Section 2365 of title 10, United States Code, as added by subsection (a), and the amendments made by subsection (b) shall apply with respect to major defense acquisition programs under which, on the date of the enactment of this Act, the Secretary of Defense or the Secretary of the military department concerned has not entered into a contract to proceed beyond low-rate initial production.

SEC. 215. LIMITATION ON TESTING OF ANTI-SATELLITE WEAPONS.

(a) ASAT TESTING MORATORIUM.—The Secretary of Defense may not carry out a test of the Space Defense System (anti-satellite weapon) against an object in space until the President certifies to Congress that the Soviet Union has conducted, after the date of the enactment of this Act, a test against an object in space of a dedicated anti-satellite weapon.

(b) EXPIRATION.—The prohibition in subsection (a) expires on October 1, 1987.

SEC. 216. ADVANCED ANTI-ARMOR WEAPON SYSTEM.

(a) FEASIBILITY DEMONSTRATION OF CANDIDATE SYSTEMS.—Of the funds authorized in section 201 for the Army, $48,735,000 is authorized to be appropriated for the Advanced Anti-Armor Weapon System Medium (AAWS-M) program, but funds may be obligated for such program only if—

(1) the Secretary of the Army begins a prototype feasibility demonstration of not more than three candidate systems for such program, including a true fire-and-forget, launch, and leave candidate;

(2) the feasibility demonstration for such a system is capable of being completed within 24 months after the date of the enactment of this Act;

(3) the authority for test planning and evaluation for the feasibility demonstration is the Director of Test and Evaluation of the Department of Defense; and

(4) the actual conduct of the feasibility demonstration is carried out jointly by the Army and the Marine Corps.

(b) REQUIREMENT FOR SATISFACTION OF SERVICE ANTI-ARMOR REQUIREMENTS.—The Secretary of Defense may not authorize the initiation of full-scale engineering development of the winning AAWS-M candidate until—

(1) the Secretary of the Army certifies to the Committees on Armed Services and Appropriations of the Senate and House of Representatives that the winning system meets the anti-armor requirement of the Army; and

(2) the Secretary of the Navy, upon recommendation of the Commandant of the Marine Corps, certifies to such Committees that the winning system meets the anti-armor requirement of the Marine Corps.

SEC. 217. COORDINATION OF RESEARCH ACTIVITIES.

(a) PURPOSE.—It is the purpose of this section to strengthen coordination among Department of Defense research facilities and other organizations in the Department of Defense.

(b) FINDINGS.—The Congress finds that centralized coordination of the collection and dissemination of technological data among research facilities and other organizations within the Department of Defense is necessary (1) to ensure that personnel of the Department are currently informed about emerging technology for defense systems; and (2) to avoid unnecessary and costly duplication of research staffs and projects.

(c) DEFINITIONS.—For purposes of this section:

(1) The term "Defense research facility" means any Department of Defense facility which performs or contracts for the performance of (i) basic research, or (ii) applied research known as exploratory development.

(2) The term "milestone 0 decision" means a decision made within the Department of Defense that there is a mission need for a new major weapon system and that research and development is to begin to meet such need.

(3) The term "milestone I decision" means a selection by an appropriate official of the Department of Defense of a new major weapon system concept and a program for demonstration and validation of such concept.

(4) The term "milestone II decision" means approval by an appropriate official with the Department of Defense for the full-scale development of a new major weapon system.

(d) COORDINATION OF DEPARTMENT OF DEFENSE TECHNOLOGICAL DATA.—The Secretary of Defense shall—

(1) promote, monitor, and evaluate programs for the communication and exchange of technological data—

(A) among the Defense research facilities, combat forces, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces; and

(B) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters; and

(2) ensure, to the maximum extent practicable—

(A) that Defense research facilities are assigned broad mission requirements rather than specific hardware needs;

(B) that appropriate personnel of such facilities are assigned to serve as consultants on component and support system standardization;

(C) that the managers of such facilities have broad latitute to choose research and development projects;

(D) that technology position papers prepared by Defense research facilities are readily available to all military commands and to contractors who submit bids or proposals for Department of Defense contracts; and

(E) that, in order to promote increased consideration of technological issues early in the development process, any position papers prepared by Defense research facilities on technological issues relating to a major weapon system and any technological assessments made by such facilities in the

case of such component are made a part of the records considered for the purpose of making milestone 0, I, and II decisions.

(e) REPORT.—The Secretary of Defense shall submit to the Congress, within one year after the date of the enactment of this Act, a written report containing a description of (i) the actions taken by the Secretary for the purpose of implementing this section, and (ii) any other action taken by the Secretary for the purpose of improving the management and utilization of Defense research facilities.

SEC. 218. LIMITATION ON ESTABLISHMENT OF A FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER FOR THE STRATEGIC DEFENSE INITIATIVE PROGRAM.

(a) LIMITATION.—The Secretary of Defense may not obligate or expend any funds for the purpose of operating a Federally funded research and development center that is established for the support of the Strategic Defense Initiative Program after the date of the enactment of this Act unless—

(1) the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives a report with respect to such proposed center that provides the information described in subsection (b); and

(2) funds are specifically authorized to be appropriated for such purpose after the date of the enactment of this Act in an Act other than—

(A) an appropriations Act; or

(B) a continuing resolution.

(b) CONTENT OF REPORT.—A report submitted under subsection (a)(1) with respect to a proposed center shall include a discussion of—

(1) the ability of existing Federally funded research and development centers, Federal research laboratories, and private contractors to perform the objectives of technological integration and evaluation required by the Strategic Defense Initiative Organization;

(2) the comparative cost of having the proposed work performed by—

(A) the Strategic Defense Initiative Organization;

(B) Federally funded research and development centers in existence on the date of the enactment of this Act;

(C) by Federal research laboratories;

(D) by private contractors; or

(E) by such center;

(3) whether such center is intended to be—

(A) primarily a study and analysis center; or

(B) primarily a system engineering/system integration center;

(4) whether such center will be required or authorized to enter into contracts under which research projects would be performed by other Federally funded research and development centers, Federal research laboratories, or private contractors;

(5) whether the contract to operate such center will be awarded on a competitive basis;

(6) whether proposals with respect to the operation of such center—

(A) will be considered by the appropriate Defense Agency; and

(B) will be subjected to review by persons to be elected by the National Academy of Sciences;

(7) whether such center will be designed to prevent even the possibility of an appearance of a conflict of interest—

(A) by prohibiting any officer, employee, or member of the governing body of such center from holding any position with—

(i) the Strategic Defense Initiative Organization; or

(ii) a private contractor that has a substantial interest in the development of the Strategic Defense Initiative; and

(B) by prohibiting more than one-half of the members of the governing body of the proposed Federally Funded Research Center from simultaneously holding any position with the Strategic Defense Initiative Advisory Committee or any similar body which provides technological, scientific, or strategic advice to the Department of Defense about the Strategic Defense Initiative;

(8) whether other actions will be taken to avoid possible conflict of interest situations within such center;

(9) the role of the Department of Defense in—

(A) the selection of the staff of such center; and

(B) the internal organization of such center; and

(10) whether a prescribed minimum percentage of the annual budget of such center will be set aside for research to be conducted independently of the Department of Defense.

SEC. 219. LIMITATION ON TESTING ELECTROMAGNETIC PULSE.

During fiscal year 1987, the Secretary of the Navy may not carry out a demonstration test of an electromagnetic pulse in the Chesapeake Bay, Maryland and Virginia, in connection with the Electromagnetic Pulse Radiation Environment Simulator Program for Ships.

SEC. 220. TRANSFER OF FUNDS.

Of the amounts appropriated pursuant to authorizations of appropriations in this Act, the Secretary of Defense shall make available to the Director of Central Intelligence, from amounts other than amounts appropriated for intelligence and intelligence-related activities, the sum of $90,000,000, which shall be available as the Director may determine for the collection, processing, and analysis of intelligence to support counterintelligence, counternarcotics, and counterterrorism programs and activities within the National Foreign Intelligence Program.

TITLE III—OPERATION AND MAINTENANCE

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal year 1987 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance in amounts as follows:

For the Army, $20,742,770,000.

For the Navy, $24,437,000,000.

For the Marine Corps, $1,845,700,000.

For the Air Force, $19,562,600,000.

For the Defense Agencies, $6,728,097,000.

For the Army Reserve, $789,800,000.

For the Naval Reserve, $907,500,000.

For the Marine Corps Reserve, $64,800,000.

For the Air Force Reserve, $927,100,000.

For the Army National Guard, $1,790,100,000.

For the Air National Guard, $1,783,100,000.

For the National Board for the Promotion of Rifle Practice, $4,330,000.

For the Military Health Care Account, $1,569,503,000.

For Defense Claims, $153,100,000.

For the Court of Military Appeals, $3,400,000.

For Foreign Currency Fluctuations, Defense, $495,000,000.

For Environmental Restoration, Defense, $385,900,000.

(b) GENERAL AUTHORIZATION FOR CONTINGENCIES.—There are authorized to be appropriated for fiscal year 1987, in addition to the amounts authorized to be appropriated in subsection (a), such sums as may be necessary—

(1) for unbudgeted increases in fuel costs;

(2) for unbudgeted increases as the result of inflation in the cost of activities authorized by subsection (a); and

(3) for unbudgeted amounts for salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds authorized to be appropriated in subsection (a).

(c) LIMITATION ON OBLIGATIONS.—The maximum amount that may be obligated from an appropriation account for which funds are authorized to be appropriated by this section or section 302 or 303 is the amount authorized to be appropriated for that account plus any amount authorized under subsection (b).

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 1987 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working-capital funds in amounts as follows:

For the Army Stock Fund, $286,700,000.

For the Navy Stock Fund, $458,500,000.

For the Marine Corps Stock Fund, $44,400,000.

For the Air Force Stock Fund, $239,400,000.

For the Defense Stock Fund, $126,800,000.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS FOR ASSISTANCE TO PAN AMERICAN GAMES.

Funds are hereby authorized to be appropriated for fiscal year 1987 for assistance to the Tenth International Pan American Games in accordance with section 304 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 583), in the amount of $15,000,000.

SEC. 304. PROHIBITIONS ON MANAGING CIVILIAN PERSONNEL BY END STRENGTHS AND ON CONTROLLING PERSONNEL NOT FUNDED BY GOVERNMENT.

(a) IN GENERAL.—Section 140b of title 10, United States Code, is amended—

(1) by inserting "(a)" at the beginning of the text of such section;

(2) by inserting "and" before "(2)";

(3) by striking out ", and (3)" and all that follows through "such fiscal year";

(4) by striking out the period at the end of the second sentence and inserting in lieu thereof "or any constraint or limitation (known as an 'end-strength') on the number of such personnel who may be employed on the last day of such fiscal year."; and

(5) by adding at the end the following:

"(b) The number of, and the amount of funds available to be paid to, indirectly funded Government employees of the Department of Defense may not be—

"(1) subject to any constraint or limitation on the number of such personnel who may be employed on the last day of a fiscal year;

"(2) managed on the basis of any end-strength; or

"(3) controlled under any policy of the Secretary of a military department for control of civilian manpower resources.

"(c) In this section, the term 'indirectly funded Government employees' means civilian employees of the Department of Defense—

"(1) who are employed by industrial-type activities or commercial-type activities described in section 2208 of this title; and

"(2) whose salaries and benefits are funded from sources other than appropriated funds.".

(b) EFFECTIVE DATE.—Subsections (b) and (c) of section 140b of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1986.

(c) CONFORMING AMENDMENTS.—Section 138(c) of title 10, United States Code, is amended—

(1) by striking out paragraph (2);

(2) by redesignating paragraph (3) as paragraph (2) and in subparagraph (A) of that paragraph—

(A) by striking out "annual" before "active duty" the first place it appears in the first sentence;

(B) by striking out "the annual civilian personnel end strength level" in the first sentence and inserting in lieu thereof "projecting civilian personnel strength levels";

(C) by striking out "next fiscal year, and shall include in that report justification for the strength levels recommended and an explanation of the relationship between the personnel strength levels recommended for that fiscal year" and inserting in lieu thereof "next fiscal year. The Secretary shall include in that report justification for the strength levels recommended for active duty end strengths and projected for civilian personnel and an explanation of the relationship between such strength levels";

(3) by redesignating paragraph (4) as paragraph (3) and in that paragraph striking out "or civilian"; and

(4) by redesignating paragraph (5) as paragraph (4).

SEC. 305. CONTRACT PERSONNEL TO BE INCLUDED IN BUDGET JUSTIFICATION.

Section 2203 of title 10, United States Code, is amended by adding at the end the following new sentences: "The Secretary of Defense shall provide that the budget justification documents for such budget include information on the number of employees of contractors estimated to be working on contracts of the Department of Defense during the fiscal year for which the budget is submitted. Such information shall be set forth in terms of employee-years or such other measure as will be uniform and readily comparable with civilian personnel of the Department of Defense.".

SEC. 306. PROCUREMENT OF CERTAIN BAKERY AND DAIRY PRODUCTS OUTSIDE THE UNITED STATES.

(a) PROCUREMENT OF BAKERY AND DAIRY PRODUCTS.—Chapter 143 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2422. Bakery and dairy products: procurement outside the United States

"(a) The Secretary of Defense may authorize any element of the Department of Defense that procures bakery and dairy products for use by the armed forces outside the United States to procure any products described in subsection (b) through the use of procedures other than competitive procedures.

"(b) The products referred to in subsection (a) are bakery or dairy products produced by the Army and Air Force Exchange Service in a facility outside the United States that began operating before July 1, 1986.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2422. Bakery and dairy products: procurement outside the United States.".

SEC. 307. FUNCTIONS OF MILITARY COMMISSARIES; PURCHASE OF ALCOHOLIC BEVERAGES BY NONAPPROPRIATED FUND INSTRUMENTALITIES.

(a) IN GENERAL.—Chapter 147 of title 10, United States Code, is amended by adding at the end the following new sections:

"§ 2486. Commissary stores: merchandise that may be sold; uniform surcharges

"(a) Commissary stores are similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

"(b) Merchandise sold in commissary stores may include items in the following categories:

"(1) Health and beauty aids.
"(2) Meat and poultry.
"(3) Fish and seafood.
"(4) Produce.
"(5) Food and non-food grocery items.
"(6) Bakery goods.
"(7) Dairy products.
"(8) Tobacco products.
"(9) Delicatessen items.
"(10) Frozen foods.
"(11) Other categories designated in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense.

"(c) An adjustment of or surcharge on sales prices in commissary stores under section 2484(b) or 2685(a) of this title or for any other purpose shall be applied as a uniform percentage of the sales price of all merchandise sold in commissary stores.

"§ 2487. Commissary stores: limitations on release of sales information

"(a) In order to protect commercially valuable information, the Secretary of a military department, except as provided in subsection (b), may not release to the public those portions of computer data generated by electronic scanners used in military commissaries, and those portions of reports generated by such scanners, that contain the following information:

"(1) The unit prices of items sold.
"(2) The number of units of items sold.

"(b) Information subject to subsection (a) may be released under a written agreement. Any such agreement shall require payment for such information and shall specify the amount of such payment.

"(c) Amounts received by the United States under an agreement described in subsection (b) with respect to a commissary shall be deposited in the Commissary Trust Revolving Fund of the military department under which the commissary is operated.

"§ 2488. Nonappropriated fund instrumentalities: purchase of alcoholic beverages

"(a) The Secretary of Defense shall provide that—

"(1) covered alcoholic beverage purchases made for resale on a military installation located in the United States shall be made from the most competitive source, price and other factors considered, except that

"(2) in the case of malt beverages and wine purchased for resale on a military installation located in the contiguous States, such purchases shall be made from, and delivery shall be accepted from, a source within the State in which the military installation concerned is located.

"(b) If a military installation located in the contiguous States is located in more than one State, a source of supply in any State in which the installation is located shall be considered for the purposes of subsection (a)(2) to be a source within the State in which the installation is located.

"(c) In this section:

"(1) The term 'covered alcoholic beverage purchases' means purchases of alcoholic beverages by a nonappropriated fund instrumentality of the Department of Defense with nonappropriated funds.

"(2) The term 'State' includes the District of Columbia.".

(b) REPEAL OF LIMITATION ON FY86 FUNDS.—Section 8099 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190), is repealed.

(c) EXEMPTION FROM WRITTEN NOTICE REQUIREMENTS.—Section 2305(b) of title 10, United States Code, is amended by adding at the end of paragraph (4) the following new subparagraph:

"(E) Subparagraph (D) does not apply with respect to the award of a contract for the acquisition of perishable subsistence items.".

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

"2486. Commissary stores: merchandise that may be sold; uniform surcharges.
"2487. Commissary stores: limitation on release of sales information.
"2488. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.".

SEC. 308. AUTHORITY FOR SECRETARY OF DEFENSE TO ACCEPT GIFTS FOR THE DEFENSE DEPENDENTS' EDUCATION SYSTEM.

(a) IN GENERAL.—Chapter 155 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2605. Acceptance of gifts for defense dependents' education system

"(a) The Secretary of Defense may accept, hold, administer, and spend any gift (including any gift of an interest in real property) made on the condition that it be used in connection with the operation or administration of the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.). The Secretary may pay all necessary expenses in connection with the acceptance of a gift under this subsection.

"(b) There is established in the Treasury a fund to be known as the 'Department of Defense Dependents' Education Gift Fund'. Gifts of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the fund. The Secretary may disburse funds deposited under this subsection for the benefit or use of the defense dependent's education system, subject to the terms of the gift.

"(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

"(d)(1) Upon request of the Secretary of Defense, the Secretary of the Treasury may—

"(A) retain money, securities, and the proceeds of the sale of securities, in the Department of Defense Dependents' Education Gift Fund; and

"(B) invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securi-

ties guaranteed as to principal and interest by the United States.

"(2) The interest and profits accruing from those securities shall be deposited to the credit of the fund and may be disbursed as provided in subsection (b).

"(e) In this section, the term 'gift' includes a devise of real property or a bequest of personal property.

"(f) The Secretary of Defense shall prescribe regulations to carry out this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2605. Acceptance of gifts for defense dependents' education system.".

SEC. 309. RENOVATION OF FACILITIES.

(a) IN GENERAL.—Chapter 169 of title 10, United States Code, is amended by adding at the end of subchapter I the following new section:

"§ 2810. Renovation of facilities

"(a) The Secretary concerned may carry out renovation projects that combine maintenance, repair, and minor construction projects for an entire single-purpose facility, or one or more functional areas of a multipurpose facility, using funds available for operations and maintenance.

"(b) The amount obligated on such a renovation project may not exceed the maximum amount specified by law for a minor construction project under section 2805 of this title.

"(c) Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2810. Renovation of facilities.".

SEC. 310. PROHIBITION OF PURCHASE OF PETROLEUM PRODUCTS FROM COMPANIES PRODUCING OIL IN ANGOLA.

(a) GENERAL RULE.—The Secretary of Defense may not enter into a contract for the purchase of a petroleum product from a company if the company (or a subsidiary or partnership of the company)—

(1) is engaged in the production of petroleum products in Angola; or

(2) during the preceding 12 months has purchased petroleum products, directly or indirectly, from Angola.

(b) PETROLEUM PRODUCT DEFINED.—For the purposes of this section, the term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (including any natural gas liquid or any natural gas liquid product).

(c) EFFECTIVE DATE.—This section shall take effect six months after the date of the enactment of this Act. Purchases of petroleum products before the date on which this section takes effect shall not be considered for purposes of subsection (a)(2).

SEC. 311. PROHIBITION OF CONTRACTS FOR THE PERFORMANCE OF CERTAIN ARMY AMMUNITION ACTIVITIES.

(a) PROHIBITIONS OF CONTRACTING.—The Secretary of Defense and the Secretary of the Army may not enter into a contract for the performance by contractor personnel of functions performed by employees of the Department of Defense at the Crane Army Ammunition Activity, Crane, Indiana, or the McAlester Army Ammunition Plant, McAlester, Oklahoma.

(b) EXCEPTION.—The prohibition in subsection (a) does not apply to a contract (or the renewal of a contract) for the performance of a function that on the date of the enactment of this Act is under contract for performance by contractor personnel.

SEC. 312. EXTENSION OF AUTHORIZATION FOR HUMANITARIAN ASSISTANCE.

(a) TRANSPORTATION, ADMINISTRATION, AND DELIVERY OF HUMANITARIAN RELIEF SUPPLIES TO AFGHAN REFUGEES.—Section 305 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 617), is amended—

(1) by inserting after "sum of $10,000,000" in subsection (a) the following: "and for fiscal year 1987 the sum of $3,000,000";

(2) by striking out "for the purpose of" in subsection (a) and inserting in lieu thereof "for the purposes of (1)";

(3) by inserting after "Soviet Union" in subsection (a) the following: ", (2) paying administrative costs of providing such transportation, and (3) providing for the acquisition of transportation assets for the distribution of supplies as part of such relief"; and

(4) by adding at the end the following new subsection:

"(d) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization in subsection (a) shall remain available until expended, if so provided in appropriation Acts."

(b) DISTRIBUTION OF EXCESS NONLETHAL SUPPLIES FOR HUMANITARIAN RELIEF.—(1) Section 2547(b) of title 10, United States Code, is amended to read as follows:

"(b) Excess supplies made available for humanitarian relief purposes under this section shall be transferred—

"(1) to the Secretary of State, who shall be responsible for the distribution of such supplies; or

"(2) following notification to the Secretary of State, to a component of the Department of Defense which plans to distribute such supplies under otherwise authorized humanitarian and civic assistance programs.".

(2) There is hereby authorized to be appropriated to the Secretary of Defense for fiscal year 1987 the sum of $9,000,000 to carry out section 2547 of title 10, United States Code.

SEC. 313. NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE.

(a) PERSONNEL SERVICES.—Section 4308 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) The Secretary may provide personnel services (in addition to pay and non-travel related allowances for members of the armed forces) in carrying out the authority of the Secretary under this section and sections 4310 through 4312 of this title.".

(b) ALLOWANCES FOR COMPETITORS AT NATIONAL MATCHES.—Section 4313 of such title is amended—

(1) by striking out "draw not more than" in subsection (a) and all that follows through the end of the subsection and inserting in lieu thereof "be paid a subsistence allowance in such amount as the Secretary of the Army shall prescribe."; and

(2) by striking out "of five cents a mile" in subsection (b) and inserting in lieu thereof "in such amount as the Secretary of the Army shall prescribe".

SEC. 314. PROHIBITION ON JOINT USE OF GRAY ARMY AIRFIELD WITH CIVIL AVIATION.

The Secretary of the Army may not enter into an agreement to allow joint use of the Robert Gray Army Airfield at Fort Hood, Texas, with civil aviation.

SEC. 315. PREFERENCE FOR UNITED STATES AGRICULTURAL PRODUCTS IN COMMISSARY FOOD PURCHASES.

(a) PREFERENCE REQUIREMENT.—The Secretary of Defense shall require that, when acquiring food products through the use of competitive procedures for resale through commissary stores located in the United States, the Department of Defense give preference to United States companies that use United States agricultural commodities in the products sold to the Department of Defense.

(b) GUIDELINES.—The Secretary shall develop guidelines to implement the preference required by subsection (a). Such guidelines shall be developed and implemented not later than 60 days after the date of enactment of this Act. The Secretary shall transmit a copy of the guidelines to the Committees on Armed Services of the Senate and House of Representatives as soon as they are developed.

(c) REPORT.—The Secretary shall, not later than 120 days after the date of the enactment of this Act, submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation of this section.

SEC. 316. TRANSPORTATION OF LIVESTOCK FEED.

The Secretary of Defense may authorize the use during 1986 of National Guard equipment and personnel for transportation (including airlift) of livestock feed to drought-stricken areas of the United States.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

SEC. 401. END STRENGTHS FOR ACTIVE FORCES.

The Armed Forces are authorized strengths for active-duty personnel as of September 30, 1987, as follows:

(1) The Army, 780,800.
(2) The Navy, 583,300.
(3) The Marine Corps, 198,800.
(4) The Air Force, 606,470.

SEC. 402. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—For fiscal year 1987, the Selected Reserve of the reserve components of the Armed Forces shall be programmed to attain strengths as of September 30, 1987, of not less than the following:

(1) The Army National Guard of the United States, 456,596.
(2) The Army Reserve, 326,600.
(3) The Naval Reserve, 152,994.
(4) The Marine Corps Reserve, 43,663.
(5) The Air National Guard of the United States, 115,013.
(6) The Air Force Reserve, 80,489.
(7) The Coast Guard Reserve, 13,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

SEC. 403. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVE COMPONENTS.

(a) IN GENERAL.—Within the end strengths prescribed in section 402, the reserve components of the Armed Forces are authorized, as of September 30, 1987, the following number

of Reserves to be serving on full-time active duty or, in the case of members of the National Guard, on full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components or the National Guard:

(1) The Army National Guard of the United States, 25,731.

(2) The Army Reserve, 12,657.

(3) The Naval Reserve, 21,476.

(4) The Marine Corps Reserve, 1,745.

(5) The Air National Guard of the United States, 8,169.

(6) The Air Force Reserve, 665.

(b) AUTHORITY TO INCREASE END-STRENGTH LIMIT.—Upon a determination by the Secretary of Defense that such action is in the national interest, the end strengths prescribed by subsection (a) may be increased by a total of not more than the number equal to 2 percent of the total end strengths prescribed.

SEC. 404. MILITARY TRAINING STUDENT LOADS.

(a) IN GENERAL.—For fiscal year 1987, the components of the Armed Forces are authorized average military training student loads as follows:

(1) The Army, 76,758.

(2) The Navy, 72,483.

(3) The Marine Corps, 19,433.

(4) The Air Force, 43,911.

(5) The Army National Guard of the United States, 18,262.

(6) The Army Reserve, 15,858.

(7) The Naval Reserve, 3,493.

(8) The Marine Corps Reserve, 3,944.

(9) The Air National Guard of the United States, 3,566.

(10) The Air Force Reserve, 2,127.

(b) ADJUSTMENTS.—The average military student loads for the Army, the Navy, the Marine Corps, and the Air Force and the reserve components authorized in subsection (a) for fiscal year 1987 shall be adjusted consistent with the personnel strengths authorized in sections 401 and 402. Such adjustment shall be apportioned among the Army, the Navy, the Marine Corps, and the Air Force and the reserve components in such manner as the Secretary of Defense shall prescribe.

TITLE V—DEFENSE PERSONNEL POLICY

PART A—ACTIVE FORCES

SEC. 501. ASSIGNMENT OF ACTIVE-DUTY MEMBERS OUTSIDE THE UNITED STATES.

(a) REPEAL OF 12-WEEK REQUIREMENT.—Section 671 of title 10, United States Code, relating to assignment of members outside the United States before the completion of training, is amended by striking out "until he has had twelve weeks of basic training or its equivalent" and inserting in lieu thereof "until the member has completed basic training or its equivalent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to individuals who begin basic training on or after the date of the enactment of this Act.

SEC. 502. WEARING OF RELIGIOUS APPAREL BY MEMBERS OF THE ARMED FORCES WHILE IN UNIFORM.

(a) IN GENERAL.—Chapter 45 of title 10, United States Code, is amended—

(1) by redesignating section 774 as section 775; and

(2) by inserting after section 773 the following new section 774:

"§ 774. Religious apparel: wearing while in uniform

"(a) GENERAL RULE.—Except as provided under subsection (b), a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force.

"(b) EXCEPTIONS.—The Secretary concerned may prohibit the wearing of an item of religious apparel—

"(1) in circumstances with respect to which the Secretary determines that the wearing of the item would interfere with the performance of the member's military duties; or

"(2) if the Secretary determines, under regulations under subsection (c), that the item of apparel is not neat and conservative.

"(c) REGULATIONS.—The Secretary concerned shall prescribe regulations concerning the wearing of religious apparel by members of the armed forces under the Secretary's jurisdiction while the members are wearing the uniform. Such regulations shall be consistent with subsections (a) and (b).

"(d) RELIGIOUS APPAREL DEFINED.—In this section, the term 'religious apparel' means apparel the wearing of which is part of the observance of the religious faith practiced by the member.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking out the item relating to section 774 and inserting in lieu thereof the following:

"774. Religious apparel: wearing while in uniform.
"775. Applicability of chapter.".

(c) REGULATIONS.—The Secretary concerned shall prescribe the regulations required by section 774(c) of title 10, United States Code, as added by subsection (a), not later than the end of the 120-day period beginning on the date of the enactment of this Act.

SEC. 503. SERVICE OF MEMBERS ON STATE AND LOCAL JURIES.

(a) IN GENERAL.—Chapter 49 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 982. Members: service on State and local juries

"(a) A member of the armed forces on active duty may not be required to serve on a State or local jury if the Secretary concerned determines that such service—

"(1) would unreasonably interfere with the performance of the member's military duties; or

"(2) would adversely affect the readiness of the unit, command, or activity to which the member is assigned.

"(b) A determination by the Secretary concerned under this section is conclusive.

"(c) The Secretary concerned shall prescribe regulations for the administration of this section.

"(d) In this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"982. Members: service on State and local juries.".

SEC. 504. EXTENSION OF EXPIRING AUTHORITY FOR SPOT PROMOTIONS OF NAVY LIEUTENANTS.

Section 5721(f) of title 10, United States Code, is amended by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1987".

SEC. 505. REPEAL OF REQUIREMENT REGARDING ENLISTMENT OF WOMEN IN THE AIR FORCE DURING FISCAL YEAR 1987.

Section 551(a) of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2530), is amended by striking out "the period beginning on October 1, 1986" and all that follows through the end of the subsection and inserting in lieu thereof "fiscal year 1988, not less than 22 percent shall be women.".

SEC. 506. AUTHORITY TO EXEMPT PHYSICIANS AT UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FROM REDUCTIONS IN RETIRED PAY.

Section 2113(f) of title 10, United States Code, is amended—

(1) by inserting "(1)" after "(f)"; and

(2) by adding at the end the following:

"(2) The Board may exempt, at any time, a physician who is a member of the faculty from the restrictions in subsections (a), (b), and (c) of section 5532 of title 5, if the Board determines that such exemption is necessary to recruit or retain well-qualified physicians for the faculty of the University. An exemption granted under this paragraph shall terminate upon any break in employment with the University by a physician of three days or more. An exemption granted under this paragraph to a person shall apply to the retired pay of such person beginning with the first month after the month in which the exemption is granted.".

SEC. 507. STUDY OF REPRESENTATION OF RELIGIOUS FAITHS IN THE ARMED FORCES.

(a) FINDINGS.—The Congress finds that an imbalance exists in the representation of various religious faiths among chaplains of the Armed Forces compared to the representation of those faiths among members of the Armed Forces as a whole. While recognizing that much of this faith imbalance may be attributable to an overall shortage of clergy in the United States among religious faiths that are underrepresented among military chaplains, Congress finds that the Department of Defense has not taken sufficient steps to alleviate the existing faith imbalance.

(b) STUDY.—The Secretary of Defense shall carry out a complete study of the causes and conditions of the existing faith imbalances in the Armed Forces. The study shall include the following:

(1) A list of all religious denominations represented in the Armed Forces and the goals set by the Secretary or the Secretary concerned for the number of chaplains to serve each such religious denomination; a comparison of such goals and the actual number of chaplains for each such religious denomination for fiscal year 1987; an analysis of how such goals and the actual number of chaplains compares to the demographic representation of religious denominations in the United States at the time of the study; and recommendations on how the number of chaplains in the Armed Forces in the future can better reflect current and future demographic representation of religious denominations in the United States.

(2) An analysis of all policies, procedures of operation, and standards affecting personnel requirements of all branches of the Corps of Chaplains, and an analysis of all means to alleviate existing faith imbalances, including the use of grade retentions, continuation boards, and standby tours of duty for reserve chaplains from underrepresented faiths.

(3) A roster of chaplains for all branches and, for the purpose of establishing the number of clergy on duty and ready for mobilization, personnel data for all active duty chaplains, reserve duty chaplains, inactive reserve duty chaplains, and contract clergy.

(4) An analysis and comparison of retentions in grade and age waivers as in effect for physicians in the Armed Forces and clergy in the Armed Forces. The analysis shall include an examination of the ration-

ale and purpose of such policies as they apply to physicians versus as they apply to clergy in the Armed Forces.

(5) The names, faiths, salaries, and places of work for all contract clergy for all branches of the Armed Forces.

(c) REPORT TO CONGRESS.—Not later than 4 months after the date of the enactment of this Act, the Secretary shall submit a report on the findings of the study conducted under subsection (b) to the Committees on Armed Services of the Senate and the House of Representatives. The report shall address the effects of personnel policies, releases, and retentions in grade on existing faith imbalances in the Corps of Chaplains and shall include recommendations on how to alleviate the existing faith imbalances.

SEC. 508. EXTENSION OF MANDATORY RETIREMENT AGE FOR MEDICAL OFFICERS.

(a) GENERAL RULE.—Section 1251 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) Unless retired or separated earlier, each regular officer of the Army, Navy, or Air Force who is a medical officer shall be retired on the first day of the month following the month in which the officer becomes 67 years of age.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1251(a) of such title is amended by inserting "a medical officer or" after "other than".

(2)(A) Chapter 36 of such title is amended by inserting after section 636 the following new section:

"§ 636a. Exception to mandatory retirement for medical officers

"Sections 633, 634, 635, and 636 of this title do not apply to medical officers.".

(B) The table of sections at the beginning of subchapter III of such chapter is amended by adding at the end the following new item:

"636a. Exception to mandatory retirement for medical officers.".

PART B—RESERVE FORCES

SEC. 511. AUTHORITY FOR PRESIDENT TO CALL SELECTED RESERVE MEMBERS TO ACTIVE DUTY.

Section 673b(c) of title 10, United States Code, is amended by striking out "100,000" and inserting in lieu thereof "200,000".

SEC. 512. PAY, ALLOWANCES, AND BENEFITS FOR MEMBERS OF THE RESERVE COMPONENTS.

(a) MEDICAL AND DENTAL CARE.—(1) Section 1074a of title 10, United States Code, is amended to read as follows:

"§ 1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

"(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

"(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

"(A) active duty for a period of 30 days or less; or

"(B) inactive-duty training.

"(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

"(A) active duty for a period of 30 days or less; or

"(B) inactive-duty training.

"(b) A person described in subsection (a) is entitled to—

"(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

"(2) subsistence during hospitalization.

"(c) A member is not entitled to benefits under this section if the injury, illness, or disease, or aggravation of an injury, illness, or disease described in subsection (a)(2), is the result of the gross negligence or misconduct of the member.".

(2) The item relating to section 1074a in the table of sections at the beginning of chapter 55 of such title is amended to read as follows:

"1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days.".

(b) PAY AND ALLOWANCES FOR DISABLED MEMBERS.—Section 204 of title 37, United States Code, is amended as follows:

(1) Subsections (g) and (h) are amended to read as follows:

"(g) A member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member—

"(1) is called or ordered to active duty for a period of more than 30 days; and

"(2) is physically disabled in line of duty from injury, illness, or disease.

"(h)(1) A member of a reserve component of a uniformed service is entitled, upon request, to a portion of the monthly pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for each month for which the member demonstrates a loss of income from non-military compensation as a result of an injury, illness, or disease incurred or aggravated—

"(A) in line of duty while performing active duty for a period of 30 days or less;

"(B) in line of duty while performing inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service); or

"(C) while traveling directly to or from that duty or training.

"(2)(A) Subject to subparagraphs (B) and (C), pay and allowances paid under paragraph (1) shall be in an amount which offsets the loss of income from non-military compensation.

"(B) Pay and allowances may not be paid under paragraph (1) to a member who is enrolled in any other income protection insurance plan to the extent that such payment would result in total benefits to the member of more than the demonstrated loss of income from non-military compensation.

"(C) The total amount of pay and allowances paid under paragraph (1) and compensation paid under section 206(a) of this title for any period may not exceed the amount of pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for that period.

"(3) Pay and allowances may be paid under paragraph (1)—

"(A) for a period of not more than six months; or

"(B) for a longer period, if the Secretary concerned determines that it is in the interests of fairness and equity to do so.

"(4) A member is not entitled to benefits under this subsection if the injury, illness, disease, or aggravation of an injury, illness, or disease described in paragraph (1)(B) is the result of the gross misconduct of the member.

"(5) Regulations with respect to procedures for paying pay and allowances under paragraph (1) shall be prescribed—

"(A) by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary; and

"(B) by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.".

(2) Subsection (i) is repealed.

(3) Subsection (j) is redesignated as subsection (i).

(c) INACTIVE-DUTY TRAINING PAY FOR DISABLED MEMBERS.—Section 206(a) of title 37, United States Code, is amended by striking out "entitled to basic pay" the second place it appears and all that follows and inserting in lieu thereof the following: "entitled to basic pay—

"(1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

"(2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe; or

"(3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated—

"(A) in line of duty while performing—

"(i) active duty for a period of 30 days or less; or

"(ii) inactive-duty training; or

"(B) while traveling directly to or from that duty or training (unless such injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member).".

(d) RETIREMENT FOR DISABILITY.—(1) Sections 1204 and 1206 of title 10, United States Code, are amended by striking out "resulting from an injury".

(2)(A) The heading of section 1204 of such title is amended to read as follows:

"§ 1204. Members on active duty for 30 days or less: retirement".

(2) The heading of section 1205 of such title is amended to read as follows:

"§ 1205. Members on active duty for 30 days or less: temporary disability retired list".

(3) The heading of section 1206 of such title is amended to read as follows:

"§ 1206. Members on active duty for 30 days or less: separation".

(4) The items relating to sections 1204, 1205, and 1206 in the table of sections at the beginning of chapter 61 of such title are amended to read as follows:

"1204. Members on active duty for 30 days or less: retirement.

"1205. Members on active duty for 30 days or less: temporary disability retired list.

"1206. Members on active duty for 30 days or less: separation.".

(e) DEATH BENEFITS.—(1) Section 1475(a) of title 10, United States Code, is amended by striking out "from an injury incurred by

him after December 31, 1956," in paragraph (3).

(2) Section 1476 of such title is amended—

(A) by striking out subsection (a) and inserting in lieu thereof the following:

"(a)(1) Except as provided in section 1480 of this title, the Secretary concerned shall pay a death gratuity to or for the survivors prescribed in section 1477 of this title of each person who dies within 120 days after discharge or release from—

"(A) active duty; or

"(B) inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service).

"(2) A death gratuity may be paid under paragraph (1) only if the Administrator of Veterans' Affairs determines that the death resulted from an injury or disease incurred or aggravated during—

"(A) the active duty or inactive-duty training described in paragraph (1); or

"(B) travel directly to or from such duty.";

(B) by striking out subsection (b); and

(C) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(3) Section 1481(a) of such title is amended—

(A) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) a member of a reserve component of an armed force who dies while—

"(A) on active duty;

"(B) performing inactive-duty training;

"(C) performing authorized travel directly to or from active duty or inactive-duty training; or

"(D) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training;"; and

(B) by striking out paragraph (3).

(f) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Title 10, United States Code, is amended as follows:

(A) Sections 3687, 3721, 3722, 6148, 8687, 8721, and 8722 are repealed.

(B)(i) The table of sections at the beginning of chapter 353 is amended by striking out the item relating to section 3687.

(ii) The table of sections at the beginning of chapter 355 is amended by striking out the items relating to sections 3721 and 3722.

(iii) The table of sections at the beginning of chapter 561 is amended by striking out the item relating to section 6148.

(iv) The table of sections at the beginning of chapter 853 is amended by striking out the item relating to section 8687.

(v) The table of sections at the beginning of chapter 855 is amended by striking out the items relating to sections 8721 and 8722.

(C) Sections 1076(a)(2)(B) and 1086(c)(2)(B) are amended by striking out "injury or illness" and inserting in lieu thereof "injury, illness, or disease".

(D) Sections 3723 and 8723 are amended by striking out "was injured, or contracted a disease," and inserting in lieu thereof "incurred an injury, illness, or disease,".

(2)(A) Sections 318, 319, 320, and 321 of title 32, United States Code, are repealed.

(B) The table of sections at the beginning of chapter 3 of such title is amended by striking out the items relating to sections 318, 319, 320, and 321.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to persons who, after the date of enactment of this Act—

(1) incur or aggravate an injury, illness, or disease; or

(2) die.

SEC. 513. ACTIVE DUTY OF NATIONAL GUARD.

(a) GOVERNOR CONSENT FOR ACTIVE DUTY OF NATIONAL GUARD MEMBERS.—Section 501 of title 32, United States Code, is amended by adding at the end the following new subsection:

"(c) With regard to active duty outside the United States, its territories, and its possessions, the consent of the Governor described in sections 672(b) and 672(d) of title 10 may not be withheld in whole or in part because of any objection to the location, purpose, type, or schedule of such active duty.".

(b) CONFORMING AMENDMENT.—Section 672 of title 10, United States Code, is amended—

(1) by inserting "except as provided by section 501(c) of title 32" after "as the case may be" in subsection (b); and

(2) by inserting "except as provided by section 501(c) of title 32" after "whichever is concerned" in subsection (d).

SEC. 514. TREATMENT OF SINGLE PARENTS ENLISTING IN RESERVE COMPONENTS OF THE ARMED FORCES.

(a) IN GENERAL.—(1) Section 510 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(e)(1) In determining whether a person who is applying to enlist in a reserve component upon discharge or release from active duty is qualified for enlistment as a Reserve of an armed force, the Secretary concerned may not disqualify the person because the person is a single parent if the person became a single parent while serving on active duty.

"(2) The Secretary concerned shall provide that treatment of a person described in paragraph (1) shall be equivalent with respect to parenthood to the treatment of a member who becomes a single parent during the term of the member's enlistment. Such equivalent treatment may include a requirement for a written agreement with respect to child care.

"(3) In this subsection, the term 'single parent' means a person who is not married and who has custody of a child under the age of 18 pursuant to a court order.".

(b) EFFECTIVE DATE.—Section 510(e) of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

PART A—PAY AND ALLOWANCES

SEC. 601. ENHANCEMENT OF AVIATION OFFICER CONTINUATION PAY.

(a) ELIMINATION OF OFFSET FOR RECEIPT OF HAZARDOUS DUTY INCENTIVE PAY.—Section 301b(e) of title 37, United States Code, is amended by striking out paragraph (4).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments made for periods beginning after September 30, 1986, under agreements entered into under section 301b of title 37, United States Code.

SEC. 602. AUTHORITY TO PAY ROTC MEMBERS IN ADVANCE FOR FIELD TRAINING.

(a) IN GENERAL.—Section 1006 of title 37, United States Code, is amended by adding at the end the following new subsection:

"(j) Under regulations prescribed by the Secretary concerned, not more than one month's pay may be paid in advance to a member of the Senior Reserve Officers' Training Corps who is ordered to field training or a practice required under section 2109 of title 10.".

(b) EFFECTIVE DATE.—Subsection (j) of title 37, United States Code, as added by subsection (a), shall apply with respect to pay payable for months beginning after the later of September 30, 1986, and the date of the enactment of this Act.

SEC. 603. REPORT ON VARIABLE HOUSING ALLOWANCE RECAPTURE PROVISION.

Not later than February 1, 1987, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the impact of the variable housing allowance recapture provision enacted in the Department of Defense Authorization Act, 1986 (Public Law 99-145). The report shall address—

(1) the cost of administering the variable housing program;

(2) the total cost of the variable housing program; and

(3) levels of regular military compensation (as defined in section 101 of title 37, United States Code) among members of the armed forces in the same pay grade and locality.

PART B—TRAVEL AND TRANSPORTATION

SEC. 611. TRANSPORTATION OF MOTOR VEHICLES FOR MEMBERS MAKING PERMANENT CHANGES OF STATION.

Section 2634 of title 10, United States Code, is amended—

(1) by striking out "in the case of" and all that follows through "debarkation" in subsection (a)(4) and inserting in lieu thereof "by other surface transportation"; and

(2) by striking out ", or his designee," in the second sentence of subsection (a);

(3) by striking out the first and second sentences of subsection (b) and inserting in lieu thereof the following: "In this section, the term 'change of permanent station' means the transfer or assignment of a member of the armed forces from a permanent station inside the continental United States to a permanent station outside the continental United States or from a permanent station outside the continental United States to another permanent station.".

SEC. 612. REIMBURSEMENT FOR ACTUAL LODGING EXPENSES PLUS PER DIEM FOR MEMBERS ENTITLED TO TRAVEL ALLOWANCES.

(a) IN GENERAL.—Section 404(d) of title 37, United States Code, is amended—

(1) by striking out "per diem in place of subsistence in an amount not more than $50 determined by the Secretaries concerned to be sufficient" in paragraph (1)(B) and inserting in lieu thereof "payment in lieu of subsistence as provided in paragraph (2) of this subsection in an amount sufficient";

(2) by striking out "to be" in paragraph (1)(B) after "travel is"; and

(3) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service entitled to travel and transportation allowances under subsection (a) of this section is entitled to any of the following:

"(A) A per diem allowance at a rate not to exceed that established by the Secretaries concerned.

"(B) Reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Secretaries concerned.

"(C) A combination of payments described in subparagraphs (A) and (B) of this paragraph.

"(3) A per diem allowance or maximum amount of reimbursement established for

purposes of paragraph (2) of this subsection shall be established, to the extent feasible, by locality.

"(4) For travel consuming less than a full day, the payment prescribed by regulation under paragraph (2) of this subsection shall be allocated in such manner as the Secretaries concerned prescribe.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to travel performed after the end of the 180-day period beginning on the date of the enactment of this Act.

SEC. 613. PER DIEM FOR DEPENDENTS RECEIVING TRANSPORTATION ALLOWANCE.

(a) IN GENERAL.—Section 406 of title 37, United States Code, is amended as follows:

(1) The first sentence of subsection (e) is amended by striking out ", as the case may be," and inserting in lieu thereof the following: "(as the case may be), plus a per diem,".

(2) Subsection (f) is amended by inserting after "member" the following: ", plus a per diem for the member's dependents,".

(3) Subsection (g)(1) is amended by inserting after "404(c) of this title" the following: ", and to a per diem for his dependents".

(4) Subsection (j) is amended by inserting after "household effects," the following: "plus a per diem for the member's dependents,".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to travel performed after the later of September 30, 1986, and the date of the enactment of this Act.

SEC. 614. MODIFICATION OF FAMILY SEPARATION ALLOWANCE.

(a) DENIAL OF ALLOWANCE TO CERTAIN MEMBERS.—(1) Section 427(b) of title 37, United States Code, is amended—

(1) by inserting "(1)" after "(b)";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) by designating the second sentence as paragraph (2) and striking out "clause (2) or (3)" in that sentence and inserting in lieu thereof "subparagraph (B) or (C) of paragraph (1)"; and

(4) by adding at the end the following:

"(3) A member who elects to serve a tour of duty unaccompanied by his dependents at a permanent station to which the movement of his dependents is authorized at the expense of the United States under section 406 of this title is not entitled to an allowance under this subsection. The Secretary concerned may waive the preceding sentence in situations in which it would be inequitable to deny the allowance to the member because of unusual family or operational circumstances.".

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a), a member who on September 30, 1986, was assigned to a permanent station to which the movement of his dependents was authorized at the expense of the United States under section 406 of title 37, United States Code, and who elected to serve a tour of duty at that station unaccompanied by his dependents, shall, until he departs that station as a result of a change of permanent station, be entitled to receive the allowance authorized by section 427(b) of such title without regard to paragraph (3) of such section, as added by subsection (a).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1986.

SEC. 615. TRANSPORTATION AND TRAVEL ALLOWANCES FOR ESCORTS FOR CERTAIN DEPENDENTS.

(a) IN GENERAL.—(1) Chapter 7 of title 37, United States Code, is amended by adding at the end the following new section:

"§ 431. Travel and transportation: members escorting certain dependents

"(a) Under regulations prescribed by the Secretary concerned, a member of a uniformed service may be provided round trip transportation and travel allowances for travel performed or to be performed under competent orders as an escort for the member's dependent when travel by the dependent is authorized by competent authority and the dependent is incapable of traveling alone because of age, mental or physical incapacity, or other extraordinary circumstances.

"(b) Whenever possible, the Military Airlift Command or Military Sealift Command shall be used, on a space-required basis, for the travel authorized by this section.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"431. Travel and transportation: members escorting certain dependents.".

(b) EFFECTIVE DATE.—Section 431 of title 37, United States Code, as added by subsection (a), shall apply with respect to travel performed after September 30, 1986.

SEC. 616. TRANSPORTATION FOR DEPENDENTS AND HOUSEHOLD EFFECTS OF CERTAIN MEMBERS.

(a) TRANSPORTATION OF DEFENDENTS.—Paragraph (2)(A) of section 406(a) of title 37, United States Code, is amended to read as follows:

"(2)(A) Except as provided in subparagraph (B) of this paragraph, a member who—

"(i) is separated from the service or released from active duty; and

"(ii) on the date of his separation from the service or release from active duty, has not served on active duty for a period of time equal to at least 90 percent of the period of time for which he initially enlisted or otherwise initially agreed to serve.

may be provided transportation under this subsection for his dependents only by transportation in kind by the least expensive mode of transportation available or by a monetary allowance that does not exceed the cost to the Government of such transportation in kind.".

(b) TRANSPORTATION OF HOUSEHOLD EFFECTS.—(1) The first sentence of section 406(h) of title 37, United States Code, is amended to read as follows: "(1) If the Secretary concerned determines that it is in the best interests of a member described in paragraph (2) or his dependents and the United States, he may, when orders directing a change of permanent station for the member concerned have not been issued, or when they have been issued, but cannot be used as authority for the transportation of his dependents, baggage, and household effects—

"(A) authorize the movement of the member's dependents, baggage, and household effects at the station to an appropriate location in the United States or its possessions or the country of the dependents' origin, in the event the dependents are foreign nationals, and prescribe transportation in kind, reimbursement therefor, or a monetary allowance in place thereof (as the case may be), plus a per diem, as authorized under subsection (a) or (b) of this section; and

"(B) in the case of a member described in paragraph (2)(A), authorize the transportation of one motor vehicle owned by the member or for his or her dependents' personal use to that location by means of transportation authorized under section 2634 of title 10.".

(2) Section 406(h) of such title is further amended by adding at the end the following new paragraph:

"(2) A member referred to in paragraph (1) is a member who—

"(A) is serving at a station outside the United States or Hawaii or Alaska;

"(B) receives an administrative discharge under other than honorable conditions; or

"(C) is sentenced by a court-martial to be confined for a period of more than 30 days, to receive a dishonorable or bad-conduct discharge, or to be dismissed from a uniformed service, if the sentence is approved under section 860(c)(2) of title 10.".

SEC. 617. COORDINATION OF PERMANENT CHANGE OF STATION MOVES WITH SCHOOL YEAR.

The Secretary of each military department shall establish procedures to ensure that, to the maximum extent practicable, permanent change of station moves for members of the Armed Forces under the jurisdiction of the Secretary who have dependents in elementary or secondary school occur between normal school years.

PART C—BENEFITS FOR SURVIVORS AND FORMER SPOUSES

SEC. 631. COURT-ORDERED SURVIVOR ANNUITIES FOR FORMER SPOUSES.

(a) GENERAL RULE.—Paragraph (4) of section 1450(f) of title 10, United States Code, is amended to read as follows:

"(4) A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).".

(b) CONFORMING AMENDMENTS.—

(1) Section 1448(b)(5) of such title is amended by inserting "(A) whether the election is being made pursuant to the requirements of a court order, or (B)" after "setting forth".

(2) Paragraph (2) of section 1450(f) of such title is amended—

(A) by striking out "enters into" and all that follows through "pursuant to such agreement" and inserting in lieu thereof "is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement,";

(B) by striking out "in a case in which such agreement" at the beginning of subparagraph (A) and inserting in lieu thereof "in a case in which the election is required by a court order, or in which an agreement to make the election";

(C) by striking out "relating to the agreement to make such election" and inserting in lieu thereof "relating to such election, or the agreement to make such election,"; and

(D) by striking out "in which such agreement" at the beginning of subparagraph (B) and inserting in lieu thereof "of a written agreement that".

(3) Paragraph (3)(A) of such section is amended—

(A) by striking out "voluntary" both places it appears;

(B) by inserting "or if such person is required by a court order to make such an

election," after "applicable State law" the first place it appears; and

(C) by inserting "requires such election or" after "on its face, which".

(c) EFFECTIVE DATE.—The amendments made by this section apply to court orders issued on or after the date of the enactment of this Act.

SEC. 632. MISCELLANEOUS SURVIVOR BENEFIT AND FORMER SPOUSE AMENDMENTS.

(a) ANNUITY FOR A DEPENDENT CHILD.—

(1) REPEAL OF COMMON-ACCIDENT LIMITATION.—(A) Subsection (d)(2) of section 1448 of title 10, United States Code, is amended by striking out "if the member and the member's spouse die as a result of a common accident" and inserting in lieu thereof "if there is no surviving spouse or if the member's surviving spouse subsequently dies".

(B) Subsection (f)(2) of such section is amended by striking out "if the person and the person's spouse die as a result of a common accident" and inserting in lieu thereof "if there is no surviving spouse or if the person's surviving spouse subsequently dies".

(2) AMOUNT OF ANNUITY FOR DISABLED CHILD OVER AGE 62.—(A) Subsection (a) of section 1451 of such title is amended—

(i) by inserting "or is a dependent child" in paragraphs (1)(A) and (2)(A) after "under 62 years of age"; and

(ii) by inserting "(other than a dependent child)" in paragraphs (1)(B) and (2)(B) after "beneficiary".

(B) Subsection (c)(1) of such section is amended—

(i) by inserting "or is a dependent child" in subparagraph (A) after "under 62 years of age"; and

(ii) by inserting "(other than a dependent child)" in subparagraph (B) after "receiving the annuity".

(3) EFFECTIVE DATES.—The amendment made by paragraph (1) shall apply only to claims arising on or after the date of the enactment of this Act. The amendments made by paragraph (2) shall apply to payments for periods after the later of September 30, 1986, and the date of the enactment of this Act.

(b) AGE AT WHICH REMARRIAGE TERMINATES SPOUSE SURVIVOR BENEFIT.—

(1) REDUCTION FROM AGE 60 TO AGE 55.—Section 1450(b) of such title is amended by striking out "age 60" both places it appears and inserting in lieu thereof "age 55".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to remarriages that occur on or after the date of the enactment of this Act, but only with respect to payments for periods after the later of September 30, 1986, and the date of the enactment of this Act.

(c) REVISION OF DEFINITION OF DISPOSABLE RETIRED PAY FOR PURPOSES OF COURT ORDERS.—(1) Section 1408(a)(4) of such title is amended—

(A) by striking out "(other than" and all that follows through "title)" in the matter preceding subparagraph (A); and

(B) by striking out subparagraph (E) and inserting in lieu thereof the following:

"(E) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or".

(2) The amendments made by paragraph (1) shall apply with respect to court orders issued after the date of the enactment of this Act.

SEC. 633. REVISION OF OPEN PERIOD TO ELECT FORMER SPOUSE AND CHILD COVERAGE.

Section 716(b) of the Survivor Benefit Plan Amendments of 1985 (title VII of Public Law 99-145; 99 Stat. 674) is amended—

(1) by striking out "the date of the enactment of this Act" and inserting in lieu thereof "March 1, 1986,";

(2) by striking out ", within the one-year period beginning on that date of enactment,"; and

(3) by adding at the end the following new sentence: "Such an election must be made—

"(1) not later than March 1, 1987, in the case of a person who made the election to provide an annuity for a former spouse before November 8, 1985; and

"(2) not later than the end of the one-year period beginning on the date of the enactment of the Department of Defense Authorization Act, 1987, in the case of a person who made the election to provide an annuity for a former spouse during the period beginning on November 8, 1985, and ending on February 28, 1986.".

SEC. 634. EXTENSION OF MEDICAL BENEFITS FOR CERTAIN FORMER SPOUSES.

Section 645(c) of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2549), is amended by striking out "during the two-year period" and inserting in lieu thereof "until the later of (1) April 1, 1988, and (2) the last day of the two-year period".

PART D—EDUCATIONAL ASSISTANCE PROGRAM

SEC. 641. TUITION ASSISTANCE FOR ARMY RESERVE COMPONENT OFFICERS.

(a) IN GENERAL.—Section 2007 of title 10, United States Code, is amended—

(1) by inserting "on active duty" in subsection (a)(3) after "a commissioned officer"; and

(2) by adding at the end of the following new subsection:

"(c)(1) Subject to paragraphs (2) and (3), the Secretary of the Army may pay not more than 75 percent of the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer in a program leading to a baccalaureate degree.

"(2) The Secretary may not pay charges under paragraph (1) for tuition or expenses of an officer unless the officer agrees to remain a member of the Selected Reserve for at least four years after completion of the education or training for which the charges are paid.

"(3) The Secretary may not pay charges under paragraph (1)—

"(A) for a warrant officer; or

"(B) for an officer on active duty or full-time National Guard duty.".

(b) LIMITATION ON AMOUNT FOR FISCAL YEAR 1987.—The total amount obligated by the Secretary of the Army under subsection (c) of section 2007 of title 10, United States Code, as added by subsection (a), during fiscal year 1987 may not exceed $4,200,000.

(c) EFFECTIVE DATE.—Subsection (c) of section 2007 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1986.

PART E—COST REDUCTIONS

SEC. 651. COST REDUCTIONS FOR FISCAL YEAR 1987.

(a) PCS MOVES.—The total amount expended by the Department of Defense during fiscal year 1987 for permanent change of station moves may not exceed $2,533,760,000.

(b) SELECTIVE REENLISTMENT BONUS.—(1) During fiscal year 1987, the Secretary concerned may not pay more than 50 percent of an amount paid to any person under section 308 of title 37, United States Code, in a lump sum.

(2) During fiscal year 1987, the total amount obligated for payments under such section with respect to reenlistments and extensions of enlistments after Septeber 30, 1986, may not exceed $291,600,000.

(c) ENLISTMENT BONUSES.—An enlistment bonus under section 308a of title 37, United States Code, may not be paid by the Secretary of the Navy or the Secretary of the Air Force with respect to an enlistment after September 30, 1986.

(d) ENLISTED TO OFFICER RATIO.—The Secretary of Defense shall require that officer personnel strengths be managed so as to attain a ratio within the armed forces (other than the Coast Guard) of enlisted members to officers of not less than 6.12 to 1 by September 30, 1987, with a goal of achieving a ratio of 6.5 to 1 by September 30, 1990.

(e) RESERVE UNIT AND INDIVIDUAL TRAINING.—During fiscal year 1987, the amount spent for reserve unit and individual training may not exceed $5,084,500,000.

TITLE VII—UNIFORM CODE OF MILITARY JUSTICE

SEC. 701. SHORT TITLE; REFERENCES TO UNIFORM CODE OF MILITARY JUSTICE.

(a) SHORT TITLE.—This title may be cited as the "Military Justice Amendments of 1986".

(b) REFERENCES TO UCMJ.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

SEC. 702. ESTABLISHMENT OF DEFENSE OF LACK OF MENTAL RESPONSIBILITY.

(a) IN GENERAL.—(1) Subchapter VII is amended by inserting after section 850 (article 50) the following new section (article):

"§ 850a. Art. 50a. Defense of lack of mental responsibility

"(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

"(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

"(c) Notwithstanding the provisions of section 852 of this title (article 52), the accused may be found not guilty under this section only if—

"(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

"(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.".

(2) The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 850 (article 50) the following new item:

"850a. 50a. Defense of lack of mental responsibility.".

(b) EFFECTIVE DATE.—Section 850a of title 10, United States Code, as added by subsection (a)(1), shall apply only to offenses committed on or after the date of the enactment of this Act.

SEC. 703. APPLICATION FOR ENLISTED MEMBERS TO SERVE ON COURT-MARTIAL.

(a) IN GENERAL.—Section 825(c)(1) (article 25(c)(1)) is amended by striking out "has requested in writing" and inserting in lieu thereof "has requested orally on the record or in writing".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only to a case in which arraignment is completed on or after the effective date of this part.

SEC. 704. COURT-MARTIAL JURISDICTION OVER RESERVE MEMBERS.

(a) JURISDICTION OVER RESERVE MEMBERS UNDER CERTAIN CIRCUMSTANCES.—(1) Paragraph (3) of section 802(a) (article 2(a)) is amended to read as follows:

"(3) Members of a reserve component while—

"(A) on active duty; or

"(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.".

(2) Section 802 (article 2) is further amended by adding at the end the following new subsection:

"(d)(1) A member of a reserve component who is charged with having committed an offense against this chapter may be called or ordered to active duty involuntarily for the purpose of—

"(A) investigation under section 832 of this title (article 32);

"(B) trial by court-martial; or

"(C) nonjudicial punishment under section 815 of this title (article 15).

"(2) A member of a reserve component may not be called or ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

"(A) on active duty; or

"(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

"(3) Authority to call or order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the Secretary concerned.".

(b) CONTINUED AMENABILITY TO JURISDICTION.—Section 803 (article 3) is amended by adding at the end the following new subsection:

"(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.".

(c) AUTHORITY TO ADMINISTER OATHS.—Section 936 (article 136) is amended by inserting "or performing inactive-duty training" in subsections (a) and (b) after "active duty".

(d) ARTICLES TO BE EXPLAINED.—The text of section 937 (article 137) is amended to read as follows:

"(a)(1) The sections of this title (articles of the Uniform Code of Military Justice) specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within six days after)—

"(A) the member's initial entrance on active duty; or

"(B) the member's initial entrance into a duty status with a reserve component.

"(2) Such sections (articles) shall be explained again—

"(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

"(B) at the time when the member reenlists.

"(3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).

"(b) The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination.".

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply only to an offense committed on or after the effective date of this part.

SEC. 705. STATUTE OF LIMITATIONS.

(a) REVISION OF STATUTES OF LIMITATION.—Subsections (a), (b), and (c) of section 843 (article 43) are amended to read as follows:

"(a) A person charged with absence without leave or missing movement in time of war, or with any offense punishable by death, may be tried and punished at any time without limitation.

"(b)(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

"(2) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

"(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).".

(b) TIME FOR REINSTATEMENT OF CHARGES.—Such section is further amended by adding at the end the following new subsection:

"(g) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

"(1) has expired; or

"(2) will expire within six calendar months of the date of dismissal of the charges and specifications,

trial and punishment under new charges and specifications are not barred by a statute of limitations if the new charges and specifications are received by an officer exercising summary court-martial jurisdiction over the command within six calendar months of the dismissal of the charges or specifications.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to an offense committed on or after the date of the enactment of this Act.

SEC. 706. TIME FOR DEFENSE POST-TRIAL SUBMISSIONS.

(a) SIMPLIFICATION OF TIME FOR SUBMISSION.—Subsection (b) of section 860 (article 60) is amended—

(1) by striking out paragraph (3);

(2) by redesignating paragraph (2) as paragraph (3) and inserting a comma in that paragraph after "case"; and

(3) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

"(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.".

(b) RECOMMENDATIONS OF STAFF JUDGE ADVOCATE.—Subsection (c)(2) of such section is amended by striking out "and, if applicable, under subsection (d),".

(c) CONFORMING AMENDMENTS.—Subsection (d) of such section is amended—

(1) in the third sentence, by striking out "who shall have five days from the date of receipt in which to submit any matter in response" and inserting in lieu thereof "who may submit any matter in response under subsection (b)"; and

(2) by striking out the fourth sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in cases in which the sentence is adjudged on or after the effective date of this part.

SEC. 707. DETAIL OF JUDGE ADVOCATES.

(a) REPRESENTATION OF UNITED STATES INTERESTS.—Section 806(a) (article 6(a)) is amended by inserting after the second sentence the following: "A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)—

(1) shall take effect on the date of the enactment of this Act; and

(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act.

SEC. 708. EFFECTIVE DATE.

Except as provided in sections 702(b), 705(c), and 707(b), the amendments made by this title shall take effect on the earlier of—

(1) the last day of the 120-day period beginning on the date of the enactment of this Act; or

(2) the date specified in an Executive order for such amendments to take effect.

TITLE VIII—DEPARTMENT OF DEFENSE MANAGEMENT

PART A—MANAGEMENT OF CERTAIN PROCUREMENT MATTERS

SEC. 801. CONTRACTS FOR OVERHAUL, REPAIR, AND MAINTENANCE OF NAVAL VESSELS.

(a) IN GENERAL.—Section 7299a of title 10, United States Code (relating to construction of combatant and escort vessels and assign-

ment of naval vessel projects), is amended by adding at the end the following new subsections:

"(c) In evaluating bids or proposals for a contract for the overhaul, repair, or maintenance of a naval vessel, the Secretary of the Navy shall, in determining the price of work to be performed in an area outside the area of the homeport of the vessel, consider all costs of performing the work in that area (including costs to the Navy of performing the work in that area that are subject to estimation before contract award).

"(d)(1) Notwithstanding subsections (b) and (c), the Secretary may award a contract for short-term work for the overhaul, repair, or maintenance of a naval vessel only to a contractor that is able to perform the work at the homeport of the vessel, if the Secretary determines that adequate competition is available among firms able to perform the work at the homeport of the vessel.

"(2) In this subsection, the term 'short-term work' means work that will be for a period of six months or less.".

(b) REPEAL OF LIMITATION ON FY86 FUNDS.—Section 8104 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1221)), is repealed.

SEC. 802. HANDLING OF HAZARDOUS WASTE GENERATED DURING REPAIR OR MAINTENANCE OF NAVAL VESSELS.

(a) REQUIRED CONTRACT PROVISIONS.—Chapter 633 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 7311. Repair or maintenance of naval vessels: handling of hazardous waste

"(a) CONTRACTUAL PROVISIONS.—The Secretary of the Navy shall ensure that a contract entered into for repair or maintenance of a naval vessel includes the following provisions:

"(1) IDENTIFICATION OF HAZARDOUS WASTES.—Provisions identifying the type and amounts of hazardous wastes that are expected to be generated during the performance of the repair or maintenance.

"(2) COMPENSATION.—Provisions specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

"(3) STATEMENT OF WORK.—Provisions mutually acceptable to the Navy and the contractor specifying the responsibilities of the Navy and of the contractor, respectively, for the removal, handling, storage, transportation, and disposal of hazardous wastes generated during the performance of the repair or maintenance.

"(b) RENEGOTIATION OF CONTRACT.—The Secretary of the Navy shall renegotiate a contract described in subsection (a) if—

"(1) the contractor, during the performance of repair or maintenance under the contract, discovers hazardous wastes different in type or amount from those identified in the contract; and

"(2) such hazardous wastes originated on the naval vessel on which the repair or maintenance is being performed, including any waste materials rendered hazardous as a result of the performance of the work required by the contract.

"(c) IDENTIFICATION NUMBERS.—Each naval vessel, or each Supervisor of Shipbuilding in lieu of each vessel, at or upon which hazardous wastes are produced or from which hazardous wastes are removed, shall obtain an identification number which shall be used on all contracts, manifests, and invoices for the transportation of such wastes for treatment, storage, or disposal in accordance with regulations issued by the Administrator of the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1978, as amended. For purposes of this section, the term 'hazardous wastes' shall include all wastes for which the contractor is entitled to reimbursement under subsection (a)(2) or (b).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"7311. Repair or maintenance of naval vessels: handling of hazardous waste.".

SEC. 803. LIMITATION ON TRANSFER OF CERTAIN TECHNICAL DATA PACKAGES.

(a) TECHNICAL DATA PACKAGES FOR PRODUCTION OF LARGE-CALIBER CANNON.—(1) Chapter 433 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception

"(a) GENERAL RULE.—Funds appropriated to the Department of Defense may not be used—

"(1) to transfer to a foreign country a technical data package for a defense item being manufactured or developed in an arsenal; or

"(2) to assist a foreign country in producing such a defense item.

"(b) EXCEPTION.—The Secretary of the Army may use funds appropriated to the Department of Defense to transfer a technical data package, or to provide assistance, described in subsection (a) if—

"(1) the transfer or provision of assistance is to a friendly foreign country (as determined by the Secretary of Defense in consultation with the Secretary of State);

"(2) the Secretary of the Army determines that such action—

"(A) would have a clear benefit to the preservation of the production base for the production of cannon at the arsenal concerned; and

"(B) would not transfer technology (including production techniques) considered unique to the arsenal concerned; and

"(3) the Secretary of Defense enters into an agreement with the country concerned described in subsection (c).

"(c) COPRODUCTION AGREEMENTS.—An agreement under this subsection shall be in the form of a Government-to-Government Memorandum of Understanding and shall include provisions that—

"(1) prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

"(2) require that production by the participating foreign country of the defense item to which the technical data package or assistance relates be shared with the arsenal concerned;

"(3) subject to such exceptions as may be approved under subsection (d), prohibit transfer by the participating foreign country to a third party or country of—

"(A) any defense article, technical data package, technology, or assistance provided by the United States under the agreement; and

"(B) any defense article produced by the participating foreign country under the agreement; and

"(4) require the Secretary of Defense to monitor compliance with the agreement and the participating foreign country to report periodically to the Secretary of Defense concerning the agreement.

"(d) TRANSFERS TO THIRD PARTIES.—A transfer described in subsection (b)(3) may be made if—

"(1) the defense article, technical data package, or technology to be transferred is a product of a cooperative research and development program in which the United States and the participating foreign country were partners; or

"(2) the President—

"(A) complies with all requirements of section 3(d) of the Arms Export Control Act (22 U.S.C. 2753(d)) with respect to such transfer; and

"(B) certifies to Congress, before the transfer, that the transfer would provide a clear benefit to the production base of the United States for large-caliber cannon.

"(e) NOTICE AND REPORTS TO CONGRESS.—(1) The Secretary of the Army shall submit to Congress a notice of each agreement entered into under this section.

"(2) The Secretary shall submit to Congress a semi-annual report on the operation of this section and of agreements entered into under this section.

"(f) ARSENAL DEFINED.—In this section, the term 'arsenal' means a Government-owned, Government-operated defense plant that manufactures large-caliber cannon.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception.".

(b) EFFECTIVE DATE.—Section 4542 of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years after fiscal year 1986.

SEC. 804. INFORMATION CONCERNING USE IN MAJOR SYSTEMS OF COMPONENTS MANUFACTURED OUTSIDE THE UNITED STATES.

(a) INCLUSION OF INFORMATION IN COMPREHENSIVE ANNUAL SELECTED ACQUISITION REPORTS.—Section 139a(c)(3) of title 10, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) for each major defense acquisition program included in the report, information detailing the use of components manufactured outside the United States, including the dollar value and country of origin of such components.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(3) shall apply to comprehensive annual Selected Acquisition Reports submitted for fiscal years beginning after the date of the enactment of this Act.

SEC. 805. REQUIREMENTS CONCERNING TRANSPORTATION OF MEMBERS OF THE ARMED FORCES BY CHARTERED AIRCRAFT.

(a) IN GENERAL.—(1) Chapter 157 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2640. Charter air transportation of members of the armed forces

"(a) REQUIREMENTS.—(1) The Secretary of Defense may not enter into a contract with an air carrier for the charter air transportation of members of the armed forces unless the air carrier—

"(A) meets, at a minimum, the safety standards established by the Secretary of Transportation under title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.);

"(B) has at least 12 months of experience operating services in air transportation that are substantially equivalent to the service sought by the Department of Defense; and

"(C) undergoes a technical safety evaluation.

"(2) For purposes of paragraph (1)(C), a technical safety evaluation—

"(A) shall include inspection of a representative number of aircraft; and

"(B) shall be conducted in accordance with regulations prescribed by the Secretary, after consultation with the Secretary of Transportation.

"(b) INSPECTIONS.—The Secretary shall provide for inspections of each air carrier that contracts with the Department of Defense for the charter air transportation of members of the armed forces. The inspections shall be conducted in accordance with standards established by the Secretary, after consultation with the Secretary of Transportation, and shall include, at a minimum, the following:

"(1) An on-site capability survey of the air carrier conducted at least once every two years.

"(2) A performance evaluation of the air carrier conducted at least once every six months.

"(3) A preflight safety inspection of each aircraft conducted not more than 72 hours before each flight to ensure a high degree of flying safety.

"(4) Operational check-rides on aircraft conducted periodically.

"(c) COMMERCIAL AIRLIFT REVIEW BOARD.—The Secretary shall establish a Commercial Airlift Review Board within the Department of Defense. The Board shall consist of personnel from the Department of Defense and other Government personnel as may be appropriate. The duties of the Board shall be—

"(1) to make recommendations to the Secretary on suspension and reinstatement of air carriers under subsection (d);

"(2) to make recommendations to the Secretary on waivers under subsection (g); and

"(3) to carry out such other duties and make recommendations on such other matters as the Secretary considers appropriate.

"(d) SUSPENSION AND REINSTATEMENT.—(1) The Secretary shall establish guidelines for the suspension of air carriers under contract with the Department of Defense for the charter air transportation of members of the armed forces and for the reinstatement of air carriers that have been so suspended. The guidelines—

"(A) shall require the immediate determination of whether to suspend an air carrier if an aircraft of the air carrier is involved in a fatal accident; and

"(B) may require the suspension of an air carrier—

"(i) if the carrier is in violation of any order, rule, regulation, or standard prescribed under title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.); or

"(ii) if an aircraft of the air carrier is involved in a serious accident.

"(2) The Commercial Airlift Review Board shall make recommendations to the Secretary on suspension and reinstatement under this subsection.

"(3) The Secretary shall include in each contract subject to this section the provisions on suspension and reinstatement established under this subsection.

"(e) AUTHORITY TO LEAVE UNSAFE AIRCRAFT.—A representative of the Military Airlift Command, the Military Traffic Management Command, or such other agency as may be designated by the Secretary of Defense (or if there is no such representative reasonably available, the senior officer on board a chartered aircraft) may order members of the armed forces to leave a chartered aircraft if the representative (or officer) determines that a condition exists on the aircraft which may endanger the safety of the members.

"(f) FAA INFORMATION.—The Secretary shall request the Secretary of Transportation to provide to the Secretary a report on each inspection performed by Federal Aviation Administration personnel, and the status of corrective actions taken, on each aircraft of an air carrier under contract with the Department of Defense for the charter air transportation of members of the armed forces.

"(g) WAIVER.—After considering recommendations by the Commercial Airlift Review Board, the Secretary may waive any provision of this section in an emergency.

"(h) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section, including requirements and identification of inspecting personnel with respect to preflight safety inspections required by subsection (b)(3).

"(i) DEFINITIONS.—In this section:

"(1) The terms 'air carrier', 'aircraft', 'air transportation', and 'charter air transportation' have the meanings given such terms by sections 101(3), 101(5), 101(10), and 101(15), respectively, of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15)).

"(2) The term 'members of the armed forces' means members of the Army, Navy, Air Force, and Marine Corps.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2640. Charter air transportation of members of the armed forces.".

(b) DEADLINE FOR REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe the regulations required by section 2640 of title 10, United States Code, as added by subsection (a).

(c) EFFECTIVE DATE.—Section 2640 of title 10, United States Code, as added by subsection (a), shall apply only to contracts which are entered into on or after the date on which the regulations required by subsection (b) are prescribed.

SEC. 806. FUEL SOURCES FOR HEATING SYSTEMS ON MILITARY INSTALLATIONS.

(a) USE OF MOST COST-EFFECTIVE FUEL IN NEW HEATING SYSTEMS.—(1) Section 2690 of title 10, United States Code, is amended to read as follows:

"§ 2690. Fuel sources for heating systems

"(a) The Secretary of the military department concerned shall provide that the primary fuel source to be used in any new heating system constructed on lands under the jurisdiction of the military department is the most cost-effective fuel for that heating system over the life cycle of the system.

"(b) The Secretary of Defense shall prescribe regulations for the determination of the life-cycle cost effectiveness of a fuel for the purposes of subsection (a).

"(c) In the case of a military installation in the Federal Republic of Germany, the Secretary of the military department concerned shall, where practical, use the German utility system for purposes of heating.".

(2) The item relating to such section in the table of sections at the beginning of chapter 159 of such title is amended to read as follows:

"2690. Fuel sources for heating systems.".

(b) REPEAL OF REQUIREMENT FOR CONVERSION OF EXISTING STEAM-GENERATING PLANTS.—Section 8110 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1222)), is repealed.

SEC. 807. PROHIBITION ON CONTRACTS FOR PERFORMANCE OF FIREFIGHTING AND SECURITY FUNCTION.

(a) PROHIBITION.—Chapter 159 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2693. Prohibition on contracts for performance of firefighting and security-guard functions

"(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

"(b) The prohibition in subsection (a) does not apply—

"(1) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which military personnel would have to be used for the performance of the function described in subsection (a) at the expense of unit readiness;

"(2) to a contract to be carried out on a Government-owned but privately operated installation; or

"(3) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2693. Prohibition on contracts for performance of firefighting and security-guard functions.".

SEC. 808. DEFENSE INVESTIGATIVE SERVICE INVESTIGATIONS OF SPECIAL ACCESS PROGRAM CONTRACTORS.

(a) PERIODIC SECURITY INVESTIGATIONS.—The Secretary of Defense shall direct the Director of the Defense Investigative Service to conduct an investigation at least every six months of each special access program contractor in order to verify control of classified material held by the contractor pertaining to the special access program.

(b) REPORT.—The Secretary of Defense shall submit to Congress an annual report on the results of investigations under subsection (a). Such report shall be submitted in an unclassified form and shall be prepared in consultation with the Director of the Defense Investigative Service. Each such report shall include—

(1) a certification of what portion of special access program contractors have been determined to be handing special access program information in accordance with established Department of Defense procedures and what portion have been determined to not be handling such information in accordance with such procedures;

(2) with respect to those special access program contractors which have been determined to not be handling such information in accordance with such procedures—

(A) a certification of what portion have been corrected or are being corrected;

(B) a description of the seriousness of the failures to handle such information in accordance with such procedures; and

(C) a description of what corrective action has been taken and is planned to be taken to correct such failures.

(c) DEFINITION.—For purposes of this section, the term "special access program contractor" means a firm that is a contractor with the Department of Defense under a special access program established by the Secretary of Defense.

PART B—HEALTH CARE MANAGEMENT

SEC. 811. IMPROVEMENT OF MILITARY HEALTH-CARE DELIVERY SYSTEM.

(a) IN GENERAL.—(1) Chapter 55 of title 10, United States Code, is amended by adding at the end the following new sections:

"§ 1096. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care

"(a) IN GENERAL.—The Secretary of Defense, after consulting with the other administering Secretaries, may contract for the delivery of health care to which covered beneficiaries are entitled under this chapter. The Secretary may enter into a contract under this section with any of the following:

"(1) Health maintenance organizations.

"(2) Preferred provider organizations.

"(3) Individual providers, individual medical facilities, or insurers or consortiums of such providers, facilities, or insurers.

"(b) SCOPE OF COVERAGE UNDER HEALTH CARE PLANS.—A contract entered into under this section may provide for the delivery of—

"(1) selected health care services;

"(2) total health care services for selected covered beneficiaries; or

"(3) total health care services for all covered beneficiaries who reside in a geographical area designated by the Secretary.

"(c) CHARGES FOR HEALTH CARE.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section.

"(d) DEFINITION.—In this section, the term 'covered beneficiary' means a beneficiary under this chapter other than a beneficiary under section 1074(a) of this title.

"§ 1097. Military Health Care Account

"(a) ESTABLISHMENT OF ACCOUNT.—

"(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be known as the 'Military Health Care Account'. All sums appropriated to carry out the functions of the Secretary of Defense with respect to the Civilian Health and Medical Program of the Uniformed Services shall be appropriated to the account.

"(2) AVAILABILITY OF AMOUNTS.—Amounts appropriated to the account shall remain available until obligated or expended under subsection (c) or (d).

"(b) ALLOCATION OF AMOUNTS IN ACCOUNT FOR PROVISION OF MEDICAL CARE BY SERVICE SECRETARIES.—

"(1) REQUESTS FOR ALLOCATIONS.—The Secretary of a military department shall, before the beginning of a fiscal year quarter, provide to the Secretary of Defense a description of the amounts necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of the Secretary for that quarter.

"(2) ALLOCATION BY SECRETARY OF DEFENSE.—The Secretary of Defense shall, subject to amounts provided in advance in appropriation acts, make available to each Secretary of a military department the amount from the account that the Secretary of Defense determines is necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of that Secretary for that quarter.

"(c) EXPENDITURE OF AMOUNTS FROM ACCOUNT BY SERVICE SECRETARIES.—The Secretary of a military department shall provide medical and dental care to covered beneficiaries for a fiscal-year quarter from amounts appropriated to the Secretary and from amounts from the account made available for that quarter to the Secretary by the Secretary of Defense.

"(d) OBLIGATION OF AMOUNTS FROM ACCOUNT BY SECRETARY OF DEFENSE.—The Secretary of Defense may obligate or expend funds from the account for purposes of entering into a contract under section 1096 of this title to the extent amounts are available in the account.

"(e) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

"(f) DEFINITIONS.—In this section:

"(1) The term 'account' means the Military Health Care Account established in subsection (a).

"(2) The term 'Civilian Health and Medical Program of the Uniformed Services' means the program authorized under sections 1079 and 1086 of this title and includes contracts entered into under section 1091 or 1096 of this title and demonstration projects under section 1092 of this title.

"(3) The term 'covered beneficiary' has the meaning given that term in section 1095(d) of this title.

"(4) The term 'program' means the Civilian Health and Medical Program of the Uniformed Services.

"§ 1098. Health care enrollment system

"(a) ESTABLISHMENT OF SYSTEM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish a system of health care enrollment for covered beneficiaries who reside in the United States.

"(b) DESCRIPTION OF SYSTEM.—Such system shall—

"(1) allow covered beneficiaries to elect a health care plan from eligible health care plans designated by the Secretaries; or

"(2) if necessary in order to ensure full use of facilities of the uniformed services in a geographical area, assign covered beneficiaries who reside in such area to a health care plan.

"(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM.—A health care plan designated by the Secretary of Defense shall provide all health care to which a covered beneficiary is entitled under this chapter. Such a plan may consist of any of the following:

"(1) Use of facilities of the uniformed services.

"(2) The Civilian Health and Medical Program of the Uniformed Services.

"(3) Any other health care plan contracted for by the Secretary of Defense.

"(d) ISSUANCE OF REGULATIONS.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe regulations to carry out this section.

"(e) DEFINITIONS.—In this section:

"(1) The term 'Civilian Health and Medical Program of the Uniformed Services' has the meaning given that term in section 1097(f)(2) of this title.

"(2) The term 'covered beneficiary' has the meaning given that term in section 1096(d) of this title.

"§ 1099. Diagnosis-related groups

"(a) ESTABLISHMENT OF DRGS.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish by regulation the use of diagnosis-related groups as the primary criteria for allocation of resources to facilities of the uniformed services.

"(b) CONTENT OF REGULATIONS.—Such regulations shall establish a system of diagnosis-related groups similar to that established under section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)). Such regulations shall include the following:

"(1) A classification of inpatient treatments by diagnosis-related groups and a similar classification of outpatient treatment.

"(2) A methodology for classifying specific treatments within such groups.

"(3) An appropriate weighting factor for each such diagnosis-related group which reflects the relative resources used by a facility of a uniformed service with respect to treatments classified within that group compared to treatments classified within other groups.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

"1096. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care.

"1097. Military Health Care Account.

"1098. Health care enrollment system.

"1099. Diagnosis-related groups.".

(b) REPORTS TO CONGRESS.—

(1) HEALTH CARE ENROLLMENT SYSTEM.—Not later than March 1, 1987, the Secretary of Defense shall submit to Congress a report detailing—

(A) the establishment and initial implementation of a system of health care enrollment under section 1098(a) of title 10, United States Code (as added by subsection (a)); and

(B) the plan of the Secretary for completing the implementation of such system.

(2) DIAGNOSIS-RELATED GROUPS.—The Secretary shall submit to Congress—

(A) not later than May 1, 1987, a report on plans of the Secretary for establishing diagnosis-related groups for inpatient services under section 1099(a) of title 10, United States Code (as added by subsection (a)); and

(B) not later than May 1, 1988, a report on plans of the Secretary for establishing diagnosis-related groups for outpatient services under such section.

(c) EFFECTIVE DATES.—The Secretary of Defense shall prescribe regulations—

(1) as required by section 1097(e) of title 10, United States Code (as added by subsection (a)), to take effect after September 30, 1986;

(2) as required by section 1098(d) of such title (as added by subsection (a)), to gradually implement the system of health care enrollment for covered beneficiaries during the period beginning on October 1, 1987, and ending on September 30, 1990; and

(3) as required by section 1099(a) of such title (as added by subsection (a)), to take effect—

(A) in the case of inpatient treatments, after September 30, 1987; and

(B) in the case of outpatient treatments, after September 30, 1988.

SEC. 812. MEDICAL INFORMATION SYSTEMS ACQUISITION.

(a) SELECTION OF MEDICAL INFORMATION SYSTEM.—

(1) IN GENERAL.—After carrying out the testing required by subsection (b) and the demonstration project described in subsection (c), the Secretary of Defense shall designate for use in all military medical treatment facilities the medical information system tested that is the most advantageous to the Government based on the recommendations of the Secretary required by subsection (e).

(2) RESTRICTION.—The Secretary may not obligate or expend funds appropriated or otherwise made available to the Department of Defense to—

(A) deploy a medical information system in military medical treatment facilities before the Secretary submits the report required by subsection (e); or

(B) conduct an extended benchmark test of the system known as the Composite Health-Care System.

(3) WAITING PERIOD.—The Secretary may not designate a medical information system under paragraph (1) until the end of the 30-day period beginning on the date on which the Comptroller General submits the report required by subsection (f)(2)(B).

(b) OPERATIONAL TESTING OF MEDICAL INFORMATION SYSTEMS.—

(1) IN GENERAL.—The Secretary shall carry out operational tests on medical information systems for purposes of selecting the medical information system for use in military medical treatment facilities that is the most advantageous to the Government based on the recommendations of the Secretary required by subsection (e).

(2) REQUIREMENTS FOR TEST.—(A) The tests required by paragraph (1) shall be carried out over a one-year period at six test sites designated by the Secretary.

(B) Each test site designated by the Secretary shall include not less than one medium-to-large military medical treatment facility and not less than one small military medical treatment facility.

(C) Each branch of the services shall be represented at not less than one of the test sites designated by the Secretary.

(D) The Secretary shall designate vendors to participate in the tests required by paragraph (1), including—

(i) not less than three vendors for the system known as the Composite Health-Care System; and

(ii) not less than one vendor who uses and adapts the existing Veterans' Administration software with respect to the hospital management computer system of the Veterans' Administration known as the Veterans' Administration's decentralized hospital computer program.

(E) Each vendor that participates in such tests shall—

(i) demonstrate the functions included in phases I, II, and IID of Solicitation No. DAHC26-85-R-0009 (relating to acquisition of the Composite Health-Care System); and

(ii) calculate an incremental price and delivery schedule, at the appropriate level, for each of the functions offered in phases I, II, IID, and III of such solicitation.

(3) SPECIAL INTEREST USER GROUPS.—The Secretary shall establish a special interest user group at each test site designated under paragraph (2)(A) to facilitate the implementation and development of the medical information system at each such site. Each such group shall include—

(A) representatives from the program office of the Tri-Service Medical Information Systems of the Department of Defense;

(B) representatives from the military medical treatment facilities at the site; and

(C) representatives of the vendor.

(c) VETERANS' ADMINISTRATION DECENTRALIZED HOSPITAL COMPUTER PROGRAM.—

(1) IN GENERAL.—The Secretary shall continue to carry out the demonstration project required by section 1203 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 718), with respect to the hospital-management computer system of the Veterans' Administration known as the Veterans' Administration Decentralized Hospital Computer Program.

(2) EXTENSION OF DEMONSTRATION PROJECT.—The Secretary shall extend the duration of the demonstration project described in paragraph (1) so that such project shall be completed on the same date as the tests required by subsection (b).

(3) USE OF ALL COMPONENTS OF DHCP.—Section 1203 of the Department of Defense Authorization Act, 1986, is amended in subsection (c)—

(A) by striking out "available"; and

(B) by inserting "that are available at least six months before the date on which the demonstration project is expected to be completed" after "software)".

(d) EVALUATIONS.—

(1) MILITARY EVALUATION TEAMS.—The Secretary shall establish teams of military medical personnel assigned to military medical facilities to assist in evaluating each medical information system being tested. Each such team shall travel to each test site included in the operational tests under subsection (b) or the demonstration project described in subsection (c) in order to compare all the medical information systems being tested.

(2) INDEPENDENT EVALUATION.—The Secretary shall enter into a contract with an independent technical firm to conduct an evaluation of the demonstration project. For purposes of this paragraph, an independent technical firm is a technical firm that is not involved in any aspect of the operational tests under subsection (b) or the demonstration project described in subsection (c).

(3) CONTENT OF EVALUATIONS.—An evaluation under this paragraph shall include—

(A) an assessment of the benefits (including quality and timeliness of care) and cost-effectiveness of the use of each of the medical information systems tested under subsection (b) or under the demonstration project described in subsection (c) and the technical factors of each of such systems;

(B) an assessment of the impact of initiatives of the Department of Defense (including proposed reform, initiative of the Department of Defense with respect to the Civilian Health and Medical Program of the Uniformed Services (commonly known as "Project Imprint") on the functioning and required workload of each medical information system tested; and

(C) the formulation of a life cycle management plan for automation of military medical facilities.

(e) REPORT.—The Secretary shall submit to Congress a report describing the testing carried out under subsection (b) and the demonstration project referred to in subsection (c). The report shall include—

(1) specific findings and recommendations by the Secretary with respect to—

(A) the benefits (including quality and timeliness of care) and cost-effectiveness of the use of each of the medical information systems tested under subsection (b) or under the demonstration project described in subsection (c) and the technical factors of each of such systems; and

(B) the benefits to be achieved by each function referred to in subsection (b)(2)(E);

(2) a plan for implementing the systems recommended by the Secretary under paragraph (1);

(3) findings and recommendations with respect to the impact of the initiatives described in subsection (d)(3)(B); and

(4) a complete life cycle management plan for automation of military medical facilities.

(f) EVALUATIONS AND REPORTS BY COMPTROLLER GENERAL.—

(1) SELECTION OF VENDORS.—(A) The Comptroller General shall evaluate the selection of vendors by the Secretary for the testing of the Composite Health-Care System.

(B) The Comptroller General shall submit to Congress a report on such evaluation before the end of the 45-day period beginning on the date that the Secretary completes the selection of vendors for such testing.

(2) EVALUATION BY COMPTROLLER GENERAL.—(A) The Comptroller General shall evaluate the conduct of the evaluations required by subsection (d) and the report of the Secretary required by subsection (e).

(B) The Comptroller General shall submit to Congress a report on such evaluation before the end of the 45-day period beginning on the date that the Secretary submits such report to Congress.

(g) DEFINITIONS.—In this section:

(1) The term "medical information system" means a computer-based information system that—

(A) receives data normally recorded concerning patients;

(B) creates and maintains from such data a computerized medical record for each patient; and

(C) provides access to data for patient care, hospital administration, research, and medical care resource planning.

(2) The term "medium-to-large military medical treatment facility" means a military hospital with 150 or more beds.

(3) The term "military medical treatment facility" means a hospital, medical center, or clinic under the jurisdiction of the Secretary of a military department or the Secretary of Defense.

(4) The term "Secretary" means the Secretary of Defense.

(5) The term "small military medical treatment facility" means a military hospital with fewer than 50 beds or a free-standing ambulatory clinic.

SEC. 813. CHAMPUS CATCHMENT AREAS.

(a) REIMBURSEMENT FOR INPATIENT SERVICES WITHIN CATCHMENT AREA.—Section 1079(a)(7) of title 10, United States Code, is amended by striking out "pays for at least 75 percent of the services" and inserting in lieu thereof "provides primary coverage for the services".

(b) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 1986.

SEC. 814. USE OF PUBLIC HEALTH SERVICE HOSPITALS AS FACILITIES OF THE UNIFORMED SERVICES.

Subsection (e) of section 1252 of the Department of Defense Authorization Act, 1984 (42 U.S.C. 248d(e)), is amended in the first sentence by striking out "December 31, 1987" and inserting in lieu thereof "December 31, 1988".

SEC. 815. LIMITATION ON IMPLEMENTATION OF HEALTH CARE REFORM INITIATIVE.

(a) LIMITATION.—

(1) IN GENERAL.—The Secretary of Defense may not obligate or expend funds appropriated or otherwise made available to the Department of Defense for purposes of implementing the health care reform initiative of the Department of Defense commonly known as Project Imprint until—

(A) the Secretary completes the study required by subsection (b)(1) and submits the report required by subsection (b)(2); and

(B) a period of 30 days of continuous session of Congress elapses after the Secretary submits such report.

(2) COMPUTATION OF TIME PERIOD.—For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such 30-day period.

(b) STUDY OF HEALTH CARE ALTERNATIVES.—

(1) IN GENERAL.—The Secretary shall conduct a study of—

(A) methods to guarantee the maintenance of competition among providers of health care to persons under the jurisdiction of the Secretary;

(B) the merits of the use of a voucher system or a fee schedule for provision of health care to such persons; and

(C) methods to guarantee that community hospitals are given equal consideration with other health care providers for provision of health care services under contracts with the Department of Defense.

(2) REPORT.—The Secretary shall submit to Congress a report discussing the matters evaluated in the study required by paragraph (1) before the end of the 60-day period beginning on the date of the enactment of this Act.

SEC. 816. ELIGIBILITY OF PHILANTHROPIC INSTITUTIONS TO RECEIVE REIMBURSEMENT UNDER CHAMPUS.

(a) IN GENERAL.—

(1) ACTIVE-DUTY DEPENDENTS.—Section 1079 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(l) Notwithstanding subsection (j), a hospital that is operated primarily for philanthropic purposes may not be denied payment for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) solely on the basis that such hospital does not impose a legal obligation on patients to pay for such services.".

(2) CERTAIN MEMBERS, FORMER MEMBERS, AND THEIR DEPENDENTS.—Section 1086 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(h) Notwithstanding subsection (d) or any other provision of this chapter, a hospital that is operated primarily for philanthropic purposes may not be denied payment for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) solely on the basis that such hospital does not impose a legal obligation on patients to pay for such services.".

(b) EFFECTIVE DATE.—Section 1079(l) of title 10, United States Code (as added by subsection (a)(1)), and section 1086 of such title (as added by subsection (a)(2)) shall apply with respect to medical care received after the date of the enactment of this Act.

PART C—COMMISSION ON MERCHANT MARINE AND DEFENSE

SEC. 821. STATUS OF MEMBERS OF COMMISSION ON MERCHANT MARINE AND DEFENSE; EXTENSION OF REPORT DEADLINES AND AVAILABILITY OF APPROPRIATIONS.

(a) STATUS OF COMMISSION MEMBERS.—Subsection (d) of section 1536 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2633), is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end the following new paragraph:

"(2) A member of the Commission appointed under subsection (c)(1)(C) (who is not otherwise employed by the Federal Government) shall not be considered to be a Federal employee, except for the purposes of—

"(A) chapter 81 of title 5, United States Code, relating to compensation for work-related injuries; and

"(B) chapter 171 of title 28, United States Code, relating to tort claims.".

(b) EXTENSIONS.—Such section is further amended as follows:

(1) The last sentence of subsection (b) and the first sentence of subsection (g) are each amended by striking out "the date of the enactment of the law first providing funds for the Commission" and inserting in lieu thereof "the date on which sufficient members of the Commission to constitute a quorum have been appointed".

(2) The second sentence of subsection (g) is amended by striking out "of enactment" each place it appears.

(3) The last sentence of subsection (i) is amended by striking out "September 30, 1988" and inserting in lieu thereof "36 months after the date on which sufficient members of the Commission to constitute a quorum have been appointed".

(c) DEADLINE FOR APPOINTMENTS.—The President shall make appointments as required by subsection (c)(1)(C) of such section before the end of the 30-day period beginning on the date of the enactment of this Act.

TITLE IX—PROCUREMENT POLICY REFORM

SEC. 900. SHORT TITLE.

This title may be cited as the "Defense Procurement Improvement Act of 1986".

PART A—MANAGEMENT OF THE ACQUISITION PROCESS

SEC. 901. DUTIES OF UNDER SECRETARY OF DEFENSE FOR ACQUISITION.

(a) DUTIES OF POSITION.—

(1) IN GENERAL.—Section 134a of title 10, United States Code, is amended to read as follows:

"§ 134a. Under Secretary of Defense for Acquisition: appointment; powers and duties; precedence

"(a) There is an Under Secretary of Defense for Acquisition, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive management background in the private sector.

"(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition—

"(1) is responsible for setting overall policy for, and supervises, all acquisition activities of the Department of Defense; and

"(2) shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

"(c) The Under Secretary—

"(1) is the senior procurement executive for the Department of Defense for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3));

"(2) is the Defense Acquisition Executive for purposes of regulations and procedures of the Department providing for a Defense Acquisition Executive; and

"(3) to the extent directed by the Secretary, supervises all other officers in the Office of the Secretary of Defense who have acquisition responsibilities.

"(d) Supervision of the audit and oversight functions performed by the Defense Contract Audit Agency on the date of the enactment of this section shall be carried out in the same manner as in effect on such date.

"(e) The Secretary of Defense shall prescribe the precedence of the Under Secretary in the Department of Defense.".

(2) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of chapter 4 of such title is amended to read as follows:

"134a. Under Secretary of Defense for Acquisition: appointment; powers and duties; precedence.".

(b) INDEPENDENCE OF DIRECTOR OF OPERATIONAL TEST AND EVALUATION.—Section 136a(d) of title 10, United States Code (relating to the Director of Operational Test and Evaluation), is amended by inserting "personally" after "Secretary of Defense" in the first sentence.

(c) ARMED FORCES POLICY COUNCIL.—Section 171(a) of such title (relating to the Armed Forces Policy Council) is amended—

(1) by redesignating paragraphs (3) through (11) as paragraphs (4) through (12), respectively;

(2) by inserting after paragraph (2) the following new paragraph (3):

"(3) the Under Secretary of Defense for Acquisition;"; and

(3) by striking out "Under Secretaries of Defense" in paragraph (7) (as so redesignated) and inserting in lieu thereof "Under Secretary of Defense for Policy and the Director of Defense Research and Engineering".

(d) PREVENTION OF DUPLICATION OF CERTAIN CONTRACT AUDIT AND OVERSIGHT ACTIVITIES.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2214. Audit and oversight of contractor activities: coordination and prevention of duplicative policies

"(a) COORDINATION.—The Secretary of Defense shall prescribe procedures to ensure that Department of Defense policies for the audit and oversight of contractor activities are coordinated and carried out in a manner to prevent duplication of audit and oversight activities by different elements of the Department.

"(b) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Under Secretary of Defense for Acquisition and the Inspector General of the Department of Defense.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2214. Audit and oversight of contractor activities: coordination and prevention of duplicative policies.".

SEC. 902. STREAMLINING PROGRAM MANAGEMENT.

(a) IN GENERAL.—

(1) PROGRAM TO STREAMLINE MANAGEMENT.—The Secretary of Defense shall conduct, through the Secretaries of the military departments, a program with respect to increasing the efficiency of the management structure of major defense acquisition pro-

grams by reducing the number of officials through whom a program manager reports to the senior procurement executive of the military department concerned.

(2) DESIGNATION OF PARTICIPATING PROGRAMS.—The Secretary shall require that the Secretary of each military department designate at least two major defense acquisition programs of that department, and as many as practicable, to participate in the program described in paragraph (1).

(3) ELIGIBILITY.—A program may be designated under paragraph (2) only if the program has not proceeded into full-scale engineering development as of September 30, 1986.

(b) GUIDELINES.—The Secretary of Defense shall issue guidelines governing the management of the major defense acquisition programs designated by the Secretaries of the military departments under subsection (a)(2). Such guidelines shall include the following requirements:

(1) PROGRAM EXECUTIVE OFFICER.—The Secretary concerned shall designate a program executive officer for each program.

(2) SUPERVISION OF PROGRAM MANAGER.—The program manager for each program shall report directly, without intervening review or approval, to the program executive officer for that program. The program manager shall consider recommendations received from the competition advocate for the department with respect to decisions concerning that program.

(3) SUPERVISION OF PROGRAM EXECUTIVE OFFICER.—The program executive officer for a program shall report directly, without intervening review or approval, to the senior procurement executive of the military department concerned designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(c) DEFINITION.—In this section, the term "major defense acquisition program" has the meaning given that term in section 139a(a)(1) of title 10, United States Code.

SEC. 903. MILESTONE AUTHORIZATION AND BASELINING.

(a) PROGRAM STABILITY.—

(1) Chapter 4 of title 10, United States Code, is amended by inserting after section 139c the following new section:

"§ 139d. Major defense acquisition programs: enhanced program stability

"(a)(1) The Secretary of Defense shall include in a request to Congress for funding for a major defense acquisition program, before full-scale engineering development and before full-rate production, the following:

"(A) In the case of the full-scale engineering development stage—

"(i) a baseline description of the total program; and

"(ii) the total program cost (including the cost of all elements included in the baseline description), which may not exceed the amount of the independent estimate for that program submitted to the Secretary under section 139c of this title.

"(B) In the case of the production stage, a revision of the most recent baseline description and of the most recent total program cost.

"(2) The Secretary shall include in the baseline description of a program all elements related to the development, production, and initial provisioning of the system to be developed under the program, including—

"(A) system performance;

"(B) number of end items;

"(C) scheduling;

"(D) testing;

"(E) initial training; and

"(F) initial provisioning.

"(b) The Secretary of Defense shall designate for each fiscal year not more than three major defense acquisition programs in each military department to be considered for multiyear authorization under subsection (c). A program may not be designated under this subsection if—

"(1) the program is being submitted for approval by Congress to proceed into the full-rate production stage; and

"(2) initial operational test and evaluation of the program has not been completed.

"(c)(1) If a program designated by the Secretary of Defense under subsection (b) is approved by Congress to proceed into the full-scale engineering development stage, or into the full-rate production stage, Congress shall authorize funds for that stage in a single amount sufficient to carry out that stage, but not for a period in excess of five years.

"(2) The Secretary concerned may not begin full-scale engineering development, or full-rate production, for such a program until Congress authorizes funds for that stage in an amount sufficient to carry out that stage.

"(d)(1) If, in carrying out a full-scale engineering development or full-rate production for which Congress has authorized funds, the Secretary concerned determines that there is a significant adverse program deviation—

"(A) the Secretary concerned shall notify Congress in writing of that determination and of the significant adverse program deviation before the end of the 10-day period beginning on the date that the determination is made; and

"(B) except as provided in paragraph (2), funds appropriated for that program may not be obligated on or after the date of that determination.

"(2) The prohibition in paragraph (1)(B) on the obligation of funds for a major defense acquisition program shall cease to apply at the end of the 45-day period beginning on the date on which the Secretary concerned submits the report required under paragraph (1)(A), except that the Secretary may not obligate funds appropriated for the fiscal year following the fiscal year in which the deviation occurred unless such funds are authorized by law.

"(3) In this subsection, the term 'significant adverse program deviation', with respect to a program, means—

"(A) an adverse change in the capability of the system being acquired under the program that results in a capability for the system that does not meet the thresholds specified in the current baseline description for the program;

"(B) an increase in the current total program cost, in constant year dollars, above the total program cost associated with that baseline description; or

"(C) a delay in program schedule beyond the threshold specified in the current baseline description.

"(e)(1) After Congress authorizes funds for full-scale engineering development, or for full-rate production, for a program under this section, the Secretary of Defense or the Secretary concerned may (except as provided in subsection (d)) change the current baseline description with respect to the program and the total program cost associated with that baseline description.

"(2) The Secretary of Defense or the Secretary concerned shall notify the Committees on Armed Services of the Senate and House of Representatives of a change under paragraph (1) not later than 10 days after the date on which the change is made.

"(3) Except for a change required by mandatory safety concerns, authority under paragraph (1) may only be delegated—

"(A) in the case of the Secretary of Defense, to the Deputy Secretary of Defense or to the Under Secretary of Defense for Acquisition; and

"(B) in the case of a Secretary of a military department, to the Under Secretary (or to any other official designated by the Secretary concerned as the Service Acquisition Executive of that military department).

"(f) The Secretary is not required to report under section 139a of this title on any program that is designated under subsection (b).

"(g) In this section, the term 'major defense acquisition program' has the meaning given that term in section 139a(a)(1) of this title.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 139c the following new item:

"139d. Major defense acquisition programs: enhanced cost control.".

(b) EFFECTIVE DATE.—The Secretary of Defense shall make the designations required by subsection (b) of section 139d of title 10, United States Code, as added by subsection (a), as part of the budget submission of the Department of Defense for fiscal year 1988.

SEC. 904. COMPARABLE BUDGETING FOR SIMILAR SYSTEMS.

(a) MATTERS TO BE INCLUDED IN ANNUAL DEFENSE BUDGETS.—In preparing the defense budget for any fiscal year, the Secretary of Defense shall—

(1) specifically identify each common procurement weapon system included in the budget;

(2) take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system; and

(3) identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems.

(b) ASSISTANT SECRETARY (COMPTROLLER).—The Secretary of Defense shall carry out this section through the Assistant Secretary of Defense (Comptroller).

(c) DEFINITIONS.—In this section:

(1) DEFENSE BUDGET.—The term "defense budget" means the budget of the Department of Defense included in the President's budget submitted to Congress under section 1105 of title 31, United States Code, for a fiscal year.

(2) COMMON PROCUREMENT WEAPON SYSTEM.—The term "common procurement weapon system" means a weapon system for which two or more of the Army, Navy, Air Force, and Marine Corps request procurement funds in a defense budget.

SEC. 905. PREFERENCE FOR NONDEVELOPMENTAL PRODUCTS.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PREFERENCE.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2325. Preference for nondevelopmental items

"(a) IN GENERAL.—

"(1) STATEMENT OF PROCUREMENT REQUIREMENTS.—The Secretary of Defense shall ensure, that, to the maximum extent practicable—

"(A) requirements of the Department of Defense with respect to a procurement of

supplies are stated in the broadest possible functional description; and

"(B) such requirements are defined so that nondevelopmental items may be procured to fulfill such requirements when such items are adequate to meet the needs of the Department.

"(2) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

"(b) DEFINITION.—In this section, the term 'nondevelopmental item' means—

"(1) any item of supply, or component of such item, that is available in the commercial marketplace;

"(2) any previously-developed item of supply, or component of such item, that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement; or

"(3) any item of supply, or component of such item, described in paragraph (1) or (2) that requires only minor modification in order to meet the requirements of the procuring agency.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2325. Preference for nondevelopmental items.".

(3) EFFECTIVE DATE.—The Secretary of Defense shall prescribe regulations as required by section 2325(a)(2) of title 10, United States Code (as added by subsection (a)(1)), before the end of the 120-day period beginning on the date of the enactment of this Act.

(b) EVALUATION BY COMPTROLLER GENERAL.—

(1) EVALUATION.—The Comptroller General shall conduct an independent evaluation of the actions taken by the Secretary of Defense to carry out the requirements of section 2325 of title 10, United States Code (as added by subsection (a)(1)).

(2) REPORT.—The Comptroller General shall submit to Congress a report on the evaluation required by paragraph (1). Such report shall include—

(A) an analysis of the effectiveness of the actions taken by the Secretary to carry out the requirements of section 2325 of title 10, United States Code (as added by subsection (a)(1));

(B) a description of any programs conducted to notify acquisition personnel of the Department of Defense of the requirements of such section and to train such personnel in the appropriate procedures for carrying out such section;

(C) a description of each law, regulation, and procedure which prevents or restricts maximum practicable use of nondevelopment items to fulfill the supply requirements of the Department of Defense; and

(D) such recommendations for additional legislation as the Comptroller General considers necessary or appropriate to promote maximum procurement of nondevelopmental items to fulfill the supply requirements of the Department of Defense.

(3) The report required by paragraph (2) shall be submitted before the end of the one-year period beginning on the date of the enactment of this Act.

(c) REMOVAL OF IMPEDIMENTS TO ACQUISITION OF NONDEVELOPMENTAL ITEMS.—

(1) REPORT.—The Secretary of Defense shall submit to the defense committees a report—

(A) identifying all statutes and regulations that are determined by the Secretary to impede the acquisition of nondevelopmental products by the Department of Defense; and

(B) recommending any legislation that the Secretary considers necessary or appropriate to promote maximum procurement of nondevelopmental items to fulfill the supply requirements of the Department of Defense.

(2) ACTIONS BY SECRETARY.—The Secretary shall take appropriate steps to remove any impediments identified by the Secretary under paragraph (1)(A) that are under the jurisdiction of the Secretary.

(3) DEFENSE COMMITTEES.—In this subsection, the term "defense committees" means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

SEC. 906. REPORT ON OPPORTUNITIES FOR ADVANCEMENT FOR PROGRAM MANAGERS AND OTHER ACQUISITION PERSONNEL.

(a) REPORT.—The Secretary of Defense shall submit to Congress a report that describes methods to enhance career opportunities for program managers and other acquisition personnel of the Department of Defense.

(b) DEADLINE FOR REPORT.—The report shall be submitted not later than the end of the 90-day period following the date of the enactment of this Act.

PART B—AMENDMENTS TO EXISTING LAW

SEC. 911. SMALL BUSINESS SET-ASIDES.

(a) PROPORTION OF CONTRACTS SET ASIDE DETERMINED ON INDUSTRY CATEGORY BASIS.—Paragraph (3) of section 15(a) of the Small Business Act (15 U.S.C. 644(a)(3)) is amended—

(1) by inserting "in each industry category" after "Government", and

(2) by adding at the end the following new sentences: "For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the four-digit standard industrial classification codes contained in the Standard Industrial Classification Manual published by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire domestic market for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located.".

(b) AWARDING OF CONTRACTS AT FAIR MARKET PRICES.—(1) Section 15(a) of such Act (15 U.S.C. 644(a)) is further amended by adding at the end the following new sentence: "A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.".

(2) Section 8(a)(1)(A) of such Act (15 U.S.C. 637(a)(1)(A)) is amended by striking out the semicolon at the end and adding in lieu thereof the following: ". A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;".

(c) ASSURANCE AS TO COMPOSITION OF LABOR FORCE.—(1) Section 8(a) of such Act (15 U.S.C. 637(a)) is amended by adding at the end the following new paragraph:

"(13)(A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

"(i) in the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract with its own employees; and

"(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

"(B) The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices. A percentage established under the preceding sentence may not differ from a percentage established under section 15(n).

"(C) Not later than 180 days after the date of the enactment of this paragraph, the Administration shall establish, through public rulemaking, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 15(n) for the same industry category.".

(2) Section 15 of such Act (15 U.S.C 644) is amended by adding at the end the following new subsection:

"(n)(1) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

"(A) in the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract with its own employees; and

"(B) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

"(2) The Administrator may change the percentage under subparagraph (A) or (B) of paragraph (1) if the Administrator determines that such change is necessary to reflect conventional industry practices. A percentage established under the preceding sentence may not differ from a percentage established under section 15(n).

"(3) Not later than 180 days after the date of the enactment of this paragraph, the Administration shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph. The percentage applicable to any such requirement shall be determined in accordance with

paragraph (2), except that such a percentage may not differ from a percentage established under section 15(n) for the same industry category.".

(d) DISCLOSURE OF INFORMATION CONCERNING APPLICANTS FOR PROCUREMENT SET-ASIDES.—(1) Section 8 of such Act is amended by adding at the end the following new subsection:

"(k)(1) The head of any Federal agency shall, within five days of the agency's decision to set aside a procurement for an identifiable small business concern under this section, provide the name and address of the small business concern expected to receive the procurement and the names and addresses of the principals of such concern to any person who requests such information.

"(2) The Secretary of Defense may decline to provide information under paragraph (1) in order to protect national security interests.".

(2) Section 15 of such Act is amended by adding at the end the following new subsection:

"(o)(1) The head of any Federal agency shall, within five days of the agency's decision to set aside a procurement for small business concerns under this section, provide the names and addresses of the small business concerns expected to respond to the procurement to any person who requests such information.

"(2) The Secretary of Defense may decline to provide information under paragraph (1) in order to protect national security interests.".

(e) REVIEW OF SIZE STANDARDS.—(1) Section 3 of the Small Business Act is amended by inserting "(1)" after "SEC. 3. (a)" and adding at the end of subsection (a) the following:

"(2)(A) Within six months after the date of the enactment of this paragraph, the Small Business Administration shall establish a program for the review of the size standards for eligibility of business concerns in the industry categories described in subparagraph (B) for a procurement restricted to small business concerns under section 8(a) or 15(a).

"(B) Subparagraph (A) shall apply only to business concerns in the following industry categories:

"(i) Construction (except dredging).

"(ii) Architectural and engineering services (including surveying and mapping services).

"(iii) Ship building and ship repair.

"(3) If the Administrator determines, on the basis of any such review, that contracts awarded under the set-aside programs under such sections exceed 30 percent of the dollar value of the total contract awards for that industry category, as determined under the last sentence of section 15(a)(3), the Administrator shall adjust the size standards for such industry category establishing eligibility for a set-aside program to a size that will likely reduce the number of contracts which may be set aside to approximately 30 percent of the value of contracts to be awarded under such sections.

"(4) The Administrator shall conduct a review under the program established under paragraph (2) at least once during every three years. Such review shall be completed and appropriate size standard adjustments made with the expiration of 180 days after each three-year review period. The first review shall review the periods of fiscal years 1984, 1985, and 1986 and shall begin on January 1, 1987.".

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

SEC. 912. TRUTH IN NEGOTIATIONS ACT AMENDMENTS.

(a) STRENGTHENING OF PREVENTION OF UNEARNED AND EXCESSIVE CONTRACTOR PROFITS.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2306 the following new section:

"§ 2306a. Cost or pricing data: truth in negotiations

"(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

"(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of the contract if the price of the contract to the United States is expected to exceed $100,000.

"(B) The contractor for a contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected to exceed $100,000 (or such lesser amount as may be prescribed by the head of the agency).

"(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if—

"(i) the price of the subcontract is expected to exceed $100,000; and

"(ii) the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this subsection.

"(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if the price adjustment is expected to exceed $100,000 (or such lesser amount as may be prescribed by the head of the agency).

"(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

"(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

"(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a representative of the contracting officer designated by the contracting officer for the purposes of the negotiation of the contract); or

"(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

"(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

"(b) EXCEPTIONS.—This section need not be applied to a contract or subcontract—

"(1) for which the price agreed upon is based on—

"(A) adequate price competition;

"(B) established catalog or market prices of commercial items sold in substantial quantities to the general public; or

"(C) prices set by law or regulation; or

"(2) in an exceptional case when the head of the agency determines that the requirements of this section may be waived and states in writing his reasons for such determination.

"(c) AUTHORITY TO REQUIRE COST OR PRICING DATA—When cost or pricing data are not required to be submitted by this section, such data may nevertheless be required to be submitted by the head of the agency if the head of the agency determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract.

"(d) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

"(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

"(2)(A) A contractor shall not be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) unless—

"(i) the contractor certifies to the contracting officer (or to a representative of the contracting officer designated by the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

"(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted as specified in subsection (a)(3) before such date.

"(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification), the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

"(3) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

"(4) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—

"(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcon-

tractor because the contractor or subcontractor—

"(i) was the sole source of the property or services procured; or

"(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

"(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

"(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

"(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

"(e) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract with the Department of Defense subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

"(A) for interest on the amount of such overpayment, to be computed—

"(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

"(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1954; and

"(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

"(2) Except as provided under subsection (d), the liability of a contractor under this subsection shall not be affected by the contractor's refusal to submit a certification under subsection (a)(2) with respect to the cost or pricing data involved.

"(f) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—(1) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section with respect to a contract or subcontract, the head of the agency, acting through any authorized representative of the head of the agency who is an employee of the United States or a member of the armed forces, shall have the right to examine all records of the contractor or subcontractor related to—

"(A) the proposal for the contract or subcontract;

"(B) the discussions conducted on the proposal;

"(C) pricing of the contract or subcontract; or

"(D) performance of the contract or subcontract.

"(2) The right of the head of an agency under paragraph (1) shall expire three years after final payment under the contract or subcontract.

"(3) In this subsection, the term 'records' includes books, documents, and other data.

"(g) COST OR PRICING DATA DEFINED.—In this section, the term 'cost or pricing data' means all facts that, as of the time of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental and not subject to verification.".

(b) CONFORMING AMENDMENTS.—(1) Subsection (f) of section 2306 of such title is amended to read as follows:

"(f) So-called 'truth-in-negotiations' provisions relating to cost or pricing data to be submitted by certain contractors and subcontractors are provided in section 2306a of this title.".

(2) Section 934(a) of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 99 Stat. 700) is repealed.

(c) CLERICAL AMENDMENTS.—(1) The heading of section 2306 of title 10, United States Code, is amended to read as follows:

"§ 2306. Kinds of contracts".

(2) The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2306 and inserting in lieu thereof the following:

"2306. Kinds of contracts.
"2306a. Cost or pricing data: truth in negotiations.".

(d) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), section 2306a of title 10, United States Code, as added by subsection (a), and the amendments made by subsection (b) shall apply with respect to contracts entered into after the end of the 120-day period beginning on the date of the enactment of this Act.

(2) Subsection (e) of such section 2306(a) shall apply with respect to contracts entered into after November 7, 1985.

SEC. 913. RIGHTS IN TECHNICAL DATA.

(a) RIGHTS IN TECHNICAL DATA.—Subsection (a) of section 2320 of title 10, United States Code, is amended to read as follows:

"(a)(1) The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to a product or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. Such regulations may not impair any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law.

"(2) Such regulations shall include the following provisions:

"(A) In the case of a product or process that is developed by a contractor or subcontractor exclusively with Federal funds, the United States shall have the unlimited right to use, release, or disclose technical data pertaining to the product or process.

"(B) In the case of a product or process that is developed by a contractor or subcontractor exclusively at private expense, the contractor or subcontractor may limit the right to use, release, or disclose to persons outside the Government technical data pertaining to the product or process.

"(C) Notwithstanding subparagraph (B), the Government may use, release, or disclose technical data pertaining to a product or process to persons outside the Government if such technical data is otherwise publicly available or if—

"(i) such use, release, or disclosure—

"(I) is necessary for emergency repair and overhaul; or

"(II) is a use, release, or disclosure to a foreign government that is in the interest of the United States and is required for evaluational or informational purposes; and

"(ii) such use, release, or disclosure is made subject to a prohibition that the person to whom the data is released or disclosed may not further use, release, or disclose such data.

"(D) In the case of a product or process that is developed in part with Federal funds and in part at private expense, rights in technical data pertaining to such product or process shall be established as early in the acquisition process as practicable (preferably during contract negotiations), based upon consideration of the following factors:

"(i) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

"(ii) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

"(iii) The interest of the United States in encouraging contractors to develop at private expense items for use by the Government.

"(E) A contractor or subcontractor, or a prospective contractor or subcontractor, that develops a product or process exclusively at private expense may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract, to sell or otherwise relinquish to the United States any rights in technical data that would permit the use by, or release or disclosure of, such data to persons outside the Government except under the conditions described in paragraph (2)(C).

"(F) The Secretary of Defense may—

"(i) enter into a contract with a contractor or subcontractor for the acquisition of rights in technical data pertaining to a product or process developed by such contractor or subcontractor exclusively at private expense if necessary to develop alternative sources of supply and manufacture; or

"(ii) agree to limit rights of the United States in technical data pertaining to a product or process developed entirely or in part with Federal funds if the United States receives a royalty-free license to use, release, or disclose the data for purposes of the United States (including purposes of competitive procurement).

"(2) The Secretary of Defense shall include definitions of the terms 'developed' and 'private expense' in regulations prescribed under paragraph (1).

"(3) In this subsection, the term 'Federal Acquisition Regulation' means the single system of Government-wide procurement regulations as defined in section 4(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).".

(b) VALIDATION OF PROPRIETARY DATA RESTRICTIONS.—Subsections (a) and (b) of section 2321 of title 10, United States Code, are amended to read as follows:

"(a) A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data.

"(b)(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any restriction on the right of the United States to use, release, or disclose technical data delivered under a contract. Such review shall be conducted

before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later.

"(2)(A) If the Secretary determines, at any time before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later, that a challenge to a restriction asserted in the contract is warranted, the Secretary shall provide written notice to the contractor or subcontractor asserting the restriction. Such a determination shall be based on a finding by the Secretary that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time. Such notice shall—

"(i) state the specific grounds for challenging the asserted restriction;

"(ii) require a response within 60 days justifying the current validity of the asserted restriction; and

"(iii) state that evidence of a validation by any agency of the Department of Defense of a restriction identical to the asserted restriction within the three-year period preceding the challenge shall serve as justification for the asserted restriction if—

"(I) the validation occurred after a review of the validated restriction under this subsection; and

"(II) the validated restriction was asserted by the same contractor or subcontractor to whom such notice is being provided.".

"(B) Notwithstanding subparagraph (A), if technical data delivered under a contract is otherwise publicly available, the United States may challenge a restriction on the use, release, or disclosure of such technical data at any time.".

(c) CONFORMING AMENDMENTS.—Section 1202 of the Department of Defense Authorization Act, 1985 (10 U.S.C. 2301 note), is amended—

(1) by inserting "and" at the end of paragraph (4);

(2) by striking out "; and" at the end of paragraph (5) and inserting in lieu thereof a period; and

(3) by striking out paragraph (6).

(d) DEADLINE FOR REVISION OF REGULATIONS.—The regulations required by section 2320(a)(1) of title 10, United States Code (as amended by subsection (a)), shall be prescribed not later than 180 days after the date of the enactment of this Act.

SEC. 914. PRICES FOR PRODUCTS SOLD COMMERCIALLY.

(a) ESTABLISHMENT OF COMMERCIAL PRICING REQUIREMENT.—

(1) IN GENERAL.—Section 2323 of title 10, United States Code, is amended to read as follows:

"§ 2323. Commercial pricing for items of supply

"(a) LIMITATION ON PRICE OF COMMERCIALLY AVAILABLE SUPPLIES.—Except in the case of an offer submitted with a written statement under subsection (b)(2) and except as provided in subsection (c), if the head of an agency, using procedures other than competitive procedures, enters into a contract with a contractor for the purchase of items which such contractor also offers for sale to the general public, the price charged the United States for such items under the contract may not exceed the lowest commercial price charged by the contractor in sales of such items to the general public, under similar circumstances, terms, and conditions, during a period described in subsection (b)(1).

"(b) REQUIREMENTS FOR INCLUSION IN OFFER.—The head of an agency, with respect to an offeror who submits an offer to the head of an agency to enter into a contract for the supply of items under a contract awarded using procedures other than competitive procedures, and who also offers such items for sale to the general public, shall require that the offeror—

"(1) certify in such offer that, to the best of the knowledge and belief of the offeror, the price proposed in the offer does not exceed the lowest commercial price at which such offeror sold such items during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available; or

"(2) submit with such offer a written statement—

"(A) specifying the amount of the difference between the price proposed in the offer and the lowest commercial price at which such offeror sold such items during a period described in paragraph (1); and

"(B) providing a justification for that difference.

"(c) EXCEPTION TO LIMITATION.—Subsections (a) and (b) do not apply in the case of a contract with respect to which the contracting officer includes in the file on the contract a written determination by such officer that the use of the lowest commercial price with respect to such contract is not appropriate because of—

"(1) national security considerations; or

"(2) significant differences between the terms of the commercial sales of the items to be acquired under such contract and the terms of such contract, including differences in—

"(A) quantity;

"(B) quality;

"(C) delivery requirements; or

"(D) other terms and conditions.

"(d) AUDITING.—

"(1) IN GENERAL.—In order to verify any certification or statement made under subsection (b) with respect to a contract, the contracting officer who awards such contract, or any representative of the contracting officer who is an employee of the United States or a member of the armed forces, during the time period specified in paragraph (2), may examine and audit all records of sales (including contract terms and conditions) maintained by or for the contractor that are directly pertinent to such certification or statement.

"(2) TIME LIMITATION.—The head of an agency shall require an offeror who submits a certification or written statement under subsection (b) to make available the records, books, data, and documents described in paragraph (1) for examination, audit, or reproduction for the purposes of such paragraph during the three-year period beginning on the date that the offeror submits such certification or statement to such head of an agency.

"(3) EFFECT ON OTHER RIGHTS.—The authority established in this section is in addition to the authority of the head of an agency under section 2306(f) of this title.

"(e) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of Transportation and the Administrator of the National Aeronautics and Space Administration, shall prescribe regulations to carry out this section. Such regulations may not require the disclosure or submission of any data related to any element underlying the price of a commercial product not otherwise required by law.

"(f) LOWEST COMMERCIAL PRICE.—In this section, the term 'lowest commercial price' means the lowest price at which a sale was made to the general public of a particular item. Such term does not include the price at which a sale was made to—

"(1) any agency of the United States;

"(2) a dealer, distributor, or original equipment manufacturer of the contractor, or any other remarketer unless the Government can demonstrate that the sale is under the same terms and conditions as a sale to a dealer, distributor, or original equipment manufacturer of the contractor, or any other remarketer;

"(3) a subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity;

"(4) an educational institution if the item sold is to be used for educational purposes; or

"(5) a customer located outside the United States.

"(g) APPLICABILITY.—This section does not apply to a contract entered into utilizing simplified small purchase procedures established under section 2304(g) of this title.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 137 of such title is amended by striking out the item relating to section 2323 and inserting in lieu thereof the following:

"2323. Commercial pricing for items of supply.".

(b) EFFECTIVE DATE.—The Secretary of Defense shall prescribe regulations as required by section 2323(e) of title 10, United States Code (as amended by subsection (a)(1)), before the end of the 30-day period beginning on the date of the enactment of this Act.

SEC. 915. FUNDING OF PROCUREMENT TECHNICAL ASSISTANCE PROGRAMS SERVING DISTRESSED AREAS.

(a) DEFINITION.—Section 2411(2) of title 10, United States Code, is amended by striking out "entity' means an eligible entity (within the meaning of paragraph (1)(B))" and inserting in lieu thereof "area' means an area".

(b) SERVICE AREAS.—Section 2413(b) of such title is amended by striking out "is a distressed entity" and inserting in lieu thereof "serves a distressed area".

SEC. 916. EDUCATIONAL REQUIREMENTS FOR ACQUISITION PERSONNEL.

Section 1622(b)(1) of title 10, United States Code, is amended by striking out "attended" and inserting in lieu thereof "completed".

PART C—MISCELLANEOUS

SEC. 921. SAFEGUARDING OF MILITARY WHISTLEBLOWERS.

(a) FINDINGS.—The Congress makes the following findings:

(1) In the course of their duties, members of the Armed Forces may become aware of information evidencing wrongdoing or waste of funds.

(2) It is generally the duty of members of the Armed Forces to report such information through the chain of command.

(3) Reporting such information through the chain of command does not always result in correction and may, in some cases, be futile.

(4) Members of the Armed Forces who become aware of such information should be

encouraged to disclose it to an Inspector General or Member of Congress if necessary.

(5) Members of the Armed Forces who disclose such information should be protected from adverse personnel consequences (or threats thereof) as a result of such disclosures.

(6) Members of the Armed Forces who believe they have been subject to retaliation (or the threat thereof) should have the right to a speedy Inspector General investigation and administrative review of their cases.

(b) WHISTLEBLOWER PROTECTION.—(1) Section 1034 of title 10, United States Code, relating to communicating with a Member of Congress, is amended to read as follows:

"§ 1034. Communicating with a Member of Congress or Inspector General

"(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTORS GENERAL PROHIBITED.—

"(1) GENERAL RULE.—No person may restrict a member of an armed force in communicating with a Member of Congress or an Inspector General.

"(2) EXCEPTIONS.—Paragraph (1) does not apply to a communication that—

"(A) is unlawful; or

"(B) violates a regulation necessary to the security of the United States.

"(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of an armed force for making or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.

"(c) INSPECTOR GENERAL INVESTIGATION.—

"(1) INVESTIGATION OF CERTAIN ALLEGATIONS.—The Inspector General of the Department of Defense shall expeditiously investigate an allegation by a member of the armed forces that a reprisal prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication to a Member of Congress or an Inspector General making a complaint or disclosing information that the member of the armed forces reasonably believes evidences—

"(A) a violation of a law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(2) TIME FOR ALLEGATION.—The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 90 days after the reprisal (or threatened reprisal) that is the subject of the allegation.

"(3) INVESTIGATION OF SUBJECT MATTER OF DISCLOSURE.—If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (1).

"(4) REPORT.—Not later than 10 days after completion of an investigation under this subsection, the Inspector General shall submit a report on the results of the investigation to the Secretary of Defense. The Inspector General shall provide an unclassified copy of that report to the member concerned.

"(5) TIME FOR REPORT.—If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (2) within 30 days of the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and to the member making the allegation a notice—

"(A) of that determination (including the reasons why the report may not be submitted within that time); and

"(B) of the time when the report will be submitted.

"(6) CONTENT OF REPORT.—The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. If a person agrees to be interviewed only on the condition that the person's identity not be disclosed, the report shall not contain any information about such interview. The report shall contain no findings of disputed fact or recommendations as to the disposition of the complaint.

"(7) DELEGATION.—The Inspector General of the Department of Defense may delegate any function, power, or duty of the Inspector General under this subsection to any other Inspector General in the Department of Defense.

"(d) CORRECTION OF RECORDS.—

"(1) BOARDS FOR CORRECTION OF MILITARY RECORDS.—In resolving an allegation made by a member of an armed force to whom the Inspector General has reported under subsection (c), a correction board acting under section 1552 of this title, on the request of the member or otherwise, may—

"(A) direct further investigation;

"(B) direct the production of evidence;

"(C) direct the examination of witness;

"(D) receive oral argument; or

"(E) direct or conduct an evidentiary hearing.

"(2) LEGAL ASSISTANCE.—A member to whom the Inspector General has reported under subsection (c) is entitled to the assistance of a judge advocate in filing a petition for correction under section 1552 of this title.

"(3) BOARD DECISIONS.—The Board shall issue a final decision with respect to the petition within 120 days after the filing of such petition. If the Board fails to issue such a final decision within such time, the member shall be deemed to have exhausted administrative remedies under section 1552 of this title to the extent that such exhaustion may be required in any judicial proceeding concerning the relief sought in the petition for correction. The decision of the Board shall be in writing and shall include findings of fact and a statement of reasons. The Board shall cause its decision to be served on the petitioner by first class mail to the address listed in the petition for correction within 10 days of the date of the decision. A determination by the Board by a preponderance of the evidence that a personnel action adversely affecting a member would not have been taken in the absence of a complaint or disclosure of information described in subsection (c)(1) shall constitute a determination of a prohibited retaliatory personnel action under subsection (b).

"(4) CORRECTIVE ACTION.—The Board shall order such action as is necessary to correct the record and the effect of a prohibited retaliatory personnel action.

"(5) DISCIPLINARY ACTION.—If the Board determines that a prohibited retaliatory personnel action, as defined in subsection (b), has occurred, the Board shall refer the record of the matter to the officer exercising general court-martial jurisdiction over the person who committed the prohibited retaliatory personnel action.

"(e) JUDICIAL REVIEW.—

"(1) RIGHT OF REVIEW.—(A) A member of an armed force aggrieved by a final order of the Board may obtain judicial review of the order by filing a petition for review before the end of the 60-day period beginning on the later of—

"(i) the date the member received notice of the order of the Board; or

"(ii) the date on which the member was deemed to have exhausted administrative remedies under subsection (d)(3).

"(B) A petition for review under subparagraph (A) shall be filed with the United States Court of Appeals—

"(i) for the circuit in which the member resides;

"(ii) for the circuit in which the member is stationed; or

"(iii) in the Court of Appeals for the District of Columbia.

"(2) REVIEW OF RECORD.—With respect to any case for which a petition for review is filed under paragraph (1)(A), the court—

"(A) shall review the record; and

"(B) in any case in which it determines that the record fails to resolve significant issues of fact, may refer the case to the appropriate United States district court for a hearing de novo.

"(3) STANDARD OF REVIEW.—The court shall set aside any order of the Board that, upon completion of a review under paragraph (2), is determined to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or

"(B) not supported by substantial evidence.

"(4) ATTORNEYS FEES.—If, upon completion of a review under paragraph (2), the court finds that the claim of the member is meritorious, the court shall award such member reasonable attorneys fees and costs.

"(f) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include regulations for which violations are subject to section 892 of this title (article 92 of the Uniform Code of Military Justice).".

(2) The item relating to such section in the table of sections at the beginning of chapter 53 of such title is amended to read as follows:

"1034. Communicating with a Member of Congress or Inspector General.".

(c) DEADLINE FOR REGULATIONS.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations required by subsection (e) of section 1034 of title 10, United States Code, as added by subsection (a), not later than 120 days after the date of the enactment of this Act.

SEC. 922. PROTECTION OF CONTRACTOR EMPLOYEES FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION.

(a) IN GENERAL.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Contractor employees: protection from reprisal for disclosure of certain information

"(a) PROHIBITION OF REPRISALS.—(1) A contractor of the Department of Defense may not take a reprisal action against any officer or employee of that contractor for disclosing to an appropriate Government official information relating to a contract (or

the negotiation or competition for a contract) between such contractor and the Department of Defense which the officer or employee reasonably believes evidences—

"(A) a violation of law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(2) In this section, the term 'appropriate Government official' includes—

"(A) an officer or employee of the Department of Defense;

"(B) a Member of Congress or an officer or employee of Congress, the General Accounting Office, the Congressional Budget Office, or the Office of Technology Assessment;

"(C) any other officer or employee of the United States whose duties include the investigation or enforcement of any law, rule, or regulation relating to defense acquisition; and

"(D) a member or employee of any authorized commission established for purposes related to defense acquisition.

"(b) REMEDIES.—(1) An officer or employee of a defense contractor who believes that such officer or employee has been subject to a reprisal prohibited by subsection (a) may file a complaint with the Secretary of Defense.

"(2)(A) Under procedures prescribed by the Secretary of Defense by regulation, the Secretary shall investigate each complaint filed under paragraph (1).

"(B) If, after an investigation under subparagraph (A), the Secretary believes there is a reasonable likelihood that a reprisal prohibited by subsection (a) has occurred, the Secretary shall provide the contractor with an opportunity to show cause why the Secretary should not order corrective action and assess penalties under subparagraph (C).

"(C) If, after considering the presentation of the contractor under subparagraph (B), the Secretary finds that a reprisal prohibited by subsection (a) has occurred, the Secretary shall—

"(i) order the contractor to take action to eliminate the adverse effect of the reprisal on the complainant; and

"(ii) assess a monetary penalty against such contractor.

"(D) The Secretary shall impose penalties, which may include monetary fines and debarment from further contracts, against any contractor who fails to comply promptly with an order of the Secretary under subparagraph (C).

"(E) The Secretary shall issue a decision on a complaint filed under paragraph (1) within 45 days of receipt of the complaint.

"(3)(A) The decision of the Secretary under paragraph (2) shall be a final agency action for purposes of chapter 7 of title 5.

"(B) Failure of the Secretary to decide on a complaint within the period provided in paragraph (2)(E) shall be deemed to be final agency action for purposes of chapter 7 of title 5.

"(C) In any action brought under chapter 7 of title 5 related to a reprisal under subsection (a), a court may assess against the defense contractor, or against the United States, reasonable attorney fees and other litigation costs reasonably incurred by an officer or employee of the contractor who substantially prevails in such action.

"(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section (other than subsection (b)(3)). Such regulations shall provide that any firm which negotiates with the Department of Defense for a contract or competes for a Department of Defense contract thereby submits to the jurisdiction of the Secretary of Defense for purposes of this section.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Contractor employees: protection from reprisal for disclosure of certain information.".

(b) INITIAL REGULATIONS.—The Secretary of Defense shall prescribe the regulations required by subsection (c) of section 2408 of title 10, United States Code, as added by subsection (a), not later than the end of the 90-day period beginning on the date of the enactment of this Act.

(c) EFFECTIVE DATE.—Section 2408 of title 10, United States Code, as added by subsection (a), shall apply with respect to any reprisal action taken on or after the date of the enactment of this Act.

SEC. 923. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS.

(a) INCREASED USE OF COMPETITIVE PROCEDURES.—Except as provided in subsection (b), the Secretary of Defense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement with such center.

(b) EXCEPTION.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) STUDY.—The Comptroller General shall conduct a study of the national defense role of federally funded research and development centers. Such study shall consider the following:

(1) The appropriate circumstances for establishing such centers.

(2) The role presently served by such centers in the procurement process of the Department of Defense.

(3) The growth in the size of such centers during fiscal years 1982 through 1986.

(4) The validity of typical reasons given for such growth.

(5) The cost efficiency of such centers, particularly in comparison with other suppliers of similar services.

(6) The appropriateness of the exemption of contracts with such centers from the competitive procedures required by section 2304 of title 10, United States Code.

(7) The relationship of such centers to their sponsors.

(d) REPORT.—(1) The Comptroller General shall submit to Congress a report on the study required by subsection (a). Such report shall include a discussion of each of the matters listed in subsection (a).

(2) The report required by paragraph (1) shall be submitted not later than one year after the date of the enactment of this Act.

(e) LIMITATION.—No funds appropriated pursuant to authorizations in this or any other Act may be expended or obligated on or after the date of the enactment of this Act for purposes of operating a federally funded research center that was not in existence on or before June 1, 1986, until the end of the 60-day period beginning on the date that the head of an agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of such center.

SEC. 924. CONFLICT-OF-INTEREST IN DEFENSE PROCUREMENT.

(a) IN GENERAL.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2397a the following new sections:

"§ 2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors

"(a)(1) Any person—

"(A) who is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

"(B) who, during the two-year period preceding the person's separation from service in the Department of Defense, participated personally and substantially, and in a manner involving decisionmaking responsibilities, in a procurement function with respect to a contract through contact with the contractor,

may not accept compensation from that contractor for a period of two years following the person's separation from service in the Department of Defense.

"(2) In paragraph (1), the term 'decisionmaking responsibilities' includes the following activities with respect to a contract: approval or disapproval, or making recommendations or engaging in negotiations, with regard to a procurement function.

"(3) For purposes of paragraph (1), whether or not a person is a contractor (as defined in subsection (f)(2)) is determined as of the date of the separation from service of the officer or employee of the Department of Defense or member of the armed forces involved.

"(4) Any person who knowingly violates paragraph (1) shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

"(5) Any person who knowingly offers or provides any compensation to another person, and who knew or should have known that the acceptance of such compensation is or would be in violation of paragraph (1), shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

"(b)(1) This section applies only to—

"(A) civilian positions for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS-13 of the General Schedule; and

"(B) to positions held by members of the armed forces in a pay grade of O-4 or higher.

"(2)(A) When a vacancy occurs in a sensitive civilian procurement executive position, the Secretary of Defense, with the concurrence of the Director of the Office of Government Ethics, may exempt the person appointed to fill the vacancy from the provisions of subsection (a) by reason of service in such position.

"(B) For purposes of subparagraph (A), a sensitive civilian procurement executive position is a position—

"(i) which is identified under paragraph (1);

"(ii) which is a civilian position to which a person is appointed by the President, by and with the advice and consent of the Senate; and

"(iii) with respect to which the Secretary of Defense determines that the duties inherent in the position involve personal and substantial participation in procurement functions (to the extent to which subsection (a)(1) applies) with so many contractors that implementation of subsection (a) with respect to persons serving in the position would seriously hamper the ability of the Department of Defense to obtain the services of a highly qualified person to serve in the position.

"(C) An exemption granted under this paragraph shall not apply to the extent that the person granted the exemption acts as a Government representative in the negotiation or settlement of a contract with a contractor.

"(D) Whenever the Secretary of Defense grants an exemption under this paragraph, the Secretary shall promptly submit to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and the Judiciary of the House of Representatives a report describing the exemption and setting forth the specific reasons for the exemption.

"(c) The Secretary of Defense shall provide to each person separated from service in the Department of Defense in a position described in subsection (b)(1) who, within the two years preceding the date of such separation, participated in a procurement function of the Department a notice with respect to this section. Such notice shall include—

"(1) a written explanation of the provisions of this section; and

"(2) the name of each contractor from whom such person is prohibited from accepting compensation under this section.

"(d) This section does not apply—

"(1) to a contract for an amount less than $100,000;

"(2) to compensation of a person by an entity that did not have a Department of Defense contract in excess of $100,000 at the time the person participated personally and substantially in a procurement function (to the extent to which subsection (a)(1) applies) with respect to a contract with that entity; or

"(3) to a contractor that was awarded contracts by the Department of Defense during the preceding fiscal year in a total amount less than $100,000.

"(e)(1) A person who is considering the propriety of accepting compensation that might place the person in violation of subsection (a) may, before acceptance of such compensation, apply to the Director of the Office of Government Ethics for advice on the applicability of this section to the acceptance of such compensation.

"(2) An application under paragraph (1) shall contain such information as the Director requires.

"(f) In this section:

"(1) The term 'compensation' includes any payment, gift, benefit, reward, favor, or gratuity—

"(A) which is provided, directly or indirectly, for services rendered; and

"(B) which is valued in excess of $250 at the prevailing market price.

"(2) The term 'contractor' means—

"(A) a person that contracts to supply the Department of Defense with goods or services; and

"(B) a person that controls, is controlled by, or is under common control with, a person described in subparagraph (A).

Such term does not include a State or local government or an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code.

"(3) The term 'procurement function' includes, with respect to a contract, any function relating to—

"(A) the negotiation, award, administration, or approval of the contract;

"(B) the selection of a contractor;

"(C) the approval of changes in the contract;

"(D) quality assurance, operational and developmental testing, the approval of payment, or auditing under the contract; or

"(E) the management of the procurement program.

"(4) The term 'armed forces' does not include the Coast Guard.

"(g) For the purposes of this section and section 2397c of this title, a member or former member of the armed forces shall be considered to have been separated from service in the Department of Defense upon the member's discharge or release from active duty.

"§ 2397c. Defense contractors: requirements concerning former Department of Defense officials

"(a)(1) With respect to a contractor that during a fiscal year enters into contracts with the Department of Defense for the procurement of goods and services in amounts aggregating $100,000 or more, each contract for procurement of goods or services entered into by the Department with that contractor during the next fiscal year shall include a provision under which the contractor agrees not to provide compensation to a person if the acceptance of such compensation by such person would violate section 2397b(a)(1) of this title.

"(2) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of—

"(A) $100,000; or

"(B) three times the compensation paid by the contractor to the person in violation of such contract provision.

"(b)(1)(A) Each contractor subject during a calendar year to a contract term described in subsection (a) shall submit to the Secretary of Defense not later than April 1 of the next year a report covering the preceding calendar year. Each such report shall list the name of each person (together with other information adequate for the Government to identify the person) who—

"(i) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

"(ii) was provided compensation by that contractor during the preceding calendar year, if such compensation was provided within two years after such officer, employee, or member left service in the Department of Defense.

"(B) Each such listing shall—

"(i) show each agency in which the person was employed or served on active duty during the last two years of the person's service in the Government;

"(ii) show the person's job titles during the last two years of the person's service in the Government;

"(iii) contain a full and complete description of the duties of the person during the last two years of such service; and

"(iv) contain a description of the duties (if any) that the person is performing on behalf of the contractor.

"(2) A person who knowingly fails to file a report required by paragraph (1) shall be fined not more than $10,000.

"(3) The Secretary of Defense shall review each report under paragraph (1) to assess the report for accuracy and completeness and for the purpose of identifying possible violations of paragraph (1) or section 2397b(a) of this title or of a contract provision required by subsection (a). The Secretary shall report any such possible violation to the Attorney General.

"(c)(1) The Director of the Office of Government Ethics shall have access to the reports submitted under subsection (b)(1) and shall conduct an annual random review of the reports for violations of section 2397b(a) of this title and subsections (a) and (b)(1).

"(2) Not later than October 1 of each year, the Director shall submit to Congress a report on the operation of this section. Each such report shall include the findings of the Director based on the examination of reports for the preceding calendar year.

"(d) This section does not apply to a contract for an amount less than $100,000.

"(e) The definitions set forth in section 2397b(f) of this title apply to this section.".

(2) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by inserting after the item relating to section 2397a the following new items:

"2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors.

"2397c. Defense contractors: requirements concerning former Department of Defense officials.".

(b) REPEAL.—Effective on the effective date of this section, section 921 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 10 U.S.C. 2397a note) is repealed.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraphs (1) and (2), this section and the amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

(2) EFFECTIVE DATE FOR REGULATORY AUTHORITY.—Subsection (b) of section 2397b of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act. The Secretary of Defense shall prescribe and publish in the Federal Register regulations under that subsection not later than 180 days after such date.

(3) EFFECT ON EMPLOYMENT.—(A) The amendments made by this section—

(i) do not preclude the continuation of employment that began before the effective date of this section or the acceptance of compensation for such employment; and

(ii) do not, except as provided in subparagraph (B), apply to a person whose service in the Department of Defense terminates before the effective date of this section.

(B) Subparagraph (A)(ii) does not preclude the application of the amendments made by this section to a person with respect to service in the Department of Defense by such person on or after the effective date of this section.

(4) EFFECTIVE DATE FOR REPORTING REQUIREMENT.—The first report under section 2397c(c)(2) of title 10, United States Code, as added by subsection (a), shall be submitted not later than October 1, 1987.

SEC. 925. REQUIREMENTS RELATING TO UNDEFINITIZED CONTRACTUAL ACTIONS.

(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) LIMITATION ON USE OF FUNDS.—(A) On the last day of a fiscal quarter during a covered fiscal year, the amount of funds represented by undefinitized contractual actions (as determined under paragraph (3)) entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the reporting period with respect to such quarter may not exceed 10 percent of the amount of funds represented by all contractual actions entered into by the Secretary during such period.

(B) If at the end of a fiscal quarter during a covered fiscal year the amount of funds represented by undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the reporting period with respect to such quarter exceeds the limit established in subparagraph (A), the Secretary may not enter into any additional undefinitized contractual actions until the end of the following quarter.

(2) QUARTERLY REPORTS TO DEFENSE COMMITTEES.—(A) During each covered fiscal year, the Secretary of Defense and the Secretaries of the military departments shall each submit to the defense committees a report at the end of each fiscal year quarter concerning—

(i) the amount of funds represented by contractual actions under the jurisdiction of the Secretary that were entered into during the reporting period with respect to the month for which the report is submitted; and

(ii) the amount of such funds represented by undefinitized contractual actions.

(B) A report required by subparagraph (A) shall be submitted not later than the end of the 45-day period beginning on the first day following the fiscal year quarter for which the report is submitted.

(C) The first reports required by subparagraph (A) shall be with respect to the fiscal year quarter ending on December 31, 1986.

(3) DETERMINATION OF AMOUNTS OF CONTRACTUAL ACTIONS.—For purposes of this section, the amount of funds represented by a contractual action shall be—

(A) the contractual price; or

(B) in the case of an undefinitized contractual action, the negotiated overall ceiling price.

(4) DEFINITIONS.—For purposes of this subsection:

(A) The term "covered fiscal year" means fiscal year 1987 or 1988.

(B) The term "defense committees" means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

(C) The term "reporting period" means, with respect to any month of a covered fiscal year, the period beginning on the first day of such fiscal year and ending on the last day of such month.

(D) The term "Secretary concerned" means—

(i) the Secretary of Defense, with respect to matters concerning the Defense Logistics Agency; and

(ii) the Secretary of a military department, with respect to matters concerning that military department.

(E) The term "undefinitized contractual action" has the meaning given such term in section 2325(g) of title 10, United States Code (as added by section 3(a)(1)).

(b) REQUIREMENTS WITH RESPECT TO UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) IN GENERAL.—(A) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2325. Undefinitized contractual actions: restrictions

"(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless—

"(1) the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action; and

"(2) the contractual action provides for determination of contractual terms, specifications, and price by the earlier of—

"(A) the end of the 180-day period beginning on the date that the contractual action is initiated; or

"(B) the date on which the amount of funds obligated or expended under the contract is equal to 50 percent of the amount of the negotiated overall ceiling price.

"(b) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), the contracting officer for an undefinitized contractual action may not expend with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(2) If a contractor submits a proposal to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is expended on such action, the contracting officer for such action may not expend with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(e) ALLOWABLE PROFIT.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

"(1) the reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

"(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

"(f) APPLICABILITY.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

"(g) DEFINITION.—In this section, the term 'undefinitized contractual action' means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2325. Undefinitized contractual actions: restrictions.".

(2) EFFECTIVE DATE.—Section 2325 of title 10, United States Code (as added by subsection (a)(1)), applies to undefinitized contractual actions that are entered into after the end of the 30-day period beginning on the date of the enactment of this Act.

SEC. 926. DEFENSE ACQUISITION CORPS.

(a) IN GENERAL.—Part II of subtitle A of title 10, United States Code, is amended by inserting after chapter 83 the following new chapter:

"CHAPTER 84—DEFENSE ACQUISITION CORPS

"Sec.
"1611. Establishment.
"1612. Appointments.

"§ 1611. Establishment

"(a) ESTABLISHMENT.—There is in the Department of Defense a Defense Acquisition Corps consisting of acquisition-related positions in the Office of the Secretary of Defense, the military departments, and the Defense Agencies specified in regulations prescribed by the Secretary of Defense. The head of the Defense Acquisition Corps is the Under Secretary of Defense for Acquisition.

"(b) NUMBER.—The number of Defense Acquisition Corps positions in a military department shall be determined by the Secretary of Defense.

"§ 1612. Appointments

"The Secretary of Defense shall make appointments to the Defense Acquisition Corps from the best-qualified military personnel. The qualifications of such personnel shall be established based on levels of education, experience, and training and performance on examinations.".

(b) COMPENSATION AND PERSONNEL MANAGEMENT INITIATIVE.—

(1) IN GENERAL.—The Secretary of Defense shall develop a plan for a compensation and personnel management initiative to enhance the professionalism of military personnel in the Defense Acquisition Corps.

(2) REPORT.—The Secretary shall submit to Congress a report describing the plan developed as required by paragraph (1) not later than April 15, 1987.

(c) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle A of such title and at the beginning of part II of such subtitle are each amended by inserting after the item relating to chapter 83 the following new item:

"84. Defense Acquisition Corps..... 1611".

SEC. 927. DEFENSE ACQUISITION UNIVERSITY.

(a) ESTABLISHMENT.—The Secretary of Defense shall establish by regulation a Defense Acquisition University that includes acquisition-related defense schools in existence on the date of the enactment of this Act.

(b) REGULATIONS.—The regulations establishing the Defense Acquisition University shall include the following:

(1) ACQUISITION SPECIALTIES.—Provision for separate schools within the University with respect to various acquisition specialties, including contracting, logistics, quality, program management, systems engineering, production, and manufacturing.

(2) ADMISSION STANDARDS.—Standards and procedures for admission to the University.

(3) CURRICULUM REQUIREMENT.—A requirement that each student at the University successfully complete a central curriculum of contracting and acquisition methodology.

(4) ASSOCIATED PROGRAMS.—Provision for the education of members of the Defense Acquisition Corps through programs offered in conjunction with or in lieu of attendance at the University.

SEC. 928. BUDGETING FOR DEFENSE INFLATION.

(a) IN GENERAL.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2214. Budgeting and accounting for inflation

"(a) INFLATION IN DEFENSE BUDGETING.—In preparing the budget of the Department of Defense to be included in the budget the President submits to Congress under section 1105 of title 31 for any fiscal year, the Secretary of Defense shall set out separately for each budget account the portion of the amount requested for that account that is required to offset estimated inflation.

"(b) LIMITATION ON AN AMOUNT REQUESTED TO OFFSET ESTIMATED INFLATION.—The total amount requested in such budget as required to offset estimated inflation on purchases of property and services by the Department of Defense (other than purchases of fuel and foreign currency and amounts requested for pay and retirement benefits) may not exceed the amount that would be required to offset inflation on such purchases were inflation to be estimated at the rates projected in the President's budget for the gross national product deflator.

"(c) COMPARISONS TO PRIOR FISCAL YEARS.—In preparing such budget, the Secretary shall set out separately for each budget account a comparison, for the fiscal year during which the budget is submitted and the most recently completed fiscal year, of the portions of the amounts appropriated for such accounts that were required and are currently estimated to be required to offset inflation.

"(d) IDENTIFICATION OF INFLATION INDEXES.—If the amount required to offset inflation for any budget account in any fiscal year shown in such budget (other than purchases and amounts excepted in subsection (b)) is based on actual or projected rates of inflation different than the actual or projected rates for the gross national product deflator set forth in such budget, the Secretary shall include in the budget a description of the inflation index used and a justification for its use, together with an estimate of the amount required to offset inflation for such account using the actual and projected rates for the gross national product deflator set forth in such budget.

"(e) PROGRAM ADJUSTMENTS.—If any program adjustment is proposed to or made by Congress with respect to the amount requested or made available for any budget account, the Secretary shall identify the effect of such adjustment on that portion of such amount that was required to offset inflation.

"(f) INFLATION FUND.—(1) There is established in the Treasury a fund to be known as the 'Defense Inflation Fund'. The fund shall be administered by the Secretary of Defense. As part of the budget of the Department of Defense to be included in the President's budget submitted to Congress, the Secretary shall report—

"(A) the balance then in the fund; and

"(B) the amounts estimated to be paid from the fund to offset inflation in each budgetary account.

"(2) Amounts appropriated for a fiscal year to cover amounts required to offset inflation in major defense acquisition programs shall be appropriated to the fund.

"(3) Subject to paragraph (4), amounts in the fund shall be used by the Secretary of Defense without fiscal year limitation to meet costs for inflation—

"(A) under contracts subject to section 2408 of this title, to the extent that those costs are authorized to be paid by contract provisions required by that section; and

"(B) for that portion of spending for major defense acquisition programs that is not made under contracts subject to section 2408 of this title, in accordance with procedures approved by the Secretary of Defense.

"(4) Amounts in the fund may not be used to meet the costs of changes in contract prices due to changes in the specification of the property or services being purchased.

"(5) In this subsection, the term 'major defense acquisition program' means a Department of Defense procurement program—

"(A) that is designated by the Secretary of Defense as a major defense acquisition program; or

"(B) that is estimated by the Secretary of Defense to require an eventual total expenditure for procurement of more than $1,000,000,000 (based on fiscal year 1980 constant dollars).".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2214. Budgeting and accounting for inflation.".

(b) EFFECTIVE DATE.—Section 2214 of title 10, United States Code, as added by subsection (a), shall take effect with respect to fiscal year 1988.

SEC. 929. INFLATION ADJUSTMENT CLAUSES IN MAJOR PROCUREMENT CONTRACTS.

(a) CONTRACT CLAUSE REQUIRED.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Major procurement contracts: economic price adjustment clauses

"(a) REQUIRED CONTRACT CLAUSES.—The Secretary of Defense shall require that each major procurement contract include an economic price adjustment clause providing for adjustments in contract prices to compensate for inflation over the life of the contract.

"(b) LIMITATIONS.—An economic price adjustment clause included in a contract pursuant to subsection (a)—

"(1) may not be based on an index or indices measuring inflation for a sector of the economy in which purchases, or wages paid, by the contractor constitute more than 20 percent of total purchases or wages paid;

"(2) may not be based on an index or indices measuring inflation for a sector of the economy in which purchases for national security or military purposes, or wages paid by contractors with the Department of Defense or their subcontractors, are predominant, unless the Committees on Armed Services of the Senate and House of Representatives have been notified in writing of a proposal to base a clause on such an index or indices and 30 days of continuous session of Congress have expired following the date such notice is received; and

"(3) may not permit to be included as inflation under the contract a change in contract prices due to changes in the specifications of the property or service being purchased, except that if any such change in prices becomes effective, the contract may provide for adjustment in the change in price to compensate for inflation over the remaining life of the contract.

"(c) DEFINITION.—In this section, the term 'major procurement contract' means a contract (other than a cost reimbursement contract) for the purchase of property or services awarded after using procedures other than sealed bid procedures which is performable over a period greater than two years and which—

"(1) is a prime contract under a major defense acquisition program for the purposes of section 2214 of this title; or

"(2) is an associate or Government-furnished equipment contract under such a major defense acquisition program which is one of the six largest contracts under such program in dollar amount and which is for an amount in excess of $2,000,000.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Major procurement contracts: economic price adjustment clauses.".

(b) EFFECTIVE DATE.—Section 2408 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act.

SEC. 930. GAO REPORT ON IMPLEMENTATION OF DEFENSE BUDGETING FOR INFLATION.

The Comptroller General shall periodically report to Congress on implementation by the Department of Defense of the requirements of sections 2214 and 2408 of title 10, United States Code, as added by the amendments made by sections 928(a) and 929(a). Each such report shall include any recommendations of the Comptroller General for further legislative action.

SEC. 931. GAO REPORT ON DEFENSE FINANCIAL MANAGEMENT SYSTEM.

(a) REPORT.—The Comptroller General shall submit to Congress a report setting forth a proposed financial management system for the Department of Defense. The proposed financial management system shall be designed to reconcile—

(1) funds appropriated or otherwise made available to the Department of Defense, with

(2) funds obligated by the Department.

(b) DEADLINE FOR REPORT.—The report required by subsection (a) shall be submitted not later than the end of the six-month period beginning on the date of the enactment of this Act.

SEC. 932. CODIFICATION OF REQUIREMENT FOR PERIODIC REPORTS ON UNOBLIGATED BALANCES.

(a) PERIODIC REPORTS ON UNOBLIGATED BALANCES.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2215. Reports on unobligated balances

"(a) REQUIRED REPORTS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives reports (at the times specified under subsection (d)) containing an estimate of the amount of funds in each appropriation account of the Department of Defense that at the time of the report—

"(1) is available for obligation; and

"(2) is in excess of the amount needed to carry out the programs for which the funds were appropriated.

"(b) MATTERS TO BE INCLUDED.—Each report under subsection (a) shall include, set forth separately for each account, estimates of amounts attributable to—

"(1) inflation savings;

"(2) foreign currency savings;

"(3) excess working capital fund cash; and

"(4) all other savings.

"(c) UNANTICIPATED COST INCREASES.—Each such report shall also identify unanticipated cost increases resulting from adverse economic trends.

"(d) SUBMISSION OF REPORTS.—A report under this section shall be submitted to Congress each year—

"(1) with the President's budget for the next fiscal year;

"(2) with the April Budget Update; and

"(3) with the Mid-Session Budget Review.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2215. Reports on unobligated balances.".

(b) REPEAL OF SOURCE LAW.—Section 1407 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), is repealed.

SEC. 933. CERTIFICATION OF ALLOWABLE INDIRECT COSTS.

(a) STRENGTHENING OF CERTIFICATION REQUIREMENT.—Subsection (h) of section 2324 of title 10, United States Code, is amended to read as follows:

"(h)(1) A contractor that submits a proposal for interim or final settlement of indirect costs applicable to a covered contract shall be required to certify that all indirect costs included in the proposal are allowable. Any such certification shall be in the form prescribed in paragraph (2).

"(2) The certification required by paragraph (1) is as follows:

"'CERTIFICATE OF OVERHEAD COSTS

"'This is to certify that:

"'1. I have reviewed the indirect cost proposal submitted with this certification.

"'2. All costs included in this proposal to establish (billing) (final indirect cost rates) for (identify period) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts.

"'3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs (contributions and donations), entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and goodwill.

"'4. All costs included in this proposal benefit the Department of Defense and are demonstrably related to or necessary for the performance of each Department of Defense contract covered by the proposal.

"'I declare under penalty of perjury that the foregoing is true and correct.'.

"(3) Such certification shall identify the contractor and be signed by the chief financial officer of the contractor.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to contracts entered into after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 934. COMPETITIVE PROTOTYPE STRATEGY REQUIREMENT FOR MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ESTABLISHMENT OF REQUIREMENT.—

(1) IN GENERAL.—Chapter 139 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2362. Competitive prototype strategy requirement for major defense acquisition programs

"(a) COMPETITIVE PROTOTYPE STRATEGY REQUIREMENT.—Except as provided in subsection (c), the Secretary of Defense shall require the use of a competitive prototype program strategy in the development of a major weapons system (or a subsystem of such system).

"(b) QUALIFYING STRATEGIES.—A strategy qualifies as a competitive prototype strategy if it—

"(1) requires that contracts be entered into with not less than two contractors, using the same combat performance requirements, for the competitive design and manufacture of a prototype system or subsystem for operational test and evaluation;

"(2) requires that all systems or subsystems developed under contracts described in paragraph (1) be tested in a comparative side-by-side test that is designed to—

"(A) reproduce combat conditions; and

"(B) determine which system or subsystem is most effective under such conditions; and

"(3) requires that each contractor that develops a prototype system or subsystem, before the testing described in subparagraph (B) is begun, submit—

"(A) bids for full-scale engineering development;

"(B) production estimates; and

"(C) if appropriate, fixed-price or not-to-exceed production price options.

"(c) EXCEPTION.—Subsection (a) shall not apply to the development of a major weapons system (or subsystem of such system) after—

"(1) the Secretary submits to Congress—

"(A) written notification that use of a competitive prototype program strategy is not practicable with respect to such system or subsystem; and

"(B) a report that fully explains why use of such a strategy is not practicable, including—

"(i) detailed cost estimates comparing the total program cost of the competitive prototype strategy with the total program cost of the non-competitive prototype strategy; and

"(ii) a demonstration that the total program cost of the competitive prototype strategy is significantly greater than the total program cost of the non-competitive prototype strategy; and

"(2) 30 days of continuous session of Congress elapse after the Secretary submits the notification and report required by paragraph (1).

"(d) DEFINITIONS.—In this section:

"(1) MAJOR WEAPONS SYSTEM.—The term 'major weapons system' means a major weapons system that is acquired under a program that is a major defense acquisition program.

"(2) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' means a Department of Defense acquisition program that—

"(A) is not a highly sensitive classified program (as determined by the Secretary of Defense); and

"(B) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $200,000,000 (based on fiscal year 1980 constant dollars).".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2362. Competitive prototype strategy requirement for major defense acquisition programs.".

(b) EFFECTIVE DATE.—Section 2362 of title 10, United States Code (as added by subsection (a)(1)), shall apply to major weapons systems (as defined in subsection (c)(1) of such section) that enter the advanced development stage after September 30, 1986.

SEC. 935. RELEASE OF TECHNICAL DATA.

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2326. Release of technical data

"(a) IN GENERAL.—

"(1) RELEASE OF DATA.—The Secretary of Defense shall, if required to release technical data under section 552 of title 5, release technical data to a person requesting such a release if such person pays all reasonable costs attributable to search and duplication.

"(2) REGULATIONS.—The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section. The fees established in such schedule may not exceed comparable fees established under section 9701 of title 31.

"(b) DISPOSITION OF COSTS.—Amounts collected under this section shall be retained by the collecting agency and shall be used to reimburse the costs incurred in complying with requests for technical data.

"(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in addition to costs under section 552 of title 5 if—

"(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States;

"(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

"(3) the Secretary determines, in accordance with section 552(a)(4)(A) of title 5, that such a waiver is in the interests of the United States.

"(d) TECHNICAL DATA.—In this section, the term 'technical data' means formulae, designs, drawings, blueprints, technical manuals, or computer software.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2326. Release of technical data.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 936. THRESHOLDS FOR CERTAIN REQUIREMENTS RELATING TO SMALL PURCHASES.

(a) NOTICE THRESHOLDS.—

(1) SMALL BUSINESS ACT.—Subparagraph (A) of section 8(e)(1) of the Small Business Act (15 U.S.C. 637(e)(1)(A)) is amended—

(A) by striking out "$10,000" each place such term appears in subparagraph (A) and inserting in lieu thereof "$25,000";

(B) by striking out "or" at the end of clause (i);

(C) by striking out the comma at the end of clause (ii) and inserting in lieu thereof "; or"; and

(D) by inserting after clause (ii) the following new clause:

"(iii) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, if there is not a reasonable expectation that not less than two offers will be received from responsive and responsible offerors,".

(2) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Subparagraph (A) of section 18(a)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(1)(A)) is amended—

(A) by striking out "$10,000" each place such term appears in subparagraph (A) and inserting in lieu thereof "$25,000";

(B) by striking out "or" at the end of clause (i);

(C) by striking out the comma at the end of clause (ii) and inserting in lieu thereof "; or"; and

(D) by inserting after clause (ii) the following new clause:

"(iii) solicit bids or proposals for a contract for property or services for a price ex-

pected to exceed $10,000, if there is not a reasonable expectation that not less than two offers will be received from responsive and responsible offerors,".

(b) SMALL BUSINESS SET-ASIDES.—The first sentence of subsection (j) of section 15 of the Small Business Act (15 U.S.C. 644(j)) is amended by striking out "$10,000" and inserting in lieu thereof "25,000".

SEC. 937. SUBCONTRACTOR INFORMATION TO BE PROVIDED TO PROCUREMENT OUTREACH CENTERS.

(a) CONTRACTORS TO FURNISH INFORMATION.—(1) Chapter 142 of title 10, United States Code, is amended—

(A) by redesignating section 2416 as section 2417; and

(B) by inserting after section 2415 the following new section:

"§ 2416. Subcontractor information

"(a) The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

"(b) Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contractor, together with the business address and telephone number and area of responsibility of each such employee.

"(c) A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

"(d) In this section, the term 'defense contractor', for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of $100,000.".

(2) The table of sections at the beginning of such chapter is amended by striking out the item relating to section 2416 and inserting in lieu thereof the following new items:

"2416. Subcontractor information.
"2417. Regulations.".

(b) EFFECTIVE DATE.—Section 2416 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1987.

SEC. 938. PRIORITY FOR DOMESTIC FIRMS WITH RESPECT TO DEFENSE CONTRACTS.

(a) ESTABLISHMENT OF PRIORITY.—

(1) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Contracts: priority for domestic firms

"(a) IN GENERAL.—The Secretary concerned shall award a contract to a domestic firm that, under the use of competitive procedures, would be awarded to a foreign firm if—

"(1) when completely assembled, not less than 50 percent of the final product of the domestic firm would be domestically produced; and

"(2) the difference between the bids submitted by the foreign and domestic firms is not more than five percent.

"(b) WAIVER.—This section does not apply to the extent to which the Secretary of Defense determines that—

"(1) such application would not be in the public interest; or

"(2) compelling national security considerations require otherwise.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Contracts: priority for domestic firms.".

(b) EFFECTIVE DATE.—Section 2408 of title 10, United States Code (as added by subsection (a)), shall apply to contracts for which solicitations for bids are issued after the date of the enactment of this Act.

SEC. 939. LIMITATION ON AVAILABILITY OF EXCESS FUNDS.

(a) UNNECESSARY FUNDS.—The Secretary of Defense may not obligate or expend amounts appropriated to the Secretary, for any program, project, or activity, that are in excess of the amount needed to carry out the program, project, or activity for which such amounts were appropriated. Excess amounts that may not be obligated or expended are—

(1) inflation savings;

(2) excess working capital fund costs;

(3) foreign currency savings; and

(4) all other savings.

(b) FAILURE TO OBLIGATE FUNDS WITHIN THREE YEARS.—The Secretary of Defense may not obligate amounts appropriated to the Secretary for any program, project, or activity, for which a contract has not been entered into after the end of the three-year period beginning on the date that such amounts become available for obligation for such program, project, or activity.

TITLE X—GENERAL PROVISIONS

PART A—FINANCIAL MATTERS

SEC. 1001. TRANSFER AUTHORITY.

(a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—(1) Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division between any such authorizations (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary of Defense may transfer under the authority of this section may not exceed $2,000,000,000.

(b) LIMITATIONS.—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(2) may not be used to provide authority for an item that has been denied authorization by Congress.

(c) EFFECT ON OBLIGATION LIMITATIONS.—A transfer made under the authority of this section—

(1) increases by the amount of the transfer the obligation limitation provided in this division on the account (or other amount) to which the transfer is made; and

(2) decreases by the amount of the transfer the obligation limitation provided in this division on the account (or other amount) from which the transfer is made.

(d) NOTICE TO CONGRESS.—The Secretary of Defense shall promptly notify Congress of transfers made under the authority of this section.

SEC. 1002. DEBT COLLECTION.

(a) IN GENERAL.—Chapter 165 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2780. Debt collection

"(a)(1) Subject to paragraph (2), the Secretary of Defense shall enter into one or more contracts with a person for collection services to recover indebtedness owed to the United States Government (arising out of activities related to Department of Defense) that is delinquent by more than three months.

"(2) The authority of the Secretary to enter into a contract under this section for any fiscal year is subject to the availability of appropriations.

"(3) Any such contract shall provide that the person submit to the Secretary a status report on the person's success in collecting such debts at least once each six months. Section 3718 of title 31 shall apply to any such contract, to the extent not inconsistent with this subsection.

"(b) The Secretary shall disclose to consumer reporting agencies, in accordance with paragraph (1) of section 3711(f) of title 31, information concerning any debt described in subsection (a) of more than $100 that is delinquent by more than 31 days.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2780. Debt collection.".

SEC. 1003. LIMITATION ON CERTAIN SPENDING AUTHORITY.

A provision of this Act (including an amendment made by this Act) under which the United States is obligated to make payments to a person or government who meets the requirements established by law for such payments may only be construed as providing authority to make such payments if the budget authority for such payments is provided for in advance by appropriation Acts.

PART B—SPECIAL OPERATIONS MATTERS

SEC. 1011. ESTABLISHMENT OF NATIONAL SPECIAL OPERATIONS AGENCY.

(a) SHORT TITLE.—This section may be cited as the "Dan Daniel Special Operations Forces Act".

(b) AGENCY CHARTER.—Chapter 8 of title 10, United States Code, is amended—

(1) by redesignating section 191 as section 192; and

(2) by inserting after the table of sections the following new section:

"§ 191. National Special Operations Agency

"(a) ESTABLISHMENT.—(1) There is hereby established in the Department of Defense the National Special Operations Agency (hereinafter in this section referred to as the 'Agency'). The head of the Agency shall be a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director may not be an officer of the armed forces on the active-duty list.

"(2) The Director reports directly to the Secretary of Defense and has rank in the Department of Defense equivalent to that of an Assistant Secretary of Defense. The Director is the principal adviser to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff for all matters pertaining to special operations forces and activities.

"(b) AUTHORITY OF DIRECTOR.—Subject to the authority, direction, and control of the President and the Secretary of Defense, the Director—

"(1) shall exercise command and operational control of all special operations forces (including reserve component forces) of the Department of Defense (other than those forces assigned or allocated to a unified combatant command); and

"(2) shall be responsible for—

"(A) all training, exercises, plans, and doctrine of the Department of Defense relating to special operations, including professional military education and preparation for joint staff assignments; and

"(B) all special operations activities (including special operations missions) assigned to elements of the Department of Defense by the President or Secretary of Defense.

"(c) DEPUTY DIRECTORS.—(1) There shall be not less than three Deputy Directors of the Agency. The Deputy Directors shall include—

"(A) a Deputy Director for Policy, who shall be a civilian;

"(B) a Deputy Director for Programs, who may be a civilian or an officer on the active-duty list; and

"(C) a Deputy Director for Operations, who shall be an officer on the active-duty list and who shall serve in such position in a grade above major general or rear admiral, if appointed to such grade by the President for service in such position under section 601 of this title.

"(2) Deputy Directors shall be selected by the Director, except that officers on the active-duty list shall be selected by the Director in accordance with procedures approved by the Secretary of Defense.

"(d) ASSIGNED FORCES.—(1) Notwithstanding any other provision of law, the Secretary of Defense shall provide that all special operations forces shall be assigned to the Agency. The Secretary may assign or allocate such forces from the Agency to a combatant command.

"(2) Forces assigned to the Agency shall be organized as the Joint Special Operations Command. The Deputy Director for Operations of the Agency shall be the commander of the Joint Special Operations Command.

"(e) THEATER SPECIAL OPERATIONS FORCES.—(1) The Director shall assign to each unified combatant command an officer to serve as the theater special operations commander. Such officer shall also be the liaison of the Agency to the commander of the command. The theater special operations commander assigned to a unified combatant command is under the command of the commander of that command, and the assignment of an officer to a position as theater special operations commander is subject to the approval of the commander of the command.

"(2) The commander of a unified combatant command exercises command and operational control of special operations forces assigned or allocated to that command. Except in the case of elements of the Navy assigned to fleet operations, such operational control shall be exercised through the theater special operations commander.

"(f) BUDGET MATTERS.—(1) The Secretary of Defense shall provide that the budget justification documents of the Department of Defense for any fiscal year shall be prepared so that the presentation of major force programs in those documents sets out funding for all activities and elements of the Agency as a separate major force program category.

"(2) The responsibility for preparation, justification, and execution of budgets for the Agency shall be vested solely in the Director. The Director shall carry out such functions in accordance with guidance furnished by the Secretary of Defense and, in carrying out such functions, shall consider the views and recommendations of the commanders of the combatant commands.

"(g) PERSONNEL.—The Director shall have the authority to select, train, and assign military and civilian personnel of the Agency (including the personnel of forces assigned to the Agency).

"(h) UNAUTHORIZED ACTIVITIES.—This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require—

"(1) a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or

"(2) a notice to the intelligence committees under section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413).

"(i) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the activities of the Agency. Those regulations shall include provisions authorizing the Director to provide for operational security of special operations forces and activities. The regulations may not authorize the Agency to engage in clandestine foreign intelligence collection or (except in time of war) in covert action activities.

"(j) SPECIAL OPERATIONS FORCES DEFINED.—(1) Except as provided in paragraph (2), the term 'special operations forces', for the purposes of this section, means those forces of the armed forces that—

"(A) are identified as core forces or as augmenting forces in the Joint Chiefs of Staff Joint Strategic Capabilities Plan, Annex E, dated December 17, 1985;

"(B) are described in the Terms of Reference and Conceptual Operations Plan for the Joint Special Operations Command, as in effect on April 1, 1986; or

"(C) are designated as special operations forces by the Secretary of Defense.

"(2) Subject to paragraph (3), the term 'special operations forces' does not include forces identified, described, or designated under paragraph (1) that the Director (in conjunction with the Chairman of the Joint Chiefs of Staff) determines—

"(A) are augmenting forces (rather than core forces); and

"(B) are not necessary to the performance of nonpriority special operations activities.

"(3) When required by the Director, forces described in paragraph (2)—

"(A) shall immediately be assigned or otherwise made available to the Director; and

"(B) shall be considered to be special operations forces for the purposes of this section. The Secretary of Defense shall ensure that this paragraph is implemented so as to give the Director clear and unambiguous authority under the preceding sentence.

"(k) SPECIAL OPERATIONS ACTIVITIES DEFINED.—In this section, the term 'special operations activities' includes each of the following insofar as it relates to special operations:

"(1) Direct action.

"(2) Strategic reconnaissance.

"(3) Unconventional warfare.

"(4) Foreign internal defense.

"(5) Civil affairs.

"(6) Psychological operations.

"(7) Counterterrorism.

"(8) Drug interdiction (including coordination with other Government agencies).

"(9) Humanitarian assistance.

"(10) Theater search and rescue.

"(11) Such other matters as may be specified by the President or Secretary of Defense.".

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of such chapter is amended—

(1) by redesignating the item relating to section 191 to conform to the redesignation made by paragraph (1)(A); and

(2) by inserting before such item the following new item:

"191. National Special Operations Agency.".

(d) IMPLEMENTATION.—

(1) DIRECTOR.—The nomination of an individual for appointment as Director of the National Special Operations Agency shall be made by the President not later than 30 days after the date of the enactment of this Act.

(2) AGENCY.—The establishment of the National Special Operations Agency, including the assignment of forces to the Agency, shall be completed not later than six months after the date of the enactment of this Act.

(3) INITIAL FUNDING.—The Secretary of Defense may spend unobligated funds appropriated to the Department of Defense for fiscal years before fiscal year 1987 in such sums as necessary in order to carry out this section and section 191 of title 10, United States Code, as added by subsection (a).

(4) PERSONNEL.—The Secretary of Defense shall provide that the initial assignment of personnel to the Agency (including military and civilian personnel) shall, to the maximum extent practicable, be made from among personnel assigned to the headquarters staffs of the Department of Defense, military departments, and military services (including the Joint Staff) whose functions are rendered redundant by the establishment of the Agency.

SEC. 1012. SPECIAL OPERATIONS AIRLIFT READINESS.

(a) CONFIGURATION CONTROL OF SPECIAL OPERATIONS AIRCRAFT.—Funds appropriated or otherwise made available to the Department of Defense for fiscal year 1987 for the development, modification, or procurement of special operations and combat rescue aircraft shall be obligated and expended subject to the following requirements:

(1) PAVE LOW MODIFICATION.—The Secretary of the Air Force shall develop a plan that provides that, during the modification of the airframes for the HH-53H helicopters, there will be a transition from the Pave Low III Enhanced configuration to the Pave Low IV (HH-60H Nighthawk) configuration.

(2) HH-60A/MH-60X DEVELOPMENT.—The Secretary of Defense shall designate the Air Force as the Executive Agent—

(A) for the development of a joint-service HH-60A/MH-60X aircraft variant for special operations and combat rescue missions; and

(B) to ensure maximum commonality and economic procurement for an avionics suite to be adapted to the variant airframe selected by the Navy for those missions.

(3) MH-47E DEVELOPMENT.—The Secretary of the Army shall carry out further development of the MH-47E special operations variant of the CH-47D helicopter—

(A) subject to full and open competition; and

(B) so that such helicopter is configured to maximum commonality between a MH-47E and the joint-service HH-60A/MH-60X and Pave Low IV aircraft, as provided in paragraphs (1) and (2).

(4) CV-22A OSPREY AND MC-130H SYSTEMS.—The Secretary of the Navy shall carry out development of the special operations variant of the CV-22A Osprey tilt-rotor aircraft so that—

(A) such development is expedited to the maximum extent possible; and

(B) the configuration of such aircraft is conformed to the maximum extent possible with that of the aircraft referred to in paragraphs (1), (2), and (3) and the MC-130H Combat Talon II aircraft currently in production.

(b) AIR FORCE HH-60A AIRCRAFT.—The Secretary of the Air Force shall retain the initial HH-60A test aircraft in its existing configuration and shall make such aircraft available as necessary for joint-service testing purposes until sufficient numbers of aircraft under the programs referred to in paragraphs (1) through (4) of subsection (a) have been produced in a common configuration to make continued use of such HH-60A aircraft for such testing purposes unnecessary. At such time, such aircraft may be assigned for operational use in an Air Force special operations/combat rescue squadron.

PART C—REPORTS

SEC. 1021. REPORT ON CHEMICAL WEAPONS DEMILITARIZATION PROGRAM.

(a) REPORT REQUIREMENT.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the chemical weapons demilitarization program required by section 1412 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 747). The report shall describe—

(1) methods for carrying out such program that would optimize safety considerations; and

(2) methods for carrying out such program that would optimize cost-effectiveness considerations.

(b) DEADLINE FOR REPORT.—The report required by subsection (a) shall be submitted not later than February 1, 1987.

SEC. 1022. REPORT ON ARMY DEBT COLLECTION.

(a) REPORT REQUIREMENT.—The Secretary of the Army shall submit to Congress a report on actions of the Secretary relating to debt collection taken as a result of the identification of problems with such debt collection in the report of the General Accounting Office entitled "Debt Collection", dated December 13, 1985.

(b) DEADLINE FOR REPORT.—The report required by subsection (a) shall be submitted not later than the end of the 60-day period beginning on the date of the enactment of this Act.

SEC. 1023. REPORT ON LANDING AREA FOR AV-8B HARRIER AIRCRAFT ON IOWA CLASS BATTLESHIP.

Within six months after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the feasibility and benefits of removing the rear turret off an Iowa class battleship to create a landing area for AV-8B Harrier aircraft.

SEC. 1024. ANNUAL REPORT ON SOVIET ABM TREATY COMPLIANCE.

Not later than February 1, 1987, and not later than February 1 of each following year, the Secretary of Defense shall submit to the Congress a report (in both classified and unclassified versions) on the compliance of the Soviet Union with the 1972 Treaty on the Limitation of Anti-Ballistic Missile Systems. The report shall include—

(1) the findings of the Secretary with respect to such compliance during the previous year including, if necessary, the military implications of, and possible United States military responses to, violations by the Soviet Union of such treaty; and

(2) any additional information the Secretary considers necessary to keep the Congress currently informed about such compliance.

SEC. 1025. REPORT ON EFFORTS TO INCREASE DEFENSE CONTRACT AWARDS TO INDIAN-OWNED BUSINESS.

(a) REPORT.—The Secretary of Defense shall submit to Congress a report on the efforts by the Department of Defense during fiscal year 1986 to increase defense contract awards to Indian-owned businesses in accordance with the memorandum of understanding between the Department of Defense and the Small Business Administration of September 29, 1983. Such report shall include, to the maximum extent practicable, any data regarding the number and value of prime contracts awarded by the Department of Defense during such fiscal year to such businesses.

(b) DEADLINE.—The report required by subsection (a) shall be submitted no later than March 31, 1987.

(c) INDIAN-OWNED BUSINESS DEFINED.—For purposes of this section, the term "Indian-owned business" means a firm owned and controlled by American Indians, including a tribally owned for-profit entity.

SEC. 1026. REPORT ON GEOGRAPHIC DISTRIBUTION OF DEFENSE CONTRACTS.

(a) REPORT.—The Secretary of Defense shall submit to Congress a report on the geographic distribution by State of defense contract awards during fiscal years 1985 and 1986. Such report shall include—

(1) an analysis of any efforts undertaken by the Department of Defense to reduce disparities in the number and value of contract awards between geographic regions and between States; and

(2) data on direct purchases, indirect purchases, indirect payroll, total defense spending, share of net State product, and per capita amounts of defense outlays, using the Department of Defense's Defense Economic Impact Modeling System.

(b) DEADLINE.—The report required by subsection (a) shall be submitted no later than March 31, 1987.

SEC. 1027. SENSE OF CONGRESS EXPRESSING SUPPORT FOR A CENTRAL ROLE FOR NUCLEAR RISK REDUCTION CENTERS.

(a) CONGRESSIONAL STATEMENTS.—The Congress—

(1) has expressed its prior support for the establishment of nuclear risk reduction centers; and

(2) supports the President's willingness to negotiate an agreement with the Soviet Union to establish such centers in each nation.

(b) SENSE OF CONGRESS.—It is the sense of Congress that if an agreement on nuclear risk reduction centers is signed, the United States center should be assigned the responsibility—

(1) for ongoing assignment of Federal risk reduction activities; and

(2) to serve as the locus of such Federal activities.

PART D—MISCELLANEOUS

SEC. 1031. USE OF MARINE MAMMALS FOR NATIONAL DEFENSE PURPOSES.

(a) IN GENERAL.—Chapter 645 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 7524. Use of marine mammals for national defense purposes

"(a) IN GENERAL.—Notwithstanding the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and subject to subsection (b), the Secretary of Defense, with the concurrence of the Secretary of Commerce and after consultation with the Marine Mammal Commission established by section 201 of such Act (16 U.S.C. 1401), may authorize the taking of not more than 25 marine mammals each year for national defense purposes. Any mammal taken under this section shall be captured, supervised, cared for, transported, and deployed in a humane manner consistent with conditions established by the Secretary of Commerce.

"(b) RESTRICTIONS.—A mammal may not be taken under this section if such mammal is determined to be a member of an endangered or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new subsection:

"7524. Use of marine mammals for national defense purposes.".

SEC. 1032. CONTRACT SET-ASIDE REQUIREMENTS.

(a) SET-ASIDE REQUIREMENT.—Except as provided in subsection (d), not less than 10 percent of each amount described in subsection (b) shall be obligated during any fiscal year for contracts entered into with—

(1) small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined by section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under such section);

(2) historically Black colleges and universities; or

(3) minority institutions (as defined by the Secretary of Education pursuant to the General Education Provisions Act (20 U.S.C. 1221 et seq.)).

(b) AMOUNT TO BE SET-ASIDE.—The requirements of subsection (a) for any fiscal year apply to each of the following amounts:

(1) Funds appropriated to the Department of Defense for such fiscal year for procurement.

(2) Funds appropriated to the Department of Defense for such fiscal year for research, development, test, and evaluation.

(3) Funds appropriated to the Department of Defense for such fiscal year for military construction.

(4) Funds appropriated to the Department of Defense for operation and maintenance.

(c) TECHNICAL ASSISTANCE.—The Secretary of Defense shall provide for technical assistance to potential contractors described in subsection (a). Such technical assistance shall include information about the set-aside program, advice about Department of Defense procurement procedures, assistance in preparation of proposals, and such other assistance as the Secretary considers appropriate.

(d) APPLICABILITY.—Subsection (a) does not apply—

(1) to the extent to which the Secretary of Defense determines that compelling national security considerations require otherwise; and

(2) if the Secretary making such a determination notifies Congress of such determination and the reasons for such determination.

(e) COMPETITIVE PROCEDURES AND ADVANCE PAYMENTS.—In carrying out the requirements of subsection (a), the Secretary of Defense shall—

(1) solicit bids or competitive proposals in a manner designed to achieve full and open competition for the procurement, and

(2) to the extent practicable and when necessary to facilitate achievement of the 10 percent set-aside requirement described in subsection (a), make advance payments under section 2307 of title 10, United States Code, to contractors described in subsection (a).

(f) ANNUAL REPORT.—(1) Not later than May 1 of each fiscal year, the Secretary of Defense shall submit to Congress a report on the compliance of the Secretary with the requirements of subsection (a) during the pre-

ceding fiscal year. Each such report shall include—

(A) a full explanation of any failure to comply with such requirements; and

(B) a plan to remedy such failure.

(2) The first report required by subsection (a) shall be submitted not later than May 1, 1987.

(g) EFFECTIVE DATE.—This section applies to each of fiscal years 1987, 1988, 1989, 1990, and 1991.

SEC. 1033. REPORT ON HEALTH CARE FOR CERTAIN ABUSED DEPENDENTS.

(a) The Secretary of Defense shall submit a report to the Congress no later than December 31, 1986, on the desirability of establishing a program to provide one year of medical (including mental health) and dental care to the dependents of military members who are discharged or who voluntarily leave the service, who abused their dependents while in the service, and whose dependents require medical or dental care as a result of the abuse.

(b) The report shall include (1) data on the cost and the estimated number of persons that would be eligible for medical and dental care under subsection (a), and (2) a plan to implement such a program.

SEC. 1034. REIMBURSEMENT FOR INCIDENTAL EXPENSES INCURRED WHILE PROVIDING VOLUNTARY SERVICES.

Section 1588 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) The Secretary of the military department concerned may provide for reimbursement of incidental expenses which are incurred by a person providing voluntary services under subsection (a) as an ombudsman or for a family service center program. Such Secretary shall determine which expenses are eligible for reimbursement under this subsection.".

SEC. 1035. DEFENSE OF LEGAL MALPRACTICE SUITS.

(a)(1) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1051. Defense of certain suits arising out of legal malpractice

"(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32), in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the estate of the person) whose act or omission gave rise to such action or proceeding.

"(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein—

"(1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;

"(2) to the Attorney General; and

"(3) to the head of the agency concerned.

"(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court—

"(1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and

"(2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

"(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

"(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

"(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

"(g) In this section, 'head of the agency concerned' means—

"(1) the Secretary of Defense or the Secretary of a military department; or

"(2) the Secretary of Transportation.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1051. Defense of certain suits arising out of legal malpractice.".

(b) EFFECTIVE DATE.—Section 1051 of title 10, United States Code, as added by subsection (a), shall apply only to claims accruing on or after the date of the enactment of this Act, regardless of when the alleged negligent or wrongful act or omission occurred.

SEC. 1036. CORRECTION OF EFFECTS OF CONTAMINATION AT ROCKY MOUNTAIN ARSENAL.

(a) IN GENERAL.—

(1) USE OF AMOUNTS RECEIVED FROM LITIGATION.—Any amounts received as the result of the litigation described in paragraph (2) (whether from a judgment rendered in such litigation or from a settlement of such litigation) shall be available, without fiscal year limitation, to the Secretary of the Army only for purposes of correcting the effects of contamination at the Rocky Mountain Arsenal.

(2) DESCRIPTION OF LITIGATION.—The litigation referred to in paragraph (1) is any litigation between the United States and any person concerning the liability of such person for correcting the effects of contamination at the Rocky Mountain Arsenal or for cost recovery relating to correcting the effects of such contamination.

(b) ACCEPTANCE OF SERVICES.—In partial settlement of the litigation described in subsection (a), the United States may accept services that correct the effects of contamination at the Rocky Mountain Arsenal.

SEC. 1037. WAGE RATE FOR CERTAIN CORPS OF ENGINEERS EMPLOYEES.

(a) WAGE DETERMINATIONS.—(1) Notwithstanding any other provision of law, in the administration of the last undesignated paragraph preceding chapter 6 of title I of Public Law 97-257 (96 Stat. 832), the individuals described in paragraph (2) shall be paid wages determined in the same manner as that established in such undesignated paragraph with respect to United States Army Corps of Engineers employees paid from Corps of Engineers Special Power Rate Schedules.

(2) The individuals described in this paragraph are electric powerplant controllers and powerplant shift operators (as defined under regulations prescribed by the Secretary of Defense or his designee) assigned to the Soo Locks Power Plant in the Detroit District in the North Central Region of the United States Army Corps of Engineers.

(b) EFFECTIVE DATE.—Subsection (a) is effective with respect to pay periods commencing on or after the date of enactment of this Act.

SEC. 1038. MEAL REIMBURSEMENT FOR NONPROFIT YOUTH GROUPS RESIDING AT MILITARY INSTALLATIONS.

Section 1011(b) of title 37, United States Code, is amended by inserting after "military installation" in the second sentence the following: "or when residing at a military installation pursuant to an agreement in effect on June 30, 1986,".

SEC. 1039. FOREIGN CURRENCY EXCHANGE FOR MOVEMENT OF HOUSEHOLD GOODS.

(a) REINSTATEMENT OF PROGRAM.—The Secretary of the Army shall reinstitute the foreign currency rate adjustment program of the Military Traffic Management Command of the Army effective with the procurement Volume 54 (effective April 1, 1987) provided that the Comptroller General certifies to the Congress no later than September 30, 1986, that cost savings to the Government can reasonably be expected by the reinstitution of the program.

(b) Subject to subsection (a), the Commander of the Command shall follow the recommendations of the Comptroller General with respect to procedures for the administration of the program to ensure that the interests of the United States are adequately protected when any rate adjustment is made under the program. The Commander of the Command shall also, to the extent practicable, take into account the concerns of the affected industry in any reinstitution of the program.

SEC. 1040. REPORT ON PROPOSED REGULATIONS RELATING TO MOVEMENT OF HOUSEHOLD GOODS AND CARGOES.

(a) REPORT REQUIREMENT.—

(1) IN GENERAL.—The regulations of the Military Traffic Management Command described in subsection (b) may not become effective until—

(A) the Commander of the Military Traffic Management Command submits a report to Congress with respect to such regulations that includes a discussion of—

(i) the cost savings expected as a result of implementation of such regulations; and

(ii) the increased quality of services expected as a result of such implementation; and

(B) 90 days of continuous session of Congress elapse after the submission of such report.

(2) COMPUTATION OF TIME PERIOD.—For purposes of this subsection, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such 90-day period.

(b) DESCRIPTION OF REGULATIONS.—The regulations referred to in subsection (a) are the regulations contained in the International Through Government Bill of Lading Rate Solicitation, volume 54, that concern—

(1) elimination of the so-called "me-too" rate filing cycle;

(2) elimination of the rate cancellation cycles;

(3) mandatory use of Government-owned containers; and

(4) changes in storage-in-transit charges.

SEC. 1041. SENSE OF CONGRESS ON USE OF ARMED FORCES TO PROTECT UNITED STATES CITIZENS AND AIR CARRIERS AT AIRPORTS OUTSIDE THE UNITED STATES.

It is the sense of the Congress that the President, pursuant to his authority under the Constitution, should consider assigning or detailing members of the Army, Navy, Air Force, or Marine Corps to guard United States citizens and United States passenger air carriers (including aircraft and personnel) at airports outside the United States against terrorism and other acts of violence. Any such assignment or detail—

(1) should not be made if the assignment or detail will adversely affect the military preparedness of the United States; and

(2) should be made only in a Nation whose government has agreed to allow the assignment or detail.

SEC. 1042. OFF-POST RENTAL HOUSING LEASE INDEMNITY PILOT PROGRAM.

(a) ESTABLISHMENT OF PROGRAM BY SECRETARY OF DEFENSE.—

(1) IN GENERAL.—The Secretary of Defense shall establish a pilot program to test the feasibility of implementing a program under which the Secretary of a military department may guarantee compensation of any person who leases a rental unit to any member of the Armed Forces under the jurisdiction of the Secretary for any breach of any lease or any damage to the rental unit by the member.

(2) DEADLINE.—The program referred to in paragraph (1) shall be established not later than the end of the 90-day period beginning on the date of the enactment of this Act, but not before October 1, 1986.

(b) ACTIONS BY SECRETARIES OF MILITARY DEPARTMENTS.—

(1) DESIGNATION OF MILITARY INSTALLATIONS.—In accordance with action taken by the Secretary of Defense under subsection (a), the Secretary of each military department shall designate one military installation in the United States that is under the jurisdiction of such Secretary to participate in the program established under subsection (a).

(2) SECURITY AGREEMENTS.—For purposes of carrying out this section, the Secretary of a military department, to the extent approved in advance in appropriation Acts, may enter into an agreement with any person who leases a rental unit to any member of the Armed Forces under the jurisdiction of the Secretary. Any agreement under this paragraph shall provide that—

(A) the term of the agreement shall not be for more than one year;

(B) the member shall not pay a security deposit;

(C) the Secretary (except as provided in subparagraphs (D) and (E)) shall compensate the lessor for any breach of the lease by the member and for any damage to the rental unit caused by the member or by any guest or dependent of the member;

(D) the total liability of the Secretary for any breach of the lease or for any damage described in subparagraph (C) shall not exceed an amount equal to the amount that the Secretary determines would have been required by the lessor as a security deposit absent the agreement authorized in this paragraph;

(E) the Secretary shall not compensate the lessor for any breach of the lease or for any damage described in subparagraph (C) until the lessor exhausts any remedies available to the lessor against the member for the breach or damage; and

(F) the Secretary shall be subrogated to the rights of the lessor in any case in which the Secretary compensates the lessor for any breach of the lease or for any damage described in subparagraph (C).

(3) REGULATIONS.—Any authority of the Secretary of a military department under this section shall be exercised under regulations prescribed by the Secretary of Defense.

(c) GARNISHMENT OF PAY OF MEMBER OF ARMED FORCES.—Any Secretary who compensates any lessor under subsection (b) for any damage to a rental unit or any breach of a lease by a member of the Armed Forces may issue a special order under section 1007 of title 37, United States Code, to authorize the withholding from the pay of the member of an amount equal to the amount paid by the Secretary to the lessor as compensation for the breach or damage.

(d) REPORT REQUIREMENT.—

(1) IN GENERAL.—The Secretary of Defense shall submit to Congress a report concerning the pilot program established under subsection (a), including—

(A) findings and conclusions of the Secretary with respect to the pilot program; and

(B) recommendations as to the feasibility of implementing a program similar to the pilot program on all military installations.

(2) DEADLINE.—The report referred to in paragraph (1) shall be submitted before the expiration of the 18-month period following the date of the establishment of the pilot program under subsection (a).

(e) TERMINATION OF AUTHORITY.—The authority of the Secretary of a military department to enter into any contract under subsection (b) shall terminate upon the expiration of the 18-month period following the date of the establishment of the pilot program under subsection (a).

SEC. 1043. REIMBURSEMENT FOR TRANSFERRED DEFENSE INDUSTRIAL RESERVE EQUIPMENT.

(a) IN GENERAL.—Section 4 of the Defense Industrial Reserve Act (50 U.S.C. 453) is amended—

(1) by inserting "(a)" before "To execute"; and

(2) by adding at the end the following:

"(b)(1) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

"(A) storage of such property;

"(B) repair and maintenance of such property; and

"(C) overhead allocated to such property.

"(2) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under pragraph (1).".

(b) EFFECTIVE DATE.—(1) The regulations required to be prescribed by subsection (b) of section 4 of the Defense Industrial Reserve Act, as added by subsection (a), shall be prescribed not later than 60 days after the date of the enactment of ths Act.

(2) The requirement for reimbursement under such subsection shall apply with respect to property transferred from the Defense Industrial Reserve to a military department after the date on which such regulations are prescribed.

SEC. 1044. LIMITATION ON SOURCE OF FUNDS FOR NICARAGUAN DEMOCRATIC RESISTANCE.

(a) LIMITATION.—Notwithstanding title II of the Military Construction Appropriations Act, 1987, or any other provision of law, funds appropriated or otherwise made available to the Department of Defense for any fiscal year for operation and maintenance may not be used to provide assistance for the democratic resistance forces in Nicaragua. If funds appropriated or otherwise made available to the Department of Defense for any fiscal year are authorized by law to be used for such assistance, funds for such purpose may only be derived from amounts appropriated or otherwise made available to the Department for procurement. However, not more than 10 percent of the amount required may be taken from the procurement of ammunition provided that the Secretary of Defense notifies the Congress in writing that such transfer of funds will not adversely affect the combat readiness of United States forces.

(b) REPORT.—Before funds appropriated or otherwise made available to the Department of Defense are released to be used for the purpose described in subsection (a), the Secretary of Defense shall submit to Congress a report describing the specific source of such funds.

SEC. 1045. BALLISTIC MISSILE DEFENSIVE SYSTEM.

The Congress declares that it is the policy of the United States to expeditiously develop and deploy in cooperation with our allies a defensive system as capable as the Soviet SA-12 system to defend against attacks by tactical ballistic missiles.

SEC. 1046. LIMITATION ON INTRODUCTION OF ARMED FORCES INTO NICARAGUA FOR COMBAT.

(a) LIMITATION.—Funds appropriated to the Department of Defense may not be obligated or expended for the purpose of introducing United States Armed Forces into or over Nicaragua for combat.

(b) DEFINITION OF COMBAT.—As used in this section, the term "combat" means the introduction of United States Armed Forces for the purpose of delivering weapons fire upon an enemy.

(c) EXCEPTIONS TO LIMITATION.—This section does not apply with respect to an introduction of United States Armed Forces into or over Nicaragua for combat if—

(1) the Congress has declared war or enacted specific authorization for such introduction; or

(2) such introduction is necessary—

(A) to meet a clear and present danger of hostile attack upon the United States, its territories or possessions or its allies;

(B) to meet a clear and present danger to, and to provide necessary protection for the United States Embassy;

(C) to meet a clear and present danger to, and to provide necessary protection for and to evacuate, United States Government personnel or United States citizens; or

(D) to respond to hijacking or kidnapping of citizens of the United States or of an ally of the United States, or to respond to other acts of terrorism involving such citizens.

(d) EXISTING REQUIREMENTS PRESERVED.—Nothing in this section shall invalidate any requirement of Public Law 93-148.

(e) TREATY AUTHORITY PRESERVED.—Nothing in this section shall invalidate any authority of the United States to act in accordance with the Organization of American States under the provisions of the Inter-American Treaty of Reciprocal Assistance.

(f) EXPIRATION.—This section shall not apply after the date on which MIG aircraft, or other aircraft similar in design and capability, or nuclear weapons are introduced into Nicaragua.

SEC. 1047. LIMITATION.

Military technology developed with funds appropriated or otherwise made available for fiscal year 1987 or fiscal year 1988 to the Strategic Defense Initiative Organization may not be made available to the Soviet Union unless the President determines it is in the national interest and for the purposes of maintaining peace.

SEC. 1048. COMPUTATION OF CONTRACT BID PRICES.

(a) IN GENERAL.—Section 2306 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(i) The head of an agency, in computing the price of a contract to be awarded using sealed-bid procedures, may not include in such computation the prices under such contract for options to purchase additional units of the item being procured under such contract unless the head of the agency has determined that there is a reasonable certainty that the options will be exercised.".

(b) EFFECTIVE DATE.—Section 2306(i) of title 10, United States Code (as added by subsection (a)), shall apply to solicitations for sealed bids issued after the date of the enactment of this Act.

SEC. 1049. SENSE OF CONGRESS REGARDING RENAMING OF CHECKPOINT CHARLIE.

(a) FINDINGS.—The Congress finds the following:

(1) On March 24, 1985, Major Arthur D. Nicholson, Junior, of the United States Army was carrying out his official duties as a United States intelligence officer in the German Democratic Republic.

(2) On that date, Major Nicholson was performing his duties in an open and direct manner, according to orders and in the knowledge that he was conducting himself in a way which was neither excessively provocative nor beyond the limits of acceptable behavior for his assigned duties.

(3) On that date, a member or members of the Soviet armed forces shot and fatally wounded Major Nicholson without warning and without provocation, given the traditionally accepted rules of behavior for military officers engaged in activities such as those in which Major Nicholson was engaged.

(4) After having shot Major Nicholson, the members of the Soviet armed forces forcibly restrained Major Nicholson's aide and prevented him from providing medical assistance to Major Nicholson, so that Major Nicholson died slowly and with great suffering, which death and suffering might have been prevented had Major Nicholson been permitted to receive assistance.

(5) The death of Major Nicholson was an untimely, unnecessary, cold-blooded murder committed against a United States military officer in pursuit of his official duties by a member or members of the armed forces of the Soviet Union, in a painful and degrading manner.

(b) SENSE OF CONGRESS.—The Congress deplores and condemns the cold-blooded murder of Major Arthur D. Nicholson, Junior. It is the sense of Congress that—

(1) the Government of the Union of Soviet Socialist Republics should apologize for and renounce the murder of Major Nicholson and should indemnify the family of Major Nicholson financially; and

(2) the President should name the East-West control point between the American and Soviet sectors in Berlin, currently known as Checkpoint Charlie, in honor of Major Arthur D. Nicholson, Junior.

SEC. 1050. AUTHORITY FOR PAYMENT TO NASA.

(a) AUTHORITY.—The Secretary of Defense may make payments during fiscal year 1987 to the National Aeronautics and Space Administration for space shuttle services in advance of the receipt of such services. Any such payments—

(1) may be made only from funds available to the Department of Defense for obligation and only to the extent provided in appropriations Acts;

(2) may not be made until 30 days after the date on which the report required in subsection (b) is received by the Congress; and

(3) may not exceed $531,000,000.

(b) REPORT.—Not later than December 31, 1986, the Secretary of Defense shall submit to the appropriate committees of the Congress a ten-year plan setting forth the schedule for planned payments to the National Aeronautics and Space Administration for space shuttle services and the schedule for the provision of such services.

SEC. 1051. RESTRICTION ON PERFORMANCE OF SERVICES BY PERSONS WHO FAIL TO REGISTER UNDER THE MILITARY SELECTIVE SERVICE ACT.

(a) IN GENERAL.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following:

"§ 2408. Contracts: performance of services by selective service nonregistrants

"(a) A person born after December 31, 1959, who is required to register under section 3(a) of the Military Selective Service Act (50 U.S.C. App. 453(a)) and who has not so registered shall not perform services under any contract or subcontract financed in whole or in part by funds appropriated to the Department of Defense.

"(b) The Secretary may waive the application of this section with respect to a contract when the Secretary determines such a waiver is necessary in the interests of national security.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Contracts: performance of services by selective service nonregistrants.".

(b) EFFECTIVE DATE.—Section 2408 of title 10, United States Code (as added by subsection (a)), shall apply to contracts entered into after the date of the enactment of this Act and only with respect to individuals hired by contractors or subcontractors after such date.

SEC. 1052. REPORT ON CLEANUP OF NATIONAL PRESTO INDUSTRIES.

The Secretary of Defense shall investigate and report to the Committees on Armed Services of the Senate and the House of Representatives by January 1, 1987, on the sources, dates of origin, and responsibility for hazardous waste contamination at the National Presto Industries Plant near Eau Claire, Wisconsin.

PART E—LIMITATIONS ON DEPLOYMENT OF STRATEGIC NUCLEAR WEAPONS CONSISTENT WITH EXISTING ARMS LIMITATION AGREEMENTS

SEC. 1061. LIMITATIONS ON STRATEGIC WEAPONS.

(a) LIMITATIONS.—Notwithstanding any other provision of law, funds may not be obligated or expended for the deployment of—

(1) launchers for more than 820 intercontinental ballistic missiles carrying multiple independently-targetable reentry vehicles;

(2) launchers for an aggregate of more than 1,200 intercontinental ballistic missiles carrying multiple independently-targetable reentry vehicles and submarine-launched ballistic missiles carrying multiple independently-targetable reentry vehicles; or

(3) an aggregate of more than 1,320 launchers described in paragraph (2) and heavy bombers equipped for air-launched cruise missiles capable of a range in excess of 600 kilometers;

unless the President certifies to the Congress that the Soviet Union has deployed strategic forces in excess of these limitations.

(b) DEFINITIONS.—For purposes of this section—

(1) launchers of intercontinental ballistic missiles and submarine-launched ballistic missiles equipped with multiple independently-targetable reentry vehicles are launchers of the types developed and tested for launching intercontinental ballistic missles and submarine-launched ballistic missiles equipped with multiple independently-targetable reentry vehicles; and

(2) air-launched cruise missiles are unmanned, self-propelled, guided, weapon-delivery vehicles which sustain flight through the use of aerodynamic lift over most of their flight path and which are flight tested from or deployed on aircraft.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATION

SEC. 2001. SHORT TITLE.

This division may be cited as the "Military Construction Authorization Act, 1987".

TITLE I—ARMY

SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—The Secretary of the Army may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations inside the United States:

UNITED STATES ARMY FORCES COMMAND

Camp Dawson, West Virginia, $8,700,000.
Fort Bragg, North Carolina, $24,600,000.
Fort Campbell, Kentucky, $21,240,000.
Fort Carson, Colorado, $11,300,000.
Fort Devens, Massachusetts, $20,800,000.
Fort Drum, New York, $615,000,000.
Fort Hood, Texas, $13,350,000.
Fort Irwin, California, $820,000.
Fort Lewis, Washington, $25,980,000.
Fort McPherson, Georgia, $2,900,000.
Fort Ord, California, $6,550,000.
Fort Polk, Louisiana, $27,000,000.
Fort Riley, Kansas, $12,500,000.
Fort Sam Houston, Texas, $3,700,000.
Fort Sheridan, Illinois, $2,050,000.
Fort Stewart, Georgia, $1,550,000.

UNITED STATES ARMY WESTERN COMMAND

Wheeler Army Air Field, Hawaii, $2,900,000.

Various locations, Hawaii, $12,000,000.

UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND

Carlisle Barracks, Pennsylvania, $800,000.
Fort Belvoir, Virginia, $5,600,000.
Fort Benning, Georgia, $16,180,000.
Fort Eustis, Virginia, $2,050,000.
Fort Jackson, South Carolina, $1,300,000.
Fort Knox, Kentucky, $3,200,000.
Fort Leavenworth, Kansas, $1,100,000.
Fort Lee, Virginia, $17,600,000.
Fort Leonard Wood, Missouri, $43,200,000.
Fort McClellan, Alabama, $540,000.
Fort Rucker, Alabama, $44,500,000.
Fort Story, Virginia, $2,700,000.

UNITED STATES ARMY MATERIEL COMMAND

Aberdeen Proving Ground, Maryland, $42,750,000.

Anniston Army Depot, Alabama, $1,950,000.

Badger Army Ammunition Plant, Wisconsin, $980,000.

Corpus Christi Army Depot, Texas, $10,650,000.

Detroit Arsenal, Michigan, $1,350,000.

Dugway Proving Ground, Utah, $12,900,000.

Fort Monmouth, New Jersey, $4,900,000.
Fort Wingate, New Mexico, $350,000.

Harry Diamond Laboratory, Maryland, $680,000.

Letterkenny Army Depot, Pennsylvania, $1,900,000.

Lexington-Blue Grass Depot Activity, Kentucky, $540,000.
Navajo Army Depot, Arizona, $3,900,000.
Pueblo Depot Activity, Colorado, $600,000.
Red River Army Depot, Texas, $1,350,000.
Redstone Arsenal, Alabama, $19,500,000.
Savanna Army Depot, Illinois, $320,000.
Seneca Army Depot, New York, $1,100,000.
Sierra Army Depot, California, $2,450,000.
Tooele Army Depot, Utah, $1,850,000.
Umatilla Army Depot, Oregon, $1,050,000.
Yuma Proving Ground, Arizona, $820,000.

UNITED STATES ARMY INFORMATION SYSTEMS COMMAND

Fort Huachuca, Arizona, $17,200,000.

UNITED STATES MILITARY ACADEMY

U.S. Military Academy, New York, $24,500,000.

MILITARY TRAFFIC MANAGEMENT COMMAND

Sunny Point Military Ocean Terminal, North Carolina, $650,000.

ASSISTANT CHIEF OF ENGINEERS

Classified, United States, $7,400,000.

(b) OUTSIDE THE UNITED STATES.—The Secretary of the Army may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations outside the United States:

UNITED STATES ARMY, JAPAN

Kawakami, Japan, $1,200,000.

EIGHTH UNITED STATES ARMY

Camp Carroll, Korea, $1,740,000.
Camp Casey, Korea, $24,940,000.
Camp Castle, Korea, $4,800,000.
Camp Essayons, Korea, $3,000,000.
Camp Greaves, Korea, $3,650,000.
Camp Hovey, Korea, $9,000,000.
Camp Howze, Korea, $5,850,000.
Camp Humphreys, Korea, $16,100,000.
Camp Jackson, Korea, $1,800,000.
Camp Laguardia, Korea, $2,970,000.
Camp Libby, Korea, $1,100,000.
Camp Liberty Bell, Korea, $780,000.
Camp Long, Korea, $5,600,000.
Camp Market, Korea, $540,000.
Camp Nimble, Korea, $1,950,000.
Camp Page, Korea, $1,400,000.
Camp Pelham, Korea, $2,280,000.
Camp Red Cloud, Korea, $4,550.000.
Camp Stanley, Korea, $4,700,000.
H220, Korea, $2,750,000.
K-16 Army Airfield, Korea, $2,520,000.
Pusan, Korea, $12,940,000.
Second Infantry, Korea, $5,150,000.
Taegu, Korea, $4,900,000.
Yongsan, Korea, $8,760,000.

UNITED STATES ARMY STRATEGIC DEFENSE COMMAND

Kwajalein, $20,600,000.

UNITED STATES ARMY FORCES COMMAND, OVERSEAS

Classified, $4,000,000.

UNITED STATES ARMY EUROPE AND SEVENTH ARMY

Ansbach, Germany, $1,790,000.
Aschaffenburg, Germany, $7,000,000.
Bad Kreuznach, Germany, $11,100,000.
Bamberg, Germany, $18,000,000.
Baumholder, Germany, $18,450,000.
Bitburg, Germany, $19,920,000.
Enisiedlerhof, Germany, $4,750,000.
Fulda, Germany, $1,000,000.
Giessen, Germany, $6,570,000.
Goeppingen, Germany, $1,850,000.
Hanau, Germany, $26,150,000.
Heidelberg, Germany, $1,600,000.
Heilbronn, Germany, $2,100,000.
Hohenfels, Germany, $8,800,000.
Kaiserslautern, Germany, $1,400,000.
Karlsruhe, Germany, $10,000,000.
Mannheim, Germany, $2,450,000.
Neu Ulm, Germany, $26,050,000.
Nuernberg, Germany, $5,500,000.
Rheinberg, Germany, $29,150,000.
Schweinfurt, Germany, $23,000,000.
Stuttgart, Germany, $820,000.
Various, Germany, $6,350,000.
Vilseck, Germany, $53,020,000.
Wuerzburg, Germany, $1,000,000.
Katsimidhi Site, Greece, $560,000.
Zelo, Italy, $610,000.

UNITED STATES ARMY INTELLIGENCE AND SECURITY COMMAND, OVERSEAS

Location 177, $1,950,000.
Location 276, $3,700,000.
Location 280, $2,100,000.

SEC. 2102. FAMILY HOUSING.

The Secretary of the Army may construct or acquire family housing units (including land acquisition) at the following installations in the number of units shown, and in the amount shown, for each installation:

Fort Irwin, California, thirty-eight manufactured home spaces, $730,000.

Fort Ord, California, three hundred and eighty-five units, $34,000,000.

Crailsheim, Germany, forty units, $4,100,000.

Darmstadt, Germany, forty units, $3,150,000.

Erlangen, Germany, one hundred and six units, $9,400,000.

Herzo Base, Germany, thirty-four units, $3,300,000.

Schweinfurt, Germany, ninety units, $8,400,000.

Vilseck, Germany, two hundred and twenty-four units, $21,000,000.

Wildflecken, Germany, twenty-four units, $2,050,000.

Various Locations, Germany, one hundred and twenty units, funded in the manner authorized in section 2103(a).

Fort Polk, Louisiana, five hundred and eighty-three units, $37,000,000.

Kwajalein, Marshall Island, one hundred and thirty-six units, $23,000,000.

Aberdeen Proving Ground, Maryland, one hundred and forty units and seventy manufactured home spaces, $10,800,000.

Fort Drum, New York, one thousand and two hundred units, $91,000,000.

Seneca Army Depot, New York, thirty units, $2,900,000.

SEC. 2103. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

(a) AMOUNT AUTHORIZED.—Subject to section 2825 of title 10, United States Code, the Secretary of the Army may make expenditures, using amounts appropriated pursuant to section 2110(a)(7)(A), to improve existing military family housing units in an amount not to exceed $145,930,000, of which not more than $11,900,000 may be used to convert portions of existing facilities at various locations in Germany to military family housing units, and may make additional expenditures not to exceed $15,671,000 for energy conservation projects using amounts appropriated pursuant to section 2110(b)(1).

(b) WAIVER OF MAXIMUM PER UNIT COST FOR CERTAIN IMPROVEMENT PROJECTS.—Notwithstanding the maximum amount per unit for an improvement project under section 2825(b) of title 10, United States Code, the Secretary of the Army may carry out projects to improve existing military family housing units at the following installations in the number of units shown, and in the amount shown, for each installation:

Aschaffenburg, Germany, one hundred and forty-four units, $5,120,000.

Aschaffenburg, Germany, forty-eight units, $2,800,000.

Bremerhaven, Germany, twenty-four units, $1,400,000.

Karlsruhe, Germany, twenty-four units, $1,400,000.

Kitzingen, Germany, one hundred and two units, $5,950,000.

Mainz, Germany, one unit, $69,000.

Worms, Germany, six units, $350,000.

Fort Benjamin Harrison, Indiana, one hundred and sixty-six units, $6,000,000.

Pusan, Korea, forty-eight units, $2,237,000.

Fort Indiantown Gap, Pennsylvania, six units, $166,000.

Fort Sam Houston, Texas, twenty-three units, $930,000.

Fort Myer, Virginia, three units, $140,000.

SEC. 2104. FORT DRUM, NEW YORK.

(a) AUTHORIZATION.—The Secretary of the Army may, in advance of the availability of appropriations authorized to be appropriated by section 2110(c), enter into one or more contracts for the military construction projects authorized by section 2101 at Fort Drum, New York, if each such contract limits the amount of payments that the Federal government is obligated to make under such contract to the amount of appropriations available, at the time the contract is entered into, for obligation under such a contract. Such construction may be accomplished by using one-step turn-key selection procedures or other competitive contracting methods.

(b) FAMILY HOUSING.—(1) Of the family housing units authorized by section 102 of the Military Construction Authorization Act, 1986, to be constructed at Fort Drum, New York—

(A) three of those units shall be constructed for assignment to general officers, and notwithstanding section 2826 of title 10, United States Code, each such unit may be constructed with a maximum net floor area of 3,000 square feet; and

(B) seven of those units shall be constructed for assignment to colonels who hold positions as commanders, and notwithstanding section 2826 of title 10, United States Code,

each such unit may be constructed with a maximum net floor area of 2,100 square feet.

(2) For purposes of this subsection, the term "net floor area" has the meaning given that term by section 2826(f) of title 10, United States Code.

SEC. 2105. LAND EXCHANGE, ORLANDO, FLORIDA.

(a) IN GENERAL.—Subject to subsections (b) through (e), the Secretary of the Army may convey to the City of Orlando, Florida, all right, title, and interest of the United States in and to a tract of land located in Orlando, Florida, consisting of approximately 36 acres, together with improvements thereon, comprising the United States Army Reserve training facility located at the former McCoy Air Force Base, Orlando, Florida.

(b) CONSIDERATION.—In consideration for the conveyance by the Secretary under subsection (a), the City shall—

(1) convey to the United States a tract of real property consisting of approximately 36 acres located at Orlando Jetport, Orlando, Florida; and

(2) design, and construct on such real property, suitable replacement facilities, in accordance with the requirements of the Secretary, for the training activities of the United States Army Reserve.

(c) PAYMENT BY THE CITY.—If the fair market value (as determined by the Secretary) of the land and improvements conveyed by the United States to the City under subsection (a) exceeds the sum of the fair market value (as determined by the Secretary) of the property conveyed by the City to the United States and the fair market value of the facilities constructed by the City on the land conveyed to the United States under subsection (b), the City shall pay to the United States the amount of the difference.

(d) LEGAL DESCRIPTION OF THE LAND.—The exact acreages and legal description of properties to be conveyed under subsections (a) and (b) shall be determined by surveys that are satisfactory to the Secretary. The cost of such surveys shall be borne by the City.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions as the Secretary considers appropriate to carry out the provisions of this section and to protect the interests of the United States.

SEC. 2106. SALE OF LAND AND REPLACEMENT OF CERTAIN WAREHOUSING FACILITIES.

(a) IN GENERAL.—Subject to subsections (b) through (g), the Secretary of the Army may convey approximately 14.41 acres of real property, and improvements thereon, at Kapalama Military Reservation, Hawaii, and may replace and relocate warehousing facilities located on such property.

(b) CONSIDERATION.—In consideration for the real property and improvements described in subsection (a), the purchaser of such property and improvements shall pay—

(1) for the cost of the design and construction of suitable replacement warehousing facilities to be constructed at Schofield Barracks, Hawaii, in a manner determined by the Secretary;

(2) for any cost incurred by the Department of the Army under this section with respect to the relocation of warehousing facilities; and

(3) the amount described in subsection (d).

(c) SALE AND REPLACEMENT ACTIVITIES.—The Secretary may use any amount received from the purchaser under paragraphs (1) and (2) of subsection (b) for the purpose of carrying out this section.

(d) PAYMENT OF EXCESS INTO TREASURY.—If the fair market value of the real property and improvements described in subsection (a) exceeds the costs described in paragraphs (1) and (2) of subsection (b), as determined by the Secretary, the purchaser shall pay the amount of such difference to the Secretary, and the Secretary shall deposit such amount into the Treasury as miscellaneous receipts.

(e) COMPETITIVE BID PROCEDURES.—The conveyance described in subsection (a) shall be carried out under competitive bid procedures.

(f) LEGAL DESCRIPTION OF LAND.—The exact location and legal description of the real property described in subsection (a) shall be determined by a survey which is satisfactory to the Secretary. The cost of such survey shall be borne by the purchaser.

(g) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2107. PLAN FOR CLEANUP OF ROCKY MOUNTAIN ARSENAL.

Section 822(b)(7) of the Military Construction Authorization Act, 1986 (Public Law 99-167; 99 Stat. 991), is amended by inserting before the semicolon the following: ", including establishing methods of assisting local governments near the Arsenal with the planning and design of water treatment facilities in appropriate cases".

SEC. 2108. COMMUNITY PLANNING ASSISTANCE.

The Secretary of the Army may not use more than $200,000 from funds appropriated to the Department of the Army for fiscal year 1987 for planning and design purposes to provide planning assistance to local communities located near the newly established light infantry division at Fort Drum, New York, if the Secretary determines that the financial resources available to the community (by grant or otherwise) are inadequate.

SEC. 2109. LAND CONVEYANCE, WHITTIER NARROWS DAM, LOS ANGELES COUNTY, CALIFORNIA.

(a) AUTHORITY TO CONVEY.—Subject to subsections (b) through (f), the Secretary of the Army may convey to Southern California Edison Company approximately 7.44 acres of real property, and improvements thereon, within the Whittier Narrows Flood Control Basin located north of Rush Street and east of Walnut Grove Avenue in Los Angeles County, California, for not less than the fair market value, as determined by the Secretary.

(b) CONSIDERATION.—In consideration for the conveyance authorized by subsection (a), the Secretary may accept land in the Los Angeles area or cash, or both.

(c) CONDITIONS.—(1) The Secretary may convey the real property described in subsection (a) only if—

(A) the Company grants the United States a perpetual easement that enables the Federal Government to carry out necessary flood control activities with respect to such real property; and

(B) the Company agrees to permit the County of Los Angeles to use a portion of such real property for parking in connection with recreation activities at Whittier Narrows Golf Course, as the Secretary considers appropriate.

(d) USE OF FUNDS.—Any funds received by the Secretary under this section shall be deposited into the general fund of the Treasury.

(e) LEGAL DESCRIPTION OF LAND.—The exact location and legal description of the real property described in subsection (a) shall be determined by a survey which is satisfactory to the Secretary. The cost of such survey shall be borne by the company.

(f) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2110. AUTHORIZATION OF APPROPRIATIONS, ARMY.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for military construction, land acquisition, and military family housing functions of the Department of the Army in the total amount of $3,013,060,000 as follows:

(1) For military construction projects inside the United States authorized by section 2101(a), $678,350,000.

(2) For military construction projects outside the United States authorized by section 2101(b), $456,310,000.

(3) For the construction of the Eastern Distribution Center, New Cumberland Army Depot, Pennsylvania, as authorized by section 101 of the Military Construction Authorization Act, 1986, $43,000,000.

(4) For Pershing II security upgrade at various locations, Germany, as authorized by section 101 of the Military Construction Authorization Act, 1986, $7,000,000.

(5) For unspecified minor construction projects under section 2805 of title 10, United States Code, $20,000,000.

(6) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $131,640,000.

(7) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $420,760,000;

(B) for support of military family housing (including the functions described in section 2833 of title 10, United States Code), $1,250,000,000, of which—

(i) not more than $31,246,000 may be obligated or expended for the leasing of military family housing units in the United States, the Commonwealth of Puerto Rico, and Guam; and

(ii) not more than $142,639,000 may be obligated or expended for the leasing of military family housing units in foreign countries; and

(C) for the Homeowners Assistance Program as authorized by section 2832 of title 10, United States Code, $6,000,000.

(b) AUTHORIZATION OF UNOBLIGATED FUNDS.—(1) Funds appropriated to the Department of Defense for fiscal years before fiscal year 1987 which could be used for energy conservation projects for existing military family housing units of the Department of the Army that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for energy conservation projects for military family housing of the Army in an amount not to exceed $15,671,000.

(2) Funds appropriated to the Department of Defense for fiscal years before fiscal year 1987 for military construction functions of the Army (other than funds described in paragraph (1)) that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for the construction of an Army aviation museum at Fort Rucker, Alabama, in an amount not to exceed $2,500,000.

(c) ADVANCE AUTHORIZATION OF APPROPRIATIONS FOR FORT DRUM, NEW YORK.—Funds

are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for the military construction projects and land acquisition authorized at Fort Drum, New York, by sections 2101(a) and 2104 as follows:

(1) $221,000,000 in fiscal year 1988.

(2) $214,000,000 in fiscal year 1989.

(d) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS AUTHORIZED IN THIS TITLE.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variations authorized by law, the total cost of all projects carried out under section 2101 may not exceed the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a) and under subsection (c).

SEC. 2111. EXTENSION OF CERTAIN PRIOR YEAR AUTHORIZATIONS.

(a) EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 1984 PROJECTS.—Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1984 (Public Law 98-115, 97 Stat. 780), authorizations for the following projects authorized in section 101 of that Act, as extended by section 606(b) of the Military Construction Authorization Act, 1986 (Public Law 99-167, 99 Stat. 983) shall remain in effect until October 1, 1987, or the date of enactment of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Unaccompanied personnel housing in the amount of $1,400,000 at Argyroupolis, Greece.

(2) Operations building in the amount of $370,000 at Argyroupolis, Greece.

(3) Multipurpose recreation facility in the amount of $480,000 at Argyroupolis, Greece.

(4) Unaccompanied officer housing in the amount of $600,000 at Perivolaki, Greece.

(5) Operations building in the amount of $410,000 at Perivolaki, Greece.

(6) Multipurpose recreation facility in the amount of $620,000 at Perivolaki, Greece.

(7) Physical fitness training center in the amount of $1,000,000 at Elefsis, Greece.

(b) EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 1985 PROJECTS.—Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1985 (Public Law 98-407, 98 Stat. 1515), authorizations for the following projects authorized in sections 101 of that Act shall remain in effect until October 1, 1987, or the date of enactment of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Barracks with dining facility in the amount of $11,400,000 at Presidio of San Francisco, California.

(2) Child care center in the amount of $1,980,000 at Presidio of San Francisco, California.

(3) Barracks in the amount of $6,600,000 at Presidio of San Francisco, California.

(4) Multipurpose recreation facility in the amount of $1,150,000 at Koropi, Greece.

(5) Multipurpose recreation facility in the amount of $960,000 at Katsimidi, Greece.

(6) Barracks modernization in the amount of $660,000 at Argyroupolis, Greece.

(7) Barracks modernization in the amount of $660,000 at Perivolaki, Greece.

(8) Barracks with dining facility in the amount of $2,350,000 at Elefsis, Greece.

SEC. 2112. STUDY OF USE OF PROPERTY AT LOS ALAMITOS ARMED FORCES RESERVE CENTER, CALIFORNIA, FOR MILITARY FAMILY HOUSING.

(a) IN GENERAL.—The Secretary of the Army and the Secretary of the Navy shall conduct a study concerning the potential use of the property currently being utilized as the Los Alamitos Armed Forces Reserve Center, California, for military family housing for the Navy.

(b) MATTERS TO CONSIDER.—In conducting the study described in subsection (a), each of the Secretaries shall take into consideration—

(1) the extensive number of complaints from residents concerning aircraft noise;

(2) the need for such military family housing;

(3) the public safety concerns involved with respect to military aircraft flying over a highly populated, urban area;

(4) the importance of maintaining facilities for the stationing of National Guard and other Reserve component units;

(5) the importance of maintaining facilities for the training of military aviation personnel;

(6) the importance of maintaining facilities for the maintenance of Army facilities and Army aircraft assigned to the California Army National Guard and the United States Army Reserve;

(7) the importance of the Los Alamitos Armed Forces Reserve Center, California, as a designated relief site in the event of a national disaster or emergency; and

(8) the costs associated with establishing and maintaining military family housing for the Navy at such Center.

(c) RECOMMENDED ACTION.—If the Secretaries find that the Center described in subsection (a) would not be suitable for military family housing or that it should not be so used, they shall recommend, in the report transmitted to the Committees pursuant to subsection (d), an alternate course of action for reducing the noise caused by aircraft traffic between the Center and the training area in the Santa Ana Mountains.

(d) DATE OF TRANSMITTAL.—The Secretaries described in subsection (a) shall transmit a copy of the findings and conclusions of the study carried out under this section to the Committees on Armed Services of the House of Representatives and the Senate no later than 90 days after the date of enactment of this Act.

SEC. 2113. LAND EXCHANGE, SANTA FE, NEW MEXICO.

(a) AUTHORITY TO CONVEY.—(1) Subject to subsections (b) through (f), the Secretary of the Army may make the conveyances described in paragraphs (2) and (3).

(2) The Secretary may convey, without reimbursement except as provided in subsection (f)(2), to the City of Santa Fe, New Mexico (hereinafter in this section referred to as the "City"), all right, title, and interest of the United States in and to the southernmost 27.88 acres, more or less, of the parcel of land conveyed to the State of New Mexico in accordance with the Act of June 19, 1956 (70 Stat. 296) and currently being leased to the City as a public park.

(3) The Secretary may convey, without reimbursement except as provided in subsection (f)(2), to the New Mexico State Armory Board (hereinafter in this section referred to as the "Board"), all right, title, and interest of the United States in and to the northernmost 21.61 acres, more or less, of the parcel of land conveyed to the State of New Mexico in accordance with the Act of June 19, 1956 (70 Stat. 296), and currently the location of the State headquarters and other facilities of the New Mexico National Guard.

(b) CONDITIONS.—The lands conveyed by the Secretary under subsection (a) shall be subject to the following conditions:

(1) The City shall, in accordance with the agreement entered into under subsection (d), provide to the Board a site of not less than 250 acres determined by the Board to be acceptable for the construction of—

(A) an armory for all New Mexico National Guard units located in Santa Fe, New Mexico;

(B) an organizational maintenance shop;

(C) a United States property and fiscal office building and warehouse;

(D) a headquarters complex for the New Mexico National Guard;

(E) a local training area for the New Mexico National Guard units;

(F) a complex for the New Mexico Army National Guard officer candidate school and noncommissioned officer academy; and

(G) additional facilities specified by the National Guard Bureau or the New Mexico State Armory Board.

(2) The Board shall use the land provided to it by the City pursuant to paragraph (1) for the training and support of the National Guard of New Mexico, and for other military purposes and if the site ever ceases to be used for such purposes, all right, title, and interest in and to such property shall revert to and become the property of the United States which shall have the immediate right of entry thereon.

(c) MINERAL RIGHTS.—The conveyances made by the Secretary under subsection (a) shall reserve all mineral rights, including oil and gas, to the United States in accordance with the Act of June 19, 1956 (70 Stat. 296).

(d) GENERAL AUTHORITY.—To implement the land exchange authorized by this section, the Secretary may enter into agreements with the City, the Board, and such other parties the Secretary determines are necessary to effectuate the purpose of this section.

(e) LEGAL DESCRIPTION OF LANDS.—The exact acreage and legal description of the site provided by the City to the Board in accordance with subsection (b) shall be determined by surveys that are satisfactory to the Secretary. The cost of any such surveys shall be borne by the City or the Board.

(f) ADDITIONAL TERMS AND CONDITIONS.—(1) The Secretary may require such other terms and conditions with respect to the transaction authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

(2) The terms and conditions described in paragraph (1) may include a requirement for payment to the United States by the City or the Board, or both, to the extent, if any, that the value of the property conveyed by the United States pursuant to subsection (a) exceeds the value of the property conveyed to the Board pursuant to subsection (b).

TITLE II—NAVY

SEC. 2201. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—The Secretary of the Navy may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations inside the United States:

UNITED STATES MARINE CORPS

Headquarters Marine Corps, Arlington, Virginia, $3,020,000.

Marine Corps Air Station, Beaufort, South Carolina, $4,250,000.

Camp H. M. Smith, Oahu, Hawaii, $1,570,000.

Marine Corps Base, Camp Lejeune, North Carolina, $36,120,000.

Marine Corps Air Station, Camp Pendleton, California, $10,410,000.

Marine Corps Base, Camp Pendleton, California, $37,140,000.
Marine Corps Air Station, Cherry Point, North Carolina, $15,510,000.
Marine Corps Air Station, El Toro, California, $13,450,000.
Marine Corps Air Station, Kaneohe Bay, Hawaii, $39,440,000.
Marine Corps Air Station, New River, North Carolina, $21,710,000.
Marine Corps Recruit Depot, San Diego, California, $8,440,000.
Marine Corps Air Station, Tustin, California, $14,910,000.
Marine Corps Air-Ground Combat Center, Twentynine Palms, California, $32,630,000.
Marine Corps Air Station, Yuma, Arizona, $8,860,000.

SPACE AND NAVAL WARFARE SYSTEMS COMMAND

Naval Electronic Systems Engineering Center, Portsmouth, Virginia, $1,870,000.

CHIEF OF NAVAL OPERATIONS

Naval Academy, Annapolis, Maryland, $2,660,000.
Navy Tactical Interoperability Support Activity, Long Beach, California, $510,000.
Naval Legal Service Office, Norfolk, Virginia, $1,080,000.
Naval Legal Service Office Detachment, Oceana, Virginia, $540,000.
Commandant Naval District, Washington, District of Columbia, $2,000,000.

COMMANDER IN CHIEF, ATLANTIC FLEET

Naval Air Station, Brunswick, Maine, $1,160,000.
Naval Air Station, Cecil Field, Florida, $8,640,000.
Naval Station, Charleston, South Carolina, $1,400,000.
Naval Ocean Processing Facility, Dam Neck, Virginia, $540,000.
Naval Air Station, Jacksonville, Florida, $9,030,000.
Naval Air Station, Key West, Florida, $10,140,000.
Naval Amphibious Base, Little Creek, Virginia, $6,970,000.
Naval Station, Mayport, Florida, $880,000.
Naval Supply Center Detachment, Mayport, Florida, $3,730,000.
Naval Submarine Base, New London, Connecticut, $4,630,000.
Naval Station, New York, New York, $52,950,000.
Fleet Intelligence Center Europe and Atlantic, Norfolk, Virginia, $1,880,000.
Naval Air Station, Norfolk, Virginia, $1,570,000.

COMMANDER IN CHIEF, PACIFIC FLEET

Naval Air Station, Adak, Alaska, $24,400,000.
Naval Facility, Adak, Alaska, $5,700,000.
Naval Air Station, Alameda, California, $18,625,000.
Naval Submarine Base, Bangor, Washington, $5,900,000.
Trident Refit Facility, Bangor, Washington, $1,570,000.
Naval Facility, Centerville Beach, California, $1,370,000.
Naval Amphibious Base, Coronado, California, $21,170,000.
Naval Air Station, Fallon, Nevada, $31,200,000.
Naval Air Station, Lemoore, California, $980,000.
Naval Station, Long Beach, California, $7,260,000.
Naval Magazine, Lualualei, Hawaii, $4,350,000.
Naval Air Station, Miramar, California, $40,400,000.
Naval Station, Pearl Harbor, Hawaii, $3,240,000.
Naval Submarine Base, Pearl Harbor, Hawaii, $690,000.
Naval Station, San Diego, California, $19,460,000.
Naval Submarine Base, San Diego, California, $6,500,000.
Naval Station, Seattle, Washington, $2,950,000.
Naval Air Station, Whidbey Island, Washington, $5,180,000.

CHIEF OF NAVAL EDUCATION AND TRAINING

Naval Air Station, Corpus Christi, Texas, $690,000.
Naval Guided Missile School, Dam Neck, Virginia, $3,140,000.
Naval Training Center, Great Lakes, Illinois, $5,300,000.
Naval Construction Training Center, Gulfport, Mississippi, $1,180,000.
Naval Air Station, Kingsville, Texas, $3,780,000.
Combat Systems Technical Schools Command, Mare Island, California, $5,200,000.
Naval Air Station, Memphis, Tennessee, $3,010,000.
Naval Air Station, Meridian, Mississippi, $4,410,000.
Naval Submarine School, New London, Connecticut, $9,540,000.
Naval Education and Training Center, Newport, Rhode Island, $11,700,000.
Surface Warfare Officers School Command, Newport, Rhode Island, $8,840,000.
Fleet Training Center, Norfolk, Virginia, $5,400,000.
Naval Training Center, Orlando, Florida, $12,620,000.
Naval Diving and Salvage Training Center, Panama City, Florida, $2,850,000.
Naval Technical Training Center, Pensacola, Florida, $7,360,000.
Naval Construction Training Center, Port Hueneme, California, $3,240,000.
Fleet Intelligence Training Center, Pacific, San Diego, California, $4,220,000.
Fleet Training Center, San Diego, California, $3,930,000.
Naval Training Center, San Diego, California, $18,170,000.
Naval Technical Training Center, San Francisco, California, $9,820,000.
Naval Air Station, Whiting Field, Florida, $2,120,000.

NAVAL MEDICAL COMMAND

Naval Hospital, Camp Lejeune, North Carolina, $1,670,000.
Naval Hospital, Pensacola, Florida, $690,000.

NAVAL OCEANOGRAPHY COMMAND

Naval Observatory, Washington, District of Columbia, $980,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Adak, Alaska, $14,600,000.

NAVAL SUPPLY SYSTEMS COMMAND

Naval Supply Center, Bremerton, Washington, $500,000.
Naval Supply Center, Jacksonville, Florida, $830,000.
Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, $1,670,000.
Naval Supply Center, Norfolk, Virginia, $3,140,000.
Naval Supply Center, Oakland, California, $3,490,000.
Naval Supply Center, Pearl Harbor, Hawaii, $11,820,000.
Naval Supply Center, San Diego, California, $2,450,000.

NAVAL AIR SYSTEMS COMMAND

Pacific Missile Range Facility, Barking Sands, Kauai, Hawaii, $8,260,000.
Naval Air Rework Facility, Cherry Point, North Carolina, $37,200,000.
Naval Air Test Center, Patuxent River, Maryland, $21,140,000.
Naval Air Rework Facility, Pensacola, Florida, $8,050,000.
Pacific Missile Test Center, Point Mugu, California, $590,000.

NAVAL FACILITIES ENGINEERING COMMAND

Naval Construction Battalion Center, Gulfport, Mississippi, $17,650,000.
Navy Public Works Center, Norfolk, Virginia, $8,740,000.
Navy Public Works Center, Pearl Harbor, Hawaii, $25,690,000.
Navy Public Works Center, Pensacola, Florida, $2,120,000.
Naval Construction Battalion Center, Port Hueneme, California, $7,120,000.
Navy Public Works Center, San Francisco, California, $450,000.

NAVAL SEA SYSTEMS COMMAND

Charleston Naval Shipyard, Charleston, South Carolina, $10,810,000.
Naval Weapons Station, Charleston, South Carolina, $22,630,000.
Naval Weapons Station, Concord, California, $790,000.
Naval Weapons Support Center, Crane, Indiana, $6,880,000.
Naval Weapons Station, Earle, New Jersey, $54,760,000.
Naval Ordnance Station, Indian Head, Maryland, $1,450,000.
Naval Undersea Warfare Engineering Station, Keyport, Washington, $5,890,000.
Long Beach Naval Shipyard, Long Beach, California, $3,630,000.
Norfolk Naval Shipyard, Portsmouth, Virginia, $5,900,000.
Naval Sea Combat Systems Engineering Station, Norfolk, Virginia, $980,000.
Supervisor of Shipbuilding, Pascagoula, Mississippi, $4,120,000.
Naval Ship System Engineering Station, Philadelphia, Pennsylvania, $400,000.
Portsmouth Naval Shipyard, Kittery, Maine, $12,270,000.
Naval Weapons Station, Yorktown, Virginia, $4,220,000.

OFFICE OF THE CHIEF OF NAVAL RESEARCH

Naval Weapons Center, China Lake, California, $1,370,000.
Naval Surface Weapons Center, Dahlgren, Virginia, $15,960,000.
Naval Coastal Systems Center, Panama City, Florida, $880,000.
Naval Research Laboratory Annex, Quantico, Virginia, $1,500,000.

STRATEGIC SYSTEMS PROJECT OFFICE

Naval Submarine Base, Kings Bay, Georgia, $117,610,000.

(b) OUTSIDE THE UNITED STATES.—The Secretary of the Navy may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations outside the United States:

MARINE CORPS

Marine Corps Air Station, Futenma, Okinawa, Japan, $4,270,000.
Marine Corps Base, Camp Smedley D. Butler, Okinawa, Japan, $8,950,000.

COMMANDER IN CHIEF, ATLANTIC FLEET

Naval Station, Guantanamo Bay, Cuba, $2,600,000.
Naval Air Station, Keflavik, Iceland, $13,840,000.
Naval Facility, Keflavik, Iceland, $1,570,000.
Atlantic Fleet Weapons Training Facility, Roosevelt Roads, Puerto Rico, $4,220,000.
Naval Station, Roosevelt Roads, Puerto Rico, $7,080,000.

COMMANDER IN CHIEF, PACIFIC FLEET

Administrative Support Unit, Bahrain Island, $2,550,000.

Mobile Construction Battalion, Camp Covington, Guam, $15,500,000.

Naval Facility, Guam, $820,000.

Naval Supply Depot, Guam, $400,000.

COMMANDER IN CHIEF, UNITED STATES NAVAL FORCES EUROPE

Naval Support Activity, Naples, Italy, $1,570,000.

Naval Station, Rota, Spain, $4,600,000.

Classified Locations, $15,700,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communications Area Master Station, Western Pacific, Guam, $480,000.

Naval Communications Station, Harold E. Holt, Exmouth, Australia, $2,180,000.

Naval Communications Area Master Station, Mediterranean, Naples, Italy, $8,250,000.

Naval Communication Station, Thurso, United Kingdom, $350,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Edzell, Scotland, $2,250,000.

Naval Security Group Detachment, Guam, $2,150,000.

Naval Security Group Activity, Sabana Seca, Puerto Rico, $790,000.

NAVAL FACILITIES ENGINEERING COMMAND

Navy Public Works Center, Guam, $1,570,000.

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Naval Underwater Systems Center, Andros Island, Bahamas, $3,730,000.

SEC. 2202. FAMILY HOUSING.

The Secretary of the Navy may construct or acquire family housing units (including land acquisition) at the following installations in the number of units shown, and in the amount shown, for each installation:

Naval Station, Long Beach, California, three hundred units, $22,900,000.

Naval Air Station, Moffett Field, California, one hundred and twenty-six units, $11,600,000.

Navy Public Works Center, San Francisco, California, three hundred units, $26,450,000.

Marine Corps Air-Ground Combat Center, Twentynine Palms, California, three hundred and ninety-two units and seventy-five mobile home spaces, $35,300,000.

Marine Corps Base, Camp Pendleton, California, one hundred mobile home spaces, $1,800,000.

Marine Corps Base, Camp Lejeune, North Carolina, seventy-five mobile home spaces, $930,000.

Marine Corps Development and Education Command, Quantico, Virginia, fifty mobile home spaces, $790,000.

Naval Station, Keflavik, Iceland, two hundred and fifty units, $48,642,000.

SEC. 2203. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

(a) AMOUNT AUTHORIZED.—Subject to section 2825 of title 10, United States Code, the Secretary of the Navy may make expenditures, using amounts appropriated pursuant to section 2210(a)(7)(A), to improve existing military family housing units in an amount not to exceed $51,580,000.

(b) WAIVER OF MAXIMUM PER UNIT COST FOR CERTAIN IMPROVEMENT PROJECTS.—Notwithstanding the maximum amount per unit for an improvement project under 2825(b) of title 10, United States Code, the Secretary of the Navy may carry out projects to improve existing military family housing units at the following installations in the number of units shown, and in the amount shown, for each installation:

Naval Station, Mare Island, Vallejo, California, one hundred units, $5,200,000.

Marine Corps Logistics Base, Albany, Georgia, one unit, $33,300.

Navy Public Works Center, Great Lakes, Illinois, two hundred and ten units, $9,400,000.

Naval Air Station, Brunswick, Maine, forty-four units, $1,274,600.

Naval Construction Battalion Center, Gulfport, Mississippi, one unit, $28,700.

Naval Air Station, Fallon, Nevada, forty-four units, $1,868,500.

Naval Station, New York, New York, one hundred and twenty units, $9,600,000.

Naval Air Development Center, Warminster, Pennsylvania, six units, $256,800.

Naval Education and Training Center, Newport, Rhode Island, one hundred and eighty-six units, $10,200,000.

Navy Public Works Center, Guam, one unit, $64,700.

Navy Public Works Center, Guam, one hundred and nine units, $10,360,000.

Naval Air Station, Agana, Guam, one hundred units, $9,517,000.

Naval Air Station, Agana, Guam, one unit, $58,600.

SEC. 2204. ACQUISITION OF EXISTING HOUSING UNITS ON GUAM.

The Secretary of the Navy may acquire, without reimbursement, 89 existing family housing units constructed and used by the Federal Aviation Administration on land in Finegayan, Guam, held by the Secretary of the Navy under the provisions of section 1158 of title 49, United States Code.

SEC. 2205. INCREASE IN TITLE TOTAL AMOUNT FOR MILITARY CONSTRUCTION PROJECT AT KINGS BAY, GEORGIA.

Section 602(c) of the Military Construction Authorization Act, 1986 (Public Law 99-167; 99 Stat. 981), is amended by striking "may not exceed the total amount authorized" and all that follows and inserting the following:

"may not exceed—

"(1) the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a);

"(2) the amount specified in subsection (b); and

"(3) $85,600,000 (the balance of the amount authorized under section 201(a) for military construction projects at Kings Bay, Georgia).".

SEC. 2206. GRANTING OF EASEMENTS AND REPLACEMENT OF FAMILY HOUSING UNITS AND OTHER FACILITIES AT MARINE CORPS AIR STATION, EL TORO, CALIFORNIA.

(a) AUTHORITY TO GRANT EASEMENTS.—Subject to subsection (b) and other conditions the Secretary may specify in the agreements entered into for the purpose of carrying out this section, the Secretary of the Navy may grant to the County of Orange, California, one or more easements through the Marine Corps Air Station, El Toro, California.

(b) MANDATE TO REPLACE FAMILY HOUSING AND OTHER FACILITIES.—(1) Subject to subsection (c), the Secretary shall provide for the replacement of all family housing units and other facilities that are to be demolished as a result of any easement granted under subsection (a).

(2) An easement granted under subsection (a) shall not become effective until the Secretary determines that—

(A) family housing units have been constructed to replace all the family housing units to be demolished as a result of such easement; and

(B) such replacement units meet the applicable requirements specified in the agreements referred to in subsection (a).

(3) Until the determination referred to in paragraph (2) is made, the Secretary shall continue to use, as military family housing, the housing units that are to be demolished as a result of an easement becoming effective.

(c) FUNDING.—(1) The Secretary may use not more than $2,300,000 of the amount appropriated pursuant to section 2210(a)(7)(A) for payment in connection with the construction of replacement family housing units required by subsection (b).

(2) The Secretary may make available amounts for the construction of such replacement family housing units at the times specified in the agreements referred to in subsection (a).

(3) The Secretary may not make any funds available for the replacement of facilities that are not family housing facilities.

SEC. 2207. LAND EXCHANGE, LONG BEACH NAVAL STATION, CALIFORNIA.

(a) AUTHORITY TO EXCHANGE.—Subject to subsections (b) through (d), the Secretary of the Navy may exchange approximately 16 acres of real property (and improvements thereon) adjacent to Admiral Kidd Park at the Long Beach Naval Station, California, to the City of Long Beach, California, for real property (and improvements thereon) located on Hill Street, between Webster Avenue and the Terminal Island Freeway, in Long Beach, California.

(b) CONDITION.—If the fair market value of the real property and improvements conveyed to the City under subsection (a) exceeds the fair market value of the real property and improvements conveyed to the United States as described in such subsection, the City shall pay the difference to the United States. The Secretary shall deposit any funds received under this subsection as miscellaneous receipts in the Treasury.

(c) LEGAL DESCRIPTION OF LAND.—The exact acreage and legal description of the real property exchanged under this section shall be in accordance with surveys that are satisfactory to the Secretary.

(d) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2208. LEASE AND DEVELOPMENT OF CERTAIN REAL PROPERTY, SAN DIEGO, CALIFORNIA.

(a) IN GENERAL.—Subject to subsections (b) through (g), the Secretary of the Navy may enter into leases of real property located within the Broadway Complex of the Department of the Navy, San Diego, California.

(b) CONSIDERATION.—(1) In consideration for leasing the real property described in subsection (a), the Secretary shall obtain, without compensation or at substantially below market value, facilities or the use of facilities, or both, constructed on such real property by the lessees.

(2) The Secretary shall provide that the value of the facilities or the use of facilities, or both, obtained under paragraph (1) shall be at least equal to the value of the use of the real property leased under subsection (a), as determined by the Secretary.

(c) CONDITIONS.—(1) The Secretary shall provide that the real property leased under subsection (a) be developed in a manner that is in the best interests of the Department of the Navy, taking into consideration the appropriate use of the real property and the maximum economic return that can be

realized by the Department with respect to such property.

(2) A lease may not be entered into under this section until 21 days after the Secretary submits a plan for the development of the real property described in subsection (a) to the Committees of the Armed Services of the Senate and the House of Representatives, including a justification of how this plan is more advantageous to the United States than developing the real property with Federal funds.

(d) COMPETITIVE PROCEDURES.—Each lease entered into under subsection (a) shall be awarded through the use of competitive procedures.

(e) RIGHT TO ACQUIRE.—The Secretary may provide that, upon the termination of a lease entered into under this section, the United States shall have the right of first refusal to acquire all right, title, and interest to the facilities constructed on the real property subject to such lease.

(f) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions in connection with the leases authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

(g) LIMITATION.—The Secretary may obligate or expend amounts to obtain facilities or use of facilities under subsection (b)(1) only to the extent funds are available for such purpose.

SEC. 2209. CERTAIN ENLISTED QUARTERS, GUAM.

Section 201(b) of the Military Construction Authorization Act, 1986 (Public Law 99-167; 99 Stat. 970), is amended—

(1) by striking out "Naval Magazine, Guam, $11,270,000." and inserting in lieu thereof "Naval Magazine, Guam, $6,570,000."; and

(2) by striking out "Naval Station, Guam, $10,200,000." and inserting in lieu thereof "Naval Station, Guam, $14,900,000.".

SEC. 2210. AUTHORIZATION OF APPROPRIATIONS, NAVY.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of $2,210,683,000 as follows:

(1) For military construction projects inside the United States authorized by section 2201(a), $1,138,005,000.

(2) For military construction projects outside the United States authorized by section 2201(b), $105,420,000.

(3) For military construction projects at Kings Bay, Georgia, authorized by section 2201(a) of the Military Construction Authorization Act, 1986, $40,905,000.

(4) For unspecified minor construction projects under section 2805 of title 10, United States Code, $15,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $143,770,000.

(6) For advances to the Secretary of Transportation for construction of defense access roads under section 210 of title 23, United States Code, $5,400,000.

(7) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $204,292,000; and

(B) for support of military housing (including functions described in section 2833 of title 10, United States Code), $557,891,000, of which—

(i) not more than $5,214,100 may be obligated or expended for the leasing of military family housing in the United States, the Commonwealth of Puerto Rico, and Guam; and

(ii) not more than $17,244,900 may be obligated or expended for the leasing of military family housing units in foreign countries.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS AUTHORIZED IN THIS TITLE.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2201 of this division may not exceed the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a).

SEC. 2211. EXTENSION OF CERTAIN PRIOR YEAR AUTHORIZATIONS.

(a) EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 1984 PROJECTS.—Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1984 (Public Law 98-115, 97 Stat. 780), authorizations for the following projects authorized in section 201 of that Act, as extended by section 606(b) of the Military Construction Authorization Act, 1986 (Public Law 99-167, 99 Stat. 983) shall remain in effect until October 1, 1987, or the date of enactment of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Land acquisition in the amount of $830,000 at the Naval Weapons Station, Concord, California.

(2) Unaccompanied enlisted personnel housing in the amount of $10,000,000 at the Naval Air Station, Jacksonville, Florida.

(3) Electrical distribution lines in the amount of $7,200,000 at the Mare Island Naval Shipyard, Vallejo, California.

(b) EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 1985 PROJECTS.—Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1985 (Public Law 98-407, 98 Stat. 1515), authorizations for the following projects authorized in sections 201 of that Act shall remain in effect until October 1, 1987, or the date of enactment of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Unaccompanied enlisted personnel housing in the amount of $10,740,000 at the Marine Corps Air Station, Yuma, Arizona.

(2) Antenna support facility in the amount of $320,000 at the Naval Security Group Activity, Adak, Alaska.

(3) Data processing center in the amount of $6,160,000 at the Naval Supply Center, Bremerton, Washington.

(4) Unaccompanied enlisted personnel housing in the amount of $12,130,000 at the Naval Air Station, Whidbey Island, Washington.

(5) Unaccompanied enlisted personnel housing in the amount of $6,600,000 at the Naval Station, Mare Island, Vallejo, California.

(6) Engine test cell in the amount of $9,700,000 for the Naval Air Rework Facility, Cherry Point, North Carolina.

(7) Security building in the amount of $850,000 for the Naval Station, Norfolk, Virginia.

(8) Unaccompanied enlisted personnel housing in the amount of $1,580,000 for the Naval Station, Panama Canal, Panama.

(9) Heating, ventilation and air conditioning in the amount of $4,540,000 for the Naval Air Station, Alameda, California.

(10) Land acquisition in the amount of $4,750,000 for the Marine Corps Air Station, El Toro, California.

(11) Maintenance hangar in the amount of $5,000,000 for the Naval Air Station, Fallon, Nevada.

(12) Construction battalion unit complex in the amount of $1,090,000 for the Naval Station, Mare Island, Vallejo, California.

(13) Airframes shop in the amount of $1,680,000 for the Pacific Missile Test Center, Point Mugu, California.

(14) Unaccompanied enlisted personnel housing in the amount of $6,650,000 for the Pacific Missile Test Center, Point Mugu, California.

(15) Maintenance hangar in the amount of $13,200,000 for the Marine Corps Air Station, Tustin, California.

(16) Oil spill prevention facility in the amount of $710,000 for the Marine Corps Air Station, Tustin, California.

(17) Energy monitoring and control system in the amount of $1,100,000 for the Naval Air Station, Chase Field, Texas.

(18) Host nation infrastructure support in the amount of $2,970,000 for various locations.

TITLE III—AIR FORCE

SEC. 2301. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—The Secretary of the Air Force may acquire real property and may carry out military construction projects in the amount shown for each of the following installations and locations inside the United States:

AIR FORCE LOGISTICS COMMAND

Hill Air Force Base, Utah, $20,550,000.
Kelly Air Force Base, Texas, $10,900,000.
McClellan Air Force Base, California, $28,900,000.
Newark Air Force Station, Ohio, $3,000,000.
Robbins Air Force Base, Georgia, $16,055,000.
Tinker Air Force Base, Oklahoma, $32,900,000.
Wright-Patterson Air Force Base, Ohio, $19,500,000.

AIR FORCE SYSTEM COMMAND

Arnold Air Force Station, Tennessee, $3,530,000.
Edwards Air Force Base, California, $14,100,000.
Eglin Air Force Base, Florida, $720,000.
Hanscom Air Force Base, Massachusetts, $4,000,000.
Patrick Air Force Base, Florida, $2,600,000.
Sunnyvale Air Force Station, California, $2,600,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Illinois, $11,300,000.
Keesler Air Force Base, Mississippi, $1,970,000.
Lackland Air Force Base, Texas, $16,000,000.
Laughlin Air Force Base, Texas, $3,700,000.
Mather Air Force Base, California, $740,000.
Randolph Air Force Base, Texas, $2,250,000.
Williams Air Force Base, Arizona, $4,900,000.

AIR UNIVERSITY

Gunter Air Force Station, Alabama, $2,900,000.
Maxwell Air Force Base, Alabama, $5,310,000.

ALASKAN AIR COMMAND

Eielson Air Force Base, Alaska, $12,590,000.
Elmendorf Air Force Base, Alaska, $8,170,000.
Galena Airport, Alaska, $11,600,000.
King Salmon Airport, Alaska, $4,050,000.
Shemya Air Force Base, Alaska, $22,300,000.

MILITARY AIRLIFT COMMAND

Altus Air Force Base, Oklahoma, $310,000.
Andrews Air Force Base, Maryland, $25,430,000.
Charleston Air Force Base, South Carolina, $6,290,000.
Kirtland Air Force Base, New Mexico, $11,800,000.
Little Rock Air Force Base, Arkansas, $2,750,000.
McChord Air Force Base, Washington, $6,400,000.
McGuire Air Force Base, New Jersey, $13,595,000.
Norton Air Force Base, California, $1,450,000.
Pope Air Force Base, North Carolina, $3,400,000.
Scott Air Force Base, Illinois, $1,100,000.
Travis Air Force Base, California, $8,200,000.

PACIFIC AIR FORCES

Hickam Air Force Base, Hawaii, $4,700,000.

SPACE COMMAND

Cape Cod Air Force Station, Massachusetts, $4,300,000.
Cavalier Air Force Station, North Dakota, $2,820,000.
Falcon Air Force Station, Colorado, $6,400,000.
Peterson Air Force Base, Colorado, $3,640,000.

SPECIAL PROJECT

Various Locations, $37,056,000.

STRATEGIC AIR COMMAND

Beale Air Force Base, California, $9,516,000.
Blytheville Air Force Base, Arkansas, $3,870,000.
Carswell Air Force Base, Texas, $490,000.
Castle Air Force Base, California, $2,630,000.
Dyess Air Force Base, Texas, $4,130,000.
Ellsworth Air Force Base, South Dakota, $10,910,000.
Fairchild Air Force Base, Washington, $7,520,000.
F. E. Warren Air Force Base, Wyoming, $3,550,000.
Grand Forks Air Force Base, North Dakota, $23,130,000.
Griffiss Air Force Base, New York, $1,590,000.
Grissom Air Force Base, Indiana, $3,850,000.
Holbrook Radar Bomb Score Site, Arizona, $630,000.
K. I. Sawyer Air Force Base, Michigan, $1,730,000.
La Junta Radar Bomb Scoring Site, Colorado, $5,460,000.
Loring Air Force Base, Maine, $1,300,000.
Malmstrom Air Force Base, Montana, $33,770,000.
March Air Force Base, California, $14,440,000.
McConnell Air Force Base, Kansas, $35,740,000.
Minot Air Force Base, North Dakota, $33,100,000.
Offutt Air Force Base, Nebraska, $24,970,000.
Pease Air Force Base, New Hampshire, $2,200,000.
Plattsburgh Air Force Base, New York, $9,610,000.
Vandenburg Air Force Base, California, $2,700,000.
Whiteman Air Force Base, Missouri, $10,700,000.
Wurtsmith Air Force Base, Michigan, $11,740,000.

TACTICAL AIR COMMAND

Avon Park Auxiliary Air Field, Florida, $4,100,000.
Bangor International Airport, Maine, $1,250,000.
Base 39, Classified Location, $2,300,000.
Bergstrom Air Force Base, Texas, $1,860,000.
Davis-Monthan Air Force Base, Arizona, $12,430,000.
England Air Force Base, Louisiana, $2,300,000.
George Air Force Base, California, $9,550,000.
Holloman Air Force Base, New Mexico, $14,760,000.
Homestead Air Force Base, Florida, $6,550,000.
Indian Springs Auxiliary Air Field, Nevada, $1,700,000.
Langley Air Force Base, Virginia, $9,640,000.
Luke Air Force Base, Arizona, $24,140,000.
MacDill Air Force Base, Florida, $3,730,000.
Moody Air Force Base, Georgia, $900,000.
Mountain Home Air Force Base, Idaho, $14,760,000.
Nellis Air Force Base, Nevada, $23,800,000.
Seymour-Johnson Air Force Base, North Carolina, $2,760,000.
Shaw Air Force Base, South Carolina, $3,700,000.
Tyndall Air Force Base, Florida, $15,310,000.
WESTCONUS, Various Locations, $10,300,000.

UNITED STATES AIR FORCE ACADEMY

Air Force Academy, Colorado, $12,620,000.

(b) OUTSIDE THE UNITED STATES.—The Secretary of the Air Force may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations outside the United States:

MILITARY AIRLIFT COMMAND

Lajes Field, Portugal, $15,750,000.
Rhein-Main Air Base, Germany, $1,300,000.

PACIFIC AIR FORCES

Kadena Air Base, Japan, $7,365,000.
Misawa Air Base, Japan, $10,300,000.
Totsuka Air Base, Japan, $700,000.
Yokosuka Air Base, Japan, $600,000.
Yokota Air Base, Japan, $4,900,000.
Camp Humphreys, Korea, $8,300,000.
Camp Red Cloud, Korea, $1,450,000.
Kimhae Air Base, Korea, $3,620,000.
Kunsan Air Base, Korea, $8,170,000.
Kwang-Ju Air Base, Korea, $600,000.
Osan Air Base, Korea, $14,350,000.
Suwon Air Base, Korea, $3,850,000.
Taegu Air Base, Korea, $5,170,000.
Saipan, $5,200,000.

SPACE COMMAND

Sondrestrom Air Base, Greenland, $5,860,000.
Thule Air Base, Greenland, $9,790,000.
Woomera Air Station, Australia, $2,300,000.

STRATEGIC AIR COMMAND

Andersen Air Force Base, Guam, $7,600,000.

TACTICAL AIR COMMAND

Keflavik Naval Air Station, Iceland, $1,600,000.
Masirah, Oman, $3,500,000.
Thumrait, Oman, $3,400,000.

UNITED STATES AIR FORCES IN EUROPE

Florennes Air Base, Belgium, $1,200,000.
Bitburg Air Base, Germany, $5,350,000.
Hahn Air Base, Germany, $12,640,000.
Lindsey Air Station, Germany, $1,200,000.
Ramstein Air Base, Germany, $31,230,000.
Sembach Air Base, Germany, $11,870,000.
Spangdahlem Air Base, Germany, $8,310,000.
Wueschheim Air Station, Germany, $310,000.
Zweibrucken Air Base, Germany, $6,740,000.
Iraklion Air Station, Greece, $320,000.
Aviano Air Base, Italy, $4,200,000.
Camp Darby, Italy, $270,000.
Comiso Air Station, Italy, $3,230,000.
San Vito Air Station, Italy, $3,790,000.
Camp New Amsterdam, The Netherlands, $1,500,000.
Woensdrecht Air Base, The Netherlands, $30,780,000.
Ankara Air Station, Turkey, $6,780,000.
Incirlik Air Base, Turkey, $12,250,000.
Pirinclik Air Station, Turkey, $3,000,000.
Martlesham Heath, United Kingdom, $1,650,000.
RAF Alconbury, United Kingdom, $17,170,000.
RAF Bentwaters, United Kingdom, $7,550,000.
RAF Chicksands, United Kingdom, $950,000.
RAF Croughton, United Kingdom, $630,000.
RAF Fairford, United Kingdom, $4,450,000.
RAF Lakenheath, United Kingdom, $500,000.
RAF Mildenhall, United Kingdom, $4,700,000.
RAF Molesworth, United Kingdom, $2,430,000.
RAF Upper Heyford, United Kingdom, $11,700,000.
RAF Welford, United Kingdom, $1,590,000.
RAF Wethersfield, United Kingdom, $650,000.
RAF Woodbridge, United Kingdom, $3,400,000.
Base 30, Classified Location, $2,950,000.
Overseas Classified Location, $11,500,000.
Various Locations, Europe, $3,953,000.

SEC. 2302. FAMILY HOUSING.

The Secretary of the Air Force may construct or acquire family housing units (including land acquisition) at the following installations, in the number of units shown, and in the amount shown, for each installation:

Bitburg Air Base, Germany, three hundred and thirty-two units, $26,415,000.
Hahn Air Base, Germany, one hundred and fifty units, $11,300,000.
La Junta Air Force Station, Colorado, forty units, $4,000,000.
Beale Air Force Base, California, family housing maintenance shop, $180,000.
Davis-Monthan Air Force Base, Arizona, family housing management office, $300,000.
McGuire Air Force Base, New Jersey, family housing management office, $325,000.
Pope Air Force Base, North Carolina, family housing management office, $300,000.
Edwards Air Force Base, California, twenty-four mobile home spaces, $376,000.

SEC. 2303. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

(a) AMOUNT AUTHORIZED.—Subject to section 2825 of title 10, United States Code, the Secretary of the Air Force may make expenditures, using amounts appropriated pursuant to section 2306(a)(6)(A), to improve existing military family housing units, including energy conservation projects, in an amount not to exceed $58,644,000.

(b) WAIVER OF MAXIMUM PER UNIT COST FOR CERTAIN IMPROVEMENT PROJECTS.—Notwithstanding the maximum amount per unit for an improvement project under section 2825(b) of title 10, United States Code, the Secretary of the Air Force may carry out projects to improve existing military family housing units at the following installations in the number of units shown, and in the amount shown, for each installation:

Eielson Air Force Base, Alaska, eighty-eight units, $6,186,000.

Elmendorf Air Force Base, Alaska, twelve units, $760,000.

Air Force Academy, Colorado, one unit, $120,000.

Peterson Air Force Base, Colorado, four units, $149,000.

MacDill Air Force Base, Florida, one hundred and fifty-eight units, $4,430,000; seven units, $553,000; seventy-one units, $2,103,000.

Scott Air Force Base, Illinois, one hundred and twelve units, $4,690,000.

Barksdale Air Force Base, Louisiana, one hundred and fourteen units, $5,342,000.

Bangor Air Force Station, Maine, one unit, $30,000.

Andrews Air Force Base, Maryland, seven units, $518,000.

Pease Air Force Base, New Hampshire, two-hundred units, $7,177,000.

Plattsburgh Air Force Base, New York, twenty-nine units, $2,272,000.

Shaw Air Force Base, South Carolina, one hundred and twenty-five units, $4,385,000; seventy-four units, $2,598,000.

Carswell Air Force Base, Texas, two hundred and three units, $7,478,000.

Lackland Air Force Base, Texas, sixty-four units, $1,920,000.

Randolph Air Force Base, Texas, five units, $402,000.

Reese Air Force Base, Texas, one hundred units, $2,895,000.

Langley Air Force Base, Virginia, five units, $441,000.

Andersen Air Force Base, Guam, two hundred units, $14,517,000.

Kadena Air Base, Japan, one hundred units, $5,054,000; three units, $240,000.

SEC. 2304. RESTRICTION ON CERTAIN MILITARY CONSTRUCTION FUNDING.

Funds appropriated for military construction may not be used during fiscal year 1987 in connection with the basing at any military installation or facility other than Little Rock Air Force Base, Jacksonville, Arkansas, the eight KC-135 tanker aircraft that, as of June 1, 1986, were based at such Air Force base and assigned to the 189th Air Refueling Group of the Air National Guard.

SEC. 2305. LIMITATION ON CERTAIN EXTENSION OF AUTHORIZATION AND OBLIGATION OF CERTAIN APPROPRIATIONS.

(a) LIMITATION ON AUTHORIZATION.—The extension of authorization in section 2307 for 140 units of family housing at Fort MacArthur, California, shall become effective on the date on which the Secretary of Defense submits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a description of—

(1) all Federal land in the Los Angeles, California, metropolitan area that is suitable for military family housing;

(2) the family housing needs of each military department in such area; and

(3) the sites at which the personnel who will reside in the military family housing planned for the area will carry out their military responsibilities.

(b) LIMITATION ON OBLIGATION OF PRIOR YEAR APPROPRIATIONS.—Funds appropriated for military family housing units at Fort MacArthur, California, for fiscal year 1983 or fiscal year 1985 that have not been obligated by June 9, 1986, may not be obligated until the date on which the Secretary of Defense submits the report described in subsection (a).

SEC. 2306. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of $2,206,440,000 as follows:

(1) For military construction projects inside the United States authorized by section 2301(a) $835,042,000.

(2) For military construction projects outside the United States authorized by section 2301(b), $347,158,000.

(3) For unspecified minor construction projects under section 2805 of title 10, United States Code, $16,000,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $127,260,000.

(5) For advances to the Secretary of Transportation for construction of defense access roads under section 210 of title 23, United States Code, $32,700,000.

(6) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $108,840,000; and

(B) for support of military housing (including functions described in section 2833 of title 10, United States Code), $739,440,000, of which—

(i) not more than $5,600,000 may be obligated or expended for the leasing of military family housing units in the United States, the Commonwealth of Puerto Rico, and Guam; and

(ii) not more than $74,176,000 may be obligated or expended for the leasing of military family housing units in the foreign countries.

(b) AUTHORIZATION OF UNOBLIGATED FUNDS FOR ENERGY CONSERVATION PROJECTS.—Funds appropriated to the Department of Defense for fiscal years before fiscal year 1987 which could be used for energy conservation projects of the Department of the Air Force that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for energy conservation projects authorized in section 2301(a) in an amount not to exceed $9,470,000.

(c) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS AUTHORIZED IN THIS TITLE.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2301 may not exceed the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a) and the amount specified in subsection (b).

(d) USE OF CERTAIN FUNDS.—The Secretary of the Air Force may use not more than $350,000 of the amount appropriated pursuant to subsection (a)(3) to acquire a 20-acre tract of real property, and improvements thereon, located adjacent to Lake Wateree near Shaw Air Force Base, South Carolina.

SEC. 2307. EXTENSION OF CERTAIN PRIOR YEAR AUTHORIZATIONS.

Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1985 (Public Law 98-407, 98 Stat. 1515) and subject to section 2305 of this division, authorizations for the following projects authorized in section 302 of that Act shall remain in effect until October 1, 1987, or the date of enactment of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Fort MacArthur, California, 140 units, $15,100,000.

(2) RAF Greenham Common, United Kingdom, 250 units, $22,441,000.

(3) RAF Bentwaters, United Kingdom, 200 units, $20,163,000.

TITLE IV—DEFENSE AGENCIES

SEC. 2401. AUTHORIZED CONSTRUCTION PROJECTS AND LAND ACQUISITION FOR THE DEFENSE AGENCIES.

(a) INSIDE THE UNITED STATES.—The Secretary of Defense may acquire real property and carry out military construction projects in the amounts shown for each of the following installations and locations inside the United States:

DEFENSE COMMUNICATIONS AGENCY

Scott Air Force Base, Illinois, $7,600,000.

DEFENSE LANGUAGE INSTITUTE

Defense Language Institute, Monterey, California, $5,400,000.

DEFENSE LOGISTICS AGENCY

Defense Fuel Support Point, Estero Bay, California, $680,000.

Hazardous Materials and Waste Storage Facility, Fort Stewart, Georgia, $730,000.

Hazardous Materials and Waste Storage facility Naval Air Station, Brunswick, Maine, $510,000.

Hazardous Materials and Waste Storage Facility, Kirtland Air Force Base, New Mexico, $620,000.

Defense Construction Supply Center, Columbus, Ohio, $860,000.

Hazardous Materials and Waste Storage Facility, Navy Ship Parts Control Center, Mechanicsburg, Pennsylvania, $318,000.

Defense Fuel Support Point, Charleston, South Carolina, $460,000.

Defense Fuel Support Point, Naval Supply Center, Charleston, South Carolina, $5,130,000.

Hazardous Materials and Waste Storage Facility, Fort Bragg, North Carolina, $825,000.

Defense Depot, Memphis, Tennessee, $1,160,000.

Hazardous Materials and Waste Storage Facility, Fort McCoy, Wisconsin, $260,000.

DEFENSE MAPPING AGENCY

Aerospace Center, St. Louis, Missouri, $16,700,000.

DEFENSE MEDICAL FACILITIES OFFICE

Edwards Air Force Base, California, $3,950,000.

March Air Force Base, California, $2,350,000.

Fort Ord, California, $530,000.

Vandenberg Air Force Base, California, $1,900,000.

Pearl Harbor, Hawaii, $9,700,000.

Mountain Home Air Force Base, Idaho, $30,500,000.

Fort Polk, Louisiana, $2,650,000.
Andrews Air Force Base, Maryland, $2,000,000.
Keesler Air Force Base, Mississippi, $3,100,000.
McGuire Air Force Base, New Jersey, $3,800,000.
Camp Lejeune, North Carolina, $3,900,000.
Fort Hood, Texas, $3,450,000.
Randolph Air Force Base, Texas, $13,700,000.
Fort Sam Houston, Texas, $10,000,000.

DEFENSE NUCLEAR AGENCY

Armed Forces Radiobiology Research Institute, Bethesda, Maryland, $790,000.
Field Command, Kirtland Air Force Base, New Mexico, $900,000.

JOINT TACTICAL COMMAND, CONTROL, AND COMMUNICATIONS AGENCY

Fort Huachucha, Arizona, $9,890,000.

NATIONAL SECURITY AGENCY

Fort Meade, Maryland, $5,200,000.
Classified Location, $3,000,000.
Classified Location, $4,000,000.
Classified Location, $1,000,000.

DEPARTMENT OF DEFENSE SECTION 6 SCHOOLS

Fort McClellan, Alabama, $2,830,000.
Fort Benning, Georgia, $1,080,000.
Robbins Air Force Base, Georgia, $2,440,000.
Fort Campbell, Kentucky, $1,340,000.
Fort Knox, Kentucky, $4,350,000.
Governors Island, New York, $2,600,000.
Camp Lejeune, North Carolina, $1,190,000.
Dahlgren, Virginia, $1,130,000.
Quantico, Virginia, $420,000.

UNIFORMED SERVICES UNIVERSITY OF HEALTH SCIENCES

Bethesda, Maryland, $900,000.

(b) OUTSIDE THE UNITED STATES.—The Secretary of Defense may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations outside the United States:

DEFENSE LOGISTICS AGENCY

Defense Fuel Support Point, Chimu Wan, Japan, $6,640,000.
Defense Fuel Support Point, Tsurumi, Japan, $3,520,000.
Defense Reutilization and Marketing Office, Bupyong, Korea, $1,290,000.
Defense Fuel Support Point, Toegeywon, Korea, $1,010,000.

DEFENSE MEDICAL FACILITIES OFFICE

Boeblingen, Germany, $3,650,000.
Grafenwoehr, Germany, $3,950,000.
Karlsruhe, Germany, $6,800,000.
Vilseck, Germany, $5,600,000.
Camp Edwards, Korea, $1,800,000.
Camp Long, Korea, $1,850,000.
Camp Pelham, Korea, $720,000.
Camp New Amsterdam, The Netherlands, $6,000,000.

DEPARTMENT OF DEFENSE DEPENDENT SCHOOLS

Florennes, Belgium, $1,260,000.
Naval Air Station, Bermuda, $4,280,000.
Aschaffenburg, Germany, $6,600,000.
Bad Kissingen, Germany, $1,330,000.
Baumholder, Germany, $1,600,000.
Dexheim, Germany, $2,430,000.
Erlangen, Germany, $3,220,000.
Gelnhausen, Germany, $1,130,000.
Grafenwoehr, Germany, $2,500,000.
Hahn, Germany, $3,470,000.
Heidelberg, Germany, $3,190,000.
Hessisch-Oldendorf, Germany, $2,310,000.
Hohenfels, Germany, $1,190,000.
Kaiserslautern, Germany, $7,880,000.
Nuernberg, Germany, $8,580,000.
Schwaebish Gmuend, Germany, $1,640,000.
Stuttgart, Germany, $4,530,000.
Wuerzburg, Germany, $7,760,000.
Seoul, Korea, $510,000.
Woensdrecht, The Netherlands, $7,420,000.

SEC. 2402. FAMILY HOUSING.

The Secretary of Defense may construct or acquire three family housing units (including land acquisition) at classified locations in the total amount of $270,000.

SEC. 2403. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments), in the total amount of $516,403,000 as follows:

(1) For military construction projects inside the United States authorized by section 2401(a), $175,843,000.

(2) For military construction projects outside the United States authorized by section 2401(b), $115,660,000.

(3) For the construction of a research and engineering facility at Fort Meade, Maryland, authorized by section 401(a) of the Military Construction Authorization Act, 1986, $38,000,000.

(4) For the construction of the Madigan Army Medical Center, Fort Lewis, Washington, authorized by section 101(a) of the Military Construction Authorization Act, 1985, $72,100,000.

(5) For unspecified minor construction projects under section 2805 of title 10, United States Code, $4,000,000.

(6) For construction projects under the contingency construction authority of the Secretary of Defense under section 2804 of title 10, United States Code, $5,000,000.

(7) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $88,200,000.

(8) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $270,000; and

(B) for support of military housing (including functions described in section 2833 of title 10, United States Code), $17,330,000, of which not more than $14,027,000 may be obligated or expended for the leasing of military family housing units in foreign countries.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS AUTHORIZED IN THIS TITLE.—Notwithstanding the cost variations authorized by section 2858 of title 10, United States Code, and any other cost variations authorized by law, the total cost of all projects carried out under section 2401 may not exceed the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a).

(c) USE OF CERTAIN FUNDS.—Of the amounts appropriated pursuant to subsection (a), not more than $16,000,000 may be used for the construction of a medical facility for Kirtland Air Force Base, New Mexico.

SEC. 2404. EXTENSION OF PRIOR YEAR AUTHORIZATIONS.

Notwithstanding the provisions of section 607(a) of the Military Construction Authorization Act, 1985 (Public Law 98-407, 98 Stat. 1515), the authorizations for the following projects authorized in sections 401 and 402 of such Act shall remain in effect until October 1, 1987, or the date of the Military Construction Authorization Act for fiscal year 1988, whichever is later:

(1) Defense property disposal office in the amount of $1,950,000 at Pearl Harbor Naval Shipyard, Hawaii.

(2) Six family housing units at classified locations in the amount of $693,000.

TITLE V—NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

SEC. 2501. AUTHORITY OF THE SECRETARY OF DEFENSE TO MAKE CONTRIBUTIONS.

(a) IN GENERAL.—The Secretary of Defense may make contributions for the North Atlantic Treaty Organization infrastructure program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2502 and the amount collected from the North Atlantic Treaty Organization as a result of construction previously financed by the United States.

(b) LIMITATION.—The Secretary may obligate funds under this section only to the extent funds are appropriated for use under section 2806 of title 10, United States Code.

SEC. 2502. AUTHORIZATION OF APPROPRIATIONS, NATO.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Infrastructure Program as authorized by section 2501, in the amount of $247,000,000.

SEC. 2503. AMENDMENT TO NATO INFRASTRUCTURE PROGRAM.

(a) IN GENERAL.—Section 2806(a) of title 10, United States Code, is amended by inserting "and for related expenses" after "headquarters)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1986, and shall apply only with respect to contributions made with funds appropriated for fiscal years after fiscal year 1986.

SEC. 2504. RESTRICTION ON CERTAIN FUNDING.

The Secretary of Defense may not obligate or expend any funds after fiscal year 1987 with respect to the North Atlantic Treaty Organization infrastructure program as provided in section 2806 of title 10, United States Code, until the Secretary submits to the Committees on Armed Services of the Senate and the House of Representatives—

(1) a comprehensive master plan for establishing adequate active defenses for—

(A) air bases in Europe at which operations of United States aircraft are planned; and

(B) sites in Europe used by the United States for logistic support of the North Atlantic Treaty Organization or for prepositioned overseas materiel configured to unit sets; and

(2) a report containing a certification by the Secretary that sufficient funds have been budgeted by the Department of Defense in the fiscal year 1988 five-year defense plan to meet the objectives of such comprehensive master plan.

TITLE VI—GUARD AND RESERVE FORCES FACILITIES

SEC. 2601. AUTHORIZATION FOR GUARD AND RESERVE FACILITIES.

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor,

under chapter 133 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, $121,100,000, and

(B) for the Army Reserve, $86,700,000.

(2) For the Department of the Navy, for the Naval and Marine Corps Reserves, $44,500,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, $140,000,000, and

(B) for the Air Force Reserve, $58,900,000.

TITLE VII—GENERAL PROVISIONS

PART A—EXPIRATION OF AUTHORIZATIONS

SEC. 2701. EXPIRATION OF AUTHORIZATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), all authorizations contained in titles I, II, III, IV, and V for military construction projects, land acquisition, family housing projects and facilities, and contributions to the NATO Infrastructure Program (and authorizations of appropriations therefor) shall expire on October 1, 1988, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1989, whichever is later.

(b) EXCEPTION.—The provisions of subsection (a) do not apply to authorizations for military construction projects, land acquisition, family housing projects and facilities, and contributions to the NATO Infrastructure Program (and authorizations of appropriations therefor), for which appropriated funds have been obligated before October 1, 1988, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1989, whichever is later, for construction contracts, land acquisition, family housing projects and facilities, or contributions to the NATO Infrastructure Program.

PART B—MILITARY CONSTRUCTION PROGRAM PROVISIONS

SEC. 2711. CODIFICATION OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW.

(a) MAXIMUM AMOUNT FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—Section 2805 of title 10, United States Code, is amended—

(1) in subsection (a), by striking out "the amount specified by law as the maximum amount for a minor military construction project" in clause (2) and inserting in lieu thereof "$1,000,000";

(2) in subsection (b)(1), by striking out "50 percent" and all that follows through "project" and inserting in lieu thereof "$500,000"; and

(3) in subsection (c), by striking out "20 percent" and all that follows through "project" and inserting in lieu thereof "$200,000".

(b) MAXIMUM AMOUNT FOR ARCHITECTURAL AND ENGINEERING SERVICES.—Section 2807(b) of such title is amended by striking out "the maximum amount specified by law for the purposes of this section" and inserting in lieu thereof "$300,000".

(c) MAXIMUM AMOUNT PER UNIT FOR AN IMPROVEMENT PROJECT FOR FAMILY HOUSING UNITS.—Section 2825(b)(1) of such title is amended by striking out "an amount specified by law for such purpose" and inserting in lieu thereof "$30,000".

(d) MAXIMUM ANNUAL RENTAL FOR A FAMILY HOUSING UNIT IN THE UNITED STATES.—Section 2828(b) of such title is amended—

(1) in paragraph (2), by striking out "the amount specified by law as the maximum annual domestic family housing unit lease amount" and inserting in lieu thereof "$10,000"; and

(2) in paragraph (3)(A), by striking out "the maximum annual domestic" and all that follows through the period and inserting in lieu thereof "$10,000 but does not exceed $12,000.".

(e) MAXIMUM ANNUAL RENTAL FOR A FAMILY HOUSING UNIT OUTSIDE THE UNITED STATES.—Section 2828(e)(1) of such title is amended by striking out "the amount specified by law as the maximum annual foreign family housing unit lease amount" and inserting in lieu thereof "$16,800".

(f) MAXIMUM NUMBER OF FAMILY HOUSING UNITS LEASED IN FOREIGN COUNTRIES.—Section 2828(e)(2) of such title is amended by striking out "shall be specified by law" and inserting in lieu thereof "is $32,000".

(g) MAXIMUM ANNUAL RENTAL FOR FAMILY HOUSING FACILITIES, OR FOR REAL PROPERTY RELATED TO FAMILY HOUSING FACILITIES, LEASED IN A FOREIGN COUNTRY.—Section 2828(f) of such title is amended by striking out "the amount specified by law for such purpose" and inserting in lieu thereof "$250,000".

SEC. 2712. FAMILY HOUSING IN FOREIGN COUNTRIES.

(a) IN GENERAL.—Subsection 2828(e)(1) of title 10, United States Code, is amended by striking out "200" and inserting in lieu thereof "220".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply only with respect to funds appropriated for fiscal years after fiscal year 1986.

SEC. 2713. PLANNING AND DESIGN.

(a) IN GENERAL.—Section 2807 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(d) For study, planning, design, architectural, and engineering services related to military construction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing appropriations from different fiscal years to the extent that those appropriations are available for obligation.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only to funds appropriated for fiscal years after fiscal year 1986.

SEC. 2714. BUDGETING FOR GUARD AND RESERVE.

Section 2859 of title 10, United States Code, is amended by adding at the end the following sentence: "Beginning with fiscal year 1988, the Secretary of Defense shall provide that at least 10 percent of the total amount requested for military construction authorization (excluding the amount requested for military family housing) for a fiscal year shall be requested for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 133 of this title (including the cost of acquisition of land for those facilities).".

SEC. 2715. EXEMPTION FOR CERTAIN MILITARY CONSTRUCTION CONTRACTS.

Section 2852 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c)(1) With respect to the rate of wages to be paid in fiscal year 1987 for laborers and mechanics employed on any authorized military construction or military family housing project (including any alteration or repair project), the Secretary of Defense and the Secretaries of the military departments may enter into a contract for not more than $25,000 to carry out such a project without regard to the requirements of the Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (40 U.S.C. 276a–276a-5) (referred to in this subsection as the 'Davis-Bacon Act').

"(2) Any 2 or more contracts for any authorized military construction or military family housing project (including any alteration or repair project) that—

"(A) individually do not exceed $25,000,

"(B) in the aggregate do exceed $25,000, and

"(C) all relate to the same project or related projects at the same site,

shall be treated as a single contract for purposes of paragraph (1).

"(3)(A)(i) Any interested person may bring an action against the Secretary of Defense or Secretaries of the military departments to enforce the requirements of the Davis-Bacon Act with respect to any contract to which paragraph (1) applies.

"(ii) For purposes of this paragraph, the term 'interested person' means any contractor likely to seek or to work under a contract to which paragraph (1) applies, any association representing such a contractor, any laborer or mechanic likely to be employed or to seek employment under such a contract, or any labor organization which represents such a laborer or mechanic.

"(B) An action described in subparagraph (A) may be brought in any United States district court for the district in which the violation of the Davis-Bacon Act is alleged to have been committed or in the United States District Court for the District of Columbia. Such an action shall be commenced not later than 90 days after the day on which the last labor was performed under the contract with respect to which the action is brought.

"(C) If in an action brought under subparagraph (A) the court finds that there has been a violation of the Davis-Bacon Act with respect to a contract to which paragraph (1) applies, the court may order such relief as may be appropriate, including (i) compliance with the Davis-Bacon Act in the payment of wages under such contract, and (ii) the payment by the Secretary of Defense and the Secretaries of the military departments, as the case may be, of prevailing wage rates in accordance with that Act from the date construction began under the contract involved in such action until the date of the judgment of the court, together with interest, at a rate determined by the court, on the difference between the wages paid under such contract and the wages required to be paid under such contract by the Davis-Bacon Act.

"(D) If an interested person prevails in an action brought under subparagraph (A), the court in such action shall assess the defendants in the action reasonable attorney fees and other litigation costs reasonably incurred by the interested person.

"(E) If in an action brought under subparagraph (A) the Secretary of Defense certifies that performance of the contract involved in such action is essential to the national security, the court shall not grant any relief which delays, halts, or in any other manner hinders the performance of that contract.".

PART C—REAL PROPERTY TRANSACTIONS

SEC. 2721. PROPERTY MANAGEMENT.

In accordance with the provisions of section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) governing transfers of excess property, the

Administrator of General Services shall transfer, without reimbursement, to the Secretary of the Army approximately 235 acres of real property (and improvements thereon) near Beltsville, Maryland, for such use as the Secretary of the Army considers appropriate.

SEC. 2722. AUTHORIZATION OF LAND CONVEYANCE TO CITY OF ARCADIA, CALIFORNIA.

(a) IN GENERAL.—Subject to subsection (b), the County of Los Angeles, California, may convey the land described in the Act entitled "An Act to convey certain land in the county of Los Angeles, State of California", approved March 24, 1933, to the City of Arcadia, California.

(b) REVERTER.—Any conveyance made under subsection (a) may be made only on the condition that the land shall revert to the United States if it is used for purposes other than public park, playground, and recreation purposes.

PART D—MISCELLANEOUS

SEC. 2731. PROHIBITION OF FUNDING FOR CERTAIN MILITARY CONSTRUCTION CONTRACTS ON GUAM.

(a) IN GENERAL.—Except as provided in subsection (b), funds appropriated pursuant to any authorization made by this division may not be expended with respect to any contract for a military construction project on Guam if any work is carried out on such project by any person who is a nonimmigrant described in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)).

(b) EXCEPTION.—In any case in which there is no acceptable bid made in response to a solicitation by the Secretary of a military department for bids on a contract for a military construction project on Guam and the Secretary concerned makes a determination that the prohibition contained in subsection (a) is a significant deterrent to obtaining bids on such contract, the Secretary concerned may make another solicitation for bids on such contract and the prohibition contained in subsection (a) shall not apply to such contract after the end of the 21-day period beginning on the date on which the Secretary concerned transmits a report concerning such contract to the Committees on Armed Services of the Senate and the House of Representatives.

(c) EFFECTIVE DATE.—This section shall apply only to contracts entered into, amended, or otherwise modified on or after the date of the enactment of this division.

SEC. 2732. POSTAL FACILITIES.

(a) ARMY.—Section 4779 of title 10, United States Code, is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(b) AIR FORCE.—Section 9779 of such title is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

SEC. 2733. REPORT.

The Secretary of the Army shall, within 45 days of the date of the enactment of this Act, submit a real estate acquisition report for the lease of temporary facilities located in Rio Rancho, New Mexico, for the Hawk Missile Battalion of the New Mexico Army National Guard that is to be permanently located near Rio Rancho, New Mexico.

DIVISION C—OTHER NATIONAL DEFENSE AUTHORIZATIONS

TITLE I—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

SEC. 3001. SHORT TITLE.

This title may be cited as the "Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987".

PART A—NATIONAL SECURITY PROGRAMS AUTHORIZATIONS

SEC. 3011. OPERATING EXPENSES.

Funds are authorized to be appropriated to the Department of Energy for fiscal year 1987 for operating expenses incurred in carrying out national security programs (including scientific research and development in support of the Armed Forces, strategic and critical materials necessary for the common defense, and military applications of nuclear energy and related management and support activities) as follows:

(1) For weapons activities, $3,327,454,000, to be allocated as follows:

(A) For research and development, $895,200,000, of which $17,000,000 shall be used for the plasma separation process program.

(B) For weapons testing, $539,800,000.

(C) For production and surveillance, $1,833,604,000.

(D) For program direction, $58,850,000.

(2) For the defense inertial confinement fusion program, $148,200,000, to be allocated as follows:

(A) $61,000,000 shall be used to support the program at the Lawrence Livermore National Laboratory.

(B) $33,000,000 shall be used to support the program at the Los Alamos National Laboratory.

(C) $29,000,000 shall be used to support the program at the Sandia National Laboratory, Albuquerque, New Mexico.

(D) $25,200,000 shall be used for supporting services.

(3) For verification and control technology, $90,500,000.

(4) For defense nuclear materials production, $1,565,990,000, to be allocated as follows:

(A) For uranium enrichment for naval reactors, $176,000,000.

(B) For other uranium enrichment, $14,500,000.

(C) For production reactor operations, $616,660,000.

(D) For processing of defense nuclear materials, including naval reactors fuel, $493,830,000, of which $70,900,000 shall be used for special isotope separation.

(E) For supporting services, $242,100,000.

(F) For program direction, $22,900,000.

(5) For defense nuclear waste and byproduct management, $431,050,000, to be allocated as follows:

(A) For interim waste management, $314,345,000.

(B) For long-term waste management technology, $75,205,000.

(C) For terminal waste storage, $39,100,000.

(D) For program direction, $2,400,000.

(6) For nuclear materials safeguards and security technology development program, $60,100,000.

(7) For security investigations, $33,300,000.

(8) For naval reactors development, $523,800,000.

SEC. 3012. PLANT AND CAPITAL EQUIPMENT.

Funds are authorized to be appropriated to the Department of Energy for fiscal year 1987 for plant and capital equipment (including maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, land acquisition related thereto, and acquisition and fabrication of capital equipment not related to construction) necessary for national security programs as follows:

(1) For weapons activities:

Project 87-D-101, general plant projects, various locations, $29,000,000.

Project 87-D-121, general plant projects, various locations, $32,000,000.

Project 87-D-122, short-range attack missile II (SRAM II) warhead production facilities, various locations, $5,000,000.

Project 87-D-123, protective clothing decontamination facility, Rocky Flats Plant, Golden, Colorado, $500,000.

Project 86-D-103, decontamination and waste treatment facility, Lawrence Livermore National Laboratory, Livermore, California, $5,300,000, for a total project authorization of $9,000,000.

Project 86-D-104, strategic defenses facility, Sandia National Laboratories, Albuquerque, New Mexico, $7,000,000, for a total project authorization of $11,000,000.

Project 86-D-105, instrumentation systems laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $5,800,000, for a total project authorization of $12,000,000.

Project 86-D-106, laboratory data communications center, Los Alamos National Laboratory, Los Alamos, New Mexico, $10,000,000, for a total project authorization of $13,000,000.

Project 86-D-122, structural upgrade of existing plutonium facilities, Rocky Flats Plant, Golden, Colorado, $2,420,000, for a total project authorization of $5,420,000.

Project 86-D-123, environmental hazards elimination, various locations, $16,840,000, for a total project authorization of $25,540,000.

Project 86-D-124, safeguards and site security upgrading, Phase II, Mound Plant, Miamisburg, Ohio, $1,880,000, for a total project authorization of $4,880,000.

Project 86-D-125, safeguards and site security upgrade, Phase II, Pantex Plant, Amarillo, Texas, $8,410,000, for a total project authorization of $9,910,000.

Project 86-D-130, tritium loading facility replacement, Savannah River Plant, Aiken, South Carolina, $29,700,000, for a total project authorization of $34,700,000.

Project 85-D-102, nuclear weapons research, development, and testing facilities revitalization, Phase I, various locations, $29,950,000, for a total project authorization of $130,750,000.

Project 85-D-103, safeguards and security enhancements, Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore, California, $6,500,000, for a total project authorization of $27,600,000.

Project 85-D-105, combined device assembly facility, Nevada Test Site, Las Vegas, Nevada, $5,400,000, for a total project authorization of $20,000,000.

Project 85-D-106, hardened engineering test building, Lawrence Livermore National Laboratory, Livermore, California, $330,000, for a total project authorization of $3,030,000.

Project 85-D-112, enriched uranium recovery improvements, Y-12 Plant, Oak Ridge, Tennessee, $19,000,000, for a total project authorization of $38,800,000.

Project 85-D-113, power plant and steam distribution system, Pantex Plant, Amarillo,

Texas, $1,790,000, for a total project authorization of $24,790,000.

Project 85-D-115, renovate plutonium building utility systems, Rocky Flats Plant, Golden, Colorado, $13,440,000, for a total project authorization of $34,040,000.

Project 85-D-121, air and water pollution control facilities, Y-12 Plant, Oak Ridge, Tennessee, $9,160,000, for a total project authorization of $28,160,000.

Project 85-D-125, tactical bomb production facilities, various locations, $12,800,000, for a total project authorization of $28,800,000.

Project 84-D-102, radiation-hardened integrated circuit laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $3,000,000, for a total project authorization of $40,500,000.

Project 84-D-107, nuclear testing facilities revitalization, various locations, $13,300,000, for a total project authorization of $79,240,000.

Project 84-D-112, Trident II warhead production facilities, various locations, $14,500,000, for a total project authorization of $155,200,000.

Project 84-D-124, environmental improvements, Y-12 Plant, Oak Ridge, Tennessee, $9,280,000, for a total authorization of $38,280,000.

Project 84-D-211, safeguards and site security upgrading, Y-12 Plant, Oak Ridge, Tennessee, $27,220,000, for a total project authorization of $40,220,000.

Project 82-D-107, utilities and equipment restoration, replacement, and upgrade, Phase III, various locations, $97,904,000, for a total project authorization of $838,304,000.

Project 82-D-144, simulation technology laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $6,000,000, for a total project authorization of $40,000,000.

(2) For materials production:

Project 87-D-146, general plant projects, various locations, $32,100,000.

Project 87-D-149, reduced chemical discharges to process sewers, Richland, Washington, $3,150,000.

Project 87-D-150, radioactive liquid effluent treatment facility, partial design only, Richland, Washington, $4,000,000.

Project 87-D-152, environmental protection plantwide, Savannah River, South Carolina, $1,500,000.

Project 87-D-159, environmental, health, and safety improvements, Phase I, Feed Materials Production Center, Fernald, Ohio, $10,000,000.

Project 86-D-149, productivity retention program, Phase I and II, various locations, $65,625,000, for a total project authorization of $89,825,000.

Project 86-D-150, in-core neutron monitoring system, N reactor, Richland, Washington, $2,760,000, for a total project authorization of $7,220,000.

Project 86-D-151, PUREX electrical system upgrade, Richland, Washington, $2,480,000, for a total project authorization of $4,980,000.

Project 86-D-152, reactor electrical distribution system, Savannah River, South Carolina, $8,410,000, for a total project authorization of $10,410,000.

Project 86-D-153, additional line III furnace, Savannah River, South Carolina, $7,605,000, for a total project authorization of $9,105,000.

Project 86-D-154, effluent treatment facility, Savannah River, South Carolina, $15,650,000, for a total project authorization of $18,150,000.

Project 86-D-156, plantwide safeguards systems, Savannah River, South Carolina, $13,610,000, for a total project authorization of $16,610,000.

Project 85-D-139, fuel processing restoration, Idaho Fuels Processing Facility, Idaho National Engineering Laboratory, Idaho, $32,430,000, for a total project authorization of $54,430,000.

Project 85-D-140, productivity and radiological improvements, Feed Materials Production Center, Fernald, Ohio, $23,500,000, for a total project authorization of $41,500,000.

Project 85-D-145, fuel production facility, Savannah River, South Carolina, $27,500,000, for a total project authorization of $53,300,000.

Project 84-D-134, safeguards and security improvements, plantwide, Savannah River, South Carolina, $5,765,000, for a total project authorization of $32,665,000.

Project 84-D-135, process facility modifications, Richland, Washington, $24,475,000, for a total project authorization of $56,975,000.

Project 84-D-136, enriched uranium conversion facility modifications, Y-12 Plant, Oak Ridge, Tennessee, $500,000, for a total project authorization of $20,100,000.

Project 82-D-124, restoration of production capabilities, Phases II, III, IV, and V, various locations, $3,511,000, for a total project authorization of $352,045,000.

(3) For defense waste and byproducts management:

Project 87-D-171, general plant projects, interim waste operations and long-term waste management technology, various locations, $24,535,000.

Project 87-D-172, WESF K-3 filter upgrade, Richland, Washington, $500,000.

Project 87-D-173, 242-A evaporator crystallizer upgrade, Richland, Washington, $2,800,000.

Project 87-D-174, 241-AQ tank farm, Richland, Washington, $2,100,000.

Project 87-D-175, steam system rehabilitation, Phase I, Richland, Washington, $900,000.

Project 87-D-177, test reactor area liquid radioactive waste cleanup system, Phase III, Idaho National Engineering Laboratory, Idaho, $700,000.

Project 87-D-180, burial ground expansion, Savannah River, South Carolina, $2,000,000.

Project 87-D-181, diversion box and pump pit containment buildings, Savannah River, South Carolina, $960,000.

Project 86-D-172, B-plant F-filter, Richland, Washington, $2,949,000, for a total project authorization of $3,949,000.

Project 86-D-174, low-level waste processing and shipping system, Feed Materials Production Center, Fernald, Ohio, $8,072,000, for a total authorization of $10,572,000.

Project 86-D-175, Idaho National Engineering Laboratory security upgrade, Idaho National Engineering Laboratory, Idaho, $5,258,000, for a total project authorization of $7,258,000.

Project 85-D-158, central warehouse upgrade, Richland, Washington, $1,044,000, for a total project authorization of $6,744,000.

Project 85-D-159, new waste transfer facilities, Savannah River, South Carolina, $4,118,000, for a total project authorization of $24,118,000.

Project 85-D-160, test reactor area security system upgrade, Idaho National Engineering Laboratory, Idaho, $2,703,000, for a total project authorization of $6,953,000.

Project 81-T-105, defense waste processing facility, Savannah River, South Carolina, $123,967,000, for a total project authorization of $721,467,000.

(4) For naval reactors development:

Project 87-N-101, general plant projects, various locations, $4,800,000.

Project 87-N-102, Kesselring site facilities upgrade, Knolls Atomic Power Laboratory, West Milton, New York, $5,000,000.

Project 87-N-103, computation laboratory addition, Bettis Atomic Power Laboratory, West Mifflin, Pennsylvania, $2,300,000.

(5) For capital equipment not related to construction:

(A) For weapons activities, $273,570,000.

(B) For the defense inertial confinement fusion program, $9,500,000.

(C) For materials production, $110,120,000.

(D) For defense waste and byproducts management, $35,505,000.

(E) For verification and control technology, $4,200,000.

(F) For nuclear safeguards and security, $4,800,000.

(G) For naval reactors development, $46,700,000.

(6) For verification and control technology:

Project 85-D-171, Space Science Laboratory, Los Alamos, New Mexico, $2,000,000, for a total project authorization of $7,500,000.

(7) The sum of the amounts authorized to be appropriated by this section is hereby reduced by $11,000,000.

SEC. 3013. AUTHORIZATION FOR STRATEGIC DEFENSE INITIATIVE.

Of the funds authorized to be appropriated in sections 3011 and 3012, $279,000,000 is authorized for programs, projects, and activities of the Strategic Defense Initiative, such amount being the amount of $270,000,000 provided for fiscal year 1986 plus an additional $9,000,000 representing a 3.5 percent increase for inflation.

PART B—RECURRING GENERAL PROVISIONS

SEC. 3021. REPROGRAMMING.

(a) NOTICE TO CONGRESS.—(1) Except as otherwise provided in this title—

(1) no amount appropriated pursuant to this title may be used for any program in excess of 105 percent of the amount authorized for that program by this title or $10,000,000 more than the amount authorized for that program by this title, whichever is the lesser, and

(2) no amount appropriated pursuant to this title may be used for any program which has not been presented to, or requested of, the Congress,

unless a period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after receipt by the Committees on Armed Services and Appropriations of the Senate and House of Representatives of notice from the Secretary of Energy (hereinafter in this part referred to as the "Secretary") containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or unless each such committee before the expiration of such period has transmitted to the Secretary written notice to the effect that such committee has no objection to the proposed action.

(b) LIMITATION ON AMOUNT OBLIGATED.—In no event may the total amount of funds obligated pursuant to this title exceed the total amount authorized to be appropriated by this title.

SEC. 3022. LIMITS ON GENERAL PLANT PROJECTS.

(a) IN GENERAL.—The Secretary may carry out any construction project under the general plant projects provisions authorized by this title if the total estimated cost of the construction project does not exceed $1,200,000.

(b) REPORT TO CONGRESS.—If at any time during the construction of any general plant project authorized by this title, the estimated cost of the project is revised because of unforeseen cost variations and the revised cost of the project exceeds $1,200,000, the Secretary shall immediately furnish a complete report to the Committees on Armed Services and Appropriations of the Senate and House of Representatives explaining the reasons for the cost variation.

SEC. 3023. LIMITS ON CONSTRUCTION PROJECTS.

(a) IN GENERAL.—Whenever the current estimated cost of a construction project, which is authorized by section 3012 of this title, or which is in support of national security programs of the Department of Energy and was authorized by any previous Act, exceeds by more than 25 percent the higher of—

(1) the amount authorized for the project; or

(2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress,

construction may not be started or additional obligations incurred in connection with the project above the total estimated cost, as the case may be, unless a period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after receipt by the Committees on Armed Services and Appropriations of the Senate and House of Representatives of notice from the Secretary of Energy containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or unless each such committee before the expiration of such period has transmitted to the Secretary written notice to the effect that such committee has no objection to the proposed action.

(b) EXCEPTION.—Subsection (a) shall not apply to any construction project which has a current estimated cost of less than $5,000,000.

SEC. 3024. FUND TRANSFER AUTHORITY.

Funds appropriated pursuant to this title may be transferred to other agencies of the Government for the performance of the work for which the funds were appropriated, and funds so transferred may be merged with the appropriations of the agency to which the funds are transferred.

SEC. 3025. AUTHORITY FOR CONSTRUCTION DESIGN.

(a) IN GENERAL.—(1) Within the amounts authorized by this title for plant engineering and design, the Secretary may carry out advance planning and construction designs (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such planning and design does not exceed $2,000,000.

(2) In any case in which the total estimated cost for such planning and design exceeds $300,000, the Secretary shall notify the Committees on Armed Services and Appropriations of the Senate and House of Representatives in writing of the details of such project at least 30 days before any funds are obligated for design services for such project.

(b) SPECIFIC AUTHORITY REQUIRED.—In any case in which the total estimated cost for advance planning and construction design in connection with any construction project exceeds $2,000,000, funds for such design must be specifically authorized by law.

SEC. 3026. AUTHORITY FOR EMERGENCY CONSTRUCTION DESIGN.

In addition to the advance planning and construction design authorized by section 3012, the Secretary may perform planning and design utilizing available funds for any Department of Energy defense activity construction project whenever the Secretary determines that the design must proceed expeditiously in order to meet the needs of national defense or to protect property or human life.

SEC. 3027. FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY.

Subject to the provisions of appropriation Acts, amounts appropriated pursuant to this title for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

SEC. 3028. ADJUSTMENTS FOR PAY INCREASES.

Appropriations authorized by this title for salary, pay, retirement, or other benefits for Federal employees may be increased by such amounts as may be necessary for increases in such benefits authorized by law.

SEC. 3029. AVAILABILITY OF FUNDS.

When so specified in an appropriation Act, amounts appropriated for "Operating Expenses" or for "Plant and Capital Equipment" may remain available until expended.

PART C—SPECIAL PROGRAM PROVISIONS

SEC. 3031. PROTECTION OF SENSITIVE TECHNICAL INFORMATION.

(a) Whenever any contractor makes an invention or discovery to which the Department of Energy has elected to retain ownership at the time of contracting pursuant to section 202(a) (ii) or (iv) of title 35, United States Code, or pursuant to section 152 or section 159 of the Atomic Energy Act of 1954 (42 U.S.C. 2182 or 2189) in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy and the contractor requests waiver of any property rights, the Secretary of Energy may decide to assign to the contractor property rights in such invention or discovery. Such decision shall be made within a reasonable time (which shall usually be six months from the date of the request by the contractor for assignment of such rights).

(b) In making a decision under this section, the Secretary shall consider—

(1) whether national security will be compromised;

(2) whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(3) whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(4) whether failure to assert such a claim will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

SEC. 3032. RESTRICTION ON USE OF FUNDS TO PAY PENALTIES UNDER ENVIRONMENTAL LAWS.

(a) RESTRICTION.—Funds appropriated to the Department of Energy for fiscal year 1987 pursuant to authorizations of appropriations in this title for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, forfeiture, or settlement in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.

(b) EXCEPTION.—Subsection (a) shall not apply with respect to an environmental requirement if—

(1) the President fails to request funds for compliance with the environmental requirement; or

(2) the Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or rescinded) and the Secretary of Energy fails to use the funds for such purpose.

SEC. 3033. STUDY OF PRODUCTION REACTOR SAFETY.

(a) REQUIREMENT FOR INDEPENDENT STUDY.—(1) The Secretary of Energy shall request the National Academy of Sciences and the National Academy of Engineering—

(A) to make an independent assessment of the safety of continuing operations of the "N" Production Reactor, located near Richland, Washington, including any technical and safety issues raised by the nuclear reactor accident at Chernobyl in the Soviet Union; and

(B) to provide a report on such assessment, together with findings and recommendations, concurrently to Congress and the Secretary not later than March 1, 1987.

(2) The assessment should—

(A) be made by distinguished scientists and engineers drawn from the councils of the National Academy of Sciences, the National Academy of Engineering, and the National Institute of Medicine chosen with regard for their special competence and expertise; and

(B) be conducted in a manner that would allow for appropriate public participation in the review process consistent with statutory requirements to prevent the unauthorized disclosure of classified information.

(b) REVIEW AND COMMENT BY SECRETARY.—The Secretary shall review the findings and recommendations contained in the report under subsection (a) and shall separately provide to Congress a report containing—

(1) the Secretary's comments on such findings and recommendations; and

(2) a description (including cost assessments) of plans of the Secretary to correct any technical problems described in the report or to carry out recommendations set forth in the report.

SEC. 3034. COMMUNITY ASSISTANCE PAYMENTS.

Section 1532 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986 (title XV of Public Law 99-145; 99 Stat. 773) is amended by adding at the end the following new subsection:

"(d) RULE OF CONSTRUCTION.—The authority of the Secretary of Energy under subsection (a) to provide a final financial settlement with Anderson County and Roane County, Tennessee, and with the City of Oak Ridge, Tennessee, and terminate all annual

assistance payments made to those entities pursuant to section 91 of the Atomic Energy Community Act of 1955 (42 U.S.C. 2391) does not affect any other right, function, or duty of the Secretary with respect to such Act (42 U.S.C. 2301), and the Secretary shall consider the purposes of such Act a continuing atomic energy defense function of the Department of Energy.".

SEC. 3035. AUTHORITY FOR DEPARTMENT OF ENERGY CONTRACTOR EMPLOYEES TO CARRY FIREARMS BEYOND BOUNDARIES OF A DOE FACILITY.

Section 161k. of the Atomic Energy Act of 1954 is amended—

(1) by inserting "and subcontractors (at any tier)" in the second sentence after "employees of its contractors";

(2) by striking out "owned by the United States and" in the second sentence and inserting in lieu thereof "under the jurisdiction of the United States";

(3) by inserting "or being transported to or from such facilities" in the second sentence after "contracted to the United States";

(4) by inserting after the third sentence the following new sentence: "An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense."; and

(5) by striking out the semicolon at the end and inserting in lieu thereof the following: ". The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;".

SEC. 3036. LIMITATION ON NUCLEAR TESTING.

(a) ONE-YEAR LIMITATION.—During calendar year 1987, funds appropriated to the Department of Defense or the Department of Energy may not be obligated or expended to carry out any nuclear explosion with a yield exceeding one kiloton, or a nuclear explosion that is conducted outside a designated test area, unless the President certifies to Congress—

(1) that the Soviet Union has carried out a nuclear explosion with a yield exceeding one kiloton after December 31, 1986;

(2) that the Soviet Union has carried out a nuclear explosion outside a designated test area after December 31, 1986; or

(3) that the Soviet Union has refused to accept and implement reciprocal in-country monitoring arrangements to be in effect for calendar year 1987.

(b) TERMINATION FOR CERTAIN NEW AGREEMENTS.—The limitation on nuclear explosions in subsection (a) shall cease to apply if supplanted by an agreement, accord, or treaty between the United States and the Soviet Union establishing significant limits on nuclear explosions by such countries that is negotiated after the date of the enactment of this Act.

(c) DEFINITIONS.—For the purposes of this section:

(1) The term "in-country reciprocal monitoring arrangements" means arrangements between the United States and the Soviet Union to supplement national technical means of verification through the emplacement by each country of seismic monitoring stations on the national territory of the other so that the seismic monitoring network of each nation will be capable of detecting and identifying nuclear explosions with a yield exceeding one kiloton at known nuclear weapons test sites of the other nation and at any other site of the other nation that currently has the capability to accommodate decoupled nuclear explosions with a yield exceeding one kiloton.

(2) The term "designated test area" means an area within the Soviet Union or the United States which—

(A) is known to be composed of strong-coupling rock; and

(B) is located within the boundaries of a single existing nuclear weapons testing site in such country.

SEC. 3037. CONTRACTOR LIABILITY FOR CLAIMS ARISING OUT OF ATOMIC WEAPONS TESTING PROGRAMS.

(a) IN GENERAL.—(1) Chapter 171 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 2681. Certain civil actions involving the atomic weapons testing program

"(a)(1) Notwithstanding any other provision of this chapter, or section 2401 of this title, an action may be brought against the United States for money damages for injury to or loss of property or for personal injury or death due to exposure to radiation based on an act or omission of a contractor in carrying out an atomic weapons testing program under a contract with the United States. In any such action, the United States shall be liable to the same extent as the contractor would be liable, and shall have available as defenses only those defenses that would be available to the contractor.

"(2) Notwithstanding any other provision of this chapter, or section 2401 of this title, in any action brought against any person other than the United States for money damages for injury to or loss of property or for personal injury or death due to exposure to radiation based on an act or omission of a contractor in carrying out an atomic weapons testing program under a contract with the United States, the United States shall be substituted as the party defendant and shall have available as defenses only those defenses available to the contractor.

"(3) For purposes of any action described in paragraph (1) or (2), the contractor shall not be considered to be a corporation primarily acting as an instrumentality or agency of the United States.

"(4) Any action described in paragraph (1) or (2) shall, at the request of any party to the action, be tried by the court with a jury.

"(b) A contractor against whom an action described in subsection (a)(2) is brought shall promptly deliver all process served upon that contractor to the Attorney General. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (a)(2), an action commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action is pending. For purposes of such removal, the certification by the Attorney General under this subsection establishes conclusively that the action is within the provisions of subsection (a)(2) of this section.

"(c) In any action under subsection (a), the United States shall not be liable for interest prior to judgment or for punitive damages.

"(d) The judgment in an action under subsection (a) shall constitute a complete bar to any other civil action by the plaintiff, by reason of the same subject matter, against the contractor whose act or omission gave rise to the claim, or against any employee or agent of the contractor.

"(e) The Attorney General or a person designated by the Attorney General may arbitrate, compromise, or settle any action under subsection (a).

"(f)(1) No attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment rendered, or any compromise or settlement made, in an action under subsection (a).

"(2) Any attorney who violates paragraph (1) shall, if recovery be had, be fined not more than $2,000 or imprisoned not more than one year, or both.

"(g) This section applies to actions pending on October 19, 1984, and to actions commenced after that date.

"(h) For purposes of this section, the term 'contractor' includes a contractor, or cost reimbursement subcontractor of any tier, participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or any of its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).".

(2) The table of sections at the beginning of chapter 171 of title 28, United States Code, is amended by adding at the end the following new item:

"2681. Certain civil actions involving the atomic weapons testing program.".

(b) COURT JURISDICTION.—Section 1346 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(g) The district courts shall have exclusive jurisdiction of all actions under section 2681 of this title.".

(c) REPEAL.—Section 1631 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2646), is repealed effective on October 19, 1984.

(d) EFFECT ON STATUTES OF LIMITATIONS.—The period during which section 1631 of the Department of Defense Authorization Act, 1985, was in effect shall not be taken into account in computing the period provided in any Federal or State statute of limitations applicable to any civil action for an injury, loss of property, personal injury, or death described in subsection (a)(1) of such section.

TITLE II—NATIONAL DEFENSE STOCKPILE

SEC. 3101. SHORT TITLE.

This title may be cited as the "Strategic and Critical Materials Stock Piling Amendments of 1986".

SEC. 3102. STOCKPILE REQUIREMENTS.

(a) PURPOSE OF STOCKPILE.—Section 2 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98a) is amended by adding at the end the following new subsection:

"(c) It is the intent of Congress—

"(1) that the National Defense Stockpile be used to serve the interest of national defense only and not be used for economic or budgetary purposes; and

"(2) that the quantities of materials stockpiled under this Act should be sufficient to sustain the United States for a period of not less than three years in the event of a national emergency.".

(b) ESTABLISHMENT OF STOCKPILE REQUIREMENTS BY LAW.—Section 3 of such Act (50 U.S.C. 98b) is amended to read as follows:

"ESTABLISHMENT BY LAW OF STOCKPILE REQUIREMENTS

"SEC. 3. (a) The materials that are strategic and critical materials for the purposes of this Act, and the quality and quantity of each such material to be acquired for the purposes of this Act and the form in which each such material shall be acquired and stored, shall be established by law.

"(b) Such materials when acquired, together with the other materials described in section 4, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this Act referred to as the 'stockpile').

"(c) Determinations under subsection (a) shall be known as 'stockpile requirements'.".

(c) INITIAL LEVEL OF STOCKPILE REQUIREMENTS.—The determinations in effect as of October 1, 1984, under section 3(a) of the Strategic and Critical Materials Stock Piling Act shall be the stockpile requirements for the purposes of such section, as amended by this title, until otherwise provided by law.

SEC. 3103. TRANSFER OF CERTAIN STOCKPILE FUNCTIONS TO THE SECRETARY OF DEFENSE.

(a) IN GENERAL.—Sections 5, 6, 10, and 11 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98d, 98e, 98h–1, 98h–2) are amended by striking out "President" each place it appears and inserting in lieu thereof "Secretary".

(b) DEFINITION OF SECRETARY.—Section 12 of such Act (50 U.S.C. 98h-3) is amended by adding at the end the following new paragraph:

"(3) The term 'Secretary' means the Secretary of Defense.".

(c) TECHNICAL AMENDMENT.—Section 11(b) of such Act (50 U.S.C. 98h–1) is amended by striking out "each year" and all that follows through "the next fiscal year" and inserting in lieu thereof "each year, at the time that the Budget is submitted to Congress pursuant to section 1105 of title 31, United States Code, for the next fiscal year,".

SEC. 3104. ANNUAL RECOMMENDATION OF STOCKPILE REQUIREMENTS BY SECRETARY OF DEFENSE.

The Strategic and Critical Materials Stock Piling Act is amended by adding at the end the following new section:

"ANNUAL RECOMMENDATIONS BY SECRETARY OF DEFENSE

"SEC. 14. (a) IN GENERAL.—In order to assist Congress in establishing stockpile requirements under section 3, the Secretary shall submit to Congress an annual report on stockpile requirements. Each such report shall be submitted with the annual report submitted under section 11(b) and shall include—

"(1) the Secretary's recommendations with respect to stockpile requirements; and

"(2) the matters required under subsections (b) through (e).

"(b) NATIONAL EMERGENCY PLANNING ASSUMPTIONS.—Each report under this section shall set forth the national emergency planning assumptions used in determining the stockpile requirements recommended by the Secretary. Assumptions to be set forth include assumptions relating to each of the following:

"(1) Length and intensity of the assumed emergency.

"(2) The military force structure to be mobilized.

"(3) Losses from enemy action.

"(4) Military, industrial, and essential civilian requirements to support the national emergency.

"(5) The availability of supplies of strategic and critical materials from foreign sources, taking into consideration possible shipping losses.

"(6) Domestic production of strategic and critical materials.

"(7) Civilian austerity measures.

"(c) CONSIDERATION OF MATERIALS BASED ON NET IMPORT RELIANCE.—

"(1) IN GENERAL.—In determining the materials to be recommended to Congress under subsection (a)(1) as strategic and critical materials (and the quantity and quality of such materials to be recommended), the Secretary shall consider—

"(A) whether each of the materials determined under paragraph (3) should be recommended as a strategic and critical material; and

"(B) in the case of any such material, whether the quantity determined under paragraph (5) with respect to such material is the appropriate quantity of such material to be established by Congress as the stockpile requirement for that material.

"(2) MATTERS TO BE INCLUDED IN REPORT.—In each report under this section, the Secretary shall identify—

"(A) each material determined under paragraph (3); and

"(B) the quantity determined under paragraph (5) with respect to each such material.

"(3) MATERIALS TO BE IDENTIFIED.—The Secretary shall identify each material that the Secretary determines is necessary for the security of the United States, essential to the economy of the United States, and obtained from foreign sources.

"(4) CLASSIFICATION OF MATERIALS BASED ON NET IMPORT RELIANCE.—Each of the materials identified under paragraph (3) shall be classified by the Secretary for the purposes of this section as follows:

"(A) CLASS A MATERIALS.—A material shall be classified as a class A material if—

"(i) the material is not produced in the United States or is produced in the United States in limited quantities; and

"(ii) the net import reliance of the United States for the material is greater than or equal to 65 percent.

"(B) CLASS B MATERIALS.—A material shall be classified as a class B material if—

"(i) the material is produced in the United States but is not available in sufficient quantities in the United States; and

"(ii) the net import reliance of the United States for the material is greater than or equal to 30 percent but less than 65 percent.

"(C) CLASS C MATERIALS.—A material shall be classified as a class C material if—

"(i) the material is produced in substantial quantities in the United States; and

"(ii) the net import reliance of the United States for the material is less than 30 percent.

"(5) QUANTITY TO BE DETERMINED.—For each material identified under paragraph (3), the Secretary shall determine the following:

"(A) CLASS A MATERIALS.—In the case of a material classified under paragraph (4) as a class A material, the Secretary shall determine the quantity of such material equal to three years' net imports of such material.

"(B) CLASS B MATERIALS.—In the case of a material classified under paragraph (4) as a class B material, the Secretary shall determine the quantity of such material equal to two years' net imports of such material.

"(C) CLASS C MATERIALS.—In the case of a material classified under paragraph (4) as a class C material, the Secretary shall determine the quantity of such material equal to one year's net imports of such material.

"(6) DETERMINATION OF NET IMPORTS.—For purposes of paragraph (5), a year's net imports of a material is the quantity of the material equal to the amount by which—

"(A) the sum of—

"(i) the average annual imports of such material into the United States during the base period; and

"(ii) the average annual shipment of such material from the stockpile as excess material during the base period; exceeds

"(B) the average annual exports of such material from the United States during the base period.

"(7) BASE PERIOD DEFINED.—For purposes of paragraph (6), the term 'base period' means the most recent period of five calendar years for which data is available.

"(d) EFFECT OF ESTABLISHING STOCKPILE REQUIREMENTS IN ACCORDANCE WITH DETERMINATIONS UNDER SUBSECTION (c).—The Secretary shall include in each report under this section an analysis of the effect (including the cost and the impact on world markets) of establishing the stockpile requirements in accordance with the materials, and the quantities of materials, identified under subsection (c).

"(e) DIFFERENCES BETWEEN RECOMMENDATIONS AND NET IMPORT RESULTS.—When the stockpile requirements recommended by the Secretary in a report under this section differ from the materials and quantities that are identified under subsection (c), the Secretary shall also include in the report a detailed explanation for such differences, including—

"(1) a description of the assumptions used to determine the recommended stockpile requirements; and

"(2) a detailed analysis supporting the recommended quantity and quality for each material recommended as a strategic and critical material.

"(f) PERIODIC REVIEW.—The Secretary shall conduct a detailed review of the stockpile requirement for each strategic and critical material at least once every five years. If the Secretary determines at any time that the stockpile requirement for a material should be revised, the Secretary shall submit to Congress a report that—

"(1) notifies Congress of that determination;

"(2) sets forth the Secretary's recommended stockpile requirement for that material; and

"(3) sets forth the assumptions used by the Secretary in determining that recommended requirement.".

SEC. 3105. STOCKPILE MANAGEMENT.

The Strategic and Critical Materials Stock Piling Act is amended by adding after section 14 (as added by section 3104) the following new sections:

"INTERAGENCY AGREEMENTS

"SEC. 15. (a) AUTHORITY TO ENTER INTO AGREEMENTS.—The Secretary may enter into an interagency agreement with the head of any other department or agency for the performance of functions of the Secretary relating to section 6.

"(b) REIMBURSEMENT.—The Secretary shall reimburse the head of any such agency for expenses incurred by that agency in the administration of functions relating to the stockpile assigned to that agency by the Secretary under such an interagency agreement.

"APPROPRIATIONS TO BE MADE TO DEPARTMENT OF DEFENSE

"SEC. 16. Appropriations for the operation and management of the stockpile and for de-

posit to the National Defense Stockpile Transaction Fund shall be made as part of appropriations made to the Department of Defense for the military functions of the Department.".

SEC. 3106. EXTENSION OF USES OF STOCKPILE TRANSACTION FUND AND CODIFICATION OF REVOLVING FUND PROVISIONS.

(a) IN GENERAL.—Section 9(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)) is amended—

(1) by striking out the second sentence of paragraph (1); and

(2) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) Subject to section 5(a)(1), moneys covered into the fund under paragraph (1) are hereby made available (subject to such limitations as may be provided in appropriation Acts) for—

"(A) the acquisition of strategic and critical materials under section 6(a)(1);

"(B) transportation, storage, and other incidental expenses related to such acquisition;

"(C) development of current specifications of stockpile materials and the upgrading of existing stockpile materials to meet current specifications (including transportation related to such upgrading);

"(D) testing and quality studies of stockpile materials; and

"(E) other reasonable requirements for management of the stockpile.

"(3) Moneys in the fund shall remain available until expended.".

(b) CONFORMING AMENDMENT.—Section 110 of Public Law 97-377 (96 Stat. 1911) is amended by striking out "Notwithstanding" and all that follows through "That during" and inserting in lieu thereof "During".

(c) APPLICABILITY OF AMENDMENTS.—The amendments made by subsection (a) apply with respect to funds covered into the National Defense Stockpile Fund before, on, or after the date of the enactment of this Act.

SEC. 3107. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) TECHNICAL AMENDMENTS.—Section 4(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c(a)) is amended—

(1) by striking out "on the day before the date of the date of the enactment of the Strategic and Critical Materials Stock Piling Revision Act of 1979" in paragraphs (1) and (3) and inserting in lieu thereof "on July 29, 1979", and

(2) by striking out "on or after the date of the enactment of the Strategic and Critical Materials Stock Piling Revision Act of 1979" in paragraph (2) and inserting in lieu thereof "after July 29, 1979".

(b) CLARIFYING AMENDMENT.—Section 6(a)(3) of such Act (50 U.S.C. 98e(a)(3)) is amended by striking out "the form most" and inserting in lieu thereof "a form more".

TITLE III—CIVIL DEFENSE

SEC. 3201. AUTHORIZATION OF APPROPRIATIONS FOR CIVIL DEFENSE FUNCTIONS.

There is hereby authorized to be appropriated for fiscal year 1987 the sum of $126,565,000 to carry out the provisions of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2251 et seq.).

TITLE IV—NUCLEAR WINTER RESEARCH

SEC. 3301. AUTHORIZATION FOR NUCLEAR WINTER RESEARCH.

(a) AUTHORIZATION.—

(1) DEPARTMENT OF DEFENSE.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987 for nuclear winter research as described in subsection (b) in the amount of $8,500,000.

(2) DEPARTMENT OF ENERGY.—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 1987 for nuclear winter research as described in subsection (b) in the amount of $2,500,000.

(b) PURPOSES.—The funds authorized under subsection (a) are for the following purposes:

(1) To improve computer modeling efforts on the short- and long-term climatic effects of nuclear winter.

(2) To expand field research in areas related to the nuclear winter theory, including fire ignition, smoke production and composition, and smoke plume dynamics.

(3) To create a substantial research program on the atmospheric, climatic, biological, health, and environmental consequences of nuclear explosions and nuclear exchanges.

(4) To contract with the National Academy of Sciences to carry out an independent evaluation and submit a report as described in section 3302(c).

(c) REPORT.—Not later than September 30, 1987, the Secretary of Defense and the Secretary of Energy shall each submit to Congress a detailed report on the allocation of funds appropriated pursuant to the authorization in subsection (a). The report shall include a list of the recipients of such funds and the research for which such funds were used.

SEC. 3302. NUCLEAR WINTER STUDY AND REPORT.

(a) STUDY.—The Secretary of Defense shall conduct a comprehensive study on the atmospheric, climatic, biological, health, and environmental consequences of nuclear explosions and nuclear exchanges and the implications that such consequences have for the nuclear weapons, arms control, and civil defense policies of the United States.

(b) REPORT.—Not later than November 1, 1987, the Secretary shall submit to the President and the Congress an unclassified report suitable for release to the public, with classified addenda if necessary, on the study conducted under subsection (a). The report shall contain the following:

(1) A detailed review and assessment of the findings in the current body of domestic and international scientific literature on the atmospheric, climatic, biological, health, and environmental consequences of nuclear explosions and nuclear exchanges.

(2) A thorough evaluation of the implications that such findings have on—

(A) the nuclear weapons policy of the United States, especially with regard to strategy, targeting, planning, command, control, procurement, and deployment;

(B) the nuclear arms control policy of the United States; and

(C) the civil defense policy of the United States.

(3) A discussion of the manner in which the results of such evaluation of policy implications will be incorporated into the nuclear weapons, arms control, and civil defense policies of the United States.

(4) An analysis of the extent to which current scientific findings on the consequences of nuclear explosions are being studied, disseminated, and used in the Soviet Union.

(5) A plan for a five-year research program to advance understanding of nuclear winter and an estimate of the funding necessary to carry out such a research program.

(c) EVALUATION OF REPORT.—Upon submission of the report under subsection (b), the Secretary shall contract with the National Academy of Sciences to—

(1) make an independent evaluation of the material contained in the report; and

(2) not later than April 1, 1988, submit a report to the Secretary of Defense and to the Committees on Armed Services of the Senate and of the House of Representatives, setting forth the results of the evaluation and any recommendations pertaining to the contents of the report, including the plan for the five-year research program.

DIVISION D—DEPARTMENT OF DEFENSE REORGANIZATION

SECTION 3500. SHORT TITLE.

This division may be cited as the "Bill Nichols Department of Defense Reorganization Act of 1986".

TITLE I—COMBATANT COMMANDS

SEC. 3501. ENHANCEMENT OF AUTHORITY OF COMMANDERS OF UNIFIED AND SPECIFIED COMBATANT COMMANDS.

(a) REVISION AND EXTENSION OF COMBATANT COMMAND AUTHORITY.—(1) Title 10, United States Code, is amended by inserting after chapter 5 the following new chapter:

"CHAPTER 6—COMBATANT COMMANDS

"161. Establishment.
"162. Forces assigned to combatant commands.
"163. Functions and supervision.
"164. Administration and support of assigned forces.
"165. Unified and specified commands: program and budget proposals; net assessments.
"166. Combatant command subordinate commanders and CINC staff officers: selection and tenure.
"167. Joint Commanders Council.

"§ 161. Establishment

"(a) UNIFIED AND SPECIFIED COMMANDS.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

"(1) establish unified combatant commands and specified combatant commands to perform military missions; and

"(2) prescribe the force structure of those commands.

"(b) SPECIAL COMBATANT COMMANDS.—(1) If the President determines that a situation warrants the creation for a specific military mission of a force outside the existing unified and specified commands, the President, with the advice and assistance of the Chairman of the Joint Chiefs of Staff and acting through the Secretary of Defense, may—

"(A) establish a special combatant command to respond to that situation; and

"(B) prescribe the mission, force structure, and support and administrative arrangements of that command.

"(2) In the case of any such special combatant command, the President, with the advice and assistance of the Chairman of the Joint Chiefs of Staff and acting through the Secretary of Defense, shall prescribe the chain of command from the President and Secretary of Defense to the commander of that command. Such chain of command shall be the shortest practicable for each force deployed consistent with proper supervision and support.

"(c) PERIODIC REVIEW.—(1) The Chairman shall periodically (and not less often than every other year)—

"(A) review the overall structure of the unified and specified combatant commands (including the relationship among their respective functions, missions, areas of responsibility, and chains of command); and

"(B) recommend to the President, through the Secretary of Defense, any changes that the Chairman considers necessary or appropriate.

"(2) The President shall promptly inform Congress of any action taken in response to recommendations made by the Chairman under paragraph (1)(B).

"§ 162. Forces assigned to combatant commands

"(a) ASSIGNMENT OF FORCES.—(1)(A) Except as provided in paragraph (2), the Secretaries of the military departments shall assign all forces under their jurisdiction to unified and specified combatant commands to perform the missions assigned to those commands. Such assignments shall be made as directed by the Secretary of Defense, including direction as to the command to which forces are to be assigned.

"(B) As directed by the Secretary of Defense, the commanders of the unified and specified combatant commands and the Secretaries of the military departments shall assign forces under their jurisdiction to any special combatant command established under this chapter to perform the missions assigned to that command.

"(2) Except as otherwise directed by the Secretary of Defense, forces to be assigned by the Secretaries of the military departments to the combatant commands under paragraph (1) do not include forces assigned to the recruiting, organizing, training, or supplying of the armed forces.

"(3) A force assigned to a combatant command under this section may be transferred from the command to which it is assigned only by authority of the Secretary of Defense and under procedures prescribed by the Secretary with the approval of the President.

"(4) A force not assigned to a combatant command remains, for all purposes, in the military department concerned.

"(5) Unless otherwise directed by the Secretary of Defense, all forces operating within the geographic area assigned to the commander of a unified command shall be assigned to and under the command of the commander of that command. The preceding sentence applies to forces assigned to a specified command or a special combatant command only as prescribed by the Secretary of Defense.

"(b) COMMAND OF ASSIGNED FORCES.—(1) Notwithstanding any other provision of law, a force assigned to a combatant command under this section is under the command of the commander of that command. In this section, the term 'command' means the authority to give authoritative direction to subordinate forces necessary to accomplish assigned missions.

"(2) The Secretary of Defense shall ensure that commanders of combatant commands have sufficient authority over the forces assigned to their commands to exercise effective command over those forces.

"(3) If a commander of a combatant command at any time considers his authority over any of the forces assigned to that command to be insufficient to command effectively, the commander shall promptly inform the Secretary of Defense.

"(c) ORGANIZATION, TRAINING, AND EMPLOYMENT OF ASSIGNED FORCES.—(1) The commander of each combatant command shall prescribe the chain of command and organizational structure of forces assigned to that command. To the extent practicable, the structure established should be the structure that would be used in the event of war or hostilities.

"(2) The commander of a combatant command shall have authority—

"(A) to train forces assigned to that command; and

"(B) to employ those forces to accomplish assigned missions.

"§163. Functions and supervision

"(a) FUNCTIONS.—Commanders of combatant commands established under this chapter are responsible to the President and to the Secretary of Defense for such missions as may be assigned to them by the Secretary with the approval of the President.

"(b) SUPERVISION BY JCS CHAIRMAN.—Subject to the authority, direction, and control of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff supervises the commanders of the combatant commands and is their spokesman at the seat of Government.

"§ 164. Administration and support of assigned forces

"(a) ADMINISTRATION.—Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of each military department is responsible for the administration of forces assigned by that department to combatant commands.

"(b) SUPPORT.—Unless otherwise directed by the Secretary of Defense, the Secretary of each military department is responsible for the support of forces assigned by that department to combatant commands. The Secretary of Defense may assign the responsibility for the support of forces assigned to a combatant command (or any part of that responsibility) to—

"(1) one or more of the military departments;

"(2) other agencies of the Department of Defense; or

"(3) the commander of the combatant command concerned.

"(c) REQUESTS BY CINCS TO PROVIDE OWN SUPPORT.—(1) If a commander of a combatant command decides that performance of a support function (or any part of such a function) by elements of that command would improve the capability of the command to carry out assigned missions or would otherwise be more effective, economical, or efficient, the commander may submit to the Secretary of Defense a proposal for the transfer of that function (or any part of that function) to the command.

"(2) Parts of a support function with respect to which a commander may submit a proposal under this subsection include the authority, with respect to that function, to establish requirements and to plan and direct distribution.

"(d) ADVICE OF CHAIRMAN.—The functions of the Secretary under this section shall be carried out with the advice and assistance of the Chairman of the Joint Chiefs of Staff.

"§ 165. Unified and specified commands: program and budget proposals; net assessments

"(a) COMBATANT COMMAND BUDGETS.—The Secretary of Defense shall include in the annual budget of the Department of Defense submitted to Congress a separate budget proposal for such activities of each of the unified and specified combatant commands as may be determined under subsection (b).

"(b) CONTENT OF PROPOSALS.—A budget proposal under subsection (a) for funding of activities of a combatant command shall include funding proposals for such activities of the combatant command as the Secretary (after consultation with the Chairman of the Joint Chiefs of Staff) determines to be appropriate for inclusion. Activities of a combatant command for which funding may be requested in such a proposal include the following:

"(1) Joint exercises.

"(2) Force training.

"(3) Contingencies.

"(4) Selected operations.

"(c) SUBMISSION BY CINCS.—The commander of each unified or specified combatant command shall submit to the Chairman an annual program and budget proposal for that command for consideration for inclusion under subsection (a) in the next budget of the Department of Defense.

"(d) SUBMISSION OF BUDGET PROPOSALS BY CHAIRMAN.—The Chairman shall—

"(1) review and analyze the combatant command budget proposals submitted under subsection (c);

"(2) establish priorities in accordance with guidance provided by the Secretary; and

"(3) recommend to the Secretary for the purposes of subsection (a) a budget proposal for each command.

"(e) SECRETARY OF DEFENSE GUIDANCE.—Budget proposals under subsections (c) and (d) shall be prepared in accordance with, and subject to, guidance furnished by the Secretary of Defense, including guidance with respect to anticipated budget limitations.

"(f) NET ASSESSMENTS.—(1) In accordance with guidelines established by the Secretary of Defense, the findings, conclusions, and recommendations of any net assessment conducted by an organization of the Department of Defense shall be made available to the commanders of the unified and specified combatant commands.

"(2) The Chairman of the Joint Chiefs of Staff shall establish procedures by which—

"(A) each commander of a combatant command may require the Joint Staff to assist the commander with respect to net assessments relating to the commander's duties; and

"(B) each commander shall contribute to the preparation, conduct, and findings of net assessments performed by the Joint Staff.

"(3) The Secretary of Defense shall establish procedures by which a commander of a combatant command may require organizations of the Department of Defense that perform net assessments (in addition to the Joint Staff) to assist the commander with respect to net assessments relating to the commander's duties.

"(4) The commander of a unified or specified combatant command shall include the results of any current net assessment conducted by or on behalf of his command—

"(A) in preparing any evaluation of the capabilities of his command for submission to the Secretary or the Chairman; and

"(B) in developing operations plans for the command.

"§ 166. Combatant command subordinate commanders and CINC staff officers: selection and tenure

"(a) SELECTION.—

"(1) SENIOR GENERAL AND FLAG OFFICERS.—The selection of a general or flag officer for recommendation to the President for nomination to an assignment as a principal subordinate officer of the commander of a unified or specified combatant command, or to the staff of such a commander, in a position of importance and responsibility designated by the President under section 601 of this title shall be made by the commander of that command in accordance with procedures prescribed by the Secretary of Defense. Such procedures shall provide for the selection to be made from a list of officers submitted to the commander by the Secretary of the military department concerned and that the commander may specify the number of officers to be included on such a list.

"(2) OTHER OFFICERS.—Except as provided under paragraph (1), the selection of an officer to an assignment as a principal subordi-

nate officer of the commander of a unified or specified combatant command, or to the staff of such a commander, shall be made by that commander. Such selection shall be made from a list of officers submitted to the commander by the Secretary of the military department concerned. The commander may specify the number of officers to be included on such a list.

"(b) TENURE.—The tenure of an officer assigned to a combatant command under subsection (a) is subject to the approval of the commander of the combatant command.

"§ 167. Joint Commanders Council

"(a) ESTABLISHMENT.—There is hereby established in the Department of Defense a council to be known as the 'Joint Commanders Council'. The Council consists of—

"(1) the Chairman of the Joint Chiefs of Staff, who is the head of the Council; and

"(2) the commanders of the unified and specified combatant commands.

"(b) FUNCTIONS.—The Council, as a body, shall—

"(1) provide advice to the President and Secretary of Defense on matters with respect to which such advice is requested; and

"(2) advise the Chairman, as requested by him, on the execution of the Chairman's responsibilities.".

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part I of subtitle A, of such title are amended by inserting after the item relating to chapter 5 the following new item:

"6. Combatant Commands ..... 161".

(b) COURT-MARTIAL JURISDICTION.—Section 822(a) of title 10, United States Code (article 22(a) of the Uniform Code of Military Justice), is amended—

(1) by redesignating paragraphs (2) through (7) as paragraphs (4) through (9), respectively; and

(2) by inserting after paragraph (1) the following new paragraphs (2) and (3):

"(2) the Secretary of Defense;

"(3) the commanding officer of a unified or specified combatant command;".

(c)(1) Notwithstanding any other provision of law, the President and the Secretary of Defense may assign missions, roles, and functions to the military departments, unified and specified commands, and other elements of the Department of Defense.

(2) Section 5012 of title 10, United States Code, is amended—

(A) by striking out "is generally" and all that follows in the third sentence of subsection (a) and inserting in lieu thereof ", in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war."; and

(B) by striking out subsection (d).

(d) CONFORMING AMENDMENTS.—

(1) REPEAL OF SECTION 124.—(A) Section 124 of such title is repealed.

(B) The table of sections at the beginning of chapter 3 of such title is amended by striking out the item relating to section 124.

(2) COMMAND AUTHORITY OF CINCS.—Sections 3034(d)(4), 5081(c), 5201(d), and 8034(d)(4) of such title are amended by striking out "full operational command vested in unified or specified combatant commanders under section 124 of this title" and inserting in lieu thereof "command authority vested in the commanders of unified and specified combatant commands under chapter 6 of this title".

SEC. 3502. FUNCTIONS OF CHAIRMAN OF JOINT CHIEFS OF STAFF.

(a) IN GENERAL.—Section 141(c) of title 10, United States Code, is amended—

(1) by striking out the matter preceding clause (1) and inserting in lieu thereof the following:

"(c) Subject to the authority and direction of the President and the Secretary of Defense, the Chairman (in consultation, as appropriate, with the other members of the Joint Chiefs of Staff and with the commanders of the unified and specified commands) shall—";

(2) by striking out "and" at the end of paragraph (7);

(3) by redesignating paragraph (8) as paragraph (15); and

(4) by inserting after paragraph (7) the following new paragraphs:

"(8) submit to the Secretary recommendations for the allocation of defense resources under the proposed national defense budget for each fiscal year, to be developed within anticipated limits on funding levels available for defense functions and based on—

"(A) guidance provided by the Secretary;

"(B) recommendations submitted by the commanders of the unified and specified combatant commands based on the requirements of their assigned missions; and

"(C) recommendations (as appropriate) submitted by the Secretaries of the military departments and the heads of other components of the Department of Defense;

"(9) review the program objectives and budget proposals of the Secretary of each military department and of those defense agencies with a combat support mission and recommend to the Secretary changes in such proposals in accordance with the Chairman's recommendations under clause (8);

"(10) in accordance with section 165(d) of this title, recommend to the Secretary a budget for each unified and specified combatant command, including the functions of each such command for which funds should be appropriated to the command;

"(11) establish and maintain, in consultation with the commanders of the unified and specified combatant commands, a uniform system of evaluating the overall capabilities of each such command to accomplish its missions;

"(12) monitor the extent to which each military department provides officers for joint duty assignments and report to the Secretary of Defense when any department provides substantially fewer than one-third of the positions on the Joint Staff and one-third of the total number of joint duty assignments;

"(13) develop doctrine for the joint employment of the armed forces;

"(14) perform net assessments to determine the capabilities of the armed forces to carry out military operations under unified command; and".

(b) CONSULTATION.—Section 141 of such title is further amended by adding at the end the following new subsection:

"(e) In carrying out his functions under this chapter or any other provision of law, the Chairman shall consult, as appropriate, with the other members of the Joint Chiefs of Staff and the commanders of the unified and specified commands.".

(c) JOINT STAFF NET ASSESSMENT CAPABILITY.—Section 143 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) The Chairman shall ensure that the Joint Staff is organized and staffed so as to provide the Chairman the necessary staff expertise to enable him to carry out section 141(a)(14) of this title.".

SEC. 3503. TRANSFERS OF STAFF PERSONNEL.

(a) TRANSFERS OF STAFFS TO CINC HEADQUARTERS.—The Secretary of Defense shall provide that personnel assigned to the headquarters staffs of the military departments and of the separate Armed Forces and personnel assigned to the staffs of the commanders of subordinate forces of the unified and specified commands shall, to the maximum extent practicable, be transferred to the staffs of the commanders of the unified and specified commands to reflect transfers of functions provided for or authorized by this Act. Such transfers shall be carried out as expeditiously as possible.

(b) LIMITATION ON TOTAL STAFF SIZE.—The total size of the headquarters staffs of the commanders of the unified and specified commands, the military departments, the separate Armed Forces, and the commanders of subordinate forces of the unified and specified commands may not be greater after any such transfer of functions than it was before such transfer.

SEC. 3504. INITIAL REVIEW OF UNIFIED COMMAND PLAN.

(a) MATTERS TO BE CONSIDERED—The first review of the structure of the unified and specified commands under section 161(c) of title 10, United States Code, as added by section 3501, shall include consideration of the following:

(1) Creation of a unified strategic command combining the missions, functions, and forces of the Strategic Air Command, the strategic forces of the Navy, and other appropriate forces.

(2) Creation of a unified command for special operations missions.

(3) Creation of a unified command for missions, functions, and responsibilities relating to security of United States borders.

(4) Revision of the geographic area that is the responsibility of the Central Command, to include the ocean areas adjacent to Southwest Asia.

(5) Revision of the geographic area that is the responsibility of the Southern Command, to include the ocean areas adjacent to Central America.

(6) Revision of the missions, functions, and responsibilities of the Readiness Command and of the Central Command.

(7) Elimination of the United States Forces Caribbean Command.

(b) DEADLINE.—The first report to the President under such section shall be made not later than one year after the date of the enactment of this Act.

SEC. 3505. REPEAL OF CERTAIN LIMITATIONS ON DEFENSE MANAGEMENT.

(a) PROHIBITION AGAINST CONSOLIDATING FUNCTIONS OF THE MILITARY TRANSPORTATION COMMANDS.—Section 1110 of the Department of Defense Authorization Act, 1983 (Public Law 97-252; 96 Stat. 747), is repealed.

(b) PROHIBITION AGAINST ALTERING COMMAND STRUCTURE FOR MILITARY FORCES IN ALASKA.—Section 8106 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1221)), is repealed.

SEC. 3506. TRANSITION.

(a) GENERAL RULE.—Except as otherwise provided in this section, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) ASSIGNMENT OF FORCES TO COMBATANT COMMANDS.—Section 162 of title 10, United States Code, as added by section 3501, shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

(c) PROGRAM AND BUDGET PROPOSALS.—Section 165 (other than subsection (f)) of title

10, United States Code, as added by section 3501, shall take effect with respect to program and budget proposals for fiscal year 1989.

(d) SELECTION AND TENURE OF SUBORDINATE OFFICERS.—Section 166 of title 10, United States Code, as added by section 3501, shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

(e) COMBATANT COMMAND EVALUATION SYSTEM.—The uniform system of evaluating the overall capabilities of each unified and specified combatant command required to be established by paragraph (11) of section 141(c) of title 10, United States Code, as added by section 102(a), shall be established not later than the end of the one-year period beginning on the date of the enactment of this Act.

TITLE II—DEFENSE AGENCIES

SEC. 3601. OVERSIGHT REQUIREMENTS WITH RESPECT TO DEFENSE AGENCIES.

(a) IN GENERAL.—(1) Chapter 8 of title 10, United States Code, is amended—

(A) by redesignating section 191 as section 196; and

(B) by inserting after the table of sections the following new sections:

"§ 191. Authority to provide for common performance of supply or service activities

"Whenever the Secretary of Defense determines it will be more effective, economical, or efficient, the Secretary shall provide for the performance of a supply or service activity common to more than one military department by one agency or such other organization as the Secretary considers appropriate.

"§ 192. Defense agencies: oversight by the Secretary of Defense

"(a) PERIODIC REVIEW.—Periodically (and not less often than every two years), the Secretary of Defense shall review the services and supplies provided by the defense agencies to ensure that the provision of those services and supplies by those agencies, rather than by the military departments, is a more effective, economical, or efficient manner of providing those services and supplies consistent with the requirements for combat readiness of the armed forces.

"(b) INFORMATION REQUIRED FOR REVIEW.—(1) In performing the review required by subsection (a), the Secretary shall obtain, as appropriate, the views of—

"(A) the directors of the defense agencies;

"(B) the Chairman of the Joint Chiefs of Staff;

"(C) the Secretaries of the military departments;

"(D) the Chief of Staff of the Army, the Chief of Staff of the Air Force, the Chief of Naval Operations, and the Commandant of the Marine Corps; and

"(E) the commanders of the unified and specified combatant commands.

"(2) Paragraph (1) shall apply to the National Security Agency as determined appropriate by the Secretary. The Secretary shall establish procedures under which information required for review of the National Security Agency shall be obtained.

"§ 193. Combat support agencies: duties of the Chairman of the Joint Chiefs of Staff

"(a) COMBAT READINESS.—(1) Periodically (and not less often than every two years), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense a report on the combat support agencies. Each such report shall include—

"(A) a determination with respect to the responsiveness and readiness of each such agency to support operating forces in the event of a war or threat to national security; and

"(B) any recommendations that the Chairman considers appropriate.

"(2) In preparing each such report, the Chairman shall review the plans of each such agency with respect to its support of operating forces in the event of a war or threat to national security. After consultation with the Secretaries of the military departments and the commanders of the unified and specified combatant commands, as appropriate, the Chairman may, in accordance with guidelines established by the Secretary of Defense, take steps to provide for any revision of those plans that the Chairman considers appropriate.

"(b) PARTICIPATION IN JOINT TRAINING EXERCISES.—The Chairman shall—

"(1) provide for the participation of the combat support agencies in joint training exercises to the extent necessary to ensure that those agencies are capable of performing their support missions with respect to a war or threat to national security; and

"(2) assess the performance in joint training exercises of each such agency and, in accordance with guidelines established by the Secretary of Defense, take steps to provide for any change that the Chairman considers appropriate to improve that performance.

"(c) READINESS REPORTING SYSTEM.—The Chairman shall develop, in consultation with the director of each combat support agency, a uniform system for reporting to the Secretary of Defense, the commanders of the unified and specified combatant commands, and the Secretaries of the military departments concerning the readiness of each such agency to perform with respect to a war or threat to national security.

"(d) REVIEW OF NATIONAL SECURITY AGENCY.—(1) This section shall apply to the National Security Agency, but only with respect to functions the Agency performs for the Department of Defense.

"(2) The Secretary, after consulting with the Director of Central Intelligence, shall establish policies and procedures with respect to the application of this section to the National Security Agency.

"(3) The Secretary shall submit to Congress a report on any revision of the policies and procedures established under paragraph (2).

"§ 194. Combat support agency representatives: combatant command headquarters

"Upon the request of the commander of a unified or specified combatant command, the director of a combat support agency shall assign a representative of that agency to the headquarters of that command.

"§ 195. Definition of combat support agency

"In this chapter, the term 'combat support agency' means any of the following:

"(1) The Defense Communications Agency.

"(2) The Defense Intelligence Agency.

"(3) The Defense Logistics Agency.

"(4) The Defense Mapping Agency.

"(5) Any other defense agency designated as a combat support agency by the Secretary of Defense.".

(2) The table of sections at the beginning of such chapter is amended to read as follows:

"Sec.

"191. Authority to provide for common performance of supply or service activities.

"192. Defense agencies: oversight by the Secretary of Defense.

"193. Combat support agencies: duties of the Chairman of the Joint Chiefs of Staff.

"194. Combat support agency representatives: combatant command headquarters.

"195. Definition of combat support agency.

"196. Unauthorized use of Defense Intelligence Agency name, initials, or seal.".

(b) DEFENSE AGENCY DEFINED.—Section 101 of such title is amended by adding at the end the following new paragraph:

"(43) 'Defense agency' means an agency established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before the date of the enactment of the Department of Defense Reorganization Act of 1986)) to perform a supply or service activity common to more than one military department.".

(c) CONFORMING AMENDMENT.—Section 125 of such title is amended by striking out the last sentence of subsection (d).

(d) TRANSITION PROVISIONS.—

(1) SECRETARY OF DEFENSE REVIEW OF DEFENSE AGENCIES.—The first review under section 192 of title 10, United States Code (as added by subsection (a)(1)), shall be completed not later than the end of the two-year period beginning on the date that the report required by section 202(f) is required to be submitted to Congress.

(2) FUNCTIONS OF CHAIRMAN OF JOINT CHIEFS OF STAFF.—The first report under subsection (a) of section 193 of such title (as added by subsection (a)(1)) shall be submitted, and subsections (b) and (c) of such section shall be implemented, not later than the end of the one-year period beginning on the date of the enactment of this Act. The Secretary of Defense shall provide an interim report on the implementation of such subsections (b) and (c) in the report of the Secretary submitted to Congress for 1987 under section 133(c) of title 10, United States Code, and shall provide a final report on such implementation in the report of the Secretary under such section submitted for 1988.

(3) APPLICATION TO NATIONAL SECURITY AGENCY.—The Secretary of Defense shall, before the end of the 120-day period beginning on the date of the enactment of this Act—

(A) establish the policies and procedures required to be established by subsection (d)(2) of section 193 of such title (as added by subsection (a)(1)) with respect to the application of such section to the National Security Agency; and

(B) submit to Congress a report on such policies and procedures.

SEC. 3602. REASSESSMENT OF DEFENSE AGENCIES.

(a) SECRETARY OF DEFENSE.—(1) The Secretary of Defense shall conduct a study of the functions and organizational structure of the defense agencies. The study shall determine the most appropriate means of providing the supplies and services now provided by those agencies, after considering the matters set forth in subsection (d) and the reports submitted under subsection (b).

(2) To the extent that the most appropriate means of providing those supplies and services is determined under paragraph (1) to be the existing defense agency structure, the study shall analyze methods to improve the performance and responsiveness of the defense agencies with respect to the entities to which they provide those supplies and services, particularly with regard to the unified and specified combatant commands.

(b) SERVICE SECRETARIES AND CHAIRMAN OF THE JOINT CHIEFS OF STAFF.—The Chairman of the Joint Chiefs of Staff and the Secretaries of the military departments shall each conduct a study of functions and organizational structure of the defense agencies. The Chairman and Secretaries shall each submit a report to the Secretary of Defense on such study at a time specified by the Secretary. Each such report shall include a discussion of and recommendations concerning each matter set forth in subsection (d).

(c) NATIONAL SECURITY AGENCY.—This section shall apply to the National Security Agency as determined appropriate by the Secretary. The Secretary shall establish procedures under which information required for review of the National Security Agency shall be obtained.

(d) MATTERS CONSIDERED.—The studies required by subsections (a) and (b) shall consider the following matters:

(1) Whether the existing allocation of functions to, and organizational structure of, the defense agencies meets the statutory requirement of providing more effective, economical, or efficient provision of a supply or service activity common to more than one military department and eliminating duplication in the provision of that supply or service activity.

(2) Alternative allocations of authority and functions assigned to the defense agencies, including—

(A) various possible redistributions of responsibilities among those agencies;

(B) transfer of those functions to the military departments;

(C) transfer of those functions to the Office of the Secretary of Defense;

(D) transfer of those functions to the Chairman of the Joint Chiefs of Staff, the commanders of the unified and specified combatant commands, or other joint entities of the Department of Defense;

(E) creation of new defense agencies; and

(F) other organizational changes in the Department of Defense designed to make the performance of those functions more effective, economical, or efficient.

(3) The effect of the amendments made by section 3601 on ensuring the readiness and responsiveness of the defense agencies in the event of a war or threat to national security and any additional legislation that the Secretary considers necessary to ensure such readiness and responsiveness.

(4) Additional legislative or administrative actions that the Secretary considers necessary to ensure effective oversight of defense agency resource management, personnel policies, and budget procedures and to clarify the chain of command.

(5) The findings of the report of March 1979 entitled "Report to the Secretary of Defense of the Defense Agency Review" and directed by Major General Theodore Antonelli, United States Army (Retired).

(e) CONSULTATION WITH APPROPRIATE OFFICIALS.—The Secretary, in carrying out the study required by subsection (a), shall consult with the directors of the defense agencies and such other officials as the Secretary considers appropriate.

(f) REPORT.—The Secretary of Defense shall submit to Congress a report that includes the following:

(1) A report on the study required by subsection (a) that includes—

(A) a discussion of and recommendations concerning each matter set forth in subsection (d); and

(B) a discussion of the reports required by subsection (b).

(2) A copy of each report required by subsection (b) and the comments of the Secretary concerning each such report.

(g) DEADLINE FOR SUBMISSION.—The report required by subsection (f) shall be submitted not later than the end of the one-year period beginning on the date of the enactment of this Act.

SEC. 3603. REPORT ON IMPROVED APPLICATION OF COMPUTER SYSTEMS TO DEFENSE AGENCY FUNCTIONS.

(a) IN GENERAL.—The Secretary of Defense shall prepare a report describing a plan for the improved application of computer systems to defense agency functions and activities, particularly with respect to the application of new automated data processing equipment and systems to such activities and the replacement of existing equipment and systems with new equipment and systems. The report shall set forth a plan for the rapid replacement of existing automated data processing equipment and systems when necessary for agency functions.

(b) SUBMISSION OF REPORT.—The report required by subsection (a) shall be submitted as part of the report of the Secretary under section 3602(f).

TITLE III—JOINT OFFICER PERSONNEL POLICY

SEC. 3701. JOINT OFFICER MANAGEMENT.

(a) ESTABLISHMENT OF JOINT SPECIALTY.—Part II of subtitle A of title 10, United States Code, is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—JOINT OFFICER MANAGEMENT

"Sec.
"661. Joint specialty.
"662. Selection for senior military positions.
"663. Training and education.
"664. Length of joint duty assignments.
"665. Procedures for monitoring careers of joint officers.
"666. Reserve officers not on the active duty list.
"667. Annual report to Congress.
"668. Definitions.

"§ 661. Joint specialty

"(a) ESTABLISHMENT.—The Secretary of Defense shall establish an occupational category for officers of the Army, Navy, Air Force, and Marine Corps on the active-duty list who (in addition to their principal military occupational specialty) are particularly trained in and oriented toward joint matters (as defined in section 668 of this title). Officers with that occupational category shall be identified or designated in such manner as the Secretary of Defense directs. For purposes of this chapter, that category is referred to as the 'joint specialty'.

"(b) NUMBERS AND SELECTION.—

"(1) NUMBER.—The number of officers with the joint specialty shall be determined by the Secretary. Such number shall be large enough to meet the requirements of subsection (d).

"(2) SELECTION OF OFFICERS FOR JOINT SPECIALTY.—Officers shall be selected for the joint specialty by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff. The Secretaries of the military departments shall nominate officers for selection for the joint specialty. Nominations shall be made from among officers—

"(A) who meet qualifications prescribed by the Secretary of Defense; and

"(B) who—

"(i) are senior captains or, in the case of the Navy, lieutenants; or

"(ii) are serving in the grade of major or lieutenant commander or a higher grade.

"(c) TRAINING AND EXPERIENCE REQUIREMENTS.—

"(1) GENERAL RULE.—An officer who is nominated for the joint specialty may not be selected for the joint specialty until the officer—

"(A) successfully completes an appropriate program at a joint professional military education school; and

"(B) after completing such program of education, successfully completes a full tour of duty in a joint duty assignment.

"(2) EXCEPTION FOR OFFICERS WITH CRITICAL SKILLS.—An officer who has a critical occupational specialty involving combat operations (as designated by the Secretary of Defense) who is nominated for the joint specialty may be selected for the joint specialty after successful completion of a joint duty assignment of not less than two years and successful completion of a program under paragraph (1)(A). An officer selected for the joint specialty under this paragraph shall be required to complete the generally applicable requirements for selection under paragraph (1)(B) as soon as practicable after such officer's selection.

"(d) JOINT DUTY ASSIGNMENTS.—

"(1) 50 PERCENT REQUIREMENT.—The Secretary of Defense shall ensure that approximately one-half of the joint duty assignment positions in grades above captain or, in the case of the Navy, lieutenant are filled at any time by officers who have (or have been nominated for) the joint specialty.

"(2) CRITICAL ASSIGNMENTS.—The Secretary of Defense shall designate not fewer than 1,000 joint duty assignment positions as critical joint duty assignment positions. Each such position shall be held only by officers with the joint specialty.

"(e) CAREER GUIDELINES.—The Secretary, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish career guidelines for officers with the joint specialty. Such guidelines shall include guidelines for—

"(1) selection;

"(2) training;

"(3) military education;

"(4) types of duty assignments;

"(5) information and guidelines to be furnished by the Secretary of a military department under section 615 of this title for officer selection boards; and

"(6) such other matters as the Secretary considers appropriate.

"§ 662. Selection for senior military positions

"(a) POLICY FOR SELECTION FOR SENIOR POSITIONS.—The Secretary of Defense shall establish policies to ensure that, whenever practicable, the criteria set forth in subsection (b) are applied to the selection of an officer for recommendation to the President for—

"(1) appointment as Chairman of the Joint Chiefs of Staff or as a Chief of Service; or

"(2) assignment as the commander of a unified or specified combatant command.

"(b) CRITERIA.—The criteria referred to in subsection (a) are as follows:

"(1) JCS CHAIRMAN.—The criteria for selection of an officer for recommendation for appointment as Chairman of the Joint Chiefs of Staff are that the officer have served as a Chief of Service or as the commander of a unified or specified combatant command.

"(2) CHIEF OF SERVICE.—The criteria for selection of an officer for recommendation for appointment as a Chief of Service are that the officer have had significant experience in joint duty assignments and that such ex-

perience include at least one joint duty assignment as a general or flag officer.

"(3) CINC.—The criteria for selection of an officer for recommendation for assignment as the commander of a unified or specified combatant command are that the officer—

"(A) have the joint specialty; and

"(B) have had at least one joint duty assignment as a general or flag officer.

"(c) CHIEF OF SERVICE DEFINED.—In this section, the term 'Chief of Service' means the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps.

"§ 663. Training and education

"(a) CAPSTONE COURSE FOR NEW GENERAL AND FLAG OFFICERS.—

"(1) REQUIREMENT.—Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new flag and general officers to work with the other armed forces.

"(2) WAIVER AUTHORITY.—Subject to paragraph (3), the Secretary of Defense may waive paragraph (1)—

"(A) in the case of an officer whose immediately previous assignment was in a critical joint duty assignment and who is thoroughly familiar with joint warfare matters;

"(B) when necessary for the good of the service;

"(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and

"(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, chaplain, or judge advocate.

"(3) LIMITATION ON WAIVER AUTHORITY.—The authority of the Secretary of Defense to grant a waiver under paragraph (2) may only be delegated to the Deputy Secretary of Defense or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

"(b) JOINT MILITARY EDUCATION SCHOOLS.—The Secretary of Defense shall periodically review and revise the curriculum of schools of the National Defense University (and of any other joint professional military education school) to enhance the education and training of officers in joint military matters. Such schools shall be required to maintain rigorous standards for the military education of officers with the joint specialty.

"(c) OTHER PROFESSIONAL MILITARY EDUCATION SCHOOLS.—The Secretary of Defense shall require that each Department of Defense school concerned with professional military education periodically review and revise its curricula for senior and intermediate grade officers in order to strengthen the focus on—

"(1) joint military operations; and

"(2) preparing officers for joint duty assignments.

"(d) POST-TRAINING DUTY ASSIGNMENTS.—The Secretary shall ensure that—

"(1) unless waived by the Secretary in an individual case, each officer with the joint specialty who graduates from a joint professional military school shall be assigned to a joint duty assignment for that officer's next duty assignment; and

"(2) a high proportion (which shall be significantly greater than 50 percent) of the other officers graduating from a joint professional military school also receive assignments to a joint duty assignment as their next duty assignment.

"(e) OTHER REQUIREMENTS FOR SENIOR OFFICERS.—The Secretary shall take all other practicable measures to improve the training and experience of officers serving in senior joint duty assignments.

"§ 664. Length of joint duty assignments

"(a) GENERAL RULE.—The length of a joint duty assignment—

"(1) for general and flag officers shall be not less than three years; and

"(2) for other officers shall be not less than three and one half years.

"(b) WAIVER AUTHORITY.—The Secretary of Defense may waive subsection (a) in any case, but the Secretary shall ensure that the average length of joint duty assignments meets the standards prescribed in that subsection.

"(c) CERTAIN OFFICERS WITH CRITICAL COMBAT OPERATIONS SKILLS.—Joint duty assignments of less than the period prescribed by subsection (a), but not less than two years, may be authorized for the purposes of section 661(c)(2) of this title. Any such assignment shall not be counted for the purposes of determining the average length of joint duty assignments under subsection (b).

"§ 665. Procedures for monitoring careers of joint officers

"(a) PROCEDURES.—(1) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish procedures for overseeing the careers of—

"(A) officers with the joint specialty; and

"(B) other officers who serve in joint duty assignments.

"(2) Such oversight shall include monitoring of the implementation of the career guidelines established under section 661(e) of this title.

"(b) ADVICE OF CHAIRMAN OF JOINT CHIEFS OF STAFF.—The Chairman of the Joint Chiefs of Staff shall advise the Secretaries of the military departments with respect to duty assignments of—

"(1) officers with the joint specialty; and

"(2) other officers serving in joint duty assignments.

"(c) FUNCTION OF JOINT STAFF.—The Secretary shall take such action as necessary to enhance the capabilities of the Joint Staff so that it can—

"(1) monitor the promotions and career assignments of officers with the joint specialty and of other officers who have served in joint duty assignments; and

"(2) otherwise advise the Chairman on joint personnel matters.

"§ 666. Reserve officers not on the active duty list

"The Secretary of Defense shall establish personnel policies emphasizing training and experience in joint matters for reserve officers not on the active-duty list. Such policies shall, to the extent practicable for the reserves components, be similar to the policies provided by this chapter.

"§ 667. Annual report to Congress

"(a) IN GENERAL.—The Secretary of Defense shall include in the annual report of the Secretary to Congress (in that portion of the report relating to management) the following information:

"(1) The number of officers qualifying for the joint specialty and their education and training.

"(2) The promotion rate for officers in the joint specialty compared with the promotion rates for officers in the same armed force and at the same competitive category, shown for all officers of the armed force and for officers serving on the headquarters staff of the military department concerned.

"(3) The promotion rates of other officers serving in joint duty assignments, compared in the same manner as specified in paragraph (2).

"(4) Promotion rates for officers below the zone, shown for officers with the joint specialty and other officers who have served in joint duty assignments, compared in the same manner as specified in paragraph (2).

"(5) An analysis of assignments of officers after selection for the joint specialty.

"(6) The average length of tours of duty in joint duty assignments—

"(A) for general and flag officers, shown separately for assignments to the Joint Staff and other joint duty assignments; and

"(B) for other officers, shown separately for assignments to the Joint Staff and other joint duty assignments.

"(7) In any case in which the information under paragraphs (2) through (6) shows a significant imbalance between officers serving in joint duty assignments and other officers, a description of what action has been taken (or is planned to be taken) by the Secretary to correct the imbalance.

"(8) Any other information or comparative data that shows performance of the Department of Defense and the performance of each military department in carrying out this chapter and section 626a of this title.

"(b) ANNUAL REPORT OF THE SECRETARY DEFINED.—In this section, the term 'annual report of the Secretary' means the annual report of the Secretary of Defense required by section 133(c) of this title.

"§ 668. Definitions

"(a) JOINT MATTERS.—In this chapter, the term 'joint matters' means matters relating to the integrated employment of land, sea, and air forces, including matters relating to—

"(1) national military strategy;

"(2) long-range and contingency planning; and

"(3) command and control of combat operations under unified command.

"(b) JOINT DUTY ASSIGNMENT.—

"(1) IN GENERAL—The Secretary of Defense shall by regulation define the term 'joint duty assignment' for the purposes of this chapter. That definition shall be limited to assignments in which the officer gains significant experience in joint matters and shall exclude—

"(A) assignments for joint training or joint education; and

"(B) assignments within an officer's own military department.

"(2) PUBLICATION.—The Secretary shall publish a list showing—

"(A) the positions that are joint duty assignment positions under such regulation and the number of such positions; and

"(B) of the positions listed under subparagraph (A), those that are critical joint duty assignment positions and the number of such positions.".

(b) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of title 10, United States Code, are amended by inserting after the item relating to chapter 37 the following new item:

"38. Joint Officer Management..... 661".

SEC. 3702. PROMOTION POLICY FOR JOINT SERVICE OFFICERS.

(a) COMPOSITION OF SELECTION BOARDS.—Section 612 of title 10, United States Code, is

amended by adding at the end the following new subsection:

"(c) Each selection board that will consider officers who have served in joint duty assignments shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is currently serving in a joint duty assignment. The Secretary of Defense may waive the preceding sentence in the case of any selection board of the Marine Corps.".

(b) REVIEW OF PROMOTION LISTS BY CHAIRMAN OF JCS.—Section 618 of such title is amended—

(1) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b)(1) After completing the requirements of subsection (a), the Secretary concerned shall submit the report to the Chairman of the Joint Chiefs of Staff.

"(2) The Chairman shall review the report in accordance with guidelines prescribed by the Secretary of Defense. After reviewing the report of a selection board, the Chairman may recommend for promotion officers who—

"(A) were considered by the board and not recommended for promotion; and

"(B) have served or are serving in joint duty assignments.

"(3) The number of such officers that the Chairman recommends for promotion in any competitive category considered by the board may not exceed 10 percent of the number of officers that the board was authorized to recommend for promotion in that competitive category (but in any case the Chairman may recommend one such officer).

"(4) After reviewing the report of a selection board, the Chairman shall return the report to the Secretary concerned with the names of officers (if any) who were not recommended for promotion by the selection board and who the Chairman recommends for promotion under paragraph (2). Except as provided under paragraph (5), each such name shall be added to the report of the selection board.

"(5) If the Chairman recommends officers for promotion under paragraph (2), and if (after consulting with the Chairman) the Secretary concerned disagrees with any such recommendation of the Chairman, the Secretary—

"(A) may return the report, together with the Chairman's recommendations and comments, to the selection board for further proceedings in accordance with subsection (a);

"(B) may convene a special selection board in the manner provided for under section 628 of this title for consideration of any such officer on his record; or

"(C) may take other appropriate action to satisfy the concerns of the Chairman.

"(6) If, after completion of all actions taken under paragraph (5), the Secretary concerned and the Chairman remain in disagreement with respect to the selection for promotion of an officer, the Secretary concerned shall indicate such disagreement, and the reasons for such disagreement, as part of his transmittal of the report of the selection board to the Secretary of Defense under subsection (c). Such transmittal shall include the name of each officer recommended by the Chairman."; and

(3) by adding at the end of paragraph (1) of subsection (c) (as redesignated by paragraph (1)) the following new sentences: "If the Secretary concerned and the Chairman of the Joint Chiefs of Staff disagree with respect to a recommendation for promotion by the Chairman under subsection (b), the Secretary of Defense shall, before transmitting the report to the President, decide the matter by directing that the name of an officer recommended for promotion by the Chairman be added to, or not be added to, the report of the selection board for officers recommended for promotion. After final action by the Secretary of Defense, the report of the selection board, as modified in accordance with subsection (b) and the decisions of the Secretary of Defense, shall be considered for all purposes to be the report of the selection board.".

(c) PROMOTION POLICIES FOR JOINT SERVICE OFFICERS.—

(1) RELATIVE PROMOTION RATES.—Chapter 36 of such title is amended by inserting after section 626 end the following new section:

"§ 626a. Promotion policy for joint service officers

"The Secretary of Defense shall establish policies to ensure that, whenever practicable, selection of officers on the active-duty list for promotion under this chapter is carried out in a manner consistent with the following policies:

"(1) JOINT STAFF OFFICERS.—Officers who are serving on, or have served on, the Joint Staff shall, as a group, be promoted at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving or have served on the headquarters staff of their armed force.

"(2) JOINT SPECIALTY OFFICERS.—Officers with the joint specialty under chapter 38 of this title shall, as a group, be promoted at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving or have served on the headquarters staff of their armed force.

"(3) OTHER JOINT ASSIGNMENT OFFICERS.—Officers who are serving in, or have served in, joint assignments (other than officers covered by paragraphs (1) and (2)) shall, as a group, be promoted at a rate determined by the Secretary of Defense between—

"(A) the rate for all officers of that armed force in the same grade and competitive category; and

"(B) the rate for officers of the same armed force in the same grade and competitive category who are serving or have served on the headquarters staffs of the military departments.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of such chapter is amended by adding at the end the following new item:

"626a. Promotion policy for joint service officers.".

SEC. 3703. JOINT DUTY ASSIGNMENT AS PREREQUISITE FOR PROMOTION TO GENERAL OR FLAG OFFICER RANK.

Section 619 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(e)(1) An officer may not be selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) unless the officer has served in a joint duty assignment.

"(2) Subject to paragraph (3), the Secretary of Defense may waive paragraph (1)—

"(A) when necessary for the good of the service;

"(B) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist;

"(C) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, chaplain, or judge advocate; and

"(D) until January 1, 1992, in the case of an officer who the Secretary determines served before the date of the enactment of this subsection in an assignment (other than a joint duty assignment) that involved significant experience in joint matters.

"(3)(A) A waiver may be granted under paragraph (2) only on a case-by-case basis in the case of an individual officer.

"(B) In the case of a waiver under paragraph (2)(A), the Secretary shall provide that the first duty assignment as a general or flag officer of an officer for whom the waiver is granted shall be in a joint duty assignment.

"(C) The authority of the Secretary of Defense to grant a waiver under paragraph (2)(B) or (2)(C) may only be delegated to the Deputy Secretary of Defense or an Assistant Secretary of Defense.

"(4) The Secretary of Defense shall prescribe regulations to carry out this subsection. Such regulations shall specifically identify those categories of officers for which selection for promotion to brigadier general is based primarily upon scientific and technical qualifications for which joint requirements do not exist.".

SEC. 3704. ANNUAL REPORT ON IMPLEMENTATION.

The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 133(c) of title 10, United States Code, for each year from 1987 through 1991 (in that portion of the report relating to management) a detailed report on the implementation of this title and the amendments made by this title.

SEC. 3705. TRANSITION.

(a) JOINT SPECIALTY.—

(1) INITIAL SELECTIONS.—The Secretary of Defense shall make the initial selections of officers for the joint specialty under chapter 38 of title 10, United States Code, as added by section 3701, from among officers in such grades as the Secretary determines.

(2) SPECIAL RULES.—In making such selections, the Secretary—

(A) may waive the requirement of either subparagraph (A) or (B) (but not both) of section 661(c)(1) of title 10, United States Code, as added by section 3701, in the case of officers in a grade above captain or, in the case of the Navy, lieutenant and below the grade of brigadier general or rear admiral (lower half); and

(B) may waive the requirements of both subparagraphs (A) and (B) of such sentence in the case of general and flag officers who have served in joint duty assignments.

(3) SUNSET.—The authority provided by this section shall expire two years after the date of the enactment of this Act.

(b) JOINT DUTY ASSIGNMENTS.—(1) Section 661(d) of title 10, United States Code, as added by section 3701, shall be implemented as rapidly as possible and not later than two years after the date of the enactment of this Act.

(2) The list of positions that are joint duty assignments required to be published by section 668(b)(2) of such title shall be published not later than the end of the six-month period beginning on the date of the enactment of this Act.

(c) CAREER GUIDELINES.—The career guidelines required to be established by section 661(e) of such title, the procedures required to be established by section 665(a) of such title, and the personnel policies required to

be established by section 666 of such title shall be established not later than the end of the six-month period beginning on the date of the enactment of this Act. The provisions of section 665(c) of such title shall be implemented not later than the end of such period.

(d) TRAINING AND EDUCATION.—

(1) CAPSTONE COURSE.—Subsection (a) of section 663 of such title, as added by subsection (a), shall apply with respect to officers selected in reports of officer selection boards submitted to the Secretary concerned after the end of the 120-day period beginning on the date of the enactment of this Act.

(2) REVIEW OF MILITARY EDUCATION SCHOOLS.—(A) The first review under subsections (b) and (c) of such section shall be completed not later than 120 days after the date of the enactment of this Act. The Secretary of Defense shall submit to Congress a report on the results of the review at each Department of Defense school not later than 60 days thereafter.

(B) Such subsections shall be implemented so that the revised curricula take effect with respect to courses beginning after August 1987.

(e) PROMOTION POLICY.—(1) The amendments made by subsections (a) and (b) of section 3702 shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 120-day period beginning on the date of the enactment of this Act.

(2) Section 626a of title 10, United States Code, as added by section 3702(c), shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 180-day period beginning on the date of the enactment of this Act.

TITLE IV—MILITARY DEPARTMENT ORGANIZATION

SEC. 3801. REORGANIZATION OF MILITARY DEPARTMENTS BY THE SECRETARY OF DEFENSE.

(a) IN GENERAL.—The Secretary of Defense shall reorganize the executive part of the military departments in accordance with the provisions of this title.

(b) REORGANIZATION POLICIES.—In carrying out the reorganization required by subsection (a), the Secretary of Defense shall implement the following policies:

(1) Each military department shall have a single integrated staff for the executive part of the department, rather than separate civilian secretariat and military staffs.

(2) Commissioned officers serving on the new military department staff shall not constitute or be organized as a separate component within the staff (other than the personal staff of a Service Chief).

(3) The functional assignments of the assistant secretaries of the military departments shall be as uniform as possible across the military departments. In implementing this policy, the Secretary shall limit exceptions to the greatest extent possible.

(4) Senior civilian officials on the department staff who are political appointees shall not be placed in a position subordinate to a military officer.

(5) The size of the department staffs shall be substantially reduced from the combined size of the prior secretariat and military staffs, with functions to be shifted to appropriate joint staffs or to subordinate commands outside the seat of government.

(6) The existing staff functions in the executive part of a military department relating to the reserve components shall not be abolished or consolidated with other elements of the military department staff (other than the consolidation of existing military staff and civilian secretariat staff functions relating to the reserve components).

(7) The position of Administrative Assistant in the Department of the Army provided for under section 3016 of title 10, United States Code, shall not be abolished and the other military departments may be authorized to have a similar position.

(c) LIMITATION ON FUTURE ADMINISTRATIVE REORGANIZATION OF THE MILITARY DEPARTMENTS.—After the reorganization required by this section is implemented, no reorganization may be made within the Department of Defense that would be inconsistent with the policies set forth in subsection (b).

(d) SUPERVISORY CONTROL OF MILITARY PERSONNEL.—Nothing in this title limits the authority of a Service Chief, under the authority, direction, and control of the Secretary concerned, to exercise supervisory control over members of the Armed Forces under his jurisdiction, especially with respect to personnel matters, in the manner exercised by the Service Chief before the enactment of this Act.

SEC. 3802. EXECUTIVE PART OF MILITARY DEPARTMENTS.

(a) IN GENERAL.—The executive part of each of the military departments is composed of the following:

(1) The Secretary of the military department.

(2) The Under Secretary.

(3) The Assistant Secretaries.

(4) The general counsel.

(5) The Chief of Staff and, in the case of the Department of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps.

(6) The Vice Chief of Staff or, in the case of the Department of the Navy, the Vice Chief of Naval Operations and the Assistant Commandant of the Marine Corps.

(7) Deputy Chiefs of Staff and, in the case of the Department of the Navy, Deputy Chiefs of Naval Operations.

(8) The Administrative Assistant, in the case of the Department of the Army and any other military department with a similar position.

(9) Other offices or positions provided by law to be in the executive part of the military department.

(10) Civilian personnel in the military department assigned or detailed to the executive part of the military department.

(11) Other members of the Armed Forces assigned or detailed to the executive part of the military department.

(b) ASSISTANT SECRETARIES.—

(1) FUNCTIONS.—The Assistant Secretaries of the military departments shall be assigned the following areas of responsibility by the Secretary of Defense:

(A) Manpower functions.

(B) Reserve affairs functions.

(C) Financial management and comptroller functions.

(D) Research and development functions.

(E) Acquisition functions.

(F) Logistics functions.

(G) Installations functions.

(H) In the case of the Department of the Army, civil works functions.

(2) NUMBER.—There shall be four Assistant Secretaries in each military department, plus an additional Assistant Secretary in the Department of the Army for civil works functions.

(c) PERSONAL STAFFS OF SERVICE SECRETARIES AND SERVICE CHIEFS.—The Secretary of each military department and each Service Chief may each have a personal staff of not more than 30 persons. The Administrative Assistant, and the staff of the Administrative Assistant, of a military department shall not be counted as part of the personal staff of the Secretary of the military department under this subsection.

(d) LIMITATION ON SIZE OF MILITARY DEPARTMENT STAFF.—The total number of persons assigned or detailed to the department staff or staffs of a military department may not exceed 85 percent of the total number of persons on the service secretariat and headquarters staff or staffs of that military department before the reorganization of that department under this Act. The Secretary of Defense shall ensure that the reduction of the number of persons on staffs of military headquarters results in a reduction in the number of persons that are assigned to duty in the Washington, D.C., area.

SEC. 3803. LIMITATION OF DEPARTMENT STAFF FUNCTIONS.

(a) JOINT STAFF.—The Secretary of Defense, in carrying out the reorganization required by this title, shall provide that operation and planning responsibilities that are duplicated by the staff of the Joint Chiefs of Staff shall be shifted to that staff.

(b) DECENTRALIZATION OF NON-HEADQUARTERS FUNCTIONS.—The Secretary of Defense, in carrying out the reorganization required by this title, and the Secretaries of the military departments shall provide that functions that may be performed by subordinate commands outside of the Washington, D.C., area shall be reassigned to those commands.

SEC. 3804. RESPONSIBILITIES OF SERVICE SECRETARIES.

(a) INTELLIGENCE ACTIVITIES.—Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of a military department is responsible to the Secretary of Defense for the effective supervision and control of the intelligence activities of that military department.

(b) OPERATIONAL READINESS.—The Secretary of a military department, in organizing, training, and equipping forces under the jurisdiction of the Secretary, shall ensure the operational readiness of such forces.

SEC. 3805. IMPLEMENTATION AND REPORT.

(a) IMPLEMENTATION.—The Secretary of Defense shall complete implementation of this title not later than September 30, 1987.

(b) REPORT.—The Secretary shall submit to Congress a report on such implementation. The report shall be submitted not later than 30 days after the date provided under subsection (a). The report shall include a draft of legislation to make conforming changes to title 10, United States Code, and other appropriate provision of law to reflect the reorganization carried out pursuant to section 3801 and the effect of the other provisions of this title.

SEC. 3806. DEFINITION.

For purposes of this title, the term "Service Chief" means any of the following:

(1) The Chief of Staff of the Army.

(2) The Chief of Naval Operations.

(3) The Chief of Staff of the Air Force.

(4) The Commandant of the Marine Corps.

TITLE V—MISCELLANEOUS

SEC. 3901. ANNUAL REPORT ON NATIONAL SECURITY STRATEGY.

(a) REPORT REQUIREMENT.—The President shall submit to the Committees on Armed Services and Foreign Relations and the Select Committee on Intelligence of the Senate and the Committees on Armed Services and Foreign Affairs and the Permanent

Select Committee on Intelligence of the House of Representatives each year a comprehensive written report on the national security strategy of the United States. The President shall submit such report on the same date each year on which he submits the budget to Congress pursuant to section 1105 of title 31, United States Code.

(b) CONTENTS OF REPORT.—The report referred to in subsection (a) shall include—

(1) a comprehensive discussion of the vital interests, goals, and objectives of the United States throughout the world;

(2) a coordinated and comprehensive description of the foreign policy, worldwide commitments, and national defense capabilities of the United States necessary to deter aggression and to implement the national security strategy of the United States;

(3) a discussion of the proposed short-term and long-term uses of the political, economic, military, and other elements of the national power of the United States to protect or promote the interests and achieve the goals and objectives referred to in clause (1);

(4) a discussion of the adequacy of the capabilities of the United States to carry out the national security strategy of the United States, including an evaluation of the balance among the capabilities of all elements of the national power of the United States to support the implementation of the national security strategy; and

(5) such other pertinent information as may be necessary to help inform Congress on matters relating to the overall foreign policy strategy and military strategy of the United States.

(c) CLASSIFICATION.—The report referred to in subsection (a) shall be transmitted in a classified and an unclassified form.

SEC. 3902. MANAGEMENT STUDIES OF OFFICE OF THE SECRETARY OF DEFENSE.

(a) SECRETARY OF DEFENSE STUDY.—The Secretary of Defense shall conduct a study on the functions and organization of the Office of the Secretary of Defense. The study shall examine the functions, divisions of responsibility, and management structure of the Office, including each of the matters specified in subsection (c).

(b) SERVICE SECRETARIES AND CHAIRMAN OF THE JOINT CHIEFS OF STAFF.—The Chairman of the Joint Chiefs of Staff and the Secretaries of the military departments shall each conduct a study of the functions and organization of the Office of the Secretary of Defense. The Chairman and Secretaries shall each submit a report to the Secretary of Defense on such study at a time specified by the Secretary. Each such report shall include a discussion of and recommendations concerning each matter specified in subsection (c).

(c) MATTERS TO BE INCLUDED.—The studies required by subsections (a) and (b) shall include consideration of the following:

(1) Whether the present allocation of functions to, and the organizational structure of, the Office constitutes the most effective, efficient, and economical allocation and structure.

(2) Whether the present organization of the Office is the most effective and efficient for the functions of policy initiation, development, and articulation.

(3) Whether the present organization of the Office best ensures that military strategy and military planning are dictated by considerations of national policy and strategy.

(4) Whether effective civilian control of the Department of Defense is best provided by the present structure of the Office, including civilian control of—

(A) policy planning;

(B) force planning;

(C) program development;

(D) budget development;

(E) program execution; and

(F) program review.

(5) Means to improve and strengthen the evaluation function, with particular reference to the findings and recommendations set forth in the final report of the Defense Organization Project of the Georgetown University Center for Strategic and International Studies, entitled "Toward A More Effective Defense" and published in February 1985.

(6) Means to improve and strengthen the oversight function within each element of the Office.

(7) Factors inhibiting efficient and effective execution of the functions of the Office, including factors relating to—

(A) duplication of functions (both within the Office and between the Office and other elements of the Department);

(B) insufficient information; and

(C) insufficient resources (including personnel).

(8) Alternative allocations of authorities and functions of the Office and other reorganization proposals for the Office, including the desirability of—

(A) establishing the Office by law;

(B) establishing Under Secretaries of Defense for mission-oriented areas of responsibility;

(C) establishing the Secretaries of the military departments as Undersecretaries of Defense;

(D) eliminating functional descriptions or designations of Assistant Secretaries of Defense by law;

(E) revising the planning, programming, and budgeting system to strengthen policy and strategy direction;

(F) decentralizing functions of the Office;

(G) reducing the number of officials reporting directly to the Secretary of Defense; and

(H) changing the number of military and civilian personnel in the Office.

(d) ANALYSIS OF CIVILIAN CONTROL.—The Secretary of Defense, in considering under subsection (c)(4) whether effective civilian control of the Department of Defense is best provided by the current structure of the Office, shall examine the functions performed in the Office by members of the Armed Forces on active duty and the functions performed by members in a retired status serving in civilian positions. Such examination shall include determination of—

(1) the number of positions in the Office in grades GS-9 (or the military equivalent) and above held by members of the Armed Forces on active duty, shown for each pay grade by number and as a percentage of the total number of positions in the Office in the pay grade concerned; and

(2) the number of such positions held by members of the Armed Forces in a retired status, shown in the same manner as provided under paragraph (1).

(e) CONSULTATION WITH OTHER APPROPRIATE OFFICIALS.—The Secretary of Defense, in carrying out the study required by subsection (a), shall consult with and obtain the views of the Under Secretaries and Assistant Secretaries of Defense, the directors of the defense agencies, and such other officials as the Secretary considers appropriate.

(f) INDEPENDENT CONTRACTOR STUDY.—The Secretary shall provide for an independent study to be carried out by a contractor to consider the same matters considered in the study of the Secretary under subsection (a). The Secretary shall ensure that the contractor has full access to such information as the contractor requires and that the contractor otherwise receives full cooperation from all Department of Defense officials and entities.

(g) REPORT TO CONGRESS.—(1) The Secretary of Defense shall submit to Congress a report on the Secretary's study under subsection (a). The report shall include—

(A) the findings and conclusions of the Secretary with respect to each of the matters set forth in subsection (c);

(B) the findings and statistical determinations required under subsection (d); and

(C) any recommendations of the Secretary for organizational changes in the Office of the Secretary of Defense and a description for the means for implementing each such recommendation.

(2) The Secretary shall include with the report a copy of each report to the Secretary under subsection (b) and a copy of the report of the independent contractor under subsection (e), together with such comments on each such report as the Secretary considers appropriate.

(3) The report under this subsection shall be submitted not later than one year after the date of the enactment of this Act.

SEC. 3903. REDUCTION OF REPORTING REQUIREMENTS.

(a) POLICY.—It is the policy of Congress to reduce the administrative burden placed on the Department of Defense by requirements for reports, studies, and notifications to be submitted to Congress through the elimination of outdated, redundant, or otherwise unnecessary report requirements.

(b) COMPILATION OF EXISTING REPORT REQUIREMENTS.—(1) The Secretary of Defense shall compile a list of all provisions of law currently in effect that require the President, with respect to national defense functions of the Government, or any official or employee of the Department of Defense to submit in writing any report, notification, or study to Congress or any committee of Congress.

(2) The Secretary shall submit to Congress the list compiled under paragraph (1) not later than six months after the date of the enactment of this Act. The Secretary shall include with such list (with respect to each report, notification, or study shown on the list) the following:

(A) The date the requirement for such report, notification, or study was first imposed by law.

(B) The Secretary's assessment of the continuing utility of such requirement to Congress and to the executive branch.

(C) The Secretary's assessment of the administrative burden of such requirement and how such burden relates to the utility of the report, notification, or study.

(D) The Secretary's recommendation as to whether such requirement should be retained, modified, or repealed.

(3) The matter submitted under paragraph (2) shall also include any recommendation of the Secretary for consolidation of different requirements for reports, notifications, and studies and a draft of legislation to implement any changes in law recommended by the Secretary.

(c) PARTIAL TERMINATION OF PROGRAMS ON LIST.—Except as provided in subsection (d), effective as of the end of the first session of the 100th Congress, each provision of law shown on the list submitted under subsection (b) that is contained in title 10, 32, or

37, United States Code, or in any Act authorizing appropriations or making appropriations for military functions of the Department of Defense (including military construction and military family housing functions) and that is recommended by the Secretary of Defense under subsection (b)(2)(D) to be repealed shall not be effective to the extent such provision requires the submission in writing of a report, notification, or study shown on the list.

(d) EXCEPTIONS.—Subsection (c) shall not apply to any provision of law enacted on or after the date of enactment of this Act or to any provision of law that requires the submission of the following reports, notifications, and studies:

(1) The annual reports, statements, and recommendations required by section 133(c) of title 10, United States Code, relating to the accomplishments of the Department of Defense.

(2) The annual report required by section 133(e) of such title, relating to foreign policy, major military missions, and military force structure.

(3) The reports required by subsection (b)(5) of section 136a of such title and the annual report required by subsection (g) of such section, relating to operational test and evaluation activities.

(4) The annual report required by section 133a of such title, relating to North Atlantic Treaty Organization readiness.

(5) The reports required by section 1464(c) of such title, relating to the status of the Department of Defense Military Retirement Fund.

(6) The annual report required by section 2208(k) of such title, relating to the condition and operation of working-capital funds.

(7) The notifications required by section 2233a(a)(1) of such title, relating to expenditures and contributions for acquisition of facilities for reserve components.

(8) The notifications required by section 2304(c)(7) of such title, relating to the use of procurement procedures other than competitive procedures.

(9) The notifications required by section 2306(h)(3) of such title, relating to cancellation ceilings in certain multiyear contracts.

(10) The annual report required by section 2313(d)(4) of such title, relating to subpoenas issued by the Director of the Defense Contract Audit Agency to obtain contractor records.

(11) The annual report required by section 2349 of such title, relating to North Atlantic Treaty Organization acquisition and cross-servicing agreements.

(12) The semiannual report required by section 2357 of such title, relating to contracts in excess of $50,000 entered into by the military departments for research and development.

(13) The notifications required by section 2394(b)(2) of such title, relating to contracts for energy or fuel.

(14) The annual report required by section 2397(e) of such title, relating to the names of certain employees and former employees of defense contractors.

(15) The notifications required by clauses (B) and (C) of section 2401(b)(1) of such title, the cost analyses required by section 2401(e)(1) of such title, and the reports required by section 2401(e)(2) of such title, all relating to the long-term lease or charter of vessels and aircraft by the military departments.

(16) The notifications required by subsection (e)(1) of section 2403 of such title and the annual report required by subsection (e)(2) of such section, relating to waivers of certain requirements for contractor guarantees.

(17) The notifications required by paragraphs (1) and (2) of section 2407(d) of such title, relating to certain contracts awarded by the Department of Defense in connection with North Atlantic Treaty Organization cooperative agreements.

(18) The annual report required by section 2457(d) of such title, relating to the policy to standardize equipment, ammunition, and fuel procured for the use of United States military forces stationed in Europe under the North Atlantic Treaty.

(19) The reports required by subsection (a) or (e) of section 2662 of such title and the annual report required by subsection (b) of such section, relating to certain real property transactions.

(20) The proposals referred to in section 2667a(b)(1) of such title, relating to sale and replacement of nonexcess real property.

(21) The notifications required by section 2672(b) of such title, relating to acquisitions of interests in land for more than $100,000.

(22) The notifications required by section 2676(d) of such title, relating to reductions in scope and increases in cost of a land acquisition.

(23) The notifications and submissions required by section 2687(b) of such title, relating to base closures and realignments.

(24) The annual report required by section 2779(b)(4) of such title, relating to the use of funds appropriated for the elimination of certain losses caused by fluctuations in currency exchange rates of foreign countries.

(25) The reports required by section 133b of such title, relating to sales or transfers of certain defense articles.

(26) The reports required by section 2803(b) of such title, relating to emergency military construction projects carried out under section 2803 of such title.

(27) The reports required by section 2804(b) of such title, relating to military construction projects not authorized by law.

(28) The notifications required by paragraphs (2) and (3) of section 2805(b) of such title, relating to minor construction in connection with certain relocations of activities from one installation to another.

(29) The reports required by section 2806(c)(2) of such title, relating to contributions for North Atlantic Treaty Organization Infrastructure.

(30) The notifications required by subsection (b) of section 2807 of such title and the reports required by subsection (c) of such section, relating to architectural and engineering services and construction design in connection with military construction or military family housing projects.

(31) The notifications required by section 2808(b) of such title, relating to military construction projects in the event of a declaration of war or national emergency.

(32) The justifications and economic analyses required by section 2809(a)(4) of such title, relating to long-term contracts for the construction, management, and operation of certain facilities.

(33) The notifications and justifications required by section 2823(b) of such title, relating to disagreements on the availability of suitable alternative housing at locations in the United States where family housing is proposed to be constructed.

(34) The notifications required by section 2827(b) of such title, relating to relocation of military family housing units.

(35) The economic analyses required by section 2828(g)(6)(A) of such title, relating to leasing military family housing facilities.

(36) The notifications required by section 2834(b) of such title, relating to agreements with the Secretary of State for the use of Department of State housing and related services by Department of Defense personnel.

(37) The notifications required by subsections (d) and (e) of section 2853 of such title, relating to reductions in the scope of work or increases in the cost of military construction projects.

(38) The notifications required by section 2854(b) of such title, relating to repair, restoration, or replacement of damaged or destroyed military facilities.

(39) The annual request required by section 2859 of such title, relating to military construction authorizations.

(40) The annual report required by section 2861(a) of such title, relating to military construction activities and military family housing activities.

(41) The annual report required by section 138(c)(3) of such title, relating to military and civilian personnel end strength levels, certain other manpower requirements, base structures, and certain requirements for and information on officers.

(42) The annual report required by section 138(d)(2) of such title, relating to average student training loads.

(43) The annual report required by section 138(e) of such title, relating to operations and maintenance.

(44)(A) The annual and supplemental reports required by section 139 of such title, relating to weapons development and procurement schedules, including the matter required by section 53(b) of the Arms Export Control Act (95 Stat. 1524; 22 U.S.C. 2795b(b)) to be included in such annual reports.

(B) The notifications in lieu of such supplemental reports under subsection (b) of such section.

(45) The Selected Acquisition Reports required by section 139a of such title.

(46) The notifications required by subsection (d)(3) of section 139b of such title and reports required by subsection (e) of such section, relating to increases in program acquisition unit costs and procurement unit costs of certain major defense acquisition programs.

(47) The notifications required by section 7307(b)(2) of such title, relating to the disposition of naval vessels to foreign nations.

(48) The quarterly report required by section 7434 of title 10, United States Code, relating to the production from the naval petroleum reserve.

(49) The annual report required by section 406(i) of title 37, United States Code, relating to dependents accompanying members of the Armed Forces stationed outside the United States.

(50) The statements and quarterly report required by subsections (c) and (e) of section 709 of the Department of Defense Appropriation Authorization Act, 1975 (88 Stat. 408; 50 U.S.C. App. 2403–1(e)), relating to the export of certain goods, technology, and industrial techniques.

(51) The notifications, summaries, certifications, and reports required by subsections (a), (b), and (c) of section 502 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2304 note), relating to conversion of performance of commercial and other type functions from Department of Defense personnel to private contractors.

(52) The notifications required by section 1201(c) of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 678), relating to transfers of amounts of authorizations.

(53) The reports and assessments required by section 1231 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 693), relating to certain intercontinental ballistic missile systems.

(54) The reports required by section 307(b)(3) of the Department of Defense Authorization Act, 1985 (98 Stat. 2515; 10 U.S.C. 2304 note), relating to waivers of a prohibition on contracting out certain logistics activities.

(55) The annual report required by section 1002(d)(1) of the Department of Defense Authorization Act, 1985 (98 Stat. 2575; 22 U.S.C. 1928 note), relating to the supply of munitions and certain aircraft facilities in support of the North Atlantic Treaty Organization.

(56) The annual report required by section 1002(d)(2) of the Department of Defense Authorization Act, 1985 (98 Stat. 2575; 22 U.S.C. 1928 note), relating to the status and cost of the United States commitment to the North Atlantic Treaty Organization and certain activities of other North Atlantic Treaty Organization members.

(57) The annual reports required by subsections (c) and (d) of section 1003 of the Department of Defense Authorization Act, 1985 (98 Stat. 2576; 22 U.S.C. 1928 note), relating to allied contributions to the common defense.

(58) The annual report required by section 1102 of the Department of Defense Authorization Act, 1985 (98 Stat. 2580; 10 U.S.C. 2872 note (formerly 10 U.S.C. 139 note)), relating to the Strategic Defense Initiative and any other antiballistic missile defense program.

(59) The notifications required by section 1501(c) of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2626), relating to transfers of amounts of authorizations.

(60) The reports required by section 1536(g) of the Department of Defense Authorization Act, 1985 (98 Stat. 2633; 46 U.S.C. 1120 note), relating to the Commission on Merchant Marine and Defense.

(61) The certification required by section 125(a)(1) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 601), relating to any new contract for the procurement of 5-ton trucks.

(62) The legislative environmental impact statement required by section 209(c) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 610), relating to full-scale development of a small intercontinental ballistic missile or the selection of basing areas for the deployment of such missile.

(63) The certification required by section 222 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 613), relating to termination of a prohibition of deployment of a strategic defense system.

(64) The reports required by section 223 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 613), relating to the Strategic Defense Initiative.

(65) The quarterly reports required by section 502(c) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 621), relating to the obligation of funds appropriated for civilian personnel.

(66) The report required by section 1002 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 705), relating to Soviet compliance with arms control commitments.

(67) The annual report required by section 1221(d)(2) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 727), relating to a research program to support the polygraph activities of the Department of Defense.

(68) The annual reports required by section 1407 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), relating to unobligated balances in appropriation accounts.

(69)(A) The certifications required by subsections (b) and (c)(2) of section 1411 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), relating to the procurement or assembly of binary chemical weapons.

(B) The report required by subsection (e) of such section, relating to consultations among North Atlantic Treaty Organization member nations concerning North Atlantic Treaty Organization's chemical deterrent posture.

(70) The annual reports required by section 704 of the Military Construction Authorization Act, 1982 (Public Law 97-99; 95 Stat. 1377), relating to contracts for construction in the United States and its possessions.

(71) The economic analyses required by section 802(d)(1) of the Military Construction Authorization Act, 1984 (97 Stat. 784; 10 U.S.C. 2821 note), relating to proposed military housing rental guarantee agreements.

(72) The notifications required by section 803(b)(2) of the Military Construction Authorization Act, 1984 (97 Stat. 785; 10 U.S.C. 2821 note), relating to waivers of a requirement to use manufactured or factory-built housing fabricated in the United States by a United States contractor for military family housing construction in foreign countries.

(73) The report required by section 840(d) of the Military Construction Authorization Act, 1986 (Public Law 99-167; 99 Stat. 998), relating to the sale of land at Fort Jackson, South Carolina.

(74) The notifications required by the proviso in section 8005(m) of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98-473 (98 Stat. 1923)), relating to unusual cost overruns incident to overhaul, maintenance, and repair for certain ships.

(75) The annual report required by section 8104(b) of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98-473 (98 Stat. 1942)), relating to consultations with members of common defense alliances concerning Strategic Defense Initiative research.

(76) The notifications required by section 8020 or 8021 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1206)), relating to transfers of working capital funds.

(77) The notifications required by section 8021 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1206)), relating to the obligation of working capital funds to procure war reserve material inventory.

(78) The notifications required by section 8042 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1210)), relating to the availability of appropriated funds for intelligence or special activities different from activities justified to the Congress.

(79) The notification required by section 8075 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1214)), relating to the acquisition of certain types of weapons, subsystems, and munitions of European North Atlantic Treaty Organization manufacture.

(80) The certification required by section 8097 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1219)), relating to the obligation or expenditure of funds to carry out a test of the Space Defense System (anti-satellite weapon) against an object in space.

(81) The annual report required by the third proviso in the undesignated paragraph under the heading "FOREIGN CURRENCY FLUCTUATION, CONSTRUCTION, DEFENSE" in the Military Construction Appropriation Act, 1980 (Public Law 96-130; 93 Stat. 1019), relating to transfers of appropriated funds to eliminate losses in military construction or expenses of family housing caused by fluctuations in foreign currency exchange rates of foreign countries.

(82) The reports required by section 125(a) of the Military Construction Appropriations Act, 1985 (as contained in section 101(e) of Public Law 98-473 (98 Stat. 1883)), relating to terminations of a prohibition on the availability of appropriated military construction funds to foreign governments ineligible to receive such funds by reason of inadequate drug control measures.

(83)(A) The semiannual report required by section 5(b) of the Inspector General Act of 1978 (5 U.S.C. App. 3), relating to activities of the Inspector General of the Department of Defense.

(B) The reports required by section 5(d) of such Act (5 U.S.C. App. 3), relating to particular cases of problems, abuses, or deficiencies which have come to the attention of the Inspector General of the Department of Defense.

(C) The statements required by paragraphs (3) and (4) of section 8(b) of such Act (5 U.S.C. App. 3), relating to the exercise of certain authority of the Secretary of Defense with respect to the activities of the Inspector General of the Department of Defense.

(84) The requirement to furnish information and to report to Congress concerning intelligence activities as provided in title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(85) Reports and information required to be furnished under the following provisions of law:

(A) Section 1601(e) of title 10, United States Code, relating to the Defense Intelligence Senior Executive Service.

(B) Section 1604(e) of title 10, United States Code, relating to termination of certain Defense Intelligence Agency personnel.

(C) Section 1605 of title 10, United States Code, relating to benefits and allowances for certain Defense Intelligence Agency civilian personnel.

(D) Section 431 of title 37, United States Code, relating to benefits and allowances for certain military personnel assigned to the Defense Intelligence Agency.

(e) CHANGE FROM QUARTERLY TO ANNUAL REPORT.—Section 406(i) of title 37, United States Code, is amended—

(1) by striking out "quarter" in the matter preceding clause (1); and

(2) by striking out "quarter" in clauses (1) and (2) and inserting in lieu thereof "fiscal year".

SEC. 3904. DEPUTY CHAIRMAN OF JOINT CHIEFS OF STAFF.

(a) ESTABLISHMENT OF POSITION OF DEPUTY CHAIRMAN.—(1) Chapter 5 of title 10, United States Code, is amended by inserting after section 142 the following new section:

"§ 142a. Deputy Chairman

"(a)(1) There is a Deputy Chairman of the Joint Chiefs of Staff. The Deputy Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces.

"(2) The Chairman and Deputy Chairman may not be members of the same armed force. However, the Secretary of Defense may waive the limitation in the preceding sentence for a limited period of time.

"(3) The Deputy Chairman serves at the pleasure of the President for a term of four years and may be reappointed in the same manner for one additional term. However, in time of war declared by Congress there is no limit on the number of reappointments.

"(b)(1) The Deputy Chairman exercises such duties as may be delegated by the Chairman with the approval of the Secretary of Defense.

"(2) When there is a vacany in the office of Chairman or in the absence or disability of the Chairman, the Deputy Chairman acts as Chairman and performs the duties of the Chairman until a successor is appointed or the absence or disability ceases.

"(c) The Deputy Chairman is the director of the Joint Staff.

"(d) The Deputy Chairman may attend all meetings of the Joint Chiefs of Staff but may not vote on a matter before the Joint Chiefs of Staff except when acting as Chairman.

"(e) The Deputy Chairman, while so serving, holds the rank of general or, in the case of an officer of the Navy, admiral and outranks all other officers of the armed forces except the Chairman. The Deputy Chairman may not exercise military command over the Joint Chiefs of Staff or over any of the armed forces.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 142 the following new item:

"142a. Deputy Chairman.".

(b) EXEMPTION FROM GRADE LIMITATIONS.—Section 525(b)(3) of such title is amended by inserting "or Deputy Chairman" after "Chairman".

(c) CONFORMING AMENDMENT.—Subsection (b) of section 143 of such title is repealed.

DIVISION E—MISCELLANEOUS GENERAL PROVISIONS

SEC. 4001. CLERICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 10.—Title 10, United States Code, is amended as follows:

(1) The text of section 775 (as redesignated by section 502) is amended to read as follows:

"This chapter applies in—

"(1) the United States;

"(2) the territories, commonwealths, and possessions of the United States; and

"(3) all other places under the jurisdiction of the United States.".

(2) Section 976(a)(1) is amended by striking out the second comma before "(B)".

(3) Section 1035 is amended—

(A) by striking out "armed force" in subsection (a) and inserting in lieu thereof "armed forces"; and

(B) by striking out "the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam" in subsection (b) and inserting in lieu thereof "May 7, 1975".

(4) Section 1087(b)(2) is amended by striking out "title XVIII" and all that follows and inserting in lieu thereof "title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)).".

(5) Section 1094(d) is amended by realigning paragraph (2) so as to be indented two ems (rather than four ems).

(6) Section 1208 (a)(2)(A) is amended by striking out "after February 2, 1901".

(7) Section 1216(d) is amended by striking out "who is in pay grade" and all that follows through "Air Force" and inserting in lieu thereof "who is a general officer or flag officer or is a medical officer".

(8)(A) Section 1447(2)(A) is amended by striking out "or retainer" both places it appears.

(B) Section 1448(a)(5) is amended by striking out "an annuity by virtue of eligiblity under paragraph (1)(B)" in the fourth sentence and inserting in lieu thereof "a reserve-component annuity".

(C) Section 1450(c) is amended by inserting "dependency and indemnity" before "compensation" the first place it appears in the first sentence.

(D) Section 1451(a)(1)(A) is amended by striking out "subsection" and inserting in lieu thereof "section".

(E) Section 1452(h) is amended by striking out "and retainer".

(9) Section 1603 is amended—

(A) by striking out "this" after "Nothing in"; and

(B) by striking out "this sections 1601 and 1602 of this title" and inserting in lieu thereof "those sections".

(10) The heading of section 1623 is amended to read as follows:

"§ 1623. Education, training, and experience requirements: flag and general officers".

(11) Section 2236(b) is amended by striking out ", territory, the Commonwealth of Puerto Rico, or the District of Columbia, as the case may be,".

(12) The item relating to section 2319 in the table of sections at the beginning of chapter 137 is amended to read as follows:

"2319. Encouragement of new competitors.".

(13) Section 2302(2)(A) is amended by striking out "(41 U.S.C." and inserting in lieu thereof "(40 U.S.C.".

(14) Section 2304(b)(2) is amended by striking out "15 U.S.C. 639;" and inserting in lieu thereof "15 U.S.C. 638,".

(15) Section 2407(g)(2) is amended by striking out "the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b))" and inserting in lieu thereof "section 2631 of this title and section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))".

(16) Section 2672 is amended—

(A) by inserting "(1)" in subsection (a) after "(a)";

(B) by striking out "he or his designee" in clause (A) of subsection (a) and inserting in lieu thereof "the Secretary";

(C) by designating the second sentence of subsection (a) as paragraph (2);

(D) by transferring the third sentence of subsection (a) to the end of the section and designating that sentence as subsection (c); and

(E) by striking out "interest" in the section heading and inserting in lieu thereof "interests".

(17)(A) Section 2676(c)(2)(B) is amended by striking out "the agreed" and all that follows through "exceeds the" and inserting in lieu thereof "the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land, exceeds the".

(B) The amendment made by subparagraph (A) shall take effect as if included in the enactment of section 802(2) of the Military Construction Authorization Act, 1985 (Public Law 98-407; 98 Stat. 1519).

(18) Section 2683(b) is amended by striking out "this" before "subsection (a)".

(19) Section 2775 is amended—

(A) in subsection (a)(1), by striking out "it is" and all that follows through "that the" and inserting in lieu thereof "(as determined under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) the";

(B) in subsection (b)—

(i) by inserting a comma after "Secretary of Defense";

(ii) by striking out "when the Coast Guard" and inserting in lieu thereof "with respect to the Coast Guard when it"; and

(iii) by inserting a comma after "Navy"; and

(C) in subsection (e), by striking out "when the Coast Guard" and inserting in lieu thereof "with respect to the Coast Guard when it".

(20) Section 2809 is amended—

(A) in subsection (a)(1)—

(i) by striking out "contracts" and inserting in lieu thereof "a contract";

(ii) by striking out "facilities" the first place it appears and inserting in lieu thereof "a facility";

(iii) by striking out "military installations" and inserting in lieu thereof "a military installation";

(iv) by inserting a comma after "waste water treatment";

(v) by striking out "cases" and inserting in lieu thereof "a case"

(vi) by striking out "facilities" the second place it appears and inserting in lieu thereof "facility"; and

(vii) by striking out "long-term contracts" and inserting in lieu thereof "a long-term contract";

(B) in subsection (a)(2), by striking out "subsection (a)" and inserting in lieu thereof "this section";

(C) in subsection (a)(3), by striking out "twenty" and inserting in lieu thereof "20";

(D) in subsection (a)(4), by striking out "the" before "Congress"; and

(E) in subsection (b), by striking out "the authority of subsection (a) of".

(21)(A) Section 2860 is amended—

(i) by striking out "defense agency" and inserting in lieu thereof "to the Secretary of Defense";

(ii) by inserting "for obligation" after "remain available"; and

(iii) by striking out "the" before "appropriation Acts".

(B) The item relating to that section in the table of sections at the beginning of subchapter III of chapter 169 is amended by striking out the last three words.

(22) The items relating to chapter 138 in the table of chapters at the beginning of subtitle A, and in the table of chapters at the beginning of part IV of subtitle A, are amended by striking out "2321" and inserting in lieu thereof "2341".

(23) Section 5155(c) is amended by striking out "commodore" and inserting in lieu thereof "rear admiral (lower half)".

(24) The heading of section 5442 is amended by striking out the second colon and inserting in lieu thereof a semicolon.

(b) AMENDMENTS TO TITLE 37.—

(1) Section 302(h) of title 37, United States Code, is amended by striking out "paragraph (1) of this subsection" and inserting in lieu thereof "subsection (c)(2) or (f) of this section".

(2) Section 404(d)(1)(C) of such title is amended by striking out "clause (1) of this subsection" and inserting in lieu thereof "subparagraph (A) of this paragraph".

(3) The heading of section 405a of such title is amended to read as follows:

"§ 405a. Travel and transportation allowances: departure allowances".

(c) AMENDMENTS TO TITLE 14.—Sections 256(b) and 288(a) of title 14, United States Code, are amended by striking out "commodore" and inserting in lieu thereof "rear admiral (lower half)".

SEC. 4002. TECHNICAL CORRECTION TO DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985.

(a) CORRECTION OF BAQ SAVE-PAY.—Section 602(a)(2) of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2534), is amended—

(1) by striking out "During the period" and all that follows through "paragraph (1)" and inserting in lieu thereof "(A) During the period described in subparagraph (B)";

(2) by striking out "on or after January 1, 1985, and before the date of any such change" and inserting in lieu thereof "during such period"; and

(3) by adding at the end the following:

"(B) The period referred to in subparagraph (A) is the period beginning on January 1, 1985, and ending on the effective date of a change made by law in the rates of basic allowance for quarters that increases the rates for such allowance to a level not less than 7 percent greater than the rates in effect on January 1, 1985.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later.

SEC. 4003. TECHNICAL CORRECTIONS TO PROVISIONS ENACTED BY DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1986.

(a) AVIATION PAY.—Paragraph (1) of section 301(a) of title 37, United States Code (as amended by section 635(a)(1)(A) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 647)), is amended to read as follows:

"(1) involving frequent and regular participation in aerial flight as a crew member, as determined by the Secretary concerned, except for a member who is entitled to incentive pay under section 301a of this title;".

(b) CLARIFICATION OF VHA SAVE PAY.—Section 602(f)(2) of the Department of Defense Authorization Act, 1985 (Public Law 98-525) (as amended by section 603(b) of the Department of Defense Authorization Act, 1986 (99 Stat. 637)), is amended—

(1) by striking out "departs that station as a result of" in subparagraph (B)(i) and inserting in lieu thereof "changes residence in conjunction with"; and

(2) in subparagraph (C)—

(A) by striking out "Any member" and inserting in lieu thereof "A member"; and

(B) by striking out "under paragraph" and all that follows and inserting in lieu thereof ", except that such a member serving an unaccompanied tour of duty in Alaska or Hawaii may be paid a variable housing allowance based on the residence of the member's dependents in another State.".

(c) DENTAL OFFICERS' SAVE PAY.—Section 639(d) of the Department of Defense Authorization Act, 1986 (99 Stat. 651), is amended—

(1) by striking out "shall be entitled to such pay in an annual amount that is not less than" and inserting in lieu thereof "may (notwithstanding the provisions of such section and in the discretion of the Secretary concerned) be paid such pay, in order to prevent inequities, in an annual amount equal to"; and

(2) by striking out "was entitled on September 30, 1985." and inserting in lieu thereof "would have been entitled on September 30, 1985, in accordance with the status of the officer (as determined by the Secretary concerned) during the period for which the pay is paid. Notwithstanding the preceding sentence, an officer may not be paid special pay by reason of this paragraph in an amount greater than the amount of special pay to which the officer was entitled under such sections on September 30, 1985.".

(d) RESERVE MEDICAL OFFICERS SPECIAL PAY.—Subparagraph (B) of section 302(h)(1) of title 37, United States Code (as amended by section 640 of the Department of Defense Authorization Act, 1986 (99 Stat. 652)), is amended to read as follows:

"(B) who is on active duty under a call or order to active duty for a period of less than one year;".

(e) REPEAL OF DUPLICATIVE AMENDMENTS.—Subsection (a) of section 1102 of the Department of Defense Authorization Act, 1986 (99 Stat. 708), and the amendments made by that subsection are repealed, and the Arms Export Control Act shall apply as if that subsection had not been enacted.

(f) CORRECTION OF SECTION REFERENCE.—Section 719(h)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2169(h)(1)), as amended by section 934(b) of the Department of Defense Authorization Act, 1986, is amended by striking out "Public Law 92-41" in the third sentence and inserting in lieu thereof "section 105(b)(2) of the Renegotiation Act of 1951".

(g) CORRECTION OF SECTION AMENDED.—Section 522(a)(2) of Department of Defense Authorization Act, 1986 (99 Stat. 631), is amended by striking out "Section 3851(c)" and inserting in lieu thereof "Section 3851(d)", and the subsection inserted by the amendment made by that section is redesignated as subsection (d).

(h) EFFECTIVENESS OF AMENDMENTS.—

(1) The amendments made by subsections (a) through (d) shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever is later.

(2) The amendments made by subsections (f) and (g) shall apply as if included in the enactment of the Department of Defense Authorization Act, 1986 (Public Law 99-145).

SEC. 4004. CIVIL AIR PATROL.

(a) PAYMENT OF EXPENSES OF PLACING EQUIPMENT INTO SERVICEABLE CONDITION.—Section 9441(b)(9) of title 10, United States Code, is amended by striking out "a major item of equipment furnished to the Civil Air Patrol under clause (1)" and inserting in lieu thereof "major items of equipment (including aircraft, motor vehicles, and communications equipment) owned by the Civil Air Patrol".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to funds appropriated for fiscal years after fiscal year 1986.

SEC. 4005. ADJUSTMENT IN DATE MILITARY PAY TO BE PAYABLE.

(a) PAY TO BE PAYABLE FIRST DAY OF FOLLOWING MONTH.—(1) Chapter 19 of title 37, United States Code, is amended by adding at the end the following new section:

"§ 1013. Payment date for pay and allowances

"(a) Amounts of basic pay, basic allowance for quarters, basic allowance for subsistence, and other payments of military compensation (other than travel and transportation allowances and separation allowances) shall be paid on the first day of the month beginning after the month during which the right to such compensation accrues.

"(b) Subsection (a) does not preclude one payment in mid-month for any element of compensation and does not affect any authority to make advance payments of pay and allowances.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1013. Payment date for pay and allowances.".

(b) RETIREMENT ACCRUAL CHARGE.—Section 1466(a)(2) of title 10, United States Code, is amended by striking out "paid" and inserting in lieu thereof "accrued".

(c) EFFECTIVE DATE.—Section 1013 of title 37, United States Code, as added by subsection (a), and the amendment made by subsection (b) shall take effect on September 1, 1987.

SEC. 4006. REDUCTIONS IN AUTHORIZATIONS.

(a) REDUCTIONS THROUGH ELIMINATION OR REDUCTION IN CERTAIN PROGRAMS.—Sums authorized to be appropriated in this Act are hereby reduced as follows:

Section	Account	Reduction Amount
	DEPARTMENT OF DEFENSE AUTHORIZATIONS	
101(a)	Missile procurement, Army.	$129,500,000
	Weapons and tracked combat vehicles, Army.	$49,300,000
	Ammunition, Army.	$37,800,000
	Other procurement, Army.	$182,300,000
102(a)	Aircraft procurement, Navy.	$680,900,000
102(b)	Weapons procurement, Navy.	−$138,200,000
102(c)	Shipbuilding and conversion, Navy.	$798,600,000
102(d)	Other procurement, Navy.	$74,900,000
102(e)	Procurement, Marine Corps.	$40,200,000
103(a)	Aircraft procurement, Air Force.	$994,200,000
	Missile procurement, Air Force.	$11,700,000
	Other procurement, Air Force.	$214,700,000
104	Procurement, Defense Agencies.	$41,000,000
201	Research, development, test, and evaluation, Army	$54,400,000
	Research, development, test, and evaluation, Navy (including the Marine Corps)	$456,100,000
	Research, development, test, and evaluation, Air Force	$407,100,000

Section	Account	Reduction Amount
	Research, development, test, and evaluation, Defense Agencies..	$461,600,000
301	Operation and maintenance, Army.	$700,000
	Operation and maintenance, Navy.	$60,000,000
	Operation and maintenance, Air Force.	$268,800,000
	Operation and maintenance, Defense Agencies..	$31,300,000
	National Board for the Promotion of Rifle Practice.....	$3,400,000
	Foreign Currency, Fluctuations, Defense.	$495,000,000
312	Aid to Afghanistan..	$6,000,000
	MILITARY CONSTRUCTION AUTHORIZATIONS	
2110	Military construction, Army.	$99,100,000
	Inside the United States.	$50,210,000
	Outside the United States.	$48,890,000
2210	Military construction, Navy.	$100,350,000
	Inside the United States.	$78,480,000
	Outside the United States.	$1,870,000
	Military family housing construction.	$20,000,000
2306	Military construction, Air Force.	$97,730,000
	Inside the United States.	$53,150,000
	Outside the United States.	$44,580,000
	DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS	
3011	Operating Expenses.	$100,000,000
3011(1)	Weapons activities.	$81,000,000
	Research and development.	$41,000,000
	Weapons testing.	$22,000,000
	Production and surveillance.	$18,000,000
3011(4)	Defense nuclear materials production	$10,000,000
	Uranium enrichment for naval reactors.	$6,000,000
	Processing of defense nuclear materials.	$4,000,000
3011(5)	Defense nuclear waste and byproduct management.....	$9,000,000
	Interim waste management.	$6,000,000
	Long-term waste management technology.	$3,000,000
3012	Plant and capital equipment: Weapons activities, project 84-D-211 ..	$10,000,000
3013	Strategic Defense Initiative.	$63,000,000

(b) OBLIGATION LIMITATIONS.—Limitations on obligations in this Act are hereby reduced as follows:

Section	Program	Reduction Amount
102(b)	Missile programs.....	$115,400,000
	MK-48 torpedo program.	−$253,400,000
102(c)	DDG-51 Guided missile Destroyer Program.	$798,600,000
102(d)	Aviation support equipment.	$34,900,000
	Civil engineering support equipment, supply support equipment, and command support equipment.....	$40,000,000

SEC. 4007. LIMITATION ON OBLIGATION OF FISCAL YEAR 1985 AND FISCAL YEAR 1986 FUNDS.

Funds appropriated for fiscal years 1985 and 1986 and remaining available for obligation may not be obligated as follows:

Account	Fiscal year 1985 amount	Fiscal year 1986 amount
Aircraft Procurement, Army.	$21,000,000	$110,800,000
Missile Procurement, Army.	$21,400,000	$91,900,000
Procurement of Weapons and Tracked Combat Vehicles, Army.....	$43,900,000	$211,400,000
Procurement of Ammunition, Army.	$3,900,000	$30,300,000
Other Procurement, Army.	$15,600,000	$123,600,000
Aircraft Procurement, Navy.	$86,300,000	$446,100,000
Weapons Procurement, Navy.	$48,800,000	$215,600,000
Shipbuilding and Conversion, Navy.	$168,700,000	$367,500,000
Other Procurement, Navy.	$16,100,000	$117,100,000
Procurement, Marine Corps.	$18,200,000	$52,000,000
Aircraft Procurement, Air Force.	$212,500,000	$714,500,000
Missile Procurement, Air Force.	$53,400,000	$326,400,000
Other Procurement, Air Force.	$19,100,000	$181,100,000
National Guard and Reserve Equipment.....	$900,000	$17,900,000
Procurement, Defense Agencies.	$4,000,000	$31,000,000
Research, Development, Test and Evaluation, Army.....	$1,900,000	$71,200,000
Research, Development, Test and Evaluation, Navy.....	$2,800,000	$71,900,000
Research, Development, Test and Evaluation, Air Force	$6,000,000	$176,400,000
Research, Development, Test and Evaluation, Defense Agencies.....	$1,400,000	$84,700,000
Director of Test and Evaluation, Defense.....	$0	$700,000
Military Construction, Army.	$6,800,000	$64,400,000
Military Construction, Navy.	$6,800,000	$45,200,000
Military Construction, Air Force.	$6,300,000	$43,200,000
Military Construction, Defense Agencies.....	$1,900,000	$5,300,000
Military Construction, Army National Guard	$0	$2,500,000
Military Construction, Air National Guard	$200,000	$3,300,000
Military Construction, Army Reserve.	$0	$1,800,000
Military Construction, Naval Reserve.	$0	$1,200,000
Military Construction, Air Force Reserve.....	$200,000	$1,800,000
North Atlantic Treaty Organization Infrastructure....	$0	$8,000,000
Family Housing, Army.	$900,000	$19,400,000
Family Housing, Navy and Marine Corps.....	$400,000	$8,800,000
Family Housing, Air Force.	$2,400,000	$12,300,000

SEC. 4008. AMENDMENT OF MILITARY SELECTIVE SERVICE ACT TO PROVIDE ELIGIBILITY FOR BENEFITS TO CERTAIN PERSONS WHO FAIL TO REGISTER.

(a) ELIGIBILITY FOR BENEFITS.—Section 12 of the Military Selective Service Act (50 U.S.C. App. 462) (relating to penalties) is amended—

(1) by striking out "Any person" in subsection (f)(1) and inserting in lieu thereof "Except as provided in subsection (g), any person"; and

(2) by adding at the end the following new subsection:

"(g) Any person who is discharged under honorable conditions from the Armed Forces or who is permanently handicapped may not be denied any right, privilege, or benefit under Federal law by reason of his failure to present himself for and submit to registration under section 3.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply—

(1) to a person discharged under honorable conditions before, on, or after the date of the enactment of this Act; and

(2) to rights, benefits, and privileges to which such person would have been entitled had such subsection been in effect at the time of such discharge.

Amend the title so as to read: "An Act to authorize appropriations for fiscal year 1987 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to improve the defense acquisition process, and for other purposes.".

The SPEAKER. The question is on the motion offered by the gentleman from Wisconsin [Mr. ASPIN].

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "An Act to authorize appropriations for fiscal year 1987 for the Armed Forces for procurement, for research, development, test, and evaluation, for operation and maintenance, and for working capital funds, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 4428) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 2638

Mr. ASPIN. Mr. Speaker, I ask unanimous consent that the House insist on its amendments to the Senate bill, S. 2638, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none, and appoints the following conferees:

From the Committee on Armed Services for consideration of the entire Senate bill and House amendment (unless otherwise restricted): Messrs. ASPIN, PRICE, BENNETT, STRATTON, NICHOLS, DANIEL, MONTGOMERY, and DELLUMS, Mrs. SCHROEDER, Mrs. BYRON, Messrs. MAVROULES, HUTTO, SKELTON, MCCURDY, RAY, SPRATT, DICKINSON, WHITEHURST, and SPENCE, Mrs. HOLT, and Messrs. HILLIS, BADHAM, STUMP, COURTER, HOPKINS, and DAVIS.

As additional conferees from the Permanent Select Committee on Intelligence solely when differences regarding intelligence-related activities are under consideration: Messrs. HAMILTON, STOKES, and CHENEY.

As additional conferees from the Committee on Foreign Affairs, solely for the consideration of sections 205(f), 952, 1205-1209, 1214-1217, 1228, 1231, and 1233 of the Senate bill and sections 1024 and 1041 of the House amendment: Messrs. FASCELL, HAMILTON, YATRON, SOLARZ, BROOMFIELD, and GILMAN.

As an additional conferee, soley for the consideration of section 1032 of the House amendment and modifications committed to conference: Mr. SAVAGE.

As additional conferees, solely for the consideration of sections 911 and 936 of the House amendment and modifications committed to conference: Mr. MITCHELL and BROOMFIELD.

As exclusive conferees, solely for the consideration of sections 109, 203, 205(a)(1), 1210, 1230, and 3114(a) of the Senate bill and sections 123, 128, 208, 215, 1061, 3013, and 303(of the House amendment: Messrs. ASPIN, PRICE, BENNETT, and DELLUMS, Mrs. SCHROEDER, Mrs. BYRON, Messrs. MAVROULES, MCCURDY, SPRATT, FASCELL, BROWN of California, GEPHARDT, FAZIO, DICKS, AUCOIN, DOWNEY of New York, MARKEY, BEDELL, DICKINSON, WHITEHURST, and SPENCE, Mrs. HOLT, and Messrs. BADHAM, STUMP, COURTER, BROOMFIELD, LAGOMARSINO, HYDE, and SOLOMON.

As exclusive conferees, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendment: Messrs. MAVROULES, BENNETT, MCCURDY, HERTEL of Michigan, SISISKY, and SPRATT, Mrs. SCHROEDER, Mrs. BOXER, and Messrs. WYDEN, LEVINE of California, SIKORSKI, BRYANT, COURTER, DICKINSON, KRAMER, KASICH, BATEMAN, STUMP, and HUNTER.

As exclusive conferees, solely for the consideration of section 1002 of the Senate bill and section 2715 of the House amendment: Messrs. PRICE, DELLUMS, and DICKINSON.

As additional conferees, from the Committee on Education and Labor solely for the consideration of section 1002 of the Senate bill and section 2715 of the House amendment: Messrs. HAWKINS, MURPHY, CLAY, WILLIAMS, WALDON, JEFFORDS, PETRI, and BARTLETT.

As exclusive conferees, from the Committee on Education and Labor solely for consideration of division F of the Senate bill and modifications committed to conference: Messrs. HAWKINS, FORD of Michigan, KILDEE, WILLIAMS, MARTINEZ, OWENS, BOUCHER, PERKINS, GOODLING, CHANDLER, MCKERNAN, and FAWELL.

As exclusive conferees, solely for the consideration of division B of the Senate bill and division B of the House amendment: Messrs. DELLUMS, MONTGOMERY, HUTTO, LEATH of Texas, HERTEL of Michigan, KRAMER, DICKINSON, and WHITEHURST.

As exclusive conferees, solely for the consideration of division D of the House amendment and modifications committed to conference: Messrs. ASPIN, NICHOLS, SKELTON, MAVROULES, DICKINSON, HOPKINS, and KASICH.

THE MAKEUP CONGRESSIONAL BASEBALL GAME

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker—

Half a league, half a league,
half a league onward
Into the valley of death
rode the six hundred—

So goes the poem, "The Charge of the Light Brigade."

Well, Mr. Speaker, the British Cavalry in the Crimea had no greater challenge than the Republican Baseball Team at Four Mile Run last night.

There were Democrats to the left of us, Democrats to the right of us, Democrats in front of us. They were everywhere. And we, only nine stouthearted souls, rode into the valley of death.

The score was 8 to 6 in favor of the Democrats, but we never gave up. In fact if the spaceman, BILL NELSON had not made the last spectacular catch—routine for most—but spectacular for him, the game would have been tied.

Nonetheless, the public must know that by the end of two innings, after MAC SWEENEY broke his thumb, we only had eight players.

The Democrats offered us a player, but his wheelchair broke down on the way to our dugout. So we had to call CARL PURSELL out of retirement,

We drew our sabres and rode valiantly into the valley of death, but the outcome was the same as it was outside Sevastopol over a 100 years ago. We charged headlong into the never-ending flow of Democrats to a heroic defeat.

I want to thank all my players, they gave it all. We were outmanned and outgunned. I now know how Custer felt at the Little Bighorn. This time it wasn't Crazy Horse and Sitting Bull, but BULL CHAPPELL and CRAZY RUSSO. But the dust of game settled quickly. We sat down afterwards and smoked a "peace" cigar.

Mr. Speaker, I'd recommend we play a similar game to settle the fiscal matters before us so we can go home. But just as we found in last night's game we are surrounded on all sides.

The SPEAKER. The next game is the first Tuesday in November.

□ 1120

AIR CARRIER ACCESS ACT OF 1986

Mr. MINETA. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation be discharged from further consideration of the Senate bill (S. 2703) to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. HAMMERSCHMIDT. Reserving the right to object, Mr. Speaker, under my reservation I yield to the distinguished chairman of the Aviation Subcommittee, the gentleman from California [Mr. MINETA] to explain his request to the Members of the House.

Mr. MINETA. Mr. Speaker, I thank my distinguished colleague from Arkansas for yielding.

The bill now before us, S. 2703, will help ensure that airlines do not discriminate against handicapped passengers.

During the past year I had a number of meetings with representatives of handicapped groups and I have been concerned with the special difficulties which handicapped persons sometimes face when they travel. One cause of these difficulties appears to be that there is considerable confusion among airlines and their employees about the obligations of an airline to furnish the same air transportation services to the handicapped as are furnished to other passengers. The confusion has been increased by a recent Supreme Court decision which ruled that nonsubsidized airlines are not subject to the requirements of section 504 of the Rehabilitation Act of 1973 prohibiting discrimination against the handicapped.

The bill now before us, S. 2703, will make it clear that airlines may not discriminate against handicapped persons. The bill requires the Secretary of Transportation to enact regulations to ensure that handicapped passengers are treated fairly and are not subject to discrimination.

In addition, we expect the Secretary of Transportation to review the procedures for transporting the handicapped which the airlines have filed with the Federal Aviation Administration. The review will ensure that airline procedures do not discriminate and impose only those restrictions necessary for safety.

In carrying out its responsibilities DOT should bear in mind that all disabilities are not equally limiting and that many handicapped individuals are able to use air transportation in precisely the same manner as travelers who are not handicapped. DOT should ensure that handicapped persons will receive air transportation services geared to their capabilities.

The legislation now before us is similar to H.R. 5274 which was introduced in the House by my distinguished colleague from Arkansas. H.R. 5274 is cosponsored by 33 of our colleagues. The bill is supported by the Departments of Justice and Transportation, and by a large number of organizations representing the disabled.

In conclusion, I strongly believe that handicapped passengers are entitled to take full advantage of the mobility afforded by air transportation and that handicapped persons are entitled to be treated with dignity when they travel. The legislation which we are considering will help ensure that handicapped passengers can travel without any special problems arising from their handicapped status.

Mr. HAMMERSCHMIDT. Further reserving the right to object, Mr. Speaker, I want to thank my friend for his explanation.

Mr. Speaker, I rise in support of this bill. I am pleased that we are moving quickly to address the problems of handicapped air travelers.

Two years ago, after extensive hearings, we moved to pass the Civil Aeronautics Board [CAB] Sunset Act. The purpose of that legislation was to ensure that rules to protect airline passengers would continue to be enforced by the Department of Transportation [DOT]. One of the regulations we sought to preserve was the rule that prohibited discrimination against handicapped airline passengers.

Unfortunately, our efforts on behalf of the handicapped were set back by the recent Supreme Court decision in the case of Paralyzed Veterans of America versus DOT. In that case, the Court decided that the Rehabilitation Act, which prohibits discrimination against the handicapped, did not apply to air travel.

As a result, the obligation of airlines to carry handicapped passengers without discrimination has been thrown into doubt. While I believe that the CAB Sunset Act imposes obligations on airlines with respect to the handicapped, it is apparent that further legislation is needed to make this clear.

That is why I am pleased to support S. 2703 which passed the other body unanimously. This bill is very similar to the bill I introduced, H.R. 5274. Both state explicitly that airlines may not discriminate against handicapped individuals. Neither would impose any financial burdens on the airlines. In order to ensure that all air travelers receive the necessary protections as soon as possible, I favor the passage of S. 2703 at this time.

There is one difference between the two bills that should be noted. H.R. 5274 requires DOT to review existing airline policies to ensure that they are not discriminatory. This review is not required by S. 2703, the bill before us today.

Nevertheless, I would urge DOT to undertake this review. Such a review could help root out many of the problems and inconsistencies that handicapped travelers now face when dealing with the airlines.

Mr. Speaker, I need not remind my colleagues that many people became handicapped as a result of injuries received while serving their country. Others are handicapped through no fault of their own. They should all be able to travel by air without discrimination like any other American.

The bill before us today has widespread support. The administration supports it. The airlines, while claiming that they do not discriminate, are not opposing this bill. The Paralyzed Veterans of America have worked tirelessly to see that this bill is passed. I also have letters of support from the Epilepsy Foundation of America, Goodwill Industries, National Easter Seal Society, Military Order of the Purple Heart, Handicapped Organized Women [HOW], and many others who support this bill.

I would like to take this opportunity to thank Chairman MINETA for his support on this issue.

I urge my colleagues to support this bill.

Mr. ACKERMAN. Mr. Speaker, I rise in strong support of S. 2703, legislation that would prohibit discrimination against handicapped persons by air carriers. I am particularly pleased to be working with the distinguished majority leader in the Senate, Mr. DOLE, toward a common goal of eliminating discrimination and providing airline accessibility for all air travelers.

As you know, Mr. Speaker, last summer I introduced similar legislation to amend the Federal Aviation Act immediately following the Supreme Court ruling that major airlines cannot be forced to comply with the Rehabilitation Act, because they do not receive direct Federal assistance. The ruling, in keeping with the precedent set by the Court's controversial Grove City ruling, was a major setback for all people with disabilities and a shameful retreat in our national effort to combat discrimination in this country.

As a result of the ruling, millions of Americans continue to be subjected to humiliating and just plain offensive airline policies. Sometimes physically disabled people are forced to wait in a separate area before they may board an aircraft. At times they are charged more than able-bodied passengers. I've heard from a number of people who were not permitted to board flights at all because of their disability. At a time when technology permits disabled citizens unlimited opportunities to participate in America's mainstream activities, it is intolerable that airlines continue to allow dis-

abled individuals to be singled out for discriminatory treatment.

The unfortunate Supreme Court decision left Congress no choice but to change the law and undo the damage that the Court has done. Although I believe additional reforms may be needed to ensure that disabled individuals are able to use an airline's services, equipment and facilities, and obtain equitable relief from an airline which violates the law and injustly discriminates, I believe the legislation before us is a good basis from which to begin our efforts to eliminate inconsistent and unfair airline procedures. I strongly urge my colleagues to support the measure before us, so that there will no longer be any excuse for treating handicapped Americans as second-class citizens when it comes to air travel.

Mr. HOWARD. Mr. Speaker, I rise in strong support of S. 2703, a bill that will require the Secretary of Transportation to promulgate regulations to ensure that handicapped airline passengers are treated fairly and are not subjected to discrimination by the airlines.

The Nation's economy, as well as its political, social, and cultural life, is very closely tied to the air transportation system. Equal and nondiscriminatory access to the air transportation system is vital to economic opportunity for all citizens and to participation in the political, social, and cultural life of our country.

The bill enjoys wide support in the Congress, the executive branch, and among a large number of organizations involved in issues affecting handicapped persons.

Finally, Mr. Speaker, I am proud that it is the Committee on Public Works and Transportation that brings this bill before the House. I urged my colleagues to support this legislation.

Mr. EDGAR. Mr. Speaker, on behalf of 36 million disabled Americans, many of whom reside in the State of Pennsylvania, I rise in support of the "Air Carrier Access Act of 1986." This legislation is in response to the recent Supreme Court decision in the case of U.S. Department of Transportation versus Paralyzed Veterans of America, which held that nonfederally subsidized commercial air carriers are not required to adhere to antidiscriminatory statutes under current law.

The result is that commercial airlines can continue to single out disabled individuals for disparate and discriminatory treatment. It is important to emphasize that this legislation has nothing whatsoever to do with safety regulations. The injustices this legislation will remedy are humiliating and degrading regulations or practices by commercial air carriers or its personnel. For instance, there have been cases where handicapped passengers were segregated on flights and in separate waiting areas and were also charged greater airfare than others. Handicapped individuals have witnessed their expensive wheelchairs and other necessary medical equipment lost, damaged or misplaced. Certain carriers even go so far as to require disabled travelers to sit on blankets in case of alleged incontinence, a practice which I find particularly degrading. Some airline carriers require ticketing so far in advance that the independence of all disabled travelers and in particular disabled individuals of the business community find it nearly impossible to carry out the daily functions of a busy, mobile society.

Mr. Speaker, this legislation is acceptable to the Air Transport Association and the administration has formally supported it by letters of endorsement from the Secretary of Transportation and the Attorney General. In addition, this measure is endorsed by many, many organizations serving the needs of, and representing the disabled community, veterans groups, and other interested parties.

The other body has already passed, by unanimous consent, a similar bill, S. 2703. I call upon my colleagues to support this bipartisan measure and ensure that handicapped persons are not subjected to humiliating and degrading practices by commercial airlines.

Mr. Speaker, in closing I would like to commend my distinguished colleagues; the gentleman from Arkansas [Mr. HAMMERSCHMIDT] and the gentleman from California [Mr. MINETA] for introducing H.R. 5274 in the House of Representatives. It is particularly fitting to enact legislation of this nature as we are approaching the fourth year in the United Nations and National "Decade of the Disabled." I urge consideration of this important legislation without delay.

Mr. SNYDER. Mr. Speaker, I rise in strong support of S. 2703, which would prohibit air carriers from discriminating against handicapped individuals in the provision of air transportation. According to this legislation, the Secretary of Transportation would be required to promulgate regulations within 120 days after the date of enactment of the act to ensure nondiscriminatory treatment by air carriers of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers.

In June of this year, the U.S. Supreme Court held in the case of DOT versus Paralyzed Veterans of America that section 504 of the Rehabilitation Act of 1973 does not apply to commercial air carriers not receiving direct Federal financial assistance. Because of this decision, it became unclear as to whether or not the Federal Aviation Act of 1958 was sufficient statutory authority to support comprehensive antidiscrimination regulations in furtherance of the air carrier's legal duty to provide safe and adequate service. Because of this uncertainty, handicapped air travelers could find themselves subjected to discriminatory practices by air carriers.

Over the past several months, we have been informed of numerous instances where certain handicapped individuals have been forced to comply with airline procedures which seemingly are unrelated to safety. Furthermore, these procedures vary from airline to airline, thus presenting an intolerable and inconsistent situation whereby handicapped air travelers have no idea as to how they will be treated from one airline to the next.

I believe the Senate bill now before us will provide much needed relief to the 36 million handicapped Americans in this country. By making it clear through this legislation that no air carrier can discriminate against a handicapped individual in the provision of air transportation, the handicapped community will now have a firm basis upon which to travel freely without being subjected to discriminatory practices.

As I mentioned before, the bill gives the Secretary of Transportation 120 days to enact regulations prohibiting discrimination against handicapped individuals. I would expect that these regulations will be drafted in such a way as to assure that handicapped individuals are treated consistently from airline to airline. Clearly, it is not too much to ask for the airline industry to adopt a predictable and consistent set of procedures for handling handicapped individuals.

Mr. Speaker, travel by air is a means of transportation which should be make available to all Americans without discrimination. Air travel is not a luxury but a necessity in today's world, and there is no reason whatsoever to treat the handicapped as second-class citizens. I urge my colleagues to support this legislation.

I would like to take this opportunity to commend the gentleman from Arkansas [Mr. HAMMERSCHMIDT] and the gentleman from California [Mr. MINETA] for their leadership in promoting passage of this legislation.

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2703

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Air Carrier Access Act of 1986".

SEC. 2. (a) Section 404 of the Federal Aviation Act of 1958 (49 U.S.C 1374) is amended by adding at the end thereof the following new subsection:

"PROHIBITION ON DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS

"(c)(1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.

"(2) For the purposes of paragraph (1) of this subsection the term 'handicapped individual' means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.".

(b) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading

"SEC. 404. Rates for carriage of persons and property.

is amended by adding at the end thereof:

"(c) Prohibition on discrimination against handicapped individuals.".

SEC. 3. Within one hundred and twenty days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers.

The Senate bill was ordered to be read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MINETA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

PERMISSION TO CHANGE CONFEREES ON S. 2638, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1987

Mr. ASPIN. Mr. Speaker, I ask unanimous consent for a change in the conferees on the Senate bill, S. 2638, the National Defense Authorization Act for fiscal year 1987, in section 911 of the bill. As I understand, on the Republican side this has been worked out. There would be a change, appointing the gentleman from Michigan [Mr. BROOMFIELD] in place of the gentleman from Pennsylvania [Mr. MCDADE] as a conferee for the consideration of sections 911 and 936 of the House amendments and modifications committed to conference.

The SPEAKER. Without objection, the gentleman from Pennsylvania [Mr. MCDADE] is excused and the gentleman from Michigan [Mr. BROOMFIELD] will take his place.

There was no objection.

The SPEAKER. The Clerk will notify the Senate of the change in conferees.

MOTION TO CLOSE CONFERENCE COMMITTEE MEETINGS ON S. 2638, NATIONAL DEFENSE AUTHORIZATION ACT, 1987, WHEN CLASSIFIED NATIONAL SECURITY INFORMATION IS UNDER CONSIDERATION

Mr. ASPIN. Mr. Speaker, I offer a privileged motion.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. ASPIN moves that, pursuant to clause 6(a) of rule XXVIII, conference meetings between the House and the Senate on S. 2638, the National Defense Authorization Act for fiscal year 1987, may be closed to the public at such times as classified national security information may come under consideration; Provided, however, that any sitting Member of Congress shall have the right to attend any closed or open meeting.

The SPEAKER. The question is on the motion offered by the gentleman from Wisconsin [Mr. ASPIN].

On this motion, the vote must be taken by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 391, nays 2, not voting 38, as follows:

[Roll No. 389]

YEAS—391

Ackerman	Downey	Kostmayer
Akaka	Dreier	Kramer
Alexander	Duncan	LaFalce
Anderson	Durbin	Lagomarsino
Andrews	Dwyer	Lantos
Annunzio	Dymally	Latta
Anthony	Dyson	Leach (IA)
Applegate	Eckart (OH)	Leath (TX)
Archer	Eckert (NY)	Lehman (CA)
Armey	Edwards (CA)	Lehman (FL)
Aspin	Edwards (OK)	Lent
Atkins	Emerson	Levin (MI)
AuCoin	English	Levine (CA)
Badham	Erdreich	Lewis (CA)
Barnard	Evans (IA)	Lewis (FL)
Barnes	Evans (IL)	Lightfoot
Bartlett	Fascell	Lipinski
Barton	Fawell	Lloyd
Bateman	Fazio	Loeffler
Bates	Feighan	Long
Bedell	Fiedler	Lott
Beilenson	Fields	Lowery (CA)
Bennett	Flippo	Luken
Bentley	Florio	Lundine
Bereuter	Foglietta	Lungren
Berman	Foley	Mack
Bevill	Ford (MI)	MacKay
Biaggi	Frank	Madigan
Bilirakis	Franklin	Manton
Bliley	Frenzel	Markey
Boehlert	Frost	Marlenee
Boggs	Fuqua	Martin (IL)
Boner (TN)	Gallo	Martin (NY)
Bonior (MI)	Garcia	Martinez
Bonker	Gaydos	Matsui
Borski	Gejdenson	Mavroules
Bosco	Gekas	Mazzoli
Boucher	Gephardt	McCain
Boulter	Gibbons	McCandless
Boxer	Gilman	McCloskey
Brooks	Gingrich	McCollum
Broomfield	Glickman	McCurdy
Brown (CA)	Goodling	McDade
Brown (CO)	Gordon	McEwen
Bruce	Gradison	McGrath
Bryant	Gray (IL)	McHugh
Burton (IN)	Gray (PA)	McKernan
Bustamante	Green	McKinney
Byron	Gregg	McMillan
Carper	Guarini	Meyers
Carr	Gunderson	Mica
Chandler	Hall (OH)	Michel
Chapman	Hall, Ralph	Mikulski
Chappell	Hamilton	Miller (CA)
Chappie	Hammerschmidt	Miller (OH)
Cheney	Hansen	Miller (WA)
Clay	Hatcher	Mineta
Clinger	Hawkins	Mitchell
Coats	Hayes	Moakley
Cobey	Hefner	Molinari
Coble	Hendon	Mollohan
Coelho	Henry	Monson
Coleman (MO)	Hertel	Moody
Coleman (TX)	Hiler	Moorhead
Collins	Hillis	Morrison (CT)
Combest	Holt	Morrison (WA)
Conte	Hopkins	Murphy
Conyers	Horton	Murtha
Cooper	Howard	Myers
Coughlin	Hoyer	Natcher
Courter	Hubbard	Neal
Coyne	Huckaby	Nelson
Craig	Hughes	Nichols
Crane	Hunter	Nielson
Crockett	Hutto	Nowak
Daniel	Hyde	Oakar
Dannemeyer	Jacobs	Oberstar
Darden	Jeffords	Obey
Daschle	Jenkins	Olin
Daub	Johnson	Ortiz
Davis	Jones (NC)	Oxley
de la Garza	Jones (OK)	Packard
DeLay	Jones (TN)	Panetta
Derrick	Kanjorski	Parris
DeWine	Kaptur	Pashayan
Dicks	Kasich	Pease
Dingell	Kastenmeier	Penny
DioGuardi	Kemp	Pepper
Dixon	Kennelly	Perkins
Donnelly	Kildee	Petri
Dorgan (ND)	Kleczka	Pickle
Dornan (CA)	Kolbe	Porter
Dowdy	Kolter	Price
Quillen	Sisisky	Torres
Rahall	Skeen	Torricelli
Ray	Skelton	Towns
Regula	Slattery	Traficant
Reid	Slaughter	Udall
Richardson	Smith (FL)	Valentine
Ridge	Smith (IA)	Vander Jagt
Rinaldo	Smith (NE)	Vento
Ritter	Smith (NJ)	Visclosky
Roberts	Smith, Denny (OR)	Volkmer
Robinson	Smith, Robert (NH)	Vucanovich
Rodino	Smith, Robert (OR)	Walgren
Roe	Snowe	Walker
Roemer	Snyder	Watkins
Rogers	Solarz	Waxman
Rostenkowski	Solomon	Weaver
Roth	Spence	Weber
Roukema	Spratt	Weiss
Rowland (CT)	St Germain	Wheat
Rowland (GA)	Staggers	Whitehurst
Roybal	Stallings	Whitley
Rudd	Stangeland	Whittaker
Russo	Stark	Whitten
Sabo	Stenholm	Wirth
Saxton	Strang	Wise
Scheuer	Studds	Wolf
Schneider	Stump	Wolpe
Schroeder	Sundquist	Wortley
Schulze	Swindall	Wright
Schumer	Synar	Wyden
Seiberling	Tallon	Wylie
Sensenbrenner	Tauke	Yates
Sharp	Tauzin	Yatron
Shaw	Taylor	Young (AK)
Shelby	Thomas (CA)	Young (FL)
Shumway	Thomas (GA)	Young (MO)
Shuster		Zschau
Sikorski		
Siljander		

NAYS—2

Gonzalez	Lowry (WA)

NOT VOTING—38

Boland	Grotberg	Rose
Breaux	Hartnett	Savage
Burton (CA)	Ireland	Schaefer
Callahan	Kindness	Schuette
Campbell	Leland	Stokes
Carney	Livingston	Stratton
Dellums	Lujan	Sweeney
Dickinson	Montgomery	Swift
Early	Moore	Traxler
Edgar	Mrazek	Waldon
Fish	Owens	Williams
Ford (TN)	Pursell	Wilson
Fowler	Rangel	

□ 1145

Mr. GONZALEZ changed his vote from "yea" to "nay."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

RELATING TO TELEPHONE SERVICES FOR SENATORS

Mr. ANNUNZIO. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the Senate bill (S. 2759) relating to telephone services for Senators, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. WHITLEY). Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2759

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1205(a) of the Supplemental Appropriations Act, 1984 (2 U.S.C. 58a) is amended by striking out "(except services for which the charge is based on the amount of time the service is used)".

Mr. ANNUNZIO. Mr. Speaker, yesterday the Committee on House Administration unanimously ordered S. 2759 reported from the committee. And as a matter of comity, I am bringing the bill to the floor at this time.

The Senate Sergeant at Arms currently pays the cost of FTS service in each Senator's State offices. This bill merely allows the Sergeant at Arms to pay the cost of alternative service, not to exceed the cost of FTS, where there is improved accessibility, or transmission quality is better than FTS, or where it is more economical than FTS.

As a matter of regular practice, the Senate enacts these changes to its allowance provisions. As a matter of comity we should approve this matter, which affects only the internal operations of the Senate.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FRENZEL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

MINIMUM ALTITUDE FOR AIRCRAFT FLYING OVER NATIONAL PARK SYSTEM UNITS

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 533 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 533

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4430) to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national park system units, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall continue not to exceed one hour, thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs and thirty minutes to be equally divided and controlled by the Chairman and ranking minority member of the Committee on Public Works and Transportation, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interior and Insular Affairs as an original bill for the purpose of amendment under the five-minute rule, and each section of said substitute shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 7 of rule 16 are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from California [Mr. BEILENSON] is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Mississippi [Mr. LOTT], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 533 is an open rule providing for the consideration of H.R. 4430, regarding aircraft flights at low levels over national parks.

The rule provides for 1 hour of general debate, with 30 minutes to be controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs and 30 minutes to be controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation.

The rule makes in order an amendment in the nature of a substitute recommended by the Committee on Interior and Insular Affairs as original text for the purpose of amendment. The substitute shall be considered under the 5-minute rule by sections, with each section considered as read.

In addition, the resolution waives points of order against the substitute for failure to comply with the provisions of clause 7 of rule XVI, the germaneness waiver. The bill, as introduced, was a simple study measure designed to examine possible aircraft limitations over some national parks where air tour and recreational flights are taking place. During consideration of the bill, sections 2 and 3 were added to mandate certain aircraft restrictions at the Grand Canyon, Yosemite and Haleakala National Parks. These new provisions were not included when the bill was originally introduced, and as a result a waiver of clause 7 of rule XVI is required.

Finally, House Resolution 533 provides for one motion to recommit with or without instructions.

H.R. 4430 is a bill requiring the Secretary of the Interior to conduct a 3-year study to determine the appropriate minimum altitude for aircraft flying over certain national parks. It is an important bill which addresses a growing problem of noise and danger from uncontrolled aircraft over many of our parks. The study would target 10 park units and would include an evaluation of the value of air tours, the impact of noise from aircraft, and the safety of the public and the parks.

Tragically, the incident which recently cost the lives of 26 persons at the Grand Canyon was the impetus for adding language to the bill which would begin controlling aircraft flights in and around three of our parks. H.R. 4430, as amended, would set minimum flight levels at Yosemite and Haleakala Parks. It would ban flights below the canyon rim at the Grand Canyon, except those necessary for emergency and administrative purposes, and would require the National Park Service to submit to the FAA an aircraft management plan for prompt review and implementation.

Mr. Speaker, H.R. 4430 would begin the process of putting sensible controls on low-flying aircraft over our National Park System. It strikes a reasonable balance between the need to preserve the wilderness experience for visitors who want to hike or climb in the parks against the needs of those who wish to view the scenery from the air. This is an important bill, and I urge adoption of House Resolution 533 so that we can proceed to its timely consideration.

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

□ 1155

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is an open rule and I urge its adoption.

H.R. 4430 comes forward in response to the increasing number of aircraft flights within our national parks. At the Rules Committee hearing on this bill, we received testimony that in the Grand Canyon alone, there are about 50,000 aircraft flights per year, and the number is rising. One can well imagine the affect these flights have on the noise level in the Grand Canyon and other parks. Also, Members will recall the recent tragic air crash over the Grand Canyon in which 26 people were killed. In the past 5 years, 54 people have been killed in air accidents at Grand Canyon.

H.R. 4430 does a number of things. It requires the Secretary of the Interior to conduct a study to determine altitude limits for aircraft over the national parks and to establish strict controls over aircraft flights at Grand Canyon, Yosemite, and Haleakala.

So, this is perhaps a minor bill but it is an important one. This is an open

rule permitting a full and fair debate. I ask for a "yes" vote on the rule so that we may begin consideration of the bill.

Mr. Speaker, I yield back the balance of my time.

Mr. BEILENSON. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 533 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4430.

□ 1158

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4430) to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over National Park System units, with Mr. PICKLE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Minnesota [Mr. VENTO] will be recognized for 15 minutes, the gentleman from Arizona [Mr. MCCAIN] will be recognized for 15 minutes, the gentleman from California [Mr. MINETA] will be recognized for 15 minutes, and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, the controversy over aircraft flights at low elevation above certain units of the National Park System has existed for several years. Because of the severity of the problem, the Subcommittee on Public Lands and National Parks urged the Federal Aviation Administration [FAA] and the National Park Service [NPS] to work together on the problem. A memorandum of agreement was signed in September 1984 which was designed to promote compliance with the FAA advisory rule to maintain 2,000-feet elevation above units of the National Park System. While I understand these efforts have had positive effects at some units, especially with general aviation pilots, there has been increasing concern expressed about other park units and about the flight patterns of the rapidly expanding scenic overflight industry.

Even though numerous complaints are made each year by park users offended by noise intrusion of aircraft or expressing concern over the safety of rock climbers, horseback riders, and other park users, NPS has not conducted any systematic study of the park system to determine how widespread and how severe the problem is. Neither has there been any systematic study of the noise levels of different types of aircraft flying at different elevations and the impact of such noise on park users or resources.

Mr. Chairman, H.R. 4430 requires a 3-year study of the National Park System with indepth research limited to 10 park units and would include an evaluation of the values of overflights as well as the adverse impacts and would provide for requirements that the Administrator of the FAA evaluate the study and recommendations for possible problems to the safety of aircraft operations.

Also the FAA would be required to submit a study of aviation safety related to overflights of selected park units.

Aircraft overflight restrictions are required for Yosemite and Haleakala National Parks. At Yosemite the FAA advisory to fly on visual flight rules at 2,000 feet above national parks would be made mandatory and at Haleakala, aircraft would be required to operate at or above a 9,500-foot elevation over the Haleakala crater and certain other features in the park. The restrictions imposed on overflights of Yosemite and Haleakala would terminate 2 years after submittal of the required report to the Congress.

Additionally, language is included to require joint action by the National Park Service and the Federal Aviation Administration to establish overflight controls at Grand Canyon National Park including a ban on flights below the canyon rim.

The committee has worked closely with the Subcommittee on Aviation of the Public Works Committee to assure that this bill reflected the best possible approach to resolving the problems of overflights of national parks and include equitable involvement of both the National Park Service and the Federal Aviation Administration.

I believe we have accomplished that goal.

Mr. Chairman, this bill has been the product of a truly broad based, bipartisan, cooperative effort on the part of several of our colleagues. The chairman of the Interior and Insular Affairs Committee, MO UDALL and the other outstanding member from Arizona, JOHN MCCAIN put in many hours working out a solution to the conflicting and controversial problems associated with aircraft overflights at Grand Canyon National Park. I am very appreciative of the help they have given me.

Of course we would not be here today if it had not been for the foresight and interest of our colleague TONY COELHO, in protecting the great resources of our national parks. He not only introduced the bill but has been unrelenting in his efforts to craft this excellent bill that we have before us today. I want to commend the gentleman for his knowledge and hard work. Our former colleague, Ceci Heftel also dedicated many hours to this effort and was very helpful.

I am especially appreciative of the cooperation and assistance we have received from the chairman of the Aviation Subcommittee, NORM MINETA. His understanding and commitment to developing sound public policy was crucial to bringing the bill to the House floor. The list of supporter wouldn't be complete without mention of SALA BURTON and her early concerns as a former member of the House Interior Committee—voicing strong objection to the aircraft overflights of our national parks and monuments, it is indeed this type of support which has guided this measure through the House process.

Mr. Chairman, this is a good bill, a bill that is needed and one we can all support.

Mr. Chairman, I reserve the balance of my time.

Mr. MCCAIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 4430, a measure which requires the National Park Service to evaluate the impact of air traffic on our National Park System. Chairman VENTO has already explained the salient features of this bill. I would like to devote the balance of my remarks to that aspect of the bill dealing with the Grand Canyon. However, before I turn to that subject, I would like to make a few general comments.

Our national heritage, as embodied in our National Park System, used to be self-regulating. Particularly when we talk about western parks. By and large, they were situated out in the middle of nowhere with few humans, let alone human activity, around. Well, the middle of nowhere is increasingly on the edge of somewhere. More and more, human activities are encroaching on our national parks. This, I believe, requires a more active and forward looking role on the part of those charged with the stewardship of our National Park System.

The measure before us represents such a role. The Interior Committee, in approving this legislation, has not stated that aircraft and national parks are incompatible, nor has it found air tour activities to be inappropriate. What it has done is recognize that the entities are making use of the park in some fashion, and that, like any other activity in our parks, its impact on

other users must be measured and evaluated. Our national parks, for the most part, are not wilderness areas, but rather are meant to be seen and experienced by the American public. Aircraft use is one way to do this. However, it must be harmonized with other uses.

When the Interior Committee first took up H.R. 4430, I joined with Chairman UDALL to author an amendment which dealt specifically with the Grand Canyon. I am sure that everyone is award of the recent tragic event over the Grand Canyon in which a collision of two aircraft, flying below the rim of the canyon, resulted in the deaths of 25 people. In the time between the Interior Committee reporting out this measure and the House's consideration of it, two more people have died in yet another accident in the canyon. In fact, over the last 5 years, there have been 12 accidents resulting in the deaths of 56 people.

One year ago a report by National Park Service planners in Grand Canyon National Park made the following statement, "The mixture over Grand Canyon of numerous scheduled air-tour operator flights with randomly flying recreational pilots creates a high possibility for midair collisions." This was not the first such warning. A year earlier, after a 1984 air crash killed 10 people, the National Transportation Safety Board called for the Federal Aviation Administration to control sightseeing flights over the canyon.

While the safety issue is a very serious one, it is by no means the only one. Flights at the Grand Canyon currently number 50,000 a year, and they are expected to increase. These flights are having a significant affect on the natural quiet of the canyon. For the last year, the National Park Service, under the direction of the Superintendent of Grand Canyon National Park, Dick Marks, has been studying the issue of noise from aircraft operations over the Park and its effect on the natural quiet and experience of the park. They have been doing so under the legislative direction of the Grand Canyon Enlargement Act of 1974. A recent Park Service survey found that aircraft noise was audible up to 95 percent of the time during the day, with an average of 50 percent of the day in all locations monitored by the Park Service; 70–80 percent of the back country visitors stated that their experience was degraded by aircraft.

Mr. Chairman, sometime at the end of this month or the beginning of the next, the National Park Service will issue its recommendations to the Administrator of the FAA regarding the appropriate action that should be taken to control aircraft use of the park. Of course, I wholeheartedly support this effort. We control everything from dogs to bikes to campfires at the park; I see no reason aircraft should be an exception. This legislation directs the FAA to evaluate the Park Service recommendations as to their impact on safety, make the necessary changes if any need to be made, then implement the management plan.

I realize the FAA is not enamoured with the Park Service's involvement in this area. However, I would hope they realize that, just as the National Park Service does not quite have the resources to analyze aircraft safety issues, the FAA does not possess the expertise to evaluate the conditions of our natural resources. I am very happy to see that the FAA has begun taking action on this matter. It is my hope that they and the Park Service can join together and produce a plan which protects the canyon as well as the flying public.

Let me close, Mr. Chairman, with the following observation. The Grand Canyon has been described in a number of ways: one of the Seven Wonders of the World, one of our Nation's crown jewels, Nature's masterpiece. But I see it as a symbol of our commitment to our natural heritage, not only for today, but for our children and their children. We must be willing to take the steps necessary to maintain its integrity. to keep alive the true meaning of a Grand Canyon experience. If we are to keep our commitment to the American people to maintain a viable park system, I urge all my colleagues to give this measure their enthusiastic support.

□ 1205

The CHAIRMAN. The gentleman from Arkansas [Mr. HAMMERSCHMIDT] is recognized for 15 minutes.

Mr. HAMMERSCHMIDT. Mr. Chairman, I yield myself such time as I may consume. For the last few years, there has been a growing controversy about aircraft overflights of the Grand Canyon and other national parks. Environmentalists, backpackers, and hikers complain that aircraft noise ruins their enjoyment of the national parks. Aircraft owners, particularly those offering sightseeing tours of the parks, say that for many tourists a flight over the park is the best way to see it and enjoy it. This controversy came to a head recently as a result of the tragic aircraft collision over the Grand Canyon.

The bill before us today would direct the Secretary of the Interior to study this problem. The study would consider the proper minimum altitude that should be maintained while flying over our national parks. The study would focus on three national parks, including the Grand Canyon.

The bill also requires the Secretary of the Interior to submit a plan for the management of airspace over the Grand Canyon to the FAA. The FAA then must implement this plan unless it finds that it would adversely affect aviation safety.

The crucial point here is that the FAA has the primary role in establishing airspace restrictions. Although some may disagree with its previous approach to this issue, the fact remains that only the FAA has the background and technical expertise to deal with these sorts of restrictions. I don't believe we should support a bill that gives the final say over airspace restrictions to a nonaviation agency.

I am therefore pleased that this bill keeps the ultimate say over airspace restrictions at our national parks in the hands of the FAA.

I further think that I ought to relate to my colleagues what the administration's position is on this bill.

While the administration shares congressional concerns regarding overflights of national parks, it opposes H.R. 4430 as overly restrictive and unnecessary. Current law already authorizes the Department of the Interior to conduct studies such as that required by the bill and authorizes the Department of Transportation to impose whatever restrictions prove necessary to protect park resources and visitors. New flight restrictions at Grand Canyon National Park are being developed by the Department of Transportation under existing authorities. The administration prefers these new restrictions to be developed under established procedures, instead of the special requirements of H.R. 4430, which would confuse regulatory authority over airspace by granting the Department of the Interior primary authority for developing air traffic restrictions at Grand Canyon National Park.

Mr. Chairman, I reserve the balance of my time.

Mr. VENTO. Mr. Chairman, I yield 2 minutes to the gentleman from Nevada [Mr. REID].

Mr. REID. Mr. Chairman, I rise in support of H.R. 4430, a bill to address the problems associated with aircraft flights over our national parks.

When introduced in March, the legislation focused upon the need to identify problems that are created when aircraft fly over our national parks. Aircraft sound adversely affects the natural quiet and visitor experience and may have negative impact on the natural, historical and cultural resources of each park as well. Following the tragic June 18 midair collision over the Grand Canyon that killed 25 people, the issue of aircraft safety was brought to the forefront.

Specifically the legislation requires the National Park Service and the Federal Aviation Administration to conduct a study to determine the minimum altitude that aircraft should maintain when flying over units of the National Park System, and to make

recommendations for legislative or regulatory action. Restrictions on aircraft flights over Yosemite National Park and Haleakala National Park are also established. In addition, H.R. 4430 requires the Park Service to submit a final plan for the management of air traffic over the Grand Canyon to the FAA providing for "substantial restoration of the natural quiet of the park." Under the plan, flights below the rim of the canyon, except for emergency purposes, are prohibited.

Tour operators in my district have raised some concerns about the legislation, particularly the blanket prohibition of flights below the rim. I agree that an overall ban is questionable and feel these legitimate concerns need to be considered.

Last year, approximately 400,000 tourists paid for scenic tours of the Grand Canyon. Flight operators estimate the tour business at Grand Canyon alone is a $50 million per year industry. Many of the flights originate from Las Vegas, NV.

Aside from the economic benefits, commercial air tours provide a unique way for thousands of people of all ages and infirmities to explore the Grand Canyon each year. Flying sightseers leave no trash or human refuse behind.

The tour operators point out the Grand Canyon is almost 300 miles long and many parts of the canyon are not accessible. Tour operators maintain they are willing to apply judicious routing methods in sound-sensitive areas and still provide a safe flight below the rim in certain areas.

When reporting the bill, the Interior and Insular Affairs Committe did not define "below the rim," but instead calls for the development of a "practical and commonsense definition" to meet the bill's objectives to restore the natural quiet of the Grand Canyon and provide for public safety.

The valid concerns of the air tour industry must be taken into consideration by the National Park Service and the Federal Avaiation Administration while developing the final management plan for the Grand Canyon. I pledge to work with the Park Service and the FAA to ensure that a well-balanced solution be reached to protect our treasured park areas and still allow for visitor safety and enjoyment.

Mr. McCAIN. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Chairman, I rise in support of H.R. 4430. This bill requires a study to identify the problems associated with aircraft overflights and the impacts caused by various types of aircraft, including sightseeing, military, and commercial. The study will include research at 10 units of the National Park System including Grand Canyon, Yosemite, Hawaii Volcanoes, and Glacier National Parks and Mount Rushmore National Memorial. The study report, which will include recommendations by the Federal Aviation Administration regarding safety, is to be completed and submitted to Congress within 3 years. The bill also provides that during the study period and for 2 years after its completion, mandatory altitude restrictions will apply in the Grand Canyon, Yosemite, and Haleakala National Parks.

I believe this is a meritorious bill in that it seeks to study a serious problem. In recent years, concerns have been expressed regarding the impacts of aircraft overflights in terms of noise and safety on the resources of our National Park System and the visiting public. These concerns were heightened by the tragic midair collision over the Grand Canyon in June. Therefore, I commend the chairman of the committee, Mr. UDALL and the other distinguished member of the committee from Arizona, Mr. MCCAIN, for their diligent efforts in responding to the problems at the Grand Canyon and working to develop a viable solution. They have expended a great deal of hard work and time on this legislation and I thank them for that. Hopefully, the National Park Service's aircraft management plan for the Grand Canyon will be in place shortly and will also address these problems in a more permanent fashion. I also want to commend the bill's sponsor, my colleague from California, Mr. COELHO, for his foresight in recognizing that the overflight issue should be studied and reviewed by Congress, and I want to thank him and the subcommittee chairman, Mr. VENTO, for working with other interested Members to improve this legislation. I do feel the bill was improved in the committee process by several amendments, including one to require that the values of aircraft overflights also be included in the study and one to exempt from the bill's restrictions helicopter operations below the rim of the Grand Canyon for the purpose of transporting river runners to and from the Colorado River.

The many weeks of negotiation on this bill have resulted in a fine piece of legislation. Therefore, Mr. Chairman, I urge all of my colleagues to support H.R. 4430.

The CHAIRMAN. The gentleman from California [Mr. MINETA] is recognized for 15 minutes.

Mr. MINETA. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from California [Mr. COELHO], the author of this legislation.

Mr. COELHO. I thank the gentleman for yielding time to me.

Mr. Chairman, I will not take a great deal of time. I would just like to thank the gentleman from California [Mr. MINETA] and the members of his subcommittee and his full Committee on Public Works and thank the chairman of our subcommittee, the gentleman from Minnesota [Mr. VENTO], and the chairman of the full committee, the gentleman from Arizona [Mr. UDALL], and the Republican side as well for their efforts in helping to get this through, in particular the gentleman from Arizona [Mr. MCCAIN], who was very actively involved in trying to put something together that makes sense.

Mr. Chairman, today the House is considering legislation that is important for preserving our national parks as a place of enjoyment for the thousands of people who visit each year. We are frequently finding that the tranquility our visitors have come to expect from our parks is being shattered by the constant drone of flights over the parks. These flights occur at such low altitudes that they also threaten the very safety of the people on the ground.

The tragedy that occurred earlier this year in the Grand Canyon only reinforced the need to take action to prevent any more needless deaths. It is unfortunate that we often do not act until we are forced to; however, I hope that by passing this bill today, no further accidents will happen at Grand Canyon or other national parks in this country.

My original legislation called only for a study of the problem of overflights in the national parks so we could formulate a policy to control these flights. I am pleased that the Interior Committee agreed with my recommendations to strengthen the bill by placing specific altitude limits over three national parks that are having some of the worst problems—Yosemite, Haleakala, and Grand Canyon National Parks.

I have particular concern about the overflights problem in Yosemite National Park, which is in my district. This bill requires that all aircraft flying over the park stay 2,000 feet above the surface that is within the route of flight. For the purposes of flying over Yosemite Valley, aircraft would be required to stay 2,000 feet over the rim.

I wanted these specific altitude restrictions for Yosemite because complaints about aircraft that are flying low over a number of areas of the park are continuing, despite my previous efforts to resolve this problem.

In 1984, I was able to get officials of the National Park Service and the Federal Aviation Administration to agree on an aircraft advisory for our national parks. This advisory requested that all aircraft maintain at least a 2,000-feet-above-the-ground minimum altitude when flying over national parks.

Unfortunately, this advisory is being ignored in Yosemite National Park

and testimony we received during hearings on this legislation shows that the advisory is being ignored in other national parks.

Allowing pilots to fly wherever they please resulted in the tragic accident at Grand Canyon. Restricting overflights has become not only a matter of protecting the environment in our parks, but also a matter of safety.

I thank my colleagues on the committee, Mr. VENTO, Mr. UDALL, and Mr. MCCAIN, for their hard work in getting this bill to the House floor today. I also appreciate the assistance of our former colleague, Mr. HEFTEL, and the cooperation of the chairman of the Aviation Subcommittee, Mr. MINETA. I urge all Members to support this legislation as a means of bringing some control to the continuing overflights problem.

Mr. MINETA. Mr. Chairman, I yield myself such time as I may consume.

I thank the gentleman from California [Mr. COELHO] for his comments.

Mr. Chairman, I rise in strong support of this legislation, and commend our distinguished colleagues on the Committee on Interior and Insular Affairs and the Interior Subcommittee on National Parks for this fine work on this bill. I also thank them for their most cooperative and constructive efforts in working with the Committee on Public Works and Transportation and the Subcommittee on Aviation to accommodate our interests and concerns. Because of this cooperation, the Committee on Public Works and Transportation, which shares jurisdiction on this legislation, was able to quickly agree to the bill being brought to the floor.

My interest in the problem of overflights of the national parks is nothing new. Three years ago, Congressman SEIBERLING, then chairman of the National Parks Subcommittee, and I urged changes to FAA-recommended operating procedures covering overflights of national parks. The change was to advise pilots to fly 2,000 feet above canyon rims in units of the National Park System for noise abatement reasons. We recognized then, as did the Federal Aviation Administration, that flying below the Canyon rim in national parks, like Grand Canyon and Yosemite, produced noise incompatible with the purpose of a national park—that being establishment of areas where citizens can enjoy our Nation's natural beauty and quiet.

This change in recommended operating procedures has had a positive benefit, but it has become apparent that we now need to go beyond recommendations or advice to the pilot community, because there continue to be abuses resulting in environmental degradation of some units of the national parks.

I will not reiterate what my colleagues from the Interior Committee are proposing in this legislation. They have already ably described the comprehensive approach of study and regulation of airspace over specific units of the national parks.

I would like to take a few moments to describe how some of my initial concerns have been addressed. I began supporting wholeheartedly the concept of tighter regulation of the airspace over the Grand Canyon, Yosemite, and the Hawaiian Parks. However, I believe that when we decide to regulate the airspace over our national parks for environmental reasons that we must be crystal clear as to who is doing the regulating and who is enforcing those regulations. It is my firm belief that the regulation of airspace must remain in the hands of the Federal Aviation Administration.

It should be recognized that changes in airspace regulation can be made for reasons other than safety, such as to take account of environmental considerations, but changes in airspace regulation must never result in diminution of safety. In order that the safety implications of any changes be adequately addressed, jurisdiction over the airspace must rest with the Federal agency whose expertise and mission is aviation safety, the Federal Aviation Administration.

This legislation before us today does just that and bestows no authority on the National Park Service to regulate airspace. Any new regulations that are developed out of the studies we would authorize with this bill would be regulations of the FAA, not the Park Service. The Park Service can propose regulations, but if the FAA determines the Park Service proposal would adversely affect safety, then aviation safety concerns must be accommodated to FAA's satisfaction before any plans or regulations are put into effect.

Another important section of the legislation authorizes the FAA to conduct a study aimed at improving air safety above our national parks. In this study, I would expect a wide variety of issues to be addressed, including the need for stronger regulation of commercial operations using our national parks, the need for improved communications, the need for clearly defined flight patterns, and the need for improved surveillance and inspection of commercial aircraft operators by the FAA.

This study would be completed within 6 months of enactment of H.R. 4430, but I would urge the FAA to exercise its existing authority to get underway on the study now and not wait for enactment of the bill because, as the recent tragedy at the Grand Canyon demonstrates, there are some obvious safety problems in need of solution.

Again, I want to commend our Interior Committee colleagues, particularly Chairman UDALL, Subcommittee Chairman VENTO, ranking minority members YOUNG and LAGOMARSINO, and Congressman COELHO, the original sponsor of this legislation, for their fine work on this legislation and the opportunity they have afforded me and the Aviation Subcommittee to contribute to their efforts.

□ 1220

Mr. Chairman, I reserve the balance of my time.

Mr. HAMMERSCHMIDT. Mr. Chairman, I ask unanimous consent that the gentleman from Arizona [Mr. MCCAIN] be allowed to handle the rest of the time that I have remaining for the consideration of H.R. 4430.

The CHAIRMAN. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. MCCAIN. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Utah [Mr. HANSEN].

Mr. HANSEN. Mr. Chairman, this has been an interesting piece of legislation that we are discussing. I find it interesting that when this first came about, it was predicated more on the idea of noise than it was on safety.

At that particular time, we found ourselves in a situation that, can you as an individual go into one of our national parks and enjoy a wilderness experience without hearing aircraft buzzing around?

I am somewhat familiar with the Grand Canyon, and I would like to address my remarks to the Grand Canyon. I hiked across the Bright Angel Trail and the Kaibab Trail. I have run the river twice. I have to say that my son is a professional river runner and runs it 12 to 14 times a year, the whole 281 miles, and then on to Lake Meade.

I have been asking some of these river runners specifically: Have you heard aircraft flying overhead? So I have asked people from the private industry and from the commercial industry and have yet to find one who actually could ever hear an airplane of those who were taking people over the park. But I have heard a lot of those people say, yes, I can hear a Western Airlines or an American Airlines at 32,000 feet flying over.

I think those of us who fly, and there are an awful lot of Members in this House who hold pilot licenses, and some of us have buzzed right through the middle of the canyon that we are sorry to admit to, but it is not an equation with altitude and noise. You know yourself that a jet aircraft makes a lot more noise at 35,000 than a Cessna 340 right over your head. So even talking to those who make aircraft engines, you do not really find noise and elevation equated. I think we realize that.

So is it really a question of noise?

Along the line as this bill was introduced, we then found a situation—unfortunately we had a deHavilland and a Ranger III that collided in midair. It was a very unfortunate thing, but the bill at that point took a new aspect. It took a giant step forward, and now it became a safety angle.

Well, I have to say that I have respect for this bill and I reluctantly support it, but I do support it, because I feel it is very important that we move toward that area.

But I would like to just have the Members of this House realize what is their philosophy regarding the parks of this Nation. There are 400,000 people a year who have the opportunity for flying over the Grand Canyon, a $50 million business. Those 400,000 people, many of them do not have the physical wherewithal to hike those trails, do not have the time, the effort, or the money that they want to get in a raft and go 281 miles through the middle of the Grand Canyon. I personally feel that their feelings are just as important as the person who wants to have a solitude experience and go through the canyon on foot.

So I think that possibly this study that we are looking at probably makes a lot of sense. I am glad the gentleman from California [Mr. MINETA] pointed out that it put no authority on the National Park Service to regulate that.

I would urge Members of the House to vote for this bill, but take into consideration there will be further things on, and everyone's interests should be considered as we look at flyovers of the canyon.

Mr. VENTO. Mr. Chairman, I yield 4 minutes to the distinguished chairman of the Interior and Insular Affairs Committee, the gentleman from Arizona [Mr. UDALL]

Mr. UDALL. Mr. Chairman, today the House is considering an important piece of legislation. H.R. 4430 addresses a growing problem in many of our national parks—the noise and danger generated by uncontrolled aircraft overflights. Although the bill generally deals with studying the problem at some parks, it mandates specific action at Grand Canyon National Park and it is these provisions with which I am most concerned.

It used to be that our parks, especially our premier western parks, were largely self-protecting because of the very nature of their isolation. That has all changed now, and our parks are virtually under siege from an army of stresses and threats that are being imported into their boundaries.

Our parks are not wilderness areas, unless the Congress otherwise so designates them. They are meant to be seen, enjoyed and experienced by the public. To do that, both the National Park Service and private business together must provide the goods and services necessary to do the job for the visiting public. I believe that air tours are a legitimate and appropriate way to provide a unique and exciting experience of a park and that to ban them would be wrong and unfair.

But some have argued that the overflights, even helicopter and fixed-wing flights below the rim, do not really bother anybody but a few elitist backpackers and that besides, more people fly over and into the canyon than walk into it. They say that we should not restrict this popular and profitable activity at all, except perhaps to zone aircraft below the rim away from areas where on-the-ground visitors go. I have great problems with these arguments.

First, neither the Congress nor the Park Service is charged with the responsibilty of making it possible for everyone to see a park whenever and in whatever manner they want. Nor is it their responsibility to allow private business to make a profit off park resources whenever and in whatever manner they want. We do not allow tramways into the Grand Canyon, or major hotels on the river, even though it would be popular and profitable to do so. Our first and overriding responsibility clearly is to protect the resources of the park and then to provide for visitor experiences that are consonant with resource protection and protect the public health and safety.

Nowhere has this fundamental conflict become more advanced than at the Grand Canyon. I have known and loved the canyon all my life. I also have been a pilot for a good deal of my life. It is obvious to me that the situation at Grand Canyon with regard to aircraft overflights has gotten out of control and that the time for action to protect both the park and the public safety has arrived. It is very obvious to me that it is not just a small minority of park visitors who are offended by the sights and sounds of these aircraft. I have received an avalanche of mail from all kinds of people who say that their experience at the rim, at the river and at all points in between has been diminished by aircraft overflights. Polls in Arizona also confirm that most people in my State believe that the presence of helicopters and airplanes buzzing around below the rim of the canyon is simply and essentially incompatible with our responsibility to protect the grandeur and serenity of this magnificent natural wonder. And make no mistake about it, part of what makes the Grand Canyon so wonderful is its quiet, which has been recognized as a "resource" of the park in previous legislation. The quiet of the Grand Canyon is every bit as much a resource of this park as the giant sequoias are of Redwood National Park or Old Faithful is of Yellowstone National Park.

The National Park Service, pursuant to directions given to it by the Grand Canyon Enlargement Act, has been studying the aircraft overflight problem and is now weighing various alternative management schemes. I think it would be very unwise at this time to simply overthrow this process. But the process has been unacceptably slow and the principal agencies involved, the Park Service and especially the Federal Aviation Administration, need some direction from the Congress.

Therefore, H.R. 4430 requires the Park Service to submit an aircraft management plan to the FAA within 30 days of enactment. This plan is to have three major elements. First, it must restore the natural quiet of the canyon; second, the plan would have to be safe for the flying public and other park visitors. Recent tragic events make this goal all the more imperative; and third the plan must have as one of its components a ban on all flights, except those for necessary emergency and administrative purposes, below the rim of the canyon.

Upon receipt of the plan, the FAA would have 60 days in order to do what it does best—determine whether the plan is safe. If it so certifies, the plan would then be implemented by the FAA. If it cannot so certify, then the FAA and the Park Service are given an additional 60 days in which to make the necessary modifications to the plan and then implement it.

Let me add a few words about what the bill does not do. First, it does not end air tours at the Grand Canyon. I expect that sightseeing flights above the rim will continue to be available and will continue to be highly popular, as well they should be. Arguments that we are denying the aged, the infirm, the handicapped, or anyone else their "right" to see the Grand Canyon are obviously misplaced. We are simply attempting to place sensible controls on this form of visitation in order, first and foremost, to protect the park, and, second, to protect the public.

Second, the bill does not interfere with the prerogatives of the FAA. We have worked very closely with Representative MINETA, chairman of the Aviation Subcommittee, to make sure that we do not. No plan for the management of aircraft at the Grand Canyon can take effect without FAA approval. The FAA is solely responsible for writing and implementing any regulations necessary to implement any plan.

I would add at this point that since the Interior Committee passed H.R. 4430, the FAA has moved to formally consider new regulations to ban all but emergency flights below the rim, specific route and altitude restrictions in the airspace from the rim to 2,000 feet above the rim, and prohibitions

against any aircraft below 2,000 feet above the rim that do not conform with these restrictions.

These provisions, if adopted, would fit in perfectly with the intentions of H.R. 4430 and I wish the FAA had moved earlier to consider them. I certainly think the FAA announcement says a great deal about the fairness of our proposal. I still believe the bill is a necessity, however, because of the uncertainty of FAA action and the specific timetables laid out in H.R. 4430.

In summary, this bill represents, in my opinion, a very reasonable compromise between those who want no restrictions and those who want far harsher restrictions, such as a mandatory minimum altitude for all aircraft of 2,000 feet above the canyon rim. It preserves the opportunity of everyone to see the Grand Canyon from the air, while mandating important steps to preserve the serenity and quiet of one of Nature's most glorious wonders. It does not in any way usurp the authorities or prerogatives of Federal agencies such as the FAA. And finally, I am convinced that although the safety record of the air-tour operators at the Grand Canyon generally has been rather good, the safety of future flights will be improved by both the restrictions mandated by the bill and the attention now being focused on this problem by the FAA.

I urge my colleagues to join the bipartisan support this bill has long enjoyed and vote in favor of this important measure.

□ 1230

Mr. McCAIN. Mr. Chairman, I yield 3 minutes to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise today, not in total opposition to H.R. 4430, a bill that authorizes a study to determine the minimum altitude for aircraft flying over national parks, but to express my concerns over certain requirements of this bill. I do not object to the study altogether; I do, however, have reservations about the specific restrictions regarding the Grand Canyon.

The proposition to prohibit flights below the rim of the Grand Canyon has been very controversial. This will have a significant impact on my State as 90 percent of all flights to the Grand Canyon originate in Las Vegas. The Grand Canyon restrictions are proposed, in part, as a means to find a way to address the alleged noise in the canyon so the hikers and air visitors can coexist. I believe this can be done without the severe restrictions imposed on canyon overflights.

The national parks of this country should be available to everyone. The restrictions proposed for below-the-rim flights to the Grand Canyon may well prohibit thousands of people from enjoying the beauty and splendor the Grand Canyon has to offer. I agree with my colleague, the gentleman from Utah [Mr. HANSEN], no longer will the elderly, handicapped, or regular, nonhiking Americans be able to participate in the beauty below the rim of the canyon.

The other reason for the proposed restrictions is safety. I venture to say, however, that if all flights take place at 2,000 feet above the rim, the air space will be more congested and the risk of accident increased. The problem won't be solved, it will just be moved 2,000 feet higher.

I believe the FAA should work closely with the National Park Service in developing a safe air traffic management plan, a plan that will not deny the public the opportunity to experience the Grand Canyon from the air. Thank you.

I do support the study but hope my colleagues will consider the reservations some of us have expressed.

Mr. MINETA. Mr. Chairman, I yield 4 minutes to the gentleman from Hawaii [Mr. AKAKA].

Mr. AKAKA. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in strong support of H.R. 4430 and urge my colleagues to join me in voting for this important bill. Now is the time to confront the problems associated with overflights of our national parks.

Aircraft noise is a serious problem in Hawaii's national parks. Over the past 10 years, sightseeing aircraft operations have increased, particularly on the islands of Kauai, Maui, and Hawaii. According to FAA records, there were over 60,000 helicopter flights on Kauai in 1985. There are now 11 helicopter tour companies operating on that island alone. It is not unusual for visitors, to some wilderness areas to be subjected to a low-altitude overflight every 15 minutes. Nowhere are the problems more serious than in Hawaii's two national parks, Haleakala National Park on Maui and Hawaii Volcanoes National Park on Hawaii.

In 1984, there were over 1 million visitors to Haleakala National Park. Many came to view the spectacular volcanic crater, Haleakala, the "House of the Sun." The crater area can be reached by hiking or by air. Haleakala experiences an average of 30 tourist helicopter flights a day. The crater itself, which is about 3,000 feet deep from rim to floor, magnifies noise caused by helicopters as the sound bounces off its walls, particularly when helicopters are flown inside the crater, below, the rim.

A University of Hawaii graduate student, Al Perez, recently surveyed 44 park visitors on the trails of Haleakala. Seventy percent of those surveyed said they came to the park for silence and solitude. Without prompting from the interviewer, 41 percent said that helicopter noise was the most disagreeable aspect of their visit. In addition, I have received numerous statements, letters, and testimony from community leaders, local officials, Hawaii residents, and park visitors which further describe the problems with these overflights. I have also reviewed Park Service cases of aircraft complaints by park rangers and visitors. These records indicate that sightseeing helicopter flight practices often go beyond being a nuisance and create unnecessary safety hazards. Complaints from horseback riders have been filed after low-flying helicopters threatened to startle their mounts. Several stockmen with trail-riding concessions in the park have remarked that this is a recurring problem. Complaints have also been filed by park rangers who have observed actual unsafe flight practices, some in violation of a Federal air regulation requiring helicopters carrying paying passengers to maintain a minimum altitude of 300 feet above populated areas.

It is time to address these problems. Since 1984, an FAA advisory has been in effect requesting aircraft to fly at least 2,000 feet above the highest landform of any national park. Unfortunately, this advisory has been ignored, particularly with respect to Haleakala National Park. We need the temporary restrictions over Haleakala which H.R. 4430 provides during the 5-year study and review period. We need not only to protect our national parks but also public safety. Finally, we need to study the problems associated with aircraft overflights of our national parks by passing H.R. 4430. I urge my colleagues to join me in this effort.

Mr. McCAIN. Mr. Chairman, I yield 3 minutes to the gentleman from Arizona [Mr. KOLBE].

□ 1240

Mr. KOLBE. Mr. Chairman, the spectacle and beauty of a visit to the Grand Canyon can hardly be forgotten by anyone fortunate enough to visit this natural wonder. Whether one chooses to see the canyon from an observation point on either the south or north rim, or by rafting down the Colorado River as I was privileged to do last summer, or by hiking down some of the many trails into the park, or even by viewing it by aircraft, the Grand Canyon National Park evokes a sense of wonder and awe in all who see it. Unfortunately, these various forms of appreciation can result in conflicts between users. This conflict took on tragic scope this past summer when two sightseeing aircraft, a plane and a helicopter, both flying below the rim of the canyon, collided—resulting in the deaths of 25 people. Provisions of

this bill have been drafted in response to this conflict, and to the safety question which this accident raised.

I agree with the intent of section 3 of this bill as it requires the submission of a report by the National Park Service a final plan to the Federal Aviation Administration for the management of air traffic in the air space above the Grand Canyon. I also agree that below the rim flights have resulted in noise levels that detract from many hikers' enjoyment of the park, and this problem needs to be addressed in this plan.

This problem has been around for a long time. The first draft aircraft management plan was drawn up, but ignored, back in 1971. Since then, resolution of this problem has been elusive, largely because of benign neglect within the FAA. I would hope that the FAA will play an active role in improving management guidelines within the canyon not only to ensure the safety of park users, but also to enhance the enjoyment of all the park's visitors.

I do have concerns about some of the language in section 3. Relative to sections dealing with Yosemite and Haleakala, the applicable period for limits on flight elevation is open ended. This is not consistent with section 3(b)3, which requires a report within 2 years about the success of the plan. If the plan has not succeeded, or if technical improvements to aircraft can be implemented which substantially restores the natural quiet in the park, then we should have the opportunity to revisit the issue at that time. For Yosemite and Haleakala, this is how it is done. It would seem logical to do the same for the Grand Canyon.

I do want to commend the Interior Committee, and especially Congressmen MCCAIN, UDALL, and COELHO for the work they've done to craft this legislation given the various complex elements involved. Arizonans are very protective about their canyon, because we know it is a national treasure that to be enjoyed, needs to be shared. The various users of the park should recognize this as well. Full enjoyment of the park should not be restricted to merely the young and able-bodied. Aircraft play a significant role in enhancing the enjoyment in the park for those that cannot hike or raft. However, I believe we all recognize that the Park Service, and especially the FAA need to take decisive steps to improve the air management within the park. That is why I support this bill.

Mr. VENTO. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. LEHMAN], a member of the committee and a sponsor of the measure before us.

Mr. LEHMAN of California. Mr. Chairman, I rise in strong support of H.R. 4430 as amended and I commend the author of the bill, Congressmen COELHO, and Chairman UDALL, VENTO, MINETA, Congressman MCCAIN, and others for their hard work to bring us legislation to both study and regulate commercial overflights in our national parks.

The recent and unfortunate crashes of small aircraft at the Grand Canyon and at Yosemite National Park have increased our awareness that the problem of overflights in national parks is far more than just an aesthetic issue. The general public relies on the Government to ensure its air safety, and we have gone far too long with business as usual with commercial overflights. If we can prevent the past overflight disasters at Yosemite and the Grand Canyon from happening in the future, we must make every effort to do so.

Mr. Chairman, I believe aviation sightseeing is an important and legitimate business. Operated properly with commonsense and courtesy, that business can be compatible with other park uses.

Because these overflights make money from the national parks, however, they are concessionaires. Though they are regulated by the FAA, they should be required to protect park values and not harm the experience of others.

It is my hope that regulations will eventually be promulgated affecting the frequency, location, time, and altitude of these flights. This bill is a good first step.

I am pleased to be a cosponsor of H.R. 4430 and I urge my colleagues to vote "yes" on the bill.

The CHAIRMAN. The Chair will advise the gentleman from Minnesota [Mr. VENTO] that he has 5 minutes remaining, the gentleman from Arizona [Mr. MCCAIN] has 10 minutes remaining, and the gentleman from California [Mr. MINETA] has 4 minutes remaining.

Mr. VENTO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this measure, of course, would not be here without the help of the sponsors and many others who have worked on this measure, including the gentleman from California [Mr. COELHO], the chairman of the committee, the gentleman from Arizona [Mr. UDALL], the gentleman from Arizona [Mr. MCCAIN] and, of course, as I mentioned earlier, the gentlewoman from California, SALA BURTON, was one of the first to point out the problems.

The fact is that, because of this issue, in fact, especially with regard to Grand Canyon, a study was initiated in the midseventies, 1975, and here we are today in 1986 without any effective regulation of the type of overflights that are, in fact, taking place in this national park.

Recently I received another letter, another promise, from the Federal Aviation Administration. I want to quote a paragraph from that letter. It is directed to the gentleman from Arizona [Mr. UDALL]. In the fourth paragraph, it says:

> I am considering a plan to supplement the voluntary measures now in effect with a regulation that would generally prohibit flight below the rim of the Grand Canyon except in the case of emergencies. The regulation would further prohibit flights in the airspace up to 2,000 feet above the rim of the canyon unless conducted in accordance with specific route and altitude restrictions.

The reason I am bringing this up, Mr. Chairman, I think it is important to note that this had come from Mr. Donald Engen, the U.S. Department of Transportation, and he goes on to point out the voluntary restrictions that are now in place which, for all practical purposes, I think, do not achieve the good results they intend: the training exercises, the pilots, the concerns about safety, the concerns about noise, many advisories, weather information that they provide. All of this put togeher simply does not work and I think it is necessary, because of the time that this issue has been under study by the National Park Service and the FAA, that we come through with legislation. I certainly hope that the other body recognizes the fact that this is really stymied in terms of the administration, in terms of the various agencies. While they all have good intentions, the fact of the matter is that these flights continue in such a way as to destroy the experience of the park, in the process, of course, I think, in a manner that is not as safe as it could and should be.

I would hope that with the passage of this, we will get better insights into the concerns and the safety and the visitor experience in a variety of different parks.

The question is when the parks were very often designated and set aside in perpetuity, they did not anticipate the types of flights or overflights. I think that the oversite flights that occur indicate the spectacular success of the park system in this country, but the question is, if we are to continue that success and preserve these, as was intended when they were designated under the law, then I think we have to address this particular question.

This measure before us will give us immediate limitations and relief in the Grand Canyon and a couple of parks where these oversite flights are occurring.

In the near term, they will, then, within 3 years, provide us further guidance on how we can deal with this problem so as to afford the best experience for all Americans in our national parks.

Mr. Chairman, I reserve the balance of my time.

Mr. MCCAIN. Mr. Chairman, I yield such time as he may consume to the

distinguished gentleman from Arizona [Mr. STUMP].

Mr. STUMP. Mr. Chairman, I rise in opposition to H.R. 4430.

Mr. Chairman, I am seriously concerned about the dangerous precedent we are setting by legislatively regulating airspace, and believe that existing regulatory authority in both the Departments of Interior and Transportation are sufficient to strike the balance necessary to insure the enjoyment of our national parks for all types of visitor use.

While concerned with the overall effects of this type of legislation, I would like to specifically address my comments to section 3 of H.R. 4430, regarding Grand Canyon National Park, which is a large part of Congressional District Three.

The Grand Canyon is recognized as one of the seven natural wonders of the world, and is a world heritage site. The Canyon is the major attraction site within the State of Arizona, and one of the top visitor attractions in the entire United States. Annually, the Grand Canyon attracts 2¾ to 3 million visitors, approximately a third of whom are from foreign countries.

Grand Canyon National Park provides a range of ways for those many visitors to enjoy and experience the Canyon; from running miles of the Colorado River through the depths of the Canyon to aircraft sightseeing tours over the park. It is that range of visitor use which has the potential of creating a conflict in how visitors enjoy the park.

Aircraft flights, whether for transportation to the park or for enjoying scenic tours of the park, provide a legitimate means for a large number of visitors to have access to the scenic grandeur of the Canyon which they might not otherwise have. Concerns involving aircraft overflight, whether generated from noise encroachment issues or safety issues need to be addressed. A resolution of those concerns which strikes a balance between accommodating the various types of visitor use and caring for the resources of the park can and should be developed and implemented. A simple solution of the status quo or a total ban of aircraft is not realistic, nor is it practical. Neither is a legislatively imposed resolution.

The 1975 Grand Canyon National Park Enlargement Act included a provision directing the Secretary of the Interior to work with the FAA and the EPA to develop "rules and regulations or other actions as he believes appropriate to protect the public health, welfare, and safety of the natural environment within the park." The development of an aircraft management plan in response to that provision is an ongoing process, and has been for the last 2 or more years, our legislatively addressing this matter, whether or not our actions are predicated on an issue of safety, is premature, and may be based on unsubstantiated information because the management plan process has not been completed. It should be of interest in our consideration of the bill today, that the data developed to make a decision on the management of aircraft within the park is currently under careful review within the Department of the Interior to ensure that as the plan is developed it is done so with information which truly validates both the situation at the park and the management process itself.

I hope that it will also be noted by my colleagues that the National Transportation Safety Board is this week holding an onsite public hearing regarding the tragic mid-air collision last June at the Canyon in an effort to complete the record in its investigation. The NTSB's findings and report on the probable cause of the accident will not be adopted for several months, further illustrating our lack of complete information on the subject of aircraft operations at the Canyon.

As importantly, the FAA is completing the development of a Special Federal Airspace Regulation specifically for Grand Canyon National Park, properly exercising existing regulatory authority to address safety concerns.

Mr. Chairman, while I believe that we do need to address both safety and noise encroachment concerns regarding aircraft at the Grand Canyon National Park, I believe that we are acting prematurely, and creating an unnecessary legislative mandate in an area in which we are not fully prepared to address. Only after such time as the appropriate agencies are unable to find a reasonable balance among visitors use, safety concerns and environmental impacts should we move so hastily. With ongoing efforts in both the Department of the Interior and the Department of Transportation, I do not believe that that time has come, and urge my colleagues to oppose H.R. 4430.

Mr. McCAIN. Mr. Chairman, I yield 1 minute to myself.

I would just like to say that I am pleased that this legislation is on the floor. I would like to emphasize that there is compatability between the air tours and the Grand Canyon. We regulate every aspect of this great natural treasure. We regulate camping, we regulate rafting, and I believe that the time is long overdue for us to regulate aircraft flights over the canyon as well.

I believe working together with the FAA and the Park Service, we will be able to achieve an equitable and reasonable management plan that satisfies all of the interests involved, since we all share the common goal. The preservation of one of the crown jewels of America.

Mrs. BURTON of California. Mr. Chairman, as one who has held a longstanding interest in this issue, I rise in support of H.R. 4430. When I first heard that tourist flights were scheduled over Yosemite National Park, I talked with my colleagues on the Interior Committee to see if congressional action might be necessary to prohibit this hazardous practice. It is unfortunate that the recent tragic loss of 25 lives in an aircrash over the Grand Canyon has compelled us to this action today.

You will hear some very convincing statistics today on the dangers of commercializing the airspace over our national parks. It is shocking to realize that there are 50,000 tourist flights a year over Grand Canyon National Park and that this activity represents one-sixth of the annual air traffic at Washington's National Airport. We all know how busy and congested National Airport is so you can well imagine the intensified impact for a national park area far removed from concentrated urban life.

The impressive natural wonders of our national parks should be protected from the intrusion of airborne mass transit and our park visitors should be protected from the dangers inherent in trying to circumnavigate these often massive and obtrusive natural structures.

The peace and solitude of our national parks is as much a natural resource as the tangible elements of the park environment. This legislation will simply speed the study process along for determining safe altitudes for aircraft flying over our national parks in order to protect the park environment, as well as visitors to park areas. I urge my colleagues to support H.R. 4430.

Mr. McCAIN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

□ 1250

Mr. VENTO. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. PANETTA. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the committee amendment in the nature of a substitute recommended by the Committee on Interior and Insular Affairs now printed in the reported bill shall be considered as an original bill for the purpose of amendment and each section will be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

H.R. 4430

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STUDY OF PARK OVERFLIGHTS.

(a) STUDY BY PARK SERVICE.—The Secretary of the Interior (hereinafter referred to as the "Secretary"), acting through the Director of the National Park Service, shall conduct a study to determine the proper minimum altitude which should be maintained by aircraft when flying over units of the national park system. The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration (hereinafter referred to as the "Administrator"), shall provide technical assistance to the Secretary of the Interior in carrying out the study.

(b) GENERAL REQUIREMENTS OF STUDY.—The study shall identify any problems associated with overflight by aircraft of units of the national park system and shall provide information regarding the types of overflight which may be impacting on park unit resources. The study shall distinguish between the impacts caused by sightseeing aircraft, military aircraft, commercial aviation, general aviation, and other forms of aircraft which affect such units. The study shall identify those park system units, and portions thereof, in which the most serious adverse impacts from aircraft overflight exist.

(c) SPECIFIC REQUIREMENTS.—The study under this section shall include research at the following units of the national park system: Cumberland Island National Sea-

shore, Yosemite National Park, Hawaii Volcanoes National Park, Haleakala National Park, Glacier National Park, and Mt. Rushmore National Memorial, and at no more than 4 additional national park system units, excluding those established by section 201 of Public Law 96-487. The research at each such unit shall provide information and an evaluation regarding each of the following:

(1) The impacts of aircraft noise on the safety of the park system users, including hikers, rock-climbers, and boaters.

(2) The impairment of visitor enjoyment associated with overflights over national park system units.

(3) Other injurious effects of flights over park system lands on the natural, historical, and cultural resources for which the park system units were established.

(4) The values of aircraft flights over park system lands in terms of visitor enjoyment, the protection of persons or property, search and rescue operations and firefighting.

Such research shall evaluate the impact of overflight by both fixed-wing aircraft and helicopters. The research shall include an evaluation of the differences in noise levels within the park system units concerned which are associated with flight by commonly used aircraft at different altitudes. The research shall apply only to overflights and shall not apply to landing fields within, or adjacent to, park system units.

(d) REPORT TO CONGRESS.—The Secretary of the Interior shall submit a report to the Congress within 3 years after the enactment of this Act containing the results of the study carried out under this section. Such report shall also contain recommendations for legislative and regulatory action which could be taken regarding the effects referred to in paragraphs (1) through (3) of subsection (c). Before submission to the Congress the Secretary shall provide a draft of the report and recommendations to the Administrator of the Federal Aviation Administration for his review. The Administrator shall review such report and recommendations and notify the Secretary of any adverse effects which the implementation of such recommendations would have on the safety of aircraft operations. The Administrator shall consult with the Secretary to resolve issues relating to such adverse effects. The final report shall include a findings by the Administrator that implementation of the recommendations of the Secretary will not have adverse effects on the safety of aircraft operations, or if the Administrator is unable to make such finding, a statement by the Administrator of the reasons be believes the Secretary's recommendations will have an adverse effect on the safety of aircraft operations.

(e) FAA REVIEW OF RULES.—The Administrator shall review current rules and regulations pertaining to flights of aircraft over units of the national park system at which research is conducted under subsection (c) and in addition over any other such units at which such a review is determined necessary by the Administrator or is requested by the Secretary. In the review under this subsection, the Administrator shall determine whether changes are needed in such rules and regulations on the basis of aviation safety. Not later than 6 months after the identification of the units of the national park system for which research is to be conducted under subsection (c), the Administrator shall submit a report to Congress containing the results of the review along with recommendations for legislative and regulatory action which is needed to implement any such changes.

(f) AUTHORIZATION.—Effective October 1, 1986, there are authorized to be appropriated such sums as may be necessary to carry out the studies and review under this section.

The CHAIRMAN. Are there any amendments to section 1? If not, the Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. FLIGHTS OVER YOSEMITE AND HALEAKALA DURING STUDY AND REVIEW.

(a) YOSEMITE NATIONAL PARK.—During the applicable study and review period it shall be unlawful for any fixed wing aircraft or helicopter flying under visual flight rules to fly at an altitude of less than 2,000 feet over the surface of Yosemite National Park. For purposes of this subsection, the term "surface" refers to the highest terrain within the park which is within 2,000 feet laterally of the route of flight and with respect to Yosemite Valley such term refers to the uppermost rim of the valley.

(b) HALEAKALA NATIONAL PARK.—During the applicable study and review period it shall be unlawful for any fixed wing aircraft or helicopter flying under visual flight rules to fly at an altitude below 9,500 feet above mean sea level over the surface of any of the following areas in Haleakala National Park: Haleakala Crater, Crater Cabins, the Scientific Research Reserve, Halemauu Trail, Kaupo Gap Trail, or any designated tourist viewpoint.

(c) APPLICABLE PERIOD.—For purposes of the subsections (a) and (b), the applicable study and review period shall be the period comprised of the time prior to the submission of the report under section 1 plus a 2-year period for Congressional review thereafter.

(d) EXCEPTIONS.—The prohibitions contained in subsections (a) and (b) shall not apply to any of the following:

(1) Emergency situations involving the protection of persons or property, including aircraft.

(2) Search and rescue operations.

(3) Flights for purposes of firefighting.

(4) Compliance with instructions of an air traffic controller.

(e) ENFORCEMENT.—For purposes of enforcement, the prohibitions contained in subsection (a) and (b) shall be treated as requirements established pursuant to section 307 of the Federal Aviation Act of 1958. To provide information to pilots regarding the restrictions established under this Act, the Administrator of the Federal Aviation Administration shall publish notice of such restrictions in appropriate Federal Aviation Administration publications as soon as practicable after the enactment of this Act.

The CHAIRMAN. Are there any amendments to section 2? If not, the Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. GRAND CANYON NATIONAL PARK.

(a) Noise associated with aircraft overflight at the Grand Canyon National Park is causing a significant adverse effect on the natural quiet and experience of the Park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users.

(b) PLAN.—

(1) SUBMISSION.—Within 30 days after the enactment of this Act, the Secretary, acting through the Director of the National Park Service, shall submit to the Administrator of the Federal Aviation Administration a final plan for the management of air traffic in the air space above Grand Canyon National Park. The plan shall provide for substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight. Except as provided in subsection (c), the plan shall contain provisions prohibiting the flight of aircraft below the rim of the Canyon, except for purposes of administration and for emergency operations.

(2) IMPLEMENTATION.—Not later than 60 days after receipt of the plan under paragraph (1) and after notice and opportunity for hearing, the Administrator shall issue regulations implementing the recommendations in the plan unless the Administrator determines that implementing the recommendations would adversely affect aviation safety. If the Administrator determines that implementing the recommendations would adversely affect aviation safety, he shall, not later than 60 days after making such determination, in consultation with the Secretary and after notice and opportunity for hearing, revise the recommendations consistent with the requirements of paragraph (1) to eliminate the adverse effects on aviation safety and issue regulations implementing the revised recommendations in the plan. In addition to the Administrator's authority to enforce such regulations under the Federal Aviation Act of 1958, the Director may enforce the requirements of the plan under such rules and regulations applicable to the units of the national park system as he deems appropriate. The Director shall consider the appropriate use of his existing authorities as they may relate to the licensing of commercial operations in connection with national park units.

(3) REPORT.—Within 2 years after the effective date of the plan required by subsection (b)(1), the Secretary shall submit to the Congress a report discussing—

(A) whether the plan has succeeded in substantially restoring the natural quiet in the Park, and

(B) such other matters, including possible changes in the plan, as may be of interest.

The report shall include comments by the Administrator regarding the effect of the plan's implementation on aircraft safety.

(c) Helicopter Flights of River Runners.—Subsection (b) shall not prohibit the flight of helicopters—

(1) which fly a direct route between a point on the north rim outside of the Grand Canyon National Park and locations on the Hualapai Indian Reservation (as designated by the Tribe), and

(2) whose sole purpose is transporting individuals to or from boat trips on the Colorado River and any guide of such a trip.

The CHAIRMAN. Are there any amendments to section 3?

Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. DORNAN OF CALIFORNIA

Mr. DORNAN of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DORNAN of California: At the end of the bill add the following:

SEC. 4. COLLISION AVOIDANCE SYSTEM.

Section 312(c) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353(c)), which relates to research and development, is amended by inserting "(1)" immediately after "(c)" and by adding at the end thereof the following new paragraph:

"(2) In carrying out his functions, powers, and duties under this section pertaining to aviation safety, the Secretary of Transportation shall coordinate and take whatever steps necessary (including research and development) to promulgate standards for an airborne collision avoidance system for all United States aircraft, civil and military, to improve aviation safety. The Secretary of Transportation shall promulgate such standards within one year after the date of enactment of this Act. Such standards shall require that such collision avoidance system be designed—

"(A) to give aircraft pilots clear and unambiguous instructions concerning maneuvers to be undertaken or avoided to prevent a mid-flight collision with other aircraft;

"(B) to be totally independent of any ground-based equipment and ground stations and able to function in any remote or other area without the need for communication with ground-based equipment;

"(C) to permit modification of the performance of such system by the pilot in command of the aircraft in which such system is installed at the option of such pilot;

"(D) to prevent the functions of such system being modified in any way by signals sent from any ground-based system or equipment;

"(E) so that such system can be manufactured and sold at a cost which the Secretary of Transportation determines is sufficiently reasonable so that its use on all such aircraft would not impose an unreasonable burden on air carriers and other owners and operators of aircraft;

"(F) so that it shall not be incompatible with the air traffic control system; and

"(G) so that it shall be adequate to protect a small aircraft from a similarly equipped small private or military aircraft.".

Mr. DORNAN of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. VENTO. Mr. Chairman, I do not object to dispensing with the reading, but I reserve a point of order against the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentleman from Minnesota [Mr. VENTO] reserves a point of order.

The gentleman from California [Mr. DORNAN] is recognized for 5 minutes in support of his amendment.

Mr. DORNAN of California. Mr. Chairman, I must take this opportunity because this is a discussion of air safety, far more than a discussion of noise. Although I may vote for this bill because it is a study, I feel it is necessary to take this opportunity to bring to the attention of my colleagues for the umpteenth time and to this Nation, a bill that I have submitted going back 10 years now, on the avoidance of midair collisions.

Now, I am sure some Members will find my next statement so ironic and coincidental as almost begging disbelief; but I have my Air Force form-5 as proof, with a pencil notation, that I was flying over the Grand Canyon on June 30, 1956, in an F-86 Saber jet out of Williams Air Force Base at Phoenix, when I got a call on the Guard channel on my radio for all aircraft in the Grand Canyon area to identify themselves. That tragic midair collision had just happened in which 7 feet were lost off the wing of a United Airlines DC-7 when it cut completely the tail off a TWA constellation, with much loss of life on both sides.

Now, a few years after that, the pilot that had soloed me in an aircraft when I was 16 years of age back in 1950 died in a midair collision over Whittier, CA, when his light plane struck a Navy PV-2 Neptune patrol aircraft.

I find it more than ironic that after submitting a bill for an airborne collision avoidance system, on several occasions while I was a 4-year member of the Science and Technology Committee in the 1970's, that I resubmitted that bill on December 11 of this year and then of all the congressional districts over which a midair collision should happen, on August 31 of last month a DC-9 Aero-Mexico is struck by a Piper Archer aircraft and another collision takes place, this time with great loss of life over my own district.

Now, I went down to San Diego and walked to the horrible ground with the loss of life of 144 people, 12 of them on the ground, in San Diego, before resubmitting my bill again in 1978. That midair collision was in September 1978.

A whistle blower of the highest integrity came to my office shortly after that, Mr. James Pope. Many of you may have seen him on "60 Minutes" last week. They reran a program 5 years old where Mr. Pope made his very serious allegations that the FAA was engaged in a coverup of this whole airborne collision avoidance system.

I know that the gentleman from California [Mr. MINETA] has worked as hard as anybody in the House can work on this issue, so has the gentleman from California [Mr. BROWN] of the Science and Technology Committee, the gentleman from California [Mr. MINETA] being the chairman of the Aviation Subcommittee on Transportation and Public Works under which this bill comes to the floor; but this is the only opportunity, I tell my colleagues, that we have a chance to add to this study of noise, with all the discussion of safety here, a further study to bring to the attention of the American people that for 12 years after RCA, Minneapolis-Honeywell and McDonnell Douglas under the guidance of its chief executive officer, Sandy McDonnell, who lost two of his top test pilots, former military pilots, in a midair collision near St. Louis, that all three of these companies had ready 12 years ago under a reasonable price an airborne collision avoidance system.

Now, please, my colleagues, listen to these statistics. Presently there is an average of about 32 midair collisions occurring throughout this country, most of them small airplanes at local airports that we do not hear about.

If we have to wait for the so-called full implementation of TCAS or BCAS or FAA control systems for another 12 to 14 years, we can expect on the average 448 midair collisions involving over 896 aircraft. If just an average of three people die as a result of these collisions, we are talking about close to 2,700 people who will die needlessly.

Now, of course, statisticians will argue that this is a small number compared to those who die in automobile crashes, 40 or 50,000 a year, or would die in other airplane crashes.

Yes, it is small in a peculiar way relative to other loss of life, but what we are talking about here, my colleagues, is avoidable accidents and avoidable deaths; although there is no reason to believe that out of the 448 anticipated midair crashes at least one is going to involve an airliner and then there will be a lot more people die on the ground, as I lost 9 people in my city of Cerritos on the 31st of last month.

I would ask my colleagues to please accept this amendment, because it is the last chance we will get in the 99th Congress to do something to stop this bureaucratic blockage of an airborne inexpensive collision avoidance system.

The CHAIRMAN. The time of the gentleman from California [Mr. DORNAN] has expired.

Does the gentleman from Minnesota [Mr. VENTO] insist on his point of order?

Mr. VENTO. Yes, Mr. Chairman, I insist on my point of order.

The CHAIRMAN. The gentleman from Minnesota is recognized.

POINT OF ORDER

Mr. VENTO. Mr. Chairman, under the rule of germaneness, rule XVI, clause 7, no subject different from that under consideration shall be admitted under the color of an amendment. The amendment of the gentleman from California [Mr. DORNAN] violates that rule and I must reluctantly insist on my point of order, Mr. Chairman.

The CHAIRMAN. Does the gentleman from California wish to be heard on the point of order?

Mr. DORNAN of California. Yes, Mr. Chairman, I would like to speak to it.

The CHAIRMAN. The gentleman from California is recognized.

Mr. DORNAN of California. Mr. Chairman, I understand the gentleman's objection and I would ask for some help. Under my 5 minutes here, I would like to ask for a colloquy with my good friend and distinguished colleague, the gentleman from California [Mr. MINETA].

The CHAIRMAN. The Chair will advise the gentleman that he cannot have a colloquy during a point of order.

Mr. DORNAN of California. All right, Mr. Chairman, here is what I will ask rhetorically and publicly.

There are very few times we get to take the well or the leadership desks here to fight for directly protecting life. I stand here convinced that if we had been able to pass a bill forcing the FAA to come up with an airborne collision avoidance system back in 1977 when we first had hearings and investigated it or back in 1979 after we were responding to the September 1978 crash of an airliner and a small light plane over southern California, and I might add that every time I go into the cockpit of a large airplane and see the limited visibility I am reminded that the small aircraft at San Diego was 22 degrees below the nose level and in the cockpit of a 727 you can only look 16 degrees down, so these less maneuverable aircraft have the responsibility to avoid the small ones, although the responsibility is with the small ones in that airspace, and yet they are the ones who have even less electronic assistance available to them.

Now, I would ask the gentleman from California [Mr. MINETA] if there is anyway that we can get some kind of a hearing in the remaining 2 or 3 weeks, God forbid that we come back into a special session, so that this 99th Congress, which suffered a midair collision over the Grand Canyon on June 18 does something in this Congress.

Mr. Chairman, I ask the gentleman to withdraw his objection.

The CHAIRMAN. The Chair will advise the gentleman from California that he is still not speaking to the point of order and will ask the gentleman to conclude his remarks on the point of order, without the colloquy or the questions.

The gentleman may proceed.

Mr. DORNAN of California. That is all, Mr. Chairman.

The CHAIRMAN (Mr. PICKLE). The Chair is ready to rule.

The gentleman from California [Mr. DORNAN] has offered an amendment adding a section 4 pertaining to the collision avoidance system.

The Chair has had an opportunity to examine the amendment and it is the opinion of the Chair that the amendment is not germane. The bill before us, H.R. 4430, is a narrow one addressing only overflights over certain national park areas.

The amendment goes to an unrelated subject amending an act not amended by the bill.

Therefore, the Chair sustains the point of order.

Mr. GRAY of Illinois. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise at this time to associate myself with the remarks of the gentleman from California [Mr. DORNAN] on aircraft travel safety.

Thirteen years ago as a member of the Committee on Public Works and Transportation, we had before our committee the then Administrator of the FAA, Mr. Kee.

I said to him, "How are you coming on the collision avoidance device research and development?"

He said, "Mr. GRAY, we are just around the corner."

I retired from this body, as many of you know, for 10 years. When I came back, we had the present FAA Administrator, Admiral Engen before our committee a few months ago and I said, "Admiral, how are you coming on the collision avoidance device research and development?"

And believe it or not, he said the same words—13 long years later, "just around the corner."

This year in the Department of Transportation appropriations bill, the subcommittee chairman, my friend Mr. LEHMAN of Florida of the Subcommittee on Transportation has put in the bill this year additional money for T-CAS-1, T-CAS-2, and even T-CAS-3 and accelerated research and development on a collision avoidance system program. The ball is now in FAA's court.

The only reason I take this time now is to state to this body that we all should be rising up and asking the FAA to move forward now that they will soon have more funds in fiscal year 1987 appropriations starting October 1. Thanks.

Mr. DORNAN of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if I could ask my good friend and distinguished colleague, the gentleman from California [Mr. MINETA], to help my frustration a little bit, as a person of responsibility and power, as head of that Aviation Subcommittee, may I ask the gentleman what can we do before this 99th Congress adjourns to light a fire under the FAA? Twelve years of foot-dragging is nothing short of a disgrace.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. DORNAN of California. I am glad to yield to the gentleman from California.

Mr. MINETA. Mr. Chairman, it is not all just foot-dragging on the part of the FAA. The Air Transport Association is also concerned about the kind of device that is going to be placed in their aircraft.

We have a T-CAS-1, T-CAS-2, and T-CAS-3, as has been explained.

In T-CAS-2, there is one in a Piedmont Airlines aircraft. There are about I believe 20 more that will be installed in United, Republic, and other Piedmont aircraft very shortly; but we are moving ahead with this program.

The Air Transport Asssociation has also been concerned because they want to make sure that what is installed is really in fact going to be the right kind of equipment. There are also some issues about liability.

If there is an aircraft accident as the result of the use of a transponder, the question about liability also ensues; so there has been some concern about that.

I think at this point because of the expressions of concern and because of the Cerritos air crash and other factors, there is a great deal of movement on this and I think we are now taking very large progressive steps.

Again, hopefully with the amount of money that is available in the transportation appropriation bill for R&D and other efforts going on, that we will in fact be further along.

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Mr. DORNAN of California. Mr. Chairman, reclaiming my time, I have a report here from an engineer, Mr. Ed R. Gunny, that was written 11 days before the terrible air crash into my district, and I submit this report for the RECORD, so that people reading this will understand my frustration, and I hope that something happens in this area.

The report follows:

WHY NO COLLISION AVOIDANCE EQUIPMENT FOR PILOTS? AN ENGINEER/PILOT'S LAMENT AND REVELATION

(By E.R. Gunny)

Pilots have sought some electronic means by which they can avoid mid-air collisions ever since 1956, when a mid-aid collision between two airliners occurred over the Grand Canyon. By 1967, the Air Transport Association of America set forth performance specifications for such equipment. Briefly, they included the need for a system to be able to operate independently of any ground-based equipment. Also an acceptable design is to be one able to protect all aircraft in all areas, while providing 40-second warnings to any impending threat situation. Today's technology limits such equipment to some form of cooperative inter-aircraft data exchange means. This means that all aircraft must have compatible equipment installed. Thus, there can be only one standard design.

In 1974, designs of three private firms were submitted to the FAA for evaluation. Each met the cited specifications (ANTC-117). It became the job of the FAA to determine which, if any, should be adopted as this nation's standard. The FAA rejected all three, and added the caveat that any such

design, no matter how nearly perfect, would also be rejected. Their reason was that while such equipment satisfied pilots needs, none satisfied requirements of the FAA's air traffic controllers. The given rationale was that once such equipment was installed in aircraft there could be instances when the airborne equipment (ACAS) could give maneuver directives to flight crews that were in conflict with those issued by the air traffic controller. The FAA maintained that this could not be allowed to happen. So, while rejecting private designs, the FAA preempted the Collision Avoidance System (CAS) design field and took upon itself to become the designer of this nation's only collision avoidance system, and its sole judge.

It has been over 12 years now since that decision. If you were to ask the FAA "Why so long?", you might be told that such a design is technically difficult. Added may be the words that they are just completing the design of what is called TCAS III. It is the super-deluxe version affordable by only the largest air lines, and maybe some military types. An earlier version, TCAS II, was ordered by the Department of Transportation to be a National Standard in June of 1984 (Order no. 6367.1). Thus, the FAA says they are practically there and need only to finalize a baseline design called TCAS I. The low-cost version for the little guys. The FAA will also point out that they are now flight testing their equipment in Piedmont aircraft. What you may not be told is that they have been flight testing something for over 5 years now. In the design of any avionics product, be it an aircraft or electronic equipment, flight testing is both an expensive and very inefficient way to accumulate test data. It's generally done only as a last step prior to getting certification. A step taken after a design has passed all lab and analytical tests. In the case of TCAS, in my opinion, this has not been done. Matter of fact, all of the flight testing done now is against aircraft equipped with transponders to be replaced by an entirely different one. Hence, the data accumulated is not really relevant.

Note the development order, TCAS II, TCAS III, then TCAS I. Its a little like designing the middle of a skycraper first, the top next, and the foundation last.

On technical difficulty, we have to ask "Compared to what?" We now enjoy flawless communications with satellites over 22,000 miles away and that accomplishment took less than 5 years. We have witnessed man's travel to the moon and safe return after less than a 7-year effort. Why then is it so hard to provide 2-way radio communications between aircraft less than 6 miles apart? Present day citizen's band radio exceeds this range, and even some of our kid's toy walkie-talkies. No, technical difficulty is not a valid excuse for inability to perform.

One may ask "Why have a collision-avoidance system anyway?" Here's why. If you were asked: "What is the primary objective of any flight you make." What might be your answer? While several things may go through your mind, the primary objective is really survival. Prudence dictates that every possible means be used to ensure a safe trip ever time. Yet, when pilots themselves are asked, many today remain indifferent. "Who needs it, I've flown umpteen thousand hours and haven't had any problem." The truth of the matter is that all pilots need something. For to be sure of no catastrophic collision, every pilot should spend 100% of his time looking for intruders. No pilot can, but electronics can.

Since threats can come from any direction, a pilot should be able to see in all directions about his craft. He can't, yet electronics can. To do the job right, the pilot should be able to look directly in the direction of the sun, and be able to see through clouds, inclement weather and darkness. Again, he can't but electronics can. To put things in perspective, imagine trying to drive your car on the freeway with all windows painted black, save the windshield. You might feel secure just going straight ahead, but would need help in order to be able to change lanes safely. That's the way it is with pilots. They fly virtually blind in all directions except straight ahead. Of course, you as a passenger, would like to think otherwise, but that's the way it is. Sadly, the mid-air collision that occurred between a PSA 727 jet, and a Cessna Model 172 aircraft over San Diego in 1978 is a hard example. There, the jet had the normal complement of 3 pilots, and a 4th jumprider. Air traffic control has advised them of the traffic, and all 4 were searching the sky. A bright sunlit sky that was clear. Because of the limited cockpit visibility, their looking was in vain. Subsequent studies showed that the Cessna aircraft was at a bearing 22° below straight ahead. The pilot's downward visibility was limited to about 16° down. If the PSA jet had a clear transparent nose, or if it had an airborne collision-avoidance system operating then that tragedy would not have occurred. There can be no greater graphic proof that pilots need help than this catastrophe in which so many died needlessly.

Today, pilots enjoy electronics (avionics) in many forms in aircraft. Electronics serve in the capacity of communications, navigation, and aircraft flight control. In each instance, there was initial resistance to change, but once pilots had the convenience provided by avionic equipment they were converted. None today would think of going without any of the equipment they now take for granted. If you think about it, most of the equipment is used only for a portion of the time during a flight. Take for example, a piece of equipment, called an emergency locator transmitter. It is useful only after a pilot has crash landed his craft. Yet, though its usage is most limited, pilots buy them. Collision-avoidance equipment would be something used 100 percent of the time on every flight.

Its greatest use is not in avoiding collisions, but rather in providing the knowledge of traffic location needed in order to safely navigate through the air. Now that the air line companies are changing from 3-man crews to 2-man crews, the need is even greater. For the 2-man crews still have the same in-cockpit chores needed during takeoffs and landings that the 3-man crews had. Here, the collision avoidance equipment could serve as a third man. One who can spend all of his time outside the cockpit. One, never tiring that can provide peace-of-mind to all pilots and their most precious cargo. It would be a third man that you only have to pay for once, and have available on each and every subsequent flight. Thus, such equipment has value. It would enable all flights to be made with less dog-leg vectoring saving both time and fuel costs. With it, traffic spacings between flights could be reduced with safety. This would reduce, and even eliminate some delays. Private aircraft owners would benefit additionally as there could be far fewer restrictions on the little guys. Again, making flying both more efficient and more safe. With the safety improvement, there could be a reduction in the amount of insurance premiums, thus, all-in-all such equipment would qualify as an investment and not as an expense.

Going back to the driving analogy, having such equipment would be like clearing all the windows in your car, and adding lookouts that didn't occupy much space, have much weight nor require much power. In my opinion, there is no present equipment aboard aircraft that pilots would enjoy more than a fully workable, and reliable collision avoidance system. Whether or not we ever see one remains problematical.

One man, James Pope, contends that the FAA is dead set against implementation of any collision avoidance system. Mr. Pope is a former employee of the FAA. While there, he had a chance to see first hand what was going on, and he didn't like it. His going public with the information cost him his job. The reason he gives is that once pilots have their own means of knowing the whereabouts of nearby traffic, they would not need all of the services of the FAA's air traffic controllers. The air traffic controller's responsibilities would be reduced to mainly establishing arrival and departure priorities at terminal areas. Thus, the size and the rate of growth of the FAA would be negatively impacted by collision-avoidance. This is something, Mr. Pope says, the FAA will not voluntarily allow to happen. So that you the reader can better assess the whole story, a short tutorial on designing an aircraft collision avoidance system follows. Though the subject is technical in nature, it is written so as to be easily understood by all.

The work of many engineers over the years has resulted in knowledge of just what information (data) must be exchanged between aircraft in any collision-avoidance system (CAS), and also just how best to use that information. What's left unsettled is just how best to effect the data exchange. Today, the best means remains 2-way radio. A special application of 2-way radio by combination transmitters-receivers called transponders. They function a little like 'active' radar. In operation, each aircraft would periodically (once a second) send out a transmission called an interrogation. Radar would have these transmissions reflect off of aircraft and return to the interrogator as a delayed echo. This is not done here because the strength of the echo would be too low to use, and the echo could not add any intelligence. In the case of the transponder (active radar) the interrogation signal is received by all aircraft within detection range. Its encoded intelligence is decoded telling the receiver what the interrogator's altitude is. If the receiver is within an altitude band of interest (co-altitude ±3400 feet), it is to make a return transmission called a "reply". The reply could be encoded with any desired information. This may be aircraft. ID, altitude, heading, airspeed, color, flight number, or whatever. The replier's range and bearing relative to the interrogator's can be derived from the detected reply by the interrogator's receiver. After a number of such information-exchanging cycles, each aircraft will have compiled a file on all of the aircraft within an area of interest. From that file can be drawn information on whether any may be a threat. Once one is determined to be a threat, then an on-board computer will determine a best course of action and relay guidance instructions to the flight crew. Thus, this is basically how an aircraft collision avoidance system using transponders would work.

Transponder equipment now exists for air traffic control. Here, it is known as the Air Traffic Control Radar Beacon System (ATCRBS). In use, the air traffic control ground stations do the interrogating and the in-range aircraft do the replying. This is only a one-way exchange. For collision-avoidance, all parties would have to participate in both interrogating and replying. The air traffic control stations would have to obtain equipment with which to listen for interrogations, and make reply transmissions. All aircraft would have to add equipment able to make interrogations, and listen for replies. Also, the aircraft owners would have to add another antenna aboard. Right now the single transponder antenna is located on the bottom of the aircraft's fuselage. To be sure of communications with all, a second top-side antenna would have to be added and operation alternated between the two. Just how best to design such a system is the next subject.

In this application of electronics, it is of paramount importance that inter-aircraft communications be reliable. Reliable, even in worse-case traffic conditions. You don't want any erroneous data exchanged, and you don't want to miss any data. These can lead to either false alarms, or missed alarms. Unless a flight crew can totally rely upon their equipment, the equipment will not be used. Again, the equipment is a form of 2-way radio used for inter-aircraft data communications. Like any radio equipment, a receiver can properly handle only one signal at a time. If two or more signals overlap timewise at a receiver, then the full intelligence of all will have been lost. This should not be a problem when only two aircraft are communicating, but could be when there are more. In dense traffic areas around major airports in this country there could be more than 40 aircraft all trying to communicate with one another at the same time and on the same radio frequency channel. Therein lies the problem. How does one assure reliability under circumstances where so many aircraft are tying to talk to each other during the same period of time? The following is a technical discussion that will clarify things and may prove to be quite revealing. Also, from it, you will be able to better judge for yourself just what the FAA intends for us.

Think about 40 people all on a single telephone party line. Periodically each wants to contact each of the others. To do so without interference, only one party can use the line at a time. Put another way, a listener can only understand when he (she) hears one person (signal) at a time. How to maximize the probability that this will be the case? Common sense tells us that each party need minimize the numbers of transmissions made during a certain period of time, and the length of time spent making each transmission should be kept to an absolute minimum. If the telephone line (radio channel) is unused most of the time, then the chances of your interference-free usage will be good. For example, if you want 95% chance of no interference on received signals, then the line (radio channel) should be unused 95% of the time. It's really almost just that simple.

Now let's apply this reasoning to the specific case of an aircraft collision-avoidance system design. Here, we want to make data updates once each second of time. That means that each aircraft in a communications net will make at least one interrogation, and all those detecting interrogations, and flying within an altitude band of interest will reply. Take the example of 40 aircraft within communications range. If each made one interrogation per second, there could be elicited one reply from each of the other 39 aircraft. Thus, the numbers of replies in an update period (one second) would be 40 x 39 = 1560. However, in a typical environment only about two-thirds would be within an altitude band of interest. So, for the 40 interrogations there would be 1040 replies of interest generated. Actually, while a range of interest may contain only 39 other aircraft, the signal detection range is typically twice as far implying four times the area, or 4 x 40 = 160 aircraft. So, rather than just 1040 replies being made within a period of one second, there would be more like 16,960 being made all within one second of time. Note: if the altitude difference between an aircraft detecting an interrogation and the interrogator's altitude exceeds 3400 feet then, according to the ATA, safety is implied, and a reply need not be made. The interrogation message would contain the altitude of the interrogator.

For this example, if these replies were not to overlap at an interrogator's reply message receiver then the time of receipt between any two replies would have to be greater than the time length of each reply. Let's look at a more typical case. This will involve a little arithmetic, but please put up with it as it leads to something.

The FAA has projected that worst-case traffic conditions will have .3 aircraft in each square nautical mile of airspace. An object of a collision-avoidance system is to provide pilots with a 40-second warning time to any detected threat situation. For aircraft flying under 10,000 feet above the ground level (agl), there is imposed a 250-knot speed limit. This means that the highest closing rate between two aircraft around terminal areas would be 500 knots (250+250=500). The distance covered in 40 seconds at this rate is 5.56 nautical miles (6.39 statute miles). Let's make that our maximum range of interest for this example. Now a circle having a radius of 5.56 nautical miles will encompass an area of 97 nautical miles squared. At .3 aircraft per nautical mile squared we would expect 29 in-range aircraft. If only 2/3's of those are within an altitude band of interest about an interrogator, then each would expect to get 19 replies from an interrogation. All of these 19 replies would be received in the time that it would take the radio signal to travel out to the maximum range of 5.56 nautical miles, and return. This is a time that is only 68.6 millionths of a second. Not much time for one reply, let alone 19. If there is to be no overlap of any of these 19 at the interrogator's receiver, how much time should be allowed for each reply? Certainly, it would have to be less than 68.6 divided by 19 = 3.6 millionths of a second. The better answer is that each reply should have a minimum amount of transmission time consistent with the ability to convey all of the intelligence required.

Note, as cited above, while a range of interest is just 5.56 nautical miles, a signal detection range is greater. So the number of communicating aircraft will be more like 4 x 29 = 116, each eliciting 19 replies within the range time of 68.6 microseconds.

Thus, now we can cite what is needed for an optimal transponder system design. All of the participants should be limited to just one interrogation per update period of one second (epoch). From these should be just one reply from only those aircraft within an altitude band of interest. Both the interrogations and the reply transmissions should have an absolute minimum of transmitter-on time. Nothing spectacular here, and it all should make some sense. I believe that you can now realize that since all participants in any data-exchange are free to interrogate randomly, or asynchronously, any more than one interrogation per second by any aircraft would needlessly pollute the radio spectrum, lead to a degraded 2-way link reliability, and cause unwanted interference. Also result in many unneeded replies. Now, having given you the basis for understanding, the following will describe both what is achievable today, and what the FAA intends for us.

Using the same technology we enjoy in our accurate quartz watches, we can encode virtually any message unambiguously as a period of time. One period of time to say one thing, and another different length of time to say something else. Electronics today is good at generating accurate frequencies, and in counting cycles of any frequency. Thus, an optimum design would let us encode messages as a period of time bounded by two transmitted pulses each having a minimum time length. That period of time would consist of some number of cycles of a frequency termed a 'clock' frequency. The clock frequency is chosen so that the time of each cycle represents the desired 'minimum time' length of all generated pulses. In use, there would be one pulse transmitted to denote the start of a message period, and another pulse signifying its end. In a proper system design, there would be no conflict in determining which pulses constituted a message start, and which were representative of a message end. Using two minimum-length pulses to encode messages would represent a way that utilizes an irreducible amount of transmitter-on time. This means could be used for both encoding the interrogation messages, and all reply messages. The time needed for a short pulse is primarily determined by the available radio-frequency bandwidth. The wider the bandwidth, the shorter the pulses can be.

Today, it's easy to encode messages this way, and surprisingly easy to recover pairs of pulses amidst a plurality of such pairs received overlapping timewise, and correctly decode all pairs. This is the only means to encode messages without a serious problem from overlapping. Here, whenever silence is overlapped by silence, you still get silence. In the existing radio channels used by the ATCRBS for air traffic control, each of two frequencies used has a signal bandwidth of 6 million cycles or Megahertz (MHz). One, at 1030 MHz is used for transmitting interrogations. Another at 1090 MHz is used for replies. A minimum time for a pulse of maximum power would be one having a time length of ⅓ of a million of a second (.333 microseconds). Let's see how we would fare using these bandwidths, and our novel pairs of transmitted pulses for message encoding.

The worse case would be the reply case, for where we might have 29 interrogations, we could expect 19 in-range replies, but interrogations don't just go to a range of interest and stop. They continue on with diminishing strength. A detectable range may be one that is twice the range of interest. Or in our example the detectable range would be 11.11 nautical miles. Here, we could expect to elicit 77 replies for each interrogation. The total reply transmitter-on time would be 29 x 77 x ⅔ = 1486.7 microseconds. The usage in the interrogation spectrum would be just 29 x ⅔ = 19.33 microseconds. Notice the disparity. There is far more time

used for replies than there is in generating interrogations. If the two spectrums were combined to form just one 12 MHz band, then each pulse could be halved in time length, and a single wider-band frequency could be used for both interrogations and replies. Doing this would further reduce the usage density of the radio channel and make for better reliability. (another advantage. It costs less to make a single channel transponder than it does for a dual-frequency one). However, in order to discriminate between the two types of messages, some change would be in order. Since there are fewer interrogations than replies, the makeup of the interrogation should be the one altered requiring more time. For example, make the start of an interrogation consist of a pair of closely spaced pulses, and the end of an interrogation also another pair, but a pair having a different spacing. By doing this, we would have increased the number of pulses used to send an interrogation to 4. Look now at what could be accomplished. There would be 29 x 77= 2233 replies of two pulses each for a total of 4466 pulses. In addition to these on the same spectrum would be the 29 interrogations which would require 4 x 29 =116 pulses. A combined total would be 4582 pulses each having a length of ⅛ microsecond. So, the total transmitter-on times would be just 764 microseconds for aircraft communications. If we add numbers for air traffic control operations, we would get a truer picture. A worst case area may be where signals from as many as 40 ATC stations overlapped aircraft signals. To aircraft in such an area, these would appear as just 40 more interrogations and 40 x 77 = 3,080 more replies for a total of 5313 replies, and 69 interrogations. The added added transmission time would be 1053 microseconds. Thus the transmission times of both aircraft and air traffic control stations would be 764 + 1053 = 1817 microseconds out of an available one million microseconds existing during a data update period. This means that the radio spectrum would be unused 99.82 percent of the time, and would be indicative of the 2-way link reliability attainable for this example.

If, instead, operation were to take place on the 30 MHz band centered at 1607.5 MHz., a frequency already allocated by the FCC for aircraft collision-avoidance usage, then each pulse would require only .067 microseconds for a total of 726.8 microseconds. A time so short that the spectrum would be unused for 99.93 percent of the time. One other little facet should be mentioned. In this type of a design, an interrogator's reply receiver need be on only for a period of time needed to hear a reply from an aircraft at the greatest range of interest. That would be a period of time less than 1% of a second. Hence, the reply receiver would be off 99% of the time ignoring all of the replies intended for others. Not so with the FAA's design. The FAA would necessarily have to have its reply receiver on 100% of the time so as to be able to pick up on any new in-range aircraft. This means its equipment would have to have a greater data memory capability, and have to process all replies most of which would be of no significance. Being on for 100% of the time will add to the probability of detecting phantom aircraft, and generating false alarms.

Now this past discussion was given just so that you the reader can grasp a little of what can be done today towards making a most reliable inter-aircraft data exchange means, and the reasoning behind it. Having learned how to make a reliable system, let's look at what might constitute a worst design. First, we would use some message encoding means other than a time type. One that would have all reply messages require a time that is as long as the maximum range time. In our cited example, this would be a time of 68.6 microseconds. By doing this, we could be assured that there would be overlapping interference anytime that there were more than one in-range replier. Next, instead of just one interrogation each second, let's up the count to something like 10 or more each second, and let each interrogation also take an appreciable amount of time. Something like 29 microseconds instead of the .267 microseconds cited above (4 X .067). They wouldn't provide us with any more intelligence, but would serve to further overload the spectrum making sure that no single signal could ever be received by itself. About now you should question "Who in their right mind would do something like this?". Suppose we take a look at the FAA's design, and see.

Initially, the FAA intended to add a collision avoidance function to the existing air traffic control transponder system (ATCRBS). Their thinking was noble if nothing else. Here was an in place, and operating system. Most of the aircraft that fly in controlled airspace are already equipped with such transponders. If it could be made additionally workable as a collision avoidance system, then only those wanting the collision/avoidance function would have to buy something new. This was in 1974, and the intended design was called BCAS, for beacon collision avoidance system. Well, already in dense traffic areas the transponder system was overloaded by too many transmissions being made in response to interrogations made by ground-based air traffic control stations alone. And the ATCRBS reply message requires 20.75 microseconds to complete, a lot more than our attainable .133 microsecond figure. Now, add any interrogations from BCAS equipped aircraft, and you would be exascerbating an already intolerable condition. Yet the FAA tried. Their efforts resulted in a decision to abandon BCAS, and go to a new message format.

Not wanting to have to mandate implementation of new equipment for all, the FAA chose the path of allowing the gradual phase-out of ATCRBS transponder usage, with the replacement transponder designed to be able to operate with either the ATCRBS message format, or the newer message format initially called DABS for discrete address beacon system. The name was subsequently changed to Mode-S, for mode select. Its greatest virtue was the capability of being able to individually interrogate any selected aircraft. This format utilizes what is called pulse position, or pulse-code modulation for reply messages. Such a message consists of transmitted pulses interspersed with period of no pulses according to the encoded message. For interrogations, pulse position modulation is used at the beginning of an interrogation to indentify it as such. A following data segment utilizes what is called bi-phase shift keying to encode the message intelligence. Bi-phase shift keying consists of a continuous transmission with periodic interruptions. The interruptions consist of a complete upside down reversal of the signal's wave structure. The encoded intelligence determines the timing of these interruptions, or polarity inversions. While both of these types of carrier-modulation means are widely used, neither is suitable for this multi-party application simply because they require too much transmitter-on time to send a message.

Now, knowing that the ATCRBS was no longer usable as either an acceptable air traffice control data exchange, or the more pressing collision avoidance data exchange means because of too many interrogations and excessive reply message time, you would think that the FAA's new improved message format would somehow reduce the numbers of required interrogations, and approach the desired minimum time length for all transmissions so as to ensure the best possible 2-way communications reliability. Not so. Their new design maximizes the numbers of interrogations an aircraft would make during each data update period, and has replies lasting a destructively long time.

Recall that an example of a worst possible design would have replies last for an entire range time of 68.6 microseconds? Well, the FAA chose to do just that. Only the digital world, it is better to use numbers that are integral powers of two. Such a number that is less than 68.6 is 64. The next higher number is 120. Please know that the FAA intends that the replacement for the unacceptable 20.75 microsecond reply time of the ATCRBS transponders is to be replies having either a length of 64 microseconds, or a length of 120 microseconds. They both will be used to effect an average reply length that can be greater than the full-range time of 68.6 microseconds. On the number of intended interrogations, rather than just one interrogation per update period for all, the FAA intends that there will be one interrogation for every reply sought, once Mode-S is fully implemented. In the example given earlier, it was shown that as many as 5313 replies would be elicited by 29 aircraft interrogations, and 40 ATC station interrogations. 29+40=69 interrogations which is enough to do the job. Instead of just 69, the FAA would use 5313 interrogations, and the average length of each could be 29 microseconds instead of .133 microseconds, an attainable value. That's 5313×29=154,077 microseconds instead of .133×69=9.2 microseconds for interrogations that a better design would need. More than 16,747 times as much time (154,077/9.2=16,747).

In order to allow continual usage of the ATCRBS and yet add collision avoidance, the FAA intends a complicated arrangement of limits to both the numbers of interrogations made, and the power level of each is to be employed. Employed in equipment now termed TCAS for traffic alert and collision avoidance system. In areas where the numbers of aircraft are low, there will be made not just one ATCRBS interrogation, but as many as 32 during each second of time by each aircraft. As the aircraft density becomes higher, the number of allowed interrogations will be reduced, and also the power so as not to interfere significantly with normal air traffic control functions. So, operations will still be made with dual-frequency transponders, only the new ones must include a dual encoding/decoding means as well. This, so that they can operate compatibly with either the ATCRBS message formats, or the replacement Mode-S message formats. All air traffic control stations will continue to use their mechanically rotating antennas and provide controllers with updates only once every 4 or 9 seconds.

Once all ATCRBS transponders are replaced, and this is now estimated to be sometime after the year 2000, only addressed interrogations are to be employed. To do this, each aircraft must accumulate and continually update a list of all aircraft

within communications range. Addressed interrogations will be a must because of the full-range length of the Mode-S replies. Only one reply can be made per interrogation to be sure of no overlap. While the theory sounds plausible, there are practical limits. Aircraft will have to have antennas both on top of their fuselages, and on the bottom. Today, all ATCRBS antennas are bottom-mounted. The frequencies employed are so high that the radio signals behave much like light. They cannot penetrate metal. Therefore, in certain aircraft attitudes, communications are best made with bottom-mounted antennas to avoid 'shadowing' effects of an aircraft's protuberances. Whenever this is done, there will be an Interference problem from surface-reflected signals. The so-called short 64 microsecond Mode-S message is one that is almost 11.9 miles long (that's how far radio signals will travel in 64 microseconds). This means that anytime two communicating aircraft are flying at less than 31,000 above the ground, a ground-reflected signal will overlap a direct aircraft-to-aircraft one at the receiving aircraft. Thus causing destructive interference. That's one drawback of the lengthy replies of Mode-S. Another is the need to establish and maintain a 'roll-call' list of in range aircraft then make a separate interrogation to each once a second. This will only transfer the problem of excessive replies to one of excessive interrogations. The Mode-S interrogation message is also one having two possible lengths. Like the Mode-S replies not something close to a minimum in time length but times that will either be 22 or 36 microseconds long. They will be susceptible to destructive overlap. Any change in the encoded message of an interrogation by overlap will result in either a wrong aircraft being called, or the wrong information requested. It could also be both.

Let's look at what might be the spectrum usage by TCAS with Mode-S in a worst-case traffic environment. That's one where there will be .3 aircraft in each square nautical mile of airspace. A 40-second range time would be 5.56 nautical miles, and cover an area of 97 square nautical miles. However, as cited earlier, a signal detection range may be twice as far of 11.11 nautical miles. Over this extended range, there could be as many as 116 aircraft trying to communicate with those nearby. If each makes 22 interrogations to those thought to be within an area of interest there will be a total of $116 \times 22 = 2552$ interrogations made and detected by all of the aircraft. All of the 2552 replies generated will likewise be detected by all others. Hence, in such a situation the 2-way communications (interrogator to replier & replier to interrogator) reliability would be on the order of just 40%. Now the FAA is aware of degraded performance that may occur under such situations. What's their fix? Not make a change to improve reliability under these conditions, but simply change the ground rules. Don't provide a full 40-second warning time like the private designs did, and like the pilots want. Cut back both on the numbers of transmissions made, and the transmitter power. This reduces the circle of communications and will result in better reliability. Of course, the pilots may only get 20 second warnings. The FAA, in its infinite wisdom, considers this acceptable. To this writer its another admission of failure. The FAA, in seeing a shortcoming of their design, rather than make a constructive change, resorts to subterfuge. Cheat the pilots, and cheat the flying public. That it will work with these complexities is a fact and herein admitted. That's like saying it will "fly". But like aircraft designer's say, "We can make anything fly, given enough power". In my opinion, the attainable performance of TCAS with Mode-S is not acceptable, and it comes at too high a cost.

For such equipment serving in a life and death situation must itself be without compromise. Not only must it be of optimum design for performance, but it must also include a comprehensive self-test capability. The pilots, depending upon such equipment for safety, must know at all times that the equipment is working properly. Any collision-avoidance equipment, before being accepted, will have to include an automatic self-test capability. This means be able to make a self-test once each second, as it accumulates data once each second. Equipment for usage aboard air liners, or military craft would have redundant capabilities. Anytime a fault is noted in one equipment module, operation would change to the backup unit and the pilot notified of its status. Also, self-test would be made before an aircraft's engine is started prior to flight. If the CAS equipment doesn't work, the aircraft just don't go. Once a system is fully implemented, the air traffic controller could be given the capability to exercise an aircraft's collision-avoidance system before giving that aircraft permission to take off. By doing this, all will know the equipment of others is working properly. Anytime an inflight failure occurs leaving one system completely inoperative, then the flight crew of that aircraft will be responsible for using every other facility available to ensure safety, and would notify the nearest air traffic control station.

Let's talk about costs to implement. A dual-frequency, dual encoder/decoder Mode-S transponder is estimated to cost anywhere from $1,500 to $2,500 without any collision-avoidance function. Add a minimum collision-avoidance function and the price jumps to something like $4,000. The deluxe version known as TCAS III, and planned for air carriers and the military has an estimated cost that ranges from $70,000 to $250,000. A less exotic version known as TCAS II has already been proclaimed by our Department of Transportation to be this nation's standard for collision-avoidance equipment. This was made so in an order (6367.1) issued on June 19, 1984. That's over two years ago. Yet, today there is no air line company using this equipment to enhance safety or improve flight efficiency. No avionics company offers such equipment as part of their standard production line. You ask the FAA why, and might be told is because of no customers. Air line companies can't afford the equipment, general aviation aircraft owners can't either and they don't want it, according to the FAA. They also say that another problem is the reluctance of the International Civil Aviation Organization to accept it. Of course they're reluctant. The whole concept of TCAS/Mode-S makes for a very expensive and very poor collision-avoidance system, and we're expected to wait at least another 14 years for full implementation. Recall the Air Transport Association of America had specified that an acceptable design be on able to provide pilots with a 40-second warning time? Well, the 3 rejected private designs all met this specification in their submissions made to the FAA in 1974. Here today, 12 years later, our FAA will only guarantee 20 seconds with their TCAS design. Why does the FAA feel free to loosen requirements for its design, while holding, at the time, private designs to the 40-second requirement? Especially when a very comprehensive analysis showed that pilots really need this much time in order to make an assessment of their predicament, then respond with a smooth gradual correction. In my opinion, this is just another indication of failure of the FAA's design.

Any new private design utilizing a message-encoding format requirement little transmitter-on time would have no trouble providing a full 40-second warning to all and in all areas. A 40-second warning time without a lot of nuisance, or false alarms by making one change. The FAA intends that all aircraft include an exchange of altitude information. The altitude they have in mind is called pressure altitude. That is simply the present altimeter indicated altitude when the altimeter is adjusted for a standard day pressure (29.92 mm. of mercury). Rather than this, a better parameter to exchange would be that altitude to be attained in the next 40 seconds (future altitude). By making such a change all would have included the effects of their vertical speed. This is easy to do, and would permit threat computers to do a more accurate job of predicting potential collisions with a 40-second lead time.

Getting back to costs. With TCAS estimated to be so costly, most small aircraft owners won't buy, and the FAA says that they don't have to. That's nice, but leaves us with a problem. In any encounter between a TCAS-equipped air liner, and a none-equipped small aircraft, it will be incumbent upon the air liner to always yield the right-of-way to the little guy. This, even though the little guy is the most maneuverable aircraft (almost 85% of the aircraft in this country fall into this category). If a good private design were adopted to replace the FAA's TCAS offerings, the reverse could be true. All aircraft would be required to have collision-avoidance equipment, and at a cost less than that required for one of the FAA's Mode-S transponders. The right design could enable air liners to always have the right-of-way over smaller aircraft. Here's one way of accomplishing that. Added to the data exchange would be aircraft-type identity. Once a threat situation arose between a small aircraft and an air liner, the equipment in the small aircraft, recognizing a threat from an air liner, would provide a warning with a 44-second lead time. The equipment in the air liner would always delay a warning by 4 seconds if the offending aircraft is recognized as a small one. By doing this, the small aircraft would have 8 seconds in which to start a correction. Most of the time the small aircraft would have started a correction making one by the air liner unnecessary. This is certainly the more equitable way to go. Now think about midair collisions.

Presently there is an average of about 32 mid-air collisions occurring in this country per year. If we have to wait for so-called full implementation of collision avoidance for 14 more years, then we can expect 448 midair collisions involving 896 aircraft. If each had an average of just 3 passengers who died as a result of the collision, then we're talking about close to 2,700 people who will die needlessly. Of course, statisticians can argue that this is a small number compared to those who will die in other aircraft, and automobile accidents. Yes, its small but in this case we are talking about avoidable accidents, and avoidable deaths. Also, there is no reason not to believe that out of the 448

anticipated midairs at least one will involve an air liner and a lot more people both in the aircraft, and on the ground may have to die needlessly.

Let us look at managing immediate full implementation of a good design. A good private design. If operation were to be made on a single frequency rather than on two as is now the case, then there could be simplification of hardware and a cost savings. Since a new design need have only one message encoding and decoding means another savings would be realized. All-in-all today such a design could include a reliable collision avoidance function as well as serve in air traffic control and sell for the same price as today's ATCRBS transponders. These transponders are priced at under $1000 for three different models. The FAA argues that aircraft owners can't afford the equipment. Let's say that may be so, but how about if each is given a subsidy? Not a taxpayer subsidy but another. Here's what sounds practical to me. There are about 220,000 aircraft in this country that would need such equipment. If we were to give $1000 to the owner of each stipulating that the money need be spent on implementing collision-avoidance equipment, then the total outlay would be 220 million dollars. That would be enough money to outfit all aircraft with minimum equipment.

Right now in a trust fund known as the Airports and Airways Trust Fund there is a balance of 7 billion dollars. Of this, 4 billion is committed to support several programs. This leaves an uncommitted surplus of 3 billion dollars. An embarrassingly high surplus. This money has come from taxes applied to aircraft owners. It is their money. Though not now available for such usage, a change in legislation could make it available. Thus, minimum equipment could be made available to all with an expenditure that is really less than 8% of monies accrued for which there is no other need. Money not paid directly by taxpayers, but monies collected from aircraft owners. There could be no better expenditure for 100% of this money let alone just 8%.

Another factor of concern to the FAA is in phasing-in another system. What happens during a transition period? Since it has been shown that a single-frequency operation is both practical and most cost effective, it makes sense to go to that. Leave present air traffic control as it is, and phase in collision-avoidance equipment on another frequency. Use the frequency of 1607.5 MHz already allocated by the FCC for such usage. Then, allow a period of time for all aircraft owners to install equipment. That period of time to be one that is reasonable from both a equipment production schedule, and an installation schedule. Once that established period of time has elapsed, no unequipped aircraft would be allowed to fly over populated areas, or in controlled airspace. Such a transition period may be a period of three years. That means someone buying equipment today would not be able to enjoy full usage of it for three years. The FAA has stated that this should not be. However, any worthwhile undertaking of man requires an initial investment, then time to complete. This whether it be a bridge, freeway, or building. Here, collision avoidance is no different.

Concluding.

Pilots need the help available from electronic traffic surveillance (collision avoidance), and the flying public deserves it. Today a most efficient collision avoidance system can be made and full implementation realized in as little as 3 years after approval of design and start of production. It would be most cost effective and could easily be adopted as a world standard. Being equipment able to effect flight savings to all, all would soon accept it both for the savings and also for the freedom of more unrestricted flight coupled with better safety. Cost cannot be an objection when there is money in the Airport and Airway Trust Fund that could be used to initiate implementation. Time to implement cannot be an objection for all have already waited over 20 years for something. One more thing. Mention was made of the fact that private avionics engineers were participating in TCAS development as members of the Radio Technical Commission on Aeronautic's (RTCA) committee No. 147. Please know that this committee includes members that are engineers from Japan, England, Belgium, France, and Russia. If the American people can't come up with a design worthy of being adopted as a world standard, you can bet somebody else will. I argue that that shouldn't and needn't be. Also, this point should be clearly made. There is no suggestion here that all of the work that has been accomplished over the years by so many be entirely discarded. No charge need be made in the information to be exchanged. No change need be made in just how best to use the information. Only change the message encoding means. Only change from Mode-S to something else that's both a more efficient means of encoding data, and one that would be less costly to implement. Keep TCAS, but get rid of Mode-S as the data exchange format.

You have been reading something critical of an agency of the United States government. Something written by just one man. About now you should question why such a story hasn't come from one of the nation's Avionics firms. After all, they would be the ones to profit more by developing a design worthy of becoming first a U.S. standard, then ultimately a world standard. You talk to them looking for corroboration of what has been given here, and you may get either a "no comment" or something else. That something else may be the logic that they aren't "pioneers". Speculating in a new field in risky, and rather than gamble, they would rather see someone make a design, then participate in producing that design. Get their share of the market rather than going for the big plum. That's one view, but there is another more ominous one. Today, all Avionic firms need to have their products approved by the FAA. You get the FAA mad at you for any reason, then you might find approval a little hard to come by. In my opinion, its simply a question of intimidation. If the FAA wants the whole collision-avoidance design pie, the FAA gets the whole pie, and the public be dammed.

This discussion would not be complete without looking at another order already made by the department of transportation. That is their order number 6365.1A issued on January 3, 1983. Its subject is: U.S. National Aviation Standard for the Mode Select Beacon System (Mode-S). It describes the purpose of the order to establish Mode-S as the new beacon system to replace the ATCRBS. Two paragraphs of that order bear some study, and they are give here.

"4. Background.—a. It was recognized in a study conducted for the Department of Transportation in 1968, that improvements would be required in the Air Traffic Control Radar Beacon System (ATCRBS) to support air traffic control through the 1990's. Also recognized was the need for a data link system to support enhanced automation with sufficient capacity to meet traffic growth through the same period.

"c. In December 1981 the concept was modified to remove all ground based collision-avoidance functions and associated complexities reducing cost substantially. The name was changed to Mode S at that time to be consistent with the international name adopted for these systems."

Paragraph 4a says that there is a need for enhanced automation. One way to enhance automation at all Air Traffic Control Stations is to add a collision-avoidance function to the equipment at each station. Think about the job of the air traffic controller. It's both dull, and repetitive yet carries an awesome responsibility. It's a job far better suited to a machine (computer). With a good collision-avoidance system providing good reliable data and at an update rate of once a second, a computer could essentially take over the job completely. While a controller tries to assess the safety of one aircraft out of maybe 100 displayed on his screen, the computer could check all within the same period of time. Should a safety problem arise between any two, the computer could both alert the traffic controller and provide him with directions to give to the flight crews of each affected aircraft.

Paragraph 4c in removing all collision-avoidance functions wipes this out, and I read this as saying: "We can't make it work reliably so let's just cut it out". We have to ask why. Why if their design is so good as to become the national standard, why if it's good enough for aircraft, why not good enough for air traffic control stations? If it's too complex, and too costly for a ground station, wouldn't the same equipment be too complex and costly for an aircraft? Especially a small general aviation aircraft? In my opinion, this is another admission of failure. The FAA's collision avoidance cannot be added to the air traffic control stations equipment because the data is neither reliable enough, nor available at an acceptable rate. If we were to go to a new private design. That new design could also be used by the air traffic control stations. They could throw out their mechanically rotated antennas used for operation and replace them with a fixed omni-directional one that could be used for interrogations. With this, each station could then get good data, and have it available at at least once a second. Hence, having it available for a computer to use in assisting traffic controllers. Of course, to use such an antenna, the reply message format must be one of a short transmission time. The cited optimum figure given in this document would permit air traffic control stations to make omni-directional interrogations and have a 34-foot range resolution. This means that aircraft only have to differ in range by a 34-foot length in order to be separately identified. And 34 feet is less than the length of all airliners.

Thus the picture seen by one engineer. One who is not trying to sell just one design, but one who has tried to make the point that the work of the FAA lends credence to the allegations made by Mr. Pope that the FAA really doesn't want to ever see any such equipment implemented. Either the FAA's engineers aren't very smart, or they are. If they're not, then they should be taken out of the design effort. If they are, and they have been deceiving the public, then they should be taken out of the design effort, and also removed from the public's

payroll. It is my opinion, after many years of watching them spinning their wheels, that it's just like Mr. Pope says. They just don't want to see any collision-avoidance equipment water down the monopoly they now have on air traffic control. Not any sooner than they have to. I'll argue that if the FAA were taken out of the CAS design picture, this Nation's avionics engineers would immediately step forward with a number of designs all of which would be substantially better than TCAS/Mode-S, cost a lot less, and be made available sooner. Designs for equipment able to provide protection 100 percent of the time whereas air traffic controller must time-share their services. Services that a flight crew may not have when they are needed the most.

Today airline companies are having trouble making ends meet. General aviation business has declined over 80 percent. Partly because of high fuel costs and high product liability costs. Partly because of ever increasing air space restrictions reduces the value of flying. The equipment being discussed here can help both. Can make commercial flyng more profitable, and private flying less costly and safer. Since it is a product that can save all money, while providing benefits of flight efficiency and safety, there is no reason not to believe all aircraft owners would go for it once shown a good package, and a good price. Pilots expressed their needs in 1967. Three firms, Honeywell, RCA, and McDonnell-Douglas, had designs meeting all specifications ready in 1974, over 12 years ago. How much longer should pilots, and the flying public, have to wait? How many more need die before action is taken? Action to get an agency of the Federal Government out of unfair competition with private industry. Private industry that can do the job both a lot better, and a lot quicker. I say that time for change is now. Change that will help both pilots and air traffic controller. Beyond that, just this.

It's true that the probability of mid-air collision involving an airliner is low today. Yet, in the game of large numbers, the event of low probability will occasionally occur. Commercial flying is a game of large numbers, thus each of us has to ask ourselves these questions. "When will it occur?" "How many may die?" "How close to home will it strike?" and, "What could I have done to prevent it?" Mr. Pope has done his part, and is still trying. By this paper I am trying. Now it's your turn. How about helping effect change? Change to help yourself and all those dear to you.

[Press release from Government Accountability Project, June 18, 1985.]

WHISTLEBLOWER CHARGES NEEDLESS MIDAIR COLLISIONS—FAA COVERUP TO PROTECT R&D BOONDOGGLE

A former Federal Aviation Administration ombudsman today charged that FAA has permitted hundreds of needless deaths over the last 10 years by failing to certify an inexpensive, proven device to backup air traffic controllers in avoiding midair collisions. The reason was that approval of the collison avoidance device would obviate the need for FAA's own Research and Development program into the same problem, according to a "whistleblowing disclosure" filed today with the Office of the Special Counsel at the Merit Systems Protection Board. But FAA's version still hasn't been developed. As Pope explains, "Ten years, $125 million in R&D, and 548 deaths later, we still don't have a backup device to protect us when the controllers make a mistake." Pope's charges come just as FAA is about to test the latest version of its program, known as Total Collision Avoidance System (T/CAS).

The stakes are high both in terms of public safety and economics. Pope and many industry leaders say that an air-based backup system is needed, because that approach guarantees an independent check on electronic failures or human errors in the existing ground-based air traffic control system. The Honeywell Corporation developed such a device, known as the Aircraft Separation Avoidance System (ACAS), in the early 1970's. After a four year, congressionally mandated study, on December 16, 1975 an internal FAA study concluded that the Honeywell model was available for immediate implementation and met all agency objectives but should be rejected. The study committee explained that if Honeywell's model were approved, FAA's own R&D program for a backup collision-avoidance device no longer would be necessary.

Unfortunately, FAA's version is ground-based, which leaves it vulnerable to the same flaws of the controller system it is backing up. A 1977 report for FAA by the MITRE Corporation concluded that the air-based ACAS could have prevented all 228 conceivably avoidable midair collisions, while two ground-based FAA models could have prevented only 190 and 2, respectively. FAA has denied the report's existence to Congress. Since the secret 1975 decision, 548 passengers have died in midair collisions, many of which were avoidable. "There is no decent excuse, for the avoidable accidents," declared Pope's attorney Thomas Devine, legal director of the Government Accountability Project. "These Americans were sacrificed at the altar of FAA's R&D budget."

It's an expensive altar. In the last ten years FAA has thrown nearly $125 million in taxpayer funds after the ground-based system, which still has not been implemented. "The wasted R&D funds are only the beginning," explained Pope. "It will cost another $7-8 billion to construct all the new ground terminals necessary for T/CAS to function, even if it worked."

GAP, a non-partisan, public interest whistleblower organization, took the case, according to Devine, because "Mr. Pope's experience is a classic case where the government exists to benefit itself, not the public. Cutting this boondoggle out of the budget would not hurt anyone except the bureaucrats. The only thing we accomplish by continuing FAA's research is to risk another aircraft tragedy."

GOVERNMENT ACCOUNTABILITY PROJECT,
Washington, DC, September 10, 1985.

Hon. ELIZABETH DOLE,
Secretary of Transportation, U.S. Department of Transportation, Washington, DC.

DEAR SECRETARY DOLE: I am writing on behalf of our client, Mr. James Pope, in regard to a current Department of Transportation (DOT), Office of Inspector General (OIG) investigation of the Federal Aviation Administration (FAA). The Office of the Special Counsel (OSC) referred to you, under 5 U.S.C. §§ 1206(b) (3) and (4), Mr. Pope's whistleblowing allegations of wrongdoing by the FAA in its ongoing midair collision-avoidance research and development program. The OIG has been conducting the investigation ordered by the Special Counsel.

We recently learned that the OIG has not engaged in a good faith, reasonable effort to investigate Mr. Pope's charges. As the attached affidavit clearly shows, the OIG has merely organized previous FAA denials of Mr. Pope's allegations to match up with his current charges. The OSC did not order a cursory comparison of pre-existing documentation; the OSC ordered an investigation based upon its assessment that there was a "substantial likelihood" that the information brought forward by Mr. Pope disclosed improprieties. The OSC referral could not have occurred if the previous FAA denials had credibility.

5 U.S.C. § 1206(b)(4)(B) requires you to include "a description of the conduct of the investigation" in your written report to the OSC. The information that we currently possess shows that the OIG has not conducted an investigation. Pulling old reports from a file and resubmitting them to the Special Counsel under a new cover letter does not qualify as an investigation.

We request that you look into this matter before completing your report to the OSC, and seek an extension of time under 5 U.S.C. § 1206(b)(3)(A)(ii) in order to assure that the DOT conducts a thorough, good faith investigation into Mr. Pope's allegations, as required by law.

Sincerely,

THOMAS DEVINE,
DONALD APLIN,
Counsel for Mr. Pope.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. DORNAN of California. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I appreciate the gentleman's concern, and I understand the importance that this issue has to the district that he represents and really to all of our districts with regard to air safety.

I just want to explain to the gentleman that early on, the Interior Committee in terms of dealing with these oversite flights over parks did examine some of the different issues in terms of look-down radar, transponders, and other types of technology that could in fact help avoid these types of midair collisions, because clearly that was something that came up and was brought to our focus of attention, the terrible loss of life that occurred after our hearings had really begun on dealing with the issue that we have before us.

The decision was to defer that and to permit the Committee on Public Works and Transportation, especially the subcommittee of the gentleman from California [Mr. MINETA] and others, to deal with that issue so that we could narrow the focus of this. It is an important issue that the gentleman raises, but we are trying to deal with a more limited focus with this, and I appreciate the gentleman's comments and his understanding of the matter.

Mr. DORNAN of California. Reclaiming my time, Mr. Chairman, in no way did I accept the gentleman's point of order as indicating not having equal concern with me for air safety, and I just hope that the gentleman understands my frustration that this seemed

to be the only vehicle to discuss this and move it forward on a priority basis.

We lost seven people in the space shuttle *Challenger,* and look at the focus of concern there. We lost 9 people on the ground alone, 70 in the air, combining the two airplanes over my district and on the ground in my district, and I want to see the same focus and concern on getting an airborne collision avoidance system. I am still not convinced that the T-CAS is anything except a complementary system. I want to see redundancy.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. GRAY of Illinois) having assumed the chair, Mr. PICKLE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4430) to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national park system units, pursuant to House Resolution 533, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum if not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 378, nays 12, not voting 41, as follows:

[Roll No. 390]

YEAS—378

Ackerman	Applegate	Bartlett
Akaka	Archer	Barton
Alexander	Aspin	Bateman
Anderson	Atkins	Bates
Andrews	AuCoin	Bedell
Annunzio	Badham	Beilenson
Anthony	Barnes	Bennett
Bentley	Frost	Matsui
Bereuter	Gallo	Mavroules
Berman	Garcia	Mazzoli
Bevill	Gaydos	McCain
Biaggi	Gejdenson	McCandless
Bilirakis	Gekas	McCloskey
Blilley	Gephardt	McCollum
Boehlert	Gibbons	McCurdy
Boggs	Gilman	McDade
Boner (TN)	Gingrich	McEwen
Bonior (MI)	Glickman	McGrath
Bonker	Gonzalez	McHugh
Borski	Goodling	McKernan
Bosco	Gordon	McKinney
Boucher	Gradison	McMillan
Boulter	Gray (IL)	Meyers
Boxer	Gray (PA)	Mica
Brooks	Green	Mikulski
Broomfield	Gregg	Miller (CA)
Brown (CA)	Guarini	Miller (WA)
Brown (CO)	Gunderson	Mineta
Bruce	Hall (OH)	Mitchell
Bryant	Hall, Ralph	Moakley
Burton (IN)	Hamilton	Molinari
Bustamante	Hansen	Mollohan
Byron	Hatcher	Monson
Carper	Hawkins	Montgomery
Carr	Hayes	Moody
Chandler	Hefner	Moorhead
Chapman	Hendon	Morrison (CT)
Chappie	Henry	Morrison (WA)
Cheney	Hertel	Murphy
Clay	Hiler	Myers
Clinger	Hillis	Natcher
Coats	Holt	Neal
Cobey	Hopkins	Nelson
Coble	Horton	Nichols
Coelho	Howard	Nielson
Coleman (MO)	Hoyer	Nowak
Coleman (TX)	Hubbard	Oakar
Collins	Huckaby	Oberstar
Combest	Hughes	Obey
Conte	Hunter	Olin
Conyers	Hutto	Ortiz
Cooper	Hyde	Oxley
Courter	Jacobs	Packard
Coyne	Jeffords	Panetta
Craig	Jenkins	Parris
Crockett	Johnson	Pashayan
Daniel	Jones (NC)	Pease
Dannemeyer	Jones (OK)	Penny
Darden	Jones (TN)	Pepper
Daschle	Kanjorski	Perkins
Daub	Kaptur	Petri
Davis	Kasich	Pickle
de la Garza	Kastenmeier	Porter
Derrick	Kemp	Price
DeWine	Kennelly	Pursell
Dicks	Kildee	Quillen
Dingell	Kleczka	Rahall
DioGuardi	Kolbe	Ray
Dixon	Kolter	Regula
Donnelly	Kostmayer	Reid
Dorgan (ND)	Kramer	Richardson
Dowdy	LaFalce	Ridge
Downey	Lagomarsino	Rinaldo
Dreier	Lantos	Roberts
Duncan	Latta	Robinson
Durbin	Leach (IA)	Rodino
Dwyer	Leath (TX)	Roe
Dymally	Lehman (CA)	Roemer
Dyson	Lehman (FL)	Rogers
Eckart (OH)	Lent	Rostenkowski
Eckert (NY)	Levin (MI)	Roth
Edgar	Levine (CA)	Roukema
Edwards (CA)	Lewis (CA)	Rowland (CT)
Edwards (OK)	Lightfoot	Rowland (GA)
Emerson	Lipinski	Roybal
English	Lloyd	Russo
Erdreich	Loeffler	Sabo
Evans (IA)	Long	Saxton
Evans (IL)	Lott	Scheuer
Fascell	Lowery (CA)	Schneider
Fawell	Lowry (WA)	Schroeder
Fazio	Lujan	Schulze
Feighan	Luken	Schumer
Fiedler	Lundine	Seiberling
Fields	Lungren	Sensenbrenner
Fish	Mack	Sharp
Florio	MacKay	Shaw
Foglietta	Madigan	Shelby
Foley	Manton	Shumway
Ford (MI)	Markey	Shuster
Frank	Martin (IL)	Sikorski
Franklin	Martin (NY)	Siljander
Frenzel	Martinez	Sisisky
Skeen	Studds	Watkins
Skelton	Sundquist	Waxman
Slattery	Swindall	Weaver
Slaughter	Synar	Weber
Smith (FL)	Tallon	Weiss
Smith (IA)	Tauke	Wheat
Smith (NE)	Tauzin	Whitley
Smith (NJ)	Taylor	Whittaker
Smith, Robert (NH)	Thomas (CA)	Whitten
	Thomas (GA)	Williams
Smith, Robert (OR)	Torres	Wirth
	Torricelli	Wise
Snowe	Towns	Wolf
Snyder	Traficant	Wortley
Solarz	Traxler	Wright
Solomon	Udall	Wyden
Spence	Valentine	Wylie
Spratt	Vander Jagt	Yates
St Germain	Vento	Yatron
Staggers	Visclosky	Young (AK)
Stallings	Volkmer	Young (FL)
Stangeland	Vucanovich	Young (MO)
Stenholm	Walgren	Zschau
Strang	Walker	

NAYS—12

Armey	Hammerschmidt	Smith, Denny (OR)
Carney	Lewis (FL)	Stump
Crane	Marlenee	
DeLay	Miller (OH)	
Dornan (CA)	Rudd	

NOT VOTING—41

Barnard	Fuqua	Rose
Boland	Grotberg	Savage
Breaux	Hartnett	Schaefer
Burton (CA)	Ireland	Schuette
Callahan	Kindness	Stark
Campbell	Leland	Stokes
Chappell	Livingston	Stratton
Coughlin	Michel	Sweeney
Dellums	Moore	Swift
Dickinson	Mrazek	Waldon
Early	Murtha	Whitehurst
Flippo	Owens	Wilson
Ford (TN)	Rangel	Wolpe
Fowler	Ritter	

□ 1325

Mr. DORNAN of California changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4430, the bill just passed.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS AND HUMAN RESOURCES OF THE COMMITTEE ON GOVERNMENT OPERATIONS TO SIT TODAY DURING 5-MINUTE RULE

Mr. WEISS. Mr. Speaker, I ask unanimous consent that the Subcommittee on Intergovernmental Relations and Human Resources of the Committee on Government Operations be permitted to meet during the

5-minute rule on H.R. 2482 this afternoon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

MAKING REPAYABLE ADVANCES TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the joint resolution (H.J. Res. 727) making repayable advances to the hazardous substance response trust fund.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. CONTE. Mr. Speaker, I reserve the right to object.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I just want to confirm for the record that what we are doing here is taking money that was previously appropriated in this year and transferring it into the Superfund trust fund so that it has sufficient money with which to operate; but we are not coming up with any new dollars, and there is no dificit add-on involved in this particular appropriation bill.

Mr. CONTE. Mr. Speaker, the gentleman is absolutely right.

Mr. Speaker, I rise once again in support of this joint resolution on Superfund.

As I explained in great detail during Tuesday's debate, when we had first attempted to bring this up, what we are trying to do here is save about $600 million in Superfund appropriations. That's $600 million that we appropriated last November but that we will lose if we don't pass this resolution.

Let me emphasize for my colleagues that this action provides no new budget authority and no additional outlays. None. It simply transfers in a manner of speaking the $600 million already in the Superfund account to the trust fund where it can be used when we have a Superfund reauthorization enacted.

We are trying to address a technical problem here, but it is not a small one. We can't afford to lose $600 million because of a technicality. The Superfund Program can't afford to lose it, either. Lee Thomas—the Administrator of EPA—will tell you that. He's been pinching pennies for over a year waiting for a reauthorization bill. The Office of Management and Budget, and the General Accounting Office recognize that if there is no cash balance in a trust fund during the year of an appropriation, then the appropriation expires. That is the situation we are facing with the Superfund trust fund. That fund is broke. If new taxing authority and reauthorization is not enacted by September 30—12 days from now—the $600 million we have already appropriated will vanish.

Now, perhaps some of our conferees on the reauthorization bill can assure us that they will have a new bill enacted in 12 days. I haven't received any such assurances. But, as a member of the Appropriations Committee, my interest is to ensure that these funds are available as we intended them to be for the Superfund Program, whenever it is resuscitated.

Even though Superfund is gasping right now, none of this $600 million is available for expenditure under the provisions of this bill. It is fenced off. We still need the taxing authority and the reauthorization before a penny of this money can be spent. The same fence applies to the $861 million in our 1987 bill passed on Friday.

If we lose the $600 million, there's no way we'll be able to replace it in our 302(b) allocation. The big losers are going to be all of our communities with Superfund sites.

I don't like these bandaid approaches to maintaining one of the most vitally important health and environmental issues of our time. I regret that our Appropriations Committee must take this action today. But we have no choice.

I hope that my colleagues will support this resolution, and urge our friends on the Superfund conference to complete action on the reauthorization bill.

Mr. CONTE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 727

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That language under the heading "Environmental Protection Agency, Hazardous Substance Response Trust Fund" in Public Law 99-160, as amended by Public Law 99-270 and Public Law 99-411, is further amended by deleting "$702,000,000 shall be derived from the Hazardous Substance Response Trust Fund and $198,000,000 shall be derived from advances from the general fund of the Treasury to the Hazardous Substance Response Trust Fund to be repaid in accordance with section 223(c)(3) of Public Law 96-510 and notwithstanding section 223(c)(2)(D) of Public Law 96-510: *Provided,* That none of the $150,000,000 made available by Public Law 99-270 shall be available for obligation after May 31, 1986: *Provided further,* That of the additional $48,000,000 made immediately available, $15,000,000 shall be obligated by September 30, 1986, for continuation of ongoing remedial and removal site work and $19,000,000 shall be used only to continue ongoing contracts and to replace contracts for essential services:" and inserting in lieu thereof "$102,000,000 shall be derived from the Hazardous Substance Response Trust Fund and $798,000,000 shall be derived from advances from the general fund of the Treasury to the Hazardous Substance Response Trust Fund to be repaid in accordance with section 223(c)(3) of Public Law 96-510 and notwithstanding section 223(c)(2)(D) of Public Law 96-150: *Provided,* That none of the $150,000,000 made available by Public Law 99-270 shall be available for obligation after May 31, 1986: *Provided further,* That of the $48,000,000 made available by Public Law 99-411, $15,000,000 shall be obligated by September 30, 1986, for continuation of ongoing remedial and removal site work and $19,000,000 shall be used only to continue ongoing contracts and to replace contracts for essential services: *Provided further,* That none of the additional $600,000,000 advanced to the Hazardous Substance Response Trust Fund by this joint resolution shall be available for obligation until Superfund taxing authority is enacted:".

The SPEAKER pro tempore. The gentleman from Mississippi [Mr. WHITTEN] is recognized for 1 hour.

Mr. WHITTEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution will take care of what is essentially a technical problem in regard to the Superfund issue.

At the end of this month there will be about $600 million remaining of the 1986 Superfund appropriation, which EPA has not obligated because the trust fund is out of money. The Appropriations Committee intended these funds to be carried over into 1987—and we specifically provided that the funds "remain available until expended."

However, both OMB and GAO recognize that if there is no cash balance in a trust fund during the year of the appropriation—the appropriation expires. That is exactly the situation we face in Superfund—if new taxing authority and reauthorization is not enacted before September 30, $600 million will be lost on October 1.

This resolution will take care of the problem. It will permit the $600 million to be advanced from the general fund to the Superfund trust fund—so that it can be carried over into 1987. The action provides no new budget authority and no additional outlays. Finally, language has been included to "fence" these funds so that EPA cannot make any obligation until after taxing authority has been enacted.

This $600 million is essential to provide for an expanding Superfund program in 1987 and 1988. The 1987 HUD bill provides $861 million, assuming substantial funds would carry over. If this $600 million is lost, it cannot be replaced within our 302 allocation. So the Superfund program will suffer in 1987 and beyond.

Without a doubt, the Superfund program is now suffering from a severe shortage of funds. However, the solution must be a long-term reauthorization bill—not another bandaid. Most members of there authorizing committees and supporters of Superfund believe that making additional funds available at this point would backfire and actually work to undermine or delay passage of reauthorizing and tax legislation.

This will in no way breach the $8.5 billion authorization total. This concerns the other side of the ledger—and the Appropriations Committee's problem in preserving the budget authority to provide the levels of funds anticipated in the legislation. We will not exceed the $8.5 billion total for Superfund during the 1987-91 period.

It is my understanding that this has been cleared with the affected authorizing committees, on both sides of the aisle. I am told that all parties to this are in agreement that this needs to be done.

Mr. FLORIO. Mr. Speaker, will the gentleman yield,

Mr. WHITTEN. I yield to the gentleman from New Jersey.

Mr. WHITTEN. Mr. Speaker, I urge the adoption of the joint resolution and I yield back the balance of my time.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

URGENT SUPPLEMENTAL APPROPRIATIONS FOR EMERGENCY ASSISTANCE TO THE PHILIPPINES

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the joint resolution (H.J. Res. 732) making urgent supplemental appropriations for the fiscal year ending September 30, 1986, for emergency assistance to the Government of the Philippines.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. WALKER. Mr. Speaker, I reserve the right to object.

I do so, Mr. Speaker, in order to understand the procedure here. We are asking for consideration only. Immediately following the gentleman's request, we will in fact have debate time on the bill and there will in fact be a chance to vote yes or no on the bill; is that correct?

Mr. Speaker, I yield to the gentleman from Mississippi [Mr. WHITTEN].

Mr. WHITTEN. Mr. Speaker, may I say I expect to yield to the gentleman from Wisconsin [Mr. OBEY], chairman of the Subcommittee on Foreign Operations, and he will be in control of the time and the handling of the bill. I intend to yield my time to the gentleman from Wisconsin [Mr. OBEY].

Mr. WALKER. Further reserving the right to object, Mr. Speaker, I just want to make certain what kind of procedure we are establishing here. I do not particularly want us to proceed on this bill under the objection rule. I would prefer to see us go to a regular consideration of the bill.

It is my understanding that what the gentleman has asked for is consideration only. That will be perfectly acceptable with this gentleman, but I do not want us to either pass the bill by unanimous consent, nor do I want us to operate under the objection rule for the debate on the bill.

□ 1335

Does this gentleman understand what your request is?

Mr. WHITTEN. I understand that will be done.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the joint resolution, as follows,

H.J. RES. 732

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply urgent supplemental appropriations for the fiscal year ending September 30, 1986, namely:

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR ECONOMIC DEVELOPMENT

ECONOMIC SUPPORT FUND

For an additional amount for the "Economic Support Fund", $200,000,000 to be made available only for the Philippines: *Provided,* That such amount shall be obligated and expended prior to October 1, 1986: *Provided further,* That such amount shall be made available as a grant cash transfer, *Provided further,* That section 524 of the Foreign Assistance and Related Programs Appropriations Act, 1986 and section 634A of the Foreign Assistance Act of 1961 shall not apply: That such funds shall be made available not withstanding section 10 of Public Law 91-672 and section 15 of the State Department Basic Authorities Act of 1956.

The gentleman from Mississippi [Mr. WHITTEN] is recognized for 1 hour.

Mr. WHITTEN. Mr. Speaker, I yield 1 hour to the gentleman from Wisconsin [Mr. OBEY].

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from New York.

Mr. KEMP. I thank the gentleman for yielding.

Mr. Speaker, as the ranking minority member of the subcommittee upon which the gentleman from Wisconsin is our chairman, he does plan, I hope, to yield half the time to the minority?

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. OBEY] is recognized for 1 hour.

Mr. OBEY. Mr. Speaker, I yield 30 minutes of that time to the gentleman from New York [Mr. KEMP], the ranking member of the subcommittee.

The SPEAKER pro tempore. Without objection, the gentleman from Wisconsin [Mr. OBEY] may yield 30 minutes.

There was no objection.

Mr. KEMP. I thank the gentleman for yielding time.

At this point I yield such time as he needs to my friend, the gentleman from New York [Mr. SOLOMON] in order that he may make his speech in opposition immediately.

The SPEAKER pro tempore. Without objection, the gentleman from New York [Mr. SOLOMON] is recognized for such time as he may consume.

There was no objection.

Mr. SOLOMON. Mr. Speaker, if the gentleman would yield, I am not prepared to make my opposition remarks at this time. I would prefer to have the gentleman go ahead. I wanted to make sure that those of us who are in opposition and did not object to this unanimous-consent request do have ample time to make our points.

Mr. KEMP. Mr. Speaker, let me say to my colleagues that I very much appreciate the gentleman from New York [Mr. SOLOMON], as well as the gentleman from Pennsylvania [Mr. WALKER], allowing us to bring this bill to the floor under unanimous consent.

So, at this point I would defer to my friend, the gentleman from Wisconsin [Mr. OBEY] to present the case, and then I reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from New York [Mr. KEMP] reserves the balance of his time.

The Chair recognizes the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Speaker, I yield myself 8 minutes.

Mr. Speaker, as I think the membership understands, earlier today we heard a tremendously moving speech by the new President of the Philippines, President Aquino.

I may have heard a more eloquent speech on the floor of this House in the 17 years that I have been here, but if I have, I cannot remember what it was.

She laid out the moral foundation for her position attacking the economic problems of the country, attacking the military problems of the country, and I think did so in a way which drew on the best traditions of American history.

I know of no recent event worldwide that has been more thrilling to anyone who is concerned with the expansion of democracy around the world than to see the abusive regime of the previous Philippine President replaced by this one, after a magnificent display of dedication to democratic principles on the part of the Filipino people.

After that event, I had been asked on a number of occasions if we could not provide additional financial assistance to the Philippines in the fiscal year 1987 appropriations bill. I tried to explain to people that because of the requirements of Gramm-Rudman and the limitations placed on us by the Budget Act pursuant to Gramm-Rudman changes which were enacted last year, that we simply did not have any room in the budget for fiscal year 1987 to provide some additional assistance to the Philippines and that I could not support additional assistance if it did not come from some other place.

I was then asked why not support putting in the continuing resolution additional financial assistance for the Philippines for fiscal year 1986? The problem with that would have been that in my judgment the continuing resolution is probably not going to become law before the expiration of this fiscal year. Ideally it ought to, but if we follow our past track record we will probably get that continuing resolution to the President, at best, on midnight the day before the fiscal year expires, and I suspect it will have a lag of a day or so.

That would mean that, if moneys were expended under that continuing resolution, they would be scorekeeped by CBO as actually having occurred in fiscal year 1987, and that would mean that we would breach the Gramm-Rudman ceiling for fiscal year 1987.

So at the suggestion of a number of parties, what we are trying to do on a bipartisan basis is to respond to the moving and eloquent statement that Mrs. Aquino made this morning in a way which does not damage the commitment that I strenuously feel to abide by the budget ceilings for fiscal year 1987.

As you know, there is a different set of rules which applies as far as Gramm-Rudman is concerned for fiscal year 1986. The technical ceiling for that year has already been breached, it has been breached a long time ago. So we really do not face that specific problem.

So what we are doing here today is bringing an emergency supplemental up which provides $200 million in fiscal year 1986 economic support funds for the Philippines. This resolution provides that funds must be obligated and expended in this fiscal year so that it would not affect Gramm-Rudman ceilings for 1987.

This will provide immediate assistance to the Philippines to help meet their debt repayment problems. It will be provided by way of direct budget support. It follows the authorization bill that passed the House on August 11.

At that time you may remember that I indicated on the floor that, while I would support the authorization bill, I could not guarantee under the processes then being contemplated that we could actually provide the assistance to the Philippines.

This is the only way that I know of that we can provide additional assistance which I deeply believe is in the national interest, our national interest, in a manner which will actually get to them.

I believe that any other process would simply hold out a false promise when in fact we probably could not deliver because of procedural impediments which lie in the way.

I would like to make one other point. I do not believe that this additional assistance will do anything except assist the Aquino government on the margins. That is all it will do. I think we have to face the fact—and here the gentleman from New York [Mr. KEMP] and I are in significant although not total agreement—I think we have to face the fact that whether we are talking about the Philippines or whether we are talking about Latin America, that it makes no sense to be following policies which require these countries to repay to American and other banks all or most of the assistance which they get in foreign aid simply to repay past loans. And I would suggest, therefore, that until we actually establish as national policy and until we can get greater cooperation from the IMF in changing the manner in which we and they are trying to bring austerity to these areas, until we can manage to fine tune that program in a better way than we are doing it today, we will not really address the central economic problem, and therefore, we will not really address the central social problem that any of those countries face.

All we will be doing is to be dealing on the margins as best we can with the limited tools available. I think that is what we ought to do today.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Florida [Mr. FASCELL], the chairman of the Committee on Foreign Affairs.

Mr. FASCELL. I thank the gentleman for yielding.

Mr. Speaker, I simply want to associate myself with the remarks of the gentleman from Wisconsin in toto, in pointing out the entire problem as it relates to this specific request.

I also wanted to express the appreciation of the Committee on Foreign Affairs for the cooperation that we got from the chairman of the Committee on Appropriations, from the distinguished gentleman from Wisconsin, the chairman of the subcommittee, and from the ranking member, Mr. KEMP, and Mr. CONTE, who is the ranking member, the leadership on both sides for proceeding in this fashion.

I want to emphasize again it is the only way that we can get the funds if they are going to do any good in this fiscal year because there is no way to get them in 1987. This is really an urgent matter.

I agree with the gentleman that it is in our national interest, and I hope we will get an overwhelming vote of support on this bill.

The SPEAKER pro tempore. The time of the gentleman from Wisconsin [Mr. OBEY] has expired.

The Chair recognizes the gentleman from New York [Mr. KEMP].

Mr. KEMP. Mr. Speaker, I appreciate again my friend from New York's extraordinary courtesy in allowing us to bring to the floor this historic opportunity to send a signal that this House, which Mrs. Aquino called the home of democracy—my colleagues, when she gave that speech she said she was here in the home of democracy. In my view what we are doing today is sending a very strong signal not only to her but to her fledgling democratic government that we are partners in the promotion of democratic governments around the world. I would suggest on a bipartisan basis we do all we can to quickly respond to the very urgent appeal that she made for support from the United States of America.

Again I want to thank my colleagues.

Today would give us a memorable moment, that is she gave us a memorable moment when she came before us and suggested the type of plans that she has for the Philippines. She once again reiterated her friendship for the United States of America.

Let me tell you we have a big stake in the freedom and the independence and the democratic progress of the Philippines. My friend from New York, Mr. SOLARZ, has made it very clear, and those of us on this side of the aisle have made it very clear that there is no substitute, there is none in the western Pacific, no substitute in the western Pacific for the Philippines. We need them. They obviously need us. We have made great progress and certainly her speech today was a testimony to the inspiration of this system that we call democracy in America, to her government. She talked about common ideals. Now, I have discussed this, I want to say to my friends on the Republican side of the aisle, with Mr. LOTT, who is going to support it, Mr. BROOMFIELD, our ranking member on the Committee on

Foreign Affairs, Mr. CONTE, my leader on the Committee on Appropriations and my good friend, we have discussed this in the Democratic Party leadership. So I would hope that there would be unanimity, if not unanimity at least some unity today on passing this urgent supplemental and help Mrs. Aquino deal with those fundamental economic problems that are causing, in large part, this insurgency.

While I am on the subject of insurgency, let me make one last footnote: let me say to my conservative friends we spent money yesterday to help an anti-Communist movement in southern Africa, in Angola; we spent $100 million, over time, to our anti-Communist friends in Nicaragua, Central America; we supported Afghanistan, as well we should. Here we have a legitimate government, a legitimate anti-Communist, pro-Western government that is making economic reforms with an eye toward free enterprise and strong resistance to the spread of communism in the southern, western Pacific.

I would suggest this would be a highly important effort that we are making on behalf of freedom and democracy around the world.

Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. BROOMFIELD], the ranking minority member of the Committee on Foreign Affairs.

The SPEAKER pro tempore. Without objection, the gentleman from Michigan [Mr. BROOMFIELD] is recognized for such time as he may consume.

There was no objection.

□ 1350

Mr. BROOMFIELD. Mr. Speaker, I do want to join the gentleman from New York [Mr. KEMP], and also compliment the gentleman from Wisconsin [Mr. OBEY], and all the others, Mr. FASCELL, Mr. SOLARZ, Mr. LEACH of Iowa, and Mr. CONTE.

This is extremely important. I think anyone who had the privilege of sitting here today and listening to Mrs. Aquino understands the importance of this particular bill before us.

Mr. Speaker, I urge the passage of this particular measure.

Mr. KEMP. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON].

The SPEAKER pro tempore (Mr. GRAY of Illinois). Without objection, the gentleman from New York [Mr. SOLOMON] is recognized for such time as he may consume.

There was no objection.

Mr. SOLOMON. Mr. Speaker, I will be brief.

Mr. Speaker, I did not object to this matter being brought on the floor, although I should because it cannot even be amended.

But let me just say this. There is nobody who respects and admires and loves the Filipino people more than this gentleman right here, and I would do anything in my power to help them become a shining light of the free world.

But let me tell you what we are doing. We met privately with Mrs. Aquino in the Foreign Affairs room not more than an hour ago, and many serious questions were posed to Mrs. Aquino. I do not know if we should even be discussing them here in this open meeting at this particular time.

But let me just say this. We have need right now in repairs and maintenance to Subic Bay and Clark Air Force Base in the Philippines of more than $1 billion. We need to start that repair and maintenance yesterday, not tomorrow, not next year or the year after.

When the question was posed to Mrs. Aquino, who I have a deep respect for and who built up my own confidence in her when she spoke today, we asked her if she could commit her own personal feelings to renewing those base agreements of the Philippines. She said in answer, very sincerely, that she would start the negotiations in 1988.

Ladies and gentlemen, if we have to replace Clark Air Force Base and Subic Bay by moving it to Guam or some other place at some future time, we have to start that yesterday. That is a $6 billion expenditure. How can we sit here and commit another $200 million on top of the $500 million, half a billion dollars, that we have already given the Philippines this year alone, how can we do that when we do not even have that money, and without any kind of a personal commitment that, yes, she will support those bases, and it is only a question of how much they will charge?

Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. RAY], who is on the Armed Services Committee and can speak to this matter.

The SPEAKER pro tempore. Without objection, the gentleman from Georgia [Mr. RAY] is recognized for such time as he may consume.

There was no objection.

Mr. RAY. Mr. Speaker, I just want to commend the gentleman for those fine remarks. I posed that question to Mrs. Aquino, and we do support her and wish her well. I am going to support this aid today.

But I will tell you that the Armed Services Committee has taken out this year $72 million of the military construction budget simply because of the uncertainty of sending those dollars to an area where we will not be. We do need to spend $1 billion there in the next 5 years.

I asked Mrs. Aquino, as the gentleman has so well pointed out, that she needs to send us a signal to give us some idea if we are going to be able to stay there and to maintain those bases.

So I ommend the gentleman for bringing that up. I do think that we need to not be jerked around in this particular area. We need those bases. But if we are not going to be able to move forward with some certainty, then we need to know if we are going to be moving at least 6,000 jobs to Guam sometime in the next 3 years.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the distinguished ranking member of the committee.

Mr. BROOMFIELD. Mr. Speaker, as long as we are discussing this issue, it ought to be made very plain that Mrs. Aquino did not give any indication one way or another, but said that as long as the bases contract right now goes to 1989, she thought 1988 was a reasonable time to make that decision and she wanted time to give some thought to it.

Mr. SOLOMON. Mr. Speaker, I am not going to use up all of the time, because I know there are other people who want to speak.

But let me just say this. This is an urgent supplemental that is brought before us with less than 2 weeks to go before the end of the fiscal year. There is no way that this money can even be appropriated and handed over to the Philippines and spent during this 2-week period. If we are going to enact this today, then we are going to be coming right back here in 2 weeks asking for the same thing all over again. That is the reason to rush it through today. It is not going to work. We are wasting this money, and we should be using this as a bargaining chip on a very friendly basis for setting up the renegotiation of our bases and getting that commitment now on behalf of the free world.

Mr. Speaker, I reserve the balance of my time.

Mr. OBEY. Mr. Speaker, I yield 7 minutes to the gentleman from New York [Mr. SOLARZ].

The SPEAKER pro tempore. Without objection, the gentleman from New York [Mr. SOLARZ] is recognized for 7 minutes.

There was no objection.

Mr. SOLARZ. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, in a way, the very fact that this bill is now before us is almost as miraculous as the peaceful democratic revolution which took place in the Philippines several months ago.

I want to pay very special tribute to the leadership on both sides of the aisle, the Speaker, the majority leader and the whip, the minority leader and the minority whip, for their willingness to facilitate the consideration of this legislation under a unanimous-consent procedure.

I also want to pay tribute to our extraordinarily distinguished chairman of the Appropriations Committee, who fought with Douglas MacArthur in the Philippines, and who, as a result of the adoption of this legislation, will rank second in the hearts of the Filipino only behind General MacArthur.

I want to pay special tribute to the chairman of the Subcommittee on Foreign Operations of the Appropriations Committee, the gentleman from Wisconsin, who had the idea to strike while the iron was hot and who was the one who advanced the suggestion in the wake of President Aquino's speech that we bring up this bill today if we could get unanimous consent to do so.

I want to pay tribute to my very, very dear friend from New York [Mr. KEMP] who, over the course of the last several months, has worked assiduously to cultivate support in the Appropriations Committee and among all of our colleagues for the adoption of this supplemental appropriation, because he understood in a way more than almost anyone else how much the adoption of this legislation would advance America's national interests.

I want to pay tribute to the gentleman from Michigan, the distinguished ranking minority member of the Foreign Affairs Committee [Mr. BROOMFIELD], who has been with us all the way and whose support has been so helpful.

I would be remiss if I did not point out the essential role played by the ranking minority member on the Asian and Pacific Affairs Subcommittee, the gentleman from Iowa [Mr. LEACH], whose support for this supplemental helped to ensure a bipartisan majority in favor of the authorizing legislation.

And last but not least, and I do not want to leave out too many of our colleagues, my dear, dear friend, the chairman of the Foreign Affairs Committee [Mr. FASCELL], whose willingness to take the ball and run with it this afternoon to get the support of all the relevant factors, has made it possible.

Let me also say a word about my other good friend from New York [Mr. SOLOMON], who opposes this legislation and who will probably vote against it. I want to thank the gentleman for at least letting us consider it. We worked together long and hard on the Philippines over the last several months. We have not always agreed on how to deal with the problems that face us in that part of the world but, without exception, the gentleman has invariably accommodated the concerns of the majority and has permitted the process to go forward without obstructing it in ways which he would have been perfectly free to do. For that I am very grateful.

Now let me just say a word or two about the substance of this bill. This may well be one of the most significant votes we cast in this session. We have an opportunity this afternoon to send a message to the people of the Philippines that we support democracy. The heady work of deposing a dictatorship is behind us, but the hard work of sustaining democracy has just begun.

Let me tell you that Corazon Aquino may well be the last best hope for democracy in the Philippines. If she fails, the Communists stand poised, ready, willing and able to take over. And if they do so, it will be a political tragedy for the people of the Philippines and a strategic disaster for us. It is in our fundamental national interest to strengthen the hand of this courageous woman who came before us earlier today.

Let me tell you, my friends, the single most important factor in determining the success or failure of democracy in the Philippines will be the ability of the new Government to revive the declining economy of that country which was ravaged by a decade of crony capitalism and corruption. Our willingness to provide these additional funds at this time will constitute a resounding vote of confidence on the part of the Congress and of the American people in the ability of the new Government of the Philippines to cope with those problems, and substantively the aid will be important as well.

Let me say to my friend from New York this is coming in the form of budgetary assistance. If it passes the House today, I think the support is there to get it through the Senate as well, and all we have to do then is write the check for $200 million to the Government of the Philippines before the fiscal year is over. It is technically feasible.

Some of our colleagues express some concern about the bases. Those bases are, of course, important. They are the most important military facilities we have in the world anywhere outside the continental United States.

□ 1400

But we all understand that Mrs. Aquino faces a very delicate political situation and problem at the present time. Let me say that if we want to make sure that we stay in those facilities and that we can continue to utilize them, the single most significant thing we could do would be to approve this legislation today. The good will it will generate in the Philippines will greatly facilitate a successful conclusion of the negotiations.

Let me say I heard what President Aquino said to our committee. Sometimes you can accomplish more with a wink than a handshake. I heard her say that she will be looking to conclude these negotiations in a way which is compatible with the interests of both our countries, and that was enough for me, and I think it is enough for most of our colleagues at the present time.

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from New York.

Mr. KEMP. I thank the gentleman for yielding.

Mr. Speaker, I just want to associate myself with the understanding that the gentleman received from his discussions with Mrs. Aquino. I received the same impression, and I heartily associate myself with his outstanding remarks.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from New York.

Mr. SOLOMON. I thank the gentleman for yielding to me.

Mr. Speaker, I really am glad the gentleman brought it up. I know he is sincere, but the time may come when you and I may have to go back to the Philippines on behalf of whoever the President of the United States is at that time and remind everyone of that situation.

Mr. SOLARZ. I will be happy to go with you. Let me say that sincerely.

Mr. Speaker, I just want to say in conclusion when President Aquino finished her stirring address this morning, the distinguished majority leader of the other body said to her. "Madam President, you hit a home run." Without missing a step, President Aquino responded, "I hope the bases were loaded."

Let me tell you, Cory, in the ninth inning of the seventh game of the World Series you hit a grand slam.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. CONTE].

The SPEAKER pro tempore. Without objection, the gentleman from Massachusetts is recognized for 1 minute.

Mr. CONTE. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support for this urgent supplemental appropriation of $200 million in economic assistance for the Philippines.

By making this timely response to a most moving and convincing appeal to the joint session this morning by President Corazon Aquino, Congress and the people of the United States are sending a material signal of support for the democratic process and

freedom in the Philippines. We are sending that signal to all parties, both in and out of that country.

Freedom and democracy deserve and need monetary support at this time. The Philippines are presently burdened with an external debt of $26 billion. They are fighting an insurgency. They are trying to correct years of graft and neglect.

The United States has recently provided $300 million in economic support funds, but this additional assistance is needed now. The House passed the authorization bill for this $200 million on August 7, and the specific amendment for the Philippines passed by a vote of 320 to 76.

I trust that this appropriation will pass by at least as large a margin.

Mr. OBEY. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, I would just like to ask the chairman of the Budget Committee one question. I think it is important that the membership understand what the implications of this legislation would be for the fiscal 1987 Gramm-Rudman situation in which we find ourselves.

It is my understanding that the way this measure is drafted, there is in fact no problem in terms of Gramm-Rudman limitations for fiscal 1987.

I yield to the gentleman from Pennsylvania [Mr. GRAY] for his response.

Mr. GRAY of Pennsylvania. I would say to the gentleman from Wisconsin and chairman of the Foreign Operations Committee that he is correct.

If the House decides to pass this legislation and if the President signs it into law, it will not affect 1987 deficit targets and therefore will not be added to the goal that must be met in order to comply with Gramm-Rudman, the threshold of 144 to 154.

Mr. OBEY. The second question I would ask is this: Does this run into any Gramm-Rudman impediment for fiscal 1986? I have been assuring them that it does not because there was a different set of ground rules established for the first year of Gramm-Rudman.

I yield to the gentleman for his response.

Mr. GRAY of Pennsylvania. Under the present Budget Act which incorporates the Gramm-Rudman law of 1985, there is a cap for total aggregate deficit for 1987. There is no such cap for 1986. If this bill were debated and passed and signed into law, it would not affect 1987. The impact would be on 1986.

Mr. KLECZKA. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Wisconsin.

Mr. KLECZKA. I thank the gentleman for yielding.

Mr. Speaker, I think I understand how this expenditure of $200 million will have no effect on 1987. But I was under the impression that we are running a deficit for 1986 also, and regardless of what the effect is on Gramm-Rudman, does this appropriation increase the deficit for 1986?

Mr. OBEY. I do not think there is any question that it would increase the deficit for 1986. The judgment you have to make is whether in a trillion-dollar economy it is a more important consideration for us to be concerned about a decimal point change in the deficit situation or the shoring up of our national interests by assisting the Aquino government to get through some very difficult days in its first year in office.

Mr. KLECZKA. If the gentleman will continue to yield, with that being said, nevertheless I think the 1987 fiscal year is upon us. If in fact these dollars are so direly needed, which I probably admit they are, I think we should have the wherewithal to look in that 1987 either foreign aid appropriation or other appropriations around here and cut back sufficiently to make up those additional $200 million.

I agree with the bulk of the speakers today. The speech we heard this morning by President Aquino was very stirring, but the sad part this afternoon is that we are legislating with our heart instead of our head.

The gentleman from New York indicates that on the way out of town if this resolution is expedited she could possibly pick up the check and leave. My question is: Will we have time to go to the bank and borrow the money first?

I hate to slow down a stampede, my fellow Members, but clearly this adds to the deficit. If in fact it is needed, which I agree it is, let us look for it in the 1987 dollars. Clearly, to increase the deficit today when I have to say "no" to my cities and towns and counties through shared revenue is not the way to legislate.

Let us legislate with our heads, not our hearts.

Mr. OBEY. Mr. Speaker, I do not think I need to apologize to anyone in this body in terms of my insistence that we scale back foreign assistance requests in the coming year rather than having to take it out of farmers and take it out of cancer research and take it out of student aid.

I have made the largest percentage cuts in the administration requests of any appropriations subcommittee chairman. We have cut that budget to the extreme and as a result OMB is indicating that they will veto the bill as it now stands. For the first time in history they are saying they are going to veto the bill because it does not spend enough money. So with all due respect to the gentleman from Wisconsin, I think this gentleman has indicated clearly his intent to see to it that we follow fiscal stringency in 1987. Not one dime is going to come out of revenue sharing because of this action today. Not one dime is going to come out of education. Not one dime is going to come out of domestic expenditures. It is correct that the deficit for fiscal 1986 will be increased. That is a judgment that every Member is entitled to make for himself, but it is not correct to suggest that revenue sharing is endangered because of this act or any other domestic expenditure in fiscal 1987. That is simply not the fact.

Mr. SOLOMON. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. LEACH].

The SPEAKER pro tempore. Without objection, the gentleman from Iowa is recognized for such time as he may consume.

Mr. LEACH of Iowa. I thank the gentleman for yielding time to me.

Mr. Speaker, President Aquino and the people of the Philippines have inscribed a new chapter in the history of nonviolent political change.

The myth that developing countries have less of an interest and less of a stake in the democratic process than mature Western democracies was punctured this year in the Philippines. The courage demonstrated by the Philippine people demands our attention and commands our respect.

For citizens to stand up and vote for a candidate whose only weapon was her convictions and then sit down before the tanks of the certified winner whose only claim to legitimacy was his control of the vote count may be unprecedented in human history.

Hitherto armies have been designed to protect people, not vice versa. But when Filipinos of all ages responded to the request of the church-controlled radio station to become a human dike between the elite palace guard and elements of the professional military who questioned the integrity of the election process, Stalin's sneering query as to how many divisions the Pope controlled was definitively answered: more than any autocrat.

For the moment at least, the widow of the martyred hero Benigno Aquino stands tall as a modern day Joan of Arc.

President Marcos found that it was simply impossible to loot a people and at the same time advance their welfare.

The economic and political infrastructure of the Philippines collapsed because the moral fiber of the leadership of the country itself collapsed. Corruption bred cynicism and the attendant poverty of opportunity for the masses bred an irrepressible demand for change.

In his wanton theft of the financial resources of his people, Ferdinand Marcos lost the moral capacity to govern. In his theft of the ballot box, he lost all stamp of legitimacy. Marcos' house of illegitimate wealth and power, therefore, had to fall and the United States had no responsible option except to recognize the legitimacy of Cory Aquino's assertion of authority and support the fledging democracy being reestablished in the Philippines.

Now that the politics of the Philippines appear to have been righted, the bigger chal-

lenge of righting the economy and dealing with the Communist insurgency lies ahead. To change the Government has taken great courage; to turn the economy around and address the insurgency will take great perseverance. The world community has a responsibility to help an extraordinary people address an extraordinary problem. This resolution deserves our support.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. GILMAN].

The SPEAKER pro tempore. Without objection, the gentleman from New York is recognized for 2 minutes.

There was no objection.

□ 1410

Mr. GILMAN. Mr. Speaker, I am pleased to rise in strong support of this supplemental appropriation for emergency assistance to the Government of the Philippines for fiscal year 1986 in order to provide some $200 million in immediate assistance to that Government.

In her moving appearance before today's joint session of Congress, Corazon Aquino, the President of the Philippines, eloquently reminded us that we have "spent many lives and much treasure to bring freedom to many lands that were reluctant to receive it. Here we have a people who want it by themselves and need only help to preserve it."

Mr. Speaker, I urge my colleagues to respond, with wholehearted support, to Cory Aquino's invitation to join with the Philippine people as they build their new democracy. Let us be generous in our efforts in helping them to become another beacon of freedom throughout the world.

Mr. OBEY. Mr. Speaker, may I inquire as to how much time is remaining on each side?

The SPEAKER pro tempore (Mr. GRAY of Illinois). The gentleman from Wisconsin [Mr. OBEY] has 11 minutes remaining and the gentleman from New York [Mr. SOLOMON] has 17 minutes remaining.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin [Mr. ROTH].

The SPEAKER pro tempore. Without objection, the gentleman from Wisconsin [Mr. ROTH] is recognized for 1 minute.

There was no objection.

Mr. ROTH. Mr. Speaker, yes, President Aquino gave a very excellent speech today, but is it worth a quarter-billion-dollar honorarium? We, the American people have been very generous to the Philippines. We have given them over half a billion dollars this year.

I would like to help all countries. I would like to help all the people throughout the world, but the fact remains that we have big, big, big deficits in our country and we have not addressed those deficits.

When we have a balanced budget, then maybe legislation like this is appropriate. But first, we must sweep in front of our own door.

As long as we have not balanced our budget, we have an obligation to our own people and to our own problems first for a change.

I appeal to you to let cool heads prevail. Do not let the emotions of the moment carry away your better judgment. If a half billion dollars will not buy good will, three-quarters of a billion dollars will not, either.

Let us think of our people and our problems first for a change.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. WALKER].

The SPEAKER pro tempore. Without objection, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 3 minutes.

There was no objection.

Mr. WALKER. Mr. Speaker, President Aquino is a great lady; she is a great advocate of democracy; she gave a magnificent speech on the floor today. No one could have better made the case for her country than President Aquino.

Now we are called upon to respond, and we do so immediately. How do we respond? We respond with $200 million of 1986 deficit add-on. No prioritization. We are not prioritizing the spending in any way. We did not hear Mrs. Aquino and say that her case was so persuasive that we should readjust our spending priorities.

No. We in this bill simply call for more deficit. What is that deficit for? It is deficit for more foreign aid.

I remember very well a few weeks ago when we had Contra aid out here on the floor and some of the very people who are speaking here came to the floor and said we could not have $100 million, not of new money, but of transferred money, for the freedom fighters, the courageous freedom fighters in Nicaragua, because we needed that money for our farmers and for our students and for our elderly and for all of these people. We had to have all kinds of controls on that money.

But, no, today we are coming to the floor; we have got no transfer; we have got no controls. We have simply got more deficit for more foreign aid.

I cannot vote for this measure for that reason.

If you want to reprioritize the money to get the money for this purpose, I will consider that. But we have an obligation to our own people to be responsible with their money and the debt that we incur on their behalf.

I recognize that we want to respond emotionally to a magnificent speech that we heard today and to do this is to respond exactly that way. But this bill is wrong as it relates to our obligations to our taxpayers.

I urge a "no" vote.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from Indiana [Mr. BURTON].

The SPEAKER pro tempore. Without objection, the gentleman from Indiana [Mr. BURTON] is recognized for 1 minute.

There was no objection.

Mr. OBEY. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. TORRICELLI].

The SPEAKER pro tempore. Without objection, the gentleman from New Jersey [Mr. TORRICELLI] is recognized for 2 minutes.

There was no objection.

Mr. TORRICELLI. Mr. Speaker, the point has been raised as to whether we are acting today with our heads or with our hearts. Let me suggest to my colleagues that we are acting with both.

With our hearts because we reach out to the Philippine people in this critical moment in their history, trying to restore their democracy and to lead struggling people around the world to understand that in the struggle between freedom and communism, America will continue to provide leadership; but also with our heads, knowing that this is not an investment in the government as it was in the Marcos dictatorship; that more than democracy has been restored. Mrs. Aquino has broken the corruption, the cronyism. This is an investment in a sound Philippines. But also with our heads because we recognize another choice.

The question is not whether we provide assistance today or not at all, but whether we invest in a sound democracy in the Philippines today, in peace in the Philippines, or rather have to invest years in the future in war in the Philippines, in increasing insurgency in the Philippines.

No investment could make more sense than today, $200 million, lest we have to fight again tomorrow in a growing insurgency out of control in the Philippines.

I urge an affirmative vote, to vote for peace, stability, democracy, indeed, for our own security, as much as the security of the Philippines.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

The SPEAKER pro tempore. Without objection, the gentlewoman from New Jersey [Mrs. ROUKEMA] is recognized for 2 minutes.

There was no objection.

Mrs. ROUKEMA. Mr. Speaker, I rise in opposition to this proposal today, in strong opposition.

Let us be clear about what we are talking about. We are not debating who has more respect for Mrs. Aquino. We are not debating who has more concern about the future of that fledg-

ling democracy. We are talking about a procedure here that is clearly going to add to our budget deficit.

We are talking about juggling the books, so to speak. We are going to put it on this year quickly and then see what we are going to do about it next year.

I will not go back to the senior citizens who appeared at my health forum last Saturday and explain to them that I voted for $200 million more in foreign assistance on a moment's notice when they stood before me with fear, anger, frustration, and concern about their future health needs.

I will not do that until we come up with a sound plan, fiscal plan, as to how we are going to pay for these things without having it come out of the hides of our domestic programs or without necessarily raising taxes, I will vote "no."

Mr. SOLOMON. Mr. Speaker, will the gentlewoman yield?

Mrs. ROUKEMA. I yield to the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I just say that the gentlewoman makes an excellent point in the fact that Mrs. Aquino has not even asked for this money.

Mrs. ROUKEMA. May I add, I would be happy, in fact, I would like to lead the procedure for working this out in next year's budget, but it has to be done in a sound, planned way, and not through fiscal slight of hand which adds to the deficit.

□ 1420

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DORNAN], a member of the Foreign Affairs Committee.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Without objection, the gentleman from California is recognized for 2 minutes.

There was no objection.

Mr. DORNAN of California. Mr. Speaker, I understand the serious trepidation with which Members are looking at both our budget process and the rapidity with which this is being done.

The gentleman from Wisconsin [Mr. ROTH] got off a good line about a $200 million honorarium for an excellent speech. I thought Mrs. Aquino gave the most moving speech I have heard on the floor from the head of a state, bar none.

Now, I am going to be on the winning side on this and I think the winning side is going to be that she gets that honorarium. I agree she has not asked for it and we have already put up $500 million; but let me tell you why I was 1 of the 24 Republicans who voted against Gramm-Rudman, principally because of what it does under that unfair formula to gut defense. I mentioned at the time of the Gramm-Rudman vote that we had helped to behead three countries, Grenada, Haiti, and the Philippines, and properly so in all three cases; but I remember November 1, 1963, when we beheaded a nation under Communist assault, Vietnam by name, and look at the blood and treasure we lost there; so I am willing to go out on a limb for Mrs. Aquino. I think she may be the answer.

I am placing in the RECORD the article by Ross Monroe comparing the NPA, not even to the Soviet Union Communist style or China but comparing them to the Khmer Rouge, which means this scholar sees the potential on those 7,200 islands for an unbelievable genocidal slaughter. That is how ugly and vicious the NPA is.

THE NEW KHMER ROUGE

(By Ross H. Munro)

April 13, 1974. Three U.S. Navy officers are riding in a jeep along a new road hugging the boundary of the Subic Bay naval base in the Philippines. All three are Seabees—Navy construction men—and their destination is a half-mile farther north where a Seabee battalion is continuing work on the road. Suddenly shots ring out. One officer is killed instantly. A moment later, the two others, badly wounded, are finished off with shots to the head fired at point-blank range. Later, Philippine intelligence informs U.S. authorities that the Navy men had been ambushed by members of the still fledgling Communist guerrilla group, the New People's Army (NPA). The guerrilla leader responsible for the attack, as he had been for previous attacks on U.S. military personnel stationed in the Philippines, is a twenty-six-year-old former engineering student who calls himself Commander Bilog. His real name is Rodolfo Salas.

Rodolfo Salas has long since graduated from being the leader of a five-man NPA hit squad. Now thirty-seven, he is the ruthless and brilliant leader of the Communist Party of the Philippines (CPP), presiding over the fastest growing, most threatening, and arguably the most brutal Communist insurgency in the world today. U.S. analysts believe that if the corrupt and exhausted regime of President Ferdinand Marcos remains in power and the situation in the Philippines continues to deteriorate at its current pace. Rodolfo Salas could one day be leading the People's Democratic Republic of the Philippines, the name the Communists have already chose for their new state.

Yet only a tiny minority of Filipinos has ever heard of Salas and only a handful of non-Communist politicians has met him during the eight years he has been chairman of the CPP. Most politically-minded Filipinos, if asked, will say that the leader of the Communists in the Philippines is Jose Maria Sison, who founded the CPP in 1968. But Sison, a poet, university teacher, and Maoist ideologue, has been languishing in jail since 1977, his influence largely eroded. It has been Salas the engineer who has turned Sison's vision of a nationwide Communist insurgency into a full-fledged reality. From a few thousand party members and guerrilla fighters who were at most a serious nuisance in Sison's day, Salas has been instrumental in building the Communist movement into a formidable force. Today, the CPP credibly boasts that it has "way over" 30,000 members, while the NPA has "way beyond" 20,000 guerrillas, now fighting in at least 59 of the nation's 73 provinces.

In news reports from the Philippines, nearly all the responsibility for the Communist upsurge is being given to Ferdinand Marcos. And indeed he has played an essential role. During his twenty years in power, the country has suffered from colossal mismanagement of its economy, corruption akin to looting, and the near destruction of the nation's basic political institutions. Without all this help from Marcos, it seems, the Communists would have remained about as inconsequential as they are today in, say, Indonesia or Thailand.

Yet by trashing the Marcos regime and blaming it alone for the Communist upsurge, we fail to give proper attention and credit to the Communists themselves. For it has been their fanaticism, bequeathed by Sison, combined with their increasing ruthlessness and opportunism since Salas became leader, that have also proved essential to their success.

While Salas shares Sison's original radical goal of transforming the Philippines into a Communist dictatorship, he seems to be far less concerned than the party's Maoist founder about what methods are used to achieve that goal. Under Salas, the Communist guerrillas are waging a largely unreported campaign of terror, assassination, and torture in the Philippine countryside. As a radical but independent leftist who knows both the CPP and the NPA well says: "I'm afraid we might be staring at a Pol Pot future." In the cities, the working style of the CPP is so paranoid, rigid, and totalitarian that even left-wing nationalists have quit anti-Marcos alliances controlled by the Communists. The most respected of these independent nationalists, former Senator Jose Diokno, states: "They [the Communist] feel they're so close to victory that they only need two or three of us "Abroad, the once Maoist CPP has dropped its pro-Chinese stance and, with Salas taking the lead, is avidly courting the Soviet Union for official recognition and for financial and military aid.

Most chilling of all is the rapidly mounting evidence of the NPA's reign of terror, rivaling the Khmer Rouge in savagery if not yet in scale. Most of the reports come from the countryside, where the more than 20,000 Communist guerrillas, with far less than one modern rifle per man, have a largely demoralized corrupt, and ineffective Philippine military tied up in knots. From the foothills of the Cagayan Valley in northern Luzon to the city slums of southern Mindanao, the NPA continues to tighten its hold. That its primary means of accomplishing this is terror seems well known among leftists, civil-rights lawyers, rural parish priests, and others whose anti-Marcos credentials give them rare access to information about how the NPA really operates.

Typical is a leftist professor in Manila whose radical teachings have helped inspire many students to join Communist-front groups like the League of Filipino Students. Recently, several of his students won much-sought-after invitations to visit NPA strongholds in various parts of the countryside and view the revolution first-hand for a couple of weeks. But, recounts this professor, many returned sickened and appalled by what they had witnessed. They watched as Communist guerrillas killed "suspected informers" before an audience of villagers. "But it's not just an execution. It's cruel,

slow, painful." The professor demonstrates how the guerrillas stab the victim in the legs, buttocks, back, shoulders, and stomach before plunging a dagger into his heart. "Is this happening in a particular region of the country?" the professor is asked. "All over," is his pained reply.

"Suspected informer" is a phrase heard again and again in accounts of how the NPA holds sway over thousands of villages. The NPA readily applies the condemnatory label to a villager who turns down the "invitation" of a newly arrived NPA squad to a lecture in a nearby hut on the evils of capitalism. Or to a minor local official who speaks out against the Communists. Or to a peasant who resists paying NPA "taxes."

In a village in southern Luzon this spring, a Philippine journalist accompanying an NPA band witnessed a man being led away for execution, again on grounds that he was a suspected informer. The journalist, vaguely sympathetic to the NPA, pointed out to a guerrilla that the case against the man, a recent arrival in the village, was a circumstantial one, and flimsy at that. The guerrilla's response was a dismissive shrug. The journalist accompanied the NPA to several villages in the area and discovered that in every one, no matter how small, the NPA had executed people.

Desperate for more funds to feed and arm their burgeoning ranks, NPA units are applying their terrorist methods to extorting money from rich and poor alike. No one seems exempt anymore. Early this year, for example, when Philippine Protestant missionaries in the province of Surigao del Norte resisted NPA demands for a hefty share of their Sunday collections, an NPA squad invaded their chapel during Sunday services where they shot and killed one pastor in front of his congregation, beat up a "deaconess" at another chapel, and, that night, tracked down and killed another pastor.

As law and order continue to deteriorate, NPA hit squats (the foreign media have adopted the NPA's slightly heroic-sounding name, Armed City Partisans, for such groups) are operating with increasing ease in urban areas. Recent targets have included unsympathetic Philippine journalists (whose deaths draw little attention compared with those of anti-Marcos journalist). In the city of Cebu, the NPA issued statements taking credit for shooting and killing two outspokenly anti-Communist radio commentators. The Communists are also turning their guns on the leaders of democratic trade unions. According to Ernesto Herrera, the courageous general secretary of the Trade Union Congress of the Philippines (TUCP), the Communists began killing rival labor leaders last year. "We've lost nine [TUCP leaders killed by the Communists] in the last ten months," he reports.

There is also a steady stream of official accounts of NPA atrocities from the Philippine military that are carried mainly in progovernment newspapers. Such reports have little impact because the credibility of the military and the pro-Marcos media has long since been squandered. But independent sources say that the government accounts hardly do justice to the full horror of the violence perpetrated by the NPA in the countryside.

Here are a few of the more recent military accounts of NPA violence, confirmed by secondary sources:

In trying to establish its control over a remote gold-rush site in the province of Davao del Norte, the NPA executed at least 45 people in a period of less than five months, ending this March. Most of the victims were retrieved from a body pit. Many showed signs of having been tortured; and indeed, eyewitnesses confirmed that the NPA had tortured many of the victims before killing them.

On June 15 of this year three NPA guerrillas grabbed Corazon Pacana Coloso, a minor municipal official in northern Mindanao who had the misfortune of being the provincial governor's sister. The guerrillas told the hastily assembled townspeople that they were convening a "people's court," They accused her of corruption, pronounced her guilty, and then shot her in the head. She died instantly.

The military statistics show that the NPA killed 138 local Philippine officials in 1984. And the number of such killings this year is running ahead of last. No one appears to be challenging these numbers, even though a good case can be made that they understate the reality. Some of the local officials being executed are undoubtedly corrupt by Western standards. But because the aims of the killings is not to clean up corruption but to terrorize officials and villagers alike into knuckling under to the NPA, strong and popular local officials are being killed also. Says a U.S. official saddened by *deja vu:* "It's just like Vietnam. The guerrillas are killing the worst and the best local officials. They don't worry about the mediocre ones; they know they'll go along."

Inevitably, the increasingly violent NPA is turning on itself. Intelligence sources say the NPA recently executed several of its own members in southern Luzon in the belief that they were government agents. They discovered, too late, that they were mistaken. In the Davao area of Mindanao, Brigadier General Dionisio Tan-Gatue claims the NPA Killed 28 or 29 of its own men who had been wounded in an encounter May 14 and were slowing down the escape of the other guerrillas.

Although the NPA's reign of terror is largely ignored by foreign correspondents and the anti-Marcos media, it is no secret among Communist-party members. On the final day of my most recent trip to the Philippines, I told a key member of the CPP that I had repeatedly heard horror stories about NPA terror and violence directed against civilians in almost every part of the Philippines. He offered not a word of argument, not even a suggestion that the stories might be overblown. "It is the biggest problem we have right now," he conceded. Yet evidently only a minority of his fellow members agree that it is a problem. The issue of NPA brutality toward civilians was raised at a clandestine meeting of national CPP and NPA cadres in late 1984. The outcome then was inconclusive. The belated response of Salas and the top CPP leadership came in the CPP's official, underground newspaper, *Ang Bayan* ("The Nation"), this spring. Charges of NPA abuses amount to "slander," *Ang Bayan* stated, because everyone knows that the NPA has "iron discipline."

Few but the most naive city-bound party members would believe such a claim. Instead, typical party members seem to have accepted the fact that they are players in an increasingly violent drama. These days, the phrase "blood debts will be paid in blood" rolls off the lips of party members as easily as it does off the pages of *Ang Bayan.* Such members have stopped making distinctions among the people who are murdered by the NPA. As three party members made clear in a discussion with me, by definition anyone killed by the NPA must be a "*demonyo*"—a term that the NPA initially used to describe enemy spies but which has evolved into a label for anyone the NPA decides to execute. *A Guide to Establishing a Mass Base in the Rural Areas,* a manual prepared for the exclusive use of party cadres inside the NPA, makes it clear that the guerrillas have party approval to kill virtually anyone they want. Among the broadly defined categories of people who can be executed are "enemies of the people, spies, and unreformed elements who hinder the development of the revoluntionary movement in the *barrio.*"

The Armed Forces of the Philippines (AFP) claims that the NPA is currently killing more than 130 civilians a month, not including local government officials. Most of the civilians are victims of so-called liquidations, meaning murders, assassinations, or executions. Although the Marcos regime's statistics are often suspect, these numbers seem to be "clean." For one thing, the same military reports that tally these civilian deaths contain other statistics on NPA gains that are remarkably consistent with claims that the NPA is making in its underground publication, *Pulang Bandila* ("Red Flag"). And dissidents in the armed forces who are otherwise critical of how the military conducts its business say the reporting of NPA killings is carefully corroborated by death certificates or eyewitness accounts.

But while these numbers are apparently without doubt, the actual number of civilian liquidations carried out by the NPA is much higher, quite possibly four or five times higher, than the military claims. The explanation is that NPA killings in remote *barrios* where its power is greatest are rarely reported, particularly not to the untrusted military. A peasant who journeys into town to tell officials of a Communist-ordered execution in his *barrio* is inviting, at best, a clumsy military raid on his village or, much worse, an NPA accusation that he is an informer.

If one ventures into areas in the Philippines where NPA guerrillas are active, the story is always the same. Where the NPA prevails, a code of fearful silence prevails: even if the NPA kills your brother or your best friend, you do not report it. When the NPA killed one of those Protestant missionaries in his home in Surigao del Norte, the guerruillas told his wife that she too would be killed if she reported the killing to the authorities. The civilian killings that do become widely known are usually those that the NPA wants widely known—where the guerrillas make an example of a victim by staging a pre-execution "trail" or by simply leaving his bullet-ridden body in the town square.

But usually only the local villagers hear about the killing. In a small city in Bicol, the southern tail of Luzon, a young and well-informed lawyer who often defends dissidents says that an NPA unit was killing civilians in a village just a few miles from his home for more than three years before he or anyone else in the city heard about it. The villagers were simply too frightened, he says, to report the deaths.

In the province of Davao del Norte, where the NPA controls much of the population, I asked Father Eligio Bianchi why he and other churchmen in the area had not reported the many killings by the NPA as diligently as they had reported the relatively few killings by the military. Bianchi replied that, while he believed all killings were equally wrong, he rarely heard from frightened villagers about NPA killings. "Now and

then you might hear someone whisper that somebody had been killed by the NPA, but that's all. They didn't want to talk about it."

This fearful silence prevailing in the countryside wherever the NPA is active is almost completely overlooked by middle-class Manilans and other Filipinos who still live far from the everyday insurgency. Filipinos, they themselves readily concede, are traditionally a garrulous lot, chronically unable to keep a secret, and they still take it as a given that they are the recipients of a free and plentiful flow of information. Manila's upper classes in particular pride themselves on knowing what is happening in their family's home province on the basis of an occasional visit from a retainer, relative, or friend. But the visitor probably lives in the provincial capital and knows less about what is going on in the surrounding countryside than the Bicol lawyer.

II

But the prevailing silence only partly explains why NPA brutality is largely ignored by the foreign-press contingent in Manila as well as by the independent or anti-Marcos newspapers that have been thriving in the Philippines during the past two years. Another important part of the explanation is that the media can learn nothing about NPA atrocities from Philippine organizations that claim to be committed to civil liberties and human rights.

By far the most prominent of these groups is Task Force Detainees (TFD). In an almost incredible feat of public relations, the openly pro-Communist TFD has become recognized as the leading defender of human rights in the Philippines. Its accounts and statistics regarding "political prisoners" and the frequent abuses committed by the Philippine military are cited by Amnesty International, the Lawyers' Committee for International Rights, and even the U.S. State Department. And its claims and statistics find their way into innumerable articles by foreign correspondents reporting from the Philippines.

Despite its international standing, the TFD has consistently ignored NPA killings and other abuses of civilians. It resolutely refuses to investigate, report, or act on killings by the NPA. In my visits to the TFD offices in Manila over several years, officials have offered several explanations for their one-sided view of what constitutes a human-rights abuse. TFD spokesman Fidel Agcaoili made it clear in an interview this summer that the TFD is interested in exposing only those human-rights abuses that reflect badly on the military. "Definitely our main line of inquiry [is] human-rights abuses being committed by the government." Agcaoili referred in a dismissive tone to "the alleged abuses being committed by the NPA," then quickly caught himself and said, "No, I won't say any more." But as far as the TFD's position on people who take up arms and join the NPA is concerned, Agcaoili readily volunteers that "we respect their right to do so."

That Task Force Detainees has a benign view of the New People's Army should surprise no one; the TFD has never made a secret of its politics. A visit to its offices in suburban Manila finds activists, widely reputed even by leftists to be Communists, wandering in and out and being treated by the TFD staff with everyday familiarity. Staff members talk about their plans to attend rallies organized by a Communist-front group. The head of the TFD, Sister Mariani Dimaranan, has remained on the executive board of BAYAN, one of the most tightly controlled of those fronts, even though virtually every independent leftist on the executive has quit in protest against the CPP's heavy-handed domination. Gerardo Bulatao, for several years the key administrator of the TFD's parent organization, the Association of Major Religious Superiors, was sentenced this year to twenty years in jail after the government made a strong case that he had played an important role in the Communist insurgency on the island of Samar. The TFD's fortnightly publication. *Political Detainees Update*, usually devotes its front page to highly favorable reports of the activities of BAYAN and other Communist-party fronts, like KMU, the labor alliance. Headlines use CPP terminology—"U.S.-Marcos Dictatorship"—to describe the regime.

The TFD takes its heavy ideological baggage along in pursuing its main task, which is chronicling the human-rights abuses committed by the Marcos regime and the Armed Forces of the Philippines. The pursuit is relentlessly well-organized. The TFD currently has a staff of 280 and a large budget. Most of the money comes from foreign church-related organizations, but the TFD refused to answer both oral and written questions this summer about the origin and amount of the donations and the size of its total budget.

As countless news reports from the Philippines have made clear, the TFD has no shortage of raw material to work with in building its case against the Marcos regime. There are many documented instances of the Philippine military and other government security forces abducting, torturing, and killing Communist suspects. But even here, the TFD constantly plays with the facts. Victims of the military are regularly portrayed not as members of the NPA or the CPP who are trying to overthrow the government by force but merely as "farmers, . . . fishermen, . . . students" implicitly innocent of any wrongdoing. In many cases, the most cursory investigation would reveal that a victim of the military's mistreatment was an NPA guerrilla or a key NPA informer. Crucial facts such as these could not possibly justify a killing by the military. But the TFD's omission of such facts represents a conscious attempt to suppress an important part of the story for political reasons.

This was so when the TFD portrayed an ugly mass killing that occurred on the island of Negros in 1980 which, more than any other single incident, marked the Marcos regime internationally as brutal and murderous. In the spring of 1980, in the rural municipality of Kabankalan in the province of Negros Occidental, several peasants were killed by military units acting at the behest of a local political boss. In the protests and publicity emanating from the TFD and other human-rights organizations, two of the victims came to symbolize the injustice. Alex Garsales and Herman Moleta were portrayed as simple farmers who had been murdered because they were active members of the local branch of Basic Christian Communities, which in turn was portrayed as a Christian form of community organization for the poor. Yet a left-wing but non-Communist priest in Negros told me that it was well known in Kabankalan that the two men were key figures in the NPA organizational structure in their mountain village. Another leftist, with close ties to the CPP and first-hand knowledge of the situation in Negros, said it was taken for granted that the Basic Christian Communities of Negros formed "the basic infrastructure for the NPA." (This is by no means true everywhere in the Philippines. For instance, Basic Christian Communities in Bukidnon province in Mindanao that were begun under the leadership of Bishop Francisco Claver are wary of both the regime and the NPA.) But there was never a hint of this either in TFD literature, or in a 1982 Amnesty International pamphlet that described the incident, or in a New York Times article (January 29, 1981) about the case.

In addition to suppressing crucial information, the TFD's reports also artifically inflate the extent of political violence for which the authorities are responsible. The TFD does this by refusing to make clear distinctions between persons killed by the military for political reasons and those killed by a variety of armed groups because they are involved in criminal activities, economic disputes, or even personal quarrels. Agcaoili conceded, for instance, that the TFD would define as political the killing of a peasant involved in a land dispute. After grouping together a wide variety of killings in a countryside beset for centuries with rampant violence, the TFD then suggests that all the violence is somehow connected to the regime's current counterinsurgency efforts.

What discredits the TFD's reports even more is that, even where there are virtually no facts available, it is ready to blame a murder on the authorities. This is particularly true in the TFD's tally of "salvagings," a uniquely Philippine term for an incident in which the military kills a civilian in cold blood because he is a suspected Communist.

Here, for instance, is the TFD's full account (in Political Detainees Update, May 15, 1985) of a recent case it classified as a salvaging:

"Butuan City—An unidentified man was found dead along KM 8 of the National Highway in Ampayon at 5:30 a.m., March 17. The victim was approximately 30 years old, 5'4" and of fair complexion. He was wearing denim pants and a red T-shirt. The victim suffered stab wounds all over his body."

The TFD has less opportunities to manipulate the statistics concerning "political prisoners." Here, each prisoner is a confirmed resident of a prison detection center. The TFD's own statistics show that the number of political prisoners peaked in 1983 and has been declining ever since, from 851 on January 1 of this year to 695 on July 15. It is important to understand that many of these prisoners are picked up in raids on guerrilla strongholds and held for only a short period. The majority of the 695 prisoners have been in jail for less than one year, many for just a few days.

It is appropriate to call these people "prisoners of war" rather than political prisoners. There seems to be universal agreement in the Philippines that virtually all the long-term prisoners are NPA guerrillas or Communist-party members actively involved in trying to overthrow the regime. The TFD itself implicitly conceded this by distributing a statement this July saluting "the political prisoners who dare risk their freedom for the sake of our people's liberation." In other words, these are prisoners of war captured in the midst of a fierce, nationwide insurgency.

What the TFD's tally really tells us is how pitifully ineffective the Armed Forces of the Philippines have become. After fighting Communist guerrillas for more than a decade, they have succeeded in capturing only some 200 CPP and NPA members im-

portant enough or threatening enough to keep in jail.

Nor, by the standards of rural insurgencies elsewhere in the world today, is the Philippine military particularly brutal. The language used in TFD reports ("state terrorism . . . escalating military abuses . . . alarmingly rampant salvaging . . .") and the tenor of some news reports suggest that the Philippines is akin to military-ruled Argentina or Guatemala. That is far from the truth. Even if the TFD's inflated statistics are used, the rate of political killings and disappearances over the past decade is no more than one-fiftieth that of Guatemala.

In fact, the Philippine military is no longer marauding much around the countryside. Mostly the soldiers are huddling in their barracks, demoralized and on the defensive, while the NPA extends its reign of terror. Many so-called combat units no longer have the gasoline or even the boots to move around. One statistic sums up the portrait of an almost defeated military: a minuscule 2 percent of the clashes between the AFP and the NPA during the first half of this year were initiated by the military. Two-thirds of the clashes were initiated by the Communist guerrillas. The remaining incidents were classified as "encounters," a catch-all term that includes incidents where the soldiers of the two sides stumble into each other.

Significantly, the Philippine military units most often on the offensive against the NPA are the very units most trusted and respected by the people in the countryside—the Marines and Scout Rangers. But these groups are a minority within the AFP; the majority of the armed forces is composed of passive, corrupt, and demoralized units. It is these units that are driving rural Filipinos into a sullen alienation that makes continuing Communist gains almost certain. They are led by officers who siphon off defense-ministry funds, sell their units' services to provincial political bosses or landgrabbers, or use their power to muscle into local business. The enlisted men, understanding full well the connection between their officers' wealth and their own lack of adequate food and clothing, run petty, but vicious protection rackets in the towns, steal chickens in the villages, and, at checkpoints on the roads, demand payoffs from farmers bringing their produce to market. Shunned by civilians, the enlisted men express their frustration in drinking and fighting.

When a demand for action against the guerrillas comes down the command structure, a hapless lieutenant is dispatched to a village where he may grab the first two young men in sight and threaten to beat them unless they reveal the identity and whereabouts of the local NPA. Even villagers terrorized by the NPA and inclined to give information to the military know that the lieutenant will not be there the next day to help protect them from an NPA death sentence for being an informer. In short, the people are learning every day that the military cannot be trusted or relied upon. An army like that cannot win a guerrilla war.

III

The roots of that guerrilla war can be traced to the mid-1960's when a group of young radicals began coalescing at the University of the Philippines. At their center was Jose Maria Sison, first a student and then a lecturer at the university, who had joined the old Moscow line Communist party, then as now referred to as the PKP.

In late 1964, Sison founded, *Kabataang Makabayan* (KM, or Nationalist Youth). Although KM was organized as the PKP's youth wing, it was first and foremost Sison's organization. The intense, brilliant, energetic, and disputatious Sison recruited and trained a phalanx of loyalists who formed the hard core of KM. Almost from the beginning, it seems, Sison chafed under PKP leaders he viewed as old failures. The heady politics of China's cultural revolution energized and legitimized his discontent and, by 1967, Sison had completed his first draft of a history of the PKP that incisively dissected and condemned the party's failure since 1942 under the leadership of the three Lava brothers. This draft, *Rectify Errors and Rebuild the Party,* became one of the founding documents of the originally Maoist CPP. Polemical and one-sided as it is, it remains the best available history of the PKP.

In April 1967, the Moscow-oriented PKP leadership expelled Sison and his supporters from the party. Almost immediately they formed their own provisional Politburo and issued a May Day statement hailing China's cultural revolution. But it was not until the day after Christmas 1968, when Sison and ten trusted comrades secretly gathered in Pangasinan province and opened what they called a "Congress of Reestablishment," that the new Communist Party of the Philippines was formally founded. The name given to the CPP's first meeting underlined Sison's contention that the old PKP was no longer a legitimate Communist party.

By now the CPP might have been a defunct and forgotten Maoist sect if Sison had not found Bernabe Buscayno. Commander Dante, as he is to this day better known, was the leader of a small group of guerrillas who were among the remnants of the 12,000 Huks who had challenged the Philippine government in the late 1940's and early 1950's. Dante had an apparently well-deserved reputation as a ruthless and well-practiced killer but, by all accounts, he wanted to devote his talents to revolution, not to serving the criminal syndicate into which the Huk hierarchy had degenerated. When the two would-be makers of revolution joined forces, Dante had his ideology and Sison had his army. The New People's Army was founded on March 29, 1969, with 35 rifles and handguns, the discipline code of China's Red Army, and Mao's strategy of protracted people's war.

There was a slavish quality in the Maoist cant ("punish the evil gentry) . . . establish firmest relations with Albania") that was woven into the CPP's founding manifesto, *Programme for a People's Democratic Revolution.* But the "central task" of the CPP then as now was straightforward: "Seizing political power through armed revolution."

Amid the Maoist jargon and formulas in the CPP's early documents there was only a hint of Sison's analytical and visionary mind. That became more evident in 1970 in *Philippine Society and Revolution,* his comprehensive Marxist critique of what ailed the Philippines, which contained a hint of the Maoist prescription that he had in mind for its cure.

Sison's most important contribution in the literature of the Philippine revolution was published in 1974. With *Specific Characteristics of Our People's War,* Sison presented his fellow Philippine Communists with the strategic game plan they have been following ever since. At that time, Marcos was at the peak of his power and the CPP and the NPA together numbered no more than 3,000. But Sison saw victory ahead. He believed that the NPA could defeat the Philippine military slowly but surely by creating guerrilla strongholds in the mountains and hills of every major island. "In the long run," he reassured his doubting comrades, "the fact that our country is archipelagic will turn out to be a great advantage for us and a great disadvantage for the enemy. The enemy shall be forced to divide his attention and forces not only to the countryside but also to so many islands."

Sison believed that the Huks under PKP leadership had seriously blundered by effectively confining their guerrilla warfare to the island of Luzon. This allowed the Philippine military to concentrate its countersurgency forces there. It was Sison's idea to establish guerrilla fronts in all the major islands of the Philippines, dispersing the armed forces throughout the archipelago and then gradually grinding them down.

Sison had a special role in mind for the largest island in the south. "The long-term task of our Mindanao forces is to draw enemy forces from Luzon and destroy them." The supremely confident Sison issued this master plan at a time when not a single NPA guerrilla band was active in Mindanao. With fanatic dedication, the Communists would try again and again and finally succeed in achieving Sison's goal of turning Mindanao into the military meatgrinder it is today. In early 1971, the CPP dispatched a lone student radical, Benjamin de Vera, to the city of Davao in eastern Mindanao. By the end of that year, de Vera had sworn in three party members and they had recruited 30 candidate members. A few months after Marcos declared martial law on September 21, 1972, the CPP put together a small guerrilla unit to test the revolutionary waters in the countryside between Davao and the city of Cotabato. By the end of 1973, party documents reveal, this unit had been virtually wiped out.

But the CPP and the NPA persevered. More former student radicals were sent to Mindanao to "integrate with the masses" and to organize small villages. The NPA began over again, but painfully slowly. By July 1975, again according to party documents, the NPA in Mindanao consisted of only seven men with seven guns. It seemed that most of the young, educated Communists who came from the cities ended up dying. By mid-1976, 300 of the first 370 party members in Mindanao had died, dropped out, defected, or been detained. Elsewhere in the Philippines—in Isabela province and the Cagayan Valley in northern Luzon, and on the islands of Negros and Samar—the former student activists, along with the few members of the rural lumpenproletariat they could recruit, were doing only a little better. One pro-Communist account of the guerrilla fighting in northern Luzon reported that the life expectancy of an NPA member in those days was three years.

It was during this period—the early to mid-1970's when the Philippine economy was booming and Marcos was at the height of his power—that the highly favorable image of the New People's Army became fixed in the minds of the many middle-class Filipinos outside the guerrilla zones. The image was grounded partly in reality but to a substantial extent, even in those days, in myth. The fact that countless student radicals with comfortable backgrounds and promising futures were dying or going to prison for their cause made a deep impression on many middle- and upper-class Filipinos. Adrift in an increasingly cynical and

materialistic society, privileged and educated Manilans often viewed the fanaticism of the Communists as an enviable virtue. To this day, an upper class Manila dinner party seems incomplete until a guest, who invariably has no first-hand knowledge of how the guerrillas operate, begins speaking in admiring tones of the young Communists in the hills and prisons. The other guests nod knowingly and approvingly as dollar-a-day servants hover over them. Even politically moderate activists like Agapito (Butz) Aquino, brother of the assassinated political leader Benigno (Ninoy) Aquino, see something to admire in the fanatic dedication of the Communists. "I have always been impressed by the conviction of these guys. . . . I envy these guys . . . they're struggling for a philosophy they believe in . . ."

Many Filipinos came to think that if the Communists' fanaticism was selfless than it must also be benign. So they were instant believers in the myths surrounding how the NPA operated: guerrillas were idealistic students who won over the peasants by providing them with medical care (heavy on the acupuncture) and with political instruction that opened their eyes to their oppression. Now and then the guerrillas might shoot someone but the victims were all bad people—cattle rustlers, rapists, sadistic policemen—who should have been punished by the authorities. The peasants were so delighted that they referred to the NPA as the Nice People Around.

This myth may have overlapped with reality in some parts of the Philippines for a brief period in the 1970's. It is difficult to say because there are virtually no independent accounts available of how the NPA operated a decade or more ago. Certainly some radical leftists who are appalled by the NPA's actions today insist that there was a golden era. But even if that were true, the tarnish was already visible. As early as 1970, about one-third of the ranking NPA members belonged to liquidation squads. And the most upward mobile of all the NPA guerrillas during this supposed golden period was Rodolfo Salas, who was riding his reputation as a gunslinger to greater power and status inside the CPP.

VI

Contribution to the myth of a benign NPA was the growing awareness among educated Filipinos that many priests and nuns were becoming deeply involved with the Communists. Many Filipinos, who are more than 90-percent Roman Catholic, seem to believe that if nuns and priests support the Communists, then Communism must have many commendable qualities.

But very few Filipinos appreciate how deep the involvement of many members of the Catholic clergy has become. Nowhere else in the world, it seems, have so many priests and nuns been so committed to the Communist cause. As a Philippine leftist puts it: "Liberation theology has gone much further in the Philippines than in Latin America. In Latin America, it justifies collaboration with the Communists. Here it means joining the Communists."

Although a great deal of publicity has been given to a handful of priests who have become gun-toting NPA guerrillas, these clerics turned killers from just a small and unrepresentative minority of the Communists inside the Church. In the Philippines, hundred of priests and nuns effectively become Communist-party members by joining a highly secretive, possibly unique, organization called Christians for National Liberation (CNL). The CNL's members included some Catholic lay workers and some Protestants, but its core consists of an estimated 1,200 priests and nuns who form secret cells inside the Catholic Church and its many organizations. The CNL constitution mandates a secretive, highly disciplined structure "based on the principle of Marxism-Leninism. The policies of the CNL are also explicitly Communist; its constitution requires members to pledge support for "protracted people's war" and the "armed struggle and the underground movement." The key task is "to overthrow the U.S.-Marcos dictatorship."

The first program adopted by the CNL all but announced the Communists' intention to establish Task Force Detainees under the control of the CNL. The wording left no doubt that the aim was not to protect human rights but to aid the NPA. The program declared that "the CNL must develop a massive, sustained, and militant protest movement against militarization. This seeks to block the full escalation of military activity against the guerrilla fronts. . . . We denounce military atrocities." In 1974, about a year after the CNL program was written, Task Force Detainees came into existence. To this day, all of TFD's 13 regional and subregional directors are priests or nuns and most, if not all, are members of the CNL.

For priests and nuns, joining the CNL amounts to a secret rejection of the Roman Catholic Church. Their acceptance of the CNL's unqualified call for revolutionary violence represents a philosophical break with the Church, but they also break with it in an organizational sense by endorsing a constitution that rejects the Church hierarchy from the local bishopric to the Vatican. Besides requiring members to fight for democratic decisionmaking in the Church, the CNL constitution says another aim of the organization is "to fight for truly self-reliant and self-determining Filipino churches against the interventions of foreign Church bodies and institutions." Presumably that includes the Pope.

What is particularly insidious about the CNL's presence within the Church is its secrecy. Bishop Francisco Claver, a left-wing critic of the Communists, has often said that he objects not so much to the presence of Communists inside the Church as to their dishonesty and deceit. Priests will live in the same residence or work in the same Church organization as other priests for years without telling them they are CNL members. There is no open and honest debate because they never reveal to their fellow priests precisely what they stand for or where their ultimate loyalties lie.

Partly because virtually no Filipinos outside the CNL know anything of substance about the group, its constitution, or its program, it is still widely believed that the presence of priests and nuns inside the Communist movement is a force for moderation and mercy. Such comforting thoughts are promoted by people like the nun who told me that she knew guerrillas who, after being exposed to some of the Communists in the Church, began carrying Bibles in their packs. Yet the evidence suggests that the CNL members are more radical and rigid than other Communists. In statements commenting on the Aquino assassination that were issued within days of each other in the fall of 1983, the CPP endorsed all forms of protest, both violent and nonviolent, against the Marcos regime while the CNL called only for armed struggle.

It is not only the rhetoric of the CNL that is radical. Any curious visitor to provincial conventos where priests live and work will soon discover that many of them harbor clerics who are working virtually full time for the revolution. CNL members find shelter for wounded guerrillas, help party cadres move through their towns on the way to NPA base areas, and serve as message drops.

For a period in the middle to late 1970's, in some areas where the NPA's existence was still tenuous, the help of CNL priests and nuns was probably essential in permitting the NPA to hang on. In other areas, the CNL and its allies hastened the growth of the Communists. In Mindanao, for instance, the Communists took virtually complete control of the day-to-day running of the Mindanao-Sulu Pastoral Conference, the organization that the bishops of Mindanao and the Sulu archipelago had set up to administer social programs. The bishops eventually conceded that the only way they could regain control of their own organization was to abolish it. After much agony and delay, that is exactly what they did.

On the island of Negros, leftist sources confirm personal impressions that some priests were involved in organizing sugar workers for the Communists. Years before, the PKP, the old Communist party, had tried to organize these workers but had been quickly thrown off the isolated haciendas where the sugar workers lived. Said one participant in that old struggle: "We failed completely." But the new CPP succeeded: "When priests come to organize the workers under the banner of religion, better yet when the priests are Australian or Irish, it's easy. The landlords will never think that this is a Communist organization. But that is what happened; the Basic Christian Communities [organized by the priests] in Negros became the infrastructure of the NPA."

One account of how the CPP has infiltrated and seized control of Church organizations in the Philippines is the testimony of the late Father Edgardo Kangleon. Father Kangleon was deeply involved in the Communist-party network operating inside the Roman Catholic Church on the island of Samar. After being arrested, he had a change of heart and consented to have a dialogue with Defense Minister Juan Ponce Enrile in front of three Catholic bishops.

Kangleon talked freely about how the Communists and a few trusted members of front groups had taken virtually complete control of the Church's social-action programs in Samar. Church programs ostensibly aimed at helping peasants, fishermen, and illiterates were in reality initiated and controlled by the Communist party, said Kangleon. "We geared these programs toward our own motives." Applications for financial help from Philippine and foreign agencies were passed through a regional organization, the Visayan Secretariat for Social Action, where other Communists forwarded them with a favorable recommendation to potential donor organizations.

The same thing is happening today to a greater or lesser extent in every region of the Philippines. It seems that no one in the Marcos regime or even in the CPP has a good estimate of the total amount. But no one doubts that hundreds of thousands, quite possibly millions, of dollars from abroad are flowing into Communist-controlled organizations and projects in the Philippines. One intelligence analyst estimates that Church-related organizations in Western Europe alone last year donated $750,000 to Communist-controlled organiza-

tions under the umbrella of the Roman Catholic Church. But that is only a semi-educated guess.

Despite the great inroads that the Communists have made in the Catholic Church since Christians for National Liberation was formed in February 1972, the Church as a whole is still far from being pro-Communist. Less than 10 percent of the country's 14,000 priests and nuns belong to the CNL; most, if asked point blank, would say they are opposed to Communism. But this rank-and-file majority, now deeply disillusioned with the Marcos regime, has failed to come up with any coherent political stance that is both anti-Marcos and anti-Communist.

Thus the majority is easily cowed by the pro-Communist minority, even most conservative bishops now try to ignore pro-Communist activism among their priests, just as they themselves refrain from making anti-Communist statements. In fact, the Church majority has been bullied into such a flaccid neutrality regarding the Communists that it was an unusual, newsworthy event this summer when the Archbishop of Zamboanga, Francisco Cruces, pleaded that publicity given to NPA atrocities be as extensive as publicity given to military atrocities.

There is little immediate prospect that the Church will come to grips with the Communist challenge. Instead, the implicit policy of the Church hierarchy, from the Archbishop of Manila, Jaime Cardinal Sin, to the lowliest provincial bishop, is to maintain a state of ignorance about the CPP presence inside the Church. Cardinal Sin, in particular, is known to place the survival of a unified Catholic Church above almost everything else. If he were to launch a comprehensive examination of the CPP presence in the Church, he would, to borrow a Marxist term, be heightening the contradictions within the Church, and possibly precipitating a crisis.

V

Back in 1976, the Communists did not seem to pose much of a threat to the Church, or to any other institution in the Philippines. On June 25, 1976, after the CPP leadership had spent months analyzing the failure of the party and the NPA to make significant gains, the CPP issued a cautious new position paper. Although it has apparently been circulated only clandestinely and in mimeographed form, Our Urgent Tasks remains one of the key documents in the CPP's history. It would also prove to be the last important party paper written by Sison before his arrest.

Although Tasks brimmed with Sison's rhetorical optimism ("the soil for the revolutionary antifeudal movement and armed struggle in the countryside is more fertile than ever before"), the overall message was glum. The Marcos regime was killing or arresting NPA guerrillas and CPP cadres at a rapid rate. There had been hardly any net growth in party membership since 1973. The party remained a small organization, perhaps 3,000 members, who were almost all one-time student radicals and other educated Fillipinos from the middle and upper classes. In fact, most party members then seem to have been former members of KM, the radical youth organization, or had been recruited by KM members. The party of the masses it definitely was not. As Tasks almost plaintively stated: "We must increase the number of party members who are of worker and peasant status. In this regard, we must keep in mind that we do not wish to be an exclusively cadre party."

With false bravado, the Tasks paper declared that "in no year [since 1968] has the enemy struck down more than 5 percent of the party." Even taken at face value, this was an admission that as many as two-fifths of the Filipinos who had joined the CPP since 1968 had been killed. But few of these deaths occurred among the large number of party members who had remained in the towns and cities. What Sison was really admitting was that the many party members fighting with the NPA were dying like flies.

One of the key problems then faced by the NPA was its lack of modern rifles. On that score, the party document was more hortatory than helpful: "We make sure that at the core of such weapons as bolos [a machete-like knife], spears, bows and arrows, and homemade explosives are good guns." And if that is not possible, then "a full enemy squad . . . caught by surprise . . . can be easily overpowered by our militia with bolos or even with bare hands."

The bottom-line advice Our Urgent Tasks had for the NPA was to avoid military action as much as possible and, instead, return to the task of consolidating control over rural base areas in remote parts of the country. Only after there is "painstaking work" and "solid organizational work," said Sison, should the NPA attempt military action. Cautioned the CPP strategist: "We can advance only step by step."

The NPA proceeded to build those secure base areas with a vengeance. "Solid organizational work" soon came to mean the total mobilization and control of the people in the base areas. This is how the Communist-party publication, Ang Bayan, described what was happening to civilians in NPA areas by the late 1970's:

"In the guerrilla fronts, the day-to-day work of the masses includes giving material support to the people's army, keeping the enemy under surveillance, and helping to safeguard the security of the revolutionary forces. The people also participate in military operations carried out by the guerrilla units. They also play an important role in exposing and punishing enemy spies."

Many such "civilians" forced by the NPA into semi-conbatant roles were among the first victims when the military came hunting the guerrillas. It was classic guerrilla-warfare strategy: coop civilians and put them between you and the government's armed forces. Their deaths have continued to provide grist for the mills of groups like Task Force Detainees.

But there was another reason why the NPA had concluded by the mid-1970's that it had to be ruthless in asserting control over the guerrilla base areas. In Mindanao Party Situation and Policies, another CPP document issued about the same time as Our Urgent Tasks, guerrilla leaders blamed their losses on their failure to kill "bad elements" and "local government informants." What the NPA had to confront was the fact that, unlike virtually all Communist guerrilla movements that had ever achieved victory, it had no completely secure base area or sanctuary. There was no friendly foreign territory just across an international boundary where its guerrillas could flee when the fighting got particularly heavy. Nor did it have a remote base inside the country like Mao's Yenan that government troops could not penetrate. Instead, to this day, there is no NPA base area anywhere in the Philippines that a large contingent of government troops could not penetrate and occupy if it wished to. Since the NPA cannot depend on territory, there is nowhere the enemy cannot come, the NPA has to make certain there is no one who might talk to the enemy when he arrives.

The literally terrifying solution that the party and the NPA came up with was to demonstrate their willingness to kill anyone who might possibly hinder the consolidation of their base areas. A defender of the NPA might say that, forced by military realities, the NPA terrorized the rural population. The NPA killed real, possible, and even, in its view, potential informers. It killed at the slightest pretext just to demonstrate its power and coldbloodedness. In Bukidnon province, for instance, we have first-hand accounts of the NPA killing a man solely because he once bragged that he had no fear of the NPA and, in another town, killing two men because, the guerrillas announced afterward, they had maintained mistresses. There are also countless second-hand accounts that make it clear that the NPA is less interested in whom it kills than in demonstrating to a cowed populace that it is ready to kill.

The NPA's new ruthlessness was endorsed by the top CPP leadership. The party in effect told the NPA that it should feel free to kill anyone it felt it was necessary to kill. By including on the death list "unreformed bad elements who hinder the development of the revolutionary movement in the *barrio*," the CPP was giving the NPA virtual carte blanche. If that was not subjective enough, *Ang Bayan* (December 31, 1980) seemed to suggest that any killing was permissible if a village mob approved:

"What kind of criminals are meted out the death penalty by the revoluntionary movement? The masses clearly express the answer to this by their feeling of relief every time a "*demonyo*" (enemy spy) or some other bad element is given capital punishment by the NPA. . . . The crimes of these bad elements vary but these are all so grave as to warrant death as a just penalty."

In this period of reconsolidation, NPA guerrilla bands gravitated neither to the poorest areas in the Philippines nor to those areas where military abuses were necessarily the greatest. Instead, the NPA sunk new roots into remote and isolated areas where the government and the military had little if any effective presence and authority. The interior of the island of Samar was one of these vacuum areas; Davao del Norte, a province in eastern Mindanao, was another.

It was in Davao del Norte that I learned what the NPA had become. By the late 1970's the NPA was well on its way to taking effective control of much of the province. The center of NPA strength was the municipality (equivalent in size to a large U.S. county) of San Vicente, still known to its inhabitants by its previous name, Laac. There, in late 1981, the Philippine military finally reacted to the NPA's gains by setting up variations of strategic hamlets. They forced farm families in small settlements to dismantle their houses and rebuild them in the municipality's larger towns where small military units were posted to stand guard. The military's aim was to isolate the NPA guerrillas from their support base. The move, which appeared to be a pilot project, alarmed the Communist party; clandestine CPP publications had long warned that hamletization represented a dire threat to the NPA.

So the Communists decided to launch a concerted propaganda campaign aimed at portraying the hamlets as a rank injustice foisted on an unwilling population. The first two journalists invited, indirectly by the

Communists, to visit San Vicente, where they could be expected to write unfavorably on the hamlets, were a good-hearted missionary-journalist, who had great sympathy for the far Left, and myself.

By then I had reported several stories from the Philippines that reflected harshly on the Marcos regime, several of which had been attacked by the Pro-Marcos press in Manila. The best-known article, provocatively headlined by *Time* "Pacific Powderkeg" (September 24, 1979), may have been the first comprehensive portrait in a major U.S. media outlet of the decay that was besetting the Marcos regime and the country at large. Reports of this kind had given me substantial access to Communists and their fellow-travelers. They seemed to think that I was their sort of reporter.

Not, as it turned out, in Davao del Norte. This was so despite reporting conditions heavily skewed in favor of the guerrillas. A pro-NPA group accompanied me virtually everywhere. The interpreter for all my interviews with local farmers was very close to, probably a member of, the Communist party. (An unqualified statement of CPP membership is hard to come by; membership status is so secret that fellow members are forbidden to acknowledge membership to one another unless they have been directed to work together.) But one advantage I did have was that many of the peasants I talked to addressed me as "father," believing I was a Catholic missionary in whom they could, presumably, confide. The peasants were not parroting anybody's line: they were obviously relieved that the guerrillas had fled, but they seemed wary of the military who were the powers-that-be. All conversations were held well out of sight of military personnel.

Everywhere we went, the story was the same. The area was relatively well off; most farmers worked their own small landholdings. Until a few months before, there had been no significant military abuses; in fact, the area had generally been ignored by the authorities. There was no real government presence except in the *poblacion* (central town) of San Vicente. Roads were no better than dirt tracks, increasing the isolation of the area. The NPA had moved in just a few years before and had already killed scores of people. In the *sitio* of Linumbaan, a small village of 83 families, an NPA supporter and resident told us, the NPA had killed 20 people in the village and immediate surrounding area. The killings he described were aimed at demonstrating the NPA's power more than anything else. The NPA, he said, had killed people who had spoken out against the guerrillas. It had killed a woman, whom the villagers referred to simply as Tomboy, solely because she was a reputed lesbian. At another *sitio* that was home to 72 families, the NPA had killed two local people in the past two years. Villagers said the NPA had steadily raised "revolutionary taxes" that were paid in cash and food.

The NPA has set up forced-labor plots in some locations; local farmers had no choice but to work a three-day stint on them every few weeks. Nearly all the produce from the plots was appropriated by the guerrillas; a small amount was apparently put in collective storage for the entire village.

In three separate interviews, local farmers summed up the NPA's methods by slicing their hands across their throats, graphically conveying their firm belief that they would have been killed if they had not complied with the NPA's demands.

VI

While the NPA was resorting to increasingly brutal methods in the latter half of the 1970's, an almost complete turnover was not so coincidentally under way in the Communist-party leadership. Starting in the mid-1970's, members of the KM generation of leaders began to be killed or captured. Names well known in Philippine radical circles—Ocampo, Corpuz, Jopson—fell one by one. And on November 10, 1977, the party chairman himself, Jose Maria Sison, was captured. Sison's comrade and top military man, Bernabe Buscayno, had been captured more than a year earlier.

During this period, a gloating President Marcos publicly declared that the elimination of the top party leaders had broken the Communist movement. Even today, Marcos is fond of rolling out statistics on how many CPP and NPA leaders have been killed or jailed. He apparently still does not understand that the ability of the CPP and the NPA to survive these repeated setbacks and then to continue growing under a new corps of leaders is compelling evidence of the Communists' strength, discipline, and resilience.

At a central committee meeting in January 1977, ten months before Sison was captured, Salas had reportedly already been designated as Sison's successor. In any event, he was quickly and formally elected party head in early 1978, capping a meteoric rise in the ranks of the CPP.

Born in the province of Pampanga on December 23, 1947, he went to high school in Angeles City, the prosperous next-door neighbor of Clark air-force base. He arrived on the campus of the University of the Philippines (UP) in 1965 where he studied mathematics and then chemical engineering. Soon caught up in radical student politics, Salas is said to have been recruited into the Communist orbit by Sison himself. Technically this made Salas a member of UP's KM generation of radicals. But Salas's contemporaries on the UP campus in the 1960's now say that he was an unassuming fellow who was never part of the inner circle of student leftists. By most accounts it was only after leaving the university and going underground that Salas became important in the party.

Even today, as the undisputed leader of the Communist insurgency, Salas does not leave a vivid impression with Filipinos outside the CPP who occasionally meet with him surreptitiously. They describe him as a man of ordinary appearance ("except for his ears, which stick out and make him look like Alfred E. Neuman," said one opposition politician). He speaks quietly and exudes self-confidence.

With no claims to being an intellectual like Sison, Salas developed a reputation as a good underground organizer and a daring military tactician. He was conducting military actions like the Subic Bay ambush at a time when the NPA nationwide had only a few modern guns. Although he was arrested in June 1973, he soon escaped. Salas was given the powerful post of party chairman for Central Luzon and was reportedly already in charge of party-building nationwide when he became the leader of the entire CPP.

Once he was chairman, Salas immediately began putting his stamp on the party. Sison, the poet, Maoist intellectual, and grand strategist, had placed great emphasis on ideological correctness and procedural purity. But Salas, the engineer and military tactician, though no less radical than Sison in his ultimate political goals, seems from the beginning to have been much more concerned with ends than with means. Whatever was required to win the struggle for power was justified. It was Salas, for instance, who wrote or at least authorized those party statements, issued since the late 1970's, which establish and defend the party's carte-blanche policy toward the killing of civilians in NPA guerrilla base areas.

The first whiff of the new opportunism came in 1978 when a CPP directive authorized local party leaders to jettison strict procedures set up during Sison's leadership for the careful screening and training of prospective party members before they were admitted to the CPP. For the sake of party-building, the new directive stated, instant memberships could now be granted in areas where the party was just starting to organize.

In the late summer of 1980, members of the Communist party's central committee gathered at a temporary hideout in the foothills near the Bicol town of Daet. It was a typical central-committee plenum, with intense discussion lasting for weeks. The meeting ended with agreement on a growth plan that reflected Salas's ambition to speed up the revolution. Party membership, then totaling 8,000, was to be tripled and NPA strength, then just a few thousand, was to be doubled over the next three years. The party's plans for Mindanao were particularly ambitious. The number of guerrilla fronts on the island was to be increased to 14 by 1984, even though there were only five in existence at the end of 1980.

For the party, the timing of the decision to launch a major expansion effort could not have been better. The Philippine economy had begun to unravel in 1979 due in part to the second oil crisis that hit Third World oil importers like the Philippines particularly hard. Unlike the aftermath of the 1973 crisis, the Philippines could not borrow or export its way out of its problem. There was no new flood of credits for economies as badly managed as the Philippines and there was no new surge in commodity prices. In fact, the prices of sugar and coconut oil, two key exports for the Philippines, were in the basement.

But the lion's share of the credit for the economic collapse was due to the corrupt and wasteful economic policies of the Marcos regime that were finally coming home to roost. Businesses run by Marcos cronies and propped up by billions of dollars in government loans went bankrupt, some because of incompetence, others because the cronies had looted their own companies. Institutions that might have helped the Philippines weather the storm had been crippled by Marcos. The legislature had been abolished, the judiciary deeply compromised, the military politicized, the independent business sector cronyized.

With no jobs luring Filipinos from the countryside to the cities and newly unemployed Filipinos returning to the villages where there was a better chance of eating regularly, the agricultural labor force suddenly began to balloon. There was an increase of at least three million, or 34 percent, from 1979 to 1984, according to government statistics. Suddenly, the NPA was awash in potential recruits, but they were a new breed. For years, the core of the NPA had been young educated Communists from the cities who completely dominated the local recruits, best described as members of the rural lumpenproletariat. The newcomers flooding into the NPA were acting pri-

marily out of economic necessity, not ideological commitment, but they were able to feel right at home. Under Salas the CPP and the NPA had been paying less attention to ideology, and more to achieving victory; to collecting more money and guns to make that victory possible; and to cutting down anyone who might stand in the way.

Inevitably, the new circumstances created a new kind of guerrilla leader. No one personifies this change better than Romulo (Rolly) Kintanar, who today is the single most powerful guerrilla leader in the Philippines. The party dispatched Rolly Kintanar to Mindanao in late 1974 or early 1975, about the time the NPA on the island had been reduced to a pitiful handful of seven men with seven guns. Kintanar was initially charged with giving military training to new and existing NPA guerrillas. But he quickly emerged as the key military tactician and commander in the NPA, building up NPA forces in Mindanao from a total of seven gun-carriers in 1975 to about 100 by the end of 1976.

It was Kintanar, according to some reports, who perfected the NPA's solution to its critical shortage of guns: he created and trained small hit squads, which assassinated policemen and military personel, often on crowded streets, and stole their guns.

When the economic crisis hit the Philippines, it hit commodity-dependent Mindanao the hardest. And no guerrilla leader was more ready than Kintanar to exploit the new circumstances, and transform the insurrection from an ideological to an economic one. Today, Mindanao is home to several thousand NPA guerrillas and, thanks more to Kintanar than to anyone else, the island has become the nemesis of the Armed Forces of the Philippines just as Sison envisioned.

Kintanar's success did not immediately endear him to the national party leadership. He was repeatedly passed over for top party positions in Mindanao and was not even admitted to the central committee until 1979, when Salas was firmly in control. There is no mystery about why the old generation of party leaders in particular were not eager to embrace their military genius in the south. The most positive comment heard about Kintanar in leftist circles is that "he's a first-rate military commander who doesn't know anything about political ideology." Others are not to charitable, describing him as "a warlord who's operating a massive protection racket" and "a psychotic . . . who loves to put a bandanna around his forehead and then go out and kill people."

The number of would-be guerrillas needing to be equipped and fed has continued growing faster in Mindano than in other parts of the Philippines. This created an economic crisis for the NPA because it was already coming close to exhausting in traditional "tax base." For years, the NPA's rural guerrillas had been demanding what amounted to protection money from the operators of mines, logging camps, plantations, and ranches. Those refusing to pay had either to hire their own private armies to keep the NPA at bay or to wait for the guerrillas' tax-enforcement bureau to show up and drive ore-carrier trucks off cliffs, burn logging equipment, or rustle cattle.

Most businessmen paid, reluctantly but without any great sense of outrage. After all, in Mindanao, payoffs to political leaders, military officers, and sometimes criminal bosses had long been considered part of the cost of doing business. But as NPA "taxes" rose, some of the taxpayers said they were being driven out of business. A few of the more reasonable NPA leaders actually sent accountants who were CPP members to examine the books of some of the businessmen who were pleading poverty and waived taxes if it was shown they were losing money.

Kintanar's solution was to start collecting taxes in Davao, the sprawling city of an estimated million people on Mindanao's east coast. Businessmen who did not comply might be kidnapped; storeowners risked having their stores bombed or vandalized in the night. Kintanar dispatched NPA gunmen into Davao to enforce tax collection and to collect a commodity even more precious to the NPA than money—guns to arm the countless would-be guerrillas in the area. Over the past few years, dozens of policemen have been shot and killed in the streets of Davao by NPA hit men who grab their guns and race away.

To kill policemen and enforce his protection rackets, Kintanar has drawn around him a bunch of thugs who are a world apart from the campus Maoists who launched the revolution seventeen years ago. In their hideouts, the walls sport posters not of Mao but of Charles Bronson, for them a symbol of macho violence. Says a Davao City resident with leftist sympathies: "These people aren't good Communists." But the national Communist party leadership no longer seems to care. Kintanar's boys are doing their job: Davao continues to slip slowly out of the Marcos regime's control and business is grinding to a halt.

All the available evidence suggests that Kintanar launched urban guerrilla warfare in Davao City despite the deep misgivings, if not the outright opposition, of the CPP's national leadership. Underground party publications long ignored what was happening in the city. Then they began running the occasional article endorsing urban guerrilla warfare in principle but stressing that the time was not yet ripe.

Some Filipinos on the Left argue that Kintanar at that time was ignoring CPP directives and was on the verge of becoming an independent warlord or bandit leader. But recently the national party leadership seems to have decided that, thug or no thug, Kintanar is one of them. Kintanar has been promoted; he was recently named head of the NPA's central military staff and of its national operational command. CPP publications are now endorsing urban guerrilla warfare in general terms and are reporting favorably on what they have dubbed the NPA's Armed City Partisans (ACP's). The ACP's are essentially hit men and saboteurs. Previously, the euphemism used by the NPA for its assassins in both city and countryside was "sparrow units." In the good old days, they were simply members of "liquidation squads."

At the same time, party leaders may be trying to cut Kintanar off from his power base. While the new job titles sound impressive, it is uncertain how much real power they carry with them. The jobs could keep him in metropolitan Manila, or the provinces just north of the capital, where the underground headquarters of the CPP and the NPA are believed to be located. Either place is far from his base in southern Mindanao. The party also seems to be trying to reduce the independence of Kintanar and any other would-be guerrilla warlords by ordering that large Manila-based companies with logging, mining, or other business operations in the provinces pay their "revolutionary taxes" to representatives of the party in Manila and not to local NPA leaders.

These efforts by the national party leadership to maintain strong central control are consistent with the entire history of the CPP. Although the party encourages local CPP and NPA leaders to use their initiative in formulating tactics and carrying out operations, it has always acted like a classic Communist party in demanding total adherence of its members to the party hierarchy and to official party policy.

This insistence on unity and discipline helps explain the marathon meetings where top party leaders will often spend weeks thrashing out policy and personal differences before reaching an ironclad consensus which, from that point on, is considered unbreachable. It also explains why the CPP commits substantial resources to maintaining an extensive courier network so that party communications can flow quickly from one end of the archipelago to the other. In addition, the party leadership is constantly reassigning party cadres to various parts of the country to counter the regionalist tendencies that are historically so strong in the Philippines.

Because the CPP is secretive to the point of paranoia about its affairs, and because it almost never gives its leaders any public exposure, many otherwise well-informed Filipinos strongly doubt that a cohesive national Communist party even exists. This was the consensus, for instance, of a group of Philippine legislators, representing both the government and opposition parties, who recently visited Washington. Their collective view was that the NPA guerrillas in various parts of the country are effectively autonomous groups that have, at best, tenuous ties with each other.

Only a few Filipinos are better informed. Another recent visitor to Washington, Jaime Ongpin, the chief executive of the Philippines' leading mining company, Benguet, has no doubt about the centralized nature of the party. He said that guerrillas harassing his company's operations in Mindanao knew precisely how Benguet had handled similar harassment at another company operation in northern Luzon, several hundred miles away.

VII

The Philippine Communists are not waging revolution only through the outlawed New People's Army. They are also stepping up their efforts to topple the Marcos regime by using an ever-changing network of tightly controlled but legal front groups. And as Communist power grows both underground and aboveground in the Philippines, the front groups are making less and less of a secret of their Communist affiliation. This past spring, a coalition of CPP fronts called a general strike aimed at shutting down the Mindanao economy and creating political havoc. A pamphlet issued by the coalition calling for such actions as "the putting up of barricades" on Davao's main streets left no doubt that the strike organizers were calling for an urban insurrection:

"The primary objective of the *Welgang Bayan* [national strike] is to paralyze the economic, political and social machinery of the dictatorship. . . . The *Welgang Bayan* will develop from partial to sustained strikes, from temporary to complete paralysis. . . . This will result in the paralysis of the economy and political foundation of the U.S.-Marcos dictatorship and facilitate its downfall."

Shortly after the strike, the key publicly identifiable organizers were arrested. One of those was Davao lawyer Laurente Iligan. His incarceration has become a minor *cause célèbre* among human-rights activists. However, news reports, including one in the New York *Times*, have failed to indicate the declared goals of the strike.

The granddaddy of all the CPP fronts is the *National Democratic Front of the Philippines*, the NDF grandly describes itself as a broad coalition "made up of Filipino nationalists, democrats, progressive christians [the NDF uses the lower-case c] and church people, national minority autonomists, women's emancipationists, socialists, communists, and other genuine patriots here and abroad, representing a wide variety of political and ideologists trends." And within this coalition, promises *Liberations*, the NDF's own publication, "no single party . . . will be allowed to dominate. . . ."

This is all fiction. The NDF has been the total creature of the CPP since 1971 when a central committee directive ordered its creation. It was formally founded on April 24, 1973, but only after CPP members had established the Christians for National Liberation and other front groups that, in turn, were designated as the founding members of the NDF "coalition." Other founding groups in this ostensibly broad alliance were the NPA and the CPP itself, as well as CPP captive organizations like KM, the Communist youth group founded by Sison.

Not only is the NDF completely controlled by the Communists; so, apparently, are all its constituent organizations. Some, like the CNL, are effectively part of the CPP. There are other constituent organizations of students and workers—a good example being the KMU labor alliance—in which the majority of members are not Communists but the leaders are.

The NDF is organized into secret cells, similar to those of the Communist party. Apparently most of the NDF's membership is composed of CPP candidate members and of CNL members who do not want to take that final step of formally joining the party. The CPP administers the NDF through its National United Front Commission. The key roles in the NDF are filled by senior party members. Recently, the NDF's leading clandestine spokesman has been Tony Zumel, who not coincidentally is the CPP's propaganda chief.

A few years ago, the CPP faced the fact that the NDF had failed to develop into a classic Communist front, that is, a political umbrella organization with a program broad enough so that a respectable cross-section of non-Communist leftists and nationalists would be willing to endorse it. So recently the party set up a new generation of legal fronts—a good example being the Nationalists Alliance for Justice, Freedom, and Democracy—meant to draw in non-Communists. But the CPP's control of such organizations has been so obvious and heavy-handed that they have failed to develop broad bases. The Communists also infiltrated groups they had not started—like the August Twenty-One Movement, or ATOM, founded by Butz Aquino. But here again, any hope that the Communists might have had to influence a popular, grass-roots organization was destroyed by their seemingly compulsive need for total control. This summer ATOM split in half, with the Communists going one way and Aquino's people another.

For a while this spring, the Communists appeared to some anti-Marcos activities to be genuinely willing to participate in the creation of BAYAN, a broad opposition alliance in which they would not have automatic control. In the original Communist proposal, BAYAN would have three equal voting blocs: "National democrats," i.e., the pro-Communist group; social democrats; and "liberal democrats," i.e., moderates.

But once preliminary meetings got under way, recalls Butz Aquino, the Communists repeatedly and successfully demanded that the voting formula be changed in their favor. When the founding congress began on Saturday, May 5, it soon became obvious to Aquino that the Communists were determined to manipulate and control the entire event. The Communists orchestrated workshop discussions, broke standing agreements by shipping the names of trusted party members into the nomination lists for the executive, and referred every major decision to top Communists not even at the meeting. Recounting Butz Aquino:

"The people outside the hall who we didn't even see were calling the shots. . . . Party members were giving the orders. Whenever there was a crucial decision to be made, they'd ask for a recess. They they'd come back with their hard position."

Angered by the CPP's manipulative approach, virtually every respected and independent political figure in the anti-Marcos opposition—from moderates like Aquino to left-wing nationalists like former Senator Jose Diokno—have quit BAYAN. After working on and off with the Communists for the two year since his brother was assassinated, Aquino concludes: "You can't trust these guys." But how could it be otherwise when the CPP's explicit policy toward all front-group activity is one of deceit? This is how the basic party directive on front groups described the need for secret party control:

"These concentric circles [anti-Marcos elements NDF members, party members] are expressive of our effort to have the party . . . committee always at the center of anti-fascist and other legal activities, leading those activities without being clearly visible to the enemy."

To many it seems that those hurt most by the Communist machinations inside BAYAN were the Communists themselves. Today, BAYAN is known as just another CPP front. If the Communist had restrained themselves, they would today be a strong, perhaps decisive, influence within a popular, broadly based, anti-Marcos alliance. The explanations being advanced for this seemingly self-defeating behavior are all rather ominous. Aquino offers two reasons suggesting that we are merely witnessing a totalitarian party in action. The first is a paraphrase of the CPP directive: "their wanting to dominate completely any organization they join . . ." The other, "their feeling that they're the only ones who have the answers to everything." Jose Diokno suspects the explanation lies in the Communists' growing belief that they are so close to taking power that they no longer need to make significant compromises with the non-Communist opposition.

Certainly there were few real compromises evident in the new National Democratic Front program that was issued at the beginning of this year. Although Communists have repeatedly described the program as a moderate appeal to non-Communists, in reality it is overtly Marxist and covertly Leninist. The heart of the program is a call for the establishment of a People's Democratic Republic of the Philippines (PDRP). The program is like that of most other nations with names that start out "People's Democratic Republic of. . . ." The United States is, of course, the enemy. The program promises that the PDRP's "revolutionary army as well as the people shall be constantly in a state of readiness to repel any act of intervention and aggression from foreign forces, including the United States." Furthermore, "the United States must leave its military bases in the Philippines. . . ." And "as a rule, direct investments and profit-making assets of the U.S. and other big foreign capitalists, especially those in the vital and strategic industries, shall be nationalized.

In addition to Americans, a lot of Filipinos might feel unwelcome in the new People's Democratic Republic of the Philippines:

"Upon victory, a people's tribunal shall be created. This tribunal will have jurisdiction to try and punish enemies of the revolution and their collaborators who have committed crimes against the people, and to escheat *[sic]* properties and ill-gotten wealth amassed by the ruling elite of the old order."

The program also promises "severe punishment of those with grave crimes (i.e., those who owe the people blood debts) and reeducation of those who deserve leniency. . . ."

The NDF program repeatedly states that the PDRP will be run by a "democratic coalition" government. What is most unsettling about that statement is the NDF's assurance that the coalition will be as pluralistic as the NDF is today. "As in the course of the people's war, no political party, group, or individual shall be allowed to monopolize the decision-making processes and the execution of state affairs." If there is any remaining doubt about the CPP's concept of a coalition, it should have been dashed by NDF spokesman Tony Zumel who said earlier this year that the NDF rejected the suggestion that the Communists in the National Liberation Front of South Vietnam had overwhelmed the front's non-Communist reformers.

While the "democratic-coalition" government the Communists are promising through the NDF cannot be described as a coalition, neither should it be described as democratic. The NDF program declares that "all the basic democratic rights shall be embodied in the constitution of the People's Democratic Republic. These shall include the right . . . to free speech and the free press. . . ." But the CPP's underground monthly, *Ang Bayan*, confided to party members this year that, contrary to what its front organization is promising, freedom of the press will be tightly restricted:

"Under the People's Democratic Republic, press freedom shall be enjoyed by the toiling classes and the strata of the bourgeoisie allied to them—in short by the overwhelming majority of the people who are at present exploited and oppressed. But should we allow the same freedom to be enjoyed by those who would seek the restoration of imperialist, landlord, comprador, and facist rule? Democracy will be enjoyed by the majority composed of the nationalist and democratic classes, while their class adversaries shall be suppressed—that is, prevented from regaining power."

This sort of duplicity could not possibly be surprising to any student of Communist history, but there are few such people in the Philippines. There is a whole generation of young, vaguely leftish Filipinos who view

the NDF program as a completely credible document deserving of serious discussion.

The Communists' intention of crushing a free press while their totally controlled front group, the NDF, promises otherwise is simple and straightforward duplicity. But the CPP's leadership is also quite adept at complex, multi-layered duplicity. Nowhere is this more evident than in how the party leaders are handling the emotional and controversial issue of the U.S. military bases on Philippine soil.

At first glance, the Communist position seems unambiguous. The NDF program declares that "the United States must leave its military bases in the Philippines. . . ." In fact, says the NDF, "no foreign power shall be allowed to set up military bases on Philippine soil. . . ." For years, the CPP has ridden this issue, using it to mobilize students and other nationalists to demonstrate in front of the U.S embassy in Manila. Yet simultaneously, CPP leaders have been repeatedly signaling U.S. officials that they are willing to make a deal with the United States whereby the U.S. bases could continue operating after the Communists came to power.

The CPP began sending such a signal as early as 1981 when Horacio (Boy) Morales told a journalist that, despite the NDF's clear-cut pledge to remove the bases, all the NDF really wanted was to negotiate their future status. This year, people who have spoken with Salas and other figures in the Communist movement say that they also have expressed their readiness to junk the NDF program and make a deal on the bases.

But this is not necessarily the final word on where the Communists really stand on the issue. This is because Philippine nationalists who are strongly opposed to the bases say that Salas has been reassuring them this year that his offers to make a deal are a tactical ruse aimed at nothing more than lulling the United States.

This is consistent with the NPA's apparent decision a few years ago to avoid military action aimed at the bases or at U.S. military personnel. Long gone are the days when Salas was a hit-squad leader ambushing U.S. Navy personnel at Subic. Today the areas immediately adjacent to Clark and Subic are among the most peaceful in the Philippines. Instead of attacking U.S. military officers and heightening Washington's alarm over the deteriorating situation in the Philippines, the NPA is quietly collecting "revolutionary taxes" from the businesses that prosper at the periphery of the bases.

VIII

The logical question to ask about the issue of U.S. military bases, or any other major issue, should be: what is the official position of the Communist Party of the Philippines? In fact, what is the official program of the Communist Party of the Philippines? Every Communist party on earth, after all, has an official program. But ask any rank-and-file member of the CPP what his party's program is and watch the uncertainty flicker over his face. When he recovers, he always has an answer. The trouble is that every CPP member seems to have a different answer.

Answer One: "The CPP's program is that of the founding document, *Programme for a People's Democratic Revolution*, issued in 1968." Obviously not, say other party members. And with good reason: the 1968 other party members. And with good reason: the 1968 program, with its praise of MAO and Albania and its attacks on institutions that no longer exist, has long been out of date.

Answer Two: *"Our Urgent Tasks* [1976) was an update of the party program." This answer was offered only by Jose Maria Sison, in a written response to questions I relayed to him this summer. The document he refers to was offered only by Jose Maria Sison, in a written response to questions I relayed to him this summer. The document he refers to was the last party document he wrote before being jailed.

Answer Three: "The party has no program." This answer, volunteered by more than one party member, is not credible. It is true only in the very narrow, technical sense that the CPP has apparently not held a full Dress party congress, at which party programs and the like are formally ratified, since the founding meeting in 1968. But this does not prevent the top CPP leadership from having its own program that it keeps secret from party members.

Answer Four: "The CPP program is the same as the program of the National Democratic Front." That sounds like a confession of what we know is true—that the Communists completely control the NDF. But the fact that the CPP controls the NDF does not mean that the public NDF program is the same as the secret CPP program.

With its promises of reeducation camps, sweeping nationalization of private business, and an anti-American stance in foreign policy, the NDF program by most yardsticks earns a Communist label. But the NDF's parent, the CPP, is telling its members that the NDF program represents only the beginning of the revolution in the Philippines. Says the CPP's *Ang Bayan*:

"In essence, the [current] people's democratic revolution is a bourgeois democratic revolution and not a proletarian revolution. . . . What will be the direction of the people's democracy that will be established? Depending on the class composition of the revolutionary coalition, it could lead toward socialism or toward capitalism.

In other words, when the NPA is marching down the streets of Manila, the real struggle has just begun: "The party of the revolutionary Filipino proletariat [i.e., we of the CPP] will bend every effort to advance Philippine Society toward the correct path of socialism. . . ." Said a member of the central committee in an interview this summer: "That [the NDF program] is the minimum program. The maximum program is Communism."

So what are the constituent parts of the CPP program? In informal conversations this past summer, CPP members talked loosely about a second, radical stage of the revolution that would push the Philippines to the far Left of the Communist world. Evoking memories of the Khmer Rouge's forced evacuation of Phnom Penh, one CPP member said that "most probably" the population of Manila would have to be significantly reduced. "We can't support Manila the way it is."

Another said that the NDF promise "to distribute land to the landless tillers" represents only a halfway house on the road to the total communization of agriculture. "There will be a transition period of land reform and cooperatives. . . . We will invite them [the peasants] to join cooperatives and try to show them the benefits of collective labor. Collectivization will be implemented step by step." And how long will all this take? "A few years," said one. "Easily ten to twenty years," said another.

In truth, none of these relatively low-level party members really knows what the CPP program is. They were simply repeating the kind of talk they had been hearing inside party circles. Like the low-ranking Khmer Rouge soldiers who entered Phnom Penh not knowing that the next day they would be ordering the populace to evacuate, these good soldiers of the CPP are ready to carry out the second stage of the revolution when their leaders unveil the plan. Among the thousands of members of the Communist Party of the Philippines, it seems that only the estimated half-dozen members of the Politburo's executive committee share knowledge of the secret program.

IX

The party leadership's ultra-elitist style was evident as early as 1981 when Rodolfo Salas and a small group around him secretly decided to seek aid from the Soviet bloc. The decision was a momentous one. Since Sison had founded the CPP as a classic Maoist party, all the basic documents of the CPP and the NDF had denounced the foreign policy of the Soviet Union as social-imperialist. This was still the party's position when Salas approved a scheme to smuggle arms from Eastern Europe into the Philippines through South Yemen, which is firmly within the Soviet bloc and East German military personnel based on its soil.

For the record, the arms were donated to the Philippine Communists not by the Soviets but by a branch of the Palestine Liberation Organization. But this was a veneer that even Haracio Morales, a key figure in the smuggling operation, had difficulty in treating seriously. In a one-on-one courthouse interview after he had been arrested, I asked Morales why the CPP had decided to accept aid from the Soviets. "It's a few steps removed from the Soviets," he said with a nervous laugh, adding, "but it's still considered separate, no?"

Long after the arms (AK-47's) and Makharov pistols) were aboard a freighter and on their way to the Philippines, the CPP leadership continued to suggest to rank-and-file members that there had been no change in the party's antagonism toward the Soviet Union. The August 1981 issue of *Ang Bayan*, for instance, denounced "Soviet social-imperialism." When the smuggling operation was later exposed and a few angry party members accused Salas and others of secretly acting contrary to party policy, the leadership lamely replied that the arms smuggling was the work of the CPP's National Democratic Front and not of the CPP itself. The fact that the NDF did not drop the anti-Soviet planks from its program until the year after the arms arrived was never explained. Nor was the fact that it was party leader Salas who gave final approval to the Soviet arms shipment.

The CPP leadership did not go public with its swing to a pro-Soviet position until January 1982, when it authorized the NDF to issue a new draft program that dropped all the Maoist jargon and the attacks on the Soviets. The party's Maoist founder, Jose Maria Sison, who had been watching developments in the CPP under Salas with increasing unhappiness since being captured in 1977, was enraged. In an exchange with me of questions and answers from prison in mid-1982, he contemptuously referred to the new NDF program as "this supposed draft." He also suggested that anyone in the CPP or the NDF who had approached the Soviet Union for aid was a renegade: "I do not believe that the National Democratic Front as a whole has ever approached the Soviet Union for assistance. Nobody wants a

bear hug. It can be fatal." He added that "China's diplomatic line is correct."

During this period Sison several times signaled his opposition to the changes under way in the CPP. But it soon became obvious that the founding father was being ignored. By mid-1983, the CPP had turned the corner and was openly leaning toward the Soviets while almost completely ignoring the People's Republic of China. *Ang Bayan* began praising developments in Cambodia, Vietnam, Mozambique, and Angola and dropped its earlier attacks on Soviet and Cuban aggression. Except for the occasional reference to "antagonistic contradictions" between Vietnam and Cambodia, the CPP's statements on foreign affairs are completely consistent with Soviet policy. And this summer, in the exchange of questions and answers, Sison himself seemed to have accepted in principle the idea of the CPP's receiving Soviet aid.

Meanwhile, using the National Democratic Front as its vehicle, the CPP is actively courting the Soviets in Europe. Luis Jalandoni, a Filipino and former priest who serves as the NDF's international representative in Amsterdam, is successfully tying the NDF, and by implication the CPP, ever closer to the Soviet bloc. Jalandoni was a delegate to last year's International Conference on Nicaragua and for Peace in Central America held in Lisbon. There he conferred with Vietnam's education minister. Jalandoni also worked hard at identifying the NDF and its European supporters with the movement opposed to the deployment of U.S. missiles in Western Europe.

Jalandoni's most important task has evidently been raising funds for the Communist movement back home in the Philippines. He seems to have been very successful. As far back as the summer of 1981, according to unchallenged affidavits, Jalandoni provided $30,000 for travel and transportation to the CPP arms smugglers who passed through Europe on their way to South Yemen. Today, the amount of money flowing into the Philippines from Western Europe each year is estimated by Philippine and U.S. analysts to be at least in the hundreds of thousands of dollars. As already noted, the lion's share of this money seems to be flowing from Church-related bodies in Europe to Communist-dominated organizations within the Roman Catholic Church in the Philippines. At least some members of the European Church organizations know precisely what is happening to their money. *Ang Bayan* reported some time ago that "a number of foreign Church people . . . have also visited the NPA guerrilla zones."

Another, increasingly important, source of funds are the so-called Philippine "solidarity groups" that Jalandoni has been instrumental in setting up in Europe. Such groups exist in Sweden, Norway, West Germany, Belgium, Holland, Ireland, and apparently several other countries. Some of these groups appear to be the offspring of small, radical splinter parties. Recently, several of them sent envoys to the Philippines to see first-hand how their donations are being spent by the NPA. A U.S. journalist who spent several days this summer at an NPA camp said a Norwegian woman was in the camp for discussions with the NPA guerrilla leader about giving financial help that would enable the NPA to obtain additional arms. Several German and Japanese radicals have also spent time with the NPA.

The financial help that the CPP is receiving from abroad does not seem to have increased to the point that it is making a huge difference. But it is already substantial, a fact that is almost universally ignored by the U.S. media. In August alone, the Washington *Post* reported that the NPA is receiving "negligible foreign support" while the Washington *Times* flatly stated that "there is no evidence of any material foreign support."

In fact, the CPP has been openly acknowledging since 1974 that it is actively seeking and often receiving material aid from abroad. As recently as this spring, Tony Zumel declared in an NDF news release that:

"We have made an appeal to all freedom-loving peoples around the world for political and material assistance and the response has been heartening. Such assistance comes from revolutionary, progressive, and democratic organizations, institutions and individuals who care deeply for our people's liberation struggles and welfare."

The question left hanging is whether the Soviets are involved in the flow of foreign assistance to the Philippine Communists. Since the 1981 arms shipment, which embarrassed both the Soviets and the CPP leadership when it became public, not a single well-documented case of Soviet aid has surfaced. Rumors abound that Vietnam is helping the NPA, but no hard evidence seems to exist. A strong circumstantial case is made by some that at least a few of the radical and Church organizations funneling money from Europe to the Philippine Communists must be controlled or bankrolled by Soviet agents.

But the most persuasive case that the Soviets have begun aiding the Philippine Communsits was made by two Filipinos in separate interviews this summer in Manila. Both are very knowledgeable about what is going on inside the Communist party. One is hostile to the CPP; one is very sympathetic. Both said that Moscow is split over how to handle the CPP.

On one side, according to both these sources, is the International Department (of the Central Committee) of the Communist Party of the Soviet Union (CPSU). This organization usually takes the leading role in the USSR's relations with foreign Communist parties. But afflicted with bureaucratic inertia, the International Department today is run by conservatives who are comfortable with their decades-long ties to the old, pro-Moscow Communist party in the Philippines, the PKP (which since the expulsion of Sison and his supporters in 1967 has been declining in size and influence in comparison with the CPP and whose existence today largely depends on Moscow's recognition of it as a fraternal Communist party). According to this analysis, the International Department bureaucrats have resisted the CPP's repeated requests that they withdraw their recognition of the PKP and recognize the CPP instead.

Though a reading of CPP and PKP statements suggests that the International Department has been trying to convince the PKP to negotiate a modus vivendi with the CPP, hopes for any such agreement seem to have collapsed. By early this year, the CPP had escalated its attacks on the PKP's leaders, calling them "professional political swindlers [who] are trying to sneak into the ranks of the revolutionary Left." The CPSU's International Department responded in June by inviting the PKP's general secretary, Felicisimo Macapagal, to Moscow where the CPSU and the PKP, according to Tass, pledged their "fraternal solidarity."

But the more pragmatic and energetic KGB shares neither the old loyalties nor the new qualms of the International Department, according to my informants. Recently, they say, the KGB has developed close relations with the CPP. The two sides are in frequent contact with each other both in the Philippines and abroad, but precisely what kind of business they are transacting is unknown. Both sources assume that the KGB is assisting the CPP but they have no proof.

Clearly the CPP's new generation of coldly opportunistic leaders would no longer hesitate to accept substantial aid from the Soviets if it were offered. And just as clearly the CPP currently needs a generous foreign backer. For in the last year, the Communists' successes have brought them to a critical juncture where the issue of outside aid is more and more pressing. The guerrillas of the New People's Army are increasing rapidly in number. Moving in ever larger units, they have a soaring demand for arms, food, and equipment. The NPA also has enough potential recruits to double in size if it had the money to equip and support them as well. But the economic depression that helps produce so many potential recruits also makes NPA "tax collecting" increasingly less lucrative, no matter how much extortionate violence is applied.

If the future brings no substantial flow of money to the Communists from abroad, and if Marcos were to die or be toppled and succeded by a competent, reformist government, it is quite conceivable that the current rapid growth of the Communists could stall. But if the money were to start flowing in substantial amounts and Marcos, who has lost the moral authority necessary to fight the Communists, were to hang onto power, then it is highly likely that Rodolfo Salas will be heading the People's Democratic Republic of the Philippines sometime in the 1990's and unveiling "a Pol Pot future."

This fine lady is up against it and I want to be on the side that gives her every advantage to make democracy work, because I can hear in my ears right now in this Chamber if it all turns to hell there that we cannot go back to Southeast Asia because that is the part of the world those 7,200 islands are located.

If I were in the politburo, other than Afghanistan and the Baluchistan part of Iran, I would want those 7,200 islands. I think they are desperately out to get them. That will leave us with no base from Osumi all the way around the greatest landmass in the world to Diego Garcia; so I am going out on a limb for a fine lady and I am going to vote for this $200 million.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. TRAFICANT].

The SPEAKER pro tempore. Without objection, the gentleman from Ohio [Mr. TRAFICANT] is recognized for 1 minute.

There was no objection.

Mr. TRAFICANT. Mr. Speaker, I agree with the beautiful speech this morning. Mrs. Aquino is trying to help her country and certainly will be a help to the world; however, we will be setting a very dangerous precedent sending this money here on such short notice. We are endangering revenue

sharing funds. We have farmers in this country who are looking for what is next. We have senior citizens worried about the future. We have cities literally in a state of depression and economic collapse.

I would say this. There are two things we should concern ourselves with here today. If we are going to do it, we should have a negotiated agreement on permanence on those bases, not on a speech.

No. 2, the money should come from the 1987 foreign aid appropriations, and I agree with the gentleman from Wisconsin [Mr. KLECZKA]. You can give a man a fish and he will eat for a day. You can teach him to fish and he will eat forever.

I think we cannot set a dangerous precedent, letting everyone who has a defense establishment in their region and their country come to the United States on a critical impasse asking for dollars. We have got to stop throwing these dollars around and hold our stand here today. I say that we vote no.

Mr. SOLOMON. Mr. Speaker, I yield 2 mintues to the distinguished gentleman from Oklahoma [Mr. EDWARDS], a member of the Appropriations Committee.

The SPEAKER pro tempore. Without objection, the gentleman from Oklahoma [Mr. EDWARDS] is recognized for 2 minutes.

There was no objection.

(Mr. EDWARDS of Oklahoma asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of Oklahoma. Mr. Speaker, I have been in the House for 10 years. In that time I have voted for a foreign aid bill only one time. I am a member of the Foreign Operations Subcommittee and I have voted for a foreign aid bill only one time.

I am not a great advocate of foreign aid, but I do understand that there are times when we act in our national security interests.

I was not here on the floor. I did not hear Mrs. Aquino's speech. I met her later at coffee.

I am not advocating support of this money because I think she deserves an honorarium. I am not advocating giving her this money because I think that it is the heartfelt thing to do. I am not advocating giving her the money. I am advocating putting money into the Philippines where we have Subic Bay and Clark Air Force Base and where we need to keep them, where there is a Communist threat that we need to stop.

We on this floor recently took up the issue of Central America and we said we must make an investment in stopping communism and preserving democracy.

Yes, it adds to the deficit. Everything we do, everything we spend on anything adds to the deficit, but we have to choose priorities, and one of those priorities is to defend freedom and democracy in the world, and this is one way to do it.

I advocate support of this money for the Philippines for our own national security.

Mr. OBEY. Mr. Speaker, I yield myself 2½ minutes.

Mr. Speaker, I would like to put some things in perspective. I want to make it quite clear that I regard this $200 million effort that is being made here today as a one-shot operation to try to provide some emergency help to an ally who needs it very badly at the moment. That does not mean that it can be counted on in the next fiscal year, because I would point out that because of the fiscal stringencies that have already been cited, the foreign operations bill which will be a part of the continuing resolution which we consider next week will cut the pool of money available for all those countries in the military credit sales portion of that bill by 50 percent and it will cut under the ESF provision, and this is in the ESF today, that discretionary pool of funds available for all the countries that are not earmarked in that bill by 32 percent.

So lest anybody think that the foreign assistance bill coming out for fiscal year 1987 is loose, I want to emphasize again that we have massive reductions in that bill. What we are trying to do is balance off our requirement to comply with Gramm-Rudman in the fiscal year under consideration with the necessity to provide some assistance to a critical ally at a critical time, and procedurally we have only one way to do it and this is the way.

In terms of base rights and bargaining chips, I want to say that I agree with those who have raised questions about the base rights negotiations. I have minimum high regard for the kind of negotiations which our previous administrations—plural—engaged in in terms of obtaining a decent price for the use of those bases, not just in the Philippines but in a number of other countries around the world. I think our negotiators were soft and I think they paid too much.

I do think that our negotiators have to be tougher on the next round of negotiations, but there is a time and place, there is a smart way to go about applying pressure on negotiations and a bad way. This is the best way to do it if we want to protect our negotiating rights in the future and to protect our allies and democracy today.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from Colorado [Mr. BROWN].

The SPEAKER pro tempore. Without objection, the gentleman from Colorado [Mr. BROWN] is recognized for 1 minute

There was no objection.

Mr. BROWN of Colorado. Mr. Speaker, I thank the gentleman for yielding the time.

I would like to ask my colleagues to give some thought to what we are about today. The first question we should ask ourselves is are we on target with regard to the budget deficit?

Remember when we talked about $170-some billion deficits for this year? We were outraged that it was that high.

Does anybody want to guess how close we are? We missed it by more than $50 billion. Now, that is not close.

The simple fact is this House has ignored its budget, has ignored its responsibility and has imposed a terrible burden on the taxpayers.

Now, what we are doing is saying that we are not going to set priorities. We are not going to care whether we stay within the budget. We are not going to care about planning for future years. We are going to take $200 million and appropriate it over and above the budget and ignore our responsibilities to the American people in the Budget Act. That is wrong. Every Member in this Chamber knows that is wrong.

It is not a question of the Philippines. It is not a question of national defense. It is whether or not we ignore the responsibilities we have under the Budget Act and ignore the responsibilities we have to the American people.

Mr. Speaker, I would hope before we give away another $200 million of the taxpayers' money, we give some thought to our obligations.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may use.

Mr. Speaker, we have heard that this is just a one-shot deal. If that were true, it would be one thing, but in my opinion we really are establishing an entitlement program. By enacting this legislation as an urgent supplemental now with 2 weeks to go in this fiscal year, we really are exempting it from all the other foreign aid Gramm-Rudman cuts, as we are giving exemptions to Egypt and Israel and Pakistan.

I just do not think that we can afford to do this.

Now, Mrs. Aquino made a point to us today in her very sincere statement that, yes, her country needs money and she needs to provide an income to the rebels, the insurgents, the Communists, so that they will not be poor and depressed people.

What she needs is to revise her economy. We asked Marcos, the gentleman from New York [Mr. SOLARZ] and myself, when we were in the Philippines over a year ago, begging him to make the reforms that were necessary, to make the political, the economic, and the military reforms. He refused to do it and he went down, as well he

should; but those reforms have not been made under this administration yet, either.

What I am saying to all of you here is that if they do need the money, they need to establish this confidence in the rest of the world. Japan is not investing a nickel. None of the other countries are investing a nickel, and until they make those reforms, those countries will not.

If we need to give them $200 million today, let us give $200 million to our military construction program and let us spend the $200 million in the Philippines refurbishing those two bases and that money will end up in the Philippines. It will help them and it will help us, but let us not go through this charade of appropriating now $200 million, adding to our deficit, as the gentlewoman from New Jersey [Mrs. ROUKEMA] has said so eloquently before, and as the gentleman who replaced our dear friend from Wisconsin, Clem Zablocki, has said, let us do this in a normal procedure 2 weeks from now in the 1987 budget when it should be done.

I for one will do everything I can to help the Philippines and even to help this kind of an appropriation within the 1987 budget, but I cannot be fiscally irresponsible and support this legislation today.

I hope the legislation will be defeated so that we can act on it intelligently at another time.

Mr. OBEY. Mr. Speaker, I yield our remaining 6½ minutes to the distinguished majority leader, the gentleman from Texas [Mr. WRIGHT].

The SPEAKER pro tempore. Without objection, the gentleman from Texas [Mr. WRIGHT] is recognized for 6½ minutes.

There was no objection.

Mr. WRIGHT. Mr. Speaker, I rise in support of this legislation. It has been reported to us on a bipartisan basis from our Foreign Affairs Committee. I think it is an imperative national need. This is in our own national strategic interest.

Surely our forward most military bases, the far-flung battleline of the United States, stretches to the Philippine Islands.

I do not know how long our memories may be, those of us who were of an age that we can remember, I recall how vital the Philippines were to our national self-interest in World War II. We remember General MacArthur's ordeal and how he held on as long as he could before being driven from the Philippines and vowed upon leaving, "I shall return." We remember the thrill that we experienced when he did.

Many of us can still remember the news reels how he came aboard with the gingerbread showing on his hat, with wet feet walking into the Bay in the Philippines from the landing craft.

The Philippine Islands has such a long history of identity with the United States that we cannot divorce them. There is no way that we can divorce the Philippine Islands from our own best national interests. Militarily, from the standpoint of the investment we have in those military bases, surely it would cost us many times more than the amount that is contemplated in this bill if, God forbid, the tenuous tentative government they have established, the fragile flower of democracy that has begun to flourish, should be rooted up by the tides of insurrection, and that could happen. Surely that definitely could happen, unless this fragile flower has the seedbed and the rainfall and the nourishment in which to grow.

□ 1435

Democracy is not an automatic thing. What Mrs. Aquino and her government have undertaken to do is to demonstrate that a free government operating under constitutional laws with protection of the rights of individual citizens can solve the legitimate social and economic problems of the people, and do it better than a slave government driven by a dictatorship of either the left or right.

I cannot imagine a better investment. I cannot imagine a more necessary demonstration of our continuing interest in that bastion of freedom that exists that far away in the Far East. I just ask Members to bear in mind the longstanding obligations that we have had to them and that they have had and discharged to us, beginning at a time when we helped them win their liberty in a sense from the shackles of a colonial empire, and for a long while they were associated with us, sharing our burdens and our responsibilities.

Then at the end of World War II, when they wanted it, we gave to them their independence. We have a responsibility, it seems to me, to see to it that the thing that happened at the same time in history when we helped them attain their independence does not occur as occurred in Cuba, and that that country should go by the wayside.

I would just ask that Members bear in mind the prayer of the poet who said:

God of our fathers, known of old,
Lord of our far-flung battle-line,
Beneath whose awful Hand we hold
Dominion over palm and pine—
Lord God of Hosts, be with us yet,
Lest we forget—lest we forget!

Mr. RAY. Mr. Speaker, I must oppose with regret this supplemental legislation because there is no clear-cut plan to fund it during this time of budget deficits.

I have seen no effort to reprogram funds from other foreign aid recipients who are of a lower priority than the Philippines.

The Philippines are a priority, and Mrs. Aquino has made a sincere plea for assistance. However, Mrs. Aquino has not responded positively to my own concerns and the concerns of others about the future of our military bases—the Subic Bay Naval Base and Clark Air Force Base.

She says that we can depend on her to work out a mutually satisfactory agreement in 1988.

Mr. Speaker, the infrastructure of these bases is deteriorating and cannot wait till 1988.

DOD has requested $72 million for 1987 and has stated that $1 billion will be needed by 1990 to provide for quality of life programs and needed repairs.

The House Armed Services Committee has deleted the 1987 funding.

It does not seem to bother DOD that, in 1988, Mrs. Aquino may or may not decide to renew the lease for just 1 more year at a time beginning in 1991—yet we are expected to make investments which will last 20 or 30 years and which may, in fact, benefit some other country who may not be a friendly ally.

Mr. Speaker, our military bases in the Philippines are being held hostage.

A gun is to our head, and we are being jerked around in a manner which I don't believe we should tolerate.

Under these circumstances, because of my obligations as a fiscally responsible Member of Congress, I cannot support this supplemental appropriations bill.

Mr. BROOMFIELD. Mr. Speaker, I offer my strong support for this joint resolution giving additional economic assistance to the Philippines. Now is the time to help that new government rebuild the economy of that country.

This morning, we were honored to have the President of the Philippines, President Corazon Aquino, address a joint session of Congress. She is to be commended for her excellent remarks. President Aquino told us of the tragic loss of her husband, and of her vision for the Philippines.

Her new government is bringing new hope to the Philippine people. The dark days of the Marcos regime are behind us. Now, however, is not the time to sit back and hope that all will go well in that country. We must ensure that the democratic revolution of the Philippine people becomes a reality. We must work with Mrs. Aquino to ensure that the Philippines moves smoothly and confidently along the road to political and economic recovery.

President Aquino briefly told us of the financial damage done to the Philippines by the previous government. The Philippines have been left in an economically emasulated and fragile position. These are difficult times for that country. That island nation is in dire need of substantial emergency economic assistance. America needs a strong and stable democratic government in that important region of the world. America also needs a good and loyal ally in the Pacific. Who can doubt the strategic importance of that country? Who can ignore the fact that Communist insurgents are threatening the viability of the Philippines?

I join my colleagues in supporting this request for additional economic aid, in the form of economic support funds, for the Philippines. This emergency economic package is the

right medicine at the right time. That country deserves renewed U.S. investment, banker confidence and economic support. Now is the time to extend a helping hand to an old ally that has stood by America in past days. President Aquino, we stand with you in your efforts to bring new strength and vitality to your land. I urge my colleagues to join me in this worthwhile cause.

Mr. OBEY. Mr. Speaker, I move the previous question on the joint resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SOLOMON. Mr. Speaker, I object the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 203, nays 197, answered "present" 1, not voting 30, as follows:

[Roll No. 391]

YEAS—203

Ackerman	Dornan (CA)	Hunter
Anderson	Downey	Hyde
Annunzio	Durbin	Jeffords
Aspin	Dwyer	Johnson
Atkins	Dymally	Kaptur
AuCoin	Eckert (NY)	Kastenmeier
Barnes	Edgar	Kemp
Bates	Edwards (CA)	Kennelly
Bedell	Edwards (OK)	Kildee
Beilenson	Evans (IA)	Kolter
Bennett	Evans (IL)	Kostmayer
Berman	Fascell	LaFalce
Biaggi	Fazio	Lagomarsino
Boehlert	Feighan	Lantos
Boggs	Fish	Leach (IA)
Bonior (MI)	Florio	Leath (TX)
Bonker	Foglietta	Lehman (CA)
Borski	Foley	Lehman (FL)
Boucher	Ford (MI)	Lent
Boxer	Frank	Levin (MI)
Broomfield	Frost	Levine (CA)
Brown (CA)	Fuqua	Lewis (CA)
Bruce	Gallo	Lipinski
Bryant	Garcia	Long
Bustamante	Gejdenson	Lott
Chandler	Gephardt	Lowery (CA)
Chappell	Gibbons	Lowry (WA)
Coelho	Gilman	Lundine
Collins	Gingrich	MacKay
Conte	Gray (PA)	Manton
Cooper	Green	Markey
Coughlin	Guarini	Martin (NY)
Coyne	Gunderson	Matsui
Crockett	Hall (OH)	Mavroules
de la Garza	Hatcher	McCurdy
Derrick	Hawkins	McDade
DeWine	Hayes	McGrath
Dicks	Hertel	McHugh
Dingell	Hillis	McKernan
DioGuardi	Horton	McKinney
Dixon	Howard	Meyers
Donnelly	Hoyer	Mica
Michel	Pursell	Tauke
Mikulski	Richardson	Thomas (CA)
Miller (CA)	Robinson	Torres
Miller (WA)	Rodino	Torricelli
Mineta	Roe	Towns
Mitchell	Rostenkowski	Udall
Moakley	Roybal	Vander Jagt
Molinari	Sabo	Vento
Mollohan	Savage	Vucanovich
Moody	Scheuer	Walgren
Morrison (CT)	Schroeder	Waxman
Morrison (WA)	Schumer	Weaver
Mrazek	Seiberling	Weber
Murtha	Sharp	Weiss
Natcher	Sikorski	Wheat
Neal	Siljander	Whitley
Nowak	Slattery	Williams
Oakar	Smith (FL)	Wirth
Oberstar	Smith (NJ)	Wise
Obey	Snowe	Wolf
Ortiz	Solarz	Wolpe
Owens	Spratt	Wortley
Pashayan	Staggers	Wright
Penny	Stark	Yates
Pepper	Studds	Zschau
Price	Synar	

NAYS—197

Akaka	Gray (IL)	Ray
Alexander	Gregg	Regula
Andrews	Hall, Ralph	Reid
Anthony	Hamilton	Ridge
Applegate	Hammerschmidt	Rinaldo
Archer	Hansen	Ritter
Armey	Hefner	Roberts
Badham	Hendon	Roemer
Bartlett	Henry	Rogers
Barton	Hiler	Roth
Bateman	Holt	Roukema
Bentley	Hopkins	Rowland (CT)
Bereuter	Hubbard	Rowland (GA)
Bevill	Huckaby	Rudd
Bilirakis	Hughes	Russo
Bliley	Hutto	Saxton
Boner (TN)	Jacobs	Schneider
Bosco	Jenkins	Schulze
Boulter	Jones (NC)	Sensenbrenner
Brooks	Jones (OK)	Shaw
Brown (CO)	Jones (TN)	Shelby
Burton (IN)	Kanjorski	Shumway
Byron	Kasich	Shuster
Carney	Kleczka	Sisisky
Carper	Kolbe	Skeen
Carr	Kramer	Skelton
Chapman	Latta	Slaughter
Chappie	Lewis (FL)	Smith (IA)
Clay	Lightfoot	Smith (NE)
Clinger	Lloyd	Smith, Denny (OR)
Coats	Loeffler	
Cobey	Lujan	Smith, Robert (NH)
Coble	Luken	
Coleman (MO)	Lungren	Smith, Robert (OR)
Coleman (TX)	Mack	
Combest	Madigan	Snyder
Courter	Marlenee	Solomon
Craig	Martin (IL)	Spence
Crane	Martinez	St Germain
Daniel	Mazzoli	Stallings
Dannemeyer	McCain	Stangeland
Darden	McCandless	Stenholm
Daschle	McCloskey	Strang
Daub	McCollum	Stump
Davis	McEwen	Sundquist
DeLay	McMillan	Swindall
Dorgan (ND)	Miller (OH)	Tallon
Dowdy	Monson	Tauzin
Dreier	Montgomery	Taylor
Duncan	Moorhead	Thomas (GA)
Dyson	Murphy	Traficant
Eckart (OH)	Myers	Traxler
Emerson	Nelson	Valentine
English	Nichols	Visclosky
Erdreich	Nielson	Volkmer
Fawell	Olin	Walker
Fiedler	Oxley	Watkins
Fields	Packard	Whitehurst
Flippo	Panetta	Whittaker
Franklin	Parris	Whitten
Frenzel	Pease	Wyden
Gaydos	Perkins	Wylie
Gekas	Petri	Yatron
Glickman	Pickle	Young (AK)
Goodling	Porter	Young (FL)
Gordon	Quillen	Young (MO)
Gradison	Rahall	

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—30

Barnard	Early	Rangel
Boland	Ford (TN)	Rose
Breaux	Fowler	Schaefer
Burton (CA)	Grotberg	Schuette
Callahan	Hartnett	Stokes
Campbell	Ireland	Stratton
Cheney	Kindness	Sweeney
Conyers	Leland	Swift
Dellums	Livingston	Waldon
Dickinson	Moore	Wilson

□ 1455

The Clerk announced the following pair:

On this vote:

Mr. Dellums for, with Mr. BARNARD against.

Mr. CHAPMAN and Mr. DAVIS changed their votes from "yea" to "nay."

Mr. MARTIN of New York changed his vote from "nay" to "yea".

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF HOUSE JOINT RESOLUTION 732

Mr. OBEY. Mr. Speaker, I ask unanimous consent that in the engrossment of the joint resolution just passed, the Clerk be authorized to make technical corrections in punctuation, spelling, and cross-references.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

INDIAN HEALTH CARE AMENDMENTS OF 1986

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 528 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 528

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1426) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs and thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments recommended by the Commit-

tees on Interior and Insular Affairs and Energy and Commerce now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text of the bill H.R. 5222 as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered for amendment by titles instead of by sections and each title shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 5(a) of rule XXI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 528 is an open rule providing for the consideration of H.R. 1426, a bill to reauthorize and amend the Indian Health Care Improvement Act. The resolution provides for 1 hour and 30 minutes of general debate to be divided in the following manner: 1 hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs and 30 minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce.

The rule provides that in lieu of the amendments recommended by the Committees on Interior and Insular Affairs and Energy and Commerce, which are now printed in the bill, that it shall be in order to consider an amendment in the nature of a substitute, consisting of the text of H.R. 5222, as an original bill for the purpose of amendment under the 5-minute rule. The rule further provides that the substitute shall be considered for amendment by titles instead of by sections and that each title shall be considered as having been read.

Mr. Speaker, H.R. 5222, which is made in order as the amendment vehicle by this rule, represents a compromise proposal developed by the two committees having jurisdiction over Indian health programs. H.R. 1426 was reported from both the Interior Committee and the Energy and Commerce Committee in slightly differing forms in May 1985. In April of this year, the two committees agreed to a version of the bill, embodied in H.R. 4600, which was presented to the House under suspension of the rules, but that version failed to receive the necessary two-thirds vote for passage. Since last April, the two committees have developed a new consensus bill which includes many provisions from H.R. 1426 which are mutually agreeable to the two committees. However, there remain matters in the consensus bill which are still subject to some disagreement and consequently, the rule providing for the consideration of H.R. 1426 and the substitute, H.R. 5222, provides for the consideration of all germane amendments.

Mr. Speaker, the rule further provides a waiver of points of order against the substitute for failure to comply with the provisions of clause 5(a) of rule XXI, which prohibits the consideration of appropriations in a legislative bill. The substitute provides for the expenditure of moneys held in trust for Indian tribes by the U.S. Government, by those Indian tribes for the renovation or modernization of Indian Health Service facilities. This provision of the substitute specifically states that the expenditure of these trust fund moneys does not obligate the Indian Health Service to further expenditures on the facility in question, but since the provision does provide for expenditure from the Federal Treasury, a waiver is necessary against the substitute.

In addition, the rule provides that at the conclusion of the consideration of the bill for amendment, the committee shall rise and report the bill to the House with such amendments as may have been adopted, and that any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this rule. Finally, the rule provides that the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. Speaker, in 1976 when the Congress first passed the Indian Health Care Improvement Act, it acted in response to well documented evidence of deficiencies in the health of the Native American population. The 1976 act was designed to provide additional funding for Indian health care over and above services made available to the Native American population through the 1921 Synder Act, as well as to establish new programs such as manpower training for health care professionals and urban health clinics. The act's purpose was, then, to raise the health status of Indian and Alaska Natives over a 7-year period, ending in fiscal year 1984, to a level comparable to that of the general U.S. population. While the act was revised and extended in 1980 and provided the authorization that carried these programs through fiscal year 1984, the goal to achieve health parity has not been completely met.

H.R. 1426 is designed to not only reauthorize those programs of the 1976 act for an additional 4 fiscal years, but to, within the constraints of a limited Federal budget, provide a continued commitment to improving the status of Indian health until it is at a parity with the rest of the Nation. The bill provides authorizations of $23.5 million in fiscal year 1987, $75.5 million in fiscal year 1988, $79.9 million in fiscal year 1989, and $65.2 million in fiscal year 1990. These authorization levels will provide expanded health manpower and training, targeted assistance for those tribes that are most deficient in health services, a catastrophic health emergency fund to assist in meeting extraordinary costs associated with disasters or catastrophic illnesses, sanitation facilities, and continued outreach and referral services for urban Indians.

Mr. Speaker, the commitment of our Government to the native American population is not one we should shirk even in these times of spending restraint. I urge my colleagues to adopt this rule which provides for a full and fair debate of the issues embodied in H.R. 1426 and in our Government's commitment to the American Indian.

□ 1505

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

You know, Mr. Speaker, our native Americans have long been overlooked. We have pushed them around. In earlier days we slaughtered them.

We do not treat them with the respect that they deserve, and it is time we started doing that.

Improvement of health care is most important. I believe that this measure provides that, not only to our American Indians but Native Alaskans as well.

We devoted a lot of time on this House floor trying to say what is wrong in South Africa, and what is wrong in the countries of the world. Yet we have blindfolds as to what is wrong with our native Americans.

We need to get down to the business of helping them. Health care is only one measure.

Mr. Speaker, I sincerely plead with the Members of this House to open their eyes to what is going on and what has gone on and what has to be done instead of focusing on other countries around the world. We must concentrate on a problem that has long been overlooked in our own country.

Mr. Speaker, I yield 2 minutes to the gentleman from Arizona [Mr. MCCAIN].

Mr. MCCAIN. I thank the gentleman for yielding this time to me on this rule.

Mr. Speaker, I rise in support of the rule. Similar legislation, H.R. 4600, was brought up before this body under suspension. That bill was defeated because certain Members wanted to retain the right to perfect the bill. The rule provides for 1 hour of open debate, equally divided between the two authorizing committees and further divided between the minority and majority. It also provides that it is open to amendment during the reading of the bill by title.

I, for one, will have an amendment concerning the eligibility of California Indians. This is a provision cited by the President in his veto statement on similar legislation in the last Congress, and present in the administration's statement of opposition to this bill. My amendment will address that specific concern and improve the chances of signature on this important piece of legislation for Indian tribes. Additionally, my amendment is supported by the National Tribal Chairman's Association, a body made up of the selected leaders of Indian tribes, including California Indian tribes.

The Indian Health Care Amendments of 1986 is one of the most important pieces of legislation for the future of Indian tribes. It is an attempt to provide minimal adequate care to Indian people. It is said that medical care in Indian country is one generation behind that of the rest of the Nation. Because of this it is important to perfect the bill so that the President will sign it into law. I believe we are very close to that point. I urge my colleagues to support the rule and H.R. 1426.

Mr. QUILLEN. Mr. Speaker, I have no further requests for time, but I urge adoption of the rule and the measure when it is debated on the House floor.

We must not continue to overlook the first Americans of this great land of ours.

Mr. Speaker, I yield back the balance of my time.

Mr. FROST. Mr. Speaker, I yield back the balance of my time and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. QUILLEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 385, nays 1, not voting 45, as follows:

[Roll No. 392]

YEAS—385

Ackerman	DioGuardi	Johnson
Akaka	Dixon	Jones (NC)
Alexander	Donnelly	Jones (OK)
Anderson	Dorgan (ND)	Jones (TN)
Andrews	Dornan (CA)	Kanjorski
Annunzio	Dowdy	Kaptur
Anthony	Downey	Kasich
Applegate	Dreier	Kemp
Archer	Duncan	Kennelly
Armey	Durbin	Kildee
Aspin	Dwyer	Kleczka
Atkins	Dymally	Kolbe
AuCoin	Dyson	Kolter
Badham	Eckart (OH)	Kostmayer
Barnes	Eckert (NY)	Kramer
Bartlett	Edgar	LaFalce
Barton	Edwards (CA)	Lagomarsino
Bateman	Edwards (OK)	Lantos
Bates	Emerson	Leach (IA)
Bedell	English	Leath (TX)
Bellenson	Erdreich	Lehman (CA)
Bennett	Evans (IA)	Lehman (FL)
Bentley	Evans (IL)	Lent
Bereuter	Fascell	Levin (MI)
Berman	Fawell	Levine (CA)
Bevill	Fazio	Lewis (CA)
Biaggi	Feighan	Lewis (FL)
Bilirakis	Fields	Lightfoot
Bliley	Fish	Lipinski
Boehlert	Flippo	Lloyd
Boggs	Foglietta	Loeffler
Boner (TN)	Foley	Long
Bonior (MI)	Ford (MI)	Lott
Bonker	Frank	Lowery (CA)
Borski	Franklin	Lowry (WA)
Bosco	Frenzel	Lujan
Boulter	Frost	Luken
Boxer	Fuqua	Lundine
Brooks	Gallo	Lungren
Broomfield	Garcia	Mack
Brown (CA)	Gaydos	MacKay
Brown (CO)	Gejdenson	Madigan
Bruce	Gekas	Manton
Bryant	Gephardt	Markey
Burton (IN)	Gibbons	Marlenee
Bustamante	Gilman	Martin (IL)
Byron	Gingrich	Martin (NY)
Carney	Glickman	Martinez
Carper	Gonzalez	Matsui
Carr	Goodling	Mavroules
Chandler	Gordon	Mazzoli
Chapman	Gradison	McCain
Chappell	Gray (IL)	McCandless
Chappie	Gray (PA)	McCloskey
Clay	Green	McCollum
Clinger	Gregg	McCurdy
Coats	Guarini	McDade
Cobey	Gunderson	McGrath
Coble	Hall (OH)	McHugh
Coelho	Hall, Ralph	McKernan
Coleman (MO)	Hamilton	McKinney
Coleman (TX)	Hammerschmidt	McMillan
Collins	Hansen	Meyers
Combest	Hatcher	Mica
Conte	Hayes	Michel
Cooper	Hefner	Mikulski
Coughlin	Hendon	Miller (CA)
Courter	Henry	Miller (OH)
Coyne	Hiler	Miller (WA)
Craig	Hillis	Mineta
Crockett	Holt	Moakley
Daniel	Hopkins	Molinari
Dannemeyer	Horton	Monson
Darden	Howard	Montgomery
Daschle	Hoyer	Moody
Daub	Hubbard	Moorhead
Davis	Huckaby	Morrison (CT)
de la Garza	Hughes	Morrison (WA)
DeLay	Hunter	Mrazek
Derrick	Hutto	Murphy
DeWine	Jacobs	Murtha
Dicks	Jeffords	Myers
Dingell	Jenkins	Natcher
Nelson	Sabo	Sundquist
Nichols	Savage	Swindall
Nielson	Saxton	Synar
Nowak	Scheuer	Tallon
Oakar	Schneider	Tauke
Oberstar	Schroeder	Tauzin
Obey	Schulze	Taylor
Olin	Schumer	Thomas (CA)
Ortiz	Seiberling	Thomas (GA)
Owens	Sensenbrenner	Torres
Oxley	Sharp	Torricelli
Packard	Shaw	Towns
Panetta	Shelby	Traficant
Parris	Shumway	Traxler
Pashayan	Shuster	Udall
Pease	Sikorski	Valentine
Penny	Siljander	Vander Jagt
Pepper	Sisisky	Vento
Perkins	Skeen	Visclosky
Petri	Skelton	Volkmer
Pickle	Slattery	Vucanovich
Porter	Slaughter	Walgren
Price	Smith (FL)	Walker
Pursell	Smith (IA)	Watkins
Quillen	Smith (NE)	Waxman
Rahall	Smith (NJ)	Weaver
Ray	Smith, Denny (OR)	Weber
Regula	Smith, Robert (NH)	Weiss
Reid	Smith, Robert (OR)	Wheat
Richardson	Snowe	Whitehurst
Ridge	Snyder	Whitley
Rinaldo	Solarz	Whittaker
Ritter	Solomon	Whitten
Roberts	Spence	Wise
Robinson	Spratt	Wolf
Roe	St Germain	Wortley
Roemer	Staggers	Wright
Rogers	Stallings	Wyden
Rose	Stangeland	Wylie
Rostenkowski	Stark	Yates
Roth	Stenholm	Yatron
Roukema	Strang	Young (AK)
Rowland (CT)	Studds	Young (FL)
Rowland (GA)	Stump	Young (MO)
Roybal		Zschau
Rudd		
Russo		

NAYS—1

Crane

NOT VOTING—45

Barnard	Fowler	Moore
Boland	Grotberg	Neal
Boucher	Hartnett	Rangel
Breaux	Hawkins	Rodino
Burton (CA)	Hertel	Schaefer
Callahan	Hyde	Schuette
Campbell	Ireland	Stokes
Cheney	Kastenmeier	Stratton
Conyers	Kindness	Sweeney
Dellums	Latta	Swift
Dickinson	Leland	Waldon
Early	Livingston	Williams
Fiedler	McEwen	Wilson
Florio	Mitchell	Wirth
Ford (TN)	Mollohan	Wolpe

□ 1530

Mr. BROWN of Colorado changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 528 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1426.

□ 1533

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill

(H.R. 1426) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, with Mr. ANTHONY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Arizona [Mr. UDALL] will be recognized for 15 minutes, the gentleman from Arizona [Mr. MCCAIN] will be recognized for 15 minutes, the gentleman from California [Mr. WAXMAN] will be recognized for 15 minutes, and the gentleman from Utah [Mr. NIELSON] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am pleased to bring before the House for its consideration the bill, H.R. 1426, the Indian Health Care Amendments of 1986.

The purpose of this bill is to:

Reauthorized funding for the Indian Health Manpower Program and the Urban Indian Health Program established in the 1976 Indian Health Act;

Provide new programs, direction, and guidance in providing health services to Indian people; and

Make basic reforms in the administration of Indian health programs.

Mr. Chairman, the United States has a unique legal and moral responsibility to ensure that Indian people have available adequate health care. That responsibility is founded upon many treaties and statutes and the historical relationship with Indian tribes.

The record made before the Interior Committee over the last 4 years have made it very clear that we have not adequately met that responsibility. It is my hope and belief that enactment of this bill will go a long way toward meeting that responsibility.

Since the enactment of the Indian Health Care Improvement Act in 1976, significant progress has been made in raising the health standards of Indian people toward that of the rest of the Nation.

Yet, Mr. Chairman, I must advise the House that Indians still lag far behind the rest of the Nation in health status and health conditions. By way of example, I will read from the 1984 testimony of Dr. Frank Billingsley of the American College of Obstetricians and Gynecologists who stated:

> I have served in volunteer situations in southern communities, in Southeast Asia and in South America, and I can say that the Indian health situation is probably lower in many areas than many of these other countries * * *.

What Dr. Billingsley and the many other witnesses who appeared before my committee are saying is that, in the most affluent and advanced Nation in the world, there is a segment of our population who have a health standard lower than that of many Third World countries.

This disagreeable state of affairs hardly comports with the unique obligations we owe to the Indian tribes and their members. It is unacceptable. Passage of H.R. 1426 will represent a clear statement of the House of Representatives that it is unacceptable.

Mr. Chairman, H.R. 1426 was jointly referred to my committee and the Committee on Energy and Commerce. Both committees have reported the bill, but in different versions. We have compromised our differences and that compromise has been introduced by myself and Congressman WAXMAN as H.R. 5222. Under the rule, the text of H.R. 5222 will be considered as original text for purpose of amendment.

I am sure that Members may have further amendments which will further improve this most important legislation.

I would like to commend the chairman of the Subcommittee on Health and Environment, Mr. WAXMAN, for his great concern and efforts in the development of this legislation.

I would also like to commend Mr. MCCAIN and Mr. RICHARDSON and many other members of my committee who worked so hard on the bill.

Mr. Chairman, I urge the House to pass H.R. 1426, as amended.

Mr. McCAIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as an original cosponsor of H.R. 1426, I rise in strong support of the measure. Based on the Constitution, historical development, treaties, and statutes, the United States has assumed a legal and moral obligation to provide adequate health care and services to the Indian tribes and their members. It is the stated purpose of the 1980 Indian Health Care Improvement Act that this obligation shall be met in a manner that will ensure a health status for members of Indian tribes at a parity with the rest of the Nation.

Recently, the Office of Technology Assessment issued a report on Indian health care. It stated that since 1955 substantial improvement had been made in the health status of our native Americans, "but Indians still lag behind the general U.S. population." The mortality rate is 1.4 times that the general population, 37 percent of Indian deaths occur before the age of 45, death from diabetes is 2.8 times the U.S. rate, diseases such as pneumonia and influenza are still common causes of death among Indians, the suicide rate is 1.7 times the general population, and the list goes on. Most experts consider the state of Indian health and health care to be a generation behind the rest of the Nation.

H.R. 1426 represents a reaffirmation of our commitment to Indian tribes and Indian people. It reauthorizes several programs including urban health programs, and the Health Care Improvement Fund. It also authorizes new programs such as the Catastrophic Fund. The bill is not without controversy, and I will offer my own amendment at the proper time concerning the eligibility of California Indians. Additionally, I believe there will be other technical amendments. I do caution the Members that the provisions of H.R. 1426 are the result of careful analysis of the unmet health needs of Indian tribes. Deep cuts in the authorization levels should not be made. H.R. 1426 is our commitment to Indian tribes and it is important to live up to our commitments.

I urge my colleagues to support H.R. 1426, the Indian Health Care Amendments of 1986.

□ 1540

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 1426, the Indian Health Care Amendments of 1986.

Let me first thank the distinguished chairman of the Committee on Interior and Insular Affairs, Mr. UDALL, for his leadership on this bill and on Indian affairs generally.

H.R. 1426, which is before the House with a substitute text introduced as H.R. 5222, would revise and extend, for 4 years, the Indian Health Care Improvement Act. This legislation was first enacted in 1976 to raise the health status of American Indians and Alaska natives to the level of the general U.S. population.

In a recent report, the Office of Technology Assessment found that, despite some progress over the past decade, Indians still suffer from mortality rates that are higher than the national average. The most recent data compiled by OTA show that death rates were higher among Indians for liver disease, pneumonia, diabetes, kidney disease, homicide, and suicide, among others. The Indian death rate for tuberculosis—a preventable disease that is almost unknown in this country except among the homeless and Asian refugees—is seven times that of the U.S. population.

Clearly, this is an unacceptable situation. The Federal Government has a moral and legal obligation to improve the health status of the Indian people. The bill before us today is intended to enable the Federal Government meet that obligation.

H.R. 1426, as revised by the text of H.R. 5222, represents a compromise between the bills reported in May of last year by the Energy and Commerce Committee and the Interior Committee. It contains most of the provisions reported out by each committee.

Chairman UDALL has ably summarized the bill. I would only note that those provisions that were reported by the Committee on Energy and Commerce are more fully explained in House Report 99-94, part 2.

The funding in this bill is extremely modest. Authorization levels have been reduced to $244.1 million over 4 years, down from $336.1 million in the Interior version and $287.1 million in the Energy and Commerce version.

Just as there is no question about the inferior health status of the Indian people, there is no question that they need Federal health resources. The native American population is disproportionately poor. The poverty rate among Indians is more than twice as high as that among the U.S. population as a whole. In 1980, a staggering 45 percent of Indians living on reservations were poor. While some tribes may benefit from oil or mineral wealth, this is a population that, for the most part, lacks the resources necessary to afford needed health care.

When this bill last came before the House under suspension of the rules, it contained an authorization level of $99.2 million over 3 years. These levels were vigorously attacked by the distinguished chairman of the Republican Task Force on Indian Affairs, Mr. MCCAIN, as, and I quote, "much too low to address real problems." I am delighted that the minority recognized the need for additional resources for Indian health, and I look forward to their support for the higher authorization levels in the version before us today.

It has been 10 years since the Indian Health Care Improvement Act was first enacted, and 3 years since its authorizations expired. It is time for us to reaffirm our commitment to improving the health status of the Indian people. I urge my colleagues to vote for this bill.

Mr. Chairman, I reserve the balance of my time.

Mr. NIELSON of Utah. Mr. Chairman, I yield 2 minutes to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I want to compliment the members of the various committees that have worked on this legislation and the people who have put a lot of hard work and effort into it.

Eighty percent of the native Americans who live in the State of Wisconsin live in my congressional district. So I am well aware of many of these problems and I am very thankful that we have legislation like H.R. 1426.

Mr. Chairman, I support this legislation. This important measure provides needed funding to correct deficiencies in the health programs for native American Indians.

The Indian Health Care Act was established to bring the health status of the first Americans up to the level of the general population. While some progress has been made over the past 10 years, a report recently issued by the Office of Technology Assessment clearly illustrates that we still have a long way to go.

The health profile of native American and Alaska Indians lags far behind the general U.S. population. The average-age adjusted mortality rate for Indians is 10 percent greater than that of the general U.S population. Although the infant mortality rate has decreased since 1976, it is still at an intolerable level, 11 percent higher than the national average. The reauthorization of H.R. 1426 will bring positive improvement in health care to the 29,000 Indians in Wisconsin, 80 percent of whom live in the Eighth Congressional District.

Alcoholism and drug abuse continue to be chronic health problems among the youth and adult Indian population. The incidence of alcohol-related deaths is almost 5 times the average of the general population. Under H.R. 1426, an Office of Alcohol and Drug Abuse will be created to administer rehabilitation and prevention programs. The measure also targets additional funding for increased recruitment of health professionals.

H.R. 1426 represents a comprehensive approach to the serious health problems facing Indians. I urge my colleagues to support this responsible and necessary legislation.

Mr. Chairman, I yield back the balance of my time.

Mr. NIELSON of Utah. Mr. Chairman, I reserve the balance of my time.

Mr. RICHARDSON. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, first, I would like to commend all of the people who have worked so hard on H.R. 1426, the Indian Health Care Amendments Act. Mr. UDALL has devoted a great deal of his time to improving the quality of life for American Indians—perhaps in no other area does his devotion show as much as it does in the field of Indian health. In light of the President's previous veto of this legislation, and the substantial unmet health care needs of Native Americans, the passage of this bill by the House is of the utmost importance. I am in strong support of this bill, and urge my colleagues to support it, too.

There are over 110,000 American Indians in my home State of New Mexico. My district has the highest Native American population in the country. Ninety-six thousand Indians in New Mexico's Third Congressional District depend on the Indian Health Service for their medical care. While tribal leaders in my district are making every effort to improve the quality of life for their people, unemployment remains high and health care needs are many. In my district alone, 45 percent of all admissions to IHS facilities are alcohol related. Infant mortality is much higher than that of the rest of the Nation, and in fact, the list of diseases, such as tuberculosis, affecting Indians disproportionate to the rest of this country's population is very lengthy.

The Constitution, numerous treaties, statutes, and historical development have all contributed to the unique moral and legal obligation which the Federal Government has to American Indians. Part of this obligation is to provide health care services. Inherent in this unique relationship is the responsibility that Indians enjoy a health status comparable to that of the rest of the Nation.

This administration has taken a callous, uncaring approach to the provision of services to American Indians. Indian education, economic development, and health care programs have all suffered as a result of the administration's attitude. Every time I return to my district, I see the extreme health care needs of the reservations, the pueblos, and the urban areas. I believe that this bill will play an important role in improving the health status of American Indians in New Mexico and around the country. The time for the assistance it mandates for the provision of health care services to Indians is long overdue. I strongly support this bill, and urge my colleagues to do so, also.

Mr. MCCAIN. Mr. Chairman, I yield such time as he may consume to the gentleman from Nebraska [Mr. BEREUTER].

□ 1550

Mr. BEREUTER. Mr. Chairman, I rise in strong support of H.R. 1426 and urge my colleagues to support the legislation as well.

As an original cosponsor, I am very pleased that we have had the great leadership from both sides of the aisle in both committees. I am pleased also that finally agreement has been reached on at least a few of the remaining controversial elements of this legislation; but regardless how this body votes on those amendments, I urge Members to vote for the passage of this bill.

Contained in it are several provisions on which this Member has worked for a considerable period of time. One such provision creates a catastrophic health emergency fund. This Member cannot stress too emphatically the importance of creating a small catastrophic health emergency fund. Several years ago, for example, eight children were critically injured when a propane gas tank exploded on the Santee Sioux Indian Reservation in my district. Miraculously, all eight children lived, despite severe injuries. The direct health care budget for the entire Indian health service area in

which the children resided, however, was depleted by some 25 percent during the first year of their care alone, due to the costs of ongoing medical treatment. As a result of that extraordinary cost for the treatment of these eight children, the more routine health matters were unattended for other tribal members in that service area.

Additionally, I want to express my support for the authorization for the program to train educators and counselors to prevent and to attack juvenile alcohol and drug abuse.

Mr. Chairman, no Indian tribes should ever have to face such an untenable situation again as the one I mentioned regarding the eight children. The inclusion of a small health emergency catastrophic fund, carefully managed, is a wise and humane investment for both the Federal Government and the Indian tribes.

Mr. Chairman, I ask my colleagues to support H.R. 1426.

Mr. WAXMAN. Mr. Chairman, we have no further requests for time, and I yield back the balance of our time.

Mr. UDALL. Mr. Chairman, I have no requests for time, and I yield back the balance of my time.

Mr. NIELSON Of Utah. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to express my opposition to H.R. 1426 as amended by H.R. 5222. My objections relate primarily to excessive authorizations for appropriations which are $160 million above the amount contained in H.R. 4600, a bill to authorize an extension to the Indian Health Care Improvement Act that received a 241-163 vote on April 29, 1986, but failed for lack of two-thirds majority. I plan to offer H.R. 4600 as an amendment in the nature of a substitute at the conclusion of the amendment process.

H.R. 4600 is a compromise introduced by Chairmen WAXMAN and UDALL which contains authorization levels significantly less than those contained in the legislation reported out of the Energy and Commerce and Interior and Insular Affairs Committees.

During the markup of Indian health legislation, I offered several amendments to reduce authorizations for several of the titles in the bill. Some of these amendments were adopted by the committee. Others were not. One of the amendments that I offered which was not adopted, would have stricken new authority for a catastrophic fund. I am not convinced that a catastrophic fund makes sense and am encouraged that authorization for the fund has been reduced to $3 million in H.R. 4600 from $12 million in the energy and commerce version of H.R. 1426.

I am also encouraged to see that several of the new authorities contained in title VII of H.R. 1426 have been stricken from H.R. 4600.

Overall, H.R. 4600 authorizes just under $100 million over the next 3 fiscal years. In contrast, the energy and commerce version of H.R. 1426 authorized $212 million for those same fiscal years. This is a very significant reduction.

The Indian Health Care Improvement Act, which this legislation reauthorizes and amends, was first enacted in 1976. The act was designed to bring the health status of American Indians and Alaska Natives up to a level equal to that of the general population. We have made some progress in reaching that goal but must continue to fund specific programs to completely succeed. Substituting the text of H.R. 4600 for H.R. 1426 will go a long way in helping that process.

Mr. McCAIN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the text of H.R. 5222 is considered by titles as an original bill for the purpose of amendment under the 5-minute rule in lieu of the amendment recommended by the Committees on Interior and Insular Affairs and Energy and Commerce printed in the bill and each title is considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Health Care Amendments of 1986".

The CHAIRMAN. Are there any amendments to section 1? If not, the Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. REFERENCE.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.).

The CHAIRMAN. Are there any amendments to section 2? If not, the Clerk will designate title I.

The text of title I is as follows:

TITLE I—INDIAN HEALTH MANPOWER

SEC. 101. HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS.

Subsection (c) of section 102 (25 U.S.C. 1612(c)) is amended to read as follows:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $550,000 for fiscal year 1987,

"(2) $600,000 for fiscal year 1988,

"(3) $650,000 for fiscal year 1989, and

"(4) $700,000 for fiscal year 1990.".

SEC. 102. HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM.

(a) SCHOLARSHIPS.—Section 103 (25 U.S.C. 1613) is amended by striking out subsection (d) and inserting in lieu thereof the following:

"(d) The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely on the basis of the applicant's scholastic achievement if such applicant has been admitted to, or maintained good standing at, an accredited institution.

"(e) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $4,000,000 for fiscal year 1987,

"(2) $4,700,000 for fiscal year 1988,

"(3) $5,400,000 for fiscal year 1989, and

"(4) $6,100,000 for fiscal year 1990.".

(b) EXPENSES.—Subsection (c) of section 103 is amended by striking out "expenses" and inserting in lieu thereof "expenses of a grantee while attending school full time".

SEC. 103. HEALTH PROFESSIONS SCHOLARSHIP PROGRAM.

(a) PROGRAM.—Section 104 is amended to read as follows:

"INDIAN HEALTH PROFESSIONS SCHOLARSHIPS

"SEC. 104. (a) In order to provide health professionals to Indian communities, the Secretary, acting through the Service and in accordance with this section, shall make scholarship grants to Indians who are enrolled full time in schools of medicine, osteopathy, podiatry, psychology, dentistry, veterinary medicine, nursing, optometry, public health, and allied health professions. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with section 338A of the Public Health Service Act (42 U.S.C. 2541) except as provided in subsection (b) of this section.

"(b)(1) The Secretary, acting through the Service, shall determine who shall receive such scholarships and shall determine the distribution of such scholarships among such health professions on the basis of the relative needs of Indians for additional service in such health professions.

"(2) An individual shall be eligible for a scholarship under subsection (a) in any year in which such individual is enrolled full time in a health profession school referred to in subsection (a).

"(3) The active duty service obligation prescribed under section 338B of the Public Health Service Act (42 U.S.C. 254m) shall be met by a recipient of an Indian Health Scholarship by service in the Indian Health Service, including service or employment under a contract under the Indian Self-Determination Act (Public Law 93-638); employment in a program assisted under title V of this Act; or in the private practice of his profession if, as determined by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

"(c) For the purpose of this section, the term 'Indian' has the same meaning given that term by subsection (c) of section 4 of this Act, including all individuals described in clauses (1) through (4) of that subsection.

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $6,100,000 for fiscal year 1987,

"(2) $7,000,000 for fiscal year 1988,

"(3) $8,100,000 for fiscal year 1989, and

"(4) $9,234,000 for fiscal year 1990.".

(b) TECHNICAL.—Section 338G of the Public Health Service Act (42 U.S.C. 254r) is repealed.

SEC. 104. INDIAN HEALTH SERVICE EXTERN PROGRAM.

Subsection (d) of section 105 (25 U.S.C. 1614) is amended to read as follows:

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $300,000 for fiscal year 1987,

"(2) $350,000 for fiscal year 1988,

"(3) $400,000 for fiscal year 1989, and

"(4) $450,000 for fiscal year 1990.".

SEC. 105. CONTINUING EDUCATION ALLOWANCES.

Subsection (b) of section 106 (25 U.S.C. 1615 (b)) is amended to read as follows:

"(b) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $500,000 for fiscal year 1987,

"(2) $526,300 for fiscal year 1988,

"(3) $553,800 for fiscal year 1989, and

"(4) $582,500 for fiscal year 1990.".

AMENDMENT OFFERED BY MR. NIELSON OF UTAH

Mr. NIELSON of Utah. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NIELSON of Utah: Page 3, line 1, strike "$4,000,000" and insert "$3,000,000".

Page 3, line 2, strike "$4,700,000" and insert "$3,700,000".

Page 3, line 3, strike "$5,400,000" and insert "$4,400,000".

Page 3, line 4, strike "$6,100,000" and insert "$5,100,000".

Page 4, line 24, strike "$6,100,000" and insert "$5,100,000".

Page 4, line 25, strike "$7,100,000" and insert "$6,000,000".

Page 5, line 1, strike "$8,100,000" and insert "$7,100,000".

Page 5, line 2, strike "$9,234,000" and insert "$8,234,000".

Mr. NIELSON of Utah (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Utah?

There was no objection.

Mr. NIELSON of Utah. Mr. Chairman, this amendment strikes $1 million from each of the years in section 103 under Manpower, so the amounts will be instead of $4 million, $4.7 million, $5.4 million and $6.1 million respectively, will now become $3 million, $3.7 million, $4.4 million and $5.1 million in pages 3, 4, and 5 as appropriate.

I do this to bring the bill a little more in line with the fiscal realities. This does not cripple the programs. Indian health care will continue to be an effective program. This reduction does give us more a fiscally responsible bill and it is one which I hope the majority and the minority Members will be able to accept.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. NIELSON of Utah. I am happy to yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I am reluctantly going to vote for the gentleman's amendment. It is, as the gentleman said, difficult fiscal times we are in. I think we can make these reductions and show our cooperation in the drive toward a balanced budget without doing unnecessary damage to the long-term goals that we all seek here, so I will reluctantly vote for the gentleman's amendment.

Mr. McCAIN. Mr. Chairman, will the gentleman yield?

Mr. NIELSON of Utah. I yield to the gentleman from Arizona.

Mr. McCAIN. Mr. Chairman, I also reluctantly agree with the amendment proposed by the gentleman from Utah.

I would also like to state that I appreciate the efforts of the gentleman from Utah to bring about financial reductions in these days of Gramm-Rudman and reduce budget situations.

At the same time, I would like to mention to the gentleman from Utah that I will not accept other amendments at this time, or I will have substitutions for some of the gentleman's amendments, which I think could be very crippling and damaging to the bill.

This amendment I do reluctantly accept. I appreciate the gentleman's efforts in behalf of this entire piece of legislation.

Mr. NIELSON of Utah. Mr. Chairman, I thank the gentleman.

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. NIELSON of Utah. I am happy to yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Chairman, is it correct that the gentleman's amendment only affects title I?

Mr. NIELSON of Utah. It is title I, section 103, a $1 million reduction in each of the 4 fiscal years.

Mr. RICHARDSON. And that is all there is in the amendment?

Mr. NIELSON of Utah. I have other amendments that the gentleman may wish to address, but this is the one that I think is generally agreeable.

Mr. RICHARDSON. Mr. Chairman, I thank my colleague.

Mr. NIELSON of Utah. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah [Mr. NIELSON].

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to title I? If not, the Clerk will designate title II.

The text of title II is as follows:

TITLE II—HEALTH SERVICES

SEC. 201. IMPROVEMENT OF INDIAN HEALTH STATUS.

Section 201 is amended to read as follows:

"INDIAN HEALTH CARE IMPROVEMENT FUND

"SEC. 201. (a)(1) To further implement the national policy of raising the health status of Indians to a zero level of deficiency as defined in subsection (c) by eliminating backlogs in health care services and meeting unmet Indian health needs as soon as possible and in an equitable manner, the Secretary is authorized to expend, through the Service, over the three year period beginning with fiscal year 1988 the amounts authorized to be appropriated by subsection (h) of this section. Funds requested under this section shall be separately stated in the Service budget request as submitted to Congress under section 1104 of title 31, United States Code, and funds appropriated under this section shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13), or any other law. Funds appropriated under this section in any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

"(2) Nothing in this section is intended to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs, nor is it intended to discourage the Service from undertaking additional efforts to achieve parity among tribes.

"(b)(1) Funds appropriated under this section shall be expended to augment the ability of the Service to meet the following health service responsibilities—

"(A) clinical care (direct or indirect);

"(B) preventive health;

"(C) dental care (direct or indirect);

"(D) mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treatment centers, and training of traditional Indian practitioners;

"(E) emergency medical services;

"(F) treatment and control of, and rehabilitative care related to, alcoholism among Indians;

"(G) accident prevention programs;

"(H) community health representative programs;

"(I) home health care; and

"(J) maintenance and repair.

"(2) Where any funds allocated to a service unit are used for a contract under the Indian Self-Determination Act, a reasonable proportion of such funds may be used for health planning, training, technical assistance, and other administrative support functions.

"(3)(A) To the extent that all or a portion of the funds appropriated under subsection (h) are required to raise tribes which are below a level II deficiency, as defined in subsection (c)(2), to such level, such funds shall not be available for allocation to service units serving only tribes at or above such level. Funds appropriated under this section shall be allocated on a service unit basis. Apportionment of a service unit's allocation of funds among the health service responsibilities listed in paragraph (1) shall be as determined by the Service and the Indian tribe or tribes whose deficiency level was the basis on which the funds were allocated.

"(B) In the case of multitribal service units, the allocation of funds under this section shall be made, apportioned, and expended upon the basis of the health resources deficiency level of each separate tribe within that service unit.

"(c)(1) Within 60 days of the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress the current health services priority system report of the Service for each tribe including units serving newly recognized or acknowledged tribes. Such report shall contain—

"(A) the methodology for determining tribal health resources deficiencies; the level of health resources deficiency for each

tribe; the amount of funds necessary to raise all tribes below a level II deficiency to a level II deficiency; the amount of funds necessary to raise all tribes below a level I deficiency to a level I deficiency; and the amount of funds necessary to raise all tribes to a zero level of deficiency;

"(B) an estimate of—

"(i) the amount of health service funds appropriated under the authority of this or any other Act for the preceding fiscal year which is allocated to each service unit; and

"(ii) the number of Indians eligible for health services in each service unit and each tribe; and

"(C) an evaluation of—

"(i) the preventive health, health protection, and health promotion needs of Indians identified in tribal specific health plans;

"(ii) the preventive health, health protection, and health promotion services necessary to meet such needs;

"(iii) the resources which would be required to enable the Service to provide such services; and

"(iv) the resources currently available to the Service which could be used to provide such services.

"(2) For purposes of this section, health resources deficiency levels shall be defined as follows:

"Level I—0 to 20 percent deficiency.

"Level II—21 to 40 percent deficiency.

"Level III—41 to 60 percent deficiency.

"Level IV—61 to 80 percent deficiency.

"Level V—81 to 100 percent deficiency.

"(3) The Secretary shall establish by regulation procedures which allow any Indian tribe to petition the Secretary for a review of any determination of the health resources deficiency level of such tribe.

"(d) Upon enactment of the Indian Health Care Amendments of 1986, the Secretary, acting through the Service, shall take all necessary action, in cooperation with each Indian tribe, to bring current the tribal specific health plans which were developed as a part of the plan required by section 703 of this Act and which formed the basis for such plan in response to the requirements of section 701 of this Act. These plans shall be based upon the methodology submitted under subsection (c), as may be further modified through tribal consultation, and shall form the basis for the health services priority system report to be submitted by the Secretary for fiscal years 1989 and 1990. Such reports shall be submitted to the Congress not more than 30 days after the submission of the annual budget for such fiscal years to the Congress by the President.

"(e) The Secretary, acting through the Service, shall expend directly or by contract not less than 1 percent of the funds appropriated under subsection (h) for research in the areas of Indian health care set out in subparagraphs (A) through (G) of subsection (b)(1). Indian tribes and tribal organizations contracting with the Service pursuant to the Indian Self-Determination Act shall be given an equal opportunity to compete for and receive such research funds.

"(f) Programs administered by any Indian tribe or tribal organization under the authority of the Indian Self-Determination Act shall be eligible for funds appropriated pursuant to subsection (h) on an equal basis with programs that are administered directly by the Indian Health Service.

"(g) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which specifies the total amount obligated or expended in the most recently completed fiscal year to carry out subsection (d) and to carry out each of the subparagraphs of subsection (b)(1).

"(h) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $28,000,000 for fiscal year 1988,

"(2) $29,000,000 for fiscal year 1989, and

"(3) such sums as may be necessary for fiscal year 1990.

Any funds appropriated under this subsection shall be designated as the 'Indian Health Care Improvement Fund'.".

SEC. 202. CATASTROPHIC HEALTH PROGRAM.

Title II is amended by adding at the end thereof the following new section:

"CATASTROPHIC HEALTH PROGRAM

"SEC. 202. (a) There is established an Indian Catastrophic Health Emergency Fund (hereinafter in this section referred to as the 'Fund') to be administered by the Secretary, acting through the Service, solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses falling within the responsibility of the Service. The Fund shall be administered by the central office of the Service and shall not be allocated, apportioned, or delegated on a service unit or area office basis. Funds appropriated under subsection (c) shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13), or any other law. No part of the Fund or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination Act (Public Law 93-638).

"(b) The Secretary shall, through the promulgation of regulations consistent with the provisions of this section—

"(1) establish a definition of disasters and catastrophic illnesses for which the cost of treatment, whether provided under contract or directly by the Service, would qualify for payment from the Fund; and which shall provide that a service unit shall not be eligible for reimbursement for the cost of treatment from the Fund until its cost of treating any victim of such catastrophic illness or disaster shall have reached a certain threshold cost which the Secretary shall establish at not less than $10,000 or not more than $20,000;

"(2) establish a procedure for the reimbursement of service units or facilities rendering treatment or, whenever otherwise authorized by the Service, the reimbursement of nonservice facilities or providers rendering treatment;

"(3) establish a procedure for payment from the Fund where the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

"(4) establish a procedure that will assure that no payment shall be made from the Fund to any provider to the extent that the provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible or by which the patient is covered.

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $12,000,000 for fiscal year 1988, and

"(2) for each of the fiscal years 1989 and 1990, such sums as may be necessary to maintain the fund at $12,000,000.

Funds appropriated under this subsection shall remain available until expended.

"(d) By no later than January 1, 1989, the Secretary shall report to Congress on the operation of the Fund. Such report shall include—

"(1) the number and nature of disasters and catastrophic illnesses for which reimbursement was sought;

"(2) the costs associated with such disasters or illnesses;

"(3) the amounts reimbursed by the Fund in connection with such disasters and illnesses;

"(4) the effect of the Fund on the ability of service units to meet the health needs of their service populations; and

"(5) the Secretary's recommendations regarding the future operation of the Fund.".

SEC. 203. COMPETITIVE PROCUREMENT.

Title II is amended by adding at the end thereof the following new section:

"COMPETITIVE PROCUREMENT

"SEC. 203. (a) Notwithstanding any other provision of law, the Secretary, acting through the Service, may waive any statutory or administrative requirement for competitive procurement of health services if, in the judgment of the Chief Medical Officer who will have jurisdiction over such health services, such competitive procurement would compromise the accessibility, quality, or continuity of health services or would not result in any appreciable competition or savings.

"(b) Notwithstanding any other provision of law, the Secretary, acting through the Service, shall reject any bid submitted under any statutory or administrative requirement for competitive procurement of health services upon the certification of the Chief Medical Officer who will have jurisdiction over such health services that acceptance of such bid would compromise the accessibility, quality, and continuity of health services.".

SEC. 204. PREVENTIVE HEALTH, HEALTH PROTECTION, AND HEALTH PROMOTION.

Title II, as amended by sections 202 and 203 of this Act, is further amended by adding at the end the following new section:

"PREVENTIVE HEALTH, HEALTH PROTECTION, AND HEALTH PROMOTION

"SEC. 204. (a) The Congress finds that—

"(1) preventive health, health protection, and health promotion services will—

"(A) improve the health and well-being of Indians; and

"(B) reduce the expenses for medical care of Indians;

"(2) preventive health, health protection, and health promotion services should be provided by the coordinated efforts of Federal, State, local, and tribal governments; and

"(3) in addition to the provision of primary health care, the Service should provide preventive health, health protection, and health promotion services to Indians.

"(b) The Secretary, acting through the Service, shall—

"(1) require, by regulation, that each Indian tribe include within any tribal specific health plan submitted to the Secretary—

"(A) an identification of the preventive health, health protection and health promotion needs of such tribe; and

"(B) a comprehensive plan for providing such services to such tribe;

"(2) develop from tribal specific health plans a comprehensive plan for the provision by the Service of preventive health, health protection, and health promotion services to Indians;

"(3) establish a schedule for the provision of such services by the Service; and

"(4) provide such services to Indians in accordance with such comprehensive plan and schedule.".

AMENDMENT OFFERED BY MR. NIELSON OF UTAH

Mr. NIELSON of Utah. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NIELSON of Utah: Page 12, strike line 1 and all that follows through page 14, line 20 (and redesignate the subsequent sections of title II of the bill accordingly).

Mr. NIELSON of Utah. Mr. Chairman, if we look at title II for health services, the current fiscal year 1986 and also fiscal year 1987 has no funding at all in that particular account. In fiscal years 1988 and 1989 there is $40 million in services for the first year and $41 million for the second year and $40 million again in fiscal year 1990.

Of that, $28 million goes to the improvement fund which I support, because that provides equity. It provides for Indian services to people who are now not getting their equitable share of services.

It will help go a long way toward help solving the problems of Indian health I do support that particular section and the gentleman from California in this regard because of sheer equity and fairness in dealings with problems of Indian care I oppose the gentleman from Arizona on this issue.

My concern, however, is with the catastrophic fund which the gentleman from Nebraska praised and which on a revolving fund basis may have some merit.

I would have supported a level of $3 million, as I did on the suspension calendar, but I cannot accept the $12 million level. I think that is excessive. It is a new program. It is coming out with too much money and without proper wages. I would prefer to phase in funds up to $12 million over a period of time. I have no objection to phasing it up gradually, but I think $12 million at the beginning is excessive.

I therefore move to strike the fund. As I say, I would have accepted a $3 million funding level, as I did in H.R. 4600, but I cannot accept the $12 million and for that reason I oppose these funds.

I suggest this is not the time to start new programs. It is not clear how effective it will be. We currently have the ability to shift funds already where necessary and we are giving additional money in the manpower area and also in the improvement fund which should take care of any contingency.

PERFECTING AMENDMENT OFFERED BY MR. MC CAIN

Mr. McCAIN. Mr. Chairman, I offer a perfecting amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Perfecting amendment offered by Mr. MCCAIN: Section 201 is amended by striking:

"(h) There are authorized to be appropriated for the purposes of carrying out the provisions of this section—

"(1) $28,000,000 for fiscal year 1988

"(2) $29,000,000 for fiscal year 1989, and

"(3) such sums as may be necessary for fiscal year 1990.

And inserting in lieu thereof the following:

"(h) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $18,000,000 for fiscal year 1988

"(2) $19,000,000 for fiscal year 1989, and

"(3) $19,000,000 for fiscal year 1990.

Section 202 is amended by striking:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $12,000,000 for fiscal year 1988, and

"(2) for each of the fiscal years 1989, and 1990, such sums as may be necessary to maintain the fund at $12,000,000.

And inserting in lieu thereof the following:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $8,000,000 for fiscal year 1988, and

"(2) for each of the fiscal years 1989, and 1990, such sums as may be necessary to maintain the fund at $8,000,000.

Mr. McCAIN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. McCAIN. Mr. Chairman, like others, I am concerned about the objections of the administration about the total authorization of this bill. I am, therefore, proposing that there be a reduction of $16 million from the $28 million down to $12 million for the improvement fund and a reduction of $10 million from the $18 million down to $8 million for the catastrophic fund.

Mr. Chairman, I believe that both the improvement fund and the catastrophic fund require funding. They are both urgent and important programs.

I am willing to submit this amendment in a reduction in funding, but I think it would be a very serious mistake if we adopted the Nielson amendment which would simply zero out the catastrophic fund, which I think is a crucial part of this bill.

Mr. Chairman, I urge my colleagues to accept this perfecting amendment.

Mr. NIELSON of Utah. Mr. Chairman, will the gentleman yield?

Mr. McCAIN. I am glad to yield to the gentleman from Utah.

Mr. NIELSON of Utah. Mr. Chairman, the gentleman said the improvement fund was $12 million and then $12 million for the catastrophic fund; is that the gentleman's amendment?

Mr. McCAIN. It is $12 million for improvement, $8 million for catastrophic.

Mr. NIELSON of Utah. Mr. Chairman, if the gentleman will yield further, what about the other fiscal years, 1989 and 1990?

Mr. McCAIN. It is consistent for all 3 years.

Mr. NIELSON of Utah. All 3 years frozen. If the gentleman will yield further, the effect of the gentleman's amendment then is to cut out $20 million, whereas my amendment cuts out only $12 million, but the effect of the gentleman's amendment is to keep both funds, rather than just the improvement fund; is that correct?

Mr. McCAIN. Indeed, that is the case.

Mr. NIELSON of Utah. Mr. Chairman, if the gentleman will yield further, would the gentleman consider giving a lump sum and letting them use it in both funds as they see fit? If so, I could support it.

Mr. McCAIN. I cannot at this time, because I feel that it is important that the funds be earmarked in both separate areas; otherwise, we could have problems in administering these funds.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. McCAIN. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I strongly support the McCain substitute and strongly oppose the Nielson amendment.

This catastrophic fund is a key part of the funds in the bill that we have here on the floor today. The administration always tells us that they already have authority to do this, but the fact is that they have not used that authority. As between zeroing out this program and going partway with the McCain amendment, clearly the responsible position is to go forward with Mr. MCCAIN. So I support his substitute and oppose the Nielson amendment, and I urge my colleagues to vote accordingly.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. McCAIN. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I do support the amendment that the gentleman from Arizona [Mr. MCCAIN] is offering, and I believe that I can provide an example of why it is essential that we not rely strictly on the discretion of the administration.

We had an opportunity to move funds to assist Indian tribes in South Dakota and Nebraska who suffered as a result of the catastrophic experience for eight Indian children, but they did not move it. Therefore, I think that it

is essential that we do have adequate funding in both of those funds, including the catastrophic health emergency fund.

The gentleman's amendment would do that. I think that it is very preferable, quite desirable, to have this approach. In the absence of this approach the discretion has been proven to be wanting, and I thank the gentleman for his amendment.

The CHAIRMAN. The question is on the perfecting amendment offered by the gentleman from Arizona [Mr. MCCAIN] to title II.

The perfecting amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah [Mr. NIELSON].

The amendment was rejected.

The CHAIRMAN. Are there other amendments to title II?

If not, the Clerk will designate title III.

The text of title III is as follows:

TITLE III—HEALTH FACILITIES

SEC. 301. HEALTH FACILITIES.

Section 301 (25 U.S.C. 1631) is amended to read as follows:

"HEALTH FACILITIES

"SEC. 301. (a)(1) Within 60 days after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress a report which shall set forth the current health facilities priority system of the Service and which shall include the planning, design, construction, or renovation needs for the ten top priority inpatient care facilities and the ten top priority ambulatory care facilities together with required staff quarters, the justification for such priority listings, and the projected cost of such projects. The report shall also include the methodology adopted by the Service in establishing priorities under its health facilities priority system.

"(2)(A) Within 30 days of the submission of the annual budget to the Congress by the President for each of the fiscal years 1989 and 1990, the Secretary shall submit to the Congress a report which complies with the requirements for paragraph (1).

"(B) In preparing such report in such fiscal years, the Service shall consult with tribes and tribal organizations including those tribes or tribal organizations operating health programs or facilities with funds from the Service under the Indian Self-Determination Act, and shall review the needs of these tribes and tribal organizations for inpatient and outpatient facilities, including their needs for renovation and expansion of existing facilities.

"(3) The Service shall use the same criteria for each of the fiscal years 1988, 1989, and 1990 to evaluate the needs of facilities operated under contract under the Indian Self-Determination Act as it uses to evaluate the needs of facilities operated directly by the Service in such fiscal years.

"(4) The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities which are the subject of a contract for health services entered into under the Indian Self-Determination Act are fully and equitably integrated into the development of the health facility priority system.

"(b)(1) All funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13), for the planning, design, construction, or renovation of health facilities for the benefit of a tribe or tribes shall be subject to the provisions of sections 103 and 104(b) of the Indian Self-Determination Act. The United States shall hold title to any facility constructed under a grant pursuant to section 104(b) of that Act.

"(2) Any tribal contractor or grantee shall expend the funds described in paragraph (1) for the purpose for which appropriated pursuant to rules and regulations established by the Secretary for contracting and procurement.

"(c) Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for facilities planning and design, construction, or renovation under the Act of November 2, 1921 (25 U.S.C. 13), the Secretary, acting through the Service, shall—

"(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, wherever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made, and

"(2) ensure, wherever practicable, that such facility, not later than one year after its construction or renovation, shall meet the standards of the Joint Commission on Accreditation of Hospitals.

"(d) The Secretary shall not close, under any existing authority, any Service hospital or other outpatient health care facility or any portion thereof unless he has submitted to the Congress at least one year prior to the planned closure date an evaluation of the impact of the proposed action which shall include the following factors—

"(1) accessibility of alternative health care resources for the service population;

"(2) cost effectiveness of the closure;

"(3) quality of health care to be provided to the service population after closure;

"(4) availability of contract health care funds to maintain current levels of service; and

"(5) the views of the Indian tribe or tribes served by such facility on the planned closure.

This subsection shall not be applicable to temporary closures where such closure is specifically determined to be necessary to avoid jeopardizing the health or safety of patients.".

SEC. 302. SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES.

Section 302 (25 U.S.C. 1632) is amended to read as follows:

"SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

"SEC. 302. (a)(1) Congress finds that—

"(A) the provision of safe water supply and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

"(B) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such facilities;

"(C) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such facilities and other preventive health measures;

"(D) many Indian homes and communities still lack safe water supply and sanitary sewage and solid waste disposal facilities; and

"(E) it is in the interest of the United States and it is the policy of the United States that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply and sanitary sewage and solid waste disposal facilities as soon as possible.

"(2) Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(b) Beginning in fiscal year 1987, the Secretary, acting through the Service, shall develop and begin implementation of a 10 year plan to provide safe water supply and sanitary sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

"(c)(1) Within 60 days of the date of the enactment of the Indian Health Care Amendments of 1986, the Secretary shall report to Congress on the Service's sanitation facilities priority system. The Secretary, in preparing such report, shall uniformly apply the methodology for determining sanitation deficiencies to all Indian tribes. Such report shall identify the methodology for determining sanitation deficiencies; the level of deficiency for each Indian community or tribe; the amount of funds necessary to raise all communities to a level I deficiency; and the amount of funds necessary to raise all communities or tribes to a zero level of deficiency. For the purpose of such report—

"(A) a level I deficiency means a sanitation system which complies with all applicable water supply and pollution control laws and regulations in which the defined deficiencies consist of routine replacement, repair, or maintenance needs;

"(B) a level II deficiency means a sanitation system which complies with all applicable water supply and pollution control laws and regulations in which the defined deficiencies consist of capital improvements necessary to improve the facilities to meet the needs of the communities for domestic sanitation facilities;

"(C) a level III deficiency means a sanitation system which has an inadequate or partial water supply and sewage disposal facility which does not comply with applicable water supply and pollution control laws and regulations or which has no solid waste disposal facility;

"(D) a level IV deficiency means a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

"(E) a level V deficiency means the absence of a safe water supply and sewage disposal system.

Any tribe or community which lacks the operation and maintenance capability to meet all applicable water supply and pollution control laws and regulations shall be deemed to have a rating no higher than a level III deficiency.

"(2)(A) Within 30 days of the submission of the annual budget to the Congress by the President for fiscal years 1988, 1989, and 1990, the Secretary shall submit a report to the Congress which meets the requirements of paragraph (1).

"(B) In preparing such report for each of the fiscal years 1988, 1989, and 1990, the Secretary, acting through the Service, shall consult with tribes and tribal organizations including those operating health care programs or facilities under contracts under

the Indian Self-Determination Act to determine the sanitation needs of each tribe.

"(d)(1) To clarify the powers conferred by subsection (a) of section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Secretary, acting through the Service, is authorized to provide—

"(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities,

"(B) ongoing technical assistance and training in the management of utility organizations, and

"(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities in situations where the community, tribe, or family is not financially or technically capable of performing the required emergency repairs with their own resources.

"(2)(A) This section is not intended to diminish the primary responsibilities of the Indian community or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operation and maintenance of sanitation facilities.

"(B) The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a precondition for the provision or construction of such facilities and the Secretary may not require a tribe or community to accept a transfer of such facilities where he has determined the tribe or community does not have, or may not be reasonably expected to achieve, such capability.

"(e) Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination Act shall be eligible for—

"(1) funds appropriated pursuant to subsection (f), and

"(2) funds appropriated for the purpose of providing water supply or sewage disposal services,

on an equal basis with programs that are administered directly by the Indian Health Services.

"(f)(1) There are authorized to be appropriated for each of the fiscal years 1988, 1989, and 1990, $3,000,000 for the purpose of providing funds necessary to implement the expanded responsibilities of the Service under subsection (d).

"(2) In addition to the amount authorized under paragraph (1), there are authorized to be appropriated for each of the fiscal years 1988, 1989, and 1990, $850,000 for the purpose of providing thirty new full-time equivalents for the Service which shall be used to carry out the expanded responsibilities of the Service under subsection (d).".

SEC. 303. USE OF NONSERVICE FUNDS FOR RENOVATION.

Section 305 (25 U.S.C. 1634) is amended to read as follows:

"EXPENDITURE OF NONSERVICE FUNDS FOR RENOVATION

"SEC. 305. (a) An Indian tribe is authorized to expend—

"(1) any funds of such tribe, including funds held in trust by the United States for such tribe the use of which is not otherwise restricted by law, and

"(2) any funds appropriated under Federal law which are not appropriated for expenditure through the Service and which are not otherwise restricted by law,

for the purpose of making any major renovation or modernization of any Service facility or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act (including an expenditure for the planning or designing of such renovation or modernization) if the requirements of subsection (b) are met.

"(b) The requirements of this subsection are met with respect to any renovation or modernization if the renovation or modernization—

"(1) does not require or obligate the Secretary to provide any additional employees or equipment,

"(2) is approved by the appropriate area director of the Service, and

"(3) is administered by the Indian tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

"(c) A renovation or modernization shall not be authorized by this section if such renovation or modernization would require the diversion of funds appropriated to the Service for any project which has a higher priority under the health facility priority system of the Service.".

SEC. 304. BETHEL, ALASKA, HOSPITAL.

Title III is amended by adding at the end thereof the following new section:

"BETHEL, ALASKA, HOSPITAL

"SEC. 306. (a) If a final administrative ruling by the Department of the Interior holds that the Bethel Native Corporation is entitled to conveyance of the title to the real property described in subsection (d)(1) under the Alaska Native Claims Settlement Act, such ruling shall not be subject to judicial review and title to such property shall be conveyed to the Bethel Native Corporation.

"(b) The Secretary is authorized, notwithstanding any other provision of law, to enter into an agreement with Bethel Native Corporation for an exchange of the real property described in subsection (d)(1) for—

"(1) the lands described in subsection (d)(2), or

"(2) any other Federal property which Bethel Native Corporation would have been able to select under the Alaska Native Claims Settlement Act.

"(c) If an agreement for the exchange of land is not entered into under subsection (b) by the date that is 90 days after the date of the ruling described in subsection (a), the Secretary shall purchase the lands described in subsection (d)(1) at fair market value.

"(d)(1) The real property referred to in subsection (a) is United States Survey Numbered 4000 other than the lands described in paragraph (2).

"(2) The lands referred to in subsection (b)(1) are the lands identified as tracts A and B in the determination AA-18959 of the Bureau of Land Management issued on September 30, 1983, pursuant to the Alaska Native Claims Settlement Act.".

PARLIAMENTARY INQUIRY

Mr. NIELSON of Utah. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. NIELSON of Utah. Mr. Chairman, on the perfecting amendment of the gentleman from Arizona [Mr. MCCAIN], that amendment passed but my amendment failed. That means that his amendment went down with mine; is that correct?

The CHAIRMAN. The perfecting amendment of the gentleman from Arizona prevailed to the bill, not to the gentleman's amendment, and at the present it is the prevailing amendment.

Mr. NIELSON of Utah. It is part of the bill, then?

The CHAIRMAN. The gentleman is correct. Yes; it is part of the bill.

AMENDMENT OFFERED BY MR. NIELSON OF UTAH

Mr. NIELSON of Utah. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NIELSON of Utah: Page 17, strike line 3 and all that follows through page 28, line 13 (and redesignate the subsequent titles of the bill accordingly).

Mr. NIELSON of Utah. Mr. Chairman, I will not take long on this. This is again a brandnew program which calls for $3.85 million in each of the next 3 years—that is, fiscal years 1988, 1989, and 1990—for facilities for sanitation, operation and maintenance, and also administration.

The reason that I oppose this is not because it is not a good idea to have sanitation facilities. It is not because I do not think that the Indians should have these sanitation facilities provided by the people with whom they work. It is simply that that is out of the purview of the Indian health care. It ought to come under Occupational Safety and Health Administration, or some other program. It does not need to be handled here. We have adequate means to take care of it elsewhere, and I do not think that it is time to start a brandnew program. Therefore, I offer to strike title III.

Mr. UDALL. Mr. Chairman, I rise in strong opposition to the gentleman's amendment.

This title makes some basic reforms in the way the administration handles the construction of Indian health and sanitation facilities.

Aside from the authorization of small amounts of funds to provide assistance to Indian tribes for emergency repair to sanitation facilities, all this title does is to require the Department of Health and Human Services to provide to the Congress reports and information that it already prepares.

This information is needed by the Congress in authorizing such projects and providing funding for them. The Department routinely prohibits the Indian Health Service from freely making that information available.

The administration opposes this title on the grounds that it requires burdensome new reporting requirements. That is not true. All it does is require them to give to the Congress information it already compiles.

I urge rejection of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah [Mr. NIELSON].

The amendment was rejected.

The CHAIRMAN. Are there other amendments to title III? If not, the Clerk will designate title IV.

The text of title IV is as follows:

TITLE IV—ACCESS TO HEALTH SERVICES

SEC. 401. GRANTS AND CONTRACTS WITH TRIBAL ORGANIZATIONS.

(a) Section 404 (25 U.S.C. 1622) is amended—

(1) by striking out "and" at the end of subsection (a)(2) and inserting in lieu thereof "or", and

(2) by striking out "shall include, but are not limited to," in subsection (b) and inserting in lieu thereof "may include, as appropriate,", and

(3) by adding "or" at the end of subsection (b)(3).

(b) Section 404(c) (25 U.S.C. 1622(c)) is amended by striking out "and" after "1983" and by insertifg before the period a comma and "$3,000,000 for the fiscal year ending September 30, 1988, $3,500,000 for the fiscal year ending September 30, 1989, and $4,000,000 for the fiscal year ending September 30, 1990".

SEC. 402. MEDICAID PROVISIONS.

(a) SKILLED NURSING FACILITY.—Section 1911 of the Social Security Act is amended by striking out "or skilled nursing facility" each place it appears and inserting in lieu thereof in each instance "skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan".

(b) REIMBURSEMENT.—Section 1911 of the Social Security Act is amended by adding at the end thereof the following new subsections:

"(c) The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.

"(d) Notwithstanding any other provision of law, payments to which any facility of the Indian Health Service (including a hospital, intermediate care facility, skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan) is entitled under a State plan approved under this title by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this title. In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the facilities of the Indian Health Service, for which such service unit makes collections, are entitled by reason of this section, if such amount is necessary for the purpose of making improvements in such facilities in order to achieve compliance with the conditions and requirements of this title. This subsection shall cease to apply when the Secretary determines and certifies that substantially all of the health facilities of such Service in the United States are in compliance with such conditions and requirements.".

(c) REPEALS.—Subsections (b) and (c) of section 402 of the Indian Health Care Improvement Act (42 U.S.C. 1396j, note) are repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to health care services performed on or after the date of the enactment of this Act.

SEC. 403. STUDY OF BARRIERS TO MEDICAID PARTICIPATION.

Title IV is amended by adding at the end thereof the following new section:

"STUDY OF BARRIERS TO MEDICAID PARTICIPATION

"SEC. 405. (a) The Secretary shall, in consultation with Indian tribes and tribal organizations, conduct a study of any barriers which may prevent Indians from receiving medical assistance under State plans approved under title XIX of the Social Security Act.

"(b) By no later than the date which is one year after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress a report on the study conducted under subsection (a). Such report shall include—

"(1) recommendations for legislation which—

"(A) would remove any barriers identified in such study which prevent Indians from receiving medical assistance under plans described in subsection (a) and,

"(B) would encourage participation by Indians in such plans; and

"(2) estimates, by service unit, of—

"(A) the number of Indians potentially eligible for medical assistance under such plans, and

"(B) the number of Indians receiving medical assistance under such plans.".

AMENDMENT OFFERED BY MR. NIELSON OF UTAH

Mr. NIELSON of Utah. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NIELSON of Utah: Page 28, strike line 14 and all that follows through page 31, line 26 (and redesignate the subsequent titles of the bill accordingly).

Mr. NIELSON of Utah. Mr. Chairman, this is another brandnew program, Medicaid and Medicare. This is getting into an area which is covered elsewhere. This is something that the administration opposes and does not think is necessary, and it is another $3 million one year, $3½ million, then $4 million. Who knows how it may grow in the future?

Again, I think that it is a matter of adding areas that do not belong in Indian health care, that should be administered directly under the Medicare and Medicaid Programs and do not belong in this bill, and I propose striking them, as I did the facilities and also the catastrophic aspects of the bill.

Mr. WAXMAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I oppose this amendment, which would strike all of title IV of the bill. This title is designed to increase access of eligible Indians to the Medicare and Medicaid Programs. The total lost, over 3 years, is only $10.5 million, for grants and contracts to Indian tribes. This is a reasonable provision, approved by the Congress 2 years ago.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah [Mr. NIELSON].

The amendment was rejected.

The CHAIRMAN. Are there other amendments to title IV? If not, the Clerk will designate title V.

The text of title V is as follows:

TITLE V—URBAN INDIAN HEALTH SERVICES

SEC. 501. REVISION OF PROGRAM.

Title V (25 U.S.C. 1651, et seq.) is amended to read as follows:

"TITLE V—HEALTH SERVICES FOR URBAN INDIANS

"PURPOSE

"SEC. 501. The purpose of this title is to encourage the establishment of programs in urban centers to make health services more accessible to urban Indians.

"CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

"SEC. 502. The Secretary, through the Service, shall enter into contracts with urban Indian organizations to assist such organizations to establish and administer, in the urban centers in which such organizations are situated, programs which meet the requirements set forth in this title. The Secretary, through the service, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract which the Secretary enters into with any urban Indian organization pursuant to this title.

"CONTRACTS FOR THE PROVISION OF HEALTH CARE OR REFERRAL SERVICES

"SEC. 503. (a) The Secretary, through the Service, shall enter into contracts with urban Indian organizations for the provision of health care or referral services for urban Indians residing in the urban centers in which such organizations are situated. Any such contract shall include requirements that the urban Indian organization successfully undertake to—

"(1) determine the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

"(2) determine the current health status of urban Indians residing in such urban center;

"(3) determine the current health care needs of urban Indians residing in such urban center;

"(4) identify all public and private health services resources within such urban center which are or may be available to urban Indians;

"(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

"(6) assist such health services resources in providing services to urban Indians;

"(7) assist urban Indians in becoming familiar with and utilizing such health services resources;

"(8) provide basic health education to urban Indians;

"(9) establish and implement manpower training programs to accomplish the referral and education tasks set forth in clauses (6) through (8) of this subsection;

"(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

"(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

"(12) where necessary, provide, or enter into, contracts for the provision of, health care services for urban Indians.

"(b) The Secretary, through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations to enter into contracts under this section. Such criteria shall, among other factors, include—

"(1) the extent of unmet health care needs of urban Indians in the urban center involved;

"(2) the size of the urban Indian population in the urban center involved;

"(3) the accessibility to, and utilization of, health care services (other than services provided under this title) by urban Indians in the urban center involved;

"(4) the extent, if any, to which the activities set forth in subsection (a) would duplicate—

"(A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to this title; or

"(B) any project funded under this title;

"(5) the capability of an urban Indian organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary under this section;

"(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

"(7) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an urban center; and

"(8) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

"CONTRACTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS

"SEC. 504. (a) The Secretary, through the Service, may enter into contracts with urban Indian organizations situated in urban centers for which contracts have not been entered into under section 503. The purpose of a contract under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract under section 503 with the urban Indian organization with which the Secretary has entered into a contract under this section.

"(b) Any contract entered into by the Secretary under this section shall include requirements that—

"(1) the urban Indian organization successfully undertake to—

"(A) document the health care status and unmet health care needs of the urban Indians in the urban center involved;

"(B) with respect to urban Indians in the urban center involved, determine the matters described in clauses (2), (3), (4), and (8) of section 503(b); and

"(2) the urban Indian organization complete performance of the contract within one year after the date on which the Secretary and such organization enter into such contract.

"(c) The Secretary may not renew any contract entered into under this section.

"EVALUATIONS; CONTRACT RENEWALS

"SEC. 505. (a) The Secretary, through the Service, shall develop procedures to evaluate compliance with, and performance of, contracts entered into by urban Indian organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

"(b) The Secretary, through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a contract under section 503 for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

"(c) If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract is not renewed under this section.

"(d) In determining whether to renew a contract with an urban Indian organization under section 503, or whether to enter into a contract with an urban Indian organization under section 503 which has completed performance of a contract under section 504, the Secretary shall review the records of the urban Indian organization, the reports submitted under section 507, and, in the case of a renewal of a contract under section 503, shall consider the results of the onsite evaluations conducted under subsection (b).

"OTHER CONTRACT REQUIREMENTS

"SEC. 506. (a) Contracts with urban Indian organizations pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935, as amended.

"(b) Payments under any contracts pursuant to this title may be made in advance or by the way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

"(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title.

"(d) In connection with any contract entered into pursuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for the use and maintenance of such facilities.

"(e) Contracts with urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

"REPORTS AND RECORDS

"SEC. 507. (a) For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract under this title, such organization shall submit to the Secretary a quarterly report including—

"(1) in the case of a contract under section 503, information gathered pursuant to clauses (10) and (11) of subsection (a) of such section;

"(2) information on activities conducted by the organization pursuant to the contract;

"(3) an accounting of the amounts and purposes for which Federal funds were expended; and

"(4) such other information as the Secretary may request.

"(b) The reports and records of the urban Indian organization with respect to a contract under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(c) The Secretary shall allow as a cost of any contract entered into under section 503 the cost of an annual private audit conducted by a certified public accountant.

"LIMITATION ON CONTRACT AUTHORITY

"SEC. 508. The authority of the Secretary to enter into contracts under this title shall be to the extent, and in an amount, provided for in appropriation Acts.

"AUTHORIZATIONS

"SEC. 509. There are authorized to be appropriated for contracts under this title—

"(1) $10,000,000 for fiscal year 1987,

"(2) $13,200,000 for fiscal year 1988,

"(3) $14,400,000 for fiscal year 1989, and

"(4) $15,800,000 for fiscal year 1990.".

AMENDMENT OFFERED BY MR. NIELSON OF UTAH

Mr. NIELSON of Utah. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NIELSON of Utah: Page 40, line 18, strike "$13,200,000" and insert "$10,000,000".

Page 40, line 19, strike "$14,400,000" and insert "$10,000,000".

Page 40, line 20, strike "$15,800,000" and insert "$10,000,000".

Mr. NIELSON of Utah. Mr. Chairman, the first amendment that I offered was basically an amendment to section 103 which reduced the money and kept it fiscally responsible. The next amendments I offered were to strike new programs, not to start new programs at the present time with our budget situation as it is.

This is like the first amendment. It is a freeze amendment. It leaves the urban program at $10 million for each of the fiscal years.

This was the amount which H.R. 4600 that was on the Suspension Calendar had, $10 million throughout, which I supported, and which many of us supported.

The administration would like to strike this fund entirely. They do not think that the urban program is doing what it is supposed to do, and they would prefer that it be struck entirely.

I do think that the urban program does some good, particularly for those Indians who are not living on reservations who need this access, and so I do not wish to strike it. However, I would like to freeze it. The reason that I would like to freeze it, as we have done on many bills this year, is because of our budget situation; we really should be freezing all programs or cutting whenever we can. Certainly this bill adds new programs. By the Members' votes they have indicated that they want those new programs. This is one that we have now which I believe is doing a good job, but I do not think that we have the funds to increase it by 32 percent, as this bill calls for in 1988, and so I suggest that it be frozen.

□ 1615

AMENDMENT OFFERED BY MR. MCCAIN AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. NIELSON OF UTAH

Mr. McCAIN. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. MCCAIN as a substitute offered by Mr. NIELSON of Utah:

Section 501 is amended by striking:

"SEC. 509. There are authorized to be appropriated for contracts under this title—

"(1) $10,000,000 for fiscal year 1987,

"(2) $13,200,000 for fiscal year 1988,

"(3) $14,400,000 for fiscal year 1989, and

"(4) $15,800,000 for fiscal year 1990.

And inserting in lieu of the following:

"SEC. 509. There are authorized to be appropriated for contracts under this title—

"(1) $10,000,000 for fiscal year 1987,

"(2) $11,200,000 for fiscal year 1988,

"(3) $12,400,000 for fiscal year 1989, and

"(4) $13,800,000 for fiscal year 1990.

Mr. McCAIN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment offered as a substitute for the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. McCAIN. Mr. Chairman, this amendment basically simply allows for what appears to be inflation in the following years.

I understand the concerns of the gentleman from Utah. I believe that urban health care clinics are crucial to urban Indians and Indian urban health care clinics are an important factor in this health care equation.

This amendment basically allows increases for fiscal years 1988, 1989, and 1990 to the extent of what I think would take care of inflation. It would reduce from the present bill some $6 million over a 3-year period leaving, however, the $10 million number for fiscal year 1987.

I would just like to point out again that urban health care clinics are a crucial part of the health care equation for our Indian population. I believe that some fiscal reductions can be made, but at the same time I do not believe that they should be as draconian as that suggested in the amendment of the gentleman from Utah [Mr. NIELSON].

I urge my colleagues to support this amendment as a substitute.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment. In 1976, Congress made a conscious decision that the Federal Government has some responsibility to ensure that Indian people who are forced to migrate to the urban areas receive adequate health services.

It did so, not by making provision for direct Federal health services, but by giving urban Indians the ability to reach out to existing health services in that urban area.

When health care costs and the costs of accessing such care are rising, this amendment would freeze these Indian people into a substandard health condition.

I oppose the amendment and urge the House to reject it.

Mr. WAXMAN. Mr. Chairman, I rise in opposition to the Nielson amendment. I rise in opposition to the amendment because it would reduce the authorizations for the urban Indian health program by $13.4 million over 3 years, leaving the program frozen at $10 million for each of the next 3 years.

This program is essential to California which has far more urban Indians than any other State. For that reason, among others, I would strongly oppose the amendment.

Mr. NIELSON of Utah. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to indicate that while I would prefer my amendment, which is a freeze for this program, as we have in many other programs, $10 million is a figure that both the chairman of the Committee on Interior and Insular Affairs and the chairman of the Committee on Energy and Commerce, Subcommittee on Health and the Environment, were willing to accept 4 or 5 short months ago. If $10 million was acceptable at that point, I do not know why it is so inadequate now. I am for the urban programs and the program the gentleman from Arizona [Mr. MCCAIN] has suggested as being a modest increase for inflation. I hope he is wrong on his numbers, because these are 12-percent increases each year. I would hope that inflation does not go back to 12 percent a year. I think the amount is excessive.

Obviously, I do not have sufficient votes to freeze. I wish I did. I will probably reluctantly support the amendment offered by the gentleman from Arizona [Mr. MCCAIN], but I want to point out it is a 12-percent increase per year. I think that it is much more than inflation, as he suggests.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona [Mr. MCCAIN] as a substitute for the amendment offered by the gentleman from Utah [Mr. NIELSON].

The amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah [Mr. NIELSON], as amended.

The amendment, as amended, was agreed to.

The CHAIRMAN. Are there other amendments to title V?

If not, the Clerk will designate title VI.

The text of title VI is as follows:

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

SEC. 601. ESTABLISHMENT OF INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE.

(a) AMENDMENT.—Title VI (25 U.S.C. 1661) is amended to read as follows:

"TITLE VI—ORGANIZATIONAL IMPROVEMENTS

"ESTABLISHMENT OF THE INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE

"SEC. 601. (a) In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as are or may be hereafter provided by Federal statute or treaties, there is established within the Public Health Service of the Department of Health and Human Services the Indian Health Service. The Indian Health Service shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Indian Health Service shall report to the Secretary through the Assistant Secretary for Health, of the Department of Health and Human Services, and shall not report to, or be under the supervision of, any other officer or employee of such Department.

"(b) The Indian Health Service shall be an agency within the Public Health Service of the Department of Health and Human Services, and shall not be an office, component, or unit of any other agency of the Department.

"(c) The Secretary shall carry out through the Director of the Indian Health Service—

"(1) all functions which were, on the day before the date of enactment of the Indian Health Care Amendments of 1986, carried out by or under the direction of the individual serving as Director of the Indian Health Service on such day;

"(2) all functions of the Secretary relating to the maintenance and operation of hospital and health facilities for Indians and the planning for, and the provision and utilization of, health services for Indians; and

"(3) all health programs under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including (but not limited to) programs under—

"(A) this Act;

"(B) the Act of November 2, 1921 (25 U.S.C. 13);

"(C) the Act of August 5, 1954 (68 Stat. 674);

"(D) the Act of August 16, 1957 (71 Stat. 370); and

"(E) the Indian Self-Determination and Education Assistance Act (Public Law 93-638).

"(d)(1) Notwithstanding any other provision of law, the Secretary may not reorganize, alter, or discontinue the Indian Health Service or allocate or reallocate any function which this section specifies shall be performed by the Director of the Indian Health Service or by the Secretary of Health and Human Services through the Director of the Indian Health Service.

"(2) Paragraph (1) shall not apply to any action taken by the Director of the Indian Health Service which the Director of the Indian Health Service determines to be appropriate.

"(e)(1) The Director of the Indian Health Service shall have the authority—

"(A) except to the extent provided in paragraph (2), to appoint and compensate employees for the Service in accordance with title 5, United States Code;

"(B) to enter into contracts for the procurement of goods and services to carry out the functions of the Service; and

"(C) to manage, expend, and obligate all funds appropriate for the Service.

"(2) Notwithstanding any other law, the provisions of section 12 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 472) shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a).

"MANAGEMENT INFORMATION SYSTEM; ACCESS TO PATIENT'S RECORDS

"SEC. 602. (a) The Secretary shall establish an automated management information system for the Service.

"(b) The information system established under subsection (a) shall include—

"(1) a cost accounting system,

"(2) a patient care information system for each area served by the Service, and

"(3) a privacy component that protects the privacy of patient information held by, or on behalf of, the Service.

"(c) Notwithstanding any other provisions of law, each patient shall have reasonable access to the medical or health records of such patient which are held by, or on behalf of, the Service.

"(d)(1) The Secretary shall provide—

"(A) all tribes or tribal organizations providing health services under a contract with the Service under the Indian Self-Determination Act, and

"(B) all urban Indian organizations providing health services under a contract with the Service under section 503 of this Act,

automated management information systems which meet the management information needs of each such tribe or organization with respect to the treatment by the tribe or organization of patients of the Service and which meet the management information needs of the Service.

"(2) The Secretary shall reimburse each such tribe or organization for the part of the cost of the operation of a system provided under paragraph (1) which is attributable to the treatment by the tribe or organization of patients of the Service.

"(3) The Secretary shall provide systems under paragraph (1) to tribes and organizations providing health services in California not later than September 30, 1988.".

(b) TRANSFERS.—All personnel, records, equipment, facilities, and interests in property that are administered by the Indian Health Service on the day before the date on which the amendments made by this section take effect shall be transferred to the Indian Health Service established by the amendment made by subsection (a) of this section. All transfers must be accomplished within 9 months of the date of enactment of this title. The Secretary is authorized to waive the Indian preference laws on a case-by-case basis for temporary transfers involved in implementing this title during such 9-month period.

(c) EFFECTIVE DATE.—Section 601 of the Indian Health Care Improvement Act added by subsection (a) of this section shall take effect 9 months from the date of the enactment of this Act.

The CHAIRMAN. Are there any amendments to title VI?

If not, the Clerk will designate title VII.

The text of title VII is as follows:

TITLE VII—MISCELLANEOUS

SEC. 701. LEASING AND OTHER CONTRACTS.

Section 704 (25 U.S.C. 1674) is amended—

(1) by striking out "Notwithstanding", and inserting in lieu thereof "(a) Notwithstanding", and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary may enter into leases, contracts, and other legal agreements with Indian tribes or tribal organizations which hold—

"(1) title to;

"(2) a leasehold interest in; or

"(3) a beneficial interest in (where title is held by the United States in trust for the benefit of a tribe);

facilities used for the administration and delivery of health services by the Indian Health Service or by programs operated by tribes or tribal organizations to compensate such tribes or tribal organizations for costs associated with the use of such facilities for such purposes. Such costs include rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and other expenses determined by regulation to be allowable.".

SEC. 702. JUVENILE ALCOHOL AND DRUG ABUSE.

Section 706 (25 U.S.C. 1676) is amended to read as follows:

"JUVENILE ALCOHOL AND DRUG ABUSE

"SEC. 706. (a) Within 180 days of the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall enter into an agreement with the Secretary of the Interior and the Secretary of Education to coordinate the efforts of their Departments related to alcohol and drug abuse among Indian juveniles. The agreement shall provide for the identification and coordination of available resources and programs to combat Indian juvenile alcohol and drug abuse through prevention, education, counseling, and referral. The Secretary shall publish such agreement in the Federal Register within 30 days after an agreement has been entered into pursuant to this subsection.

"(b) The Secretary, acting through the Service and in consultation and cooperation with the Secretary of the Interior and the Secretary of Education, shall develop a program to provide training in—

"(1) preventive education;

"(2) the identification of juvenile alcohol and drug abusers; and

"(3) counseling techniques on juvenile alcohol and drug abuse.

Such training shall be provided to elementary and secondary teachers and counselors—

"(A) in schools operated by the Bureau of Indian Affairs;

"(B) in schools operated under contract with the Bureau of Indian Affairs; and

"(C) in public schools on or near Indian reservations (including public schools in Oklahoma and Alaska with significant numbers of Indian students).

The Service may provide such training either directly or through contract with qualified private or public entities.

"(c) The Secretary of the Interior, acting through the Bureau of Indian Affairs and in consultation with the Service, shall review existing literature and reports on juvenile alcohol and drug abuse, including studies and school curricula and any other material relevant to an understanding of the problem of juvenile alcohol and drug abuse, and shall make available the results of such review to the schools described in subsection (b).

"(d) The Secretary shall establish an Office of Alcohol and Drug Abuse within the Service which shall be responsible for the administration of programs and authorities of the Service in the field of alcohol and drug abuse. The Office shall have assigned to it a number of full-time equivalent positions which shall not be less than eight full-time equivalent positions in the Central Office of the Service and one full-time equivalent position in each Service area and Program Office.

"(e) For the purpose of implementing subsection (b) there is authorized to be appropriated $1,500,000 for each of the fiscal years 1988, 1989, and 1990.".

SEC. 703. NUCLEAR RESOURCE DEVELOPMENT HEALTH HAZARDS.

(a) Subsections (a) and (b) of section 707 (25 U.S.C. 1677) are amended to read as follows:

"(a) The Secretary, acting through the Service, shall enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the health hazards to Indian miners and to Indians living on or near Indian reservations or in Indian communities which result from development of nuclear resources. Such study shall include—

"(1) an evaluation of the nature and extent of nuclear resource development related health problems currently exhibited among Indians and the causes of such health problems;

"(2) an analysis of the potential effect of ongoing and future nuclear resource development on or near Indian reservations and communities;

(3) an evaluation of the types and nature of activities, practices, and conditions causing or affecting such health problems, including uranium mining and milling, uranium mine tailing deposits, nuclear power

plant operation and construction, and nuclear waste disposal;

"(4) a summary of any findings and recommendations provided in Federal and State studies, reports, investigations, and inspections during the 10-year period ending on the date of enactment of the Indian Health Care Amendments of 1986 that directly or indirectly relate to the activities, practices, and conditions affecting the health or safety of such Indians; and

"(5) an evaluation of the efforts that have been made by Federal and State agencies and mining and milling companies to effectively carry out an education program for such Indians regarding the health and safety hazards of nuclear resource development.

To assist the Academy in conducting such study, the Secretary and the Secretary of the Interior shall furnish at the request of the Academy any information which the Academy deems necessary for the purpose of conducting the study. In addition, they shall cooperate with the Academy in obtaining information necessary to carry out the intent of the study.

"(b) Upon completion of the study described in subsection (a), the Secretary, acting through the Service, shall develop, on the basis of the results of such study, a health care plan to address the health problems studied under subsection (a). The plan shall include—

"(1) methods for diagnosing and treating Indians currently exhibiting nuclear resource development related health problems;

"(2) preventive care for Indians who may be exposed to such health hazards as a result of nuclear resource development, including the monitoring of the health of individuals who have or may have been exposed to excessive amounts of radiation, or otherwise affected by nuclear development activities that have had or could have a serious impact upon the health of such individuals; and

"(3) a program of education for Indians who, by reason of their work or geographic proximity to nuclear development activities, may experience health problems.".

(b) Subsection (c) of section 707 is amended by striking out "no later than the date eighteen months after the date of the enactment of this section" and inserting in lieu thereof "by no later than the date which is eighteen months after the date of enactment of the Indian Health Care Amendments of 1986".

(c) Subsection (f) of section 707 (25 U.S.C. 1677(f)) is amended to read as follows:

"(f) There are authorized to be appropriated $750,000 for the purpose of conducting the study described in subsection (a). Such funds shall remain available for expenditure until the date which is eighteen months after the date such funds are appropriated.".

SEC. 704. ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.

Subsection (a) of section 708 (25 U.S.C. 1678(a)) is amended—

(1) by striking out "1984" and inserting in lieu thereof "1989", and

(2) by striking out "Indians in such State" and inserting in lieu thereof "members of federally recognized Indian tribes of Arizona".

SEC. 705. ELIGIBILITY OF CALIFORNIA INDIANS.

Section 709 (25 U.S.C. 1679) is amended to read as follows:

"ELIGIBILITY OF CALIFORNIA INDIANS

"SEC. 709. (a) The following California Indians shall be eligible for care from the Service:

"(1) Any member of a federally recognized Indian tribe.

"(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant—

"(A) is living in California,

"(B) is a member of the Indian community served by a local program of the Service, and

"(C) is regarded as an Indian by the community in which such descendant lives.

"(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

"(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

"(b) Paragraph (4) of subsection (a) shall not apply after September 30, 1988.".

SEC. 706. CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.

Section 710 (25 U.S.C. 1680) is amended to read as follows:

"CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

"SEC. 710. The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, and Santa Clara shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to Indians in such State.".

SEC. 707. CONTRACT HEALTH FACILITIES.

Title VII is amended by adding at the end thereof the following new section:

"CONTRACT HEALTH FACILITIES

"SEC. 711. (a) The Indian Health Service shall provide funds for health care programs and facilities operated by tribes and tribal organizations under contracts with the Indian Health Service under the Indian Self-Determination Act—

"(1) for the maintenance and repair of clinics owned or leased by such tribes or tribal organizations,

"(2) for employee training,

"(3) for cost-of-living increases for employees, and

"(4) for any other expenses relating to the provision of health services,

on the same basis as such funds are provided to programs and facilities operated directly by the Indian Health Service.

"(b) In the case of eligible California Indians as defined by section 709 who are not members of Indian tribes or eligible for membership in such tribes, the Secretary may not enter into a contract to provide health services to such Indians under section 103 of the Indian Self-Determination Act if 51 per centum of the adult population of such Indians object prior to the award of such contract through any legally established organization of Indians representative of such Indians, in which case the Secretary, acting through the Service, shall make alternate arrangements for the delivery of health care services to such Indians. In making such alternate arrangements for such Indians, the Service may—

"(1) provide services directly to some or all of such Indians through its own facilities,

"(2) purchase services for some or all of such Indians on a contract basis,

"(3) contract with a qualified organization representing some or all of such Indians for the provision of services under the terms of the third proviso of the first paragraph under the heading "Secretary" in the division relating to general provisions of the Act of April 30, 1908 (35 Stat. 71, chapter 153; 25 U.S.C. 47), popularly known as the Buy Indian Act, or

"(4) make other effective arrangements for the delivery of health care services to such Indians.

"(c) Nothing in this section shall be construed to restrict or interfere with the right of any Indian tribe to contract for health services on behalf of its own members.".

SEC. 708. NATIONAL HEALTH SERVICE CORPS.

(a) NATIONAL HEALTH SERVICE CORPS.—Title VII, as amended by section 707 of this Act, is further amended by adding at the end thereof the following new section:

"NATIONAL HEALTH SERVICE CORPS

"SEC. 712. The Secretary of Health and Human Services shall not—

"(1) remove a member of the National Health Service Corps from a health facility operated by the Indian Health Service or by a tribe or tribal organization under contract with the Indian Health Service under the Indian Self-Determination Act; or

"(2) withdraw funding used to support such member,

unless the Secretary, acting through the Service, has ensured that the Indians receiving services from such member will experience no reduction in services.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect as of January 1, 1984.

SEC. 709. ADDITIONAL PROVISIONS.

Title VII, as amended by sections 707 and 708 of this Act, is further amended by adding at the end thereof the following new sections:

"SERVICE TO INELIGIBLE PERSONS

"SEC. 713. (a)(1) The Secretary, acting through the Service, may provide or authorize the provision of medical care, treatment, or benefits by the Service to persons who are not otherwise eligible for such services in health facilities maintained by the Service or contracted under the Indian Self-Determination Act (Public Law 93-638) or through contract health care services, subject to the limitations of this section.

"(2) Persons eighteen years of age or under who are the natural or adopted children (including foster- and step-children), legal wards, or orphans of an eligible Indian person and who are not otherwise eligible for the medical care, treatment, or benefits of the Service shall be eligible for all such services on the same basis and subject to the same rules as apply to eligible Indians until their nineteenth birthday. The existing potential medical needs of such persons shall be taken into consideration by the Service in determining the need for, or the allocation of, its health resources. Any such person who has been determined to be legally incompetent prior to their nineteenth birthday shall remain eligible for such services until one year after the date such disability has been removed.

"(3) Non-Indian spouses of eligible Indians or spouses of Indian descent who are not otherwise eligible for the medical care, treatment, or benefits of the Service shall not be eligible for the medical care, treatment, or benefits of the Service unless they are made eligible, as a class, by an appropriate resolution of the governing body of the relevant Indian tribe. The medical needs of persons made eligible under this subsection

shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

"(b)(1)(A) At the request of the Indian tribe or tribes included within the service area of any service unit of the Service, the Secretary may authorize the medical care and treatment of otherwise ineligible persons residing within such service area in health facilities maintained and operated by the Service.

"(B) Persons receiving medical care and treatment under this subsection shall be liable for the payment for such services under a fee schedule adopted by the Secretary which, in the judgment of the Secretary, shall result in reimbursement in an amount not less than the actual cost of providing the service. Fees collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Fees collected pursuant to this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

"(2)(A) Except as provided in subparagraph (B), where the governing body of an Indian tribe or, in the case of a multitribal service area, any Indian tribe revokes its concurrence to the provision of services under paragraph (1)(A), the Secretary's authority to provide such service shall terminate at the end of the fiscal year following the fiscal year in which such revocation was adopted.

"(B) In California, in the case of a multitribal service area, unless 51 per centum or more of the Indian tribes in the service area revoke their concurrence to the provision of services under paragraph (1)(A), the authority to provide such service shall not be affected.

"(3)(A) In the case of health facilities operated directly by the Service, such medical care and treatment may be provided under this subsection only where the Secretary and the affected tribe or tribes have jointly determined that—

"(i) the provision of such service will not result in a denial or diminution of services to eligible Indian persons; and

"(ii) there is no reasonable alternative health facility or service, within or without the service unit area, available to meet the medical needs of such person.

"(B) In the case of health facilities operated under contract under the Indian Self-Determination Act, the governing body of the Indian tribe or tribal organization providing health services under a contract with the Service under the Indian Self-Determination Act is authorized to determine the eligibility for such services of persons who are not otherwise eligible for such services. Such determination shall be in accordance with the requirements of this section.

"(4) The Service may continue to provide medical care, treatment, and benefits to persons not provided service under subsection (a) or (b) to achieve stability in a medical emergency, to prevent the spread of a communicable disease or otherwise deal with a public health hazard; to provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum, or to immediate family members of an eligible person where such care is directly related to the treatment of the eligible person.

"(5) Hospital privileges in health facilities operated and maintained by the Service or operated under contract under the Indian Self-Determination Act may be extended to non-Service health care practitioners. Such non-Service health care practitioners shall not be regarded as employees of the Federal Government for purposes of the provisions of title 28 of the United States Code relating to Federal tort claims except in the course of providing services to eligible persons as a part of the conditions under which privileges are extended under this subsection.

"RESTRICTIONS ON THE USE OF INDIAN HEALTH SERVICE APPROPRIATIONS

"SEC. 714. (a) Unless otherwise specifically provided, any restriction placed on the use of appropriations for Indian health services shall not be interpreted—

"(1) to apply to the use of funds other than such appropriated funds by an entity with a contract with the Indian Health Service;

"(2) to prohibit the support of litigation with such other funds; or

"(3) to prohibit the promotion of public support for or opposition to any legislative proposal with such other funds.

"(b) The Service may not offset or limit the amount of funds obligated to any entity under contract with the Service because of the use of funds, other than funds appropriated to the Indian Health Service, by such entity for the purposes described in paragraphs (1) through (3) of subsection (a).

"INFANT AND MATERNAL MORTALITY

"SEC. 715. (a) Not later than January 1, 1987, the Secretary shall develop and begin implementation of a plan to achieve the following objectives by January 1, 1991:

"(1) Reduction of the rate of Indian infant mortality in each Area Office of the Service to twelve deaths per one thousand live births or to that of the United States population, whichever is lower.

"(2) Reduction of the rate of maternal mortality in each Area Office of the Service to five deaths per one hundred thousand live births or to that of the United States population, whichever is lower.

"(b) The Secretary shall report to Congress on January 1 of each year beginning after fiscal year 1987 on the progress that has been made toward achieving the objectives described in subsection (a).

"CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA

"SEC. 716. The Secretary, acting through the Service, is directed to provide contract health services to members of the Turtle Mountain Band of Chippewa Indians that reside in the Trenton Service Area of Divide, McKenzie, and Williams counties of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the State of Montana.".

SEC. 710. INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING.

Title VII, as amended by sections 707, 708, and 709 of this Act, is further amended by adding at the end thereof the following new sections:

"INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING

"SEC. 717. (a) The Secretary shall examine the feasibility of entering into an arrangement for the sharing of medical facilities and services between the Indian Health Service and the Veterans' Administration and shall, in accordance with subsection (b), prepare a report on the feasibility of such an arrangement and submit such report to the Congress not later than September 30, 1988.

"(b) The Secretary may not make any recommendation under subsection (a) nor take any action under subchapter IV of part VI of title 38, United States Code which would impair—

"(1) the priority access of any Indian to health care services provided through the Indian Health Service;

"(2) the quality of health care services provided to any Indian through the Indian Health Service;

"(3) the priority access of any veteran to health care services provided by the Veterans' Administration;

"(4) the quality of health care services provided to any veteran by the Veterans' Administration;

"(5) the eligibility of any Indian person to receive health services through the Indian Health Service; or

"(6) the eligibility of any Indian person who is a Veteran, to receive health services through the Veterans' Administration.

"NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM

"SEC. 718. (a) The Secretary shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

"(b) The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate Committees of Congress by January 1, 1990.

"(c)(1) There is authorized to be appropriated for the purposes of this section $400,000 for each of the fiscal years 1988, 1989, and 1990.

"(2) Not more than 10 percent of the funds appropriated under paragraph (1) for any fiscal year may be used for administrative purposes.

"STUDY OF HEALTH CARE NEEDS OF NATIVE HAWAIIANS AND OTHER NATIVE PACIFIC ISLANDERS

"SEC. 719. (a)(1) The Secretary shall conduct a study of the physical and mental health care needs of Native Hawaiians and other Native American Pacific Islanders.

"(2) In conducting the study required under paragraph (1), the Secretary shall consult with the Commissioner of the Administration for Native Americans, the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Indian Health Service, leaders in the field of health care, and representatives of Native Hawaiians and other Native American Pacific Islanders.

"(b) By no later than the date that is 1 year after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress a report on the study conducted under subsection (a). Such report shall include—

"(1) an assessment of the access of, and barriers to, Native Hawaiians and other Native American Pacific Islanders in receiving physical and mental health care services,

"(2) an assessment of the physical and mental health care needs of Native Hawaiians and other Native American Pacific Islanders, and

"(3) specific recommendations for the development of a national strategy to address such needs.".

SEC. 711. DEFINITIONS.

Section 4 (25 U.S.C. 1603) is amended by striking out subsections (i), (j), and (k), and by inserting in lieu thereof the following new subsections:

"(i) 'Area Office' means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographical area.

"(j) 'Service Unit' means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act through which services are provided, directly and by contract, to the eligible Indian population within a defined geographic area.

"(k) 'Native Hawaiian' means any individual who has any ancestors that were natives, prior to 1778, of the area that now comprises the State of Hawaii.

"(l) 'Native American Pacific Islander' means—

"(1) any Native Hawaiian,

"(2) any of the indigenous people residing in Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; or

"(3) any individual whose direct ancestors are from Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.".

AMENDMENT OFFERED BY MR. MC CAIN

Mr. McCAIN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McCAIN: Strike section 705 and insert the following:

SEC. 705. ELIGIBILITY OF CALIFORNIA INDIANS.

Section 709 (25 U.S.C. 1679) is amended by placing a "period" at the end of the September 30, 1982" and deleting", and ending with the fiscal year ending September 30, 1984.",

Strike section 706 and insert in lieu thereof the following:

SEC. 706. "CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA".

"SEC. 710. The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura shall be designated as a contract health service delivery area by the service for the purpose of providing contract health services to Indians in such State.".

Mr. McCAIN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. McCAIN. Mr. Chairman, I regret that this issue has come up today because I think it is important that we get this bill passed and resolved.

As you may recall, some time ago, this bill, the Indian health care amendments, was brought to the floor under suspension of the rules. At that time, I objected to the passage of the bill under suspension of the rules, and the bill was defeated.

A major reason why I objected was simply because of the so-called California or Waxman amendment to this piece of legislation.

After the bill was defeated, Mr. Chairman, I approached the gentleman from California [Mr. WAXMAN] and told him that I was more than happy to try to compromise and work out some kind of an accommodation on this issue. He nodded in the affirmative, and there has been no communication between him or his staff with me or my staff since that time. I had hoped that we could at least at some time work out some kind of an accommodation to satisfy what are his genuine concerns about California Indians, and mine about what this does to the scarce dollars that are available for Indian health care.

Unfortunately, that did not take place, and we are now here on the floor with a portion of the bill which the administration has stated categorically will lead to a presidential veto if we pass this bill. If the bill is vetoed, I do not believe there is anyone who believes we can revisit it again this year, and we will again deprive our Native Americans of much needed health care that they deserve.

My amendment would make permanent the existing law concerning eligibility of California Indians by removing the sunset provision. This means that those Indians in California currently served by the Indian Health Care Service will remain eligible for services.

There would be no way of expanding services beyond this service group, except by tribes, and tribes traditionally can determine their own membership.

This amendment would address the problems described by the administration in its position and in the President's veto statement of similar legislation last Congress. The definition of California contract care delivery areas is strongly opposed by the administration and by this Member. It is this language that would increase eligibility for Federal health care by an estimated 30,000 persons. There has been no evidence presented on why these nontribal persons should receive Federal health care.

This amendment would reduce the areas which would be contract health care delivery areas and reflect the current law. Again, there would be no reduction in existing service.

□ 1625

Together, this two-part amendment would address the concerns of the administration about California eligibility be consistent with our Federal Government-to-Government policy of dealing with Indian tribes, and assure currently eligible California Indians that they will continue to receive services.

Mr. Chairman, the National Tribal Chairman's Association, the elected leaders of Indian country, support this amendment; and later on if I have time, I will quote from some of the letters I have received from Indian tribes throughout this Nation.

I want to point out, Mr. Chairman, it is not the business of this body traditionally to pass legislation for which the vast majority of Indians are opposed, and this piece of legislation is opposed by the National Tribal Council Association, and others.

The Santa Rosa Rancheria California Tribe wrote:

We object to section 709 because the policy of federal recognition would ultimately be undermined, since the benefits that accrue to native people would be diluted because of increased services demanded by "self-identified" Indians in the area of their residence.

The Apache Tribe of Oklahoma, Mr. Chairman, says:

It is feared that the result will be to open the door to thousands of persons for IHS services who are truly not Indian. A precedent might be set for other States to rely upon Federal IHS programs to serve all self-identified Indians in their State; thereby reducing its responsibility to all of its citizens.

The pueblo of Acoma, NM:

The basic Federal Indian Health Services should be limited to members of the federally-recognized Indian tribes wherever they may live.

Mr. Chairman, I believe that this amendment recognizes the unique nature of California Indians. Their history is a sad chapter in U.S.-tribal relations, but Congress addressed this issue in 1980, and the McCain amendment preserves this decision.

I strongly urge, for the sake of the California Indians, for the sake of getting this legislation signed into law by the President, and for the sake of justice, that we approve this amendment overwhelmingly.

(On request of Mr. LAGOMARSINO and by unanimous consent, Mr. McCAIN was allowed to proceed for 1 additional minute.)

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. McCAIN. I am glad to yield to the gentleman from California [Mr. LAGOMARSINO], a distinguished member of the committee, who has taken an abiding and long-standing interest, and has deep knowledge on Indian issues.

Mr. LAGOMARSINO. Mr. Chairman, I want to rise in support of the McCain amendment. The Indian Health Service serves both the Santa Ynez Indian Tribe in my district, and the Urban Health Care Clinic, which is also in my district.

The McCain amendment would not affect either of those entities; either of those services, and the Santa Ynez Tribe supports the McCain amendment.

The history of California Indians is a sad one, especially with regard to health care, but I believe the McCain amendment adequately addresses the unique nature of California without providing an opportuntiy to expand eligibility and, as the gentleman from Arizona [Mr. MCCAIN] points out, adoption of his amendment will probably assure signature of this bill; and that is what we should be about, trying to get legislation enacted, not just legislation to the President's desk.

Mr. WAXMAN. Mr. Chairman, I rise in opposition to the McCain amendment.

Mr. Chairman, I rise in opposition to the amendment. I wished I had an opportunity to negotiate any kind of potential compromise with Mr. MCCAIN, but I did not hear from him, and I would have looked forward to talking to him about this matter.

What his amendment does and what he seems to be set on doing is to terminate the health care to roughly 53,000 California Indians and their families who are now eligible for and receiving Indian Health Service health services.

It appears what we have is a scramble for a limited pie in terms of the allocation of the funds. We are not going to save money if the McCain amendment is adopted; what it would do is lead to the reallocation of money, of much of the funding that now goes to California Indians and it would go to Indians in other States; not surprisingly, to the Indians in Arizona.

The McCain amendment makes absolutely no provision for these California Indians who would be terminated from any health care coverage. The McCain amendment would wreck the network of 27 rural Indian health clinics that has been built up throughout the State of California, evidently not in Mr. LAGOMARSINO's district, but throughout the rest of the State, and most of these clinics would be forced to close, forcing their patients to seek care elsewhere.

By limiting eligibility in California to members of federally recognized California tribes, the McCain amendment ignores a long history of Federal termination of California tribes and refusal by the Federal Government to ratify treaties negotiated with California tribes.

Ralph Forquera, a professor of American Indian studies at San Diego State University and a registered California Mission Indian, put it this way in a recent letter:

> The McCain amendment indicates a lack of knowledge with regard to the history of oppression and severe racial discrimination perpetuated against California Indians. Unfortunately, this oppression continues to this day in the form of bureaucratic restrictions through eligibility requirements which fail to recognize the unique conditions in California, through continued racial prejudice within the community, and through other forms of disenfranchisement.

Mr. MCCAIN argues that the California provision would allow Federal health benefits to those who are not now truly needy Indians, or covered. The truth of the matter is the Federal Government right now considers the California Indians, defined by the provisions in the bill, to be eligible for IHS services and pays for their care.

These California Indians certainly view themselves and are viewed by others as truly Indians, even though the Federal Government, for historical reasons, does not recognize their tribes.

So I would urge we oppose the McCain amendment. It would change the basis for the allocation to the various Indian health programs; it would do disastrous disservice to the Indians in California with no jurisdiction that I can see in my mind for doing so.

We are only going to take away from those who are now getting services, where there is such a great need for expansion, and take away those funds to give to other States, to other Indians based on some kind of notion of Federal recognition of the tribes.

This was the provision in the bill which would be struck by the McCain amendment. Part of the bill that passed this House in the last Congress; we ought to stay with it. I cannot believe that we cannot work out a bill that the President will sign. In fact, I have every confidence that we will, and I would urge the defeat of the McCain amendment.

Mr. NIELSON of Utah. Mr. Chairman, I rise in opposition to the amendment.

The gentleman from Arizona [Mr. MCCAIN] has, by his amendment to title II, provided some $20 million each year for services. He has opposed the motion to strike the facilities, and has given a modest increase to the urban program.

It seems to me that this is a very good program. We worked over it very carefully in the Committee on Energy and Commerce where it had careful review. We had a look at the amount of money going to the Indian health care throughout the country.

Arizona leads the list. Arizona, per capita, is the highest in the country. No wonder the people in Arizona do not wish to share their wealth. They do not even share it well within the Navajo members outside Arizona: Utah, New Mexico, and Colorado do not get their fair share of the Navajo funds in that area.

California Indians receive almost the bottom amount per State, along with Utah Indians, among the lowest in the country.

I support the gentleman from California, who has worked diligently on this. I think he has good arguments on his side. This bill has passed twice in this Congress and several times in the House in committees. I think we should stick with it. The amount of money we are talking about is something like $2,650,000 next year. We did not want to cut $12 million earlier; we did not want to cut $4 million or $3 million, so we are worrying about $2 million, which is far more justifiable than the ones I tried to strike.

So I do oppose the amendment, and support the gentleman from California for what I think is a good program. If you are talking about fairness and equity, and giving true Indian health care to those who need it, I think we should defeat the McCain amendment.

Mr. STRANG. Mr. Chairman, I rise in support of the McCain amendment and in support of the comments offered in its favor by Mr. MCCAIN and my colleague, Mr. LAGOMARSINO; and I would yield to the gentleman from Arizona [Mr. MCCAIN].

Mr. MCCAIN. Mr. Chairman, I think that it is very foolish for the gentleman from California [Mr. WAXMAN] to think that this bill is going to be signed by the President with this provision included.

I also reject his statements concerning the draconian effects that it would have on California Indians. It does not—I repeat—does not require a reduction of service, nor is there any intent of this gentleman or the legislation to have that happen.

I cannot imagine the National Tribal Council Association, the leading body of native Americans in this country, supporting the McCain amendment if they thought it was going to deprive native Americans of health service. It is ludicrous to expect that they would be endorsing the McCain amendment if that were going to be the case; and I believe the gentleman from California knows better.

So I strongly suggest that without the support of the Indian community in America, that the Waxman amendment, that the Waxman part of this bill should be removed by means of the McCain amendment and I strongly urge my colleagues to do so.

□ 1635

Mr. STRANG. Reclaiming my time, Mr. Chairman, I would point out that the California provisions would allow Federal benefits to thousands of persons who are not truly Indians and would make it difficult for real tribes to achieve the stated goal of health equity. The California provisions would provide a precedent for many groups nationally to receive Federal funding without a historical or legal claim to those services such as State-recognized tribes. Finally, the Califor-

nia provisions change the basis for Federal tribal relations from a political government-to-government basis to one based on race, which may be subject to a constitutional challenge. I urge the support of the McCain amendment and yield back the balance of my time.

Mr. WAXMAN. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. Without objection, the gentleman will be recognized for 5 minutes.

There was no objection.

Mr. WAXMAN. Mr. Chairman, section 705 of the bill provides that the following California Indians will be eligible for care from the IHS: First, members of federally recognized tribes; second, descendants of Indians who lived in California on June 1, 1852, who are members of the Indian community now served by the IHS; third, Indians holding certain trust interests; and fourth, Indians listed on certain plans for distribution of California rancherias and reservations and their dependents.

The McCain amendment would say only those who are members of the federally recognized tribes would be eligible to be served under the Indian health program. This amendment, and let me just reiterate it: according to tribal estimates compiled by the Office of Technology Assessment would cover 22,000, thus Mr. McCAIN's amendment would terminate from the IHS coverage roughly 53,000 California Indians who are currently eligible for and receiving IHS services. This is not the Waxman amendment; this is the amendment out of the Committee on Energy and Commerce which had bipartisan support and it is part of the bill before us, and I would urge we stick with the bill and defeat the McCain amendment which is so contrary to the interests of 53,000 California Indians.

The CHAIRMAN. The time of the gentleman from California has expired. Do other Members seek recognition?

If not, the question is on the amendment offered by the gentleman from Arizona [Mr. McCAIN].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. McCAIN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 393]

Ackerman	Dreier	Kolter
Akaka	Duncan	Kostmayer
Alexander	Durbin	Kramer
Anderson	Dwyer	LaFalce
Andrews	Dymally	Lagomarsino
Annunzio	Dyson	Lantos
Anthony	Eckart (OH)	Latta
Applegate	Eckert (NY)	Leach (IA)
Armey	Edgar	Leath (TX)
Atkins	Edwards (CA)	Lehman (CA)
AuCoin	Edwards (OK)	Lent
Badham	Emerson	Levin (MI)
Barnes	English	Levine (CA)
Bartlett	Erdreich	Lewis (FL)
Barton	Evans (IA)	Lightfoot
Bateman	Evans (IL)	Lipinski
Bates	Fascell	Lloyd
Bedell	Fawell	Loeffler
Beilenson	Fazio	Long
Bennett	Feighan	Lott
Bentley	Fiedler	Lowery (CA)
Bereuter	Fields	Lowry (WA)
Berman	Fish	Lujan
Bevill	Flippo	Luken
Biaggi	Florio	Lungren
Bilirakis	Foglietta	Mack
Bliley	Foley	MacKay
Boehlert	Ford (MI)	Madigan
Boggs	Frank	Markey
Boner (TN)	Franklin	Marlenee
Bonior (MI)	Frenzel	Martin (IL)
Bonker	Frost	Martin (NY)
Borski	Fuqua	Martinez
Bosco	Gallo	Matsui
Boucher	Garcia	Mavroules
Boulter	Gaydos	Mazzoli
Boxer	Gejdenson	McCain
Brooks	Gekas	McCandless
Broomfield	Gephardt	McCloskey
Brown (CA)	Gibbons	McCollum
Brown (CO)	Gilman	McCurdy
Bruce	Gingrich	McDade
Bryant	Glickman	McEwen
Burton (IN)	Gonzalez	McGrath
Bustamante	Goodling	McHugh
Byron	Gordon	McKernan
Carney	Gradison	McKinney
Carper	Gray (IL)	McMillan
Carr	Gray (PA)	Meyers
Chandler	Green	Mica
Chapman	Gregg	Michel
Chappell	Guarini	Mikulski
Chappie	Gunderson	Miller (CA)
Clay	Hall (OH)	Miller (OH)
Clinger	Hall, Ralph	Miller (WA)
Coats	Hamilton	Mineta
Cobey	Hammerschmidt	Mitchell
Coble	Hansen	Moakley
Coelho	Hatcher	Molinari
Coleman (MO)	Hayes	Mollohan
Coleman (TX)	Hefner	Monson
Collins	Hendon	Montgomery
Combest	Henry	Moody
Conte	Hiler	Moorhead
Cooper	Hillis	Morrison (CT)
Coughlin	Holt	Morrison (WA)
Courter	Hopkins	Mrazek
Coyne	Horton	Murphy
Craig	Howard	Murtha
Crane	Hoyer	Myers
Crockett	Hubbard	Natcher
Daniel	Huckaby	Nelson
Dannemeyer	Hughes	Nichols
Darden	Hutto	Nielson
Daschle	Jacobs	Nowak
Daub	Jeffords	Oakar
Davis	Jenkins	Oberstar
de la Garza	Johnson	Obey
DeLay	Jones (NC)	Olin
Derrick	Jones (OK)	Ortiz
DeWine	Jones (TN)	Owens
Dicks	Kanjorski	Oxley
Dingell	Kaptur	Packard
DioGuardi	Kasich	Panetta
Donnelly	Kastenmeier	Parris
Dorgan (ND)	Kennelly	Pashayan
Dornan (CA)	Kildee	Pease
Dowdy	Kleczka	Penny
Downey	Kolbe	Pepper
Perkins	Sikorski	Thomas (CA)
Petri	Siljander	Thomas (GA)
Pickle	Sisisky	Torres
Porter	Skeen	Torricelli
Price	Skelton	Towns
Pursell	Slattery	Traficant
Rahall	Slaughter	Traxler
Ray	Smith (FL)	Udall
Regula	Smith (IA)	Valentine
Reid	Smith (NE)	Vander Jagt
Richardson	Smith (NJ)	Vento
Ridge	Smith, Denny (OR)	Visclosky
Rinaldo	Smith, Robert (NH)	Volkmer
Ritter	Smith, Robert (OR)	Vucanovich
Roberts	Snowe	Walgren
Robinson	Snyder	Walker
Roe	Solarz	Watkins
Roemer	Solomon	Waxman
Rogers	Spence	Weaver
Rostenkowski	Spratt	Weber
Roth	St Germain	Weiss
Roukema	Staggers	Wheat
Rowland (CT)	Stallings	Whitley
Rowland (GA)	Stangeland	Whittaker
Roybal	Stark	Whitten
Sabo	Stenholm	Wirth
Savage	Strang	Wise
Saxton	Studds	Wolf
Scheuer	Stump	Wolpe
Schneider	Sundquist	Wortley
Schroeder	Swift	Wright
Schulze	Swindall	Wyden
Schumer	Synar	Wylie
Seiberling	Tallon	Yates
Sensenbrenner	Tauke	Young (AK)
Sharp	Tauzin	Young (FL)
Shaw	Taylor	Young (MO)
Shelby		Zschau
Shumway		
Shuster		

□ 1700

The CHAIRMAN. Three hundred eighty-two Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Arizona [Mr. McCAIN] for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 206, noes 180, not voting 45, as follows:

[Roll No. 394]

AYES—206

Archer	Coughlin	Gallo
Armey	Courter	Gekas
Badham	Craig	Gilman
Barnes	Crane	Gingrich
Bartlett	Daniel	Glickman
Barton	Dannemeyer	Goodling
Bateman	Daschle	Gradison
Bentley	Daub	Gray (PA)
Bereuter	DeLay	Green
Bevill	DeWine	Gregg
Bilirakis	Dingell	Gunderson
Bliley	DioGuardi	Hall, Ralph
Boehlert	Dorgan (ND)	Hamilton
Bonker	Dornan (CA)	Hammerschmidt
Boulter	Dreier	Hendon
Brooks	Duncan	Henry
Brown (CO)	Dyson	Hiler
Burton (IN)	Eckert (NY)	Hillis
Byron	Edwards (OK)	Holt
Carney	Emerson	Hopkins
Carper	English	Horton
Chandler	Evans (IA)	Hubbard
Chapman	Fawell	Huckaby
Chappell	Fiedler	Hunter
Chappie	Fields	Hutto
Clinger	Fish	Jeffords
Coats	Flippo	Jenkins
Cobey	Franklin	Jones (NC)
Coble	Frenzel	Jones (OK)
Coleman (MO)	Frost	Jones (TN)
Combest	Fuqua	Kasich

Kolbe	Murphy	Smith, Denny (OR)
Kramer	Myers	Smith, Robert (NH)
Lagomarsino	Neal	Smith, Robert (OR)
Latta	Nichols	Snowe
Leach (IA)	Obey	Snyder
Lent	Oxley	Solomon
Lewis (FL)	Packard	Spence
Lightfoot	Parris	Stallings
Lloyd	Penny	Stangeland
Loeffler	Petri	Stenholm
Lott	Pickle	Strang
Lowery (CA)	Porter	Stump
Lujan	Pursell	Sundquist
Lundine	Ray	Swindall
Lungren	Regula	Synar
Mack	Ridge	Tallon
Madigan	Rinaldo	Tauke
Marlenee	Roberts	Tauzin
Martin (IL)	Robinson	Taylor
Martin (NY)	Roemer	Thomas (CA)
McCain	Rogers	Valentine
McCandless	Rose	Vander Jagt
McCloskey	Roth	Vucanovich
McCollum	Roukema	Walker
McCurdy	Rowland (CT)	Watkins
McDade	Saxton	Weber
McEwen	Schneider	Whitley
McGrath	Schulze	Whittaker
McKernan	Sensenbrenner	Williams
McMillan	Sharp	Wolf
Meyers	Shaw	Wortley
Mica	Shuster	Wylie
Michel	Siljander	Young (AK)
Miller (OH)	Skeen	Young (FL)
Miller (WA)	Skelton	Zschau
Molinari	Slattery	
Montgomery	Slaughter	
Moorhead	Smith (NE)	
Morrison (WA)	Smith (NJ)	

NOES—180

Ackerman	Fascell	Mitchell
Akaka	Fazio	Moakley
Alexander	Feighan	Mollohan
Anderson	Florio	Monson
Andrews	Foglietta	Moody
Annunzio	Foley	Morrison (CT)
Anthony	Ford (MI)	Mrazek
Applegate	Frank	Murtha
Aspin	Garcia	Natcher
Atkins	Gaydos	Nelson
AuCoin	Gejdenson	Nielson
Bates	Gephardt	Nowak
Bedell	Gibbons	Oakar
Beilenson	Gonzalez	Oberstar
Bennett	Gordon	Olin
Berman	Gray (IL)	Ortiz
Biaggi	Guarini	Owens
Boggs	Hall (OH)	Panetta
Boner (TN)	Hansen	Pashayan
Bonior (MI)	Hatcher	Pease
Borski	Hayes	Pepper
Bosco	Hefner	Perkins
Boucher	Howard	Price
Boxer	Hoyer	Rahall
Broomfield	Hughes	Reid
Brown (CA)	Kanjorski	Richardson
Bruce	Kaptur	Ritter
Bryant	Kastenmeier	Roe
Bustamante	Kennelly	Rostenkowski
Carr	Kildee	Rowland (GA)
Clay	Kleczka	Roybal
Coelho	Kolter	Sabo
Coleman (TX)	Kostmayer	Savage
Collins	LaFalce	Scheuer
Conte	Lantos	Schroeder
Cooper	Leath (TX)	Schumer
Coyne	Lehman (CA)	Seiberling
Crockett	Levin (MI)	Shelby
Darden	Levine (CA)	Shumway
Davis	Lipinski	Sikorski
de la Garza	Long	Sisisky
Derrick	Lowry (WA)	Smith (FL)
Dicks	Luken	Smith (IA)
Donnelly	MacKay	Solarz
Dowdy	Markey	Spratt
Downey	Martinez	St Germain
Durbin	Matsui	Staggers
Dwyer	Mavroules	Stark
Dymally	Mazzoli	Studds
Eckart (OH)	McHugh	Swift
Edgar	McKinney	Thomas (GA)
Edwards (CA)	Mikulski	Torres
Erdreich	Miller (CA)	Torricelli
Evans (IL)	Mineta	Towns
Traficant	Waxman	Wise
Udall	Weaver	Wolpe
Vento	Weiss	Wright
Visclosky	Wheat	Wyden
Volkmer	Whitten	Yates
Walgren	Wirth	Young (MO)

NOT VOTING—45

Barnard	Hartnett	Quillen
Boland	Hawkins	Rangel
Breaux	Hertel	Rodino
Burton (CA)	Hyde	Rudd
Callahan	Ireland	Russo
Campbell	Jacobs	Schaefer
Cheney	Johnson	Schuette
Conyers	Kemp	Stokes
Dellums	Kindness	Stratton
Dickinson	Lehman (FL)	Sweeney
Dixon	Leland	Traxler
Early	Lewis (CA)	Waldon
Ford (TN)	Livingston	Whitehurst
Fowler	Manton	Wilson
Grotberg	Moore	Yatron

The Clerk announced the following pairs:

On this vote:

Mr Barnard for, with Mr. Dellums against.

Mr. Campbell for, with Mr. Hawkins against.

Mr. WYDEN and Mr. WHITLEY changed their votes from "aye" to "no."

Messrs. RINALDO, ROSE, VALENTINE, WHITLEY, CHAPPIE, McCANDLESS, BONKER, FLIPPO, ZSCHAU, DANNEMEYER, BEVILL, and JENKINS changed their votes from "no" to "aye."

Mr. DREIER of California changed his vote from "present" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1710

AMENDMENT OFFERED BY MR. SYNAR

Mr. SYNAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SYNAR: Page 65, after line 11, insert the following:

"ELIGIBILITY POLICY

"SEC. 720. In fiscal years 1987 and 1988, the Indian Health Service shall apply such regulations, policies, and procedures governing eligibility for health services from the Indian Health Service as were in effect on January 1, 1986.".

Page 65, line 11, strike the quotation marks and the final period.

Mr. SYNAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. SYNAR. Mr. Chairman, the amendment that I offer, I offer on behalf of the gentleman from Oklahoma: Messrs. JONES, WATKINS, McCURDY, ENGLISH, and EDWARDS.

Mr. Chairman, this amendment prohibits the Indian Health Service from implementing new regulations to govern eligibility for health services under this act.

IHS proposed on June 10 of this year a new rule that would restrict access to health care for native Americans of more than one-quarter blood quantum. While I have been told that IHS has withdrawn this rule, I think it is important for Congress to prohibit such action outright.

What IHS has proposed is probably unconstitutional. It has long been settled that special Indian programs are not racial in nature but are based on the unique political relationship between Indian tribes and the Federal Government. The imposition of uniform blood quantum requirements would shift the ground of the relationship from political to racial.

It is inappropriate for IHS to make the determination of who is eligible for health services. This is exclusively a responsibility and prerogative of Congress.

The proposed rule would have a devastating effect on native American Indians. In Oklahoma alone, we estimate that 100,000 Indians who now benefit from these services would become ineligible. This is a class of Americans who suffers from the highest rate of a number of preventable illnesses. They suffer from twice the rate of poverty as the general population. For us to drastically reduce their access to health care would be callous, unnecessary, and unconstitutional.

The administration has argued that the change is necessary to allow them to better meet the needs of Indians. If this is true, why have they attempted to reduce funding for this program year after year? And why do we continually face the threat of veto of this legislation?

I urge my colleagues to support this amendment and ensure that native Americans are allowed to receive the level of health care services to which they are now entitled.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. SYNAR. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I rise in strong support of this amendment. The fundamental issue here is who determines who is eligible for IHS services?

I believe this is the prerogative and responsibility of the Congress. The Synar amendment would give the next Congress the opportunity to define eligibility for IHS programs by blocking the administration's effort to go through regulations.

I urge my colleagues to support the amendment.

Mr. JONES of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. SYNAR. I yield to the gentleman from Oklahoma.

Mr. JONES of Oklahoma. Mr. Chairman, I am delighted to join the gentleman from Oklahoma [Mr. SYNAR] and

the delegation from Oklahoma in sponsoring this amendment.

This proposed regulation would affect about 40 percent of the Indians in Oklahoma and it would provide no health care facilities for them. The State could not pick up the slack because our State is in an economic depression, by and large.

There are several objections to the proposed regulation. Number 1 is that this flies in the face of the administration's proposed policy of tribal self-determination. It should not arbitrarily define who is an Indian. That is for the tribes themselves to define.

So for all of these reasons, I think this amendment should pass and this regulation should be defeated.

Mr. WATKINS. Mr. Chairman, will the gentleman yield?

Mr. SYNAR. I yield to the gentleman from Oklahoma.

Mr. WATKINS. Mr. Chairman, I am happy to join my colleague, the gentleman from Muskogee, OK [Mr. SYNAR], and the entire united Oklahoma delegation in support of this amendment which is badly needed for the health care of Indians, not only in Oklahoma, but throughout this great country of ours.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. SYNAR. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I would reluctantly accept the amendment of the gentleman. While I support the concept of his amendment, I have some difficulty in including it in this legislation.

First, our committee has been informally advised that the administration is no longer pushing the adoption of the blood quantum criteria.

Second, it is my opinion that the administrative adoption of such a criteria would be unconstitutional in the absence of an act of Congress authorizing them to do so. I do not want the adoption of this amendment to imply that the Congress agrees with their constitutional rights to apply such a criteria.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma [Mr. SYNAR].

The amendment was agreed to.

Mr. NIELSON of Utah. Mr. Chairman, I move to strike the last word.

I would like to engage the gentleman from New Mexico [Mr. RICHARDSON] in a colloquy.

There are two programs in the section 7 which I had a concern about. One had to do with juvenile alcohol prevention and the other with Navajo alcohol pilot projects.

These programs, at least the last one and possibly the first one, were placed in the drug bill that we passed last week, and my question to the gentleman from New Mexico is, is he willing to attach language in the report to make sure that these are not funded twice?

If they are funded in the drug bill, then they would not be funded. Is that the gentleman's understanding?

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. NIELSON of Utah. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Chairman, I would accept that recommendation by my colleague, the gentleman from Utah. I believe that it is critical that this project be funded. As the gentleman knows, it was put into the drug bill. It is contained in this bill, but as soon as one passes, or one is approved, we are trying to guard against a potential veto, one of them would be stripped.

I assure my colleague that that would happen.

Mr. NIELSON of Utah. Mr. Chairman, with that assurance, I will not offer the amendments I had planned to offer to strike those two.

I thank my colleague.

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The CHAIRMAN. Are there any other amendments to title VII? If not, the gentleman from Utah [Mr. NIELSON] is recognized.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. NIELSON OF UTAH

Mr. NIELSON of Utah. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. NIELSON of Utah.

Page 1, line 3, strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Health Care Amendments of 1986".

SEC. 2. REFERENCE.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.).

TITLE I—INDIAN HEALTH MANPOWER

SEC. 101. HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS.

Subsection (c) of section 102 (25 U.S.C. 1612(c)) is amended to read as follows:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $700,000 for fiscal year 1987,

"(2) $700,000 for fiscal year 1988, and

"(3) $700,000 for fiscal year 1989.".

SEC. 102. HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM.

(a) SCHOLARSHIPS.—Section 103 (25 U.S.C. 1613) is amended by striking out subsection (d) and inserting in lieu thereof the following:

"(d) The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely on the basis of the applicant's scholastic achievement if such applicant has been admitted to, or maintained good standing at, an accredited institution.

"(e) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $3,000,000 for fiscal year 1987,

"(2) $3,500,000 for fiscal year 1988, and

"(3) $4,000,000 for fiscal year 1989.".

(b) EXPENSES.—Subsection (c) of section 103 is amended by striking out "expenses" and inserting in lieu thereof "expenses of a grantee while attending school full time".

SEC. 103. HEALTH PROFESSIONS SCHOLARSHIP PROGRAM.

(a) PROGRAM.—Section 104 is amended to read as follows:

"INDIAN HEALTH PROFESSIONS SCHOLARSHIPS

"SEC. 104. (a) In order to provide health professionals to Indian communities, the Secretary, acting through the Service and in accordance with this section, shall make scholarship grants to Indians who are enrolled full time in schools of medicine, osteopathy, podiatry, dentistry, veterinary medicine, nursing, optometry, public health, and allied health professions. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with section 338A of the Public Health Service Act (42 U.S.C. 2541) except as provided in subsection (b) of this section.

"(b)(1) The Secretary, acting through the Service, shall determine who shall receive such scholarships and shall determine the distribution of such scholarships among such health professions on the basis of the relative needs of Indians for additional service in such health professions.

"(2) An individual shall be eligible for a scholarship under subsection (a) in any year in which such individual is enrolled full time in a health profession school referred to in subsection (a).

"(3) The active duty service obligation prescribed under section 338B of the Public Health Service Act (42 U.S.C. 254m) shall be met by a recipient of an Indian Health Scholarship by service in the Indian Health Service, including service or employment under a contract under the Indian Self-Determination Act (Public Law 93-638); employment in a program assisted under title V of this Act; or in the private practice of his profession if, as determined by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

"(c) For the purpose of this section, the term 'Indian' has the same meaning given that term by subsection (c) of section 4 of this Act, including all individuals described in clauses (1) through (4) of that subsection.

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $4,000,000 for fiscal year 1987,

"(2) $4,500,000 for fiscal year 1988, and

"(3) $5,000,000 for fiscal year 1989.".

(b) TECHNICAL.—Section 338G of the Public Health Service Act (42 U.S.C. 254r) is repealed.

SEC. 104. INDIAN HEALTH SERVICE EXTERN PROGRAM.

Subsection (d) of section 105 (25 U.S.C. 1614) is amended to read as follows:

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $1,000,000 for fiscal year 1987,

"(2) $1,000,000 for fiscal year 1988, and

"(3) $1,000,000 for fiscal year 1989.".

SEC. 105. CONTINUING EDUCATION ALLOWANCES.

Subsection (b) of section 106 (25 U.S.C. 1615(b)) is amended to read as follows:

"(b) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $300,000 for fiscal year 1987,

"(2) $300,000 for fiscal year 1988, and

"(3) $300,000 for fiscal year 1989.".

TITLE II—HEALTH SERVICES

SEC. 201. IMPROVEMENT OF INDIAN HEALTH STATUS.

Section 201 is amended to read as follows:

"INDIAN HEALTH CARE IMPROVEMENT FUND

"SEC. 210. (a)(1) To further implement the national policy of raising the health status of Indians to a zero level of deficiency as defined in subsection (c) by eliminating backlogs in health care services and meeting unmet Indian health needs as soon as possible and in an equitable manner, the Secretary is authorized to expend, through the Service, over the 2 year period beginning with fiscal year 1988 the amounts authorized to be appropriated by subsection (h) of this section. Funds requested under this section shall be separately stated in the Service budget request as submitted to Congress under section 1104 of title 31, United States Code, and funds appropriated under this section shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13), or any other law. Funds appropriated under this section in any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

"(2) Nothing in this section is intended to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs, nor is it intended to discourage the Service from undertaking additional efforts to achieve parity among tribes.

"(b)(1) Funds appropriated under this section shall be expended to augment the ability of the Service to meet the following health service responsibilities—

"(A) clinical care (direct or indirect);

"(B) preventive health;

"(C) dental care (direct or indirect);

"(D) mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treatment centers, and training of traditional Indian practitioners;

"(E) emergency medical services;

"(F) treatment and control of, and rehabilitative care related to, alcoholism among Indians;

"(G) accident prevention programs;

"(H) community health representative programs;

"(I) home health care; and

"(J) maintenance and repair.

"(2) Where any funds allocated to a service unit are used for a contract under the Indian Self-Determination Act, a reasonable proportion of such funds may be used for health planning, training, technical assistance, and other administrative support functions.

"(3)(A) To the extent that all or a portion of the funds appropriated under subsection (h) are required to raise tribes which are below a level II deficiency, as defined in subsection (c)(2), to such level, such funds shall not be available for allocation to service units serving only tribes at or above such level. Funds appropriated under this section shall be allocated on a service unit basis. Apportionment of a service unit's allocation of funds among the health service responsibilities listed in paragraph (1) shall be as determined by the Service and the Indian tribe or tribes whose deficiency level was the basis on which the funds were allocated.

"(B) In the case of multitribal service units, the allocation of funds under this section shall be made, apportioned, and expended upon the basis of the health resources deficiency level of each separate tribe within that service unit.

"(c)(1) Within 60 days of the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress the current health services priority system report of the Service for each tribe including units serving newly recognized or acknowledged tribes. Such report shall contain—

"(A) the methodology for determining tribal health resources deficiencies; the level of health resources deficiency for each tribe; the amount of funds necessary to raise all tribes below a level II deficiency to a level II deficiency; the amount of funds necessary to raise all tribes below a level I deficiency to a level I deficiency; and the amount of funds necessary to raise all tribes to a zero level of deficiency;

"(B) an estimate of—

"(i) the amount of health service funds appropriated under the authority of this or any other Act for the preceding fiscal year which is allocated to each service unit; and

"(ii) the number of Indians eligible for health services in each service unit and each tribe; and "(C) an evaluation of—

"(i) the preventive health, health protection, and health promotion needs of Indians identified in tribal specific health plans;

"(ii) the preventive health, health protection, and health promotion services necessary to meet such needs;

"(iii) the resources which would be required to enable the Service to provide such services; and

"(iv) the resources currently available to the Service which could be used to provide such services.

"(2) For purposes of this section, health resources deficiency levels shall be defined as follows:

"Level I—0 to 20 percent deficiency,

"Level II—21 to 40 percent deficiency,

"Level III—41 to 60 percent deficiency,

"Level IV—61 to 80 percent deficiency,

"Level V—81 to 110 percent deficiency,

"(3) The Secretary shall establish by regulation procedures which allow any Indian tribe to petition the Secretary for a review of any determination of the health resources deficiency level of such tribe.

"(d) Upon enactment of the Indian Health Care Amendments of 1986, the Secretary, acting through the Service, shall take all necessary action, in cooperation with each Indian tribe, to bring current the tribal specific health plans which were developed as a part of the plan required by section 703 of this Act and which formed the basis for such plan in response to the requirements of section 701 of this Act. These plans shall be based upon the methodology submitted under subsection (c), as may be further modified through tribal consultation, and shall form the basis for the health services priority system report to be submitted by the Secretary for fiscal years 1987, 1988, and 1989. Such reports shall be submitted to the Congress not more than 30 days after the submission of the annual budget for such fiscal years to the Congress by the President.

"(e) The Secretary, acting through the Service, shall expend directly or by contract not less than 1 percent of the funds appropriated under subsection (h) for research in the areas of Indian health care set out in subparagraphs (A) through (G) of subsection (b)(1). Indian tribes and tribal organizations contracting with the Service pursuant to the Indian Self-Determination Act shall be given an equal opportunity to compete for and receive such research funds.

"(f) Programs administered by any Indian tribe or tribal organization under the authority of the Indian Self-Determination Act shall be eligible for funds appropriated pursuant to subsection (h) of an equal basis with programs that are administered directly by the Indian Health Service.

"(g) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which specifies the total amount obligated or expended in the most recently completed fiscal year to carry out subsection (d) and to carry out of the subparagraphs of subsection (b)(1).

"(h) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $10,000,000 for fiscal year 1988, and

"(2) $10,000,000 for fiscal year 1989.

Any funds appropriated under this subsection shall be designated as the 'Indian Health Care Improvement Fund'.".

SEC. 202. CATASTROPHIC HEALTH PROGRAM.

SEC. 202. Title II is amended by adding at the end thereof the following new section:

"CATASTROPHIC HEALTH PROGRAM

"SEC. 202. (a) There is established an Indian Catastrophic Health Emergency Fund (hereinafter in this section referred to as the 'Fund') to be administered by the Secretary, acting through the Service, solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses falling within the responsibility of the Service. The Fund shall be administered by the central office of the Service and shall not be allocated, apportioned, or delegated on a service unit or area office basis. Funds appropriated under subsection (c) shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13), or any other law. No part of the Fund or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination Act (Public Law 93-638).

"(b) The Secretary shall, through the promulgation of regulations consistent with the provisions of this section—

"(1) establish a definition of disasters and catastrophic illnesses for which the cost of treatment, whether provided under contract or directly by the Service, would qualify for payment from the Fund; and which shall provide that a service unit shall not be eligible for reimbursement for the cost of treatment from the Fund until its cost of treating any victim of such catastrophic illness or disaster shall have reached a certain threshold cost which the Secretary shall establish at not less than $10,000 or not more than $20,000;

"(2) establish a procedure for the reimbursement of service units or facilities rendering treatment or, whenever otherwise authorized by the Service, the reimbursement of nonservice facilities or providers rendering treatment;

"(3) establish a procedure for payment from the Fund where the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

"(4) establish a procedure that will assure that no payment shall be made from the Fund to any provider to the extent that the provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible or by which the patient is covered.

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $3,000,000 for fiscal year 1988, and

"(2) for fiscal year 1989, such sums as may be necessary to maintain the Fund at $3,000,000.

Funds appropriated under this subsection shall remain available until expended.

"(d) By no later than January 1, 1989, the Secretary shall report to Congress on the operation of the Fund. Such report shall include—

"(1) the number and nature of disasters and catastrophic illnesses for which reimbursement was sought;

"(2) the costs associated with such disasters or illnesses;

"(3) the amounts reimbursed by the Fund in connection with such disasters and illnesses;

"(4) the effect of the Fund on the ability of service units to meet the health needs of their service populations; and

"(5) the Secretary's recommendations regarding the future operation of the Fund.".

SEC. 203. COMPETITIVE PROCUREMENT.

SEC. 203. Title II is amended by adding at the end thereof the following new section:

"COMPETITIVE PROCUREMENT

"SEC. 203. (a) Notwithstanding any other provision of law, the Secretary, acting through the Service, may waive any statutory or administrative requirement for competitive procurement of health services if, in the judgment of the Chief Medical Officer who will have jurisdiction over such health services, such competitive procurement would compromise the accessibility, quality, or continuity of health services or would not result in any appreciable competition or savings.

"(b) Notwithstanding any other provision of law, the Secretary, acting through the Service, shall reject any bid submitted under any statutory or administrative requirement for competitive procurement of health services upon the certification of the Chief Medical Officer who will have jurisdiction over such health services that acceptance of such bid would compromise the accessibility, quality, and continuity of health services.".

SEC. 204. PREVENTIVE HEALTH, HEALTH PROTECTION, AND HEALTH PROMOTION.

Title II, as amended by sections 202 and 203 of this Act, is further amended by adding at the end the following new section:

"PREVENTIVE HEALTH, HEALTH PROTECTION, AND HEALTH PROMOTION

"SEC. 204. (a) The Congress finds that—

"(1) preventive health, health protection, and health promotion services will—

"(A) improve the health and well-being of Indians; and

"(B) reduce the expenses for medical care of Indians;

"(2) preventive health, health protection, and health promotion services should be provided by the coordinated efforts of Federal, State, local, and tribal governments; and

"(3) in addition to the provision of primary health care, the Service should provide preventive health, health protection, and health promotion services to Indians.

"(b) The Secretary, acting through the Service, shall—

"(1) require, by regulation, that each Indian tribe include within any tribal specific health plan submitted to the Secretary—

"(A) an identification of the preventive health, health protection and health promotion needs of such tribe; and

"(B) a comprehensive plan for providing such services to such tribe;

"(2) develop from tribal specific health plans a comprehensive plan for the provision by the Service of preventive health, health protection, and health promotion services to Indians;

"(3) establish a schedule for the provision of such services by the Service; and

"(4) provide such services to Indians in accordance with such comprehensive plan and schedule.".

TITLE III—HEALTH FACILITIES

SEC. 301. HEALTH FACILITIES.

Section 301 (25 U.S.C. 1631) is amended to read as follows:

"HEALTH FACILITIES

"SEC. 301. (a)(1) Within 60 days after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress a report which shall set forth the current health facilities priority system of the Service and which shall include the planning, design, construction, or renovation needs for the ten top priority inpatient care facilities and the ten top priority ambulatory care facilities together with required staff quarters, the justification for such priority listings, and the projected cost of such projects. The report shall also include the methodology adopted by the Service in establishing priorities under its health facilities priority system.

(2)(A) Within 30 days of the submission of the annual budget to the Congress by the President for each of the fiscal years 1988 and 1989, the Secretary shall submit to the Congress a report which complies with the requirement for paragraph (1).

(B) In preparing such report in such fiscal years, the Service shall consult with tribes and tribal organizations operating health programs or facilities with funds from the Service under the Indian Self-Determination Act, and shall review the needs of these tribes and tribal organizations for inpatient and outpatient facilities, including their needs for renovation and expansion of existing facilities.

(3) The Service shall use the same criteria for each of the fiscal years 1988 and 1989 to evaluate the needs of facilities operated under contract under the Indian Self-Determination Act as it uses to evaluate the need of facilities operated directly by the Service in such fiscal years.

(4) The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities which are the subject of a contract for health services entered into under the Indian Self-Determination Act are fully and equitably integrated into the development of the health facility priority system.

"(b)(1) All funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13), for the planning, design, construction, or renovation of health facilities for the benefit of a tribe or tribes shall be subject to the provisions of sections 103 and 104(b) of the Indian Self-Determination Act. The United States shall hold title to any facility constructed under a grant pursuant to section 104(b) of that Act.

"(2) Any tribal contractor or grantee shall expend the funds described in paragraph (1) for the purpose for which appropriated pursuant to rules and regulations established by the Secretary for contracting and procurement.

"(c) Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for facilities planning and design, construction, or renovation under the Act of November 2, 1921 (25 U.S.C. 13), the Secretary, acting through the Service, shall—

"(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, wherever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made, and

"(2) ensure, wherever practicable, that such facility, not later than one year after its construction or renovation, shall meet the standards of the Joint Commission on Accreditation of Hospitals.

"(d) The Secretary shall not close, under any existing authority, any Service hospital or other outpatient health care facility or any portion thereof unless he has submitted to the Congress at least one year prior to the planned closure date an evaluation of the impact of the proposed action which shall include the following factors—

"(1) accessibility of alternative health care resources for the service population;

"(2) cost effectiveness of the closure;

"(3) quality of health care to be provided to the service population after closure;

"(4) availability of contract health care funds to maintain current levels of service; and

"(5) the views of the Indian tribe or tribes served by such facility on the planned closure.

This subsection shall not be applicable to temporary closures where such closure is specifically determined to be necessary to avoid jeopardizing the health or safety of patients.".

SEC. 302. SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES.

Section 302 (25 U.S.C. 1632) is amended to read as follows:

"SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

"Sec. 302. (a)(1) Congress finds that—

"(A) the provision of safe water supply and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

"(B) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such facilities;

"(C) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such facilities and other preventive health measures;

"(D) many Indian homes and communities still lack safe water supply and sanitary sewage and solid waste disposal facilities; and

"(E) it is in the interest of the United States and it is the policy of the United States that all Indian communities and Indian homes, new and existing, be provided

with safe and adequate water supply and sanitary sewage and solid waste disposal facilities as soon as possible.

"(2) Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(b) Beginning in fiscal year 1987, the Secretary, acting through the Service, shall develop and begin implementation of a 10 year plan to provide safe water supply and sanitary sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

"(c)(1) Within 60 days of the date of the enactment of the Indian Health Care Amendments of 1986, the Secretary shall report to Congress on the Service's sanitation facilities priority system. The Secretary, in preparing such report, shall uniformly apply the methodology for determining sanitation deficiencies to all Indian tribes. Such report shall identify the methodology for determining sanitation deficiencies; the level of deficiency for each Indian community or tribe; the amount of funds necessary to raise all communities to a level I deficiency; and the amount of funds necessary to raise all communities or tribes to a zero level of deficiency. For the purpose of such report—

"(A) a level I deficiency means a sanitation system which complies with all applicable water supply and pollution control laws and regulations in which the defined deficiencies consist of routine replacement, repair, or maintenance needs;

"(B) a level II deficiency means a sanitation system which complies with all applicable water supply and pollution control laws and regulations in which the defined deficiencies consist of capital improvements necessary to improve the facilities to meet the needs of the communities for domestic sanitation facilities;

"(C) a level III deficiency means a sanitation system which has an inadequate or partial water supply and sewage disposal facility which does not comply with applicable water supply and pollution control laws and regulations or which has no solid waste disposal facility;

"(D) a level IV deficiency means a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

"(E) a level V deficiency means the absence of a safe water supply and sewage disposal system.

Any tribe or community which lacks the operation and maintenance capability to meet all applicable water supply and pollution control laws and regulations shall be deemed to have a rating no higher than a level III deficiency.

"(2)(A) Within 30 days of the submission of the annual budget to the Congress by the President for fiscal years 1988 and 1989, the Secretary shall submit a report to the Congress which meets the requirements of paragraph (1).

"(B) In preparing such report for each of the fiscal years 1988 and 1989, the Secretary, acting through the Service, shall consult with tribes and tribal organizations including those operating health care programs or facilities under contracts under the Indian Self-Determination Act to determine the sanitation needs of each tribe.

"(d)(1) To clarify the powers conferred by subsection (a) of section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Secretary, acting through the Service, is authorized to provide—

"(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities,

"(B) ongoing technical assistance and training in the management of utility organizations, and

"(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities in situations where the community, tribe, or family is not financially or technically capable of performing the required emergency repairs with their own resources.

"(2)(A) This section is not intended to diminish the primary responsibilities of the Indian community or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operation and maintenance of sanitation facilities.

"(B) The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a precondition for the provision or construction of such facilities and the Secretary may not require a tribe or community to accept a transfer of such facilities where he has determined the tribe or community does not have, or may not be reasonably expected to achieve, such capability.

"(e) Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination Act shall be eligible for—

"(1) funds appropriated pursuant to subsection (f), and

"(2) funds appropriated for the purpose of providing water supply or sewage disposal services,

on an equal basis with programs that are administered directly by the Indian Health Services.

"(f)(1) There are authorized to be appropriated for each of the fiscal years 1988 and 1989, $3,000,000 for the purpose of providing funds necessary to implement the expanded responsibilities of the Service under subsection (d).

"(2) In addition to the amount authorized under paragraph (1), there are authorized to be appropriated for each of the fiscal years 1988 and 1989, $850,000 for the purpose of providing thirty new full-time equivalents for the Service which shall be used to carry out the expanded responsibilities of the Service under subsection (d).".

SEC. 303. USE OF NONSERVICE FUNDS FOR RENOVATION.

Section 305 (25 U.S.C. 1634) is amended to read as follows:

"EXPENDITURES OF NONSERVICE FUNDS FOR RENOVATION

"SEC. 305. (a) An Indian tribe is authorized to expend—

"(1) any funds of such tribe, including funds in trust by the United States for such tribe the use of which is not otherwise restricted by law, and

"(2) any funds appropriated under Federal law which are not appropriated for expenditure through the Service and which are not otherwise restricted by law,

for the purpose of making any major renovation or modernization of any Service facility or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act (including an expenditure for the planning or designing of such renovation or modernization) if the requirements of subsection (b) are met.

"(b) The requirements of this subsection are met with respect to any renovation or modernization if the renovation or modernization—

"(1) does not require or obligate the Secretary to provide any additional employees or equipment,

"(2) is approved by the appropriate area director of the Service, and

"(3) is administered by the Indian tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

"(c) A renovation or modernization shall not be authorized by this section if such renovation or modernization would require the diversion of funds appropriated to the Service for any project which has a higher priority under the health facility priority system of the Service.".

SEC. 304. BETHEL, ALASKA, HOSPITAL.

Title III is amended by adding at the end thereof the following new section:

"BETHEL, ALASKA, HOSPITAL

"SEC. 306. (a) If a final administrative ruling by the Department of the Interior holds that the Bethel Native Corporation is entitled to conveyance of the title to the real property described in subsection (d)(1) under the Alaska Native Claims Settlement Act, such ruling shall not be subject to judicial review and title to such property shall be conveyed to the Bethel Native Corporation.

"(b) The Secretary is authorized, notwithstanding any other provision of law, to enter into an agreement with Bethel Native Corporation for an exchange of the real property described in subsection (d)(1) for—

"(1) the lands described in subsection (d)(2), or

"(2) any other Federal property which Bethel Native Corporation would have been able to select under the Alaska Native Claims Settlement Act.

"(c) If an agreement for the exchange of land is not entered into under subsection (b) by the date that is 90 days after the date of the ruling described in subsection (a), the Secretary shall purchase the lands described in subsection (d)(1) at fair market value.

"(d)(1) The real property referred to in subsection (a) is United States Survey Numbered 4000 other than the lands described in paragraph (2).

"(2) The lands referred to in subsection (b)(1) are the lands identified as tracts A and B in the determination AA-18959 of the Bureau of Land Management issued on September 30, 1983, pursuant to the Alaska Native Claims Settlement Act.".

TITLE IV—ACCESS TO HEALTH SERVICES

SEC. 401. MEDICAID PROVISIONS.

(a) SKILLED NURSING FACILITY.—Section 1911 of the Social Security Act is amended by striking out "or skilled nursing facility" each place it appears and inserting in lieu thereof in each instance "skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan".

(b) REIMBURSEMENT.—Section 1911 of the Social Security Act is amended by adding at

the end thereof the following new subsections:

"(c) The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.

"(d) Notwithstanding any other provision of law, payments to which any facility of the Indian Health Service (including a hospital, intermediate care facility, skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan) is entitled under a State plan approved under this title by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this title. In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the facilities of the Indian Health Service, for which such service unit makes collections, are entitled by reason of this section, if such amount is necessary for the purpose of making improvements in such facilities in order to achieve compliance with the conditions and requirements of this title. This subsection shall cease to apply when the Secretary determines and certifies that substantially all of the health facilities of such Service in the United States are in compliance with such conditions and requirements.".

(c) REPEALS.—Subsections (b) and (c) of section 402 of the Indian Health Care Improvement Act (42 U.S.C. 1396j, note) are repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to health care services performed on or after the date of the enactment of this Act.

SEC. 402. STUDY OF BARRIERS TO MEDICAID PARTICIPATION.

Title IV is amended by adding at the end thereof the following new section:

"STUDY OF BARRIERS TO MEDICAID PARTICIPATION

"SEC. 405. (a) The Secretary shall, in consultation with Indian tribes and tribal organizations, conduct a study of any barriers which may prevent Indians from receiving medical assistance under State plans approved under title XIX of the Social Security Act.

"(b) By no later than the date which is one year after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress a report on the study conducted under subsection (a). Such report shall include—

"(i) recommendations for legislation which—

"(A) would remove any barriers identified in such study which prevent Indians from receiving medical assistance under plans described in subsection (a) and,

"(B) would encourage participation by Indians in such plans; and

"(2) estimates, by service unit, of—

"(A) the number of Indians potentially eligible for medical assistance under such plans, and

"(B) the number of Indians receiving medical assistance under such plans.".

TITLE V—URBAN INDIAN HEALTH SERVICES

SEC. 501. REVISION OF PROGRAM.

Title V (25 U.S.C. 1651, et seq.) is amended to read as follows:

"TITLE V—HEALTH SERVICES FOR URBAN INDIANS

"PURPOSE

"SEC. 501. The purpose of this title is to encourage the establishment of programs in urban centers to make health services more accessible to urban Indians.

"CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

"SEC. 502. The Secretary, through the Service, shall enter into contracts with urban Indian organizations to assist such organizations to establish and administer, in the urban centers in which such organizations are situated, programs which meet the requirement set forth in this title. The Secretary, through the service, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract which the secretary enters into with any Indian organization pursuant to this title.

CONTRACTS FOR THE PROVISION OF HEALTH CARE OF REFERRAL SERVICES

"SEC. 503. (a) The Secretary, through the Service, shall enter into contracts with urban Indian organizations for the provision of health care or referral services for urban Indian residing in the urban centers in which such organizations are situated. Any such contract shall include requirements that the urban Indian organization successfully undertake to—

"(1) determine the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

"(2) determine the current health status of urban Indians residing in such urban center;

"(3) determine the current health care needs of urban Indians residing in such urban center;

"(4) identify all public and private health services resources within such urban center which are or may be available to urban Indians;

"(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

"(6) assist such health services resources in providing services to urban Indians;

"(7) assist urban Indians in becoming familiar with and utilizing such health services resources;

"(8) provide basic health education to urban Indians;

"(9) establish and implement manpower training program to accomplish the referral and education tasks set forth in clauses (6) through (8) of this subsection;

"(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

"(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

"(12) where necessary, provide, or enter into, contracts for the provision of, health care services for urban Indians.

"(b) The Secretary, through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations to enter into contracts under this section. Such criteria shall, among other factors, include—

"(1) the extent of unmet health care needs of urban Indians in the urban center involved;

"(2) the size of the urban Indian population in the urban center involved;

"(3) the accessibility to, and utilization of, health care services (other than services provided under this title) by urban Indians in the urban center involved;

"(4) the extent, if any, to which the activities set forth in subsection (a) would duplicate—

"(A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to this title; or

"(B) any project funded under this title;

"(5) the capability of an urban Indian organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary under this section;

"(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

"(7) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an urban center; and

"(8) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

CONTRACTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS

"SEC. 504. (a) The Secretary, through the Service, may enter into contracts with urban Indian organizations situated in urban centers for which contracts have not been entered into under section 503. The purpose of a contract under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract under section 503 with the urban Indian organization with which the Secretary has entered into a contract under this section.

"(b) Any contract entered into by the Secretary under this section shall include requirements that—

"(1) the urban Indian organization successfully undertake to—

"(A) document the health care status and unmet health care needs of the urban Indians in the urban center involved;

"(B) with respect to urban Indians in the urban center involved, determine the matters described in clauses (2), (3), (4), and (8) of section 503(b); and

"(2) the urban Indian organization complete performance of the contract within one year after the date on which the Secretary and such organization enter into such contract.

"(c) The Secretary may not renew any contract entered into under this section.

"EVALUATIONS; CONTRACT RENEWALS

"SEC. 505. (a) The Secretary, through the Service, shall develop procedures to evaluate compliance with, and performance of, contracts entered into by urban Indian organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

"(b) The Secretary, through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a contract under section 503 for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

"(c) If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract is not renewed under this section.

"(d) In determining whether to renew a contract with an urban Indian organization under section 503, or whether to enter into a contract with an urban Indian organization under section 503 which completed performance of a contract under section 504, the Secretary shall review the records of the urban Indian organization, the reports submitted under section 507, and, in the case of a renewal of a contract under section 503, shall consider the results of the onsite evaluation conducted under subsection (b).

"OTHER CONTRACT REQUIREMENTS

"SEC. 506. (a) Contracts with urban Indian organizations pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935, as amended.

"(b) Payments under any contracts pursuant to this title may be made in advance or by the way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

"(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title.

"(d) In connection with any contract entered into pursuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for the use and maintenance of such facilities.

"(e) Contracts with urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

"REPORTS AND RECORDS

"SEC. 507. (a) For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract under this title, such organization shall submit to the Secretary a quarterly report including—

"(1) in the case of a contract under section 503, information gathered pursuant to clauses (10) and (11) of subsection (a) of such section;

"(2) information on activities conducted by the organization pursuant to the contract;

"(3) an accounting of the amounts and purposes for which Federal funds were expended; and

"(4) such other information as the Secretary may request.

"(b) The reports and records of the urban Indian organization with respect to a contract under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(c) The Secretary shall allow as a cost of any contract entered into under section 503 the cost of an annual private audit conducted by a certified public accountant.

"LIMITATION ON CONTRACT AUTHORITY

"SEC. 508. The authority of the Secretary to enter into contracts under this title shall be to the extent, and in an amount, provided for in appropriation Acts.

"AUTHORIZATIONS

"SEC. 509. There are authorized to be appropriated for contracts under this title—

"(1) $10,000,000 for fiscal year 1987,

"(2) $10,500,000 for fiscal year 1988, and

"(3) $11,000,000 for fiscal year 1989.".

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

SEC. 601. ESTABLISHMENT OF INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE.

Title VI (25 U.S.C. 1661) is amended to read as follows:

"TITLE VI—ORGANIZATIONAL IMPROVEMENTS

SEC. 601. ESTABLISHMENT OF THE INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE.

(a) ESTABLISHMENT.—Title VI is amended to read as follows:

INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE

"SEC. 601. (a) In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as is or may be provided by Federal statutes or treaties, there is established in the Office of the Secretary of Health and Human Services the Office of Indian Health Service to administer all Indian health programs and authorities, such as personnel and contracting, assigned to the Secretary or Surgeon General and including programs and authorities under this Act; the Act of November 2, 1921 (42 Stat. 208); the Act of August 5, 1954 (68 Stat. 674), as amended; the Act of August 16, 1957 (71 Stat. 370); the Indian Self-Determination and Education Assistance Act (Public Law 93-638); and the Act of December 5, 1979 (93 Stat. 1056).

"(b)(1) The Office shall be under the direction of an Assistant Secretary for Indian Health who, under the supervision of the Secretary, shall be responsible for the conduct and operation of Indian health matters, including administrative and financial management, personnel, contracting, granting, policy development and planning, evaluation, and public information functions which are required for the implementation of such programs and authorities.

"(2) Notwithstanding any other law, the provisions of section 12 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 472) shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a).

"(c) The Assistant Secretary for Indian Health shall be appointed by the President, by and with the advise and consent of the Senate, and shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries for Health and Human Services.

"(d) Section 5315 of title 5 of the United States Code is amended by striking the phrase 'Assistant Secretaries of Health and Human Services (5)' and inserting in lieu thereof, the phrase 'Assistant Secretaries for Health and Human Services (6)'.

"(e) The Indian Health Service shall be transferred to the Office of Indian Health Service as shall its personnel, records, equipment, and facilities. In addition, a 'real transfer' of a proportional amount of staff services and funds now available to the Indian Health Service shall be made to the Office. All transfers must be accomplished within 9 months of the date of enactment of this title. The Secretary is authorized to waive the Indian preference laws on a case-by-case basis for temporary transfers involved in implementing this title during such 9 month period.

"MANAGEMENT INFORMATION SYSTEM; ACCESS TO PATIENT'S RECORDS

"SEC. 602. (a) The Secretary shall establish an automated management information system for the Service.

"(b) the information system established under subsection (a) shall include—

"(1) a cost accounting system,

"(2) a patient care information system for each area served by the Service, and

"(3) a privacy component that protects the privacy of patient information held by, or on behalf of, the Service.

"(c) Notwithstanding any other provisions of law, each patient shall have reasonable access to the medical or health records of such patient which are held by, or on behalf of, the Service.

"(d)(1) The Secretary shall provide—

"(A) all tribes or tribal organizations providing health services under a contract with the Service under the Indian Self-Determination Act, and

"(B) all urban Indian organizations providing health services under a contract with the Service under section 503 of this Act,

automated management information systems which meet the management information needs of each such tribe or organization with respect to the treatment by the tribe or organization of patients of the Service and which meet the management information needs of the Service.

"(2) The Secretary shall reimburse each such tribe or organization for the part of the cost of the operation of a system provided under paragraph (1) which is attributable to the treatment by the tribe or organization of patients of the Service.

"(3) The Secretary shall provide systems under paragraph (1) to tribes and organizations providing health services in California not later than September 30, 1988.".

(b) TRANSFER.—All personnel, records, equipment, facilities, and interests in property that are administered by the Indian Health Service on the day before the date on which the amendments made by this section take effect shall be transferred to the

Indian Health Service established by the amendment made by subsection (a) of this section.

(c) INDIAN PREFERENCE LAWS.—The Secretary of Health and Human Services may waive the application of the Indian preference laws on a case-by-case basis for any temporary transfer which is necessary in order to implement the amendments made by subsection (a) of this section during the 9 month period beginning on the date on which the amendments made by this section take effect.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 9 months from the date of enactment of this Act.

TITLE VII—MISCELLANEOUS

SEC. 701. LEASING AND OTHER CONTRACTS.

Section 704 (25 U.S.C. 1674) is amended—

(1) by striking out "Notwithstanding", and inserting in lieu thereof "(a) Notwithstanding", and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary may enter into leases, contracts, and other legal agreements with Indian tribes or tribal organizations which hold—

"(1) title to;

"(2) a leasehold interest in; or

"(3) a beneficial interest in (where title is held by the United States in trust for the benefit of a tribe);

facilities used for the administration and delivery of health services by the Indian Health Service or by programs operated by tribes or tribal organizations to compensate such tribes or tribal organizations for costs associated with the use of such facilities for such purposes. Such costs include rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and other expenses determined by regulation to be allowable.".

SEC. 702. JUVENILE ALCOHOL AND DRUG ABUSE.

Section 706 (25 U.S.C. 1676) is amended to read as follows:

"JUVENILE ALCOHOL AND DRUG ABUSE

"SEC. 706. (a) Within 180 days of the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall enter into an agreement with the Secretary of the Interior and the Secretary of Education to coordinate the efforts of their Departments related to alcohol and drug abuse among Indian juveniles. The agreement shall provide for the identification and coordination of available resources and programs to combat Indian juvenile alcohol and drug abuse through prevention, education, counseling, and referral. The Secretary shall publish such agreement in the Federal Register within 30 days after an agreement has been entered into pursuant to this subsection.

"(b) The Secretary, acting through the Service and in consultation and cooperation with the Secretary of the Interior and the Secretary of Education, shall develop a program to provide training in—

"(1) preventive education;

"(2) the identification of juvenile alcohol and drug abusers; and

"(3) counseling techniques on juvenile alcohol and drug abuse. Such training shall be provided to elementary and secondary teachers and counselors—

"(A) in schools operated by the Bureau of Indian Affairs;

"(B) in schools operated under contract with the Bureau of Indian Affairs; and

"(C) in public schools on or near Indian reservations (including public schools in Oklahoma and Alaska with significant numbers of Indian students).

The Service may provide such training either directly or through contract with qualified private or public entities.

"(c) The Secretary of the Interior, acting through the Bureau of Indian Affairs and in consultation with the Service, shall review existing literature and reports on juvenile alcohol and drug abuse, including studies and school curricula and any other material relevant to an understanding of the problem of juvenile alcohol and drug abuse, and shall make available the results of such review to the schools described in subsection (b).

"(d) The Secretary shall establish an Office of Alcohol and Drug Abuse within the Service which shall be responsible for the administration of programs and authorities of the Service in the field of alcohol and drug abuse. The Office shall have assigned to it a number of full-time equivalent positions which shall not be less than eight full-time equivalent positions in the Central Office of the Service and one full-time equivalent position in each Service area and Program Office.

"(e) For the purpose of implementing subsection (b) there is authorized to be appropriated $1,500,000 for each of the fiscal years 1987 and 1988.".

SEC. 703. ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA; FORMERLY RECOGNIZED TRIBES IN CALIFORNIA.

Subsection (a) of section 708 (25 U.S.C. 1678(a)) is amended—

(1) by striking out "1984" and inserting in lieu thereof "1989", and

(2) by striking out "Indians in such State" and inserting in lieu thereof "members of federally recognized Indian tribes of Arizona".

SEC. 704. ELIGIBILITY OF CALIFORNIA INDIANS.

Section 709 (25 U.S.C. 1679) is amended to read as follows:

"ELIGIBILITY OF CALIFORNIA INDIANS

"SEC. 709. The following California Indians shall be eligible for care from the Service:

"(1) Any member of a federally recognized Indian tribe.

"(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant—

"(A) is living in California,

"(B) is a member of the Indian community served by a local program of the Service, and

"(C) is regarded as an Indian by the community in which such descendant lives.

"(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

"(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

Paragraph (4) shall not apply after September 30, 1988.".

SEC. 705. CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.

Section 710 (25 U.S.C. 1680) is amended to read as follows:

"CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

"SEC. 710. The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, and Santa Clara, shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to Indians in such State.".

SEC. 706. CONTRACT HEALTH FACILITIES.

SEC. 707. (a) Title VII is amended by adding at the end thereof the following new section:

"CONTRACT HEALTH FACILITIES

SEC. 711. (a) The Indian Health Service shall provide funds for health care programs and facilities operated by tribes and tribal organizations under contracts with the Indian Health Service under the Indian Self-Determination Act—

"(1) for the maintenance and repair of clinics owned or leased by such tribes or tribal organizations,

"(2) for employee training,

"(3) for cost-of-living increases for employees, and

"(4) for any other expenses relating to the provision of health services,

on the same basis as such funds are provided to programs and facilities operated directly by the Indian Health Service.

"(b) In the case of eligible California Indians as defined by section 709 who are not members of Indian tribes or eligible for membership in such tribes, the Secretary may not enter into a contract to provide health services to such Indians under section 103 of the Indian Self-Determination Act if 51 per centum of the adult population of such Indians object prior to the award of such contract through any legally established organization of Indians representative of such Indians, in which case the Secretary, acting through the Service, shall make alternate arrangements for the delivery of health care services to such Indians. In making such alternative arrangements for such Indians, the Service may—

"(1) provide services directly to some or all of such Indians through its own facilities,

"(2) purchase services for some or all of such Indians on a contract basis,

"(3) contract with a qualified organization representing some or all of such Indians for the provision of services under the terms of the third proviso of the first paragraph under the heading "Secretary" in the division relating to general provisions of the Act of April 30, 1908 (35 Stat. 71, chapter 153; 25 U.S.C. 47), popularly known as the Buy Indian Act, or

"(4) make other effective arrangements for the delivery of health care services to such Indians.

"(c) Nothing in this section shall be construed to restrict or interfere with the right of any Indian tribe to contract for health services on behalf of its own members.".

SEC. 707. NATIONAL HEALTH SERVICE CORPS.

(a) NATIONAL HEALTH SERVICE CORPS.—Title VII, as amended by section 706 of this Act, is further amended by adding at the end thereof the following new section:

"NATIONAL HEALTH SERVICE CORPS

"SEC. 712. The Secretary of Health and Human Services shall not—

"(1) remove a member of the National Health Service Corps from a health facility operated by the Indian Health Service or by a tribe or tribal organization under contract with the Indian Health Service under the Indian Self-Determination Act; or

"(2) withdraw funding used to support such member, unless the Secretary, acting through the Service, has ensured that the Indians receiving services from such

member will experience no reduction in services.

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect as of January 1, 1984.".

SEC. 708. ADDITIONAL PROVISIONS.

Title VII, as amended by sections 706 and 707 of this Act, is further amended by adding at the end thereof the following new sections:

"SERVICE TO INELIGIBLE PERSONS

"SEC. 713. (a)(1) The Secretary, acting through the Service, may provide or authorize the provision of medical care, treatment, or benefits by the Service to persons who are not otherwise eligible for such services in health facilities maintained by the Service or contracted under the Indian Self-Determination Act (Public Law 93-638) or through contract health care services, subject to the limitations of this section.

"(2) Persons eighteen years of age or under who are the natural or adopted children (including foster- and step-children), legal wards, or orphans of an eligible Indian person and who are not otherwise eligible for the medical care, treatment, or benefits of the Service shall be eligible for all such services on the same basis and subject to the same rules as apply to eligible Indians until their nineteenth birthday. The existing potential medical needs of such persons shall be taken into consideration by the Service in determining the need for, or the allocation of, its health resources. Any such person who has been determined to be legally incompetent prior to their nineteenth birthday shall remain eligible for such services until one year after the date such disability has been removed.

"(3) Non-Indian spouses of eligible Indians or spouses of Indian descent who are not otherwise eligible for the medical care, treatment, or benefits of the Service shall not be eligible for the medical care, treatment, or benefits of the Service unless they are made eligible, as a class, by an appropriate resolution of the governing body of the relevant Indian tribe. The medical needs of persons made eligible under this subsection shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

"(b)(1)(A) At the request of the Indian tribe or tribes included within the service area of any service unit of the Service, the Secretary may authorize the medical care and treatment of otherwise ineligible persons residing within such service area in health facilities maintained and operated by the Service.

"(B) Persons receiving medical care and treatment under this subsection shall be liable for the payment for such services under a fee schedule adopted by the Secretary which, in the judgment of the Secretary, shall result in reimbursement in an amount not less than the actual cost of providing the service. Fees collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Fees collected pursuant to this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

"(2)(A) Except as provided in subparagraph (B), where the governing body of an Indian tribe or, in the case of a multitribal service area, any Indian tribe revokes its concurrence to the provision of services under paragraph (1)(A), the Secretary's authority to provide such service shall terminate at the end of the fiscal year following the fiscal year in which such revocation was adopted.

"(B) In California, in the case of multitribal service area, unless 51 per centum or more of the Indian tribes in the service area revoke their concurrence to the provision of services under paragraph (1)(A), the authority to provide such service shall not be affected.

"(3)(A) In the case of health facilities operated directly by the Service, such medical care and treatment may be provided under this subsection only where the Secretary and the affected tribe or tribes have jointly determined that—

"(i) the provision of such service will not result in a denial or diminution of services to eligible Indian persons; and

"(ii) there is no reasonable alternative health facility or service, within or without the service unit area, available to meet the medical needs of such person.

"(B) In the case of health facilities operated under contract under the Indian Self-Determination Act, the governing body of the Indian tribe or tribal organization providing health services under a contract with the Service under the Indian Self-Determination Act is authorized to determine the eligibility for such services of persons who are not otherwise eligible for such services. Such determination shall be in accordance with the requirements of this section.

"(4) The Service may continue to provide medical care, treatment, and benefits to persons not provided service under subsection (a) or (b) to achieve stability in a medical emergency, to prevent the spread of a communicable disease or otherwise deal with a public health hazard; to provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum, or to immediate family members of an eligible person where such care is directly related to the treatment of the eligible person.

"(5) Hospital privileges in health facilities operated and maintained by the Service or operated under contract under the Indian Self-Determination Act may be extended to non-Service health care practitioners. Such non-Service health care practitioners shall not be regarded as employees of the Federal Government for purposes of the provisions of title 28 of the United States Code relating to Federal tort claims except in the course of providing services to eligible persons as a part of the conditions under which privileges are extended under this subsection.

"RESTRICTIONS ON THE USE OF INDIAN HEALTH SERVICE APPROPRIATIONS

"SEC. 714. (a) Unless otherwise specifically provided, any restriction placed on the use of appropriations for Indian health services shall not be interpreted—

"(1) to apply to the use of funds other than such appropriated funds by an entity with a contract with the Indian Health Service;

"(2) to prohibit the support of litigation with such other funds; or

"(3) to prohibit the promotion of public support for or opposition to any legislative proposal with such other funds.

"(b) The Service may not offset or limit the amount of funds obligated to any entity under contract with the Service because of the use of funds, other than funds appropriated to the Indian Health Service, by such entity for the purposes described in paragraphs (1) through (3) of subsection (a).

"INFANT AND MATERNAL MORTALITY

"SEC. 715. (a) Not later than January 1, 1987, the Secretary shall develop and begin implementation of a plan to achieve the following objectives by January 1, 1991:

"(1) Reduction of the rate of Indian infant mortality in each Area Office of the Service to twelve deaths per one thousand live births or to that of the United States population, whichever is lower.

"(2) Reduction of the rate of maternal mortality in each Area Office of the Service to five deaths per one hundred thousand live births or to that of the United States population, whichever is lower.

"(b) The Secretary shall report to Congress on January 1 of each year beginning after fiscal year 1987 on the progress that has been made toward achieving the objectives described in subsection (a).

"CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA

"SEC. 716. The Secretary, acting through the Service, is directed to provide contract health services to members of the Turtle Mountain Band of Chippewa Indians that reside in the Trenton Service Area of Divide, McKenzie, and Williams counties of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the State of Montana.".

SEC. 709. INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING.

Title VII, as amended by sections 706, 707, and 708 of this Act, is further amended by adding at the end thereof the following new sections:

"INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING

"SEC. 717. (a) The Secretary shall examine the feasibility of entering into an arrangement for the sharing of medical facilities and services between the Indian Health Service and the Veterans' Administration and shall, in accordance with subsection (b), prepare a report on the feasibility of such an arrangement and submit such report to the Congress not later than September 30, 1987.

"(b) The Secretary may not make any recommendation under subsection (a) nor take any action under subchapter IV of part VI of title 38, United States Code which would impair—

"(1) the priority access of any Indian to health care services provided through the Indian Health Service;

"(2) the quality of health care services provided to any Indian through the Indian health Service;

"(3) the priority access of any veteran to health care services provided by the veterans' Administration;

"(4) the quality of health care services provided to any veteran by the Veterans' Administration;

"(5) the eligibility of any Indian person to receive health services through the Indian Health Service; or

"(6) the eligibility of any Indian person who is a Veteran, to receive health services through the Veterans' Administration.

"NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM

"SEC. 718. (a) The Secretary shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult

Navajo Indians suffering from alcoholism or alcohol abuse.

"(b) The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the Appropriate Committees of Congress by January 1, 1990.

"(c)(1) There is authorized to be appropriated for the purposes of this section $400,000 for each of the fiscal years 1988 and 1989.

"(2) Not more than 10 percent of the funds appropriated under paragraph (1) for any fiscal year may be used for administrative purposes.

"STUDY OF HEALTH CARE NEEDS OF NATIVE HAWAIIANS AND OTHER NATIVE PACIFIC ISLANDERS

"SEC. 719. (a)(1) The Secretary shall conduct a study of the physical and mental health care needs of Native Hawaiians and other Native American Pacific Islanders.

"(2) In conducting the study required under paragraph (1), the Secretary shall consult with the Commissioner of the Administration for Native Americans, the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Indian Health Service, leaders in the field of health care, and representatives of Native Hawaiians and other Native American Pacific Islanders.

"(b) By no later than the date that is 1 year after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress a report on the study conducted under subsection (a). Such report shall include—

"(1) an assessment of the access of, and barriers to, Native Hawaiians and other Native American Pacific Islanders in receiving physical and mental health care services,

"(2) an assessment of the physical and mental health care needs of Native Hawaiians and other Native American Pacific Islanders, and

"(3) specific recommendations for the development of a national strategy to address such needs.".

SEC. 710. DEFINITIONS.

Section 4 (25 U.S.C. 1603) is amended by striking out subsections (i), (j), and (k), and by inserting in lieu thereof the following new subsections:

"(i) 'Area Office' means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographical area; and

"(j) 'Service Unit' means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act through which services are provided, directly and by contract, to the eligible Indian population within a defined geographic area.

"(k) 'Native Hawaiian' means any individual who has any ancestors that were natives, prior to 1778, of the area that now comprises the State of Hawaii.

"(1) 'Native American Pacific Islander' means—

"(2) any Native Hawaiian,

"(2) any of the indigenous people residing in Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; or

"(3) any individual whose direct ancestors are from Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.".

Mr. NIELSON of Utah (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Utah?

There was no objection.

Mr. NIELSON of Utah. Mr. Chairman, this amendment in the nature of a substitute is essentially the bill which we voted on in April of this year. It passed in the House by 263 to 241, that is, it got 263 votes to 241, which was some 6 votes less than it would have needed to pass under suspension; nevertheless, 263 of our number voted for this bill as presented at that time.

Mr. Chairman, as has been said earlier, we are all in favor of having good Indian health care. We want to have the maximum return for our dollar; however, the present bill calls for some $212 million over a 3-year period, plus another $82 million for fiscal year 1990.

The bill we voted on in April this year had $99.3 million, so this is $122 million more than the bill we voted on in April this year. By failing to pass it on suspension, we now have a bill before us which is $120 million more than we had in April.

In my view it was a mistake not to vote for that bill in April, because it would have saved a considerable amount of money. It preserved the manpower requirements. It froze the services. It froze the facilities. It left the Medicaid and Medicare and it froze the urban program.

The total bill at that time was approximately $20 million for the first fiscal year 1987 and approximately $35 million for each of the next fiscal years 1988 and 1989.

This bill will provide a fairly good increase in Indian health care services, approximately a 15-percent increase each year, which adds to a total increase of 50 percent by the fiscal year 1989. This is a healthy increase in years when we have very few budget dollars.

It also has I believe some protections because Indian health care is one of those which is protected from Gramm-Rudman cuts. That being the case, they are assured of the dollars which are appropriated to them.

We have had some amendments to the bill before us, H.R. 5222, and some of those amendments were in the right direction. I think the last amendment by the gentleman from Arizona [Mr. MCCAIN] was in the wrong direction; nevertheless, the bill before us, regardless of those amendments, is way too expensive.

The President vetoed a bill less expensive than H.R. 5222 on the basis of cost. I think he will sign a bill with $99.3 million.

As stated earlier, we have a bill that we need to get passed. It needs to be reauthorized. We need to take care of the Indian health care programs in an economical way. This bill basically does that and in the process saves $120 million in a 3-year period of time, plus another $82 million in the fiscal year 1990.

It is responsible. It continues the good programs which have been successful. It preserves the urban program which has been successful. It preserves the manpower program. It provides for Medicaid and Medicare studies and in general it does what needs to be done in the Indian health care field in a manner consistent with the budget realities we have facing us at the present time.

I hope you will support the amendment in the nature of a substitute.

Mr. MCCAIN. Mr. Chairman, I rise in opposition to the substitute amendment. I reluctantly oppose the substitute.

We have a carefully crafted bill here. It is a bill that is the subject of great compromise.

Just let me say also, Mr. Chairman, the most dramatically growing population in America today is our Indian population. Over half the population of the Indian country in America is below the age of 18. The demand for health care services and the dramatic increase, not decrease, in fact many of the budget reductions that have been enacted over the last 5 years have dramatically affected our Indian population.

I believe that this bill now that the McCain amendment was passed will be accepted by the administration. I think we will fulfill the obligation that was the subject of treaties and agreements for the last 200 years between the U.S. Government and our Indian population.

For those reasons, I reluctantly, although respectfully, oppose the substitute amendment offered by my colleague and friend, the gentleman from Utah [Mr. NIELSON].

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, this is the last amendment of which I am aware and we should be finishing up shortly if we dispose of this amendment.

This bill today has been in the jurisdiction of two committees, the Energy and Commerce Committee and the Interior and Insular Affairs Committee.

Mr. Chairman, I rise in strong opposition to this proposed substitute. As the gentleman notes, the substitute contains the text of H.R. 4600 which I

introduced. This bill failed of passage on suspension of the rules in April of this year.

H.R. 4600 was specifically developed as a suspension vehicle in order to accommodate members who felt that this important legislation should be expedited. In order to qualify for consideration under suspension, the total cost of that bill was reduced below $100,000,000. This was accomplished not primarily by reducing the authorization levels of the various programs, but by reducing the years of authorization.

I reluctantly agreed to bring the legislation to the floor under suspension. It failed on suspension not because many Members opposed the legislation, but because many supporters of H.R. 1426 disagreed with the reduction in funding levels and funding years.

Mr. Chairman, H.R. 1426, as brought to the House under the rule, is better legislation and I urge the defeat of this substitute.

Mr. AKAKA. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Hawaii.

Mr. AKAKA. Mr. Chairman, I rise in strong support of H.R. 1426, the Indian Health Care Amendments, and I urge my colleagues to do the same.

The purpose of this bill, Mr. Speaker, is to address the severe health needs of the Indian people of our Nation. And, well we should.

When the Indian Health Care Improvement Act of 1976 was passed, it was done for the primary reason of raising the health status of American Indians and Alaska Natives to a level at parity with that of the general U.S. population. That measure was passed because Congress recognized that the Federal Government has an historical and unique legal relationship with, and a resulting responsibility to, Indian tribes and their members.

Ten years later, while advances have been made in promoting the aims of that act, the task of providing adequate services to achieve those aims has not yet been met.

Indeed, the health status of Indians continues to be poorer than that of the U.S. population in general. Compared to all Americans, for example, the 1980 age-adjusted tuberculosis death rate for American Indians and Alasks Natives was six times greater than that for the general U.S. population. Statistics on the influenza and pneumonia death rate were no less significant: 1.6 times as great.

Clearly, if the success of a society is measured by the welfare of its citizens, then America, most assuredly, has a long way to go before it can be described as successful.

It is incumbent upon each and every one of us today to recognize the responsibility which is before us. We must, as keepers of the traditions of our country, ensure continuity in our policy of providing needed health services to American Indians, a policy which dates back to as early as 1802. H.R. 1426 helps us to meet our obligation.

There are those who would have us believe that this bill is excessive, overexpansive and burdensome. I simply do not agree. In fact, I believe that H.R. 1426 is a modest effort to address the need for additional health services, facilities, and the like, in an environment of fiscal conservatism.

I want to compliment Chairman UDALL and Chairman WAXMAN for their work on this measure. They have fought an uphill battle this year, and it is time for us to lend them a hand.

I urge the adoption of this bill.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Utah [Mr. NIELSON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. NIELSON of Utah. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 127, noes 253, not voting 51, as follows:

[Roll No. 395]

AYES—127

Archer	Frenzel	Parris
Armey	Gallo	Porter
Badham	Gekas	Ray
Bartlett	Gingrich	Regula
Barton	Goodling	Rinaldo
Bateman	Gregg	Ritter
Bentley	Hall, Ralph	Roberts
Bevill	Hansen	Robinson
Bilirakis	Henry	Roemer
Bliley	Hiler	Rogers
Boulter	Hillis	Roukema
Broomfield	Holt	Rowland (CT)
Brown (CO)	Hopkins	Saxton
Burton (IN)	Hubbard	Schulze
Byron	Hunter	Sensenbrenner
Carr	Hyde	Shaw
Chapman	Johnson	Shumway
Chappie	Kasich	Shuster
Clinger	Kolbe	Siljander
Coats	Latta	Slaughter
Cobey	Leach (IA)	Smith (NE)
Coble	Lent	Smith, Denny (OR)
Coleman (MO)	Lightfoot	Smith, Robert (NH)
Combest	Lloyd	Snyder
Coughlin	Loeffler	Solomon
Courter	Lott	Spence
Craig	Lowery (CA)	Stangeland
Crane	Lujan	Stenholm
Daniel	Lungren	Stump
Dannemeyer	Mack	Sundquist
DeLay	Madigan	Swindall
DioGuardi	Martin (IL)	Tauke
Dornan (CA)	McCandless	Taylor
Dreier	McDade	Thomas (CA)
Duncan	McEwen	Vander Jagt
Eckert (NY)	Michel	Vucanovich
Edwards (OK)	Miller (OH)	Walker
Emerson	Moorhead	Weber
Erdreich	Murphy	Wylie
Fawell	Myers	Young (FL)
Fields	Nichols	Zschau
Flippo	Nielson	
Franklin	Oxley	

NOES—253

Ackerman	Anderson	Anthony
Akaka	Andrews	Aspin
Alexander	Annunzio	Atkins
AuCoin	Hammerschmidt	Pashayan
Barnes	Hatcher	Pease
Bates	Hayes	Penny
Bedell	Hefner	Pepper
Beilenson	Hendon	Perkins
Bennett	Horton	Petri
Bereuter	Howard	Pickle
Berman	Hoyer	Price
Biaggi	Huckaby	Pursell
Boehlert	Hughes	Rahall
Boggs	Hutto	Reid
Boner (TN)	Jacobs	Richardson
Bonker	Jeffords	Ridge
Borski	Jenkins	Rodino
Bosco	Jones (NC)	Roe
Boucher	Jones (OK)	Rose
Boxer	Jones (TN)	Rostenkowski
Brooks	Kanjorski	Roth
Brown (CA)	Kaptur	Rowland (GA)
Bruce	Kastenmeier	Roybal
Bryant	Kennelly	Sabo
Bustamante	Kildee	Savage
Carney	Kleczka	Scheuer
Carper	Kolter	Schneider
Chandler	Kostmayer	Schroeder
Chappell	Kramer	Schumer
Clay	LaFalce	Seiberling
Coelho	Lagomarsino	Sharp
Coleman (TX)	Lantos	Sikorski
Collins	Leath (TX)	Sisisky
Conte	Lehman (CA)	Skeen
Cooper	Levin (MI)	Skelton
Coyne	Levine (CA)	Slattery
Darden	Lewis (FL)	Smith (FL)
Daschle	Lipinski	Smith (IA)
Davis	Long	Smith (NJ)
de la Garza	Lowry (WA)	Smith, Robert (OR)
Derrick	Luken	Snowe
DeWine	Lundine	Solarz
Dicks	MacKay	Spratt
Donnelly	Markey	St Germain
Dorgan (ND)	Marlenee	Staggers
Dowdy	Martin (NY)	Stallings
Downey	Martinez	Strang
Durbin	Matsui	Studds
Dwyer	Mavroules	Swift
Dymally	Mazzoli	Synar
Dyson	McCain	Tallon
Eckart (OH)	McCloskey	Tauzin
Edgar	McCollum	Thomas (GA)
Edwards (CA)	McCurdy	Torres
English	McGrath	Torricelli
Evans (IA)	McHugh	Towns
Evans (IL)	McKernan	Traficant
Fascell	McKinney	Traxler
Fazio	McMillan	Udall
Feighan	Meyers	Valentine
Fiedler	Mica	Vento
Fish	Mikulski	Visclosky
Florio	Miller (CA)	Volkmer
Foglietta	Miller (WA)	Walgren
Foley	Mineta	Watkins
Ford (MI)	Mitchell	Waxman
Frank	Moakley	Weaver
Frost	Molinari	Weiss
Fuqua	Mollohan	Wheat
Garcia	Montgomery	Whitley
Gaydos	Moody	Whittaker
Gejdenson	Morrison (CT)	Whitten
Gibbons	Morrison (WA)	Williams
Gilman	Mrazek	Wirth
Glickman	Murtha	Wise
Gonzalez	Natcher	Wolf
Gordon	Neal	Wolpe
Gradison	Nelson	Wortley
Gray (IL)	Oakar	Wright
Gray (PA)	Oberstar	Wyden
Green	Obey	Yates
Guarini	Olin	Young (AK)
Gunderson	Ortiz	Young (MO)
Hall (OH)	Owens	
Hamilton	Panetta	

NOT VOTING—51

Applegate	Daub	Hawkins
Barnard	Dellums	Hertel
Boland	Dickinson	Ireland
Bonior (MI)	Dingell	Kemp
Breaux	Dixon	Kindness
Burton (CA)	Early	Lehman (FL)
Callahan	Ford (TN)	Leland
Campbell	Fowler	Lewis (CA)
Cheney	Gephardt	Livingston
Conyers	Grotberg	Manton
Crockett	Hartnett	Monson

Moore	Russo	Stratton
Nowak	Schaefer	Sweeney
Packard	Schuette	Waldon
Quillen	Shelby	Whitehurst
Rangel	Stark	Wilson
Rudd	Stokes	Yatron

□ 1745

The Clerk announced the following pair:

On this vote:

Mr. Campbell for, with Mr. Dellums against.

Ms. FIEDLER and Mr. SPRATT changed their votes from "aye" to "no."

Mr. WEBER, Mrs. LLOYD, and Mr. ROEMER changed their votes from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. MOAKLEY] having assumed the chair, Mr. ANTHONY, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill (H.R. 1426) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, pursuant to House Resolution 528, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WALKER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 308, noes 70, answered "present" 1, not voting 52, as follows:

[Roll No. 396]

AYES—308

Ackerman	Franklin	Mollohan
Akaka	Frenzel	Montgomery
Alexander	Frost	Moody
Anderson	Fuqua	Morrison (CT)
Andrews	Gallo	Morrison (WA)
Annunzio	Garcia	Mrazek
Anthony	Gaydos	Murphy
Applegate	Gejdenson	Murtha
Aspin	Gibbons	Myers
Atkins	Gilman	Natcher
AuCoin	Gingrich	Neal
Barnes	Glickman	Nelson
Bateman	Gonzalez	Nichols
Bates	Gordon	Nowak
Bedell	Gradison	Oakar
Beilenson	Gray (IL)	Oberstar
Bennett	Gray (PA)	Obey
Bentley	Green	Ortiz
Bereuter	Guarini	Owens
Berman	Gunderson	Panetta
Bevill	Hall (OH)	Parris
Biaggi	Hamilton	Pashayan
Bilirakis	Hammerschmidt	Pease
Bliley	Hatcher	Penny
Boehlert	Hayes	Pepper
Boggs	Hefner	Perkins
Boner (TN)	Hendon	Petri
Bonior (MI)	Hiler	Pickle
Bonker	Horton	Porter
Borski	Howard	Price
Bosco	Hoyer	Pursell
Boucher	Huckaby	Rahall
Boxer	Hughes	Regula
Brooks	Hunter	Reid
Broomfield	Hutto	Richardson
Brown (CA)	Jacobs	Ridge
Bruce	Jeffords	Rinaldo
Bryant	Jenkins	Roberts
Bustamante	Jones (NC)	Rodino
Carney	Jones (OK)	Roe
Carper	Jones (TN)	Rose
Carr	Kanjorski	Rostenkowski
Chandler	Kaptur	Roth
Chappell	Kasich	Rowland (CT)
Chappie	Kastenmeier	Rowland (GA)
Clay	Kennelly	Roybal
Clinger	Kildee	Sabo
Coats	Kleczka	Savage
Coble	Kolbe	Saxton
Coelho	Kolter	Scheuer
Coleman (MO)	Kostmayer	Schneider
Coleman (TX)	Kramer	Schroeder
Collins	LaFalce	Schulze
Conte	Lagomarsino	Schumer
Cooper	Lantos	Seiberling
Coughlin	Leath (TX)	Sharp
Courter	Lehman (CA)	Shaw
Coyne	Levin (MI)	Shelby
Darden	Levine (CA)	Sikorski
Daschle	Lewis (FL)	Siljander
Davis	Lipinski	Sisisky
de la Garza	Lloyd	Skeen
Derrick	Long	Skelton
DeWine	Lowry (WA)	Slattery
Dicks	Lujan	Smith (FL)
DioGuardi	Luken	Smith (IA)
Donnelly	Lundine	Smith (NJ)
Dorgan (ND)	MacKay	Smith, Robert (OR)
Downey	Markey	Snowe
Duncan	Martin (NY)	Solarz
Durbin	Martinez	Spence
Dwyer	Matsui	Spratt
Dymally	Mavroules	St Germain
Eckart (OH)	Mazzoli	Staggers
Edgar	McCain	Stallings
Edwards (CA)	McCloskey	Stangeland
Edwards (OK)	McCollum	Strang
Emerson	McCurdy	Studds
English	McDade	Sundquist
Erdreich	McGrath	Swift
Evans (IA)	McHugh	Synar
Evans (IL)	McKernan	Tallon
Fascell	McKinney	Tauzin
Fazio	McMillan	Taylor
Feighan	Meyers	Thomas (CA)
Fiedler	Mica	Thomas (GA)
Fish	Mikulski	Torres
Flippo	Miller (CA)	Torricelli
Florio	Miller (WA)	Towns
Foglietta	Mineta	Traficant
Foley	Mitchell	Traxler
Ford (MI)	Moakley	Udall
Frank	Molinari	Valentine
Vander Jagt	Weber	Wolpe
Vento	Weiss	Wortley
Visclosky	Wheat	Wright
Volkmer	Whitley	Wyden
Vucanovich	Whittaker	Wylie
Walgren	Whitten	Yates
Watkins	Williams	Young (AK)
Waxman	Wirth	Young (FL)
Weaver	Wise	Young (MO)
	Wolf	Zschau

NOES—70

Archer	Gregg	Moorhead
Armey	Hall, Ralph	Nielson
Badham	Hansen	Olin
Bartlett	Henry	Oxley
Boulter	Hillis	Ray
Brown (CO)	Holt	Ritter
Burton (IN)	Hopkins	Robinson
Byron	Hubbard	Roemer
Cobey	Hyde	Rogers
Combest	Johnson	Sensenbrenner
Craig	Latta	Shuster
Crane	Leach (IA)	Slaughter
Daniel	Lightfoot	Smith (NE)
Dannemeyer	Loeffler	Smith, Denny (OR)
Daub	Lott	Smith, Robert (NH)
DeLay	Lowery (CA)	Snyder
Dornan (CA)	Lungren	Solomon
Dreier	Mack	Stenholm
Dyson	Madigan	Stump
Eckert (NY)	Martin (IL)	Swindall
Fawell	McCandless	Tauke
Fields	McEwen	Walker
Gekas	Michel	
Goodling	Miller (OH)	

ANSWERED "PRESENT"—1

Roukema

NOT VOTING—52

Barnard	Fowler	Packard
Barton	Gephardt	Quillen
Boland	Grotberg	Rangel
Breaux	Hartnett	Rudd
Burton (CA)	Hawkins	Russo
Callahan	Hertel	Schaefer
Campbell	Ireland	Schuette
Chapman	Kemp	Shumway
Cheney	Kindness	Stark
Conyers	Lehman (FL)	Stokes
Crockett	Leland	Stratton
Dellums	Lent	Sweeney
Dickinson	Lewis (CA)	Waldon
Dingell	Livingston	Whitehurst
Dixon	Manton	Wilson
Dowdy	Marlenee	Yatron
Early	Monson	
Ford (TN)	Moore	

□ 1805

The Clerk announced the following pair:

On this vote:

Mr. Dellums for, with Mr. Campbell against.

Mr. LEACH of Iowa changed his vote from "aye" to "no."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore (Mr. MOAKLEY). Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERSONAL EXPLANATION

Mrs. ROUKEMA. Mr. Speaker, on the vote on final passage of H.R. 1426, the Indian health care amendments bill, I miscast my vote as "present." I meant it to be "aye".

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4300, PARENTAL AND MEDICAL LEAVE ACT OF 1986

Mr. BONIOR of Michigan, from the Committee on Rules, submitted a privileged report (Rept. No. 99-838) on the resolution (H. Res. 552) providing for the consideration of the bill (H.R. 4300) to entitle employees to parental leave in cases involving the birth, adoption, or serious health condition of a son or daughter and temporary medical leave in cases involving inability to work because of a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5495, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATIONS

Mr. BONIOR of Michigan, from the Committee on Rules, submitted a privileged report (Rept. No. 99-839) on the resolution (H. Res. 553) providing for the consideration of the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4154, AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1986

Mr. BONIOR of Michigan, from the Committee on Rules, submitted a privileged report (Rept. No. 99-840) on the resolution (H. Res. 554) providing for the consideration of the bill (H.R. 4154) to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes, which was referred to the House Calendar and ordered to be printed.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT AMENDMENTS OF 1985

The SPEAKER pro tempore. Pursuant to House Resolution 536 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 2482.

□ 1807

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2482) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, with Mr. McHUGH in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, September 17, 1986, all time for general debate had expired.

Pursuant to the rule, the text of H.R. 5440 is considered by titles as an original bill for the purpose of amendment under the 5-minute rule in lieu of the amendments recommended by the Committee on Agriculture now printed in the bill and each title is considered as having been read.

No amendments to titles I through X of said substitute are in order except germane amendments printed in the CONGRESSIONAL RECORD and pro forma amendments for the purpose of debate.

No amendments to title XI of said substitute are in order except the amendment printed in House Report 99-803 if offered by Representative Roberts or his designee.

The Clerk will designate section 1.

The text of section 1 is as follows:

H.R. 5440

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. References to the Federal Insecticide, Fungicide, and Rodenticide Act.

TITLE I—REGISTRATION

Sec. 101. Preregistration access to data.
Sec. 102. Criminal penalties for disclosure of information.
Sec. 103. Conditional registration.
Sec. 104. Definition of outstanding data requirement.
Sec. 105. Reregistration of registered pesticides.
Sec. 106. Administrator's authority to require data on inert ingredients.
Sec. 107. Definition of ingredient statement.
Sec. 108. Disclosure of inert ingredients.
Sec. 109. Compensation for data on inert ingredients.

TITLE II—INFORMATION DISCLOSURE

Sec. 201. Public right to know.
Sec. 202. Data disclosure to States.

TITLE III—REVIEW AND CANCELLATION

Sec. 301. Public interim administrative review.
Sec. 302. Proceedings under section 6.
Sec. 303. Cancellation and change in classification or labels.
Sec. 304. Public hearings and scientific review.
Sec. 305. Administrative changes.
Sec. 306. Cancellation of registration based on false or invalid data.

TITLE IV—RECORDS AND INSPECTIONS

Sec. 401. Records.
Sec. 402. Inspections.

TITLE V—EXPORTS

Sec. 501. Definition of misbranded.
Sec. 502. Definition of importing country.
Sec. 503. Pesticides and devices intended for export.
Sec. 504. Cancellation notices furnished to foreign governments.

TITLE VI—CERTIFICATION AND TRAINING

Sec. 601. Certification, training, and recordkeeping for pesticide applicators.

TITLE VII—DATA COMPENSATION

Sec. 701. Defensive data.
Sec. 702. Data compensation and arbitration.

TITLE VIII—GENERAL

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Sec. 801. State registrations.
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Subtitle B—Other Provisions

Sec. 821. Liability.
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TITLE IX—CLARIFYING AND TECHNICAL AMENDMENTS

Sec. 901. Clarifying amendments.
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TITLE X—EFFECTIVE DATE

Sec. 1001. Effective date.

TITLE XI—TOLERANCES AND INTERNATIONAL COOPERATION

Sec. 1101. Tolerances for agricultural commodities.
Sec. 1102. Cooperation in international efforts.

The CHAIRMAN. Are there any amendments to section 1?

If not, the Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. REFERENCES TO THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.

Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

The CHAIRMAN. Are there any amendments to section 2?

If not, the Clerk will designate title I.

The text of title I is as follows:

TITLE I—REGISTRATION

SEC. 101. PREREGISTRATION ACCESS TO DATA.

(a) IN GENERAL.—Section 3(c) (7 U.S.C. 136a(c)) is amended by adding at the end thereof the following new paragraph:

"(9) PREREGISTRATION ACCESS TO DATA.—

"(A) If an application for—

"(i) a registration of a pesticide containing a new active ingredient, or

"(ii) a registration of a pesticide to authorize the initial food use of a pesticide active ingredient,

is submitted to the Administrator, the Administrator, before acting on such application, shall provide, in accordance with this paragraph, public access to health, safety, and environmental data that are submitted or cited in support of such application.

"(B) To obtain access to the data referred to in subparagraph (A), a person shall send by certified mail—

"(i) not later than 30 days after the publication under paragraph (4) of a notice of the application referred to in subparagraph (A), and

"(ii) simultaneously to the Administrator and to the applicant for the registration of the pesticide,

a request for such access and the affirmation required by subparagraph (D).

"(C)(i) Unless within 15 days after the Administrator's receipt of a request for access to such data and of an affirmation complying with subparagraph (D) the applicant submits to the Administrator an objection to the request asserting that the affirmation is inaccurate and the reasons for the objection, the Administrator shall grant the request. If an objection to a request is submitted to the Administrator within such 15-day period, the Administrator shall determine whether to grant the request within 5 days after the receipt of the objection. If the Administrator determines to grant the request, access shall not be permitted until 5 days after the applicant making the objection has been notified that access has been granted.

"(ii) If access to data is denied under clause (i), comments on the application for which such data were submitted or cited shall be filed within 60 days after the decision of the Administrator denying access.

"(D)(i) Data referred to in subparagraph (A) may be made available only to a person who provides an affirmation (and such supporting evidence as the Administrator considers necessary) containing the information prescribed by clause (ii).

"(ii) The affirmation required under clause (i) shall—

"(I) state that the person is not engaged in, and is neither employed by nor acting (directly or indirectly) on behalf of any other person or affiliate thereof engaged in, the production, sale, or distribution of a pesticide,

"(II) identify any business, employer, or other person, if any, on whose behalf the person is requesting access to the data, and

"(III) state that the person will not intentionally or recklessly violate this paragraph.

For purposes of this clause, an affiliate of a person is a person who directly or indirectly, through one or more intermediates, controls or is controlled by or is under common control with the other person.

"(iii) Section 1001 of title 18, United States Code, shall apply to an affirmation made under this subparagraph.

"(E)(i) Data supporting an application may be made available under subparagraph (A) to a person only for the purpose of permitting the person to comment to the Administrator on such application. Such comments may reasonably quote data submitted to the Administrator. No person, including the Administrator, may make such comments public before the decision of the Administrator on the application for the registration of the pesticide for which such data were submitted or after such decision if the application for registration is denied.

"(ii) Except as provided in clause (iii), a person who obtains data under subparagraph (A) (directly or indirectly) may not—

"(I) publish, copy, or transfer the data to any other person to obtain approval to sell, manufacture, or distribute a pesticide anywhere in the world, or

"(II) use the data for any purpose in any court or agency of the United States or any State or political subdivision thereof before the decision of the Administrator on the application for the registration of the pesticide for which such data were submitted or after such decision if the application for registration is denied.

"(iii) Such data and comments may be disclosed consistent with section 10 after registration of the pesticide for which such data were submitted.

"(F)(i) Data made available under this paragraph may be examined at an office of the Environmental Protection Agency or an appropriate State agency under the conditions prescribed by this paragraph and may not be removed from such office.

"(ii) The Administrator shall maintain a record of the persons who inspect data. A copy of such record shall be sent to the data submitter on request.

"(G) Once access to data respecting an application is granted, the data may be examined and notes may be taken for use in developing comments on the application. Such comments on the application shall be filed within 60 days after the decision of the Administrator granting access, unless the comment period is extended by the Administrator for an additional 30 days for good cause.".

(b) NOTICE OF APPLICATION.—Section 3(c)(4) (7 U.S.C. 136a(c)(4)) is amended—

(1) in the first sentence, by striking out "promptly" and inserting in lieu thereof "not later than 30 days", and

(2) in the second sentence—

(A) by striking out "The notice" and inserting in lieu thereof "Except as provided in paragraph (9), the notice", and

(B) by striking out "30" and inserting in lieu thereof "60".

SEC. 102. CRIMINAL PENALTIES FOR DISCLOSURE OF INFORMATION.

Paragraph (3) of section 14(b) (7 U.S.C. 1361(b)(3)) is amended to read as follows:

"(3) DISCLOSURE OF INFORMATION.—

"(A) Any person who, with intent to defraud, uses or reveals information relative to the formula of a product acquired under section 3 shall be fined not more than $25,000, or imprisoned for not more than 3 years, or both.

"(B) Any person, including any officer, contractor, or employee of the United States or a State, who—

"(i) is granted access to data under section 3(c)(9), and

"(ii) in furtherance of a commercial purpose involving the production, registration, distribution, or sale of a pesticide—

"(I) knowingly violates such section, or

"(II) knowingly allows data to be made available in violation of such section,

shall be fined not more than $100,000, or imprisoned for not more than 3 years, or both.".

SEC. 103. CONDITIONAL REGISTRATION.

Subparagraphs (B) and (C) of section 3(c)(7) (7 U.S.C. 136a(c)(7)) are amended to read as follows:

"(B)(i) The Administrator may conditionally amend the registration of a pesticide under this subparagraph to permit additional uses of such pesticide notwithstanding the fact that data concerning the pesticide may be insufficient to support an unconditional amendment, if the Administrator determines that—

"(I) the applicant has submitted or cited the additional data that the Administrator may require solely for the proposed additional use,

"(II) amending the registration in the manner proposed by the applicant would not materially increase the risk of any unreasonable adverse effect on the environment, and

"(III) the additional use is in the public interest.

"(ii)(I) Except as provided in subclause (II), if the Administrator has issued a notice stating that a pesticide, or any ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human dietary exposure and specified in regulations issued under paragraph (8), no registration of the pesticide may be amended under clause (i) to add any food or feed use during the pendency of any evaluation by the Administrator initiated by such notice.

"(II) If the Administrator has issued a notice stating that a pesticide, or any ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human dietary exposure and specified in regulations issued under paragraph (8), the Administrator may amend the registration of the pesticide under clause (i) to add a minor food or feed use if the Administrator determines, with the concurrence of the Secretary of Agriculture, that there is not available an effective alternative pesticide that does not meet or exceed such risk criteria.

"(iii) An applicant seeking an amended registration of a pesticide under this subparagraph shall submit or cite to the Administrator such data as would be required to obtain a registration of a similar pesticide under paragraph (5). Except as provided in

clause (iv), if the applicant is unable to submit or cite an item of such data because it has not yet been generated, the Administrator may amend the registration of the pesticide under such conditions as will require the submission or citation of such data not later than the time such data are required to be submitted for the maintenance of a registration of the similar pesticide under this section.

"(iv) If data concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, or teratogenicity are required to support the registration of a pesticide and if a period reasonably sufficient for the generation and submission of such data has elapsed since the Administrator first imposed the data requirement, a conditional amendment to permit an additional use of the pesticide for other than a minor use shall not be granted under clause (i) unless such data have been submitted.

"(C)(i) The Administrator may conditionally register a pesticide under this subparagraph containing an active ingredient not contained in any registered pesticide for a period reasonably sufficient for generation and submission of required data that have not been submitted because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirement (I) on the conditions that by the end of such period the Administrator receives such data and that the data that the Administrator receives do not meet or exceed risk criteria enumerated in regulations issued under paragraph (8), and (II) on such other conditions as the Administrator may prescribe.

"(ii) A conditional registration under this subparagraph shall be granted only if the Administrator determines that—

"(I) use of the pesticide during the period referred to in clause (i) will not cause any unreasonable adverse effect on the environment, and

"(II) use of the pesticide is in the public interest.

"(iii) The Administrator shall not conditionally register a pesticide under this subparagraph if data concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, or teratogenicity would be required for registration of such a pesticide under paragraph (5), a period reasonably sufficient for generation of such data has elapsed since the Administrator first imposed the data requirement, and such data have not been submitted to the Administrator.".

SEC. 104. DEFINITION OF OUTSTANDING DATA REQUIREMENT.

Section 2 (7 U.S.C. 136) is amended by adding at the end the following new subsection:

"(ff) OUTSTANDING DATA REQUIREMENT.—

"(1) IN GENERAL.—The term 'outstanding data requirement' means a requirement for any study, information, or data which is necessary to make a determination under section 3(c)(5) and which study, information, or data—

"(A) has not been submitted to the Administrator, or

"(B) if submitted to the Administrator, the Administrator has determined must be resubmitted because it is not valid, complete, or adequate to make a determination under section 3(c)(5) and the regulations and guidelines issued thereunder, as determined by the Administrator.

"(2) FACTORS.—In making a determination under paragraph (1)(B) respecting a study, the Administrator shall examine, at a minimum, relevant protocols, documentation of the conduct and analysis of the study, and the results of the study to determine whether the study and the results of the study fulfill the data requirement for which the study was submitted to the Administrator.".

SEC. 105. REREGISTRATION OF REGISTERED PESTICIDES.

(a) AMENDMENT.—The Act is amended by inserting after section 3 (7 U.S.C. 136a) the following new section:

"SEC. 3A. REREGISTRATION OF REGISTERED PESTICIDES.

"(a) GENERAL RULE.—The Administrator shall reregister, in accordance with this section, each registered pesticide containing any active ingredient contained in any pesticide first registered before November 1, 1984, except for any pesticide as to which the Administrator has determined, after November 1, 1984, and before the effective date of this section, that—

"(1) there are no outstanding data requirements, and

"(2) the requirements of section 3(c)(5) have been satisfied.

"(b) SPECIAL AUTHORITIES OF ADMINISTRATOR.—

"(1) GUIDELINES.—Not later than one year after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator, by order, shall issue guidelines to be followed by registrants in—

"(A) summarizing studies,

"(B) reformatting studies,

"(C) identifying adverse information, and

"(D) identifying studies that have been submitted previously that may not meet the requirements of section 3 or regulations issued under such section,

in accordance with subsection (f)(1). Guidelines issued under this paragraph shall not be subject to judicial review.

"(2) MONITORING.—The Administrator shall monitor the progress of registrants in acquiring and submitting the data required under this section.

"(3) SUSPENSIONS AND PENALTIES.—

"(A) The Administrator shall issue a notice of intent to suspend the registration of a pesticide in accordance with the procedures prescribed by section 3(c)(2)(B)(iv) if—

"(i) the Administrator determines that progress is insufficient to ensure the submission of the data required for such pesticide under a commitment made under subsection (e)(3)(B) or (f)(1)(H) within the time period prescribed by subsection (e)(4)(B) or (f)(2)(B) or the registrant has not submitted such data to the Administrator within such time period,

"(ii) the Administrator determines that tests necessary to fill an outstanding data requirement for such pesticide have not been initiated within 1 year after the issuance of a notice under subsection (g)(1)(B),

"(iii) the Administrator determines that progress is insufficient to ensure submission of the data referred to in clause (ii) within the time period prescribed by subsection (g)(2)(B) or the required data have not been submitted to the Administrator within such time period, or

"(iv) a registrant fails to comply with clause (ii) or (iii) of section 3(c)(2)(B).

"(B) A registrant who submits a certification under subsection (f)(1)(G) that is false shall be considered to have violated this Act and shall be subject to the penalties prescribed by section 14.

"(c) REREGISTRATION PHASES.—Reregistrations of pesticides under this section shall be carried out in the following phases:

"(1) The first phase shall include the listing under subsection (d) of the active ingredients of the pesticides that will be reregistered.

"(2) The second phase shall include the submission to the Administrator under subsection (e) of notices by registrants respecting their intention to seek reregistration, identification by registrants of missing and inadequate data for such pesticides, and commitments by registrants to replace such missing or inadequate data within the applicable time period.

"(3) The third phase shall include submission to the Administrator by registrants of the information required under subsection (f).

"(4) The fourth phase shall include an independent, initial review by the Administrator under subsection (g) of submissions under phases two and three, identification of outstanding data requirements, and the issuance, as necessary, of requests for additional data.

"(5) The fifth phase shall include the review by the Administrator under subsection (h) of data submitted for reregistration and appropriate regulatory action by the Administrator.

"(d) PHASE ONE.—

"(1) PRIORITY FOR REREGISTRATION.—For purposes of the reregistration of the pesticides described in subsection (a), the Administrator shall list the active ingredients of pesticides and shall give priority to, among others, active ingredients (other than active ingredients for which registration standards have been issued before the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986) that—

"(A) are in use on or in food or feed and may result in postharvest residues,

"(B) may result in residues of potential toxicological concern in potable groundwater, edible fish, or shellfish,

"(C) have been determined by the Administrator before the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 to have significant outstanding data requirements, or

"(D) are used on crops, including in greenhouses and nurseries, where worker exposure is most likely to occur.

"(2) REREGISTRATION LISTS.—For purposes of reregistration under this section, the Administrator shall by order—

"(A) not later than 70 days after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list pesticide active ingredients for which registration standards have been issued before such date,

"(B) not later than 4 months after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list the first 150 pesticide active ingredients, as determined under paragraph (1),

"(C) not later than 7 months after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list the second 150 pesticide active ingredients, as determined under paragraph (1), and

"(D) not later than 10 months after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list the remainder of the pesticide active ingredients, as determined under paragraph (1).

Each list shall be published in the Federal Register.

"(3) JUDICIAL REVIEW.—The content of a list issued by the Administrator under paragraph (2) shall not be subject to judicial review.

"(4) NOTICE TO REGISTRANTS.—On the publication of a list of pesticide active ingredients under paragraph (2), the Administrator shall send by certified mail to the registrants of the pesticides containing such active ingredients a notice of the time by which the registrants are to notify the Administrator under subsection (e) whether they intend to seek or not to seek reregistration of such pesticides.

"(e) PHASE TWO.—

"(1) IN GENERAL.—The registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) shall submit to the Administrator, within the time period prescribed by paragraph (4), the notice described in paragraph (2) and any information, commitment, or offer described in paragraph (3).

"(2) NOTICE OF INTENT TO SEEK OR NOT TO SEEK REREGISTRATION.—

"(A) The registrant of a pesticide containing an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) shall notify the Administrator by certified mail whether the registrant intends to seek or does not intend to seek reregistration of the pesticide.

"(B) If a registrant submits a notice under subparagraph (A) of an intention not to seek reregistration of a pesticide, the Administrator shall publish a notice in the Federal Register stating that such a notice has been submitted.

"(3) MISSING OR INADEQUATE DATA.—Each registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) and for which the registrant submitted a notice under paragraph (2) of an intention to seek reregistration of such pesticide shall submit to the Administrator—

"(A) in accordance with regulations issued by the Administrator under section 3, an identification of—

"(i) all data that are required by regulation to support the registration of the pesticide with respect to such active ingredient,

"(ii) data that were submitted by the registrant previously in support of the registration of the pesticide that are inadequate to meet such regulations, and

"(iii) data identified under clause (i) that have not been submitted to the Administrator, and

"(B) either—

"(i) a commitment to replace the data identified under subparagraph (A)(ii) and submit the data identified under subparagraph (A)(iii) within the applicable time period prescribed by paragraph (4)(B), or

"(ii) an offer to share in the cost to be incurred by a person who has made a commitment under clause (i) to replace or submit the data and an offer to submit to arbitration as described by section 3(c)(2)(B) with regard to such cost sharing.

For purposes of a submission by a registrant under subparagraph (A)(ii), data are inadequate if the data are derived from a study with respect to which the registrant is unable to make the certification prescribed by subsection (f)(1)(G) that the registrant possesses or has access to the raw data used in or generated by such study. For purposes of a submission by a registrant under such subparagraph, data shall be considered to be inadequate if the data are derived from a study submitted before January 1, 1970, unless it is demonstrated to the satisfaction of the Administrator that such data should be considered to support the registration of the pesticide that is to be reregistered.

"(4) TIME PERIODS.—

"(A) A submission under paragraph (2) or (3) shall be made—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 3 months after the date of publication of the listing of such active ingredient,

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 3 months after the date of publication of the listing of such active ingredient, and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 3 months after the date of publication of the listing of such active ingredient.

On application, the Administrator may extend a time period prescribed by this subparagraph if the Administrator determines that factors beyond the control of the registrant prevent the registrant from complying with such period.

"(B) A registrant shall submit data in accordance with a commitment entered into under paragraph (3)(B) within a reasonable period of time, as determined by the Administrator, but not more than 48 months after the date the registrant submitted the commitment. The Administrator, on application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(5) CANCELLATION AND REMOVAL.—

"(A) If the registrant of a pesticide does not submit a notice under paragraph (2) or (3) within the time prescribed by paragraph (4)(A), the Administrator shall issue a notice of intent to cancel the registration of such registrant for such pesticide and shall publish the notice in the Federal Register and allow 60 days for the submission of comments on the notice. On expiration of such 60 days, the Administrator, by order and without a hearing, may cancel the registration or take such other action, including extension of applicable time periods, as may be necessary to enable reregistration of such pesticide by another person.

"(B) If no registrant of a pesticide containing an active ingredient listed under subsection (d)(2) notifies the Administrator under paragraph (2) that the registrant intends to seek reregistration of any pesticide containing that active ingredient, if no such registrant complies with paragraph (3)(A), or if no such registrant makes a commitment under paragraph (3)(B) to replace or submit all data described in clauses (ii) and (iii) of paragraph (3)(A), or if the fee prescribed by subsection (j)(1) has not been paid with regard to the active ingredient, the Administrator shall publish in the Federal Register a notice of intent to remove the active ingredient from the list established under subsection (d)(2) and a notice of intent to cancel the registrations of all pesticides containing such active ingredient and shall provide 60 days for comment on such notice. After the 60-day period has expired, the Administrator, by order, may cancel any such registration without hearing, except that the Administrator shall not cancel a registration under this subparagraph if—

"(i) during the comment period a person acquires the registrant's rights in that registration,

"(ii) during the comment period that person furnishes a notice of intent to reregister the pesticide in accordance with paragraph (2), and

"(iii) not later than 120 days after the publication of the notice under this subparagraph, that person has complied with paragraph (3) and the fee prescribed by subsection (j)(1) has been paid.

"(f) PHASE THREE.—

"(1) INFORMATION ABOUT STUDIES.—Each registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) who has submitted a notice under subsection (e)(2) of an intent to seek the reregistration of such pesticide shall submit, in accordance with the guidelines issued under subsection (b)(1), to the Administrator—

"(A) a summary of each study concerning the active ingredient previously submitted by the registrant in support of the registration of a pesticide containing such active ingredient and considered by the registrant to be adequate to meet the requirements of section 3 and the regulations issued under such section,

"(B) a summary of each study concerning the active ingredient previously submitted by the registrant in support of the registration of a pesticide containing such active ingredient that may not comply with the requirements of section 3 and the regulations issued under such section but which the registrant asserts should be deemed to comply with such requirements and regulations,

"(C) a reformat of the data from each study summarized under subparagraph (A) or (B) by the registrant concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, teratogenicity, or residue chemistry of the active ingredient that were submitted to the Administrator before January 1, 1982,

"(D) where data described in subparagraph (C) are not required for the active ingredient by regulations issued under section 3, a reformat of acute and subchronic dosing data submitted by the registrant to the Administrator before January 1, 1982, that the registrant considers to be adequate to meet the requirements of section 3 and the regulations issued under such section,

"(E) an identification of data that are required to be submitted to the Administrator under section 6(g)(4) indicating an adverse effect of the pesticide,

"(F) an identification of any other information available that in the registrant's view supports the registration,

"(G) a certification that the registrant or the Administrator possesses or has access to the raw data used in or generated by the studies that the registrant summarized under subparagraph (A) or (B),

"(H) either—

"(i) a commitment to submit data to fill each outstanding data requirement identified by the registrant, or

"(ii) an offer to share in the cost of developing such data to be incurred by a person who has made a commitment under clause (i) to submit such data, and an offer to submit to arbitration as described by section 3(c)(2)(B) with regard to such cost sharing, and

"(I) evidence of compliance with section 3(c)(1)(D)(ii) and regulations issued thereunder with regard to previously submitted data as if the registrant were now seeking the original registration of the pesticide.

"(2) TIME PERIODS.—

"(A) The information required by paragraph (1) shall be submitted to the Administrator—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 12 months after the date of publication of the listing of such active ingredient,

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 12 months after the date of publication of the listing of such active ingredient, and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 12 months after the date of publication of the listing of such active ingredient.

"(B) A registrant shall submit data in accordance with a commitment entered into under paragraph (1)(H) within a reasonable period of time, as determined by the Administrator, but not more than 48 months after the date the registrant submitted the commitment under such paragraph. The Administrator, upon application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(3) CANCELLATION.—

"(A) If the registrant of a pesticide fails to submit the information required by paragraph (1) within the time prescribed by paragraph (2), the Administrator, by order and without hearing, shall cancel the registration of such pesticide.

"(B)(i) If the registrant of a pesticide submits the information required by paragraph (1) within the time prescribed by paragraph (2) and such information does not conform to the guidelines for submissions established by the Administrator, the Administrator shall determine whether the registrant made a good faith attempt to conform its submission to such guidelines.

"(ii) If the Administrator determines that the registrant made a good faith attempt to conform its submission to such guidelines, the Administrator shall provide the registrant a reasonable period of time to make any necessary changes or corrections.

"(iii) If the Administrator determines that the registrant did not make a good faith attempt to conform its submission to such guidelines, the Administrator may issue a notice of intent to cancel the registration. Such a notice shall be sent to the registrant by certified mail. The registration shall be cancelled without a hearing or further notice at the end of 30 days after receipt by the registrant of the notice unless during that time a request for a hearing is made by the registrant. If a hearing is requested, a hearing shall be conducted under section 6(d), except that the only matter for resolution at the hearing shall be whether the registrant made a good faith attempt to conform its submission to such guidelines. The hearing shall be held and a determination made within 75 days after receipt of a request for hearing.

"(g) PHASE FOUR.—

"(1) INDEPENDENT REVIEW AND IDENTIFICATION OF OUTSTANDING DATA REQUIREMENTS.—

"(A) The Administrator shall review the submissions of all registrants of pesticides containing a particular active ingredient under subsections (e)(3) and (f)(1) to determine if such submissions identified all the data that are missing or inadequate for such active ingredient. To assist the Administrator's review under this section, the Administrator may require a registrant seeking reregistration to submit complete copies of studies summarized under subsection (f)(1).

"(B) The Administrator shall independently identify and publish in the Federal Register the outstanding data requirements for each active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is contained in a pesticide to be reregistered under this section. The Administrator, at the same time, shall issue a notice under section 3(c)(2)(B) for the submission of the additional data that are required to meet such requirements.

"(2) TIME PERIODS.—

"(A) The Administrator shall take the action required by paragraph (1)—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 18 months after the date of the listing of such active ingredient,

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 24 months after the date of the listing of such active ingredient, and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 33 months after the date of the listing of such active ingredient.

"(B) If the Administrator issues a notice to a registrant under paragraph (1)(B) for the submission of additional data, the registrant shall submit such data within a reasonable period of time, as determined by the Administrator, but not to exceed 48 months after the issuance of such notice. The Administrator, on application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(h) PHASE FIVE.—

"(1) DATA REVIEW.—The Administrator shall conduct a thorough examination of all data submitted under this section concerning an active ingredient listed under subsection (d)(2) and of all other available data found by the Administrator to be relevant.

"(2) REREGISTRATION AND OTHER ACTIONS.—

"(A) ELIGIBILITY FOR REREGISTRATION.—Within 1 year after the submission of all data concerning an active ingredient of a pesticide under subsection (g), the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. For extraordinary circumstances, the Administrator may extend such period for not more than 1 additional year.

"(B) PRODUCT-SPECIFIC DATA.—Before reregistering a pesticide, the Administrator shall obtain any needed product-specific data regarding the pesticide by use of section 3(c)(2)(B) and shall review such data within 90 days after its submission. The Administrator shall require that data under this subparagraph be submitted to the Administrator not later than 8 months after a determination of eligibility under subparagraph (A) has been made for each active ingredient of the pesticide, unless the Administrator determines that a longer period is required for the generation of the data.

"(C) REREGISTRATION.—After conducting the review required by paragraph (1) for each active ingredient of a pesticide and the review required by subparagraph (B) of this paragraph, the Administrator shall determine whether to reregister a pesticide by determining whether such pesticide meets the requirements of section 3(c)(5). If the Administrator determines that a pesticide is eligible to be reregistered, the Administrator shall reregister such pesticide within 6 months after the submission of the data concerning such pesticide under subparagraph (B).

"(D) OTHER ACTION.—If after conducting a review under paragraph (1) or subparagraph (B) of this paragraph the Administrator determines that a pesticide should not be reregistered, the Administrator shall take appropriate regulatory action.

"(i) COMPENSATION OF DATA SUBMITTER.—If data that are submitted by a registrant under subsection (e), (f), (g), or (h) are used to support the application of another person under section 3, the registrant who submitted such data shall be entitled to compensation for the use of such data as prescribed by section 3(c)(1)(D). In determining the amount of such compensation, the fees paid by the registrant under this section shall be taken into account.

"(j) FEES.—

"(1) INITIAL FEE FOR FOOD OR FEED PESTICIDE ACTIVE INGREDIENTS.—The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $50,000 on submission of information under paragraphs (2) and (3) of subsection (e) forsuch ingredient.

"(2) FINAL FEE FOR FOOD OR FEED PESTICIDE ACTIVE INGREDIENTS.—

"(A) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $100,000 (i) on submission of information for such ingredient under subsection (f)(1) if data are reformatted under subsection (f)(1)(C), or (ii) on submission of data for such ingredient under subsection (f)(2)(B) if data are not reformatted under subsection (f)(1)(C).

"(B) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (A) of subsection (d)(2) and that is an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $100,000 at such time as the Administrator shall prescribe.

"(3) FEES FOR OTHER PESTICIDE ACTIVE INGREDIENTS.—

"(A) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is not an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay fees in amounts determined by the Administrator. Such fees may not be less than one-half of, nor greater than, the fees required by paragraphs (1) and (2). A registrant shall pay such fees at the times corresponding to the times fees prescribed by paragraphs (1) and (2) are to be paid.

"(B) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (A) of subsection (d)(2) and that is not an active ingredient of any pesticide that is registered for a major use on food or feed shall collectively pay a fee of not more than $100,000 and not less than

$50,000 at such time as the Administrator shall prescribe.

"(4) REDUCTION OR WAIVER OF FEES FOR MINOR USE AND OTHER PESTICIDES.—

"(A) In the case of an active ingredient of a pesticide that is registered solely for an agricultural or nonagricultural minor use or in the case of a pesticide the value or volume of use of which is small, the Administrator, upon application and in the sole discretion of the Administrator, may reduce or waive the fees prescribed by paragraph (3).

"(B) In the case of an antimicrobial active ingredient for which the production level does not exceed 1,000,000 pounds per year, the Administrator, upon application and in the sole discretion of the Administrator, may reduce or waive the fees prescribed by paragraph (3).

"(C) In the case of a small business registrant that produces an active ingredient of a pesticide, the Administrator, upon application and in the sole discretion of the Administrator, may reduce or waive the fees prescribed by paragraph (3). For the purpose of this subparagraph, a small business registrant is a corporation, partnership, or unincorporated business that—

"(i) has 125 or fewer employees, and

"(ii) for the last 3 years before application is made for a reduction or waiver had an average annual gross revenue that did not exceed $20,000,000.

"(5) OTHER FEES.—On payment of fees for the reregistration of a pesticide in accordance with paragraph (1), (2), (3), or (4), the Administrator may not levy any other fees for the reregistration with respect to that active ingredient.

"(6) APPORTIONMENT.—If two or more registrants are required to pay any fee prescribed by this subsection with respect to a particular active ingredient, the fees for such active ingredient shall be apportioned among such registrants on the basis of the market share in United States sales of the active ingredient for the three calendar years preceding the date of payment of such fee. The Administrator, by order, may require such registrants to submit such reports as the Administrator determines to be necessary to allow the Administrator to apportion fees under this paragraph. If any such report is not submitted by a registrant after receiving notice of such report requirement, or if any fee prescribed by this subsection for an active ingredient is not paid by a registrant to the Administrator by the time prescribed under paragraph (1), (2), or (3)(B), the Administrator, by order and without hearing, may cancel each registration held by such registrant of a pesticide containing the active ingredient with respect to which the fee is imposed. The Administrator then shall reapportion the fee among the remaining registrants and notify such registrants that they are required to pay to the Administrator any unpaid balance of the fee within 30 days after receipt of such notice.

"(k) EXEMPTION OF CERTAIN REGISTRANTS.—The requirements of subsections (e), (f), (g), and (j) regarding data concerning an active ingredient and fees for review of such data shall not apply to any person who is the registrant of a pesticide to the extent that, under section 3(c)(2)(D), the person would not be required to submit or cite such data to obtain an initial registration of such pesticide.

"(l) REREGISTRATION FUND.—

"(1) There shall be established in the Treasury of the United States a reregistration fund.

"(2) All fees collected by the Administrator under subsection (j) shall be deposited into the fund and shall be available to the Administrator, without fiscal year limitation, to carry out this section.

"(3) Money in the fund not currently needed to carry out this section shall be—

"(A) maintained on hand or on deposit,

"(B) invested in obligations of the United States or guaranteed thereby, or

"(C) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

"(4) The Administrator shall—

"(A) provide an annual accounting of the fees collected and disbursed from the fund, and

"(B) take all steps necessary to ensure that expenditures of such funds are used only to carry out this section.

"(m) JUDICIAL REVIEW.—Any failure of the Administrator to take any action required by this section shall be subject to judicial review under the procedures prescribed by section 16(b).".

(b) TECHNICAL AMENDMENT.—Subsection (g) of section 3 (7 U.S.C. 136a(g)) is repealed.

(c) DEFINITION.—

(1) Section 2 (7 U.S.C. 136) (as amended by section 104) is amended by adding at the end the following:

"(gg) ANTIMICROBIAL.—The term 'antimicrobial' means any active ingredient that is contained only in pesticides that are not registered for any food or feed use and that are—

"(1) sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces or in water or air,

"(2) bacteriostats intended to inhibit the growth of bacteria in the presence of moisture,

"(3) disinfectants intended to destroy or irreversibly inactivate bacteria, fungi, or viruses on surfaces or inanimate objects, or

"(4) sterilizers intended to destroy viruses and all living bacteria, fungi, and their spores on inanimate surfaces.".

(2) Section 2(u) (7 U.S.C. 136(u)) is amended by striking out "and" immediately before the first clause (2), by adding ", and" at the end of the first clause (2), and by adding a new clause (3) as follows: "(3) any substance or mixture of substances intended for a purpose described in subsection (gg)".

SEC. 106. ADMINISTRATOR'S AUTHORITY TO REQUIRE DATA ON INERT INGREDIENTS.

(a) SECTION 3(c)(2)(A).—Subsection (c)(2)(A) of section 3 (7 U.S.C. 136a(c)(2)(A)) is amended by inserting after "any additional kind of information under subparagraph (B) of this paragraph" the following: "including information regarding an inert ingredient in a pesticide".

(b) PRIORITY LIST AND DATA REQUIREMENTS.—Section 3 (7 U.S.C. 136a) is amended by adding at the end thereof the following new subsection:

"(g) PRIORITY LIST AND DATA REQUIREMENTS FOR INERT INGREDIENTS.—

"(1) ESTABLISHMENT OF LIST.—Subject to paragraph (4), the Administrator shall establish a priority list of inert ingredients consisting of—

"(A) inert ingredients that appear to cause a pesticide to meet or exceed a criterion for initiating a public interim administrative review under subsection (c)(8),

"(B) inert ingredients (i) for which additional data are reasonably necessary to assess the risk that the inert ingredient may result in a pesticide causing an unreasonable adverse effect on the environment, (ii) that are similar in molecular structure to a chemical that is oncogenic, mutagenic, or teratogenic or causes another similarly significant adverse effect, and (iii) that have significant use in pesticides or to which there is significant exposure from pesticides, and

"(C) inert ingredients for which additional data are reasonably necessary to assess the risk that the inert ingredient may result in a pesticide causing an unreasonable adverse effect on the environment and to which there is significant exposure from pesticides.

"(2) PUBLICATION OF LIST.—Not later than 90 days after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator shall publish the priority list required under paragraph (1). The Administrator shall publish revisions to such list at least annually.

"(3) JUDICIAL REVIEW.—The priority list under paragraph (1), the inclusion or exclusion of an ingredient on or from the priority list, and any revision of the priority list shall not be subject to judicial review.

"(4) NUMBER OF INGREDIENTS.—The priority list under paragraph (1) shall consist of not less than 50 inert ingredients unless the Administrator determines that there is not a sufficient number of inert ingredients meeting the requirements for listing under paragraph (1) to reach such minimum number. Such list may not exceed 75 inert ingredients.

"(5) ADDITIONAL DATA.—

"(A) The Administrator shall determine whether additional data are required for an inert ingredient in a registered pesticide not later than 1 year after the inert ingredient is placed on the priority list under paragraph (1). The Administrator shall require submission of such data from each registrant of such pesticide under this Act or from manufacturers and processors of the inert ingredient under the Toxic Substances Control Act. Such data shall be submitted within a reasonable time but not later than 4 years after the date of the request. The Administrator may extend the period for the submission of data by not more than 2 years if extraordinary circumstances beyond the control of the registrant or producer prevent the submission of the necessary data.

"(B) Data requirements imposed under subparagraph (A) or a decision not to require data for an inert ingredient shall be subject to judicial review under section 16(b).

"(6) EVALUATION.—Within 1 year after the receipt of additional data under paragraph (5) for an inert ingredient, the Administrator shall evaluate the data and take such steps as are appropriate to prevent unreasonable adverse effects on the environment caused by pesticides containing such inert ingredient. Under exceptional circumstances, the Administrator may extend the period for evaluation by not more than 1 year.

"(7) CONSTRUCTION.—This subsection shall not be construed to affect the authority of the Administrator—

"(A) to regulate under this Act impurities, contaminants, degradants, or other ingredients of pesticides that have not been deliberately added to the pesticides,

"(B) to regulate under this Act any deliberately added inert ingredient that has not previously been used in a pesticide or a sig-

nificant new use in a pesticide of a deliberately added inert ingredient,

"(C) to require the submission of short-term, environmental fate, or residue studies for deliberately added inert ingredients, or

"(D) to require the submission of revised formula statements under subsection (c)(2)(B).".

(c) DATA COMPENSATION.—Section 3(c)(1)(D)(ii) (7 U.S.C. 136a(c)(1)(D)(ii)) is amended—

(1) by striking out "or for reregistration" and inserting in lieu thereof "for reregistration, or to support the safety of an inert ingredient", and

(2) by inserting "or in support of the safety of an inert ingredient" before "by any other person".

SEC. 107. DEFINITION OF INGREDIENT STATEMENT.

Subsection (n) of section 2 (7 U.S.C. 136(n)) is amended to read as follows:

"(n) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement that contains—

"(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in a pesticide,

"(2) the name of each inert ingredient in the pesticide that the Administrator determines must appear in the ingredient statement because of the hazard that the Administrator has determined may be posed by the use pattern and concentration level of the inert ingredient in the pesticide,

"(3) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic,

"(4) any other information concerning the chemical composition or identity of any active ingredient of the pesticide, including information on chemical equivalency, that the Administrator requires to appear in the ingredient statement so that the nature of the active ingredient is accurately represented, and

"(5) the name of any inert ingredient for which the Administrator has required additional data under section 3(g)(5) because such ingredient is listed under section 3(g)(1)(A) as appearing to cause a pesticide to meet or exceed a criterion for initiating a public interim administrative review under subsection (c)(8).".

SEC. 108. DISCLOSURE OF INERT INGREDIENTS.

Section 10(d) (7 U.S.C. 136h(d)) is amended in the first sentence of paragraph (3) by striking out "If" and inserting in lieu thereof "Except with respect to disclosure of information on inert ingredients in ingredient statements in accordance with section 2(n), if".

SEC. 109. COMPENSATION FOR DATA ON INERT INGREDIENTS.

Subparagraph (D) of section 3(c)(2) (7 U.S.C. 136a(c)(2)) is amended to read as follows:

"(D) EXEMPTION.—

"(i) No applicant for registration or amended registration of a pesticide who proposes to purchase a registered pesticide from another producer to formulate such purchased pesticide into the pesticide that is the subject of the application shall be required to—

"(I) submit or cite data pertaining to such purchased pesticide, or

"(II) offer to pay reasonable compensation otherwise required by paragraph (1)(D) for the use of any such data.

"(ii) No applicant for registration or amended registration of a pesticide who proposes to purchase an inert ingredient from another person to formulate the pesticide shall be required to offer to pay reasonable compensation otherwise required by paragraph (1)(D) for a study concerning such ingredient if any portion of the cost of the study will be or could be included in the price of the purchased ingredient.".

The CHAIRMAN. Are there any amendments to title I?

AMENDMENT OFFERED BY MR. BEDELL

Mr. BEDELL. I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BEDELL: Page 38, line 17: delete the words "$100,000" and insert in lieu thereof the words "$150,000".

Mr. BEDELL. Mr. Chairman, I am offering this amendment at the request of the administration.

I would like to take this opportunity to thank EPA officials for the outstanding cooperation which they have shown throughout this effort to write a new FIFRA bill.

The purpose of this amendment is to provide for uniform reregistration fees for all pesticide active ingredients, regardless of where those pesticides are in the current reregistration process.

H.R. 2482 requires that reregistration fees be paid in two stages. The initial fee is paid in order to help EPA defray the cost of examining the registration file on each pesticide to determine if any required data are missing. Because EPA has already completed this work on nearly 130 pesticides, the bill exempts these pesticides from the first part of the reregistration fee. This amendment would apply this fee to those pesticides that have undergone the initial review at EPA but have not yet been reregistered.

Although I offer this amendment with some reluctance, the fact remains that the administration is concerned whether sufficient resources will be available to complete reregistration under the timetable established in the bill.

This amendment would help to close the resource gap by providing nearly $6 million in additional revenue, and I urge its adoption.

Mr. ROBERTS. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment.

Mr. Chairman, I said yesterday during general debate on this legislation that there were some problems with the legislation that we are considering. One problem is that it mandates a time, a deadline for the EPA to complete a reregistration process, but according to the EPA the user fees imposed on the registrant fall short by nearly $50 million. That is the point my colleague from Iowa has made.

The plain fact of the matter, the truth of the matter is the bill contains numbers and demands on the Office of Pesticide Programs that will be nearly impossible for it to meet even with the reregistration fees that are provided in this bill. I am well aware of the budget restrictions we face within many of our regulatory agencies but once again without the gentleman's amendment Congress is mandating that an agency do its job without providing adequate resources for it to do the job.

I warned my colleagues in my remarks at that time that the shortfall in resources will surely mean that the Office of Pesticide Programs will not meet the mandated deadlines in this bill.

For that reason, to make this bill whole, so to speak, to pay for what we are about, I rise in support of the gentleman's amendment.

I would note that my colleague from Wisconsin [Mr. GUNDERSON] will come with an amendment to the amendment of the gentleman to provide full funding for the FIFRA bill and would urge my colleagues to pay very close attention to that amendment as well.

Mr. Chairman, I yield back the balance of my time.

AMENDMENT OFFERED BY MR. GUNDERSON TO THE AMENDMENT OFFERED BY MR. BEDELL

Mr. GUNDERSON. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GUNDERSON to the amendment offered by Mr. BEDELL:

At the end of the amendment (page 38) strike the period, insert a semicolon, and add the following:

Page 37, line 20, strike out "$50,000" and insert in lieu thereof "$100,000";

Page 38, line 6, strike out "$100,000" and insert in lieu thereof "$200,000";

Page 38, line 17, strike out "$100,000" and insert in lieu thereof "$300,000"; and

Page 39, line 13, strike out "$100,000" and insert in lieu thereof "$300,000".

Mr. GUNDERSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. GUNDERSON. Mr. Chairman, I, too, rise in support of the amendment offered by the distinguished chairman of our subcommittee, Mr. BEDELL. However, I would like to suggest to my colleagues that the amendment by the gentleman from Iowa does not go far enough. I would like to take a little bit of time to go with you through the numbers to exactly understand what we are dealing with in this reauthorization. We are undergoing as a result of this legislation directing EPA to pursue the most massive reregistration of active ingredients that has ever occurred in the history of this country. Within 9 years we are frankly to reregister every active chemical ingredient which is used in our agricultural chemical industry in this country.

Now, when you take a look at exactly what this does, the estimated reregistration cost in the legislation in front of us according to the Environmental

Protection Agency is some $206 million.

The current budget over a 9-year period will bring in approximately $110 million, leaving us a revenue shortfall of $96 million.

The legislation in front of us on the revenue side through the registration process brings in in the food use area about $21.9 million for those with no registration standard, about $11.4 million for those with a registration standard; in the area of nonfoods, it brings in about $7.9 million for those with no registration standard and about $1.12 million for those with a registration standard, giving us additional revenue of $42.3 million. That of course, if you do some quick subtraction, would suggest to you that you have approximately a $54 million shortfall over the 9-year period.

If the gentleman from Iowa's amendment is agreed to, that will elevate that number and bring in an additional $6 million, leaving us with a revenue shortfall of approximately $48 million over that same 9-year period.

Now, when you bring this down to a typical annual year, what you are dealing with is a recognition that in the present abatement and control budget for fiscal year 1986 for the Environmental Protection Agency, they spend approximately $12.3 million of that in reregistration.

Now, under the bill that is in front of us, rather than $12.3 million we are going to be going to approximately $23 million annually or $206 million over the 9-year period. But the reregistration fees will only bring in approximately $6 million a year. So even though we have doubled from $12 to $23 million because of the increase in fees under the bill at the present time, we only increase from $12 to $18 million of the cost, we are looking at approximately a $5 to $6 million shortfall each year.

Here is the problem, ladies and gentlemen: while we would all like to be content with that, No. 1, we face opposition from the Office of Management and Budget if we do not properly fund this legislation. I agree with the gentleman from Iowa his amendment goes in the right direction. Is it enough? OMB will not tell him, and they will not tell me it is enough. We do not know for sure.

That is why I bring to you this case scenario that is in front of us at the present time.

But more so than that, I think we need to understand that this bill includes for the first time major time mandates that must be met to achieve the reregistration of all the active ingredients within 9 years and gives the opportunity to sue in court if the Environmental Protection Agency does not meet those mandates and gives the reimbursement for attorney fees anytime such a case is brought to court, absolutely inviting cases to be brought to court to force EPA to meet that mandate.

The problem with this is very obvious. What is going to happen is next year and the year after under Gramm-Rudman we are not going to increase funds for EPA, we are going to pass this legislation which increased the mandates, and all of a sudden the entire regulation and enforcement of pesticides in this country are not going to be done by the Agriculture Committee, it is not going to be done by proper management of the Environmental Protection Agency but it is going to be done by the courts.

The CHAIRMAN. The time of the gentleman from Wisconsin [Mr. GUNDERSON] has expired.

(By unanimous consent, Mr. GUNDERSON was allowed to proceed for 5 additional minutes.)

Mr. GUNDERSON. As the EPA Administrator, Dr. Morse, said, "I am going to respond to the court orders. I am not about to go to jail for not pursuing the timetable on a particular active ingredient."

So there will be no rational decisionmaking process to determine how we implement the FIFRA legislation that we are passing today.

Now, we are not talking about a big amount of dollars here. What we are talking about is approximately $48 million.

□ 1820

Some are going to suggest that this is going to hurt the little companies. I point out to them that we include in this legislation the absolute authority for the administrator to reduce or waive those reregistration fees whenever he believes it is proper and necessary to do so.

So each and every one of us ought to decide today, do you think it is the business of the Congress of the United States and the taxpayers of this country to pay for the cost of reregistration or, frankly, ought the chemical companies which are going to get the money and the revenues from the sale of those active ingredients pay for the reregistration process. You decide, $48 million in my amendment, or are you willing to cut $48 million out of handicapped education, out of Indian health care, out of foreign aid to Mrs. Aquino or some other program near and dear to your heart?

I think the case is very obvious, and that is why I would hope that we would pass not only the amendment offered by Mr. BEDELL, but my amendment to his.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. GUNDERSON. I yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Chairman, in the interest of my colleagues in terms of information, I would like to inform them with regard to the Administration's position, that in talking with Dr. John Moore, who is the Deputy Administrator of EPA, he has informed me that the administration will oppose the FIFRA bill if the gentleman's amendment is not included.

Mr. GUNDERSON. Mr. Chairman, I thank the gentleman for his comments.

Mr. BEDELL. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

Mr. Chairman, it is obvious that I am trying to help the administration in paying for the cost of this program. But I hope people realize that this is something that serves the public purpose. This is the only case that I know of where we have gone this far in saying that the industry will have to pay the cost of something that we are doing for the public purpose.

I am on the Agriculture Committee. The Agriculture Committee surely does not believe that we should say that meat inspection will have to be paid by all the meat plants that are slaughtering livestock.

So we have gone a long way. We have already gone further than was in the bill as we passed it out of our committee. The EPA, I understand, says that pesticides are their No. 1 priority at EPA. If that is correct, I believe we have a department of Government which does have a mandate to try to serve the public. Under those circumstances, I believe that the amendment I offered, which does indeed increase the funds that are available to them, goes as far as we should go.

I do not believe it is proper for us to say that when we are mandating something for public purpose that it should be up to the businesses themselves to pay the entire cost of the effort.

So I would hope that this amendment would be defeated and that my amendment would stand without the amendment that has been offered.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin [Mr. GUNDERSON] to the amendment offered by the gentleman from Iowa [Mr. BEDELL].

The question was taken; and on a division (demanded by Mr. GUNDERSON) there were—ayes 6, noes 13.

So the amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa [Mr. BEDELL].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HATCHER

Mr. HATCHER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Has the amendment been printed in the RECORD.

Mr. HATCHER. The amendment has been printed in the RECORD, Mr. Chairman.

The Clerk read as follows:

Amendment offered by Mr. HATCHER: Page 40, strike out lines 7 through 19 and insert in lieu thereof the following:

"(C)(i) Notwithstanding any other provision of this subsection, in the case of a small business registrant of a pesticide, the registrant shall pay a fee for the reregistration of each active ingredient of the pesticide that does not exceed an amount determined in accordance with this subparagraph.

"(ii) If during the 3-year period prior to reregistration the average annual gross revenue of the registrant from pesticides containing such active ingredient is—

"(I) less than $5,000,000, the registrant shall pay 0.5 percent of such revenue;

"(II) $5,000,000 or more but less than $10,000,000, the registrant shall pay 1 percent of such revenue; or

"(III) $10,000,000 or more, the registrant shall pay 1.5 percent of such revenue, but not more than $150,000.

"(iii) For the purpose of this subparagraph, a small business registrant is a corporation, partnership, or unincorporated business that—

"(I) has 150 or fewer employees; and

"(II) during the 3-year period prior to reregistration, had an average annual gross revenue from pesticides that did not exceed $40,000,000.

Mr. HATCHER. Mr. Chairman, I rise to seek support for this amendment that will keep small businesses from paying a disproportionate share of the reregistration fees imposed by H.R. 5440.

This amendment sets a cap on reregistration fees paid by small businesses, guaranteeing that all small businesses would contribute toward pesticide reregistration costs. This amendment is not an exemption nor is it a waiver for small businesses. Rather, it creates a fair and progressive fee, based on the registrant's ability to pay, in which the fee rises in proportion to the sales of the active ingredient. If the sales go above $10 million for a pesticide active ingredient, all businesses would be treated equally.

Mr. Chairman, many small businesses cannot afford fees of $75,000 to $150,000 for each active ingredient because low volume, low-profit products cannot support such fees. A significant number of active ingredients will be dropped voluntarily. Small businesses, which often make small batches of specialized pesticide products, would be discouraged from innovating new low volume, low profit products if they have to pay large reregistration fees. And, most important, research and development by small companies would surely decline. I believe this amendment would make FIFRA more equitable for small businesses and should be passed, and I ask for the support of all Members.

Mr. DREIER of California. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, as a member of the Small Business Committee and a veteran of the small chemical manufacturing industry, I rise in support of this amendment. Small businesses comprise an important part of the pesticide industry, and this amendment would make the fees they must pay for reregistration of active ingredients fair and progressive.

Small businesses are responsible for manufacturing most of the specialized products which are regulated by FIFRA. But requiring them to pay the same $75,000 to $150,000 reregistration fee that duPont and Dow pay does not make sense. Many of these products are manufactured only in small quantities, or contain only small amounts of active ingredients regulated by FIFRA. These small manufacturers tell me that, in the face of fees of this magnitude, they would simply discontinue many of their products.

Furthermore, new products which small businesses are prominent in developing will never see the light of day if the reregistration fee structure makes economically unfeasible.

This is a serious situation. One company in Indiana points out that they would have to discontinue an antimicrobial product used in whirlpool therapy for burn patients because the fee relative to the amount of active ingredient would be prohibitive.

The Hatcher amendment is fair, and would ensure the availability of those products with small markets. The Senate Agriculture Committee has already adopted this approach, and I urge my colleagues to do the same.

□ 1830

Mr. BEDELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, what we have just done is try to raise the revenue in order that this would be more in line with the cost of administering the program. I take a back seat to no one in regard to small business. Just as the gentleman from California, I have been on the Small Business Committee, as he knows. I think we should fight for small business.

I hope we realize what has already been done in the bill. The bill as it is now says that for minor use pesticides the maximum that can be charged is $75,000. Half of what is otherwise charged.

We have also said that the Administrator can lower that fee if he feels that the fee is repressive and improper. What this is doing is saying that we here in the Congress are going to decide on a formula which we think should be put into this bill that says that if you sell $5 million worth of a given chemical, and I think $5 million is a sizeable sale, that whereas others will be paying $150,000, you will only have to pay $25,000. Indeed, if it is a million dollars, you only have to pay $5,000 where the others will pay the $150,000.

We have tried to address this problem in committee. I think we do have a problem in the bill in terms of revenues for the bill. We have just passed legislation that would increase the revenues. I cannot, in all good conscience, even though I certainly agree that we need to support small business, support something that has come forth by the small business interests saying now that you are on the floor, why do you not cut the fees for us as we are trying to raise them.

Mr. DREIER of California. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from California.

Mr. DREIER of California. I thank the gentleman for yielding to me.

Mr. Chairman, first of all I would laud the small business community for ferreting out this problem and realizing that it does exist. I think that is a very complimentary thing for them.

Mr. BEDELL. If I may reclaim my time, what is the problem that exists?

Mr. DREIER of California. The problem that exists is this potential crisis of a lack of new and innovative products which could emanate. That is the question I would like to ask. In response to the example I used about this company in Indiana which has announced that they, because of the prohibitive costs, would be prevented from further researching and expanding this technology dealing with whirlpool therapy, they would be prevented because of the fees.

Mr. BEDELL. Because of the fees? Does the gentleman understand that normally the fees are a very, very small part of the cost? That the big cost to the company is not the fees; the big cost to the company is obtaining all of the data that is necessary in order to apply for the registration.

Does the gentleman understand that?

Mr. DREIER of California. If the gentleman will yield further, I would simply like to say that the gentleman, I hope, would come up with an alternative to address concerns which have been voiced by the small business sector. That really is the stated goal here.

Mr. BEDELL. We have done that. We have said that the fees in no circumstance for minor use chemicals can be over half of what the other fees are.

We have also said that if indeed it appears to the administrator that those fees are a problem, then the administrator has full power to lower the fees if an argument can be shown that the fees are a problem.

In most cases, it is not the fee that is the problem. In most cases, the problem is the cost of getting all the data necessary in order to properly comply with the EPA requirements.

Mr. ROBERTS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as I indicated before in my earlier comments, this bill really does cross a very long philosophical bridge for some of us. I do not like user fees. The reason I do not like user fees in this legislation is that regardless of what we are talking about in terms of the registration fees they are going to be passed on to the farmer-stockman and he can ill-afford it.

We decided it was in the public interest to go that route, if you will, because we did not have the appropriations. So now we have the bill. Mr. BEDELL has already offered an amendment that has been passed to almost fully fund this legislation. Then Mr. GUNDERSON became totally immersed, if you will, became Ivory Soap pure. We still lack about $48 million.

We have it in the bill now that it is discretionary that the EPA Administrator can do the very thing that Mr. HATCHER wants to do on a more mandatory basis. I laud him for his efforts. I do not have any other business other than small business in my district. But we have no cost item here; we have no bottom-line cost figure and we are going to go at cross-purposes with the amendment that we just passed.

I do not much like the direction of this amendment. I do not like user fees. I do not like saddling small business and the farmer and the stockman with these costs. But if in fact we are you-know-where-bent in terms of passing this reform legislation, we have got to make it pay for itself.

As a consequence, I reluctantly oppose Mr. HATCHER's amendment and agree with my friend and colleague from Iowa.

Mr. HATCHER. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Georgia.

Mr. HATCHER. I thank the gentleman for yielding.

Mr. Chairman, I would just like to state in response to the gentleman's assertion about the discretion of the Administrator that if this Member had any reason to believe that this Administrator or subsequent Administrators would use that discretion to give the relief that small businesses need, I would not be here presenting this.

I happen to be a Member who believes they have no intention of using it, and I would like to see it in the law so that the small businesses can continue to exist.

Mr. ROBERTS. I would say for the benefit of my colleagues that my colleague made an eloquent plea in that regard during full committee consideration. I am in agreement with him and I hope he becomes a catalyst so that the Administrator will do exactly what the gentleman has suggested.

Mr. RAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Hatcher amendment. But in doing so, I want to compliment Mr. BEDELL on the good job that he has done in putting this bill together. It was not an easy task; I can understand why he would not want it cluttered with amendments. I feel so strongly about this particular amendment that it is important that I get up and speak on its behalf.

This is a small business issue, pure and simple. What this amendment does is to establish a fair and progressive fee scale, so that all small business registrants of pesticide active ingredients will contribute toward pesticide registration costs, but they will pay the EPA fees based on their ability to pay. By adopting this amendment, we assure that small businesses will not be forced to pay a disproportionate share of the reregistration fees on pesticide active ingredients.

Many small companies simply cannot afford the high fees that would be required if this amendment were not adopted. If we don't provide a more equitable way of distributing the burden of these fees, then much of the innovation, research, and development in the area of specialized pesticide products will disappear.

Mr. Chairman, I have spent many years as a small businessman. I was also in the pesticide business, so I feel I have some knowledge of the small companies, many of which do not even exist any more.

During the years, we have seen the number of pesticide manufacturing companies, large and small, diminish in number. Presently the large companies dominate the industry, and it is important that we in this body give these few remaining small companies and businesses and formulators and distributors all the support that we can possibly do so. We cannot leave any doubt existing.

The Hatcher amendment fairly and wisely recognizes this weakness in the legislation and seeks to correct it, and I urge its passage.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia [Mr. HATCHER].

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. MARLENEE. Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 397]

Ackerman	Edgar	Madigan
Akaka	Edwards (CA)	Markey
Anderson	Edwards (OK)	Marlenee
Andrews	Emerson	Martin (IL)
Annunzio	English	Martin (NY)
Anthony	Erdreich	Martinez
Applegate	Evans (IA)	Matsui
Archer	Evans (IL)	Mavroules
Armey	Fascell	Mazzoli
Aspin	Fawell	McCain
Atkins	Fazio	McCandless
AuCoin	Feighan	McCloskey
Badham	Fiedler	McCollum
Barnes	Fields	McCurdy
Bartlett	Fish	McDade
Bateman	Florio	McEwen
Bates	Foglietta	McGrath
Bedell	Foley	McHugh
Beilenson	Franklin	McKernan
Bennett	Frenzel	McKinney
Bentley	Fuqua	McMillan
Bereuter	Gallo	Meyers
Berman	Garcia	Mica
Bevill	Gaydos	Michel
Biaggi	Gejdenson	Miller (CA)
Bilirakis	Gekas	Miller (OH)
Billey	Gingrich	Miller (WA)
Boehlert	Glickman	Mineta
Boggs	Gonzalez	Moakley
Boner (TN)	Goodling	Molinari
Bonker	Gordon	Mollohan
Borski	Gradison	Montgomery
Bosco	Gray (IL)	Moody
Boucher	Green	Moorhead
Boulter	Guarini	Morrison (CT)
Boxer	Gunderson	Morrison (WA)
Brooks	Hall, Ralph	Mrazek
Brown (CA)	Hamilton	Murphy
Brown (CO)	Hammerschmidt	Murtha
Bruce	Hansen	Myers
Bryant	Hatcher	Natcher
Burton (IN)	Hayes	Nelson
Bustamante	Hendon	Nichols
Byron	Henry	Nielson
Carney	Hiler	Nowak
Carper	Holt	Oakar
Carr	Hopkins	Oberstar
Chandler	Horton	Obey
Chapman	Howard	Olin
Chappell	Hoyer	Ortiz
Chappie	Hubbard	Owens
Clay	Huckaby	Oxley
Clinger	Hughes	Panetta
Coats	Hunter	Parris
Cobey	Hyde	Pashayan
Coble	Jacobs	Pease
Coelho	Jeffords	Penny
Coleman (MO)	Jenkins	Pepper
Coleman (TX)	Johnson	Perkins
Collins	Jones (NC)	Pickle
Combest	Jones (TN)	Porter
Conte	Kanjorski	Price
Cooper	Kaptur	Rahall
Coughlin	Kasich	Ray
Courter	Kastenmeier	Regula
Coyne	Kennelly	Reid
Craig	Kildee	Richardson
Crane	Kolbe	Ridge
Daniel	Kolter	Rinaldo
Dannemeyer	Kostmayer	Ritter
Darden	Kramer	Roberts
Daschle	LaFalce	Robinson
Daub	Lagomarsino	Rodino
Davis	Lantos	Roe
de la Garza	Leach (IA)	Rogers
Derrick	Lent	Rose
DeWine	Levin (MI)	Roth
Dicks	Levine (CA)	Roukema
DioGuardi	Lewis (FL)	Rowland (CT)
Donnelly	Lightfoot	Rowland (GA)
Dorgan (ND)	Lipinski	Roybal
Dornan (CA)	Lloyd	Sabo
Downey	Loeffler	Savage
Dreier	Lott	Saxton
Duncan	Lowery (CA)	Schneider
Durbin	Lowry (WA)	Schroeder
Dwyer	Lujan	Schulze
Dymally	Luken	Schumer
Dyson	Lungren	Sensenbrenner
Eckart (OH)	Mack	Sharp
Eckert (NY)	MacKay	Shaw

Shelby	Staggers	Volkmer
Shumway	Stallings	Vucanovich
Shuster	Stangeland	Walgren
Sikorski	Stenholm	Walker
Siljander	Strang	Watkins
Sisisky	Studds	Waxman
Skeen	Stump	Weaver
Skelton	Sundquist	Weber
Slattery	Swift	Weiss
Slaughter	Swindall	Wheat
Smith (FL)	Synar	Whitley
Smith (IA)	Tallon	Whittaker
Smith (NE)	Tauke	Whitten
Smith (NJ)	Tauzin	Wirth
Smith, Denny (OR)	Thomas (CA)	Wise
	Thomas (GA)	Wolf
Smith, Robert (NH)	Torres	Wolpe
	Torricelli	Wortley
Smith, Robert (OR)	Towns	Wright
	Traficant	Wyden
Snowe	Traxler	Wylie
Snyder	Udall	Yates
Solarz	Valentine	Young (AK)
Solomon	Vander Jagt	Young (FL)
Spence	Vento	Zschau
Spratt	Visclosky	

□ 1850

The CHAIRMAN. Three hundred forty-seven Members have answered to their names, a quorum is present, and the committee will resume its business.

Does the gentleman from Montana [Mr. MARLENEE] insist upon his demand for a recorded vote?

Mr. MARLENEE. Mr. Chairman, I withdraw my demand for a recorded vote.

So the amendment was agreed to.

Mr. HATCHER. Mr. Chairman, the three main wood preservatives—pentachlorophenol, creosote and inorganic arsenicals—will become restricted use pesticides on November 10, 1986. Some States now require all persons who use, distribute, or sell pesticides classified for restricted use to meet each State's certified pesticide applicator requirements for the respective States. This is a hardship on many small businesses which distribute and sell these pesticides in many States. It is also a needless duplication of private and government workers' time and financial resources. Reciprocity for pesticide dealer licensing is needed in those areas without cooperative agreements to mutually recognize uniform licensing requirements.

Report 99-695 on H.R. 2482, the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1985, at page 30 contains the following language dealing with the reciprocity of training:

In general, these amendments should be construed in a manner that encourages the States to employ reciprocity for the satisfaction of training requirements in situations where applicators are applying pesticides in more than one State. Reciprocity among the States should be considered an effective means of achieving a consistently high level of competency while encouraging the free flow of commerce across State lines.

This spirit of this report language should apply in situations where dealers, sales representatives, and technical representatives of pesticides are selling their product in multistate areas. Reciprocity in this area would also help to achieve a consistent high level of dealer competency while encouraging the free flow of commerce across State lines.

Mr. DE LA GARZA. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker pro tempore [Mr. FOLEY] having assumed the chair, Mr. MCHUGH, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill (H.R. 2482) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, had come to no resolution thereon.

CONFERENCE REPORT ON H.R. 3838, TAX REFORM ACT OF 1986

Mr. ROSTENKOWSKI submitted the following conference report and statement on the bill (H.R. 3838) to reform the internal revenue laws of the United States:

CONFERENCE REPORT (H. REPT. 99-841)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3838) to reform the internal revenue laws of the United States, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Tax Reform Act of 1986".

(b) TABLE OF CONTENTS.—

TITLE I—INDIVIDUAL INCOME TAX PROVISIONS

Subtitle A—Rate Reductions; Increase in Standard Deduction and Personal Exemptions

Sec. 101. Rate reductions.
Sec. 102. Increase in standard deduction.
Sec. 103. Increase in personal exemptions.
Sec. 104. Technical amendments.

Subtitle B—Provisions Related to Tax Credits

Sec. 111. Increase in earned income credit.
Sec. 112. Repeal of credit for contributions to candidates for public office.

Subtitle C—Provisions Related to Exclusions

Sec. 121. Taxation of unemployment compensation.
Sec. 122. Prizes and awards.
Sec. 123. Scholarships.

Subtitle D—Provisions Related to Deductions

Sec. 131. Repeal of deduction for 2-earner married couples.
Sec. 132. 2-percent floor on miscellaneous itemized deductions.
Sec. 133. Medical expense deduction limitation increased.
Sec. 134. Repeal of deduction for State and local sales tax.
Sec. 135. Repeal of deduction for adoption expenses.

Subtitle E—Miscellaneous Provisions

Sec. 141. Repeal of income averaging.
Sec. 142. Limitations on deductions for meals, travel, and entertainment.
Sec. 143. Changes in treatment of hobby loss, etc.
Sec. 144. Deduction for mortgage interest and real property taxes allowable where parsonage allowance or military housing allowance received.

Subtitle F—Effective Dates

Sec. 151. Effective dates.

TITLE II—PROVISIONS RELATING TO CAPITAL COST

Subtitle A—Depreciation Provisions

Sec. 201. Modification of accelerated cost recovery system.
Sec. 202. Expensing of depreciable assets.
Sec. 203. Effective dates; general transitional rules.

Subtitle B—Repeal of Regular Investment Tax Credit

Sec. 211. Repeal of regular investment tax credit.
Sec. 212. Effective 15-year carryback of existing carryforwards of steel companies.
Sec. 213. Effective 15-year carryback of existing carryforwards of qualified farmers.

Subtitle C—General Business Credit Reduction

Sec. 221. Reduction in tax liability which may be offset by business credit from 85 percent to 75 percent.

Subtitle D—Research and Development Provisions

Sec. 231. Amendments relating to credit for increasing research activities.
Sec. 232. Extension of credit for clinical testing expenses for certain drugs.

Subtitle E—Changes in Certain Amortization Provisions

Sec. 241. Repeal of 5-year amortization of trademark and trade name expenditures.
Sec. 242. Repeal of amortization of railroad grading and tunnel bores.
Sec. 243. Deduction for bus and freight forwarder operating authority.
Sec. 244. Treatment of expenditures for removal of architectural barriers to the handicapped and elderly made permanent.

Subtitle F—Provisions Relating to Real Estate

Sec. 251. Modification of investment tax credit for rehabilitation expenditures.
Sec. 252. Low-income housing credit.

Subtitle G—Merchant Marine Capital Construction Funds

Sec. 261. Provisions relating to merchant marine capital construction funds.

TITLE III—CAPITAL GAINS

Subtitle A—Individual Capital Gains

Sec. 301. Repeal of exclusion for long-term capital gains of individuals.
Sec. 302. 28-percent capital gains rate for taxpayers other than corporations.

Subtitle B—Repeal of Corporate Capital Gains Treatment

Sec. 311. Repeal of corporate capital gains treatment.

Subtitle C—Incentive Stock Options

Sec. 321. Repeal of requirement that incentive stock options are exercisable only in chronological order; modification of $100,000 limitation.

Subtitle D—Straddles

Sec. 331. Year-end rule expanded.

TITLE IV—AGRICULTURE, ENERGY, AND NATURAL RESOURCES

Subtitle A—Agriculture

Sec. 401. Limitation on expensing of soil and water conservation expenditures.

Sec. 402. Repeal of special treatment for expenditures for clearing land.

Sec. 403. Treatment of dispositions of converted wetlands or highly erodible croplands.

Sec. 404. Limitation on certain prepaid farming expenses.

Sec. 405. Tax treatment of discharge of certain indebtedness of solvent farmers.

Subtitle B—Treatment of Oil, Gas, Geothermal, and Hard Minerals

Sec. 411. Treatment of intangible drilling costs and mineral exploration and development costs.

Sec. 412. Modification of percentage depletion rules.

Sec. 413. Gain from disposition of interests in oil, gas, geothermal, or other mineral properties.

Subtitle C—Other Provisions

Sec. 421. Extension of energy investment credit for solar, geothermal, ocean thermal, and biomass property.

Sec. 422. Provisions relating to excise tax on fuels.

Sec. 423. Ethyl alcohol and mixtures thereof for fuel use.

TITLE V—TAX SHELTER LIMITATIONS; INTEREST LIMITATIONS

Subtitle A—Limitations on Tax Shelters

Sec. 501. Limitations on losses and credits from passive activities.

Sec. 502. Transitional rule for low-income housing.

Sec. 503. Extension of at risk limitations to real property.

Subtitle B—Interest Expense

Sec. 511. Limitations on deduction for nonbusiness interest.

TITLE VI—CORPORATE PROVISIONS

Subtitle A—Corporate Rate Reductions

Sec. 601. Corporate rate reductions.

Subtitle B—Treatment of Stock and Stock Dividends

Sec. 611. Reduction in dividends received deduction.

Sec. 612. Repeal of partial exclusion of dividends received by individuals.

Sec. 613. Nondeductibility of stock redemption expenses.

Sec. 614. Reduction in stock basis for nontaxed portion of extraordinary dividends.

Subtitle C—Limitation on Net Operating Loss Carryforwards and Excess Credit Carryforwards

Sec. 621. Limitation on net operating loss carryforwards.

Subtitle D—Recognition of Gain and Loss on Distributions of Property in Liquidation

Sec. 631. Recognition of gain and loss on distributions of property in liquidation.

Sec. 632. Treatment of C corporations electing subchapter S status.

Sec. 633. Effective dates.

Sec. 634. Study of corporate provisions.

Subtitle E—Other Corporate Provisions

Sec. 641. Special allocation rules for certain asset acquisitions.

Sec. 642. Modification of definition of related party.

Sec. 643. Treatment of amortizable bond premium as interest.

Sec. 644. Provisions relating to cooperative housing corporations.

Sec. 645. Special rules relating to personal holding company tax.

Sec. 646. Certain entitles not treated as corporations.

Sec. 647. Special rule for disposition of stock of subsidiary.

Subtitle F—Regulated Investment Companies

Sec. 651. Excise tax on undistributed income of regulated investment companies.

Sec. 652. Treatment of business development companies.

Sec. 653. Amendments to qualification rules.

Sec. 654. Treatment of series funds as separate corporations.

Sec. 655. Extension of period for mailing notices to shareholders.

Sec. 656. Protection of mutual funds receiving third-party summonses.

Sec. 657. Certain distributions not treated as preferential dividends.

Subtitle G—Real Estate Investment Trusts

Sec. 661. General qualification requirements.

Sec. 662. Asset and income requirements.

Sec. 663. Definition of rents.

Sec. 664. Distribution requirements.

Sec. 665. Treatment of capital gains.

Sec. 666. Modifications of prohibited transaction rules.

Sec. 667. Deficiency dividends of real estate investment trusts not subject to penalty under section 6697.

Sec. 668. Excise tax on undistributed income of real estate investment trusts.

Sec. 669. Effective dates.

Subtitle H—Taxation of Interests in Entities Holding Real Estate Mortgages

Sec. 671. Taxation of real estate mortgage investment conduits.

Sec. 672. Rules for accruing original issue discount on regular interests and similar debt instruments.

Sec. 673. Treatment of taxable mortgage pools.

Sec. 674. Compliance provisions.

Sec. 675. Effective dates.

TITLE VII—ALTERNATIVE MINIMUM TAX

Sec. 701. Alternative minimum tax for individuals and corporations.

Sec. 702. Study of book and earnings and profits adjustments.

TITLE VIII—ACCOUNTING PROVISIONS

Subtitle A—General Provisions

Sec. 801. Limitation on use of cash method of accounting.

Sec. 802. Simplified dollar-value LIFO method for certain small businesses.

Sec. 803. Capitalization and inclusion in inventory costs of certain expenses.

Sec. 804. Modifications of method of accounting for long-term contracts.

Sec. 805. Repeal of reserve for bad debts of taxpayers other than financial institutions.

Sec. 806. Taxable years of certain entities.

Subtitle B—Treatment of Installment Obligations

Sec. 811. Allocation of indebtedness as payment on installment obligation.

Sec. 812. Disallowance of use of installment method for certain obligations.

Subtitle C—Other Provisions

Sec. 821. Income attributable to utility services.

Sec. 822. Repeal of application of discharge of indebtedness rules to qualified business indebtedness.

Sec. 823. Repeal of deduction for qualified discount coupons.

Sec. 824. Inclusion in gross income of contributions in aid of construction.

TITLE IX—FINANCIAL INSTITUTIONS

Sec. 901. Limitations on bad debt reserves.

Sec. 902. Interest incurred to carry tax-exempt bonds.

Sec. 903. Termination of special 10-year carryback rules for certain financial institutions; new special carryover rules for certain losses.

Sec. 904. Repeal of special reorganization rules for financial institutions.

Sec. 905. Treatment of losses on deposits or accounts in insolvent financial institutions.

TITLE X—INSURANCE PRODUCTS AND COMPANIES

Subtitle A—Policyholder Issues

Sec. 1001. Repeal of exclusion for interest on installment payments of life insurance proceeds.

Sec. 1002. Exclusion from income with respect to structured settlements limited to cases involving physical injury.

Sec. 1003. Denial of deduction for interest on loans from certain life insurance contracts.

Sec. 1004. Deduction for nonbusiness casualty losses covered by insurance allowable only if claim filed.

Subtitle B—Life Insurance Companies

Sec. 1011. Repeal of special life insurance company deduction.

Sec. 1012. Repeal of tax-exempt status for certain organizations providing commercial-type insurance.

Sec. 1013. Operations loss deduction of insolvent companies may offset distributions from policyholders surplus account.

Subtitle C—Property and Casualty Insurance Companies

Sec. 1021. Inclusion in income of 20 percent of unearned premium reserve.

Sec. 1022. Treatment of certain dividends and tax-exempt interest.

Sec. 1023. Discounting of unpaid losses and certain unpaid expenses.

Sec. 1024. Repeal of protection against loss account; revision of special treatment for small companies; combination of parts II and III.

Sec. 1025. Study of treatment of property and casualty insurance companies.

Subtitle D—Miscellaneous Provisions

Sec. 1031. Physicians' and surgeons' mutual protection and interindemnity arrangements or associations.

TITLE XI—PENSIONS AND DEFERRED COMPENSATION; EMPLOYEE BENEFITS; EMPLOYEE STOCK OWNERSHIP PLANS

Subtitle A—Pensions and Deferred Compensation

PART I—LIMITATIONS ON TAX-DEFERRED SAVINGS

SUBPART A—RULES APPLICABLE TO IRAS

Sec. 1101. Limitations on IRA deductions for active participants in certain pension plans.

Sec. 1102. Nondeductible contributions may be made to individual retirement plans.

Sec. 1103. Spousal deduction allowed where spouse has small amount of earned income.

SUBPART B—OTHER PROVISIONS

Sec. 1105. $7,000 limitation on elective deferrals.

Sec. 1106. Adjustments to limitations on contributions and benefits under qualified plans.

Sec. 1107. Modifications of section 457.

Sec. 1108. Special rules for simplified employee pensions.

Sec. 1109. Deductible contributions permitted under section 501(c)(18) plan.

PART II—NONDISCRIMINATION REQUIREMENTS

SUBPART A—GENERAL REQUIREMENTS

Sec. 1111. Application of nondiscrimination rules to integrated plans.

Sec. 1112. Minimum coverage requirements for qualified plans.

Sec. 1113. Minimum vesting standards.

Sec. 1114. Definition of highly compensated employee.

Sec. 1115. Separate lines of business; compensation.

SUBPART B—OTHER PROVISIONS

Sec. 1116. Cash or deferred arrangements.

Sec. 1117. Nondiscrimination requirements for employer matching contributions and employee contributions.

Sec. 1118. Benefits treated as accruing ratably for purposes of determining whether plan is top-heavy.

Sec. 1119. Modification of rules for benefit forfeitures.

Sec. 1120. Nondiscrimination requirements for tax-sheltered annuities.

PART III—TREATMENT OF DISTRIBUTIONS

Sec. 1121. Minimum distribution requirements.

Sec. 1122. Taxation of distributions.

Sec. 1123. Uniform additional tax on early distributions from qualified retirement plans.

Sec. 1124. Election to treat certain lump sum distributions received during 1987 as received during 1986.

PART IV—MISCELLANEOUS PROVISIONS

Sec. 1131. Adjustments to section 404 limitations.

Sec. 1132. Excise tax on reversion of qualified plan assets to employer.

Sec. 1133. Tax on excess distributions.

Sec. 1134. Treatment of loans.

Sec. 1135. Deferred annuities available only to natural persons.

Sec. 1136. Profits not required for profit-sharing plans.

Sec. 1137. Requirement that collective bargaining agreements be bona fide.

Sec. 1138. Penalty on underpayments attributable to overstatement of pension liabilities.

Sec. 1139. Interest rate assumptions.

Sec. 1140. Plan amendments not required under January 1, 1989.

Sec. 1141. Issuance of final regulations.

Sec. 1142. Secretary to accept applications with respect to section 401(k) plans.

Sec. 1143. Treatment of certain fishermen as self-employed individuals.

Sec. 1144. Acquisition of gold and silver coins by individual retirement accounts.

Sec. 1145. Requirement of joint and survivor annuities and preretirement survivor annuities not to apply to certain plan.

Sec. 1146. Treatment of leased employees.

Sec. 1147. Tax treatment of Federal Thrift Savings Fund.

Subtitle B—Employee Benefit Provisions

PART I—NONDISCRIMINATION RULES FOR CERTAIN STATUTORY EMPLOYEE BENEFIT PLANS

Sec. 1151. Nondiscrimination rules for coverage and benefits under certain statutory employee benefit plans.

PART II—OTHER PROVISIONS

Sec. 1161. Deductibility of health insurance costs of self-employed individuals.

Sec. 1162. 2-year extension of exclusions for educational assistance programs and group legal plans.

Sec. 1163. $5,000 limit on dependent care assistance exclusion.

Sec. 1164. Tax treatment of faculty housing.

Sec. 1165. Limitation on accrual of vacation pay.

Sec. 1166. Treatment of certain full-time life insurance salesmen.

Sec. 1167. Extension of due date for study of welfare benefit plans.

Sec. 1168. Exclusion from gross income of certain military benefits.

Subtitle C—Changes Relating to Employee Stock Ownership Plans

Sec. 1171. Repeal of employee stock ownership credit.

Sec. 1172. Estate tax deduction for proceeds from sales of employer securities.

Sec. 1173. Provisions relating to loans used to acquire employer securities.

Sec. 1174. Requirements for employee stock ownership plans.

Sec. 1175. Additional qualification requirements.

Sec. 1176. Special ESOP requirements.

Sec. 1177. Transition rules.

TITLE XII—FOREIGN TAX PROVISIONS

Subtitle A—Foreign Tax Credit Modifications

Sec. 1201. Separate application of section 904 with respect to certain categories of income.

Sec. 1202. Deemed paid credit under sections 902 and 960 determined on accumulated basis.

Sec. 1203. Clarification of treatment of separate limitation losses.

Sec. 1204. Foreign taxes used to provide subsidies.

Sec. 1205. Limitation on carryback of foreign tax credits to taxable years beginning before 1987.

Subtitle B—Source Rules

Sec. 1211. Determination of source in case of sales of personal property.

Sec. 1212. Special rules for transportation income.

Sec. 1213. Source rule for space and certain ocean activities.

Sec. 1214. Limitations on special treatment of 80-20 corporations.

Sec. 1215. Rules for allocating interest, etc., to foreign source income.

Sec. 1216. 1-year modification in regulations providing for allocation of research and experimental expenditures.

Subtitle C—Taxation of Income Earned Through Foreign Corporations

Sec. 1221. Income subject to current taxation.

Sec. 1222. Testing controlled foreign corporations and foreign personal holding companies by value and voting power.

Sec. 1223. Subpart F de minimis rule.

Sec. 1224. Repeal of special treatment of possessions corporations.

Sec. 1225. Only effectively connected capital gains and losses of foreign corporations taken into account for purposes of accumulated earnings tax and personal holding company provisions.

Sec. 1226. Deductions for dividends received from certain foreign corporations.

Sec. 1227. Special rule for application of section 954 to certain dividends.

Subtitle D—Special Tax Provisions for United States Persons

Sec. 1231. Modifications to section 936.

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SEC. 2. INTERNAL REVENUE CODE OF 1986.

(a) REDESIGNATION OF 1954 CODE.—The Internal Revenue Title enacted August 16, 1954, as heretofore, hereby, or hereafter amended, may be cited as the "Internal Revenue Code of 1986".

(b) REFERENCES IN LAWS, ETC.—Except when inappropriate, any reference in any law, Executive order, or other document—

(1) to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986, and

(2) to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

SEC. 3. AMENDMENT OF 1986 CODE; COORDINATION WITH SECTION 15.

(a) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the

reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(b) COORDINATION WITH SECTION 15.—

(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of section 15 of the Internal Revenue Code of 1986, no amendment or repeal made by this Act shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

(2) EXCEPTION.—Paragraph (1) shall not apply to the amendment made by section 601 (relating to corporate rate reductions).

TITLE I—INDIVIDUAL INCOME TAX PROVISIONS

SUBTITLE A—RATE REDUCTIONS; INCREASE IN STANDARD DEDUCTION AND PERSONAL EXEMPTIONS

SEC. 101. RATE REDUCTIONS.

(a) GENERAL RULE.—Section 1 (relating to tax imposed on individuals) is amended to read as follows:

"SECTION 1. TAX IMPOSED.

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is	The tax is:
Not over $29,750	15% of taxable income.
Over $29,750	$4,462.50, plus 28% of the excess over $29,750.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is	The tax is:
Not over $23,900	15% of taxable income.
Over $23,900	$3,585, plus 28% of the excess over $23,900.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is	The tax is:
Not over $17,850	15% of taxable income.
Over $17,850	$2,677.50, plus 28% of the excess over $17,850.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is	The tax is:
Not over $14,875	15% of taxable income.
Over $14,875	$2,231.25, plus 28% of the excess over $14,875.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is	The tax is:
Not over $5,000	15% of taxable income.
Over $5,000	$750, plus 28% of the excess over $5,000.

"(f) ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—

"(1) IN GENERAL.—Not later than December 15 of 1988, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

"(2) METHOD OF PRESCRIBING TABLES.—The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed—

"(A) by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

"(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

"(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

"(3) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

"(A) the CPI for the preceding calendar year, exceeds

"(B) the CPI for the calendar year 1987.

"(4) CPI FOR ANY CALENDAR YEAR.—For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

"(5) CONSUMER PRICE INDEX.—For purposes of paragraph (4), the term 'Consumer Price Index' means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

"(6) ROUNDING.—

"(A) IN GENERAL.—If any increase determined under paragraph (2)(A), subsection (g)(4), section 63(c)(4), or section 151(d)(3) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

"(B) TABLE FOR MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to section 63(c)(4)) shall be applied by substituting '$25' for '$50' each place it appears.

"(g) PHASEOUT OF 15-PERCENT RATE AND PERSONAL EXEMPTIONS.—

"(1) IN GENERAL.—The amount of tax imposed by this section (determined without regard to this subsection) shall be increased by 5 percent of the excess (if any) of—

"(A) taxable income, over

"(B) the applicable dollar amount.

"(2) LIMITATION.—The increase determined under paragraph (1) with respect to any taxpayer for any taxable year shall not exceed the sum of—

"(A) 13 percent of the maximum amount of taxable income to which the 15-percent rate applies under the table contained in subsection (a), (b), (c), or (e) (whichever applies), and

"(B) 28 percent of the deductions for personal exemptions allowable to the taxpayer for the taxable year under section 151.

In the case of any individual taxable under subsection (d), subparagraph (A) shall apply as if such individual were taxable under subsection (a).

"(3) APPLICABLE DOLLAR AMOUNT.—For purposes of paragraph (1), the applicable dollar amount shall be determined under the following table:

"In the case of a taxpayer to which the following subsection of this section applies:	The applicable dollar amount is:
Subsection (a)	$71,900
Subsection (b)	61,650
Subsection (c)	43,150
Subsection (d)	35,950
Subsection (e)	13,000

"(4) ADJUSTMENT FOR INFLATION.—In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (3) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under subsection (f)(3) for the calendar year in which the taxable year begins.

"(h) TAX SCHEDULES FOR TAXABLE YEARS BEGINNING IN 1987.—In the case of any taxable year beginning in 1987—

"(1) subsection (g) shall not apply, and

"(2) the following tables shall apply in lieu of the tables set forth in subsections (a), (b), (c), (d), and (e):

"(A) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—The table to apply for purposes of subsection (a) is as follows:

"If taxable income is	The tax is:
Not over $3,000	11% of taxable income.
Over $3,000 but not over $28,000.	$330, plus 15% of the excess over $3,000.
Over $28,000 but not over $45,000.	$4,080, plus 28% of the excess over $28,000.
Over $45,000 but not over $90,000.	$8,840, plus 35% of the excess over $45,000.
Over $90,000	$24,590, plus 38.5% of the excess over $90,000.

"(B) HEADS OF HOUSEHOLDS.—The table to apply for purposes of subsection (b) is as follows:

"If taxable income is	The tax is:
Not over $2,500	11% of taxable income.
Over $2,500 but not over $23,000.	$275, plus 15% of the excess over $2,500.
Over $23,000 but not over $38,000.	$3,350, plus 28% of the excess over $23,000.
Over $38,000 but not over $80,000.	$7,550, plus 35% of the excess over $38,000.
Over $80,000	$22,250, plus 38.5% of the excess over $80,000.

"(C) UNMARRIED INDIVIDUALS OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS.—The table to apply for purposes of subsection (c) is as follows:

"If taxable income is	The tax is:
Not over $1,800	11% of taxable income.
Over $1,800 but not over $16,800.	$198, plus 15% of the excess over $1,800.
Over $16,800 but not over $27,000.	$2,448, plus 28% of the excess over $16,800.
Over $27,000 but not over $54,000.	$5,304, plus 35% of the excess over $27,000.
Over $54,000	$14,754, plus 38.5% of the excess over $54,000.

"(D) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—The table to apply for purposes of subsection (d) is as follows:

"If taxable income is	The tax is:
Not over $1,500	11% of taxable income.
Over $1,500 but not over $14,000.	$165, plus 15% of the excess over $1,500.
Over $14,000 but not over $22,500.	$2,040, plus 28% of the excess over $14,000.
Over $22,500 but not over $45,000.	$4,420, plus 35% of the excess over $22,500.
Over $45,000	$12,295, plus 38.5% of the excess over $45,000.

"(E) ESTATES AND TRUSTS.—The table to apply for purposes of subsection (e) is as follows:

"If taxable income is	The tax is:
Not over $500	11% of taxable income.
Over $500 but not over $4,700.	$55, plus 15% of the excess over $500.
Over $4,700 but not over $7,550.	$685, plus 28% of the excess over $4,700.
Over $7,550 but not over $15,150.	$1,483, plus 35% of the excess over $7,500.
Over $15,150	$4,143, plus 38.5% of the excess over $15,150."

(b) AMENDMENT OF SECTION 15.—Subsection (d) of section 15 (relating to effect of changes in rates during a taxable year) is amended to read as follows:

"(d) SECTION NOT TO APPLY TO INFLATION ADJUSTMENTS.—This section shall not apply to any change in rates under subsection (f) of section 1 (relating to adjustments in tax tables so that inflation will not result in tax increases)."

SEC. 102. INCREASE IN STANDARD DEDUCTION.

(a) GENERAL RULE.—Section 63 (defining taxable income) is amended to read as follows:

"SEC. 63. TAXABLE INCOME DEFINED.

"(a) IN GENERAL.—Except as provided in subsection (b), for purposes of this subtitle, the term 'taxable income' means gross income minus the deductions allowed by this chapter (other than the standard deduction).

"(b) INDIVIDUALS WHO DO NOT ITEMIZE THEIR DEDUCTIONS.—In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term 'taxable income' means adjusted gross income, minus—

"(1) the standard deduction, and

"(2) the deduction for personal exemptions provided in section 151.

"(c) STANDARD DEDUCTION.—For purposes of this subtitle—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'standard deduction' means the sum of—

"(A) the basic standard deduction, and

"(B) the additional standard deduction.

"(2) BASIC STANDARD DEDUCTION.—For purposes of paragraph (1), the basic standard deduction is—

"(A) $5,000 in the case of—

"(i) a joint return, or

"(ii) a surviving spouse (as defined in section 2(a)),

"(B) $4,400 in the case of a head of household (as defined in section 2(b)),

"(C) $3,000 in the case of an individual who is not married and who is not a surviving spouse or head of household, or

"(D) $2,500 in the case of a married individual filing a separate return.

"(3) ADDITIONAL STANDARD DEDUCTION FOR AGED AND BLIND.—For purposes of paragraph (1), the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (f).

"(4) ADJUSTMENTS FOR INFLATION.—In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (2) or (5)(A) or subsection (f) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins.

"(5) LIMITATION ON STANDARD DEDUCTION IN THE CASE OF CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the standard deduction applicable to such individual for such individual's taxable year shall not exceed the greater of—

"(A) $500, or

"(B) such individual's earned income.

"(6) CERTAIN INDIVIDUALS, ETC., NOT ELIGIBLE FOR STANDARD DEDUCTION.—In the case of—

"(A) a married individual filing a separate return where either spouse itemizes deductions,

"(B) a nonresident alien individual,

"(C) a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States),

"(D) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period, or

"(E) an estate or trust, common trust fund, or partnership,

the standard deduction shall be zero.

"(d) ITEMIZED DEDUCTIONS.—For purposes of this subtitle, the term 'itemized deductions' means the deductions allowable under this chapter other than—

"(1) the deductions allowable in arriving at adjusted gross income, and

"(2) the deduction for personal exemptions provided by section 151.

"(e) ELECTION TO ITEMIZE.—

"(1) IN GENERAL.—Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

"(2) TIME AND MANNER OF ELECTION.—Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.

"(3) CHANGE OF ELECTION.—Under regulations prescribed by the Secretary, a change of election with respect to itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

"(A) the spouse makes a change of election with respect to itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

"(B) the taxpayer and his spouse consent in writing to the assessment (within such period as may be agreed on with the Secretary) of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122.

"(f) AGED OR BLIND ADDITIONAL AMOUNTS.—

"(1) ADDITIONAL AMOUNTS FOR THE AGED.—The taxpayer shall be entitled to an additional amount of $600—

"(A) for himself if he has attained age 65 before the close of his taxable year, and

"(B) for the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

"(2) ADDITIONAL AMOUNT FOR BLIND.—The taxpayer shall be entitled to an additional amount of $600—

"(A) for himself if he is blind at the close of the taxable year, and

"(B) for the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

For purposes of subparagraph (B), if the spouse dies during the taxable year the determination of whether such spouse is blind shall be made as of the time of such death.

"(3) HIGHER AMOUNT FOR CERTAIN UNMARRIED INDIVIDUALS.—In the case of an individual who is not married and is not a surviving spouse, paragraphs (1) and (2) shall be applied by substituting '$750' for '$600'.

"(4) BLINDNESS DEFINED.—For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

"(g) MARITAL STATUS.—For purposes of this section, marital status shall be determined under section 7703.

"(h) TRANSITIONAL RULE FOR TAXABLE YEARS BEGINNING IN 1987.—In the case of any taxable year beginning in 1987, paragraph (2) of subsection (c) shall be applied—

"(1) by substituting '$3,760' for '$5,000',

"(2) by substituting '$2,540' for '$4,400',

"(3) by substituting '$2,540' for '$3,000', and

"(4) by substituting '$1,880' for '$2,500'.

The preceding sentence shall not apply if the taxpayer is entitled to an additional amount determined under subsection (f) (relating to additional amount for aged and blind) for the taxable year."

(b) TAX TABLES.—Section 3 (relating to tax tables for individuals) is amended by striking out subsection (a) and inserting in lieu thereof the following:

"(a) IMPOSITION OF TAX TABLE TAX.—

"(1) IN GENERAL.—In lieu of the tax imposed by section 1, there is hereby imposed for each taxable year on the taxable income of every individual—

"(A) who does not itemize his deductions for the taxable year, and

"(B) whose taxable income for such taxable year does not exceed the ceiling amount,

a tax determined under tables, applicable to such taxable year, which shall be prescribed by the Secretary and which shall be in such form as he determines appropriate. In the table so prescribed, the amounts of the tax shall be computed on the basis of the rates prescribed by section 1.

"(2) CEILING AMOUNT DEFINED.—For purposes of paragraph (1), the term 'ceiling amount' means, with respect to any taxpayer, the amount (not less than $20,000) determined by the Secretary for the tax rate category in which such taxpayer falls.

"(3) AUTHORITY TO PRESCRIBE TABLES FOR TAXPAYERS WHO ITEMIZE DEDUCTIONS.—The Secretary may provide that this section shall apply also for any taxable year to individuals who itemize their deductions. Any tables prescribed under the preceding sentence shall be on the basis of taxable income."

SEC. 103. INCREASE IN PERSONAL EXEMPTIONS.

(a) GENERAL RULE.—Subsection (f) of section 151 (defining exemption amount) is amended to read as follows:

"(f) EXEMPTION AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'exemption amount' means—

"(A) $1,900 for taxable years beginning during 1987,

"(B) $1,950 for taxable years beginning during 1988, and

"(C) $2,000 for taxable years beginning after December 31, 1988.

"(2) EXEMPTION AMOUNT DISALLOWED IN THE CASE OF CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

"(3) INFLATION ADJUSTMENT FOR YEARS AFTER 1989.—In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1)(C) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1988' for 'calendar year 1987' in subparagraph (B) thereof."

(b) REPEAL OF ADDITIONAL EXEMPTIONS FOR TAXPAYERS OVER AGE 65 OR BLIND.—Section 151 is amended by striking out subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

SEC. 104. TECHNICAL AMENDMENTS.

(a) FILING REQUIREMENTS.—

(1) SECTION 6012.—

(A) Paragraph (1) of section 6012(a) (relating to persons required to make returns of income) is amended to read as follows:

"(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual—

"(i) who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

"(ii) who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

"(iii) who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual, or

"(iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).

"(B) The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63(c)(3)) in the case of an individual entitled to such deduction by reason of section 63(f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63(f)(1).

"(C) The exception under subparagraph (A) shall not apply to any individual—

"(i) who is described in section 63(c)(5) and who has—

"(I) income (other than earned income) in excess of the amount in effect under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), or

"(II) total gross income in excess of the standard deduction, or

"(ii) for whom the standard deduction is zero under section 63(c)(6).

"(D) For purposes of this subsection—

"(i) The terms 'standard deduction', 'basic standard deduction' and 'additional standard deduction' have the respective meanings given such terms by section 63(c).

"(ii) The term 'exemption amount' has the meaning given such term by section 151(d). In the case of an individual described in section 151(d)(2), the exemption amount shall be zero."

(B) Paragraph (9) of section 6012(a) is amended by striking out "$2,700 or more" and inserting in lieu thereof "not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D)".

(2) SECTION 6013.—Subparagraph (A) of section 6013(b)(3) (relating to when return deemed filed) is amended—

(A) by striking out "(twice the exemption amount in case such spouse was 65 or over)" each place it appears,

(B) by striking out "section 151(f)" and inserting in lieu thereof "section 151(d)", and

(C) by adding at the end thereof the following new sentence: "For purposes of clauses (ii) and (iii), if the spouse whose gross income is being compared to the exemption amount is 65 or over, such clauses shall be applied by substituting 'the sum of the exemption amount and the additional standard deduction under section 63(c)(2) by reason of section 63(f)(1)(A)' for 'the exemption amount'."

(b) OTHER AMENDMENTS.—

(1) SECTION 21, ETC.—

(A) Sections 21(b)(1)(A), 21(e)(6)(A), and 129(c)(1) are each amended by striking out "section 151(e)" and inserting in lieu thereof "section 151(c)".

(B) Sections 21(e)(6)(B), 32(c)(1)(A)(i), 129(c)(2), and 152(e)(1)(A) are each amended by striking out "section 151(e)(3)" and inserting in lieu thereof "section 151(c)(3)".

(2) SECTION 108.—Subparagraph (B) of section 108(b)(3) is amended by striking out "50 cents" and inserting in lieu thereof "33⅓ cents".

(3) SECTION 152, ETC.—Sections 152(d)(2) and 2032A(c)(7)(D) are each amended by striking out "section 151(e)(4)" and inserting in lieu thereof "section 151(c)(4)".

(4) SECTION 172.—Subsection (d) of section 172 (relating to modifications) is amended by striking out paragraph (7).

(5) SECTION 402.—Subparagraph (B) of section 402(e)(1), as amended by section 1222(b), is amended by striking out "the zero bracket amount applicable to such individual for the taxable year plus".

(6) SECTION 441.—Clause (iii) of section 441(f)(2)(B) (relating to change in accounting period) is amended by striking out "and by adding the zero bracket amount,".

(7) SECTION 443.—

(A) Paragraph (1) of section 443(b) (relating to computation of tax on change of annual accounting period) is amended by striking out ", and adding the zero bracket amount".

(B) Clause (ii) of section 443(b)(2)(A) (relating to computation based on 12-month period) is amended to read as follows:

"(ii) the tax computed on the modified taxable income for the short period."

(8) SECTION 541.—Section 541 is amended by striking out "50 percent" and inserting in lieu thereof "28 percent (38.5 percent in the case of taxable years beginning in 1987)".

(9) SECTION 613A.—Paragraph (1) of section 613A(d) (relating to limitation on percentage depletion based on taxable income) is amended by striking out "(reduced in the case of an individual by the zero bracket amount)".

(10) SECTION 667.—Paragraph (2) of section 667(b) (relating to tax on amount deemed distributed by trust in preceding years) is amended to read as follows:

"(2) TREATMENT OF LOSS YEARS.—For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than zero."

(11) SECTION 861.—Subsection (b) of section 861 (relating to taxable income from sources within the United States) is amended by striking out "the zero bracket amount" and inserting in lieu thereof "the standard deduction".

(12) SECTION 862.—Subsection (b) of section 862 (relating to taxable income from sources without the United States) is amended by striking out "the zero bracket amount" and inserting in lieu thereof "the standard deduction".

(13) SECTION 904.—Subsection (a) of section 904 (relating to limitation on foreign tax credit) is amended by striking out the last sentence.

(14) SECTION 1398.—Subsection (c) of section 1398 (relating to computation and payment of tax; zero bracket amount) is amended—

(A) by striking out "ZERO BRACKET AMOUNT" in the subsection heading and inserting in lieu thereof "BASIC STANDARD DEDUCTION", and

(B) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) BASIC STANDARD DEDUCTION.—In the case of an estate which does not itemize deductions, the basic standard deduction for the estate for the taxable year shall be the same as for a married individual filing a separate return for such year."

(15) SECTION 3402.—

(A) Paragraph (1) of section 3402(f) (relating to withholding exemptions) is amended by striking out subparagraphs (B) and (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (B), (C), (D), and (E), respectively.

(B) Subparagraph (A) of section 3402(f)(1) is amended by inserting "unless he is an individual described in section 151(d)(2)" after "himself".

(C) Subparagraph (B) of section 3402(f)(1), as redesignated by subparagraph (A), is amended by striking out "subpara-

graph (A), (B), (C), or (F)" and inserting in lieu thereof "subparagraph (A) or (D)".

(D) Subparagraph (C) of section 3402(f)(1), as redesignated by subparagraph (A), is amended by striking out "section 151(e)" and inserting in lieu thereof "section 151(c)".

(E) Subparagraph (E) of section 3402(f)(1), as redesignated by subparagraph (A), is amended by striking out "zero bracket" and inserting in lieu thereof "standard deduction".

(F) The last sentence of paragraph (1) of section 3402(f) is amended—

(i) by striking out "subparagraph (G)" and inserting in lieu thereof "subparagraph (E)", and

(ii) by striking out "zero bracket" and inserting in lieu thereof "standard deduction".

(G) Paragraph (3) of section 3402(m) is amended by inserting "(including the additional standard deduction under section 63(c)(3) for the aged and blind)" after "deductions".

(16) SECTION 6014.—

(A) Subsection (a) of section 6014 (relating to income tax return—tax not computed by taxpayer) is amended by striking out "who does not have an unused zero bracket amount (determined under section 63(e))" and inserting in lieu thereof "who is not described in section 6012(a)(1)(C)(i)".

(B) Paragraph (4) of section 6014(b) is amended to read as follows:

"(4) to cases where the taxpayer itemizes his deductions or where the taxpayer claims a reduced standard deduction by reason of section 63(c)(5)."

(17) SECTION 6212.—Subparagraph (A) of section 6212(c)(2) (relating to cross references) is amended to read as follows:

"(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3)."

(18) SECTION 6504.—Paragraph (2) of section 6504 (relating to cross references) is amended to read as follows:

"(2) Change of treatment with respect to itemized deductions where taxpayer and his spouse make separate returns, see section 63(e)(3)."

SUBTITLE B—PROVISIONS RELATED TO TAX CREDITS

SEC. 111. INCREASE IN EARNED INCOME CREDIT.

(a) INCREASE IN AMOUNT OF CREDIT.—Subsection (a) of section 32 (relating to earned income credit) is amended—

(1) by striking out "11 percent" and inserting in lieu thereof "14 percent", and

(2) by striking out "$5,000" and inserting in lieu thereof "$5,714".

(b) INCREASE IN INCOME LEVEL AT WHICH PHASEOUT BEGINS.—Subsection (b) of section 32 is amended to read as follows:

"(b) LIMITATION.—The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(1) the maximum credit allowable under subsection (a) to any taxpayer, over

"(2) 10 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $9,000.

In the case of any taxable year beginning in 1987, paragraph (2) shall be applied by substituting '$6,500' for '$9,000'."

(c) INFLATION ADJUSTMENTS.—Section 32 is amended by adding at the end thereof the following new subsection:

"(i) INFLATION ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of any taxable year beginning after the applicable calendar year, each dollar amount referred to in paragraph (2)(B) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1984' for 'calendar year 1987' in subparagraph (B) thereof.

"(2) DEFINITIONS, ETC.—For purposes of paragraph (1)—

"(A) APPLICABLE CALENDAR YEAR.—The term 'applicable calendar year' means—

"(i) 1986 in the case of the dollar amounts referred to in clause (i) or (ii) of subparagraph (B), and

"(ii) 1987 in the case of the dollar amount referred to in clause (iii) of subparagraph (B).

"(B) DOLLAR AMOUNTS.—The dollar amounts referred to in this subparagraph are—

"(i) the $5,714 amount contained in subsection (a),

"(ii) the $6,500 amount contained in the last sentence of subsection (b), and

"(iii) the $9,000 amount contained in subsection (b)(2).

"(3) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or, if such increase is a multiple of $5, such increase shall be increased to the next higher multiple of $10)."

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 32(f) (relating to amount of credit to be determined under tables) is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) for earned income between $0 and the amount of earned income at which the credit is phased out under subsection (b), and

"(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b)."

(2) Subparagraph (B) of section 3507(c)(2) (relating to earned income advance amount) is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) of not more than 14 percent of earned income not in excess of the amount of earned income taken into account under section 32(a), which

"(ii) phases out between the amount of earned income at which the phaseout begins under subsection (b) of section 32 and the amount of earned income at which the credit under section 32 is phased out under such subsection, or".

(3) Subparagraph (C) of section 3507(c)(2) is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) of not more than 14 percent of earned income not in excess of ½ of the amount of earned income taken into account under section 32(a), which

"(ii) phases out between amounts of earned income which are ½ of the amounts of earned income described in subparagraph (B)(ii)."

(e) EMPLOYEE NOTIFICATION.—The Secretary of the Treasury is directed to require, under regulations, employers to notify any employee who has not had any tax withheld from wages (other than an employee whose wages are exempt from withholding pursuant to section 3402(n) of the Internal Revenue Code of 1986) that such employee may be eligible for a refund because of the earned income credit.

SEC. 112. REPEAL OF CREDIT FOR CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE.

(a) GENERAL RULE.—Section 24 (relating to contributions to candidates for public office) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (g) of section 527 (relating to treatment of newsletter funds) is amended—

(A) by striking out "section 24(c)(2)" in paragraph (1) and inserting in lieu thereof "paragraph (3)", and

(B) by adding at the end thereof the following new paragraph:

"(3) CANDIDATE.—For purposes of paragraph (1), the term 'candidate' means, with respect to any Federal, State, or local elective public office, an individual who—

"(A) publicly announces that he is a candidate for nomination or election to such office, and

"(B) meets the qualifications prescribed by law to hold such office."

(2) Subsection (a) of section 642 (relating to credits against tax for estates and trusts) is amended to read as follows:

"(a) FOREIGN TAX CREDIT ALLOWED.—An estate or trust shall be allowed the credit against tax for taxes imposed by foreign countries and possessions of the United States, to the extent allowed by section 901, only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries."

(3) Paragraph (3) of section 901(i) (relating to cross references) is amended by striking out "section 642(a)(1)" and inserting in lieu thereof "section 642(a)".

(4) Paragraph (6) of section 7871(a) (relating to Indian tribal governments treated as States for certain purposes) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B), (C), (D), (E), and (F) as subparagraphs (A), (B), (C), (D), and (E), respectively.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by striking out the item relating to section 24.

SUBTITLE C—PROVISIONS RELATED TO EXCLUSIONS

SEC. 121. TAXATION OF UNEMPLOYMENT COMPENSATION.

Section 85 (relating to unemployment compensation) is amended to read as follows:

"SEC. 85. UNEMPLOYMENT COMPENSATION.

"(a) GENERAL RULE.—In the case of an individual, gross income includes unemployment compensation.

"(b) UNEMPLOYMENT COMPENSATION DEFINED.—For purposes of this section, the term 'unemployment compensation' means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation."

SEC. 122. PRIZES AND AWARDS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Section 74 (relating to prizes and awards) is amended—

(A) by striking out "Except as provided in subsection (b) and" in subsection (a) and inserting in lieu thereof "Except as otherwise provided in this section or",

(B) by striking out "EXCEPTION" in the heading for subsection (b) and inserting in lieu thereof "EXCEPTION FOR CERTAIN PRIZES AND AWARDS TRANSFERRED TO CHARITIES",

(C) by striking out "and" at the end of subsection (b)(1), by striking out the period at the end of subsection (b)(2) and inserting in lieu thereof "; and", and by adding after

subsection (b)(2) the following new paragraph:

"(3) the prize or award is transferred by the payor to a governmental unit or organization described in paragraph (1) or (2) of section 170(c) pursuant to a designation made by the recipient.", and

(D) by adding at the end thereof the following new subsection:

"(c) EXCEPTION FOR CERTAIN EMPLOYEE ACHIEVEMENT AWARDS.—

"(1) IN GENERAL.—Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

"(2) EXCESS DEDUCTION AWARD.—If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

"(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

"(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

"(3) TREATMENT OF TAX-EXEMPT EMPLOYERS.—In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

"(4) CROSS REFERENCE.—

"For provisions excluding certain de minimis fringes from gross income, see section 132(e)."

(2) CONFORMING AMENDMENTS.—

(A) Clause (i) of section 4941(d)(2)(G) is amended by striking out "section 74(b)" and inserting in lieu thereof "section 74(b) (without regard to paragraph (3) thereof)".

(B) Paragraph (2) of section 4945(g) is amended by striking out "section 74(b)" and inserting in lieu thereof "section 74(b) (without regard to paragraph (3) thereof)".

(b) AMOUNTS TRANSFERRED BY EMPLOYER NOT EXCLUDABLE AS GIFTS.—Section 102 (relating to gifts and inheritances) is amended by adding at the end thereof the following new subsection:

"(c) EMPLOYEE GIFTS.—

"(1) IN GENERAL.—Subsection (a) shall not exclude from gross income any amount transferred by or for an employer to, or for the benefit of, an employee.

"(2) CROSS REFERENCES.—

"For provisions excluding certain employee achievement awards from gross income, see section 74(c).

"For provisions excluding certain de minimis fringes from gross income, see section 132(e)."

(c) GIFTS.—Section 274(b) (relating to gifts) is amended—

(1) by adding "or" at the end of subparagraph (A) of paragraph (1),

(2) by striking out "or" at the end of subparagraph (B) of paragraph (1), and inserting in lieu thereof a period,

(3) by striking out subparagraph (C) of paragraph (1), and

(4) by striking out paragraph (3).

(d) DEDUCTION FOR COST OF EMPLOYEE ACHIEVEMENT AWARDS.—Section 274 (relating to certain entertainment, etc., expenses) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) EMPLOYEE ACHIEVEMENT AWARDS.—

"(1) GENERAL RULE.—No deduction shall be allowed under section 162 or section 212 for the cost of an employee achievement award except to the extent that such cost does not exceed the deduction limitations of paragraph (2).

"(2) DEDUCTION LIMITATIONS.—The deduction for the cost of an employee achievement award made by an employer to an employee—

"(A) which is not a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year which are not qualified plan awards, shall not exceed $400, and

"(B) which is a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year (including employee achievement awards which are not qualified plan awards), shall not exceed $1,600.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYEE ACHIEVEMENT AWARD.—The term 'employee achievement award' means an item of tangible personal property which is—

"(i) transferred by an employer to an employee for length of service achievement or safety achievement,

"(ii) awarded as part of a meaningful presentation, and

"(iii) awarded under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation.

"(B) QUALIFIED PLAN AWARD.—

"(i) IN GENERAL.—The term 'qualified plan award' means an employee achievement award awarded as part of an established written plan or program of the taxpayer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)) as to eligibility or benefits.

"(ii) LIMITATION.—An employee achievement award shall not be treated as a qualified plan award for any taxable year if the average cost of all employee achievement awards which are provided by the employer during the year, and which would be qualified plan awards but for this subparagraph, exceeds $400. For purposes of the preceding sentence, average cost shall be determined by including the entire cost of qualified plan awards, without taking into account employee achievement awards of nominal value.

"(4) SPECIAL RULES.—For purposes of this subsection—

"(A) PARTNERSHIPS.—In the case of an employee achievement award made by a partnership, the deduction limitations contained in paragraph (2) shall apply to the partnership as well as to each member thereof.

"(B) LENGTH OF SERVICE AWARDS.—An item shall not be treated as having been provided for length of service achievement if the item is received during the recipient's 1st 5 years of employment or if the recipient received a length of service achievement award (other than an award excludable under section 132(e)(1)) during that year or any of the prior 4 years.

"(C) SAFETY ACHIEVEMENT AWARDS.—An item provided by an employer to an employee shall not be treated as having been provided for safety achievement if—

"(i) during the taxable year, employee achievement awards (other than awards excludable under section 132(e)(1)) for safety achievement have previously been awarded by the employer to more than 10 percent of the employees of the employer (excluding employees described in clause (ii)), or

"(ii) such item is awarded to a manager, administrator, clerical employee, or other professional employee.".

(e) TREATMENT FOR PURPOSES OF EMPLOYMENT TAXES.—Each of the following provisions are amended by striking out "117 or" and inserting in lieu thereof "74(c), 117, or":

(1) Section 3121(a)(20).

(2) Section 3231(e)(5).

(3) Section 3306(b)(16).

(4) Section 3401(a)(20).

(5) Section 209(s) of the Social Security Act.

SEC. 123. SCHOLARSHIPS.

(a) IN GENERAL.—Section 117 (relating to scholarship and fellowship grants) is amended to read as follows:

"SEC. 117. QUALIFIED SCHOLARSHIPS.

"(a) GENERAL RULE.—Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

"(b) QUALIFIED SCHOLARSHIP.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified scholarship' means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

"(2) QUALIFIED TUITION AND RELATED EXPENSES.—For purposes of paragraph (1), the term 'qualified tuition and related expenses' means—

"(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

"(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

"(c) LIMITATION.—Subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

"(d) QUALIFIED TUITION REDUCTION.—

"(1) IN GENERAL.—Gross income shall not include any qualified tuition reduction.

"(2) QUALIFIED TUITION REDUCTION.—For purposes of this subsection, the term 'qualified tuition reduction' means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

"(A) such employee, or

"(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(f).

"(3) REDUCTION MUST NOT DISCRIMINATE IN FAVOR OF HIGHLY COMPENSATED, ETC.—Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any officer, owner, or highly com-

pensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees (within the meaning of section 414(q))."

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (a) of section 74 is amended by striking out "(relating to scholarship and fellowship grants)" and inserting in lieu thereof "(relating to qualified scholarships)".

(2) The second sentence of section 1441(b) (relating to income items) is amended to read as follows: "The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which are incident to a qualified scholarship to which section 117(a) applies, but only to the extent such amounts are includible in gross income."

(3) Paragraph (6) of section 7871(a) (relating to Indian tribal governments treated as States for certain purposes), as amended by section 112, is amended by striking out subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(4) The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 117 and inserting in lieu thereof the following new item:

"Sec. 117. Qualified scholarships."

SUBTITLE D—PROVISIONS RELATED TO DEDUCTIONS

SEC. 131. REPEAL OF DEDUCTION FOR 2-EARNER MARRIED COUPLES.

(a) GENERAL RULE.—Section 221 (relating to deduction for 2-earner married couples) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 62 is amended by striking out paragraph (16).

(2) Subparagraph (A) of section 86(b)(2) is amended by striking out "sections 221," and inserting in lieu thereof "sections".

(3) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 221.

SEC. 132. 2-PERCENT FLOOR ON MISCELLANEOUS ITEMIZED DEDUCTIONS.

(a) GENERAL RULE.—Part I of subchapter B of chapter 1 (defining gross income, adjusted gross income, etc.) is amended by adding at the end thereof the following new section:

"SEC. 67. 2-PERCENT FLOOR ON MISCELLANEOUS ITEMIZED DEDUCTIONS.

"(a) GENERAL RULE.—In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income.

"(b) MISCELLANEOUS ITEMIZED DEDUCTIONS.—For purposes of this section, the term 'miscellaneous itemized deductions' means the itemized deductions other than—

"(1) the deduction under section 163 (relating to interest),

"(2) the deduction under section 164 (relating to taxes),

"(3) the deduction under section 165(a) for losses described in subsection (c)(3) or (d) of section 165,

"(4) the deduction under section 170 (relating to charitable, etc., contributions and gifts),

"(5) the deduction under section 213 (relating to medical, dental, etc., expenses),

"(6) the deduction under section 217 (relating to moving expenses),

"(7) any deduction allowable for impairment-related work expenses,

"(8) the deduction under section 691(c) (relating to deduction for estate tax in case of income in respect of the decedent),

"(9) any deduction allowable in connection with personal property used in a short sale,

"(10) the deduction under section 1341 (relating to computation of tax where taxpayer restores substantial amount held under claim of right),

"(11) the deduction under section 72(b)(3) (relating to deduction where annuity payments cease before investment recovered),

"(12) the deduction under section 171 (relating to deduction for amortizable bond premium), and

"(13) the deduction under section 216 (relating to deductions in connection with cooperative housing corporations).

"(c) DISALLOWANCE OF INDIRECT DEDUCTION THROUGH PASS-THRU ENTITY.—The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such reporting requirements as may be necessary to carry out the purposes of this subsection. The preceding sentence shall not apply with respect to estates, trusts, cooperatives, and real estate investment trusts.

"(d) IMPAIRMENT-RELATED WORK EXPENSES.—For purposes of this section, the term 'impairment-related work expenses' means expenses—

"(1) of a handicapped individual (as defined in section 190(b)(3)) for attendant care services at the individual's place of employment and other expenses in connection with such place of employment which are necessary for such individual to be able to work, and

"(2) with respect to which a deduction is allowable under section 162 (determined without regard to this section).

"(e) DETERMINATION OF ADJUSTED GROSS INCOME IN CASE OF ESTATES AND TRUSTS.—For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and would not have been incurred if the property were not held in such trust or estate shall be treated as allowable in arriving at adjusted gross income."

(b) TREATMENT OF TRADE AND BUSINESS DEDUCTIONS OF EMPLOYEES.—

(1) IN GENERAL.—Paragraph (2) of section 62 (defining adjusted gross income) is amended to read as follows:

"(2) CERTAIN TRADE AND BUSINESS DEDUCTIONS OF EMPLOYEES.—

"(A) REIMBURSED EXPENSES OF EMPLOYEES.—The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer.

"(B) CERTAIN EXPENSES OF PERFORMING ARTISTS.—The deductions allowed by section 16 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee."

(2) DEFINITION OF QUALIFIED PERFORMING ARTIST.—Section 62 is amended—

(A) by striking out "For purposes of this subtitle" and inserting in lieu thereof "(a) GENERAL RULE.—For purposes of this subtitle", and

(B) by adding at the end thereof the following new subsection:

"(b) QUALIFIED PERFORMING ARTIST.—

"(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the term 'qualified performing artist' means, with respect to any taxable year, any individual if—

"(A) such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

"(B) the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

"(C) the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed $16,000.

"(2) NOMINAL EMPLOYER NOT TAKEN INTO ACCOUNT.—An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds $200.

"(3) SPECIAL RULES FOR MARRIED COUPLES.—

"(A) IN GENERAL.—Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

"(B) APPLICATION OF PARAGRAPH (1).—In the case of a joint return—

"(i) paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

"(ii) paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

"(C) DETERMINATION OF MARITAL STATUS.—For purposes of this subsection, marital status shall be determined under section 7703(a).

"(D) JOINT RETURN.—For purposes of this subsection, the term 'joint return' means the joint return of a husband and wife made under section 6013."

(c) MOVING EXPENSE DEDUCTION NOT ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 (as amended by subsection (b)) is amended by striking out paragraph (8).

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 67. 2-percent floor on miscellaneous itemized deductions."

SEC. 133. MEDICAL EXPENSE DEDUCTION LIMITATION INCREASED.

Subsection (a) of section 213 (relating to deduction for medical, dental, etc., expenses) is amended by striking out "5 percent" and inserting in lieu thereof "7.5 percent".

SEC. 134. REPEAL OF DEDUCTION FOR STATE AND LOCAL SALES TAXES.

(a) GENERAL RULE.—Subsection (a) of section 164 (relating to deduction for taxes) is amended—

(1) by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4), and

(2) by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition."

(b) CONFORMING AMENDMENTS.—Subsection (b) of section 164 is amended—

(1) by striking out paragraphs (2) and (5), and

(2) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

SEC. 135. REPEAL OF DEDUCTION FOR ADOPTION EXPENSES.

(a) GENERAL RULE.—Section 222 (relating to deduction for adoption expenses) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 223 is redesignated as section 220.

(2) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the items relating to sections 222 and 223 and inserting in lieu thereof the following:

"Sec. 220. Cross references."

SUBTITLE E—MISCELLANEOUS PROVISIONS

SEC. 141. REPEAL OF INCOME AVERAGING.

(a) GENERAL RULE.—Part I of subchapter Q of chapter 1 (relating to income averaging) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (b) of section 3 (relating to section inapplicable to certain individuals) is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(2) Subsection (b) of section 5 (relating to cross references relating to tax on individuals) is amended by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(3) Subparagraph (B) of section 6511(d)(2) (relating to special rules applicable to income taxes) is amended to read as follows:

"(B) APPLICABLE RULES.—

"(i) IN GENERAL.—If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or a capital loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph.

"(ii) TENTATIVE CARRYBACK ADJUSTMENTS.—If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411(a).

"(iii) DETERMINATIONS BY COURTS TO BE CONCLUSIVE.—In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to—

"(I) the net operating loss deduction and the effect of such deduction, and

"(II) the determination of a short-term capital loss and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not an issue in such proceeding."

(c) CLERICAL AMENDMENT.—The table of parts for subchapter Q of chapter 1 is amended by striking out the item relating to part I.

SEC. 142. LIMITATIONS ON DEDUCTIONS FOR MEALS, TRAVEL, AND ENTERTAINMENT.

(a) BUSINESS MEALS.—

(1) IN GENERAL.—Section 274 (relating to disallowance of certain entertainment, etc. expenses), as amended by section 122(d), is amended by redesignating subsection (k) as subsection (o) and by inserting after subsection (j) the following new subsection:

"(k) BUSINESS MEALS.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for the expense of any food or beverages unless—

"(A) such expense is not lavish or extravagant under the circumstances, and

"(B) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any expense if subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e)."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (e) of section 274 (relating to specific exceptions to application of subsection (a)) is amended by striking out paragraph (1) and by redesignating paragraphs (2) through (10) as paragraphs (1) through (9), respectively.

(B) Paragraph (3) of section 274(e), as redesignated by subparagraph (A), is amended by striking out "paragraph (3)" and inserting in lieu thereof "paragraph (2)".

(b) ADDITIONAL RESTRICTIONS ON EXPENSES FOR MEALS, TRAVEL, AND ENTERTAINMENT.—Section 274 is amended by inserting after the subsection added by subsection (a) the following new subsections:

"(l) ADDITIONAL LIMITATIONS ON ENTERTAINMENT TICKETS.—

"(1) ENTERTAINMENT TICKETS.—

"(A) IN GENERAL.—In determining the amount allowable as a deduction under this chapter for any ticket for any activity or facility described in subsection (d)(2), the amount taken into account shall not exceed the face value of such ticket.

"(B) EXCEPTION FOR CERTAIN CHARITABLE SPORTS EVENTS.—Subparagraph (A) shall not apply to any ticket for any sports event—

"(i) which is organized for the primary purpose of benefiting an organization which is described in section 501(c)(3) and exempt from tax under section 501(a),

"(ii) all of the net proceeds of which are contributed to such organization, and

"(iii) which utilizes volunteers for substantially all of the work performed in carrying out such event.

"(2) SKYBOXES, ETC.—

"(A) IN GENERAL.—In the case of a skybox or other private luxury box leased for more than 1 event, the amount allowable as a deduction under this chapter with respect to such events shall not exceed the sum of the face value of non-luxury box seat tickets for the seats in such box covered by the lease. For purposes of the preceding sentence, 2 or more related leases shall be treated as 1 lease.

"(B) PHASEIN.—In the case of—

"(i) a taxable year beginning in 1987, the amount disallowed under subparagraph (A) shall be ⅓ of the amount which would be disallowed without regard to this subparagraph, and

"(ii) in the case of a taxable year beginning in 1988, the amount disallowed under subparagraph (A) shall be ⅔ of the amount which would have been disallowed without regard to this subparagraph."

"(m) ADDITIONAL LIMITATIONS ON TRAVEL EXPENSES.—

"(1) LUXURY WATER TRANSPORTATION.—

"(A) IN GENERAL.—No deduction shall be allowed under this chapter for expenses incurred for transportation by water to the extent such expenses exceed twice the aggregate per diem amounts for days of such transportation. For purposes of the preceding sentence, the term 'per diem amounts' means the highest amount generally allowable with respect to a day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

"(i) any expense allocable to a convention, seminar, or other meeting which is held on any cruise ship, and

"(ii) any expense to which subsection (a) does not apply by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).

"(2) TRAVEL AS FORM OF EDUCATION.—No deduction shall be allowed under this chapter for expenses for travel as a form of education.

"(n) ONLY 80 PERCENT OF MEAL AND ENTERTAINMENT EXPENSES ALLOWED AS DEDUCTION.—

"(1) IN GENERAL.—The amount allowable as a deduction under this chapter for—

"(A) any expense for food or beverages, and

"(B) any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such activity,

shall not exceed 80 percent of the amount of such expense or item which would (but for this paragraph) be allowable as a deduction under this chapter.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any expense if—

"(A) subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),

"(B) in the case of an expense for food or beverages, such expense is excludable from the gross income of the recipient under section 132 by reason of subsection (e) thereof (relating to de minimis fringes),

"(C) such expense is covered by a package involving a ticket described in subsection (l)(1)(B), or

"(D) in the case of an expense for food or beverages before January 1, 1989, such expense is an integral part of a qualified meeting.

"(3) QUALIFIED MEETING.—For purposes of paragraph (2)(D), the term 'qualified meeting' means any convention, seminar, annual meeting, or similar business program with respect to which—

"(A) an expense for food or beverages is not separately stated,

"(B) more than 50 percent of the participants are away from home,

"(C) at least 40 individuals attend, and

"(D) such food and beverages are part of a program which includes a speaker."

(c) NO DEDUCTION ALLOWED FOR SEMINARS, ETC., FOR SECTION 212 PURPOSES.—

(1) IN GENERAL.—Subsection (h) of section 274 (relating to attendance at conventions,

etc.) is amended by adding at the end thereof the following new paragraph:

"(7) SEMINARS, ETC. FOR SECTION 212 PURPOSES.—No deduction shall be allowed under section 212 for expenses allocable to a convention, seminar, or similar meeting."

(2) TECHNICAL AMENDMENTS.—Paragraphs (1), (2), (4), and (5) of section 274(h) are each amended—

(A) by striking out "or 212" each place it appears, and

(B) by striking out "or to an activity described in section 212 and" each place it appears.

(d) DENIAL OF CHARITABLE CONTRIBUTION FOR CERTAIN TRAVEL EXPENSES.—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

"(k) DENIAL OF DEDUCTION FOR CERTAIN TRAVEL EXPENSES.—No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel."

SEC. 143. CHANGES IN TREATMENT OF HOBBY LOSS, ETC.

(a) HOBBY LOSS.—Subsection (d) of section 183 (relating to presumption) is amended—

(1) by striking out "2 or more of the taxable years in the period of 5 consecutive taxable years" and inserting in lieu thereof "3 or more of the taxable years in the period of 5 consecutive taxable years", and

(2) by striking out the last sentence and inserting in lieu thereof the following: "In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting '2' for '3' and '7' for '5'."

(b) TREATMENT OF RENTAL TO EMPLOYER UNDER SECTION 280A.—Subsection (c) of section 280A (relating to exceptions for certain business or rental use; limitation on deductions for such use) is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF RENTAL TO EMPLOYER.—Paragraphs (1) and (3) shall not apply to any item which is attributable to the rental of the dwelling unit (or any portion thereof) by the taxpayer to his employer during any period in which the taxpayer uses the dwelling unit (or portion) in performing services as an employee of the employer."

(c) REVISION OF LIMITATION ON DEDUCTION FOR BUSINESS USE OF HOME.—Paragraph (5) of section 280A(c) (relating to exceptions for certain business or rental use; limitation on deductions for such use) is amended by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) the sum of—

"(i) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used, and

"(ii) the deductions allocable to the trade or business in which such use occurs (but which are not allocable to such use) for such taxable year.

Any amount not allowable as a deduction under this chapter by reason of the preceding sentence shall be taken into account as a deduction (allocable to such use) under this chapter for the succeeding taxable year."

SEC. 144. DEDUCTION FOR MORTGAGE INTEREST AND REAL PROPERTY TAXES ALLOWABLE WHERE PARSONAGE ALLOWANCE OR MILITARY HOUSING ALLOWANCE RECEIVED.

Section 265 (relating to expenses and interest relating to tax-exempt income) is amended by adding at the end thereof the following new paragraph:

"(6) SECTION NOT TO APPLY WITH RESPECT TO PARSONAGE AND MILITARY HOUSING ALLOWANCES.—No deduction shall be denied under this section for interest on a mortgage on, or real property taxes on, the home of the taxpayer by reason of the receipt of an amount as—

"(A) a military housing allowance, or

"(B) a parsonage allowance excludable from gross income under section 107."

SUBTITLE F—EFFECTIVE DATES

SEC. 151. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this title shall apply to taxable years beginning after December 31, 1986.

(b) UNEMPLOYMENT COMPENSATION.—The amendment made by section 121 shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

(c) PRIZES AND AWARDS.—The amendments made by section 122 shall apply to prizes and awards granted after December 31, 1986.

(d) SCHOLARSHIPS.—The amendments made by section 123 shall apply to taxable years beginning after December 31, 1986, but only in the case of scholarships and fellowships granted after August 16, 1986.

(e) PARSONAGE AND MILITARY HOUSING ALLOWANCES.—The amendment made by section 144 shall apply to taxable years beginning before, on, or after, December 31, 1986.

TITLE II—PROVISIONS RELATING TO CAPITAL COST

Subtitle A—Depreciation Provisions

SEC. 201. MODIFICATION OF ACCELERATED COST RECOVERY SYSTEM.

(a) GENERAL RULE.—Section 168 (relating to accelerated cost recovery system) is amended to read as follows:

"SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

"(a) GENERAL RULE.—Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using—

"(1) the applicable depreciation method,

"(2) the applicable recovery period, and

"(3) the applicable convention.

"(b) APPLICABLE DEPRECIATION METHOD.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the applicable depreciation method is—

"(A) the 200 percent declining balance method,

"(B) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

"(2) 15-YEAR AND 20-YEAR PROPERTY.—In the case of 15-year and 20-year property, paragraph (1) shall be applied by substituting '150 percent' for '200 percent'.

"(3) PROPERTY TO WHICH STRAIGHT LINE METHOD APPLIES.—The applicable depreciation method shall be the straight line method in the case of the following property:

"(A) Nonresidential real property.

"(B) Residential rental property.

"(C) Property with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

"(4) SALVAGE VALUE TREATED AS ZERO.—Salvage value shall be treated as zero.

"(5) ELECTION.—An election under paragraph (3)(C) may be made with respect to 1 or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

"(c) APPLICABLE RECOVERY PERIOD.—For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:

"In the case of:	The applicable recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year property	15 years
20-year property	20 years
Residential rental property	27.5 years
Nonresidential real property	31.5 years.

"(d) APPLICABLE CONVENTION.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the applicable convention is the half-year convention.

"(2) REAL PROPERTY.—In the case of—

"(A) nonresidential real property, and

"(B) residential rental property,

the applicable convention is the mid-month convention.

"(3) SPECIAL RULE WHERE SUBSTANTIAL PROPERTY PLACED IN SERVICE DURING LAST 3 MONTHS OF TAXABLE YEAR.—

"(A) IN GENERAL.—Except as provided in regulations, if during any taxable year—

"(i) the aggregate bases of property to which this section applies and which are placed in service during the last 3 months of the taxable year, exceed

"(ii) 40 percent of the aggregate bases of property to which this section applies placed in service during such taxable year,

the applicable convention for all property to which this section applies placed in service during such taxable year shall be the mid-quarter convention.

"(B) CERTAIN REAL PROPERTY NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), nonresidential real property and residential rental property shall not be taken into account.

"(4) DEFINITIONS.—

"(A) HALF-YEAR CONVENTION.—The half-year convention is a convention which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

"(B) MID-MONTH CONVENTION.—The mid-month convention is a convention which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.

"(C) MID-QUARTER CONVENTION.—The mid-quarter convention is a convention which treats all property placed in service during any quarter of a taxable year (or disposed of during any quarter of a taxable year) as placed in service (or disposed of) on the mid-point of such quarter.

"(e) CLASSIFICATION OF PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, property shall be classified under the following table:

"Property shall be treated as:	If such property has a class life (in years) of:
3-year property	4 or less
5-year property	More than 4 but less than 10
7-year property	10 or more but less than 16
10-year property	16 or more but less than 20
15-year property	20 or more but less than 25
20-year property	25 or more.

"(2) RESIDENTIAL RENTAL OR NONRESIDENTIAL REAL PROPERTY.—

"(A) RESIDENTIAL RENTAL PROPERTY.—The term 'residential rental property' has the meaning given such term by section 167(j)(2)(B).

"(B) NONRESIDENTIAL REAL PROPERTY.—The term 'nonresidential real property' means section 1250 property which is not—

"(i) residential rental property, or

"(ii) property with a class life of less than 27.5 years.

"(3) CLASSIFICATION OF CERTAIN PROPERTY.—

"(A) 3-YEAR PROPERTY.—The term '3-year property' includes—

"(i) any race horse which is more than 2 years old at the time it is placed in service, and

"(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service.

"(B) 5-YEAR PROPERTY.—The term '5-year property' includes—

"(i) any automobile or light general purpose truck,

"(ii) any semi-conductor manufacturing equipment,

"(iii) any computer-based telephone central office switching equipment,

"(iv) any qualified technological equipment,

"(v) any property used in connection with research and experimentation, and

"(vi) any property which—

"(I) is described in paragraph (3)(A)(viii), (3)(A)(ix), or (4) of section 48(l), or

"(II) is described in paragraph (15) of section 48(l) and is a qualifying small power production facility within the meaning of section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), as in effect on September 1, 1986.

"(C) 7-YEAR PROPERTY.—The term '7-year property' includes—

"(i) any railroad track,

"(ii) any single-purpose agricultural or horticultural structure (within the meaning of section 48(p)), and

"(iii) any property which—

"(I) does not have a class life, and

"(II) is not otherwise classified under paragraph (2) or this paragraph.

"(D) 15-YEAR PROPERTY.—The term '15-year property' includes—

"(i) any municipal wastewater treatment plant, and

"(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications.

"(E) 20-YEAR PROPERTY.—The term '20-year property' includes any municipal sewers.

"(f) PROPERTY TO WHICH SECTION DOES NOT APPLY.—This section shall not apply to—

"(1) CERTAIN METHODS OF DEPRECIATION.—Any property if—

"(A) the taxpayer elects to exclude such property from the application of this section, and

"(B) for the 1st taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciated under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the retirement-replacement-betterment method or similar method).

"(2) CERTAIN PUBLIC UTILITY PROPERTY.—Any public utility property (within the meaning of section 167(l)(3)(A)) if the taxpayer does not use a normalization method of accounting.

"(3) FILMS AND VIDEO TAPE.—Any motion picture film or video tape.

"(4) SOUND RECORDINGS.—Any sound recording described in section 48(r)(5).

"(5) CERTAIN PROPERTY PLACED IN SERVICE IN CHURNING TRANSACTIONS.—

"(A) IN GENERAL.—Property—

"(i) described in paragraph (4) of section 168(e) (as in effect before the amendments made by the Tax Reform Act of 1986), or

"(ii) which would be described in such paragraph if such paragraph were applied by substituting '1987' for '1981' and '1986' for '1980' each place such terms appear.

"(B) SUBPARAGRAPH (A)(II) NOT TO APPLY.—Clause (ii) of subparagraph (A) shall not apply to—

"(i) any residential rental property or nonresidential real property, or

"(ii) any property if, for the 1st full taxable year in which such property is placed in service—

"(I) the amount allowable as a deduction under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than

"(II) the amount allowable as a deduction under this section (as in effect on or after such date and using the half-year convention) for such taxable year.

"(g) ALTERNATIVE DEPRECIATION SYSTEM FOR CERTAIN PROPERTY.—

"(1) IN GENERAL.—In the case of—

"(A) any tangible property which during the taxable year is used predominantly outside the United States,

"(B) any tax-exempt use property,

"(C) any tax-exempt bond financed property,

"(D) any imported property covered by an Executive order under paragraph (6), and

"(E) any property to which an election under paragraph (7) applies,

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

"(2) ALTERNATIVE DEPRECIATION SYSTEM.—For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using—

"(A) the straight line method (without regard to salvage value),

"(B) the applicable convention determined under subsection (d), and

"(C) a recovery period determined under the following table:

"In the case of:	The recovery period shall be:
(i) Property not described in clause (ii) or (iii)	The class life.
(ii) Personal property with no class life	12 years.
(iii) Nonresidential real and residential rental property	40 years.

"(3) SPECIAL RULES FOR DETERMINING CLASS LIFE.—

"(A) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall in no event be less than 125 percent of the lease term.

"(B) SPECIAL RULE FOR CERTAIN PROPERTY ASSIGNED TO CLASSES.—For purposes of paragraph (2), in the case of property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

"If property is described in subparagraph:	The class life is:
(B)(ii)	5
(B)(iii)	9.5
(C)(i)	10
(C)(ii)	15
(D)(i)	24
(D)(ii)	24
(E)	50.

"(C) QUALIFIED TECHNOLOGICAL EQUIPMENT.—In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

"(D) AUTOMOBILES, ETC.—In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be 5 years.

"(E) CERTAIN REAL PROPERTY.—In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

"(4) PROPERTY USED PREDOMINANTLY OUTSIDE THE UNITED STATES.—For purposes of this subsection, rules similar to the rules under section 48(a)(2) (including the exceptions contained in subparagraph (B) thereof) shall apply in determining whether property is used predominantly outside the United States. In addition to the exceptions contained in such subparagraph (B), there shall be excepted any satellite or other spacecraft (or any interest therein) held by a United States person if such satellite or spacecraft was launched from within the United States.

"(5) TAX-EXEMPT BOND FINANCED PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'tax-exempt bond financed property' means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a).

"(B) ALLOCATION OF BOND PROCEEDS.—For purposes of subparagraph (A), the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

"(C) QUALIFIED RESIDENTIAL RENTAL PROJECTS.—The term 'tax-exempt bond financed property' shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

"(6) IMPORTED PROPERTY.—

"(A) COUNTRIES MAINTAINING TRADE RESTRICTIONS OR ENGAGING IN DISCRIMINATORY ACTS.—If the President determines that a foreign country—

"(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

"(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

"(B) IMPORTED PROPERTY.—For purposes of this subsection, the term 'imported property' means any property if—

"(i) such property was completed outside the United States, or

"(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term 'United States' includes the Commonwealth of Puerto Rico and the possessions of the United States.

"(7) ELECTION TO USE ALTERNATIVE DEPRECIATION SYSTEM.—

"(A) IN GENERAL.—If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

"(B) ELECTION IRREVOCABLE.—An election under subparagraph (A), once made, shall be irrevocable.

"(h) TAX-EXEMPT USE PROPERTY.—

"(1) IN GENERAL.—For purposes of this section—

"(A) PROPERTY OTHER THAN NONRESIDENTIAL REAL PROPERTY.—Except as otherwise provided in this subsection, the term 'tax-exempt use property' means that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity.

"(B) NONRESIDENTIAL REAL PROPERTY.—

"(i) IN GENERAL.—In the case of nonresidential real property, the term 'tax-exempt use property' means that portion of the property leased to a tax-exempt entity in a disqualified lease.

"(ii) DISQUALIFIED LEASE.—For purposes of this subparagraph, the term 'disqualified lease' means any lease of the property to a tax-exempt entity, but only if—

"(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing,

"(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

"(III) such lease has a lease term in excess of 20 years, or

"(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

"(iii) 35-PERCENT THRESHOLD TEST.—Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

"(iv) TREATMENT OF IMPROVEMENTS.—For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

"(v) LEASEBACKS DURING 1ST 3 MONTHS OF USE NOT TAKEN INTO ACCOUNT.—Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

"(C) EXCEPTION FOR SHORT-TERM LEASES.—

"(i) IN GENERAL.—Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

"(ii) SHORT-TERM LEASE.—For purposes of clause (i), the term 'short-term lease' means any lease the term of which is—

"(I) less than 3 years, and

"(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of nonresidential real property and property with no present class life, subclause (II) shall not apply.

"(D) EXCEPTION WHERE PROPERTY USED IN UNRELATED TRADE OR BUSINESS.—The term 'tax-exempt use property' shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.

"(E) NONRESIDENTIAL REAL PROPERTY DEFINED.—For purposes of this paragraph, the term 'nonresidential real property' includes residential rental property.

"(2) TAX-EXEMPT ENTITY.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'tax-exempt entity' means—

"(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

"(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter, and

"(iii) any foreign person or entity.

"(B) EXCEPTIONS FOR CERTAIN PROPERTY SUBJECT TO UNITED STATES TAX AND USED BY FOREIGN PERSON OR ENTITY.—

"(i) INCOME FROM PROPERTY SUBJECT TO UNITED STATES TAX.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

"(I) subject to tax under this chapter, or

"(II) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

"(ii) MOVIES AND SOUND RECORDINGS.—Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)) or any sound recording (as defined in section 48(r)(5)).

"(C) FOREIGN PERSON OR ENTITY.—For purposes of this paragraph, the term 'foreign person or entity' means—

"(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

"(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

"(D) TREATMENT OF CERTAIN TAXABLE INSTRUMENTALITIES.—For purposes of this subsection, a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

"(i) all of the activities of such corporation are subject to tax under this chapter, and

"(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

"(E) CERTAIN PREVIOUSLY TAX-EXEMPT ORGANIZATIONS.—

"(i) IN GENERAL.—For purposes of this subsection, an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property (other than property held by such organization) if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first used by such organization. The preceding sentence and subparagraph (D)(ii) shall not apply to the Federal Home Loan Mortgage Corporation.

"(ii) ELECTION NOT TO HAVE CLAUSE (I) APPLY.—

"(I) IN GENERAL.—In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

"(II) TAX-EXEMPT USE PERIOD.—For purposes of subclause (I), the term 'tax-exempt use period' means the period beginning with the taxable year in which the property described in subclause (I) is first used by the organization and ending with the close of the 15th taxable year following the last taxable year of the applicable recovery period of such property.

"(III) ELECTION.—Any election under subclause (I), once made, shall be irrevocable.

"(iii) TREATMENT OF SUCCESSOR ORGANIZATIONS.—Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this subparagraph of such predecessor organization.

"(iv) FIRST USED.—For purposes of this subparagraph, property shall be treated as first used by the organization—

"(I) when the property is first placed in service under a lease to such organization, or

"(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.

"(3) SPECIAL RULES FOR CERTAIN HIGH TECHNOLOGY EQUIPMENT.—

"(A) EXEMPTION WHERE LEASE TERM IS 5 YEARS OR LESS.—For purposes of this section, the term 'tax-exempt use property' shall not

include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less.

"(B) EXCEPTION FOR CERTAIN PROPERTY.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the term 'qualified technological equipment' shall not include any property leased to a tax-exempt entity if—

"(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a),

"(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

"(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

"(ii) LEASEBACKS DURING 1ST 3 MONTHS OF USE NOT TAKEN INTO ACCOUNT.—Subclause (II) of clause (i) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

"(4) RELATED ENTITIES.—For purposes of this subsection—

"(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

"(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

"(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

"(i) significant common purposes and substantial common membership, or

"(ii) directly or indirectly substantial common direction or control.

"(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

"(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

"(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection.

"(5) TAX-EXEMPT USE OF PROPERTY LEASED TO PARTNERSHIPS, ETC., DETERMINED AT PARTNER LEVEL.—For purposes of this subsection—

"(A) IN GENERAL.—In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (6)(C)) of such property as being leased to such partner.

"(B) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

"(C) PRESUMPTION WITH RESPECT TO FOREIGN ENTITIES.—Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

"(6) TREATMENT OF PROPERTY OWNED BY PARTNERSHIPS, ETC.—

"(A) IN GENERAL.—For purposes of this subsection, if—

"(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

"(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall (except as provided in paragraph (1)(D)) be treated as tax-exempt use property.

"(B) QUALIFIED ALLOCATION.—For purposes of subparagraph (A), the term 'qualified allocation' means any allocation to a tax-exempt entity which—

"(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

"(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

"(C) DETERMINATION OF PROPORTIONATE SHARE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

"(ii) DETERMINATION WHERE ALLOCATIONS VARY.—For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

"(D) DETERMINATION OF WHETHER PROPERTY USED IN UNRELATED TRADE OR BUSINESS.—For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.

"(E) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraphs (A), (B), (C), and (D) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

"(F) TREATMENT OF CERTAIN TAXABLE ENTITIES.—

"(i) IN GENERAL.—For purposes of this paragraph and paragraph (5), except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

"(ii) ELECTION.—If a tax-exempt controlled entity makes an election under this clause—

"(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph and paragraph (5), and

"(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

"(iii) TAX-EXEMPT CONTROLLED ENTITY.—

"(I) IN GENERAL.—The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (2)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

"(II) Only 5-percent shareholders taken into account in case of publicly traded stock.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (4)) shall be treated as 1 entity.

"(III) Section 318 to apply.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).

"(G) REGULATIONS.—For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (8) for purposes of this paragraph—

"(i) shall set forth the proper treatment for partnership guaranteed payments, and

"(ii) may provide for the exclusion or segregation of items.

"(7) LEASE.—For purposes of this subsection, the term 'lease' includes any grant of a right to use property.

"(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

"(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CLASS LIFE.—

"(A) IN GENERAL.—Except as provided in this section, the term 'class life' means the class life (if any) which would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) thereof and as if the taxpayer had made an election under such subsection).

"(B) SECRETARIAL AUTHORITY.—The Secretary, through an office established in the Treasury—

"(i) shall monitor and analyze actual experience with respect to all depreciable assets, and

"(ii) except in the case of residential rental property or nonresidential real property—

"(I) may prescribe a new class life for any property,

"(II) in the case of assigned property, may modify any assigned item, or

"(III) may prescribe a class life for any property which does not have a class life within the meaning of subparagraph (A).

Any class life or assigned item prescribed or modified under the preceding sentence shall reasonably reflect the anticipated useful life, and the anticipated decline in value over

time, of the property to the industry or other group.

"(C) EFFECT OF MODIFICATION.—Any class life or assigned item with respect to any property prescribed or modified under subparagraph (B) shall be used in classifying such property under subsection (e) and in applying subsection (g).

"(D) NO MODIFICATION OF ASSIGNED PROPERTY BEFORE JANUARY 1, 1992.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the Secretary may not modify an assigned item under subparagraph (B)(ii)(II) for any assigned property which is placed in service before January 1, 1992.

"(ii) EXCEPTION FOR SHORTER CLASS LIFE.—In the case of assigned property which is placed in service before January 1, 1992, and for which the assigned item reflects a class life which is shorter than the class life under subparagraph (A), the Secretary may modify such assigned item under subparagraph (B)(ii)(II) if such modification results in an item which reflects a shorter class life than such assigned item.

"(E) ASSIGNED PROPERTY AND ITEM.—For purposes of this paragraph—

"(i) ASSIGNED PROPERTY.—The term 'assigned property' means property for which a class life, classification, or recovery period is assigned under subsection (e)(3) or subparagraph (B), (C), or (D) of subsection (g)(3).

"(ii) ASSIGNED ITEM.—The term 'assigned item' means the class life, classification, or recovery period assigned under subsection (e)(3) or subparagraph (B), (C), or (D) of subsection (g)(3).

"(2) QUALIFIED TECHNOLOGICAL EQUIPMENT.—

"(A) IN GENERAL.—The term 'qualified technological equipment' means—

"(i) any computer or peripheral equipment,

"(ii) any high technology telephone station equipment installed on the customer's premises, and

"(iii) any high technology medical equipment.

"(B) COMPUTER OR PERIPHERAL EQUIPMENT DEFINED.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'computer or peripheral equipment' means—

"(I) any computer, and

"(II) any related peripheral equipment.

"(ii) COMPUTER.—The term 'computer' means a programmable electronically activated device which—

"(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

"(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

"(iii) RELATED PERIPHERAL EQUIPMENT.—The term 'related peripheral equipment' means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

"(iv) EXCEPTIONS.—The term 'computer or peripheral equipment' shall not include—

"(I) any equipment which is an integral part of other property which is not a computer,

"(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

"(III) equipment of a kind used primarily for amusement or entertainment of the user.

"(C) HIGH TECHNOLOGY MEDICAL EQUIPMENT.—For purposes of this paragraph, the term 'high technology medical equipment' means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

"(3) LEASE TERM.—

"(A) IN GENERAL.—In determining a lease term—

"(i) there shall be taken into account options to renew, and

"(ii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

"(B) SPECIAL RULE FOR FAIR RENTAL OPTIONS ON NONRESIDENTIAL REAL PROPERTY OR RESIDENTIAL RENTAL PROPERTY.—For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

"(4) GENERAL ASSET ACCOUNTS.—Under regulations, a taxpayer may maintain 1 or more general asset accounts for any property to which this section applies. Except as provided in regulations, all proceeds realized on any disposition of property in a general asset account shall be included in income as ordinary income.

"(5) CHANGES IN USE.—The Secretary shall, by regulations, provide for the method of determining the deduction allowable under section 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

"(6) TREATMENTS OF ADDITIONS OR IMPROVEMENTS TO PROPERTY.—In the case of any addition to (or improvement of) any property—

"(A) any deduction under subsection (a) for such addition or improvement shall be computed in the same manner as the deduction for such property would be computed if such property had been placed in service at the same time as such addition or improvement, and

"(B) the applicable recovery period for such addition or improvement shall begin on the later of—

"(i) the date on which such addition (or improvement) is placed in service, or

"(ii) the date on which the property with respect to which such addition (or improvement) was made is placed in service.

"(7) TREATMENT OF CERTAIN TRANSFEREES.—

"(A) IN GENERAL.—In the case of any property transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of computing the depreciation deduction determined under this section with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

"(B) TRANSACTIONS COVERED.—The transactions described in this subparagraph are any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731. Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).

"(C) PROPERTY REACQUIRED BY THE TAXPAYER.—Under regulations, property which is disposed of and then reacquired by the taxpayer shall be treated for purposes of computing the deduction allowable under subsection (a) as if such property had not been disposed of.

"(D) EXCEPTION.—This paragraph shall not apply to any transaction to which subsection (f)(5) applies (relating to churning transactions).

"(8) TREATMENT OF LEASEHOLD IMPROVEMENTS.—In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

"(9) NORMALIZATION RULES.—

"(A) IN GENERAL.—In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2)—

"(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

"(ii) if the amount allowable as a deduction under this section with respect to such property differs from the amount that would be allowable as a deduction under section 167 (determined without regard to section 167(l)) using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax expense under clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

"(B) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS, ETC.—

"(i) IN GENERAL.—One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

"(ii) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS.—The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

"(iii) REGULATORY AUTHORITY.—The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

"(C) PUBLIC UTILITY PROPERTY WHICH DOES NOT MEET NORMALIZATION RULES.—In the case of any public utility property to which this section does not apply by reason of subsection (f)(2), the allowance for depreciation under section 167(a) shall be an amount computed using the method and period referred to in subparagraph (A)(i).

"(10) PUBLIC UTILITY PROPERTY.—The term 'public utility property' has the meaning given such term by section 167(l)(3)(A).

"(11) RESEARCH AND EXPERIMENTATION.—The term 'research and experimentation' has the same meaning as the term research and experimental has under section 174.

"(12) SECTION 1245 AND 1250 PROPERTY.—The terms 'section 1245 property' and 'section 1250 property' have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively."

(b) SYSTEM USED FOR PURPOSES OF EARNINGS AND PROFITS.—Paragraph (3) of section 312(k) is amended to read as follows:

"(3) EXCEPTION FOR TANGIBLE PROPERTY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of tangible property to which section 168 applies, the adjustment to earnings and profits for depreciation for any taxable year shall be determined under the alternative depreciation system (within the meaning of section 168(g)(2)).

"(B) TREATMENT OF AMOUNTS DEDUCTIBLE UNDER SECTION 179.—For purposes of computing the earnings and profits of a corporation, any amount deductible under section 179 shall be allowed as a deduction ratably over the period of 5 taxable years (beginning with the taxable year for which such amount is deductible under section 179)."

(c) CONTINUATION OF RULES RELATING TO MOTOR VEHICLE OPERATING LEASES.—Section 7701 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) MOTOR VEHICLE OPERATING LEASES.—

"(1) IN GENERAL.—For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause—

"(A) such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

"(B) the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

"(2) QUALIFIED MOTOR VEHICLE OPERATING AGREEMENT DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified motor vehicle operating agreement' means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of subparagraphs (B), (C), and (D) of this paragraph.

"(B) MINIMUM LIABILITY OF LESSOR.—An agreement meets the requirements of this subparagraph if under such agreement the sum of—

"(i) the amount the lessor is personally liable to repay, and

"(ii) the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement, equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

"(C) CERTIFICATION BY LESSEE; NOTICE OF TAX OWNERSHIP.—An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee—

"(i) under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

"(ii) which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

"(D) LESSOR MUST HAVE NO KNOWLEDGE THAT CERTIFICATION IS FALSE.—An agreement meets the requirements of this subparagraph if the lessor does not know that the certification described in subparagraph (C)(i) is false.

"(3) TERMINAL RENTAL ADJUSTMENT CLAUSE DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'terminal rental adjustment clause' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

"(B) SPECIAL RULE FOR LESSEE DEALERS.—The term 'terminal rental adjustment clause' also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A)."

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 167.—Paragraph (4) of section 167(m) (relating to termination of class lives) is amended to read as follows:

"(4) TERMINATION.—This subsection shall not apply with respect to any property to which section 168 applies."

(2) SECTION 178.—

(A) Section 178 is amended to read as follows:

"SEC. 178. AMORTIZATION OF COST OF ACQUIRING A LEASE.

"(a) GENERAL RULE.—In determining the amount of the deduction allowable to a lessee of a lease for any taxable year for amortization under section 167, 169, 179, 185, 190, 193, or 194 in respect of any cost of acquiring the lease, the term of the lease shall be treated as including all renewal options (and any other period for which the parties reasonably expect the lease to be renewed) if less than 75 percent of such cost is attributable to the period of the term of the lease remaining on the date of its acquisition.

"(b) CERTAIN PERIODS EXCLUDED.—For purposes of subsection (a), in determining the period of the term of the lease remaining on the date of acquisition, there shall not be taken into account any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee."

(B) The table of sections for part VI of subchapter B of chapter 1 is amended by striking out the item relating to section 178 and inserting in lieu thereof the following new item:

"Sec. 178. Amortization of cost of acquiring a lease."

(3) SECTION 179.—Paragraph (8) of section 179(d) is amended to read as follows:

"(8) TREATMENT OF PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders."

(4) SECTION 280F.—

(A) Paragraph (2) of section 280F(a) (relating to depreciation) is amended—

(i) by striking out clauses (i) and (ii) of subparagraph (A) thereof and inserting in lieu thereof the following new clauses:

"(i) $2,560 for the 1st taxable year in the recovery period,

"(ii) $4,100 for the 2nd taxable year in the recovery period,

"(iii) $2,450 for the 3rd taxable year in the recovery period, and

"(iv) $1,475 for each succeeding taxable year in the recovery period.", and

(ii) by striking out "$4,800" each place it appears in subparagraph (B) thereof and inserting in lieu thereof "$1,475".

(B) Subparagraph (A) of section 280F(b)(3) (relating to recapture) is amended by striking out "the straight line method over the earnings and profits life" and inserting in lieu thereof "section 168(g) (relating to alternative depreciation system)".

(C) Paragraph (4) of section 280F(b) (relating to definitions) is amended to read as follows:

"(4) PROPERTY PREDOMINANTLY USED IN QUALIFIED BUSINESS USE.—For purposes of this subsection, property shall be treated as predominantly used in a qualified business use for any taxable year if the business use percentage for such taxable year exceeds 50 percent."

(D) Paragraph (4) of section 280F(c) is amended by striking out "section 168(j)(6)(B)" and inserting in lieu thereof "section 168(i)(3)(A)".

(E) Paragraph (1) of section 280F(d) is amended by striking out "recovery deduction" and inserting in lieu thereof "depreciation deduction".

(F) Paragraph (2) of section 280F(d) is amended—

(i) by striking out "recovery deduction" and inserting in lieu thereof "depreciation deduction", and

(ii) by striking out "use described in section 168(c)(1) (defining recovery property)" and inserting in lieu thereof "use in a trade or business (including the holding for the production of income)".

(G) Clause (iv) of section 280F(d)(4)(A) is amended by striking out "section 168(j)(5)(D)" and inserting in lieu thereof "section 168(i)(2)(B)".

(H) Paragraph (8) of section 280F(d) (defining unrecovered basis) is amended to read as follows:

"(8) UNRECOVERED BASIS.—For purposes of subsection (a)(2), the term 'unrecovered basis' means the adjusted basis of the passenger automobile determined after the application of subsection (a) and as if all use during the recovery period were use in a trade or business (including the holding of property for the production of income)."

(I) Paragraph (10) of section 280F(d) is amended by striking out ", notwithstanding any regulations prescribed under section 168(f)(7),".

(J) Paragraph (2) of section 280F(b) is amended by striking out "the straight line method over the earnings and profits life for such property" and inserting in lieu thereof "section 168(g) (relating to alternative depreciation system)".

(K) Subsections (a) and (b) of section 280F are amended by striking out "recovery deduction" each place it appears and inserting in lieu thereof "depreciation deduction".

(5) SECTION 291.—

(A) Subparagraph (A) of section 291(a)(1) is amended by striking out "or section 1245 recovery property".

(B) Paragraph (1) of section 291(c) is amended to read as follows:

"(1) ACCELERATED COST RECOVERY DEDUCTION.—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(5)."

(C) Section 291(e)(2) is amended by striking out ", 'section 1245 recovery property'," and ", section 1245(a)(5),".

(6) SECTION 312.—Paragraph (4) of section 312(k) is amended by striking out the last sentence.

(7) SECTION 465.—

(A) Subparagraph (C) of section 465(b)(3) is amended to read as follows:

"(C) RELATED PERSON.—For purposes of this subsection, a person (hereinafter in this paragraph referred to as the 'related person') is related to any person if—

"(i) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

"(ii) the related person and such person are engaged in trades or business under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of clause (i), in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'."

(B) Section 46(c)(8)(D)(v) is amended by striking out "section 168(e)(4)" and inserting in lieu thereof "section 465(b)(3)(C)".

(C) Section 4162(c)(3) is amended by striking out "section 168(e)(4)(D)" and inserting in lieu thereof "section 465(b)(3)(C)".

(8) SECTION 467.—

(A) Paragraph (3) of section 467(e) is amended to read as follows:

"(3) STATUTORY RECOVERY PERIOD.—

"(A) IN GENERAL.—

"In the case of:	The statutory recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year and 20-year property	15 years
Residential rental property and nonresidential real property.	19 years.

"(B) SPECIAL RULE FOR PROPERTY NOT DEPRECIABLE UNDER SECTION 168.—In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property."

(B) Paragraph (5) of section 467(e) (defining related person) is amended by striking out "section 168(e)(4)(D)" and inserting in lieu thereof "section 465(b)(3)(C)".

(9) SECTION 514.—Subclause (II) of section 514(c)(9)(B)(vi) (relating to real property acquired by a qualified organization) is amended by striking out "section 168(j)(9)" and inserting in lieu thereof "section 168(h)(6)".

(10) SECTION 751.—Subsection (c) of section 751 (defining unrealized receivables) is amended by striking out "section 1245 recovery property (as defined in section 1245(a)(5)),".

(11) SECTION 1245.—

(A) Paragraph (1) of section 1245(a) (relating to gain from dispositions of certain depreciable property) is amended by striking out "during a taxable year beginning after December 31, 1962, or section 1245 recovery property is disposed of after December 31, 1980,".

(B) Paragraph (2) of section 1245(a) (defining recomputed basis) is amended to read as follows:

"(2) RECOMPUTED BASIS.—For purposes of this section—

"(A) IN GENERAL.—The term 'recomputed basis' means, with respect to any property, its adjusted basis recomputed by adding thereto all adjustments reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation or amortization.

"(B) TAXPAYER MAY ESTABLISH AMOUNT ALLOWED.—For purposes of subparagraph (A), if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

"(C) CERTAIN DEDUCTIONS TREATED AS AMORTIZATION.—Any deduction allowable under section 179, 190, or 193 shall be treated as if it were a deduction allowable for amortization."

(C) Paragraph (3) of section 1245(a) (defining section 1245 property) is amended by striking out subparagraph (C) and by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively.

(D) Subsection (a) of section 1245 is amended by striking out paragraphs (5) and (6).

(12) SECTION 4162.—Paragraph (3) of section 4162(c) (defining related person) is amended by striking out "section 168(e)(4)(D)" and inserting in lieu thereof "section 465(b)(3)(C)".

(13) SECTION 6111.—Clause (ii) of section 6111(c)(3)(B) (relating to certain borrowed amounts excluded) is amended by striking out "section 168(e)(4)" and inserting in lieu thereof "section 465(b)(3)(C)".

(14) SECTION 7701.—

(A) Subparagraph (A) of section 7701(e)(4) is amended by striking out "section 168(j)" and inserting in lieu thereof "section 168(h)".

(B) Paragraph (5) of section 7701(e) (relating to exception for certain low-income housing) is amended by striking out "low-income housing (section 168(c)(2)(F))" and inserting in lieu thereof "property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing)".

SEC. 202. EXPENSING OF DEPRECIABLE ASSETS.

(a) LIMITATIONS ON EXPENSING.—Subsection (b) of section 179 (relating to election to expense certain depreciable assets) is amended to read as follows:

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $10,000.

"(2) REDUCTION IN LIMITATION.—The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year exceeds $200,000.

"(3) LIMITATION BASED ON INCOME FROM TRADE OR BUSINESS.—

"(A) IN GENERAL.—The aggregate cost of section 179 property taken into account under subsection (a) for any taxable year shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

"(B) CARRYOVER OF UNUSED COST.—The amount of any cost which (but for subparagraph (A)) would have been allowed as a deduction under subsection (a) for any taxable year shall be carried to the succeeding taxable year and added to the amount allowable as a deduction under subsection (a) for such succeeding taxable year.

"(C) COMPUTATION OF TAXABLE INCOME.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the cost of any section 179 property.

"(4) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a husband and wife filing separate returns for the taxable year—

"(A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and

"(B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual."

(b) SECTION 179 PROPERTY.—Paragraph (1) of section 179(d) (defining section 179 property) is amended by inserting "in the active conduct of" after "purchase for use".

(c) RECAPTURE.—Section 179(d)(10) (relating to recapture in certain cases) is amended by striking out all that follows "at any time" and inserting in lieu thereof a period.

SEC. 203. EFFECTIVE DATES; GENERAL TRANSITIONAL RULES.

(a) GENERAL EFFECTIVE DATES.—

(1) SECTION 201.—

(A) IN GENERAL.—Except as provided in this section, section 204, and section 251(d), the amendments made by section 201 shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

(B) ELECTION TO HAVE AMENDMENTS MADE BY SECTION 201 APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have the amendments made by section 201 apply to any property placed in service after July 31, 1986, and before January 1, 1987.

(2) SECTION 202.—The amendments made by section 202 shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

(b) GENERAL TRANSITIONAL RULE.—

(1) IN GENERAL.—The amendments made by section 201 shall not apply to—

(A) any property which is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on March 1, 1986,

(B) property which is constructed or reconstructed by the taxpayer if—

(i) the lesser of (I) $1,000,000, or (II) 5 percent of the cost of such property has been incurred or committed by March 1, 1986, and

(ii) the construction or reconstruction of such property began by such date, or

(C) an equipped building or plant facility if construction has commenced as of March 1, 1986, pursuant to a written specific plan and more than one-half of the cost of such equipped building or facility has been incurred or committed by such date.

(2) REQUIREMENT THAT CERTAIN PROPERTY BE PLACED IN SERVICE BEFORE CERTAIN DATE.—

(A) IN GENERAL.—Paragraph (1) and section 204(a) (other than paragraph (8) or (12) thereof) shall not apply to any property unless such property has a class life of at least 7 years and is placed in service before the applicable date determined under the following table:

In the case of property with a class life of:	The applicable date is:
At least 7 but less than 20 years	January 1, 1989
20 years or more	January 1, 1991.

(B) RESIDENTIAL RENTAL AND NONRESIDENTIAL REAL PROPERTY.—In the case of residential rental property and nonresidential real property, the applicable date is January 1, 1991.

(C) CLASS LIVES.—For purposes of subparagraph (A)—

(i) the class life of property to which section 168(g)(3)(B) of the Internal Revenue Code of 1986 (as added by section 201) shall be the class life in effect on January 1, 1986, except that computer-based telephone central office switching equipment described in section 168(e)(3)(B)(iii) of such Code shall be treated as having a class life of 6 years,

(ii) property described in section 204(a) shall be treated as having a class life of 20 years, and

(iii) property with no class life shall be treated as having a class life of 12 years.

(D) SUBSTITUTION OF APPLICABLE DATES.—If any provision of this Act substitutes a date for an applicable date, this paragraph shall be applied by using such date.

(3) PROPERTY QUALIFIES IF SOLD AND LEASED BACK IN 3 MONTHS.—Property shall be treated as meeting the requirements of paragraphs (1) and (2) or section 204(a) with respect to any taxpayer if such property is acquired by the taxpayer from a person—

(A) in whose hands such property met the requirements of paragraphs (1) and (2) or section 204(a), or

(B) who placed the property in service before January 1, 1987,

and such property is leased back by the taxpayer to such person not later than the earlier of the applicable date under paragraph (2) or the day which is 3 months after such property was placed in service.

(4) PLANT FACILITY.—For purposes of paragraph (1), the term "plant facility" means a facility which does not include any building (or with respect to which buildings constitute an insignificant portion) and which is—

(A) a self-contained single operating unit or processing operation,

(B) located on a single site, and

(C) identified as a single unitary project as of March 1, 1986.

(c) PROPERTY FINANCED WITH TAX-EXEMPT BONDS.—

(1) IN GENERAL.—Subparagraph (C) of section 168(g)(1) of the Internal Revenue Code of 1986 (as added by this Act) shall apply to property placed in service after December 31, 1986, in taxable years ending after such date, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after March 1, 1986.

(2) EXCEPTIONS.—

(A) CONSTRUCTION OR BINDING AGREEMENTS.—Subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply to obligations with respect to a facility—

(i)(I) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before March 2, 1986, and was completed on or after such date,

(II) with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before March 2, 1986, and some of such expenditures are incurred on or after such date, or

(III) acquired on or after March 2, 1986, pursuant to a binding contract entered into before such date, and

(ii) described in an inducement resolution or other comparable preliminary approval adopted by the issuing authority (or by a voter referendum) before March 2, 1986.

(B) REFUNDING.—

(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1986, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before March 2, 1986, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1987, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before March 2, 1986.

(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before March 2, 1986, for purposes of subparagraphs (A) and (B)(ii) with respect to obligations described in such resolution, the term "facilities" means the facilities described in such resolution.

(D) SIGNIFICANT EXPENDITURES.—For purposes of this paragraph, the term "significant expenditures" means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

(d) MID-QUARTER CONVENTION.—In the case of any taxable year in which property to which the amendments made by section 201 do not apply is placed in service, such property shall be taken into account in determining whether section 168(d)(3) of the Internal Revenue Code of 1986 (as added by section 201) applies for such taxable year to property to which such amendments apply.

(e) NORMALIZATION REQUIREMENTS.—

(1) IN GENERAL.—A normalization method of accounting shall not be treated as being used with respect to any public utility property for purposes of section 167 or 168 of the Internal Revenue Code of 1986 if the taxpayer, in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces the excess tax reserve more rapidly or to a greater extent than such reserve would be reduced under the average rate assumption method.

(2) DEFINITIONS.—For purposes of this subsection—

(A) EXCESS TAX RESERVE.—The term "excess tax reserve" means the excess of—

(i) the reserve for deferred taxes (as described in section 167(l)(3)(G)(ii) or 168(e)(3)(B)(ii) of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act), over

(ii) the amount which would be the balance in such reserve if the amount of such reserve were determined by assuming that the corporate rate reductions provided in this Act were in effect for all prior periods.

(B) AVERAGE RATE ASSUMPTION METHOD.—The average rate assumption method is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes. Under such method, if timing differences for the property reverse, the amount of the adjustment to the reserve for the deferred taxes is calculated by multiplying—

(i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property as of the beginning of the period in question, by

(ii) the amount of the timing differences which reverse during such period.

SEC. 204. ADDITIONAL TRANSITIONAL RULES.

(a) OTHER TRANSITIONAL RULES.—

(1) URBAN RENOVATION PROJECTS.—

(A) IN GENERAL.—The amendments made by section 201 shall not apply to any property which is an integral part of any qualified urban renovation project.

(B) QUALIFIED URBAN RENOVATION PROJECT.—For purposes of subparagraph (A), the term "qualified urban renovation project" means any project—

(i) described in subparagraph (C), (D), (E), or (G) which before March 1, 1986, was publicly announced by a political subdivision of a State for a renovation of an urban area within its jurisdiction,

(ii) described in subparagraph (C), (D) or (G) which before March 1, 1986, was identified as a single unitary project in the internal financing plans of the primary developer of the project, and

(iii) described in subparagraph (C) or (D), which is not substantially modified on or after March 1, 1986.

(C) PROJECT WHERE AGREEMENT ON DECEMBER 19, 1984.—A project is described in this subparagraph if—

(i) a political subdivision granted on July 11, 1985, development rights to the primary developer-purchaser of such project, and

(ii) such project was the subject of a development agreement between a political subdivision and a bridge authority on December 19, 1984.

For purposes of this subparagraph, subsection (b)(2) shall be applied by substituting "January 1, 1994" for "January 1, 1991".

(D) CERTAIN ADDITIONAL PROJECTS.—A project is described in this subparagraph if it is described in any of the following clauses of this subparagraph and the primary developer of all such projects is the same person:

(i) A project is described in this clause if the development agreement with respect thereto was entered into during April 1984 and the estimated cost of the project is approximately $194,000,000.

(ii) A project is described in this clause if the development agreement with respect thereto was entered into during May 1984 and the estimated cost of the project is approximately $190,000,000.

(iii) A project is described in this clause if the project has an estimated cost of approximately $92,000,000 and at least $7,000,000 was spent before September 26, 1985, with respect to such project.

(iv) A project is described in this clause if the estimately project cost is approximately $39,000,000 and at least $2,000,000 of construction cost for such project were incurred before September 26, 1985.

(v) A project is described in this clause if the development agreement with respect thereto was entered into before September 26, 1985, and the estimated cost of the project is approximately $150,000,000.

(vi) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $107,000,000.

(vii) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $59,000,000.

(viii) A project is described in this clause if the Board of Directors of the primary developer approved such project in December 1983, following selection of the developer by a city council on September 26, 1983, and the estimated cost of such project is approximately $107,000,000."

(E) Project where plan confirmed on October 4, 1984.—A project is described in this subparagraph if—

(i) a State or an agency, instrumentality, or political subdivision thereof approved the filing of a general project plan on June 18, 1981, and on October 4, 1984, a State or an agency, instrumentality, or political subdivision thereof confirmed such plan,

(ii) the project plan as confirmed on October 4, 1984, included construction or renovation of office buildings, a hotel, a trade mart, theaters, and a subway complex, and

(iii) significant segments of such project were the subject of one or more conditional designations granted by a State or an agency, instrumentality, or political subdivision thereof to one or more developers before January 1, 1985.

The preceding sentence shall apply with respect to a property only to the extent that a building on such property site was identified as part of the project plan before September 26, 1985, and only to the extent that the size of the building on such property site was not substantially increased by reason of a modification to the project plan with respect to such property on or after such date. For purposes of this subparagraph, subsection (b)(2) shall be applied by substituting "January 1, 1998" for "January 1, 1991."

(F) A project is described in this paragraph if it is a sports and entertainment facility which—

(i) is to be used by both a National Hockey League team and a National Basketball Association team;

(ii) is to be constructed on a platform utilizating air rights over land acquired by a state authority and identified as Site B in a report dated May 30, 1984, prepared for a state urban development corporation; and

(iii) is eligible for real property tax, and power and energy benefits pursuant to the provisions of state legislation approved and effective July 7, 1982, or

(iv) the mixed-use development is—

(I) to be constructed above a public railroad station utilized by the national railroad passenger corporation and commuter railroads serving two states; and

(II) will include the reconstruction of such station so as to make it a more efficient transportation center and to better integrate the station with the development above, such reconstruction plans to be prepared in cooperation with a state transportation authority.

For purposes of this subparagraph, subsection (b)(2) shall be applied by substituting "January 1, 1993" for the applicable date that would otherwise apply.

(G) A project is described in this subparagraph if—

(i) an inducement resolution was passed on March 9, 1984, for the issuance of obligations with respect to such project,

(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

(iii) an application was submitted on January 31, 1984, for an Urban Development Action Grant with respect to such project, and

(iv) an Urban Development Action Grant was preliminarily approved for all or part of such project on July 3, 1986."

(H) A project is described in this subparagraph if it is a redevelopment project, with respect to which $10 million in industrial revenue bonds were approved by a State Development Finance Authority on January 15, 1986, a village transferred approximately $4 million of bond volume authority to the State in June 1986, and a binding Redevelopment Agreement was executed between a city and the development team on July 1, 1986.

(2) CERTAIN PROJECTS GRANTED FERC LICENSES, ETC.—The amendments made by section 201 shall not apply to any property which is part of a project—

(A) which is certified by the Federal Energy Regulatory Commission before March 2, 1986, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978,

(B) which was granted before March 2, 1986, a hydroelectric license for such project by the Federal Energy Regulatory Commission, or

(C) which is a hydroelectric project of less than 80 megawatts that field an application for a permit exemption, or license with the Federal Energy Regulatory Commission before March 2, 1986.

(3) SUPPLY OR SERVICE CONTRACTS.—The amendments made by section 201 shall not apply to any property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding on March 1, 1986.

(4) PROPERTY TREATED UNDER PRIOR TAX ACTS.—The amendments made by section 201 shall not apply to property described in section 12(c)(2) or 31(g)(5) and 31(g)(17)(j) of the Tax Reform Act of 1984, to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984 and to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

(5) SPECIAL RULES FOR PROPERTY INCLUDED IN MASTER PLANS OF INTEGRATED PROJECTS.—The amendments made by section 201 shall not apply to any property placed in service pursuant to a master plan which is clearly identifiable as of March 1, 1986, for any project described in any of the following subparagraphs of this paragraph:

(A) A project is described in this subparagraph if—

(i) the project involves production platforms for offshore drilling, oil and gas pipeline to shore, process and storage facilities, and a marine terminal, and

(ii) at least $900,000,000 of the costs of such project were incurred before September 26, 1985.

(B) A project is described in this subparagraph if—

(i) such project involves a fiber optic network of at least 20,000 miles, and

(ii) before September 26, 1985, construction commenced pursuant to the master plan and at least $85,000,000 was spent on construction.

(C) A project is described in this subparagraph if—

(i) such project passes through at least 10 States and involves intercity communication link (including one or more repeater sites terminals and junction stations for microwave transmissions, regenerators or fiber optics and other related equipment,

(ii) the lesser of $150,000,000 or 5 percent of the total project cost has been expended, incurred, or committed before March 2, 1986, by one or more taxpayers each of which is a member of the same affiliated group (as defined in section 1504(a)), and

(iii) such project consists of a comprehensive plan for meeting network capacity requirements as encompassed within either:

(I) a November 5, 1985, presentation made to and accepted by the Chairman of the Board and the president of the taxpayer, or

(II) the approvals by the Board of Directors of the parent company of the taxpayer on May 3, 1985, and September 22, 1985, and of the executive committee of said board on December 23, 1985.

(D) a project is described in this subparagraph if—

(i) such project is part of a flat rolled product modernization plan which was initially presented to the Board of Directors of the taxpayer on July 8, 1983,

(ii) such program will be carried out at 3 locations, and

(iii) such project will involve a total estimated minimum capital cost of at least $250,000,000.

(E) A project is described in this subparagraph if the project is being carried out by a corporation engaged in the production of paint, chemicals, fiberglass, and glass, and if—

(i) the project includes a production line which applied a thin coating to glass in the manufacture of energy efficient residential products, if approved by the management committee of the corporation on January 29, 1986,

(ii) the project is a turbogenerator which was approved by the president of such corporation and at least $1,000,000 of the cost of which was incurred or committed before such date,

(iii) the project is a waste-to-energy disposal system which was initiatlly approved by the management committee of the corporation on March 29, 1982, and at least $5,000,000 of the cost of which was incurred before September 26, 1985,

(iv) the project, which involves the expansion of an existing service facility and the addition of new lab facilities needed to accommodate topcoat and undercoat production needs of a nearby automotive assembly plant, was approved by the corporation's management committee on March 5, 1986, or

(v) the project is part of a facility to consolidate and modernize the silica production of such corporation and the project was approved by the president of such corporation on August 19, 1985.

(F) A project is described in this subparagraph if—

(i) such project involves a port terminal and oil pipeline extending generally from the area of Los Angeles, California, to the area of Midland, Texas, and

(ii) before September 26, 1985, there is a binding contract for dredging and channeling with respect thereto and a management contract with a construction manager for such project.

(G) A project is described in this subparagraph if—

(i) the project is a newspaper printing and distribution plant project with respect to which a contract for the purchase of 8 printing press units and related equipment to be installed in a single press line was entered into on January 8, 1985, and

(ii) the contract price for such units and equipment represents at least 50 percent of the total cost of such project.

(H) A project is described in this subparagraph if it is the second phase of a project involving direct current transmission lines

spanning approximately 190 miles from the United States-Canadian border to Ayer, Massachusetts, alternating current transmission lines in Massachusetts from Ayers to Millbury to West Medway, DC-AC converted terminals to Monroe, New Hampshire, and Ayer, Massachusetts, and other related equipment and facilities.

(I) A project is described in this subparagraph if it involves not more than two natural gas-fired combined cycle electric generating units each having a net electrical capability of approximately 233 megawatts, and a sales contract for approximately ½ of the output of the 1st unit was entered into in December 1985.

(J) A project is described in this subparagraph if—

(i) the project involves an automobile manufacturing facility (including equipment and incidental appurtenances) to be located in the United States, and

(ii) either—

(I) the project was the subject of a memorandum of understanding between 2 automobile manufacturers that was signed before September 25, 1985, the automobile manufacturing facility (including equipment and incidental appurtenances) will involve a total estimated cost of approximately $750,000,000, and will have an annual production capacity of approximately 240,000 vehicles or

(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of an existing facility to produce a new model of a vehicle currently not produced in the United States, such facility will be placed in service by July 1, 1987, and such Board action occurred in July 1985, with respect to a $523 million expenditure, in June 1983, with respect to a $475 million expenditure, or in July 1984, with respect to a $312 million expenditure.

(K) A project is described in this subparagraph if either—

(i) the project involves a joint venture between a utility company and a paper company for a super calendar paper mill, and at least $50,000,000 were incurred or committed with respect to such project before March 1, 1986, or

(ii) the project involves a paper mill for the manufacture of newsprint (including a cogeneration facility) is generally based on a written design and feasibility study that was completed on December 15, 1981, and will be placed in service before January 1, 1991, or

(iii) the project is undertaken by a Maine corporation and involves the modernization of pulp and paper mills in Millinocket and/or East Millinocket, Maine, or

(iv) the project involves the installation of a paper machine for production of coated publication papers, the modernization of a pulp mill, and the installation of machinery and equipment with respect to related processes, as of December 31, 1985, in excess of $50 million was incurred for the project, as of July 1986, in excess of $150 million was incurred for the project, and the project is located in Pine Bluff, Arkansas, or

(v) involves property of a type described in ADR classes 26.1, 26.2, 25, 00.3 and 00.4 included in a paper plant which will manufacture and distribute tissue, towel or napkin products; is located in Effingham County, Georgia; and is generally based upon a written General Description which was submitted to the Georgia Department of Revenue on or about June 13, 1985.

(L) A project is described in this subparagraph if—

(i) a letter of intent with respect to such project was executed on June 4, 1985, and

(ii) a 5-percent downpayment was made in connection with such project for 2 10-unit press lines and related equipment.

(M) A project is described in this subparagraph if—

(i) the project involves the retrofit of ammonia plants,

(ii) as of March 1, 1986, more than $390,000 had been expended for engineering and equipment, and

(iii) more than $170,000 was expensed in 1985 as a portion of preliminary engineering expense.

(N) A project is described in this subparagraph if the project involves bulkhead intermodal flat cars which are placed in service before January 1, 1987, and either—

(i) more than $2,290,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 300 platforms, or

(ii) more than $95,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 850 platforms.

(O) A project is described in this subparagraph if—

(i) the project involves the production and transportation of oil and gas from a well located north of the Arctic Circle, and

(ii) more than $200,000,000 of cost had been incurred or committed before September 26, 1985.

(P) A project is described in this subparagraph if—

(i) a commitment letter was entered into with a financial institution on January 23, 1986, for the financing of the project,

(ii) the project involves intercity communication links (including microwave and fiber optics communications systems and related property),

(iii) the project consists of communications links between—

(I) Omaha, Nebraska, and Council Bluffs, Iowa,

(II) Waterloo, Iowa and Sioux City, Iowa,

(III) Davenport, Iowa and Springfield, Illinois, and

(iv) the estimated cost of such project is approximately $13,000,000.

(Q) A project is described in this subparagraph if—

(i) such project is a mining modernization project involving mining, transport, and milling operations,

(ii) before September 26, 1985, at least $20,000,000 was expended for engineering studies which were approved by the Board of Directors of the taxpayer on January 27, 1983, and

(iii) such project will involve a total estimated minimum cost of $350,000,000.

(R) A project is described in this subparagraph if—

(i) such project is a dragline acquired in connection with a 3-stage program which began in 1980 to increase production from a coal mine,

(ii) at least $35,000,000 was spent before September 26, 1985, on the 1st 2 stages of the program, and

(iii) at least $4,000,000 was spent to prepare the mine site for the dragline.

(S) A project is described in this subparagraph if it is a project consisting of a mineral processing facility using a heap leaching system (including waste dumps, low-grade dumps, a leaching area, and mine roads) and if—

(i) convertible subordinated debentures were issued in August 1985, to finance the project,

(ii) construction of the project was authorized by the Board of Directors of the taxpayer on or before December 31, 1985,

(iii) at least $750,000 was paid or incurred with respect to the project on or before December 31, 1985, and

(iv) the project is placed in service on or before December 31, 1986.

(T) A project is described in this subparagraph if it is a plant facility on Alaska's North Slope and—

(i) the approximate cost is $575 million, of which approximately $100 million was spent on off-site construction or

(ii) the approximate cost of which is $450 million, of which approximately $100 was spent on off-site construction, more than 50 percent of the project cost was spent prior to December 31, 1985, and which will be placed in service in 1987.

(U) A project is described in this subparagraph if it involves the connecting of existing retail stores in the downtown area of a city to a new covered area, the total project will be 250,000 square feet, a formal Memorandum of Understanding relating to development of the project was executed with the city on July 2, 1986, and the estimated cost of the project is $18,186,424.

(V) A project is described in this subparagraph if it includes a 200,000 square foot office tower, a 200-room hotel, a 300,000 square foot retail center, an 800-space parking facility, the total cost is projected to be $60 million, and $1,250,000 was expended with respect to the site before August 25, 1986.

(W) A project is described in this subparagraph if it is a joint use and development project including an integrated hotel, convention center, office, related retail facilities and public mass transportation terminal, and vehicle parking facilities which satisfies the following conditions:

(i) is developed within certain air space rights and upon real property exchanged for such joint use and development project which is owned or acquired by a state department of transportation, a regional mass transit district in a county with a population of at least 5,000,000 and a community redevelopment agency;

(ii) such project affects an existing, approximately forty (40) acre public mass transportation bus-way terminal facility located adjacent to an interstate highway;

(iii) a memorandum of understanding with respect to such joint use and development project is executed by a state department of transportation, such a county regional mass transit district and a community redevelopment agency on or before December 31, 1986, and

(iv) a major portion of such joint use and development project is placed in service by December 31, 1990.

(X) A project is described in this subparagraph if—

(i) it is an $8 million project to provide advanced control technology for adipic acid at a plant, which was authorized by the company's Board of Directors in October 1985, at December 31, 1985, $1.4 million was committed and $.4 million expended with respect to such project, or

(ii) it is an $8.3 million project to achieve compliance with state and federal regulations for particulates emissions, which was authorized by the company's Board of Directors in December 1985, by March 31, 1986, $250,000 was committed and $250,000 was expended with respect to such project, or

(iii) it is a $22 million project for the retrofit of a plant that makes a raw material

for aspartame, which was approved in the company's December 1985 capital budget, if approximately $3 million of the $22 million was spent before August 1, 1986.

(Y) A project is described in this subparagraph if such project passes through at least 9 states and involves an intercity communication link (including multiple repeater sites and junction stations for microwave transmissions and amplifiers for fiber optics); the link from Buffalo to New York/Elizabeth was completed in 1984; the link from Buffalo to Chicago was completed in 1985; and the link from New York to Washington is completed in 1986.

(6) NATURAL GAS PIPELINE.—The amendments made by section 201 shall not apply to any interstate natural gas pipeline (and related equipment) if—

(A) 3 applications for the construction of such pipeline were filed with the Federal Energy Regulatory Commission before November 22, 1985 (and 2 of which were filed before September 26, 1985), and

(B) such pipeline has 1 of its terminal points near Bakersfield, California.

(7) CERTAIN LEASEHOLD IMPROVEMENTS.—The amendments made by section 201 shall not apply to any reasonable leasehold improvements, equipment and furnishings placed in service by a lessee or its affiliates if—

(A) the lessee or an affiliate is the original lessee of each building in which such property is to be used, and—

(B) such lessee is obligated to lease the building under an agreement to lease entered into before September 26, 1985, and such property is provided for such building, and

(C) such buildings are to serve as world headquarters of the lessee and its affiliates. For purposes of this paragraph, a corporation is an affiliate of another corporation if both corporations are members of a controlled group of corporations within the meaning of section 1563(a) of the Internal Revenue Code of 1954 without regard to section 1563(b)(2) of such Code. Such lessee shall include a securities firm that meets the requirements of subparagraph (A), except the lessee is obligated to lease the building under a lessee entered into on June 18, 1986.

(8) SOLID WASTE DISPOSAL FACILITIES.—The amendments made by section 201, and section 203(c), shall not apply to the taxpayer who originally places in service any qualified solid waste disposal facility (as defined in section 7701(e)(3)(B) of the Internal Revenue Code of 1986) if before March 2, 1986—

(A) there is a binding written contract between a service recipient and a service provider with respect to the operation of such facility to pay for the services to be provided by such facility, or

(B) a service recipient or governmental unit (or any entity related to such recipient or unit) made a financial commitment of at least $200,000 for the financing or construction of such facility, or

(C) such facility is the Tri-Cities Solid Waste Recovery Project involving Fremont, Newark, and Union City, California, and has received an authority to construct from the Environmental Protection Agency or from a State or local agency authorized by the Environmental Protection Agency to issue air quality permits under the Clean Air Act.

(9) CERTAIN SUBMERSIBLE DRILLING UNITS.—In the case of a binding contract entered into on October October 30, 1984, for the purchase of 6 semi-submersible drilling units at a cost of $425,000,000, such units shall be treated as having an applicable date under subsection 203(b)(2) of January 1, 1991.

(10) WASTEWATER OR SEWAGE TREATMENT FACILITY.—The amendments made by section 201 shall not apply to any property which is part of a wastewater or sewage treatment facility if either—

(A) site preparation for such facility commenced before September 1985, and a parish council approved a service agreement with respect to such facility on December 4, 1985, or

(B) a city-parish advertised in September 1985, for bids for construction of secondary treatment improvements for such facility, in May 1985, the city-parish received statements from 16 firms interested in privatizing the wastewater treatment facilities, and the metropolitan council selected a privatizer at its meeting on November 20, 1985, and adopted a resolution authorizing the Mayor to enter into contractual negotiation with the selected privatizer;

(C) the property is part of a wastewater treatment facility with respect to which a binding service agreement between a privatizer and the Western Carolina Regional Sewer Authority with respect to such facility was signed before January 1, 1986;

(D) such property is part of a wastewater treatment facility (located in Cameron County, Texas, within one mile of the City of Harlingen), an application for a wastewater discharge permit was filed with respect to such facility on December 4, 1985, and a City Commission approved a letter of intent relating to a service agreement with respect to such facility on August 7, 1986; or a wastewater facility (located in Harlingen, Texas) which is a subject of the letter of intent and service agreement described in subparagraph (A)(2) of this paragraph and the design of which was contracted for in a letter of intent dated January 23, 1986."

(11) CERTAIN AIRCRAFT.—The amendments made by section 201 shall not apply to any new aircraft with 19 or fewer passenger seats if—

(A) The aircraft is manufactured in Kansas, Florida, Georgia, or Texas. For purposes of this subparagraph, an aircraft is "manufactured" at the point of its final assembly;

(B) The aircraft was in inventory or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986, the date of conference committee action) and

(C) The aircraft is purchased or subject to a binding contract on or before December 31, 1986, and is delivered and placed in service by the purchase, before July 1, 1987.

Section 211(d)(2)(B) shall not apply to aircraft which meet the requirements of this subparagraph.

(12) CERTAIN SATELLITES.—The amendments made by section 201 shall not apply to any satellite with respect to which—

(A) on or before January 28, 1986, there was a binding contract to construct or acquire a satellite, and

(i) an agreement to launch was in existence on that date, or

(ii) on or before August 5, 1983, the Federal Communications Commission had authorized the construction and for which the authorized party has a specific although undesignated agreement to launch in existence on January 28, 1986;

(B) by order adopted on July 25, 1985, the Federal Communications Commission granted the taxpayer an orbital slot and authorized the taxpayer to launch and operate 2 satellites with a cost of approximately $300,000,000; or

(C) the International Telecommunications Satellite Organization or the International Maritime Satellite Organization entered into written binding contracts before May 1, 1985.

(13) CERTAIN NONWIRE LINE CELLULAR TELEPHONE SYSTEMS.—The amendments made by section 201 shall not apply to property that is part of a nonwire line system in the Domestic Public Cellular Radio Telecommunications Service for which the Federal Communications Commission has issued a construction permit before September 26, 1985, but only if such property is placed in service before January 1, 1987.

(14) CERTAIN COGENERATION FACILITIES.—The amendments made by section 201 shall not apply to projects consisting of 1 or more facilities for the cogeneration and distribution of electricity and steam or other forms of thermal energy if—

(A) at least $100,000 was paid or incurred with respect to the project before March 1, 1986, a memorandum of understanding was executed on September 13, 1985, and the project is placed in service before January 1, 1989,

(B) at least $500,000 was paid or incurred with respect to the projects before May 6, 1986, the projects involve a 22-megawatt combined cycle gas turbine plant and a 45-megawatt coal waste plant, and applications for qualifying facility status were filed with the Federal Energy Regulatory Commission on March 5, 1986,

(C) the project cost approximates $125,000,000 to $140,000,000 and an application was made to the Federal Energy Regulatory Commission in July 1985, or

(D) an inducement resolution for such facility was adopted on September 10, 1985, a development authority was given an inducement date of September 10, 1985, for a loan not to exceed $80,000,000 with respect to such facility, and such facility is expected to have a capacity of approximately 30 megawatts of electric power and 70,000 pounds of steam per hour.

(E) at least $1,000,000 was incurred with respect to the project before May 6, 1986, the project involves a 52-megawatt combined cycle gas turbine plant and a petition was filed with the Connecticut Department of Public Utility Control to approve a power sales agreement with respect to the project on March 27, 1986.

(15) CERTAIN ELECTRIC GENERATING STATIONS.—The amendments made by section 201 shall not apply to a project consisting of a coal-fired electric generating station (including multiple generating units, coal mine equipment, and transmission facilities) if—

(A) a tax-exempt entity will own an equity interest in all property included in the project (except the coal mine equipment), and

(B) at least $72,000 was expended in the acquisition of coal leases, land and water rights, engineering studies, and other development costs before May 6, 1986.

For purposes of this subparagraph, subsection (b)(2) shall be applied by substituting "January 1, 1986" for "January 1, 1991."

(16) SPORTS ARENAS.—

(A) INDOOR SPORTS FACILITY.—The amendments made by section 201 shall not apply to up to $20,000,000 of improvements made by a lessee of any indoor sports facility pursuant to a lease from a State commission granting the right to make limited and specified improvements (including planned seat explanations), if architectural renderings of

the project were commissioned and received before December 22, 1985.

(B) METROPOLITAN SPORTS ARENA.—The amendments made by section 201 shall not apply to any property which is part of an arena constructed for professional sports activities in a metropolitan area, provided that such arena is capable of seating no less than 18,000 spectators and a binding contract to incur significant expenditures for its construction was entered into before June 1, 1986.

(17) CERTAIN WASTE-TO-ENERGY FACILITIES.—The amendments made by section 201 shall not apply to 2 agricultural waste-to-energy powerplants (and required transmission facilities), in connection with which a contract to sell 100 megawatts of electricity to a city was executed in October 1984.

(18) CERTAIN COAL-FIRED PLANTS.—The amendments made by section 201 shall not apply to one of three 540 megawatt coal-fired plants that are placed in service after a sale leaseback occurring after January 1, 1986, if—

(A) the Board of Directors of an electric power cooperation authorized the investigation of a sale leaseback of a nuclear generation facility by resolution dated January 22, 1985, and

(B) a loan was extended by the Rural Electrification Administration on February 20, 1986, which contained a covenant with respect to used property leasing from unit II.

(19) CERTAIN REAL SYSTEMS.—

(A) The amendments made by section 201 shall not apply to a light rail transit system, the approximate cost of which is $235,000,000, if, with respect to which, the board of directors of a corporation (formed in September 1984 for the purpose of developing, financing, and operating the system) authorized a $300,000 expenditure for a feasibility study in April 1985.

(B) The amendments made by section 201 shall not apply to any project for rehabilitation of regional railroad rights of way and properties including grade crossings which was authorized by the Board of Directors of such company prior to October 1985; and/or was modified, altered or enlarged as a result of termination of company contracts, but approved by said Board of Directors no later than January 30, 1986, and which is in the public interest, and which is subject to binding contracts or substantive commitments by December 31, 1987.

(20) CERTAIN DETERGENT MANUFACTURING FACILITY.—The amendments made by section 201 shall not apply to a laundry detergent manufacturing facility, the approximate cost of which is $13,200,000, with respect to which a project agreement was fully executed on March 17, 1986.

(21) CERTAIN RESOURCE RECOVERY FACILITY.—The amendments made by section 201 shall not apply to any of 3 resource recovery plants, the aggregatre cost of which approximates $300,000,000, if an industrial development authority adopted a bond resolution with respect to such facilities on December 17, 1984, and the projects were approved by the department of commerce of a Commonwealth on December 27, 1984.

(22) The amendments made by section 201 shall not apply to a computer and office support center building in Minneapolis, with respect to which the first contract, with an architecture frim, was signed on April 30, 1985, and a construction contract was signed on March 12, 1986.

(23) CERTAIN DISTRICT HEATING AND COOLING FACILITIES.—The amendment made by section 201 shall not apply to pipes, mains, and related equipment included in district heating and cooling facilities, with respect to which the development authority of a State approved the project through an inducement resolution adopted on October 8, 1985, and in connection with which approximately $11,000,000 of tax-exempt bonds are to be issued.

(24) CERTAIN VESSELS.—

(A) CERTAIN OFFSHORE VESSELS.—The amendments made by section 201 shall not apply to any offshore vessel the construction contract for which was signed on February 28, 1986, and the approximate cost of which is $9,000,000.

(B) CERTAIN INLAND RIVER VESSEL.—The amendments made by section 201 shall not apply to a project involving the reconstruction of an inland river vessel docked on the Mississippi River at St. Louis, Missouri, on July 14, 1986, and with respect to which:

(i) the estimated cost of reconstruction is approximately $39,000,000;

(ii) reconstruction was commenced prior to December 1, 1985;

(iii) at least $17,000,000 was expended before December 31, 1985; and

(C) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by section 201 shall not apply to two new automobile carrier vessels which will cost approximately $47,000,000 and will be constructed by a U.S.-flag carrier to operate, under the U.S.-flag and with an American crew, to transport foreign automobiles to the United States, in a case where negotiations for such transportation arrangements commenced in April 1985, formal contract bids were submitted prior to the end of 1985, and definitive transportation contracts were awarded in May 1986.

(D) The amendments made by section 201 shall not apply to a 562-foot passenger cruise ship, which was purchased in 1980 for the purpose of returning the vessel to U.S. service, the approximate cost of refurbishment of which is approximately $47 million.

(25) CERTAIN WOOD ENERGY PROJECTS.—The amendments made by section 201 shall not apply to two wood energy products for which applications with the Federal Energy Regulatory Commission were filed before January 1, 1986, which are described as follows:

(A) a 26.5 megawatt plant in Fresno, California, and

(B) a 26.5 megawatt plant in Rocklin, California.

(26) The amendments made by section 201 shall not apply to property which is a geothermal project of less than 20 megawatts that was certified by the Federal Energy Regulatory Commission on July 14, 1986, as a qualifying small power production facility for purposes of the Public Utility Regulatory Policies Act of 1978 pursuant to an application filed with the Federal Energy Regulatory Commission on April 17, 1986."

(27) CERTAIN ECONOMIC DEVELOPMENT PROJECTS.—The amendments made by section 201 shall not apply to any of the following projects:

(A) A mixed use development on the East River the total cost of which is approximately $400,000,000, with respect to which a letter of intent ws executed on January 24, 1984, and with respect to which approximately $2.5 million had been spent by March 1, 1986.

(B) A 356-room hotel, banquet, and conference facility (including 525,000 square feet of office space) the approximate cost of which is $158,000,000, with respect to which a letter of intent was executed on June 1, 1984 and with respect to which an inducement resolution and bond resolution was adopted on August 20, 1985.

(C) Phase 1 of a 4-phase project involving the construction of laboratory space and ground-floor retail space the estimated cost of which is $32,000,000 and with respect to which a memoradum of understanding was made before August 29, 1983.

(D) A project involving the development of a 490,000 square foot mixed-use buiddifg at 152 W. 57th Street and 7th Avenue, New York, New York, the estimated cost of which is $100,000,000, and with respect to which a building permit application was filed in May 1986.

(E) A mixed-use project containing a 300 unit, 12-story hotel, garage, two multi-rise office buildings, and also included a park, renovated riverboat, and barge with festival marketplace, the capital outlays for which approximate $68 million.

(F) The construction of a three-story office building that will serve as the home office for an insurance group and its affiliated companies, with respect to which a city agreed to transfer its ownership of the land for the project in a Redevelopment Agreement executed on September 18, 1985, once certain conditions are met.

(G) A commercial bank formed under the laws of the State of New York which entered into an agreement on September 5, 1985, to construct its headquarters at 60 Wall Street, New York, New York, with respect to such headquarters.

(H) Any property which is part of a commercial and residential project, the first phase of which is currently under construction, to be developed on land which is the subject of an ordinance passed on July 20, 1981, by the city council of the city in which such land is located, designating such land and the improvements to be placed thereon as a residential-business planned development, which development is being financed in part by the proceeds of industrial development bonds in the amount of $62,000 issued on December 4, 1985.

(28) The amendment made by section 201 shall not apply to an $80 million capital project steel seamless tubular casings minimill and melting facility located in Youngstown, Ohio, which was purchased by the taxpayer in April 1985, and—

(A) the purchase and renovation of which was approved by a committee of the Board of Directors on February 22, 1985, and

(B) as of December 31, 1985, more than $20,000,000 was incurred or committed with respect to the renovation.

(29) The amendments made by section 201 shall not apply to any project for residential rental property if—

(A) an inducement resolution with respect to such project was adopted by the State housing development authority on January 18, 1985, and

(B) such project was the subject of law suits filed on June 22, 1984, and November 21, 1985.

(30) The amendments made by section 201 shall not apply to a 30 megawatt electric generating facility fueled by geothermal and wood waste, the approximate cost of which is $55 million, and with respect to which a 30-year power sales contract was executed on March 22, 1985.

(31) The amendments made by section 201 shall not apply to railroad maintenance-of-way equipment, with respect to which a Boston bank entered into a firm binding contract with a major northeastern railroad before March 2, 1986, to finance $10.2 mil-

lion of such equipment, if all of the equipment was placed in service before August 1, 1986.

(32) The amendment made by section 201 shall not apply to—

(A) a facility constructed on approximately seven acres of land located on Ogle's Poso Creek Oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an application for an authority to construct was filed on July 30, 1984, an authority to construct was issued on February 28, 1985, and a prevention of significant deterioration permit application was submitted on June 17, 1985,

(B) a facility constructed on approximately seven acres of land located on Teorco's Jasmin oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an authority to construct was filed on August 30, 1984, an authority to construct was issued on May 4, 1985, and a prevention of significant deterioration permit application was submitted on July 3, 1985,

(C) the Mountain View Apartments, in Hadley, Massachusetts,

(D) a facility expected to have a capacity of not less than 65 megawatts of electricity, the steam from which is to be sold to a pulp and paper mill, with respect to which application was made to the Federal Regulatory Commission for certification as a qualified facility on November 1, 1985, and received such certification on January 24, 1986,

(E) $2.2 million of equipment ordered on January 27, 1986, in connection with a 60,000 square foot plant that was completed in 1983,

(F) to a magnetic resonance imaging machine, with respect to which a binding contract to purchase was entered into in April 1986, in connection with the construction of a magnetic resonance imaging clinic with respect to which a Determination of Need certification was obtained from a State Department of Public Health on October 22, 1985, if such property is placed in service before December 31, 1986,

(G) to a company located in Salina, Kansas, which has been engaged in the construction of highways and city streets since 1946, but only to the extent of $1,410,000 of investment in new section 38 property,

(H) to a $300,000 project undertaken by a small metal finishing company located in Minneapolis, Minnesota, the first parts of which were received and paid for in January 1986, with respect to which the company received Board approval to purchase the largest piece of machinery it has ever ordered in 1985,

(I) A $1.2 million finishing machine that was purchased on April 2, 1986 and placed into service in September 1986 by a company located in Davenport, Iowa,

(J) A 25 megawatt small power production facility, with respect to which Qualifying Facility status no. QF86-593-000 was granted on March 5, 1986,

(K) A $600 million 250 megawatt plant placed in service by the Sierra Pacific Power Company,

(L) 128 units of rental housing the Point Gloria Limited Partnership,

(M) Kenosha Harbor, in Kenosha, Wisconsin,

(N) Lakeland Park Phase II, in Baton Rouge, Louisiana,

(O) the Santa Rosa Hotel, in New Orleans, Louisiana,

(P) the Sheraton Baton Rouge, in Baton Rouge, Louisiana,

(Q) $300,000 of equipment placed in service in 1986, in connection with the renovation of the Best Western Townhouse Convention Center in Cedar Rapids, Iowa,

(R) the segment of a nationwide fiber optics telecommunications network placed in service by SouthernNet, the total estimated cost of which is $37 million,

(S) two cogeneration facilities, placed in service by the Reading Anthracite Company, costing approximately $110 million each, with respect to which filings were made with the Federal Energy Regulatory Commission on December 31, 1985, and which are located in Pennsylvania,

(T) a fiber optics network placed in service by Kansas City Southern Industries, the total estimated cost of which is $25 million,

(U) 3 newly constructed fishing vessels, and one vessel that is overhauled, placed in service by Mid Coast Marine, but only to the extent of $6.7 million of investment,

(V) $350,000 of equipment acquired in connection with the reopening of a plant in Bristol, Rhode Island, which plant was purchased by Buttonwoods, Ltd., Associates on February 7, 1986,

(W) $4.046 million of equipment placed in service by Brendle's Inc., acquired in connection with a Distribution Center,

(X) a multi-family mixed-use housing project located in a home rule city, the zoning for which was changed to residential business planned development on November 26, 1985, and with respect to which both the home rule city and the State housing finance agency adopted inducement resolutions on December 20, 1985,

(Y) the Myrtle Beach Convention Center, in South Carolina, to the extent of $25 million of investment, and

(Z) railroad cars placed in service by the Pullman Leasing Company, pursuant to an April 3, 1986 purchase order, costing approximately $10 million

(33) The amendments made by section 201 shall not apply to—

(A) $400,000 of equipment placed in service by Super Key Market, if such equipment is placed in service before January 1, 1987,

(B) the Trolley Square project, the total project cost of which is $24.5 million, and the amount of depreciable real property of which is $14.7 million.

(C) a waste-to-energy project in Derry, New Hampshire, costing approximtely $60 million,

(D) the City of Los Angeles Co-composting project, the estimated cost of which is $62 million, with respect to which, on July 17, 1985, the California Pollution Control Financing Authority issued an initial resolution in the maximum amount of $75 million to finance this project,

(E) the St. Charles, Missouri Mixed-Use Center,

(F) Oxford Place in Tulsa, Oklahoma,

(G) an amount of investment generating $20 million of investment tax credits attributable to property used on the Illinois Diversatch Campus,

(H) $25 million of equipment used in the Melrose Park Engine Plant that is sold and leased back by Navistar,

(I) 80 thousand vending machines, for a cost approximating $3.4 million placed into service by Folz Vending Co.

(J) a 24 megawatt alternative energy facility placed in service by Peat Products, with respect to which certification by the Federal Energy Regulatory Commission on April 3, 1986, and

(K) Burbank Manors, in Illinois.

(b) SPECIAL RULE FOR CERTAIN PROPERTY.The provisions of section 168(f)(8) of the Internal Revenue Code of 1954 (as amended by section 209 of the Tax Equity and Fiscal Responsibility Act of 1982) shall continue to apply to any transaction permitted by reason of section 12(c)(2) of the Tax Reform Act of 1984 or section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982.

(c) APPLICABLE DATE IN CERTAIN CASES.—

(1) Section 203(b)(2) shall be applied by substituting "January 1, 1992" for January 1, 1991" in the following cases.

(A) in the case of a 2-unit nuclear powered electric generating plant (and equipment and incidental appurtenances), constructed pursuant to contracts entered into by the owner operator of the facility before December 31, 1975, including contracts with the engineer/constructor and the nuclear steam system supplier, such contracts shall be treated as contracts described in section 203(b)(1)(A),

(B) a cogeneration facility with respect to which an application with the Federal Energy Regulatory Commission was filed on August 2, 1985, and approved October 15, 1985, and

(C) in the case of a 1,300 megawatt coal-fired steam powered electric generating plant (and related equipment and incidental appurtenances), which the three owners determined in 1984 to convert from nuclear power to coal power and for which more than $600 million had been incurred or committed for construction before September 25, 1985, except that no investment tax credit will be allowable under section 49(d)(3) added by section 211(a) of this Act for any qualified progress expenditures made after December 31, 1990.

(2) Section 203(b)(2) shall be applied by substituting "April 1, 1992" for the applicable date that would otherwise apply, in the case of the second unit of a twin steam electric generating facility and related equipment which was granted a certificate of public convenience and necessity by a public service commission prior to January 1, 1982, if the first unit of the facility was placed in service prior to January 1, 1985, and before September 26, 1985, more than $100,000,000 had been expended toward the construction of the second unit.

(3) Section 203(b)(2) shall be applied by substituting "January 1, 1990," for the applicable date that would otherwise apply in the case of—

(A) new commercial passenger aircraft used by a domestic airline, if a binding contract with respect to such aircraft was entered into before April 1, 1986, and such aircraft has a present class life of 12 years,

(B) a pumped storage hydroelectric project with respect to which an application was made to the Federal Energy Regulatory commission for a license on February 4, 1974, and license was issued August 1, 1977, the project number of which is 2740,

(C) a facility for the manufacture of an improved particleboard, if—a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina, and

(D) a newsprint mill in Pend Oreille county, Washington, costing about $290 million.

(7) The amendments made by section 201 shall not apply to a limited amount of the following property or a limited amount of property set forth in submission before September 16, 1986, by the following taxpayers—

(A) Arena project, Michigan,

(B) Campbell Soup Company, Pennsylvania and California,
(C) Overton, Florida,
(D) Legett and Platt,
(E) East Bank Housing Project,
(F) Standard Telephone Company,
(G) Presidential Air,
(H) Ann Arbor Railroad,
(I) Ada, Michigan Cogeneration,
(J) Anchor Store Project, Michigan,
(K) Biogen Power,
(L) $14 million of television transmitting towers placed in service by Media General, Inc., which were subject to binding contracts as of January 21, 1986, and will be placed in service before January 1, 1988,
(M) Hardage Company,
(N) Mesa Airlines,
(O)Yarn-spinning equipment used at Spring Cotton Mills, and
(P) 328 units of low-income housing at Angelus Plaza.

(d) RAILROAD GRADING AND TUNNEL BORES.—

(1) IN GENERAL.—In the case of expenditures for railroad grading and tunnel bores which were incurred by a common carrier by railroad to replace property destroyed in a disaster occurring on or about April 17, 1983, near Thistle, Utah, such expenditures, to the extent not in excess of $15,000,000, shall be treated as recovery property which is 5-year property under section 168 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) and which is placed in service at the time such expenditures were incurred.

(2) BUSINESS INTERRUPTION PROCEEDS.—Business interruption proceeds received for loss of use, revenues, or profits in connection with the disaster described in paragraph (1) and devoted by the taxpayer described in paragraph (1) to the construction of replacement track and related grading and tunnel bore expenditures shall be treated as constituting an amount received from the involuntary conversion of property under section 1033(a)(2) of such Code.

(3) EFFECTIVE DATE.—This subsection shall apply to taxable years ending after April 17, 1983.

(e) TREATMENT OF CERTAIN DISASTER LOSSES.—

(1) IN GENERAL.—In the case of a disaster described in paragraph (2), at the election of the taxpayer, the amendments made by section 201 of this Act—
(A) shall not apply to any property placed in service during 1987 or 1988, or
(B) shall apply to any property placed in service during 1985 or 1986,
which is property to replace property lost, damaged, or destroyed in such disaster.

(2) DISASTER TO WHICH SECTION APPLIES.—This section shall apply to a flood which occurred on November 3 through 7, 1985, and which was declared a natural disaster area by the President of the United States.

SUBTITLE B—REPEAL OF REGULAR INVESTMENT TAX CREDIT

SEC. 211. REPEAL OF REGULAR INVESTMENT TAX CREDIT.

(a) GENERAL RULE.—Subpart E of part IV of subchapter A of chapter 1 (relating to investment tax credit) is amended by adding at the end thereof the following new section:

"SEC. 49. TERMINATION OF REGULAR PERCENTAGE.

"(a) GENERAL RULE.—For purposes of determining the amount of the investment tax credit determined under section 46, the regular percentage shall not apply to any property placed in service after December 31, 1985.

"(b) EXCEPTIONS.—Subject to the provisions of subsections (c) and (d), subsection (a) shall not apply to the following:

"(1) TRANSITION PROPERTY.—Property which is transition property (within the meaning of subsection (e)).

"(2) QUALIFIED PROGRESS EXPENDITURE FOR PERIODS BEFORE JANUARY 1, 1986.—In the case of any taxpayer who has made an election under section 46(d)(6), the portion of the adjusted basis of any progress expenditure property attributable to qualified progress expenditures for periods before January 1, 1986.

"(3) QUALIFIED TIMBER PROPERTY.—The portion of the adjusted basis of qualified timber property which is treated as section 38 property under section 48 (a)(1)(F).

"(c) 35-PERCENT REDUCTION IN CREDIT FOR TAXABLE YEARS AFTER 1986.—

"(1) REDUCTION IN CURRENT YEAR INVESTMENT CREDIT.—Any portion of the current year business credit under section 38(b) for any taxable year beginning after June 30, 1987, which is attributable to the regular investment credit shall be reduced by 35 percent.

"(2) UNEXPIRED CARRYFORWARDS TO 1ST TAXABLE YEAR BEGINNING AFTER JUNE 30, 1987.—Any portion of the business credit carryforward under section 38(a)(1) attributable to the regular investment credit which has not expired as of the close of the taxable year preceding the 1st taxable year of the taxpayer beginning after June 30, 1987, shall be reduced by 35 percent.

"(3) SPECIAL RULE FOR TAXABLE YEARS BEGINNING BEFORE AND ENDING AFTER JULY 1, 1987.—In the case of any taxable year beginning before and ending after July 1, 1987—

"(A) any portion of the current year business credit under section 38(b) for such taxable year, or

"(B) any portion of the business credit carryforward under section 38(a)(1) to such year,

which is attributable to the regular investment credit shall be reduced by the applicable percentage.

"(4) TREATMENT OF DISALLOWED CREDIT.—

"(A) IN GENERAL.—The amount of the reduction of the regular investment credit under paragraphs (1) and (2) shall not be allowed as a credit for any taxable year.

"(B) NO CARRYBACK FOR YEAR STRADDLING JULY 1, 1987; GROSS UP OF CARRYFORWARDS.—The amount of the reduction of the regular investment credit under paragraph (3)—

"(i) may not be carried back to any taxable year, but

"(ii) shall be added to the carryforwards from the taxable year before applying paragraph (2).

"(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to a taxable year beginning before and ending after July 1, 1987, the percentage which bears the same ratio to 35 percent as—

"(i) the number of months in such taxable year after June 30, 1987, bears to

"(ii) the number of months in such taxable year.

"(B) REGULAR INVESTMENT CREDIT.—

"(i) IN GENERAL.—The term 'regular investment credit' has the meaning given such term by section 48(o).

"(ii) EXCEPTION FOR TIMBER PROPERTY.—The term 'regular investment credit' shall not include any portion of the regular investment credit which is attributable to section 38 property described in section 48(a)(1)(F).

"(C) PORTION OF CREDITS ATTRIBUTABLE TO REGULAR INVESTMENT CREDIT.—The portion of any current year business credit or business credit carryforward which is attributable to the regular investment credit shall be determined on the basis that the regular investment credit is used first.

"(d) FULL BASIS ADJUSTMENT.—

"(1) IN GENERAL.—In the case of periods after December 31, 1985, section 48(q) (relating to basis adjustment to section 38 property) shall be applied with respect to transaction property—

"(A) by substituting '100 percent' for '50 percent' in paragraph (1), and

"(B) without regard to paragraph (4) thereof (relating to election of reduced credit in lieu of basis adjustment).

"(2) SPECIAL RULE FOR QUALIFIED PROGRESS EXPENDITURES.—If the taxpayer made an election under section 48(q)(4) with respect to any qualified progress expenditures for periods before January 1, 1986—

"(A) paragraph (1) shall not apply to the portion of the adjusted basis attributable to such expenditures, and

"(B) such election shall not apply to such expenditures for periods after December 31, 1985.

"(e) TRANSITION PROPERTY.—For purposes of this section—

"(1) TRANSITION PROPERTY.—The term 'transition property' means any property placed in service after December 31, 1985, and to which the amendments made by section 201 of the Tax Reform Act of 1986 do not apply, except that in making such determination—

"(A) section 203(a)(1)(A) of such Act shall be applied by substituting '1985' for '1986',

"(B) sections 203(b)(1) and 204(a)(3) of such Act shall be applied by substituting 'December 31, 1985' for 'March 1, 1986',

"(C) in the case of transition property with a class life of less than 7 years—

"(i) section 203(b)(2) of such Act shall apply, and

"(ii) in the case of property with a class life—

"(I) of less than 5 years, the applicable date shall be July 1, 1986, and

"(II) at least 5 years, but less than 7 years, the applicable date shall be January 1, 1987, and

"(D) section 203(b)(3) shall be applied by substituting '1986' for '1987'.

"(2) TREATMENT OF PROGRESS EXPENDITURES.—No progress expenditures for periods after December 31, 1985, with respect to any property shall be taken into account for purposes of applying the regular percentage unless it is reasonable to expect that such property will be transition property when placed in service. If any progress expenditures are taken into account by reason of the preceding sentence and subsequently there is not a reasonable expectation that such property would be transition property when placed in service, the credits attributable to progress expenditures with respect to such property shall be recaptured under section 47."

(b) NORMALIZATION RULES.—If, for any taxable year beginning after December 31, 1985, the requirements of paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 are not met with respect to public utility property to which the regular percentage applied for purposes of determining the amount of the investment tax credit—

(1) all credits for open taxable years as of the time of the final determination referred to in section 46(f)(4)(A) of such Code shall be recaptured, and

(2) if the amount of the taxpayer's unamortized credits (or the credits not previously restored to rate base) with respect to such

property (whether or not for open years) exceeds the amount referred to in paragraph (1), the taxpayer's tax for the taxable year shall be increased by the amount of such excess.

If any portion of the excess described in paragraph (2) is attributable to a credit which is allowable as a carryover to a taxable year beginning after December 31, 1985, in lieu of applying paragraph (2) with respect to such portion, the amount of such carryover shall be reduced by the amount of such portion. Rules similar to the rules of this subsection shall apply in the case of any property with respect to which the requirements of section 46(f)(9) of such Code are met.

(c) CONFORMING AMENDMENT.—The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 49. Termination of regular percentage."

(d) EXCEPTION FOR CERTAIN AIRCRAFT USED IN ALASKA.—

(1) The amendments made by subsection (a) shall not apply to property originally placed in service after December 29, 1982, and before August 1, 1985, by a corporation incorporated in Alaska on May 21, 1953, and used by it—

(A) in part, for the transportation of mail for the United States Postal Service in the State of Alaska, and

(B) in part, to provide air service in the State of Alaska on routes which had previously been served by an air carrier that received compensation from the Civil Aeronautics Board for providing service.

(2) In the case of property described in subparagraph (A)—

(A) such property shall be treated as recovery property described in section 208(d)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA");

(B) "48 months" shall be substituted for "3 months" each place it appears in applying—

(i) section 48(b)(2)(B) of the Code, and

(ii) section 168(f)(8)(D) of the Code (as in effect after the amendments made by the Technical Corrections Act of 1982 but before the amendments made by TEFRA); and

(C) the limitation of section 168(f)(8)(D)(ii)(III) (as then in effect) shall be read by substituting "the lessee's original cost basis.", for "the adjusted basis of the lessee at the time of the lease.".

(3) The aggregate amount of property to which this paragraph shall apply shall not exceed $60,000,000.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to property placed in service after December 31, 1985, in taxable years ending after such date.

(2) EXCEPTIONS FOR CERTAIN FILMS.—For purposes of determining whether any property is transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986—

(A) in the case of any motion picture or television film, construction shall be treated as including production for purposes of section 203(b)(1) of this Act, and written contemporary evidence of an agreement (in accordance with industry practice) shall be treated as a written binding contract for such purposes,

(B) in the case of any television film, a license agreement or agreement for production services between a television network and a producer shall be treated as a binding contract for purposes of section 203(b)(1)(A) of this Act, and

(C) a motion picture film shall be treated as described in section 203(b)(1)(A) of this Act if—

(i) funds were raised pursuant to a public offering before September 26, 1985, for the production of such film,

(ii) 40 percent of the funds raised pursuant to such public offering are being spent on films the production of which commenced before such date, and

(iii) all of the films funded by such public offering are required to be distributed pursuant to distribution agreements entered into before September 26, 1985.

(3) NORMALIZATION RULES.—The provisions of subsection (b) shall apply to any violation of the normalization requirements under paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 occurring in taxable years ending after December 31, 1985.

(4) ADDITIONAL EXCEPTIONS.—

(A) Paragraphs (c) and (d) of section 49 of the Internal Revenue Code of 1954 shall not apply to any continuous caster facility for slabs and blooms which is subject to a lease and which is part of a project the second phase of which is a continuous slab caster which was placed in service before December 31, 1935.

(B) For purposes of determining whether an automobile manufacturing facility (including equipment and incidental appurtenances) is transition property within the meaning of section 49(e), property with respect to which the Board of Directors of an automobile manufacturer formally approved the plan for the project on January 7, 1985 shall be treated as transition property, but only with respect to $70 million of regular investment tax credits.

SEC. 212. EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF STEEL COMPANIES.

(a) GENERAL RULE.—If a qualified corporation makes an election under this section for its 1st taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 made by such corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be the lesser of—

(1) 50 percent of the portion of the corporation's existing carryforwards to which the election under subsection (a) applies, or

(2) the corporation's net tax liability for the carryback period.

(c) CORPORATION MAKING ELECTION MAY NOT USE SAME AMOUNTS UNDER SECTION 38.—In the case of a qualified corporation which makes an election under subsection (a), the portion of such corporation's existing carryforwards to which such an election applies shall not be taken into account under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1986.

(d) NET TAX LIABILITY FOR CARRYBACK PERIOD.—For purposes of this section—

(1) IN GENERAL.—A corporation's net tax liability for the carryback period is the aggregate of such corporation's net tax liability for taxable years in the carryback period.

(2) NET TAX LIABILITY.—The term "net tax liability" means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 for such taxable year, reduced by the sum of the credits allowable under part IV of subchapter A of such chapter 1 (other than section 34 thereof). For purposes of the preceding sentence, any tax treated as not imposed by chapter 1 of such Code under section 26(b)(2) of such Code shall not be treated as tax imposed by such chapter 1.

(3) CARRYBACK PERIOD.—The term "carryback period" means the period—

(A) which begins with the corporation's 15th taxable year preceding the 1st taxable year from which there is an unused credit included in such corporation's existing carryforwards (but in no event shall such period begin before the corporation's 1st taxable year ending after December 31, 1961), and

(B) which ends with the corporation's last taxable year beginning before January 1, 1986.

(e) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1986, or

(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period.

(f) REINVESTMENT REQUIREMENT.—

(1) IN GENERAL.—Any amount determined under this section must be committed to reinvestment in, and modernization of the steel industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of steel workers.

(2) GENERAL RULE.—In this section applies to LTV Corporation in lieu of the requirements of paragraph (1)

(A) such corporation shall place such refund in a separate account; and

(B) amounts in such separate account—

(i) shall only be used by the corporation—

(I) to purchase an insurance policy which provides that, in the event the corporation becomes involved in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1954), the insurer will provide life and health insurance coverage during the 1-year period beginning on the date such inolvement begins to any individual with respect to whom the corporation would (but for such involvement) have been obligated to provide such coverage the coverage provided by the insurer will be identical to the coverage which the corporation would (but for such involvement) have been obligated to provide, and provides that the payment of insurance premiums will not be required during such 1-year period to keep such policy in force, or

(II) directly in connection with the trade or business of the corporation in the manufacturer or production of steel; and

(ii) shall be used (or obligated) for purposes described in clause (i) not later than 3 months after the corporation receives the refund.

(g) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED CORPORATION.—

(A) IN GENERAL.—The term "qualified corporation" means any corporation which is described in section 806(b) of the Steel Import Stabilization Act and a company which was unincorporated on February 11, 1983, in Michigan.

(B) CERTAIN PREDECESSORS INCLUDED.—In the case of any qualified corporation which

has carryforward attributable to a predecessor corporation described in such section 806(b), the qualified corporation and the predecessor corporation shall be treated as 1 corporation for purposes of subsections (d) and (e).

(2) EXISTING CARRYFORWARDS.—The term "existing carryforward" means the aggregate of the amounts which—

(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) and any reduction under section 49 of the Internal Revenue Code of 1986), and

(B) are attributable to the amount of the regular investment credit determined under section 46(a)(1) of such Code (relating to regular percentage), or any corresponding provision of prior law, determined on the basis that the regular investment credit was used first.

SEC. 213. EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF QUALIFIED FARMERS.

(a) GENERAL RULE.—If a taxpayer who is a qualified farmer makes an election under this section for its 1st taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 made by such taxpayer on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be equal to the smallest of—

(1) 50 percent of the portion of the taxpayer's existing carryforwards to which the election under subsection (a) applies,

(2) the taxpayer's net tax liability for the carryback period (within the meaning of section 212(d) of this Act), or

(3) $750.

(c) TAXPAYER MAKING ELECTION MAY NOT USE SAME AMOUNTS UNDER SECTION 38.—In the case of a qualified farmer who makes an election under subsection (a), the portion of such farmer's existing carryforwards to which such an election applies shall not be taken into account under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1986.

(d) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1954, or

(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period (within the meaning of section 212(d)(3) of this Act).

(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED FARMER.—The term "qualified farmer" means any taxpayer who, during the 3-taxable year period preceding the taxable year for which an election is made under subsection (a), derived 50 percent or more of the taxpayer's gross income from the trade or business of farming.

(2) EXISTING CARRYFORWARD.—The term "existing carryforward" means the aggregate of the amounts which—

(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) of the Internal Revenue Code of 1986), and

(B) are attributable to the amount of the investment credit determined under section 46(a) of such Code (or any corresponding provision of prior law) with respect to section 38 property which was used by the taxpayer in the trade or business of farming, determined on the basis that such credit was used first.

(3) FARMING.—The term "farming" has the meaning given such term by section 2032A(e) (4) and (5) of such Code.

SUBTITLE C—GENERAL BUSINESS CREDIT REDUCTION

SEC. 221. REDUCTION IN TAX LIABILITY WHICH MAY BE OFFSET BY BUSINESS CREDIT FROM 85 PERCENT TO 75 PERCENT.

(a) IN GENERAL.—Subparagraph (B) of section 38(c)(1) (relating to limitation based on amount of tax) is amended by striking out "85 percent" and inserting in lieu thereof "75 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1985.

SUBTITLE D—RESEARCH AND DEVELOPMENT PROVISIONS

SEC. 231. AMENDMENTS RELATING TO CREDIT FOR INCREASING RESEARCH ACTIVITIES.

(a) 3-YEAR EXTENSION OF THE RESEARCH CREDIT.—

(1) IN GENERAL.—Section 30 (relating to credit for increasing research activities) is amended by adding at the end thereof the following new subsection:

"(h) TERMINATION.—

"(1) IN GENERAL.—This section shall not apply to any amount paid or incurred after December 31, 1988.

"(2) COMPUTATION OF BASE PERIOD EXPENSES.—In the case of any taxable year which begins before January 1, 1989, and ends after December 31, 1988, any amount for any base period with respect to such taxable year shall be the amount which bears the same ratio to such amount for such base period as the number of days in such taxable year before January 1, 1989, bears to the total number of days in such taxable year."

(2) CONFORMING AMENDMENT.—Subsection (d) of section 221 of the Economic Recovery Tax Act of 1981 is amended—

(A) by striking out ", and before January 1, 1986" in paragraph (1), and

(B) by striking out the last sentence of paragraph (2)(A).

(b) DEFINITION OF QUALIFIED RESEARCH; CERTAIN RESEARCH NOT ELIGIBLE FOR CREDIT.—Subsection (d) of section 30 (defining qualified research) is amended to read as follows:

"(d) QUALIFIED RESEARCH DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified research' means research—

"(A) with respect to which expenditures may be treated as expenses under section 174,

"(B) which is undertaken for the purpose of discovering information—

"(i) which is technological in nature, and

"(ii) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and

"(C) substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in paragraph (3).

Such term does not include any activity described in paragraph (4).

"(2) TESTS TO BE APPLIED SEPARATELY TO EACH BUSINESS COMPONENT.—For purposes of this subsection—

"(A) IN GENERAL.—Paragraph (1) shall be applied separately with respect to each business component of the taxpayer.

"(B) BUSINESS COMPONENT DEFINED.—The term 'business component' means any product, process, computer software, technique, formula, or invention which is to be—

"(i) held for sale, lease, or license, or

"(ii) used by the taxpayer in a trade or business of the taxpayer.

"(C) SPECIAL RULE FOR PRODUCTION PROCESSES.—Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).

"(3) PURPOSES FOR WHICH RESEARCH MAY QUALIFY FOR CREDIT.—For purposes of paragraph (1)(C)—

"(A) IN GENERAL.—Research shall be treated as conducted for a purpose described in this paragraph if it relates to—

"(i) a new or improved function,

"(ii) performance, or

"(iii) reliability or quality.

"(B) CERTAIN PURPOSES NOT QUALIFIED.—Research shall in no event be treated as conducted for a purpose described in this paragraph if it relates to style, taste, cosmetic, or seasonal design factors.

"(4) ACTIVITIES FOR WHICH CREDIT NOT ALLOWED.—The term 'qualified research' shall not include any of the following:

"(A) RESEARCH AFTER COMMERCIAL PRODUCTION.—Any research conducted after the beginning of commercial production of the business component.

"(B) ADAPTATION OF EXISTING BUSINESS COMPONENTS.—Any research related to the adaptation of an existing business component to a particular customer's requirement or need.

"(C) DUPLICATION OF EXISTING BUSINESS COMPONENT.—Any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component.

"(D) SURVEYS, STUDIES, ETC.—Any—

"(i) efficiency survey,

"(ii) activity relating to management function or technique,

"(iii) market research, testing, or development (including advertising or promotions),

"(iv) routine data collection, or

"(v) routine or ordinary testing or inspection for quality control.

"(E) COMPUTER SOFTWARE.—Except to the extent provided in regulations, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in—

"(i) an activity which constitutes qualified research (determined with regard to this subparagraph), or

"(ii) a production process with respect to which the requirements of paragraph (1) are met.

"(F) FOREIGN RESEARCH.—Any research conducted outside the United States.

"(G) SOCIAL SCIENCES, ETC.—Any research in the social sciences, arts, or humanities.

"(H) FUNDED RESEARCH.—Any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity)."

(c) REDUCTION IN CREDIT; CREDIT FOR BASIC RESEARCH PAYMENTS TO QUALIFIED ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (a) of section 30 is amended to read as follows:

"(a) GENERAL RULE.—For purposes of section 38, the research credit determined under this section for the taxable year shall be an amount equal to the sum of—

"(1) 20 percent of the excess (if any) of—

"(A) the qualified research expenses for the taxable year, over

"(B) the base period research expenses, and

"(2) 20 percent of the basic research payments determined under subsection (e)(1)(A)."

(2) DEFINITIONS AND SPECIAL RULES RELATING TO PAYMENTS FOR BASIC RESEARCH.—Subsection (e) of section 30 (relating to credit available with respect to certain basic research by colleges, universities, and certain research organizations) is amended to read as follows:

"(e) CREDIT ALLOWABLE WITH RESPECT TO CERTAIN PAYMENTS TO QUALIFIED ORGANIZATIONS FOR BASIC RESEARCH.—For purposes of this section—

"(1) IN GENERAL.—In the case of any taxpayer who makes basic research payments for any taxable year—

"(A) the amount of basic research payments taken into account under subsection (a)(2) shall be equal to the excess of—

"(i) such basic research payments, over

"(ii) the qualified organization base period amount, and

"(B) that portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of subsection (a)(1).

"(2) BASIC RESEARCH PAYMENTS DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'basic research payment' means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if—

"(i) such payment is pursuant to a written agreement between such corporation and such qualified organization, and

"(ii) such basic research is to be performed by such qualified organization.

"(B) EXCEPTION TO REQUIREMENT THAT RESEARCH BE PERFORMED BY THE ORGANIZATION.—In the case of a qualified organization described in subparagraph (C) or (D) of paragraph (6), clause (ii) of subparagraph (A) shall not apply.

"(3) QUALIFIED ORGANIZATION BASE PERIOD AMOUNT.—For purposes of this subsection, the term 'qualified organization base period amount' means an amount equal to the sum of—

"(A) the minimum basic research amount, plus

"(B) the maintenance-of-effort amount.

"(4) MINIMUM BASIC RESEARCH AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'minimum basic research amount' means an amount equal to the greater of—

"(i) 1 percent of the average of the sum of amounts paid or incurred during the base period for—

"(I) any in-house research expenses, and

"(II) any contract research expenses, or

"(ii) the amounts treated as contract research expenses during the base period by reason of this subsection (as in effect during the base period).

"(B) FLOOR AMOUNT.—Except in the case of a taxpayer which was in existence during a taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

"(5) MAINTENANCE-OF-EFFORT AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'maintenance-of-effort amount' means, with respect to any taxable year, an amount equal to the excess (if any) of—

"(i) an amount equal to—

"(I) the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by

"(II) the cost-of-living adjustment for the calendar year in which such taxable year begins, over

"(ii) the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

"(B) NONDESIGNATED UNIVERSITY CONTRIBUTIONS.—For purposes of this paragraph, the term 'nondesignated university contribution' means any amount paid by a taxpayer to any qualified organization described in paragraph (6)(A)—

"(i) for which a deduction was allowable under section 170, and

"(ii) which was not taken into account—

"(I) in computing the amount of the credit under this section (as in effect during the base period) during any taxable year in the base period, or

"(II) as a basic research payment for purposes of this section.

"(C) COST-OF-LIVING ADJUSTMENT DEFINED.—

"(i) IN GENERAL.—The cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under section 1(f)(3).

"(ii) SPECIAL RULE WHERE BASE PERIOD ENDS IN A CALENDAR YEAR OTHER THAN 1983 OR 1984.—If the base period of any taxpayer does not end in 1983 or 1984, section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which such base period ends for 1987.

"(6) QUALIFIED ORGANIZATION.—For purposes of this subsection, the term 'qualified organization' means any of the following organizations:

"(A) EDUCATIONAL INSTITUTIONS.—Any educational organization which—

"(i) is an institution of higher education (within the meaning of section 3304(f)), and

"(ii) is described in section 170(b)(1)(A)(ii).

"(B) CERTAIN SCIENTIFIC RESEARCH ORGANIZATIONS.—Any organization not described in subparagraph (A) which—

"(i) is described in section 501(c)(3) and is exempt from tax under section 501(a),

"(ii) is organized and operated primarily to conduct scientific research, and

"(iii) is not a private foundation.

"(C) SCIENTIFIC TAX-EXEMPT ORGANIZATIONS.—Any organization which—

"(i) is described in—

"(I) section 501(c)(3) (other than a private foundation), or

"(II) section 501(c)(6),

"(ii) is exempt from tax under section 501(a),

"(iii) is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph (A) pursuant to written research agreements, and

"(iv) currently expends—

"(I) substantially all of its funds, or

"(II) substantially all of the basic research payments received by it,

for grants to, or contracts for basic research with, an organization described in subparagraph (A).

"(D) CERTAIN GRANT ORGANIZATIONS.—Any organization not described in subparagraph (B) or (C) which—

"(i) is described in section 501(c)(3) and is exempt from tax under section 501(a) (other than a private foundation),

"(ii) is established and maintained by an organization established before July 10, 1981, which meets the requirements of clause (i),

"(iii) is organized and operated exclusively for the purpose of making grants to organizations described in subparagraph (A) pursuant to written research agreements for purposes of basic research, and

"(iv) makes an election, revocable only with the consent of the Secretary, to be treated as a private foundation for purposes of this title (other than section 4940, relating to excise tax based on investment income).

"(7) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) BASIC RESEARCH.—The term 'basic research' means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include—

"(i) basic research conducted outside of the United States, and

"(ii) basic research in the social sciences, arts, or humanities.

"(B) BASE PERIOD.—The term 'base period' means the 3-taxable-year period ending with the taxable year immediately preceding the 1st taxable year of the taxpayer beginning after December 31, 1983.

"(C) EXCLUSION FROM INCREMENTAL CREDIT CALCULATION.—For purposes of determining the amount of credit allowable under subsection (a)(1) for any taxable year, the amount of the basic research payments taken into account under subsection (a)(2)—

"(i) shall not be treated as qualified research expenses under subsection (a)(1)(A), and

"(ii) shall not be included in the computation of base period research expenses under subsection (a)(1)(B).

"(D) TRADE OR BUSINESS QUALIFICATION.—For purposes of applying subsection (b)(1) to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of subsection (b)(3)(B)).

"(E) CERTAIN CORPORATIONS NOT ELIGIBLE.—The term 'corporation' shall not include—

"(i) an S corporation,

"(ii) a personal holding company (as defined in section 542), or

"(iii) a service organization (as defined in section 414(m)(3))."

(d) RESEARCH CREDIT TREATED AS OTHER BUSINESS CREDITS.—

(1) IN GENERAL.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking out "plus" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", plus", and by adding at the end thereof the following new paragraph:

"(4) the research credit determined under section 41(a)."

(2) TRANSFER OF RESEARCH CREDIT TO SUBPART RELATING TO BUSINESS CREDITS.—Section 30 (relating to credit for increasing research activities) is hereby transferred to subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (as amended

by this Act), inserted after section 40 of such Code, and redesignated as section 41 of such Code.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A)(i) Subsections (b) and (c) of section 28 are each amended by striking out "section 30" each place it appears and inserting in lieu thereof "section 41".

(ii) Paragraph (2) of section 28(c) is amended by striking out "section 30(b)" and inserting in lieu thereof "section 41(b)".

(iii) Paragraph (4) of section 28(d) is amended by striking out "section 30(f)" and inserting in lieu thereof "section 41(f)".

(iv) Subparagraph (D) of section 28(b)(1) is amended by striking out "1985" and inserting in lieu thereof "1988".

(B) Subsection (d) of section 38, as amended by this Act, is amended by inserting "41(a)," after "40(a),".

(C)(i) Subsection (d) of section 39 (relating to carryback and carry forward of unused credits) is amended by adding at the end thereof the following new paragraph:

"(3) SIMILAR RULES FOR RESEARCH CREDIT.—Rules similar to the rules of paragraphs (1) and (2) shall apply to the credit allowable under section 30 (as in effect before the date of the enactment of the Tax Reform Act of 1986) except that—

"(A) 'December 31, 1985' shall be substituted for 'December 31, 1983' each place it appears, and

"(B) 'January 1, 1986' shall be substituted for 'January 1, 1984'."

(ii) Subsection (g) of section 41 (relating to limitation based on amount of tax), as redesignated by this section, is amended to read as follows:

"(g) SPECIAL RULE FOR PASS-THRU OF CREDIT.—In the case of an individual who—

"(1) owns an interest in an unincorporated trade or business,

"(2) is a partner in a partnership,

"(3) is a beneficiary of an estate or trust, or

"(4) is a shareholder in an S corporation, the amount determined under subsection (a) for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity."

(D) Subparagraph (B) of section 108(b)(2) (relating to reduction of tax attributes in title 11 case or insolvency), as amended by this Act, is amended to read as follows:

"(B) GENERAL BUSINESS CREDIT.—Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit)."

(E) Paragraph (3) of section 280C(b) is amended—

(i) by striking out "section 30(f)(5)" and inserting in lieu thereof "section 41(f)(5)",

(ii) by striking out "section 30(f)(1)(B)" and inserting in lieu thereof "section 41(f)(1)(B)", and

(iii) by striking out "section 30(f)(1)" and inserting in lieu thereof "section 41(f)(1)".

(F) Subsection (c) of section 381 is amended by striking out paragraph (25) and by redesignating paragraph (26) as paragraph (25).

(G) Section 936(h)(5)(C)(i)(I)(a) (defining product area research) is amended by striking out "section 30(b)" and inserting in lieu thereof "section 41(b)".

(H) Section 6411 (relating to tentative carryback and refund adjustments) is amended—

(i) by striking out "by a research credit carryback provided in section 30(g)(2)" in subsection (a),

(ii) by striking out "a research credit carryback or" in subsection (a),

(iii) by striking out "(or, with respect to any portion of a business credit carryback attributable to a research credit carryback from a subsequent taxable year within a period of 12 months from the end of such subsequent taxable year)" in subsection (a), and

(iv) by striking out "unused research credit," each place it appears in subsections (a) and (b).

(I) Subparagraph (C) of section 6511(d)(6) (defining credit carryback) is amended by striking out "and any research credit carryback under section 30(g)(2)".

(J) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by striking out the item relating to section 30.

(K) The table of sections for subpart D of such part is amended by inserting after the item relating to section 40 the following new item:

"Sec. 41. Credit for increasing research activities."

(e) DENIAL OF CREDIT WITH RESPECT TO AMOUNTS FOR CERTAIN LEASED PERSONAL PROPERTY.—Clause (iii) of section 41(b)(2)(A) (defining in-house research expenses), as redesignated by subsection (d), is amended to read as follows:

"(iii) under regulations prescribed by the Secretary, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research."

(f) DEDUCTION FOR CERTAIN CONTRIBUTIONS OF SCIENTIFIC RESEARCH PROPERTY.—Clause (i) of section 170(e)(4)(B) (relating to special rule for contributions of scientific property used for research) is amended to read as follows:

"(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1985.

(2) SUBSECTION (A).—The amendments made by subsection (a) shall apply to taxable years ending after December 31, 1985.

(3) BASIC RESEARCH.—Section 41(a)(2) of the Internal Revenue Code of 1986 (as added by this section), and the amendments made by subsection (c)(2), shall apply to taxable years beginning after December 31, 1986.

SEC. 232. EXTENSION OF CREDIT FOR CLINICAL TESTING EXPENSES FOR CERTAIN DRUGS.

Subsection (e) of section 28 (relating to termination) is amended by striking out "1987" and inserting in lieu thereof "1990".

SUBTITLE E—CHANGES IN CERTAIN AMORTIZATION PROVISIONS

SEC. 241. REPEAL OF 5-YEAR AMORTIZATION OF TRADEMARK AND TRADE NAME EXPENDITURES.

(a) IN GENERAL.—Section 177 (relating to trademark and trade name expenditures) is hereby repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 312(n) is amended by striking out ", 177,".

(2) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking out paragraph (16) and by redesignating paragraphs (17) through (27) as paragraphs (16) through (26), respectively.

(3) The table of sections for part VI of subchapter B of chapter 1 is amended by striking out the item relating to section 177.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures paid or incurred after December 31, 1986.

(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

(A) pursuant to a binding contract entered into before March 2, 1986, or

(B) with respect to the development, protection, expansion, registration, or defense of a trademark or trade name commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such development, protection, expansion, registration, or defense has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to a trademark or trade name placed in service after December 31, 1987.

SEC. 242. REPEAL OF AMORTIZATION OF RAILROAD GRADING AND TUNNEL BORES.

(a) IN GENERAL.—Section 185 (relating to amortization of railroad grading and tunnel bores) is hereby repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 1082(a)(2) is amended by striking out ", 185,".

(2) Paragraph (3) of section 1250(b) (defining additional depreciation) is amended by inserting "(as in effect before its repeal by the Tax Reform Act of 1986)" after "185".

(3) The table of sections for part VI of subchapter B of chapter 1 is amended by striking out the item relating to section 185.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to that portion of the basis of any property which is attributable to expenditures paid or incurred after December 31, 1986.

(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

(A) pursuant to a binding contract entered into before March 2, 1986, or

(B) with respect to any improvement commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such improvement has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to an improvement placed in service after December 31, 1987.

SEC. 243. DEDUCTION FOR BUS AND FREIGHT FORWARDER OPERATING AUTHORITY.

(a) BUS OPERATING AUTHORITY.—

(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 shall be applied as if the term "motor carrier operating authority" included a bus operating authority.

(2) MODIFICATIONS.—For purposes of paragraph (1), section 266 of such Act shall be applied—

(A) by substituting "November 19, 1982" for "July 1, 1980" each place it appears, and

(B) by substituting "November 1982" for "July 1980" in subsection (a) thereof.

(3) BUS OPERATING AUTHORITY DEFINED.—For purposes of this subsection and section 266 of such Act, the term "bus operating authority" means—

(A) a certificate or permit held by a motor common or contract carrier of passengers which was issued pursuant to subchapter II of chapter 109 of title 49, United States Code, and

(B) a certificate or permit held by a motor carrier authorizing the transportation of passengers, as a common carrier, over regular routes in intrastate commerce which was issued by the appropriate State agency.

(b) FREIGHT FORWARDER OPERATING AUTHORITY.—

(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 shall be applied as if subsection (b) thereof contained "or a freight forwarder" after "contract carrier of property".

(2) MODIFICATIONS.—The modifications referred to in this paragraph are:

(A) 60-MONTH PERIOD TO BEGIN IN 1987.—The 60-month period referred to in section 266(a) of such Act shall begin with the later of—

(i) the deregulation month, or

(ii) at the election of the taxpayer, the 1st month of the taxpayer's 1st taxable year beginning after the deregulation month.

(B) AUTHORITY MUST BE HELD AS OF BEGINNING OF 60-MONTH PERIOD.—A motor carrier operating authority shall not be taken into account unless such authority is held by the taxpayer at the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

(C) ADJUSTED BASIS NOT TO EXCEED ADJUSTED BASIS AT BEGINNING OF 60-MONTH PERIOD.—The adjusted basis taken into account with respect to any motor carrier operating authority shall not exceed the adjusted basis of such authority as of the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

(3) DEREGULATION MONTH.—For purposes of this section, the term "deregulation month" means the month in which the Secretary of the Treasury or his delegate determines that a Federal law has been enacted which deregulates the freight forwarding industry.

(c) SPECIAL RULE FOR MOTOR CARRIER OPERATING AUTHORITY.—In the case of a corporation which was incorporated on December 29, 1969, in the State of Delaware, notwithstanding any other provision of law, there shall be allowed as a deduction for the taxable year of the taxpayer beginning in 1980 an amount equal to $2,705,188 for its entire loss due to a decline in value of its motor carrier operating authority by reason of deregulation.

(d) EFFECTIVE DATES.—

(1) BUS OPERATING AUTHORITY.—

(A) IN GENERAL.—Subsection (a) shall apply to taxable years ending after November 18, 1982.

(B) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented at any time on or before the date which is 1 year after the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such subsection) may, notwithstanding such law or rule of law, be made or allowed if claim therefore is filed on or before the date which is 18 months after such date of enactment.

(2) FREIGHT FORWARDER OPERATING AUTHORITY.—Subsection (b) shall apply to taxable years ending after the month preceding the deregulation month.

SEC. 244. TREATMENT OF EXPENDITURES FOR REMOVAL OF ARCHITECTURAL BARRIERS TO THE HANDICAPPED AND ELDERLY MADE PERMANENT.

Paragraph (2) of section 190(d) (relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly) is amended by striking out "1983, and before January 1, 1986" and inserting in lieu thereof "1983".

SUBTITLE F—PROVISIONS RELATING TO REAL ESTATE

SEC. 251. MODIFICATION OF INVESTMENT TAX CREDIT FOR REHABILITATION EXPENDITURES.

(a) REDUCTION IN PERCENTAGE.—Paragraph (4) of section 46(b) (relating to rehabilitation percentage) is amended to read as follows:

"(4) REHABILITATION PERCENTAGE.—

"(A) IN GENERAL.—The term 'rehabilitation percentage' means—

"(i) 10 percent in the case of qualified rehabilitation expenditures with respect to a qualified rehabilitated building other than a certified historic structure, and

"(ii) 20 percent in the case of such expenditure with respect to a certified historic structure.

"(B) REGULAR AND ENERGY PERCENTAGES NOT TO APPLY.—The regular percentage and the energy percentages shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures."

(b) SPECIAL RULES FOR QUALIFIED REHABILITATED BUILDINGS.—Subsection (g) of section 48 (relating to special rules for qualified rehabilitated buildings) is amended to read as follows:

"(g) SPECIAL RULES FOR QUALIFIED REHABILITATED BUILDINGS.—For purposes of this subpart—

"(1) QUALIFIED REHABILITATED BUILDING.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified rehabilitated building' means any building (and its structural components) if—

"(i) such building has been substantially rehabilitated,

"(ii) such building was placed in service before the beginning of the rehabilitation, and

"(iii) in the case of any building other than a certified historic structure, in the rehabilitation process—

"(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

"(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

"(III) 75 percent or more of the existing internal structural framework of such building is retained in place.

"(B) BUILDING MUST BE FIRST PLACED IN SERVICE BEFORE 1936.—In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.

"(C) SUBSTANTIALLY REHABILITATED DEFINED.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulations) and ending with or within the taxable year exceed the greater of—

"(I) the adjusted basis of such building (and its structural components), or

"(II) $5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

"(ii) SPECIAL RULE FOR PHASED REHABILITATION.—In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting '60-month period' for '24-month period'.

"(iii) LESSEES.—The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

"(D) RECONSTRUCTION.—Rehabilitation includes reconstruction.

"(2) QUALIFIED REHABILITATION EXPENDITURE DEFINED.—For purposes of this section—

"(A) IN GENERAL.—The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account—

"(i) for property for which depreciation is allowable under section 168 and which is—

"(I) nonresidential real property,

"(II) residential rental property,

"(III) real property which has a class life of more than 12.5 years, or

"(IV) an addition or improvement to property or housing described in subclause (I), (II), or (III), and

"(ii) in connection with the rehabilitation of a qualified rehabilitated building.

"(B) CERTAIN EXPENDITURES NOT INCLUDED.—The term 'qualified rehabilitation expenditure' does not include—

"(i) STRAIGHT LINE DEPRECIATION MUST BE USED.—Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

"(ii) COST OF ACQUISITION.—The cost of acquiring any building or interest therein.

"(iii) ENLARGEMENTS.—Any expenditure attributable to the enlargement of an existing building.

"(iv) CERTIFIED HISTORIC STRUCTURE, ETC.—Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

"(I) such building was not a certified historic structure,

"(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

"(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirement of subclause (II).

"(v) TAX-EXEMPT USE PROPERTY.—

"(I) IN GENERAL.—Any expenditure in connection with the rehabilitation of a building which is allocable to that portion of such building which is (or may reasonably be ex-

pected to be) tax-exempt use property (within the meaning of section 168(h)).

"(II) CLAUSE NOT TO APPLY FOR PURPOSES OF PARAGRAPH (1)(C).—This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

"(vi) EXPENDITURES OF LESSEE.—Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

"(C) CERTIFIED REHABILITATION.—For purposes of subparagraph (B), the term 'certified rehabilitation' means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

"(D) NONRESIDENTIAL REAL PROPERTY; RESIDENTIAL RENTAL PROPERTY; CLASS LIFE.—For purposes of subparagraph (A), the terms 'nonresidential real property', 'residential rental property', and 'class life' have the respective meanings given such terms by section 168.

"(3) CERTIFIED HISTORIC STRUCTURE DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'certified historic structure' means any building (and its structural components) which—

"(i) is listed in the National Register, or

"(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

"(B) REGISTERED HISTORIC DISTRICT.—The term 'registered historic district' means—

"(i) any district listed in the National Register, and

"(ii) any district—

"(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

"(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

"(4) PROPERTY TREATED AS NEW SECTION 38 PROPERTY.—Property which is treated as section 38 property by reason of subsection (a)(1)(E) shall be treated as new section 38 property."

(c) BASIS ADJUSTMENT FOR CERTIFIED HISTORIC STRUCTURES.—Paragraph (3) of section 48(q) (relating to special rule for qualified rehabilitated buildings) is amended by striking out "other than a certified historic structure".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

(2) GENERAL TRANSITIONAL RULE.—The amendments made by this section and section 201 shall not apply to any property placed in service before January 1, 1994, if such property is placed in service as part of—

(A) a rehabilitation which was completed pursuant to a written contract which was binding on March 1, 1986, or

(B) a rehabilitation incurred in connection with property (including any leasehold interest) acquired before March 2, 1986, or acquired on or after such date pursuant to a written contract that was binding on March 1, 1986, if—

(i) the rehabilitation was completed pursuant to a written contract that was binding on March 1, 1986,

(ii) parts 1 and 2 of the Historic Preservation Certification Application were filed with the Department of the Interior (or its designee) before March 2, 1986, or

(iii) the lesser of $1,000,000 or 5 percent of the cost of the rehabilitation is incurred before March 2, 1986, or is required to be incurred pursuant to a written contract which was binding on March 1, 1986.

(3) CERTAIN ADDITIONAL REHABILITATIONS.—The amendments made by this section and section 201 shall not apply to—

(A) the rehabilitation of 8 bathhouses within the Hot Springs National Park or of buildings in the Central Avenue Historic District at such Park,

(B) the rehabilitation of the Upper Pontabla Building in New Orleans, Louisiana,

(C) the rehabilitation of at least 60 buildings listed on the National Register at the Frankford Arsenal,

(D) the rehabilitation of De Baliveriere Arcade, St. Louis Centre, and Drake Apartments in Missouri,

(E) the rehabilitation of The Tides in Bristol, Rhode Island,

(F) the rehabilitation and renovation of the Outlet Company building and garage in Providence, Rhode Island,

(G) the rehabilitation of 10 structures in Harrisburg, Pennsylvania, with respect to which the Harristown Development Corporation was designated redeveloper and received an option to acquire title to the entire project site for $1 on June 27, 1984,

(H) the rehabilitation of a project involving the renovation of 3 historic structures on the Minneapolis riverfront, with respect to which the developer of the project entered into a redevelopment agreement with a municipality dated January 4, 1985, and industrial development bonds were sold in 3 separate issues in May, July, and October 1985,

(I) the rehabilitation of a bank's main office facilities of approximately 120,000 square feet, in connection with which the bank's board of directors authorized a $3,300,000 expenditure for the renovation and retrofit on March 20, 1984,

(J) the rehabilitation of 10 warehouse buildings built between 1906 and 1910 and purchased under a contract dated February 17, 1986,

(K) the rehabilitation of a facility which is customarily used for conventions and sporting events if an analysis of operations and recommendations of utilization of such facility was prepared by a certified public accounting firm pursuant to an engagement authorized on March 6, 1984, and presented on June 11, 1984, to officials of the city in which such facility is located,

(L) Mount Vernon Mills in Columbia, South Carolina,

(M) the Barbara Jordan II Apartments,

(N) the rehabilitation of the Federal Building and Post Office, 120 Hanover Street, Manchester, New Hampshire,

(O) the rehabilitation of the Charleston Waterfront project in South Carolina,

(P) the Hayes Mansion in San Francisco,

(Q) the renovation of a facility owned by the National Railroad Passenger Corporation ("Amtrak") for which project Amtrak engaged a development team by letter agreement dated August 23, 1985, as modified by letter agreement dated September 9, 1985,

(R) the rehabilitation of a structure or its components which is listed in the National Register of Historic Places, is located in Allegheny County, Pennsylvania, will be substantially rehabilitated (as defined in section 48(g)(1)(C) prior to amendment by this Act), prior to December 31, 1989; and was previously utilized as a market and an auto dealership,

(S) The Bellevue Stratford Hotel in Philadelphia, Pennsylvania,

(T) the Dixon Mill Housing project in Jersey City, New Jersey,

(U) Motor Square Garden,

(V) the Blackstone Apartments, and the Shriver-Johnson building, in Sioux Falls, South Dakota,

(W) the Holy Name Academy in Spokane, Washington,

(X) the Nike/Clemson Mill in Exeter, New Hampshire,

(Y) the Central Bank Building in Grand Rapids, Michigan, and

(Z) the Heritage Hotel, in the City of Marquette, Michigan.

(4) ADDITIONAL REHABILITATIONS.—The amendments made by this section and section 201 shall not apply to—

(A) the Fort Worth Town Square Project in Texas,

(B) the American Youth Hostel in New York, New York,

(C) The Riverwest Loft Development (including all three phases, two of which do not involve rehabilitations),

(D) the Gaslamp Quarter Historic District in California,

(E) the Eberhardt & Ober Brewery, in Pennsylvania,

(F) the Captain's Walk Limited Partnership-Harris Place Development, in Connecticut,

(G) the Velvet Mills in Connecticut,

(H) the Roycroft Inn, in New York,

(I) Old Main Village, in Mankato, Minnesota,

(J) the Washburn-Crosby A Mill, in Minneapolis, Minnesota,

(K) the Lakeland marbel Arcade in Lakeland, Florida,

(L) the Willard Hotel, in Washington, D.C.,

(M) the H. P. Lau Building in Lincoln, Nebraska,

(N) the Starks Building, in Louisville, Kentucky,

(O) the Bellevue High School, in Bellevue, Kentucky,

(P) the Major Hampden Smith House, in Owensboro, Kentucky,

(Q) the Doe Run Inn, in Brandenburg, Kentucky,

(R) the State National Bank, in Frankfort, Kentucky,

(S) the Captain Jack House, in Fleming, Kentucky,

(T) the Elizabeth Arlinghaus House, in Louisville, Kentucky,

(U) Limerick Shamrock, in Louisville, Kentucky,

(V) the Robert Mills Project, in South Carolina,

(W) the 620 Project, consisting of 3 buildings, in Kentucky,

(X) the Warrior Hotel, Ltd., the first two floors of the Martin Hotel, and the 105,000 square foot warehouse constructed in 1910, all in Sioux City, Iowa,

(Y) the waterpark condominium residential project, to the extent of $2 million of expenditures, and

(Z) the Apollo and Bishop Building Complex on 125th Street, the Bigelow-Hartford Carpet Mill in New York, New York.

(5) Reduction in credit for property under transitional rules.—In the case of property placed in service after December 31, 1986, and to which the amendments made by this section do not apply, subparagraph (A) of section 46(b)(4) of the Internal Revenue Code of 1954 (as in effect before the enactment of this Act) shall be applied—

(A) by substituting "10 percent" for "15 percent", and

(B) by substituting "13 percent" for "20 percent".

(6) EXPENSING OF REHABILITATION EXPENDITURES FOR THE FRANKFORD ARSENAL.—In the case of any expenditures paid or incurred in connection with the rehabilitation of the Frankford Arsenal during the 8-year period beginning on January 1, 1987, such expenditures (including expenditures for repair and maintenance of the building and property) shall be allowable as a deduction in the taxable year in which paid or incurred in an amount not in excess of the submissions made by the taxpayer before September 16, 1986.

SEC. 252. LOW-INCOME HOUSING CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits) is amended by adding at end thereof the following new section:

"SEC. 42. LOW-INCOME HOUSING CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

"(1) the applicable percentage of

"(2) The qualified basis of each qualified low-income building.

"(b) APPLICABLE PERCENTAGE: 70 PERCENT PRESENT VALUE CREDIT FOR CERTAIN NEW BUILDINGS; 30 PERCENT PRESENT VALUE CREDIT FOR CERTAIN OTHER BUILDINGS.—For purposes of this section—

"(1) BUILDING PLACED IN SERVICE DURING 1987.—In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term 'applicable percentage' means—

"(A) 9 percent for new buildings which are not federally subsidized for the taxable year, or

"(B) 4 percent for——

"(i) new buildings which are federally subsidized for the taxable year, and

"(ii) existing buildings.

"(2) BUILDINGS PLACED IN SERVICE AFTER 1987.—

"(A) IN GENERAL.—In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term applicable percentage means the appropriate percentage presecribed by the Secretary for the month in which such building is placed in service.

"(B) METHOD OF PRESCRIBING PERCENTAGES.—The percentages perscribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have present value equal to—

"(i) 70 percent of the qualified basis of a building described in pargaph (1)(A), and

"(ii) 30 percent of the qualified basis of a building described in paragraph (1)(B).

"(C) METHOD OF DISCOUNTING.—The present value under subparagraph (B) shall be determined—

"(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),

"(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month in which the building was placed in service and compounded annually, and

"(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

"(3) CROSS REFERENCE.—For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

(c) QUALIFIED BASIS; QUALIFIED LOW-INCOME BUILDING.—For purposes of this section—

"(1) QUALIFIED BASIS.—

"(A) DETERMINATION.—The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

"(i) the applicable fraction (determined as of the close of such taxable year) of

"(ii) the eligible basis of such building (determined under subsection (d)(5)).

"(B) APPLICABLE FRACTION.—For purposes of subparagraph (A), the term 'applicable fraction' means the smaller of the unit fraction or the floor space fraction.

"(C) UNIT FRACTION.—For purposes of subparagraph (B), the term 'unit fraction' means the fraction—

"(i) the numerator of which is the number of low-income units in the building, and

"(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

"(D) FLOOR SPACE FRACTION.—For purposes of subparagraph (B), the term 'floor space fraction' means the fraction—

"(i) the numerator of which is the total floor space of the low-income units in such building, and

"(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

"(2) QUALIFIED LOW-INCOME BUILDING.—The term 'qualified low-income building' means any building—

"(A) which at all times during the compliance period with respect to such building is part of a qualified low-income housing project, and

"(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

"(d) ELIGIBLE BASIS.—For purposes of this section—

"(1) NEW BUILDINGS.—The eligible basis of a new building is its adjusted basis.

"(2) EXISTING BUILDINGS.—

"(A) IN GENERAL.—The eligible basis of an existing building is—

"(i) in the case of a building which meets the requirements of subparagraph (B), the sum of—

"(I) the portion of its adjusted basis attributable to its acquisition cost, plus

"(II) amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation, and

"(ii) zero in any other case.

"(B) REQUIREMENTS.—A building meets the requirements of this subparagraph if—

"(i) the building is acquired by purchase (as defined in section 179(d)(2)),

"(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the later of—

"(I) the date the building was last placed in service , or

"(II) the date of the most recent nonqualified substantial improvement of the building, and

"(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service.

"(C) ACQUISITION COST.—For purposes of subparagraph (A), the cost of any building shall not include so much of the basis of such building as is determined, by reference to the basis of other property held at any time by the person acquiring the building.

"(D) SPECIAL RULES FOR SUBPARAGRAPH (B).—

"(i) NONQUALIFIED SUBSTANTIAL IMPROVEMENT.—For purposes of subparagraph (B)(ii)—

"(I) IN GENERAL.—The term 'nonqualified substantial improvement' means any substantial improvement if section 167(k) was elected with respect to such improvement or section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.

"(II) DATE OF SUBSTANTIAL IMPROVEMENT.—The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III).

"(III) SUBSTANTIAL IMPROVEMENT.—The term 'substantial improvement' means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section 1016(a)) as of the 1st day of such period.

"(ii) SPECIAL RULE FOR NONTAXABLE EXCHANGES.—For purposes of determining under subparagraph (B)(ii) when a building was last placed in service , there shall not be taken into account any placement in service in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom aquired.

"(iii) RELATED PERSON, ETC.—

"(I) APPLICATION OF SECTION 179.—For purposes of subparagraph (B)(i), section 179(d) shall be applied by substituting "10 percent" for "50 percent" in section 267(b) and 707(b) and in section 179(b)(7).

"(II) RELATED PERSON.—For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the 'related person') is related to any person if the related persons bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.

"(3) ELIGIBLE BASIS REDUCED WHERE DISPROPORTIONATE STANDARD FOR UNITS.—The eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(4) SPECIAL RULES RELATING TO DETERMINATION OF ADJUSTED BASIS.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

"(B) BASIS OF PROPERTY IN COMMON AREAS, ETC., INCLUDED.—The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) NO REDUCTION FOR DEPRECIATION.—The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).

"(5) ELIGIBLE BASIS DETERMINED WHEN BUILDING PLACED IN SERVICE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the eligible basis of any building for the entire compliance period for such building shall be its eligible basis on the date such building is placed in service.

"(B) ELIGIBLE BASIS REDUCED BY FEDERAL GRANTS.—If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.

"(6) CREDIT ALLOWABLE FOR CERTAIN FEDERALLY-ASSISTED BUILDINGS ACQUIRED DURING 10-YEAR PERIOD DESCRIBED IN PARAGRAPH (2)(B)(II).—

"(A) IN GENERAL.—On application by the taxpayer, the Secretary (after consultation with the appropriate Federal official) may waive paragraph (2)(B)(ii) with respect to any federally-assisted building if the Secretary determines that such waiver is necessary—

"(i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers' Home Administration,

"(ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured, or

"(iii) to the extent provided in regulations, by reason of other circumstances of financial distress.

The preceding sentence shall not apply to any building described in paragraph (7)(B).

"(B) FEDERALLY-ASSISTED BUILDING.—For purposes of subparagraph (A), the term 'federally-assisted building' means any building which is substantially assisted, financed, or operated under—

"(i) section 8 of the United States Housing Act of 1937,

"(ii) section 221(d)(3) or 236 of the National Housing Act of 1934, or

"(iii) section 515 of the Housing Act of 1949,

as such Acts are in effect on the date of the enactment of the Tax Reform Act of 1986.

"(C) APPROPRIATE FEDERAL OFFICIAL.—For purposes of subparagraph (A), the term 'appropriate Federal official' means—

"(i) the Secretary of Housing and Urban Development in the case of any building described in subparagraph (B) by reason of clause (i) or (ii) thereof, and

"(ii) the Secretary of Agriculture in the case of any building described in subparagraph (B) by reason of clause (iii) thereof.

"(7) ACQUISITION OF BUILDING BEFORE END OF PRIOR COMPLIANCE PERIOD.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) which is acquired by the taxpayer—

"(i) paragraph (2)(B) shall not apply, but

"(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under sebsection (a) for such period to the prior owner referred to in subparagraph (B) has such owner not disposed of the building.

"(B) DESCRIPTION OF BUILDING.—A building is described in this subparagraph if—

"(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

"(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

"(e) REHABILITATION EXPENDITURES TREATED AS SEPARATE NEW BUILDING.—

"(1) IN GENERAL.—Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

"(2) REHABILITATION EXPENDITURES.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'rehabilitation expenditures' means amounts chargeable to captial account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

"(B) COST OF ACQUISITION, ETC, NOT INCLUDED.—Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

"(3) AVERAGE OF REHABILITATION EXPENDITURES MUST BE $2,000 OR MORE.—

"(A) IN GENERAL.—Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if the qualified basis attributable to such expenditures incurred during any 24-month period, when divided by the low-income units in the building, is $2,000 or more.

"(B) DATE OF DETERMINATION.—The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

"(4) SPECIAL RULES.—For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection—

"(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

"(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

"(5) NO DOUBLE COUNTING.—Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i)(II) but not under both such subsections.

"(6) REGULATIONS TO APPLY SUBSECTION WITH RESPECT TO GROUP OF UNITS IN BUILDING.—The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to whch rehabilitation expenditures are incurred as a separate new building.

"(f) DEFINITION AND SPECIAL RULES RELATING TO CREDIT PERIOD.—

"(1) CREDIT PERIOD DEFINED.—For purposes of this section, the term 'credit period' means, with respect to any building, the period of 10 taxable years beginning with the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. Such an election, once made, shall be irrevocable.

"(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT PERIOD.—

"(A) IN GENERAL.—The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

"(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

"(ii) the denominator of which is 12.

"(B) DISALLOWED 1ST YEAR CREDIT ALLOWED IN 11TH YEAR.—Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

"(3) SPECIAL RULE WHERE INCREASE IN QUALIFIED BASIS AFTER 1ST YEAR OF CREDIT PERIOD.—

"(A) CREDIT INCREASED.—If—

"(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of any building exceeds

"(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the credit allowable under subsection (a) for the taxable year (determined without regard to this paragraph) shall be increased by an amount equal to the product of such excess and the percentage equal to ⅔ of the applicable percentage for such building.

"(B) 1ST YEAR COMPUTATION APPLIES.—A rule similar to the rule of paragraph (2)(A) shall apply to the additional credit allowable by reason of this paragraph for the 1st year in which such additional credit is allowable.

"(g) QUALIFIED LOW-INCOME HOUSING PROJECT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified low-income housing project' means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

"(A) 20-50 TEST.—The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such projet are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

"(B) 40-60 TEST.—The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

"(2) RENT-RESTRICTED UNITS.—

"(A) IN GENERAL.—For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the income limitation under paragraph (1) applicable to individuals occupying such unit.

"(B) GROSS RENT.—For purposes of subparagraph (A), gross rent—

"(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable Federal rental assistance program (with respect to such unit or occupants thereof), and

"(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937.

"(3) DATE FOR MEETING REQUIREMENTS.—

"(A) PROJECTS CONSISTING OF 1 BUILDING.—In the case of a project which does not have any other building in service, such project shall not be treated as meeting the requirements of paragraph (1) unless it meets such requirements not later than the date which is 12 months after the date such project is placed in service.

"(B) PROJECTS CONSISTING OF MORE THAN 1 BUILDING.—In the case of a project which has a building in service when a later building is placed in service as part of such project, such project shall not be treated as meeting the requirements of paragraph (1) with respect to such later building unless—

"(i) such project meets such requirements without regard to such later building on the date such later building is placed in service, and

"(ii) such project meets such requirements with regard to such later building not later than the date which is 12 months after the date such later building is placed in service.

"(4) CERTAIN RULES MADE APPLICABLE.—Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit.

"(5) ELECTION TO TREAT BUILDING AFTER COMPLIANCE PERIOD AS NOT PART OF A PROJECT.—For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

"(h) LIMITATION ON AGGREGATE CREDIT ALLOWABLE WITH RESPECT TO PROJECTS LOCATED IN A STATE.—

"(1) CREDIT MAY NOT EXCEED CREDIT AMOUNT ALLOCATED TO BUILDING.—No credit shall be allowed by reason of this section for any taxable year with respect to any building in excess of the housing credit dollar amount allocated to such building under this subsection. An allocation shall be taken into account under the preceding sentence only if it occurs not later than the earlier of—

"(A) the 60th day after the close of the taxable year, or

"(B) the close of the calendar year in which such taxable year ends.

"(2) ALLOCATED CREDIT AMOUNT TO APPLY TO ALL TAXABLE YEARS ENDING DURING OR AFTER CREDIT ALLOCATION YEAR.—Any housing credit dollar amount allocated to any building for any calendar year——

"(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

"(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

"(3) HOUSING CREDIT DOLLAR AMOUNT FOR AGENCIES.—

"(A) IN GENERAL.—The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

"(B) STATE CEILING INITIALLY ALLOCATED TO STATE HOUSING CREDIT AGENCIES.—Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

"(C) STATE HOUSING CREDIT CEILING.—The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to $1.25 multiplied by the State population.

"(D) SPECIAL RULE FOR STATES WITH CONSTITUTIONAL HOME RULE CITIES.—For purposes of this subsection—

"(i) IN GENERAL.—The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

"(I) the population of such city, bears to

"(II) the population of the entire State.

"(ii) COORDINATION WITH OTHER ALLOCATIONS.—In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

"(iii) CONSTITUTIONAL HOME RULE CITY.—For purposes of this paragraph, the term 'constitutional home rule city' has the meaning given such term by section 146(d)(3)(C).

"(E) STATE MAY PROVIDE FOR DIFFERENT ALLOCATION.—Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

"(F) POPULATION.—For purposes of this paragraph, population shall be determined in accordance with section 146(j).

"(4) CREDIT FOR BUILDINGS FINANCED BY TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP NOT TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 and which is taken into account under section 146.

"(B) SPECIAL RULE WHERE 70 PERCENT OR MORE OF BUILDING IS FINANCED WITH TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP.—For purposes of subparagraph (A), if 70 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

"(5) PORTION OF STATE CEILING SET-ASIDE FOR CERTAIN PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—

"(A) IN GENERAL.—Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraphs (B).

"(B) PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to materially participate (within the meaning of section 469(h) in the development and operation of the project throughout the compliance period.

"(C) QUALIFIED NONPROFIT ORGANIZATION.—For purposes of this paragraph, the term 'qualified nonprofit organization' means any organization if—

"(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a), and

"(ii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

"(D) STATE MAY NOT OVERRIDE SET-ASIDE.—Nothing in subparagraph (E) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

"(6) SPECIAL RULES.—

"(A) BUILDING MUST BE LOCATED WITHIN JURISDICTION OF CREDIT AGENCY.—A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

"(B) HOUSING CREDIT DOLLAR AMOUNT MAY NOT BE CARRIED OVER, ETC.—

"(i) NO CARRYOVER.—The portion of the aggregate housing credit dollar amount of any housing credit agency which is not allocated for any calendar year may not be carried over to any other calendar year.

"(ii) ALLOCATION MAY NOT BE EARLIER THAN YEAR IN WHICH BUILDING PLACED IN SERVICE.—A housing credit agency may allocate its housing credit dollar amount for any calendar year only to buildings placed in service before the close of such calendar year.

"(C) AGENCY ALLOCATIONS IN EXCESS OF LIMIT.—If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

"(D) CREDIT ALLOWABLE DETERMINED WITHOUT REGARD TO AVERAGING CONVENTION, ETC.—For purposes of this subsection, the credit allowable under subsection (a) with respect to any building shall be determined—

"(i) without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

"(ii) by applying subsection (f)(3)(A) without regard to 'the percentage equal to 2/3 of.'

"(7) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) HOUSING CREDIT AGENCY.—The term 'housing credit agency' means any agency authorized to carry out this subsection.

"(B) POSSESSIONS TREATED AS STATES.—The term 'State' includes a possession of the United States.

"(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) COMPLIANCE PERIOD.—The term 'compliance period' means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

"(2) DETERMINATION OF WHETHER BUILDING IS FEDERALLY SUBSIDIZED.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year, there is outstanding any obligation the

interest on which is exempt from tax under section 103, or any below market Federal loan, the proceeds of which are used (directly or indirectly) with respect to such building or the operation thereof.

"(B) ELECTION TO REDUCE ELIGIBLE BASIS BY OUTSTANDING BALANCE OF LOAN.—A loan shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude an amount equal to the outstanding balance of such loan from the eligible basis of the building for purposes of subsection (d).

"(C) BELOW MARKET FEDERAL LOAN.—For purposes of subparagraph (A), the term 'below market Federal loan' means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made).

"(3) LOW-INCOME UNIT.—

"(A) IN GENERAL.—The term 'low-income unit' means any unit in a building if—

"(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

"(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

"(B) EXCEPTIONS.—A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

"(C) SPECIAL RULE FOR BUILDINGS HAVING 4 OR FEWER UNITS.—In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—

"(i) any individual who occupies a residential unit in such building, or

"(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

"(4) NEW BUILDING.—The term 'new building' means a building the original use of which begins with the taxpayer.

"(5) EXISTING BUILDING.—The term 'existing building' means any building which is not a new building.

"(j) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—If—

"(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

"(B) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

"(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

"(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount dscribed in paragraph (1)(A), plus

"(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

"(3) ACCELERATED PORTION OF CREDIT.—For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

"(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

"(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) ONLY BASIS FOR WHICH CREDIT ALLOWED TAKEN INTO ACCOUNT.—Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

"(C) NO RECAPTURE OF ADDITIONAL CREDIT ALLOWABLE BY REASON OF SUBSECTION (f)(3).—Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

"(D) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

"(E) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

"(5) CERTAIN PARTNERSHIPS TREATED AS THE TAXPAYER.—

"(A) IN GENERAL.—For purposes of applying this subsection to a partnership to which this paragraph applies—

"(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

"(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

"(iii) paragraph (4)(A) shall not apply, and

"(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

"(B) PARTNERSHIPS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any partnership—

"(i) which has 35 or more partners each of whom is a natural person or an estate, and

"(ii) which elects the application of this paragraph.

"(C) SPECIAL RULES.—

"(i) HUSBAND AND WIFE TREATED AS 1 PARTNER.—For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

"(ii) ELECTION IRREVOCABLE.—Any election under subparagraph (B), once made, shall be irrevocable.

"(6) NO RECAPTURE ON DISPOSITION OF BUILDING WHERE BOND POSTED.—In the case of a disposition of a building, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if—

"(A) the taxpayer furnishes to the Secretary a bond in an amount satifactory to the Secretary and for the period required by the Secretary, and

"(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

"(k) APPLICATION OF AT-RISK RULES.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, rules similar to the rules of section 46(c) (8) (other than subparagraph (D)(iv)(I) thereof), section 46(c)(9), and section 47(d)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

"(2) SPECIAL RULES FOR DETERMINING QUALIFIED PERSON.—For purposes of paragraph (1)—

"(A) IN GENERAL.—If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

"(i) is actively and regularly engaged in the business of lending money, or

"(ii) is a person described in section 46(c)(8)(D)(iv)(II).

"(B) FINANCING SECURED BY PROPERTY.—The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building.

"(C) PORTION OF BUILDING ATTRIBUTABLE TO FINANCING.—The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wraparound mortgage involving such financing).

"(D) REPAYMENT OF PRINCIPAL AND INTEREST.—The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

"(i) the date on which such financing matures,

"(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

"(iii) the date of its refinancing or the sale of the building to which such financing relates.

"(3) PRESENT VALUE OF FINANCING.—If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financ-

ing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

"(4) FAILURE TO FULLY REPAY.—

"(A) IN GENERAL.—To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

"(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

"(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621.

"(B) APPLICABLE PORTION.—For purposes of subparagraph (A), the term 'applicable portion' means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

"(C) CERTAIN RULES TO APPLY.—Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

"(l) CERTIFICATIONS TO SECRETARY.—

"(1) CERTIFICATION WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD.—Not later than the 90th day following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (in such form and in such manner as the Secretary prescribes)—

"(A) the taxable year, and calendar year, in which such building was placed in service,

"(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

"(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

"(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

"(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

"(2) ANNUAL REPORTS FROM HOUSING CREDIT AGENCIES.—Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

"(A) the amount of housing credit amount allocated to each building for such year, and

"(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

"(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

"(m) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

"(1) dealing with—

"(A) projects which include more than 1 building or only a portion of a building,

"(B) buildings which are placed in service in portions,

"(2) providing for the application of this section to short taxable years, and

"(3) preventing the avoidance of the rules of this section.

"(n) TERMINATION—

(1) IN GENERAL.—Except as provided in parargraph (2), the State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989.

"(2) CARRYOVER OF 1989 LIMIT FOR CERTAIN PROJECTS IN PROGRESS.—

"(A) IN GENERAL.—The aggregate housing credit amount of any agency for 1989 which is not allocated for 1989 shall be treated for purposes of applying this section to any building described in subparagraph (B) as the housing credit amount of such agency for 1990.

"(B) DESCRIPTION.—A building is described in this subparagraph if—

"(i) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

"(ii) more than 10 percent of the reasonably anticipated cost of such construction, reconstrcution, or rehabilitation has been incurred as of January 1, 1989, and

"(iii) such building is placed in service before January 1, 1991.

"(C) CERTAIN RULE NOT TO APPLY.—Subsection (h)(6)(B)(i) shall not apply for purposes of this paragraph."

(b) LOW-INCOME HOUSING CREDIT TREATED AS OTHER BUSINESS CREDITS.—

(1) Subsection (b) of section 38 (relating to current year business credits), as amended by this Act, is amended by striking out "plus" at the end of paragraph (3), but striking out the period at the end of paragraph (4) and inserting in lieu thereof "plus", and by adding at the end thereof the following new paragraph:

"(5) the low-income housing credit determined under section 42(a)."

(2) Subsection (d) of section 38 is amended by inserting "42(a)," before "46(a)".

(c) RECAPTURE TAX NOT TO REDUCE MINIMUM TAX.—Paragraph (1) of section 55(c), as amended by section 701 of this Act, is amended by inserting "or section 42(j)" after "section 47".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 42. Low-income housing credit."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to buildings placed in service after December 31, 1986, in taxable years ending after such date.

(2) SPECIAL RULE FOR REHABILITATION EXPENDITURES.—Subsection (e) of section 42 of the Internal Revenue Code of 1986 (as added by this section) shall apply for purposes of paragraph (1).

(f) TRANSITIONAL RULES.—

(1) LIMITATION TO NON-ACRS BUILDINGS NOT TO APPLY TO CERTAIN BUILDINGS, ETC.—

(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

(i) section 42(c)(2)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply, and

(ii) such building shall be treated as not federally subsidized for purposes of section 42(b)(1)(A) of such Code.

(B) PROJECT DESCRIBED.—A project is described in this subparagraph if—

(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

(ii) a zoning commission map amendment related to such project was granted on July 17, 1985, and

(iii) the number assigned to such project by the Federal Housing Administration is 023-36602.

(C) ADDITIONAL UNITS ELIGIBLE FOR CREDIT.—In the case of a building to which subparagraph (A) applies and which is part of a project which meets the requirements of subparagraph (D), for each low-income unit in such building which is occupied by individuals whose income is 30 percent or less of area median gross income, one additional unit (not otherwise a low-income unit) in such building shall be treated as a low-income unit for purposes of such section 42.

(D) PROJECT DESCRIBED.—A project is described in this subparagraph if—

(i) rents charged for units in such project are restricted by State regulations,

(ii) the annual cash flow of such project is restricted by State law,

(iii) the project is located on land owned by or ground leased from a public housing authority,

(iv) construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990, and

(v) for a 20-year period, 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

(E) MAXIMUM ADDITIONAL CREDIT.—The maximum annual additional credit allowable under section 42 of such Code by reason of subparagraph (C) shall not exceed 25 percent of the eligible basis of the building.

(2) ADDITIONAL ALLOCATION OF HOUSING CREDIT CEILING.—

(A) IN GENERAL.—There is hereby allocated to each housing credit agency described in subparagraph (B) an additional housing credit dollar amount determined in accordance with the following table:

For calendar year:	The additional allocation is:
1987	$3,900,000
1988	$7,600,000
1989	$1,300,000

(B) HOUSING CREDIT AGENCIES DESCRIBED.—The housing credit agencies described in this subparagraph are:

(i) A corporate governmental agency constituted as a public benefit corporation and established in 1971 under the provisions of Article XII of the Private Housing Finance Law of the State.

(ii) A city department established on December 20, 1979, pursuant to chapter XVIII of a municipal code of such city for the purpose of supervising and coordinating the formation and execution of projects and programs affecting housing within such city.

(iii) The State housing finance agency referred to in subparagraph (C), but only with respect to projects described in subparagraph (C).

(C) PROJECT DESCRIBED.—A project is described in this subparagraph if such project

is a qualified low-income housing project which—

(i) receives financing from a State housing finance agency from the proceeds of bonds issued pursuant to chapter 708 of the Acts of 1966 of such State pursuant to loan commitments from such agency made between May 8, 1984, and July 8, 1986, and

(ii) is subject to subsidy commitments issued pursuant to a program established under chapter 574 of the Acts of 1983 of such State having award dates from such agency between May 31, 1984, and June 11, 1985.

(D) SPECIAL RULES.—

(i) Any building—

(I) which is allocated any housing credit dollar amount by a housing credit agency described in clause (iii) of subparagraph (B), and

(II) which is placed in service after June 30, 1986, and before January 1, 1987,

shall be treated for purposes of the amendments made by this section as placed in service on January 1, 1987.

(ii) Section 42(c)(2)(B) of the Internal Revenue Code of 1986 shall not apply to any building which is allocated any housing credit dollar amount by any agency described in subparagraph (B).

(E) ALL UNITS TREATED AS LOW-INCOME UNITS IN CERTAIN CASES.—In the case of any building—

(i) which is allocated any housing credit dollar amount by any agency described in subparagraph (B), and

(ii) which after the application of subparagraph (D)(ii) is a qualified low-income building at all times during any taxable year,

such building shall be treated as described in section 42(b)(1)(B) of such Code and having an applicable fraction for such year of 1.

(3) CERTAIN PROJECTS PLACED IN SERVICE BEFORE 1987.—

(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

(i) section 42(c)(2)(B) of such Code shall not apply,

(ii) such building shall be treated as placed in service during the first calendar year after 1986 and before 1990 in which such building is a qualified low-income building (determined after the application of clause (i)), and

(iii) for purposes of section 42(h) of such Code, such building shall be treated as having allocated to it a housing credit dollar amount equal to the dollar amount appearing in the clause of subparagraph (B) in which such building is described.

(B) PROJECT DESCRIBED.—A project is described in this subparagraph if the Code number assigned to such project by the Farmers' Home Administration appears in the following table:

The code number is:	The housing credit dollar amount is:
(i) 49284553664	$16,000
(ii) 4927742022446	$22,000
(iii) 492707422769087	$64,000
(iv) 490270742387293	$48,000
(v) 4927074218234	$32,000
(vi) 49270742274019	$36,000
(vii) 51460742345074	$53,000.

(C) DETERMINATION OF ADJUSTED BASIS.—The adjusted basis of any building to which this paragraph applies for purposes of section 42 of such Code shall be its adjusted basis as of the close of the taxable year ending before the first taxable year of the credit period for such building.

(D) CERTAIN RULES TO APPLY.—Rules similar to the rules of subparagraph (E) of paragraph (2) shall apply for purposes of this paragraph.

(4) DEFINITIONS.—For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

SUBTITLE G—MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS

SEC. 261. PROVISIONS RELATING TO MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.

(a) PURPOSE.—The purpose of this section is to coordinate the application of the Internal Revenue Code of 1986 with the capital construction program under the Merchant Marine Act, 1936.

(b) AMENDMENT OF 1986 CODE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7518. TAX INCENTIVES RELATING TO MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.

"(a) CEILING ON DEPOSITS.—

"(1) IN GENERAL.—The amount deposited in a fund established under section 607 of the Merchant Marine Act, 1936 (hereinafter in this section referred to as a 'capital construction fund') shall not exceed for any taxable year the sum of:

"(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

"(B) the amount allowable as a deduction under section 167 for such year with respect to the agreement vessels,

"(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from—

"(i) the sale or other disposition of any agreement vessel, or

"(ii) insurance or indemnity attributable to any agreement vessel, and

"(D) the receipts from the investment or reinvestment of amounts held in such fund.

"(2) LIMITATIONS ON DEPOSITS BY LESSEES.—In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under section 607 of the Merchant Marine Act, 1936, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

"(3) CERTAIN BARGES AND CONTAINERS INCLUDED.—For purposes of paragraph (1), the term 'agreement vessel' includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

"(b) REQUIREMENTS AS TO INVESTMENTS.—

"(1) IN GENERAL.—Amounts in any capital construction fund shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary.

"(2) LIMITATION ON FUND INVESTMENTS.—Amounts in any capital construction fund may be invested only in interest-bearing securities approved by the Secretary; except that, if such Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage.

"(3) INVESTMENT IN CERTAIN PREFERRED STOCK PERMITTED.—For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

"(c) NONTAXABILITY FOR DEPOSITS.—

"(1) IN GENERAL.—For purposes of this title—

"(A) taxable income (determined without regard to this section and section 607 of the Merchant Marine Act, 1936) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (a)(1)(A),

"(B) gain from a transaction referred to in subsection (a)(1)(C) shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

"(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

"(D) the earnings and profits (within the meaning of section 316) of any corporation shall be determined without regard to this section and section 607 of the Merchant Marine Act, 1936, and

"(E) in applying the tax imposed by section 531 (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

"(2) ONLY QUALIFIED DEPOSITS ELIGIBLE FOR TREATMENT.—Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

"(d) ESTABLISHMENT OF ACCOUNTS.—For purposes of this section—

"(1) IN GENERAL.—Within a capital construction fund 3 accounts shall be maintained:

"(A) the capital account,

"(B) the capital gain account, and

"(C) the ordinary income account.

"(2) CAPITAL ACCOUNT.—The capital account shall consist of—

"(A) amounts referred to in subsection (a)(1)(B),

"(B) amounts referred to in subsection (a)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (c)(1)(B),

"(C) the percentage applicable under section 243(a)(1) of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsec-

tion (c)(1)(C)) be allowed a deduction under section 243, and

"(D) interest income exempt from taxation under section 103.

"(3) CAPITAL GAIN ACCOUNT.—The capital gain account shall consist of—

"(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (a)(1)(C) or (a)(1)(D), reduced by

"(B) amounts representing capital losses on assets held in the fund for more than 6 months.

"(4) ORDINARY INCOME ACCOUNT.—The ordinary income account shall consist of—

"(A) amounts referred to in subsection (a)(1)(A),

"(B)(i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (a)(1)(C) or (a)(1)(D), reduced by

"(ii) amounts representing capital losses on assets held in the fund for 6 months or less,

"(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

"(D) ordinary income from a transaction described in subsection (a)(1)(C), and

"(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

"(5) CAPITAL LOSSES ONLY ALLOWED TO OFFSET CERTAIN GAINS.—Except on termination of a capital construction fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

"(e) PURPOSES OF QUALIFIED WITHDRAWALS.—

"(1) IN GENERAL.—A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

"(A) the acquisition, construction, or reconstruction of a qualified vessel,

"(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

"(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction, or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary, subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

"(2) PENALTY FOR FAILING TO FULFILL ANY SUBSTANTIAL OBLIGATION.—Under joint regulations, if the Secretary determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

"(f) TAX TREATMENT OF QUALIFIED WITHDRAWALS.—

"(1) ORDERING RULE.—Any qualified withdrawal from a fund shall be treated—

"(A) first as made out of the capital account,

"(B) second as made out of the capital gain account, and

"(C) third as made out of the ordinary income account.

"(2) ADJUSTMENT TO BASIS OF VESSEL, ETC., WHERE WITHDRAWAL FROM ORDINARY INCOME ACCOUNT.—If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

"(3) ADJUSTMENT TO BASIS OF VESSEL, ETC., WHERE WITHDRAWAL FROM CAPITAL GAIN ACCOUNT.—If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

"(4) ADJUSTMENT TO BASIS OF VESSELS, ETC., WHERE WITHDRAWALS PAY PRINCIPAL ON DEBT.—If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

"(5) ORDINARY INCOME RECAPTURE OF BASIS REDUCTION.—If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (g)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

"(g) TAX TREATMENT OF NONQUALIFIED WITHDRAWALS.—

"(1) IN GENERAL.—Except as provided in subsection (h), any withdrawal from a capital construction fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

"(2) ORDERING RULE.—Any nonqualified withdrawal from a fund shall be treated—

"(A) first as made out of the ordinary income account,

"(B) second as made out of the capital gain account, and

"(C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (f)(4), shall be treated as withdrawn on a last-in-first-out basis.

"(3) OPERATING RULES.—For purposes of this title—

"(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

"(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

"(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

"(i) no interest shall be payable under section 6601 and no addition to the tax shall be payable under section 6651,

"(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

"(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act of 1936 as in effect on December 31, 1969.

"(4) INTEREST RATE.—For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal—

"(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

"(B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury or his delegate and the applicable Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

"(5) AMOUNT NOT WITHDRAWN FROM FUND AFTER 25 YEARS FROM DEPOSIT TAXED AS NONQUALIFIED WITHDRAWAL.—

"(A) IN GENERAL.—The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

"If the amount remains in the fund at the close of the—	The applicable percentage is—
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent

"(B) EARNINGS TREATED AS DEPOSITS.—The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

"(C) AMOUNTS COMMITTED TREATED AS WITHDRAWN.—For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with

respect to an identified item for which such withdrawal may be made.

"(D) AUTHORITY TO TREAT EXCESS FUNDS AS WITHDRAWN.—If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

"(E) AMOUNTS IN FUND ON JANUARY 1, 1987.—For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

"(6) NONQUALIFIED WITHDRAWALS TAXED AT HIGHEST MARGINAL RATE.—

"(A) IN GENERAL.—In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 shall be determined—

"(i) by excluding such withdrawal from gross income, and

"(ii) by increasing the tax imposed by chapter 1 by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation).

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(i) or 1201(a) applies, the rate of tax taken into account under the preceding sentence shall not exceed 28 percent (34 percent in the case of a corporation).

"(B) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

"(i) such portion shall not be taken into account under subparagraph (A), and

"(ii) an amount equal to such portion shall be treated as a deduction under section 172 for the taxable year in which such withdrawal occurs.

"(C) COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.—Any nonqualified withdrawal excluded from gross income under subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2).

"(h) CERTAIN CORPORATE REORGANIZATIONS AND CHANGES IN PARTNERSHIPS.—Under joint regulations—

"(1) a transfer of a fund from one person to another person in a transaction to which section 381 applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

"(2) a similar rule shall be applied in the case of a continuation of a partnership.

"(i) DEFINITIONS.—For purposes of this section, any term defined in section 607(k) of the Merchant Marine Act, 1936 which is also used in this section (including the definition of 'Secretary') shall have the meaning given such term by such section 607(k) as in effect on the date of the enactment of this section."

(c) CREDITS NOT ALLOWED AGAINST INCREASE IN TAX.—Paragraph (2) of section 26(b) is amended by striking out "and" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(I) subparagraph (A) of section 7518(g)(6) (relating to nonqualified withdrawals from capital construction funds taxed at highest marginal rate)."

(d) DEPARTMENTAL REPORTS AND CERTIFICATION.—Section 607 of the Merchant Marine Act, 1936, is amended by adding at the end thereof the following new subsection:

"(m) DEPARTMENTAL REPORTS AND CERTIFICATION.—

"(1) IN GENERAL.—For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

"(2) CONTENTS OF REPORTS.—Each report shall set forth the name and taxpayer identification number of each person—

"(A) establishing a capital construction fund during such calendar year;

"(B) maintaining a capital construction fund as of the last day of such calendar year;

"(C) terminating a capital construction fund during such calendar year;

"(D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

"(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party."

(e) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 607(d)(1) of the Merchant Marine Act, 1936 is amended by inserting "and section 7518 of such Code" after "this section".

(2) Subparagraph (D) of section 607(d)(1) of such Act is amended by inserting "and section 7518 of such Code" after "this section".

(3) Subparagraph (C) of section 607(e)(2) of such Act is amended by striking out "85 percent" and inserting in lieu thereof "the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986".

(4) Subparagraph (E) of section 607(e)(4) of such Act is amended to read as follows:

"(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph."

(5) Paragraph (3) of section 607(g) of such Act is amended to read as follows:

"(3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion."

(6) Subsection (h) of section 607 of such Act is amended by adding at the end thereof the following new paragraphs:

"(5) AMOUNT NOT WITHDRAWN FROM FUND AFTER 25 YEARS FROM DEPOSIT TAXED AS NONQUALIFIED WITHDRAWAL.—

"(A) IN GENERAL.—The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

"If the amount remains in the fund at the close of the—	The applicable percentage is—
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent

"(B) EARNINGS TREATED AS DEPOSITS.—The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

"(C) AMOUNTS COMMITTED TREATED AS WITHDRAWN.—For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

"(D) AUTHORITY TO TREAT EXCESS FUNDS AS WITHDRAWN.—If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

"(E) AMOUNTS IN FUND ON JANUARY 1, 1987.—For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

"(6) NONQUALIFIED WITHDRAWALS TAXED AT HIGHEST MARGINAL RATE.—

"(A) IN GENERAL.—In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be determined—

"(i) by excluding such withdrawal from gross income, and

"(ii) by increasing the tax imposed by chapter 1 of such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code.

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(i) or 1201(a) of such Code applies, the rate of tax taken into account under the preceding sentence shall not exceed 28 percent (34 percent in the case of a corporation).

"(B) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

"(i) such portion shall not be taken into account under subparagraph (A), and

"(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code for the taxable year in which such withdrawal occurs.

"(C) COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.—Any nonqualified withdrawal excluded from gross income under

subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2) of the Internal Revenue Code of 1986."

(f) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7518. Tax incentives relating to merchant marine capital construction funds."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

TITLE III—CAPITAL GAINS

SUBTITLE A—INDIVIDUAL CAPITAL GAINS

SEC. 301. REPEAL OF EXCLUSION FOR LONG-TERM CAPITAL GAINS OF INDIVIDUALS.

(a) IN GENERAL.—Section 1202 (relating to deduction for capital gains) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 62(a) (defining adjusted gross income), as amended by section 132, is amended by striking out paragraph (3) and redesignating paragraphs (4), (5), (6), (7), (10), (11), (12), (13), (14), and (15) as paragraphs (3) through (12), respectively.

(2) Section 170(e)(1) (relating to certain contributions of ordinary income and capital gain property) is amended by striking out "40 percent (46/96 in the case of a corporation) of".

(3) Paragraph (2) of section 172(d) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets."

(4) Paragraph (1) of section 219(f) (defining compensation) is amended by striking out "paragraph (7)" and inserting in lieu thereof "paragraph (6)".

(5)(A) Section 223 (relating to cross references) is amended to read as follows:

"SEC. 223. CROSS REFERENCE.

"For deductions in respect of a decedent, see section 691."

(B) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out "references" in the item relating to section 223 and inserting in lieu thereof "reference".

(6) Paragraph (4) of section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose) is amended—

(A) by striking out the 1st sentence, and

(B) by striking out "ADJUSTMENTS" in the paragraph heading and inserting in lieu thereof "COORDINATION WITH SECTION 681".

(7) Paragraph (3) of section 643(a) (relating to distributable net income) is amended by striking out the last sentence.

(8) Paragraph (4) of section 691(c) (relating to deduction for estate tax) is amended—

(A) by striking out "1201, 1202, and 1211, and for purposes of section 57(a)(9)" and inserting in lieu thereof "1(j), 1201, and 1211", and

(B) by striking out "CAPITAL GAIN DEDUCTION, ETC.—" in the paragraph heading and inserting in lieu thereof "CAPITAL GAIN PROVISIONS.—".

(9) The second sentence of paragraph (2) of section 871(a) (relating to income not connected with United States business) is amended by striking out "such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and".

(10) Subsection (b) of section 1211 (relating to limitation on capital losses) is amended to read as follows:

"(b) OTHER TAXPAYERS.—In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of—

"(1) $3,000 ($1,500 in the case of a married individual filing a separate return), or

"(2) the excess of such losses over such gains."

(11) Paragraph (2) of section 1212(b) (relating to capital loss carrybacks and carryovers) is amended to read as follows:

"(2) SPECIAL RULE.—For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), an amount equal to the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) shall be treated as a short-term capital gain in such year."

(12) Paragraph (1) of section 1402(i) (relating to special rules for options and commodities dealers) is amended to read as follows:

"(1) IN GENERAL.—Notwithstanding subsection (a)(3)(A), in determining the net earnings from self-employment of any options dealer or commodities dealer, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts."

(13) The table of sections for part I of subchapter P of chapter 1 is amended by striking out the item relating to section 1202.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 302. 28-PERCENT CAPITAL GAINS RATE FOR TAXPAYERS OTHER THAN CORPORATIONS.

(a) IN GENERAL.—Section 1 (relating to tax imposed on individuals), as amended by sections 101 and 1411, is amended by adding at the end thereof the following new subsection:

"(j) MAXIMUM CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year to which this subsection applies, then the tax imposed by this section shall not exceed the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(i) the taxable income reduced by the amount of net capital gain, or

"(ii) the amount of taxable income taxed at a rate below 28 percent, plus

"(B) a tax of 28 percent of the amount of taxable income in excess of the amount determined under subparagraph (A), plus

"(C) the amount of increase determined under subsection (g).

"(2) YEARS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

"(A) any taxable year beginning in 1987, and

"(B) any taxable year beginning after 1987 if the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) (whichever applies) for such taxable year exceeds 28 percent."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986.

(c) TRANSITIONAL RULE.—The tax under section 1 of the Internal Revenue Code of 1986 on the long-term capital gain on rights to royalties paid under leases and assignments binding on September 25, 1985, by a limited partnership formed on March 1, 1977, which on October 30, 1979, assigned leases and which assignment was amended on April 27, 1981, shall not exceed 20 percent.

SUBTITLE B—REPEAL OF CORPORATE CAPITAL GAINS TREATMENT

SEC. 311. REPEAL OF CORPORATE CAPITAL GAINS TREATMENT.

(a) GENERAL RULE.—Section 1201 (relating to alternative tax for corporations) is amended to read as follows:

"SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS.

"(a) GENERAL RULE.—If for any taxable year a corporation has a net capital gain and any rate of tax imposed by section 11, 511, or 831(a) (whichever is applicable) exceeds 34 percent (determined without regard to the last sentence of section 11(b)), then, in lieu of any such tax, there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

"(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(2) a tax of 34 percent of the net capital gain.

"(b) CROSS REFERENCES.—

"For computation of the alternative tax—

"(1) in the case of life insurance companies, see section 801(a)(2),

"(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D), and

"(3) in the case of real estate investment trusts, see section 857(b)(3)(A)."

(b) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 852(b)(3)(D) is amended by striking out "72 percent" and inserting in lieu thereof "66 percent".

(2) Subparagraph (E) of section 593(b)(2), as in effect before the amendments made by title IX, is amended by adding "and" at the end of clause (iii), by striking out clause (iv), and by redesignating clause (v) as clause (iv).

(3) The second sentence of section 631(c) is amended by striking out "Such owner" and inserting in lieu thereof "If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner".

(4) Paragraphs (1) and (2) of section 1445(e) (as amended by title XVIII) are each amended by striking out "28 percent" and inserting in lieu thereof "34 percent".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1986.

(d) TRANSITIONAL RULES.—

(1) TAXABLE YEARS WHICH BEGIN IN 1986 AND END IN 1987.—In the case of any taxable year which begins before January 1, 1987, and ends on or after such date, paragraph (2) of section 1201(a) of the Internal Revenue Code of 1954, as in effect on the date before the date of enactment of this Act, shall be applied as if it read as follows:

"(2) the sum of—

"(A) 28 percent of the lesser of—

"(i) the net capital gain determined by taking into account only gain or loss which is properly taken into account for the portion of the taxable year before January 1, 1987, or

"(ii) the net capital gain for the taxable year, and

"(B) 34 percent of the excess (if any) of—

"(i) the net capital gain for the taxable year, over

"(ii) the amount of the net capital gain taken into account under subparagraph (A)."

(2) REVOCATION OF ELECTIONS UNDER SECTION 631(a).—Any election under section 631(a) of the Internal Revenue Code of 1954 made (whether by a corporation or a person other than a corporation) for a taxable year beginning before January 1, 1987, may be revoked by the taxpayer for any taxable year ending after December 31, 1986. For purposes of determining whether the taxpayer may make a further election under such section, such election (and any revocation under this paragraph) shall not be taken into account.

SUBTITLE C—INCENTIVE STOCK OPTIONS

SEC. 321. REPEAL OF REQUIREMENT THAT INCENTIVE STOCK OPTIONS ARE EXERCISABLE ONLY IN CHRONOLOGICAL ORDER; MODIFICATION OF $100,000 LIMITATION.

(a) GENERAL RULE.—Subsection (b) of section 422A is amended by inserting "and" at the end of paragraph (6) and by striking out paragraphs (7) and (8) and inserting in lieu thereof the following new paragraph:

"(7) under the terms of the plan the aggregate fair market value (determined at the time the option is granted) of the stock with respect to which incentive stock options are exercisable for the 1st time by such individual during any calendar year (under all such plans of the individual's employer corporation and its parent and subsidiary corporations) shall not exceed $100,000."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 422A is amended—

(A) by striking out paragraphs (4) and (7), and

(B) by redesignating paragraphs (5), (6), (8), (9), and (10) as paragraphs (4), (5), (6), (7), and (8), respectively.

(2) The last sentence of section 422A(c)(1) is amended by striking out "paragraph (8) of subsection (b) and paragraph (4) of this subsection" and inserting in lieu thereof "paragraph (7) of subsection (b)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to options granted after December 31, 1986.

SUBTITLE D—STRADDLES

SEC. 331. YEAR-END RULE EXPANDED.

(a) IN GENERAL.—Subparagraph (E) of section 1092(c)(4) (defining straddle) is amended—

(1) by inserting "or the stock is disposed of at a loss" in clause (i) after "closed",

(2) by striking out "is" in clause (ii) and inserting in lieu thereof "or gains on such options are", and

(3) by inserting "or option" after "stock" and "or the disposition of such stock" after "options" in clause (iii).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after January 1, 1987.

TITLE IV—AGRICULTURE, ENERGY, AND NATURAL RESOURCES

SUBTITLE A—AGRICULTURE

SEC. 401. LIMITATION ON EXPENSING OF SOIL AND WATER CONSERVATION EXPENDITURES.

(a) GENERAL RULE.—Subsection (c) of section 175 (relating to soil and water conservation expenditures) is amended by adding at the end thereof the following new paragraph:

"(3) ADDITIONAL LIMITATIONS.—

"(A) EXPENDITURES MUST BE CONSISTENT WITH SOIL CONSERVATION PLAN.—Notwithstanding any other provision of this section, subsection (a) shall not apply to any expenditures unless such expenditures are consistent with—

"(i) the plan (if any) approved by the Soil Conservation Service of the Department of Agriculture for the area in which the land is located, or

"(ii) if there is no plan described in clause (i), any soil conservation plan of a comparable State agency.

"(B) CERTAIN WETLAND, ETC., ACTIVITIES NOT QUALIFIED.—Subsection (a) shall not apply to any expenditures in connection with the draining or filling of wetlands or land preparation for center pivot irrigation systems."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after December 31, 1986, in taxable years ending after such date.

SEC. 402. REPEAL OF SPECIAL TREATMENT FOR EXPENDITURES FOR CLEARING LAND.

(a) IN GENERAL.—Section 182 (relating to expenditures by farmers for clearing land) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 263(a) (relating to capital expenditures) is amended by striking out subparagraph (E) and by redesignating subparagraphs (F), (G), and (H) as subparagraphs (E), (F), and (G), respectively.

(2) Subparagraph (A) of section 1252(a)(1) (relating to gain from disposition of farm land) is amended by striking out "(relating to expenditures by farmers for clearing land)" and inserting in lieu thereof "(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)".

(3) The table of sections for part VI of subchapter B of chapter 1 is amended by striking out the item relating to section 182.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 1985, in taxable years ending after such date.

SEC. 403. TREATMENT OF DISPOSITIONS OF CONVERTED WETLANDS OR HIGHLY ERODIBLE CROPLANDS.

(a) GENERAL RULE.—Part IV of subchapter P of chapter 1 (relating to special rules for determining capital gains and losses) is amended by adding at the end thereof the following new section:

"SEC. 1257. DISPOSITION OF CONVERTED WETLANDS OR HIGHLY ERODIBLE CROPLANDS.

"(a) GAIN TREATED AS ORDINARY INCOME.—Any gain on the disposition of converted wetland or highly erodible cropland shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

"(b) LOSS TREATED AS LONG-TERM CAPITAL LOSS.—Any loss recognized on the disposition of converted wetland or highly erodible cropland shall be treated as a long-term capital loss.

"(c) DEFINITIONS.—For purposes of this section—

"(1) CONVERTED WETLAND.—The term 'converted wetland' means any converted wetland (as defined in section 1201(4) of the Food Security Act of 1985 (16 U.S.C. 3801(4))) held—

"(A) by the person whose activities resulted in such land being converted wetland, or

"(B) by any other person who at any time used such land for farming purposes.

"(2) HIGHLY ERODIBLE CROPLAND.—The term 'highly erodible cropland' means any highly erodible cropland (as defined in section 1201(6) of the Food Security Act of 1985 (16 U.S.C. 3801(6))), if at any time the taxpayer used such land for farming purposes (other than the grazing of animals).

"(3) TREATMENT OF SUCCESSORS.—If any land is converted wetland or highly erodible cropland in the hands of any person, such land shall be treated as converted wetland or highly erodible cropland in the hands of any other person whose adjusted basis in such land is determined (in whole or in part) by reference to the adjusted basis of such land in the hands of such person.

"(d) SPECIAL RULES.—Under regulations prescribed by the Secretary, rules similar to the rules applicable under section 1245 shall apply for purposes of subsection (a). For purposes of sections 170(e), 341(e)(12), and 751(c), amounts treated as ordinary income under subsection (a) shall be treated in the same manner as amounts treated as ordinary income under section 1245."

(b) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1257. Disposition of converted wetlands or highly erodible croplands."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions of converted wetland or highly erodible cropland (as defined in section 1257(c) of the Internal Revenue Code of 1986 as added by this section) first used for farming after March 1, 1986, in taxable years ending after that date.

SEC. 404. LIMITATION ON CERTAIN PREPAID FARMING EXPENSES.

(a) GENERAL RULE.—Section 464 (relating to limitations on deductions in case of farming syndicates) is amended by adding at the end thereof the following new subsection:

"(f) SUBSECTIONS (a) AND (b) TO APPLY TO CERTAIN PERSONS PREPAYING 50 PERCENT OR MORE OF CERTAIN FARMING EXPENSES.—

"(1) IN GENERAL.—In the case of a taxpayer to whom this subsection applies, subsections (a) and (b) shall apply to the excess prepaid farm supplies of such taxpayer in the same manner as if such taxpayer were a farming syndicate.

"(2) TAXPAYER TO WHOM SUBSECTION APPLIES.—This subsection applies to any taxpayer for any taxable year if such taxpayer—

"(A) does not use an accrual method of accounting,

"(B) has excess prepaid farm supplies for the taxable year, and

"(C) is not a qualified farm-related taxpayer.

"(3) QUALIFIED FARM-RELATED TAXPAYER.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified farm-related taxpayer' means any farm-related taxpayer if—

"(i)(I) the aggregate prepaid farm supplies for the 3 taxable years preceding the taxable year are less than 50 percent of,

"(II) the aggregate deductible farming expenses (other than prepaid farm supplies) for such 3 taxable years, or

"(ii) the taxpayer has excess prepaid farm supplies for the taxable year by reason of any change in business operation directly attributable to extraordinary circumstances.

"(B) FARM-RELATED TAXPAYER.—For purposes of this paragraph, the term 'farm-related taxpayer' means any taxpayer—

"(i) whose principal residence (within the meaning of section 1034) is on a farm,

"(ii) who has a principal occupation of farming, or

"(iii) who is a member of the family (within the meaning of subsection (c)(2)(E)) of a taxpayer described in clause (i) or (ii).

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) EXCESS PREPAID FARM SUPPLIES.—The term 'excess prepaid farm supplies' means the prepaid farm supplies for the taxable year to the extent the amount of such supplies exceeds 50 percent of the deductible farming expenses for the taxable year (other than prepaid farm supplies).

"(B) PREPAID FARM SUPPLIES.—The term 'prepaid farm supplies' means any amounts which are described in subsection (a) or (b) and would be allowable for a subsequent taxable year under the rules of subsections (a) and (b).

"(C) DEDUCTIBLE FARMING EXPENSES.—The term 'deductible farming expenses' means any amount allowable as a deduction under this chapter (including any amount allowable as a deduction for depreciation or amortization) which is properly allocable to the trade or business of farming."

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 464 is amended by striking out "in case of farming syndicates" and inserting in lieu thereof "for certain farming".

(2) The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by striking out "in case of farming syndicates" in the item relating to section 464 and inserting in lieu thereof "for certain farming expenses".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after March 1, 1986, in taxable years beginning after such date.

SEC. 405. TAX TREATMENT OF DISCHARGE OF CERTAIN INDEBTEDNESS OF SOLVENT FARMERS.

(a) IN GENERAL.—Section 108 (relating to income from discharge of indebtedness) is amended by adding at the end thereof the following new subsection:

"(g) SPECIAL RULES FOR DISCHARGE OF QUALIFIED FARM INDEBTEDNESS OF SOLVENT FARMERS.—

"(1) IN GENERAL.—For purposes of this section and section 1017, the discharge by a qualified person of qualified farm indebtedness of a taxpayer who is not insolvent at the time of the discharge shall be treated in the same manner as if the discharge had occurred when the taxpayer was insolvent.

"(2) QUALIFIED FARM INDEBTEDNESS.—For purposes of this subsection, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

"(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

"(B) 50 percent or more of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

"(3) QUALIFIED PERSON.—For purposes of this subsection, the term 'qualified person' means a person described in section 46(c)(8)(D)(iv)."

(b) BASIS ADJUSTMENT.—Section 1017(b) (relating to basis adjustment) is amended by adding at the end thereof the following new paragraph:

"(4) ORDERING RULE IN THE CASE OF QUALIFIED FARM INDEBTEDNESS.—Any amount which is excluded from gross income under section 108(a) by reason of the discharge of qualified farm indebtedness (within the meaning of section 108(g)(2)) and which under subsection (b) of section 108 is to be applied to reduce basis shall be applied—

"(A) first to reduce the tax attributes described in section 108(b)(2) (other than subparagraph (D) thereof),

"(B) then to reduce basis of property other than property described in subparagraph (C), and

"(C) then to reduce the basis of land used or held for use in the trade or business of farming."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness occurring after April 9, 1986, in taxable years ending after such date.

SEC. 406. RETENTION OF CAPITAL GAINS TREATMENT FOR SALES OF DAIRY CATTLE UNDER MILK PRODUCTION TERMINATION PROGRAM.

The amendments made by subtitles A and B of title III shall not apply to any gain from the sale of dairy cattle under a valid contract with the United States Department of Agriculture under the milk production termination program to the extent such gain is properly taken into account under the taxpayer's method of accounting after January 1, 1987, and before September 1, 1987.

SUBTITLE B—TREATMENT OF OIL, GAS, GEOTHERMAL, AND HARD MINERALS

SEC. 411. TREATMENT OF INTANGIBLE DRILLING COSTS AND MINERAL EXPLORATION AND DEVELOPMENT COSTS.

(a) TREATMENT UNDER SECTION 291.—

(1) INCREASE IN PERCENTAGE DISALLOWANCE.—Paragraph (1) of section 291(b) (relating to special rules for treatment of intangible drilling costs and mineral exploration and development costs) is amended by striking out "20 percent" and inserting in lieu thereof "30 percent".

(2) TREATMENT OF DISALLOWED AMOUNT.—Subsection (b) of section 291 is amended by striking out paragraphs (2), (3), (4), (5), and (6) and inserting in lieu thereof the following new paragraphs:

"(2) AMORTIZATION OF AMOUNTS NOT ALLOWABLE AS DEDUCTIONS UNDER PARAGRAPH (1).—The amount not allowable as a deduction under section 263(c), 616(a), or 617(a) (as the case may be) for any taxable year by reason of paragraph (1) shall be allowable as a deduction ratably over the 60-month period beginning with the month in which the costs are paid or incurred.

"(3) DISPOSITIONS.—For purposes of section 1254, any deduction under paragraph (2) shall be treated as a deduction allowable under section 263(c), 616(a), or 617(a) (whichever is appropriate).

"(4) INTEGRATED OIL COMPANY DEFINED.—For purposes of this subsection, the term 'integrated oil company' means, with respect to any taxable year, any producer (within the meaning of section 4996(a)(1)) of crude oil other than an independent producer (within the meaning of section 4992(b)).

"(5) COORDINATION WITH COST DEPLETION.—The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611."

(b) TREATMENT OF COSTS INCURRED OUTSIDE THE UNITED STATES.—

(1) INTANGIBLE DRILLING AND DEVELOPMENT COSTS.—

(A) IN GENERAL.—Section 263 (relating to capital expenditures) is amended by adding at the end thereof the following new subsection:

"(i) SPECIAL RULES FOR INTANGIBLE DRILLING AND DEVELOPMENT COSTS INCURRED OUTSIDE THE UNITED STATES.—In the case of intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States—

"(1) subsection (c) shall not apply, and

"(2) such costs shall—

"(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (determined without regard to section 613), or

"(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such costs were paid or incurred.

This subsection shall not apply to costs paid or incurred with respect to a nonproductive well."

(B) CONFORMING AMENDMENT.—Section 263(c) is amended by inserting "and except as provided in subsection (i)," after "subsection (a),".

(2) DEVELOPMENT AND MINING EXPLORATION COSTS.—

(A) IN GENERAL.—Section 616 (relating to development expenditures) is amended by redesignating subsection (d) as subsection (e), and inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULES FOR FOREIGN DEVELOPMENT.—In the case of any expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside of the United States—

"(1) subsections (a) and (b) shall not apply, and

"(2) such expenditures shall—

"(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

"(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such expenditures were paid or incurred."

(B) CERTAIN MINING EXPLORATION EXPENDITURES OUTSIDE THE UNITED STATES.—Section 617(h) (relating to limitation) is amended to read as follows:

"(h) SPECIAL RULES FOR FOREIGN EXPLORATION.—In the case of any expenditures paid or incurred before the development stage for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (other than an oil, gas, or geothermal well) located outside the United States—

"(1) subsection (a) shall not apply, and

"(2) such expenditures shall—

"(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

"(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such expenditures were paid or incurred."

(C) CONFORMING AMENDMENTS.—

(i) Subsection (a) of section 616 is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (d)".

(ii) Subparagraph (B) of section 291(b)(1) is amended by striking out "617" and inserting in lieu thereof "617(a)".

(iii) Paragraph (10) of section 381(c) is amended by striking out the last sentence thereof.

(iv) Subparagraph (C) of section 243(b)(3) is amended—

(I) by adding "and" at the end of clause (i),

(II) by striking out clause (ii), and

(III) by redesignating clause (iii) as clause (ii).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to costs paid or incurred after December 31, 1986, in taxable years ending after such date.

(2) TRANSITION RULE.—The amendments made by this section shall not apply with respect to intangible drilling and development costs incurred by United States companies pursuant to a minority interest in a license for Netherlands or United Kingdom North Sea development if such interest was acquired on or before December 31, 1985.

SEC. 412. MODIFICATION OF PERCENTAGE DEPLETION RULES.

(a) PERCENTAGE DEPLETION NOT ALLOWED FOR LEASE BONUSES, ETC.—

(1) IN GENERAL.—Subsection (d) of section 613A (relating to limitations on application of subsection (c)) is amended by adding at the end thereof the following new paragraph:

"(5) PERCENTAGE DEPLETION NOT ALLOWED FOR LEASE BONUSES, ETC.—In the case of any oil or gas property to which subsection (c) applies, for purposes of section 613, the term 'gross income from the property' shall not include any lease bonus, advance royalty, or other amount payable without regard to production from property."

(2) GEOTHERMAL DEPOSITS.—Section 613(e) is amended by adding at the end thereof the following new paragraph:

"(4) PERCENTAGE DEPLETION NOT TO INCLUDE LEASE BONUSES, ETC.—In the case of any geothermal deposit, the term 'gross income from the property' shall, for purposes of this section, not include any amount described in section 613A(d)(5)."

(3) EFFECTIVE DATE.—The amendment made by this subsection shall apply to amounts received or accrued after August 16, 1986, in taxable years ending after such date.

(b) TREATMENT UNDER SECTION 291 OF COAL AND IRON ORE.—

(1) IN GENERAL.—Paragraph (2) of section 291(a) (relating to reductions in percentage depletion) is amended by striking out "15 percent" and inserting in lieu thereof "20 percent".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

SEC. 413. GAIN FROM DISPOSITION OF INTERESTS IN OIL, GAS, GEOTHERMAL, OR OTHER MINERAL PROPERTIES.

(a) GENERAL RULE.—Section 1254 is amended to read as follows:

"SEC. 1254. GAIN FROM DISPOSITION OF INTEREST IN OIL, GAS, GEOTHERMAL, OR OTHER MINERAL PROPERTIES.

"(a) GENERAL RULE.—

"(1) ORDINARY INCOME.—If any section 1254 property is disposed of, the lesser of—

"(A) the aggregate amount of—

"(i) expenditures which have been deducted by the taxpayer or any person under section 263, 616, or 617 with respect to such property and which, but for such deduction, would have been included in the adjusted basis of such property, and

"(ii) the deductions for depletion under section 611 which reduced the adjusted basis of such property, or

"(B) the excess of—

"(i) in the case of—

"(I) a sale, exchange, or involuntary conversion, the amount realized, or

"(II) in the case of any other disposition, the fair market value of such property, over

"(ii) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(2) DISPOSITION OF PORTION OF PROPERTY.—For purposes of paragraph (1)—

"(A) In the case of the disposition of a portion of section 1254 property (other than an undivided interest), the entire amount of the aggregate expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

"(B) In the case of the disposition of an undivided interest in a section 1254 property (or a portion thereof), a proportionate part of the expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

"(3) SECTION 1254 PROPERTY.—The term 'section 1254 property' means any property (within the meaning of section 614) if—

"(A) any expenditures described in paragraph (1)(A) are properly chargeable to such property, or

"(B) the adjusted basis of such property includes adjustments for deductions for depletion under section 611.

"(b) SPECIAL RULES UNDER REGULATIONS.—Under regulations prescribed by the Secretary—

"(1) rules similar to the rule of subsection (g) of section 617 and to the rules of subsections (b) and (c) of section 1245 shall be applied for purposes of this section; and

"(2) in the case of the sale or exchange of stock in an S corporation, rules similar to the rules of section 751 shall be applied to that portion of the excess of the amount realized over the adjusted basis of the stock which is attributable to expenditures referred to in subsection (a)(1)(A) of this section."

(b) COORDINATION WITH SECTION 617(d).—Subsection (d) of section 617 is amended by adding at the end thereof the following new paragraph:

"(5) COORDINATION WITH SECTION 1254.—This subsection shall not apply to any disposition to which section 1254 applies."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to any disposition of property which is placed in service by the taxpayer after December 31, 1986.

(2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to any disposition of property placed in service after December 31, 1986, if such property was acquired pursuant to a written contract which was entered into before September 26, 1985, and which was binding at all times thereafter.

SUBTITLE C—OTHER PROVISIONS

SEC. 421. EXTENSION OF ENERGY INVESTMENT CREDIT FOR SOLAR, GEOTHERMAL, OCEAN THERMAL, AND BIOMASS PROPERTY.

(a) IN GENERAL.—The table contained in subparagraph (A) of section 46(b)(2) (relating to energy percentage) is amended by adding at the end thereof the following new items:

"(viii) SOLAR ENERGY PROPERTY.—Property described in section 48(l)(4) (other than wind energy property):		
A. 15 percent.	Jan. 1, 1986	Dec. 31, 1986.
B. 12 percent.	Jan. 1, 1987	Dec. 31, 1987.
C. 10 percent.	Jan. 1, 1988	Dec. 31, 1988.
"(ix) GEOTHERMAL PROPERTY.—Property described in section 48(l)(3)(A)(viii):		
A. 15 percent.	Jan. 1, 1986	Dec. 31, 1986.
B. 10 percent.	Jan. 1, 1987	Dec. 31, 1988.
"(x) OCEAN THERMAL PROPERTY.—Property described in section 48(l)(3)(A)(ix):		
15 percent.....	Jan 1, 1986	Dec. 31, 1988.
"(xi) BIOMASS PROPERTY.—Property described in section 48(l)(15):		
A. 15 percent.	Jan. 1, 1986	Dec. 31, 1986.
B. 10 percent.	Jan. 1, 1987	Dec. 31, 1987."

(b) TREATMENT OF CERTAIN TRANSITIONAL RULE PROPERTY.—Paragraph (2) of section 46(b) is amended by adding at the end thereof the following new subparagraph:

"(E) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c) and (d) of section 49 shall apply to any credit allowable by reason of subparagraph (C) or (D)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after December 31, 1985, under rules similar to rules under section 48(m) of the Internal Revenue Code of 1986.

SEC. 422. PROVISIONS RELATING TO EXCISE TAX ON FUELS.

(a) REDUCTION IN EXCISE TAX EXEMPTION FOR QUALIFIED METHANOL AND ETHANOL FUELS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(b)(2) (relating to exemption for qualified ethanol and methanol fuels) is amended to read as follows:

"(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel, subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents'.".

(2) CONFORMING AMENDMENT.—The heading for section 4041(b) is amended by striking out "Exemption" the second place it appears and inserting in lieu thereof "Reduction in Tax".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on January 1, 1987.

(b) EXTENSION OF REDUCTION IN TAX FOR FUEL USED BY TAXICABS.—Paragraph (3) of section 6427(e) (relating to termination) is amended by striking out "September 30, 1985" and inserting in lieu thereof "September 30, 1988".

SEC. 423. ETHYL ALCOHOL AND MIXTURES THEREOF FOR FUEL USE.

(a) IN GENERAL.—Except as provided in subsection (b), no ethyl alcohol or a mixture thereof may be considered—

(1) for purposes of general headnote 3(a) of the Tariff Schedules of the United States, to be—

(A) the growth or product of an insular possession of the United States,

(B) manufactured or produced in an insular possession from materials which are the growth, product, or manufacture of any such possession, or

(C) otherwise eligible for exemption from duty under such headnote as the growth or product of an insular possession; or

(2) for purposes of section 213 of the Caribbean Basin Economic Recovery Act, to be—

(A) an article that is wholly the growth, product, or manufacture of a beneficiary country,

(B) a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country,

(C) a material produced in a beneficiary country, or

(D) otherwise eligible for duty-free treatment under such Act as the growth, product, or manufacture of a beneficiary country;

unless the ethyl alcohol or mixture thereof is an indigenous product of that insular possession or beneficiary country.

(b) EXCEPTION.—

(1) Subject to the limitation in paragraph (2), subsection (a) shall not apply to ethyl alcohol that is imported into the United States during calendar years 1987 and 1988 and produced in—

(A) an azeotropic distillation facility located in an insular possession of the United States or a beneficiary country, if that facility was established before, and in operation on, January 1, 1986, or

(B) an azeotropic distillation facility—

(i) at least 50 percent of the total value of the equipment and components of which were—

(I) produced in the United States, and

(II) owned by a corporation at least 50 percent of the total value of the outstanding shares of stock of which were owned by a United States person (or persons) on or before January 1, 1986, and

(ii) substantially all of the equipment and components of which were, on or before January 1, 1986—

(I) located in the United States under the possession or control of such corporation,

(II) ready for shipment to, and installation in, a beneficiary country, and

(iii) which—

(I) has on the date of enactment of this Act, or

(II) will have at the time such facility is placed in service (based on estimates made before the date of enactment of this Act),

a stated capacity to produce not more than 42,000,000 gallons of such product per year.

(2) The exception provided under paragraph (1) shall cease to apply during each of calendar years 1987 and 1988 to ethyl alcohol produced in a facility described in subparagraph (A) or (B) of paragraph (1) after 20,000,000 gallons of ethyl alcohol produced in that facility are entered into the United States during that year.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "ethyl alcohol or a mixture thereof" means (except for purposes of subsection (e)) ethyl alcohol or any mixture thereof described in item 901.50 of the Appendix to the Tariff Schedules of the United States.

(2) Ethyl alcohol or a mixture thereof may be treated as being an indigenous product of an insular possession or beneficiary country only if the ethyl alcohol or a mixture thereof—

(A) has been both dehydrated and produced by a process of full-scale fermentation within that insular possession or beneficiary country; or

(B) has been dehydrated within that insular possession or beneficiary country from hydrous ethyl alcohol that includes hydrous ethyl alcohol which is wholly the product or manufacture of any insular possession or beneficiary country and which has a value not less than—

(i) 30 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1987, except that this clause shall not apply to any ethyl alcohol or mixture which has been dehydrated in the United States Virgin Islands by a facility with respect to which—

(I) the owner has entered into a binding contract for the engineering and design of full-scale fermentation capacity, and

(II) authorization for operation of a full-scale fermentation facility has been granted by the Island authorities before May 1, 1986,

(ii) 60 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1988, and

(iii) 75 percent of the value of the ethyl alcohol or mixture, if entered after December 31, 1988.

(3) The term "beneficiary country" has the meaning given to such term under section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702).

(4) The term "United States person" has the meaning given to such term by section 7701(a)(3) of the Internal Revenue Code of 1986.

(5) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(d) AMENDMENT TO APPENDIX TO SCHEDULES.—The item designation for item 901.50 of the Appendix to the Tariff Schedules of the United States is amended to read as follows: "Ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) or any mixture containing such ethyl alcohol (provided for in part 1, 2 or 10, schedule 4) if such ethyl alcohol or mixture is to be used as fuel or in producing a mixture of gasoline and alcohol, a mixture of a special fuel and alcohol, or any other mixture to be used as fuel (including motor fuel provided for in item 475.25), or is suitable for any such uses."

(e) DRAWBACKS.—

(1) For purposes of subsections (b) and (j)(2) of section 313 of the Tariff Act of 1930 (19 U.S.C. 1313), as amended by section 1888(2) of this Act, any ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) which is subject to the additional duty imposed by item 901.50 of the Appendix to such Schedules may be treated as being fungible with, or of being of the same kind and quality as, any other imported ethyl alcohol (provided for in item 427.88 of such Schedules) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) only if such other imported ethyl alcohol or mixture thereof is also subject to such additional duty.

(2) Paragraph (1) shall not apply with respect to ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethly alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) that is exempt from the additional duty imposed by item 901.50 of the Appendix to such Schedules by reason of—

(A) subsection (b), or

(B) any agreement entered into under section 102 (b) of the Trade Act of 1974.

(f) CONFORMING AMENDMENTS.—

(1) General headnote 3(a)(i) of the Tariff Schedules of the United States is amended by inserting "and except as provided in section 423 of the Tax Reform Act of 1986," after "part 7 of schedule 7,".

(2) Section 213(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(1)) is amended by inserting "and subject to section 423 of the Tax Reform Act of 1986," after "Unless otherwise excluded from eligibility by this title,".

(3) The headnotes to subpart A of part 1 of the Appendix to the Tariff Schedules of the United States are amended by adding at the end thereof the following:

"2. For purposes of item 901.50, the phrase 'is suitable for any such uses' does not include ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) that is certified by the importer of record to the satisfaction of the Commissioner of Customs (hereinafter in this headnote referred to as the 'Commissioner') to be ethyl alcohol or a mixture containing such ethyl alcohol imported for uses other than liquid motor fuel use or use in producing liquid motor fuel related mixtures. If the importer of record certifies nonliquid motor fuel use for purposes of establishing actual use or suitability under item 901.50, the Commissioner shall not liquidate the entry of ethyl alcohol until he is satisfied that the ethyl alcohol has in fact not been used for liquid motor fuel use or use in producing liquid motor fuel related mixtures. If he is not satisfied within a reasonable period of time not less than 18 months from the date of entry, then the duties provided for in item 901.50 shall be payable retroactive to the date of entry. Such duties shall also become payable, retroactive to the date of entry, immediately upon the diversion to liquid motor fuel use of any ethyl alcohol or ethyl alcohol mixture certified upon entry as having been imported for non-liquid motor fuel use."

(g) EFFECTIVE PERIOD.—

(1) The provisions of, and the amendments made by, this section (other than subsection (e)) shall apply to articles entered—

(A) after December 31, 1986, and

(B) before the expiration of the effective period of item 901.50 of the Appendix to the Tariff Schedules of the United States.

(2) The provisions of subsection (e) shall take effect on the date of the enactment of this Act.

TITLE V—TAX SHELTER LIMITATIONS; INTEREST LIMITATIONS

Subtitle A—Limitations On Tax Shelters

SEC. 501. LIMITATIONS ON LOSSES AND CREDITS FROM PASSIVE ACTIVITIES.

(a) GENERAL RULE.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end thereof the following new section:

"SEC. 469. PASSIVE ACTIVITY LOSSES AND CREDITS LIMITED.

"(a) DISALLOWANCE.—

"(1) IN GENERAL.—If for any taxable year the taxpayer is described in paragraph (2), neither—

"(A) the passive activity loss, nor

"(B) the passive activity credit,

for the taxable year shall be allowed.

"(2) PERSONS DESCRIBED.—The following are described in this paragraph:

"(A) any individual, estate, or trust,

"(B) any closely held C corporation, and

"(C) any personal service corporation.

"(b) DISALLOWED LOSS OR CREDIT CARRIED TO NEXT YEAR.—Except as otherwise provided in this section, any loss or credit from an activity which is disallowed under subsection (a) shall be treated as a deduction or credit allocable to such activity in the next taxable year.

"(c) PASSIVE ACTIVITY DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'passive activity' means any activity—

"(A) which involves the conduct of any trade or business, and

"(B) in which the taxpayer does not materially participate.

"(2) PASSIVE ACTIVITY INCLUDES ANY RENTAL ACTIVITY.—The term 'passive activity' includes any rental activity.

"(3) WORKING INTERESTS IN OIL AND GAS PROPERTY.—

"(A) IN GENERAL.—The term 'passive activity' shall not include any working interest in any oil or gas property which the taxpayer holds directly or through an entity which does not limit the liability of the taxpayer with respect to such interest.

"(B) INCOME IN SUBSEQUENT YEARS.—If any taxpayer has any loss for any taxable year from a working interest in any oil or gas property which is treated as a loss which is not from a passive activity, then any net income from such property (or any property the basis of which is determined in whole or in part by reference to the basis of such property) for any succeeding taxable year shall be treated as income of the taxpayer which is not from a passive activity.

"(4) MATERIAL PARTICIPATION NOT REQUIRED FOR PARAGRAPHS (2) AND (3).—Paragraphs (2) and (3) shall be applied without regard to whether or not the taxpayer materially participates in the activity.

"(5) TRADE OR BUSINESS INCLUDES RESEARCH AND EXPERIMENTATION ACTIVITY.—For purposes of paragraph (1)(A), the term 'trade or business' includes any activity involving research or experimentation (within the meaning of section 174).

"(6) ACTIVITY IN CONNECTION WITH TRADE OR BUSINESS OR PRODUCTION OF INCOME.—To the extent provided in regulations, for purposes of paragraph (1)(A), the term 'trade or business' includes—

"(A) any activity in connection with a trade or business, or

"(B) any activity with respect to which expenses are allowable as a deduction under section 212.

"(d) PASSIVE ACTIVITY LOSS AND CREDIT DEFINED.—For purposes of this section—

"(1) PASSIVE ACTIVITY LOSS.—The term 'passive activity loss' means the amount (if any) by which—

"(A) the aggregate losses from all passive activities for the taxable year, exceed

"(B) the aggregate income from all passive activities for such year.

"(2) PASSIVE ACTIVITY CREDIT.—The term 'passive activity credit' means the amount (if any) by which—

"(A) the sum of the credits from all passive activities allowable for the taxable year under—

"(i) subpart D of part IV of subchapter A, or

"(ii) subpart B (other than section 27(a)) of such part IV, exceeds

"(B) the regular tax liability of the taxpayer for the taxable year allocable to all passive activities.

"(e) SPECIAL RULES FOR DETERMINING INCOME OR LOSS FROM A PASSIVE ACTIVITY.—For purposes of this section—

"(1) CERTAIN INCOME NOT TREATED AS INCOME FROM PASSIVE ACTIVITY.—In determining the income or loss from any activity—

"(A) IN GENERAL.—There shall not be taken into account—

"(i) any—

"(I) gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business,

"(II) expenses (other than interest) which are clearly and directly allocable to such gross income, and

"(III) interest expense properly allocable to such gross income, and

"(ii) gain or loss attributable to the disposition of property—

"(I) producing income of a type described in clause (i), or

"(II) held for investment.

For purposes of clause (ii), any interest in a passive activity shall not be treated as property held for investment.

"(B) RETURN ON WORKING CAPITAL.—For purposes of subparagraph (A), any income, gain, or loss which is attributable to an investment of working capital shall be treated as not derived in the ordinary course of a trade or business.

"(2) PASSIVE LOSSES OF CERTAIN CLOSELY HELD CORPORATIONS MAY OFFSET ACTIVE INCOME.—

"(A) IN GENERAL.—If a closely held C corporation (other than a personal service corporation) has net active income for any taxable year, the passive activity loss of such taxpayer for such taxable year (determined without regard to this paragraph)—

"(i) shall be allowable as a deduction against net active income, and

"(ii) shall not be taken into account under subsection (a) to the extent so allowable as a deduction.

A similar rule shall apply in the case of any passive activity credit of the taxpayer.

"(B) NET ACTIVE INCOME.—For purposes of this paragraph, the term 'net active income' means the taxable income of the taxpayer for the taxable year determined without regard to—

"(i) any income or loss from a passive activity, and

"(ii) any item of gross income, expense, gain, or loss described in paragraph (1)(A).

"(3) COMPENSATION FOR PERSONAL SERVICES.—Earned income (within the meaning of section 911(d)(2)(A)) shall not be taken into account in computing the income or loss from a passive activity for any taxable year.

"(4) DIVIDENDS REDUCED BY DIVIDENDS RECEIVED DEDUCTION.—For purposes of paragraphs (1) and (2), income from dividends shall be reduced by the amount of any dividends received deduction under section 243, 244, or 245.

"(f) TREATMENT OF FORMER PASSIVE ACTIVITIES.—For purposes of this section—

"(1) IN GENERAL.—If an activity is a former passive activity for any taxable year—

"(A) any unused deduction allocable to such activity under subsection (b) shall be offset against the income from such activity for the taxable year,

"(B) any unused credit allocable to such activity under subsection (b) shall be offset against the regular tax liability (computed after the application of paragraph (1)) allocable to such activity for the taxable year, and

"(C) any such deduction or credit remaining after the application of subparagraphs (A) and (B) shall continue to be treated as arising from a passive activity.

"(2) CHANGE IN STATUS OF CLOSELY HELD C CORPORATION OR PERSONAL SERVICE CORPORATION.—If a taxpayer ceases for any taxable year to be a closely held C corporation or personal service corporation, this section shall continue to apply to losses and credits to which this section applied for any preceding taxable year in the same manner as if such taxpayer continued to be a closely held C corporation or personal service corporation, whichever is applicable.

"(3) FORMER PASSIVE ACTIVITY.—The term 'former passive activity' means any activity which, with respect to the taxpayer—

"(A) is not a passive activity for the taxable year, but

"(B) was a passive activity for any prior taxable year.

"(g) DISPOSITIONS OF ENTIRE INTEREST IN PASSIVE ACTIVITY.—If during the taxable year a taxpayer disposes of his entire interest in any passive activity (or former passive activity), the following rules shall apply:

"(1) FULLY TAXABLE TRANSACTION.—

"(A) IN GENERAL.—If all gain or loss realized on such disposition is recognized, any loss from such activity which has not previously been allowed as a deduction (and in the case of a passive activity for the taxable year, any loss realized on such disposition) shall not be treated as a passive activity loss and shall be allowable as a deduction against income in the following order:

"(i) Income or gain from the passive activity for the taxable year (including any gain recognized on the disposition).

"(ii) Net income or gain for the taxable year from all passive activities.

"(iii) Any other income or gain.

"(B) SUBPARAGRAPH (A) NOT TO APPLY TO DISPOSITION INVOLVING RELATED PARTY.—If the taxpayer and the person acquiring the interest bear a relationship to each other described in section 267(b) or section 707(b)(1), then subparagraph (A) shall not apply to any loss of the taxpayer until the taxable year in which such interest is acquired (in a transaction described in subparagraph (A)) by another person who does not bear such a relationship to the taxpayer.

"(C) COORDINATION WITH SECTION 1211.—In the case of any loss realized on the disposition of an interest in a passive activity, section 1211 shall be applied before subparagraph (A) is applied.

"(2) DISPOSITION BY DEATH.—If an interest in the activity is transferred by reason of the death of the taxpayer—

"(A) paragraph (1) shall apply to such losses to the extent such losses are greater than the excess (if any) of—

"(i) the basis of such property in the hands of the transferee, over

"(ii) the adjusted basis of such property immediately before the death of the taxpayer, and

"(B) any losses to the extent of the excess described in subparagraph (A) shall not be allowed as a deduction for any taxable year.

"(3) INSTALLMENT SALE OF ENTIRE INTEREST.—In the case of an installment sale of an entire interest in an activity to which section 453 applies, paragraph (1) shall apply to the portion of such losses for each taxable year which bears the same ratio to all such losses as the gain recognized on such sale during such taxable year bears to the gross profit from such sale realized (or to be realized) when payment is completed.

"(h) MATERIAL PARTICIPATION DEFINED.—For purposes of this section—

"(1) IN GENERAL.—A taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is—

"(A) regular,

"(B) continuous, and

"(C) substantial.

"(2) INTERESTS IN LIMITED PARTNERSHIPS.—Except as provided in regulations, no interest in a limited partnership as a limited partner shall be treated as an interest with respect to which a taxpayer materially participates.

"(3) TREATMENT OF CERTAIN RETIRED INDIVIDUALS AND SURVIVING SPOUSES.—A taxpayer shall be treated as materially participating in any farming activity for a taxable year if paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity if such taxpayer had died during the taxable year.

"(4) CERTAIN CLOSELY HELD C CORPORATIONS AND PERSONAL SERVICE CORPORATIONS.—A closely held C corporation or personal service corporation shall be treated as materially participating in an activity if—

"(A) 1 or more shareholders holding stock representing more than 50 percent (by value) of the outstanding stock of such corporation materially participate in such activity, or

"(B) in the case of a closely held C corporation (other than a personal service corporation), the requirements of section 465(c)(7)(C) (without regard to clause (iv)) are met with respect to such activity.

"(5) PARTICIPATION BY SPOUSE.—In determining whether a taxpayer materially participates, the participation of the spouse of the taxpayer shall be taken into account.

"(i) $25,000 OFFSET FOR RENTAL REAL ESTATE ACTIVITIES.—

"(1) IN GENERAL.—In the case of any natural person, subsection (a) shall not apply to that portion of the passive activity loss or the deduction equivalent (within the meaning of subsection (j)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in the taxable year in which such portion of such loss or credit arose.

"(2) DOLLAR LIMITATION.—The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed $25,000.

"(3) PHASE-OUT OF EXEMPTION.—

"(A) IN GENERAL.—In the case of any taxpayer, the $25,000 amount under paragraph (2) shall be reduced (but not below zero) by 50 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $100,000.

"(B) SPECIAL PHASE-OUT OF LOW-INCOME HOUSING AND REHABILITATION CREDITS.—In the case of any portion of the passive activity credit for any taxable year which is attributable to any credit to which paragraph (6)(B) applies, subparagraph (A) shall be applied by substituting '$200,000' for '$100,000'.

"(C) ORDERING RULE TO REFLECT SEPARATE PHASE-OUTS.—If subparagraph (B) applies for any taxable year, paragraph (1) shall be applied—

"(i) first to the passive activity loss,

"(ii) second to the portion of the passive activity credit to which subparagraph (B) does not apply, and

"(iii) then to the portion of such credit to which subparagraph (B) applies.

"(D) ADJUSTED GROSS INCOME.—For purposes of this paragraph, adjusted gross income shall be determined without regard to—

"(i) any amount includible in gross income under section 86,

"(ii) any amount allowable as a deduction under section 219, and

"(iii) any passive activity loss.

"(4) SPECIAL RULE FOR ESTATES.—

"(A) IN GENERAL.—In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death.

"(B) REDUCTION FOR SURVIVING SPOUSE'S EXEMPTION.—For purposes of subparagraph (A), the $25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

"(5) MARRIED INDIVIDUALS FILING SEPARATELY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any married individual filing a separate return, this subsection shall be applied by substituting—

"(i) '$12,500' for '$25,000' each place it appears,

"(ii) '$50,000' for '$100,000' in paragraph (3)(A), and

"(iii) '$100,000' for '$200,000' in paragraph (3)(B).

"(B) TAXPAYERS NOT LIVING APART.— This subsection shall not apply to a taxpayer who—

"(i) is a married individual filing a separate return for any taxable year, and

"(ii) does not live apart from his spouse at all times during such taxable year.

"(6) ACTIVE PARTICIPATION.—

"(A) IN GENERAL.—An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.

"(B) NO PARTICIPATION REQUIREMENT FOR LOW-INCOME HOUSING OR REHABILITATION CREDIT.—Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of—

"(i) any credit determined under section 42 for any taxable year, or

"(ii) any rehabilitation investment credit (within the meaning of section 48(o)).

"(C) INTEREST AS A LIMITED PARTNER.—No interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively participates.

"(D) PARTICIPATION BY SPOUSE.—In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.

"(j) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CLOSELY HELD C CORPORATION.—The term 'closely held C corporation' means any C corporation described in section 465(a)(1)(B).

"(2) PERSONAL SERVICE CORPORATION.—The term 'personal service corporation' has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

"(A) by substituting 'any' for 'more than 10 percent', and

"(B) by substituting 'any' for '50 percent or more in value' in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence).

"(3) REGULAR TAX LIABILITY.—The term 'regular tax liability' has the meaning given such term by section 26(b).

"(4) ALLOCATION OF PASSIVE ACTIVITY LOSS AND CREDIT.—The passive activity loss and the passive activity credit (and the $25,000 amount under subsection (i)) shall be allocated to activities, and within activities, on a pro rata basis in such manner as the Secretary may prescribe.

"(5) DEDUCTION EQUIVALENT.—The deduction equivalent of credits from a passive activity for any taxable year is the amount which (if allowed as a deduction) would reduce the regular tax liability for such taxable year by an amount equal to such credits.

"(6) SPECIAL RULE FOR GIFTS.—In the case of a disposition of any interest in a passive activity by gift—

"(A) the basis of such interest immediately before the transfer shall be increased by the amount of any passive activity losses allocable to such interest, and

"(B) such losses shall not be allowable as a deduction for any taxable year.

"(7) QUALIFIED RESIDENCE INTEREST.—The passive activity loss of a taxpayer shall be computed without regard to qualified residence interest (within the meaning of section 163(h)(3)).

"(8) RENTAL ACTIVITY.—The term 'rental activity' means any activity where payments are principally for the use of tangible property.

"(9) ELECTION TO INCREASE BASIS OF PROPERTY BY AMOUNT OF DISALLOWED CREDIT.—For purposes of determining gain or loss from a disposition of any property to which subsection (g)(1) applies, the transferor may elect to increase the basis of such property immediately before the transfer by an amount equal to the portion of any unused credit allowable under this chapter which reduced the basis of such property for the taxable year in which such credit arose. If the taxpayer elects the application of this paragraph, such portion of the passive activity credit of such taxpayer shall not be allowed for any taxable year.

"(k) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out provisions of this section, including regulations—

"(1) which specify what constitutes an activity, material participation, or active participation for purposes of this section,

"(2) which provide that certain items of gross income will not be taken into account in determining income or loss from any activity (and the treatment of expenses allocable to such income),

"(3) requiring net income or gain from a limited partnership or other passive activity to be treated as not from a passive activity,

"(4) which provide for the determination of the allocation of interest expense for purposes of this section, and

"(5) which deal with changes in marital status and changes between joint returns and separate returns.

"(l) PHASE-IN OF DISALLOWANCE OF LOSSES AND CREDITS FOR INTERESTS HELD BEFORE DATE OF ENACTMENT.—

"(1) IN GENERAL.—In the case of any passive activity loss or credit for any taxable year beginning in calendar years 1987 through 1990 which—

"(A) is attributable to a pre-enactment interest, but

"(B) is not attributable to a carryforward to such taxable year of any loss or credit which was disallowed under this section for a preceding taxable year,

there shall be disallowed under subsection (a) only the applicable percentage of the amount which (but for this subsection) would have been disallowed under subsection (a) for such taxable year.

"(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the applicable percentage shall be determined in accordance with the following table:

"In the case of taxable years beginning in:	The applicable percentage is:
1987	35
1988	60
1989	80
1990	90.

"(3) PORTION OF LOSS OR CREDIT ATTRIBUTABLE TO PRE-ENACTMENT INTERESTS.—For purposes of this subsection—

"(A) IN GENERAL.—The portion of the passive activity loss for any taxable year which is attributable to pre-enactment interests shall be equal to the lesser of—

"(i) the passive activity loss for such taxable year, or

"(ii) the passive activity loss for such taxable year determined by taking into account only pre-enactment interests.

For purposes of this subparagraph, the deduction equivalent (within the meaning of subsection (j)(5)) of a passive activity credit shall be taken into account.

"(B) PRE-ENACTMENT INTEREST.—

"(i) IN GENERAL.—The term 'pre-enactment interest' means any interest in a passive activity held by a taxpayer on the date of the enactment of the Tax Reform Act of 1986, and at all times thereafter.

"(ii) BINDING CONTRACT EXCEPTION.—For purposes of clause (i), any interest acquired after such date of enactment pursuant to a written binding contract in effect on such date, and at all times thereafter, shall be treated as held on such date.

"(iii) INTEREST IN ACTIVITIES.—The term 'pre-enactment interest' shall not include an interest in a passive activity unless such activity was being conducted on such date of enactment. The preceding sentence shall not apply to an activity commencing after such date if—

"(I) the property used in such activity is acquired pursuant to a written binding contract in effect on August 16, 1986, and at all times thereafter, or

"(II) construction of property used in such activity began on or before August 16, 1986."

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 469. Passive activity losses and credits limited."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SPECIAL RULE FOR CARRYOVERS.—The amendments made by this section shall not apply to any loss, deduction, or credit carried to a taxable year beginning after December 31, 1986, from a taxable year beginning before January 1, 1987.

(3) SPECIAL RULE FOR LOW-INCOME HOUSING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), section 469(i)(6)(B)(i) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property placed in service after December 31, 1989.

(B) EXCEPTION WHERE AT LEAST 10 PERCENT OF COSTS INCURRED.—In the case of property placed in service after December 31, 1989, and before January 1, 1991, section 469(i)(6)(B)(i) of such Code shall apply to such property if at least 10 percent of the costs of such property were incurred before January 1, 1989.

SEC. 502. TRANSITIONAL RULE FOR LOW-INCOME HOUSING.

(a) GENERAL RULE.—Any loss sustained by a qualified investor with respect to an interest in a qualified low-income housing project for any taxable year in the relief period shall not be treated as a loss from a passive activity for purposes of section 469 of the Internal Revenue Code of 1986.

(b) RELIEF PERIOD.—For purposes of subsection (a), the term "relief period" means the period beginning with the taxable year in which the investor made his initial investment in the qualified low-income housing project and ending with whichever of the following is the earliest—

(1) the 6th taxable year after the taxable year in which the investor made his initial investment,

(2) the 1st taxable year after the taxable year in which the investor is obligated to make his last investment, or

(3) the taxable year preceding the 1st taxable year for which such project ceased to be a qualified low-income housing project.

(c) QUALIFIED LOW-INCOME HOUSING PROJECT.—For purposes of this section, the term "qualified low-income housing project" means any project if—

(1) such project meets the requirements of clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) as of the date placed in service and for each taxable year thereafter which begins after 1986 and for which a passive loss may be allowable with respect to such project,

(2) the operator certifies to the Secretary of the Treasury or his delegate that such project met the requirements of paragraph (1) on the date of the enactment of this Act (or, if later, when placed in service) and annually thereafter,

(3) such project is constructed or acquired pursuant to a binding written contract entered into on or before August 16, 1986, and

(4) such project is placed in service before January 1, 1989.

(d) QUALIFIED INVESTOR.—For purposes of this section—

(1) IN GENERAL.—The term "qualified investor" means any natural person who holds (directly or through 1 or more entities) an interest in a qualified low-income housing project—

(A) if—

(i) in the case of a project placed in service before August 16, 1986, such person held an interest in such project on August 16, 1986, and the taxpayer made his initial investment after December 31, 1983, or

(ii) in the case of a project not described in subparagraph (A), such investor held an interest in such project on December 31, 1986, and

(B) if such investor is required to make payments after December 31, 1986, of 50 percent or more of the total original obligated investment for such interest.

For purposes of subparagraph (A), a person shall be treated as holding an interest on August 16, 1986, or December 31, 1986, if on such date such person had a binding contract to acquire such interest.

(2) TREATMENT OF ESTATES.—The estate of a decedent shall succeed to the treatment under this section of the decedent but only with respect to the 1st 2 taxable years of such estate ending after the date of the decedent's death.

(d) SPECIAL RULES.—

(1) WHERE MORE THAN 1 BUILDING IN PROJECT.—If there is more than 1 building in any project, the determination of when such project is placed in service shall be based on when the 1st building in such project is placed in service.

(2) ONLY CASH AND OTHER PROPERTY TAKEN INTO ACCOUNT.—In determining the amount any person invests in (or is obligated to invest in) any interest, only cash and other property shall be taken into account.

(3) COORDINATION WITH CREDIT.—No low-income housing credit shall be determined under section 42 of the Internal Revenue Code of 1986 with respect to any project with respect to which any person has been allowed any benefit under this section.

SEC. 503. EXTENSION OF AT RISK LIMITATIONS TO REAL PROPERTY.

(a) IN GENERAL.—Paragraph (3) of section 465(c) (relating to activities to which section applies) is amended by striking out subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

(b) QUALIFIED NONRECOURSE FINANCING TREATED AS AN AMOUNT AT RISK.—Section 465(b) (relating to amounts considered at risk) is amended by adding at the end thereof the following new paragraph:

"(6) QUALIFIED NONRECOURSE FINANCING TREATED AS AMOUNT AT RISK.—For purposes of this section—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, in the case of an activity of holding real property, a taxpayer shall be considered at risk with respect to the taxpayer's share of any qualified nonrecourse financing which is secured by real property used in such activity.

"(B) QUALIFIED NONRECOURSE FINANCING.—For purposes of this paragraph, the term 'qualified nonrecourse financing' means any financing—

"(i) which is borrowed by the taxpayer with respect to the activity of holding real property,

"(ii) which is borrowed by the taxpayer from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government,

"(iii) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

"(iv) which is not convertible debt.

"(C) SPECIAL RULE FOR PARTNERSHIPS.—In the case of a partnership, a partner's share of any qualified nonrecourse financing of such partnership shall be determined on the basis of the partner's share of liabilities of such partnership incurred in connection with such financing (within the meaning of section 752).

"(D) QUALIFIED PERSON DEFINED.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified person' has the meaning given such term by section 46(c)(8)(D)(iv).

"(ii) CERTAIN COMMERCIALLY REASONABLE FINANCING FROM RELATED PERSONS.—For purposes of clause (i), section 46(c)(8)(D)(iv) shall be applied without regard to subclause (I) thereof (relating to financing from related persons) if the financing from the related person is commercially reasonable and on substantially the same terms as loans involving unrelated persons.

"(E) ACTIVITY OF HOLDING REAL PROPERTY.—For purposes of this paragraph—

"(i) INCIDENTAL PERSONAL PROPERTY AND SERVICES.—The activity of holding real property includes the holding of personal property and the providing of services which are incidental to making real property available as living accommodations.

"(ii) MINERAL PROPERTY.—The activity of holding real property shall not include the holding of mineral property."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to losses incurred after December 31, 1986, with respect to property placed in service by the taxpayer after December 31, 1986.

(2) SPECIAL RULE FOR LOSSES OF S CORPORATION, PARTNERSHIP, OR PASS-THRU ENTITY.—In the case of an interest in an S corporation, a partnership, or other pass-thru entity acquired after December 31, 1986, the amendments made by this section shall apply to losses after December 31, 1986, which are attributable to property placed in service by the S corporation, partnership, or pass-thru entity on, before, or after January 1, 1986.

(3) SPECIAL RULE FOR ATHLETIC STADIUM.—The amendments made by this section shall not apply to any losses incurred by a taxpayer with respect to the holding of a multiuse athletic stadium in Pittsburgh, Pennsylvania, which the taxpayer acquired in a sale for which a letter of understanding was entered into before April 16, 1986.

SUBTITLE B—INTEREST EXPENSE

SEC. 511. LIMITATIONS ON DEDUCTION FOR NONBUSINESS INTEREST.

(a) LIMITATION ON INVESTMENT INTEREST.—Subsection (d) of section 163 (relating to limitation on interest on investment indebtedness) is amended to read as follows:

"(d) LIMITATION ON INVESTMENT INTEREST.—

"(1) IN GENERAL.—In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

"(2) CARRYFORWARD OF DISALLOWED INTEREST.—The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

"(3) INVESTMENT INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'investment interest' means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1)) which is paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment.

"(B) EXCEPTIONS.—The term 'investment interest' shall not include—

"(i) any qualified residence interest (as defined in subsection (h)(3)), or

"(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

"(C) PERSONAL PROPERTY USED IN SHORT SALE.—For purposes of this paragraph, the term 'interest' includes any amount allowable as a deduction in connection with personal property used in a short sale.

"(4) NET INVESTMENT INCOME.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'net investment income' means the excess of—

"(i) investment income, over

"(ii) investment expenses.

"(B) INVESTMENT INCOME.—The term 'investment income' means the sum of—

"(i) gross income (other than gain described in clause (ii)) from property held for investment, and

"(ii) any net gain attributable to the disposition of property held for investment,

but only to the extent such amounts are not derived from the conduct of a trade or business.

"(C) INVESTMENT EXPENSES.—The term 'investment expenses' means the deductions allowed under this chapter (other than for interest) which are directly connected with the production of investment income.

"(D) INCOME AND EXPENSES FROM PASSIVE ACTIVITIES.—Investment income and investment expenses shall not include any income or expenses taken into account under section 469 in computing income or loss from a passive activity.

"(E) REDUCTION IN INVESTMENT INCOME DURING PHASE-IN OF PASSIVE LOSS RULES.—Investment income of the taxpayer for any taxable year shall be reduced by the amount of the passive activity loss to which section 469(a) does not apply for such taxable year by reason of section 469(l). The preceding sentence shall not apply to any portion of such passive activity loss which is attributable to a rental real estate activity with respect to which the taxpayer actively participates (within the meaning of section 469(i)(6)) during such taxable year.

"(5) PROPERTY HELD FOR INVESTMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'property held for investment' shall include—

"(i) any property which produces income of a type described in section 469(e)(1), and

"(ii) any interest held by a taxpayer in an activity involving the conduct of a trade or business—

"(I) which is not a passive activity, and

"(II) with respect to which the taxpayer does not materially participate.

"(B) INVESTMENT EXPENSES.—In the case of property described in subparagraph (A)(i), expenses shall be allocated to such property in the same manner as under section 469.

"(C) TERMS.—For purposes of this paragraph, the terms 'activity', 'passive activity', and 'materially participate' have the meanings given such terms by section 469.

"(6) PHASE-IN OF DISALLOWANCE.—In the case of any taxable year beginning in calendar years 1987 through 1990—

"(A) IN GENERAL.—The amount of interest disallowed under this subsection for any such taxable year shall be equal to the sum of—

"(i) the applicable percentage of the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection for the taxable year to the extent such amount does not exceed the ceiling amount,

"(ii) the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection in excess of the ceiling amount, plus

"(iii) the amount of any carryforward to such taxable year under paragraph (2) with respect to which a deduction was disallowed under this subsection for a preceding taxable year.

For purposes of this subparagraph, the amount under clause (i) or (ii) shall be computed without regard to the amount described in clause (iii).

"(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined in accordance with the following table:

"In the case of taxable years beginning in:	The applicable percentage is:
1987	35
1988	60
1989	80
1990	90.

"(C) CEILING AMOUNT.—For purposes of this paragraph, the term 'ceiling amount' means—

"(i) $10,000 in the case of a taxpayer not described in clause (ii) or (iii),

"(ii) $5,000 in the case of a married individual filing a separate return, and

"(iii) zero in the case of a trust.

(b) DISALLOWANCE OF DEDUCTION FOR PERSONAL INTEREST OF INDIVIDUALS.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) DISALLOWANCE OF DEDUCTION FOR PERSONAL INTEREST.—

"(1) IN GENERAL.—In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the taxable year.

"(2) PERSONAL INTEREST.—For purposes of this subsection, the term 'personal interest' means any interest allowable as a deduction under this chapter other than—

"(A) interest paid or accrued on indebtedness incurred or continued in connection with the conduct of a trade or business (other than the trade or business of performing services as an employee),

"(B) any investment interest (within the meaning of subsection (d)),

"(C) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer,

"(D) any qualified residence interest (within the meaning of paragraph (3)), and

"(E) any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6163 or 6166.

"(3) QUALIFIED RESIDENCE INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified residence interest' means interest which is paid or accrued during the taxable year on indebtedness which is secured by any property which (at the time such interest is paid or accrued) is a qualified residence of the taxpayer.

"(B) LIMITATION ON AMOUNT OF INTEREST.—The term 'qualified residence interest' shall not include any interest paid or accrued on indebtedness secured by any qualified residence which is allocable to that portion of the principal amount of such indebtedness which, when added to the outstanding aggregate principal amount of all other indebtedness previously incurred and secured by such qualified residence, exceeds the lesser of—

"(i) the fair market value of such qualified residence, or

"(ii) the sum of—

"(I) the taxpayer's basis in such qualified residence (adjusted only by the cost of any improvements to such residence), plus

"(II) the aggregate amount of qualified indebtedness of the taxpayer with respect to such qualified residence.

"(C) COST NOT LESS THAN BALANCE OF INDEBTEDNESS INCURRED ON OR BEFORE AUGUST 16, 1986.—The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986,

shall not be less than the outstanding aggregate principal amount (as of such time) of indebtedness which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986.

"(D) TIME FOR DETERMINATION.—Except as provided in regulations, any determination under subparagraph (B) shall be made as of the time the indebtedness is incurred.

"(4) QUALIFIED INDEBTEDNESS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified indebtedness' means indebtedness secured by a qualified residence of the taxpayer which is incurred after August 16, 1986, to pay for—

"(i) qualified medical expenses, or

"(ii) qualified educational expenses,

which are paid or incurred within a reasonable period of time before or after such indebtedness is incurred.

"(B) QUALIFIED MEDICAL EXPENSES.—For purposes of this paragraph, the term 'qualified medical expenses' means amounts, not compensated for by insurance or otherwise, incurred for medical care (within the meaning of subparagraphs (A) and (B) of section 213(d)(1)) for the taxpayer, his spouse, or a dependent.

"(C) QUALIFIED EDUCATIONAL EXPENSES.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified educational expenses' means qualified tuition and related expenses of the taxpayer, his spouse, or a dependent for attendance at an educational institution described in section 170(b)(1)(A)(ii).

"(ii) QUALIFIED TUITION AND RELATED EXPENSES.—The term 'qualified tuition and related expenses' has the meaning given such term by section 117(b), except that such term shall include any reasonable living expenses while away from home.

"(D) DEPENDENT.—For purposes of this paragraph, the term 'dependent' has the meaning given such term by section 152.

"(5) OTHER DEFINITIONS AND SPECIAL RULES.—

"(A) QUALIFIED RESIDENCE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified residence' means—

"(I) the principal residence (within the meaning of section 1034) of the taxpayer, and

"(II) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).

"(ii) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If a married couple does not file a joint return for the taxable year—

"(I) such couple shall be treated as 1 taxpayer for purposes of clause (i), and

"(II) each individual shall be entitled to take into account 1 residence unless both individuals consent in writing to 1 individual taking into account the principal residence and 1 other residence.

"(iii) RESIDENCE NOT USED OR RENTED.—For purposes of clause (i)(II), notwithstanding section 280A(d)(1), if the taxpayer does not rent or use a dwelling unit at any time during a taxable year, such unit may be treated as a residence for such taxable year.

"(B) SPECIAL RULE FOR COOPERATIVE HOUSING CORPORATIONS.—For purposes of this paragraph, any indebtedness secured by stock held by the taxpayer as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by the house or apartment which the taxpayer is entitled to occupy as such a tenant-stockholder. If stock described in the preceding sentence may not be used to secure indebtedness, indebtedness shall be treated as so secured if the taxpayer establishes to the satisfaction of the Secretary that such indebtedness was incurred to acquire such stock.

"(6) PHASE-IN OF LIMITATION.—In the case of any taxable year beginning in calendar years 1987 through 1990, the amount of interest with respect to which a deduction is disallowed under this subsection shall be equal to the applicable percentage (within the meaning of subsection (d)(6)(B)) of the amount which (but for this subsection) would have been so disallowed."

(d) TECHNICAL AMENDMENTS.—

(1) Clause (i) of section 7872(d)(1)(E) is amended by striking out "section 163(d)(3)" and inserting in lieu thereof "section 163(d)(4)".

(2)(A) Sections 467(c)(5) and 1255(b)(2) are each amended by striking out "section 163(d),".

(B) Section 703(b) is amended by striking out paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(C) Section 1363(c)(2) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

TITLE VI—CORPORATE PROVISIONS

SUBTITLE A—CORPORATE RATE REDUCTIONS

SEC. 601. CORPORATE RATE REDUCTIONS.

(a) GENERAL RULE.—Subsection (b) of section 11 is amended to read as follows:

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be the sum of—

"(1) 15 percent of so much of the taxable income as does not exceed $50,000,

"(2) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

"(3) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $11,750."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years beginning on or after July 1, 1987.

(2) CROSS REFERENCE.—

For treatment of taxable years which include July 1, 1987, see section 15 of the Internal Revenue Code of 1986.

Subtitle B—Treatment of Stock and Stock Dividends

SEC. 611. REDUCTION IN DIVIDENDS RECEIVED DEDUCTION.

(a) GENERAL RULE.—The following provisions are each amended by striking out "85 percent" and inserting in lieu thereof "80 percent":

(1) Section 243(a)(1) (relating to dividends received by corporations).

(2) Sections 244 (a)(3) and (b)(2) (relating to dividends received on certain preferred stock).

(3) Section 246(b)(1) (relating to limitation on aggregate amount of deductions).

(4) Section 246A(a)(1) (relating to dividends received deduction reduced where portfolio stock is debt financed).

(5) Subparagraph (B) of section 805(a)(4) (relating to dividends received by insurance company).

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to dividends received or accrued after December 31, 1986, in taxable years ending after such date.

(2) AMENDMENT RELATING TO LIMITATION ON DEDUCTIONS.—The amendment made by subsection (a) to section 246(b) of the Internal Revenue Code of 1986 shall apply to taxable years beginning after December 31, 1986.

SEC. 612. REPEAL OF PARTIAL EXCLUSION OF DIVIDENDS RECEIVED BY INDIVIDUALS.

(a) GENERAL RULE.—Section 116 (relating to partial exclusion of dividends received by individuals) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (g) of section 301 is amended by striking out paragraph (4).

(2)(A) Subsection (c) of section 584 is amended to read as follows:

"(c) INCOME OF PARTICIPANTS IN FUND.—Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

"(1) as part of its gains and losses from sales or exchanges of capital assets held for not more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 6 months,

"(2) as part of its gains and losses from sales or exchanges of capital assets held for more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 6 months, and

"(3) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d)."

(B) If the amendments made by section 1001 of the Tax Reform Act of 1984 cease to apply, effective with respect to property to which such amendments do not apply, subsection (c) of section 584 is amended by striking out "6 months" each place it appears and inserting in lieu thereof "1 year".

(3) Section 642 is amended by striking out subsection (j).

(4) Paragraph (7) of section 643(a) is hereby repealed.

(5) Paragraph (5) of section 702(a) is amended to read as follows:

"(5) dividends with respect to which there is a deduction under part VIII of subchapter B,".

(6) Section 854 is amended—

(A) by striking out "section 116 (relating to an exclusion for dividends received by individuals), and" in subsection (a),

(B) in subsection (b)—

(i) by striking out subparagraph (B) of paragraph (1) and redesignating subparagraph (C) as subparagraph (B),

(ii) by striking out "or (B)" in subparagraph (B) (as so redesignated),

(iii) by striking out "the exclusion under section 116 and" in paragraph (2), and

(iv) by amending subparagraph (B) of paragraph (3) to read as follows:

"(B)(i) The term 'aggregate dividends received' includes only dividends received from domestic corporations.

"(ii) For purposes of clause (i), the term 'dividend' shall not include any distribution from—

"(I) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding

taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations), or

"(II) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following).

"(iii) In determining the amount of any dividend for purposes of this subparagraph, a dividend received from a regulated investment company shall be subject to the limitations prescribed in this section."

(7) Subsection (c) of section 857 is amended by striking out "section 116 (relating to an exclusion for dividends received by individuals), and".

(8) The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 116.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 613. NONDEDUCTIBILITY OF STOCK REDEMPTION EXPENSES.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses), is amended by redesignating subsection (l) as subsection (m) and inserting after subsection (k) the following new subsection:

"(l) STOCK REDEMPTION EXPENSES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the redemption of its stock.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) CERTAIN SPECIFIC DEDUCTIONS.—Any—

"(i) deduction allowable under section 163 (relating to interest), or

"(ii) deduction for dividends paid (within the meaning of section 561).

"(B) STOCK OF CERTAIN REGULATED INVESTMENT COMPANIES.—Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to any amount paid or incurred after February 28, 1986, in taxable years ending after such date.

SEC. 614. REDUCTION IN STOCK BASIS FOR NONTAXED PORTION OF EXTRAORDINARY DIVIDENDS.

(a) 2-YEAR HOLDING REQUIREMENT.—

(1) IN GENERAL.—Section 1059(a) (relating to corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends) is amended to read as follows:

"(a) GENERAL RULE.—If any corporation receives any extraordinary dividend with respect to any share of stock and such corporation has not held such stock for more than 2 years before the dividend announcement date—

"(1) REDUCTION IN BASIS.—The basis of such corporation in such stock shall be reduced (but not below zero) by the nontaxed portion of such dividends.

"(2) RECOGNITION UPON SALE OR DISPOSITION IN CERTAIN CASES.—In addition to any gain recognized under this chapter, there shall be treated as gain from the sale or exchange of any stock for the taxable year in which the sale or disposition of such stock occurs an amount equal to the aggregate nontaxed portions of any extraordinary dividends with respect to such stock which did not reduce the basis of such stock by reason of the limitation on reducing basis below zero."

(2) DIVIDEND ANNOUNCEMENT DATE.—Section 1059(d) (relating to special rules) is amended by adding at the end thereof the following new paragraph:

"(6) DIVIDEND ANNOUNCEMENT DATE.—The term 'dividend announcement date' means, with respect to any dividend, the date on which the corporation declares, announces, or agrees to, the payment of such dividend, whichever is the earliest."

(3) CONFORMING AMENDMENT.—Section 1059(d)(3) (relating to determination of holding period) is amended by striking out "1 year" and inserting in lieu thereof "2 years".

(b) EXTRAORDINARY DIVIDEND MAY BE DETERMINED BY REFERENCE TO FAIR MARKET VALUE.—Section 1059(c) (defining extraordinary dividend) is amended by adding at the end thereof the following new paragraph:

"(4) FAIR MARKET VALUE DETERMINATION.—If the taxpayer establishes to the satisfaction of the Secretary the fair market value of any share of stock as of the day before the ex-dividend date, the taxpayer may elect to apply paragraphs (1) and (3) by substituting such value for the taxpayer's adjusted basis."

(c) TIME FOR REDUCTION IN BASIS.—

(1) IN GENERAL.—Paragraph (1) of section 1059(d) (relating to time for reduction) is amended to read as follows:

"(1) TIME FOR REDUCTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any reduction in basis under subsection (a)(1) shall occur immediately before any sale or disposition of the stock.

"(B) SPECIAL RULE FOR COMPUTING EXTRAORDINARY DIVIDEND.—In determining a taxpayer's adjusted basis for purposes of subsection (c)(1), any reduction in basis under subsection (a)(1) by reason of a prior distribution which was an extraordinary dividend shall be treated as occurring at the beginning of the ex-dividend date for such distribution."

(2) CONFORMING AMENDMENT.—Section 1059(c)(1) is amended by striking out "(determined without regard to this section)".

(d) NO EXTRAORDINARY DIVIDEND WHERE STOCK HELD DURING ENTIRE EXISTENCE OF CORPORATION.—Section 1059(d) (relating to special rules) is amended by adding at the end thereof the following new paragraph:

"(7) EXCEPTION WHERE STOCK HELD DURING ENTIRE EXISTENCE OF CORPORATION.—Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

"(A) such stock was held by the taxpayer during the entire period such corporation (and any precedessor corporation) was in existence,

"(B) except as provided in regulations, the only earnings and profits of such corporation were earnings and profits accumulated by such corporation (or any predecessor corporation) during such period, and

"(C) the application of this paragraph to such dividend is not inconsistent with the purposes of this section."

(e) CERTAIN LIQUIDATIONS AND REDEMPTIONS TREATED AS EXTRAORDINARY DIVIDENDS; QUALIFYING DIVIDENDS NOT TREATED AS EXTRAORDINARY DIVIDENDS; SPECIAL RULE FOR PREFERRED DIVIDENDS.—Section 1059 (relating to extraordinary dividends) is amended by redesignating subsection (e) as subsection (f) and by adding after subsection (d) the following new subsection:

"(e) SPECIAL RULES FOR CERTAIN DISTRIBUTIONS.—

"(1) TREATMENT OF PARTIAL LIQUIDATIONS AND NON-PRO RATA REDEMPTIONS.—Except as otherwise provided in regulations, in the case of any redemption of stock which is—

"(A) part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation, or

"(B) not pro rata as to all shareholders,

any amount treated as a dividend under section 301 with respect to such redemption shall be treated as an extraordinary dividend for purposes of this section (without regard to the holding period of the stock).

"(2) QUALIFYING DIVIDENDS.—Except as provided in regulations, the term 'extraordinary dividend' shall not include any qualifying dividend (within the meaning of section 243(b)(1)).

"(3) QUALIFIED PREFERRED DIVIDENDS.—

"(A) IN GENERAL.—A qualified preferred dividend shall be treated as an extraordinary dividend—

"(i) only if the actual rate of return of the taxpayer on the stock with respect to which such dividend was paid exceeds 15 percent, or

"(ii) if clause (i) does not apply, and the taxpayer disposes of such stock before the taxpayer has held such stock for more than 5 years, only to the extent the actual rate of return exceeds the stated rate of return.

"(B) RATE OF RETURN.—For purposes of subparagraph (A)—

"(i) ACTUAL RATE OF RETURN.—The actual rate of return shall be the rate of return for the period for which the taxpayer held the stock, determined—

"(I) by only taking into account dividends during such period, and

"(II) by using the lesser of the adjusted basis of the taxpayer in such stock or the liquidation preference of such stock.

"(ii) STATED RATE OF RETURN.—The stated rate of return shall be the annual rate of the qualified preferred dividend payable with respect to any share of stock (expressed as a percentage of the amount described in subparagraph (B)(i)(II)).

"(C) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) QUALIFIED PREFERRED DIVIDEND.—The term 'qualified preferred dividend' means any dividend payable with respect to any share of stock which—

"(I) provides for fixed preferred dividends payable not less frequently than annually, and

"(II) is not in arrears as to dividends at the time the taxpayer acquires the stock.

"(ii) HOLDING PERIOD.—In determining the holding period for purposes of subparagraph (A)(ii), subsection (d)(3) shall be applied by substituting '5 years' for '2 years'."

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to dividends declared after July 18, 1986, in taxable years ending after such date.

(2) AGGREGATION.—For purposes of section 1059(c)(3) of the Internal Revenue Code of 1986, dividends declared after July 18, 1986, shall not be aggregated with dividends declared on or before July 18, 1986.

(3) REDEMPTIONS.—Section 1059(e)(1) of the Internal Revenue Code of 1986 (as added by subsection (e)) shall apply to dividends declared after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle C—Limitation on Net Operating Loss Carryforwards and Excess Credit Carryforwards

SEC. 621. LIMITATION ON NET OPERATING LOSS CARRYFORWARDS.

(a) IN GENERAL.—Section 382 (relating to special limitations on net operating loss carryovers) is amended to read as follows:

"SEC. 382. LIMITATION ON NET OPERATING LOSS CARRYFORWARDS AND CERTAIN BUILT-IN LOSSES FOLLOWING OWNERSHIP CHANGE.

"(a) GENERAL RULE.—The amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year.

"(b) SECTION 382 LIMITATION.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the section 382 limitation for any post-change year is an amount equal to—

"(A) the value of the old loss corporation, multiplied by

"(B) the long-term tax-exempt rate.

"(2) CARRYFORWARD OF UNUSED LIMITATION.—If the section 382 limitation for any post-change year exceeds the taxable income of the new loss corporation for such year which was offset by pre-change losses, the section 382 limitation for the next post-change year shall be increased by the amount of such excess.

"(3) SPECIAL RULE FOR POST-CHANGE YEAR WHICH INCLUDES CHANGE DATE.—In the case of any post-change year which includes the change date—

"(A) LIMITATION DOES NOT APPLY TO TAXABLE INCOME BEFORE CHANGE.—Subsection (a) shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the change date. Except as provided in subsection (h)(5) and in regulations, taxable income shall be allocated ratably to each day in the year.

"(B) LIMITATION FOR PERIOD AFTER CHANGE.—For purposes of applying the limitation of subsection (a) to the remainder of the taxable income for such year, the section 382 limitation shall be an amount which bears the same ratio to such limitation (determined without regard to this paragraph) as—

"(i) the number of days in such year after the change date, bears to

"(ii) the total number of days in such year.

"(c) CARRYFORWARDS DISALLOWED IF CONTINUITY OF BUSINESS REQUIREMENTS NOT MET.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if the new loss corporation does not continue the business enterprise of the old loss corporation at all times during the 2-year period beginning on the change date, the section 382 limitation for any post-change year shall be zero.

"(2) EXCEPTION FOR CERTAIN GAINS.—The section 382 limitation for any post-change year shall not be less than the sum of—

"(A) any increase in such limitation under—

"(i) subsection (h)(1)(A) for recognized built-in gains for such year, and

"(ii) subsection (h)(1)(C) for gain recognized by reason of an election under section 338, plus

"(B) any increase in such limitation under subsection (b)(2) for amounts described in subparagraph (A) which are carried forward to such year.

"(d) PRE-CHANGE LOSS AND POST-CHANGE YEAR.—For purposes of this section—

"(1) PRE-CHANGE LOSS.—The term 'pre-change loss' means—

"(A) any net operating loss carryforward of the old loss corporation to the taxable year ending with the ownership change or in which the change date occurs, and

"(B) the net operating loss of the old loss corporation for the taxable year in which the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date.

Except as provided in subsection (h)(5) and in regulations, the net operating loss shall, for purposes of subparagraph (B), be allocated ratably to each day in the year.

"(2) POST-CHANGE YEAR.—The term 'post-change year' means any taxable year ending after the change date.

"(e) VALUE OF OLD LOSS CORPORATION.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the value of the old loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change.

"(2) SPECIAL RULE IN THE CASE OF REDEMPTION.—If a redemption occurs in connection with an ownership change, the value under paragraph (1) shall be determined after taking such redemption into account.

"(f) LONG-TERM TAX-EXEMPT RATE.—For purposes of this section—

"(1) IN GENERAL.—The long-term tax-exempt rate shall be the highest of the adjusted Federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the change date occurs.

"(2) ADJUSTED FEDERAL LONG-TERM RATE.—For purposes of paragraph (1), the term 'adjusted Federal long-term rate' means the Federal long-term rate determined under section 1274(d), except that—

"(A) paragraphs (2) and (3) thereof shall not apply, and

"(B) such rate shall be properly adjusted for differences between rates on long-term taxable and tax-exempt obligations.

"(g) OWNERSHIP CHANGE.—For purposes of this section—

"(1) IN GENERAL.—There is an ownership change if, immediately after any owner shift involving a 5-percent shareholder or any equity structure shift—

"(A) the percentage of the stock of the new loss corporation owned by 1 or more 5-percent shareholders has increased by more than 50 percentage points, over

"(B) the lowest percentage of stock of the old loss corporation (or any predecessor corporation) owned by such shareholders at any time during the testing period.

"(2) OWNER SHIFT INVOLVING 5-PERCENT SHAREHOLDER.—There is an owner shift involving a 5-percent shareholder if—

"(A) there is any change in the respective ownership of stock of a corporation, and

"(B) such change affects the percentage of stock of such corporation owned by any person who is a 5-percent shareholder before or after such change.

"(3) EQUITY STRUCTURE SHIFT DEFINED.—

"(A) IN GENERAL.—The term 'equity structure shift' means any reorganization (within the meaning of section 368). Such term shall not include—

"(i) any reorganization described in subparagraph (D) or (G) of section 368(a)(1) unless the requirements of section 354(b)(1) are met, and

"(ii) any reorganization described in subparagraph (F) of section 368(a)(1).

"(B) TAXABLE REORGANIZATION-TYPE TRANSACTIONS, ETC.—To the extent provided in regulations, the term 'equity structure shift' includes taxable reorganization-type transactions, public offerings, and similar transactions.

"(4) SPECIAL RULES FOR APPLICATION OF SUBSECTION.—

"(A) TREATMENT OF LESS THAN 5-PERCENT SHAREHOLDERS.—Except as provided in subparagraphs (B)(i) and (C), in determining whether an ownership change has occurred, all stock owned by shareholders of a corporation who are not 5-percent shareholders of such corporation shall be treated as stock owned by 1 5-percent shareholder of such corporation.

"(B) COORDINATION WITH EQUITY STRUCTURE SHIFTS.—For purposes of determining whether an equity structure shift (or subsequent transaction) is an ownership change—

"(i) LESS THAN 5-PERCENT SHAREHOLDERS.—Subparagraph (A) shall be applied separately with respect to each group of shareholders (immediately before such equity structure shift) of each corporation which was a party to the reorganization involved in such equity structure shift.

"(ii) ACQUISITIONS OF STOCK.—Unless a different proportion is established, acquisitions of stock after such equity structure shift shall be treated as being made proportionately from all shareholders immediately before such acquisition.

"(C) COORDINATION WITH OTHER OWNER SHIFTS.—Except as provided in regulations, the rules of subparagraph (B) shall apply in determining whether there has been an owner shift involving a 5-percent shareholder and whether such shift (or subsequent transaction) results in an ownership change.

"(h) SPECIAL RULES FOR BUILT-IN GAINS AND LOSSES AND SECTION 338 GAINS.—For purposes of this section—

"(1) IN GENERAL.—

"(A) NET UNREALIZED BUILT-IN GAIN.—

"(i) IN GENERAL.—If the old loss corporation has a net unrealized built-in gain, the section 382 limitation for any recognition period taxable year shall be increased by the recognized built-in gains for such taxable year.

"(ii) LIMITATION.—The increase under clause (i) for any recognition period taxable year shall not exceed—

"(I) the net unrealized built-in gain, reduced by

"(II) recognized built-in gains for prior years ending in the recognition period.

"(B) NET UNREALIZED BUILT-IN LOSS.—

"(i) IN GENERAL.—If the old loss corporation has a net unrealized built-in loss, the recognized built-in loss for any recognition period taxable year shall be subject to limitation under this section in the same manner as if such loss were a pre-change loss.

"(ii) LIMITATION.—Clause (i) shall apply to recognized built-in losses for any recognition period taxable year only to the extent such losses do not exceed—

"(I) the net unrealized built-in loss, reduced by

"(II) recognized built-in losses for prior taxable years ending in the recognition period.

"(C) SECTION 338 GAIN.—The section 382 limitation for any taxable year in which gain is recognized by reason of an election under section 338 shall be increased by the excess of—

"(i) the amount of such gain, over

"(ii) the portion of such gain taken into account in computing recognized built-in gains for such taxable year.

"(2) RECOGNIZED BUILT-IN GAIN AND LOSS.—

"(A) RECOGNIZED BUILT-IN GAIN.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset to the extent the new loss corporation establishes that—

"(i) such asset was held by the old loss corporation immediately before the change date, and

"(ii) such gain does not exceed the excess of—

"(I) the fair market value of such asset on the change date, over

"(II) the adjusted basis of such asset on such date.

"(B) RECOGNIZED BUILT-IN LOSS.—The term 'recognized built-in loss' means any loss recognized during the recognition period on the disposition of any asset except to the extent the new loss corporation establishes that—

"(i) such asset was not held by the old loss corporation immediately before the change date, or

"(ii) such loss exceeds the excess of—

"(I) the adjusted basis of such asset on the change date, over

"(II) the fair market value of such asset on such date.

"(3) NET UNREALIZED BUILT-IN GAIN AND LOSS DEFINED.—

"(A) NET UNREALIZED BUILT-IN GAIN AND LOSS.—

"(i) IN GENERAL.—The terms 'net unrealized built-in gain' and 'net unrealized built-in loss' mean, with respect to any old loss corporation, the amount by which—

"(I) the fair market value of the assets of such corporation immediately before an ownership change is more or less, respectively, than

"(II) the aggregate adjusted basis of such assets at such time.

"(ii) SPECIAL RULE FOR REDEMPTIONS.—If a redemption occurs in connection with an ownership change, determinations under clause (i) shall be made after taking such redemption into account.

"(B) THRESHOLD REQUIREMENT.—

"(i) If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than 25 percent of the amount determined for purposes of subparagraph (A)(i)(I), the net unrealized built-in gain or net unrealized built-in loss shall be zero.

"(ii) CASH AND CASH ITEMS NOT TAKEN INTO ACCOUNT.—In computing any net unrealized built-in gain or net unrealized built-in loss under clause (i), there shall not be taken into account—

"(I) any cash or cash item, or

"(II) any marketable security which has a value which does not substantially differ from adjusted basis.

"(4) DISALLOWED LOSS TREATED AS A NET OPERATING LOSS.—If a deduction for any portion of a recognized built-in loss is disallowed for any post-change year, such portion—

"(A) shall be carried forward to subsequent taxable years under rules similar to the rules for the carrying forward of net operating losses, but

"(B) shall be subject to limitation under this section in the same manner as a pre-change loss.

"(5) SPECIAL RULES FOR POST-CHANGE YEAR WHICH INCLUDES CHANGE DATE.—For purposes of subsection (b)(3)—

"(A) in applying subparagraph (A) thereof, taxable income shall be computed without regard to recognized built-in gains and losses, and gain described in paragraph (1)(C), for the year, and

"(B) in applying subparagraph (B) thereof, the section 382 limitation shall be computed without regard to recognized built-in gains, and gain described in paragraph (1)(C), for the year.

"(6) SECRETARY MAY TREAT CERTAIN DEDUCTIONS AS BUILT-IN LOSSES.—The Secretary may by regulation treat amounts which accrue on or before the change date but which are allowable as a deduction after such date as recognized built-in losses.

"(7) RECOGNITION PERIOD, ETC.—

"(A) RECOGNITION PERIOD.—The term 'recognition period' means, with respect to any ownership change, the 5-year period beginning on the change date.

"(B) RECOGNITION PERIOD TAXABLE YEAR.—The term 'recognition period taxable year' means any taxable year any portion of which is in the recognition period.

"(8) DETERMINATION OF FAIR MARKET VALUE IN CERTAIN CASES.—If 80 percent or more in value of the stock of a corporation is acquired in 1 transaction (or in a series of related transactions during any 12-month period), for purposes of determining the net unrealized built-in loss, the fair market value of the assets of such corporation shall not exceed the grossed up amount paid for such stock properly adjusted for indebtedness of the corporation and other relevant items.

"(9) TAX-FREE EXCHANGES OR TRANSFERS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection where property held on the change date is transferred in a transaction where gain or loss is not recognized (in whole or in part).

"(i) TESTING PERIOD.—For purposes of this section—

"(1) 3-YEAR PERIOD.—Except as otherwise provided in this section, the testing period is the 3-year period ending on the day of any owner shift involving a 5-percent shareholder or equity structure shift.

"(2) SHORTER PERIOD WHERE THERE HAS BEEN RECENT OWNERSHIP CHANGE.—If there has been an ownership change under this section, the testing period for determining whether a 2nd ownership change has occurred shall not begin before the 1st day following the change date for such earlier ownership change.

"(3) SHORTER PERIOD WHERE ALL LOSSES ARISE AFTER 3-YEAR PERIOD BEGINS.—The testing period shall not begin before the 1st day of the 1st taxable year from which there is a carryforward of a loss or of an excess credit to the 1st post-change year. Except as provided in regulations, this paragraph shall not apply to any loss corporation which has a net unrealized built-in loss (determined after application of subsection (h)(3)(B)).

"(j) CHANGE DATE.—For purposes of this section, the change date is—

"(1) in the case where the last component of an ownership change is an owner shift involving a 5-percent shareholder, the date on which such shift occurs, and

"(2) in the case where the last component of an ownership change is an equity structure shift, the date of the reorganization.

"(k) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) LOSS CORPORATION.—The term 'loss corporation' means a corporation entitled to use a net operating loss carryover. Except to the extent provided in regulations, such term includes any corporation with a net unrealized built-in loss.

"(2) OLD LOSS CORPORATION.—The term 'old loss corporation' means any corporation with respect to which there is an ownership change—

"(A) which (before the ownership change) was a loss corporation, or

"(B) with respect to which there is a pre-change loss described in subsection (d)(1)(B).

"(3) NEW LOSS CORPORATION.—The term 'new loss corporation' means a corporation which (after an ownership change) is a loss corporation. Nothing in this section shall be treated as implying that the same corporation may not be both the old loss corporation and the new loss corporation.

"(4) TAXABLE INCOME.—Taxable income shall be computed with the modifications set forth in section 172(d).

"(5) VALUE.—The term 'value' means fair market value.

"(6) RULES RELATING TO STOCK.—

"(A) PREFERRED STOCK.—Except as provided in regulations and subsection (e), the term 'stock' means stock other than stock described in section 1504(a)(4).

"(B) TREATMENT OF CERTAIN RIGHTS, ETC.—The Secretary shall prescribe such regulations as may be necessary—

"(i) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

"(ii) to treat stock as not stock.

"(C) DETERMINATIONS ON BASIS OF VALUE.—Determinations of the percentage of stock of any corporation held by any person shall be made on the basis of value.

"(7) 5-PERCENT SHAREHOLDER.—The term '5-percent shareholder' means any person holding 5 percent or more of the stock of the corporation at any time during the testing period.

"(l) CERTAIN ADDITIONAL OPERATING RULES.—For purposes of this section—

"(1) CERTAIN CAPITAL CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—Any capital contribution received by an old loss corporation as part of a plan a principal purpose of which is to avoid or increase any limitation under this section shall not be taken into account for purposes of this section.

"(B) CERTAIN CONTRIBUTIONS TREATED AS PART OF PLAN.—For purposes of subparagraph (A), any capital contribution made during the 2-year period ending on the change date shall, except as provided in regulations, be treated as part of a plan described in subparagraph (A).

"(2) ORDERING RULES FOR APPLICATION OF SECTION.—

"(A) COORDINATION WITH SECTION 172(b) CARRYOVER RULES.—In the case of any pre-change loss for any taxable year (hereinafter in this subparagraph referred to as the 'loss year') subject to limitation under this section, for purposes of determining under the 2nd sentence of section 172(b)(2) the amount of such loss which may be carried to any taxable year, taxable income for any taxable year shall be treated as not greater than—

"(i) the section 382 limitation for such taxable year, reduced by

"(ii) the unused pre-change losses for taxable years preceding the loss year.

Similar rules shall apply in the case of any credit or loss subject to limitation under section 383.

"(B) ORDERING RULE FOR LOSSES CARRIED FROM SAME TAXABLE YEAR.—In any case in which—

"(i) a pre-change loss of a loss corporation for any taxable year is subject to a section 382 limitation, and

"(ii) a net operating loss of such corporation from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset first by the loss subject to such limitation.

"(3) OPERATING RULES RELATING TO OWNERSHIP OF STOCK.—

"(A) CONSTRUCTIVE OWNERSHIP.—Section 318 (relating to constructive ownership of stock) shall apply in determining ownership of stock, except that—

"(i) paragraphs (1) and (5)(B) of section 318(a) shall not apply and an individual and all members of his family described in paragraph (1) of section 318(a) shall be treated as 1 individual for purposes of applying this section,

"(ii) paragraph (2) of section 318(a) shall be applied—

"(I) without regard to the 50-percent limitation contained in subparagraph (C) thereof, and

"(II) except as provided in regulations, by treating stock attributed thereunder as no longer being held by the entity from which attributed,

"(iii) paragraph (3) of section 318(a) shall be applied only to the extent provided in regulations, and

"(iv) except to the extent provided in regulations, paragraph (4) of section 318(a) shall apply to an option if such application results in an ownership change.

A rule similar to the rule of clause (iv) shall apply in the case of any contingent purchase, warrant, convertible debt, put, stock subject to a risk of forfeiture, contract to acquire stock, or similar interests.

"(B) STOCK ACQUIRED BY REASON OF DEATH, GIFT, DIVORCE, SEPARATION, ETC.—If—

"(i) the basis of any stock in the hands of any person is determined—

"(I) under section 1014 (relating to property acquired from a decedent),

"(II) section 1015 (relating to property acquired by a gift or transfer in trust), or

"(III) section 1041(b)(2) (relating to transfers of property between spouses or incident to divorce,

"(ii) stock is received by any person in satisfaction of a right to receive a pecuniary bequest, or

"(iii) stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2)),

such person shall be treated as owning such stock during the period such stock was owned by the person from whom it was acquired.

"(C) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the acquisition of employer securities (within the meaning of section 409(l)) by—

"(I) a tax credit employee stock ownership plan or an employee stock ownership plan (within the meaning of section 4975(e)(7)), or

"(II) a participant of any such plan pursuant to the requirements of section 409(h),

shall not be taken into account in determining whether an ownership change has occurred.

"(ii) OWNERSHIP AND ALLOCATION REQUIREMENTS.—Subclause (I) of clause (i) shall not apply to any acquisition unless—

"(I) immediately after such acquisition the plan holds stock meeting the requirements of section 1042(b)(2), except that such section shall be applied by substituting '50 percent' for '30 percent', and

"(II) the plan meets requirements similar to the requirements of section 409(n).

"(D) CERTAIN CHANGES IN PERCENTAGE OWNERSHIP WHICH ARE ATTRIBUTABLE TO FLUCTUATIONS IN VALUE NOT TAKEN INTO ACCOUNT.—Except as provided in regulations, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

"(4) REDUCTION IN VALUE WHERE SUBSTANTIAL NONBUSINESS ASSETS.—

"(A) IN GENERAL.—If, immediately after an ownership change, the new loss corporation has substantial nonbusiness assets, the value of the old loss corporation shall be reduced by the excess (if any) of—

"(i) the fair market value of the nonbusiness assets of the old loss corporation, over

"(ii) the nonbusiness asset share of indebtedness for which such corporation is liable.

"(B) CORPORATION HAVING SUBSTANTIAL NONBUSINESS ASSETS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The old loss corporation shall be treated as having substantial nonbusiness assets if at least ⅓ of the value of the total assets of such corporation consists of nonbusiness assets.

"(ii) EXCEPTION FOR CERTAIN INVESTMENT ENTITIES.—A regulated investment company to which part I of subchapter M applies, a real estate investment trust to which part II of subchapter M applies, or a real estate mortgage pool to which part IV of subchapter M applies, shall not be treated as a new loss corporation having substantial nonbusiness assets.

"(C) NONBUSINESS ASSETS.—For purposes of this paragraph, the term 'nonbusiness assets' means assets held for investment.

"(D) NONBUSINESS ASSET SHARE.—For purposes of this paragraph, the nonbusiness asset share of the indebtedness of the corporation is an amount which bears the same ratio to such indebtedness as—

"(i) the fair market value of the nonbusiness assets of the corporation, bears to

"(ii) the fair market value of all assets of such corporation.

"(E) TREATMENT OF SUBSIDIARIES.—For purposes of this paragraph, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, and 50 percent or more of the total value of shares of all classes of stock.

"(5) TITLE 11 OR SIMILAR CASE.—

"(A) IN GENERAL.—Subsection (a) shall not apply to any ownership change if—

"(i) the old loss corporation is (immediately before such ownership change) under the jurisdiction of the court in a title 11 or similar case, and

"(ii) the shareholders and creditors of the old loss corporation (determined immediately before such ownership change) own (immediately after such ownership change) stock of the new loss corporation (or stock of controlling corporation if also in bankruptcy) which meets the requirements of section 1504(a)(2) (determined by substituting '50 percent' for '80 percent' each place it appears).

"(B) REDUCTION FOR INTEREST PAYMENTS TO CREDITORS BECOMING SHAREHOLDERS.—In any case to which subparagraph (A) applies, the net operating loss deduction under section 172(a) for any post-change year shall be determined as if no deduction was allowable under this chapter for the interest paid or accrued by the old loss corporation on indebtedness which was converted into stock pursuant to title 11 or similar case during—

"(i) any taxable year ending during the 3-year period preceding the taxable year in which the ownership change occurs, and

"(ii) the period of the taxable year in which the ownership change occurs on or before the change date.

"(C) REDUCTION OF CARRYFORWARDS WHERE DISCHARGE OF INDEBTEDNESS.—In any case to which subparagraph (A) applies, the prechange losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been includible in gross income for any taxable year had been so included.

"(D) SECTION 382 LIMITATION ZERO IF ANOTHER CHANGE WITHIN 2 YEARS.—If, during the 2-year period immediately following an ownership change to which this paragraph applies, an ownership change of the new loss corporation occurs, this paragraph shall not apply and the section 382 limitation with respect to the 2nd ownership change for any post-change year ending after the change date of the 2nd ownership change shall be zero.

"(E) ONLY CERTAIN STOCK OF CREDITORS TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(ii), stock transferred to a creditor in satisfaction of indebtedness shall be taken into account only if such indebtedness—

"(i) was held by the creditor at least 18 months before the date of the filing of the title 11 or similar case, or

"(ii) arose in the ordinary course of the trade or business of the old loss corporation and is held by the person who at all times held the beneficial interest in such indebtedness.

"(F) SPECIAL RULE FOR CERTAIN FINANCIAL INSTITUTIONS.—

"(i) IN GENERAL.—In the case of any ownership change to which this subparagraph applies, this paragraph shall be applied—

"(I) by substituting '20 percent' for '50 percent' in subparagraph (A)(ii), and

"(II) without regard to subparagraphs (B) and (C).

"(ii) SPECIAL RULE FOR DEPOSITORS.—For purposes of applying this paragraph to an ownership change to which this subparagraph applies—

"(I) a depositor in the old loss corporation shall be treated as a stockholder in such loss corporation immediately before the change,

"(II) deposits which, after the change, become deposits of the new loss corporation shall be treated as stock of the new loss corporation, and

"(III) the fair market value of the outstanding stock of the new loss corporation shall include deposits described in subclause (II).

"(iii) CHANGES TO WHICH SUBPARAGRAPH APPLIES.—This subparagraph shall apply to—

"(I) an equity structure shift which is a reorganization described in section 368(a)(3)(D)(ii), or

"(II) any other equity structure shift (or transaction to which section 351 applies) which occurs as an integral part of a transaction involving a change to which subclause (I) applies.

This subparagraph shall not apply to any equity structure shift or transaction occurring after December 31, 1988.

"(G) TITLE 11 OR SIMILAR CASE.—For purposes of this paragraph, the term 'title 11 or similar case' has the meaning given such term by section 368(a)(3)(A).

"(H) ELECTION NOT TO HAVE PARAGRAPH APPLY.—A new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of this paragraph apply.

"(6) SPECIAL RULE FOR INSOLVENCY TRANSACTIONS.—If paragraph (5) does not apply to any reorganization described in subparagraph (G) of section 368(a)(1) or any exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3)(A)), the value under subsection (e) shall be the value of the new loss corporation immediately after the ownership change.

"(7) COORDINATION WITH ALTERNATIVE MINIMUM TAX.—The Secretary shall by regulation provide for the application of this section to the alternative tax net operating loss deduction under section 56(d).

"(m) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and section 383, including (but not limited to) regulations—

"(1) providing for the application of this section and section 383 where an ownership change with respect to the old loss corporation is followed by an ownership change with respect to the new loss corporation, and

"(2) providing for the application of this section and section 383 in the case of a short taxable year,

"(3) providing for such adjustments to the application of this section and section 383 as is necessary to prevent the avoidance of the purposes of this section and section 383, including the avoidance of such purposes through the use of related persons, pass-thru entities, or other intermediaries,

"(4) providing for the treatment of corporate contractions as redemptions for purposes of subsections (e)(2) and (h)(3)(A), and

"(5) providing for the application of subsection (g)(4) where there is only 1 corporation involved."

(b) AMENDMENT OF SECTION 383.—Section 383 (relating to special limitations on unused investment credits, etc.) is amended to read as follows:

"SEC. 383. SPECIAL LIMITATIONS ON CERTAIN EXCESS CREDITS, ETC.

"(a) EXCESS CREDITS.—

"(1) IN GENERAL.—Under regulations, if an ownership change occurs with respect to a corporation, the amount of any excess credit for any taxable year which may be used in any post-change year shall be limited to an amount determined on the basis of the tax liability which is attributable to so much of the taxable income as does not exceed the section 382 limitation for such post-change year to the extent available after the application of section 382 and subsections (b) and (c) of this section.

"(2) EXCESS CREDIT.—For purposes of paragraph (1), the term 'excess credit' means—

"(A) any unused general business credit of the corporation under section 39, and

"(B) any unused minimum tax credit of the corporation under section 53.

"(b) LIMITATION ON NET CAPITAL LOSS.—If an ownership change occurs with respect to a corporation, the amount of any net capital loss under section 1212 for any taxable year before the 1st post-change year which may be used in any post-change year shall be limited under regulations which shall be based on the principles applicable under section 382. Such regulations shall provide that any such net capital loss used in a post-change year shall reduce the section 382 limitation which is applied to pre-change losses under section 382 for such year.

"(c) FOREIGN TAX CREDITS.—If an ownership change occurs with respect to a corporation, the amount of any excess foreign taxes under section 904(c) for any taxable year before the 1st post-change taxable year shall be limited under regulations which shall be consistent with purposes of this section and section 382.

"(d) PRO RATION RULES FOR YEAR WHICH INCLUDES CHANGE.—For purposes of this section, rules similar to the rules of subsections (b)(3) and (d)(1)(B) of section 382 shall apply.

"(e) DEFINITIONS.—Terms used in this section shall have the same respective meanings as when used in section 382, except that appropriate adjustments shall be made to take into account that the limitations of this section apply to credits and net capital losses."

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (5) of section 318(b) is amended by striking out "section 382(a)(3)" and inserting in lieu thereof "section 382(l)(3)".

(2) The table of sections for part V of subchapter C of chapter 1 is amended—

(A) by striking out the item relating to section 382 and inserting in lieu thereof the following new item:

"Sec. 382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change.",

and

(B) by striking out the item relating to section 383 and inserting in lieu thereof the following new item:

"Sec. 383. Special limitations on certain excess credits, etc.".

(d) REPORT ON DEPRECIATION AND BUILT-IN DEDUCTIONS; REPORT ON BANKRUPTCY WORKOUTS.—The Secretary of the Treasury or his delegate—

(1) shall, not later than January 1, 1989, conduct a study and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate with respect to the treatment of depreciation, amortization, depletion, and other built-in deductions for purposes of sections 382 and 383 of the Internal Revenue Code of 1986 (as amended by this section), and

(2) shall, not later than January 1, 1988, conduct a study and report to the committees referred to in paragraph (1) with respect to the treatment of informal bankruptcy workouts for purposes of sections 108 and 382 of such Code.

(e) REPEAL OF CHANGES MADE BY TAX REFORM ACT OF 1976.—

(1) Subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 (including the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984) are hereby repealed.

(2) Subsection (g) of such section 806 is amended by striking out paragraphs (2) and (3).

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall apply to any ownership change following—

(A) an owner shift involving a 5-percent shareholder occurring after December 31, 1986, or

(B) an equity structure shift occurring pursuant to a plan of reorganization adopted after December 31, 1986.

(2) FOR AMENDMENTS TO TAX REFORM ACT OF 1976.—

(A) IN GENERAL.—The repeals made by subsection (e)(1) and the amendment made by subsection (e)(2) shall take effect on January 1, 1986.

(B) ELECTION TO HAVE AMENDMENTS APPLY.—

(i) If a taxpayer described in clause (ii) elects to have the provisions of this subparagraph apply, the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall apply to the reorganization described in clause (ii).

(ii) A taxpayer is described in this clause if the taxpayer filed a title 11 or similar case on December 8, 1981, filed a plan of reorganization on February 5, 1986, filed an amended plan on March 14, 1986, and received court approval for the amended plan and disclosure statement on April 16, 1986.

(C) APPLICATION OF OLD RULES TO CERTAIN DEBT.—In the case of debt of a corporation incorporated in Colorado on November 8, 1924, with headquarters in Denver, Colorado—

(i) the amendments made by subsections (a), (b), and (c) shall not apply to any debt restructuring of such debt which was approved by the debtor's Board of Directors and the lenders in 1986, and

(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 (including the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984) shall apply to such debt restructuring.

(D) SPECIAL RULE FOR OIL AND GAS WELL DRILLING BUSINESS.—In the case of a Texas corporation incorporated on July 23, 1935, in applying section 382 of the Internal Revenue Code of 1986 (as in effect before and after the amendments made by subsections (a), (b), and (c)) to a loan restructuring agreement during 1985, section 382(a)(5)(C) of the Internal Revenue Code of 1954 (as added by the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976) shall be applied as if it were in effect with respect to such restructuring or reorganization.

(3) TESTING PERIOD.—For purposes of determining whether there is an ownership change after December 31, 1986, the testing period shall not begin before the later of—

(A) May 6, 1986, or

(B) in the case of an ownership change which occurs after May 5, 1986, and to which the amendments made by subsections (a), (b), and (c) do not apply, the first day following the date on which such ownership change occurs.

(4) SPECIAL TRANSITION RULES.—The amendments made by subsections (a), (b), and (c) shall not apply to any—

(A) stock-for-debt exchanges and stock sales made pursuant to a plan of reorganization with respect to a petition for reorganization filed by a corporation under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and related plan of reorganization before March 1, 1986, or

(B) ownership change of a Delaware corporation incorporated in August 1983, which may result from the exercise of put or call option under an agreement entered into on September 14, 1983, but only with respect to taxable years beginning after 1991 regardless of when such ownership change takes place.

Any regulations prescribed under section 382(g)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall not apply with respect to domestic building

and loan transactions for any period before January 1, 1989.

(5) BANKRUPTCY PROCEEDINGS.—In the case of a reorganization described in subparagraph (G) of section 368(a)(1) of the Internal Revenue Code of 1986 or an exchange of debt for stock in a title 11 or similar case, as defined in section 368(a)(3) of such Code, the amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986.

(6) CERTAIN PLANS.—The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change with respect to—

(A) the acquisition of a corporation the stock of which is acquired pursuant to a plan of divestiture which identified such corporation and its assets, and was agreed to by the board of directors of such corporation's parent corporation on May 17, 1985,

(B) a merger which occurs pursuant to a merger agreement (entered into before September 24, 1985) and an application for approval by the Federal Home Loan Bank Board was filed on October 4, 1985,

(C) a reorganization involving a party to a reorganization of a group of corporations engaged in enhanced oil recovery operations in California, merged in furtherance of a plan of reorganization adopted by a board of directors vote on September 24, 1985, and a Delaware corporation whose principal oil and gas producing fields are located in California, or

(D) the conversion of a mutual savings and loan association holding a Federal charter dated March 22, 1985, to a stock savings and loan association pursuant to the rules and regulations of the Federal Home Loan Bank Board.

(7) OWNERSHIP CHANGE OF REGULATED AIR CARRIER.—The amendments made by subsections (a), (b), and (c) shall not apply to an ownership change of a regulated air carrier if—

(A) on July 16, 1986, at least 40 percent of the outstanding common stock (excluding all preferred stock, whether or not convertible) of such carrier had been acquired by the parent corporation referred to in section 203(d)(13)(B), and

(B) the acquisition (by or for such parent corporation) or retirement of the remaining common stock of such carrier is completed before the later of March 31, 1987, or 90 days after the requisite governmental approvals are finally granted,

but only if the ownership change occurs on or before the later of March 31, 1987, or such 90th day. The aggregate reduction in tax for any taxable year by reason of this paragraph shall not exceed $10,000,000. The testing period for determining whether a subsequent ownership change has occurred shall not begin before the 1st day following an ownership change to which this paragraph applies.

(8) The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from the conversion of a Minnesota mutual savings bank holding a Federal charter dated December 31, 1985, to a stock savings bank pursuant to the rules and regulations of the Federal Home Loan Bank Board, and from the issuance of stock pursuant to that conversion to a holding company incorporated in Delaware on February 21, 1984. For purposes of determining whether any ownership change occurs with respect to the holding company or any subsidiary thereof (whether resulting from the transaction described in the preceding sentence or otherwise), any issuance of stock made by such holding company in connection with the transaction described in the preceding sentence shall not be taken into account.

(9) DEFINITIONS.—Except as otherwise provided, terms used in this subsection shall have the same meaning as when used in section 382 of the Internal Revenue Code of 1986 (as amended by this section).

SUBTITLE D—RECOGNITION OF GAIN AND LOSS ON DISTRIBUTIONS OF PROPERTY IN LIQUIDATION

SEC. 631. RECOGNITION OF GAIN AND LOSS ON DISTRIBUTIONS OF PROPERTY IN LIQUIDATION.

(a) GENERAL RULE.—Subpart B of part II of subchapter C (relating to effects on corporation) is amended by striking out sections 336 and 337 and inserting in lieu thereof the following:

"SEC. 336. GAIN OR LOSS RECOGNIZED ON PROPERTY DISTRIBUTED IN COMPLETE LIQUIDATION.

"(a) GENERAL RULE.—Except as otherwise provided in this section or section 337, gain or loss shall be recognized to a liquidating corporation on the distribution of property in complete liquidation as if such property were sold to the distributee at its fair market value.

"(b) TREATMENT OF LIABILITIES IN EXCESS OF BASIS.—If any property distributed in the liquidation is subject to a liability or the shareholder assumes a liability of the liquidating corporation in connection with the distribution, for purposes of subsection (a) and section 337, the fair market value of such property shall be treated as not less than the amount of such liability.

"(c) EXCEPTION FOR CERTAIN LIQUIDATIONS TO WHICH PART III APPLIES.—This section shall not apply with respect to any distribution of property to the extent there is nonrecognition of gain or loss with respect to such property to the recipient under part III.

"(d) LIMITATIONS ON RECOGNITION OF LOSS.—

"(1) NO LOSS RECOGNIZED IN CERTAIN DISTRIBUTIONS TO RELATED PERSONS.—

"(A) IN GENERAL.—No loss shall be recognized to a liquidating corporation on the distribution of any property to a related person (within the meaning of section 267) if—

"(i) such distribution is not pro rata, or

"(ii) such property is disqualified property.

"(B) DISQUALIFIED PROPERTY.—For purposes of subparagraph (A), the term 'disqualified property' means any property which is acquired by the liquidating corporation in a transaction to which section 351 applied, or as a contribution to capital, during the 5-year period ending on the date of the distribution. Such term includes any property if the adjusted basis of such property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

"(2) SPECIAL RULE FOR CERTAIN PROPERTY ACQUIRED IN CERTAIN CARRYOVER BASIS TRANSACTIONS.—

"(A) IN GENERAL.—For purposes of determining the amount of loss recognized by any liquidating corporation on any sale, exchange, or distribution of property described in subparagraph (B), the adjusted basis of such property shall be reduced (but not below zero) by the excess (if any) of—

"(i) the adjusted basis of such property immediately after its acquisition by such corporation, over

"(ii) the fair market value of such property as of such time.

"(B) DESCRIPTION OF PROPERTY.—

"(i) IN GENERAL.—For purposes of subparagraph (A), property is described in this subparagraph if—

"(I) such property is acquired by the liquidating corporation in a transaction to which section 351 applied or as a contribution to capital, and

"(II) the acquisition of such property by the liquidating corporation was part of a plan a principal purpose of which was to recognize loss by the liquidating corporation with respect to such property in connection with the liquidation.

Other property shall be treated as so described if the adjusted basis of such other property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

"(ii) CERTAIN ACQUISITIONS TREATED AS PART OF PLAN.—For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidating corporation during the 2-year period ending on the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as part of a plan described in clause (i)(II).

"(C) RECAPTURE IN LIEU OF DISALLOWANCE.—The Secretary may prescribe regulations under which, in lieu of disallowing a loss under subparagraph (A) for a prior taxable year, the gross income of the liquidating corporation for the taxable year in which the plan of complete liquidation is adopted shall be increased by the amount of the disallowed loss.

"(3) SPECIAL RULE IN CASE OF LIQUIDATION TO WHICH SECTION 332 APPLIES.—In the case of any liquidation to which section 332 applies, no loss shall be recognized to the liquidating corporation on any distribution in such liquidation.

"(e) CERTAIN STOCK SALES AND DISTRIBUTIONS MAY BE TREATED AS ASSET TRANSFERS.—Under regulations prescribed by the Secretary, if—

"(1) a corporation owns stock in another corporation meeting the requirements of section 1504(a)(2), and

"(2) such corporation sells, exchanges, or distributes all of such stock,

such corporation may elect to treat such sale, exchange, or distribution as a disposition of all of the assets of such other corporation, and no gain or loss shall be recognized on the sale, exchange, or distribution of such stock.

"SEC. 337. NONRECOGNITION FOR PROPERTY DISTRIBUTED TO PARENT IN COMPLETE LIQUIDATION OF SUBSIDIARY.

"(a) IN GENERAL.—No gain or loss shall be recognized to the liquidating corporation on the distribution to the 80-percent distributee of any property in a complete liquidation to which section 332 applies.

"(b) TREATMENT OF INDEBTEDNESS OF SUBSIDIARY, ETC.—

"(1) INDEBTEDNESS OF SUBSIDIARY TO PARENT.—If—

"(A) a corporation is liquidated in a liquidation to which section 332 applies, and

"(B) on the date of the adoption of the plan of liquidation, such corporation was indebted to the 80-percent distributee,

for purposes of this section and section 336, any transfer of property to the 80-percent distributee in satisfaction of such indebtedness shall be treated as a distribution to such distributee in such liquidation.

"(2) TREATMENT OF TAX-EXEMPT DISTRIBUTEE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), paragraph (1) and subsection (a) shall not apply where the 80-percent distributee is an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

"(B) EXCEPTION WHERE PROPERTY WILL BE USED IN UNRELATED BUSINESS.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to any distribution of property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such distribution, such organization uses such property in an unrelated trade or business (as defined in section 513).

"(ii) LATER DISPOSITION OR CHANGE IN USE.—If any property to which clause (i) applied is disposed of by the organization acquiring such property, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of clause (i) shall be included in such organization's unrelated business taxable income. For purposes of the preceding sentence, if such property ceases to be used in an unrelated trade or business of such organization, such organization shall be treated as having disposed of such property on the date of such cessation.

"(c) 80-PERCENT DISTRIBUTEE.—For purposes of this section, the term '80-percent distributee' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b).

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the amendments made to this subpart by the Tax Reform Act of 1986, including—

"(1) regulations to ensure that such purposes may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations and part III of this subchapter), and

"(2) regulations providing for appropriate coordination of the provisions of this section with the provisions of this title relating to taxation of foreign corporations and their shareholders."

(b) AMENDMENTS TO SECTION 338.—

(1) Subsection (a) of section 338 (relating to certain stock purchases treated as asset acquisitions) is amended by striking out "to which section 337 applies".

(2) Subsection (c) of section 338 is hereby repealed.

(3) Subparagraph (B) of section 338(h)(10) is amended by adding at the end thereof the following new sentence:

"To the extent provided in regulations, such term also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return)."

(c) TREATMENT OF DISTRIBUTIONS OF APPRECIATED PROPERTY.—Section 311 is amended to read as follows:

"SEC. 311. TAXABILITY OF CORPORATION ON DISTRIBUTION.

"(a) GENERAL RULE.—Except as provided in subsection (b), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock, of—

"(1) its stock (or rights to acquire its stock), or

"(2) property.

"(b) DISTRIBUTIONS OF APPRECIATED PROPERTY.—

"(1) IN GENERAL.—If—

"(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and

"(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(2) TREATMENT OF LIABILITIES IN EXCESS OF BASIS.—Rules similar to the rules of section 336(b) shall apply for purposes of this subsection."

(d) TREATMENT OF FOREIGN DISTRIBUTEES.—

(1) AMENDMENTS TO SECTION 367.—Subsection (e) of section 367 is amended to read as follows:

"(e) TREATMENT OF DISTRIBUTIONS DESCRIBED IN SECTION 355 OR LIQUIDATIONS UNDER SECTION 332.—

"(1) DISTRIBUTIONS DESCRIBED IN SECTION 355.—In the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a domestic corporation to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.

"(2) LIQUIDATIONS UNDER SECTION 332.—In the case of any liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply where the 80-percent distributee (as defined in section 337(c)) is a foreign corporation."

(2) AMENDMENTS TO SECTION 1248.—

(A) Subsection (e) of section 1248 is amended by striking out "Under regulations" and inserting in lieu thereof "Except as provided in regulations".

(B) Subsection (f) of section 1248 is amended by inserting "Except as provided in regulations prescribed by the Secretary—" after the subsection heading.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (4) of section 312(n) (as redesignated by title XVIII) is amended to read as follows:

"(4) LIFO INVENTORY ADJUSTMENTS.—

"(A) IN GENERAL.—Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the 1st taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.

"(B) LIFO RECAPTURE AMOUNT.—For purposes of this paragraph, the term 'LIFO recapture amount' means the amount (if any) by which—

"(i) the inventory amount of the inventory assets under the first-in, first-out method authorized by section 471, exceeds

"(ii) the inventory amount of such assets under the LIFO method.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) LIFO METHOD.—The term 'LIFO method' means the method authorized by section 472 (relating to last-in, first-out inventories).

"(ii) INVENTORY ASSETS.—The term 'inventory assets' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

"(iii) INVENTORY AMOUNT.—The inventory amount of assets under the first-in, first-out method authorized by section 471 shall be determined—

"(I) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

"(II) if subclause (I) does not apply, by using cost or market, whichever is lower."

(2) Subsection (c) of section 332 is hereby repealed.

(3) Section 333 is hereby repealed.

(4)(A) Subsection (a) of section 334 is amended by striking out "(other than a distribution to which section 333 applies)".

(B) Subsection (c) of section 334 is hereby repealed.

(5) Paragraph (12) of section 338(h) is hereby repealed.

(6)(A) Subsection (e) of section 341 is amended by striking out paragraphs (2), (3), and (4).

(B) Paragraph (5) of section 341(e) is amended—

(i) by striking out "paragraphs (1), (2), and (4)" and inserting in lieu thereof "paragraph (1)", and

(ii) by striking out subparagraph (B).

(7) Subsection (b) of section 346 is amended by striking out "337,".

(8)(A) Subparagraphs (A) and (B) of section 453(h)(1) (relating to use of installment sales in section 337 liquidations) are amended to read as follows:

"(A) IN GENERAL.—If, in a liquidation to which section 331 applies, the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period beginning on the date a plan of complete liquidation is adopted and the liquidation is completed during such 12-month period, then, for purposes of this section, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.

"(B) OBLIGATIONS ATTRIBUTABLE TO SALE OF INVENTORY MUST RESULT FROM BULK SALE.—Subparagraph (A) shall not apply to an installment obligation acquired in respect of a sale or exchange of—

"(i) stock in trade of the corporation,

"(ii) other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and

"(iii) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

unless such sale or exchange is to one person and involves substantially all of such property attributable to a trade or business of the corporation."

(B) Subparagraph (E) of section 453(h)(1) is amended to read as follows:

"(E) SALES BY LIQUIDATING SUBSIDIARIES.—For purposes of subparagraph (A), in the case of a controlling corporate shareholder (within the meaning of section 368(c)(1)) of a selling corporation, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by such controlling corporate shareholder. The preceding sentence shall be applied successively to each controlling corporate shareholder above such controlling corporate shareholder."

(C) The heading for section 453(h) is amended by striking out "SECTION 337" and inserting in lieu thereof "CERTAIN".

(9) Subsection (d) of section 453B is amended to read as follows:

"(d) EFFECT OF DISTRIBUTION IN LIQUIDATIONS TO WHICH SECTION 332 APPLIES.—If—

"(1) an installment obligation is distributed in a liquidation to which section 332 (relating to complete liquidations of subsidiaries) applies, and

"(2) the basis of such obligation in the hands of the distributee is determined under section 334(b)(1),

then no gain or loss with respect to the distribution of such obligation shall be recognized by the distributing corporation."

(10) Paragraph (5) of section 467(c) is amended by striking out "453B(d)(2),".

(11) Subsection (b) of section 852 is amended by adding at the end thereof the following new paragraph:

"(6) SECTION 311(b) NOT TO APPLY TO CERTAIN DISTRIBUTIONS.—Section 311(b) shall not apply to any distribution by a regulated investment company to which this part applies, if such distribution is in redemption of its stock upon the demand of the shareholder."

(12) Subsection (d) of section 897 is amended—

(A) by striking out paragraph (2),

(B) by striking out the heading for paragraph (1),

(C) by appropriately redesignating each subparagraph, clause, and subclause of paragraph (1) as a paragraph, subparagraph, or clause, as the case may be,

(D) by striking out "subparagraph (A)" in paragraph (2) (as so redesignated) and inserting in lieu thereof "paragraph (1)", and

(E) by striking out ", ETC.," in the subsection heading.

(13) Subsection (a) of section 1056 is amended by striking out the last sentence thereof.

(14) Paragraph (2) of section 1255(b) is amended by striking out "453B(d)(2)".

(15) Paragraph (3) of section 1276(c) is amended by striking out "334(c),".

(16) The table of sections for subpart A of part II of subchapter C of chapter 1 is amended by striking out the item relating to section 333.

(17) The table of sections for subpart B of part II of subchapter C of chapter 1 is amended by striking out the items relating to sections 336 and 337 and inserting in lieu thereof the following:

"Sec. 336. Gain or loss recognized on property distributed in complete liquidation.

"Sec. 337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary."

SEC. 632. TREATMENT OF C CORPORATIONS ELECTING SUBCHAPTER S STATUS.

(a) GENERAL RULE.—Section 1374 (relating to tax imposed on certain capital gains) is amended to read as follows:

"SEC. 1374. TAX IMPOSED ON CERTAIN BUILT-IN GAINS.

"(a) GENERAL RULE.—If for any taxable year beginning in the recognition period an S corporation has a recognized built-in gain, there is hereby imposed a tax (computed under subsection (b)) on the income of such corporation for such taxable year.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The tax imposed by subsection (a) shall be a tax computed by applying the highest rate of tax specified in section 11(b) to the lesser of—

"(A) the recognized built-in gains of the S corporation for the taxable year, or

"(B) the amount which would be the taxable income of the corporation for such taxable year if such corporation were not an S corporation.

"(2) NET OPERATING LOSS CARRYFORWARDS FROM C YEARS ALLOWED.—Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the lesser of the amounts referred to in subparagraph (A) or (B) of paragraph (1). For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the lesser of the amounts referred to in subparagraph (A) or (B) of paragraph (1) shall be treated as taxable income.

"(3) CREDITS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no credit shall be allowable under part IV of subchapter A of this chapter (other than under section 34) against the tax imposed by subsection (a).

"(B) BUSINESS CREDIT CARRYFORWARDS FROM C YEARS ALLOWED.—Notwithstanding section 1371(b)(1), any business credit carryforward under section 39 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed by subsection (a) in the same manner as if it were imposed by section 11.

"(4) COORDINATION WITH SECTION 1201(a).—For purposes of section 1201(a)—

"(A) the tax imposed by subsection (a) shall be treated as if it were imposed by section 11, and

"(B) the lower of the amounts specified in subparagraphs (A) and (B) of paragraph (1) shall be treated as the taxable income.

"(c) LIMITATIONS.—

"(1) CORPORATIONS WHICH WERE ALWAYS S CORPORATIONS.—Subsection (a) shall not apply to any corporation if an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years. Except as provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of the preceding sentence.

"(2) LIMITATION ON AMOUNT OF RECOGNIZED BUILT-IN GAINS.—The amount of the recognized built-in gains taken into account under this section for any taxable year shall not exceed the excess (if any) of—

"(A) the net unrealized built-in gain, over

"(B) the recognized built-in gains for prior taxable years beginning in the recognition period.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) NET UNREALIZED BUILT-IN GAIN.—The term 'net unrealized built-in gain' means the amount (if any) by which—

"(A) the fair market value of the assets of the S corporation as of the beginning of its 1st taxable year for which an election under section 1362(a) is in effect, exceeds

"(B) the aggregate adjusted bases of such assets at such time.

"(2) RECOGNIZED BUILT-IN GAIN.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset except to the extent that the S corporation establishes that—

"(A) such asset was not held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (1), or

"(B) such gain exceeds the excess (if any) of—

"(i) the fair market value of such asset as of the beginning of such 1st taxable year, over

"(ii) the adjusted basis of the asset as of such time.

"(3) RECOGNITION PERIOD.—The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

"(4) TAXABLE INCOME.—Taxable income of the corporation shall be determined under section 63(a)—

"(A) without regard to the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures), and

"(B) without regard to the deduction under section 172."

(b) TREATMENT OF DISTRIBUTIONS.—Subsection (e) of section 1363 is amended to read as follows:

"(e) SUBSECTION (d) NOT TO APPLY TO REORGANIZATIONS, ETC.—Subsection (d) shall not apply to any distribution to the extent it consists of property permitted by section 354, 355, or 356 to be received without the recognition of gain."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (G) of section 26(b)(2) is amended by striking out "ccrtain capital gains" and inserting in lieu thereof "certain built-in gains".

(2) Paragraph (2) of section 1366(f) is amended to read as follows:

"(2) REDUCTION IN PASS-THRU FOR TAX IMPOSED ON BUILT-IN GAINS.—If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount of each recognized built-in gain (as defined in section 1374(d)(2)) for such taxable year shall be reduced by its proportionate share of such tax."

(3) Subparagraph (B) of section 1375(b)(1) is amended by striking out "section 1374(d)" and inserting in lieu thereof "section 1374(d)(4)".

(d) CLERICAL AMENDMENT.—The table of sections for part III of subchapter S of chapter 1 is amended by striking out the item relating to section 1374 and inserting in lieu thereof the following:

"Sec. 1374. Tax imposed on certain built-in gains."

SEC. 633. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle shall apply to—

(1) any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before January 1, 1987,

(2) any transaction described in section 338 of the Internal Revenue Code of 1986 for which the acquisition date occurs after December 31, 1986, and

(3) any distribution (not in complete liquidation) made after December 31, 1986.

(b) BUILT-IN GAINS OF S CORPORATIONS.—The amendments made by section 632 (other than subsection (b) thereof) shall apply to taxable years beginning after December 31, 1986, but only in cases where the 1st taxable year for which the corporation is an S corporation is pursuant to an election made after December 31, 1986.

(c) EXCEPTION FOR CERTAIN PLANS OF LIQUIDATION AND BINDING CONTRACTS.—

(1) IN GENERAL.—The amendments made by this subtitle shall not apply to—

(A) any distribution or sale or exchange made pursuant to a plan of liquidation adopted before August 1, 1986, if the liquidating corporation is completely liquidated before January 1, 1988,

(B) any distribution or sale or exchange made by any corporation if 50 percent or more of the voting stock by value of such corporation is acquired on or after August 1, 1986, pursuant to a written binding contract in effect before such date and if such

corporation is completely liquidated before January 1, 1988,

(C) any distribution or sale or exchange made by any corporation if substantially all of the assets of such corporation are sold on or after August 1, 1986, pursuant to 1 or more written binding contracts in effect before such date and if such corporation is completely liquidated before January 1, 1988, or

(D) any transaction described in section 338 of the Internal Revenue Code of 1986 with respect to any target corporation if a qualified stock purchase of such target corporation is made on or after August 1, 1986, pursuant to a written binding contract in effect before such date and the acquisition date (within the meaning of such section 338) is before January 1, 1988.

(2) SPECIAL RULE FOR CERTAIN ACTIONS TAKEN BEFORE NOVEMBER 20, 1985.—For purposes of paragraph (1), transactions shall be treated as pursuant to a plan of liquidation adopted before August 1, 1986, if—

(A) before November 20, 1985—

(i) the board of directors of the liquidating corporation adopted a resolution to solicit shareholder approval for a transaction of a kind described in section 336 or 337, or

(ii) the shareholders or board of directors have approved such a transaction,

(B) before November 20, 1985—

(i) there has been an offer to purchase a majority of the voting stock of the liquidating corporation, or

(ii) the board of directors of the liquidating corporation has adopted a resolution approving an acquisition or recommending the approval of an acquisition to the shareholders, or

(C) before November 20, 1985, a ruling request was submitted to the Secretary of the Treasury or his delegate with respect to a transaction of a kind described in section 336 or 337 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this subtitle).

For purposes of the preceding sentence, any action taken by the board of directors or shareholders of a corporation with respect to any subsidiary of such corporation shall be treated as taken by the board of directors or shareholders of such subsidiary.

(d) TRANSITIONAL RULE FOR CERTAIN SMALL CORPORATIONS.—

(1) IN GENERAL.—In the case of the complete liquidation before January 1, 1989, of a qualified corporation, the amendments made by this section shall not apply to the applicable percentage of each gain or loss which (but for this paragraph) would be recognized by reason of the amendments made by this subtitle.

(2) PARAGRAPH (1) NOT TO APPLY TO CERTAIN ITEMS.—Paragraph (1) shall not apply to—

(A) any gain or loss which is an ordinary gain or loss (determined without regard to section 1239 of the Internal Revenue Code of 1986),

(B) any gain or loss on a capital asset held for not more than 6 months, and

(C) any gain to the extent section 453B of such Code applies.

(3) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means—

(A) 100 percent if the applicable value of the qualified corporation is less than $5,000,000, or

(B) 100 percent reduced by an amount which bears the same ratio to 100 percent as—

(i) the excess of the applicable value of the corporation over $5,000,000, bears to

(ii) $5,000,000.

(4) APPLICABLE VALUE.—For purposes of this subsection, the applicable value is the fair market value of all of the stock of the corporation on the date of the adoption of the plan of complete liquidation (or if greater, on August 1, 1986).

(5) QUALIFIED CORPORATION.—For purposes of this subsection, the term 'qualified corporation' means any corporation if—

(A) on August 1, 1986, and at all times thereafter before the corporation is completely liquidated, more than 50 percent (by value) of the stock in such corporation is held by 10 or fewer qualified persons, and

(B) the applicable value of such corporation does not exceed $10,000,000.

(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) QUALIFIED PERSON.—The term "qualified person" means—

(i) an individual,

(ii) an estate, or

(iii) any trust described in clause (ii) or (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

(B) ATTRIBUTION RULES.—

(i) ENTITIES.—Any stock held by a corporation, trust, or partnership shall be treated as owned proportionally by its shareholders, beneficiaries, or partners. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(ii) FAMILY MEMBERS.—Stock owned (or treated as owned under clause (i)) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person.

(C) CONTROLLED GROUP OF CORPORATIONS.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of this subsection.

(7) SECTION 338 TRANSACTIONS.—The provisions of this subsection shall also apply in the case of a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before January 1, 1989.

(8) APPLICATION OF SECTION 1374.—Rules similar to the rules of this subsection shall apply for purposes of applying section 1374 of the Internal Revenue Code of 1986 (as amended by section 632) in the case of a qualified corporation which becomes an S corporation for a taxable year beginning before January 1, 1989.

(d) COMPLETE LIQUIDATION DEFINED.—For purposes of this section, a corporation shall be treated as completely liquidated if all of the assets of such corporation are distributed in complete liquidation, less assets retained to meet claims.

(e) OTHER TRANSITIONAL RULES.—

(1) The amendments made by this subtitle shall not apply to any liquidation of a corporation incorporated under the laws of Pennsylvania on August 3, 1970, if—

(A) the board of directors of such corporation approved a plan of liquidation before January 1, 1986,

(B) an agreement for the sale of a material portion of the assets of such corporation was signed on May 9, 1986 (whether or not the assets are sold in accordance with such agreement), and

(C) the corporation is completely liquidated on or before December 31, 1988.

(2) The amendments made by this subtitle shall not apply to any liquidation (or deemed liquidation under section 338 of the Internal Revenue Code of 1986) of a diversified financial services corporation incorporated under the laws of Delaware on May 9, 1929, pursuant to a binding written contract entered into on or before December 31, 1986; but only if the liquidation is completed (or in the case of a section 338 election, the acquisition date occurs) before January 1, 1988.

(3) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

(A) of the assets owned (directly or indirectly) by a testamentary trust established under the will of a decent dying on June 15, 1956, to its beneficiaries,

(B) made pursuant to a court order in an action filed on January 18, 1984, if such order—

(i) is issued after July 31, 1986, and

(ii) directs the disposition of the assets of such trust and the division of the trust corpus into 3 separate sub-trusts.

For purposes of the preceding sentence, an election under section 338(g) of the Internal Revenue Code of 1986 (or an election under section 338(h)(10) of such Code), qualifying as a section 337 liquidation pursuant to regulations prescribed by the Secretary under section 1.338(h)(10)-1T(j)) made in connection with a sale or exchange pursuant to a court order described in subparagraph (B) shall be treated as a sale of exchange.

(4)(A) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

(i) if—

(I) an option agreement binding on the selling corporation to sell substantially all its assets is executed before August 1, 1986, the corporation adopts (by approval of its shareholders) a conditional plan of liquidation before August 1, 1986 to become effective upon the exercise of such option agreement (or modification thereto), and the assets are sold pursuant to the exercise of the option (as originally executed or subsequently modified provided that the purchase price is not thereby increased), or

(II) in the event that the optionee does not acquire substantially all the assets of the corporation, the optionor corporation sells substantially all its assets to another purchaser at a purchase price not greater than that contemplated by such option agreement pursuant to an effective plan of liquidation, and

(ii) the complete liquidation of the corporation occurs within 12 months of the time the plan of liquidation becomes effective, but in no event later than December 31, 1989.

(B) For purposes of subparagraph (A), a distribution, or sale, or exchange, of a distributee corporation (within the meaning of section 337(c)(3) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of subparagraph (A) if its subsidiary satisfies the requirements of subparagraph (A).

(C) For purposes of section 56 of the Internal Revenue Code of 1986 (as amended by this Act), any gain or loss not recognized by reason of this paragraph shall not be taken into account in determining the adjusted net book income of the corporation.

(5) In the case of a corporation incorporated under the laws of Wisconsin on April 3, 1948—

(A) a voting trust established not later than December 31, 1987, for purposes of holding employees' shares of stock in such corporation, shall qualify as a trust permit-

ted as a shareholder of an S corporation, and

(B) the amendment made by section 632 (other than subsection (b) thereof) shall not apply to such corporation if it elects to be an S corporation before January 1, 1989.

(6) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated on January 26, 1982, under the laws of the State of Alabama with a principal place of business in Colbert County, Alabama, but only if such corporation is completely liquidated on or before December 31, 1987.

(7) The amendments made by this subtitle shall not apply to the acquisition by a Delaware bank holding company of all of the assets of an Iowa Bank holding company pursuant to a written contract dated December 9, 1981.

(8) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated under the laws of Delaware on January 20, 1984, if more than 40 percent of the stock of such corporation was acquired by purchase on June 11, 1986, and there was a tender offer with respect to all additional outstanding shares of such corporation on July 29, 1986, but only if the corporation is completely liquidated on or before December 31, 1987.

(f) TREATMENT OF CERTAIN DISTRIBUTIONS IN RESPONSE TO HOSTILE TENDER OFFER.—

(1) IN GENERAL.—No gain or loss shall be recognized under the Internal Revenue Code of 1986 to a corporation (hereinafter in this subsection referred to as "parent" on a qualified distribution.

(2) QUALIFIED DISTRIBUTION DEFINED.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term "qualified distribution" means a distribution—

(i) by parent of all of the stock of a qualified subsidiary in exchange for stock of parent which was acquired for purposes of such exchange pursuant to a tender offer dated February 16, 1982, and

(ii) pursuant to a contract dated February 13, 1982, and

(iii) which was made not more than 60 days after the board of directors of parent recommended rejection of an unsolicited tender offer to obtain control of parent.

(B) QUALIFIED SUBSIDIARY.—The term "qualified subsidiary" means a corporation created or organized under the laws of Delaware on September 7, 1976, all of the stock of which was owned by parent immediately before the qualified distribution.

SEC. 634. STUDY OF CORPORATE PROVISIONS.

The Secretary of the Treasury or his delegate shall conduct a study of proposals to reform the provisions of subchapter C of chapter 1 of the Internal Revenue Code of 1986. Not later than January 1, 1988, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this section (together with such recommendations as he may deem advisable).

Subtitle E—Other Corporate Provisions

SEC. 641. SPECIAL ALLOCATION RULES FOR CERTAIN ASSET ACQUISITIONS.

(a) IN GENERAL.—Part IV of subchapter O of chapter 1 (relating to special rules for determining basis) is amended by redesignating section 1060 as section 1061 and by inserting after section 1059 the following new section:

"SEC. 1060. SPECIAL ALLOCATION RULES FOR CERTAIN ASSET ACQUISITIONS.

"(a) GENERAL RULE.—In the case of any applicable asset acquisition, for purposes of determining both—

"(1) the transferee's basis in such assets, and

"(2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5).

"(b) INFORMATION REQUIRED TO BE FURNISHED TO SECRETARY.—Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

"(1) The amount of the consideration received for the assets which is allocated to goodwill or going concern value.

"(2) Any modification of the amount described in paragraph (1).

"(3) Any other information with respect to other assets transferred in such acquisition as the Secretary may find necessary to carry out the provisions of this section.

"(c) APPLICABLE ASSET ACQUISITION.—For purposes of this section, the term 'applicable asset acquisition' means any transfer (whether directly or indirectly)—

"(1) of assets which constitute a trade or business, and

"(2) with respect to which the transferee's basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred."

(b) CONFORMING AMENDMENT.—The table of sections for part IV of subchapter O of chapter 1 is amended by striking out the item relating to section 1060 and inserting in lieu thereof the following new items:

"Sec. 1060. Special allocation rules for certain asset acquisitions.

"Sec. 1061. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter.

SEC. 642. MODIFICATION OF DEFINITION OF RELATED PARTY.

(a) DEFINITIONS OF RELATED PARTY FOR PURPOSES OF CERTAIN SALES.—

(1) SALE OF DEPRECIABLE PROPERTY BETWEEN CERTAIN RELATED TAXPAYERS.—

(A) IN GENERAL.—Paragraph (1) of section 1239(b) (defining related persons) is amended by striking out "80-percent owned entities" and inserting in lieu thereof "controlled entities".

(B) CONTROLLED ENTITY DEFINED.—

(i) IN GENERAL.—Section 1239(c)(1) (defining 80-percent owned entity) is amended—

(I) by striking out "80-percent owned entity" and inserting in lieu thereof "controlled entity",

(II) by striking out "80 percent or more in value" in subparagraph (A) and inserting in lieu thereof "more than 50 percent of the value",

(III) by striking out "80 percent or more" in subparagraph (B) and inserting in lieu thereof "more than 50 percent", and

(IV) by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b)."

(ii) CONFORMING AMENDMENT.—Section 1239(c) is amended by striking out "80-PERCENT OWNED ENTITY" in the heading thereof and inserting in lieu thereof "CONTROLLED ENTITY",

(C) CONSTRUCTIVE OWNERSHIP.—Paragraph (2) of section 1239(c) is amended to read as follows:

"(2) CONSTRUCTIVE OWNERSHIP.—For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof)."

(D) CONFORMING AMENDMENT.—Section 453(g) is amended by striking out "80-PERCENT OWNED" in the heading thereof and inserting in lieu thereof "CONTROLLED".

(2) PARTNERSHIPS.—Paragraph (2) of section 707(b) (relating to gains treated as ordinary income) is amended by striking out "80 percent" each place it appears and inserting in lieu thereof "50 percent".

(3) INSTALLMENT SALES.—Paragraph (1) of section 453(f) (defining related person) is amended to read as follows:

"(1) RELATED PERSON.—Except for purposes of subsection (g) and (h), the term 'related person' means—

"(A) a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property, or

"(B) a person who bears a relationship described in section 267(b) to the person first disposing of the property."

(b) RULES RELATING TO CONTINGENT PAYMENTS.—

(1) PAYMENTS TO BE RECEIVED DEFINED.—Section 453(f) (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(8) PAYMENTS TO BE RECEIVED DEFINED.—The term 'payment to be received' includes—

"(A) the aggregate amount of all payments which are not contingent as to amount, and

"(B) the fair market value of any payments which are contingent as to amount."

(2) SALE OF DEPRECIABLE PROPERTY BETWEEN RELATED PARTIES.—Paragraph (1) of section 453(g) (relating to sale of depreciable property to controlled entities) is amended to read as follows:

"(1) IN GENERAL.—In the case of an installment sale of depreciable property between related persons (within the meaning of section 1239(b))—

"(A) subsection (a) shall not apply, and

"(B) for purposes of this title—

"(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

"(ii) in the case of any payments which are contingent as to amount but with respect to which the fair market value may not be reasonably ascertained—

"(I) the basis shall be recovered ratably, and

"(II) the purchaser may not increase the basis of any property acquired in such sale by any amount before such time as the seller includes such amount in income."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to sales after the date of the enactment of this Act, in taxable years ending after such date.

(2) TRADITIONAL RULE FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to sales made after August 14, 1986, which are made pursuant to a binding contract in effect on August 14, 1986, and at all times thereafter.

SEC. 643. TREATMENT OF AMORTIZABLE BOND PREMIUM AS INTEREST.

(a) IN GENERAL.—Section 171 (relating to amortizable bond premium) is amended by redesignating subsection (e) as (f) and by inserting after subsection (d) the following new subsection:

"(e) TREATMENT AS INTEREST.—Except as provided in regulations, the amount of any amortizable bond premium with respect to which a deduction is allowed under subsection (a)(1) for any taxable year shall be treated as interest for purposes of this title."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to obligations acquired after the date of the enactment of this Act, in taxable years ending after such date.

(2) REVOCATION OF ELECTION.—In the case of a taxpayer with respect to whom an election is in effect on the date of enactment of this Act under section 171(c) of the Internal Revenue Code of 1986, such election shall apply to obligations issued after the date of the enactment of this Act only if the taxpayer chooses (at such time and in such manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations.

SEC. 644. PROVISIONS RELATING TO COOPERATIVE HOUSING CORPORATIONS.

(a) TENANT-STOCKHOLDER MAY INCLUDE PERSON OTHER THAN INDIVIDUAL.—

(1) IN GENERAL.—Section 216(b)(2) (defining tenant-stockholder) is amended—

(A) by striking out "an individual" and inserting in lieu thereof "a person", and

(B) by striking out "such individual" and inserting in lieu thereof "such person".

(2) PRIOR APPROVAL OF OCCUPANCY.—Paragraphs (5) and (6) of section 216(b) are amended to read as follows:

"(5) PRIOR APPROVAL OF OCCUPANCY.—For purposes of this section, in the following cases there shall not be taken into account the fact that (by agreement with the cooperative housing corporation) the person or his nominee may not occupy the house or apartment without the prior approval of such corporation:

"(A) In any case where a person acquires stock of a cooperative housing corporation by operation of law.

"(B) In any case where a person other than an individual acquires stock of a cooperative housing corporation.

"(C) In any case where the original seller acquires any stock of the cooperative housing corporation from the corporation not later than 1 year after the date on which the apartments or houses (or leaseholds therein) are transferred by the original seller to the corporation.

"(6) ORIGINAL SELLER DEFINED.—For purposes of paragraph (5), the term 'original seller' means the person from whom the corporation has acquired the apartments or houses (or leaseholds therein).".

(b) TREATMENT OF DEPRECIATION.—Section 216(c) (relating to treatment as property subject to depreciation) is amended to read as follows:

"(c) TREATMENT AS PROPERTY SUBJECT TO DEPRECIATION.—

"(1) IN GENERAL.—So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under section 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.

"(2) DEDUCTION LIMITED TO ADJUSTED BASIS IN STOCK.—

"(A) IN GENERAL.—The amount of any deduction for depreciation allowable under section 167(a) to a tenant-stockholder with respect to any stock for any taxable year by reason of paragraph (1) shall not exceed the adjusted basis of such stock as of the close of the taxable year of the tenant-stockholder in which such deduction was incurred.

"(B) CARRYFORWARD OF DISALLOWED AMOUNT.—The amount of any deduction which is not allowed by reason of subparagraph (A) shall, subject to the provisions of subparagraph (A), be treated as a deduction allowable under section 167(a) in the succeeding taxable year.".

(c) DISALLOWANCE OF DEDUCTIONS FOR PAYMENTS TO CORPORATION.—Section 216 is amended by adding at the end thereof the following new subsection:

"(d) DISALLOWANCE OF DEDUCTION FOR CERTAIN PAYMENTS TO THE CORPORATION.—No deduction shall be allowed to a stockholder in a cooperative housing corporation for any amount paid or accrued to such corporation during any taxable year (in excess of the stockholder's proportionate share of the items described in subsections (a)(1) and (a)(2)) to the extent that, under regulations prescribed by the Secretary, such amount is properly allocable to amounts paid or incurred at any time by the corporation which are chargeable to the corporation's capital account. The stockholder's adjusted basis in the stock in the corporation shall be increased by the amount of such disallowance."

(d) DEDUCTION OF TAXES AND INTEREST.—Paragraph (3) of section 216(b) (defining tenant-stockholder's proportionate share) is amended to read as follows:

"(3) TENANT-STOCKHOLDER'S PROPORTIONATE SHARE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'tenant-stockholder's proportionate share' means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

"(B) SPECIAL RULE WHERE ALLOCATION OF TAXES OR INTEREST REFLECT COST TO CORPORATION OF STOCKHOLDER'S UNIT.—

"(i) IN GENERAL.—If, for any taxable year—

"(I) each dwelling unit owned or leased by a cooperative housing corporation is separately allocated a share of such corporation's real estate taxes described in subsection (a)(1) or a share of such corporation's interest described in subsection (a)(2), and

"(II) such allocations reasonably reflect the cost to such corporation of such taxes, or of such interest, attributable to the tenant-stockholder's dwelling unit (and such unit's share of the common areas),

then the term 'tenant-stockholder's proportionate share' means the shares determined in accordance with the allocations described in subclause (II).

"(ii) ELECTION BY CORPORATION REQUIRED.—Clause (i) shall apply with respect to any cooperative housing corporation only if such corporation elects its application. Such an election, once made, may be revoked only with the consent of the Secretary."

(e) TREATMENT OF AMOUNTS RECEIVED IN CONNECTION WITH THE REFINANCING OF INDEBTEDNESS OF CERTAIN COOPERATIVE HOUSING CORPORATIONS; TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE.—

(1) PAYMENT OF CLOSING COSTS AND CREATION OF RESERVE EXCLUDED FROM GROSS INCOME.—For purposes of the Internal Revenue Code of 1954, no amount shall be included in the gross income of a qualified cooperative housing corporation by reason of the payment or reimbursement by a city housing development agency or corporation of amounts for—

(A) closing costs, or

(B) the creation of reserves for the qualified cooperative housing corporation,

in connection with a qualified refinancing.

(2) INCOME FROM RESERVE FUND TREATED AS MEMBER INCOME.—

(A) IN GENERAL.—Income from a qualified refinancing-related reserve shall be treated as derived from its members for purposes of—

(i) section 216 of the Internal Revenue Code of 1954 (relating to deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder), and

(ii) section 277 of such Code (relating to deductions incurred by certain membership organizations in transactions with members).

(B) NO INFERENCE.—Nothing in the provisions of this paragraph shall be construed to infer that a change in law is intended with respect to the treatment of deductions under section 277 of the Internal Revenue Code of 1954 with respect to cooperative housing corporations, and any determination of such issue shall be made as if such provisions had not been enacted.

(3) TREATMENT OF CERTAIN INTEREST CLAIMED AS DEDUCTION.—Any amount—

(A) claimed (on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1954) as a deduction by a qualified cooperative housing corporation for interest for any taxable year beginning before January 1, 1986, on a second mortgage loan made by a city housing development agency or corporation in connection with a qualified refinancing, and

(B) reported (before April 16, 1986) by the qualified cooperative housing corporation to its tenant-stockholders as interest described in section 216(a)(2) of such Code,

shall be treated for purposes of such Code as if such amount were paid by such qualified cooperative housing corporation during such taxable year.

(4) QUALIFIED COOPERATIVE HOUSING CORPORATION.—

(A) IN GENERAL.—For purposes of this subsection, the term "qualified cooperative housing corporation" means any corporation if—

(i) such corporation is, after the application of paragraphs (1) and (2), a cooperative housing corporation (as defined in section 216(b) of the Internal Revenue Code of 1954),

(ii) such corporation is subject to a qualified limited-profit housing companies law, and

(iii) such corporation either—

(I) filed for incorporation on July 22, 1965, or

(II) filed for incorporation on March 5, 1964.

(B) QUALIFIED LIMITED-PROFIT HOUSING COMPANIES LAW.—For purposes of subparagraph (A), the term "qualified limited-profit housing companies law" means any limited-profit housing companies law which limits the resale price for a tenant-stockholder's stock in a cooperative housing corporation to the sum of his basis for such stock plus his proportionate share of part or all of the amortization of any mortgage on the building owned by such corporation.

(5) QUALIFIED REFINANCING.—For purposes of this subsection, the term "qualified refinancing" means any refinancing—

(A) which occurred—

(i) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(I) on September 20, 1978, or

(ii) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(II) on November 21, 1978, and

(B) in which a qualified cooperative housing corporation refinanced a first mortgage loan made to such corporation by a city housing development agency with a first mortgage loan made by a city housing development corporation and insured by an agency of the Federal Government and a second mortgage loan made by such city housing development agency, in the process of which a reserve was created (as required by such Federal agency) and closing costs were paid or reimbursed by such city housing development agency or corporation.

(6) QUALIFIED REFINANCING-RELATED RESERVE.—For purposes of this subsection, the term "qualified refinancing-related reserve" means any reserve of a qualified cooperative housing corporation with respect to the creation of which no amount was included in the gross income of such corporation by reason of paragraph (a).

(7) TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE.—

(A) IN GENERAL.—With respect to any payment from a qualified refinancing-related reserve out of amounts excluded from gross income by reason of paragraph (1)—

(i) no deduction shall be allowed under chapter 1 of such Code, and

(ii) the basis of any property acquired with such payment (determined without regard to this subparagraph) shall be reduced by the amount of such payment.

(B) ORDERING RULES.—For purposes of subparagraph (A), payments from a reserve shall be treated as being made—

(i) first from amounts excluded from gross income by reason of paragraph (1) to the extent thereof, and

(ii) then from other amounts in the reserve.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SUBSECTION (e).—

(A) Except as provided in subparagraph (B), subsection (e) shall apply to taxable years beginning before January 1, 1986.

(B) Subsection (e)(7) shall apply to amounts paid or incurred, and property acquired, in taxable years beginning, after December 31, 1985.

SEC. 645. SPECIAL RULES RELATING TO PERSONAL HOLDING COMPANY TAX.

(a) COMPUTER SOFTWARE ROYALTIES.—

(1) IN GENERAL.—Paragraph (1) of section 543(a) (defining personal holding company income) is amended—

(A) by striking out "and" at the end of subparagraph (A),

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and

(C) by adding at the end thereof the following new subparagraph:

"(C) active business computer software royalties (within the meaning of subsection (d))."

(2) ACTIVE BUSINESS COMPUTER SOFTWARE ROYALTIES DEFINED.—Section 543 is amended by adding at the end thereof the following new subsection:

"(d) ACTIVE BUSINESS COMPUTER SOFTWARE ROYALTIES.—

"(1) IN GENERAL.—For purposes of this section, the term 'active business computer software royalties' means any royalties—

"(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

"(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

"(2) ROYALTIES MUST BE RECEIVED BY CORPORATION ACTIVELY ENGAGED IN COMPUTER SOFTWARE BUSINESS.—The requirements of this paragraph are met if the royalties described in paragraph (1)—

"(A) are received by a corporation engaged in the active conduct of the trade or business of developing, manufacturing, or producing computer software, and

"(B) are attributable to computer software which—

"(i) is developed, manufactured, or produced by such corporation (or its predecessor) in connection with the trade or business described in subparagraph (A), or

"(ii) is directly related to such trade or business.

"(3) ROYALTIES MUST CONSTITUTE AT LEAST 50 PERCENT OF INCOME.—The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the ordinary gross income of the corporation for the taxable year.

"(4) DEDUCTIONS UNDER SECTIONS 162 AND 174 RELATING TO ROYALTIES MUST EQUAL OR EXCEED 25 PERCENT OF ORDINARY GROSS INCOME.—

"(A) IN GENERAL.—The requirements of this paragraph are met if—

"(i) the sum of the deductions allowable to the corporation under sections 162, 174, and 195 for the taxable year which are properly allocable to the trade or business described in paragraph (2) equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year, or

"(ii) the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such period.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

"(B) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction shall not be treated as allowable under section 162 if it is specifically allowable under another section.

"(C) LIMITATION ON ALLOWABLE DEDUCTIONS.—For purposes of subparagraph (A), no deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence—

"(i) individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account, and

"(ii) stock deemed to be owned by a shareholder solely by attribution from a partner under section 544(a)(2) shall be disregarded.

"(5) DIVIDENDS MUST EQUAL OR EXCEED EXCESS OF PERSONAL HOLDING COMPANY INCOME OVER 10 PERCENT OF ORDINARY GROSS INCOME.—

"(A) IN GENERAL.—The requirements of this paragraph are met if the sum of—

"(i) the dividends paid during the taxable year (determined under section 562),

"(ii) the dividends considered as paid on the last day of the taxable year under section 563(c) (as limited by the second sentence of section 563(b)), and

"(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year exceeds 10 percent of the ordinary gross income of such corporation for such taxable year.

"(B) COMPUTATION OF PERSONAL HOLDING COMPANY INCOME.—For purposes of this paragraph, personal holding company income shall be computed—

"(i) without regard to amounts described in subsection (a)(1)(C),

"(ii) without regard to interest income during any taxable year—

"(I) which is in the 5-taxable year period beginning with the later of the 1st taxable year of the corporation or the 1st taxable year in which the corporation conducted the trade or business described in paragraph (2)(A), and

"(II) durifg which the corporation meets the requirements of paragraphs (2), (3), and (4), and

"(iii) by including adjusted income from rents and adjusted income from mineral, oil, and gas royalties (within the meaning of paragraphs (2) and (3) of subsection (a)).

"(6) SPECIAL RULES FOR AFFILIATED GROUP MEMBERS.—

"(A) IN GENERAL.—In any case in which—

"(i) the taxpayer receives royalties in connection with the licensing of computer software, and

"(ii) another corporation which is a member of the same affiliated group as the taxpayer meets the requirements of paragraphs (2), (3), (4), and (5) with respect to such computer software,

the taxpayer shall be treated as having met such requirements.

"(B) AFFILIATED GROUP.—For purposes of this paragraph, the term 'affiliated group' has the meaning given such term by section 1504(a)."

(3) FOREIGN PERSONAL HOLDING COMPANY INCOME.—Paragraph (1) of section 553(a) (defining foreign personal holding company income) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to active business computer software royalties (as defined in section 543(d))."

(4) CONFORMING AMENDMENTS.—

(A) Section 543(a)(4) (relating to copyright royalties) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to active business computer software royalties.".

(B) Section 543(b)(3) (relating to adjusted income from rents) is amended—

(i) by striking out "or" at the end of subparagraph (C),

(ii) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", or", and

(iii) by adding at the end thereof the following new subparagraph:

"(E) active business computer software royalties (as defined in subsection (d))."

(b) SPECIAL RULES FOR BROKER-DEALERS.—In the case of a broker-dealer which is part of an affiliated group which files a consolidated Federal income tax return, the common parent of which was incorporated in Nevada on January 27, 1972, the personal holding company income (within the meaning of section 543 of the Internal Revenue Code of 1986) of such broker-dealer, shall not include any interest received after the date of the enactment of this Act with respect to—

(1) any securities or money market instruments held as inventory,

(2) margin accounts, or

(3) any financing for a customer secured by securities or money market instruments.

(c) SPECIAL RULE FOR ROYALTIES RECEIVED BY QUALIFIED TAXPAYER.—

(1) IN GENERAL.—Any qualified royalty received or accrued in taxable years beginning after December 31, 1981, by a qualified taxpayer shall be treated in the same manner as a royalty with respect to software is treated under the amendments made by this section.

(2) QUALIFIED TAXPAYER.—For purposes of this subsection, a qualified taxpayer is any taxpayer incorporated on September 7, 1978, which is engaged in the trade or business of manufacturing dolls and accessories.

(3) QUALIFIED ROYALTY.—For purposes of this subsection, the term "qualified royalty" means any royalty arising from an agreement entered into in 1982 which permits the licensee to manufacture and sell dolls and accessories.

(d) SPECIAL RULE FOR TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES.—In the case of a taxpayer which was incorporated on May 3, 1977, in California and which elected to be taxed as an S corporation for its taxpable year ending on December 31, 1985, any active business computer royalties (within the meaning of section 543(d) of the Internal Revenue Code of 1986 as added by this Act) which are received by the taxpayer in taxable years beginning after December 31, 1984, shall not be treated as passive investment income (within the meaning of section 1362(d)(3)(D)) for purposes of subchapter S of chapter 1 of such Code.

(e) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to royalties received before, on, and after December 31, 1986.

SEC. 646. CERTAIN ENTITIES NOT TREATED AS CORPORATIONS.

(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, if the entity described in subsection (b) makes an election under subsection (c), such entity shall be treated as a trust to which subpart E of part 1 of subchapter J of chapter 1 of such Code applies.

(b) ENTITY.—An entity is described in this subsection if—

(1) such entity was created in 1906 as a common law trust and is governed by the trust laws of the State of Minnesota,

(2) such entity receives royalties from iron ore leases, and

(3) income interests in such entity are publicly traded on a national stock exchange.

(c) ELECTION.—

(1) IN GENERAL.—An election under this subsection to have the provisions of this section apply—

(A) shall be made by the board of trustees of the entity, and

(B) shall not be valid unless accompanied by an agreement described in paragraph (2).

(2) AGREEMENT.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not—

(A) sell any trust property,

(B) purchase any additional trust properties, or

(C) receive any income other than—

(i) income from long-term mineral leases, or

(ii) interest or other income attributable to ordinary and necessary reserves of the entity.

(3) PERIOD FOR WHICH ELECTION IS IN EFFECT.—An election under this subsection shall be in effect during the period—

(A) beginning on the first day of the first taxable year beginning after the date of the enactment of this Act and following the taxable year in which the election is made, and

(B) ending as of the close of the taxable year preceding the taxable year in which the entity ceases to be described in subsection (b) or violates any term of the agreement under paragraph (2).

(4) MANNER OF ELECTION.—Any election under this subsection shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe.

(d) SPECIAL RULES FOR TAXATION OF TRUST.—

(1) ELECTION TREATED AS A LIQUIDATION.—If an election is made under subsection (c) with respect to any entity—

(A) such entity shall be treated as having been liquidated into a trust immediately before the period described in subsection (c)(3) in a liquidation to which section 333 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) applies, and

(B) any person holding an interest in the property held by such entity as of such time shall be treated as a qualified electing shareholder for purposes of section 333 of such Code (as so in effect).

(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), then the tax imposed on such entity for the taxable year in which such cessation or violation occurs shall be increased by the sum of—

(A) the amount of taxes which would have been imposed on such entity during any taxable year with respect to which an election under subsection (c) was in effect if such election had not been in effect, plus

(B) interest determined for the period—

(i) beginning on the due date for any such taxable year, and

(ii) ending on the due date for the taxable year in which such cessation or violation occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

(3) TRUST CEASING TO EXIST.—Paragraph (2) shall not apply if the trust ceases to be described in subsection (b) or violates the agreement in subsection (c)(2) because the trust ceases to exist or by reason of subsection (e).

(e) TERMINATION OF ELECTION.—Any election under subsection (c) shall not apply to any taxable year beginning more than 5 years after the date of the enactment of this Act unless the trust petitions a court of competent jurisdiction and the court acts to remove from the trust instrument any powers deemed by the court to be inconsistent with the operation of the entity as a trust for tax purposes (as described in an Internal Revenue Service ruling dated November 1, 1983).

SEC. 647. SPECIAL RULE FOR DISPOSITION OF STOCK OF SUBSIDIARY.

If for a taxable year of an affiliated group filing a consolidated return ending on or before December 31, 1987, there is a disposition of stock of a subsidiary (within the meaning of Treasury Regulation section 1.1502-19), the amount required to be included in income with respect to such disposition under Treasury Regulation section 1.1502-19(a) shall, notwithstanding such section, be included in income ratably over the 15-year period beginning with the taxable year in which the disposition occurs. The preceding sentence shall apply only if such subsidiary was incorporated on December 24, 1969, and is a participant in a mineral joint venture with a corporation organized under the laws of the foreign country in which the joint venture mineral project is located.

Subtitle F—Regulated Investment Companies

SEC. 651. EXCISE TAX ON UNDISTRIBUTED INCOME OF REGULATED INVESTMENT COMPANIES.

(a) GENERAL RULE.—Chapter 44 (relating to real estate investment trusts) is amended by adding at the end thereof the following new section:

"SEC. 4982. EXCISE TAX ON UNDISTRIBUTED INCOME OF REGULATED INVESTMENT COMPANIES.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on every regulated investment company for each calendar year equal to 4 percent of the excess (if any) of—

"(1) the required distribution for such calendar year, over

"(2) the distributed amount for such calendar year.

"(b) REQUIRED DISTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'required distribution' means, with respect to any calendar year, the sum of—

"(A) 97 percent of the regulated investment company's ordinary income for such calendar year, plus

"(B) 90 percent of the regulated investment company's capital gain net income for the 1-year period ending on October 31 of such calendar year.

"(2) INCREASE BY PRIOR YEAR SHORTFALL.—The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

"(A) the grossed up required distribution for the preceding calendar year, over

"(B) the distributed amount for such preceding calendar year.

"(3) GROSSED UP REQUIRED DISTRIBUTION.—The grossed up required distribution for any calendar year is the required distribution for such year determined—

"(A) with the application of paragraph (2) to such taxable year, and

"(B) by substituting '100 percent' for each percentage set forth in paragraph (1).

"(c) DISTRIBUTED AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'distributed amount' means, with respect to any calendar year, the sum of—

"(A) the deduction for dividends paid (as defined in section 561) during such calendar year, and

"(B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 852 for any taxable year ending in such calendar year.

"(2) INCREASE BY PRIOR YEAR OVERDISTRIBUTION.—The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

"(A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over

"(B) the grossed up required distribution for such preceding calendar year.

"(3) DETERMINATION OF DIVIDENDS PAID.—The amount of the dividends paid during any calendar year shall be determined without regard to—

"(A) the provisions of section 855, and

"(B) any exempt-interest dividend as defined in section 852(b)(5).

"(d) TIME FOR PAYMENT OF TAX.—The tax imposed by this section for any calendar year shall be paid on or before March 15 of the following calendar year.

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ORDINARY INCOME.—The term 'ordinary income' means the investment company taxable income (as defined in section 852(b)(2)) determined—

"(A) without regard to subparagraphs (A) and (D) of section 852(b)(2),

"(B) by not taking into account any gain or loss from the sale or exchange of a capital asset, and

"(C) by treating the calendar year as the company's taxable year.

"(2) CAPITAL GAIN NET INCOME.—The term 'capital gain net income' has the meaning given to such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year).

"(3) TREATMENT OF DEFICIENCY DISTRIBUTIONS.—In the case of any deficiency dividend (as defined in section 860(f))—

"(A) such dividend shall be taken into account when paid without regard to section 860, and

"(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid.

"(4) ELECTION TO USE TAXABLE YEAR IN CERTAIN CASES.—

"(A) IN GENERAL.—If—

"(i) the taxable year of the regulated investment company ends with the month of November or December, and

"(ii) such company makes an election under this paragraph,

subsection (b)(1)(B) and paragraph (2) of this subsection shall be applied by taking into account the company's taxable year in lieu of the 1-year period ending on October 31 of the calendar year.

"(B) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under this paragraph, once made, may be revoked only with the consent of the Secretary."

(b) RELATED AMENDMENTS.—

(1) TIME CERTAIN DIVIDENDS TAKEN INTO ACCOUNT.—

(A) Subsection (b) of section 852 (relating to method of taxation of regulated investment companies and their shareholders) is amended by adding at the end thereof the following new paragraph:

"(6) TIME CERTAIN DIVIDENDS TAKEN INTO ACCOUNT.—For purposes of this title, any dividend declared by a regulated investment company in December of any calendar year and payable to shareholders of record on a specified date in such month shall be deemed—

"(A) to have been received by each shareholder on such date, and

"(B) to have been paid by such company on such date (or, if earlier, as provided in section 855).

The preceding sentence shall apply only if such dividend is actually paid by the company before February 1 of the following calendar year."

(B) Subsection (b) of section 855 is amended by striking out "Amounts" and inserting in lieu thereof "Except as provided in section 852(b)(6), amounts".

(2) TREATMENT OF EARNINGS AND PROFITS.—Subsection (c) of section 852 is amended to read as follows:

"(c) EARNINGS AND PROFITS.—

"(1) IN GENERAL.—The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term 'regulated investment company' includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).

"(2) COORDINATION WITH TAX ON UNDISTRIBUTED INCOME.—A regulated investment company shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such company. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the company exceeds the required distribution for such calendar year (as determined under section 4982)."

(3) TREATMENT OF NET CAPITAL LOSS AFTER OCTOBER 31 OF ANY YEAR.—Subparagraph (C) of section 852(b)(3) (defining capital gain dividend) is amended by adding at the end thereof the following new sentences: "For purposes of this subparagraph, the amount of the net capital gain for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss attributable to transactions after October 31 of such year, and any such net capital loss shall be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing regulated investment company taxable income."

(c) CLERICAL AMENDMENT.—Chapter 44 is amended by striking out the chapter heading and the table of sections and inserting in lieu thereof the following:

"CHAPTER 44—QUALIFIED INVESTMENT ENTITIES

"Sec. 4981. Excise tax on undistributed income of real estate investment trusts.

"Sec. 4982. Excise tax on undistributed income of regulated investment companies."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 1986.

SEC. 652. TREATMENT OF BUSINESS DEVELOPMENT COMPANIES.

(a) GENERAL RULE.—Paragraph (1) of section 851(a) is amended by striking out "either as a management company or as a unit investment trust" and inserting in lieu thereof "as a management company, business development company, or unit investment trust".

(b) TECHNICAL AMENDMENT.—Paragraph (1) of section 851(e) (relating to investment companies furnishing capital to development corporations) is amended by striking out "registered management company" and inserting in lieu thereof "registered management company or registered business development company".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 653. AMENDMENTS TO QUALIFICATION RULES.

(a) TREATMENT OF CERTAIN HEDGING TRANSACTIONS.—Section 851 (defining regulated investment company) is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF CERTAIN HEDGING TRANSACTIONS.—

"(1) IN GENERAL.—In the case of any designated hedge, for purposes of subsection (b)(3), increases (and decreases) during the period of the hedge in the value of positions which are part of such hedge shall be netted.

"(2) DESIGNATED HEDGE.—For purposes of this subsection, there is a designated hedge where—

"(A) the taxpayer's risk of loss with respect to any position in property is reduced by reason of—

"(i) the taxpayer having an option to sell, being under a contractual option to sell, or having made (and not closed) a short sale of substantially identical property,

"(ii) the taxpayer being the grantor of an option to buy substantially identical property, or

"(iii) under regulations prescribed by the Secretary, the taxpayer holding 1 or more other positions, and

"(B) the positions which are part of the hedge are clearly identified by the taxpayer in the manner prescribed by regulations."

(b) DEFINITION OF QUALIFYING INCOME.—Paragraph (2) of subsection 851(b) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof: "(as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies;".

(c) FOREIGN CURRENCY GAINS.—Subsection (b) of section 851 is amended by inserting before the last sentence thereof the following new sentence: "For purposes of paragraph (2), the Secretary may by regulation exclude from qualifying income foreign currency gains which are not ancillary to the company's principal business of investing in stock or securities (or options and futures with respect to stock or securities)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 654. TREATMENT OF SERIES FUNDS AS SEPARATE CORPORATIONS.

(a) GENERAL RULE.—Section 851 is amended by adding at the end thereof the following new subsection:

"(q) SPECIAL RULE FOR SERIES FUNDS.—

"(1) IN GENERAL.—In the case of a regulated investment company (within the meaning of subsection (a)) having more than one fund, each fund of such regulated investment company shall be treated as a separate corporation for purposes of this title (except with respect to the definitional requirement of subsection (a)).

"(2) FUND DEFINED.—For purposes of paragraph (1) the term 'fund' means a segregated portfolio of assets, the beneficial interests in which are owned by the holders of a class or series of stock of the regulated investment company that is preferred over all other

classes or series in respect of such portfolio of assets."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

(2) TREATMENT OF CERTAIN EXISTING SERIES FUNDS.—In the case of a regulated investment company which has more than one fund on the date of the enactment of this act, and has before such date been treated for Federal income tax purposes as a single corporation—

(A) the amendment made by subsection (a), and the resulting treatment of each fund as a separate corporation, shall not give rise to the realization or recognition of income or loss by such regulated investment company, its funds, or its shareholders, and

(B) the tax attributes of such regulated investment company shall be appropriately allocated among its funds.

SEC. 655. EXTENSION OF PERIOD FOR MAILING NOTICES TO SHAREHOLDERS.

(a) GENERAL RULE.—The following provisions are each amended by striking out "45 days" each place it appears and inserting in lieu thereof "60 days":

(1) Paragraph (3) of subsection 852(b).

(2) Subparagraph (A) of paragraph 852(b)(5).

(3) Subsection (c) of section 853.

(4) Paragraph (2) of subsection 854(b).

(5) Subsection (c) of section 855.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 656. PROTECTION OF MUTUAL FUNDS RECEIVING THIRD-PARTY SUMMONSES.

(a) GENERAL RULE.—Paragraph (3) of subsection 7609(a) is amended—

(1) by striking out "and" at the end of subparagraph (F);

(2) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding the following new subparagraph:

"(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to summonses served after the date of the enactment of this Act.

SEC. 657. CERTAIN DISTRIBUTIONS NOT TREATED AS PREFERENTIAL DIVIDENDS.

(a) GENERAL RULE.—Subsection (c) of section 562 (relating to preferential dividends) is amended by adding at the end thereof the following new sentence: "In the case of a distribution by a regulated investment company to a shareholder who made an initial investment of at least $10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

SUBTITLE G—REAL ESTATE INVESTMENT TRUSTS

SEC. 661. GENERAL QUALIFICATION REQUIREMENTS.

(a) MODIFICATION OF CLOSELY-HELD REQUIREMENTS.—

(1) Paragraph (6) of section 856(a) is amended to read as follows:

"(6) which is not closely held (as determined under subsection (h)); and".

(2) Section 856 is amended by adding at the end thereof the following new subsection:

"(h) CLOSELY HELD DETERMINATIONS.—

"(1) SECTION 542(a)(2) APPLIED.—

"(A) IN GENERAL.—For purposes of subsection (a)(6), a corporation, trust, or association is closely held if the stock ownership requirement of section 542(a)(2) is met.

"(B) WAIVER OF PARTNERSHIP ATTRIBUTION, ETC.—For purposes of subparagraph (A)—

"(i) paragraph (2) of section 544(a) shall be applied as if such paragraph did not contain the phrase 'or by or for his partner', and

"(ii) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting 'the entity meet the stock ownership requirement of section 542(a)(2)' for 'the corporation a personal holding company'.

"(2) SUBSECTIONS (a) (5) AND (6) NOT TO APPLY TO 1ST YEAR.—Paragraphs (5) and (6) of subsection (a) shall not apply to the 1st taxable year for which an election is made under subsection (c)(1) by any corporation, trust, or association."

(b) REQUIREMENT OF NO EARNINGS AND PROFITS ACCUMULATED IN NON-REIT YEARS.—Subsection (a) of section 857 is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and", and by adding at the end thereof the following:

"(3) either—

"(A) the provisions of this part apply to the real estate investment trust for all taxable years beginning after February 28, 1986, or

"(B) as of the close of the taxable year, the real estate investment trust has no earnings and profits accumulated in any non-REIT year.

For purposes of the preceding sentence, the term 'non-REIT year' means any taxable year to which the provisions of this part did not apply with respect to the entity."

(c) INITIAL CHANGE IN ANNUAL ACCOUNTING PERIOD PERMITTED.—

(1) Section 859 is amended by adding at the end thereof the following new subsection:

"(b) CHANGE OF ACCOUNTING PERIOD WITHOUT APPROVAL.—Notwithstanding section 442, an entity which has not engaged in any active trade or business may change its accounting period to a calendar year without the approval of the Secretary if such change is in connection with an election under section 856(c)."

(2) Section 859 is amended by striking out "For purposes of" and inserting in lieu thereof "(a) GENERAL RULE.—For purposes of".

SEC. 662. ASSET AND INCOME REQUIREMENTS.

(a) TREATMENT OF CERTAIN WHOLLY OWNED SUBSIDIARIES.—Section 856 (defining real estate investment trust) is amended by adding at the end thereof the following new subsection:

"(i) TREATMENT OF CERTAIN WHOLLY OWNED SUBSIDIARIES.—

"(1) IN GENERAL.—For purposes of this title—

"(A) a corporation which is a qualified REIT subsidiary shall not be treated as a separate corporation, and

"(B) all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the real estate investment trust.

"(2) QUALIFIED REIT SUBSIDIARY.—For purposes of this subsection, the term 'qualified REIT subsidiary' means any corporation if 100 percent of the stock of such corporation is held by the real estate investment trust at all times during the period such corporation was in existence.

"(3) TREATMENT OF TERMINATION OF QUALIFIED SUBSIDIARY STATUS.—For purposes of this subtitle, if any corporation which was a qualified REIT subsidiary ceases to meet the requirements of paragraph (2), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the real estate investment trust in exchange for its stock."

(b) TEMPORARY INVESTMENT OF NEW EQUITY CAPITAL.—

(1) Paragraph (3) of section 856(c) is amended by striking out "and" at the end of subparagraph (G), by adding "and" at the end of subparagraph (H), and by inserting after subparagraph (H) the following new subparagraph:

"(I) qualified temporary investment income;".

(2) Subparagraph (B) of section 856(c)(6) is amended by adding at the end thereof the following new sentence: "Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital."

(3) Paragraph (6) of section 856(c) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) QUALIFIED TEMPORARY INVESTMENT INCOME.—

"(i) IN GENERAL.—The term 'qualified temporary investment income' means any income which—

"(I) is attributable to stock or a debt instrument,

"(II) is attributable to the temporary investment of new capital, and

"(III) is received or accrued during the 1-year period beginning on the date on which the real estate investment trust receives such capital.

"(ii) NEW CAPITAL.—The term 'new capital' means any amount received by the real estate investment trust—

"(I) in exchange for stock in such trust (other than amounts received pursuant to a dividend reinvestment plan), or

"(II) in a public offering of debt obligations of such trust which have maturities of at least 5 years."

(c) TREATMENT OF SHARED APPRECIATION MORTGAGES.—Section 856 is amended by adding at the end thereof the following new subsection:

"(j) TREATMENT OF SHARED APPRECIATION MORTGAGES.—

"(1) IN GENERAL.—Solely for purposes of subsection (c) of this section and section 857(b)(6), any income derived from a shared appreciation provision shall be treated as gain recognized on the sale of the secured property.

"(2) TREATMENT OF INCOME.—For purposes of applying subsection (c) of this section and section 857(b)(6) to any income described in paragraph (1)—

"(A) the real estate investment trust shall be treated as holding the secured property for the period during which it held the shared appreciation provision (or, if shorter, for the period during which the secured

property was held by the person holding such property), and

"(B) the secured property shall be treated as property described in section 1221(1) if it is so described in the hands of the person holding the secured property (or it would be so described if held by the real estate investment trust).

"(3) COORDINATION WITH PROHIBITED TRANSACTIONS SAFE HARBOR.—For purposes of section 857(b)(6)(C)—

"(A) the real estate investment trust shall be treated as having sold the secured property when it recognizes any income described in paragraph (1), and

"(B) any expenditures made by any holder of the secured property shall be treated as made by the real estate investment trust.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) SHARED APPRECIATION PROVISION.—The term 'shared appreciation provision' means any provision—

"(i) which is in connection with an obligation which is held by the real estate investment trust and is secured by an interest in real property, and

"(ii) which entitles the real estate investment trust to receive a specified portion of any gain realized on the sale or exchange of such real property (or of any gain which would be realized if the property were sold on a specified date).

"(B) SECURED PROPERTY.—The term 'secured property' means the real property referred to in subparagraph (A)."

SEC. 663. DEFINITION OF RENTS.

(a) MODIFICATION OF INDEPENDENT CONTRACTOR REQUIREMENTS.—Paragraph (2) of section 856(d) (relating to certain amounts excluded from rents from real property) is amended by adding at the end thereof the following:

"Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2)."

(b) CERTAIN RENTS OR INTEREST BASED ON NET INCOME OR PROFITS PERMITTED.—

(1) RENTS.—Subsection (d) of section 856 is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR CERTAIN PROPERTY SUBLEASED BY TENANT OF REAL ESTATE INVESTMENT TRUSTS.—

"(A) IN GENERAL.—If—

"(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

"(ii) such tenant receives or accrues, directly or indirectly, from subtenants only amounts which are qualified rents,

then the amounts that the trust receives or accrues from the tenant shall not be excluded from the term 'rents from real property' solely by reason of being based on the income or profits of such tenant.

"(B) QUALIFIED RENTS.—For purposes of subparagraph (A), the term 'qualified rents' means any amount which would be treated as rents from real property if received by the real estate investment trust."

(2) INTEREST.—Subsection (f) of section 856 (relating to qualifying interest income) is amended to read as follows:

"(f) INTEREST.—

"(1) IN GENERAL.—For purposes of paragraphs (2)(B) and (3)(B) of subsection (c), the term 'interest' does not include any amount received or accrued (directly or indirectly) if the determination of such amount depends (in whole or in part) on the income or profits of any person, except that—

"(A) any amount so received or accrued shall not be excluded from the term 'interest' solely by reason of being based on a fixed percentage or percentages of receipts or sales, and

"(B) any amount so received or accrued with respect to an obligation secured by a mortgage on real property or an interest in real property shall not be excluded from the term 'interest' solely by reason of being based on the income or profits of the debtor from such property, if—

"(i) the debtor derives substantially all of its gross income with respect to such property from the leasing of substantially all of its interests in such property to tenants, and

"(ii) the amounts received or accrued directly or indirectly by the debtor from such tenants are only qualified rents (as defined in subsection (d)(6)(B)).

"(2) SPECIAL RULE.—Where a real estate investment trust receives or accrues any amount which would be excluded from the term 'interest' solely because the debtor of the real estate investment trust receives or accrues any amount the determination of which depends (in whole or in part) on the income or profits of any person, only a proportionate part (determined under regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust shall be excluded from the term 'interest'."

(3) CONFORMING AMENDMENT.—Subparagraph (A) of section 856(d)(2) is amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraphs (4) and (6)".

SEC. 664. DISTRIBUTION REQUIREMENTS.

(a) EXCLUSION OF CERTAIN NONCASH INCOME FROM DISTRIBUTION REQUIREMENT.—Subparagraph (B) of section 857(a)(1) (relating to distribution requirements) is amended to read as follows:

"(B) any excess noncash income (as determined under subsection (e)); and"

(b) EXCESS NONCASH INCOME DEFINED.—Section 857 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXCESS NONCASH INCOME.—

"(1) IN GENERAL.—For purposes of subsection (a)(1)(B), the term 'excess noncash income' means the excess (if any) of—

"(A) the amount determined under paragraph (2) for the taxable year, over

"(B) 5 percent of the real estate investment trust taxable income for the taxable year determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain.

"(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph for the taxable year is the sum of—

"(A) the amount (if any) by which—

"(i) the amounts includible in gross income under section 467 (relating to certain payments for the use of property or services), exceed

"(ii) the amounts which would have been includible in gross income without regard to such section,

"(B) in the case of a real estate investment trust using the cash receipts and disbursements method of accounting, the amount (if any) by which—

"(i) the amounts includible in gross income as original issue discount on instruments to which section 1274 (relating to certain debt instruments issued for property) applies, exceed

"(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments; plus

"(C) any income on the disposition of a real estate asset if—

"(i) there is a determination (as defined in section 860(e)) that such income is not eligible for nonrecognition under section 1031, and

"(ii) failure to meet the requirements of section 1031 was due to reasonable cause and not to willful neglect."

SEC. 665. TREATMENT OF CAPITAL GAINS.

(a) COORDINATION OF NET OPERATING LOSS DEDUCTION WITH PAYMENT OF CAPITAL GAIN DIVIDENDS.—

(1) IN GENERAL.—Paragraph (3) of section 857(b) (relating to capital gains) is amended by adding at the end thereof the following new subparagraph:

"(D) COORDINATION WITH NET OPERATING LOSS PROVISIONS.—For purposes of section 172, if a real estate investment trust pays capital gain dividends during any taxable year, the amount of the net capital gain for such taxable year (to the extent such gain does not exceed the amount of such capital gain dividends) shall be excluded in determining—

"(i) the net operating loss for the taxable year, and

"(ii) the amount of the net operating loss of any prior taxable year which may be carried through such taxable year under section 172(b)(2) to a succeeding taxable year."

(2) REPEAL OF LIMITATION OF NET CAPITAL GAIN TO REAL ESTATE INVESTMENT TRUST TAXABLE INCOME.—Subparagraph (C) of section 857(b)(3) (defining capital gain dividend) is amended by striking out the last sentence.

(b) NOTICE OF CAPITAL GAINS DIVIDENDS MAY BE MAILED WITH ANNUAL REPORT.—

(1) Subparagraph (C) of section 857(b)(3) (defining capital gain dividend) is amended by striking out "the close of its taxable year" and inserting in lieu thereof "the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)".

(2) Subsection (c) of section 858 (relating to notice to shareholders) is amended by striking out "distribution is made" and inserting in lieu thereof "distribution is made (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)".

SEC. 666. MODIFICATIONS OF PROHIBITED TRANSACTION RULES.

(a) EXEMPTIONS FROM PROHIBITED TRANSACTIONS RULES.—

(1) Clause (iii) of section 857(b)(6)(C) (relating to certain sales not to constitute prohibited transactions) is amended to read as follows:

"(iii)(I) during the taxable year the trust does not make more than 7 sales of property (other than foreclosure property), or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than foreclosure property) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year; and".

(2) Clause (ii) of section 857(b)(6)(C) is amended by striking out "20 percent" and inserting in lieu thereof "30 percent".

(3) Subparagraph (C) of section 857(b)(6) is amended by striking out "and" at the end

of clause (iii), by striking out the period at the end of clause (iv) and inserting in lieu thereof "; and", and by inserting after clause (iv) the following new clause:

"(v) if the requirement of clause (iii)(I) is not satisfied, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income."

(b) NET LOSS FROM PROHIBITED TRANSACTIONS.—

(1) LOSS FROM PROHIBITED TRANSACTIONS NOT ALLOWED TO OFFSET GAIN FROM SUCH TRANSACTIONS.—Clause (ii) of section 857(b)(6)(B) (relating to income from prohibited transactions) is amended to read as follows:

"(ii) in determining the amount of the net income derived from prohibited transactions, there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss; and".

(2) NET LOSS MAY REDUCE TAXABLE INCOME.—Subparagraph (F) of section 857(b)(2) (defining real estate investment trust taxable income) is amended by striking out "and there shall be included an amount equal to any net loss derived from prohibited transactions".

SEC. 667. DEFICIENCY DIVIDENDS OF REAL ESTATE INVESTMENT TRUSTS NOT SUBJECT TO PENALTY UNDER SECTION 6697.

(a) GENERAL RULE.—The section heading and subsection (a) of section 6697 (relating to assessable penalties with respect to liability for tax of qualified investment entities) are amended to read as follows:

"SEC. 6697. ASSESSABLE PENALTIES WITH RESPECT TO LIABILITY FOR TAX OF REGULATED INVESTMENT COMPANIES.

"(a) CIVIL PENALTY.—In addition to any other penalty provided by law, any regulated investment company whose tax liability for any taxable year is deemed to be increased pursuant to section 860(c)(1)(A) shall pay a penalty in an amount equal to the amount of the interest (for which such company is liable) which is attributable solely to such increase."

(b) CONFORMING AMENDMENT.—

(1) Subsection (j) of section 860 is amended by striking out "qualified investment entity" and inserting in lieu thereof "regulated investment company".

(2) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to section 6697 and inserting in lieu thereof the following:

"Sec. 6697. Assessable penalties with respect to liability for tax of regulated investment companies."

SEC. 668. EXCISE TAX ON UNDISTRIBUTED INCOME OF REAL ESTATE INVESTMENT TRUSTS.

(a) GENERAL RULE.—Section 4981 is amended to read as follows:

"SEC. 4981. EXCISE TAX ON UNDISTRIBUTED INCOME OF REAL ESTATE INVESTMENT TRUSTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on every real estate investment trust for each calendar year equal to 4 percent of the excess (if any) of—

"(1) the required distribution for such calendar year, over

"(2) the distributed amount for such calendar year.

"(b) REQUIRED DISTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'required distribution' means, with respect to any calendar year, the sum of—

"(A) 85 percent of the real estate investment trust's ordinary income for such calendar year, plus

"(B) 95 percent of the real estate investment trust's capital gain net income for such calendar year.

"(2) INCREASE BY PRIOR YEAR SHORTFALL.—The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

"(A) the grossed up required distribution for the preceding calendar year, over

"(B) the distributed amount for such preceding calendar year.

"(3) GROSSED UP REQUIRED DISTRIBUTION.—The grossed up required distribution for any calendar year is the required distribution for such year determined—

"(A) with the application of paragraph (2) to such taxable year, and

"(B) by substituting '100 percent' for each percentage set forth in paragraph (1).

"(c) DISTRIBUTED AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'distributed amount' means, with respect to any calendar year, the sum of—

"(A) the deduction for dividends paid (as defined in section 561) during such calendar year, and

"(B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 857 for any taxable year ending in such calendar year.

"(2) INCREASE BY PRIOR YEAR OVERDISTRIBUTION.—The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

"(A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over

"(B) the grossed up required distribution for such preceding calendar year.

"(3) DETERMINATION OF DIVIDENDS PAID.—The amount of the dividends paid during any calendar year shall be determined without regard to the provisions of section 858.

"(d) TIME FOR PAYMENT OF TAX.—The tax imposed by this section for any calendar year shall be paid on or before March 15 of the following calendar year.

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ORDINARY INCOME.—The term 'ordinary income' means the real estate investment trust taxable income (as defined in section 857(b)(2)) determined—

"(A) without regard to subparagraph (B) of section 857(b)(2),

"(B) by not taking into account any gain or loss from the sale or exchange of a capital asset, and

"(C) by treating the calendar year as the trust's taxable year.

"(2) CAPITAL GAIN NET INCOME.—The term 'capital gain net income' has the meaning given to such term by section 1222(9) (determined by treating the calendar year as the trust's taxable year).

"(3) TREATMENT OF DEFICIENCY DISTRIBUTIONS.—In the case of any deficiency dividend (as defined in section 860(f))—

"(A) such dividend shall be taken into account when paid without regard to section 860, and

"(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid."

(b) RELATED AMENDMENTS.—

(1) TIME CERTAIN DIVIDENDS TAKEN INTO ACCOUNT.—

(A) Subsection (b) of section 857 (relating to method of taxation of real estate investment trusts and holders of interests therein) is amended by adding at the end thereof the following new paragraph:

"(8) TIME CERTAIN DIVIDENDS TAKEN INTO ACCOUNT.—For purposes of this title, any dividend declared by a real estate investment trust in December of any calendar year and payable to shareholders of record on a specified date in such month shall be deemed—

"(A) to have been received by each shareholder on such date, and

"(B) to have been paid by such trust on such date (or, if earlier, as provided in section 858).

The preceding sentence shall apply only if such dividend is actually paid by the company before February 1 of the following calendar year."

(B) Subsection (b) of section 856 is amended by striking out "Amounts" and inserting in lieu thereof "Except as provided in section 857(b)(8), amounts".

(2) TREATMENT OF EARNINGS AND PROFITS.—Subsection (d) of section 857 is amended to read as follows:

"(d) EARNINGS AND PROFITS.—

"(1) IN GENERAL.—The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings) shall not be reduced by any amount which is not allowable in computing its taxable income for such taxable year. For purposes of this subsection, the term 'real estate investment trust' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).

"(2) COORDINATION WITH TAX ON UNDISTRIBUTED INCOME.—A real estate investment trust shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such trust. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the trust exceeds the required distribution for such calendar year (as determined under section 4981)."

(3) TREATMENT OF NET CAPITAL GAIN AFTER OCTOBER 31 OF ANY YEAR.—Subparagraph (C) of section 857(b)(3) (defining capital gain dividend) is amended by adding at the end thereof the following new sentences: "For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss such be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing real estate investment trust taxable income."

SEC. 669. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply to taxable years beginning after December 31, 1986.

(b) SECTION 668.—The amendments made by section 668 shall apply to calendar years beginning after December 31, 1986.

(c) RETENTION OF EXISTING TRANSITIONAL RULE.—The amendment made by section 663(b)(2) shall not apply with respect to amounts received or accrued pursuant to loans made before May 28, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding

commitment entered into before May 28, 1976.

SUBTITLE H—TAXATION OF INTERESTS IN ENTITIES HOLDING REAL ESTATE MORTGAGES

SEC. 671. TAXATION OF REAL ESTATE MORTGAGE INVESTMENT CONDUITS.

(a) GENERAL RULE.—Subchapter M of chapter 1 (relating to regulated investment companies and real estate investment trusts) is amended by adding at the end thereof the following new part:

"PART IV—REAL ESTATE MORTGAGE INVESTMENT CONDUITS

"Sec. 860A. Taxation of REMIC's.
"Sec. 860B. Taxation of holders of regular interests.
"Sec. 860C. Taxation of residual interests.
"Sec. 860D. REMIC defined.
"Sec. 860E. Treatment of income in excess of daily accruals on residual interests.
"Sec. 860F. Other rules.
"Sec. 860G. Other definitions and special rules.

"SEC. 860A. TAXATION OF REMIC's.

"(a) GENERAL RULE.—Except as otherwise provided in this part, a REMIC shall not be subject to taxation under this chapter (and shall not be treated as a corporation, partnership, or trust for purposes of this chapter).

"(b) INCOME TAXABLE TO HOLDERS.—The income of any REMIC shall be taxable to the holders of interests in such REMIC as provided in this part.

"SEC. 860B. TAXATION OF HOLDERS OF REGULAR INTERESTS.

"(a) GENERAL RULE.—In determining the tax under this chapter of any holder of a regular interest in a REMIC, such interest (if not otherwise a debt instrument) shall be treated as a debt instrument.

"(b) HOLDERS MUST USE ACCRUAL METHOD.—The amounts includible in gross income with respect to any regular interest in a REMIC shall be determined under the accrual method of accounting.

"(c) PORTION OF GAIN TREATED AS ORDINARY INCOME.—Gain on the disposition of a regular interest shall be treated as ordinary income to the extent such gain does not exceed the excess (if any) of—

"(1) the amount which would have been includible in the gross income of the taxpayer with respect to such interest if the yield on such interest were 110 percent of the applicable Federal rate (as defined in section 1274(d) without regard to paragraph (2) thereof) as of the beginning of the taxpayer's holding period, over

"(2) the amount actually includible in gross income with respect to such interest by the taxpayer.

"(d) CROSS REFERENCE.—

"For special rules in determining inclusion of original issue discount on regular interests, see section 1272(a)(6).

"SEC. 860C. TAXATION OF RESIDUAL INTERESTS.

"(a) PASS-THRU OF INCOME OR LOSS.—

"(1) IN GENERAL.—In determining the tax under this chapter of any holder of a residual interest in a REMIC, such holder shall take into account his daily portion of the taxable income or net loss of such REMIC for each day during the taxable year on which such holder held such interest.

"(2) DAILY PORTION.—The daily portion referred to in paragraph (1) shall be determined—

"(A) by allocating to each day in any calendar quarter its ratable portion of the taxable income (or net loss) for such quarter, and

"(B) by allocating the amount so allocated to any day among the holders (on such day) of residual interests in proportion to their respective holdings on such day.

"(b) DETERMINATION OF TAXABLE INCOME OR NET LOSS.—For purposes of this section—

"(1) TAXABLE INCOME.—The taxable income of a REMIC shall be determined under an accrual method of accounting and in the same manner as in the case of an individual, except that—

"(A) regular interests in such REMIC (if not otherwise debt instruments) shall be treated as indebtedness of such REMIC,

"(B) market discount on any market discount bond shall be included in gross income for the taxable years to which it is attributable as determined under the rules of section 1276(b)(2) (and sections 1276(a) and 1277 shall not apply),

"(C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction, and

"(D) the deductions referred to in section 703(a)(2) (other than any deduction under section 212) shall not be allowed.

"(2) NET LOSS.—The net loss of any REMIC is the excess of—

"(A) the deductions allowable in computing the taxable income of such REMIC, over

"(B) its gross income.

Such amount shall be determined with the modifications set forth in paragraph (1).

"(c) DISTRIBUTIONS.—Any distribution by a REMIC—

"(1) shall not be included in gross income to the extent it does not exceed the adjusted basis of the interest, and

"(2) to the extent it exceeds the adjusted basis of the interest, shall be treated as gain from the sale or exchange of such interest.

"(d) BASIS RULES.—

"(1) INCREASE IN BASIS.—The basis of any person's residual interest in a REMIC shall be increased by the amount of the taxable income of such REMIC taken into account under subsection (a) by such person with respect to such interest.

"(2) DECREASES IN BASIS.—The basis of any person's residual interest in a REMIC shall be decreased (but not below zero) by the sum of the following amounts:

"(A) any distributions to such person with respect to such interest, and

"(B) any net loss of such REMIC taken into account under subsection (a) by such person with respect to such interest.

"(e) SPECIAL RULES.—

"(1) AMOUNTS TREATED AS ORDINARY INCOME.—Any amount included in the gross income of any holder of a residual interest in a REMIC by reason of subsection (a) shall be treated as ordinary income.

"(2) LIMITATION ON LOSSES.—

"(A) IN GENERAL.—The amount of the net loss of any REMIC taken into account by a holder under subsection (a) with respect to any calendar quarter shall not exceed the adjusted basis of such holder's residual interest in such REMIC as of the close of such calendar quarter (determined without regard to the adjustment under subsection (d)(2)(B) for such calendar quarter).

"(B) INDEFINITE CARRYFORWARD.—Any loss disallowed by reason of subparagraph (A) shall be treated as incurred by the REMIC in the succeeding calendar quarter with respect to such holder.

"(3) CROSS REFERENCE.—

"For special treatment of income in excess of daily accruals, see section 860E.

"SEC. 860D. REMIC DEFINED.

"(a) GENERAL RULE.—For purposes of this title, the terms 'real estate mortgage investment conduit' and 'REMIC' mean any entity—

"(1) to which an election to be treated as a REMIC applies for the taxable year and all prior taxable years,

"(2) all of the interests in which are regular interests or residual interests,

"(3) which has 1 (and only 1) class of residual interests (and all distributions, if any, with respect to such interests are pro rata),

"(4) as of the close of the 4th month ending after the startup day and each quarter ending thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments, and

"(5) which has a taxable year which is a calendar year.

"(b) ELECTION.—

"(1) IN GENERAL.—An entity (otherwise meeting the requirements of subsection (a)) may elect to be treated as a REMIC for its 1st taxable year. Such an election shall be made on its return for such 1st taxable year. Except as provided in paragraph (2), such an election shall apply to the taxable year for which made and all subsequent taxable years.

"(2) TERMINATION.—

"(A) IN GENERAL.—If any entity ceases to be a REMIC at any time during the taxable year, such entity shall not be treated as a REMIC for such taxable year or any succeeding taxable year.

"(B) INADVERTENT TERMINATIONS.—If—

"(i) an entity ceases to be a REMIC,

"(ii) the Secretary determines that such cessation was inadvertent,

"(iii) no later than a reasonable time after the discovery of the event resulting in such cessation, steps are taken so that such entity is once more a REMIC, and

"(iv) such entity, and each person holding an interest in such entity at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such entity as a REMIC or a C corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding such terminating event, such entity shall be treated as continuing to be a REMIC (or such cessation shall be disregarded for purposes of subparagraph (A)) whichever the Secretary determines to be appropriate.

"SEC. 860E. TREATMENT OF INCOME IN EXCESS OF DAILY ACCRUALS ON RESIDUAL INTERESTS.

"(a) EXCESS INCLUSIONS MAY NOT BE OFFSET BY NET OPERATING LOSSES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year.

"(2) EXCEPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—Paragraph (1) shall not apply to any organization to which section 593 applies. The Secretary may by regulations provide that the preceding sentence shall not apply where necessary or appropriate to prevent avoidance of tax imposed by this chapter.

"(b) ORGANIZATIONS SUBJECT TO UNRELATED BUSINESS TAX.—If the holder of any residual interest in a REMIC is an organization subject to the tax imposed by section 511, the excess inclusion of such holder for any taxable year shall be treated as unrelated busi-

ness taxable income of such holder for purposes of section 511.

"(c) EXCESS INCLUSION.—For purposes of this section—

"(1) IN GENERAL.—The term 'excess inclusion' means, with respect to any residual interest in a REMIC for any calendar quarter, the excess (if any) of—

"(A) the amount taken into account with respect to such interest by the holder under section 860C(a), over

"(B) the sum of the daily accruals with respect to such interest for days during such calendar quarter while held by such holder. To the extent provided in regulations, if residual interests in a REMIC do not have significant value, the excess inclusions with respect to such interests shall be the amount determined under subparagraph (A) without regard to subparagraph (B).

"(2) DETERMINATION OF DAILY ACCRUALS.—

"(A) IN GENERAL.—For purposes of this subsection, the daily accrual with respect to any residual interest for any day in any calendar quarter shall be determined by allocating to each day in such quarter its ratable portion of the product of—

"(i) the adjusted issue price of such interest at the beginning of such quarter, and

"(ii) 120 percent of the long-term Federal rate (determined on the basis of compounding at the close of each calendar quarter and properly adjusted for the length of such quarter).

"(B) ADJUSTED ISSUE PRICE.—For purposes of this paragraph, the adjusted issue price of any residual interest at the beginning of any calendar quarter is the issue price of residual interest—

"(i) increased by the amount of daily accruals for prior quarters, and

"(ii) decreased by any distribution made with respect to such interest before the beginning of such quarter.

"(C) FEDERAL LONG-TERM RATE.—For purposes of this paragraph, the term 'Federal long-term rate' means the Federal long-term rate which would have applied to the residual interest under section 1274(d) (determined without regard to paragraph (2) thereof) if it were a debt instrument.

"(d) TREATMENT OF RESIDUAL INTERESTS HELD BY REAL ESTATE INVESTMENT TRUSTS.—If a residual interest in a REMIC is held by a real estate investment trust, under regulations prescribed by the Secretary—

"(1) any excess of—

"(A) the aggregate excess inclusions determined with respect to such interests, over

"(B) the real estate investment trust taxable income (within the meaning of section 857(b)(2), excluding any net capital gain),

Shall be allocated among the shareholders of such trust in proportion to the dividends received by such shareholders from trust, and

"(2) any amount allocated to a shareholder under paragraph (1) shall be treated as an excess inclusion with respect to a residual interest held by such shareholder.

"SEC. 860F. OTHER RULES.

"(a) 100 PERCENT TAX ON PROHIBITED TRANSACTIONS.—

"(1) TAX IMPOSED.—There is hereby imposed for each taxable year of a REMIC a tax equal to 100 percent of the net income derived from prohibited transactions.

"(2) PROHIBITED TRANSACTION.—For purposes of this part, the term 'prohibited transaction' means—

"(A) DISPOSITION OF QUALIFIED MORTGAGE.—The disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to—

"(i) the substitution of a qualified replacement mortgage for a qualified mortgage,

"(ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage,

"(iii) the bankruptcy or insolvency of the real estate mortgage pool, or

"(iv) a qualified liquidation.

Notwithstanding the preceding sentence, the term 'prohibited transaction' shall not include any disposition required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.

"(B) INCOME FROM NONPERMITTED ASSETS.—The receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment.

"(C) COMPENSATION FOR SERVICES.—The receipt by the real estate mortgage pool of any amount representing a fee or other compensation for services.

"(D) GAIN FROM DISPOSITION OF CASH FLOW INVESTMENTS.—Gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation described in subsection (b).

"(3) DETERMINATION OF NET INCOME.—For purposes of paragraph (1), the term 'net income derived from prohibited transactions' means the excess of the gross income from prohibited transactions over the deductions alloved by this chapter which are directly connected with such transactions; except that there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss.

"(4) QUALIFIED LIQUIDATION.—For purposes of this part—

"(A) IN GENERAL.—The term 'qualified liquidation' means a transaction in which—

"(i) the REMIC adopts a plan of complete liquidation,

"(ii) such REMIC sells all its assets (other than cash) within the liquidation period, and

"(iii) all proceeds of the liquidation (plus the cash), less assets retained to meet claims, are credited or distributed to holders of regular or residual interests on or before the last day of the liquidation period.

"(B) LIQUIDATION PERIOD.—The term 'liquidation period' means the period—

"(i) beginning on the date of the adoption of the plan of liquidation, and

"(ii) ending at the close of the 90th day after such date.

"(b) TREATMENT OF TRANSFERS TO THE REMIC.—

"(1) TREATMENT OF TRANSFEROR.—

"(A) NONRECOGNITION GAIN OR LOSS.—No gain or loss shall be recognized to the transferor on the transfer of any property to a REMIC.

"(B) ADJUSTED BASES OF INTERESTS.—The adjusted bases of the regular and residual interests received in a transfer described in subparagraph (A) shall be equal to the aggregate adjusted bases of the property transferred in such transfer. Such amount shall be allocated among such interests in proportion to their respective fair market values.

"(C) TREATMENT OF NONRECOGNIZED GAIN.—If the issue price of any regular or residual interest exceeds its adjusted basis as determined under subparagraph (B), for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

"(i) in the case of a regular interest, such excess shall be included in gross income (as determined under rules similar to rules of section 1276(b)), and

"(ii) in the case of a residual interest, such excess shall be included in gross income ratably over the anticipated period during which the real estate mortgage pool will be in existence.

"(D) TREATMENT OF NONRECOGNIZED LOSS.—If the adjusted basis of any regular or residual interest received in a transfer described in subparagraph (A) exceeds its issue price, for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

"(i) in the case of a regular interest, such excess shall be allowable as a deduction under rules similar to the rules of section 171, and

"(ii) in the case of a residual interest, such excess shall be allowable as a deduction ratably over the anticipated period during which the real estate mortgage pool will be in existence.

"(2) BASIS TO REMIC.—The basis of any property received by a REMIC in a transfer described in paragraph (1)(A) shall be its fair market value immediately after such transfer.

"(c) DISTRIBUTIONS OF PROPERTY.—If a REMIC makes a distribution of property with respect to any regular or residual interest—

"(1) notwithstanding any other provision of this subtitle, gain shall be recognized to such REMIC on the distribution in the same manner as if it had sold such property to the distributee at its fair market value, and

"(2) the basis of the distributee in such property shall be its fair market value.

"(d) COORDINATION WITH WASH SALE RULES.—For purposes of section 1091—

"(1) any residual interest in a REMIC shall be treated as a security, and

"(2) in applying such section to any loss claimed to have been sustained on the sale or other disposition of a residual interest in a REMIC—

"(A) except as provided in regulations, any residual interest in any REMIC and any interest in a taxable mortgage pool (as defined in section 7701(i)) comparable to a residual interest in a REMIC shall be treated as substantially identical stock or securities, and

"(B) subsections (a) and (e) of such section shall be applied by substituting '6 months' for '30 days' each place it appears.

"(e) TREATMENT UNDER SUBTITLE F.—For purposes of subtitle F, a REMIC shall be treated as a partnership (and holders of residual interests in such REMIC shall be treated as partners). Any return required by reason of the preceding sentence shall include the amount of the daily accruals determined under section 860E(c).

"SEC. 860G. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this part—

"(1) REGULAR INTEREST.— The term 'regular interest' means an interest in a REMIC the terms of which are fixed on the startup day, and which—

"(A) unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

"(B) provides that interest payments (or other similar amounts), if any, at or before maturity are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate).

An interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts)

may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments.

"(2) RESIDUAL INTEREST.—The term 'residual interest' means an interest in a REMIC which is not a regular interest and is designated as a residual interest.

"(3) QUALIFIED MORTGAGE.—The term 'qualified mortgage' means—

"(A) any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured, directly or indirectly, by an interest in real property and which—

"(i) is transferred to the REMIC on or before the startup day, or

"(ii) is purchased by the REMIC within the 3-month period beginning on the startup day,

"(B) any qualified replacement mortgage, and

"(C) any regular interest in another REMIC transferred to the REMIC on or before the startup day.

"(4) QUALIFIED REPLACEMENT MORTGAGE.—The term 'qualified replacement mortgage' means any obligation—

"(A) which would be described in paragraph (3)(A) if it were transferred to the REMIC on or before the startup day, and

"(B) which is received for—

"(i) another obligation within the 3-month period beginning on the startup day, or

"(ii) a defective obligation within the 2-year period beginning on the startup day.

"(5) PERMITTED INVESTMENTS.—The term 'permitted investments' means any—

"(A) cash flow investment,

"(B) qualified reserve asset, or

"(C) foreclosure property.

"(6) CASH FLOW INVESTMENT.—The term 'cash flow investment' means any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC.

"(7) QUALIFIED RESERVE ASSET.—

"(A) IN GENERAL.—The term 'qualified reserve asset' means any intangible property which is held for investment and as part of a qualified reserve fund.

"(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages. The amount of any such reserve shall be promptly and appropriately reduced as payments of qualified mortgages are received.

"(C) SPECIAL RULE.—A reserve shall not be treated as a qualified reserve for any taxable year (and all subsequent taxable years) if more than 30 percent of the gross income from the assets in such fund for the taxable year is derived from the sale or other disposition of property held for less than 3 months. For purposes of the preceding sentence, gain on the disposition of a qualified reserve asset shall not be taken into account if the disposition giving rise to such gain is required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.

"(8) FORECLOSURE PROPERTY.—The term 'foreclosure property' means property—

"(A) which would be foreclosure property under section 856(e) if acquired by a real estate investment trust, and

"(B) which is acquired in connection with the default or imminent default of a qualified mortgage held by the REMIC.

Property shall cease to be foreclosure property with respect to the REMIC on the date which is 1 year after the date such real estate mortgage pool acquired such property.

"(9) STARTUP DAY.—The term 'startup day' means any day selected by a REMIC which is on or before the 1st day on which interests in such REMIC are issued.

"(10) ISSUE PRICE.—The issue price of any regular or residual interest in a REMIC shall be determined under section 1273(b) in the same manner as if such interest were a debt instrument; except that if the interest is issued for property, paragraph (3) of section 1273(b) shall apply whether or not the requirements of such paragraph are met.

"(b) TREATMENT OF NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.—If the holder of a residual interest in a REMIC is a nonresident alien individual or a foreign corporation, for purposes of sections 871(a), 881, 1441, and 1442—

"(1) amounts includible in the gross income of such holder under this part shall be taken into account when paid or distributed (or when the interest is disposed of), and

"(2) no exemption from the taxes imposed by such sections (and no reduction in the rates of such taxes) shall apply to any excess inclusion.

The Secretary may by regulations provide that such amounts shall be taken into account earlier than as provided in paragraph (1) where necessary or appropriate to prevent the avoidance of tax imposed by this chapter.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations—

"(1) to prevent unreasonable accumulations of assets in a REMIC,

"(2) permitting determinations of the fair market value of property transferred to a REMIC and issue price of interests in a REMIC to be made earlier than otherwise provided, and

"(3) requiring reporting to holders of residual interests of such information as frequently as is necessary or appropriate to permit such holders to compute their taxable income accurately."

(b) TECHNICAL AMENDMENTS.—

(1) TREATMENT FOR REIT PURPOSES.—Paragraph (6) of section 856(c) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) A regular or residual interest in a REMIC shall be treated as an interest in real property, and any amount includible in gross income with respect to such an interest shall be treated as interest; except that, if less than 95 percent of the assets of such REMIC are interests in real property (determined as if the taxpayer held such assets), such interest shall be so treated only in the proportion which the assets of the REMIC consist of such interests."

(2) TREATMENT FOR PURPOSES OF SECTION 593.—Subsection (d) of section 593 (defining loans) is amended by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF INTERESTS IN REMIC'S.—A regular or residual interest in a REMIC shall be treated as a qualifying real property loan; except that, if less than 95 percent of the assets of such REMIC are qualifying real property loans (determined as if the taxpayer held the assets of the REMIC), such interest shall be so treated only in the proportion which the assets of such REMIC consist of such loans."

(3) TREATMENT FOR PURPOSES OF SECTION 7701(a)(19).—Subparagraph (C) of section 7701(a)(19) (defining domestic building and loan associations) is amended by striking out "and" at the end of clause (ix), by striking out the period at the end of clause (x) and inserting in lieu thereof ", and", and by inserting after clause (x) the following new clause:

"(xi) any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are loans described in clauses (i) through (x), the entire interest in the REMIC shall qualify."

(4) TREATMENT FOR PURPOSES OF SECTION 582(c).—Paragraph (1) of section 582(c) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness."

SEC. 672. RULES FOR ACCRUING ORIGINAL ISSUE DISCOUNT ON REGULAR INTERESTS AND SIMILAR DEBT INSTRUMENTS.

Subsection (a) of section 1272 (relating to current inclusion in income of original issue discount) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) DETERMINATION OF DAILY PORTIONS WHERE PRINCIPAL SUBJECT TO ACCELERATION.—

"(A) IN GENERAL.—In the case of any debt instrument to which this paragraph applies, the daily portion of the original issue discount shall be determined by allocating to each day in any accrual period its ratable portion of the excess (if any) of—

"(i) the sum of (I) the present value determined under subparagraph (B) of all remaining payments under the debt instrument as of the close of such period, and (II) the payments during the accrual period of amounts included in the stated redemption price of the debt instrument, over

"(ii) the adjusted issue price of such debt instrument at the beginning of such period.

"(B) DETERMINATION OF PRESENT VALUE.—For purposes of subparagraph (A), the present value shall be determined on the basis of—

"(i) the original yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period),

"(ii) events which have occurred before the close of the accrual period, and

"(iii) a prepayment assumption determined in the manner prescribed by regulations.

"(C) DEBT INSTRUMENTS TO WHICH PARAGRAPH APPLIES.—This paragraph applies to—

"(i) any regular interest in a REMIC or qualified mortgage held by a REMIC, or

"(ii) any other debt instrument if payments under such debt instrument may be accelerated by reason of prepayments of other obligations securing such debt instrument (or, to the extent provided in regulations, by reason of other events)."

SEC. 673. TREATMENT OF TAXABLE MORTGAGE POOLS.

Section 7701, as amended by section 201(c), is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) TAXABLE MORTGAGE POOLS.—

"(1) TREATED AS SEPARATE CORPORATIONS.—A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

"(2) TAXABLE MORTGAGE POOL DEFINED.—For purposes of this title—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC) if—

"(i) substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),

"(ii) such entity is the obligor under debt obligations with 2 or more maturities, and

"(iii) under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

"(B) PORTION OF ENTITIES TREATED AS POOLS.—Any portion of an entity which meets the definition of subparagraph (A) shall be treated as a taxable mortgage pool.

"(C) EXCEPTION FOR DOMESTIC BUILDING AND LOAN.—Nothing in this subsection shall be construed to treat any domestic building and loan association (or portion thereof) as a taxable mortgage pool.

"(D) TREATMENT OF CERTAIN EQUITY INTERESTS.—To the extent provided in regulations, equity interest of varying classes which correspond to maturity classes of debt shall be treated as debt for purposes of this subsection.

"(3) TREATMENT OF CERTAIN REIT'S.—If—

"(A) a real estate investment trust is a taxable mortgage pool, or

"(B) a qualified REIT subsidiary (as defined in section 856(i)(2)) of a real estate investment trust is a taxable mortgage pool,

under regulations prescribed by the Secretary, adjustments similar to the adjustments provided in section 860E(d) shall apply to the shareholders of such real estate investment trust."

SEC. 674. COMPLIANCE PROVISIONS.

Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end thereof the following new paragraph:

"(7) INTERESTS IN REMIC'S AND CERTAIN OTHER DEBT INSTRUMENTS.—

"(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income with respect to regular interests in REMIC's.

"(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph and any other debt instrument to which section 1272(a)(6) applies, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

"(C) ADDITIONAL INFORMATION.—Except as otherwise provided in regulations, any return or statement required to be filed or furnished under this section with respect to interest income described in subparagraph (A) and interest on any other debt instrument to which section 1272(a)(6) applies shall also provide information setting forth the issue price of the interest to which the return or statement relates at the beginning of each accrual period with respect to which interest income is required to be reported on such return or statement and information necessary to compute accrual of market discount.

"(D) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting."

SEC. 675. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply to taxable years beginning after December 31, 1986.

(b) RULES FOR ACCRUING ORIGINAL ISSUE DISCOUNT.—The amendment made by section 672 shall apply to debt instruments issued after December 31, 1986, in taxable years ending after such date.

(c) TREATMENT OF TAXABLE MORTGAGE POOLS.—

(1) IN GENERAL.—The amendment made by section 673 shall take effect on January 1, 1992.

(2) TREATMENT OF EXISTING ENTITIES.—The amendment made by section 673 shall not apply to any entity in existence on December 31, 1991. The preceding sentence shall cease to apply with respect to any entity as of the 1st day after December 31, 1991, on which there is a substantial transfer of cash or other property to such entity.

(3) SPECIAL RULE FOR COORDINATION WITH WASH-SALE RULES.—Notwithstanding paragraphs (1) and (2), for purposes of applying section 860F(d) of the Internal Revenue Code of 1986 (as added by this part), the amendment made by section 673 shall apply to taxable years beginning after December 31, 1986.

TITLE VII—ALTERNATIVE MINIMUM TAX

SEC. 701. ALTERNATIVE MINIMUM TAX FOR INDIVIDUALS AND CORPORATIONS.

(a) GENERAL RULE.—Part VI of subchapter A of chapter 1 (relating to minimum tax for tax preferences) is amended to read as follows:

"PART VI—ALTERNATIVE MINIMUM TAX

"Sec. 55. Alternative minimum tax imposed.
"Sec. 56. Adjustments in computing alternative minimum taxable income.
"Sec. 57. Items of tax preference.
"Sec. 58. Denial of certain losses.
"Sec. 59. Other definitions and special rules.

"SEC. 55. ALTERNATIVE MINIMUM TAX IMPOSED.

"(a) GENERAL RULE.—There is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to the excess (if any) of—

"(1) the tentative minimum tax for the taxable year, over

"(2) the regular tax for the taxable year.

"(b) TENTATIVE MINIMUM TAX.—For purposes of this part—

"(1) IN GENERAL.—The tentative minimum tax for the taxable year is—

"(A) 20 percent (21 percent in the case of a taxpayer other than a corporation) of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by

"(B) the alternative minimum tax foreign tax credit for the taxable year.

"(2) ALTERNATIVE MINIMUM TAXABLE INCOME.—The term 'alternative minimum taxable income' means the taxable income of the taxpayer for the taxable year—

"(A) determined with the adjustments provided in section 56 and section 58, and

"(B) increased by the amount of the items of tax preference described in section 57.

"(c) REGULAR TAX.—

"(1) IN GENERAL.—For purposes of this section, the term 'regular tax' means the regular tax liability for the taxable year (as defined in section 26(b)) reduced by the foreign tax credit allowable under section 27(a). Such term shall not include any tax imposed by section 402(e) and shall not include any increase in tax under section 47.

"(2) CROSS REFERENCES.—

"For provisions providing that certain credits are not allowable against the tax imposed by this section, see sections 26(a), 28(d)(2), 29(b)(5), and 38(c).

"(d) EXEMPTION AMOUNT.—For purposes of this section—

"(1) EXEMPTION AMOUNT FOR TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the term 'exemption amount' means—

"(A) $40,000 in the case of—

"(i) a joint return, or

"(ii) a surviving spouse,

"(B) $30,000 in the case of an individual who—

"(i) is not a married individual, and

"(ii) is not a surviving spouse, and

"(C) $20,000 in the case of—

"(i) a married individual who files a separate return, or

"(ii) an estate or trust.

For purposes of this paragraph, the term 'surviving spouse' has the meaning given to such term by section 2(a), and marital status shall be determined under section 7703.

"(2) CORPORATIONS.—In the case of a corporation, the term 'exemption amount' means $40,000.

"(3) PHASE-OUT OF EXEMPTION AMOUNT.—The exemption amount of any taxpayer shall be reduced (but not below zero) by an amount equal to 25 percent of the amount by which the alternative minimum taxable income of the taxpayer exceeds—

"(A) $150,000 in the case of a taxpayer described in paragraph (1)(A) or (2),

"(B) $112,500 in the case of a taxpayer described in paragraph (1)(B), and

"(C) $75,000 in the case of a taxpayer described in paragraph (1)(C).

"SEC. 56. ADJUSTMENTS IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

"(a) ADJUSTMENTS APPLICABLE TO ALL TAXPAYERS.—In determining the amount of the alternative minimum taxable income for any taxable year the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

"(1) DEPRECIATION.—

"(A) IN GENERAL.—

"(i) PROPERTY OTHER THAN CERTAIN REAL PROPERTY.—Except as provided in clause (ii), the depreciation deduction allowable under section 167 with respect to any tangible property placed in service after December 31, 1986, shall be determined under the alternative system of section 168(g).

"(ii) 150-PERCENT DECLINING BALANCE METHOD FOR CERTAIN PROPERTY.—The method of depreciation used shall be—

"(I) the 150 percent declining balance method,

"(II) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of the year will yield a higher allowance.

The preceding sentence shall not apply to any section 1250 property (as defined in section 1250(c)) or to any other property if the depreciation deduction determined under section 168 with respect to such other prop-

erty for purposes of the regular tax is determined by using the straight line method.

"(B) EXCEPTION FOR CERTAIN PROPERTY.—This paragraph shall not apply to property described in paragraph (1), (2), (3), or (4) of section 168(f).

"(C) COORDINATION WITH TRANSITIONAL RULES.—

"(i) IN GENERAL.—This paragraph shall not apply to property placed in service after December 31, 1986, to which the amendments made by section 201 of the Tax Reform Act of 1986 do not apply.

"(ii) TREATMENT OF CERTAIN PROPERTY PLACED IN SERVICE BEFORE 1987.—This paragraph shall apply to any property to which the amendments made by section 201 of the Tax Reform Act of 1986 apply by reason of an election under section 203(a)(1)(B) of such Act without regard to the requirement of subparagraph (A) that the property be placed in service after December 31, 1986.

"(D) NORMALIZATION RULES.—With respect to public utility property described in section 167(1)(3)(A), the Secretary shall prescribe the requirements of a normalization method of accounting for this section.

"(2) MINING EXPLORATION AND DEVELOPMENT COSTS.—

"(A) IN GENERAL.—With respect to each mine or other natural deposit (other than an oil, gas, or geothermal well) of the taxpayer, the amount allowable as a deduction under section 616(a) or 617(a) (determined without regard to section 291(b)) in computing the regular tax for costs paid or incurred after December 31, 1986, shall be capitalized and amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

"(B) LOSS ALLOWED.—If a loss is sustained with respect to any property described in subparagraph (A), a deduction shall be allowed for the expenditures described in subparagraph (A) for the taxable year in which such loss is sustained in an amount equal to the lesser of—

"(i) the amount allowable under section 165(a) for the expenditures if they had remained capitalized, or

"(ii) the amount of such expenditures which have not previously been amortized under subparagraph (A).

"(3) TREATMENT OF CERTAIN LONG-TERM CONTRACTS.—In the case of any long-term contract entered into by the taxpayer on or after March 1, 1986, the taxable income from such contract shall be determined under the percentage of completion method of accounting (as modified by section 460(b)).

"(4) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—The alternative tax net operating loss deduction shall be allowed in lieu of the net operating loss deduction allowed under section 172.

"(5) POLLUTION CONTROL FACILITIES.—In the case of any certified pollution control facility placed in service after December 31, 1986, the deduction allowable under section 169 (without regard to section 291) shall be determined under the alternative system of section 168(g).

"(6) INSTALLMENT SALES OF CERTAIN PROPERTY.—In the case of any—

"(A) disposition after March 1, 1986, of property described in section 1221(1), or

"(B) other disposition if an obligation arising from such disposition would be an applicable installment obligation (as defined in section 453C(e)) to which section 453C applies,

income from such disposition shall be determined without regard to the installment method under section 453 or 453A and all payments to be received for the disposition shall be deemed received in the taxable year of the disposition. This paragraph shall not apply to any disposition with respect to which an election is in effect under section 453C(e)(4).

"(7) ADJUSTED BASIS.—The adjusted basis of any property to which paragraph (1) or (5) applies (or with respect to which there are any expenditures to which paragraph (2) or subsection (b)(2) applies) shall be determined on the basis of the treatment prescribed in paragraph (1), (2), or (5), or subsection (b)(2), whichever applies.

"(b) ADJUSTMENTS APPLICABLE TO INDIVIDUALS.—In determining the amount of the alternative minimum taxable income of any taxpayer (other than a corporation), the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

"(1) LIMITATION ON ITEMIZED DEDUCTIONS.—

"(A) IN GENERAL.—No deduction shall be allowed—

"(i) for any miscellaneous itemized deduction (as defined in section 67(b)), or

"(ii) for any taxes described in paragraph (1), (2), or (3) of section 164(a).

Clause (ii) shall not apply to any amount allowable in computing adjusted gross income.

"(B) MEDICAL EXPENSES.—In determining the amount allowable as a deduction under section 213, subsection (a) of section 213 shall be applied by substituting '10 percent' for '7.5 percent'.

"(C) INTEREST.—In determining the amount allowable as a deduction for interest, subsections (d) and (h) of section 163 shall apply, except that—

"(i) in lieu of the exception under section 163(h)(2)(D), the term 'personal interest' shall not include any qualified housing interest (as defined in subsection (e)),

"(ii) sections 163(d)(6) and 163(h)(6) (relating to phase-ins) shall not apply, and

"(iii) interest on any specified private activity bond (and any amount treated as interest on a specified activity bond under section 56(a)(5)(B)), and any deduction referred to in section 57(a)(5)(A), shall be treated as includible in gross income (or as deductible) for purposes of applying section 163(d).

"(D) TREATMENT OF CERTAIN RECOVERIES.—No recovery of any tax to which subparagraph (A)(ii) applied shall be included in gross income for purposes of determining alternative minimum taxable income.

"(E) STANDARD DEDUCTION NOT ALLOWED.—The standard deduction provided in section 63(c) shall not be allowed.

"(2) CIRCULATION AND RESEARCH AND EXPERIMENTAL EXPENDITURES.—

"(A) IN GENERAL.—The amount allowable as a deduction under section 173 or 174(a) in computing the regular tax for amounts paid or incurred after December 31, 1986, shall be capitalized and—

"(i) in the case of circulation expenditures described in section 173, shall be amortized ratably over the 3-year period beginning with the taxable year in which the expenditures were made, or

"(ii) in the case of research and experimental expenditures described in section 174(a), shall be amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

"(B) LOSS ALLOWED.—If a loss is sustained with respect to any property described in subparagraph (A), a deduction shall be allowed for the expenditures described in subparagraph (A) for the taxable year in which such loss is sustained in an amount equal to the lesser of—

"(i) the amount allowable under section 165(a) for the expenditures if they had remained capitalized, or

"(ii) the amount of such expenditures which have not previously been amortized under subparagraph (A).

"(C) SPECIAL RULE FOR PERSONAL HOLDING COMPANIES.—In the case of circulation expenditures described in section 173, the adjustments provided in this paragraph shall apply also to a personal holding company (as defined in section 542).

"(c) ADJUSTMENTS APPLICABLE TO CORPORATIONS.—In determining the amount of the alternative minimum taxable income of a corporation, the following treatment shall apply:

"(1) ADJUSTMENT FOR BOOK INCOME OR ADJUSTED EARNINGS AND PROFITS.—

"(A) BOOK INCOME ADJUSTMENT.—For taxable years beginning in 1987, 1988, and 1989, alternative minimum taxable income shall be adjusted as provided under subsection (f).

"(B) ADJUSTED EARNINGS AND PROFITS.—For taxable years beginning after 1989, alternative minimum taxable income shall be adjusted as provided under subsection (g).

"(2) MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.—In the case of a capital construction fund established under section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177)—

"(A) subparagraphs (A), (B), and (C) of section 7518(c)(1) (and the corresponding provisions of such section 607) shall not apply to—

"(i) any amount deposited in such fund after December 31, 1986, or

"(ii) any earnings (including gains and losses) after December 31, 1986, on amounts in such fund, and

"(B) no reduction in basis shall be made under section 7518(f) (or the corresponding provisions of such section 607) with respect to the withdrawal from the fund of any amount to which subparagraph (A) applies. For purposes of this paragraph, any withdrawal of deposits or earnings from the fund shall be treated as allocable first to deposits made before (and earnings received or accrued before) January 1, 1987.

"(3) SPECIAL DEDUCTION FOR CERTAIN ORGANIZATIONS NOT ALLOWED.—The deduction determined under section 833(b) shall not be allowed.

"(d) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION DEFINED.—

"(1) IN GENERAL.—For purposes of subsection (a)(4), the term 'alternative tax net operating loss deduction' means the net operating loss deduction allowable for the taxable year under section 172, except that—

"(A) the amount of such deduction shall not exceed 90 percent of alternative minimum taxable income determined without regard to such deduction, and

"(B) in determining the amount of such deduction—

"(i) the net operating loss (within the meaning of section 172(c)) for any loss year shall be adjusted as provided in paragraph (2), and

"(ii) in the case of taxable years beginning after December 31, 1986, section 172(b)(2) shall be applied by substituting '90 percent of alternative minimum taxable income determined without regard to the alternative tax net operating loss deduction' for 'taxable income' each place it appears.

"(2) ADJUSTMENTS TO NET OPERATING LOSS COMPUTATION.—

"(A) POST-1986 LOSS YEARS.—In the case of a loss year beginning after December 31, 1986, the net operating loss for such year under section 172(c) shall—

"(i) be determined with the adjustments provided in this section and section 58, and

"(ii) be reduced by the items of tax preference determined under section 57 for such year (other than subsection (a)(6) thereof).

"(B) PRE-1987 YEARS.—In the case of loss years beginning before January 1, 1987, the amount of the net operating loss which may be carried over to taxable years beginning after December 31, 1986, for purposes of paragraph (2), shall be equal to the amount which may be carried from the loss year to the first taxable year of the taxpayer beginning after December 31, 1986.

"(e) QUALIFIED HOUSING INTEREST.—For purposes of this part—

"(1) IN GENERAL.—The term 'qualified housing interest' means interest which is paid or accrued during the taxable year on indebtedness which is incurred in acquiring, constructing, or substantially rehabilitating any property which—

"(A) is the principal residence (within the meaning of section 1034) of the taxpayer at the time such interest accrues or is paid, or

"(B) is a qualified dwelling which is a qualified residence (within the meaning of section 163(h)(3)).

Such term also includes interest on any indebtedness resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence; but only to the extent that the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness immediately before the refinancing.

"(2) QUALIFIED DWELLING.—The term 'qualified dwelling' means any—

"(A) house,

"(B) apartment,

"(C) condominium, or

"(D) mobile home not used on a transient basis (within the meaning of section 7701(a)(19)(C)(v)),

including all structures or other property appurtenant thereto.

"(3) SPECIAL RULE FOR INDEBTEDNESS INCURRED BEFORE JULY 1, 1982.—The term 'qualified housing interest' includes interest paid or accrued on indebtedness which—

"(A) was incurred by the taxpayer before July 1, 1982, and

"(B) is secured by property which, at the time such indebtedness was incurred, was—

"(i) the principal residence (within the meaning of section 1034) of the taxpayer, or

"(ii) a qualified dwelling used by the taxpayer (or any member of his family (within the meaning of section 267(c)(4))).

"(f) ADJUSTMENTS FOR BOOK INCOME OF CORPORATIONS.—

"(1) IN GENERAL.—The alternative minimum taxable income of any corporation for any taxable year beginning in 1987, 1988, or 1989 shall be increased by 50 percent of the amount (if any) by which—

"(A) the adjusted net book income of the corporation, exceeds

"(B) the alternative minimum taxable income for the taxable year (determined without regard to this subsection and the alternative tax net operating loss deduction).

"(2) ADJUSTED NET BOOK INCOME.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'adjusted net book income' means the net income or loss of the taxpayer set forth on the taxpayer's applicable financial statement, adjusted as provided in this paragraph.

"(B) ADJUSTMENTS FOR CERTAIN TAXES.—The amount determined under subparagraph (A) shall be appropriately adjusted to disregard any Federal income taxes, or income, war profits, or excess profits taxes imposed by any foreign country or possession of the United States, which are directly or indirectly taken into account on the taxpayer's applicable financial statement. The preceding sentence shall not apply to any such taxes imposed by a foreign country or possession of the United States if the taxpayer does not choose to take, to any extent, the benefits of section 901.

"(C) SPECIAL RULES FOR RELATED CORPORATIONS.—

"(i) CONSOLIDATED RETURNS.—If the taxpayer files a consolidated return for any taxable year, adjusted net book income for such taxable year shall take into account items on the taxpayer's applicable financial statement which are properly allocable to members of such group included on such return.

"(ii) TREATMENT OF DIVIDENDS.—In the case of any corporation which is not included on a consolidated return with the taxpayer, adjusted net book income shall take into account the earnings of such other corporation only to the extent of the sum of the dividends received from such other corporation and other amounts required to be included in gross income under this chapter in respect of the earnings of such other corporation.

"(D) STATEMENTS COVERING DIFFERENT PERIODS.—Appropriate adjustments shall be made in adjusted net book income in any case in which an applicable financial statement covers a period other than the taxable year.

"(E) SPECIAL RULE FOR COOPERATIVES.—In the case of a cooperative to which section 1381 applies, the amount determined under subparagraph (A) shall be reduced by the amounts referred to in section 1382(b) (relating to patronage dividends and per-unit retain allocations) to the extent such amounts were not otherwise taken into account in determining adjusted net book income.

"(F) TREATMENT OF DIVIDENDS FROM 936 CORPORATIONS.—

"(i) IN GENERAL.—In determining the amount of adjusted net book income, any dividend received from a corporation eligible for the credit provided by section 936 shall be increased by the amount of any withholding tax paid to a possession of the United States with respect to such dividend.

"(ii) TREATMENT AS FOREIGN TAXES.—

"(I) IN GENERAL.—50 percent of any withholding tax paid to a possession of the United States with respect to dividends referred to in clause (i) (to the extent such dividends do not exceed the excess referred to in paragraph (1), determined without regard to clause (i)) shall, for purposes of this part, be treated as a tax paid by the corporation receiving the dividend to a foreign country.

"(II) TREATMENT OF TAXES IMPOSED ON 936 CORPORATION.—For purposes of this subparagraph, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States, shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902.

"(G) RULES FOR ALASKA NATIVE CORPORATIONS.—The amount determined under subparagraph (A) shall be appropriately adjusted to allow:

"(i) cost recovery and depletion attributable to property the basis of which is determined under section 21(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1620(c)), and

"(ii) deductions for amounts payable made pursuant to section 7(i) or section 7(j) of such Act (43 U.S.C. 1606(i) and 1606(j)) only at such time as the deductions are allowed for tax purposes.

"(H) SECRETARIAL AUTHORITY TO ADJUST ITEMS.—Under regulations, adjusted net book income shall be properly adjusted to prevent the omission or duplication of any item.

"(3) APPLICABLE FINANCIAL STATEMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable financial statement' means, with respect to any taxable year, any statement covering such taxable year—

"(i) which is required to be filed with the Securities and Exchange Commission,

"(ii) which is a certified audited income statement to be used for the purposes of a statement or report—

"(I) for credit purposes,

"(II) to shareholders, or

"(III) for any other substantial nontax purpose,

"(iii) which is an income statement required to be provided to—

"(I) the Federal Government or any agency thereof,

"(II) a State government or any agency thereof, or

"(III) a political subdivision of a State or any agency thereof, or

"(iv) which is an income statement to be used for the purposes of a statement or report—

"(I) for credit purposes,

"(II) to shareholders, or

"(III) for any other substantial nontax purpose.

"(B) EARNINGS AND PROFITS USED IN CERTAIN CASES.—If—

"(i) a taxpayer has no applicable financial statement, or

"(ii) a taxpayer has only a statement described in subparagraph (A)(iv) and the taxpayer elects the application of this subparagraph,

the net income or loss set forth on the taxpayer's applicable financial statement shall, for purposes of paragraph (3)(A), be treated as being equal to the taxpayer's earnings and profits for the taxable year (without diminution by reason of distributions during the tax year). Such election, once made, shall remain in effect for any taxable year for which the taxpayer is described in this subparagraph unless revoked with the consent of the Secretary.

"(C) SPECIAL RULE WHERE MORE THAN 1 STATEMENT.—For purposes of subparagraph (A), if a taxpayer has a statement described in more than 1 clause or subclause, the applicable financial statement shall be the statement described in the clause or subclause with the lowest number designation.

"(4) EXCEPTION FOR CERTAIN CORPORATIONS.—This subsection shall not apply to any S corporation, regulated investment company, real estate investment trust, or REMIC.

"(g) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—

"(1) IN GENERAL.—The alternative minimum taxable income of any corporation for any taxable year beginning after 1989 shall be increased by 75 percent of the excess (if any) of—

"(A) the adjusted current earnings of the corporation, over

"(B) the alternative minimum taxable income (determined without regard to this

subsection and the alternative tax net operating loss deduction).

"(2) ALLOWANCE OF NEGATIVE ADJUSTMENTS.—

"(A) IN GENERAL.—The alternative minimum taxable income for any corporation of any taxable year beginning after 1989, shall be reduced by 75 percent of the excess (if any) of—

"(i) the amount referred to in subparagraph (B) of paragraph (1), over

"(ii) the amount referred to in subparagraph (A) of paragraph (1).

"(B) LIMITATION.—The reduction under subparagraph (A) for any taxable year shall not exceed the excess (if any) of—

"(i) the aggregate increases in alternative minimum taxable income under paragraph (1) for prior taxable years, over

"(ii) the aggregate reductions under subparagraph (A) of this paragraph for prior taxable years.

"(3) ADJUSTED CURRENT EARNINGS.—For purposes of this subsection, the term 'adjusted current earnings' means the alternative minimum taxable income for the taxable year—

"(A) determined with the adjustments provided in paragraph (4), and

"(B) determined without regard to this subsection and the alternative tax net operating loss deduction.

"(4) ADJUSTMENTS.—In determining adjusted current earnings, the following adjustments shall apply:

"(A) DEPRECIATION.—

"(i) PROPERTY PLACED IN SERVICE AFTER 1989.—The depreciation deduction with respect to any property placed in service in a taxable year beginning after 1989 shall be determined under whichever of the following methods yields deductions with a smaller present value:

"(I) The alternative system of section 168(g), or

"(II) The method used for book purposes.

"(ii) PROPERTY TO WHICH NEW ACRS SYSTEM APPLIES.—In the case of any property to which the amendments made by section 201 of the Tax Reform Act of 1986 apply and which is placed in service in a taxable year beginning before 1990, the depreciation deduction shall be determined—

"(I) by taking into account the adjusted basis of such property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last taxable year beginning before January 1, 1990, and

"(II) by using the straight-line method over the remainder of the recovery period applicable to such property under the alternative system of section 168(g).

"(iii) PROPERTY TO WHICH ORIGINAL ACRS SYSTEM APPLIES.—In the case of any property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 and without regard to subsection (d)(1)(A)(ii) thereof) applies, the depreciation deduction shall be determined—

"(I) by taking into account the adjusted basis of such property (as determined for purposes of computing the regular tax) as of the close of the last taxable year beginning before January 1, 1990, and

"(II) by using the straight line method over the remainder of the recovery period which would apply to such property under the alternative system of section 168(g).

"(iv) PROPERTY PLACED IN SERVICE BEFORE 1981.—In the case of any property not described in clause (i), (ii), or (iii), the amount allowable as depreciation or amortization with respect to such property shall be determined in the same manner as for purposes of computing taxable income.

"(v) SLOWER METHOD USED IF USED FOR BOOK PURPOSES.—In the case of any property to which clause (ii), (iii), or (iv) applies, if the depreciation method used for book purposes yields deductions for taxable years beginning after 1989 with a smaller present value than the method which would otherwise be used under such clause, the method used for book purposes shall be used in lieu of the method which would otherwise be used under such clause.

"(B) INCLUSION OF ITEMS INCLUDED FOR PURPOSES OF COMPUTING EARNINGS AND PROFITS.—

"(i) IN GENERAL.—In the case of any amount which is excluded from gross income for purposes of computing alternative minimum taxable income but is taken into account in determining the amount of earnings and profits—

"(I) such amount shall be included in income in the same manner as if such amount were includible in gross income for purposes of computing alternative minimum taxable income, and

"(II) the amount of such income shall be reduced by any deduction which would have been allowable in computing alternative minimum taxable income if such amount were includible in gross income.

"(ii) INCLUSION OF BUILDUP IN LIFE INSURANCE CONTRACTS.—In the case of any life insurance contract—

"(I) the income on such contract (as determined under section 7702(g)) for any taxable year shall be treated as includible in gross income for such year, and

"(II) there shall be allowed as a deduction that portion of any premium which is attributable to insurance coverage.

"(iii) INCLUSION OF INCOME ON ANNUITY CONTRACT.—In the case of any annuity contract, the income on such contract (as determined under section 72(u)(2)) shall be treated as includible in gross income for such year

"(C) DISALLOWANCE OF ITEMS NOT DEDUCTIBLE IN COMPUTING EARNINGS AND PROFITS.—

"(i) IN GENERAL.—A deduction shall not be allowed for any item if such item would not be deductible for any taxable year for purposes of computing earnings and profits.

"(ii) SPECIAL RULE FOR 100-PERCENT DIVIDENDS.—Clause (i) shall not apply to any deduction allowable under section 243 or 245 for a 100-percent dividend—

"(I) if the corporation receiving such dividend and the corporation paying such dividend could not be members of the same affiliated group under section 1504 by reason of section 1504(b),

"(II) but only to the extent such dividend is attributable to income of the paying corporation which is subject to tax under this chapter (determined after the application of sections 936 and 921).

For purposes of the preceding sentence, the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the amount allowable as a deduction under section 243 or 245 with respect to such dividend is 100 percent.

"(iii) SPECIAL RULE FOR DIVIDENDS FROM SECTION 936 COMPANIES.—In the case of any dividend received from a corporation eligible for the credit provided by section 936, rules similar to the rules of subparagraph (F) of subsection (f)(1) shall apply, except that '75 percent' shall be substituted for '50 percent' in clause (ii)(I) thereof.

"(D) CERTAIN OTHER EARNINGS AND PROFITS ADJUSTMENTS.—

"(i) IN GENERAL.—The adjustments provided in section 312(n) shall apply; except that—

"(I) paragraphs (1), (2), and (3) shall apply only to amounts paid or incurred in taxable years beginning after December 31, 1989,

"(II) paragraph (4) shall apply only to taxable years beginning after December 31, 1989,

"(III) paragraph (5) shall apply only to installment sales in taxable years beginning after December 31, 1989,

"(IV) paragraph (6) shall apply only to contracts entered into on or after March 1, 1986, and

"(V) paragraphs (7) and (8) shall not apply.

"(ii) SPECIAL RULE FOR INTANGIBLE DRILLING COSTS AND MINERAL EXPLORATION AND DEVELOPMENT COSTS.—If—

"(I) the present value of the deductions provided under subparagraph (A)(ii) or (B)(ii) of section 312(n)(2) with respect to amounts paid or incurred in taxable years beginning after December 31, 1989, exceeds

"(II) the present value of the deductions for such amounts under the method used for book purposes,

such amounts shall be deductible under the method used for book purposes in lieu of that provided in such subparagraph.

"(E) DISALLOWANCE OF LOSS ON EXCHANGE OF DEBT POOLS.—No loss shall be recognized on the exchange of any pool of debt obligations for another pool of debt obligations having substantially the same effective interest rates and maturities.

"(F) ACQUISITION EXPENSES OF LIFE INSURANCE COMPANIES.—Acquisition expenses of life insurance companies shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subparagraph applied to all taxable years.

"(G) DEPLETION.—The allowances for depletion with respect to any property placed in service in a taxable year beginning after 1989, shall be determined under whichever of the following methods yields deductions with a smaller present value:

"(i) cost depletion determined under section 611, or

"(ii) the method used for book purposes.

"(H) TREATMENT OF CERTAIN OWNERSHIP CHANGES.—If—

"(i) there is an ownership change (within the meaning of section 382) after the date of the enactment of the Tax Reform Act of 1986 with respect to any corporation, and

"(ii)(I) the aggregate adjusted bases of the assets of such corporation (immediately after the change), exceed

"(II) the value of the stock of such corporation (as determined for purposes of section 382), properly adjusted for liabilities and other relevant items,

then the adjusted basis of each asset of such corporation (as of such time) shall be its proportionate share (determined on the basis of respective fair market values) of the amount referred to in clause (ii)(II).

"(5) OTHER DEFINITIONS.—For purposes of paragraph (4)—

"(A) BOOK PURPOSES.—The term 'book purposes' means the treatment for purposes of preparing the applicable financial statement referred to in subsection (f).

"(B) EARNINGS AND PROFITS.—The term 'earnings and profits' means earnings and profits computed for purposes of subchapter C.

"(C) PRESENT VALUE.—Present value shall be determined as of the time the property is placed in service (or, if later, as of the beginning of the first taxable year beginning after

1989) and under regulations prescribed by the Secretary.

"(D) TREATMENT OF ALTERNATIVE MINIMUM TAXABLE INCOME.—The treatment of any item for purposes of computing alternative minimum taxable income shall be determined without regard to this subsection.

"(6) EXCEPTION FOR CERTAIN CORPORATIONS.—This subsection shall not apply to any S corporation, regulated investment company, real estate investment trust, or REMIC.

"SEC. 57. ITEMS OF TAX PREFERENCE.

"(a) GENERAL RULE.—For purposes of this part, the items of tax preference determined under this section are—

"(1) DEPLETION.—With respect to each property (as defined in section 614), the excess of the deduction for depletion allowable under section 611 for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year).

"(2) INTANGIBLE DRILLING COSTS.—

"(A) IN GENERAL.—With respect to all oil, gas, and geothermal properties of the taxpayer, the amount (if any) by which the amount of the excess intangible drilling costs arising in the taxable year is greater than 65 percent of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year.

"(B) EXCESS INTANGIBLE DRILLING COSTS.—For purposes of subparagraph (A), the amount of the excess intangible drilling costs arising in the taxable year is the excess of—

"(i) the intangible drilling and development costs paid or incurred in connection with oil, gas, and geothermal wells (other than costs incurred in drilling a nonproductive well) allowable under section 263(c) or 291(b) for the taxable year, over

"(ii) the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (b)) had been used with respect to such costs.

"(C) NET INCOME FROM OIL, GAS, AND GEOTHERMAL PROPERTIES.—For purposes of subparagraph (A), the amount of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year is the excess of—

"(i) the aggregate amount of gross income (within the meaning of section 613(a)) from all oil, gas, and geothermal properties of the taxpayer received or accrued by the taxpayer during the taxable year, over

"(ii) the amount of any deductions allocable to such properties reduced by the excess described in subparagraph (B) for such taxable year.

"(D) PARAGRAPH APPLIED SEPARATELY WITH RESPECT TO GEOTHERMAL PROPERTIES AND OIL AND GAS PROPERTIES.—This paragraph shall be applied separately with respect to—

"(i) all oil and gas properties which are not described in clause (ii), and

"(ii) all properties which are geothermal deposits (as defined in section 613(e)(3)).

"(3) INCENTIVE STOCK OPTIONS.—

"(A) IN GENERAL.—With respect to the transfer of a share of stock pursuant to the exercise of an incentive stock option (as defined in section 422A), the amount by which the fair market value of the share at the time of exercise exceeds the option price. For purposes of this paragraph, the fair market value of a share of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.

"(B) BASIS ADJUSTMENT.—In determining the amount of gain or loss recognized for purposes of this part on any disposition of a share of stock acquired pursuant to an exercise (in a taxable year beginning after December 31, 1986) of an incentive stock option, the basis of such stock shall be increased by the amount of the excess referred to in subparagraph (A).

"(4) RESERVES FOR LOSSES ON BAD DEBTS OF FINANCIAL INSTITUTIONS.—In the case of a financial institution to which section 585 or 593 applies, the amount by which the deduction allowable for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the institution maintained its bad debt reserve for all taxable years on the basis of actual experience.

"(5) TAX-EXEMPT INTEREST.—

"(A) IN GENERAL.—Interest on specified private activity bonds reduced by any deduction (not allowable in computing the regular tax) which would have been allowable if such interest were includible in gross income.

"(B) TREATMENT OF EXEMPT-INTEREST DIVIDENDS.—Under regulations prescribed by the Secretary, any exempt-interest dividend (as defined in section 852(b)(5)(A)) shall be treated as interest on a specified private activity bond to the extent of its proportionate share of the interest on such bonds received by the company paying such dividend.

"(C) SPECIFIED PRIVATE ACTIVITY BONDS.—

"(i) IN GENERAL.—For purposes of this part, the term 'specified private activity bonds' means any private activity bond (as defined in section 141) issued after August 7, 1986.

"(ii) EXCEPTION FOR QUALIFIED 501(C)(3) BONDS.—For purposes of clause (i), the term 'private activity bond' shall not include any qualified 501(c)(3) bond (as defined in section 145).

"(iii) EXCEPTION FOR REFUNDINGS.—For purposes of clause (i), the term 'private activity bond' shall not include any refunding bond if the refunded bond (or in the case of a series of refundings, the original bond) was issued before August 8, 1986.

"(iv) CERTAIN BONDS ISSUED BEFORE SEPTEMBER 1, 1986.—For purposes of this subparagraph, a bond issued before September 1, 1986, shall be treated as issued before August 8, 1986, unless such bond would be a private activity bond if—

"(I) paragraphs (1) and (2) of section 141(b) were applied by substituting '25 percent' for '10 percent' each place it appears,

"(II) paragraphs (3), (4), and (5) of section 141(b) did not apply, and

"(III) subparagraph (B) of section 141(c)(1) did not apply.

"(6) APPRECIATED PROPERTY CHARITABLE DEDUCTION.—

"(A) IN GENERAL.—The amount by which the deduction allowable under section 170 would be reduced if all capital gain property were taken into account at its adjusted basis.

"(B) CAPITAL GAIN PROPERTY.—For purposes of subparagraph (A), the term 'capital gain property' has the meaning given to such term by section 170(b)(1)(C)(iv). Such term shall not include any property to which an election under section 170(b)(1)(C)(iii) applies.

"(7) ACCELERATED DEPRECIATION OR AMORTIZATION ON CERTAIN PROPERTY PLACED IN SERVICE BEFORE JANUARY 1, 1987.—The amounts which would be treated as items of tax preference with respect to the taxpayer under paragraphs (2), (3), (4), and (12) of this subsection (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986). The preceding sentence shall not apply to any property to which section 56(a)(1) or (5) applies.

"(b) STRAIGHT LINE RECOVERY OF INTANGIBLES DEFINED.—For purposes of paragraph (2) of subsection (a)—

"(1) IN GENERAL.—The term 'straight line recovery of intangibles', when used with respect to intangible drilling and development costs for any well, means (except in the case of an election under paragraph (2)) ratable amortization of such costs over the 120-month period beginning with the month in which production from such well begins.

"(2) ELECTION.—If the taxpayer elects with respect to the intangible drilling and development costs for any well, the term 'straight line recovery of intangibles' means any method which would be permitted for purposes of determining cost depletion with respect to such well and which is selected by the taxpayer for purposes of subsection (a)(2).

"SEC. 58. DENIAL OF CERTAIN LOSSES.

"(a) DENIAL OF FARM LOSS.—

"(1) IN GENERAL.—For purposes of computing the amount of the alternative minimum taxable income for any taxable year of a taxpayer other than a corporation—

"(A) DISALLOWANCE OF FARM LOSS.—No loss of the taxpayer for such taxable year from any tax shelter farm activity shall be allowed.

"(B) DEDUCTION IN SUCCEEDING TAXABLE YEAR.—Any loss from a tax shelter farm activity disallowed under subparagraph (A) shall be treated as a deduction allocable to such activity in the 1st succeeding taxable year.

"(2) TAX SHELTER FARM ACTIVITY.—For purposes of this subsection, the term 'tax shelter farm activity' means—

"(A) any farming syndicate as defined in section 464(c) (as modified by section 461(i)(4)(A)), and

"(B) any other activity consisting of farming which is a passive activity (within the meaning of section 469(d), without regard to paragraph (1)(B) thereof).

"(3) APPLICATION TO PERSONAL SERVICE CORPORATIONS.—For purposes of paragraph (1), a personal service corporation (within the meaning of section 469(g)(1)(C)) shall be treated as a taxpayer other than a corporation.

"(b) DISALLOWANCE OF PASSIVE ACTIVITY LOSS.—In computing the alternative minimum taxable income of the taxpayer for any taxable year, section 469 shall apply, except that in applying section 469—

"(1) the adjustments of section 56 shall apply,

"(2) any deduction to the extent such deduction is an item of tax preference under section 57(a) shall not be taken into account, and

"(3) the provisions of section 469(l) (relating to phase-in of disallowance) shall not apply.

"(c) SPECIAL RULES.—For purposes of this section—

"(1) SPECIAL RULE FOR INSOLVENT TAXPAYERS.—

"(A) IN GENERAL.—The amount of losses to which subsection (a) or (b) applies shall be reduced by the amount (if any) by which the taxpayer is insolvent as of the close of the taxable year.

"(B) INSOLVENT.—For purposes of this paragraph, the term 'insolvent' means the excess of liabilities over the fair market value of assets.

"(2) LOSS ALLOWED FOR YEAR OF DISPOSITION OF FARM SHELTER ACTIVITY.—If the taxpayer disposes of his entire interest in any tax shelter farm activity during any taxable year, the amount of the loss attributable to such activity (determined after carryovers under subsection (a)(1)(B)) shall (to the extent otherwise allowable) be allowed for such taxable year in computing alternative minimum taxable income and not treated as a loss from a tax shelter farm activity.

"SEC. 59. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) ALTERNATIVE MINIMUM TAX FOREIGN TAX CREDIT.—For purposes of this part—

"(1) IN GENERAL.—The alternative minimum tax foreign tax credit for any taxable year shall be the credit which would be determined under section 27(a) for such taxable year if—

"(A) the amount determined under section 55(b)(1)(A) were the tax against which such credit was taken for purposes of section 904 for the taxable year and all prior taxable years beginning after December 31, 1986,

"(B) section 904 were applied on the basis of alternative minimum taxable income instead of taxable income, and

"(C) for purposes of section 904, any increase in alternative minimum taxable income by reason of section 56(c)(1)(A) (relating to adjustment for book income) shall have the same proportionate source (and character) as alternative minimum taxable income determined without regard to such increase.

"(2) LIMITATION TO 90 PERCENT OF TAX.—

"(A) IN GENERAL.—The alternative minimum tax foreign tax credit for any taxable year shall not exceed the excess (if any) of—

"(i) the amount determined under section 55(b)(1)(A) for the taxable year, over

"(ii) 10 percent of the amount which would be determined under section 55(b)(1)(A) without regard to the alternative tax net operating loss deduction.

"(B) CARRYBACK AND CARRYFORWARD.—If the alternative minimum tax foreign tax credit exceeds the amount determined under subparagraph (A), such excess shall, for purposes of this part, be treated as an amount to which section 904(c) applies.

"(b) MINIMUM TAX NOT TO APPLY TO INCOME ELIGIBLE FOR SECTION 936 CREDIT.—In the case of any corporation for which a credit is allowable for the taxable year under section 936, alternative minimum taxable income shall not include any amount with respect to which the requirements of subparagraph (A) or (B) of section 936(a)(1) are met.

"(c) TREATMENT OF ESTATES AND TRUSTS.—In the case of any estate or trust, the alternative minimum taxable income of such estate or trust and any beneficiary thereof shall be determined by applying part I of subchapter J with the adjustments provided in this part.

"(d) APPORTIONMENT OF DIFFERENTLY TREATED ITEMS IN CASE OF CERTAIN ENTITIES.—

"(1) IN GENERAL.—The differently treated items for the taxable year shall be apportioned (in accordance with regulations prescribed by the Secretary)—

"(A) REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—In the case of a regulated investment company to which part I of subchapter M applies or a real estate investment company to which part II of subchapter M applies, between such company or trust and shareholders and holders of beneficial interest in such company or trust.

"(B) COMMON TRUST FUNDS.—In the case of a common trust fund (as defined in section 584(a)), pro rata among the participants of such fund.

"(2) DIFFERENTLY TREATED ITEMS.—For purposes of this section, the term 'differently treated item' means any item of tax preference or any other item which is treated differently for purposes of this part than for purposes of computing the regular tax.

"(e) OPTIONAL 10-YEAR WRITEOFF OF CERTAIN TAX PREFERENCES.—

"(1) IN GENERAL.—For purposes of this title, any qualified expenditure to which an election under this paragraph applies shall be allowed as a deduction ratably over the 10-year period (3-year period in the case of circulation expenditures described in section 173) beginning with the taxable year in which such expenditure was made.

"(2) QUALIFIED EXPENDITURE.—For purposes of this subsection, the term 'qualified expenditure' means any amount which, but for an election under this subsection, would have been allowable as a deduction for the taxable year in which paid or incurred under—

"(A) section 173 (relating to circulation expenditures),

"(B) section 174(a) (relating to research and experimental expenditures),

"(C) section 263(c) (relating to intangible drilling and development expenditures),

"(D) section 616(a) (relating to development expenditures), or

"(E) section 617(a) (relating to mining exploration expenditures).

"(3) OTHER SECTIONS NOT APPLICABLE.—Except as provided in this subsection, no deduction shall be allowed under any other section for any qualified expenditure to which an election under this subsection applies.

"(4) ELECTION.—

"(A) IN GENERAL.—An election may be made under paragraph (1) with respect to any portion of any qualified expenditure.

"(B) REVOCABLE ONLY WITH CONSENT.—Any election under this subsection may be revoked only with the consent of the Secretary.

"(C) PARTNERS AND SHAREHOLDERS OF S CORPORATIONS.—In the case of a partnership, any election under paragraph (1) shall be made separately by each partner with respect to the partner's allocable share of any qualified expenditure. A similar rule shall apply in the case of an S corporation and its shareholders.

"(5) DISPOSITIONS.—

"(A) APPLICATION OF SECTION 1254.—In the case of any disposition of property to which section 1254 applies (determined without regard to this section), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 1254, be treated as a deduction allowable under section 263(c), 616(a), or 617(a), whichever is appropriate.

"(B) APPLICATION OF SECTION 617(d).—In the case of any disposition of mining property to which section 617(d) applies (determined without regard to this subsection), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 617(d), be treated as a deduction allowable under section 617(a).

"(6) AMOUNTS TO WHICH ELECTION APPLY NOT TREATED AS TAX PREFERENCE.—Any portion of any qualified expenditure to which an election under paragraph (1) applies shall not be treated as an item of tax preference under section 57(a) and section 56 shall not apply to such expenditure.

"(f) COORDINATION WITH SECTION 291.—Except as otherwise provided in this part, section 291 (relating to cutback of corporate preferences) shall apply before the application of this part.

"(g) TAX BENEFIT RULE.—The Secretary may prescribe regulations under which differently treated items shall be properly adjusted where the tax treatment giving rise to such items will not result in the reduction of the taxpayer's regular tax for any taxable year.

"(h) COORDINATION WITH CERTAIN LIMITATIONS.—The limitations of sections 704(d), 465, and 1366(d) (and such other provisions as may be specified in regulations) shall be applied for purposes of computing the alternative minimum taxable income of the taxpayer for the taxable year—

"(1) with the adjustments of section 56, and

"(2) by not taking into account any deduction to the extent such deduction is an item of tax preference under section 57(a).

"(i) SPECIAL RULE FOR INTEREST TREATED AS TAX PREFERENCE.—For purposes of this subtitle, interest shall not fail to be treated as wholly exempt from tax imposed by this title solely by reason of being included in alternative minimum taxable income."

(b) CREDIT AGAINST REGULAR TAX FOR PRIOR YEAR MINIMUM TAX LIABILITY.—Part IV of subchapter A of chapter 1 (relating to credits allowable) is amended by adding at the end thereof the following new subpart:

"Subpart G—Credit Against Regular Tax for Prior Year Minimum Tax Liability

"Sec. 53. Credit for prior year minimum tax liability.

"SEC. 53. CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for any taxable year an amount equal to the minimum tax credit for such taxable year.

"(b) MINIMUM TAX CREDIT.—For purposes of subsection (a), the minimum tax credit for any taxable year is the excess (if any) of—

"(1) the adjusted net minimum tax imposed for all prior taxable years beginning after 1986, over

"(2) the amount allowable as a credit under subsection (a) for such prior taxable years.

"(c) LIMITATION.—The credit allowable under subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(1) the regular tax liability of the taxpayer for such taxable year reduced by the sum of the credits allowable under subparts A, B, D, E, and F of this part, over

"(2) the tentative minimum tax for the taxable year.

"(d) DEFINITIONS.—For purposes of this section—

"(1) NET MINIMUM TAX.—

"(A) IN GENERAL.—The term 'net minimum tax' means the tax imposed by section 55.

"(B) CREDIT NOT ALLOWED FOR EXCLUSION PREFERENCES.—

"(i) ADJUSTED NET MINIMUM TAX.—The adjusted net minimum tax for any taxable year is—

"(I) the amount of the net minimum tax for such taxable year, reduced by

"(II) the amount which would be the net minimum tax for such taxable year if the only adjustments and items of tax preference taken into account were those specified in clause (ii).

"(ii) SPECIFIED ITEMS.—The following are specified in this clause—

"(I) the adjustments provided for in subsections (b)(1) and (c)(3) of section 56, and

"(II) the items of tax preference described in paragraphs (1), (5), and (6) of section 57(a).

In the case of taxable years beginning after 1989, the adjustments provided in section 56(g) shall be treated as specified in this clause to the extent attributable to items which are excluded from gross income for any taxable year for purposes of the regular tax, or are not deductible for any taxable year under the adjusted earnings and profits method of section 56(g).

"(2) TENTATIVE MINIMUM TAX.—The term 'tentative minimum tax' has the meaning given to such term by section 55(b)."

(c) CREDITS NOT ALLOWABLE AGAINST MINIMUM TAX.—

(1) PERSONAL CREDITS.—

(A) IN GENERAL.—Subsection (a) of section 26 (relating to limitation based on amount of tax) is amended to read as follows:

"(a) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the excess (if any) of—

"(1) the taxpayer's regular tax liability for the taxable year, over

"(2) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit)."

(B) REGULAR TAX LIABILITY.—Subsection (b) of section 26 (as amended by title II) is amended—

(i) by striking out "this section" in the matter preceding paragraph (1) and inserting in lieu thereof "this part",

(ii) by striking out "tax liability" in paragraph (1) and inserting in lieu thereof "regular tax liability",

(iii) by striking out subparagraph (A) of paragraph (2) and inserting in lieu thereof the following:

"(A) section 55 (relating to minimum tax),",

(iv) by striking out "and" at the end of paragraph (2)(H), by striking out the period at the end of paragraph (2)(I) and inserting in lieu thereof ", and", and by adding at the end of paragraph (2) the following new subparagraph:

"(J) sections 871(a) and 881 (relating to certain income of nonresident aliens and foreign corporations,", and

(v) by striking out "TAX LIABILITY" in the subsection heading and inserting in lieu thereof "REGULAR TAX LIABILITY".

(C) TENTATIVE MINIMUM TAX.—Subsection (c) of section 26 is amended to read as follows:

"(c) TENTATIVE MINIMUM TAX.—For purposes of this part, the term 'tentative minimum tax' means the amount determined under section 55(b)(1)."

(2) CREDIT FOR CLINICAL TESTING EXPENSES.—Paragraph (2) of section 28(d) is amended to read as follows:

"(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed by this section for any taxable year shall not exceed the excess (if any) of—

"(A) the regular tax (reduced by the sum of the credits allowable under subpart A and section 27), over

"(B) the tentative minimum tax for the taxable year."

(3) CREDIT FOR PRODUCTION OF FUEL FROM NONCONVENTIONAL SOURCES.—Paragraph (5) of section 29(b) is amended to read as follows:

"(5) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27 and 28, over

"(B) the tentative minimum tax for the taxable year."

(4) GENERAL BUSINESS CREDIT.—Subsection (c) of section 38 (relating to limitation based on amount of tax), as amended by section 631(a), is amended by redesignating paragraph (3) as paragraph (4), and by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the lesser of—

"(A) the allowable portion of the taxpayer's net regular tax liability for the taxable year, or

"(B) the excess (if any) of the taxpayer's net regular tax liability for the taxable year over the tentative minimum tax for the taxable year.

"(2) ALLOWABLE PORTION OF NET REGULAR TAX LIABILITY.—For purposes of this subsection, the allowable portion of the taxpayer's net regular tax liability for the taxable year is the sum of—

"(A) so much of the taxpayer's net regular tax liability for the taxable year as does not exceed $25,000, plus

"(B) 75 percent of so much of the taxpayer's net regular tax liability for the taxable year as exceeds $25,000.

For purposes of the preceding sentence, the term 'net regular tax liability' means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

"(3) REGULAR INVESTMENT TAX CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—In the case of any C corporation, to the extent the credit under subsection (a) is attributable to the application of the regular percentage under section 46, the limitation of paragraph (1) shall be the greater of—

"(A) the lesser of—

"(i) the allowable portion of the taxpayer's net regular tax liability for the taxable year, or

"(ii) the excess (if any) of the taxpayer's net regular tax liability for the taxable year over 75 percent of the tentative minimum tax for the taxable year, or

"(B) 25 percent of the taxpayer's tentative minimum tax for the year."

In no event shall this paragraph permit the allowance of a credit which (in combination with the alternative tax net operating loss deduction and the alternative minimum tax foreign tax credit) would reduce the tax payable under section 55 below an amount equal to 10 percent of the amount which would be determined under section 55(b) without regard to the alternative tax net operating loss deduction and the alternative minimum tax foreign tax credit."

(d) ESTIMATED TAX PROVISIONS TO APPLY TO CORPORATE MINIMUM TAX.—

(1) Paragraph (1) of section 6154(c) is amended to read as follows:

"(1) The amount which the corporation estimates as the sum of—

"(A) the income tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever applies, and

"(B) the minimum tax imposed by section 55, over".

(2) Subparagraph (A) of section 6425(c)(1) is amended to read as follows:

"(A) The sum of—

"(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, plus

"(ii) the tax imposed by section 55, over".

(3) Paragraph (1) of section 6655(f) is amended to read as follows:

"(1) the sum of—

"(A) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, plus

"(B) the tax imposed by section 55, over".

(e) TECHNICAL AMENDMENTS.—

(1) APPLICATION OF SECTION 381.—Subsection (c) of section 381 is amended by adding at the end thereof the following new paragraph:

"(27) CREDIT UNDER SECTION 53.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 53, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 53 in respect of the distributor or transferor corporation."

(2) LIMITATION IN CASE OF CONTROLLED CORPORATIONS.—Subsection (a) of section 1561 (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations) is amended—

(A) by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and" and by inserting after paragraph (2) the following new paragraph:

"(3) one $40,000 exemption amount for purposes of computing the amount of the minimum tax.",

(B) by striking out "amounts specified in paragraph (1)" and inserting in lieu thereof "amounts specified in paragraph (1) (and the amount specified in paragraph (3))", and

(C) by adding at the end thereof the following new sentence: "In applying section 55(d)(3), the alternative minimum taxable income of all component members shall be taken into account and any decrease in the exemption amount shall be allocated to the component members in the same manner as under paragraph (3)."

(3) TREATMENT OF SHORT TAXABLE YEARS.—Subsection (d) of section 443 (relating to adjustment in computing minimum tax for tax preference) is amended to read as follows:

"(d) ADJUSTMENT IN COMPUTING MINIMUM TAX AND TAX PREFERENCES.—If a return is made for a short period by reason of subsection (a)—

"(1) the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying such amount by 12 and dividing the result by the number of months in the short period, and

"(2) the amount computed under paragraph (1) of section 55(a) shall bear the same relation to the tax computed on the annual basis as the number of months in the short period bears to 12."

(4) CONFORMING AMENDMENTS.—

(A) Paragraph (4) of section 5(a) is amended to read as follows:

"(4) For alternative minimum tax, see section 55."

(B) Paragraph (7) of section 12 is amended to read as follows:

"(7) For alternative minimum tax, see section 55."

(C) Subparagraph (D) of section 48(d)(4) is amended by striking out "section 57(c)(1)(B)" and inserting in lieu thereof "section 57(c)(1)(B) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)".

(D) Section 173(b), 174(e)(2), 263(c), and 1016(a)(24) (as redesignated by section 634(b)(2)) are each amended by striking out "section 58(i)" and inserting in lieu thereof "section 59(d)".

(E) Subsection (b) of section 703 (relating to elections of the partnership), as amended by title V, is amended by striking out para-

graph (1) and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(F) Paragraph (1) of section 882(a) (relating to imposition of tax on income of foreign corporations connected with United States business) is amended by striking out "or 1201(a)" and inserting in lieu thereof ", 55, or 1201(a)".

(G) So much of section 897(a)(2) as precedes subparagraph (B) thereof is amended to read as follows:

"(2) 21-PERCENT MINIMUM TAX ON NONRESIDENT ALIEN INDIVIDUALS.—

"(A) IN GENERAL.—In the case of any nonresident alien individual, the amount determined under section 55(b)(1)(A) shall not be less than 21 percent of the lesser of—

"(i) the individual's alternative minimum taxable income (as defined in section 55(b)(2)) for the taxable year, or

"(ii) the individual's net United States real property gain for the taxable year."

(H) Paragraph (2) of section 904(i) (relating to cross references) is amended by striking out "by an individual" and all that follows and inserting in lieu thereof "against the alternative minimum tax, see section 59(a)."

(I) Paragraph (3) of section 936(a) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B), (C), and (E) as subparagraphs (A), (B), and (C), respectively.

(J) Subsection (a) of section 1363 is amended by striking out "and in section 58(d)".

(K) Paragraph (2) of section 1366(f) (relating to reduction in pass-thru for tax imposed on capital gain) is amended by striking out "56 or".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) ADJUSTMENT OF NET OPERATING LOSS.—

(A) INDIVIDUALS.—In the case of a net operating loss of an individual for a taxable year beginning after December 31, 1982, and before January 1, 1987, for purposes of determining the amount of such loss which may be carried to a taxable year beginning after December 31, 1986, for purposes of the minimum tax, such loss shall be adjusted in the manner provided in section 55(d)(2) of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act.

(B) CORPORATIONS.—If the minimum tax of a corporation was deferred under section 56(b) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) for any taxable year beginning before January 1, 1987, and the amount of such tax has not been paid for any taxable year beginning before January 1, 1987, the amount of the net operating loss carryovers of such corporation which may be carried to taxable years beginning after December 31, 1986, for purposes of the minimum tax shall be reduced by the amount of tax preferences a tax on which was so deferred.

(3) INSTALLMENT SALES.—Section 56(a)(6) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply to any disposition to which the amendments made by section 811 of this Act (relating to allocation of dealer's indebtedness to installment obligations) do not apply by reason of section 811(c)(2) of this Act.

(4) EXCEPTION FOR CHARITABLE CONTRIBUTIONS BEFORE AUGUST 16, 1986.—Section 57(a)(6) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply to any deduction attributable to contributions made before August 16, 1986.

(5) BOOK INCOME.—

(A) IN GENERAL.—In the case of a corporation to which this paragraph applies, the amount of any increase for any taxable year under section 56(c)(1)(A) of the Internal Revenue Code of 1986 (as added by this section) shall be reduced (but not below zero) by the excess (if any) of—

(i) 50 percent of the excess of taxable income for the 5-taxable year period ending with the taxable year preceding the 1st taxable year to which such section applies over the adjusted net book income for such period, over

(ii) the aggregate amounts taken into account under this paragraph for preceding taxable years.

(B) TAXPAYER TO WHOM PARAGRAPH APPLIES.—This paragraph applies to a taxpayer which was incorporated in Delaware on May 31, 1912.

(C) TERMS.—Any term used in this paragraph which is used in section 56 of such Code (as so added) shall have the same meaning as when used in such section.

(6) CERTAIN PUBLIC UTILITY.—

(A) In the case of investment tax credits described in subparagraph (B) or (C), subsection 38(c)(3)(A)(ii) of the Internal Revenue Code of 1986 shall be applied by substituting "25 percent" for "75 percent", and section 38(c)(3)(B) of the Internal Revenue Code of 1986 shall be applied by substituting "75 percent" for "25 percent".

(B) If, on September 25, 1985, a regulated electric utility owned an undivided interest, within the range of 1,111 and 1,149, in the "maximum dependable capacity, net, megawatts electric" of an electric generating unit located in Illinois or Mississippi for which a binding written contract was in effect on December 31, 1980, then any investment tax credit with respect to such unit shall be described in this subparagraph. The aggregate amount of investment tax credits with respect to the unit in Mississippi allowed solely by reason of being described in this subparagraph shall not exceed $141,000,000.

(C) If, on September 25, 1985, a regulated electric utility owned an undivided interest, within the range of 1,104 and 1,111, in the "maximum dependable capacity, net, megawatts electric" of an electric generating unit located in Louisiana for which a binding written contract was in effect on December 31, 1980, then any investment tax credit of such electric utility shall be described in this subparagraph. The aggregate amount of investment tax credits allowed solely by reason of being described by this subparagraph shall not exceed $20,000,000.

(7) AGREEMENT VESSEL DEPRECIATION ADJUSTMENT.—

(A) For purposes of part VI of subchapter A of chapter 1 of the Internal Revenue Code of 1986, in the case of a qualified taxpayer, alternative minimum taxable income for the taxable year shall be reduced by an amount equal to the agreement vessel depreciation adjustment.

(B) For purposes of this paragraph, the agreement vessel depreciation adjustment shall be an amount equal to the depreciation deduction that would have been allowable for such year under section 167 of such Code with respect to agreement vessels placed in service before January 1, 1987, if the basis of such vessels had not been reduced under section 607 of the Merchant Marine Act of 1936, as amended, and if depreciation with respect to such vessel had been computed using the 25-year straight-line method. The aggregate amount by which basis of a qualified taxpayer is treated as not reduced by reason of this subparagraph shall not exceed $100,000,000.

(C) For purposes of this paragraph, the term "qualified taxpayer" means a parent corporation incorporated in the State of Delaware on December 1, 1972, and engaged in water transportation, and includes any other corporation which is a member of the affiliated group of which the parent corporation is the common parent. No taxpayer shall be treated as a qualified corporation for any taxable year beginning after December 31, 1991.

SEC. 702. STUDY OF BOOK AND EARNINGS AND PROFITS ADJUSTMENTS.

The Secretary of the Treasury or his delegate shall conduct a study of the operation and effect of the provisions of sections 56(f) and 56(g) of the Internal Revenue Code of 1986.

TITLE VIII—ACCOUNTING PROVISIONS

SUBTITLE A—GENERAL PROVISIONS

SEC. 801. LIMITATION ON USE OF CASH METHOD OF ACCOUNTING.

(a) GENERAL RULE.—Subpart A of part II of subchapter E of chapter 1 (relating to methods of accounting) is amended by adding at the end thereof the following new section:

"SEC. 448. LIMITATION ON USE OF CASH METHOD OF ACCOUNTING.

"(a) GENERAL RULE.—Except as otherwise provided in this section, in the case of a—

"(1) C corporation,

"(2) partnership which has a C corporation as a partner, or

"(3) tax shelter,

taxable income shall not be computed under the cash receipts and disbursements method of accounting.

"(b) EXCEPTIONS.—

"(1) FARMING BUSINESS.—Paragraphs (1) and (2) of subsection (a) shall not apply to any farming business.

"(2) QUALIFIED PERSONAL SERVICE CORPORATIONS.—Paragraphs (1) and (2) of subsection (a) shall not apply to a qualified personal service corporation, and such a corporation shall be treated as an individual for purposes of determining whether paragraph (2) of subsection (a) applies to any partnership.

"(3) ENTITIES WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—Paragraphs (1) and (2) of subsection (a) shall not apply to any corporation or partnership for any taxable year if, for all prior taxable years beginning after December 31, 1985, such entity (or any predecessor) met the $5,000,000 gross receipts test of subsection (c).

"(c) $5,000,000 GROSS RECEIPTS TEST.—For purposes of this section—

"(1) IN GENERAL.—A corporation or partnership meets the $5,000,000 gross receipts test of this subsection for any prior taxable year if the average annual gross receipts of such entity for the 3-taxable-year period ending with such prior taxable year does not exceed $5,000,000.

"(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as one person for purposes of paragraph (1).

"(3) SPECIAL RULES.—For purposes of this subsection—

"(A) NOT IN EXISTENCE FOR ENTIRE 3-YEAR PERIOD.—If the entity was not in existence for the entire 3-year period referred to in paragraph (1), such paragraph shall be ap-

plied on the basis of the period during which such entity (or trade or business) was in existence.

"(B) SHORT TAXABLE YEARS.—Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.

"(C) GROSS RECEIPTS.—Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) FARMING BUSINESS.—

"(A) IN GENERAL.—The term 'farming business' means the trade or business of farming (within the meaning of section 263A(e)(4)).

"(B) TIMBER AND ORNAMENTAL TREES.—The term 'farming business' includes the raising, harvesting, or growing of trees to which section 263A(c)(5) applies.

"(2) QUALIFIED PERSONAL SERVICE CORPORATION.—The term 'qualified personal service corporation' means any corporation—

"(A) substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and

"(B) substantially all of the stock of which (by value) is held directly or indirectly by—

"(i) employees performing services for such corporation in connection with the activities involving a field referred to in subparagraph (A),

"(ii) retired employees who had performed such services for such corporation,

"(iii) the estate of any individual described in clause (i) or (ii), or

"(iv) any other person who acquired such stock by reason of the death of an individual described in clause (i) or (ii) (but only for the 2-year period beginning on the date of the death of such individual).

"(3) TAX SHELTER DEFINED.—The term 'tax shelter' has the meaning given such term by section 461(i)(3) (determined after application of paragraph (4) thereof).

"(4) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (2).—For purposes of paragraph (2)—

"(A) community property laws shall be disregarded,

"(B) stock held by a plan described in section 401(a) which is exempt from tax under section 501(a) shall be treated as held by an employee described in paragraph (2)(B)(i), and

"(C) at the election of the common parent of an affiliated group (within the meaning of section 1504(a)), all members of such group may be treated as 1 taxpayer for purposes of paragraph (2)(B) if substantially all of the activities of all such members involve the performance of services in the same field described in paragraph (2)(A).

"(5) SPECIAL RULE FOR SERVICES.—In the case of any person using an accrual method of accounting with respect to amounts to be received for the performance of services by such person, such person shall not be required to accrue any portion of such amounts which (on the basis of experience) will not be collected. This paragraph shall not apply to any amount if interest is required to be paid on such amount or there is any penalty for failure to timely pay such amount.

"(6) TREATMENT OF CERTAIN TRUSTS SUBJECT TO TAX ON UNRELATED BUSINESS INCOME.—For purposes of this section, a trust subject to tax under section 511(b) shall be treated as a C corporation with respect to its activities constituting an unrelated trade or business.

"(7) COORDINATION WITH SECTION 481.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as made with the consent of the Secretary, and

"(C) the period for taking into account the adjustments under section 481 by reason of such change—

"(i) except as provided in clause (ii), shall not exceed 4 years, and

"(ii) in the case of a hospital, shall be 10 years."

(b) COORDINATION WITH APPLICATION OF ECONOMIC PERFORMANCE RULES TO TAX SHELTERS.—

(1) IN GENERAL.—So much of section 461(i) as precedes paragraph (3) thereof is amended to read as follows:

"(i) SPECIAL RULES FOR TAX SHELTERS.—

"(1) RECURRING ITEM EXCEPTION NOT TO APPLY.—In the case of a tax shelter, economic performance shall be determined without regard to paragraph (3) of subsection (h).

"(2) SPECIAL RULE FOR SPUDDING OF OIL OR GAS WELLS.—In the case of a tax shelter, economic performance with respect to the act of drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year."

(2) CONFORMING AMENDMENT.—Paragraph (4) of section 461(i) is amended to read as follows:

"(4) SPECIAL RULES FOR FARMING.—In the case of the trade or business of farming (as defined in section 464(e)), in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3)."

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 448. Limitation on use of cash method of accounting."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) ELECTION TO RETAIN CASH METHOD FOR CERTAIN TRANSACTIONS.—A taxpayer may elect not to have the amendments made by this section apply to any loan or lease, or any transaction with a related party (within the meaning of section 267(b) of the Internal Revenue Code of 1954, as in effect before the enactment of this Act), entered into on or before September 25, 1985. Any election under the preceding sentence may be made separately with respect to each transaction.

(3) CERTAIN CONTRACTS.—The Amendments made by this section shall not apply to—

(A) contracts for the acquisition or transfer of real property, and

(B) contracts for services related to the acquisition or development of real property,

but only if such contracts were entered into before September 25, 1985, and the sole element of the contract which has not been performed as of September 25, 1985, is payment for such property or services.

(4) TREATMENT OF AFFILIATED GROUP PROVIDING ENGINEERING SERVICES.—Each member of an affiliated group of corporations (within the meaning of section 1504(a) of the Internal Revenue Code of 1986) shall be allowed to use the cash receipts and disbursements method of accounting for any trade or business of provding engineering services with respect to taxable years ending after December 31, 1986, if the common parent of such group—

(A) was incorporated in the State of Delaware in 1970,

(B) was the successor to a corporation that was incorporated in the State of Illinois in 1949, and

(C) used the completed contract method of accounting for a substantial part of its income from the performance of engineering services.

SEC. 802. SIMPLIFIED DOLLAR-VALUE LIFO METHOD FOR CERTAIN SMALL BUSINESSES.

(a) GENERAL RULE.—Section 474 (relating to election by certain small businesses to use one inventory pool) is amended to read as follows:

"SEC. 474. SIMPLIFIED DOLLAR-VALUE LIFO METHOD FOR CERTAIN SMALL BUSINESSES.

"(a) GENERAL RULE.—An eligible small business may elect to use the simplified dollar-value method of pricing inventories for purposes of the LIFO method.

"(b) SIMPLIFIED DOLLAR-VALUE METHOD OF PRICING INVENTORIES.—For purposes of this section—

"(1) IN GENERAL.—The simplified dollar-value method of pricing inventories is a dollar-value method of pricing inventories under which—

"(A) the taxpayer maintains a separate inventory pool for items in each major category in the applicable Government price index, and

"(B) the adjustment for each such separate pool is based on the change from the preceding taxable year in the component of such index for the major category.

"(2) APPLICABLE GOVERNMENT PRICE INDEX.—The term 'applicable Government price index' means—

"(A) except as provided in subparagraph (B), the Producer Price Index published by the Bureau of Labor Statistics, or

"(B) in the case of a retailer using the retail method, the Consumer Price Index published by the Bureau of Labor Statistics.

"(3) MAJOR CATEGORY.—The term 'major category' means—

"(A) in the case of the Producer Price Index, any of the 2-digit standard industrial classifications in the Producer Prices Data Report, or

"(B) in the case of the Consumer Price Index, any of the general expenditure categories in the Consumer Price Index Detailed Report.

"(c) ELIGIBLE SMALL BUSINESS.—For purposes of this section, a taxpayer is an eligible small business for any taxable year if the average annual gross receipts of the taxpayer for the 3 preceding taxable years do not exceed $5,000,000. For purposes of the preceding sentence, rules similar to the rules of section 448(c)(3) shall apply.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) CONTROLLED GROUPS.—

"(A) IN GENERAL.—In the case of a taxpayer which is a member of a controlled group, all persons which are component members of such group shall be treated as 1 taxpayer for purposes of determining the gross receipts of the taxpayer.

"(B) CONTROLLED GROUP DEFINED.—For purposes of subparagraph (A), persons shall be treated as being component members of a controlled group if such persons would be treated as a single employer under section 52.

"(2) ELECTION.—

"(A) IN GENERAL.—The election under this section may be made without the consent of the Secretary.

"(B) PERIOD TO WHICH ELECTION APPLIES.—The election under this section shall apply—

"(i) to the taxable year for which it is made, and

"(ii) to all subsequent taxable years for which the taxpayer is an eligible small business,

unless the taxpayer secures the consent of the Secretary to the revocation of such election.

"(3) LIFO METHOD.—The term 'LIFO method' means the method provided by section 472(b).

"(4) TRANSITIONAL RULES.—

"(A) IN GENERAL.—In the case of a year of change under this section—

"(i) the inventory pools shall—

"(I) in the case of the 1st taxable year to which such an election applies, be established in accordance with the major categories in the applicable Government price index, or

"(II) in the case of the 1st taxable year after such election ceases to apply, be established in the manner provided by regulations under section 472;

"(ii) the aggregate dollar amount of the taxpayer's inventory as of the beginning of the year of change shall be the same as the aggregate dollar value as of the close of the taxable year preceding the year of change, and

"(iii) the year of change shall be treated as a new base year in accordance with procedures provided by regulations under section 472.

"(B) YEAR OF CHANGE.—For purposes of this paragraph, the year of change under this section is—

"(i) the 1st taxable year to which an election under this section applies, or

"(ii) in the case of a cessation of such an election, the 1st taxable year after such election ceases to apply."

(b) CLERICAL AMENDMENT.—The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 474 and inserting in lieu thereof the following:

"Sec. 474. Simplified dollar-value LIFO method for certain small businesses."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) TREATMENT OF TAXPAYERS WHO MADE ELECTIONS UNDER EXISTING SECTION 474.—The amendments made by this section shall not apply to any taxpayer who made an election under section 474 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) for any period during which such election is in effect. Notwithstanding any provision of such section 474 (as so in effect), an election under such section may be revoked without the consent of the Secretary.

SEC. 803. CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES.

(a) GENERAL RULE.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by inserting after section 263 the following new section:

"SEC. 263A. CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES.

"(a) NONDEDUCTIBILITY OF CERTAIN DIRECT AND INDIRECT COSTS.—

"(1) IN GENERAL.—In the case of any property to which this section applies, any costs described in paragraph (2)—

"(A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and

"(B) in the case of any other property, shall be capitalized.

"(2) ALLOCABLE COSTS.—The costs described in this paragraph with respect to any property are—

"(A) the direct costs of such property, and

"(B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

"(b) PROPERTY TO WHICH SECTION APPLIES.—Except as otherwise provided in this section, this section shall apply to—

"(1) PROPERTY PRODUCED BY TAXPAYER.—Real or tangible personal property produced by the taxpayer.

"(2) PROPERTY ACQUIRED FOR RESALE.—

"(A) IN GENERAL.—Real or personal property described in section 1221(1) which is acquired by the taxpayer for resale.

"(B) EXCEPTION FOR TAXPAYER WITH GROSS RECEIPTS OF $10,000,000 OR LESS.—Subparagraph (A) shall not apply to any personal property acquired during any taxable year by the taxpayer for resale if the average annual gross receipts of the taxpayer (or any predecessor) for the 3-taxable year period ending with the taxable year preceding such taxable year do not exceed $10,000,000.

"(C) AGGREGATION RULES, ETC.—For purposes of subparagraph (B), rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

For purposes of paragraph (1), the term 'tangible personal property' shall include a film, sound recording, video tape, book, or similar property.

"(c) GENERAL EXCEPTIONS.—

"(1) PERSONAL USE PROPERTY.—This section shall not apply to any property produced by the taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit.

"(2) RESEARCH AND EXPERIMENTAL EXPENDITURES.—This section shall not apply to any amount allowable as a deduction under section 174.

"(3) CERTAIN DEVELOPMENT AND OTHER COSTS OF OIL AND GAS WELLS OR OTHER MINERAL PROPERTY.—This section shall not apply to any cost allowable as a deduction under section 263(c), 616(a), or 617(a).

"(4) COORDINATION WITH LONG-TERM CONTRACT RULES.—This section shall not apply to any property produced by the taxpayer pursuant to a long-term contract.

"(5) TIMBER AND CERTAIN ORNAMENTAL TREES.—This section shall not apply to—

"(A) trees raised, harvested, or grown by the taxpayer other than trees described in clause (ii) of subsection (e)(4)(B) (after application of the last sentence thereof), and

"(B) any real property underlying such trees.

"(d) EXCEPTION FOR FARMING BUSINESSES.—

"(1) SECTION TO APPLY ONLY IF PREPRODUCTIVE PERIOD IS MORE THAN 2 YEARS.—

"(A) IN GENERAL.—This section shall not apply to any plant or animal which is produced by the taxpayer in a farming business and which has a preproductive period of 2 years or less.

"(B) EXCEPTION FOR TAXPAYERS REQUIRED TO USE ACCRUAL METHOD.—Subparagraph (A) shall not apply to any corporation, partnership, or tax shelter required to use an accrual method of accounting under section 447 or 448(a)(3).

"(2) TREATMENT OF CERTAIN PLANTS LOST BY REASON OF CASUALTY.—

"(A) IN GENERAL.—If plants bearing an edible crop for human consumption were lost or damaged (while in the hands of the taxpayer) by reason of freezing temperatures, disease, drought, pests, or casualty, this section shall not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States).

"(B) SPECIAL RULE FOR PERSON WITH MINORITY INTEREST WHO MATERIALLY PARTICIPATES.—Subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

"(i) the taxpayer described in subparagraph (A) has an equity interest of more than 50 percent in such grove, orchard, or vineyard, and

"(ii) such other person holds any part of the remaining equity interest and materially participates in the planting, maintenance, cultivation, or development of such grove, orchard, or vineyard during the 4-taxable year period beginning with the taxable year in which the grove, orchard or vineyard was lost or damaged.

The determination of whether an individual materially participates in any activity shall be made in a manner similar to the manner in which such determination is made under section 2032A(e)(6).

"(3) ELECTION TO HAVE THIS SECTION NOT APPLY.—

"(A) IN GENERAL.—If a taxpayer makes an election under this paragraph, this section shall not apply to any plant or animal produced in any farming business carried on by such taxpayer.

"(B) CERTAIN PERSONS NOT ELIGIBLE.—No election may be made under this paragraph—

"(i) by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3), or

"(ii) with respect to the planting, cultivation, maintenance, or development of pistachio trees.

"(C) SPECIAL RULE FOR CITRUS AND ALMOND GROWERS.—An election under this paragraph shall not apply with respect to any item which is attributable to the planting, cultivation, maintenance, or development of any citrus or almond grove (or part thereof) and which is incurred before the close of the 4th taxable year beginning with the taxable year in which the trees were planted. For purposes of the preceding sentence, the portion of a citrus or almond grove planted in 1 taxable year shall be treated separately from the portion of such grove planted in another taxable year.

"(D) ELECTION.—Unless the Secretary otherwise consents, an election under this paragraph may be made only for the taxpayer's 1st taxable year which begins after December 31, 1986, and during which the taxpayer engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

"(e) DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF SUBSECTION (d).—

"(1) RECAPTURE OF EXPENSED AMOUNTS ON DISPOSITION.—

"(A) IN GENERAL.—In the case of any plant or animal with respect to which amounts would have been capitalized under subsec-

tion (a) but for an election under subsection (d)(3)—

"(i) such plant or animal (if not otherwise section 1245 property) shall be treated as section 1245 property, and

"(ii) for purposes of section 1245, the recapture amount shall be treated as a deduction allowed for depreciation with respect to such property.

"(B) RECAPTURE AMOUNT.—For purposes of subparagraph (A), the term 'recapture amount' means any amount allowable as a deduction to the taxpayer which, but for an election under subsection (d)(3), would have been capitalized with respect to the plant or animal.

"(2) EFFECTS OF ELECTION ON DEPRECIATION.—

"(A) IN GENERAL.—If the taxpayer (or any related person) makes an election under subsection (d)(3), the provisions of section 168(g)(2) (relating to alternative depreciation) shall apply to all property of the taxpayer used predominantly in the farming business and placed in service in any taxable year during which any such election is in effect.

"(B) RELATED PERSON.—For purposes of subparagraph (A), the term 'related person' means—

"(i) the taxpayer and members of the taxpayer's family,

"(ii) any corporation (including an S corporation) if 50 percent or more (in value) of the stock of such corporation is owned (directly or through the application of section 318) by the taxpayer or members of the taxpayer's family,

"(iii) a corporation and any other corporation which is a member of the same controlled group described in section 1563(a)(1), and

"(iv) any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

"(C) MEMBERS OF FAMILY.—For purposes of this paragraph, the term 'family' means the taxpayer, the spouse of the taxpayer, and any of their children who have not attained age 18 before the close of the taxable year.

"(3) PREPRODUCTIVE PERIOD.—

"(A) IN GENERAL.—For purposes of this section, the term 'preproductive period' means—

"(i) in the case of a plant or animal which will have more than 1 crop or yield, the period before the 1st marketable crop or yield from such plant or animal, or

"(ii) in the case of any other plant or animal, the period before such plant or animal is reasonably expected to be disposed of.

For purposes of this subparagraph, use by the taxpayer in a farming business of any supply produced in such business shall be treated as a disposition.

"(B) RULE FOR DETERMINING PERIOD.—In the case of a plant grown in commercial quantities in the United States, the preproductive period for such plant if grown in the United States shall be based on the nationwide weighted average preproductive period for such plant.

"(4) FARMING BUSINESS.—For purposes of this section—

"(A) IN GENERAL.—The term 'farming business' means the trade or business of farming.

"(B) CERTAIN TRADES AND BUSINESSES INCLUDED.—The term 'farming business' shall include the trade or business of—

"(i) operating a nursery or sod farm, or

"(ii) the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees.

For purposes of clause (ii), an evergreen tree which is more than 6 years old at the time severed from the roots shall not be treated as an ornamental tree.

"(5) CERTAIN INVENTORY VALUATION METHODS PERMITTED.—The Secretary shall by regulations permit the taxpayer to use reasonable inventory valuation methods to compute the amount required to be capitalized under subsection (a) in the case of any plant or animal.

"(f) SPECIAL RULES FOR ALLOCATION OF INTEREST TO PROPERTY PRODUCED BY THE TAXPAYER.—

"(1) INTEREST CAPITALIZED ONLY IN CERTAIN CASES.—Subsection (a) shall only apply to interest costs which are—

"(A) paid or incurred during the production period, and

"(B) allocable to property which is described in subsection (b)(1) and which has—

"(i) a long useful life,

"(ii) an estimated production period exceeding 2 years, or

"(iii) an estimated production period exceeding 1 year and a cost exceeding $1,000,000.

"(2) ALLOCATION RULES.—

"(A) IN GENERAL.—In determining the amount of interest required to be capitalized under subsection (a) with respect to any property—

"(i) interest on any indebtedness directly attributable to production expenditures with respect to such property shall be assigned to such property, and

"(ii) interest on any other indebtedness shall be assigned to such property to the extent that the taxpayer's interest costs could have been reduced if production expenditures (not attributable to indebtedness described in clause (i)) had not been incurred.

"(B) EXCEPTION FOR QUALIFIED RESIDENCE INTEREST.—Subparagraph (A) shall not apply to any qualified residence interest (within the meaning of section 163(h)).

"(C) SPECIAL RULE FOR FLOW-THROUGH ENTITIES.*** BAD MAG TAPE ***—Except as provided in regulations, in the case of any flow-through entity, this paragraph shall be applied first at the entity level and then at the beneficiary level.

"(3) INTEREST RELATING TO PROPERTY USED TO PRODUCE PROPERTY.—This subsection shall apply to any interest on indebtedness incurred or continued in connection with property used to produce property to which this subsection applies to the extent such interest is allocable to the produced property.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) LONG USEFUL LIFE.—Property has a long useful life if such property is—

"(i) real property, or

"(ii) property with a class life of 20 years or more (as determined under section 168).

"(B) PRODUCTION PERIOD.—The term 'production period' means, when used with respect to any property, the period—

"(i) beginning on the date on which production of the property begins, and

"(ii) ending on the date on which the property is ready to be placed in service or is ready to be held for sale.

"(C) PRODUCTION EXPENDITURES.—The term 'production expenditures' means the costs (whether or not incurred durifg the production period) required to be capitalized under subsection (a) with respect to the property.

"(g) PRODUCTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'produce' includes construct, build, install, manufacture, develop, or improve.

"(2) TREATMENT OF PROPERTY PRODUCED UNDER CONTRACT FOR THE TAXPAYER.—The taxpayer shall be treated as producing any property produced for the taxpayer under a contract with the taxpayer; except that only costs paid or incurred by the taxpayer (whether under such contract or otherwise) shall be taken into account in applying subsection (a) to the taxpayer.

"(h) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

"(1) regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section, and

"(2) regulations providing for simplified procedures for the application of this section in the case of property described in subsection (b)(2)."

(b) TECHNICAL AMENDMENTS.—

(1) Section 189 is hereby repealed.

(2)(A) Section 280 is hereby repealed.

(B) Paragraph (5) of section 48(r) (defining sound recording) is amended to read as follows:

"(5) SOUND RECORDING.—For purposes of this subsection, the term 'sound recording' means works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material objects (such as discs, tapes, or other phonorecordings) in which such sounds are embodied."

(3) Section 312(n)(1) is amended—

(A) by striking out "(determined without regard to section 189) in subparagraph (B)", and

(B) by striking out subparagraph (C) and inserting in lieu thereof:

"(C) CONSTRUCTION PERIOD.—The term 'construction period' has the meaning given the term production period under section 263A(f)(4)(B)."

(4) Section 471 (relating to general rule for inventories) is amended—

(A) by striking out "Whenever" and inserting in lieu thereof "(a) GENERAL RULE.—Whenever", and

(B) by adding at the end thereof the following new subsection:

"(b) CROSS REFERENCE.—

"For rules relating to capitalization of direct and indirect costs of property, see section 263A."

(5) Section 267(e)(5)(D) is amended—

(A) by striking out "low-income housing (as defined in paragraph (5) of section 189(e))" and inserting "property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)", and

(B) by striking out "low-income housing (as so defined)" and inserting "such property".

(6) Section 278 is hereby repealed.

(7)(A) Subsection (b) of section 447 is amended to read as follows:

"(b) PREPRODUCTIVE PERIOD OF EXPENSES.—

"For rules requiring capitalization of certain preproductive period of expenses, see section 263A."

(B) Subsection (a) of section 447 is amended by striking out "and with the capitalization of preproductive period of expenses described in subsection (b)".

(C) Section 447(g)(1) (is amended by striking out "If" and inserting in lieu thereof "Notwithstanding subsection (a) or section 263A, if".

(8) Subsection (d) of section 464 is amended to read as follows:

"(d) EXCEPTION.—Subsection (a) shall not apply to any amount paid for supplies which are on hand at the close of the taxable year on account of fire, storm, or other casualty, or on account of disease or drought."

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for part IX of subchapter B of chapter 1 is amended by striking out the item relating to section 278 and by inserting after the item relating to section 263 the following:

"Sec. 263A. Capitalization and inclusion in inventory costs of certain expenses."

(2) The table of sections for part VI of subchapter B of chapter 1 is amended by striking out the item relating to section 189.

(3) The table of sections for part IX of subchapter B of chapter 1 is amended by striking out the item relating to section 280.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to costs incurred after December 31, 1986, in taxable years ending after such date.

(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

(A) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by the amendments made by this section to change its method of accounting with respect to such property for any taxable year—

(i) such change shall be treated as initiated by the taxpayer,

(ii) such change shall be treated as made with the consent of the Secretary, and

(iii) the period for taking into account the adjustments under section 481 by reason of such change shall not exceed 4 years.

(3) SPECIAL RULE FOR SELF-CONSTRUCTED PROPERTY.—The amendments made by this section shall not apply to any property which is produced by the taxpayer for use by the taxpayer if substantial construction had occurred before March 1, 1986.

(4) TRANSITIONAL RULE FOR CAPITALIZATION OF INTEREST AND TAXES.—

(A) TRANSITION PROPERTY EXEMPTED FROM INTEREST CAPITALIZATION.—Section 263A(f) of the Internal Revenue Code of 1986 (as added by this section) and the amendment made by subsection (b)(1) shall not apply to any property—

(i) to which the amendments made by section 201 do not apply by reason of sections 203(a)(1)(D) and (E) and 203(a)(5)(A), and

(ii) to which the amendments made by section 251 do not apply by reason of section 251(d)(3)(M).

(B) INTEREST AND TAXES.—Section 263A of such Code shall not apply to property described in the matter following subparagraph (B) of section 207(e)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 to the extent it would require the capitalization of interest and taxes paid or incurred in connection with such property which are not required to be capitalized under section 189 of such Code (as in effect before the amendment made by subsection (b)(1)).

(5) TRANSITION RULE CONCERNING CAPITALIZATION OF INVENTORY RULES.—In the case of a corporation which on the date of the enactment of this Act was a member of an affiliated group of corporations (within the meaning of section 1504(a) of the Internal Revenue Code of 1986), the parent of which—

(A) was incorporated in California on April 15, 1925,

(B) adopted LIFO accounting as of the close of the taxable year ended December 31, 1950, and

(C) was, on May 22, 1986, merged into a Delaware corporation incorporated on March 12, 1986,

the amendments made by this section shall apply under a cut-off method whereby the uniform capitalization rules are applied only in costing layers of inventory acquired during taxable years beginning on or after January 1, 1987.

(6) TREATMENT OF CERTAIN REHABILITATION PROJECT.—The amendments made by this section shall not apply to interest and taxes paid or incurred withrespect to the rehabilitation and conversion of a certified historic building which was formerly a factory into an apartment project with 155 units, 39 units of which are for low-income families, if the project was approved for annual interest assistance on June 10, 1986, by the housing authority of the State in which the project is located.

(7) SPECIAL RULE FOR CASUALTY LOSSES.—Section 263A(d)(2) of the Internal Revenue Code of 1986 (as added by this section) shall apply to expenses incurred on or after the date of the enactment of this Act.

SEC. 804. MODIFICATIONS OF METHOD OF ACCOUNTING FOR LONG-TERM CONTRACT.

(a) GENERAL RULE.—Subpart B of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new section:

"SEC. 460. SPECIAL RULES FOR LONG-TERM CONTRACTS.

"(a) PERCENTAGE OF COMPLETION-CAPITALIZED COST METHOD.—

"(1) IN GENERAL.—In the case of any long-term contract—

"(A) 40 percent of the items with respect to such contract shall be taken into account under the percentage of completion method (as modified by subsection (b)), and

"(B) 60 percent of the items with respect to such contract shall be taken into account under the taxpayer's normal method of accounting.

"(2) 40 PERCENT LOOK-BACK METHOD TO APPLY.—Upon completion of any long-term contract, the taxpayer shall pay (or shall be entitled to receive) interest determined by applying the look-back method of subsection (b)(3) to 40 percent of the items with respect to the contract.

"(b) PERCENTAGE OF COMPLETION METHOD.—

"(1) SUBSECTION (a) NOT TO APPLY WHERE PERCENTAGE OF COMPLETION METHOD USED.—Subsection (a) shall not apply to any long-term contract with respect to which amounts includible in gross income are determined under the percentage of completion method.

"(2) REQUIREMENTS OF PERCENTAGE OF COMPLETION METHOD.—In the case of any long-term contract with respect to which the percentage of completion method is used—

"(A) the percentage of completion shall be determined by comparing costs allocated to the contract under subsection (c) and incurred before the close of the taxable year with the estimated total contract costs, and

"(B) upon completion of the contract, the taxpayer shall pay (or shall be entitled to receive) interest computed under the look-back method of paragraph (3).

"(3) LOOK-BACK METHOD.—The interest computed under the look-back method of this subparagraph shall be determined by—

"(A) first allocating income under the contract among taxable years before the year in which the contract is completed on the basis of the actual contract price and costs instead of the estimated contract price and costs,

"(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each taxable year referred to in paragraph (1) which would result solely from the application of paragraph (1), and

"(C) then using the overpayment rate established by section 6621, compounded daily, on the overpayment or underpayment determined under paragraph (1).

"(c) ALLOCATION OF COSTS TO CONTRACT.—

"(1) DIRECT AND CERTAIN INDIRECT COSTS.—In the case of a long-term contract, all costs (including research and experimental costs) which directly benefit, or are incurred by reason of, the long-term contract activities of the taxpayer shall be allocated to such contract in the same manner as costs are allocated to extended period long-term contracts under section 451 and the regulations thereunder.

"(2) COSTS IDENTIFIED UNDER COST-PLUS AND CERTAIN FEDERAL CONTRACTS.—In the case of a cost-plus long-term contract or a Federal long-term contract, any cost not allocated to such contract under paragraph (1) shall be allocated to such contract if such cost is identified by the taxpayer (or a related person), pursuant to the contract or Federal, State, or local law or regulation, as being attributable to such contract.

"(3) ALLOCATION OF PRODUCTION PERIOD INTEREST TO CONTRACT.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of a long-term contract, interest costs shall be allocated to the contract in the same manner as interest costs are allocated to property produced by the taxpayer under section 263A(f).

"(B) PRODUCTION PERIOD.—In applying section 263A(f) for purposes of subparagraph (A), the production period shall be the period—

"(i) beginning on the later of—

"(I) the contract commencement date, or

"(II) in the case of a taxpayer who uses an accrual method with respect to long-term contracts, the date by which at least 5 percent of the total estimated costs (including design and planning costs) under the contract have been incurred, and

"(ii) ending on the contract completion date.

"(C) APPLICATION OF DE MINIMIS RULE.—In applying section 263A(f) for purposes of subparagraph (A), paragraph (1)(B)(iii) of such section shall be applied on a contract-by-contract basis; except that, in the case of a taxpayer described in subparagraph (B)(i)(II) of this paragraph, paragraph (1)(B)(iii) of section 263A(f) shall be applied on a property-by-property basis.

"(4) CERTAIN COSTS NOT INCLUDED.—This subsection shall not apply to any—

"(A) independent research and development expenses,

"(B) expenses for unsuccessful bids and proposals, and

"(C) marketing, selling, and advertising expenses.

"(5) INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—For purposes of paragraph (4), the term 'independent research and development expenses' means any expenses incurred in the performance of research or development, except that such term shall not include—

"(A) any expenses which are directly attributable to a long-term contract in existence when such expenses are incurred, or

"(B) any expenses under an agreement to perform research or development.

"(d) FEDERAL LONG-TERM CONTRACT.—For purposes of this section—

"(1) IN GENERAL.—The term 'Federal long-term contract' means any long-term contract—

"(A) to which the United States (or any agency or instrumentality thereof) is a party, or

"(B) which is a subcontract under a contract described in subparagraph (A).

"(2) SPECIAL RULES FOR CERTAIN TAXABLE ENTITIES.—For purposes of paragraph (1), the rules of section 168(h)(2)(D) (relating to certain taxable entities not treated as instrumentalities) shall apply.

"(e) EXCEPTION FOR CERTAIN CONSTRUCTION CONTRACTS.—

"(1) IN GENERAL.—Subsections (a), (b), and (c)(1) and (2) shall not apply to any construction contract entered into by a taxpayer—

"(A) who estimates (at the time such contract is entered into) that such contract will be completed within the 2-year period beginning on the contract commencement date of such contract, and

"(B) whose average annual gross receipts for the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $10,000,000.

"(2) DETERMINATION OF TAXPAYER'S GROSS RECEIPTS.—For purposes of paragraph (1), the gross receipts of—

"(A) all trades or businesses (whether or not incorporated) which are under common control with the taxpayer (within the meaning of section 52(b)), and

"(B) all members of any controlled group of corporations of which the taxpayer is a member,

for the 3 taxable years of such persons preceding the taxable year in which the contract described in paragraph (1) is entered into shall be included in the gross receipts of the taxpayer for the period described in paragraph (1)(B). The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who engage in construction contracts through partnerships, joint ventures, and corporations.

"(3) CONTROLLED GROUP OF CORPORATIONS.—For purposes of this subsection, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(A) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(4) CONSTRUCTION CONTRACT.—For purposes of this subsection, the term 'construction contract' means any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, or improvements of, real property.

"(f) LONG-TERM CONTRACT.—For purposes of this section—

"(1) IN GENERAL.—The term 'long-term contract' means any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into.

"(2) SPECIAL RULE FOR MANUFACTURING CONTRACTS.—A contract for the manufacture of property shall not be treated as a long-term contract unless such contract involves the manufacture of—

"(A) any unique item of a type which is not normally included in the finished goods inventory of the taxpayer, or

"(B) any item which normally requires more than 12 calendar months to complete (without regard to the period of the contract).

"(3) AGGREGATION, ETC.—For purposes of this subsection, under regulations prescribed by the Secretary—

"(A) 2 or more contracts which are interdependent (by reason of pricing or otherwise) may be treated as 1 contract, and

"(B) a contract which is properly treated as an aggregation of separate contracts may be so treated.

"(g) CONTRACT COMMENCEMENT DATE.—For purposes of this section, the term 'contract commencement date' means, with respect to any contract, the first date on which any costs (other than bidding expenses or expenses incurred in connection with negotiating the contract) allocable to such contract are incurred."

(b) CHANGE IN REGULATIONS.—The Secretary of the Treasury or his delegate shall modify the income tax regulations relating to accounting for long-term contracts to carry out the provisions of section 460 of the Internal Revenue Code of 1986 (as added by subsection (a)).

(c) CONFORMING AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 460. Special rules for long-term contracts."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to any contract entered into after February 28, 1986.

(2) CLARIFICATION OF TREATMENT OF INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—

(A) IN GENERAL.—For periods before, on, or after the date of enactment of this Act—

(i) any independent research and development expenses taken into account in determining the total contract price shall not be severable from the contract, and

(ii) any independent research and development expenses shall not be treated as amounts chargeable to capital account.

(B) INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—For purposes of subparagraph (A), the term "independent research and development expenses" has the meaning given to such term by section 263A(c)(5) of the Internal Revenue Code of 1986, as added by this section.

SEC. 805. REPEAL OF RESERVE FOR BAD DEBTS OF TAXPAYERS OTHER THAN FINANCIAL INSTITUTIONS.

(a) GENERAL RULE.—Subsection (c) of section 166 (relating to reserve for bad debts) is hereby repealed.

(b) REPEAL OF RESERVE FOR CERTAIN GUARANTEED DEBT OBLIGATIONS.—Section 166 is amended by striking out subsection (f) and by redesignating subsection (g) as subsection (f).

(c) TECHNICAL AMENDMENTS.—

(1)(A) Section 81 (relating to certain increases in suspense accounts) is amended to read as follows:

"SEC. 81. INCREASE IN VACATION PAY SUSPENSE ACCOUNT.

"There shall be included in gross income for the taxable year the amount of any increase in any suspense account for such taxable year required by paragraph (2)(B) of section 463(c) (relating to accrual of vacation pay)."

(B) The table of sections for part II of subchapter B of chapter 1 is amended by striking out the item relating to section 81 and inserting in lieu thereof the following:

"Sec. 81. Increase in vacation pay suspense account."

(2) Clause (ii) of section 108(e)(7)(A) is amended by striking out "subsection (a), (b), or (c) of section 166" and inserting in lieu thereof "subsection (a) or (b) of section 166".

(3) Paragraph (7) of section 108(e) is amended by striking out subparagraph (B) and by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (e), respectively.

(4) Subparagraph (E) of section 108(e)(7) (as so redesignated) is amended by striking out "subparagraphs (A), (B), (C), (D), and (E)" and inserting in lieu thereof "the foregoing subparagraphs".

(5) Paragraph (5) of section 461(h) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(6) Subsection (b) of section 805 is amended by striking out paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who maintained a reserve for bad debts for such taxpayer's last taxable year beginning before January 1, 1987, and who is required by the amendments made by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

(i) in the case of a taxpayer maintaining a reserve under section 166(f), be reduced by the balance in the suspense account under section 166(f)(4) of such Code as of the close of such last taxable year, and

(ii) be taken into account ratably in each of the first 4 taxable years beginning after December 31, 1986.

SEC. 806. TAXABLE YEARS OF CERTAIN ENTITIES.

(a) PARTNERSHIPS.—

(1) IN GENERAL.—Paragraph (1) of section 706(b) (relating to partnership's taxable year) is amended to read as follows:

"(1) PARTNERSHIP'S TAXABLE YEAR.—

"(A) PARTNERSHIP TREATED AS TAXPAYER.—The taxable year of a partnership shall be determined as though the partnership were a taxpayer.

"(B) TAXABLE YEAR DETERMINED BY REFERENCE TO PARTNERS.—Except as provided in subparagraph (C), a partnership shall not have a taxable year other than—

"(i) the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent,

"(ii) if there is no taxable year described in clause (i), the taxable year of all the principal partners of the partnership, or

"(iii) if there is no taxable year described in clause (i) or (ii), the calendar year or such other period as the Secretary may prescribe in regulations.

"(C) BUSINESS PURPOSE.—A partnership may have a taxable year not described in subparagraph (B) if it establishes, to the satisfaction of the Secretary, a business purpose therefor. For purposes of this subparagraph, any deferral of income to partners shall not be treated as a business purpose."

(2) DETERMINATION OF MAJORITY INTEREST.—Section 706(b) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION OF MAJORITY INTEREST RULE.—Clause (i) of paragraph (1)(B) shall not apply to any taxable year of a partnership unless the period which constitutes the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent has been the same for—

"(A) the 3-taxable year period of such partner or partners ending on or before the beginning of such taxable year of the partnership, or

"(B) if the partnership has not been in existence during all of such 3-taxable year period, the taxable years of such partner or partners ending with or within the period of existence.

This paragraph shall apply without regard to whether the same partners or interests are taken into account in determining the 50 percent interest during any period."

(3) CONFORMING AMENDMENT.—The heading for section 706(b) is amended by striking out "ADOPTION OF".

(b) S CORPORATION.—

(1) IN GENERAL.—Section 1378(a) (relating to taxable year of S corporation) is amended to read as follows:

"(a) GENERAL RULE.—For purposes of this subtitle, the taxable year of an S corporation shall be a permitted year."

(2) BUSINESS PURPOSE.—Section 1378(b) (defining permitted year) is amended by adding at the end thereof the following new flush sentence:

"For purposes of paragraph (2), any deferral of income to shareholders shall not be treated as a business purpose."

(3) CONFORMING AMENDMENT.—Section 1378 is amended by striking out subsection (c).

(c) PERSONAL SERVICE CORPORATION.—

(1) IN GENERAL.—Section 441 (relating to period for computation of taxable income) is amended by adding at the end thereof the following new subsection:

"(i) TAXABLE YEAR OF PERSONAL SERVICE CORPORATIONS.—

"(1) IN GENERAL.—For purposes of this subtitle, the taxable year of any personal service corporation shall be the calendar year unless the corporation establishes, to the satisfaction of the Secretary, a business purpose for having a different period for its taxable year. For purposes of this paragraph, any deferral of income to shareholders shall not be treated as a business purpose.

"(2) PERSONAL SERVICE CORPORATION.—For purposes of this subsection, the term 'personal service corporation' has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

"(A) by substituting 'any' for 'more than 10 percent', and

"(B) by substituting 'any' for '50 percent or more in value' in section 318(a)(2)(C)."

(2) CONFORMING AMENDMENT.—Section 267(a) (relating to matching of deduction and payee income in the case of expenses and interest) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b)."

(d) COORDINATION WITH 52-53 WEEK PERIOD.—Section 441(f) (relating to election of year consisting of 52-53 weeks) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL RULE FOR PARTNERSHIPS, S CORPORATIONS, AND PERSONAL SERVICE CORPORATIONS.—The Secretary may by regulation provide terms and conditions for the application of this subsection to a partnership, S corporation, or personal service corporation (within the meaning of section 441(i)(2))."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) CHANGE IN ACCOUNTING PERIOD.—In the case of any taxpayer required by the amendments made by this section to change its accounting period for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) with respect to any partner or shareholder of an S corporation which is required to include the items from more than 1 taxable year of the partnership or S corporation in any 1 taxable year, income in excess of expenses of such partnership or corporation for the short taxable year required by such amendments shall be taken into account ratably in each of the first 4 taxable years (including such short taxable year) beginning after December 31, 1986, unless such partner or shareholder elects to include all such income in the short taxable year.

Subparagraph (C) shall apply to a shareholder of an S corporation only if such corporation was an S corporation for a taxable year beginning in 1986.

SUBTITLE B—TREATMENT OF INSTALLMENT OBLIGATIONS

SEC. 811. ALLOCATION OF INDEBTEDNESS AS PAYMENT ON INSTALLMENT OBLIGATION.

(a) IN GENERAL.—Subpart B of part II of subchapter E of chapter 1 (relating to taxable year for which item of gross income included) is amended by inserting after section 453B the following new section:

"SEC. 453C. CERTAIN INDEBTEDNESS TREATED AS PAYMENT ON INSTALLMENT OBLIGATIONS.

"(a) GENERAL RULE.—For purposes of sections 453 and 453A, if a taxpayer has allocable installment indebtedness for any taxable year, such indebtedness—

"(1) shall be allocated on a pro rata basis to any applicable installment obligation of the taxpayer which—

"(A) arises in such taxable year, and

"(B) is outstanding as of the close of such taxable year, and

"(2) shall be treated as a payment received on such obligation as of the close of such taxable year.

"(b) ALLOCABLE INSTALLMENT INDEBTEDNESS.—For purposes of this section—

"(1) IN GENERAL.—The term 'allocable installment indebtedness' means, with respect to any taxable year, the excess (if any) of—

"(A) the installment percentage of the taxpayer's average quarterly indebtedness for such taxable year, over

"(B) the aggregate amount treated as allocable installment indebtedness with respect to applicable installment obligations which—

"(i) are outstanding as of the close of such taxable year, but

"(ii) did not arise during such taxable year.

"(2) INSTALLMENT PERCENTAGE.—The term 'installment percentage' means the percentage (not in excess of 100 percent) determined by dividing—

"(A) the face amount of all applicable installment obligations of the taxpayer outstanding as of the close of the taxable year, by

"(B) the sum of—

"(i) the aggregate adjusted bases of all assets not described in clause (ii) held as of the close of the taxable year, and

"(ii) the face amount of all installment obligations outstanding as of such time.

For purposes of subparagraph (B)(i), a taxpayer may elect to compute the aggregate adjusted bases of all assets using the deduction for depreciation which is used in computing earnings and profits under section 312(k).

"(3) SPECIAL RULES FOR PERSONAL USE PROPERTY.—For purposes of this subsection—

"(A) for purposes of paragraph (2)(B), there shall not be taken into account any personal use property (within the meaning of section 1275(b)(3)) held by an individual or any installment obligation arising from the sale of such property, and

"(B) for purposes of computing the taxpayer's average quarterly indebtedness under paragraph (1)(A), there shall not be taken into account any indebtedness with respect to which substantially all of the property securing such indebtedness is property described in subparagraph (A).

"(4) SPECIAL RULE FOR CASUAL SALES.—If the taxpayer has no applicable installment obligations described in subclause (I) or (II) of subsection (e)(1)(A)(i) outstanding at any time during the taxable year, then the taxpayer's allocable installment indebtedness for such taxable year shall be computed by using the taxpayer's indebtedness as of the close of such taxable year in lieu of the taxpayer's average quarterly indebtedness.

"(c) TREATMENT OF SUBSEQUENT PAYMENTS.—

"(1) PAYMENTS TREATED AS RECEIPT OF TAX PAID AMOUNTS.—If any amount is treated as received under subsection (a) (after application of subsection (d)(2)) with respect to any applicable installment obligation, subsequent payments received on such obligation shall not be taken into account for purposes of sections 453 and 453A to the extent that the aggregate amount of such subsequent payments does not exceed the aggregate amount treated as received on such obligation under subsection (a).

"(2) REDUCTION OF ALLOCABLE INSTALLMENT INDEBTEDNESS.—For purposes of applying subsection (b)(1)(B) for the taxable year in which any payment to which paragraph (1) of this subsection applies was received (and for any subsequent taxable year), the allocable installment indebtedness with respect to the applicable installment obligation shall be reduced (but not below zero) by the amount of such payment not taken into account by reason of paragraph (1).

"(d) LIMITATION BASED ON TOTAL CONTRACT PRICE.—

"(1) IN GENERAL.—The amount treated as received under subsection (a) (after application of paragraph (2)) with respect to any applicable installment obligation for any

taxable year shall not exceed the excess (if any) of—

"(A) the total contract price, over

"(B) any portion of the total contract price received under the contract before the close of such taxable year—

"(i) including amounts so treated under subsection (a) for all preceding taxable years (after application of paragraph (2)), but

"(ii) not including amounts not taken into account by reason of subsection (c).

"(2) EXCESS ALLOCABLE INSTALLMENT INDEBTEDNESS.—If, after application of paragraph (1), the allocable installment indebtedness for any taxable year exceeds the amount which may be allocated to applicable installment obligations arising in (and outstanding as of the close of) such taxable year, such excess shall—

"(A) subject to the limitations of paragraph (1), be allocated to applicable installment obligations outstanding as of the close of such taxable year which arose in preceding taxable years, beginning with applicable installment obligations arising in the earliest preceding taxable year, and

"(B) be treated as a payment under subsection (a)(2).

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE INSTALLMENT OBLIGATION.—

"(A) IN GENERAL.—The term 'applicable installment obligation' means any obligation—

"(i) which arises from the disposition—

"(I) after February 28, 1986, of personal property under the installment method by a person who regularly sells or otherwise disposes of personal property of the same type on the installment plan,

"(II) after February 28, 1986, of real property under the installment method which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, or

"(III) after August 16, 1986, of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000 (determined after application of the rule under the last sentence of section 1274(c)(3)(A)(ii)), and

"(ii) which is held by the seller or a member of the same affiliated group (within the meaning of section 1504(a), but without regard to section 1504(b)) as the seller.

"(B) EXCEPTION FOR PERSONAL USE AND FARM PROPERTY.—The term 'applicable installment obligation' shall not include any obligation which arises from the disposition—

"(i) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

"(ii) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e) (4) or (5)).

"(2) AGGREGATION RULES.—For purposes of this section, all persons treated as a single employer under section 52 shall be treated as 1 taxpayer. The Secretary shall prescribe regulations for the treatment under this section of transactions between such persons.

"(3) AGGREGATION OF OBLIGATIONS.—The Secretary may by regulations provide that all (or any portion of) applicable installment obligations of a taxpayer may be treated as 1 obligation.

"(4) EXCEPTION FOR SALES OF TIMESHARES AND RESIDENTIAL LOTS.—

"(A) IN GENERAL.—If a taxpayer elects the application of this paragraph, this section shall not apply to any installment obligation which—

"(i) arises from a sale in the ordinary course of the taxpayer's trade or business to an individual of—

"(I) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks, or a right to use specified campgrounds for recreational purposes, or

"(II) any residential lot but only if the taxpayer (or any related person) is not to make any improvements with respect to such lot, and

"(ii) which is not guaranteed by any person other than an individual.

For purposes of clause (i)(I), a timeshare right to use (or timeshare ownership interest in) property held by the spouse, children, grandchildren, or parents of an individual shall be treated as held by such individual.

"(B) INTEREST ON DEFERRED TAX.—If subparagraph (A) applies to any installment obligation, interest shall be paid on the portion of any tax for any taxable year (determined without regard to any deduction allowable for such interest) which is attributable to the receipt of payments on such obligation in such year (other than payments received in the taxable year of the sale). Such interest shall be computed for the period from the date of the sale to the date on which the payment is received using the applicable Federal rate under section 1274 (without regard to subsection (d)(2) or (3) thereof) in effect at the time of the sale, compounded semiannually.

"(C) TIME FOR PAYMENT.—Any interest payable under this paragraph with respect to a payment shall be treated as an addition to tax for the taxable year in which the payment is received, except that the amount of such interest shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year.

"(5) REGULATIONS.—The Secretary shall prescribe regulations as may be necessary to carry out the purposes of this section, including regulations—

"(A) disallowing the use of the installment method in whole or in part for transactions in which the rules of this section otherwise would be avoided through the use of related parties, pass-through entities, or intermediaries,

"(B) providing for the proper treatment of reserves (including consistent treatment with assets held in the reserves), and

"(C) providing that subsection (b)(4) shall not apply where necessary to prevent the avoidance of the application of this section."

(b) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by inserting after the item relating to section 453B the following new item:

"Sec. 453C. Certain indebtedness treated as payments on installment obligations."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this section shall apply to taxable years ending after December 31, 1986, with respect to dispositions after February 28, 1986.

(2) EXCEPTION FOR CERTAIN SALES OF PROPERTY BY A MANUFACTURER TO A DEALER.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any installment obligation arising from the disposition of tangible personal property by a manufacturer (or any affiliate) to a dealer if—

(i) the dealer is obligated to pay on such obligation only when the dealer resells (or rents) the property,

(ii) the manufacturer has the right to repurchase the property at a fixed (or ascertainable) price after no later than the 9-month period beginning with the date of the sale, and

(iii) such disposition is in a taxable year with respect to which the requirements of subparagraph (B) are met.

(B) RECEIVABLES MUST BE AT LEAST 50 PERCENT OF TOTAL SALES.—

(i) IN GENERAL.—The requirements of this subparagraph are met with respect to any taxable year if for such taxable year and the preceding taxable year the aggregate face amount of installment obligations described in subparagraph (A) is at least 50 percent of the total sales to dealers giving rise to such obligations.

(ii) TAXPAYER MUST FAIL FOR 2 CONSECUTIVE YEARS.—A taxpayer shall be treated as failing to meet the requirements of clause (i) only if the taxpayer fails to meet the 50-percent test for both the taxable year and the preceding taxable year.

(C) TRANSITION RULE.—An obligation issued before the date of the enactment of this Act shall be treated as described in subparagraph (A) if, within 60 days after such date, the taxpayer modifies the terms of such obligation to conform to the requirements of subparagraph (A).

(D) APPLICATION WITH OTHER OBLIGATIONS.—In applying section 453C of the Internal Revenue Code of 1986 to any installment obligations to which the amendments made by this section apply, obligations described in subparagraph (A) shall not be treated as applicable installment obligations (within the meaning of section 453C(e)(1) of such Code).

(E) OTHER REQUIREMENTS.—This paragraph shall apply only if the taxpayer meets the requirements of subparagraphs (A) and (B) for its first taxable year beginning after the date of the enactment of this Act.

(3) EXCEPTION FOR CERTAIN OBLIGATIONS.—In applying the amendments made by this section to any installment obligation of a corporation incorporated on January 13, 1928, the following indebtedness shall not be taken into account in determining the allocable installment indebtedness of such corporation under section 453C of the Internal Revenue Code of 1986 (as added by this section):

(A) 12¾ percent subordinated debentures with a total face amount of $175,000,000 issued pursuant to a trust indenture dated as of September 1, 1985.

(B) A revolving credit term loan in the maximum amount of $130,000,000 made pursuant to a revolving credit and security agreement dated as of September 6, 1985, payable in various stages with final payment due on August 31, 1992.

This paragraph shall also apply to indebtedness which replaces indebtedness described in this paragraph if such indebtedness does not exceed the amount and maturity of the indebtedness it replaces.

(4) SPECIAL RULE FOR RESIDENTIAL CONDOMINIUM PROJECT.—For purposes of applying the amendments made by this section, the term applicable installment obligation (within the meaning of section 453C(e)(1) of the Internal Revenue Code of 1986) shall not include any obligation arising in connection with sales from a residential condominium project—

(A) for which a contract to purchase land for the project was entered into at least 5

years before the date of the enactment of this Act,

(B) with respect to which land for the project was purchased before September 26, 1985,

(C) with respect to which building permits for the project were obtained, and construction commenced, before September 26, 1985,

(D) in conjunction with which not less than 80 units of low-income housing are deeded to a tax-exempt organization designated by a local government, and

(E) with respect to which at least $1,000,000 of expenses were incurred before September 26, 1985.

(D) the portion of the net adjustment taken into account in the 1st taxable year of the taxpayer ending after December 31, 1986, shall not exceed 15 percent of such adjustment, and

(E) the remaining portion of such adjustment shall be taken into account ratably in the 2nd, 3rd, and 4th years ending after December 31, 1986.

(5) SPECIAL RULE FOR QUALIFIED BUYOUT.—The amendments made by this section shall apply for taxable years ending after December 31, 1991, to a corporation if—

(A) such corporation was incorporated on May 25, 1984, for the purpose of acquiring all of the stock of another corporation,

(B) such acquisition took place on October 23, 1985,

(C) in connection with such acquisition, the corporation incurred indebtedness of approximately $151,000,000, and

(D) substantially all of the stock of the corporation is owned directly or indirectly by employees of the corporation the stock of which was acquired on October 23, 1985.

(6) SPECIAL RULE FOR SALES OF REAL PROPERTY BY DEALERS.—In the case of installment obligations arising from the sale of real property in the ordinary course of the trade or business of the taxpayer, any gain attributable to allocable installment indebtedness allocated to any such installment obligations which arise (or are deemed to arise)—

(A) in the 1st taxable year of the taxpayer ending after December 31, 1986, shall be taken into account ratably over the 3 taxable years beginning with such 1st taxable year, and

(B) in the 2nd taxable year of the taxpayer ending after December 31, 1986, shall be taken into account ratably over the 2 taxable years beginning with such 2nd taxable year.

(7) SPECIAL RULE FOR SALES OF PERSONAL PROPERTY BY DEALERS.—In the case of installment obligations arising from the sale of personal property in the ordinary course of the trade or business of the taxpayer, solely for purposes of determining the time for payment of tax and interest payable with respect to such tax—

(A) any increase in tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the 1st taxable year of the taxpayer ending after December 31, 1986, by reason of the amendments made by this section shall be treated as imposed ratably over the 3 taxable years beginning with such 1st taxable year, and

(B) any increase in tax imposed by such chapter 1 for the 2nd taxable year of the taxpayer ending after December 31, 1986, (determined without regard to subparagraph (A)) by reason of the amendments made by this section shall be treated as imposed ratably over the 2 taxable years beginning with such 2d taxable year.

(8) TREATMENT OF CERTAIN INSTALLMENT OBLIGATIONS.—Notwithstanding the amendments made by subtitle B of title III, gain with respect to installment payments received pursuant to notes issued in accordance with a note agreement dated as of August 29, 1980, where—

(A) such note agreement was executed pursuant to an agreement of purchase and sale dated April 25, 1980,

(B) more than ½ of the installment payments of the aggregate principal of such notes have been received by August 29, 1986, and

(C) the last installment payment of the principal of such notes is due August 29, 1989,

shall be taxed at a rate of 28 percent.

SEC. 812. DISALLOWANCE OF USE OF INSTALLMENT METHOD FOR CERTAIN OBLIGATIONS.

(a) IN GENERAL.—Section 453 (relating to installment method) is amended by adding at the end thereof the following new subsection:

"(j) CURRENT INCLUSION IN CASE OF REVOLVING CREDIT PLANS, ETC.—In the case of—

"(1) any disposition of personal property under a revolving credit plan, or

"(2) any installment obligation arising out of a sale of—

"(A) stock or securities which are traded on an established securities market, or

"(B) to the extent provided in regulations, property (other than stock or securities) of a kind regularly traded on an established market,

subsection (a) and section 453A shall not apply, and, for purposes of this title, all payments to be received shall be treated as received in the year of disposition. The Secretary may provide for the application of this subsection in whole or in part for transactions in which the rules of this subsection otherwise would be avoided through the use of related parties, pass-thru entities, or intermediaries."

(b) CONFORMING AMENDMENTS.—

(1) Section 453A(a)(2) (relating to installment method for dealers in personal property) is amended by striking out the last sentence thereof.

(2) Section 453A is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For disallowance of use of installment method for certain obligations, see section 453(j)."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under section 453 or 453A of the Internal Revenue Code of 1986 for such taxpayer's last taxable year beginning before January 1, 1987, the amendments made by this section shall be treated as a change in method of accounting for its 1st taxable year beginning after December 31, 1986, and—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) the period for taking into account adjustments under section 481 of such Code by reason of such change shall not exceed 4 years.

SUBTITLE C—OTHER PROVISIONS

SEC. 821. INCOME ATTRIBUTABLE TO UTILITY SERVICES.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end thereof the following new subsection:

"(f) SPECIAL RULE FOR UTILITY SERVICES.—

"(1) IN GENERAL.—In the case of a taxpayer the taxable income of which is computed under an accrual method of accounting, any income attributable to the sale or furnishing of utility services to customers shall be included in gross income not later than the taxable year in which such services are provided to such customers.

"(2) DEFINITION AND SPECIAL RULE.—For purposes of this subsection—

"(A) UTILITY SERVICES.—The term 'utility services' includes—

"(i) the providing of electrical energy, water, or sewage disposal,

"(ii) the furnishing of gas or steam through a local distribution system,

"(iii) telephone or other communication services, and

"(iv) the transporting of gas or steam by pipeline.

"(B) YEAR IN WHICH SERVICES PROVIDED.—The taxable year in which services are treated as provided to customers shall not, in any manner, be determined by reference to—

"(i) the period in which the customers' meters are read, or

"(ii) the period in which the taxpayer bills (or may bill) the customers for such service."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) CHANGE IN METHOD OF ACCOUNTING.—If a taxpayer is required by the amendments made by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) the adjustments under section 481 of the Internal Revenue Code of 1954 by reason of such change shall be taken into account ratably over a period no longer than the first 4 taxable years beginning after December 31, 1986.

(3) SPECIAL RULE FOR CERTAIN CYCLE BILLING.—If a taxpayer for any taxable year beginning before August 16, 1986, for purposes of chapter 1 of the Internal Revenue Code of 1986 took into account income from services described in section 451(f) of such Code (as added by subsection (a)) on the basis of the period in which the customers' meters were read, then such treatment for such year shall be deemed to be proper.

SEC. 822. REPEAL OF APPLICATION OF DISCHARGE OF INDEBTEDNESS RULES TO QUALIFIED BUSINESS INDEBTEDNESS.

(a) GENERAL RULE.—Paragraph (1) of section 108(a) (relating to exclusion from gross income of income from discharge of indebtedness) is amended by striking out subparagraph (C), by inserting "or" at the end of subparagraph (A), and by striking out ", or" at the end of subparagraph (B) and inserting in lieu thereof a period.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 108(a) is amended to read as follows:

"(2) COORDINATION OF EXCLUSIONS.—Subparagraph (B) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case."

(2) Section 108 is amended by striking out subsection (c).

(3) Section 108(d) is amended—

(A) by striking out paragraph (4),

(B) by striking out "subsections (a), (b), and (c)" each place it appears in the heading thereof and in the text and heading of paragraphs (6) and (7) and inserting in lieu thereof "subsections (a) and (b)",

(C) by striking out the last sentence of paragraph (7)(B), and

(D) by striking out "under paragraph (4) of this subsection or" in paragraph (9) thereof.

(4) Section 1017(a)(2) is amended by striking out ", (b)(5), or (c)(1)(A)" and inserting in lieu thereof "or (b)(5)".

(5) Section 1017(b)(3)(A) is amended by striking out "or (c)(1)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges after December 31, 1986.

SEC. 823. REPEAL OF DEDUCTION FOR QUALIFIED DISCOUNT COUPONS.

(a) GENERAL RULE.—Section 466 (relating to qualified discount coupons redeemed after close of taxable year) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (5) of section 461(h) is amended by striking out subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(2) The table of contents for subpart C of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 466.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 466 of the Internal Revenue Code of 1954 apply for such taxpayer's last taxable year beginning before January 1, 1987, and is required to change its method of accounting by reason of the amendments made by this section for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

(i) be reduced by the balance in the suspense account under section 466(e) of such Code as of the close of such last taxable year, and

(ii) be taken into account over a period not longer than 4 years.

SEC. 824. INCLUSION IN GROSS INCOME OF CONTRIBUTIONS IN AID OF CONSTRUCTION.

(a) GENERAL RULE.—Section 118 (relating to contributions to the capital of a corporation) is amended by striking out subsections (b) and (c), by redesignating subsection (d) as subsection (c), and by inserting after subsection (a) the following new subsection:

"(b) CONTRIBUTIONS IN AID OF CONSTRUCTION, ETC.—For purposes of subsection (a), the term 'contribution to the capital of the taxpayer' does not include any contribution in aid of construction or any other contribution as a customer or potential customer."

(b) TECHNICAL AMENDMENT.—Subsection (c) of section 362 (relating to special rules for certain contributions to capital) is amended by striking out paragraph (3).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

(2) TREATMENT OF CERTAIN WATER SUPPLY PROJECTS.—The amendments made by this section shall not apply to amounts which are paid by the New Jersey Department of Environmental Protection for construction of alternative water supply projects in zones of drinking water contamination and which are designated by such department as being taken into account under this paragraph. Not more than $4,631,000 of such amounts may be designated under the preceding sentence.

(3) TREATMENT OF CERTAIN CONTRIBUTIONS BY TRANSPORTATION AUTHORITY.—The amendments made by this section shall not apply to contributions in aid of construction by a qualified transportation authority which were clearly identified in a master plan in existence on September 13, 1984, and which are designated by such authority as being taken into account under this paragraph. Not more than $68,000,000 of such contributions may be designated under the preceding sentence. For purposes of this paragraph, a qualified transportation authority is an entity which was created on February 20, 1967, and which was established by an interstate compact and consented to by Congress in Public Law 89-774, 80 Stat. 1324 (1966).

(4) TREATMENT OF CERTAIN PARTNERSHIPS.—In the case of a partnership with a taxable year beginning May 1, 1986, if such partnership realized net capital gain during the period beginning on the 1st day of such taxable year and ending on May 29, 1986, pursuant to an indemnity agreement dated May 6, 1986, then such partnership may elect to treat each asset to which such net capital gain relates as having been distributed to the partners of such partnership in proportion to their distributive share of the capital gain or loss realized by the partnership with respect to such asset and to treat each such asset as having been sold by each partner on the date of the sale of the asset by the partnership. If such an election is made, the consideration received by the partnership in connection with the sale of such assets shall be treated as having been received by the partners in connection with the deemed sale of such assets. In the case of a tiered partnership, for purposes of this paragraph each partnership shall be treated as having realized net capital gain equal to its proportionate share of the net capital gain of each partnership in which it is a partner, and the election provided by this paragraph shall apply to each tier.

TITLE IX—FINANCIAL INSTITUTIONS

SEC. 901. LIMITATIONS ON BAD DEBT RESERVES.

(a) LARGE BANKS NOT ELIGIBLE FOR BAD DEBT RESERVES.—

(1) IN GENERAL.—Subsection (a) of section 585 (relating to reserves for losses on loans of banks) is amended to read as follows:

"(a) RESERVE FOR BAD DEBTS.—

"(1) IN GENERAL.—Except as provided in subsection (c), a bank shall be allowed a deduction for a reasonable addition to a reserve for bad debts. Such deduction shall be in lieu of any deduction under section 166(a).

"(2) BANK.—For purposes of this section—

"(A) IN GENERAL.—The term 'bank' means any bank (as defined in section 581) other than an organization to which section 593 applies.

"(B) BANKING BUSINESS OF UNITED STATES BRANCH OF FOREIGN CORPORATION.—The term 'bank' also includes any corporation to which subparagraph (A) would apply except for the fact that it is a foreign corporation. In the case of any such foreign corporation, this section shall apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States."

(2) RESERVE DEDUCTION NOT AVAILABLE FOR LARGE BANKS.—Section 585 is amended by adding at the end thereof the following new subsection:

"(c) SECTION NOT TO APPLY TO LARGE BANKS.—

"(1) IN GENERAL.—In the case of a large bank, this section shall not apply (and no deduction shall be allowed under any other provision of this subtitle for any addition to a reserve for bad debts).

"(2) LARGE BANKS.—For purposes of this subsection, a bank is a large bank if, for the taxable year (or for any preceding taxable year beginning after December 31, 1986)—

"(A) the average adjusted bases of all assets of such bank exceeded $500,000,000, or

"(B) such bank was a member of a parent-subsidiary controlled group and the average adjusted bases of all assets of such group exceeded $500,000,000.

"(3) 4-YEAR SPREAD OF ADJUSTMENTS.—

"(A) IN GENERAL.—Except as provided in paragraph (4), in the case of any bank which for its last taxable year before the disqualification year maintained a reserve for bad debts—

"(i) the provisions of this subsection shall be treated as a change in the method of accounting of such bank for the disqualification year,

"(ii) such change shall be treated as having been made with the consent of the Secretary, and

"(iii) the net amount of adjustments required by section 481(a) to be taken into account by the taxpayer shall be taken into account in each of the 4 taxable years beginning with the disqualification year with—

"(I) the amount taken into account for the 1st of such taxable years being the greater of 10 percent of such net amount or such greater amount as the taxpayer may designate, and

"(II) the amount taken into account in each of the 3 succeeding taxable years being equal to the applicable fraction (determined in accordance with the following table for the taxable year involved) of the portion of such net amount not taken into account under subclause (I).

In the case of the—	The applicable fraction is—
1st succeeding year	2/9
2nd succeeding year	1/3
3rd succeeding year	4/9.

"(B) SUSPENSION OF RECAPTURE FOR TAXABLE YEAR FOR WHICH BANK IS FINANCIALLY TROUBLED.—

"(i) IN GENERAL.—In the case of a bank which is a financially troubled bank for any taxable year—

"(I) no adjustment shall be taken into account under subparagraph (A) for such taxable year, and

"(II) such taxable year shall be disregarded in determining whether any other taxable year is a taxable year for which an adjustment is required to be taken into account under subparagraph (A) or the amount of such adjustment.

"(ii) EXCEPTION FOR ELECTIVE RECAPTURE FOR 1ST YEAR.—Clause (i) shall not apply to the 1st taxable year referred to in subparagraph (A)(iii)(I) if the taxpayer designates an amount in accordance with such subparagraph.

"(iii) FINANCIALLY TROUBLED BANK.—For purposes of clause (i), the term 'financially troubled bank' means any bank if, for the taxable year, the nonperforming loan percentage of such bank exceeds 75 percent.

"(iv) NONPERFORMING LOAN PERCENTAGE.—For purposes of clause (iii), the term 'nonperforming loan percentage' means the percentage determined by dividing—

"(I) the sum of the outstanding balances of nonperforming loans of the bank as of the close of each quarter of the taxable year, by

"(II) the sum of the amounts of equity of the bank as of the close of each such quarter. In the case of a bank which is a member of a parent-subsidiary controlled group for the taxable year, the preceding sentence shall be applied with respect to such group.

"(v) OTHER DEFINITIONS.—For purposes of this subparagraph—

"(I) NONPERFORMING LOANS.—The term 'nonperforming loan' means any loan which is considered to be nonperforming by the primary Federal regulatory agency with respect to the bank.

"(II) EQUITY.—The term 'equity' means the equity of the bank as determined for Federal regulatory purposes.

"(C) COORDINATION WITH ESTIMATED TAX PAYMENTS.—For purposes of applying section 6655(d)(3) with respect to any installment, the determination under subparagraph (B) of whether an adjustment is required to be taken into account under subparagraph (A) shall be made as of the last day prescribed for payment of such installment.

"(4) ELECTIVE CUT-OFF METHOD.—If a bank makes an election under this paragraph for the disqualification year—

"(A) the provisions of this subsection shall not be treated as a change in the method of accounting of the taxpayer for purposes of section 481,

"(B) the taxpayer shall continue to maintain its reserve for loans held by the bank as of the 1st day of the disqualification year and charge against such reserve any losses resulting from loans held by the bank as of such 1st day, and

"(C) no deduction shall be allowed under this section (or any other provision of this subtitle) for any addition to such reserve for the disqualification year or any subsequent taxable year.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) PARENT-SUBSIDIARY CONTROLLED GROUP.—The term 'parent-subsidiary controlled group' means any controlled group of corporations described in section 1563(a)(1). In determining the average adjusted bases of assets held by such a group, interests held by one member of such group in another member of such group shall be disregarded.

"(B) DISQUALIFICATION YEAR.—The term 'disqualification year' means, with respect to any bank, the 1st taxable year beginning after December 31, 1986, for which such bank was a large bank if such bank maintained a reserve for bad debts for the preceding taxable year."

(b) RESERVES OF DOMESTIC BUILDING AND LOAN ASSOCIATIONS, MUTUAL SAVINGS BANKS, AND COOPERATIVE BANKS.—

(1) IN GENERAL.—Subsection (a) of section 593 (relating to reserves for losses on loans) is amended to read as follows:

"(a) RESERVE FOR BAD DEBTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), in the case of—

"(A) any domestic building and loan association,

"(B) any mutual savings bank, or

"(C) any cooperative bank without capital stock organized and operated for mutual purposes and without profit,

there shall be allowed a deduction for a reasonable addition to a reserve for bad debts. Such deduction shall be in lieu of any deduction under section 166(a).

"(2) ORGANIZATION MUST MEET 60-PERCENT ASSET TEST OF SECTION 7701(a)(19).—This section shall apply to an association or bank referred to in paragraph (1) only if it meets the requirements of section 7701(a)(19)(C)."

(2) LIMITATION ON PERCENTAGE OF TAXABLE INCOME METHOD.—Paragraph (2) of section 593(b) (relating to percentage of taxable income method) is amended—

(A) by striking out subparagraphs (A), (B), and (C) and inserting in lieu thereof the following:

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the amount determined under this paragraph for the taxable year shall be an amount equal to 8 percent of the taxable income for such year.

"(B) REDUCTION FOR AMOUNTS REFERRED TO IN PARAGRAPH (1)(A).—The amount determined under subparagraph (A) shall be reduced (but not below 0) by the amount determined under paragraph (1)(A).", and

(B) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(3) REPEAL OF PERCENTAGE METHOD OF COMPUTING RESERVES FOR BAD DEBTS.—Subsection (b) of section 593 (relating to addition to reserves for bad debts) is amended by striking out paragraphs (3) and (5) and by redesignating paragraph (4) as paragraph (3).

(4) SECTION 593 RESERVES NOT TREATED AS PREFERENCE FOR PURPOSES OF SECTION 291.—Subparagraph (A) of section 291(e)(1) (defining financial institution preference item) is amended by striking out "or 593".

(c) REPEAL OF SECTION 586.—Section 586 (relating to reserves for losses on loans of small business investment companies, etc.) is hereby repealed.

(d) CONFORMING AMENDMENTS.—

(1) AMENDMENT TO SECTION 585.—Paragraph (1) of section 585(b) is amended by striking out "section 166(c)" and inserting in lieu thereof "subsection (a)".

(2) AMENDMENTS TO SECTION 593.—

(A) Paragraph (1) of section 593(b) is amended by striking out "section 166(c)" and inserting in lieu thereof "subsection (a)".

(B) Subparagraph (B) of section 593(b)(1) is amended—

(i) by striking out "paragraph (2), (3), or (4), whichever amount is the largest" and inserting in lieu thereof "paragraph (2) or (3), whichever is the larger", and

(ii) by striking out "paragraph (4)" in clause (i) and inserting in lieu thereof "paragraph (3)".

(B) Subparagraph (D) of section 593(b)(2) (as redesignated by subsection (b)(2)) is amended by striking out "the applicable percentage (determined under subparagraphs (A) and (B))" and inserting in lieu thereof "8 percent".

(C) Subparagraph (B) of section 593(e)(1) is amended by striking out "subsection (b)(4)" and inserting in lieu thereof "subsection (b)(3)".

(3) BONDS, ETC., LOSSES AND GAINS OF FINANCIAL INSTITUTIONS.—

(A) Paragraph (1) of section 582(c) (relating to bonds, etc., losses and gains of financial institutions) is amended by striking out "a financial institution to which section 585, 586, or 593 applies" and inserting in lieu thereof "a financial institution referred to in paragraph (5)".

(B) Subsection (c) of section 582 is amended by adding at the end thereof the following new paragraph:

"(5) FINANCIAL INSTITUTIONS TO WHICH PARAGRAPH (1) APPLIES.—

"(A) IN GENERAL.—For purposes of paragraph (1), the financial institutions referred to in this paragraph are—

"(i) any bank (and any corporation which would be a bank except for the fact it is a foreign corporation),

"(ii) any financial institution referred to in section 591,

"(iii) any small business investment company operating under the Small Business Investment Act of 1958, and

"(iv) any business development corporation.

"(B) BUSINESS DEVELOPMENT CORPORATION.—For purposes of subparagraph (A), the term 'business development corporation' means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

"(C) LIMITATIONS ON FOREIGN BANKS.—In the case of a foreign corporation referred to in subparagraph (A)(i), paragraph (1) shall only apply to gains and losses which are effectively connected with the conduct of a banking business in the United States."

(4) OTHER CONFORMING AMENDMENTS.—

(A) Subsection (g) of section 166 is amended by striking out paragraphs (3) and (4).

(B) Subparagraph (F) of section 172(b)(1) is amended by striking out "to which section 585, 586, or 593 applies" and inserting in lieu thereof "referred to in section 582(c)(5)".

(C) Clause (i) of section 291(e)(1)(B) is amended by striking out "to which section 585 or 593 applies" and inserting in lieu thereof "which is a bank (as defined in section 582(a)(2)) or to which section 593 applies".

(D) Section 596 is amended by striking out "an amount equal to" and all that follows down through the period at the end thereof and inserting in lieu thereof "an amount equal to 8 percent of such total amount.".

(E) Paragraph (4) of section 856(a) is amended by striking out "to which section 585, 586, or 593 applies" and inserting in lieu thereof "referred to in section 582(c)(5)".

(F) Subsection (c) of section 1277 is amended by striking out "to which section 585 or 593 applies" and inserting in lieu thereof "which is a bank (as defined in section 585(a)(2)) or to which section 593 applies".

(G) Subparagraph (B) of section 1361(b)(2) is amended by striking out "to which section 585 or 593 applies" and inserting in lieu thereof "which is a bank (as defined in section 585(a)(2)) or to which section 593 applies".

(H) The table of sections for part I of subchapter H of chapter 1 is amended by striking out the item relating to section 586.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 902. INTEREST INCURRED TO CARRY TAX-EXEMPT BONDS.

(a) GENERAL RULE.—Section 265 (relating to expenses and interest relating to tax-exempt income) is amended by adding at the end thereof the following new subsection:

"(b) PRO RATA ALLOCATION OF INTEREST EXPENSE OF FINANCIAL INSTITUTIONS TO TAX-EXEMPT INTEREST.—

"(1) IN GENERAL.—In the case of a financial institution, no deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to tax-exempt interest.

"(2) ALLOCATION.—For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to tax-exempt interest is an amount which bears the same ratio to such interest expense as—

"(A) the taxpayer's average adjusted bases (within the meaning of section 1016) of tax-exempt obligations acquired after August 7, 1986, bears to

"(B) such average adjusted bases for all assets of the taxpayer.

"(3) EXCEPTION FOR CERTAIN TAX-EXEMPT OBLIGATIONS.—

"(A) IN GENERAL.—Any qualified tax-exempt obligation acquired after August 7, 1986, shall be treated for purposes of paragraph (2) and section 291(e)(1)(B) as if it were acquired on August 7, 1986.

"(B) QUALIFIED TAX-EXEMPT OBLIGATION.—For purposes of subparagraph (A), the term 'qualified tax-exempt obligation' means a tax-exempt obligation which—

"(i) is not a private activity bond (as defined in section 141), and

"(ii) is designated by the issuer for purposes of this paragraph.

For purposes of the preceding sentence and subparagraph (C), a qualified 501(c)(3) bond (as defined in section 145) shall not be treated as a private activity bond.

"(C) LIMITATION ON ISSUER.—An obligation issued by an issuer during any calendar year shall not be treated as a qualified tax-exempt obligation unless the reasonably anticipated amount of qualified tax-exempt obligations (other than private activity bonds) which will be issued by such issuer during such calendar year does not exceed $10,000,000.

"(D) OVERALL $10,000,000 LIMITATION.—Not more than $10,000,000 of obligations issued by an issuer during any calendar year may be designated by such issuer for purposes of this paragraph.

"(E) AGGREGATION OF ISSUERS.—For purposes of subparagraphs (C) and (D), an issuer and all subordinate entities thereof shall be treated as 1 issuer.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) INTEREST EXPENSE.—The term 'interest expense' means the aggregate amount allowable to the taxpayer as a deduction for interest for the taxable year (determined without regard to this subsection and section 291). For purposes of the preceding sentence, the term 'interest' includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

"(B) TAX-EXEMPT OBLIGATION.—The term 'tax-exempt obligation' means any obligation the interest on which is wholly exempt from taxes imposed by this subtitle. Such term includes shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

"(5) FINANCIAL INSTITUTION.—For purposes of this subsection, the term 'financial institution' means any person who—

"(A) accepts deposits from the public in the ordinary course of such person's trade or business, and is subject to Federal or State supervision as a financial institution, or

"(B) is a corporation described in section 585(a)(2).

"(6) SPECIAL RULES.—

"(A) COORDINATION WITH SUBSECTION (a).—If interest on any indebtedness is disallowed under subsection (a) with respect to any tax-exempt obligation—

"(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

"(ii) for purposes of applying paragraph (2), the adjusted basis of such tax-exempt obligation shall be reduced (but not below zero) by the amount of such indebtedness.

"(B) COORDINATION WITH SECTION 263A.—This section shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property)."

(b) REPEAL OF SPECIAL TREATMENT FOR CERTAIN FINANCIAL INSTITUTIONS.—Paragraph (2) of section 265 (as in effect on the day before the date of the enactment of this Act) is amended by striking out the second sentence.

(c) TERMINATION OF REDUCTION IN DEDUCTION FOR INTEREST ALLOCABLE TO TAX-EXEMPT OBLIGATIONS UNDER SECTION 291.—

(1) IN GENERAL.—Clause (i) of section 291(e)(1)(B) (relating to interest on debt to carry tax-exempt obligations acquired after December 31, 1982) is amended by striking out "after December 31, 1982" and inserting in lieu thereof "after December 31, 1982, and before August 8, 1986".

(2) TECHNICAL AMENDMENTS.—Subparagraph (B) of section 291(e)(1) is amended—

(A) by striking out "(but for this paragraph)" in clause (i) and inserting in lieu thereof "(but for this paragraph or section 265(b))",

(B) by striking out "without regard to this section" in clause (ii) and inserting in lieu thereof "without regard to this section and section 265(b)",

(C) by striking out "AFTER DECEMBER 31, 1982" in the subparagraph heading and inserting in lieu thereof "AFTER DECEMBER 31, 1982, AND BEFORE AUGUST 8, 1986", and

(D) by adding at the end thereof the following new clause:

"(iv) APPLICATION OF SUBPARAGRAPH TO CERTAIN OBLIGATIONS ISSUED AFTER AUGUST 7, 1986.—

"For application of this subparagraph to certain obligations issued after August 7, 1986, see section 265(b)(3)."

(d) CLERICAL AMENDMENT.—Section 265 is amended by striking out "No deduction shall be allowed for—" and inserting in lieu thereof the following:

"(a) GENERAL RULE.—No deduction shall be allowed for—".

(e) CONFORMING AMENDMENTS.—

(1) Section 163(h)(12) is amended by striking out "section 265(2)" and inserting in lieu thereof "section 265(a)(2).

(2) Section 1277(c) is amended by striking out "section 265(5)" and inserting in lieu thereof "section 265(a)(5)".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 1986.

(2) OBLIGATIONS ACQUIRED PURSUANT TO CERTAIN COMMITMENTS.—For purposes of sections 265(b) and 291(e)(1)(B) of the Internal Revenue Code of 1986, any tax-exempt obligation which is acquired after August 7, 1986, pursuant to a direct or indirect written commitment—

(A) to purchase or repurchase such obligation, and

(B) entered into on or before September 25, 1985,

shall be treated as an obligation acquired before August 8, 1986.

(3) TRANSITIONAL RULES.—For purposes of sections 265(b) and 291(e)(1)(B) of the Internal Revenue Code of 1986, obligations with respect to any of the following projects shall be treated as obligations acquired before August 8, 1986, in the hands of the first and any subsequent financial institution acquiring such obligations:

(A) Park Forest, Illinois, redevelopment project.

(B) Clinton, Tennessee, Carriage Trace project.

(C) Savannah, Georgia, Mall Terrace Warehouse project.

(D) Chattanooga, Tennessee, Warehouse Row project.

(E) Dalton, Georgia, Towne Square project.

(F) Milwaukee, Wisconsin, Standard Electric Supply Company—distribution company.

(G) Wausau, Wisconsin, urban renewal project.

(H) Cassville, Missouri, UDAG project.

(I) Outlook Envelope Company—plant expansion.

(J) Woodstock, Connecticut, Crabtree Warehouse partnership.

(K) Louisville, Kentucky, Speed Mansion renovation project.

(L) Charleston, South Carolina, waterfront project.

(M) New Orleans, Lousiana, Upper Pontabla Building renovation.

(N) Woodward Wight Building.

(O) Minneapolis, Minnesota, Miller Milling Company—flour mill project.

(P) Birmingham, Alabama, Club Apartments.

(Q) Charlotte, North Carolina—qualified mortgage bonds acquired by NCNB bank ($5,250,000).

(R) Grand Rapids, Michigan, Central Bank project.

(S) Ruppman Marketing Services, Inc.—building project.

(4) ADDITIONAL TRANSITIONAL RULE.—Obligations issued pursuant to an allocation of a State's volume limitation for private activity bonds, which allocation was made by Executive Order 25 signed by the Governor of the State on May 22, 1986 (as such order may be amended before January 1, 1987), shall be treated as acquired on or before August 7, 1986, in the hands of the first and any subsequent financial institution acquiring such obligation. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $200,000,000.

SEC. 903. TERMINATION OF SPECIAL 10-YEAR CARRYBACK RULES FOR CERTAIN FINANCIAL INSTITUTIONS; NEW SPECIAL CARRYOVER RULES FOR CERTAIN LOSSES.

(a) TERMINATION OF SPECIAL 10-YEAR CARRYBACK RULES FOR CERTAIN FINANCIAL INSTITUTIONS.—

(1) Subparagraph (F) of section 172(b)(1) (relating to years to which loss may be carried) is amended by striking out "after December 31, 1975," and inserting in lieu thereof "after December 31, 1975, and before January 1, 1987,".

(2) Subparagraph (G) of section 172(b)(1) is amended by striking out "after December

31, 1969," and inserting in lieu thereof "after December 31, 1969, and before January 1, 1987,".

(3) Subparagraph (H) of section 172(b)(1) is amended—

(A) by striking out "after December 31, 1981," and inserting in lieu thereof "after December 31, 1981, and before January 1, 1987,", and

(B) by striking out "after December 31, 1984," and inserting in lieu thereof "after December 31, 1984, and before January 1, 1987,".

(b) SPECIAL 10-YEAR CARRYBACK FOR BAD DEBT LOSSES OF COMMERCIAL BANKS; ADDITIONAL 3-YEAR CARRYFORWARD FOR LOSSES OF THRIFT INSTITUTIONS.—

(1) IN GENERAL.—Paragraph (1) of section 172(b) (relating to year to which loss may be carried) is amended by adding at the end thereof the following new subparagraphs:

"(L) BAD DEBT LOSSES OF COMMERCIAL BANKS.—In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

"(M) LOSSES OF THRIFT INSTITUTIONS.—In the case of an organization to which section 593 applies, in lieu of applying subparagraph (F), a net operating loss for any taxable year beginning after December 31, 1981, and before January 1, 1986, shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 8 taxable years following the taxable year of such loss."

(2) TECHNICAL AMENDMENTS.—

(A) Subparagraph (A) of section 172(b)(1) is amended by striking out "and (K)" and inserting in lieu thereof "(K), (L), and (M)".

(B) Subparagraph (B) of section 172(b)(1) is amended by striking out "and (J)" and inserting in lieu thereof "(J), (L), and (M)".

(C) Section 172 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) RULES RELATING TO BAD DEBT LOSSES OF COMMERCIAL BANKS.—For purposes of this section—

"(1) PORTION ATTRIBUTABLE TO DEDUCTION FOR BAD DEBTS.—The portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be the excess of—

"(i) the net operating loss for such taxable year, over

"(ii) the net operating loss for such taxable year determined without regard to the amount allowed as a deduction under section 166(a) for such taxable year.

"(2) COORDINATION WITH SUBSECTION (b)(2).—In applying paragraph (2) of subsection (b), the portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to losses incurred in taxable years beginning after December 31, 1986.

(2) ADDITIONAL CARRYFORWARD PERIOD FOR LOSSES OF THRIFT INSTITUTIONS.—Subparagraph (M) of section 172(b)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to losses incurred in taxable years beginning after December 31, 1981.

SEC. 904. REPEAL OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS.

(a) GENERAL RULE.—Subparagraph (D) of section 368(a)(3) (relating to agency receivership proceedings which involve financial institutions) is amended to read as follows:

"(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court."

(b) REPEAL OF SPECIAL TREATMENT FOR FSLIC FINANCIAL ASSISTANCE.—

(1) Section 597 (relating to FSLIC financial assistance) is hereby repealed.

(2) The table of sections for part II of subchapter H of chapter 1 is amended by striking out the item relating to section 597.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to acquisitions after December 31, 1988, in taxable years ending after such date.

(2) SUBSECTION (b).—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to transfers after December 31, 1988, in taxable years ending after such date; except that such amendments shall not apply to transfers after such date pursuant to an acquisition to which the amendments made by subsection (a) do not apply.

(B) CLARIFICATION OF TREATMENT OF AMOUNTS EXCLUDED UNDER SECTION 597.—Section 265(a)(1) of the Internal Revenue Code of 1986 (as amended by this title) shall not deny any deduction by reason of such deduction being allocable to amounts excluded from gross income under section 597 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act).

SEC. 905. TREATMENT OF LOSSES ON DEPOSITS OR ACCOUNTS IN INSOLVENT FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Section 165 (relating to losses) is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) TREATMENT OF CERTAIN LOSSES IN INSOLVENT FINANCIAL INSTITUTIONS.—

"(1) IN GENERAL.—If—

"(A) as of the close of the taxable year, it can reasonably be estimated that there is a loss on a qualified individual's deposit in a qualified financial institution, and

"(B) such loss is on account of the bankruptcy or insolvency of such institution,

then the taxpayer may elect to treat the amount so estimated as a loss described in subsection (c)(3) incurred during the taxable year.

"(2) QUALIFIED INDIVIDUAL DEFINED.—For purposes of this subsection, the term 'qualified individual' means any individual, except an individual—

"(A) who owns at least 1 percent in value of the outstanding stock of the qualified financial institution,

"(B) who is an officer of the qualified financial institution,

"(C) who is a sibling (whether by the whole or half blood), spouse, aunt, uncle, nephew, niece, ancestor, or lineal descendant of an individual described in subparagraph (A) or (B), or

"(D) who otherwise is a related person (as defined in section 267(b)) with respect to an individual described in subparagraph (A) or (B).

"(3) QUALIFIED FINANCIAL INSTITUTION.—For purposes of this subsection, the term 'qualified financial institution' means—

"(A) any bank (as defined in section 581),

"(B) any institution described in section 591,

"(C) any credit union the deposits or accounts in which are insured under Federal or State law or are protected or guaranteed under State law, or

"(D) any similar institution chartered and supervised under Federal or State law.

"(4) DEPOSIT.—For purposes of this subsection, the term 'deposit' means any deposit, withdrawable account, or withdrawable or repurchasable share.

"(5) ELECTION.—Any election by the taxpayer under this subsection may be revoked only with the consent of the Secretary and shall apply to all losses of the taxpayer on deposits in the institution with respect to which such election was made.

"(6) COORDINATION WITH SECTION 166.—Section 166 shall not apply to any loss to which an election under this subsection applies.".

(b) INTEREST ON FROZEN DEPOSITS.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end thereof the following new subsection:

"(f) TREATMENT OF INTEREST ON FROZEN DEPOSITS IN CERTAIN FINANCIAL INSTITUTIONS.—

"(1) IN GENERAL.—In the case of interest credited during any calendar year on a frozen deposit in a qualified financial institution, the amount of such interest includible in the gross income of a qualified individual shall not exceed the sum of—

"(A) the net amount withdrawn by such individual from such deposit during such calendar year, and

"(B) the amount of such deposit which is withdrawable as of the close of the taxable year (determined without regard to any penalty for premature withdrawals of a time deposit).

"(2) INTEREST TESTED EACH YEAR.—Any interest not included in gross income by reason of paragraph (1) shall be treated as credited in the next calendar year.

"(3) DEFERRAL OF INTEREST DEDUCTION.—No deduction shall be allowed to any qualified financial institution for interest not includible in gross income under paragraph (1) until such interest is includible in gross income.

"(4) FROZEN DEPOSIT.—For purposes of this subsection, the term 'frozen deposit' means any deposit if, as of the close of the calendar year, any portion of such deposit may not be withdrawn because of—

"(A) the bankruptcy or insolvency of the qualified financial institution (or threat thereof), or

"(B) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in the State.

"(5) OTHER DEFINITIONS.—For purposes of this subsection, the terms 'qualified individual', 'qualified financial institution', and 'deposit' have the same respective meanings as when used in section 165(l)."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1982.

(2) SPECIAL RULES FOR SUBSECTION (b).—

(A) The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1982, and before January 1, 1987, only if the qualified individual elects to have such amendment apply for all such taxable years.

(B) In the case of interest attributable to the period beginning January 1, 1983, and ending December 31, 1987, the interest deduction of financial institutions shall be determined without regard to paragraph (3) of section 451(f) of the Internal Revenue Code of 1986 (as added by subsection (b)).

TITLE X—INSURANCE PRODUCTS AND COMPANIES

SUBTITLE A—POLICYHOLDER ISSUES

SEC. 1001. REPEAL OF EXCLUSION FOR INTEREST ON INSTALLMENT PAYMENTS OF LIFE INSURANCE PROCEEDS.

(a) IN GENERAL.—The second sentence of paragraph (1) of section 101(d) (relating to payment of life insurance proceeds at a date later than death) is amended to read as follows: "There shall be excluded from the gross income of such beneficiary in the taxable year received any amount determined by such proration."

(b) DETERMINATION OF AMOUNT HELD BY INSURER.—Clause (ii) of section 101(d)(2)(B) is amended to read as follows:

"(ii) as discounted on the basis of the interest rate used by the insurer in calculating payments under the agreement and mortality tables prescribed by the Secretary."

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (d) of section 101 is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(2) Subparagraph (B) of section 101(d)(2) is amended by striking out "is equal" and inserting in lieu thereof "equal".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received with respect to deaths occurring after the date of the enactment of this section in taxable years ending after such date.

SEC. 1002. EXCLUSION FROM INCOME WITH RESPECT TO STRUCTURED SETTLEMENTS LIMITED TO CASES INVOLVING PHYSICAL INJURY.

(a) IN GENERAL.—Subsection (c) of section 130 (relating to certain personal insurance liability assignments) is amended by inserting "(in a case involving physical injury or physical sickness)" after "personal injury or sickness".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to assignments entered into after December 31, 1986, in taxable years ending after such date.

SEC. 1003. DENIAL OF DEDUCTION FOR INTEREST ON LOANS FROM CERTAIN LIFE INSURANCE CONTRACTS.

(a) IN GENERAL.—Section 264(a) (relating to disallowance of deduction for certain amounts paid in connection with insurance contracts) is amended by adding after paragraph (3) the following new paragraph:

"(4) Any interest paid or accrued on any indebtedness with respect to 1 or more life insurance policies owned by the taxpayer covering the life of any individual who—

"(A) is an officer or employee of, or

"(B) is financially interested in,

any trade or business carried on by the taxpayer to the extent that the aggregate amount of such indebtedness with respect to policies covering such individual exceeds $50,000."

(b) CONFORMING AMENDMENT.—Section 264(a) is amended by adding at the end thereof the following new sentence: "Paragraph (4) shall apply with respect to contracts purchased after June 20, 1986."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts purchased after June 20, 1986, in taxable years ending after such date.

SEC. 1004. DEDUCTION FOR NONBUSINESS CASUALTY LOSSES COVERED BY INSURANCE ALLOWABLE ONLY IF CLAIM FILED.

(a) IN GENERAL.—Paragraph (4) of section 165(h) (relating to treatment of casualty gains and losses) is amended by adding at the end thereof the following new subparagraph:

"(E) CLAIM REQUIRED TO BE FILED IN CERTAIN CASES.—Any loss of an individual described in subsection (c)(3) to the extent covered by insurance shall be taken into account under this section only if the individual files a timely insurance claim with respect to such loss."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to losses sustained in taxable years beginning after December 31, 1986.

SUBTITLE B—LIFE INSURANCE COMPANIES

SEC. 1011. REPEAL OF SPECIAL LIFE INSURANCE COMPANY DEDUCTION.

(a) IN GENERAL.—Section 806 is amended by striking out subsection (a) and by redesignating subsections (b), (c), and (d), as subsections (a), (b), and (c), respectively.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Sections 453B(e)(2)(B) and 465(c)(7)(D)(v) are each amended by striking out "section 806(c)(3)" and inserting in lieu thereof "section 806(b)(3)".

(2) Section 804 is amended by adding "and" at the end of paragraph (1) and by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) the small life insurance company deduction (if any) determined under section 806(a)."

(3) Subparagraph (C) of section 801(a)(2) is amended—

(A) by striking out "the amounts allowable as deductions under paragraphs (2) and (3)" and inserting in lieu thereof "the amount allowable as a deduction under paragraph (2)", and

(B) by striking out "SPECIAL LIFE INSURANCE COMPANY DEDUCTION AND" in the heading.

(4) Clause (i) of section 805(a)(4)(B) and clause (iii) of section 805(b)(3)(A) are each amended by striking out "the special life insurance company deduction and".

(5) Paragraph (1) of section 806(b), as redesignated by subsection (a), is amended by striking out "without regard to—" and all that follows and inserting in lieu thereof "without regard to the small life insurance company deduction."

(6) Paragraph (1) of section 806(c), as redesignated by subsection (a), is amended—

(A) by striking out "subsections (a) and (b)" and inserting in lieu thereof "subsection (a)",

(B) by striking out "any special life insurance company deduction and", and

(C) by striking out "SPECIAL LIFE INSURANCE COMPANY DEDUCTION AND SMALL" in the heading and inserting in lieu thereof "SMALL".

(7) Paragraph (2) of section 806(c), as redesignated by subsection (a), is amended by striking out "subsection (b)(3)" and inserting in lieu thereof "subsection (a)(3)".

(8) Subsection (c) of section 806, as redesignated by subsection (a), is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(9) Subparagraph (A) of section 813(a)(4) is amended by striking out "section 806(b)(3)(C)" and inserting in lieu thereof "section 806(a)(3)(C)".

(10) Clause (ii) of section 815(c)(2)(A) is amended by striking out "special deductions" and inserting in lieu thereof "small life insurance company deduction."

(11)(A) The section heading of section 806 is amended by striking out "SPECIAL DEDUCTIONS" and inserting in lieu thereof "SMALL LIFE INSURANCE COMPANY DEDUCTION".

(B) The table of sections for subpart C of part I of subchapter L of chapter 1 is amended by striking out "Special deductions" in the item relating to section 806 and inserting in lieu thereof "Small life insurance company deduction".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SPECIAL RULE.—Section 217(k) of the Tax Reform Act of 1984 is amended—

(A) by striking out "the special deductions under section 806" and inserting in lieu thereof "the small life insurance company deduction under section 806(a)", and

(B) by adding at the end thereof the following: "For purposes of determining taxable income, the amount of any income, gain, loss, or deduction attributable to the ownership of such stock shall be an amount equal to 46 times the amount of such income, gain, loss, or deduction, divided by 36.8."

(d) TREATMENT OF CERTAIN MARKET DISCOUNT BONDS.—

(1) IN GENERAL.—Notwithstanding the amendments made by subtitle B of title III, any gain recognized by a qualified life insurance company on the redemption at maturity of any bond which was issued before July 19, 1984, and acquired by such company on or before September 25, 1985, shall be subject to tax at the rate of 28 percent.

(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term 'qualified life insurance company' means any of the following companies: Aetna, Provident Life and Accident, Massachusetts Mutual, Mutual Benefit, Connecticut Mutual, Phoenix Mutual, John Hancock, New England Life, Pennsylvania Mutual, Transamerica, Northwestern, Provident Mutual, Prudential, Mutual of Omaha, and Metropolitan.

SEC. 1012. REPEAL OF TAX-EXEMPT STATUS FOR CERTAIN ORGANIZATIONS PROVIDING COMMERCIAL-TYPE INSURANCE.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) CERTAIN ORGANIZATIONS PROVIDING COMMERCIAL-TYPE INSURANCE NOT EXEMPT FROM TAX.—

"(1) DENIAL OF TAX EXEMPTION WHERE PROVIDING COMMERCIAL-TYPE INSURANCE IS SUBSTANTIAL PART OF ACTIVITIES.—An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

"(2) OTHER ORGANIZATIONS TAXED AS INSURANCE COMPANIES ON INSURANCE BUSINESS.—In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

"(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

"(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

"(3) COMMERCIAL-TYPE INSURANCE.—For purposes of this subsection, the term 'commercial-type insurance' shall not include—

"(A) insurance provided at substantially below cost to a class of charitable recipients,

"(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations, and

"(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches, and

"(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees.

"(4) INSURANCE INCLUDES ANNUITIES.—For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance."

(b) TREATMENT OF BLUE CROSS AND BLUE SHIELD ORGANIZATIONS AND SIMILAR ORGANIZATIONS.—

(1) IN GENERAL.—Part III of subchapter L of chapter 1 is amended by adding at the end thereof the following new section:

"SEC. 833. TREATMENT OF BLUE CROSS AND BLUE SHIELD ORGANIZATIONS, ETC.

"(a) GENERAL RULE.—In the case of any organization to which this section applies—

"(1) TREATED AS STOCK COMPANY.—Such organization shall be taxable under this part in the same manner as if it were a stock insurance company.

"(2) SPECIAL DEDUCTION ALLOWED.—The deduction determined under subsection (b) for any taxable year shall be allowed.

"(3) REDUCTIONS IN UNEARNED PREMIUM RESERVES NOT TO APPLY.—Subparagraph (B) of paragraph (4) of section 832(b) shall be applied by substituting '100 percent' for '80 percent', and subparagraph (C) of such paragraph (4) shall not apply.

"(b) AMOUNT OF DEDUCTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the deduction determined under this subsection for any taxable year is the excess (if any) of—

"(A) 25 percent of the sum of—

"(i) the claims incurred during the taxable year, and

"(ii) the expenses incurred during the taxable year in connection with the administration, adjustment, or settlement of claims, over

"(B) the adjusted surplus as of the beginning of the taxable year.

"(2) LIMITATION.—The deduction determined under paragraph (1) for any taxable year shall not exceed taxable income for such taxable year (determined without regard to such deduction).

"(3) ADJUSTED SURPLUS.—For purposes of this subsection—

"(A) IN GENERAL.—The adjusted surplus as of the beginning of any taxable year is an amount equal to the adjusted surplus as of the beginning of the preceding taxable year—

"(i) increased by the amount of any adjusted taxable income for such preceding taxable year, or

"(ii) decreased by the amount of any adjusted net operating loss for such preceding taxable year.

"(B) SPECIAL RULE.—The adjusted surplus as of the beginning of the organization's 1st taxable year beginning after December 31, 1986, shall be its surplus as of such time. For purposes of the preceding sentence and subsection (c)(3)(C), the term 'surplus' means the excess of the total assets over total liabilities as shown on the annual statement.

"(C) ADJUSTED TAXABLE INCOME.—The term 'adjusted taxable income' means taxable income determined—

"(i) without regard to the deduction determined under this subsection,

"(ii) without regard to any carryforward or carryback to such taxable year, and

"(iii) by increasing gross income by an amount equal to the net exempt income for the taxable year.

"(D) ADJUSTED NET OPERATING LOSS.—The term 'adjusted net operating loss' means the net operating loss for any taxable year determined with the adjustments set forth in subparagraph (C).

"(E) NET EXEMPT INCOME.—The term 'net exempt income' means—

"(i) any tax-exempt interest received or accrued during the taxable year, reduced by any amount (not otherwise deductible) which would have been allowable as a deduction for the taxable year if such interest were not tax-exempt, and

"(ii) the aggregate amount allowed as a deduction for the taxable year under sections 243, 244, and 245.

The amount determined under clause (ii) shall be reduced by the amount of any decrease in deductions allowable for the taxable year by reason of section 832(b)(5)(B) to the extent such decrease is attributable to deductions under sections 243, 244, and 245.

"(4) ONLY HEALTH-RELATED ITEMS TAKEN INTO ACCOUNT.—Any determination under this subsection shall be made by only taking into account items attributable to the health-related business of the taxpayer.

"(c) ORGANIZATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to—

"(A) any existing Blue Cross or Blue Shield organization, and

"(B) any other organization meeting the requirements of paragraph (3).

"(2) EXISTING BLUE CROSS OR BLUE SHIELD ORGANIZATION.—The term 'existing Blue Cross or Blue Shield organization' means any Blue Cross or Blue Shield organization if—

"(A) such organization was in existence on August 16, 1986,

"(B) such organization is determined to be exempt from tax for its last taxable year beginning before January 1, 1987, and

"(C) no material change has occurred in the operations of such organization or in its structure after August 16, 1986, and before the close of the taxable year.

To the extent permitted by the Secretary, any successor to an organization meeting the requirements of the preceding sentence, and any organization resulting from the merger or consolidation of organizations each of which met such requirements, shall be treated as an existing Blue Cross or Blue Shield organization.

"(3) OTHER ORGANIZATIONS.—

"(A) IN GENERAL.—An organization meets the requirements of this paragraph for any taxable year if—

"(i) substantially all the activities of such organization involve the providing of health insurance,

"(ii) at least 10 percent of the health insurance provided by such organization is provided to individuals and small groups (not taking into account any medicare supplemental coverage),

"(iii) such organization provides continuous full-year open enrollment (including conversions) for individuals and small groups,

"(iv) such organization's policies covering individuals provide full coverage of pre-existing conditions of high-risk individuals without a price differential (with a reasonable waiting period), and coverage is provided without regard to age, income, or employment status of individuals under age 65,

"(v) at least 35 percent of its premiums are determined on a community rated basis, and

"(vi) no part of its net earnings inures to the benefit of any private shareholder or individual.

"(B) SMALL GROUP DEFINED.—For purposes of subparagraph (A), the term 'small group' means the lesser of—

"(i) 15 individuals, or

"(ii) the number of individuals required for a small group under applicable State law.

"(C) SPECIAL RULE FOR DETERMINING ADJUSTED SURPLUS.—For purposes of subsection (b), the adjusted surplus of any organization meeting the requirements of this paragraph as of the beginning of the 1st taxable year for which it meets such requirements shall be its surplus as of such time."

(2) CLERICAL AMENDMENT.—The table of sections for such part III is amended by adding at the end thereof the following new item:

"Sec. 833. Treatment of Blue Cross and Blue Shield organizations, etc."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) STUDY OF FRATERNAL BENEFICIARY ASSOCIATIONS.—The Secretary of the Treasury or his delegate shall conduct a study of organizations described in section 501(c)(8) of the Internal Revenue Code of 1986 and which received gross annual insurance premiums in excess of $25,000,000 for the taxable years of such organizations which ended during 1984. Not later than January 1, 1988, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation the results of such study, together with such recommendations as he determines to be appropriate. The Secretary of the Treasury shall have authority to require the furnishing of such information as may be necessary to carry out the purposes of this paragraph.

(3) SPECIAL RULES FOR EXISTING BLUE CROSS OR BLUE SHIELD ORGANIZATIONS.—

(A) IN GENERAL.—In the case of any existing Blue Cross or Blue Shield organization (as defined in section 833(c)(2) of the Internal Revenue Code of 1986 as added by this section)—

(i) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its 1st taxable year beginning after December 31, 1986, and

(ii) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

(B) TREATMENT OF CERTAIN DISTRIBUTIONS.—For purposes of section 833(b)(3)(B), the surplus of any organization as of the beginning of its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of any distribution (other than to policyholders) made by such organization after August 16, 1986, and before the beginning of such taxable year.

(C) RESERVE WEAKENING AFTER AUGUST 16, 1986.—Any reserve weakening after August 16, 1986, by an existing Blue Cross or Blue Shield organization shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1986.

(4) OTHER SPECIAL RULES.—

(A) The amendments made by this section shall not apply with respect to that portion of the business of Mutual of America which is attributable to pension business.

(B) The amendments made by this section shall not apply to that portion of the business of the Teachers Insurance Annuity Association-College Retirement Equities Fund which is attributable to pension business.

(C) The amendments made by this section shall not apply to—

(i) the retirement fund of the YMCA,

(ii) the Missouri Hospital Association,

(iii) administrative services performed by municipal leagues, and

(iv) dental benefit coverage provided by Delta Dental Plans Association through contracts with independent professional service providers so long as the provision of such coverage is the principal activity of such Association.

(D) For purposes of this paragraph, the term "pe..sion business" means the administration of any plan described in section 401(a) of the Internal Revenue Code of 1954 which includes a trust exempt from tax under section 501(a), any plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b) of such Code, any individual retirement plan described in section 408 of such Code, and any eligible deferred compensation plan to which section 457(a) of such Code applies.

SEC. 1013. OPERATIONS LOSS DEDUCTION OF INSOLVENT COMPANIES MAY OFFSET DISTRIBUTIONS FROM POLICYHOLDER.' SURPLUS ACCOUNT.

(a) IN GENERAL.—If—

(1) on November 15, 1985, a life insurance company was insolvent,

(2) pursuant to the order of any court of competent jurisdiction in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1954), such company is liquidated, and

(3) as a result of such liquidation, the tax imposed by section 801 of such Code for any taxable year (hereinafter in this subsection referred to as the "liquidation year") would (but for this subsection) be increased under section 815(a) of such Code,

then the amount described in section 815(a)(2) of such Code shall be reduced by the loss from operations (if any) for the liquidation year, and by the unused operations loss carryovers (if any) to the liquidation year (determined after the application of section 810 of such Code for such year). No carryover of any loss from operations of such company arising during the liquidation year (or any prior taxable year) shall be allowable for any taxable year succeeding the liquidation year.

(b) DEFINITIONS.—For purposes of subsection (a)—

(1) INSOLVENT.—The term "insolvent" means the excess of liabilities over the fair market value of assets.

(2) LOSS FROM OPERATIONS.—The term "loss from operations" has the meaning given such term by section 810(c) of such Code.

(c) EFFECTIVE DATE.—This section shall apply to liquidations on or after November 15, 1985, in taxable years ending after such date.

SUBTITLE C—PROPERTY AND CASUALTY INSURANCE COMPANIES

SEC. 1021. INCLUSION IN INCOME OF 20 PERCENT OF UNEARNED PREMIUM RESERVE.

(a) IN GENERAL.—The first sentence of paragraph (4) of section 832(b) (defining premiums earned) is amended by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) To the result so obtained, add 80 percent of the unearned premiums on outstanding business at the end of the preceding taxable year and deduct 80 percent of the unearned premiums on outstanding business at the end of the taxable year.

"(C) To the result so obtained, in the case of a taxable year beginning after December 31, 1986, and before January 1, 1993, add an amount equal to 3⅓ percent of unearned premiums on outstanding business at the end of the most recent taxable year beginning before January 1, 1987."

(b) SPECIAL RULES.—Subsection (b) of section 832 is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR APPLYING PARAGRAPH (4).—

"(A) REDUCTION NOT TO APPLY TO LIFE INSURANCE RESERVES.—Subparagraph (B) of paragraph (4) shall be applied with respect to amounts included in unearned premiums under the 2nd sentence of such paragraph by substituting '100 percent' for '80 percent' each place it appears in such subparagraph (B), and subparagraph (C) of paragraph (4) shall be applied by not taking such amounts into account.

"(B) SPECIAL TREATMENT OF PREMIUMS ATTRIBUTABLE TO INSURING CERTAIN SECURITIES.—In the case of premiums attributable to insurance against default in the payment of principal or interest on securities described in section 165(g)(2)(C) with maturities of more than 5 years—

"(i) subparagraph (B) of paragraph (4) shall be applied by substituting '90 percent' for '80 percent' each place it appears, and

"(ii) subparagraph (C) of paragraph (4) shall be applied by substituting '1⅔ percent' for '3⅓ percent'.

"(C) TERMINATION AS NONLIFE INSURANCE COMPANY.—Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if, for any taxable year beginning before January 1, 1993, the taxpayer ceases to be an insurance company taxable under this part, the aggregate adjustments which would be made under paragraph (4)(C) for such taxable year and subsequent taxable years but for such cessation shall be made for the taxable year preceding such cessation year.

"(8) SPECIAL RULES FOR APPLYING PARAGRAPH (4) TO TITLE INSURANCE PREMIUMS.—

"(A) IN GENERAL.—In the case of premiums attributable to title insurance—

"(i) subparagraph (B) of paragraph (4) shall be applied by substituting 'the discounted unearned premiums' for '80 percent of the unearned premiums' each place it appears, and

"(ii) subparagraph (C) of paragraph (4) shall not apply.

"(B) METHOD OF DISCOUNTING.—For purposes subparagraph (A), the amount of the discounted unearned premiums as of the end of any taxable year shall be the present value of such premiums (as of such time and separately with respect to premiums received in each calendar year) determined by using—

"(i) the amount of the undiscounted unearned premiums at such time,

"(ii) the applicable interest rate, and

"(iii) the applicable statutory premium recognition pattern.

"(C) DETERMINATION OF APPLICABLE FACTORS.—In determining the amount of the discounted unearned premiums as of the end of any taxable year—

"(i) UNDISCOUNTED UNEARNED PREMIUMS.—The term 'undiscounted unearned premiums' means the unearned premiums shown in the yearly statement filed by the taxpayer for the year ending with or within such taxable year.

"(ii) APPLICABLE INTEREST RATE.—The term 'applicable interest rate' means the annual rate determined under 846(c)(2) for the calendar year in which the premiums are received.

"(iii) APPLICABLE STATUTORY PREMIUM RECOGNITION PATTERN.—The term 'applicable statutory premium recognition pattern' means the statutory premium recognition pattern—

"(I) which is in effect for the calendar year in which the premiums are received, and

"(II) which is based on the statutory premium recognition pattern which applies to premiums received by the taxpayer in such calendar year.

For purposes of the preceding sentence, premiums received during any calendar year shall be treated as received in the middle of such year."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SPECIAL TRANSITIONAL RULE FOR TITLE INSURANCE COMPANIES.—For the 1st taxable year beginning after December 31, 1986, in the case of premiums attributable to title insurance—

(A) IN GENERAL.—The unearned premiums at the end of the preceding taxable year as defined in paragraph (4) of section 832(b) shall be determined as if the amendments made by this section had applied to such unearned premiums in the preceding taxable year and by using the interest rate and premium recognition pattern applicable to years ending in calendar year 1987.

(B) FRESH START.—Except as provided in subparagraph (C), any difference between—

(i) the amount determined to be unearned premiums for the year preceding the first taxable year of a title insurance company beginning after December 31, 1986, determined without regard to subparagraph (A), and

(ii) such amount determined with regard to subparagraph (A),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company.

SEC. 1022. TREATMENT OF CERTAIN DIVIDENDS AND TAX-EXEMPT INTEREST.

(a) IN GENERAL.—Paragraph (5) of section 832(b) (defining losses incurred) is amended to read as follows:

"(5) LOSSES INCURRED.—

"(A) IN GENERAL.—The term 'losses incurred' means losses incurred during the taxable year on insurance contracts, computed as follows:

"(i) To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year.

"(ii) To the result so obtained, add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year.

"(B) REDUCTION OF DEDUCTION.—The amount which would (but for this subparagraph) be taken into account under subparagraph (A) shall be reduced by an amount equal to 15 percent of the sum of—

"(i) tax-exempt interest received or accrued during such taxable year, and

"(ii) the aggregate amount of deductions provided by sections 243, 244, and 245 for—

"(I) dividends (other than 100 percent dividends) received during the taxable year, and

"(II) 100 percent dividends received during the taxable year to the extent attributable to prorated amounts.

In the case of a 100 percent dividend paid by an insurance company, the portion attributable to prorated amounts shall be determined under subparagraph (E)(ii).

"(C) EXCEPTION FOR INVESTMENTS MADE BEFORE AUGUST 8, 1986.—

"(i) IN GENERAL.—Except as provided in clause (ii), subparagraph (B) shall not apply to any dividend or interest received or accrued on any stock or obligation acquired before August 8, 1986.

"(ii) SPECIAL RULE FOR 100 PERCENT DIVIDENDS.—For purposes of clause (i), the portion of any 100 percent dividend which is attributable to prorated amounts shall be treated as received with respect to stock acquired on the later of—

"(I) the date the payor acquired the stock or obligation to which the prorated amounts are attributable, or

"(II) the 1st day on which the payor and payee were members of the same affiliated group (as defined in section 243(b)(5)).

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) PRORATED AMOUNTS.—The term 'prorated amounts' means tax-exempt interest and dividends with respect to which a deduction is allowable under section 243, 244, or 245 (other than 100 percent dividends).

"(ii) 100 PERCENT DIVIDEND.—

"(I) IN GENERAL.—The term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

"(II) CERTAIN DIVIDENDS RECEIVED BY FOREIGN CORPORATIONS.—A dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(5) shall be treated as a 100 percent dividend.

"(E) SPECIAL RULES FOR DIVIDENDS SUBJECT TO PRORATION AT SUBSIDIARY LEVEL.—

"(i) IN GENERAL.—In the case of any 100 percent dividend paid to an insurance company to which this part applies by any insurance company, the amount of the decrease in the deductions of the payee company by reason of the portion of such dividend attributable to prorated amounts shall be reduced (but not below zero) by the amount of the decrease in the deductions (or increase in income) of the payor company attributable to the application of this section or section 805(a)(4)(A) to such amounts.

"(ii) PORTION OF DIVIDEND ATTRIBUTABLE TO PRORATED AMOUNTS.—For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

"(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits attributable to prorated amounts (to the extent thereof), and

"(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1023. DISCOUNTING OF UNPAID LOSSES AND CERTAIN UNPAID EXPENSES.

(a) LIMITATION OF DEDUCTION IN THE CASE OF PROPERTY AND CASUALTY INSURANCE COMPANIES.—

(1) LOSSES INCURRED.—Clause (ii) of section 832(b)(5)(A) (defining losses incurred), as amended by section 1022, is amended to read as follows:

"(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year."

(2) EXPENSES INCURRED.—Section 832(b)(6) (defining expenses incurred) is amended by inserting after the 1st sentence: "For purposes of this subchapter, the term 'expenses unpaid' shall not include any unpaid loss adjustment expenses shown on the annual statement, but such unpaid loss adjustment expenses shall be included in unpaid losses."

(b) LIMITATION OF DEDUCTION IN THE CASE OF LIFE INSURANCE COMPANIES.—Section 807(c) (relating to reserves and similar items taken into account) is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846."

(c) DISCOUNTED UNPAID LOSSES DEFINED.—Part IV of subchapter L of chapter 1 (relating to provisions of general application) is amended by adding at the end thereof the following new section:

"SEC. 846. DISCOUNTED UNPAID LOSSES DEFINED.

"(a) DISCOUNTED LOSSES DETERMINED.—

"(1) SEPARATELY COMPUTED FOR EACH ACCIDENT YEAR.—The amount of the discounted unpaid losses as of the end of any taxable year shall be the sum of the discounted unpaid losses (as of such time) separately computed under this section with respect to unpaid losses in each line of business attributable to each accident year.

"(2) METHOD OF DISCOUNTING.—The amount of the discounted unpaid losses as of the end of any taxable year attributable to any accident year shall be the present value of such losses (as of such time) determined by using—

"(A) the amount of the undiscounted unpaid losses as of such time,

"(B) the applicable interest rate, and

"(C) the applicable loss payment pattern.

"(3) LIMITATION ON AMOUNT OF DISCOUNTED LOSSES.—In no event shall the amount of the discounted unpaid losses with respect to any line of business attributable to any accident year exceed the aggregate amount of unpaid losses with respect to such line of business for such accident year included on the annual statement filed by the taxpayer for the year ending with or within the taxable year.

"(4) DETERMINATION OF APPLICABLE FACTORS.—In determining the amount of the discounted unpaid losses attributable to any accident year—

"(A) the applicable interest rate shall be the interest rate determined under subsection (c) for the calendar year with which such accident year ends, and

"(B) the applicable loss payment pattern shall be the loss payment pattern determined under subsection (d) which is in effect for the calendar year with which such accident year ends.

"(b) DETERMINATION OF UNDISCOUNTED UNPAID LOSSES.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'undiscounted unpaid losses' means the unpaid losses shown in the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer.

"(2) ADJUSTMENT IF LOSSES DISCOUNTED ON ANNUAL STATEMENT.—If—

"(A) the amount of unpaid losses shown in the annual statement is determined on a discounted basis, and

"(B) the extent to which the losses were discounted can be determined on the basis of information disclosed on or with the annual statement,

the amount of the unpaid losses shall be determined without regard to any reduction attributable to such discounting.

"(c) RATE OF INTEREST.—

"(1) IN GENERAL.—For purposes of this section, the rate of interest determined under this subsection shall be the annual rate determined by the Secretary under paragraph (2).

"(2) DETERMINATION OF ANNUAL RATE.—

"(A) IN GENERAL.—The annual rate determined by the Secretary under this paragraph for any calendar year shall be a rate equal to the average of the applicable Federal mid-term rates (as defined in section 1274(d) but based on annual compounding) effective as of the beginning of each of the calendar months in the test period.

"(B) TEST PERIOD.—For purposes of subparagraph (A), the test period is the most recent 60-calendar-month period ending before the beginning of the calendar year for which the determination is made; except that there shall be excluded from the test period any month beginning before August 1, 1986.

"(d) LOSS PAYMENT PATTERN.—

"(1) IN GENERAL.—For each determination year, the Secretary shall determine a loss payment pattern for each line of business by reference to the historical loss payment pattern applicable to such line of business. Any loss payment pattern determined by the Secretary shall apply to the accident year ending with the determination year and to each of the 4 succeeding accident years.

"(2) METHOD OF DETERMINATION.—Determinations under paragraph (1) for any determination year shall be made by the Secretary—

"(A) by using the aggregate experience reported on the annual statements of insurance companies,

"(B) on the basis of the most recent published aggregate data from such annual statements relating to loss payment patterns available on the 1st day of the determination year,

"(C) as if all losses paid or treated as paid during any year are paid in the middle of such year, and

"(D) in accordance with the computational rules prescribed in paragraph (3).

"(3) COMPUTATIONAL RULES.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the loss payment pattern for any line of business shall be based on the assumption that all losses are paid—

"(i) during the accident year and the 3 calendar years following the accident year, or

"(ii) in the case of any line of business reported in the schedule or schedules of the annual statement relating to auto liability, other liability, medical malpractice, workers' compensation, and multiple peril lines, during the accident year and the 10 calendar years following the accident year.

"(B) TREATMENT OF CERTAIN LOSSES.—Except as otherwise provided in this paragraph—

"(i) in the case of any line of business not described in subparagraph (A)(ii), losses paid after the 1st year following the accident year shall be treated as paid equally in the 2nd and 3rd year following the accident year, and

"(ii) in the case of a line of business described in subparagraph (A)(ii), losses paid after the close of the period applicable under subparagraph (A)(ii) shall be treated as paid in the last year of such period.

"(C) SPECIAL RULE FOR CERTAIN LONG-TAIL LINES.—In the case of any long-tail line of business—

"(i) the period taken into account under subparagraph (A)(ii) shall be extended (but not by more than 5 years) to the extent required under clause (ii), and

"(ii) the amount of losses which would have been treated as paid in the 10th year after the accident year shall be treated as paid in such 10th year and each subsequent year in an amount equal to the amount of the losses treated as paid in the 9th year after the accident year (or, if lesser, the portion of the unpaid losses not theretofore taken into account).

Notwithstanding clause (ii), to the extent such unpaid losses have not been treated as paid before the last year of the extension, they shall be treated as paid in such last year.

"(D) LONG-TAIL LINE OF BUSINESS.—For purposes of subparagraph (C), the term 'long-tail line of business' means any line of business described in subparagraph (A)(ii) if the amount of losses which (without regard to subparagraph (C)) would be treated as paid in the 10th year after the accident year exceeds the losses treated as paid in the 9th year after the accident year.

"(E) SPECIAL RULE FOR INTERNATIONAL AND REINSURANCE LINES OF BUSINESS.—Except as otherwise provided by regulations, any determination made under subsection (a) with respect to unpaid losses relating to the international or reinsurance lines of business shall be made using, in lieu of the loss payment pattern applicable to the respective lines of business, a pattern determined by the Secretary under paragraphs (1) and (2) based on the combined losses for all lines of business described in subparagraph (A)(ii).

"(F) ADJUSTMENTS IF LOSS EXPERIENCE INFORMATION AVAILABLE FOR LONGER PERIODS.—The Secretary shall make appropriate adjustments in the application of this paragraph if annual statement data with respect to payment of losses is available for longer periods after the accident year than the periods assumed under the rules of this paragraph.

"(G) SPECIAL RULE FOR 9TH YEAR IF NEGATIVE OR ZERO.—If the amount of the losses treated as paid in the 9th year after the accident year is zero or a negative amount, subparagraphs (C)(ii) and (D) shall be applied by substituting the average of the losses treated as paid in the 7th, 8th, and 9th years after the accident year for the losses treated as paid in the 9th year after the accident year.

"(4) DETERMINATION YEAR.—For purposes of this section, the term 'determination year' means calendar year 1987 and each 5th calendar year thereafter.

"(e) ELECTION TO USE COMPANY'S HISTORICAL PAYMENT PATTERN.—

"(1) IN GENERAL.—The taxpayer may elect to apply subsection (a)(2)(C) with respect to all lines of business by using a loss payment pattern determined by reference to the taxpayer's loss payment pattern for the most recent calendar year for which an annual statement was filed before the beginning of the accident year. Any such determination shall be made with the application of the rules of paragraphs (2)(C) and (3) of subsection (d).

"(2) ELECTION.—

"(A) IN GENERAL.—An election under paragraph (1) shall be made separately with respect to each determination year under subsection (d).

"(B) PERIOD FOR WHICH ELECTION IN EFFECT.—Unless revoked with the consent of the Secretary, an election under paragraph (1) with respect to any determination year shall apply to accident years ending with the determination year and to each of the 4 succeeding accident years.

"(C) TIME FOR MAKING ELECTION.—An election under paragraph (1) with respect to any determination year shall be made on the taxpayer's return for the taxable year in which (or with which) the determination year ends.

"(3) NO ELECTION FOR INTERNATIONAL OR REINSURANCE BUSINESS.—No election under this subsection shall apply to any international or reinsurance line of business.

"(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection including—

"(A) regulations providing that a taxpayer may not make an election under this subsection if such taxpayer does not have sufficient historical experience for the line of business to determine a loss payment pattern, and

"(B) regulations to prevent the avoidance (through the use of separate corporations or otherwise) of the requirement of this subsection that an election under this subsection applies to all lines of business of the taxpayer.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ACCIDENT YEAR.—The term 'accident year' means the calendar year in which the incident occurs which gives rise to the related unpaid loss.

"(2) UNPAID LOSS ADJUSTMENT EXPENSES.—The term 'unpaid losses' includes any unpaid loss adjustment expenses shown on the annual statement.

"(3) ANNUAL STATEMENT.—The term 'annual statement' means the annual statement approved by the National Association of Insurance Commissioners which the taxpayer is required to file with insurance regulatory authorities of a State.

"(4) LINE OF BUSINESS.—The term 'line of business' means a category for the reporting of loss payment patterns determined on the basis of the annual statement for fire and casualty insurance companies for the calendar year ending with or within the taxable year, except that the multiple peril lines shall be treated as a single line of business.

"(5) MULTIPLE PERIL LINES.—The term 'multiple peril lines' means the lines of business relating to farmowners multiple peril, homeowners multiple peril, commercial multiple peril, ocean marine, aircraft (all perils) and boiler and machinery.

"(6) SPECIAL RULE FOR CERTAIN ACCIDENT AND HEALTH INSURANCE LINES OF BUSINESS.—Any determination under subsection (a) with respect to unpaid losses relating to accident and health insurance lines of businesses (other than credit disability insurance) shall be made—

"(A) in the case of unpaid losses relating to disability income, by using the general rules prescribed under section 807(d) applicable to noncancellable accident and health insurance contracts and using a mortality or morbidity table reflecting the taxpayer's experience; except that—

"(i) the prevailing State assumed interest rate shall be the rate in effect for the year in which the loss occurred rather than the year in which the contract was issued, and

"(ii) the limitation of subsection (a)(3) shall apply in lieu of the limitation of the last sentence of section 807(d)(1), and

"(B) in all other cases, by using an assumption (in lieu of a loss payment pattern) that unpaid losses are paid during the year following the accident year.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

"(1) regulations providing proper treatment of allocated reinsurance, and

"(2) regulations providing proper treatment of salvage and reinsurance recoverable attributable to unpaid losses."

(d) CLERICAL AMENDMENT.—The table of sections for such part IV is amended by adding at the end thereof the following new item:

"Sec. 846. Discounted unpaid losses defined."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) TRANSITIONAL RULE.—For the first taxable year beginning after December 31, 1986—

(A) the unpaid losses and the expenses unpaid (as defined in paragraphs (5)(B) and (6) of section 832(b) of the Internal Revenue Code of 1986) at the end of the preceding taxable year, and

(B) the unpaid losses as defined in sections 807(c)(2) and 805(a)(1) of such Code at the end of the preceding taxable year,

shall be determined as if the amendments made by this section had applied to such unpaid losses and expenses unpaid in the preceding taxable year and by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987. For subsequent taxable years, such amendments shall be applied with respect to such unpaid losses and expenses unpaid by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987.

(3) FRESH START.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, any difference between—

(i) the amount determined to be the unpaid losses and expenses unpaid for the year preceding the 1st taxable year of an insurance company beginning after December 31, 1986, determined without regard to paragraph (2), and

(ii) such amount determined with regard to paragraph (2),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

(B) RESERVE STRENGTHENING IN YEARS AFTER 1985.—Subparagraph (A) shall not apply to any reserve strengthening in a taxable year beginning in 1986, and such strengthening shall be treated as occurring in the taxpayer's 1st taxable year beginning after December 31, 1986.

(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company.

SEC. 1024. REPEAL OF PROTECTION AGAINST LOSS ACCOUNT; REVISION OF SPECIAL TREATMENT FOR SMALL COMPANIES; COMBINATION OF PARTS II AND III.

(a) GENERAL RULE.—Subchapter L of chapter 1 is amended as follows:

(1) Part II (other than sections 822 and 826) is hereby repealed.

(2) Parts III and IV are hereby redesignated as parts II and III, respectively.

(3) Section 822 (relating to determination of taxable investment income) and section 826 (relating to election by reciprocal) are hereby redesignated as sections 834 and 835, respectively, and transferred to the end of part II (as redesignated by paragraph (2)).

(4) Section 831 is amended to read as follows:

"SEC. 831. TAX ON INSURANCE COMPANIES OTHER THAN LIFE INSURANCE COMPANIES.

"(a) GENERAL RULE.—Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company.

"(b) ALTERNATIVE TAX FOR CERTAIN SMALL COMPANIES.—

"(1) IN GENERAL.—In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b).

"(2) COMPANIES TO WHICH THIS SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to every insurance company other than life (including interinsurers and reciprocal underwriters) if—

"(i) the net written premiums (or, if greater, direct written premiums) for the taxable year exceed $350,000 but do not exceed $1,200,000, and

"(ii) such company elects the application of this subsection for such taxable year.

"(B) CONTROLLED GROUP RULES.—

"(i) IN GENERAL.—For purposes of subparagraph (A), in determining whether any company is described in clause (i) of subparagraph (A), such company shall be treated as receiving during the taxable year amounts described in such clause (i) which are received during such year by all other companies which are members of the same controlled group as the insurance company for which the determination is being made.

"(ii) CONTROLLED GROUP.—For purposes of clause (i), the term 'controlled group' means any controlled group of corporations (as defined in section 1563(a)); except that—

"(I) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a), and

"(II) subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

"(c) CROSS REFERENCES.—

"(1) For alternative tax in case of capital gains, see section 1201(a).

"(2) For taxation of foreign corporations carrying on an insurance business within the United States, see section 842.

"(3) For exemption from tax for certain insurance companies other than life, see section 501(c)(15).".

(b) REVISION OF EXEMPTION FROM TAX.—Paragraph (15) of section 501(c) (relating to list of exempt organizations) is amended to read as follows:

"(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.

"(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

"(C) For purposes of subparagraph (B), the term 'controlled group' has the meaning given such term by section 831(b)(2)(B)(ii)."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 832(b)(1) is amended by striking out "a mutual fire insurance company described in section 831(a)(3)(A)" and inserting in lieu thereof "a mutual fire insurance company exclusively issuing perpetual policies".

(2) Subparagraph (D) of section 832(b)(1) is amended to read as follows:

"(D) in the case of a mutual fire or flood insurance company whose principal business is the issuance of policies—

"(i) for which the premium deposits are the same (regardless of the length of the term for which the policies are written), and

"(ii) under which the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy,

an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to such policies after deduction of premium deposits returned or credited during the same taxable year, and".

(3) Paragraph (4) of section 832(b) is amended—

(A) by striking out "section 831(a)(3)(B)" each place it appears and inserting in lieu thereof "paragraph (1)(D)", and

(B) by striking out the last sentence and inserting in lieu thereof the following: "Premiums paid by the subscriber of a mutual flood insurance company described in paragraph (1)(D) or issuing exclusively perpetual policies shall be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company described in subparagraph (C) or (D) of paragraph (1)."

(4) Paragraph (5) of section 832(c) is amended by striking out "section 822(b)" and inserting in lieu thereof "section 834(b)".

(5) Paragraph (11) of section 832(c) is amended—

(A) by striking out "section 831(a)(3)(A)" and inserting in lieu thereof "subsection (b)(1)(C)", and

(B) by striking out "section 831(a)(3)(B)" and inserting in lieu thereof "subsection (b)(1)(D)".

(6) Section 832 is amended by adding at the end thereof the following new subsection:

"(f) INTERINSURERS.—In the case of a mutual insurance company which is an interinsurer or reciprocal underwriter—

"(1) there shall be allowed as a deduction the increase for the taxable year in savings credited to subscriber accounts, or

"(2) there shall be included as an item of gross income the decrease for the taxable year in savings credited to subscriber accounts.

For purposes of the preceding sentence, the term 'savings credited to subscriber accounts' means such portion of the surplus as is credited to the individual accounts of subscribers before the 16th day of the 3rd month following the close of the taxable year, but only if the company would be obligated to pay such amount promptly to such subscriber if he terminated his contract at the close of the company's taxable year. For purposes of determining his taxable income, the subscriber shall treat any such savings credited to his account as a dividend paid or declared."

(7) Subsection (a) of section 834 (as redesignated by subsection (a)) is amended to read as follows:

"(a) GENERAL RULE.—For purposes of section 831(b), the term 'taxable investment income' means the gross investment income, minus the deductions provided in subsection (c)."

(8) Subsection (d) of section 834 (as so redesignated) is amended—

(A) by striking out "section 821" each place it appears and inserting in lieu thereof "section 831", and

(B) by inserting before the period at the end of the last sentence of paragraph (2) the following:

"except in the case of discount which is original issue discount (as defined in section 1273)".

(9) Section 835 (as redesignated by subsection (a)) is amended—

(A) by striking out subsection (d) and by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively, and

(B) by amending subsection (e) (as so redesignated) to read as follows:

"(e) BENEFITS OF GRADUATED RATES DENIED.—Any increase in the taxable income of a reciprocal attributable to the limits provided in subsection (b) shall be taxed at the highest rate of tax specified in section 11(b)."

(10) Section 841 is amended—

(A) by striking out "section 801, 821, or 831" and inserting in lieu thereof "section 801 or 831",

(B) by inserting "and" at the end of paragraph (1),

(C) by striking out paragraph (2), and

(D) by redesignating paragraph (3) as paragraph (2).

(11) Section 842 is amended by striking out "part I, II, or III" and inserting in lieu thereof "part I or II".

(12) Section 844 is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) GENERAL RULE.—If an insurance company—

"(1) is subject to the tax imposed by part I or II of this subchapter for the taxable year, and

"(2) was subject to the tax imposed by a different part of this subchapter for the taxable year,

then any operations loss carryover under section 810 (or the corresponding provisions of prior law) or net operating loss carryover under section 172 (as the case may be) arising in such prior taxable year shall be included in its operations loss deduction under section 810(a) or net operating loss deduction under section 832(c)(10), as the case may be.

"(b) LIMITATION.—The amount included under section 810(a) or 832(c)(10) (as the case may be) by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years the company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence, section 810(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply."

(13) Section 891 is amended by striking out "821,".

(14) Subsection (a) of section 1201 is amended by striking out "821(a) or (c) and 831(a)" and inserting in lieu thereof "831(a) or (b)".

(15) Paragraph (2) of section 1504(b) is amended by striking out "or 821".

(16) Paragraph (2)(A) of section 1504(c) is amended by striking out "or 821".

(17) Subparagraph (D) of section 1563(b)(2) is amended by striking out "or section 821".

(18) The table of sections for part II of subchapter L of chapter 1 (as redesignated by subsection (a)) is amended by adding at the end thereof the following new items:

"Sec. 834. Determination of taxable investment income.

"Sec. 835. Election by reciprocal."

(d) TRANSITIONAL RULES.—

(1) TREATMENT OF AMOUNTS IN PROTECTION AGAINST LOSS ACCOUNT.—In the case of any insurance company which had a protection against loss account for its last taxable year beginning before January 1, 1987, there shall be included in the gross income of such company for any taxable year beginning after December 31, 1986, the amount which would have been included in gross income for such taxable year under section 824 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act). For purposes of the preceding sentence, no addition to such account shall be made for any taxable year beginning after December 31, 1986.

(2) TRANSITIONAL RULE FOR UNUSED LOSS CARRYOVER UNDER SECTION 825.—Any unused loss carryover under section 825 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) which—

(A) is from a taxable year beginning before January 1, 1987, and

(B) could have been carried under such section to a taxable year beginning after December 31, 1986, but for the repeal made by subsection (a)(1),

shall be included in the net operating loss deduction under section 832(c)(10) of such Code without regard to the limitations of section 844(b) of such Code.

(e) EFFECTIVE DATE.—The amendments made by this section (and the provisions of subsection (d)) shall apply to taxable years beginning after December 31, 1986.

SEC. 1025. STUDY OF TREATMENT OF PROPERTY AND CASUALTY INSURANCE COMPANIES.

The Secretary of the Treasury or his delegate shall conduct a study of—

(1) the treatment of policyholder dividends by mutual property and casualty insurance companies,

(2) the treatment of property and casualty insurance companies under the minimum tax, and

(3) the operation and effect of, and revenue raised by, the amendments made by this subtitle.

Not later than January 1, 1989, such Secretary shall submit to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation, the results of such study, together with such recommendations as he determines to be appropriate. The Secretary of the Treasury shall have authority to require the furnishing of such information as may be necessary to carry out the purposes of this section.

SUBTITLE D—MISCELLANEOUS PROVISIONS

SEC. 1031. PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.

(a) CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.—

(1) TREATMENT OF ARRANGEMENTS OR ASSOCIATIONS.—

(A) CAPITAL CONTRIBUTIONS.—There shall not be included in the gross income of any eligible physicians' and surgeons' mutual protection and interindemnity arrangement or association any initial payment made during any taxable year to such arrangement or association by a member joining such arrangement or association which—

(i) does not release such member from obligations to pay current or future dues, assessments, or premiums; and

(ii) is a condition precedent to receiving benefits of membership.

Such initial payment shall be included in the gross income of such arrangement or association for such taxable year if it is reasonable to expect that such payment will be deductible pursuant to paragraph (2) by any member of such arrangement or association.

(B) RETURN OF CONTRIBUTIONS.—

(i) IN GENERAL.—The repayment to any member of any amount of any payment excluded under subparagraph (A) shall not be treated as policyholder dividend, and is not deductible by the arrangement or association.

(ii) SOURCE OF RETURNS.—Except in the case of the termination of a member's interest in the arrangement or association, any amount distributed to any member shall be treated as paid out of surplus in excess of amounts excluded under subparagraph (A).

(2) DEDUCTION FOR MEMBERS OF ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—

(A) PAYMENT AS TRADE OR BUSINESS EXPENSES.—To the extent not otherwise allowable under this title, any member of any eligible arrangement or association may treat any initial payment made during a taxable year to such arrangement or association as an ordinary and necessary expense incurred in connection with a trade or business for purposes of the deduction allowable under section 162, to the extent such payment does not exceed the amount which would be payable to an independent insurance company for similar annual insurance coverage (as determined by the Secretary), and further reduced by any annual dues, assessments, or premiums paid during such taxable year. Such deduction shall not be allowable as to any initial payment made to an eligible arrangement or association by any person who is a member of any other eligible arrangement or association on or after the effective date of the Tax Reform Act of 1986. Any excess amount not allowed as a deduction for the taxable year in which such payment was made pursuant to the limitation contained in the 1st sentence of this subparagraph shall, subject to such limitation, be allowable as a deduction in any of the 5 succeeding taxable years, in order of time, to the extent not previously allowed as a deduction under this sentence.

(B) REFUNDS OF INITIAL PAYMENTS.—Any amount attributable to any initial payment to such arrangement or association described in paragraph (1) which is later refunded for any reason shall be included in the gross income of the recipient in the taxable year received, to the extent a deduction for such payment was allowed. Any amount refunded in excess of such payment shall be included in gross income except to the extent otherwise excluded from income by this title.

(3) ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—The terms "eligible physicans' and surgeons' mutual protection and interindemnity arrangement or association" and "eligible arrangement or association" mean and are limited to any mutual protection and interindemnity arrangement or association that provides only medical malpractice liability protection for its members or medical malpractice liability protection in conjunction with protection against other liability claims incurred in the course of, or related to, the professional practice of a physician or surgeon and which—

(A) was operative and was providing such protection, or had received a permit for the offer and sale of memberships, under the laws of any State before January 1, 1984,

(B) is not subject to regulation by any State insurance department,

(C) has a right to make unlimited assessments against all members to cover current claims and losses, and

(D) is not a member of, nor subject to protection by, any insurance guaranty plan or association of any State.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to payments made to and receipts of physicians' and surgeons' mutual protection and interindemnity arrangements or associations, and refunds of payments by such arrangements or associations, after the date of the enactment of this Act, in taxable years ending after such date.

TITLE XI—PENSIONS AND DEFERRED COMPENSATION; EMPLOYEE BENEFITS; EMPLOYEE STOCK OWNERSHIP PLANS

SUBTITLE A—PENSIONS AND DEFERRED COMPENSATION

PART I—LIMITATIONS ON TAX-DEFERRED SAVINGS

Subpart A—Rules Applicable to IRAs

SEC. 1101. LIMITATIONS ON IRA DEDUCTIONS FOR ACTIVE PARTICIPANTS IN CERTAIN PENSION PLANS.

(a) LIMITATIONS ON DEDUCTIONS FOR ACTIVE PARTICIPANTS.—

(1) IN GENERAL.—Section 219 (relating to deduction for retirement savings) is amended by redesignating subsection (g) as subsection (h) and by adding after subsection (f) the following new subsection:

"(g) LIMITATION ON DEDUCTION FOR ACTIVE PARTICIPANTS IN CERTAIN PENSION PLANS.—

"(1) IN GENERAL.—If (for any part of any plan year ending with or within a taxable year) an individual or the individual's spouse is an active participant, each of the dollar limitations contained in subsections (b)(1)(A) and (c)(2) for such taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—

"(A) IN GENERAL.—The amount determined under this paragraph with respect to any dollar limitation shall be the amount which bears the same ratio to such limitation as—

"(i) the excess of—

"(I) the taxpayer's adjusted gross income for such taxable year, over

"(II) the applicable dollar amount, bears to

"(ii) $10,000.

"(B) NO REDUCTION BELOW $200 UNTIL COMPLETE PHASE-OUT.—No dollar limitation shall be reduced below $200 under paragraph (1) unless (without regard to this subparagraph) such limitation is reduced to zero.

"(C) ROUNDING.—Any amount determined under this paragraph which is not a multiple of $10 shall be rounded to the next lowest $10.

"(3) ADJUSTED GROSS INCOME; APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection—

"(A) ADJUSTED GROSS INCOME.—Adjusted gross income of any taxpayer shall be determined—

"(i) after application of sections 86 and 469, and

"(ii) without regard to section 911 or the deduction allowable under this section.

"(B) APPLICABLE DOLLAR AMOUNT.—The term 'applicable dollar amount' means—

"(i) in the case of a taxpayer filing a joint return, $40,000,

"(ii) in the case of any other taxpayer (other than a married individual filing a separate return), $25,000, and

"(iii) in the case of a married individual filing a separate return, zero.

"(4) SPECIAL RULE FOR MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return for any taxable year, paragraph (1) shall be applied without regard to whether such individual's spouse is an active participant for any plan year ending with or within such taxable year.

"(5) ACTIVE PARTICIPANT.—For purposes of this subsection, the term 'active participant' means, with respect to any plan year, an individual—

"(A) who is an active participant in—

"(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(ii) an annuity plan described in section 403(a),

"(iii) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing,

"(iv) an annuity contract described in section 403(b), or

"(v) a simplified employee pension (within the meaning of section 408(k)), or

"(B) who makes deductible contributions to a trust described in section 501(c)(18).

The determination of whether an individual is an active participant shall be made without regard to whether or not such individual's rights under a plan, trust, or contract are nonforfeitable. An eligible deferred compensation plan (within the meaning of section 457(b)) shall not be treated as a plan described in subparagraph (A)(iii).

"(6) CERTAIN INDIVIDUALS NOT TREATED AS ACTIVE PARTICIPANTS.—For purposes of this subsection, any individual described in any of the following subparagraphs shall not be treated as an active participant for any taxable year solely because of any participation so described:

"(A) MEMBERS OF RESERVE COMPONENTS.—Participation in a plan described in subparagraph (A)(iii) of paragraph (5) by reason of service as a member of a reserve component of the Armed Forces (as defined in section 261(a) of title 10), unless such individual has served in excess of 90 days on active duty (other than active duty for training) during the year.

"(B) VOLUNTEER FIREFIGHTERS.—A volunteer firefighter—

"(i) who is a participant in a plan described in subparagraph (A)(iii) of paragraph (5) based on his activity as a volunteer firefighter, and

"(ii) whose accrued benefit as of the beginning of the taxable year is not more than an annual benefit of $1,800 (when expressed as a single life annuity commencing at age 65)."

(2) CONFORMING AMENDMENT.—Section 219(f)(3) is amended to read as follows:

"(3) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof)."

(b) REPEAL OF DEDUCTION FOR QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (e) of section 219 (relating to defining retirement savings contributions) is amended to read as follows:

"(e) QUALIFIED RETIREMENT CONTRIBUTION.—For purposes of this section, the term 'qualified retirement contribution' means—

"(1) any amount paid in cash for the taxable year by or on behalf of an individual to an individual retirement plan for such individual's benefit, and

"(2) any amount contributed on behalf of any individual to a plan described in section 501(c)(18)."

(2) CONFORMING AMENDMENTS.—

(A) Section 219(b) is amended by striking out paragraph (3).

(B) Paragraph (3) of section 72(p) is amended to read as follows:

"(3) QUALIFIED EMPLOYER PLAN, ETC.—For purposes of this subsection—

"(A) QUALIFIED EMPLOYER PLAN.—

"(i) IN GENERAL.—The term 'qualified employer plan' means—

"(I) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(II) an annuity plan described in section 403(a), and

"(III) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

"(ii) SPECIAL RULES.—The term 'qualified employer plan'—

"(I) shall include any plan which was (or was determined to be) a qualified employer plan or a government plan, but

"(II) shall not include a plan described in subsection (e)(7).

"(B) GOVERNMENT PLAN.—The term 'government plan' means any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing."

(C) Paragraph (5) of section 72(o) is amended—

(i) by inserting "and made for a taxable year beginning before January 1, 1987," after "date" in subparagraph (A),

(ii) by striking out "section 219(e)(3)" in subparagraph (C) and inserting in lieu thereof "subsection (p)(3)(A)(i)", and

(iii) by striking out "section 219(e)(4)" in subparagraph (D) and inserting in lieu thereof "subsection (p)(3)(B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 1986.

SEC. 1102. NONDEDUCTIBLE CONTRIBUTIONS MAY BE MADE TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Section 408 (relating to individual retirement accounts) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) DEFINITIONS AND RULES RELATING TO NONDEDUCTIBLE CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.—

"(1) IN GENERAL.—Subject to the provisions of this subsection, designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

"(2) LIMITS ON AMOUNTS WHICH MAY BE CONTRIBUTED.—

"(A) IN GENERAL.—The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

"(B) NONDEDUCTIBLE LIMIT.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'nondeductible limit' means the excess of—

"(I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g)), over

"(II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g)).

"(ii) TAXPAYER MAY ELECT TO TREAT DEDUCTIBLE CONTRIBUTIONS AS NONDEDUCTIBLE.—If a taxpayer elects not to deduct an amount which (without regard to this clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

"(C) DESIGNATED NONDEDUCTIBLE CONTRIBUTIONS.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'designated nondeductible contribution' means any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219.

"(ii) DESIGNATION.—Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

"(3) TIME WHEN CONTRIBUTIONS MADE.—In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f)(3) shall apply.

"(4) INDIVIDUAL REQUIRED TO REPORT AMOUNT OF DESIGNATED NONDEDUCTIBLE CONTRIBUTIONS.—

"(A) IN GENERAL.—Any individual who—
"(i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or
"(ii) receives any amount from any individual retirement plan for any taxable year,
shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B).
"(B) INFORMATION REQUIRED TO BE SUPPLIED.—The following information is described in this subparagraph:
"(i) The amount of designated nondeductible contributions for the taxable year.
"(ii) The amount of distributions from individual retirement plans for the taxable year.
"(iii) The excess (if any) of—
"(I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over
"(II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.
"(iv) The aggregate balance of all individual retirement plans of the individual as of the close of the calendar year with or within which the taxable year ends.
"(v) Such other information as the Secretary may prescribe.
"(C) PENALTY FOR REPORTING CONTRIBUTIONS NOT MADE.—

"For penalty where individual reports designated nondeductible contributions not made, see section 6693(b)."

(b) EXCESS CONTRIBUTIONS.—
(1) APPLICATION OF TAX.—Section 4973(b) (defining excess contributions) is amended by adding at the end thereof the following new sentence: "For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 (after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B).
(2) RETURN OF EXCESS CONTRIBUTIONS.—Paragraph (5) of section 408(d) (relating to tax treatment of distributions) is amended by adding at the end thereof the following new sentence: For purposes of this paragraph, the amount allowable as a deduction under section 219 (after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B)."
(c) TREATMENT OF DISTRIBUTIONS.—Paragraphs (1) and (2) of section 408(d) (relating to tax treatment of distributions) are amended to read as follows:
"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.
"(2) SPECIAL RULES FOR APPLYING SECTION 72.—For purposes of applying section 72 to any amount described in paragraph (1)—
"(A) all individual retirement plans shall be treated as 1 contract,
"(B) all distributions during any taxable year shall be treated as 1 distribution, and
"(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year with or within which the taxable year ends.
For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year."
(d) PENALTY FOR REPORTING NONDEDUCTIBLE CONTRIBUTIONS NOT MADE.—
(1) IN GENERAL.—Section 6693 (relating to failure to provide reports on individual retirement accounts or annuities) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:
"(b) OVERSTATEMENT OF DESIGNATED NONDEDUCTIBLE CONTRIBUTIONS.—Any individual who—
"(1) is required to furnish information under section 408(o)(4) as to the amount of designated nondeductible contributions made for any taxable year, and
"(2) overstates the amount of such contributions made for such taxable year,
shall pay a penalty of $100 for each such overstatement unless it is shown that such overstatement is due to reasonable cause."
(2) CONFORMING AMENDMENTS.—
(A) Section 6693(c), as redesignated by paragraph (1), is amended by striking out "subsection (a)" and inserting in lieu thereof "this section".
(B) The heading for section 6693 is amended by inserting "; OVERSTATEMENT OF DESIGNATED NONDEDUCTIBLE CONTRIBUTIONS" after "ANNUITIES".
(C) The item relating to section 6693 in the table of sections for subchapter B of chapter 68 is amended by inserting "; overstatement of designated nondeductible contributions" after "annuities".
(e) SPECIAL RULES RELATING TO REQUIREMENTS OF TRUSTEES OF INDIVIDUAL RETIREMENT PLANS.—
(1) WITHHOLDING.—Subparagraph (B) of section 3405(d)(1) (relating to exceptions) is amended by adding at the end thereof the following new flush sentence:
"For purposes of clause (ii), any distribution or payment from or under an individual retirement plan shall be treated as includible in gross income."
(2) TIME FOR REPORTING INFORMATION WITH RESPECT TO INDIVIDUAL RETIREMENT PLANS.—The last sentence of section 408(i) (relating to reports) is amended to read as follows:
"The reports required by this subsection—
"(1) shall be filed at such time and in such manner as the Secretary prescribes in such regulations, and
"(2) shall be furnished to individuals—
"(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and
"(B) in such manner as the Secretary prescribes in such regulations."
(f) CONFORMING AMENDMENT.—Section 219(f) (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:
"(7) ELECTION NOT TO DEDUCT CONTRIBUTIONS.—

"For election not to deduct contributions to individual retirement plans, see section 408(o)(2)(B)(ii)."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions and distributions for taxable years beginning after December 31, 1986.

SEC. 1102. SPOUSAL DEDUCTION ALLOWED WHERE SPOUSE HAS SMALL AMOUNT OF EARNED INCOME.

(a) IN GENERAL.—Subparagraph (B) of section 219(c)(1) (relating to special rules for certain married individuals) is amended to read as follows:
"(B) whose spouse—
"(i) has no compensation (determined without regard to section 911) for the taxable year, or
"(ii) elects to be treated for purposes of subsection (b)(1)(B) as having no compensation for the taxable year,"
(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning before, on, or after December 31, 1985.

Subpart B—Other Provisions

SEC. 1105. $7,000 LIMITATION ON ELECTIVE DEFERRALS.

(a) GENERAL RULE.—Section 402 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end thereof the following new subsection:
"(g) LIMITATION ON EXCLUSION FOR ELECTIVE DEFERRALS.—
"(1) IN GENERAL.—Notwithstanding subsections (a)(8) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000.
"(2) REQUIRED DISTRIBUTION OF EXCESS DEFERRALS.—
"(A) IN GENERAL.—If any amount (hereinafter in this paragraph referred to as 'excess deferrals') is included in the gross income of an individual under paragraph (1) for any taxable year—
"(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and
"(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount).
The distribution described in clause (ii) may be made notwithstanding any other provision of law.
"(B) TREATMENT OF DISTRIBUTION UNDER SECTION 401(k).—Except to the extent provided under rules prescribed by the Secretary, notwithstanding the distribution of any portion of an excess deferral from a plan under subparagraph (A)(ii), such portion shall, for purposes of applying section 401(k)(3)(A)(ii), be treated as an employer contribution.
"(C) TAXATION OF DISTRIBUTION.—In the case of a distribution to which subparagraph (A) applies—
"(i) except as provided in clause (ii), such distribution shall not be included in gross income (and no tax shall be imposed under section 72(t)), and
"(ii) any income on the excess deferral shall, for purposes of this chapter, be treated as earned and received in the taxable year in which such excess deferral is made.
"(3) ELECTIVE DEFERRALS.—For purposes of this paragraph, the term 'elective deferrals' means, with respect to any taxable year, the sum of—
"(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (a)(8) (determined without regard to this subsection),
"(B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B) (determined without regard to this subsection), and
"(C) any employer contribution to purchase an annuity contract under section

403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).

"(4) INCREASE IN LIMIT FOR AMOUNTS CONTRIBUTED UNDER SECTION 403(b) CONTRACTS.—The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C).

"(5) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d).

"(6) DISREGARD OF COMMUNITY PROPERTY LAWS.—This subsection shall be applied without regard to community property laws.

"(7) COORDINATION WITH SECTION 72.—For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

"(8) SPECIAL RULE FOR CERTAIN ORGANIZATIONS.—

"(A) IN GENERAL.—In the case of a qualified employee of a qualified organization, with respect to employer contributions described in paragraph (3)(C) made by such organization, the limitation of paragraph (1) for any taxable year shall be increased by whichever of the following is the least:

"(i) $3,000,

"(ii) $15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or

"(iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years.

"(B) QUALIFIED ORGANIZATION.—For purposes of this paragraph, the term 'qualified organization' means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4).

"(C) QUALIFIED EMPLOYEE.—For purposes of this paragraph, the term 'qualified employee' means any employee who has completed 15 years of service with the qualified organization."

(b) REPORTING REQUIREMENTS.—Section 6051(a) (relating to requirements of receipts for employees) is amended by striking "and" at the end of paragraph (6), by striking the period at the end of paragraph (7), and by inserting after paragraph (7) the following new paragraph:

"(8) the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

(2) DEFERRALS UNDER COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendment made by subsection (a) shall not apply to contributions made pursuant to such an agreement for taxable years beginning before the earlier of—

(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1989.

Such contributions shall be taken into account for purposes of applying the amendment made by this section to other plans.

(3) DISTRIBUTIONS MADE BEFORE PLAN AMENDMENT.—

(A) IN GENERAL.—If a plan amendment is required to allow the plan to make any distribution described in section 402(g)(2)(A)(ii) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 shall be treated as made in accordance with the provisions of such plan.

(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 402(g)(2)(A)(ii) of such Code.

(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

(4) SPECIAL RULE FOR TAXABLE YEARS OF PARTNERSHIPS WHICH INCLUDE JANUARY 1, 1987.—In the case of the taxable year of any partnership which begins before January 1, 1987, and ends after January 1, 1987, elective deferrals (within the meaning of section 402(g)(3) of the Internal Revenue Code of 1986) made on behalf of a partner for such taxable year shall, for purposes of section 402(g)(3) of such Code, be treated as having been made ratably during such taxable year.

(5) CASH OR DEFERRED ARRANGEMENTS.—The amendments made by this section shall not apply to employer contributions made during 1987 and attributable to services performed during 1986 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of such arrangement as in effect on August 16, 1986—

(A) the employee makes an election with respect to such contribution before January 1, 1987, and

(B) the employer identifies the amount of such contribution before January 1, 1987.

SEC. 1106. ADJUSTMENTS TO LIMITATIONS ON CONTRIBUTIONS AND BENEFITS UNDER QUALIFIED PLANS.

(a) ADJUSTMENT OF ANNUAL CONTRIBUTION LIMITS.—Subparagraph (A) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended to read as follows:

"(A) $30,000 (or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A)), or".

(b) ADJUSTMENT OF DEFINED BENEFIT PLAN LIMITS.—

(1) USE OF SOCIAL SECURITY RETIREMENT AGE.—

(A) IN GENERAL.—Subparagraphs (C) and (D) of section 415(b)(2) are each amended—

(i) by striking out "age 62" and "age 65" each place they appear and inserting in lieu thereof "the social security retirement age", and

(ii) by striking out the last sentence of subparagraph (C) and inserting in lieu thereof the following: "The reduction under this subparagraph shall be made in such manner as the Secretary may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the social security retirement age under the Social Security Act."

(B) DEFINITION OF SOCIAL SECURITY RETIREMENT AGE.—Section 415(b) is amended by adding at the end thereof the following new paragraph:

"(8) SOCIAL SECURITY RETIREMENT AGE DEFINED.—For purposes of this subsection, the term 'social security retirement age' means the age used as the retirement age under section 216(l) of the Social Security Act, except that such section shall be applied—

"(A) without regard to the age increase factor, and

"(B) as if the early retirement age under section 216(l)(2) of such Act were 62."

(2) SPECIAL RULES FOR GOVERNMENTAL AND TAX-EXEMPT PLANS AND QUALIFIED POLICE AND FIREFIGHTERS.—Paragraph (2) of section 415(b) (relating to annual benefit) is amended by adding at the end thereof the following new subparagraphs:

"(F) PLANS MAINTAINED BY GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—In the case of a governmental plan (within the meaning of section 414(d)), a plan maintained by an organization (other than a governmental unit) exempt from tax under this subtitle, or a qualified merchant marine plan—

"(i) subparagraph (C) shall be applied—

"(I) by substituting 'age 62' for 'social security retirement age' each place it appears, and

"(II) as if the last sentence thereof read as follows: 'The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below (i) $75,000 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the equivalent of the $75,000 limitation for age 55', and

"(ii) subparagraph (D) shall be applied by substituting 'age 65' for 'social security retirement age' each place it appears.

For purposes of this subparagraph, the term 'qualified merchant marine plan' means a plan in existence on January 1, 1986, the participants in which are merchant marine officers holding licenses issued by the Secretary of Transportation under title 46, United States Code.

"(G) SPECIAL LIMITATION FOR QUALIFIED POLICE OR FIREFIGHTERS.—In the case of a qualified participant—

"(i) subparagraph (C) shall not reduce the limitation of paragraph (1)(A) to an amount less than $50,000, and

"(ii) the rules of subparagraph (F) shall apply.

The Secretary shall adjust the $50,000 amount in clause (i) at the same time and in the same manner as under section 415(d).

"(H) QUALIFIED PARTICIPANT DEFINED.—For purposes of subparagraph (G), the term 'qualified participant' means a participant—

"(i) in a defined benefit plan which is maintained by a State or political subdivision thereof,

"(ii) with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 20 years of service of the participant—

"(I) as a full-time employee of any police department or fire department which is organized and operated by the State or political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision, or

"(II) as a member of the Armed Forces of the United States."

(3) TREATMENT OF AIRLINE PILOTS.—Subsection (b) of section 415 (relating to limitation for defined benefit plans) is amended by adding at the end thereof the following new paragraph:

"(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot—

"(i) the rule of paragraph (2)(F)(i)(II) shall apply, and

"(ii) if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before the social security retirement age, paragraph (2)(C) (after application of clause (i)) shall be applied by substituting such age for the social security retirement age.

"(B) INDIVIDUALS WHO SEPARATE FROM SERVICE BEFORE AGE 60.—If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(F) shall apply."

(4) SPECIAL ELECTIONS FOR SECTION 403(b) CONTRACTS.—Subparagraphs (A), (B), and (C) of section 415(c)(4) are each amended by inserting "a health and welfare service agency," after "a home health service agency,".

(c) CONTRIBUTIONS TO COST-OF-LIVING ARRANGEMENTS UNDER DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 415(k) (relating to special rules for limitations on benefits and contributions under qualified plans) is amended by adding at the end thereof the following new paragraph:

"(2) CONTRIBUTIONS TO PROVIDE COST-OF-LIVING PROTECTION UNDER DEFINED BENEFIT PLANS.—

"(A) IN GENERAL.—In the case of a defined benefit plan which maintains a qualified cost-of-living arrangement—

"(i) any contribution made directly by an employee under such arrangement—

"(I) shall not be treated as an annual addition for purposes of subsection (c), but

"(II) shall be so treated for purposes of subsection (e), and

"(ii) any benefit under such arrangement which is allocable to an employer contribution which was transferred from a defined contribution plan and to which the requirements of subsection (c) were applied shall, for purposes of subsection (b), be treated as a benefit derived from an employee contribution (and subsections (c) and (e) shall not again apply to such contribution by reason of such transfer).

"(B) QUALIFIED COST-OF-LIVING ARRANGEMENT DEFINED.—For purposes of this paragraph, the term 'qualified cost-of-living arrangement' means an arrangement under a defined benefit plan which—

"(i) provides a cost-of-living adjustment to a benefit provided under such plan or a separate plan subject to the requirements of section 412, and

"(ii) meets the requirements of subparagraphs (C), (D), (E), and (F) and such other requirements as the Secretary may prescribe.

"(C) DETERMINATION OF AMOUNT OF BENEFIT.—An arrangement meets the requirement of this subparagraph only if the cost-of-living adjustment of participants is based—

"(i) on increases in the cost-of-living after the annuity starting date, and

"(ii) on average cost-of-living increases determined by reference to 1 or more indexes prescribed by the Secretary, except that the arrangement may provide that the increase for any year will not be less than 3 percent of the retirement benefit (determined without regard to the arrangement).

"(D) ARRANGEMENT ELECTIVE; TIME FOR ELECTION.—An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may be made in—

"(i) the year in which the participant—

"(I) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

"(II) separates from service, or

"(ii) both such years.

"(E) NONDISCRIMINATION REQUIREMENTS.—An arrangement shall not meet the requirements of this subparagraph if the Secretary finds that a pattern of discrimination exists with respect to participation.

"(F) SPECIAL RULES FOR KEY EMPLOYEES.—

"(i) IN GENERAL.—An arrangement shall not meet the requirements of this paragraph if any key employee is eligible to participate.

"(ii) KEY EMPLOYEE.—For purposes of this subparagraph, the term 'key employee' has the meaning given such term by section 416(i)(1), except that in the case of a plan other than a top-heavy plan (within the meaning of section 416(g)), such term shall not include an individual who is a key employee solely by reason of section 416(i)(1)(A)(i)."

(2) CERTAIN TRANSFERS TO DEFINED BENEFIT PLANS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF LUMP SUM DISTRIBUTION.—Section 402(e)(4) (relating to special rules for lump sum distributions) is amended by adding at the end thereof the following new subparagraph:

"(N) TRANSFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION.—For purposes of this subsection, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan."

(d) LIMITATION ON AMOUNT OF ANNUAL COMPENSATION WHICH MAY BE TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Subsection (a) of section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by inserting after paragraph (16) the following new paragraph:

"(17) A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d)."

(2) DEDUCTION FOR EMPLOYER CONTRIBUTIONS.—Section 404 (relating to deduction for contributions of employers to plans) is amended by adding at the end thereof the following new subsection:

"(l) LIMITATION ON AMOUNT OF ANNUAL COMPENSATION TAKEN INTO ACCOUNT.—For purposes of applying the limitations of this section, the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d)."

(3) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 416 is amended by inserting "and" at the end of paragraph (1), by striking out ", and" at the end of paragraph (2) and inserting in lieu thereof a period, and by striking out paragraph (3).

(B)(i) Subsection (d) of section 416 is hereby repealed.

(ii) Section 416(c)(2)(B) is amended by striking out clause (ii) and by redesignating clause (iii) as clause (ii).

(C) Paragraph (3) of section 818(a) is amended by inserting "(17)," after "(16),".

(e) TREATMENT OF EMPLOYEE CONTRIBUTIONS FOR PURPOSES OF DETERMINING ANNUAL ADDITION.—

(1) IN GENERAL.—Subparagraph (B) of section 415(c)(2) (defining annual addition) is amended to read as follows:

"(B) the employee contributions, and".

(2) ANNUAL COMPENSATION LIMIT NOT TO APPLY TO CONTRIBUTIONS FOR POST-RETIREMENT MEDICAL BENEFITS.—Section 415(c)(2) is amended by adding at the end thereof the following new sentence: "Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition."

(f) PHASE-IN OF LIMITATION FOR DEFINED BENEFIT PLANS BASED ON YEARS OF PARTICIPATION.—Paragraph (5) of section 415(b) (relating to reduction for service less than 10 years) is amended to read as follows:

"(5) REDUCTION FOR PARTICIPATION OR SERVICE OF LESS THAN 10 YEARS.—

"(A) DOLLAR LIMITATION.—In the case of an employee who has less than 10 years of participation in a defined benefit plan, the limitation referred to in paragraph (1)(A) shall be the limitation determined under such paragraph (without regard to this paragraph) multiplied by a fraction—

"(i) the numerator of which is the number of years (or part thereof) of participation in the defined benefit plan of the employer, and

"(ii) the denominator of which is 10.

"(B) COMPENSATION AND BENEFITS LIMITATIONS.—The provisions of subparagraph (A) shall apply to the limitations under paragraphs (1)(B) and (4), except that such subparagraph shall be applied with respect to years of service with an employer rather than years of participation in a plan.

"(C) LIMITATION ON REDUCTION.—In no event shall subparagraph (A) or (B) reduce the limitations referred to in paragraphs (1) and (4) to an amount less than 1/10 of such limitation (determined without regard to this paragraph).

"(D) APPLICATION TO CHANGES IN BENEFIT STRUCTURE.—To the extent provided in regulations, this paragraph shall be applied separately with respect to each change in the benefit structure of a plan."

(g) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 415(d) is amended by inserting "and" at the end of subparagraph (A), by striking out subparagraph (B), and by redesignating subparagraph (C) as paragraph (B).

(2) Paragraph (2) of section 415(d) is amended—

(A) by striking out "subparagraphs (A) and (B)" and inserting in lieu thereof "subparagraph (A)", and

(B) by striking out "subparagraph (C)" and inserting in lieu thereof "subparagraph (B)".

(3) Paragraph (3) of section 415(d) is amended by striking out "subparagraph (A) or (B)" and inserting in lieu thereof "subparagraph (A)".

(h) PLANS MAY INCORPORATE SECTION 415 LIMITATIONS BY REFERENCE.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the limitations under section 415 of the Internal Revenue Code of 1986.

(i) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to years beginning after December 31, 1986.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1; 1986, the amendments made by this section (other than subsection (d)) shall not apply to contributions or benefits pursuant to such agreement in years beginning before the earlier of—

(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1989.

(3) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

(A) IN GENERAL.—In the case of an individual who is a participant (as of the 1st day of the 1st year to which the amendments made by this section apply) in a defined benefit plan which is in existence on May 6, 1986, and with respect to which the requirements of section 415 of the Internal Revenue Code of 1986 have been met for all plan years, if such individual's current accrued benefit under the plan exceeds the limitation of subsection (b) of section 415 of such Code (as amended by this section), then (in the case of such plan), for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b)(1)(A) with respect to such individual shall be equal to such current accrued benefit.

(B) CURRENT ACCRUED BENEFIT DEFINED.—

(i) IN GENERAL.—For purposes of this paragraph, the term "current accrued benefit" means the individual's accrued benefit (at the close of the last year to which the amendments made by this section do not apply) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code).

(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

(I) no change in the terms and conditions of the plan after May 5, 1986, and

(II) no cost-of-living adjustment occurring after May 5, 1986,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement ratified before May 6, 1986, shall be treated as a change made before May 6, 1986.

(4) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for its last year beginning before January 1, 1987, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of such Code does not exceed 1.0 for such year.

(5) EFFECTIVE DATE FOR SUBSECTION (d).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (d) shall apply to benefits accruing in years beginning after December 31, 1988.

(B) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan described in paragraph (2), the amendments made by subsection (d) shall apply to benefits accruing in years beginning on or after the earlier of—

(i) the later of—

(I) the date determined under paragraph (2)(A), or

(II) January 1, 1989, or

(ii) January 1, 1991.

(6) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (e).—The amendment made by subsection (e) shall not require the recomputation, for purposes of section 415(e) of the Internal Revenue Code of 1986, of the annual addition for any year beginning before 1987.

SEC. 1107. MODIFICATIONS OF SECTION 457.

(a) GENERAL RULE.—Section 457 (relating to deferred compensation plans with respect to service for State and local governments) is amended to read as follows:

"SEC. 457. DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

"(a) YEAR OF INCLUSION IN GROSS INCOME.—In the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.

"(b) ELIGIBLE DEFERRED COMPENSATION PLAN DEFINED.—For purposes of this section, the term 'eligible deferred compensation plan' means a plan established and maintained by an eligible employer—

"(1) in which only individuals who perform service for the employer may be participants,

"(2) which provides that (except as provided in paragraph (3)) the maximum amount which may be deferred under the plan for the taxable year shall not exceed the lesser of—

"(A) $7,500, or

"(B) 33⅓ percent of the participant's includible compensation,

"(3) which may provide that, for 1 or more of the participant's last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

"(A) $15,000, or

"(B) the sum of—

"(i) the plan ceiling established for purposes of paragraph (2) for the taxable year (determined without regard to this paragraph), plus

"(ii) so much of the plan ceiling established for purposes of paragraph (2) for taxable years before the taxable year as has not previously been used under paragraph (2) or this paragraph,

"(4) which provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month,

"(5) which meets the distribution requirements of subsection (d), and

"(6) which provides that—

"(A) all amounts of compensation deferred under the plan,

"(B) all property and rights purchased with such amounts, and

"(C) all income attributable to such amounts, property, or rights,

shall remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the employer's general creditors.

A plan which is established and maintained by an employer which is described in subsection (e)(1)(A) and which is administered in a manner which is inconsistent with the requirements of any of the preceding paragraphs shall be treated as not meeting the requirements of such paragraph as of the 1st plan year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the employer corrects the inconsistency before the 1st day of such plan year.

"(c) INDIVIDUALS WHO ARE PARTICIPANTS IN MORE THAN 1 PLAN.—

"(1) IN GENERAL.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed $7,500 (as modified by any adjustment provided under subsection (b)(3)).

"(2) COORDINATION WITH CERTAIN OTHER DEFERRALS.—In applying paragraph (1) of this subsection and paragraphs (2) and (3) of subsection (b)—

"(A) any amount excluded from gross income under section 403(b) for the taxable year, and

"(B) any amount—

"(i) excluded from gross income under section 402(a)(8) or section 402(h)(1)(B) for the taxable year, or

"(ii) with respect to which a deduction is allowable by reason of a contribution to an organization described in section 501(c)(18) for the taxable year,

shall be treated as an amount deferred under subsection (a). In applying section 402(g)(8)(A)(iii) or 403(b)(2)(A)(ii), an amount deferred under subsection (a) for any year of service shall be taken into account as if described in section 402(g)(3)(C) or 403(b)(2)(A)(ii), respectively. Subparagraph (B) shall not apply in the case of a participant in a rural electric cooperative plan (as defined in section 401(k)(7)).

"(d) DISTRIBUTION REQUIREMENTS.—

"(1) IN GENERAL.—For purposes of subsection (b)(5), a plan meets the distribution requirements of this subsection if—

"(A) the plan provides that amounts payable under the plan will be made available to participants or other beneficiaries not earlier than when the participant is separated from service with the employer or is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary by regulation), and

"(B) the plan meets the minimum distribution requirements of paragraph (2).

"(2) MINIMUM DISTRIBUTION REQUIREMENTS.—A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of subparagraphs (A), (B), and (C):

"(A) APPLICATION OF SECTION 401(a)(9).—A plan meets the requirements of this subparagraph if the plan meets the requirements of section 401(a)(9).

"(B) ADDITIONAL DISTRIBUTION REQUIREMENTS.—A plan meets the requirements of this subparagraph if—

"(i) in the case of a distribution beginning before the death of the participant, such distribution will be made in a form under which—

"(I) at least ⅔ of the total amount payable with respect to the participant will be paid during the life expectancy of such participant (determined as of the commencement of the distribution), and

"(II) any amount not distributed to the participant during his life will be distributed after the death of the participant at least as rapidly as under the method of distributions being used under subclause (I) as of the date of his death, or

"(ii) in the case of a distribution which does not begin before the death of the participant, the entire amount payable with respect to the participant will be paid during a period not to exceed 15 years (or the life expectancy of the surviving spouse if such spouse is the beneficiary).

"(C) NONINCREASING BENEFITS.—A plan meets the requirements of this subparagraph if any distribution payable over a period of more than 1 year can only be made in substantially nonincreasing amounts (paid not less frequently than annually).

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE EMPLOYER.—The term 'eligible employer' means—

"(A) a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State, and

"(B) any other organization (other than a governmental unit) exempt from tax under this subtitle.

"(2) PERFORMANCE OF SERVICE.—The performance of service includes performance of service as an independent contractor and the person (or governmental unit) for whom such services are performed shall be treated as the employer.

"(3) PARTICIPANT.—The term 'participant' means an individual who is eligible to defer compensation under the plan.

"(4) BENEFICIARY.—The term 'beneficiary' means a beneficiary of the participant, his estate, or any other person whose interest in the plan is derived from the participant.

"(5) INCLUDIBLE COMPENSATION.—The term 'includible compensation' means compensation for service performed for the employer which (taking into account the provisions of this section and other provisions of this chapter) is currently includible in gross income.

"(6) COMPENSATION TAKEN INTO ACCOUNT AT PRESENT VALUE.—Compensation shall be taken into account at its present value.

"(7) COMMUNITY PROPERTY LAWS.—The amount of includible compensation shall be determined without regard to any community property laws.

"(8) INCOME ATTRIBUTABLE.—Gains from the disposition of property shall be treated as income attributable to such property.

"(9) BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS.—If—

"(A) the total amount payable to a participant under the plan does not exceed $3,500, and

"(B) no additional amounts may be deferred under the plan with respect to the participant,

the amount payable to the participant under the plan shall not be treated as made available merely because such participant may elect to receive a lump sum payable within 60 days of the election.

"(10) TRANSFERS BETWEEN PLANS.—A participant shall not be required to include in gross income any portion of the entire amount payable to such participant solely by reason of the transfer of such portion from 1 eligible deferred compensation plan to another eligible deferred compensation plan.

"(f) TAX TREATMENT OF PARTICIPANTS WHERE PLAN OR ARRANGEMENT OF EMPLOYER IS NOT ELIGIBLE.—

"(1) IN GENERAL.—In the case of a plan of an eligible employer providing for a deferral of compensation, if such plan is not an eligible deferred compensation plan, then—

"(A) the compensation shall be included in the gross income of the participant or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

"(B) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc.).

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(B) an annuity plan or contract described in section 403,

"(C) that portion of any plan which consists of a transfer of property described in section 83, and

"(D) that portion of any plan which consists of a trust to which section 402(b) applies.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement.

"(B) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual."

(b) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 457 and inserting in lieu thereof the following:

"Sec. 457. Deferred compensation plans of State and local governments and tax-exempt organizations."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1988.

(2) TRANSFERS AND CASH-OUTS.—Paragraphs (9) and (10) of section 457(e) of the Internal Revenue Code of 1986 (as amended by this section) shall apply to taxable years beginning after December 31, 1986.

(3) APPLICATION TO TAX-EXEMPT ORGANIZATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the application of section 457 of the Internal Revenue Code of 1986 by reason of the amendments made by this section to eligible deferred compensation plans established and maintained by organizations exempt from tax shall apply to taxable years beginning after December 31, 1986.

(B) EXISTING DEFERRALS AND ARRANGEMENTS.—Section 457 of such Code shall not apply to amounts deferred under a plan described in subparagraph (A) which—

(i) were deferred from taxable years beginning before January 1, 1987, or

(ii) are deferred from taxable years beginning after December 31, 1986, pursuant to an agreement which—

(I) was in writing on August 16, 1986,

(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula.

Clause (ii) shall not apply to any taxable year ending after the date on which any modification to the amount or formula described in subclause (II) is effective. Amounts described in the first sentence shall be taken into account for applying section 457 to other amounts deferred under any eligible deferred compensation plan.

(4) DEFERRED COMPENSATION PLANS FOR STATE JUDGES.—The amendments made by this section shall not apply to any qualified State judicial plan (as defined in section 131(c)(3)(B) of the Revenue Act of 1978 as amended by section 252 of the Tax Equity and Fiscal Responsibility Act of 1982).

(5) SPECIAL RULE FOR CERTAIN DEFERRED COMPENSATION PLANS.—The amendments made by this section shall not apply to employees on August 16, 1986, of—

(A) a deferred compensation plan of a nonprofit corporation organized under the laws of the State of Alabama with respect to which the Internal Revenue Service issued a ruling dated March 17, 1976, that the plan would not affect the tax-exempt status of the corporation, or

(B) a deferred compensation plan with respect to which a letter dated November 6, 1975, submitted the original plan to the Internal Revenue Service, an amendment was submitted on November 19, 1975, and the Internal Revenue Service responded with a letter dated December 24, 1975,

but only with respect to deferrals under such plan.

SEC. 1108. SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS.

(a) SALARY REDUCTION ARRANGEMENTS PERMITTED.—Section 408(k) (relating to simplified employee pension defined) is amended by inserting after paragraph (5) the following new paragraph:

"(6) EMPLOYEE MAY ELECT SALARY REDUCTION ARRANGEMENT.—

"(A) IN GENERAL.—A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension—

"(i) an employee may elect to have the employer make payments—

"(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

"(II) to the employee directly in cash,

"(ii) an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer, and

"(iii) the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product derived by multiplying the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate by 1.25.

"(B) EXCEPTION WHERE MORE THAN 25 EMPLOYEES.—This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees at any time during the preceding year.

"(C) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS.—

"(i) IN GENERAL.—Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

"(ii) EXCESS CONTRIBUTION.—For purposes of clause (i), the term 'excess contribution' means, with respect to a highly compensated employee, the excess of elective employer

contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

"(D) DEFERRAL PERCENTAGE.—For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

"(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

"(ii) the employee's compensation (within the meaning of section 414(s)) for the year.

"(E) EXCEPTION FOR STATE AND LOCAL AND TAX-EXEMPT PENSIONS.—This paragraph shall not apply to a simplified employee pension maintained by—

"(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

"(ii) an organization exempt from tax under this title.

"(F) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q)."

(b) EXCLUSION FROM GROSS INCOME.—Section 402 (relating to taxability of beneficiary of employees' trust), as amended by section 1105(a), is amended by inserting at the end thereof the following new subsection:

"(h) SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS.—For purposes of this chapter—

"(1) IN GENERAL.—Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k))—

"(A) shall not be treated as distributed or made available to the employee or as contributions made by the employee, and

"(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to the simplified employee pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

"(2) LIMITATIONS ON EMPLOYER CONTRIBUTIONS.—Contributions made by an employer to a simplified employee pension with respect to an employee for any year shall be treated as distributed or made available to such employee and as contributions made by the employee to the extent such contributions exceed the lesser of—

"(A) 15 percent of the compensation (within the meaning of section 414(s)) from such employer includible in the employee's gross income for the year (determined without regard to the employer contributions to the simplified employee pension), or

"(B) the limitation in effect under section 415(c)(1)(A), reduced in the case of any highly compensated employee (within the meaning of section 414(q)) by the amount taken into account with respect to such employee under section 408(k)(3)(D).

"(3) DISTRIBUTIONS.—Any amount paid or distributed out of an individual retirement plan pursuant to a simplified employee pension shall be included in gross income by the payee or distributee, as the case may be, in accordance with the provisions of section 408(d)."

(c) DEDUCTIBILITY OF CONTRIBUTIONS.—Subparagraphs (A) and (B) of section 404(h)(1) (relating to special rules for simplified employee pensions) are amended to read as follows:

"(A) Contributions made for a year are deductible—

"(i) in the case of a simplified employee pension maintained on a calendar year basis, for the taxable year with or within which the calendar year ends, or

"(ii) in the case of a simplified employee pension which is maintained on the basis of the taxable year of the employer, for such taxable year.

"(B) Contributions shall be treated for purposes of this subsection as if they were made for a taxable year if such contributions are made on account of such taxable year and are made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

(d) PARTICIPATION REQUIREMENTS.—Paragraph (2) of section 408(k) (relating to participation requirements) is amended to read as follows:

"(2) PARTICIPATION REQUIREMENTS.—This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

"(A) has attained age 21,

"(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

"(C) received at least $300 in compensation (within the meaning of section 414(q)(7)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made."

(e) COST-OF-LIVING ADJUSTMENTS.—Section 408(k) is amended by adding at the end thereof the following new paragraph:

"(8) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $300 amount in paragraph (2)(C) and the $200,000 amount in paragraph (3)(C) at the same time and in the same manner as under section 415(d)."

(f) COMPUTATION PERIOD.—Section 408(k)(7) is amended by adding at the end thereof the following new subparagraph:

"(C) YEAR.—The term 'year' means—

"(i) the calendar year, or

"(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year, the employer's taxable year."

(g) CONFORMING AMENDMENTS.—

(1) Section 408(k)(3) (relating to nondiscrimination requirements) is amended—

(A) by striking out all that follows "in favor of" in subparagraph (A) and inserting in lieu thereof "any highly compensated employee (within the meaning of section 414(q)).",

(B) in subparagraph (C)—

(i) by inserting "and except as provided in subparagraph (D)," after "subparagraph (A),",

(ii) by inserting "(other than contributions under an arrangement described in paragraph (6))" after "employer contributions to simplified employee pensions", and

(iii) by striking out the last sentence thereof, and

(C) by striking out subparagraphs (D) and (E) and inserting in lieu thereof:

"(D) PERMITTED DISPARITY.—For purposes of subparagraph (C), the rules of section 401(l)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6))."

(2) Paragraph (2) of section 219(b) is amended to read as follows:

"(2) SPECIAL RULE FOR EMPLOYER CONTRIBUTIONS UNDER SIMPLIFIED EMPLOYEE PENSIONS.—This section shall not apply with respect to an employer contribution to a simplified employee pension."

(3) Section 219(c)(2)(B) is amended by striking out "(determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))".

(4) Section 408(k)(3)(A) is amended by striking out "calendar".

(5) Section 415(c)(2) is amended by striking out "allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(o)(5)" and inserting in lieu thereof "which are excludable from gross income under section 408(k)(6)".

(6) Section 408(k), as amended by subsection (e), is amended by adding at the end thereof the following new paragraph:

"(9) CROSS REFERENCE.—

"For excise tax on certain excess contributions, see section 4979."

(7) Section 3121(a)(5) is amended by striking out subparagraph (C) and inserting in lieu thereof the following subparagraph:

"(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),".

(8) Section 3306(b)(5) is amended by striking out subparagraph (C) and inserting in lieu thereof the following subparagraph:

"(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1986.

SEC. 1109. DEDUCTIBLE CONTRIBUTIONS PERMITTED UNDER SECTION 501(c)(18) PLAN.

(a) IN GENERAL.—Section 501(c)(18) is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and" and by adding at the end thereof the following new subparagraph:

"(D) in the case of a plan under which an employee may designate certain contributions as deductible—

"(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

"(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions, and

"(iii) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof).

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement."

(b) LIMITATION ON DEDUCTION.—Section 219(b), as amended by section 1101(b), is amended by adding at the end thereof the following new paragraph:

"(3) PLANS UNDER SECTION 501(C)(18).—Notwithstanding paragraph (1), the amount al-

lowable as a deduction under subsection (a) with respect to any contributions on behalf of an employee to a plan described in section 501(c)(18) shall not exceed the lesser of—

"(A) $7,000, or

"(B) an amount equal to 25 percent of the compensation (as defined in section 415(c)(3)) includible in the individual's gross income for such taxable year."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

PART II—NONDISCRIMINATION REQUIREMENTS

SEC. 1111. APPLICATION OF NONDISCRIMINATION RULES TO INTEGRATED PLANS.

(a) IN GENERAL.—Section 401(l) (relating to nondiscriminatory coordination of defined contribution plans with OASDI) is amended to read as follows:

"(l) PERMITTED DISPARITY IN PLAN CONTRIBUTIONS OR BENEFITS.—

"(1) IN GENERAL.—The requirements of this subsection are met with respect to a plan if—

"(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

"(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

"(2) DEFINED CONTRIBUTION PLAN.—

"(A) IN GENERAL.—A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

"(i) the base contribution percentage, or

"(ii) the greater of—

"(I) 5.7 percentage points, or

"(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

"(B) CONTRIBUTION PERCENTAGES.—For purposes of this paragraph—

"(i) EXCESS CONTRIBUTION PERCENTAGE.—The term 'excess contribution percentage' means the percentage of compensation which is contributed under the plan with respect to that portion of each participant's compensation in excess of the integration level.

"(ii) BASE CONTRIBUTION PERCENTAGE.—The term 'base contribution percentage' means the percentage of compensation contributed under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

"(3) DEFINED BENEFIT PLAN.—A defined benefit plan meets the requirements of this paragraph if—

"(A) EXCESS PLANS.—

"(i) IN GENERAL.—In the case of a plan other than an offset plan—

"(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

"(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

"(III) benefits are based on average annual compensation.

"(ii) BENEFIT PERCENTAGES.—For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits rather than contributions.

"(B) OFFSET PLANS.—In the case of an offset plan, the plan provides that—

"(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

"(ii) benefits are based on average annual compensation.

"(4) DEFINITIONS RELATING TO PARAGRAPH (3).—For purposes of paragraph (3)—

"(A) MAXIMUM EXCESS ALLOWANCE.—The maximum excess allowance is equal to—

"(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 of a percentage point, and

"(ii) in the case of total benefits, 3/4 of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

"(B) MAXIMUM OFFSET ALLOWANCE.—The maximum offset allowance is equal to—

"(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ percent of the participant's final average compensation, and

"(ii) in the case of total benefits, ¾ percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

"(C) REDUCTIONS.—

"(i) IN GENERAL.—The Secretary shall prescribe regulations requiring the reduction of the ¾ percentage factor under subparagraph (A) or (B)—

"(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

"(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

"(ii) BASIS OF REDUCTIONS.—Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

"(D) OFFSET PLAN.—The term 'offset plan' means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

"(5) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) INTEGRATION LEVEL.—

"(i) IN GENERAL.—The term 'integration level' means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

"(ii) LIMITATION.—The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

"(iii) LEVEL TO APPLY TO ALL PARTICIPANTS.—A plan's integration level shall apply with respect to all participants in the plan.

"(iv) MULTIPLE INTEGRATION LEVELS.—Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

"(B) COMPENSATION.—The term 'compensation' has the meaning given such term by section 414(s).

"(C) AVERAGE ANNUAL COMPENSATION.—The term 'average annual compensation' means the greater of—

"(i) the participant's final average compensation (determined without regard to subparagraph (D)(ii)), or

"(ii) the participant's highest average annual compensation for any other period of at least 3 consecutive years.

"(D) FINAL AVERAGE COMPENSATION.—

"(i) IN GENERAL.—The term 'final average compensation' means the participant's average annual compensation for—

"(I) the 3-consecutive year period ending with the current year, or

"(II) if shorter, the participant's full period of service.

"(ii) LIMITATION.—A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

"(E) COVERED COMPENSATION.—

"(i) IN GENERAL.—The term 'covered compensation' means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains age 65.

"(ii) COMPUTATION FOR ANY YEAR.—For purposes of clause (i), the determination for any year preceding the year in which the employee attains age 65 shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains age 65.

"(F) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

"(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

"(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

"(6) SPECIAL RULE FOR PLAN MAINTAINED BY RAILROADS.—In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974."

(b) CONFORMING AMENDMENT.—Paragraph (5) of section 401(a) is amended to read as follows:

"(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

"(A) SALARIED OR CLERICAL EMPLOYEES.—A classification shall not be considered discriminatory within the meaning of para-

graph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

"(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

"(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

"(D) INTEGRATED DEFINED BENEFIT PLAN.—

"(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

"(I) the participant's final pay with the employer, over

"(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

"(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(7)) paid to the participant by the employer for any year—

"(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

"(II) for which the participant's total compensation from the employer was highest.

"(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

"(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

"(ii) BENEFITS.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates."

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to benefits attributable to plan years beginning after December 31, 1988.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to years beginning after December 31, 1988.

(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to benefits pursuant to, and individuals covered by, any such agreement in plan years beginning before the earlier of—

(A) the later of—

(i) January 1, 1989, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

SEC. 1112. MINIMUM COVERAGE REQUIREMENTS FOR QUALIFIED PLANS.

(a) IN GENERAL.—Subsection (b) of section 410 (relating to eligibility requirements) is amended to read as follows:

"(b) MINIMUM COVERAGE REQUIREMENTS.—

"(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless such trust is designated by the employer as part of a plan which meets 1 of the following requirements:

"(A) The plan benefits at least 70 percent of employees who are not highly compensated employees.

"(B) The plan benefits—

"(i) a percentage of employees who are not highly compensated employees which is at least 70 percent of

"(ii) the percentage of highly compensated employees benefiting under the plan.

"(C) The plan meets the requirements of paragraph (2).

"(2) AVERAGE BENEFIT PERCENTAGE TEST.—

"(A) IN GENERAL.—A plan shall be treated as meeting the requirements of this paragraph if—

"(i) the plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees, and

"(ii) the average benefit percentage for employees who are not highly compensated employees is at least 70 percent of the average benefit percentage for highly compensated employees.

"(B) AVERAGE BENEFIT PERCENTAGE.—For purposes of this paragraph, the term 'average benefit percentage' means, with respect to any group, the average of the benefit percentages calculated separately with respect to each employee in such group (whether or not a participant in any plan).

"(C) BENEFIT PERCENTAGE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'benefit percentage' means the employer-provided contribution or benefit of an employee under all qualified plans maintained by the employer, expressed as a percentage of such employee's compensation (within the meaning of section 414(s)).

"(ii) PERIOD FOR COMPUTING PERCENTAGE.—At the election of an employer, the benefit percentage for any plan year shall be computed on the basis of contributions or benefits for—

"(I) such plan year, or

"(II) any consecutive plan year period (not greater than 3 years) which ends with such plan year and which is specified in such election.

An election under this clause, once made, may be revoked or modified only with the consent of the Secretary.

"(D) EMPLOYEES TAKEN INTO ACCOUNT.—For purposes of determining who is an employee for purposes of determining the average benefit percentage under subparagraph (B)—

"(i) except as provided in clause (ii), paragraph (4)(A) shall not apply, or

"(ii) if the employer elects, paragraph (4)(A) shall be applied by using the lowest age and service requirements of all qualified plans maintained by the employer.

"(E) QUALIFIED PLAN.—For purposes of this paragraph, the term 'qualified plan' means any plan which (without regard to this subsection) meets the requirements of section 401(a).

"(3) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of this subsection, there shall be excluded from consideration—

"(A) employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

"(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

"(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Subparagraph (A) shall not apply with respect to coverage of employees under a plan pursuant to an agreement under such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.

"(4) EXCLUSION OF EMPLOYEES NOT MEETING AGE AND SERVICE REQUIREMENTS.—

"(A) IN GENERAL.—If a plan—

"(i) prescribes minimum age and service requirements as a condition of participation, and

"(ii) excludes all employees not meeting such requirements from participation,

then such employees shall be excluded from consideration for purposes of this subsection.

"(B) REQUIREMENTS MAY BE MET SEPARATELY WITH RESPECT TO EXCLUDED GROUP.—If employees do not meet the minimum age or service requirements of subsection (a)(1) (without regard to subparagraph (B) thereof) and are covered under a plan of the employer which meets the requirements of paragraph (1) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets the requirements of paragraph (1).

"(5) LINE OF BUSINESS EXCEPTION.—

"(A) IN GENERAL.—If, under section 414(r), an employer is treated as operating separate lines of business for a year, the employer may apply the requirements of this subsection for such year separately with respect to employees in each separate line of business.

"(B) PLAN MUST BE NONDISCRIMINATORY.—Subparagraph (A) shall not apply with respect to any plan maintained by an employer unless such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not

to be discriminatory in favor of highly compensated employees.

"(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) HIGHLY COMPENSATED EMPLOYEE.—The term 'highly compensated employee' has the meaning given such term by section 414(q).

"(B) AGGREGATION RULES.—An employer may elect to designate—

"(i) 2 or more trusts,

"(ii) 1 or more trusts and 1 or more annuity plans, or

"(iii) 2 or more annuity plans,

as part of 1 plan intended to qualify under section 401(a) to determine whether the requirements of this subsection are met with respect to such trusts or annuity plans. If an employer elects to treat any trusts or annuity plans as 1 plan under this subparagraph, such trusts or annuity plans shall be treated as 1 plan for purposes of section 401(a)(4).

"(C) SPECIAL RULES FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—

"(i) IN GENERAL.—If a person becomes, or ceases to be, a member of a group described in subsection (b), (c), (m), or (o) of section 414, then the requirements of this subsection shall be treated as having been met during the transition period with respect to any plan covering employees of such person or any other member of such group if—

"(I) such requirements were met immediately before each such change, and

"(II) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members of a group).

"(ii) TRANSITION PERIOD.—For purposes of clause (i), the term 'transition period' means the period—

"(I) beginning on the date of the change in members of a group, and

"(II) ending on the last day of the 1st plan year beginning after the date of such change.

"(D) SPECIAL RULE FOR CERTAIN EMPLOYEE STOCK OWNERSHIP PLANS.—A trust which is part of a tax credit employee stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of this subsection if—

"(i) such plan benefits 50 percent or more of all the employees who are eligible under a nondiscriminatory classification under the plan, and

"(ii) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year.

"(E) ELIGIBILITY TO CONTRIBUTE.—In the case of contributions which are subject to section 401(k) or 401(m), employees who are eligible to contribute (or elect to have contributions made on their behalf) shall be treated as benefiting under the plan (other than for purposes of paragraph (2)(A)(ii)).

"(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection."

(b) ADDITIONAL PARTICIPATION REQUIREMENTS.—Section 401(a) (relating to qualification requirements) is amended by adding at the end thereof the following new paragraph:

"(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

"(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless such trust is part of a plan which on each day of the plan year benefits the lesser of—

"(i) 50 employees of the employer, or

"(ii) 40 percent or more of all employees of the employer.

"(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

"(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

"(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

"(I) the benefits for such employees are provided under the same plan as benefits for other employees,

"(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

"(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

"(C) ELIGIBILITY TO PARTICIPATE.—In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan.

"(D) SPECIAL RULE FOR COLLECTIVE BARGAINING UNITS.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

"(E) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

"(F) REGULATIONS.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph."

(c) PLANS FAILING TO MEET REQUIREMENTS OF SECTION 410(b).—

(1) IN GENERAL.—Subsection (b) of section 402 (relating to taxability of beneficiary of nonexempt trust) is amended by adding at the end thereof the following new paragraph:

"(2) FAILURE TO MEET REQUIREMENTS OF SECTION 410(b).—

"(A) IN GENERAL.—In the case of a trust which is not exempt from tax under section 501(a) solely because such trust is part of a plan which fails to meet the requirements of section 410(b)—

"(i) such trust shall be treated as exempt from tax under section 501(a) for purposes of applying paragraph (1) to employees who are not highly compensated employees, and

"(ii) paragraph (1) shall be applied to the vested accrued benefit (other than employee contributions) of any highly compensated employee as of the close of the employer's taxable year described in paragraph (1) (rather than contributions made during such year).

"(B) FAILURE IN MORE THAN 1 YEAR.—If a plan fails to meet the requirements of section 410(b) for more than 1 taxable year, any portion of the vested accrued benefit to which subparagraph (A) applies shall be included in gross income only once.

"(C) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q)."

(2) CONFORMING AMENDMENT.—The heading for section 402(b) is amended to read as follows:

"(b) TAXABILITY OF BENEFICIARY OF NONEXEMPT TRUST.—

"(1) IN GENERAL.—".

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 401(k)(3)(A) is amended by striking out "subparagraph (A) or (B) of" before "section 410(b)(1)".

(2) Section 404(a)(2) is amended by striking out "and (22)" and inserting in lieu thereof "(22), and (26)".

(3) Sections 406(b)(1) and 407(b)(1) are each amended by striking out "(without regard to paragraph (1)(A) thereof)" after "section 410(b)".

(4) Section 818(a)(3) is amended by striking out "and (22)" and inserting in lieu thereof "(22), and (26)".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1988.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to employees covered by any such agreement in plan years beginning before the earlier of—

(A) the later of—

(i) January 1, 1989, or

(ii) the date on which the last of such collective bargaining agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

(3) WAIVER OF EXCISE TAX ON REVERSIONS.—

(A) IN GENERAL.—If—

(i) a plan is in existence on August 16, 1986,

(ii) such plan would fail to meet the requirements of section 401(a)(26) of the Internal Revenue Code of 1986 (as added by subsection (b)) if such section were in effect for the plan year including August 16, 1986, and

(iii) there is no transfer of assets to or liabilities from a plan or merger or spinoff or merger involving such plan after August 16, 1986,

then no tax shall be imposed under section 4980 of such Code on any employer reversion by reason of the termination or merger of such plan before the 1st year to which the amendment made by subsection (b) applies.

(B) DETERMINATION OF AMOUNT OF REVERSION.—For purposes of the Internal Revenue Code of 1986, in determining the present value of the accrued benefit of any highly compensated employee (within the meaning of section 414(q) of such Code) on the termination or merger of any plan to which subparagraph (A) applies, the plan shall use the highest interest rate which may be used for calculating present value under section 411(a)(11)(B) of such Code.

(C) SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 before the 1st year to which the amendment made by subsection (b) applies, subparagraph (A) shall be applied by substi-

tuting "the 1st year in which the plan is able to terminate" for "the 1st year to which the amendment made by subsection (b) applies".

SEC. 1113. MINIMUM VESTING STANDARDS.

(a) IN GENERAL.—Paragraph (2) of section 411(a) (relating to minimum vesting standards) is amended to read as follows:

"(2) EMPLOYER CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) 5-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(B) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

"(C) MULTIEMPLOYER PLANS.—A plan satisfies the requirements of this subparagraph if—

"(i) the plan is a multiemployer plan (within the meaning of section 414(f)), and

"(ii) under the plan—

"(I) an employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

"(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I)."

(b) REPEAL OF CLASS YEAR VESTING.—Paragraph (4) of section 411(d) (relating to class year vesting) is hereby repealed.

(c) MODIFICATION OF MINIMUM PARTICIPATION STANDARDS.—Clause (i) of section 410(a)(1)(B) (relating to special rules for certain plans) is amended by striking out "3 years" each place it appears and inserting in lieu thereof "2 years".

(d) CONFORMING AMENDMENTS.—

(A) The heading for section 410(a)(5)(B) is amended by striking out "3-year" and inserting in lieu thereof "2-year".

(B) Section 411(a)(10)(B) is amended by striking out "5 years" and inserting in lieu thereof "3 years".

(e) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to read as follows:

"(2) A plan satisfies the requirements of this paragraph if it satisfies the following requirements of subparagraph (A), (B), or (C).

"(A) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(B) A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

"(C) A plan satisfies the requirements of this subparagraph if—

"(i) the plan is a multiemployer plan (within the meaning of section 3(37)), and

"(ii) under the plan—

"(I) an employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

"(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I)."

(2) REPEAL OF CLASS YEAR VESTING.—Subsection (c) of section 203 of such Act is amended by striking out paragraph (3).

(3) MINIMUM PARTICIPATION STANDARDS.—Section 202(B)(i) of such Act is amended by striking out "3 years" each place it appears and inserting in lieu thereof "2 years".

(4) CONFORMING AMENDMENTS.—

(A) MINIMUM VESTING STANDARDS.—Section 203(c)(1)(B) of such Act is amended by striking out "5 years" and inserting in lieu thereof "3 years".

(B) BENEFIT ACCRUAL REQUIREMENTS.—Subsection (i) of section 204 of such Act (29 U.S.C. 1054(i)) is amended to read as follows:

"(i) CROSS REFERENCE.—

"For special rules relating to plan provisions adopted to preclude discrimination, see section 203(c)(2).".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 1988.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to employees covered by any such agreement in plan years beginning before the earlier of—

(A) the later of—

(i) January 1, 1989, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

(3) PARTICIPATION REQUIRED.—The amendments made by this section shall not apply to any employee who does not have 1 hour of service in any plan year to which the amendments made by this section apply.

SEC. 1114. DEFINITION OF HIGHLY COMPENSATED EMPLOYEE.

(a) GENERAL RULE.—Section 414 is amended by adding at the end thereof the following new subsection:

"(q) HIGHLY COMPENSATED EMPLOYEE.—

"(1) IN GENERAL.—The term 'highly compensated employee' means any employee who, during the year or the preceding year—

"(A) was at any time a 5-percent owner,

"(B) received compensation from the employer in excess of $75,000,

"(C) received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or

"(D) was at any time an officer and received compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for such year.

"(2) SPECIAL RULE FOR CURRENT YEAR.—In the case of the year for which the relevant determination is being made, an employee not described in subparagraph (B), (C), or (D) of paragraph (1) for the preceding year (without regard to this paragraph) shall not be treated as described in subparagraph (B), (C), or (D) of paragraph (1) unless such employee is a member of the group consisting of the 100 employees paid the greatest compensation during the year for which such determination is being made.

"(3) 5-PERCENT OWNER.—An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

"(4) TOP-PAID GROUP.—An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

"(5) SPECIAL RULES FOR TREATMENT OF OFFICERS.—

"(A) NOT MORE THAN 50 OFFICERS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)(D), no more than 50 employees (or, if lesser, the greater of 3 employees or 10 percent of the employees) shall be treated as officers.

"(B) AT LEAST 1 OFFICER TAKEN INTO ACCOUNT.—If for any year no officer of the employer as described in paragraph (1)(D), the highest paid officer of the employer for such year shall be treated as described in such paragraph.

"(6) TREATMENT OF CERTAIN FAMILY MEMBERS.—

"(A) IN GENERAL.—If any individual is a member of the family of a 5-percent owner or of a highly compensated employee in the group consisting of the 10 highly compensated employees paid the greatest compensation during the year, then—

"(i) such individual shall not be considered a separate employee, and

"(ii) any compensation paid to such individual (and any applicable contribution or benefit on behalf of such individual) shall be treated as if it were paid to (or on behalf of) the 5-percent owner or highly compensated employee.

"(B) FAMILY.—For purposes of subparagraph (A), the term 'family' means, with respect to any employee, such employee's spouse and lineal ascendants or descendants and the spouses of such lineal ascendants or descendants.

"(7) COMPENSATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'compensation' means compensation within the meaning of section 415(c)(3).

"(B) CERTAIN PROVISIONS NOT TAKEN INTO ACCOUNT.—The determination under subparagraph (A) shall be made—

"(i) without regard to sections 125, 402(a)(8), and 402(h)(1)(B), and

"(ii) in the case of employer contributions made pursuant to a salary reduction agreement, without regard to section 403(b).

"(8) EXCLUDED EMPLOYEES.—For purposes of subsection (r) and for purposes of determining the number of employees in the top-paid group under paragraph (4), the following employees shall be excluded—

"(A) employees who have not completed 6 months of service,

"(B) employees who normally work less than 17½ hours per week,

"(C) employees who normally work not more than 6 months during any year,

"(D) employees who have not attained age 21,

"(E) except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer, and

"(F) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

The employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) than that specified in such subparagraph.

"(9) FORMER EMPLOYEES.—A former employee shall be treated as a highly compensated employee if—

"(A) such employee was a highly compensated employee when such employee separated from service, or

"(B) such employee was a highly compensated employee at any time after attaining age 55.

"(10) COORDINATION WITH OTHER PROVISIONS.—Subsections (b), (c), (m), (n), and (o) shall be applied before the application of this section."

(b) CONFORMING AMENDMENTS.—

(1) Section 106(b)(1) is amended by striking out "highly compensated individual (within the meaning of section 105(h)(5))" and inserting in lieu thereof "highly compensated employee (within the meaning of section 414(q))".

(2) Section 117(d)(3), as amended by section 123 of this Act, is amended—

(A) by striking out "officer, owner, or",

(B) by striking out "officers, owners, or", and

(C) by inserting at the end thereof the following new sentence: "For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q)."

(3)(A) Section 120(c)(1) is amended by striking out "officers, shareholders, self-employed individuals, or highly compensated" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(B) Section 120(d)(1) is amended—

(i) by striking out "The term 'self-employed individual' means, and the" and inserting in lieu thereof "The", and

(ii) by striking out "SELF-EMPLOYED INDIVIDUAL;" in the heading thereof.

(4) Sections 127(b)(2) and 129(d)(2) are each amended by striking out "officers, owners, or highly compensated," and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(5)(A) Sections 132 (e)(2) and (h)(1) are each amended—

(i) by striking out "officer, owner, or", and

(ii) by striking out "officers, owners, or".

(B) Section 132(h) is amended by adding at the end thereof the following new paragraph:

"(7) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this section, the term 'highly compensated employee' has the meaning given such term by section 414(q)."

(6) Section 274(e)(5) is amended by striking out "officers, shareholders or other owners, or highly compensated employees" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(7) Section 401(a)(4) is amended to read as follows:

"(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3) (A) and (C)."

(8) Section 404A(g)(1)(A) is amended by striking out "an officer, shareholder, or highly compensated" and inserting in lieu thereof "a highly compensated employee (within the meaning of section 414(q))".

(9)(A) Section 406(b)(1)(A) is amended by striking out "an officer, shareholder, or person whose principal duties consist of supervising the work of other employees of a foreign affiliate of such American employer" and insert in lieu thereof "a highly compensated employee (within the meaning of section 414(q))".

(B) Section 407(b)(1)(A) is amended by striking out "an officer, shareholder, or person whose principal duties consist of supervising the work of other employees of a domestic subsidiary" and insert in lieu thereof "a highly compensated employee (within the meaning of section 414(q))".

(C) Sections 406(b)(1)(B) and 407(b)(1)(B) are each amended by inserting "(as so defined)" after "employee".

(10) Subparagraphs (A) and (B) of section 411(d)(1) are each amended by striking out "officers, shareholders, or highly compensated" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(11) Clause (ii) of section 414(m)(2)(B) is amended by striking out "officers, highly compensated employees, or owners" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(12) Section 415(c)(3)(C)(ii) is amended by striking out "an officer, owner, or highly compensated" and inserting in lieu thereof "a highly compensated employee (within the meaning of section 414(q))".

(13) Section 423(b)(4)(D) is amended by striking out "officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(14) Clauses (ii) and (iii) of section 501(c)(17) and subparagraphs (B) and (C) of section 501(c)(18) are each amended by striking out "officers, shareholders, persons whose principal duties consists of supervising the work of other employees, or highly compensated employees" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(15)(A) Section 4975(d)(1)(B) is amended by striking out "highly compensated employees, officers, or shareholders" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(B) Section 408(b)(1)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)) is amended by striking out "highly compensated employees, officers, or shareholders" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986)".

(16) Paragraph (5) of section 505(b) is amended to read as follows:

"(5) HIGHLY COMPENSATED INDIVIDUAL.—For purposes of this subsection, the determination as to whether an individual is a highly compensated individual shall be made under rules similar to the rules for determining whether an individual is a highly compensated employee (within the meaning of section 414(q))."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section shall apply to years beginning after December 31, 1986.

(2) CONFORMING AMENDMENTS TO EMPLOYEE BENEFIT PROVISIONS.—The amendments made by paragraphs (2), (3), (4), (5), and (16) of subsection (b) shall apply to years beginning after December 31, 1987.

(3) CONFORMING AMENDMENTS TO PENSION PROVISIONS.—The amendments made by paragraphs (7), (8), (9), (10), (11), (12), and (15) of subsection (b) shall apply to years beginning after December 31, 1988.

(4) SPECIAL RULE FOR DETERMINING HIGHLY COMPENSATED EMPLOYEES.—For purposes of sections 401(k) and 401(m) of the Internal Revenue Code of 1986, in the case of an employer incorporated on December 15, 1924, if more than 50 percent of its employees in the top-paid group (within the meaning of section 414(q)(4) of such Code) earn less than $25,000 (indexed at the same time and in the same manner as under section 415(d) of such Code), then the highly compensated employees shall include employees described in section 414(q)(1)(C) of such Code determined without regard to the level of compensation of such employees.

SEC. 1115. SEPARATE LINES OF BUSINESS; COMPENSATION.

(a) IN GENERAL.—Section 414 is amended by adding at the end thereof the following new subsections:

"(r) SPECIAL RULES FOR SEPARATE LINE OF BUSINESS.—

(1) IN GENERAL.—For purposes of sections 89 and 410(b), an employer shall be treated as operating separate lines of business during any year if the employer for bona fide business reasons operates separate lines of business.

"(2) LINE OF BUSINESS MUST HAVE 50 EMPLOYEES, ETC.—A line of business shall not be treated as separate under paragraph (1) unless—

"(A) such line of business has at least 50 employees who are not excluded under subsection (q)(8),

"(B) the employer notifies the Secretary that such line of business is being treated as separate for purposes of paragraph (1), and

"(C) such line of business meets guidelines prescribed by the Secretary or the employer receives a determination from the Secretary that such line of business may be treated as separate for purposes of paragraph (1).

"(3) SAFE HARBOR RULE.—The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

"(A) not less than one-half, and

"(B) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of subparagraph (A) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

"(4) HIGHLY COMPENSATED EMPLOYEE PERCENTAGE DEFINED.—For purposes of this subsection, the term 'highly compensated employee percentage' means the percentage which highly compensated employees performing services for the line of business are of all employees performing services for the line of business.

"(5) ALLOCATION OF BENEFITS TO LINE OF BUSINESS.—For purposes of this subsection, benefits which are attributable to services provided to a line of business shall be treated as provided by such line of business.

"(6) HEADQUARTERS PERSONNEL, ETC.—The Secretary shall prescribe rules providing for—

"(A) the allocation of headquarters personnel among the lines of business of the employer, and

"(B) the treatment of other employees providing services for more than 1 line of business of the employer or not in lines of business meeting the requirements of paragraph (2).

"(7) SEPARATE OPERATING UNITS.—For purposes of this subsection, the term 'separate line of business' includes an operating unit in a separate geographic area separately operated for a bona fide business reason.

"(8) AFFILIATED SERVICE GROUPS.—This subsection shall not apply in the case of any affiliated service group (within the meaning of section 414(m)).

"(s) COMPENSATION.—For purposes of this part—

"(1) IN GENERAL.—The term 'compensation' means compensation for service performed for an employer which (taking into account the provisions of this chapter) is currently includible in gross income.

"(2) SELF-EMPLOYED INDIVIDUALS.—The Secretary shall prescribe regulations for the determination of the compensation of an employee who is a self-employed individual (within the meaning of section 401(c)(1)) which are based on the principles of paragraph (1).

"(3) EMPLOYER MAY ELECT TO TREAT CERTAIN DEFERRALS AS COMPENSATION.—An employer may elect to include as compensation any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 402(a)(8), 402(h), or 403(b).

"(4) ALTERNATIVE DETERMINATION OF COMPENSATION.—The Secretary shall by regulation provide for alternative methods of determining compensation which may be used by an employer, except that such regulations shall provide that an employer may not use an alternative method if the use of such method discriminates in favor of highly compensated employees (within the meaning of subsection (q))."

(b) EFFECTIVE DATES.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1986.

Subpart B—Other Provisions

SEC. 1116. CASH OR DEFERRED ARRANGEMENTS.

(a) GENERAL RULE.—Subparagraph (A) of section 401(k)(3) (relating to application of participation and discrimination standards) is amended—

(1) by striking out "1.5" in clause (ii)(I) and inserting in lieu thereof "1.25",

(2) by striking out "3 percentage points" in clause (ii)(II) and inserting in lieu thereof "2 percentage points", and

(3) by striking out "2.5" in clause (ii)(II) and inserting in lieu thereof "2".

(b) WITHDRAWAL AND OTHER RESTRICTIONS.—

(1) WITHDRAWALS.—Paragraph (2)(B) of section 401(k) (defining qualified cash or deferred arrangement) is amended to read as follows:

"(B) under which—

"(i) amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than—

"(I) separation from service, death, or disability,

"(II) termination of the plan without establishment of a successor plan,

"(III) the date of the sale by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation with respect to an employee who continues employment with the corporation acquiring such assets,

"(IV) the date of the sale by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)) with respect to an employee who continues employment with such subsidiary,

"(V) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½, or

"(VI) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(a)(8) applies, upon hardship of the employee, and

"(ii) amounts will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and".

(2) NOT MORE THAN 1 YEAR OF SERVICE MAY BE REQUIRED.—Paragraph (2) of section 401(k) is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof)."

(3) OTHER REQUIREMENTS.—Subsection (k) of section 401 is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) OTHER REQUIREMENTS.—

"(A) BENEFITS (OTHER THAN MATCHING CONTRIBUTIONS) MUST NOT BE CONTINGENT ON ELECTION TO DEFER.—A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit provided by such employer is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

"(B) STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by—

"(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

"(ii) any organization exempt from tax under this subtitle.

"(C) COORDINATION WITH OTHER PLANS.—Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii)."

(4) AGGREGATION RULE.—The last sentence of subparagraph (A) of section 401(k)(3) (relating to application of participation and discrimination standards) is amended by striking out "any employee" and inserting in lieu thereof "any highly compensated employee".

(c) PLAN NOT DISQUALIFIED IF EXCESS CONTRIBUTIONS DISTRIBUTED BEFORE THE END OF FOLLOWING PLAN YEAR.—

(1) IN GENERAL.—Subsection (k) of section 401 is amended by adding at the end thereof the following new paragraph:

"(8) ARRANGEMENT NOT DISQUALIFIED IF EXCESS CONTRIBUTIONS DISTRIBUTED.—

"(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

"(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions) is distributed, or

"(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

"(B) EXCESS CONTRIBUTIONS.—For purposes of subparagraph (A), the term 'excess contributions' means, with respect to any plan year, the excess of—

"(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

"(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

"(C) METHOD OF DISTRIBUTING EXCESS CONTRIBUTIONS.—Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the respective portions of the excess contributions attributable to each of such employees.

"(D) ADDITIONAL TAX UNDER SECTION 72(t) NOT TO APPLY.—No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

"(E) CROSS REFERENCE.—

"For excise tax on certain excess contributions, see section 4979."

(2) TECHNICAL AMENDMENT.—Clause (ii) of section 401(k)(3)(A) is amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (5)".

(d) DEFINITIONS OF HIGHLY COMPENSATED EMPLOYEE AND COMPENSATION.—

(1) HIGHLY COMPENSATED EMPLOYEE.—Paragraph (5) of section 401(k), as redesignated by this Act, is amended to read as follows:

"(5) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term 'highly compensated employee' has the meaning given such term by section 414(q)."

(2) COMPENSATION.—Section 401(k), as amended by this Act, is amended by adding at the end thereof the following new paragraph:

"(9) COMPENSATION.—For purposes of this subsection, the term 'compensation' has the meaning given such term by section 414(s)."

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 401(k)(3) is amended by striking out the last sentence thereof.

(e) NONDISCRIMINATION STANDARDS.—Section 401(k)(3) is amended by adding at the end thereof the following new subparagraph:

"(C) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

"(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

"(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

"(I) matching contributions (as defined in 401(m)(4)(A) which meets the requirements of paragraph (2) (B and (C)), and

"(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C))."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to years beginning after December 31, 1988.

(2) NONDISCRIMINATION RULES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a), (b)(4), and (d), and the provisions of section 401(k)(4)(B) of the Internal Revenue Code of 1986 (as added by this section), shall apply to years beginning after December 31, 1986.

(B) TRANSITION RULES FOR CERTAIN GOVERNMENTAL AND TAX-EXEMPT PLANS.—Subparagraph (B) of section 401(k)(4) of the Internal Revenue Code of 1986 (relating to governments and tax-exempt organizations not eligible for cash or deferred arrangements), as added by this section, shall not apply to any cash or deferred arrangement adopted by—

(i) a State or local government (or political subdivision thereof) before May 6, 1986, or

(ii) a tax-exempt organization before July 2, 1986.

In the case of an arrangement described in clause (i), the amendments made by subsections (a), (b)(4), and (d) shall apply to years beginning after December 31, 1988.

(3) AGGREGATION AND EXCESS CONTRIBUTIONS.—The amendments made by subsections (c) and (e) shall apply to years beginning after December 31, 1986.

(4) COLLECTIVE BARGAINING AGREEMENTS.—

(A) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to years beginning before the earlier of—

(i) the later of—

(I) January 1, 1989, or

(II) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(ii) January 1, 1991.

(B) SPECIAL RULE FOR NONDISCRIMINATION RULES.—In the case of a plan described in subparagraph (A), the amendments and provisions described in paragraph (2) shall not apply to years beginning before the earlier of—

(i) the date determined under subparagraph (A)(i)(II), or

(ii) January 1, 1989.

(5) SPECIAL RULE FOR QUALIFIED OFFSET ARRANGEMENTS.—

(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of section 401(k)(4) of the Internal Revenue Code of 1986 (as added by this section) to the extent such arrangement is part of a qualified offset arrangement consisting of such cash or deferred arrangement and a defined benefit plan.

(B) QUALIFIED OFFSET ARRANGEMENT.—For purposes of subparagraph (A), a cash or deferred arrangement is part of a qualified offset arrangement with a defined benefit plan to the extent such offset arrangement satisfies each of the following conditions with respect to the employer maintaining the arrangement on April 16, 1986, and at all times thereafter:

(i) The benefit under the defined benefit plan is directly and uniformly conditioned on the initial elective deferrals (up to 4 percent of compensation).

(ii) The benefit provided under the defined benefit plan (before the offset) is at least 60 percent of an employee's cumulative elective deferrals (up to 4 percent of compensation).

(iii) The benefit under the defined benefit plan is reduced by the benefit attributable to the employee's elective deferrals under the plan (up to 4 percent of compensation) and the income allocable thereto. The interest rate used to calculate the reduction shall not exceed the greater of the rate under section 411(a)(11)(B)(ii) of such Code or the interest rate applicable under section 411(c)(2)(C)(iii) of such Code, taking into account section 411(c)(2)(D) of such Code.

For purposes of applying section 401(k)(3) of such Code to the cash or deferred arrangement, the benefits under the defined benefit plan conditioned on initial elective deferrals may be treated as matching contributions under such rules as the Secretary of the Treasury or his delegate may prescribe. The Secretary shall provide rules for the application of this paragraph in the case of successor plans.

(C) DEFINITION OF EMPLOYER.—For purposes of this paragraph, the term "employer" includes any research and development center which is federally funded and engaged in cancer research, but only with respect to employees of contractor-operators whose salaries are reimbursed as direct costs against the operator's contract to perform work at such center.

(6) WITHDRAWALS ON SALE OF ASSETS.—Subclauses (II), (III), and (IV) of section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 (as added by subsection (b)(1)) shall apply to distributions after December 31, 1984.

(7) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(k)(8) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140, shall be treated as made in accordance with the provisions of such plan.

(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(k)(8) of such Code.

(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

SEC. 1117. NONDISCRIMINATION REQUIREMENTS FOR EMPLOYER MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.

(a) GENERAL RULE.—Section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by redesignating subsections (m) and (n) as subsections (n) and (o), respectively, and by inserting after subsection (l) the following new subsection:

"(m) NONDISCRIMINATION TEST FOR MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.—

"(1) IN GENERAL.—A plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

"(2) REQUIREMENTS.—

"(A) CONTRIBUTION PERCENTAGE REQUIREMENT.—A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees does not exceed the greater of—

"(i) 125 percent of such percentage for all other eligible employees, or

"(ii) the lesser of 200 percent of such percentage for all other eligible employees, or such percentage for all other eligible employees plus 2 percentage points.

"(B) MULTIPLE PLANS TREATED AS A SINGLE PLAN.—If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which such contributions are made, all such contributions shall be aggregated for purposes of this subsection.

"(3) CONTRIBUTION PERCENTAGE.—For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

"(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

"(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) MATCHING CONTRIBUTION.—The term 'matching contribution' means—

"(i) any employer contribution made to the plan on behalf of an employee on account of an employee contribution made by such employee, and

"(ii) any employer contribution made to the plan on behalf of an employee on account of an employee's elective deferral.

"(B) ELECTIVE DEFERRAL.—The term 'elective deferral' means any employer contribution described in section 402(g)(3)(A).

"(C) QUALIFIED NONELECTIVE CONTRIBUTIONS.—The term 'qualified nonelective con-

tribution' means any employer contribution (other than a matching contribution) with respect to which—

"(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

"(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

"(5) EMPLOYEES TAKEN INTO CONSIDERATION.—

"(A) IN GENERAL.—Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

"(B) CERTAIN NONPARTICIPANTS.—If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

"(6) PLAN NOT DISQUALIFIED IF EXCESS AGGREGATE CONTRIBUTIONS DISTRIBUTED BEFORE END OF FOLLOWING PLAN YEAR.—

"(A) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

"(B) EXCESS AGGREGATE CONTRIBUTIONS.—For purposes of subparagraph (A), the term 'excess aggregate contributions' means, with respect to any plan year, the excess of—

"(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

"(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

"(C) METHOD OF DISTRIBUTING EXCESS CONTRIBUTIONS.—Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the respective portions of such amounts attributable to each of such employees. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

"(D) COORDINATION WITH SUBSECTION (k) AND 402(g).—The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

"(i) first determining the excess deferrals (within the meaning of section 402(g)), and

"(ii) then determining the excess contributions under subsection (k).

"(7) TREATMENT OF DISTRIBUTIONS.—

"(A) ADDITIONAL TAX OF SECTION 72(t) NOT APPLICABLE.—No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (8).

"(B) EXCLUSION OF EMPLOYEE CONTRIBUTIONS.—Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

"(8) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term 'highly compensated employee' has the meaning given to such term by section 414(q).

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

"(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

"(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term 'alternative limitation' means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.

"(10) CROSS REFERENCE.—

"For excise tax on certain excess contributions, see section 4979."

(b) EXCISE TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Chapter 43 (relating to qualified pension, etc. plans) is amended by adding at the end thereof the following new section:

"SEC. 4979. TAX ON CERTAIN EXCESS CONTRIBUTIONS.

"(a) GENERAL RULE.—In the case of any plan, there is hereby imposed a tax for the taxable year equal to 10 percent of the sum of—

"(1) any excess contributions under a cash or deferred arrangement which is part of such plan for the plan year ending in such taxable year, and

"(2) any excess aggregate contributions under the plan for the plan year ending in such taxable year.

"(b) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the employer.

"(c) EXCESS CONTRIBUTIONS.—For purposes of this section, the term 'excess contributions' has the meaning given such term by sections 401(k)(8)(B), 403(b), 408(k)(8)(B), and 501(c)(18).

"(d) EXCESS AGGREGATE CONTRIBUTION.—For purposes of this section, the term 'excess aggregate contribution' has the meaning given to such term by section 401(m)(6)(B).

"(e) PLAN.—For purposes of this section, the term 'plan' means—

"(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(2) any annuity plan described in section 403(a),

"(3) any annuity contract described in section 403(b),

"(4) a simplified employee pension of an employer which satisfies the requirements of section 408(k), and

"(5) a plan described in section 501(c)(18).

Such term includes any plan which, at any time, has been determined by the Secretary to be such a plan.

"(f) NO TAX WHERE EXCESS DISTRIBUTED WITHIN 2½ MONTHS OF CLOSE OF YEAR.—

"(1) IN GENERAL.—No tax shall be imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent such contribution (together with any income allocable thereto) is distributed (or, if forfeitable, is forfeited) before the close of the first 2½ months of the following plan year.

"(2) INCLUDED IN PRIOR YEAR.—Any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by adding at the end thereof the following new item:

"Sec. 4979. Tax on certain excess contributions."

(c) TECHNICAL AMENDMENT.—Paragraph (2) of section 414(k) (relating to certain plans) is amended by striking out "and 415 (relating to limitations on benefits and contributions under qualified plans)" and inserting in lieu thereof ", 415 (relating to limitations on benefits and contributions under qualified plans), and 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions)".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1986.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

(A) January 1, 1989, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).

(3) ANNUITY CONTRACTS.—In the case of an annuity contract under section 403(b) of the Internal Revenue Code of 1986—

(A) the amendments made by this section shall apply to plan years beginning after December 31, 1988, and

(B) in the case of a collective bargaining agreement described in paragraph (2), the amendments made by this section shall not apply to years beginning before the earlier of—

(i) the later of—

(I) January 1, 1989, or

(II) the date determined under paragraph (2)(B), or

(ii) January 1, 1991.

SEC. 1118. BENEFITS TREATED AS ACCRUING RATABLY FOR PURPOSES OF DETERMINING WHETHER PLAN IS TOP-HEAVY.

(a) GENERAL RULE.—Paragraph (4) of section 416(g) (defining top-heavy plan) is amended by adding at the end thereof the following new subparagraph:

"(F) ACCRUED BENEFITS TREATED AS ACCRUING RATABLY.—The accrued benefit of any employee (other than a key employee) shall be determined—

"(i) under the method which is used for accrual purposes for all plans of the employer, or

"(ii) if there is no method described in clause (i), as if such benefit accrued not more rapidly than the slowest accrual rate permitted under section 411(b)(1)(C)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to plan years beginning after December 31, 1986.

SEC. 1119. MODIFICATION OF RULES FOR BENEFIT FORFEITURES.

(a) GENERAL RULE.—Paragraph (8) of section 401(a) (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by striking out "pension plan" and inserting in lieu thereof "defined benefit plan".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to plan years beginning after December 31, 1985.

SEC. 1120. NONDISCRIMINATION REQUIREMENTS FOR TAX-SHELTERED ANNUITIES.

(a) GENERAL RULE.—Paragraph (1) of section 403(b) is amended by striking out "and" at the end of subparagraph (B), by inserting "and" at the end of subparagraph (C), and by inserting after subparagraph (C) the following new subparagraph:

"(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (10),".

(b) NONDISCRIMINATION REQUIREMENTS.—Subsection (b) of section 403 is amended by adding at the end thereof the following new paragraph:

"(10) NONDISCRIMINATION REQUIREMENTS.—

"(A) IN GENERAL.—For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

"(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), and (26) of section 401(a) and section 410(b) in the same manner as if such plan were described in section 401(a), and

"(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded.

"(B) CHURCH.—For purposes of paragraph (1)(D), the term 'church' has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1988.

PART III—TREATMENT OF DISTRIBUTIONS

SEC. 1121. MINIMUM DISTRIBUTION REQUIREMENTS.

(a) EXCISE TAX ON FAILURE TO DISTRIBUTE.—

(1) IN GENERAL.—Section 4974 is amended to read as follows:

"SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN QUALIFIED RETIREMENT PLANS.

"(a) GENERAL RULE.—If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

"(b) MINIMUM REQUIRED DISTRIBUTION.—For purposes of this section, the term 'minimum required distribution' means the minimum amount required to be distributed during a taxable year under section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be, as determined under regulations prescribed by the Secretary.

"(c) QUALIFIED RETIREMENT PLAN.—For purposes of this section, the term 'qualified retirement plan' means—

"(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(2) an annuity plan described in section 403(a),

"(3) an annuity contract described in section 403(b),

"(4) an individual retirement account described in section 408(a), or

"(5) an individual retirement annuity described in section 408(b).

Such term includes any plan, contract, account, or annuity which, at any time, has been determined by the Secretary to be such a plan, contract, account, or annuity.

"(d) WAIVER OF TAX IN CERTAIN CASES.—If the taxpayer establishes to the satisfaction of the Secretary that—

"(1) the shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and

"(2) reasonable steps are being taken to remedy the shortfall,

the Secretary may waive the tax imposed by subsection (a) for the taxable year."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by striking out the item relating to section 4974 and inserting in lieu thereof the following:

"Sec. 4974. Excise tax on certain accumulations in qualified retirement plans."

(b) UNIFORM REQUIRED BEGINNING DATE.—Subparagraph (C) of section 401(a)(9) (defining required beginning date) is amended to read as follows:

"(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the calendar year in which the employee attains age 70½."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (F) of section 402(a)(5) is amended to read as follows:

"(F) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer described in subparagraph (A) to an eligible retirement plan described in subclause (I) or (II) of subparagraph (E)(iv) shall be treated as a rollover contribution described in section 408(d)(3)."

(2) Clause (ii) of section 408(d)(3)(A) is amended by striking out the third and fourth parenthetical phrases.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to years beginning after December 31, 1988.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall apply to years beginning after December 31, 1986.

(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to distributions to individuals covered by such agreements in plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(ii) January 1, 1989, or

(B) January 1, 1991.

(4) TRANSITION RULES.—

(A) The amendments made by subsections (a) and (b) shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982.

(B)(i) Except as provided in clause (ii), the amendment made by subsection (b) shall not apply in the case of any individual who has attained age 70½ before January 1, 1988.

(ii) Clause (i) shall not apply to any individual who is a 5-percent owner (as defined in section 416(i) of the Internal Revenue Code of 1986), at any time during—

(I) the plan year ending with or within the calendar year in which such owner attains age 66½, and

(II) any subsequent plan year.

SEC. 1122. TAXATION OF DISTRIBUTIONS.

(a) LIMITATIONS ON SPECIAL AVERAGING PROVISIONS.—

(1) AVERAGING PROVISIONS LIMITED TO 1 LUMP SUM DISTRIBUTION AFTER AGE 59½.—Subparagraph (B) of section 402(e)(4) (relating to election of lump sum treatment) is amended to read as follows:

"(B) AVERAGING TO APPLY TO 1 LUMP SUM DISTRIBUTION AFTER AGE 59½.—Paragraph (1) shall apply to a lump sum distribution with respect to an employee under subparagraph (A) only if—

"(i) such amount is received on or after the taxpayer has attained age 59½, and

"(ii) the taxpayer elects for the taxable year to have all such amounts received during such taxable year so treated.

Not more than 1 election may be made under this subparagraph by any taxpayer with respect to any employee. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to 2 or more trusts, the election under this subparagraph shall be made by the personal representative of the taxpayer."

(2) 5-YEAR AVERAGING IN LIEU OF 10-YEAR AVERAGING.—Subparagraph (C) of section 402(e)(1) (relating to initial separate tax) is amended—

(A) by striking out "10 times" and inserting in lieu thereof "5 times", and

(B) by striking out "one-tenth" and inserting in lieu thereof "⅕".

(b) REPEAL OF CAPITAL GAINS TREATMENT.—

(1) IN GENERAL.—The following provisions are hereby repealed:

(A) Paragraph (2) of section 402(a) (relating to capital gains treatment for portion of lump sum distribution).

(B) Paragraph (2) of section 403(a) (relating to capital gains treatment for certain distributions).

(2) TECHNICAL AMENDMENTS.—

(A) Clause (iii) of section 402(a)(5)(D) is amended to read as follows:

"(iii) DENIAL OF 10-YEAR AVERAGING FOR SUBSEQUENT DISTRIBUTIONS.—If an election under clause (i) is made with respect to any partial distribution paid to any employee, paragraphs (1) and (3) of subsection (e) shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan)."

(B) Paragraph (1) of section 402(e) is amended—

(i) by striking out subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively, and

(ii) by striking out "The initial separate tax" in subparagraph (B) (as so redesignated) and inserting in lieu thereof "The amount of tax imposed by subparagraph (A)", and

(iii) by striking out "INITIAL SEPARATE" in the heading of subparagraph (B) (as so redesignated) and inserting in lieu thereof "AMOUNT OF TAX".

(C) Paragraph (3) of section 402(e) is amended by striking out "the ordinary income portion" and inserting in lieu thereof "total taxable amount".

(D) Paragraph (4) of section 402(e) is amended by striking out subparagraph (E).

(E) Subparagraph (H) of section 402(e)(4) is amended by striking out "(but not for purposes of subsection (a)(2) or section 403(a)(2)(A))".

(c) AMENDMENTS TO SECTION 72.—

(1) REPEAL OF SPECIAL RULE FOR EMPLOYEES' ANNUITIES.—Subsection (d) of section 72 (relating to employee's annuities where employee's contributions recoverable in 3 years) is hereby repealed.

(2) AMOUNT EXCLUDED UNDER EXCLUSION RATIO LIMITED TO EMPLOYEE'S INVESTMENT IN THE CONTRACT.—Subsection (b) of section 72 (relating to exclusion ratio) is amended to read as follows:

"(b) EXCLUSION RATIO.—

"(1) IN GENERAL.—Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date).

"(2) EXCLUSION LIMITED TO INVESTMENT.—The portion of any amount received as an annuity which is excluded from gross income under paragraph (1) shall not exceed the unrecovered investment in the contract immediately before the receipt of such amount.

"(3) DEDUCTION WHERE ANNUITY PAYMENTS CEASE BEFORE ENTIRE INVESTMENT RECOVERED.—

"(A) IN GENERAL.—If—

"(i) after the annuity starting date, payments as an annuity under the contract cease by reason of the death of an annuitant, and

"(ii) as of the date of such cessation, there is unrecovered investment in the contract,

the amount of such unrecovered investment (in excess of any amount specified in subsection (e)(5) which was not included in gross income) shall be allowed as a deduction to the annuitant for his last taxable year.

"(B) PAYMENTS TO OTHER PERSONS.—In the case of any contract which provides for payments meeting the requirements of subparagraphs (B) and (C) of subsection (c)(2), the deduction under subparagraph (A) shall be allowed to the person entitled to such payments for the taxable year in which such payments are received.

"(C) NET OPERATING LOSS DEDUCTIONS PROVIDED.—For purposes of section 172, a deduction allowed under this paragraph shall be treated as if it were attributable to a trade or business of the taxpayer.

"(4) UNRECOVERED INVESTMENT.—For purposes of this subsection, the unrecovered investment in the contract as of any date is—

"(A) the investment in the contract as of the annuity starting date, reduced by

"(B) the aggregate amount received under the contract on or after such annuity starting date and before the date as of which the determination is being made, to the extent such amount was excludable from gross income under this subtitle."

(3) AMOUNTS NOT RECEIVED AS ANNUITIES ALLOCATED ON A PRO RATA BASIS.—

(A) IN GENERAL.—Subsection (e) of section 72 is amended by adding at the end thereof the following new paragraphs:

"(8) EXTENSION OF PARAGRAPH (2)(B) TO QUALIFIED PLANS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection (other than paragraph (7)), in the case of any amount received before the annuity starting date from a trust or contract described in paragraph (5)(D), paragraph (2)(B) shall apply to such amounts.

"(B) ALLOCATION OF AMOUNT RECEIVED.—For purposes of paragraph (2)(B), the amount allocated to the investment in the contract shall be the portion of the amount described in subparagraph (A) which bears the same ratio to such amount as the investment in the contract bears to the account balance. The determination under the preceding sentence shall be made as of the time of the distribution or at such other time as the Secretary may prescribe.

"(C) TREATMENT OF FORFEITABLE RIGHTS.—If an employee does not have a nonforfeitable right to any amount under any trust or contract to which subparagraph (A) applies, such amount shall not be treated as part of the account balance.

"(D) INVESTMENT IN THE CONTRACT BEFORE 1987.—In the case of a plan which on May 5, 1986, permitted withdrawal of any employee contributions before separation from service, subparagraph (A) shall apply only to the extent that amounts received before the annuity starting date (when increased by amounts previously received under the contract after December 31, 1986) exceed the investment in the contract as of December 31, 1986.

"(9) TREATMENT OF EMPLOYEE CONTRIBUTIONS AS SEPARATE CONTRACT.—Any employee contributions (and any income allocable thereto) under a defined contribution plan shall be treated as a separate contract for purposes of this subsection."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 72(e)(5) is amended by striking out "paragraph (7)" and inserting in lieu thereof "paragraphs (7) and (8)".

(d) BENEFICIARY OF QUALIFIED ANNUITIES TAXED ONLY WHEN AMOUNTS ACTUALLY RECEIVED.—

(1) Paragraph (1) of section 403(a) (relating to taxability of beneficiary under a qualified annuity plan) is amended to read as follows:

"(1) DISTRIBUTEE TAXABLE UNDER SECTION 72.—If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities)."

(2) The second sentence of section 403(b)(1) (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended to read as follows: "The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities)."

(3) The last sentence of section 403(c) (relating to taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations) is amended to read as follows: "In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities)."

(e) SPECIAL RULES FOR ROLLOVER DISTRIBUTIONS.—

(1) PARTIAL ROLLOVERS.—Clause (i) of section 402(a)(5)(D) (relating to requirements for partial distributions) is amended to read as follows:

"(i) REQUIREMENTS.—Subparagraph (A) shall apply to a partial distribution only if the employee elects to have subparagraph (A) apply to such distribution and such distribution would be a lump sum distribution if subsection (e)(4)(A) were applied—

"(I) by substituting '50 percent of the balance to the credit of an employee' for 'the balance to the credit of an employee',

"(II) without regard to clause (ii) thereof, the second sentence thereof, and subparagraph (B) of subsection (e)(4).

Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of this clause."

(2) EXTENSION OF ROLLOVER PERIOD FOR FROZEN DEPOSITS.—

(A) IN GENERAL.—Section 402(a)(6) (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(H) SPECIAL RULE FOR FROZEN DEPOSITS.—

"(i) IN GENERAL.—The 60-day period described in paragraph (5)(C) shall not—

"(I) include any period during which the amount transferred to the employee is a frozen deposit, or

"(II) end earlier than 10 days after such amount ceases to be a frozen deposit.

"(ii) FROZEN DEPOSIT.—For purposes of this subparagraph, the term 'frozen deposit' means any deposit which may not be withdrawn because of—

"(I) the bankruptcy or insolvency of any financial institution, or

"(II) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State."

(B) INDIVIDUAL RETIREMENT PLANS.—Section 408(d)(3) (relating to rollover contribution) is amended by adding at the end thereof the following new subparagraph:

"(F) FROZEN DEPOSITS.—For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(H) (relating to frozen deposits) shall apply."

(g) NET UNREALIZED APPRECIATION.—Section 402(e)(4)(J) (relating to unrealized appreciation of employer securities) is amended by adding at the end thereof the following new sentence: "To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution."

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to amounts distributed after December 31, 1986, in taxable years ending after such date.

(2) SUBSECTION (c).—

(A) SUBSECTION (c)(1).—The amendment made by subsection (c)(1) shall apply to in-

dividuals whose annuity starting date is after July 1, 1986.

(B) SUBSECTION (c)(2).—The amendment made by subsection (c)(2) shall apply to individuals whose annuity starting date is after December 31, 1986.

(C) SPECIAL RULE FOR AMOUNTS NOT RECEIVED AS ANNUITIES.—In the case of any plan not described in section 72(e)(8)(D) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)), the amendments made by subsection (c)(3) shall apply to amounts received after July 1, 1986.

(3) SPECIAL RULE FOR INDIVIDUALS WHO ATTAINED AGE 50 BEFORE JANUARY 1, 1986.—

(A) IN GENERAL.—In the case of a lump sum distribution to which this paragraph applies—

(i) the existing capital gains provisions shall continue to apply, and

(ii) the requirement of subparagraph (B) of section 402(e)(4) of the Internal Revenue Code of 1986 (as amended by subsection (a)) that the distribution be received after attaining age 59½ shall not apply.

(B) COMPUTATION OF TAX.—If subparagraph (A) applies to any lump sum distribution of any taxpayer for any taxable year, the tax imposed by section 1 of the Internal Revenue Code of 1986 on such taxpayer for such taxable year shall be equal to the sum of—

(i) the tax imposed by such section 1 on the taxable income of the taxpayer (reduced by the portion of such lump sum distribution to which clause (ii) applies), plus

(ii) 20 percent of the portion of such lump sum distribution to which the existing capital gains provisions continue to apply by reason of this paragraph.

(C) LUMP SUM DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any lump sum distribution if—

(i) such lump sum distribution is received by an individual who has attained age 50 before January 1, 1986, and

(ii) the taxpayer makes an election under this paragraph.

Not more than 1 election may be made under this paragraph with respect to an employee. An election under this subparagraph shall be treated as an election under section 402(e)(4)(B) of such Code with respect to any other lump sum distribution.

(4) 5-YEAR PHASE-OUT OF CAPITAL GAINS TREATMENT.—

(A) Notwithstanding the amendment made by subsection (b), if the taxpayer elects the application of this paragraph with respect to any distribution after December 31, 1986, and before January 1, 1992, the phase-out percentage of the amount which would have been treated, without regard to this subparagraph, as long-term capital gain under the existing capital gains provisions shall be treated as long-term capital gain.

(B) For purposes of this paragraph—

In the case of distributions during calendar year:	The phase-out percentage is:
1987	100
1988	95
1989	75
1990	50
1991	25.

(C) No more than 1 election may be made under this paragraph with respect to an employee. An election under this paragraph shall be treated as an election under section 402(e)(4)(B) of the Internal Revenue Code of 1986 with respect to any other lump sum distribution.

(5) ELECTION OF 10-YEAR AVERAGING.—An individual who has attained age 50 before January 1, 1986, and elects the application of paragraph (3) or section 402(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act) may elect to have such section applied by substituting "10 times" for "5 times" and "⅒" for "⅕" in subparagraph (B) thereof. For purposes of the preceding sentence, section 402(e)(1) of such Code shall be applied by using the rate of tax in effect under section 1 of the Internal Revenue Code of 1954 for taxable years beginning during 1986.

(6) EXISTING CAPITAL GAIN PROVISIONS.—For purposes of paragraphs (3) and (4), the term 'existing capital gains provisions' means the provisions of paragraph (2) of section 402(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) and paragraph (2) of section 403(a) of such Code (as so in effect).

(7) SUBSECTION (d).—The amendments made by subsection (d) shall apply to taxable years beginning after December 31, 1985.

(8) FROZEN DEPOSITS.—The amendments made by subsection (e)(2) shall apply to amounts transferred to an employee before, on, or after the date of the enactment of this Act, except that in the case of an amount transferred on or before such date, the 60-day period referred to in section 402(a)(5)(C) of the Internal Revenue Code of 1986 shall not expire before the 60th day after the date of the enactment of this Act.

SEC. 1123. UNIFORM ADDITIONAL TAX ON EARLY DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS.

(a) IN GENERAL.—Section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (t) as subsection (u) and by inserting after subsection (s) the following new subsection:

"(t) 10-PERCENT ADDITIONAL TAX ON EARLY DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS.—

"(1) IMPOSITION OF ADDITIONAL TAX.—If any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

"(2) SUBSECTION NOT TO APPLY TO CERTAIN DISTRIBUTIONS.—Except as provided in paragraphs (3) and (4), paragraph (1) shall not apply to any of the following distributions:

"(A) IN GENERAL.—Distributions which are—

"(i) made on or after the date on which the employee attains age 59½,

"(ii) made to a beneficiary (or to the estate of the employee) on or after the death of the employee,

"(iii) attributable to the employee's being disabled within the meaning of subsection (m)(7),

"(iv) part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his beneficiary, or

"(v) made to an employee after separation from service on account of early retirement under the plan after attainment of age 55, or

"(vi) dividends paid with respect to stock of a corporation which are described in section 404(k).

"(B) MEDICAL EXPENSES.—Distributions made to the employee (other than distributions described in subparagraph (A) or (C)) to the extent such distributions do not exceed the amount allowable as a deduction under section 213 to the employee for amounts paid during the taxable year for medical care (determined without regard to whether the employee itemizes deductions for such taxable year).

"(C) CERTAIN PLANS.—

"(i) IN GENERAL.—Except as provided in clause (ii), any distribution made before January 1, 1990, to an employee from an employee stock ownership plan defined in section 4975(e)(7) to the extent that, on average, a majority of assets in the plan have been invested in employer securities (as defined in section 409(l)) for the 5-plan-year period preceding the plan year in which the distribution is made.

"(ii) BENEFITS DISTRIBUTED MUST BE INVESTED IN EMPLOYER SECURITIES FOR 5 YEARS.—Clause (i) shall not apply to any distribution which is attributable to assets which have not been invested in employer securities at all times during the period referred to in clause (i).

"(D) PAYMENTS TO ALTERNATE PAYEES PURSUANT TO QUALIFIED DOMESTIC RELATIONS ORDERS.—Any distribution to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)(1)).

"(3) LIMITATIONS.—

"(A) CERTAIN EXCEPTIONS NOT TO APPLY TO INDIVIDUAL RETIREMENT PLANS.—Subparagraphs (A)(v), (B), and (C) of paragraph (2) shall not apply to distributions from an individual retirement plan.

"(B) PERIODIC PAYMENTS UNDER QUALIFIED PLANS MUST BEGIN AFTER SEPARATION.—Paragraph (2)(A)(iv) shall not apply to any amount paid from a trust described in section 401(a) which is exempt from tax under section 501(a) or from a contract described in section 72(e)(5)(D)(ii) unless the series of payments begins after the employee separates from service.

"(4) CHANGE IN SUBSTANTIALLY EQUAL PAYMENTS.—

"(A) IN GENERAL.—If—

"(i) paragraph (1) does not apply to a distribution by reason of paragraph (2)(A)(iv), and

"(ii) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

"(I) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59½, or

"(II) before the employee attains age 59½, the taxpayer's tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(A)(iv)) would have been imposed, plus interest for the deferral period.

"(B) DEFERRAL PERIOD.—For purposes of this paragraph, the term 'deferral period' means the period beginning with the taxable year in which (without regard to paragraph (2)(A)(iv)) the distribution would have been includible in gross income and ending with the taxable year in which the modification described in subparagraph (A) occurs.

"(5) EMPLOYEE.—For purposes of this subsection, the term 'employee' includes any participant, and in the case of an individual retirement plan, the individual for whose benefit such plan was established."

(b) CONFORMING CHANGES TO TAX ON PREMATURE DISTRIBUTIONS FROM ANNUITY CONTRACTS; EXCEPTION FOR QUALIFIED FUNDING ASSETS.—

(1) INCREASE IN RATE.—Section 72(q) is amended—

(A) by striking out "5 percent" in paragraph (1) thereof and inserting in lieu thereof "10 percent", and

(B) by striking out "5-PERCENT" in the heading thereof and inserting in lieu thereof "10-PERCENT".

(2) PERIODIC PAYMENTS.—Subparagraph (D) of section 72(q)(2) is amended to read as follows:

"(D) which is a part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary."

(3) ADDITIONAL TAX.—Section 72(q) is amended by adding at the end thereof the following new paragraph:

"(3) CHANGE IN SUBSTANTIALLY EQUAL PAYMENTS.—If—

"(A) paragraph (1) does not apply to a distribution by reason of paragraph (2)(D), and

"(B) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

"(i) before the close of the 5-year period beginning on the date of the first payment and after the employee attains age 59½, or

"(ii) before the employee attains age 59½, the taxpayer's tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(D)) would have been imposed, plus interest for the deferral period (within the meaning of subsection (t)(4)(B))."

(3) Paragraph (2) of section 72(q) is amended by striking out "This subsection" and inserting in lieu thereof "Paragraph (1)".

(4) Section 72(q)(2), as amended by this Act, is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H), and by adding at the end thereof the following new subparagraphs:

"(I) under an immediate annuity contract (within the meaning of section 72(u)(4)), or

"(J) which is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and which is held by the employer until such time as the employee separates from service."

(c) AMENDMENTS TO SECTION 403(b).—

(1) IN GENERAL.—Subsection (b) of section 403 (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end thereof the following new paragraph:

"(11) REQUIREMENT THAT DISTRIBUTIONS NOT BEGIN BEFORE AGE 59½, SEPARATION FROM SERVICE, DEATH, OR DISABILITY.—This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

"(A) when the employee attains age 59½, separates from service, dies, or becomes disabled (within the meaning of section 72(m)(7)), or

"(B) in the case of hardship.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship."

(2) CUSTODIAL ACCOUNTS.—Clause (ii) of section 403(b)(7) (relating to amounts treated as contributions) is amended by inserting "in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D))," before "encounters".

(d) TECHNICAL AMENDMENTS.—

(1) Subparagraph (A) of section 72(m)(5) is amended to read as follows:

"(A) This paragraph applies to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner, or by a successor of such an individual, but only to the extent such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula."

(2) Subsection (f) of section 408 is hereby repealed.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1988.

(3) EXCEPTION WHERE DISTRIBUTION COMMENCES.—The amendments made by this section shall not apply to distributions to any employee from a plan maintained by any employer if—

(A) as of March 1, 1986, the employee separated from service with the employer,

(B) as of March 1, 1986, the accrued benefit of the employee was in pay status pursuant to a written election providing a specific schedule for the distribution of the entire accrued benefit of the employee, and

(C) such distribution is made pursuant to such written election.

(4) TRANSITION RULE.—The amendments made by this section shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 1124. ELECTION TO TREAT CERTAIN LUMP SUM DISTRIBUTIONS RECEIVED DURING 1987 AS RECEIVED DURING 1986.

(a) IN GENERAL.—If an employee separates from service during 1986 and receives a lump sum distribution (within the meaning of section 402(e)(4)(A) of such Code) after December 31, 1986, and before March 16, 1987, on account of such separation from service, then, for purposes of the Internal Revenue Code of 1986, such employee may elect to treat such lump sum distribution as if it were received when such employee separated from service.

(b) SPECIAL RULE FOR TERMINATED PLAN.—In the case of an employee who receives a distribution from a terminated plan which was maintained by a corporation organized under the laws of the State of Nevada, the principal place of business of which is Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986, the employee may treat a lump sum distribution received from such plan before June 30, 1987, as if it were received in 1986.

PART IV—MISCELLANEOUS PROVISIONS

SEC. 1131. ADJUSTMENTS TO SECTION 404 LIMITATIONS.

(a) ELIMINATION OF LIMIT CARRYFORWARD OF SECTION 404(a)(3)(A).—Subparagraph (A) of section 404(a)(3) (relating to limits on deductible contributions to stock bonus and profit-sharing trusts) is amended to read as follows:

"(A) LIMITS ON DEDUCTIBLE CONTRIBUTIONS.—

"(i) IN GENERAL.—In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan.

"(ii) CARRYOVER OF EXCESS CONTRIBUTIONS.—Any amount paid into the trust in any taxable year in excess of the limitation of clause (i) (or the corresponding provision of prior law) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this clause in any 1 such succeeding taxable year together with the amount allowable under clause (i) shall not exceed 15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.

"(iii) CERTAIN RETIREMENT PLANS EXCLUDED.—For purposes of this subparagraph, the term 'stock bonus or profit-sharing trust' shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1).

"(iv) 2 OR MORE TRUSTS TREATED AS 1 TRUST.—If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

"(v) PRE-87 LIMITATION CARRYFORWARDS.—

"(I) IN GENERAL.—The limitation of clause (i) for any taxable year shall be increased by the unused pre-87 limitation carryforwards (but not to an amount in excess of 25 percent of the compensation described in clause (i)).

"(II) UNUSED PRE-87 LIMITATION CARRYFORWARDS.—For purposes of subclause (I), the term 'unused pre-87 limitation carryforwards' means the amount by which the limitation of the first sentence of this subparagraph (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for any taxable year beginning before January 1, 1987, exceeded the amount paid to the trust for such taxable year (to the extent such excess was not taken into account in prior taxable years)."

(b) COMBINED LIMIT TO APPLY TO COMBINATIONS OF DEFINED CONTRIBUTION PLANS AND DEFINED BENEFIT PLANS.—Paragraph (7) of section 404(a) is amended to read as follows:

"(7) LIMITATION ON DEDUCTIONS WHERE COMBINATION OF DEFINED CONTRIBUTION PLAN AND DEFINED BENEFIT PLAN.—

"(A) IN GENERAL.—If amounts are deductible under the foregoing provisions of this subsection (other than paragraph (5)) in connection with 1 or more defined contribution plans and 1 or more defined benefit plans, the total amount deductible in a taxable year under such plans shall not exceed the greater of—

"(i) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, or

"(ii) the amount of contributions made to or under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans for the plan year which ends with or within such taxable year (or for any prior plan year).

A defined contribution plan which is a pension plan shall not be treated as failing to provide definitely determinable benefits merely by limiting employer contributions to amounts deductible under this section.

"(B) CARRYOVER OF CONTRIBUTIONS IN EXCESS OF THE DEDUCTIBLE LIMIT.—Any amount paid under the plans in any taxable year in excess of the limitation of subparagraph (A) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this subparagraph in any 1 such succeeding taxable year together with the amount allowable under subparagraph (A) shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plans.

"(C) PARAGRAPH NOT TO APPLY IN CERTAIN CASES.—This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.

"(D) SECTION 412(i) PLANS.—For purposes of this paragraph, any plan described in section 412(i) shall be treated as a defined benefit plan."

(c) EXCISE TAX ON NONDEDUCTIBLE CONTRIBUTIONS TO QUALIFIED EMPLOYER PLANS.—

(1) IN GENERAL.—Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4971 the following new section:

"SEC. 4972. TAX ON NONDEDUCTIBLE CONTRIBUTIONS TO QUALIFIED EMPLOYER PLANS.

"(a) TAX IMPOSED.—In the case of any qualified employer plan, there is hereby imposed a tax equal to 10 percent of the nondeductible contributions under the plan (determined as of the close of the taxable year of the employer).

"(b) EMPLOYER LIABLE FOR TAX.—The tax imposed by this section shall be paid by the employer making the contributions.

"(c) NONDEDUCTIBLE CONTRIBUTIONS.—For purposes of this section, the term 'nondeductible contributions' means, with respect to any qualified employer plan, the sum of—

"(1) the excess (if any) of—

"(A) the amount contributed for the taxable year by the employer to or under such plan, over

"(B) the amount allowable as a deduction under section 404 for such contributions, and

"(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

"(A) the portion of the amount so determined returned to the employer during the taxable year, and

"(B) the portion of the amount so determined deductible under section 404 for the taxable year.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

"(A) any plan meeting the requirements of section 401(a) which includes a trust exempt from the tax under section 501(a),

"(B) an annuity plan described in section 403(a), and

"(C) any simplified employee pension (within the meaning of section 408(k)).

"(2) EMPLOYER.—In the case of a plan which provides contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1), the term 'employer' means the person treated as the employer under section 401(c)(4)."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by inserting after the item relating to section 4971 the following item:

"Sec. 4972. Tax on nondeductible contributions to qualified employer plans."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1132. EXCISE TAX ON REVERSION OF QUALIFIED PLAN ASSETS TO EMPLOYER.

(a) GENERAL RULE.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end thereof the following new section:

"SEC. 4980. TAX ON REVERSION OF QUALIFIED PLAN ASSETS TO EMPLOYER.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax of 10 percent of the amount of any employer reversion from a qualified plan.

"(b) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the employer maintaining the plan.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED PLAN.—The term 'qualified plan' means any plan meeting the requirements of section 401(a) or 403(a), other than—

"(A) a plan maintained by an employer if such employer has, at all times, been exempt from tax under this subtitle, or

"(B) a governmental plan (within the meaning of section 414(d)).

Such term shall include any plan which, at any time, has been determined by the Secretary to be a qualified plan.

"(2) EMPLOYER REVERSION.—

"(A) IN GENERAL.—The term 'employer reversion' means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

"(B) EXCEPTIONS.—The term 'employer reversion' shall not include—

"(i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating any provision of section 401, or

"(ii) any distribution to the employer which is allowable under section 401(a)(2)—

"(I) in the case of a multiemployer plan, by reason of mistakes of law or fact or the return of any withdrawal liability payment,

"(II) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or

"(III) in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of contributions to be deductible.

"(3) EXCEPTION FOR EMPLOYEE STOCK OWNERSHIP PLANS.—

"(A) IN GENERAL.—If, upon an employer reversion from a qualified plan, any applicable amount is transferred from such plan to an employee stock ownership plan described in section 4975(e)(7), such amount shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of the employer) if—

"(i) the requirements of subparagraphs (B), (C), and (D) are met, and

"(ii) under the plan, employer securities to which subparagraph (B) applies must remain in the plan until distribution to participants in accordance with the provisions of such plan.

"(B) INVESTMENT IN EMPLOYER SECURITIES.—The requirements of this subparagraph are met if, within 90 days after the transfer (or such longer period as the Secretary may prescribe), the amount transferred is invested in employer securities (as defined in section 409(l)) or used to repay loans used to purchase such securities.

"(C) ALLOCATION REQUIREMENTS.—The requirements of this subparagraph are met if the portion of the amount transferred which is not allocated (by reason of the limitations of section 415) under the plan to accounts of participants in the plan year in which the transfer occurs—

"(i) is credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over a period not to exceed 7 years, and

"(ii) when allocated to accounts of participants under the plan, is treated as an employer contribution for purposes of section 415(c), except that—

"(I) the annual addition (as determined under section 415(c)) attributable to each such allocation shall not exceed the value of such securities as of the time such securities were credited to such suspense account, and

"(II) no additional employer contributions shall be permitted to an employee stock ownership plan described in subparagraph (A) of the employer before the allocation of such amount.

"(D) PARTICIPANTS.—The requirements of this subparagraph are met if at least half of the participants in the qualified plan are participants in the employee stock ownership plan (as of the close of the 1st plan year for which an allocation of the securities is required).

"(E) APPLICABLE AMOUNT.—For purposes of this paragraph, the term 'applicable amount' means any amount which—

"(i) is transferred after March 31, 1985, and before January 1, 1989, or

"(ii) is transferred after December 31, 1988, pursuant to a termination which occurs after March 31, 1985, and before January 1, 1989."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by adding at the end thereof the following new item:

"Sec. 4980. Tax on reversion of qualified plan assets to employer."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to reversions occurring after December 31, 1985.

(2) EXCEPTION WHERE TERMINATION DATE OCCURRED BEFORE JANUARY 1, 1986.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall not apply to any reversion after December 31, 1985, which occurs pursuant to a plan termination where the termination date is before January 1, 1986.

(B) ELECTION TO HAVE AMENDMENTS APPLY.—A corporation may elect to have the amendments made by this section apply to any reversion after 1985 pursuant to a plan termination occurring before 1986 if such corporation was incorporated in the State of Delaware in March, 1978, and became a parent corporation of the consolidated group on September 19, 1978, pursuant to a merger agreement recorded in the State of Nevada on November 19, 1978.

(3) TERMINATION DATE.—For purposes of paragraph (2), the term "termination date" is the date of the termination (within the meaning of section 411(d)(3) of the Internal Revenue Code of 1986) of the plan.

(4) TRANSITION RULE FOR CERTAIN TERMINATIONS.—

(A) IN GENERAL.—In the case of a taxpayer to which this paragraph applies, the amendments made by this section shall not apply to any termination occurring before the date which is 1 year after the date of the enactment of this Act.

(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma,

(ii) a corporation incorporated on January 17, 1917, which is located in Coatesville, Pennsylvania,

(iii) a corporation incorporated on January 23, 1928, which has its principal place of business in New York, New York,

(iv) a corporation incorporated on April 23, 1956, which has its principal place of business in Dallas, Texas, and

(v) a corporation incorporated in the State of Nevada, the principal place of business of which is in Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986.

SEC. 1133. TAX ON EXCESS DISTRIBUTIONS.

(a) GENERAL RULE.—Chapter 43 (relating to tax on pension, etc., plans) is amended by adding at the end thereof the following new section:

"SEC. 4981. TAX ON EXCESS DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS.

"(a) GENERAL RULE.—There is hereby imposed a tax equal to 15 percent of the excess distributions with respect to any individual during any calendar year.

"(b) LIABILITY FOR TAX.—The individual with respect to whom the excess distributions are made shall be liable for the tax imposed by subsection (a). The amount of the tax imposed by subsection (a) shall be reduced by the amount (if any) of the tax imposed by section 72(t) to the extent attributable to such excess distributions.

"(c) EXCESS DISTRIBUTIONS.—For purposes of this section—

"(1) IN GENERAL.—The term 'excess distributions' means the aggregate amount of the retirement distributions with respect to any individual during any calendar year to the extent such amount exceeds $112,500 (adjusted at the same time and in the same manner as under section 415(d)).

"(2) EXCLUSION OF CERTAIN DISTRIBUTIONS.—The following distributions shall not be taken into account under paragraph (1):

"(A) Any retirement distribution with respect to an individual made after the death of such individual.

"(B) Any retirement distribution with respect to an individual payable to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)) if includible in income of the alternate payee.

"(C) Any retirement distribution with respect to an individual which is attributable to the employee's investment in the contract (as defined in section 72(f)).

"(D) Any retirement distribution to the extent not included in gross income by reason of a rollover contribution.

Any distribution described in subparagraph (B) shall be treated as a retirement distribution to the person to whom paid for purposes of this section.

"(3) AGGREGATION OF PAYMENTS.—If retirement distributions with respect to any individual during any calendar year are received by the individual and 1 or more other persons, all such distributions shall be aggregated for purposes of determining the amount of the excess distributions for the calendar year.

"(4) SPECIAL RULE WHERE TAXPAYER ELECTS INCOME AVERAGING.—If the retirement distributions with respect to any individual during any calendar year include a lump sum distribution to which an election under section 402(e)(4)(B) applies—

"(A) paragraph (1) shall be applied separately with respect to such lump sum distribution and other retirement distributions, and

"(B) the limitation under paragraph (1) with respect to such lump sum distribution shall be equal to 5 times the amount of such limitation determined without regard to this subparagraph.

"(5) SPECIAL RULE FOR ACCRUED BENEFITS AS OF AUGUST 1, 1986.—

"(A) IN GENERAL.—If the employee elects on a return filed for a taxable year ending before January 1, 1989 to have this paragraph apply, the portion of any retirement distribution which is attributable (as determined under rules prescribed by the Secretary) to the accrued benefit of an employee as of August 1, 1986, shall be taken into account for purposes of paragraph (1), but no tax shall be imposed under this section with respect to such portion of such distribution.

"(B) LIMITATION.—An employee may not make an election under subparagraph (A) unless the accrued benefit of such employee as of August 1, 1986, exceeds $562,500.

"(C) TAXPAYER NOT MAKING ELECTION.—If an employee does not elect the application of this paragraph, paragraph (1) shall be applied by substituting $150,000 for such dollar limitation unless such dollar limitation is greater than $150,000.

"(d) INCREASE IN ESTATE TAX IF INDIVIDUAL DIES WITH EXCESS ACCUMULATION.—

"(1) IN GENERAL.—The tax imposed by chapter 11 with respect to the estate of any individual shall be increased by an amount equal to 15 percent of the individual's excess retirement accumulation.

"(2) NO CREDIT ALLOWABLE.—No credit shall be allowable under section 2010 with respect to any portion of the tax imposed by chapter 11 attributable to the increase under paragraph (1).

"(3) EXCESS RETIREMENT ACCUMULATION.—For purposes of paragraph (1), the term 'excess retirement accumulation' means the excess (if any) of—

"(A) the value of the individual's interests in qualified employer plans and individual retirement plans as of the date of the decedent's death (or, in the case of an election under section 2032, the applicable valuation date prescribed by such section), over

"(B) the present value (as determined under rules prescribed by the Secretary as of the valuation date prescribed in subparagraph (A)) of an annuity for a term certain—

"(i) with annual payments equal to the limitation of subsection (c) (as in effect for the year in which the death occurs), and

"(ii) payable for a period equal to the life expectancy of the individual immediately before his death.

"(e) RETIREMENT DISTRIBUTIONS.—For purposes of this section—

"(1) IN GENERAL.—The term 'retirement distribution' means, with respect to any individual, the amount distributed during the taxable year under—

"(A) any qualified employer plan with respect to which such individual is or was the employee, and

"(B) any individual retirement plan.

"(2) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

"(A) any plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(B) an annuity plan described in section 403(a), or

"(C) an annuity contract described in section 403(b).

Such term includes any plan or contract which, at any time, has been determined by the Secretary to be such a plan or contract."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by adding at the end thereof the following new item:

"Sec. 4981. Tax on excess distributions from qualified retirement plans."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to distributions made after December 31, 1986.

(2) ESTATE TAX.—Section 4981(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to the estates of decedents dying after December 31, 1986.

(3) PLAN TERMINATIONS BEFORE 1987.—The amendments made by this section shall not apply to distributions before January 1, 1988, which are made on account of the termination of a qualified employer plan if such termination occurred before January 1, 1987.

SEC. 1134. TREATMENT OF LOANS.

(a) $50,000 LIMITATION REDUCED BY BALANCE OF CERTAIN PRECEDING LOANS.—Clause (i) of section 72(p)(2)(A) (relating to exceptions for certain loans) is amended to read as follows:

"(i) $50,000, reduced by the excess (if any) of—

"(I) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over

"(II) the outstanding balance of loans from the plan on the date on which such loan was made, or".

(b) LEVEL AMORTIZATION OF LOAN REQUIRED.—Paragraph (2) of section 72(p) is amended by redesignating subparagraph (C) as subparagraph (D) and inserting after subparagraph (B) the following new subparagraph:

"(C) REQUIREMENT OF LEVEL AMORTIZATION.—Except as provided in regulations, this paragraph shall not apply to any loan unless substantially level amortization of such loan (with payments not less frequently than quarterly) is required over the term of the loan."

(c) DENIAL OF INTEREST DEDUCTION IN CERTAIN CASES.—Subsection (p) of section 72 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively and by inserting after paragraph (2) the following new paragraph:

"(3) DENIAL OF INTEREST DEDUCTIONS IN CERTAIN CASES.—

"(A) IN GENERAL.—No deduction otherwise allowable under this chapter shall be allowed under this chapter for any interest paid or accrued on any loan described in subparagraph (B).

"(B) LOANS TO WHICH SUBPARAGRAPH (A) APPLIES.—For purposes of subparagraph (A), a loan is described in this subparagraph—

"(i) if paragraph (1) does not apply to such loan by reason of paragraph (2), and

"(ii) if—

"(I) such loan is made to a key employee (as defined in section 416(i)), or

"(II) such loan is secured by amounts attributable to elective 401(k) or 403(b) deferrals (as defined in section 402(g)(3))."

(d) EXCEPTION FOR HOME LOANS LIMITED TO ACQUISITION OF PRINCIPAL RESIDENCE.—Clause (ii) of section 72(p)(2)(B) is amended to read as follows:

"(ii) EXCEPTION FOR HOME LOANS.—Clause (i) shall not apply to any loan used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as the principal residence of the participant."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to loans made, renewed, renegotiated, modified, or extended after December 31, 1986.

SEC. 1135. DEFERRED ANNUITIES AVAILABLE ONLY TO NATURAL PERSONS.

(a) GENERAL RULE.—Section 72, as amended by section 1223, is amended by redesignating subsection (u) as subsection (v) and by inserting after subsection (t) the following new subsection:

"(u) TREATMENT OF ANNUITY CONTRACTS NOT HELD BY NATURAL PERSONS.—

"(1) IN GENERAL.—If any annuity contract is held by a person who is not a natural person—

"(A) such contract shall not be treated as an annuity contract for purposes of this subtitle, and

"(B) the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the owner during such taxable year.

For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account.

"(2) INCOME ON THE CONTRACT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'income on the contract' means, with respect to any taxable year of the policyholder, the excess of—

"(i) the sum of the net surrender value of the contract as of the close of the taxable year plus all distributions under the contract received during the taxable year or any prior taxable year, reduced by

"(ii) the sum of the amount of net premiums under the contract for the taxable year and prior taxable years and amounts includible in gross income for prior taxable years with respect to such contract under this subsection.

Where necessary to prevent the avoidance of this subsection, the Secretary may substitute 'fair market value of the contract' for 'net surrender value of the contract' each place it appears in the preceding sentence.

"(B) NET PREMIUMS.—For purposes of this paragraph, the term 'net premiums' means the amount of premiums paid under the contract reduced by any policyholder dividends.

"(3) EXCEPTIONS.—This subsection shall not apply to any annuity contract which—

"(A) is acquired by the estate of a decedent by reason of the death of the decedent,

"(B) is held under a plan described in section 401(a) or 403(a), under a program described in section 403(b), or under an individual retirement plan,

"(C) is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment),

"(D) which is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and which is held by the employer until such time as the employee separates from service, or

"(E) which is an immediate annuity.

"(4) IMMEDIATE ANNUITY.—For purposes of this subsection, the term 'immediate annuity' means an annuity—

"(A) which is purchased with a single premium or annuity consideration, and

"(B) the annuity starting date (as defined in subsection (c)(4)) of which commences no later than 1 year from the date of the purchase of the annuity."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions to annuity contracts after February 28, 1986.

SEC. 1136. PROFITS NOT REQUIRED FOR PROFIT-SHARING PLANS.

(a) IN GENERAL.—Subsection (a) of section 401, as amended by section 1112(b), is amended by inserting after paragraph (26) the following new paragraph:

"(27) The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization."

(b) CONFORMING AMENDMENTS.—Section 404(a)(2) and 818(a)(3), as amended by this Act, are each amended by striking out "and (26)" and inserting in lieu thereof "(26), and (27)".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1985.

SEC. 1137. REQUIREMENT THAT COLLECTIVE BARGAINING AGREEMENTS BE BONA FIDE.

Paragraph (46) of section 7701(a) (relating to determination of whether there is a collective bargaining agreement) is amended by adding at the end thereof the following new sentence: "An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers."

SEC. 1138. PENALTY ON UNDERPAYMENTS ATTRIBUTABLE TO OVERSTATEMENT OF PENSION LIABILITIES.

(a) GENERAL RULE.—Subchapter A of chapter 68 (relating to additions to tax) is amended by inserting after section 6659 the following new section:

"SEC. 6659A. ADDITION TO TAX IN CASE OF OVERSTATEMENTS OF PENSION LIABILITIES.

"(a) ADDITION TO TAX.—In the case of an underpayment of the tax imposed by chapter 1 on any taxpayer for the taxable year which is attributable to an overstatement of pension liabilities, there shall be added to such tax an amount equal to the applicable percentage of the underpayment so attributable.

"(b) APPLICABLE PERCENTAGE DEFINED.—For purposes of subsection (a), the applicable percentage shall be determined under the following table:

"If the valuation claimed is the following percent of the correct valuation—	The applicable percentage is:
150 percent or more but not more than 200 percent	10
More than 200 percent but not more than 250 percent	20
More than 250 percent	30.

"(c) OVERSTATEMENT OF PENSION LIABILITIES.—For purposes of this section, there is an overstatement of pension liabilities if the actuarial determination of the liabilities taken into account for purposes of computing the deduction under paragraph (1) or (2) of section 404(a) exceeds the amount determined to be the correct amount of such liability.

"(d) UNDERPAYMENT MUST BE AT LEAST $1,000.—This section shall not apply if the underpayment for the taxable year attributable to valuation overstatements is less than $1,000.

"(e) AUTHORITY TO WAIVE.—The Secretary may waive all or any part of the addition to the tax provided by this section on a showing by the taxpayer that there was a reasonable basis for the valuation claimed on the return and that such claim was made in good faith."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 68 is amended by inserting after the item relating to section 6659 the following new item:

"Sec. 6659A. Addition to tax in case of overstatements of pension liabilities."

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to overstatements made after the date of the enactment of this Act.

SEC. 1139. INTEREST RATE ASSUMPTIONS.

(a) IN GENERAL.—Subparagraph (B) of section 411(a)(11) is amended to read as follows:

"(B) DETERMINATION OF PRESENT VALUE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the present value shall be calculated—

"(I) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

"(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under subclause (I)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(ii) APPLICABLE INTEREST RATE.—For purposes of clause (i), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 417(e) (relating to determination of present value) is amended to read as follows:

"(3) DETERMINATION OF PRESENT VALUE.—

"(A) IN GENERAL.—For purposes of paragraphs (1) and (2), the present value shall be calculated—

"(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

"(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(B) APPLICABLE INTEREST RATE.—For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

(c) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 203(e) of the Employee Retirement Income

Security Act of 1974 (29 U.S.C. 1053(e)(2)) is amended to read as follows:

"(2)(A) For purposes of paragraph (1), the present value shall be calculated—

"(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

"(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(B) APPLICABLE INTEREST RATE.—For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 205(g) of such Act (29 U.S.C. 1055(g)(3)) is amended to read as follows:

"(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated—

"(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

"(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(B) For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions in plan years beginning after December 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after December 31, 1984, and before January 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984.

(2) REDUCTION IN ACCRUED BENEFITS.—

(A) IN GENERAL.—If a plan—

(i) adopts a plan amendment before the close of the first plan year beginning on or before January 1, 1989, which provides for the calculation of the present value of the accrued benefits in the manner provided by the amendments made by this section, and

(ii) the plan reduces the accrued benefits for any plan year to which such plan amendment applies in accordance with such plan amendment,

such reduction shall not be treated as a violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)).

(B) SPECIAL RULE.—In the case of a plan maintained by a corporation incorporated on April 11, 1934, which is headquartered in Tarrant County, Texas—

(i) such plan may be amended to remove the option of an employee to receive a lump sum distribution (within the meaning of section 402(e)(5) of such Code) if such amendment—

(I) is adopted within 1 year of the date of the enactment of this Act, and

(II) is not effective until 2 years after the employees are notified of such amendment, and

(ii) the present value of any vested accrued benefit of such plan determined during the 3-year period beginning on the date of the enactment of this Act shall be determined under the applicable interest rate (within the meaning of section 411(a)(11)(B)(ii) of such Code, except that if such value (as so determined) exceeds $50,000, then the value of any excess over $50,000 shall be determined by using the interest rate specified in the plan as of August 16, 1986.

SEC. 1140. PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989.

(a) IN GENERAL.—If any amendment made by this subtitle or subtitle C requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment or in accordance with an amendment prescribed by the Secretary and adopted by the plan, and

(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this provision.

(b) MODEL AMENDMENT.—

(1) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment or amendments which allow a plan to meet the requirements of any amendment made by this subtitle or subtitle C—

(A) which requires an amendment to such plan, and

(B) is effective before the first plan year beginning after December 31, 1988.

(2) ADOPTION BY PLAN.—If a plan adopts the amendment or amendments prescribed under paragraph (1) and operates in accordance with such amendment or amendments, such plan shall not be treated as failing to provide definitely determinable benefits or contributions or to be operated in accordance with the provisions of the plan.

(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, subsection (a) shall be applied by substituting for the first plan year beginning on or after January 1, 1989, the first plan year beginning after the earlier of—

(1) the later of—

(A) January 1, 1989, or

(B) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

(2) January 1, 1991.

SEC. 1141. ISSUANCE OF FINAL REGULATIONS.

The Secretary of the Treasury or his delegate shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by—

(1) section 1111, relating to application of nondiscrimination rules to integrated plans,

(2) section 1112, relating to coverage requirements for qualified plans,

(3) section 1113, relating to minimum vesting standards,

(4) section 1114, relating to the definition of highly compensated employee,

(5) section 1115, relating to separate lines of business and the definition of compensation,

(6) section 1116, relating to rules for section 401(k) plans,

(7) section 1117, relating to nondiscrimination requirements for employer matching and employer contribution,

(8) section 1120, relating to nondiscrimination requirements for tax sheltered annuities, and

(9) section 1133, relating to tax on excess distributions.

SEC. 1142. SECRETARY TO ACCEPT APPLICATIONS WITH RESPECT TO SECTION 401(k) PLANS.

The Secretary of the Treasury or his delegate shall, not later than May 1, 1987, begin accepting applications for opinion letters with respect to master and prototype plans for qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Code of 1986.

SEC. 1143. TREATMENT OF CERTAIN FISHERMEN AS SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Section 401(c) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR CERTAIN FISHERMEN.—For purposes of this subsection, the term 'self-employed individual' includes an individual described in section 3121(b)(20) (relating to certain fishermen)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

SEC. 1144. ACQUISITION OF GOLD AND SILVER COINS BY INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Section 408(m) (relating to investment in collectibles treated as distributions) is amended by adding at the end thereof the following new paragraph:

"(3) EXCEPTION FOR CERTAIN COINS.—In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to acquisitions after December 31, 1986.

SEC. 1145. REQUIREMENT OF JOINT AND SURVIVOR ANNUITIES AND PRERETIREMENT SURVIVOR ANNUITIES NOT TO APPLY TO CERTAIN PLAN.

(a) IN GENERAL.—Section 401(a)(11) (relating to requirement of joint and survivor annuity and preretirement survivor annuity) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(C).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan."

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 205(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)) is amended by adding at the end thereof the following new paragraph:

"(3) This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in section 404(c) of the Internal Revenue Code of 1986 (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan."

(c) AMENDMENTS TO RETIREMENT EQUITY ACT.—Section 303 of the Retirement Equity Act of 1984 is amended by adding at the end thereof the following new subsection:

"(f) The amendments made by section 301 of this Act shall not apply to the termination of a defined benefit plan if such termination—

"(1) is pursuant to a resolution directing the termination of such plan which was adopted by the Board of Directors of a corporation on July 24, 1984, and

"(2) occurred on November 30, 1984."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the amendments made by the Retirement Equity Act of 1984.

SEC. 1146. TREATMENT OF LEASED EMPLOYEES.

(a) MODIFICATIONS OF LEASED EMPLOYEE PROVISIONS.—

(1) GENERAL RULE.—Paragraph (5) of section 414(n) (relating to safe harbor exemption) is amended to read as follows:

"(5) SAFE HARBOR.—

"(A) IN GENERAL.—In the case of requirements described in subparagraphs (A) and (B) of paragraph (3), this subsection shall not apply to any leased employee with respect to services performed for a recipient if—

"(i) such employee is covered by a plan which is maintained by the leasing organization and meets the requirements of subparagraph (B), and

"(ii) leased employees (determined without regard to this paragraph) do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

"(B) PLAN REQUIREMENTS.—A plan meets the requirements of this subparagraph if—

"(i) such plan is a money purchase pension plan with a nonintegrated employer contribution rate for each participant of at least 10 percent of compensation,

"(ii) such plan provides for full and immediate vesting, and

"(iii) each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization) immediately participates in such plan.

Clause (iii) shall not apply to any individual whose compensation from the leasing organization in each plan year during the 4-year period ending with the plan year is less than $1,000.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) HIGHLY COMPENSATED EMPLOYEE.—The term 'highly compensated employee' has the meaning given such term by section 414(q).

"(ii) NONHIGHLY COMPENSATED WORK FORCE.—The term 'nonhighly compensated work force' means the aggregate number of individuals (other than highly compensated employees)—

"(I) who are employees of the recipient (without regard to this subsection) and have performed services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, or

"(II) who are leased employees with respect to the recipient (determined without regard to this paragraph).

"(iii) COMPENSATION.—The term 'compensation' has the same meaning as when used in section 415; except that such term shall include—

"(I) any employer contribution under a qualified cash or deferred arrangement to the extent not included in gross income under section 402(a)(8) or 402(h)(1)(B),

"(II) any amount which the employee would have received in cash but for an election under a cafeteria plan (within the meaning of section 125), and

"(III) any amount contributed to an annuity contract described in section 403(b) pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D))."

(2) CLARIFICATION OF YEARS OF SERVICE.—Paragraph (4) of section 414(n) is amended to read as follows:

"(4) TIME WHEN FIRST CONSIDERED AS EMPLOYEE.—

"(A) IN GENERAL.—In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the requirements listed in paragraph (3) are met for periods after the close of the period referred to in paragraph (2)(B).

"(B) YEARS OF SERVICE.—In the case of a person who is an employee of the recipient (whether by reason of this subsection or otherwise), for purposes of the requirements listed in paragraph (3), years of service for the recipient shall be determined by taking into account any period for which such employee would have been a leased employee but for the requirements of paragraph (2)(B)."

(3) CONFORMING AMENDMENT.—Paragraph (6) of section 414(n) is amended to read as follows:

"(6) OTHER RULES.—For purposes of this subsection—

"(A) RELATED PERSONS.—The term 'related persons' has the same meaning as when used in section 103(b)(6)(C).

"(B) EMPLOYEES OF ENTITIES UNDER COMMON CONTROL.—The rules of subsections (b), (c), (m), and (o) shall apply."

(b) MINIMIZING RECORDKEEPING REQUIREMENTS.—

(1) IN GENERAL.—Subsection (o) of section 414 (relating to regulations) is amended by adding at the end thereof the following new sentence:

"The regulations prescribed under subsection (n) shall include provisions to minimize the recordkeeping requirements of subsection (n) in the case of an employer which has no top-heavy plans (within the meaning of section 416(g)) and which uses the services of persons (other than employees) for an insignificant percentage of the employer's total workload."

(2) CONFORMING AMENDMENT.—Section 414(n)(1) is amended by striking out "except to the extent otherwise provided in regulations,".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1983.

(2) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to services performed after December 31, 1986.

(3) RECORDKEEPING REQUIREMENTS.—In the case of years beginning before the date of the enactment of this Act, the last sentence of section 414(o) shall be applied without regard to the requirement that an insignificant percentage of the workload be performed by persons other than employees.

SEC. 1147. TAX TREATMENT OF FEDERAL THRIFT SAVINGS FUND.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) TAX TREATMENT OF FEDERAL THRIFT SAVINGS FUND.—

"(1) IN GENERAL.—For purposes of this title—

"(A) the Thrift Savings Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

"(B) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

"(C) subject to the provisions of paragraph (2) and any dollar limitation on the application of section 402(a)(8), contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code, and section 8351 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

"(2) NONDISCRIMINATION REQUIREMENTS.—Paragraph (1)(C) shall not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements (other than any requirement relating to coverage) applicable to arrangements described in section 401(k) and to matching contributions. Rules similar to the rules of sections 401(k)(8) and 401(m)(8) (relating to no disqualification if excess contributions distributed) shall apply for purposes of the preceding sentence.

"(3) COORDINATION WITH SOCIAL SECURITY ACT.—Paragraph (1) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term 'wages' for the purposes of section 209 of the Social Security Act or section 3121(a) of this title.

"(4) DEFINITIONS.—For purposes of this subsection, the terms 'Member', 'employee', and 'Thrift Savings Fund' shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code.

"(5) COORDINATION WITH OTHER PROVISIONS OF LAW.—No provision of law not contained in this title shall apply for purposes of determining the treatment under this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund."

(b) CONFORMING AMENDMENT.—Section 3121(v)(3) (defining exempt governmental deferred compensation plan) is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B), and inserting in lieu thereof ", and", and by inserting after subparagraph (B) the following new subparagraph:

"(C) the Thrift Saving Fund (within the meaning of subchapter III of chapter 84 of title 5, United States Code)."

SUBTITLE B—EMPLOYEE BENEFIT PROVISIONS

PART I—NONDISCRIMINATION RULES FOR CERTAIN STATUTORY EMPLOYEE BENEFIT PLANS

SEC. 1151. NONDISCRIMINATION RULES FOR COVERAGE AND BENEFITS UNDER CERTAIN STATUTORY EMPLOYEE BENEFIT PLANS.

(a) GENERAL RULE.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by

adding at the end thereof the following new section:

"SEC. 89. BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.

"(a) BENEFITS UNDER DISCRIMINATORY PLANS.—

"(1) IN GENERAL.—Notwithstanding any provision of part III of this subchapter, gross income of a highly compensated employee who is a participant in a discriminatory employee benefit plan during any plan year shall include an amount equal to such employee's excess benefit under such plan for such plan year.

"(2) YEAR OF INCLUSION.—Any amount included in gross income under paragraph (1) shall be taken into account for the taxable year of the employee with or within which the plan year ends.

"(b) EXCESS BENEFIT.—For purposes of this section—

"(1) IN GENERAL.—The excess benefit of any highly compensated employee is the excess of such employee's employer-provided benefit under the plan over the highest permitted benefit.

"(2) HIGHEST PERMITTED BENEFIT.—For purposes of paragraph (1), the highest permitted benefit under any plan shall be determined by reducing the nontaxable benefits of highly compensated employees (beginning with the employees with the greatest nontaxable benefits) until such plan would not be treated as a discriminatory employee benefit plan if such reduced benefits were taken into account.

"(3) PLANS OF SAME TYPE.—In computing the excess benefit with respect to any benefit, there shall be taken into account all plans of the employer of the same type.

"(4) NONTAXABLE BENEFITS.—For purposes of this subsection, the term 'nontaxable benefit' means any benefit provided under a plan to which this section applies which (without regard to subsection (a)(1)) is excludable from gross income under this chapter.

"(c) DISCRIMINATORY EMPLOYEE BENEFIT PLAN.—For purposes of this section, the term 'discriminatory employee benefit plan' means any statutory employee benefit plan unless such plan meets the—

"(1) eligibility requirements of subsection (d), and

"(2) benefit requirements of subsection (e).

"(d) ELIGIBILITY REQUIREMENTS.—

"(1) IN GENERAL.—A plan meets the eligibility requirements of this subsection for any plan year if—

"(A) at least 90 percent of all employees who are not highly compensated employees—

"(i) are eligible to participate in such plan (or in any other plan of the employer of the same type), and

"(ii) would (if they participated) have available under such plans an employer-provided benefit which is at least 50 percent of the largest employer-provided benefit available under all such plans of the employer to any highly compensated employee,

"(B) at least 50 percent of the employees eligible to participate in such plan are not highly compensated employees, and

"(C) such plan does not contain any provision relating to eligibility to participate which (by its terms or otherwise) discriminates in favor of highly compensated employees.

"(2) ALTERNATIVE ELIGIBILITY PERCENTAGE TEST.—A plan shall be treated as meeting the requirements of paragraph (1)(B) if—

"(A) the percentage determined by dividing the number of highly compensated employees eligible to participate in the plan by the total number of highly compensated employees, does not exceed

"(B) the percentage similarly determined with respect to employees who are not highly compensated employees.

"(e) BENEFIT REQUIREMENTS.—

"(1) IN GENERAL.—A plan meets the benefit requirements of this subsection for any plan year if the average employer-provided benefit received by employees other than highly compensated employees under all plans of the employer of the same type is at least 75 percent of the average employer-provided benefit received by highly compensated employees under all plans of the employer of the same type.

"(2) AVERAGE EMPLOYER-PROVIDED BENEFIT.—For purposes of this subsection, the term 'average employer-provided benefit' means, with respect to highly compensated employees, an amount equal to—

"(A) the aggregate employer-provided benefits received by highly compensated employees under all plans of the type being tested, divided by

"(B) the number of highly compensated employees (whether or not covered under such plans).

The average employer-provided benefit with respect to employees other than highly compensated employees shall be determined in the same manner as the average employer-provided benefit for highly compensated employees.

"(f) SPECIAL RULE WHERE HEALTH OR GROUP-TERM PLAN MEETS 80-PERCENT COVERAGE TEST.—If at least 80 percent of the employees who are not highly compensated employees are covered under a health plan or group-term life insurance plan during the plan year, such plan shall be treated as meeting the requirements of subsections (d) and (e) for such year. The preceding sentence shall not apply if the plan does not meet the requirements of subsection (d)(1)(C) (relating to nondiscriminatory provisions).

"(g) OPERATING RULES.—

"(1) AGGREGATION OF COMPARABLE HEALTH PLANS.—In the case of health plans maintained by an employer—

"(A) IN GENERAL.—An employer may treat a group of comparable plans as 1 plan for purposes of applying subsections (d)(1)(B), (d)(2) and (f).

"(B) COMPARABLE PLANS.—For purposes of subparagraph (A), a group of comparable plans is any group (selected by the employer) of plans of the same type if the smallest employer-provided benefit available to any participant in any such plan is at least 95 percent of the largest employer-provided benefit available to any participant in any such plan.

"(2) SPECIAL RULES FOR APPLYING BENEFIT REQUIREMENTS TO HEALTH PLANS.—

"(A) ELECTION.—For purposes of determining whether the requirements of subsection (e) are met with respect to health plans, the employer may elect—

"(i) to disregard any employee if such employee and his spouse and dependents (if any) are covered by a health plan providing core benefits maintained by another employer, and

"(ii) to apply subsection (e) separately with respect to coverage of spouses or dependents by such plans and to take into account with respect to such coverage only employees with a spouse or dependents who are not covered by a health plan providing core benefits maintained by another employer.

"(B) SWORN STATEMENTS.—Any employer who elects the application of subparagraph (A) shall obtain and maintain, in such manner as the Secretary may prescribe, adequate sworn statements to demonstrate whether individuals have—

"(i) a spouse or dependents, and

"(ii) core health benefits under a plan of another employer.

The Secretary shall provide a method for meeting the requirements of this subparagraph through the use of valid sampling techniques.

"(C) PRESUMPTION WHERE NO STATEMENT.—In the absence of a statement described in subparagraph (B)—

"(i) an employee who is not a highly compensated employee shall be treated—

"(I) as not covered by another plan of another employer providing core benefits, and

"(II) as having a spouse and dependents not covered by another plan of another employer providing core benefits, and

"(ii) a highly compensated employee shall be treated—

"(I) as covered by another plan of another employer providing core benefits, and

"(II) as not having a spouse or dependents.

"(D) CERTAIN INDIVIDUALS MAY NOT BE DISREGARDED.—In the case of a highly compensated employee who receives employer-provided benefits under all health plans of the employer which are more than 133⅓ percent of the average employer-provided benefit under such plan for employees other than highly compensated employees, the employer may not disregard such employee, or his spouse or dependents for purposes of clause (i) or (ii) of subparagraph (A).

"(3) EMPLOYER-PROVIDED BENEFIT.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subsection (k), an employee's employer-provided benefit under any statutory employee benefit plan is—

"(i) in the case of any health or group-term life insurance plan, the value of the coverage, or

"(ii) in the case of any other plan, the value of the benefits,

provided during the plan year to or on behalf of such employee to the extent attributable to contributions made by the employer.

"(B) SPECIAL RULE FOR HEALTH PLANS.—The value of the coverage provided by any health plan shall be determined under procedures prescribed by the Secretary which shall—

"(i) set forth the values of various standard types of coverage involving a representative group, and

"(ii) provide for adjustments to take into account the specific coverage and group involved.

"(C) SPECIAL RULE FOR GROUP-TERM LIFE PLANS.—

"(i) IN GENERAL.—Except as provided in clause (ii), in determining the value of coverage under a group-term life insurance plan, the amount taken into account for any employee shall be based on the cost of the insurance determined under section 79(c) for an employee who is age 40.

"(ii) EXCESS BENEFIT.—For purposes of subsection (b), the excess benefit with respect to coverage under a group-term life insurance plan shall be equal to the greater of—

"(I) the cost of such excess benefit (expressed as dollars of coverage) determined without regard to section 79(c), or

"(II) such cost determined with regard to section 79(c).

"(D) SALARY REDUCTIONS.—Except for purposes of subsections (d)(1)(A)(ii) and (j)(5),

any salary reduction shall be treated as an employer-provided benefit.

"(4) ELECTION TO TEST PLANS OF DIFFERENT TYPES TOGETHER.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the employer may elect to treat all plans of the types specified in such election as plans of the same type for purposes of applying subsection (e).

"(B) EXCEPTION FOR HEALTH PLANS.—Subparagraph (A) shall not apply for purposes of determining whether any health plan meets the requirements of subsection (e); except that benefits provided under health plans which meet such requirements may be taken into account in determining whether plans of other types meet the requirements of subsection (e).

"(5) SEPARATE LINE OF BUSINESS EXCEPTION.—If, under section 414(r), an employer is treated as operating separate lines of business for a year, the employer may apply the preceding provisions of this section separately with respect to employees in each such separate line of business. The preceding sentence shall not apply to any plan unless such plan is available to a group of employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees.

"(6) SPECIAL RULE FOR APPLYING ELIGIBILITY REQUIREMENTS AND 80-PERCENT TEST TO HEALTH PLANS.—For purposes of determining whether the requirements of subsection (d)(1)(A)(ii) or of subsection (f) are met with respect to health plans, the employer may elect—

"(A) to apply this section separately with respect to coverage of spouses and dependents by such plans, and

"(B) to take into account with respect to such coverage only those employees with a spouse or dependent (determined under rules similar to the rules of paragraphs (2)(B) and (C)).

"(h) EXCLUDED EMPLOYEES.—

"(1) IN GENERAL.—The following employees shall be excluded from consideration under this section:

"(A) Employees who have not completed 1 year of service (or in the case of core benefits under a health plan, 6 months of service). An employee shall be excluded from consideration until the 1st day of the 1st month beginning after completion of the period of service required under the preceding sentence.

"(B) Employees who normally work less than 17½ hours per week.

"(C) Employees who normally work during not more than 6 months during any year.

"(D) Employees who have not attained age 21.

"(E) Employees who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employers if there is evidence that the type of benefits provided under the plan was the subject of good faith bargaining between the employee representatives and such employer or employers.

"(F) Employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Subparagraphs (A), (B), (C), and (D) shall be applied by substituting a shorter period of service, smaller number of hours or months, or lower age specified in the plan for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph.

"(2) CERTAIN EXCLUSIONS NOT TO APPLY IF EXCLUDED EMPLOYEES COVERED.—Except to the extent provided in regulations, employees shall not be excluded from consideration under any subparagraph of paragraph (1) (other than subparagraph (F)) unless no employee described in such subparagraph (determined with regard to the last sentence of paragraph (1)) is eligible under the plan.

"(3) EXCLUSION MUST APPLY TO ALL PLANS.—

"(A) IN GENERAL.—An exclusion shall apply under any subparagraph of paragraph (1) (other than subparagraph (F) thereof) only if the exclusion applies to all statutory employee benefit plans of the employer of the same type. In the case of a cafeteria plan, all benefits under the cafeteria plan shall be treated as provided under plans of the same type.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any difference in waiting periods for core and noncore benefits provided by health plans.

"(4) EXCEPTION FOR SEPARATE LINE OF BUSINESS.—If any line of business is treated separately under subsection (h)(5), then paragraphs (2) and (3) shall be applied separately to such line of business.

"(5) REQUIREMENTS MAY BE MET SEPARATELY WITH RESPECT TO EXCLUDED GROUP.—Notwithstanding paragraphs (2) and (3), if employees do not meet minimum age or service requirements described in paragraph (1) (without regard to the last sentence thereof) and are covered under a plan of the employer which meets the requirements of this section separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets the requirements of this section.

"(i) STATUTORY EMPLOYEE BENEFIT PLAN.—For purposes of this section—

"(1) IN GENERAL.—The term 'statutory employee benefit plan' means—

"(A) an accident or health plan (within the meaning of section 105(e)), and

"(B) any plan of an employer for providing group-term life insurance (within the meaning of section 79).

"(2) EMPLOYER MAY ELECT TO TREAT OTHER PLANS AS STATUTORY EMPLOYEE BENEFIT PLAN.—An employer may elect to treat any of the following plans as statutory employee benefit plans:

"(A) A qualified group legal services plan (within the meaning of section 120(b)).

"(B) An educational assistance program (within the meaning of section 127(b)).

"(C) A dependent care assistance program (within the meaning of section 129(d)).

An election under this paragraph with respect to any plan shall apply with respect to all plans of the same type as such plan.

"(3) PLANS OF THE SAME TYPE.—2 or more plans shall be treated as of the same type if such plans are described in the same subparagraph of paragraph (1) or (2).

"(j) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) HIGHLY COMPENSATED EMPLOYEE.—The term 'highly compensated employee' has the meaning given such term by section 414(q).

"(2) HEALTH PLAN.—The term 'health plan' means any plan described in paragraph (1)(A) of subsection (i).

"(3) TREATMENT OF FORMER EMPLOYEES.—Except to the extent provided in regulations, this section shall be applied separately to former employees under requirements similar to the requirements that apply to employees.

"(4) GROUP-TERM LIFE INSURANCE PLANS.—

"(A) IN GENERAL.—Any group-term life insurance plan shall not be treated as 2 or more separate plans merely because the amount of life insurance under the plan on behalf of employees bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

"(B) LIMITATION ON COMPENSATION.—For purposes of subparagraph (A), compensation in excess of the amount applicable under section 401(a)(17) shall not be taken into account.

"(C) LIMITATION.—This paragraph shall not apply to any plan if such plan is combined with plans of other types pursuant to an election under subsection (g)(4).

"(5) SPECIAL RULE FOR EMPLOYEES WORKING LESS THAN 30 HOURS PER WEEK.—Any health plan shall not fail to meet the requirements of this section merely because the employer-provided benefit is proportionately reduced for employees who normally work less than 30 hours per week. The preceding sentence shall apply only where the average work week of employees who are not highly compensated employees is 30 hours or more.

"(6) TREATMENT OF SELF-EMPLOYED INDIVIDUALS.—In the case of a statutory employee benefit plan described in subparagraph (A), (B), or (C) of subsection (i)(2)—

"(A) TREATMENT AS EMPLOYEE, ETC.—The term 'employee' includes any self-employed individual (as defined in section 401(c)(1)), and the term 'compensation' includes such individual's earned income (as defined in section 401(c)(2)).

"(B) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is treated as an employee under subparagraph (A).

"(7) CERTAIN PLANS TREATED AS MEETING OTHER NONDISCRIMINATION REQUIREMENTS.—If an employer makes an election under subsection (i)(2) to have this section apply to any plan and such plan meets the requirements of this section, such plan shall be treated as meeting any other nondiscrimination requirement imposed on such plan (other than any requirement under section 120(c)(3), 127(b)(3), or 129(d)(4)).

"(8) SPECIAL RULES FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—

"(A) IN GENERAL.—If a person becomes, or ceases to be, a member of a group described in subsection (b), (c), (m), or (o) of section 414, then the requirements of this section shall be treated as having been met during the transition period with respect to any plan covering employees of such person or any other member of such group if—

"(i) such requirements were met immediately before each such change, and

"(ii) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members of a group).

"(B) TRANSITION PERIOD.—For purposes of subparagraph (A), the term 'transition period' means the period—

"(i) beginning on the date of the change in members of a group, and

"(ii) ending on the last day of the 1st plan year beginning after the date of such change.

"(9) COORDINATION WITH MEDICARE, ETC.—If a plan may be coordinated with health benefits provided under any Federal, State, or foreign law or under any other health plan covering the employee or family member of the employee, such plan shall not fail to meet the requirements of this section with respect to health benefits merely because the amount of such benefits provided to any employee or family member of any employee

are coordinated in a manner which does not discriminate in favor of highly compensated employees.

"(10) DISABILITY BENEFITS.—

"(A) IN GENERAL.—If a plan may be coordinated with disability benefits provided under any Federal, State, or foreign law or under any other plan covering the employee, such plan shall not fail to meet the requirements of this section with respect to disability benefits merely because the amount of such benefits provided to an employee are coordinated in a manner which does not discriminate in favor of highly compensated employees.

"(B) CERTAIN DISABILITY PLANS EXEMPT FROM NONDISCRIMINATION RULES.—Subsection (a) shall not apply to any disability coverage other than disability coverage the benefits of which are excludable from gross income under section 105(b) or (c).

"(11) SEPARATE APPLICATION IN THE CASE OF OPTIONS.—Each option or different benefit shall be treated as a separate plan.

"(k) REQUIREMENT THAT PLAN BE IN WRITING, ETC.—

"(1) IN GENERAL.—Notwithstanding any provision of part III of this subchapter, gross income of an employee shall include an amount equal to such employee's employer-provided benefit for the taxable year under an employee benefit plan to which this subsection applies unless, except to the extent provided in regulations—

"(A) such plan is in writing,

"(B) the employees' rights under such plan are legally enforceable,

"(C) employees are provided reasonable notification of benefits available in the plan,

"(D) such plan is maintained for the exclusive benefit of employees, and

"(E) such plan was established with the intention of being maintained for an indefinite period of time.

Such inclusion shall be in lieu of any inclusion under subsection (a) with respect to such plan.

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

"(A) any statutory employee benefit plan,

"(B) a qualified tuition reduction program (within the meaning of section 117(d)),

"(C) a cafeteria plan (within the meaning of section 125),

"(D) a fringe benefit program providing no-additional-cost services, qualified employee discounts, or employer-operated eating facilities which are excludable from gross income under section 132, and

"(E) a plan to which section 505 applies.

"(3) SPECIAL RULE FOR DETERMINING INCLUSION.—For purposes of paragraph (1), an employee's employer-provided benefit shall be the value of the benefits provided to the employee.

"(4) PLANS TO WHICH CONTRIBUTIONS ARE MADE BY MORE THAN 1 EMPLOYER.—For purposes of paragraph (1)(D), in the case of a plan to which contributions are made by more than 1 employer, each employer shall be treated as employing employees of all other employers.

"(l) REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—If an employee of an employer maintaining a plan is required to include any amount in gross income under this section for any plan year ending with or within a calendar year, the employer shall separately include such amount on the statement which the employer is required to provide the employee under section 6051(a) (and any statement required to be furnished under section 6051(d)).

"(2) PENALTY.—

"For penalty for failing to report, see section 6652(l).

"(m) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing for appropriate adjustments in case of individuals not employees of the employer throughout the plan year."

(b) PENALTY FOR FAILING TO REPORT.—Section 6652 (relating to failure to file information returns, registration statements, etc.) is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) INFORMATION WITH RESPECT TO INCLUDABLE EMPLOYEE BENEFITS.—

"(1) IN GENERAL.—In the case of each failure to include any amount on any statement under section 6051(a) or 6051(d) which is required to be so included under section 89(l), there shall be paid, on notice and demand of the Secretary and in the same manner as tax, the amount determined under paragraph (2).

"(2) AMOUNT OF ADDITIONAL TAX.—The amount determined under this paragraph shall be equal to the product of—

"(A) the highest rate of tax imposed by section 1 for taxable years beginning in the calendar year to which the return or statement relates, multiplied by

"(B) the employer-provided benefit (within the meaning of section 89 without regard to subsection (g)(3) thereof) with respect to the employee to whom such failure relates.

"(3) REASONABLE CAUSE EXCEPTION.—Paragraph (1) shall not apply to any failure if it is shown that such failure is due to reasonable cause.

"(4) COORDINATION WITH OTHER PENALTIES.—Any penalty under this subsection shall be in addition to any other penalty under this section or section 6678 with respect to any failure.

"(5) ONLY 1 ADDITION PER EMPLOYEE PER YEAR.—Paragraph (1) shall be applied only once if there is more than 1 failure with respect to any amount.

(c) REPEAL OF CERTAIN EXISTING NONDISCRIMINATION RULES.—

(1) DISCRIMINATORY GROUP-TERM LIFE INSURANCE PLANS.—Subsection (d) of section 79 is amended to read as follows:

"(d) NONDISCRIMINATION REQUIREMENTS.—In the case of a group-term life insurance plan which is a discriminatory employee benefit plan, subsection (a)(1) shall apply only to the extent provided in section 89."

(2) DISCRIMINATORY SELF-INSURED MEDICAL EXPENSE REIMBURSEMENT PLANS.—Section 105 (relating to amounts received under accident and health plans) is amended by striking out subsection (h) and by redesignating subsection (i) as subsection (h).

(3) QUALIFIED GROUP LEGAL SERVICES PLANS.—Section 120(b) (defining qualified group legal services plan) is amended to read as follows:

"(b) QUALIFIED GROUP LEGAL SERVICES PLAN.—For purposes of this section, a qualified group legal services plan is a separate plan of an employer—

"(1) under which the employer provides specified personal legal services to employees (or their spouses or dependents) through the prepayment of, or the provision in advance for, any portion of the legal fees for such services, and

"(2) which meets the requirements of subsection (c) and section 89(k)."

(4) EDUCATIONAL ASSISTANCE PROGRAMS.—Section 127(b) (relating to educational assistance programs) is amended—

(A) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) IN GENERAL.—For purposes of this section, an educational assistance program is a plan of an employer—

"(A) under which the employer provides employees with educational assistance, and

"(B) which meets the requirements of paragraphs (2) through (5) and section 89(k).", and

(B) by striking out paragraph (6) thereof.

(5) DEPENDENT CARE ASSISTANCE PROGRAMS.—Section 129(d) (relating to dependent care assistance program) is amended—

(A) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) IN GENERAL.—For purposes of this section, a dependent care assistance program is a plan of an employer—

"(A) under which the employer provides employees with dependent care assistance, and

"(B) which meets the requirements of paragraphs (2) through (6) and section 89(k).", and

(B) by striking out paragraph (6) thereof, and redesignating paragraph (7) as paragraph (6).

(d) COORDINATION WITH CAFETERIA PLANS.—

(1) IN GENERAL.—Section 125 (relating to cafeteria plans) is amended to read as follows:

"SEC. 125. CAFETERIA PLANS.

"(a) GENERAL RULE.—In the case of a cafeteria plan—

"(1) amounts shall not be included in gross income of a participant in such plan solely because, under the plan, the participant may choose among the benefits of the plan, and

"(2) if the plan fails to meet the requirements of subsection (b) for any plan year—

"(A) paragraph (1) shall not apply, and

"(B) notwithstanding any other provision of part III of this subchapter, any qualified benefits received under such cafeteria plan by a highly compensated employee for such plan year shall be included in the gross income of such employee for the taxable year with or within which such plan year ends.

"(b) PROHIBITION AGAINST DISCRIMINATION AS TO ELIGIBILITY TO PARTICIPATE.—

"(1) HIGHLY COMPENSATED EMPLOYEES.—A plan shall be treated as failing to meet the requirements of this subsection unless the plan is available to a group of employees as qualify under a classification set up by the employer and which the Secretary find not to be discriminatory in favor of highly compensated employees.

"(2) KEY EMPLOYEES.—In the case of a key employee (within the meaning of section 416(i)(1)), a plan shall be treated as failing to meet the requirements of this subsection if the qualified benefits provided to key employees under the plan exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, qualified benefits shall be determined without regard to the last sentence of subsection (e).

"(3) EXCLUDABLE EMPLOYEES.—For purposes of this subsection, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).

"(c) CAFETERIA PLAN DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'cafeteria plan' means a plan which meets the requirements of section 89(k) and under which—

"(A) all participants are employees, and

"(B) the participants may choose—

"(i) among 2 or more benefits consisting of cash and qualified benefits, or

"(ii) among 2 or more qualified benefits.

"(2) DEFERRED COMPENSATION PLANS EXCLUDED.—

"(A) IN GENERAL.—The term 'cafeteria plan' does not include any plan which provides for deferred compensation.

"(B) EXCEPTION FOR CASH AND DEFERRED ARRANGEMENTS.—Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

"(C) EXCEPTION FOR CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

"(i) all contributions for such insurance must be made before retirement, and

"(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance.

"(d) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this section, the term 'highly compensated employee' has the meaning given such term by section 414(q).

"(e) QUALIFIED BENEFITS DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified benefit' means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132).

"(2) CERTAIN BENEFITS INCLUDED.—The term 'qualified benefits' includes—

"(A) any group-term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79, and

"(B) any other benefit permitted under regulations.

"(f) COLLECTIVELY BARGAINED PLAN NOT CONSIDERED DISCRIMINATORY.—For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

"(g) CROSS REFERENCES.—

"For reporting and recordkeeping requirements, see section 6039D."

(2) APPLICATION WITH EMPLOYMENT TAXES.—

(A) Section 3121(a)(5) is amended by striking out "or" at the end of subparagraph (E), by inserting "or" at the end of subparagraph (F), and by inserting after subparagraph (F) the following new subparagraph:

"(G) under a cafeteria plan (within the meaning of section 125),"

(B) Section 3306(b)(5) is amended by striking out "or" at the end of subparagraph (E), by inserting "or" at the end of subparagraph (F), and by inserting after subparagraph (F) the following new subparagraph:

"(G) under a cafeteria plan (within the meaning of section 125),"

(C) Section 209(e) of the Social Security Act is amended by inserting before the semicolon at the end thereof the following: ", or (9) under a cafeteria plan (within the meaning of section 125 of the Internal Revenue Code of 1986)".

(e) SPECIAL RULES FOR CONTROLLED GROUPS, ETC.—

(1) IN GENERAL.—Section 414 is amended by adding at the end thereof the following new subsection:

"(t) APPLICATION OF CONTROLLED GROUP RULES TO CERTAIN EMPLOYEE BENEFITS.—

"(1) IN GENERAL.—All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of an applicable section. The provisions of subsection (o) of section 414 shall apply with respect to the requirements of an applicable section.

"(2) APPLICABLE SECTION.—For purposes of this subsection, the term 'applicable section' means section 79, 89, 106, 117(d), 120, 125, 127, 129, 132, 274(j), or 505."

(2) CONFORMING AMENDMENTS.—

(A) Section 132(g) (relating to special rules relating to employer) is amended to read as follows:

"(g) RECIPROCAL AGREEMENTS.—For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

"(1) such service is provided pursuant to a written agreement between such employers, and

"(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement."

(B) Paragraph (4) of section 505(b) (relating to aggregation rules) is amended to read as follows:

"(4) AGGREGATION RULES.—At the election of the employer, 2 or more plans of such employer may be treated as 1 plan for purposes of this subsection."

(f) BENEFITS TEST FOR DEPENDENT CARE ASSISTANCE PROGRAMS.—Section 129(d) (relating to dependent care assistance program) is amended by adding at the end thereof the following new paragraph:

"(8) BENEFITS.—

"(A) IN GENERAL.—A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees is at least 55 percent of the average benefits provided to highly compensated employees.

"(B) SALARY REDUCTION AGREEMENTS.—For purposes of subparagraph (A), in the case of any benefits provided through a salary reduction agreement, there shall be disregarded any employees whose compensation (within the meaning of section 415(q)(7)) is less than $25,000."

(g) DEFINITION OF EXCLUDABLE EMPLOYEE.—

(1) Section 120(c)(2) is amended by striking out the last sentence thereof and inserting in lieu thereof "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)."

(2) Section 117(d) is amended by adding at the end thereof the following new paragraph:

"(4) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of this subsection, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)."

(3) Section 127(b)(2) is amended by striking out the last sentence thereof and inserting in lieu thereof: "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)."

(4) Section 129(d)(3) is amended by striking out the last sentence thereof and inserting in lieu thereof: "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)."

(5) Section 132(h)(1) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph and subsection (e), there may be excluded from consideration employees who may be excluded from consideration under section 89(h)."

(6) Paragraph (2) of section 505(b) is amended to read as follows:

"(2) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of paragraph (1), there may be excluded from consideration employees who may be excluded from consideration under section 89(h)."

(h) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6039D(d) is amended to read as follows:

"(d) DEFINITIONS.—For purposes of this section—

"(1) SPECIFIED FRINGE BENEFIT PLAN.—The term 'specified fringe benefit plan' means any plan under section 79, 105, 106, 120, 125, 127, or 129.

"(2) APPLICABLE EXCLUSION.—The term 'applicable exclusion' means, with respect to any specified fringe benefit plan, the section specified under paragraph (1) under which benefits under such plan are excludable from gross income."

(2) INFORMATION REQUIRED TO BE REPORTED.—Section 6039D(a) is amended by striking out "and" at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting in lieu thereof ", and", and by inserting after paragraph (5) the following new paragraph:

"(6) the number of highly compensated employees among the employees described in paragraphs (1), (2), and (3)."

(3) ADDITIONAL INFORMATION.—Section 6039B(c) is amended by adding at the end thereof the following new sentence: "The Secretary may require returns under this subsection only from a representative group of employers."

(i) CONFORMING AMENDMENTS TO SECTION 414(n).—

(1) Paragraph (1) of section 414(n) is amended by striking out "pension requirements" and inserting in lieu thereof "requirements".

(2) Subparagraph (B) of section 414(n)(2) is amended by inserting "(6 months in the case of core health benefits) after "1 year".

(3) Paragraph (3) of section 414(n) is amended—

(A) by striking out "PENSION REQUIREMENTS" and inserting in lieu thereof "REQUIREMENTS",

(B) by striking out "pension requirements" and inserting in lieu thereof "requirements", and

(C) by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(C) sections 79, 89, 106, 117(d), 120, 125, 127, 129, 132, 274(j), and 505."

(j) OTHER CONFORMING AMENDMENTS.—

(1) The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 89. Benefits provided under certain employee benefit plans."

(2) Subsection (a) of section 106 (relating to contributions by employer to accident and health plans) is amended to read as follows:

"(a) IN GENERAL.—Gross income of an employee does not include employer-provided coverage under an accident or health plan."

(3) Section 505(b) is amended by adding at the end thereof the following new paragraph:

"(6) COMPENSATION.—For purposes of this subsection, the term 'compensation' has the meaning given such term by section 414(s)."

(k) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after the later of —

(A) December 31, 1987, or

(B) the earlier of—

(i) the date which is 3 months after the date on which the Secretary of the Treasury or his delegate issues such regulations as are necessary to carry out the provisions of section 89 of the Internal Revenue Code of 1986 (as added by this section), or

(ii) December 31, 1988.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING PLAN.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to employees covered by such an agreement in years beginning before the earlier of—

(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

A plan shall not be required to take into account employees to which the preceding sentence applies for purposes of applying section 89 of the Internal Revenue Code of 1986 (as added by this section) to employees to which the preceding sentence does not apply for any year preceding the year described in the preceding sentence.

(3) EXCEPTION FOR CERTAIN GROUP-TERM INSURANCE PLANS.—In the case of a plan described in section 223(d)(2) of the Tax Reform Act of 1984, such plan shall be treated as meeting the requirements of section 89 of the Internal Revenue Code of 1986 (as added by this section) with respect to individuals described in section 223(d)(2) of such Act. An employer may elect to disregard such individuals in applying section 89 of such Code (as so added) to other employees of the employer.

(4) SPECIAL RULE FOR CHURCH PLANS.—In the case of a church plan (within the meaning of section 414(e)(3) of the Internal Revenue Code of 1986) maintaining an insured accident and health plan, the amendments made by this section shall apply to years beginning after December 31, 1988.

(5) CAFETERIA PLANS.—The amendments made by subsection (d)(2) shall apply to taxable years beginning after December 31, 1983.

PART II—OTHER PROVISIONS

SEC. 1161. DEDUCTIBILITY OF HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) GENERAL RULE.—Section 162 (relating to trade or business expenses), as amended by this Act, is amended by redesignating subsection (n) as subsection (m) and by inserting after subsection (l) the following new subsection:

"(m) SPECIAL RULES FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—

"(1) IN GENERAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 25 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

"(2) LIMITATIONS.—

"(A) DOLLAR AMOUNT.—No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)).

"(B) REQUIRED COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any taxable year unless coverage is provided under 1 or more plans meeting the requirements of section 89, treating such coverage as an employer-provided benefit.

"(C) OTHER COVERAGE.—Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer.

"(3) COORDINATION WITH MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

"(4) TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 1989."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986.

(2) TRANSITIONAL RULE.—In the case of any year to which section 89 of the Internal Revenue Code of 1986 does not apply, section 162(m)(2)(B) of such Code shall be applied by substituting any nondiscrimination requirements otherwise applicable for the requirements of section 89 of such Code.

(3) ASSISTANCE.—The Secretary of the Treasury or his delegate shall provide guidance to self-employed individuals to assist them in meeting the requirements of section 89 of the Internal Revenue Code of 1986 with respect to coverage required by the amendments made by this section.

SEC. 1162. 2-YEAR EXTENSION OF EXCLUSIONS FOR EDUCATIONAL ASSISTANCE PROGRAMS AND GROUP LEGAL PLANS.

(a) EDUCATIONAL ASSISTANCE PROGRAMS.—

(1) EXTENSION.—Subsection (d) of section 127 (relating to termination of exclusion for amounts received under educational assistance programs) is amended by striking out "1985" and inserting in lieu thereof "1987".

(2) INCREASE IN AMOUNT.—Paragraph (2) of section 127(a) is amended by striking out "$5,000" each place it appears in the text and the heading thereof and inserting in lieu thereof "$5,250".

(b) GROUP LEGAL PLANS.—Subsection (e) of section 120 (relating to termination of exclusion for amounts received under qualified group legal services plans) is amended by striking out "1985" and inserting in lieu thereof "1987".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1985.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to years ending after December 31, 1985.

(3) CAFETERIA PLAN WITH GROUP LEGAL BENEFITS.—If, within 60 days after the date of the enactment of this Act, an employee elects under a cafeteria plan under section 125 of the Internal Revenue Code of 1986 coverage for group legal benefits to which section 120 of such Code applies, such election may, at the election of the taxpayer, apply to all legal services provided during 1986. The preceding sentence shall not apply to any plan which on August 16, 1986, offered such group legal benefits under such plan.

SEC. 1163. $5,000 LIMIT ON DEPENDENT CARE ASSISTANCE EXCLUSION.

(a) GENERAL RULE.—Subsection (a) of section 129 (relating to dependent care assistance programs) is amended to read as follows:

"(a) EXCLUSION.—

"(1) IN GENERAL.—Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

"(2) LIMITATION OF EXCLUSION.—The aggregate amount excluded from the gross income of the taxpayer under this section for any taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e)."

(b) TREATMENT OF ONSITE FACILITIES.—Subsection (e) of section 129 is amended by adding at the end thereof the following new paragraph:

"(8) TREATMENT OF ONSITE FACILITIES.—In the case of an onsite facility, except to the extent provided in regulations, the amount excluded with respect to any dependent shall be based on—

"(A) utilization, and

"(B) the value of the services provided."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1164. TAX TREATMENT OF FACULTY HOUSING.

(a) IN GENERAL.—Section 119 (relating to meals or lodging furnished for the convenience of the employer) is amended by adding at the end thereof the following new subsection:

"(d) LODGING FURNISHED BY CERTAIN EDUCATIONAL INSTITUTIONS TO EMPLOYEES.—

"(1) IN GENERAL.—In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

"(2) EXCEPTION IN CASES OF INADEQUATE RENT.—Paragraph (1) shall not apply to the extent of the excess of—

"(A) the lesser of—

"(i) 5 percent of the appraised value (as of the close of the calendar year in which the taxable year begins) of the qualified campus lodging, or

"(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

"(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

"(3) QUALIFIED CAMPUS LODGING.—For purposes of this subsection, the term 'qualified campus lodging' means lodging to which subsection (a) does not apply and which is—

"(A) located on, or in the proximity of, a campus of the educational institution, and

"(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

"(4) EDUCATIONAL INSTITUTION.—For purposes of this paragraph, the term 'educational institution' means an institution described in section 170(b)(1)(A)(ii).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1985.

SEC. 1165. LIMITATION ON ACCRUAL OF VACATION PAY.

(a) GENERAL RULE.—Paragraph (1) of section 463(a) (relating to accrual of vacation pay) is amended by striking out "and expected to be paid during the taxable year or within 12 months following the close of the taxable year" and inserting in lieu thereof "and paid during the taxable year or within 8½ months following the close of the taxable year".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

SEC. 1166. TREATMENT OF CERTAIN FULL-TIME LIFE INSURANCE SALESMEN.

(a) GENERAL RULE.—Paragraph (20) of section 7701(a) (defining employee) is amended by striking out "and 106" and inserting in lieu thereof "106, and 125".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1985.

SEC. 1167. EXTENSION OF DUE DATE FOR STUDY OF WELFARE BENEFIT PLANS.

Section 560(b) of the Tax Reform Act of 1984 is amended by striking out "February 1, 1985" and inserting in lieu thereof "the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986".

SEC. 1168. EXCLUSION FROM GROSS INCOME OF CERTAIN MILITARY BENEFITS.

(a) EXCLUSION FROM GROSS INCOME.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 134 as section 135 and by inserting after section 133 the following new section:

"SEC. 134. CERTAIN MILITARY BENEFITS.

"(a) GENERAL RULE.—Gross income shall not include any qualified military benefit.

"(b) QUALIFIED MILITARY BENEFIT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified military benefit' means any allowance or in-kind benefit which—

"(A) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services, and

"(B) was excludable from gross income on September 9, 1986, under any provision of law or regulation thereunder which was in effect on such date (other than a provision of this title).

"(2) NO OTHER BENEFIT TO BE EXCLUDABLE EXCEPT AS PROVIDED BY THIS TITLE.—Notwithstanding any other provision of law, no benefit shall be treated as a qualified military benefit unless such benefit—

"(A) is a benefit described in paragraph (1), or

"(B) is excludable from gross income under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

"(3) LIMITATIONS ON MODIFICATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no modification or adjustment of any qualified military benefit after September 9, 1986, under any provision of law or regulation described in paragraph (1) shall be taken into account.

"(B) EXCEPTION FOR CERTAIN ADJUSTMENTS TO CASH BENEFITS.—Subparagraph (A) shall not apply to any adjustment to any qualified military benefit payable in cash which—

"(i) is pursuant to a provision of law or regulation (as in effect on September 9, 1986), and

"(ii) is determined by reference to any fluctuation in cost, price, currency, or other similar index."

(b) The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 134 and inserting in lieu thereof the following new items:

"Sec. 134. Certain military benefits.

"Sec. 135. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

Subtitle C—Changes Relating to Employee Stock Ownership Plans

SEC. 1171. REPEAL OF EMPLOYEE STOCK OWNERSHIP CREDIT.

(a) IN GENERAL.—Section 41 (relating to employee stock ownership credit) is hereby repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 38 is amended by striking out paragraph (4), by striking out ", plus" at the end of paragraph (3) and inserting in lieu thereof a period, and by inserting "plus" at the end of paragraph (2).

(2) Subsection (d) of section 38 is amended—

(A) by striking out "196(a), and 404(i)" and inserting in lieu thereof "and 196(a)", and

(B) by striking out "41(a),".

(3) Subsection (c) of section 56 is amended by striking out the last sentence.

(4) Subparagraph (B) of section 108(b)(2) is amended by striking out the last sentence.

(5) Paragraph (21) of section 401(a) is hereby repealed.

(6) Subsection (i) of section 404 (relating to deductibility of unused portions of employee stock ownership credit) is hereby repealed.

(7)(A) Section 6699 (relating to assessable penalties relating to tax credit employee stock ownership plan) is hereby repealed.

(B) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to section 6699.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to compensation paid or accrued after December 31, 1986, in taxable years ending after such date.

(2) SECTIONS 404(i) AND 6699 TO CONTINUE TO APPLY TO PRE-1987 CREDITS.—The provisions of sections 404(i) and 6699 of the Internal Revenue Code of 1986 shall continue to apply with respect to credits under section 41 of such Code attributable to compensation paid or accrued before January 1, 1987 (or under section 38 of such Code with respect to qualified investment before January 1, 1983).

SEC. 1172. ESTATE TAX DEDUCTION FOR PROCEEDS FROM SALES OF EMPLOYER SECURITIES.

(a) IN GENERAL.—Part IV of subchapter A of chapter 11 (relating to taxable estate) is amended by adding at the end thereof the following new section:

"SEC. 2057. SALES OF EMPLOYER SECURITIES TO EMPLOYEE STOCK OWNERSHIP PLANS OR WORKER-OWNED COOPERATIVES.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to 50 percent of the qualified proceeds of a qualified sale of employer securities.

"(b) QUALIFIED SALE.—For purposes of this section, the term 'qualified sale' means any sale of employer securities by the executor of an estate to—

"(1) an employee stock ownership plan is described in section 4975(e)(7), or

"(2) an eligible worker-owned cooperative (within the meaning of section 1042(c)).

"(c) QUALIFIED PROCEEDS.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified proceeds' means the amount received by the estate from the sale of employer securities at any time before the date on which the return of the tax imposed by section 2001 is required to be filed (including any extensions).

"(2) PROCEEDS FROM CERTAIN SECURITIES NOT QUALIFIED.—The term 'qualified proceeds' shall not include the proceeds from the sale of any employer securities if such securities were received by the decedent—

"(A) in a distribution from a plan exempt from tax under section 501(a) which meets the requirements of section 401(a), or

"(B) as a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

"(d) WRITTEN STATEMENT REQUIRED.—

"(1) IN GENERAL.—No deduction shall be allowed under subsection (a) unless the executor of the estate of the decedent files with the Secretary the statement described in paragraph (2).

"(2) STATEMENT.—A statement is described in this paragraph if it is a verified written statement of—

"(A) the employer whose employees are covered by the plan described in subsection (b)(1), or

"(B) any authorized officer of the cooperative described in subsection (b)(2),

consenting to the application of section 4979A with respect to such employer or cooperative.

"(e) EMPLOYER SECURITIES.—For purposes of this section, the term 'employer securities' has the meaning given such term by section 409(l).

"(f) TERMINATION.—This section shall not apply to any sale after December 31, 1991."

(b) CONFORMING AMENDMENTS.—

(1) Section 409(n)(1) is amended—

(A) by inserting "or section 2057" after "section 1042",

(B) by inserting "or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies," after "securities" in subparagraph (A)(i) thereof, and

(C) by inserting "or the decedent" after "taxpayer" in subparagraph (A)(ii) thereof.

(2) Section 4979A is amended—

(A) by inserting "or section 2057" after "section 1042" in subsection (b)(1) thereof, and

(B) by inserting "or section 2057(d)" after "section 1042(b)(3)(B)" in subsection (c) thereof.

(3) The table of sections for part IV of subchapter A of chapter 11 is amended by

adding at the end thereof the following new item:

"Sec. 2057. Sales of employer securities to employee stock ownership plans or worker-owned cooperatives."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the date of the enactment of this Act with respect to which an election is made by the executor of an estate who is required to file the return of the tax imposed by the Internal Revenue Code of 1986 on a date (including extensions) after the date of the enactment of this Act.

SEC. 1173. PROVISIONS RELATING TO LOANS USED TO ACQUIRE EMPLOYER SECURITIES.

(a) DEDUCTION FOR DIVIDENDS PAID TO REPAY LOANS.—

(1) IN GENERAL.—Paragraph (2) of section 404(k) (relating to dividend paid deductions) is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or", and by inserting at the end thereof the following new subparagraph:

"(C) the dividend with respect to employer securities is used to make payments on a loan described in section 404(a)(9)."

(2) CONFORMING AMENDMENT.—Section 404(k) is amended by adding at the end thereof the following new sentence: "Any deduction under paragraph (2)(C) shall be allowable in the taxable year of the corporation in which the dividend is used to repay the loan described in such paragraph."

(b) SECURITIES ACQUISITION LOANS.—

(1) APPLICATION TO INTEREST RECEIVED BY RIC.—

(A) IN GENERAL.—Section 133(a) (relating to exclusion for interest on certain loans used to acquire employer securities) is amended by striking out "or" at the end of paragraph (2), by inserting "or" at the end of paragraph (3), and by adding at the end thereof the following new paragraph:

"(4) a regulated investment company (as defined in section 851),".

(B) CONFORMING AMENDMENT.—Section 852(b)(5) is amended by adding at the end thereof the following new subparagraph:

"(C) INTEREST ON CERTAIN LOANS USED TO ACQUIRE EMPLOYER SECURITIES.—For purposes of this paragraph—

"(i) 50 percent of the amount of any loan of the regulated investment company which qualifies as a securities acquisition loan (as defined in section 133) shall be treated as an obligation described in section 103(a), and

"(ii) 50 percent of the interest received on such loan shall be treated as interest excludable from gross income under section 103."

(2) SECURITIES ACQUISITION LOAN.—Section 133(b)(1) (defining securities acquisition loan) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this section, the term 'securities acquisition loan' means—

"(A) any loan to a corporation or to an employee stock ownership plan to the extent that the proceeds are used to acquire employer securities for the plan, or are used to refinance such a loan, or

"(B) any loan to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of such loan and such securities are allocable to accounts of plan participants within 1 year of the date of such loan, except that this subparagraph shall not apply to any loan the commitment period of which exceeds 7 years. For purposes of this paragraph, the term 'employer securities' has the meaning given such term by section 409(l)."

(c) EFFECTIVE DATES.—

(1) DIVIDENDS.—The amendments made by subsection (a) shall apply to dividends paid in taxable years beginning after the date of the enactment of this Act.

(2) SUBSECTION (b).—

(A) The amendments made by subsection (b)(1) shall apply to loans used to acquire employer securities after the date of the enactment of this Act, including loans used to refinance loans used to acquire employer securities before such date if such loans were used to acquire employer securities after May 23, 1984.

(B)(i) Section 133(b)(1)(A) of the Internal Revenue Code of 1986, as amended by subsection (b)(2), shall apply to any loan used to refinance a loan which—

(I) met the requirements of section 133(b)(1) (as in effect when such loan was entered into), and

(II) was used to acquire securities after July 18, 1984.

(ii) If a loan described in clause (i) has a term of greater than 7 years, clause (i) shall apply only to interest accruing on such loan during the first 7 years.

(C) Section 133(b)(1)(B) of the Internal Revenue Code of 1986, as added by subsection (b)(2), shall apply to loans incurred after the date of enactment of this Act.

SEC. 1174. REQUIREMENTS FOR EMPLOYEE STOCK OWNERSHIP PLANS.

(a) DISTRIBUTIONS ON PLAN TERMINATIONS PERMITTED.—

(1) IN GENERAL.—Paragraph (1) of section 409(d) (requiring that employer securities must stay in the plan) is amended by striking out "or separation from service" and inserting in lieu thereof "separation from service, or termination of the plan".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to plan terminations after December 31, 1984.

(b) DISTRIBUTION AND PAYMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 409 (relating to qualifications for employee stock ownership plans) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) DISTRIBUTION AND PAYMENT REQUIREMENTS.—A plan meets the requirements of this subsection if—

"(1) DISTRIBUTION REQUIREMENT.—

"(A) IN GENERAL.—The plan provides that, unless the participant otherwise elects, the distribution of the participant's account balance in the plan will commence not later than 1 year after the close of the plan year—

"(i) in which the participant separates from service by reason of the attainment of normal retirement age under the plan, disability, or death, or

"(ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service, except that this clause shall not apply if the participant is reemployed by the employer before such year.

"(B) EXCEPTION FOR CERTAIN FINANCED SECURITIES.—For purposes of this subsection, the account balance of a participant shall not include any employer securities acquired with the proceeds of the loan described in section 404(a)(9) until the close of the plan year in which such loan is repaid in full.

"(C) LIMITED DISTRIBUTION PERIOD.—The plan provides that, unless the participant elects otherwise, the distribution of the participant's account balance will be in substantially equal periodic payments (not less frequently than annually) over a period not longer than the greater of—

"(i) 5 years, or

"(ii) in the case of a participant with an account balance in excess of $500,000, 5 years plus 1 additional year (but not more than 5 additional years) for each $100,000 or fraction thereof by which such balance exceeds $500,000.

"(2) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the dollar amounts under paragraph (1)(C) at the same time and in the same manner as under section 415(d)."

(2) CONFORMING AMENDMENTS.—Sections 409(a)(3) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (o)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to distributions attributable to stock acquired after December 31, 1986.

(c) PUT OPTION REQUIREMENTS.—

(1) PAYMENT REQUIREMENT.—

(A) IN GENERAL.—Subsection (h) of section 409 (relating to right to demand employer securities; put option) is amended by adding at the end thereof the following new paragraphs:

"(5) PAYMENT REQUIREMENT FOR TOTAL DISTRIBUTION.—If an employer is required to repurchase employer securities which are distributed to the employee as part of a total distribution, the requirements of paragraph (1)(B) shall be treated as met if—

"(A) the amount to be paid for the employer securities is paid in substantially equal periodic payments (not less frequently than annually) over a period beginning not later than 30 days after the exercise of the put option described in paragraph (4) and not exceeding 5 years, and

"(B) there is adequate security provided and reasonable interest paid on the unpaid amounts referred to in subparagraph (A).

For purposes of this paragraph, the term 'total distribution' means the distribution within 1 taxable year to the recipient of the balance to the credit of the recipient's account.

"(6) PAYMENT REQUIREMENT FOR INSTALLMENT DISTRIBUTIONS.—If an employer is required to repurchase employer securities as part of an installment distribution, the requirements of paragraph (1)(B) shall be treated as met if the amount to be paid for the employer securities is paid not later than 30 days after the exercise of the put option described in paragraph (4)."

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to distributions attributable to stock acquired after December 31, 1986, except that a plan may elect to have such amendment apply to all distributions after the date of the enactment of this Act.

(2) PUT OPTION REQUIREMENT EXTENDED TO STOCK BONUS PLANS.—

(A) IN GENERAL.—Section 401(a)(23) is amended to read as follows:

"(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan."

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to distributions attributable to stock acquired after December 31, 1986.

(d) NONDISCRIMINATION REQUIREMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 415(c)(6) is amended by striking out "the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 415(c)(6) is amended by striking out clauses (iii) and (iv) thereof.

(B) Subparagraph (C) of section 415(c)(6) is amended by striking out "the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 1986.

SEC. 1175. ADDITIONAL QUALIFICATION REQUIREMENTS.

(a) ADDITIONAL QUALIFICATION REQUIREMENTS FOR EMPLOYEE STOCK OWNERSHIP PLANS.—

(1) IN GENERAL.—Subsection (a) of section 401 (relating to qualified pension, profit-sharing, and stock bonus plans), as amended by this Act, is amended by inserting after paragraph (27) the following new paragraph:

"(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

"(A) IN GENERAL.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

"(B) DIVERSIFICATION OF INVESTMENTS.—

"(i) IN GENERAL.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting '50 percent' for '25 percent'.

"(ii) METHOD OF MEETING REQUIREMENTS.—A plan shall be treated as meeting the requirements of clause (i) if—

"(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

"(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i).

"(iii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term 'qualified participant' means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

"(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term 'qualified election period' means the 5-plan-year period beginning with the plan year after the plan year in which the participant attains age 55 (or, if later, beginning with the plan year after the 1st plan year in which the individual 1st became a qualified participant).

"(C) USE OF INDEPENDENT APPRAISER.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term 'independent appraiser' means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1)."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to stock acquired after December 31, 1986.

SEC. 1176. SPECIAL ESOP REQUIREMENTS.

(a) IN GENERAL.—Section 401(a)(22) (relating to qualified pension, profit sharing and stock bonus plans) is amended by inserting at the end thereof the following new sentence: "The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not publicly traded and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation."

(b) Section 409(l) is amended by adding at the end thereof the following new paragraph:

"(4) NONVOTING COMMON STOCK MAY BE ACQUIRED IN CERTAIN CASES.—Nonvoting common stock of an employer described in the last sentence of section 401(a)(22) shall be treated as employer securities if an employer has a class of nonvoting common stock outstanding and the specific shares that the plan acquires have been issued and outstanding for at least 24 months."

(c) EFFECTIVE DATES.—The amendment made by subsection (a) shall be effective December 31, 1986. The amendment made by subsection (b) shall apply to acquisitions of securities after December 31, 1986.

SEC. 1177. TRANSITION RULES.

(a) SECTION 1171.—The amendments made by section 1171 shall not apply in the case of a tax credit employee stock ownership plan if—

(1) such plan was favorably approved on September 23, 1983, by employees, and

(2) not later than January 11, 1984, the employer of such employees was 100 percent owned by such plan.

(b) SUBTITLE NOT TO APPLY TO CERTAIN NEWSPAPER.—The amendments made by this subtitle shall not apply to any daily newspaper—

(1) which was first published on December 17, 1855, and which began publication under its current name in 1954, and

(2) which is published in a constitutional home rule city (within the meaning of section 143(d)(3)(C) of the Internal Revenue Code of 1986) which has a population of less than 2,500,000.

TITLE XII—FOREIGN TAX PROVISIONS

Subtitle A—Foreign Tax Credit Modifications

SEC. 1201. SEPARATE APPLICATION OF SECTION 904 WITH RESPECT TO CERTAIN CATEGORIES OF INCOME.

(a) GENERAL RULE.—Paragraph (1) of section 904(d) (relating to separate application of section 904 with respect to certain income) is amended by striking out subparagraph (A), by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (F), (G), (H), and (I), respectively, and by inserting before subparagraph (F) (as so redesignated) the following new subparagraphs:

"(A) passive income,

"(B) high withholding tax interest,

"(C) financial services income,

"(D) shipping income,

"(E) dividends from each noncontrolled section 902 corporation,".

(b) CATEGORIES DEFINED.—Subsection (d) of section 904 is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following new paragraphs:

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) PASSIVE INCOME.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'passive income' means any income received or accrued by any person which is of a kind which would be foreign personal holding company income (as defined in section 954(c)).

"(ii) CERTAIN AMOUNTS INCLUDED.—The term 'passive income' includes any amount includible in gross income under section 551 or section 1293 (relating to certain passive foreign investment companies).

"(iii) EXCEPTIONS.—The term 'passive income' shall not include—

"(I) any income described in a subparagraph of paragraph (1) other than subparagraph (A),

"(II) any export financing interest,

"(III) any high-taxed income, and

"(IV) any foreign oil and gas extraction income (as defined in section 907(c)).

"(B) HIGH WITHHOLDING TAX INTEREST.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'high withholding tax interest' means any interest if—

"(I) such interest is subject to a withholding tax of a foreign country or possession of the United States (or other tax determined on a gross basis), and

"(II) the rate of such tax applicable to such interest is at least 5 percent.

"(ii) EXCEPTION FOR EXPORT FINANCING.—The term 'high withholding tax interest' shall not include any export financing interest.

"(iii) REGULATIONS.—The Secretary may by regulations provide that amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph.

"(C) FINANCIAL SERVICES INCOME.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'financial services income' means income received or accrued by any person which is not passive income (determined without regard to subparagraph (A)(iii)(I) and which—

"(I) is derived in the active conduct of a banking, financing, or similar business, or derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business,

"(II) is of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraphs (1)(A) of such section which limit insurance income to income from countries other than the country in which the corporation was created or organized.

"(ii) SPECIAL RULE IF ENTITY PREDOMINANTLY ENGAGED IN BANKING, ETC., BUSINESS.—If, for any taxable year, an entity is predominantly engaged in the active conduct of a banking, insurance, financing, or similar busi-

ness, the term 'financial services income' includes any passive income (determined without regard to subparagraph (A)(iii)(I)) of such corporation for such taxable year. In the case of any entity described in the preceding sentence, the term 'shipping income' shall not include any income treated as financial services income under the preceding sentence.

"(iii) EXCEPTION FOR EXPORT FINANCING.—The term 'financial services income' does not include any export financing interest.

"(iv) HIGH WITHHOLDING TAX INTEREST.—The term 'financial services income' does not include any high withholding tax interest.

"(D) SHIPPING INCOME.—The term 'shipping income' means any income received or accrued by any person which is of a kind which would be foreign base company shipping income (as defined in section 954(f)).

"(E) NONCONTROLLED SECTION 902 CORPORATION.—

"(i) IN GENERAL.—The term 'noncontrolled section 902 corporation' means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraph (3), the requirements of section 902(b)). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation.

"(ii) SPECIAL RULE FOR TAXES ON HIGH-WITHHOLDING TAX INTEREST.—If a foreign corporation is a noncontrolled section 902 corporation with respect to the taxpayer, taxes on high withholding tax interest (to the extent imposed at a rate in excess of 5 percent) shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid by the taxpayer under section 902.

"(F) HIGH-TAXED INCOME.—The term 'high-taxed income' means any income which (but for this subparagraph) would be passive income if the sum of—

"(i) the foreign income taxes paid or accrued by the taxpayer with respect to such income, and

"(ii) the foreign income taxes deemed paid by the taxpayer with respect to such income under section 902 or 960,

exceeds the highest rate of tax specified in section 1 or 11 (whichever applies) multiplied by the amount of such income (determined with regard to section 78). For purposes of the preceding sentence, the term 'foreign income taxes' means any income, war profits, or excess profits tax imposed by any foreign country or possession of the United States.

"(G) EXPORT FINANCING INTEREST.—For purposes of this paragraph, the term 'export financing interest' means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property—

"(i) which is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and

"(ii) not more than 50 percent of the fair market value of which is attributable to products imported into the United States.

For purposes of clause (ii), the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

"(H) RELATED PERSON.—For purposes of this paragraph, the term 'related person' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting 'the person with respect to whom the determination is being made' for 'controlled foreign corporation' each place it appears.

"(I) TRANSITIONAL RULE.—For purposes of paragraph (1)—

"(i) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income which was described in subparagraph (A) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (A) of paragraph (1) (as in effect after such date),

"(ii) taxes paid or accrued in a taxable year beginning before January 1, 1986, with respect to income which was described in subparagraph (E) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (I) of paragraph (1) (as in effect after such date) except to the extent that—

"(I) the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to shipping income, or

(II) in the case of an entity meeting the requirements of subparagraph (C)(ii), the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to financial services income, and

"(iii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income described in any other subparagraph of paragraph (1) (as so in effect before such date) shall be treated as taxes paid or accrued with respect to income described in the corresponding subparagraph of paragraph (1) (as so in effect after such date).

"(3) LOOK-THRU IN CASE OF CONTROLLED FOREIGN CORPORATIONS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as income in a separate category.

"(B) SUBPART F INCLUSIONS.—Any amount included in gross income under section 951(a)(1)(A) shall be treated as income in a separate category to the extent the amount so included is attributable to income in such category.

"(C) INTEREST, RENTS, AND ROYALTIES.—Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as income in a separate category to the extent it is properly allocable (under regulations prescribed by the Secretary) to income of the controlled foreign corporation in such category.

"(D) DIVIDENDS.—Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as income in a separate category in proportion to the ratio of—

"(i) the portion of the earnings and profits attributable to income in such category, to

"(ii) the total amount of earnings and profits.

"(E) LOOK-THRU APPLIES ONLY WHERE SUBPART F APPLIES.—If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its income for such taxable year shall be treated as income in a separate category. Solely for purposes of applying subparagraph (D), income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation) of a controlled foreign corporation shall not be treated as income in a separate category if the requirements of section 954(b)(4) are met with respect to such income.

"(F) SEPARATE CATEGORY.—For purposes of this paragraph, the term 'separate category' means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).

"(G) DIVIDEND.—For purposes of this paragraph, the term 'dividend' includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

"(4) CONTROLLED FOREIGN CORPORATION; UNITED STATES SHAREHOLDER.—For purposes of this subsection—

"(A) CONTROLLED FOREIGN CORPORATION.—The term 'controlled foreign corporation' has the meaning given such term by section 957 (taking into account section 953(c)).

"(B) UNITED STATES SHAREHOLDER.—The term 'United States shareholder' has the meaning given such term by section 951(b) (taking into account section 953(c)).

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate for the purposes of this subsection, including regulations—

"(A) for the application of paragraph (3) and subsection (f)(5) in the case of income paid (or loans made) through 1 or more entities or between 2 or more chains of entities,

"(B) preventing the manipulation of the character of income the effect of which is to avoid the purposes of this subsection, and

"(C) providing that rules similar to the rules of paragraph (3)(C) shall apply to interest, rents, and royalties received or accrued from entities which would be controlled foreign corporations if they were foreign corporations."

(c) SOURCE RULE.—Paragraph (5) of section 954(b) (relating to deductions) is amended by adding at the end thereof the following new sentence: "Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(1)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons."

(d) TECHNICAL AMENDMENTS.—

(1) The subsection heading of section 904(d) is amended to read as follows:

"(d) SEPARATE APPLICATION OF SECTION WITH RESPECT TO CERTAIN CATEGORIES OF INCOME.—".

(2) Subparagraph (I) of section 904(d)(1) (as redesignated by subsection (a)) is amended by striking out "in subparagraph (A), (B), (C), or (D)" and inserting in lieu

thereof "in any of the preceding subparagraphs".

(3) Paragraph (1) of section 904(d) is amended by inserting "and sections 902, 907, and 960" after "subsections (a), (b), and (c)".

(4) Clause (i) of section 864(d)(5)(A) is amended to read as follows:

"(i) Subparagraphs (A)(iii)(II), (B)(ii), and (C)(iii) of section 904(d)(2) (relating to exceptions for export financing interest)."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) QUALIFIED LOANS.—

(A) IN GENERAL.—The following shall not be treated as high withholding tax interest for purposes of applying section 904(d) of the Internal Revenue Code of 1986 (as amended by this section):

(i) Any interest received or accrued by any taxpayer during any taxable year beginning after December 31, 1986, and before January 1, 1990, on any pre-1990 qualified loan, and

(ii) The phase-out percentage of any interest received or accrued by any taxpayer during any taxable year beginning after December 31, 1989 on any post-1989 qualified loan.

(B) PHASE-OUT PERCENTAGE.—For purposes of subparagraph (A) the phase-out percentage is—

In the case of the following taxable years beginning after 12/31/89:	The phase out percentage is:
1st	80
2nd	60
3rd	40
4th	20
5th or succeeding	0

(C) PRE-1990 QUALIFIED LOAN.—For purposes of subparagraph (A), the term "pre-1990 qualified loan" means, with respect to any taxable year beginning before January 1, 1990, any qualified loan outstanding at any time during such taxable year to the extent that the total amount of foreign taxes which would be creditable (without regard to the limitation of section 904 of the Internal Revenue Code of 1986) with respect to all qualified loans outstanding at any time during such taxable year does not exceed the applicable credit limit for such taxable year.

(D) POST-1989 QUALIFIED LOANS.—For purposes of subparagraph (A), the term "post-1989 qualified loan" means any qualified loan outstanding as of the close of the 1st taxable year of the taxpayer beginning after December 31, 1988, to the extent that the total amount of foreign taxes which would be creditable (without regard to the limitation of section 904 of the Internal Revenue Code of 1986) with respect to all qualified loans outstanding as of the close of such taxable year does not exceed the applicable credit limit for post-1989 qualified loans.

(E) CLASSIFICATION OF QUALIFIED LOANS.—For purposes of this paragraph, if the foreign taxes creditable for any taxable year beginning before January 1, 1990, with respect to any qualified loan, when added to the aggregate amount of foreign taxes creditable for such taxable year with respect to qualified loans entered into by the taxpayer before the date on which such qualified loan was entered into, exceed the applicable credit limit, then that portion of a qualified loan which causes the taxpayer to exceed the applicable credit limit shall not be treated as a pre-1990 or post-1989 qualified loan, as the case may be.

(F) APPLICABLE CREDIT LIMIT.—

(i) IN GENERAL.—The applicable credit limit shall be equal to—

(I) except as provided in subclause (II), 110 percent of the base credit amount multiplied by the applicable interest rate adjustment for the taxable year, and

(II) in the case of post-1989 qualified loans, the amount determined under subclause (I) (without regard to the interest rate adjustment) multiplied by the interest rate adjustment for post-1989 qualified loans.

(ii) BASE CREDIT AMOUNT.—The base credit amount of a taxpayer shall be an amount equal to the principal amount of qualified loans held by such taxpayer on November 16, 1985, multiplied by the product of—

(I) the interest rate applicable to such loan on November 16, 1985, and

(II) the foreign withholding tax rate applicable to interest payable with respect to such loan on November 16, 1985.

(G) INTEREST RATE ADJUSTMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), the applicable interest rate adjustment shall equal the ratio of the weighted average 6-month London Interbank Offered Rate (LIBOR) for the taxable year in question to LIBOR on November 15, 1985.

(ii) POST-1989 QUALIFIED LOANS.—The applicable interest rate adjustment for post-1989 qualified loans shall be equal to the ratio of LIBOR on the last day of the taxpayer's 1st taxable year beginning after December 31, 1988 to LIBOR on November 15, 1985.

(H) QUALIFIED LOAN.—For purposes of this subsection, the term "qualified loan" means any loan made by the taxpayer to any of the following countries or any resident thereof for use in such country:

(i) Argentina.
(ii) Bolivia.
(iii) Brazil.
(iv) Chile.
(v) Colombia.
(vi) Costa Rica.
(vii) The Dominican Republic.
(viii) Ecuador.
(ix) Guyana.
(x) Honduras.
(xi) The Ivory Coast.
(xii) Jamaica.
(xiii) Liberia.
(xiv) Madagascar.
(xv) Malawi.
(xvi) Mexico.
(xvii) Morocco.
(xviii) Mozambique.
(xix) Niger.
(xx) Nigeria.
(xxi) Panama.
(xxii) Peru.
(xxiii) The Philippines.
(xxiv) Romania.
(xxv) Senegal.
(xxvi) Sierra Leone.
(xxvii) The Sudan.
(xviii) Togo.
(xxix) Uruguay.
(xxx) Venezuela.
(xxxi) Yugoslavia.
(xxxii) Zaire.
(xxxiii) Zambia.

(I) NO BENEFIT FOR INCREASED WITHHOLDING TAXES.—No benefit shall be allowable by reason of this paragraph for any foreign withholding tax imposed on interest payable with respect to any qualified loan to the extent the rate of such tax exceeds the foreign withholding tax rate applicable to interest payable with respect to such loan on November 16, 1985.

(3) SPECIAL RULE FOR TAXPAYER WITH OVERALL FOREIGN LOSS.—

(A) IN GENERAL.—If a taxpayer incorporated on June 20, 1928, the principal headquarters of which is in Minneapolis, Minnesota, sustained an overall foreign loss (as defined in section 904(f)(2) of the Internal Revenue Code of 1954) in taxable years beginning before January 1, 1986, in connection with 2 separate trades or businesses which the taxpayer had, during 1985, substantially disposed of in tax-free transactions pursuant to section 355 of such Code, then an amount, not to exceed $40,000,000 of foreign source income, which, but for this paragraph, would not be treated as overall limitation income, shall be so treated.

(B) SUBSTANTIAL DISPOSITION.—For purposes of this paragraph, a taxpayer shall be treated as having substantially disposed of a trade or business if the retained portion of such business had sales of less than 10 percent of the annual sales of such business for taxable years ending in 1985.

SEC. 1202. DEEMED PAID CREDIT UNDER SECTIONS 902 AND 960 DETERMINED ON ACCUMULATED BASIS.

(a) GENERAL RULE.—Section 902 (relating to credit for corporate stockholder in foreign corporation) is amended to read as follows:

"SEC. 902. DEEMED PAID CREDIT WHERE DOMESTIC CORPORATION OWNS 10 PERCENT OR MORE OF VOTING STOCK OF FOREIGN CORPORATION.

"(a) TAXES PAID BY FOREIGN CORPORATION TREATED AS PAID BY DOMESTIC CORPORATION.—For purposes of this subpart, a domestic corporation which owns 10 percent or more of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of such foreign corporation's post-1986 foreign income taxes as—

"(1) the amount of such dividends (determined without regard to section 78), bears to

"(2) such foreign corporation's post-1986 undistributed earnings.

"(b) DEEMED TAXES INCREASED IN CASE OF CERTAIN 2ND AND 3RD TIER FOREIGN CORPORATIONS.—

"(1) 2ND TIER.—If the foreign corporation described in subsection (a) (hereinafter in this section referred to as the '1st tier corporation') owns 10 percent or more of the voting stock of a 2nd foreign corporation from which it receives dividends in any taxable year, the 1st tier corporation shall be deemed to have paid the same proportion of such 2nd foreign corporation's post-1986 foreign income taxes as would be determined under subsection (a) if such 1st tier corporation were a domestic corporation.

"(2) 3RD TIER.—If such 1st tier corporation owns 10 percent or more of the voting stock of a 2nd foreign corporation which, in turn, owns 10 percent or more of the voting stock of a 3rd foreign corporation from which the 2nd corporation receives dividends in any taxable year, such 2nd foreign corporation shall be deemed to have paid the same proportion of such 3rd foreign corporation's post-1986 foreign income taxes as would be determined under subsection (a) if such 2nd foreign corporation were a domestic corporation.

"(3) 5 PERCENT STOCK REQUIREMENT.—For purposes of this subpart—

"(A) FOR 2ND TIER.—Paragraph (1) shall not apply unless the percentage of voting stock owned by the domestic corporation in the 1st tier corporation and the percentage of voting stock owned by the 1st tier corporation in the 2nd foreign corporation when multiplied together equal at least 5 percent.

"(B) FOR 3RD TIER.—Paragraph (2) shall not apply unless the percentage arrived at for purposes of applying paragraph (1) when multiplied by the percentage of voting stock owned by the 2nd foreign corporation in the 3rd foreign corporation is equal to at least 5 percent.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) POST-1986 UNDISTRIBUTED EARNINGS.—The term 'post-1986 undistributed earnings' means the amount of the earnings and profits of the foreign corporation (computed in accordance with sections 964 and 986) accu-

mulated in taxable years beginning after December 31, 1986—

"(A) as of the close of the taxable year of the foreign corporation in which the dividend is distributed, and

"(B) without diminution by reason of dividends distributed during such taxable year.

"(2) POST-1986 FOREIGN INCOME TAXES.—The term 'post-1986 foreign income taxes' means the sum of—

"(A) the foreign income taxes with respect to the taxable year of the foreign corporation in which the dividend is distributed, and

"(B) the foreign income taxes with respect to prior taxable years beginning after December 31, 1986, to the extent such foreign taxes were not deemed paid with respect to dividends distributed by the foreign corporation in prior taxable years.

"(3) SPECIAL RULE WHERE DOMESTIC CORPORATION ACQUIRES 10 PERCENT OF FOREIGN CORPORATION AFTER DECEMBER 31, 1986.—

"(A) IN GENERAL.—If the 1st day on which the ownership requirements of subparagraph (B) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 foreign income taxes of such foreign corporation shall be determined by taking into account only periods beginning on and after the 1st day of the 1st taxable year in which such ownership requirements are met.

"(B) OWNERSHIP REQUIREMENTS.—The ownership requirements of this subparagraph are met with respect to any foreign corporation if—

"(i) 10 percent or more of the voting stock of such foreign corporation is owned by a domestic corporation,

"(ii) the requirements of subsection (b)(3)(A) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (i), or

"(iii) the requirements of subsection (b)(3)(B) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (ii).

"(4) FOREIGN INCOME TAXES.—

"(A) IN GENERAL.—The term 'foreign income taxes' means any income, war profits, or excess profits taxes paid by the foreign corporation to any foreign country or possession of the United States.

"(B) TREATMENT OF DEEMED TAXES.—Except for purposes of determining the amount of the post-1986 foreign income taxes of a 3rd foreign corporation referred to in subsection (b)(2), the term 'foreign income taxes' includes any such taxes deemed to be paid by the foreign corporation under this section.

"(5) ACCOUNTING PERIODS.—In the case of a foreign corporation the income, war profits, and excess profits taxes of which are determined on the basis of an accounting period of less than 1 year, the word 'year' as used in this subsection shall be construed to mean such accounting period.

"(6) TREATMENT OF DISTRIBUTIONS FROM EARNINGS BEFORE 1987.—

"(A) IN GENERAL.—In the case of any dividend paid by a foreign corporation out of accumulated profits (as defined in this section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for taxable years beginning before the 1st taxable year taken into account in determining the post-1986 undistributed earnings of such corporation—

"(i) this section (as amended by the Tax Reform Act of 1986) shall not apply, but

"(ii) this section (as in effect on the day before the date of the enactment of such Act) shall apply.

"(B) DIVIDENDS PAID FIRST OUT OF POST-1986 EARNINGS.—Any dividend in a taxable year beginning after December 31, 1986, shall be treated as made out of post-1986 undistributed earnings to the extent thereof.

"(7) REGULATIONS.—The Secretary shall provide such regulations as may be necessary or appropriate to carry out the provisions of this section and secton 960, including provisions which provide for the separate application of this section to reflect the separate application of section 904 to separate types of income and loss.

"(d) CROSS REFERENCES.—

"(1) For inclusion in gross income of an amount equal to taxes deemed paid under subsection (a), see section 78.

"(2) For application of subsections (a) and (b) with respect to taxes deemed paid in a prior taxable year by a United States shareholder with respect to a controlled foreign corporation, see section 960.

"(3) For reduction of credit with respect to dividends paid out of post-1986 undistributed earnings for years for which certain information is not furnished, see section 6038."

(b) SECTION 960 CREDIT DETERMINED ON ACCUMULATED BASIS.—The first sentence of section 960(a)(1) (relating to taxes paid by a foreign corporation) is amended by striking out "then" and all that follows down through the period at the end thereof and inserting in lieu thereof the following:

"then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))."

(c) TECHNICAL AMENDMENTS.—

(1) Subparagraph (B) of section 6038(a)(1) (relating to information with respect to certain foreign corporations) is amended to read as follows:

"(B) the post-1986 undistributed earnings (as defined in section 902(c)) of such foreign corporation,".

(2) Subparagraph (C) of section 6038(c)(4) (relating to penalty of reducing foreign tax credit) is amended by striking out all that follows "the amount of" and inserting in lieu thereof "post-1986 undistributed earnings."

(d) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter N of chapter 1 is amended by striking out the item relating to section 902 and inserting in lieu thereof the following:

"Sec. 902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions by foreign corporations out of, and to inclusions under section 951(c) of the Internal Revenue Code of 1986 attributable to, earnings and profits for taxable years beginning after December 31, 1986.

SEC. 1203. CLARIFICATION OF TREATMENT OF SEPARATE LIMITATION LOSSES.

(a) GENERAL RULE.—Subsection (f) of section 904 (relating to recapture of overall foreign loss) is amended by adding at the end thereof the following new paragraph:

"(5) TREATMENT OF SEPARATE LIMITATION LOSSES.—

"(A) IN GENERAL.—The amount of the separate limitation losses for any taxable year shall reduce income from sources within the United States for such taxable year only to the extent the aggregate amount of such losses exceeds the aggregate amount of the separate limitation incomes for such taxable year.

"(B) ALLOCATION OF LOSSES.—The separate limitation losses for any taxable year (to the extent such losses do not exceed the separate limitation incomes for such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis.

"(C) RECHARACTERIZATION OF SUBSEQUENT INCOME.—If—

"(i) a separate limitation loss from any income category (hereinafter in this subparagraph referred to as 'the loss category') was allocated to income from any other category under subparagraph (B), and

"(ii) the loss category has income for a subsequent taxable year,

such income (to the extent it does not exceed the aggregate separate limitation losses from the loss category not previously recharacterized under this subparagraph) shall be recharacterized as income from such other category in proportion to the prior reductions under subparagraph (B) in such other category not previously taken into account under this subparagraph. Nothing in the preceding sentence shall be construed as recharacterizing any tax.

"(D) SPECIAL RULES FOR LOSSES FROM SOURCES IN THE UNITED STATES.—Any loss from sources in the United States for any taxable year (to the extent such loss does not exceed the separate limitation incomes from such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis. This subparagraph shall be applied after subparagraph (B).

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) INCOME CATEGORY.—The term 'income category' means each separate category of income described in subsection (d)(1).

"(ii) SEPARATE LIMITATION INCOME.—The term 'separate limitation income' means, with respect to any income category, the taxable income from sources outside the United States, separately computed for such category.

"(iii) SEPARATE LIMITATION LOSS.—The term 'separate limitation loss' means, with respect to any income category, the loss from such category determined under the principles of section 907(c)(4)(B)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to losses incurred in taxable years beginning after December 31, 1986.

SEC. 1204. FOREIGN TAXES USED TO PROVIDE SUBSIDIES.

(a) TREATMENT OF CERTAIN SUBSIDIES.—Section 901 (relating to credit for foreign taxes) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) TAXES USED TO PROVIDE SUBSIDIES.—Any income, war profits, or excess profits tax shall not be treated as a tax for purposes of this title to the extent—

"(1) the amount of such tax is used (directly or indirectly) by the country imposing such tax to provide a subsidy by any means to the taxpayer, a related person (within the

meaning of section 482), or any party to the transaction or to a related transaction, and

"(2) such subsidy is determined (directly or indirectly) by reference to the amount of such tax, or the base used to compute the amount of such tax."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to foreign taxes paid or accrued in taxable years beginning after December 31, 1986.

SEC. 1205. LIMITATION ON CARRYBACK OF FOREIGN TAX CREDITS TO TAXABLE YEARS BEGINNING BEFORE 1987.

(a) DETERMINATION OF EXCESS CREDITS.—

(1) IN GENERAL.—Any taxes paid or accrued in a taxable year beginning after 1986 may be treated under section 904(c) of the Internal Revenue Code of 1954 as paid or accrued in a taxable year beginning before 1987 only to the extent such taxes would be so treated if the tax imposed by chapter 1 of such Code for the taxable year beginning after 1986 were determined by applying section 1 or 11 of such Code (as the case may be) as in effect on the day before the date of the enactment of this Act.

(2) ADJUSTMENTS.—Under regulations prescribed by the Secretary of the Treasury or his delegate proper adjustments shall be made in the application of paragraph (1) to take into account—

(A) the repeal of the zero bracket amount, and

(B) the changes in the treatment of capital gains.

(b) COORDINATION WITH SEPARATE BASKETS.—Any taxes paid or accrued in a taxable year beginning after 1986 which (after the application of subsection (a)) are treated as paid or accrued in a taxable year beginning before 1987 shall be treated as imposed on income described in section 904(d)(1)(E) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act). No taxes paid or accrued in a taxable year beginning after 1986 with respect to high withholding tax interest (as defined in section 904(d)(2)(B) of the Internal Revenue Code of 1986 as amended by this Act) may be treated as paid or accrued in a taxable year beginning before 1987.

Subtitle B—Source Rules

SEC. 1211. DETERMINATION OF SOURCE IN CASE OF SALES OF PERSONAL PROPERTY.

(a) PERSONAL PROPERTY SOURCE RULES.—Part I of subchapter N of chapter 1 (relating to determination of source of income) is amended by adding at the end thereof the following new section:

"SEC. 865. SOURCE RULES FOR PERSONAL PROPERTY SALES.

"(a) GENERAL RULE.—Except as otherwise provided in this section, income from the sale of personal property—

"(1) by a United States resident shall be sourced in the United States, or

"(2) by a nonresident shall be sourced outside the United States.

"(b) EXCEPTION FOR INVENTORY PROPERTY.—In the case of income derived from the sale of inventory property—

"(1) this section shall not apply, and

"(2) such income shall be sourced under the rules of sections 861(a)(6), 862(a)(6), and 863(b).

"(c) EXCEPTION FOR DEPRECIABLE PERSONAL PROPERTY.—

"(1) IN GENERAL.—Gain (not in excess of the depreciation adjustments) from the sale of depreciable personal property shall be allocated between sources in the United States and sources outside the United States—

"(A) by treating the same proportion of such gain as sourced in the United States as the United States depreciation adjustments with respect to such property bear to the total depreciation adjustments, and

"(B) by treating the remaining portion of such gain as sourced outside the United States.

"(2) GAIN IN EXCESS OF DEPRECIATION.—Gain (in excess of the depreciation adjustments) from the sale of depreciable personal property shall be sourced as if such property were inventory property.

"(3) UNITED STATES DEPRECIATION ADJUSTMENTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'United States depreciation adjustments' means the portion of the depreciation adjustments to the adjusted basis of the property which are attributable to the depreciation deductions allowable in computing taxable income from sources in the United States.

"(B) SPECIAL RULE FOR CERTAIN PROPERTY.—Except in the case of property of a kind described in section 48(a)(2)(B), if, for any taxable year—

"(i) such property is used predominantly in the United States, or

"(ii) such property is used predominantly outside the United States,

all of the depreciation deductions allowable for such year shall be treated as having been allocated to income from sources in the United States (or, where clause (ii) applies, from sources outside the United States).

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) DEPRECIABLE PERSONAL PROPERTY.—The term 'depreciable personal property' means any personal property if the adjusted basis of such property includes depreciation adjustments.

"(B) DEPRECIATION ADJUSTMENTS.—The term 'depreciation adjustments' means adjustments reflected in the adjusted basis of any property on account of depreciation deductions (whether allowed with respect to such property or other property and whether allowed to the taxpayer or to any other person).

"(C) DEPRECIATION DEDUCTIONS.—The term 'depreciation deductions' means any deductions for depreciation or amortization or any other deduction allowable under any provision of this chapter which treats an otherwise capital expenditure as a deductible expense.

"(d) EXCEPTION FOR INTANGIBLES.—

"(1) IN GENERAL.—In the case of any sale of an intangible—

"(A) this section shall apply only to the extent the payments in consideration of such sale are not contingent on the productivity, use, or disposition of the intangible, and

"(B) to the extent such payments are so contingent, the source of such payments shall be determined under this part in the same manner as if such payments were royalties.

"(2) INTANGIBLE.—For purposes of paragraph (1), the term 'intangible' means any patent, copyright, secret process or formula, goodwill, trademark, trade brand, or other like property.

"(3) SPECIAL RULE IN THE CASE OF GOODWILL.—To the extent this section applies to the sale of goodwill, payments in consideration of such sale shall be treated as from sources in the country in which such goodwill was generated.

"(e) SPECIAL RULES FOR SALES THROUGH OFFICES OR FIXED PLACES OF BUSINESS.—

"(1) SALES BY RESIDENTS.—

"(A) IN GENERAL.—In the case of income not sourced under subsection (b), (c), (d), or (f), if a United States resident maintains an office or other fixed place of business outside the United States, income from sales of personal property attributable to such office or other fixed place of business shall be sourced outside the United States.

"(B) TAX MUST BE IMPOSED.—Subparagraph (A) shall not apply unless an income tax equal to at least 10 percent of the income from the sale is actually paid to a foreign country with respect to such income.

"(2) SALES BY NONRESIDENTS.—

"(A) IN GENERAL.—Notwithstanding any other provisions of this part, if a nonresident maintains an office or other fixed place of business in the United States, income from any sale of personal property (including inventory property) attributable to such office or other fixed place of business shall be sourced in the United States. The preceding sentence shall not apply for purposes of section 971 (defining export trade corporation).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to—

"(i) any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer outside the United States materially participated in the sale, or

"(ii) any amount included in gross income under section 951(a)(1)(A).

"(3) SALES ATTRIBUTABLE TO AN OFFICE OR OTHER FIXED PLACE OF BUSINESS.—The principles of section 864(c)(5) shall apply in determining whether a taxpayer has an office or other fixed place of business and whether a sale is attributable to such an office or other fixed place of business.

"(f) STOCK OF AFFILIATES.—If—

"(1) a United States resident sells stock in an affiliate which is a foreign corporation,

"(2) such affiliate is engaged in the active conduct of a trade or business, and

"(3) such sale occurs in the foreign country in which the affiliate derived more than 50 percent of its gross income for the 3-year period ending with the close of the affiliate's taxable year immediately preceding the year during which such sale occurred,

any gain from such sale shall be sourced outside the United States.

"(g) UNITED STATES RESIDENT; NONRESIDENT.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection—

"(A) UNITED STATES RESIDENT.—The term 'United States resident' means—

"(i) any individual who has a tax home (as defined in section 911(d)(3)) in the United States, and

"(ii) any corporation, partnership, trust, or estate which is a United States person (as defined in section 7701(a)(30)).

"(B) NONRESIDENT.—The term 'nonresident' means any person other than a United States resident.

"(2) SPECIAL RULES FOR UNITED STATES CITIZENS AND RESIDENT ALIENS.—For purposes of this section, a United States citizen or resident alien shall not be treated as a nonresident with respect to any sale of personal property unless an income tax equal to at least 10 percent of the gain derived from such sale is actually paid to a foreign country with respect to that gain.

"(h) OTHER DEFINITIONS.—For purposes of this section—

"(1) INVENTORY PROPERTY.—The term 'inventory property' means personal property described in paragraph (1) of section 1221.

"(2) SALE INCLUDES EXCHANGE.—The term 'sale' includes an exchange or any other disposition.

"(3) TREATMENT OF POSSESSIONS.—Any possession of the United States shall be treated as a foreign country.

"(4) AFFILIATE.—The term 'affiliate' means a member of the same affiliated group (within the meaning of section 1504(a) without regard to section 1504(b)).

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of this section, including regulations—

"(1) relating to the treatment of losses from sales of personal property, and

"(2) applying the rules of this section to income derived from trading in futures contracts, forward contracts, options contracts, and other instruments.

"(j) CROSS REFERENCES.—

"(1) For provisions relating to the characterization as dividends for source purposes of gains from the sale of stock in certain foreign corporations, see section 1248.

"(2) For sourcing of income from certain foreign currency transactions, see section 988."

(b) CONFORMING AMENDMENTS.—

(1) Each of the following provisions are amended by striking out "personal property" and inserting in lieu thereof "inventory property (within the meaning of section 865(h)(1))":

(A) Paragraphs (2) and (3) of section 863(b).

(B) Paragraph (6) of section 861(a).

(C) Paragraph (6) of section 862(a).

(2) Subparagraph (B) of section 864(c)(4) is amended by adding "or" at the end of clause (i), by striking out "; or" at the end of clause (ii) and inserting in lieu thereof a period, and by striking out clause (iii).

(3) Paragraph (3) of section 904(b) is amended by striking out subparagraphs (C) and (D) and redesignating subparagraphs (E) and (F) as subparagraphs (C) and (D), respectively.

(4) Subparagraph (D) of section 871(a)(1) is amended by striking out "or from payments which are treated as being so contingent under subsection (e),".

(5) Subsection (e) of section 871 is hereby repealed.

(6) Paragraph (4) of section 881(a) is amended by striking out "or from payments which are treated as being so contingent under section 871(e),".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SPECIAL RULE FOR FOREIGN PERSONS.—In the case of any foreign person other than any controlled foreign corporations (within the meaning of section 957(a) of the Internal Revenue Code of 1954), the amendments made by this section shall apply to transactions entered into after March 18, 1986.

(d) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study of the source rules for sales of inventory property. Not later than September 30, 1987, the Secretary of the Treasury or his delegate shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of such study (together with such recommendations as he may deem advisable).

SEC. 1212. SPECIAL RULES FOR TRANSPORTATION INCOME.

(a) GENERAL RULE.—Paragraph (2) of section 863(c) (relating to special rule for certain transportation income) is amended to read as follows:

"(2) OTHER TRANSPORTATION HAVING UNITED STATES CONNECTION.—

"(A) IN GENERAL.—50 percent of all transportation income attributable to transportation which—

"(i) is not described in paragraph (1), and

"(ii) begins or ends in the United States,

shall be treated as from sources in the United States.

"(B) SPECIAL RULE FOR PERSONAL SERVICE INCOME.—Subparagraph (A) shall not apply to any transportation income which is income derived from personal services performed by the taxpayer, unless such income is attributable to transportation which—

"(i) begins in the United States and ends in a possession of the United States, or

"(ii) begins in a possession of the United States and ends in the United States."

(b) 4 PERCENT TAX ON GROSS TRANSPORTATION INCOME.—

(1) IN GENERAL.—Part II of subchapter N of chapter 1 (relating to nonresident alien individuals and foreign corporations) is amended by redesignating subpart C as subpart D and by inserting after subpart B the following new subpart:

"Subpart C—Tax on Gross Transportation Income

"Sec. 887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations.

"SEC. 887. IMPOSITION OF TAX ON GROSS TRANSPORTATION INCOME OF NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.

"(a) IMPOSITION OF TAX.—In the case of any nonresident alien individual or foreign corporation, there is hereby imposed for each taxable year a tax equal to 4 percent of such individual's or corporation's United States source gross transportation income for such taxable year.

"(b) UNITED STATES SOURCE GROSS TRANSPORTATION INCOME.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'United States source gross transportation income' means any gross income which is transportation income (as defined in section 863(c)(3)) to the extent such income is treated as from sources in the United States under section 863(c).

"(2) EXCEPTION FOR CERTAIN INCOME EFFECTIVELY CONNECTED WITH BUSINESS IN THE UNITED STATES.—The term 'United States source gross transportation income' shall not include any income taxable under section 871(b) or 882.

"(3) DETERMINATION OF EFFECTIVELY CONNECTED INCOME.—For purposes of this chapter, transportation income of any taxpayer shall not be treated as effectively connected with the conduct of a trade or business in the United States unless—

"(A) the taxpayer has a fixed place of business in the United States involved in the earning of transportation income, and

"(B) substantially all of the United States source gross transportation income (determined without regard to paragraph (2)) of the taxpayer is attributable to regularly scheduled transportation (or, in the case of income from the leasing of a vessel or aircraft, is attributable to a fixed place of business in the United States).

"(c) COORDINATION WITH OTHER PROVISIONS.—Any income taxable under this section shall not be taxable under section 871, 881, or 882."

(2) CLERICAL AMENDMENT.—The table of subparts for part II of subchapter N is amended by striking out the item relating to subpart C and inserting in lieu thereof the following:

"Subpart C. Tax on gross transportation income.

"Subpart D. Miscellaneous provisions."

(c) LIMITATION ON EXCLUSION OF TRANSPORTATION INCOME.—

(1) Subsection (b) of section 872 (relating to exclusions) is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) SHIPS OPERATED BY CERTAIN NONRESIDENTS.—Gross income derived by an individual resident of a foreign country from the operation of a ship or ships if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

"(2) AIRCRAFT OPERATED BY CERTAIN NONRESIDENTS.—Gross income derived by an individual resident of a foreign country from the operation of aircraft if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States."

(2) Section 872(b) is amended by adding at the end thereof the following new paragraphs:

"(5) CERTAIN RENTAL INCOME.—Income to which paragraphs (1) and (2) apply shall include income which is derived from the rental on a full or bareboat basis of a ship or ships or aircraft, as the case may be.

"(6) APPLICATION TO DIFFERENT TYPES OF TRANSPORTATION.—The Secretary may provide that this subsection be applied separately with respect to income from different types of transportation."

(3) Subsection (a) of section 883 (relating to exclusions from gross income) is amended by striking out paragraphs (1) and (2) and by inserting in lieu thereof the following:

"(1) SHIPS OPERATED BY CERTAIN FOREIGN CORPORATIONS.—Gross income derived by a corporation organized in a foreign country from the operation of a ship or ships if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

"(2) AIRCRAFT OPERATED BY CERTAIN FOREIGN CORPORATIONS.—Gross income derived by a corporation organized in a foreign country from the operation of aircraft if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States."

(4) Section 883(a) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULES.—The rules of paragraphs (5) and (6) of section 872(b) shall apply for purposes of this subsection."

(5) Section 883 is amended by adding at the end thereof the following new subsection:

"(c) TREATMENT OF CERTAIN FOREIGN CORPORATIONS.—

"(1) IN GENERAL.—Paragraphs (1) and (2) of subsection (a) shall not apply to any foreign corporation if 50 percent or more of the value of the stock of such corporation is owned by individuals who are not residents of such foreign country or another foreign country meeting the requirements of such paragraphs (1) and (2).

"(2) TREATMENT OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (1) shall not apply to any foreign corporation which is a controlled foreign corporation (as defined in section 957(a)).

"(3) EXCEPTION FOR PUBLICLY TRADED CORPORATIONS.—Paragraph (1) shall not apply to any foreign corporation—

"(A) the stock of which is primarily and regularly traded on an established securities market in the foreign country in which such corporation is organized, or

"(B) which is wholly owned (either directly or indirectly) by another corporation meeting the requirements of subparagraph (A) and is organized in the same foreign country as such other corporation.

"(4) STOCK OWNERSHIP THROUGH ENTITIES.—For purposes of paragraph (1), stock owned (directly or indirectly) by or for a corporation, partnership, trust, or estate shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person."

(d) REPEAL OF SPECIAL TREATMENT FOR LEASED AIRCRAFT, ETC.—Section 861 is amended by striking out subsection (e) and by redesignating subsection (f) as subsection (e).

(e) CONFORMING AMENDMENT.—Section 863(b)(1) is amended by striking out "transportation or other services" and inserting in lieu thereof "services".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SPECIAL RULE FOR CERTAIN LEASED PROPERTY.—The amendments made by subsections (a) and (d) shall not apply to any income attributable to property held by the taxpayer on January 1, 1986, if such property was first leased by the taxpayer before January 1, 1986, in a lease to which section 863(c)(2)(B) or 861(e) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) applied.

(3) SPECIAL RULE FOR CERTAIN SHIPS LEASED BY THE UNITED STATES NAVY.—

(A) IN GENERAL.—In the case of any property described in subparagraph (B), paragraph (2) shall be applied by substituting "1987" for "1986" each place it appears.

(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—Property described in this subparagraph consists of 4 ships which are to be leased by the United States Navy and which are the subject of Internal Revenue Service rulings issued on the following dates and which involved the following amount of financing, respectively:

March 5, 1986	$176,844,000
February 5, 1986	64,567,000
April 22, 1986	64,598,000
May 22, 1986	175,300,000.

SEC. 1213. SOURCE RULE FOR SPACE AND CERTAIN OCEAN ACTIVITIES.

(a) GENERAL RULE.—Section 863 (relating to items not specified in section 861 or 862) is amended by adding at the end thereof the following new subsections:

"(d) SOURCE RULES FOR SPACE AND CERTAIN OCEAN ACTIVITIES.—

"(1) IN GENERAL.—Except as provided in regulations, any income derived from a space or ocean activity—

"(A) if derived by a United States person, shall be sourced in the United States, and

"(B) if derived by a person other than a United States person, shall be sourced outside the United States.

"(2) SPACE OR OCEAN ACTIVITY.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'space or ocean activity' means—

"(i) any activity conducted in space, and

"(ii) any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States.

Such term includes any activity conducted in Antarctica.

"(B) EXCEPTION FOR CERTAIN ACTIVITIES.—The term 'space or ocean activity' shall not include—

"(i) any activity giving rise to transportation income (as defined in section 863(c)),

"(ii) any activity giving rise to international communications income (as defined in subsection (e)(2)), and

"(iii) any activity with respect to mines, oil and gas wells, or other natural deposits to the extent within the United States or any foreign country or possession of the United States (as defined in section 638).

For purposes of applying section 638, the jurisdiction of any foreign country shall not include any jurisdiction not recognized by the United States.

"(e) INTERNATIONAL COMMUNICATIONS INCOME.—

"(1) SOURCE RULES.—

"(A) UNITED STATES PERSONS.—In the case of any United States person, 50 percent of any international communications income shall be sourced in the United States and 50 percent of such income shall be sourced outside the United States.

"(B) FOREIGN PERSONS.—

"(i) IN GENERAL.—Except as provided in regulations or clause (ii), in the case of any person other than a United States person, any international communications income shall be sourced outside the United States.

"(ii) SPECIAL RULE FOR INCOME ATTRIBUTABLE TO OFFICE OR FIXED PLACE OF BUSINESS IN THE UNITED STATES.—In the case of any person (other than a United States person) who maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business shall be sourced in the United States.

"(2) DEFINITION.—For purposes of this section, the term 'international communications income' includes all income derived from the transmission of communications or data from the United States to any foreign country or from any foreign country to the United States."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

SEC. 1214. LIMITATIONS ON SPECIAL TREATMENT OF 80–20 CORPORATIONS.

(a) INTEREST PAYMENTS.—

(1) IN GENERAL.—Subparagraph (B) of section 861(a)(1) (relating to interest) is amended to read as follows:

"(B) interest from a resident alien individual or domestic corporation, if such individual or corporation meets the 80-percent foreign business requirements of subsection (c)(1),".

(2) FOREIGN BUSINESS REQUIREMENTS.—Subsection (c) of section 861 is amended to read as follows:

"(c) FOREIGN BUSINESS REQUIREMENTS.—

"(1) FOREIGN BUSINESS REQUIREMENTS.—

"(A) IN GENERAL.—An individual or corporation meets the 80-percent foreign business requirements of this paragraph if it is shown to the satisfaction of the Secretary that at least 80 percent of the gross income from all sources of such individual or corporation for the testing period is active foreign business income.

"(B) ACTIVE FOREIGN BUSINESS INCOME.—For purposes of subparagraph (A), the term 'active foreign business income' means gross income which—

"(i) is derived from sources outside the United States (as determined under this subchapter), and

"(ii) is attributable to the active conduct of a trade or business in a foreign country or possession of the United States by the individual or corporation (or by a subsidiary or chain of subsidiaries of such corporation).

"(C) TESTING PERIOD.—For purposes of this subsection, the term 'testing period' means the 3-year period ending with the close of the taxable year of the individual or corporation preceding the payment (or such part of such period as may be applicable). If the individual or corporation has no gross income for such 3-year period (or part thereof), the testing period shall be the taxable year in which the payment is made.

"(2) LOOK-THRU WHERE RELATED PERSON RECEIVES INTEREST.—

"(A) IN GENERAL.—In the case of interest received by a related person from a resident alien individual or domestic corporation meeting the 80-percent foreign business requirements of paragraph (1), subsection (a)(1)(A) shall apply only to a percentage of such interest equal to the percentage which—

"(i) the gross income of such individual or corporation for the testing period from sources outside the United States (as determined under this subchapter), is of

"(ii) the total gross income of such individual or corporation for the testing period.

"(B) RELATED PERSON.—For purposes of this paragraph, the term 'related person' has the meaning given such term by section 954(d)(3), except that—

"(i) such section shall be applied by substituting 'the individual or corporation making the payment' for 'controlled foreign corporation' each place it appears, and

"(ii) such section shall be applied by substituting '10 percent' for '50 percent' each place it appears."

(b) TREATMENT OF DIVIDENDS.—Subparagraph (A) of section 861(a)(2) (relating to dividends) is amended to read as follows:

"(A) from a domestic corporation other than a corporation which has an election in effect under section 936, or".

(c) WITHHOLDING TAX NOT TO APPLY TO CERTAIN INTEREST AND DIVIDENDS.—

(1) NONRESIDENT ALIENS.—Section 871 (relating to tax on nonresident aliens) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) TAX NOT TO APPLY TO CERTAIN INTEREST AND DIVIDENDS.—

"(1) IN GENERAL.—No tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a) on any amount described in paragraph (2).

"(2) AMOUNTS TO WHICH PARAGRAPH (1) APPLIES.—The amounts described in this paragraph are as follows:

"(A) Interest on deposits, if such interest is not effectively connected with the conduct of a trade or business within the United States.

"(B) A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A).

"(C) Income derived by a foreign central bank of issue from bankers' acceptances.

"(3) DEPOSITS.—For purposes of paragraph (2), the term 'deposits' means amounts which are—

"(A) deposits with persons carrying on the banking business,

"(B) deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but

only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to sections 265 and 291) in computing the taxable income of such institutions, and

"(C) amounts held by an insurance company under an agreement to pay interest thereon."

(2) FOREIGN CORPORATIONS.—Section 881 (relating to tax on foreign corporations) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) TAX NOT TO APPLY TO CERTAIN INTEREST AND DIVIDENDS.—No tax shall be imposed under paragraph (1) or (3) of subsection (a) on any amount described in section 871(i)(2)."

(3) WITHHOLDING TAX.—Subsection (c) of section 1441 (relating to exceptions) is amended by adding at the end thereof the following new paragraph:

"(10) EXCEPTION FOR CERTAIN INTEREST AND DIVIDENDS.—No tax shall be required to be deducted and withheld under subsection (a) from any amount described in section 871(i)(2)."

(4) REPORTING REQUIREMENTS.—Subparagraph (B) of section 6049(b)(5) is amended by striking out "or" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iv) such amount is described in section 871(i)(2)."

(5) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 861(a) (as amended by subsection (a)) is amended by striking out subparagraphs (A) and (E) and by redesignating subparagraphs (B), (C), (D), (F), (G), and (H) as subparagraphs (A), (B), (C), (D), (E), and (F), respectively.

(B) Subparagraph (D) of section 861(a)(1) (as so redesignated) is amended by striking out "paragraph (2) of subsection (c)" and inserting in lieu thereof "subparagraph (B) of section 871(i)(3)".

(C) Subsection (d) of section 861 is amended to read as follows:

"(d) SPECIAL RULE FOR APPLICATION OF SUBSECTION (a)(2)(B).—For purposes of subsection (a)(2)(B), if the foreign corporation has no gross income from any source for the 3-year period (or part thereof) specified, the requirements of such subsection shall be applied with respect to the taxable year of such corporation in which the payment of the dividend is made."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to payments after December 31, 1986.

(2) TREATMENT OF CERTAIN INTEREST.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any interest paid or accrued on any obligation outstanding on December 31, 1985. The preceding sentence shall not apply to any interest paid pursuant to any extension or renewal of such an obligation agreed to after December 31, 1985.

(B) SPECIAL RULE FOR RELATED PAYEE.—If the payee of any interest to which subparagraph (A) applies is related (within the meaning of section 904(d)(2)(G) of the Internal Revenue Code of 1986) to the payor, such interest shall be treated for purposes of section 904 of such Code as if the payor were a controlled foreign corporation (within the meaning of section 957(a) of such Code).

(3) TRANSITIONAL RULE.—

(A) YEARS BEFORE 1988.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning before January 1, 1988, the requirements of clause (ii) of section 861(c)(1)(B) of the Internal Revenue Code of 1986 (relating to active business requirements), as amended by this section, shall not apply to gross income of such corporation for taxable years beginning before January 1, 1987.

(B) YEARS AFTER 1987.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning after December 31, 1987, the testing period for purposes of section 861(c) of such Code (as so amended) shall not include any taxable year beginning before January 1, 1987.

(4) CERTAIN DIVIDENDS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any dividend paid before January 1, 1991, by a qualified corporation with respect to stock which was outstanding on May 31, 1985.

(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means any business systems corporation which—

(i) was incorporated in Delaware in February, 1979,

(ii) is headquartered in Garden City, New York, and

(iii) the parent corporation of which is a resident of Sweden.

SEC. 1215. RULES FOR ALLOCATING INTEREST, ETC., TO FOREIGN SOURCE INCOME.

(a) GENERAL RULE.—Section 864 (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(e) RULES FOR ALLOCATING INTEREST, ETC.—For purposes of this subchapter (except as provided in regulations)—

"(1) TREATMENT OF AFFILIATED GROUPS.—The taxable income of each member of an affiliated group from sources outside the United States shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

"(2) GROSS INCOME METHOD MAY NOT BE USED FOR INTEREST.—All allocations and apportionments of interest expense shall be made on the basis of assets rather than gross income.

"(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of allocating and apportioning any deductible expense, any tax-exempt asset (and any income from such an asset) shall not be taken into account. A similar rule shall apply in the case of any dividend (other than a qualifying dividend as defined in section 243(b)) for which a deduction is allowable under section 243 or 245(a) and any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).

"(4) BASIS OF STOCK IN CERTAIN CORPORATIONS ADJUSTED FOR EARNINGS AND PROFITS CHANGES.—For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any asset which is stock in a corporation which is not included in the affiliated group and in which members of the affiliated group own 10 percent or more of the total combined voting power of all classes of stock entitled to vote in such corporation shall be—

"(A) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

"(B) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

"(5) AFFILIATED GROUP.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'affiliated group' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

"(B) TREATMENT OF CERTAIN FINANCIAL INSTITUTIONS.—For purposes of subparagraph (A), any corporation described in subparagraph (C) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying such section separately to corporations so described.

"(C) DESCRIPTION.—A corporation is described in this subparagraph if—

"(i) such corporation is a financial institution described in section 581 or 591,

"(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

"(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

"(6) ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.—Expenses other than interest which are not directly allocable and apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing—

"(A) for the resourcing of income of any member of an affiliated group or modifications to the consolidated return regulations to the extent such resourcing or modification is necessary to carry out the purposes of this section,

"(B) for direct allocation of interest expense incurred to carry out an integrated financial transaction to any interest (or interest-type income) derived from such transaction, and

"(C) for the apportionment of expenses allocated to foreign source income among the members of the affiliated group and various categories of income described in section 904(d)(1)."

(b) CLERICAL AMENDMENTS.—

(1) The section heading for section 864 is amended to read as follows:

"SEC. 864. DEFINITIONS AND SPECIAL RULES."

(2) The table of sections for part I of subchapter N of chapter 1 is amended by striking out the item relating to section 864 and inserting in lieu thereof the following:

"Sec. 864. Definitions and special rules."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) TRANSITIONAL RULES.—

(A) GENERAL PHASE-IN.—Except as provided in subparagraph (B), in the case of the first 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall apply only to the applicable percentage (determined under the following table) of the interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the aggregate amount of indebtedness outstanding on November 16, 1985:

In the case of the:	The applicable percentage is:
1st taxable year	25
2nd taxable year	50
3rd taxable year	75.

(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

(i) INTEREST ATTRIBUTABLE TO INCREASE IN INDEBTEDNESS FROM JANUARY 1, 1984, THROUGH MAY 28, 1985.—In the case of the first 5 taxable years of the taxpayer beginning after December 31, 1986, with respect to interest expenses attributable to the excess of—

(I) the amount of the outstanding debt of the taxpayer on May 29, 1985, over

(II) the amount of the outstanding debt of the taxpayer on December 31, 1983,

paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section) shall apply only to the applicable percentage (determined under the following table) of such interest expenses paid or accrued by the taxpayer during the taxable year:

In the case of the:	The applicable percentage is:
1st taxable year	16⅔
2nd taxable year	33⅓
3rd taxable year	50
4th taxable year	66⅔
5th taxable year	83⅓

(ii) INTEREST ATTRIBUTABLE TO INCREASE IN INDEBTEDNESS FROM JANUARY 1, 1983, THROUGH DECEMBER 31, 1983.—In the case of the first 4 taxable years of the taxpayer beginning after December 31, 1986, with respect to interest expenses attributable to the excess of—

(I) the amount of the outstanding debt of the taxpayer on January 1, 1984, over

(II) the amount of the outstanding debt of the taxpayer on December 31, 1982,

paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section) shall apply only to the applicable percentage (determined under the following table) of such interest expenses paid or accrued by the taxpayer during the taxable year:

In the case of the:	The applicable percentage is:
1st taxable year	20
2nd taxable year	40
3rd taxable year	60
4th taxable year	80.

(iii) ORDERING RULE.—For purposes of this subparagraph, indebtedness outstanding on November 16, 1985, shall be treated as attributable first to any excess described in clause (i), then to any excess described in clause (ii), and then to other indebtedness.

(iv) TREATMENT OF AFFILIATED GROUP.—For purposes of this subparagraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as added by this section) shall be treated as one taxpayer whether or not such members filed a consolidated return.

(C) SPECIAL RULE.—In the case of the first 9 taxable years beginning after December 31, 1986, the following applicable percentages shall be applied (in lieu of those set forth in subparagraph (A)) to interest expenses paid or accrued with respect to the amount of indebtedness described in subparagraph (D) or (E):

In the case of the:	The applicable percentage is:
1st taxable year	10
2nd taxable year	20
3rd taxable year	30
4th taxable year	40
5th taxable year	50
6th taxable year	60
7th taxable year	70
8th taxable year	80
9th taxable year	90.

(D) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this subparagraph if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

(E) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this subparagraph if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a)), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

(3) SPECIAL RULE.—

(A) IN GENERAL.—In the case of a qualified corporation, in lieu of applying paragraph (2), the amendments made by this section shall not apply to interest expenses allocable to any indebtedness to the extent such indebtedness does not exceed $500,000,000 if—

(i) the indebtedness was incurred to develop or improve existing property that is owned by the taxpayer on November 16, 1985, and was acquired with the intent to develop or improve the property,

(ii) the loan agreement with respect to the indebtedness provides that the funds are to be utilized for purposes of developing or improving the above property, and

(iii) the debt to equity ratio of the companies that join in the filing of the consolidated return is less than 15 percent.

(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term "qualified corporation" means a corporation—

(i) which was incorporated in Delaware on June 29, 1964,

(ii) the principal subsidiary of which is a resident of Arkansas, and

(iii) which is a member of an affiliated group the average daily United States production of oil of which is less than 50,000 barrels and the average daily United States refining of which is less than 150,000 barrels.

(4) SPECIAL RULES FOR SUBSIDIARY.—The amendments made by this section shall not apply to interest on up to the applicable dollar amount of indebtedness of a subsidiary incorporated on February 11, 1975, the indebtedness of which on May 6, 1986, included—

(A) $100,000,000 face amount of 11¾ percent notes due in 1990,

(B) $100,000,000 of 8¾ percent notes due in 1989,

(C) 6¼ percent Japanese yen notes due in 1991, and

(D) 5¾ percent Swiss franc bonds due in 1994.

For purposes of this paragraph, the term "applicable dollar amount" means $600,000,000 in the case of taxable years beginning in 1987 through 1991, $500,000,000 in the case of the taxable year beginning in 1992, $400,000,000 in the case of the taxable year beginning in 1993, $300,000,000 in the case of the taxable year beginning in 1994, $200,000,000 in the case of the taxable year beginning in 1995, $100,000,000 in the case of the taxable year beginning in 1996, and zero in the case of taxable years beginning after 1996.

(5) SPECIAL RULE FOR FINANCIAL CORPORATION.—For purposes of section 864(e)(5) of the Internal Revenue Code of 1986 (as added by this section), a corporation shall be treated as described in subparagraph (C) of such section for any taxable year if—

(A) such corporation is a Delaware corporation incorporated on August 20, 1959, and

(B) such corporation was primarily engaged in the financing of dealer inventory or consumer purchases on May 29, 1985, and at all times thereafter before the close of the taxable year.

(6) SPECIAL RULES FOR ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSES.—

(A) IN GENERAL.—In the case of an affiliated group of domestic corporations the common parent of which has its principal office in New Brunswick, New Jersey, and has a certificate of organization which was filed with the Secretary of the State of New Jersey on November 10, 1887, the amendments made by this section shall not apply to the phase-in percentage of general and administrative expenses paid or incurred in its 1st 3 taxable years beginning after December 31, 1986.

(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

In the case of taxable years beginning in:	The phase-in percentage is:
1987	75
1988	50
1989	25.

SEC. 1216. 1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) GENERAL RULE.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1954, notwithstanding section 864(e) of such Code—

(1) 50 percent of all amounts allowable as a deduction for qualified research and experimental expenditures shall be apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

(2) the remaining portion of such amounts shall be apportioned on the basis of gross sales or gross income.

The preceding sentence shall not apply to any expenditures described in section 1.861-8(e)(3)(i)(B) of the Income Tax Regulations.

(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

(1) IN GENERAL.—The term "qualified research and experimental expenditures" means amounts—

(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

(B) which are attributable to activities conducted in the United States.

(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of section 174(c) of such Code shall apply.

(c) EFFECTIVE DATE.—This section shall apply to taxable years beginning after August 1, 1986, and on or before August 1, 1987.

SUBTITLE C—TAXATION OF INCOME EARNED THROUGH FOREIGN CORPORATIONS

SEC. 1221. INCOME SUBJECT TO CURRENT TAXATION.

(a) DEFINITION OF FOREIGN PERSONAL HOLDING COMPANY INCOME.—

(1) IN GENERAL.—Subsection (c) of section 954 (defining foreign personal holding company income) is amended to read as follows:

"(c) FOREIGN PERSONAL HOLDING COMPANY INCOME.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the term 'foreign personal holding company income' means the portion of the gross income which consists of:

"(A) DIVIDENDS, ETC.—Dividends, interest, royalties, rents, and annuities.

"(B) CERTAIN PROPERTY TRANSACTIONS.—The excess of gains over losses from the sale or exchange of property—

"(i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)), or

"(ii) which does not give rise to any income.

This subparagraph shall not apply to gain from the sale or exchange of any property which, in the hands of the taxpayer, is property described in section 1221(1) or to gain from the sale or exchange of any property by a regular dealer in such property.

"(C) COMMODITIES TRANSACTIONS.—The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which—

"(i) arise out of bona fide hedging transactions reasonably necessary to the conduct of any business by a producer, processor, merchant, or handler of a commodity in the manner in which such business is customarily and usually conducted by others,

"(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities, or

"(iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

"(D) FOREIGN CURRENCY GAINS.—The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

"(E) INCOME EQUIVALENT TO INTEREST.—Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

"(2) EXCEPTION FOR CERTAIN AMOUNTS.—

"(A) RENTS AND ROYALTIES DERIVED IN ACTIVE BUSINESS.—Foreign personal holding company income shall not include rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)).

"(B) CERTAIN EXPORT FINANCING.—Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

"(3) CERTAIN INCOME RECEIVED FROM RELATED PERSONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'foreign personal holding company income' does not include—

"(i) dividends and interest received from a related person which (I) is created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

"(ii) rents and royalties received from a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

"(B) EXCEPTION NOT TO APPLY TO ITEMS WHICH REDUCE SUBPART F INCOME.—Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income."

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 864(d)(5) (relating to certain provisions not to apply) is amended by striking out clauses (iii) and (iv) and inserting in lieu thereof the following:

"(iii) Subparagraph (B) of section 954(c)(2) (relating to certain export financing).

"(iv) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons)."

(b) DEFINITION OF INSURANCE INCOME.—

(1) IN GENERAL.—Subsection (a) of section 953 (defining income derived from the insurance of United States risks) is amended to read as follows:

"(a) GENERAL RULE.—For purposes of section 952(a)(1), the term 'insurance income' means any income which—

"(1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract—

"(A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or

"(B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and

"(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company."

(2) SPECIAL RULE FOR CERTAIN CAPTIVE INSURANCE COMPANIES.—Section 953 is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULE FOR CERTAIN CAPTIVE INSURANCE COMPANIES.—

"(1) IN GENERAL.—For purposes only of taking into account related person insurance income—

"(A) the term 'United States shareholder' means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation, and

"(B) the term 'controlled foreign corporation' has the meaning given to such term by section 957(a) determined by substituting '25 percent or more' for 'more than 50 percent'.

"(2) RELATED PERSON INSURANCE INCOME.—For purposes of this subsection, the term 'related person insurance income' means any insurance income attributable to a policy of insurance or reinsurance with respect to which the primary insured is a United States shareholder in the foreign corporation or a related person (within the meaning of section 954(d)(3)) to such a shareholder.

"(3) EXCEPTIONS.—

"(A) CORPORATIONS NOT HELD BY INSUREDS.—Paragraph (1) shall not apply to any foreign corporation if at all times during the taxable year of such foreign corporation—

"(i) less than 20 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

"(ii) less than 20 percent of the total value of such corporation,

is owned (directly or indirectly under the principles of section 883(c)(4)) by persons who are the primary insured under any policy of insurance or reinsurance issued by such corporation or who are related persons (within the meaning of section 954(d)(3)) to any such primary insured.

"(B) DE MINIMIS EXCEPTION.—Paragraph (1) shall not apply to any foreign corporation for a taxable year of such corporation if the related person insurance income of such corporation for such taxable year is less than 20 percent of its insurance income for such taxable year determined without regard to those provisions of subsection (a)(1) which limit insurance income to income from countries other than the country in which the corporation was created or organized.

"(C) ELECTION TO TREAT INCOME AS EFFECTIVELY CONNECTED.—Paragraph (1) shall not apply to any foreign corporation for any taxable year if—

"(i) such corporation elects (at such time and in such manner as the Secretary may prescribe)—

"(I) to treat its related person insurance income for such taxable year as income effectively connected with the conduct of a trade or business in the United States, and

"(II) to waive all benefits with respect to related person insurance income under any income tax treaty between the United States and any foreign country, and

"(ii) such corporation meets such requirements as the Secretary shall prescribe to ensure that the tax imposed by this chapter on such income is paid.

"(D) SPECIAL RULES FOR SUBPARAGRAPH (C).—

"(i) ELECTION IRREVOCABLE.—Any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(ii) EXEMPTION FROM TAX IMPOSED BY SECTION 4371.—The tax imposed by section 4371 shall not apply with respect to any related person insurance income treated as effectively connected with the conduct of a trade or business within the United States under subparagraph (C).

"(4) TREATMENT OF MUTUAL INSURANCE COMPANIES.—In the case of a mutual insurance company—

"(A) this subsection shall apply,

"(B) policyholders of such company shall be treated as shareholders, and

"(C) appropriate adjustments in the application of this subpart shall be made under regulations prescribed by the Secretary.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise."

(3) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 952(a) (defining subpart F income) is amended to read as follows:

"(1) insurance income (as defined under section 953),".

(B) Subsection (e) of section 954 is amended by striking out the last sentence.

(C) Subsection (b) of section 957 is amended by striking out "income derived from insurance of United States risks" and inserting in lieu thereof "insurance income".

(D) The section heading for section 953 is amended to read as follows:

"SEC. 953. INSURANCE INCOME."

(E) The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by striking out the item relating to section 953 and inserting in lieu thereof the following:

"Sec. 953. Insurance income."

(c) REPEAL OF EXCLUSION FOR REINVESTED SHIPPING INCOME.—

(1) IN GENERAL.—Paragraph (2) of section 954(b) (relating to exclusion for reinvested shipping income) is hereby repealed.

(2) SPACE AND CERTAIN OCEAN ACTIVITIES INCLUDED.—Subsection (f) of section 954 (defining foreign base company shipping income) is amended by adding at the end thereof the following new sentence:

"Such term includes any income derived from a space or ocean activity (as defined in section 863(d)(2))."

(3) CONFORMING AMENDMENTS.—

(A)(i) Section 954 is amended by striking out subsection (g) and by redesignating subsection (h) as subsection (g).

(ii) Paragraph (5) of section 954(a) is amended by striking out "determined under subsection (h)" and inserting in lieu thereof "determined under subsection (g)".

(B) Subparagraph (A) of section 955(a)(1) is amended by striking out "all prior taxable years" and inserting in lieu thereof "all prior taxable years beginning before 1987".

(C) Subparagraph (A) of section 955(a)(2) is amended by striking out "at the close of the preceding taxable year" and inserting in lieu thereof "as of the close of the last taxable year beginning before 1987".

(d) EXCEPTION WHERE FOREIGN CORPORATION NOT AVAILED OF TO REDUCE TAX.—Paragraph (4) of section 954(b) (relating to exception for foreign corporations not availed of to reduce taxes) is amended to read as follows:

"(4) EXCEPTION FOR CERTAIN INCOME SUBJECT TO HIGH FOREIGN TAXES.—For purposes of subsection (a) and section 953, foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11. The preceding sentence shall not apply to foreign base company oil-related income described in subsection (a)(5)."

(e) DEFINITION OF RELATED PERSON.—

(1) Paragraph (3) of section 954(d) (defining related person) is amended by striking out subparagraphs (A), (B), and (C), and inserting in lieu thereof the following:

"(A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the controlled foreign corporation, or

"(B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the controlled foreign corporation."

(2) Paragraph (3) of section 954(d) is amended by striking out the last 2 sentences and inserting in lieu thereof the following: "For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing 50 percent or more of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of 50 percent or more (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply."

(f) REPEAL OF CERTAIN LIMITATIONS ON AMOUNT OF SUBPART F INCOME.—Section 952 (defining subpart F income) is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) LIMITATION.—

"(1) IN GENERAL.—

"(A) SUBPART F INCOME LIMITED TO CURRENT EARNINGS AND PROFITS.—For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such taxable year

"(B) CERTAIN PRIOR YEAR DEFICITS MAY BE TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—The amount included in the gross income of any United States shareholder under section 951(a)(1)(A)(i) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

"(ii) QUALIFIED DEFICIT.—The term 'qualified deficit' means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit—

"(I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and

"(II) has not previously been taken into account under this subparagraph.

"(iii) QUALIFIED ACTIVITY.—For purposes of this paragraph, the term 'qualified activity' means any activity giving rise to—

"(I) foreign base company shipping income,

"(II) foreign base company oil related income,

"(III) in the case of a qualified insurance company, insurance income or

"(IV) in the case of a qualified financial institution, foreign personal holding company income.

"(iv) PRO RATA SHARE.—For purposes of this paragraph, the shareholder's pro rata share of any deficit for any prior taxable year shall be determined under rules similar to rules under section 951(a)(2) for whichever of the following yields the smaller share:

"(I) the close of the taxable year, or

"(II) the close of the taxable year in which the deficit arose.

"(v) QUALIFIED INSURANCE COMPANY.—For purposes of this subparagraph, the term 'qualified insurance company' means any controlled foreign corporation predominantly engaged in the active conduct of an insurance business in the taxable year and in the prior taxable years in which the deficit arose.

"(vi) QUALIFIED FINANCIAL INSTITUTION.—For purposes of this paragraph, the term 'qualified financial institution' means any controlled foreign corporation predominantly engaged in the active conduct of a banking, financing, or similar business in the taxable year and in the prior taxable year in which the deficit arose.

"(2) RECHARACTERIZATION IN SUBSEQUENT TAXABLE YEARS.—If the subpart F income of any controlled foreign corporation for any taxable year was reduced by reason of paragraph (1)(A), any excess of the earnings and profits of such corporation for any subsequent taxable year over the subpart F income of such foreign corporation for such taxable year shall be recharacterized as subpart F income under rules similar to the rules applicable under section 904(f)(5)."

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 1986.

(2) SPECIAL RULE FOR REPEAL OF EXCLUSION FOR REINVESTMENT SHIPPING INCOME.—

(A) IN GENERAL.—In the case of any qualified controlled foreign corporation—

(i) the amendments made by subsection (c) shall apply to taxable years ending on or after January 1, 1992, and

(ii) sections 955(a)(1)(A) and 955(a)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (c)(3) shall be applied by substituting "ending before 1992" for "beginning before 1987".

(B) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of subparagraph (A), the term "qualified controlled foreign corporation" means any controlled foreign corporation (as defined in section 957 of such Code)—

(i) if the United States agent of such corporation is a domestic corporation incorporated on March 13, 1951, and

(ii) if—

(I) the certificate of incorporation of such corporation is dated July 23, 1963, and

(II) such corporation has a wholly owned subsidiary and its certificate of incorporation is dated November 2, 1965.

(3) EXCEPTION FOR CERTAIN REINSURANCE CONTRACTS.—

(A) IN GENERAL.—In the case of the 1st 3 taxable years of a qualified controlled foreign insurer beginning after December 31, 1986, the amendments made by this section shall not apply to the phase-in percentage of any qualified reinsurance income.

(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

In the case of taxable years beginning in:	The phase-in percentage is:
1987	75
1988	50
1989	25

(C) QUALIFIED CONTROLLED FOREIGN INSURER.—For purposes of this paragraph, the term "qualified controlled foreign insurer" means—

(i) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as defined in section 1504(a) of the Internal Revenue Code of 1986 without regard to subsection (b)(3) thereof) which had as its common parent a corporation incorporated in Delaware on July 9, 1967, with executive offices in New York, New York, or

(ii) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as so defined) which had as its common parent a corporation incorporated in Delaware on March 31, 1982, with executive offices in Philadelphia, Pennsylvania.

(D) QUALIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term 'qualified reinsurance income' means any insurance income attributable tl risks (other than risk described in section 953(a) or 954(e) of such Code as in effect on the day before the date of the enactment of this Act) assumed as of August 16, 1986, under a reinsurance contract in effect on such date. For purposes of the preceding sentence, insurance income

shall mean the underwriting income (as defined in section 832(b)(3) of such Code) and investment income derived from an amount of assets (to be segregated and separately identified) equivalent to the ordinary and necessary insurance reserves and necessary surplus equal to ⅓ of earned premium attributable to such contracts.

SEC. 1222. TESTING CONTROLLED FOREIGN CORPORATIONS AND FOREIGN PERSONAL HOLDING COMPANIES BY VALUE AND VOTING POWER.

(a) DEFINITION OF CONTROLLED FOREIGN CORPORATION.—

(1) IN GENERAL.—Subsection (a) of section 957 (defining controlled foreign corporation) is amended to read as follows:

"(a) GENERAL RULE.—For purposes of this subpart, the term 'controlled foreign corporation' means any foreign corporation if more than 50 percent of—

"(1) the total combined voting power of all classes of stock of such corporation entitled to vote, or

"(2) the total value of the stock of such corporation,

is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation."

(2) SPECIAL RULE FOR INSURANCE.—Subsection (b) of section 957 is amended by striking out "all classes of stock" and inserting in lieu thereof "all classes of stock (or more than 25 percent of the total value of stock)".

(b) DEFINITION OF FOREIGN PERSONAL HOLDING COMPANY.—Paragraph (2) of section 552(a) (defining foreign personal holding company) is amended to read as follows:

"(2) STOCK OWNERSHIP REQUIREMENT.—At any time during the taxable year more than 50 percent of—

"(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

"(B) the total value of the stock of such corporation,

is owned (directly or indirectly) by or for not more than 5 individuals who are citizens or residents of the United States (hereinafter in this part referred to as the 'United States group')."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendments made by this section, property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.

(3) SPECIAL RULE FOR BENEFICIARY OF TRUST.—In the case of an individual—

(A) who is a beneficiary of a trust which was established on December 7, 1979, under the laws of a foreign jurisdiction, and

(B) who was not a citizen or resident of the United States on the date the trust was established,

amounts which are included in the gross income of such beneficiary under section 951(a) of the Internal Revenue Code of 1986 with respect to stock held by the trust (and treated as distributed to the trust) shall be treated as the first amounts which are distributed by the trust to such beneficiary and as amounts to which section 959(a) of such Code applies.

SEC. 1223. SUBPART F DE MINIMIS RULE.

(a) GENERAL RULE.—Paragraph (3) of section 954(b) (relating to special rule where foreign base company income is less than 10 percent or more than 70 percent of gross income) is amended to read as follows:

"(3) DE MINIMIS, ETC., RULES.—For purposes of subsection (a) and section 953—

"(A) DE MINIMIS RULE.—If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of—

"(i) 5 percent of gross income, or

"(ii) $1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

"(B) FOREIGN BASE COMPANY INCOME AND INSURANCE INCOME IN EXCESS OF 70 PERCENT OF GROSS INCOME.—If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

"(C) GROSS INSURANCE INCOME.—For purposes of subparagraphs (A) and (B), the term 'gross insurance income' means any item of gross income taken into account in determining insurance income under section 953."

(b) TECHNICAL AMENDMENTS.—

(1) Clause (ii) of section 864(d)(5)(A) is amended by striking out "less than 10 percent" and inserting in lieu thereof "less than 5 percent or $1,000,000".

(2) Clause (i) of section 881(c)(4)(A) is amended by striking out "less than 10 percent" and inserting in lieu thereof "less than 5 percent or $1,000,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1224. REPEAL OF SPECIAL TREATMENT OF POSSESSIONS CORPORATIONS.

(a) GENERAL RULE.—Section 957 (defining controlled foreign corporations; United States persons) is amended by striking out subsection (c) and by redesignating subsection (d) as subsection (c).

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendment made by subsection (a), property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.

SEC. 1225. ONLY EFFECTIVELY CONNECTED CAPITAL GAINS AND LOSSES OF FOREIGN CORPORATIONS TAKEN INTO ACCOUNT FOR PURPOSES OF ACCUMULATED EARNINGS TAX AND PERSONAL HOLDING COMPANY PROVISIONS.

(a) ACCUMULATED EARNINGS TAX.—Subsection (b) of section 535 (relating to adjustments to taxable income) is amended by adding at the end thereof the following new paragraph:

"(9) SPECIAL RULE FOR CAPITAL GAINS AND LOSSES OF FOREIGN CORPORATIONS.—In the case of a foreign corporation, paragraph (6) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty."

(b) PERSONAL HOLDING COMPANY PROVISIONS.—Subsection (b) of section 545 (relating to adjustments to taxable income) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULE FOR CAPITAL GAINS AND LOSSES OF FOREIGN CORPORATIONS.—In the case of a foreign corporation, paragraph (5) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to gains and losses realized on or after March 1, 1986.

SEC. 1226. DEDUCTIONS FOR DIVIDENDS RECEIVED FROM CERTAIN FOREIGN CORPORATIONS.

(a) GENERAL RULE.—Subsection (a) of section 245 is amended to read as follows:

"(a) DIVIDENDS FROM 10-PERCENT OWNED FOREIGN CORPORATIONS.—

"(1) IN GENERAL.—In the case of dividends received by a corporation from a qualified 10-percent owned foreign corporation, there shall be allowed as a deduction an amount equal to the percent (specified in section 243 for the taxable year) of the U.S.-source portion of such dividends.

"(2) QUALIFIED 10-PERCENT OWNED FOREIGN CORPORATION.—For purposes of this subsection, the term 'qualified 10-percent owned foreign corporation' means any foreign corporation (other than a foreign personal holding company passive foreign investment company) if at least 10 percent of the stock of such corporation (by vote and value) is owned by the taxpayer.

"(3) U.S.-SOURCE PORTION.—For purposes of this subsection, the U.S.-source portion of any dividend is an amount which bears the same ratio to such dividend as—

"(A) the post-1986 undistributed U.S. earnings, bears to

"(B) the total post-1986 undistributed earnings.

"(4) POST-1986 UNDISTRIBUTED EARNINGS.—For purposes of this subsection, the term 'post-1986 undistributed earnings' has the meaning given to such term by section 902(c)(1).

"(5) POST-1986 UNDISTRIBUTED U.S. EARNINGS.—For purposes of this subsection, the term 'post-1986 undistributed U.S. earnings' means the portion of the post-1986 undistributed earnings which is attributable to—

"(A) income of the qualified 10-percent owned foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or

"(B) any dividend received (directly or through a wholly owned foreign corporation) from a domestic corporation at least 80 percent of the stock of which (by vote and value) is owned (directly or through such wholly owned foreign corporation) by the qualified 10-percent owned foreign corporation.

"(6) SPECIAL RULE.—If the 1st day on which the requirements of paragraph (2) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 undistributed U.S. earnings of such corporation shall be determined by only taking into

account periods beginning on and after the 1st day of the 1st taxable year in which such requirements are met.

"(7) COORDINATION WITH SUBSECTION (b).—Earnings and profits of any qualified 10-percent owned foreign corporation for any taxable year shall not be taken into account under this subsection if the deduction provided by subsection (b) would be allowable with respect to dividends paid out of such earnings and profits.

"(8) COORDINATION WITH SECTION 902.—In the case of a dividend received by a corporation from a qualified 10-percent owned foreign corporation, no credit shall be allowed under section 901 for any taxes treated as paid under section 902 with respect to the U.S.-source portion of such dividend.

"(9) COORDINATION WITH SECTION 904.—For purposes of section 904, the U.S.-source portion of any dividend received by a corporation from a qualified 10-percent owned foreign corporation shall be treated as from sources in the United States."

(b) TECHNICAL AMENDMENT.—Subsection (d) of section 959 is amended by striking out the period at the end thereof and inserting in lieu thereof "; except that such distributions shall immediately reduce earnings and profits."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to distributions out of earnings and profits for taxable years beginning after December 31, 1986.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act.

SEC. 1227. SPECIAL RULE FOR APPLICATION OF SECTION 954 TO CERTAIN DIVIDENDS.

(a) IN GENERAL.—For purposes of section 954(c)(3)(A) of the Internal Revenue Code of 1986, any dividends received by a qualified controlled foreign corporation (within the meaning of section 951 of such Code) during any of its last 5 taxable years beginning after December 31, 1986, with respect to its 32.7 percent interest in a Brazilian corporation shall be treated as if such Brazilian corporation were a related person to the qualified controlled foreign corporation to the extent the Brazilian corporation's income is attributable to its interest in the trade or business of mining in Brazil.

(b) QUALITY CONTROLLED FOREIGN CORPORATION.—For purposes of this section, a qualified controlled foreign corporation is a corporation the greater than 99 percent shareholder of which is a company originally incorporated in Montana on July 9, 1951 (the name of which was changed on August 10, 1966).

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after December 31, 1986.

SEC. 1228. SPECIAL RULE FOR APPLYING SECTION 897.

(a) IN GENERAL.—For purposes of section 897 of the Internal Revenue Code of 1986, gain shall not be recognized on the transfer, sale, exchange, or other disposition, of shares of stock of a United States real property holding company, if—

(1) such United States real property holding company is a Delaware corporation incorporated on January 17, 1984,

(2) the transfer, sale, exchange, or other disposition is to any member of a qualified ownership group,

(3) the recipient of the share of stock elects, for purposes of such section 897, a carryover basis in the transferred shares, and

(4) an election under this section applies to such transfer, sale, exchange, or other disposition.

(b) MEMBER OF A QUALIFIED OWNERSHIP GROUP.—For purposes of this section, the term "member of a qualified ownership group" means a corporation incorporated on June 16, 1890, under the laws of the Netherlands or a corporation incorporated on October 18, 1897, under the laws of the United Kingdom or any corporation owned directly or indirectly by either or both such corporations.

(c) ELECTION.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, and an election under this section may only be made with respect to 1 transfer, sale, exchange, or other disposition.

(d) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section.

SUBTITLE D—SPECIAL TAX PROVISIONS FOR UNITED STATES PERSONS

SEC. 1231. MODIFICATIONS TO SECTION 936.

(a) TREATMENT OF INTANGIBLES.—

(1) COST SHARING METHOD.—Section 936(h)(5)(C)(i)(I) is amended—

(A) by striking out "the same proportion of the cost" and inserting in lieu thereof "the same proportion of 110 percent of the cost", and

(B) by adding at the end thereof the following new sentence: "In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation."

(2) PROFIT SPLIT METHOD.—Section 936(h)(5)(C)(ii)(II) is amended by striking out "the third sentence thereof)" and inserting in lieu thereof "the third and fourth sentences thereof, but substituting '120 percent' for '110 percent' in the second sentence thereof)".

(b) MODIFICATION OF REQUIREMENT THAT AMOUNTS BE RECEIVED IN THE UNITED STATES.—Subsection (b) of section 936 is amended by adding at the end thereof the following new sentence: "This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii)(I) and (E)(i) thereof) with respect to the domestic corporation."

(c) TREATMENT OF CERTAIN INVESTMENT INCOME AS QUALIFIED POSSESSION SOURCE INVESTMENT INCOME.—Subsection (d) of section 936 is amended by adding at the end thereof the following new paragraph:

"(4) INVESTMENT IN QUALIFIED CARIBBEAN BASIN COUNTRIES.—

"(A) IN GENERAL.—For purposes of paragraph (2)(B), an investment in a financial institution shall, subject to such conditions as the Secretary may prescribe by regulations, be treated as for use in Puerto Rico to the extent used by such financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank)—

"(i) for investment, consistent with the goals and purposes of the Caribbean Basin Economic Recovery Act, in—

"(I) active business assets in a qualified Caribbean Basin country, or

"(II) development projects in a qualified Caribbean Basin country, and

"(ii) in accordance with a specific authorization granted by the Government Development Bank for Puerto Rico pursuant to regulations issued by the Secretary of the Treasury of Puerto Rico.

A similar rule shall apply in the case of a direct investment in the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank.

"(B) QUALIFIED CARIBBEAN BASIN COUNTRY.—For purposes of this subsection, the term 'qualified Caribbean Basin country' means any beneficiary country (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act) which meets the requirements of clauses (i) and (ii) of section 274(h)(6)(A).

"(C) ADDITIONAL REQUIREMENTS.—Subparagraph (A) shall not apply to any investment made by a financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) unless—

"(i) the person in whose trade or business such investment is made (or such other recipient of the investment) and the financial institution or such Bank certify to the Secretary and the Secretary of the Treasury of Puerto Rico that the proceeds of the loan will be promptly used to acquire active business assets or to make other authorized expenditures, and

"(ii) the financial institution (or the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) and the recipient of the investment funds agree to permit the Secretary and the Secretary of the Treasury of Puerto Rico to examine such of their books and records as may be necessary to ensure that the requirements of this paragraph are met."

(d) INCREASE IN AMOUNT OF GROSS INCOME WHICH MUST BE FROM TRADE OR BUSINESS.—

(1) IN GENERAL.—Subparagraph (B) of section 936(a)(2) is amended by striking out "65 percent" and inserting in lieu thereof "75 percent".

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 936(a) is amended by striking out subparagraph (C).

(e) TREATMENT OF CERTAIN ROYALTY PAYMENTS.—

(1) IN GENERAL.—Section 482 (relating to allocation of income and deductions among taxpayers) is amended by adding at the end thereof the following new sentence: "In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible."

(2) TECHNICAL AMENDMENT.—Subparagraph (A) of section 367(d)(2) (relating to transfers of intangibles treated as transfer pursuant to sale for contingent payments) is amended by adding at the end thereof the following new sentence:

"The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible."

(f) TECHNICAL CORRECTION TO PROFIT-SPLIT RULES.—The last sentence of section 936(h)(5)(C)(ii)(II) is amended by striking out "all products produced and types of service rendered" and inserting in lieu thereof "all products and types of services, within such product area, produced or rendered".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments

made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SPECIAL RULE FOR TRANSFER OF INTANGIBLES.—

(A) IN GENERAL.—The amendments made by subsection (e) shall apply to taxable years beginning after December 31, 1986, but only with respect to transfers after November 16, 1985, or licenses granted after such date (or before such date with respect to property not in existence or owned by the taxpayer on such date).

(B) SPECIAL RULE FOR SECTION 936.—For purposes of section 936(h)(5)(C) of the Internal Revenue Code of 1986 the amendments made by subsection (e) shall apply to taxable years beginning after December 31, 1986, without regard to when the transfer (or license) was made.

(3) SUBSECTION (f).—The amendment made by subsection (f) shall apply to taxable years beginning after December 31, 1982.

(4) TRANSITIONAL RULE.—In the case of a corporation—

(A) with respect to which an election under section 936 of the Internal Revenue Code of 1986 (relating to possessions tax credit) is in effect,

(B) which produced an end-product form in Puerto Rico on or before September 3, 1982,

(C) which began manufacturing a component of such product in Puerto Rico in its taxable year beginning in 1983, and

(D) with respect to which a Puerto Rican tax exemption was granted on June 27, 1983, such corporation shall treat such component as a separate product for such taxable year for purposes of determining whether such corporation had a significant business presence in Puerto Rico with respect to such product and its income with respect to such product.

SEC. 1232. TREATMENT OF CERTAIN PERSONS IN PANAMA.

(a) GENERAL RULE.—Nothing in the Panama Canal Treaty (or in any agreement implementing such Treaty) shall be construed as exempting (in whole or in part) any citizen or resident of the United States from any tax under the Internal Revenue Code of 1954 or 1986. The preceding sentence shall apply to all taxable years whether beginning before, on, or after the date of the enactment of this Act (or in the case of any tax not imposed with respect to a taxable year, to taxable events after the date of enactment of this Act.)

(b) TREATMENT OF EMPLOYEES OF PANAMA CANAL COMMISSION AND DEPARTMENT OF DEFENSE FOR PURPOSES OF SECTION 912.—Employees of the Panama Canal Commission and civilian employees of the Defense Department of the United States stationed in Panama may exclude from gross income allowances which are comparable to the allowances excludable under section 912(1) of the Internal Revenue Code of 1986 by employees of the State Department of the United States stationed in Panama. The preceding sentence shall apply to taxable years beginning after December 31, 1986.

SEC. 1233. PROVISIONS RELATING TO SECTION 911 EXCLUSION.

(a) REDUCTION IN SECTION 911 EXCLUSION.—Subparagraph (A) of section 911(b)(2) (relating to limitation on foreign earned income) is amended to read as follows:

"(A) IN GENERAL.—The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate of $70,000."

(b) SECTION 911 EXCLUSION NOT AVAILABLE TO INDIVIDUALS VIOLATING FEDERAL TRAVEL AND OTHER RESTRICTIONS.—Section 911(d) (relating to definitions and special rules) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) LIMITATION ON INCOME EARNED IN RESTRICTED COUNTRY.—

"(A) IN GENERAL.—If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

"(i) the term 'foreign earned income' shall not include any income from sources within such country attributable to services performed during such period,

"(ii) the term 'housing expenses' shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

"(iii) an individual shall not be treated as a bona fide resident of, or as present in, a foreign country for any day during which such individual was present in such country during such period.

"(B) REGULATIONS.—For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

"(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

"(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

"(C) EXCEPTION.—Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1234. FOREIGN COMPLIANCE PROVISIONS.

(a) INFORMATION RETURNS.—

(1) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 (relating to information concerning persons subject to special provisions) is amended by inserting after section 6039D the following new section:

"SEC. 6039E. INFORMATION CONCERNING RESIDENT STATUS.

"(a) GENERAL RULE.—Notwithstanding any other provision of law, any individual who—

"(1) applies for a United States passport (or a renewal thereof), or

"(2) applies to be lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws,

shall include with any such application a statement which includes the information described in subsection (b).

"(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

"(1) the taxpayer's TIN (if any),

"(2) in the case of a passport applicant, any foreign country in which such individual is residing,

"(3) in the case of an individual seeking permanent residence, information with respect to whether such individual is required to file a return of the tax imposed by chapter 1 for such individual's most recent 3 taxable years, and

"(4) such other information as the Secretary may prescribe.

"(c) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty equal to $500 for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect.

"(d) INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law, any agency of the United States which collects (or is required to collect) the statement under subsection (a) shall—

"(1) provide any such statement to the Secretary, and

"(2) provide to the Secretary the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a).

"(e) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section."

(2) CONFORMING AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6039D the following new item:

"Sec. 6039E. Information concerning resident status."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to applications submitted after December 31, 1987 (or, if earlier, the effective date (which shall not be earlier than January 1, 1987) of the initial regulations issued under section 6039E of the Internal Revenue Code of 1986 as added by this subsection).

(b) WITHHOLDING ON CERTAIN DEFERRED PAYMENTS OUTSIDE THE UNITED STATES.—

(1) IN GENERAL.—Subsection (d) of section 3405 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(13) ELECTION MAY NOT BE MADE WITH RESPECT TO CERTAIN PAYMENTS OUTSIDE THE UNITED STATES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any periodic payment or nonperiodic distribution which is to be delivered outside of the United States, no election may be made under subsection (a)(2) or (b)(3) with respect to such payment.

"(B) EXCEPTION.—Subparagraph (A) shall not apply if the recipient certifies to the payor, in such manner as the Secretary may prescribe, that such person is not—

"(i) a United States citizen who is a bona fide resident of a foreign country, or

"(ii) an individual to whom section 877 applies."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to payments after December 31, 1986.

SEC. 1235. TREATMENT OF CERTAIN PASSIVE FOREIGN INVESTMENT COMPANIES.

(a) GENERAL RULE.—Subchapter P of chapter 1 is amended by adding at the end thereof the following new part:

"PART VI—TREATMENT OF CERTAIN PASSIVE FOREIGN INVESTMENT COMPANIES

"Subpart A. Interest on tax deferral.

"Subpart B. Treatment of qualified electing funds.

"Subpart C. General provisions.

"Subpart A—Interest on Tax Deferral

"Sec. 1291. Interest on tax deferral.

"SEC. 1291. INTEREST ON TAX DEFERRAL.

"(a) TREATMENT OF DISTRIBUTIONS AND STOCK DISPOSITIONS.—

"(1) DISTRIBUTIONS.—If a United States person receives an excess distribution in respect of stock in a passive foreign investment company, then—

"(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer's holding period for the stock,

"(B) with respect to such excess distribution, the taxpayer's gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

"(i) the current year, or

"(ii) any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company for which it was a passive foreign investment company (or, if later, January 1, 1987), and

"(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

"(2) DISPOSITIONS.—If the taxpayer disposes of stock in a passive foreign investment company, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

"(3) DEFINITIONS.—For purposes of this section—

"(A) HOLDING PERIOD.—The taxpayer's holding period shall be determined under section 1223; except that, in the case of an excess distribution, such holding period shall be treated as ending on the date of such distribution.

"(B) CURRENT YEAR.—The term 'current year' means the taxable year in which the excess distribution or disposition occurs.

"(4) COORDINATION WITH SECTION 904.—Subparagraph (B) of paragraph (1) shall not apply for purposes of section 904.

"(5) SECTION 902 NOT TO APPLY.—Section 902 shall not apply to any dividend paid by a passive foreign investment company unless such company is a qualified electing fund.

"(b) EXCESS DISTRIBUTION.—

"(1) IN GENERAL.—For purposes of this section, the term 'excess distribution' means any distribution in respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

"(2) TOTAL EXCESS DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'total excess distribution' means the excess (if any) of—

"(i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over

"(ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer's holding period before the taxable year).

"(B) NO EXCESS FOR 1ST YEAR.—The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer's holding period in such stock begins.

"(3) ADJUSTMENTS.—Under regulations prescribed by the Secretary—

"(A) determinations under this subsection shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated,

"(B) proper adjustments shall be made for stock splits and stock dividends,

"(C) if the taxpayer does not hold the stock during the entire taxable year, distributions received during such year shall be annualized,

"(D) if the taxpayer's holding period includes periods during which the stock was held by another person, distributions received by such other person shall be taken into account as if received by the taxpayer, and

"(E) if the distributions are received in a foreign currency, determinations under this subsection shall be made in such currency and the amount of any excess distribution determined in such currency shall be translated into dollars.

"(c) DEFERRED TAX AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'deferred tax amount' means, with respect to any distribution or disposition to which subsection (a) applies, an amount equal to the sum of—

"(A) the aggregate increases in taxes described in paragraph (2), plus

"(B) the aggregate amount of interest (determined in the manner provided under paragraph (3)) on such increases in tax.

"(2) AGGREGATE INCREASES IN TAXES.—For purposes of paragraph (1)(A), the aggregate increases in taxes shall be determined by multiplying each amount allocated under subsection (a)(1)(A) to any taxable year (other than any taxable year referred to in subsection (a)(1)(B)) by the highest rate of tax in effect for such taxable year under section 1 or 11, whichever applies.

"(3) COMPUTATION OF INTEREST.—

"(A) IN GENERAL.—The amount of interest referred to in paragraph (1)(B) on any increase determined under paragraph (2) for any taxable year shall be determined for the period—

"(i) beginning on the due date for such taxable year, and

"(ii) ending on the due date for the taxable year with or within which the distribution or disposition occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

"(B) DUE DATE.—For purposes of this subsection, the term 'due date' means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

"(d) COORDINATION WITH SUBPART B.—

"(1) IN GENERAL.—This section shall not apply with respect to—

"(A) any distribution paid by a passive foreign investment company during a taxable year for which such company is a qualified electing fund, and

"(B) any disposition of stock in a passive foreign investment company if such company is a qualified electing fund for each of its taxable years—

"(i) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

"(ii) which includes any portion of the taxpayer's holding period.

"(2) ELECTION TO RECOGNIZE GAIN WHERE COMPANY BECOMES QUALIFIED ELECTING FUND.—

"(A) IN GENERAL.—If—

"(i) a passive foreign investment company becomes a qualified electing fund for a taxable year which begins after December 31, 1986,

"(ii) the taxpayer holds stock in such company on the first day of such taxable year, and

"(iii) the taxpayer establishes to the satisfaction of the Secretary the fair market value of such stock on such first day,

the taxpayer may elect to recognize gain as if he sold such stock on such first day for such fair market value.

"(B) ADJUSTMENTS.—In the case of any stock to which subparagraph (A) applies—

"(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A), and

"(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in subparagraph (A).

"(e) CERTAIN BASIS, ETC., RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c), (d), (e), and (f) of section 1246 shall apply for purposes of this section; except that—

"(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent's death, and

"(2) such a reduction shall not apply in the case of a decedent who was not a nonresident alien at all times during his holding period in the stock.

"(f) NONRECOGNITION PROVISIONS.—To the extent provided in regulations, gain shall be recognized on any disposition of stock in a passive foreign investment company.

"Subpart B—Treatment of Qualified Electing Funds

"Sec. 1293. Current taxation of income from qualified electing funds.

"Sec. 1294. Election to extend time for payment of tax on undistributed earnings.

"Sec. 1295. Qualified electing fund.

"SEC. 1293. CURRENT TAXATION OF INCOME FROM QUALIFIED ELECTING FUNDS.

"(a) INCLUSION.—

"(1) IN GENERAL.—Every United States person who owns (or is treated under section 1297(a) as owning) stock of a qualified electing fund at any time during the taxable year of such fund shall include in gross income—

"(A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such year, and

"(B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such year.

"(2) YEAR OF INCLUSION.—The inclusion under paragraph (1) shall be for the taxable year of the shareholder in which or with which the taxable year of the fund ends.

"(b) PRO RATA SHARE.—The pro rata share referred to in subsection (a) in the case of any shareholder is the amount which would have been distributed with respect to the shareholder's stock if, on each day during the taxable year of the fund, the fund had distributed to each shareholder a pro rata share of that day's ratable share of the fund's ordinary earnings and net capital gain for such year.

"(c) PREVIOUSLY TAXED AMOUNTS DISTRIBUTED TAX FREE.—If the taxpayer establishes to the satisfaction of the Secretary that any amount distributed by a passive foreign investment company is paid out of earnings and profits of the company which were included under subsection (a) in the income of any United States person, such amount shall be treated as a distribution which is not a dividend.

"(d) BASIS ADJUSTMENTS.—The basis of the taxpayer's stock in a passive foreign investment company shall be—

"(1) increased by any amount which is included in the income of the taxpayer under

subsection (a) with respect to such stock, and

"(2) decreased by any amount distributed with respect to such stock which is not includible in the income of the taxpayer by reason of subsection (c).

A similar rule shall apply also in the case of any property if by reason of holding such property the taxpayer is treated under section 1297(a) as owning stock in a qualified electing fund.

"(e) ORDINARY EARNINGS.—For purposes of this section—

"(1) ORDINARY EARNINGS.—The term 'ordinary earnings' means the excess of the earnings and profits of the qualified electing fund for the taxable year over its net capital gain for such taxable year.

"(2) LIMITATION ON NET CAPITAL GAIN.—A qualified electing fund's net capital gain for any taxable year shall not exceed its earnings and profits for such taxable year.

"(f) FOREIGN TAX CREDIT ALLOWED IN THE CASE OF 10-PERCENT CORPORATE SHAREHOLDER.—For purposes of section 960—

"(1) any amount included in the gross income under subsection (a) shall be treated as if it were included under section 951(a), and

"(2) any amount excluded from gross income under subsection (c) shall be treated in the same manner as amounts excluded from gross income under section 959.

"SEC. 1294. ELECTION TO EXTEND TIME FOR PAYMENT OF TAX ON UNDISTRIBUTED EARNINGS.

"(a) EXTENSION ALLOWED BY ELECTION.—

"(1) IN GENERAL.—At the election of the taxpayer, the time for payment of any undistributed PFIC earnings tax liability of the taxpayer for the taxable year shall be extended to the extent and subject to the limitations provided in this section.

"(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION 551 OR 951.—The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if—

"(A) any amount is includible in the gross income of the taxpayer under section 551 with respect to such fund for such taxable year, or

"(B) any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.

"(b) DEFINITIONS.—For purposes of this section—

"(1) UNDISTRIBUTED PFIC EARNINGS TAX LIABILITY.—The term 'undistributed PFIC earnings tax liability' means, in the case of any taxpayer, the excess of—

"(A) the tax imposed by this chapter for the taxable year, over

"(B) the tax which would be imposed by this chapter for such year without regard to the inclusion in gross income under section 1293 of the undistributed earnings of a qualified electing fund.

"(2) UNDISTRIBUTED EARNINGS.—The term 'undistributed earnings' means, with respect to any qualified electing fund, the excess (if any) of—

"(A) the amount includible in gross income by reason of section 1293(a) for the taxable year, over

"(B) the amount not includible in gross income by reason of section 1293(c) for such taxable year.

"(c) TERMINATION OF EXTENSION.—

"(1) DISTRIBUTIONS.—

"(A) IN GENERAL.—If a distribution is not includible in gross income for the taxable year by reason of section 1293(c), then the extension under subsection (a) for payment of the undistributed PFIC earnings tax liability with respect to the earnings to which such distribution is attributable shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for such taxable year.

"(B) ORDERING RULE.—For purposes of subparagraph (A), a distribution shall be treated as made from the most recently accumulated earnings and profits.

"(2) DISPOSITION, ETC.—If—

"(A) stock in a passive foreign investment company is disposed of during the taxable year, or

"(B) a passive foreign investment company ceases to be a qualified electing fund,

all extensions under subsection (a) for payment of undistributed PFIC earnings tax liability attributable to such stock (or, in the case of such a cessation, attributable to any stock in such company) which had not expired before the date of such disposition or cessation shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which such disposition or cessation occurs.

"(3) JEOPARDY.—If the Secretary believes that collection of an amount to which an extension under this section relates is in jeopardy, the Secretary shall immediately terminate such extension with respect to such amount, and notice and demand shall be made by him for payment of such amount.

"(d) ELECTION.—The election under subsection (a) shall be made not later than the time prescribed by law (including extensions) for filing the return of tax imposed by this chapter for the taxable year.

"(e) AUTHORITY TO REQUIRE BOND.—Section 6165 shall apply to any extension under this section as though the Secretary were extending the time for payment of the tax.

"SEC. 1295. QUALIFIED ELECTING FUND.

"(a) GENERAL RULE.—For purposes of this part, the term 'qualified electing fund' means any passive foreign investment company if—

"(1) an election under subsection (b) applies to such company for the taxable year, and

"(2) such company complies for such taxable year with such requirements as the Secretary may prescribe for purposes of—

"(A) determining the ordinary earnings and net capital gain of such company for the taxable year,

"(B) ascertaining the ownership of its outstanding stock, and

"(C) otherwise carrying out the purposes of this subpart.

"(b) ELECTION.—

"(1) IN GENERAL.—A passive foreign investment company may make an election under this subsection for any taxable year. Such an election, once made, shall apply to all subsequent taxable years of such company for which such company is a passive foreign investment company unless revoked with the consent of the Secretary.

"(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time before the 15th day of the 3rd month of the following taxable year.

"Subpart C—General Provisions

"Sec. 1296. Passive foreign investment company.

"Sec. 1297. Special rules.

"SEC. 1296. PASSIVE FOREIGN INVESTMENT COMPANY.

"(a) IN GENERAL.—For purposes of this part, except as otherwise provided in this subpart the term 'passive foreign investment company' means any foreign corporation if—

"(1) 75 percent or more of the gross income of such corporation for the taxable year is passive income, or

"(2) the average percentage of assets (by value) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent.

"(b) PASSIVE INCOME.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'passive income' has the meaning given such term by section 904(d)(2)(A) without regard to the exceptions contained in clause (iii) thereof.

"(2) EXCEPTION FOR CERTAIN BANKS AND INSURANCE COMPANIES.—Except as provided in regulations, the term 'passive income' does not include any income—

"(A) derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States (or, to the extent provided in regulations, by any other corporation), or

"(B) derived in the active conduct of an insurance business by a corporation which would be subject to tax under subchapter L if it were a domestic corporation.

"(c) LOOK-THRU IN THE CASE OF 25-PERCENT OWNED CORPORATIONS.—If a foreign corporation owns at least 25 percent (by value) of the stock of another corporation, for purposes of determining whether such foreign corporation is a passive foreign investment company, such foreign corporation shall be treated as if it—

"(1) held its proportionate share of the assets of such other corporation, and

"(2) received directly its proportionate share of the income of such other corporation.

"(d) SECTION 1247 CORPORATIONS.—For purposes of this part, the term 'passive foreign investment company' does not include any foreign investment company to which section 1247 applies.

"SEC. 1297. SPECIAL RULES.

"(a) ATTRIBUTION OF OWNERSHIP.—For purposes of this part—

"(1) ATTRIBUTION TO UNITED STATES PERSONS.—This subsection—

"(A) shall apply to the extent that the effect is to treat stock of a passive foreign investment company as owned by a United States person, and

"(B) except to the extent provided in regulations, shall not apply to treat stock owned (or treated as owned under this subsection) by a United States person as owned by any other person.

"(2) CORPORATIONS.—

"(A) IN GENERAL.—If 50 percent or more in value of the stock of a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned directly or indirectly by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all stock in the corporation.

"(B) 50-PERCENT LIMITATION NOT TO APPLY TO PFIC.—For purposes of determining whether a shareholder of a passive foreign investment company is treated as owning stock owned directly or indirectly by or for such company, subparagraph (A) shall be applied without regard to the 50-percent limitation contained therein.

"(3) PARTNERSHIPS, ETC.—Stock owned, directly or indirectly, by or for a partnership,

estate, or trust shall be considered as being owned proportionately by its partners or beneficiaries.

"(4) SUCCESSIVE APPLICATION.—Stock considered to be owned by a person by reason of the application of paragraph (2) or (3) shall, for purposes of applying such paragraphs, be considered as actually owned by such person.

"(b) OTHER SPECIAL RULES.—For purposes of this part—

"(1) TIME FOR DETERMINATION.—Stock held by a taxpayer shall be treated as stock in a passive foreign investment company if, at any time during the holding period of the taxpayer with respect to such stock, such corporation (or any predecessor) was a passive foreign investment corporation which was not a qualified electing fund. The preceding sentence shall not apply if the taxpayer elects to recognize gain (as of the last day of the last taxable year for which the company was a passive foreign investment company) under rules similar to the rules of section 1291(d)(2).

"(2) CERTAIN CORPORATIONS NOT TREATED AS PFIC'S DURING START-UP YEAR.—A corporation shall not be treated as a passive foreign investment company for the first taxable year such corporation has gross income (hereinafter in this paragraph referred to as the 'start-up year') if—

"(A) no predecessor of such corporation was a passive foreign investment company,

"(B) it is established to the satisfaction of the Secretary that such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following the start-up year, and

"(C) such corporation is not a passive foreign investment company for either of the 1st 2 taxable years following the start-up year.

"(3) CERTAIN CORPORATIONS CHANGING BUSINESSES.—A corporation shall not be treated as a passive foreign investment company for any taxable year if—

"(A) such corporation (and any predecessor) was not a passive foreign investment corporation for any prior taxable year,

"(B) it is established to the satisfaction of the Secretary that—

"(i) substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

"(ii) such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following such taxable year, and

"(C) such corporation is not a passive foreign investment company for either of such 2 taxable years.

"(4) SEPARATE INTERESTS TREATED AS SEPARATE CORPORATIONS.—Under regulations prescribed by the Secretary, where necessary to carry out the purposes of this part, separate classes of stock (or other interests) in a corporation shall be treated as interests in separate corporations.

"(5) APPLICATION OF SECTION WHERE STOCK HELD BY OTHER ENTITY.—Under regulations, in any case in which a United States person is treated as holding stock in a passive foreign investment company by reason of subsection (a), any disposition by the United States person or the person holding such stock which results in the United States person being treated as no longer holding such stock, shall be treated as a disposition by the United States person with respect to stock in the passive foreign investment company.

"(6) DISPOSITIONS.—If a taxpayer uses any stock in a passive foreign investment company as security for a loan, the taxpayer shall be treated as having disposed of such stock.

"(7) COORDINATION WITH SECTION 1246.—Section 1246 shall not apply to earnings and profits of any company for any taxable year beginning after December 31, 1986, if such company is a passive foreign investment company for such taxable year.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part."

(b) COORDINATION OF SECTION 1246 WITH SECTION 1248.—Section 1246 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) COORDINATION WITH SECTION 1248.—This section shall not apply to any gain to the extent such gain is treated as ordinary income under section 1248 (determined without regard to section 1248(g)(3))."

(c) COORDINATION WITH SUBPART F.—Section 951 (relating to amounts included in gross income of United States shareholders) is amended by adding at the end thereof the following new subsection:

"(f) COORDINATION WITH PASSIVE FOREIGN INVESTMENT COMPANY PROVISIONS.—If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 1293 (relating to current taxation of income from certain passive foreign investment companies), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A)."

(d) EXTENSION OF STATUTE OF LIMITATION.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) EXTENSION OF TIME FOR PAYMENT OF UNDISTRIBUTED PFIC EARNINGS TAX LIABILITY.—The running of any period of limitations for collection of any amount of undistributed PFIC earnings tax liability (as defined in section 1294(b)) shall be suspended for the period of any extension of time under section 1294 for payment of such amount."

(e) COORDINATION WITH FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.—Section 551 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) COORDINATION WITH PASSIVE FOREIGN INVESTMENT COMPANY PROVISIONS.—If, but for this subsection, an amount would be included in the gross income of any person under subsection (a) and under section 1293 (relating to current taxation of income from certain passive foreign investment companies), such amount shall be included in the gross income of such person only under subsection (a)."

(f) OTHER TECHNICAL AMENDMENTS.—

(1) Subsection (b) of section 532 (relating to exceptions from accumulated earnings tax) is amended by striking out "or" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", or", and by adding at the end thereof the following new paragraph:

"(4) a passive foreign investment company (as defined in section 1296)."

(2) Subsection (c) of section 542 (relating to exceptions from personal holding company provisions) is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(10) a passive foreign investment company (as defined in section 1296)."

(3) The second sentence of section 851(b) is amended—

(A) by striking out "section 951(a)(1)(A)(i)" and inserting in lieu thereof "section 951(a)(1)(A)(i) or 1293(a)", and

(B) by striking out "section 959(a)(1)" and inserting in lieu thereof "section 959(a)(1) or 1293(c) (as the case may be)".

(4)(A) Subparagraph (A) of section 904(g)(1) is amended by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iii) section 1293 (relating to current taxation of income from qualified funds)."

(B) The paragraph heading of section 904(g)(2) is amended by striking out "HOLDING COMPANY" and inserting in lieu thereof "HOLDING OR PASSIVE FOREIGN INVESTMENT COMPANY".

(g) CLERICAL AMENDMENT.—The table of parts for subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Part VI. Treatment of certain passive foreign investment companies."

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 1986.

SEC. 1236. TREATMENT OF INTEREST ON OBLIGATIONS OF THE UNITED STATES RECEIVED BY BANKS ORGANIZED IN GUAM.

(a) IN GENERAL.—Subsection (e) of section 882 (relating to interest on United States obligations received by banks organized in possessions) is amended by adding at the end thereof the following sentence:

"The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after November 16, 1985.

SUBTITLE E—TREATMENT OF FOREIGN TAXPAYERS

SEC. 1241. BRANCH PROFITS TAX.

(a) GENERAL RULE.—Subpart B of part II of subchapter N of chapter 1 (relating to foreign corporations) is amended by redesignating section 884 as section 885 and by inserting after section 883 the following new section:

"SEC. 884. BRANCH PROFITS TAX.

"(a) IMPOSITION OF TAX.—In addition to the tax imposed by section 882 for any taxable year, there is hereby imposed on any foreign corporation a tax equal to 30 percent of the dividend equivalent amount for the taxable year.

"(b) DIVIDEND EQUIVALENT AMOUNT.—For purposes of subsection (a), the term 'dividend equivalent amount' means the foreign corporation's effectively connected earnings and profits for the taxable year adjusted as provided in this subsection:

"(1) REDUCTION FOR INCREASE IN U.S. NET EQUITY.—If—

"(A) the U.S. net equity of the foreign corporation as of the close of the taxable year, exceeds

"(B) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year,

the effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

"(2) INCREASE FOR DECREASE IN NET EQUITY.—

"(A) IN GENERAL.—If—

"(i) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year, exceeds

"(ii) the U.S. net equity of the foreign corporation as of the close of the taxable year, the effectively connected earnings and profits for the taxable year shall be increased by the amount of such excess.

"(B) LIMITATION.—The increase under subparagraph (A) for any taxable year shall not exceed the aggregate reductions under paragraph (1) for prior taxable years to the extent not previously taken into account under subparagraph (A).

"(c) U.S. NET EQUITY.—For purposes of this section—

"(1) IN GENERAL.—The term 'U.S. net equity' means—

"(A) U.S. assets, reduced (including below zero) by

"(B) U.S. liabilities.

"(2) U.S. ASSETS AND U.S. LIABILITIES.—For purposes of paragraph (1)—

"(A) U.S. ASSETS.—The term 'U.S. assets' means the money and aggregate adjusted bases of property of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary. For purposes of the preceding sentence, the adjusted basis of any property shall be its adjusted basis for purposes of computing earnings and profits.

"(B) U.S. LIABILITIES.—The term 'U.S. liabilities' means the liabilities of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary.

"(C) REGULATIONS TO BE CONSISTENT WITH ALLOCATION OF DEDUCTIONS.—The regulations prescribed under subparagraphs (A) and (B) shall be consistent with the allocation of deductions under section 882(c)(1).

"(d) EFFECTIVELY CONNECTED EARNINGS AND PROFITS.—For purposes of this section—

"(1) IN GENERAL.—The term 'effectively connected earnings and profits' means earnings and profits (without diminution by reason of any distributions made during the taxable year) which are attributable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

"(2) EXCEPTION FOR CERTAIN INCOME.—The term 'effectively connected earnings and profits' shall not include any earnings and profits attributable to—

"(A) income not includible in gross income under paragraph (1) or (2) of section 883(a),

"(B) income treated as effectively connected with the conduct of a trade or business within the United States under section 921(d) or 926(b),

"(C) gain on the disposition of a United States real property interest described in section 897(c)(1)(A)(ii), or

"(D) income treated as effectively connected with the conduct of a trade or business within the United States under section 953(c)(3)(C).

Property and liabilities of the foreign corporation treated as connected with such income under regulations prescribed by the Secretary shall not be taken into account in determining the U.S. assets or U.S. liabilities of the foreign corporation.

"(e) COORDINATION WITH INCOME TAX TREATIES; ETC.—

"(1) LIMITATION ON TREATY EXEMPTION.—No income tax treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

"(A) such foreign corporation is a qualified resident of such foreign country, or

"(B) such foreign corporation is not a qualified resident of such foreign country but such income tax treaty permits a withholding tax on dividends described in section 861(a)(2)(B) which are paid by such foreign corporation.

"(2) TREATY MODIFICATIONS.—If a foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty—

"(A) the rate of tax under subsection (a) shall be the rate of tax specified in such treaty—

"(i) on branch profits if so specified, or

"(ii) if not so specified, on dividends paid by a domestic corporation to a corporation resident in such country which wholly owns such domestic corporation, and

"(B) any other limitations under such treaty on the tax imposed by subsection (a) shall apply.

"(3) COORDINATION WITH 2ND TIER WITHHOLDING TAX.—

"(A) IN GENERAL.—If a foreign corporation is not exempt for any taxable year from the tax imposed by subsection (a) by reason of a treaty, no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation during the taxable year.

"(B) LIMITATION ON CERTAIN TREATY BENEFITS.—No foreign corporation which is not a qualified resident of a foreign country shall be entitled to claim benefits under any income tax treaty between the United States and such foreign country with respect to dividends—

"(i) which are paid by such foreign corporation and with respect to which such foreign corporation is otherwise required to deduct and withhold tax under section 1441 or 1442, or

"(ii) which are received by such foreign corporation and are described in section 861(a)(2)(B).

"(4) QUALIFIED RESIDENT.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualified resident' means, with respect to any foreign country, any foreign corporation which is a resident of such foreign country unless—

"(i) more than 50 percent (by value) of the stock of such foreign corporation is owned (within the meaning of section 883(c)(4)) by individuals who are not residents of such foreign country and who are not United States citizens or resident aliens, or

"(ii) 50 percent or more of its income is used (directly or indirectly) to meet liabilities to persons who are not residents of such foreign country or the United States.

"(B) SPECIAL RULE FOR PUBLICLY TRADED CORPORATIONS.—A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

"(i) the stock of such corporation is primarily and regularly traded on an established securities market in such foreign country, or

"(ii) such corporation is wholly owned (either directly or indirectly) by another foreign corporation which is organized in such foreign country and the stock of which is so traded.

"(C) SECRETARIAL AUTHORITY.—The Secretary may, in his sole discretion, treat a foreign corporation as being a qualified resident of a foreign country if such corporation establishes to the satisfaction of the Secretary that such corporation meets such requirements as the Secretary may establish to ensure that individuals who are not residents of such foreign country do not use the treaty between such foreign country and the United States in a manner inconsistent with the purposes of this subsection.

"(f) TREATMENT OF INTEREST ALLOCABLE TO EFFECTIVELY CONNECTED INCOME.—

"(1) IN GENERAL.—In the case of a foreign corporation engaged in a trade or business in the United States, for purposes of sections 871, 881, 1441, and 1442—

"(A) any interest paid by such trade or business in the United States shall be treated as if it were paid by a domestic corporation, and

"(B) to the extent the amount of interest allowable as a deduction under section 882 in computing the effectively connected taxable income of such foreign corporation exceeds the interest described in subparagraph (A), such foreign corporation shall be liable for tax under section 881(a) in the same manner as if such excess were interest paid to such foreign corporation by a wholly owned domestic corporation on the last day of such foreign corporation's taxable year.

Rules similar to the rules of subsection (e)(3)(B) shall apply to interest described in the preceding sentence.

"(2) EFFECTIVELY CONNECTED TAXABLE INCOME.—For purposes of this subsection, the term 'effectively connected taxable income' means taxable income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing for appropriate adjustments in the determination of the dividend equivalent amount in connection with the distribution to shareholders or transfer to a controlled corporation of the taxpayer's U.S. assets and other adjustments in such determination as are necessary or appropriate to carry out the purposes of this section."

(b) AMENDMENTS TO INTEREST AND DIVIDEND SOURCING RULES.—

(1) INTEREST.—Paragraph (1) of section 861(a) (as amended by section 1214) is amended—

(A) by striking out "residents, corporate or otherwise," in the matter preceding subparagraph (A) and inserting in lieu thereof "noncorporate residents or domestic corporations", and

(B) by striking out subparagraphs (B) and (C) and by redesignating subparagraphs (D), (E), and (F) as subparagraphs (B), (C), and (D), respectively.

(2) DIVIDENDS.—Subparagraph (B) of section 861(a)(2) is amended—

(A) by striking out "50 percent" and inserting in lieu thereof "25 percent", and

(B) by striking out "effectively connected" each place it appears and inserting in lieu thereof "effectively connected (or treated as effectively connected other than under section 884(a)(2))".

(c) DISALLOWANCE OF CREDIT.—Subsection (b) of section 906 is amended by adding at the end thereof the following new paragraph:

"(6) No credit shall be allowed under this section against the tax imposed by section 884."

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter N of chapter 1 is amended by striking out the item relating to section 884 and inserting in lieu thereof the following:

"Sec. 884. Branch profits tax.

"Sec. 885. Cross references."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1242. TREATMENT OF DEFERRED PAYMENTS AND APPRECIATION ARISING OUT OF BUSINESS CONDUCTED WITHIN THE UNITED STATES.

(a) GENERAL RULE.—Subsection (c) of section 864 (defining effectively connected income) is amended by adding at the end thereof the following new paragraphs:

"(6) TREATMENT OF CERTAIN DEFERRED PAYMENTS, ETC.—For purposes of this title, any income or gain of a nonresident alien individual or a foreign corporation for any taxable year which is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year shall be treated as effectively connected with the conduct of a trade or business within the United States if it would have been so treated if such income or gain were taken into account in such other taxable year.

"(7) TREATMENT OF CERTAIN PROPERTY TRANSACTIONS.—For purposes of this title, if any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, the determination of whether any income or gain attributable to a sale or exchange of such property occurring within 10 years after such cessation is effectively connected with the conduct of a trade or business within the United States shall be made as if such sale or exchange occurred immediately before such cessation."

(b) CONFORMING AMENDMENTS.—Paragraph (1) of section 864(c) is amended—

(1) by striking out "and (4)" in subparagraph (A) and inserting in lieu thereof "(4), (6), and (7)", and

(2) by striking out "as provided in" in subparagraph (B) and inserting in lieu thereof "as provided in paragraph (6) or (7) or in".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1243. TREATMENT UNDER SECTION 877 OF PROPERTY RECEIVED IN TAX-FREE EXCHANGES, ETC.

(a) GENERAL RULE.—Subsection (c) of section 877 (relating to expatriation to avoid tax) is amended by adding at the end thereof the following new sentence:

"For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales or exchanges of property received in exchanges after September 25, 1985.

SEC. 1244. STUDY OF UNITED STATES REINSURANCE INDUSTRY.

The Secretary of the Treasury or his delegate shall conduct a study to determine whether United States reinsurance corporations are placed at a significant competitive disadvantage with foreign reinsurance corporations by existing treaties between the United States and foreign countries. The Secretary shall report before January 1, 1988, the results of such study to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 1245. INFORMATION WITH RESPECT TO CERTAIN FOREIGN-OWNED CORPORATIONS.

(a) IN GENERAL.—Paragraph (1) of section 6038A(b) (relating to certain required information) is amended—

(1) by striking out "each corporation" in the matter preceding subparagraph (A) and inserting in lieu thereof "each person", and

(2) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) is a related party to the reporting corporation, and".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6038A(b) is amended by striking out "each corporation" and inserting in lieu thereof "each person".

(2) Paragraph (3) of section 6038A(b) is amended to read as follows:

"(3) transactions between the reporting corporation and each foreign person which is a related party to the reporting corporation."

(3) Subsection (b) of section 6038A is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(4) such information as the Secretary may require for purposes of carrying out the provisions of section 453C."

(4) Paragraph (2) of section 6038A(c) is amended to read as follows:

"(2) RELATED PARTY.—The term 'related party' means—

"(A) any person who is related to the reporting corporation within the meaning of section 267(b) or 707(b)(1), and

"(B) any other person who is related (within the meaning of section 482) to the reporting corporation."

(5) Paragraph (1) of section 6038(a) is amended by striking out "and" at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof ", and", and by inserting after subparagraph (E) the following new subparagraph:

"(F) such information as the Secretary may require for purposes of carrying out the provisions of section 453C."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1246. WITHHOLDING TAX ON AMOUNTS PAID BY PARTNERSHIPS TO FOREIGN PARTNERS.

(a) IN GENERAL.—Subchapter A of chapter 3 (relating to withholding of tax on nonresident) is amended by adding at the end thereof the following new section:

"SEC. 1446. WITHHOLDING TAX ON AMOUNTS PAID BY PARTNERSHIPS TO FOREIGN PARTNERS.

"(a) GENERAL RULE.—Except as provided in this section, if a partnership has any income, gain, or loss which is effectively connected or treated as effectively connected with the conduct of a trade or business within the United States, any person described in section 1441(a) shall be required to deduct and withhold a tax equal to 20 percent of any amount distributed to a partner which is not a United States person.

"(b) LIMITATION IF LESS THAN 80 PERCENT OF GROSS INCOME IS EFFECTIVELY CONNECTED WITH UNITED STATES TRADE OR BUSINESS.—

"(1) IN GENERAL.—If the effectively connected percentage is less than 80 percent, only the effectively connected percentage of any distribution shall be taken into account under subsection (a).

"(2) EFFECTIVELY CONNECTED PERCENTAGE.—For purposes of paragraph (1) the term 'effectively connected percentage' means the percentage of the gross income of the partnership for the 3 taxable years preceding the taxable year of the distribution which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

"(c) EXCEPTIONS.—

"(1) AMOUNTS ON WHICH TAX WITHHELD.—Subsection (a) shall not apply to that portion of any distribution with respect to which a tax is required to be deducted and withheld under section 1441 or 1442 (or would be required to be deducted and withheld but for a treaty).

"(2) PARTNERSHIPS WITH CERTAIN ALLOCATIONS.—Except as provided in regulations, subsection (a) shall not apply to any partnership with respect to which substantially all income from sources within the United States and substantially all income which is effectively connected with the conduct of a trade or business within the United States is properly allocated to United States persons.

"(3) COORDINATION WITH SECTION 1445.—Under regulations proper adjustments shall be made in the amount required to be deducted and withheld under subsection (a) for amounts deducted and withheld under section 1445.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) COORDINATION WITH SECTION 6401(b).—Paragraph (2) of section 6401(b) (relating to excessive credits treated as overpayments) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any amount deducted and withheld under section 1446."

(c) CONFORMING AMENDMENT.—The table of sections for subchapter A of chapter 3 is amended by adding at the end thereof the following new item:

"Sec. 1446. Withholding tax on amounts paid by partnerships to foreign partners."

(d) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after December 31, 1987, (or, if earlier, the effective date (which shall not be earlier than January 1, 1987) of the initial regulations issued under section 1446 of the Internal Revenue Code of 1986 as added by this section).

SEC. 1247. INCOME OF FOREIGN GOVERNMENTS.

(a) SPECIAL RULE.—Section 892 (relating to income of foreign governments and of international organizations) is amended to read as follows:

"SEC. 892. INCOME OF FOREIGN GOVERNMENTS AND OF INTERNATIONAL ORGANIZATIONS.

"(a) FOREIGN GOVERNMENTS.—

"(1) IN GENERAL.—THE INCOME OF FOREIGN GOVERNMENTS RECEIVED FROM—

"(A) investments in the United States in—

"(i) stock, bonds, or other domestic securities owned by such foreign governments, or

"(ii) financial instruments held in the execution of governmental financial or monetary policy, or

"(B) interest on deposits in banks in the United States of moneys belonging to such foreign governments,

shall not be included in gross income and shall be exempt from taxation under this subtitle.

"(2) INCOME RECEIVED DIRECTLY OR INDIRECTLY FROM COMMERCIAL ACTIVITIES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any income—

"(i) derived from the conduct of any commercial activity (whether within or outside the United States), or

"(ii) received from or by a controlled commercial entity.

"(B) CONTROLLED COMMERCIAL ENTITY.—For purposes of subparagraph (A), the term 'controlled commercial entity' means any entity engaged in commercial activities (whether within or outside the United States) if the government—

"(i) holds (directly or indirectly) any interest in such entity which (by value or voting interest) is 50 percent or more of the total of such interests in such entity, or

"(ii) holds (directly or indirectly) any other interest in such entity which provides the foreign government with effective control of such entity.

For purposes of the preceding sentence, a central bank of issue shall be treated as a controlled commercial entity only if engaged in commercial activities within the United States.

"(b) INTERNATIONAL ORGANIZATIONS.—The income of international organizations received from investments in the United States in stocks, bonds, or other domestic securities owned by such international organizations, or from interest on deposits in banks in the United States of moneys belonging to such international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts received on or after July 1, 1986, except that no amount shall be required to be deducted and withheld by reason of the amendment made by subsection (a) from any payment made before the date of the enactment of this Act.

SEC. 1248. LIMITATION ON COST OF PROPERTY IMPORTED FROM RELATED PERSONS.

(a) IN GENERAL.—Part IV of subchapter O of chapter 1 (relating to special rules for determination of basis) is amended by inserting after section 1059 the following new section:

"SEC. 1059A. LIMITATION ON TAXPAYER'S BASIS OR INVENTORY COST IN PROPERTY IMPORTED FROM RELATED PERSONS.

"(a) IN GENERAL.—If any property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of section 482), the amount of any costs—

"(1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

"(2) which are also taken into account in computing the customs value of such property,

shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

"(b) CUSTOMS VALUE; IMPORT.—For purposes of this section—

"(1) CUSTOMS VALUE.—The term 'customs value' means the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property.

"(2) IMPORT.—Except as provided in regulations, the term 'import' means the entering, or withdrawal from warehouse, for consumption."

(b) CONFORMING AMENDMENT.—The table of sections for part IV of subchapter O of chapter 1 is amended by inserting after the item relating to section 1059 and inserting in lieu thereof the following new item:

"Sec. 1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after March 18, 1986.

SEC. 1249. TREATMENT OF DUAL RESIDENCE CORPORATIONS.

(a) GENERAL RULE.—Section 1503 (relating to consolidated return) is amended by adding at the end thereof the following new subsection:

"(d) DUAL CONSOLIDATED LOSS.—

"(1) IN GENERAL.—The dual consolidated loss for any taxable year of any corporation shall not be allowed to reduce the taxable income of any other member of the affiliated group for the taxable year or any other taxable year.

"(2) DUAL CONSOLIDATED LOSS.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'dual consolidated loss' means any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to such a tax on a residence basis.

"(B) SPECIAL RULE WHERE LOSS NOT USED UNDER FOREIGN LAW.—To the extent provided in regulations, the term 'dual consolidated loss' shall not include any loss which, under the foreign income tax law, does not offset the income of any foreign corporation."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to net operating losses for taxable years beginning after December 31, 1986.

SUBTITLE F—FOREIGN CURRENCY TRANSACTIONS

SEC. 1261. TREATMENT OF FOREIGN CURRENCY TRANSACTIONS.

(a) GENERAL RULE.—Part III of subchapter N of chapter 1 is amended by adding at the end thereof the following new subpart:

"Subpart J—Foreign Currency Transactions

"Sec. 985. Functional currency.

"Sec. 986. Determination of foreign corporation's earnings and profits and foreign taxes.

"Sec. 987. Branch transactions.

"Sec. 988. Treatment of certain foreign currency transactions.

"Sec. 989. Other definitions and special rules.

"SEC. 985. FUNCTIONAL CURRENCY.

"(a) IN GENERAL.—Unless otherwise provided in regulations, all determinations under this subtitle shall be made in the taxpayer's functional currency.

"(b) FUNCTIONAL CURRENCY.—

"(1) IN GENERAL.—For purposes of this subtitle, the term 'functional currency' means—

"(A) except as provided in subparagraph (B), the dollar, or

"(B) in the case of a qualified business unit, the currency of the economic environment in which a significant part of such unit's activities are conducted and which is used by such unit in keeping its books and records.

"(2) FUNCTIONAL CURRENCY WHERE ACTIVITIES PRIMARILY CONDUCTED IN DOLLARS.—The functional currency of any qualified business unit shall be the dollar if activities of such unit are primarily conducted in dollars.

"(3) ELECTION.—To the extent provided in regulations, the taxpayer may elect to use the dollar as the functional currency for any qualified business unit if—

"(A) such unit keeps its books and records in dollars, or

"(B) the taxpayer uses a method of accounting that approximates a separate transactions method.

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(4) CHANGE IN FUNCTIONAL CURRENCY TREATED AS A CHANGE IN METHOD OF ACCOUNTING.—Any change in the functional currency shall be treated as a change in the taxpayer's method of accounting for purposes of section 481 under procedures to be established by the Secretary.

"SEC. 986. DETERMINATION OF FOREIGN CORPORATION'S EARNINGS AND PROFITS AND FOREIGN TAXES.

"(a) EARNINGS AND PROFITS AND DISTRIBUTIONS.—For purposes of determining the tax under this subtitle—

"(1) of any shareholder of any foreign corporation, the earnings and profits of such corporation shall be determined in the corporation's functional currency, and

"(2) in the case of any United States person, the earnings and profits determined under paragraph (1) (when distributed, deemed distributed, or otherwise taken into account under this subtitle) shall (if necessary) be translated into dollars using the appropriate exchange rate.

"(b) FOREIGN TAXES.—

"(1) IN GENERAL.—In determining the amount of foreign taxes deemed paid under section 902 or 960—

"(A) any foreign income taxes paid by a foreign corporation shall be translated into dollars using the exchange rates as of the time of payment, and

"(B) any adjustment to the amount of foreign income taxes paid by a foreign corporation shall be translated into dollars using—

"(i) except as provided in clause (ii), the appropriate exchange rate as of when such adjustment is made, and

"(ii) in the case of any refund or credit of foreign taxes, using the exchange rate as of the time of original payment of such foreign income taxes.

"(2) FOREIGN INCOME TAXES.—For purposes of paragraph (1), 'foreign income taxes' means any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States.

"(c) PREVIOUSLY TAXED EARNINGS AND PROFITS.—

"(1) IN GENERAL.—Foreign currency gain or loss with respect to distributions of previously taxed earnings and profits (as described in section 959 or 1293(c)) attributable to movements in exchange rates between

the times of deemed and actual distribution shall be recognized and treated as ordinary income or loss from the same source as the associated income inclusion.

"(2) DISTRIBUTIONS THROUGH TIERS.—The Secretary shall prescribe regulations with respect to the treatment of distributions of previously taxed earnings and profits through tiers of foreign corporations.

"SEC. 987. BRANCH TRANSACTIONS.

"In the case of any taxpayer having 1 or more qualified business units with a functional currency other than the dollar, taxable income of such taxpayer shall be determined—

"(1) by computing the taxable income or loss separately for each such unit in its functional currency,

"(2) by translating the income or loss separately computed under paragraph (1) at the appropriate exchange rate,

"(3) by making proper adjustments (as prescribed by the Secretary) for transfers of property between qualified business units of the taxpayer having different functional currencies, including—

"(A) treating post-1986 remittances from each such unit as made on a pro rata basis out of post-1986 accumulated earnings, and

"(B) treating gain or loss determined under this paragraph as ordinary income or loss, respectively, and sourcing such gain or loss by reference to the source of the income giving rise to post-1986 accumulated earnings, and

"(4) by translating foreign income taxes paid by each qualified business unit of the taxpayer in the same manner as provided under section 986(b).

"SEC. 988. TREATMENT OF CERTAIN FOREIGN CURRENCY TRANSACTIONS.

"(a) GENERAL RULE.—

"(1) TREATMENT AS ORDINARY INCOME OR LOSS.—

"(A) IN GENERAL.—Except as otherwise provided in this section, any foreign currency gain or loss attributable to a section 988 transaction shall be computed separately and treated as ordinary income or loss (as the case may be).

"(B) SPECIAL RULE FOR FORWARD CONTRACTS, ETC.—Except as provided in regulations, a taxpayer may elect to treat any foreign currency gain or loss attributable to a forward contract, a futures contract, or option described in subsection (c)(1)(B)(iii) which is a capital asset in the hands of the taxpayer and which is not a part of a straddle (within the meaning of section 1092(c), without regard to paragraph (4) thereof) as capital gain or loss (as the case may be) if the taxpayer makes such election and identifies such transaction before the close of the day on which such transaction is entered into (or such earlier time as the Secretary may prescribe).

"(2) GAIN OR LOSS TREATED AS INTEREST FOR CERTAIN PURPOSES.—To the extent provided in regulations, any amount treated as ordinary income or loss under paragraph (1) shall be treated as interest income or expense (as the case may be).

"(3) SOURCE.—

"(A) IN GENERAL.—Except as otherwise provided in regulations, in the case of any amount treated as ordinary income or loss under paragraph (1) (without regard to paragraph (1)(B)), the source of such amount shall be determined by reference to the residence of the taxpayer or the qualified business unit of the taxpayer on whose books the asset, liability, or item of income or expense is properly reflected.

"(B) RESIDENCE.—For purposes of this subpart—

"(i) IN GENERAL.—The residence of any person shall be—

"(I) in the case of an individual, the country in which such individual's tax home (as defined in section 911(d)(3)) is located,

"(II) in the case of any corporation, partnership, trust, or estate which is a United States person (as defined in section 7701(a)(30)), the United States, and

"(III) in the case of any corporation, partnership, trust, or estate which is not a United States person, a country other than the United States.

"(ii) EXCEPTION.—In the case of a qualified business unit of any taxpayer (including an individual), the residence of such unit shall be the country in which the principal place of business of such qualified business unit is located.

"(C) SPECIAL RULE FOR CERTAIN RELATED PARTY LOANS.—Except to the extent provided in regulations, in the case of a loan by a United States person or a related person to a 10-percent owned foreign corporation which is denominated in a currency other than the dollar and bears interest at a rate at least 10 percentage points higher than the Federal mid-term rate (determined under section 1274(d)) at the time such loan is entered into, the following rules shall apply:

"(i) For purposes of section 904 only, such loan shall be marked to market on an annual basis.

"(ii) Any interest income earned with respect to such loan for the taxable year shall be treated as income from sources within the United States to the extent of any loss attributable to clause (i).

For purposes of this subparagraph, the term 'related person' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting 'United States person' for 'controlled foreign corporation' each place such term appears.

"(D) 10-PERCENT OWNED FOREIGN CORPORATION.—The term '10-percent owned foreign corporation' means any foreign corporation in which the United States person owns directly or indirectly at least 10 percent of the voting stock.

"(b) FOREIGN CURRENCY GAIN OR LOSS.—For purposes of this section—

"(1) FOREIGN CURRENCY GAIN.—The term 'foreign currency gain' means any gain from a section 988 transaction to the extent such gain does not exceed gain realized by reason of changes in exchange rates on or after the booking date and before the payment date.

"(2) FOREIGN CURRENCY LOSS.—The term 'foreign currency loss' means any loss from a section 988 transaction to the extent such loss does not exceed the loss realized by reason of changes in exchange rates on or after the booking date and before the payment date.

"(c) OTHER DEFINITIONS.—For purposes of this section—

"(1) SECTION 988 TRANSACTION.—

"(A) IN GENERAL.—The term 'section 988 transaction' means any transaction described in subparagraph (B) if the amount which the taxpayer is entitled to receive (or is required to pay) by reason of such transaction—

"(i) is denominated in terms of a nonfunctional currency, or

"(ii) is determined by reference to the value of 1 or more nonfunctional currencies.

"(B) DESCRIPTION OF TRANSACTIONS.—For purposes of subparagraph (A), the following transactions are described in this subparagraph:

"(i) The acquisition of a debt instrument or becoming the obligor under a debt instrument.

"(ii) Accruing (or otherwise taking into account) for purposes of this subtitle any item of expense or gross income or receipts which is to be paid or received after the date on which so accrued or taken into account.

"(iii) Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument if such instrument is not marked to market at the close of the taxable year under section 1256.

The Secretary may prescribe regulations excluding from the application of clause (ii) any class of items the taking into account of which is not necessary to carry out the purposes of this section by reason of the small amounts or short periods involved, or otherwise.

"(C) SPECIAL RULES FOR DISPOSITION OF NONFUNCTIONAL CURRENCY.—

"(i) IN GENERAL.—In the case of any disposition of any nonfunctional currency—

"(I) such disposition shall be treated as a section 988 transaction, and

"(II) for purposes of determining the foreign currency gain or loss from such transaction, paragraphs (1) and (2) of subsection (b) shall be applied by substituting 'acquisition date' for 'booking date' and 'disposition' for 'payment date'.

"(ii) NONFUNCTIONAL CURRENCY.—For purposes of this section, the term 'nonfunctional currency' includes coin or currency, and nonfunctional currency denominated demand or time deposits or similar instruments issued by a bank or other financial institution.

"(2) BOOKING DATE.—The term 'booking date' means—

"(A) in the case of a transaction described in paragraph (1)(B)(i), the date of acquisition or on which the taxpayer becomes the obligor,

"(B) in the case of a transaction described in paragraph (1)(B)(ii), the date on which accrued or otherwise taken into account, or

"(C) in the case of a transaction described in paragraph (1)(B)(iii), the date on which the position is entered into or acquired.

"(3) PAYMENT DATE.—The term 'payment date' means—

"(A) in the case of a transaction described in paragraph (1)(B) (i) or (ii), the date on which payment is made or received, or

"(B) in the case of a transaction described in paragraph (1)(B)(iii), the date payment is made or received or the date the taxpayer's rights with respect to the position are terminated.

"(4) DEBT INSTRUMENT.—The term 'debt instrument' means a bond, debenture, note, or certificate or other evidence of indebtedness. To the extent provided in regulations, such term shall include preferred stock.

"(d) TREATMENT OF 988 HEDGING TRANSACTIONS.—

"(1) IN GENERAL.—To the extent provided in regulations, if any section 988 transaction is part of a 988 hedging transaction, all transactions which are part of such 988 hedging transaction shall be integrated and treated as a single transaction or otherwise treated consistently for purposes of this section. For purposes of the preceding sentence, the determination of whether any transaction is a section 988 transaction shall be determined without regard to whether such transaction would otherwise be market-to-market under section 1256 and such term shall not include any transaction with respect to which an election is made under subsection (a)(1)(B). Sections 1092 and 1256 shall not apply to a transaction covered by this subsection.

"(2) 988 HEDGING TRANSACTION.—For purposes of paragraph (1), the term '988 hedging transaction' means any transaction—

"(A) entered into by the taxpayer primarily—

"(i) to reduce risk of currency fluctuations with respect to property which is held or to be held by the taxpayer, or

"(ii) to reduce risk of currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer, and

"(B) identified by the Secretary or the taxpayer as being a 988 hedging transaction.

"(e) APPLICATION TO INDIVIDUALS.—This section shall apply to section 988 transactions entered into by an individual only to the extent expenses properly allocable to such transactions meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).

"SEC. 989. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) QUALIFIED BUSINESS UNIT.—For purposes of this subpart, the term 'qualified business unit' means any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

"(b) APPROPRIATE EXCHANGE RATE.—Except as provided in regulations, for purposes of this subpart, the term 'appropriate exchange rate' means—

"(1) in the case of an actual distribution of earnings and profits, the spot rate on the date such distribution is included in income,

"(2) in the case of an actual or deemed sale or exchange of stock in a foreign corporation treated as a dividend under section 1248, the spot rate on the date the deemed dividend is included in income,

"(3) in the case of any amounts included in income under section 951(a), 551(a), or 1293(a), the weighted average exchange rate for the taxable year of the foreign corporation, or

"(4) in the case of any other qualified business unit of a taxpayer, the weighted average exchange rate for the taxable year of such qualified business unit.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subpart, including regulations—

"(1) setting forth procedures to be followed by taxpayers with qualified business units using a net worth method of accounting before the enactment of this subpart,

"(2) limiting the recognition of foreign currency loss on certain remittances from qualified business units,

"(3) providing for the recharacterization of interest and principal payments with respect to obligations denominated in certain hyperinflationary currencies,

"(4) providing for alternative adjustments to the application of section 905(c), and

"(5) providing for the appropriate treatment of related party transactions (including transactions between qualified business units of the same taxpayer)."

(b) APPLICATION OF SECTION 1092 TO FOREIGN CURRENCY.—Section 1092(d) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR FOREIGN CURRENCY.—

"(A) POSITION TO INCLUDE INTEREST IN CERTAIN DEBT.—For purposes of paragraph (2), an obligor's interest in a nonfunctional currency denominated debt obligation is treated as a position in the nonfunctional currency.

"(B) ACTIVELY TRADED REQUIREMENT.—For purposes of paragraph (1), foreign currency for which there is an active interbank market is presumed to be actively traded."

(c) REPEAL OF SPECIAL TREATMENT OF BANKS FOR HEDGING EXCEPTION.—Subsection (e) of section 1256 (relating to mark to market not to apply to hedging transactions) is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(d) CLERICAL AMENDMENT.—The table of subparts for part III of subchapter N of chapter 1 is amended by adding at the end thereof the following new item:

"Subpart J. Foreign currency transactions."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) SPECIAL RULES FOR PURPOSES OF SECTIONS 902 AND 960.—For purposes of applying sections 902 and 960 of the Internal Revenue Code of 1986, the amendments made by this section shall apply to—

(A) earnings and profits of the foreign corporation for taxable years beginning after December 31, 1986, and

(B) foreign taxes paid or accrued by the foreign corporation with respect to such earnings and profits.

SUBTITLE G—TAX TREATMENT OF POSSESSIONS

PART I—TREATMENT OF GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS

SEC. 1271. AUTHORITY OF GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS TO ENACT REVENUE LAWS.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in the laws of the United States shall prevent Guam, American Samoa, or the Northern Mariana Islands from enacting tax laws (which shall apply in lieu of the mirror system) with respect to income—

(1) from sources within, or effectively connected with the conduct of a trade or business within, any such possession, or

(2) received or accrued by any resident of such possession.

(b) AGREEMENTS TO ALLEVIATE CERTAIN PROBLEMS RELATING TO TAX ADMINISTRATION.—Subsection (a) shall apply to Guam, American Samoa, or the Northern Mariana Islands only if (and so long as) an implementing agreement is in effect between the United States and such possession with respect to—

(1) the elimination of double taxation involving taxation by such possession and taxation by the United States,

(2) the establishment of rules under which the evasion or avoidance of United States income tax shall not be permitted or facilitated by such possession,

(3) the exchange of information between such possession and the United States for purposes of tax administration, and

(4) the resolution of other problems arising in connection with the administration of the tax laws of such possession or the United States.

Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury after consultation with the Secretary of the Interior.

(c) REVENUES NOT TO DECREASE.—The total amount of the revenue received by any possession referred to in subsection (a) pursuant to its tax laws during the implementation year and each of the 4 fiscal years thereafter shall not be less than the revenue (adjusted for inflation) which was received by such possession pursuant to tax laws for its last fiscal year before the implementation year.

(d) NONDISCRIMINATORY TREATMENT REQUIRED.—Nothing in any tax law of a possession referred to in subsection (a) may discriminate against any United States person or any resident (corporate or otherwise) of any other possession.

(e) ENFORCEMENT.—

(1) IN GENERAL.—If the Secretary of the Treasury (after consultation with the Secretary of the Interior) determines that any possession has failed to comply with subsection (c) or (d), the Secretary of the Treasury shall so notify the Governor of such possession in writing. If such possession does not comply with subsection (c) or (d) (as the case may be) within 90 days of such notification, the Secretary of the Treasury shall notify the Congress of such noncompliance. Unless the Congress by law provides otherwise, the mirror system of taxation shall be reinstated in such possession and shall be in full force and effect for taxable years beginning after such notification to the Congress.

(2) SPECIAL RULE FOR REVENUE REQUIREMENTS.—If the failure to comply with subsection (c) is for good cause and does not jeopardize the fiscal integrity of the possession, the Secretary may waive the requirements of subsection (c) for such period as he determines appropriate.

(f) DEFINITIONS AND SPECIAL RULES.—

(1) IMPLEMENTATION YEAR.—For purposes of this section, the term "implementation year" means the 1st fiscal year of the possession in which the tax laws authorized by subsection (a) take effect.

(2) MIRROR SYSTEM.—For purposes of this section, the mirror system of taxation consists of the provisions of law (in effect on the day before the date of the enactment of this Act) which make the provisions of the income tax laws of the United States (as in effect from time to time) in effect in a possession of the United States.

(3) SPECIAL RULE FOR NORTHERN MARIANA ISLANDS.—Notwithstanding the provisions of the last clause of section 601(a) of Public Law 94-241, the Commonwealth of the Northern Mariana Islands may elect to continue its mirror system of taxation without regard to whether Guam enacts tax laws under the authority provided in subsection (a).

SEC. 1272. EXCLUSION OF POSSESSION SOURCE INCOME FROM THE GROSS INCOME OF CERTAIN INDIVIDUALS.

(a) IN GENERAL.—Section 931 (relating to income from sources within possessions of the United States) is amended to read as follows:

"SEC. 931. INCOME FROM SOURCES WITHIN GUAM, AMERICAN SAMOA, OR THE NORTHERN MARIANA ISLANDS.

"(a) GENERAL RULE.—In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

"(1) income derived from sources within any specified possession, and

"(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

"(b) DEDUCTIONS, ETC. ALLOCABLE TO EXCLUDED AMOUNTS NOT ALLOWABLE.—An individual shall not be allowed—

"(1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or

"(2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

"(c) SPECIFIED POSSESSION.—For purposes of this section, the term 'specified possession' means Guam, American Samoa, and the Northern Mariana Islands.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) EMPLOYEES OF THE UNITED STATES.—Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).

"(2) DETERMINATION OF SOURCE, ETC.—The determination as to whether income is described in paragraph (1) or (2) of subsection (a) shall be made under regulations prescribed by the Secretary.

"(3) DETERMINATION OF RESIDENCY.—For purposes of this section and section 876, the determination of whether an individual is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands shall be made under regulations prescribed by the Secretary."

(b) EXEMPTION FROM WITHHOLDING TAX; TAX IMPOSED BY SECTION 1.—Section 876 (relating to alien residents of Puerto Rico) is amended to read as follows:

"SEC. 876. ALIEN RESIDENTS OF PUERTO RICO, GUAM, AMERICAN SAMOA, OR THE NORTHERN MARIANA ISLANDS.

"(a) GENERAL RULE.—This subpart shall not apply to any alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands during the entire taxable year and such alien shall be subject to the tax imposed by section 1.

"(b) CROSS REFERENCES.—

"For exclusion from gross income of income derived from sources within—

"(1) Guam, American Samoa, and the Northern Mariana Islands,

see section 931, and

"(2) Puerto Rico, see section 933."

(c) EXEMPTION FROM WAGE WITHHOLDING FOR CERTAIN SERVICES PERFORMED IN POSSESSIONS.—Paragraph (8) of section 3401(a) (defining wages) is amended by adding at the end thereof the following new subparagraph:

"(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; or".

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 932 (relating to citizens of possessions of the United States) is hereby repealed.

(2) Section 935 (relating to coordination of United States and Guam individual income taxes) is hereby repealed.

(3) Paragraphs (1) and (2) of section 933 are each amended by inserting ", or any credit," before "properly".

(4) Subparagraph (C) of section 32(c)(1) is amended to read as follows:

"(C) INDIVIDUAL WHO CLAIMS BENEFITS OF SECTION 911 NOT ELIGIBLE INDIVIDUAL.—The term 'eligible individual' does not include an individual who, for the taxable year, claims the benefits of section 911 (relating to citizens or residents of the United States living abroad)."

(5) Clause (vii) of section 48(a)(2)(B) is amended by striking out "932,".

(6) Paragraph (6) of section 63(c) (relating to certain individuals, etc., not eligible for standard deduction), as amended by title I of this Act, is amended by striking out subparagraph (C) and by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(7) Section 153 is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(8) Paragraph (8) of section 1402(a) is amended by striking out "and section 931 (relating to income from sources within possessions of the United States)" and by inserting "and" after "of the employer),".

(9) Paragraph (9) of section 1402(a) is amended to read as follows:

"(9) the exclusion from gross income provided by section 931 shall not apply;".

(10) Clause (iii) of section 6091(b)(1)(B) is amended by striking out "possessions of the United States" and inserting in lieu thereof "Guam, American Samoa, or the Northern Mariana Islands".

(11) Subsection (b) of section 7655 is amended by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and by inserting before paragraph (2), as so redesignated, the following new paragraph:

"(1) Section 931, relating to income tax on residents of Guam, American Samoa, or the Northern Mariana Islands;".

(12) The table of sections for subpart D of part III of subchapter N of chapter 1 is amended by striking out the items relating to sections 932 and 935 and by striking out the item relating to section 931 and inserting in lieu thereof the following:

"Sec. 931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands."

(13) The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by striking out the item relating to section 876 and inserting in lieu thereof the following:

"Sec. 876. Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands."

SEC. 1273. TREATMENT OF CORPORATIONS ORGANIZED IN GUAM, AMERICAN SAMOA, OR THE NORTHERN MARIANA ISLANDS.

(a) TREATMENT UNDER SUBPART F.—Subsection (c) of section 957 (relating to controlled foreign corporations; United States persons), as amended by section 1224, is amended by adding "and" at the end of paragraph (1) and by striking out paragraphs (2) and (3) and inserting in lieu thereof the following new paragraph:

"(2) with respect to a corporation organized under the laws of Guam, American Samoa, or the Northern Mariana Islands—

"(A) 80 percent or more of the gross income of which for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within such a possession or was effectively connected with the conduct of a trade or business in such a possession, and

"(B) 50 percent or more of the gross income of which for such period (or part) was derived from the conduct of an active trade or business within such a possession,

such term does not include an individual who is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands.

For purposes of subparagraphs (A) and (B) of paragraph (2), the determination as to whether income was derived from sources within a possession, was effectively connected with the conduct of a trade or business within a possession, or derived from the active conduct of a trade or business within a possession shall be made under regulations prescribed by the Secretary."

(b) EXEMPTION FROM WITHHOLDING.—

(1) IN GENERAL.—Subsection (b) of section 881 (relating to exception for certain Guam and Virgin Islands corporations) is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) IN GENERAL.—For purposes of this section and section 884, a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession shall not be treated as a foreign corporation for any taxable year if—

"(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is beneficially owned (directly or indirectly) by foreign persons,

"(B) at least 65 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to be effectively connected with the conduct of a trade or business in such a possession or the United States for the 3-year period ending with the close of the taxable year of such corporation (or for such part of such period as the corporation or any predecessor has been in existence), and

"(C) no substantial part of the income of such corporation is used (directly or indirectly) to satisfy obligations to persons who are not bona fide residents of such a possession or the United States."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (b) of section 881 is amended by redesignating paragraph (3) as paragraph (2) and by striking out paragraph (4).

(B) Subsection (c) of section 1442 is amended to read as follows:

"(c) EXCEPTION FOR CERTAIN POSSESSIONS CORPORATIONS.—For purposes of this section, the term 'foreign corporation' does not include a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation."

PART II—TREATMENT OF THE VIRGIN ISLANDS

SEC. 1274. COORDINATION OF UNITED STATES AND VIRGIN ISLANDS INCOME TAXES.

(a) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 is amended by inserting after section 931 the following new section:

"SEC. 932. COORDINATION OF UNITED STATES AND VIRGIN ISLANDS INCOME TAXES.

"(a) TREATMENT OF UNITED STATES RESIDENTS.—

"(1) APPLICATION OF SUBSECTION.—This subsection shall apply to an individual for the taxable year if—

"(A) such individual—

"(i) is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands at the close of the taxable year), and

"(ii) has income derived from sources within the Virgin Islands, or effectively connected with the conduct of a trade or business within such possession, for the taxable year, or

"(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

"(2) FILING REQUIREMENT.—Each individual to whom this subsection applies for the taxable year shall file his income tax return for the taxable year with both the United States and the Virgin Islands.

"(3) EXTENT OF INCOME TAX LIABILITY.—In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the United States shall be treated as including the Virgin Islands.

"(b) PORTION OF UNITED STATES TAX LIABILITY PAYABLE TO THE VIRGIN ISLANDS.—

"(1) IN GENERAL.—Each individual to whom subsection (a) applies for the taxable year shall pay the applicable percentage of the taxes imposed by this chapter for such taxable year (determined without regard to paragraph (3)) to the Virgin Islands.

"(2) APPLICABLE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'applicable percentage' means the percentage which Virgin Islands adjusted gross income bears to adjusted gross income.

"(B) VIRGIN ISLANDS ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'Virgin Islands adjusted gross income' means adjusted gross income determined by taking into account only income derived from sources within the Virgin Islands and deductions properly apportioned or allocable thereto.

"(3) AMOUNTS PAID ALLOWED AS CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the taxes required to be paid to the Virgin Islands under paragraph (1) which are so paid.

"(c) TREATMENT OF VIRGIN ISLANDS RESIDENTS.—

"(1) APPLICATION OF SUBSECTION.—This subsection shall apply to an individual for the taxable year if—

"(A) such individual is a bona fide resident of the Virgin Islands at the close of the taxable year, or

"(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

"(2) FILING REQUIREMENT.—Each individual to whom this subsection applies for the taxable year shall file his income tax return for the taxable year with the Virgin Islands.

"(3) EXTENT OF INCOME TAX LIABILITY.—In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the Virgin Islands shall be treated as including the United States.

"(4) RESIDENTS OF THE VIRGIN ISLANDS.—In the case of an individual who is a bona fide resident of the Virgin Islands at the close of the taxable year and who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, for purposes of calculating income tax liability to the United States gross income shall not include any amount included in gross income on such return.

"(d) SPECIAL RULE FOR JOINT RETURNS.—In the case of a joint return, this section shall be applied on the basis of the residence of the spouse who has the greater adjusted gross income (determined without regard to community property laws) for the taxable year.

"(e) SECTION NOT TO APPLY TO TAX IMPOSED IN VIRGIN ISLANDS.—This section shall not apply for purposes of determining income tax liability incurred to the Virgin Islands."

(b) AUTHORITY TO IMPOSE NONDISCRIMINATORY LOCAL INCOME TAXES.—Nothing in any provision of Federal law shall prevent the Virgin Islands from imposing on any person nondiscriminatory local income taxes. Any taxes so imposed shall be treated in the same manner as State and local income taxes under section 164 of the Internal Revenue Code of 1954 and shall not be treated as taxes to which section 901 of such Code applies.

(c) REGULATIONS ON APPLICATION OF MIRROR SYSTEM.—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary or appropriate for applying this title for purposes of determining tax liability incurred to the Virgin Islands.

(d) CLERICAL AMENDMENT.—The table of sections for such subpart D is amended by inserting after the item relating to section 931 the following new item:

"Sec. 932. Coordination of United States and Virgin Islands income taxes."

SEC. 1275. VIRGIN ISLANDS CORPORATIONS ALLOWED POSSESSION TAX CREDIT.

(a) POSSESSION TAX CREDIT ALLOWED.—

(1) IN GENERAL.—Paragraph (1) of section 936(d) (defining possession) is amended by striking out ", but does not include the Virgin Islands of the United States" and inserting in lieu thereof "and the Virgin Islands".

(2) CONFORMING AMENDMENTS.—

(A) Section 934 is amended by striking out subsections (e) and (f).

(B) Subsection (e) of section 246 is amended by striking out "or 934(e)(3)".

(b) CLARIFICATION OF TREATMENT OF VIRGIN ISLANDS INHABITANTS.—Subparagraph (B) of section 7651(5) (relating to the Virgin Islands) is amended to read as follows:

"(B) For purposes of this title, section 28(a) of the Revised Organic Act of the Virgin Islands shall be effective as if such section 28(a) had been enacted before the enactment of this title and such section 28(a) shall have no effect on the amount of income tax liability required to be paid by any person to the United States."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection 934 is amended by striking out subsections (b), (c), and (d).

(2)(A) Subsection (a) of section 934 is amended by striking out "or (c) or in section 934A".

(B) Section 934, as amended by paragraph (1), is amended by inserting after subsection (a) the following new subsection:

"(b) REDUCTIONS PERMITTED WITH RESPECT TO CERTAIN INCOME.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands.

"(2) EXCEPTION FOR LIABILITY PAID BY CITIZENS OR RESIDENTS OF THE UNITED STATES.—Paragraph (1) shall not apply to any liability payable to the Virgin Islands under section 932(b).

"(3) SPECIAL RULE FOR NON-UNITED STATES INCOME OF CERTAIN FOREIGN CORPORATIONS.—

"(A) IN GENERAL.—In the case of a qualified foreign corporation, subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income which is derived from sources outside the United States and which is not effectively connected with the conduct of a trade or business within the United States.

"(B) QUALIFIED FOREIGN CORPORATION.—For purposes of subparagraph (A), the term 'qualified foreign corporation' means any foreign corporation if less than 10 percent of—

"(i) the total voting power of the stock of such corporation, and

"(ii) the total value of the stock of such corporation,

is owned or treated as owned (within the meaning of section 958) by 1 or more United States persons.

"(4) DETERMINATION OF INCOME SOURCE, ETC.—The determination as to whether income is derived from sources within the Virgin Islands or the United States or is effectively connected with the conduct of a trade or business within the Virgin Islands or the United States shall be made under regulations prescribed by the Secretary."

(3) Section 934A (relating to income tax rates on Virgin Islands source income) is hereby repealed.

(4) Subparagraph (B) of section 28(d)(3) is amended to read as follows:

"(B) SPECIAL LIMITATION FOR CORPORATIONS TO WHICH SECTION 936 APPLIES.—No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which an election under section 936 applies."

(5) Clause (vii) of section 48(a)(2)(B) is amended by striking out "or which is entitled to the benefits of section 934(b)" and by striking out ", 933, or 934(c)" and inserting in lieu thereof "or 933".

(6) Clause (i) of section 338(h)(6)(B) is amended by striking out "a corporation described in section 934(b),".

(7) Subparagraph (B) of section 864(d)(5) is amended to read as follows:

"(B) SPECIAL RULES FOR POSSESSIONS.—An amount treated as interest under paragraph (1) shall not be treated as income described in subparagraph (A) or (B) of section 936(a)(1) unless such amount is from sources within a possession of the United States (determined after the application of paragraph (1))."

(8) The table of sections for subpart D of part III of subchapter N of chapter 1 is amended by striking out the item relating to section 934A.

PART III—COVER OVER OF INCOME TAXES

SEC. 1276. COVER OVER OF INCOME TAXES.

(a) IN GENERAL.—Section 7654 (relating to coordination of United States and Guam individual income taxes) is amended to read as follows:

"SEC. 7654. COORDINATION OF UNITED STATES AND CERTAIN POSSESSION INDIVIDUAL INCOME TAXES.

"(a) GENERAL RULE.—The net collection of taxes imposed by chapter 1 for each taxable year with respect to an individual to which section 931 or 932(c) applies shall be covered into the Treasury of the specified possession of which such individual is a bona fide resident.

"(b) DEFINITION AND SPECIAL RULE.—For purposes of this section—

"(1) NET COLLECTIONS.—In determining net collections for a taxable year, an appropriate adjustment shall be made for credits allowed against the tax liability and refunds made of income taxes for the taxable year.

"(2) SPECIFIED POSSESSION.—The term 'specified possession' means Guam, American

Samoa, the Northern Mariana Islands, and the Virgin Islands.

"(c) TRANSFERS.—The transfers of funds between the United States and any specified possession required by this section shall be made not less frequently than annually.

"(d) FEDERAL PERSONNEL.—In addition to the amount determined under subsection (a), the United States shall pay to each specified possession at such times and in such manner as determined by the Secretary—

"(1) the amount of the taxes deducted and withheld by the United States under chapter 24 with respect to compensation paid to members of the Armed Forces who are stationed in such possession but who have no income tax liability to such possession with respect to such compensation by reason of the Soldiers' and Sailors' Civil Relief Act (50 App. U.S.C. 501 et seq.), and

"(2) the amount of the taxes deducted and withheld under chapter 24 with respect to amounts paid for services performed as an employee of the United States (or any agency thereof) in a specified possession with respect to an individual unless section 931 or 932(c) applies.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section and sections 931 and 932, including regulations prohibiting the rebate of taxes covered over which are allocable to United States source income and prescribing the information which the individuals to whom such sections may apply shall furnish to the Secretary."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter D of chapter 78 is amended by striking out the item relating to section 7654 and inserting in lieu thereof the following:

"Sec. 7654. Coordination of United States and certain possession individual income taxes."

PART IV—EFFECTIVE DATE

SEC. 1277. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle shall apply to taxable years beginning after December 31, 1986.

(b) SPECIAL RULE FOR GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS.—The amendments made by this subtitle shall apply with respect to Guam, American Samoa, or the Northern Mariana Islands (and to residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement under section 1271 is in effect between the United States and such possession.

(c) SPECIAL RULES FOR THE VIRGIN ISLANDS.—

(1) IN GENERAL.—The amendments made by section 1275(c) shall apply with respect to the Virgin Islands (and residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement is in effect between the United States and the Virgin Islands with respect to the establishment of rules under which the evasion or avoidance of United States income tax shall not be permitted or facilitated by such possession. Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury, after consultation with the Secretary of the Interior.

(2) SECTION 1275(b).—

(A) IN GENERAL.—The amendment made by section 1275(b) shall apply with respect to—

(i) any taxable year beginning after December 31, 1986, and

(ii) any pre-1987 open year.

(B) SPECIAL RULES.—In the case of any pre-1987 open year—

(i) the amendment made by section 1275(b) shall not apply to income from sources in the Virgin Islands or income effectively connected with the conduct of a trade or business in the Virgin Islands, and

(ii) the taxpayer shall be allowed a credit—

(I) against any additional tax imposed by subtitle A of the Internal Revenue Code of 1954 (by reason of the amendment made by section 1275(b)) on income not described in clause (i) and from sources in the United States,

(II) for any tax paid to the Virgin Islands before the date of the enactment of this Act and attributable to such income.

For purposes of clause (ii)(II), any tax paid before January 1, 1987, pursuant to a process in effect before August 16, 1986, shall be treated as paid before the date of the enactment of this Act.

(C) PRE-1987 OPEN YEAR.—For purposes of this paragraph, the term "pre-1987 open year" means any taxable year beginning before January 1, 1987, if on the date of the enactment of this Act the assessment of a deficiency of income tax for such taxable year is not barred by any law or rule of law.

(D) EXCEPTION.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any domestic corporation if—

(i) during the fiscal year which ended May 31, 1986, such corporation was actively engaged directly or through a subsidiary in the conduct of a trade or business in the Virgin Islands and such trade or business consists of business related to marine activities, and

(ii) such corporation was incorporated on March 31, 1983, in Delaware.

(E) EXCEPTION FOR CERTAIN TRANSACTIONS.—

(i) IN GENERAL.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any income derived from transactions described in clause (ii) by 1 or more corporations which were formed in Delaware on or about March 6, 1981, and which have owned 1 or more office buildings in St. Thomas, United States Virgin Islands, for at least 5 years before the date of the enactment of this Act.

(ii) DESCRIPTION OF TRANSACTIONS.—The transactions described in this clause are—

(I) the redemptions of limited partnership interests for cash and property described in an agreement (as amended) dated March 12, 1981,

(II) the subsequent disposition of the properties distributed in such redemptions, and

(III) interest earned before January 1, 1987, on bank deposits of proceeds received from such redemptions to the extent such deposits are located in the United States Virgin Islands.

(iii) LIMITATION.—The aggregate reduction in tax by reason of this subparagraph shall not exceed $8,312,000. If the taxes which would be payable as the result of the application of the amendment made by section 1275(b) to pre-1987 open years exceeds the limitation of the preceding sentence, such excess shall be treated as attributable to income received in taxable years in reverse chronological order.

(d) REPORT ON IMPLEMENTING AGREEMENTS.—If, during the 1-year period beginning on the date of the enactment of this Act, any implementing agreement described in subsection (b) or (c) is not executed, the Secretary of the Treasury or his delegate shall report to the Committee on Finance of the United States Senate, the Committee on Ways and Means, and the Committee on Interior and Insular Affairs of the House of Representatives with respect to—

(1) the status of such negotiations, and

(2) the reason why such agreement has not been executed.

(e) TREATMENT OF CERTAIN UNITED STATES PERSONS.—Except as otherwise provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a United States person becomes a resident of Guam, American Samoa, or the Northern Mariana Islands, the rules of section 877(c) of the Internal Revenue Code of 1954 shall apply to such person during the 10-year period beginning when such person became such a resident. The preceding sentence shall apply to dispositions after December 31, 1985, in taxable years ending after such date.

TITLE XIII—TAX-EXEMPT BONDS

SUBTITLE A—AMENDMENTS OF INTERNAL REVENUE CODE OF 1954

SEC. 1301. STATE AND LOCAL BONDS.

(a) EXCLUSION FOR INTEREST ON BONDS WHICH MEET CERTAIN REQUIREMENTS.—Section 103 (relating to interest on certain governmental obligations) is amended to read as follows:

"SEC. 103. INTEREST ON STATE AND LOCAL BONDS.

"(a) EXCLUSION.—Except as provided in subsection (b), gross income does not include interest on any State or local bond.

"(b) EXCEPTIONS.—Subsection (a) shall not apply to—

"(1) PRIVATE ACTIVITY BOND WHICH IS NOT A QUALIFIED BOND.—Any private activity bond which is not a qualified bond (within the meaning of section 141).

"(2) ARBITRAGE BOND.—Any arbitrage bond (within the meaning of section 148).

"(3) BOND NOT IN REGISTERED FORM, ETC.—Any bond unless such bond meets the applicable requirements of section 149.

"(c) DEFINITIONS.—For purposes of this section and part IV—

"(1) STATE OR LOCAL BOND.—The term 'State or local bond' means an obligation of a State or political subdivision thereof.

"(2) STATE.—The term 'State' includes the District of Columbia and any possession of the United States."

(b) TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS.—Part IV of subchapter B of chapter 1 (relating to determination of marital status) is amended to read as follows:

"PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

"Subpart A. Private activity bonds.

"Subpart B. Requirements applicable to all State and local bonds.

"Subpart C. Definitions and special rules.

"Subpart A—Private Activity Bonds

"Sec. 141. Private activity bond; qualified bond.

"Sec. 142. Exempt facility bond.

"Sec. 143. Mortgage revenue bonds: qualified mortgage bond and qualified veterans' mortgage bond.

"Sec. 144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond.

"Sec. 145. Qualified 501(c)(3) bond.

"Sec. 146. Volume cap.

"Sec. 147. Other requirements applicable to certain private activity bonds.

"SEC. 141. PRIVATE ACTIVITY BOND; QUALIFIED BOND.

"(a) PRIVATE ACTIVITY BOND.—For purposes of this title, the term 'private activity bond' means any bond issued as part of an issue—

"(1) which meets—

"(A) the private business use test of paragraph (1) of subsection (b), and

"(B) the private security or payment test of paragraph (2) of subsection (b), or

"(2) which meets the private loan financing test of subsection (c).

"(b) PRIVATE BUSINESS TESTS.—

"(1) PRIVATE BUSINESS USE TEST.—Except as otherwise provided in this subsection, an issue meets the test of this paragraph if more than 10 percent of the proceeds of the issue are to be used for any private business use.

"(2) PRIVATE SECURITY OR PAYMENT TEST.—Except as otherwise provided in this subsection, an issue meets the test of this paragraph if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly—

"(A) secured by any interest in—

"(i) property used or to be used for a private business use, or

"(ii) payments in respect of such property, or

"(B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

"(3) 5 PERCENT TEST FOR PRIVATE BUSINESS USE NOT RELATED OR DISPROPORTIONATE TO GOVERNMENT USE FINANCED BY THE ISSUE.—

"(A) IN GENERAL.—An issue shall be treated as meeting the tests of paragraphs (1) and (2) if such tests would be met if such paragraphs were applied—

"(i) by substituting '5 percent' for '10 percent' each place it appears, and

"(ii) by taking into account only—

"(I) the proceeds of the issue which are to be used for any private business use which is not related to any government use of such proceeds,

"(II) the disproportionate related business use proceeds of the issue, and

"(III) payments, property, and borrowed money with respect to any use of proceeds described in subclause (I) or (II).

"(B) DISPROPORTIONATE RELATED BUSINESS USE PROCEEDS.—For purposes of subparagraph (A), the disproportionate related business use proceeds of an issue is an amount equal to the aggregate of the excesses (determined under the following sentence) for each private business use of the proceeds of an issue which is related to a government use of such proceeds. The excess determined under this sentence is the excess of—

"(i) the proceeds of the issue which are to be used for the private business use over

"(ii) the proceeds of the issue which are to be used for the government use to which such private business use relates.

"(4) LOWER LIMITATION FOR CERTAIN OUTPUT FACILITIES.—An issue 5 percent or more of the proceeds of which are to be used with respect to any output facility (other than a facility for the furnishing of water) shall be treated as meeting the tests of paragraphs (1) and (2) if the nonqualified amount with respect to such issue exceeds the excess of—

"(A) $15,000,000, over

"(B) the aggregate nonqualified amounts with respect to all prior tax-exempt issues 5 percent or more of the proceeds of which are or will be used with respect to such facility (or any other facility which is part of the same project).

There shall not be taken into account under subparagraph (B) any bond which is not outstanding at the time of the later issue or which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue.

"(5) COORDINATION WITH VOLUME CAP WHERE NONQUALIFIED AMOUNT EXCEEDS $15,000,000.—If the nonqualified amount with respect to an issue—

"(A) exceeds $15,000,000, but

"(B) does not exceed the amount which would cause a bond which is part of such issue to be treated as a private activity bond without regard to this paragraph,

such bond shall nonetheless be treated as a private activity bond unless the issuer allocates a portion of its volume cap under section 146 to such issue in an amount equal to the excess of such nonqualified amount over $15,000,000.

"(6) PRIVATE BUSINESS USE DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'private business use' means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For purposes of the preceding sentence, use as a member of the general public shall not be taken into account.

"(B) CLARIFICATION OF TRADE OR BUSINESS.—For purposes of the 1st sentence of subparagraph (A), any activity carried on by a person other than a natural person shall be treated as a trade or business.

"(7) GOVERNMENT USE.—The term 'government use' means any use other than a private business use.

"(8) NONQUALIFIED AMOUNT.—For purposes of this subsection, the term 'nonqualified amount' means, with respect to an issue, the lesser of—

"(A) the proceeds of such issue which are to be used for any private business use, or

"(B) the proceeds of such issue with respect to which there are payments (or property or borrowed money) described in paragraph (2).

"(9) EXCEPTION FOR QUALIFIED 501(C)(3) BONDS.—There shall not be taken into account under this subsection or subsection (c) the portion of the proceeds of an issue which (if issued as a separate issue) would be treated as a qualified 501(c)(3) bond if the issuer elects to treat such portion as a qualified 501(c)(3) bond.

"(c) PRIVATE LOAN FINANCING TEST.—

"(1) IN GENERAL.—An issue meets the test of this subsection if the amount of the proceeds of the issue which are to be used (directly or indirectly) to make or finance loans (other than loans described in paragraph (2)) to persons other than governmental units exceeds the lesser of—

"(A) 5 percent of such proceeds, or

"(B) $5,000,000.

"(2) EXCEPTION FOR TAX ASSESSMENT, ETC., LOANS.—For purposes of paragraph (1), a loan is described in this paragraph if such loan—

"(A) enables the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function, or

"(B) is a nonpurpose investment (within the meaning of section 148(f)(6)(A)).

"(d) QUALIFIED BOND.—For purposes of this part, the term 'qualified bond' means any private activity bond if—

"(1) IN GENERAL.—Such bond is—

"(A) an exempt facility bond,

"(B) a qualified mortgage bond,

"(C) a qualified veterans' mortgage bond,

"(D) a qualified small issue bond,

"(E) a qualified student loan bond,

"(F) a qualified redevelopment bond, or

"(G) a qualified 501(c)(3) bond.

"(2) VOLUME CAP.—Such bond is issued as part of an issue which meets the applicable requirements of section 146, and

"(3) OTHER REQUIREMENTS.—Such bond meets the applicable requirements of each subsection of section 147.

"SEC. 142. EXEMPT FACILITY BOND.

"(a) GENERAL RULE.—For purposes of this part, the term 'exempt facility bond' means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

"(1) airports,

"(2) docks and wharves,

"(3) mass commuting facilities,

"(4) facilities for the furnishing of water,

"(5) sewage facilities,

"(6) solid waste disposal facilities,

"(7) qualified residential rental projects,

"(8) facilities for the local furnishing of electric energy or gas,

"(9) local district heating or cooling facilities, or

"(10) qualified hazardous waste facilities.

"(b) SPECIAL EXEMPT FACILITY BOND RULES.—For purposes of subsection (a)—

"(1) CERTAIN FACILITIES MUST BE GOVERNMENTALLY OWNED.—

"(A) IN GENERAL.—A facility shall be treated as described in paragraph (1), (2), or (3) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit.

"(B) SAFE HARBOR FOR LEASES AND MANAGEMENT CONTRACTS.—For purposes of subparagraph (A), property leased by a governmental unit shall be treated as owned by such governmental unit if—

"(i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property,

"(ii) the lease term (as defined in 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147(b)), and

"(iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised).

Rules similar to the rules of the preceding sentence shall apply to management contracts and similar types of operating agreements.

"(2) LIMITATION ON OFFICE SPACE.—An office shall not be treated as described in a paragraph of subsection (a) unless—

"(A) the office is located on the premises of a facility described in such a paragraph, and

"(B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.

"(c) AIRPORTS, DOCKS AND WHARVES, AND MASS COMMUTING FACILITIES.—For purposes of subsection (a)—

"(1) STORAGE AND TRAINING FACILITIES.—Storage or training facilities directly related to a facility described in paragraph (1), (2), or (3) of subsection (a) shall be treated as described in the paragraph in which such facility is described.

"(2) EXCEPTION FOR CERTAIN PRIVATE FACILITIES.—Property shall not be treated as described in paragraph (1), (2), or (3) of subsection (a) if such property is described in any of the following subparagraphs and is

to be used for any private business use (as defined in section 141(b)(6)).

"(A) Any lodging facility.

"(B) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the exempt facility.

"(C) Any retail facility (other than parking) for passengers or the general public located outside the exempt facility terminal.

"(D) Any office building for individuals who are not employees of a governmental unit or of the operating authority for the exempt facility.

"(E) Any industrial park or manufacturing facility.

"(d) QUALIFIED RESIDENTIAL RENTAL PROJECT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified residential rental project' means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

"(A) 20-50 TEST.—The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

"(B) 40-60 TEST.—The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) QUALIFIED PROJECT PERIOD.—The term 'qualified project period' means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of—

"(i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,

"(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

"(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

"(B) INCOME OF INDIVIDUALS; AREA MEDIAN GROSS INCOME.—The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size.

"(3) CURRENT INCOME DETERMINATIONS.—For purposes of this subsection—

"(A) IN GENERAL.—The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident.

"(B) CONTINUING RESIDENT'S INCOME MAY INCREASE ABOVE THE APPLICABLE LIMIT.—If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such unit (or as of any prior determination under subparagraph (A)), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

"(4) SPECIAL RULE IN CASE OF DEEP RENT SKEWING.—

"(A) IN GENERAL.—In the case of any project described in subparagraph (B), the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting—

"(i) '170 percent' for '140 percent', and

"(ii) 'any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit'.

"(B) DEEP RENT SKEWED PROJECT.—A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii):

"(i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

"(ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.

"(iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed ½ of the average rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

"(C) DEFINITIONS APPLICABLE TO SUBPARAGRAPH (B).—For purposes of subparagraph (B)—

"(i) LOW-INCOME UNIT.—The term 'low-income unit' means any unit which is required to be occupied by individuals who meet the applicable income limit.

"(ii) GROSS RENT.—The term 'gross rent' includes—

"(I) any payment under section 8 of the United States Housing Act of 1937, and

"(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

"(5) APPLICABLE INCOME LIMIT.—For purposes of paragraphs (3) and (4), the term 'applicable income limit' means—

"(A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or

"(B) in the case of a unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

"(6) SPECIAL RULE FOR CERTAIN HIGH COST HOUSING AREA.—In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting '25 percent' for '40 percent'.

"(7) CERTIFICATION TO SECRETARY.—The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall subject the operator to penalty, as provided in section 6652(j).

"(e) FACILITIES FOR THE FURNISHING OF WATER.—For purposes of subsection (a)(4), the term 'facilities for the furnishing of water' means any facility for the furnishing of water if—

"(1) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and

"(2) either the facility is operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

"(f) LOCAL FURNISHING OF ELECTRIC ENERGY OR GAS.—For purposes of subsection (a)(8), the local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

"(1) a city and 1 contiguous county, or

"(2) 2 contiguous counties.

"(g) LOCAL DISTRICT HEATING OR COOLING FACILITY.—

"(1) IN GENERAL.—For purposes of subsection (a)(9), the term 'local district heating or cooling facility' means property used as an integral part of a local district heating or cooling system.

"(2) LOCAL DISTRICT HEATING OR COOLING SYSTEM.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'local district heating or cooling system' means any local system consisting of a pipeline or network (which may be connected to a heating or cooling source) providing hot water, chilled water, or steam to 2 or more users for—

"(i) residential, commercial, or industrial heating or cooling, or

"(ii) process steam.

"(B) LOCAL SYSTEM.—For purposes of this paragraph, a local system includes facilities furnishing heating and cooling to an area consisting of a city and 1 contiguous county.

"(h) QUALIFIED HAZARDOUS WASTE FACILITIES.—For purposes of subsection (a)(10), the term 'qualified hazardous waste facility' means any facility for the disposal of hazardous waste by incineration or entombment but only if—

"(1) the facility is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986), and

"(2) the portion of such facility which is to be provided by the issue does not exceed the portion of the facility which is to be used by persons other than—

"(A) the owner or operator of such facility, and

"(B) any related person (within the meaning of section 144(a)(3)) to such owner or operator.

"SEC. 143. MORTGAGE REVENUE BONDS: QUALIFIED MORTGAGE BOND AND QUALIFIED VETERANS' MORTGAGE BOND.

"(a) QUALIFIED MORTGAGE BOND.—

"(1) QUALIFIED MORTGAGE BOND DEFINED.—

"(A) IN GENERAL.—For purposes of this title, the term 'qualified mortgage bond' means a bond which is issued as part of a qualified mortgage issue.

"(B) TERMINATION ON DECEMBER 31, 1988.—No bond issued after December 31, 1988, may be treated as a qualified mortgage bond.

"(2) QUALIFIED MORTGAGE ISSUE DEFINED.—

"(A) DEFINITION.—For purposes of this title, the term 'qualified mortgage issue' means an issue by a State or political subdivision thereof of 1 or more bonds, but only if—

"(i) all proceeds of such issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences,

"(ii) such issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), and (i), and

"(iii) no bond which is part of such issue meets the private business tests of paragraphs (1) and (2) of section 141(b).

"(B) GOOD FAITH EFFORT TO COMPLY WITH MORTGAGE ELIGIBILITY REQUIREMENTS.—An issue which fails to meet 1 or more of the requirements of subsections (c), (d), (e), (f), and (i) shall be treated as meeting such requirements if—

"(i) the issuer in good faith attempted to meet all such requirements before the mortgages were executed,

"(ii) 95 percent or more of the proceeds devoted to owner-financing was devoted to residences with respect to which (at the time the mortgages were executed) all such requirements were met, and

"(iii) any failure to meet the requirements of such subsections is corrected within a reasonable period after such failure is first discovered.

"(C) GOOD FAITH EFFORT TO COMPLY WITH OTHER REQUIREMENTS.—An issue which fails to meet 1 or more of the requirements of subsections (g) and (h) shall be treated as meeting such requirements if—

"(i) the issuer in good faith attempted to meet all such requirements, and

"(ii) any failure to meet such requirements is due to inadvertent error after taking reasonable steps to comply with such requirements.

"(b) QUALIFIED VETERANS' MORTGAGE BOND DEFINED.—For purposes of this part, the term 'qualified veterans' mortgage bond' means any bond—

"(1) which is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide residences for veterans,

"(2) the payment of the principal and interest on which is secured by the general obligation of a State,

"(3) which is part of an issue which meets the requirements of subsections (c), (g), (i)(1), and (l), and

"(4) which does not meet the private business tests of paragraphs (1) and (2) of section 141(b).

Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(2) shall apply to the requirements specified in paragraph (3) of this subsection.

"(c) RESIDENCE REQUIREMENTS.—

"(1) FOR A RESIDENCE.—A residence meets the requirements of this subsection only if—

"(A) it is a single-family residence which can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided, and

"(B) it is located within the jurisdiction of the authority issuing the bond.

"(2) FOR AN ISSUE.—An issue meets the requirements of this subsection only if all of the residences for which owner-financing is provided under the issue meet the requirements of paragraph (1).

"(d) 3-YEAR REQUIREMENT.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if 95 percent or more of the net proceeds of such issue are used to finance the residences of mortgagors who had no present ownership interest in their principal residences at any time during the 3-year period ending on the date their mortgage is executed.

"(2) EXCEPTIONS.—For purposes of paragraph (1), the proceeds of an issue which are used to provide—

"(A) financing with respect to targeted area residences, and

"(B) qualified home improvement loans and qualified rehabilitation loans,

shall be treated as used as described in paragraph (1).

"(3) MORTGAGOR'S INTEREST IN RESIDENCE BEING FINANCED.—For purposes of paragraph (1), a mortgagor's interest in the residence with respect to which the financing is being provided shall not be taken into account.

"(e) PURCHASE PRICE REQUIREMENT.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-financing of which is provided under the issue does not exceed 90 percent of the average area purchase price applicable to such residence.

"(2) AVERAGE AREA PURCHASE PRICE.—For purposes of paragraph (1), the term 'average area purchase price' means, with respect to any residence, the average purchase price of single family residences (in the statistical area in which the residence is located) which were purchased during the most recent 12-month period for which sufficient statistical information is available. The determination under the preceding sentence shall be made as of the date on which the commitment to provide the financing is made (or, if earlier, the date of the purchase of the residence).

"(3) SEPARATE APPLICATION TO NEW RESIDENCES AND OLD RESIDENCES.—For purposes of this subsection, the determination of average area purchase price shall be made separately with respect to—

"(A) residences which have not been previously occupied, and

"(B) residences which have been previously occupied.

"(4) SPECIAL RULE FOR 2 TO 4 FAMILY RESIDENCES.—For purposes of this subsection, to the extent provided in regulations, the determination of average area purchase price shall be made separately with respect to 1 family, 2 family, 3 family, and 4 family residences.

"(5) SPECIAL RULE FOR TARGETED AREA RESIDENCES.—In the case of a targeted area residence, paragraph (1) shall be applied by substituting '110 percent' for '90 percent'.

"(6) EXCEPTION FOR QUALIFIED HOME IMPROVEMENT LOANS.—Paragraph (1) shall not apply with respect to any qualified home improvement loan.

"(f) INCOME REQUIREMENTS.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if all owner-financing provided under the issue is provided for mortgagors whose family income is 115 percent or less of the applicable median family income.

"(2) DETERMINATION OF FAMILY INCOME.—For purposes of this subsection, the family income of mortgagors, and area median gross income, shall be determined by the Secretary after taking into account the regulations prescribed under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination).

"(3) SPECIAL RULE FOR APPLYING PARAGRAPH (1) IN THE CASE OF TARGETED AREA RESIDENCES.—In the case of any financing provided under any issue for targeted area residences—

"(A) ½ of the amount of such financing may be provided without regard to paragraph (1), and

"(B) paragraph (1) shall be treated as satisfied with respect to the remainder of the owner financing if the family income of the mortgagor is 140 percent or less of the applicable median family income.

"(4) APPLICABLE MEDIAN FAMILY INCOME.—For purposes of this subsection, the term 'applicable median family income' means, with respect to a residence, whichever of the following is the greater:

"(A) the area median gross income for the area in which such residence is located, or

"(B) the statewide median gross income for the State in which such residence is located.

"(g) REQUIREMENTS RELATED TO ARBITRAGE.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if such issue meets the requirements of paragraphs (2) and (3) of this subsection. Such requirements shall be in addition to the requirements of section 148 (other than subsection (f) thereof).

"(2) EFFECTIVE RATE OF MORTGAGE INTEREST CANNOT EXCEED BOND YIELD BY MORE THAN 1.125 PERCENTAGE POINTS.—

"(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph only if the excess of—

"(i) the effective rate of interest on the mortgages provided under the issue, over

"(ii) the yield on the issue,

is not greater than 1.125 percentage points.

"(B) EFFECTIVE RATE OF MORTGAGE INTEREST.—

"(i) IN GENERAL.—In determining the effective rate of interest on any mortgage for purposes of this paragraph, there shall be taken into account all fees, charges, and other amounts borne by the mortgagor which are attributable to the mortgage or to the bond issue.

"(ii) SPECIFICATION OF SOME OF THE AMOUNTS TO BE TREATED AS BORNE BY THE MORTGAGOR.—For purposes of clause (i), the following items (among others) shall be treated as borne by the mortgagor:

"(I) all points or similar charges paid by the seller of the property, and

"(II) the excess of the amounts received from any person other than the mortgagor by any person in connection with the acquisition of the mortgagor's interest in the property over the usual and reasonable acquisition costs of a person acquiring like property where owner-financing is not provided through the use of qualified mortgage bonds or qualified veterans' mortgage bonds.

"(iii) SPECIFICATION OF SOME OF THE AMOUNTS TO BE TREATED AS NOT BORNE BY THE MORTGAGOR.—For purposes of clause (i), the following items shall not be taken into account:

"(I) any expected rebate of arbitrage profits, and

"(II) any application fee, survey fee, credit report fee, insurance charge, or similar amount to the extent such amount does not

exceed amounts charged in such area in cases where owner-financing is not provided through the use of qualified mortgage bonds or qualified veterans' mortgage bonds. Subclause (II) shall not apply to origination fees, points, or similar amounts.

"(iv) PREPAYMENT ASSUMPTIONS.—In determining the effective rate of interest—

"(I) it shall be assumed that the mortgage prepayment rate will be the rate set forth in the most recent applicable mortgage maturity experience table published by the Federal Housing Administration, and

"(II) prepayments of principal shall be treated as received on the last day of the month in which the issuer reasonably expects to receive such prepayments.

"(C) YIELD ON THE ISSUE.—For purposes of this subsection, the yield on an issue shall be determined on the basis of—

"(i) the issue price (within the meaning of sections 1273 and 1274), and

"(ii) an expected maturity for the bonds which is consistent with the assumptions required under subparagraph (B)(iv).

"(3) ARBITRAGE AND INVESTMENT GAINS TO BE USED TO REDUCE COSTS OF OWNER-FINANCING.—

"(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

"(i) the excess of—

"(I) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over

"(II) the amount which would have been earned if such investments were invested at a rate equal to the yield on the issue, plus

"(ii) any income attributable to the excess described in clause (i),

is paid or credited to the mortgagors as rapidly as may be practicable.

"(B) INVESTMENT GAINS AND LOSSES.—For purposes of subparagraph (A), in determining the amount earned on all nonpurpose investments, any gain or loss on the disposition of such investments shall be taken into account.

"(C) REDUCTION WHERE ISSUER DOES NOT USE FULL 1.125 PERCENTAGE POINTS UNDER PARAGRAPH (2).—

"(i) IN GENERAL.—The amount required to be paid or credited to mortgagors under subparagraph (A) (determined under this paragraph without regard to this subparagraph) shall be reduced by the unused paragraph (2) amount.

"(ii) UNUSED PARAGRAPH (2) AMOUNT.—For purposes of clause (i), the unused paragraph (2) amount is the amount which (if it were treated as an interest payment made by mortgagors) would result in the excess referred to in paragraph (2)(A) being equal to 1.125 percentage points. Such amount shall be fixed and determined as of the yield determination date.

"(D) ELECTION TO PAY UNITED STATES.—Subparagraph (A) shall be satisfied with respect to any issue if the issuer elects before issuing the bonds to pay over to the United States—

"(i) not less frequently than once each 5 years after the date of issue, an amount equal to 90 percent of the aggregate amount which would be required to be paid or credited to mortgagors under subparagraph (A) (and not theretofore paid to the United States), and

"(ii) not later than 60 days after the redemption of the last bond, 100 percent of such aggregate amount not theretofore paid to the United States.

"(E) SIMPLIFIED ACCOUNTING.—The Secretary shall permit any simplified system of accounting for purposes of this paragraph which the issuer establishes to the satisfaction of the Secretary will assure that the purposes of this paragraph are carried out.

"(F) NONPURPOSE INVESTMENT.—For purposes of this paragraph, the term 'nonpurpose investment' has the meaning given such term by section 148(f)(6)(A).

"(h) PORTION OF LOANS REQUIRED TO BE PLACED IN TARGETED AREAS.—

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if at least 20 percent of the proceeds of the issue which are devoted to providing owner-financing is made available (with reasonable diligence) for owner-financing of targeted area residences for at least 1 year after the date on which owner-financing is first made available with respect to targeted area residences.

"(2) LIMITATION.—Nothing in paragraph (1) shall be treated as requiring the making available of an amount which exceeds 40 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences located in targeted areas within the jurisdiction of the issuing authority.

"(i) OTHER REQUIREMENTS.—

"(1) MORTGAGES MUST BE NEW MORTGAGES.—

"(A) IN GENERAL.—An issue meets the requirements of this subsection only if no part of the proceeds of such issue is used to acquire or replace existing mortgages.

"(B) EXCEPTIONS.—Under regulations prescribed by the Secretary, the replacement of—

"(i) construction period loans,

"(ii) bridge loans or similar temporary initial financing, and

"(iii) in the case of a qualified rehabilitation, an existing mortgage,

shall not be treated as the acquisition or replacement of an existing mortgage for purposes of subparagraph (A).

"(2) CERTAIN REQUIREMENTS MUST BE MET WHERE MORTGAGE IS ASSUMED.—An issue meets the requirements of this subsection only if each mortgage with respect to which owner-financing has been provided under such issue may be assumed only if the requirements of subsections (c), (d), and (e), and the requirements of paragraph (1) or (3)(B) of subsection (f) (whichever applies), are met with respect to such assumption.

"(j) TARGETED AREA RESIDENCES.—

"(1) IN GENERAL.—For purposes of this section, the term 'targeted area residence' means a residence in an area which is either—

"(A) a qualified census tract, or

"(B) an area of chronic economic distress.

"(2) QUALIFIED CENSUS TRACT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualified census tract' means a census tract in which 70 percent or more of the families have income which is 80 percent or less of the statewide median family income.

"(B) DATA USED.—The determination under subparagraph (A) shall be made on the basis of the most recent decennial census for which data are available.

"(3) AREA OF CHRONIC ECONOMIC DISTRESS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'area of chronic economic distress' means an area of chronic economic distress—

"(i) designated by the State as meeting the standards established by the State for purposes of this subsection, and

"(ii) the designation of which has been approved by the Secretary and the Secretary of Housing and Urban Development.

"(B) CRITERIA TO BE USED IN APPROVING STATE DESIGNATIONS.—The criteria used by the Secretary and the Secretary of Housing and Urban Development in evaluating any proposed designation of an area for purposes of this subsection shall be—

"(i) the condition of the housing stock, including the age of the housing and the number of abandoned and substandard residential units,

"(ii) the need of area residents for owner-financing under this section, as indicated by low per capita income, a high percentage of families in poverty, a high number of welfare recipients, and high unemployment rates,

"(iii) the potential for use of owner-financing under this section to improve housing conditions in the area, and

"(iv) the existence of a housing assistance plan which provides a displacement program and a public improvements and services program.

"(k) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) MORTGAGE.—The term 'mortgage' means any owner-financing.

"(2) STATISTICAL AREA.—

"(A) IN GENERAL.—The term 'statistical area' means—

"(i) a metropolitan statistical area, and

"(ii) any county (or the portion thereof) which is not within a metropolitan statistical area.

"(B) METROPOLITAN STATISTICAL AREA.—The term 'metropolitan statistical area' includes the area defined as such by the Secretary of Commerce.

"(C) DESIGNATION WHERE ADEQUATE STATISTICAL INFORMATION NOT AVAILABLE.—For purposes of this paragraph, if there is insufficient recent statistical information with respect to a county (or portion thereof) described in subparagraph (A)(ii), the Secretary may substitute for such county (or portion thereof) another area for which there is sufficient recent statistical information.

"(D) DESIGNATION WHERE NO COUNTY.—In the case of any portion of a State which is not within a county, subparagraphs (A)(ii) and (C) shall be applied by substituting for 'county' an area designated by the Secretary which is the equivalent of a county.

"(3) ACQUISITION COST.—

"(A) IN GENERAL.—The term 'acquisition cost' means the cost of acquiring the residence as a completed residential unit.

"(B) EXCEPTIONS.—The term 'acquisition cost' does not include—

"(i) usual and reasonable settlement or financing costs,

"(ii) the value of services performed by the mortgagor or members of his family in completing the residence, and

"(iii) the cost of land which has been owned by the mortgagor for at least 2 years before the date on which construction of the residence begins.

"(C) SPECIAL RULE FOR QUALIFIED REHABILITATION LOANS.—In the case of a qualified rehabilitation loan, for purposes of subsection (e), the term 'acquisition cost' includes the cost of the rehabilitation.

"(4) QUALIFIED HOME IMPROVEMENT LOAN.—The term 'qualified home improvement loan' means the financing (in an amount which does not exceed $15,000)—

"(A) of alterations, repairs, and improvements on or in connection with an existing residence by the owner thereof, but

"(B) only of such items as substantially protect or improve the basic livability or energy efficiency of the property.

"(5) QUALIFIED REHABILITATION LOAN.—

"(A) IN GENERAL.—The term 'qualified rehabilitation loan' means any owner-financing provided in connection with—

"(i) a qualified rehabilitation, or

"(ii) the acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after the completion of the rehabilitation.

"(B) QUALIFIED REHABILITATION.—For purposes of subparagraph (A), the term 'qualified rehabilitation' means any rehabilitation of a building if—

"(i) there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins,

"(ii) in the rehabilitation process—

"(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

"(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

"(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

"(iii) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

For purposes of clause (iii), the mortgagor's adjusted basis shall be determined as of the completion of the rehabilitation or, if later, the date on which the mortgagor acquires the residence.

"(6) DETERMINATIONS ON ACTUARIAL BASIS.—All determinations of yield, effective interest rates, and amounts required to be paid or credited to mortgagors or paid to the United States under subsection (g) shall be made on an actuarial basis taking into account the present value of money.

"(7) SINGLE-FAMILY AND OWNER-OCCUPIED RESIDENCES INCLUDE CERTAIN RESIDENCES WITH 2 TO 4 UNITS.—Except for purposes of subsection (h)(2), the terms 'single-family' and 'owner-occupied', when used with respect to residences, include 2, 3, or 4 family residences—

"(A) one unit of which is occupied by the owner of the units, and

"(B) which were first occupied at least 5 years before the mortgage is executed.

"(8) COOPERATIVE HOUSING CORPORATIONS.—

"(A) IN GENERAL.—In the case of any cooperative housing corporation—

"(i) each dwelling unit shall be treated as if it were actually owned by the person entitled to occupy such dwelling unit by reason of his ownership of stock in the corporation, and

"(ii) any indebtedness of the corporation allocable to the dwelling unit shall be treated as if it were indebtedness of the shareholder entitled to occupy the dwelling unit.

"(B) ADJUSTMENT TO TARGETED AREA REQUIREMENT.—In the case of any issue to provide financing to a cooperative housing corporation with respect to cooperative housing not located in a targeted area, to the extent provided in regulations, such issue may be combined with 1 or more other issues for purposes of determining whether the requirements of subsection (h) are met.

"(C) COOPERATIVE HOUSING CORPORATION.—The term 'cooperative housing corporation' has the meaning given to such term by section 216(b)(1).

"(9) TREATMENT OF LIMITED EQUITY COOPERATIVE HOUSING.—

"(A) TREATMENT AS RESIDENTIAL RENTAL PROPERTY.—Except as provided in subparagraph (B), for purposes of this part—

"(i) any limited equity cooperative housing shall be treated as residential rental property and not as owner-occupied housing, and

"(ii) bonds issued to provide such housing shall be subject to the same requirements and limitations as bonds the proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)).

"(B) BONDS SUBJECT TO QUALIFIED MORTGAGE BOND TERMINATION DATE.—Subparagraph (A) shall not apply to any bond issued after the date specified in subsection (a)(1)(B).

"(C) LIMITED EQUITY COOPERATIVE HOUSING.—For purposes of this paragraph, the term 'limited equity cooperative housing' means any dwelling unit which a person is entitled to occupy by reason of his ownership of stock in a qualified cooperative housing corporation.

"(D) QUALIFIED COOPERATIVE HOUSING CORPORATION.—For purposes of this paragraph, the term 'qualified cooperative housing corporation' means any cooperative housing corporation (as defined in section 216(b)(1)) if—

"(i) the consideration paid for stock held by any stockholder entitled to occupy any house or apartment in a building owned or leased by the corporation may not exceed the sum of—

"(I) the consideration paid for such stock by the first such stockholder, as adjusted by a cost-of-living adjustment determined by the Secretary,

"(II) payments made by any stockholder for improvements to such house or apartment, and

"(III) payments (other than amounts taken into account under subclause (I) or (II)) attributable to any stockholder to amortize the principal of the corporation's indebtedness arising from the acquisition or development of real property, including improvements thereof,

"(ii) the value of the corporation's assets (reduced by any corporate liabilities), to the extent such value exceeds the combined transfer values of the outstanding corporate stock, shall be used only for public benefit or charitable purposes, or directly to benefit the corporation itself, and shall not be used directly to benefit any stockholder, and

"(iii) at the time of issuance of the issue, such corporation makes an election under this paragraph.

"(E) EFFECT OF ELECTION.—If a cooperative housing corporation makes an election under this paragraph, section 216 shall not apply with respect to such corporation (or any successor thereof) during the qualified project period (as defined in section 142(d)(2)).

"(F) CORPORATION MUST CONTINUE TO BE QUALIFIED COOPERATIVE.—Subparagraph (A)(i) shall not apply to limited equity cooperative housing unless the cooperative housing corporation continues to be a qualified cooperative housing corporation at all times during the qualified project period (as defined in section 142(d)(2)).

"(G) ELECTION IRREVOCABLE.—Any election under this paragraph, once made, shall be irrevocable.

"(I) ADDITIONAL REQUIREMENTS FOR QUALIFIED VETERANS' MORTGAGE BONDS.—An issue meets the requirements of this subsection only if it meets the requirements of paragraphs (1), (2), and (3).

"(1) VETERANS TO WHOM FINANCING MAY BE PROVIDED.—An issue meets the requirements of this paragraph only if each mortgagor to whom financing is provided under the issue is a qualified veteran.

"(2) REQUIREMENT THAT STATE PROGRAM BE IN EFFECT BEFORE JUNE 22, 1984.—An issue meets the requirements of this paragraph only if it is a general obligation of a State which issued qualified veterans' mortgage bonds before June 22, 1984.

"(3) VOLUME LIMITATION.—

"(A) IN GENERAL.—An issue meets the requirements of this paragraph only if the aggregate amount of bonds issued pursuant thereto (when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the State during the calendar year) does not exceed the State veterans limit for such calendar year.

"(B) STATE VETERANS LIMIT.—A State veterans limit for any calendar year is the amount equal to—

"(i) the aggregate amount of qualified veterans bonds issued by such State during the period beginning on January 1, 1979, and ending on June 22, 1984 (not including the amount of any qualified veterans bond issued by such State during the calendar year (or portion thereof) in such period for which the amount of such bonds so issued was the lowest), divided by

"(ii) the number (not to exceed 5) of calendar years after 1979 and before 1985 during which the State issued qualified veterans bonds (determined by only taking into account bonds issued on or before June 22, 1984).

"(C) TREATMENT OF REFUNDING ISSUES.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the term 'qualified veterans' mortgage bond' shall not include any bond issued to refund another bond but only if the maturity date of the refunding bond is not later than the later of—

"(I) the maturity date of the bond to be refunded, or

"(II) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

The preceding sentence shall apply only to the extent that the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

"(ii) EXCEPTION FOR ADVANCE REFUNDING.—Clause (i) shall not apply to any bond issued to advance refund another bond.

"(4) QUALIFIED VETERAN.—For purposes of this subsection, the term 'qualified veteran' means any veteran—

"(A) who served on active duty at some time before January 1, 1977, and

"(B) who applied for the financing before the later of—

"(i) the date 30 years after the last date on which such veteran left active service, or

"(ii) January 31, 1985.

"(5) SPECIAL RULE FOR CERTAIN SHORT-TERM BONDS.—In the case of any bond—

"(A) which has a term of 1 year or less,

"(B) which is authorized to be issued under O.R.S. 407.435 (as in effect on the date of the enactment of this subsection), to provide financing for property taxes, and

"(C) which is redeemed at the end of such term,

the amount taken into account under this subsection with respect to such bond shall be 1/15 of its principal amount.

"SEC. 144. QUALIFIED SMALL ISSUE BOND; QUALIFIED STUDENT LOAN BOND; QUALIFIED REDEVELOPMENT BOND.

"(a) QUALIFIED SMALL ISSUE BOND.—

"(1) IN GENERAL.—For purposes of this part, the term 'qualified small issue bond' means any bond issued as part of an issue

the aggregate authorized face amount of which is $1,000,000 or less and 95 percent or more of the net proceeds of which are to be used—

"(A) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or

"(B) to redeem part or all of a prior issue which was issued for purposes described in subparagraph (A) or this subparagraph.

"(2) CERTAIN PRIOR ISSUES TAKEN INTO ACCOUNT.—If—

"(A) the proceeds of 2 or more issues of bonds (whether or not the issuer of each such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

"(B) the principal user of such facilities is or will be the same person or 2 or more related persons, and

"(C) but for this paragraph, paragraph (1) (or the corresponding provision of prior law) would apply to each such issue,

then, for purposes of paragraph (1), in determining the aggregate face amount of any later issue there shall be taken into account the aggregate face amount of tax-exempt bonds issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

"(3) RELATED PERSONS.—For purposes of this subsection, a person is a related person to another person if—

"(A) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

"(B) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein).

"(4) $10,000,000 LIMIT IN CERTAIN CASES.—

"(A) IN GENERAL.—At the election of the issuer with respect to any issue, this subsection shall be applied—

"(i) by substituting '$10,000,000' for '$1,000,000' in paragraph (1), and

"(ii) in determining the aggregate face amount of such issue, by taking into account not only the amount described in paragraph (2), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (B) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding tax-exempt issues to which paragraph (1) (or the corresponding provision of prior law) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in paragraph (2).

"(B) FACILITIES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(ii), the facilities described in this subparagraph are facilities—

"(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

"(ii) the principal user of which is or will be the same person or 2 or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

"(C) CERTAIN CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(ii), any capital expenditure—

"(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

"(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance,

"(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000), or

"(iv) described in clause (i) or (ii) of section 41(b)(2)(A) for which a deduction was allowed under section 174(a),

shall not be taken into account.

"(D) LIMITATION ON LOSS OF TAX EXEMPTION.—In applying subparagraph (A)(ii) with respect to capital expenditures made after the date of any issue, no bond issued as a part of such issue shall cease to be treated as a qualified small issue bond by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

"(E) CERTAIN REFINANCING ISSUES.—In the case of any issue described in paragraph (1)(B), an election may be made under subparagraph (A) of this paragraph only if all of the prior issues being redeemed are issues to which paragraph (1) (or the corresponding provision of prior law) applied. In applying subparagraph (A)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under paragraph (1) (or the corresponding provision of prior law).

"(F) AGGREGATE AMOUNT OF CAPITAL EXPENDITURES WHERE THERE IS URBAN DEVELOPMENT ACTION GRANT.—In the case of any issue 95 percent or more of the net proceeds of which are to be used to provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974, capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).

"(5) ISSUES FOR RESIDENTIAL PURPOSES.—This subsection shall not apply to any bond issued as part of an issue 5 percent or more of the net proceeds of which are to be used directly or indirectly to provide residential real property for family units.

"(6) LIMITATIONS ON TREATMENT OF BONDS AS PART OF THE SAME ISSUE.—

"(A) IN GENERAL.—For purposes of this subsection, separate lots of bonds which (but for this subparagraph) would be treated as part of the same issue shall be treated as separate issues unless the proceeds of such lots are to be used with respect to 2 or more facilities—

"(i) which are located in more than 1 State, or

"(ii) which have, or will have, as the same principal user the same person or related persons.

"(B) FRANCHISES.—For purposes of subparagraph (A), a person (other than a governmental unit) shall be considered a principal user of a facility if such person (or a group of related persons which includes such person)—

"(i) guarantees, arranges, participates in, or assists with the issuance (or pays any portion of the cost of issuance) of any bond the proceeds of which are to be used to finance or refinance such facility, and

"(ii) provides any property, or any franchise, trademark, or trade name (within the meaning of section 1253), which is to be used in connection with such facility.

"(7) SUBSECTION NOT TO APPLY IF BONDS ISSUED WITH CERTAIN OTHER TAX-EXEMPT BONDS.—This subsection shall not apply to any bond issued as part of an issue (other than an issue to which paragraph (4) applies) if the interest on any other bond which is part of such issue is excluded from gross income under any provision of law other than this subsection.

"(8) RESTRICTIONS ON FINANCING CERTAIN FACILITIES.—This subsection shall not apply to an issue if—

"(A) more than 25 percent of the net proceeds of the issue are to be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service, or the provision of recreation or entertainment; or

"(B) any portion of the proceeds of the issue is to be used to provide the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, or racetrack.

"(9) AGGREGATION OF ISSUES WITH RESPECT TO SINGLE PROJECT.—For purposes of this subsection, 2 or more issues part or all of the net proceeds of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of offices, stores, or warehouses using substantial common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue).

"(10) AGGREGATE LIMIT PER TAXPAYER.—

"(A) IN GENERAL.—This subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any test-period beneficiary (when increased by the outstanding tax-exempt facility-related bonds of such beneficiary) exceeds $40,000,000.

"(B) OUTSTANDING TAX-EXEMPT FACILITY-RELATED BONDS.—

"(i) IN GENERAL.—For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt facility-related bonds of any person who is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in clause (ii)—

"(I) which are allocated to such beneficiary, and

"(II) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

"(ii) BONDS TAKEN INTO ACCOUNT.—For purposes of clause (i), the bonds referred to in this clause are—

"(I) exempt facility bonds, qualified small issue bonds, and qualified redevelopment bonds, and

"(II) industrial development bonds (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the

Tax Reform Act of 1986) to which section 141(a) does not apply.

"(C) ALLOCATION OF FACE AMOUNT OF ISSUE.—

"(i) IN GENERAL.—Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary of a facility financed by the proceeds of such issue (other than an owner of such facility) is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility used by such beneficiary bears to the entire facility.

"(ii) OWNERS.—Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary who is an owner of a facility financed by the proceeds of such issue is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility owned by such beneficiary bears to the entire facility.

"(D) TEST-PERIOD BENEFICIARY.—For purposes of this paragraph, except as provided in regulations, the term 'test-period beneficiary' means any person who is an owner or a principal user of facilities being financed by the issue at any time during the 3-year period beginning on the later of—

"(i) the date such facilities were placed in service, or

"(ii) the date of issue.

"(E) TREATMENT OF RELATED PERSONS.—For purposes of this paragraph, all persons who are related (within the meaning of paragraph (3)) to each other shall be treated as 1 person.

"(11) LIMITATION ON ACQUISITION OF DEPRECIABLE FARM PROPERTY.—

"(A) IN GENERAL.—This subsection shall not apply to any issue if more than $250,000 of the net proceeds of such issue are to be used to provide depreciable farm property with respect to which the principal user is or will be the same person or 2 or more related persons.

"(B) DEPRECIABLE FARM PROPERTY.—For purposes of this paragraph, the term 'depreciable farm property' means property of a character subject to the allowance for depreciation which is to be used in a trade or business of farming.

"(C) PRIOR ISSUES TAKEN INTO ACCOUNT.—In determining the amount of proceeds of an issue to be used as described in subparagraph (A), there shall be taken into account the aggregate amount of each prior issue to which paragraph (1) (or the corresponding provisions of prior law) applied which were or will be so used.

"(12) TERMINATION DATES.—

"(A) IN GENERAL.—This subsection shall not apply to—

"(i) any bond (other than a bond described in clause (ii)) issued after December 31, 1986, or

"(ii) any bond issued to refund a bond issued on or before such date unless—

"(I) the refunding bond has a maturity date not later than the maturity date of the refunded bond,

"(II) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond,

"(III) the interest rate on the refunding bond is lower than the interest rate on the refunded bond, and

"(IV) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

"(B) BONDS ISSUED TO FINANCE MANUFACTURING FACILITIES AND FARM PROPERTY.—In the case of any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

"(i) any manufacturing facility, or

"(ii) any land or property in accordance with section 147(c)(2),

subparagraph (A) shall be applied by substituting '1989' for '1986'.

"(C) MANUFACTURING FACILITY.—For purposes of this paragraph, the term 'manufacturing facility' means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property). A rule similar to the rule of section 142(b)(2) shall apply for purposes of the preceding sentence.

"(b) QUALIFIED STUDENT LOAN BOND.—For purposes of this part—

"(1) IN GENERAL.—The term 'qualified student loan bond' means any bond issued as part of an issue the applicable percentage or more of the net proceeds of which are to be used directly or indirectly to make or finance student loans under—

"(A) a program of general application to which the Higher Education Act of 1965 applies if—

"(i) limitations are imposed under the program on—

"(I) the maximum amount of loans outstanding to any student, and

"(II) the maximum rate of interest payable on any loan,

"(ii) the loans are directly or indirectly guaranteed by the Federal Government,

"(iii) the financing of loans under the program is not limited by Federal law to the proceeds of tax-exempt bonds, and

"(iv) special allowance payments under section 438 of the Higher Education Act of 1965—

"(I) are authorized to be paid with respect to loans made under the program, or

"(II) would be authorized to be made with respect to loans under the program if such loans were not financed with the proceeds of tax-exempt bonds, or

"(B) a program of general application approved by the State to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply if no loan under such program exceeds the difference between the total cost of attendance and other forms of student assistance (not including loans pursuant to section 428B(a)(1) of such Act (relating to parent loans) or subpart I of part C of title VII of the Public Health Service Act (relating to student assistance)) for which the student borrower may be eligible a bond issued as part of an issue shall be treated as a qualified student loan bond only if no bond which is part of such issue meets the private business tests of paragraphs (1) and (2) of section 141(b).

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means—

"(A) 90 percent in the case of the program described in paragraph (1)(A), and

"(B) 95 percent in the case of the program described in paragraph (1)(B).

"(3) STUDENT BORROWERS MUST BE RESIDENTS OF ISSUING STATE, ETC.—A student loan shall be treated as being made or financed under a program described in paragraph (1) with respect to an issue only if the student is—

"(A) a resident of the State from which the volume cap under section 146 for such loan was derived, or

"(B) enrolled at an educational institution located in such State.

"(4) DISCRIMINATION ON BASIS OF SCHOOL LOCATION NOT PERMITTED.—A program shall not be treated as described in paragraph (1)(A) if such program discriminates on the basis of the location (in the United States) of the educational institution in which the student is enrolled.

"(c) QUALIFIED REDEVELOPMENT BOND.—For purposes of this part—

"(1) IN GENERAL.—The term 'qualified redevelopment bond' means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used for 1 or more redevelopment purposes in any designated blighted area.

"(2) ADDITIONAL REQUIREMENTS.—A bond shall not be treated as a qualified redevelopment bond unless—

"(A) the issue described in paragraph (1) is issued pursuant to—

"(i) a State law which authorizes the issuance of such bonds for redevelopment purposes in blighted areas, and

"(ii) a redevelopment plan which is adopted before such issuance by the governing body described in paragraph (4)(A) with respect to the designated blighted area,

"(B)(i) the payment of the principal and interest on such issue is primarily secured by taxes of general applicability imposed by a general purpose governmental unit, or

"(ii) any increase in real property tax revenues (attributable to increases in assessed value) by reason of the carrying out of such purposes in such area is reserved exclusively for debt service on such issue (and similar issues) to the extent such increase does not exceed such debt service,

"(C) each interest in real property located in such area—

"(i) which is acquired by a governmental unit with the proceeds of the issue, and

"(ii) which is transferred to a person other than a governmental unit,

is transferred for fair market value,

"(D) the financed area with respect to such issue meets the no additional charge requirements of paragraph (5), and

"(E) the use of the proceeds of the issue meets the requirements of paragraph (6).

"(3) REDEVELOPMENT PURPOSES.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'redevelopment purposes' means, with respect to any designated blighted area—

"(i) the acquisition (by a governmental unit having the power to exercise eminent domain) of real property located in such area,

"(ii) the clearing and preparation for redevelopment of land in such area which was acquired by such governmental unit,

"(iii) the rehabilitation of real property located in such area which was acquired by such governmental unit, and

"(iv) the relocation of occupants of such real property.

"(B) NEW CONSTRUCTION NOT PERMITTED.—The term 'redevelopment purposes' does not include the construction (other than the rehabilitation) of any property or the enlargement of an existing building.

"(4) DESIGNATED BLIGHTED AREA.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'designated blighted area' means any blighted area designated by the governing body of a local general purpose governmental unit in the jurisdiction of which such area is located.

"(B) BLIGHTED AREA.—The term 'blighted area' means any area which the governing body described in subparagraph (A) determines to be a blighted area on the basis of the substantial presence of factors such as excessive vacant land on which structures were previously located, abandoned or

vacant buildings, substandard structures, vacancies, and delinquencies in payment of real property taxes.

"(C) DESIGNATED AREAS MAY NOT EXCEED 20 PERCENT OF TOTAL ASSESSED VALUE OF REAL PROPERTY IN GOVERNMENT'S JURISDICTION.—

"(i) IN GENERAL.—An area may be designated by a governmental unit as a blighted area only if the designation percentage with respect to such area, when added to the designation percentages of all other designated blighted areas within the jurisdiction of such governmental unit, does not exceed 20 percent.

"(ii) DESIGNATION PERCENTAGE.—For purposes of this subparagraph, the term 'designation percentage' means, with respect to any area, the percentage (determined at the time such area is designated) which the assessed value of real property located in such area is of the total assessed value of all real property located within the jurisdiction of the governmental unit which designated such area.

"(iii) EXCEPTION WHERE BONDS NOT OUTSTANDING.—The designation percentage of a previously designated blighted area shall not be taken into account under clause (i) if no qualified redevelopment bond (or similar bond) is or will be outstanding with respect to such area.

"(D) MINIMUM DESIGNATED AREA.—

"(i) IN GENERAL.—Except as provided in clause (ii), an area shall not be treated as a designated blighted area for purposes of this subsection unless such area is contiguous and compact and its area equals or exceeds 100 acres.

"(ii) 10-ACRE MINIMUM IN CERTAIN CASES.—Clause (i) shall be applied by substituting '10 acres' for '100 acres' if not more than 25 percent of the financed area is to be provided (pursuant to the issue and all other such issues) to 1 person. For purposes of the preceding sentence, all related persons (as defined in subsection (a)(3)) shall be treated as 1 person. For purposes of this clause, an area provided to a developer on a short-term interim basis shall not be treated as provided to such developer.

"(5) NO ADDITIONAL CHARGE REQUIREMENTS.—The financed area with respect to any issue meets the requirements of this paragraph if, while any bond which is part of such issue is outstanding—

"(A) no owner or user of property located in the financed area is subject to a charge or fee which similarly situated owners or users of comparable property located outside such area are not subject, and

"(B) the assessment method or rate of real property taxes with respect to property located in the financed area does not differ from the assessment method or rate of real property taxes with respect to comparable property located outside such area.

For purposes of the preceding sentence, the term 'comparable property' means property which is of the same type as the property to which it is being compared and which is located within the jurisdiction of the designating governmental unit.

"(6) USE OF PROCEEDS REQUIREMENTS.—The use of the proceeds of an issue meets the requirements of this paragraph if—

"(A) not more than 25 percent of the net proceeds of such issue are to be used to provide (including the provision of land for) facilities described in subsection (a)(8) or section 147(e), and

"(B) no portion of the proceeds of such issue is to be used to provide (including the provision of land for) any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

"(7) FINANCED AREA.—For purposes of this subsection, the term 'financed area' means, with respect to any issue, the portion of the designated blighted area with respect to which the proceeds of such issue are to be used.

"(8) RESTRICTION ON ACQUISITION OF LAND NOT TO APPLY.—Section 147(c) (other than paragraphs (1)(B) and (2) thereof) shall not apply to any qualified redevelopment bond.

"SEC. 145. QUALIFIED 501(c)(3) BOND.

"(a) IN GENERAL.—For purposes of this part, except as otherwise provided in this section, the term 'qualified 501(c)(3) bond' means any private activity bond issued as part of an issue if—

"(1) all property which is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and

"(2) such bond would not be a private activity bond if—

"(A) 501(c)(3) organizations were treated as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a), and

"(B) paragraphs (1) and (2) of section 141(b) were applied by substituting '5 percent' for '10 percent' each place it appears and by substituting 'net proceeds' for 'proceeds' each place it appears..

"(b) $150,000,000 LIMITATION ON BONDS OTHER THAN HOSPITAL BONDS.—

"(1) IN GENERAL.—A bond (other than a qualified hospital bond) shall not be treated as a qualified 501(c)(3) bond if the aggregate authorized face amount of the issue (of which such bond is a part) allocated to any 501(c)(3) organization which is a test-period beneficiary (when increased by the outstanding tax-exempt nonhospital bonds of such organization) exceeds $150,000,000.

"(2) OUTSTANDING TAX-EXEMPT NONHOSPITAL BONDS.—

"(A) IN GENERAL.—For purposes of applying paragraph (1) with respect to any issue, the outstanding tax-exempt nonhospital bonds of any organization which is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in subparagraph (B)—

"(i) which are allocated to such organization, and

"(ii) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

"(B) BONDS TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), the bonds referred to in this subparagraph are—

"(i) any qualified 501(c)(3) bond other than a qualified hospital bond, and

"(ii) any bond to which section 141(a) does not apply if—

"(I) such bond would have been an industrial development bond (as defined in section 103(b), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) if 501(c)(3) organizations were not exempt persons, and

"(II) such bond was not described in paragraph (4), (5), or (6) of such section 103(b) (as in effect on the date such bond was issued).

"(C) ONLY NONHOSPITAL PORTION OF BONDS TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—A bond shall be taken into account under subparagraph (B)(ii) only to the extent that the proceeds of the issue of which such bond is a part are not used with respect to a hospital.

"(ii) SPECIAL RULE.—If 90 percent or more of the net proceeds of an issue are used with respect to a hospital, no bond which is part of such issue shall be taken into account under subparagraph (B)(ii).

"(3) AGGREGATION RULE.—For purposes of this subsection, 2 or more organizations under common management or control shall be treated as 1 organization.

"(4) ALLOCATION OF FACE AMOUNT OF ISSUE; TEST-PERIOD BENEFICIARY.—Rules similar to the rules of subparagraphs (C) and (D) of section 144(a)(10) shall apply for purposes of this subsection.

"(c) QUALIFIED HOSPITAL BOND.—For purposes of this section, the term 'qualified hospital bond' means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used with respect to a hospital.

"(d) ELECTION OUT—This section shall not apply to an issue if—

"(1) the issue elects not to have this section apply to such issue, and

"(2) such issue is an issue of exempt facility bonds, or qualified redevelopment bonds, to which section 146 applies.

"SEC. 146. VOLUME CAP.

"(a) GENERAL RULE.—A private activity bond issued as part of an issue meets the requirements of this section if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority's volume cap for such calendar year.

"(b) VOLUME CAP FOR STATE AGENCIES.—For purposes of this section—

"(1) IN GENERAL.—The volume cap for any agency of the State authorized to issue tax-exempt private activity bonds for any calendar year shall be 50 percent of the State ceiling for such calendar year.

"(2) SPECIAL RULE WHERE STATE HAS MORE THAN 1 AGENCY.—If more than 1 agency of the State is authorized to issue tax-exempt private activity bonds, all such agencies shall be treated as a single agency.

"(c) VOLUME CAP FOR OTHER ISSUERS.—For purposes of this section—

"(1) IN GENERAL.—The volume cap for any issuing authority (other than a State agency) for any calendar year shall be an amount which bears the same ratio to 50 percent of the State ceiling for such calendar year as—

"(A) the population of the jurisdiction of such issuing authority, bears to

"(B) the population of the entire State.

"(2) OVERLAPPING JURISDICTIONS.—For purposes of paragraph (1)(A), if an area is within the jurisdiction of 2 or more governmental units, such area shall be treated as only within the jurisdiction of the unit having jurisdiction over the smallest geographical area unless such unit agrees to surrender all or part of such jurisdiction for such calendar year to the unit with overlapping jurisdiction which has the next smallest geographical area.

"(d) STATE CEILING.—For purposes of this section—

"(1) IN GENERAL.—The State ceiling applicable to any State for any calendar year shall be the greater of—

"(A) an amount equal to $75 multiplied by the State population, or

"(B) $250,000,000.

Subparagraph (B) shall not apply to any possession of the United States.

"(2) ADJUSTMENT AFTER 1987.—In the case of calendar years after 1987, paragraph (1) shall be applied by substituting—

"(A) '$50' for '$75', and

"(B) '$150,000,000' for '$250,000,000'.

"(3) SPECIAL RULE FOR STATES WITH CONSTITUTIONAL HOME RULE CITIES.—For purposes of this section—

"(A) IN GENERAL.—The volume cap for any constitutional home rule city for any calendar year shall be determined under paragraph (1) of subsection (c) by substituting '100 percent' for '50 percent'.

"(B) COORDINATION WITH OTHER ALLOCATIONS.—In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying subsections (b) and (c) with respect to issuing authorities in such State other than constitutional home rule cities, the State ceiling for any calendar year shall be reduced by the aggregate volume caps determined for such year for all constitutional home rule cities in such State.

"(C) CONSTITUTIONAL HOME RULE CITY.—For purposes of this section, the term 'constitutional home rule city' means, with respect to any calendar year, any political subdivision of a State which, under a State constitution which was adopted in 1970 and effective on July 1, 1971, had home rule powers on the 1st day of the calendar year.

"(4) SPECIAL RULE FOR POSSESSIONS WITH POPULATIONS OF LESS THAN THE POPULATION OF THE LEAST POPULOUS STATE.—

"(A) IN GENERAL.—If the population of any possession of the United States for any calendar year is less than the population of the least populous State (other than a possession) for such calendar year, the limitation under paragraph (1)(A) shall not be less than the amount determined under subparagraph (B) for such calendar year.

"(B) LIMITATION.—The limitation determined under this subparagraph, with respect a possession, for any calendar year is an amount equal to the product of—

"(i) the fraction—

"(I) the numerator of which is the amount applicable under paragraph (1)(B) for such calendar year, and

"(II) the denominator of which is the State population of the least populous State (other than a possession) for such calendar year, and

"(ii) the population of such possession for such calendar year.

"(e) STATE MAY PROVIDE FOR DIFFERENT ALLOCATION.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (3), a State may, by law provide a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue tax-exempt private activity bonds.

"(2) INTERIM AUTHORITY FOR GOVERNOR.—

"(A) IN GENERAL.—Except as otherwise provided in paragraph (3), the Governor of any State may proclaim a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue private activity bonds.

"(B) TERMINATION OF AUTHORITY.—The authority provided in subparagraph (A) shall not apply to bonds issued after the earlier of—

"(i) the last day of the 1st calendar year after 1986 during which the legislature of the State met in regular session, or

"(ii) the effective date of any State legislation with respect to the allocation of the State ceiling.

"(3) STATE MAY NOT ALTER ALLOCATION TO CONSTITUTIONAL HOME RULE CITIES.—Except as otherwise provided in a State constitutional amendment (or law changing the home rule provision adopted in the manner provided by the State constitution), the authority provided in this subsection shall not apply to that portion of the State ceiling which is allocated to any constitutional home rule city in the State unless such city agrees to such different allocation.

"(f) ELECTIVE CARRYFORWARD OF UNUSED LIMITATION FOR SPECIFIED PURPOSE.—

"(1) IN GENERAL.—If—

"(A) an issuing authority's volume cap for any calendar year after 1985, exceeds

"(B) the aggregate amount of tax-exempt private activity bonds issued during such calendar year by such authority,

such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward purposes.

"(2) ELECTION MUST IDENTIFY PURPOSE.—In any election under paragraph (1), the issuing authority shall—

"(A) identify the purpose for which the carryforward is elected, and

"(B) specify the portion of the excess described in paragraph (1) which is to be a carryforward for each such purpose.

"(3) USE OF CARRYFORWARD.—

"(A) IN GENERAL.—If any issuing authority elects a carryforward under paragraph (1) with respect to any carryforward purpose, any private activity bonds issued by such authority with respect to such purpose during the 3 calendar years following the calendar year in which the carryforward arose shall not be taken into account under subsection (a) to the extent the amount of such bonds does not exceed the amount of the carryforward elected for such purpose.

"(B) ORDER IN WHICH CARRYFORWARD USED.—Carryforwards elected with respect to any purpose shall be used in the order of the calendar years in which they arose.

"(4) ELECTION.—Any election under this paragraph (and any identification or specification contained therein), once made, shall be irrevocable.

"(5) CARRYFORWARD PURPOSE.—The term 'carryforward purpose' means—

"(A) the purpose of issuing bonds referred to in one of the clauses of section 141(d)(1)(A),

"(B) the purpose of issuing qualified mortgage bonds or mortgage credit certificates,

"(C) the purpose of issuing qualified student loan bonds, and

"(D) the purpose of issuing qualified redevelopment bonds.

"(g) EXCEPTION FOR CERTAIN BONDS.—Only for purposes of this section, the term 'private activity bond' shall not include—

"(1) any qualified veterans' mortgage bond,

"(2) any qualified 501(c)(3) bond, and

"(3) any exempt facility bond issued as part of an issue described in paragraph (1) or (2) of section 142(a) (relating to airports and docks and wharves).

"(h) EXCEPTION FOR GOVERNMENT-OWNED SOLID WASTE DISPOSAL FACILITIES.—

"(1) IN GENERAL.—Only for purposes of this section, the term 'private activity bond' shall not include any exempt facility bond described in section 142(a)(6) which is issued as part of an issue if all of the property to be financed by the net proceeds of such issue is to be owned by a governmental unit.

"(2) SAFE HARBOR FOR DETERMINATION OF GOVERNMENT OWNERSHIP.—In determining ownership for purposes of paragraph (1), section 142(b)(1)(B) shall apply, except that a lease term shall be treated as satisfying clause (ii) thereof if it is not more than 20 years.

"(i) TREATMENT OF REFUNDING ISSUES.—For purposes of the volume cap imposed by this section—

"(1) IN GENERAL.—The term 'private activity bond' shall not include any bond which is issued to refund another bond to the extent that the amount of such bond does not exceed the outstanding amount of the refunded bond.

"(2) SPECIAL RULES FOR STUDENT LOAN BONDS.—In the case of any qualified student loan bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of—

"(A) the maturity date of the bond to be refunded, or

"(B) the date 17 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

"(3) SPECIAL RULES FOR QUALIFIED MORTGAGE BONDS.—In the case of any qualified mortgage bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of—

"(A) the maturity date of the bond to be refunded, or

"(B) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

"(4) EXCEPTION FOR ADVANCE REFUNDING.—This subsection shall not apply to any bond issued to advance refund another bond.

"(j) POPULATION.—For purposes of this section, determinations of the population of any State (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such State (or issuing authority) released by the Bureau of Census before the beginning of such calendar year.

"(k) FACILITY MUST BE LOCATED WITHIN STATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no portion of the State ceiling applicable to any State for any calendar year may be used with respect to financing for a facility located outside such State.

"(2) EXCEPTION FOR CERTAIN FACILITIES WHERE STATE WILL GET PROPORTIONATE SHARE OF BENEFITS.—Paragraph (1) shall not apply to any exempt facility bond described in paragraph (4), (5), (6), or (10) of section 142(a) if the issuer establishes that the State's share of the use of the facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

"(l) ISSUER OF QUALIFIED SCHOLARSHIP FUNDING BONDS.—In the case of a qualified scholarship funding bond, such bond shall be treated for purposes of this section as issued by a State or local issuing authority (whichever is appropriate).

"(m) TREATMENT OF AMOUNTS ALLOCATED TO PRIVATE ACTIVITY PORTION OF GOVERNMENT USE BONDS.—

"(1) IN GENERAL.—The volume cap of an issuer shall be reduced by the amount allocated by the issuer to an issue under section 141(b)(5).

"(2) ADVANCE REFUNDINGS.—Except as otherwise provided by the Secretary, any advance refunding of any part of an issue to which an amount was allocated under section 141(b)(5) (or would have been allocated if such section applied to such issue) shall

be taken into account under this section to the extent of the amount of the volume cap which was (or would have been) so allocated.

"(n) REDUCTION FOR MORTGAGE CREDIT CERTIFICATES, ETC.—The volume cap of any issuing authority for any calendar year shall be reduced by the sum of—

"(1) the amount of qualified mortgage bonds which such authority elects not to issue under section 25(c)(2)(A)(ii) during such year, plus

"(2) the amount of any reduction in such ceiling under section 25(f) applicable to such authority for such year.

"SEC. 147. OTHER REQUIREMENTS APPLICABLE TO CERTAIN PRIVATE ACTIVITY BONDS.

"(a) SUBSTANTIAL USER REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in subsection (h), a private activity bond shall not be a qualified bond for any period during which it is held by a person who is a substantial user of the facilities or by a related person of such a substantial user.

"(2) RELATED PERSON.—For purposes of paragraph (1), the following shall be treated as related persons—

"(A) 2 or more persons if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b),

"(B) 2 or more persons which are members of the same controlled group of corporations (as defined in section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein),

"(C) a partnership and each of its partners (and their spouses and minor children), and

"(D) an S corporation and each of its shareholders (and their spouses and minor children).

"(b) MATURITY MAY NOT EXCEED 120 PERCENT OF ECONOMIC LIFE.—

"(1) GENERAL RULE.—Except as provided in subsection (h), a private activity bond shall not be a qualified bond if it is issued as part of an issue and—

"(A) the average maturity of the bonds issued as part of such issue, exceeds

"(B) 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue.

"(2) DETERMINATION OF AVERAGES.—For purposes of paragraph (1)—

"(A) the average maturity of any issue shall be determined by taking into account the respective issue prices of the bonds issued as part of such issue, and

"(B) the average reasonably expected economic life of the facilities being financed with any issue shall be determined by taking into account the respective cost of such facilities.

"(3) SPECIAL RULES.—

"(A) DETERMINATION OF ECONOMIC LIFE.—For purposes of this subsection, the reasonably expected economic life of any facility shall be determined as of the later of—

"(i) the date on which the bonds are issued, or

"(ii) the date on which the facility is placed in service (or expected to be placed in service).

"(B) TREATMENT OF LAND.—

"(i) LAND NOT TAKEN INTO ACCOUNT.—Except as provided in clause (ii), land shall not be taken into account under paragraph (1)(B).

"(ii) ISSUES WHERE 25 PERCENT OR MORE OF PROCEEDS USED TO FINANCE LAND.—If 25 percent or more of the net proceeds of any issue is to be used to finance land, such land shall be taken into account under paragraph (1)(B) and shall be treated as having an economic life of 30 years.

"(4) SPECIAL RULE FOR POOLED FINANCING OF 501(C)(3) ORGANIZATION.—

"(A) IN GENERAL.—At the election of the issuer, a qualified 501(c)(3) bond shall be treated as meeting the requirements of paragraph (1) if such bond meets the requirements of subparagraph (B).

"(B) REQUIREMENTS.—A qualified 501(c)(3) bond meets the requirements of this subparagraph if—

"(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

"(ii) each loan described in clause (i) satisfies the requirements of paragraph (1) (determined by treating each loan as a separate issue),

"(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

"(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued).

"(5) SPECIAL RULE FOR CERTAIN FHA INSURED LOANS.—Paragraph (1) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance mortgage loans insured under FHA 242 or under a similar Federal Housing Administration program (as in effect on the date of the enactment of the Tax Reform Act of 1986) where the loan term approved by such Administration plus the maximum maturity of debentures which could be issued by such Administration in satisfaction of its obligations exceeds the term permitted under paragraph (1).

"(c) LIMITATION ON USE FOR LAND ACQUISITION.—

"(1) IN GENERAL.—Except as provided in subsection (h), a private activity bond shall not be a qualified bond if—

"(A) it is issued as part of an issue and 25 percent or more of the net proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein), or

"(B) any portion of the proceeds of such issue is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

"(2) EXCEPTION FOR FIRST-TIME FARMERS.—

"(A) IN GENERAL.—If the requirements of subparagraph (B) are met with respect to any land, paragraph (1) shall not apply to such land, and subsection (d) shall not apply to property to be used thereon farming purposes, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of $250,000.

"(B) ACQUISITION BY FIRST-TIME FARMERS.—The requirements of this subparagraph are met with respect to any land if—

"(i) such land is to be used for farming purposes, and

"(ii) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

"(C) FIRST-TIME FARMER.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'first-time farmer' means any individual if such individual—

"(I) has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated, and

"(II) has not received financing under this paragraph in an amount which, when added to the financing to be provided under this paragraph, exceeds $250,000.

"(ii) AGGREGATION RULES.—Any ownership or material participation, or financing received, by an individual's spouse or minor child shall be treated as ownership and material participation, or financing received, by the individual.

"(iii) INSOLVENT FARMER.—For purposes of clause (i), farmland which was previously owned by the individual and was disposed of while such individual was insolvent shall be disregarded if section 108 applied to indebtedness with respect to such farmland.

"(D) FARM.—For purposes of this paragraph, the term 'farm' has the meaning given such term by section 6420(c)(2).

"(E) SUBSTANTIAL FARMLAND.—For purposes of this paragraph, the term 'substantial farmland' means any parcel of land unless—

"(i) such parcel is smaller than 15 percent of the median size of a farm in the county in which such parcel is located, and

"(ii) the fair market value of the land does not at any time while held by the individual exceed $125,000.

"(F) USED EQUIPMENT LIMITATION.—For purposes of this paragraph, in no event may the amount of financing provided by reason of this paragraph to a first-time farmer for personal property—

"(i) of a character subject to the allowance for depreciation,

"(ii) the original use of which does not begin with such farmer, and

"(iii) which is to be used for farming purposes,

exceed $62,500. A rule similar to the rule of subparagraph (C)(ii) shall apply for purposes of the preceding sentence.

"(3) EXCEPTION FOR CERTAIN LAND ACQUIRED FOR ENVIRONMENTAL PURPOSES, ETC.—Any land acquired by a governmental unit (or issuing authority) in connection with an airport, mass commuting facility, dock, or wharf shall not be taken into account under paragraph (1) if—

"(A) such land is acquired for noise abatement or wetland preservation, or for future use as an airport, mass commuting facility, dock, or wharf, and

"(B) there is not other significant use of such land.

"(d) ACQUISITION OF EXISTING PROPERTY NOT PERMITTED.—

"(1) IN GENERAL.—Except as provided in subsection (h), a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the net proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the 1st use of such property is pursuant to such acquisition.

"(2) EXCEPTION FOR CERTAIN REHABILITATIONS.—Paragraph (1) shall not apply with respect to any building (and the equipment therefor) if—

"(A) the rehabilitation expenditures with respect to such building, equal or exceed

"(B) 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the issue.

A rule similar to the rule of the preceding sentence shall apply in the case of structures other than a building except that subparagraph (B) shall be applied by substituting '100 percent' for '15 percent'.

"(3) REHABILITATION EXPENDITURES.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in this paragraph, the term 'rehabilitation expenditures' means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this subparagraph, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

"(B) CERTAIN EXPENDITURES NOT INCLUDED.—The term 'rehabilitation expenditures' does not include any expenditure described in section 48(g)(2)(B).

"(C) PERIOD DURING WHICH EXPENDITURES MUST BE INCURRED.—The term 'rehabilitation expenditures' shall not include any amount which is incurred after the date 2 years after the later of—

"(i) the date on which the building was acquired, or

"(ii) the date on which the bond was issued.

"(4) SPECIAL RULE FOR CERTAIN PROJECTS.—In the case of a project involving 2 or more buildings, this subsection shall be applied on a project basis.

"(e) NO PORTION OF BONDS MAY BE ISSUED FOR SKYBOXES, AIRPLANES, GAMBLING ESTABLISHMENTS, ETC.—A private activity bond shall not be treated as a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

"(f) PUBLIC APPROVAL REQUIRED FOR PRIVATE ACTIVITY BONDS.—

"(1) IN GENERAL.—A private activity bond shall not be a qualified bond unless such bond satisfies the requirements of paragraph (2).

"(2) PUBLIC APPROVAL REQUIREMENT.—

"(A) IN GENERAL.—A bond shall satisfy the requirements of this paragraph if such bond is issued as a part of an issue which has been approved by—

"(i) the governmental unit—

"(I) which issued such bond, or

"(II) on behalf of which such bond was issued, and

"(ii) each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than 1 governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only 1 such unit need approve such issue).

"(B) APPROVAL BY A GOVERNMENTAL UNIT.—For purposes of subparagraph (A), an issue shall be treated as having been approved by any governmental unit if such issue is approved—

"(i) by the applicable elected representative of such governmental unit after a public hearing following reasonable public notice, or

"(ii) by voter referendum of such governmental unit.

"(C) SPECIAL RULES FOR APPROVAL OF FACILITY.—If there has been public approval under subparagraph (A) of the plan for financing a facility, such approval shall constitute approval under subparagraph (A) for any issue—

"(i) which is issued pursuant to such plan within 3 years after the date of the 1st issue pursuant to the approval, and

"(ii) all or substantially all of the proceeds of which are to be used to finance such facility or to refund previous financing under such plan.

"(D) REFUNDING BONDS.—No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) unless the maturity date of such bond is later than the maturity date of the bond to be refunded.

"(E) APPLICABLE ELECTED REPRESENTATIVE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'applicable elected representative' means with respect to any governmental unit—

"(I) an elected legislative body of such unit, or

"(II) the chief elected executive officer, the chief elected State legal officer of the executive branch, or any other elected official of such unit designated for purposes of this paragraph by such chief elected executive officer or by State law.

"(ii) NO APPLICABLE ELECTED REPRESENTATIVE.—If (but for this clause) a governmental unit has no applicable elected representative, the applicable elected representative for purposes of clause (i) shall be the applicable elected representative of the governmental unit—

"(I) which is the next higher governmental unit with such a representative, and

"(II) from which the authority of the governmental unit with no such representative is derived.

"(3) SPECIAL RULE FOR APPROVAL OF AIRPORTS.—If—

"(A) the proceeds of an issue are to be used to finance a facility or facilities located at an airport, and

"(B) the governmental unit issuing such bonds is the owner or operator of such airport,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport for purposes of this subsection.

"(g) RESTRICTION ON ISSUANCE COSTS FINANCED BY ISSUE.—

"(1) IN GENERAL.—A private activity bond shall not be a qualified bond if the issuance costs financed by the issue (of which such bond is a part) exceed 2 percent of the aggregate face amount of the issue.

"(2) SPECIAL RULE FOR SMALL MORTGAGE REVENUE BOND ISSUES.—In the case of an issue of qualified mortgage bonds or qualified veterans' mortgage bonds, paragraph (1) shall be applied by substituting '3.5 percent' for '2 percent' if the aggregate authorized face amount of the issue does not exceed $20,000,000.

"(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE REVENUE BONDS, QUALIFIED STUDENT LOAN BONDS, AND QUALIFIED 501(c)(3) BONDS.—

"(1) MORTGAGE REVENUE BONDS AND QUALIFIED STUDENT LOAN BONDS.—Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond.

"(2) QUALIFIED 501(C)(3) BONDS.—Subsections (a), (c), and (d) shall not apply to any qualified 501(c)(3) bond and subsection (e) shall be applied as if it did not contain 'health club facility' with respect to such a bond.

"SUBPART B—REQUIREMENTS APPLICABLE TO ALL STATE AND LOCAL BONDS

"Sec. 148. Arbitrage.

"Sec. 149. Bonds must be registered to be tax exempt; other requirements.

"SEC. 148. ARBITRAGE.

"(a) ARBITRAGE BOND DEFINED.—For purposes of section 103, the term 'arbitrage bond' means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly—

"(1) to acquire higher yielding investments, or

"(2) to replace funds which were used directly or indirectly to acquire higher yielding investments.

For purposes of this subsection, a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described in paragraph (1) or (2).

"(b) HIGHER YIELDING INVESTMENTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'higher yielding investments' means any investment property which produces a yield over the term of the issue which is materially higher than the yield on the issue.

"(2) INVESTMENT PROPERTY.—The term 'investment property' means—

"(A) any security (within the meaning of section 165(g)(2) (A) or (B)),

"(B) any obligation,

"(C) any annuity contract, or

"(D) any investment-type property.

Such term shall not include any tax-exempt bond.

"(c) TEMPORARY PERIOD EXCEPTION.—

"(1) IN GENERAL.—For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that the proceeds of the issue of which such bond is a part may be invested in higher yielding investments for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued.

"(2) LIMITATION ON TEMPORARY PERIOD FOR POOLED FINANCINGS.—

"(A) IN GENERAL.—The temporary period referred to in paragraph (1) shall not exceed 6 months with respect to the proceeds of an issue which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons.

"(B) SPECIAL RULE FOR CERTAIN STUDENT LOAN POOLS.—In the case of the proceeds of an issue to be used to make or finance loans under a program described in section 144(b)(1)(A), subparagraph (A) shall be applied by substituting '18 months' for '6 months'. The preceding sentence shall not apply to any bond issued after December 31, 1988.

"(C) SHORTER TEMPORARY PERIOD FOR LOAN REPAYMENTS, ETC.—Subparagraph (A) shall be

applied by substituting '3 months' for '6 months' with respect to the proceeds from the sale or repayment of any loan which are to be used to make or finance any loan. For purposes of the preceding sentence, a nonpurpose investment shall not be treated as a loan.

"(D) EXCEPTION FOR MORTGAGE REVENUE BONDS.—This paragraph shall not apply to any qualified mortgage bond or qualified veterans' mortgage bond.

"(d) SPECIAL RULES FOR REASONABLY REQUIRED RESERVE OR REPLACEMENT FUND.—

"(1) IN GENERAL.—For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of the issue of which such bond is a part may be invested in higher yielding investments which are part of a reasonably required reserve or replacement fund. The amount referred to in the preceding sentence shall not exceed 10 percent of the proceeds of such issue unless the issuer establishes to the satisfaction of the Secretary that a higher amount is necessary.

"(2) LIMITATION ON AMOUNT IN RESERVE OR REPLACEMENT FUND WHICH MAY BE FINANCED BY ISSUE.—A bond issued as part of an issue shall be treated as an arbitrage bond if the amount of the proceeds from the sale of such issue which is part of any fund described in paragraph (1) exceeds 10 percent of the proceeds of the issue (or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary).

"(3) LIMITATION ON INVESTMENT IN NONPURPOSE INVESTMENTS.—

"(A) IN GENERAL.—A bond which is part of an issue which does not meet the requirements of subparagraph (B) shall be treated as an arbitrage bond.

"(B) REQUIREMENTS.—An issue meets the requirements of this subparagraph only if—

"(i) at no time during any bond year may the amount invested in nonpurpose investments with a yield materially higher than the yield on the issue exceed 150 percent of the debt service on the issue for the bond year, and

"(ii) the aggregate amount invested as provided in clause (i) is promptly and appropriately reduced as the amount of outstanding bonds of the issue is reduced (or, in the case of a qualified mortgage bond or a qualified veterans' mortgage bond, as the mortgages are repaid).

"(C) EXCEPTIONS FOR TEMPORARY PERIOD.—Subparagraph (B) shall not apply to—

"(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the governmental purpose of the issue, and

"(ii) temporary investment periods related to debt service.

"(D) DEBT SERVICE DEFINED.—For purposes of this paragraph, the debt service on the issue for any bond year is the scheduled amount of interest and amortization of principal payable for such year with respect to such issue. For purposes of the preceding sentence, there shall not be taken into account amounts scheduled with respect to any bond which has been redeemed before the beginning of the bond year.

"(E) NO DISPOSITION IN CASE OF LOSS.—This paragraph shall not require the sale or disposition of any investment if such sale or disposition would result in a loss which exceeds the amount which, but for such sale or disposition, would at the time of such sale or disposition—

"(i) be paid to the United States, or,

"(ii) in the case of a qualified mortgage bond or a qualified veterans' mortgage bond, be paid or credited mortgagors under section 143(g)(3)(A).

"(F) EXCEPTION FOR GOVERNMENTAL USE BONDS AND QUALIFIED 501(C)(3) BONDS.—This paragraph shall not apply to any bond which is not a private activity bond or which is a qualified 501(c)(3) bond.

"(e) MINOR PORTION MAY BE INVESTED IN HIGHER YIELDING INVESTMENTS.—Notwithstanding subsections (a), (c), and (d), a bond issued as part of an issue shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of such issue (in addition to the amounts under subsections (c) and (d)) is invested in higher yielding investments if such amount does not exceed the lesser of—

"(1) 5 percent of the proceeds of the issue, or

"(2) $100,000.

"(f) REQUIRED REBATE TO THE UNITED STATES.—

"(1) IN GENERAL.—A bond which is part of an issue shall be treated as an arbitrage bond if the requirements of paragraphs (2) and (3) are not met with respect to such issue. The preceding sentence shall not apply to any qualified mortgage bond or qualified veterans' mortgage bond.

"(2) REBATE TO UNITED STATES.—An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

"(A) the excess of—

"(i) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this subparagraph), over

"(ii) the amount which would have been earned if such nonpurpose investments were invested at a rate equal to the yield on the issue, plus

"(B) any income attributable to the excess described in subparagraph (A),

is paid to the United States by the issuer in accordance with the requirements of paragraph (3).

"(3) DUE DATE OF PAYMENTS UNDER PARAGRAPH (2).—Except to the extent provided by the Secretary, the amount which is required to be paid to the United States by the issuer shall be paid in installments which are made at least once every 5 years. Each installment shall be in an amount which ensures that 90 percent of the amount described in paragraph (2) with respect to the issue at the time payment of such installment is required will have been paid to the United States. The last installment shall be made no later than 60 days after the day on which the last bond of the issue is redeemed and shall be in an amount sufficient to pay the remaining balance of the amount described in paragraph (2) with respect to such issue.

"(4) SPECIAL RULES FOR APPLYING PARAGRAPH (2).—

"(A) IN GENERAL.—In determining the aggregate amount earned on nonpurpose investments for purposes of paragraph (2)—

"(i) any gain or loss on the disposition of a nonpurpose investment shall be taken into account, and

"(ii) unless the issuer otherwise elects, any amount earned on a bona fide debt service fund shall not be taken into account if the gross earnings on such fund for the bond year is less than $100,000.

"(B) TEMPORARY INVESTMENTS.—Under regulations prescribed by the Secretary—

"(i) IN GENERAL.—An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if the gross proceeds of such issue are expended for the governmental purpose for which the issue was issued by no later than the day which is 6 months after the date of issuance of such issue. Gross proceeds which are held in a bona fide debt service fund shall not be considered gross proceeds for purposes of this subparagraph only.

"(ii) ADDITIONAL PERIOD FOR CERTAIN BONDS.—

"(I) IN GENERAL.—In the case of an issue described in subclause (II), clause (i) shall be applied by substituting '1 year' for '6 months' with respect to the portion of the proceeds of the issue which are not expended in accordance with clause (i) if such portion does not exceed the lesser of 5 percent of the proceeds of the issue or $100,000.

"(II) ISSUES TO WHICH SUBCLAUSE (I) APPLIES.—An issue is described in this subclause if no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond.

"(iii) SAFE HARBOR FOR DETERMINING WHEN PROCEEDS OF TAX AND REVENUE ANTICIPATION BONDS ARE EXPENDED.—

"(I) IN GENERAL.—For purposes of clause (i), in the case of an issue of tax or revenue anticipation bonds, the net proceeds of such issue (including earnings thereon) shall be treated as expended for the governmental purpose of the issue on the 1st day after the date of issuance that the cumulative cash flow deficit to be financed by such issue exceeds 90 percent of the aggregate face amount of such issue.

"(II) CUMULATIVE CASH FLOW DEFICIT.—For purposes of subclause (I), the term 'cumulative cash flow deficit' means, as of the date of computation, the excess of the expenses paid during the period described in subclause (III) which would ordinarily be paid out of or financed by anticipated tax or other revenues over the aggregate amount available (other than from the proceeds of the issue) during such period for the payment of such expenses.

"(III) PERIOD INVOLVED.—For purposes of subclause (II), the period described in this subclause is the period beginning on the date of issuance of the issue and ending on the earliest of the maturity date of the issue, the date 6 months after such date of issuance, or the date of the computation of cumulative cash flow deficit.

"(C) EXCEPTION FOR SMALL GOVERNMENTAL UNITS.—An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraphs (2) and (3) if—

"(i) the issue is issued by a governmental unit with general taxing powers,

"(ii) no bond which is part of such issue is a private activity bond,

"(iii) 95 percent or more of the net proceeds of such issue are to be used for local governmental activities of the issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the issuer), and

"(iv) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by such unit (and all subordinate entities thereof) during the calendar year in which such issue is issued is not reasonably expected to exceed $5,000,000.

Clause (iv) shall not take into account any bond which is not outstanding at the time of a later issue or which is redeemed (other than in an advance refunding) from the net proceeds of the later issue.

"(D) EXCEPTION FOR CERTAIN QUALIFIED STUDENT LOAN BONDS.—

"(i) IN GENERAL.—In determining the aggregate amount earned on nonpurpose in-

vestments acquired with gross proceeds of an issue of bonds described in section 144(b)(1)(A), the amount earned from investment of net proceeds of such issue during the initial temporary period under subsection (c) shall not be taken into account to the extent that the amount so earned is used to pay the reasonable—

"(I) administrative costs of such a program attributable to such issue and the costs of carrying such issue, and

"(II) costs of issuing such issue,

but only to the extent such costs were financed with proceeds of such issue and for which the issuer was not reimbursed.

"(ii) ONLY ARBITRAGE ON AMOUNTS LOANED DURING TEMPORARY PERIOD TAKEN INTO ACCOUNT FOR ADMINISTRATIVE COSTS, ETC.—The amount earned from investment of net proceeds of an issue during the initial temporary period under subsection (c) shall be taken into account under clause (i)(I) only to the extent attributable to proceeds which were used to make or finance (not later than the close of such period) student loans under a program described in section 144(b)(1)(A).

"(iii) ELECTION.—This subparagraph shall not apply to any issue if the issuer elects not to have this subparagraph apply to such issue.

"(iv) TERMINATION.—This subparagraph shall not apply to any bond issued after December 31, 1988.

"(5) EXEMPTION FROM GROSS INCOME OF SUM REBATED.—Gross income shall not include the sum described in paragraph (2). Notwithstanding any other provision of this title, no deduction shall be allowed for any amount paid to the United States under paragraph (2).

"(6) DEFINITIONS.—For purposes of this subsection and subsections (c) and (d)—

"(A) NONPURPOSE INVESTMENT.—The term 'nonpurpose investment' means any investment property which—

"(i) is acquired with the gross proceeds of an issue, and

"(ii) is not acquired in order to carry out the governmental purpose of the issue.

"(B) GROSS PROCEEDS.—Except as otherwise provided by the Secretary, the gross proceeds of an issue include—

"(i) amounts received (including repayments of principal) as a result of investing the original proceeds of the issue, and

"(ii) amounts to be used to pay debt service on the issue.

"(7) PENALTY IN LIEU OF LOSS OF TAX EXEMPTION.—In the case of an issue which would (but for this paragraph) fail to meet the requirements of paragraph (2) or (3), the Secretary may treat such issue as not failing to meet such requirements if—

"(A) no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond),

"(B) the failure to meet such requirements is due to reasonable cause and not to willful neglect, and

"(C) the issuer pays to the United States a penalty in an amount equal to the sum of—

"(i) 50 percent of the amount which was not paid in accordance with paragraphs (2) and (3), plus

"(ii) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required under paragraph (3) for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this paragraph.

"(g) STUDENT LOAN INCENTIVE PAYMENTS.—Except to the extent otherwise provided in regulations, payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 are not to be taken into account, for purposes of subsection (a)(1), in determining yields on student loan notes.

"(h) DETERMINATIONS OF YIELD.—For purposes of this section, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274).

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

"SEC. 149. BONDS MUST BE REGISTERED TO BE TAX EXEMPT; OTHER REQUIREMENTS.

"(a) BONDS MUST BE REGISTERED TO BE TAX EXEMPT.—

"(1) GENERAL RULE.—Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any registration-required bond unless such bond is in registered form.

"(2) REGISTRATION-REQUIRED BOND.—For purposes of paragraph (1), the term 'registration-required bond' means any bond other than a bond which—

"(A) is not of a type offered to the public,

"(B) has a maturity (at issue) of not more than 1 year, or

"(C) is described in section 163(f)(2)(B).

"(3) SPECIAL RULES.—

"(A) BOOK ENTRIES PERMITTED.—For purposes of paragraph (1), a book entry bond shall be treated as in registered form if the right to the principal of, and stated interest on, such bond may be transferred only through a book entry consistent with regulations prescribed by the Secretary.

"(B) NOMINEES.—The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of paragraph (1) where there is a nominee or chain of nominees.

"(b) FEDERALLY GUARANTEED BOND IS NOT TAX EXEMPT.—

"(1) IN GENERAL.—Section 103(a) shall not apply to any State or local bond if such bond is federally guaranteed.

"(2) FEDERALLY GUARANTEED DEFINED.—For purposes of paragraph (1), a bond is federally guaranteed if—

"(A) the payment of principal or interest with respect to such bond is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof),

"(B) such bond is issued as part of an issue and 5 percent or more of the proceeds of such issue is to be—

"(i) used in making loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or

"(ii) invested (directly or indirectly) in federally insured deposits or accounts, or

"(C) the payment of principal or interest on such bond is otherwise indirectly guaranteed (in whole or in part) by the United States (or an agency or instrumentality thereof).

"(3) EXCEPTIONS.—

"(A) CERTAIN INSURANCE PROGRAMS.—A bond shall not be treated as federally guaranteed by reason of—

"(i) any guarantee by the Federal Housing Administration, the Veterans' Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association,

"(ii) any guarantee of student loans and any guarantee by the Student Loan Marketing Association to finance student loans, or

"(iii) any guarantee by the Bonneville Power Authority pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984 with respect to any bond issued before July 1, 1989.

"(B) DEBT SERVICE, ETC.—Paragraph (1) shall not apply to—

"(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the purpose for which such issue was issued,

"(ii) investments of a bona fide debt service fund,

"(iii) investments of a reserve which meet the requirements of section 148(d),

"(iv) investments in bonds issued by the United States Treasury, or

"(v) other investments permitted under regulations.

"(C) EXCEPTION FOR HOUSING PROGRAMS.—

"(i) IN GENERAL.—Except as provided in clause (ii), paragraph (1) shall not apply to—

"(I) a private activity bond for a qualified residential rental project or a housing program obligation under section 11(b) of the United States Housing Act of 1937,

"(II) a qualified mortgage bond, or

"(III) a qualified veterans' mortgage bond.

"(ii) EXCEPTION NOT TO APPLY WHERE BOND INVESTED IN FEDERALLY INSURED DEPOSITS OR ACCOUNTS.—Clause (i) shall not apply to any bond which is federally guaranteed within the meaning of paragraph (2)(B)(ii).

"(D) LOANS TO, OR GUARANTEES BY, FINANCIAL INSTITUTIONS.—Except as provided in paragraph (2)(B)(ii), a bond which is issued as part of an issue shall not be treated as federally guaranteed merely by reason of the fact that the proceeds of such issue are used in making loans to a financial institution or there is a guarantee by a financial institution unless such guarantee constitutes a federally insured deposit or account.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) TREATMENT OF CERTAIN ENTITIES WITH AUTHORITY TO BORROW FROM UNITED STATES.—To the extent provided in regulations prescribed by the Secretary, any entity with statutory authority to borrow from the United States shall be treated as an instrumentality of the United States. Except in the case of an exempt facility bond, a qualified small issue bond, a qualified student loan bond, and a qualified redevelopment bond, nothing in the preceding sentence shall be construed as treating the District of Columbia or any possession of the United States as an instrumentality of the United States.

"(B) FEDERALLY INSURED DEPOSIT OR ACCOUNT.—The term 'federally insured deposit or account' means any deposit or account in a financial institution to the extent such deposit or account is insured under Federal law by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any similar federally chartered corporation.

"(c) TAX EXEMPTION MUST BE DERIVED FROM THIS TITLE.—

"(1) GENERAL RULE.—Except as provided in paragraph (2), no interest on any bond shall be exempt from taxation under this title unless such interest is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

"(2) CERTAIN PRIOR EXEMPTIONS.—

"(A) PRIOR EXEMPTIONS CONTINUED.—For purposes of this title, notwithstanding any

provision of this part, any bond the interest on which is exempt from taxation under this title by reason of any provision of law (other than a provision of this title) which is in effect on January 6, 1983, shall be treated as a bond described in section 103(a).

"(B) ADDITIONAL REQUIREMENTS FOR BONDS ISSUED AFTER 1983.—Subparagraph (A) shall not apply to a bond (not described in subparagraph (C)) issued after 1983 if the appropriate requirements of this part (or the corresponding provisions of prior law) are not met with respect to such bond.

"(C) DESCRIPTION OF BOND.—A bond is described in this subparagraph (and treated as described in subparagraph (A)) if—

"(i) such bond is issued pursuant to the Northwest Power Act (16 U.S.C. 839d), as in effect on July 18, 1984;

"(ii) such bond is issued pursuant to section 608(a)(6)(A) of Public Law 97-468, as in effect on the date of the enactment of the Tax Reform Act of 1986; or

"(iii) such bond is issued before June 19, 1984 under section 11(b) of the United States Housing Act of 1937.

"(d) ADVANCE REFUNDINGS.—

"(1) IN GENERAL.—Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in paragraph (2), (3), or (4).

"(2) CERTAIN PRIVATE ACTIVITY BONDS.—An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond).

"(3) OTHER BONDS.—

"(A) IN GENERAL.—An issue is described in this paragraph if any bond (issued as part of such issue), hereinafter in this paragraph referred to as the 'refunding bond', is issued to advance refund a bond unless—

"(i) the refunding bond is only—

"(I) the 1st advance refunding of the original bond if the original bond is issued after 1985, or

"(II) the 1st or 2nd advance refunding of the original bond if the original bond was issued before 1986,

"(ii) in the case of refunded bonds issued before 1986, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed at par or at a premium of 3 percent or less,

"(iii) in the case of refunded bonds issued after 1985, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed,

"(iv) the initial temporary period under section 148(c) ends—

"(I) with respect to the proceeds of the refunding bond not later than 30 days after the date of issue of such bond, and

"(II) with respect to the proceeds of the refunded bond on the date of issue of the refunding bond, and

"(v) in the case of refunded bonds to which section 148(e) did not apply, on and after the date of issue of the refunding bond, the amount of proceeds of the refunded bond invested in higher yielding investments (as defined in section 148(b)) which are nonpurpose investments as defined in section 148(f)(6)(A) does not exceed—

"(I) the amount so invested as part of a reasonably required reserve or replacement fund or during an allowable temporary period, and

"(II) the amount which is equal to the lesser of 5 percent of the proceeds of the issue of which the refunded bond is a part or $100,000 (to the extent such amount is allocable to the refunded bond).

"(B) SPECIAL RULES FOR REDEMPTIONS.—

"(i) ISSUER MUST REDEEM ONLY IF DEBT SERVICE SAVINGS.—Clause (ii) and (iii) of subparagraph (A) shall apply only if the issuer may realize present value debt service savings (determined without regard to administrative expenses) in connection with the issue of which the refunding bond is a part.

"(ii) REDEMPTIONS NOT REQUIRED BEFORE 90TH DAY.—For purposes of clauses (ii) and (iii) of subparagraph (A), the earliest date referred to in such clauses shall not be earlier than the 90th day after the date of issuance of the refunding bond.

"(4) ABUSIVE TRANSACTIONS PROHIBITED.—An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund another bond and a device is employed in connection with the issuance of such issue to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates.

"(5) ADVANCE REFUNDING.—For purposes of this part, a bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

"(6) SPECIAL RULES FOR PURPOSES OF PARAGRAPH (3).—For purposes of paragraph (3), bonds issued before the date of the enactment of this subsection shall be taken into account under subparagraph (A)(i) thereof except—

"(A) a refunding which occurred before 1986 shall be treated as an advance refunding only if the refunding bond was issued more than 180 days before the redemption of the refunded bond, and

"(B) a bond issued before 1986, shall be treated as advance refunded no more than once before March 15, 1986.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

"(e) INFORMATION REPORTING.—

"(1) IN GENERAL.—Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of paragraph (2).

"(2) INFORMATION REPORTING REQUIREMENTS.—A bond satisfies the requirements of this paragraph if the issuer submits to the Secretary, not later than the 15th day of the 2d calendar month after the close of the calendar quarter in which the bond is issued (or such later time as the Secretary may prescribe with respect to any portion of the statement), a statement concerning the issue of which the bond is a part which contains—

"(A) the name and address of the issuer,

"(B) the date of issue, the amount of net proceeds of the issue, the stated interest rate, term, and face amount of each bond which is part of the issue, the amount of issuance costs of the issue, and the amount of reserves of the issue,

"(C) where required, the name of the applicable elected representative who approved the issue, or a description of the voter referendum by which the issue was approved,

"(D) the name, address, and employer identification number of—

"(i) each initial principal user of any facility provided with the proceeds of the issue,

"(ii) the common parent of any affiliated group of corporations (within the meaning of section 1504(a)) of which such initial principal user is a member, and

"(iii) if the issue is treated as a separate issue under section 144(a)(6)(A), any person treated as a principal user under section 144(a)(6)(B),

"(E) a description of any property to be financed from the proceeds of the issue,

"(F) a certification by a State official designated by State law (or, where there is no such official, the Governor) that the bond meets the requirements of section 146 (relating to cap on private activity bonds), if applicable, and

"(G) such other information as the Secretary may require.

Subparagraphs (C) and (D) shall not apply to any bond which is not a private activity bond. The Secretary may provide that certain information specified in the 1st sentence need not be included in the statement with respect to an issue where the inclusion of such information is not necessary to carry out the purposes of this subsection.

"(3) EXTENSION OF TIME.—The Secretary may grant an extension of time for the filing of any statement required under paragraph (2) if there is reasonable cause for the failure to file such statement in a timely fashion.

"SUBPART C—DEFINITIONS AND SPECIAL RULES

"Sec. 150. Definitions and special rules.

"SEC. 150. DEFINITIONS AND SPECIAL RULES.

"(a) GENERAL RULE.—For purposes of this part—

"(1) BOND.—The term 'bond' includes any obligation.

"(2) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term 'governmental unit' does not include the United States or any agency or instrumentality thereof.

"(3) NET PROCEEDS.—The term 'net proceeds' means, with respect to any issue, the proceeds of such issue reduced by amounts in a reasonably required reserve or replacement fund.

"(4) 501(c)(3) ORGANIZATION.—The term '501(c)(3) organization' means any organization described in section 501(c)(3) and exempt from tax under section 501(a).

"(5) OWNERSHIP OF PROPERTY.—Property shall be treated as owned by a governmental unit if it is owned on behalf of such unit.

"(6) TAX-EXEMPT BOND.—The term 'tax-exempt' means, with respect to any bond (or issue), that the interest on such bond (or on the bonds issued as part of such issue) is excluded from gross income.

"(b) CHANGE IN USE OF FACILITIES FINANCED WITH TAX-EXEMPT PRIVATE ACTIVITY BONDS.—

"(1) MORTGAGE REVENUE BONDS.—

"(A) IN GENERAL.—In the case of any residence with respect to which financing is provided from the proceeds of a qualified mortgage bond or qualified veterans' mortgage bond, if there is a continuous period of at least 1 year during which such residence is not the principal residence of at least 1 of the mortgagors who received such financing, then no deduction shall be allowed under this chapter for interest on such financing which accrues on or after the date such period began.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to the extent the Secretary determines that its application would result in undue hardship and that the failure to meet the requirements of subparagraph (A) resulted from circumstances beyond the mortgagor's control.

"(2) QUALIFIED RESIDENTIAL RENTAL PROJECTS.—In the case of any project for residential rental property—

"(A) with respect to which financing is provided from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt bond described paragraph (7) of section 142(a), and

"(B) which does not meet the requirements of section 142(d),

no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the 1st day of the taxable year in which such project fails to meet such requirements and ending on the date such project meets such requirements.

"(3) QUALIFIED 501(C)(3) BONDS.—

"(A) IN GENERAL.—In the case of any facility with respect to which financing is provided from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond, if any portion of such facility—

"(i) is used in a trade or business of any person other than a 501(c)(3) organization or a governmental unit, but

"(ii) continues to be owned by a 501(c)(3) organization,

then the owner of such portion shall be treated for purposes of this title as engaged in an unrelated trade or business (as defined in section 513) with respect to such portion. The amount of gross income attributable to such portion for any period shall not be less than the fair rental value of such portion for such period.

"(B) DENIAL OF DEDUCTION FOR INTEREST.—No deduction shall be allowed under this chapter for interest on financing described in subparagraph (A) which accrues during the period beginning on the date such facility is used as described in subparagraph (A)(i) and ending on the date such facility is not so used.

"(4) CERTAIN EXEMPT FACILITY BONDS.—

"(A) IN GENERAL.—In the case of any facility with respect to which financing is provided from the proceeds of any private activity bond to which this paragraph applies, if such facility is not used for a purpose for which a tax-exempt bond could be issued on the date of such issue, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the date such facility is not so used and ending on the date such facility is so used.

"(B) BONDS TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any private activity bond which, when issued, purported to be a tax-exempt exempt facility bond described in a paragraph (other than paragraph (7)) of section 142(a).

"(5) FACILITIES REQUIRED TO BE OWNED BY GOVERNMENTAL UNITS OR 501(C)(3) ORGANIZATIONS.—If—

"(A) financing is provided with respect to any facility from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt bond,

"(B) such facility is required to be owned by a governmental unit or a 501(c)(3) organization as a condition of such tax exemption, and

"(C) such facility is not so owned,

then no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the date such facility is not so owned and ending on the date such facility is so owned.

"(c) EXCEPTION AND SPECIAL RULES FOR PURPOSES OF SUBSECTION (b).—For purposes of subsection (b)—

"(1) EXCEPTION.—Any use with respect to facilities financed with proceeds of an issue which are not required to be used for the exempt purpose of such issue shall not be taken into account.

"(2) TREATMENT OF AMOUNTS OTHER THAN INTEREST.—If the amounts payable for the use of a facility are not interest, subsection (b) shall apply to such amounts as if they were interest but only to the extent such amounts for any period do not exceed the amount of interest accrued on the bond financing for such period.

"(3) USE OF PORTION OF FACILITY.—In the case of any person which uses only a portion of the facility, only the interest accruing on the financing allocable to such portion shall be taken into account by such person.

"(4) CESSATION WITH RESPECT TO PORTION OF FACILITY.—In the case of any facility where part but not all of the facility is not used for an exempt purpose, only the interest accruing on the financing allocable to such part shall be taken into account.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and subsection (b).

"(d) QUALIFIED SCHOLARSHIP FUNDING BOND.—For purposes of this part and section 103—

"(1) TREATMENT AS STATE OR LOCAL BOND.—A qualified scholarship funding bond shall be treated as a State or local bond.

"(2) QUALIFIED SCHOLARSHIP FUNDING BOND DEFINED.—The term 'qualified scholarship funding bond' means a bond issued by a corporation which—

"(A) is a corporation not for profit established and operated exclusively for the purpose of acquiring student loan notes incurred under the Higher Education Act of 1965, and

"(B) is organized at the request of the State or 1 or more political subdivisions thereof or is requested to exercise such power by 1 or more political subdivisions and required by its corporate charter and bylaws, or required by State law, to devote any income (after payment of expenses, debt service, and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States.

"(e) BONDS OF CERTAIN VOLUNTEER FIRE DEPARTMENTS.—For purposes of this part and section 103—

"(1) IN GENERAL.—A bond of a volunteer fire department shall be treated as a bond of a political subdivision of a State if—

"(A) such department is a qualified volunteer fire department with respect to an area within the jurisdiction of such political subdivision, and

"(B) such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of a firehouse or firetruck used or to be used by such department.

"(2) QUALIFIED VOLUNTEER FIRE DEPARTMENT.—For purposes of this subsection, the term 'qualified volunteer fire department' means, with respect to a political subdivision of a State, any organization—

"(A) which is organized and operated to provide firefighting or emergency medical services for persons in an area (within the jurisdiction of such political subdivision) which is not provided with any other firefighting services, and

"(B) which is required (by written agreement) by the political subdivision to furnish firefighting services in such area."

(c) AMENDMENT TO ARBITRAGE REGULATIONS.—The provision in the Federal income tax regulations relating to the arbitrage requirements which permits a higher yield on acquired obligations if the issuer elects to waive the benefits of the temporary period provisions shall not apply to bonds issued after August 31, 1986.

(d) STATE AND LOCAL GOVERNMENT SERIES MODIFICATIONS.—Notwithstanding any other provision of law or any regulations promulgated thereunder (including the provisions of 31 CFR part 344) the Secretary of the Treasury shall extend by January 1, 1987, the State and Local Government Series program to provide—

(1) instruments allowing flexible investment of bond proceeds in a manner eliminating the earning of rebatable arbitrage,

(2) demand deposits under such program by eliminating advance notice and minimum maturity requirements related to the purchase of bonds,

(3) operation of such program at no net cost to the Federal Government, and

(4) deposits for a stated maturity under reasonable advance notice requirements.

(e) MANAGEMENT CONTRACTS.—The Secretary of the Treasury or his delegate shall modify the Secretary's advance ruling guidelines relating to when use of property pursuant to a management contract is not considered a trade or business use by a private person for purposes of section 141(a) of the Internal Revenue Code of 1986 to provide that use pursuant to a management contract generally shall not be treated as trade or business use as long as—

(1) the term of such contract (including renewal options) does not exceed 5 years,

(2) the exempt owner has the option to cancel such contract at the end of any 3-year period,

(3) the manager under the contract is not compensated (in whole or in part) on the basis of a share of net profits, and

(4) at least 50 percent of the annual compensation of the manager under such contract is based on a periodic fixed fee.

(f) AMENDMENTS RELATING TO MORTGAGE CREDIT CERTIFICATE PROGRAM.—

(1) TRADE-IN RATE INCREASED TO 25 PERCENT.—

(A) Subparagraph (A) of section 25(d)(2) (relating to aggregate limit of certificate credit rates) is amended by striking out "20 percent" and inserting in lieu thereof "25 percent".

(B) Subparagraph (A) of section 25(f)(2) (defining correction amount) is amended by striking out "0.20" and inserting in lieu thereof "0.25".

(2) CONFORMING AMENDMENTS.—

(A) Clause (ii) of section 25(b)(2)(A) (defining certificate indebtedness amount) is amended by striking out "section 103A(l)(6)" and inserting in lieu thereof "section 143(k)(4)".

(B) Clause (iii) of section 25(b)(2)(A) is amended by striking out "section 103A(l)(7)" and inserting in lieu thereof "section 143(k)(5)".

(C)(i) Subparagraphs (A)(iii) and (B) of section 25(c)(2) are each amended by striking out "section 103A" each place it appears and inserting in lieu thereof "section 143".

(ii) Clause (ii) of section 25(c)(2)(A) is amended by striking out "section 103A" and inserting in lieu thereof "section 103".

(D) Clause (iii) of section 25(c)(2)(A) (defining qualified mortgage credit certificate program) is amended by striking out all the subclauses thereof and inserting in lieu thereof the following:

"(I) subsection (c) (relating to residence requirements),

"(II) subsection (d) (relating to 3-year requirement),

"(III) subsection (e) (relating to purchase price requirement),

"(IV) subsection (f) (relating to income requirements),

"(V) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

"(VI) paragraph (1) of subsection (i) (relating to other requirements),".

(E) The last sentence of subparagraph (A) of section 25(c)(2) is amended by striking out "section 103A(c)(2)" and inserting in lieu thereof "section 143(a)(2)".

(F) Subparagraph (B) of section 25(c)(2) is amended—

(i) by striking out "subclauses (II) and (IV)" and inserting in lieu thereof "subclauses (II), (IV), and (V)", and

(ii) by striking out clause (iii) and all that follows and inserting in lieu thereof the following:

"(iii) paragraph (1) of section 143(d) shall be applied by substituting '100 percent' for '95 percent or more'.

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 95-percent requirement of section 143(d)(1) and the Secretary is satisfied that such requirement will be met under such plan."

(G) Subsection (d) of section 25 (relating to determination of certificate credit rate) is amended by striking out paragraph (3).

(H) Paragraph (2) of section 25(e) (relating to indebtedness not treated as certified where certain requirements in fact not met) is amended by striking out "subsection (d)(1), (e), (f), and (j) of section 103A" and inserting in lieu thereof "subsections (c)(1), (d), (e), (f), and (i) of section 143".

(I) Paragraph (6) of section 25(e) is amended by striking out "section 103(b)(6)(C)(i)" and inserting in lieu thereof "section 144(a)(3)(A)".

(J) Subparagraph (A) of section 25(e)(8) is amended by striking out "section 103A(l)(7)(B)" and inserting in lieu thereof "section 143(k)(5)(B)".

(K) Subparagraph (B) of section 25(e)(8) is amended by striking out "section 103A(l)(6)" and inserting in lieu thereof "section 143(k)(4)".

(L) Paragraph (9) of section 25(e) is amended by striking out "section 103A(c)(1)" and inserting in lieu thereof "section 143(a)(1)".

(M) Paragraph (10) of section 25(e) is amended by striking out "section 103A" and inserting in lieu thereof "section 143".

(N) Paragraph (1) of section 25(f) is amended by striking out "paragraph (4) of section 103A(g)" and inserting in lieu thereof "subsection (d) of section 146".

(O) Paragraph (3) of section 25(f) is amended by striking out "section 103A(g)(5)(C)" and inserting in lieu thereof "section 146(d)(3)(C)".

(g) PENALTY FOR FAILURE TO FILE REPORT ON COMPLIANCE WITH QUALIFIED RESIDENTIAL RENTAL PROJECT RULES.—Section 6652 (relating to failure to file certain information returns, registration statements, etc.), as amended by section 1501 of this Act, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) FAILURE TO FILE CERTIFICATION WITH RESPECT TO CERTAIN RESIDENTIAL RENTAL PROJECTS.—In the case of each failure to provide a certification as required by section 142(d)(7) at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such certification, an amount equal to $100 for each such failure."

(h) REPEAL OF REPORT ON MORTGAGE REVENUE BOND PROGRAM.—Paragraph (7) of section 611(d) of the Tax Reform Act of 1984 is hereby repealed.

(i) AMENDMENT TO OUTPUT REGULATIONS.—The Secretary of the Treasury or his delegate shall amend the provision in the Federal income tax regulations relating to when use pursuant to certain output contracts is considered to satisfy the private business tests of paragraphs (1) and (2) of section 141(b) of the Internal Revenue Code of 1986 to eliminate the requirement of a 3 percent guaranteed minimum payment.

(j) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) REPEAL OF SECTION 103A.—Section 103A is hereby repealed.

(2) SECTION 143 REDESIGNATED AS SECTION 7703.—

(A) IN GENERAL.—Chapter 79 (relating to definitions) is amended by adding at the end thereof the following new section:

"SEC. 7703. DETERMINATION OF MARITAL STATUS.

"(a) GENERAL RULE.—For purposes of part V of subchapter B of chapter 1 and those provisions of this title which refer to this subsection—

"(1) the determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

"(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

"(b) CERTAIN MARRIED INDIVIDUALS LIVING APART.—For purposes of those provisions of this title which refer to this subsection, if—

"(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 151(e)(3)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)),

"(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

"(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household,

such individual shall not be considered as married."

(B) CLERICAL AMENDMENT.—The table of sections for chapter 79 is amended by adding at the end thereof the following new item:

"Sec. 7703. Determination of marital status."

(3) Paragraph (3) of section 163(f) (relating to denial of deductions for interest on certain obligations not in registered form) is amended by striking out "section 103(j)(3)" and inserting in lieu thereof "section 149(a)(3)".

(4) Sections 269A(b)(3), 414(m)(5), 414(n)(6), and 4988(c)(2) (defining related person) are each amended by striking out "section 103(b)(6)(C)" and inserting in lieu thereof "section 144(a)(3)".

(5) Paragraph (1) of section 4701(b) (defining registration-required obligation) is amended by striking out "section 103(j)" and inserting in lieu thereof "section 149(a)".

(6) Sections 4940(c)(5), 4942(f)(2)(A), and 7871(a)(4) are each amended by striking out "(relating to interest on certain governmental obligations)" and inserting in lieu thereof "(relating to State and local bonds)".

(7) Paragraph (2) of section 7871(c) (relating to no exemption for certain private activity bonds) is amended to read as follows:

"(2) NO EXEMPTION FOR PRIVATE ACTIVITY BONDS.—Subsection (a) of section 103 shall not apply to any private activity bond (as defined in section 141(a)) issued by an Indian tribal government (or subdivision thereof)."

(8) Sections 22(e)(2), 32 (c) and (d), 86(c)(3), 152(a)((9), 153(5), 194(b)(1), 1398(d)(2), 3402(f), and 6362(f)(5) are each amended by striking out "section 143" each place it appears and inserting in lieu thereof "section 7703".

(9) Sections 105(d)(5)(C) and 879(c)(3) are each amended by striking out "section 143(a)" and inserting in lieu thereof "section 7703(a)".

(10) Section 2(c) is amended by striking out "section 143(b)" and inserting in lieu thereof "section 7703(b)".

SEC. 1302. TREATMENT OF SECTION 501(c)(3) BONDS.

Nothing in the treatment of section 501(c)(3) bonds as private activity bonds under the amendments made by this title shall be construed as indicating how section 501(c)(3) bonds will be treated in future legislation, and any change in future legislation applicable to private activity bonds shall apply to section 501(c)(3) bonds only if expressly provided in such legislation.

SEC. 1303. REPEAL OF PROVISIONS RELATING TO GENERAL STOCK OWNERSHIP CORPORATIONS.

(a) IN GENERAL.—Subchapter U of chapter 1 (relating to general stock ownership corporation) is hereby repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 172(b) (relating to net operating loss carrybacks and carryovers) is amended by striking out subparagraph (J) and by redesignating subparagraph (K) as subparagraph (J).

(2) Paragraphs (2) and (4) of section 172(k) are each amended by striking out "subsection (b)(1)(K)" and inserting in lieu thereof "subsection (b)(1)(J)".

(3) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking out paragraph (22) and by redesignating paragraphs (23) through (27) as paragraphs (22) through (26), respectively.

(4) Subsection (r) of section 3402 (relating to extension of withholding to GSOC distribution) is hereby repealed.

(5) Section 6039B (relating to return of general stock ownership corporation) is hereby repealed.

(c) CLERICAL AMENDMENTS.—

(1) The table of subchapters for chapter 1 is amended by striking out the item relating to subchapter U.

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking out the item relating to section 6039B.

SUBTITLE B—EFFECTIVE DATES AND TRANSITIONAL RULES

SEC. 1311. GENERAL EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this subtitle, the amendments made by section 1301 shall apply to bonds issued after August 15, 1986.

(b) SECTION 1301(f).—

(1) INCREASE IN TRADE-IN RATE.—The amendments made by paragraph (1) of section 1301(f) shall apply to nonissued bond amounts elected after August 15, 1986.

(2) CERTIFICATES.—The amendments made by paragraph (2) of section 1301(f) shall apply to certificates issued after August 15, 1986.

(c) CHANGES IN USE, ETC., OF FACILITIES FINANCED WITH PRIVATE ACTIVITY BONDS.—Subsection (b) of section 150 of the 1986 Code shall apply to changes in use (and ownership) after August 15, 1986, but only with respect to financing (including refinancings) provided after such date.

(d) SECTION 1303.—The amendments made by section 1303 shall take effect on the date of the enactment of this Act.

SEC. 1312. TRANSITIONAL RULES FOR CONSTRUCTION OR BINDING AGREEMENTS AND CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.

(a) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENTS.—

(1) IN GENERAL.—The amendments made by section 1301 shall not apply to bonds (other than a refunding bond) with respect to a facility—

(A)(i) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before September 26, 1985, and was completed on or after such date,

(ii) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before September 26, 1985, and some of such expenditures are incurred on or after such date, or

(iii) acquired on or after September 26, 1985, pursuant to a binding contract entered into before such date, and

(B) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before September 26, 1985.

(2) SIGNIFICANT EXPENDITURES.—For purposes of paragraph (1)(A), the term "significant expenditures" means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

(b) CERTAIN AMENDMENTS TO APPLY TO BONDS UNDER SUBSECTION (a) TRANSITIONAL RULE.—

(1) IN GENERAL.—In the case of a bond issued after August 15, 1986, and to which subsection (a) of this section applies, the requirements of the following provisions shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code:

(A) The requirement that 95 percent or more of the net proceeds of an issue are to be used for a purpose described in section 103(b) (4) or (5) of such Code in order for section 103(b)(4) or (5) of such Code to apply, including the application of section 142(b)(2) of the 1986 Code (relating to limitation on office space).

(B) The requirement that 95 percent or more of the net proceeds of an issue are to be used for a purpose described in section 103(b)(6)(A) of the 1954 Code in order for section 103(b)(6)(A) of such Code to apply.

(C) The requirements of section 143 of the 1986 Code (relating to qualified mortgage bonds and qualified veterans' mortgage bonds) in order for section 103A(b)(2) of the 1954 Code to apply.

(D) The requirements of section 144(a)(11) of the 1986 Code (relating to limitation on acquisition of depreciable farm property) in order for section 103(b)(6)(A) of the 1954 Code to apply.

(E) The requirements of section 147(b) of the 1986 Code (relating to maturity may not exceed 120 percent of economic life).

(F) The requirements of section 147(f) of the 1986 Code (relating to public approval required for private activity bonds).

(G) The requirements of section 147(g) of the 1986 Code (relating to restriction on issuance costs financed by issue).

(H) The requirements of section 148 of the 1986 Code (relating to arbitrage).

(I) The requirements of section 149(e) of the 1986 Code (relating to information reporting).

(J) The provisions of section 150(b) of the 1986 Code (relating to changes in use).

(2) CERTAIN REQUIREMENTS APPLY ONLY TO BONDS ISSUED AFTER DECEMBER 31, 1986.—In the case of subparagraphs (F) and (I) of paragraph (1), paragraph (1) shall be applied by substituting "December 31, 1986" for "August 15, 1986".

(3) APPLICATION OF VOLUME CAP.—Except as provided in section 1315, any bond to which this subsection applies shall be treated as a private activity bond for purposes of section 146 of the 1986 Code if such bond would have been taken into account under section 103(n) or 103A(g) of the 1954 Code (determined without regard to any carryforward election) were such bond issued before August 16, 1986.

(4) APPLICATION OF PROVISIONS.—For purposes of applying the requirements referred to in any subparagraph of paragraph (1) or of subsection (a)(3) or (b)(3) of section 1313 to any bond, such bond shall be treated as described in the subparagraph of section 141(d)(1) of the 1986 Code to which the use of the proceeds of such bond most closely relates.

(c) SPECIAL RULES FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—

(1) IN GENERAL.—In the case of any bond described in paragraph (2)—

(A) section 1311 (a) and (c) and subsection (b) of this section shall be applied by substituting "August 31, 1986" for "August 15, 1986" each place it appears,

(B) subsection (b)(1) shall be applied without regard to subparagraphs (F), (G), and (J), and

(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (H) and (I) of subsection (b)(1).

(2) BOND DESCRIBED.—A bond is described in this paragraph if such bond is not—

(A) an industrial development bond, as defined in section 103(b)(2) of the 1954 Code but determined—

(i) by inserting "directly or indirectly" after "is" in the material preceding clause (i) of subparagraph (B) thereof, and

(ii) without regard to subparagraph (B) of section 103(b)(3) of such Code,

(B) a mortgage subsidy bond (as defined in section 103A(b)(1) of such Code, without regard to any exception from such definition), or

(C) a private loan bond (as defined in section 103(o)(2)(A) of such Code, without regard to any exception from such definition other than section 103(o)(2)(C) of such Code).

(d) ELECTION OUT.—This section shall not apply to any issue with respect to which the issuer elects not to have this section apply.

SEC. 1313. TRANSITIONAL RULES RELATING TO REFUNDINGS.

(a) CERTAIN CURRENT REFUNDINGS.—

(1) IN GENERAL.—Except as provided in paragraph (3), the amendments made by section 1301 shall not apply to any bond the proceeds of which are used exclusively to refund (other than to advance refund) a qualified bond (or a bond which is part of a series of refundings of a qualified bond) if—

(A) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(B)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the proceeds of such issue (determined under section 147(b) of the 1986 Code), or

(ii) the refunding bond has a maturity date not later than the date which is 17 years after the date on which the qualified bond was issued.

In the case of a qualified bond which was (when issued) a qualified mortgage bond or a qualified veterans' mortgage bond, subparagraph (B)(i) shall not apply and subparagraph (B)(ii) shall be applied by substituting "32 years" for "17 years".

(2) QUALIFIED BOND.—For purposes of paragraph (1), the term "qualified bond" means any bond (other than a refunding bond)—

(A) issued before August 16, 1986, or

(B) issued after August 15, 1986, if section 1312(a) applies to such bond.

(3) CERTAIN AMENDMENTS TO APPLY.—The following provisions of the 1986 Code shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code and shall apply to refunding bonds described in paragraph (1):

(A) The requirements of section 147(f) (relating to public approval required for private activity bonds) but only if the maturity date of the refunding bond is later than the maturity date of the refunded bond.

(B) The requirements of section 147(g) (relating to restriction on issuance costs financed by issue).

(C) The requirements of section 148 (relating to arbitrage).

(D) The requirements of section 149(e) (relating to information reporting).

(E) The provisions of section 150(b) of such Code (relating to changes in use).

Subparagraphs (A) and (D) shall apply only if the refunding bond is issued after December 31, 1986.

(4) SPECIAL RULES FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—In the case of any bond described in section 1312(c)(2)—

(A) paragraph (2) of this subsection shall be applied by substituting "August 31, 1986" for "August 15, 1986",

(B) paragraph (3) shall be applied without regard to subparagraphs (A), (B), and (E), and

(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (C) and (D) of paragraph (3).

(b) CERTAIN ADVANCE REFUNDINGS.—

(1) IN GENERAL.—Except as provided in paragraph (3), the amendments made by section 1301 shall not apply to any bond the proceeds of which are used exclusively to advance refund a bond if—

(A) the refunded bond is described in paragraph (2), and

(B) the requirements of subsection (a)(1)(B) are met.

(2) NON-IDB'S, ETC.—A bond is described in this paragraph if such bond is not described in subsection (b)(2) or (o)(2)(A) of section 103 of the 1954 Code and was issued (or was issued to refund a bond issued) before August 16, 1986.

(3) CERTAIN AMENDMENTS TO APPLY.—The following provisions of the 1986 Code shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code and shall apply to refunding bonds described in paragraph (1):

(A) The requirements of section 147(f) (relating to public approval required for private activity bonds).

(B) The requirements of section 147(g) (relating to restriction on issuance costs financed by issue).

(C) The requirements of section 148 (relating to arbitrage), except that section 148(d)(3) shall not apply to proceeds of such bonds to be used to discharge the refunded bonds.

(D) The requirements of paragraphs (3) and (4) of section 149(d) (relating to advance refundings).

(E) The requirements of section 149(e) (relating to information reporting).

(F) The provisions of section 150(b) of such Code (relating to changes in use).

Subparagraphs (A) and (E) shall apply only if the refunding bond is issued after December 31, 1986.

(4) SPECIAL RULE FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—In the case of any bond described in section 1312(c)(2)—

(A) paragraph (2) of this subsection shall be applied by substituting "September 1, 1986" for "August 16, 1986",

(B) paragraph (3) shall be applied without regard to subparagraphs (A), (B), and (F), and

(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (C) and (E).

(5) CERTAIN REFUNDING BONDS SUBJECT TO VOLUME CAP.—Any refunding bond described in paragraph (1) the proceeds of which are used to refund a bond issued as part of an issue 5 percent or more of the net proceeds of which are to be used to provide an output facility (within the meaning of section 141(b)(4) of the 1986 Code) shall be treated as a private activity bond for purposes of section 146 of the 1986 Code (to the extent of the nongovernmental use of such issue, under rules similar to the rules of section 146(m)(2) of such Code). For purposes of the preceding sentence, use by a 501(c)(3) organization with respect to its activities which do not constitute unrelated trades or businesses (determined by applying section 513(a) of the 1986 Code) shall not be taken into account.

(c) TREATMENT OF CURRENT REFUNDINGS OF CERTAIN IDB'S AND 501(c)(3) BONDS.—

(1) $40,000,000 LIMIT FOR CERTAIN SMALL ISSUE BONDS.—Paragraph (10) of section 144(a) of the 1986 Code shall not apply to any bond the proceeds of which are used exclusively to refund a tax-exempt bond to which such paragraph and the corresponding provision of prior law do not apply if—

(A) the refunding bond has a maturity date not later than the maturity date of the refunded bond,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond,

(C) the interest rate on the refunding bond is lower than the interest rate on the refunded bond, and

(D) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

(2) $150,000,000 LIMITATION FOR CERTAIN 501(C)(3) BONDS.—Subsection (b) of section 145 of the 1986 Code (relating to $150,000,000 limitation for nonhospital bonds) shall not apply to any bond the proceeds of which are used exclusively to refund a tax-exempt bond to which such subsection does not apply if—

(A)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the proceeds of such issue (determined under section 147(b) of the 1986 Code), or

(ii) the refunding bond has a maturity date not later than the later of the date which is 17 years after the date on which the qualified bond (as defined in subsection (a)(2)) was issued, and

(B) the requirements of subparagraphs (B) and (D) of paragraph (1) are met with respect to the refunding bond.

Subsection (b) of section 145 of the 1986 Code shall not apply to the 1st advance refunding after March 14, 1986, of a bond issued before January 1, 1986.

(3) APPLICATION TO LATER ISSUES.—Any bond to which section 144(a)(10) or 145(b) of the 1986 Code does not apply by reason of this section shall be taken into account in determining whether such section applies to any later issue.

SEC. 1314. SPECIAL RULES WHICH OVERRIDE OTHER RULES IN THIS SUBTITLE.

(a) ARBITRAGE RESTRICTION ON INVESTMENTS IN ANNUITIES.—In the case of a bond issued after September 25, 1985, section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to an annuity contract.

(b) TEMPORARY PERIOD FOR ADVANCE REFUNDINGS.—In the case of a bond issued after December 31, 1985, to advance refund a bond, the initial temporary period under section 103(c) of the 1954 Code with respect to the proceeds of the refunding bond shall end not later than 30 days after the date of issue of the refunding bond.

(c) DETERMINATION OF YIELD.—In the case of a bond issued after December 31, 1985, for purposes of section 103(c) of the 1954 Code, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274 of the 1986 Code).

(d) ARBITRAGE REBATE REQUIREMENT.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, in the case of a bond issued after December 31, 1985, section 103 of the 1954 Code shall be treated as including the requirements of section 148(f) of the 1986 Code in order for section 103(a) of the 1954 Code to apply.

(2) GOVERNMENT BONDS.—In the case of a bond described in section 1312(c)(2) (and not described in paragraph (3) of this subsection), paragraph (1) shall be applied by substituting "August 31, 1986" for "December 31, 1985".

(3) CERTAIN POOLS.—

(A) IN GENERAL.—In the case of a bond described in section 1312(c)(2) and issued as part of an issue described in subparagraph (B), (C), (D), or (E), paragraph (1) shall be applied by substituting "3 p.m. E.D.T., July 17, 1986" for "December 31, 1985". Such a bond shall not be treated as a private activity bond for purposes of applying section 148(f) of the 1986 Code.

(B) LOANS TO UNRELATED GOVERNMENTAL UNITS.—An issue is described in this subparagraph if any portion of the proceeds of the issue is to be used to make or finance loans to any governmental unit other than any governmental unit which is subordinate to the issuer and the jurisdiction of which is within—

(i) the jurisdiction of the issuer, or

(ii) the jurisdiction of the governmental unit on behalf of which such issuer issued the issue.

(C) LESS THAN 75 PERCENT OF PROJECTS IDENTIFIED.—An issue is described in this subparagraph if less than 75 percent of the proceeds of the issue is to be used to make or finance loans to initial borrowers to finance projects identified (with specificity) by the issuer, on or before the date of issuance of the issue, as projects to be financed with the proceeds of the issue.

(D) LESS THAN 25 PERCENT OF FUNDS COMMITTED TO BE BORROWED.—An issue is described in this subparagraph if, on or before the date of issuance of the issue, commitments have not been entered into by initial borrowers to borrow at least 25 percent of the proceeds of the issue.

(E) CERTAIN LONG MATURITY ISSUES.—An issue is described in this subparagraph if—

(i) the maturity date of any bond issued as part of such issue exceeds 30 years, and

(ii) any principal payment on any loan made or financed by the proceeds of the issue is to be used to make or finance additional loans.

(F) SPECIAL RULES.—

(i) EXCEPTION FROM SUBPARAGRAPHS (C) AND (D) WHERE SIMILAR POOLS ISSUED BY ISSUER.—An issue shall not be treated as described in subparagraph (C) or (D) with respect to any issue to make or finance loans to governmental units if—

(I) the issuer, before 1986, issued 1 or more similar issues to make or finance loans to governmental units, and

(II) the aggregate face amount of such issues issued during 1986 does not exceed 250 percent of the average of the annual aggregate face amounts of such similar issues issued during 1983, 1984, or 1985.

(ii) DETERMINATION OF ISSUANCE.—For purposes of subparagraph (A), an issue shall not be treated as issued until—

(I) the bonds issued as part of such issue are offered to the public (pursuant to final offering materials), and

(II) at least 25 percent of such bonds is sold to the public.

For purposes of the preceding sentence, the sale of a bond to a securities firm, broker, or other person acting in the capacity of an underwriter or wholesaler shall not be treated as a sale to the public.

(e) INFORMATION REPORTING.—In the case of a bond issued after December 31, 1986, nothing in section 103(a) of the 1986 Code or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of section 149(e) of the 1986 Code. A bond described in section 1312(c)(2) shall not be treated as a private activity bond for purposes of applying such requirements.

(f) ABUSIVE TRANSACTION LIMITATION ON ADVANCE REFUNDINGS TO APPLY.—In the case of a bond issued after December 31, 1986, nothing in section 103(a) of the 1986 Code or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond if the issue of which such bond is a part is described in paragraph (4) of section 149(d) of the 1986 Code (relating to abusive transactions).

(g) SECTION TO OVERRIDE OTHER RULES.—Except as otherwise expressly provided by reference to a provision to which a subsection of this section applies, nothing in any

other section of this subtitle shall be construed as exempting any bond from the application such provision.

SEC. 1315. TRANSITIONAL RULES RELATING TO VOLUME CAP.

(a) IN GENERAL.—Except as otherwise provided in this section, section 146(f) of the 1986 Code shall not apply with respect to an issuing authority's volume cap under section 103(n) of the 1954 Code, and no carryforward under such section 103(n) shall be recognized for bonds issued after August 15, 1986.

(b) CERTAIN BONDS FOR CARRYFORWARD PROJECTS OUTSIDE OF VOLUME CAP.—Bonds issued pursuant to an election under section 103(n)(10) of the 1954 Code (relating to elective carryforward of unused limitation for specified project) made before November 1, 1985, shall not be taken into account under section 146 of the 1986 Code if the carryforward project is a facility to which the amendments made by section 1301 do not apply by reason of section 1312(a) of this Act.

(c) VOLUME CAP NOT TO APPLY WITH RESPECT TO CERTAIN FACILITIES AND PURPOSES.—Section 146 of the 1986 Code shall not apply to any bond issued with respect to any facility or purpose described in a paragraph of subsection (d) if—

(1) such bond would not have been taken into account under section 103(n) of the 1954 Code (determined without regard to any carryforward election) were such bond issued before August 16, 1986, or

(2) such bond would not have been taken into account under section 103(n) of the 1954 Code (determined with regard to any carryforward election made before January 1, 1986) were such bond issued before August 16, 1986.

(d) FACILITIES AND PURPOSES DESCRIBED.—

(1) A facility is described in this paragraph if the amendments made by section 201 of this Act (relating to depreciation) do not apply to such facility by reason of section 204(a)(8) of this Act (or, in the case of a facility which is governmentally owned, would not apply to such facility were it owned by a nongovernmental person).

(2) A facility or purpose is described in this paragraph if the facility or purpose is described in a paragraph of section 1317.

(3) A facility is described in this paragraph if the facility—

(A) serves Los Osos, California, and

(B) would be described in paragraph (1) were it a solid waste disposal facility.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $35,000,000.

(4) A facility is described in this paragraph if it is a sewage disposal facility with respect to which—

(A) on September 13, 1985, the State public facilities authority took official action authorizing the issuance of bonds for such facility, and

(B) on December 30, 1985, there was an executive order of the State Governor granting allocation of the State ceiling under section 103(n) of the 1954 Code in the amount of $250,000,000 to the Industrial Development Board of the Parish of East Baton Rouge, Louisiana.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $98,500,000.

(5) A facility is described in this paragraph if—

(A) such facility is a solid waste disposal facility in Charleston, South Carolina, and

(B) a State political subdivision took formal action on April 1, 1980, to commit development funds for such facility.

For purposes of determining whether a bond issued as part of an issue for a facility described in the preceding sentence is an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code, "90 percent" shall be substituted for "95 percent" in section 142(a) of the 1986 Code.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $75,000,000.

(6) A facility is described in this paragraph if—

(A) such facility is a wastewater treatment facility for which site preparation commenced before September 1985, and

(B) a parish council approved a service agreement with respect to such facility on December 4, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $120,000,000.

(e) TREATMENT OF REDEVELOPMENT BONDS.—Any bond to which section 1317(6) of this Act applies shall be treated for purposes of this section as described in subsection (c)(1).

SEC. 1316. PROVISIONS RELATING TO CERTAIN ESTABLISHED STATE PROGRAMS.

(a) CERTAIN LOANS TO VETERANS FOR THE PURCHASE OF LAND.—

(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code, but subsections (a), (b), (c), and (d) of section 147 of such Code shall not apply to such bond.

(2) BOND DESCRIBED.—A bond is described in this paragraph if—

(A) such bond is a private activity bond solely by reason of section 141(c) of such Code, and

(B) such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to carry out a program established under State law to provide loans to veterans for the purchase of land and which has been in effect in substantially the same form during the 30-year period ending on July 18, 1984, but only if such proceeds are used to make loans or to fund similar obligations—

(i) in the same manner in which,

(ii) in the same (or lesser) amount or multiple of acres per participant, and

(iii) for the same purposes for which,

such program was operated on March 15, 1984.

(b) RENEWABLE ENERGY PROPERTY.—

(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code.

(2) BOND DESCRIBED.—A bond is described in this paragraph if paragraph (1) of section 103(b) of the 1954 Code would not (without regard to the amendments made by this title) have applied to such bond by reason of section 243 of the Crude Oil Windfall Profit Tax Act of 1980 if—

(A) such section 243 were applied by substituting "95 percent or more of the net proceeds" for "substantially all of the proceeds" in subsection (a)(1) thereof, and

(B) subparagraph (E) of subsection (a)(1) thereof referred to section 149(b) of the 1986 Code.

(c) CERTAIN STATE PROGRAMS.—

(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code.

(2) BOND DESCRIBED.—A bond is described in this paragraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to carry out a program established under sections 280A, 280B, and 280C of the Iowa Code, but only if—

(A) such program has been in effect in substantially the same form since July 1, 1983, and

(B) such proceeds are to be used to make loans or fund similar obligations for the same purposes as permitted under such program on July 1, 1986.

(3) $100,000,000 LIMITATION.—The aggregate face amount of outstanding bonds to which this subsection applies shall not exceed $100,000,000.

(d) USE BY CERTAIN FEDERAL INSTRUMENTALITIES TREATED AS USE BY GOVERNMENTAL UNITS.—Use by an instrumentality of the United States shall be treated as use by a State or local governmental unit for purposes of section 103, and part IV of subchapter B of chapter 1, of the 1986 Code with respect to a program approved by Congress before August 3, 1972, but only if—

(1) a portion of such program has been financed by bonds issued before such date, to which section 103(a) of the 1954 Code applied pursuant to a ruling issued by the Commissioner of the Internal Revenue Service, and

(2) construction of 1 or more facilities comprising a part of such program commenced before such date.

(e) 1 REFUNDING PERMITTED OF CERTAIN BONDS INVESTED IN FEDERALLY INSURED DEPOSITS.—

(1) IN GENERAL.—Section 149(b)(2)(B)(ii) of the 1986 Code shall not apply to any bond issued to refund a bond—

(A) which, when issued, would have been treated as federally guaranteed by reason of being described in clause (ii) of section 103(h)(2)(B) of the 1954 Code if such section had applied to such bond, and

(B)(i) which was issued before April 15, 1983, or

(ii) to which such clause did not apply by reason of the except clause in section 631(c)(2) of the Tax Reform Act of 1984.

Section 147(c) of the 1986 Code shall not apply to any refunding bond permitted under the preceding sentence if section 103(b)(16) of the 1954 Code did not apply to the refunded bond when issued.

(2) REQUIREMENTS.—A refunding bond meets the requirements of this paragraph if—

(A) the refunding bond has a maturity date not later than the maturity date of the refunded bond,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond,

(C) the weighted average interest rate on the refunding bond is lower than the weighted average interest rate on the refunded bond, and

(D) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

(f) CERTAIN HYDROELECTRIC GENERATING PROPERTY.—

(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code.

(2) DESCRIPTION.—A bond is described in this paragraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility described in section 103(b)(4)(H) of the 1954 Code determined—

(A) by substituting "an application for a license" for "an application" in section 103(b)(8)(E)(ii) of the 1954 Code, and

(B) by applying the requirements of section 142(b)(2) of the 1986 Code.

(g) TREATMENT OF BONDS SUBJECT TO TRANSITIONAL RULES UNDER TAX REFORM ACT OF 1984.—

(1) Subsections (d)(3) and (f) of section 148 of the 1986 Code shall not apply to any bond described in section 624(c)(2) of the Tax Reform Act of 1984.

(2)(A) There shall not be taken into account under section 146 of the 1986 Code any bond described in the paragraph (3) of section 631(a) of the Tax Reform Act of 1984 relating to exception for certain bonds for a convention center and resource recovery project.

(B) If a bond issued as part of an issue substantially all of the proceeds of which are used to provide the convention center to which such paragraph (3) applies, such bond shall be treated as an exempt facility bond as defined in section 142(a) of the 1986 Code.

(C) If a bond which is issued as part of an issue substantially all of the proceeds of which are used to provide the resource recovery project to which paragraph (3) applies, such bond shall be treated as an exempt facility bond as defined in section 142(a) of the 1986 Code and section 149(b) of such Code shall not apply.

(3) The amendments made by section 1301 shall not apply to bonds issued to finance any property described in section 631(d)(4) of the Tax Reform Act of 1984.

(4) The amendments made by section 1301 shall not apply to—

(A) any bond issued to finance property described in section 631(d)(5) of the Tax Reform Act of 1984,

(B) any bond described in paragraph (2), (3), (4), (5), (6), or (7) of section 632(a), or section 632(b), of such Act, and

(C) any bond to which section 632(g)(2) of such Act applies.

In the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

(5) The preceding provisions of this subsection shall not apply to any bond issued after December 31, 1988.

(6) The amendments made by section 1301 shall not apply to any bond issued to finance property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

(7) In the case of a bond described in section 632(d) of the Tax Reform Act of 1984—

(A) section 141 of the 1986 Code shall be applied without regard to subsection (a)(2) and subsection (b)(5) and paragraphs (1) and (2) of subsection (b) thereof shall be applied by substituting "25 percent" for "10 percent" each place it appears, and

(B) section 149(b) of the 1986 Code shall not apply.

(8)(A) The amendments made by section 1301 shall not apply to any bond to which section 629(a)(1) of the Tax Reform Act of 1984 applies, but such bond shall be treated as a private activity bond for purposes of section 146 of the 1986 Code.

(B) Section 629 of the Tax Reform Act of 1984 is amended—

(i) in subsection (c)(2), by striking out "$625,000,000" and inserting in lieu thereof "$911,000,000",

(ii) in subsection (c)(3), by adding at the end thereof the following new subparagraphs:

"(D) Improvements to existing generating facilities.

"(E) Transmission lines.

"(F) Electric generating facilities.", and

(iii) in subsection (a), by adding at the end thereof the following new sentence: "The preceding sentence shall be applied by inserting 'and a rural electric cooperative utility' after 'regulated public utility' but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility."

(h) CERTAIN POLLUTION BONDS.—Any bond which is treated as described in section 103(b)(4)(F) of the 1954 Code by reason of section 13209 of the Consolidated Omnibus Budget Reconciliation Act of 1985 shall be treated as a exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code, and section 147(d) of the 1986 Code shall not apply to such bond.

(i) TRANSITION RULE FOR AGGREGATE LIMIT PER TAXPAYER.—For purposes of section 144(a)(10) of the 1986 Code, tax increment bonds described in section 1869(c)(3) of this Act which are issued before August 16, 1986, shall not be taken into account under subparagraph (B)(ii) thereof.

(j) EXTENSION OF ADVANCE REFUNDING EXCEPTION FOR QUALIFIED PUBLIC FACILITY.—Paragraph (4) of section 631(c) of the Tax Reform Act of 1984 is amended—

(1) by striking out "or the Dade County, Florida, airport" in the last sentence, and

(2) by adding at the end thereof the following new sentence: "In the case of refunding obligations not to exceed $40,000,000 with respect to the Dade County, Florida, airport, the first sentence of this paragraph shall be applied by substituting 'December 31, 1987' for 'December 31, 1984' and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply."

(k) EXPANSION OF EXCEPTION FOR RIVER PLACE PROJECT.—Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980, as added by the Tax Reform Act of 1984, is amended—

(1) by striking out "December 31, 1984," in subsection (p) and inserting in lieu thereof "December 31, 1984 (other than obligations described in subsection (r)(1)),", and

(2) by striking out "$55,000,000," in subsection (r)(1)(B) and inserting in lieu thereof "$110,000,000 of which $55,000,000 must be redeemed no later than November 1, 1987".

(l) CERTAIN REFUNDINGS.—Section 628(g) of the Tax Reform Act of 1984 (and the amendments made by section 1301 of this Act) shall not apply to any refunding obligation if the refunded issue was approved by a city building commission on April 29, 1982, and was issued on May 11, 1982, and the refunding obligations were issued before January 1, 1987.

SEC. 1317. TRANSITIONAL RULES FOR SPECIFIC FACILITIES.

(1) DOCKS AND WHARVES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any dock or wharf (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for a facility described in section 142(a)(2) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such dock or wharf is described in any of the following subparagraphs:

(A) A dock or wharf is described in this subparagraph if—

(i) the issue to finance such dock or wharf was approved by official city action on September 3, 1985, and by voters on November 5, 1985, and

(ii) such dock or wharf is for a slack water harbor with respect to which a Corps of Engineers grant of approximately $2,000,000 has been made under section 107 of the Rivers and Harbors Act.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $2,500,000.

(B) A dock or wharf is described in this subparagraph if—

(i) inducement resolutions were adopted on May 23, 1985, September 18, 1985, and September 24, 1985, for the issuance of the bonds to finance such dock or wharf,

(ii) a harbor dredging contract with respect thereto was entered into on August 2, 1985, and

(iii) a construction management and joint venture agreement with respect thereto was entered into on October 1, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $625,000,000.

(C) A facility is described in this subparagraph if—

(i) the legislature first authorized on June 29, 1981, the State agency issuing the bond to issue at least $30,000,000 of bonds,

(ii) the developer of the facility was selected on April 26, 1985, and

(iii) an inducement resolution for the issuance of such issue was adopted on October 9, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

(D) A facility is described in this subparagraph if—

(i) an inducement resolution was adopted on October 17, 1985, for such issue, and

(ii) the city council for the city in which the facility is to be located approved on July 30, 1985, an application for an urban development action grant with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $36,500,000. A facility shall be treated as described in this subparagraph if it would be so described if "90 percent" were substituted for "95 percent" in the material preceding subparagraph (A) of this paragraph.

(2) POLLUTION CONTROL FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide air or water pollution control facilities (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

(A) A facility is described in this subparagraph if—

(i) inducement resolutions with respect to such facility were adopted on September 23, 1974, and on April 5, 1985,

(ii) a bond resolution for such facility was adopted on September 6, 1985, and

(iii) the issuance of the bonds to finance such facility was delayed by action of the Securities and Exchange Commission (file number 70-7127).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $120,000,000.

(B) A facility is described in this subparagraph if—

(i) there was an inducement resolution for such facility on November 19, 1985, and

(ii) design and engineering studies for such facility were completed in March of 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

(C) A facility is described in this subparagraph if—

(i) a resolution was adopted by the county board of supervisors pertaining to an issuance of bonds with respect to such facility on April 10, 1974, and

(ii) such facility was placed in service on June 12, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000. For purposes of this subparagraph, a pollution control facility includes a sewage or solid waste disposal facility (within the meaning of section 103(b)(4)(E) of the 1954 Code).

(D) A facility is described in this subparagraph if—

(i) the issuance of the bonds for such facility was approved by a State agency on August 22, 1979, and

(ii) the authority to issue such bonds was scheduled to expire (under terms of the State approval) on August 22, 1989.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $198,000,000.

(E) A facility is described in this subparagraph if—

(i) such facility is 1 of 4 such facilities in 4 States with respect to which the Ball Corporation transmitted a letter of intent to purchase such facilities on February 26, 1986, and

(ii) inducement resolutions were issued on December 30, 1985, January 15, 1986, January 22, 1986, and March 17, 1986 with respect to bond issuance in the 4 respective States.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,000,000.

(F) A facility is described in this subparagraph if—

(i) inducement resolutions for bonds with respect to such facility were adopted on September 27, 1977, May 27, 1980, and October 8, 1981, and

(ii) such facility is located at a geothermal power complex owned and operated by a single investor-owned utility.

For purposes of this subparagraph and section 103 of the 1986 Code, all hydrogen sulfide air and water pollution control equipment, together with functionally related and subordinate equipment and structures, located or to be located at such power complex shall be treated as a single pollution control facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $600,000,000.

(G) A facility is described in this subparagraph if—

(i) such facility is an air pollution control facility approved by a State bureau of pollution control on July 10, 1986, and by a State board of economic development on July 17, 1986, and

(ii) on August 15, 1986, the State bond attorney gave notice to the clerk to initiate validation proceedings with respect to such issue and on August 28, 1986, the validation decree was entered.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $900,000.

(I) A facility is described in this subparagraph if—

(i) a private company met with a State air control board on November 14, 1985, to propose construction of a sulften unit, and

(ii) the sulften unit is being constructed under a letter of intent to construct which was signed on April 8, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $11,000,000.

(J) A facility is described in this subparagraph if it is part of a 250 megawatt coal-fired electric plant in northeastern Nevada on which the Sierra Pacific Power Company began construction in 1980. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

(K) A facility is described in this subparagraph if—

(i) there was an inducement resolution adopted by a State industrial development authority on January 14, 1976, and

(ii) such facility is named in a resolution of such authority relating to carryforward of the State's unused 1985 private activity bond limit passed by such industrial development authority on December 18, 1985.

This subparagraph shall apply only to obligations issued at the request of the party pursuant to whose request the January 14, 1976, inducement was given. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

(L) A facility is described in this subparagraph if a city council passed an ordinance (ordinance number 4626) agreeing to issue bonds for such project, December 16, 1985. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

(3) SPORTS FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide sports facilities (within the meaning of section 103(b)(4)(B) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facilities are described in any of the following subparagraphs:

(A) A facility is described in this subparagraph if it is a domed stadium—

(i) which was the subject of a city ordinance passed on September 23, 1985,

(ii) for which a loan of approximately $4,000,000 for land acquisition was approved on October 28, 1985, by the State Controlling Board, and

(iii) a stadium operating corporation with respect to which was incorporated on March 20, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

(B) A facility is described in this subparagraph if—

(i) it is a stadium with respect to which a lease agreement for the ground on which the stadium is to be built was entered into between a county and the stadium corporation for such stadium on July 3, 1984,

(ii) there was a resolution approved on November 14, 1984, by an industrial development authority setting forth the terms under which the bonds to be issued to finance such stadium would be issued, and

(iii) there was an agreement for consultant and engineering services for such stadium entered into on September 28, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

(C) A facility is described in this subparagraph if—

(i) it is a stadium to be used by an American League baseball team currently using a stadium in a city having a population in excess of 2,500,000 and described in section 146(d)(3) of the 1986 Code, or by one or more professional sports teams currently using stadiums in such city (or professional sports teams which locate in such city following the relocation from such city of one or more professional sports teams currently using one or more of such stadiums), and

(ii) the obligations to be used to provide financing for such stadium are issued pursuant to an inducement resolution adopted by a State agency on November 20, 1985 (whether or not the beneficiary of such issue is the beneficiary (if any) specified in such resolution).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. In the case of a carryforward of volume cap for a stadium described in the first sentence of this subparagraph, such carryforward shall be permitted whether or not there is a change in the beneficiary of the project.

(D) A facility is described in this subparagraph if—

(i) such facility is a stadium or sports arena for Memphis, Tennessee,

(ii) there was an inducement resolution adopted on November 12, 1985, for the issuance of bonds to expand or renovate an existing stadium and sports arena and/or to construct a new arena, and

(iii) the city council for such city adopted a resolution on April 19, 1983, to include funds in the capital budget of the city for such facility or facilities.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

(E) A facility is described in this subparagraph if such facility is a baseball stadium located in Bergen, Essex, Union, Middlesex, or Hudson County, New Jersey with respect to which governmental action occurred on November 7, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

(F) A facility is described in this subparagraph if—

(i) it is a facility with respect to which—

(I) an inducement resolution dated December 24, 1985, was adopted by the county industrial development authority,

(II) a public hearing of the county industrial development authority was held on February 6, 1986, regarding such facility, and

(III) a contract was entered into by the county, dated February 19, 1986, for engineering services for a highway improvement in connection with such project, or

(ii) it is a domed football stadium adjacent to Cervantes Convention Center in St. Louis, Missouri, with respect to which a proposal to evaluate market demand, financial operations, and economic impact was dated May 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $175,000,000.

(G) A project to provide a roof or dome for an existing sports facility is described in this subparagraph if—

(i) in December 1984 the county sports complex authority filed a carryforward election under section 103(n) of the 1954 Code with respect to such project,

(ii) in January 1985, the State authorized issuance of $30,000,000 in bonds in the next 3 years for such project, and

(iii) an 11-member task force was appointed by the county executive in June 1985, to further study the feasibility of the project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

(H) A sports facility renovation or expansion project is described in this subparagraph if—

(i) an amendment to the sports team's lease agreement for such facility was entered into on May 23, 1985, and

(ii) the lease agreement had previously been amended in January 1976, on July 6, 1984, on April 1, 1985, and on May 7, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

(I) A facility is described in this subparagraph if—

(i) an appraisal for such facility was completed on March 6, 1985,

(ii) an inducement resolution was adopted with respect to such facility on June 7, 1985, and

(iii) a State bond commission granted preliminary approval for such project on September 3, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $3,200,000.

(J) A sports facility renovation or expansion project is described in this subparagraph if—

(i) such facility is a domed stadium which commenced operations in 1965,

(ii) such facility has been the subject of an ongoing construction, expansion, or renovation program of planned improvements,

(iii) part 1 of such improvements began in 1982 with a preliminary renovation program financed by tax-exempt bonds,

(iv) part 2 of such program was previously scheduled for a bond election on February 25, 1986, pursuant to a Commissioners Court Order of October 29, 1985, and

(v) the bond election for improvements to such facility was subsequently postponed on December 10, 1985, in order to provide for more comprehensive construction planning.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

(K) A facility is described in this subparagraph if—

(i) the 1985 State legislature appropriated a maximum sum of $22,500,000 to the State urban development corporation to be made available for such project, and

(ii) a development and operation agreement was entered into among such corporation, the city, the State budget director, and the county industrial development agency, as of March 1, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $28,000,000.

(L) A facility is described in this subparagraph if—

(i) it is to consist of 1 or 2 stadiums appropriate for football games and baseball games with related structures and facilities,

(ii) governmental action was taken on August 7, 1985, by the county commission, and on December 19, 1985, by the city council, concerning such facility, and

(iii) such facility is located in a city having a National League baseball team.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

(M) A facility is described in this subparagraph if—

(i) such facility consists of 1 or 2 stadium projects (1 of which may be a stadium renovation or expansion project) with related structures and facilities,

(ii) a special advisory commission commissioned a study by a national accounting firm with respect to a project for such facility, which study was released in September 1985, and recommended construction of either a new multipurpose or a new baseball-only stadium,

(iii) a nationally recognized design and architectural firm released a feasibility study with respect to such project in April 1985, and

(iv) the metropolitan area in which the facility is located is presently the home of an American League baseball team.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

(N) A facility is described in this subparagraph if—

(i) it is to consist of 1 or 2 stadiums appropriate for football games and baseball games with related structures and facilities,

(ii) the site for such facility was approved by the council of the city in which such facility is to be located on July 9, 1985, and

(iii) the request for proposals process was authorized by the council of the city in which such facility is to be located on November 5, 1985, and such requests were distributed to potential developers on November 15, 1985, with responses due by February 14, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

(O) A facility is described in this subparagraph if—

(i) such facility is described in a feasibility study dated September 1985, and

(ii) resolutions were adopted or other actions taken on February 21, 1985, July 18, 1985, August 8, 1985, October 17, 1985, and November 7, 1985, by the Board of Supervisors of the county in which such facility will be located with respect to such feasibility study, appropriations to obtain land for such facility, and approving the location of such facility in the county.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

(P) A facility is described in this subparagraph if such facility constructed on a site acquired with the sale of revenue bonds approved by a city council on December 9, 1985, (Ordinances No. 669 and 670, series 1985). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

(Q) A facility is described in this subparagraph if—

(i) resolutions were adopted approving a ground lease dated June 27, 1983, by a sports authority (created by a State legislature) with respect to the land on which the facility will be erected,

(ii) such facility is described in a market study dated June 13, 1983, and

(iii) such facility was the subject of an Act of the State legislature which was signed on July 1, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $81,000,000.

(R) A facility is described in this subparagraph if such facility is a baseball stadium and adjacent parking facilities with respect to which a city made a carryforward election of $52,514,000 on February 25, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

(S) A facility is described in this subparagraph if—

(i) such facility is to be used by both a National Hockey League team and a National Basketball Association team,

(ii) such facility is to be constructed on a platform using air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation, and

(iii) such facility is eligible for real property tax (and power and energy) benefits pursuant to State legislation approved and effective as of July 7, 1982.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $225,000,000.

(T) A facility is described in this subparagraph if—

(i) a resolution authorizing the financing of the facility through an issuance of revenue bonds was adopted by the City Commission on August 5, 1986, and

(ii) the metropolitan area in which the facility is to be located is currently the spring training home of an American league baseball team located during the regular season in a city described in subparagraph (C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

(U) A facility is described in this subparagraph if it is a football stadium located in Oakland, California, with respect to which a design was completed by a nationally recognized architectural firm for a stadium seating approximately 72,000, to be located on property adjacent to an existing coliseum complex. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

(V) A facility is described in this subparagraph if it is a sports arena (and related parking facility) for Grand Rapids, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

(W) A facility is described in this subparagraph if such facility is located adjacent to the Anacostia River in the District of Columbia. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $225,000,000.

(X) A facility is described in this subparagraph if it is a spectator sports facility for the City of San Antonio, Texas. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $125,000,000.

(Y) A facility is described in this subparagraph is it will be part of, or adjacent to, an existing stadium which has been owned and operated by a State university and if—

(i) the stadium was the subject of a feasibility report by a certified public accounting firm which is dated December 28, 1984, and

(ii) a report by an independent research organization was prepared in December 1985 demonstrating support among donors and season ticket holders for the addition of a dome to the stadium.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

(4) RESIDENTIAL RENTAL PROPERTY.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance a residential rental project within the meaning of section 103(b)(4) of the 1954 Code shall be treated as an exempt facility bond within the meaning of section 142(a)(7) of the 1986 Code if the facility with respect to the bond is issued satisfies all low-income occupancy requirements applicable to such bonds before August 15, 1986. The bonds are issued pursuant to—

(A) a contract to purchase such property dated August 12, 1985; and

(B) the county housing authority approved the property and the financing thereof on September 24, 1985,

(C) there was an inducement resolution adopted on October 10, 1985, by the county industrial development authority.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $25,400,000.

(5) AIRPORTS.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide an airport (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for facilities described in section 142(a)(1) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if the facility is described in any of the following subparagraphs:

(A) A facility is described in this subparagraph if such facility is a hotel at an airport facility serving a city described in section 631(a)(3) of the Tax Reform Act of 1984 (relating to certain bonds for a convention center and resource recovery project). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

(B) A facility is described in this subparagraph if such facility is the primary airport for a city described in paragraph (3)(C). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000,000. Section 148(d)(2) of the 1986 Code shall not apply to any issue to which this subparagraph applies. A facility shall be described in this subparagraph if it would be so described if "90 percent" were substituted for "95 percent" in the material preceding subparagraph (A).

(C) A facility is described in this subparagraph if such facility is a hotel at Logan airport and such hotel is located on land leased from a State authority under a lease contemplating development of such hotel dated May 1, 1983, or under an amendment, renewal, or extension of such a lease. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

(D) A facility is described in this subparagraph if such facility is the airport for the County of Sacramento, California. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

(6) REDEVELOPMENT PROJECTS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance redevelopment activities as part of a project within a specific designated area shall be treated as a qualified redevelopment bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such project is described in any of the following subparagraphs:

(A) A project is described in this subparagraph if it was the subject of a city ordinance numbered 82-115 and adopted on December 2, 1982, or numbered 9590 and adopted on April 6, 1983. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,000,000.

(B) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph (3)(C) which was designated as commercially blighted on November 14, 1975, by the city council and the redevelopment plan for which will be approved by the city council before January 31, 1987. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

(C) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph (3)(C) which was designated as commercially blighted on March 28, 1979, by the city council and the redevelopment plan for which was approved by the city council on June 20, 1984. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

(D) A project is described in this subparagraph if it is any one of three redevelopment projects in areas in a city described in paragraph (3)(C) designated as blighted by a city council before January 31, 1987 and with respect to which the redevelopment plan is approved by the city council before January 31, 1987. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

(E) A project is described in this subparagraph if such project is for public improvements (including street reconstruction and improvement of underground utilities) for Great Falls, Montana, with respect to which engineering estimates are due on October 1, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $3,000,000.

(F) A project is described in this subparagraph if—

(i) such project is located in an area designated as blighted by the governing body of the city on February 15, 1983 (Resolution No. 4573), and

(ii) such project is developed pursuant to a redevelopment plan adopted by the governing body of the city on March 1, 1983 (Ordinance No. 15073).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

(G) A project is described in this subparagraph if—

(i) such project is located in an area designated by the governing body of the city in 1983,

(ii) such project is described in a letter dated August 8, 1985, from the developer's legal counsel to the development agency of the city, and

(iii) such project consists primarily of retail facilities to be built by the developer named in a resolution of the governing body of the city on August 30, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

(H) A project is described in this subparagraph if—

(i) such project is a project for research and development facilities to be used primarily to benefit a State university and related hospital, with respect to which an urban renewal district was created by the city council effective October 11, 1985, and

(ii) such project was announced by the university and the city in March 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

(I) A project is described in this subparagraph if such project is a downtown redevelopment project with respect to which—

(i) an urban development action grant was made, but only if such grant was preliminarily approved on November 3, 1983, and received final approval before June 1, 1984, and

(ii) the issuer of bonds with respect to such facility adopted a resolution indicating the issuer's intent to adopt such redevelopment project on October 6, 1981, and the issuer adopted an ordinance adopting such redevelopment project on December 13, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

(J) A project is described in this subparagraph if—

(i) with respect to such project the city council adopted on December 16, 1985, an ordinance directing the urban renewal authority to study blight and produce an urban renewal plan,

(ii) the blight survey was accepted and approved by the urban renewal authority on March 20, 1986, and

(iii) the city planning board approved the urban renewal plan on May 7, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

(K) A project is described in this subparagraph if—

(i) the city redevelopment agency approved resolutions authorizing issuance of land acquisition and public improvements bonds with respect to such project on August 8, 1978,

(ii) such resolutions were later amended in June 1979, and

(iii) the State Supreme Court upheld a lower court decree validating the bonds on December 11, 1980.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $380,000,000.

(L) A project is described in this subparagraph if it is a mixed use redevelopment project either—

(i) in an area (known as the Near South Development Area) with respect to which the planning department of a city described in paragraph 3(C) promulgated a draft development plan dated March 1986, and which was the subject of public hearings held by a subcommittee of the plan commission of such city on May 28, 1986, and June 10, 1986, or

(ii) in an area located within the boundaries of any one or more census tracts which are directly adjacent to a river whose course runs through such city.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

(M) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph 3(C) and such area—

(i) was the subject of a report released in May 1986, prepared by the National Park Service, and

(ii) was the subject of a report released January 1986, prepared by a task force appointed by the Mayor of such city.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

(N) A project is described in this subparagraph if it is a city-university redevelopment project approved by a city ordinance No. 152-0-84 and the development plan for which was adopted on January 28, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $23,760,000.

(O) A project is described in this subparagraph if—

(i) an inducement resolution was passed on March 9, 1984, for issuance of bonds with respect to such project,

(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

(iii) an urban development action grant was preliminarily approved for part or all of such project on July 3, 1986, and

(iv) the project is located in a district designated as the Peabody-Gayoso District.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $140,000,000.

(P) A project is described in this subparagraph if the project is a 1-block area of a central business district containing a YMCA building with respect to which—

(i) the city council adopted a resolution expressing an intent to issue bonds for the project on September 27, 1985,

(ii) the city council approved project guidelines for the project on December 20, 1985, and

(iii) the city council by resolution (adopted on July 30, 1986) directed completion of a development agreement.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $26,000,000.

(Q) A project is described in this subparagraph if the project is a 2-block area of a central business district designated as blocks E and F with respect to which—

(i) the city council adopted guidelines and criteria and authorized a request for development proposals on July 22, 1985,

(ii) the city council adopted a resolution expressing an intent to issue bonds for the project on September 27, 1985, and

(iii) the city issued requests for development proposals on March 28, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $47,000,000.

(R) A project is described in this subparagraph if the project is an urban renewal project covering approximately 5.9 acres of land in the Shaw area of the northwest section of the District of Columbia and the 1st portion of such project was the subject of a District of Columbia public hearing on June 2, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

(S) A project is described in this subparagraph if such project is a hotel, commercial, and residential project on the east bank of the Grand River in Grand Rapids, Michigan, with respect to which a developer was selected by the city in June 1985 and a planning agreement was executed in August 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $39,000,000.

(T) A project is described in this subparagraph if such project is the Wurzburg Block Redevelopment Project in Grand Rapids, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

(U) A project is described in this subparagraph if such project is consistent with an urban renewal plan adopted or ordered prepared before August 28, 1986, by the city council of the most populous city in a State which entered the Union on February 14, 1859. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $83,000,000.

(V) A project is described in this subparagraph if such project is consistent with an urban renewal plan which was adopted (or ordered prepared) before August 13, 1985, by an appropriate jurisdiction of a state which entered the Union on February 14, 1859. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $135,000,000 and the limitation on the period during which bonds under this section may be issued shall not apply to such bonds.

(W) A project is described in this paragraph if such project—

(i) is located on lands submerged under the waters of a Great Lake or on adjacent lands which formerly were submerged under the waters of such lake;

(ii) project lands were improved with a stadium which was demolished prior to December 31, 1983, and

(iii) legislation for the project was included in a biennium budget for such the State in which it is to be located prior to December 31, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000.

(X) Any designated area with respect to which a project is described in any subparagraph of this paragraph shall be taken into account in applying section 144(c)(4)(C) of the 1986 Code in determining whether other areas (not so described) may be designated.

(7) CONVENTION CENTERS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any convention or trade show facility (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

(A) A facility is described in this subparagraph if—

(i) a feasibility consultant and a design consultant were hired on April 3, 1985, with respect to such facility, and

(ii) a draft feasibility report with respect to such facility was presented on November 3, 1985, to the Mayor of the city in which such facility is to be located.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $190,000,000. For purposes of this subparagraph, not more than $20,000,000 of bonds issued to advance refund existing convention facility bonds sold on May 12, 1978, shall be treated as bonds described in this subparagraph.

(B) A facility is described in this subparagraph if—

(i) an application for a State loan for such facility was approved by the city council on March 4, 1985, and

(ii) the city council of the city in which such facility is to be located approved on March 25, 1985, an application for an urban development action grant.

The aggregate face amount of bonds which this subparagraph applies shall not exceed $10,000,000.

(C) A facility is described in this subparagraph if—

(i) on November 1, 1983, a convention development tax took effect and was dedicated to financing such facility,

(ii) the State supreme court of the State in which the facility is to be located validated such tax on February 8, 1985, and

(iii) an agreement was entered into on November 14, 1985, between the city and county in which such facility is to be located on the terms of the bonds to be issued with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $66,000,000.

(D) A facility is described in this subparagraph if such facility was initially approved in 1983 and is for San Jose, California. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

(E) A facility is described in this subparagraph if—

(i) such facility is meeting rooms for a convention center, and

(ii) resolutions and ordinances were adopted with respect to such meeting rooms on January 17, 1983, July 11, 1983, December 17, 1984, and September 23, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

(F) A facility is described in this subparagraph if it is an international trade center which is part of the 125th Street redevelopment project in New York, New York. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $165,000,000.

(G) A facility is described in this subparagraph if—

(i) such facility is located in a city which was the subject of a convention center market analysis or study dated March 1983, and prepared by a nationally recognized accounting firm,

(ii) such facility's location was approved by a task force created jointly, in December 1985, by the Governor or the State within which such facility will be located and the mayor of the capital city of such State, and

(iii) the size of such facility is not more than 200,000 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $70,000,000.

(H) A facility is described in this subparagraph if an analysis of operations and recommendations of utilization of such facility was prepared by a certified public accounting firm pursuant to an engagement authorized on March 6, 1984, and presented on June 11, 1984, to officials of the city in which such facility is located. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

(I) A facility is described in this subparagraph if—

(i) voters approved a bond issue to finance the acquisition of the site for such facility on May 4, 1985,

(ii) title of the property was transferred from the Illinois Center Gulf Railroad to the city on September 30, 1985, and

(iii) a United States judge rendered a decision regarding the fair market value of the site of such facility on December 30, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $131,000,000.

(J) A facility is described in this subparagraph if—

(i) such facility is to be used for an annual civic festival, and

(ii) a referendum was held in the spring of 1985 in which voters permitted the city council to lease 130 acres of dedicated parkland to such festival, and

(iii) the city council passed an inducement resolution on June 19, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

(K) A facility is described in this subparagraph if—

(i) voters approved a bond issued to finance a portion of the cost of such facility on December 1, 1984, and

(ii) such facility was the subject of a market study and financial projections dated March 21, 1986, prepared by a nationally recognized accounting firm.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

(L) A facility is described in this subparagraph if—

(i) on July 12, 1984, the city council passed a resolution increasing the local hotel and motel tax to 7 percent to assist in paying for such facility,

(ii) on October 25, 1984, the city council selected a consulting firm for such facility, and

(iii) with respect to such facility, the city council appropriated funds for additional work on February 7, 1985, October 3, 1985, and June 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $120,000,000.

(M) A facility is described in this subparagraph if—

(i) a board of county commissioners, in an action dated January 21, 1986, supported an application for official approval of the facility, and

(ii) the State economic development commission adopted a resolution dated February 25, 1986, determining the facility to be an eligible facility pursuant to State law and the rules adopted by the commission.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,500,000.

(8) SPORTS OR CONVENTION FACILITIES.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide either a sports facility (within the meaning of section 103(b)(4)(B) of the 1954 Code) or a convention facility (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

(A) A combined convention and arena facility, or any part thereof (whether on the same or different sites), is described in this subparagraph if—

(i) bonds for the expansion, acquisition, or construction of such combined facility are payable from a tax and are issued under a plan initially approved by the voters of the taxing authority on April 25, 1978, and

(ii) such bonds were authorized for expanding a convention center, for acquiring an arena site, and for building an arena or any of the foregoing pursuant to a resolution adopted by the governing body of the bond issuer on March 17, 1986, and superseded by a resolution adopted by such governing body on May 27, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $160,000,000.

(B) A sports or convention facility is described in this subparagraph if—

(i) on March 4, 1986, county commissioners held public hearings on creation of a county convention facilities authority, and

(ii) on March 7, 1986, the county commissioners voted to create a county convention facilities authority and to submit to county voters a ½ cent sales and use tax to finance such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

(C) A sports or convention facility is described in this subparagraph if—

(i) a feasibility consultant and a design consultant were hired prior to October 1980 with respect to such facility,

(ii) a feasibility report dated October 1980 with respect to such facility was presented to a city or county in which such facility is to be located, and

(iii) on September 7, 1982, a joint city/county resolution appointed a committee which was charged with the task of independently reviewing the studies and present need for the facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

(D) A sports or convention facility is described in this subparagraph if—

(i) such facility is a multipurpose coliseum facility for which, before January 1, 1985, a city, an auditorium district created by the State legislature within which such facility will be located, and a limited partnership executed an enforceable contract,

(ii) significant governmental action regarding such facility was taken before May 23, 1983, and

(iii) inducement resolutions were passed for issuance of bonds with respect to such facility on May 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

(9) PARKING FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a parking facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

(A) A facility is described in this subparagraph if—

(i) there was an inducement resolution on March 9, 1984, for the issuance of bonds with respect to such facility, and

(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

(B) A facility is described in this subparagraph if—

(i) such facility is for a university medical school,

(ii) the last parcel of land necessary for such facility was purchased on February 4, 1985, and

(iii) the amount of bonds to be issued with respect to such facility was increased by the State legislature of the State in which the facility is to be located as part of its 1983-1984 general appropriations act.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,000,000.

(C) A facility is described in this subparagraph if—

(i) the development agreement with respect to the project of which such facility is a part was entered into during May 1984, and

(ii) an inducement resolution was passed on October 9, 1985, for the issuance of bonds with respect to the facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

(D) A facility is described in this subparagraph if the city council approved a resolution of intent to issue tax-exempt bonds (Resolution 34083) for such facility on April 30, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000. Solely for purposes of this subparagraph, a heliport constructed as part of such facility shall be deemed to be functionally related and subordinate to such facility.

(E) A facility is described in this subparagraph if—

(i) resolutions were adopted by a public joint powers authority relating to such facility on March 5, 1985, May 1, 1985, October 2, 1985, December 4, 1985, and February 5, 1986; and

(ii) such facility is to be located at an exposition park which includes a coliseum and sports arena.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

(F) A facility is described in this subparagraph if—

(i) it is to be constructed as part of an overall development that is the subject of a development agreement dated October 1, 1983, between a developer and an organization described in section 501(c)(3) of the 1986 Code, and

(ii) an environmental notification form with respect to the overall development was filed with a State environmental agency on February 28, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

(G) A facility is described in this subparagraph if—

(i) an inducement resolution was passed by the city redevelopment agency on December 3, 1984, and a resolution to carryforward the private activity bond limit was passed by such agency on December 21, 1984, with respect to such facility, and

(ii) the owner participation agreement with respect to such facility was entered into on July 30, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $18,000,000.

(H) A facility is described in this subparagraph if—

(i) an application (dated August 28, 1986) for financial assistance was submitted to the county industrial development agency with respect to such facility, and

(ii) the inducement resolution for such facility was passed by the industrial development agency on September 10, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

(I) A facility is described in this subparagraph if—

(i) it is located in a city the parking needs of which were comprehensively described in a "Downtown Parking Plan" dated January 1983, and approved by the city's City Plan Commission on June 1, 1983, and

(ii) obligations with respect to the construction of which are issued on behalf of a State or local governmental unit by a corporation empowered to issue the same which was created by the legislative body of a State by an Act introduced on May 21, 1985, and thereafter passed, which Act became effective without the governor's signature on June 26, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

(J) A facility is described in this subparagraph if—

(i) such facility is located in a city which was the subject of a convention center market analysis or study dated March 1983 and prepared by a nationally recognized accounting firm,

(ii) such facility is intended for use by, among others, persons attending a convention center located within the same town or city, and

(iii) such facility's location was approved by a task force created jointly, in December 1985, by the governor of the State within which such facility will be located and the mayor of the capital city of such State.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

(K) A facility is described in this subparagraph if—

(i) scale and components for the facility were determined by a city downtown plan adopted October 31, 1984 (resolution number 3882), and

(ii) the site area for the facility is approximately 51,200 square feet.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

(L) A facility is described in this subparagraph if—

(i) the property for such facility was offered for development by a city renewal agency on March 19, 1986 (resolution number 920), and

(ii) the site area for the facility is approximately 25,600 square feet.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

(M) A facility is described in this subparagraph if such facility was approved by official action of the city council on July 26, 1984 (resolution number 33718), and is for the Moyer Theatre. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

(N) A facility is described in this subparagraph if it is part of a renovation project involving the Outlet Company building in Providence, Rhode Island. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $6,000,000.

(10) CERTAIN ADVANCE REFUNDINGS.—

(A) Section 149(d)(3) of the 1986 Code shall not apply to a bond issued by a State admitted to the Union on November 16, 1907, for the advance refunding of not more than $186,000,000 State turnpike obligations.

(B) A refunding of the Charleston, West Virginia Town Center Garage Bonds shall not be treated for purposes of part IV of subchapter A of chapter 1 of the 1986 Code as an advance refunding if it would not be so treated if "100" were substituted for "90" in section 149(d)(5) of such Code.

(11) PRINCIPAL USER PROVISIONS.—

(A) In the case of a bond issued as part of an issue the proceeds of which are to be used to provide a facility described in subparagraph (B) or (C), the determination of whether such bond is an exempt facility bond shall be made by substituting "90 percent" for "95 percent" and section 142(a) of the 1986 Code.

(B) A facility is described in this subparagraph if—

(i) it is a waste-to-energy project for which a contract for the sale of electricity was executed in September 1984, and

(ii) the design, construction, and operation contract for such project was signed in March 1985 and the order to begin construction was issued on March 31, 1986.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $29,100,000.

(C) A facility is described in this subparagraph if it is a solid waste disposal facility for Charleston, South Carolina, and a State political subdivision took formal action on April 1, 1980, to commit development funds for such facility.

(12) QUALIFIED SCHOLARSHIP FUNDING BONDS.—Subsections (d)(3) and (f) of section 148 of the 1986 Code shall not apply to any bond or series of bonds the proceeds of which are used exclusively to refund qualified scholarship funding bonds (as defined in section 150 of the 1986 Code) issued before January 1, 1986, if—

(A) the amount of the refunding bonds does not exceed the aggregate face amount of the refunded bonds,

(B) the maturity date of such refunding bond is not later than later of—

(i) the maturity date of the bond to be refunded, or

(ii) the date which is 15 years after the date on which the refunded bond was issued (or, in the case of a series of refundings, the date on which the original bond was issued),

(C) the bonds to be refunded were issued by the California Student Loan Finance Corporation, and

(D) the face amount of the refunding bonds does not exceed $175,000,000.

(13) RESIDENTIAL RENTAL PROPERTY PROJECTS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a project for residential rental property which satisfies the requirements of section 103(b)(4)(A) of the 1954 Code shall be treated as an exempt facility bond (for projects described in section 142(a)(7) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if the project is described in any of the following subparagraphs:

(A) A residential rental property project is described in this subparagraph if—

(i) a public building development corporation was formed on June 6, 1984, with respect to such project,

(ii) a partnership of which the corporation is a general partner was formed on June 8, 1984, and

(iii) the partnership entered into a preliminary agreement with the State public facilities authority effective as of May 4, 1984, with respect to the issuance of the bonds for such project.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,200,000.

(B) A residential rental property project is described in this subparagraph if—

(i) the Board of Commissioners of the city housing authority officially selected such project's developer on December 19, 1985,

(ii) the Board of the City Redevelopment Commission agreed on February 13, 1986, to conduct a public hearing with respect to the project on March 6, 1986,

(iii) an official action resolution for such project was adopted on March 6, 1986, and

(iv) an allocation of a portion of the State ceiling was made with respect to such project on July 29, 1986.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

(C) A residential rental property project is described in this subparagraph if—

(i) the issuance of $1,289,882 of bonds for such project was approved by a State agency on September 11, 1985, and

(ii) the authority to issue such bonds was scheduled to expire (under the terms of the State approval) on September 9, 1986.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,300,000.

(D) A residential rental property project is described in this subparagraph if—

(i) the issuance of $7,020,000 of bonds for such project was approved by a State agency on October 10, 1985, and

(ii) the authority to issue such bonds was scheduled to expire (under the terms of the State approval) on October 9, 1986.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,020,000.

(E) A residential rental property project is described in this subparagraph if—

(i) it is to be located in a city urban renewal project area which was established pursuant to an urban renewal plan adopted by the city council on May 17, 1960,

(ii) the urban renewal plan was revised in 1972 to permit multifamily dwellings in areas of the urban renewal project designated as a central business district,

(iii) an inducement resolution was adopted for such project on December 14, 1984, and

(iv) the city council approved on November 6, 1985, an agreement which provides for conveyance to the city of fee title to such project site.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

(F) A residential rental property project is described in this subparagraph if—

(i) such project is to be located in a city urban renewal project area which was established pursuant to an urban renewal plan adopted by the city council on May 17, 1960,

(ii) the urban renewal plan was revised in 1972 to permit multifamily dwellings in areas of the urban renewal project designated as a central business district,

(iii) the amended urban renewal plan adopted by the city council on May 19, 1972, also provides for the conversion of any public area site in Block J of the urban renewal project area for the development of residential facilities, and

(iv) acquisition of all of the parcels comprising the Block J project site was completed by the city on December 28, 1984.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

(G) A residential rental property project is described in this subparagraph if—

(i) such project is to be located on a city-owned site which is to become available for residential development upon the relocation of a bus maintenance facility,

(ii) preliminary design studies for such project site were completed in December 1985, and

(iii) such project is located in the same State as the projects described in subparagraphs (E) and (F).
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

(H) A residential rental property project is described in this subparagraph if—

(i) at least 20 percent of the residential units in such project are to be utilized to fulfill the requirements of a unilateral agreement date July 21, 1983, relating to the provision of low- and moderate-income housing,

(ii) the unilateral agreement was incorporated into ordinance numbers 83-49 and 83-50, adopted by the city council and approved by the mayor on August 24, 1983, and

(iii) an inducement resolution was adopted for such project on September 25, 1985.
The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

(I) A residential rental property project is described in this subparagraph if—

(i) a letter of understanding was entered into on December 11, 1985, between the city

and county housing and community development office and the project developer regarding the conveyance of land for such project, and

(ii) such project is located in the same State as the projects described in subparagraphs (E), (F), (G), and (H).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed an amount which, together with the amounts allowed under subparagraphs (E), (F), (G), and (H), does not exceed $250,000,000.

(J) A residential rental property project is described in this subparagraph if it is a multifamily residential development located in Arrowhead Springs, within the county of San Bernardino, California, and a portion of the site of which currently is owned by the Campus Crusade for Christ. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $350,000,000.

(K) A residential rental property project is described in this subparagraph if—

(i) it is a new residential development with approximately 309 dwelling units located in census tract No. 3202, and

(ii) there was an inducement ordinance for such project adopted by a city council on November 20, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $32,000,000.

(L) A residential rental property project is described in this subparagraph if—

(i) it is a new residential development with approximately 70 dwelling units located in census tract No. 3901, and

(ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $4,000,000.

(M) A residential rental property project is described in this subparagraph if—

(i) it is a new residential development with approximately 98 dwelling units located in census tract No. 4701, and

(ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,000,000.

(N) A project or projects are described in this subparagraph if they are part of the Willow Road residential improvement plan in Menlo Park, California. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $9,000,000.

(O) A residential rental property project is described in this subparagraph if—

(i) an inducement resolution for such project was approved on July 18, 1985, by the city council,

(ii) such project was approved by such council on August 11, 1986, and

(iii) such project consists of approximately 22 duplexes to be used for housing qualified low and moderate income tenants.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,500,000.

(P) A residential rental property project is described in this subparagraph if—

(i) an inducement resolution for such project was approved on April 22, 1986, by the city council,

(ii) such project was approved by such council on August 11, 1986, and

(iii) such project consists of a unit apartment complex (having approximately 60 units) to be used for housing qualified low and moderate income tenants.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,625,000.

(Q) A residential rental property project is described in this subparagraph if—

(i) a State housing authority granted a notice of official action for the project on May 24, 1985, and

(ii) a binding agreement was executed for such project with the State housing finance authority on May 14, 1986, and such agreement was accepted by the State housing authority on June 5, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,800,000.

(R) A residential rental property project is described in this subparagraph if such project is either of 2 projects (located in St. Louis, Missouri) which received commitments to provide construction and permanent financing through the issuance of bonds in principal amounts of up to $242,130 and $654,045, on July 16, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,000,000.

(S) A residential rental property project is described in this subparagraph if—

(i) a local housing authority approved an inducement resolution for such project on January 28, 1985, and

(ii) a suit relating to such project was dismissed without right of further appeal on April 4, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $13,200,000.

(T) A residential rental property project is described in this subparagraph if—

(i) such project is the renovation of a hotel for residents for senior citizens,

(ii) an inducement resolution for such project was adopted on November 20, 1985, by the State Development Finance Authority, and

(iii) such project is to be located in the metropolitan area of the city described in paragraph (3)(C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,500,000.

(U) A residential rental property project is described in this subparagraph if—

(i) such project is the renovation of apartment housing,

(ii) an inducement resolution for such project was adopted on December 20, 1985, by the State Housing Development Authority, and

(iii) such project is to be located in the metropolitan area of the city described in paragraph (3)(C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $12,000,000.

(V) A residential rental project is described in this subparagraph if it is a renovation and construction project for low-income housing in central Louisville, Kentucky, and local board approval for such project was granted April 22, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000.

(W) A residential rental project is described in this subparagraph if—

(i) such project is 1 of 6 residential rental projects having in the aggregate approximately 1,010 units,

(ii) inducement resolutions for such projects were adopted by the county residential finance authority on November 21, 1985, and

(iii) a public hearing of the county residential finance authority was held by such authority on December 19, 1985, regarding such projects to be constructed by an incommonwealth developer.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $62,000,000.

(X) A residential rental project is described in this subparagraph if—

(i) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

(ii) the issuance of bonds for such project was the subject of a law suit filed on October 25, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $64,000,000. In the case of bonds to which this subparagraph applies, the requirements of sections 148 and 149(d) of the 1986 Code shall not be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

(Y) A project or projects are described in this subparagraph if they are financed with bonds issued by the Tulare, California, County Housing Authority. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $8,000,000.

(Z) A residential rental project is described in this subparagraph if such project is a multifamily mixed-use housing project located in a city described in paragraph (3)(C), the zoning for which was changed to residential-business planned development on November 26, 1985, and with respect to which both the city on December 4, 1985, and the state housing finance agency on December 20, 1985, adopted inducement resolutions. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $90,000,000.

(14) QUALIFIED STUDENT LOANS.—The amendments made by section 1301 shall not apply to any qualified student loan bonds (as defined in section 144 of the 1986 Code) issued by the Volunteer State Student Assistance Corporation. The aggregate face amount of bonds to which this paragraph applies shall not exceed $90,000,000. In the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) of the 1986 Code shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

(15) ANNUITY CONTRACTS.—The treatment of annuity contracts as investment property under section 148(b)(2) of the 1986 Code shall not apply to any bond described in any of the following subparagraphs:

(A) A bond is described in this subparagraph if such bond is issued by a city located in a noncontiguous State if—

(i) the authority to acquire such a contract was approved on September 24, 1985, by city ordinance A085-176, and

(ii) formal bid requests for such contracts were mailed to insurance companies on September 6, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $57,000,000.

(B) A bond is described in this subparagraph if—

(i) on or before May 12, 1985, the governing board of the city pension fund authorized an agreement with an underwriter for possible execution and delivery of tax-

exempt certificates of participation by a nonprofit corporation, and

(ii) the proceeds of the sale of such certificates are to be used to purchase an annuity to fund the unfunded liability of the City of Berkeley, California's Safety Members Pension Fund.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

(C) A bond is described in this subparagraph if such bond is issued by the South Dakota Building Authority if on September 18, 1985, representatives of such authority and its underwriters met with bond counsel and approved financing the purchase of an annuity contract through the sale and leaseback of State properties. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $175,000,000.

(D) A bond is described in this subparagraph if—

(i) such bond is issued by Los Angeles County, and

(ii) such country, before September 25, 1985, paid or incurred at least $50,000 of costs related to the issuance of such bonds.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000,000.

(16) SOLID WASTE DISPOSAL FACILITY.—The amendments made by section 1301 shall not apply to any solid waste disposal facility if—

(A) construction of such facility was approved by State law I.C. 36-9-31,

(B) there was an inducement resolution on November 19, 1984, for the bonds with respect to such facility, and

(C) a carryforward election of unused 1984 volume cap was made for such project on February 25, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $120,000,000. In the case of bonds to which this paragraph applies, the requirements of sections 148, 149(d), and 149(g) of the 1986 Code shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

(17) REFUNDING OF BOND ANTICIPATION NOTES.—There shall not be taken into account under section 146 of the 1986 Code any refunding of bond anticipation notes—

(A) issued in December of 1984 by the Rhode Island Housing and Mortgage Finance Corporation,

(B) which mature in December of 1986,

(C) which is not an advance refunding within the meaning of section 149(d)(5) of the 1986 Code (determined by substituting "180 days" for "90 days" therein), and

(D) the aggregate face amount of the refunding bonds does not exceed $25,500,000.

(18) CERTAIN AIRPORTS.—The amendments made by section 1301 shall not apply to a bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any airport (within the meaning of section 103(b)(4)(D) of the 1954 Code) if such airport is a mid-field airport terminal and accompanying facilities at a major air carrier airport which during April 1980 opened a new precision instrument approach runway 10R28L. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $425,000,000.

(19) MASS COMMUTING FACILITIES.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide a mass commuting facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for facilities described in section 142(a)(3) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in 1 of the following subparagraphs:

(A) A facility is described in this subparagraph if—

(i) such facility provides access to an international airport,

(ii) a corporation was formed in connection with such project in September 1984,

(iii) the Board of Directors of such corporation authorized the hiring of various firms to conduct a feasibility study with respect to such project in April 1985, and

(iv) such feasibility study was completed in November 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

(B) A facility is described in this subparagraph if—

(i) enabling legislation with respect to such project was approved by the State legislature in 1979,

(ii) a 1-percent local sales tax assessment to be dedicated to the financing of such project was approved by the voters on August 13, 1983, and

(iii) a capital fund with respect to such project was established upon the issuance of $90,000,000 of notes on October 22, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000 and such bonds must be issued before January 1, 1996.

(C) A facility is described in this subparagraph if—

(i) bonds issued therefor are issued by or on behalf of an authority organized in 1979 pursuant to enabling legislation originally enacted by the State legislature in 1973, and

(ii) such facility is part of a system connector described in a resolution adopted by the board of directors of the authority on March 27, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $400,000,000. Notwithstanding the last paragraph of this subsection, this subparagraph shall apply to bonds issued before January 1, 1996.

(D) A facility is described in this subparagraph if—

(i) the facility is a light rail transitway project,

(ii) enabling legislation with respect to the issuing authority was approved by the State legislature in May 1973,

(iii) on October 28, 1985, a board issued a request for consultants to conduct a feasibility study on mass transit corridor analysis in connection with the facility, and

(iv) on May 12, 1986, a board approved a further binding contract for expenditures of approximately $1,494,963, to be expended on a facility study.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. Notwithstanding the last paragraph of this subsection, this subparagraph shall apply to bonds issued before January 1, 1996.

(20) PRIVATE COLLEGES.—Section 148(f) of the 1986 Code shall not apply to any bond which is issued as part of an issue if such bond—

(A) is issued by a political subdivision pursuant to home rule and interlocal cooperation powers conferred by the constitution and laws of a State to provide funds to finance the costs of the purchase and construction of educational facilities for private colleges and universities, and

(B) was the subject of a resolution of official action by such political subdivision (Resolution No. 86-1039) adopted by the governing body of such political subdivision on March 18, 1986.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

(21) POOLED FINANCING PROGRAMS.—

(A) Section 147(b) of the 1986 Code shall not apply to any hospital pooled financing program with respect to which—

(i) a formal presentation was made to a city hospital facilities authority on January 14, 1986, and

(ii) such authority passed a resolution approving the bond issue in principle on February 5, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $95,000,000.

(B) Subsection (c) and (f) of section 148 of the 1986 Code shall not apply to bonds for which closing occurred on July 16, 1986, and for which a State municipal league served as administrator for use in a State described in section 103A(g)(5)(C)l of the Internal Revenue Code of 1954. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $585,000,000.

(22) DOWNTOWN REDEVELOPMENT PROJECT.—

(A) In the case of a bond described in subparagraph (B), section 141 of the 1986 Code shall be applied without regard to subsection (a)(2), subsection (b)(3), and subsection (b)(5); and paragraphs (1) and (2) of subsection (b) shall be applied by substituting "25 percent" for "10 percent" each place it appears.

(B) A bond is described in this subparagraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

(i) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue bonds for such project,

(ii) before September 26, 1985, the city expended (or entered into binding contracts to expend) more than $10,000,000 in connection with such project, and

(iii) the state supreme court issued a ruling regarding the proposed finance structure for such project on December 11, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $85,000,000 and such bonds must be issued before January 1, 1992.

(23) MASS COMMUTING AND PARKING FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any mass commuting facility or parking facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is provided in connection with the rehabilitation, renovation, or other improvement to an existing railroad station owned on the date of the enactment of this Act by the National Railroad Passenger Corporation in the Northeast Corridor and which was placed in partial service in 1934 and was placed in the National Register of Historic Places in 1978. The aggregate face amount of bonds to which this paragraph applies shall not exceed $30,000,000.

(24) TAX-EXEMPT STATUS OF BONDS OF CERTAIN EDUCATIONAL ORGANIZATIONS.—

(A) IN GENERAL.—For purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code, a qualified educational organization shall be treated as a governmen-

tal unit, but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business (determined by applying section 513(a) of such Code to such organization).

(B) QUALIFIED EDUCATIONAL ORGANIZATION.—For purposes of subparagraph (A), the term "qualified educational organization" means a college or university—

(i) which was reincorporated and renewed with perpetual existence as a corporation by specific act of the legislature of the State within which such college or university is located on March 19, 1913, or

(ii) which—

(I) was initially incorporated or created on February 28, 1787, on April 29, 1854, or on May 14, 1888, and

(II) as an instrumentality of the State, serves as a "State-related" university by a specific act of the legislature of the State within which such college or university is located.

(25) TAX-EXEMPT STATUS OF BONDS OF CERTAIN PUBLIC UTILITIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a bond shall be treated as a qualified bond for purposes of section 103 of the 1986 Code if such bond is issued after the date of the enactment of this Act with respect to a public utility facility if such facility is—

(i) located at any non-federally owned dam (or on project waters or adjacent lands) located wholly or partially in 3 counties, 2 of which are contiguous to the third, where the rated capacity of the hydroelectric generating facilities at 5 of such dams on October 18, 1979, was more than 650 megawatts each,

(ii) located at a dam (or on the project waters or adjacent lands) at which hydroelectric generating facilities were financed with the proceeds of tax-exempt obligations before December 31, 1968,

(iii) owned and operated by a State, political subdivision of a State, or any agency or instrumentality of any of the foregoing, and

(iv) located at a dam (or on project waters or adjacent lands) where the general public has access for recreational purposes to such dam or to such project waters or adjacent lands.

(B) SPECIAL RULES FOR SUBPARAGRAPH (a).—

(i) BONDS SUBJECT TO CAP.—Section 146 of the 1986 Code shall apply to any bond described in subparagraph (A) which (without regard to subparagraph (A)) is a private activity bond.

(ii) LIMITATION ON AMOUNT OF BONDS TO WHICH SUBPARAGRAPH (a) APPLIES.—The aggregate face amount of bonds to which subparagraph (A) applies shall not exceed $750,000,000, not more than $350,000,000 of which may be issued before January 1, 1992.

(iii) LIMITATION ON PURPOSES.—Subparagraph (A) shall only apply to bonds issued as part of an issue 95 percent or more of the net proceeds of which are used to provide 1 or more of the following:

(I) A fish by-pass facility or fisheries enhancement facility.

(II) A recreational facility or other improvement which is required by Federal licensing terms and conditions or other Federal, State, or local law requirements.

(III) A project of repair, maintenance, renewal, or replacement, and safety improvement.

(IV) Any reconstruction, replacement, or improvement, including any safety improvement, which increases, or allows an increase in, the capacity, efficiency, or productivity of the existing generating equipment.

(26) CONVENTION AND PARKING FACILITIES.—A bond shall not be treated as a private activity bond for purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code if—

(A) such bond is issued to provide a sports or convention facility described in section 103(b)(4) (B) or (C) of the 1954 Code,

(B) such bond is not described in section 103 (b)(2) or (o)(2)(A) of such Code,

(C) legislation by a State legislature in connection with such facility was enacted on July 19, 1985, and was designated Chapter 375 of the Laws of 1985, and

(D) legislation by a State legislature in connection with the appropriation of funds to a State public benefit corporation for loans in connection with the construction of such facility was enacted on April 17, 1985, and was designated Chapter 41 of the Laws of 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

(27) SMALL ISSUE TERMINATION.—Section 144(a)(12) of the 1986 Code shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility described in any of the following subparagraphs:

(A) A facility is described in this subparagraph if—

(i) the facility is a hotel and office facility located in a State capital,

(ii) the economic development corporation of the city in which the facility is located adopted an initial inducement resolution on October 30, 1985, and

(iii) a feasibility consultant was retained on February 21, 1986, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

(B) A facility is described in this subparagraph if such facility is financed by bonds issued by a State finance authority which was created in April 1985 by Act 1062 of the State General Assembly, and the Bond Guarantee Act (Act 505 of 1985) allowed such authority to pledge the interest from investment of the State's general fund as a guarantee for bonds issued by such authority. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

(C) A facility is described in this subparagraph if such facility is a downtown mall and parking project for Holland, Michigan, with respect to which an initial agreement was formulated with the city in May 1985 and a formal memorandum of understanding was executed on July 2, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $18,200,000.

(D) A facility is described in this subparagraph if such facility is a downtown mall and parking ramp project for Traverse City, Michigan, with respect to which a final development agreement was signed in June 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $21,500,000.

(E) A facility is described in this subparagraph if such facility is the rehabilitation of the Heritage Hotel in Marquette, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

(F) A facility is described in this subparagraph if it is the Lakeland Center Hotel in Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $10,000,000.

(G) A facility is described in this subparagraph if it is the Marble Arcade office building renovation project in Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $5,900,000.

(H) A facility is described in this subparagraph if it is a medical office building in Bradenton, Florida, with respect to which—

(i) a memorandum of agreement was entered into on October 17, 1985, and

(ii) the city council held a public hearing and approved issuance of the bonds on November 14, 1985.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $8,500,000.

(I) A facility is described in this subparagraph if it consists of the rehabilitation of the Andover Town Hall in Andover, Massachusetts. The provisions of section 149(b) of the 1986 Code (relating to federally guaranteed obligations) shall not apply to obligations to finance such project solely as a result of the occupation of a portion of such building by a United States Post Office.

(J) A facility is described in this subparagraph if it is the Central Bank Building renovation project in Grand Rapids, Michigan. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $1,000,000.

(28) CERTAIN PRIVATE LOANS NOT TAKEN INTO ACCOUNT.—For purposes of determining whether any bond is a private activity bond, an amount of loans (but not in excess of $75,000,000) provided from the proceeds of 1 or more issues shall not be taken into account if such loans are provided in furtherance of—

(A) a city Emergency Conservation Plan as set forth in an ordinance adopted by the city council of such city on February 17, 1983, or

(B) a resolution adopted by the city council of such city on March 10, 1983, committing such city to a goal of reducing the peak load of such city's electric generation and distribution system by 553 megawatts in 15 years.

(29) CERTAIN PRIVATE BUSINESS USE NOT TAKEN INTO ACCOUNT.—

(A) The nonqualified amount of the proceeds of an issue shall not be taken into account under section 141(b)(5) of the 1986 Code or in determining whether a bond described in subparagraph (B) (which is part of such issue) is a private activity bond for purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code.

(B) A bond is described in this subparagraph if—

(i) such bond is issued before January 1, 1993, by a State admitted to the Union on June 14, 1776, and

(ii) such bond is issued pursuant to a resolution of the State Bond Commission adopted before September 26, 1985.

(C) The nonqualified amount to which this paragraph applies shall not exceed $150,000,000.

(D) For purposes of this paragraph, the term "nonqualified amount" has the meaning given such term by section 141(b)(8) of the 1986 Code, except that such term shall include the amount of the net proceeds of an issue which is to be used (directly or indirectly) to make or finance loans (other than loans described in section 141(c)(2) of the 1986 Code) to persons other than governmental units.

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(30) VOLUME CAP NOT TO APPLY TO CERTAIN FACILITIES.—For purposes of section 146 of the 1986 Code, any exempt facility bond for the following facility shall not be taken into account:

The facility is a facility for the furnishing of water which was authorized under Public Law 90-537 of the United States if—

(A) construction of such facility began on May 6, 1973, and

(B) forward funding will be provided for the remainder of the project pursuant to a negotiated agreement between State and local water users and the Secretary of the Interior signed April 15, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $391,000,000.

(31) CERTAIN HYDROELECTRIC GENERATING PROPERTY.—A bond shall be treated as described in paragraph (2) of section 1316(f) of this Act if—

(A) such bond would be so described but for the substitution specified in such paragraph,

(B) on January 7, 1983, an application for a preliminary permit was filed for the project for which such bond is issued and received docket no. 6986, and

(C) on September 20, 1983, the Federal Energy Regulatory Commission issued an order granting the preliminary permit for the project.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $12,000,000.

(32) VOLUME CAP.—The State ceiling applicable under section 146 of the 1986 Code for calendar year 1987 for the State which ratified the United States Constitution on May 29, 1790, shall be $150,000,000 higher than the State ceiling otherwise applicable under such section for such year.

(33) APPLICATION OF $150,000,000 LIMITATION FOR CERTAIN QUALIFIED 501(C)(3) BONDS.—Proceeds of an issue described in any of the following subparagraphs shall not be taken into account under section 145(b) of the 1986 Code.

(A) Proceeds of an issue are described in this subparagraph if—

(i) such proceeds are used to provide medical school facilities or medical research and clinical facilities for a university medical center,

(ii) such proceeds are of—

(I) a $21,550,000 issue on August 1, 1980,

(II) a $84,400,000 issue on September 1, 1984, and

(III) a $48,500,000 issue (Series 1985 A and 1985 B), and

(iii) the issuer of all such issues is the same.

(B) Proceeds of an issue are described in this subparagraph if such proceeds are for use by Yale University and—

(i) the bonds are issued after August 8, 1986, and before August 7, 1988, by the State of Connecticut Health and Educational Facilities Authority, or

(ii) the bonds are the 1st or 2nd refundings (including advance refundings) of the bonds described in clause (i) or of original bonds issued before August 7, 1986, by such Authority.

(C) Proceeds of an issue are described in this subparagraph if—

(i) such issue is issued on behalf of a university established by Charter granted by King George II of England on October 31, 1754, to accomplish a refunding (including an advance refunding) of bonds issued to finance 1 or more projects, and

(ii) the application or other request for the issuance of the issue to the appropriate State issuer was made by or on behalf of such university before February 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000.

(D) Proceeds of an issue are described in this subparagraph if—

(i) such proceeds are to be used for finance construction of a new student recreation center,

(ii) a contract for the development phase of the project was signed by the university on May 21, 1986, with a private company for 5 percent of the costs of the project, and

(iii) a committee of the university board of administrators approved the major program elements for the center on August 11, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

(E) Proceeds of an issue are described in this subparagraph if—

(i) such proceeds are to be used in the construction of new life sciences facilities for a university for medical research and education,

(ii) the president of the university authorized a faculty/administration planning committee for such facilities on September 17, 1982,

(iii) the trustees of such university authorized site and architect selection on October 30, 1984, and

(iv) the university negotiated a $2,600,000 contract with the architect on August 9, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $47,500,000.

(F) Proceeds of an issue are described in this subparagraph if such proceeds are to be used to renovate undergraduate chemistry and engineering laboratories, and to rehabilitate other basic science facilities, for an institution of higher education in Philadelphia, Pennsylvania, chartered by legislative Acts of the Commonwealth of Pennsylvania, including an Act dated September 30, 1791.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,500,000.

(G) Proceeds of an issue are described in this subparagraph if such proceeds are of bonds which are the first advance refunding of bonds issued during 1985 for the development of a computer network, and construction and renovation or rehabilitation of other facilities, for an institution of higher education described in subparagraph (H).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

(H) Proceeds of an issue are described in this subparagraph if—

(i) the issue is issued on behalf of a university founded in 1789, and

(ii) the request to issue bonds for items to be determined by the issuer was transmitted to Congress on November 7, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

(I) Proceeds of an issue are described in this subparagraph if the issue is issued on behalf of a university established on August 6, 1872, for a project approved by the trustees thereof on November 11, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

(J) Proceeds of an issue are described in this subparagraph if—

(i) the issue is issued on behalf of a university for which the founding grant was signed on November 11, 1885, and

(ii) such bond is issued for the purpose of providing a Near West Campus Redevelopment Project and a Student Housing Project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000.

(J) Proceeds of an issue are described in this subparagraph if—

(i) they are the proceeds of advance refunding obligations issued on behalf of a university established on April 21, 1831, and

(ii) the application or other request for the issuance of such obligations was made to the appropriate State issuer before July 12, 1986.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $175,000,000.

(K) Proceeds of an issue are described in this subparagraph if—

(i) the issue is for the purpose of financing or refinancing costs associated with university facilities including 900 units of housing for students, faculty, and staff in up to two buildings and an office building containing up to 2,000 square feet of space, and

(ii) a bond act authorizing the issuance of such bonds for such project was adopted on July 8, 1986, and such act under Federal law was required to be transmitted to Congress.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $150,000,000.

(L) Proceeds of an issue are described in this subparagraph if such issue is for Cornell University in an aggregate face amount of not more than $150,000,000.

(M) Proceeds of an issue are described in this subparagraph if—

(i) such issue would not (if issued before August 16, 1986) be an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), and

(ii) such bonds were approved by city voters on January 19, 1985, for an art museum and 2 theaters.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $2,300,000.

(N) Proceeds of an issue are described in this subparagraph if—

(i) such issue is issued by a State dormitory authority on behalf of one or more universities described in section 501(c)(3) of the 1986 Code or a foundling hospital, and

(ii) the application by the university for the issuance of such bond was made before October 27, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $150,000,000. In the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) of the 1986 Code shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

(O) Any bond to which section 145(b) of the 1986 Code does not apply by reason of this section shall be taken into account in determining whether such section applies to any later issue.

(34) ARBITRAGE REBATE.—Section 148(f) of the 1986 Code shall not apply to any period before October 1, 1990, with respect to any bond the proceeds of which are to be used to provide a high-speed rail system for the State of Ohio. The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000.

(35) EXTENSION OF CARRYFORWARD PERIOD.—

(A) In the case of a carryforward under section 103(n)(10) of the 1954 Code of $170,000,000 of bond limit for calendar year 1984 for a project described in subparagraph (B), clause (i) of section 103(n)(10)(C) of the 1954 Code shall be applied by substituting "6 calendar years" for "3 calendar years", and such carryforward may be used by any authority designated by the State in which the facility is located.

(B) A project is described in this subparagraph if—

(i) such project is a facility for local furnishing of electricity described in section 645 of the Tax Reform Act of 1984, and

(ii) construction of such facility commenced within the 3-year period following the calendar year in which the carryforward arose.

(36) POWER PURCHASE BONDS.—A bond issued to finance purchase of power from a power facility at a dam being renovated pursuant to P.L. 98-381 shall not be treated as a private activity bond if it would not be such under section 141(b)(1) and (2) of the 1986 Code if 25 percent were substituted for 10 percent and the provisions of section 141(b) (3), (4), and (5) of the 1986 Code did not apply. The aggregate face amount of bonds to which this paragraph applies shall not exceed $80,000,000.

(37) QUALIFIED MORTGAGE BONDS.—A bond issued as part of either of 2 issues no later than September 8, 1986, shall be treated as a qualified mortgage bond within the meaning of section 141(d)(1)(B) of the 1986 Code if it satisfies the requirements of section 103A of the 1954 Code and if the issues are issued by the two most populous cities in the Tar Heel State. The aggregate face amount of bonds to which this paragraph applies shall not exceed $4,000,000.

(38) EXEMPT FACILITY BONDS.—A bond shall be treated as an exempt facility bond within the meaning of section 142(a) of the 1986 Code if it is issued to fund residential, office, retail, light industrial, recreational and parking development known as Tobacco Row. Such bond shall be subject to section 146 and sections 148 and 149 of the 1986 Code. The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

(39) CERTAIN WASTEWATER TREATMENT FACILITY.—A bond shall not be subject to the provisions of section 146 of the 1986 Code if it is issued to acquire and complete a wastewater treatment facility—

(A) which was organized by an inter-local agreement dated October 17, 1978,

(B) for which $78,143,557 has been spent as of July 31, 1986, and

(C) for which the first construction contract was let on February 27, 1981.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

(40) REFUNDING OF CERTAIN TAXABLE DEBT.—A bond issued to refinance taxable debt shall not be treated as a qualified 501(c)(3) bond within the meaning of section 141(d)(1)(G) of the 1986 Code if an authorizing resolution as adopted by the issuer on August 14, 1986, for St. Mary's Hospital. The aggregate face amount of bonds to which this paragraph applies shall not exceed $22,314,000.

(41) TIME TO MATURITY FOR CERTAIN OBLIGATIONS.—The requirement of section 147(b) of the 1986 Code shall apply to current refunding bonds issued with respect to two power facilities on which construction has been suspended by measuring the economic life of the facilities from the date of the refunding bonds if the facilities have not been placed in service as of the date of issuance of the refunding bonds. The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000.

(42) RESIDENTIAL RENTAL PROPERTY.—A bond issued to finance a residential rental project within the meaning of 103(b)(4) of the 1954 Code shall be treated as an exempt facility bond within the meaning of section 142(a)(7) of the 1986 Code if the county housing finance authority adopted an inducement resolution with respect to the project on May 8, 1985, and the project is located in Polk County, Florida. The aggregate face amount of bonds to which this paragraph applies shall not exceed $4,100,000.

(43) EXTENSION OF ADVANCE REFUNDING FOR CERTAIN FACILITIES.—Paragraph (4) of section 631(c) of the Tax Reform Act of 1984 is amended—

(A) by striking out the second sentence thereof,

(B) by adding at the end thereof the following new sentence: "In the case of refunding obligations not exceeding $100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting "December 31, 1987" for "December 31, 1984".

(44) POOL BONDS.—The following amounts of pool bonds are exempt from the arbitrage rebate requirement of section 148(f) of the 1986 Code:

Pool	Maximum Bond Amount
Tennessee Utility Districts Pool	$80,000,000
New Mexico Hospitals Bond Pool	$35,000,000
Pennsylvania Local Government Investment Trust Pool	$375,000,000
Indiana Bond Bank Pool	$240,000,000
Hernando County, Florida Bond Pool	$300,000,000
Utah Municipal Finance Cooperative Pool	$262,000,000
North Carolina League of Municipalities Pool	$200,000,000
Kentucky Municipal League Bond Pool	$170,000,000
Kentucky Association of Counties Bond Pool	$100,000,000
Homewood Municipal Bond Pool	$50,000,000
Colorado Association of School Boards Pool	$300,000,000
Tennessee Municipal League Pooled Bonds	$75,000,000
Georgia Municipal Association Pool	$130,000,000

(45) CERTAIN CARRYFORWARD ELECTIONS.—Notwithstanding any other provision of this title—

(A) In the case of a metropolitan service district created pursuant to State revised statutes, chapter 268, up to $100,000,000 unused 1985 bond authority may be carried forward to any year until 1989 (regardless of the date on which such carryforward election is made).

(B) If—

(i) official action was taken by an industrial development board on September 16, 1985, with respect to the issuance of not more than $98,500,000 of waste water treatment revenue bonds, and

(ii) an executive order of the governor granted a carryforward of State bond authority for such project on December 30, 1985,

such carryforward election shall be valid for any year through 1988. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $98,500,000.

(46) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE HYDROELECTRIC GENERATING FACILITY.—If—

(A) obligations are issued in an amount not exceeding $5,000,000 to finance the construction of a hydroelectric b generating facility located on the North Fork of Cache Creek in Lake County, California, which was the subject of a preliminary resolution of the issuer of the obligations on June 29, 1982, or are issued to refund any of such obligations,

(B) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utility Regulatory Policies Act of 1978, and

(C) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the person referred to in subparagraph (B) shall not be treated as a principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the 1954 Code.

(47) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE STEAM AND ELECTRIC COGENERATION FACILITY.—If—

(A) obligations are issued on or before December 31, 1986, in an amount not exceeding $4,400,000 to finance a facility for the generation and transmission of steam and electricity having a maximum electrical capacity of approximately 5.3 megawatts and located within the City of San Jose, California, or are issued to refund any of such obligations,

(B) substantially all of the electrical power generated by such facility that is not sold to an institution of higher education created by statute of the State of California is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utility Regulatory Policies Act of 1978, and

(C) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the nongovernmental person referred to in subparagraph (B) shall not be treated as a principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

(48) TREATMENT OF CERTAIN OBLIGATIONS.—A bond which is not an industrial development bond under section 103(b)(2) of the Internal Revenue Code of 1954 shall not be treated as a private activity bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if 95 percent or more of the net proceeds of the issue of which such bond is a part are used to provide facilities described in either of the following subparagraphs:

(A) A facility is described in this subparagraph if it is a governmentally-owned and operated State fair and exposition center with respect to which—

(i) the 1985 session of the State legislature authorized revenue bonds to be issued in a maximum amount of $10,000,000, and

(ii) a market feasibility study dated June 30, 1986, relating to a major capital improvemental program at the facility was prepared for the advisory board of the State fair and exposition center by a certified public accounting firm.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $10,000,000.

(B) A facility is described in this subparagraph if it is a convention, trade, or spectator facility which is to be located in the State with respect to which subparagraph (O) applies and with respect to which feasibility and preliminary design consultants were hired on May 1, 1985 and October 31, 1985. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $175,000,000.

(49) TRANSITION RULE FOR REFUNDING CERTAIN HOUSING BONDS.—Sections 146 and 149(d) of the 1986 Code shall not apply to the refunding of any bond issued under section 11(b) of the Housing Act of 1937 before December 31, 1983, if—

(A) the bond has an original term to maturity of at least 40 years,

(B) the maturity date of the refunding bonds does not exceed the maturity date of the refunded bonds,

(C) the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds,

(D) the interest rate on the refunding bonds is lower than the interest rate of the refunded bonds, and

(E) the refunded bond is required to be redeemed not later than the earliest date on which such bond could be redeemed at par.

(50) TRANSITION BONDS SUBJECT TO CERTAIN RULES.—In the case of any bond to which any provision of this subsection applies—

(A) MINIMUM TAX TREATMENT.—Any bond which, without regard to this section, would be a private activity bond (as defined in section 141(a) of the 1986 Code) shall be so treated for purposes of section 55 of such Code unless such bond would not be described in section 103(b)(2) or (o)(2) of the 1954 Code were such bond issued before August 16, 1986.

(B) CERTAIN RESTRICTIONS APPLY.—Except as otherwise expressly provided, sections 103 and 103A of the 1954 Code shall be applied as if the requirements of section 148 and subsections (d) and (g) of section 149 of the 1986 Code were included in each such section.

(51) CERTAIN ADDITIONAL PROJECTS.—Section 141(a) of the 1986 Code shall be applied by substituting "25" for "10" each place it appears and by not applying sections 141(a)(3) and 141(c)(1)(B) to bonds substantially all of the proceeds are used for—

(A) A project is described in this subparagraph if it consists of a capital improvements program for a metropolitan sewer district, with respect to which a proposition was submitted to voters on August 7, 1984. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $60,000,000.

(B) Facilities described in this subparagraph if it consists of additions, extensions, and improvements to the wastewater system for Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $20,000,000.

(C) A project is described in this subparagraph if it is the Central Valley Water Reclamation Project in Utah. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $100,000,000.

(D) A project is described in this subparagraph if it is a project to construct approximately 26 miles of toll expressways, with respect to which any appeal to validation was filed July 11, 1986. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $450,000,000.

(52) TERMINATION.—This section shall not apply to any bond issued after December 31, 1990.

SEC. 1318. DEFINITIONS, ETC., RELATING TO EFFECTIVE DATES AND TRANSITIONAL RULES.

For purposes of this subtitle—

(1) 1954 CODE.—The term "1954 Code" means the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act.

(2) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986 as amended by this Act.

(3) BOND.—The term "bond" includes any obligation.

(4) ADVANCE REFUND.—A bond shall be treated as issued to advance refund of another bond if it is issued more than 90 days before the redemption of the refunded bond.

(5) NET PROCEEDS.—The term "net proceeds" has the meaning given such term by section 150(a) of the 1986 Code.

(6) CONTINUED APPLICATION OF THE 1954 CODE.—Nothing in this subtitle shall be construed to exempt any bond from any provision of the 1954 Code by reason of a delay in (or exemption from) the application of any amendment made by subtitle A.

(7) TREATMENT AS EXEMPT FACILITY.—Any bond which is treated as an exempt facility bond by section 1316 or 1317 shall not fail to be so treated by reason of subsection (b) of section 142 of the 1986 Code.

TITLE XIV—TRUSTS AND ESTATES; UNEARNED INCOME OF CERTAIN MINOR CHILDREN; GIFT AND ESTATE TAXES; GENERATION-SKIPPING TRANSFER TAX

SUBTITLE A—INCOME TAXATION OF TRUSTS AND ESTATES

SEC. 1401. GRANTOR TREATED AS HOLDING ANY POWER OR INTEREST OF GRANTOR'S SPOUSE.

(a) IN GENERAL.—Section 672 (relating to definitions and rules) is amended by adding at the end thereof the following new subsection:

"(e) GRANTOR TREATED AS HOLDING ANY POWER OR INTEREST OF GRANTOR'S SPOUSE.—For purposes of this subpart, if a grantor's spouse is living with the grantor at the time of the creation of any power or interest held by such spouse, the grantor shall be treated as holding such power or interest."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to transfers in trust made after March 1, 1986.

SEC. 1402. LIMITATIONS TO REVERSIONARY INTEREST RULE EXCEPTIONS.

(a) IN GENERAL.—Section 673 (relating to reversionary interest) is amended to read as follows:

"SEC. 673. REVERSIONARY INTERESTS.

"(a) GENERAL RULE.—The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds 5 percent of the value of such portion.

"(b) REVERSIONARY INTEREST TAKING EFFECT AT DEATH OF MINOR LINEAL DESCENDANT BENEFICIARY.—In the case of any beneficiary who—

"(1) is a lineal descendant of the grantor, and

"(2) holds all of the present interests in any portion of a trust,

the grantor shall not be treated under subsection (a) as the owner of such portion solely by reason of a reversionary interest in such portion which takes effect upon the death of such beneficiary before such beneficiary attains age 21."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 674(b) (relating to exceptions for certain powers) is amended—

(A) by striking out "the expiration of a period" and inserting in lieu thereof "the occurrence of an event",

(B) by striking out "the expiration of the period" and inserting in lieu thereof "the occurrence of the event", and

(C) by striking out "EXPIRATION OF 10-YEAR PERIOD" in the heading thereof and inserting in lieu thereof "OCCURRENCE OF EVENT".

(2) Subsection (b) of section 676 (relating to power to revoke) is amended—

(A) by striking out "the expiration of a period" and inserting in lieu thereof "the occurrence of an event",

(B) by striking out "the expiration of such period" and inserting in lieu thereof "the occurrence of such event", and

(C) by striking out "EXPIRATION OF 10-YEAR PERIOD" in the heading thereof and inserting in lieu thereof "OCCURRENCE OF EVENT".

(3) Subsection (a) of section 677 (relating to income for benefit of grantor) is amended—

(A) by striking out "the expiration of a period" and inserting in lieu thereof "the occurrence of an event", and

(B) by striking out "the expiration of the period" and inserting in lieu thereof "the occurrence of the event".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to transfers in trust made after March 1, 1986.

(2) TRANSFERS PURSUANT TO PROPERTY SETTLEMENT AGREEMENT.—The amendments made by this section shall not apply to any transfer in trust made after March 1, 1986, pursuant to a binding property settlement agreement entered into on or before March 1, 1986, which required the taxpayer to establish a grantor trust and for the transfer of a specified sum of money or property to the trust by the taxpayer. This paragraph shall apply only to the extent of the amount required to be transferred under the agreement described in the preceding sentence.

SEC. 1403. TAXABLE YEAR OF TRUSTS TO BE CALENDAR YEAR.

(a) IN GENERAL.—Subpart A of part I of subchapter J of chapter 1 (relating to general rules for taxation of estates and trusts) is amended by adding at the end thereof the following new section:

"SEC. 645. TAXABLE YEAR OF TRUSTS.

"(a) IN GENERAL.—For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

"(b) EXCEPTION FOR TRUSTS EXEMPT FROM TAX AND CHARITABLE TRUSTS.—Subsection (a) shall not apply to a trust exempt from taxation under section 501(a) or to a trust described in section 4947(a)(1)."

(b) CLERICAL AMENDMENT.—The table of sections of subpart A of part I of subchapter J of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 645. Taxable year of trusts."

(c) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) TRANSITION RULE.—With respect to any trust beneficiary who is required to include in gross income amounts under sections 652(a) or 662(a) of the Internal Revenue Code of 1986 in the 1st taxable year of the beneficiary beginning after December 31, 1986, by reason of any short taxable year of the trust required by the amendments made by this section, such income shall be ratably included in the income of the trust beneficiary over the 4-taxable year period beginning with such taxable year.

SEC. 1404. TRUSTS AND CERTAIN ESTATES TO MAKE ESTIMATED PAYMENTS OF INCOME TAXES.

(a) IN GENERAL.—Subsection (k) of section 6654 (relating to failure by individual to pay estimated income tax) is amended to read as follows:

"(k) TRUSTS AND CERTAIN ESTATES.—This section shall apply to—

"(1) any trust, and

"(2) any estate with respect to any taxable year ending 2 or more years after the date of the death of the decedent's death."

(b) CERTAIN PAYMENTS OF ESTIMATED TAX BY A TRUST.—Section 643 is amended by adding at the end thereof the following new subsection:

"(g) CERTAIN PAYMENTS OF ESTIMATED TAX TREATED AS PAID BY BENEFICIARY.—

"(1) IN GENERAL.—In the case of a trust—

"(A) the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust,

"(B) any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and

"(C) for purposes of subtitle F, the amount so treated—

"(i) shall not be treated as a payment of estimated tax made by the trust, but

"(ii) shall be treated as a payment of estimated tax made by such beneficiary on January 15 following the taxable year.

The preceding sentence shall apply only to the extent the payments of estimated tax made by the trust for the taxable year exceed the tax imposed by this chapter shown on its return for the taxable year.

"(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) may be made—

"(A) only on the trust's return of the tax imposed by this chapter for the taxable year, and

"(B) only if such return is filed on or before the 65th day after the close of the taxable year."

(c) CONFORMING AMENDMENTS.—

(1) Section 6152 (relating to installment payments) is repealed.

(2) Section 6215(b) (relating to cross references) is amended by striking out paragraph (7) and redesignating paragraph (8) as paragraph (7).

(3) Paragraph (2) of section 6601 (relating to last date prescribed for payment) is amended—

(A) by striking out "6152(a), 6156(a), or 6158(a)" and inserting in lieu thereof "6156(a) or 6158(a)", and

(B) by striking out "6152(b), 6156(b), or 6158(a)" in subparagraph (A) and inserting in lieu thereof "6156(b) or 6158(a)".

(4) The table of sections for subchapter A of chapter 62 is amended by striking out the item relating to section 6152.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

Subtitle B—Unearned Income of Certain Minor Children

SEC. 1411. UNEARNED INCOME OF CERTAIN MINOR CHILDREN.

(a) GENERAL RULE.—Section 1, as amended by section 101, is amended by inserting after subsection (h) the following new subsection:

"(i) CERTAIN UNEARNED INCOME OF MINOR CHILDREN TAXED AS IF PARENT'S INCOME.—

"(1) IN GENERAL.—In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of—

"(A) the tax imposed by this section without regard to this subsection, or

"(B) the sum of—

"(i) the tax which would be imposed by this section if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

"(ii) such child's share of the allocable parental tax.

"(2) CHILD TO WHOM SUBSECTION APPLIES.—This subsection shall apply to any child for any taxable year if—

"(A) such child has not attained age 14 before the close of the taxable year, and

"(B) either parent of such child is alive at the close of the taxable year.

"(3) ALLOCABLE PARENTAL TAX.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'allocable parental tax' means the excess of—

"(i) the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

"(ii) the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any deduction or credit of the parent.

"(B) CHILD'S SHARE.—A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

"(4) NET UNEARNED INCOME.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'net unearned income' means the excess of—

"(i) the portion of the gross income for the taxable year which is not earned income (as defined in section 911(d)(2)), over

"(ii) the sum of—

"(I) the amount in effect for the taxable year under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

"(II) the greater of the amount described in subclause (I) or, if the child itemizes his deduction for the taxable year, the amount of the deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of gross income referred to in clause (i).

"(B) LIMITATION BASED ON TAXABLE INCOME.—The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

"(5) SPECIAL RULES FOR DETERMINING PARENT TO WHOM SUBSECTION APPLIES.—For purposes of this subsection, the parent whose taxable income shall be taken into account shall be—

"(A) in the case of parents who are not married (within the meaning of section 7703), the custodial parent of the child, and

"(B) in the case of married individuals filing separately, the individual with the greater taxable income.

"(6) PROVIDING OF PARENT'S TIN.—The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year."

(b) DISCLOSURE OF INFORMATION.—Subparagraph (A) of section 6103(e)(1) (relating to disclosure to persons having material interest) is amended by striking out "or" at the end of clause (ii), by inserting "or" at the end of clause (iii), and by adding at the end thereof the following new clause:

"(iv) the child of that individual (or such child's legal representative) to the extent necessary to comply with the provisions of section 1(j);".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

Subtitle C—Gift and Estate Taxes

SEC. 1421. INFORMATION NECESSARY FOR VALID SPECIAL USE VALUATION ELECTION.

(a) IN GENERAL.—In the case of any decedent dying before January 1, 1986, if the executor—

(1) made an election under section 2032A of the Internal Revenue Code of 1954 on the return of tax imposed by section 2001 of such Code within the time prescribed for filing such return (including extensions thereof), and

(2) provided substantially all the information with respect to such election required on such return of tax,

such election shall be a valid election for purposes of section 2032A of such Code.

(b) EXECUTOR MUST PROVIDE INFORMATION.—An election described in subsection (a) shall not be valid if the Secretary of the Treasury or his delegate after the date of the enactment of this Act requests information from the executor with respect to such election and the executor does not provide such information within 90 days of receipt of such request.

(c) EFFECTIVE DATE.—The provisions of this section shall not apply to the estate of any decedent if before the date of the enactment of this Act the statute of limitations has expired with respect to—

(1) the return of tax imposed by section 2001 of the Internal Revenue Code of 1954, and

(2) the period during which a claim for credit or refund may be timely filed.

(d) SPECIAL RULE FOR CERTAIN ESTATE.—Notwithstanding subsection (a)(2), the provisions of this section shall apply to the estate of an individual who died on January 30, 1984, and with respect to which—

(1) a Federal estate tax return was filed on October 30, 1984, electing current use valuation, and

(2) the agreement required under section 2032A was filed on November 9, 1984.

SEC. 1422. GIFT AND ESTATE TAX DEDUCTIONS FOR CERTAIN CONSERVATION EASEMENT DONATIONS.

(a) ESTATE TAX.—Section 2055 (relating to transfers for public, charitable, and religious uses) is amended—

(1) by redesignating subsection (f) as subsection (g), and

(2) by inserting after subsection (e) the following new subsection:

"(f) SPECIAL RULE FOR IRREVOCABLE TRANSFERS OF EASEMENTS IN REAL PROPERTY.—A deduction shall be allowed under subsection

(a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof)."

(b) GIFT TAX.—Section 2522 (relating to charitable and similar gifts) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULE FOR IRREVOCABLE TRANSFERS OF EASEMENTS IN REAL PROPERTY.—A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof)."

(c) CONFORMING AMENDMENT.—Subparagraph (F)(ii) of section 2106(a)(2) is amended by striking out "section 2055(f)" and inserting in lieu thereof "section 2055(g)".

(d) SPECIAL DONATIONS.—If the Secretary of the Interior acquires by donation after December 31, 1986, a conservation easement (within the meaning of section 2(h) of S. 720, 99th Congress, 1st Session, as in effect on August 16, 1986), such donation shall qualify for treatment under section 2055(f) or 2522(d) of the Internal Revenue Code of 1954, as added by this section.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers and contributions made after December 31, 1986.

SEC. 1423. CONVEYANCE OF CERTAIN REAL AND PERSONAL PROPERTY OF DECEDENT TO CHARITABLE FOUNDATION TREATED AS CHARITABLE CONTRIBUTION.

Notwithstanding any other law or any rule of law (including res judicata, laches, or lapse of time), in the case of any real property or personal property located in Bangkok, Thailand, which—

(1) was owned by James H.W. Thompson at the time of his death, and

(2) has been transferred to the Jim Thompson Foundation (also known as the J.H.W. Thompson Foundation), a charitable foundation established in Thailand for the purpose of operating a museum consisting of such real and personal property,

such property shall be treated, for purposes of section 2055 of the Internal Revenue Code of 1954 (relating to deductions for transfers for public, charitable, and religious uses), as having been transferred as a bequest or a devise directly from the estate of James H.W. Thompson to the Jim Thompson Foundation and the value of such property included in the gross estate shall be deducted from the gross estate of James H.W. Thompson for purposes of the tax imposed by section 2001 of such Code.

SUBTITLE D—GENERATION-SKIPPING TRANSFERS

SEC. 1431. NEW TAX ON GENERATION-SKIPPING TRANSFERS.

(a) GENERAL RULE.—Chapter 13 (relating to tax on certain generation-skipping transfers) is amended to read as follows:

"CHAPTER 13—TAX ON GENERATION-SKIPPING TRANSFERS

"Subchapter A. Tax imposed.
"Subchapter B. Generation-skipping transfers.
"Subchapter C. Taxable amount.
"Subchapter D. GST exemption.
"Subchapter E. Applicable rate; inclusion ratio.
"Subchapter F. Other definitions and special rules.
"Subchapter G. Administration.

"Subchapter A—Tax Imposed

"Sec. 2601. Tax imposed.
"Sec. 2602. Amount of tax.
"Sec. 2603. Liability for tax.
"Sec. 2604. Credit for certain State taxes.

"SEC. 2601. TAX IMPOSED.

"A tax is hereby imposed on every generation-skipping transfer (within the meaning of subchapter B).

"SEC. 2602. AMOUNT OF TAX.

"The amount of the tax imposed by section 2601 is—

"(1) the taxable amount (determined under subchapter C), multiplied by

"(2) the applicable rate (determined under subchapter E).

"SEC. 2603. LIABILITY FOR TAX.

"(a) PERSONAL LIABILITY.—

"(1) TAXABLE DISTRIBUTIONS.—In the case of a taxable distribution, the tax imposed by section 2601 shall be paid by the transferee.

"(2) TAXABLE TERMINATION.—In the case of a taxable termination or a direct skip from a trust, the tax shall be paid by the trustee.

"(3) DIRECT SKIP.—In the case of a direct skip (other than a direct skip from a trust), the tax shall be paid by the transferor.

"(b) SOURCE OF TAX.—Unless otherwise directed pursuant to the governing instrument by specific reference to the tax imposed by this chapter, the tax imposed by this chapter on a generation-skipping transfer shall be charged to the property constituting such transfer.

"(c) CROSS REFERENCE.—

"For provisions making estate and gift tax provisions with respect to transferee liability, liens, and related matters applicable to the tax imposed by section 2601, see section 2661.

"SEC. 2604. CREDIT FOR CERTAIN STATE TAXES.

"(a) GENERAL RULE.—If a generation-skipping transfer (other than a direct skip) occurs at the same time as and as a result of the death of an individual, a credit against the tax imposed by section 2601 shall be allowed in an amount equal to the generation-skipping transfer tax actually paid to any State in respect to any property included in the generation-skipping transfer.

"(b) LIMITATION.—The aggregate amount allowed as a credit under this section with respect to any transfer shall not exceed 5 percent of the amount of the tax imposed by section 2601 on such transfer.

"Subchapter B—Generation-Skipping Transfers

"Sec. 2611. Generation-skipping transfer defined.
"Sec. 2612. Taxable termination; taxable distribution; direct skip.
"Sec. 2613. Skip person and non-skip person defined.

"SEC. 2611. GENERATION-SKIPPING TRANSFER DEFINED.

"(a) IN GENERAL.—For purposes of this chapter, the term 'generation-skipping transfers' mean—

"(1) a taxable distribution,

"(2) a taxable termination, and

"(3) a direct skip.

"(b) CERTAIN TRANSFERS EXCLUDED.—The term 'generation-skipping transfer' does not include—

"(1) any transfer (other than a direct skip) from a trust, to the extent such transfer is subject to a tax imposed by chapter 11 or 12 with respect to a person in the 1st generation below that of the grantor, and

"(2) any transfer which, if made inter vivos by an individual, would not be treated as a taxable gift by reason of section 2503(e) (relating to exclusion of certain transfers for educational or medical expenses), and

"(3) any transfer to the extent—

"(A) the property transferred was subject to a prior tax imposed under this chapter,

"(B) the transferee in the prior transfer was assigned to the same generation as (or a lower generation than) the generation assignment of the transferee in this transfer, and

"(C) such transfers do not have the effect of avoiding tax under this chapter with respect to any transfer.

"SEC. 2612. TAXABLE TERMINATION; TAXABLE DISTRIBUTION; DIRECT SKIP.

"(a) TAXABLE TERMINATION.—

"(1) GENERAL RULE.—For purposes of this chapter, the term 'taxable termination' means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless—

"(A) immediately after such termination, a non-skip person has an interest in such property, or

"(B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

"(2) CERTAIN PARTIAL TERMINATIONS TREATED AS TAXABLE.—If, upon the termination of an interest in property held in a trust, a specified portion of the trust assets are distributed to skip persons who are lineal descendants of the holder of such interest (or to 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.

"(b) TAXABLE DISTRIBUTION.—For purposes of this chapter, the term 'taxable distribution' means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

"(c) DIRECT SKIP.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'direct skip' means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

"(2) SPECIAL RULE FOR TRANSFERS TO GRANDCHILDREN.—For purposes of determining whether any transfer is a direct skip, if—

"(A) an individual is a grandchild of the transferor (or the transferor's spouse or former spouse), and

"(B) as of the time of the transfer, the parent of such individual who is a lineal descendant of the transferor (or the transferor's spouse or former spouse) is dead,

such individual shall be treated as if such individual were a child of the transferor and all of that grandchild's children shall be treated as if they were grandchildren of the transferor. In the case of lineal descendants below a grandchild, the preceding sentence may be reapplied.

"SEC. 2613. SKIP PERSON AND NON-SKIP PERSON DEFINED.

"(a) SKIP PERSON.—For purposes of this chapter, the term 'skip person' means—

"(1) a person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or

"(2) a trust—

"(A) if all interests in such trust are held by skip persons, or

"(B) if—

"(i) there is no person holding an interest in such trust, and

"(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a nonskip person.

"(b) NON-SKIP PERSON.—For purposes of this chapter, the term 'non-skip person' means any person who is not a skip person.

"Subchapter C—Taxable Amount

"Sec. 2621. Taxable amount in case of taxable distribution.
"Sec. 2622. Taxable amount in case of taxable termination.
"Sec. 2623. Taxable amount in case of direct skip.
"Sec. 2624. Valuation.

"SEC. 2621. TAXABLE AMOUNT IN CASE OF TAXABLE DISTRIBUTION.

"(a) IN GENERAL.—For purposes of this chapter, the taxable amount in the case of any taxable distribution shall be—

"(1) the value of the property received by the transferee, reduced by

"(2) any expense incurred by the transferee in connection with the determination, collection, or refund of the tax imposed by this chapter with respect to such distribution.

"(b) PAYMENT OF GST TAX TREATED AS TAXABLE DISTRIBUTION.—For purposes of this chapter, if any of the tax imposed by this chapter with respect to any taxable distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a taxable distribution.

"SEC. 2622. TAXABLE AMOUNT IN CASE OF TAXABLE TERMINATION.

"(a) IN GENERAL.—For purposes of this chapter, the taxable amount in the case of a taxable termination shall be—

"(1) the value of all property with respect to which the taxable termination has occurred, reduced by

"(2) any deduction allowed under subsection (b).

"(b) DEDUCTION FOR CERTAIN EXPENSES.—For purposes of subsection (a), there shall be allowed a deduction similar to the deduction allowed by section 2053 (relating to expenses, indebtedness, and taxes) for amounts attributable to the property with respect to which the taxable termination has occurred.

"SEC. 2623. TAXABLE AMOUNT IN CASE OF DIRECT SKIP.

"For purposes of this chapter, the taxable amount in the case of a direct skip shall be the value of the property received by the transferee.

"SEC. 2624. VALUATION.

"(a) GENERAL RULE.—Except as otherwise provided in this chapter, property shall be valued as of the time of the generation-skipping transfer.

"(b) ALTERNATE VALUATION AND SPECIAL USE VALUATION ELECTIONS APPLY TO CERTAIN DIRECT SKIPS.—In the case of any direct skip of property which is included in the transferor's gross estate, the value of such property for purposes of this chapter shall be the same as its value for purposes of chapter 11 (determined with regard to sections 2032 and 2032A).

"(c) ALTERNATE VALUATION ELECTION PERMITTED IN THE CASE OF TAXABLE TERMINATIONS OCCURRING AT DEATH.—If 1 or more taxable terminations with respect to the same trust occur at the same time as and as a result of the death of an individual, an election may be made to value all of the property included in such terminations in accordance with section 2032.

"(d) REDUCTION FOR CONSIDERATION PROVIDED BY TRANSFEREE.—For purposes of this chapter, the value of the property transferred shall be reduced by the amount of any consideration provided by the transferee.

"Subchapter D—GST Exemption

"Sec. 2631. GST exemption.
"Sec. 2632. Special rules for allocation of GST exemption.

"SEC. 2631. GST EXEMPTION.

"(a) GENERAL RULE.—For purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of $1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

"(b) ALLOCATIONS IRREVOCABLE.—Any allocation under subsection (a), once made, shall be irrevocable.

"SEC. 2632. SPECIAL RULES FOR ALLOCATION OF GST EXEMPTION.

"(a) TIME AND MANNER OF ALLOCATION.—

"(1) TIME.—Any allocation by an individual of his GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

"(2) MANNER.—The Secretary shall prescribe by forms or regulations the manner in which any allocation referred to in paragraph (1) is to be made.

"(b) DEEMED ALLOCATION TO CERTAIN LIFETIME DIRECT SKIPS.—

"(1) IN GENERAL.—If any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

"(2) UNUSED PORTION.—For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under paragraph (1)) with respect to a prior direct skip.

"(3) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—An individual may elect to have this subsection not apply to a transfer.

"(c) ALLOCATION OF UNUSED GST EXEMPTION.—

"(1) IN GENERAL.—Any portion of an individual's GST exemption which has not been allocated within the time prescribed by subsection (a) shall be deemed to be allocated as follows—

"(A) first, to property which is the subject of a direct skip occurring at such individual's death, and

"(B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

"(2) ALLOCATION WITHIN CATEGORIES.—

"(A) IN GENERAL.—The allocation under paragraph (1) shall be made among the properties described in subparagraph (A) thereof and the trusts described in subparagraph (B) thereof, as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

"(B) NONEXEMPT PORTION.—For purposes of subparagraph (A), the term 'nonexempt portion' means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

"Subchapter E—Applicable Rate; Inclusion Ratio

"Sec. 2641. Applicable rate.
"Sec. 2642. Inclusion ratio.

"SEC. 2641. APPLICABLE RATE.

"(a) GENERAL RULE.—For purposes of this chapter, the term 'applicable rate' means, with respect to any generation-skipping transfer, the product of—

"(1) the maximum Federal estate tax rate, and

"(2) the inclusion ratio with respect to the transfer.

"(b) MAXIMUM FEDERAL ESTATE TAX RATE.—For purposes of subsection (a), the term 'maximum Federal estate tax rate' means the maximum rate imposed by section 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

"SEC. 2642. INCLUSION RATIO.

"(a) INCLUSION RATIO DEFINED.—For purposes of this chapter—

"(1) IN GENERAL.—Except as otherwise provided in this section, the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over—

"(A) except as provided in subparagraph (B), the applicable fraction determined for the trust from which such transfer is made, or

"(B) in the case of a direct skip, the applicable fraction determined for such skip.

"(2) APPLICABLE FRACTION.—For purposes of paragraph (1), the applicable fraction is a fraction—

"(A) the numerator of which is the amount of the GST exemption allocated to the trust (or in the case of a direct skip, allocated to the property transferred in such skip), and

"(B) the denominator of which is—

"(i) the value of the property transferred to the trust (or involved in the direct skip), reduced by

"(ii) the sum of—

"(I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and

"(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property.

Except as provided in paragraphs (3) and (4) of subsection (b), the value determined under subparagraph (B)(i) shall be of the property as of the time of the transfer to the trust (or the direct skip).

"(b) VALUATION RULES, ETC.—

"(1) GIFTS FOR WHICH GIFT TAX RETURN FILED OR DEEMED ALLOCATION MADE.—If the allocation of the GST exemption to any property is made on a timely filed gift tax return required by section 6019 or is deemed to be made under section 2632(b)(1)—

"(A) the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 12, and

"(B) such allocation shall be effective on and after the date of such transfer.

"(2) TRANSFERS AND ALLOCATIONS AT OR AFTER DEATH.—

"(A) TRANSFERS AT DEATH.—If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11.

"(B) ALLOCATIONS AT OR AFTER DEATH OF TRANSFEROR.—Any allocation at or after the death of the transferor shall be effective on and after the date of the death of the transferor.

"(3) INTER VIVOS ALLOCATIONS NOT MADE ON TIMELY FILED GIFT TAX RETURN.—If any allocation of the GST exemption to any property is made during the life of the transferor but is not made on a timely filed gift tax return

required by section 6019 and is not deemed to be made under section 2632(b)(1)—

"(A) the value of such property for purposes of subsection (a) shall be determined as of the time such allocation is filed with the Secretary, and

"(B) such allocation shall be effective on and after the date on which such allocation is filed with the Secretary.

"(4) QTIP TRUSTS.—If the value of property is included in the estate of a spouse by virtue of section 2044, and if such spouse is treated as the transferor of such property under section 2652(a), the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11 in the estate of such spouse.

"(c) TREATMENT OF CERTAIN NONTAXABLE GIFTS.—

"(1) DIRECT SKIPS.—In the case of any direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

"(2) TREATMENT OF NONTAXABLE GIFTS MADE TO TRUSTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any nontaxable gift which is not a direct skip and which is made to a trust shall not be taken into account under subsection (a)(2)(B).

"(B) DETERMINATION OF 1ST TRANSFER TO TRUST.—In the case of any nontaxable gift referred to in subparagraph (A) which is the 1st transfer to the trust, the inclusion ratio for such trust shall be zero.

"(3) NONTAXABLE GIFT.—For purposes of this section, the term 'nontaxable gift' means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

"(A) section 2503(b) (taking into account the application of section 2513), or

"(B) section 2503(e).

"(d) SPECIAL RULES WHERE MORE THAN 1 TRANSFER MADE TO TRUST.—

"(1) IN GENERAL.—If a transfer of property (other than a nontaxable gift) is made to a trust in existence before such transfer, the applicable fraction for such trust shall be recomputed as of the time of such transfer in the manner provided in paragraph (2).

"(2) APPLICABLE FRACTION.—In the case of any such transfer, the recomputed applicable fraction is a fraction—

"(A) the numerator of which is the sum of—

"(i) the amount of the GST exemption allocated to property involved in such transfer, plus

"(ii) the nontax portion of such trust immediately before such transfer, and

"(B) the denominator of which is the sum of—

"(i) the value of the property involved in such transfer, reduced by any charitable deduction allowed under section 2055 or 2522 with respect to such property, and

"(ii) the value of all of the property in the trust (immediately before such transfer).

"(3) NONTAX PORTION.—For purposes of paragraph (2), the term 'nontax portion' means the product of—

"(A) the value of all of the property in the trust, and

"(B) the applicable fraction in effect for such trust.

"(4) SIMILAR RECOMPUTATION IN CASE OF CERTAIN LATE ALLOCATIONS.—If—

"(A) any allocation of the GST exemption to property transferred to a trust is not made on a timely filed gift tax return required by section 6019, and

"(B) there was a previous allocation with respect to property transferred to such trust, the applicable fraction for such trust shall be recomputed as of the time of such allocation under rules similar to the rules of paragraph (2).

"Subchapter F—Other Definitions and Special Rules

"Sec. 2651. Generation assignment.
"Sec. 2652. Other definitions.
"Sec. 2653. Taxation of multiple skips.
"Sec. 2654. Special rules.

"SEC. 2651. GENERATION ASSIGNMENT.

"(a) IN GENERAL.—For purposes of this chapter, the generation to which any person (other than the transferor) belongs shall be determined in accordance with the rules set forth in this section.

"(b) LINEAL DESCENDANTS.—

"(1) IN GENERAL.—An individual who is a lineal descendant of a grandparent of the transferor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the transferor.

"(2) ON SPOUSE'S SIDE.—An individual who is a lineal descendant of a grandparent of a spouse of the transferor (other than such spouse) shall be assigned to that generation which results from comparing the number of generations between such grandparent and such individual with the number of generations between such grandparent and such spouse.

"(3) TREATMENT OF LEGAL ADOPTIONS, ETC.—For purposes of this subsection—

"(A) LEGAL ADOPTIONS.—A relationship by legal adoption shall be treated as a relationship by blood.

"(B) RELATIONSHIPS BY HALF-BLOOD.—A relationship by the half-blood shall be treated as a relationship of the whole-blood.

"(c) MARITAL RELATIONSHIP.—

"(1) MARRIAGE TO TRANSFEROR.—An individual who has been married at any time to the transferor shall be assigned to the transferor's generation.

"(2) MARRIAGE TO OTHER LINEAL DESCENDANTS.—An individual who has been married at any time to an individual described in subsection (b) shall be assigned to the generation of the individual so described.

"(d) PERSONS WHO ARE NOT LINEAL DESCENDANTS.—An individual who is not assigned to a generation by reason of the foregoing provisions of this section shall be assigned to a generation on the basis of the date of such individual's birth with—

"(1) an individual born not more than 12½ years after the date of the birth of the transferor assigned to the transferor's generation,

"(2) an individual born more than 12½ years but not more than 37½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and

"(3) similar rules for a new generation every 25 years.

"(e) OTHER SPECIAL RULES.—

"(1) INDIVIDUALS ASSIGNED TO MORE THAN 1 GENERATION.—Except as provided in regulations, an individual who, but for this subsection, would be assigned to more than 1 generation shall be assigned to the youngest such generation.

"(2) INTERESTS THROUGH ENTITIES.—Except as provided in paragraph (3), if an estate, trust, partnership, corporation, or other entity has an interest in property, each individual having a beneficial interest in such entity shall be treated as having an interest in such property and shall be assigned to a generation under the foregoing provisions of this subsection.

"(3) TREATMENT OF CERTAIN CHARITABLE ORGANIZATIONS.—Any organization described in section 511(a)(2) and any charitable trust described in section 511(b)(2) shall be assigned to the transferor's generation.

"SEC. 2652. OTHER DEFINITIONS.

"(a) TRANSFEROR.—For purposes of this chapter—

"(1) IN GENERAL.—Except as provided in this subsection or section 2653(a), the term 'transferor' means—

"(A) in the case of a transfer of a kind subject to the tax imposed by chapter 11, the decedent, and

"(B) in the case of a transfer of a kind subject to the tax imposed by chapter 12, the donor.

"(2) GIFT-SPLITTING BY MARRIED COUPLES.—If, under section 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of this chapter.

"(3) SPECIAL ELECTION FOR QUALIFIED TERMINABLE INTEREST PROPERTY.—In the case of—

"(A) any property with respect to which a deduction is allowed to the decedent under section 2056 by reason of subsection (b)(7) thereof, and

"(B) any property with respect to which a deduction to the donor spouse is allowed under section 2523 by reason of subsection (f) thereof,

the estate of the decedent or the donor spouse, as the case may be, may elect to treat such property for purposes of this chapter as if the election to be treated as qualified terminable interest property had not been made.

"(b) TRUST AND TRUSTEE.—

"(1) TRUST.—The term 'trust' includes any arrangement (other than an estate) which, although not a trust, has substantially the same effect as a trust.

"(2) TRUSTEE.—In the case of an arrangement which is not a trust but which is treated as a trust under this subsection, the term 'trustee' shall mean the person in actual or constructive possession of the property subject to such arrangement.

"(3) EXAMPLES.—Arrangements to which this subsection applies include arrangements involving life estates and remainders, estates for years, and insurance and annuity contracts.

"(c) INTEREST.—

"(1) IN GENERAL.—A person has an interest in property held in trust if (at the time the determination is made) such person—

"(A) has a right (other than a future right) to receive income or corpus from the trust,

"(B) is a permissible current recipient of income or corpus from the trust and is not described in section 2055(a), or

"(C) is described in section 2055(a) and the trust is—

"(i) a charitable remainder annuity trust,

"(ii) a charitable remainder unitrust within the meaning of section 664, or

"(iii) a pooled income fund within the meaning of section 642(c)(5).

"(2) CERTAIN NOMINAL INTERESTS DISREGARDED.—For purposes of paragraph (1), an interest which is used primarily to postpone or avoid the tax imposed by this chapter shall be disregarded.

"SEC. 2653. TAXATION OF MULTIPLE SKIPS.

"(a) GENERAL RULE.—For purposes of this chapter, if—

"(1) there is a generation-skipping transfer of any property, and

"(2) immediately after such transfer such property is held in trust,

for purposes of applying this chapter (other than section 2651) to subsequent transfers

from the portion of such trust attributable to such property, the trust will be treated as if the transferor of such property were assigned to the first generation above the highest generation of any person who has an interest in such trust immediately after the transfer.

"(b) TRUST RETAINS INCLUSION RATIO.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of subsection (a) shall not affect the inclusion ratio determined with respect to any trust. Under regulations prescribed by the Secretary, notwithstanding the preceding sentence, proper adjustment shall be made to the inclusion ratio with respect to such trust to take into account any tax under this chapter borne by such trust which is imposed by this chapter on the transfer described in subsection (a).

"(2) SPECIAL RULE FOR POUR-OVER TRUST.—

"(A) IN GENERAL.—If the generation-skipping transfer referred to in subsection (a) involves the transfer of property from 1 trust to another trust (hereinafter in this paragraph referred to as the 'pour-over trust'), the inclusion ratio for the pour-over trust shall be determined by treating the nontax portion of such distribution as if it were a part of a GST exemption allocated to such trust.

"(B) NONTAX PORTION.—For purposes of subparagraph (A), the nontax portion of any distribution is the amount of such distribution multiplied by the applicable fraction which applies to such distribution.

"SEC. 2654. SPECIAL RULES.

"(a) BASIS ADJUSTMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if property is transferred in a generation-skipping transfer, the basis of such property shall be increased (but not above the fair market value of such property) by an amount equal to that portion of the tax imposed by section 2601 (computed without regard to section 2604) with respect to the transfer which is attributable to the excess of the fair market value of such property over its adjusted basis immediately before the transfer.

"(2) CERTAIN TRANSFERS AT DEATH.—If property is transferred in a taxable termination which occurs at the same time as and as a result of the death of an individual, the basis of such property shall be adjusted in a manner similar to the manner provided under section 1014(a); except that, if the inclusion ratio with respect to such property is less than 1, any increase in basis shall be limited by multiplying such increase by the inclusion ratio.

"(b) SEPARATE SHARES TREATED AS SEPARATE TRUSTS.—Substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

"(c) DISCLAIMERS.—

"For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.

"(d) LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.—A trustee shall not be personally liable for any increase in the tax imposed by section 2601 which is attributable to the fact that—

"(1) section 2642(c) (relating to exemption of certain nontaxable gifts) does not apply to a transfer to the trust which was made during the life of the transferor and for which a gift tax return was not filed, or

"(2) the inclusion ratio with respect to the trust is greater than the amount of such ratio as computed on the basis of the return on which was made (or was deemed made) an allocation of the GST exemption to property transferred to such trust.

The preceding sentence shall not apply if the trustee has knowledge of facts sufficient reasonably to conclude that a gift tax return was required to be filed or that the inclusion ratio was erroneous.

"Subchapter G—Administration

"Sec. 2661. Administration.
"Sec. 2662. Return requirements.
"Sec. 2663. Regulations.

"SEC. 2661. ADMINISTRATION.

"Insofar as applicable and not inconsistent with the provisions of this chapter—

"(1) except as provided in paragraph (2), all provisions of subtitle F (including penalties) applicable to the gift tax, to chapter 12, or to section 2501, are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601, as the case may be, and

"(2) in the case of a generation-skipping transfer occurring at the same time as and as a result of the death of an individual, all provisions of subtitle F (including penalties) applicable to the estate tax, to chapter 11, or to section 2001 are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601 (as the case may be).

"SEC. 2662. RETURN REQUIREMENTS.

"(a) IN GENERAL.—The Secretary shall prescribe by regulations the person who is required to make the return with respect to the tax imposed by this chapter and the time by which any such return must be filed. To the extent practicable, such regulations shall provide that—

"(1) the person who is required to make such return shall be the person liable under section 2603(a) for payment of such tax, and

"(2) the return shall be filed—

"(A) in the case of a direct skip (other than from a trust), on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer, and

"(B) in all other cases, on or before the 15th day of the 4th month after the close of the taxable year of the person required to make such return in which such transfer occurs.

"(b) INFORMATION RETURNS.—The Secretary may by regulations require a return to be filed containing such information as he determines to be necessary for purposes of this chapter.

"SEC. 2663. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter, including—

"(1) such regulations as may be necessary to coordinate the provisions of this chapter with the recapture tax imposed under section 2032A(c), and

"(2) regulations (consistent with the principles of chapters 11 and 12) providing for the application of this chapter in the case of transferors who are nonresidents not citizens of the United States."

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle B is amended by striking out the item relating to chapter 13 and inserting in lieu thereof the following:

"Chapter 13. Tax on generation-skipping transfers."

SEC. 1432. RELATED AMENDMENTS.

(a) INCOME TAX DEDUCTION FOR GENERATION-SKIPPING TRANSFER TAX.—

(1) IN GENERAL.—Subsection (a) of section 164 (relating to deduction for certain taxes), as amended by section 134, is amended by inserting after paragraph (4) the following new paragraph:

"(5) the GST tax imposed on income distributions."

(2) DEFINITIONS.—Subsection (b) of section 164, as so amended, is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULES FOR GST TAX.—

"(A) IN GENERAL.—The GST tax imposed on income distributions is—

"(i) the tax imposed by section 2601, and

"(ii) any State tax described in section 2604,

but only to the extent such tax is imposed on a transfer which is included in the gross income of the distributee and to which section 666 does not apply.

"(B) SPECIAL RULE FOR TAX PAID BEFORE DUE DATE.—Any tax referred to in subparagraph (A) imposed with respect to a transfer occurring during the taxable year of the distributee (or, in the case of a taxable termination, the trust) which is paid not later than the time prescribed by law (including extensions) for filing the return with respect to such transfer shall be treated as having been paid on the last day of the taxable year in which the transfer was made."

(3) DEDUCTION FOR TAX IN CASE OF TAXABLE TERMINATIONS.—Paragraph (3) of section 691(c) (relating to deduction for estate tax) is amended to read as follows:

"(3) SPECIAL RULE FOR GENERATION-SKIPPING TRANSFERS.—In the case of any tax imposed by chapter 13 on a taxable termination or a direct skip occurring as a result of the death of the transferor, there shall be allowed a deduction (under principles similar to the principles of this subsection) for the portion of such tax attributable to items of gross income of the trust which were not properly includible in the gross income of the trust for periods before the date of such termination."

(b) DISTRIBUTIONS IN REDEMPTION OF STOCK TO PAY GENERATION-SKIPPING TRANSFER TAXES.—Subsection (d) of section 303 is amended to read as follows:

"(d) SPECIAL RULES FOR GENERATION-SKIPPING TRANSFERS.—Where stock in a corporation is the subject of a generation-skipping transfer (within the meaning of section 2611(a)) occurring at the same time as and as a result of the death of an individual—

"(1) the stock shall be deemed to be included in the gross estate of such individual;

"(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of such individual's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

"(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

"(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer."

(c) AVAILABILITY OF ALTERNATE VALUATION ELECTION.—

(1) IN GENERAL.—Paragraph (2) of section 2032(c) (relating to election must decrease gross estate and estate tax) is amended to read as follows:

"(2) the sum of the tax imposed by this chapter and the tax imposed by chapter 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes)."

(2) CONFORMING AMENDMENT.—Subsection (g) of section 2013 is hereby repealed.

(d) GENERATION-SKIPPING TAX TREATED AS TAXABLE GIFT.—

(1) IN GENERAL.—Subchapter B of chapter 12 is amended by inserting after section 2514 the following new section:

"SEC. 2515. TREATMENT OF GENERATION-SKIPPING TRANSFER TAX.

"In the case of any taxable gift which is a direct skip (within the meaning of chapter 13), the amount of such gift shall be increased by the amount of any tax imposed on the transferor under chapter 13 with respect to such gift."

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 12 is amended by inserting after the item relating to section 2514 the following new item:

"Sec. 2515. Treatment of generation-skipping transfer tax."

(e) EXTENSION OF TIME FOR PAYMENT OF TAX ON CERTAIN DIRECT SKIPS.—Section 6166 is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

"(i) SPECIAL RULE FOR CERTAIN DIRECT SKIPS.—To the extent that an interest in a closely held business is the subject of a direct skip (within the meaning of section 2612(c)) occurring at the same time as and as a result of the decedent's death, then for purposes of this section any tax imposed by section 2601 on the transfer of such interest shall be treated as if it were additional tax imposed by section 2001."

SEC. 1433. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this part shall apply to any generation-skipping transfer (within the meaning of section 2611 of the Internal Revenue Code of 1986) made after the date of the enactment of this Act.

(b) SPECIAL RULES.—

(1) TREATMENT OF CERTAIN INTER VIVOS TRANSFERS MADE AFTER SEPTEMBER 25, 1985.—For purposes of subsection (a) (and chapter 13 of the Internal Revenue Code of 1986 as amended by this part), any inter vivos transfer after September 25, 1985, and on or before the date of the enactment of this Act shall be treated as if it were made on the 1st day after the date of enactment of this Act.

(2) EXCEPTIONS.—The amendments made by this part shall not apply to—

(A) any generation-skipping transfer under a trust which was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985,

(B) any generation-skipping transfer under a will executed before the date of the enactment of this Act if the decedent dies before January 1, 1987, and

(C) any generation-skipping transfer—

(i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the decedent during his life after the date of the enactment of this Act), or reinvestments thereof, or

(ii) which is a direct skip which occurs by reason of the death of any decedent;

but only if such decedent was, on the date of the enactment of this Act, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term "direct skip" shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent that the aggregate transfers from such transferor to such grandchild do not exceed $2,000,000.

(c) REPEAL OF EXISTING TAX ON GENERATION-SKIPPING TRANSFERS.—

(1) IN GENERAL.—In the case of any tax imposed by chapter 13 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act), such tax (including interest, additions to tax, and additional amounts) shall not be assessed and if assessed, the assessment shall be abated, and if collected, shall be credited or refunded (with interest) as an overpayment.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of paragraph (1) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.

(d) ELECTION FOR CERTAIN TRANSFERS BENEFITING GRANDCHILD.—

(1) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986 (as amended by this Act) and subsection (b) of this section, any transfer in trust for the benefit of a grandchild of a transferor shall be treated as a direct skip if—

(A) the transfer occurs before the date of enactment of this Act,

(B) the transfer would be a direct skip except for the fact that the trust instrument provides that, if the grandchild dies before vesting of the interest transferred, the interest is transferred to the grandchild's heir (rather than the grandchild's estate), and

(C) an election under this subsection applies to such transfer.

Any transfer treated as a direct skip by reason of the preceding sentence shall be subject to Federal estate tax on the grandchild's death in the same manner as if the contingent gift over had been to the grandchild's estate.

(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

TITLE XV—COMPLIANCE AND TAX ADMINISTRATION

SUBTITLE A—REVISION OF CERTAIN PENALTIES, ETC.

SEC. 1501. PENALTY FOR FAILURE TO FILE INFORMATION RETURNS OR STATEMENTS.

(a) GENERAL RULE.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new part:

"PART II—FAILURE TO FILE CERTAIN INFORMATION RETURNS OR STATEMENTS

"Sec. 6721. Failure to file certain information returns.

"Sec. 6722. Failure to furnish certain payee statements.

"Sec. 6723. Failure to include correct information.

"Sec. 6724. Waiver; definitions and special rules.

"SEC. 6721. FAILURE TO FILE CERTAIN INFORMATION RETURNS.

"(a) GENERAL RULE.—In the case of each failure to file an information return with the Secretary on the date prescribed therefor (determined with regard to any extension of time for filing), the person failing to so file such return shall pay $50 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000.

"(b) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures to which subsection (a) applies are due to intentional disregard of the filing requirement, then, with respect to each such failure—

"(1) the penalty imposed under subsection (a) shall be $100, or, if greater—

"(A) in the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050J, 6050K, or 6050L, 10 percent of the aggregate amount of the items required to be reported, or

"(B) in the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate amount of the items required to be reported, and

"(2) in the case of any penalty determined under paragraph (1)—

"(A) the $100,000 limitation under subsection (a) shall not apply, and

"(B) such penalty shall not be taken into account in applying the $100,000 limitation to penalties not determined under paragraph (1).

"SEC. 6722. FAILURE TO FURNISH CERTAIN PAYEE STATEMENTS.

"(a) GENERAL RULE.—In the case of each failure to furnish a payee statement on the date prescribed therefor to the person to whom such statement is required to be furnished, the person failing to so furnish such statement shall pay $50 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000.

"(b) FAILURE TO NOTIFY PARTNERSHIP OF EXCHANGE OF PARTNERSHIP INTEREST.—In the case of any person who fails to furnish the notice required by section 6050K(c)(1) on the date prescribed therefor, such person shall pay a penalty of $50 for each such failure.

"SEC. 6723. FAILURE TO INCLUDE CORRECT INFORMATION.

"(a) GENERAL RULE.—If—

"(1) any person files an information return or furnishes a payee statement, and

"(2) such person does not include all of the information required to be shown on such return or statement or includes incorrect information,

such person shall pay $5 for each return or statement with respect to which such failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $20,000.

"(b) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures to which subsection (a) applies are due to intentional disregard of the correct information reporting requirement, then, with respect to each such failure—

"(1) the penalty imposed under subsection (a) shall be $100, or, if greater—

"(A) in the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050J, 6050K, or 6050L, 10 percent of the aggregate amount of the items required to be reported correctly, or

"(B) in the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate amount of the items required to be reported correctly, and

"(2) in the case of any penalty determined under paragraph (1)—

"(A) the $20,000 limitation under subsection (a) shall not apply, and

"(B) such penalty shall not be taken into account in applying the $20,000 limitation to penalties not determined under paragraph (1).

"(c) COORDINATION WITH SECTION 6676.—No penalty shall be imposed under subsection (a) or (b) with respect to any return or statement if a penalty is imposed under section 6676 (relating to failure to supply identifying number) with respect to such return or statement.

"SEC. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.

"(a) REASONABLE CAUSE WAIVER.—No penalty shall be imposed under this part with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

"(b) PAYMENT OF PENALTY.—Any penalty imposed by this part shall be paid on notice and demand by the Secretary and in the same manner as tax.

"(c) SPECIAL RULES FOR FAILURE TO FILE INTEREST AND DIVIDEND RETURNS OR STATEMENTS.—

"(1) HIGHER STANDARDS FOR WAIVER.—In the case of any interest or dividend return or statement—

"(A) subsection (a) shall not apply, but

"(B) no penalty shall be imposed under this part if it is shown that the person otherwise liable for such penalty exercised due diligence in attempting to satisfy the requirement with respect to such return or statement.

"(2) LIMITATIONS NOT TO APPLY.—In the case of any interest or dividend return or statement—

"(A) the $100,000 limitations of sections 6721(a) and 6722(a) and the $20,000 limitation of section 6723(a) shall not apply (and any penalty imposed on any failure involving such a return or statement shall not be taken into account in applying such limitations to other penalties), and

"(B) penalties imposed with respect to such returns or statements shall not be taken into account for purposes of applying such limitations with respect to other returns or statements.

"(3) SELF ASSESSMENT.—Any penalty imposed under this part on any person with respect to an interest or dividend return or statement—

"(A) shall be assessed and collected in the same manner as an excise tax imposed by subtitle D, and

"(B) shall be due and payable on April 1 of the calendar year following the calendar year for which such return or statement is required.

"(4) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed under this part with respect to an interest or dividend return or statement.

"(5) INTEREST OR DIVIDEND RETURN OR STATEMENT.—For purposes of this subsection, the term 'interest or dividend return or statement' means—

"(A) any return required by section 6042(a)(1), 6044(a)(1), or 6049(a), and

"(B) any statement required under section 6042(c), 6044(e), or 6049(c).

"(d) DEFINITIONS.—For purposes of this part—

"(1) INFORMATION RETURN.—The term 'information return' means—

"(A) any statement of the amount of payments to another person required by—

"(i) section 6041 (a) or (b) (relating to certain information at source),

"(ii) section 6042(a)(1) (relating to payments of dividends),

"(iii) section 6044(a)(1) (relating to payments of patronage dividends),

"(iv) section 6049(a) (relating to payments of interest),

"(v) section 6050A(a) (relating to reporting requirements of certain fishing boat operators),

"(vi) section 6050N(a) (relating to payments of royalties), or

"(vii) section 6051(d) (relating to information returns with respect to income tax withheld), and

"(B) any return required by—

"(i) section 4997(a) (relating to information with respect to windfall profit tax on crude oil),

"(ii) section 6041A (a) or (b) (relating to returns of direct sellers),

"(iii) section 6045 (a) or (d) (relating to returns of brokers),

"(iv) section 6050H(a) (relating to mortgage interest received in trade or business from individuals),

"(v) section 6050I(a) (relating to cash received in trade or business),

"(vi) section 6050J(a) (relating to foreclosures and abandonments of security),

"(vii) section 6050K(a) (relating to exchanges of certain partnership interests),

"(viii) section 6050L(a) (relating to returns relating to certain dispositions of donated property),

"(ix) section 6052(a) (relating to reporting payment of wages in the form of group-term life insurance), or

"(x) section 6053(c)(1) (relating to reporting with respect to certain tips).

"(2) PAYEE STATEMENT.—The term 'payee statement' means any statement required to be furnished under—

"(A) section 4997(a) (relating to records and information; regulations),

"(B) section 6031(b), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities),

"(C) section 6039(a) (relating to information required in connection with certain options),

"(D) section 6041(d) (relating to information at source),

"(E) section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales),

"(F) section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits),

"(G) section 6044(e) (relating to returns regarding payments of patronage dividends),

"(H) section 6045 (b) or (d) (relating to returns of brokers),

"(I) section 6049(c) (relating to returns regarding payments of interest),

"(J) section 6050A(b) (relating to reporting requirements of certain fishing boat operators),

"(K) section 6050C (relating to information regarding windfall profit tax on domestic crude oil),

"(L) section 6050H(d) (relating to returns relating to mortgage interest received in trade or business from individuals),

"(M) section 6050I(e) (relating to returns relating to cash received in trade or business),

"(N) section 6050J(e) (relating to returns relating to foreclosures and abandonments of security),

"(O) section 6050K(b) (relating to returns relating to exchanges of certain partnership interests),

"(P) section 6050L(c) (relating to returns relating to certain dispositions of donated property),

"(Q) section 6050N(b) (relating to returns regarding payments of royalties),

"(R) section 6051 (relating to receipts for employees),

"(S) section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance), or

"(T) section 6053 (b) or (c) (relating to reports of tips)."

(b) INCREASE IN MAXIMUM PENALTY FOR FAILURE TO SUPPLY IDENTIFYING NUMBERS.—Subsection (a) of section 6676 (relating to failure to supply identifying numbers) is amended by striking out "$50,000" and inserting in lieu thereof "$100,000".

(c) CLARIFICATION OF PENALTY FOR FAILURE TO FURNISH PAYEE STATEMENTS.—

(1) Subsection (d) of section 6041 is amended to read as follows:

"(d) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. To the extent provided in regulations prescribed by the Secretary, this subsection shall also apply to persons required to make returns under subsection (b)."

(2) Subsection (c) of section 6042 is amended to read as follows:

"(c) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made and shall be in such form as the Secretary may prescribe by regulations."

(3) Subsection (e) of section 6044 is amended to read as follows:

"(e) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every cooperative required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the cooperative required to make such return, and

"(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be

made and shall be in such form as the Secretary may prescribe by regulations."

(4) Subsection (b) of section 6045 is amended to read as follows:

"(b) STATEMENTS TO BE FURNISHED TO CUSTOMERS.—Every person required to make a return under subsection (a) shall furnish to each customer whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the information required to be shown on such return with respect to such customer.

The written statement required under the preceding sentence shall be furnished to the customer on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(5) Subsection (c) of section 6049 is amended to read as follows:

"(c) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—

"(1) IN GENERAL.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

"(A) the name and address of the person required to make such return, and

"(B) the aggregate amount of payments to, or the aggregate amount includible in the gross income of, the person required to be shown on the return.

"(2) TIME AND FORM OF STATEMENT.—The written statement under paragraph (1)—

"(A) shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made, and

"(B) shall be in such form as the Secretary may prescribe by regulations."

(6) Subsection (b) of section 6050A is amended to read as follows:

"(b) WRITTEN STATEMENT.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing the information relating to such person required to be contained in such return. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(7) Subsection (b) of section 6050B is amended to read as follows:

"(b) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of payments to the individual required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(8) Subsection (b) of section 6050E is amended to read as follows:

"(b) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name of the State or political subdivision thereof, and

"(2) the information required to be shown on the return with respect to refunds, credits, and offsets to the individual.

The written statement required under the preceding sentence shall be furnished to the individual during January of the calendar year following the calendar year for which the return under subsection (a) was required to be made. No statement shall be required under this subsection with respect to any individual if it is determined (in the manner provided by regulations) that such individual did not claim itemized deductions under chapter 1 for the taxable year giving rise to the refund, credit, or offset."

(9) Subsection (b) of section 6050F is amended to read as follows:

"(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name of the agency making the payments, and

"(2) the aggregate amount of payments, of repayments, and of reductions, with respect to the individual required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(10) Subsection (b) of section 6050G is amended to read as follows:

"(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—The Railroad Retirement Board shall furnish to each individual whose name is required to be set forth in the return under subsection (a) a written statement showing—

"(1) the aggregate amount of payments to such individual, and of employee contributions with respect thereto, required to be shown on the return, and

"(2) such other information as the Secretary may require.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(11) Subsection (d) of section 6050H is amended to read as follows:

"(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of interest described in subsection (a)(2) received by the person required to make such return from the individual to whom the statement is required to be furnished.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(12) Subsection (e) of section 6050I is amended to read as follows:

"(e) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(13) Subsection (b) of section 6050K is amended to read as follows:

"(b) STATEMENTS TO BE FURNISHED TO TRANSFEROR AND TRANSFEREE.—Every partnership required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the partnership required to make such return, and

"(2) the information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(14) Subsection (b) of section 6052 is amended to read as follows:

"(b) STATEMENTS TO BE FURNISHED TO EMPLOYEES WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every employer required to make a return under subsection (a) shall furnish to each employee whose name is required to be set forth in such return a written statement showing the cost of the group-term life insurance shown on such return. The written statement required under the preceding sentence shall be furnished to the employee on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(15) Subsection (a) of section 6034A is amended—

(A) by striking out "making the return required to be filed" and inserting in lieu thereof "required to file a return",

(B) by striking out "was filed" and inserting in lieu thereof "was required to be filed", and

(C) by striking out "shown on such return" and inserting in lieu thereof "required to be shown on such return".

(16) Subsection (b) of section 6031 (relating to return of partnership income) is amended—

(A) by striking out "was filed" and inserting in lieu thereof "was required to be filed", and

(B) by striking out "shown on such return" and inserting in lieu thereof "required to be shown on such return".

(d) CONFORMING AMENDMENTS.—

(1)(A) Section 6652 is amended—

(i) by striking out subsection (a) and by redesignating subsections (b) through (k) as subsections (a) through (j), respectively, and

(ii) by striking out "OTHER RETURNS" in the heading of subsection (a) (as so redesig-

nated) and inserting in lieu thereof "RETURNS WITH RESPECT TO CERTAIN PAYMENTS AGGREGATING LESS THAN $10".

(B) Subsection (g) of section 219 is amended by striking out "section 6652(h)" and inserting in lieu thereof "section 6652(g)".

(C) Sections 6033(e), 6034(c), and 6043(c) are each amended by striking out "section 6652(d)" and inserting in lieu thereof "section 6652(c)".

(D) Section 6047(e)(1) and 6058(f) are each amended by striking out "section 6652(f)" and inserting in lieu thereof "section 6652(e)".

(E) Paragraph (1) of section 6050C(d) is amended by striking out "section 6652(b)" and inserting in lieu thereof "section 6722".

(F) Subsection (g) of section 6057 is amended by striking out "section 6652(e)" and inserting in lieu thereof "section 6652(d)".

(2) Section 6678 is hereby repealed.

(3) Subchapter B of chapter 68 is amended by inserting after the subchapter heading the following:

"Part I. General provisions.
"Part II. Failure to file certain information returns or statements.

"PART I—GENERAL PROVISIONS".

(4) The table of sections for subchapter B of chapter 68 (as in effect before the amendment made by paragraph (3)) is amended by striking out the item relating to section 6678.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986, except that the amendments made by subsections (c)(2), (c)(3), and (c)(5) shall apply to returns the due for which (determined without regard to extensions) is after the date of the enactment of this Act.

SEC. 1502. INCREASE IN PENALTY FOR FAILURE TO PAY TAX.

(a) GENERAL RULE.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) INCREASE IN PENALTY FOR FAILURE TO PAY TAX IN CERTAIN CASES.—

"(1) IN GENERAL.—In the case of each month (or fraction thereof) beginning after the day described in paragraph (2) of this subsection, paragraphs (2) and (3) of subsection (a) shall be applied by substituting '1 percent' for '0.5 percent' each place it appears.

"(2) DESCRIPTION.—For purposes of paragraph (1), the day described in this paragraph is the earlier of—

"(A) the day 10 days after the date on which notice is given under section 6331(d), or

"(B) the day on which notice and demand for immediate payment is given under the last sentence of section 6331(a)."

(b) REPEAL OF CERTAIN REDUCTION IN FAILURE TO PAY PENALTY.—Paragraph (1) of section 6651(c) is amended to read as follows:

"(1) ADDITIONS UNDER MORE THAN ONE PARAGRAPH.—With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month (or fraction thereof) to which an addition to tax applies under both paragraphs (1) and (2). In any case described in the last sentence of subsection (a), the amount of the addition under paragraph (1) of subsection (a) shall not be reduced under the preceding sentence below the amount provided in such last sentence."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply—

(A) to failures to pay which begin after December 31, 1986, and

(B) to failures to pay which begin on or before December 31, 1986, if after December 31, 1986—

(i) notice (or renotice) under section 6331(d) of the Internal Revenue Code of 1954 is given with respect to such failure, or

(ii) notice and demand for immediate payment of the underpayment is made under the last sentence of section 6331(a) of such Code.

In the case of a failure to pay described in subparagraph (B), paragraph (2) of section 6651(d) of such Code (as added by subsection (a)) shall be applied by taking into account the first notice (or renotice) after December 31, 1986.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to amounts assessed after December 31, 1986, with respect to failures to pay which begin before, on, or after such date.

SEC. 1503. AMENDMENTS TO PENALTY FOR NEGLIGENCE AND FRAUD.

(a) GENERAL RULE.—Section 6653 (relating to failure to pay tax) is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) NEGLIGENCE.—

"(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to the sum of—

"(A) 5 percent of the underpayment, and

"(B) an amount equal to 50 percent of the interest payable under section 6601 with respect to the portion of such underpayment which is attributable to negligence for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

"(2) UNDERPAYMENT TAKEN INTO ACCOUNT REDUCED BY PORTION ATTRIBUTABLE TO FRAUD.—There shall not be taken into account under this subsection any portion of an underpayment attributable to fraud with respect to which a penalty is imposed under subsection (b).

"(3) NEGLIGENCE.—For purposes of this subsection, the term 'negligence' includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term 'disregard' includes any careless, reckless, or intentional disregard.

"(b) FRAUD.—

"(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to the sum of—

"(A) 75 percent of the portion of the underpayment which is attributable to fraud, and

"(B) an amount equal to 50 percent of the interest payable under section 6601 with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

"(2) DETERMINATION OF PORTION ATTRIBUTABLE TO FRAUD.—If the Secretary establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes is not attributable to fraud.

"(3) SPECIAL RULE FOR JOINT RETURNS.—In the case of a joint return, this subsection shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse."

(b) SPECIAL RULE FOR INTEREST OR DIVIDEND PAYMENTS EXTENDED TO OTHER AMOUNTS SHOWN ON INFORMATION RETURNS.—Subsection (g) of section 6653 (relating to special rule in the case of interest or dividend payments) is amended to read as follows:

"(g) SPECIAL RULE FOR AMOUNTS SHOWN ON INFORMATION RETURNS.—If—

"(1) any amount is shown on—

"(A) an information return (as defined in section 6724(d)(1)), or

"(B) a return filed under section 6031, section 6037, section 6012(a) by an estate or trust, section 6050B, or section 6050E, and

"(2) the payee (or other person with respect to whom the return is made) fails to properly show such amount on his return,

any portion of an underpayment attributable to such failure shall be treated, for purposes of subsection (a), as due to negligence in the absence of clear and convincing evidence to the contrary."

(c) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 6222 is amended by striking out "intentional or negligent".

(2) Subsection (d) of section 6653 is amended by striking out "same underpayment" and inserting in lieu thereof "portion of the underpayment which is attributable to fraud".

(3) Subsection (f) of section 6653 is amended by striking out "or intentional disregard of rules and regulations (but without intent to defraud)".

(d) CHANGE IN SECTION HEADING.—

(1) The heading for section 6653 (relating to failure to pay tax) is amended to read as follows:

"SEC. 6653. ADDITIONS TO TAX FOR NEGLIGENCE AND FRAUD."

(2) The item relating to section 6653 in the table of sections for subpart A of chapter 68 is amended to read as follows:

"Sec. 6653. Additions to tax for negligence and fraud."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

SEC. 1504. INCREASE IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF LIABILITY.

(a) IN GENERAL.—Subsection (a) of section 6661 (relating to substantial understatement of liability) is amended by striking out "10 percent" and inserting in lieu thereof "20 percent".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

Subtitle B—Interest Provisions

SEC. 1511. DIFFERENTIAL INTEREST RATE.

(a) GENERAL RULE.—Section 6621 (relating to determination of rate of interest) is amended by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following:

"(a) GENERAL RULE.—

"(1) OVERPAYMENT RATE.—The overpayment rate established under this section shall be the sum of—

"(A) the short-term Federal rate determined under subsection (b), plus

"(B) 2 percentage points.

"(2) UNDERPAYMENT RATE.—The underpayment rate established under this section shall be the sum of—

"(A) the short-term Federal rate determined under subsection (b), plus

"(B) 3 percentage points.

"(b) SHORT-TERM FEDERAL RATE.—For purposes of this section—

"(1) GENERAL RULE.—The Secretary shall determine the short-term Federal rate for the first month in each calendar quarter.

"(2) PERIOD DURING WHICH RATE APPLIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Federal short-term rate determined under paragraph (1) for any month shall apply during the first calendar quarter beginning after such month.

"(B) SPECIAL RULE FOR INDIVIDUAL ESTIMATED TAX.—In determining the addition to tax under section 6654 for failure to pay estimated tax for any taxable year, the Federal short-term rate which applies during the 3rd month following such taxable year shall also apply during the first 15 days of the 4th month following such taxable year.

"(3) FEDERAL SHORT-TERM RATE.—The Federal short-term rate for any month shall be the Federal short-term rate determined during such month by the Secretary in accordance with section 1274(d). Any such rate shall be rounded to the nearest full percent (or, if a multiple of ½ of 1 percent, such rate shall be increased to the next highest full percent)."

(b) COORDINATION BY REGULATION.—The Secretary of the Treasury or his delegate may issue regulations to coordinate section 6621 of the Internal Revenue Code of 1954 (as amended by this section) with section 6601(f) of such Code. Such regulations shall not apply to any period after the date 3 years after the date of the enactment of this Act.

(c) TECHNICAL AMENDMENTS.—

(1) Section 6621 is amended—

(A) by redesignating subsection (d) as subsection (c), and

(B) by striking out "the adjusted rate established under subsection (b)" in subsection (c)(1) (as so redesignated) and inserting in lieu thereof "the underpayment rate established under this section", and

(C) by striking out "annual" in subsecton (c)(1) (as so redesignated).

(2) Subparagraph (G) of section 47(d)(3) is amended by striking out "determined under section 6621" and inserting in lieu thereof "determined at the underpayment rate established under section 6621".

(3) The last sentence of section 48(d)(6)(C)(ii) (defining at risk percentage) is amended by striking out "the rate" and inserting in lieu thereof "the underpayment rate".

(4) Subparagraph (B) of section 167(q)(2) is amended by striking out "at the rate determined under section 6621" and inserting in lieu thereof "at the underpayment rate established under section 6621".

(5) Subparagraph (B) of section 644(a)(2) is amended by striking out "the annual rate established under section 6621" and inserting in lieu thereof "the underpayment rate established under section 6621".

(6) Subparagraph (A) of section 852(e)(3) is amended by striking out "the annual rate established under section 6621" and inserting in lieu thereof "the underpayment rate established under section 6621".

(7) Paragraph (2) of section 4497(c) is amended by striking out "at rates determined under section 6621" and inserting in lieu thereof "at the underpayment rate established under section 6621".

(8) Subsection (e) of section 6214 is amended by striking out "section 6621(d)(4)" and inserting in lieu thereof "section 6621(c)(4)".

(9) Paragraph (1) of section 6332(c) is amended by striking out "an annual rate established under section 6621" and inserting in lieu thereof "the underpayment rate established under section 6621".

(10) Subsection (c) of section 6343 is amended by striking out "an annual rate established under section 6621" and inserting in lieu thereof "the overpayment rate established under section 6621".

(11) Subsection (a) of section 6601 is amended by striking out "an annual rate established under section 6621" and inserting in lieu thereof "the underpayment rate established under section 6621".

(12) Section 6602 is amended by striking out "an annual rate established under section 6621" and inserting in lieu thereof "the underpayment rate established under section 6621".

(13) Subsection (a) of section 6611 is amended by striking out "an annual rate established under section 6621" and inserting in lieu thereof "the overpayment rate established under section 6621".

(14) Paragraph (1) of section 6654(a) is amended by striking out "the applicable annual rate established under section 6621" and inserting in lieu thereof "the underpayment rate established under section 6621".

(15) Paragraph (1) of section 6655(a) is amended by striking out "the rate established under section 6621" and inserting in lieu thereof "the underpayment rate established under section 6621".

(16) Subsection (g) of section 7426 is amended by striking out "an annual rate established under section 6621" and inserting in lieu thereof "the overpayment rate established under section 6621".

(17) Section 1961(c)(1) of title 28, United States Code, is amended by striking out "a rate established under section 6621" and inserting in lieu thereof "the underpayment rate or overpayment rate (whichever is appropriate) established under section 6621".

(18) Section 2411 of title 28, United States Code, is amended by striking out "an annual rate established under section 6621" and inserting in lieu thereof "the overpayment rate established under section 6621".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply for purposes of determining interest for periods after December 31, 1986.

SEC. 1512. INTEREST ON ACCUMULATED EARNINGS TAX TO ACCRUE BEGINNING ON DATE RETURN IS DUE.

(a) IN GENERAL.—Subsection (b) of section 6601 (relating to last date prescribed for payment) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) ACCUMULATED EARNINGS TAX.—In the case of the tax imposed by section 531 for any taxable year, the last date prescribed for payment shall be deemed to be the due date (without regard to extensions) for the return of tax imposed by subtitle A for such taxable year."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1985.

Subtitle C—Information Reporting Provisions

SEC. 1521. REQUIREMENT OF REPORTING FOR REAL ESTATE TRANSACTIONS.

(a) GENERAL RULE.—Section 6045 (relating to returns of brokers) is amended by adding at the end thereof the following new subsection:

"(e) RETURN REQUIRED IN THE CASE OF REAL ESTATE TRANSACTIONS.—

"(1) IN GENERAL.—In the case of a real estate transaction, the real estate broker shall file a return under subsection (a) and a statement under subsection (b) with respect to such transaction.

"(2) REAL ESTATE BROKER.—For purposes of this subsection, the term 'real estate broker' means any of the following persons involved in a real estate transaction in the following order:

"(A) the person (including any attorney or title company) responsible for closing the transaction,

"(B) the mortgage lender,

"(C) the seller's broker,

"(D) the buyer's broker, or

"(E) such other person designated in regulations prescribed by the Secretary.

Any person treated as a real estate broker under the preceding sentence shall be treated as a broker for purposes of subsection (c)(1)."

(b) BACKUP WITHHOLDING REQUIREMENTS.—Paragraph (5) of section 3406(h) (relating to other definitions and special rules) is amended by adding at the end thereof the following new subparagraph:

"(D) REAL ESTATE BROKER NOT TREATED AS A BROKER.—Except as provided by regulations, such term shall not include any real estate broker (as defined in section 6045(e)(2))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to real estate transactions closing after December 31, 1986.

SEC. 1522. INFORMATION REPORTING ON PERSONS RECEIVING CONTRACTS FROM CERTAIN FEDERAL AGENCIES.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

"SEC. 6050M. RETURNS RELATING TO PERSONS RECEIVING CONTRACTS FROM FEDERAL EXECUTIVE AGENCIES.

"(a) REQUIREMENT OF REPORTING.—The head of every Federal executive agency which enters into any contract shall make a return (at such time and in such form as the Secretary may by regulations prescribe) setting forth—

"(1) the name, address, and TIN of each person with which such agency entered into a contract during the calendar year, and

"(2) such other information as the Secretary may require.

"(b) FEDERAL EXECUTIVE AGENCY.—For purposes of this section, the term 'Federal executive agency' means—

"(1) any executive agency (as defined in section 105 of title 5, United States Code) other than the General Accounting Office,

"(2) any military department (as defined in section 102 of such title), and

"(3) the United States Postal Service and the Postal Rate Commission.

"(c) AUTHORITY TO EXTEND REPORTING TO LICENSES AND SUBCONTRACTS.—To the extent provided in regulations, this section also shall apply to—

"(1) licenses granted by Federal executive agencies, and

"(2) subcontracts under contracts to which subsection (a) applies.

"(d) AUTHORITY TO PRESCRIBE MINIMUM AMOUNTS.—This section shall not apply to contracts or licenses in any class which are below a minimum amount or value which may be prescribed by the Secretary by regulations for such class."

(b) CLERICAL AMENDMENT.—The table of sections for such subpart B is amended by adding at the end thereof the following new item:

"Sec. 6050M. Returns relating to persons receiving contracts from Federal executive agencies."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts (and subcontracts) entered into, and licenses granted, before, on, or after January 1, 1987.

SEC. 1523. RETURNS REGARDING PAYMENTS OF ROYALTIES.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

"SEC. 6050N. RETURNS REGARDING PAYMENTS OF ROYALTIES.

"(a) REQUIREMENT OF REPORTING.—Every person—

"(1) who makes payments of royalties (or similar amounts) aggregating $10 or more to any other person during any calendar year, or

"(2) who receives payments of royalties (or similar amounts) as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the royalties (or similar amounts) so received,

shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

"(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS FURNISHED.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of payments to the person required to be shown on such return.

The written statement required under the preceding sentence shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made and shall be in such form as the Secretary may prescribe by regulations.

"(c) EXCEPTION FOR PAYMENTS TO CERTAIN PERSONS.—Except to the extent otherwise provided in regulations, this section shall not apply to any amount paid to a person described in subparagraph (A), (B), (C), (D), (E), or (F) of section 6049(b)(4)."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 3406(b) (relating to backup withholding) is amended—

(A) by striking out "or" at the end of subparagraph (C),

(B) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", or", and

(C) by adding at the end thereof the following new subparagraph:

"(E) section 6050N (relating to payments of royalties)."

(2) Subsection (a) of section 6041 (relating to information at source) is amended by striking out "or 6049(a)" and inserting in lieu thereof "6049(a), or 6050N(a)".

(3) Section 6676 (relating to failure to supply identifying numbers) is amended—

(A) by striking out "or 6049" in subsection (a)(3) and inserting in lieu thereof "6049, or 6050N",

(B) by striking out "or 6049" in subsection (b)(1)(A) and inserting in lieu thereof "6049, or 6050N", and

(C) by striking out "AND DIVIDEND" in the heading for subsection (b) and inserting in lieu thereof ", DIVIDENDS, AND ROYALTIES".

(c) CLERICAL AMENDMENT.—The table of sections of subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050N. Returns regarding payments of royalties."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to payments made after December 31, 1986.

SEC. 1524. TINS REQUIRED FOR DEPENDENTS CLAIMED ON TAX RETURNS.

(a) GENERAL RULE.—Section 6109 (relating to identifying numbers) is amended by adding at the end thereof the following new subsection:

"(e) FURNISHING NUMBER FOR CERTAIN DEPENDENTS.—If—

"(1) any taxpayer claims an exemption under section 151 for any dependent on a return for any taxable year, and

"(2) such dependent has attained the age of 5 years before the close of such taxable year,

such taxpayer shall include on such return the identifying number (for purposes of this title) of such dependent."

(b) PENALTY FOR FAILURE TO SUPPLY TIN.—Section 6676 (relating to failure to supply identifying numbers) is amended by adding at the end thereof the following new subsection:

"(e) PENALTY FOR FAILURE TO SUPPLY TIN OF DEPENDENT.—

"(1) IN GENERAL.—If any person required under section 6109(e) to include the TIN of any dependent on his return fails to include such number on such return (or includes an incorrect number), such person shall, unless it is shown that such failure is due to reasonable cause and not willful neglect, pay a penalty of $5 for each such failure.

"(2) SUBSECTION (a) NOT TO APPLY.—Subsection (a) shall not apply to any failure described in paragraph (1) of this subsection."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1987.

SEC. 1525. TAX-EXEMPT INTEREST REQUIRED TO BE SHOWN ON RETURN.

(a) IN GENERAL.—Section 6012 (relating to persons required to make returns of income) is amended by redesignating subsection (d) as subsection (e) by inserting after subsection (c) the following new subsection:

"(d) TAX-EXEMPT INTEREST REQUIRED TO BE SHOWN ON RETURN.—Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

Subtitle D—Provisions Relating to Tax Shelters

SEC. 1531. MODIFICATION OF TAX SHELTER RATIO TEST FOR REGISTRATION OF TAX SHELTERS.

(a) IN GENERAL.—Subparagraph (A) of section 6111(c)(2) (defining tax shelter ratio) is amended by striking out "200 percent" and inserting in lieu thereof "350 percent".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any tax shelter (within the meaning of section 6111 of the Internal Revenue Code of 1986 as amended by this section) interests in which are first offered for sale after December 31, 1986 take effect on January 1, 1987.

SEC. 1532. INCREASED PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Paragraph (2) of section 6707(a) (relating to penalty for failure to register tax shelters) is amended to read as follows:

"(2) AMOUNT OF PENALTY.—The penalty imposed under paragraph (1) with respect to any tax shelter shall be an amount equal to the greater of—

"(A) 1 percent of the aggregate amount invested in such tax shelter, or

"(B) $500."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to failures with respect to tax shelters interests in which are first offered for sale after the date of the enactment of this Act.

SEC. 1533. PENALTY FOR FAILURE TO INCLUDE TAX SHELTER IDENTIFICATION NUMBER ON RETURN INCREASED TO $250.

(a) IN GENERAL.—Paragraph (2) of section 6707(b) (relating to penalty for failure to furnish tax shelter identification number) is amended by striking out "$50" and inserting in lieu thereof "$250".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

SEC. 1534. INCREASED PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS IN POTENTIALLY ABUSIVE TAX SHELTERS.

(a) IN GENERAL.—Subsection (a) of section 6708 (relating to failure to maintain lists of investors in potentially abusive tax shelters) is amended by striking out "$50,000" and inserting in lieu thereof "$100,000".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring or continuing after the date of the enactment of this Act.

SEC. 1535. CLARIFICATION OF TREATMENT OF SHAM OR FRAUDULENT TRANSACTIONS UNDER SECTION 6221(c).

(a) CLARIFICATION OF TREATMENT OF SHAM OR FRAUDULENT TRANSACTIONS.—Subparagraph (A) of section 6621(c)(3) (as so redesignated) is amended by striking out "and" at the end of clause (iii), by striking out the period at the end of clause (iv) and inserting in lieu thereof ", and", and by adding at the end thereof the following new clause:

"(v) any sham or fraudulent transaction."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accruing after December 31, 1984; except that such amendment shall not apply in the case of any underpayment with respect to which there was a final court decision before the date of the enactment of this Act.

Subtitle E—Estimated Tax Provisions

SEC. 1541. CURRENT YEAR LIABILITY TEST INCREASED FROM 80 TO 90 PERCENT FOR ESTIMATED TAX PAYMENTS BY INDIVIDUALS.

(a) IN GENERAL.—Clause (i) of section 6654(d)(1)(B) (defining required annual

payment) is amended by striking out "80 percent" each place it appears and inserting in lieu thereof "90 percent".

(b) TECHNICAL AMENDMENTS.—

(1) The table contained in clause (ii) of section 6654(d)(2)(C) (defining applicable percentage) is amended—

(A) by striking out "20" and inserting in lieu thereof "22.5",

(B) by striking out "40" and inserting in lieu thereof "45",

(C) by striking out "60" and inserting in lieu thereof "67.5", and

(D) by striking out "80" and inserting in lieu thereof "90".

(2) Subparagraph (C) of section 6654(i)(1) (relating to special rules for farmers and fishermen) is amended by striking out "80 percent" and inserting in lieu thereof "90 percent".

(3) The table contained in subparagraph (B) of section 6654(j)(3) (relating to special rules for nonresident aliens) is amended—

(A) by striking out "40" and inserting in lieu thereof "45",

(B) by striking out "60" and inserting in lieu thereof "67.5", and

(C) by striking out "80" and inserting in lieu thereof "90".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1542. CERTAIN TAX-EXEMPT ORGANIZATIONS SUBJECT TO CORPORATE ESTIMATED TAX RULES.

(a) GENERAL RULE.—Section 6154 (relating to installment payments of estimated income tax by corporations) is amended by adding at the end thereof the following new subsection:

"(h) CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of this section and section 6655—

"(1) any organization subject to the tax imposed by section 511, and any private foundation subject to the tax imposed by section 4940, shall be treated as a corporation subject to tax under section 11,

"(2) any tax imposed by section 511 or 4940 shall be treated as a tax imposed by section 11, and

"(3) any reference to taxable income shall be treated as including a reference to unrelated business taxable income or net investment income (as the case may be)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

SEC. 1543. WAIVER OF ESTIMATED PENALTIES FOR 1986 UNDERPAYMENTS ATTRIBUTABLE TO THIS ACT.

No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 (relating to failure to pay estimated tax) for any period before April 16, 1987 (March 16, 1987, in the case of a taxpayer subject to section 6655 of such Code), with respect to any underpayment, to the extent such underpayment was created or increased by any provision of this Act.

Subtitle F—Provisions Regarding Judicial Proceedings

SEC. 1551. LIMITATIONS ON AWARDING OF COURT COSTS AND CERTAIN FEES MODIFIED.

(a) MAXIMUM DOLLAR LIMITATION REMOVED.—Subsection (b) of section 7430 (relating to awarding of court costs and certain fees) is amended by striking out paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(b) AWARDING OF COURT COSTS AND CERTAIN FEES DENIED IF PREVAILING PARTY PROTRACTS PROCEEDINGS.—Section 7430(b) (relating to limitations to awarding of court costs and certain fees) is amended by adding at the end thereof the following new paragraph:

"(4) COSTS DENIED WHERE PARTY PREVAILING PROTRACTS PROCEEDINGS.—No award for reasonable litigation costs may be made under subsection (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted such proceeding."

(c) ADDITIONAL LIMITATIONS ON FEES OF EXPERT WITNESSES AND ATTORNEYS.—Subparagraph (A) of section 7430(c)(1) (defining reasonable litigation costs) is amended to read as follows:

"(A) IN GENERAL.—The term 'reasonable litigation costs' includes—

"(i) reasonable court costs, and

"(ii) based upon prevailing market rates for the kind or quality of services furnished—

"(I) the reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

"(II) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

"(III) reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that such fees shall not be in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate."

(d) DEFINITION OF PREVAILING PARTY.—Subparagraph (A) of section 7430(c)(2) (defining prevailing party) is amended—

(1) by striking out "was unreasonable" in clause (i) and inserting in lieu thereof "was not substantially justified", and

(2) by strikng out "and" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof", and", and by adding at the end thereof the following new clause:

"(iii) meets the requirements of section 504(b)(1)(B) of title 5, United States Code (as in effect on the date of the enactment of the Tax Reform Act of 1986 and applied by taking into account the commencement of the proceeding described in subsection (a) in lieu of the initiation of the adjudication referred to in such section)."

(e) POSITION OF UNITED STATES INCLUDES ADMINISTRATIVE ACTION.—Section 7430(c) (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(4) POSITION OF UNITED STATES.—The term 'position of the United States' includes—

"(A) the position taken by the United States in the civil proceeding, and

"(B) any administrative action or inaction by the District Counsel of the Internal Revenue Service (and all subsequent administrative action or inaction) upon which such proceeding is based."

(f) TECHNICAL AMENDMENT.—Subsection (a) of section 7430 is amended by inserting "(payable in the case of the Tax Court in the same manner as such an award by a district court)" after "a judgment".

(g) PROVISIONS MADE PERMANENT.—Section 7430 is amended by striking out subsection (f).

(h) EFFECTIVE DATES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts paid after September 30, 1986, in civil actions or proceedings, commenced after December 31, 1985.

(2) SUBSECTION (f).—The amendment made by subsection (f) shall take effect as if included in the amendments made by section 292 of the Tax Equity and Fiscal Responsibility Act of 1982.

(3) APPLICABILITY OF AMENDMENTS TO CERTAIN PRIOR CASES.—The amendments made by this section shall apply to any case commenced after December 31, 1985, and finally disposed of before the date of the enactment of this Act, except that in any such case, the 30-day period referred to in section 2412(d)(1)(B) of title 28, United States Code, or Rule 231 of the Tax Court, as the case may be, shall be deemed to commence on the date of the enactment of this Act.

SEC. 1552. FAILURE TO PURSUE ADMINISTRATIVE REMEDIES.

(a) GENERAL RULE.—Section 6673 (relating to damages assessable for instituting proceedings before the Tax Court primarily for delay, etc.) is amended by striking out "or that the taxpayer's position in such proceedings is frivolous or groundless" and inserting in lieu thereof ", that the taxpayer's position in such proceeding is frivolous or groundless, or that the taxpayer unreasonably failed to pursue available administrative remedies".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proceedings commenced after the date of the enactment of this Act.

(c) REPORT.—The Secretary of the Treasury or his delegate and the Tax Court shall each prepare a report for 1987 and for each 2-calendar year period thereafter on the inventory of cases in the Tax Court and the measures to close cases more efficiently. Such reports shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 1553. TAX COURT PRACTICE FEE.

(a) IN GENERAL.—Part III of Subchapter C of chapter 76 (relating to miscellaneous provisions) in amended by adding at the end thereof the following new section:

"SEC. 7475. PRACTICE FEE.

"(a) IN GENERAL.—The Tax Court is authorized to impose a periodic registration fee on practitioners admitted to practice before such Court. The frequency and amount of such fee shall be determined by the Tax Court, except that such amount may not exceed $30 per year.

"(b) USE OF FEES.—The fees described in subsection (a) shall be available to the Tax Court to employ independent counsel to pursue disciplinary matters."

(b) CONFORMING AMENDMENTS.—

(1) The second sentence of section 7472 (relating to expenditures) is amended by striking out "All" and inserting in lieu thereof "Except as provided in section 7475, all".

(2) Section 7473 (relating to disposition of fees) is amended by striking out "All" and inserting in lieu thereof "Except as provided in section 7475, all".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 1554. CLARIFICATION OF JURISDICTION OVER ADDITION TO TAX FOR FAILURE TO PAY AMOUNT OF TAX SHOWN ON RETURN.

(a) IN GENERAL.—Subsection (a) of section 6214 (relating to determinations by Tax Court) is amended by striking out "addition

to the tax" and inserting in lieu thereof "any addition to the tax".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any action or proceeding in the Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1954) before the date of the enactment of this Act.

SEC. 1555. AUTHORITY TO REQUIRE ATTENDANCE OF UNITED STATES MARSHALS AT TAX COURT SESSIONS.

(a) IN GENERAL.—Subsection (e) of section 7456 (relating to incidental powers) is amended by adding at the end thereof the following new sentence: "The United States marshal for any district in which the Tax Court is sitting shall, when requested by the chief judge of the Tax Court, attend any session of the Tax Court in such district."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 1556. CHANGES IN CERTAIN PROVISIONS RELATING TO SPECIAL TRIAL JUDGES.

(a) IN GENERAL.—Part I of subchapter C of chapter 76 (relating to judicial proceedings) is amended by inserting after section 7443 the following new section:

"SEC. 7443A. SPECIAL TRIAL JUDGES.

"(a) APPOINTMENT.—The chief judge may, from time to time, appoint special trial judges who shall proceed under such rules and regulations as may be promulgated by the Tax Court.

"(b) PROCEEDINGS WHICH MAY BE ASSIGNED TO SPECIAL TRIAL JUDGES.—The chief judge may assign—

"(1) any declaratory judgment proceeding,

"(2) any proceeding under section 7463,

"(3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $10,000, and

"(4) any other proceeding which the chief judge may designate,

to be heard by the special trial judges of the court.

"(c) AUTHORITY TO MAKE COURT DECISION.—The court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), or (3) of subsection (b), subject to such conditions and review as the court may provide.

"(d) SALARY.—Each special trial judge shall receive salary—

"(1) at a rate equal to 90 percent of the rate for judges of the Tax Court, and

"(2) in the same installments as such judges.

"(e) EXPENSES FOR TRAVEL AND SUBSISTENCE.—Subsection (d) of section 7443 shall apply to special trial judges subject to such rules and regulations as may be promulgated by the Tax Court."

(b) TECHNICAL AMENDMENTS.—

(1) Section 7456 (relating to administration of oaths and procurement of testimony) is amended by striking out subsections (c) and (d) and by redesignating subsection (e) as subsection (c).

(2) Subsection (c) of section 7471 is amended by striking out "section 7456(c)" and inserting in lieu thereof "subsections (d) and (e) of section 7443A".

(3) The table of sections for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443 the following new item:

"Sec. 7443A. Special trial judges."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) SALARY.—Subsection (d) of section 7443A of the Internal Revenue Code of 1954 (as added by this section) shall take effect on the 1st day of the 1st month beginning after the date of the enactment of this Act.

(3) NEW APPOINTMENTS NOT REQUIRED.—Nothing in the amendments made by this section shall be construed to require the reappointment of any individual serving as a special trial judge of the Tax Court on the day before the date of the enactment of this Act.

SEC. 1557. EFFECT ON RETIRED PAY BY ELECTION TO PRACTICE LAW, ETC., AFTER RETIREMENT.

(a) CHANGE IN AGE AND SERVICE REQUIREMENTS FOR RETIREMENT.—Paragraph (2) of section 7447(b) (relating to retirement) is amended to read as follows:

"(2) Any judge who meets the age and service requirements set forth in the following table may retire:

"The judge has attained age:	And the years of service as a judge are at least:
65	15
66	14
67	13
68	12
69	11
70	10."

(b) EFFECT ON RETIRED PAY OF PRACTICING LAW, ETC., AFTER RETIREMENT.—Subsection (f) of section 7447 (relating to individuals receiving retired pay to be available for recall) is amended to read as follows:

"(f) RETIRED PAY AFFECTED IN CERTAIN CASES.—In the case of an individual for whom an election to receive retired pay under subsection (d) is in effect—

"(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—If such individual during any calendar year fails to perform judicial duties required of him by subsection (c), such individual shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the 1st day on which he so fails to perform such duties.

"(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—If such individual performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for his client, his employer, or any of his employer's clients, such individual shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the 1st day on which he engages in any such activity. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

"(3) SUSPENSION OF RETIRED PAY DURING PERIOD OF COMPENSATED GOVERNMENT SERVICE.—If such individual accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)), such individual shall forfeit all rights to retired pay under subsection (d) for the period for which such compensation is received.

"(4) FORFEITURES OF RETIRED PAY UNDER PARAGRAPHS (1) AND (2) NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF RETIRED PAY.—

"(A) IN GENERAL.—If any individual makes an election under this paragraph—

"(i) paragraphs (1) and (2) (and subsection (c)) shall not apply to such individual beginning on the date such election takes effect, and

"(ii) the retired pay under subsection (d) payable to such individual for periods beginning on or after the date such election takes effect shall be equal to the retired pay to which such individual would be entitled without regard to this clause at the time of such election.

"(B) ELECTION.—An election under this paragraph—

"(i) may be made by an individual only if such individual meets the age and service requirements for retirement under paragraph (2) of subsection (b),

"(ii) may be made only during the period during which the individual may make an election to receive retired pay or while the individual is receiving retired pay, and

"(iii) shall be made in the same manner as the election to receive retired pay.

Such an election, once it takes effect, shall be irrevocable.

"(C) WHEN ELECTION TAKES EFFECT.—Any election under this paragraph shall take effect on the 1st day of the 1st month following the month in which the election is made."

(c) HIGH 3 YEARS OF SALARY MUST BE DURING PERIOD WHEN ELECTION TO RECEIVE RETIRED PAY IS NOT IN EFFECT.—Subsection (m) of section 7448 (relating to computation of annuities) is amended by adding at the end thereof the following new sentence: "In determining the period of 3 consecutive years referred to in the preceding sentence, there may not be taken into account any period for which an election under section 7447(f)(4) is in effect."

(d) CLERICAL AMENDMENTS.—

(1) Subsection (a) of section 7447 (relating to definitions) is amended by striking out paragraph (2) and by redesignating paragraphs (3) and (5) as paragraphs (2) and (3), respectively.

(2) Subsection (e) of section 7447 is amended by striking out "Civil Service Commission" each place it appears and inserting in lieu thereof "Office of Personnel Management".

(3) Subparagraph (C) of section 7447(g)(2) (relating to coordination with civil service retirement) is amended by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) FORFEITURE OF RETIRED PAY.—The amendments made by this section shall not apply to any individual who, before the date of the enactment of this Act, forfeited his rights to retired pay under section 7447(d) of the Internal Revenue Code of 1954 by reason of the 1st sentence of section 7447(f) of such Code (as in effect on the day before such date).

SEC. 1558. AUTHORIZATION FOR APPEALS FROM INTERLOCUTORY ORDERS OF THE TAX COURT.

(a) IN GENERAL.—Subsection (a) of section 7482 (relating to courts of review) is amended by adding at the end thereof the following new paragraph:

"(2) INTERLOCUTORY ORDERS.—

"(A) IN GENERAL.—When any judge of the Tax Court includes in an interlocutory order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference

of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals may, in its discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of such order. Neither the application for nor the granting of an appeal under this paragraph shall stay proceedings in the Tax Court, unless a stay is ordered by a judge of the Tax Court or by the United States Court of Appeals which has jurisdiction of the appeal or a judge of that court.

"(B) ORDER TREATED AS TAX COURT DECISION.—For purposes of subsections (b) and (c), an order described in this paragraph shall be treated as a decision of the Tax Court.

"(C) VENUE FOR REVIEW OF SUBSEQUENT PROCEEDINGS.—If a United States Court of Appeals permits an appeal to be taken from an order described in subparagraph (A), except as provided in subsection (b)(2), any subsequent review of the decision of the Tax Court in the proceeding shall be made by such Court of Appeals."

(b) CLERICAL AMENDMENTS.—The text of subsection (a) of section 7482 (as in effect before the amendment made by subsection (a)) is moved below the subsection heading and 2 ems to the right (so that the left margin of such text is aligned with the left margin of the paragraph (2) added by subsection (a)) and amended by inserting before such text "(1) IN GENERAL.—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any order of the Tax Court entered after the date of the enactment of this Act.

SEC. 1559. CHANGES RELATING TO ANNUITIES FOR SURVIVING SPOUSES AND DEPENDENT CHILDREN OF TAX COURT JUDGES.

(a) INCREASES IN SALARY DEDUCTIONS, AND AUTHORIZATIONS OF APPROPRIATIONS, FOR TAX COURT JUDGES SURVIVORS ANNUITY FUND.—

(1) INCREASES IN SALARY DEDUCTIONS.—

(A) Subsection (c) of section 7448 (relating to salary deductions) is amended by striking out "3 percent" and inserting in lieu thereof "3.5 percent".

(B) Subsection (d) of section 7448 (relating to deposits in survivors annuity fund) is amended by striking out "3 percent" the second place it appears and inserting in lieu thereof "3.5 percent".

(2) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—Subsection (c) of section 7448 is amended—

(i) by striking out "(c) SALARY DEDUCTIONS.—There" and inserting in lieu thereof the following:

"(c) SURVIVORS ANNUITY FUND.—

"(1) SALARY DEDUCTIONS.—There",

(ii) by moving the text of such subsection 2 ems to the right, and

(iii) by adding at the end thereof the following new paragraph:

"(2) APPROPRIATIONS WHERE UNFUNDED LIABILITY.—

"(A) IN GENERAL.—Not later than the close of each fiscal year, there shall be deposited in the Treasury of the United States to the credit of the survivors annuity fund, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts required to reduce to zero the unfunded liability (if any) of such fund. Subject to appropriation Acts, such deposits shall be taken from sums available for such fiscal year for the payment of amounts described in subsection (a)(4), and shall immediately become an integrated part of such fund.

"(B) EXCEPTION.—The amount required by subparagraph (A) to be deposited in any fiscal year shall not exceed an amount equal to 11 percent of the aggregate amounts described in subsection (a)(4) paid during such fiscal year.

"(C) UNFUNDED LIABILITY DEFINED.—For purposes of subparagraph (A), the term 'unfunded liability' means the amount estimated by the Secretary to be equal to the excess (as of the close of the fiscal year involved) of—

"(i) the present value of all benefits payable from the survivors annuity fund (determined on an annual basis in accordance with section 9503 of title 31, United States Code), over

"(ii) the sum of—

"(I) the present values of future deductions under subsection (c) and future deposits under subsection (d), plus

"(II) the balance in such fund as of the close of such fiscal year.

"(D) AMOUNTS NOT CREDITED TO INDIVIDUAL ACCOUNTS.—Amounts appropriated pursuant to this paragraph shall not be credited to the account of any individual for purposes of subsection (g)."

(B) CONFORMING AMENDMENT.—Subsection (h) of section 7448 is amended by striking out "subsection (c)" and inserting in lieu thereof "subsection (c)(1)".

(b) INCREASES IN ANNUITIES PAYABLE FROM SURVIVORS ANNUITY FUND.—

(1) ANNUITIES FOR SURVIVING SPOUSES.—

(A) INCREASE IN ANNUITY.—Subsection (m) of section 7448 (relating to computation of annuities) is amended—

(i) by striking out "1½ percent" and inserting in lieu thereof "1.5 percent", and

(ii) by striking out "but such annuity shall not" and all that follows down through the end thereof and inserting in lieu thereof "except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary, and shall be further reduced in accordance with subsection (d) (if applicable)."

(B) ANNUITY TO TERMINATE ON REMARRIAGE ONLY IF SPOUSE NOT 55.—The second sentence of section 7448(h) is amended by striking out "or remarriage" and inserting in lieu thereof "or such surviving spouse's remarriage before attaining age 55".

(2) ANNUITIES FOR SURVIVING DEPENDENT CHILDREN.—

(A) ANNUITY WHERE SURVIVING SPOUSE.—Paragraph (2) of section 7448(h) (relating to entitlement to annuity) is amended by striking out all that follows "equal to" and inserting in lieu thereof the following:

"the lesser of—

"(A) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

"(B) 20 percent of such average annual salary, divided by the number of such children; or".

(B) ANNUITY WHERE NO SURVIVING SPOUSE.—Paragraph (3) of section 7448(h) is amended by striking out all that follows "equal to" and inserting in lieu thereof the following:

"the lesser of—

"(A) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

"(B) 40 percent of such average annual salary, divided by the number of such children."

(c) AUTHORITY TO ELECT TERMINATION OF PARTICIPATION IN SURVIVOR ANNUITY PROGRAM.—

(1) IN GENERAL.—Subsection (g) of section 7448 is amended by inserting "or if any judge ceases to be married after making the election under subsection (b) and revokes (in a writing filed as provided in subsection (b)) such election" after "1939".

(2) CONFORMING AMENDMENT.—The subsection heading for such subsection (g) is amendment by striking out "OF SERVICE".

(d) EFFECTIVE DATE.—

(1) SALARY DEDUCTIONS.—

(A) The amendment made by subsection (a)(1)(A) shall apply to amounts paid after November 1, 1986.

(B) The amendment made by subsection (a)(1)(B) shall apply to service after November 1, 1986.

(2) APPROPRIATIONS.—The amendments made by subsection (a)(2) shall apply to fiscal years beginning after 1986.

(3) COMPUTATION OF ANNUITIES.—The amendments made by subsection (b) shall apply to annuities the starting date of which is after November 1, 1986.

(4) OPPORTUNITY TO REVOKE SURVIVOR ANNUITY ELECTION.—

(A) IN GENERAL.—Any individual who before November 1, 1986, made an election under subsection (b) of section 7448 of the Internal Revenue Code of 1954 may revoke such election. Such a revocation shall constitute a complete withdrawal from the survivor annuity program provided for in such section and shall be filed as provided for elections under such subsection.

(B) EFFECT OF REVOCATION.—Any revocation under subparagraph (A) shall have the same effect as if there were a termination to which section 7448(g) of such Code applies on the date such revocation is filed.

(C) PERIOD REVOCATION PERMITTED.—Any revocation under subparagraph (A) may be made only during the 180-day period beginning on the date of the enactment of this Act.

(5) OPPORTUNITY TO ELECT SURVIVOR ANNUITY WHERE PRIOR REVOCATION.—Any individual who under paragraph (4) revoked an election under subsection (b) of section 7448 of such Code may thereafter make such an election only if such individual deposits to the credit of the survivors annuity fund under subsection (c) of such section the entire amount paid to such individual under paragraph (4), together with interest computed as provided in subsection (d) of such section.

Subtitle G—Tax Administration Provisions

SEC. 1561. SUSPENSION OF STATUTE OF LIMITATIONS IF THIRD-PARTY RECORDS NOT PRODUCED WITHIN 6 MONTHS AFTER SERVICE OF SUMMONS.

(a) IN GENERAL.—Subsection (e) of section 7609 (relating to special procedures for third-party summonses) is amended to read as follows:

"(e) SUSPENSION OF STATUTE OF LIMITATIONS.—

"(1) SUBSECTION (b) ACTION.—If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

"(2) SUSPENSION AFTER 6 MONTHS OF SERVICE OF SUMMONS.—In the absence of the resolu-

tion of the third-party recordkeeper's response to the summons described in subsection (c), the running of any period of limitations under section 6501 or under section 6531 with respect to any person with respect to whose liability the summons is issued other (other than a person taking action as provided in subsection (b)) shall be suspended for the period—

"(A) beginning on the date which is 6 months after the service of such summons, and

"(B) ending with the final resolution of such response."

(b) NOTICE OF SUSPENSION IN THE CASE OF A JOHN DOE SUMMONS.—Section 7609(i) (relating to duty of third-party recordkeeper) is amended by adding at the end thereof the following new paragraph:

"(4) NOTICE OF SUSPENSION OF STATUTE OF LIMITATIONS IN THE CASE OF A JOHN DOE SUMMONS.—In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the third-party recordkeeper shall provide notice of such suspension to any person described in subsection (f)."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1562. AUTHORITY TO RESCIND NOTICE OF DEFICIENCY WITH TAX- PAYER'S CONSENT.

(a) IN GENERAL.—Section 6212 (relating to notice of deficiency) is amended by adding at the end thereof the following new subsection:

"(d) AUTHORITY TO RESCIND NOTICE OF DEFICIENCY WITH TAXPAYER'S CONSENT.—The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to notices of deficiency issued on or after January 1, 1986.

SEC. 1563. AUTHORITY TO ABATE INTEREST DUE TO ERRORS OR DELAYS BY THE INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by adding at the end thereof the following new subsection:

"(e) ASSESSMENTS OF INTEREST ATTRIBUTABLE TO ERRORS AND DELAYS BY INTERNAL REVENUE SERVICE.—

"(1) IN GENERAL.—In the case of any assessment of interest on—

"(A) any deficiency attributable in whole or in part to any error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial act, or

"(B) any payment of any tax described in section 6212(a) to the extent that any delay in such payment is attributable to such an officer or employee being dilatory in performing a ministerial act,

the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

"(2) INTEREST ABATED WITH RESPECT TO ERRONEOUS REFUND CHECK.—The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 until the date demand for repayment is made, unless—

"(A) the taxpayer (or a related party) has in any way caused such erroneous refund, or

"(B) such erroneous refund exceeds $50,000."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after December 31, 1978.

(2) STATUTE OF LIMITATIONS.—If refund or credit of any amount resulting from the application of the amendment made by subsection (a) is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such amount (to the extent attributable to the application of the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefore is filed before the close of such 1-year period.

SEC. 1564. SUSPENSION OF COMPOUNDING WHERE INTEREST ON DEFICIENCY SUSPENDED.

(a) IN GENERAL.—Subsection (c) of section 6601 (relating to suspension of interest in certain income, estate, gift, and certain excise taxes cases) is amended by inserting before the period at the end thereof "and interest shall not be imposed during such period on any interest with respect to such deficiency for any prior period".

(b) EFFECTIVE DATE.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accruing after December 31, 1982.

(2) STATUTE OF LIMITATIONS.—If refund or credit of any amount resulting from the application of the amendment made by subsection (a) is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such amount (to the extent attributable to the application of the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefore is filed before the close of such 1-year period.

SEC. 1565. CERTAIN SERVICE-CONNECTED DISABILITY PAYMENTS EXEMPT FROM LEVY.

(a) EXEMPTION FROM LEVY.—Subsection (a) of section 6334 (relating to the enumeration of property exempt from levy) is amended by adding at the end thereof the following new paragraph:

"(10) CERTAIN SERVICE-CONNECTED DISABILITY PAYMENTS.—Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under—

"(A) subchapter II, IV, or VI of chapter 11 of such title 38,

"(B) subchapter I, II, or III of chapter 19 of such title 38, or

"(C) chapter 21, 31, 32, 34, 35, 37, or 39 of such title 38."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts payable after December 31, 1986.

SEC. 1566. INCREASE IN VALUE OF PERSONAL PROPERTY SUBJECT TO CERTAIN LISTING AND NOTICE PROCEDURES.

(a) IN GENERAL.—Section 7325 (relating to personal property valued at $2,500 or less) is amended by striking out "$2,500" each place it appears (including the section heading) and inserting in lieu thereof "$100,000".

(b) INCREASE IN AMOUNT OF BOND BY CLAIMANT.—Paragraph (3) of section 7325 is amended by striking out "$250" and inserting in lieu thereof "$2,500".

(c) TECHNICAL AMENDMENT.—Paragraph (4) of section 7103(b) is amended by striking out "$1,000" and inserting in lieu thereof "$100,000".

(d) CLERICAL AMENDMENT.—The item relating to section 7325 in the table of sections for part II of subchapter C of chapter 75 is amended by striking out "$2,500" and inserting in lieu thereof "$100,000".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1567. CERTAIN RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—For purposes of sections 132 and 274 of the Internal Revenue Code of 1954, use of an automobile by a special agent of the Internal Revenue Service shall be treated in the same manner as use of an automobile by an officer of any other law enforcement agency.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect on January 1, 1985.

SEC. 1568. DISCLOSURE OF RETURNS AND RETURN INFORMATION TO CERTAIN CITIES.

(a) IN GENERAL.—Subsection (b) of section 6103 (relating to definitions for confidentiality and disclosure of returns and return information) is amended—

(1) by striking out paragraph (5) and inserting in lieu thereof the following:

"(5) STATE.—The term 'State' means—

"(A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and

"(B) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p) any municipality—

"(i) with a population in excess of 2,000,000 (as determined under the most recent decennial United States census data available),

"(ii) which imposes a tax on income or wages, and

"(iii) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure.", and

(2) by adding at the end thereof the following new paragraph:

"(10) CHIEF EXECUTIVE OFFICER.—The term 'chief executive officer' means, with respect to any municipality, any elected official and the chief official (even if not elected) of such municipality."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1569. TREATMENT OF CERTAIN FORFEITURES.

(a) IN GENERAL.—Subsection (i) of section 6323 is amended by adding at the end thereof the following new paragraph:

"(3) FORFEITURES.—For purposes of this subchapter, a forfeiture under local law of property seized by a law enforcement agency of a State, county, or other local governmental subdivision shall relate back to the time

of seizure, except that this paragraph shall not apply to the extent that under local law the holder of an intervening claim or interest would have priority over the interest of the State, county, or other local governmental subdivision in the property."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 1570. PROCEDURE AT TAX SALE OF SEIZED PROPERTY WHERE NO PERSON OFFERS MINIMUM PRICE.

(a) IN GENERAL.—Paragraph (1) of section 6335(e) (relating to manner and conditions of sale of seized property) is amended to read as follows:

"(1) IN GENERAL.—

"(A) DETERMINATIONS RELATING TO MINIMUM PRICE.—Before the sale of property seized by levy, the Secretary shall determine—

"(i) a minimum price for which such property shall be sold (taking into account the expense of making the levy and conducting the sale), and

"(ii) whether, on the basis of criteria prescribed by the Secretary, the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

"(B) SALE TO HIGHEST BIDDER AT OR ABOVE MINIMUM PRICE.—If, at the sale, one or more persons offer to purchase such property for not less than the amount of the minimum price, the property shall be declared sold to the highest bidder.

"(C) PROPERTY DEEMED SOLD TO UNITED STATES AT MINIMUM PRICE IN CERTAIN CASES.—If no person offers the amount of the minimum price for such property at the sale and the Secretary has determined that the purchase of such property by the United States would be in the best interest of the United States, the property shall be declared to be sold to the United States at such minimum price.

"(D) RELEASE TO OWNER IN OTHER CASES.—If, at the sale, the property is not declared sold under subparagraph (B) or (C), the property shall be released to the owner thereof and the expense of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property released under this subparagraph shall remain subject to any lien imposed by subchapter C."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to—

(1) property seized after the date of the enactment of this Act, and

(2) property seized on or before such date which is held by the United States on such date.

SEC. 1571. MODIFICATION OF TIPS ALLOCATION METHOD.

Effective for any payroll period beginning after December 31, 1986, an establishment may utilize the optional method of tips allocation described in the last sentence of section 31.6053-3(f)(1)(iv) of the Internal Revenue Regulations only if such establishment employs less than the equivalent of 25 full-time employees during such payroll period.

SEC. 1572. TREATMENT OF FORFEITURES OF LAND SALES CONTRACTS FOR PURPOSES OF DISCHARGE OF LIENS.

(a) AMENDMENT OF SECTION 7425(c).—Subsection (c) of section 7425 (relating to special rules for discharge of liens) is amended by adding at the end thereof the following new paragraph:

"(4) FORFEITURES OF LAND SALES CONTRACTS.—For purposes of subsection (b), a sale of property includes any forfeiture of a land sales contract."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to forfeitures after the 30th day after the date of the enactment of this Act.

Subtitle H—Miscellaneous Provisions

SEC. 1581. WITHHOLDING ALLOWANCES TO REFLECT NEW RATE SCHEDULES.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall modify the withholding schedules and withholding exemption certificates under section 3402 of the Internal Revenue Code of 1954 to better approximate actual tax liability under the amendments made by this Act.

(b) CERTAIN DECREASES IN WITHHOLDING NOT PERMITTED.—Subsection (i) of section 3402 is amended by striking out "or decreases".

(c) EMPLOYER'S RESPONSIBILITY.—If an employee has not filed a revised withholding allowance certificate before October 1, 1987, the employer shall withhold income taxes from the employee's wages—

(1) as if the employee claimed 1 withholding allowance, if the employee checked the "single" box on the employee's previous withholding allowance certificate, or

(2) as if the employee claimed 2 withholding allowances, if the employee checked the "married" box on the employee's previous withholding allowance certificate.

SEC. 1582. REPORT ON RETURN-FREE SYSTEM.

(a) REPORT.—The Secretary of the Treasury or his delegate shall prepare a report on a return-free system for the Federal income tax of individuals. Such report shall include—

(1) the identification of classes of individuals who would be permitted to use a return-free system,

(2) how such a system would be phased in,

(3) what additional resources the Internal Revenue Service would need to carry out such a system, and

(4) the types of changes to the Internal Revenue Code of 1954 which would inhibit or enhance the use of such a system.

(b) DUE DATE.—The report under subsection (a) shall be submitted, not later than 6 months after the date of the enactment of this Act, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE XVI—EXEMPT AND NONPROFIT ORGANIZATIONS

SEC. 1601. CERTAIN DISTRIBUTIONS OF LOW COST ARTICLES AND EXCHANGES AND RENTALS OF MEMBER LISTS BY CERTAIN ORGANIZATIONS NOT TO BE TREATED AS UNRELATED TRADE OR BUSINESS.

(a) IN GENERAL.—Section 513 (defining unrelated trade or business) is amended by adding at the end thereof the following new subsection:

"(h) CERTAIN DISTRIBUTIONS OF LOW COST ARTICLES WITHOUT OBLIGATION TO PURCHASE AND EXCHANGES AND RENTALS OF MEMBER LISTS.—

"(1) IN GENERAL.—In the case of an organization which is described in section 501 and contributions to which are deductible under paragraph (2) or (3) of section 170(c), the term 'unrelated trade or business' does not include—

"(A) activities relating to the distribution of low cost articles if the distribution of such articles is incidental to the solicitation of charitable contributions, or

"(B) any trade or business which consists of—

"(i) exchanging with another such organization names and addresses of donors to (or members of) such organization, or

"(ii) renting such names and addresses to another such organization.

"(2) LOW COST ARTICLE DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'low cost article' means any article which has a cost not in excess of $5 to the organization which distributes such item (or on whose behalf such item is distributed).

"(B) AGGREGATION RULE.—If more than 1 item is distributed by or on behalf of an organization to a single distributee in any calendar year, the aggregate of the items so distributed in such calendar year to such distributee shall be treated as 1 article for purposes of subparagraph (A).

"(C) INDEXATION OF $5 AMOUNT.—In the case of any taxable year beginning in a calendar year after 1987, the $5 amount in subparagraph (A) shall be increased by an amount equal to—

"(i) $5, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins.

"(3) DISTRIBUTION WHICH IS INCIDENTAL TO THE SOLICITATION OF CHARITABLE CONTRIBUTIONS DESCRIBED.—For purposes of this subsection, any distribution of low cost articles by an organization shall be treated as a distribution incidental to the solicitation of charitable contributions only if—

"(A) such distribution is not made at the request of the distributee,

"(B) such distribution is made without the express consent of the distributee, and

"(C) the articles so distributed are accompanied by—

"(i) a request for a charitable contribution (as defined in section 170(c)) by the distributee to such organization, and

"(ii) a statement that the distributee may retain the low cost article regardless of whether such distributee makes a charitable contribution to such organization."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions of low cost articles and exchanges and rentals of member lists after the date of the enactment of this Act.

SEC. 1602. EDUCATIONAL ACTIVITIES AT CONVENTION AND TRADE SHOWS.

(a) CERTAIN EDUCATIONAL ACTIVITIES TREATED AS CONVENTION AND TRADE SHOW ACTIVITIES.—Section 513(d)(3)(B) (defining qualified convention and trade show activity) is amended by inserting after "industry in general" the following: "or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization".

(b) QUALIFYING ORGANIZATIONS.—Section 513(d)(3)(C) (defining qualifying organization) is amended—

(1) by striking out "501(c) (5) or (6)" and inserting in lieu thereof "501(c) (3), (4), (5), or (6)", and

(2) by inserting before the period at the end thereof the following: "or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to activities in taxable years beginning after the date of the enactment of this Act.

SEC. 1603. TAX EXEMPTION FOR CERTAIN TITLE-HOLDING COMPANIES.

(a) IN GENERAL.—Section 501(c) (relating to the list of exempt organizations) is amended by adding at the end thereof the following new paragraph:

"(25)(A) Any corporation or trust which—
"(i) has no more than 35 shareholders or beneficiaries,
"(ii) has only 1 class of stock or beneficial interest, and
"(iii) is organized for the exclusive purposes of—
"(I) acquiring real property and holding title to, and collecting income from, such property, and
"(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.
"(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).
"(C) An organization is described in this subparagraph if such organization is—
"(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),
"(ii) a governmental plan (within the meaning of section 414(d)),
"(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing,
"(iv) any organization described in paragraph (3), or
"(v) any organization described in this paragraph.
"(D) A corporation or trust described in this paragraph must permit its shareholders or beneficiaries—
"(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and
"(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:
"(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or
"(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust."

(b) CLERICAL AMENDMENT.—Subparagraph (C) of section 514(c)(9) (relating to real property acquired by a qualified organization) is amended—

(1) by striking out "or" at the end of clause (i),

(2) by striking out the period following clause (ii) and inserting in lieu thereof "; or", and

(3) by adding at the end thereof the following new clause:

"(iii) an organization described in section 501(c)(25)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 1604. EXCEPTION TO MEMBERSHIP ORGANIZATION DEDUCTION RULES.

(a) IN GENERAL.—Subsection (b) of section 277 (relating to deductions incurred by certain membership organizations in transactions with members) is amended—

(1) by striking out "or" at the end of paragraph (2),

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following new paragraph:

"(4) which is engaged primarily in the gathering and distribution of news to its members for publication."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 1605. TAX-EXEMPT STATUS FOR AN ORGANIZATION INTRODUCING INTO PUBLIC USE TECHNOLOGY DEVELOPED BY QUALIFIED ORGANIZATIONS.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, an organization shall be treated as an organization organized and operated exclusively for charitable purposes if such organization—

(1) is organized and operated exclusively—

(A) to provide for (directly or by arranging for and supervising the performance by independent contractors)—

(i) reviewing technology disclosures from qualified organizations,

(ii) obtaining protection for such technology through patents, copyrights, or other means, and

(iii) licensing, sale, or other exploitation of such technology,

(B) to distribute the income therefrom, to such qualified organizations after paying expenses and other amounts as agreed with the originating qualified organizations, and

(C) to make research grants to such qualified organizations,

(2) regularly provides the services and research grants described in paragraph (1) exclusively to 1 or more qualified organizations, except that research grants may be made to such qualified organizations through an organization which is controlled by 1 or more organizations each of which—

(A) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 or the income of which is excluded from taxation under section 115 of such Code, and

(B) may be a recipient of the services or research grants described in paragraph (1),

(3) derives at least 80 percent of its gross revenues from providing services to qualified organizations located in the same State as the State in which such organization has its principal office, and

(4) was incorporated on July 20, 1981.

(b) QUALIFIED ORGANIZATIONS.—For purposes of this section, the term "qualified organization" has the same meaning given to such term by subparagraphs (A) and (B) of section 41(e)(6) (as redesignated by section 231(d)(2)) of the Internal Revenue Code of 1986.

(c) TREATMENT OF INVESTMENT IN A TECHNOLOGY TRANSFER SERVICE ORGANIZATION.—

(1) IN GENERAL.—A qualified investment made by a private foundation in an organization described in subparagraph (C) shall be treated as an investment described in section 4944(c) of the Internal Revenue Code of 1986 and shall not result in imposition of taxes under section 4941, 4943, 4944, 4945, or 507(c) of such Code.

(2) DEFINITIONS.—For purposes of this subsection—

(A) QUALIFIED INVESTMENT.—The term "qualified investment" means a transfer by a private foundation of—

(i) all of the patents, copyrights, know-how, and other technology or rights thereto of the private foundation, and

(ii) investment assets, net receivables, and cash not exceeding $35,000,000,

to such organization in exchange for debt.

(B) PRIVATE FOUNDATION.—The term "private foundation" means—

(i) a nonprofit corporation which was incorporated before 1913 which is described in sections 501(c)(3) and 509(a) of such Code, and which is exempt from taxation under section 501(a) of such Code, and

(ii) the principal purposes of which are to support research by and to provide technology transfer services to organizations described in section 170(b)(1)(A) of such Code—

(I) which are exempt from taxation under section 501(a) of such Code, or

(II) the income of which is excluded from taxation under section 115 of such Code.

(C) TECHNOLOGY TRANSFER ORGANIZATION.—The term "technology transfer organization" means a corporation established after the date of the enactment of this Act—

(i) which is organized and operated to advance the public welfare through the provision of technology transfer services to research organizations,

(ii) no part of the net earnings of which inures to the benefit of, or is distributable to, any private shareholder, individual, or entity, other than a private foundation or research organization,

(iii) which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office,

(iv) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

(v) upon liquidation or dissolution of which all of its net assets can be distributed only to research organizations.

(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 1606. DEFINITION OF GOVERNMENT OFFICIAL.

(a) IN GENERAL.—Paragraph (5) of section 4946(c) of the Internal Revenue Code of 1986 (relating to government official) is amended by striking out "$15,000" and inserting in lieu thereof "$20,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to compensation received after December 31, 1985.

SEC. 1607. TRANSITION RULE FOR ACQUISITION INDEBTEDNESS WITH RESPECT TO CERTAIN LAND.

For purposes of applying section 514(c) of the Internal Revenue Code of 1986, with respect to a disposition during calendar year 1986 or calendar year 1987 of land acquired during calendar year 1984, the term "acquisition indebtedness" does not include indebtedness incurred in connection with bonds issued after January 1, 1984, and before July 19, 1984, on behalf of an organization which is a community college and which is described in section 511(a)(2)(B) of such Code.

SEC. 1608. TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION.

(a) IN GENERAL.—Amounts paid by a taxpayer to or for the benefit of an institution of higher education described in paragraph (1) or (2) of subsection (b) (other than amounts separately paid for tickets) which would otherwise qualify as a charitable contribution within the meaning of section 170 of the Internal Revenue Code of 1986 shall not be disqualified because such taxpayer receives the right to seating or the right to

purchase seating in an athletic stadium of such institution.

(b) DESCRIBED INSTITUTIONS.—

(1) An institution is described in this paragraph, if—

(A) such institution was mandated by a State constitution in 1876,

(B) such institution was established by a State legislature in March 1881, and is located in a State capital pursuant to a statewide election in September 1981,

(C) the campus of such institution formally opened on September 15, 1883, and

(D) such institution is operated under the authority of a 9-member board of regents appointed by the governor.

(2) An institution is described in this paragraph if such institution has an athletic stadium—

(A) the plans for renovation of which were approved by a board of supervisors in December 1984, and reaffirmed by such board in December 1985 and January 1986, and

(B) the plans for renovation of which were approved by a State board of ethics for public employees in February 1986.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to amounts paid in taxable years beginning on or after January 1, 1984.

TITLE XVII—MISCELLANEOUS PROVISIONS

SEC. 1701. EXTENSION AND MODIFICATION OF TARGETED JOBS CREDIT.

(a) 3-YEAR EXTENSION.—Paragraph (3) of section 51(c) (relating to termination) is amended by striking out "December 31, 1985" and inserting in lieu thereof "December 31, 1988".

(b) CREDIT FOR FIRST-YEAR WAGES ONLY.—

(1) IN GENERAL.—Section 51(a) (relating to determination of amount of credit) is amended to read as follows:

"(a) DETERMINATION OF AMOUNT.—For purposes of section 38, the amount of the targeted jobs credit determined under this section for the taxable year shall be equal to 40 percent of the qualified first-year wages for such year."

(2) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 51 (defining qualified wages) is amended—

(i) by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3), and

(ii) by striking out ", and the amount of the qualified second-year wages," in paragraph (3) (as so redesignated).

(B) Subparagraph (B) of section 51(d)(12) (relating to qualified summer youth employee) is amended—

(i) by striking out "50 percent" in clause (i) thereof and inserting in lieu thereof "40 percent",

(ii) by striking out clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively, and

(iii) by striking out "subsection (b)(4)" and inserting in lieu thereof "subsection (b)(3)" in clause (iii) (as so redesignated).

(c) ELIGIBLE INDIVIDUALS—PERIOD OF EMPLOYMENT.—Subsection (i) of section 51 (relating to certain individuals ineligible) is amended by adding at the end thereof the following new paragraph:

"(3) INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIOD.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

"(A) is employed by the employer at least 90 days (14 days in the case of an individual described in subsection (d)(12)), or

"(B) has completed at least 120 hours (20 hours in the case of an individual described in subsection (d)(12)) of services performed for the employer."

(d) EXTENSION OF AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Tax Act of 1981 is amended by striking out "fiscal years 1983, 1984, and 1985" and inserting in lieu thereof "fiscal years 1983, 1984, 1985, 1986, 1987, and 1988".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to individuals who begin work for the employer after December 31, 1985.

SEC. 1702. CERTAIN DIESEL FUEL TAXES MAY BE IMPOSED ON SALES TO RETAILERS.

(a) IN GENERAL.—Section 4041 (relating to imposition of tax on special fuels) is amended by adding at the end thereof the following new subsection:

"(n) TAX ON DIESEL FUEL FOR HIGHWAY VEHICLE USE MAY BE IMPOSED ON SALE TO RETAILER.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—Upon the written consent of the seller, the tax imposed by subsection (a)(1)—

"(A) shall apply to the sale of diesel fuel to a qualified retailer (and such sale shall be treated as described in subsection (a)(1)(A)), and

"(B) shall not apply to the sale of diesel fuel by such retailer or the use of diesel fuel described in subsection (a)(1)(B) if tax was imposed on such fuel under subparagraph (A) of this paragraph.

"(2) LIABILITY FOR VIOLATION OF CERTIFICATION.—Notwithstanding paragraph (1), a qualified retailer shall be liable for the tax on liquid described in paragraph (3)(C)(ii) if such liquid is used as fuel in a diesel-powered highway vehicle.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED RETAILER.—The term 'qualified retailer' means any retailer—

"(i) who elects (under such terms and conditions as may be prescribed by the Secretary) to have paragraph (1) apply to all sales of diesel fuel to such retailer by any person, and

"(ii) who agrees to provide a written notice to such person that paragraph (1) applies to all sales of diesel fuel by such person to such retailer.

Such election and notice shall be effective for such period or periods as may be prescribed by the Secretary.

"(B) RETAILER.—The term 'retailer' means any person who sells diesel fuel for use as a fuel in a diesel-powered highway vehicle. Such term does not include any person who sells diesel fuel primarily for resale.

"(C) DIESEL FUEL.—

"(i) IN GENERAL.—The term 'diesel fuel' means any liquid on which tax would be imposed by subsection (a)(1) if sold to a person, and for a use, described in subsection (a)(1)(A).

"(ii) EXCEPTION.—A liquid shall not be treated as diesel fuel for purposes of this subsection if the retailer certifies in writing to the seller of such liquid that such liquid will not be sold for use as a fuel in a diesel-powered highway vehicle.

"(4) FAILURE TO NOTIFY SELLER.—

"(A) IN GENERAL.—If a qualified retailer fails to provide the notice described in paragraph (3)(A)(ii) to any seller of diesel fuel to such retailer—

"(i) paragraph (1) shall not apply to sales of diesel fuel by such seller to such retailer during the period for which such failure continues, and

"(ii) any diesel fuel sold by such seller to such retailer during such period shall be treated as sold by such retailer (in a sale described in subsection (a)(1)(A)) on the date such fuel was sold to such retailer.

"(B) PENALTY.—For penalty for failing to notify seller, see section 6652(j).

"(5) EXEMPTIONS NOT TO APPLY.—

"(A) IN GENERAL.—No exemption from the tax imposed by subsection (a)(1) shall apply to a sale to which paragraph (1) or (4)(A) of this subsection applies.

"(B) CROSS REFERENCE.—

"For provisions allowing a credit or refund for certain sales and uses of fuel, see sections 6416 and 6427."

(b) PENALTY.—Section 6652 (relating to failure to file certain information returns, registration statements, etc.), as amended by section 1501(d), is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) FAILURE TO GIVE WRITTEN NOTICE TO CERTAIN SELLERS OF DIESEL FUEL.—

"(1) IN GENERAL.—If any qualified retailer fails to provide the notice described in section 4041(n)(3)(A)(ii) to any seller of diesel fuel to such retailer, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by such retailer with respect to each sale of diesel fuel to such retailer by such seller to which section 4041(n)(4) applies an amount equal to 5 percent of the tax imposed by section 4041(a)(1) on such sale by reason of paragraphs (3) and (4)(A) of section 4041(n).

"(2) DEFINITIONS.—For purposes of paragraph (1), the terms 'qualified retailer' and 'diesel fuel' have the respective meanings given such terms by section 4041(n)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the first calendar quarter beginning more than 60 days after the date of the enactment of this Act.

SEC. 1703. GASOLINE TAX GENERALLY COLLECTED AT TERMINAL LEVEL.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 32 (relating to manufacturers excise taxes) is amended to read as follows:

"Subpart A—Gasoline

"Sec. 4081. Imposition of tax.

"Sec. 4082. Definitions.

"Sec. 4083. Cross references.

"SEC. 4081. IMPOSITION OF TAX.

"(a) TAX IMPOSED.—

"(1) IN GENERAL.—There is hereby imposed a tax of 9 cents a gallon on the earlier of—

"(A) the removal, or

"(B) the sale,

of gasoline by the refiner or importer thereof or the terminal operator.

"(2) BULK TRANSFER TO TERMINAL OPERATOR.—For purposes of paragraph (1), the bulk transfer of gasoline to a terminal operator by a refiner or importer shall not be considered a removal or sale of gasoline by such refiner or importer.

"(b) TREATMENT OF REMOVAL OR SUBSEQUENT SALE BY BLENDER OR COMPOUNDER.—

"(1) IN GENERAL.—There is hereby imposed a tax of 9 cents a gallon on gasoline removed or sold by the blender or compounder thereof.

"(2) CREDIT FOR TAX PREVIOUSLY PAID.—If—

"(A) tax is imposed on the removal or sale of gasoline by reason of paragraph (1), and

"(B) the blender or compounder establishes the amount of the tax paid with re-

spect to such gasoline by reason of subsection (a),
the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

"(c) GASOLINE MIXED WITH ALCOHOL AT REFINERY, ETC.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, subsection (a) shall be applied by substituting '3 cents' for '9 cents' in the case of the removal or sale of any gasoline for use in producing gasohol at the time of such removal or sale. For purposes of this paragraph, the term 'gasohol' means any mixture of gasoline if at least 10 percent of such mixture is alcohol.

"(2) LATER SEPARATION OF GASOLINE FROM GASOHOL.—If any person separates the gasoline from a mixture of gasoline and alcohol on which tax was imposed under subsection (a) at a rate equivalent to 3 cents a gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the refiner of such gasoline. The amount of tax imposed on any sale of such gasoline by such person shall be 5 2/3 cents a gallon.

"(3) ALCOHOL DEFINED.—For purposes of this subsection, the term 'alcohol' includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal (including peat). Such term does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

"(4) TERMINATION.—Paragraph (1) shall not apply to any removal or sale after December 31, 1992.

"(d) TERMINATION.—On and after October 1, 1988, the taxes imposed by this section shall not apply.

"SEC. 4082. DEFINITIONS.

"(a) GASOLINE.—For purposes of this subpart, the term 'gasoline' includes, to the extent prescribed in regulations—

"(1) gasoline blend stocks, and

"(2) products commonly used as additives in gasoline.

For purposes of paragraph (1), the term 'gasoline blend stocks' means any petroleum product component of gasoline.

"(b) CERTAIN USES DEFINED AS REMOVAL.—If a refiner, importer, terminal operator, blender, or compounder uses (other than in the production of gasoline or special fuels referred to in section 4041) gasoline refined, imported, blended, or compounded by him, such use shall for the purposes of this chapter be considered a removal.

"SEC. 4083. CROSS REFERENCES.

"(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

"(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

"(3) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline not used for taxable purposes, see section 6427."

(b) BOND REQUIREMENTS.—

(1) IN GENERAL.—Section 4101 is amended to read as follows:

"SEC. 4101. REGISTRATION AND BOND.

"(a) REGISTRATION.—Every person subject to tax under section 4081 shall, before incurring any liability for tax under such section, register with the Secretary.

"(b) BOND.—Under regulations prescribed by the Secretary, every person who registers under subsection (a) may be required to give a bond in such sum as the Secretary determines."

(2) CLERICAL AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by striking out the item relating to section 4101 and inserting in lieu thereof the following new item:

"Sec. 4101. Registration and bond."

(c) GASOLINE SOLD FOR CERTAIN EXEMPT PURPOSES.—

(1) IN GENERAL.—Section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems) is amended—

(A) by redesignating subsections (c), (d), (e), (f), (g), and (h) as subsections (d), (e), (f), (g), (h), and (i), respectively, and

(B) by inserting after subsection (b), the following new subsection:

"(c) EXEMPT PURPOSES.—If gasoline is sold to any person for any purpose described in paragraph (2), (3), (4), or (5) of section 4221(a), the Secretary shall pay (without interest) to such person an amount equal to the product of the number of gallons of gasoline so sold multiplied by the rate at which tax was imposed on such gasoline by section 4081."

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 6421(d) (relating to time for filing claims; period covered), as redesignated by paragraph (1) of this subsection, is amended by striking out "and not more than one claim may be filed under subsection (b)" and inserting in lieu thereof "not more than one claim may be filed under subsection (b), and not more than one claim may be filed under subsection (c)".

(B) Section 6421(f) (relating to exempt sales; other payments or refunds available), as redesignated by paragraph (1) of this subsection, is amended by striking out paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(C) Subsection (a) of section 4221 (relating to certain tax-free sales) is amended—

(i) by inserting "or 4081" after "section 4121" in the first sentence, and

(ii) by striking out "4071, or 4081" in the last sentence and inserting in lieu thereof "or 4071".

(D) The heading for section 6421 is amended to read as follows:

"SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES, USED BY LOCAL TRANSIT SYSTEMS, OR SOLD FOR CERTAIN EXEMPT PURPOSES."

(E) The table of contents for subchapter B of chapter 65 is amended by striking out the item relating to section 6421 and inserting in lieu thereof the following new item:

"Sec. 6421. Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes."

(d) TIME FOR FILING GASOHOL CREDIT.—

(1) IN GENERAL.—Section 6427(h) (relating to time for filing claims; period covered) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR GASOHOL CREDIT.—

"(A) IN GENERAL.—A claim may be filed under subsection (f) by any person with respect to gasoline used to produce gasohol (as defined in section 4081(c)(1)) for any period—

"(i) for which $200 or more is payable under such subsection (f), and

"(ii) which is not less than 1 week.

"(B) PAYMENT OF CLAIM.—Notwithstanding subsection (f)(1), if the Secretary has not paid pursuant to a claim filed under this section within 20 days of the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621."

(B) CONFORMING AMENDMENTS.—

(i) Paragraph (1) of section 6427(h) is amended by striking out "(f)".

(ii) Paragraph (2)(A) of section 6427(h) is amended—

(I) by inserting "or" at the end of subclause (i),

(II) by striking out "or" at the end of subclause (ii), and

(III) by striking out clause (iii) and "(or clauses)".

(iii) Paragraph (2)(B) of section 6427(f) is amended by striking out "or clause (iii)".

(iv) Paragraph (2) of section 6427(j) is amended by striking out "subsection (h)(2)" and inserting in lieu thereof "subsection (h)(2) or (h)(3)".

(e) CREDIT FOR GASOLINE BLEND STOCKS OR ADDITIVES NOT USED FOR PRODUCING GASOLINE.—

(1) IN GENERAL.—Section 6427 (relating to fuels not used for taxable purposes) is amended—

(A) by redesignating subsections (h), (i), (j), (k), (l), (m), and (n) as subsections (i), (j), (k), (l), (m), (n), and (o), respectively, and

(B) by inserting after subsection (g) the following new subsection:

"(h) GASOLINE BLEND STOCKS OR ADDITIVES NOT USED FOR PRODUCING GASOLINE.—Except as provided in subsection (k), if any gasoline blend stock or additive (within the meaning of section 4082(b)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive."

(2) CONFORMING AMENDMENTS.—

(A) Subsections (a), (b)(1), (c), (d), (e)(1), (f)(1), and (g)(1) of section 6427 are each amended by striking out "subsection (j)" and inserting in lieu thereof "subsection (k)".

(B) Subsection (i)(1) of section 6427 (as redesignated by subsection (d)(1)(A)) is amended by striking out "or (g)" and inserting in lieu thereof "(g), or (h)".

(C) Subsections (i)(2)(A)(i) and (n) of section 6427 (as so redesignated) are amended by striking out "and (g)" each place it appears and inserting in lieu thereof "(g), and (h)".

(D) The heading of subsection (n) of section 6427 (as so redesignated) is amended by striking out "AND (g)" and inserting in lieu thereof "(g), AND (h)".

(E) Subsection (i)(2) of section 6427 (as so redesignated) is amended by striking out "subsection (h)(2)" and inserting in lieu thereof "(i)(2)".

(F) Section 34(a)(3) is amended by striking out "section 6427(j)" and inserting in lieu thereof "section 6427(k)".

(G) Sections 7210, 7603, 7604(b), 7604(c)(2), 7605(a), 7609(c)(1), and 7610(c) are amended by striking out "section 6427(i)(2)" and inserting in lieu thereof "section 6427(j)(2)".

(f) FLOOR STOCK TAXES.—

(1) IN GENERAL.—On gasoline subject to tax under section 4081 of the Internal Revenue Code of 1986 which, on January 1, 1988, is held by a dealer for sale, and with respect to which no tax has been imposed under such section, there is hereby imposed a floor stocks tax at the rate of 9 cents a gallon.

(2) OVERPAYMENT OF FLOOR STOCKS TAXES.—Section 6416 of such Code shall apply in respect of the floor stocks taxes imposed by this section, so as to entitle, subject to all provisions of such section, any person paying such floor stocks taxes to a credit or refund thereof for any reasons specified in such section.

(3) DUE DATE OF TAXES.—The taxes imposed by this subsection shall be paid before February 16, 1988.

(4) TRANSFER OF FLOOR STOCKS TAXES TO HIGHWAY TRUST FUND.—For purposes of determining the amount transferred to the Highway Trust Fund for any period, the taxes imposed by this subsection shall be treated as if they were imposed by section 4081 of the Internal Revenue Code of 1986.

(5) DEFINITIONS AND SPECIAL RULE.—For purposes of this subsection—

(A) DEALER.—The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(B) HELD BY A DEALER.—Gasoline shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made) and if for purposes of consumption title to such gasoline or possession thereof has not at any time been transferred to any person other than a dealer.

(C) GASOLINE.—The term "gasoline" has the same meaning given to such term by section 4082(a) of the Internal Revenue Code of 1986.

(g) STUDY OF EVASION OF GASOLINE TAX.—

(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of the incidence of the evasion of the gasoline tax.

(2) REPORT.—The report of the study under paragraph (1) shall be submitted, not later than December 31, 1986, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to gasoline removed (as defined in section 4082 of the Internal Revenue Code of 1986, as amended by this section) after December 31, 1987.

SEC. 1704. EXEMPTION FROM SOCIAL SECURITY COVERAGE FOR CERTAIN CLERGY.

(a) CONDITIONS FOR RECEIVING EXEMPTION.—

(1) IN GENERAL.—Section 1402(e)(1) (relating to exemption from tax on self-employment income of certain ministers, members of religious orders, and Christian Science practitioners) is amended by inserting "and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance" after "Act)".

(2) VERIFICATION OF APPLICATION.—Section 1402(e), as amended by paragraph (1) of this subsection, is further amended—

(A) by striking out "Any individual" in paragraph (1) and inserting in lieu thereof "Subject to paragraph (2), any individual",

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and

(C) by inserting after paragraph (1) the following new paragraph:

"(2) VERIFICATION OF APPLICATION.—The Secretary may approve an application for an exemption filed pursuant to paragraph (1) only if the Secretary has verified that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to this subsection and that the individual seeks exemption on such grounds. The Secretary (or the Secretary of Health and Human Services under an agreement with the Secretary) shall make such verification by such means as prescribed in regulations."

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to applications filed after December 31, 1986.

(b) REVOCATION OF EXEMPTION.—

(1) IN GENERAL.—Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986, as redesignated by subsection (a)(2)(B) of this section, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of subtitle A of such Code), if such application is filed—

(A) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act (without regard to section 202(j)(1) or 223(b) of such Act), and

(B) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act.

Any such revocation shall be effective (for purposes of chapter 2 of subtitle A of the Internal Revenue Code of 1986 and title II of the Social Security Act), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the Federal income tax return for the applicant's first taxable year ending on or after the date of the enactment of this Act and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of subtitle A of such Code (notwithstanding paragraph (4) or (5) of section 1402(c) of such Code) but for the exemption under section 1402(e)(1) of such Code.

(2) EFFECTIVE DATE.—Paragraph (1) of this subsection shall apply with respect to service performed (to the extent specified in such paragraph) in taxable years ending on or after the date of the enactment of this Act and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such paragraph) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

SEC. 1705. APPLICABILITY OF UNEMPLOYMENT COMPENSATION TAX TO CERTAIN SERVICES PERFORMED FOR CERTAIN INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—For purposes of the Federal Unemployment Tax Act, service performed in the employ of a qualified Indian tribal government shall not be treated as employment (within the meaning of section 3306 of such Act) if it is service—

(1) which is performed—

(A) before, on, or after the date of the enactment of this Act, but before January 1, 1988, and

(B) during a period in which the Indian tribal government is not covered by a State unemployment compensation program, and

(2) with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid.

(b) DEFINITION.—For purposes of this section, the term "qualified Indian tribal government" means an Indian tribal government the service for which is not covered by a State unemployment compensation program on June 11, 1986.

SEC. 1706. TREATMENT OF CERTAIN TECHNICAL PERSONNEL.

(a) IN GENERAL.—Section 530 of the Revenue Act of 1978 is amended by adding at the end thereof the following new subsection:

"(d) EXCEPTION.—This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid and services rendered after December 31, 1986.

SEC. 1707. EXCLUSION FOR CERTAIN FOSTER CARE PAYMENTS.

(a) IN GENERAL.—Section 131 (relating to certain foster care payments) is amended to read as follows:

"SEC. 131. CERTAIN FOSTER CARE PAYMENTS.

"(a) GENERAL RULE.—Gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments.

"(b) QUALIFIED FOSTER CARE PAYMENT DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified foster care payment' means any amount—

"(A) which is paid by a State or political subdivision thereof or by a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

"(B) which is—

"(i) paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or

"(ii) a difficulty of care payment.

"(2) QUALIFIED FOSTER INDIVIDUAL.—The term 'qualified foster individual' means any individual who is living in a foster family home in which such individual was placed by—

"(A) an agency of a State or political subdivision thereof, or

"(B) in the case of an individual who has not attained age 19, an organization which is licensed by a State (or political subdivision thereof) as a placement agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).

"(3) LIMITATION BASED ON NUMBER OF INDIVIDUALS OVER THE AGE OF 18.—In the case of any foster home in which there is a qualified

foster care individual who has attained age 19, foster care payments (other than difficulty of care payments) for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 5 such qualified foster individuals."

"(c) DIFFICULTY OF CARE PAYMENTS.—For purposes of this section—

"(1) DIFFICULTY OF CARE PAYMENTS.—The term 'difficulty of care payments' means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

"(A) are compensation for providing the additional care of a qualified foster individual which is—

"(i) required by reason of a physical, mental, or emotional handicap of such individual with respect to which the State has determined that there is a need for additional compensation, and

"(ii) provided in the home of the foster care provider, and

"(B) are designated by the payor as compensation described in subparagraph (A).

"(2) LIMITATION BASED ON NUMBER OF INDIVIDUALS.—In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than—

"(A) 10 qualified foster individuals who have not attained age 19, and

"(B) 5 qualified foster individuals not described in subparagraph (A)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1985.

SEC. 1708. EXTENSION OF RULES FOR SPOUSES OF INDIVIDUALS MISSING IN ACTION.

(a) EXTENSION OF PROVISIONS.—

(1) DEFINITION OF SURVIVING SPOUSE.—Subparagraph (B) of section 2(a)(3) (relating to special rule where deceased spouse was in missing status) is amended to read as follows:

"(B) except in the case of the combat zone designated for purposes of the Vietnam conflict, the date which is 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone."

(2) INCOME TAXES OF MEMBERS OF ARMED FORCES ON DEATH.—The last sentence of section 692(b) (relating to individuals in missing status) is amended to read as follows: "Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after the date designated under section 112 as the date of termination of combatant activities in a combat zone."

(3) JOINT RETURNS.—The last sentence of section 6013(f)(1) (relating to joint returns where an individual is in missing status) is amended by striking out "no such election may be made for any taxable year beginning after December 31, 1982" and inserting in lieu thereof "such election may be made for any taxable year while an individual is in missing status".

(4) POSTPONEMENT OF TIME FOR PERFORMING CERTAIN ACTS.—The last sentence of section 7508(b) (relating to application to spouse) is amended to read as follows: "Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than 2 years after the date designated under section 112 as the date of termination of combatant activities in a combat zone."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1982.

SEC. 1709. AMENDMENT TO THE REINDEER INDUSTRY ACT OF 1937.

(a) TAX EXEMPTION FOR REINDEER-RELATED INCOME.—Before the period at the end of the first sentence of section 8 of the Act of September 1, 1937 (50 Stat. 900, chapter 897), insert the following: ": Provided, That during the period of the trust, income derived directly from the sale of reindeer and reindeer products as provided in this Act shall be exempt from Federal income taxation".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if originally included in the provision of the Act of September 1, 1937, to which such amendment relates.

SEC. 1710. QUALITY CONTROL STUDIES.

Section 12301 of the Consolidated Omnibus Reconciliation Act of 1985 is amended—

(1) by striking out "of the enactment of this Act" in subsection (a)(3) and inserting in lieu thereof "the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2)";

(2) by striking out "18 months after the date of the enactment of this Act" in subsection (c)(1) and inserting in lieu thereof "6 months after the date on which the results of both studies required under subsection (a)(3) have been reported".

SEC. 1711. ADOPTION ASSISTANCE AGREEMENTS UNDER ADOPTION ASSISTANCE PROGRAM: PAYMENT OF NONRECURRING EXPENSES RELATED TO ADOPTIONS OF CHILDREN WITH SPECIAL NEEDS.

(a) IN GENERAL.—Section 473(a) of the Social Security Act is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and

(2) by striking out all of paragraph (1) through "adopt a child who—" and inserting in lieu thereof the following:

"(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 475(3)) with the adoptive parents of children with special needs.

"(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State—

"(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency or through another public or nonprofit private agency, in amounts determined under paragraph (3), and

"(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, directly through the State agency or through another public or nonprofit private agency, in amounts so determined.

"(2) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child—

(b) DEFINITION AND PAYMENT OF NONRECURRING ADOPTION EXPENSES.—Section 473(a) of the Social Security Act, as amended by subsection (a) of this section, is further amended by adding at the end thereof the following new paragraph:

"(6)(A) For purposes of paragraph (1)(B)(i), the term 'nonrecurring adoption expenses' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

"(B) A State's payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 474(a)(3)(B)."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The first sentence of section 470 of the Social Security Act is amended by striking out "foster care" and all that follows down through "title XVI)" and inserting in lieu thereof the following: "foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A and adoption assistance for children with special needs".

(2) Paragraphs (1) and (11) of section 471(a) of such Act are each amended by striking out "adoption assistance payments" and inserting in lieu thereof "adoption assistance".

(3) Section 473(a)(3) of such Act, as redesignated by subsection (a)(1) of this section, is amended—

(A) by striking out "adoption assistance payments" in the first sentence and inserting in lieu thereof "payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B)", and

(B) by inserting after "the adoption assistance payment" the first place it appears in the second sentence the following: "made under clause (ii) of paragraph (1)(B)".

(4) Section 473(a)(5) of such Act, as so redesignated, is amended by striking out ", pursuant to an interlocutory decree, shall be eligible for adoption assistance payments under this subsection," and inserting in lieu thereof "in accordance with applicable State and local law shall be eligible for such payments,".

(5) Section 473(b)(1)(A) of such Act is amended by striking out "subsection (a)(1)" and inserting in lieu thereof "subsection (a)(2)".

(6) Section 475(3) of such Act is amended by striking out clause (A) and inserting in lieu thereof the following: "(A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to expenditures made after December 31, 1986.

TITLE XVIII—TECHNICAL CORRECTIONS

SEC. 1800. COORDINATION WITH OTHER TITLES.

For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.

SUBTITLE A—AMENDMENTS RELATED TO THE TAX REFORM ACT OF 1984

CHAPTER 1—AMENDMENTS RELATED TO TITLE I OF THE ACT

SEC. 1801. AMENDMENTS RELATED TO DEFERRAL OF CERTAIN TAX REDUCTIONS.

(a) AMENDMENTS RELATED TO SECTION 12 OF THE ACT.—

(1) ELECTION OUT OF TRANSITIONAL RULES.—Paragraph (1) of section 12(c) of the Tax Reform Act of 1984 (relating to finance lease

provisions) is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply to any property with respect to which an election is made under this sentence at such time after the date of the enactment of the Tax Reform Act of 1986 as the Secretary of the Treasury or his delegate may prescribe."

(2) TREATMENT OF CERTAIN FARM FINANCE LEASES.—

(A) IN GENERAL.—If—

(i) any partnership or grantor trust is the lessor under a specified agreement,

(ii) such partnership or grantor trust met the requirements of section 168(f)(8)(C)(i) of the Internal Revenue Code of 1954 (relating to special rules for finance leases) when the agreement was entered into, and

(iii) a person other than a C corporation became a partner in such partnership (or a beneficiary in such trust) before September 26, 1985,

then, for purposes of applying the revenue laws of the United States in respect to such agreement, the portion of the property allocable to partners (or beneficiaries) not described in clause (iii) shall be treated as if it were subject to a separate agreement and the portion of such property allocable to the partner or beneficiary described in clause (iii) shall be treated as if it were subject to a separate agreement.

(B) SPECIFIED AGREEMENT.—For purposes of subparagraph (A), the term "specified agreement" means an agreement to which subparagraph (B) of section 209(d) of the Tax Equity and Fiscal Responsibility Act of 1982 applies which is—

(i) an agreement dated as of December 20, 1982, as amended and restated as of February 1, 1983, involving approximately $8,734,000 of property at December 31, 1983,

(ii) an agreement dated as of December 15, 1983, as amended and restated as of January 3, 1984, involving approximately $13,199,000 of property at December 31, 1984, or

(iii) an agreement dated as of October 25, 1984, as amended and restated as of December 1, 1984, involving approximately $966,000 of property at December 31, 1984.

(b) AMENDMENT RELATED TO SECTION 26 OF THE ACT.—Paragraph (2) of section 4251(b) (relating to rate of tax on communications services) is amended by inserting "1985," after "1984," in the table contained in such section.

(c) AMENDMENTS RELATED TO SECTION 27 OF THE ACT.—

(1) Subsection (e) of section 5061 (relating to payment by electronic fund transfer of alcohol taxes) is amended by adding at the end thereof the following new paragraph:

"(3) CONTROLLED GROUPS.—

"(A) IN GENERAL.—In the case of a controlled group of corporations, all corporations which are component members of such group shall be treated as 1 taxpayer. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by subsection (a) of section 1563, except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in such subsection.

"(B) CONTROLLED GROUPS WHICH INCLUDE NONINCORPORATED PERSONS.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation."

(2) Paragraph (3) of section 5703(b) (relating to payment by electronic fund transfer of tobacco taxes) is amended by adding at the end thereof the following: "Rules similar to the rules of section 5061(e)(3) shall apply to the $5,000,000 amount specified in the preceding sentence."

(3) Paragraph (7) of section 27(b) of the Tax Reform Act of 1984 (relating to floor stocks tax on distilled spirits) is amended by adding at the end thereof the following new subparagraph:

"(F) TREATMENT OF DISTILLED SPIRITS IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, distilled spirits which are located in a foreign trade zone on October 1, 1985, shall be subject to the tax imposed by paragraph (1) and shall be treated for purposes of this subsection as held on such date for sale if—

"(i) internal revenue taxes have been determined, or customs duties liquidated, with respect to such distilled spirits before such date pursuant to a request made under the first proviso of section 3(a) of such Act, or

"(ii) such distilled spirits are held on such date under the supervision of customs pursuant to the second proviso of such section 3(a).

Under regulations prescribed by the Secretary, provisions similar to sections 5062 and 5064 of such Code shall apply to distilled spirits with respect to which tax is imposed by paragraph (1) by reason of this subparagraph."

SEC. 1802. AMENDMENTS RELATED TO TAX-EXEMPT ENTITY LEASING PROVISIONS.

(a) AMENDMENTS RELATING TO SECTION 31 OF THE ACT.—

(1) TREATMENT OF USE IN UNRELATED TRADE OR BUSINESS.—Subparagraph (D) of section 168(j)(3) (relating to exception where property used in unrelated trade or business) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease."

(2) TREATMENT OF CERTAIN PREVIOUSLY TAX-EXEMPT ORGANIZATIONS.—

(A) Clause (i) of section 168(j)(4)(E) (relating to treatment of certain previously tax-exempt organizations) is amended—

(i) by striking out "any property of which such organization is the lessee" and inserting in lieu thereof "any property (other than property held by such organization)", and

(ii) by striking out "first leased to" and inserting in lieu thereof "first used by".

(B) Subclause (I) of section 168(j)(4)(E)(ii) is amended by striking out "of which such organization is the lessee".

(C) Subclause (II) of section 168(j)(4)(E)(ii) is amended by striking out "is placed in service under the lease" and inserting in lieu thereof "is first used by the organization".

(D) Subparagraph (E) of section 168(j)(4) is amended by adding at the end thereof the following new clause:

"(iv) FIRST USED.—For purposes of this subparagraph, property shall be treated as first used by the organization—

"(I) when the property is first placed in service under a lease to such organization, or

"(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity."

(E)(i) Paragraph (9) of section 168(j) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

"(E) TREATMENT OF CERTAIN TAXABLE ENTITIES.—

"(i) IN GENERAL.—For purposes of this paragraph, except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

"(ii) ELECTION.—If a tax-exempt controlled entity makes an election under this clause—

"(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph, and

"(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

"(iii) TAX-EXEMPT CONTROLLED ENTITY.—The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (by value) of the stock in such corporation is held (directly or through the application of section 318 determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof) by 1 or more tax-exempt entities."

(ii)(I) Except as otherwise provided in this clause, the amendment made by clause (i) shall apply to property placed in service after September 27, 1985; except that such amendment shall not apply to any property acquired pursuant to a binding written contract in effect on such date (and at all times thereafter).

(II) If an election under this subclause is made with respect to any property, the amendment made by clause (i) shall apply to such property whether or not placed in service on or before September 27, 1985.

(F) Clause (i)(I) of section 31(g)(16)(C) of the Tax Reform Act of 1984 (defining exempt arbitrage profits) is amended by striking out "section 168(j)(4)(E)(i)(I)" and inserting in lieu thereof "section 168(j)(4)(E)(i)".

(G) Clause (i) of section 168(j)(4)(E) is amended by striking out "preceding sentence" and inserting in lieu thereof "preceding sentence and subparagraph (D)(ii)".

(3) REPEAL OF OVERLAPPING SECRETARIAL AUTHORITY.—Clause (iv) of section 168(j)(5)(C) (relating to property not subject to rapid obsolescence may be excluded) is hereby repealed.

(4) PARTNERSHIP RULES.—

(A) Paragraph (8) of section 168(j) (relating to tax-exempt use of property leased to partnerships, etc., determined at partner level) is amended by striking out "and paragraphs (4) and (5) of section 48(a)" in the matter preceding subparagraph (A).

(B) Paragraph (9) of section 168(j) (relating to treatment of property owned by partnerships, etc.) is amended—

(i) by striking out "and paragraphs (4) and (5) of section 48(a)" in subparagraph (A), and

(ii) by striking out "loss deduction" in subparagraph (B)(i) and inserting in lieu thereof "loss, deduction".

(C) Paragraph (5) of section 48(a) (relating to property used by governmental units or foreign persons or entities) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) SPECIAL RULES FOR PARTNERSHIPS, ETC.—For purposes of this paragraph and paragraph (4), rules similar to the rules of paragraphs (8) and (9) of section 168(j) shall apply."

(5) TREATMENT OF CERTAIN AIRCRAFT LEASED TO FOREIGN PERSONS.—

(A) Subsection (a) of section 47 (relating to certain dispositions, etc., of section 38 property) is amended by adding at the end thereof the following new paragraph:

"(9) AIRCRAFT LEASED TO FOREIGN PERSONS OR ENTITIES.—

"(A) IN GENERAL.—Any aircraft which was new section 38 property for the taxable year in which it was placed in service and which is used by any foreign person or entity (as defined in section 168(j)(4)(C)) under a qualified lease (as defined in paragraph (7)(C)) entered into before January 1, 1990, shall not be treated as ceasing to be section 38 property by reason of such use until such aircraft has been so used for a period or periods exceeding 3 years in total.

"(B) RECAPTURE PERIOD EXTENDED.—For purposes of paragraphs (1) and (5)(B) of this subsection, any period during which there was use described in subparagraph (A) of an aircraft shall be disregarded."

(B) Clause (iii) of section 48(a)(5)(B) is hereby repealed.

(6) TREATMENT OF CERTAIN PARTNERSHIPS HAVING SECTION 593 ORGANIZATION AS MEMBER.—Paragraph (4) of section 46(e) is amended by adding at the end thereof the following new subparagraph:

"(D) SPECIAL RULES FOR PARTNERSHIPS, ETC.—For purposes of paragraph (1)(A), rules similar to the rules of paragraphs (8) and (9) of section 168(j) shall apply."

(7) TREATMENT OF CERTAIN PROPERTY HELD BY PARTNERSHIPS.—

(A) Paragraph (9) of section 168(j) (relating to treatment of property owned by partnerships, etc.) is amended by redesignating subparagraphs (D), (E), and (F) as subparagraphs (E), (F), and (G), respectively, and by inserting after subparagraph (C) the following new subparagraph:

"(D) DETERMINATION OF WHETHER PROPERTY USED IN UNRELATED TRADE OR BUSINESS.—For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514."

(B) Subparagraph (E) of section 168(j)(9) (as redesignated by subparagraph (A)) is amended by striking out "and (C)" and inserting in lieu thereof "(C), and (D)".

(8) EXCEPTION FOR QUALIFIED REHABILITATED BUILDINGS LEASED TO SECTION 593 ORGANIZATIONS.—Paragraph (4) of section 46(e) (relating to special rules where section 593 organization is lessee) is amended by adding at the end thereof the following new subparagraph:

"(E) EXCEPTION FOR QUALIFIED REHABILITATED BUILDINGS LEASED TO SECTION 593 ORGANIZATIONS.—Subparagraph (A) shall not apply to qualified investment attributable to qualified rehabilitation expenditures for any portion of a building if such portion of the building would not be tax-exempt use property (as defined in section 168(j)) if the section 593 organization were a tax-exempt entity (as defined in section 168(j)(4))."

(9) CLERICAL AMENDMENTS.—

(A) Paragraph (4) of section 48(a) is amended—

(i) by striking out "514(c)" and inserting in lieu thereof "514(b)", and

(ii) by striking out "514(b)" and inserting in lieu thereof "514(a)".

(B) Subclause (I) of section 48(g)(2)(B)(vi) is amended by striking out "section 168(j)(3)" and inserting in lieu thereof "section 168(j)".

(C) Subparagraph (A) of section 7701(e)(4) is amended by adding at the end thereof the following new sentence:

"For purposes of this paragraph, the term 'related entity' has the same meaning as when used in section 168(j)."

(10) EFFECTIVE DATE PROVISIONS.—

(A) Subparagraph (B) of section 31(g)(3) of the Tax Reform Act of 1984 is amended by striking out "The amendments made by this section" and inserting in lieu thereof "Paragraph (9) of section 168(j) of the Internal Revenue Code of 1954 (as added by this section)".

(B) Effective with respect to property placed in service by the taxpayer after July 18, 1984, clause (ii) of section 31(g)(15)(D) of the Tax Reform Act of 1984 (relating to certain aircraft) is amended to read as follows:

"(ii) such aircraft is originally placed in service by such foreign person or entity (or its successor in interest under the contract) after May 23, 1983, and before January 1, 1986."

(C) Paragraph (4) of section 31(g) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE FOR CREDIT UNIONS.—In the case of any property leased to a credit union pursuant to a written binding contract with an expiration date of December 31, 1984, which was entered into by such organization on August 23, 1984—

"(i) such credit union shall not be treated as an agency or instrumentality of the United States; and

"(ii) clause (ii) of subparagraph (A) shall be applied by substituting 'January 1, 1987' for 'January 1, 1985'."

(D)(i) Clause (ii) of section 31(g)(20)(B) of the Tax Reform Act of 1984 (defining substantial improvement) is amended by striking out subclauses (I) and (II) and inserting in lieu thereof the following:

"(I) by substituting 'property' for 'building' each place it appears therein,

"(II) by substituting '20 percent' for '25 percent' in clause (ii) thereof, and

"(III) without regard to clause (iii) thereof."

(ii) The amendment made by clause (i) shall not apply to any property if—

(I) on or before March 28, 1985, the taxpayer (or a predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, or rehabilitate the property, or

(II) the taxpayer or the tax-exempt entity began the construction, reconstruction, or rehabilitation of the property on or before March 28, 1985.

(E) Paragraph (4) of section 31(g) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subparagraphs:

"(D) SPECIAL RULE FOR GREENVILLE AUDITORIUM BOARD.—For purposes of this paragraph, significant official governmental action taken by the Greenville County Auditorium Board of Greenville, South Carolina, before May 23, 1983, shall be treated as significant official governmental action with respect to the coliseum facility subject to a binding contract to lease which was in effect on January 1, 1985.

"(E) TREATMENT OF CERTAIN HISTORIC STRUCTURES.—If—

"(i) On June 16, 1982, the legislative body of the local governmental unit adopted a bond ordinance to provide funds to renovate elevators in a deteriorating building owned by the local governmental unit and listed in the National Register, and

"(ii) the chief executive officer of the local governmental unit, in connection with the renovation of such building, made an application on June 1, 1983, to a State agency for a Federal historic preservation grant and made an application on June 17, 1983, to the Economic Development Administration of the United States Department of Commerce for a grant,

the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met."

(F) Subparagraph (H) of section 31(g)(17) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new sentence: "In the case of Clemson University, the preceding sentence applies only to the Continuing Education Center and the component housing project."

(G) Subparagraph (L) of section 31(g)(17) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following:

"Property is described in this subparagraph if such property was leased to a tax-exempt entity pursuant to a lease recorded in the Registry of Deeds of Essex County, New Jersey, on May 7, 1984, and a deed of such property was recorded in the Registry of Deeds of Essex County, New Jersey, on May 7, 1985."

(b) AMENDMENTS RELATED TO SECTION 32 OF THE ACT.—

(1) Subsection (f) of section 168 (relating to special rules) is amended—

(A) by redesignating the paragraph (13) relating to motor vehicle operating leases as paragraph (14), and

(B) by redesignating paragraph (14) as paragraph (15).

(2) Subsection (c) of section 32 of the Tax Reform Act of 1984 is amended by striking out "section 168(f)(13)" and inserting in lieu thereof "section 168(f)(14)".

SEC. 1803. AMENDMENTS RELATED TO TREATMENT OF BONDS AND OTHER DEBT INSTRUMENTS.

(a) AMENDMENTS RELATED TO SECTION 41 OF THE ACT.—

(1) TREATMENT OF SHORT-TERM NONGOVERNMENT OBLIGATIONS.—

(A) Subsection (a) of section 1271 (relating to treatment of amounts received on retirement or sale or exchange of debt instruments) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN SHORT-TERM NONGOVERNMENT OBLIGATIONS.—

"(A) IN GENERAL.—On the sale or exchange of any short-term nongovernment obligation, any gain realized which does not exceed an amount equal to the ratable share of the original issue discount shall be treated as ordinary income.

"(B) SHORT-TERM NONGOVERNMENT OBLIGATION.—For purposes of this paragraph, the term 'short-term nongovernment obligation' means any obligation which—

"(i) has a fixed maturity date not more than 1 year from the date of the issue, and

"(ii) is not a short-term Government obligation (as defined in paragraph (3)(B) without regard to the last sentence thereof).

"(C) RATABLE SHARE.—For purposes of this paragraph, except as provided in subparagraph (D), the ratable share of the original issue discount is an amount which bears the same ratio to such discount as—

"(i) the number of days which the taxpayer held the obligation, bears to

"(ii) the number of days after the date of original issue and up to (and including) the date of its maturity.

"(D) ELECTION OF ACCRUAL ON BASIS OF CONSTANT INTEREST RATE.—At the election of the taxpayer with respect to any obligation, the ratable share of the original issue discount is the portion of the original issue discount accruing while the taxpayer held the obligation determined (under regulations prescribed by the Secretary) on the basis of—

"(i) the yield to maturity based on the issue price of the obligation, and

"(ii) compounding daily.

Any election under this subparagraph, once made with respect to any obligation, shall be irrevocable."

(B) Paragraph (3) of section 1283(d) is amended by striking out "section 1271(a)(3)" and inserting in lieu thereof "paragraphs (3) and (4) of section 1271(a)".

(2) ELECTION OF ACCRUAL ON BASIS OF CONSTANT INTEREST RATE FOR SHORT-TERM GOVERNMENT OBLIGATIONS.—

(A) IN GENERAL.—Paragraph (3) of section 1271(a) (relating to certain short-term Government obligations) is amended by adding at the end thereof the following new subparagraph:

"(E) ELECTION OF ACCRUAL ON BASIS OF CONSTANT INTEREST RATE.—At the election of the taxpayer with respect to any obligation, the ratable share of the acquisition discount is the portion of the acquisition discount accruing while the taxpayer held the obligation determined (under regulations prescribed by the Secretary) on the basis of—

"(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

"(ii) compounding daily.

An election under this subparagraph, once made with respect to any obligation, shall be irrevocable."

(B) TECHNICAL AMENDMENT.—Subparagraph (D) of section 1271(a)(3) is amended by striking out "this paragraph" and inserting in lieu thereof "this paragraph, except as provided in subparagraph (E)".

(3) DEFINITION OF SHORT-TERM GOVERNMENT OBLIGATION.—Subparagraph (B) of section 1271(a)(3) (defining short-term Government obligation) is amended to read as follows:

"(B) SHORT-TERM GOVERNMENT OBLIGATION.—For purposes of this paragraph, the term 'short-term Government obligation' means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia, which has a fixed maturity date not more than 1 year from the date of issue. Such term does not include any tax-exempt obligation."

(4) DEDUCTION OF ORIGINAL ISSUE DISCOUNT ON SHORT-TERM OBLIGATIONS.—Paragraph (2) of section 163(e) (relating to original issue discount) is amended by adding at the end thereof the following new subparagraph:

"(C) SHORT-TERM OBLIGATIONS.—In the case of an obligor of a short-term obligation (as defined in section 1283(a)(1)(A)) who uses the cash receipts and disbursements method of accounting, the original issue discount (and any other interest payable) on such obligation shall be deductible only when paid."

(5) TREATMENT OF CERTAIN TRANSFERS OF MARKET DISCOUNT BONDS.—Paragraph (1) of section 1276(d) (relating to special rules) is amended by striking out "and" at the end of subparagraph (A) and by inserting after subparagraph (B) the following new subparagraph:

"(C) paragraph (3) of section 1245(b) shall be applied as if it did not contain a reference to section 351, and".

(6) TREATMENT OF BONDS ACQUIRED AT ORIGINAL ISSUE FOR PURPOSES OF MARKET DISCOUNT RULES.—Paragraph (1) of section 1278(a) (defining market discount bond) is amended by adding at the end thereof the following new subparagraph:

"(C) TREATMENT OF BONDS ACQUIRED AT ORIGINAL ISSUE.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph or in regulations, the term 'market discount bond' shall not include any bond acquired by the taxpayer at its original issue.

"(ii) TREATMENT OF BONDS ACQUIRED FOR LESS THAN ISSUE PRICE.—Clause (i) shall not apply to any bond if—

"(I) the basis of the taxpayer in such bond is determined under section 1012, and

"(II) such basis is less than the issue price of such bond determined under subpart A of this part.

"(iii) BONDS ACQUIRED IN CERTAIN REORGANIZATIONS.—Clause (i) shall not apply to any bond issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) in exchange for another bond having market discount. Solely for purposes of section 1276, the preceding sentence shall not apply if such other bond was issued on or before July 18, 1984 (the date of the enactment of section 1276) and if the bond issued pursuant to such plan of reorganization has the same term and the same interest rate as such other bond had.

"(iv) TREATMENT OF CERTAIN TRANSFERRED BASIS PROPERTY.—For purposes of clause (i), if the adjusted basis of any bond in the hands of the taxpayer is determined by reference to the adjusted basis of such bond in the hands of a person who acquired such bond at its original issue, such bond shall be treated as acquired by the taxpayer at its original issue."

(7) TREATMENT OF CERTAIN STRIPPED BONDS OR STRIPPED COUPONS.—Paragraph (1) of section 1281(b) (relating to short-term obligations to which section applies) is amended by striking out "or" at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof ", or", and by adding at the end thereof the following new subparagraph:

"(F) is a stripped bond or stripped coupon held by the person who stripped the bond or coupon (or by any other person whose basis is determined by reference to the basis in the hands of such person)."

(8) ACCRUAL OF INTEREST PAYMENTS ON CERTAIN SHORT-TERM OBLIGATIONS.—

(A) Effective with respect to obligations acquired after September 27, 1985, subsection (a) of section 1281 (relating to current inclusion in income of discount on certain short-term obligations) is amended to read as follows:

"(a) GENERAL RULE.—In the case of any short-term obligation to which this section applies, for purposes of this title—

"(1) there shall be included in the gross income of the holder an amount equal to the sum of the daily portions of the acquisition discount for each day during the taxable year on which such holder held such obligation, and

"(2) any interest payable on the obligation (other than interest taken into account in determining the amount of the acquisition discount) shall be included in gross income as it accrues."

(B) Subsection (a) of section 1282 (relating to deferral of interest deduction allocable to accrued discount) is amended to read as follows:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the net direct interest expense with respect to any short-term obligation shall be allowed as a deduction for the taxable year only to the extent such expense exceeds the sum of—

"(1) the daily portions of the acquisition discount for each day during the taxable year on which the taxpayer held such obligation, and

"(2) the amount of any interest payable on the obligation (other than interest taken into account in determining the amount of the acquisition discount) which accrues during the taxable year while the taxpayer held such obligation (and is not included in the gross income of the taxpayer for such taxable year by reason of the taxpayer's method of accounting)."

(9) TREATMENT OF TRANSFERS OF LAND BETWEEN RELATED PARTIES.—In the case of any sale or exchange before July 1, 1985, to which section 483(f) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of Public Law 99-121) applies, such section shall be treated as providing that the discount rate to be used for purposes of section 483(c)(1) of such Code shall be 6 percent, compounded semi-annually.

(10) CLARIFICATION OF TREATMENT OF DEBT INSTRUMENTS ISSUED FOR PUBLICLY TRADED PROPERTY.—Subparagraph (B) of section 1273(b)(3) (relating to debt instruments issued for property where there is public trading) is amended to read as follows:

"(B)(i) is issued for stock or securities which are traded on an established securities market, or

"(ii) to the extent provided in regulations, is issued for property (other than stock or securities) of a kind regularly traded on an established market,".

(11) BOND PREMIUMS AMORTIZED AT CONSTANT RATE, ETC.—

(A) IN GENERAL.—Paragraph (3) of section 171(b) (relating to amortizable bond premiums) is amended to read as follows:

"(3) METHOD OF DETERMINATION.—

"(A) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, the determinations required under paragraphs (1) and (2) shall be made on the basis of the taxpayer's yield to maturity determined by—

"(i) using the taxpayer's basis (for purposes of determining loss on sale or exchange) of the obligation, and

"(ii) compounding at the close of each accrual period (as defined in section 1272(a)(5)).

"(B) SPECIAL RULE WHERE EARLIER CALL DATE IS USED.—For purposes of subparagraph (A), if the amount payable on an earlier call date is used under paragraph (1)(B)(ii) in determining the amortizable bond premium attributable to the period before the earlier call date, such bond shall be treated as maturing on such date for the amount so payable and then reissued on such date for the amount so payable."

(B) AMORTIZABLE BOND PREMIUM RULES TO APPLY TO OBLIGATIONS ISSUED BY INDIVIDUALS, ETC.—Subsection (d) of section 171 (defining bond) is amended by striking out "issued by any corporation and bearing interest (in-

cluding any like obligation issued by a government or political subdivision thereof),".

(C) EFFECTIVE DATE.—

(i) The amendments made by this paragraph shall apply to obligations issued after September 27, 1985.

(ii) In the case of a taxpayer with respect to whom an election is in effect on the date of the enactment of this Act under section 171(c) of the Internal Revenue Code of 1954, such election shall apply to obligations issued after September 27, 1985, only if the taxpayer chooses (at such time and in such manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations.

(12) CLARIFICATION OF AMOUNT OF AMORTIZABLE BOND PREMIUM.—

(A) IN GENERAL.—Subsection (b) of section 171 (defining amortizable bond premium) is amended by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF CERTAIN BONDS ACQUIRED IN EXCHANGE FOR OTHER PROPERTY.—

"(A) IN GENERAL.—If—

"(i) a bond is acquired by any person in exchange for other property, and

"(ii) the basis of such bond is determined (in whole or in part) by reference to the basis of such other property,

for purposes of applying this subsection to such bond while held by such person, the basis of such bond shall not exceed its fair market value immediately after the exchange. A similar rule shall apply in the case of such bond while held by any other person whose basis is determined (in whole or in part) by reference to the basis in the hands of the person referred to in clause (i).

"(B) SPECIAL RULE WHERE BOND EXCHANGED IN REORGANIZATION.—Subparagraph (A) shall not apply to an exchange by the taxpayer of a bond for another bond if such exchange is a part of a reorganization (as defined in section 368). If any portion of the basis of the taxpayer in a bond transferred in such an exchange is not taken into account in determining bond premium by reason of this paragraph, such portion shall not be taken into account in determining the amount of bond premium on any bond received in the exchange."

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to exchanges after May 6, 1986.

(13) SPECIAL RULE FOR BONDS WITH PARTIAL PRINCIPAL PAYMENTS.—

(A) TREATMENT OF ACCRUED MARKET DISCOUNT.—

(i) Subsection (a) of section 1276 (relating to disposition gain representing accrued market discount treated as ordinary income) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) TREATMENT OF PARTIAL PRINCIPAL PAYMENTS.—

"(A) IN GENERAL.—Any partial principal payment on a market discount bond shall be included in gross income as ordinary income to the extent such payment does not exceed the accrued market discount on such bond.

"(B) ADJUSTMENT.—If subparagraph (A) applies to any partial principal payment on any market discount bond, for purposes of applying this section to any disposition of (or subsequent partial principal payment on) such bond, the amount of accrued market discount shall be reduced by the amount of such partial principal payment included in gross income under subparagraph (A)."

(ii) Paragraph (4) of section 1276(a) (as redesignated by subparagraph (A)) is amended by striking out "under paragraph (1)" and inserting in lieu thereof "under paragraph (1) or (3)".

(iii) Subsection (b) of section 1276 is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE WHERE PARTIAL PRINCIPAL PAYMENTS.—In the case of a bond the principal of which may be paid in 2 or more payments, the amount of accrued market discount shall be determined under regulations prescribed by the Secretary."

(B) COORDINATION WITH TAX TREATMENT OF STRIPPED BONDS.—

(i) Paragraph (1) of section 1286(b) (relating to tax treatment of person stripping bond) is amended to read as follows:

"(1) such person shall include in gross income an amount equal to the sum of—

"(A) the interest accrued on such bond while held by such person and before the time such coupon or bond was disposed of (to the extent such interest has not theretofore been included in such person's gross income), and

"(B) the accrued market discount on such bond determined as of the time such coupon or bond was disposed of (to the extent such discount has not theretofore been included in such person's gross income),".

(ii) Paragraph (2) of section 1286(b) is amended by striking out "the amount of the accrued interest described in paragraph (1)" and inserting in lieu thereof "the amount included in gross income under paragraph (1)".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to obligations acquired after the date of the enactment of this Act.

(14) CLERICAL AMENDMENTS.—

(A) Subparagraph (A) of section 1274(c)(4) is amended by striking out "FOR LESS THAN $1,000,000" in the subparagraph heading and inserting in lieu thereof "FOR $1,000,000 OR LESS".

(B) Paragraph (1) of section 483(d) is amended by striking out "any debt instrument to which section 1272 applies" and inserting in lieu thereof "any debt instrument for which an issue price is determined under section 1273(b) (other than paragraph (4) thereof) or section 1274".

(C) Clause (iii) of section 6049(b)(5)(B) is amended by striking out "section 1232(b)(1)" and inserting in lieu thereof "section 1273(a)".

(b) AMENDMENTS RELATED TO SECTION 44 OF THE ACT.—

(1) CLARIFICATION OF TRANSITIONAL RULE FOR PURPOSES OF IMPUTED INTEREST RULES.—Paragraph (4) of section 44(b) of the Tax Reform Act of 1984 (relating to special rules for sales before July 1, 1985), as added by section 2 of Public Law 98-612, is amended—

(A) by striking out "before July 1, 1985" in subparagraph (A) and inserting in lieu thereof "after December 31, 1984, and before July 1, 1985",

(B) by striking out "BEFORE JULY 1, 1985" in the paragraph heading and inserting in lieu thereof "AFTER DECEMBER 31, 1984, AND BEFORE JULY 1, 1985", and

(C) by adding at the end thereof the following new subparagraph:

"(G) CLARIFICATION OF APPLICATION OF THIS PARAGRAPH, ETC.—This paragraph and paragraphs (5), (6), and (7) shall apply only in the case of sales or exchanges to which section 1274 or 483 of the Internal Revenue Code of 1954 (as amended by section 41) applies."

(2) CLARIFICATION OF INTEREST ACCRUAL, ETC.—Subparagraph (A) of section 44(b)(3) of the Tax Reform Act of 1984 is amended by striking out "and before January 1, 1985," each place it appears.

(3) EXCEPTION FOR BINDING CONTRACTS.—Subparagraph (B) of section 44(b)(3) of the Tax Reform Act of 1984 is amended to read as follows:

"(B) EXCEPTION FOR BINDING CONTRACTS.—

"(i) Subparagraph (A)(i)(I) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

"(ii) Subparagraph (A)(i)(II) shall not apply to any sale or exchange pursuant to a written contract which was binding on June 8, 1984, and at all times thereafter before the sale or exchange."

(4) CLERICAL AMENDMENT.—Clause (ii) of section 44(b)(6)(B) of the Tax Reform Act of 1984 (as added by section 2 of Public Law 98-612) is amended by striking out "greater than" and inserting in lieu thereof "not greater than".

(5) CLARIFICATION OF EFFECTIVE DATE FOR REPEAL OF CAPITAL ASSET REQUIREMENT.—Subsection (g) of section 44 of the Tax Reform Act of 1984 is amended by striking out "before December 31, 1984" and inserting in lieu thereof "on or before December 31, 1984".

SEC. 1804. AMENDMENTS RELATED TO CORPORATE PROVISIONS.

(a) AMENDMENT RELATED TO SECTION 51 OF THE ACT.—Subsection (a) of section 246A (relating to dividends received deduction reduced where portfolio stock is debt financed) is amended—

(1) by striking out "or 245" and inserting in lieu thereof "or 245(a)", and

(2) by adding at the end thereof the following new sentence:

"The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a)."

(b) AMENDMENTS RELATED TO SECTION 53 AND SECTION 54 OF THE ACT.—

(1) AMENDMENTS TO SECTION 246.—

(A) Subparagraph (A) of section 246(c)(1) (relating to exclusion of certain dividends) is amended to read as follows:

"(A) which is held by the taxpayer for 45 days or less, or".

(B) Paragraph (4) of section 246(c) (relating to holding period reduced for periods where risk of loss diminished) is amended by striking out "determined under paragraph (3)" and inserting in lieu thereof "determined for purposes of this subsection".

(C) The amendments made by this paragraph shall apply to stock acquired after March 1, 1986.

(2) EFFECTIVE DATE FOR RELATED PERSON PROVISIONS.—Paragraph (3) of section 53(e) of the Tax Reform Act of 1984 (relating to effective date for related person provisions) is amended to read as follows:

"(3) RELATED PERSON PROVISIONS.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the amendment made by subsection (c) shall take effect on July 18, 1984.

"(B) SPECIAL RULE FOR PURPOSES OF SECTION 265(2).—The amendment made by subsection (c) insofar as it relates to section 265(2) of the Internal Revenue Code of 1954 shall apply to—

"(i) term loans made after July 18, 1984, and

"(ii) demand loans outstanding after July 18, 1984 (other than any loan outstanding

on July 18, 1984, and repaid before September 18, 1984).

"(C) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this paragraph, any loan renegotiated, extended, or revised after July 18, 1984, shall be treated as a loan made after such date.

"(D) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this paragraph, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1954, except that the second sentence of such paragraph (5) shall not apply."

(3) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1988.—Paragraph (3) of section 54 of the Tax Reform Act of 1984 (relating to exceptions for distributions before January 1, 1985, to 80-percent corporate shareholders) is amended by adding at the end thereof the following new subparagraph:

"(D) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1988.—

"(i) IN GENERAL.—In the case of a transaction to which this subparagraph applies, subparagraph (A) shall be applied by substituting '1988' for '1985' and the amendments made by subtitle D of title VI shall not apply.

"(ii) TRANSACTION TO WHICH SUBPARAGRAPH APPLIES.—This subparagraph applies to a transaction in which a Delaware corporation which was incorporated on May 31, 1927, and which was acquired by the transferee on December 9, 1968, transfers to the transferee stock in a corporation—

"(I) with respect to which such Delaware corporation is a 100-percent corporate shareholder, and

"(II) which is a Tennessee corporation which was incorporated on October 5, 1981, and which is a successor to an Indiana corporation which was incorporated on June 28, 1946, and acquired by the transferee on December 9, 1968."

(c) AMENDMENTS RELATED TO SECTION 55 OF THE ACT.—

(1) Clause (ii) of section 852(b)(4)(B) (relating to losses attributable to exempt-interest dividend) is amended by striking out "for less than 31 days" and inserting in lieu thereof "for 6 months or less".

(2) Subparagraph (C) of section 852(b)(4) (relating to determination of holding periods) is amended to read as follows:

"(C) DETERMINATION OF HOLDING PERIODS.—For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock; except that '6 months' shall be substituted for each number of days specified in subparagraph (B) of section 246(c)(3)."

(3) Subparagraph (D) of section 852(b)(4) (relating to losses incurred under a periodic liquidation plan) is amended by striking out "subparagraph (A)" and inserting in lieu thereof "subparagraphs (A) and (B)".

(4) Paragraph (4) of section 852(b) is amended by adding at the end thereof the following new subparagraph:

"(E) AUTHORITY TO SHORTEN REQUIRED HOLDING PERIOD.—In the case of a regulated investment company which regularly distributes at least 90 percent of its net tax-exempt interest, the Secretary may by regulations prescribe that subparagraph (B) (and subparagraph (C) to the extent it relates to subparagraph (B)) shall be applied on the basis of a holding period requirement shorter than 6 months; except that such shorter holding period requirement shall not be shorter than the greater of 31 days or the period between regular distributions of exempt-interest dividends."

(5) The paragraph heading for paragraph (4) of section 852(b) is amended by striking out "LESS THAN 31 DAYS" and inserting in lieu thereof "6 MONTHS OR LESS".

(6) The amendments made by this subsection shall apply to stock with respect to which the taxpayer's holding period begins after March 28, 1985.

(d) AMENDMENT RELATED TO SECTION 58 OF THE ACT.—

(1) IN GENERAL.—Paragraph (1) of section 562(b) (relating to distributions in liquidation) is amended by adding at the end thereof the following new sentence: "Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to distributions after September 27, 1985.

(e) AMENDMENTS RELATED TO SECTION 60 OF THE ACT.—

(1) TREATMENT OF CERTAIN REDEMPTION AND LIQUIDATION RIGHTS.—Subparagraph (C) of section 1504(a)(4) (relating to certain preferred stock not treated as stock) is amended to read as follows:

"(C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and".

(2) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED ON JUNE 22, 1984.—Paragraph (2) of section 60(b) of the Tax Reform Act of 1984 (relating to special rule for corporations affiliated on June 22, 1984) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall cease to apply as of the first day after June 22, 1984, on which such corporation does not qualify as a member of such group under section 1504(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act)."

(3) TREATMENT OF CERTAIN SELL-DOWNS AFTER JUNE 22, 1984.—Paragraph (3) of section 60(b) of the Tax Reform Act of 1984 (relating to special rule not to apply to certain sell-downs after June 22, 1984) is amended to read as follows:

"(3) SPECIAL RULE NOT TO APPLY TO CERTAIN SELL-DOWNS AFTER JUNE 22, 1984.—If—

"(A) the requirements of paragraph (2) are satisfied with respect to a corporation,

"(B) more than a de minimis amount of the stock of such corporation—

"(i) is sold or exchanged (including in a redemption), or

"(ii) is issued,

after June 22, 1984 (other than in the ordinary course of business), and

"(C) the requirements of the amendment made by subsection (a) are not satisfied after such sale, exchange, or issuance,

then the amendment made by subsection (a) shall apply for purposes of determining whether such corporation continues to be a member of the group. The preceding sentence shall not apply to any transaction if such transaction does not reduce the percentage of the fair market value of the stock of the corporation referred to in the preceding sentence held by members of the group determined without regard to this paragraph."

(4) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED ON JUNE 22, 1984, ETC.—Subsection (b) of section 60 of the Tax Reform Act of 1984 is amended by striking out paragraph (5) and inserting in lieu thereof the following new paragraphs:

"(5) NATIVE CORPORATIONS.—

"(A) In the case of a Native Corporation established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or a corporation all of whose stock is owned directly by such a corporation, during any taxable year (beginning after the effective date of these amendments and before 1992), or any part thereof, in which the Native Corporation is subject to the provisions of section 7(h)(1) of such Act (43 U.S.C. 1606(h)(1))—

"(i) the amendment made by subsection (a) shall not apply, and

"(ii) the requirements for affiliation under section 1504(a) of the Internal Revenue Code of 1986 before the amendment made by subsection (a) shall be applied solely according to the provisions expressly contained therein, without regard to escrow arrangements, redemption rights, or similar provisions.

"(B) Except as provided in subparagraph (C), during the period described in subparagraph (A), no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law shall apply to deny the benefit or use of losses incurred or credits earned by a corporation described in subparagraph (A) to the affiliated group of which the Native Corporation is the common parent.

"(C) Losses incurred or credits earned by a corporation described in subparagraph (A) shall be subject to the general consolidated return regulations, including the provisions relating to separate return limitation years, and to sections 382 and 383 of the Internal Revenue Code of 1986.

"(D) Losses incurred and credits earned by a corporation which is affiliated with a corporation described in subparagraph (A) shall be treated as having been incurred or earned in a separate return limitation year, unless the corporation incurring the losses or earning the credits satisfies the affiliation requirements of section 1504(a) without application of subparagraph (A).

"(6) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED ON JUNE 22, 1984.—In the case of an affiliated group which—

"(A) has as its common parent a Minnesota corporation incorporated on April 23, 1940, and

"(B) has a member which is a New York corporation incorporated on November 13, 1969,

for purposes of determining whether such New York corporation continues to be a member of such group, paragraph (2) shall be applied by substituting for 'January 1, 1988,' the earlier of January 1, 1994, or the date on which the voting power of the preferred stock in such New York corporation terminates.

"(7) ELECTION TO HAVE AMENDMENTS APPLY FOR YEARS BEGINNING AFTER 1983.—If the common parent of any group makes an election under this paragraph, notwithstanding any other provision of this subsection, the amendments made by subsection (a) shall apply to such group for taxable years beginning after December 31, 1983. Any such election, once made, shall be irrevocable.

"(8) TREATMENT OF CERTAIN AFFILIATED GROUPS.—If—

"(A) a corporation (hereinafter in this paragraph referred to as the 'parent') was incorporated in 1968 and filed consolidated returns as the parent of an affiliated group for each of its taxable years ending after 1969 and before 1985,

"(B) another corporation (hereinafter in this paragraph referred to as the 'subsidi-

ary') became a member of the parent's affiliated group in 1978 by reason of a recapitalization pursuant to which the parent increased its voting interest in the subsidiary from not less than 56 percent to not less than 85 percent, and

"(C) such subsidiary is engaged (or was on September 27, 1985, engaged) in manufacturing and distributing a broad line of business systems and related supplies for binding, laminating, shredding, graphics, and providing secure identification,

then, for purposes of determining whether such subsidiary corporation is a member of the parent's affiliated group under section 1504(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)), paragraph (2)(B) of such section 1504(a) shall be applied by substituting '55 percent' for '80 percent'.

"(9) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED DURING 1971.— In the case of a group of corporations which filed a consolidated Federal income tax return for the taxable year beginning during 1971 and which—

"(A) included as a common parent on December 31, 1971, a Delaware corporation incorporated on August 26, 1969, and

"(B) included as a member thereof a Delaware corporation incorporated on November 8, 1971,

for taxable years beginning after December 31, 1970, and ending before January 1, 1988, the requirements for affiliation for each member of such group under section 1504(a) of the Internal Revenue Code of 1954 (before the amendment made by subsection (a)) shall be limited solely to the provisions expressly contained therein and by reference to stock issued under State law as common or preferred stock. During the period described in the preceding sentence, no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law, except the general consolidated return regulations (including the provisions relating to separate return limitation years) and sections 382 and 383 of such Code, shall apply to deny the benefit or use of losses incurred or credits earned by members of such group."

(5) TREATMENT OF CERTAIN SELL-DOWNS.— Paragraph (4) of section 60(b) of the Tax Reform Act of 1984 (relating to exception for certain sell-downs) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, if there is a letter of intent between a corporation and a securities underwriter entered into on or before June 22, 1984, and the subsequent issuance or sale is effected pursuant to a registration statement filed with the Securities and Exchange Commission, such stock shall be treated as issued or sold pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984."

(6) AMENDMENT OF SECTION 332.—

(A) IN GENERAL.—Paragraph (1) of section 332(b) (relating to liquidations to which section applies) is amended to read as follows:

"(1) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either".

(B) EFFECTIVE DATE.—

(i) IN GENERAL.—Except as provided in clause (iii), the amendment made by subparagraph (A) shall apply with respect to plans of complete liquidation adopted after March 28, 1985.

(ii) CERTAIN DISTRIBUTIONS MADE AFTER DECEMBER 31, 1984.—Except as provided in clause (iii), the amendment made by subparagraph (A) shall also apply with respect to plans of complete liquidations adopted on or before March 28, 1985, pursuant to which any distribution is made in a taxable year beginning after December 31, 1984 (December 31, 1983, in the case of an affiliated group to which an election under section 60(b)(7) of the Tax Reform Act of 1984 applies), but only if the liquidating corporation and any corporation which receives a distribution in complete liquidation of such corporation are members of an affiliated group of corporations filing a consolidated return for the taxable year which includes the date of the distribution.

(iii) TRANSITIONAL RULE FOR AFFILIATED GROUPS.—The amendment made by subparagraph (A) shall not apply with respect to plans of complete liquidation if the liquidating corporation is a member of an affiliated group of corporations under section 60(b)(2), (5), (6), or (8) of the Tax Reform Act of 1984, for all taxable years which include the date of any distribution pursuant to such plan.

(7) AMENDMENT OF SECTION 337.—

(A) IN GENERAL.—Subparagraph (B) of section 337(c)(3) (defining distributee corporation) is amended to read as follows:

"(B) DISTRIBUTEE CORPORATION.—For purposes of subparagraph (A), the term 'distributee corporation' means any corporation which receives a distribution to which section 332 applies in a complete liquidation of the selling corporation. Such term also includes any other corporation which receives a distribution to which section 332 applies in a complete liquidation of a corporation which is a distributee corporation under the preceding sentence or prior application of this sentence."

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply in the case of plans of complete liquidation pursuant to which any distribution is made in a taxable year beginning after December 31, 1984 (December 31, 1983, in the case of an affiliated group to which an election under section 60(b)(7) of the Tax Reform Act of 1984 applies).

(8) AMENDMENT OF SECTION 338.—

(A) IN GENERAL.—Paragraph (3) of section 338(d) (defining qualified stock purchase) is amended to read as follows:

"(3) QUALIFIED STOCK PURCHASE.—The term 'qualified stock purchase' means any transaction or series of transactions in which stock (meeting the requirements of section 1504(a)(2)) of 1 corporation is acquired by another corporation by purchase during the 12-month acquisition period."

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply in cases where the 12-month acquisition period (as defined in section 338(h)(1) of the Internal Revenue Code of 1954) begins after December 31, 1985.

(9) TREATMENT OF CERTAIN CORPORATION ORGANIZED ON FEBRUARY 22, 1983.—In the case of a Rhode Island corporation which was organized on February 22, 1983, and which on February 25, 1983—

(A) purchased the stock of another corporation,

(B) filed an election under section 338(g) of the Internal Revenue Code of 1986 with respect to such purchase, and

(C) merged into the acquired corporation, such purchase of stock shall be considered as made by the acquiring corporation, such election shall be valid, and the acquiring corporation shall be considered a purchasing corporation for purposes of section 338 of such Code without regard to the duration of the existence of the acquiring corporation.

(10) TREATMENT OF FORMER DISC'S.—Paragraph (7) of section 1504(b) (defining includible corporation) is amended to read as follows:

"(7) A DISC (as defined in section 992(a)(1)), or any other corporation which has accumulated DISC income which is derived after December 31, 1984."

(f) AMENDMENTS RELATED TO SECTION 61 OF THE ACT.—

(1) TREATMENT OF DISTRIBUTIONS OF APPRECIATED PROPERTY.—

(A) Subsection (b) of section 312 (relating to effect on earnings and profits) is amended to read as follows:

"(b) DISTRIBUTIONS OF APPRECIATED PROPERTY.—On the distribution by a corporation, with respect to its stock, of any property the fair market value of which exceeds the adjusted basis thereof—

"(1) the earnings and profits of the corporation shall be increased by the amount of such excess, and

"(2) subsection (a)(3) shall be applied by substituting 'fair market value' for 'adjusted basis'.

For purposes of this subsection and subsection (a), the adjusted basis of any property is its adjusted basis as determined for purposes of computing earnings and profits."

(B) Subsection (c) of section 312 is amended by inserting "and" at the end of paragraph (1), by striking out ", and" at the end of paragraph (2) and inserting in lieu thereof a period, and by striking out paragraph (3).

(C) The subsection heading for subsection (c) of section 312 is amended by striking out ", ETC".

(D) Subsection (n) of section 312 is amended by striking out paragraph (4) and by redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), and (8), respectively.

(E) Paragraph (8) of section 312(n) (as redesignated by subparagraph (D)) is amended by striking out "subsection (k)(4)" and all that follows and inserting in lieu thereof the following:

"subsection (k)(4)—

"(A) paragraphs (4) and (6) shall apply only in the case of taxable years beginning after December 31, 1985, and

"(B) paragraph (5) shall apply only in the case of taxable years beginning after December 31, 1987."

(F) Any reference in subsection (e) of section 61 of the Tax Reform Act of 1984 to a paragraph of section 312(n) of the Internal Revenue Code of 1954 shall be treated as a reference to such paragraph as in effect before its redesignation by subparagraph (D).

(2) CLERICAL AMENDMENTS.—

(A) Subsection (a) of section 1275 is amended—

(i) by redesignating the paragraph added by section 61 of the Tax Reform Act of 1984 as paragraph (5), and

(ii) by striking out "TO CORPORATIONS" in the heading of such paragraph and inserting in lieu thereof "BY CORPORATIONS".

(B) Paragraph (3) of section 301(f) is amended by striking out "this section" and inserting in lieu thereof "this subsection".

(3) EFFECTIVE DATE FOR TREATMENT OF REDEMPTIONS.—Paragraph (7) of section 312(n) of the Internal Revenue Code of 1954 (as redesignated by paragraph (1)(D) of this sub-

section), and the amendments made by section 61(a)(2) of the Tax Reform Act of 1984, shall apply to distributions in taxable years beginning after September 30, 1984.

(g) AMENDMENTS RELATED TO SECTION 63 OF THE ACT.—

(1) IN GENERAL.—Section 361 (relating to nonrecognition of gain or loss to corporations) is amended to read as follows:

"SEC. 361. NONRECOGNITION OF GAIN OR LOSS TO TRANSFEROR CORPORATION; OTHER TREATMENT OF TRANSFEROR CORPORATION; ETC.

"(a) GENERAL RULE.—No gain or loss shall be recognized to a transferor corporation which is a party to a reorganization on any exchange of property pursuant to the plan of reorganization.

"(b) OTHER TREATMENT OF TRANSFEROR CORPORATION.—In the case of a transferor corporation which is a party to a reorganization—

"(1) sections 336 and 337 shall not apply with respect to any liquidation of such corporation pursuant to the plan of reorganization,

"(2) the basis of the property (other than stock and securities described in paragraph (3)) received by the corporation pursuant to such plan of reorganization shall be the same as it would be in the hands of the transferor of such property, adjusted by the amount of gain or loss recognized to such transferor on such transfer, and

"(3) no gain or loss shall be recognized by such corporation on any disposition (pursuant to the plan of reorganization) of stock or securities which were received pursuant to such plan and which are in another corporation which is a party to such reorganization.

For purposes of paragraph (3), if the transferor corporation is merged, consolidated, or liquidated pursuant to the plan of reorganization, or if a transaction meets the requirements of section 368(a)(1)(C) pursuant to a waiver granted by the Secretary under section 368(a)(2)(G)(ii), any distribution of such stock or securities by the transferor corporation to its creditors in connection with such transaction shall be treated as pursuant to such plan of reorganization.

"(c) TREATMENT OF DISTRIBUTIONS OF APPRECIATED PROPERTY.—Notwithstanding any other provision of this subtitle, gain shall be recognized on the distribution of property (other than property permitted by section 354, 355, or 356 to be received without the recognition of gain) pursuant to a plan of reorganization in the same manner as if such property had been sold to the distributee at its fair market value."

(2) CLARIFICATION OF TRANSFERS TO CREDITORS.—Section 368(a)(2)(G)(i) (relating to distribution requirement) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization."

(3) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter C of chapter 1 is amended by striking out the item relating to section 361 and inserting in lieu thereof the following:

"Sec. 361. Nonrecognition of gain or loss to transferor corporation; other treatment of transferor corporation; etc."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plans of reorganizations adopted after the date of the enactment of this Act.

(h) AMENDMENTS RELATED TO SECTION 64 OF THE ACT.—

(1) Subsection (c) of section 368 (defining control) is amended to read as follows:

"(c) CONTROL DEFINED.—For purposes of part I (other than section 304), part II, this part, and part V, the term 'control' means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation."

(2) Paragraph (2) of section 368(a) is amended by adding at the end thereof the following new subparagraph:

"(H) SPECIAL RULE FOR DETERMINING WHETHER CERTAIN TRANSACTIONS ARE QUALIFIED UNDER PARAGRAPH (1)(D).—In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction qualifies under subparagraph (D) of paragraph (1), the term 'control' has the meaning given to such term by section 304(c)."

(3) Section 368(a)(2) is amended by inserting "(other than for purposes of subparagraph (C))" in subparagraph (A) after "subchapter".

(i) AMENDMENTS RELATED TO SECTION 65 OF THE ACT.—

(1) IN GENERAL.—Subsection (a) of section 341 (relating to collapsible corporations) is amended by striking out "held for more than 6 months".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to sales, exchanges, and distributions after September 27, 1985.

(j) AMENDMENTS RELATED TO SECTION 67 OF THE ACT.—

(1) EXEMPTION FOR SMALL BUSINESS CORPORATIONS, ETC.—Subsection (b) of section 280G (defining excess parachute payment) is amended by adding at the end thereof the following new paragraph:

"(5) EXEMPTION FOR SMALL BUSINESS CORPORATIONS, ETC.—

"(A) IN GENERAL.—Notwithstanding paragraph (2), the term 'parachute payment' does not include—

"(i) any payment to a disqualified individual with respect to a corporation which (immediately before the change described in paragraph (2)(A)(i)) was a small business corporation (as defined in section 1361(b)), and

"(ii) any payment to a disqualified individual with respect to a corporation (other than a corporation described in clause (i)) if—

"(I) immediately before the change described in paragraph (2)(A)(i), no stock in such corporation was readily tradeable on an established securities market or otherwise, and

"(II) the shareholder approval requirements of subparagraph (B) are met with respect to such payment.

The Secretary may, by regulations, prescribe that the requirements of subclause (I) of clause (ii) are not met where a substantial portion of the assets of any entity consists (directly or indirectly) of stock in such corporation and interests in such other entity are readily tradeable on an established securities market, or otherwise.

"(B) SHAREHOLDER APPROVAL REQUIREMENTS.—The shareholder approval requirements of this subparagraph are met with respect to any payment if—

"(i) such payment was approved by a vote of the persons who owned, immediately before the change described in paragraph (2)(A)(i), more than 75 percent of the voting power of all outstanding stock of the corporation, and

"(ii) there was adequate disclosure to shareholders of all material facts concerning all payments which (but for this paragraph) would be parachute payments with respect to a disqualified individual."

(2) TREATMENT OF REASONABLE COMPENSATION.—Paragraph (4) of section 280G(b) (relating to excess parachute payments reduced to extent taxpayer establishes reasonable compensation) is amended to read as follows:

"(4) TREATMENT OF AMOUNTS WHICH TAXPAYER ESTABLISHES AS REASONABLE COMPENSATION.—In the case of any payment described in paragraph (2)(A)—

"(A) the amount treated as a parachute payment shall not include the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered on or after the date of the change described in paragraph (2)(A)(i), and

"(B) the amount treated as an excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered before the date of the change described in paragraph (2)(A)(i).

For purposes of subparagraph (B), reasonable compensation for services actually rendered before the date of the change described in paragraph (2)(A)(i) shall be first offset against the base amount."

(3) EXEMPTION FOR PAYMENT UNDER QUALIFIED PLANS.—Subsection (b) of section 280G (defining excess parachute payment) is amended by adding at the end thereof the following new paragraph:

"(6) EXEMPTION FOR PAYMENTS UNDER QUALIFIED PLANS.—Notwithstanding paragraph (2), the term 'parachute payment' shall not include any payment to or from—

"(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(B) an annuity plan described in section 403(a), or

"(C) a simplified employee pension (as defined in section 408(k))."

(4) TREATMENT OF AFFILIATED GROUPS.—Subsection (d) of section 280G is amended by adding at the end thereof the following new paragraph:

"(5) TREATMENT OF AFFILIATED GROUPS.—Except as otherwise provided in regulations, all members of the same affiliated group (as defined in section 1504, determined without regard to section 1504(b)) shall be treated as 1 corporation for purposes of this section. Any person who is an officer or any member of such group shall be treated as an officer of such 1 corporation."

(5) LIMITATION ON NUMBER OF INDIVIDUALS TREATED AS HIGHLY COMPENSATED.—Subsection (c) of section 280G (defining disqualified individual) is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (2), the term 'highly-compensated individual' only includes an individual who is (or would be if the individual were an employee) a member of the group consisting of the highest paid 1 percent of the employees of the corporation or, if less, the highest paid 250 employees of the corporation."

(6) EXCLUDED AMOUNTS NOT TAKEN INTO ACCOUNT IN DETERMINING WHETHER THRESHOLD

AMOUNT IS MET.—Subparagraph (A) of section 280G(b)(2) (defining parachute payment) is amended by adding at the end thereof the following new sentence:

"For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account."

(7) LIMITATION ON TREATMENT OF PAYMENT PURSUANT TO SECURITIES LAW VIOLATION AS PARACHUTE PAYMENT.—Subparagraph (B) of section 280G(b)(2) (defining parachute payments) is amended to read as follows:

"(B) AGREEMENTS.—The term 'parachute payment' shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is made pursuant to an agreement which violates any generally enforced securities laws or regulations. In any proceeding involving the issue of whether any payment made to a disqualified individual is a parachute payment on account of a violation of any generally enforced securities laws or regulations, the burden of proof with respect to establishing the occurrence of a violation of such a law or regulation shall be upon the Secretary."

(8) CLERICAL AMENDMENT.—Paragraph (2) of section 280G(d) (defining base period) is amended by striking out "was an employee of the corporation" and inserting in lieu thereof "performed personal services for the corporation".

(k) AMENDMENTS RELATING TO SECTION 68 OF THE ACT.—

(1) NO DISC PREFERENCE REDUCTION FOR S CORPORATIONS.—Effective with respect to taxable years beginning after December 31, 1982, paragraph (4) of section 291(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) is amended by striking out "a corporation" and inserting in lieu thereof "a C corporation".

(2) CLARIFICATION OF EFFECTIVE DATES.—

(A) Paragraph (2) of section 68(e) of the Tax Reform Act of 1984 (relating to section 1250 gain) is amended by striking out "of the Internal Revenue Code of 1954" and inserting in lieu thereof "of the Internal Revenue Code of 1954, and the amendment made by subsection (c)(2) of this section,".

(B) Paragraph (3) of section 68(e) of the Tax Reform Act of 1984 (relating to pollution control facilities) is amended by striking out "of such Code" and inserting in lieu thereof "of such Code, and so much of the amendment made by subsection (c)(1) of this section as relates to pollution control facilities,".

(3) CLERICAL AMENDMENTS.—

(A) The subsection heading of section 291(a) is amended by striking out "20-PERCENT".

(B) Paragraph (2) of section 68(c) of the Tax Reform Act of 1984 is amended by striking out "section 57(h)" and inserting in lieu thereof "section 57(b)".

(C) Subparagraph (B) of section 57(b)(1) is amended to read as follows:

"(B) IRON ORE AND COAL.—In the case of any item of tax preference of a corporation described in paragraph (8) of subsection (a) (but only to the extent such item is allocable to a deduction for depletion for iron ore and coal, including lignite), only 71.6 percent of the amount of such item of tax preference (determined without regard to this subsection) shall be taken into account as an item of tax preference."

(D) Paragraph (2) of section 57(b) is amended by striking out "85 percent" and inserting in lieu thereof "80 percent".

SEC. 1805. AMENDMENTS RELATED TO PARTNERSHIP PROVISIONS.

(a) AMENDMENTS RELATED TO SECTION 72 OF THE ACT.—

(1) CLARIFICATION THAT CHANGE NEED NOT OCCUR DURING TAXABLE YEAR OF PAYMENT.—

(A) Clause (i) of section 706(d)(2)(A) is amended by striking out "each such item" and inserting in lieu thereof "such item".

(B) Subparagraph (B) of section 706(d)(2) is amended by striking out "which are described in paragraph (1) and".

(2) CLERICAL AMENDMENT.—Clause (i) of section 706(d)(2)(C) (relating to items attributable to periods not within taxable year) is amended by striking out "the first day of such taxable year" and inserting in lieu thereof "the first day of the taxable year".

(b) AMENDMENT RELATED TO SECTION 73 OF THE ACT.—Clause (iii) of section 707(a)(2)(B) (relating to treatment of certain property transfers) is amended by striking out "sale of property" and inserting in lieu thereof "sale or exchange of property".

(c) AMENDMENTS RELATED TO SECTION 75 OF THE ACT.—

(1) LIMITATION ON AMOUNT OF GAIN.—Section 386 (relating to transfers of partnership and trust interests by a corporation) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) LIMITATION ON AMOUNT OF GAIN RECOGNIZED IN CASE OF NON-LIQUIDATING DISTRIBUTIONS.—In the case of any distribution by a corporation to which section 311 applies, the amount of any gain recognized by reason of subsection (a) shall not exceed the amount of the gain which would have been recognized if the partnership interest had been sold. The Secretary may by regulations provide that the amount of such gain shall be computed without regard to any loss attributable to property contributed to the partnership for the principal purpose of recognizing such loss on the distribution."

(2) CLARIFICATION OF SECTION 761(e).—Subsection (e) of section 761 (relating to distributions treated as exchanges) is amended—

(A) by striking out "For purposes of" and inserting in lieu thereof "Except as otherwise provided in regulations, for purposes of",

(B) by striking out "any distribution (not otherwise treated as an exchange)" and inserting in lieu thereof "any distribution of an interest in a partnership (not otherwise treated as an exchange)", and

(C) by striking out "DISTRIBUTIONS" in the subsection heading and inserting in lieu thereof "DISTRIBUTIONS OF PARTNERSHIP INTERESTS".

(d) AMENDMENT RELATED TO SECTION 77 OF THE ACT.—Subparagraph (A) of section 1031(a)(3) (relating to requirement that property be identified) is amended by striking out "before the day" and inserting in lieu thereof "on or before the day".

SEC. 1806. AMENDMENTS RELATED TO TRUST PROVISIONS.

(a) AMENDMENT RELATED TO SECTION 81 OF THE ACT.—Subparagraph (B) of section 643(e)(3), as redesignated by subsection (c) (relating to election to recognize gain), is amended to read as follows:

"(B) ELECTION.—Any election under this paragraph shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year."

(b) TREATMENT OF MULTIPLE TRUSTS.—Subsection (b) of section 82 of the Tax Reform Act of 1984 (relating to treatment of multiple trusts) is amended by inserting before the period at the end thereof the following: "; except that, in the case of a trust which was irrevocable on March 1, 1984, such amendment shall so apply only to that portion of the trust which is attributable to contributions to corpus after March 1, 1984".

(c) CLERICAL AMENDMENTS.—Section 643 (relating to definitions applicable to subparts A, B, C, and D) is amended—

(1) by redesignating the subsection added by section 81 of the Tax Reform Act of 1984 as subsection (e), and

(2) by redesignating the subsection added by section 82 of such Act as subsection (f).

SEC. 1807. AMENDMENTS RELATED TO ACCOUNTING CHANGES.

(a) AMENDMENTS RELATED TO SECTION 91 OF THE ACT.—

(1) CLARIFICATION OF CASH BASIS EXCEPTION TO TAX SHELTER RULE.—

(A) Subparagraph (A) of section 461(i)(2) is amended by striking out "within 90 days after the close of the taxable year" and inserting in lieu thereof "before the close of the 90th day after the close of the taxable year".

(B) The heading for paragraph (2) of section 461(i) is amended by striking out "WITHIN 90 DAYS" and inserting in lieu thereof "ON OR BEFORE THE 90TH DAY".

(2) CLARIFICATION OF COORDINATION WITH SECTION 464.—Subparagraph (A) of section 461(i)(4) (relating to special rules for farming) is amended to read as follows:

"(A) any tax shelter described in paragraph (3)(C) shall be treated as a farming syndicate for purposes of section 464; except that this subparagraph shall not apply for purposes of determining the income of an individual meeting the requirements of section 464(c)(2),".

(3) TREATMENT OF MINING AND SOLID WASTE RECLAMATION AND CLOSING COSTS.—

(A) RESERVE INCREASED BY AMOUNT DEDUCTED.—Paragraph (2) of section 468(a) (relating to establishment of reserves for reclamation and closing costs) is amended by adding at the end thereof the following new subparagraph:

"(D) RESERVE INCREASED BY AMOUNT DEDUCTED.—A reserve shall be increased each taxable year by the amount allowable as a deduction under paragraph (1) for such taxable year which is allocable to such reserve."

(B) EFFECTIVE DATE.—Subsection (g) of section 91 of the Tax Reform Act of 1984 (relating to effective dates) is amended by adding at the end thereof the following new paragraph:

"(4) EFFECTIVE DATE FOR TREATMENT OF MINING AND SOLID WASTE RECLAMATION AND CLOSING COSTS.—Except as otherwise provided in subsection (h), the amendments made by subsection (b) shall take effect on the date of the enactment of this Act with respect to taxable years ending after such date."

(C) CLERICAL AMENDMENT.—Paragraph (1) of section 468(a) is amended by striking out "this subsection" and inserting in lieu thereof "this section".

(4) TREATMENT OF DECOMMISSIONING OF NUCLEAR POWERPLANT.—

(A) TIME WHEN PAYMENTS DEEMED MADE.—

(i) IN GENERAL.—Section 468A is amended by adding at the end thereof the following new subsection:

"(g) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to the Fund on the last day of a taxable year if such payment is made on account of such taxable year and is made within 2½ months after the close of such taxable year."

(ii) TRANSITIONAL RULE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, subsection (g) of section 468A of the Internal Revenue Code of 1954 (as added by clause (i)) shall be applied with respect to any payment on account of a taxable year beginning before January 1, 1987, as if it did not contain the requirement that the payment be made within 2½ months after the close of the taxable year. Such regulations may provide that, to the extent such payment to the Fund is made more than 2½ months after the close of the taxable year, any adjustment to the tax attributable to such payment shall not affect the amount of interest payable with respect to periods before the payment is made. Such regulations may provide appropriate adjustments to the deduction allowed under such section 468A for any such taxable year to take into account the fact that the payment to the Fund is made more than 2½ months after the close of the taxable year.

(B) TREATMENT OF AMOUNTS DISTRIBUTED.—Subparagraph (A) of section 468A(c)(1) (relating to inclusion of amount distributed) is amended by striking out "subsection (e)(2)(B)" and inserting in lieu thereof "subsection (e)(4)(B)".

(C) CLARIFICATION OF TAXATION OF FUND.—Paragraph (2) of section 468A(e) (relating to taxation of Fund) is amended to read as follows:

"(2) TAXATION OF FUND.—

"(A) IN GENERAL.—There is hereby imposed on the gross income of the Fund for any taxable year a tax at a rate equal to the highest rate of tax specified in section 11(b), except that—

"(i) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

"(ii) there shall be allowed as a deduction to the Fund any amount paid by the Fund which is described in paragraph (4)(B) (other than an amount paid to the taxpayer) and which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

"(B) TAX IN LIEU OF OTHER TAXATION.—The tax imposed by subparagraph (A) shall be in lieu of any other taxation under this subtitle of the income from assets in the Fund.

"(C) FUND TREATED AS CORPORATION.—For purposes of subtitle F—

"(i) the Fund shall be treated as if it were a corporation, and

"(ii) any tax imposed by this paragraph shall be treated as a tax imposed by section 11."

(D) LIMITATION ON INVESTMENTS.—Paragraph (4) of section 468A(e) is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(C) to the extent that a portion of the Fund is not currently needed for purposes described in subparagraph (A) or (B), making investments described in section 501(c)(21)(B)(ii)."

(E) CLERICAL AMENDMENTS.—

(i) Subsection (a) of section 468A is amended by striking out "this subsection" and inserting in lieu thereof "this section".

(ii) Subsection (d) of section 468A is amended by striking out "this subsection" in the material preceding paragraph (1) and inserting in lieu thereof "this section".

(iii) The subsection heading for subsection (e) of section 468A is amended by striking out "TRUST FUND" and inserting in lieu thereof "RESERVE FUND".

(iv) Paragraph (1) of section 468A(e) is amended—

(I) by striking out "this subsection" and inserting in lieu thereof "this section", and

(II) by striking out "Trust Fund" and inserting in lieu thereof "Reserve Fund".

(v) Paragraph (6) of section 468A(e) is amended—

(I) by striking out "this subsection" each place it appears and inserting in lieu thereof "this section", and

(II) by striking out "this subparagraph" and inserting in lieu thereof "this paragraph".

(vi) Subsection (f) of section 468A is amended by striking out "The term" and inserting in lieu thereof "For purposes of this section, the term".

(vii) Section 88 is amended by striking out "of ratemaking purposes" and inserting in lieu thereof "for ratemaking purposes".

(F) EFFECTIVE DATE.—Subsection (g) of section 91 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

"(5) RULES FOR NUCLEAR DECOMMISSIONING COSTS.—The amendments made by subsections (c) and (f) shall take effect on the date of the enactment of this Act with respect to taxable years ending after such date."

(5) EFFECTIVE DATE FOR NET OPERATING LOSS PROVISIONS.—Subsection (g) of section 91 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

"(6) MODIFICATION OF NET OPERATING LOSS CARRYBACK PERIOD.—The amendments made by subsection (d) shall apply to losses for taxable years beginning after December 31, 1983."

(6) CLARIFICATION OF ELECTION FOR EARLIER EFFECTIVE DATE.—Subparagraph (A) of section 91(g)(2) of the Tax Reform Act of 1984 (relating to taxpayer may elect earlier application) is amended—

(A) by striking out "incurred before" and inserting in lieu thereof "incurred on or before",

(B) by striking out "incurred on or after" and inserting in lieu thereof "incurred after", and

(C) by adding at the end thereof the following new sentence:

"The Secretary of the Treasury or his delegate may by regulations provide that (in lieu of an election under the preceding sentence) a taxpayer may (subject to such conditions as such regulations may provide) elect to have subsection (h) of section 461 of such Code apply to the taxpayer's entire taxable year in which occurs July 19, 1984."

(7) SPECIAL RULES FOR DESIGNATED SETTLEMENT FUNDS.—

(A) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deduction taken) is amended by adding at the end thereof the following new section:

"SEC. 468B. SPECIAL RULES FOR DESIGNATED SETTLEMENT FUNDS.

"(a) IN GENERAL.—For purposes of section 461(h), economic performance shall be deemed to occur as qualified payments are made by the taxpayer to a designated settlement fund.

"(b) TAXATION OF DESIGNATED SETTLEMENT FUND.—

"(1) IN GENERAL.—There is imposed on the gross income of any designated settlement fund for any taxable year a tax at a rate equal to the maximum rate in effect for such taxable year under section 1(e).

"(2) CERTAIN EXPENSES ALLOWED.—For purposes of paragraph (1), gross income for any taxable year shall be reduced by the amount of any administrative costs (including State and local taxes) and other incidental expenses of the designated settlement fund (including legal, accounting, and actuarial expenses)—

"(A) which are incurred in connection with the operation of the fund, and

"(B) which would be deductible under this chapter for purposes of determining the taxable income of the corporation,

no other deduction shall be allowed to the fund.

"(3) TRANSFERS TO THE FUND.—In the case of any qualified payment made to the fund—

"(A) the amount of such payment shall not be treated as income of the designated settlement fund,

"(B) the basis of the fund in any property which constitutes a qualified payment shall be equal to the fair market value of such property at the time of payment, and

"(C) the fund shall be treated as the owner of the property in the fund (and any earnings thereon).

"(4) TAX IN LIEU OF OTHER TAXATION.—The tax imposed by paragraph (1) shall be in lieu of any other taxation under this subtitle of income from assets in the designated settlement fund.

"(5) COORDINATION WITH SUBTITLE F.—For purposes of subtitle F—

"(A) a designated settlement fund shall be treated as a corporation, and

"(B) any tax imposed by this subsection shall be treated as a tax imposed by section 11.

"(c) DEDUCTIONS NOT ALLOWED FOR TRANSFER OF INSURANCE AMOUNTS.—No deduction shall be allowable for any qualified payment by the taxpayer of any amounts received from the settlement of any insurance claim to the extent such amounts are excluded from the gross income of the taxpayer.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED PAYMENT.—The term 'qualified payment' means any money or property which is transferred to any designated settlement fund pursuant to a court order, other than—

"(A) any amount which may be transferred from the fund to the taxpayer, or

"(B) the transfer of any stock or indebtedness of the taxpayer (or any related person).

"(2) DESIGNATED SETTLEMENT FUND.—The term 'designated settlement fund' means any fund—

"(A) which is established pursuant to a court order,

"(B) with respect to which no amounts may be transferred other than in the form of qualified payments,

"(C) which is administered by persons a majority of whom are independent of the taxpayer,

"(D) which is established for the principal purpose of resolving and satisfying present and future claims against the taxpayer (or any related person or formerly related person) arising out of personal injury, death, or property damage,

"(E) under the terms of which the taxpayer may not hold any beneficial interest in the income or corpus of the fund, and

"(F) with respect to which an election is made under this section by the taxpayer.

An election under this section shall be made at such time and in such manner as the Secretary shall by regulation prescribe. Such an election, once made, may be revoked only with the consent of the Secretary.

"(3) RELATED PERSON.—The term 'related person' means a person related to the taxpayer within the meaning of section 267(b).

"(e) NONAPPLICABILITY OF SECTION.—This section shall not apply with respect to any liability of the taxpayer arising under any workers' compensation Act or any contested liability of the taxpayer within the meaning of section 461(f).

"(f) OTHER FUNDS.—Except as provided in regulations, any payment in respect of a liability described in subsection (d)(2)(D) (and not described in subsection (e)) to a trust fund or escrow fund which is not a designated settlement fund shall not be treated as constituting economic performance."

(B) CLERICAL AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding after the item relating to section 468A the following new item:

"Sec. 468B. Special rules for designated settlement funds."

(C) SPECIAL RULE FOR TAXPAYER IN BANKRUPTCY REORGANIZATION.—In the case of any settlement fund which is established for claimants against a corporation which filed a petition for reorganization under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and restated plan of reorganization before March 1, 1986—

(i) any portion of such fund which meets the requirements of subparagraphs (A), (C), (D), and (F) of section 468B(d)(2) of the Internal Revenue Code of 1954 (as added by this paragraph) shall be treated as a designated settlement fund for purposes of section 468B of such Code,

(ii) such corporation (or any successor thereof) shall be liable for the tax imposed by section 468B of such Code on such portion of the fund (and the fund shall not be liable for such tax), such tax shall be deductible by the corporation, and the rate of tax under section 468B of such Code for any taxable year shall be equal to 15 percent, and

(iii) any transaction by any portion of the fund not described in clause (i) shall be treated as a transaction made by the corporation.

(D) CLARIFICATION OF LAW WITH RESPECT TO CERTAIN FUNDS.—

(i) IN GENERAL.—Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. If contributions to such an account or fund are not deductible, then the account or fund shall be taxed as a grantor trust.

(ii) EFFECTIVE DATE.—The provisions of clause (i) shall apply to accounts or funds established after August 16, 1986.

(8) TRANSITIONAL RULE FOR CERTAIN AMOUNTS.—For purposes of section 461(h) of the Internal Revenue Code of 1954, economic performance shall be treated as occurring on the date of a payment to an insurance company if—

(A) such payment was made before November 23, 1985, for indemnification against a tort liability relating to personal injury or death caused by inhalation or ingestion of dust from asbestos-containing insulation products,

(B) such insurance company is unrelated to taxpayer,

(C) such payment is not refundable, and

(D) the taxpayer is not engaged in the mining of asbestos nor is any member of any affiliated group which includes the taxpayer so engaged.

(b) AMENDMENTS RELATED TO SECTION 92 OF THE ACT.—

(1) TREATMENT OF SERVICES.—Subsection (g) of section 467 (relating to comparable rules for services) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies."

(2) CLERICAL AMENDMENTS.—

(A) Subparagraph (A) of section 467(b)(4) is amended by striking out "statutory recover period" and inserting in lieu thereof "statutory recovery period".

(B) Paragraph (4) of section 467(c) is amended by striking out "subsection (b)(3)(A)" and inserting in lieu thereof "subsection (b)(4)(A)".

(C) The last sentence of section 467(d)(2) is amended by striking out "section 1274(c)(2)(C)" and inserting in lieu thereof "section 1274(c)(4)(C)".

(D) Paragraph (5) of section 467(e) is amended by striking out "section 168(d)(4)(D)" and inserting in lieu thereof "section 168(e)(4)(D)".

(c) TRANSITION RULE.—A taxpayer shall be allowed to use the cash receipts and disbursements method of accounting for taxable years ending after January 1, 1982, if such taxpayer—

(1) is a partnership which was founded in 1936,

(2) has over 1,000 professional employees,

(3) used a long-term contract method of accounting for a substantial part of its income from the performance of architectural and engineering services, and

(4) is headquartered in Chicago, Illinois.

SEC. 1808. AMENDMENTS RELATED TO TAX STRADDLE PROVISIONS.

(a) TREATMENT OF SUBCHAPTER S CORPORATIONS.—

(1) Section 102 of the Tax Reform Act of 1984 (relating to section 1256 extended to certain options) is amended by adding at the end thereof the following new subsection:

"(j) COORDINATION OF ELECTION UNDER SUBSECTION (d)(3) WITH ELECTIONS UNDER SUBSECTIONS (g) AND (h).—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to coordinate the election provided by subsection (d)(3) with the elections provided by subsections (g) and (h)."

(2) Paragraph (3) of section 102(d) of the Tax Reform Act of 1984 (relating to subchapter S election) is amended by striking out "(as so defined)" and inserting in lieu thereof "(as so defined) or such other day as may be permitted under regulations".

(b) TREATMENT OF AMOUNTS RECEIVED FOR LOANING SECURITIES.—Subparagraph (B) of section 263(g)(2) (defining interest and carrying charges) is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by inserting after clause (iii) the following new clause:

"(iv) any amount which is a payment with respect to a security loan (within the meaning of section 512(a)(5)) includible in gross income with respect to such property for the taxable year."

(c) TREATMENT OF OPTION STRADDLES.—Subparagraph (A) of section 1092(d)(3) (relating to special rules for stocks) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any interest in stock."

(d) SECTION 108.—Section 108 of the Tax Reform Act of 1984 is amended—

(1) by striking out "if such position is part of a transaction entered into for profit" and inserting in lieu thereof "if such loss is incurred in a trade or business, or if such loss is incurred in a transaction entered into for profit though not connected with a trade or business",

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) LOSS INCURRED IN A TRADE OR BUSINESS.—For purposes of subsection (a), any loss incurred by a commodities dealer in the trading of commodities shall be treated as a loss incurred in a trade or business.",

(3) by striking out the heading for subsection (c) and inserting in lieu thereof the following:

"(c) NET LOSS ALLOWED.—",

(4) by striking out subsection (f) and inserting in lieu thereof the following:

"(f) COMMODITIES DEALER.—For purposes of this section, the term 'commodities dealer' means any taxpayer who—

"(1) at any time before January 1, 1982, was an individual described in section 1402(i)(2)(B) of the Internal Revenue Code of 1954 (as added by this subtitle), or

"(2) was a member of the family (within the meaning of section 704(e)(3) of such Code) of an individual described in paragraph (1) to the extent such member engaged in commodities trading through an organization the members of which consisted solely of—

"(A) 1 or more individuals described in paragraph (1), and

"(B) 1 or more members of the families (as so defined) of such individuals.", and

(4) by striking out subsection (h) and inserting in lieu thereof the following:

"(h) SYNDICATES.—For purposes of this section, any loss incurred by a person (other than a commodities dealer) with respect to an interest in a syndicate (within the meaning of section 1256(e)(3)(B) of the Internal Revenue Code of 1954) shall not be considered to be a loss incurred in a trade or business."

SEC. 1809. AMENDMENTS RELATED TO DEPRECIATION PROVISIONS.

(a) AMENDMENTS RELATED TO SECTION 111 OF THE ACT.—

(1) 15-YEAR STRAIGHT LINE ELECTION FOR LOW-INCOME HOUSING.—The table contained in subparagraph (A) of section 168(b)(3) (relating to election of different recovery percentage) is amended—

(A) by striking out "and low-income housing" in the last item, and

(B) by adding at the end thereof the following new item:

"Low-income housing.....	15, 35, or 45 years."

(2) USE OF CONVENTIONS.—

(A) MID-MONTH CONVENTION FOR 19-YEAR REAL PROPERTY.—

(i) Paragraph (2) of section 168(b) (relating to 19-year real property) is amended—

(I) by striking out the last sentence of subparagraph (A), and

(II) by amending subparagraph (B) to read as follows:

"(B) MID-MONTH CONVENTION FOR 19-YEAR REAL PROPERTY.—In the case of 19-year real property, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (using a mid-month convention) in which the property is in service."

(ii) Subparagraph (B) of section 168(f)(2) (relating to recovery property used predomi-

nantly outside the United States) is amended to read as follows:

"(B) REAL PROPERTY.—Except as provided in subparagraph (C), in the case of 19-year real property or low-income housing which, during the taxable year, is predominantly used outside the United States, the recovery deduction for the taxable year shall be, in lieu of the amount determined under subsection (b), the amount determined by applying to the unadjusted basis of such property the applicable percentage determined under tables prescribed by the Secretary. For purposes of the preceding sentence, in prescribing such tables, the Secretary shall—

"(i) assign to the property described in this subparagraph a 35-year recovery period, and

"(ii) assign percentages determined in accordance with the use of the method of depreciation described in section 167(j)(1)(B), switching to the method described in section 167(b)(1) at a time to maximize the deduction allowable under subsection (a)."

(B) MONTHLY CONVENTION FOR LOW-INCOME HOUSING.—Subparagraph (B) of section 168(b)(4) (relating to low-income housing) is amended to read as follows:

"(B) MONTHLY CONVENTION.—In the case of low-income housing, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (treating all property placed in service or disposed of during any month as placed in service or disposed of on the first day of such month) in which the property is in service."

(C) CONFORMING AMENDMENTS.—

(i) Effective on and after the date of the enactment of this Act, clause (ii) of section 168(j)(2)(B) (relating to conventions) is amended to read as follows:

"(ii) CROSS REFERENCE.—

"For other applicable conventions, see paragraphs (2)(B) and (4)(B) of subsection (b)."

(ii) Subparagraph (A) of section 312(k)(3) is amended by striking out ", and rules similar to the rules under the next to the last sentence of section 168(b)(2)(A) and section 168(b)(2)(B) shall apply".

(3) MINIMUM TAX TREATMENT.—Subparagraph (B) of section 57(a)(12) (relating to 19-year real property and low-income housing) is amended by striking out so much of such subparagraph as precedes clause (i) thereof and inserting in lieu thereof the following:

"(B) 19-YEAR REAL PROPERTY AND LOW-INCOME HOUSING.—With respect to each recovery property which is 19-year real property or low-income housing, the amount (if any) by which the deduction allowed under section 168(a) (or, in the case of property described in section 167(k), under section 167) for the taxable year exceeds the deduction which would have been allowable for the taxable year had the property been depreciated using a straight-line method (without regard to salvage value) over a recovery period of—".

(4) TREATMENT OF PROPERTY FINANCED WITH TAX-EXEMPT BONDS.—

(A) Clause (ii) of section 168(f)(12)(B) (relating to recovery method) is amended to read as follows:

"(ii) 19-YEAR REAL PROPERTY.—In the case of 19-year real property, the amount of the deduction allowed shall be determined by using the straight-line method (without regard to salvage value) and a recovery period of 19 years."

(B) Subparagraph (C) of section 168(f)(12) (relating to exception for projects for residential rental property) is amended to read as follows:

"(C) EXCEPTION FOR LOW- AND MODERATE-INCOME HOUSING.—Subparagraph (A) shall not apply to—

"(i) any low-income housing, and

"(ii) any other recovery property which is placed in service in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A)."

(C) Any property described in paragraph (3) of section 631(d) of the Tax Reform Act of 1984 shall be treated as property described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1954 as amended by subparagraph (B).

(5) COORDINATION WITH IMPUTED INTEREST CHANGES.—In the case of any property placed in service before May 9, 1985 (or treated as placed in service before such date by section 105(b)(3) of Public Law 99-121)—

(A) any reference in any amendment made by this subsection to 19-year real property shall be treated as a reference to 18-year real property, and

(B) section 168(f)(12)(B)(ii) of the Internal Revenue Code of 1954 (as amended by paragraph (4)(A)) shall be applied by substituting "18 years" for "19 years".

(b) TREATMENT OF TRANSFEREE IN CERTAIN TRANSACTIONS.—

(1) IN GENERAL.—Subparagraph (A) of section 168(f)(10) (relating to transferee bound by transferor's period and method in certain cases) is amended to read as follows:

"(A) IN GENERAL.—In the case of recovery property transferred in a transaction described in subparagraph (B), for purposes of computing the deduction allowable under subsection (a) with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor—

"(i) if the transaction is described in subparagraph (B)(i), the transferee shall be treated in the same manner as the transferor, or

"(ii) if the transaction is described in clause (ii) or (iii) of subparagraph (B) and the transferor made an election with respect to such property under subsection (b)(3) or (f)(2)(C), the transferee shall be treated as having made the same election (or its equivalent)."

(2) TREATMENT OF TERMINATIONS OF PARTNERSHIPS.—Subparagraph (B) of section 168(f)(10) is amended by adding at the end thereof the following new sentence:

"Clause (i) shall not apply in the case of the termination of a partnership under section 708(b)(1)(B)."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service by the transferee after December 31, 1985, in taxable years ending after such date.

(c) AMENDMENT RELATED TO SECTION 112 OF THE ACT.—Paragraph (2) of section 453(i) (defining recapture income) is amended by striking out "section 1245 or 1250" and inserting in lieu thereof "section 1245 or 1250 (or so much of section 751 as relates to section 1245 or 1250)".

(d) AMENDMENTS RELATED TO SECTION 113 OF THE ACT.—

(1) TREATMENT OF FILMS, VIDEO TAPES, AND SOUND RECORDINGS.—Except with respect to property placed in service by the taxpayer on or before March 28, 1985, subsection (c) of section 167 (relating to limitations on use of certain methods and rates) is amended by adding at the end thereof the following new sentence:

"Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording."

(2) CLERICAL AMENDMENT.—Subsection (q) of section 48 is amended by redesignating the paragraph relating to special rule for qualified films as paragraph (7).

(e) AMENDMENTS RELATED TO SECTION 114 OF THE ACT.—

(1) Paragraph (1) of section 48(b) (defining new section 38 property) is amended by adding at the end thereof the following new sentence: "Such term includes any section 38 property the reconstruction of which is completed by the taxpayer, but only with respect to that portion of the basis which is properly attributable to such reconstruction."

(2) Paragraph (2) of section 48(b) (relating to special rule for sale-leasebacks) is amended—

(A) by striking out "paragraph (1)" and inserting in lieu thereof "the first sentence of paragraph (1)",

(B) by striking out "used under the lease" and inserting in lieu thereof "used under the leaseback (or lease) referred to in subparagraph (B)",

(C) by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary.", and

(D) by striking out "3 months of" in subparagraph (B) and inserting in lieu thereof "3 months after".

SEC. 1810. AMENDMENTS RELATED TO FOREIGN PROVISIONS.

(a) AMENDMENTS RELATED TO SECTION 121 OF THE ACT.—

(1) TREATMENT OF CERTAIN DOMESTIC CORPORATIONS.—

(A) IN GENERAL.—Subsection (g) of section 904 (relating to source rules in the case of United States-owned foreign corporations) is amended by redesignating paragraph (9) as paragraph (10), and by inserting after paragraph (8) the following new paragraph:

"(9) TREATMENT OF CERTAIN DOMESTIC CORPORATIONS.—For purposes of this subsection—

"(A) in the case of interest treated as not from sources within the United States under section 861(a)(1)(B), the corporation paying such interest shall be treated as a United States-owned foreign corporation, and

"(B) in the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated as a United States-owned foreign corporation."

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a United States-owned foreign corporation by reason of the amendment made by subparagraph (A)—

(i) only income received or accrued by such corporation after such date shall be taken into account under section 904(g) of the Internal Revenue Code of 1954; except that

(ii) paragraph (5) of such section 904(g) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.

(2) TREATMENT OF CERTAIN FOREIGN CORPORATIONS ENGAGED IN TRADE OR BUSINESSES WITHIN THE UNITED STATES.—Subparagraph (E) of section 121(b)(2) of the Tax Reform

Act of 1984 (relating to special rules for applicable CFC) is amended by adding at the end thereof the following new clause:

"(iii) TREATMENT OF CERTAIN FOREIGN CORPORATIONS ENGAGED IN BUSINESS IN UNITED STATES.—For purposes of clause (ii), a foreign corporation shall be treated as a United States person with respect to any interest payment made by such corporation if—

"(I) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its last taxable year ending on or before March 31, 1984, was effectively connected with the conduct of a trade or business within the United States, and

"(II) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest was effectively connected with the conduct of a trade or business within the United States."

(3) TREATMENT OF CERTAIN SHORT-TERM BORROWING.—Clause (ii) of section 121(b)(2)(D) of the Tax Reform Act of 1984 (defining applicable CFC) is amended by striking out "or the holding of short-term obligations" and all that follows and inserting in lieu thereof "(or short-term borrowing from nonaffiliated persons) and lending the proceeds of such obligations (or such borrowing) to affiliates."

(4) COORDINATION WITH TREATY OBLIGATIONS.—Section 904(g) of the Internal Revenue Code of 1954 shall apply notwithstanding any treaty obligation of the United States to the contrary (whether entered into on, before, or after the date of the enactment of this Act) unless (in the case of a treaty entered into after the date of the enactment of this Act) such treaty by specific reference to such section 904(g) clearly expresses the intent to override the provisions of such section.

(5) TRANSITIONAL RULE RELATED TO SECTION 125(b)(5) OF THE ACT.—For purposes of section 125(b)(5) of the Tax Reform Act of 1984 (relating to separate application of section 904 in case of income covered by transitional rules), any carryover under section 904(c) of the Internal Revenue Code of 1954 allowed to a taxpayer which was incorporated on August 31, 1962, attributable to taxes paid or accrued in taxable years beginning in 1981, 1982, 1983, or 1984, with respect to amounts included in gross income under section 951 of such Code in respect of a controlled foreign corporation which was incorporated on May 27, 1977, shall be treated as taxes paid or accrued on income separately treated under such section 125(b)(5).

(b) AMENDMENTS RELATED TO SECTION 122 OF THE ACT.—

(1) TREATMENT OF SUBPART F AND FOREIGN PERSONAL HOLDING COMPANY INCLUSIONS.—Subparagraph (C) of section 904(d)(3) (relating to exception where designated corporation has small amount of separate limitation interest) is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply to any amount includible in gross income under section 551 or 951."

(2) TREATMENT OF INTEREST AND DIVIDENDS FROM MEMBERS OF SAME AFFILIATED GROUP.—Paragraph (3) of section 904(d) (relating to certain amounts attributable to United States-owned foreign corporations, etc., treated as interest) is amended by striking out subparagraph (J), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

"(I) INTEREST AND DIVIDENDS FROM MEMBERS OF SAME AFFILIATED GROUP.—For purposes of this paragraph, dividends and interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall be treated as separate limitation interest if (and only if) such amounts are attributable (directly or indirectly) to separate limitation interest of any other member of such group."

(3) TREATMENT OF INTEREST FROM DESIGNATED PAYOR CORPORATION.—Paragraph (2) of section 904(d) is amended by inserting at the end thereof the following: "For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation."

(4) DEFINITION OF DESIGNATED PAYOR CORPORATION.—

(A) IN GENERAL.—Subparagraph (E) of section 904(d)(3) (defining designated payor corporation) is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by adding at the end thereof the following:

"(iv) any other corporation formed or availed of for purposes of avoiding the provisions of this paragraph.

For purposes of this paragraph, the rules of paragraph (9) of subsection (g) shall apply."

(B) EFFECTIVE DATES.—

(i) The amendment made by subparagraph (A) insofar as it adds the last sentence to subparagraph (E) of section 905(d)(3) shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a designated payor corporation by reason of the amendment made by subparagraph (A)—

(I) only income received or accrued by such corporation after such date shall be taken into account under section 904(d)(3) of the Internal Revenue Code of 1954; except that

(II) subparagraph (C) of such section 904(d)(3) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.

(ii) The amendment made by subparagraph (A) insofar as it adds clause (iv) to subparagraph (E) of section 904(d)(3) shall take effect on December 31, 1985. For purposes of such amendment, the rule of the second sentence of clause (i) shall be applied by taking into account December 31, 1985, in lieu of March 28, 1985.

(c) AMENDMENTS RELATED TO SECTION 123 OF THE ACT.—

(1) Subparagraph (A) of section 956(b)(3) (relating to certain trade or service receivables acquired from related United States persons) is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (2) (other than subparagraph (H) thereof)".

(2) Subsection (d) of section 864 (relating to treatment of related person factoring income) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) EXCEPTION FOR CERTAIN RELATED PERSONS DOING BUSINESS IN SAME FOREIGN COUNTRY.—Paragraph (1) shall not apply to any trade or service receivable acquired by any person from a related person if—

"(A) the person acquiring such receivable and such related person are created or organized under the laws of the same foreign country and such related person has a substantial part of its assets used in its trade or business located in such same foreign country, and

"(B) such related person would not have derived any foreign base company income (as defined in section 954(a), determined without regard to section 954(b)(3)(A)), or any income effectively connected with the conduct of a trade or business within the United States, from such receivable if it had been collected by such related person."

(3) Clause (i) of section 864(d)(5)(A) (relating to certain provisions not to apply) is amended by inserting before the period at the end thereof the following: "and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group)".

(d) AMENDMENTS RELATED TO SECTION 127 OF THE ACT.—

(1) DEFINITION OF PORTFOLIO INTEREST.—

(A) Paragraph (2) of section 871(h) (defining portfolio interest) is amended by striking out "which is described in" in the matter preceding subparagraph (A) and inserting in lieu thereof "which would be subject to tax under subsection (a) but for this subsection and which is described in".

(B) Paragraph (2) of section 881(c) (defining portfolio interest) is amended by striking out "which is described in" in the matter preceding subparagraph (A) and inserting in lieu thereof "which would be subject to tax under subsection (a) but for this subsection and which is described in".

(2) ATTRIBUTION OF SHAREHOLDER STOCK TO CORPORATION.—Subparagraph (C) of section 871(h)(3) (relating to portfolio interest not to include interest received by 10-percent shareholders) is amended by striking out "and" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) section 318(a)(3)(C) shall be applied—

"(I) without regard to the 50-percent limitation therein; and

"(II) in any case where such section would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) which is owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owns in such corporation bears to the value of all stock in such corporation, and".

(3) CLERICAL AMENDMENTS.—

(A) Paragraph (1) of section 871(a) is amended by striking out "provided in subsection (i)" in the matter preceding subparagraph (A), and inserting in lieu thereof "provided in subsection (h)".

(B) Clause (ii) of section 871(h)(2)(B) is amended by striking out "has received" and inserting in lieu thereof "receives".

(C) Clause (ii) of section 881(c)(2)(B) is amended by striking out "has received" and inserting in lieu thereof "receives".

(D) Paragraph (9) of section 1441(c) is amended by striking out "871(h)(2)" and inserting in lieu thereof "section 871(h)".

(E) Subsection (a) of section 1442 is amended—

(i) by striking out "sections 871(h)(2)" and inserting in lieu thereof "sections 871(h)",

(ii) by striking out "sections 881(c)(2)" and inserting in lieu thereof "sections 881(c)", and

(iii) by striking out "section 1449(c)(9)" and inserting in lieu thereof "section 1441(c)(9)".

(e) AMENDMENTS RELATED TO SECTION 128 OF THE ACT.—

(1) DEDUCTION FOR ORIGINAL ISSUE DISCOUNT.—

(A) Subparagraph (A) of section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States."

(B) Subsection (e) of section 163 is amended by redesignating the paragraph relating to cross references as paragraph (5).

(2) TAXATION OF ORIGINAL ISSUE DISCOUNT.—

(A) Subparagraph (C) of section 871(a)(1) (relating to income not connected with United States business) is amended to read as follows:

"(C) in the case of—

"(i) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

"(ii) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and".

(B) Paragraph (3) of section 881(a) (relating to tax on income of foreign corporations not connected with United States business) is amended to read as follows:

"(3) in the case of—

"(A) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and

"(B) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the foreign corporation (except that such original issue discount shall be taken into account under this subparagraph only to the extent such discount was not theretofore taken into account under this subparagraph and only to the extent that the tax thereon does not exceed the payment less the tax imposed by paragraph (1) thereon), and".

(f) AMENDMENTS RELATED TO SECTION 129 OF THE ACT.—

(1) TREATMENT OF ELECTIONS UNDER SECTION 897(i).—

(A) Paragraph (1) of section 897(i) (relating to election by foreign corporation to be treated as domestic corporation) is amended by striking out "and section 6039C" and inserting in lieu thereof ", section 1445, and section 6039C".

(B) Paragraph (4) of section 897(i) is amended by striking out "this section and section 6039C" and inserting in lieu thereof "this section, section 1445, and section 6039C".

(2) EXEMPTION FOR INTERESTS IN CERTAIN CORPORATIONS.—Paragraph (3) of section 1445(b) (relating to nonpublicly traded domestic corporation furnishing affidavit that it is not a United States real property holding corporation) is amended to read as follows:

"(3) NONPUBLICLY TRADED DOMESTIC CORPORATION FURNISHES AFFIDAVIT THAT INTERESTS IN CORPORATION NOT UNITED STATES REAL PROPERTY INTERESTS.—Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that—

"(A) the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii), or

"(B) as of the date of the disposition, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B)."

(3) NOTICE OF FALSE AFFIDAVIT.—

(A) Clause (i) of section 1445(d)(1)(B) (relating to notice of false affidavit; foreign corporations) is amended to read as follows:

"(i) any transferor's agent—

"(I) such agent has actual knowledge that such affidavit is false, or

"(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or".

(B) Paragraph (1) of section 1445(d) is amended by striking out "described in paragraph (2)(A)" and inserting in lieu thereof "described in paragraph (2)".

(4) TREATMENT OF CERTAIN DOMESTIC PARTNERSHIPS, TRUSTS, AND ESTATES.—

(A) IN GENERAL.—Paragraph (1) of section 1445(e) (relating to certain domestic partnerships, trusts, and estates) is amended to read as follows:

"(1) CERTAIN DOMESTIC PARTNERSHIPS, TRUSTS, AND ESTATES.—In the case of any disposition of a United States real property interest as defined in section 897(c) (other than a disposition described in paragraph (4) or (5)) by a domestic partnership, domestic trust, or domestic estate, such partnership, the trustee of such trust, or the executor of such estate (as the case may be) shall be required to deduct and withhold under subsection (a) a tax equal to 28 percent of the gain realized to the extent such gain—

"(A) is allocable to a foreign person who is a partner or beneficiary of such partnership, trust, or estate, or

"(B) is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part I of subchapter J."

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to dispositions after the day 30 days after the date of the enactment of this Act.

(5) DISTRIBUTIONS BY DOMESTIC CORPORATIONS TO FOREIGN SHAREHOLDER.—Paragraph (3) of section 1445(e) (relating to distributions by certain domestic corporations to foreign shareholders) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B)."

(6) CERTAIN TAXABLE DISTRIBUTIONS.—Paragraph (4) of section 1445(e) (relating to taxable distributions by domestic or foreign partnerships, trusts, or estates) is amended by striking out "section 897(g)" and inserting in lieu thereof "section 897".

(7) PAYMENT OF TAX.—Subsection (d) of section 6039C (relating to special rule for United States interests and Virgin Islands interests) is amended by striking out "subject to tax under section 897(a)" and inserting in lieu thereof "subject to tax under section 897(a) (and any person required to withhold tax under section 1445)".

(8) PAYMENTS THROUGH 1 OR MORE ENTITIES.—Paragraph (6) of section 1445(e) (relating to regulations) is amended by inserting before the period at the end thereof the following: "and regulations for the application of this subsection in the case of payments through 1 or more entities".

(9) CONFORMING AMENDMENTS TO SECTION 6652(g).—

(A) Paragraph (1) of section 6652(g) (relating to returns, etc., required under section 6039C) is amended to read as follows:

"(1) IN GENERAL.—In the case of each failure to make a return required by section 6039C which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the amount determined under paragraph (2) shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to make such return."

(B) Paragraph (3) of section 6652(g) is amended to read as follows:

"(3) LIMITATION.—The amount determined under paragraph (2) with respect to any person for failing to meet the requirements of section 6039C for any calendar year shall not exceed the lesser of—

"(A) $25,000, or

"(B) 5 percent of the aggregate of the fair market value of the United States real property interests owned by such person at any time during such year.

For purposes of the preceding sentence, fair market value shall be determined as of the end of the calendar year (or, in the case of any property disposed of during the calendar year, as of the date of such disposition)."

(C) The subsection heading for subsection (g) of section 6652 is amended by striking out ", ETC.,".

(g) AMENDMENTS RELATED TO SECTION 131 OF THE ACT.—

(1) Subsection (f) of section 367 (relating to transitional rule) is hereby repealed.

(2) Paragraph (1) of section 7482(b) (relating to venue) is amended by striking out "section 7428, 7476, or 7477" and inserting in lieu thereof "section 7428 or 7476".

(3) Paragraph (8) of section 6501(c) (relating to failure to notify the Secretary under section 6038B) is amended—

(A) by striking out "subsection (a) or (d)" and inserting in lieu thereof "subsection (a), (d), or (e)", and

(B) by striking out "exchange" each place it appears and inserting in lieu thereof "exchange or distribution".

(4)(A) Subsection (a)(1) of section 367 (relating to foreign corporations) is amended by striking out "355,".

(B) Subsection (e) of section 367 (relating to treatment of liquidations under section 336) is amended—

(i) by striking out "described in section 336" and inserting in lieu thereof "described in section 336 or 355 (or so much of section 356 as relates to section 355)", and

(ii) by striking out "LIQUIDATIONS UNDER SECTION 366" in the subsection heading and inserting in lieu thereof "DISTRIBUTIONS DESCRIBED IN SECTION 336 OR 355".

(h) AMENDMENTS RELATED TO SECTION 132 OF THE ACT.—

(1) Subsection (c) of section 552 (relating to certain dividends and interest not taken into account) is amended by adding at the end thereof the following new sentence:

"For purposes of the preceding sentence, the term 'related person' has the meaning given such term by section 954(d)(3) (determined by substituting 'foreign personal holding company' for 'controlled foreign corporation' each place it appears)."

(2) Paragraph (1) of section 551(f) (relating to stock held through foreign entity) is amended by striking out "United States shareholder" and inserting in lieu thereof "United States shareholder or an estate or trust which is a foreign estate or trust".

(i) AMENDMENTS RELATED TO SECTION 133 OF THE ACT.—

(1) Subparagraph (B) of section 1248(i)(1) (relating to treatment of certain indirect transfers) is amended by striking out "in redemption of his stock" and inserting in lieu thereof "in redemption or liquidation (whichever is appropriate)".

(2) Clause (iii) of section 133(d)(3)(B) of the Tax Reform Act of 1984 (relating to amendments related to section 1248) is amended by striking out "180 days after the date of the enactment of this Act" and inserting in lieu thereof "the date which is 1 year after the date of the enactment of the Tax Reform Act of 1985".

(j) AMENDMENTS RELATED TO SECTION 136 OF THE ACT.—

(1) COLLECTION OF TAX.—Subsection (b) of section 269B (relating to stapled entities) is amended by inserting before the period at the end thereof the following: "and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation".

(2) EXCEPTION WHERE CORPORATIONS OWNED BY FOREIGN PERSONS.—Section 269B is amended by adding at the end thereof the following new subsection:

"(e) SUBSECTION (a)(1) NOT TO APPLY IN CERTAIN CASES.—

"(1) IN GENERAL.—Subsection (a)(1) shall not apply if it is established to the satisfaction of the Secretary that the domestic corporation and the foreign corporation referred to in such subsection are foreign owned.

"(2) FOREIGN OWNED.—For purposes of paragraph (1), a corporation is foreign owned if less than 50 percent of—

"(A) the total combined voting power of all classes of stock of such corporation entitled to vote, and

"(B) the total value of the stock of the corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30))."

(k) AMENDMENT RELATED TO SECTION 137 OF THE ACT.—Subsection (e) of section 954 (defining foreign base company services income) is amended to read as follows:

"(e) FOREIGN BASE COMPANY SERVICES INCOME.—

"(1) IN GENERAL.—For purposes of subsection (a)(3), the term 'foreign base company services income' means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

"(A) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

"(B) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

"(2) EXCEPTION.—Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

"(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, or

"(B) an offer or effort to sell or exchange such property.

"(3) TREATMENT OF CERTAIN INSURANCE CONTRACTS.—For purposes of paragraph (1), in the case of any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4))—

"(A) such primary insured shall be treated as a related person for purposes of paragraph (1)(A) (whether or not the requirements of subsection (d)(3) are met),

"(B) such services shall be treated as performed in the country within which the insured hazards, risks, losses, or liabilities occur, and

"(C) except as otherwise provided in regulations by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services."

(l) AMENDMENTS RELATED TO SECTION 138 OF THE ACT.—

(1) Clause (i) of section 7701(b)(4)(E) (relating to limitation of teachers and trainees) is amended by adding at the end thereof the following new sentence: "In the case of an individual all of whose compensation is described in section 872(b)(3), the preceding sentence shall be applied by substituting '4 calendar years' for '2 calendar years'."

(2) Subparagraph (A) of section 7701(b)(1) is amended—

(A) by striking out "the requirements of clause (i) or (ii)" and inserting in lieu thereof "the requirements of clause (i), (ii), or (iii)", and

(B) by adding at the end thereof the following new clause:

"(iii) FIRST YEAR ELECTION.—Such individual makes the election provided in paragraph (4)."

(3) Subparagraph (A) of section 7701(b)(2) is amended by adding at the end thereof the following new clause:

"(iv) RESIDENCY STARTING DATE FOR INDIVIDUALS MAKING FIRST YEAR ELECTION.—In the case of an individual who makes the election provided by paragraph (4) with respect to any calendar year, the residency starting date shall be the 1st day during such calendar year on which the individual is treated as a resident of the United States under that paragraph."

(4) Subsection (b) of section 7701 is amended by redesignating paragraphs (4), (5), (6), (7), (8), (9), and (10) as paragraphs (5), (6), (7), (8), (9), (10), and (11), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) FIRST-YEAR ELECTION.—

"(A) An alien individual shall be deemed to meet the requirements of this subparagraph if such individual—

"(i) is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the 'election year'),

"(ii) was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

"(iii) is a resident of the United States under clause (ii) of paragraph (1)(A) with respect to the calendar year immediately following the election year, and

"(iv) is both—

"(I) present in the United States for a period of at least 31 consecutive days in the election year, and

"(II) present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the 'testing period') for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

"(B) An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

"(C) An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for the portion of the election year which begins on the 1st day of the earliest testing period during such year with respect to which the individual meets the requirements of clause (iv) of subparagraph (A).

"(D) The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual's presence in the United States under this paragraph.

"(E) An election under subparagraph (B) shall be made on the individual's tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

"(F) An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary."

(5)(A) Section 7701(b)(4)(A) (defining exempt individual) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or" and by adding after clause (iii) the following new clause:

"(iv) a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274(k)(2)."

(B) The amendments made by this paragraph shall apply to periods after the date of the enactment of this Act.

SEC. 1811. AMENDMENTS RELATED TO REPORTING, PENALTY, AND OTHER PROVISIONS.

(a) AMENDMENTS RELATED TO SECTION 145 OF THE ACT.—

(1) Section 6050H (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end thereof the following new subsection:

"(g) SPECIAL RULES FOR COOPERATIVE HOUSING CORPORATIONS.—For purposes of subsection (a), an amount received by a cooperative housing corporation from a tenant-stockholder shall be deemed to be interest received on a mortgage in the course of a trade or business engaged in by such corporation, to the extent of the tenant-stockholder's proportionate share of interest described in section 216(a)(2). Terms used in the preceding sentence shall have the same meanings as when used in section 216."

(2) Paragraph (2) of section 145(d) of the Tax Reform Act of 1984 is amended by striking out "section 6652" and inserting in lieu thereof "section 6676".

(b) AMENDMENTS RELATED TO SECTION 149 OF THE ACT.—

(1) RETURN OF PARTNERSHIP INCOME.—

(A) IN GENERAL.—Section 6031 (relating to return of partnership income) is amended—

(i) by inserting "or who holds an interest in such partnership as a nominee for another person" in subsection (b) after "who is a partner", and

(ii) by adding at the end thereof, the following new subsection:

"(c) NOMINEE REPORTING.—Any person who holds an interest in a partnership as a nominee for another person—

"(1) shall furnish to the partnership, in the manner prescribed by the Secretary, the name and address of such other person, and any other information for such taxable year as the Secretary may by form and regulation prescribe, and

"(2) shall furnish in the manner prescribed by the Secretary such other person the information provided by such partnership under subsection (b)."

(B) EFFECTIVE DATE.—The amendments made by this subsection shall apply to partnership taxable years beginning after the date of the enactment of this Act.

(2) RETURNS RELATING TO CERTAIN PARTNERSHIP INTERESTS.—Paragraph (2) of section 6050K(c) (relating to requirement that transferor notify partnership) is amended by striking out "this subsection" and inserting in lieu thereof "this section".

(c) AMENDMENTS RELATED TO SECTION 150 OF THE ACT.—

(1) Paragraph (3) of section 6678(a) (relating to failure to furnish certain statements) is amended by striking out "or" at the end of subparagraph (E), by adding "or" at the end of subparagraph (F), and by inserting after subparagraph (F) the following new subparagraph:

"(G) section 6045(d) (relating to statements required in the case of certain substitute payments),".

(2) Clause (ii) of section 6652(a)(3)(A) (relating to penalty in the case of intentional disregard) is amended by inserting "(other than by subsection (d) of such section)" after "section 6045".

(d) AMENDMENT RELATED TO SECTION 155 OF THE ACT.—Section 6660 (relating to addition of tax in the case of valuation understatement for purposes of estate or gift taxes) is amended by adding at the end thereof the following new subsection:

"(f) UNDERPAYMENT DEFINED.—For purposes of this section, the term 'underpayment' has the meaning given to such term by section 6653(c)(1)."

(e) AMENDMENT RELATED TO SECTION 157 OF THE ACT.—Paragraph (3) of section 7502(e) is amended by striking out "the tax" and inserting in lieu thereof "any tax".

SEC. 1812. AMENDMENTS RELATED TO MISCELLANEOUS PROVISIONS.

(a) AMENDMENTS RELATED TO SECTION 171 OF THE ACT.—

(1) Subsection (a) of section 111 (relating to recovery of tax benefit items) is amended by striking out "did not reduce income subject to tax" and inserting in lieu thereof "did not reduce the amount of tax imposed by this chapter".

(2) Subsection (c) of section 111 (relating to treatment of carryovers) is amended by striking out "reducing income subject to tax or reducing tax imposed by this chapter, as the case may be" and inserting in lieu thereof "reducing tax imposed by this chapter".

(3) Paragraph (12) of section 381(c) (relating to recovery of bad debts, prior taxes, or delinquency amounts) is amended to read as follows:

"(12) RECOVERY OF TAX BENEFIT ITEMS.—If the acquiring corporation is entitled to the recovery of any amounts previously deducted by (or allowable as credits to) the distributor or transferor corporation, the acquiring corporation shall succeed to the treatment under section 111 which would apply to such amounts in the hands of the distributor or transferor corporation."

(4) Paragraph (2) of section 1351(d) is amended by striking out "relating to recovery of bad debts, etc." and inserting in lieu thereof "relating to recovery of tax benefit items".

(5) Paragraph (3) of section 1398(g) is amended to read as follows:

"(3) RECOVERY OF TAX BENEFIT ITEMS.—Any amount to which section 111 (relating to recovery of tax benefit items) applies."

(b) AMENDMENTS RELATED TO SECTION 172 OF THE ACT.—

(1) COORDINATION OF SECTION 7872 WITH TAXES ON PRIVATE FOUNDATIONS.—Subparagraph (B) of section 4941(d)(2) (defining self-dealing) is amended by striking out "without interest or other charge" and inserting in lieu thereof "without interest or other charge (determined without regard to section 7872)".

(2) COORDINATION WITH WITHHOLDING.—Paragraph (9) of section 7872(f) (relating to no withholding) is amended to read as follows:

"(9) NO WITHHOLDING.—No amount shall be withheld under chapter 24 with respect to—

"(A) any amount treated as transferred or retransferred under subsection (a), and

"(B) any amount treated as received under subsection (b)."

(3) DEFINITION OF DEMAND LOAN.—Paragraph (5) of section 7872(f) (defining demand loan) is amended to read as follows:

"(5) DEMAND LOAN.—The term 'demand loan' means any loan which is payable in full at any time on the demand of the lender. Such term also includes (for purposes other than determining the applicable Federal rate under paragraph (2)) any loan if the benefits of the interest arrangements of such loan are not transferable and are conditioned on the future performance of substantial services by an individual. To the extent provided in regulations, such term also includes any loan with an indefinite maturity."

(4) CLARIFICATION OF APPLICABLE FEDERAL RATE.—Subparagraph (B) of section 7872(f)(2) (defining applicable Federal rate) is amended by inserting ", compounded semiannually" immediately before the period at the end thereof.

(5) CERTAIN ISRAEL BONDS NOT SUBJECT TO RULES RELATING TO BELOW-MARKET LOANS.—Section 7872 of the Internal Revenue Code of 1954 (relating to treatment of loans with below-market interest rates) shall not apply to any obligation issued by Israel if—

(A) the obligation is payable in United States dollars, and

(B) the obligation bears interest at an annual rate of not less than 4 percent.

(c) AMENDMENTS RELATED TO SECTION 174 OF THE ACT.—

(1) TREATMENT OF FOREIGN PERSONS.—Subsection (a) of section 267 is amended by adding at the end thereof the following new paragraph:

"(3) PAYMENTS TO FOREIGN PERSONS.—The Secretary shall by regulations apply the matching principle of paragraph (2) in cases in which the person to whom the payment is to be made is not a United States person."

(2) TREATMENT OF CERTAIN SALES OF INVENTORY EXPANDED.—Subparagraph (B) of section 267(f)(3) (relating to loss deferral rules not to apply in certain cases) is amended by inserting "(or persons described in subsection (b)(10))" after "same controlled group".

(3) TREATMENT OF CERTAIN RELATED PARTNERSHIPS.—

(A) Effective with respect to sales or exchanges after September 27, 1985, paragraphs (1)(A) and (2)(A) of section 707(b) (relating to certain sales or exchanges of property with respect to controlled partnerships) are each amended by striking out "a partner" and inserting in lieu thereof "a person".

(B) Paragraph (1) of section 707(b) is amended by adding at the end thereof the following new sentence: "For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b)."

(C) Subsection (e) of section 267 is amended by adding at the end thereof the following new paragraph:

"(6) CROSS REFERENCE.—

"For additional rules relating to partnerships, see section 707(b)."

(4) CLERICAL AMENDMENTS.—

(A) Paragraph (12) of section 267(b) (defining related persons) is amended by striking out "same persons owns" and inserting in lieu thereof "same persons own".

(B) Subparagraph (B) of section 178(b)(2) (defining related persons) is amended by inserting before the period "and subsection (f)(1)(A) of such section shall not apply".

(C) Clause (ii) of section 936(h)(3)(D) (defining related person) is amended to read as follows:

"(ii) SPECIAL RULE.—For purposes of clause (i), section 267(b) and section 707(b)(1) shall be applied by substituting '10 percent' for '50 percent'."

(5) EXCEPTION FOR CERTAIN INDEBTEDNESS.—Clause (i) of section 174(c)(3)(A) of the Tax Reform Act of 1984 shall be applied by substituting "December 31, 1983" for "September 29, 1983" in the case of indebtedness which matures on January 1, 1999, the payments on which from January 1989 through November 1993 equal U/L plus $77,600, the payments on which from December 1993 to maturity equal U/L plus $50,100, and which accrued interest at 13.75 percent through December 31, 1989.

(d) AMENDMENTS RELATED TO SECTION 177 OF THE ACT.—

(1) CLARIFICATION OF TREATMENT OF DIVIDENDS PAID BY FEDERAL HOME LOAN BANKS.—

(A) Subparagraph (B) of section 246(a)(2) (relating to certain dividends of Federal home loan banks) is amended—

(i) by striking out "For purposes of subparagraph (A), in" and inserting in lieu thereof "In", and

(ii) by striking out subclause (II) of clause (i) and inserting in lieu thereof the following:

"(II) which were not previously treated as distributed under subparagraph (A) or this subparagraph, bears to".

(B) Paragraph (2) of section 246(a) (relating to subsection not to apply to certain dividends of Federal Home Loan Banks) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) COORDINATION WITH SECTION 243.—To the extent that paragraph (1) does not apply to any dividend by reason of subparagraph (A) or (B) of this paragraph, the requirement contained in section 243(a) that the corporation paying the dividend be subject to taxation under this chapter shall not apply."

(C) Subparagraph (D) of section 246(a)(2) (as redesignated by subparagraph (B)) is amended by adding at the end thereof the following new clause:

"(iv) EARNINGS AND PROFITS.—The earnings and profits of any FHLB for any taxable year shall be treated as equal to the sum of—

"(I) any dividends received by the FHLB from the FHLMC during such taxable year, and

"(II) the total earnings and profits (determined without regard to dividends described in subclause (I)) of the FHLB as reported in its annual financial statement prepared in accordance with section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440)."

(2) CLARIFICATION OF EFFECTIVE DATE.—Paragraph (4) of section 177(d) of the Tax Reform Act of 1984 (relating to effective dates) is amended to read as follows:

"(4) CLARIFICATION OF EARNINGS AND PROFITS OF FEDERAL HOME LOAN MORTGAGE CORPORATION.—

"(A) TREATMENT OF DISTRIBUTION OF PREFERRED STOCK, ETC.—For purposes of the Internal Revenue Code of 1954, the distribution of preferred stock by the Federal Home Loan Mortgage Corporation during December of 1984, and the other distributions of such stock by Federal Home Loan Banks during January of 1985, shall be treated as if they were distributions of money equal to the fair market value of the stock on the date of the distribution by the Federal Home Loan Banks (and such stock shall be treated as if it were purchased with the money treated as so distributed). No deduction shall be allowed under section 243 of the Internal Revenue Code of 1954 with respect to any dividend paid by the Federal Home Loan Mortgage Corporation out of earnings and profits accumulated before January 1, 1985.

"(B) SECTION 246(a) NOT TO APPLY TO DISTRIBUTIONS OUT OF EARNINGS AND PROFITS ACCUMULATED DURING 1985.—Subsection (a) of section 246 of the Internal Revenue Code of 1954 shall not apply to any dividend paid by the Federal Home Loan Mortgage Corporation during 1985 out of earnings and profits accumulated after December 31, 1984."

(e) AMENDMENTS RELATED TO SECTION 179 OF THE ACT.—

(1) CLARIFICATION OF DEFINITION OF PASSENGER AUTOMOBILE.—

(A) SECTION 280F.—Clause (ii) of section 280F(d)(5)(A) (defining passenger automobile) is amended by striking out "gross vehicle weight" and inserting in lieu thereof "unloaded gross vehicle weight".

(B) GAS GUZZLER TAX.—

(i) Clause (ii) of section 4064(b)(1)(A) (defining passenger automobile) is amended by striking out "gross vehicle weight" and inserting in lieu thereof "unloaded gross vehicle weight".

(ii) Paragraph (5) of section 4064(b) (defining manufacturer) is amended to read as follows:

"(5) MANUFACTURER.—

"(A) IN GENERAL.—The term 'manufacturer' includes a producer or importer.

"(B) EXCEPTION FOR CERTAIN SMALL MANUFACTURERS.—A person shall not be treated as the manufacturer of any automobile if—

"(i) such person would (but for this subparagraph) be so treated solely by reason of lengthening an existing automobile, and

"(ii) such person is a small manufacturer (as defined in subsection (d)(4)) for the model year in which such lengthening occurs."

(iii) The amendments made by clauses (i) and (ii) shall take effect as if included in the amendments made by section 201 of Public Law 95-618; except that the amendment made by clause (i) shall not apply to any station wagon if—

(I) such station wagon is originally equipped with more than 6 seat belts,

(II) such station wagon was manufactured before November 1, 1985, and

(III) such station wagon is of the 1985 or 1986 model year.

(C) TRUCKS AND VANS.—Subparagraph (A) of section 280F(d)(5) is amended by adding at the end thereof the following new sentence:

"In the case of a truck or van, clause (ii) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'."

(2) DEDUCTIONS OF EMPLOYEE FOR USE OF LISTED PROPERTY.—Subparagraph (A) of section 280F(d)(3) (relating to deductions of employee) is amended by striking out "recovery deduction allowable to the employee" and inserting in lieu thereof "recovery deduction allowable to the employee (or the amount of any deduction allowable to the employee for rentals or other payments under a lease of listed property)".

(3) TREATMENT OF CERTAIN COMPUTERS.—Subparagraph (B) of section 280F(d)(4) (relating to exception for certain computers) is amended by striking out "at a regular business establishment" and inserting in lieu thereof "at a regular business establishment and owned or leased by the person operating such establishment".

(4) EXCEPTION FOR PROPERTY USED IN BUSINESS OF TRANSPORTING PERSONS OR PROPERTY.—Paragraph (4) of section 280F(d) (defining listed property) is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION FOR PROPERTY USED IN BUSINESS OF TRANSPORTING PERSONS OR PROPERTY.—Except to the extent provided in regulations, clause (ii) of subparagraph (A) shall not apply to any property substantially all of the use of which is in a trade or business of providing to unrelated persons services consisting of the transportation of persons or property for compensation or hire."

(5) CLERICAL AMENDMENT.—Paragraph (2) of section 280F(d) (relating to subsequent depreciation deductions reduced for deductions allocable to personal use) is amended by striking out "is not use described in" and inserting in lieu thereof "is use described in".

CHAPTER 2—AMENDMENTS RELATED TO TITLE II OF THE ACT

SEC. 1821. AMENDMENTS RELATED TO SECTION 211 OF THE ACT.

(a) CERTAIN AMOUNTS NOT LESS THAN SURRENDER VALUE OF CONTRACT.—Subsection (c) of section 807 (relating to rules for certain reserves) is amended by adding at the end thereof the following new sentence: "In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract."

(b) CLARIFICATION OF DEFINITION OF EXCESS INTEREST.—Subparagraph (B) of section 808(d)(1) (defining excess interest) is amended to read as follows:

"(B) in excess of interest determined at the prevailing State assumed rate for such contract."

(c) COORDINATION OF 1984 FRESH-START ADJUSTMENT WITH CERTAIN ACCELERATIONS OF POLICYHOLDER DIVIDENDS DEDUCTIONS.—Section 808 (relating to policyholder dividends deduction) is amended by adding at the end thereof the following new subsection:

"(f) COORDINATION OF 1984 FRESH-START ADJUSTMENT WITH ACCELERATION OF POLICYHOLDER DIVIDENDS DEDUCTION THROUGH CHANGE IN BUSINESS PRACTICE.—

"(1) IN GENERAL.—The amount determined under paragraph (1) of subsection (c) for the year of change shall (before any reduction under paragraph (2) of subsection (c)) be reduced by so much of the accelerated policyholder dividends deduction for such year as does not exceed the 1984 fresh-start adjustment for policyholder dividends (to the extent such adjustment was not previously taken into account under this subsection).

"(2) YEAR OF CHANGE.—For purposes of this subsection, the term 'year of change' means the taxable year in which the change in business practices which results in the accelerated policyholder dividends deduction takes effect.

"(3) ACCELERATED POLICYHOLDER DIVIDENDS DEDUCTION DEFINED.—For purposes of this subsection, the term 'accelerated policyholder dividends deduction' means the amount which (but for this subsection) would be determined for the taxable year under paragraph (1) of subsection (c) but which would have been determined (under such paragraph) for a later taxable year under the business practices of the taxpayer as in effect at the close of the preceding taxable year.

"(4) 1984 FRESH-START ADJUSTMENT FOR POLICYHOLDER DIVIDENDS.—For purposes of this subsection, the term '1984 fresh-start adjustment for policyholder dividends' means the amounts held as of December 31, 1983, by the taxpayer as reserves for dividends to policyholders under section 811(b) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) other than for dividends which accrued before January 1, 1984. Such amounts shall be properly reduced to reflect the amount of previously nondeductible policyholder dividends (as determined under section 809(f) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984).

"(5) SEPARATE APPLICATION WITH RESPECT TO LINES OF BUSINESS.—This subsection shall be applied separately with respect to each line of business of the taxpayer.

"(6) SUBSECTION NOT TO APPLY TO MERE CHANGE IN DIVIDEND AMOUNT.—This subsection shall not apply to a mere change in the amount of policyholder dividends.

"(7) SUBSECTION NOT TO APPLY TO POLICIES ISSUED AFTER DECEMBER 31, 1983.—

"(A) IN GENERAL.—This subsection shall not apply to any policyholder dividend paid or accrued with respect to a policy issued after December 31, 1983.

"(B) EXCHANGES OF SUBSTANTIALLY SIMILAR POLICIES.—For purposes of subparagraph (A), any policy issued after December 31, 1983, in exchange for a substantially similar policy issued on or before such date shall be treated as issued before January 1, 1984. A similar rule shall apply in the case of a series of exchanges.

"(8) SUBSECTION TO APPLY TO POLICIES PROVIDED UNDER EMPLOYEE BENEFIT PLANS.—This subsection shall not apply to any policyholder dividend paid or accrued with respect to a group policy issued in connection with a plan to provide welfare benefits to employees (within the meaning of section 419(e)(2))."

(d) CLARIFICATION OF EQUITY BASE.—Paragraph (2) of section 809(b) (defining equity base) is amended by adding at the end thereof the following new sentence: "No item shall be taken into account more than once in determining equity base."

(e) DEFINITION OF 50 LARGEST STOCK COMPANIES.—

(1) IN GENERAL.—Subparagraph (C) of section 809(d)(4) (defining 50 largest stock companies) is amended by striking out the last sentence and inserting in lieu thereof the following:

"the Secretary—

"(i) shall, for purposes of determining the base period stock earnings rate, exclude from the group determined under the preceding sentence any company which had a negative equity base at any time during 1981, 1982, or 1983,

"(ii) shall exclude from such group for any calendar year any company which has a negative equity base, and

"(iii) may by regulations exclude any other company which otherwise would have been included in such group if the inclusion of the excluded company or companies would, by reason of the small equity base of such company, seriously distort the stock earnings rate.

The aggregate number of companies excluded by the Secretary under clause (iii) shall not exceed the excess of 2 over the number of companies excluded under clause (ii)."

"(2) ONLY DOMESTIC COMPANIES TAKEN INTO ACCOUNT.—Section 809 is amended—

"(A) by striking out "largest stock life insurance companies" in subsection (d)(4)(C) and inserting in lieu thereof "largest domestic stock life insurance companies", and

"(B) by striking out "mutual life insurance companies" in subsection (e)(1) and inserting in lieu thereof "domestic mutual life insurance companies".

(f) CLARIFICATION OF STATEMENT GAIN OR LOSS FROM OPERATIONS.—Paragraph (1) of section 809(g) (defining statement gain or loss from operations) is amended by striking out so much of such paragraph as precedes subparagraph (B) and inserting in lieu thereof the following:

"(1) STATEMENT GAIN OR LOSS FROM OPERATIONS.—The term 'statement gain or loss from operations' means the net gain or loss from operations required to be set forth in the annual statement, determined without regard to Federal income taxes, and—

"(A) determined by substituting for the amount shown for policyholder dividends the amount of deduction for policyholder dividends determined under section 808 (without regard to section 808(c)(2)),".

(g) DIFFERENTIAL EARNINGS RATE WHICH MAY BE USED FOR PURPOSES OF ESTIMATED TAX PAYMENTS.—Subsection (c) of section 809 (defining differential earnings rate) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH ESTIMATED TAX PAYMENTS.—For purposes of applying section 6655 with respect to any installment of estimated tax, the amount of tax shall be determined by using the lesser of—

"(A) the differential earnings rate of the second tax year preceding the taxable year for which the installment is made, or

"(B) the differential earnings rate for the taxable year for which the installment is made."

(h) RECOMPUTATION OF DIFFERENTIAL EARNINGS AMOUNT NOT TAKEN INTO ACCOUNT FOR PURPOSES OF ESTIMATED TAX.—Subsection (f) of section 809 (relating to recomputation in subsequent year) is amended by adding at the end thereof the following new paragraph:

"(5) SUBSECTION NOT TO APPLY FOR PURPOSES OF ESTIMATED TAX.—Section 6655 shall be applied to any taxable year without regard to any adjustments under this subsection for such year."

(i) AMENDMENTS RELATED TO PRORATION FORMULAS.—

(1) Paragraph (2) of section 812(b) is amended—

(A) by striking out "the prevailing State assumed rate" in subparagraph (A) and inserting in lieu thereof "the prevailing State assumed rate or, where such rate is not used, another appropriate rate",

(B) by striking out "and" at the end of subparagraph (B),

(C) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and", and

(D) by adding at the end thereof the following new subparagraph:

"(D) interest on amounts left on deposit with the company."

(2) Subparagraph (B) of section 812(b)(3) (relating to gross investment income's proportionate share of policyholder dividends) is amended—

(A) by striking out "(including tax-exempt interest)" in clause (ii), and

(B) by adding at the end thereof the following new sentence:

"For purposes of subparagraph (B)(ii), life insurance gross income shall be determined by including tax-exempt interest and by applying section 807(a)(2)(B) as if it did not contain clause (i) thereof."

(3) Subsection (c) of section 812 (defining net investment income) is amended to read as follows:

"(c) NET INVESTMENT INCOME.—For purposes of this section, the term 'net investment income' means—

"(1) except as provided in paragraph (2), 90 percent of gross investment income; or

"(2) in the case of gross investment income attributable to assets held in segregated asset accounts under variable contracts, 95 percent of gross investment income."

(4) Section 812 is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF INTEREST PARTIALLY TAX-EXEMPT UNDER SECTION 133.—For purposes of this section and subsections (a) and (b) of section 807, the terms 'gross investment income' and 'tax-exempt interest' shall not include any interest received with respect to a securities acquisition loan (as defined in section 133(b)). Such interest shall not be included in life insurance gross income for purposes of subsection (b)(3)."

(j) TREATMENT OF FOREIGN LIFE INSURANCE COMPANIES.—Paragraph (1) of section 813(a) (relating to adjustment where surplus held in United States is less than specified minimum) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall be applied before computing the amount of the special life insurance company deduction and the small life insurance company deduction, and any increase under the preceding sentence shall be treated as gross investment income."

(k) TREATMENT OF CERTAIN DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT.—

(1) Subsection (f) of section 815 (relating to other rules applicable to policyholders surplus account continued) is amended by striking out "section 6501(c)(6)" and inserting in lieu thereof "sections 819(b), 6501(c)(6)".

(2) Subsection (a) of section 815 is amended by adding at the end thereof the following new sentence:

"For purposes of the preceding sentence, the term 'indirect distribution' shall not include any bona fide loan with arms-length terms and conditions."

(3) In the case of any loan made before March 1, 1986 (other than a loan which is renegotiated, extended, renewed, or revised after February 28, 1986), which does not meet the requirements of the last sentence of section 815(a) of the Internal Revenue Code of 1954 (as added by paragraph (2)), the amount of the indirect distribution for purposes of such section 815(a) shall be the forgone interest on the loan (determined by using the lowest rate which would have met the arms-length requirements of such sentence for such a loan).

(l) TREATMENT OF DEFICIENCY RESERVES.—Section 816 (defining life insurance company) is amended by adding at the end thereof the following new subsection:

"(h) TREATMENT OF DEFICIENCY RESERVES.—For purposes of this section and section 813(a)(4)(B), the terms 'life insurance reserves' and 'total reserves' shall not include deficiency reserves."

(m) TREATMENT OF CERTAIN NONDIVERSIFIED CONTRACTS.—

(1) Subsection (h) of section 817 (relating to treatment of certain nondiversified contracts) is amended by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

"(3) SPECIAL RULE FOR INVESTMENTS IN UNITED STATES OBLIGATIONS.—To the extent that any segregated asset account with respect to a variable life insurance contract is invested in securities issued by the United States Treasury, the investments made by such account shall be treated as adequately diversified for purposes of paragraph (1).

"(4) LOOK-THROUGH IN CERTAIN CASES.—For purposes of this subsection, if all of the beneficial interests in a regulated investment company or in a trust are held by 1 or more—

"(A) insurance companies (or affiliated companies) in their general account or in segregated asset accounts, or

"(B) fund managers (or affiliated companies) in connection with the creation or management of the regulated investment company or trust,

the diversification requirements of paragraph (1) shall be applied by taking into account the assets held by such regulated investment company or trust.

"(5) INDEPENDENT INVESTMENT ADVISORS PERMITTED.—Nothing in this subsection shall be construed as prohibiting the use of independent investment advisors."

(2) Paragraph (1) of section 817(h) is amended by striking out the last sentence.

(n) TREATMENT OF CERTAIN DEFERRED COMPENSATION PLANS.—Subparagraph (A) of section 818(a)(6) (defining pension plan contract) is amended to read as follows:

"(A) a governmental plan (within the meaning of section 414(d)) or an eligible State deferred compensation plan (within the meaning of section 457(b)), or".

(o) DIVIDENDS WITHIN AFFILIATED GROUP.—Subsection (e) of section 818 (relating to special rule for consolidated returns) is amended to read as follows:

"(e) SPECIAL RULES FOR CONSOLIDATED RETURNS.—

"(1) ITEMS OF COMPANIES OTHER THAN LIFE INSURANCE COMPANIES.—If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

"(2) DIVIDENDS WITHIN GROUP.—In the case of a life insurance company filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group was not filing a consolidated return."

(p) TREATMENT OF DIVIDENDS FROM SUBSIDIARIES, ETC.—Paragraph (4) of section 805(a) (relating to dividends received by company) is amended by redesignating subparagraph (D) as subparagraph (E) and by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraphs:

"(C) 100 PERCENT DIVIDEND.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—Except as provided in clause (ii), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

"(ii) TREATMENT OF DIVIDENDS FROM NONINSURANCE COMPANIES.—The term '100 percent dividend' does not include any distribution by a corporation which is not an insurance company to the extent such distribution is out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this clause as if it applies to distributions by all corporations including insurance companies).

"(D) SPECIAL RULES FOR CERTAIN DIVIDENDS FROM INSURANCE COMPANIES.—

"(i) IN GENERAL.—In the case of any 100 percent dividend paid to any life insurance company out of the earnings and profits for any taxable year beginning after December 31, 1983, of another life insurance company if—

"(I) the paying company's share determined under section 812 for such taxable year, exceeds

"(II) the receiving company's share determined under section 812 for its taxable year in which the dividend is received or accrued,

the deduction allowed under section 243, 244, or 245(b) (as the case may be) shall be reduced as provided in clause (ii).

"(ii) AMOUNT OF REDUCTION.—The reduction under this clause for a dividend is an amount equal to—

"(I) the portion of such dividend attributable to prorated amounts, multiplied by

"(II) the percentage obtained by subtracting the share described in subclause (II) of clause (i) from the share described in subclause (I) of such clause.

"(iii) PRORATED AMOUNTS.—For purposes of this subparagraph, the term 'prorated amounts' means tax-exempt interest and dividends other than 100 percent dividends.

"(iv) PORTION OF DIVIDEND ATTRIBUTABLE TO PRORATED AMOUNTS.—For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

"(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits for taxable years beginning after December 31, 1983, attributable to prorated amounts (to the extent thereof), and

"(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

"(v) SUBPARAGRAPH TO APPLY TO DIVIDENDS FROM OTHER INSURANCE COMPANIES.—Rules similar to the rules of this subsection shall apply in the case of 100 percent dividends paid by an insurance company which is not a life insurance company."

(q) SPECIAL RULE FOR APPLICATION OF HIGH SURPLUS MUTUAL RULES.—In the case of any mutual life insurance company—

(1) which was incorporated on February 23, 1888, and

(2) which acquired a stock subsidiary during 1982,

the amount of such company's excess equity base for purposes of section 809(i) of such Code shall, notwithstanding the last sentence of section 809(i)(2)(D), equal $175,000,000.

(r) CLERICAL AMENDMENT.—Paragraph (3) of section 809(f) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (c)(1)(B)".

(s) AMENDMENTS RELATED TO SECTION 807.—Subparagraph (C) of section 807(d)(5) is amended by adding at the end thereof the following: "When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner's standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary."

(t) AMENDMENT RELATED TO SECTION 817.—

(1) Subsection (d) of section 817 is amended by adding at the end thereof the following new sentence: "Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company's general account."

(2) The amendment made by paragraph (1) shall apply—

(A) to contracts issued after December 31, 1986, and

(B) to contracts issued before January 1, 1987, if such contract was treated as a variable contract on the taxpayer's return.

SEC. 1822. AMENDMENTS RELATED TO SECTION 216 OF THE ACT.

(a) CLARIFICATION OF APPLICATION OF 10-YEAR SPREAD.—Subparagraph (C) of section 216(b)(3) of the Tax Reform Act of 1984 (relating to 10-year spread inapplicable where no 10-year spread under prior law) is amended by striking out "was required to have been taken into account" and inserting in lieu thereof "would have been required to be taken into account".

(b) TREATMENT OF CERTAIN ELECTIONS UNDER SECTION 818(c).—Subparagraph (B) of section 216(b)(4) of the Tax Reform Act of 1984 (relating to the elections under section 818(c) after September 27, 1983, not taken into account) is amended by striking out "Subparagraph (A)" and inserting in lieu thereof "Paragraph (3) and subparagraph (A) of this paragraph".

(c) ELECTION NOT TO HAVE RESERVES RECOMPUTED.—

(1) Clause (ii) of section 216(c)(2)(A) of the Tax Reform Act of 1984 (relating to election with respect to contracts issued after 1983 and before 1989) is amended by striking out "$3,000,000" and inserting in lieu thereof "$3,000,000 (determined with regard to this paragraph)".

(2) Subparagraph (A) of section 216(c)(2) of the Tax Reform Act of 1984 is amended by striking out "be equal to" and all that follows down through the period at the end thereof and inserting in lieu thereof the following: "be equal to the greater of the statutory reserve for such contract (adjusted as provided in subparagraph (B)) or the net surrender value of such contract (as defined in section 807(e)(1) of the Internal Revenue Code of 1954)."

(3) Subparagraph (B) of section 216(c)(2) of the Tax Reform Act of 1984 is amended—

(A) by striking out "statutory reserves" and inserting in lieu thereof "opening and closing statutory reserves", and

(B) by striking out "under section 805(c)(1) of such Code" and inserting in lieu thereof "under the principles of section 805(c)(1) of such Code".

(d) SPECIAL RULE WHERE REINSURER NOT USING CALENDAR YEAR AS TAXABLE YEAR.—Subparagraph (A) of section 216(b)(3) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following: "For purposes of this subparagraph, if the reinsurer's taxable year is not a calendar year, the first day of the reinsurer's first taxable year beginning after December 31, 1983, shall be substituted for 'January 1, 1984' each place it appears."

(e) CLARIFICATION OF EFFECT OF FRESH START ON EARNINGS AND PROFITS.—Paragraph (1) of section 216(b) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new sentences: "The preceding sentence shall apply for purposes of computing the earnings and profits of any insurance company for its 1st taxable year beginning in 1984. The preceding sentence shall be applied by substituting '1985' for '1984' in the case of an insurance company which is a member of a controlled group (as defined in section 806(d)(3)), the common parent of which is

"(A) a company having its principal place of business in Alabama and incorporated in Delaware on November 29, 1979, or

"(B) a company having its principal place of business in Houston, Texas, and incorporated in Delaware on June 9, 1947."

(f) TREATMENT OF SECTION 818(c) ELECTIONS MADE BY CERTAIN ACQUIRED COMPANIES.—Paragraph (4) of section 216(b) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subparagraph:

"(C) SECTION 818(C) ELECTIONS MADE BY CERTAIN ACQUIRED COMPANIES.—

"(i) IN GENERAL.—If the case of any corporation—

"(I) which made an election under such section 818(c) before September 28, 1983, and

"(II) which was acquired in a qualified stock purchase (as defined in section 338(c) of the Internal Revenue Code of 1954) before December 31, 1983,

the fact that such corporation is treated as a new corporation under section 338 of such Code shall not result in the election described in clause (i) not applying to such new corporation.

"(ii) TIME FOR MAKING SECTION 818(C) OR 338 ELECTION.—In the case of any corporation described in clause (i), the time for making an election under section 818(c) of such Code (with respect to the first taxable year of the corporation beginning in 1983 and ending after September 28, 1983), or making an election under section 338 of such Code with respect to the qualified stock purchase described in clause (i)(II), shall not expire before the close of the 60th day after the date of the enactment of the Tax Reform Act of 1986.

"(iii) STATUTE OF LIMITATIONS.—In the case of any such election under section 818(c) or 338 of such Code which would not have been timely made but for clause (ii), the period for assessing any deficiency attributable to such election (or for filing claim for credit or refund of any overpayment attributable to such election) shall not expire before the date 2 years after the date of the enactment of this Act.

SEC. 1823. AMENDMENT RELATED TO SECTION 217 OF THE ACT.

Subsection (n) of section 217 of the Tax Reform Act of 1984 (relating to special rule for companies using net level reserve method for noncancellable accident and health insurance contracts) is amended to read as follows:

"(n) SPECIAL RULE FOR COMPANIES USING NET LEVEL RESERVE METHOD FOR NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE CONTRACTS.—A company shall be treated as meeting the requirements of section 807(d)(3)(A)(iii) of the Internal Revenue Code of 1954, as amended by this Act, with respect to any directly-written noncancellable accident and health insurance contract (whether under existing or new plans of insurance) for any taxable year if—

"(1) such company—

"(A) was using the net level reserve method to compute at least 99 percent of its statutory reserves on such contracts as of December 31, 1982, and

"(B) received more than half its total direct premiums in 1982 from directly-written noncancellable accident and health insurance,

"(2) after December 31, 1983, and through such taxable year, such company has continuously used the net level reserve method for computing at least 99 percent of its tax and statutory reserves on such contracts, and

"(3) for any such contract for which the company does not use the net level reserve method, such company uses the same method for computing tax reserves as such company uses for computing its statutory reserves."

SEC. 1824. AMENDMENT RELATED TO SECTION 218 OF THE ACT.

Section 218 of the Tax Reform Act of 1984 is hereby repealed.

SEC. 1825. AMENDMENTS RELATED TO SECTION 221 OF THE ACT.

(a) COMPUTATIONAL RULES.—

(1) Paragraph (1) of section 7702(e) (relating to computational rules) is amended—

(A) by striking out "shall be no earlier than" in subparagraph (B) and inserting in lieu thereof "shall be deemed to be no earlier than",

(B) by striking out "and" at the end of subparagraph (B),

(C) by redesignating subparagraph (C) as subparagraph (D) and inserting after subparagraph (B) the following new subparagraph:

"(C) the death benefits shall be deemed to be provided until the maturity date determined by taking into account subparagraph (B), and", and

(D) by striking out "the maturity date described in subparagraph (B)" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "the maturity date determined by taking into account subparagraph (B)".

(2) Subparagraph (C) of section 7702(b)(2) is amended by striking out "subparagraphs (A) and (C)" and inserting in lieu thereof "subparagraphs (A) and (D)".

(3) Section 7702(e)(1) is amended by inserting "(other than subsection (d))" after "section".

(4) Section 7702(e)(2) is amended—

(A) by striking out "and" at the end of subparagraph (A),

(B) by striking out the period at the end of subparagraph (B), and inserting in lieu thereof a comma and "and", and

(C) by adding at the end thereof the following new subparagraph:

"(C) for purposes of the cash value accumulation test, the death benefit increases may be taken into account if the contract—

"(i) has an initial death benefit of $5,000 or less and a maximum death benefit of $25,000 or less,

"(ii) provides for a fixed predetermined annual increase not to exceed 10 percent of the initial death benefit or 8 percent of the death benefit at the end of the preceding year, and

"(iii) was purchased to cover payment of burial expenses or in connection with prearranged funeral expenses.

For purposes of subparagraph (C), the initial death benefit of a contract shall be determined by treating all contracts issued to the same contract owner as 1 contract."

(b) CLARIFICATION OF SECTION 7702(f)(7).—

(1) Paragraph (7) of section 7702(f) (relating to adjustments) is amended to read as follows:

"(7) ADJUSTMENTS.—

"(A) IN GENERAL.—If there is a change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination or adjustment made under this section, there shall be proper adjustments in future determinations made under this section.

"(B) RULE FOR CERTAIN CHANGES DURING FIRST 15 YEARS.—If—

"(i) a change described in subparagraph (A) reduces benefits under the contract,

"(ii) the change occurs during the 15-year period beginning on the issue date of the contract, and

"(iii) a cash distribution is made to the policyholder as a result of such change,

section 72 (other than subsection (e)(5) thereof) shall apply to such cash distribution to the extent it does not exceed the recapture ceiling determined under subparagraph (C) or (D) (whichever applies).

"(C) RECAPTURE CEILING WHERE CHANGE OCCURS DURING FIRST 5 YEARS.—If the change referred to in subparagraph (B)(ii) occurs during the 5-year period beginning on the issue date of the contract, the recapture ceiling is—

"(i) in the case of a contract to which subsection (a)(1) applies, the excess of—

"(I) the cash surrender value of the contract, immediately before the reduction, over

"(II) the net single premium (determined under subsection (b)), immediately after the reduction, or

"(ii) in the case of a contract to which subsection (a)(2) applies, the greater of—

"(I) the excess of the aggregate premiums paid under the contract, immediately before the reduction, over the guideline premium limitation for the contract (determined under subsection (c)(2), taking into account the adjustment described in subparagraph (A)), or

"(II) the excess of the cash surrender value of the contract, immediately before the reduction, over the cash value corridor of subsection (d) (determined immediately after the reduction).

"(D) RECAPTURE CEILING WHERE CHANGE OCCURS AFTER 5TH YEAR AND BEFORE 16TH YEAR.—If the change referred to in subparagraph (B) occurs after the 5-year period referred to under subparagraph (C), the recapture ceiling is the excess of the cash surrender value of the contract, immediately before the reduction, over the cash value corridor of subsection (d) (determined immediately after the reduction and whether or not subsection (d) applies to the contract).

"(E) TREATMENT OF CERTAIN DISTRIBUTIONS MADE IN ANTICIPATION OF BENEFIT REDUCTIONS.—Under regulations prescribed by the Secretary, subparagraph (B) shall apply also to any distribution made in anticipation of a reduction in benefits under the contract. For purposes of the preceding sentence, appropriate adjustments shall be made in the provisions of subparagraphs (C) and (D); and any distribution which reduces the cash surrender value of a contract and which is made within 2 years before a reduction in benefits under the contract shall be treated as made in anticipation of such reduction."

(2) Subparagraph (A) of section 7702(f)(1) (defining premiums paid) is amended by striking out "less any other amounts received" and inserting in lieu thereof "less any excess premiums with respect to which there is a distribution described in subparagraph (B) or (E) of paragraph (7) and any other amounts received".

(c) CLARIFICATION OF TREATMENT OF CONTRACTS WHICH DO NOT MEET TEST.—Clause (ii) of section 7702(g)(1)(B) (defining income on the contract) is amended to read as follows:

"(ii) the premiums paid (as defined in subsection (f)(1)) under the contract during the taxable year."

(d) TREATMENT OF FLEXIBLE PREMIUM CONTRACTS ISSUED DURING 1984 WHICH MEET NEW REQUIREMENTS.—Subsection (b) of section 221 of the Tax Reform Act of 1984 (relating to 1-year extension of flexible premium contract provisions) is amended by adding at the end thereof the following new paragraph:

"(3) TRANSITIONAL RULE.—Any flexible premium contract issued during 1984 which meets the requirements of section 7702 of the Internal Revenue Code of 1954 (as added by this section) shall be treated as meeting the requirements of section 101(f) of such Code."

(e) TREATMENT OF CERTAIN CONTRACTS ISSUED BEFORE OCTOBER 1, 1984.—Clause (i) of section 221(d)(2)(C) of the Tax Reform Act of 1984 (relating to certain contracts issued before October 1, 1984) is amended—

(1) by striking out "in clause (i) thereof" in the material preceding subclause (I), and

(2) by striking out "any mortality charges" in subclause (I) and inserting in lieu thereof "any mortality charges and any initial excess interest guarantees".

SEC. 1826. AMENDMENTS RELATED TO SECTION 222 OF THE ACT.

(a) EXCEPTION FOR ANNUITY CONTRACTS WHICH ARE PART OF QUALIFIED PLANS.—Subsection (s) of section 72 (relating to required distributions where holder dies before entire interest is distributed) is amended by adding at the end thereof the following new paragraph:

"(5) EXCEPTION FOR ANNUITY CONTRACTS WHICH ARE PART OF QUALIFIED PLANS.—This subsection shall not apply to any annuity contract—

"(A) which is provided—

"(i) under a plan described in section 401(a) which includes a trust exempt from tax under section 501, or

"(ii) under a plan described in section 403(a),

"(B) which is described in section 403(b), or

"(C) which is an individual retirement annuity or provided under an individual retirement account or annuity."

(b) SPECIAL RULES WHERE HOLDER IS NOT INDIVIDUAL, ETC.—

(1) Subsection (s) of section 72 (relating to required distributions where holder dies before entire interest is distributed) is amended by adding at the end thereof the following new paragraphs:

"(6) SPECIAL RULE WHERE HOLDER IS CORPORATION OR OTHER NON-INDIVIDUAL.—

"(A) IN GENERAL.—For purposes of this subsection, if the holder of the contract is not an individual, the primary annuitant shall be treated as the holder of the contract.

"(B) PRIMARY ANNUITANT.—For purposes of subparagraph (A), the term 'primary annuitant' means the individual, the events in the life of whom are of primary importance in affecting the timing or amount of the payout under the contract.

"(7) TREATMENT OF CHANGES IN PRIMARY ANNUITANT WHERE HOLDER OF CONTRACT IS NOT AN INDIVIDUAL.—For purposes of this subsection, in the case of a holder of an annuity contract which is not an individual, if there is a change in a primary annuity (as defined in paragraph (6)(B)), such change shall be treated as the death of the holder."

(2) Paragraph (1) of section 72(s) is amended by striking out "the holder of such contract" each place it appears and inserting in lieu thereof "any holder of such contract".

(3) Paragraph (4) of section 72(e) (relating to amounts not received as annuities) is amended by adding at the end thereof the following new subparagraph:

"(C) TREATMENT OF TRANSFERS WITHOUT ADEQUATE CONSIDERATION.—

"(i) IN GENERAL.—If an individual who holds an annuity contract transfers it without full and adequate consideration, such individual shall be treated as receiving an amount equal to the excess of—

"(I) the cash surrender value of such contract at the time of transfer, over

"(II) the investment in such contract at such time,

under the contract as an amount not received as an annuity.

"(ii) EXCEPTION FOR CERTAIN TRANSFERS BETWEEN SPOUSES OR FORMER SPOUSES.—Clause (i) shall not apply to any transfer to which section 1041(a) (relating to transfers of property between spouses or incident to divorce) applies.

"(iii) ADJUSTMENT TO INVESTMENT IN CONTRACT OF TRANSFEREE.—If under clause (i) an amount is included in the gross income of the transferor of an annuity contract, the investment in the contract of the transferee in such contract shall be increased by the amount so included."

(4) The amendments made by this subsection shall apply to contracts issued after the date which is 6 months after the date of the enactment of this Act in taxable years ending after such date.

(c) CLARIFICATION OF EXCEPTION FOR DISTRIBUTION AFTER DEATH.—Effective with respect to distributions made after the date 6 months after the date of the enactment of this Act, subparagraph (B) of section 72(q)(2) (relating to 5-percent penalty for premature distributions from annuity contracts) is amended to read as follows:

"(B) made on or after the death of the holder (or, where the holder is not an individual, the death of the primary annuitant (as defined in subsection (s)(6)(B))),".

(d) EXCEPTION FOR ANNUITIES WHICH ARE QUALIFIED FUNDING ASSETS.—Paragraph (2) of section 72(q) (relating to 5-percent penalty for premature distributions from annuity contracts) is amended by striking out "or" at the end of subparagraph (E), by striking out the period at the end of subparagraph (F) and inserting in lieu thereof ", or", and by adding at the end thereof the following new subparagraph:

"(G) under a qualified funding asset (within the meaning of section 130(d), but without regard to whether there is a qualified assignment)."

SEC. 1827. AMENDMENTS RELATED TO SECTION 223 OF THE ACT.

(a) DETERMINATION OF COSTS IN THE CASE OF DISCRIMINATORY PLANS.—

(1) IN GENERAL.—Subparagraph (B) of section 79(d)(1) (relating to nondiscrimination requirements) is amended to read as follows:

"(B) the cost of group-term life insurance on the life of any key employee shall be the greater of—

"(i) such cost determined without regard to subsection (c), or

"(ii) such cost determined with regard to subsection (c)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years ending after the date of the enactment of this Act.

(b) CLARIFICATION OF EFFECTIVE DATE.—

(1) Subparagraph (A) of section 223(d)(2) of the Tax Reform Act of 1984 (relating to treatment of former employees in case of existing group-term insurance plans) is amended by striking out the material following clause (ii) and inserting in lieu thereof the following:

"but only with respect to an individual who attained age 55 on or before January 1, 1984, and was employed by such employer (or a predecessor employer) at any time during 1983. Such amendments also shall not apply to any employee who retired from employment on or before January 1, 1984, and who, when he retired, was covered by the plan (or a predecessor plan)."

(2) Subparagraph (C) of section 223(d)(2) of the Tax Reform Act of 1984 is amended by striking out "after December 31, 1986," and by striking out "shall not be taken into account" and inserting in lieu thereof "may, at the employer's election, be disregarded".

(3) COMPARABLE SUCCESSOR PLANS.—Paragraph (2) of section 223(d) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subparagraph:

"(D) COMPARABLE SUCCESSOR PLANS.—For purposes of subparagraph (A), a plan shall not fail to be treated as a comparable successor to a plan described in subparagraph (A)(i) with respect to any employee whose benefits do not increase under the successor plan."

(c) DEFINITION OF KEY EMPLOYEE.—Paragraph (6) of section 79(d) (defining key employee) is amended—

(1) by striking out all that follows "section 416(i)" and inserting in lieu thereof a period, and

(2) by adding at the end thereof the following new sentence: "Such term also includes any retired employee if such employee when he retired or separated from service was a key employee."

(d) SEPARATE TREATMENT OF FORMER EMPLOYEES.—Subsection (d) of section 79 (relating to nondiscrimination requirements) is amended by adding at the end thereof the following new paragraph:

"(8) TREATMENT OF FORMER EMPLOYEES.—To the extent provided in regulations, this subsection shall be applied separately with respect to former employees."

(e) COORDINATION WITH SECTION 83.—Paragraph (5) of section 83(e) is amended by striking out "the cost of".

SEC. 1828. AMENDMENT RELATED TO SECTION 224 OF THE ACT.

Paragraph (1) of section 1035(b) (defining endowment contract) is amended by striking out "subject to tax under subchapter L".

SEC. 1829. WAIVER OF INTEREST ON CERTAIN UNDERPAYMENTS OF TAX.

No interest shall be payable for any period before July 19, 1984, on any underpayment of a tax imposed by the Internal Revenue Code of 1954, to the extent such underpayment was created or increased by any provision of subtitle A of title II of the Tax Reform Act of 1984 (relating to taxation of life insurance companies).

SEC. 1830. SCOPE OF SECTION 255 OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982.

In the case of any taxable year beginning before January 1, 1982, in applying the provisions of section 255(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982, the Internal Revenue Service shall give full and complete effect to the terms of any modified coinsurance contract. The terms to be given effect within the meaning of this provision shall include, but are not limited to, the effective date and investment income rate as stated in such contract.

CHAPTER 3—AMENDMENTS RELATED TO TITLE III OF THE ACT

SEC. 1831. AMENDMENT RELATED TO SECTION 301 OF THE ACT.

Clause (iv) of section 170(b)(1)(C) (defining capital gain property) is amended by striking out "this subparagraph" and inserting in lieu thereof "this paragraph".

SEC. 1832. AMENDMENT RELATED TO SECTION 303 OF THE ACT.

Paragraph (2) of section 4940(e) (relating to requirements) is amended by striking out subparagraph (B) and the material following such subparagraph and inserting in lieu thereof the following:

"(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period."

SEC. 1833. AMENDMENT RELATED TO SECTION 305 OF THE ACT.

Section 6214(c) is amended by striking out "section 4962(b)" and inserting in lieu thereof "section 4963(b)".

SEC. 1834. AMENDMENT RELATED TO SECTION 311 OF THE ACT.

Subparagraph (A) of section 311(a)(3) of the Tax Reform Act of 1984 is amended by striking out "a State law" and inserting in lieu thereof "a State law (originally enacted on April 22, 1977)".

CHAPTER 4—AMENDMENTS RELATED TO TITLE IV OF THE ACT

SEC. 1841. AMENDMENT RELATED TO SECTION 411 OF THE ACT.

Section 6654 (relating to failure by individual to pay estimated income tax) is amended by redesignating subsections (j), (k), and (l) as subsections (k), (l), and (m), respectively, and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULES FOR NONRESIDENT ALIENS.—In the case of a nonresident alien described in section 6072(c):

"(1) PAYABLE IN 3 INSTALLMENTS.—There shall be 3 required installments for the taxable year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments under this subsection shall be determined under the following table:

"In the case of the following required installments:	The due date is:
1st	June 15
2nd	September 15
3rd	January 15 of the following taxable year.

"(3) AMOUNT OF REQUIRED INSTALLMENTS.—

"(A) FIRST REQUIRED INSTALLMENT.—In the case of the first required installment, subsection (d) shall be applied by substituting '50 percent' for '25 percent' in subsection (d)(1)(A).

"(B) DETERMINATION OF APPLICABLE PERCENTAGE.—The applicable percentage for purposes of subsection (d)(2) shall be determined under the following table:

"In the case of the following required installments:	The applicable percentage is:
1st	45
2nd	67.5
3rd	90."

SEC. 1842. AMENDMENTS RELATED TO SECTION 421 OF THE ACT.

(a) COORDINATION WITH SECTION 1041.—Section 267 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) is amended by adding at the end thereof the following new subsection:

"(g) COORDINATION WITH SECTION 1041.—Subsection (a)(1) shall not apply to any transfer described in section 1041(a) (relating to transfers of property between spouses or incident to divorce)."

(b) TREATMENT OF TRANSFERS IN TRUST WHERE LIABILITY EXCEEDS BASIS.—Section 1041 (relating to transfers of property between spouses or incident to divorce) is amended by adding at the end thereof the following new subsection:

"(e) TRANSFERS IN TRUST WHERE LIABILITY EXCEEDS BASIS.—Subsection (a) shall not apply to the transfer of property in trust to the extent that—

"(1) the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds

"(2) the total of the adjusted basis of the property transferred.

Proper adjustment shall be made under subsection (b) in the basis of the transferee in such property to take into account gain recognized by reason of the preceding sentence."

(c) TREATMENT OF CERTAIN TRANSFERS IN TRUST.—Subsection (g) of section 453B (relating to transfers between spouses, or incident to divorce) is amended by striking out "section 1041" and inserting in lieu thereof "section 1041 (other than a transfer in trust)".

(d) CLERICAL AMENDMENT.—Paragraph (17) of section 7701(a) (defining husband and wife) is amended by striking out "and 682" and inserting in lieu thereof ", 682, and 2516".

SEC. 1843. AMENDMENTS RELATED TO SECTION 422 OF THE ACT.

(a) CROSS REFERENCE.—Section 71 (relating to alimony and separate maintenance payments) is amended by adding at the end thereof the following new subsection:

"(g) CROSS REFERENCES.—

"(1) For deduction of alimony or separate maintenance payments, see section 215.

"(2) For taxable status of income of an estate or trust in the case of divorce, etc., see section 682."

(b) INSTRUMENT NOT REQUIRED TO SPECIFY ABSENCE OF LIABILITY TO MAKE PAYMENTS AFTER DEATH.—Subparagraph (D) of section 71(b)(1) (defining alimony or separate maintenance payments) is amended by striking out "(and the divorce or separation instrument states that there is no such liability)".

(c) RECOMPUTATION WHERE EXCESS FRONT-LOADING OF ALIMONY PAYMENTS.—

(1) IN GENERAL.—Subsection (f) of section 71 is amended to read as follows:

"(f) RECOMPUTATION WHERE EXCESS FRONT-LOADING OF ALIMONY PAYMENTS—

"(1) IN GENERAL.—If there are excess alimony payments—

"(A) the payor spouse shall include the amount of such excess payments in gross income for the payor spouse's taxable year beginning in the 3rd post-separation year, and

"(B) the payee spouse shall be allowed a deduction in computing adjusted gross income for the amount of such excess payments for the payee's taxable year beginning in the 3rd post-separation year.

"(2) EXCESS ALIMONY PAYMENTS.—For purposes of this subsection, the term 'excess alimony payments' mean the sum of—

"(A) the excess payments for the 1st post-separation year, and

"(B) the excess payments for the 2nd post-separation year.

"(3) EXCESS PAYMENTS FOR 1ST POST-SEPARATION YEAR.—For purposes of this subsection, the amount of the excess payments for the 1st post-separation year is the excess (if any) of—

"(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 1st post-separation year, over

"(B) the sum of—

"(i) the average of—

"(I) the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, reduced by the excess payments for the 2nd post-separation year, and

"(II) the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

"(ii) $15,000.

"(4) EXCESS PAYMENTS FOR 2ND POST-SEPARATION YEAR.—For purposes of this subsection, the amount of the excess payments for the 2nd post-separation year is the excess (if any) of—

"(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, over

"(B) the sum of—

"(i) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

"(ii) $15,000.

"(5) EXCEPTIONS.—

"(A) WHERE PAYMENT CEASES BY REASON OF DEATH OR REMARRIAGE.—Paragraph (1) shall not apply if—

"(i) either spouse dies before the close of the 3rd post-separation year, or the payee spouse remarries before the close of the 3rd post-separation year, and

"(ii) the alimony or separate maintenance payments cease by reason of such death or remarriage.

"(B) SUPPORT PAYMENTS.—For purposes of this subsection, the term 'alimony or separate maintenance payment' shall not include any payment received under a decree described in subsection (b)(2)(C).

"(C) FLUCTUATING PAYMENTS NOT WITHIN CONTROL OF PAYOR SPOUSE.—For purposes of this subsection, the term 'alimony or separate maintenance payment' shall not include any payment to the extent it is made pursuant to a continuing liability (over a period of not less than 3 years) to pay a fixed portion or portions of the income from a business or property or from compensation for employment or self-employment.

"(6) POST-SEPARATION YEARS.—For purposes of this subsection, the term '1st post-separation years' means the 1st calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies. The 2nd and 3rd post-separation years shall be the 1st and 2nd succeeding calendar years, respectively."

(2) EFFECTIVE DATES.—

"(A) IN GENERAL.—The amendment made by paragraph (1) shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 executed after December 31, 1986.

"(B) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1987.—The amendments made by paragraph (1) shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1987, but modified on or after such date if the modification expressly provides that the amendments made by paragraph (1) shall apply to such modification.

(3) TRANSITIONAL RULE.—In the case of any instrument to which the amendment made by paragraph (1) does not apply, paragraph (2) of section 71(f) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) shall apply only with respect to the first 3 post-separation years.

(d) CLERICAL AMENDMENT.—Subparagraph (B) of section 71(c)(2) (relating to treatment of certain reductions related to contingency involving child) is amended by striking out "specified in paragraph (1)" and inserting in lieu thereof "specified in subparagraph (A)".

SEC. 1844. AMENDMENTS RELATED TO SECTION 431 OF THE ACT.

(a) DEFINITION OF RELATED PERSON.—Clause (v) of section 46(c)(8)(D) is amended by striking out "clause (i)" and inserting in lieu thereof "this subparagraph".

(b) CLARIFICATION OF RECAPTURE.—

(1) Paragraph (1) of section 47(d) (relating to increases in nonqualified nonrecourse financing) is amended—

(A) by striking out "reducing the qualified investment" and inserting in lieu thereof "reducing the credit base (as defined in section 48(c)(8)(C))", and

(B) by adding at the end thereof the following new sentence: "For purposes of deter-

mining the amount of credit subject to the early disposition or cessation rules of subsection (a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base (and correspondingly reducing the qualified investment in the property) in the year in which the property was first placed in service."

(2) Subparagraph (F) of section 47(d)(3) is hereby repealed.

(3) Subparagraph (A) of section 46(c)(9) (relating to subsequent decreases in nonqualified nonrecourse financing with respect to property) is amended by striking out "additional qualified investment in" and inserting in lieu thereof "an increase in the credit base for".

(4) Clause (i) of section 47(d)(3)(E) is amended by inserting before the semicolon at the end thereof the following: "reduced by the sum of the credit recapture amounts with respect to such property for all preceding taxable years".

(5) Clause (i) of section 46(c)(9)(C) is amended by striking out "any increase in a taxpayer's qualified investment" and all that follows down through the period at the end thereof and inserting in lieu thereof the following: "any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service."

SEC. 1845. AMENDMENT RELATED TO SECTION 452 OF THE ACT.

Section 456 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subsection:

"(d) SECTION 452.—The amendment made by section 452 shall apply to products manufactured or produced after October 31, 1984."

SEC. 1846. AMENDMENTS RELATED TO SECTION 473 OF THE ACT.

Subsection (d) of section 39 (relating to transitional rules) is amended—

(1) by striking out "or 44G" in paragraph (1)(A) and inserting in lieu thereof "or 44G (as in effect before the enactment of the Tax Reform Act of 1984)", and

(2) by striking out "as so defined in section 25(b)" in paragraph (2)(B) and inserting in lieu thereof "as defined in section 26(b)".

SEC. 1847. AMENDMENTS RELATED TO SECTION 474 OF THE ACT.

(a) MINIMUM TAX AMENDMENTS.—

(1) Subparagraph (A) of section 55(c)(3) (relating to carryover and carryback of certain credits) is amended by striking out "of such limitation" and inserting in lieu thereof "of such credit allowable".

(2) Effective with respect to taxable years beginning after December 31, 1982, clause (i) of section 55(c)(2)(E) (relating to special rule for applying section 904(c)) is amended to read as follows:

"(i) the limitation of section 904(a) shall be deemed to be the amount of foreign tax credit allowable under section 27(a) in computing the regular tax for the taxable year increased by the amount of the limitation determined under subparagraph (C), and".

(b) CLERICAL AMENDMENTS.—

(1) The clause heading for clause (iii) of section 30(b)(2)(D) is amended by striking out "NEW JOBS OR WIN CREDIT" and inserting in lieu thereof "TARGETED JOBS CREDIT".

(2) Paragraph (1) of section 86(f) is amended by striking out "section 37(c)(3)(A)" and inserting in lieu thereof "section 22(c)(3)(A)".

(3) Subparagraph (C) of section 151(e)(5) is amended by striking out "section 37(e)" and inserting in lieu thereof "section 22(e)".

(4) Clause (i) of section 415(c)(3)(C) is amended by striking out "section 37(e)(3)" and inserting in lieu thereof "section 22(e)(3)".

(5) Paragraph (9) of section 422A(c) is amended by striking out "section 37(e)(3)" and inserting in lieu thereof "section 22(e)(3)".

(6) Paragraph (5) of section 48(l) is amended—

(A) by striking out "section 44C(c)" and inserting in lieu thereof "section 23(c)", and

(B) by striking out "section 44C(c)(4)(A)(viii)" and inserting in lieu thereof "section 23(c)(4)(A)(viii)".

(7) Subparagraph (E) of section 108(b)(2) is amended by striking out "section 33" and inserting in lieu thereof "section 27".

(8) Subsection (b) of section 280C is amended—

(A) by striking out "section 29" each place it appears and inserting in lieu thereof "section 28", and

(B) by striking out "section 29(b)" and inserting in lieu thereof "section 28(b)".

(9) Section 6699 is amended—

(A) by striking out "section 44G" each place it appears in subsections (a) and (c)(2)(B) and inserting in lieu thereof "section 41", and

(B) by striking out "section 44G(c)(1)(B)" in subsection (a)(4) and inserting in lieu thereof "section 41(c)(1)(B)".

(10) Subsection (a) of section 6411 is amended by striking out "or unused business credit" in the second sentence thereof and inserting in lieu thereof "unused research credit, or unused business credit".

(11) Subparagraph (A) of section 46(b)(2) is amended by striking out "48(l)(3)(A)(vii)" in the table contained in such subparagraph and inserting in lieu thereof "48(l)(3)(A)(viii)".

(12) Paragraph (1) of section 163(b) of the Tax Reform Act of 1984 is amended by inserting "(as amended by sections 211, 314, and 474 of this Act)" after "Section 6501".

(13) Section 6501 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) DEFICIENCIES ATTRIBUTABLE TO ELECTION OF CERTAIN CREDITS.—The period for assessing a deficiency attributable to any election under section 40(f) or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation)."

(14) Subsection (k) of section 6501 is amended by striking out "an investment credit carryback, or a work incentive program carryback, or a new employee credit carryback" and inserting in lieu thereof "or a credit carryback (as defined in section 6511(d)(4)(C))".

(15) Subsection (h) of section 6511 (relating to limitations on credit or refund) is amended—

(A) by striking out "section 6501(q)(1)(B)" in paragraph (1) and inserting in lieu thereof "section 6501(m)(1)(B)", and

(B) by striking out "section 6501(q)(2)(B)" in paragraph (2) and inserting in lieu thereof "section 6501(m)(2)(B)".

(16) Paragraph (1) of section 665(d) is amended by striking out "subpart A of part IV" and inserting in lieu thereof "part IV".

SEC. 1848. AMENDMENTS RELATED TO SECTION 491 OF THE ACT.

(a) Paragraph (9) of section 46(f) (relating to special rule for additional credit) is hereby repealed.

(b) Subparagraph (A) of section 401(c)(2) (defining earned income) is amended by striking out "sections 404 and 405(c)" and inserting in lieu thereof "section 404".

(c) Subparagraph (D) of section 404(a)(8) is amended by striking out "the deductions allowed by this section and section 405(c)" and inserting in lieu thereof "the deduction allowed by this section".

(d) The second sentence of section 2039(e) is amended by striking out "or a bond described in paragraph (3)".

(e)(1) Section 6704 is amended—

(A) by striking out "section 6047(e)" each place it appears in subsection (a) and inserting in lieu thereof "section 6047(d)", and

(B) by striking out "section 6047(e)" in the section heading and inserting in lieu thereof "section 6047(d)".

(2) Subsection (e) of section 6047 is amended by adding at the end thereof the following new paragraph:

"(3) For provisions relating to penalty for failure to comply with the provisions of subsection (d), see section 6704."

(3) The table of sections for subchapter B of chapter 68 is amended by striking out "section 6047(e)" in the item relating to section 6704 and inserting in lieu thereof "section 6047(d)".

(f) Subsection (b) of section 4973 (defining excess contributions) is amended—

(1) by striking out ", individual retirement annuities, or bonds" in the material preceding paragraph (1) and inserting in lieu thereof "or individual retirement annuities",

(2) by striking out subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(A) the amount contributed for the taxable year to the accounts or for the annuities (other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), or 408(d)(3)), over", and

(3) by striking out "or bonds" in paragraph (2)(C) thereof.

CHAPTER 5—AMENDMENTS RELATED TO TITLE V OF THE ACT

SEC. 1851. AMENDMENTS RELATED TO WELFARE BENEFIT PLAN PROVISIONS.

(a) AMENDMENTS RELATED TO SECTION 511 OF THE ACT.—

(1) TREATMENT OF PLANS FOR INDEPENDENT CONTRACTORS.—Paragraph (1) of section 419(g) (relating to extension to plans for independent contractors) is amended by striking out "such a plan" and inserting in lieu thereof "such a relationship".

(2) AMENDMENTS TO SECTION 419A(d).—

(A) COORDINATION WITH SECTION 415.—Paragraph (2) of section 419A(d) (relating to coordination with section 415) is amended by adding at the end thereof the following new sentence: "Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence."

(B) SEPARATE ACCOUNT REQUIREMENTS APPLY ONLY WHERE THERE IS PRE-FUNDING.—Paragraph (1) of section 419A(d) is amended by adding at the end thereof the following new sentence:

"The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years."

(3) CLARIFICATION OF SECTION 419A(e).—

(A) Subsection (e) of section 419A is amended to read as follows:

"(e) SPECIAL LIMITATIONS ON RESERVES FOR MEDICAL BENEFITS OR LIFE INSURANCE BENEFITS PROVIDED TO RETIRED EMPLOYEES.—

"(1) RESERVE MUST BE NONDISCRIMINATORY.—No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b) with respect to such benefits (whether or not such requirements apply to such plan). The preceding sentence shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that post-retirement medical benefits or life insurance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

"(2) LIMITATION ON AMOUNT OF LIFE INSURANCE BENEFITS.—Life insurance benefits shall not be taken into account under subsection (c)(2) to the extent the aggregate amount of such benefits to be provided with respect to the employee exceeds $50,000."

(B) Subsection (e) of section 419A of the Internal Revenue Code of 1954 (as amended by subparagraph (A)) shall not apply to any group-term life insurance to the extent that the amendments made by section 223(a) of the Tax Reform Act of 1984 do not apply to such insurance by reason of paragraph (2) of section 223(d) of such Act.

(4) TREATMENT OF COLLECTIVELY BARGAINED PLANS.—Paragraph (5) of section 419A(f) (relating to higher limit in case of collectively bargained plans) is amended by striking out "welfare benefit fund established under" and inserting in lieu thereof "welfare benefit fund maintained pursuant to".

(5) CLARIFICATION OF ACTUARIAL CERTIFICATION REQUIREMENT.—Subparagraph (A) of section 419A(c)(5) (relating to special limitation where no actuarial certification) is amended by striking out "under paragraph (1)" and inserting in lieu thereof "under this subsection".

(6) AGGREGATION RULES.—

(A) Paragraph (1) of section 419A(h) (relating to aggregation rules) is amended to read as follows:

"(1) AGGREGATION OF FUNDS.—

"(A) MANDATORY AGGREGATION.—For purposes of subsections (c)(4), (d)(2), and (e)(2), all welfare benefit funds of an employer shall be treated as 1 fund.

"(B) PERMISSIVE AGGREGATION FOR PURPOSES NOT SPECIFIED IN SUBPARAGRAPH (A).—For purposes of this section (other than the provisions specified in subparagraph (A)), at the election of the employer, 2 or more welfare benefit funds of such employer may (to the extent not inconsistent with the purposes of this subpart and section 512) be treated as 1 fund."

(B) Subsection (b) of section 419A is amended by striking out "this subpart" and inserting in lieu thereof "this subpart and section 512".

(7) CLARIFICATION OF ADJUSTMENTS FOR EXISTING RESERVES.—Paragraph (7) of section 419A(f) (relating to adjustments for existing excess reserves) is amended by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraphs:

"(C) EXISTING EXCESS RESERVE.—For purposes of computing the increase under subparagraph (A) for any taxable year, the term 'existing excess reserve' means the excess (if any) of—

"(i) the amount of assets set aside at the close of the first taxable year ending after July 18, 1984, for purposes described in subsection (a), over

"(ii) the account limit determined under this section (without regard to this paragraph) for the taxable year for which such increase is being computed.

"(D) FUNDS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply only to a welfare benefit fund which, as of July 18, 1984, had assets set aside for purposes described in subsection (a)."

(8)(A) CLARIFICATION OF FUND.—Subsection (e) of section 419 (defining welfare benefit funds) is amended by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF AMOUNTS HELD PURSUANT TO CERTAIN INSURANCE CONTRACTS.—

"(A) IN GENERAL.—Notwithstanding paragraph (3)(C), the term 'fund' shall not include amounts held by an insurance company pursuant to an insurance contract if—

"(i) such contract is a life insurance contract described in section 264(a)(1), or

"(ii) such contract is a qualified nonguaranteed contract.

"(B) QUALIFIED NONGUARANTEED CONTRACT.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'qualified nonguaranteed contract' means any insurance contract (including a reasonable premium stabilization reserve held thereunder) if—

"(I) there is no guarantee of a renewal of such contract, and

"(II) other than insurance protection, the only payments to which the employer or employees are entitled are experience rated refunds or policy dividends which are not guaranteed and which are determined by factors other than the amount of welfare benefits paid to (or on behalf of) the employees of the employer or their beneficiaries.

"(ii) LIMITATION.—In the case of any qualified nonguaranteed contract, subparagraph (A) shall not apply unless the amount of any experience rated refund or policy dividend payable to an employer with respect to a policy year is treated by the employer as received or accrued in the taxable year in which the policy year ends."

(B) EFFECTIVE DATE OF REGULATIONS.—Except in the case of a reserve for post-retirement medical or life insurance benefits and any other arrangement between an insurance company and an employer under which the employer has a contractual right to a refund or dividend based solely on the experience of such employer, any account held for an employer by any person and defined as a fund in regulations issued pursuant to section 419(e)(3)(C) of the Internal Revenue Code of 1954 shall be considered a "fund" no earlier than 6 months following the date such regulations are published in final form.

(9) CLARIFICATION OF TAXES PAID BY EMPLOYER ON INCOME OF CERTAIN WELFARE BENEFIT FUNDS.—Subsection (g) of section 419A (relating to employer taxed on income of welfare benefit funds in certain cases) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH SECTION 419.—If any amount is included in the gross income of an employer for any taxable year under paragraph (1) with respect to any welfare benefit fund—

"(A) the amount of the tax imposed by this chapter which is attributable to the amount so included shall be treated as a contribution paid to such welfare benefit fund on the last day of such taxable year, and

"(B) the tax so attributable shall be treated as imposed on the fund for purposes of section 419(c)(4)(A)."

(10) AMENDMENTS TO TAX ON UNRELATED BUSINESS INCOME.—

(A) Clause (i) of section 512(a)(3)(E) is amended by striking out "determined under section 419A(c)" and inserting in lieu thereof "determined under section 419A (without regard to subsection (f)(6) thereof)".

(B) Subparagraph (E) of section 512(a)(3) is amended by striking out clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(C) Clause (ii) of section 512(a)(3)(E) (as redesignated by subparagraph (B)) is amended—

(i) by striking out "a existing reserve" in subclause (I) and inserting in lieu thereof "an existing reserve", and

(ii) by striking out subclause (II) and inserting in lieu thereof the following:

"(II) For purposes of subclause (II), the term 'reserve for post-retirement medical or life insurance benefits' means the greater of the amount of assets set aside for purposes of post-retirement medical or life insurance benefits to be provided to covered employees as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 or on July 18, 1984,".

(D) Clause (iii) of section 512(a)(3)(E) (as redesignated by subparagraph (B)) is amended by striking out "paragraph shall not" and inserting in lieu thereof "subparagraph shall not".

(11) AMENDMENTS RELATED TO TAX ON CERTAIN FUNDED WELFARE BENEFIT PLANS.—Subsection (b) of section 4976 (defining disqualified benefit) is amended to read as follows:

"(b) DISQUALIFIED BENEFIT.—For purposes of subsection (a)—

"(1) IN GENERAL.—The term 'disqualified benefit' means—

"(A) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for such employee under section 419A(d) and such payment is not from such account,

"(B) any post-retirement medical benefit or life insurance benefit provided with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of section 505(b) with respect to such benefit (whether or not such requirements apply to such plan), and

"(C) any portion of a welfare benefit fund reverting to the benefit of the employer.

"(2) EXCEPTION FOR COLLECTIVE BARGAINING PLANS.—Paragraph (1)(B) shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that the benefits referred to in paragraph (1)(B) were the subject of good faith bargaining between such employee representatives and such employer or employers.

"(3) EXCEPTION FOR NONDEDUCTIBLE CONTRIBUTIONS.—Paragraph (1)(C) shall not apply to any amount attributable to a contribution to the fund which is not allowable as a deduction under section 419 for the taxable year or any prior taxable year (and such contribution shall not be included in any carryover under section 419(d)).

"(4) EXCEPTION FOR CERTAIN AMOUNTS CHARGED AGAINST EXISTING RESERVE.—Subparagraphs (A) and (B) of paragraph (1) shall not apply to post-retirement benefits charged against an existing reserve for post-retirement medical or life insurance benefits

(as defined in section 512(a)(3)(E)) or charged against the income on such reserve."

(12) CLARIFICATION OF EFFECTIVE DATE.—Subsection (e) of section 511 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraphs:

"(6) AMENDMENTS RELATED TO TAX ON UNRELATED BUSINESS INCOME.—The amendments made by subsection (b) shall apply with respect to taxable years ending after December 31, 1985. For purposes of section 15 of the Internal Revenue Code of 1954, such amendments shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

"(7) AMENDMENTS RELATED TO EXCISE TAXES ON CERTAIN WELFARE BENEFIT PLANS.—The amendments made by subsection (c) shall apply to benefits provided after December 31, 1985."

(13) Section 419A(f)(5) is amended to read as follows:

"(5) SPECIAL RULE FOR COLLECTIVE BARGAINED AND EMPLOYEE PAY-ALL PLANS.—No accounts limits shall apply in the case of any qualified asset account under a separate welfare benefit fund—

"(A) under a collective bargaining agreement, or

"(B) an employee pay-all plan under section 501(c)(9) if—

"(i) such plan has at least 50 employees (determined without regard to subsection (h)(1)), and

"(ii) no employee is entitled to a refund with respect to amounts in the fund, other than a refund based on the experience of the entire fund."

(14) CLERICAL AMENDMENT.—Paragraph (2) of section 511(e) of the Tax Reform Act of 1984 is amended by striking out "and section 514".

(b) AMENDMENTS RELATED TO SECTION 512 OF THE ACT.—

(1) TRANSITIONAL RULE FOR CERTAIN TAXPAYERS WITH FULLY VESTED VACATION PAY PLANS.—

(A) IN GENERAL.—In the case of any taxpayer—

(i) who maintained a fully vested vacation pay plan where payments are expected to be paid (or are in fact paid) within 1 year after the accrual of the vacation pay, and

(ii) who makes an election under section 463 of the Internal Revenue Code of 1954 for such taxpayer's 1st taxable year ending after the date of the enactment of the Tax Reform Act of 1984,

in lieu of establishing a suspense account under such section 463, such election shall be treated as a change in the taxpayer's method of accounting and the adjustments required as a result of such change shall be taken into account under section 481 of such Code.

(B) EXTENSION OF TIME FOR MAKING ELECTION.—In the case of any taxpayer who meets the requirements of subparagraph (A)(i), the time for making an election under section 463 of such Code for such taxpayer's 1st taxable year ending after the date of the enactment of the Tax Reform Act of 1984 shall not expire before the date 6 months after the date of the enactment of this Act.

(2) CLERICAL AMENDMENTS.—

(A) Clause (ii) of section 404(b)(2)(B) (relating to exceptions for certain benefits) is amended by striking out "to any benefit" and inserting in lieu thereof "any benefit".

(B) Subsection (b) of section 404 is amended—

(i) by striking out "UNFUNDED" in the subsection heading and inserting in lieu thereof "CERTAIN", and

(ii) by striking out "UNFUNDED" in the heading of paragraph (2) and inserting in lieu thereof "CERTAIN".

(C)(i) Section 404(a) is amended by striking out "section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections," and inserting in lieu thereof "this chapter; but, if they would otherwise be deductible,".

(ii) Subsection (d) of section 404 is amended by striking out "under section 162 or 212" each place it appears and inserting in lieu thereof "under this chapter".

(iii) Subsection (a) of section 404A is amended—

(I) by striking out "under section 162, 212, or 404" and inserting in lieu thereof "under this chapter", and

(II) by striking out "they satisfy the conditions of section 162" and inserting in lieu thereof "they would otherwise be deductible".

(iv) Subsection (a) of section 419 is amended—

(I) by striking out "under section 162 or 212" and inserting in lieu thereof "under this subchapter", and

(II) by striking out "they satisfy the requirements of either of such sections" and inserting in lieu thereof "they would otherwise be deductible".

(c) AMENDMENTS RELATED TO SECTION 513 OF THE ACT.—

(1) Paragraph (1) of section 505(a) (relating to certain requirements must be met in case of organizations described in paragraph (9) or (20) of section 501(c)) is amended by striking out "of an employer".

(2) Paragraph (1) of section 505(b) (relating to nondiscrimination requirements) is amended by striking out "as provided in paragraph (2)" and inserting in lieu thereof "as otherwise provided in this subsection".

(3) Subparagraph (B) of section 505(b)(1) is amended by striking out "highly compensated employees" and inserting in lieu thereof "highly compensated individuals".

(4) Paragraph (2) of section 505(a) (relating to exception for collective bargaining agreements) is amended to read as follows:

"(2) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.—Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that such plan was the subject of good faith bargaining between such employee representatives and such employer or employers."

SEC. 1852. AMENDMENTS RELATED TO PENSION PLAN PROVISIONS.

(a) AMENDMENTS RELATED TO SECTION 521 OF THE ACT.—

(1) CLARIFICATION THAT DISTRIBUTION FROM INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES MUST BEGIN AT 70½.—

(A) Paragraph (6) of section 408(a) (defining individual retirement account) is amended by striking out "(relating to required distributions)" and inserting in lieu thereof "(without regard to subparagraph (C)(ii) thereof) and the incidental death benefit requirements of section 401(a)".

(B) Paragraph (3) of section 408(b) (defining individual retirement annuity) is amended by striking out "(relating to required distributions)" and inserting in lieu thereof "(without regard to subparagraph (C)(ii) thereof) and the incidental death benefit requirements of section 401(a)".

(2) EXEMPTION OF PRE-1985 ACCUMULATIONS FROM PENALTY ON PREMATURE DISTRIBUTIONS.—

(A) Subparagraph (A) of section 72(m)(5) (relating to penalties applicable to certain amounts received by 5-percent owners) is amended to read as follows:

"(A) This subparagraph shall apply—

"(i) to amounts which—

"(I) are received from a qualified trust described in section 401(a) or under a plan described in section 403(a), and

"(II) are received by a 5-percent owner before such owner attains the age of 59½ years, for any reason other than such owner becoming disabled (within the meaning of paragraph (7) of this section), and

"(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by a 5-percent owner, or by the successor of such owner, but only to the extent that such amounts are determined (under regulations prescribed by the Secretary) to exceed the benefits provided for such individual under the plan formula.

Clause (i) shall not apply to any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution and clause (i) shall not apply to amounts attributable to benefits accrued before January 1, 1985."

(B) Subparagraph (C) of section 72(m)(5) is amended to read as follows:

"(C) For purposes of this paragraph, the term '5-percent owner' means any individual who, at any time during the 5 plan years preceding the plan year ending in the taxable year in which the amount is received, is a 5-percent owner (as defined in section 416(i)(1)(B))."

(C) Paragraph (5) of section 72(m) is amended by striking out "OWNER-EMPLOYEES" in the paragraph heading and inserting in lieu thereof "5-PERCENT OWNERS".

(3) EXTENSION OF DISTRIBUTION REQUIREMENTS TO SECTION 403(b) ANNUITIES.—

(A) Subsection (b) of section 403 (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end thereof the following new paragraph:

"(10) DISTRIBUTION REQUIREMENTS.—Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of section 401(a)(9) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account)."

(B) Paragraph (7) of section 403(b) is amended by striking out subparagraph (D).

(C) The amendments made by this paragraph shall apply to benefits accruing after December 31, 1986, in taxable years ending after such date.

(4) CLARIFICATION OF REQUIRED BEGINNING DATE.—

(A) Subparagraph (C) of section 401(a)(9) (defining required beginning date) is amended by striking out the last sentence and inserting in lieu thereof the following:

"Clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5-plan-year period ending in the calendar year in which the employee attains

age 70½. If the employee becomes a 5-percent owner during any subsequent plan year, the required beginning date shall be April 1 of the calendar year following the calendar year in which such subsequent plan year ends."

(B) Subsection (d) of section 409 (relating to employer securities must stay in the plan) is amended by adding at the end thereof the following new sentence:

"This subsection shall not apply to any distribution required under section 401(a)(9)."

(5) REQUIRED DISTRIBUTIONS NOT ELIGIBLE FOR ROLLOVER TREATMENT.—

(A) Paragraph (5) of section 402(a) (relating to rollover amounts) is amended by adding at the end thereof the following new subparagraph:

"(G) REQUIRED DISTRIBUTIONS NOT ELIGIBLE FOR ROLLOVER TREATMENT.—Subparagraph (A) shall not apply to any distribution to the extent such distribution is required under section 401(a)(9)."

(B)(i) Subparagraph (B) of section 403(a)(4) is amended by striking out "through (F)" and inserting in lieu thereof "through (G)".

(ii) Paragraph (8) of section 403(b) is amended by adding at the end thereof the following new subparagraph:

"(D) REQUIRED DISTRIBUTIONS NOT ELIGIBLE FOR ROLLOVER TREATMENT.—Subparagraph (A) shall not apply to any distribution to the extent such distribution is required under paragraph (10)."

(C) Paragraph (3) of section 408(d) (relating to rollover contributions) is amended by adding at the end thereof the following new subparagraph:

"(E) DENIAL OF ROLLOVER TREATMENT FOR REQUIRED DISTRIBUTIONS.—This subparagraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3)."

(6) TREATMENT OF DISTRIBUTIONS REQUIRED UNDER INCIDENTAL DEATH BENEFIT RULES.—Paragraph (9) of section 401(a) (relating to required distributions) is amended by adding at the end thereof the following new subparagraph:

"(G) TREATMENT OF INCIDENTAL DEATH BENEFIT DISTRIBUTIONS.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph."

(7) CLERICAL AMENDMENTS.—

(A) Paragraph (1) of section 408(c) is amended by striking out "paragraphs (1) through (7)" and inserting in lieu thereof "paragraphs (1) through (6)".

(B) Subsection (a) of section 4974 (relating to excise tax on certain accumulations in individual retirement accounts or annuities) is amended by striking out "section 408(a) (6) or (7), or 408(b) (3) or (4)" and inserting in lieu thereof "section 408(a)(6) or 408(b)(3)".

(C) Subsection (b) of section 4974 is amended by striking out "section 408(a) (6) or (7) or 408(b) (3) or (4)" and inserting in lieu thereof "section 408(a)(6) or 408(b)(3)".

(b) AMENDMENTS RELATED TO SECTION 522 OF THE ACT.—

(1) Clause (v) of section 402(a)(5)(E) (defining partial distribution) is amended by striking out "of any portion of" and inserting in lieu thereof "of all or any portion of".

(2) Clause (i) of section 402(a)(5)(D) (relating to special rules for partial distributions) is amended by adding at the end thereof the following new sentence:

"For purposes of subclause (I), the balance to the credit of the employee shall not include any accumulated deductible employee contributions (within the meaning of section 72(o)(5))."

(3)(A) Section 402 is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF SELF-EMPLOYED INDIVIDUALS.—For purposes of this section, except as otherwise provided in subparagraph (A) of subsection (e)(4), the term 'employee' includes a self-employed individual (as defined in section 401(c)(1)(B)) and the employer of such individual shall be the person treated as his employer under section 401(c)(4)."

(B) Paragraph (4) of section 402(e) is amended by striking out subparagraph (F).

(4) Paragraph (7) of section 402(a) (relating to rollover where spouse received distributions after death of employee) is amended by striking out "the spouse were the employee" and inserting in lieu thereof "the spouse were the employee; except that a trust or plan described in subclause (III) or (IV) of paragraph (5)(E)(iv) shall not be treated as an eligible retirement plan with respect to such distribution".

(5) Clause (ii) of section 402(a)(5)(D) is amended by striking out "a plan described in subclause (IV) or (V)" and inserting in lieu thereof "a trust or plan described in subclause (III) or (IV)".

(6) Clause (i) of section 402(a)(5)(F) is amended by striking out "a transfer described in subparagraph (A)" and inserting in lieu thereof "a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A)".

(7) Clause (v) of section 402(a)(6)(D) is amended by striking out "(7)(B)" and inserting in lieu thereof "(7)".

(8) Paragraph (20) of section 401(a) is amended by striking out "qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)" and inserting in lieu thereof "qualified total distribution described in section 402(a)(5)(E)(i)(I)".

(9) Subsection (e) of section 522 of the Tax Reform Act of 1984 is amended by striking out "the date of the amendment" and inserting in lieu thereof "the date of the enactment".

(10) Subparagraph (C) of section 403(b)(8) is amended by striking out "(F)(i)" and inserting in lieu thereof "and (F)(i)".

(c) AMENDMENTS RELATED TO SECTION 523 OF THE ACT.—

(1) Subparagraph (B) of section 72(e)(7) (relating to plans substantially all the contributions of which are employee contributions) is amended—

(A) by striking out "any trust or contract" and inserting in lieu thereof "any plan or contract",

(B) by striking out "85 percent of" and inserting in lieu thereof "85 percent or more of", and

(C) by adding at the end thereof the following new sentence:

"For purposes of clause (ii), deductible employee contributions (as defined in subsection (o)(5)(A)) shall not be taken into account."

(2) Subparagraph (E) of section 72(q)(2) (relating to 5-percent penalty for premature distributions from annuity contracts) is amended by striking out "subsection (e)(5)(D)" and inserting in lieu thereof "subsection (e)(5)(D) (determined without regard to subsection (e)(7))".

(3) Subsection (f) of section 72 is amended—

(A) by striking out "subsection (d)(1)" and inserting in lieu thereof "subsections (d)(1) and (e)(7)", and

(B) by striking out "subsection (e)(1)(B)" and inserting in lieu thereof "subsection (e)(6)".

(4) Paragraph (2) of section 72(m) is amended—

(A) by striking out "3 years)" in subparagraph (B) and inserting in lieu thereof "3 years) and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions)", and

(B) by striking out "subsection (e)(1)(B)" in subparagraph (C) and inserting in lieu thereof "subsection (e)(6)".

(5) Subsection (b) of section 402 is amended by striking out "section 72(e)(1)" and inserting in lieu thereof "section 72(e)(5)".

(d) AMENDMENTS RELATED TO SECTION 524 OF THE ACT.—

(1) Subparagraph (A) of section 416(i)(1) (defining key employee) is amended by adding at the end thereof the following new sentence: "Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans)."

(2) Subparagraph (E) of section 416(g)(4) (relating to benefits not taken into account if employee not employed for last 5 years) is amended to read as follows:

"(E) BENEFITS NOT TAKEN INTO ACCOUNT IF EMPLOYEE NOT EMPLOYED FOR LAST 5 YEARS.—If any individual has not performed services for the employer maintaining the plan at any time during the 5-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account."

(e) AMENDMENTS RELATED TO SECTION 525 OF THE ACT.—

(1)(A) Subsection (c) of section 2039 (relating to exception of certain annuity interests created by community property laws) is hereby repealed.

(B) The amendment made by subparagraph (A) shall apply to estates of decedents dying after the date of the enactment of this Act.

(2)(A) Section 2517 (relating to certain annuities under qualified plans) is hereby repealed.

(B) The table of sections for subchapter B of chapter 12 is amended by striking out the item relating to section 2517.

(C) Subsection (e) of section 406 is amended by striking out paragraph (5).

(D) Subsection (e) of section 407 is amended by striking out paragraph (5).

(E) The amendments made by this paragraph shall apply to transfers after the date of the enactment of this Act.

(3) Section 525(b) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

"(4) IRREVOCABLE ELECTION.—For purposes of paragraph (2) and section 245(c) of the Tax Equity and Fiscal Responsibility Act of 1982, an individual who—

"(A) separated from service before January 1, 1985, with respect to paragraph (2), or January 1, 1983, with respect to section 245(c) of the Tax Equity and Fiscal Responsibility Act of 1982, and

"(B) meets the requirements of such paragraph or such section other than the requirement that there be an irrevocable election, and that the individual be in pay status,

shall be treated as having made an irrevocable election and as being in pay status within the time prescribed with respect to a

form of benefit if such individual does not change such form of benefit before death."

(f) AMENDMENT RELATED TO SECTION 526 OF THE ACT.—Paragraph (2) of section 526(d) of the Tax Reform Act of 1984 is amended by striking out "paragraph (6)" and inserting in lieu thereof "paragraph (7)".

(g) AMENDMENTS RELATED TO SECTION 527 OF THE ACT.—

(1) Paragraph (3) of section 401(k) (relating to application of participation and discrimination standards) is amended by adding at the end thereof the following new subparagraph:

"(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met."

(2) Subparagraph (A) of section 401(k)(3) is amended by striking out the last sentence and inserting in lieu thereof the following: "If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement."

(3) Subparagraph (C) of section 401(k)(2) is amended by striking out "are nonforfeitable" and inserting in lieu thereof "is nonforfeitable".

(h) AMENDMENTS RELATED TO SECTION 528 OF THE ACT.—

(1) Subsection (h) of section 401 (relating to medical, etc., benefits for retired employees and their spouses and dependents) is amended—

(A) by striking out "5-percent owner" each place it appears in paragraph (6) and inserting in lieu thereof "key employee", and

(B) by striking out the last sentence and inserting in lieu thereof the following: "For purposes of paragraph (6), the term 'key employee' means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i)."

(2) Paragraph (1) of section 416(l) (relating to treatment of certain medical benefits) is amended by adding at the end thereof the following new sentence: "Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence."

(3) Subsection (l) of section 415 is amended by striking out "a defined benefit plan" each place it appears and inserting in lieu thereof "a pension or annuity plan".

(i) AMENDMENT RELATED TO SECTION 4402 OF ERISA.—Section 4402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1461) is amended by adding at the end thereof the following new subsection:

"(h)(1) In the case of an employer who entered into a collective bargaining agreement—

"(A) which was effective on January 12, 1979, and which remained in effect through May 15, 1982, and

"(B) under which contributions to a multiemployer plan were to cease on January 12, 1982,

any withdrawal liability incurred by the employer pursuant to part 1 of subtitle E as a result of the complete or partial withdrawal of the employer from the multiemployer plan before January 12, 1982, shall be void.

"(2) In any case in which—

"(A) an employer engaged in the grocery wholesaling business—

"(i) had ceased all covered operations under a multiemployer plan before June 30, 1981, and had relocated its operations to a new facility in another State, and

"(ii) had notified a local union representative on May 14, 1980, that the employer had tentatively decided to discontinue operations and relocate to a new facility in another State, and

"(B) all State and local approvals with respect to construction of an commencement of operations at the new facility had been obtained, a contract for construction had been entered into, and construction of the new facility had begun before September 26, 1980,

any withdrawal liability incurred by the employer pursuant to part 1 of subtitle E as a result of the complete or partial withdrawal of the employer from the multiemployer plan before June 30, 1981, shall be void.".

SEC. 1853. AMENDMENTS RELATED TO FRINGE BENEFIT PROVISIONS.

(a) AMENDMENTS TO SECTION 132.—

(1) Clause (ii) of section 132(f)(2)(B) (defining dependent children) is amended by striking out "are deceased" and inserting in lieu thereof "are deceased and who has not attained age 25".

(2) Subparagraph (A) of section 132(c)(3) (defining employee discount) is amended by striking out "are provided to the employee by the employer" and inserting in lieu thereof "are provided by the employer to an employee for use by such employee".

(3) Subsection (i) of section 132 (relating to customers not to include employees) is amended by striking out "subsection (c)(2)(B)" and inserting in lieu thereof "subsection (c)(2)".

(b) AMENDMENTS TO SECTION 125.—

(1) CLARIFICATION OF BENEFITS WHICH MAY BE PROVIDED UNDER CAFETERIA PLANS.—

(A) Subsections (c) and (d)(1)(B) of section 125 are each amended by striking out "statutory nontaxable benefits" each place it appears and inserting in lieu thereof "qualified benefits".

(B) Subsection (f) of section 125 is amended to read as follows:

"(f) QUALIFIED BENEFITS DEFINED.—For purposes of this section, the term 'qualified benefit' means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 and such term includes any other benefit permitted under regulations."

(2) TRANSITIONAL RULE.—Paragraph (5) of section 531(b) of the Tax Reform Act of 1984 (relating to exception for certain cafeteria plans and benefits) is amended by adding at the end thereof the following new subparagraph:

"(D) COLLECTIVE BARGAINING AGREEMENTS.—In the case of any cafeteria plan in existence on February 10, 1984, and maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to after July 18, 1984) shall be substituted for 'January 1, 1985' in subparagraph (A) and for 'July 1, 1985' in subparagraph (B). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section (or any requirement in the regulations under section 125 of the Internal Revenue Code of 1954 proposed on May 6, 1984) shall not be treated as a termination of such collective bargaining agreement."

(3) SPECIAL RULE WHERE CONTRIBUTIONS OR REIMBURSEMENTS SUSPENDED.—Paragraph (5) of section 531(b) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subparagraph:

"(E) SPECIAL RULE WHERE CONTRIBUTIONS OR REIMBURSEMENTS SUSPENDED.—For purposes of subparagraphs (A) and (B), a plan shall not be treated as not continuing to fail to satisfy the rules referred to in such subparagraphs with respect to any benefit provided in the form of a flexible spending arrangement merely because contributions or reimbursements (or both) with respect to such plan were suspended before January 1, 1985."

(c) AMENDMENTS TO SECTION 4977.—

(1) Paragraph (2) of section 4977(c) is amended to read as follows:

"(2) at all times on or after January 1, 1984, and before the close of the calendar year involved, substantially all of the employees of the employer were entitled to employee discounts on goods or services provided by the employer in 1 line of business,".

(2) Section 4977 (relating to tax on certain fringe benefits provided by an employer) is amended by adding at the end thereof the following new subsection:

"(f) SECTION TO APPLY ONLY TO EMPLOYMENT WITHIN THE UNITED STATES.—Except as otherwise provided in regulations, this section shall apply only with respect to employment within the United States."

(3) For purposes of determining whether the requirements of section 4977(c) of the Internal Revenue Code of 1954 are met in the case of an agricultural cooperative incorporated in 1964, there shall not be taken into account employees of a member of the same controlled group as such cooperative which became a member during July 1980.

(d) TREATMENT OF TELEPHONE CONCESSION SERVICE FOR CERTAIN RETIREES.—Section 559 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following subsection:

"(e) TELEPHONE SERVICE FOR PRE-DIVESTITURE RETIREES.—In the case of an employee who, by reason of retirement or disability, separated before January 1, 1984, from the service of an entity subject to the modified final judgment—

"(1) all entities subject to the modified final judgment shall be treated as a single employer in the same line of business for purposes of determining whether telephone service provided to the employee is a no-additional-cost service as defined in section 132 of the Internal Revenue Code of 1954; and

"(2) payment by an entity subject to the modified final judgment of all or part of the cost of local telephone service provided to the employee by a person other than an entity subject to the modified final judgment (including rebate of the amount paid by the employee for the service and payment to the person providing the service) shall be treated as telephone service provided to the employee by such single employer for purposes of determining whether the telephone service is a no-additional-cost service as defined in section 132 of the Internal Revenue Code of 1954.

For purposes of this subsection, the term 'employee' has the meaning given to such

term by section 132(f) of the Internal Revenue Code of 1954."

(e) TREATMENT OF CERTAIN LEASED OPERATIONS OF DEPARTMENT STORES.—For purposes of section 132(h)(2)(B) of the Internal Revenue Code of 1954, a leased section of a department store which, in connection with the offering of beautician services, customarily makes sales of beauty aids in the ordinary course of business shall be treated as engaged in over-the-counter sales of property.

(f) TRANSITIONAL RULES FOR TREATMENT OF CERTAIN REDUCTIONS IN TUITION.—

(1) A tuition reduction plan shall be treated as meeting the requirements of section 117(d)(3) of the Internal Revenue Code of 1954 if—

(A) such plan would have met the requirements of such section (as amended by this section but without regard to the lack of evidence that benefits under such plan were the subject of good faith bargaining) on the day on which eligibility to participate in the plan was closed,

(B) at all times thereafter, the tuition reductions available under such plan are available on substantially the same terms to all employees eligible to participate in such plan, and

(C) the eligibility to participate in such plan closed on June 30, 1972, June 30, 1974, or December 31, 1975.

(2) For purposes of applying section 117(d)(3) of the Internal Revenue Code of 1954 to all tuition reduction plans of an employer with at least 1 such plan described in paragraph (1) of this subsection, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement that the Secretary of the Treasury or his delegate finds to be a collective bargaining agreement between employee representatives and 1 or more employers, if, with respect to plans other than plans described in paragraph (1), there is evidence that such benefits were the subject of good faith bargaining.

(3) Any reduction in tuition provided with respect to a full-time course of education furnished at the graduate level before July 1, 1988, shall not be included in gross income if—

(A) such reduction would not be included in gross income under the Internal Revenue Service regulations in effect on the date of the enactment of the Tax Reform Act of 1984, and

(B) such reduction is provided with respect to a student who was accepted for admission to such course of education before July 1, 1984, and began such course of education before June 30, 1985.

SEC. 1854. AMENDMENTS RELATED TO EMPLOYEE STOCK OWNERSHIP PLANS.

(a) AMENDMENTS RELATED TO SECTION 541.—

(1) Section 1042(a) (relating to nonrecognition of gain) is amended—

(A) by striking out "gain (if any) on such sale" and inserting in lieu thereof "gain (if any) on such sale which would be recognized as long-term capital gain", and

(B) by striking out "the taxpayer elects" in paragraph (1) and inserting in lieu thereof "the taxpayer or executor elects in such form as the Secretary may prescribe".

(2)(A) Section 1042(b)(2) (relating to requirement that employees must own 30 percent of stock) is amended to read as follows:

"(2) PLAN MUST HOLD 30 PERCENT OF STOCK AFTER SALE.—The plan or cooperative referred to in paragraph (1) owns (after application of section 318(a)(4)), immediately after the sale, at least 30 percent of—

"(A) each class of outstanding stock of the corporation (other than stock described in section 1504(a)(4)) which issued the qualified securities, or

"(B) the total value of all outstanding stock of the corporation (other than stock described in section 1504(a)(4)).

(B)(i) The requirement that section 1042(b) of the Internal Revenue Code of 1954 shall be applied with regard to section 318(a)(4) of such Code shall apply to sales after May 6, 1986.

(ii) In the case of sales after July 18, 1984, and before the date of the enactment of this Act, paragraph (2) of section 1042(b) of such Code shall apply as if it read as follows:

"(2) Employees must own 30 percent of stock after sale.—The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the employer securities or 30 percent of the value of employer securities (within the meaning of section 409(1) outstanding at the time of sale."

(3)(A) Section 409 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) SECURITIES RECEIVED IN CERTAIN TRANSACTIONS.—

"(1) IN GENERAL.—A plan to which section 1042 applies and an eligible worker-owned cooperative (within the meaning of section 1042(c)) shall provide that no portion of the assets of the plan or cooperative attributable to (or allocable in lieu of) employer securities acquired by the plan or cooperative in a sale to which section 1042 applies may accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a))—

"(A) during the nonallocation period, for the benefit of—

"(i) any taxpayer who makes an election under section 1042(a) with respect to employer securities,

"(ii) any individual who is related to the taxpayer (within the meaning of section 267(b)), or

"(B) for the benefit of any other person who owns (after application of section 318(a)) more than 25 percent of—

"(i) any class of outstanding stock of the corporation which issued such employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of subsection (l)(4)) as such corporation, or

"(ii) the total value of any class of outstanding stock of any such corporation.

For purposes of subparagraph (B), section 318(a) shall be applied without regard to the employee trust exception in paragraph (2)(B)(i).

"(2) FAILURE TO MEET REQUIREMENTS.—If a plan fails to meet the requirements of paragraph (1)—

"(A) the plan shall be treated as having distributed to the person described in paragraph (1) the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation,

"(B) the provisions of section 4979A shall apply, and

"(C) the statutory period for the assessment of any tax imposed by section 4979A shall not expire before the date which is 3 years from the later of—

"(i) the 1st allocation of employer securities in connection with a sale to the plan to which section 1042 applies, or

"(ii) the date on which the Secretary is notified of such failure.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) LINEAL DESCENDANTS.—Paragraph (1)(A)(ii) shall not apply to any individual if—

"(i) such individual is a lineal descendant of the taxpayer, and

"(ii) the aggregate amount allocated to the benefit of all such lineal descendants during the nonallocation period does not exceed more than 5 percent of the employer securities (or amounts allocated in lieu thereof) held by the plan which are attributable to a sale to the plan by any person related to such descendants (within the meaning of section 267(c)(4)) in a transaction to which section 1042 applied.

"(B) 25-PERCENT SHAREHOLDERS.—A person shall be treated as failing to meet the stock ownership limitation under paragraph (1)(B) if such person fails such limitation—

"(i) at any time during the 1-year period ending on the date of sale of qualified securities to the plan or cooperative, or

"(ii) on the date as of which qualified securities are allocated to participants in the plan or cooperative.

"(C) NONALLOCATION PERIOD.—The term 'nonallocation period' means the 10-year period beginning on the later of—

"(i) the date of the sale of the qualified securities, or

"(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale."

(B) Section 1042(b)(3) is amended by striking out paragraph (3) and redesignating paragraph (4) as paragraph (3).

(C) The amendments made by this paragraph apply to sales of securities after the date of the enactment of this Act.

(4) Section 1042(c)(1) (defining qualified securities) is amended—

(A) by striking out "securities outstanding that are" in subparagraph (A) and inserting in lieu thereof "stock outstanding that is",

(B) by inserting "and" at the end of subparagraph (A), and

(C) by striking out subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

(5)(A) Paragraph (4) of section 1042(c) (defining qualified replacement property) is amended to read as follows:

"(4) QUALIFIED REPLACEMENT PROPERTY.—

"(A) IN GENERAL.—The term 'qualified replacement property' means any security issued by a domestic operating corporation which—

"(i) did not, for the taxable year preceding the taxable year in which such security was purchased, have passive investment income (as defined in section 1362(d)(3)(D)) in excess of 25 percent of the gross receipts of such corporation for such preceding taxable year, and

"(ii) is not the corporation which issued the qualified securities which such security is replacing or a member of the same controlled group of corporations (within the meaning of section 1563(a)(1)) as such corporation.

For purposes of clause (i), income which is described in section 954(c)(3) shall not be treated as passive investment income.

"(B) OPERATING CORPORATION.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'operating corporation' means a corporation more than 50 percent of the assets of which were, at the time the security was purchased or before the close of the placement period, used in the active conduct of the trade or business.

"(ii) FINANCIAL INSTITUTIONS AND INSURANCE COMPANIES.—The term 'operating corporation' shall include—

"(I) any financial institution described in section 581 or 593, and

"(II) an insurance company subject to tax under subchapter L.

"(C) CONTROLLING AND CONTROLLED CORPORATIONS TREATED AS 1 CORPORATION.—

"(i) IN GENERAL.—For purposes of applying this paragraph, if—

"(I) the corporation issuing the security owns stock representing control of 1 or more other corporations,

"(II) 1 or more other corporations own stock representing control of the corporation issuing the security, or

"(III) both,

then all such corporations shall be treated as 1 corporation.

"(ii) CONTROL.—For purposes of clause (i), the term 'control' has the meaning given such term by section 304(c). In determining control, there shall be disregarded any qualified replacement property of the taxpayer with respect to the section 1042 sale being tested.

"(D) SECURITY DEFINED.—For purposes of this paragraph, the term 'security' has the meaning given such term by section 165(g)(2), except that such term shall not include any security issued by a government or political subdivision thereof."

(B) If—

(i) before January 1, 1987, the taxpayer acquired any security (as defined in section 165(g)(2) of the Internal Revenue Code of 1954) issued by a domestic corporation or by any State or political subdivision thereof,

(ii) the taxpayer treated such security as qualified replacement property for purposes of section 1042 of such Code, and

(iii) such property does not meet the requirements of section 1042(c)(4) of such Code (as amended by subparagraph (A)),

then, with respect to so much of any gain which the taxpayer treated as not recognized under section 1042(a) by reason of the acquisition of such property, the replacement period for purposes of such section shall not expire before January 1, 1987.

(6)(A) Section 1042(c) (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(7) SECTION NOT TO APPLY TO GAIN OF C CORPORATION.—Subsection (a) shall not apply to any gain on the sale of any qualified securities which is includible in the gross income of any C corporation."

(B) The amendment made by subparagraph (A) shall apply to sales after March 28, 1985, except that such amendment shall not apply to sales made before July 1, 1985, if made pursuant to a binding contract in effect on March 28, 1985, and at all times thereafter.

(C) The amendment made by subparagraph (A) shall not apply to any sale occurring on December 20, 1985, with respect to which—

(i) a commitment letter was issued by a bank on October 31, 1984, and

(ii) a final purchase agreement was entered into on November 5, 1985.

(D) In the case of a sale on September 27, 1985, with respect to which a preliminary commitment letter was issued by a bank on April 10, 1985, and with respect to which a commitment letter was issued by a bank on June 28, 1985, the amendment made by subparagraph (A) shall apply but such sale shall be treated as having occurred on September 27, 1986.

(7) Section 1042(d) (relating to basis of qualified replacement property) is amended by adding at the end thereof the following new flush sentence:

"Any reduction in basis under this subsection shall not be taken into account for purposes of section 1278(a)(2)(A)(ii) (relating to definition of market discount)."

(8)(A) Section 1042 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) RECAPTURE OF GAIN ON DISPOSITION OF QUALIFIED REPLACEMENT PROPERTY.—

"(1) IN GENERAL.—If a taxpayer disposes of any qualified replacement property, then, notwithstanding any other provision of this title, gain (if any) shall be recognized to the extent of the gain which was not recognized under subsection (a) by reason of the acquisition by such taxpayer of such qualified replacement property.

"(2) SPECIAL RULE FOR CORPORATIONS CONTROLLED BY THE TAXPAYER.—If—

"(A) a corporation issuing qualified replacement property disposes of a substantial portion of its assets other than in the ordinary course of its trade or business, and

"(B) any taxpayer owning stock representing control (within the meaning of section 304(c)) of such corporation at the time of such disposition holds any qualified replacement property of such corporation at such time,

then the taxpayer shall be treated as having disposed of such qualified replacement property at such time.

"(3) RECAPTURE NOT TO APPLY IN CERTAIN CASES.—Paragraph (1) shall not apply to any transfer of qualified replacement property—

"(A) in any reorganization (within the meaning of section 368) unless the person making the election under subsection (a)(1) owns stock representing control in the acquiring or acquired corporation and such property is substituted basis property in the hands of the transferee,

"(B) by reason of the death of the person making such election,

"(C) by gift, or

"(D) in any transaction to which section 1042(a) applies."

(B) The amendment made by subparagraph (A) shall apply to dispositions after the date of the enactment of this Act, in taxable years ending after such date.

(9)(A) Chapter 43 (relating to qualified pension, etc. plans) is amended by adding at the end thereof the following new section:

"SEC. 4979A. TAX ON CERTAIN PROHIBITED ALLOCATIONS OF QUALIFIED SECURITIES.

"(a) IMPOSITION OF TAX.—If there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.

"(b) PROHIBITED ALLOCATION.—For purposes of this section, the term 'prohibited allocation' means—

"(1) any allocation of qualified securities acquired in a sale to which section 1042 applies which violates the provisions of section 409(n), and

"(2) any benefit which accrues to any person in violation of the provisions of section 409(n).

"(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by—

"(1) the employer sponsoring such plan, or

"(2) the eligible worker-owned cooperative, which made the written statement described in section 1042(b)(3)(B).

"(d) DEFINITIONS.—Terms used in this section have the same respective meaning as when used in section 4978."

(B) Subparagraph (B) of section 1042(b)(3) is amended by striking out "section 4978(a)" and inserting in lieu thereof "sections 4978 and 4979A".

(C) The table of sections for chapter 43 is amended by adding at the end thereof the following new item:

"Sec. 4979A. Tax on certain prohibited allocations of qualified securities."

(D) The amendments made by this paragraph shall apply to sales of securities after the date of the enactment of this Act.

(10) Paragraph (5) of section 1042(c) (relating to securities acquired by underwriter) is amended—

(A) by striking out "acquisition" and inserting in lieu thereof "sale",

(B) by inserting "to an employee stock ownership plan or eligible worker-owned cooperative" before "in", and

(C) by striking out "ACQUIRED" in the heading thereof and inserting in lieu thereof "SOLD".

(11) The heading for section 1042 is amended by inserting "employee" before "stock".

(12) The table of sections for part III of subchapter O of chapter 1 is amended by striking out the item relating to section 1042 and inserting in lieu thereof the following new item:

"Sec. 1042. Sales of stock to employee stock ownership plans or certain cooperatives."

(b) AMENDMENTS RELATED TO SECTION 542.—

(1) Paragraph (5) of section 72(e) is amended by adding at the end of subparagraph (D) the following new flush sentence:

"Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies."

(2) Section 404(k) is amended—

(A) by adding at the end thereof the following new flush sentence:

"Any deduction under subparagraph (A) or (B) of paragraph (2) shall be allowed in the taxable year of the corporation in which the dividend is paid or distributed to the participant under paragraph (2).", and

(B) by striking out "during the taxable year" in the matter preceding paragraph (1).

(3) Section 404(k), as amended by paragraph (2), is amended by adding at the end thereof the following new sentence: "A plan to which this subsection applies shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7) merely by reason of any distribution described in paragraph (2)."

(4) Subsection (k) of section 404 is amended by adding at the end thereof the following new sentence:

"The Secretary may disallow the deduction under this subsection for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance of taxation."

(5) Paragraph (2) of section 404(k) is amended by striking out "participants in the plan" each place it appears and inserting in lieu thereof "participants in the plan or their beneficiaries".

(6) The amendments made by paragraphs (1) and (2) shall not apply to dividends paid before January 1, 1986, if the taxpayer treated such dividends in a manner inconsistent

with such amendments on a return filed with the Secretary before the date of the enactment of this Act.

(c) AMENDMENTS RELATED TO SECTION 543.—

(1) Subparagraph (B) of section 291(e)(1) (defining financial institution preference item) is amended by adding at the end thereof the following new clause:

"(iv) SPECIAL RULES FOR OBLIGATIONS TO WHICH SECTION 133 APPLIES.—In the case of an obligation to which section 133 applies, interest on such obligation shall not be treated as exempt from taxes for purposes of this subparagraph."

(2)(A) Section 133 (relating to exemption for interest on certain loans used to acquire employer securities) is amended by adding at the end thereof the following new subsection:

"(d) APPLICATION WITH SECTION 483 AND ORIGINAL ISSUE DISCOUNT RULES.—In applying section 483 and subpart A of part V of subchapter P to any obligation to which this section applies, appropriate adjustments shall be made to the applicable Federal rate to take into account the exclusion under subsection (a)."

(B) Section 7872(f) is amended by adding at the end thereof the following new paragraph:

"(11) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITY LOANS.—This section shall not apply to any loan between a corporation (or any member of the controlled group of corporations which includes such corporation) and an employee stock ownership plan described in section 4975(e)(7) to the extent that the interest rate on such loan is equal to the interest rate paid on a related securities acquisition loan (as described in section 133(b)) to such corporation."

(C) Section 133(b)(2) is amended by adding at the end thereof the following new flush sentence:

"For purposes of this paragraph, subparagraphs (A) and (B) shall not apply to any loan which, but for such subparagraphs, would be a securities acquisition loan if such loan was not originated by the employer of any employees who are covered by the plan or by any member of the controlled group of corporations which includes such employer, except that this section shall not apply to any interest received on such loan during such time as such loan is held by such employer (or any member of such controlled group)."

(D) Section 133(b) is amended by redesignating paragraph (3) as paragraph (4) and by adding after paragraph (2) the following new paragraph:

"(3) TERMS APPLICABLE TO CERTAIN SECURITIES ACQUISITION LOANS.—A loan to a corporation shall not fail to be treated as a securities acquisition loan merely because the proceeds of such loan are lent to an employee stock ownership plan sponsored by such corporation (or by any member of the controlled group of corporations which includes such corporation) if such loan includes—

"(A) repayment terms which are substantially similar to the terms of the loan of such corporation from a lender described in subsection (a), or

"(B) repayment terms providing for more rapid repayment of principal or interest on such loan but only if—

"(i) allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)), and

"(ii) the total commitment period of such loan to the corporation does not exceed 7 years."

(d) AMENDMENTS RELATED TO SECTION 544.—

(1)(A) Section 2210(a) (relating to liability for payment of estate tax in case of transfer of employer securities to an ESOP or worker cooperative) is amended by striking out "and" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) the executor of the estate of the decedent may (without regard to this section) make an election under section 6166 with respect to that portion of the tax imposed by section 2001 which is attributable to employer securities, and".

(B) The amendment made by subparagraph (A) shall apply to the estates of decedents dying after September 27, 1985.

(2) Section 2210(c) (relating to installment payments) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULES FOR APPLICATION OF SECTION 6166(g).—In the case of any transfer of employer securities to an employee stock ownership plan or eligible worker-owned cooperative to which this section applies—

"(A) TRANSFER DOES NOT TRIGGER ACCELERATION.—Such transfer shall not be treated as a disposition or withdrawal to which section 6166(g) applies.

"(B) SEPARATE APPLICATION TO ESTATE AND PLAN INTERESTS.—Section 6166(g) shall be applied separately to the interests held after such transfer by the estate and such plan or cooperative.

"(C) REQUIRED DISTRIBUTION NOT TAKEN INTO ACCOUNT.—In the case of any distribution of such securities by such plan which is described in section 4978(d)(1)—

"(i) such distribution shall not be treated as a disposition or withdrawal for purposes of section 6166(g), and

"(ii) such securities shall not be taken into account in applying section 6166(g) to any subsequent disposition or withdrawal."

(3) Section 2210(g) (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(5) TAX IMPOSED BY SECTION 2001.—The term 'tax imposed by section 2001' includes any interest, penalty, addition to tax, or additional amount relating to any tax imposed by section 2001."

(4) Section 2210(c)(1) is amended by inserting "any authorized officer of" before "the cooperative" in the matter following subparagraph (B).

(5) Section 2210(d) (relating to guarantee of payments) is amended—

(A) by inserting "and any eligible worker-owned cooperative" before "shall guarantee" in the matter following paragraph (2),

(B) by striking out "such plan" and inserting in lieu thereof "such plan or cooperative, respectively,", and

(C) by striking out ", including any interest payable under section 6601 which is attributable to such amount".

(6) Section 2210(g)(3) is amended by striking out "section 1041(b)(2)" and inserting in lieu thereof "section 1042(c)(2)".

(e) AMENDMENTS RELATED TO SECTION 545.—

(1) Section 4978(a)(1) (relating to tax on disposition of securities to which section 1042 applies before close of minimum holding period) is amended by striking out "then" and inserting in lieu thereof "than".

(2) Section 4978(b)(1) is amended by striking out "paragraph (1)" and inserting in lieu thereof "subsection (a)".

(3) Section 4978(c) is amended by striking out "section 1042(a)(2)(B)" and inserting in lieu thereof "section 1042(b)(3)".

(4) Section 4978(d)(1)(C) is amended by striking out "section 72(m)(5)" and inserting in lieu thereof "section 72(m)(7)".

(5) Section 4978(e)(2) is amended by striking out "section 1042(b)(1)" and inserting in lieu thereof "section 1042(c)(1)".

(6) Section 4978(e)(3) is amended by striking out "section 1042(b)(1)" and inserting in lieu thereof "section 1042(c)(2)".

(7) Section 4978(d) (relating to dispositions to which section does not apply) is amended by adding at the end thereof the following new paragraph:

"(3) LIQUIDATION OF CORPORATION INTO COOPERATIVE.—In the case of any exchange of qualified securities pursuant to the liquidation of the corporation issuing qualified securities into the eligible worker-owned cooperative in a transaction which meets the requirements of section 332 (determined by substituting '100 percent' for '80 percent' each place it appears in section 332(b)(1)), such exchange shall not be treated as a disposition for purposes of this section."

(f) OTHER AMENDMENTS.—

(1)(A) Section 409(e) (relating to voting rights) is amended by adding at the end thereof the following new paragraph:

"(5) 1 VOTE PER PARTICIPANT.—A plan meets the requirements of paragraph (2) or (3) with respect to an issue if—

"(A) the plan permits each participant 1 vote with respect to such issue, and

"(B) the trustee votes the shares held by the plan in the proportion determined after application of subparagraph (A)."

(B) Paragraph (3) of section 409(e) (relating to requirement for other employers) is amended by striking out all that follows "with respect to" and inserting in lieu thereof the following: "any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations."

(C) Paragraphs (2) and (3) of section 409(e) are amended by striking out "employer securities" and inserting in lieu thereof "securities of the employer".

(D) Paragraphs (2) and (3) of section 409(e) are amended by inserting "or beneficiary" after "participant" each place it appears.

(2) Section 402 is amended by adding at the end thereof the following new section:

"(g) EFFECT OF DISPOSITION OF STOCK BY PLAN ON NET UNREALIZED APPRECIATION.—

"(1) IN GENERAL.—For purposes of subsection (a)(1) or (e)(4)(J), in the case of any transaction to which this subsection applies, the determination of net unrealized appreciation shall be made without regard to such transaction.

"(2) TRANSACTION TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any transaction in which—

"(A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or

"(B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), except that this subparagraph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition."

(3)(A) Section 4975(e)(7) is amended by inserting ", section 409(o), and, if applicable, section 409(n)" after "section 409(h)".

(B) Section 1042(b)(3)(B) is amended by inserting "and 4979A" after "section 4978(a)".

(C) Section 409(h)(2) is amended by striking out "in cash" in the second sentence thereof and inserting in lieu thereof "in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under the terms which meet the requirements of section 409(o)".

(4)(A) The amendments made by paragraph (1)(A) and (3) shall take effect on the date of the enactment of this Act.

(B) The amendments made by subparagraphs (B), (C), and (D) of paragraph (1) shall apply after December 31, 1986, to stock acquired after December 31, 1979.

(C) The amendments made by paragraph (2) shall apply to any transaction occurring after December 31, 1984, except that in the case of any transaction occurring before the date of the enactment of this Act, the period under which proceeds are required to be invested under section 402(g) of the Internal Revenue Code of 1954 (as added by paragraph (2)) shall not end before the earlier of 1 year after the date of such transaction or 180 days after the date of the enactment of this Act.

SEC. 1855. AMENDMENTS RELATED TO MISCELLANEOUS EMPLOYEE BENEFIT PROVISIONS.

(a) AMENDMENT RELATED TO SECTION 555 OF THE ACT.—Subsection (c) of section 555 of the Tax Reform Act of 1984 (relating to technical amendments to the incentive stock option provisions) is amended—

(1) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (a)(1)",

(2) by striking out "subsection (b)" in paragraph (2) and inserting in lieu thereof "subsection (a)(2)",

(3) by striking out "after March 20, 1984," in paragraph (2), and

(4) by striking out "subsection (c)" in paragraph (3) and inserting in lieu thereof "subsection (b)".

(b) AMENDMENT RELATED TO SECTION 556 OF THE ACT.—Section 556 of the Tax Reform Act of 1984 is amended by striking out so much of such section as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"SEC. 556. TIME FOR MAKING CERTAIN SECTION 83(b) ELECTIONS.

"In the case of any transfer of property in connection with the performance of services on or before November 18, 1982, the election permitted by section 83(b) of the Internal Revenue Code of 1954 may be made, notwithstanding paragraph (2) of such section 83(b), with the income tax return for any taxable year ending after July 18, 1984, and beginning before the date of the enactment of the Tax Reform Act of 1986 if—".

CHAPTER 6—AMENDMENTS RELATED TO TITLE VI OF THE ACT

SEC. 1861. AMENDMENTS RELATED TO SECTION 611 OF THE ACT.

(a) EXTENSION OF TIME FOR SUBMITTING POLICY STATEMENT.—Paragraph (5) of section 103A(j) is amended by adding at the end thereof the following new subparagraph:

"(C) EXTENSION OF TIME.—The Secretary may grant an extension of time for the publishing of a report described in subparagraph (B) or the submittal of such report to the Secretary if there is reasonable cause for the failure to publish or submit such report in a timely fashion."

(b) DEFINITION OF QUALIFIED VETERAN.—Subparagraph (B) of section 103A(o)(4) (defining qualified veteran) is amended by striking out "January 1, 1985" and inserting in lieu thereof "January 31, 1985".

(c) CLARIFICATION OF GOOD FAITH EFFORT PROVISIONS.—

(1) Subparagraph (B) of section 103A(c)(2) (defining qualified mortgage issue) is amended by striking out "and (j)" and inserting in lieu thereof "and (j)(1) and (2)".

(2) Subparagraph (C) of section 103A(c)(2) is amended by striking out "and (i)" and inserting in lieu thereof "(i), and (j) (3), (4), and (5)".

SEC. 1862. AMENDMENT RELATED TO SECTION 612 OF THE ACT.

(a) REQUIREMENTS FOR QUALIFIED MORTGAGE CREDIT CERTIFICATE PROGRAM.—Subclause (V) of section 25(c)(2)(A)(iii) (defining qualified mortgage credit certificate program) is amended by striking out "paragraph (1) of subsection (j)" and inserting in lieu thereof "subsection (j), other than paragraph (2) thereof".

(b) GOOD FAITH EFFORT RULES MADE APPLICABLE.—Subparagraph (A) of section 25(c)(2) (defining qualified mortgage credit certificate program) is amended by adding at the end thereof the following new sentence: "Under regulations, rules similar to the rules of subparagraphs (B) and (C) of section 103A(c)(2) shall apply to the requirements of this subparagraph."

(c) CARRYFORWARD OF EXCESS CREDIT.—Subparagraph (B) of section 25(e)(1) (relating to carryforward of unused credit) is amended to read as follows:

"(B) LIMITATION.—The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount (if any) by which the applicable tax limit for such taxable year exceeds the sum of—

"(i) the credit allowable under subsection (a) for such taxable year determined without regard to this paragraph, and

"(ii) the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year."

(d) CLERICAL AMENDMENTS.—

(1) Subparagraph (B) of section 25(a)(1) is amended by striking out "paid or incurred" and inserting in lieu thereof "paid or accrued".

(2) Subchapter B of chapter 68 is amended by redesignating the section 6708 which relates to penalties with respect to mortgage credit certificates as section 6709.

(3) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to the section 6708 which relates to penalties with respect to mortgage credit certificates and inserting in lieu thereof the following:

"Sec. 6709. Penalties with respect to mortgage credit certificates."

SEC. 1863. AMENDMENT RELATED TO SECTION 613 OF THE ACT.

(a) GENERAL RULE.—Section 613 of the Tax Reform Act of 1984 (relating to authority to borrow from Federal Financing Bank) is amended to read as follows:

"SEC. 613. ADVANCE REFUNDING OF CERTAIN VETERANS' MORTGAGE BONDS PERMITTED.

"(a) IN GENERAL.—Notwithstanding section 103A(n) of the Internal Revenue Code of 1954, an issuer of applicable mortgage bonds may issue advance refunding bonds with respect to such applicable mortgage bonds.

"(b) LIMITATION ON AMOUNT OF ADVANCED REFUNDING.—

"(1) IN GENERAL.—The amount of advanced refunding bonds which may be issued under subsection (a) shall not exceed the lesser of—

"(A) $300,000,000, or

"(B) the excess of—

"(i) the projected aggregate payments of principal on the applicable mortgage bonds during the 15-fiscal year period beginning with fiscal year 1984, over

"(ii) the projected aggregate payments during such period of principal on mortgages financed by the applicable mortgage bonds.

"(2) ASSUMPTIONS USED IN MAKING PROJECTION.—The computation under paragraph (1)(B) shall be made by using the following percentages of the prepayment experience of the Federal Housing Administration in the State or region in which the issuer of the advance refunding bonds is located:

"Fiscal Year:	Percentage:
1984	15
1985	20
1986	25
1987 and thereafter	30.

"(c) DEFINITIONS.—For purposes of this section.—

"(1) APPLICABLE MORTGAGE BONDS.—The term 'applicable mortgage bonds' means any qualified veterans' mortgage bonds issued as part of an issue—

"(A) which was outstanding on December 31, 1981,

"(B) with respect to which the excess determined under subsection (b)(1)(B) exceeds 12 percent of the aggregate principal amount of such bonds outstanding on July 1, 1983,

"(C) with respect to which the amount of the average annual prepayments during fiscal years 1981, 1982, and 1983 was less than 2 percent of the average of the loan balances as of the beginning of each of such fiscal years, and

"(D) which, for fiscal year 1983, had a prepayment experience rate that did not exceed 20 percent of the prepayment experience rate of the Federal Housing Administration in the State or region in which the issuer is located.

"(2) QUALIFIED VETERANS' MORTGAGE BONDS.—The term 'qualified veterans' mortgage bonds' has the meaning given to such term by section 103A(c)(3) of the Internal Revenue Code of 1954.

"(3) FISCAL YEAR.—The term 'fiscal year' means the fiscal year of the State."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act; except that such amendment shall not apply with respect to any loan made by the Federal Financing Bank to the State of Oregon pursuant to a credit agreement entered into on April 16, 1985 (as such agreement was in effect on such date). The Secretary of the Treasury shall guarantee any loan made by the Federal Financing Bank to the State of Oregon pursuant to such agreement.

SEC. 1864. AMENDMENTS RELATED TO SECTION 621 OF THE ACT.

(a) SPECIAL RULE FOR FACILITIES LOCATED OUTSIDE THE STATE.—

(1) IN GENERAL.—Subsection (n) of section 103 (relating to limitation on aggregate amount of private activity bonds issued during any calendar year) is amended by adding at the end thereof the following new paragraph:

"(13) FACILITY MUST BE LOCATED WITHIN STATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no portion of the State

ceiling applicable to any State for any calendar year may be used with respect to financing for a facility located outside such State.

"(B) EXCEPTION FOR CERTAIN FACILITIES WHERE STATE WILL GET PROPORTIONATE SHARE OF BENEFITS.—Subparagraph (A) shall not apply to any issue described in subparagraph (E), (G), or (H) of subsection (b)(4) if the issuer establishes that the State's share of the use of the facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility."

(2) EFFECTIVE DATE.—

(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to obligations issued after the date of the enactment of this Act in taxable years ending after such date.

(B) At the election of the issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe), the amendment made by paragraph (1) shall apply to any obligation issued on or before the date of the enactment of this Act.

(b) CLARIFICATION OF AUTHORITY FOR DIFFERENT ALLOCATION.—Subparagraphs (A) and (B)(i) of section 103(n)(6) (relating to State may provide for different allocation) are each amended by striking out "governmental units" and inserting in lieu thereof "governmental units or other authorities".

(c) CLARIFICATION OF EXCEPTION FOR CERTAIN FACILITIES.—Clause (i) of section 103(n)(7)(C) (relating to exception for certain facilities described in section 103(b)(4)(C) or (D)) is amended by striking out "the property described in such subparagraph" and inserting in lieu thereof "all of the property to be financed by the obligation".

(d) INFORMATION REPORTING ON ALLOCATION OF PRIVATE ACTIVITY BOND LIMIT.—Paragraph (2) of section 103(l) (relating to information reporting requirements for certain bonds) is amended by striking out "and" at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(F) if such obligation is a private activity bond (as defined in subsection (n)(7)), such information as the Secretary may require for purposes of determining whether the requirements of subsection (n) are met with respect to such obligation."

(e) CLARIFICATION OF CARRYFORWARD OF UNUSED BOND AUTHORITY.—

(1) Subparagraph (B) of section 103(n)(10) (relating to election must specify project) is amended—

(A) by striking out "specify the project" in clause (i) and inserting in lieu thereof "identify (with reasonable specificity) the project", and

(B) by striking out "SPECIFY PROJECT" in the subparagraph heading and insert in lieu thereof "IDENTIFY PROJECT".

(2) Subparagraph (D) of section 103(n)(10) is amended by striking out "any specification" and inserting in lieu thereof "any identification or specification".

SEC. 1865. AMENDMENT RELATED TO SECTION 622 OF THE ACT.

(a) CLERICAL AMENDMENT.—Subparagraph (A) of section 103(h)(5) (relating to certain obligations subsidized under energy program) is amended by striking out "the United States,".

(b) TREATMENT OF CERTAIN GUARANTEES BY FARMERS HOME ADMINISTRATION.—An obligation shall not be treated as federally guaranteed for purposes of section 103(h) of the Internal Revenue Code of 1954 by reason of a guarantee by the Farmers Home Administration if—

(1) such guarantee is pursuant to a commitment made by the Farmers Home Administration before July 1, 1984, and

(2) such obligation is issued to finance a convention center project in Carbondale, Illinois.

(c) TREATMENT OF CERTAIN OBLIGATIONS USED TO FINANCE SOLID WASTE DISPOSAL FACILITY.—

(1) IN GENERAL.—Any obligation which is part of an issue a substantial portion of the proceeds of which is to be used to finance a solid waste disposal facility described in paragraph (2) shall not, for purposes of section 103(h) of the Internal Revenue Code of 1954, be treated as an obligation which is federally guaranteed by reason of the sale of fuel, steam, electricity, or other forms of usable energy to the Federal Government or any agency or instrumentality thereof.

(2) SOLID WASTE DISPOSAL FACILITY.—A solid waste disposal facility is described in this paragraph if such facility is described in section 103(b)(4)(E) of such Code and—

(A) if—

(i) a public State authority created pursuant to State legislation which took effect on July 1, 1980, took formal action before October 19, 1983, to commit development funds for such facility,

(ii) such authority issues obligations for such facility before January 1, 1988, and

(iii) expenditures have been made for the development of such facility before October 19, 1983,

(B) if—

(i) such facility is operated by the South Eastern Public Service Authority of Virginia, and

(ii) on December 20, 1984, the Internal Revenue Service issued a ruling concluding that a portion of the obligations with respect to such facility would not be treated as federally guaranteed under section 103(h) of such Code by reason of the transitional rule contained in section 631(c)(3)(A)(i) of the Tax Reform Act of 1984,

(C) if—

(i) a political subdivision of a State took formal action on April 1, 1980, to commit development funds for such facility,

(ii) such facility has a contract to sell steam to a naval base,

(iii) such political subdivision issues obligations for such facility before January 1, 1988, and

(iv) expenditures have been made for the development of such facility before October 19, 1983, or

(D) if—

(i) such facility is a thermal transfer facility,

(ii) is to be built and operated by the Elk Regional Resource Authority, and

(iii) is to be on land leased from the United States Air Force at Arnold Engineering Development Center near Tullahoma, Tennessee.

(3) LIMITATIONS.—

(A) In the case of a solid waste disposal facility described in paragraph (2)(A), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $65,000,000.

(B) In the case of a solid waste disposal facility described in paragraph (2)(B), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $20,000,000. Such amount shall be in addition to the amount permitted under the Internal Revenue Service ruling referred to in paragraph (2)(B)(ii).

(C) In the case of a solid waste disposal facility described in paragraph (2)(C), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $75,000,000.

(D) In the case of a solid waste disposal facility described in paragraph (2)(D), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $25,000,000.

SEC. 1866. TRANSITIONAL RULE FOR LIMIT ON SMALL ISSUE EXCEPTION.

The amendment made by section 623 of the Tax Reform Act of 1984 shall not apply to any obligation issued to refund another tax-exempt IDB to which the amendment made by such section 623 did not apply if—

(1) the refunding obligation has a maturity date not later than the maturity date of the refunded obligation,

(2) the amount of the refunding obligation does not exceed the amount of the refunded obligation,

(3) the interest rate on the refunding obligation is lower than the interest rate on the refunded issue, and

(4) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 30 days after the date of the issuance of the refunding obligation.

For purposes of the preceding sentence, the term "tax-exempt IDB" means any industrial development bond (as defined in section 103(b) of the Internal Revenue Code of 1954) the interest on which is exempt from tax under section 103(a) of such Code.

SEC. 1867. AMENDMENTS RELATED TO SECTION 624 OF THE ACT.

(a) Paragraph (2) of section 624(c) of the Tax Reform Act of 1984 (relating to effective date for limitations on arbitrage on nonpurpose obligations) is amended by striking out "by the Essex County Port Authority of New York and New Jersey as part of an issue approved" and inserting in lieu thereof "for the Essex County New Jersey Resource Recovery Project authorized by the Port Authority of New York and New Jersey on November 10, 1983, as part of an agreement approved".

(b) The amendment made by section 624 of the Tax Reform Act of 1984 shall not apply to obligations issued with respect to the Downtown Muskogee Revitalization Project for which a UDAG grant was preliminarily approved on May 5, 1981, if—

(1) such obligation is issued before January 1, 1986, or

(2) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subsection applies shall not exceed $10,000,000.

SEC. 1868. AMENDMENT RELATED TO SECTION 625 OF THE ACT.

Subparagraph (C) of section 625(a)(3) of the Tax Reform Act of 1984 (relating to arbitrage regulations) is amended by striking out "obligation issued exclusively" and inserting in lieu thereof "obligation (or series of refunding obligations) issued exclusively".

SEC. 1869. AMENDMENTS RELATED TO SECTION 626 OF THE ACT.

(a) CHANGE IN DEFINED TERM.—Subsection (o) of section 103 (relating to denial of tax exemption for consumer loan bonds) is amended—

(1) by striking out "consumer loan bond" each place it appears and inserting in lieu thereof "private loan bond",

(2) by striking out "CONSUMER LOAN BONDS" in the subsection heading and inserting in lieu thereof "PRIVATE LOAN BONDS", and

(3) by striking out "CONSUMER LOAN BONDS" in the heading for paragraph (2) and inserting in lieu thereof "PRIVATE LOAN BONDS".

(b) CLERICAL AMENDMENTS.—

(1) Clause (ii) of section 103(o)(2)(C) (relating to excluded loans) is amended by striking out "subsection (c)(6)(G)(i)" and inserting in lieu thereof "subsection (c)(6)(H)(i)".

(2) Section 103 is amended by redesignating the subsection (o) (relating to cross references) as subsection (p).

(c) TRANSITIONAL RULES.—

(1) TREATMENT OF CERTAIN OBLIGATIONS ISSUED BY THE CITY OF BALTIMORE.—Obligations issued by the city of Baltimore, Maryland, after June 30, 1985, shall not be treated as private loan bonds for purposes of section 103(o) of the Internal Revenue Code of 1954 (or as private activity bonds for purposes of section 103 and part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by title XIII of this Act) by reason of the use of a portion of the proceeds of such obligations to finance or refinance temporary advances made by the city of Baltimore in connection with loans to persons who are not exempt persons (within the meaning of section 103(b)(3) of such Code) if—

(A) such obligations are not industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954),

(B) the portion of the proceeds of such obligations so used is attributable to debt approved by voter referendum on or before November 2, 1982,

(C) the loans to such nonexempt persons were approved by the Board of Estimates of the city of Baltimore on or before October 19, 1983, and

(D) the aggregate amount of such temporary advances financed or refinanced by such obligations does not exceed $27,000,000.

(2) WHITE PINE POWER PROJECT.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to any obligation issued during 1984 to provide financing for the White Pine Power Project in Nevada.

(3) TAX INCREMENT BONDS.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to any tax increment financing obligation issued before August 16, 1986, if—

(A) substantially all of the proceeds of the issue are to be used to finance—

(i) sewer, street, lighting, or other governmental improvements to real property,

(ii) the acquisition of any interest in real property pursuant to the exercise of eminent domain, the preparation of such property for new use, or the transfer of such interest to a private developer, or

(iii) payments of reasonable relocation costs of prior users of such real property,

(B) all of the activities described in subparagraph (A) are pursuant to a redevelopment plan adopted by the issuing authority before the issuance of such issue,

(C) repayment of such issue is secured exclusively by pledges of that portion of any increase in real property tax revenues (or their equivalent) attributable to the redevelopment resulting from the issue, and

(D) none of the property described in subparagraph (A) is subject to a real property or other tax based on a rate or valuation method which differs from the rate and valuation method applicable to any other similar property located within the jurisdiction of the issuing authority.

(4) EASTERN MAINE ELECTRIC COOPERATIVE.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to obligations issued by Massachusetts Municipal Wholesale Electric Company Project No. 6 if—

(A) such obligation is issued before January 1, 1986,

(B) such obligation is issued after such date to refund a prior obligation for such project, except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $100,000,000, or

(C) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

Subparagraph (B) shall not apply to any obligation issued for the advance refunding of any obligation.

(5) CLARIFICATION OF TRANSITIONAL RULE FOR CERTAIN STUDENT LOAN PROGRAMS.—Subparagraph (A) of section 626(b)(2) of the Tax Reform Act of 1984 is amended by striking out "$11 million" in the table contained in such subparagraph and inserting in lieu thereof "$70 million".

(6) TREATMENT OF OBLIGATIONS TO FINANCE ST. JOHNS RIVER POWER PARK.—

(A) IN GENERAL.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to any obligation issued to finance the project described in subparagraph (B) if—

(i) such obligation is issued before September 27, 1985,

(ii) such obligation is issued after such date to refund a prior tax exemption obligation for such project, the amount of such obligation does not exceed the outstanding amount of the refunded obligation, and such prior tax exempt obligation is retired not later than the date 30 days after the issuance of the refunding obligation, or

(iii) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this clause applies shall not exceed $150,000,000.

Clause (ii) shall not apply to any obligation issued for the advance refunding of any obligation.

(B) DESCRIPTION OF PROJECT.—The project described in this subparagraph in the St. Johns River Power Park system in Florida which was authorized by legislation enacted by the Florida Legislature in February of 1982.

SEC. 1870. AMENDMENT RELATED TO SECTION 627 OF THE ACT.

Subparagraph (A) of section 103(b)(16) (relating to limitation on use for land acquisition) is amended by striking out "clause (i)" in the last sentence and inserting in lieu thereof "clause (ii)".

SEC. 1871. AMENDMENTS RELATED TO SECTION 628 OF THE ACT.

(a) CERTAIN RESTRICTIONS APPLY TO EXEMPTIONS NOT CONTAINED IN INTERNAL REVENUE CODE OF 1954.—

(1) IN GENERAL.—Paragraph (1) of section 103(m) (relating to obligations exempt other than under this title) is amended by striking out "(k), (l), and (n)" and inserting in lieu thereof "(j), (k), (l), (n), and (o)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to obligations issued after March 28, 1985, in taxable years ending after such date.

(b) CONFORMING AMENDMENTS TO REPEAL OF ADVANCE REFUNDING OF QUALIFIED PUBLIC FACILITIES.—Paragraphs (13), (14)(A), and (17)(A) of section 103(b) are each amended by striking out "(6), and (7)" and inserting in lieu thereof "and (6)".

SEC. 1872. AMENDMENTS RELATED TO SECTION 631 OF THE ACT.

(a) CLARIFICATION OF GENERAL EFFECTIVE DATE.—

(1) Paragraph (1) of section 631(c) of the Tax Reform Act of 1984 (relating to effective date for other provisions relating to tax-exempt bonds) is amended by striking out "made by this subtitle" and inserting in lieu thereof "made by sections 622, 623, 627, and 628 (c), (d), and (e) (and the provisions of sections 625(c), 628(f), and 629(b))".

(2)(A) Subparagraph (A) of section 631(c)(3) of the Tax Reform Act of 1984 is amended by striking out "amendments made by this subtitle (other than section 621)" and inserting in lieu thereof "amendments (and provisions) referred to in paragraph (1)".

(B) Effective with respect to obligations issued after March 28, 1985, subparagraph (A) of section 631(c)(3) of the Tax Reform Act of 1984 is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, and was completed on or after such date,

"(ii) the original use of which commences with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before October 19, 1983, and some of such expenditures are incurred on or after such date, or

"(iii) acquired after October 19, 1983, pursuant to a binding contract entered into on or before such date."

(3) Paragraph (3) of section 631(c) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION.—Subparagraph (A) shall not apply with respect to the amendment made by section 628(e) and the provisions of sections 628(f) and 629(b)."

(4) Subparagraph (B) of section 631(c)(3) of the Tax Reform Act of 1984 is amended by striking out "subsection (b)(2)(A)" and inserting in lieu thereof "subsection (b)(2)".

(b) SPECIAL RULE FOR HEALTH CLUB FACILITIES.—Subsection (c) of section 631 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE FOR HEALTH CLUB FACILITIES.—In the case of any health club facility, with respect to the amendment made by section 627(c)—

"(A) paragraph (1) shall be applied by substituting 'April 12, 1984' for 'December 31, 1983', and

"(B) paragraph (3) shall be applied by substituting 'April 13, 1984' for 'October 19, 1983' each place it appears."

(c) TREATMENT OF CERTAIN SOLID WASTE DISPOSAL FACILITIES.—

(1) IN GENERAL.—Subsection (d) of section 631 of the Tax Reform Act of 1984 (relating to provisions of subtitle not to apply to certain property) is amended by adding at the end thereof the following:

"(5) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1954 if—

"(A) a city government, by resolutions adopted on April 10, 1980, and December 27, 1982, took formal action to authorize the submission of a proposal for a feasibility study for such facility and to authorize the presentation to the Department of the Army (U.S. Army Missile Command) of a proposed agreement to jointly pursue construction and operation of such facility,

"(B) such city government (or a public authority on its behalf) issues obligations for such facility before January 1, 1988, and

"(C) expenditures have been made for the development of such facility before October 19, 1983. Notwithstanding the foregoing provisions of this subsection, the amendments made by section 624 (relating to arbitrage) shall apply to obligations issued to finance property described in paragraph (5)."

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 632(a) of the Tax Reform Act of 1984 is hereby repealed.

SEC. 1873. AMENDMENTS RELATED TO SECTION 632 OF THE ACT.

(a) CLERICAL AMENDMENT.—Subsection (a) of section 632 of the Tax Reform Act of 1984 is amended by striking out "section 623" in the matter preceding paragraph (1) thereof and inserting in lieu thereof "section 624".

(b) CERTAIN OBLIGATIONS NOT TREATED AS PRIVATE LOAN BONDS.—Subsection (d) of section 632 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new sentence:

"The amendment made by section 626 shall not apply to any obligations described in the preceding sentence."

(c) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE HYDROELECTRIC GENERATING FACILITY.—If—

(1) obligations are to be issued in an amount not to exceed $9,500,000 to finance the construction of an approximately 4 megawatt hydroelectric generating facility owned and operated by the city of Hastings, Minnesota, and located on United States Army Corps of Engineers lock and dam No. 2 or are issued to refund any of such obligations,

(2) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utilities Regulatory Policies Act of 1978, and

(3) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the person referred to in paragraph (2) shall not be treated as the principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

(d) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE HYDROELECTRIC GENERATING FACILITY.—If—

(1) obligations are to be issued in an amount not to exceed $6,500,000 to finance the construction of an approximately 2.6 megawatt hydroelectric generating facility located on the Schroon River in Warren County, New York, near Warrensburg, New York,

(2) such facility has a Federal Energy Regulatory Commission project number 8719-0000 under a preliminary permit issued on November 8, 1985, and

(3) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utilities Regulatory Policies Act of 1978,

then the person referred to in paragraph (3) shall not be treated as the principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

(e) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE HYDROELECTRIC GENERATING FACILITIES.—If—

(1) obligations in the amount of $6,000,000 issued on November 30, 1984, to finance the construction of an approximately 1.0 megawatt hydroelectric generating facility and an approximately .6 megawatt hydroelectric generating facility, both of which are located near Los Banos, California,

(2) such facilities have Federal Energy Regulatory Commission project numbers 5129-001 and 5128-001, respectively, under license exemptions issued on December 6, 1983, and

(3) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utilities Regulatory Policies Act of 1978,

then the person referred to in paragraph (3) shall not be treated as the principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

(f) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE METHANE RECOVERY ELECTRIC GENERATING FACILITIES.—If—

(1) obligations are to be issued in an amount not to exceed $3,000,000 to finance the construction of a methane recovery electric generating facility located on a sanitary landfill near Richmond, California, and

(2) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement entered into on April 16, 1985, in accordance with the Public Utilities Regulatory Policies Act of 1978,

then the person referred to in paragraph (2) shall not be treated as the principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

(g) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE HYDROELECTRIC GENERATING FACILITIES.—If—

(1) obligations are to be issued in an amount not to exceed $6,000,000 to finance the construction of a hydroelectric generating facility having a Federal Energy Regulatory Commission license number 3189, and located near Placerville, California,

(2) an inducement resolution for such project was adopted in March 1985, and

(3) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utilities Regulatory Policies Act of 1978,

then the person referred to in paragraph (3) shall not be treated as the principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

CHAPTER 7—MISCELLANEOUS PROVISIONS

SEC. 1875. AMENDMENTS RELATED TO TITLE VII OF THE ACT.

(a) AMENDMENT RELATED TO SECTION 711(a).—Subsection (c) of section 58 (relating to estates and trusts) is amended by striking out "of tax preference" and inserting in lieu thereof "of tax preference (and any itemized deductions)".

(b) AMENDMENT RELATED TO SECTION 712(1).—Paragraph (1) of section 304(a) (relating to treatment of certain stock purchases) is amended by striking out "In any such case" and inserting in lieu thereof "To the extent that such distribution is treated as a distribution to which section 301 applies".

(c) AMENDMENTS RELATED TO SECTION 713.—(1)(A) Section 402(a)(5)(F)(ii) (relating to special rules for key employees) is amended to read as follows:

"(ii) 5-PERCENT OWNERS.—An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if the employee is a 5-percent owner at the time such distribution is made. For purposes of the preceding sentence, the term '5-percent owner' means any individual who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5 plan years preceding the plan year in which the distribution is made."

(B) The amendments made by subparagraph (A) shall apply to distributions after the date of the enactment of this Act. Such amendments shall apply also to distributions after 1983 and on or before the date of the enactment of this Act to individuals who are not 5-percent owners (as defined in section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 (as amended by this paragraph)).

(2) Section 713(c) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

"(4) EFFECTIVE DATE FOR PARAGRAPH (3).—The amendment made by paragraph (3) shall apply to distributions after July 18, 1984."

(3) Section 62(7) (relating to pension, profit-sharing, and annuity plans of self-employed individuals) is amended by striking out "to the extent attributable to contributions made on behalf of such individual".

(4) Section 219(f)(1) (defining compensation) is amended by striking out "reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62".

(5) Section 713(d)(1) of the Tax Reform Act of 1984 is amended by striking out "Paragraph" and inserting in lieu thereof "Effective with respect to contributions made in taxable years beginning after December 31, 1983, paragraph".

(6)(A) Section 408(d)(5) (relating to certain distributions of excess contributions after due date) is amended by striking out "$15,000" and inserting in lieu thereof "the dollar limitation in effect under section 415(c)(1)(A) for such taxable year".

(B) Subparagraph (C) of section 219(b)(2) is amended by striking out "the $15,000 amount specified in subparagraph (A)(ii)" and inserting in lieu thereof "the dollar limitation in effect under section 415(c)(1)(A)".

(7)(A) Subparagraph (C) of section 404(a)(8) is amended by striking out "the earned income of such individual" and inserting in lieu thereof "the earned income of such individual (determined without regard to the deductions allowed by this section)".

(B) Effective with respect to taxable years beginning after December 31, 1984, subparagraph (D) of section 404(a)(8) is amended by striking out "(determined without regard to the deductions allowed by this section and section 405(c))".

(8) Subparagraph (A) of section 408(d)(3) is amended—

(A) by striking out "(other than a trust forming part of a plan under which the indi-

vidual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)" in clause (ii),

(B) by striking out "(other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)" in clause (ii), and

(C) by adding at the end thereof the following new sentence:

"Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii)."

(9) Clause (iii) of section 415(b)(2)(E) is amended by striking out "adjusting any benefit or limitation under subparagraph (B), (C), or (D)" and inserting in lieu thereof "this subsection".

(10) Subparagraph (B) of section 3405(d)(1) is amended by striking out "or" at the end of clause (ii), and by striking out the material following clause (ii) and inserting in lieu thereof the following:

"(iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty, or

"(iv) any distribution described in section 404(k)(2)."

(11) Subparagraph (C) of section 415(c)(3) is amended by striking out "a profit-sharing or stock bonus plan" and inserting in lieu thereof "any defined contribution plan".

(12) The amendments made by paragraphs (3), (4), and (6) shall take effect as if included in the amendments made by section 238 of the Tax Equity and Fiscal Responsibility Act of 1982.

(d) AMENDMENTS RELATING TO SECTION 714 OF THE ACT.—

(1) PERIOD OF LIMITATIONS.—Section 6229 is amended by adding at the end thereof the following new subsection:

"(g) PERIOD OF LIMITATIONS FOR PENALTIES.—The provisions of this section shall apply also in the case of any addition to tax or an additional amount imposed under subchapter A of chapter 68 which arises with respect to any tax imposed under subtitle A in the same manner as if such addition or additional amount were a tax imposed by subtitle A."

(2) COORDINATION WITH DEFICIENCY PROCEEDINGS.—

(A) IN GENERAL.—Subsection (a) of section 6230 is amended to read as follows:

"(a) COORDINATION WITH DEFICIENCY PROCEEDINGS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subchapter B of this chapter shall not apply to the assessment or collection of any computational adjustment.

"(2) DEFICIENCY PROCEEDINGS TO APPLY IN CERTAIN CASES.—

"(A) Subchapter B shall apply to any deficiency attributable to—

"(i) affected items which require partner level determinations, or

"(ii) items which have become nonpartnership items and are described in section 6231(e)(1)(B).

"(B) Subchapter B shall be applied separately with respect to each deficiency described in subparagraph (A) attributable to each partnership.

"(C) Notwithstanding any other law or rule of law, any notice or proceeding under subchapter B with respect to a deficiency described in this paragraph shall not preclude or be precluded by any other notice, proceeding, or determination with respect to a partner's tax liability for a taxable year."

(B) TECHNICAL AMENDMENTS.—

(i) Paragraph (4) of section 6213(h) is amended to read as follows:

"(4) For provisions relating to application of this subchapter in the case of certain partnership items, etc., see section 6230(a)."

(ii) Paragraph (1) of section 6503(a) is amended by striking out "section 6501 or 6502" and inserting in lieu thereof "section 6501 or 6502 (or section 6229, but only with respect to a deficiency described in section 6230(a)(2)(A))."

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982.

(3) EFFECTIVE DATE PROVISION.—Notwithstanding section 715 of the Tax Reform Act of 1984, the amendments made by section 714(n)(2) of such Act shall apply only to applications filed after July 18, 1984.

(3) ESTATE AND TRUST INTERESTS HELD BY NOMINEES.—

(A) IN GENERAL.—Section 6034A is amended—

(i) by striking out "The fiduciary" and inserting in lieu thereof "(a) GENERAL RULE.—The fiduciary",

(ii) by striking out "each beneficiary" and inserting in lieu thereof "each beneficiary (or nominee thereof)", and

(iii) by adding at the end thereof the following new subsection:

"(b) NOMINEE REPORTING.—Any person who holds an interest in an estate or trust as a nominee for another person—

"(1) shall furnish to the estate or trust, in the manner prescribed by the Secretary, the name and address of such other person, and any other information for the taxable year as the Secretary may by form and regulations prescribe, and

"(2) shall furnish in the manner prescribed by the Secretary to such other person the information provided by the estate or trust under subsection (a)."

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years of estates and trusts beginning after the date of the enactment of this Act.

(e) AMENDMENT RELATED TO SECTION 734 OF THE ACT.—Subsection (a) of section 201 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-11) is amended by striking out "section 209(f)(5) of the Highway Revenue Act of 1956" and inserting in lieu thereof "section 9503(c)(4)(B) of the Internal Revenue Code of 1954".

(f) AMENDMENT RELATED TO SECTION 735 OF THE ACT.—The table of sections for part I of subchapter A of chapter 32 is amended by striking out "guzzlers" and inserting in lieu thereof "guzzler".

(g) AMENDMENT OF SECTION 1248.—

(1) IN GENERAL.—Subsection (g) of section 1248 (relating to exceptions) is amended by inserting "or" at the end of paragraph (1), by striking out paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to exchanges after March 1, 1986.

(3) TRANSITIONAL RULE.—An exchange shall be treated as occurring on or before March 1, 1986, if—

(A) on or before such date, the taxpayer adopts a plan of reorganization to which section 356 applies, and

(B) such plan or reorganization is implemented and distributions pursuant to such plan are completed on or before the date of enactment of this Act.

SEC. 1876. AMENDMENTS RELATED TO TITLE VIII OF THE ACT.

(a) TREATMENT OF SECTION 923(a)(2) NON-EXEMPT INCOME.—

(1) Paragraph (6) of section 927(d) (defining section 923(a)(2) non-exempt income) is amended by adding at the end thereof the following new sentence: "Such term shall not include any income which is effectively connected with the conduct of a trade or business within the United States (determined without regard to this subpart)."

(2) Paragraph (6) of section 1248(d) (relating to foreign trade income) is amended to read as follows:

"(6) FOREIGN TRADE INCOME.—Earnings and profits of the foreign corporation attributable to foreign trade income of a FSC other than foreign trade income which—

"(A) is section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)), or

"(B) would not (but for section 923(a)(4)) be treated as exempt foreign trade income.

For purposes of the preceding sentence, the terms 'foreign trade income' and 'exempt foreign trade income' have the respective meanings given such terms by section 923."

(b) CLARIFICATION OF PREFERENCE CUTBACKS.—

(1) Paragraph (4) of section 291(a) (relating to 20-percent reduction in certain preference items, etc.) is amended to read as follows:

"(4) CERTAIN FSC INCOME.—In the case of taxable years beginning after December 31, 1984, section 923(a) shall be applied with respect to any FSC by substituting—

"(A) '30 percent' for '32 percent' in paragraph (2), and

"(B) '$^{15}/_{23}$' for '$^{16}/_{23}$' in paragraph (3).

If all of the stock in the FSC is not held by 1 or more C corporations throughout the taxable year, under regulations, proper adjustments shall be made in the application of the preceding sentence to take into account stock held by persons other than C corporations."

(2) Subparagraph (F) of section 995(b)(1) (relating to deemed distributions from a DISC) is amended—

(A) by inserting "in the case of a shareholder which is a C corporation," before "one-seventeenth" in clause (i), and

(B) by striking out "the amount determined under clause (i)" in clause (ii) and inserting in lieu thereof "$^{16}/_{17}$ of the excess referred to in clause (i),".

(3) Subsection (a) of section 923 (defining exempt foreign trade income) is amended by adding at the end thereof the following new paragraph:

"(6) CROSS REFERENCE.—

"For reduction in amount of exempt foreign trade income, see section 291(a)(4)."

(c) TREATMENT OF FOREIGN TRADE INCOME UNDER SUBPART F.—

(1) Subsection (b) of section 952 (relating to exclusion of United States income) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States."

(2) Paragraph (1) of section 951(e) is amended by striking out the last sentence.

(d) DIVIDENDS RECEIVED DEDUCTION FOR CERTAIN DISTRIBUTIONS FROM A FSC.—

(1) DEDUCTION FOR CERTAIN DIVIDENDS.—

(A) Paragraph (1) of section 245(c) (relating to certain dividends received from FSC) is amended to read as follows:

"(1) IN GENERAL.—In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to—

"(A) 100 percent of any dividend received by such corporation from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC, and

"(B) 85 percent of any dividend received by such corporation from another corporation which is distributed out of earnings and profits attributable to qualified interest and carrying charges received or accrued by such other corporation while such other corporation was a FSC.

The deduction allowable under the preceding sentence with respect to any dividend shall be in lieu of any deduction allowable under subsection (a) or (b) with respect to such dividend."

(B) Paragraph (3) of section 245(c) (relating to definitions) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, the term 'qualified interest and carrying charges' means any interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income."

(2) SEPARATE APPLICATION OF SECTION 904.—Subparagraph (D) of section 904(d)(1) is amended to read as follows:

"(D) distributions from a FSC (or a former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or qualified interest and carrying charges (as defined in section 245(c)), and".

(3) COORDINATION OF SECTIONS 906 AND 902.—Subsection (b) of section 906 (relating to nonresident alien individuals and foreign corporations) is amended by adding at the end thereof the following new paragraph:

"(6) For purposes of section 902, any income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States shall not be taken into account, and any accumulated profits attributable to such income shall not be taken into account."

(e) EXCHANGE OF INFORMATION REQUIREMENTS.—

(1) Paragraph (3) of section 927(e) (relating to exchange of information requirements) is amended—

(A) by striking out "unless, at the same time such corporation was created or organized, there was" and inserting in lieu thereof "unless there is",

(B) by striking out "section 274(h)(6)(C)" in subparagraph (A) and inserting in lieu thereof "section 274(h)(6)(C) (determined by treating any reference to a beneficiary country as being a reference to any foreign country and by applying such section without regard to clause (ii) thereof)", and

(C) by amending subparagraph (B) to read as follows:

"(B) an income tax treaty which contains an exchange of information program—

"(i) which the Secretary certifies (and has not revoked such certification) is satisfactory in practice for purposes of this title, and

"(ii) to which the FSC is subject."

(2) Effective for periods after March 28, 1985, paragraph (2) of section 924(c) (relating to requirement that FSC be managed outside the United States) is amended to read as follows:

"(2) the principal bank account of the corporation is maintained in a foreign country which meets the requirements of section 927(e)(3) or in a possession of the United States at all times during the taxable year, and".

(f) COORDINATION WITH POSSESSIONS TAXATION.—

(1) Paragraph (5) of section 927(e) (relating to exemption from certain other taxes) is amended to read as follows:

"(5) COORDINATION WITH POSSESSIONS TAXATION.—

"(A) EXEMPTION.—No tax shall be imposed by any possession of the United States on any foreign trade income derived before January 1, 1987. The preceding sentence shall not apply to any income attributable to the sale of property or the performance of services for ultimate use, consumption, or disposition within the possession.

"(B) CLARIFICATION THAT POSSESSION MAY EXEMPT CERTAIN INCOME FROM TAX.—Nothing in any provision of law shall be construed as prohibiting any possession of the United States from exempting from tax any foreign trade income of a FSC or any other income of a FSC described in paragraph (2) or (3) of section 921(d).

"(C) NO COVER OVER OF TAXES IMPOSED ON FSC.—Nothing in any provision of law shall be construed as requiring any tax imposed by this title on a FSC to be covered over (or otherwise transferred) to any possession of the United States."

(2) CLERICAL AMENDMENT.—Section 934 is amended by striking out the subsection (f) added by section 801(d)(7) of the Tax Reform Act of 1984.

(g) CLARIFICATION OF INTEREST ON DISC-RELATED DEFERRED TAX LIABILITY.—Subsection (f) of section 995 (relating to interest on DISC-related deferred tax liability) is amended by adding at the end thereof the following new paragraph:

"(7) DISC INCLUDES FORMER DISC.—For purposes of this subsection, the term 'DISC' includes a former DISC."

(h) CLARIFICATION OF EXEMPTION OF ACCUMULATED DISC INCOME.—Subparagraph (A) of section 805(b)(2) of the Tax Reform Act of 1984 (relating to exemption of accumulated DISC income from tax) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the term 'actual distribution' includes a distribution in liquidation, and the earnings and profits of any corporation receiving a distribution not included in gross income by reason of the preceding sentence shall be increased by the amount of such distribution."

(i) CLARIFICATION OF EFFECTIVE DATE FOR REQUIREMENT THAT TAXABLE YEAR OF DISC AND FSC CONFORM TO TAXABLE YEAR OF MAJORITY SHAREHOLDER.—Paragraph (4) of section 805(a) of the Tax Reform Act of 1984 is amended to read as follows:

"(4) SECTION 803.—The amendments made by section 803 shall apply to taxable years beginning after December 31, 1984."

(j) APPLICATION OF DIVIDENDS RECEIVED DEDUCTION WITH RESPECT TO CERTAIN DIVIDENDS.—Subsection (c) of section 245 (relating to dividends received from certain foreign corporations) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) COORDINATION WITH SUBSECTIONS (a) AND (b).—The gross income giving rise to the earnings and profits described in subparagraph (A) or (B) of paragraph (1) (and not described in paragraph (2)) shall not be taken into account under subsections (a) and (b)."

(k) TREATMENT OF CERTAIN QUALIFYING DISTRIBUTIONS FROM DISC.—Paragraph (2) of section 996(a) (relating to qualifying distributions) is amended by striking out the last sentence and inserting in lieu thereof the following: "In the case of any amount of any actual distribution to a C corporation made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to 16/17ths of such amount and paragraph (1) shall apply to the remaining 1/17th of such amount."

(l) TREATMENT OF CERTAIN RECEIPTS FROM OTHER FSC.—Paragraph (1) of section 924(f) (relating to certain receipts not included in foreign trade gross receipts) is amended by adding at the end thereof the following new sentence:

"In the case of gross receipts of a FSC from a transaction involving any property, subparagraph (C) shall not apply if such FSC (and all other FSC's which are members of the same controlled group and which receive gross receipts from a transaction involving such property) do not use the pricing rules under paragraph (1) of section 925(a) (or the corresponding provisions of the regulations prescribed under section 925(b)) with respect to any transaction involving such property."

(m) TREATMENT OF CERTAIN FORMER EXPORT TRADE CORPORATIONS.—If—

(1) a corporation which is not an export trading corporation for its most recent taxable year ending before the date of the enactment of the Tax Reform Act of 1984 but was an export trading corporation for any prior taxable year, and

(2)(A) such corporation may not qualify as an export trade corporation for any taxable year beginning after December 31, 1984, by reason of section 971(a)(3) of the Internal Revenue Code of 1954, or (B) such corporation makes an election, before the date 6 months after the date of the enactment of this Act, not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of section 805(b) of the Tax Reform Act of 1984 shall apply to such corporation. For purposes of the preceding sentence, the term "export trade corporation" has the meaning given such term by section 971 of such Code.

(n) TREATMENT OF DISTRIBUTION OF ACCUMULATED DISC INCOME RECEIVED BY COOPERATIVES.—Paragraph (2) of section 805(b) of the Tax Reform Act of 1984 (relating to transition rules for DISC's) is amended by adding at the end thereof the following new subparagraph:

"(C) TREATMENT OF DISTRIBUTION OF ACCUMULATED DISC INCOME RECEIVED BY COOPERATIVES.—In the case of any actual distribution received by an organization described in section 1381 of such Code and excluded from the gross income of such corporation by reason of subparagraph (A)—

"(i) such amount shall not be included in the gross income of any member of such organization when distributed in the form of a patronage dividend or otherwise, and

"(ii) no deduction shall be allowed to such organization by reason of any such distribution."

(o) TREATMENT OF CERTAIN CONTRACTS.—Paragraph (2) of section 805(a) of the Tax

Reform Act of 1984 (relating to transitional rule for certain contracts) is amended to read as follows:

"(2) SPECIAL RULE FOR CERTAIN CONTRACTS.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, any event or activity required to occur or required to be performed, before January 1, 1985, by section 924 (c) or (d) or 925(c) of the Internal Revenue Code of 1954 shall be treated as meeting the requirements of such section if such event or activity is with respect to—

"(A) any lease of more than 3 years duration which was entered into before January 1, 1985,

"(B) any contract with respect to which the taxpayer uses the completed contract method of accounting which was entered into before January 1, 1985, or

"(C) in the case of any contract other than a lease or contract described in subparagraph (A) or (B), any contract which was entered into before January 1, 1985; except that this subparagraph shall only apply to the first 3 taxable years of the FSC ending after January 1, 1985, or such later taxable years as the Secretary of the Treasury or his delegate may prescribe."

(p) CLERICAL AMENDMENTS.—

(1) Subsection (f) of section 995 is amended by redesignating the paragraphs following the paragraph (3) relating to deferred DISC income as paragraphs (4), (5), and (6).

(2) Subsection (h) of section 901 is amended by striking out "section 927(d)(6)" and inserting in lieu thereof "section 927(d)(6))".

(3) Paragraph (3) of section 802(c) of the Tax Reform Act of 1984 is hereby repealed.

(4) Subparagraph (A) of section 805(a)(2) of the Tax Reform Act of 1984 is amended by striking out "the taxpayer" and inserting in lieu thereof "the DISC or a related party".

(5) Paragraph (2) of section 927(e) is amended by striking out "clauses (i) and (ii)" and inserting in lieu thereof "clauses (ii) and (iii)".

SEC. 1877. AMENDMENTS RELATED TO TITLE IX OF THE ACT.

(a) AMENDMENT RELATED TO SECTION 911 OF THE ACT.—Paragraph (3) of section 34(a) (relating to credit for certain uses of gasoline and special fuels) is amended to read as follows:

"(3) under section 6427—

"(A) with respect to fuels used for nontaxable purposes or resold, or

"(B) with respect to any qualified diesel-powered highway vehicle purchased (or deemed purchased under section 6427(g)(6)), during the taxable year (determined without regard to section 6427(j))."

(b) AMENDMENTS RELATED TO SECTION 915 OF THE ACT.—

(1) Paragraph (2) of section 6427(b) (relating to intercity, local, or school buses) is amended by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in an automobile bus while engaged in the transportation described in paragraph (1)(B)."

(2) Subparagraph (A) of section 6427(b)(2) is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(3) The heading for subparagraph (C) of section 6427(b)(2), as redesignated by paragraph (1), is amended by striking out "EXCEPTION" and inserting in lieu thereof "EXCEPTION FOR CERTAIN INTRACITY TRANSPORTATION".

(c) AMENDMENT RELATED TO SECTION 921 OF THE ACT.—Paragraph (3) of section 4051(d) (relating to temporary reduction in tax on certain piggyback trailers) is amended by adding at the end thereof the following new sentence:

"No tax shall be imposed by reason of this paragraph on any use or resale which occurs more than 6 years after the date of the first retail sale."

SEC. 1878. AMENDMENTS RELATED TO TITLE X OF THE ACT.

(a) AMENDMENT RELATED TO SECTION 1001 OF THE ACT.—Subsection (b) of section 1001 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

"(24) Clause (i) of section 1278(a)(1)(B) (relating to short-term obligations)."

(b) AMENDMENT RELATED TO SECTION 1015 OF THE ACT.—Subparagraph (I) of section 4162(a)(6) (defining sport fishing equipment) is amended to read as follows:

"(I) fishing hook disgorgers, and".

(c) AMENDMENTS RELATED TO SECTION 1018 OF THE ACT.—

(1) Paragraph (1) of section 4041(l) (relating to exemption for certain helicopter uses) is amended to read as follows:

"(1) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or".

(2) Paragraph (1) of section 4261(e) (relating to exemption for certain helicopter uses) is amended to read as follows:

"(1) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or".

(d) AMENDMENTS RELATED TO SECTION 1028 OF THE ACT.—Subsection (b) of section 1028 of the Tax Reform Act of 1984 (relating to credit against estate tax for transfers to Toiyabe National Forest) is amended to read as follows:

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount allowed as a credit under subsection (a) shall be equal to the lesser of—

"(A) the fair market value of the real property transferred by each estate as of the valuation date used for purposes of the tax imposed by chapter 11 of such Code, or

"(B) the Federal estate tax liability (and interest thereon) of each estate.

"(2) SPECIAL RULE FOR RABE ESTATE.—In the case of the estate described in paragraph (2) of subsection (a), the amount allowed as a credit under subsection (a) shall be equal to the Federal estate tax liability (and interest accruing thereon through the date of a transfer described in paragraph (1) of subsection (c)) of such estate."

(e) AMENDMENTS RELATED TO SECTION 1034 OF THE ACT.—

(1) The last sentence of section 514(c)(9)(B) (relating to exceptions) is amended by striking out "would be unrelated business taxable income (determined without regard to this paragraph)" and inserting in lieu thereof "is unrelated business taxable income".

(2) Clause (i) of section 514(c)(9)(C) is amended by striking out "section 509(a)" and inserting in lieu thereof "section 509(a)(3)".

(3) Clause (vi) of section 514(c)(9)(B) is amended to read as follows:

"(vi) the real property is held by a partnership (which does not fail to meet the requirements of clauses (i) through (v)), and—

"(I) any partner of the partnership is not a qualified organization, and

"(II) the principal purpose of any allocation to any partner of the partnership which is a qualified organization which is not a qualified allocation (within the meaning of section 168(j)(9)) is the avoidance of income tax.

For purposes of subclause (I) of clause (vi), an organization shall not be treated as a qualified organization if any income of such organization would be unrelated business taxable income (determined without regard to this paragraph. For purposes of clause (vi), an interest in a mortgage shall in no event be treated as real property."

(f) AMENDMENTS RELATED TO SECTION 1041 OF THE ACT.—

(1) The subsection (j) of section 51 (relating to targeted jobs credit) added by section 1041 of the Tax Reform Act of 1984 is hereby redesignated as subsection (k).

(2) Subparagraph (B) of section 1041(c)(5) of the Tax Reform Act of 1984 is amended by striking out "section 51(j)" and inserting in lieu thereof "section 51(k)".

(g) AMENDMENT RELATED TO SECTION 1053 OF THE ACT.—Paragraph (2) of section 1034(h) (relating to members of armed forces) is amended by striking out "before the last day described" and inserting in lieu thereof "before the day which is 1 year after the last day described".

(h) AMENDMENT RELATED TO SECTION 1063 OF THE ACT.—Subsection (c) of section 1063 of the Tax Reform Act of 1984 (relating to permanent disallowance of deduction for expenses of demolition of certain structures) is amended to read as follows:

"(c) EFFECTIVE DATES.—

"(1) The amendments made by this section shall apply to taxable years ending after December 31, 1983, but shall not apply to any demolition (other than of a certified historic structure) commencing before July 19, 1984.

"(2) For purposes of paragraph (1), if a demolition is delayed until the completion of the replacement structure on the same site, the demolition shall be treated as commencing when construction of the replacement structure commences.

"(3) The amendments made by this section shall not apply to any demolition commencing before September 1, 1984, pursuant to a bank headquarters building project if—

"(A) on April 1, 1984, a corporation was retained to advise the bank on the final completion of the project, and

"(B) on June 12, 1984, the Comptroller of the Currency approved the project.

"(4) The amendments made by this section shall not apply to the remaining adjusted basis at the time of demolition of any structure if—

"(A) such structure was used in the manufacture, storage, or distribution of lead alkyl antiknock products and intermediate and related products at facilities located in or near Baton Rouge, Louisiana, and Houston, Texas, owned by the same corporation, and

"(B) demolition of at least one such structure at the Baton Rouge facility commenced before January 1, 1984."

(i) AMENDMENT RELATED TO SECTION 1065 OF THE ACT.—Subsection (b) of section 1065 of the Tax Reform Act of 1984 (relating to rules treating Indian tribal governments as States) is amended by striking out "section 7871" and inserting in lieu thereof "section 7871(a)".

(j) AMENDMENTS RELATED TO SECTION 1071 OF THE ACT.—

(1) Subsection (a) of section 852 (relating to taxation of regulated investment companies and their shareholders) is amended by adding "and" at the end of paragraph (1),

by striking out paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(2) Paragraph (1) of section 852(b) (relating to imposition of tax on regulated investment companies) is amended by striking out the last sentence and inserting in lieu thereof the following: "In the case of a regulated investment company which is a personal holding company (as defined in section 542) or which fails to comply for the taxable year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of its stock, such tax shall be computed at the highest rate of tax specified in section 11(b)."

SEC. 1879. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 (relating to failure to pay estimated income tax) for any period before April 16, 1985 (March 16, 1985 in the case of a taxpayer subject to section 6655 of such Code), with respect to any underpayment, to the extent that such underpayment was created or increased by any provision of the Tax Reform Act of 1984.

(b) AMENDMENTS RELATED TO ORPHAN DRUG CREDIT.—

(1) Clause (ii) of section 28(b)(2)(A) (defining clinical testing) is amended—

(A) by striking out "the date of such drug" in subclause (I) and inserting in lieu thereof "the date such drug", and

(B) by striking out "of such Act" in subclause (II) and inserting in lieu thereof "of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Services Act".

(2) Paragraph (1) of section 28(d) (defining rare disease or condition) is amended to read as follows:

"(1) RARE DISEASE OR CONDITION.—For purposes of this section, the term 'rare disease or condition' means any disease or condition which—

"(A) affects less than 200,000 persons in the United States, or

"(B) affects more than 200,000 persons in the United States but for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug.

Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act."

(3) The amendments made by this subsection shall apply to amounts paid or incurred after December 31, 1982, in taxable years ending after such date.

(c) TREATMENT OF SALES WITHIN AFFILIATED GROUP FOR PURPOSES OF SECTION 29.—

(1) Paragraph (8) of section 29(d) (relating to related persons) is amended by adding at the end thereof the following new sentence: "In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such a person by another member of such group."

(2) The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 231 of Public Law 96-223.

(d) RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFITS.—

(1) Subsection (d) of section 6039D (added by section 1 of Public Law 98-611) is amended to read as follows:

"(d) DEFINITIONS.—For purposes of this section—

"(1) SPECIFIED FRINGE BENEFIT PLAN.—The term 'specified fringe benefit plan' means—

"(A) any qualified group legal services plan (as defined in section 120),

"(B) any cafeteria plan (as defined in section 125), and

"(C) any educational assistance plan (as defined in section 127).

"(2) APPLICABLE EXCLUSION.—The term 'applicable exclusion' means—

"(A) section 120 in the case of a qualified group legal services plan,

"(B) section 125 in the case of a cafeteria plan, and

"(C) section 127 in the case of an educational assistance plan."

(2) The section 6039D added by section 1 of Public Law 98-612 is hereby repealed.

(e) REPEAL OF JOINT COMMITTEE REPORT REQUIREMENT.—Section 6405 (relating to reports of refunds and credits) is amended by striking out subsection (b) and redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(f) AMENDMENTS RELATED TO PUBLIC LAW 99-121.—

(1) The table contained in section 467(e)(3)(A) is amended—

(A) by striking out "18-year real property" and inserting in lieu thereof "19-year real property", and

(B) by striking out "18 years" and inserting in lieu thereof "19 years".

(2) The amendments made by paragraph (1) shall take effect as if included in the amendments made by section 103 of Public Law 99-121.

(g) DEFINED CONTRIBUTION PLAN OF RURAL ELECTRIC COOPERATIVE MAY INCLUDE QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

(1) IN GENERAL.—Paragraphs (1) and (2) of section 401(k) (relating to cash or deferred arrangements) are each amended by striking out "(or a pre-ERISA money purchase plan)" and inserting in lieu thereof ", a pre-ERISA money purchase plan, or a rural electric cooperative plan".

(2) RURAL ELECTRIC COOPERATIVE PLAN DEFINED.—Subsection (k) of section 401 is amended by adding at the end thereof the following new paragraph:

"(6) RURAL ELECTRIC COOPERATIVE PLAN.—For purposes of this subsection, the term 'rural electric cooperative plan' means any pension plan—

"(A) which is a defined contribution plan (as defined in section 414(i)), and

"(B) which is established and maintained by a rural electric cooperative (as defined in section 457(d)(9)(B)) or a national association of such rural electric cooperatives."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1984.

(h) CLARIFICATION OF DEFINITION OF NEWLY DISCOVERED OIL.—

(1) IN GENERAL.—Paragraph (2) of section 4991(e) (defining newly discovered oil) is amended by adding at the end thereof the following new sentences: "Such term includes any production from a property which did not produce oil in commercial quantities during calendar year 1978. For purposes of the preceding sentence, a property shall not be treated as producing oil in commercial quantities during calendar year 1978 if, during calendar year 1978 (A) the aggregate amount of oil produced from such property did not exceed 2,200 barrels (whether or not such oil was sold), and (B) no well on such property was in production for a total of more than 72 hours."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to oil removed after February 29, 1980.

(i) MEDICINAL ALCOHOL, ETC. BROUGHT INTO THE UNITED STATES FROM PUERTO RICO OR THE VIRGIN ISLANDS ELIGIBLE FOR DRAWBACK.—

(1) Section 7652 (relating to shipments to the United States) is amended by adding at the end thereof the following new subsection:

"(g) DRAWBACK FOR MEDICINAL ALCOHOL, ETC.—In the case of medicines, medicinal preparations, food products, flavors, or flavoring extracts containing distilled spirits, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the Virgin Islands—

"(1) subpart F of part II of subchapter A of chapter 51 shall be applied as if—

"(A) the use and tax determination described in section 5131(a) had occurred in the United States by a United States person at the time the article is brought into the United States, and

"(B) the rate of tax were the rate applicable under subsection (f) of this section, and

"(2) no amount shall be covered into the treasuries of Puerto Rico or the Virgin Islands."

(2) The amendment made by paragraph (1) shall apply to articles brought into the United States after the date of the enactment of this Act.

(3)(A) Section 7652 of the Internal Revenue Code of 1954 (other than subsection (f) thereof) shall not prevent the payment to Puerto Rico or the Virgin Islands of amounts with respect to medicines, medicinal preparations, food products, flavors, or flavoring extracts containing distilled spirits, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the Virgin Islands on or before the date of the enactment of this Act.

(B) With respect to articles brought into the United States after September 27, 1985, subparagraph (A) shall apply only if the Secretary of the Treasury or his delegate is satisfied that the amounts paid to Puerto Rico or the Virgin Islands under subparagraph (A) are being repaid to the proper persons who used the distilled spirits in such articles.

(j) ALLOWANCE OF INVESTMENT CREDIT TO ELIGIBLE SECTION 501(d) ORGANIZATIONS.—

(1) IN GENERAL.—Section 48 (relating to definitions and special rules) is amended by redesignating subsection (r) as subsection (s) and by inserting after subsection (q) the following new subsection:

"(r) CERTAIN SECTION 501(d) ORGANIZATIONS.—

"(1) IN GENERAL.—In the case of eligible section 501(d) organizations—

"(A) any business engaged in by such organization for the common benefit of its members and the taxable income from which is included in the gross income of its members shall be treated as an unrelated business for purposes of paragraph (4) of subsection (a),

"(B) the qualified investment for each taxable year with respect to such business shall be apportioned pro rata among such members in the same manner as the taxable income of such organization, and

"(C) any individual to whom any investment has been apportioned under subparagraph (B) shall be treated for purposes of this subpart (other than section 47) as the taxpayer with respect to such investment,

and such investment shall not (by reason of such apportionment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be.

"(2) LIMITATION ON USED SECTION 38 PROPERTY APPLIED AT ORGANIZATION LEVEL.—The limitation under subparagraph (A) of subsection (c)(2) shall apply with respect to the section 501(d) organization.

"(3) RECAPTURE.—For purposes of applying section 47 to any property for which credit was allowed under section 38 by reason of this subsection—

"(A) the section 501(d) organization shall be treated as the taxpayer to which the credit under section 38 was allowed,

"(B) the amount of such credit allowed with respect to the property shall be treated as the amount which would have been allowed to the section 501(d) organization were such credit allowable to such organization,

"(C) subparagraph (D) of section 47(a)(5) shall not apply, and

"(D) the amount of the increase in tax under section 47 for any taxable year with respect to property to which this subsection applies shall be allocated pro rata among the members of such organization in the same manner as such organization's taxable income for such year is allocated among such members.

"(4) NO INVESTMENT CREDIT ALLOWED TO MEMBER IF MEMBER CLAIMS OTHER INVESTMENT CREDIT.—No credit shall be allowed to an individual by reason of this subsection if such individual claims a credit under section 38 without regard to this subsection. The amount of the credit not allowed by reason of the preceding sentence shall not be allowed to any other person.

"(5) ELIGIBLE SECTION 501(d) ORGANIZATION.—For purposes of this subsection, the term 'eligible section 501(d) organization' means any organization—

"(A) which elects to be treated as an organization described in section 501(d) and which is exempt from tax under section 501(a), and

"(B) which does not provide a substantially higher standard of living for any person or persons than it does for the majority of the members of the community."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to periods after December 31, 1978 (under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1954), in taxable years ending after such date.

(3) SPECIAL RULE.—If refund or credit of any overpayment of tax resulting from the application of this subsection is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act by operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of the amendments made by this subsection) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

(k) AMENDMENT RELATED TO MUTUAL SAVINGS BANKS DESCRIBED IN SECTION 591(b).—

(1) IN GENERAL.—Subparagraph (B) of section 501(c)(14) (relating to list of tax-exempt organizations) is amended—

(A) by striking out "or" at the end of clause (ii),

(B) by striking out the period at the end of clause (iii) and inserting in lieu thereof a comma and "or", and

(C) by inserting at the end thereof the following new clause:

"(iv) mutual savings banks described in section 591(b)".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after August 13, 1981.

(l) AMENDMENT TO SECTION 368(a)(2)(F).—

(1) IN GENERAL.—Clause (ii) of section 368(a)(2)(F) (relating to certain transactions involving 2 or more investment companies) is amended to read as follows:

"(ii) A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer (other than stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause (ii)), and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers (other than stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause (ii)). For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply as if included in section 2131 of the Tax Reform Act of 1976.

(m) AMENDMENTS RELATING TO SUBCHAPTER S CORPORATIONS.—

(1) IN GENERAL.—

(A) Section 1361(d)(3) (relating to qualified subchapter S trusts) is amended by adding at the end thereof the following new sentence: "A substantially separate and independent share of a trust treated as a separate trust under section 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c)."

(B) Section 1368(e)(1) (relating to definitions and special rules) is amended by striking out the period at the end of subparagraph (A) and inserting in lieu thereof "and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1982.

(n) AMENDMENT RELATING TO SECTION 2523.—

(1) IN GENERAL.—Subparagraph (A) of section 2523(f)(4) (relating to election with respect to life estate for donee spouse) is amended to read as follows:

"(A) TIME AND MANNER.—An election under this subsection with respect to any property shall be made on or before the date prescribed by section 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to section 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to transfers made after December 31, 1985.

(3) SPECIAL RULE FOR CERTAIN TRANSFERS IN OCTOBER 1984.—An election under section 2523(f) of the Internal Revenue Code of 1954 with respect to an interest in property which—

(A) was transferred during October 1984, and

(B) was transferred pursuant to a trust instrument stating that the grantor's intention was that the property of the trust would constitute qualified terminable interest property as to which a Federal gift tax marital deduction would be allowed upon the grantor's election,

shall be made on the return of tax imposed by section 2501 of such Code for the calendar year 1984 which is filed on or before the due date of such return or, if a timely return is not filed, on the first such return filed after the due date of such return and before December 31, 1986.

(o) AMENDMENTS RELATING TO SECTION 4994.—

(1) For purposes of section 4991(b), a "qualified charitable interest" shall include an economic interest in crude oil held by the Episcopal Royalty Company, an entity created in 1961 as a subsidiary of the Protestant Episcopal Church Foundation of the Diocese of Oklahoma.

(2) The amendment made by this subsection shall apply to oil removed after February 29, 1980.

(p) AMENDMENT RELATED TO SECTION 252 OF THE ECONOMIC RECOVERY TAX ACT OF 1981.—

(1) Notwithstanding subsection (c) of section 252 of the Economic Recovery Tax Act of 1981, the amendment made by subsection (a) of such section 252 (and the provisions of subsection (b) of such section 252) shall apply to any transfer of stock to any person if—

(A) such transfer occurred in November or December of 1973 and was pursuant to the exercise of an option granted in November or December of 1971,

(B) in December 1973 the corporation granting the option was acquired by another corporation in a transaction qualifying as a reorganization under section 368 of the Internal Revenue Code of 1954,

(C) the fair market value (as of July 1, 1974) of the stock received by such person in the reorganization in exchange for the stock transferred to him pursuant to the exercise of such option was less than 50 percent of the fair market value of the stock so received (as of December 4, 1973),

(D) in 1975 or 1976 such person sold substantially all of the stock received in such reorganization, and

(E) such person makes an election under this section at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

(2) LIMITATION ON AMOUNT OF BENEFIT.—Subsection (a) shall not apply to transfers with respect to any employee to the extent that the application of subsection (a) with respect to such employee would (but for this subsection) result in a reduction in liability for income tax with respect to such employee for all taxable years in excess of $100,000 (determined without regard to any interest).

(3) STATUTE OF LIMITATIONS.—

(A) OVERPAYMENTS.—If refund or credit of any overpayment of tax resulting from the application of subsection (a) is prevented on the date of the enactment of this Act (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, refund or credit of such overpayment (to the extent attributable to the application of subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 6-month period.

(B) DEFICIENCIES.—If the assessment of any deficiency of tax resulting from the application of subsection (a) is prevented on the date of the enactment of this Act (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, assessment of such deficiency (to the extent attributable to the application of subsection (a)) may, nevertheless, be made within such 6-month period.

(q) TREATMENT OF CERTAIN SELF-INSURED WORKERS' COMPENSATION FUNDS.—

(1) MORATORIUM ON COLLECTION ACTIVITIES.—During the period beginning on the date of the enactment of this Act and ending on August 16, 1987, the Secretary of the Treasury or his delegate—

(A) shall suspend any pending audit of any self-insured workers' compensation fund where the audit involves the issue of whether such fund is a mutual insurance company,

(B) shall not initiate any audit of any such fund involving such issue, and

(C) shall take no steps to collect from such fund any underpayment, interest, or penalty involving such issue.

(2) SUSPENSION OF RUNNING OF INTEREST.—No interest shall be payable under chapter 67 of the Internal Revenue Code of 1986 on any underpayment by a self-insured workers' compensation fund involving such issue for the period beginning on August 16, 1986, and ending on August 16, 1987.

(3) ADDITIONAL TIME TO FILE TAX COURT PROCEEDING.—If the period during which a petition involving such issue could have been filed with the Tax Court by any self-insured workers' compensation fund had not expired before August 16, 1986, such period shall not expire before August 16, 1987.

(4) SELF-INSURED WORKERS' COMPENSATION FUND.—For purposes of this subsection, the term "self-insured workers' compensation fund" means any self-insured workers' compensation fund established pursuant to applicable State law regulating self-insured workers' compensation funds.

(r) RETURNS OF ALCOHOL, TOBACCO, AND FIREARMS TAXES.—

(1) IN GENERAL.—Subsection (b) of section 6091 of such Code (relating to place for filing returns or other documents) is amended by adding at the end thereof the following new paragraph:

"(6) ALCOHOL, TOBACCO, AND FIREARMS RETURNS, ETC.—In the case of any return of tax imposed by subtitle E (relating to taxes on alcohol, tobacco, and firearms), subsection (a) shall apply (and this subsection shall not apply)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act.

(s) TREATMENT OF STRIPPING TAX-EXEMPT BONDS.

(1) IN GENERAL.—Subsection (d) of section 1286 is amended to read as follows:

"(d) SPECIAL RULES FOR TAX-EXEMPT OBLIGATIONS.—In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

"(1) the amount of original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon from such obligation shall be the amount which produces a yield to maturity (as of the purchase date) equal to the lower of—

"(A) the coupon rate of interest on such obligation before the separation of coupons, or

"(B) the yield to maturity (on the basis of purchase price) of the stripped obligation or coupon,

"(2) the amount of original issue discount determined under paragraph (1) shall be taken into account in determining the adjusted basis of the holder under section 1288,

"(3) subsection (b)(1) shall not apply, and

"(4) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the interest accrued but not paid before the time such bond or coupon was disposed of (and not previously reflected in basis)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to any purchase or sale of any stripped tax-exempt obligation or stripped coupon from such an obligation after the date of the enactment of this Act.

(t) DISPOSITION OF CERTAIN SUBSIDIARY.—If for a taxable year of an affiliated group filing a consolidated return ending on or before December 31, 1987, there is 1 disposition of stock of a subsidiary incorporated in Delaware on December 24, 1969, and whose principal place of business is in New Orleans, Louisiana (within the meaning of Treasury Regulation section 1.1502-19), the amount required to be included in income with respect to such disposition under Treasury Regulation section 1.1502-19(a) shall, notwithstanding such section, be included in income ratably over the 15-year period beginning with the taxable year in which the disposition occurs and ending with the 14th succeeding taxable year.

(u) AMENDMENTS RELATED TO SINGLE EMPLOYER PENSION PLAN AMENDMENTS ACT OF 1986.—

(1) CLARIFICATION OF APPLICABILITY OF NOTICE REQUIREMENT FOR SIGNIFICANT REDUCTIONS IN BENEFIT ACCRUALS.—Section 206(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(h); 100 Stat. 243) is amended—

(A) by striking out "single-employer plan" and inserting in lieu thereof "plan described in paragraph (2)";

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(C) by striking out "paragraph (1), (2), or (3)" and inserting in lieu thereof "subparagraph (A), (B), or (C)";

(D) by inserting "(1)" after "(h)"; and

(E) by adding at the end the following new paragraph:

"(2) A plan is described in this paragraph if such plan is—

"(A) a defined benefit plan, or

"(B) an individual account plan which is subject to the funding standards of section 302."

(2) TREATMENT OF SECTION 4049 TRUSTS ESTABLISHED PURSUANT TO SECTION 4042(i).—Section 4049(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1349(a); 100 Stat. 258) is amended by inserting "or 4042(i)" after "section 4041(c)(3)(B)(ii) or (iii)".

(3) CORRECTION OF DEFINITION OF MULTIEMPLOYER PLAN FOR PURPOSES OF TITLE I.—Section 11016(c)(1) of the Single-Employer Pension Plan Amendments Act of 1986 (100 Stat. 273) and the amendment made thereby are repealed.

(4) EFFECTIVE DATE.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the preceding provisions of this subsection shall be effective as if such provisions were included in the enactment of the Single-Employer Pension Plan Amendments Act of 1986.

(B) SPECIAL RULE.—Subparagraph (B) of section 206(h)(2) of the Employee Retirement Income Security Act of 1974 (as amended by paragraph (1)) shall apply only with respect to plan amendments adopted on or after the date of the enactment of this Act.

CHAPTER 8—EFFECTIVE DATE

SEC. 1881. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, any amendment made by this subtitle shall take effect as if included in the provision of the Tax Reform Act of 1984 to which such amendment relates.

SUBTITLE B—RELATED TO OTHER PROGRAMS AFFECTED BY THE DEFICIT REDUCTION ACT OF 1984

CHAPTER 1—AMENDMENTS RELATED TO SOCIAL SECURITY ACT PROGRAMS

SEC. 1882. AMENDMENTS RELATED TO COVERAGE OF CHURCH EMPLOYEES (SECTION 2603 OF THE DEFICIT REDUCTION ACT).

(a) CLARIFICATION OF EXCEPTION FOR MEMBERS OF CERTAIN RELIGIOUS FAITHS.—Subsection (g) of section 1402 of the Internal Revenue Code of 1954 (relating to members of certain religious faiths) is amended by adding at the end thereof the following new paragraph:

"(5) SUBSECTION NOT TO APPLY TO CERTAIN CHURCH EMPLOYEES.—This subsection shall not apply with respect to services which are described in subparagraph (B) of section 3121(b)(8) (and are not described in subparagraph (A) of such section)."

(b) TREATMENT OF INCOME OF CERTAIN CHURCH, ETC., EMPLOYEES.—

(1) AMENDMENTS OF INTERNAL REVENUE CODE OF 1954.—

(A) IN GENERAL.—Section 1402 of such Code (relating to definitions for purposes of the tax on self-employment income) is amended by adding at the end thereof the following new subsection:

"(j) SPECIAL RULES FOR CERTAIN CHURCH EMPLOYEE INCOME.—

"(1) COMPUTATION OF NET EARNINGS.—In applying subsection (a)—

"(A) church employee income shall not be reduced by any deduction;

"(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

"(2) COMPUTATION OF SELF-EMPLOYMENT INCOME.—

"(A) SEPARATE APPLICATION OF SUBSECTION (b)(2).—Paragraph (2) of subsection (b) shall be applied separately—

"(i) to church employee income, and

"(ii) to other net earnings from self-employment.

"(B) $100 FLOOR.—In applying paragraph (2) of subsection (b) to church employee income, '$100' shall be substituted for '$400'.

"(3) COORDINATION WITH SUBSECTION (a)(12).—Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(12), and paragraph (1) shall be applied before determining the amount so allowable.

"(4) CHURCH EMPLOYEE INCOME DEFINED.—For purposes of this section, the term 'church employee income' means gross income for services which are described in section 3121(b)(8)(B) (and are not described in section 3121(b)(8)(A))."

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) NET EARNINGS.—Paragraph (14) of section 1402(a) of such Code (defining net earnings from self-employment) is amended to read as follows:

"(14) in the case of church employee income, the special rules of subsection (j)(1) shall apply."

(ii) SELF-EMPLOYMENT INCOME.—Subsection (b) of section 1402 of such Code is amended by adding at the end thereof the following new sentence: "In the case of church employee income, the special rules of subsection (j)(2) shall apply for purposes of paragraph (2)."

(iii) CONFORMING AMENDMENT.—The second sentence of section 1402(b) of such Code is amended by striking out "clause (1)" and inserting in lieu thereof "paragraph (1)".

(2) AMENDMENTS OF SOCIAL SECURITY ACT.—

(A) IN GENERAL.—Section 211 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(i)(1) In applying subsection (a)—

"(A) church employee income shall not be reduced by any deduction;

"(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

"(2)(A) Subsection (b)(2) shall be applied separately—

"(i) to church employee income, and

"(ii) to other net earnings from self-employment.

"(B) In applying subsection (b)(2) to church employee income, '$100' shall be substituted for '$400'.

"(3) Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(11), and paragraph (1) shall be applied before determining the amount so allowable.

"(4) For purposes of this section, the term 'church employee income' means gross income for services which are described in section 210(a)(8)(B) (and are not described in section 210(a)(8)(A))."

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) NET EARNINGS.—Section 211(a)(13) of such Act is amended to read as follows:

"(13) In the case of church employee income, the special rules of subsection (i)(1) shall apply."

(ii) SELF-EMPLOYMENT INCOME.—Section 211(b) of such Act is amended by adding at the end thereof the following new sentence: "In the case of church employee income, the special rules of subsection (i)(2) shall apply for purposes of paragraph (2)."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to remuneration paid or derived in taxable years beginning after December 31, 1985.

(c) REVOCATION OF ELECTION UNDER SECTION 3121(w).—Paragraph (2) of section 3121(w) of the Internal Revenue Code of 1954 (relating to timing and duration of election) is amended by striking out the last 2 sentences and inserting in lieu thereof the following: "The election may be revoked by the church or organization under regulations prescribed by the Secretary. The election shall be revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Any revocation under the preceding sentence shall apply retroactively to the beginning of the 2-year period for which the information was not furnished."

SEC. 1883. TECHNICAL CORRECTIONS IN OTHER PROVISIONS RELATED TO SOCIAL SECURITY ACT PROGRAMS.

(a) AMENDMENTS RELATING TO OASDI PROGRAM.—

(1) Section 202(c)(5)(B) of the Social Security Act is amended by striking out "or (I)" and inserting in lieu thereof "or (J)".

(2) Section 202(q)(5)(A)(i) of such Act is amended by striking out "prescribed by him" and inserting in lieu thereof "prescribed by the Secretary".

(3) Section 202(q)(5)(C) of such Act is amended by striking out "she shall be deemed" and inserting in lieu thereof "he or she shall be deemed".

(4) Section 210(a)(5)(G) of such Act is amended by striking out "Any other service" and inserting in lieu thereof "any other service".

(5) Effective on the date of the enactment of the Deficit Reduction Act of 1984—

(A) section 2601(d)(1)(B)(ii) of that Act is amended by striking out "210(a)(5)(g)(iii)" and inserting in lieu thereof "210(a)(5)(G)(iii)"; and

(B) section 2663(c)(1) of that Act is amended by striking out subparagraph (B).

(6) Section 211(c)(2) of the Social Security Act is amended by indenting subparagraph (G) two additional ems (for a total indentation of four ems) so as to align its left margin with the margins of the other subparagraphs in such section.

(7) Section 215(i)(5)(B) of such Act is amended—

(A) by striking out "subdivision (I)" in clause (ii) and inserting in lieu thereof "clause (i)(I)"; and

(B) by striking out "subdivisions (I) and (II)" in the matter between clauses (iii) and (iv) and inserting in lieu thereof "clause (i)".

(8) The heading of section 218(m) of such Act is amended to read as follows:

"Wisconsin Retirement Fund".

(9) Section 221(e) of such Act is amended by striking out "under this section" in the first sentence.

(10) Section 223(g)(1) of such Act is amended by striking out the second comma after the term "benefits" where such term first appears in the matter following subparagraph (C).

(11)(A) Section 1402(c)(2) of the Internal Revenue Code of 1954 is amended by indenting subparagraph (G) two additional ems (for a total indentation of four ems) so as to align its left margin with the margins of the other subparagraphs in such section.

(B) Section 3121(a)(8) of such Code is amended by moving subparagraph (B) two ems to the left, so that its left margin is in flush alignment with the margin of subparagraph (A) of such section.

(b) AMENDMENTS RELATING TO AFDC AND CHILD SUPPORT PROGRAMS.—

(1)(A) Section 402(a)(31)(A) of the Social Security Act is amended by striking out "(or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in fulltime employment or not employed throughout the month)".

(B) The amendment made by this paragraph shall be effective beginning October 1, 1984.

(2)(A) Section 402(a)(38)(B) of such Act is amended by striking out "section 406(a)," and inserting in lieu thereof "section 406(a) or in section 407(a) (if such section is applicable to the State),".

(B) Section 402(a)(38) of such Act (as amended by subparagraph (A) of this paragraph) is further amended by relocating so much of subparagraph (B) as follows "section 407(a) (if such section is applicable to the State)," and placing it after and below subparagraph (B), beginning flush, and indenting it two ems so that its left margin is aligned with the left margin of that portion of section 402(a)(38) that precedes subparagraph (A) thereof.

(C) The amendments made by this paragraph shall be effective beginning October 1, 1984.

(3)(A) Section 402(a)(39) of such Act is amended by striking out "under the age selected by the State pursuant to section 406(a)(2)" and inserting in lieu thereof "under the age of 18".

(B) The amendment made by subparagraph (A) shall be effective beginning October 1, 1984.

(4)(A) Section 402(a) of such Act is amended by striking out "and" after the semicolon at the end of paragraph (37), and by making any additional changes which may be necessary to assure that paragraphs (34) through (37) each end with a semicolon, paragraph (38) ends with "; and", and paragraph (39) ends with a period.

(B) Effective on the date of the enactment of the Deficit Reduction Act of 1984, section 2639(a) of that Act is amended by striking out the period immediately following "utility providing home energy" (in the quoted matter) and inserting in lieu thereof a semicolon.

(5) The placement of the last sentence of section 402(a) of the Social Security Act is modified to the extent necessary to assure that it begins flush to the full left margin without any indentation, immediately after and below the last of the numbered paragraphs.

(6) Section 457(c) of such Act is amended by striking out "subsection (b)(3) (A) and (B)" in the matter following paragraph (2) and inserting in lieu thereof "subsection (b)(4) (A) and (B)".

(7) Section 458(d) of such Act is amended by striking out "on behalf of individuals residing in another State" and inserting in lieu thereof "at the request of another State".

(8) Section 464(b)(2)(A) of such Act is amended by striking out "threshhold" and inserting in lieu thereof "threshold".

(9) Section 474(a) of such Act is amended by moving paragraph (4) two ems to the left, so that its left margin is in flush alignment with the margins of the preceding paragraphs.

(10)(A) Part E of title IV of such Act is amended by adding at the end thereof the following new section:

"EXCLUSION FROM AFDC UNIT OF CHILD FOR WHOM FOSTER CARE MAINTENANCE PAYMENTS ARE MADE

"SEC. 478. Notwithstanding any other provision of this title, a child with respect to whom foster care maintenance payments are made under this part shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of the benefits of the family under part A, and the income and resources of such child shall not be counted as the income and resources of a family under such part.".

(B) The amendment made by subparagraph (A) shall become effective October 1, 1984.

(11)(A) The failure by a State to comply with the provisions of any amendment made by paragraph (1), (2), (3), or (10) or the imposition by a State of any requirement inconsistent with such provisions, in the administration of its plan approved under section 402(a) of the Social Security Act during the period beginning October 1, 1984, and ending on the day preceding the date of the enactment of this Act, shall not be considered to be failure to comply substantially with a provision required to be included in the State's plan, or to constitute (solely by reason of such inconsistency) the imposition of a prohibited requirement in the administration of the plan, for purposes of section 404(a) of such Act.

(B) No State shall be considered to have made any overpayment or underpayment of aid, under its plan approved under section 402(a) of the Social Security Act, by reason of its compliance or noncompliance with the provisions of any amendment made by paragraph (1), (2), (3), or (10) (or solely because of the extent to which its requirements are consistent or inconsistent with such provisions) in the administration of the plan during the period specified in subparagraph (A).

(c) AMENDMENTS TO GENERAL PROVISIONS.—

(1) Section 1101(a) of such Act is amended by shifting paragraphs (3), (4), and (5) to the right to the extent necessary to assure that their left margins are aligned with the left margins of the other numbered paragraphs.

(2) Section 1136(b)(7) of such Act is amended by striking out "nongovermental" and inserting in lieu thereof "nongovernmental".

(d) AMENDMENTS RELATING TO SSI PROGRAM.—

(1) The heading of section 1631(g) of such Act is amended to read as follows:

"Reimbursement to States for Interim Assistance Payments".

(2) Section 1612(a)(1)(C) of such Act is amended by striking out "section 43" and inserting in lieu thereof "section 32".

(3) Section 1612(b) of such Act is amended—

(A) by striking out the semicolon at the end of paragraph (2)(A) and inserting in lieu thereof ", and";

(B) by striking out the period at the end of paragraph (2)(B) and inserting in lieu thereof a semicolon; and

(C) by making any changes which may be necessary to assure that paragraph (11) ends with a semicolon, paragraph (12) ends with "; and", and paragraph (13) ends with a period.

(e) AMENDMENTS RELATING TO SOCIAL SERVICES PROGRAM.—

(1)(A) Section 2003(d) of such Act is repealed.

(B) Section 2003(b) of such Act is amended by striking out "(subject to subsection (d))".

(2) Section 2007 of such Act is repealed.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall take effect on the date of the enactment of this Act.

CHAPTER 2—AMENDMENTS RELATED TO UNEMPLOYMENT COMPENSATION PROGRAM

SEC. 1884. TECHNICAL CORRECTIONS IN FEDERAL UNEMPLOYMENT TAX ACT.

The Federal Unemployment Tax Act is amended as follows:

(1) Subparagraph (B) of section 3302(c)(2) (relating to a limit on the credit against the unemployment tax) is amended—

(A) by striking out "determination" the second place it appears in the material preceding clause (i) and inserting in lieu thereof "denominator", and

(B) in clause (i)—

(i) by striking out "percent" immediately preceding the comma at the end thereof, and

(ii) by inserting "percent" after "2.7".

(2) Subparagraph (A) of section 3302(f)(8) (relating to a partial limitation on the reduction of the credit against the unemployment tax) is amended by striking out "1987" and inserting in lieu thereof "1986".

(3) Clause (i) of section 3306(o)(1)(A) (relating to crew leaders who are registered or provide specialized agricultural labor) is amended by striking out "Farm Labor Contractor Registration Act of 1963" and inserting in lieu thereof "Migrant and Seasonal Agricultural Worker Protection Act".

CHAPTER 3—AMENDMENTS RELATED TO TRADE AND TARIFF PROGRAMS

SEC. 1885. AMENDMENTS TO THE TARIFF SCHEDULES.

(a) IN GENERAL.—The Tariff Schedules of the United States are amended as follows:

(1) TELECOMMUNICATIONS PRODUCT CLASSIFICATION CORRECTIONS.—

(A) Schedule 6 is amended as follows:

(i) Headnote 1 to subpart C of part 4 is amended by striking out "688.43" and inserting in lieu thereof "688.42".

(ii) Headnote 3 of part 5 of schedule 6 is amended by striking out "items 685.11 through 685.19, inclusive," and inserting in lieu thereof "items 684.92, 684.98, 685.00, and 685.08".

(iii) Item 685.34 is amended by inserting "35% ad val." in Column No. 2.

(iv) Item 685.55 is amended by striking out "685.11 to 685.50" and inserting in lieu thereof "684.92 to 685.49".

(B) Headnote 2(ii) to part 7 of schedule 8 is amended by striking out "688.43" and inserting in lieu thereof "688.42".

(C) Subpart B of part 2 of schedule 6 is amended by inserting before the superior heading to items 608.26 and 608.29, and at the same indention level as that heading, the following new item:

"608.25	Silicon electrical steel.	5.6% ad. val. + additional duties (see headnote 4)	5.1% ad val. + additional duties (see headnote 4) (D) Free (E, I)	33% ad. val. additional duties (see headnote 4)"

(2) CORRECTIONS TO THE APPENDIX.—Subpart B of part 1 to the Appendix is amended as follows:

(A) The article description for item 906.38 is amended to read as follows: "N-Acetylsulfanilyl chloride (provided for in item 405.31, part 1B, schedule 4)".

(B) Item 907.38 is amended by striking out "411.87" and inserting in lieu thereof "411.82".

(C) Item 912.13 is amended by striking out "670.20" and inserting in lieu thereof "670.21".

(D) Item 907.63 is amended by striking out "(provided for in item 437.13" and inserting in lieu thereof "put up in measured doses in chewing gum form (provided for in item 438.02".

(3) MISCELLANEOUS CORRECTIONS.—The Schedules are further amended as follows:

(A) Headnote 1 of subpart D of part 4 of schedule 1 is amended by striking out "(casein plus albumin)" and inserting in lieu thereof "(casein plus lactalbumin)".

(B) Headnote 1 of subpart C of part 4 of schedule 3 is amended—

(i) by inserting "or" after the semicolon at the end of clause (v); and

(ii) by striking out "; or" at the end of clause (vi) and inserting in lieu thereof a period.

(b) EFFECTIVE DATE.—

(1) The amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date that is 15 days after the date of enactment of this Act.

(2) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the customs officer concerned on or before the date that is 90 days after the date of enactment of this Act, the entry of any article—

(A) which was made on or after November 14, 1984, and before the date that is 15 days after the date of enactment of this Act; and

(B) with respect to which there would have been no duty, or a lesser duty, by reason of any amendment made by subsection (a) if such entry were made on or after the date that is 15 days after the date of enactment of this Act,

shall be liquidated or reliquidated as though such entry had been made on the date that is 15 days after the date of enactment of this Act.

(3) The rate of duty in column number 1 for item 608.25 of the Tariff Schedules of the United States shall be subject to all staged rate reductions for item 608.38 of such Schedules that—

(A) take effect after the date of enactment of this Act, and

(B) were proclaimed by the President before the date of enactment of this Act.

SEC. 1886. TECHNICAL CORRECTIONS TO COUNTERVAILING AND ANTIDUMPING DUTY PROVISIONS.

(a) IN GENERAL.—Title VII of the Tariff Act of 1930 is amended as follows:

(1)(A) Subsection (c) of section 701 (19 U.S.C. 1671(c)) is redesignated as subsection (d).

(B) Subsection (g) of such section 701 (as added by section 613(b) of the Trade and Tariff Act of 1984) is—

(i) amended by striking out "(g) Whenever" and inserting in lieu thereof "(c) UPSTREAM SUBSIDY.—Whenever"; and

(ii) inserted immediately after subsection (b) of that section.

(2) Sections 702(b)(1), 732(b)(1), and 733(b)(2) (19 U.S.C. 1671a(b)(1); 1673a(b)(1); 1673b(b)(2)) are each amended by striking out "(C), (D), or (E)" each place it appears and inserting in lieu thereof "(C), (D), (E), or (F)".

(3) Subsection (h) of section 703 (19 U.S.C. 1671b(h)) is redesignated as subsection (g), and—

(A) paragraph (2)(A) of that subsection (as so redesignated) is amended by striking out "days under section 705(a)(1) or 225 days under section 705(a)(2), as appropriate" and inserting in lieu thereof "or 225 days, as appropriate, under section 705(a)(1)"; and

(B) paragraph (2)(B)(ii) of that subsection (as so redesignated) is amended by striking out "days under section 705(a)(2)" and inserting in lieu thereof "or 225 days, as appropriate, under section 705(a)(1)".

(4) Section 704 is amended—

(A) by amending subsection (d)—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

"(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent

representative period determined by the administering authority."; and

(B) by amending subsection (i)(1)(D) by striking out "international" and inserting in lieu thereof "intentional".

(5) Paragraph (2) of section 706(a) is amended by aligning the margin of the matter appearing after subparagraph (B) with the margin of the matter appearing before subparagraph (A).

(6)(A) Section 708 is amended by striking out "SEC. 708." and inserting in lieu thereof the following flush section heading:

"SEC. 708. EFFECT OF DEROGATION OF EXPORT-IMPORT BANK FINANCING.".

(B) The table of contents for such title VII is amended by inserting in numerical sequence the following:

"Sec. 708. Effect of derogation of Export-Import Bank financing."

(7) Paragraph (1) of section 736(c) (19 U.S.C. 1673e(c)(1)) is amended by inserting ", and was sold to any person that is not related to such manufacturer, producer, or exporter," immediately before "on or after the date of publication of—".

(8) The last sentence of section 751(b)(1) (19 U.S.C. 1675(b)(1)) is amended by inserting "or countervailing duty" after "antidumping" each place it appears.

(9) Clause (i) of section 771(7)(F) (19 U.S.C. 1677(7)(F)(i)) is amended—

(A) by striking "any merchandise" in that part which precedes subclause (I) and inserting in lieu thereof "the merchandise"; and

(B) by striking out "find orders" in subclause (VIII) and inserting in lieu thereof "final orders".

(10) Subsection (a) of section 771A (19 U.S.C. 1677-1(a)) is amended by striking out "(ii), or (iii)" and inserting in lieu thereof "(ii), (iii), or (iv)".

(11) Subsection (g) of section 773 (19 U.S.C. 1677b(g)) is redesignated as subsection (f).

(12) Section 775 (19 U.S.C. 1677d) is amended by striking out "an proceeding" each place it appears in the text and in the heading and inserting in lieu thereof "a proceeding".

(13) Section 777 (19 U.S.C. 1677f) is amended—

(A) by striking out "confidential", "nonconfidential", and "confidentiality" each place they appear in the text and in the side headings and inserting in lieu thereof "proprietary", "non-proprietary", and "proprietary status", respectively; and

(B) by inserting "or the Commission" after "administering authority" in subsection (b)(1)(B)(i).

(b) AMENDMENTS TO EFFECTIVE DATE PROVISIONS.—Section 626(b) of the Trade and Tariff Act of 1984 (relating to the effective dates of the amendments made therein to title VII of the Tariff Act of 1930) is amended—

(1) by amending paragraph (1) by inserting ", and to reviews begun under section 751 of that Act," after "1930"; and

(2) by adding at the end thereof the following new paragraphs:

"(3) The administering authority may delay implementation of any of the amendments referred to in subsections (a) and (b)(1) with respect to any investigation in progress on the date of enactment of this Act if the administering authority determines that immediate implementation would prevent compliance with a statutory deadline in title VII of the Tariff Act of 1930 that is applicable to that investigation.

"(4) The amendment made by section 621 shall apply with respect to merchandise that is unliquidated on or after November 4, 1984.".

SEC. 1887. AMENDMENTS TO THE TRADE ACT OF 1974.

(a) IN GENERAL.—The Trade Act of 1974 is amended as follows:

(1) Subclause (II) of section 102(b)(4)(B)(ii) of the Trade Act of 1974 (19 U.S.C. 2112(b)(4)(B)(ii)(II)) is amended by striking out "subsection (A)(ii)(I)" and inserting in lieu thereof "subparagraph (A)(ii)(I)".

(2) Subsection (n) of section 135 (as added by section 306(c)(2)(B)(v) of the Trade and Tariff Act of 1984) is redesignated as subsection (m).

(3) Section 141(d)(6) is amended by striking out "3679(b) of the Revised Statutes (31 U.S.C. 665(b))" and inserting in lieu thereof "1342 of title 31, United States Code".

(4) Subsection (d) of section 141 (19 U.S.C. 2171(d)) is amended—

(A) by striking out "and" at the end of paragraph (9),

(B) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and", and

(C) by redesignating the paragraph added by section 304(d)(2)(A)(iii) of the Trade and Tariff Act of 1984 as paragraph (11).

(5) Subparagraphs (A), (B), and (C) of section 502(b)(4) (19 U.S.C. 2462(b)(4)) are amended to read as follows:

"(A) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

"(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

"(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,".

(6) That part of section 504(c)(3)(D)(ii) (19 U.S.C. 2464(c)(3)(D)(ii)) that precedes subclause (I) is amended—

(A) by striking out "from any beneficiary developing country";

(B) by striking out "1984 which exceeds 15" and inserting in lieu thereof "1986 the aggregate value of which exceeds 15"; and

(C) by striking out "if for the preceding calendar year such beneficiary developing country—" and inserting in lieu thereof "from those beneficiary developing countries which for the preceding calendar year—".

(b) TRANSISTORS.—

(1) Section 128(b) of the Trade Act of 1974 (19 U.S.C. 2138) is amended by striking out "587.70" in paragraph (1) and inserting in lieu thereof "687.70".

(2)(A) Item 687.70 of the Tariff Schedules of the United States is amended by striking out "4.2% ad val." and inserting in lieu thereof "Free".

(B) The amendment made by subparagraph (A) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date that is 15 days after the date of enactment of this Act.

(C) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the customs officer concerned on or before the date that is 90 days after the date of enactment of this Act, the entry of any article described in item 687.70 of the Tariff Schedules of the United States which was made on or after March 1, 1985, and before the date that is 15 days after the date of enactment of this Act shall be liquidated or reliquidated as though such entry had been made on the date that is 15 days after the date of enactment of this Act.

SEC. 1888. AMENDMENTS TO THE TARIFF ACT OF 1930.

The Tariff Act of 1930 is amended as follows:

(1) Subsection (c) of section 304 (19 U.S.C. 1304(c)) is amended—

(A) by striking out "No" and inserting in lieu thereof the following: "(1) Except as provided in paragraph (2), no"; and

(B) by adding at the end thereof the following new paragraph:

"(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the four methods specified in paragraph (1), the article may be marked by an equally permanent method of marking such as paint stenciling or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.".

(2) Subsection (j) of section 313 (19 U.S.C. 1313(j)) is amended—

(A) by redesignating the paragraphs (3) and (4) inserted by section 202(1)(B) of the Trade and Tariff Act of 1984 as paragraphs (2) and (3), respectively; and

(B) by amending the paragraph redesignated as paragraph (4) by section 202(1)(A) of the Trade and Tariff Act of 1984 to read as follows:

"(4) The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on—

"(A) the imported merchandise itself in cases to which paragraph (1) applies, or

"(B) the merchandise of the same kind and quality in cases to which paragraph (2) applies,

that does not amount to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).".

(3) Section 339(c)(2)(A) (19 U.S.C. 1339) is amended by striking out "relief" and inserting in lieu thereof "injury".

(4) Section 514(a) (19 U.S.C. 1514(a)) is amended by striking out "as defined in section 771(9) (C), (D), (E), and (F) of this Act".

(5) Section 516(a)(2) (19 U.S.C. 1516(a)(2)) is amended by adding at the end thereof the following new sentence:

"Such term includes an association, a majority of whose members is composed of persons described in subparagraph (A), (B), or (C).".

(6) Section 516A(a)(3) (19 U.S.C. 1516a(a)(3)) is amended by striking out "(2)(A)(ii)" and inserting in lieu thereof "(2)(A)(i)(II)".

(7) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a), as added by section 317 of the Joint Resolution entitled "A Joint Resolution making appropriations for fiscal year 1985, and for other purposes.", approved Oc-

tober 12, 1984 (98 Stat. 2054, Public Law 98-473), is repealed.

(8) Section 641 (19 U.S.C. 1641) is amended by adding at the end thereof the following new subsection:

"(i) COMPENSATION OF OCEAN FREIGHT FORWARDERS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, no conference or group of two or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to ocean freight forwarders may—

"(A) deny to any member of such conference or group the right, upon notice of not more than 10 calendar days, to take independent action on any level of compensation paid to an ocean freight forwarder who is also a customs broker, and

"(B) agree to limit the payment of compensation to an ocean freight forwarder who is also a customs broker to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

"(2) ADMINISTRATION.—The provisions of this subsection shall be enforced by the agency responsible for administration of the Shipping Act of 1984 (46 U.S.C. 1701, et seq.).

"(3) REMEDIES.—Any person injured by reason of a violation of paragraph (1) may, in addition to any other remedy, file a complaint for reparation as provided in section 11 of the Shipping Act of 1984 (46 U.S.C. 1710), which may be enforced pursuant to section 14 of such Act (46 U.S.C. 1713).

"(4) DEFINITIONS.—For purposes of this subsection, the terms 'conference', 'ocean common carrier', and 'ocean freight forwarder' have the respective meaning given to such terms by section 3 of the Shipping Act of 1984 (46 U.S.C. 1702)."

SEC. 1889. AMENDMENTS TO THE TRADE AND TARIFF ACT OF 1984.

The Trade and Tariff Act of 1984 (Public Law 98-573) is amended as follows:

(1) Section 126 is amended by striking out the following:

"(3) Paragraphs (1) and (2) of section 126 of the bill are amended to read as follows:".

(2) Section 174(b) is amended by adding at the end of the table appearing therein the following:

"January 1, 1987..... 4.9% ad val.".

(3) Paragraph (7) of subsection (b) of section 212 is redesignated as subsection (c) of that section.

(4) The table in section 234(a) is amended by striking out "711.49" and inserting in lieu thereof "712.49".

(5) Paragraph (3) of section 307(b) is amended by striking out "or paragraph (3)".

(6) Paragraph (4) of section 404(e) is amended by striking out "147.44" and inserting in lieu thereof "147.33".

(7) Section 504 is amended by striking out "Tariff Act of 1930" and inserting in lieu thereof "Trade Act of 1974".

(8) Paragraph (3) of section 619 is amended by striking out "subsection (b)" and inserting in lieu thereof "subsection (b)(1)".

SEC. 1890. AMENDMENTS TO THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT.

ERR11 Section 213 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703) is amended—

(1) by amending paragraph (3) of subsection (a) (as added by section 235 of the Trade and Tariff Act of 1984)—

(A) by redesignating that paragraph as paragraph (4), and aligning its margin with that of paragraph (3), and

(B) by striking out "such" the first time it appears therein and inserting in lieu thereof "any beneficiary"; and

(2) by striking out "138.42" in subsection (f)(5)(B) and inserting in lieu thereof "138.46".

SEC. 1891. CONFORMING AMENDMENTS REGARDING CUSTOMS BROKERS.

Title 28 of the United States Code is amended—

(1) by striking out "(3) or (c)" in section 1581(g)(1) and inserting in lieu thereof "(3)"; and

(2) by striking out "641(a)(1)(C)" in section 1582(1) and inserting in lieu thereof "641(b)(6)".

SEC. 1892. SPECIAL EFFECTIVE DATE PROVISIONS FOR CERTAIN ARTICLES GIVEN DUTY-FREE TREATMENT UNDER THE TRADE AND TARIFF ACT OF 1984.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer on or before the date that is 90 days after the date of enactment of this Act, any entry—

(1) which was made after the applicable date and before November 14, 1984, and

(2) with respect to which there would have been no duty or a lesser duty by reason of any amendment made by section 112, 115, 118, 167, or 179 of the Trade and Tariff Act of 1984 if such entry were made on November 14, 1984,

shall be liquidated or reliquidated as though such entry had been made on November 14, 1984.

(b) APPLICABLE DATE.—For purposes of this section—

(1) The term "applicable date" means—

(A) with respect to any entry for which the amendment described in subsection (a)(2) is any amendment made by section 118 of the Trade and Tariff Act of 1984, June 1, 1982;

(B) with respect to any entry for which the amendment described in subsection (a)(2) is any amendment made by section 112, 115, or 179 of the Trade and Tariff Act of 1984, June 30, 1983; and

(C) with respect to any entry for which the amendment described in subsection (a)(2) is the amendment made by section 167 of the Trade and Tariff Act of 1984, October 30, 1983.

(2) The term "entry" includes any withdrawal from warehouse.

SEC. 1893. TECHNICAL AMENDMENTS RELATING TO CUSTOMS USER FEES.

(a) SCHEDULE OF FEES.—

(1) Subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) is amended—

(A) by striking out "Subject to the limitation in subsection (b)(2), for" in paragraph (2) and inserting in lieu thereof "For",

(B) by adding at the end thereof the following new paragraph:

"(8) For the arrival of a barge or other bulk carrier from Canada or Mexico, $100."

(2) Paragraph (3) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(3)) is amended to read as follows:

"(3) For the arrival of each railroad car carrying passengers or commercial freight, $7.50."

(b) LIMITATIONS ON FEES.—

(1) Subsection (b) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is amended by adding at the end thereof the following new paragraphs:

"(4) No fee may be charged under subsection (a)(5) with respect to the arrival of any passenger—

"(A) who is in transit to a destination outside the customs territory of the United States, and

"(B) for whom customs inspectional services are not provided.

"(5) No fee may be charged under subsection (a)(1) for the arrival of—

"(A) a vessel during a calendar year after a total of $5,955 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such vessel during such calendar year,

"(B) any vessel which, at the time of the arrival, is being used solely as a tugboat, or

"(C) any barge or other bulk carrier from Canada or Mexico.

"(6) No fee may be charged under subsection (a)(8) for the arrival of a barge or other bulk carrier during a calendar year after a total of $1,500 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such barge or other bulk carrier during such calendar year.

"(7) No fee may be charged under paragraphs (2), (3), or (4) of subsection (a) for the arrival of any—

"(A) commercial truck,

"(B) railroad car, or

"(C) private vessel,

that is being transported, at the time of the arrival, by any vessel that is not a ferry."

(2) Subparagraph (A) of section 13031(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(1)(A)) is amended to read as follows:

"(A) the arrival of any passenger whose journey—

"(i) originated in—

"(I) Canada,

"(II) Mexico,

"(III) a territory or possession of the United States, or

"(IV) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5)), or

"(ii) originated in the United States and was limited to—

"(I) Canada,

"(II) Mexico,

"(III) territories and possessions of the United States, and

"(IV) such adjacent islands;".

(3) Paragraph (1) of section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(1)) is amended—

(A) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; or ", and

(B) by adding at the end thereof the following new subparagraph:

"(C) the arrival of any ferry."

(4) Subsection (c) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(c)) is amended—

(A) by amending paragraph (1) to read as follows:

"(1) The term 'ferry' means any vessel which is being used—

"(A) to provide transportation only between places that are no more than 300 miles apart, and

"(B) to transport only—

"(i) passengers, or

"(ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.", and

(B) by adding at the end thereof the following new paragraph:

"(5) The term 'barge or other bulk carrier' means any vessel which—

"(A) is not self-propelled, or

"(B) transports fungible goods that are not packaged in any form."

(c) SPECIAL PROVISIONS RELATING TO CUSTOMS BROKER PERMITS.—

(1) Subsection (d) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(d)) is amended by adding at the end thereof the following new paragraph:

"(4)(A) Notice of the date on which payment of the fee imposed by subsection (a)(7) is due shall be published by the Secretary of the Treasury in the Federal Register by no later than the date that is 60 days before such due date.

"(B) A customs broker permit may be revoked or suspended for nonpayment of the fee imposed by subsection (a)(7) only if notice of the date on which payment of such fee is due was published in the Federal Register at least 60 days before such due date.

"(C) The customs broker's license issued under section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) may not be revoked or suspended merely by reason of nonpayment of the fee imposed under subsection (a)(7)."

(2) Notwithstanding section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(7)), the fee imposed by section 13031(a) of such Act with respect to each customs broker permit held by an individual, partnership, association, or corporate customs broker for calendar year 1986 is $62.50.

(3)(A) The Secretary of the Treasury shall reinstate any customs broker's license or customs broker permit issued under subsection (b) or (c) of section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) that was suspended or revoked on or before the date of enactment of this Act solely by reason of nonpayment of the fee imposed by section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(B) Notwithstanding any other provision of law, the Secretary of the Treasury may not suspend or revoke any customs broker permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)) solely by reason of nonpayment of the fee imposed by section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 before the date that is 60 days after the date of enactment of this Act.

(d) PROVISION OF FOREIGN PRE-CLEARANCE SERVICES.—

(1) Paragraph (1) of section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)) is amended to read as follows:

"(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights at customs serviced airports when needed and at no cost (other than the fees imposed under subsection (a)) to airlines and airline passengers."

(2) Subsection (e) of section 13031 of such Act is amended by—

(A) striking out "This subsection" in paragraph (2) and inserting in lieu thereof "Paragraph (1)", and

(B) by adding at the end thereof the following new paragraph:

"(3) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law—

"(A) the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights when needed at places located outside the customs territory of the United States at which a customs officer is stationed for the purpose of providing such customs services, and

"(B) other than the fees imposed under subsection (a), the airlines and airline passengers shall not be required to reimburse the Secretary of the Treasury for the costs of providing overtime customs inspectional services at such places."

(e) REGULATIONS ON REMITTANCE OF FEES.—Subsection (g) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(g)) is amended by adding at the end thereof the following new sentence: "Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section."

(f) REINSTATING LIMIT ON CHARGES FOR OTHER INSPECTION SERVICES.—Section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741), as amended by section 13031(h)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is further amended by adding at the end thereof the following new subsection:

"(e)(1) The cost of any inspection or quarantine service which is required to be performed by the Federal Government or any agency thereof at airports of entry or other places of inspection as a consequence of the operation of aircraft, and which is performed during regularly established hours of service on Sundays or holidays shall be reimbursed by the owners or operators of such aircraft only to the same extent as if such service had been performed during regularly established hours of service on weekdays. Notwithstanding any other provision of law, administrative overhead costs associated with any inspection or quarantine service required to be performed by the United States Government, or any agency thereof, at airports of entry as a result of the operation of aircraft, shall not be assessed against the owners or operators thereof.

"(2) Nothing in this subsection may be construed as requiring reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985."

(g) EFFECTIVE DATE; REFUNDS.—

(1) The amendments made by this section shall apply with respect to services rendered after the date that is 15 days after the date of enactment of this Act.

(2) Upon written request filed by any person with the Secretary of the Treasury (hereafter in this subsection referred to as the "Secretary") before the date that is 90 days after the date of enactment of this Act which is accompanied by such documentation establishing proof of payment as the Secretary may require, the Secretary shall refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person an amount equal to the excess of—

(A) the amount of fees imposed by section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 that were paid by such person to the Secretary with respect to customs services provided—

(i) after July 6, 1986, and

(ii) on or before the date that is 15 days after the date of enactment of this Act, over

(B) the amount of fees such person would have been required to pay to the Secretary by reason of such section with respect to such services if the amendments made by subsections (a)(1) and (b) applied with respect to such services.

(3) If the customs broker permit fee paid by any person for calendar year 1986 under section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 exceeds $62.50, the Secretary shall either—

(A) refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person the amount of the excess, or

(B) if requested by such person, credit the amount of the excess to the fee due under such section 13031(a)(7) with respect to such permit for calendar year 1987.

SEC. 1894. FOREIGN TRADE ZONES.

Section 3 of the Act of June 18, 1934 (48 Stat. 999, chapter 590; 19 U.S.C. 81c) is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding the provisions of the fifth proviso of subsection (a), any article (within the meaning of section 5002(a)(14) of the Internal Revenue Code of 1986) may be manufactured or produced from domestic denatured distilled spirits, and articles thereof, in a zone."

SUBTITLE C—MISCELLANEOUS

CHAPTER 1—AMENDMENTS RELATED TO THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 1895. COBRA TECHNICAL CORRECTIONS RELATING TO SOCIAL SECURITY ACT PROGRAMS.

(a) AMENDMENT RELATING TO THE OASDI PROGRAM.—Section 12108(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking out "1985" and inserting in lieu thereof "1986".

(b) AMENDMENTS RELATING TO THE MEDICARE PROGRAM.—

(1) INDIRECT MEDICAL EDUCATION.—(A) Paragraph (2)(C)(i) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by striking out "(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)".

(B) Paragraph (3)(A) of such subsection is amended by adding at the end the following: "If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula.".

(C) Clause (ii) of paragraph (3)(C) of such subsection is amended to read as follows:

"(ii) REDUCING FOR SAVINGS FROM AMENDMENT TO INDIRECT TEACHING ADJUSTMENT FOR DISCHARGES AFTER SEPTEMBER 30, 1986.—The

Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

"(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

"(II) that sum using the factor specified in paragraph (5)(B)(ii)(II).".

(D)(i) Except as provided in clause (ii), the amendments made by this paragraph apply to discharges occurring on or after October 1, 1986.

(ii) The amendments made by this paragraph shall not be first applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105(a) of the Consolidated Omnibus Budget Reconcilation Act of 1985 (incorporating the amendments made by paragraph (2) of this subsection) are also being applied.

(2) DISPROPORTIONATE SHARE.—(A) Paragraph (2)(C) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by section 9105(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA") is amended—

(i) by adding "and" at the end of clause (ii),

(ii) by striking out ", and" at the end of clause (iii) and inserting in lieu thereof a period, and

(iii) by striking out clause (iv).

(B) Paragraph (3)(C) of such subsection is amended by adding at the end the following:

"(iii) REDUCING FOR DISPROPORTIONATE SHARE PAYMENTS.—The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals.".

(C) Paragraph (5)(F)(vi)(I) of such subsection is amended—

(i) by striking out "supplementary" and inserting in lieu thereof "supplemental", and

(ii) by striking out "fiscal year" and inserting in lieu thereof "period".

(D) The amendments made by subparagraph (C) apply to discharges occurring on or after May 1, 1986, and the amendments made by subparagraphs (A) and (B) apply to discharges occurring on or after October 1, 1986.

(3) ALIGNMENT CORRECTION.—Subparagraph (B) of section 1886(g)(2) of the Social Security Act (as added by section 9107(a)(1)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985) is amended by moving its alignment (and the alignment of each of its clauses) two additional ems to the left.

(4) EMERGENCY CARE REQUIREMENT.—Section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)), as inserted by section 9121(b) of COBRA, is amended by striking out "and has, under the agreement, obligated itself to comply with the requirements of this section".

(5) REDESIGNATING OVERLAPPING PROVISIONS.—Paragraph (1) of section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)) is amended—

(A) by striking out "and" inserted at the end of subparagraph (I) by section 9122(a)(2) of COBRA,

(B) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof ", and", and

(C) by redesignating the subparagraph (I) inserted by section 9403(b) of COBRA as subparagraph (K) and transferring and inserting such subparagraph after subparagraph (J).

(6) CHAMPUS.—Section 9122(b) of COBRA is amended by striking out "to agreements entered into or renewed on or after the date of the enactment of this Act, but shall apply only".

(7) SKILLED NURSING FACILITY PAYMENTS.—(A) Section 1888(d)(1) of the Social Security Act (42 U.S.C. 1395yy(d)(1)), as added by section 9126(a) of COBRA, is amended by striking out "fiscal year" each place it appears and inserting in lieu thereof "cost reporting period".

(B) Section 1888(d)(4) of the Social Security Act is amended—

(i) in the first sentence, by striking out "each fiscal year" and inserting in lieu thereof "cost reporting periods beginning in a fiscal year", and

(ii) in the second sentence, by striking out "fiscal year" and all that follows up to the period and inserting in lieu thereof "cost reporting period no later than 30 days before the beginning of that period".

(C) Section 9126(d)(1) of COBRA is amended by striking out "fiscal years" and inserting in lieu thereof "cost reporting periods".

(D) The amendments made by subparagraphs (A) and (B) apply to cost reporting periods beginning on or after October 1, 1986.

(8) PROPAC.—Section 9127(b) of COBRA is amended by inserting ", except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year" after "years".

(9) DIRECT MEDICAL EDUCATION.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)), added by 9202(a) of COBRA, is amended—

(A) in paragraph (2)(C), by striking out "paragraph (B)" and inserting in lieu thereof "subparagraph (B)",

(B) in the matter preceding subclause (I) of paragraph (4)(E)(ii), by inserting "but before July 1, 1987," after "1986,",

(C) by redesignating subparagraph (E) of paragraph (4) as subparagraph (D), and

(D) in paragraph (5)(B), by striking out "As used in this paragraph, the" and inserting in lieu therof "The".

(10) CITATION CORRECTION.—Section 9202(j) of COBRA is amended by inserting "or section 402 of the Social Security Amendments of 1967" after "section 1886(c) of the Social Security Act".

(11) HMO/CMP RATES.—(A) The matter in section 1876(a)(1)(A) of the Social Security Act (42 U.S.C. 1395mm(a)(1)(A)) preceding clause (i), as amended by section 9211(d) of COBRA, is amended by striking out "publish" and inserting in lieu therof "announce (in a manner intended to provide notice to interested parties)".

(B) The amendment made by subparagraph (A) shall apply to determinations of per capita payment rates for 1987 and subsequent years.

(12) INDENTATION.—Section 1837(i)(1) of the Social Security Act (42 U.S.C. 1395p(i)(1)), as amended by section 9219(a)(2)(A) of COBRA, is amended by moving the alignment of subparagraph (A) two additional ems to the left so as to align its left margin with the left margins of subparagraphs (B) and (C) of such section.

(13) ACCESS DEMONSTRATION PROJECT.—Section 9221(a) of COBRA is amended by striking out "September 30, 1986" and inserting in lieu thereof "July 31, 1987".

(14) PHYSICIAN PAYMENT.—(A) Section 1842(b)(4)(C) of the Social Security Act (42 U.S.C. 1395u(b)(4)(C)), as amended by section 9301(b)(1)(C) of COBRA, is amended—

(i) by striking out clause (ii), and

(ii) by striking out "(i)" in clause (i).

(B) Section 9301(c)(5) of COBRA is amended by striking out "1842(b)(7)" and inserting in lieu thereof "1842(h)(7)".

(15) REDUNDANT WORDS.—Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)), as amended by section 9301(c) of COBRA, is amended—

(A) in paragraph (5), as redesignated by section 9301(c)(3)(D) of COBRA, by striking out "such" each place it appears, and

(B) in paragraph (6), as so redesignated, by striking out "the the" and inserting in lieu thereof "the".

(16) ASSISTANTS AT SURGERY.—(A) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)), added by section 9307(c) of COBRA, is amended by inserting "presents or causes to be presented a claim or" after "willfully" each place it appears.

(B) The amendment made by subparagraph (A) shall apply to claims presented after the date of the enactment of this Act.

(C) For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.

(17) CITATION.—Section 1164(b)(4)(B) of the Social Security Act (42 U.S.C. 1320c-13(b)(4)(B)), as added by section 9401(b) of COBRA, is amended by striking out "paragraphs" and inserting in lieu thereof "subparagraphs".

(18) MEDICARE TAX ON STATE AND LOCAL EMPLOYEES.—(A) Section 3121(u)(2)(B)(ii) of the Internal Revenue Code of 1954, as added by section 13205(a)(1) of COBRA, is amended—

(i) by striking out "or" at the end of subclause (III),

(ii) by striking out the period at the end of subclause (IV) and inserting in lieu thereof ", or", and

(iii) by adding at the end the following:

"(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100."

(B) Section 210(p)(2) of the Social Security Act (42 U.S.C. 410(p)(2)), as added by section 13205(b)(1) of COBRA, is amended—

(i) by striking out "or" at the end of subparagraph (C),

(ii) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", or", and

(iii) by adding at the end the following:

"(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100."

(C) The amendments made by this paragraph shall apply to services performed after March 31, 1986.

(19) PUNCTUATION.—Section 210(p)(4)(B) of the Social Security Act (42 U.S.C. 410(p)(4)(B)), as amended by section 13205(b)(1) of COBRA, is amended by striking out any quotation marks that appear before "(A)".

(c) AMENDMENTS RELATING TO THE MEDICAID PROGRAM.—

(1) EXTRA WORD.—Section 1902(a)(13)(D) of the Social Security Act (42 U.S.C. 1396a(a)(13(D)), as inserted by section 9505(c)(1)(C) of COBRA and as amended and redesignated by paragraphs (2) and (3) of section 9509(a) of COBRA, is amended by adding "and" at the end.

(2) CAPITALIZATION.—Section 1903(m)(2)(F) of the Social Security Act (42 U.S.C. 1396b(m)(2)(F)), as amended by section 9517(a)(2)(A) of COBRA, is amended by striking out "in the case" and inserting in lieu thereof "In the case".

(3) CASE-MANAGEMENT SERVICES.—(A) Section 1905(a) of the Social Security Act (42 U.S.C. 1395d(a)) is amended—

(i) by striking out "and" at the end of paragraph (18),

(ii) by redesignating paragraph (19) as paragraph (20), and

(iii) by inserting after paragraph (18) the following new paragraph:

"(19) case-management services (as defined in section 1915(g)(2)); and".

(B) Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)), as amended by section 9505(d)(1) of COBRA, is amended by striking out "(19)" and inserting in lieu thereof "(20)".

(C) Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)), as amended by section 9505(d)(2) of COBRA, is amended by striking out "through (18)" and inserting in lieu thereof "through (19)".

(4) HEALTH INSURING ORGANIZATIONS.—Section 9517(c)(2) of COBRA is amended—

(A) in subparagraph (A), by adding at the end the following "For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.";

(B) in subparagraph (B), by striking out "(iv)" and inserting in lieu thereof "(vi)"; and

(C) by adding at the end the following new subparagraph:

"(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986)."

(5) REFERENCES TO OTHER PROVISIONS.—Section 1920(a) of the Social Security Act (42 U.S.C. 1396s(a)), as added by section 9526 of COBRA, is amended—

(A) in paragraph (1)—

(i) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and

(ii) by inserting after "—(A)" the following: "Section 402(a)(32) of this Act (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

"(B)";

(B) in paragraph (2)—

(i) by inserting "(A)" after the dash, and

(ii) by adding at the end the following new subparagraph:

"(B) Section 1634(b) of this Act (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).''; and

(C) in paragraph (3), by striking out "Section 473(b)" and inserting in lieu thereof "Sections 472(h) and 473(b)".

(6) REFERENCE CORRECTION.—Section 9528(a) of COBRA is amended by striking out "1101(a)(8)(P)" and inserting in lieu thereof "1101(a)(8)(B)".

(7) INDENTATION.—Section 1902(a)(10)(A)(ii)), of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)), as amended by sections 9505(b)(2) and 9529(b)(1) of COBRA, is amended—

(A) by indenting subclause (VII) two additional ems so as to align its left margin with the left margins of subclauses (I) through (VI) of such section, and

(B) by indenting subclause (VIII) (and each of its subdivisions) four additional ems so as to align its left margin with the left margins of subclauses (I) through (VI) of such section.

(d) AMENDMENTS RELATING TO CONTINUATION OF EMPLOYER-BASED HEALTH INSURANCE COVERAGE.—

(1) EFFECT OF MODIFICATIONS TO PLAN COVERAGE PROVISIONS.—

(A) IRC AMENDMENT.—Subparagraph (A) of section 162(k)(2) (relating to type of benefit coverage) is amended by adding at the end the following: "If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group."

(B) ERISA AMENDMENT.—Paragraph (1) of section 602 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(1); 100 Stat. 228) is amended by adding at the end the following: "If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group."

(C) PHSA AMENDMENT.—Paragraph (1) of section 2202 of the Public Health Service Act is amended by adding at the end the following: "If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group."

(2) MAXIMUM REQUIRED PERIOD OF CONTINUATION COVERAGE.—

(A) IRC AMENDMENT.—Clause (i) of section 162(k)(2)(B) (relating to maximum period of coverage) is amended to read as follows:

"(i) MAXIMUM REQUIRED PERIOD—

"(I) GENERAL RULE FOR TERMINATIONS AND REDUCED HOURS.—In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

"(II) SPECIAL RULE FOR MULTIPLE QUALIFYING EVENTS.—If a qualifying event occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

"(III) GENERAL RULE FOR OTHER QUALIFYING EVENTS.—In the case of a qualifying event not described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event."

(B) ERISA AMENDMENT.—Subparagraph (A) of section 602(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2); 100 Stat. 228) is amended to read as follows:

"(A) MAXIMUM REQUIRED PERIOD.—

"(i) GENERAL RULE FOR TERMINATIONS AND REDUCED HOURS.—In the case of a qualifying event described in section 630(2), except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

"(ii) SPECIAL RULE FOR MULTIPLE QUALIFYING EVENTS.—If a qualifying event occurs during the 18 months after the date of a qualifying event described in section 603(2), the date which is 36 months after the date of the qualifying event described in section 603(2).

"(iii) GENERAL RULE FOR OTHER QUALIFYING EVENTS.—In the case of a qualifying event not described in section 603(2), the date which is 36 months after the date of the qualifying event."

(C) PHSA AMENDMENT.—Subparagraph (A) of section 2202(2) of the Public Health Service Act is amended to read as follows:

"(A) MAXIMUM REQUIRED PERIOD.—

"(i) GENERAL RULE FOR TERMINATIONS AND REDUCED HOURS.—In the case of a qualifying event described in section 2203(2), except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

"(ii) SPECIAL RULE FOR MULTIPLE QUALIFYING EVENTS.—If a qualifying event occurs during the 18 months after the date of a qualifying event described in section 2203(2), the date which is 36 months after the date of the qualifying event described in section 2203(2).

"(iii) GENERAL RULE FOR OTHER QUALIFYING EVENTS.—In the case of a qualifying event not described in section 2203(2), the date which is 36 months after the date of the qualifying event."

(3) GRACE PERIOD FOR PAYMENT OF PREMIUMS.—

(A) IRC AMENDMENT.—Clause (iii) of section 162(k)(2)(B) (relating to failure to pay premium) is amended by adding at the end the following: "The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.".

(B) ERISA AMENDMENT.—Subparagraph (C) of section 602(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2)(C); 100 Stat. 228) is amended by adding at the end the following: "The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan."

(C) PHSA AMENDMENT.—Subparagraph (C) of section 2202(2) of the Public Health Service Act is amended by adding at the end the following: "The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan."

(4) TERMINATION OF CONTINUATION COVERAGE UPON COVERAGE BY OTHER GROUP HEALTH PLAN

RATHER THAN UPON REEMPLOYMENT OR REMARRIAGE.—

(A) IRC AMENDMENT.—Subparagraph (B) of section 162(k)(2) (relating to period of coverage) is amended—

(i) by striking out clause (v); and

(ii) by striking out subclause (I) of clause (iv) and inserting in lieu thereof the following:

"(I) covered under any other group health plan (as an employee or otherwise), or";

and

(iii) by striking out the heading for clause (iv) and inserting in lieu thereof the following: "GROUP HEALTH PLAN COVERAGE OR MEDICARE ELIGIBILITY.—".

(B) ERISA AMENDMENT.—Section 602(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2); 100 Stat. 228) is amended—

(i) by striking out subparagraph (E);

(ii) by striking out clause (i) of subparagraph (D) and inserting in lieu thereof the following:

"(i) covered under any other group health plan (as an employee or otherwise), or"; and

(iii) by striking out the heading for subparagraph (D) and inserting in lieu thereof the following: "GROUP HEALTH PLAN COVERAGE OR MEDICARE ELIGIBILITY.—".

(C) PHSA AMENDMENT.—Section 2202(2) of the Public Health Service Act is amended—

(i) by striking out subparagraph (E);

(ii) by striking out clause (i) of subparagraph (D) and inserting in lieu thereof the following:

"(i) covered under any other group health plan (as an employee or otherwise), or"; and

(iii) by striking out the heading for subparagraph (D) and inserting in lieu thereof the following: "GROUP HEALTH PLAN COVERAGE OR MEDICARE ELIGIBILITY.—".

(5) CLARIFICATION RELATING TO ELECTION BY BENEFICIARIES.—

(A) IRC AMENDMENT.—Subparagraph (B) of section 162(k)(2) (relating to effect of election on other beneficiaries) is amended—

(i) by inserting "of continuation coverage" after "any election"; and

(ii) by adding at the end the following: "If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.".

(B) ERISA AMENDMENT.—Section 605(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2); 100 Stat. 230) is amended—

(i) by inserting "of continuation coverage" after "any election"; and

(ii) by adding at the end the following: "If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.".

(C) PHSA AMENDMENT.—Section 2205(2) of the Public Health Service Act is amended—

(i) by inserting "of continuation coverage" after "any election"; and

(ii) by adding at the end the following: "If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.".

(6) NOTICE REQUIREMENT.—

(A) IRC AMENDMENT.—Subparagraph (C) of section 162(k)(6) (relating to notice requirements) is amended by inserting "within 60 days after the date of the qualifying event" after "paragraph (3)".

(B) ERISA AMENDMENT.—Paragraph (3) of section 606 of the Employees Retirement Income Security Act of 1974 (29 U.S.C. 1166(3); 100 Stat. 230) is amended by inserting "within 60 days after the date of the qualifying event"; after "section 603".

(C) PHSA AMENDMENT.—Paragraph (3) of section 2206 of the Public Health Service Act is amended by inserting "within 60 days after the date of the qualifying event" after "section 603".

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall only apply with respect to qualifying events occurring after the date of the enactment of this Act.

(7) NONRESIDENT ALIENS.—Subparagraph (B) of section 162(k)(7) (relating to qualified beneficiaries) is amended by adding at the end thereof the following new clause:

"(iii) EXCEPTION FOR NONRESIDENT ALIENS.—Notwithstanding clauses (i) and (ii), the term 'qualified beneficiary' does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship to the individual.".

(8) DEFINITION OF GROUP HEALTH PLAN FOR ERISA.—Paragraph (1) of section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1); 100 Stat. 231) is amended to read as follows:

"(1) GROUP HEALTH PLAN.—The term 'group health plan' means an employee welfare benefit plan providing medical care (as defined in section 213(d) of the Internal Revenue Code of 1954) to participants or beneficiaries directly or through insurance, reimbursement, or otherwise.".

(9) AGGREGATION RULES FOR EMPLOYER FOR ERISA.—

(A) IN GENERAL.—Section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167; 100 Stat. 231) is amended by adding at the end the following new paragraph:

"(4) EMPLOYER.—Subsection (n) (relating to leased employees) and subsection (t) (relating to application of controlled group rules to certain employee benefits) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of this part in the same manner and to the same extent as such subsections apply for purposes of section 106 of such Code. Any regulations prescribed by the Secretary pursuant to the preceding sentence shall be consistent and coextensive with any regulations prescribed for similar purposes by the Secretary of the Treasury (or such Secretary's delegate) under such subsections.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect in the same manner and to the same extent as the amendments made by subsections (e) and (i) of section 1151 of this Act.

(e) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 1896. EXTENSION OF TIME FOR FILING FOR CREDIT OR REFUND WITH RESPECT TO CERTAIN CHANGES INVOLVING INSOLVENT FARMERS.

Section 13208 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (relating to certain insolvent taxpayers allowed to reduce capital gains preference item for purposes of the individual minimum tax) is amended by adding at the end thereof the following new subsection:

"(c) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act, by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such amendment) may, nevertheless, be made or allowed if claim therefor is filed on or before the close of such 1-year period."

SEC. 1897. CORRECTION OF CLERICAL ERROR IN AMENDMENTS TO COAL TAX.

(a) IN GENERAL.—Subsection (b) of section 4121 (relating to excise tax on coal) is amended by striking out ", in the case of sales during any calendar year beginning after December 31, 1985".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 13203 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

CHAPTER 2—AMENDMENTS RELATED TO THE RETIREMENT EQUITY ACT OF 1984

SEC. 1898. TECHNICAL CORRECTIONS TO THE RETIREMENT EQUITY ACT OF 1984.

(a) AMENDMENTS RELATED TO SECTIONS 102 AND 202 OF THE ACT.—

(1) TREATMENT OF CLASS-YEAR PLANS.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (4) of section 411(d) (relating to class-year plans) is amended to read as follows:

"(4) CLASS-YEAR PLANS.—

"(A) IN GENERAL.—The requirements of subsection (a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

"(B) 5-YEAR BREAK IN SERVICE.—For purposes of subparagraph (A) if—

"(i) any contributions are made on behalf of a participant with respect to any plan year, and

"(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any right to or derived from the contributions made with respect to such plan year.

"(C) CLASS-YEAR PLAN.—For purposes of this section, the term 'class-year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year."

(B) AMENDMENT OF ERISA.—Paragraph (3) of section 203(c) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(3)(A) The requirements of subsection (a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later

than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

"(B) For purposes of subparagraph (A) if—

"(i) any contributions are made on behalf of a participant with respect to any plan year, and

"(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any right to or derived from the contributions made with respect to such plan year.

"(C) For purposes of this part, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year."

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to contributions made for plan years beginning after the date of the enactment of this Act; except that, in the case of a plan described in section 302(b) of the Retirement Equity Act of 1984, such amendments shall not apply to any plan year to which the amendments made by such Act do not apply by reason of such section 302(b).

(2) RULES RELATING TO LUMP SUM TREATMENT.—Subsection (e) of section 402 (relating to tax on lump sum distributions) is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF POTENTIAL FUTURE VESTING.—

"(A) IN GENERAL.—For purposes of determining whether any distribution which becomes payable to the recipient on account of the employee's separation from service is a lump sum distribution, the balance to the credit of the employee shall be determined without regard to any increase in vesting which may occur if the employee is re-employed by the employer.

"(B) RECAPTURE IN CERTAIN CASES.—If—

"(i) an amount is treated as a lump sum distribution by reason of subparagraph (A),

"(ii) special lump sum treatment applies to such distribution,

"(iii) the employee is subsequently re-employed by the employer; and

"(iv) as a result of services performed after being so re-employed, there is an increase in the employee's vesting for benefits accrued before the separation referred to in subparagraph (A),

under regulations prescribed by the Secretary, the tax imposed by this chapter for the taxable year (in which the increase in vesting first occurs) shall be increased by the reduction in tax which resulted from the special lump sum treatment (and any election under paragraph (4)(B) shall not be taken into account for purposes of determining whether the employee may make another election under paragraph (4)(B)).

"(C) SPECIAL LUMP SUM TREATMENT.—For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

"(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

"(ii) is treated as long-term capital gain under subsection (a)(2) of this section or section 403(a)(2).

"(D) VESTING.—For purposes of this paragraph the term 'vesting' means the portion of the accrued benefits derived from employer contributions to which the participant has a nonforfeitable right."

(3) RULES RELATING TO ROLLOVERS.—Paragraph (6) of section 402(a) (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(G) TREATMENT OF POTENTIAL FUTURE VESTING.—

"(i) IN GENERAL.—For purposes of paragraph (5), in determining whether any portion of a distribution on account of the employee's separation from service may be transferred in a transfer to which paragraph (5)(A) applies, the balance to the credit of the employee shall be determined without regard to any increase in vesting which may occur if the employee is re-employed by the employer.

"(ii) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—If—

"(I) any portion of a distribution is transferred in a transfer to which paragraph (5)(A) applies by reason of clause (i),

"(II) the employee is subsequently re-employed by the employer, and

"(III) as a result of service performed after being so re-employed, there is an increase in the employee's vesting for benefits accrued before the separation referred to in clause (i),

then the provisions of paragraph (5)(D)(iii) shall apply to any distribution from the plan after the distribution referred to in clause (i). The preceding sentence shall not apply if the distribution referred to in subclause (I) is made without the consent of the participant."

(4) TREATMENT OF WITHDRAWAL OF MANDATORY CONTRIBUTIONS.—

(A) AMENDMENTS OF INTERNAL REVENUE CODE.—

(i) Clause (ii) of section 411(a)(3)(D) is amended by striking out the last sentence and inserting in lieu thereof the following: "The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal."

(ii) Subparagraph (C) of section 411(a)(7) is amended by striking out the last sentence and inserting in lieu thereof the following: "The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal."

(B) AMENDMENTS OF ERISA.—

(i) Clause (ii) of section 203(a)(3)(D) of the Employee Retirement Income Security Act of 1974 is amended by striking out the last sentence and inserting in lieu thereof the following: "The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal."

(ii) Subsection (e) of section 204 of the Employee Retirement Income Security Act of 1974 is amended by striking out the last sentence and inserting in lieu thereof the following:

"The plan provision required under this subsection may provide that such repayment must be made (A) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (B) in the case of any other withdrawal, 5 years after the date of the withdrawal."

(5) PARTICIPATION REQUIREMENTS UNDER SIMPLIFIED EMPLOYEE PENSIONS.—Effective with respect to plan years beginning after the date of the enactment of this Act, subparagraph (A) of section 408(k)(2) (relating to participation requirements) is amended by striking out "age 25" and inserting in lieu thereof "age 21".

(b) AMENDMENTS RELATED TO SECTIONS 103 AND 203 OF THE ACT.—

(1) CLARIFICATION OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITY IN CASE OF TERMINATED VESTED PARTICIPANT.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (1) of section 417(c) (defining qualified preretirement survivor annuity) is amended by adding at the end thereof the following new sentence:

"In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply."

(B) AMENDMENT OF ERISA.—Paragraph (1) of section 205(e) of the Employee Retirement Income Security Act of 1974 (defining qualified preretirement survivor annuity) is amended by adding at the end thereof the following new sentence:

"In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply."

(2) CLARIFICATION OF TRANSFEREE PLAN RULES.—

(A) AMENDMENTS OF INTERNAL REVENUE CODE.—

(i) Subclause (III) of section 401(a)(11)(B)(iii) (relating to plans to which requirements of joint and survivor annuity and preretirement survivor annuity apply) is amended by striking out "indirect transferee" and inserting in lieu thereof "indirect transferee (in a transfer after December 31, 1984)".

(ii) Subparagraph (B) of section 401(a)(11) is amended by adding at the end thereof the following new sentence:

"Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom."

(B) AMENDMENTS OF ERISA.—

(i) Clause (iii) of section 205(b)(1)(C) of the Employee Retirement Income Security Act of 1974 is amended by striking out "a transferee" and inserting in lieu thereof "a direct or indirect transferee (in a transfer after December 31, 1984)".

(ii) Paragraph (1) of section 205(b) of such Act is amended by adding at the end thereof the following new sentence:

"Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom."

(3) CLARIFICATION OF COORDINATION BETWEEN QUALIFIED JOINT AND SURVIVOR ANNUITY AND QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Clause (i) of section 401(a)(11)(A) is amended by striking out "who retires under the plan" and inserting in lieu thereof "who does not die before the annuity starting date".

(B) AMENDMENT OF ERISA.—Paragraph (1) of section 205(a) of the Employee Retirement Income Security Act of 1974 is amended by striking out "who retires under the plan" and inserting in lieu thereof "who does not die before the annuity starting date".

(4) REQUIREMENT OF SPOUSAL CONSENT FOR USING PLAN ASSETS AS SECURITY FOR LOANS.—

(A) AMENDMENTS OF INTERNAL REVENUE CODE.—

(i) Subparagraph (B) of section 417(a)(1) is amended by striking out "paragraphs (2) and (3)" and inserting in lieu thereof "paragraphs (2), (3), and (4)".

(ii) Subsection (a) of section 417 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) REQUIREMENT OF SPOUSAL CONSENT FOR USING PLAN ASSETS AS SECURITY FOR LOANS.—Each plan shall provide that, if section 401(a)(11) applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

"(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

"(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent."

(iii) Subsection (f) of section 417 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) DISTRIBUTIONS BY REASON OF SECURITY INTERESTS.—If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (a)(4), nothing in this section or section 411(a)(11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan."

(B) AMENDMENT OF ERISA.—

(i) Subparagraph (B) of section 205(c)(1) of the Employee Retirement Income Security Act of 1974 is amended by striking out "paragraphs (2) and (3)" and inserting in lieu thereof "paragraphs (2), (3), and (4)".

(ii) Subsection (c) of section 205 of such Act is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

"(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

"(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent."

(iii) Section 205 of such Act is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4), nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan."

(C) EFFECTIVE DATES.—

(i) The amendments made by this paragraph shall apply with respect to loans made after August 18, 1985.

(ii) In the case of any loan which was made on or before August 18, 1985, and which is secured by a portion of the participant's accrued benefit, nothing in the amendments made by sections 103 and 203 of the Retirement Equity Act of 1984 shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(iii) For purposes of this subparagraph, any loan which is revised, extended, renewed, or renegotiated after August 18, 1985, shall be treated as made after August 18, 1985.

(5) CLARIFICATION OF NOTICE REQUIREMENT FOR INDIVIDUALS WHO BECOME PARTICIPANTS AFTER AGE 35, ETC.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subparagraph (B) of section 417(a)(3) (relating to plan to provide written explanations) is amended to read as follows:

"(B) EXPLANATION OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

"(i) IN GENERAL.—Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

"(ii) APPLICABLE PERIOD.—For purposes of clause (i), the term 'applicable period' means, with respect to a participant, whichever of the following periods ends last:

"(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

"(II) A reasonable period after the individual becomes a participant.

"(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

"(IV) A reasonable period ending after section 401(a)(11) applies to the participant.

"(V) A reasonable period after separation from service in case of a participant who separates before attaining age 35."

(B) AMENDMENT OF ERISA.—Subparagraph (B) of section 205(c)(3) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(B)(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

"(ii) For purposes of clause (i), the term 'applicable period' means, with respect to a participant, whichever of the following periods ends last:

"(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

"(II) A reasonable period after the individual becomes a participant.

"(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

"(IV) A reasonable period ending after section 401(a)(11) applies to the participant.

"(V) A reasonable period after separation from service in case of a participant who separates before attaining age 35."

(6) SPOUSAL CONSENT FOR CHANGES IN DESIGNATIONS.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subparagraph (A) of section 417(a)(2) (relating to requirement that spouse consent to election) is amended to read as follows:

"(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or".

(B) AMENDMENT OF ERISA.—Subparagraph (A) of section 205(c)(2) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to plan years beginning after the date of the enactment of this Act.

(7) CLARIFICATION OF NONFORFEITABLE ACCRUED BENEFIT.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subclause (I) of section 401(a)(11)(B)(iii) is amended by striking out "the participant's nonforfeitable accrued benefit" and inserting in lieu thereof "the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant)".

(B) AMENDMENT OF ERISA.—Subparagraph (C) of section 205(b)(1) of the Employee Retirement Income Security Act of 1974 is amended by striking out "the participant's nonforfeitable accrued benefit" and inserting in lieu thereof "the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant)".

(8) CLARIFICATION OF DEFINITION OF VESTED PARTICIPANT.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (1) of section 417(f) (defining vested participant) is amended by striking out "the accrued benefit derived from employer contributions" and inserting in lieu thereof "such participant's accrued benefit".

(B) AMENDMENT OF ERISA.—Paragraph (1) of section 205(h) of the Employee Retirement Income Security Act of 1974 is amended by striking out "the accrued benefit derived from employer contributions" and inserting in lieu thereof "such participant's accrued benefit".

(9) CLARIFICATION OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

(A) AMENDMENTS OF INTERNAL REVENUE CODE.—

(i) Paragraph (2) of section 417(c) (defining qualified preretirement survivor annuity) is amended by striking out "the account balance of the participant as of the date of death" and inserting in lieu thereof "the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a))".

(ii) Subsection (c) of section 417 (defining qualified preretirement survivor annuity) is amended by adding at the end thereof the following new paragraph:

"(3) SECURITY INTERESTS TAKEN INTO ACCOUNT.—For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity."

(B) AMENDMENTS OF ERISA.—

(i) Paragraph (2) of section 205(e) of the Employee Retirement Income Security Act of 1974 is amended by striking out "the account balance of the participant as of the date of death" and inserting in lieu thereof "the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable accrued benefit".

(ii) Subsection (e) of section 205 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity."

(10) CLARIFICATION OF REQUIREMENTS FOR SPOUSAL CONSENT.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subsection (f) of section 417 (as amended by paragraph (4)) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) REQUIREMENTS FOR CERTAIN SPOUSAL CONSENTS.—No consent of a spouse shall be effective for purposes of subsection (e)(1) or (e)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a)(1)(A) are met."

(B) AMENDMENT TO ERISA.—Section 205 of the Employee Retirement Income Security Act of 1974 (as amended by paragraph (4)) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) are met."

(11) CLARIFICATION OF RULE FOR SUBSIDIZED PLANS.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subparagraph (A) of section 417(a)(5) (as redesignated by paragraph (4)(A)) is amended by striking out "if the plan" and inserting in lieu thereof "if such benefit may not be waived (or another beneficiary selected) and if the plan".

(B) AMENDMENT TO ERISA.—Subparagraph (A) of section 205(c)(5) of the Employee Retirement Income Security Act of 1974 (as redesignated by paragraph (4)(B)) is amended by striking out "if the plan" and inserting in lieu thereof "if such benefit may not be waived (or another beneficiary selected) and if the plan".

(12) CLARIFICATION OF ANNUITY STARTING DATE.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (2) of section 417(f) (defining annuity starting date) is amended to read as follows:

"(2) ANNUITY STARTING DATE.—

"(A) IN GENERAL.—The term 'annuity starting date' means—

"(i) the first day of the first period for which an amount is payable as an annuity, or

"(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

"(B) SPECIAL RULE FOR DISABILITY BENEFITS.—For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit."

(B) AMENDMENT TO ERISA.—Paragraph (2) of section 205(h) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(2)(A) The term 'annuity starting date' means—

"(i) the first day of the first period for which an amount is payable as an annuity, or

"(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

"(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit."

(13) CLARIFICATION OF PLANS TO WHICH REQUIREMENTS APPLY.—

(A) AMENDMENT TO INTERNAL REVENUE CODE.—Subclause (I) of section 401(a)(11)(B)(iii) is amended by striking out "section 417(a)(2)(A)" and inserting in lieu thereof "section 417(a)(2)".

(B) AMENDMENT TO ERISA.—Clause (i) of section 205(b)(1)(C) of the Employee Retirement Income Security Act of 1974 is amended by striking out "subsection (c)(2)(A)" and inserting in lieu thereof "subsection (c)(2)".

(14) CERTAIN PLANS DO NOT NEED TO PROVIDE CERTAIN SURVIVOR BENEFITS.—

(A) AMENDMENT TO INTERNAL REVENUE CODE.—Paragraph (11) of section 401(a) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death."

(B) AMENDMENT TO ERISA.—Section 205(b) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death."

(15) CLERICAL AMENDMENTS.—

(A) Paragraph (1) of section 417(a) is amended by striking out "section 401(a)(ii)" and inserting in lieu thereof "section 401(a)(11)".

(B) Paragraph (1) of section 417(c) is amended by striking out "survivor annuity or the life of" in the matter preceding subparagraph (A) and inserting in lieu thereof "survivor annuity for the life of".

(C) Subparagraph (B) of section 415(b)(2) is amended by striking out "as defined in section 401(a)(11)(G)(iii)" and inserting in lieu thereof "as defined in section 417".

(c) AMENDMENTS RELATED TO SECTIONS 104 AND 204 OF THE ACT.—

(1) TREATMENT OF QUALIFIED DOMESTIC RELATIONS ORDERS FOR INDIVIDUALS OTHER THAN SPOUSE OR FORMER SPOUSE.—

(A) IN GENERAL.—Paragraph (9) of section 402(a) (relating to alternate payee under qualified domestic relations order treated as distributee) is amended by striking out "the alternate payee shall be treated" and inserting in lieu thereof "any alternate payee who is the spouse or former spouse of the participant shall be treated".

(B) CONFORMING AMENDMENT.—Section 72(m)(10) (relating to determination of investment in the contract in the case of qualified domestic relations orders) is amended by inserting "who is the spouse or former spouse of the participant" after "alternate payee".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to payments made after the date of the enactment of this Act.

(2) PROCEDURES FOR PERIOD DURING WHICH DETERMINATION IS BEING MADE.—

(A) AMENDMENTS OF THE INTERNAL REVENUE CODE.—

(i) Subparagraph (A) of section 414(p)(7) (relating to procedures for period during which determination is being made) is amended by striking out "shall segregate in a separate account in the plan or in an escrow account the amounts" and inserting in lieu thereof "shall separately account for the amounts (hereinafter in this paragraph referred to as the 'segregated amounts')".

(ii) Subparagraph (B) of section 414(p)(7) (relating to payment to alternate payee if order is determined to be qualified domestic relations order) is amended—

(I) by striking out "18 months" and inserting in lieu thereof "the 18-month period described in subparagraph (E)", and

(II) by striking out "plus any interest" and inserting in lieu thereof "including any interest".

(iii) Subparagraph (C) of section 414(p)(7) is amended—

(I) by striking out "18 months" and inserting in lieu thereof "the 18-month period described in subparagraph (E)", and

(II) by striking out "plus any interest" and inserting in lieu thereof "including any interest".

(iv) Subparagraph (D) of section 414(p)(7) is amended by striking out "the 18-month period" and inserting in lieu thereof "the 18-month period described in subparagraph (E)".

(v) Paragraph (7) of section 414(p) is amended by adding at the end thereof the following new subparagraph:

"(E) DETERMINATION OF 18-MONTH PERIOD.—For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order."

(B) AMENDMENTS OF ERISA.—

(i) Clause (i) of section 206(d)(3)(H) of the Employee Retirement Income Security Act of 1974 is amended by striking out "shall segregate in a separate account in the plan or in an escrow account the amounts" and inserting in lieu thereof "shall separately account for the amounts (hereinafter in this subparagraph referred to as the 'segregated amounts')".

(ii) Clause (ii) of section 206(d)(3)(H) of such Act is amended—

(I) by striking out "18 months" and inserting in lieu thereof "the 18-month period described in clause (v)", and

(II) by striking out "plus any interest" and inserting in lieu thereof "including any interest".

(iii) Clause (iii) of section 206(d)(3)(H) of such Act is amended—

(I) by striking out "18 months" and inserting in lieu thereof "the 18-month period described in clause (v)", and

(II) by striking out "plus any interest" and inserting in lieu thereof "including any interest".

(iv) Clause (iv) of section 206(d)(3)(H) of such Act is amended by striking out "the 18-month period" and inserting in lieu thereof "the 18-month period described in clause (v)".

(v) Subparagraph (H) of section 206(d)(3) of such Act is amended by adding at the end thereof the following new clause:

"(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order."

(3) COORDINATION WITH QUALIFIED PLAN REQUIREMENTS.—Section 401 is amended by redesignating the subsection relating to cross references as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) COORDINATION WITH QUALIFIED DOMESTIC RELATIONS ORDERS.—The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter."

(4) CLARIFICATION OF APPLICATION OF DOMESTIC RELATION PROVISIONS.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subsection (p) of section 414 is amended by redesignating paragraph (9) as paragraph (11) and by inserting after paragraph (8) the following new paragraph:

"(9) SUBSECTION NOT TO APPLY TO PLANS TO WHICH SECTION 401(a)(13) DOES NOT APPLY.—This subsection shall not apply to any plan to which section 401(a)(13) does not apply."

(B) AMENDMENT OF ERISA.—Paragraph (3) of section 206(d) of the Employee Retirement Income Security Act of 1974 is amended by redesignating subparagraph (L) as subparagraph (N) and by inserting after subparagraph (K) the following new subparagraph:

"(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply."

(5) BENEFIT PAYMENTS MADE IN ACCORDANCE WITH QUALIFIED DOMESTIC RELATIONS ORDERS NOT TREATED AS GARNISHMENTS FOR PURPOSES OF CONSUMER CREDIT PROTECTION ACT.—Paragraph (3) of section 206(d) of the Employee Retirement Income Security Act of 1974 (as amended by paragraph (4)(B)) is further amended by inserting after subparagraph (L) the following new subparagraph:

"(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 303(a) of the Consumer Credit Protection Act.".

(6) TREATMENT OF CERTAIN SPOUSES.—

(A) AMENDMENT OF THE INTERNAL REVENUE CODE.—Subparagraph (A) of section 414(p)(5) (relating to treatment of former spouse as surviving spouse for purposes of determining survivor benefits) is amended by striking out "sections 401(a)(11) and 417" and inserting in lieu thereof "sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)".

(B) AMENDMENT OF ERISA.—Clause (i) of section 206(d)(3)(F) of the Employee Retirement Income Security Act of 1974 is amended by striking out "section 205" and inserting in lieu thereof "section 205 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)".

(7) CLERICAL AMENDMENTS.—

(A) AMENDMENTS OF INTERNAL REVENUE CODE.—

(i) Subparagraph (F) of section 402(a)(6) is amended by striking out "paragraph (5)(A)" and inserting in lieu thereof "paragraph (5)".

(ii) Clause (i) of section 414(p)(1)(B) is amended by striking out "to a spouse," and inserting in lieu thereof "to a spouse, former spouse,".

(iii) Clause (i) of section 414(p)(6)(A) is amended by striking out "any other alternate payee" and inserting in lieu thereof "each alternate payee".

(iv) Subparagraph (B) of section 414(p)(5) is amended by striking out "the surviving spouse" and inserting in lieu thereof "the surviving former spouse".

(v) Subsection (p) of section 414 is amended by striking out the last sentence of paragraph (5) and by inserting after paragraph (9) the following new paragraph:

"(10) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—With respect to the requirements of subsections (a) and (k) of section 401 and section 409(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order."

(vi) Paragraph (4)(A) of section 414(p) is amended—

(I) by striking out "In the case of any payment before a participant has separated from service, a" and inserting in lieu thereof "A", and

(II) by inserting "in the case of any payment before a participant has separated from service," before "on or" in clause (i).

(vii) Subparagraph (B) of section 414(p)(4) is amended to read as follows:

"(B) EARLIEST RETIREMENT AGE.—For purposes of this paragraph, the term 'earliest retirement age' means earlier of—

"(i) in the date on which the participant is entitled to a distribution under the plan, or

"(ii) in the later of—

"(I) the date the participant attains age 50, or

"(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service."

(B) AMENDMENTS OF ERISA.—

(i) Clause (ii) of section 206(d)(3)(F) of the Employee Retirement Income Security Act of 1974 is amended by striking out "the former spouse" and inserting in lieu thereof "the surviving former spouse".

(ii) Subclause (I) of section 206(d)(3)(G)(i) of such Act is amended by striking out "any other alternate payee" and inserting in lieu thereof "each alternate payee".

(iii) Subparagraph (E) of section 206(d)(3) of such Act is amended—

(I) by striking out "In the case of any payment before a participant has separated from service, a" in clause (i) and inserting in lieu thereof "A", and

(II) by inserting "in the case of any payment before a participant has separated from service," before "on or" in subclause (I).

(iv) Clause (ii) of section 206(d)(3)(E) of such Act is amended to read as follows:

"(ii) For purposes of this subparagraph, the term 'earliest retirement age' means the earlier of—

"(I) the date on which the participant is entitled to a distribution under the plan, or

"(II) the later of the date of the participant attains age 50 or the earliest date on which the participant could begin receiving under the plan if the participant separated from service."

(d) AMENDMENTS RELATED TO SECTIONS 105 AND 205 OF THE ACT.—

(1) VESTED ACCRUED BENEFIT.—

(A) AMENDMENTS TO THE INTERNAL REVENUE CODE.—

(i) Subparagraph (A) of section 411(a)(11) (relating to restrictions on certain mandatory distributions) is amended to read as follows:

"(A) IN GENERAL.—If the present value of any vested accrued benefit exceeds $3,500, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant."

(ii) Subsection (a) of section 411 is amended by striking out "paragraphs (1) and (2)" in the matter preceding paragraph (1) and inserting in lieu thereof "paragraphs (1), (2), and (11)".

(B) AMENDMENTS TO ERISA.—Paragraph (1) of section 203 of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(1) If the present value of any vested accrued benefit exceeds $3,500, a pension plan shall provide that such benefit may not be immediately distributed without the consent of the participant."

(2) DISTRIBUTIONS UNDER SECTION 404(k).—

(A) AMENDMENT TO THE INTERNAL REVENUE CODE.—Section 411(a)(11) is amended by adding at the end thereof the following new subparagraph:

"(C) DIVIDEND DISTRIBUTIONS OF ESOPS ARRANGEMENT.—This paragraph shall not apply to any distribution of dividends to which section 404(k) applies."

(B) AMENDMENT TO ERISA.—Section 203(e) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to any distribution of dividends to which section 404(k) of the Internal Revenue Code of 1954 applies."

(e) AMENDMENTS RELATED TO SECTION 207 OF THE ACT.—

(1) Paragraph (1) of section 402(f) (relating to written explanation to recipients of distributions eligible for rollover treatment) is amended by striking out "qualifying rollover distribution" and inserting in lieu thereof "eligible rollover distribution".

(2) Paragraph (2) of section 402(f) is amended to read as follows:

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) ELIGIBLE ROLLOVER DISTRIBUTION.—The term 'eligible rollover distribution' means any distribution any portion of which may be excluded from gross income under subsection (a)(5) of this section or subsection (a)(4) of section 403 if transferred to an eligible retirement plan in accordance with the requirements of such subsection.

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' has the meaning given such term by subsection (a)(5)(E)(iv)."

(f) AMENDMENT RELATED TO SECTION 301 OF THE ACT.—

(1) SPECIAL RULE FOR ESOPS.—

(A) AMENDMENT TO THE INTERNAL REVENUE CODE.—Section 411(d)(6) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE FOR ESOPS.—For purposes of this paragraph, any—

"(i) tax credit employee stock ownership plan (as defined in section 409(a)), or

"(ii) employee stock ownership plan (as defined in section 4975(e)(7)),

shall not be treated as failing to meet the requirements of this paragraph merely because it modifies distribution options in a nondiscriminatory manner."

(B) AMENDMENT TO ERISA.—Section 204(g) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) For purposes of this subsection, any—

"(A) tax credit employee stock ownership plan (as defined in section 409(a) of the Internal Revenue Code of 1954), or

"(B) employee stock ownership plan (as defined in section 4975(e)(7) of such Code),

shall not be treated as failing to meet the requirements of this subsection merely because it modifies distribution options in a nondiscriminatory manner."

(2) CLERICAL AMENDMENT.—Paragraph (1) of section 204(g) of the Employee Retirement Income Security Act of 1974 is amended by striking out "section 302(c)(8)" and inserting in lieu thereof "section 302(c)(8) or 4281".

(g) AMENDMENT RELATED TO SECTION 302 OF THE ACT.—Paragraph (2) of section 302(b) of the Retirement Equity Act of 1984 is amended by striking out "January 1, 1987" and inserting in lieu thereof "July 1, 1988".

(h) AMENDMENTS RELATED TO SECTION 303 OF THE ACT.—

(1)(A) Subsection (c) of section 303 of the Retirement Equity Act of 1984 (relating to transitional rule for requirement of joint and survivor annuity and preretirement survivor annuity) is amended by adding at the end thereof the following new paragraph:

"(4) ELIMINATION OF DOUBLE DEATH BENEFITS.—

"(A) IN GENERAL.—In the case of a participant described in paragraph (2), death benefits (other than a qualified joint and survivor annuity or a qualified preretirement survivor annuity) payable to any beneficiary shall be reduced by the amount payable to the surviving spouse of such participant by reason of paragraph (2). The reduction under the preceding sentence shall be made on the basis of the respective present values (as of the date of the participant's death) of such death benefits and the amount so payable to the surviving spouse.

"(B) SPOUSE MAY WAIVE PROVISIONS OF PARAGRAPH (2).—In the case of any participant described in paragraph (2), the surviving spouse of such participant may waive the provisions of paragraph (2). Such waiver shall be made on or before the close of the second plan year to which the amendments made by section 103 of this Act apply. Such a waiver shall not be treated as a transfer of property for purposes of chapter 12 of the Internal Revenue Code of 1954 and shall not be treated as an assignment or alienation for purposes of section 401(a)(13) of the Internal Revenue Code of 1954 or section 206(d) of the Employee Retirement Income Security Act of 1974."

(B) Section 2503 is amended by adding at the end thereof the following new subsection:

"(f) WAIVER OF CERTAIN PENSION RIGHTS.—If any individual waives, before the death of a participant, any survivor benefit, or right to such benefit, under section 401(a)(11) or 417, such waiver shall not be treated as a transfer of property by gift for purposes of this chapter."

(2) Subparagraph (A) of section 303(e)(2) of the Retirement Equity Act of 1984 (relating to treatment of certain participants who perform services on or after January 1, 1976) is amended by striking out "in the first plan year" and inserting in lieu thereof "in any plan year".

(3) Paragraph (2) of section 303(c) of the Retirement Equity Act is amended by adding at the end thereof the following new sentence: "In the case of a profit-sharing or stock bonus plan to which this paragraph applies, the plan shall be treated as meeting the requirements of the amendments made by sections 103 and 203 with respect to any participant if the plan made a distribution in a form other than a life annuity to the surviving spouse of the participant of such participant's nonforfeitable benefit."

(i) TECHNICAL AMENDMENT TO SECTION 408(d) OF ERISA.—

(1) Subsection (d) of section 408 of the Employee Retirement Income Security Act of 1974 is amended by striking out "(a),".

(2) The amendment made by paragraph (1) shall apply to transactions after the date of the enactment of this Act.

(j) EFFECTIVE DATE.—Except as otherwise provided in this section, any amendment made by this section shall take effect as if included in the provision of the Retirement Equity Act of 1984 to which such amendment relates.

CHAPTER 3—AMENDMENT RELATED TO THE CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984

SEC. 1899. AMENDMENT RELATED TO THE CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984.

(a) IN GENERAL.—Section 457(b)(3) of the Social Security Act is amended by inserting "or administrative" after "court".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

CHAPTER 4—MISCELLANEOUS AMENDMENTS CORRECTING ERRORS OF SPELLING, PUNCTUATION, ETC.

SEC. 1899A. MISCELLANEOUS AMENDMENTS CORRECTING ERRORS OF SPELLING, PUNCTUATION, ETC.

(1) Paragraph (4) of section 25(f) is amended by striking out "insure" and inserting in lieu thereof "ensure".

(2) Subparagraph (A) of section 103(h)(2) (relating to prohibition of discrimination) is amended by striking out "guaranted" and inserting in lieu thereof "guaranteed".

(3) Subparagraph (B) of section 103(m)(3) (relating to exceptions) is amended by striking out "section 608(6)(A)" and inserting in lieu thereof "section 608(a)(6)(A)".

(4) Paragraph (4) of section 103(p) is amended by striking out "October" and all that follows and inserting in lieu thereof "October 27, 1949 (48 U.S.C. 1403)."

(5) Clause (i) of section 132(h)(3)(B) (defining qualified automobile demonstration use) is amended by striking out "such use in" and inserting in lieu thereof "such use is".

(6) Paragraph (6) of section 172(d) is amended by inserting "MODIFICATIONS RELATED TO REAL ESTATE INVESTMENT TRUSTS.—" after "(6)".

(7) Clause (i) of section 338(h)(3)(C) is amended by striking out "subparagraph (A) and (B)" and inserting in lieu thereof "subparagraphs (A) and (B)".

(8) Paragraph (12) of section 341(e) is amended by striking out "1245(a).—" in the heading and inserting in lieu thereof "1245(a), ETC.—".

(9) Clause (iii) of section 374(e)(1)(A) is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(10) Paragraph (22) of section 401(a) is amended by striking out "if" and inserting in lieu thereof "If".

(11) Subsection (d) of section 409 is amended by striking out "participants's" and inserting in lieu thereof "participant's".

(12) Subparagraph (B) of section 414(p)(3) is amended by striking out the comma after "benefits".

(13) Subsection (k) of section 415 is amended to read as follows:

"(k) DEFINITIONS OF DEFINED CONTRIBUTION PLAN AND DEFINED BENEFIT PLAN.—For purposes of this title, the term 'defined contribution plan' or 'defined benefit plan' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

"(1) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

"(2) an annuity plan described in section 403(a),

"(3) an annuity contract described in section 403(b),

"(4) an individual retirement account described in section 408(a),

"(5) an individual retirement annuity described in section 408(b), or

"(6) a simplified employee pension."

(14) Clause (ii) of section 468(d)(2)(B) is amended by striking out "Comprehensive Environmental, Compensation, and Liability Act of 1980" and inserting in lieu thereof "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

(15) Clause (i) of section 501(c)(1)(A) is amended by striking out "the date of the enactment of the Tax Reform Act of 1984" and inserting in lieu thereof "July 18, 1984".

(16) Paragraph (2) of section 505(c) is amended by striking out "the date of the enactment of the Tax Reform Act of 1984" and inserting in lieu thereof "July 18, 1984".

(17) Clause (i) of section 535(b)(5)(C) and subparagraph (C) of section 535(b)(8) are each amended by striking out "the date of the enactment of the Tax Reform Act of 1984" and inserting in lieu thereof "July 18, 1984".

(18) Subparagraph (B) of section 543(a)(1) is amended by striking out "46 U.S.C." and inserting in lieu thereof "46 U.S.C App.".

(19) The second sentence of section 751(c) is amended by striking out "section 617(f)(2), stock" and inserting in lieu thereof "section 617(f)(2)), stock".

(20) Subsection (a) of section 844 is amended by striking our "prior law),, unused loss" and inserting in lieu thereof "prior law), unused loss".

(21) Paragraph (2) of section 864(c) is amended by striking out "section 871(h) section 881(a)" and inserting in lieu thereof "section 871(h), section 881(a)".

(22) Subparagraph (A) of section 881(b)(2) is amended by striking out "Paragraph" and inserting in lieu thereof "paragraph".

(23) Subparagraph (C) of section 881(c)(3) is amended by striking out "section 864(d)(4)." and inserting in lieu thereof "section 864(d)(4)).".

(24) The paragraph heading of section 904(d)(1) is amended to read as follows:

"(1) IN GENERAL.—".

(25) Paragraphs (23), (24), (25), and (26) of section 1016(a) are each amended by striking out the comma at the end thereof and inserting in lieu thereof a semicolon.

(26) Subsection (c) of section 1042 is amended by striking out "this section.—" in the material preceding paragraph (1) and inseting in lieu thereof "this section—".

(27) Paragraphs (1) and (2) of section 1060 are each amended by striking out "46 U.S.C." and inserting in lieu thereof "46 U.S.C. App.".

(28) Subsection (e) of section 1276 is amended by striking out "the date of the enactment of this section" and inserting in lieu thereof "July 18, 1984".

(29) Subparagraph (C) of section 1277(b)(1) is amended by striking out "this paragaph" and inserting in lieu thereof "this paragraph".

(30) The heading for subparagraph (C) of section 1277(b)(2) is amended by striking out "PARAGRAPH 1.—". and inserting in lieu thereof "PARAGRAPH (1).—".

(31) Subsection (d) of section 1277 is amended by striking out "the date of the enactment of this section" and inserting in lieu thereof "July 18, 1984".

(32) Paragraph (4) of section 1278(a) is amended by striking out "means of" and inserting in lieu thereof "means".

(33) Paragraph (1) of section 1371(e) is amended by inserting "(within the meaning of section 1368(e))" after "accumulated adjustments account".

(34) Paragraph (2) of section 1371(e) is amended by striking out "(within the meaning of section 1368(e))".

(35) Paragraph (2)(A) of section 1504(c) is amended by striking out "subsection (b)(2) includes" and inserting in lieu thereof "subsection (b)(2)) includes".

(36) Subsection (c) of section 1551 is amended by striking out "section 269(b)" and inserting in lieu thereof "section 269(c)".

(37) Subsection (d) of section 2210 is amended by striking out "may prescibe" and inserting in lieu thereof "may prescribe".

(38) Clause (ii) of section 3121(v)(2)(A) is amended by striking out "forefeiture" and inserting in lieu thereof "forfeiture".

(39) The first sentence of paragraph (1) of section 3121(w) is amended by striking out "chapter 21 of this Code" and inserting in lieu thereof "this chapter".

(40) Paragraph (2) of section 3121(w) is amended by striking out "the date of the enactment of this subsection" and inserting in lieu thereof "July 18, 1984".

(41) Subsection (e) of section 3231 is amended by redesignating the paragraph (6) added by Public Law 98-612 as paragraph (7).

(42) Paragraph (1) of section 3301 is amended by striking out "unemployed" and inserting in lieu thereof "unemployment".

(43) Clause (iii) of section 3304(a)(6)(A) is amended by striking out "and" at the end thereof.

(44) Subparagraph (A) of section 3306(b)(2) is amended by striking out "workman's compensation" and inserting in lieu thereof "workmen's compensation".

(45) Paragraph (13) of section 3306(b) is amended by striking out the comma at the end thereof and inserting in lieu thereof a semicolon.

(46) The heading for paragraph (6) of section 3406(b) is amended by striking out "6041(A)(a)" and inserting in lieu thereof "6041A(a)".

(47) Paragraph (1) of section 4051(d) is amended by striking out "the date of the enactment of the Tax Reform Act of 1984" and inserting in lieu thereof "July 18, 1984".

(48) Clause (ii) of section 4161(b)(1)(B) is amended by striking out the period at the end thereof and inserting in lieu thereof a comma.

(49) Section 4227 is amended to read as follows:

"SEC. 4227. CROSS REFERENCE.

"For exception for a sale to an Indian tribal government (or its subdivision) for the exclusive use of an Indian tribal government (or its subdivision), see section 7871.

(50) The heading for paragraph (1) of section 4961(c) is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

(51) The second sentence of subsection (d) of section 4975 is amended by striking out "and (12) shall not" and inserting in lieu thereof "and (12)) shall not".

(52) Subsection (f) of section 6011 is amended by striking out "sections 6012 to 6019, inclusive" and inserting in lieu thereof "subparts B and C".

(53) Clause (v) of section 6103(1)(7)(D) is amended by striking out "this Code" and inserting in lieu thereof "this title".

(54) Subparagraph (B) of section 6111(d)(1) is amended by striking out "subpargraph" and inserting in lieu thereof "subparagraph".

(55) Paragraph (1) of section 6427(b) is amended by striking out "provided in paragraph (2)" and inserting in lieu thereof "otherwise provided in this subsection".

(56) Paragraph (1) of section 6427(g) is amended by striking out "anount" and inserting in lieu thereof "amount".

(57) The heading for section 6660 is amended by striking out "the estate" and inserting in lieu thereof "estate".

(58) Subparagraph (B) of section 7422(g)(1) is amended by striking out "section 4962" and inserting in lieu thereof "section 4963".

(59) Paragraph (1) of section 7476(c) is amended by striking out "plan,, or" and inserting in lieu thereof "plan, or".

(60) Subparagraph (E) of section 7482(b)(1) is amended by striking out "partnership," and inserting in lieu thereof "partnership.".

(61) Subsection (i) of section 7611 is amended—

(A) by redesignating subparagraphs (A), (B), (C), (D), and (E) as paragraphs (1), (2), (3), (4), and (5), respectively.

(B) by striking out "etc)," in paragraph (3) (as so redesignated) and inserting in lieu thereof "etc.),", and

(C) by striking out "the title" in paragraph (5) (as so redesignated) and inserting in lieu thereof "the title".

(62) Paragraph (1) of section 7611(a) is amended by striking out all that follows subparagraph (A) and inserting in lieu thereof the following:

"(B) the notice requirements of paragraph (3), have been met."

(63) Clause (i) of section 7701(b)(4)(E) is amended by striking out "preceeding" and inserting in lieu thereof "preceding".

(64) Paragraph (5) of section 7701(e) is amended by striking out "section 168(C)(2)(F))" and inserting in lieu thereof "section 168(c)(2)(F))".

(65) Subparagraph (F) of section 7871(a)(6) is amended by striking out the period at the end thereof and inserting in lieu thereof "; and".

(66) Paragraph (2) of section 101(b) of the Tax Reform Act of 1984 is amended by inserting "(as such paragraphs (4) and (5) are amended by this section and section 102)" after "(4), and (5)".

(67) Subparagraph (C) of section 102(e)(3) of the Tax Reform Act of 1984 is amended by striking out "paragraph (7)(A) (including the heading)" and inserting in lieu thereof "paragraphs (6)(B) and (7)(A) (including any headings)".

(68) Paragraph (1) of section 127(b) of the Tax Reform Act of 1984 is amended by inserting "(as amended by section 128)" after "subsection (c)".

(69) Subparagraph (A) of section 221(d)(2) of the Tax Reform Act of 1984 is amended by striking out "rapid that" and inserting in lieu thereof "rapid than".

(70) The item relating to tax credit employee stock ownership plans in the table of sections for subpart A of part I of subchapter D of chapter 1 is amended to read as follows:

"Sec. 409. Qualifications for tax credit employee stock ownership plans."

(71) The table of sections for subpart C of part II of subchapter E of chapter 1 is amended in the item relating to section 467 by inserting "the" before "use".

(72) The table of subparts for part V of subchapter P of chapter 1 is amended by inserting "on bonds" after "discount" in the item relating to subpart B.

(73) The table of sections for subchapter B of chapter 3 is amended by striking out the item relating to section 1461 and inserting in lieu thereof the following:

"Sec. 1461. Liability for withheld tax."

(74) The table of sections for subchapter G of chapter 32 is amended by striking out "references" in the item relating to section 4227 and inserting in lieu thereof "reference".

(75) The table of sections for chapter 43 is amended by—

(A) inserting "section" before "403(b)" in the item relating to section 4973, and

(B) striking out "and allocations" in the item relating to section 4978.

And the Senate agree to the same.

DAN ROSTENKOWSKI,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
RICHARD A. GEPHARDT,
MARTY RUSSO,
DONALD J. PEASE,
JOHN J. DUNCAN,
GUY VANDER JAGT,
Managers on the Part of the House.

BOB PACKWOOD,
BOB DOLE,
JOHN H. CHAFEE,
RUSSELL B. LONG,
LLOYD BENTSEN,
SPARK M. MATSUNAGA,
BILL BRADLEY
DANIEL PATRICK MOYNIHAN,
Managers on the Part of the Senate.

TITLE I. INDIVIDUAL INCOME TAX PROVISIONS

A. Basic Rate Structure

1. Tax rate schedules

Present Law

The present-law rate structure consists of up to 15 taxable income brackets and tax rates beginning above the zero bracket amount (ZBA). The following provisions apply for 1986 and reflect an adjustment for 1985 inflation.

Married individuals filing jointly and surviving spouses.—There are 14 taxable income brackets above the ZBA of $3,670. The minimum 11-percent rate starts at taxable income above $3,670; the maximum 50-percent rate starts at taxable income above $175,250. (For married individuals filing separate returns, the ZBA is one-half the ZBA on joint returns, and the taxable income bracket amounts begin at one-half the amounts for joint returns.)

Heads of household.—There are 14 taxable income brackets above the $2,480 ZBA. The minimum 11-percent tax rate starts at taxable income above $2,480; the maximum 50-percent rate starts at taxable income above $116,870.

Single individuals.—There are 15 taxable income brackets above the $2,480 ZBA. The minimum 11-percent tax rate starts at taxable income above $2,480; the maximum 50-percent rate starts at taxable income above $88,270.

House Bill

In general

The tax structure under the House bill consists of four brackets and tax rates—15, 25, 35, and 38 percent—beginning at zero taxable income, with a standard deduction replacing the ZBA.

MARRIED INDIVIDUALS FILING JOINTLY AND SURVIVING SPOUSES

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	$0 to $22,500
25%	$22,500 to $43,000
35%	$43,000 to $100,000
38%	Over $100,000

(For married individuals filing separate returns, the taxable income bracket amounts begin at one-half the amounts for joint returns.)

HEADS OF HOUSEHOLD

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	$0 to $16,000
25%	$16,000 to $34,000
35%	$34,000 to $75,000
38%	Over $75,000

SINGLE INDIVIDUALS

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	$0 to $12,500
25%	$12,500 to $30,000
35%	$30,000 to $60,000
38%	Over $60,000

Effective date

The changed tax rates and taxable income brackets are effective July 1, 1986. For 1986 returns, tax rate schedules are to blend equally the present-law schedules for 1986 (i.e., the 1985 schedules as adjusted for inflation) with the new schedules.

Senate Amendment

In general

The tax structure under the Senate amendment consists of two brackets and tax rates—15 and 27 percent—beginning at zero taxable income, with a standard deduction replacing the ZBA.

MARRIED INDIVIDUALS FILING JOINTLY AND SURVIVING SPOUSES

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	$0 to $29,300
27%	Over $29,300

(For married individuals filing separate returns, the 27-percent bracket begins at $14,650, i.e., one-half the taxable income amount for joint returns.)

HEADS OF HOUSEHOLD

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	0 to $23,500
27%	Over $23,500

SINGLE INDIVIDUALS

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	0 to $17,600
27%	Over $17,600

Rate adjustment

Under the Senate amendment, the benefit of the 15-percent bracket is phased out for taxpayers above certain income levels, through a rate adjustment imposing additional tax liability equal to five percent of the income within a specified phase-out range. The rate adjustment applies over the following ranges of adjusted gross income (AGI) levels:

Filing status	*AGI phase-out level*
Joint returns and surviving spouses	$75,000–$145,320
Heads of household	$55,000–$111,400
Single individuals	$45,000–$87,240
Married individuals filing separately	$37,500–$72,660

The phase-out levels are to be adjusted for inflation beginning in 1988.

If it results in less additional tax liability, the five-percent rate adjustment is computed with respect to the taxpayer's taxable income in the 27-percent bracket. (For example, for joint returns with AGI exceeding $75,000, the rate adjustment applies over a taxable income range of $29,300 to $99,620, if that computation produces a lower additional tax liability than the computation based on AGI.)

Effective date

The changed tax rates and taxable income brackets are effective July 1, 1987. For 1987 returns, tax rate schedules are to blend equally the present-law schedules for 1987 (i.e., the 1986 schedules as adjusted for inflation) with the new schedules.

Conference Agreement

In general

The tax structure under the conference agreement consists of two brackets and tax rates—15 and 28 percent—beginning at zero taxable income, with a standard deduction replacing the ZBA.

MARRIED INDIVIDUALS FILING JOINTLY AND SURVIVING SPOUSES

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	0 to $29,750
28%	Over $29,750

(For married individuals filing separate returns, the 28-percent bracket begins at $14,875, i.e., one-half the taxable income amount for joint returns.)

HEADS OF HOUSEHOLD

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	0 to $23,900
28%	Over $23,900

SINGLE INDIVIDUALS

Tax rate	*Brackets*
ZBA	Replaced by standard deduction
15%	0 to $17,850
28%	Over $17,850

Beginning in 1989, the taxable income amounts at which the 28-percent rate starts will be adjusted for inflation.

Rate adjustment

Beginning in 1988, the benefit of the 15-percent bracket is phased out for taxpayers having taxable income exceeding specified levels. The income tax liability of such taxpayers is increased by five percent of their taxable income within specified ranges.

The rate adjustment occurs between $71,900 and $149,250 of taxable income for married individuals filing jointly; between $61,650 and $123,790 of taxable income for heads of household; between $43,150 and $89,560 of taxable income for single individuals; and between $35,950 and $113,300 of taxable income for married individuals filing separately. These amounts will be adjusted for inflation beginning in 1989.

The maximum amount of the rate adjustment generally equals 13 percent of the maximum amount of taxable income within the 15-percent bracket applicable to the taxpayer (for a married individual filing separately, within the 15-percent bracket applicable for married taxpayers filing jointly.) Thus, if the maximum rate adjustment applies, the 28-percent rate in effect applies to all of the taxpayer's taxable income, rather than only to the amount of taxable income above the breakpoint.

Transitional rate structure for 1987

For taxable years beginning in 1987, five-bracket rate schedules are provided, as shown in the table below. Neither the rate adjustment (described above) nor the personal exemption phaseout (described below) applies to taxable years beginning in 1987.

Tax rate	Taxable income brackets		
	Married, filing joint returns	Heads of household	Single individuals
11%	0–$3,000	0–$2,500	0–$1,800
15%	$3,000–28,000	$2,500–23,000	$1,800–16,800
28%	28,000–45,000	23,000–38,000	16,800–27,000
35%	45,000–90,000	38,000–80,000	27,000–54,000
38.5%	Over $90,000	Over 80,000	Over 54,000

For married individuals filing separate returns, the taxable income bracket amounts for 1987 begin at one-half the amounts for joint returns. The bracket amounts for surviving spouses are the same as those for married individuals filing joint returns.

2. Standard deduction (zero bracket amount)

Present Law

The following zero bracket amounts apply for 1986 and reflect an adjustment for 1985 inflation.

Filing status	*ZBA*
Joint returns and surviving spouses	$3,670
Heads of household	2,480
Single individuals	2,480
Married individuals filing separately	1,835

The ZBA is adjusted annually for changes in the consumer price index.

House Bill

Increased deduction.—The House bill replaces the ZBA with a standard deduction. In 1987, the standard deduction is increased to the following amounts:

Filing status	*Standard deduction*
Joint returns and surviving spouses	$4,800
Heads of household	4,200
Single individuals	2,950
Married individuals filing separately	2,400

These increased standard deduction amounts are to be adjusted for inflation beginning in 1988. For 1986, the standard deduction is to be the same amount as the ZBA for 1986 under present law.

Elderly or blind individuals.—An additional standard deduction amount of $600 (to be indexed for inflation beginning in 1988) is allowed for an elderly or blind individual; the additional amount is $1,200 for a blind and elderly individual. For elderly or blind individuals only, the new standard deduction amounts listed above (effective for all other taxpayers in 1987) and the additional $600 standard deduction amount are to be effective on January 1, 1986.

Floor under itemized deductions.—Individuals who itemize their deductions must reduce their total itemized deductions by $500 times the number of personal exemptions claimed, effective beginning in 1986. The $500 floor will be adjusted for inflation beginning in 1987.

Senate Amendment

Increased deduction.—The Senate amendment replaces the ZBA with a standard deduction. In 1988, the standard deduction is increased to the following amounts:

Filing status	*Standard deduction*
Joint returns and surviving spouses	$5,000
Heads of household	4,400
Single individuals	3,000
Married individuals filing separately	2,500

These increased standard deduction amounts are to be adjusted for inflation beginning in 1989. For 1987, the standard deduction is to be the same amount as the ZBA that would have applied for 1987 under present law (i.e., the 1986 ZBA as adjusted for inflation in 1986).

Elderly or blind individuals.—An additional standard deduction amount of $600 (to be indexed for inflation beginning in 1989) is allowed for an elderly or blind individual; the additional amount is $1,200 for a blind and elderly individual. For elderly or blind individuals only, the new standard deduction amounts listed above (effective for all other taxpayers in 1988) and the additional $600 standard deduction amount are to be effective on January 1, 1987.

Conference Agreement

Increased deduction—Under the conference agreement, the standard deduction is increased to the following amounts, effective beginning in 1988:

Filing status	*Standard deduction*
Joint returns and surviving spouses	$5,000
Heads of household	4,400
Single individuals	3,000
Married individuals filing separately	2,500

Beginning in 1989, these increased standard deduction amounts are to be adjusted for inflation.

Elderly or blind individuals.—An additional standard deduction amount of $600 is allowed for an elderly or blind individual who is married (whether filing jointly or separately) or is a surviving spouse ($1,200 for such an individual who is both elderly and blind). An additional standard deduction amount of $750 is allowed for an unmarried individual (other than a surviving spouse), or for a head of household, who is elderly or blind ($1,500 if both). For elderly or blind taxpayers only, the new standard deduction amounts (listed above) and the additional $600 or $750 standard deduction amounts are effective beginning in 1987. Beginning in 1989, the $600 and $750 additional standard deduction amounts will be adjusted for inflation.

Standard deduction for 1987.—For all individual taxpayers other than elderly or blind individuals, the standard deduction amounts for taxable years beginning in 1987 are $3,760 for married individuals filing jointly and surviving spouses; $2,540 for heads of household and single individuals; and $1,880 for married individuals filing separately.

Floor under itemized deductions.—The conference agreement follows the Senate amendment (i.e., there is no general floor under total itemized deductions).

3. Personal exemptions

Present Law

Exemption amount.—The personal exemption amount for an individual, the individual's spouse, and each dependent is $1,080 for 1986 (reflecting an inflation adjustment for 1985). One additional personal exemption is provided for a taxpayer who is age 65 or older, and for a taxpayer who is blind.

Rules for dependents.—Each taxpayer may claim a personal exemption for himself or herself and for a dependent child (or other dependent) whose gross income does not exceed the personal exemption amount ($1,080 for 1986). In addition, parents may claim a personal exemption for a dependent child who has income exceeding the personal exemption amount if the dependent child is under age 19 or a full-time student. The child or other dependent also may claim a full personal exemption on his or her return.

A child eligible to be claimed as a dependent on his or her parents' return may use the ZBA only to offset earned income. Thus, a child with unearned income exceeding the personal exemption amount must file a return and pay tax on the excess (reduced by any allowable itemized deductions).

House Bill

Exemption amount.—The personal exemption amount for an individual, an individual's spouse, and each dependent is increased to $2,000 for 1986; beginning in 1987, the $2,000 amount is to be adjusted for inflation. The additional exemption for elderly or blind individuals is repealed starting in 1986. (As described above, an additional standard deduction amount is provided by the House bill for an elderly or blind individual.)

Rules for dependents.—The House bill provides that in the case of an individual who is eligible to be claimed as a dependent on another taxpayer's return, no more than $1,000 of the personal exemption amount can be used to reduce the taxable amount of unearned income on the dependent's return. This provision is effective beginning in 1986. As under the present-law ZBA rule, the dependent may use the standard deduction only to offset earned income.

Senate Amendment

Exemption amount.—The personal exemption amount for an individual, an individual's spouse, and each dependent is increased to $1,900 for 1987 and $2,000 for 1988; beginning in 1989, the $2,000 amount is to be adjusted for inflation. The addition-

al exemption for elderly or blind individuals is repealed starting in 1987. (As described above, an additional standard deduction amount is provided by the Senate amendment for an elderly or blind individual.)

Phase-out.—All personal exemption amounts claimed by a taxpayer (including exemptions for the taxpayer's spouse and dependents) are reduced, at a five-percent rate, over a range of $40,000 (adjusted for inflation) starting at the AGI level at which the benefit of the 15-percent rate is totally phased out (see I.A.1, above). Thus, no personal exemption amounts are allowed for taxpayers with AGI exceeding the top of the exemption phase-out range. This provision is effective for taxable years beginning on or after January 1, 1987.

Rules for dependents.—Under the Senate amendment, no personal exemption amount is allowable on the return of an individual who is eligible to be claimed as a dependent on another taxpayer's return. Thus, for example, an exemption amount cannot be claimed by a child on the child's return if the child is eligible to be claimed as a dependent on the parents' return. This provision is effective for taxable years beginning on or after January 1, 1987.

If a child or other dependent who is not allowed a personal exemption under this provision has gross income of less than $100 for the year, the individual is not subject to tax on that amount and is not required to file a Federal income tax return for that year. Thus, for example, if a child's gross income consists of $85 in interest on a savings account, there would be no tax due and no return would have to be filed. If the child's gross income consists of $300 of interest, the de minimis rule would not apply, and the tax would be computed from the first dollar of taxable income (i.e., without subtracting $100). As under the present-law ZBA rule and the House bill, a child or other individual eligible to be claimed as a dependent on another person's return may use the standard deduction only to offset earned income.

Conference Agreement

Exemption amount.—The conference agreement increases the personal exemption for each individual, the individual's spouse, and each eligible dependent to $1,900 for 1987, $1,950 for 1988, and $2,000 in 1989. Beginning in 1990, the $2,000 personal exemption amount will be adjusted for inflation. The conference agreement follows the House bill and the Senate amendment in repealing the additional exemption for an elderly or blind individual, beginning in 1987. (As described above, an additional standard deduction amount is provided by the conference agreement for an elderly or blind individual, beginning in 1987.)

Phase-out.—Beginning in 1988, the benefit of the personal exemption is phased out for taxpayers having taxable income exceeding specified levels. The income tax liability of such taxpayers is increased by five percent of taxable income within certain ranges.

This reduction in the personal exemption benefit starts at the taxable income level at which the benefit of 15-percent rate is totally phased out (see "Rate adjustment," I.A.1., above). For example, in the case of married individuals filing joint returns, in 1988 the personal exemption phaseout begins at taxable income of $149,250.

The benefit of each personal exemption amount is phased out over an income range of $10,920 in 1988. The phase-out occurs serially; e.g., the phaseout of the benefit of the second personal exemption on a joint return does not begin until the phaseout of the first is complete. Thus, in the case of a married couple filing jointly who have two children, in 1988 the benefit of the four personal exemptions would phase out over an income range of $43,680 (four times $10,920) and would be phased out completely at taxable income of $192,930. In 1989, the benefit of each exemption would phase out over an income range of $11,200.

Rules for dependents.—The conference agreement follows the Senate amendment in providing that no personal exemption amount is allowable on the return of an individual who is eligible to be claimed as a dependent on another taxpayer's return (for example, on the return of a child who is eligible to be claimed as a dependent on the return of his or her parents).

As in the present-law rule that the ZBA may be used by such a dependent individual only to offset earned income, the conference agreement generally follows the House bill and the Senate amendment in providing that the standard deduction may be used by such a dependent individual only to offset earned income. However, the conference agreement liberalizes this limitation (in lieu of the $100 de minimis rule in the Senate amendment) by providing that for such a dependent individual, the individual's standard deduction is limited to the greater of (a) $500 (to be adjusted for inflation beginning in 1989) or (b) the individual's earned income up to the basic standard deduction amount (in 1988, $3,000 for a single individual). Under the conference agreement, such a dependent child must file a Federal income tax return only if he or she either has gross income exceeding the standard deduction amount for such a dependent child (i.e., the greater of earned income or $500) or has unearned income exceeding $500.

These rules for dependents are effective beginning in 1987.

4. Adjustments for inflation

Present Law

The dollar amounts defining the tax rate brackets, the ZBA (standard deduction), and the personal exemption amount are adjusted annually for inflation, measured by 12-month periods ending September 30 of the prior calendar year. If the inflation adjustment is not a multiple of $10, the increase is rounded to the nearest multiple of $10 (sec. 1(f)).

House Bill

The House bill continues inflation adjustments as under present law, except that the 12-month measuring periods end August 31, effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

The Senate amendment is the same as the House bill, except that inflation adjustments to the rate brackets, the standard deduction (and the $600 or $750 additional standard deduction for elderly or blind individuals), and personal exemption amounts are to be rounded down to the nearest multiple of $50. The Senate amendment provisions with respect to the 12-month measuring period and rounding down are effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Two-earner deduction

Present Law

Under present law, married individuals filing a joint return are allowed a deduction equal to 10 percent of the lesser of the earned income of the lower-earning spouse or $30,000; the maximum deduction thus is $3,000 (sec. 221).

House Bill

The two-earner deduction is repealed, effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

The Senate amendment is the same as the House bill, except that the two-earner deduction is repealed effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Income averaging

Present Law

An eligible individual can elect to have a lower marginal rate apply to the portion of the current year's taxable income that is more than 40 percent higher than the average of his or her taxable income for the prior three years (secs. 1301-1305).

House Bill

Income averaging is repealed, effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

The Senate amendment is the same as the House bill, except that (1) income averaging is retained for individuals who are actively engaged in the trade or business of farming and (2) the repeal of income averaging for other individuals is effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

The conference agreement follows the House bill, with the modification that the repeal of income averaging (for all taxpayers) is effective for taxable years beginning on or after January 1, 1987.

B. Earned Income Credit

Present Law

Eligible individuals with one or more children are allowed a refundable income tax credit of 11 percent of the first $5,000 of earned income (maximum credit of $550). The amount of the credit is reduced if the individual's income exceeds $6,500, and no credit is available for individuals with income of $11,000 or more (sec. 32).

To relieve eligible individuals of the burden of computing the amount of credit to be claimed on their returns, the IRS publishes tables for determining the credit amount. Eligible individuals may receive the benefit of the credit in their paychecks throughout the year by electing advance payments (sec. 3507).

House Bill

The House bill increases the earned income credit to 14 percent of the first $5,000 of earned income (maximum credit of $700), effective for taxable years beginning on or after January 1, 1986.

The income level at which the credit is completely phased out is raised to $13,500, effective for taxable years beginning on or after January 1, 1986. These income phaseout levels are raised to $9,000/$16,000 for taxable years beginning on or after January 1, 1987.

Under the House bill, the maximum amount of the credit and the phaseout income range are adjusted for inflation occurring after the 12-month period ending on August 31, 1984. Thus, for example, the maximum earned income eligible for the

credit beginning in 1986 is to equal $5,000 as adjusted for inflation between August 31, 1984 and August 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the increase in the credit rate to 14 percent and the higher phase-out range of $6,500/$13,500 are effective for taxable years beginning on or after January 1, 1987, and except that the income phase-out range is raised to $10,000/$17,000 effective for taxable years beginning on or after January 1, 1988.

Also, the Senate amendment directs that Treasury regulations are to require employers to notify (at such time and in such manner as prescribed in such regulations) employees whose wages are not subject to income tax withholding that they may be eligible for the refundable earned income credit.

Conference Agreement

The conference agreement follows the Senate amendment, except that (1) the base against which the increased 14-percent credit applies is raised to $5,714 [1] (increasing the maximum credit to $800), and (2) the income phase-out levels, effective for taxable years starting on or after January 1, 1988, are raised to $9,000/$17,000. Also, the conference agreement clarifies that the notice that must be given by an employer to employees whose wages are not subject to withholding does not have to be given to employees whose wages are exempt from withholding pursuant to Code section 3402(n) (this exemption applies, for example, in the case of high school or college students who have summer jobs).

C. Exclusions from Income

1. Unemployment compensation

Present Law

Present law provides a limited exclusion from gross income for unemployment compensation benefits received under a Federal or State program (sec. 85). If the sum of the taxpayer's unemployment compensation benefits and AGI does not exceed a base amount, then the entire benefit amount is excluded from income. The base amount is $12,000 in the case of an unmarried individual; $18,000, in the case of married individuals filing a joint return; and zero, in the case of married individuals filing separate returns.

If the base amount is exceeded, then the amount of unemployment compensation benefits that is includible in gross income equals the lesser of (1) one-half of the excess of the taxpayer's combined income (modified AGI plus benefits) over the base amount, or (2) the amount of the unemployment compensation benefits.

House Bill

Under the House bill, all unemployment compensation benefits are includible in gross income, effective for amounts received after December 31, 1986, in taxable years ending after that date.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Scholarships and fellowships

Present Law

In general.—Present law provides an exclusion from gross income for (1) amounts received as a scholarship at an educational institution (described in sec. 170(b)(1)(A)(ii)), or as a fellowship grant, and (2) incidental amounts received and spent for travel, research, clerical help, or equipment (sec. 117).

In the case of an individual who is not a candidate for a degree, the exclusion applies only if the grantor of the scholarship or fellowship is a tax-exempt organization, international organization, or government agency, and the amount of the exclusion is limited to (1) $300 per month up to a maximum lifetime exclusion of $10,800 plus (2) the amount of incidental expenses for travel, research, clerical help, or equipment.

An educational institution is described in section 170(b)(1)(A)(ii) if it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This definition encompasses primary and secondary schools, colleges and universities, and technical schools, mechanical schools, and similar institutions, but not noneducational institutions, on-the-job training, correspondence schools, night schools, and so forth (Reg. secs. 1.117-3(b), 1.151-3(c)). The term candidate for a degree means (1) an undergraduate or graduate student at a college or university who is pursuing studies or conducting research to meet the requirements for an academic or professional degree and (2) a student who receives a scholarship for study at a secondary school or other educational institution (Reg. sec. 1.117-3(e)).

Payments for services.—In general, amounts paid to an individual to enable pursuit of studies or research are not excludable from income if they represent compensation for past, present, or future services, or if the studies or research are primarily for the benefit of the grantor or are under the direction or supervision of the grantor.[2] In the case of degree candidates, the statute specifically provides that the exclusion does not apply to any portion of an otherwise qualifying scholarship or fellowship grant that represents payment for teaching, research, or other services in the nature of part-time employment required as a condition of receiving the scholarship or fellowship grant. However, an exception permits the exclusion for payments for services if all candidates for a particular degree must perform such services.

Federal grants.—Under another exception, grants received under a Federal program requiring the recipient to perform future services as a Federal employee nonetheless are excludable to the extent used for tuition and required fees, books, supplies, and equipment.

House Bill

In general.—The House bill limits the section 117 exclusion for scholarships or fellowship grants (1) to a scholarship or fellowship grant received by an individual who is a candidate for a degree at an educational institution (described in sec. 170(b)(1)(A)(ii)), and (2) to the amount of the scholarship or fellowship grant received by the degree candidate that is required to be used, and in fact is used, for tuition and course-required fees, books, supplies, and equipment ("course-related expenses"). Any other amount of a scholarship or fellowship grant received by a degree candidate (for example, amounts for room, board, or incidental expenses) is includible in gross income, as is the full amount of any scholarship or fellowship grant received by an individual who is not a degree candidate. The repeal of the exclusion in the case of nondegree candidates does not affect whether the section 127 exclusion may apply to employer-provided educational assistance to nondegree candidates, or whether unreimbursed educational expenses of some nondegree candidates may be deductible as trade or business expenses if the requirements of section 162 are met.

Payments for services.—The House bill repeals the exception under present law permitting scholarship or fellowship grants received by degree candidates representing payment for services to be excludable under section 117 if all candidates for the particular degree are required to perform such services. Thus, under the House bill, the general rule applies requiring inclusion in gross income and wages of amounts received that represent payment for services required as a condition of receiving the grant. This inclusion rule applies both to such grants received in cash and to amounts (representing payment for services) by which the tuition of the person who performs services is reduced, whether or not pursuant to a tuition reduction plan described in section 117(d).

Federal grants.—The House bill also repeals the present-law exception permitting the exclusion of certain Federal grants under section 117 even though the recipient is required to perform future service as a Federal employee. Thus, to the extent the amount received represents payments for past, present, or future services required to be performed as a condition of the grant, then the amount received is not excludable under the House bill.

Effective date.—These provisions are effective for scholarships and fellowships granted after September 25, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification to the definition of a qualified scholarship or fellowship grant ("qualified scholarship") and a modification to the effective date. The exclusion as allowed under the conference agreement for an otherwise qualified scholarship is not limited to a grant that by its express terms is required to be used for tuition and course-related expenses. Instead, the amount of an otherwise qualified scholarship received by a degree candidate is excludable (taking into account the amount of any other grant to the individual eligible for exclusion) up to the aggregate amount incurred by the candidate for tuition and course-related expenses during the period to which the grant

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[1] Under the conference agreement, the income base eligible for the credit and the phase-out starting point are adjusted for inflation occurring after the 12-month period ending on August 31, 1984. Thus, for example, the maximum amount of earned income eligible for the credit beginning in 1987 will equal $5,714 as adjusted for inflation between August 31, 1984 and August 31, 1986. These adjustments are not subject to the $50 rounding-down rule otherwise applicable under the conference agreement to inflation adjustments. Instead, as under the generally applicable inflation adjustment rule of present law, any inflation adjustment relating to the credit that is not a multiple of $10 will be rounded to the nearest multiple of $10.

[2] Treas. Reg. sec. 1.117-4(c)(1); *Bingler* v. *Johnson*, 394 U.S. 741 (1969) (describing scholarships and fellowships as "relatively disinterested, 'no strings' education grants, with no requirement of any substantial quid pro quo from the recipients").

applies, provided that the terms of the grant do not earmark or designate its use for other purposes (such as room or board) and do not specify that the grant cannot be used for tuition or course-related expenses. The conference agreement clarifies that in the case of individuals other than students attending a primary or secondary school or pursuing a degree at a college or university, the term candidate for a degree means a student (whether full-time or part-time) who receives a scholarship for study at an educational institution (described in sec. 170(b)(1)(A)(ii)) that (1) provides an educational program that is acceptable for full credit toward a bachelor's or higher degree, or offers a program of training to prepare students for gainful employment in a recognized occupation, and (2) is authorized under Federal or State law to provide such a program and is accredited by a nationally recognized accreditation agency.

The amendments made by the conference agreement are effective for taxable years beginning on or after January 1, 1987, except that present law continues to apply to scholarships and fellowships granted before August 17, 1986. Under this rule, in the case of a scholarship or fellowship granted after August 16, 1986 and before January 1, 1987, any amount of such scholarship or fellowship grant that is received prior to January 1, 1987 and is attributable to expenditures incurred prior to January 1, 1987 (such as tuition, room, and board attributable to the period prior to January 1, 1987) is eligible for the present-law exclusion under section 117.

The conference agreement also clarifies that only for purposes of the rule that a child eligible to be claimed as a dependent on the return of his or her parents may use the standard deduction only to offset the greater of $500 or earned income (see I.A.3., above), any amount of a noncompensatory scholarship or fellowship grant that is includible in gross income as a result of these amendments to section 117 (including the repeal of any section 117 exclusion for nondegree candidates) constitutes earned income. (Amounts received as payment for teaching or other services also constitute earned income.)

3. Prizes and awards

Present Law

Scientific, etc. achievement awards.—Prizes and awards received by the taxpayer, other than scholarships and fellowship grants excludable under section 117, generally are includible in gross income (sec. 74(a)). However, a limited exclusion applies for prizes and awards (other than scholarships or fellowship grants) received for achievements in fields such as the sciences, charity, or the arts, but only if the recipient (1) has not applied specifically for the prize or award (e.g., by entering a contest), and (2) is not required to render services as a condition of receiving it (sec. 74(b)).

Employee awards.—Section 61 provides that "gross income means all income from whatever source derived," including compensation for services whether in the form of cash, fringe benefits, or similar items. However, an item transferred from an employer to an employee, other than a prize or award that is includible under section 74, may be excludable from gross income if it qualifies as a gift under section 102.

The U.S. Supreme Court, in a case involving payments made "in a context with business overtones," has defined excludable gifts as payments made out of "detached and disinterested generosity" and not in return for past or future services or from motives of anticipated benefit (*Comm'r* v. *Duberstein*, 363 U.S. 278 (1960)). Under this standard, the Court said, transfers made in connection with employment constitute gifts only in the "extraordinary" instance.

If an award to an employee constitutes a gift excludable from income under section 102, the employer's deduction is limited pursuant to section 274(b). That provision generally disallows business deductions for gifts to the extent that the total cost of all gifts of cash, tangible personal property, and other items to the same individual from the taxpayer during the taxable year exceeds $25. Under an exception to the $25 limitation, the ceiling on the deduction is $400 in the case of an excludable gift of an item of tangible personal property awarded to an employee for length of service, safety achievement, or productivity. In addition, the ceiling on the employer's business gift deduction is $1,600 for an excludable employee award for such purposes when provided under a qualified award plan, if the average cost of all plan awards in the year does not exceed $400.

Section 132(e) excludes from income certain de minimis fringe benefits, i.e., any property or service the value of which is so small (taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) as to make accounting for it unreasonable or administratively impracticable.

House Bill

Scientific, etc. achievement awards.—The House bill repeals the limited exclusion under present law (sec. 74(b)) for prizes or awards for scientific, etc. achievement, except where the recipient assigns the prize or award to a governmental unit (sec. 170(c)(1)) or tax-exempt charitable organization (sec. 170(c)(2)). If a qualifying assignment is made, the prize or award is not included in the winner's gross income, and no charitable deduction is allowed to the winner or to the payor. This provision is effective for taxable years beginning after December 31, 1985.

Employee awards.—Under the House bill, employee awards are not excludable from the recipient's income either under section 74 or under section 102. (In conformity with this rule, the present-law deduction limitation provisions in sec. 274(b) are repealed.) The committee report clarifies that employee awards of low value (such as certain traditional retirement gifts) are excludable if qualifying as de minimis fringe benefits as defined in section 132(e).

This provision is effective for taxable years beginning after December 31, 1985.

Senate Amendment

Scientific, etc. achievement awards.—The Senate amendment is the same as the House bill, except that the provision is effective for taxable years beginning after December 31, 1986.

Employee awards.—Under the Senate amendment, employee awards of tangible personal property for length of service or safety achievement are excludable by the employee from gross income for income tax purposes, and are deductible by the employer, to the extent that during the year the aggregate cost of awards (safety and length of service) made to the same employee does not exceed $1,600 for all awards and $400 for all awards that are not qualified plan awards, subject to certain additional requirements, limitations, and computation rules. To the extent that the new exclusion does not apply, all prizes or awards by employers to employees are includible in gross income other than (as under the House bill) items of low value that are excludable as de minimis fringe benefits (as defined in sec. 132(e)). The latter term would include, for example, (1) a pin or similar item with a value of $15 awarded to an employee on joining a business, on completing six months' employment, or on completing a probationary employment period, and (2) a traditional retirement gift presented to an employee on his or her retirement after completing lengthy service. The new employee achievement award exclusion is not available for any award made by a sole-proprietorship to the sole-proprietor.

This provision is effective for taxable years beginning after December 31, 1986.

Conference Agreement

Scientific, etc. achievement awards.—The conference agreement follows the Senate amendment, effective for such awards made after December 31, 1986.

Employee awards.—The conference agreement follows the Senate amendment, with a modification that an employee award is excludable from wages for employment tax purposes and from the social security benefit base to the same extent that the award is excludable under the conference agreement from gross income for income tax purposes. The conference agreement is effective for such awards made after December 31, 1986.

D. Deductions for Personal Expenditures

1. Itemized deductions for certain State and local taxes

Present Law

Individuals may claim itemized deductions with respect to the following State and local taxes: income taxes, real property taxes, personal property taxes, and general sales taxes (sec. 164). Other State and local taxes and foreign taxes generally are deductible by individuals if incurred in a business or in an income-producing (investment) activity, including such taxes that are allocable to a purchase or disposition of property and thus otherwise would have to be added to basis on purchase or applied to reduce gain on disposition. However, specific Code provisions (such as secs. 189 and 263) may require capitalization of certain taxes.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the itemized deduction for State and local general sales taxes paid or accrued during a year is limited to 60 percent of the excess of such taxes over the amount of State and local income taxes paid or accrued by the taxpayer during the year. No change is made in the itemized deductions for State and local income, real property, and personal property taxes.

The Senate amendment also provides that State, local, or foreign taxes (other than real property taxes or certain other specified taxes) that are incurred in a trade or business (or in a section 212 activity) in connection with the acquisition or disposition of property are not deductible. Instead, such taxes are to be treated, respectively, as part of the cost of the property on acquisition or as a reduction in the amount realized on disposition.

These provisions are effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

Under the conference agreement, the itemized deduction for State and local sales taxes is repealed. The conference agreement follows the Senate amendment with respect to capitalization of certain taxes. (Thus, for example, the amount of sales tax paid by a business on acquisition of depreciable property for use in the business is treated under the conference agreement as part of the cost of the acquired property for depreciation purposes.) These provisions are effective for taxable years beginning on or after January 1, 1987.

2. Charitable deduction for nonitemizers

Present Law

Beginning in 1982, nonitemizers have been allowed a deduction for charitable contributions in addition to the ZBA (standard deduction) (sec. 170(i)). The maximum charitable deduction for nonitemizers was $25 for 1982 and 1983, and $75 for 1984. For 1985, 50 percent of the amount contributed was deductible, without a dollar cap. For 1986, the full amount of contributions is deductible, subject to the limitations and other rules generally applicable to charitable deductions for itemizers.

Under present law, no deduction (beyond the standard deduction) is provided for charitable contributions by nonitemizers made after 1986.

House Bill

The nonitemizer charitable deduction is made permanent. Also, the House bill modifies the deduction by providing that, for taxable years beginning after December 31, 1985, the deduction is subject to a $100 floor.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision. Thus, pursuant to present law, the nonitemizer charitable deduction terminates for contributions made after December 31, 1986.

3. Medical expense deduction

Present Law

Floor under deduction.—Itemizers may deduct unreimbursed medical care expenses to the extent the total of such expenses exceeds five percent of the taxpayer's adjusted gross income (AGI) (sec. 213).

Capital expenditures.—Treasury regulations provide that the total cost of an unreimbursed capital expenditure may be deductible in the year of acquisition as a medical expense if its primary purpose is medical care. In addition, the cost of a permanent improvement to property that ordinarily would not have a medical purpose may be deductible as a medical expense if directly related to prescribed medical care, but only for any portion of the cost that exceeds the increased value of the property attributable to the improvement. Related operating and maintenance costs also may be deducted provided that the medical reason for the capital expenditure continues to exist. Under these rules, eligible medical expenses include the additional costs of modifying an automobile to accommodate wheelchair passengers, and certain capital expenditures to accommodate a residence to a handicapped individual.

House Bill

No provision.

Senate Amendment

Floor under deduction.—The floor under the itemized medical expense deduction is increased from five to approximately nine percent of the taxpayer's AGI, effective for taxable years beginning on or after January 1, 1987.

Capital expenditures.—The committee report clarifies that the full costs of specified capital expenditures incurred to accommodate a personal residence to the needs of a physically handicapped individual, such as construction of entrance ramps or widening of doorways to allow use of wheelchairs, constitute medical expenses eligible for the deduction.

Conference Agreement

Floor under deduction.—The conference agreement follows the Senate amendment, except that the floor under the itemized medical expense deduction is increased from five to 7.5 percent of the taxpayer's AGI.

Capital expenditures.—The conferees intend to reaffirm that the full costs of specified capital expenditures incurred to accommodate a personal residence to the needs of a physically handicapped individual, such as construction of entrance ramps or widening of doorways to allow use of wheelchairs, constitute medical expenses eligible for the deduction, as described in the Senate Finance Committee Report.

4. Adoption expenses

Present Law

An itemized deduction is allowed for up to $1,500 of adoption fees and expenses (such as court costs and attorneys' fees) for the adoption of a child with special needs, i.e., a handicapped or other child eligible for adoption assistance payments under the Social Security Act (sec. 222).

House Bill

The House bill repeals the itemized adoption expense deduction, generally effective for adoption expenses paid after 1986. Present law continues to apply in 1987 for adoptions as to which deductible expenses were incurred in 1986.

In addition, the House bill amends the adoption assistance program in Title IV-E of the Social Security Act to provide matching funds as an administrative expense for adoption expenses for any child with special needs who has been placed for adoption in accordance with applicable State and local law. Such expenses include all qualified adoption expenses to which the present-law tax deduction provision applies. The effective date of amending the adoption assistance program is coordinated with repeal of the deduction.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill in repealing the itemized adoption expense deduction and amending the adoption assistance program in Title IV-E of the Social Security Act, with the modification that these provisions are effective, respectively, for taxable years beginning on or after January 1, 1987 and for expenditures made after December 31, 1986.

5. Deductibility of mortgage interest and taxes allocable to tax-free allowances for ministers and military personnel

Present Law

The IRS has ruled that a minister may not deduct mortgage interest and property taxes allocable to a parsonage allowance that is excludable from gross income under Code section 107 (Rev. Rul. 83-3, 1983-1 C.B. 72). This ruling was based on section 265(1), which disallows deductions for expenses allocable to tax-exempt income. This ruling applied effective July 1, 1983, subject to transitional relief (extended through 1986) for ministers owning homes before 1983.

House Bill

The House bill provides a permanent rule (effective retroactively) that ministers receiving excludable parsonage allowances, as well as military personnel receiving excludable military housing allowances, are not precluded by Code section 265 from deducting mortgage interest or real property taxes on their residence.

Senate Amendment

The Senate amendment is the same as the House bill, with a clarification that military personnel means members of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

Conference Agreement

The conference agreement is the same as the House bill and the Senate amendment, with the Senate amendment clarification that defines military personnel.

E. Expenses for Business or Investment

1. Meals, travel, and entertainment expenses

a. Meal expenses

Present Law

Food and beverage expenses that constitute ordinary and necessary business expenses generally are deductible if the meal takes place in an atmosphere conducive to business discussion, whether or not business is discussed before, during, or after the meal (sec. 274(e)(1)). In contrast to the rules for deducting other entertainment expenses (see item b., below), the taxpayer need not also establish that such meal expenses are either directly related to or associated with the active conduct of a trade or business. No deduction is allowed for personal, family, or living expenses (sec. 262), or for otherwise deductible traveling expenses (including meals) that are lavish and extravagant under the circumstances (sec. 162(a)(2)).

Present law (sec. 274(d)) imposes specific substantiation requirements as a condition for deductibility of (1) traveling expenses (including meals and lodging while away from home); (2) expenses with respect to entertainment, amusement, or recreation activities or facilities; (3) business gifts; and (4) expenses with respect to listed property (as defined in sec. 280F(d)(4)). To deduct such expenses, the taxpayer must substantiate by adequate records, or sufficient evidence corroborating the taxpayer's statement, (1) the amount of the expense or item; (2) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift; (3) the business purpose of the expense or other item; and (4) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift. A business entertainment expenditure that is deductible only if directly related to or associated with the active conduct of the taxpayer's trade or business must be substantiated as provided in Treas. Reg. sec. 1.274-5(b)(4).

To meet the adequate records standard, documentary evidence (such as receipts or paid bills) is required for any expenditure of $25 or more (except certain transportation charges). The Congress has emphasized that no deductions for expenditures subject to substantiation under section 274(d) are al-

lowable pursuant to the *Cohan* approximation rule.[3]

House Bill

Reduction rule.—The bill generally reduces to 80 percent the amount of any deduction otherwise allowable for meal expenses, including meals away from home and meals furnished on an employer's premises to its employees (whether or not such meals are excludable from the employee's gross income under sec. 119). The bill provides exceptions allowing full deductibility for (1) reimbursed meal expenses (in which case the employer or person making the reimbursement is subject to the 80-percent rule); (2) employer-furnished meals that are excludable from the employee's gross income as de minimis fringes under Code section 132(e) (including meals at certain eating facilities excludable under sec. 132(e)(2)); (3) meals fully taxed to the recipient as compensation; and (4) items sold to the public (such as expenses incurred by restaurants or dinner theaters for food or entertainment provided to their customers), or furnished to the public as samples or for promotion (such as expenses incurred by a hotel in furnishing complimentary lodging to potential customers). A restaurant or catering firm may deduct 100 percent (rather than 80 percent) of its costs for food and beverage items, purchased in connection with preparing and providing meals to its paying customers, that are consumed at the work site by employees of the restaurant or caterer.

Business-connection requirement.—The House bill also provides that deductions for meals are subject to the same business-connection requirement as applies under present law (sec. 274(a)) for other entertainment expenses (see item E.1.b., below). Thus, a food or beverage expense is not deductible unless the taxpayer establishes that the item was directly related to the active conduct of the taxpayer's trade or business, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that the item was associated with the active conduct of the taxpayer's trade or business. Under this standard, no deduction is allowed unless business is discussed during, or directly before or after, the meal (except where an individual traveling away from home on business has a meal alone or with persons, such as family members, who are not business-connected, and a deduction is claimed only for the meal of such individual).

Disallowance of lavish or extravagant expenditures.—The House bill explicitly provides, apart from the present-law statutory rule disallowing deductions for certain lavish and extravagant travel expenses (including meals), that no deduction is allowed for any food or beverage expense unless the expense is not lavish or extravagant under the circumstances. Thus, this disallowance rule applies whether or not the expense is incurred while the taxpayer is away from home, and whether the taxpayer incurs the expense alone or with others. Since the reduction rule is applied only after determining the otherwise allowable deduction under sections 162 and 274, if a taxpayer incurs otherwise deductible business lunch expenses of (for example) $80 for himself and if $30 of that amount is not allowable as lavish or extravagant, the remaining $50 is then reduced by 20 percent, leaving a deduction of $40.

Presence of taxpayer requirement.—Under the House bill, no deduction for food or beverage expenses is allowed unless the taxpayer or an employee of the taxpayer is present at the furnishing of the food or beverages (except where an individual traveling away from home on business has a meal alone or with persons, such as family members, who are not business-connected, and a deduction is claimed only for the meal of such individual). For purposes of this rule, an independent contractor who renders significant services to the taxpayer (such as an attorney representing the taxpayer in a legal proceeding) is treated as an employee if he or she attends the meal in connection with such performance of services.

Additional rules.—As an additional requirement that is not applicable to other entertainment expenses, the House bill provides that no deduction for business meals is allowable unless the meal has a clear business purpose presently related to the active conduct of the taxpayer's business—i.e., unless the required business discussion concerns a specific business transaction or arrangement. The Treasury is instructed to adopt stricter substantiation requirements for business meals, including expenses of less than $25 per day. Also, the bill imposes special negligence or fraud penalties on negligently or fraudulently overstated deductions for business meals.

Effective date.—These provisions are effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

The Senate amendment is the same as the House bill with respect to meal expenses, except that full deductibility is allowed in 1987 and 1988 for costs of meals (if not separately stated) that are provided as an integral part of a qualified banquet meeting. The latter term means a convention, seminar, annual meeting, or similar business meeting (including meetings held at an employee training facility) if (1) the program includes the meal, (2) more than 50 percent of the participants are away from home, (3) there are at least 40 attendees, and (4) the meal event includes a speaker. The Senate amendment is effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

The conference agreement follows the Senate amendment with respect to food or beverage expenses, except that (1) the business-connection requirement for deducting food or beverage expenses is conformed to the business-connection requirement applicable to other entertainment expenses (i.e., the conference agreement does not include the additional "clear business purpose" requirement under which a specific business transaction or arrangement would have to be discussed); (2) present law regarding substantiation of meal expenses under $25 is retained; and (3) there are no special negligence and fraud penalties applicable only to claimed deductions for business meals.

Thus, under the conference agreement, deductions for meals are subject to the same business-connection requirement as applies under present law for other entertainment expenses. Accordingly, an expense for food or beverages is not deductible unless (in addition to generally applicable deduction requirements) the taxpayer (1) establishes that the item was directly related to the active conduct of the taxpayer's trade or business, or, in the case of an item directly preceding or following a substantial and bona fide business discussion, that the item was associated with the active conduct of the taxpayer's trade or business, and (2) substantiates the deduction as required by section 274(d) and Treas. Reg. sec. 1.274-5(b)(4). Under this requirement, no deduction is allowed unless business is discussed during, or directly before or after, the meal (except where an individual traveling away from home on business has a meal alone or with persons, such as family members, who are not business-connected, and a deduction is claimed only for the meal of such individual).

The conference agreement includes the separate statutory rule disallowing lavish or extravagant expenditures for food or beverages, whether or not incurred while the taxpayer is on business travel, thereby emphasizing an intent that this standard is to be enforced by the Internal Revenue Service and the courts. Also, the conference agreement includes the requirement relating to the presence of the taxpayer or an employee of the taxpayer at the furnishing of the food or beverages. These two rules are subject to certain exceptions listed in the statute (e.g., where the full value of the food or beverages is taxed as compensation to the recipient).

Since the conference agreement provides that deductions for meals are subject to the same business-connection requirement as applies under present law for other entertainment expenses, the present-law substantiation requirements for such entertainment expenses (e.g., in Treas. Reg. sec. 1.274-5(b)(4) with respect to the directly related or associated with deductibility standard) also will apply to all meal expenses. In addition, the conference agreement instructs the Treasury to adopt stricter substantiation requirements for business meals, except that the present-law rule relating to certain expenditures of less than $25 is to be retained. It is reemphasized that under the conference agreement, as under present law, the Internal Revenue Service and the courts are not to apply the *Cohan* approximation rule to allow deductibility of any food or beverage expense, other entertainment expense, or other expenditure subject to substantiation pursuant to section 274(d) if the expenditure is not substantiated in accordance with section 274(d) and the regulations thereunder.

b. Entertainment expenses other than for meals

Present Law

In general.—Entertainment expenses (other than certain food or beverage expenses) generally are deductible only if, in addition to constituting ordinary and necessary business expenses, they are either (1) directly related to the active conduct of the taxpayer's business, or (2) if directly preceding or following a substantial and bona fide business discussion, associated with the active conduct of the taxpayer's business.

Facilities.—No deduction or credit generally is allowed for the cost of purchasing or constructing certain entertainment facilities (e.g., skyboxes).

House Bill

In general.—The House bill generally reduces to 80 percent the amount of deduction otherwise allowable for business entertainment expenses. The bill provides exceptions allowing full deductibility for (1) reimbursed entertainment expenses (in which case the employer or person making the re-

[3] See, e.g., H. Rept. 99-67, 99th Cong., 1st Sess. 8-9 (1985) (Conference Report on P.L. 99-44).

imbursement is subject to the 80-percent rule); (2) traditional employer-paid recreational expenses for employees (e.g., a holiday party); (3) items fully taxed to the recipient as compensation, or excludable from income as section 132(e) de minimis fringe benefits; (4) items sold to or made available to the general public (e.g., as promotional activities); and (5) tickets and related expenses at certain charitable fundraising sports events. In addition, no amount of ticket costs in excess of the face value of the ticket is deductible, except in the case of tickets for certain charitable fundraising sports events; the limitation to the face value amount applies prior to application of the 80-percent rule.

Facilities.—Apart from the generally applicable entertainment facility rules, the House bill disallows deductions for costs of rental or other use of a skybox or other private luxury box ("skybox") at a sports arena (to the extent in excess of the cost of regular box seat tickets) by the taxpayer or a related party for more than one event (as determined taking into account all skybox rentals by the taxpayer in the same arena, along with any related rentals).

Effective date.—The House bill provisions are effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

In general.—The Senate amendment is the same as House bill.

Facilities.—The Senate amendment does not provide a special rule disallowing deductions for certain rental costs of skyboxes (general entertainment facility rules continue to apply).

Effective date.—The Senate amendment is effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

In general.—The conference agreement follows the House bill and the Senate amendment.

Facilities.—The conference agreement follows the House bill, except that the skybox deduction disallowance rule is phased in. Under this provision, the amounts disallowed for taxable years beginning in 1987 and 1988 are, respectively, one-third and two-thirds of the amounts that otherwise would be disallowed under the conference agreement if the provision were fully effective in those years. For taxable years beginning after 1989, the conference agreement follows the House bill, i.e., no deduction is allowed for costs of rental or other use of a skybox at a sports arena by the taxpayer or a related party for more than one event.[4]

[4] If this disallowance rule applies, two types of expenses related to the skybox still may be deductible, subject to the 80 percent rule, if meeting the generally applicable requirements for deducting business entertainment expenses. First, an amount not exceeding the face values of the highest-priced nonluxury box seats generally held for sale to the public on an event-by-event basis, multiplied by the number of seats in the skybox, is deductible (subject to the percentage reduction rule). For example, if a category of box seats represents the highest-priced seats available (other than in skyboxes) and is offered to the public on a first-come, first-served basis, the face value of such box seat may be used in the deduction computation. On the other hand, the price of a limited number of seats that generally are made available by management only to a select group of purchasers (and not offered to the public generally) cannot be used in computing the allowable deduction for the skybox seats. Second, the deductibility of separately stated charges for food or beverages is determined under the rules generally applying to business meals (described above), including the percentage reduction rule and the disallowance of lavish or extravagant expenditures. Of course, a taxpayer may not circumvent the skybox rental disallowance rule through inflating the amounts charged for tickets, food and beverages, janitoral services, or other goods or services.

Effective date.—The conference agreement follows the Senate amendment.

c. Travel expenses (other than for attending conventions)

Present Law

Luxury water transportation.—Travel expenses, other than lavish and extravagant expenditures for meals or lodging, incurred by a taxpayer while away from home in the conduct of a trade or business generally are deductible if substantiated pursuant to section 274. No special rules limit otherwise allowable deductions for the costs of luxury water transportation, although limitations apply with respect to cruise ship conventions (sec. 274(h)(2)) or foreign conventions (secs. 274 (c), (h)).

Educational travel.—Traveling expenses may be deductible as business expenses if the taxpayer establishes that the travel (i) directly maintains or improves existing employment skills and (ii) directly relates to the taxpayer's duties in his or her employment or trade or business, and if the taxpayer substantiates the expenses pursuant to section 274. No deduction is allowable unless the travel is undertaken primarily to obtain education the expenses of which are deductible as trade or business expenses; in the case of travel expenses meeting this test, no deduction is allowable for expenses allocable to personal activity incidental to the primary business activity.

Charitable travel.—Traveling expenses away from home may give rise to a charitable deduction if the taxpayer establishes that the travel expenses (whether paid directly by the individual or indirectly through a contribution by the individual to the charity, which then pays for the individual's travel) are incurred in rendering services to a qualified charitable organization, and if the taxpayer verifies such expenses as required pursuant to section 170(a)(1) and Treasury regulations thereunder.

House Bill

Luxury water transportation.—The amount of any otherwise allowable deduction for costs of cruise ship or other luxury water transportation is limited to twice the highest Federal per diem for travel in the United States, times the number of days in transit. This limitation does not apply with respect to expenses of cruise ship conventions, which remain subject to present-law limitations (sec. 274(h)(2)), or where an exception to the 80-percent deduction rule (above) applies.

Educational travel.—No deduction is allowed for costs of travel that would be deductible only on the ground that the travel itself constitutes a form of education (e.g., where a teacher of French travels to France to maintain general familiarity with the French language and culture, or where a social studies teacher travels to another State to learn about or photograph its people, customs, geography, etc.). This provision overrules Treas. Reg. sec. 1.162-5(d) to the extent that such regulation allows deductions for travel as a form of education.

Charitable travel.—The present-law rule applicable to medical deductions for lodging costs away from home (sec. 213(d)(2)(B)) is extended to charitable deductions claimed for transportation and other travel expenses incurred in performing services away from home on behalf of a qualified charitable organization. Thus, no deduction is allowed for such expenses (whether paid directly by the individual or indirectly through a contribution to the organization) unless there is no significant element of personal pleasure, recreation, or vacation in the travel away from home. As under present law, an otherwise qualifying charitable deduction is deductible only if verified pursuant to Treasury regulations (Code sec. 170(a)(1)), and no charitable deduction is allowable for a contribution of services to a charitable organization.

Effective date.—The provisions in the House bill are effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

Luxury water transportation.—The Senate amendment is the same as the House bill.

Educational travel.—The Senate amendment is the same as the House bill.

Charitable travel.—No provision.

Effective date.—The provisions in the Senate amendment are effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

Luxury water transportation.—The conference agreement follows the House bill and the Senate amendment.

Educational travel.—The conference agreement follows the House bill and the Senate amendment.

Charitable travel.—The conference agreement follows the House bill, except that the provision is effective for taxable years beginning on or after January 1, 1987.

Effective date.—The conference agreement follows the Senate amendment.

d. Travel expenses for attending conventions

Present Law

In general.—The costs of attending a convention or seminar incurred in carrying on a trade or business generally are deductible under section 162, subject to substantiation pursuant to section 274. In some circumstances, the costs of attending a convention, seminar, or similar meeting in connection with the taxpayer's income-producing (investment) activities may be deductible under section 212.

Foreign conventions.—No deduction is allowed for the cost of attending a convention outside of the North American area (i.e., not in the United States, Canada, Mexico, or certain Carribean countries) unless the taxpayer can show that it was as reasonable to hold the convention there as in the North American areas (sec. 274(h)). Certain Carribean countries, including Bermuda, are treated as in the North American area if they make available certain tax information to U.S. authorities and other specified requirements are met (sec. 274(h)(6)).

House Bill

In general.—Under the House bill, no deduction is allowed under section 212 for travel or other costs of attending a convention, seminar, or similar meeting, effective for taxable years beginning on or after January 1, 1986. Thus, registration fees, travel and transportation costs, meal and lodging expenses, etc. incurred in connection with attending a convention, seminar, or similar meeting relating to investments, financial planning, or other income-production or section 212 activities are not deductible. This disallowance rule does not apply to expenses incurred by a taxpayer in attending a convention, seminar, sales meeting, or similar

meeting relating to the trade or business (within the meaning of sec. 162) of the taxpayer.

Foreign conventions.—No provision.

Senate Amendment

In general.—The Senate amendment is the same as the House bill, except that it is effective for taxable years beginning on or after January 1, 1987.

Foreign conventions.—The Senate amendment provides that Bermuda may be treated as within the North American area for purposes of the foreign convention deductibility rules in certain circumstances.

Conference Agreement

In general.—The conference agreement follows the Senate amendment.

The conferees also are concerned that some taxpayers may be claiming deductions under section 162 for travel and other costs of attending a convention, seminar, or similar meeting ("convention") at which each convention participant is furnished individually with video tapes of lectures, etc. on topics related to the taxpayer's trade or business, to be viewed at the convenience of the participant, and at which no other significant business-related activities occur during the time allotted for the convention. In such situations, the taxpayer does not participate in activities normally conducted at a business-related convention, such as participating in meetings, discussions, workshops, lectures, or exhibits held during the day, and simply views the tapes at his or her own convenience. Because permitting deductions for travel, meal, or entertainment costs associated with such minimal business-related activities would allow taxpayers to treat expenditures that essentially are for vacation, recreation, or other personal purposes as business expenses, the conferees wish to make clear that no deduction is allowable under section 162 for travel or related costs of attending such a convention.

This clarification does not disallow deductions for the travel and other costs of attending a convention that involves activities otherwise deductible under present law which are related to the taxpayer's trade or business merely because the convention utilizes video-taped or televised materials where the participants must attend a convention session in person to view the videotaped materials, assuming that the generally applicable requirements for deducting expenses of attending a convention are satisfied. Also, this clarification does not disallow deductions for costs, other than travel, meal, or entertainment expenses, of renting or using business-related video tape materials.

Foreign conventions.—The conference agreement does not include the Senate amendment relating to Bermuda.

2. Employee business expenses, investment expenses, and other miscellaneous itemized deductions

a. In general

Present Law

Under present law, four types of employee business expenses are deductible "above-the-line" in calculating an individual's adjusted gross income (sec. 62(2)): (1) certain employee expenses reimbursed by the employer; (2) employee expenses for travel away from home; (3) employee transportation expenses; and (4) business expenses of employees who are outside salespersons. Moving expenses of an employee or self-employed individual are deductible above-the-line, within certain limitations (secs. 62(8), 217).

In addition to the itemized deductions for medical expenses, charitable donations, interest, taxes, and casualty losses, itemizers may deduct certain "miscellaneous deductions." This category includes (1) unreimbursed employee business expenses (other than those deductible above-the-line), including union and professional dues and home office expenses of an employee; (2) certain expenses related to investment income or property (such as investment counsel fees) if deductible under section 212; (3) tax return preparation costs and related expenditures if deductible under section 212(3); (4) gambling or hobby losses up to the amounts, respectively, of gambling or hobby income; (5) certain adjustments where a taxpayer restores amounts held under claim of right (sec. 1341)); (6) amortizable bond premiums (sec. 171); and (7) certain costs of cooperative housing corporations (sec. 216). (The miscellaneous itemized deduction for certain costs of adopting children with special needs is discussed in I.D.4., above.)

House Bill

Under the House bill, employee travel and transportation expenses deductible above-the-line under present law pursuant to sections 62(2)(B) and (C), and expenses of outside salespersons deductible above-the-line under present law pursuant to section 62(2)(D), are allowable only as itemized deductions and are subject to a floor as described below.

The total of the taxpayer's miscellaneous itemized deductions, including the employee business expenses described above, is allowable only to the extent exceeding one percent of the taxpayer's adjusted gross income. The floor does not apply to deductions for gambling losses up to, but not exceeding, gambling income (sec. 165(d)) or for the estate tax in the case of income in respect of a decedent (sec. 691(c)). These provisions are effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

All miscellaneous itemized deductions allowable under present law are repealed under the Senate amendment, except deductions for (1) impairment-related work expenses of handicapped employees; (2) certain costs of adopting children with special needs (sec. 222); (3) estate tax in the case of income in respect of a decedent (sec. 691(c)); (4) gambling losses up to, but not exceeding, gambling income (sec. 165(d)); (5) certain adjustments where a taxpayer restores amounts held under claim of right (sec. 1341); (6) amortizable bond premiums (sec. 171); (7) certain terminated annuity payments (new sec. 72(b)(3)); and (8) certain costs of cooperative housing corporations (sec. 216). (The Senate amendment provides that Treasury regulations are to disallow indirect deductions through pass-through entities of the repealed miscellaneous itemized deductions.) In addition, a miscellaneous itemized deduction is allowed for employee travel and transportation expenses deductible above-the-line under present law pursuant to sections 62(2)(B) and (C), and expenses of outside salespersons deductible above-the-line under present law pursuant to section 62(2)(D)), but only to the extent that the aggregate of such expenses of the taxpayer exceeds one percent of adjusted gross income. These provisions are effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

Under the conference agreement, employee business expenses, other than reimbursed expenses described in section 62(2)(A)[4], are to be allowed only as itemized deductions and are subject to a floor as described below. Moving expenses of an employee or self-employed individual are to be allowed (subject to the present-law limitations in sec. 217) only as an itemized deduction; this deduction is not subject to the new floor.

The miscellaneous itemized deductions, including the employee business expenses described above, generally are subject to a floor of two percent of the taxpayer's adjusted gross income. However, the floor does not apply to deductions otherwise allowable for impairment-related work expenses for handicapped employees (new Code sec. 67(d)); the estate tax in the case of income in respect to a decedent (sec. 691(c)); certain adjustments where a taxpayer restores amounts held under a claim of right (sec. 1341); amortizable bond premium (sec. 171); certain costs of cooperative housing corporations (sec. 216); deductions allowable in connection with personal property used in a short sale; certain terminated annuity payments (new Code sec. 72(b)(3)); and gambling losses to the extent of gambling winnings (sec. 165(d)).

Pursuant to Treasury regulations, the floor is to apply with respect to indirect deductions through pass-through entities (including mutual funds) other than estates, nongrantor trusts, cooperatives, and REITs. The floor also applies with respect to indirect deductions through grantor trusts, partnerships, and S corporations by virtue of present-law grantor trust and pass-through rules. In the case of an estate or trust, the conference agreement provides that the adjusted gross income is to be computed in the same manner as in the case of an individual, except that the deductions for costs that are paid or incurred in connection with the administration of the estate or trust and that would not have been incurred if the property were not held in such trust or estate are treated as allow-

[4] The conference agreement does not modify the above-the-line deduction under sec. 62(2)(A) for certain reimbursed expenses of an employee (allowable under part VI of the Code) under a reimbursement or other expense allowance with his or her employer. (The Treasury may prescribe regulations under which expenses of an employee reimbursed by a third party are to be treated as expenses described in sec. 62(2)(A).) If the employee has a reimbursement or other expense allowance arrangement with his or her employer, but under the arrangement the employer does not reimburse the full amount of such expenses, the unreimbursed portion paid by the employee is allowable only to the extent (if any) otherwise allowable as an itemized deduction (e.g., after taking into account the percentage reduction rule, if applicable to the expense), and subject to the floor provided under the conference agreement.

Under the conference agreement, it is intended that the Treasury issue regulations coordinating the treatment of employee business expenses and the provisions in sec. 162(h), relating to travel expenses away from home of State legislators. Under the intended rules, any excess of the allowable amount as determined under sec. 162(h) over the amount actually reimbursed to the legislator would be allocated between meals and other travel expenses in accordance with the ratio of meals and other travel expenses under the Federal per diem reimbursement rules. The reimbursed amount would be deductible pursuant to sec. 62(2)(A), and 80 percent of the amount allocated to meals would be deductible by itemizers as an employee business expense (subject to the new floor under miscellaneous itemized deductions).

able in arriving at adjusted gross income and hence are not subject to the floor. The regulations to be prescribed by the Treasury relating to application of the floor with respect to indirect deductions through certain pass-through entities are to include such reporting requirements as may be necessary to effectuate this provision.

Under the conference agreement, an actor or other performing artist is allowed a new above-the-line deduction for his or her employee business expenses (allowable under sec. 162) during a year if the performing artist for that year (1) had more than one employer (excluding any nominal employer) in the performing arts, (2) incurred allowable section 162 expenses in connection with such services as an employee in an amount exceeding 10 percent of gross income from such services, and (3) did not have adjusted gross income, as determined before deducting such expenses, exceeding $16,000.

These provisions are effective for taxable years beginning on or after January 1, 1987.

b. Home office expenses

Present Law

Expenses attributable to using part of one's home as an office are deductible subject to the following limitations: (1) the use of the home office must be for the convenience of the employer, (2) the home office must be used regularly and exclusively either as the taxpayer's principal place of business, or to meet patients, clients, or customers, and (3) the deduction cannot exceed the taxpayer's gross income from the business (sec. 280A). A recent case held that these limits do not apply when the taxpayer leases a portion of the home to his or her employer.

House Bill

Under the House bill, the present-law limitations (listed above) are to apply when an employee leases a portion of the home to his or her employer. In addition, the amount of an otherwise allowable home office deduction is limited to the taxpayer's net income from the business (i.e., gross income minus deductions attributable to the business). Disallowed home office deductions may be carried forward to later years, subject to the new income limitation in such years. These provisions are effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

The Senate amendment is the same as the House bill, except that the effective date is taxable years beginning on or after January 1, 1987.

Conference Agreement

The conference agreement follows the House bill and the Senate Amendment, with the effective date in the Senate amendment.

c. Hobby losses

Present Law

Hobby losses are deductible only up to the amount of hobby income. An activity is presumed not to be a hobby, and therefore expenses incurred in the activity generally are not subject to this deduction limitation, if it is profitable in two out of five consecutive years, or two out of seven years for horse breeding or racing (sec. 183). However, an activity need not meet this standard in order to avoid treatment as a hobby.

House Bill

An activity (other than horse breeding or racing) is presumed not to be a hobby if it is profitable in three out of five consecutive years, effective for taxable years beginning on or after January 1, 1986. The present-law presumption rules are retained for horse activities.

Senate Amendment

The Senate amendment is the same as the House bill, except that the effective date is taxable years beginning on or after January 1, 1987. Thus, for example, an activity carried on during 1987 by a taxpayer is presumed not to be a hobby in that year if the activity is profitable in any three years out of the five calendar years 1983 through 1987.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with the effective date in the Senate amendment.

F. Political Contributions Tax Credit

Present Law

Individual taxpayers may claim a nonrefundable income tax credit equal to one-half the amount of their contributions to political candidates and certain political campaign organizations during the taxable year (sec. 24). The maximum allowable credit is $50 for an individual and $100 for a married couple filing a joint return.

House Bill

Under the House bill, a tax credit is allowed to individuals for the full amount of political contributions, up to a maximum of $100 ($200 for a joint return), made to a congressional candidate for election in the State in which the taxpayer resides. This provision is effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

The Senate amendment repeals the political contributions tax credit, effective for taxable years beginning on or after January 1, 1987.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE II. CAPITAL COST PROVISIONS

A. Cost Recovery: Depreciation; ITC; Finance Leases

1. Accelerated depreciation

a. Cost recovery classes

Present Law

Under the Accelerated Cost Recovery System ("ACRS"), recovery deductions are determined by applying a statutory percentage to an asset's original cost (adjusted for allowable investment tax credit). The classification of assets under ACRS generally is based on the Asset Depreciation Range ("ADR") system of prior law. Under the ADR system, a present class life ("midpoint") was provided for all assets used in the same activity, other than certain assets with common characteristics (e.g., automobiles).

The cost of eligible personal property is recovered over a three-year, five-year, 10-year, or 15-year recovery period, using statutory percentages based on the 150-percent declining balance method. The cost of real property generally is recovered over a 19-year recovery period (15 years for low-income housing), using statutory percentages based on the 175-percent declining balance method (200-percent declining balance method for low-income housing).

House Bill

ACRS is replaced by the Incentive Depreciation System ("IDS"). Under IDS, assets are grouped into 10 different classes according to present class lives (or ADR midpoint lives).

Recovery deductions are determined through prescribed depreciation methods. The cost of most personal property is recovered using the 200-percent declining balance method over periods ranging from three to 30 years. The cost of real property generally is recovered using the straight-line method over 30 years.

Senate Amendment

ACRS is modified by (1) prescribing depreciation methods for each ACRS class (in lieu of providing statutory tables), (2) creating a second three-year class to which the straight-line method of depreciation applies, (3) reclassifying assets based on their ADR midpoint lives, (4) applying the 200-percent declining balance method to property in the five- and 10-year ACRS classes (as revised by the bill), and (5) requiring the cost of residential rental property to be recovered over 27.5 years and most other real property to be recovered over 31.5 years, using the straight-line method.

Conference Agreement

In general

The conference agreement modifies the Accelerated Cost Recovery System (ACRS) for property placed in service after December 31, 1986, except for property covered by transition rules. The cost of property placed in service after July 31, 1986, and before January 1, 1987, which is not transition-rule property, may, at the election of the taxpayer on an asset-by-asset basis, be covered under the modified rules.

The conference agreement provides more accelerated depreciation for the revised three-year, five-year and 10-year classes, reclassifies certain assets according to their present class life (or "ADR midpoints", Rev. Proc. 83-35, 1983-1 C.B. 745), and creates a seven-year class, a 20-year class, a 27.5-year class, and a 31.5-year class. The conference agreement prescribes depreciation methods for each ACRS class (in lieu of providing statutory tables). Eligible personal property and certain real property are assigned among a three-year class, a five-year class, a seven-year class, a 10-year class, a 15-year class, or a 20-year class.

The depreciation method applicable to property included in the three-year, five-year, seven-year, and 10-year classes is the double declining balance method, switching to the straight-line method at a time to maximize the depreciation allowance. For property in the 15-year and 20-year class, the conference agreement applies the 150-percent declining balance method, switching to the straight-line method at a time to maximize the depreciation allowance. The cost of section 1250 real property generally is recovered over 27.5 years for residential rental property and 31.5 years for nonresidential property, using the straight-line method.

Classes of property

Property is classified as follows:

Three-year class.—ADR midpoints of 4 years or less, except automobiles and light trucks, and adding horses which are assigned to the three-year class under present law.

Five-year class.—ADR midpoints of more than 4 years and less than 10 years, and adding automobiles, light trucks, qualified technological equipment, computer-based telephone central office switching equipment, research and experimentation property, and geothermal, ocean thermal, solar,

and wind energy properties, and biomass properties that constitute qualifying small power production facilities (within the meaning of section 3(17)(C) of the Federal Power Act).

Seven-year class.—ADR midpoints of 10 years and less than 16 years, and adding single-purpose agricultural or horticultural structures and property with no ADR midpoint that is not classified elsewhere.

10-year class.—ADR midpoints of 16 years and less than 20 years.

15-year class.—ADR midpoints of 20 years and less than 25 years, and adding municipal wastewater treatment plants, and telephone distribution plant and comparable equipment used for the two-way exchange of voice and data communications.

20-year class.—ADR midpoints of 25 years and more, other than section 1250 real property with an ADR midpoint of 27.5 years and more, and adding municipal sewers.

27.5-year class.—Residential rental property (including manufactured homes that are residential rental property and elevators and escalators).

31.5-year class.—Nonresidential real property (section 1250 real property that is not residential rental property and that either does not have an ADR midpoint or whose ADR midpoint is 27.5 years or more, including elevators and escalators).

The conference agreement provides new ADR midpoint lives for the following assets:

(1) Semiconductor manufacturing equipment (described in ADR class 36.0), 5 years;

(2) Computer-based telephone central office switching equipment and related equipment (described in ADR class 48.12) which functions are those of a computer or peripheral equipment (as defined in section 168(j)(5)(D)) in their capacity as telephone central office equipment, 9.5 years;

(3) Railroad track, 10 years;

(4) Single-purpose agricultural and horticultural structures within the meaning of sec. 48(p) (described in ADR class 01.3), 15 years;

(5) Telephone distribution plant (e.g., telephone fiber optic cable) (described in ADR class 48.14) and comparable equipment, 24 years (comparable equipment means equipment used by non-telephone companies for two-way exchange of voice and data communications (equivalent of telephone communications)—comparable equipment does not include cable television equipment used primarily for one-way communication);

(6) Municipal waste-water treatment plants, 25 years; and

(7) Municipal sewers, 50 years.

Classifications under the ADR system occasionally are made on the basis of regulated accounts. All assets described in these accounts are to be included, without regard to the fact that the taxpayer owning the described assets may not be subject to any regulatory authority.

The conferees wish to clarify that under present law cargo containers have an ADR midpoint of six years and this present class life shall be used in applying the provisions of the conference agreement.

As under present law, property which the taxpayer properly elects to depreciate under the unit-of-production method or any other method not expressed in terms of years (other than the retirement-replacement-betterment method or similar method), will be so depreciated. For example, depreciation is allowable with respect to landfills on a unit basis (without regard to whether the space for dumping waste was excavated by the taxpayer), to the extent capital costs are properly allocable to the space to be filled with waste rather than to the underlying land.

b. Luxury automobiles

Present Law

Recovery deductions for automobiles are subject to the following dollar limitations: $3,200 for the first recovery year; and $4,800 for each succeeding taxable year in the recovery period.

House Bill

Retains present law.

Senate Amendment

The Senate amendment conforms the fixed limitations on deductions so that the price range of affected cars is unchanged. Additionally, the amendment clarifies that the fixed limitations apply to all deductions claimed for depreciation of automobiles, not just ACRS deductions.

Conference Agreement

The conference agreement generally follows the Senate amendment and conforms the fixed limitations on deductions so that the price range of affected cars is unchanged. The new limitations are: $2,560 for the first recovery year, $4,100 for the second recovery year; $2,450 for the third recovery year; and $1,475 for each succeeding taxable year in the recovery period. The conference agreement clarifies that the fixed limitations apply to all deductions.

c. Changes in classification

Present Law

Under ACRS, recovery periods are fixed.

House Bill

Under the House bill, Treasury has the authority to adjust class lives based on actual experience with certain depreciable assets (other than 30-year real property or low-income housing) and any new class life will be used for determining the class of such property and in applying an alternative depreciation system.

Senate Amendment

The Senate amendment follows the House bill, except the class lives of certain other property in addition to residential rental property and nonresidential real property may not be changed.

Conference Agreement

Under the conference agreement, the Treasury Department has the authority to adjust class lives of most assets (other than residential rental property and nonresidential real property) based on actual experience. Any new class life will be used for determining the classification of such property and in applying an alternative depreciation system.

Any class life prescribed under the Secretary's authority must reflect the anticipated useful life, and the anticipated decline in value over time, of an asset to the industry or other group. Useful life means the economic life span of property over all users combined and not, as under prior law, the typical period over which a taxpayer holds the property. Evidence indicative of the useful life of property which the Secretary is expected to take into account in prescribing a class life includes the depreciation practices followed by taxpayers for book purposes with respect to the property. It also includes useful lives experienced by taxpayers, according to their reports. It further includes independent evidence of minimal useful life—the terms for which new property is leased, used under a service contract, or financed—and independent evidence of the decline in value of an asset over time, such as is afforded by resale price data. If resale price data is used to prescribe class lives, such resale price data should be adjusted downward to remove the effects of historical inflation. This adjustment provides a larger measure of depreciation than in the absence of such an adjustment. Class lives using this data should be determined such that the present value of straight-line depreciation deductions over the class life, discounted at an appropriate real rate of interest, is equal to the present value of what the estimated decline in value of the asset would be in the absence of inflation.

Initial studies are expected to concentrate on property that now has no ADR midpoint. Additionally, clothing held for rental and scientific instruments (especially those used in connection with a computer) should be studied to determine whether a change in class life is appropriate.

Certain other assets specifically assigned a recovery period (including horses in the three-year class, qualified technological equipment, computer-based central office switching equipment, research and experimentation property, certain renewable energy and biomass properties, semiconductor manufacturing equipment, railroad track, single-purpose agricultural or horticultural structures, telephone distribution plant and comparable equipment, municipal wastewater treatment plants, and municipal sewers) may not be assigned a longer class life by the Treasury Department if placed in service before January 1, 1992. Additionally, automobiles and light trucks may not be reclassified by the Treasury Department during this five-year period.

Such property placed in service after December 31, 1991, and before July 1, 1992, may be prescribed a different class life if the Secretary has notified the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of the proposed change at least 6 months before the date on which such change is to take effect.

2. Alternative cost recovery system

a. In general

Present Law

(i) *In general.*—ACRS deductions are reduced for property that is (1) used predominantly outside the United States or (2) tax-exempt use property.

Different depreciation methods are also used for purposes of (1) computing earnings and profits of a domestic corporation, and (2) applying the minimum tax provisions.

(ii) *Tax-exempt bond financed property.*—Property, other than low-income housing, to the extent it is financed with industrial development bonds, the interest on which is tax-exempt, is depreciated using the straight-line method over the ACRS recovery period.

(iii) *Elective alternative recovery system.*—Taxpayers can elect to use the straight-line method over the applicable ACRS recovery period (or over a longer recovery period) with respect to one or more classes of ACRS property placed in service during a taxable year.

House Bill

(i) *In general.*—An alternative cost recovery system is provided for the following purposes: (1) property used predominantly outside the United States, (2) tax-exempt use property, (3) for computing earnings and profits of a domestic corporation, and (4) for applying the minimum tax provisions.

Depreciation deductions are computed under the method that is used under present law for property that is leased to a tax-exempt entity, which generally is straight-line over the ADR midpoint life. Qualified technological equipment, cars, and light trucks are recovered over 5 years and most section 1250 real property over 40 years.

(ii) *Tax-exempt bond property.*—If all or part of property, other than low-income housing, is financed with bonds, the interest on which is tax-exempt, the property is depreciated using the straight-line method over the next longest IDS class (40 years for most real property).

(iii) *Elective alternative recovery system.*—Taxpayers may elect an alternative cost recovery system described in (i) for property that is otherwise eligible for incentive depreciation on a class-by-class, year-by-year basis.

Senate Amendment

(i) *In general.*—Generally, the Senate amendment follows the House bill.

(ii) *Tax-exempt bond property.*—Generally, property to the extent it is financed with bonds, the interest on which is tax-exempt, is depreciated using the same method as in (i). The recovery period for solid waste disposal facilities and hazardous waste treatment facilities is 8 years, and for low-income housing is 27.5 years.

(iii) *Elective alternative recovery system.*—Taxpayers may elect either the alternative cost recovery system or the straight-line method over the ACRS recovery period for property that is otherwise eligible for ACRS on a class-by-class, year-by-year basis.

Conference Agreement

(i) *In general.*—The conference agreement provides an alternative cost recovery system for: (1) property used predominantly outside the United States, (2) tax-exempt use property, (3) for computing earnings and profits of a domestic corporation or an "80/20" company, and (4) for applying the minimum tax provisions.

For purposes of (1), (2) and (3), the conference agreement follows the House bill and the Senate amendment. For purposes of determining whether property is tax-exempt use property, in the case of a corporation the stock of which is publicly traded on an established securities market, the test of whether 50 percent or more (in value) of the stock of such corporation is held by tax-exempt entities, shall be made only by including tax-exempt entities which hold 5 percent or more (in value) of the stock in such corporation.

For purposes of the depreciation preference under the minimum tax, the cost of property other than section 1250 real property is recovered using the 150-percent declining balance method, switching to the straight-line method, over the same lives as provided for the purposes of (1), (2) and (3). The cost of section 1250 real property and other property for which the straight-line method is either elected or required to be used for regular tax purposes is recovered using the straight-line method for minimum tax purposes.

(ii) *Tax-exempt bond property.*—The conference agreement generally follows the Senate amendment. Property, to the extent it is financed with tax-exempt bonds, is depreciated using the straight-line method over the same lives as provided in (i). Only the portion of the cost of property which is attributable to tax-exempt financing is recovered using this method. If only a part of a facility is financed with tax-exempt bonds, the tax-exempt bond financed portion will be allocated to property first placed in service. An exception is provided to recover the cost of low-income housing financed with tax-exempt bonds over 27.5 years.

(iii) *Elective alternative recovery system.*—The conference agreement follows the Senate amendment.

b. Property predominantly of foreign origin

Present Law

Under present law, there is Presidential authority to deny the investment tax credit, but not to deny accelerated depreciation.

House Bill

The House bill provides Presidential authority to deny accelerated depreciation to property produced abroad, similar to present-law rules applicable to the investment tax credit.

Senate Amendment

The Senate amendment follows the House bill, except it limits the Presidential authority to assets that have not yet been ordered.

Conference Agreement

The conference agreement follows the Senate amendment.

c. Property used in outer space

Present Law

No provision.

House Bill

Property launched by a U.S. person from the United States and used in outer space is not treated as foreign use property.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Indexing

Present Law

Under present law, the basis of depreciable property is not adjusted for inflation.

House Bill

Beginning in 1988, IDS deductions are increased for half the annual inflation in excess of 5 percent since the second year an asset is placed in service.

Senate Amendment

The Senate amendment retains present law.

Conference Agreement

The conference agreement follows the Senate amendment.

4. Accounting conventions

a. Half-year convention

Present Law

Under present law, the statutory schedules for personal property reflect a half-year convention that results in a half-year depreciation allowance for the first recovery year, regardless of when property is placed in service during the year.

House Bill

For personal property, both the first and last depreciation allowances for an asset reflect the half-year convention.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. All property placed in service or disposed of during a taxable year is treated as placed in service or disposed of at the midpoint of such year. In the case of a taxable year less than 12 months, property is treated as being in service for half the number of months in such taxable year.

b. Mid-month convention

Present Law

Under a mid-month convention, real property (other than low-income housing) placed in service or disposed of at any time during a month is treated as having been placed in service or disposed of in the middle of the month.

House Bill

The House bill extends the use of the mid-month convention to low-income housing and certain other property.

Senate Amendment

The Senate amendment generally follows the House bill and applies the mid-month convention to all residential rental property and nonresidential real property.

Conference Agreement

The conference agreement follows the Senate amendment.

c. Special rule where substantial property placed in service during last three months of the year

Present Law

No provision.

House Bill

Under the House bill, a mid-month convention is applied to all property if more than 40 percent of all property (other than class 10 property and low-income housing) is placed in service by a taxpayer during the last quarter of the taxable year.

Senate Amendment

The Senate amendment generally follows the House bill.

Conference Agreement

The conference agreement provides that a mid-quarter convention is applied to all property if more than 40 percent of all property is placed in service by a taxpayer during the last three months of the taxable year. The mid-quarter convention treats all property placed in service during any quarter of a taxable year as placed in service on the midpoint of such quarter. Where the taxpayer is a member of an affiliated group (within the meaning of sec. 1504, without regard to sec. 1504(b)), all such members are treated as one taxpayer for purposes of the 40-percent determination.

For example, using the mid-quarter convention, a $100 asset in the five-year class eligible for the 200-percent declining balance method that is placed in service during the first quarter of a taxable year would receive deductions beginning in taxable year 1 and ending in taxable year 6 of $35, $26, $15.60, $11.01, $11.01, and $1.38.

For taxable years in which property is placed in service subject both to present-law ACRS and to the conference agreement, the 40-percent determination is made with respect to all such property. The mid-quarter convention, however, applies only to property subject to the conference agreement.

5. Gain on disposition

a. Residential real property

Present Law

For residential real property held for more than one year, gain realized on a disposition is recaptured only to the extent

that accelerated depreciation deductions exceed straight-line deductions. Recapture for low-income housing is phased out after property has been held for a prescribed period.

House Bill

For residential real property that is 30-year property, there is no recapture. For low-income housing, only the excess of IDS deductions over straight line deductions (over the applicable recovery period) is recaptured, and the phaseout of recapture is repealed. For property that ceases to qualify as low-income housing after a sale-leaseback, Treasury is granted regulatory authority to determine the recapture amount by reference to straight-line depreciation over 30 years.

Senate Amendment

For all residential rental property, there is no recapture.

Conference Agreement

The conference agreement follows the Senate amendment. Any capital gain is treated under the rules provided in Title III.

b. Nonresidential real property

Present Law

There is no recapture on a disposition if the taxpayer elected to recover the property's cost using the straight-line method. Otherwise, the full amount of depreciation—to extent of gain—is recaptured.

House Bill

Under the House bill, there is no recapture for nonresidential (30-year) real property.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

6. Lessee leasehold improvements

Present Law

A lessee recovers the cost of leasehold improvements over the shorter of the property's ACRS recovery period or the portion of the lease term remaining on the date the property is acquired. Under statutory rules provided for use in determining the term of a lease, in certain cases, a lease term includes periods during which the lease may be renewed pursuant to an option held by the lessee, unless the lessee establishes that it is more probable than not that the lease will not be renewed. In other cases, the statute provides that a lease term is determined by excluding renewal options held by the lessee, unless the facts show with reasonable certainty that the lease will be renewed. These rules also apply in determining the amortization period for lease acquisition costs.

House Bill

Under the House bill, a lessee recovers capital costs under the general rules in every case.

Senate Amendment

The Senate amendment is the same as the House bill. Additionally, the statutory rules for determining the term of a lease—the only future relevance of which would be in determining the amortization period for lease acquisition costs—is amended to provide that the term of a lease is determined by including all renewal options as well as any period for which the parties reasonably expect the lease to be renewed.

Conference Agreement

The conference agreement follows the Senate amendment.

7. Expensing

Present Law

Taxpayers can elect to expense up to $5,000 of the cost of personal property that is purchased and used in a trade or business. The $5,000 ceiling is scheduled to increase to $7,500 for taxable years beginning in 1988 and 1989, and to $10,000 for years beginning after 1989. The dollar limitation is subject to apportionment among certain related entities. If expensed property is converted to nonbusiness use within two years of the time the property was placed in service, the difference between the amount expensed and the ACRS deductions that would have been allowed for the period of business use is recaptured as ordinary income.

House Bill

The House bill provides a $10,000 ceiling for expensing and limits eligibility for expensing to taxpayers whose total investment in tangible personal property for the taxable year is $200,000 or less.

Senate Amendment

The Senate amendment provides a $10,000 ceiling for expensing for taxpayers whose total investment in tangible personal property is $200,000 or less. For other taxpayers, for every dollar of investment in excess of $200,000, the $10,000 ceiling is reduced by one dollar. The amount eligible to be expensed is limited to the taxable income derived from the active trade or business in which the property is used. The difference between expensing and ACRS deductions is recaptured if property is converted to nonbusiness use at any time before the end of the property's recovery period.

Conference Agreement

The conference agreement generally follows the Senate amendment, but provides that the amount eligible to be expensed is limited to the taxable income derived from any trade or business. Married individuals filing separate returns are treated as one taxpayer for purposes of determining the amount which may be expensed and the total amount of investment in tangible personal property.

8. Vintage accounts

Present Law

Under present law, taxpayers generally compute depreciation deductions on an asset-by-asset basis. Under regulations prescribed by the Secretary, there is an election to establish mass asset vintage accounts for assets in the same recovery class and placed in service in the same year. The definition of assets eligible for inclusion in mass asset accounts is limited, primarily because of concern about the mechanics of recapturing investment tax credit.

House Bill

With repeal of the investment tax credit, the House bill authorizes regulations that would expand the definition of eligible property to include all property.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment and clarifies that diverse assets can be included in these accounts.

9. Public utility property

Present Law

The benefits of accelerated depreciation must be normalized.

House Bill

The House bill retains present law and additionally applies special normalization rules to excess deferred tax reserves resulting from the reduction of corporate income tax rates.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

10. Regular investment tax credit

Present Law

General rule

A credit against income tax liability is allowed for up to 10 percent of a taxpayer's investment in certain tangible depreciable property (generally, not including buildings or their structural components) (secs. 38 and 46). The amount of the regular investment credit is based on the ACRS recovery class to which the property is assigned. The 10-percent credit is allowed for eligible property in the 5-year and 10-year classes, and the 15-year public utility property class. Three-year ACRS property is eligible for a six-percent regular credit (even if the taxpayer elects to use a longer recovery period). The maximum amount of a taxpayer's investment in used property that is eligible for the regular investment credit is $125,000 per year; the limitation on used property is scheduled to increase to $150,000 for taxable years beginning after 1987.

Generally, the investment credit is claimed for the taxable year in which qualifying property is placed in service. In cases where property is constructed over a period of two or more years, an election is provided under which the credit may be claimed on the basis of qualified progress expenditures ("QPEs") made during the period of construction before the property is completed and placed in service. Investment credits claimed on QPEs are subject to recapture if the property fails to qualify for the investment credit when placed in service.

Unused credits for a taxable year can be carried back to each of the three preceding taxable years and then carried forward to each of the 15 following taxable years (sec. 39).

Public utility property

Public utility property is eligible for the regular investment credit only if the tax benefits of the credit are normalized in setting rates charged by the utility to customers and in reflecting operating results in regulated books of account (sec. 46(f)). The investment credit is denied for public utility property if the regulatory commission's treatment of the credit results in benefits being flowed through to customers more rapidly than under either (1) the ratable flow-through method or (2) the rate base reduction method.

House Bill

The House bill repeals the regular investment tax credit.

Senate Amendment

The Senate amendment follows the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendments.

11. Finance leases

Present Law

The Tax Equity and Fiscal Responsibility Act of 1982 provided rules (finance leasing rules) that liberalized the leasing rules with respect to certain property. Under the finance leasing rules, the fact that (1) the lessee has an option to purchase the property at a fixed price of 10 percent or more of its original cost to the lessor, or (2) the property can be used only by the lessee is not taken into account in determining whether the agreement is a lease.

The finance lease rules were to have been generally effective for agreements entered into after December 31, 1983, with three temporary restrictions intended to limit the tax benefits of finance leasing in 1984 and 1985. First, no more than 40 percent of property placed in service by a lessee during any calendar year beginning before 1986 was to qualify for finance lease treatment. Second, a lessor could not have used finance lease rules to reduce its tax liability for any taxable year by more than 50 percent. This 50-percent lessor cap was to apply to property placed in service on or before September 30, 1985. Third, the investment tax credit for property subject to a finance lease and placed in service on or before September 30, 1985, was only allowable ratably over 5 years, rather than entirely in the year the property is placed in service.

Notwithstanding these general rules, finance leasing was to be available for up to $150,000 per calendar year of a lessee's farm property for agreements entered into after July 1, 1982, and before 1984. Furthermore, the 40-percent lessee cap, 50-percent lessor cap, and 5-year spread of the investment credit did not apply to this amount of farm property.

The Tax Reform Act of 1984, however, postponed the effective date of the finance lease rules to generally apply to agreements entered into after December 31, 1987, and extended the three restrictions. Thus, the 40-percent lessee cap was extended to property placed in service by a lessee during any calendar year beginning before 1990; the 50-percent lessor cap was extended through September 30, 1989; and the 5-year spread of the investment credit for property subject to a finance lease was extended to property placed in service on or before September 30, 1989.

The Tax Reform Act of 1984 provided transitional rules which exempted property from the 4-year postponement if, before March 7, 1984, (1) a binding contract to acquire or construct the property was entered into by or for the lessee, (2) the property was acquired by the lessee, or (3) construction of the property was begun by or for the lessee. In addition, the Act exempted from the 4-year postponement property which is placed in service before 1988 and is (1) a qualified lessee's automotive manufacturing property (limited to an aggregate of $150 million of cost basis per lessee) or (2) property that was part of a coal-fired cogeneration facility for which certification and construction permit applications were filed on specified dates. The special rules relating to the availability of finance leasing for up to $150,000 per calendar year of a lessee's farm property were extended to cover agreements entered into before 1988.

House Bill

The House bill repeals the finance leasing rules.

Senate Amendment

The Senate amendment follows the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

12. Effective dates

a. In general

House Bill

The depreciation provisions apply to property placed in service after December 31, 1985. The provision that repeals the regular investment tax credit is effective for property placed in service after December 31, 1985. Repeal of the finance leasing rules is effective for agreements entered into after December 31, 1985.

Senate Amendment

The provisions that modify ACRS apply to all property placed in service after December 31, 1986. The provision that repeals the regular investment tax credit is effective for property placed in service after December 31, 1985. Repeal of the finance lease rules is effective for agreements entered into after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment except that the conference agreement also provides an election to apply the modified ACRS to certain property that is placed in service after July 31, 1986. All elections made under section 168 of the Code, as amended, are irrevocable and must be made on the first tax return for the taxable year in which the property is placed in service.

b. Transitional rules

House Bill

The House bill provides certain exceptions to the general effective dates, in the case of property constructed, reconstructed or acquired pursuant to a written contract that was binding as of September 25, 1985, and in other transitional situations. Except in the case of certain qualified waste disposal facilities, the application of the transitional rules is conditioned on property being placed in service by a prescribed date.

Senate Amendment

The Senate amendment generally follows the House bill, except that (1) the binding contract date is March 1, 1986, for depreciation and December 31, 1985, for the investment tax credit (2) certain satellites are excepted from the placed-in-service requirement, and (3) additional transitional relief is provided.

Conference Agreement

In general

The conference agreement provides certain exceptions to the general effective dates, in the case of property constructed, reconstructed, or acquired pursuant to a written contract that was binding as of March 1, 1986, (December 31, 1985, for purposes of the investment tax credit) or in other transitional situations discussed below. Except in the case of qualified solid waste disposal facilities and certain satellites (described below), the application of the transitional rules is conditioned on property being placed in service by a prescribed date in the future. In addition, special rules are provided for investment credits claimed on transitional property, for tax-exempt bond financed property, and for the finance lease rules.

The conferees are aware that taxpayers may have difficulty in identifying under their accounting systems whether a particular item placed in service on or after January 1, 1987, (1986, for the investment tax credit) was acquired pursuant to a contract that was binding before March 2, 1986, (December 31, 1985, for the investment tax credit) or meets the rule for self-constructed property. The problem arises where a taxpayer regularly enters into contracts for (or manufactures itself) large stocks of identical or similar items of property to be placed in service as needed. The taxpayer's accounting system may not identify the date on which the contract for an item's acquisition was entered into (or the date on which manufacture commenced). In such a situation, a taxpayer is to assume that the first items placed in service after December 31, 1986, (1985, for the investment tax credit) were those they had under a binding contract on that date. A similar rule is to apply to self-constructed property.

Except as otherwise provided, for purposes of the depreciation transitional rules, the rules described below do not apply to any property unless the property has an ADR midpoint of seven years or more and is placed in service before the applicable date, determined according to the following: (1) for property with an ADR midpoint less than 20 years (other than computer-based telephone central office switching equipment), January 1, 1989, and (2) for property with an ADR midpoint of 20 years or more, residential rental property, and nonresidential real property, January 1, 1991.

For purposes of the investment tax credit transitional rules, the applicable placed-in-service dates are: (1) for property with an ADR midpoint less than five years, July 1, 1986, (2) for property with an ADR midpoint of at least five but less than seven years and including computer-based telephone central office switching equipment, January 1, 1987, (3) for property with an ADR midpoint of at least seven but less than 20 years (other than computer-based telephone central office switching equipment), January 1, 1989, and (4) for property with an ADR midpoint of 20 years or more, January 1, 1991. Property that is incorporated into an equipped building or plant facility need not independently satisfy the placed-in-service requirements. Instead, such property would qualify for transition relief as part of the equipped building or plant facility—as long as the equipped building or plant facility is placed in service by the prescribed date.

For purposes of the general effective dates, if at least 80 percent of a target corporation's stock is acquired on or before December 31, 1986, (December 31, 1985, for purposes of the investment tax credit) and the acquiring corporation makes a section 338 election to treat the stock purchase as an asset purchase after the relevant date, then the deemed new target corporation is treated as having purchased the assets before the general effective date.

Anti-churning rules

The conference agreement expands the scope of the present law anti-churning rules to prevent taxpayers from bringing certain property placed in service after December 31, 1980, under the modified ACRS. The expanded anti-churning rules apply to all ACRS property, other than residential rental property and nonresidential real

property, where the result would be to qualify such property for more generous depreciation than would be available under present law. The conference agreement retains the anti-churning rules applicable to property that was originally placed in service before January 1, 1981. The anti-churning rules will not apply to property that is placed in service before January 1, 1987, for personal use and converted to business use on or after January 1, 1987.

Binding contracts

The conference agreement does not apply to property that is constructed, reconstructed, or acquired by a taxpayer pursuant to a written contract that was binding as of March 1, 1986 (December 31, 1985, for investment tax credits), and at all times thereafter. If a taxpayer transfers his rights in any such property under construction or such contract to another taxpayer, the bill does not apply to the property in the hands of the transferee, as long as the property was not placed in service by the transferee before the transfer by the transferor. For purposes of this rule, if by reason of sales or exchanges of interests in a partnership, there is a deemed termination and reconstitution of a partnership under section 708(b)(1)(B), the partnership is to be treated as having transferred its rights in the property under construction or the contract to the new partnership.

The general binding contract rule applies only to contracts in which the construction, reconstruction, erection, or acquisition of property is itself the subject matter of the contract.

A contract is binding only if it is enforceable under State law against the taxpayer, and does not limit damages to a specified amount (e.g., by use of a liquidated damages provisions). A contractual provision that limits damages to an amount equal to at least five percent of the total contract price is not treated as limiting damages.

For purposes of the general binding contract rule, a contract under which the taxpayer is granted an option to acquire property is not to be treated as a binding contract to acquire the underlying property. In contrast, a contract under which the taxpayer grants an irrevocable put (i.e., an option to sell) to another taxpayer is treated as a binding contract, as the grantor of such an option does not have the ability to unilaterally rescind the commitment. In general, a contract is binding even if subject to a condition, as long as the condition is not within the control of either party or a predecessor (except in the limited circumstances described below). A contract that was binding as of March 1, 1986 (or December 31, 1985, in the case of the investment tax credit) will not be considered binding at all times thereafter if it is substantially modified after that date.

A binding contract to acquire a component part of a larger property will not be treated as a binding contract to acquire the larger property under the general rule for binding contracts. For example, if a written binding contract to acquire an aircraft engine was entered into before March 2, 1986, there would be a binding contract to acquire only the engine, not the entire aircraft.

The conferees wish to clarify the general binding contract rule with respect to investment credit and ACRS allowances. Design changes to a binding contract to construct a project that are made for reasons of technical or economic efficiencies of operation and that cause an insignificant increase in the original price will not constitute substantial modifications of the contract so as to affect the status of the project under the binding contract rule. In addition, a supplementary contract that stands on its own and is not protected by the binding contract rule, for example, to build an addition to a project protected by the binding contract rule, will not adversely affect the status of the portion of the project subject to a separate binding contract.

The conferees also wish to clarify that the general binding contract rule does not apply to supply agreements with manufacturers, where such contracts fail to specify the amount or design specifications of property to be purchased; such contracts are not to be treated as binding contracts until purchase orders are actually placed. A purchase order for a specific number of properties, based on the pricing provisions of the supply agreement, will be treated as a binding contract.

Self-constructed property

The conference agreement does not apply to property that is constructed or reconstructed by the taxpayer, if (1) the lesser of $1 million or five percent of the cost of the property was incurred or committed, (i.e., required to be incurred pursuant to a written binding contract in effect) as of March 1, 1986 (December 31, 1985, for purposes of the investment tax credit) and (2) the construction or reconstruction began by that date. For purposes of this rule, a taxpayer who serves as the engineer and general contractor of a project is to be treated as constructing the property. For purposes of this rule, the construction of property is considered to begin when physical work of a significant nature starts. Construction of a facility or equipment is not considered as begun if work has started on minor parts or components. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, researching, or developing.

For purposes of the rule for self-constructed property, in the context of a building, the term "property" includes all of the normal and customary components that are purchased from others and installed without significant modification (*e.g.*, light fixtures).

Equipped buildings

Under the conference agreement, where construction of an equipped building began on or before March 1, 1986 (December 31, 1985, for purposes of the investment tax credit), pursuant to a written specific plan, and more than one-half the cost of the equipped building (including any machinery and equipment for it) was incurred or committed before March 2, 1986 (January 1, 1986, for the investment tax credit) the entire equipped building project and incidental appurtenances are excepted from the bill's application.[1] Where the costs incurred or committed before March 2, 1986 (January 1, 1986, for the investment tax credit) do not equal more than half the cost of the equipped building, each item of machinery and equipment is treated separately for purposes of determining whether the item qualifies for transitional relief.

[1] For example, if property with a class life of less than 7 years is incorporated into an equipped building, then such property would not independently need to satisfy the placed-in-service requirements. Instead, such property would qualify for transition relief as part of the equipped building—as long as the equipped building is placed in service by the prescribed date.

Under the equipped building rule, the conference agreement will not apply to equipment and machinery to be used in the completed building, and also incidental machinery, equipment, and structures adjacent to the building (referred to here as appurtenances) which are necessary to the planned use of the building, where the following conditions are met:

(1) The construction (or reconstruction or erection) or acquisition of the building, machinery, and equipment was pursuant to a specific written plan of a taxpayer in existence on March 1, 1986 (December 31, 1985, for the investment tax credit); and

(2) More than 50 percent of the adjusted basis of the building and the equipment and machinery to be used in it (as contemplated by the written plan) was attributable to property the cost of which was incurred or committed by March 1, 1986 (December 31, 1985, for the investment tax credit), and construction commenced on or before March 1, 1986 (December 31, 1985, for the investment tax credit).

The written plan for an equipped building may be modified to a minor extent after March 1, 1986 (December 31, 1985, for the investment tax credit) and the property involved may still come under this rule; however, there cannot be substantial modification in the plan if the equipped building rule is to apply. The plan referred to must be a definite and specific plan of the taxpayer that is available in written form as evidence of the taxpayer's intentions.

The equipped building rule can be illustrated by an example where the taxpayer has a plan providing for the construction of a $100,000 building with $80,000 of machinery and equipment to be placed in the building and used for a specified manufacturing process. In addition, there may be other structures or equipment, here called appurtenances, which are incidental to the operations carried on in the building, that are not themselves located in the building. Assume that the incidental appurtenances have further costs of $30,000. These appurtenances might include, for example, an adjacent railroad siding, a dynamo or water tower used in connection with the manufacturing process, or other incidental structures or machinery and equipment necessary to the planned use of the building. Of course, appurtenances, as used here, do not include a plant needed to supply materials to be processed or used in the building under construction. In this case, if construction of the building is under a binding contract and property but no equipment had been ordered, and the appurtenances had not been constructed or placed under binding order, the equipped building rule would apply. This is true because the building cost represents more than 50 percent of the total $180,000. As a result, the machinery and equipment, even though not under binding contract, is eligible for the rule. In this connection, it should be noted that the additional cost of appurtenances, $30,000, is not taken into account for purposes of determining whether the 50-percent test is met. Nevertheless, the bill would not apply to these appurtenances since the 50-percent test is met as to the equipped building.

Plant facilities

The conference agreement also provides a plant facility rule that is comparable to the equipped building rule (described above), for cases where the facility is not housed in a building. For purposes of this rule, the term "plant facility" means a facility that

does not include any building (or of which buildings constitute an insignificant portion), and that is a self-contained single operating unit or processing operation—located on a single site—identifiable as a single unitary project as of March 1, 1986.

If pursuant to a written specific plan of a taxpayer in existence as of March 1, 1986 (December 31, 1985, for the investment tax credit), the taxpayer constructed, reconstructed, or erected a plant facility, the construction, reconstruction, or erection commenced as of March 1, 1986 (December 31, 1985, for the investment tax credit), and the 50-percent test is met, then the conference agreement will not apply to property that makes up the facility. For this purpose, construction, etc., of a plant facility is not considered to have begun until it has commenced at the site of the plant facility. (This latter rule does not apply if the facility is not to be located on land and, therefore, where the initial work on the facility must begin elsewhere.) In this case, as in the case of the commencement of construction of a building, construction begins only when actual work at the site commences; for example, when work begins on the excavation for footings, etc., or pouring the pads for the facility, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings), does not constitute the beginning of construction, reconstruction or erection.

The conferees wish to clarify the application of the plant facility rule where the original construction of a power plant is pursuant to a written specific plan of a taxpayer in existence as of March 1, 1986 (December 31, 1985, in the case of the investment tax credit), and both the original construction and more than one-half of the total cost of the property to be used at the powerplant has been incurred or committed by such date. The plant facility rule will apply to the powerplant even though the type of fuel to be utilized at the plant may have changed subsequent to the original plan and other changes may be made to accommodate the change in the fuel source, as long as more than one-half of the total cost of the plant, including all conversion costs, were incurred or committed by March 1, 1986.

Special rules for sale-leasebacks within three months

Property is treated as meeting the requirements of a transitional or general effective date rule if (1) the property is placed in service by a taxpayer who acquired the property from a person in whose hands the property would qualify under a transitional or general effective date rule, (2) the property is leased back by the taxpayer to such person, and (3) the leaseback occurs within three months after such property was originally placed in service, but no later than the applicable date. The committee intends that the special rule for sale-leasebacks apply to any property that qualifies for transitional relief under the bill or that was originally placed in service by the lessee under the sale-leaseback before the general effective date. This rule would apply where a taxpayer acquires property from a manufacturer, places the property in service by leasing it to the ultimate user, and subsequently engages in a sale-leaseback within three months after the property was originally placed in service under the initial lease.

In the case of a facility that would otherwise qualify for transitional relief as an equipped building (described above), if a portion of such equipped building is sold and leased back in accordance with the requirements of the special rule for sale-leasebacks, both the leased and retained portions will continue to qualify for transitional relief as an equipped building.

Special rules for tax-exempt bond financed property

The provision restricting ACRS deductions for property financed with tax-exempt bonds applies to property placed in service after December 31, 1986, to the extent such property is financed (directly or indirectly) by the proceeds of bonds issued after March 1, 1986. The revised restrictions on ACRS deductions do not apply to facilities placed in service after December 31, 1986, if—

(1) the original use of the facilities commences with the taxpayer and the construction (including reconstruction or rehabilitation) commenced before March 2, 1986, and was completed after that date;

(2) a binding contract to incur significant expenditures for the construction (including reconstruction or rehabilitation) of the property financed with the bonds was entered into before March 2, 1986, was binding at all times thereafter, and some or all of the expenditures were incurred after March 1, 1986; or

(3) the facility was acquired after March 1, 1986, pursuant to a binding contract entered into before March 2, 1986, and that is binding at all times after March 1, 1986.

For purposes of this restriction, the determination of whether a binding contract to incur significant expenditures existed before March 2, 1986, is made in the same manner as under the rules governing the redefinition of industrial development bonds.

The restrictions on ACRS deductions for bond-financed property do not apply to property placed in service after December 31, 1986, to the extent that the property is financed with tax-exempt bonds issued before March 2, 1986. ACRS deductions for such property may be determined, however, under the rules generally provided by the bill. For purposes of this exception, a refunding issue issued after March 1, 1986, generally is treated as a new issue and the taxpayer must use the alternative depreciation method provided by the bill for costs that are unrecovered on the date of the refunding issue.

In cases where a change of recovery method is required because of a refunding issue, only the remaining unrecovered cost of the property is required to be recovered using the alternative depreciation system provided by the bill. Therefore, no retroactive adjustments to ACRS deductions previously claimed are required when a pre-March 2, 1986, bond issue is refunded where no significant expenditures are made with respect to the facility after December 31, 1986.

Contract with persons other than a person who will construct or supply the property

The bill provides transitional relief for certain situations where written binding contracts require the construction or acquisition of property, but the contract is not between the person who will own the property and the person who will construct or supply the property. This rule applies to written service or supply contracts and agreements to lease entered into before March 2, 1986 (January 1, 1986, in the case of the investment tax credit). An example of a case to which this rule would apply would be lease agreements under which a grantor trust is obligated to provide property under a finance lease (to the extent continued under the bill). The conferees wish to clarify that this rule applies to cable television franchise agreements embodied in whole or in part in municipal ordinances or similar enactments before March 2, 1986 (January 1, 1986, for the investment tax credit).

This transitional rule is applicable only where the specifications and amount of the property are readily ascertainable from the terms of the contract, or from related documents. A supply or service contract or agreement to lease must satisfy the requirements of a binding contract (discussed above). A change in the method or amount of compensation for services under the contract, without more, will not be considered a substantial modification of the contract if, taken as a whole, the change does not affect the scope or function of the project. This rule does not provide transitional relief to property in addition to that covered under a contract described above, which additional property is included in the same project but does not otherwise qualify for transitional relief.

As a further example, where a taxpayer before January 1, 1986 entered into a written binding contract to construct a wastewater treatment facility and to provide wastewater treatment services, the subsequent amendment of the contract to (1) extend the date for completion of construction by a short period (*e.g.*, three months), (2) provide for a letter of credit or other financial protection against defaults of the service provider, (3) add a pledge of net revenue and a sewer use rate covenant by the service recipient, (4) cause the service recipient's options to purchase the facility to comply with "service contract" definitional requirements of the Internal Revenue Code, (5) merely clarify rights and remedies in the event of performance defaults, and (6) treat the obligations of the taxpayer to accept and treat wastewater as separate obligations (and treat similarly the obligation of the service recipient to pay for such services) would not in the aggregate constitute a "substantial modification," if the taxpayer's obligations to provide wastewater treatment services and to construct or acquire the facility are not affected thereby.

Development agreements relating to large-scale multi-use urban projects

The conference agreement does not apply to property that is included in a "qualified urban renovation project." The term qualified urban renovation project includes certain projects that satisfy the following requirements as of March 1, 1986 (December 31, 1985, for the investment tax credit): the project is described in the conference agreement and (1) was publicly announced by a political subdivision, for the renovation of an urban area in its jurisdiction, (2) was either the subject of an agreement for development or a lease between such political subdivision and the primary developer of the project, or was undertaken pursuant to the political subdivision's grant of development rights to a primary developer-purchaser; or (3) was identified as a single unitary project in the internal financing plans of the primary developer, and (4) is not substantially modified at any time after March 1, 1986 (December 31, 1985, for the investment tax credit).

Federal Energy Regulatory Commission application or action

The requirements of the general binding contract rule will be treated as satisfied with respect to a project if, on or before March 1, 1986 (for purposes of depreciation and the investment tax credit), the Federal Energy Regulatory Commission ("FERC") licensed the project or certified the project as a "qualifying facility" for purposes of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). A project that a developer has simply put FERC on notice as a qualifying facility is not *certified* as a qualifying facility.

This rule will not apply if a FERC license or certification is substantially amended after March 1, 1986. On the other hand, minor modifications will not affect the application of this rule (e.g., technical changes in the description of a project, extension of the deadline for placing property in operation, changes in equipment or in the configuration of equipment).

The committee is informed that FERC does not distinguish between an application to amend an existing certificate and one to have a project recertified and responds in both cases by "recertifying" the project. The committee intends that substance should control over form, and property will remain transitional property if no substantial change occurs. Similarly, a mere change in status from a "qualifying small power production facility" to a "qualifying cogeneration facility," under PURPA, without more, would not affect application of the transitional rule. The following paragraph provides guidance about how the "substance over form" rule applies in typical cases.

The requirements of the transitional rule for FERC Certification will not be violated under the following circumstances: (1) after FERC certification, the introduction of efficiencies results in a reduction of the project cost and an increase in net electricity output, and the FERC certificate is amended to reflect the higher electricity output, (2) a project was originally certified as three separate facilities, but the taxpayer determines that it is more efficient to have a single powerhouse, and the FERC certification is amended to have the facilities combined under a single certificate.

The conference agreement also provides transitional relief for hydroelectric projects of less than 80 megawatts if an application for a permit, exemption, or license was filed with FERC before March 2, 1986 (for purposes of depreciation and the investment tax credit).

Qualified solid waste disposal facilities

The conference agreement does not apply to a qualified solid waste disposal facility if, before March 2, 1986 (for purposes of depreciation and the investment tax credit) (1) there is a written binding contract between a service recipient and a service provider, providing for the operation of such facility and the payment for services to be provided by the facility, or (2) a service recipient, governmental unit, or any entity related to such an entity made a financial commitment of at least $200,000 to the financing or construction of the facility.

For purposes of this rule, a qualified solid waste disposal facility is a facility (including any portion of the facility used for power generation or resource recovery) that provides solid waste disposal services for residents of part or all of one or more governmental units, if substantially all of the solid waste processed at such facility is collected from the general public. This rule does not apply to replacement property. For example, assume a taxpayer/service provider enters into a long-term service contract before January 1, 1986, and a facility is initially placed in service after that date. Assume that the taxpayer finds it necessary to replace the facility 20 years later, pursuant to its obligation to provide continuing services under the pre-1987 service contract. The special rule will apply only to the first facility necessary to fulfill the taxpayer's obligations under the service contract.

For purposes of this provision, a contract is to be considered as binding notwithstanding the fact that the obligations of the parties are conditioned on factors such as the receipt of permits, satisfactory construction or performance of the facility, or the availability of acceptable financing. A change in the method or amount of compensation for services under the contract will not be considered a substantial modification of the contract if, taken as a whole, the change does not materially affect the scope or function of the project.

A service recipient or governmental unit or a related party is to be treated as having made a financial commitment of at least $200,000 for the financing or construction of a facility if one or more entities have issued bonds or other obligations aggregating more than 10 percent of the anticipated capital cost of such facility, the proceeds of which are identified as being for such facility or for a group of facilities that include the facility, and if the proceeds of such bonds or other obligations to be applied to the development or financing of such facility are at least $200,000 in the aggregate. Alternatively, the test would be satisfied if one or more entities have expended in the aggregate at least $200,000 of their funds, or utilized or committed at least $200,000 of their assets, toward the development or financing of such facility (*e.g.*, for the cost of feasibility studies and consultant fees). If a governmental entity acquires a site for a facility by purchase, option to purchase,[2] purchase contract, condemnation, or entering into an exchange of land, it shall be considered to have made a financial commitment equal to the fair market value of such site for purposes of this rule. For purposes of this provision, entities are related if they are described in section 168(h)(4)(A)(i).

Other exceptions

The conference agreement also provides other special transitional rules of limited application. The conference agreement does not apply to (1) those mass commuting vehicles exempted from the application of the tax-exempt leasing rules under DEFRA, (2) a qualified lessee's automotive manufacturing property that was exempted from deferral of the finance lease rules, (3) a qualified lessee's farm property that was exempted from deferral of the finance lease rules, or (4) property described in section 216(b)(3) of TEFRA. Property that qualifies under one of these provisions is also excepted from the 35-percent reduction of the investment credit and the full-basis adjustment (described below).

Master plans.—Under the special rule for master plans for integrated projects, the conferees intend that, (1) in the case of multi-step plans described in sec. 203(a)(5)(E) of the bill, the rule will include executive approval of a plan or executive authorization of expenditures under the plan before March 2, 1986, and (2) in the case of single-step plans described in sec. 203(a)(5)(E) of the bill, the rule will include project-specific designs for which expenditures were authorized, incurred or committed before March 2, 1986.

A master plan for a project will be considered to exist on March 1, 1986 if the general nature and scope of the project was described in a written document or documents in existence on March 1, 1986, or was otherwise clearly identifiable on that date. The conferees understand that each of the projects described in this rule had a master plan in existence on March 1, 1986, and does not intend the existence of such a plan to be a separate requirement for transitional relief for property comprising these projects.

Satellites.—The conference agreement provides transitional relief (including exceptions to the placed-in-service requirements) for certain satellites. Solely for purposes of the special rule for satellites, a binding contract for the construction or acquisition of two satellites by a joint venture shall be sufficient if such contract was in existence on July 2, 1986, and is for the construction or acquisition of the same satellites that were the subject of a contract to acquire or construct in effect on January 28, 1986, to which one of the joint venturers (or one of its affiliates) was a party.

Commercial passenger airliners.—The conference agreement extends the placed-in-service window for one year (through 1989) for commercial passenger airliners described in ADR class 45.0.

Special rules applicable to the regular investment credit

Full basis adjustment

A taxpayer is required to reduce the basis of property that qualifies for transition relief ("transition property") by the full amount of investment credits earned with respect to the transition property (after application of the phased-in 35-percent reduction, described below). The full-basis adjustment requirement also applies to credits claimed on qualified progress expenditures made after December 31, 1985. Further, the full-basis adjustment requirement applies to all depreciable property, regardless of whether such property is eligible for ACRS. The lower basis will be used to compute depreciation deductions, as well as gain or loss on disposition of property.

Reduction of ITC carry forwards and credits claimed under transitional rules

These rules apply only to the portion of an investment credit attributable to the regular percentage (other than the portion thereof attributable to qualified timber property). Thus, for example, 100 percent of ITC carryovers may continue to be allowed for funding of an investment tax credit employee stock ownership plan.

Under the conference agreement, the investment tax credit allowable for carryovers is reduced by 35 percent. The reduction in investment tax credit carryovers is phased in with the corporate rate reduction. The 35-percent reduction is fully effective for taxable years beginning on or after July 1, 1987. Taxpayers having a taxable year that straddles July 1, 1987, will be subject to a partial reduction that reflects the reduction for the portion of their year after that date. For example, for a calendar year taxable year, the reduction for 1987 is 17.5 percent.

[2] In the case of an option to purchase, the conferees intend the governmental entity to be treated as having made a financial commitment only if an amount is paid for the option and such consideration is forfeitable.

The investment tax credit earned on transition property is reduced in the same manner as carryovers.

The amount by which the credit is reduced will not be allowed as a credit for any other taxable year. For purposes of determining the extent to which an investment credit determined under section 46 is used in a taxable year, the regular investment credit is assumed to be used first. This rule is inapplicable to credits that a taxpayer elects to carryback 15 years under the special rules described below.

As described above, a full basis adjustment is required with respect to the reduced amount of the investment tax credit. Thus, for transition property that is eligible for a 6.5 percent investment tax credit, the basis reduction would be with respect to the 6.5 percent credit, not the unreduced 10 percent credit.

The phased-in 35-percent reduction is to be applied to the investment tax credit before application of the general 75-percent limitation. Further, the amount of investment tax credit carryovers subject to reduction shall be adjusted to reflect credits that were recaptured.

Section 48(d) election

A taxpayer in whose hands property qualifies for transitional relief can make an election under section 48(d) to pass the credit claimed to a lessee.

Estimated tax payments

The conferees are aware that the repeal of the regular investment tax credit for property placed in service after December 31, 1985, presents an issue about the manner in which estimated tax payments should be calculated for payment due dates occurring before the date of enactment of this Act. In general, for example, a corporation calculates estimated tax by determining its expected regular tax liability, less any allowable tax credits. Any underpayment of estimated corporate tax generally results in the imposition of penalties.

The conferees intend that no penalties be imposed under section 6655 on underpayments of estimated tax, but only to the extent that (1) the underpayment of an installment results from a taxpayer taking into account investment tax credits on property placed in service after December 31, 1985, and before the date of enactment of the Act, *and* (2) the taxpayer actually pays such underpayment within 30 days after the enactment of the Act.

Elective 15-year carryback for certain taxpayers

Certain companies can elect a 15-year carryback of 50 percent of investment tax credit carryforwards in existence as of the beginning of a taxpayer's first taxable year beginning after December 31, 1985. The amount carried back is treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code, made on the last day prescribed by law (without regard to extensions) for filing a return of tax under chapter 1 of the Code for the first taxable year beginning on or after January 1, 1987. The amount carried back would reduce tax liability for the first taxable year beginning after December 31, 1986; to the extent the amount carried back exceeds the tax liability for such year, any excess could be claimed as a refund under generally applicable rules. Carryforwards taken into account under the carryback rule are not taken into account under section 38 for any other taxable year. Generally, taxpayers eligible to elect the 15-year carryback are domestic corporations engaged in the manufacture and production of steel. A similar election is available to qualified farmers, except a $750 limitation applies.

The amount claimed as a payment against the tax for the first taxable year beginning on or after January 1, 1987 cannot exceed the taxpayer's net tax liability. The net tax liability is the amount of tax liability for all taxable years during the carryback period (not including minimum tax liability), reduced by the sum of credits allowable (other than the credit under section 34 relating to certain fuel taxes). The carryback period is the period that (1) begins with the taxpayer's 15th taxable year preceding the first taxable year from which there is a credit included in the taxpayer's existing carryforward (in no event can such period begin before the first taxable year ending after December 31, 1961), and (2) ends with the corporation's last taxable year beginning before January 1, 1986.

Normalization requirement for public utility property

If the tax benefits of previously allowed investment tax credits on public utility property are not normalized, then certain investment tax credits will be recaptured. In general, the amount recaptured is the greater of (1) all investment tax credits for open taxable years of the taxpayer or (2) unamortized credits of the taxpayer or credits not previously restored to rate base (whether or not for open years), whichever is applicable. If such credits have not been utilized and are being carried forward, the carryforward amount is reduced in lieu of recapture. These rules apply to violations of the relevant normalization requirements occurring in taxable years ending after December 31, 1985. Similar principles apply to the failure to normalize the tax benefits of previously allowed employee stock ownership plan credits.

General treatment of QPEs

Neither the repeal of the regular investment credit nor the phased-in 35-percent reduction of credits affects QPEs claimed with respect to the portion of the basis of any progress expenditure property attributable to progress expenditures for periods before January 1, 1986. If a taxpayer elected to take a reduced rate of credit on a QPE basis in lieu of the 50-percent basis adjustment of present law, the portion of basis attributable to such QPEs, claimed for periods before 1986, will not be reduced and such election will not apply to any other portion of such basis. After December 31, 1985, QPEs cannot be claimed unless it is reasonable to expect that the property will be placed in service before the applicable date. The determination of whether it is reasonable to expect that the placement-in-service requirement will be met is to be made on a year-by-year basis, beginning with the first taxable year that includes January 1, 1986. For any taxable year in which reasonable expectations change, no QPEs will be allowed, and previously claimed post-1985 QPEs will be recaptured. Further, if the property is not placed in service on or before the last applicable date, post-1985 QPEs will be recaptured in the taxable year that includes such date.

Special rules for television and motion picture films

Special transitional rules apply to television and motion picture films for purposes of the investment credit (but not depreciation). For purposes of the general binding contract rule, (1) construction is treated as including production, (2) in accordance with industry practice, written contemporaneous evidence of a binding contract is treated as a written binding contract, and (3) in the case of any television film, a license agreement or agreement for production services between a television network and a producer (including written evidence of such an agreement as provided in (2) above) is treated as a binding contract to produce property. For these purposes, license agreement options are binding contracts as to the optionor (non-exercising party) but not as to the optionee (exercising party). In addition, a special rule is provided for certain films produced pursuant to a permanent financing arrangement described by the bill. For purposes of the placed-in-service requirement, films and sound recordings are treated as having ADR midpoints of 12 years.

Finance leases

The finance lease rules continue to apply to any transaction permitted by reason of section 12(c)(2) of DEFRA or section 209(d)(1)(B) of TEFRA.

B. Limitation on General Business Credit

Present Law

The general business tax credit earned by a taxpayer can be used to reduce up to $25,000 of tax liability, plus 85 percent of tax liability in excess of $25,000.

House Bill

The House bill reduces the 85-percent limitation on the general business credit to 75 percent, effective for taxable years that begin after December 31, 1985.

Senate Amendment

The Senate amendment follows the House bill, except the provision is effective for taxable years that begin after December 31, 1986.

Conference Agreement

The conference agreement follows the House bill.

C. Research and Development

1. Tax credit for increasing research expenditures; university basic research credit

Present Law

a. Expiration date

Under present law, the incremental research tax credit does not apply to expenses paid or incurred after December 31, 1985 (Code sec. 30).

b. Rate

The taxpayer may claim a 25-percent tax credit for the excess of (1) qualified research expenditures for the taxable year incurred in carrying on a business over (2) the average amount of the taxpayer's yearly qualified research expenditures in the preceding three taxable years.

c. Research definition

The credit provision adopts the definition of research used for purposes of the expensing provision (sec. 174), but subject to three exclusions: (1) research conducted outside the United States; (2) research in the social sciences or humanities; and (3) research to the extent funded, through grant, contract, or otherwise, by another person or governmental entity.

d. Qualified expenditures

Research expenditures eligible for the credit consist of (a) in-house expenditures for research wages and supplies; (b) rental or other payments for research use of laboratory equipment, computers, or other personal property; (c) 65 percent of amounts

paid by the taxpayer for contract research conducted on the taxpayer's behalf; and (d) 65 percent of a corporate taxpayer's expenditures (including grants or contributions) for basic research performed by universities or certain scientific research organizations.

e. University basic research

Expenditures eligible for the 25-percent incremental research credit include 65 percent of a corporate taxpayer's expenditures (including grants or contributions) for basic research performed by universities or certain scientific research organizations.

f. Credit use limitation

The research credit is not subject to the general limitation on use of business credits (under present law, 85 percent of tax liability over $25,000).

House Bill

a. Expiration date

The House bill extends the research tax credit for an additional three years (i.e., for expenditures through December 31, 1988), with modifications.

b. Rate

The rate of the credit is reduced from 25 percent to 20 percent.

c. Research definition

The committee report on the House bill clarifies that the credit does not apply to expenditures for certain nonresearch activities (activities occurring after the beginning of production; adaptation of an existing product; and studies and surveys). In addition, the report modifies the definition of credit-eligible research (effective for taxable years beginning after 1985) to target the credit to research undertaken to discover information that is technological in nature and that pertains to functional aspects of products.

d. Qualified expenditures

The House bill generally repeals the present-law provision under which rental or other payments for the right to use personal property in conducting qualified research are eligible for the credit. However, under regulations prescribed by the Treasury, payments to persons other than the taxpayer for the right to use (time-sharing) a computer in the conduct of a qualified research will remain eligible for the incremental research credit to the extent allowable under present law.

e. University basic research credit

Under the House bill, a 20-percent tax credit applies to the *excess* of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for university basic research *over* (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed base period, as adjusted for inflation.[1]

The amount of credit-eligible basic research expenditures to which the new university basic research credit applies does not enter into the computation of the incremental credit. The remaining amount of credit-eligible basic research expenditures—i.e., the amount to which the new credit does not apply—enters into the incremental credit computation (and in subsequent years enters into the base period amounts for purposes of computing the incremental credit).

f. Credit use limitation

The House bill makes the credit subject to the general limitation on business credits, as amended by the bill (see II. B., above).

g. Effective date

These provisions are effective for taxable years beginning after December 31, 1985.

Senate Amendment

a. Expiration date

The Senate amendment extends the research tax credit for an additional four years (i.e., for expenditures through December 31, 1989), with modifications.

b. Rate

No provision (i.e., the rate of the incremental credit remains at 25 percent).

c. Research definition

The Senate amendment adopts the same general approach as under the House bill, except that the principal definitional rules (effective for taxable years beginning after 1985) are set forth in statutory language. Thus, the credit is targeted to research undertaken to discover information that is technological in nature and that pertains to functional aspects of products. Also, the Senate amendment expands the present-law statutory list of credit exclusions to include expenditures for the types of nonresearch activities excluded under the language of the House committee report.

d. Qualified expenditures

No provision (i.e., rental or other payments for research use of laboratory equipment, computers, or other personal property remain eligible for the incremental credit).

e. University basic research credit

The Senate amendment is the same as the House bill.

f. Credit use limitation

The Senate amendment is the same as the House bill.

g. Effective date

The provision extending the credit applies to taxable years ending after December 31, 1985. The provisions relating to the research definition, university basic research credit, and the credit use limitation apply for taxable years beginning after December 31, 1985.

Conference Agreement

a. Expiration date

The conference agreement follows the House bill; i.e., the research credit is extended for an additional three years, with modifications.

b. Rate

The conference agreement follows the House bill; i.e., the rate of the research credit is reduced to 20 percent.

c. Research definition

The conference agreement generally follows the approach of the House bill and the Senate amendment, with statutory provisions as to the definition of qualified research for purposes of the credit, as follows.

In general

As under present law, the conference agreement limits research expenditures eligible for the incremental credit to "research or experimental expenditures" eligible for expensing under section 174. Thus, for example, the credit is not available for (1) expenditures other than "research and development costs in the experimental or laboratory sense," (2) expenditures "such as those for the ordinary testing or inspection of materials or products for quality control or those for efficiency surveys, management studies, consumer surveys, advertising, or promotions," (3) costs of acquiring another person's patent, model, production, or process, or (4) research expenditures incurred in connection with literary, historical, or similar projects (Treas. Reg. sec. 1.174-2(a)).[2] The term research includes basic research.

Under the conference agreement, research satisfying the section 174 expensing definition is eligible for the credit only if the research is undertaken for the purpose of discovering information (a) that is technological in nature, and also (b) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer. In addition, such research is eligible for the credit only if substantially all of the activities of the research constitute elements of a process of experimentation for a functional purpose. The conference agreement also expressly sets forth exclusions from eligibility for the credit for certain research activities that might otherwise qualify and for certain nonresearch activities.

Technological nature

The determination of whether the research is undertaken for the purpose of discovering information that is technological in nature depends on whether the process of experimentation utilized in the research fundamentally relies on principles of the physical or biological sciences, engineering, or computer science[3]—in which case the information is deemed technological in nature—or on other principles, such as those of economics—in which case the information is not to be treated as technological in nature. For example, information relating to financial services or similar products (such as new types of variable annuities or legal forms) or advertising does not qualify as technological in nature.

Process of experimentation

The term process of experimentation means a process involving the evaluation of more than one alternative designed to achieve a result where the means of achieving that result is uncertain at the outset. This may involve developing one or more hypotheses, testing and analyzing those hypotheses (through, for example, modeling or simulation), and refining or discarding the hypotheses as part of a sequential design process to develop the overall component.

Thus, for example, costs of developing a new or improved business component are not eligible for the credit if the method of reaching the desired objective (the new or improved product characteristics) is readily discernible and applicable as of the begin-

[1] The House bill provides a single research credit amount, consisting of a 20-percent incremental component and a 20-percent university basic research component. For convenience, this document generally refers to these components as the incremental research credit and the university basic research credit.

[2] Section 174 also excludes from eligibility for expensing (1) expenditures for the acquisition or improvement of depreciable property, or land, to be used in connection with research, and (2) expenditures to ascertain the existence, location, extent, or quality of mineral deposits, including oil and gas.

[3] Research does not rely on the principles of computer science merely because a computer is employed. Research may be treated as undertaken to discover information that is technological in nature, however, if the research is intended to expand or refine existing principles of computer science.

ning of the research activities, so that true experimentation in the scientific or laboratory sense would not have to be undertaken to develop, test, and choose among viable alternatives. On the other hand, costs of experiments undertaken by chemists or physicians in developing and testing a new drug are eligible for the credit because the researchers are engaged in scientific experimentation. Similarly, engineers who design a new computer system, or who design improved or new integrated circuits for use in computer or other electronic products, are engaged in qualified research because the design of those items is uncertain at the outset and can only be determined through a process of experimentation relating to specific design hypotheses and decisions as described above.

Functional purposes

Under the conference agreement, research is treated as conducted for a functional purpose only if it relates to a new or improved function, performance, reliability, or quality. (Activities undertaken to assure achievement of the intended function, performance, etc. of the business component after the beginning of commercial production of the component do not constitute qualified experimentation.) The conference agreement also provides that research relating to style, taste, cosmetic, or seasonal design factors is not treated as conducted for a functional purpose and hence is not eligible for the credit.

Application of tests

The term business component means a product, process, computer software, technique, formula, or invention that is to be held for sale, lease, or license, or is to be used by the taxpayer in a trade or business of a taxpayer. If the requirements described above are not met with respect to a product, etc. but are met with respect to one or more elements thereof, the term business component means the most significant set of elements of such product, etc. with respect to which all requirements are met.

Thus, the requirements are applied first at the level of the entire product, etc. to be offered for sale, etc. by the taxpayer. If all aspects of such requirements are not met at that level, the test applies at the most significant subset of elements of the product, etc. This "shrinking back" of the product is to continue until either a subset of elements of the product that satisfies the requirements is reached, or the most basic element of the product is reached and such element fails to satisfy the test. Treasury regulations may prescribe rules for applying these rules where a research activity relates to more than one business component.

A plant process, machinery, or technique for commercial production of a business component is treated as a different component than the product being produced. Thus, research relating to the development of a new or improved production process is not eligible for the credit unless the definition of qualified research is met separately with respect to such production process research, without taking into account research relating to the development of the product.

Internal-use computer software

Under a specific rule in the conference agreement, research with respect to computer software that is developed by or for the benefit of the taxpayer primarily for the taxpayer's own internal use is eligible for the credit only if the software is used in (1) qualified research (other than the development of the internal-use software itself) undertaken by the taxpayer, or (2) a production process that meets the requirements for the credit (e.g., where the taxpayer is developing robotics and software for the robotics for use in operating a manufacturing process, and the taxpayer's research costs of developing the robotics are eligible for the credit). Any other research activities with respect to internal-use software are ineligible for the credit except to the extent provided in Treasury regulations. Accordingly, the costs of developing software are not eligible for the credit where the software is used internally, for example, in general and administrative functions (such as payroll, bookkeeping, or personnel management) or in providing noncomputer services (such as accounting, consulting, or banking services), except to the extent permitted by Treasury regulations.

The conferees intend that these regulations will make the costs of new or improved internal-use software eligible for the credit only if the taxpayer can establish, in addition to satisfying the general requirements for credit eligibility, (1) that the software is innovative (as where the software results in a reduction in cost, or improvement in speed, that is substantial and economically significant); (2) that the software development involves significant economic risk (as where the taxpayer commits substantial resources to the development and also there is substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period); and (3) that the software is not commercially available for use by the taxpayer (as where the software cannot be purchased, leased, or licensed and used for the intended purpose without modifications that would satisfy the first two requirements just stated). The conferees intend that these regulations are to apply as of the effective date of the new specific rule relating to internal-use software; i.e., internal-use computer software costs that qualify under the three-part test set forth in this paragraph are eligible for the research credit even if incurred prior to issuance of such final regulations.

The specific rule in the conference agreement relating to internal-use computer software is not intended to apply to the development costs of a new or improved package of software and hardware developed together by the taxpayer as a single product, of which the software is an integral part, that is used directly by the taxpayer in providing technological services in its trade or business to customers. For example, the specific rule would not apply where a taxpayer develops together a new or improved high technology medical or industrial instrument containing software that processes and displays data received by the instrument, or where a telecommunications company develops a package of new or improved switching equipment plus software to operate the switches. In these cases, eligibility for the incremental research tax credit is to be determined by examining the combined hardware-software product as a single product, and thus the specific rule applicable to internal-use computer software would not apply to the combined hardware-software product.

In the case of computer software costs incurred in taxable years before the effective date for the new specific rule, the eligibility of such costs for the research credit is to be determined in the same manner as the eligibility of hardware product costs. The conferees expect and have been assured by the Treasury Department that guidance to this effect is to be promulgated on an expedited basis.

Excluded activities

The conference agreement specifies that expenditures incurred in certain research, research-related, or nonresearch activities are excluded from eligibility for the credit, without reference to the requirements described above relating to technological information, process of experimentation, and functional purposes.

Post-research activities.—The conference agreement provides that activities with respect to a business component after the beginning of commercial production of the component cannot qualify as qualified research. Thus, no expenditures relating to a business component are eligible for the credit after the component has been developed to the point where it either meets the basic functional and economic requirements of the taxpayer for such component or is ready for commercial sale or use.[4] For example, the credit is not available for such expenditures as the costs of preproduction planning for a finished business component, "tooling-up" for production, trial production runs, "trouble-shooting" involving detecting faults in production equipment or processes, accumulation of data relating to production processes, and the cost of "debugging" product flaws.

By way of further illustration, the credit is not available for costs of additional clinical testing of a pharmaceutical product after the product is made commercially available to the general public. However, the clinical testing in the United States of a product prior to production for sale in this country, or clinical testing seeking to establish new functional uses, characteristics, indications, combinations, dosages, or delivery forms as improvements to an existing product, is eligible for the credit. Thus, research (e.g., body chemistry research) undertaken on a product approved for one specified indication to determine its effectiveness and safety for other potential indications is eligible for the credit. Similarly, testing a drug currently used to treat hypertension for a new anti-cancer application, and testing an antibiotic in combination with a steroid to determine its therapeutic value as a potential new anti-inflammatory drug, would be eligible for the credit.

Adaptation.—The conference agreement provides that adaptation of an existing business component to a particular requirement or customer's need is not eligible for the credit. Thus, for example, the costs of modifying an existing computer software item for a particular customer are not eligible for the credit. However, the mere fact that an item is intended for a specific customer does

[4] The exclusion from credit-eligibility for activities with respect to a business component after the beginning of commercial production of the component does not preclude the costs of significant improvements in an existing product from eligibility for the credit. Thus, for example, the expenses of an automobile manufacturer in developing, through a process of experimentation, a significantly more efficient and reliable diesel fuel injector are eligible for the incremental research tax credit even though the research expenses are incurred during or after production by the manufacturer of automobile engines containing the existing (unimproved) diesel fuel injector. However, the costs of any activities of the automobile manufacturer with respect to the improved diesel fuel injector after the beginning of commercial production of the improved diesel fuel injector would not be eligible for the research credit.

not disqualify otherwise qualified research costs of the item (assuming that the research is not funded by the customer).

Surveys, studies, etc..—The conference agreement provides that the credit is not available for the costs of efficiency surveys, activities (including studies) related to management functions or techniques, market research, market testing and development (including advertising or promotions), routine data collections, or routine or ordinary testing or inspection of materials or business items for quality control. Management functions and techniques include such items as preparation of financial data and analysis, development of employee training programs and management organization plans, and management-based changes in production processes (such as rearranging work stations on an assembly line).

Duplication.—The conference agreement provides that the credit does not apply to research related to the reproduction of an existing business component (in whole or in part) of another person from a physical examination of the component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such component. While such "reverse engineering" activities thus are not eligible for the credit, the exclusion for duplication does not apply merely because the taxpayer examines a competitor's product in developing a different component through a process of otherwise qualified experimentation requiring the testing of viable alternatives and based on the knowledge gained from such tests.

Additional exclusions

As under present law, the conference agreement excludes from eligibility for the credit expenditures for research (1) that is conducted outside the United States; (2) in the social sciences (including economics, business management, and behavioral sciences), arts, or humanities; or (3) to the extent funded by any person (or governmental entity) other than the taxpayer, whether by grant, contract, or otherwise.

Effect on section 174 definition

No inference is intended from the rules in the conference agreement defining research for purposes of the incremental credit as to the scope of the term "research or experimental" for purposes of the section 174 expensing deduction.

d. Qualified expenditures

The conference agreement follows the House bill.

e. University basic research credit

The conference agreement is the same as the House bill and the Senate amendment, except that the university basic research credit provisions are effective for taxable years beginning after December 31, 1986.

f. Credit use limitation

The conference agreement follows the House bill and the Senate amendment.

g. Effective date

The extension of the credit is effective for taxable years ending after December 31, 1985. The credit will not apply to amounts paid or incurred after December 31, 1988. The modifications to the credit made by the conference agreement are effective for taxable years beginning after December 31, 1985,[5] except that the modifications relating to the university basic research credit are effective for taxable years beginning after December 31, 1986.

2. Augmented charitable deduction for certain donations of scientific equipment

Present Law

Under a special rule, corporations are allowed an augmented charitable deduction for donations of newly manufactured scientific equipment to a college or university for research use in the physical or biological sciences (sec. 170(e)(4)).

House Bill

The House bill expands the category of eligible donees under the special rule in section 170(e)(4) to include certain tax-exempt scientific research organizations, effective for taxable years beginning after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

3. Tax credit for orphan drug clinical testing

Present Law

A 50-percent tax credit is allowed for expenditures incurred in clinical testing of certain drugs for rare diseases or conditions (sec. 28). Under present law, the credit will not apply to amounts paid or incurred after December 31, 1987.

House Bill

The House bill extends the tax credit for clinical testing of orphan drugs for one additional year (i.e., through December 31, 1988).

Senate Amendment

The Senate amendment makes permanent the orphan drug credit.

Conference Agreement

The conference agreement extends the orphan drug credit for three additional years (i.e., through December 31, 1990).

D. Rapid Amortization Provisions

1. Trademark and trade name expenditures

Present Law

Taxpayers may elect to amortize over a period of at least 60 months expenditures for the acquisition, protection, expansion, registration, or defense of a trademark or trade name, other than an expenditure which is part of the consideration for an existing trademark or trade name.

House Bill

The House bill repeals the election. Trademark and trade name expenditures are therefore generally capitalized and recovered on a disposition of the asset.

The provision is generally effective for expenditures paid or incurred on or after January 1, 1986.

However, present law applies to expenditures incurred: (1) pursuant to a written contract that was binding as of September 25, 1985; or (2) with respect to development, protection, expansion, registration or defense commenced as of September 25, 1985, if the lesser of $1 million or 5 percent of cost has been incurred or committed by that date; provided in each case the trademark or trade name is placed in service before January 1, 1988.

Senate Amendment

The Senate amendment is the same as the House bill. The Senate provision is generally effective for expenditures paid or incurred after December 31, 1986. However, present law applies to expenditures incurred: (1) pursuant to a written contract that was binding as of March 1, 1986; or (2) with respect to development, protection, expansion, registration or defense commenced as of March 1, 1986, if the lesser of $1 million or 5 percent of cost has been incurred or committed by the date, provided in each case the trademark or trade name is placed in service before January 1, 1988.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Pollution control facilities

Present Law

Taxpayers may elect to amortize over a 60-month period the cost of a qualifying certified pollution control facility used in connection with a plant that was in operation before 1976. To the extent that a pollution control facility has a useful life in excess of 15 years, a portion of the facility's cost is not eligible for 60-month amortization, but must be recovered through depreciation.

House Bill

The House bill repeals the election. Expenditures for pollution control facilities would therefore be recovered in accordance with the applicable depreciation schedules. The repeal is generally effective for expenditures paid or incurred on or after January 1, 1986.

However, present law applies to expenditures incurred: (1) pursuant to a written contract that was binding as of September 25, 1985; or (2) with respect to facilities, construction of which is commenced as of September 25, 1985, if the lesser of $1 million or 5 percent of cost has been incurred or committed by that date; provided in each case the facility is placed in service before January 1, 1988.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Qualified railroad grading and tunnel bores

Present Law

Domestic railroad common carriers may elect to amortize the cost of qualified railroad grading and tunnel bores over a 50 year period. "Qualified railroad grading and tunnel bores" include all land improvements (including tunneling) necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed of right-of-way for railroad track.

House Bill

Under the House bill, the election is repealed. Expenditures for railroad grading and tunnel bores would therefore be capitalized and recovered on disposition of the asset.

In addition, special ACRS treatment is provided for a particular railroad disaster and involuntary conversion treatment of insurance proceeds in that case is specified.

The repeal of the election generally applies to expenses paid or incurred on or after January 1, 1986. However, present law continues to apply to expenditures incurred: (1) pursuant to a written contract that was binding as of September 25, 1985; or (2) with

[5] In computing the research credit for taxable years beginning after December 31, 1985, base-period expenditures for taxable years beginning before January 1, 1986 are to be determined under the credit definition of qualified research that was applicable in such base-period years and are not to be redetermined under the definition of qualified research in the conference agreement.

respect to construction, reconstruction, alteration, improvement, replacement or restoration commenced as of September 25, 1985, if the lesser of $1 million or 5 percent of cost has been incurred or committed by that date, provided in each case the improvements are placed in service before January 1, 1988.

Senate Amendment

The Senate amendment retains the present law election. However, the treatment provided for a particular railroad disaster is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill with respect to the election. No amortization or depreciation deduction for railroad grading and tunnel bores will be allowed.

The repeal of the election generally applies to expenses paid or incurred on or after January 1, 1987. However, present law continues to apply to expenditures incurred: (1) pursuant to a written contract that was binding as of March 1, 1986; or (2) with respect to construction, reconstruction, alteration, improvement, replacement or restoration commenced as of March 1, 1986, if the lesser of $1 million or 5 percent of cost has been incurred or committed by that date, provided in each case the improvements are placed in service before January 1, 1988.

The conference agreement follows the House bill and the Senate amendment with respect to the particular railroad disaster.

4. Bus operating authorities; freight forwarders

Present Law

Generally, no deduction is allowed for a decline in value of property absent a sale or other disposition. The courts have denied a loss deduction where the value of an operating permit or license decreased as the result of legislation that expanded the number of permits or licenses issued, on the grounds that the permit or license continued to have value as a right to carry on a business.

House Bill

No provision.

Senate Amendment

The Senate amendment allows taxpayers an ordinary deduction ratably over a 60-month period for the adjusted bases of bus-operating authorities held on November 19, 1982, (the date of enactment of the Bus Regulatory Reform Act) or acquired after that date under a written contract that was binding on that date.

The provision is effective retroactively for taxable years ending after November 18, 1982.

Conference Agreement

The conference agreement follows the Senate amendment. In addition, it provides a similar rule for freight forwarders, contingent on deregulation.

5. Removal of architectural and transportation barriers to the handicapped and elderly

Present Law

Taxpayers may elect to deduct up to $35,000 of qualifying expenses for the removal of architectural and transportation barriers to the handicapped and elderly in the year paid or incurred, instead of capitalizing them. The election is not available in taxable years beginning after December 31, 1985.

House Bill

The election to deduct qualifying expenditures is extended for two years to taxable years beginning before January 1, 1988.

Senate Amendment

The election to deduct qualifying expenditures is extended permanently, effective for taxable years beginning after December 31, 1985.

Conference Agreement

The conference agreement follows the Senate amendment.

E. Real Estate Provisions

1. Tax credit for rehabilitation expenditures

Present Law

A three-tier investment tax credit is provided for qualified rehabilitation expenditures. The credit is 15 percent for nonresidential buildings at least 30 years old, 20 percent for nonresidential buildings at least 40 years old, and 25 percent for certified historic structures (including residential buildings). A certified historic structure is defined as a building (and its structural components) that is listed in the National Register of Historic Places, or is located in a registered historic district and certified by the Secretary of the Interior as being of historic significance to the district.

The rehabilitation credit is available only if the taxpayer elects to use the straight-line method of cost recovery with respect to the rehabilitation expenditures. If the 15- or 20-percent investment credit is allowed for qualified rehabilitation expenditures, the basis of the property is reduced by the amount of credit earned (and the reduced basis is used to compute cost recovery deductions) (sec. 48(q)(1) and (3)). The basis is reduced by 50 percent of the 25-percent credit allowed for the rehabilitation of certified historic structures.

Qualified rehabilitation expenditures are eligible for the credit only if incurred in connection with a substantial rehabilitation that satisfies an external-walls requirement. The test of substantial rehabilitation generally is met if the qualified expenditures during a 24-month measuring period exceed the greater of the adjusted basis of the building as of the first day of the 24-month period, or $5,000. (In phased rehabilitations, the 24-month measuring period is extended to 60 months).

The external-walls requirement provides generally that at least 75 percent of the existing external walls of the building must be retained in place as external walls in the rehabilitation process. An alternative test provides that the external-walls requirement is met if (1) at least 75 percent of the external walls are retained in place as either internal or external walls, (2) at least 50 percent of such walls are retained in place as external walls, and (3) at least 75 percent of the building's internal structural framework is retained in place.

In the case of rehabilitations of certified historic structures, certain additional rules apply. In particular, the Secretary of the Interior must certify that the rehabilitation is consistent with the historic character of the building or the historic district in which the building is located. In fulfilling this statutory mandate, the Secretary of the Interior's Standards for Rehabilitation are applied. See 36 CFR 67.7 (March 12, 1984).

House Bill

The House bill replaces the existing three-tier credit with a two-tier credit for qualified rehabilitation expenditures. The credit percentage is 20 percent for rehabilitations of certified historic structures and 10 percent for rehabilitations of buildings (other than certified historic structures) originally placed in service before 1936. Expenditures incurred by a lessee do not qualify for the credit unless the remaining lease term on the date the rehabilitation is completed is at least as long as the applicable recovery period under the general depreciation rules (generally, 30 years; 20 years for low-income housing).

The external-walls requirement will be applied by reference to a single test: whether at least 75 percent of existing external walls (including 50 percent as external walls), as well as 75 percent of a building's internal structural framework, remain in place. Further, this test does not apply to certified historic structures.

The provisions are effective for property placed in service after December 31, 1985.

Senate Amendment

The Senate amendment follows the House bill, except the applicable recovery periods used for purposes of the rule for lessees are 27.5 years for residential property and 31.5 years for nonresidential property.

The provisions are effective for property placed in service after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Five-year amortization of expenditures to rehabilitate low-income housing

Present Law

Taxpayers generally may elect to amortize over a 60-month period certain qualifying expenditures for improvements to low-income rental housing with a useful life of at least five years. In general, expenditures for any dwelling unit are not eligible to the extent that they aggregate more than $20,000 (in certain cases, $40,000). This election generally is scheduled to expire for expenditures incurred after 1986.

House Bill

The House bill extends the election and generally replaces the $20,000 and $40,000 aggregate expenditure limits with a single $30,000 limit. This provision is effective for expenditures paid or incurred after 1985, except that the $40,000 limit continues for certain expenses under a transitional rule.

Senate Amendment

No provision. (However, see tax credit for low-income rental housing, II.E.3., below.)

Conference Agreement

The conference agreement generally follows the Senate amendment. (However, see tax credit for low-income rental housing, II.E.3., below.)

3. Tax credit for low-income rental housing

Present Law

No low-income rental housing tax credit is provided under present law, but other tax incentives for low-income housing are available.

House Bill

No provision, but certain other tax incentives are retained for low-income housing.

Senate Amendment

In general

The Senate amendment provides a new tax credit that may be claimed by owners of residential rental projects providing low-income housing, in lieu of certain other tax incentives.

The credit may be claimed annually for a period of 10 years. The credit rate is set so that the annualized credit amounts have a present value of 60 percent or 30 percent of the basis attributable to qualifying low-

income units, depending on the income of the tenants qualifying the unit for the credit.

For projects on which construction commences prior to 1988, the annual credit rate is 8 percent (80 percent over 10 years) for units occupied by individuals with incomes of 50 percent or less of area median (as adjusted for family size) and 4 percent (40 percent over 10 years) for a maximum of 30 percent of the units occupied by individuals with incomes of between 50 percent and 70 percent of area median. For projects on which construction begins after 1987, Treasury is directed to adjust the credit rates to maintain the present values of the annualized credit amounts of 60 percent and 30 percent.

Newly constructed buildings and newly acquired existing structures that are substantially rehabilitated are eligible for the credit. Substantial rehabilitation is defined as rehabilitation expenditures made over a two-year period (or five-year period in the case of rehabilitation conducted subject to a comprehensive plan) of at least 22.5 percent of the acquisition cost of the project (other than the cost of land). The cost of rehabilitation and acquisition allocable to low-income units is eligible for the credit.

Comparable to the treatment of multifamily rental housing bonds in the Senate amendment, there is no volume limitation or "trade-in" requirement for low-income housing credits.

Definition of low-income housing

Low-income housing eligible for the credit is defined as follows:

(1) At least 20 percent of the housing units in each project is occupied by individuals having incomes of less than 50 percent of the area median income;

(2) Income determinations are made with adjustments for family size;

(3) Qualification as a low-income tenant is determined on a continuing basis; and

(4) The gross rent paid by families in units qualifying for the credit may not exceed 30 percent of the applicable qualifying income for a family of its size.

Restriction on tax-exempt financing

A project is not eligible for the credit if any part of the project is financed with obligations on which the interest is exempt from tax under Code section 103. This restriction applies as long as any of those obligations remain outstanding.

A limited exception is made for certain existing federally assisted projects on which tax-exempt bonds remain outstanding.

Federally assisted housing

Unless otherwise specifically provided, projects receiving Federal grants, loans, or rental assistance are not eligible for the credit. (A Federal guarantee does not constitute Federal assistance that would preclude a project from credit eligibility.) Three exceptions are provided:

(1) An exception to the Federal assistance restriction is provided for new construction or substantial rehabilitation or properties receiving assistance under the Urban Development Block Grant program, the Community Development Block Grant program, and Housing Development or Rental Rehabilitation programs. Projects receiving assistance under these programs must exclude such assistance from the basis on which the low-income credit is allowable.

(2) A second exception is provided for new construction or substantial rehabilitation of properties receiving assistance under the HUD section 8 moderate rehabilitation program or the FmHA section 515 program. Projects receiving assistance under these programs, however, only are eligible for credits on units occupied by tenants with incomes of 50 percent or less of area median. Section 8 payments may not exceed certain specified amounts on all property eligible for the credit.

(3) A third exception to the Federal assistance restriction is provided for newly acquired existing property receiving assistance under HUD's section 8, section 221(d)(3) or, section 236 programs, or FmHA's section 515 program. Such property must have 50 percent or more of the units occupied by tenants with incomes of 50 percent or less of area median income.

All residential rental units in such projects are eligible to be included in the basis on which the credit is allowed. The credit rate is one-half the rate otherwise applicable to units occupied by tenants with incomes of 50 percent or less of area median income.

Generally, a project eligible for this exception may not be placed in service within 15 years of its having last been placed in service, and section 8 payments may not exceed certain specified amounts on property eligible for the credit.

Existing property receiving assistance under HUD section 8, section 221(d)(3), section 236, or FmHA section 515 and described in this exception is also excepted from the substantial rehabilitation requirement. (Generally, existing property (and the acquisition cost of existing property) only is eligible for the credit if substantial rehabilitation is performed after acquisition.)

At-risk limitation

The amount of the credit is subject to an at-risk limitation similar to the investment tax credit at-risk rules in the case of nonrecourse refinancing.

An exception is provided for certain lenders related to the buyer of the low-income housing property. Another exception is provided for financing (including seller financing) not in excess of 60 percent of the basis of the property that is lent by charitable and social welfare organizations whose exempt purpose includes fostering low-income housing. The credit is recaptured if the financing provided by such organizations is not repaid with interest by the end of the 15-year credit compliance period (described below).

Compliance requirements

Projects are required to comply continuously with the low-income occupancy requirement for at least 15 years.

Failure to meet the minimum low-income occupancy requirement during the 15-year period triggers a recapture of the credit. The credit is recaptured fully for violations during the first ten years, and recaptured partially for violations in years 11-15.

Failure to meet the low-income occupancy requirement upon which the maximum credit is based (while still satisfying the minimum low-income occupancy requirement) results in a reduction of the credit for the year of the violation.

Transferability

Credits may be transferred to new purchasers of a project during the period for which the property is eligible to receive the credit, with the new purchaser "stepping into the shoes" of the seller, both as to credit percentage, basis, and liability for compliance and recapture.

Coordination with other provisions

The credit is subject to the rules of the general business credit, including the maximum amount of income tax liability that may be reduced by general business tax credits in any year. Unused credits for any taxable year may be carried back to each of the three preceding taxable years and then carried forward to each of the 15 following taxable years.

For purposes of the rules in the amendment limiting passive loss deductions, the credit (but not losses from the project) is treated as arising from rental real estate activities in which the taxpayer actively participates, and is subject to the limitations imposed on tax credits from such activities.

The basis with respect to which credits are allowed is reduced to reflect any rehabilitation credit for which the project is eligible.

The basis of a project for purposes of depreciation is not reduced by the amount of low-income housing credits claimed.

Conference Agreement

The conference agreement generally follows the Senate amendment, with certain substantive modifications, including (1) changes in the credit amounts, (2) redefinition of qualifying expenditures with respect to which the credit may be claimed (including the allowance of tax-exempt bond financed expenditures and the elimination of the substantial rehabilitation requirement), (3) the provision of an alternative set-aside requirement (the percentage of low-income units and the qualifying income levels of low-income tenants), (4) the addition of a State volume limitation on the number of new credits issued annually, and (5) modifications to the recapture rules.

Credit amount

The conference agreement provides two separate credit amounts: (1) a 70-percent present value credit for qualified new construction and rehabilitation expenditures that are not federally subsidized and (2) a 30-percent present value credit for other qualifying expenditures. Expenditures qualifying for the 30-percent present value credit consist of the cost of acquisition, certain rehabilitation expenditures incurred in connection with the acquisition of an existing building, and federally subsidized new construction or rehabilitation expenditures. A taxpayer's credit amount in any taxable year is computed by applying the appropriate credit percentage to the appropriate qualified basis amount in such year.

Credit percentage

For buildings placed in service in 1987, the credit percentages are 9 percent annually over 10 years for the 70-percent present value credit, and 4 percent annually over 10 years for the 30-percent present value credit.

For buildings placed in service after 1987, these credit percentages are to be adjusted monthly by the Treasury to reflect the present values of 70 percent and 30 percent at the time the building is placed in service. The Treasury's monthly adjustments of the credit percentages are to be determined on a discounted after-tax basis, based on the average of the annual applicable Federal rates (AFR) for mid-term and long-term obligations for the month the building is placed in service. The after-tax interest rate is to be computed as the product of (1) the average AFR and (2) .72 (one minus the maximum individual statutory Federal income tax rate). The discounting formula assumes

each credit is received on the last day of each year and that the present value is to be computed as of the last day of the first year. In a project consisting of two or more buildings placed in service in different months, a separate credit percentage may apply to each building.

The credit percentage for rehabilitation expenditures not claimed in connection with the acquisition of an existing building is determined when rehabilitation is completed and the property is placed in service, but no later than the end of the 24-month period for which such expenditures are aggregated. These rehabilitation expenditures are treated as a separate new building for purposes of the credit. The determination of whether the rehabilitation expenditures are federally subsidized is made without regard to the source of financing for the construction or acquisition of the building to which the rehabilitation expenditures are made (also, see the discussion of qualified basis, below, for a description of federally subsidized expenditures).

Qualified basis

The qualified basis amounts with respect to which the credit amount is computed are determined as the proportion of eligible basis in a qualified low-income building attributable to the low-income rental units. This proportion is the lesser of (1) the proportion of low-income units to all residential rental units or (2) the proportion of floor space of the low-income units to the floor space of all residential rental units. Generally, in these calculations, low-income units are those units presently occupied by qualifying tenants, whereas residential rental units are all units, whether or not presently occupied.

Eligible basis consists of (1) the cost of new construction, (2) the cost of rehabilitation, or (3) the cost of acquisition of existing buildings acquired through a purchase and the cost of rehabilitation, if any, to such buildings incurred before the close of the first taxable year of the credit period. Only the adjusted basis of the building may be included in eligible basis. The adjusted basis is determined by taking into account the adjustments described in section 1016 (other than paragraphs (2) and (3) of sec. 1016(a), relating to depreciation deductions), including, for example, the basis adjustment provided in section 48(g) for any rehabilitation credits allowed under section 38. The cost of land is not included in adjusted basis.

Generally, the eligible basis of a building is determined at the time the building is placed in service. For this purpose, rehabilitation expenditures are treated as placed in service at the close of the 24-month aggregation period. In the case of rehabilitation expenditures claimed in connection with the acquisition of a building, the capital expenditures incurred through the end of the first year of the credit period may be included in eligible basis.

Residential rental property for purposes of the low-income housing credit has the same meaning as residential rental property within Code section 103. Thus, residential rental property includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project.

Costs of the residential rental units in a building which are not low-income units may be included in eligible basis only if such units are not above the average quality standard of the low-income units. Units are of comparable quality if the construction or acquisition costs are comparable and if such units are provided in a similar proportion for both the low-income and other tenants. Rehabilitation expenditures may not be included in eligible basis if such expenditures improve any unit in the building beyond comparability with the low-income units. Eligible basis may include the cost of amenities, including personal property, only if the included amenities are comparable to the cost of the amenities in the low-income units. Additionally, the allocable cost of tenant facilities, such as swimming pools, other recreational facilities, and parking areas, may be included provided there is no separate fee for the use of these facilities and they are made available on a comparable basis to all tenants in the project. (*See* generally, Treas. Reg. sec. 1.103-8(b)(4)(iii).)

Residential rental property may qualify for the credit even though a portion of the building in which the residential rental units are located is used for a commercial use. No portion of the cost of such nonresiden*** BAD MAG TAPE ***tial rental property may be included in eligible basis. The conferees intend that the costs of such a mixed-use facility may be allocated according to any reasonable method that properly reflects the proportionate benefit to be derived, directly or indirectly, by the nonresidential rental property and the residential rental units. (*See*, e.g., Prop. Treas. Reg. sec. 1.103-8(b)(4)(v).)

The qualified basis attributable to rehabilitation expenditures not claimed in connection with the acquisition of an existing building must equal at least $2,000 per low-income unit in order for rehabilitation expenditures to qualify for the credit. The $2,000 minimum is computed as an average based on all qualifying expenditures in the building, rather than on a unit-by-unit determination. Qualified basis is determined in the same fractional manner as for new construction or acquisition costs even if all rehabilitation expenditures are made only to low-income units. Rehabilitation expenditures may be included in eligible basis without a transfer of property. Rehabilitation expenditures may be aggregated only for rehabilitation expenditures incurred before the close of the two-year period beginning on the date rehabilitation is commenced by the taxpayer. Where rehabilitation is limited to a group of units, Treasury may provide regulations treating a group of units as a separate new building.

The cost of acquisition of an existing buiddifg may be included in eligible basis and any rehabilitation expenditures to such buildings incurred before the close of the first year of the credit perigd may also be included in eligible basis, without a minimum rehabilitation requirement. These costs may be included if eligibde basis only if the building or a substantial improvement (a capital expenditure of 25 percent or more of the adjusted basis gf the building to whach five-year rapid amortization was elected or to which ACRS applaed (as if effect before the enactment of this Act)) to the buiddifg has ngt been previgusly placed ifO service within 10 years and if the buiddifg (or rehabilitated property within the buidOdifOg) is not subject to the 15-year compliafce perigd. The Treasury Department may waive thas 10-year requirement for any buidOdifOg substantially assisted, financed or gperated under the HUD section 8, section 221(d) 3), or section 236 programs, or under the Farmers' Hoee Administration section 515 program if order to avert an assigneent gf the mortgage secured by property in the project to HUD or the Farmers Home Administration, to avert a claim against a Federal mortgage insurance fund, or other sieilar circumstances relatifOg to financial distress of these prgperties as prescribed by the Treasury Department. A transfer gf owfership of a building where the basis of the property in the hands gf the few owner is determifed in whole or in part by the adjusted basis of the previgOus owner, is considered not to have been newly placed if service for purposes of t*** BAD MAG TAPE ***he 10-year requirement (also, see the discussion of transferability, below). Any other transfer will begin a few 10-year perigOd.

Elagible basis may not incdude if any taxable year the amount of any Federal grant, regardless of whether such grants are incduded in gross income. A Federal grant includes any graft funded in whole or in part by the Federal government, to the extent funded with Federal funds. Exampdes of grants whach may not be included in eligible basis include Community Development Block Grants, Urban Development Action Grants, Rental Rehabilitation Grants, and Housing Development Grafts.

If any portign gf the eligible basis attributable to new construction or the eligible basis attributable to rehabilitation expenditures is financed with Federal subsidies, the qualified basis is eligible only for the 30-percent present value credit, unless such Federal subsidies are excluded from eligible basis. A Federal subsidy is defined as any obligation the interest on which is exempt from tax under section 103 or a direct or ifdirect Federal loan, if the interest rate on such loan is less than the applicable Federal rate. A Federal loan under the Farmers' Home Administration section 515 program is an example of such a Federal subsidy, as is a reduced interest rate loan attributable in part to a Federal grant. The determination of whether rehabilitation expenditures are federally subsidized is made without regard to the source of financing for the construction or acquisition of the building to which the rehabilitation expenditures are made. For example, a Federal loan or tax-exempt bond financing that is continued or assumed upon purchase of existifg hgusifg is disregarded for purposes of the credit on rehabilitation expenditures.

The qualified basis for each building is determined on the last day of the first taxable year in which the building is placed in service or, if the taxpayer elects, on the last day of the following taxable year.

The Treasury Department may provide regulations for projects consisting of two or more buildings. Unless prescribed in regulations, the qualified basis of a project consisting of two or more buildings is determined separately for each building. Common facilities in such a project must be allocated in an appropriate manner to all buildings (whether existing or to be constructed) in the project.

The first year the credit is claimed, the allowable credit amount is determined using an averaging convention to reflect the number of months units comprising the qualified basis were occupied by low-income individuals during the year. For example, if half of the low-income units included in qualified basis were first occupied in October and the remaining half were occupied in December, a calendar year taxpayer would adjust the allowable first-year credit to reflect that these units were occupied on average only one-sixth of the year. To the extent there is such a reduction of the credit amount in the first year, an addition-

al credit in the amount of such reduction is available in the eleventh taxable year. (This first-year adjustment does not affect the amount of qualified basis with respect to which the credit is claimed in subsequent years of the 10-year credit period.)

Additions to qualified basis

The qualified basis of a building may be increased subsequent to the initial determination only by reason of an increase in the number of low-income units or in the floor space of the low-income units. Credits claimed on such additional qualified basis are determined using a credit percentage equal to two-thirds of the applicable credit percentage allowable for the initial qualified basis and must receive an allocation of credit authority as described below (see the discussion on the State low-income housing credit authority limitation). Unlike credits claimed on the initial qualified basis, credits claimed on additions to qualified basis are allowable annually for the remainder of the required 15-year compliance period, regardless of the year such additional qualified basis is determined. The additional basis is determined by reference to the original adjusted basis (before deductions for depreciation) of the property.

The credit amount on the additional qualified basis is adjusted in the first year such additions are made using an averaging convention to reflect the number of months units comprising the additional qualified basis were occupied by low-income individuals during the year. Any reduction of the credit amount in the first year may not be claimed in a later year. (This first-year adjustment does not affect the amount of additional qualified basis with respect to which the credit is claimed in subsequent years of the compliance period.)

Minimum set-aside requirement for low-income individuals

Residential rental projects providing low-income housing qualify for the credit only if (1) 20 percent or more of the aggregate residential rental units in a project are occupied by individuals with incomes of 50 percent or less of area median income, as adjusted for family size, or (2) 40 percent or more of the aggregate residential rental units in a project are occupied by individuals with incomes of 60 percent or less of area median income, as adjusted for family size.[6]

All units comprising the minimum set-aside in a project must be suitable for occupancy, used on a nontransient basis, and are subject to the limitation on gross rent (*see* the discussion of the gross rent limitation, below).

The owner must irrevocably elect the minimum set-aside requirement at the time the project is placed in service. The set-aside requirement must be met within 12 months of the date a building (or rehabilitated property) is placed in service, and complied with continuously throughout each year after first meeting the requirement for a period of 15 years beginning on the first day of the first taxable year in which the credit is claimed.

Special rules apply to projects consisting of multiple buildings placed in service on different dates. Unless prescribed by regulations, the initial building, within 12 months of being placed in service, must meet the set-aside requirement determined only by reference to those units in the building. When a second or subsequent building is placed in service, the project must meet the set-aside requirement with respect to the units in all buildings placed-in-service up to that time within 12 months of the date the second or subsequent building is placed in service and comply with this expanded requirement continuously after first meeting the requirements for a period of 15 years beginning on the later of (1) the first day of the taxable year in which the expanded requirement is met or (2) if a credit is claimed with respect to the building, the first day of the taxable year in which the credit period begins with such building.[7] Subsequent buildings are subject to separate 15-year compliance periods. After the 15-year period has expired on an initial building, but while other buildings in the same project are still subject to the compliance period, the project must continue to meet the set-aside requirement determined by reference to all buildings in the project or, at the taxpayer's election, all buildings subject to the compliance period.

The determination of whether a tenant qualifies for purposes of the low-income set-aside is made on a continuing basis, both with regard to the tenant's income and the qualifying area income, rather than only on the date the tenant initially occupies the unit. An increase in a tenant's income may, therefore, result in a unit ceasing to qualify as occupied by a low-income person. However, a qualified low-income tenant is treated as continuing to be such notwithstanding *de minimis* increases in his or her income. Under this rule, a tenant qualifying when initially occupying a rental unit will be treated as continuing to have such an income provided his or her income does not increase to a level more than 40 percent in excess of the maximum qualifying income, adjusted for family size. If the tenant's income increases to a level more than 40 percent above the otherwise applicable ceiling (or if the tenant's family size decreases so that a lower maximum family income applies to the tenant), however, that tenant may no longer be counted in determining whether the project satisfies the set-aside requirement. (For a discussion of the rules for complying with the set-aside requirements, *see* the discussion of the compliance period and penalty for noncompliance, below.)

A special rule is provided for projects that elect to satisfy a stricter set-aside requirement and that significantly restrict the rents on the low-income units relative to the other residential units in the building. Projects qualify for this rule only if, as part of the general set-aside requirement, 15 percent or more of all low-income units are occupied by individuals having incomes of 40 percent (rather than 50 percent or 60 percent) or less of area median income, and the average rent charged to tenants in the residential rental units which are not low-income units is at least 300 percent of the average rent charged to low-income tenants for comparable units. Under this special rule, (a) a low-income tenant will continue to qualify as such, as long as the tenant's income does not exceed 170 percent of the qualifying income, and (b) if the project ceases to comply with the set-aside requirement because of increases in existing tenants' incomes, no penalties are imposed if each available low income unit is rented to tenants having incomes of 40 percent or less of area median income, until the project is again in compliance.

As stated above, the conference agreement requires that adjustments for family size be made in determining the incomes used to qualify tenants as having low income. In general, these adjustments are the same as the adjustments presently made under section 8 of the United States Housing Act of 1937. Thus, for a project which qualifies by setting aside 20 percent of the units for tenants having incomes of 50 percent or less of area median income, a family of four generally will be treated as meeting this standard if the family has an income of 50 percent or less of the area median income; a family of three having an income of 45 percent or less generally will qualify; a family of two having an income of 40 percent or less generally will qualify; and, a single individual having an income of 35 percent or less generally will qualify. The conferees are aware that, in certain cases, the use of section 8 guidelines may result in qualifying incomes below the amounts reflected by these percentages because of dollar ceilings that are applied under the section 8 program. Income limits may be adjusted by the Secretary for areas with unusually low family income or high housing costs relative to family income in a manner consistent with determinations of very low income families and area median gross income under section 8 to reflect the 50-percent and 60-percent income levels.

Vacant units, formerly occupied by low-income individuals, may continue to be treated as occupied by a qualified low-income individual for purposes of the set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the unit and no other units of comparable or smaller size in the project are rented to nonqualifying individuals (see the section "Compliance period and penalty for noncompliance," below).

In no case is a unit considered to be occupied by low-income individuals if all of the occupants of such unit are students (as determined under sec. 151(c)(4)), no one of whom is entitled to file a joint income tax return.

Gross rent limitation

The gross rent paid by families in units included in qualified basis may not exceed 30 percent of the applicable qualifying income for a family of its size. Gross rent is to include the cost of any utilities, other than telephone. If any utilities are paid directly by the tenant, the maximum rent that may be paid by the tenant is to be reduced by a utility allowance prescribed by the Secretary, after taking into consideration the procedures under section 8 of the United States Housing Act of 1937.

The gross rent limitation applies only to payments made directly by the tenant. Any rental assistance payments made on behalf of the tenant, such as through section 8 of the United States Housing Act of 1937, are not included in gross rent.

Low-income unit

A low-income unit includes any unit in a qualified low-income building if the individuals occupying such unit meet the income limitation elected for the project for purposes of the minimum set-aside requirement and if the unit meets the gross rent requirement, as well as all other requirements applicable to units satisfying the minimum set-aside requirement.

[6] This requirement is referred to as the "minimum set-aside" requirement.

[7] Until the expanded requirement is met, the set-aside requirements determined by reference to all previously existing buildings must be continuously satisfied.

Qualified low-income housing projects and qualified low-income buildings

A qualified low-income building is a building subject to the 15-year compliance period and which is part of a qualified low-income housing project.

A qualified low-income housing project is a project that meets the minimum set-aside requirement and other requirements with respect to the set-aside units at all times that buildings comprising the project are subject to the 15-year compliance period. A qualified low-income housing project includes a qualified low-income building containing residential rental units and other property that is functionally related and subordinate to the function of providing residential rental units. A project may include multiple buildings having similarly constructed housing units, provided the buildings are located on the same tract of land, are owned by the same person for Federal income tax purposes, and are financed pursuant to a common plan of financing.

Residential rental units must be for use by the general public and all of the units in a project must be used on a nontransient basis. Residential rental units are not for use by the general public, for example, if the units are provided only for members of a social organization or provided by an employer for its employees. Generally, a unit is considered to be used on a nontransient basis if the initial lease term is six months or greater. Additionally, no hospital, nursing home, sanitarium, lifecare facility, retirement home, or trailer park may be a qualified low-income project.

Unlike the requirements for units in projects financed with tax-exempt bonds, certain single room occupancy housing used on a nontransient basis may qualify for the credit, even though such housing may provide eating, cooking, and sanitation facilities on a shared basis. An example of housing that may qualify for the credit is a residential hotel used on a nontransient basis that is available to all members of the public. The residential units in such a building may share bathrooms and have a common dining area.

Compliance period and penalty for noncompliance

Qualified residential rental projects must remain as rental property and must satisfy the minimum set-aside requirement, described above, throughout a prescribed compliance period. Low-income units comprising the qualified basis on which additional credits are based are required to comply continuously with all requirements in the same manner as units satisfying the minimum set-aside requirements.

Units in addition to those meeting the minimum set-aside requirement on which a credit is allowable also must continuously comply with the income requirement.

The conference agreement defines the compliance period for any building as the period beginning on the first day of the first taxable year of the credit period of such building and ending 15 years from such date. The minimum set-aside requirement must be met, in all cases, within 1 year of the date the building (or rehabilitated property) is placed in service.

Within 90 days of the end of the first taxable year for which the credit is claimed and for each taxable year thereafter during the compliance period, the taxpayer must certify to the Secretary that the project has continuously complied throughout the year with the set-aside requirement and report the dollar amount of the qualified basis of the building and the maximum applicable percentage and qualified basis permitted to be taken into account by the housing credit agency. Additionally, the certification must include the date (including the taxable year) in which the building was placed in service and any other information required by Treasury.

The penalty for any building subject to the 15-year compliance period failing to remain part of a qualified low-income project (due, for example, to noncompliance with the minimum set-aside requirement or the gross rent requirement or other requirements with respect to the units comprising the set-aside) is recapture of the accelerated portion of the credit for all prior years.

Generally, any change in ownership of a building subject to the compliance period is also a recapture event. An exception is provided if the seller posts a bond to the Secretary in an amount satisfactory to the Treasury, and provided it can reasonably be expected that such building will continue to be operated as a qualified low-income building for the remainder of the compliance period. For partnerships consisting of more than 35 individual taxpayers, at the partnership's election, no change in ownership will be deemed to occur provided within a 12-month period at least 50 percent (in value) of the original ownership is unchanged.

In the year of a recapture event, no credit is allowable for the building. Additionally, the accelerated portion of credits paid in earlier years is recaptured with interest, from the date the recaptured amount was claimed, at the overpayment rate established under section 6621. The accelerated portion of the credit in any year is the amount of credits determined for the year, less the amount which would have been determined for the year if all credits had been allowed ratably over the compliance period (with no further discounting). Because credits on the initial qualified basis of a building are claimed ratably over a 10-year credit period rather than the 15-year compliance period, the amount of credit recaptured for noncompliance during the first 11 years is one-third of the credit determined for the year, plus interest. Because credits claimed on additions to qualified basis are paid ratably over the remainder of the compliance period (the credit percentage is two-thirds of the otherwise applicable percentage), there is no accelerated portion of credits attributable to additions to qualified basis. In the absence of additions to qualified basis and previous recapture events, the credits are recaptured in the following amounts (in addition to interest): one-third for violations after year 1 and before expiration of year 11; four-fifteenths for violations after year 11 but before expiration of year 12; three-fifteenths for violations after year 12 but before expiration of year 13; two-fifteenths for violations after year 13 but before expiration of year 14; and one-fifteenth for violations after year 14 but before expiration of year 15.

The penalty for a decrease in the qualified basis of a building, while still remaining part of a qualified low-income project, is recapture of the credits with respect to the accelerated amount claimed for all previous years on the amount of the reduction in qualified basis.

Owners and operators of low-income housing projects on which a credit has been claimed must correct any noncompliance with the set-aside requirement or with a reduction in qualified basis within a reasonable period after the noncompliance is discovered or reasonably should have been discovered. If any noncompliance is corrected within a reasonable period, there is no recapture. The conferees do not intend, however, that tenants be evicted to return a project to compliance. Rather, the conferees intend that each residential rental unit of comparable or smaller size that becomes vacant while a project is not in compliance must be rented to a tenant having a qualifying income before any units in the project are rented to tenants not so qualifying until the project again is in compliance. In general, therefore, the event that gives rise to the penalty for noncompliance (i.e., recapture or a reduction in the allowable credit) will be rental of a unit to other than a low-income tenant (on other than a temporary basis) during any period when the project does not comply with the set-aside requirement or with the qualified basis amounts on which the credit is computed (or would not qualify as a result of that rental).

An example of how the recapture provisions operate follows:

Example.— Assume credits are claimed for a project based on a qualified basis of 30 percent of the basis of the project being allocable to units occupied by individuals with incomes of 50 percent or less of area median income and, at a later date, a qualified basis of only 25 percent of the basis of the project is allocable to units occupied by individuals with incomes of 50 percent or less of median income due to vacancies filled by tenants with nonqualifying incomes. Because the minimum set-aside requirement is not violated, recapture occurs only on the accelerated portion of the credit amounts allocable to the 5-percent basis of the project no longer eligible for the credit.

If the maximum credit for which a project is eligible increases and subsequently decreases, a last-in, first-out rule is applied in determining which credits are recaptured. For example, consider a building that initially claimed a credit based on a qualified basis of 25 percent of the basis of the building allocable to units occupied by individuals with incomes of 50 percent or less of area median income, and in year 3 began receiving a credit based on an additional 10 percent of the basis of the building (i.e., a total of 35 percent). The credit amount on the additions to qualified basis is computed by reference to two-thirds of the credit percentage. If in year 5 only 30 percent of the basis of the building qualifies, there is no recapture of previous years' credits because there is no accelerated portion of the credit amounts attributable to the 5 percent of the additions to qualified basis claimed since year 3.

A reduction in qualified basis by reason of a casualty loss shall not be a recapture event provided such property is restored by reconstruction or replacement within a reasonable period.

State low-income housing credit authority limitation

Generally, any building eligible for the credit not financed with the proceeds of tax-exempt bonds, which received an allocation pursuant to the new private activity bond volume limitation, must receive an allocation of credit authority from the State or local credit agency in whose jurisdiction the qualifying low-income housing project is located. The aggregate amount of such credits allocated within the State is limited by the State annual low-income credit authority limitation. Credit allocations are counted

against a State's annual credit authority limitation for the calendar year in which the credits are allocated. Credits may not be allocated before the calendar year in which the building is placed in service. The credit amount allocated to a building applies for the year the allocation is made and all future years of the compliance period.

Allowable credit authority

General rules.— The annual credit authority limitation for each State is equal to $1.25 for every individual who is a resident of the State (as determined by the most recent estimate of the State's population released by the Bureau of the Census before the beginning of the year to which the limitation applies). For purposes of the credit authority limitation, the District of Columbia and U.S. possessions (e.g., Puerto Rico, the Virgin Islands, Guam, and American Samoa) are treated as a State.

Special set-aside for qualified nonprofit organizations.— A portion of each State's credit authority limitation is set aside for exclusive use by qualified nonprofit organizations. This set-aside is equal to $0.125 per resident of the State. This set-aside amount may not be changed by State action, either legislative or gubernatorial. In addition to the special set-aside, qualified nonprofit organizations may be allocated any additional amount of a State's remaining credit authority.

To qualify for allocations from this set-aside, an organization must be a section 501(c)(3) or 501(c)(4) organization, one of the exempt purposes of which includes the fostering of low-income housing, and the qualifying project with respect to which the credits are allocated must be one in which such organization materially participates (within the meaning of the passive loss rule). Among the operations in which the organization must be involved in on a regular, continuous, and substantial basis, in addition to the continuing operation of the project, is the development of the project.

Credits subject to the credit authority limitation

Generally, credits subject to the State credit authority limitation include any credits attributable to expenditures not financed with tax-exempt bonds subject to the new private activity bond volume limitation.

In the case of a building financed with the proceeds of tax-exempt bonds subject to the bond volume limitation, if 70 percent or more of the aggregate basis of the building and land on which the building is located is financed with such proceeds, no portion of the credits attributable to such building is subject to the credit authority limitation.

If less than 70 percent of the aggregate basis of the building and land on which the building is located is financed with tax-exempt bonds subject to the bond volume limitation, only credits attributable to those bond-financed expenditures are not subject to the credit authority limitation.

Allocation of credit authority limitation among the State and other qualified governmental units therein

In general.—Each State's credit authority limitation is allocated among the various governmental units within the State pursuant to three alternative procedures.

Under the first procedure, each State's credit authority limitation is allocated in its entirety to the State housing agency until either the governor or the legislature makes a different allocation. If more than one such agency exists, they shall be treated as one agency. In the absence of a qualified State agency, no allocation may occur until provided by either the governor or the legislature.

Under the second procedure, the governor of each State is provided authority to allocate the State's credit authority limitation among all of the governmental units and other issuing authorities. This authority and any allocation rules established by the governor terminate as of the effective date of any overriding State legislation.

Under the third procedure, the State legislature may enact a law providing for a different allocation than that provided under the first or second procedures. Under this authority, the State legislature may allocate all or any portion of the State limitation to any governmental unit or other issuing authority in the State.

The conferees intend that any allocation procedure established by the governor or State legislature give balanced consideration to the low-income housing needs of the entire State.

The conferees wish to clarify that gubernatorial proclamations issued before the date of enactment of the conference agreement or State legislation enacted before that date is recognized for purposes of allocating the credit authority limitations, provided that the proclamation or legislation refers to the low-income housing tax credit authority limitation.

The conferees intend that a State be permitted to allocate available credit authority to a local issuer until a specified date during each year (e.g., November 1) at which time the authority, if unused, may revert to the State for reallocation. Similarly, a State statute may provide discretionary authority to a public official (e.g., the governor) to allocate the State's credit authority limitation. Because the credit authority limitation is an annual amount, however, any authority that has not been used for credits issued before the end of the calendar year expires.

Special rule for constitutional home rule subdivisions.—The conference agreement provides a special allocation rule for certain political subdivisions with home rule powers under a State constitution (Illinois). The home rule subdivisions to which the special allocation rule applies are those home rule subdivisions that are granted home rule powers by the beginning of the calendar year in which the credits are issued pursuant to a State constitution that was adopted in 1970 and became effective on July 1, 1971. In that State, a full portion of the State credit authority limitation is allocated to each home rule subdivision based upon the ratio that the population of that home rule subdivision bears to the population of the entire State. As is true of the other credit authority limitation determinations, this allocation is made using the most recent population estimate from the Bureau of the Census released before the beginning of the calendar year to which the credits relate. The amount so allocated to home rule subdivisions may not be altered by the power to provide a different allocation otherwise granted by the conference agreement to the governor or the State legislature. However, a home rule subdivision may agree to a different allocation.

The portion of a State's credit authority limitation not allocated to constitutional home rule cities then is allocated under essentially the same three procedures described in the previous section. Thus, under the first procedure, the remaining State credit authority limitation is allocated to the State housing agency. Under the second and third procedures described above, the governor or the State legislature may allocate the State limitation other than that allocated to home rule subdivisions to any governmental units (including home rule subdivisions), but they may not so allocate any amounts specially allocated to the home rule subdivisions.

For purposes of the rules on State action establishing allocation rules for the credit authority limitation, a mayor of a constitutional home rule city is treated as a governor, and a city council is treated as a State legislature.

Constitutional home rule cities are treated as States for purposes of the credit authority limitation set-aside for qualified nonprofit organizations. Pursuant to their general authority to alter credit allocation, described above, these cities may agree with the State in which they are located to exchange authority to allocate credits for qualified nonprofit organizations for authority to allocate credits for other projects.

Allocation of set-aside amount for qualified nonprofit organizations.—As described above, a portion of each State's credit authority limitation is set aside exclusively for projects of qualified nonprofit organizations. Although the overall amount of credit authority set aside for these credits may not be reduced by any State action, a State may enact a statute determining which credit authorities in the State may authorize these credits and may allocate the entire set-aside amount to those authorities. Similarly, before any legislation, a governor may determine which authorities may allocate credits under the set-aside. The amount of the remaining credit authority limitation allocated to all other authorities must, of course, be adjusted to take into account any reallocation of the set-aside amount.

Determination of credit amount allocation

A building must receive low-income credit authority allocated to it for the calendar year which includes the last day of the first year of the credit period. Authority must be received from the credit agency in whose jurisdiction the qualifying low-income building is located. The credit agency's remaining authority is reduced by the credit percentage multiplied by the amount of qualified basis granted by the credit agency for the building. The credit agency may grant a smaller credit percentage and a smaller qualified basis amount at the time the allocation is made than the maximum percentage and amount that would otherwise be allowed. The conferees intend that the credit agencies reduce the maximum available credit percentage when the financing and rental assistance for a project from all sources is sufficient to provide the continuing operation of the qualifying low-income building without the maximum credit.

A credit agency's credit limitation authority is reduced by the maximum amount of credit granted, whether or not the property ultimately is eligible for this maximum amount, and without regard to the averaging convention used in the first year of the credit period.

If a building is granted more credits than would be claimed in the first year of the credit period, without regard to the averaging convention, such amounts are not restored to the credit agency's authority. Such amounts may, however, be used in a later year by the owner of the building to the extent the credit determined with respect to the building is increased as a result

of additions to qualified basis (but not beyond the amount allocated by the agency, and without regard to the reduced percentage applicable to such additions). (Also, see the discussion on additions to qualified basis, above.)

Example 1.— Assume in calendar year 1987 a newly constructed building is placed in service and that the building's qualified basis, before consideration of the credit authority limitation, is determined to be $100,000 in that year. The credit agency may allocate any amount of qualified basis to the building, but the taxpayer may treat as his qualified basis only the lesser of (1) the qualified basis of the building, before consideration of the credit authority limitation, or (2) the qualified basis allocated to the building by the credit agency. If the credit agency allocated $100,000 of qualified basis and the maximum 9 percent credit percentage to the building, the agency's remaining 1987 credit authority would be reduced by $9,000.

Example 2.— Assume $120,000 in qualified basis and a credit percentage of 9 percent were initially authorized by a credit agency in 1987 for a qualified low-income building and that in 1987, the first year of the credit period, the building's qualified basis was $100,000. The credit agency's remaining 1987 credit authority is reduced by $10,800. If in year two of the credit period the qualified basis of the building increases by up to $20,000 due to an increase in the number of low-income units, additional credits may be claimed with respect to this addition to qualified basis without requiring additional credit authority from the credit agency. The credit percentage applicable to the additional qualified basis is two-thirds of the credit percentage applicable to the initial qualified basis. Credits on the additions to qualified basis may be claimed over the remainder of the compliance period.

If the qualified basis of a building is greater than the qualified basis granted to it by the credit agency, credits may not be claimed on the excess portion, unless additional low-income housing credits are allocated to the building by the credit agency. The credit authority of the credit agency is reduced for the calendar year of the allocation.

Generally, no carryover authority for unused credit authority is permitted. A limited exception is provided for buildings placed in service in 1990, if expenditures of 10 percent or more of total project costs are incurred before January 1, 1989. Credit authority for such property may be carried over from the 1989 credit allocation for the credit agency.

Credit agencies are permitted to assign future credit authority for years before the sunset date to buildings not yet placed in service by inducement resolutions or other means.

Should a credit agency issue more credits than its credit authority limitation provides, credits will be denied to those buildings last allocated credits until the credit authority limitation is not exceeded.

Credit administration

Credit agencies allocating credits may not condition allocation of credits to the source of financing for the qualifying low-income building. The conference agreement authorizes the Treasury Department to prescribe regulations that may require credit recipients to pay a reasonable fee to cover administrative expenses of the credit agency.

Agencies allocating credits must file reports with the Treasury Department containing (1) the maximum applicable percentage and qualified basis of each building, (2) the fees, if any, charged to credit recipients, (3) the aggregate amount of credits issued, and (4) other information required by Treasury. The time and manner of filing such reports and other information required are to be specified by the Treasury Department.

Transferability

A new owner of a building during its 15-year compliance period is eligible to continue to receive the credit as if the new owner were the original owner, using the same qualified basis and credit percentages as used by the original owner. Rehabilitation expenditures on such property may qualify for a credit in the same manner as rehabilitation expenditures on other qualifying property. The accelerated portion of credits claimed in previous years will be recaptured upon a transfer, subject to the election of the original owner to post a bond. All dispositions of ownership interests in buildings are treated as transfers for purposes of recapture, except for a special rule for certain partnerships. (There is no election for the new owner to assume the recapture liability for prior year credits.)

At-risk limitation

The amount of the credit is subject to an at-risk limitation similar to the investment tax credit at-risk rules in the case of nonrecourse financing. An exception is provided for lenders related to the buyer of the low-income housing property.

Another exception is provided for financing (including seller financing) not in excess of 60 percent of the basis of the property that is lent by charitable and social welfare organizations whose exempt purpose includes fostering low-income housing. Further, if the rate of interest for any financing qualifying for this exception is below the applicable Federal rate at the time the financing is incurred, less 1 percentage point, then the qualified basis to which such financing relates shall be reduced to reflect the present value of the payments of principal and interest, using as the discount rate such applicable Federal rate. The credit is recaptured if the financing provided by such organizations is not repaid with interest by the end of the 15-year credit compliance period.

Coordination with other provisions

The credit is subject to the rules of the general business credit, including the maximum amount of income tax liability that may be reduced by a general business tax credit in any year. Unused credits for any taxable year may be carried back to each of the 3 preceding taxable years and then carried forward to each of the 15 following taxable years.

For purposes of the rules in the conference agreement limiting passive loss deductions, the credit (but not losses) is treated as arising from rental real estate activities in which the taxpayer actively participates. Credits may be used to offset tax on up to $25,000 of nonpassive income, subject to a phaseout between $200,000 and $250,000 of adjusted gross income (disregarding passive losses).

The basis of property for purposes of depreciation is not reduced by the amount of low-income credits claimed.

Effective date

The credit is effective for buildings placed in service after December 31, 1986, other than property grandfathered under the depreciation rules, and before January 1, 1990. A building placed in service after 1989 is eligible for the credit if expenditures of 10 percent or more of the reasonably expected cost of the building is incurred before January 1, 1989, and the building is placed in service before January 1, 1991. Credit authority for such property placed in service in 1990 may be carried over from the 1989 volume allocation for the credit agency.

F. Merchant Marine Capital Construction Fund

Present Law

Under the Merchant Marine Act of 1936, as amended, taxpayers are entitled to deduct certain amounts deposited in a capital construction fund. Earnings from the investment or reinvestment of amounts in a capital construction fund are excluded from income. A qualified withdrawal, one which is made for the acquisition, construction or repair of a qualified vessel, does not generate income to the taxpayer.

A nonqualified withdrawal generates income to the taxpayer, subject to interest payable from the time the amount withdrawn was reported.

House Bill

The rules providing special tax treatment for capital construction funds are retained, but modified to coordinate the application of the Internal Revenue Code with the Merchant Marine Act: (1) the maximum rate of tax is imposed on nonqualified withdrawals; (2) the Secretaries of Transportation and Commerce are required to make reports to the Secretary of Treasury regarding monies in funds; (3) a taxpayer whose fund balance exceeds the amount appropriate for the vessel construction program that was determined when the fund was established must develop appropriate program objectives within three years or treat the excess as a nonqualified withawal; (4) a 10-year limit is imposed on the amount of time monies can remain in a fund; monies not withdrawn after a ten-year period are treated as nonqualified withdrawals according to a schedule, beginning with 20 percent in the 11th year and ending with 100 percent in the 15th year.

The provision is effective for taxable years beginning after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that a 25-year time limit is imposed on the amount of time monies can remain in a fund without being withdrawn for a qualified purpose. The amendments are effective for taxable years beginning after December 31, 1986.

TITLE III. CAPITAL GAINS AND LOSSES

A. Individual Capital Gains

Present Law

An individual may deduct from gross income 60 percent of net capital gain (the excess of net long-term capital gain over any net short-term capital loss). Since the maximum regular individual tax rate is 50 percent, the deduction means that net capital gain is taxed at a maximum rate of 20 percent.

Capital losses are allowed in full against capital gain. Capital losses are also allowed against up to $3,000 of ordinary income; however, only one half of the excess of net long-term capital loss over net short-term capital gain is allowed for this purpose.

Unused capital losses may be carried forward.

House Bill

The House bill provides that 42 percent (50 percent in 1986) of an individual's net capital gain is deductible. Since the highest regular rate for the individuals under the House bill is 38 percent, the highest rate applicable to such net capital gain is 22.04 percent.

The provision applies to taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment repeals the capital gains deduction.[1] The maximum rate on long-term capital gains of individuals (including all long-term capital gains recognized at any time during calendar year 1987) will not exceed the maximum individual rates that become fully effective on January 1, 1988.

These provisions do not change the character of gain as ordinary or capital, or as long- or short-term capital gain.

Capital losses are allowed in full against capital gain as under present law. Capital losses are also allowed against up to $3,000 of ordinary income and the excess of net long-term capital loss over net short-term capital gain is allowed in full for this purpose. As under present law, capital losses may be carried forward.

The provision applies to taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment with a conforming change reflecting the change in the maximum individual rates under the conference agreement. The maximum rate on long-term capital gain in 1987 is 28 percent.

The current statutory structure for capital gains is retained in the Code to facilitate reinstatement of a capital gains rate differential if there is a future tax rate increase.

B. Corporate Capital Gains

Present Law

An alternative tax rate of 28 percent applies to a corporation's net capital gain if the tax would be lower than the tax using the regular graduated rates.

Capital losses are allowed in full against capital gains but are not allowed against ordinary income. Capital losses may generally be carried back three years and forward five years.

House Bill

The House bill makes the alternative tax inapplicable to taxable years for which the new corporate tax rates are fully effective (i.e., taxable years beginning on or after July 1, 1986). Thus, corporate net capital gain for such years is taxed at regular corporate rates (i.e., generally a maximum of 36 percent under the House bill). For taxable years before the new rates are fully effective, the tax rate on gain property taken into account under the taxpayer's method of accounting after December 31, 1985 is 36 percent.

There is no change in the capital loss provisions.

The change in the alternative tax for corporate capital gain applies to gain properly taken into account under the taxpayer's method of accounting on or after January 1, 1986, unless pursuant to a sale that was made on or before September 25, 1985, or that was pursuant to a written binding contract in effect on that date.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill with conforming changes reflecting the change in the new top corporate rate under the conference agreement (34 percent rather than 36 percent). The provisions are effective for gain properly taken into account under the taxpayer's method of accounting on or after January 1, 1987, without regard to whether the gain is pursuant to a written binding contract in effect at any earlier time.

The current statutory structure for capital gains is retained in the Code to facilitate reinstatement of a capital gains rate differential if there is a future tax rate increase.

C. Incentive Stock Options

Present Law

An employee is not taxed on the exercise of an incentive stock option and is entitled to capital gains treatment when the stock is sold. No deduction is taken by the employer when the option is granted or exercised.

In order for options to qualify as incentive stock options, among other requirements, the options must be exercisable in the order they are granted. Also, the employer may not in any one year grant the employee such options to acquire stock with a value (at the time the option is granted) of more than $100,000 (increased by certain carryover amounts).

House Bill

No provision.

Senate Amendment

The Senate amendment repeals the requirement that the incentive stock options be exercisable in the order granted.

The amendment also modifies the $100,000 limitation so that an employer may not, in the aggregate, grant an employee incentive stock options that are first exercisable during any one calendar year to the extent the aggregate fair market value of the stock (determined at the time the options are granted) exceeds $100,000.

The provision applies to options issued after 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

D. Straddles

1. Mark-to-Market System

Present Law

Section 1256 contracts (regulated futures contracts, certain listed options, and forward contracts traded in the interbank market) are marked to market at the close of the taxable year, with gain taxed as 60 percent long-term and 40 percent short-term for a maximum tax rate of 32 percent. The mark-to-market rules do not generally apply to hedging transactions, except in the case of certain syndicates.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that gains under the mark-to-market regime are taxed as 100 percent short-term capital gains, for a maximum tax rate equal to the top individual rate.

The provision applies to positions established after December 31, 1986.

Conference Agreement

The conference agreement does not include the Senate amendment. Thus, the 60/40 tax regime for section 1256 contracts is retained.

2. Year-End Rule for Qualified Covered Calls

Present Law

A loss-deferral rule applies to a straddle consisting of stock offset by an option, subject to an exception for qualified covered call options. However, the qualified covered call exception is denied to a taxpayer who fails to hold stock for 30 days after the related call option is disposed of at a loss, where gain on sale of the stock is included in the subsequent year.

House Bill

No provision.

Senate Amendment

The Senate amendment denies the qualified covered call exception, and the loss-deferral rule is thus applied, to cases in which it is the stock that is sold at a loss, and the related option that is not held for 30 days thereafter and the gain on which is included in the subsequent year.

The provision applies to positions established after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Hedging Exception

Present Law

Except in the case of certain syndicates, hedging transactions are not subject to either the mark-to-market rules or the year-end loss deferral rules.

House Bill

No provision.

Senate Amendment

The Senate amendment repeals the exceptions from the mark-to-market and loss-deferral rules for certain hedging transactions for dealers, except for dealers in agricultural or horticultural commodities (other than trees which bear fruit or nuts).

The provision applies to positions established after December 31, 1986.

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[1] The Senate amendment includes a conforming amendment to Code section 170(e)(1)(B), relating to certain charitable contributions of property. Under present law, the deduction for contributions by individuals of unrelated-use tangible personal property, or of any appreciated property donated to certain private nonoperating (grant-making) foundations, essentially is limited to the donor's basis in the property plus the excludable amount of any long-term capital gain which would have been realized if the property had been sold. (The deductible amount for such contributions by corporations also is limited.) In conformity to the repeal of the capital gains exclusion for individuals, the Senate amendment essentially limits the deductible amount of such contributions by individuals to the donor's basis in the property. (A related change is made to the deductible amount of such contributions by corporations.) No change is made to the reduction rule in section 170(e)(1)(A) for contributions of ordinary-income property or to the exception to the reduction rule in section 170(e)(5) for contributions of qualified appreciated stock to certain private foundations. Under the Senate amendment (as under present law), the amount of charitable deduction allowable to an itemizer for a donation of stock to a public charity equals (for regular tax purposes) the full fair market value of the stock at the time of the donation if the donor has held the stock for more than six months, or the donor's basis in the stock if the donor has not held the stock for more than six months (Code section 170(e)).

Conference Agreement

The conference agreement does not include the Senate amendment.

TITLE IV. AGRICULTURE, TIMBER, ENERGY, AND NATURAL RESOURCES

A. Agricultural Provisions

1. Special Expensing Provisions

a. Soil and water conservation expenditures

Present Law

Under present law, a taxpayer may elect to deduct certain expenditures made for the purpose of soil or water conservation that otherwise would be required to be capitalized (Code sec. 175). Among the expenditures eligible for the election are those for grading, terracing, contour furrowing, construction of drainage ditches, irrigation ditches, dams and ponds, and planting of windbreaks.

The annual deduction under this provision is limited to 25 percent of the taxpayer's gross income from farming.

House Bill

Soil and water conservation expenditures eligible for the expensing election are limited to those consistent with a conservation plan approved by the Soil Conservation Service of the Department of Agriculture or, in the absence of such a plan, a plan of a comparable State conservation agency. Expenditures in connection with draining or filling of wetlands or preparing land for installation or operation of a center pivot irrigation system are not eligible for deduction under this provision.

The provision applies to expenditures incurred after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except it is effective for expenditures after December 31, 1986.

Conference Agreement

The conference agreement follows the House bill and Senate amendment, effective for expenditures after December 31, 1986. In addition, the conferees wish to clarify that while prior approval of the taxpayer's particular project by the Soil Conservation Service or comparable State agency is not necessary to qualify the expenditure under this provision, there must be an overall plan for the taxpayer's area that has been approved by such an agency in effect at any time during the taxable year.

b. Fertilizer and soil conditioning expenditures

Present Law

A taxpayer engaged in the trade or business of farming may elect to expense amounts otherwise subject to the capitalization rules of the Code that are paid or incurred during the taxable year for materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to the land (sec. 180).

House Bill

The House bill repeals the provision allowing a current deduction for fertilizer and soil conditioning expenditures, effective for expenditures incurred after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision. Thus, the special election to deduct fertilizer and soil conditioning expenditures is retained.

c. Land clearing expenditures

Present Law

A taxpayer engaged in the business of farming may elect to deduct currently land clearing expenditures incurred for the purpose of making such land suitable for farming (sec. 182). For any taxable year, the deduction may not exceed the lesser of $5,000 or 25 percent of the taxable income derived by the taxpayer from farming.

House Bill

The House bill repeals the election to expense land clearing expenditures, effective for expenditures after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective for expenditures after December 31, 1985.

2. Disposition of Converted Wetlands and Highly Erodible Croplands

Present Law

Gain realized on the sale or other disposition of a capital asset is subject to tax at preferential rates. The term capital asset does not include depreciable or real property used in a taxpayer's trade or business (sec. 1221(2)). However, gain from the sale of such property ("section 1231 assets") may be taxed on the same basis as gain on the sale of a capital asset if gains on all sales of section 1231 assets during a taxable year exceed losses on sales of such assets.

If losses on the sale or exchange of section 1231 assets exceed the gains from such sales or exchanges, the net loss is ordinary.

House Bill

The House bill provides that gain on the disposition of wetland or highly erodible cropland (as defined in the Food Security Act of 1985) converted to farming use, or used for farming purposes following conversion, is treated as ordinary income. Any loss on the disposition of such property is treated as a long-term capital loss. The provision is effective for dispositions after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, effective for dispositions of land converted to farming use after March 1, 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective for dispositions of land converted to farming use after March 1, 1986.

3. Preproductive Period Expenses of Farmers

Present Law

In general

The Code and regulations provide exceptions from the otherwise applicable tax accounting rules for certain farmers. For example, certain farmers may elect to use the cash method of accounting when the accrual method otherwise would be required, and may use simplified inventory methods if an accrual method is adopted. Most farmers use the cash method of accounting, and therefore do not maintain inventories or capitalize preproductive period costs (i.e., costs incurred prior to the time a plant or animal becomes productive).

Expenses relating to grove, orchard, and vineyard crops

Costs incurred in planting, cultivating, maintaining, or developing citrus or almond groves before the fourth taxable year after planting must be capitalized. Farming syndicates must capitalize planting and maintenance costs incurred with respect to other orchard, grove, or vineyard crops until production in commercial quantities begins. However, if an orchard, grove, or vineyard is lost or damaged by reason of freezing temperatures, drought, disease, pests, or casualty, otherwise deductible replanting and maintenance costs are currently deductible if the taxpayer replants on the same property.

House Bill

In general

The House bill provides that farmers are subject to the uniform capitalization rules generally applicable to producers of property (see VIII.D., below) if the plant or animal produced has a preproductive period of more than two years. However, certain farmers (in general, those not required to use the accrual method of accounting under present law and those not part of a farming syndicate) may elect to deduct currently preproductive period costs. Taxpayers making this election must recapture these costs as ordinary income on disposition of the product, and must use the nonincentive depreciation system provided under the House bill for all farm assets placed in service in any year the election is in effect.

The provision applies to costs incurred after December 31, 1985.

Expenses relating to grove, orchard, and vineyard crops

Replanting and maintenance costs incurred following loss of or damage to an orchard, grove, or vineyard used in the production of crops for human consumption by reason of freezing temperatures, etc. are currently deductible even though replanting does not take place on the same property. Thus, costs incurred at a different location (within the United States) but by the same taxpayer may qualify, provided they do not relate to acreage in excess of that on which the loss or damage occurred.

The provision applies to costs incurred after December 31, 1985.

Senate Amendment

In general

No provision.

Expenses relating to grove, orchard, and vineyard crops

The provision allowing a deduction for costs incurred following loss or damage due to freezing temperatures, etc. is extended to persons other than the person who owned the grove, orchard, or vineyard at the time of the loss or damage, provided (1) the taxpayer who owned the property at such time retains an equity interest of more than 50 percent in the property, and (2) the person claiming the deduction owns part of the remaining equity interest and materially participates in the replanting, cultivating, maintenance, or development of the property.

The provision is effective for costs incurred after date of enactment.

Conference Agreement

In general

The conference agreement follows the House bill as to the treatment of preproductive period costs incurred in the business of

farming, effective for costs incurred after December 31, 1986. Farming for this purpose includes the trade or business of operating a nursery or sod farm or the raising or harvesting of trees bearing fruits, nuts, or other crops; it does not include the raising, harvesting, or growing of timber or ornamental evergreen trees that are more than six years old at the time they are severed from the roots.

Expenses relating to grove, orchard, and vineyard crops

The conference agreement adopts both the House bill and the Senate amendment provisions, effective for costs incurred after date of enactment. The conferees wish to clarify that the special rule for preproductive period expenses following loss or damage due to freezing temperatures, etc., is intended to apply only in the case of crops that are normally eaten or drunk by humans. Thus, for example, jojoba bean production does not qualify under this special exception.

4. Prepayments of Farming Expenses

Present Law

Persons engaged in the trade or business of farming generally are permitted to use the cash method of accounting. However, a farming syndicate may not deduct any amount paid for feed, seed, or other similar supplies prior to the year in which such supplies are used or consumed.

House Bill

No provision.

Senate Amendment

In general, farmers using the cash method of accounting may not deduct amounts paid for unconsumed feed, seed, fertilizer, or other supplies to the extent they exceed 50 percent of the expenses incurred in the farming business (including prepaid expenses) during the taxable year. A similar rule applies in the case of costs incurred for the purchase of poultry. The provision is effective for prepayments made on or after March 1, 1986, in taxable years beginning after that date.

Conference Agreement

The conference agreement generally follows the Senate amendment, except that the limitation applies to prepayments for supplies to the extent such prepayments exceed 50 percent of total deductible farming expenses excluding prepaid supplies. The provision is effective for prepayments paid after March 1, 1986, in taxable years beginning after that date.

5. Treatment of Plant Variety Protection Certificates as Patents

Present Law

A sale or exchange of all substantial rights to a patent by the individual whose efforts created the patent generally produces long-term capital gain (sec. 1235). Treasury Department regulations define the term "patent" for this purpose as any patent granted under title 35 of the United States Code.

The Department of Agriculture administers a program pursuant to the Plant Variety Protection Act of 1970 that extends protections to developers of sexually propagated plant varieties similar to those provided to patent holders.

House Bill

Under the House bill, the term patent for purposes of section 1235 includes a certificate of plant variety protection issued under the Plant Variety Protection Act of 1970.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

6. Recapture Income on Installment Sales of Farm Irrigation Equipment

Present Law

In an installment sale of depreciable real or personal property, all depreciation recapture income under sections 1245 and 1250 is recognized in the taxable year of the disposition, whether or not principal payments are received in that year. Any gain in excess of the depreciation recapture income is taken into account under the installment method (sec. 453).

House Bill

No provision.

Senate Amendment

Under the Senate amendment, depreciation recapture income resulting from an installment sale of equipment used to irrigate farmland is recognized under the rules in effect prior to the Deficit Reduction Act of 1984. Accordingly, any depreciation recapture with respect to such equipment is recognized when gain is recognized under the installment method.

Conference Agreement

The conference agreement does not include the Senate amendment. Thus, depreciation is recaptured on farm irrigation equipment in the year of the installment sale.

7. Discharge of Indebtedness Income of Certain Farmers

Present Law

If a solvent taxpayer receives income from discharge of trade or business indebtedness, the taxpayer may exclude the income if an election to reduce basis in depreciable property is made. If the amount of the indebtedness forgiven exceeds the taxpayer's available basis, income must be recognized to the extent of the excess.

If an insolvent taxpayer has discharge of indebtedness income, the taxpayer may exclude the income to the extent of insolvency. The taxpayer's tax attributes (e.g., net operating loss carryovers and investment credit carryovers) and basis in property are reduced by the amount of the excluded income. However, the taxpayer's aggregate basis in assets may not be reduced below the amount of the taxpayer's remaining undischarged liabilities. If the discharge of indebtedness income exceeds the taxpayer's available tax attributes and basis, tax on the excess is forgiven.

House Bill

No provision.

Senate Amendment

Income arising from discharge of indebtedness owed by a qualifying farmer to an unrelated lender is treated as income realized by an insolvent taxpayer, if the debt was incurred in the trade or business of farming or is farm business debt secured by farmland or farm equipment used in such trade or business. A taxpayer is eligible for this relief only if 50 percent or more of his average annual gross receipts for the preceding three taxable years was derived from farming. Thus, discharge of indebtedness income is forgiven after reduction of tax attributes and basis (including basis in farmland). The provision is effective for discharges of indebtedness after April 9, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

B. Timber Provisions

1. Preproductive Period Expenses of Timber Growers

Present Law

Under present law, the direct costs of acquiring or creating standing timber must be capitalized and recovered through depletion allowances or as a cost of timber sold. The cost of creating timber includes amounts paid for seed or seedlings, for site preparation, for planting (including the cost of tools, labor, and depreciation on machinery and equipment), and for early stand establishment.[1] Costs incurred for management and protection after stand establishment (generally one or two years after planting) generally are deductible currently. Expenses in this category include labor and materials for fire, disease, and insect control and for the removal of unwanted trees and brush.

Under present law, carrying charges such as property taxes, interest, costs of administration, and costs of protecting timber either may be deducted currently or added to the taxpayer's basis in the timber, whether the property is productive or unproductive.[2]

House Bill

The House bill requires that the costs of producing timber, including interest costs, be capitalized in accordance with the uniform capitalization rules (see VIII.D., below). Generally, costs that are required to be capitalized by the House bill are to be added to the basis of the timber and recovered either through depletion deductions as the timber is cut or as cost of timber sold, as is the case under present law for the direct costs of acquiring or creating standing timber. The House bill provides special transition rules for preproductive period expenses attributable to timber planted before 1986.

The House bill also provides an election for "qualified small timber producers" (those with 75,000 acres of timberland or less) to amortize, over a period of five years, amounts otherwise required to be capitalized as a result of this provision.

The provisions of the House bill are applicable to costs and interest paid or incurred after December 31, 1985, subject to a five-year phase-in for costs attributable to timber planted before 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. Thus, current law is retained with regard to the treatment of the preproductive expenses of growing timber (see VIII.D.).

2. Reforestation Expenses

Present Law

Present law allows taxpayers to elect to amortize, over an 84-month period, up to $10,000 of reforestation expenditures incurred in each taxable year. A 10-percent tax credit is available for those expenditures qualifying for 84-month amortization.

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[1] *See*, Treas. Reg. sec. 1.611-3(a) and Rev. Rul. 75-467, 1975-2 C.B. 93.

[2] *See*, Treas. Reg. sec. 1.266-1 and Rev. Rul. 75-467, 1975-2 C.B. 93.

House Bill

The House bill repeals the provisions allowing reforestation expenditures to be amortized and to qualify for a tax credit, effective for expenditures incurred after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. Thus, current law is retained with regard to the treatment of reforestation expenses.

3. Capital Gains for Timber

Present Law

Income received on account of a retained economic interest in timber qualifies for capital gains treatment, if the timber has been held for more than six months before disposition. The owner of timber (or a contract right to cut timber) may elect to treat the cutting of the timber as a sale or exchange qualifying for long-term capital gains treatment, even though the timber is sold or used in the taxpayer's trade or business. Once such an election is made, it may be revoked only with the permission of the Secretary of the Treasury. If permission to revoke the election is obtained, a new election may not be made without the Secretary of the Treasury's consent. For this purpose, timber includes evergreen trees that are more than six years old at the time severed from the roots that are sold for ornamental purposes.

House Bill

The House bill generally limits the availability of capital gains for timber disposed of after December 31, 1988, to natural persons, estates, and trusts where all of the beneficiaries are natural persons and estates. A modified corporate capital gains rate is provided for dispositions by corporate taxpayers after December 31, 1985, and before January 1, 1989. Dispositions of timber grown on Federal lands do not qualify for capital gains treatment after December 31, 1985. The House bill treats ornamental trees as agricultural products and not as timber in determining whether a disposition qualifies for capital gains treatment.

Senate Amendment

The Senate amendment contains no specific provision relating to capital gains treatment of timber. However, the Senate amendment generally conforms the capital gains rate for noncorporate taxpayers to the ordinary tax rate, effective for taxable years beginning after December 31, 1986. (See III.A., above.)

Conference Agreement

The conference agreement follows the Senate amendment. Pursuant to the provisions of the conference agreement repealing preferential rates for capital gains (see III.A. and B., above), income from the sale of timber is subject to tax at ordinary income rates.

The conference agreement also provides that any election to treat the cutting of timber as a disposition under section 631(a) made for a taxable year beginning before January 1, 1987, may be revoked on a one-time basis by the taxpayer without the permission of the Secretary of the Treasury. Any revocation of an election made in accordance with this provision will not be considered in determining whether a future election under section 631(a) by the taxpayer is allowed. If a taxpayer revokes an election without consent in accordance with this provision, and thereafter makes an election under section 631(a), any future revocations will require the permission of the Secretary of the Treasury.

C. Oil, Gas and Geothermal Properties

1. Intangible Drilling Costs

a. General rule

Present Law

Intangible drilling and development costs (IDCs) generally may be expensed or capitalized at the election of the operator of an oil, gas, or geothermal property.

In the case of integrated producers, 80 percent of IDCs may be expensed and the remaining 20 percent must be amortized over a 36-month period beginning with the month the costs are paid or incurred (sec. 291).

Costs with respect to a nonproductive well ("dry hole") may be deducted currently by any taxpayer in the year the dry hole is completed.

House Bill

The House bill retains present law, including the special rules for integrated producers, with respect to domestic IDCs incurred prior to commencement of the installation of the production string of casing ("casing point").

IDCs incurred at, or subsequent to, the casing point are amortized over a 26-month period, beginning in the month paid or incurred. (These costs are not subject to the 20-percent reduction for integrated producers.)

As under present law, unrecovered IDCs with respect to a dry hole can be deducted in the year the dry hole is completed.

This provision applies to costs paid or incurred after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, 70 percent of IDCs of integrated producers may be expensed and the remaining 30 percent are to be amortized ratably over a 60 month (5-year) period, beginning in the month the costs are paid or incurred. This provision does not affect the option to expense dry hole costs in the year the dry hole is completed.

The provision applies to costs paid or incurred after December 31, 1986.

b. Treatment of foreign IDCs

Present Law

IDCs may qualify for expensing whether incurred in the United States or in a foreign country.

House Bill

The House bill provides that IDCs incurred outside of the United States are recovered: (1) over a 10-year, straight-line amortization schedule, or (2) at the election of the operator, as part of the basis for cost depletion. The 20-percent reduction in integrated producer IDCs (under sec. 291) does not apply to these costs.

This provision applies to costs paid or incurred after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the provision applies to costs paid or incurred after December 31, 1986. A transitional exception is provided with respect to certain licenses for North Sea development acquired on or before December 31, 1985.

Conference Agreement

The conference agreement follows the Senate amendment. This provision does not affect the option to deduct dry hole costs in the year the dry hole is completed.

2. Depletion for Oil, Gas, and Geothermal Properties

a. General rule

Present Law

Under present law, depletable costs with respect to oil and gas properties must be recovered using whichever of two methods provides the higher deduction: cost depletion or percentage depletion.

Under cost depletion, the fraction of depletable costs recovered is equal to the ratio of hydrocarbons produced during the taxable year to total remaining reserves.

Under percentage depletion, 15 percent of the taxpayer's gross income is allowed as a deduction in any taxable year, not to exceed (1) 50 percent of net income for the property, or (2) 65 percent of overall taxable income.

Percentage depletion for oil and gas properties is limited to independent producers and royalty owners, for daily production of up to 1,000 barrels of crude oil or an equivalent amount of natural gas.

Geothermal properties are treated similarly to oil and gas wells, but are not subject to the 65 percent or 1,000 barrels per day limitations.

House Bill

The House bill phases out percentage depletion for oil, gas, and geothermal properties over a 3-year period, by reducing depletion rates 5 percentage points in each year. Percentage depletion is retained for oil and gas stripper wells owned by independent producers and royalty owners.

This provision applies to production after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

b. Advance royalty payments

Present Law

Percentage depletion is available with respect to oil and gas lease bonuses or advance royalty payments (*Commissioner* v. *Engle*, 464 U.S. 206 (1984)).

House Bill

The House bill denies percentage depletion for lease bonuses, advance royalties, or other payments made without regard to actual production from an oil, gas, or geothermal property, effective January 1, 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, effective for amounts received or accrued after August 16, 1986.

3. Gain on Disposition of Interest in Oil, Gas or Geothermal Property

Present Law

Expensed intangible drilling costs incurred after 1975 are recaptured as ordinary income upon disposition of an oil, gas or geothermal property, to the extent of the excess of such costs over the amount that would have been deducted if the costs had been capitalized and recovered through depletion deductions.

House Bill

The House bill provides that expensed intangible drilling costs and depletion which reduced basis are recaptured as ordinary income.

The provision applies to dispositions of property placed in service after December 31, 1985, unless acquired pursuant to a written contract binding on September 25, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the provisions apply to dispositions of property placed in service date is after December 31, 1986. (The September 25, 1985, binding contract date is retained.)

4. Windfall Profit Tax Exemption for Certain Exchanges of Crude Oil.

Present Law

An excise tax (the crude oil windfall profit tax) is imposed on domestic crude oil when it is removed from the production premises. The tax does not apply if crude oil is used to power production equipment on the same property.

House Bill

The House bill provides an exemption for certain otherwise taxable crude oil which is exchanged for an equal amount of residual fuel oil, to be used in enhanced recovery processes on the producing property. Only crude oil attributable to an operating mineral interest qualifies for the exception.

No depletion deduction (including cost or percentage depletion) is allowed with respect to crude oil qualifying for the exception.

The provision applies to residual fuel oil used, and crude oil removed, after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

D. Hard Minerals

1. Exploration and Development Costs

a. General rule

Present Law

Exploration and development costs associated with mines and other hard mineral deposits may be deducted currently at the election of the taxpayer. Exploration (but not development) costs which have been deducted currently either (1) are applied to reduce depletion deductions, or (2) at the taxpayer's election, are recaptured in income once the mine begins production, and then recovered as a depletable expense.

In the case of corporations, only 80 percent of hard mineral exploration and development costs may be expensed. The remaining 20 percent must be recovered over the 5-year ACRS depreciation schedule (beginning in the year that exploration and development costs are paid or incurred), with an investment tax credit for domestic costs (sec. 291).

House Bill

The House bill requires recapture of both expensed development and exploration costs at the time the mine begins production. Recaptured amounts, and development costs incurred after the mine begins production, are recovered in the same manner as depreciable property in Class 1 (3-year recovery period).

The 20 percent of corporate exploration and development costs that is expensed is recovered in the same manner as depreciable property in Class 2 (5-year recovery period), beginning in the year that costs are paid or incurred.

This provision applies to costs paid or incurred after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, 30 percent of the mining development and exploration costs of corporations are to be amortized ratably over a 60-month (5-year) period, rather than being expensed.

The provision applies to costs paid or incurred after December 31, 1986.

b. Foreign exploration costs

Present Law

Foreign exploration costs must be capitalized to the extent the taxpayer's foreign and domestic exploration costs (including certain prior years' costs) exceed $400,000.

House Bill

The House bill provides that foreign exploration and development costs are recovered: (1) over a 10-year, straight-line amortization schedule, or (2) at the election of the taxpayers, as part of the basis for cost depletion.

This provision applies to costs paid or incurred after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, but effective for costs paid or incurred after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Percentage Depletion of Hard Minerals

Present Law

Depletable costs with respect to hard mineral deposits must be recovered using the greater of: (1) cost depletion, or (2) percentage depletion at the applicable statutory rate for the mineral.

Percentage depletion may not exceed 50 percent of net income from the property in any taxable year.

For corporations only, percentage depletion of coal or iron ore, in excess of adjusted basis (determined without regard to the depletion deduction for that year), is reduced by 15 percent (sec. 291).

House Bill

With the exceptions below, the House bill phases down mineral depletion rates ratably to 5 percent in 1988. Minerals having a 5-percent present law rate (e.g., sand, gravel, and certain clay) are phased down ratably to 0 in 1988. In conjunction with these changes, the 50 percent of net income limitation is phased down ratably to 25 percent.

Present law depletion (rate and net income limitation) is retained for (1) minerals used to produce fertilizer or animal feed ("agricultural minerals"), and (2) dimension stone.

This provision applies to production after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement increases the reduction in coal and iron ore percentage depletion (under section 291) from 15 percent to 20 percent.

The provision applies to taxable years beginning after December 31, 1986.

3. Gain on Disposition of Interest in Mining Property

Present Law

Adjusted exploration expenditures (generally, amounts expensed in excess of amounts that would have been deducted if the costs had been capitalized) are recaptured as ordinary income upon disposition of a mining property.

House Bill

The House bill provides that expensed exploration and development expenses and depletion that reduced basis are recaptured as ordinary income.

The provision applies to dispositions of property placed in service after December 31, 1985, unless acquired pursuant to a written contract binding on September 25, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the provision applies to property placed in service after December 31, 1986. (The September 25, 1985 binding contract date is retained.)

4. Royalty Income from Coal and Domestic Iron Ore

Present Law

Royalties on dispositions of coal and domestic iron ore qualify for capital gain treatment, provided the coal or iron ore is held for more than six months before mining.

Capital gain treatment does not apply to (1) income realized as a co-adventurer, partner, or principal in the mining of coal or iron ore, or (2) certain related party transactions.

If capital gain treatment applies, the royalty owner is not entitled to percentage depletion with respect to the same coal or iron ore.

House Bill

The House bill phases out the special capital gain treatment for coal and domestic iron ore royalties over a 3-year period, beginning January 1, 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment by retaining the existing Code provision regarding coal and domestic iron ore royalties (sec. 631(c)). Income from such royalties will be taxed as ordinary income pursuant to the general repeal of capital gains for individuals and corporations (see Title III, above). In addition, the conference agreement provides that coal and iron ore royalties are eligible for percentage depletion for any taxable year in which long-term capital gains are subject to tax at the same rate as ordinary income.

E. Energy-Related Tax Credits and Other Provisions

1. Residential Solar Energy Tax Credit

Present Law

Individuals are allowed a 40-percent tax credit on expenditures made before December 31, 1985, for up to $10,000 of solar energy source property. Unused credits at the end of 1985 may be carried forward through 1987.

House Bill

The residential solar energy tax credit is extended for three years, through December 31, 1988, and the tax credit rate during that period is 30 percent in 1986 and 20 percent in 1987 and 1988. The $10,000 general limit on qualified expenditures is reduced to $5,000 for solar energy hot water systems. Present-law provisions and the applicable regulations continue in effect, except that the credit is not allowed for a greenhouse, sun room or similar structure. Credits unused at the end of 1988 may be carried forward to 1990.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Business Energy Tax Credits

a. Extension of credits

Present Law

The business energy investment tax credits were enacted as additions to the regular investment tax credit to provide an additional tax credit as an incentive for the purchase of specified property or equipment. Credits for certain energy property expired after 1982. Energy credits were available through 1985 for the following energy property at the following rates: solar—15 percent; geothermal—15 percent; wind—15 percent; ocean thermal—15 percent; biomass—10 percent; and small scale hydroelectric—11 percent.

House Bill

The House bill extends the energy tax credit for solar energy property at 15 percent in 1986, 12 percent in 1987, and 8 percent in 1988. The geothermal tax credit is extended at 15 percent in 1986 and 10 percent in 1987 and 1988.

Senate Amendment

The Senate amendment on the solar energy tax credit is the same as the House bill, except that the tax credit rate in 1988 is 12 percent.

The Senate amendment is the same as the House bill for the geothermal energy tax credit.

The Senate amendment extends the tax credit for ocean thermal property at 15 percent through 1988.

The Senate amendment extends the tax credit for wind energy property at 15 percent in 1986 and 10 percent in 1987.

The Senate amendment extends the tax credit for biomass energy property at 15 percent in 1986 and 10 percent in 1987.

Conference Agreement

The conference agreement extends the energy tax credit for solar energy property at 15 percent in 1986, 12 percent in 1987, and 10 percent in 1988.

The conference agreement follows the House bill and the Senate amendment with respect to the energy tax credit for geothermal energy property.

The conference agreement does not change present law with respect to dual purpose solar or geothermal energy property. The conference committee, however, notes with respect to this matter that these are administrative issues which the Secretary of the Treasury should resolve under the regulatory authority provided in the Energy Tax Act of 1978 and subsequent Acts with provisions relating to energy tax credits.

The conference agreement follows the Senate amendment with respect to the energy tax credit for biomass property.

The conference agreement follows the Senate amendment with respect to the energy tax credit for ocean thermal property.

The conference agreement follows the House bill with respect to the wind energy tax credit.

b. Modifications to chlor-alkali electrolytic cells

Present Law

Modifications to chlor-alkali electrolytic cells, a category of specially defined energy property, was eligible for a 10-percent energy tax credit through December 31, 1982.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the expiration date for modifications to chlor-alkali electrolytic cells to December 31, 1983.

Conference Agreement

The conference agreement follows the House bill.

c. Affirmative commitment rules

Present Law

The expired 10-percent credit for certain alternative energy continues to be available for long-term projects which meet rules requiring (1) completion of engineering studies and application for all required permits before 1983, (2) binding contracts for 50 percent of special project equipment before 1986, and (3) project completion before 1991.

House Bill

Consistent with the general transitional rules applicable to repeal of the regular investment tax credit, the House bill requires that allowable energy credits are spread ratably over 5 years (i.e., 20 percent of the credit in each of 5 years), and requires a full basis adjustment for the full energy tax credit in the first taxable year.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that energy tax credits earned under the affirmative commitment rules are treated in the same manner as the regular investment tax credit for transition property. (See II.A.2., above, repeal of the regular investment tax credit.)

3. Credit for Fuels from Nonconventional Sources

Present Law

A tax credit equal to $3 per 5.8 million Btus of energy is provided for the domestic production and sale of specified, qualified fuels to unrelated persons. The credit applies to such fuels (1) produced from facilities placed in service after December 31, 1979, and before January 1, 1990, on properties which first begin production after December 31, 1979, and (2) sold after December 31, 1979, and before January 1, 2001.

House Bill

The credit is terminated after December 31, 1985, except for methane gas produced from wood in facilities placed in service before January 1, 1989, and sold before January 1, 2001.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

4. Alcohol Fuels Tax Credit and Import Duty

a. Alcohol fuels income tax credit

Present Law

A 60-cents-per-gallon income tax credit is allowed through 1992 for alcohol mixed with gasoline, diesel fuel, or any special motor fuel, if the mixture is sold or used as fuel. The credit also is provided for alcohol used in a trade or business or sold at retail and placed in a vehicle fuel tank. Eligible alcohol includes ethanol and methanol but not if made from petroleum, natural gas, or coal (including peat), or alcohol less than 150 proof.

House Bill

This credit is repealed after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

b. Duty on imported alcohol fuels

Present Law

A 60-cents-per-gallon duty is imposed through 1992 on alcohol imported into the United States for use as a fuel.

Ethyl alcohol may enter the United States duty-free, if it is imported from a Caribbean Basin Initiative (CBI) country, under the terms of the Caribbean Basin Economic Recovery Act (CBERA).

House Bill

No provision.

Senate Amendment

The Senate amendment retains present law, but it allows duty-free entry into the United States only for ethyl alcohol produced in a Caribbean Basin Initiative (CBI) country or U.S. insular possession from source material which is the product of a CBI country, an insular possession, or the United States. The change in the source material requirement does not apply, as of January 1, 1986, to certain facilities which were established and operating (up to a maximum of 20 million gallons per year) or ready for shipment to an installation in a CBI country (up to a maximum of 50 million gallons per year).

Conference Agreement

The conference agreement adopts in most respects section 864 of H.R. 4800. In so doing, the conferees disapprove U.S. Customs Service rulings that have found the mere dehydration of industrial-grade ethanol into fuel-grade ethanol to constitute a substantial transformation sufficient to qualify the dehydrated ethanol as a product of a CBI country or insular possession and therefore entitled to duty-free treatment. By discouraging such "pass-through" operations, the conferees seek to encourage meaningful economic investment in CBI countries and insular possessions.

Under the conference agreement, ethyl alcohol (or an ethyl alcohol mixture) may be admitted into the United States duty-free, if it is an indigenous product of a U.S. insular possession or CBI beneficiary country.

Ethyl alcohol (or ethyl alcohol mixture) may be treated as being an indigenous product of an insular possession or beneficiary country only if the ethyl alcohol (or a mixture) has been both dehydrated and produced by a process of full-scale fermentation within that insular possession or beneficiary country. Alternatively, ethyl alcohol (or a mixture) must have been dehydrated

within that insular possession or beneficiary country from hydrous ethyl alcohol that includes hydrous ethyl alcohol which is wholly the product or manufacture of any insular possession or beneficiary country and which has a value not less than (1) 30 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1987, (2) 60 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1988, and (3) 75 percent of the value of the ethyl alcohol or mixture, if entered after December 31, 1988.

Transitional exemptions are provided during 1987 and 1988 for up to 20 million gallons per year each produced by certain azeotropic distillation facilities: (1) located in a CBI country or insular possession and in operation on January 1, 1986; or (2) the equipment for which was, on January 1, 1986, ready for shipment to and installation in a CBI country. An additional transitional exemption is provided during 1987 to a facility in the Virgin Islands that received authorization prior to May 1, 1986, to operate a full-scale fermentation facility.

5. Neat Alcohol Fuels

Present Law

A 9-cents-per-gallon exemption from the excise tax on special motor fuels is provided through 1992 for neat methanol and ethanol fuels which are not derived from petroleum or natural gas. A 4½ cents exemption is provided if the fuels are derived from natural gas. Neat alcohol fuels are at least 85 percent methanol, ethanol, and other alcohol.

House Bill

The 9-cents-per-gallon exemption is reduced to 6 cents per gallon, effective for sales or use after December 31, 1985.

Senate Amendment

The Senate amendment follows the House bill, except the provision is effective for sales or use after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Taxicab Fuels Tax Exemption

Present Law

A 4-cents-per-gallon partial exemption from the motor fuels excise taxes (9 cents for gasoline and special motor fuels and 15 cents for diesel fuel) was provided for fuels used in qualifying taxicabs through September 30, 1985. The exemption was effectuated through a credit or refund (without interest).

House Bill

The 4-cents-per-gallon partial exemption from motor fuels excise taxes for qualified taxicabs is extended through September 30, 1988.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

TITLE V. TAX SHELTERS; INTEREST EXPENSE

A. At-Risk Rules

Present Law

Present law provides an at-risk limitation on losses from business and income-producing activities other than real estate and certain corporate active business activities, applicable to individuals and to certain closely held corporations. The amount at risk is generally the sum of (1) the taxpayer's cash contributions to the activity; (2) the adjusted basis of other property contributed to the activity; and (3) amounts borrowed for use in the activity with respect to which the taxpayer has personal liability or has pledged property not used in the activity. The amount at risk is generally increased (or decreased) each year by the taxpayer's share of income (or losses and withdrawals) from the activity.

The investment tax credit at-risk rules limit the credit base of property used in an activity that is subject to the loss limitation at-risk rules, and generally provide that nonrecourse debt is treated as an amount at risk for investment credit purposes where (1) it is borrowed from an unrelated commercial lender, or represents a loan from or is guaranteed by certain governmental entities, (2) the property is acquired from an unrelated person, (3) the lender is unrelated to the seller, (4) the lender or a related person does not receive a fee with respect to the taxpayer's investment in the property, (5) debt is not convertible debt, and (6) the nonrecourse debt does not exceed 80 percent of the credit base of the property.

House Bill

The House bill applies the at-risk rules to the activity of holding real property, with an exception for real estate losses providing that third party nonrecourse debt borrowed from an unrelated commercial lender is treated as an amount at risk under rules similar to the present-law credit at-risk rules (without the requirement limiting the nonrecourse debt to 80 percent).

Senate Amendment

The Senate amendment is the same as the House bill, except the third party nonrecourse debt exception for real estate losses applies notwithstanding that (1) the lender is related to the taxpayer, and (2) the taxpayer acquired the property from a related party.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications.

The conference agreement provides that in the case of the activity of holding real property, certain qualified nonrecourse financing is treated as an amount at risk, provided that, in the case of nonrecourse financing from related persons, the terms of the loan are commercially reasonable and on substantially the same terms as loans involving unrelated persons.

These requirements are imposed in addition to those imposed under the Senate amendment because the conferees believe that the opportunities for overvaluation of property and for the transfer of tax benefits attributable to amounts that resemble equity are insufficiently limited under the Senate amendment in the case of nonrecourse financing from a related person.

The conferees intend that terms of nonrecourse financing are commercially reasonable if the financing is a written unconditional promise to pay on demand or on a specified date or dates a sum or sums certain in money, and the interest rate is a reasonable market rate of interest (taking into account the maturity of the obligation). If the interest rate is below a reasonable market rate, a portion of the principal may in fact represent interest, with the result that the stated principal amount may exceed the fair market value of the financed property. Generally, an interest rate would not be considered commercially reasonable if it is significantly below the market rate on comparable loans by qualified persons who are not related (within the meaning of sec. 465(b)(3)(C)) to the borrowers under the comparable loans. In addition, it is likely that a loan which would be treated as a "below-market loan" within the meaning of sec. 7872(e) of the Code is not commercially reasonable.

Similarly, if the interest rate exceeds a reasonable market rate, or is contingent on profits or gross receipts, a portion of the principal amount may in fact represent a disguised equity interest (and a portion of the interest in fact is a return on equity) with the result that the stated principal amount may exceed the fair market value of the financed property. Thus, generally, an interest rate would not be considered commercially reasonable if it significantly exceeds the market rate on comparable loans by unrelated qualified persons. Nor would an interest rate be considered commercially reasonable if it were contingent. The conferees do not intend, however, to limit the use of interest rates that are not fixed rates, provided that interest is calculated with respect to a market interest index such as the prime rate charged by a major commercial bank, LIBOR, the rate on government securities (such as Treasury bills or notes), or the applicable Federal rate (within the meaning of sec. 1274(d)). For example, an interest rate floating at 1 point above the prime rate charged by a major commercial bank would not generally be considered contingent.

The terms of the financing would also not be considered commercially reasonable if, for example, the term of the loan exceeds the useful life of the property, or if the right to foreclosure or collection with respect to the debt is limited (except to the extent provided under applicable State law).

Generally, the conferees intend that the financing be debt with arms' length terms, to carry out the purpose of the at-risk rule to limit deductions to the taxpayer's amount at risk. Thus, nonrecourse financing from a person related to the taxpayer must be on substantially the same terms as financing involving unrelated persons.

The conference agreement also provides that no inference is to be drawn from this provision (permitting certain nonrecourse financing to be treated as at risk without regard to whether the lender is a related person) as to the determination of a partner's distributive share of partnership items of a partnership under section 704, or a partner's share of partnership liabilities under section 752.

Under the House bill, the Senate amendment, and the conference agreement, convertible debt is not treated as qualified nonrecourse financing. The conferees believe that it is not appropriate to treat investors as at risk with respect to nonrecourse debt that is convertible and that consequently represents a right to an equity interest, because taxpayers are not intended to be treated as at risk for amounts representing others' rights to equity investments.

Clarification is also provided with respect to the definition of the activity of holding real property. Generally, to the extent an activity is not subject to the at-risk rules by virtue of sec. 465(c)(3)(D)) of present law, it will be treated under the conference agreement as the activity of holding real property. The provision of services and the holding of personal property which is merely incidental to the activity of making real property available as living accommodations is treated as part of the activity of holding real property.

The extension of the at-risk rules to the activity of holding real property is effective for property placed in service after December 31, 1986, and for losses attributable to an interest in a partnership or S corporation or other pass-through entity that is acquired after December 31, 1986.

B. Limitations on Losses and Credits from Passive Activities

Present Law

Generally, present law does not limit the use of deductions or credits from a particular business activity to offset income from other activities, except in certain specific instances (e.g., the limitation on the deduction of net capital losses, and the rule that research and development credits cannot offset tax on unrelated income in the case of an individual).

House Bill

No provision.

Senate Amendment

General rule

Deductions in excess of income (i.e., losses) from passive activities generally may not offset other income such as salary, interest, dividends, and active business income. Deductions from passive activities may offset income from passive activities. Credits from passive activities generally are limited to the tax attributable to income from passive activities.

Disallowed losses and credits are carried forward and treated as deductions and credits from passive activities in the next taxable year.

Disallowed losses from an activity are allowed in full when the taxpayer disposes of his entire interest in the activity in a taxable transaction. Credits are not so allowed upon disposition.

The provision applies to individuals, estates, trusts, and personal service corporations.

Closely held corporations may not offset portfolio income with passive losses and credits but may use passive losses and credits to offset active business income.

Definition of passive activities

Passive activities include (1) trade or business activities in which the taxpayer (or spouse) does not materially participate (i.e., is not involved on a regular, continuous, and substantial basis), and (2) rental activities where payments are primarily for the use of tangible property.

Passive activities do not include working interests in oil and gas properties in which the taxpayer's form of ownership does not limit liability.

Rental real estate

In the case of rental real estate activities in which an individual actively participates, up to $25,000 of losses (and credits, in a deduction-equivalent sense) from all such activities are allowed each year against non-passive income of the taxpayer. The $25,000 amount is phased out ratably between $100,000 and $150,000 of adjusted gross income (determined without regard to passive losses). Low income housing credits may be taken under the $25,000 allowance (in a deduction-equivalent sense) against non-passive income without regard to whether the individual actively participates.

Effective date

The provision is effective for taxable years beginning after December 31, 1986, with a phase-in rule for investments made before the date of enactment.

Under the phase-in rule, the amount disallowed under the passive loss rule during any year in the phase-in period equals the applicable percentage of the amount that would be disallowed for that year under the provision if fully effective. The applicable percentage is 35 percent for taxable years beginning in 1987, 60 percent in taxable years beginning in 1988, 80 percent in taxable years beginning in 1989, 90 percent in taxable years beginning in 1990, and 100 percent in taxable years beginning after 1990.

Conference Agreement

The conference agreement generally follows the Senate amendment, but with certain modifications and clarifications.

1. Overview

Passive activity

The definition of a passive activity generally is the same as under the Senate amendment. However, the definition is clarified to accord with the original intent of the provision that passive activities can include activities generating deductions allowable under section 174 of the Code as research and experimentation expenditures. Thus, if a taxpayer has an interest in an activity with respect to which deductions would be allowed as research and experimentation expenditures, and he does not materially participate in the activity, losses from the activity (including the research and experimentation expenditures) are subject to limitation under the rule.

It is also clarified that a net lease of property is a rental activity that is treated as a passive activity under the rule.

Passive activities that are not a trade or business.—The conference agreement provides that, to the extent provided in regulations, a passive activity may include an activity conducted for profit (within the meaning of sec. 212), including an activity that is not a trade or business. The conferees anticipate that the exercise of this authority may be appropriate in certain situations where activities other than the production of portfolio income are involved. This regulatory authority is meant to cause the passive loss rule to apply with respect to activities that give rise to passive losses intended to be limited under the provision, but that may not rise to the level of a trade or business.

Interest on taxpayer's residence.—Qualified residence interest is not subject to the passive loss rule (see V. C., below).

Interaction with interest deduction limitation.—The conference agreement provides that interest deductions attributable to passive activities are treated as passive activity deductions, but are not treated as investment interest (see V. C., below). Thus, such interest deductions are subject to limitation under the passive loss rule, and not under the investment interest limitation. Similarly, income and loss from passive activities generally are not treated as investment income or loss in calculating the amount of the investment interest limitation.[1]

Interaction with other Code sections.—It is clarified that the passive loss rule applies to all deductions that are from passive activities, including deductions allowed under sections 162, 163, 164, and 165. For example, deductions for State and local property taxes incurred with respect to passive activities are subject to limitation under the passive loss rule whether such deductions are claimed above-the-line or as itemized deductions under section 164.

Personal services income not treated as from passive activity.—The conference agreement clarifies that income received by an individual from the performance of personal services with respect to a passive activity is not treated as income from a passive activity. Thus, for example, in the case of a limited partner who is paid for performing services for the partnership (whether by way of salary, guaranteed payment, or allocation of partnership income), such payments cannot be sheltered by passive losses from the partnership or from any other passive activity.

Taxpayers subject to the passive loss rule

Under the conference agreement, the passive loss provision generally applies to the same taxpayers as under the Senate amendment, and with the same more limited version of the rule for closely held corporations. However, the applicability of the rule is modified and clarified as described below.

In the case of closely held corporations, the passive loss rule permits passive losses (and credits, in a deduction equivalent sense) to offset net active income, but not portfolio income. Thus, for example, if a closely held corporation has $400,000 of passive losses from a rental activity, $500,000 of active business income, and $100,000 of portfolio income, the passive losses may be applied to reduce the active business income to $100,000, but may not be applied against the portfolio income.

Personal service corporations.—The definition of a personal service corporation applying for purposes of the provision is modified to provide that the passive loss rule does not apply to a corporation where the employee-owners together own less than 10 percent, by value, of the corporation's stock.

The conference agreement provides that the rule applicable to a change in status of a closely held corporation also applies to a change in status of a personal service corporation. That is, if a personal service corporation ceases to meet the definition of a personal service corporation subject to the passive loss rule in any year, losses from a passive activity conducted by the corporation and previously suspended by reason of the application of the passive loss rule are not triggered by the change in status, but are allowed against income from that activity. Any previously suspended losses and (deduction equivalent) credits in excess of income from the activity continue to be treated as from a passive activity. Losses and credits from an activity arising in a year when the corporation does not meet the definition of a personal service corporation (or a closely held corporation are not subject to limitation under the passive loss rule).

Affiliated groups.—A limited version of the passive loss rule applies to closely held corporations, providing that passive losses of the corporation may not offset portfolio income. In the case of affiliated groups of corporations filing consolidated returns, it is intended that this rule apply on a consolidated group basis. Thus, it is intended that losses from any passive activity within the consolidated group may offset net active income, but not portfolio income, of any member of the group. An activity may be conducted by several corporations, and conversely, one corporation may be engaged in several activities. Portfolio income is ac-

[1] However, as described in V. C., below, any passive losses allowed by reason of the phase-in of the passive loss provision (other than losses from rental real estate activities in which the taxpayer actively participates) reduce net investment income.

counted for separately from income or loss from each activity.

In determining whether an activity (other than a rental activity) conducted within the closely held consolidated group is a passive activity, the material participation test is intended to be applied on a consolidated basis. Thus, for example, if one or more individual shareholders holding stock representing more than 50 percent of a member's stock materially participate in an activity of any member of the group, the group is considered to materially participate. Similarly, if the requirements of section 465(c)(7)(C) (without regard to clause (iv) thereof) are met with respect to an activity by any member (or several members together), then the group is considered to materially participate in the activity.

In the case of a personal service corporation which is a member of a consolidated group, similar principles are intended to apply. For example, a corporation may be treated as a personal service corporation for purposes of the rule where the owners who render the requisite services are employees of a subsidiary, rather than of the parent corporation. Under the conference agreement, the definition of a personal service corporation is applied taking into account attribution of ownership of stock as provided in section 269A(b).

2. Treatment of losses and credits

In general

Losses.—The conference agreement provides that interest deductions attributable to passive activities are subject to the passive loss rule (as under the Senate amendment), but are not subject to the investment interest limitation (see section V. C., below). Thus, for example, if a taxpayer has net passive losses of $100 for a taxable year beginning after 1986, $40 of which consists of interest expense, the entire $100 is subject to limitation under the passive loss rule, and no portion of the loss is subject to limitation under the investment interest limitation.

Rental real estate in which taxpayer actively participates.—Clarification is provided with respect to the rule allowing up to $25,000 of losses and credits (in a deduction equivalent sense) from rental real estate activities in which the taxpayer actively participates to offset non-passive income of the taxpayer. The $25,000 allowance is applied by first netting income and loss from all of the taxpayer's rental real estate activities in which he actively participates. If there is a net loss for the year from such activities, net passive income (if any) from other activities is then applied against it, in determining the amount eligible for the $25,000 allowance.

For example, assume that a taxpayer has $25,000 of losses from a rental real estate activity in which he actively participates. If he also actively participates in another rental real estate activity, from which he has $25,000 of gain, resulting in no net loss from rental real estate activities in which he actively participates, then no amount is allowed under the $25,000 allowance for the year. This result follows whether or not the taxpayer has net losses from other passive activities for the year.

The Senate amendment provided that a taxpayer is not treated as actively participating with respect to an interest in a rental real estate activity if such interest is less than 10 percent of all interests in the activity. The conference agreement clarifies that a taxpayer is treated as not actively participating if at any time during the taxable year (or shorter relevant period for which the taxpayer held an interest in the activity) the taxpayer's interest in the activity is less than 10 percent.

It is clarified that, with respect to active participation, just as with respect to material participation, a change in the nature of the taxpayer's involvement does not trigger the allowance of deductions carried over from prior taxable years. Thus, if a taxpayer begins to actively participate in an activity in which, in prior years, he did not actively participate, the rule allowing up to $25,000 of losses from rental real estate activities against non-passive income does not apply to losses from the activity carried over from such prior years.[2] The same rule applies to credits, to the extent that active participation is relevant to their allowability.

The conference agreement provides that, for purposes of calculating the phase-out of the $25,000 allowance at adjusted gross income between $100,000 to $150,000 (or $200,000 to $250,000, in the case of certain credits), adjusted gross income is calculated without regard to IRA contributions and taxable social security benefits.

The conference agreement provides that in the case of an estate of a taxpayer who, in the taxable year in which he died, owned an interest in a rental real estate activity in which he actively participated, the estate is deemed to actively participate for the two years following the death of the taxpayer. Thus, the taxpayer's estate may continue to receive the same tax treatment with respect to the rental real estate activity as did the taxpayer in the taxable year of his death. This treatment applies to the taxpayer's estate during the two taxable years of the estate following his death, to facilitate the administration of the estate without requiring the executor or fiduciary to reach decisions with respect to the appropriate disposition of the rental real property within a short period following the taxpayer's death.

It is clarified that a trust is not intended to qualify for the allowance of up to $25,000 in losses and (deduction equivalent) credits from a rental real estate activity in which there is active participation, so that individuals cannot circumvent the $25,000 ceiling, or multiply the number of $25,000 allowances, simply by transferring various rental real properties to one or more trusts.

Married individuals filing separately.—The amount of the $25,000 allowance, and the adjusted gross income ranges in which the allowance is phased out (i.e., $100,000 to $150,000, except in the case of certain credits where the range is $200,000 to $250,000) is halved in the case of married individuals filing separate returns, under the Senate amendment. This rule is retained, with modification, in the conference agreement. The conference agreement provides that, in the case of married individuals filing separately, who, at any time during the taxable year, do not live apart, the amount of the $25,000 allowance is reduced to zero. Absent such a rule, married taxpayers where one spouse would be eligible for a portion of the $25,000 amount if they filed separately would have an incentive so to file; the conferees believe that rules that encourage filing separate returns give rise to unnecessary complexity and place an unwarranted burden on the administration of the tax system.

Credits.—The conference agreement provides that for the rehabilitation and low-income housing credits, the phase-out range for offsetting tax on up to $25,000 of non-passive income is increased to between $200,000 and $250,000 of adjusted gross income (calculated without regard to net passive losses, IRA contributions, or taxable social security benefits), and such credits are allowed under the $25,000 rule regardless of whether the taxpayer actively participates in the activity generating the credits. In the case of the low-income housing credit, the increase in the phase-out range (to between $200,000 and $250,000, as opposed to between $100,000 and $150,000 as for other rental real estate losses and credits), and the waiver of the requirement that the taxpayer actively participate in the activity generating the low-income housing credit, apply only to property placed in service before 1990, and only with respect to the original credit compliance period for the property, except if the property is placed in service before 1991, and 10 percent or more of the total project costs are incurred before 1989.

This increase in the adjusted gross income phase-out range may be illustrated as follows. Assume that an individual has $5,000 (deduction equivalent amount) of low-income housing credits from a limited partnership interest (in which, under the passive loss rule, he is considered not to materially or actively participate) in a rental real estate activity. His adjusted gross income (determined without regard to passive losses) is $200,000, and he has no other passive losses, credits or income for the year. The individual is permitted under the $25,000 allowance rule to take the low income housing credit.

Other credit limitations.—The interaction of the passive loss rules with other rules limiting the use of credits is clarified. The limitation on the credit for research and development activities to the tax on income from such activities is applied before the passive loss limitation is applied to such credits. The overall limitation on credits under the conference agreement (providing that credits generally cannot offset more than 75 percent of the taxpayer's tax liability for the year) is applied after the amount of credits allowable under the passive loss rule is determined. Once a credit is allowed for a year under the passive loss rule, it is treated as an active credit arising in that year.

Dispositions

In general.—The conference agreement generally follows the Senate amendment with respect to dispositions of interests in passive activities which trigger the allowance of suspended losses. The conference agreement clarifies, however, that a transaction constituting a sale (or other taxable disposition) in form, to the extent not treated as a taxable disposition under general tax rules, does not give rise to the allowance of suspended deductions. For example, sham transactions, wash sales, and transfers not properly treated as sales due to the existence of a put, call, or similar right relating to repurchase, do not give rise to the allowance of suspended losses.

Related party transactions.—The conference agreement provides that the taxpayer is not treated as having disposed of an inter-

[2] By contrast, losses (or credits) carried over from a year in which the taxpayer did actively participate, but that were not allowed against non-passive income in such year because they exceeded $25,000 (as reduced by the applicable AGI phaseout), are deductible (or allowable) under the $25,000 rule in a subsequent year, but only if the taxpayer is actively participating in the activity in such subsequent year.

est in a passive activity, for purposes of triggering suspended losses, if he disposes of it in an otherwise fully taxable transaction to a related party (within the meaning of section 267(b) or 707(b)(1), including applicable attribution rules). In the event of such a related party transaction, because it is not treated as a disposition for purposes of the passive loss rule, suspended losses are not triggered, but rather remain with the taxpayer. Such suspended losses may be offset by income from passive activities of the taxpayer.

When the entire interest owned by the taxpayer and the interest transferred to the related transferee in the passive activity are transferred to a party who is not related to the taxpayer (within the meaning of section 267(b) or 707(b)(1), including applicable attribution rules) in a fully taxable disposition, then to the extent the transfer would otherwise qualify as a disposition triggering suspended losses, the taxpayer may deduct the suspended losses attributable to his interest in the passive activity.

Certain insurance transactions.—Clarification is provided with respect to certain transactions involving dispositions of interests in syndicates that insure U.S. risks. Generally, when an owner of an interest in such a syndicate that is treated as a passive activity enters into a transaction whereby he disposes of his interest in the syndicate in a fully taxable closing transaction, he is treated as having made a disposition of his interest in the passive activity.

Abandonment.—The scope of a disposition triggering suspended losses under the passive loss rule includes an abandonment, constituting a fully taxable event under present law, of the taxpayer's entire interest in a passive activity. Thus, for example, if the taxpayer owns rental property which he abandons in a taxable event which would give rise to a deduction under section 165(a) of present law, the abandonment consititutes a taxable disposition that triggers the recognition of suspended losses under the passive loss rule.

Similarly, to the extent that the event of the worthlessness of a security is treated under section 165(g) of the Code as a sale or exchange of the security, and the event otherwise represents the disposition of an entire interest in a passive activity, it is treated as a disposition. No inference is intended with respect to whether a security includes an interest in any entity other than a corporation.

Interaction with capital loss limitation.—Upon a fully taxable disposition of a taxpayer's entire interest in a passive activity, the passive loss rule provides that any deductions previously suspended with respect to that activity are allowed in full. However, to the extent that any loss recognized upon such a disposition is a loss from the sale or exchange of a capital asset, it is limited to the amount of gains from the sale or exchange of capital assets plus $3,000 (in the case of individuals). The limitation on the deductibility of capital losses is applied before the determination of the amount of losses allowable upon the disposition under the passive loss rule.

Thus, for example, if a taxpayer has a capital loss of $10,000 upon the disposition of a passive activity, and is also allowed to deduct $5,000 of previously suspended ordinary losses as a result of the disposition, the $5,000 of ordinary losses are allowed, but the capital loss deduction is limited to $3,000 for the year (assuming the taxpayer has no other gains or losses from the sale of capital assets for the year). The remainder of the capital loss from the disposition is carried forward and allowed in accordance with the provisions determining the allowance of such capital losses.

Basis adjustment for credits.—Under the conference agreement, an election is provided in the case of a fully taxable disposition of an interest in an activity in connection with which a basis adjustment was made as a result of placing in service property for which a credit was taken. Upon such a disposition, the taxpayer may elect to increase the basis of the credit property (by an amount no greater than the amount of the original basis reduction of the property) to the extent that the credit has not theretofore been allowed by reason of the passive loss rule. At the time of the basis adjustment election, the amount of the suspended credit which may thereafter be applied against tax liability is reduced by the amount of the basis adjustment. The purpose for providing this election is to permit the taxpayer to recognize economic gain or loss, taking account of the full cost of property for which no credit was allowed.

This rule may be illustrated as follows. A taxpayer places in service rehabilitation credit property generating an allowable credit of $50, and reduces the basis of the property by $50 as required by the provisions governing the rehabilitation credit, but is prevented under the passive loss rule from taking any portion of the credit. In a later year, having been allowed no portion of the credit by virtue of the passive loss rule, the taxpayer disposes of his entire interest in the activity, including the property whose basis was reduced. Immediately prior to the disposition, the taxpayer may elect to increase basis of the credit property by the amount of the original basis adjustment (to the extent of the amount of the unused credit) with respect to the property.

If the property is disposed of in a transaction that, under the passive loss rule, does not constitute a fully taxable disposition of the taxpayer's entire interest in the passive activity, then no basis adjustment may be elected at any time. To the extent the credit has been suspended by virtue of the passive loss rule, however, it may remain available to offset tax liability attributable to passive income.

Disposition of activity of limited partnership.—In general, under the passive loss rule, suspended deductions are allowed upon a taxable disposition of the taxpayer's entire interest in an activity, because it becomes possible at that time to measure the taxpayer's actual gain or loss from the activity. Under the Senate amendment, a special rule would apply to dispositions with respect to limited partnership interests. The special rule requires the taxpayer to dispose of his entire interest in the limited partnership (along with all other interests that are part of the passive activity) in order to trigger suspended deductions with respect to any activities conducted by the limited partnership.

The conferees believe that it is not appropriate to disallow a true economic loss realized upon the disposition of the taxpayer's entire interest in an activity by reason of the taxpayer's form of ownership. Therefore, the conference agreement eliminates this special rule for dispositions of limited partnership activities, and provides instead that a disposition of the taxpayer's entire interest in an activity conducted by a limited partnership, like a disposition of an activity conducted in any other form, may constitute a disposition giving rise to the allowance of suspended deductions from the activity.

The conferees do not, however, intend to change the rule that a limited partnership interest in an activity is (except as provided in Treasury regulations) treated as an interest in a passive activity. Because a limited partner generally is precluded from materially participating in the partnership's activities, losses and credits attributable to the limited partnership's activities are generally treated as from passive activities, except that items properly treated as portfolio income and personal service income are not treated as passive.

Changes in nature of activity.—The fact that the nature of an activity changes in the course of its development does not give rise to a disposition for purposes of the passive loss provision. For example, when a real estate construction activity becomes a rental activity upon the completion of construction and the commencement of renting the constructed building, the change is not treated as a disposition.

3. Treatment of portfolio income

In general

The conference agreement generally follows the Senate amendment with respect to the definition and treatment of portfolio income, with several modifications and clarifications.

Generally, portfolio income of an activity (for example, interest, dividend, royalty or annuity income earned on funds set aside for future use in the activity) is not treated as passive income from the activity, but must be accounted for separately.[3] Similarly, portfolio income of an entity which is not attributable to, or part of, an activity of the entity that constitutes a passive activity is also accounted for separately from any passive income or loss. Gain or loss from sales or exchanges of portfolio assets (including property held for investment) is treated as portfolio gain or loss. The conference agreement adds a provision clarifying that income from annuities is treated as not passive income.

Expenses allocable to portfolio income.—The conference agreement provides that portfolio income is reduced by the deductible expenses (other than interest) that are clearly and directly allocable to such income. Properly allocable interest expense also reduces portfolio income. Such deductions accordingly are not treated as attributable to a passive activity.

The conferees anticipate that the Treasury will issue regulations setting forth standards for appropriate allocation of expenses and interest under the passive loss rule. The conferees anticipate that regulations providing guidance to taxpayers with respect to interest allocation will be issued by December 31, 1986. These regulations should be consistent with the purpose of the passive loss rules to prevent sheltering of income from personal services and portfolio income with passive losses. Moreover, the regulations should attempt to avoid inconsistent allocation of interest deductions under different Code provisions.[4]

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[3] The Senate Report notes that REIT dividends are treated as portfolio income. Similarly, income received from a RIC or a real estate mortgage investment conduit (REMIC) is treated as portfolio income.

[4] For example, an interest deduction that is disallowed under section 265 or 291 should not be allowed, capitalized, or suspended under another provision.

In the case of entities, a proper method of allocation may include, for example, allocation of interest to portfolio income on the basis of assets, although there may be situations in which tracing is appropriate because of the integrated nature of the transactions involved. Because of the difficulty of recordkeeping that would be required were interest expense of individuals allocated rather than traced, it is anticipated that, in the case of individuals, interest expense generally will be traced to the asset or activity which is purchased or carried by incurring or continuing the underlying indebtedness.

Self-charged interest.—A further issue with respect to portfolio income arises where an individual receives interest income on debt of a passthrough entity in which he owns an interest. Under certain circumstances, the interest may essentially be "self-charged," and thus lack economic significance. For example, assume that a taxpayer charges $100 of interest on a loan to an S corporation in which he is the sole shareholder. In form, the transaction could be viewed as giving rise to offsetting payments of interest income and passthrough interest expense, although in economic substance the taxpayer has paid the interest to himself.

Under these circumstances, it is not appropriate to treat the transaction as giving rise both to portfolio interest income and to passive interest expense. Rather, to the extent that a taxpayer receives interest income with respect to a loan to a passthrough entity in which he has an ownership interest, such income should be allowed to offset the interest expense passed through to the taxpayer from the activity for the same taxable year.

The amount of interest income of the partner from the loan that is appropriately offset by the interest expense of the partnership on the loan should not exceed the taxpayer's allocable share of the interest expense to the extent not increased by any special allocation. For example, assume that an individual has a 40-percent interest in a partnership that conducts a business activity in which he does not materially participate, and the individual makes a loan to the partnership on which the partnership pays $100 of interest expense for the year. Since 40 percent of the partnership's interest expense is allocable to the individual, only $40 of the partner's $100 of interest income should be permitted to offset his share of the partnership interest expense, and the remaining $60 is properly treated as portfolio income that cannot be offset by passive losses.

The conferees anticipate that Treasury regulations will be issued to provide for the above result. Such regulations may also, to the extent appropriate, identify other situations in which netting of the kind described above is appropriate with respect to a payment to a taxpayer by an entity in which he has an ownership interest. Such netting should not, however, permit any passive deductions to offset non-passive income except to the extent of the taxpayer's allocable share of the specific payment at issue. Such regulations may, if appropriate, provide that taxpayer's allocable share of the payment for this purpose will be determined without regard to special allocations.

Regulatory authority of Treasury in defining non-passive income.—The conferees believe that clarification is desirable regarding the regulatory authority provided to the Treasury with regard to the definition of income that is treated as portfolio income or as otherwise not arising from a passive activity. The conferees intend that this authority be exercised to protect the underlying purpose of the passive loss provision, i.e., preventing the sheltering of positive income sources through the use of tax losses derived from passive business activities.

Examples where the exercise of such authority may (if the Secretary so determines) be appropriate include the following: (1) ground rents that produce income without significant expenses, (2) related party leases or sub-leases, with respect to property used in a business activity, that have the effect of reducing active business income and creating passive income; and (3) activities previously generating active business losses that the taxpayer intentionally seeks to treat as passive at a time when they generate net income, with the purpose of circumventing the rule.

4. Material participation

Under the conference agreement, material participation has the same meaning as that set forth in the Senate Report. It is clarified that an individual who works full-time in a line of business consisting of one or more business activities generally is likely to be materially participating in those activities (except to the extent provided otherwise in the case of rental activities), even if the individual's role is in management rather than operations.

This clarification is not intended to alter the description of material participation in the Senate Report in any respect. Rather, it recognizes the substantial likelihood that, despite the difficulty in many circumstances of ascertaining whether the management services rendered by an individual are substantial and *bona fide*, such services are likely to be so when the individual is rendering them on a full-time basis and the success of the activity depends in large part upon his exercise of business judgment.

It is also clarified that a taxpayer is likely to be materially participating in an activity, if he does everything that is required to be done to conduct the activity, even though the actual amount of work to be done to conduct the activity is low in comparison to other activities.

With respect to material participation in an agricultural activity, clarification is provided regarding the decision-making that, if *bona fide* and undertaken on a regular, continuous, and substantial basis, may be relevant to material participation. The types of decision-making that may be relevant in this regard include, without being limited to, decision-making regarding (1) crop rotation, selection, and pricing, (2) the incursion of embryo transplant or breeding expenses, (3) the purchase, sale, and leasing of capital items, such as cropland, animals, machinery, and equipment, (4) breeding and mating decisions, and (5) the selection of herd or crop managers who then act at the behest of the taxpayer, rather than as paid advisors directing the conduct of the taxpayer.

5. Definition of activity

It is clarified that a rental activity may include the performance of services that are incidental to the activity (e.g., a laundry room in a rental apartment building). However, if a sufficient amount of such services are rendered, they may rise to the level of a separate activity, or the entire activity may not constitute a rental activity under the provision (e.g., a hotel).

6. Working interest

The conference agreement follows the Senate amendment with respect to the working interest provision under the passive loss rules.

7. Effective date and phase-in rules

Under the conference agreement, interests in passive activities acquired by the taxpayer on or before the date of enactment of the bill are eligible for the phase-in under the passive loss rule. Interests in activities acquired after the date of enactment, however, are not eligible for the phase-in, but rather are fully subject to the passive loss rule.

The conferees intend that a contractual obligation to purchase an interest in a passive activity that is binding on the date of enactment be treated as an acquisition of the interest in the activity for this purpose. A binding contract qualifies under this rule, even if the taxpayer's obligation to acquire an interest is subject to contingencies, so long as the contingencies are beyond the reasonable control of the taxpayer. Thus, if the taxpayer has, by the date of enactment, signed a subscription agreement to purchase a limited partnership interest contingent upon the agreement of other purchasers to acquire interests in the limited partnership amounting to a particular total, then if the contingency is satisfied, he is eligible for the phase-in rule with respect to the interest he was contractually bound to acquire. On the other hand, a conditional obligation to purchase, or one subject to contingencies within the taxpayer's control, does not give rise to eligibility under the phase-in rule.

In the case where, after the date of enactment, investors in an activity contribute additional capital to the activity, their interests still qualify in full for relief under the phase-in to the extent that their percentage ownership interests do not change as a result of the contribution. However, if a taxpayer's ownership interest is increased after the date of enactment, then (except to the extent the increase in the taxpayer's interest arises pursuant to a pre-enactment date binding contract or partnership agreement), the portion of his interest attributable to such increase does not qualify for the phase-in relief. For example, if a taxpayer, after the date of enactment, increases his ownership interest in a partnership from 25 percent to 50 percent, then only the losses attributable to the 25 percent interest held prior to enactment will qualify for transitional relief.[6]

In general, in order to qualify for transition relief, the interest acquired by a taxpayer must be in an activity which has commenced by the date of enactment. For example, a rental activity has commenced when the rental property has been placed in service in the activity. When an entity in which the taxpayer owns an interest liquidates or disposes of one activity and commences another after the date of enactment, the new activity does not qualify for transition relief. In the case of property purchased for personal use but converted to business use (e.g., a home that the taxpayer

[6] Phase-in relief applies only with respect to the percentage interest held by the taxpayer at all times after the date of enactment. Thus, for example, if a taxpayer after the date of enactment reduces his interest in an activity from 50 percent to 25 percent, and subsequently purchases additional interests restoring his share to 50 percent, then only the 25 percent share held throughout qualifies for phase-in relief after such subsequent purchase.

converts to rental use), similar rules apply. The activity qualifies for phase-in relief if it commences by the date of enactment. In the case of a residence converted to rental use, for example, the residence must be held out for rental by the date of enactment.

However, in the case of an activity that has not commenced by the date of enactment, phase-in treatment nevertheless applies if the entity (or an individual owning the activity directly) has entered into a binding contract effective on or before the date of conference action (August 16, 1986), to acquire the assets used to conduct the activity. Similarly, phase-in treatment applies in the case of self-constructed business property of an entity (or direct owner), where construction of the property to be used in the activity has commenced on or before the date of conference action (August 16, 1986).

In the case of a taxpayer owning both pre-enactment and post-enactment interests in passive activities, clarification is provided regarding the calculation of the amount of passive loss qualifying for the phase-in. In order to determine this amount, it is necessary first to determine the amount that would be disallowed absent the phase-in. Phase-in relief then applies to the lesser of the taxpayer's total passive loss, or the passive loss taking into account only pre-enactment interests. Thus, for example, if a taxpayer has $100 of passive loss relating to pre-enactment interests, that would be disallowed in the absence of the phase-in, and has $60 of net passive income from post-enactment interests, resulting in a total passive loss of $40, then the phase-in treatment applies to the lesser of $100 or $40, (i.e., $40). For purposes of this rule, the pre-enactment and post-enactment losses are calculated by including credits, in a deduction-equivalent sense.

Under the conference agreement, any passive loss that is disallowed for a taxable year during the phase-in period and carried forward is allowable in a subsequent year only to the extent that there is net passive income in the subsequent year (or there is a fully taxable disposition of the activity).

For example, assume that a taxpayer has a passive loss of $100 in 1987, $65 of which is allowed under the applicable phase-in percentage for the year and $35 of which is carried forward. Such $35 is not allowed in part in a subsequent year under the phase-in percentage applying for such year. If the taxpayer has a passive loss of $35 in 1988, including the amount carried over from 1987, then no relief under the phase-in is provided. If the taxpayer has a passive loss of $50 in 1988 (consisting of the $35 from 1987 and $15 from 1988, all of which is attributable to pre-enactment interests), then $6 of losses (40 percent of the $15 loss arising in 1988) is allowed against active income under the phase-in rule. The $35 loss carryover from 1987 is disallowed in 1988 and is carried forward (along with the disallowed $9 from 1988) and allowed in any subsequent year in which the taxpayer has net passive income.

It is clarified that the applicable phase-in percentage applies to the passive loss net of any portion of such loss that may be allowed against non-passive income under the $25,000 rule.

Transition relief is provided in the case of low-income housing activities. Losses from certain investments after 1983 in low-income housing are not treated as from a passive activity, applicable for a period of up to seven years from the taxpayer's original investment.

C. Nonbusiness Interest Limits

Present Law

In the case of a noncorporate taxpayer, deductions for interest on debt incurred or continued to purchase or carry property held for investment are generally limited to $10,000 per year, plus the taxpayer's net investment income, plus certain deductible expenditures in excess of rental income from net lease property. Investment interest paid or accrued during the year which exceeds this limitation is not permanently disallowed, but is subject to an unlimited carryover and may be deducted in future years (subject to the applicable limitation).

Net investment income means investment income net of investment expenses. Investment income is income from interest, dividends, rents, royalties, short-term capital gains arising from the disposition of investment assets, and certain recapture amounts, but only if the income is not derived from the conduct of a trade or business. Investment expenses are trade or business expenses, real and personal property taxes, bad debts, depreciation, amortizable bond premiums, expenses for the production of income, and depletion, to the extent these expenses are directly connected with the production of investment income. For this purpose, straight-line (not accelerated) depreciation over useful life, and cost (not percentage) depletion are used in calculating investment expenses.

House Bill

Under the House bill, the deduction for nonbusiness interest of noncorporate taxpayers is limited to $10,000 ($20,000 for joint returns), plus net investment income, plus certain deductible expenditures in excess of rental income from net lease property. Interest on debt secured by the taxpayer's principal residence or by a second residence of the taxpayer (to the extent of their fair market values) is not subject to limitation. A residential lot is treated as a residence and up to 6 weeks of time-sharing of residential properties is treated as one residence. Interest expense attributable to low income housing which is (1) very low income housing, (2) certain bond-financed low-income housing, or (3) housing eligible for 5-year amortization of rehabilitation expenses under present law, is not subject to the limitation.

Nonbusiness interest means all interest not incurred in the taxpayer's trade or business, including the taxpayer's share of interest of S corporations in whose management he does not actively participate, the taxpayer's share of interest expense of limited partnerships in which he is a limited partner, and the taxpayer's share of interest expense of certain trusts and other entities in which he is a limited entrepreneur.

Net investment income means investment income net of investment expense. Investment income is expanded to include the same items as under present law plus the taxable portion of net gain from the disposition of investment property, plus income or loss from investments, interest from which would be nonbusiness interest under the provision. Investment expense includes the same items as under present law, except that it includes the depreciation and depletion actually utilized by the taxpayer.

Generally, as under present law, property subject to a net lease is treated as investment property. The bill modifies the 15-percent test of present law, which determines whether leased property is subject to a net lease. Under the bill, in determining whether certain expenses constituting trade or business deductions are less than 15 percent of the rental income from the leased property, the value of the personal management and repair services performed with respect to the leased property by an individual taxpayer if he is a direct owner may be counted. Management and repair services of the taxpayer if he is a general partner in a general partnership that directly owns the leased property may also be counted.

The provision is phased in over a 10-year period, effective for taxable years beginning after December 31, 1985. Interest not disallowed under present law, but which is disallowed under the new provision, becomes subject to disallowance ratably (10 percent per year) over 10 years commencing with taxable years beginning in 1986.

Senate Amendment

The Senate amendment provides that the deduction for investment interest of noncorporate taxpayers is limited to net investment income, plus certain deductible expenditures in excess of rental income from net lease property. Consumer interest is not deductible. Interest on debt secured by the taxpayer's principal residence and a second residence of the taxpayer (to the extent of their fair market values) is not subject to limitation.

Investment interest (in conformity with the passive loss rule) includes all interest subject to limitation in the House bill as well as other interest attributable to an activity in which the taxpayer does not materially participate (or in the case of rental real estate activities, does not actively participate). Material participation and active participation have the same meanings as under the passive loss rule. Consumer interest means interest not attributable to a trade or business (other than the trade or business of performing services as an employee) or to an activity engaged in for profit.

Net investment income means investment income net of investment expense. Investment income is expanded to include the same items as under present law plus the taxable portion of net gain from the disposition of investment property, plus income from investments, interest from which would be investment interest under the provision.

The Senate amendment is the same as the House bill with respect to net lease property.

The provision is phased in, effective for taxable years beginning after December 31, 1986. Interest not disallowed under present law, but which is disallowed under the new provision, becomes subject to disallowance 35 percent in taxable years beginning in 1987, 60 percent in taxable years beginning in 1988, 80 percent in taxable years beginning in 1989, 90 percent in taxable years beginning in 1990, and 100 percent in taxable years beginning after 1990.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications and clarifications.

Investment interest

The conference agreement provides that the deduction for investment interest is limited to the amount of net investment income. Interest disallowed under the provision is carried forward and treated as investment interest in the succeeding taxable year. Interest disallowed under the provision is allowed in a subsequent year only to

the extent the taxpayer has net investment income in such year.

Definition of investment interest

The definition of investment interest is modified to include interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment. Investment interest includes interest expense properly allocable to portfolio income under the passive loss rule (see B., above). Investment interest also includes interest expense properly allocable to an activity, involving a trade or business, in which the taxpayer does not materially participate, if that activity is not treated as a passive activity under the passive loss rule.

Investment interest also includes the portion of interest expense incurred or continued to purchase or carry an interest in a passive activity, to the extent attributable to portfolio income (within the meaning of the passive loss rule).

Investment interest does not include any interest that is taken into account in determining the taxpayer's income or loss from a passive activity. Investment interest does not include interest properly allocable to a rental real estate activity in which the taxpayer actively participates, within the meaning of the passive loss rule. Investment interest also does not include any qualified residence interest, as described below.

Net investment income

Investment income includes gross income from property held for investment, gain attributable to the disposition of property held for investment, and amounts treated as gross portfolio income under the passive loss rule. Investment income also includes income from interests in activities, involving a trade or business, in which the taxpayer does not materially participate, if that activity is not treated as a passive activity under the passive loss rule.

Net investment income is investment income net of investment expenses. Investment expenses are deductible expenses (other than interest) directly connected with the production of investment income. In determining deductible investment expenses, it is intended that investment expenses be considered as those allowed after application of the rule limiting deductions for miscellaneous expenses to those expenses exceeding 2 percent of adjusted gross income. In computing the amount of expenses that exceed the 2-percent floor, expenses that are not investment expenses are intended to be disallowed before any investment expenses are disallowed.

Property subject to a net lease is not treated as investment property under this provision, because it is treated as a passive activity under the passive loss rule. Income from a rental real estate activity in which the taxpayer actively participates is not included in investment income.

The investment interest limitation is not intended to disallow a deduction for interest expense which in the same year is required to be capitalized (e.g., construction interest subject to sec. 263A) or is disallowed under sec. 265 (relating to tax-exempt interest).

Personal interest

The conference agreement follows the Senate amendment provision with respect to consumer interest (denominated personal interest under the conference agreement), with modifications and clarifications.

Under the conference agreement, personal interest is not deductible. Personal interest is any interest, other than interest incurred or continued in connection with the conduct of a trade or business (other than the trade or business of performing services as a employee), investment interest, or interest taken into account in computing the taxpayer's income or loss from passive activities for the year. Personal interest also generally includes interest on tax deficiencies.

Personal interest does not include qualified residence interest of the taxpayer, nor does it include interest payable on estate tax deferred under sec. 6163 or 6166.

Qualified residence interest

Under the conference agreement, qualified residence interest is not subject to the limitation on personal interest. Qualified residence interest generally means interest on debt secured by a security interest perfected under local law on the taxpayer's principal residence or a second residence of the taxpayer, not in excess of the amount of the taxpayer's cost basis for the residence (including the cost of home improvements), plus the amount of qualified medical and qualified educational expenses. Qualified residence interest does not include interest on any portion of such debt in excess of the fair market value of the residence.

Qualified residence interest is calculated as interest on debt secured by the residence, up to the amount of the cost basis of the residence, plus the amount incurred after August 16, 1986, for qualified medical and educational expenses. If the amount of any debt incurred on or before August 16, 1986, and secured by the residence on August 16, 1986 (reduced by any principal payments thereon) exceeds the taxpayer's cost basis for the residence, then such amount shall be substituted for the taxpayer's cost basis in applying the preceding sentence. Increases after August 16, 1986 in the amount of debt secured by the residence on August 16, 1986 (for example, in the case of a line of credit) are treated as incurred after August 16, 1986. Thus, interest on outstanding debt secured by the taxpayer's principal or second residence, incurred on or before August 16, 1986, is treated as fully deductible (to the extent the debt does not exceed the fair market value of the residence), regardless of the purpose for which the borrowed funds are used. Interest on debt secured by the taxpayer's principal or second residence, incurred after August 16, 1986, which debt exceeds the taxpayer's cost basis in the residence, is allowed only if the debt is incurred for qualified medical or educational expenses.

For purposes of determining qualified residence interest, the amount of the taxpayer's cost basis is determined without taking into account adjustments to basis under sec. 1034(e) (relating to rollover of gain upon the sale of the taxpayer's principal residence), or 1033(b) (relating to involuntary conversions). The cost basis for the residence includes the cost of improvements to the residence that are added to the basis of the residence. The taxpayer's cost basis is determined without regard to other adjustments to basis, such as depreciation. Thus, for example, if a taxpayer's second residence is rented to tenants for a portion of the year, and its basis is reduced by deductions for depreciation allowed in connection with the rental use of the property, the amount of his cost basis for the residence is not reduced by such deductions for purposes of this provision. Where the basis of a residence is determined under sec. 1014 (relating to the basis of property acquired from a decedent), the cost basis under this provision is the basis determined under sec. 1014. In general, under this provision, the amount of debt on which the taxpayer may deduct interest as qualified interest will not be less than his purchase price for the residence.

Generally, interest on debt secured by the taxpayer's principal or second residence (up to the amount of the taxpayer's cost basis is treated as qualified residence interest. Thus, for example, if the taxpayer's cost basis in his principal residence is $100,000 (and this amount does not exceed fair market value), and the residence is secured by debt in the amount of $60,000, interest on a refinancing for a total of $100,000 (including the original $60,000 plus an additional $40,000) is treated as qualified residence interest, regardless of the purpose for which the borrowed funds are used by the taxpayer.

Qualified medical expenses are those amounts paid for medical care within the meaning of sec. 213(d)(1)(A) and (B) (not including amounts paid for insurance covering medical care under sec. 213(d)(1)(C)), of the taxpayer, his spouse and dependents.

Qualified educational expenses are those amounts paid for reasonable living expenses while away from home, and for any tuition and related expenses incurred that would qualify scholarships (under sec. 117(b) as amended by the conference agreement), for the taxpayer, his spouse or dependent, while a student at an educational organization described in sec. 170(b)(1). Thus, tuition expenses for primary, secondary, college and graduate level education are generally included in qualified educational expenses. The qualified educational expenses or qualified medical expenses must be incurred within a reasonable period of time before or after the debt is incurred.

A principal residence of the taxpayer, and a second residence of the taxpayer, have the meanings set forth in the Senate amendment, except that if a second residence is not used by the taxpayer or rented at any time during the taxable year, the taxpayer need not meet the requirement of section 280A(d)(1) that the residence be used for personal (non-rental) purposes for the greater of 14 days or 10 percent of the number of days it is rented.

Interest on debt that is used to pay qualified medical or educational expenses, to be deductible as qualified residence interest, must be secured by the taxpayer's principal residence or second residence. Interest expense is so treated if the debt is so secured at the time the interest is paid or accrued. In the case of housing cooperatives, debt secured by stock held by the taxpayer as a tenant-stockholder is treated as secured by the residence the taxpayer is entitled to occupy as a tenant-stockholder. Where the stock may not be used as security by virtue of restrictions arising, for example, pursuant to local or State law, or pursuant to reasonable restrictions in the cooperative agreement, the stock may be treated as securing such debt, if the taxpayer establishes to the satisfaction of the Internal Revenue Service that the debt was incurred to acquire the stock. In addition, it is intended that the fact that State homestead laws may restrict the rights of secured parties with respect to certain types of residential mortgages will not cause interest on the debt to be treated as nondeductible personal interest, provided the lender's security interest is perfected and provided the interest on the debt is otherwise qualified residence interest.

Effective date

The conference agreement follows the effective date and phase-in rule of the Senate amendment, with modification.

Under the conference agreement, the amount of investment interest disallowed during the phase-in period under the provision is the excess over the amount of the present law $10,000 allowance ($5,000 in the case of a married individual filing a separate return, and zero in the case of a trust), plus the applicable portion of investment interest expense which would be disallowed without taking into account the present law allowance. Thus, for example, if an individual taxpayer has $20,000 of investment interest expense in excess of investment income 1987, 35 percent of the amount that does not exceed $10,000 or $3,500, plus the amount in excess of the $10,000 allowance. Thus, $13,500 would be disallowed, and $6,500 would be allowed for 1987 (assuming the taxpayer had no net passive loss for the year).

With respect to the investment interest limitation, for taxable years beginning on or after January 1, 1987 and before January 1, 1991, the amount of net investment income is reduced by the amount of losses from passive activities that is allowed as a deduction by virtue of the phase-in of the passive loss rule (other than net losses from rental real estate in which the taxpayer actively participates). For example, if a taxpayer has a passive loss which would be disallowed were the passive loss rule fully phased in (as in taxable years beginning after December 31, 1990), but a percentage of which is allowed under the passive loss phase-in rule, the amount of loss so allowed reduces the amount of the taxpayer's net investment income under the investment interest limitation for that year.

Further, any amount of investment interest that is disallowed under the investment interest limitation during the period that the investment interest limitation is phased in (that is, taxable years beginning on or after January 1, 1987 and before January 1, 1991) is not allowed as a deduction in a subsequent year except to the extent the taxpayer has net investment income in excess of investment interest in the subsequent year.[7]

TITLE VI. CORPORATE TAX PROVISIONS

A. Corporate Tax Rates

Present Law

Corporate income is subject to tax under a five-bracket graduated rate structure as follows:

	Tax Rate (percent)
Taxable Income:	
$25,000 or less	15
$25,000–$50,000	18
$50,000–$75,000	30
$75,000–$100,000	40
Over $100,000	46

An additional five-percent tax is imposed on a corporation's taxable income in excess of $1 million, up to a total additional tax of $20,250. This results in elimination of the benefit of the graduated rate structure (in effect, payment of tax at a flat 46 percent rate) for corporations having taxable income of $1,405,000 or more.

House Bill

Under the House bill, corporate income is subject to tax under a three-bracket graduated rate structure as follows:

	Tax Rate (percent)
Taxable Income:	
$50,000 or less	15
$50,000–$75,000	25
Over $75,000	36

An additional five-percent tax is imposed on income between $100,000 and $365,000. Thus, corporations having taxable income of $365,000 or more in effect pay tax at a flat 36 percent rate. The provision is effective July 1, 1986; income in taxable years that include July 1, 1986, is subject to blended rates.

Senate Amendment

The Senate amendment is the same as the House bill, except the maximum corporate rate is 33 percent and the phase-out of the benefit of graduated rates occurs between $100,000 and $320,000. The provision is effective July 1, 1987.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except the maximum corporate rate is 34 percent. The phase-out of the benefit of graduated rates occurs through the imposition of an additional five-percent tax between $100,000 and $335,000 of taxable income. The new rate structure is effective for taxable years beginning on or after July 1, 1987; income in taxable years that include July 1, 1987 (other than as the first date of such year), is subject to blended rates under the rules specified in section 15 of present law.

B. Corporate Dividends Paid Deduction

Present Law

In general, corporations compute taxable income and are subject to a separate corporate-level tax without any deduction for dividends paid to shareholders.

Foreign shareholders of U.S. corporations generally are subject to a 30-percent withholding tax on dividends (secs. 861, 871, 881, 1441, 1442); a lower rate may be provided by treaty. Tax-exempt entities generally are not taxable on dividends received except in certain cases where the tax-exempt entity owns debt-financed property (sec. 514).

House Bill

Under the House bill, a domestic corporation receives a deduction for 10 percent of dividends paid by the corporation out of corporate earnings that have been subject to tax after the general effective date. A foreign corporation, at least half of whose income is from a U.S. business (and thus generally subject to U.S. tax), also receives a deduction.

The House bill imposes a compensatory withholding tax on foreign shareholders, including those otherwise protected by treaty, except where the foreign recipient's country grants relief from a two-tier tax to U.S. shareholders. In addition, under the House bill, the deductible portion of dividends paid to tax-exempt shareholders owning five percent or more of the distributing corporation's stock is treated as taxable unrelated business income of the shareholder.

The provisions of the House bill are phased in over 10 years. The deduction is one percent for taxable years beginning after January 1, 1987, increasing one percentage point annually until taxable years beginning after January 1, 1996 when the full 10 percent deduction is in effect. The compensatory withholding tax on foreign shareholders otherwise protected by treaty is effective for dividends paid after 1988.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

C. Corporate Dividends Received Deduction

Present Law

Corporations that receive dividends generally are entitled to a deduction equal to 85 percent of the dividends received (sec. 243(a)(1)). Dividends received from a small business investment company operating under the Small Business Investment Act of 1958 (sec. 243(a)(2)), and "qualifying dividends" received from certain members of an affiliated group are eligible for a 100-percent dividends received deduction (sec. 243(a)(3)). In addition, pursuant to Treasury regulations, dividends received by one member of an affiliated group filing a consolidated return from another member of the group are not taxed currently to the recipient (Treas. Reg. sec. 1.1502-14).

The dividends received deduction is limited in the case of certain dividends received by a U.S. corporation from a foreign corporation and from certain other entities. The deduction also is limited in certain other circumstances.

House Bill

Under the House bill, the 85-percent dividends received deduction is reduced to 80 percent.

In addition, the House bill modifies the dividends received deduction for corporations in connection with the dividends paid deduction. Thus, under the House bill, the 80-percent dividends received deduction for distributions from non-affiliates is reduced to 70 percent. For distributions from affiliates, the 100-percent dividends received deduction otherwise available is reduced to 90 percent if the payor was entitled to a dividends paid deduction.

The House bill generally is effective with respect to dividends received after December 31, 1985. The 10-percent reductions in the dividends received deduction are phased in over 10 years corresponding to the phase-in of the dividends paid deduction.

Senate Amendment

The Senate amendment reduces the 85-percent dividends received deduction to 80 percent, effective for dividends received after December 31, 1986.

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[7] For example, assume that, in 1987, the taxpayer has a passive loss of $80,000 of which $30,000 is attributable to rental real estate activities in which the taxpayer actively participates. Assuming the taxpayer is entitled to deduct $25,000 of active rental losses, then 35 percent of the remaining $55,000, or $19,250, would be suspended under the passive loss limitation. Of the deductible $35,750 of passive losses, the portion not attributable to active rental activities reduces the taxpayer's net investment income under the investment interest limitation for 1987.

That portion is determined by first calculating the ratio of (1) the amount of 1987 losses that are *not* attributable to rental real estate activities in which the taxpayer actively participates ($50,000) to (2) the amount of 1987 losses that are subject to the passive loss phase-in rule ($55,000). The ratio is applied to the total amount of passive losses allowed in 1987, other than those allowed under the $25,000 allowance ($35,000), to determine the portion allowed under the passive loss phase-in rule. This portion (i.e., $32,500) is subtracted from the amount of net investment income, under the investment interest limitation phase-in rule.

Conference Agreement

The conference agreement follows the Senate amendment.

D. Dividend Exclusion For Individuals

Present Law

The first $100 of qualified dividends received by an individual shareholder ($200 by a married couple filing jointly) from domestic corporations is excluded from income (sec. 116(a)).

The dividend exclusion for individuals does not apply to dividends received from an organization that was exempt from tax under section 501 or a tax-exempt farmers' cooperative in either the year of distribution or the preceding year (sec. 116(b)(1)), dividends received from a real estate investment trust (sec. 116(b)(2)), dividends received from a mutual savings bank that received a deduction for the dividend under section 591 (sec. 116(c)(1)), or to an ESOP dividend for which the corporation received a deduction (sec. 116(e)). The exclusion is limited with respect to dividends received from a regulated investment company (sec. 116(c)(2)).

House Bill

Under the House bill, the dividend exclusion for individuals is repealed, effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment follows the House bill, effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective for taxable years beginning after December 31, 1986.

E. Extraordinary Dividends

Present Law

If a corporate shareholder receives an "extraordinary dividend" on stock and disposes of the stock without having held it for more than one year, the basis of the stock must be reduced by the amount of the untaxed portion of the dividend (sec. 1059). An extraordinary dividend is defined in terms of the size of the dividend in relation to the shareholder's adjusted basis in its stock. The untaxed portion of the dividend is the excess of the value of the distribution over the taxable portion of the distribution (i.e., net of the dividends received deduction).

In general, a distribution in redemption of stock that is essentially equivalent to a dividend is treated as a dividend for tax purposes (sec. 302). A redemption of the stock of a shareholder is essentially equivalent to a dividend if it does not result in a meaningful reduction in the shareholder's proportionate interest in the distributing corporation. Apart from certain cases in which a shareholder's interest is completely terminated or is reduced by more than 20 percent, present law is unclear regarding what constitutes a meaningful reduction in interest. The conferees understand that in some cases individual distributees take the position that a redemption is a sale or exchange, while corporate distributees take the position it is a dividend. Distributions in partial liquidation of the distributing corporation are not treated as dividends if the recipient is a noncorporate shareholder.

House Bill

No provision.

Senate Amendment

The basis of stock held by a corporation is reduced on disposition of the stock by the untaxed portion of extraordinary dividends received, regardless of the taxpayer's holding period for the stock. A taxpayer may elect to determine whether the dividend is extraordinary by reference to the fair market value of the stock, rather than adjusted basis, if fair market value is established to the satisfaction of the Commissioner.

The provision is effective for dividends declared after March 18, 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment, with certain modifications and clarifications.

The determination of whether a dividend is extraordinary will be made under the present law percentage-of-adjusted-basis test, subject to the alternative fair market value test provided in the Senate amendment.[1] In lieu of the one-year post-acquisition holding period requirement of present law, the conference agreement provides a test based on the holding period of the distributee as of the date the distribution is declared or publicly announced by the distributing corporation's board of directors. Under this test, a distribution with respect to stock will constitute an extraordinary dividend if the taxpayer has not held the stock for more than two years on that date. If there is a formal or informal agreement to pay the particular dividend prior to the declaration date, the date of such agreement shall be treated as the dividend announcement date for purposes of applying the two-year holding period requirement. Whether there is such a formal or informal agreement is determined based on all the facts and circumstances. In general, a broad agreement in a joint venture arrangement that dividends will be paid as funds are available would not be considered an agreement to pay a particular dividend in the absence of other facts, such as facts showing a particular expectation that a large dividend would be paid after the acquisition of an interest in the venture by a new party.

A distribution that would otherwise constitute an extraordinary dividend under the two-year rule described above will not be considered extraordinary if the distributee has held the stock for the entire period the distributing corporation (and any predecessor corporation) has been in existence.

The conference agreement provides for a different treatment of dividends on certain qualifying preferred stock. Absent the special rule under the basic definition of extraordinary dividend, a preferred stock that pays a greater than 5-percent dividend within any period of 85 days or less is paying an extraordinary dividend. Thus, for example, a 6-percent preferred stock dividend that is paid once annually would be extraordinary. On the other hand, if the stock paid four quarterly 5-percent dividends, none of the dividends would be considered extraordinary. The special rule is not intended to apply if no basis adjustment would be required under the general rule.

The exception for qualifying preferred stock is intended to provide relief for certain transactions to the extent that there is no potential for effectively purchasing a dividend that accrued prior to the date of purchase ("dividend-stripping"). Preferred stock is treated as qualifying for this purpose if: (1) it provides for fixed (i.e. not varying) preferred dividends payable not less often than annually; (2) dividends were not in arrears when the taxpayer acquired the stock, and (3) the dividends received by the taxpayer during the period it owned the stock do not exceed an annualized rate of 15 percent of the lower of (a) the taxpayer's adjusted basis or (b) the liquidation preference of the stock.[1a]

Dividends on qualifying preferred stock will be treated as extraordinary dividends only to the extent the dividends received by the taxpayer during the period it owned the stock exceed the dividends it "earned."

To determine whether the taxpayer's dividends exceed the dividends it earned, the taxpayer's "actual dividend rate" is first computed. The actual dividend rate is the average annual amount of dividends received (or deemed received under section 305 or any other provision) during the period the taxpayer owned the stock, computed as a return on the taxpayer's adjusted basis or, if lesser, the stock's liquidation preference. This is then compared to the taxpayer's "stated dividend rate," which is the return represented by the annual fixed preferred dividends payable on the stock. If the actual dividend rate exceeds the stated dividend rate, a portion of each dividend received or deemed received will be an extraordinary dividend, and basis will be reduced by the untaxed portion of such dividend.

For example, assume that on January 1, 1987, a corporation purchases for $1,000 ten shares of preferred stock having a liquidation preference of $100 per share and paying fixed preferred dividends of $6 per share to shareholders of record on March 31 and September 30 of each year. If the taxpayer does not elect to have the special rule apply, the basic rule would generally require the taxpayer to reduce the basis in the stock by the untaxed portion of each dividend received prior the the expiration of the two-year holding period. This is because a dividend exceeding 5 percent of adjusted basis (or fair market value, if shown to the satisfaction of the Secretary) paid semi-anually is an extraordinary dividend under the general rule.[2] However, special rule will apply to the preferred stock. Under this provision, the taxpayer's stated dividend rate is 12 percent ($12/$100). If the taxpayer sells the stock on October 1, 1988, (after holding the stock for 1.75 years) and no dividends in excess of the fixed preferred dividends have been paid, its "actual dividend rate" will be 13.7 percent ($240/$1,000 divided by 1.75). This 13.7 percent exceeds the 12 percent stated dividend rate by 1.7. This excess, as a fraction of the actual dividend rate, is 12.4 percent (1.7 divided by 13.7). Accordingly, each of the dividends will be treated as an extraordinary dividend described in section 1059(a) to the extent of 0.74 per share ($6 x 12.4 percent). However, if the corporation does not sell the stock until January 1, 1989, and no dividends in excess of the fixed preferred dividends have been paid, its "actual dividend rate" will be 12 percent ($240/$1000 divided by 2.0). This does not exceed the stated dividend rate; accordingly, no

[1] The conference agreement clarifies that the alternative fair market value test applies for purposes of section 1059(c)(3)(B) (which treats certain dividends having ex-dividend dates within a 365-day period as extraordinary)

[1a] It is understood that liquidation preference for puposes of this section does not include dividend arrearages, if any.

[2] If the dividend were three percent paid quarterly, it would not be an extraordinary dividend under the general rule and no basis reduction would be required.

portion of any dividend will be treated as an extraordinary dividend.

In addition, under the conference agreement the term "extraordinary dividend" is expanded to include any distribution (without regard to the holding period for the stock or the relative magnitude of the distribution) to a corporate shareholder in partial liquidation of the distributing corporation. For this purpose, a distribution will be treated as in partial liquidation if it satisfies the requirements of section 302(e) of the Code. Since the determination whether a distribution is in partial liquidation is made at the corporate rather than the shareholder level, the conferees intend that the Treasury Department will have the authority to require the distributing corporation to advise its shareholders (with notice to the Internal Revenue Service) as to the character of the distribution. This characterization will generally be binding on the shareholders.[3] The Internal Revenue Service, however, will be free to challenge the characterization of the distribution, provided it takes a consistent position with respect to corporate and noncorporate shareholders.

Finally, under the conference agreement the term extraordinary dividend includes any redemption of stock that is non-pro rata (again, irrespective of the holding period of the stock or the relative size of the distribution).

Except as provided in regulations, the provisions do not apply to distributions between members of an affiliated group filing consolidated returns. In addition, they do not apply to distributions that constitute qualifying dividends within the meaning of section 243(b)(1). Accordingly, the provision generally will not apply to dividend distributions (or deemed dividend distributions) during a consolidated return year by a subsidiary out of earnings and profits accumulated during separate return affiliation years.

In order to prevent double inclusions in earnings and profits, the conferees expect that the amount, if any, of earnings and profits resulting from gain on the disposition of stock shall be determined without regard to the basis adjustments made under this section.

The provision is generally effective for dividends declared after July 18, 1986. However, distributions constituting extraordinary dividends by virtue of being a distribution in partial liquidation or a non-pro rata distribution are subject to the provision only if announced or declared after date of enactment.

F. Corporate Shareholder Redemptions

Present Law

If a shareholder surrenders stock of the issuing corporation and receives a distribution out of earnings and profits, the transaction is treated as a dividend, rather than a sale of the surrendered stock, unless specified circumstances exist.

If the transaction is treated as a sale, capital gain or loss treatment may apply to the difference between the amount of the distribution and the basis of the stock surrendered. The shareholder's basis in the remaining shares is equal to the basis of all of the taxpayer's shares prior to the surrender, reduced by the basis of the shares surrendered.

If the transaction is treated as a dividend, the gross amount of the distribution is taxed as a dividend and the basis of the shareholder's remaining stock is not reduced. In the case of a corporate shareholder, the dividends received deduction generally is available.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, if a corporate shareholder surrenders stock of the issuing corporation and receives a distribution for which the dividends received deduction would be available if the distribution were treated as a dividend, the transaction is generally treated as a sale of the surrendered stock. However, no loss is created if no loss would have been allowed under present law.

Conference Agreement

The conference agreement does not include the Senate amendment.

G. Stock Redemption Payments

Present Law

The purchase of stock, including the repurchase by an issuing corporation of its own stock, is generally treated as a capital transaction that does not give rise to a current deduction. The Supreme Court has held that the capitalization requirement extends to expenses such as legal, brokerage, and accounting fees incident to an acquisition of stock.

Some authority exists for the proposition that, in certain extraordinary circumstances, amounts paid by a corporation to repurchase its stock may be fully deductible in the year paid. The validity of this authority, however, has been questioned.

House Bill

The House bill provides that no portion of payments by a corporation in connection with a redemption of its stock is deductible. No effective date is expressly provided.

Senate Amendment

The Senate amendment is generally the same as the House bill, except the provision does not apply to (1) interest deductible under section 163, (2) amounts constituting dividends for purposes of the accumulated earnings, personal holding company, and foreign personal holding company taxes, and for purposes of the regular income tax in the case of regulated investment companies and real estate investment trusts, or (3) otherwise deductible expenses incurred by a regulated investment company that is an open-end mutual fund in connection with the redemption of its stock upon demand of a shareholder. The provision is effective for payments on or after March 1, 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment, with certain modifications and clarifications.

The conferees intend that the denial of deductibility will apply to amounts paid in connection with a purchase of stock in a corporation, whether paid by the corporation directly or indirectly, *e.g.*, by a controlling shareholder, commonly controlled subsidiary or other related party.

The conferees wish to clarify that, while the phrase "in connection with [a] redemption" is intended to be construed broadly, the provision is not intended to deny a deduction for otherwise deductible amounts paid in a transaction that has no nexus with the redemption other than being proximate in time or arising out of the same general circumstances. For example, if a corporation redeems a departing employee's stock and makes a payment to the employee in discharge of the corporation's obligations under an employment contract, the payment in discharge of the contractual obligation is not subject to disallowance under this provision.[4] Payments in discharge of other types of contractual obligations, in settlement of litigation, or pursuant to other actual or potential legal obligations or rights, may also be outside the intended scope of the provision to the extent it is clearly established that the payment does not represent consideration for the stock or expenses related to its acquisition, and is not a payment that is a fundamental part of a "standstill" or similar agreement.

The conferees anticipate that, where a transaction is not directly related to a redemption but is proximate in time, the Internal Revenue Service will scrutinize the transaction to determine whether the amount purportedly paid in the transaction is reasonable. Thus, even where the parties have countervailing tax interests, the parties' stated allocation of the total consideration between the redemption and the unrelated transaction will be respected only if it is supported by all the facts and circumstances.[5]

However, the conferees intend that agreements to refrain from purchasing stock of a corporation or other similar types of "standstill" agreements in all events will be considered related to any redemption of the payee's stock. Accordingly, payments pursuant to such agreements are nondeductible under this provision provided there is an actual purchase of all or part of the payee's stock. The conferees intend no inference regarding the deductibility of payments under standstill or similar agreements that are unrelated to any redemption of stock owned by the payee.

In denying a deduction for payments in connection with redemptions of stock, the conferees intend no inference regarding the deductibility of such payments under present law. Moreover, no inference is intended as to the character of such payments in the hands of the payee.

The provision is effective for payments on or after March 1, 1986.

H. Special Limitations on Net Operating Loss and Other Carryforwards

Present Law

Under present law, net operating loss ("NOL") carryforwards are eliminated in different degrees and subject to different requirements, depending on whether the transaction takes the form of a taxable purchase or a tax-free reorganization. Under the 1954 Code version of section 382, in the case of a taxable purchase, NOL carryforwards are eliminated if one or more of the loss corporation's ten largest shareholders increase their common stock ownership by

[3] The conferees intend that there will be a presumption, rebuttable by clear and convincing evidence, that this characterization of the distribution is correct. The conferees anticipate that the Treasury Department may require the taxpayer to disclose on its return the fact that it is taking a contrary position and its reasons for doing so.

[4] This would be so whether the employment contract and the redemption agreement were contained in one document or separate documents, and whether or not they were separately negotiated.

[5] *Compare American International Coal Co.* v. *Comm'r*, PH Memo TC para. 82,204 (1982) (corporation's payment to shareholder-employee was nondeductible distribution in redemption of stock, not compensation for services) with *Atwater & Co.* v. *Comm'r*, 10 T.C. 218 (1948) (corporation's payment to shareholder-employee under agreement to repurchase shares upon termination of employment, *held*, deductible to extent represented additional compensation for services).

more than 50 percentage points through taxable purchases within a two-year period, unless the loss corporation continues to conduct the trade or business that was conducted before the ownership change. In the case of a tax-free reorganization, if the loss corporation's shareholders' continuing interest is less than 20 percent, the NOL carryforwards are reduced by five percent for each percentage point less than 20 percent received by such shareholders. The business-continuation requirement applicable to taxable purchases under section 382 is inapplicable to tax-free reorganizations, although continuity of business enterprise generally is required to qualify a transaction as a tax-free reorganization.

Amendments were made to section 382 by the Tax Reform Act of 1976 that would substantially change these 1954 Code provisions. The effective date of these amendments was repeatedly postponed until January 1, 1986.

House Bill

Under the House bill, if there is a more than 50 percent change in the ownership of a loss corporation over a three-year period, however effected, the loss corporation's NOL carryforwards are not reduced, but there is an annual limitation on their use after the change of ownership. In general, the annual amount of earnings against which the NOL carryforwards may be used after the ownership change cannot exceed the value of the loss corporation at the time of the change multiplied by the long-term tax-exempt rate. Under the bill, however, NOL carryforwards are eliminated entirely following both taxable purchases and tax-free reorganizations, unless the loss corporation satisfies the continuity of business enterprise requirements that apply to tax-free reorganizations under present law, for the two-year period following the ownership change. The acquisition of stock by reason of death does not result in the application of the special limitations, if the decedent was a member of the holder's family.

The limitations imposed by the bill on NOL carryforwards also apply to built-in losses (including built-in depreciation deductions), and take into account built-in gains. The special rules apply to built-in losses and gains recognized during the ten-year recognition period following the change of ownership. The built-in loss and gain rules do not apply, however, unless such net gains or net losses exceed 15 percent of the value of the loss corporation.

The value of the loss corporation for purposes of determining the applicable limitation on the use of NOL carryforwards following an ownership change is reduced under the bill by the value of any capital contributions made to the loss corporation within the three-year period prior to the acquisition date. In addition, if at least one-third of the loss corporation's assets consists of non-business assets, the value of the loss corporation is reduced by the value of such assets (less an allocable portion of the corporation's indebtedness).

Creditors who receive stock in exchange for their claims in a bankruptcy proceeding are treated as new shareholders, not continuing shareholders, for purposes of determining whether a change of ownership has occurred. Accordingly, after a bankruptcy reorganization or a stock-for-debt exchange that occurs as part of a bankruptcy proceeding, the limitations will apply if creditors receive stock worth more than 50 percent of the bankrupt corporation's value. In applying the limitations, however, a loss corporation's value is measured immediately after the change, thus taking account of additional positive value, if any, resulting from the surrender of the creditor's claims.

The bill would be effective for taxable acquisitions on or after January 1, 1986, and for tax-free reorganizations pursuant to plans adopted on or after January 1, 1986.

Senate Amendment

The Senate amendment is the same as the House bill, except as generally described below.

First, transfers by reason of death, gift, divorce, or separation are disregarded for purposes of determining whether an ownership change has occurred. In addition, acquisition of stock by an employee stock ownership plan (ESOP) or ESOP participants are disregarded in making such determinations.

Second, the rate that is applied to the loss corporation's value to determine the annual limitation on the use of NOL carryforwards is the Federal mid-term rate, without any adjustment to take into account tax exemption.

Third, the Senate amendment does not apply the continuity of business enterprise requirements for purposes of the special limitations.

Fourth, although the Senate amendment provides generally similar rules regarding built-in gains and losses, the recognition period is five years (instead of ten years), and the de minimis threshold is 25 percent (instead of 15 percent). Moreover, built-in depreciation deductions are not treated as built-in losses subject to the limitations.

Fifth, NOL carryforwards are totally eliminated if two-thirds or more of the loss corporation's asset value is attributable to assets held for investment. This rule does not apply to regulated investment companies or real estate investment trusts.

Sixth, the value of the loss corporation for purposes of determining the amount of the applicable limitation is reduced by capital contributions made with a tax-avoidance motive. Capital contributions made within two years prior to an ownership change, however, are presumed to have a tax-avoidance motive, except to the extent provided in regulations.

Seventh, if the creditors and former shareholders of the loss corporation retain at least a 50-percent interest in the corporation, creditors who receive stock in exchange for their claims as part of a bankruptcy proceeding are treated as continuing shareholders, provided their debt was held for at least one year prior to the filing of the bankruptcy petition or arose in the ordinary course of the loss corporation's business. Interest deductions on debt converted during the proceeding, however, reduce the amount of NOL carryforwards to the extent such interest was deducted by the loss corporation during the three-year period preceding the bankruptcy proceeding. In addition, all NOL carryforwards are eliminated if a loss corporation experiences a second ownership change within two years.

The Senate amendment is effective for purchases after December 31, 1986, and for tax-free reorganizations pursuant to plans adopted after December 31, 1986.

Conference Agreement

Overview

The conference agreement alters the character of the special limitations on the use of NOL carryforwards in a manner generally similar to the House bill and the Senate amendment. After an ownership change, as described below, the taxable income of a loss corporation available for offset by pre-acquisition NOL carryforwards is annually limited to a prescribed rate times the value of the loss corporation's stock on the date of the ownership change. In addition, NOL carryforwards are disallowed entirely unless the loss corporation satisfies continuity-of-business enterprise requirements for the two-year period following any ownership change. The conference agreement also expands the scope of the special limitations to include built-in losses and allows loss corporations to take into account built-in gains. The conference agreement also includes numerous technical changes and several anti-avoidance rules. Finally, the conference agreement applies similar rules to carryforwards other than NOLs, such as net capital losses and excess foreign tax credits.

Ownership change

Under the conference agreement, the special limitations apply after any ownership change. An ownership change occurs, in general, if the percentage of stock of the new loss corporation owned by any one or more 5-percent shareholders (described below) has increased by more than 50 percentage points relative to the lowest percentage of stock of the old loss corporation owned by those 5-percent shareholders at any time during the testing period (generally a three-year period).[6] The determination of whether an ownership change has occurred is made by aggregating the increases in percentage ownership for each 5-percent shareholder whose percentage ownership has increased during the testing period. For this purpose, all stock owned by persons who own less than five percent of a loss corporation's stock is generally treated as stock owned by a single 5-percent shareholder. The determination of whether an ownership change has occurred is made after any owner shift involving a 5-percent shareholder or any equity structure shift.

Determinations of the percentage of stock in a loss corporation owned by any person are made on the basis of value. Except as provided in regulations to be prescribed by the Secretary, changes in proportionate ownership attributable solely to fluctuations in the relative fair market values of different classes or amounts of stock are not taken into account.

In determining whether an ownership change has occurred, changes in the holdings of certain preferred stock are disregarded. Except as provided in regulations, all "stock" (not including stock described in section 1504(a)(4)) is taken into account. Under this standard, the term stock does not include stock that (1) is not entitled to vote, (2) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, (3) has redemption and liquidation rights that do not exceed the stock's issue price upon issuance (except for a reasonable redemption premium), and (4) is not convertible to any other class of stock. If preferred stock carries a dividend rate materially in excess of a market rate, this may indicate that it would not be disregarded.

Under grants of regulatory authority in the conference agreement, the conferees expect the Treasury Department to publish regulations disregarding, in appropriate cases, certain stock that would otherwise be

[6] Unless specifically identified as a taxable year, all references to any period constituting a year (or multiple thereof) means a 365-day period (or multiple thereof).

counted in determining whether an ownership change has occurred, when necessary to prevent avoidance of the special limitations. For example, it may be appropriate to disregard preferred stock (even though voting) or common stock where the likely percentage participation of such stock in future corporate growth is disproportionately small compared to the percentage value of the stock as a proportion of total stock value, at the time of the issuance or transfer. Similarly, the conferees are concerned that the inclusion of voting preferred stock (which is not described in section 1504(a)(4) solely because it carries the right to vote) in the definition of stock presents the potential for avoidance of section 382. As another example, stock such as that issued to the old loss company shareholders and retained by them in the case of *Maxwell Hardware Company* v. *Commissioner*, 343 F.2d 716 (9th Cir. 1969), is not intended to be counted in determining whether an ownership change has occurred.

In addition, the conferees expect that the Treasury Department will promulgate regulations regarding the extent to which stock that is not described in section 1504(a)(4) should nevertheless not be considered stock. For example, the Treasury Department may issue regulations providing that preferred stock otherwise described in section 1504(a)(4) will not be considered stock simply because the dividends are in arrears and the preferred shareholders thus become entitled to vote.

Owner shift involving a 5-percent shareholder

An owner shift involving a 5-percent shareholder is defined under the conference agreement as any change in the respective ownership of stock of a corporation that affects the percentage of stock held by any person who holds five percent or more of the stock of the corporation (a "5-percent shareholder") before or after the change. For purposes of this rule, all less-than-5-percent shareholders are aggregated and treated as one 5-percent shareholder. Thus, an owner shift involving a 5-percent shareholder includes (but is not limited to) the following transactions:

(1) A taxable purchase of loss corporation stock by a person who holds at least five percent of the stock before the purchase;

(2) A disposition of stock by a person who holds at least five percent of stock of the loss corporation either before or after the disposition;

(3) A taxable purchase of loss corporation stock by a person who becomes a 5-percent shareholder as a result of the purchase;

(4) A section 351 exchange that affects the percentage of stock ownership of a loss corporation by one or more 5-percent shareholders;

(5) A decrease in the outstanding stock of a loss corporation (*e.g.*, by virtue of a redemption) that affects the percentage of stock ownership of the loss corporation by one or more 5-percent shareholders;

(6) A conversion of debt (or pure preferred stock that is excluded from the definition of stock) to stock where the percentage of stock ownership of the loss corporation by one or more 5-percent shareholders is affected; and

(7) An issuance of stock by a loss corporation that affects the percentage of stock ownership by one or more 5-percent shareholders.

Example 1.—The stock of L corporation is publicly traded; no shareholder holds five percent or more of L stock. During the three-year period between January 1, 1987 and January 1, 1990, there are numerous trades involving L stock. No ownership change will occur as a result of such purchases, provided that no person (or persons) becomes a 5-percent shareholder, either directly or indirectly, and increases his (or their) ownership of L stock by more than 50 percentage points.

Example 2.—On January 1, 1987, the stock of L corporation is publicly traded; no shareholder holds five percent or more of L stock. On September 1, 1987, individuals A, B, and C, who were not previously L shareholders and are unrelated to each other or any L shareholders, each acquires one-third of L stock. A, B, and C each have become 5-percent shareholders of L and, in the aggregate, hold 100 percent of the L stock. Accordingly, an ownership change has occurred, because the percentage of L stock owned by the three 5-percent shareholders after the owner shift (100 percent) has increased by more than 50 percentage points over the lowest percentage of L stock owned by A, B, and C at any time during the testing period (0 percent prior to September 1, 1987).

Example 3.—On January 1, 1987, individual I owns all 1,000 shares of corporation L. On June 15, 1987, I sells 300 of his L shares to unrelated individual A. On June 15, 1988, L issues 100 shares to each of B, C, and D. After these owner shifts involving I, A, B, C, and D, each of whom are 5-percent shareholders, there is no ownership change, because the percentage of stock owned by A, B, C, and D after the owner shifts (approximately 46 percent—A–23 percent; B, C, and D–7.7 percent each) has not increased by more than 50 percentage points over the lowest percentage of stock owned by those shareholders during the testing period (0 percent prior to June 15, 1987). On December 15, 1988, L redeems 200 of the shares owned by I. Following this owner shift affecting I, a 5-percent shareholder, there is an ownership change, because the percentage of L stock owned by A, B, C, and D (approximately 55 percent—A–27.3 percent; B, C, and D–9.1 percent each) has increased by more than 50 percentage points over the lowest percentage owned by those shareholders during the testing period (0 percent prior to June 15, 1987).

Example 4.—L corporation is closely held by four unrelated individuals, A, B, C, and D. On January 1, 1987, there is a public offering of L stock. No person who acquires stock in a public offering acquires five percent or more, and neither A, B, C, nor D acquires any additional stock. As a result of the offering, less-than-5-percent shareholders own stock representing 80 percent of the outstanding L stock. The stock ownership of the less-than-5-percent shareholders are aggregated and treated as owned by a single 5-percent shareholder for purposes of determining whether an ownership change has occurred. The percentage of stock owned by the less-than-5-percent shareholders after the owner shift (80 percent) has increased by more than 50 percentage points over the lowest percentage of stock owned by those shareholders at any time during the testing period (0 percent prior to January 1, 1987). Thus, an ownership change has occurred.

Example 5.—On January 1, 1987, L corporation is wholly owned by individual X. On January 1, 1988, X sells 50 percent of his stock to 1,000 shareholders, all of whom are unrelated to him. On January 1, 1989, X sells his remaining 50-percent interest to an additional 1,000 shareholders, all of whom also are unrelated to him. Based on these facts, there is not an ownership change immediately following the initial sales by X, because the percentage of L stock owned by the group of less-than-5-percent shareholders (who are treated as a single 5-percent shareholder) after the owner shift (50 percent) has not increased by *more* than 50 percentage points over the lowest percentage of stock owned by this group at any time during the testing period (0 percent prior to January 1, 1988). On January 1, 1989, however, there is an ownership change, because the percentage of L stock owned by the group of less-than-5-percent shareholders after the owner shift (100 percent) has increased by more than 50 percentage points over their lowest percentage ownership at any time during the testing period (0 percent prior to January 1, 1988).

Example 6.—The stock of L corporation is publicly traded; no shareholder owns five percent or more. On January 1, 1987, there is a stock offering as a result of which stock representing 60 percent of L's value is acquired by an investor group consisting of 12 unrelated individuals, each of whom acquires five percent of L stock. Based on these facts, there has been an ownership change, because the percentage of L stock owned after the owner shift by the 12 5-percent shareholders in the investor group (60 percent) has increased by more than 50 percentage points over the lowest percentage of stock owned by those shareholders at any time during the testing period (0 percent prior to January 1, 1987).

Example 7.—On January 1, 1987, L corporation is owned by two unrelated shareholders, A (60 percent) and C (40 percent). LS corporation is a wholly owned subsidiary of L corporation and is therefore deemed to be owned by A and C in the same proportions as their ownership of L (after application of the attribution rules, as discussed below). On January 1, 1988, L distributes all the stock of LS to A in exchange for all of A's L stock in a section 355 transaction. There has been an ownership change of L, because the percentage of L stock owned by C (100 percent) has increased by more than 50 percentage points over the lowest percentage of L stock owned by C at any time during the testing period (40 percent prior to the distribution of LS stock). There has not been an ownership change of LS, because the percentage of LS stock owned by A (100 percent) has not increased by more than 50 percentage points over the lowest percentage of stock owned by A at any time during the testing period (60 percent, after application of the attribution rules, as discussed below), prior to January 1, 1988.

Equity structure shift

An equity structure shift is defined under the conference agreement as any tax-free reorganization within the meaning of section 368, other than a divisive reorganization or an "F" reorganization. In addition, to the extent provided in regulations, the term equity structure shift will include other transactions, such as public offerings not involving a 5-percent shareholder or taxable reorganization-type transactions (*e.g.*, mergers or other reorganization-type transactions that do not qualify for tax-free treatment due to the nature of the consideration or the failure to satisfy any of the other requirements for a tax-free transaction). A purpose of the provision that considers only owner shifts involving a 5-percent shareholder is to relieve widely held companies from the burden of keeping track

of trades among such shareholders. For example, a publicly traded company that is 60 percent owned by less-than-5-percent shareholders would not experience an ownership change merely because, within a three-year period, every one of such shareholders sold his stock to a person who was not a 5-percent shareholder. The conferees believe, however, that there are situations involving transfers of stock involving less-than-5-percent shareholders, other than tax-free reorganizations (for example, public offerings), in which it will be feasible to identify changes in ownership involving such shareholders, because, unlike public trading, the changes occur as part of a single, integrated transaction. Where identification is reasonably feasible or a reasonable presumption can be applied, the conferees intend that the Treasury Department will treat such transactions under the rules applicable to equity structure shifts.

Under the conference agreement, for purposes of determining whether an ownership change has occurred following an equity structure shift, the less-than-5-percent shareholders of each corporation that was a party to the reorganization will be segregated and treated as a single, separate 5-percent shareholder. Moreover, the conference agreement provides regulatory authority to apply similar segregation rules in cases, such as a public offering or recapitalization, that involve only a single corporation.

Example 8.—On January 1, 1988, L corporation (a loss corporation) is merged (in a transaction described in section 368(a)(1)(A)) into P corporation (not a loss corporation), with P surviving. Both L and P are publicly traded corporations with no shareholder owning five percent or more of either corporation or the surviving corporation. In the merger, L shareholders receive 30 percent of the stock of P. There has been an ownership change of L, because the percentage of P stock owned by the former P shareholders (all of whom are less-than-5-percent shareholders who are treated as a separate, single 5-percent shareholder) after the equity structure shift (70 percent) has increased by more than 50 percentage points over the lowest percentage of L stock owned by such shareholders at any time during the testing period (0 percent prior to the merger). If, however, the former shareholders of L had received at least 50 percent of the stock of P in the merger, there would not have been an ownership change of L.

It is anticipated that the same results would apply in a taxable merger in which the loss corporation survives, under facts as described above, pursuant to regulations treating taxable reorganization-type transactions as equity structure shifts.

Example 9.—On January 1, 1987, L corporation is owned by two unrelated shareholders, A (60 percent) and C (40 percent). On January 1, 1988, L redeems all of A's L stock in exchange for non-voting preferred stock described in section 1504(a)(4). Following this recapitalization (which is both an equity structure shift and an owner shift involving a 5-percent shareholder), there has been an ownership change of L, because the percentage of L stock (which does not include preferred stock within the meaning of section 1504(a)(4)) owned by C following the equity structure shift (100 percent) has increased by more than 50 percentage points over the lowest percentage of L stock owned by C at any time during the testing period (40 percent prior to the recapitalization).

Assume, however, that on January 1, 1987, the stock of L corporation was widely held, with no shareholder owning as much as five percent, and that 60 percent of the stock was redeemed in exchange for non-voting preferred stock in a transaction that is otherwise identical to the transaction described above (which would be an equity structure shift, but not an owner shift involving a 5-percent shareholder because of the existence of only a single 5-percent shareholder, the aggregated less-than-5-percent shareholders, who owns 100 percent of L both before and after the exchange). In such a case, the Secretary will prescribe regulations segregating the less-than-5-percent shareholders of the single corporation, so that the group of shareholders who retain common stock in the recapitalization will be treated as a separate, single 5-percent shareholder. Accordingly, such a transaction would constitute an ownership change, because the percentage of L stock owned by the continuing common shareholders (100 percent) has increased by more than 50 percentage points over the lowest percent of stock owned by such shareholders at any time during the testing period (40 percent prior to the recapitalization).

Example 10.—L corporation stock is widely held; no shareholder owns as much as five percent of L stock. On January 1, 1988, L corporation, which has a value of $1 million, directly issues stock with a value of $2 million to the public; no one person acquired as much as five percent in the public offering. Under the statutory definitions contained in the conference agreement, no ownership change has occurred, because a public offering in which no person acquires as much as five percent of the corporation's stock, however large, by a corporation that has no five-percent shareholder before the offering would not affect the percentage of stock owned by a 5-percent shareholder.[7] In other words, the percentage of stock owned by less-than-5-percent shareholders of L immediately after the public offering (100 percent) has not increased by more than 50 percentage points over the lowest percentage of stock owned by the less-than-5-percent shareholders of L at any time during the testing period (100 percent).

Under the conference agreement, however, to the extent provided in regulations that will apply prospectively from the date the regulations are issued, a public offering can be treated as an equity structure shift. Rules also would be provided to segregate the group of less-than-5-percent shareholders prior to the offering and the new group of less than-5-percent shareholders that acquire stock pursuant to the offering. Under such regulations, therefore, the public offering could be treated as an equity structure shift, and the less-than-5-percent shareholders who receive stock in the public offering could be segregated and treated as a separate 5-percent shareholder. Thus, an ownership change may result from the public offering described above, because the percentage of stock owned by the group of less-than-5-percent shareholders who acquire stock in the public offering, who are treated as a separate 5-percent shareholder (66.67 percent), has increased by more than 50 percentage points over the lowest percentage of L stock owned by such shareholders at any time during the testing period (0 percent prior to the public offering). The conference agreement anticipates that the regulations treating public offerings as equity structure shifts also may provide rules to allow the corporation to establish the extent, if any, to which existing shareholders acquire stock in the public offering.

Multiple transactions

As described above, the determination of whether an ownership change has occurred is made by comparing the relevant shareholders' stock ownership immediately after either an owner shift involving a 5-percent shareholder or an equity structure shift with the lowest percentage of such shareholders' ownership at any time during the testing period preceding either the owner shift involving a 5-percent shareholder or the equity structure shift. Thus, changes in ownership that occur by reason of a series of transactions including both owner shifts involving a 5-percent shareholder and equity structure shifts may constitute an ownership change. In determining whether an ownership change has occurred as a result of a transaction or transactions following an equity structure shift or owner shift involving a 5-percent shareholder that did not result in an ownership change, the conference agreement provides that, unless a different proportion is established, the acquisition of stock after such a shift shall be treated as being made proportionately from all the shareholders immediately before the acquisition.

Example 11.—On January 1, 1988, I (an individual) purchased 40 percent of the stock of L. The remaining stock of L is owned by 25 shareholders, none of whom own as much as five percent. On July 1, 1988, L is merged into P—which is wholly owned by I—in a tax-free reorganization. In exchange for their stock in L, the L shareholders (immediately before the merger) receive stock with a value representing 60 percent of the P stock that is outstanding immediately after the merger (24 percent to I; 36 percent to the less-than-5-percent shareholders of L). No other transactions occurred with respect to L stock during the testing period preceding the merger. There is an ownership change with respect to L immediately following the merger, because the percentage of stock owned by I in the combined entity (64 percent—40 percent by virtue of I's ownership of P prior to the merger plus 24 percent received in the merger) has increased by more than 50 percentage points over the lowest percentage of stock in L owned by I during the testing period (0 percent prior to January 1, 1988).

Example 12.—On July 12, 1989, L corporation is owned 45 percent by P, a publicly traded corporation (with no 5-percent shareholders), 40 percent by individual A, and 15 percent by individual B. All of the L shareholders have owned their stock since L's organization in 1984. Neither A nor B owns any P stock. On July 30, 1989, B sells his entire 15-percent interest to C for cash. On August 13, 1989, P acquires A's entire 40-percent interest in exchange for P stock representing an insignificant percentage of the outstanding P voting stock in a "B" reorganization.

There is an ownership change immediately following the B reorganization, because the percentage of L stock held (through attribution, as described below) by P shareholders (all of whom are less than-5-percent shareholders who are treated as one 5-per-

[7] A different result would occur if the public offering were performed by an underwriter on a "firm commitment" basis, because the underwriter would be a 5-percent shareholder whose percentage of stock (66.67 percent) has increased by more than 50 percentage points over the lowest percentage of stock owned by the underwriter at any time during the testing period (0 percent prior to public offering). *See* Rev. Rul. 78-294, 1978-2 C.B. 141

cent shareholder) and C (100 percent—P shareholders—85 percent; C-15 percent) has increased by more than 50 percentage points over the lowest percentage of stock owned by P shareholders and C at any time during the testing period (45 percent held constructively by P shareholders prior to August 13, 1989).

Example 13.—The stock of L corporation is widely held by the public; no single shareholder owns five percent or more of L stock. G corporation also is widely held with no shareholder owning 5 percent or more. On January 1, 1988, L corporation and G corporation merge (in a tax-free transaction), with L surviving, and G shareholders receive 49 percent of L stock. On July 1, 1988, B, an individual who has never owned stock in L or G, purchases 5 percent of L stock in a transaction on a public stock exchange.

The merger of L and G is not an ownership change of L, because the percentage of stock owned by the less-than-5-percent shareholders of G (who are aggregated and treated as a single 5-percent shareholder) (49 percent) has not increased by more than 50 percentage points over the lowest percentage of L stock owned by such shareholders during the testing period (0 percent prior to the merger). The purchase of L stock by B is an owner shift involving a five-percent shareholder, which is presumed (unless otherwise established) to have been made proportionately from the groups of former G and L shareholders (49 percent from the G shareholders and 51 percent from the L shareholders). There is an ownership change of L because, immediately after the owner shift involving B, the percentage of stock owned by the G shareholders (presumed to be 46.55 percent—49 percent actually acquired in the merger less 2.45 percent presumed sold to B) and B (5 percent) has increased by more than 50 percentage points over the lowest percentage of L stock owned by those shareholders at any time during the testing period (0 percent prior to the merger).

Example 14.—The stock of L corporation and G corporation is widely held by the public; neither corporation has any shareholder owning as much as five percent of its stock. On January 1, 1988, B purchases 10 percent of L stock. On July 1, 1988, L and G merge (in a tax-free transaction), with L surviving, and G shareholders receiving 49 percent of L stock.

The merger of L and G is an ownership change because, immediately after the merger, the percentage of stock owned by G shareholders (49 percent) and B (5.1 percent) has increased by more than 50 percentage points over the lowest percentage of L stock owned by such shareholders at any time during the testing period (0 percent prior to the stock purchase by B).

Attribution and aggregation of stock ownership

Attribution from entities.—In determining whether an ownership change has occurred, the constructive ownership rules of section 318, with several exceptions, are applied. The rules for attributing ownership from corporations to their shareholders are applied without regard to the extent of the shareholders' ownership in the corporation. Thus, any stock owned by a corporation is treated as being owned proportionately by its shareholders. Moreover, except as provided in regulations, any such stock attributed to a corporation's shareholder is not treated as being held by such corporation. Stock attributed from a partnership, estate or trust similarly shall not be treated as being held by such entity. The effect of the attribution rules is to prevent application of the special limitations after an acquisition that does not result in a more than 50 percent change in the ultimate beneficial ownership of a loss corporation. Conversely, the attribution rules result in an ownership change where more than 50 percent of a loss corporation's stock is acquired indirectly through an acquisition of stock in the corporation's parent corporation.

Example 15.—L corporation is publicly traded; no shareholder owns as much as five percent. P corporation is publicly traded; no shareholder owns as much as five percent. On January 1, 1988, P corporation purchases 100 percent of L corporation stock on the open market. The L stock owned by P is attributed to the shareholders of P, all of whom are less-than-5-percent shareholders who are treated as a single, separate 5-percent shareholder. Accordingly, there has been an ownership change of L, because the percentage of stock owned by the P shareholders after the purchase (100 percent) has increased by more than 50 percentage points over the lowest percentage of L stock owned by that group at any time during the testing period (0 percent prior to January 1, 1988).

Aggregation rules.—Special aggregation rules are applied for all stock ownership, actual or deemed, by shareholders of a corporation who are less-than-5-percent shareholders. Except as provided in regulations, stock owned by such persons is treated as being held by a single, separate 5-percent shareholder. For purposes of determining whether transactions following an equity structure shift or owner shift involving a 5-percent shareholder constitute an ownership change, the aggregation rules trace any subsequent change in ownership by a group of less-than-5-percent shareholders. In analyzing subsequent shifts in ownership, unless a different proportion is otherwise established, acquisitions of stock shall be treated as being made proportionately from all shareholders immediately before such acquisition.

Example 16.—Corporation A is widely held by a group of less-than-5-percent shareholders ("Shareholder Group A"). Corporation A owns 80 percent of both corporation B and corporation C, which respectively own 100 percent of corporation L and corporation P. Individual X owns the remaining stock in B (20 percent) and individual Y owns the remaining stock in C (20 percent). On January 1, 1988, L merges into P, with P surviving, and B is completely cashed out. The attribution rules and special aggregation rules apply to treat Shareholder Group A as a single, separate 5-percent shareholder owning 80 percent of both L and P prior to the merger. Following the merger, Shareholder Group A still owns 80 percent of the stock of P, a new loss corporation, and Y owns 20 percent. No ownership change occurs as a result of the merger, because the stock of P, the new loss corporation, owned by Y (20 percent) has not increased by more than 50 percentage points over the lowest percentage of stock of L, the old loss corporation, owned by Y at any time during the testing period (0 percent prior to January 1, 1988).

Example 17.—L corporation is publicly traded; no shareholder owns more than five percent. LS is a wholly owned subsidiary of L corporation. On January 1, 1988, L distributes all the stock of LS pro rata to the L shareholders. There has not been any change in the respective ownership of the stock of LS, because the less-than-5 percent shareholders of L, who are aggregated and treated as a single, separate 5-percent shareholder, are treated as owning 100 percent of LS (by attribution) before the distribution and directly own 100 percent of LS after the distribution. Thus, no owner shift involving a 5-percent shareholder has occurred; accordingly, there has not been an ownership change.

Example 18.—L Corporation is valued at $600. Individual A owns 30 percent of L stock, with its remaining ownership widely held by less-than-5-percent shareholders ("Shareholder Group L"). P corporation is widely held by less-than-5-percent shareholders ("Shareholder Group P"), and is valued at $400. On January 1, 1988, L and P consolidate in a tax free reorganization into L/P Corporation, with 60 percent of the value of such stock being distributed to former L corporation shareholders. On June 15, 1988, 17 percent of L/P corporation stock is acquired in a series of open market transactions by individual B. At all times between January 1, 1988 and June 15, 1988, A's ownership interest in L/P Corporation remained unchanged.

The consolidation by L and P on January 1, 1988 is an equity structure shift, but not an ownership change with respect to L. Under the attribution and aggregation rules, the ownership interest in new loss corporation, L/P Corporation, is as follows: A owns 18 percent (60 percent of 30 percent), Shareholder Group L owns 42 percent (60 percent of 70 percent) and Shareholder Group P owns 40 percent. The only 5-percent shareholder whose stock interest in new loss corporation increased relative to the lowest percentage of stock ownership in old loss corporation during the testing period, Shareholder Group P, did not increase by more than 50 percentage points.

The conference agreement provides that, unless a different proportion is established, acquisitions of stock following an equity structure shift shall be treated as being made proportionately from all shareholders immediately before such acquisition. Thus, under the general rule, B's open market purchase on June 15, 1988 of L/P Corporation stock would be treated as being made proportionately from A, Shareholder Group L, and Shareholder Group P. As a result, the application of this convention without modification would result in an ownership change, because the interests of B (17 percent) and Shareholder Group P (40 percent less the 6.8 percent deemed acquired by B) in new loss corporation would have increased by more than 50 percentage points during the testing period (50.2 percent). A's ownership interest in L/P corporation, however, has in fact remained unchanged. Because L/P Corporation could thus establish that the acquisition by B was not proportionate from all existing shareholders, however, it would be permitted to establish a different proportion for the deemed shareholder composition following B's purchase as follows: (1) A actually owns 18 percent, (2) B actually owns 17 percent, (3) Shareholder Group L is deemed to own 33.3 percent (42 percent less (17 percent x 42/82)), and (4) Shareholder Group P is deemed to own 31.7 percent (40 percent less (17 percent x 40/82)). If L/P Corporation properly establishes these facts, no ownership change has occurred, because B and Shareholder Group P have a stock interest in L/P Corporation (48.7 percent) that has not increased by more than 50 percentage points over the lowest percentage of stock owned

by such shareholders in L/P Corporation, or L Corporation at any time during the testing period (0 percent).

Other attribution rules.—The family attribution rules of sections 318(a)(1) and 318(a)(5)(B) do not apply, but an individual, his spouse, his parents, his children, and his grandparents are treated as a single shareholder. "Back" attribution to partnerships, trusts, estates, and corporations from partners, beneficiaries, and shareholders will not apply except as provided in regulations.

Finally, except as provided in regulations, the holder of an option is treated as owning the underlying stock if such a presumption would result in an ownership change. (The subsequent exercise of such an option is, of course, disregarded if the owner of the option has been treated as owning the underlying stock.) This rule is to be applied on an option-by-option basis so that, in appropriate cases, certain options will be deemed exercised while others may not. Similarly, a person will be treated as owning stock that may be acquired pursuant to any contingency, warrant, right to acquire stock, conversion feature, or put, if such a presumption results in an ownership change. If the option or other contingency expires without a transfer of stock ownership, but the existence of the option or other contingency resulted in an ownership change under this rule, the loss corporation will be able to file amended tax returns (subject to any applicable statute of limitations) for prior years as if the corporation had not been subject to the special limitations.

Example 19.—L corporation has 1,000 shares of stock outstanding, which are owned by 25 unrelated shareholders, none of whom own five percent or more. P corporation is wholly owned by individual A. On January 1, 1987, L corporation acquires 100 percent of P stock from A. In exchange, A receives 750 shares of L stock and a contingent right to receive up to an additional 500 shares of L stock, depending on the earnings of P corporation over the next five years.

Under the conference agreement, A, except as provided in regulations, is treated as owning all the L stock that he might receive under the contingency (and such stock is thus treated as additional outstanding stock). Accordingly, an ownership change of L has occurred, because the percentage of stock owned (and treated as owned) by A (1,250 shares—55.5 percent (33.3 percent (750 of 2,250 shares) directly and 22.2 percent (500 of 2,250 shares) by attribution)) has increased by more than 50 percentage points over the lowest percentage of stock owned by A at any time during the testing period (0 percent prior to January 1, 1987).

Stock acquired by reason of death, gift, divorce or separation.—If (i) the basis of any stock in the hands of any person is determined under section 1014 (relating to property acquired from a decedent), section 1015 (relating to property acquired by a gift or transfer in trust) or section 1041(b) (relating to transfers of property between spouses or incident to divorce), (ii) stock is received by any person in satisfaction of a right to receive a pecuniary bequest, or (iii) stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2)), then such persons shall be treated as owning such stock during the period such stock was owned by the person from whom it was acquired. Such transfers, therefore, would not constitute owner shifts.

Special rule for employee stock ownership plans.—If certain ownership and allocation requirements are satisfied, the acquisition of employer securities (within the meaning of section 409(l)) by either a tax credit employee stock ownership plan or an employee stock ownership plan (within the meaning of section 4975(e)(7)) shall not be taken into account in determining whether an ownership change has occurred. The acquisition of employer securities from any such plan by a participant of any such plan pursuant to the requirements of section 409(h) will also not be taken into account in determining whether an ownership change has occurred.

Utilization of holding company structures.—The mere formation of a holding company unaccompanied by a change in the beneficial ownership of the loss corporation will not result in an ownership change. The attribution rules of section 318, as modified for purposes of applying these special limitations, achieve this result by generally disregarding any corporate owner of stock as the owner of any loss corporation stock. Instead, the attribution rules are designed to provide a mechanism for tracking the changes in ownership by the ultimate beneficial owners of the loss corporation. The creation of a holding company structure is significant to the determination of whether an ownership change has occurred only if it is accompanied by a change in the ultimate beneficial ownership of the loss corporation.

Example 20.—The stock of L corporation is owned equally by unrelated individuals, A, B, C, and D. On January 1, 1988, A, B, C, and D contribute their L corporation stock to a newly formed holding company ("HC") in exchange for equal interests in stock and securities of HC in a transaction that qualifies under section 351.

The formation of HC does not result in an ownership change with respect to L. Under the attribution rules, A, B, C, and D following the incorporation of L corporation are considered to own 25 percent of the stock of L corporation and, unless provided otherwise in regulations, HC is treated as not holding any stock in L corporation. Accordingly, the respective holdings in L corporation were not altered to any extent and there is thus no owner shift involving a 5-percent shareholder. The result would be the same if L corporation were owned by less-than-5-percent shareholders prior to the formation of the holding company.

Example 21.—The stock of L corporation is widely held by the public ("Public/L") and is valued at $600. P is also widely held by the public ("Public/P") and is valued at $400. On January 1, 1988, P forms Newco with a contribution of P stock. Immediately thereafter, Newco acquires all of the properties of L corporation in exchange for its P stock in a forward triangular merger qualifying under section 368(a)(2)(D). Following the transaction, Public/L and Public/P respectively are deemed to own 60 percent and 40 percent of P stock.

Inserting P between Public/L and L corporation (which becomes Newco in the merger) does not result in an ownership change with respect to Newco, the new loss corporation. Under the conference agreement, Public/L and Public/P are each treated as a separate 5-percent shareholder of Newco, the new loss corporation.[8] Unless regulations provide otherwise, P's direct ownership interest in L corporation is disregarded. Because the percentage of Newco stock owned by Public/P shareholders after the equity structure shift (40 percent) has not increased by more than 50 percentage points over the lowest percentage of stock of L (the old loss corporation) owned by such shareholders at any time during the testing period (0 percent prior to January 1, 1988), the transaction does not constitute an ownership change with respect to Newco.

3-year testing period

In general, the relevant testing period for determining whether an ownership change has occurred is the three-year period preceding any owner shift involving a 5-percent shareholder or any equity structure shift. Thus, a series of unrelated transactions occurring during a three-year period may constitute an ownership change. A shorter period, however, may be applicable following any ownership change. In such a case, the testing period for determining whether a second ownership change has occurred does not begin before the day following the first ownership change.

In addition, the testing period does not begin before the first day of the first taxable year from which there is a loss carryforward or excess credit. Thus, transactions that occur prior to the creation of any attribute subject to limitation under section 382 or section 383 are disregarded. Except as provided in regulations, the special rule described above does not apply to any corporation with a net unrealized built-in loss. The conferees expect, however, that the regulations will permit such corporations to disregard transactions that occur before the year for which such a corporation establishes that a net unrealized built-in loss first arose.

Effect of ownership change

Section 382 limitation

For any taxable year ending after the change date (*i.e.*, the date on which an owner shifts resulting in an ownership change occurs or the date of the reorganization in the case of an equity structure shift resulting in an ownership change), the amount of a loss corporation's taxable income that can be offset by a pre-change loss (described below) cannot exceed the section 382 limitation for such year. The section 382 limitation for any taxable year is generally the amount equal to the value of the loss corporation immediately before the ownership change multiplied by the long-term tax-exempt rate (described below).

The conference agreement requires the Treasury Department to prescribe regulations regarding the application of the section 382 limitation in the case of a short taxable year. The conferees expect that these regulations will generally provide that the section 382 limitation applicable in a short taxable year will be determined by multiplying the full section 382 limitation by the ratio of the number of days in the year to 365. Thus, taxable income realized by a new loss corporation during a short taxable year may be offset by pre-change losses not exceeding a ratable portion of the full section 382 limitation.

[8] The rules described above aggregate all less-than-5-percent shareholders of any corporation. These aggregation rules are to be applied after taking into account the attribution rules. In the above example, the old loss corporation and new loss corporation are properly treated as the same corporation. Thus, even though L does not survive the reorganization, Public/L is properly treated as a continuing 5-percent shareholder of Newco, the new loss corporation. The same result would be appropriate if the transaction had been structured as a reverse triangular merger under section 368(a)(2)(E).

The section 382 limitation for any taxable year is increased by the amount of any recognized built-in gains (determined under the rules described below) and any gain recognized by virtue of a section 338 election (to the extent such gain is not taken into account as a built-in gain). Finally, if the section 382 limitation for a taxable year exceeds the taxable income for the year, the section 382 limitation for the next taxable year is increased by such excess.

If two or more loss corporations are merged or otherwise reorganized into a single entity, separate section 382 limitations are determined and applied to each loss corporation that experiences an ownership change.

Example 22.—X corporation is wholly owned by individual A and its stock has a value of $3,000; X has NOL carryforwards of $10,000. Y corporation is wholly owned by individual B and its stock has a value of $9,000; Y has NOL carryforwards of $100. Z corporation is owned by individual C and its stock has a value of $18,000; Z has no NOL carryforwards. On July 22, 1988, X, Y and Z consolidate into W corporation in a transaction that qualifies as a tax-free reorganization under section 368(a)(1)(A). The applicable long-term tax-exempt rate on such date is 10 percent. As a result of the consolidation, A receives 10 percent of W stock, B receives 30 percent and C receives 60 percent.

The consolidation of X, Y and Z results in an ownership change for old loss corporations X and Y. The conference agreement applies a separate section 382 limitation to the utilization of the NOL carryforwards of each loss corporation that experiences an ownership change. Therefore, the annual limitation on X's NOL carryforwards is $300 and the annual limitation Y's NOL carryforwards is $900.

For W's taxable year ending on December 31, 1989, W's taxable income before any reduction for its NOLs is $1,400. The amount of taxable income of W that may be offset by X and Y's pre-change losses (without regard to any unused section 382 limitation) is $400 (the $300 section 382 limitation for X's NOL carryforwards and all $100 of Y's NOL carryforwards because that amount is less than Y's $900 section 382 limitation). The unused portion of Y's section 382 limitation may not be used to augment X's section 382 limitation for 1989 or in any subsequent year.

Special rule for post-change year that includes the change date.—In general, the section 382 limitation with respect to an ownership change that occurs during a taxable year does not apply to the utilization of losses against the portion of the loss corporation's taxable income, if any, allocable to the period before the change. For this purpose, except as provided in regulations, taxable income (not including built-in gains or losses) realized during the change year is allocated ratably to each day in the year. The regulations may provide that income realized before the change date from discrete sales of assets would be excluded from the ratable allocation and could be offset without limit by pre-change losses. Moreover, these regulations may provide a loss corporation with an option to determine the taxable income allocable to the period before the change by closing its books on the change date and thus forgoing the ratable allocation.

Value of loss corporation

The value of a loss corporation is generally the fair market value of the corporation's stock (including preferred stock described in section 1504(a)(4)) immediately before the ownership change. If a redemption occurs in connection with an ownership change—either before or after the change—the value of the loss corporation is determined after taking the redemption into account. Under the conference agreement, the Treasury Department is given regulatory authority to treat other corporate contractions in the same manner as redemptions for purposes of determining the loss corporation's value. The conference agreement also requires the Treasury Department to prescribe such regulations as are necessary to treat warrants, options, contracts to acquire stock, convertible debt, and similar interests as stock for purposes of determining the value of the loss corporation.

In determining value, the conferees intend that the price at which loss corporation stock changes hands in an arms-length transaction would be evidence, but not conclusive evidence, of the value of the stock. Assume, for example, that an acquiring corporation purchased 40 percent of loss corporation stock over a 12-month period. Six months following this 40 percent acquisition, the acquiring corporation purchased an additional 20 percent of loss corporation stock at a price that reflected a premium over the stock's proportionate amount of the value of all the loss corporation stock; the premium is paid because the 20-percent block carries with it effective control of the loss corporation. Based on these facts, it would be inappropriate simply to gross-up the amount paid for the 20-percent interest to determine the value of the corporation's stock. The conferees anticipate that, under regulations, the Treasury Department will permit the loss corporation to be valued based upon a formula that grosses up the purchase price of all of the acquired loss corporation stock if a control block of such stock is acquired within a 12-month period.

Example 23.—All of the outstanding stock of L corporation is owned by individual A and has a value of $1,000. On June 15, 1988, A sells 51 percent of his stock in L to unrelated individual B. On January 1, 1989, L and A enter into a 15-year management contract and L redeems A's remaining stock interest in such corporation. The latter transactions were contemplated in connection with B's earlier acquisition of stock in 1988.

The acquisition of 51 percent of the stock of L on June 15, 1988, constituted an ownership change. The value of L for purposes of computing the section 382 limitation is the value of the stock of such corporation immediately before the ownership change. Although the value of such stock was $1,000 at that time, the value must be reduced by the value of A's stock that was subsequently redeemed in connection with the ownership change.

Long-term tax-exempt rate

The long-term tax-exempt rate is defined under the bill as the highest of the Federal long-term rates determined under section 1274(d), as adjusted to reflect differences between rates on long-term taxable and tax-exempt obligations, in effect for the month in which the change date occurs or the two prior months. The conferees intend that the Treasury Department will publish the long-term tax-exempt rate by revenue ruling within 30 days after the date of enactment and monthly thereafter. The long-term tax-exempt rate will be computed as the yield on a diversified pool of prime, general obligation tax-exempt bonds with remaining periods to maturity of more than nine years.

The use of a rate lower than the long-term Federal rate is necessary to ensure that the value of NOL carryforwards to the buying corporation is not more than their value to the loss corporation. Otherwise there would be a tax incentive for acquiring loss corporations. If the loss corporation were to sell its assets and invest in long-term Treasury obligations, it could absorb its NOL carryforwards at a rate equal to the yield on long-term government obligations. Since the price paid by the buyer is larger than the value of the loss company's assets (because of the value of NOL carryforwards are taken into account), applying the long-term Treasury rate to the purchase price would result in faster utilization of NOL carryforwards by the buying corporation. The long-term tax-exempt rate normally will fall between 66 (1 minus the corporate tax rate of 34 percent) and 100 percent of the long-term Federal rate.

Example 24.—Corporation L has $1 million of net operating loss carryforwards. L's taxable year is the calendar year, and on July 1, 1987, all of the stock of L is sold in a transaction constituting an ownership change of L. (Assume the transaction does not terminate L's taxable year.) On that date, the value of L's stock was $500,000 and the long-term tax-exempt rate was 10 percent. Finally, L incurred a net operating loss during 1987 of $100,000, and L had no built-in gains or losses.

On these facts, the taxable income of L after July 1, 1987, that could be offset by L's losses incurred prior to July 1, 1987, would generally be limited. In particular, for all taxable years after 1987, the pre-change losses of L generally could be used to offset no more than $50,000 of L's taxable income each year. (For L's 1987 taxable year, the limit would be $25,000 (½ × the $50,000 section 382 limitation)). The pre-change losses of L would constitute the $1 million of NOL carryforwards plus one-half of the 1987 net operating loss, or a total of $1,050,000. If, in taxable year 1988, L had $30,000 of taxable income to be offset by L's losses, it could be fully offset by L's pre-change NOLs and the amount of L's 1989 taxable income that could be offset by pre-change losses would be limited to $95,000 ($50,000 annual limit plus $45,000 carryover).

If L had income of $100,000 in 1987, instead of a net operating loss, L's 1987 taxable income that could be offset by pre-change losses would generally be limited to $75,000 (½ × the $50,000 section 382 limitation plus ½ × $100,000 1987 income). (In appropriate circumstances, the Secretary could, by regulations, require allocation of income using a method other than daily proration. Such circumstances might include, for example, an instance in which substantial income-producing assets are contributed to capital after the change date.)

Continuity of business enterprise requirements

Following an ownership change, a loss corporation's NOL carryforwards (including any recognized built-in losses, described below) are subject to complete disallowance (except to the extent of any recognized built-in gains or section 338 gain, described below), unless the loss corporation's business enterprise is continued at all times during the two-year period following the ownership change. If a loss corporation fails to satisfy the continuity of business enterprise requirements, no NOL carryforwards would be allowed to the new loss corporation for any post-change year. This continu-

ity of business enterprise requirement is the same requirement that must be satisfied to qualify a transaction as a tax-free reorganization under section 368. (*See* Treasury regulation section 1.368-1(d)). Under these continuity of business enterprise requirements, a loss corporation (or a successor corporation) must either continue the old loss corporation's historic business or use a significant portion of the old loss corporation's assets in a business. Thus, the requirements may be satisfied even though the old loss corporation discontinues more than a minor portion of its historic business. Changes in the location of a loss corporation's business or the loss corporation's key employees, in contrast to the results under the business-continuation rule in the 1954 Code version of section 382(a), will not constitute a failure to satisfy the continuity of business enterprise requirements under the conference agreement.

Reduction in loss corporation's value for certain capital contributions

Any capital contribution (including a section 351 transfer) that is made to a loss corporation as part of a plan a principal purpose of which is to avoid any of the special limitations under section 382 shall not be taken into account for any purpose under section 382. For purposes of this rule, except as provided in regulations, a capital contribution made during the two-year period ending on the change date is irrebuttably presumed to be part of a plan to avoid the limitations. The application of this rule will result in a reduction of a loss corporation's value for purposes of determining the section 382 limitation. The conferees intend that the regulations will generally except (i) capital contributions received on the formation of a loss corporation (not accompanied by the incorporation of assets with a net unrealized built-in loss) where an ownership change occurs within two years of incorporation, (ii) capital contributions received before the first year from which there is an NOL or excess credit carryforward (or in which a net unrealized built-in loss arose), and (iii) capital contributions made to continue basic operations of the corporation's business (*e.g.* to meet the monthly payroll or fund other operating expenses of the loss corporation). The regulations also may take into account, under appropriate circumstances, the existence of substantial nonbusiness assets on the change date (as described below) and distributions made to shareholders subsequent to capital contributions, as offsets to such contributions.

Reduction in value for corporations having substantial nonbusiness assets

If at least one-third of the fair market value of a corporation's assets consists of nonbusiness assets, the value of the loss corporation, for purposes of determining the section 382 limitation, is reduced by the excess of the value of the nonbusiness assets over the portion of the corporation's indebtedness attributable to such assets. The term nonbusiness assets includes any asset held for investment, including cash and marketable stock or securities. Assets held as an integral part of the conduct of a trade or business (*e.g.*, assets funding reserves of an insurance company or similar assets of a bank) would not be considered nonbusiness assets. In addition, stock or securities in a corporation that is at least 50 percent owned (voting power and value) by a loss corporation are not treated as nonbusiness assets. Instead, the parent loss corporation is deemed to own its ratable share of the subsidiary's assets. The portion of a corporation's indebtedness attributable to nonbusiness assets is determined on the basis of the ratio of the value of nonbusiness assets to the value of all the loss corporation's assets.

Regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits are not treated as having substantial nonbusiness assets under the conference agreement.

Losses subject to limitation

The term "pre-change loss" includes (i) for the taxable year in which an ownership change occurs, the portion of the loss corporation's NOL that is allocable (determined on a daily pro rata basis, without regard to recognized built-in gains or losses, as described below) to the period in such year before the change date, (ii) NOL carryforwards that arose in a taxable year preceding the taxable year of the ownership change and (iii) certain recognized built-in losses and deductions (described below). For any taxable year in which a corporation has income that, under section 172, may be offset by both a pre-change loss (*i.e.*, an NOL subject to limitation) and an NOL that is not subject to limitation, taxable income is treated as having been first offset by the pre-change loss. This rule minimizes the NOLs that are subject to the special limitations.

Built-in gains and losses

If a loss corporation has a net unrealized built-in loss, the recognized built-in loss for any taxable year ending within the five-year period ending at the close of the fifth post-change year (the "recognition period") is treated as a pre-change loss.

Net unrealized built-in losses.—The term "net unrealized built-in loss" is defined as the amount by which the fair market value of the loss corporation's assets immediately before the ownership change is less than the aggregate adjusted bases of a corporation's assets at that time. Under a *de minimis* exception, the special rule for built-in losses is not applied if the amount of a net unrealized built-in loss does not exceed 25 percent of the value of the corporation's assets immediately before the ownership change. For purposes of the *de minimis* exception, the value of a corporation's assets is determined by excluding any (1) cash, (2) cash items (as determined for purposes of section 368(a)(2)(F)(iv)), or (3) marketable securities that have a value that does not substantially differ from adjusted basis.

Example 25.—L corporation owns two assets: asset X, with a basis of $150 and a value of $50 (a built-in loss asset), and asset Y, with a basis of zero and a value of $50 (a built-in gain asset, described below). L has a net unrealized built-in loss of $50 (the excess of the aggregate bases of $150 over the aggregate value of $100).

Recognized built-in losses.—The term "recognized built-in loss" is defined as any loss that is recognized on the disposition of an asset during the recognition period, except to the extent that the new loss corporation establishes that (1) the asset was not held by the loss corporation immediately before the change date, or (2) the loss (or a portion of such loss) is greater than the excess of the adjusted basis of the asset on the change date over the asset's fair market value on that date. The recognized built-in loss for a taxable year cannot exceed the net unrealized built-in loss reduced by recognized built-in losses for prior taxable years ending in the recognition period.

Under the conference agreement, the amount of any recognized built-in loss that exceeds the section 382 limitation for any post-change year must be carried forward (not carried back) under rules similar to the rules applicable to net operating loss carryforwards and will be subject to the special limitations in the same manner as a pre-change loss.

Accrued deductions.—The Treasury Department is authorized to issue regulations under which amounts that accrue before the change date, but are allowable as a deduction on or after such date (*e.g.*, deductions deferred by section 267 or section 465), will be treated as built-in losses. Under the conference agreement, depreciation deductions cannot be treated as accrued deductions or built-in losses. The conference agreement, however, requires the Secretary of the Treasury to conduct a study of whether built-in depreciation deductions should be subject to section 382, and report to the tax-writing committees of the Congress before January 1, 1989.

Built-in gains

If a loss corporation has a net unrealized built in gain, the section 382 limitation for any taxable year ending within the five-year recognition period is increased by the recognized built-in gain for the taxable year.

Net unrealized built-in gains.—The term "net unrealized built-in gain" is defined as the amount by which the value of a corporation's assets exceeds the aggregate bases of such assets immediately before the ownership change. Under the *de minimis* exception described above, the special rule for built-in gains is not applied if the amount of a net unrealized built-in gain does not exceed 25 percent of the value of a loss corporation's assets.

Recognized built-in gains.—The term "recognized built-in gain" is defined as any gain recognized on the disposition of an asset during the recognition period, if the taxpayer establishes that (1) the asset was held by the loss corporation immediately before the change date, and (2) the gain does not exceed the excess of the fair market value of such asset on the change date over the adjusted basis of the asset on that date. The recognized built-in gain for a taxable year cannot exceed the net unrealized built-in gain reduced by the recognized built-in gains for prior years in the recognition period.

Bankruptcy proceedings

The special limitations do not apply after any ownership change of a loss corporation if (1) such corporation was under the jurisdiction of a bankruptcy court in a Title 11 or similar case immediately before the ownership change, and (2) the corporation's shareholders and creditors (determined immediately before the ownership change) own 50 percent of the value and voting power of the loss corporation's stock immediately after the ownership change. This special rule applies only if the stock-for-debt exchange, reorganization, or other transaction is ordered by the court or is pursuant to a plan approved by the court. For purposes of this rule, stock of a creditor that was converted from indebtedness is taken into account only if such indebtedness was held by the creditor for at least 18 months before the date the bankruptcy case was filed or arose in the ordinary course of the loss corporation's trade or business and is held by the person who has at all times held the beneficial interest in the claim. Indebtedness will be considered as having arisen in

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the ordinary course of the loss corporation's business only if the indebtedness was incurred by the loss corporation in connection with the normal, usual, or customary conduct of its business. It is not relevant for this purpose whether the debt was related to ordinary or capital expenditures of the loss corporation.

If the exception for bankruptcy proceedings applies, several special rules are applicable. First, the pre-change losses and excess credits that may be carried to a post-change year are reduced by one-half of the amount of any cancellation of indebtedness income that would have been included in the loss corporation's income as a result of any stock-for-debt exchanges that occur as part of the Title 11 or similar proceeding under the principles of section 108(e)(10) (without applying section 108(e)(10)(B)). Thus, the NOL carryforwards would be reduced by 50 percent of the excess of the amount of the indebtedness canceled over the fair market value of the stock exchanged. Second, the loss corporation's pre-change NOL carryforwards are reduced by the interest on the indebtedness that was converted to stock in the bankruptcy proceeding and paid or accrued during the period beginning on the first day of the third taxable year preceding the taxable year in which the ownership change occurs and ending on the change date. Finally, after an ownership change that qualifies for the bankruptcy exception, a second ownership change during the following two-year period will result in the elimination of NOL carryforwards that arose before the first ownership change. The special bankruptcy provisions do not apply to stock-for-debt exchanges in informal workouts, but the conference agreement directs the Secretary of the Treasury to study informal bankruptcy workouts under sections 108 and 382, and report to the tax-writing committees of the Congress before January 1, 1988.

Thrift institutions

A modified version of the bankruptcy exception (described above) applies to certain ownership changes of a thrift institution involved in a G reorganization by virtue of section 368(a)(3)(D)(ii). This rule also applies to ownership changes resulting from an issuance of stock or equity structure shift that is an integral part of a transaction involving such a reorganization, provided that the transaction would not have resulted in limitations under present law.[8a] The bankruptcy exception is applied to qualified thrift reorganizations by requiring shareholders and creditors (including depositors) to retain a 20-percent (rather than 50-percent) interest. For this purpose, the deposits of the troubled thrift that become deposits in the acquiring corporation are treated as stock, as under present law. The general bankruptcy rules that eliminate from the NOL carryforwards both interest deductions on debt that was converted and income that would be recognized under the principles of section 108(e)(10) are not applicable to thrifts.

*ERR13**ERR13*Transactions involving solvent thrifts, including a purchase of the stock of a thrift, or merger of a thrift into another corporation, will be subject to the general rules relating to ownership changes. The conversion of a solvent mutual savings and loan association into a stock savings and loan (or other transactions involving a savings and loan not entitled to special treatment), although not within the special rules applicable to troubled thrifts, will not necessarily constitute an ownership change under the conference agreement. In such a conversion, the mutual thrift converts to stock form as a preliminary step to the issuance of stock to investors for purposes of raising capital. Under existing IRS rulings, the entire transaction may qualify as a tax-free reorganization if certain conditions are met. For purposes of determining whether there has been an ownership change causing a limitation on the use of losses under the conference agreement, the issuance of stock generally will be treated under the rules applicable to owner shifts. For example, the depositors holding liquidation accounts would generally be considered a group of less-than-5-percent shareholders, and if the stock were issued entirely to less-than-5-percent shareholders, or 5-percent shareholders acquired less than 50 percent, no ownership change would occur. Treasury regulations may be issued, on a prospective basis, that would treat public offerings generally in the same manner as equity structure shifts and treat the old shareholders and the persons acquiring stock in the offering as separate 5-percent shareholder groups. If such regulations are issued and apply this same approach to the conversion of a solvent mutual savings and loan association to stock form and the issuance of new stock, an ownership change could result, however, if the value of the stock issued in the public offering exceeds the equity of the depositors in the mutual represented by liquidation accounts. The application of any such regulations to thrift institutions (whether solvent or insolvent) would not be effective before January 1, 1989.

Carryforwards other than NOLs

The conference agreement also amends section 383, relating to special limitations on unused business credits and research credits, excess foreign tax credits, and capital loss carryforwards. Under regulations to be prescribed by the Secretary, capital loss carryforwards will be limited to an amount determined on the basis of the tax liability that is attributable to so much of the taxable income as does not exceed the section 382 limitation for the taxable year, with the same ordering rules that apply under present law. Thus, any capital loss carryforward used in a post-change year will reduce the section 382 limitation that is applied to pre-change losses. In addition, the amount of any excess credit that may be used following an ownership change will be limited, under regulations, on the basis of the tax liability attributable to an amount of taxable income that does not exceed the applicable section 382 limitation, after any NOL carryforwards, capital loss carryforwards, or foreign tax credits are taken into account. The conference agreement also expands the scope of section 383 to include passive activity losses and credits and minimum tax credits.

Anti-abuse rules

The conference agreement does not alter the continuing application of section 269, relating to acquisitions made to evade or avoid taxes, as under present law. Similarly, the SRLY and CRCO principles under the regulations governing the filing of consolidated returns will continue to apply. The conferees intend, however, that the *Libson Shops* doctrine will have no application to transactions subject to the provisions of the conference agreement.

The conference agreement provides that the Treasury Department shall prescribe regulations preventing the avoidance of the purposes of section 382 through the use of, among other things, pass-through entities. For example, a special allocation of income to a loss partner should not be permitted to result in a greater utilization of losses than would occur if the principles of section 382 were applicable.

In the case of partnerships, for example, the conferees expect the regulations to limit the tax benefits that may be derived from transactions in which allocations of partnership income are made to a loss partner or to a corporation that is a member of a consolidated group with NOL carryovers (a "loss corporation partner") under an arrangement that contemplates the diversion of any more than an insignificant portion of the economic benefit corresponding to such allocation (or any portion of the economic benefit of the loss corporation partner's NOL) to a higher tax bracket partner.

This grant of authority contemplates any rules that the Treasury Department considers appropriate to achieve this objective. For example, regulations may provide, as a general rule, that the limitations of section 382 (and section 383) should be made applicable to restrict a loss corporation partner's use of losses against its distributive share of each item of partnership income and that any portion of the distributive share of partnership income so allocated which may not be offset by the loss corporation's NOLs should be taxed at the highest marginal tax rate. Such regulations could also provide that the allocation of income to the loss corporation may, in the discretion of the Secretary, be reallocated to the extent that other partners in the partnership have not been reasonably compensated for their services to the partnership. If the Treasury Department uses such a format to restrict the utilization of NOLs, the conferees believe it may be appropriate to exempt from these rules any partnership with respect to which, throughout the term of the partnership, (i) every allocation to every partner would be a qualified allocation as described in section 168(j)(9)(B) if it were made to a tax-exempt entity, with appropriate exceptions (e.g., section 704(c) allocations) and (ii) distributions are made to one partner only if there is a simultaneous pro rata distribution to all partners at the same time. Special rules would, of course, have to be provided to apply section 382 (and section 383) in this context.

The conferees do not intend any inference to be drawn whether allocations made to loss corporations by partnerships that involve transfers of the economic benefit of a loss partner's loss to another partner have substantial economic effect. As described in the report of the Committee on Finance, there are circumstances in which it appears to be questionable whether the economic benefit that corresponds to a special allocation to the NOL partner is fully received by such partner; however, some taxpayers nevertheless take the position that such allocations have substantial economic effect under section 704(b). The conferees expect the Treasury Department to review this situation.

The conferees expect that regulations issued under this grant of authority with respect to partnerships should be effective for

[8a] For example, a supervisory conversion of a mutual thrift into a stock thrift qualifying under section 368(a)(3)(D)(ii), followed by an issuance of stock for cash, would come within this special rule. The issuance of stock would not be regarded as a second ownership change for purposes of the bankruptcy exception.

transactions after the date of enactment. The conferees expect that any regulations addressing other situations, under the Treasury Department's general authority to limit the ability of other parties to obtain any portion of the benefit of a loss corporation's losses, may be prospective within the general discretion of the Secretary.

1976 Act amendments

The conference agreement generally repeals the amendments to section 382 and 383 made by the Tax Reform Act of 1976, effective retroactively as of January 1, 1986. Thus, the law that was in effect as of December 31, 1985, applies to transactions that are not subject to the new provisions because of the effective dates of the conference agreement. The conference agreement, by repealing the 1976 Act amendments, also retroactively repeals section 108(e)(10)(C), as included by the Tax Reform Act of 1984.

Effective dates

The provisions of the conference agreement generally apply to ownership changes that occur on or after January 1, 1987. In the case of equity structure shifts, the new rules apply to reorganizations pursuant to plans adopted on or after January 1, 1987. For purposes of these rules, if there is an ownership change with respect to a subsidiary corporation as the result of the acquisition of the parent corporation, the subsidiary's treatment is governed by the nature of the parent-level transaction. For example, if a parent corporation is acquired in a tax-free reorganization pursuant to a plan adopted before January 1, 1987, then the resulting indirect ownership change with respect to a subsidiary loss corporation will be treated as having occurred by reason of a reorganization pursuant to a plan adopted before January 1, 1987.

A reorganization plan will be considered adopted on the date that the boards of directors of all parties to the reorganization adopt the plans or recommend adoption to the shareholders, or on the date the shareholders approve, whichever is earlier. The parties' boards of directors may approve a plan of reorganization based on principles, and negotiations to date, and delegate to corporate officials the power to refine and execute a binding reorganization agreement, including a binding agreement subject to regulatory approval. Any subsequent board approval or ratification taken at the time of consummating the transaction as a formality (*i.e.*, that is not required, because the reorganization agreement is already legally binding under prior board approval) may occur without affecting the application of the effective date rule for reorganizations. In the case of a reorganization that occurs as part of a Title 11 or other court-supervised proceeding, the amendments do not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986.

The earliest testing period under the conference agreement begins on May 6, 1986 (the date of Senate Finance Committee action). If an ownership change occurs after May 5, 1986, but before January 1, 1987, and section 382 and 383 (as amended by the conference agreement) do not apply, then the earliest testing date will not begin before the first day immediately after such ownership change. For example, assume 60 percent of a loss corporation's stock (wholly owned by X) is purchased by B on May 29, 1986, and section 382 under the 1954 Code does not apply (because, for example, the loss corporation's business is continued and section 269 is not implicated). Assume further that X's remaining 40 percent stock interest is acquired by B on February 1, 1987. Under the conference agreement, no ownership change occurs after the second purchase because the testing period begins on May 30, 1986, the day immediately after the ownership change; thus, an ownership change would not result from the second purchase. Conversely, if 40 percent of a loss corporation's stock (wholly owned by X) is purchased by D on July 1, 1986, and an additional 15 percent is purchased by P on January 15, 1987, then an ownership change would result from the second purchase, and the amendments would apply to limit the use of the loss corporation's NOL carryforwards. Moreover, if an ownership change that occurs after December 31, 1986 is not affected by the amendments to section 382 (because, for example, in the foregoing example the initial 40 percent stock purchase occurred on May 5, 1986, prior to the commencement of the testing period), the 1954 Code version of section 382 will remain applicable to the transaction.

Special transitional rules are provided under which present law continues to apply to certain ownership changes after January 1, 1987.

I. Net Operating Loss (NOL) Carrybacks—Tax Rate Limitation

Present Law

A net operating loss may be carried back (generally, to each of the three years preceding the taxable year of the loss) without regard to any differences between the tax rates in effect in the year in which the loss arose and the rates in effect in the year to which the loss is carried back.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, a net operating loss of a corporation may reduce such corporation's income tax liability for a carryback year only up to an amount equal to the product of (1) the amount of the carryback and (2) the highest regular corporate tax rate in effect in the taxable year in which the loss arose. However, the number used as such highest rate of tax is to be adjusted under regulations to result in aggregate revenues during fiscal years 1987 through 1991 not exceeding $200 million. The provision is effective for net operating losses for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement does not adopt the Senate amendment.

J. Recognition of Gain or Loss on Liquidating Sales and Distributions of Property (*General Utilities*)

Present Law

In general, a corporation recognizes no gain or loss on a distribution of its assets to shareholders in liquidation or, if certain conditions are met, on a liquidating sale of its assets (secs. 336 and 337). Partial recognition of gain may be required, however, under statutory or judicial rules such as the depreciation recapture provisions and the tax benefit doctrine. The statutory provision providing for nonrecognition in these circumstances is sometimes referred to as the *General Utilities* rule, after a Supreme Court case[8b] said to be codified in the provision.

Nonrecognition is also available in certain "deemed" liquidating sale transactions following a purchase of a controlling interest in one corporation by another corporation (sec. 338).

Gain (but not loss) is generally recognized by a corporation on a nonliquidating distribution of property with respect to its stock (e.g., a dividend or a redemption). The gain recognized is generally the excess of the fair market value of the property over its basis in the hands of the distributing corporation. A corporation may be entitled to nonrecognition on a nonliquidating distribution if it relates to "qualified stock." In general, qualified stock is stock held by a long-term noncorporate shareholder owning ten percent or more of the corporation's outstanding stock.

House Bill

In general

Under the House bill, gain or loss is recognized by a corporation on a liquidating distribution of its assets, as if the corporation had sold the assets to the distributee at fair market value, and on liquidating sales. In addition, the treatment of nonliquidating distribution is generally conformed to the treatment of liquidating distributions.

Exceptions to requirement of recognition

The House bill provides exceptions from the general rule for the following distributions and sales in liquidation:

(1) distributions to a controlling corporate shareholder in a liquidation qualifying under section 332 in which the basis of the property in the hands of the shareholder is determined under section 334(b)(1) (but only to the extent of the controlling corporation's pro rata share of gain or loss on each asset);

(2) certain distributions in connection with tax-free reorganizations;

(3) certain distributions with respect to stock held by noncorporate, long-term shareholders holding ten percent or more of the distributing corporation's stock (under rules similar to the qualified stock exception applicable to nonliquidating distributions under present law); and

(4) certain liquidating sales of property, and sales of stock treated as asset sales under section 338, to the extent nonrecognition would be available if the property had been distributed in liquidation.

The recapture provisions and other statutory and judicial exceptions to nonrecognition continue to apply to these excepted transactions to the same extent as under present law. In addition, gain on ordinary income property and short-term capital gain property is subject to tax under the third and fourth exceptions.

S corporations

The House bill provides a special rule for S corporations designed to prevent avoidance of the provisions through a conversion of a C corporation to S corporation status. If an S corporation that was formerly a C corporation is liquidated before the close of the second taxable year following the year in which the election took effect, the S election is terminated retroactively.

[8b] *General Utilities & Operating Company* v. *Helvering*, 296 U.S. 200 (1935).

Nonliquidating distributions

In general, present law rules continue to apply to nonliquidating distributions, except that the rules relating to the definition of qualified stock for purposes of the exception under present law are conformed to the rules for the definition qualified stock for liquidating distributions provided by the bill.

Effective date

The provisions apply to distributions and sales and exchanges occurring on or after November 20, 1985. Under transitional rules, distributions and sales made pursuant to a plan of liquidation adopted before that date are not affected. Special rules apply in determining whether a plan was adopted before November 20, 1985, including rules for certain stock sales underway before that date.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill, with certain modifications and clarifications, thus repealing the *General Utilities* doctrine.

Thus, gain or loss is generally recognized by a corporation on a liquidating sale of its assets. Gain or loss is also generally recognized on a liquidating distribution of assets as if the corporation had sold the assets to the distributee at fair market value. Neither gain nor loss is recognized, however, with respect to any distribution of property by a corporation to the extent there is nonrecognition of gain or loss to the recipient under the tax-free reorganization provisions of the Code (part III of subchapter C).

Limitations on the recognition of losses

The conferees are concerned that taxpayers may utilize various means to avoid the repeal of the *General Utilities* doctrine, or otherwise take advantage of the new provisions, to recognize losses in inappropriate situations or inflate the amount of losses actually sustained. For example, under the general rule permitting recognition of losses on liquidating distributions, taxpayers may be able to create artificial losses at the corporate level or to duplicate shareholder losses in corporate solution through contribution of built-in loss property. Consequently, the conference agreement includes two provisions intended to prevent the recognition of such corporate level losses.

First, the conference agreement provides generally that no loss is recognized by a liquidating corporation with respect to any distribution of property to a related person (within the meaning of section 267), unless the property is distributed to all shareholders on a pro rata basis *and* the property was not acquired by the liquidating corporation in a section 351 transaction or as a contribution to capital during the five years preceding the distribution. Thus, for example, a liquidating corporation would not be permitted to recognize loss on a distribution of recently acquired property to a shareholder who, directly or indirectly, owns more than 50 percent in value of the stock of the corporation. Similarly, a liquidating corporation would not be permitted to recognize a loss on any property (regardless of when or how acquired) that is distributed to such a shareholder on a non-pro rata basis.

Second, the conference agreement generally provides that if a principal purpose of the contribution of property to a corporation in advance of its liquidation is to recognize a loss upon the sale or distribution of the property and thus eliminate or otherwise limit corporate level gain, then the basis (for purposes of determining loss) of any property acquired by such corporation in a section 351 transaction or as a contribution to capital will be reduced, but not below zero, by the excess of the basis of the property on the date of contribution over its fair market value on such date. For purposes of this rule, it is presumed, except to the extent provided in regulations, that any section 351 transaction or contribution to capital within the two-year period prior to the adoption of a plan to complete liquidation (or thereafter) has such a principal purpose. Although a contribution more than two years before the adoption of a plan of liquidation might be made with a prohibited purpose, the conferees expect that those rules will apply only in the most rare and unusual cases under such circumstances.

If the adoption of a plan of complete liquidation occurs in a taxable year following the date on which the tax return including the loss disallowed by this provision is filed, the conferees intend that, in appropriate cases, the liquidating corporation may recapture the disallowed loss on the tax return for the taxable year in which such plan of liquidation is adopted. In the alternative, the corporation could file an amended return for the taxable year in which the loss was reported.

The conferees intend that the Treasury Department will issue regulations generally providing that the presumed prohibited purpose for contributions of property two years in advance of the adoption of a plan of liquidation will be disregarded *unless* there is no clear and substantial relationship between the contributed property and the conduct of the corporation's current or future business enterprises. For example, assume that A owns Z Corporation which operates a widget business in New Jersey. That business operates exclusively in the northeastern region of the United States and there are no plans to expand those operations. In his individual capacity, A had acquired unimproved real estate in New Mexico that has declined in value. On March 22, 1988, A contributes such real estate to Z and six months later a plan of complete liquidation is adopted. Thereafter, all of Z's assets are sold to an unrelated party and the liquidation proceeds are distributed. A contributed no other property to Z during the two-year period prior to the adoption of the plan of liquidation. Because A contributed the property to Z less than two years prior to the adoption of the plan of liquidation, it is presumed to have been contributed with a prohibited purpose. Moreover, because there is no clear and substantial relationship between the contributed property and the conduct of Z's business, the conferees do not expect that any loss arising from the disposition of the New Mexico real estate would be allowed under the Treasury regulations.

As another example, the conferees expect that such regulations would permit the allowance of any resulting loss from the disposition of any of the assets of a trade or business (or a line of business) that are contributed to a corporation. In such circumstance, application of the loss disallowance rule is inappropriate assuming there is a meaningful relationship between the contribution and the utilization of the corporate form to conduct a business enterprise, *i.e.*, the contributed business, as distinguished from a portion of its assets, is not disposed of immediately after the contribution. The conferees also anticipate that the basis adjustment rules will generally not apply to a corporation's acquisition of property during its first two years of existence.

To illustrate the mechanical aspects of the basis adjustment rules, assume that on June 1, 1987, a shareholder who owns a 10-percent interest in X corporation ("X") contributes nondepreciable property with a basis of $1,000 and a value of $100 to X in exchange for additional stock; X is a calendar year taxpayer. Assume further that on September 30, 1987, X sells the property to an unrelated third party for $200, and includes the resulting $800 loss on its 1987 tax return. Finally, assume that X adopts a plan of liquidation on December 31, 1988. Thereafter, X could file an amended return reflecting the fact that the $800 loss was disallowed, because the property's basis would be reduced to $200. Alternatively, the conferees intend that X, under regulations, may be permitted to recapture the loss on its 1988 tax return. The amount of loss recapture in such circumstances would be limited to the lesser of the built-in loss ($900, or $1,000, the transferred basis under section 362, less $100, the value of the property on that date it was contributed to X) or the loss actually recognized on the disposition of such property ($800, or the $1,000 transferred basis less the $200 amount realized). Thus, unless X files an amended return, X must recapture $800 on its return for its taxable year ending December 31, 1988.

Section 332 liquidations [9]

The conference agreement provides an exception for liquidating transfers within an affiliated group because the property (together with the other attributes of the liquidated subsidiary) is retained within the economic unit of the affiliated group. Because such an intercorporate transfer within the group is a nonrecognition event, carryover basis follows. As a result of the carryover basis, the corporate level tax will be paid if the distributed property is disposed of by the recipient corporation to a person outside of the group.

The conference agreement modifies the exception for section 332 liquidations in which an 80-percent corporate shareholder receives property with a carryover basis, to provide for nonrecognition of gain or loss with respect to any property actually distributed to the controlling corporate shareholder (rather than a pro rata share of each gain or loss). If a minority shareholder receives property in such a liquidation, the distribution is treated in the same manner as a distribution in a nonliquidating redemption. Accordingly, gain (but not loss) is recognized to the distributing corporation.

The conference agreement denies nonrecognition under the exception for 80-percent corporate shareholders where the shareholder is a tax-exempt organization, unless the property received in the distribution is used by the organization in an unrelated trade or business immediately after the distribution. If such property later ceases to be used in an unrelated trade or business of the organization acquiring the property, the organization will be taxed at that time (in addition to any other tax imposed, for example, on depreciation recapture under section 1245) on the lesser of (a) the built-in

[9] The conferees anticipate that, in a consolidated context, the Treasury Department will consider whether aggregation of ownership rules similar to those in sec. 1.1502-34 of the regulations should be provided for purposes of determining status as an 80-percent distributee.

gain in the property at the time of the distribution, or (b) the difference between the adjusted basis of the property and its fair market value at the time of the cessation.

The conference agreement, in an amendment to section 367 of the Code, also denies nonrecognition under the section 332 carryover basis exception where the controlling corporate shareholder is a foreign corporation, except as provided in regulations. The conferees expect that regulations may permit nonrecognition if the appreciation on the distributed property is not being removed from the U.S. taxing jurisdiction prior to recognition.

Nonliquidating distributions of appreciated property

In general, the tax treatment of corporations with respect to nonliquidating distributions of appreciated property has historically been the same as liquidating distributions. In recent years, however, nonliquidating distributions have been made subject to stricter rules than liquidating distributions, and corporations have generally been required to recognize gain as a result of nonliquidating distributions of appreciated property. Consistent with this relationship, the conference agreement generally conforms the treatment of nonliquidating distributions with liquidating distributions. Accordingly, the conference agreement provides that gain must generally be recognized to a distributing corporation if appreciated property (other than an obligation of the corporation) is distributed to shareholders outside of complete liquidation.

The present law exceptions to recognition that are provided for nonliquidating distributions to ten percent, long-term noncorporate shareholders, and for certain distributions of property in connection with the payment of estate taxes or in connection with certain redemptions of private foundation stock, are repealed. As under current law, no loss is recognized to a distributing corporation on a nonliquidating distribution of property to its shareholders.

Conversion from C corporation to S corporation status

The conference agreement modifies the treatment of an S corporation that was formerly a C corporation. A corporate-level tax is imposed on any gain that arose prior to the conversion ("built-in" gain) and is recognized by the S corporation, through sale or distribution, within ten years after the date on which the S election took effect. The total amount of gain that must be recognized by the corporation, however, will be limited to the aggregate net built-in gain of the corporation at the time of conversion to S corporation status. Gains on sales or distributions of assets by the S corporation will be presumed to be built-in gains, except to the extent the taxpayer can establish that the appreciation accrued after the conversion, such as where the asset was acquired by the corporation in a taxable acquisition after the conversion. Built-in gains will be taxed at the maximum corporate rate applicable to the particular type of income (i.e., the maximum rate on ordinary income under section 11 or, if applicable, the alternative rate on capital gain income under section 1201) for the year in which the disposition occurs. The corporation will be allowed to continue to take into account all of its subchapter C tax attributes in computing the amount of the tax on recognized built-in gains, permitting it, for example, to use unexpired net operating losses, capital loss carryovers and minimum tax carryover credits to offset such tax. These provisions will generally be effective with respect to S elections made after December 31, 1986. For S elections made before January 1, 1987, the amendments made by the conference agreement do not apply. Thus, for example, the prior version of section 1374 will apply to such corporations.

Election to treat sales or distributions of certain subsidiary stock as asset transfers

The conference agreement generally conforms the treatment of liquidating sales and distributions of subsidiary stock to the present law treatment of nonliquidating sales or distributions of such stock; thus, such liquidating sales or distributions are generally taxable at the corporate level. The conferees believe it is appropriate to conform the treatment of liquidating and nonliquidating sales or distributions and to require recognition when appreciated property, including stock of a subsidiary, is transferred to a corporate or an individual recipient outside the economic unit of the selling or distributing affiliated group.

Section 338(h)(10) of present law, in certain circumstances, permits a corporate purchaser and a seller of an 80-percent-controlled subsidiary to elect to treat the sale of the subsidiary stock as if it had been a sale of the underlying assets. Among the requirements for the filing of an election under section 338(h)(10) are that the selling corporation and its target subsidiary are members of an affiliated group filing a consolidated return for the taxable year that includes the acquisition date. If an election is made, the underlying assets of the company that was sold receive a stepped-up, fair market value basis; the selling consolidated group recognizes the gain or loss attributable to the assets; and there is no separate tax on the seller's gain attributable to the stock. This provision offers taxpayers relief from a potential multiple taxation at the corporate level of the same economic gain, which may result when a transfer of appreciated corporate stock is taxed without providing a corresponding step-up in basis of the assets of the corporation. The conference agreement, following the House bill, retains this provision.

In addition, the conference agreement permits the expansion of the section 338(h)(10) concept, to the extent provided in regulations, to situations in which the selling corporation owns 80 percent of the value and voting power of the subsidiary, but does not file a consolidated return. Moreover, the conference agreement provides that, under regulations, principles similar to those of section 338(h)(10) may be applied to taxable sales or distributions of controlled corporation stock. The conferees intend that the regulations under this elective procedure will account for appropriate principles that underlie the liquidation-reincorporation doctrine. For example, to the extent that regulations make available an election to treat a stock transfer of controlled corporation stock to persons related to such corporation within the meaning of section 368(c)(2), it may be appropriate to provide special rules for such corporation's section 381(c) tax attributes so that net operating losses may not be used to offset liquidation gains, earnings and profits may not be manipulated, or accounting methods may not be changed.

The conferees do not intend this election to affect the manner in which a corporation's distribution to its shareholders will be characterized for purposes of determining the shareholder level income tax consequences.

Regulatory authority to prevent the circumvention of General Utilities repeal

The repeal of the *General Utilities* doctrine is designed to require the corporate level recognition of gain on a corporation's sale or distribution of appreciated property, irrespective of whether it occurs in a liquidating or nonliquidating context. The conferees expect the Secretary to issue, or to amend, regulations to ensure that the purpose of the new provisions is not circumvented through the use of any other provision, including the consolidated return regulations or the tax-free reorganization provisions of the Code (part III of Subchapter C).

Effective dates

The repeal of the *General Utilities* doctrine is generally effective for liquidating sales and distributions after July 31, 1986. The conference agreement generally preserves all transitional rules provided in the House bill. Thus, transactions for which the requisite action had occurred prior to November 20, 1985, under the special rules and definitions provided in the House bill and the Report of the Committee on Ways and Means will generally continue to be grandfathered. However, in order to qualify under those transitional rules, all the liquidating sales or distributions, (instead of at least one such sale or distribution) must be completed before January 1, 1988. The agreement provides two additional transitional rules, one of general application and one applicable only to certain closely held corporations.

General transitional rules

In addition to the rule discussed above, the new provisions do not apply to the following transactions:

(1) a liquidation completed before January 1, 1987;

(2) a deemed liquidation pursuant to a section 338 election where the acquisition date (the first date on which there is a qualified stock purchase under section 338) occurs before January 1, 1987;

(3) a liquidation pursuant to a plan of liquidation adopted before August 1, 1986, that is completed before January 1, 1988;

(4) a liquidation of a corporation if a majority of the voting stock of the corporation is acquired on or after August 1, 1986, pursuant to a written binding contract in effect before August 1, 1986, and if the liquidation is completed before January 1, 1988;

(5) a liquidation of a corporation if there was a binding written contract or contracts to acquire substantially all the assets of the corporation in effect before August 1, 1986, and the liquidation is completed before January 1, 1988; and

(6) a deemed liquidation, under section 338, of a corporation for which a qualified stock purchase under section 338 first occurs on or after August 1, 1986, pursuant to a written binding contract in effect before August 1, 1986, provided the section 338 acquisition date occurs before January 1, 1988.

A plan of liquidation is adopted if the plan has been approved by the shareholders. (See Treas. Reg. sec. 1.337-2(b)). If a plan of liquidation would have been considered adopted for purposes of commencing the present-law 12-month period under section 337, it will be deemed adopted for this purpose.

Athough the special additional definitions of the term "adoption of a plan" provided in the House bill and Report of the Committee on Ways and Means continue to apply for purposes of determining whether the requisite action was taken prior to November 20, 1985, such special rules do not apply for purposes of determining whether a plan of liquidation is adopted before August 1, 1986.

For purposes of determining whether there was a binding written contract or contracts to sell substantially all the assets of a corporation before August 1, 1986, the term "substantially all the assets" shall generally mean 70 percent of the gross fair market value and 90 percent of the net fair market value of the assets. In addition, even though the contract or contracts cover a lesser amount of assets, if such contract or contracts would require shareholder approval under the applicable state law that may require such approval for a sale of substantially all of such corporation's assets, then they shall qualify as contracts to sell substantially all the assets and shall be considered binding even though shareholder approval has not yet been obtained.

An acquisition of stock or assets will be considered made pursuant to a binding written contract even though the contract is subject to normal commercial due diligence or similar provisions and the final terms of the actual acquisition may vary pursuant to such provisions.

For purposes of these rules, a liquidation is completed by a required date if it would be considered completed for purposes of section 337 of present law by that date. For example, there may be a distribution of assets to a qualified liquidating trust (*See, e.g.,* Rev. Rul. 80-150, 1980-1 C.B. 316).

Certain closely held corporations

The conference agreement deletes the House bill exception for distributions to certain long-term noncorporate shareholders. The conference agreement provides an additional transitional rule for certain closely held corporations. Corporations eligible for this rule are generally entitled to present law treatment with respect to liquidating sales and distributions occurring before January 1, 1989, provided the liquidation is completed before that date. A liquidation will be treated as completed under the same standard that is applied under the general transitional rules. However, this special transitional rule requires the recognition of income on distributions of ordinary income property (appreciated property that would not produce capital gain if disposed of in a taxable transaction) and short-term capital gain property. Thus, the failure of an eligible closely held corporation to complete its liquidation by December 31, 1986, or otherwise to satisfy the general transitional rules, will result in the loss of nonrecognition treatment for the distribution of appreciated ordinary income and short-term capital gain property. Corporations eligible for this rule may also make an S election prior to January 1, 1989, without becoming subject to the special S corporation rules of the conference agreement. Such eligible, electing corporations, however, will be subject to the 1954 Code version of section 1374.

A corporation is eligible for this rule if its value does not exceed $10 million and more than 50 percent of its stock is owned by 10 or fewer individuals who have held their stock for five years or longer. Full relief is available under this rule only if the corporation's value does not exceed $5 million; relief is phased out for corporations with values between $5 million and $10 million. For purposes of this rule, a corporation's value will be the higher of the value on August 1, 1986, and its value as of the date of adoption of a plan of liquidation (or, in the case of a nonliquidating distribution, the date of such distribution), and aggregation rules similar to those in section 1563 apply, except that control is defined as 50 percent rather than 80 percent.

In the case of nonliquidating distributions, apart from changes in the case of ordinary income property and short-term capital gain property, present law is otherwise retained for distributions to qualified, long-term individual shareholders (but only during the transitional period) for corporations qualifying under the closely held corporation transitional rule.

Treasury study of subchapter C

The conference agreement directs the Treasury Department to consider whether changes to the provisions of subchapter C (relating to the income taxation of corporations and their shareholders) and related sections of the Code are desirable, and to report to the tax-writing committees no later than January 1, 1988.

K. Allocation of Purchase Price in Certain Sales of Assets

Present Law

When a going business is sold for a lump-sum amount, the buyer and seller must each allocate the purchase price among the assets for tax purposes.

Under one method of allocating purchase price to nondepreciable goodwill and going concern value, the value of such assets is determined as the excess of the purchase price over the aggregate fair market value of the tangible assets and the identifiable other intangible assets. This is the so-called "residual" method of allocation. Another method attempts to determine the value of goodwill and going concern value under a formula approach that capitalizes the apparent "excess" earning capacity of the business.

In some cases a taxpayer who has purchased a going business at a premium (that is, a price that it has determined exceeds the apparent aggregate fair market values of the tangible and intangible assets, including goodwill and going concern value) might take the position that it is entitled to allocate an amount in excess of fair market value to the basis of each of the individual assets. Relying on one interpretation of the judicial and administrative authorities, the taxpayer would separately value each of the acquired assets (including goodwill and going concern value) and allocate the premium among all the assets (other than cash and cash equivalents) in proportion to their relative fair market values in a so-called "second-tier allocation."

Proposed and temporary regulations recently issued by the Treasury Department under section 338 mandate a residual method of allocation (and prohibit a second-tier allocation) in determining the basis of assets acquired in a qualified stock purchase for which a section 338 election is made or is deemed to have been made, i.e., a stock purchase which is treated as a purchase of assets for tax purposes. These rules do not by their terms apply to actual asset acquisitions.

House Bill

No provision.

Senate Amendment

The Senate amendment requires both the buyer and seller to use the residual method in actual asset acquisitions, and thus conforms the rules for such acquisitions with the rules for deemed asset acquisitions as provided in the Treasury regulations.

The amendment also authorizes the Treasury Department to require information reporting regarding allocations by the parties to such asset acquisitions.

The provision is effective for transactions completed after May 6, 1986, unless pursuant to a binding contract in effect on that date and at all times thereafter.

Conference Agreement

The conference agreement follows the Senate amendment.

L. Related Party Sales

Present Law

Installment sale treatment is not available for gain on a sale of property to a related party if the property is depreciable in the hands of the transferee, unless it is established to the satisfaction of the Internal Revenue Service that tax avoidance was not a principal purpose of the sale. Gain on sales of depreciable property between related parties is treated as ordinary income. In the case of certain related party partnership transactions, ordinary income treatment is also required if the property is not a capital asset in the hands of the transferee.

Related parties for these purposes include a person and all entities which are 80 percent owned, directly or indirectly, with respect to that person. Specified attribution rules apply.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the definition of the related parties to which the present law rules apply. Under the amendment, related parties include a person and all entities more than 50-percent owned, directly or indirectly, by that person. Related parties also include entities more than 50-percent owned, directly or indirectly, by the same persons. The attribution and relationship rules are generally based on present law rules that apply to limit losses on sales between related parties. For example, there is attribution between parents and children.

The provision applies to sales after June 20, 1986, unless made pursuant to a binding contract in effect on that date.

Conference Agreement

The conference agreement generally follows the Senate amendment, with certain modifications. The definition of related parties is further expanded to cover other relationships that are covered under present law for purposes of disallowing losses on related party sales. In addition, in some types of sales, the conference agreement requires ratable basis recovery by the seller and conformity between buyer and seller regarding recognition of income and basis.

M. Amortizable Bond Premium

Present Law

An amortizable bond premium exists where a taxpayer buys a bond for more than face value. The amount of that excess is allowed as a deduction over the remaining term of the bond, generally offsetting interest income on the bond.

House Bill

No provision.

Senate Amendment

The amortizable bond premium deduction is treated as interest, except as otherwise provided by regulations. Thus, for example,

bond premium is treated as interest for purposes of applying the investment interest limitations.

The provision is effective for obligations acquired after date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

N. Cooperative Housing Corporations

Present Law

A tenant-stockholder in a cooperative housing corporation generally is entitled to deduct his or her "proportionate share" of the cooperative's expenses for interest and taxes (sec. 216(a)). Tenant-stockholders generally are limited to individuals (sec. 216(b)).

The tenant-stockholder's proportionate share of the cooperative's interest and taxes is that portion of such items that bears the same ratio to the cooperative's total interest and taxes that the portion of the cooperative's stock held by the tenant-stockholder bears to the total outstanding stock of the cooperative (sec. 216(b)(3)).

House Bill

The House bill provides that cooperative housing corporations that charge tenant-stockholders with a portion of the cooperative's interest and taxes in a manner that reasonably reflects the cost to the cooperative of the interest and taxes allocable to each tenant stockholder's dwelling unit, may elect to have such tenant-stockholders deduct the separately allocated amounts.

The provisions of the House bill are effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment provides that corporations, trusts and other taxpayers besides individuals may be treated as tenant-stockholders in cooperative housing corporations. In addition, maintenance and lease expenses are disallowed where payments by tenant-stockholders are allocable to amounts properly chargeable to the capital account of the cooperative.

The provisions of the Senate amendment are effective for taxable years beginning after December 31, 1986. Special rules are provided for two limited profit cooperatives.

Conference Agreement

The conference agreement includes the provisions of both the House bill and the Senate amendment. The conference agreement makes certain technical amendments to the provisions contained in the House bill, however, whereby separately allocated amounts of interest *or* taxes are deductible by a tenant-stockholder if the amount of such interest or taxes so allocated reasonably reflects the cost to the cooperative of the interest or taxes, as the case may be, allocable to the tenant-stockholder's dwelling unit, whether or not this condition is met with respect to *both* interest and taxes of the cooperative.

The conference agreement is effective for taxable years beginning after December 31, 1986. The conference agreement includes the special provisions contained in the Senate amendment for two limited profit cooperatives.

O. Real Estate Investment Trusts

Present Law

General requirements

An entity that qualifies as a real estate investment trust ("REIT") is subject to a corporate tax but is allowed a deduction for dividends paid to shareholders. In general, to qualify as a REIT, an entity (1) must be taxable as a domestic corporation, (2) must have at least 100 shareholders, (3) must not have 50 percent or more of its stock held by five or fewer individuals, (4) must distribute most of its income currently, (5) must hold a minimum percentage of its assets in real estate related and other passive assets, and (6) must derive minimum percentages of its income from such assets (secs. 856, 857). A REIT is required to be a calendar year taxpayer unless it was in existence as a REIT for any taxable year beginning prior to October 4, 1976 (sec. 859).

Asset and income requirements

In general, in order to meet the asset requirements, at least 75 percent of the value of the REIT's assets at the close of each quarter of the taxable year, must be represented by real estate assets, cash and cash items, and Government securities (sec. 856(c)).

In general, in order to meet the income requirements, at least 75 percent of the REIT's gross income for the taxable year must be derived from rents on real property, interest on obligations secured by real property, gain from the sale of interests in real property (other than property held for sale in the ordinary course of a trade or business), dividends from a REIT, refunds of property taxes, and certain other limited sources. In addition, at least 95 percent of the REIT's gross income must be derived from these sources and interest, dividends, or gains from the sale of securities (sec. 856(c)).

In addition, less than 30 percent of the gross income of the REIT must be derived from the sale or other disposition of property held for less than certain specified periods.

Definition of rents

Rents from real property include rents from interests in real property and charges for services customarily furnished in connection with the rental of real property whether or not such charges are separately stated (sec. 856(d)(1)). Income is not considered to qualify as rents from real property if services are provided other than through an independent contractor (sec. 856(d)(2)(C)). In addition, rents are not considered to qualify if they are based on the net profits of the tenant (sec. 856(d)(2)(A)).

Distribution requirement

In general, the distribution requirement is satisfied if, for the taxable year, the REIT distributes at least 95 percent of its taxable income determined without regard to any net capital gain (sec. 857(a)). For this purpose, a REIT may treat certain dividends paid after the close of the taxable year as having been paid during the taxable year (sec. 858(a)). Shareholders receiving such "spillover dividends" recognize income attributable to such dividends in the year of payment (sec. 858(b)).

Capital gains

If the REIT has recognized any net capital gain during a taxable year, the REIT is taxable on the amount of such gain unless it elects to pay a capital gain dividend.

The REIT may elect to pay a capital gain dividend by designating in a notice mailed to shareholders within 30 days of the end of the REIT's taxable year, that a dividend or portion thereof paid during the taxable year is a capital gain dividend. The dividend or portion so designated may not exceed the REIT's net capital gain reduced by any net operating losses. Any dividend so designated is treated as a long-term capital gain by the recipient shareholder (sec. 857(b)(3)).

Prohibited transactions

A 100-percent tax is imposed on a REIT's net income from prohibited transactions (sec. 857(b)(6)). Any net loss from prohibited transactions is not deductible in computing taxable income.

In general, a prohibited transaction is the sale of property held primarily for sale in the ordinary course of business. A safe harbor is provided whereby a sale of property is not treated as a prohibited transaction if such property has been held by the REIT for at least four years (for the production of rental income if land and improvements), the aggregate expenditures during the four-year period preceding the date of sale that are includible in the basis of the property do not exceed 20 percent of the selling price of the property, and the sale is one of not more than five sales of property by the REIT during the taxable year, excluding sales of foreclosure property (sec. 857(b)(6)(C)). In general, the disposition of property acquired pursuant to a foreclosure is not treated as a prohibited transaction.

Deficiency dividends

If it is determined that the taxable income of a REIT for a prior year is understated, then the REIT may avoid the imposition of tax at the REIT level and possible disqualification, by the prompt distribution of a "deficiency dividend" (sec. 860). A REIT for which such a deficiency is determined must pay interest on an amount equal to the deficiency dividend, as well as a penalty equal to the amount of interest not in excess of half of the amount of the deficiency dividend (sec. 6697).

House Bill

No provision.

Senate Amendment

General requirements

Under the Senate amendment, a taxpayer without prior operating history is permitted to change its accounting year without consent in connection with its initial election of REIT status. The Senate amendment also provides that an entity is not disqualified from electing REIT status in the first taxable year of its existence because it was closely held. Partner to partner attribution is ignored in determining if the REIT is closely held. In order to elect REIT status under the Senate amendment, the electing entity must either have been treated as a REIT for all taxable years beginning after February 28, 1986, or must have no earnings and profits accumulated as a regular corporation.

Asset and income requirements

The Senate amendment provides that REITs are permitted to hold assets in wholly owned subsidiaries. The REIT and its REIT subsidiaries are treated as a single taxpayer under the Senate amendment (i.e., the separate corporate status of the REIT subsidiaries is ignored).

Under the Senate amendment, for a one-year period after the receipt of new equity capital, income from the temporary investment of the new capital that is derived from stock or debt instruments is treated as qualifying "75-percent income." Such stock or debt instruments are treated as qualifying assets for the same period under the Senate amendment.

Definition of rents

The Senate amendment permits REITs to provide, without being required to use independent contractors, those services that may be furnished in connection with the

rental of real property by a tax-exempt organization without giving rise to unrelated business income.

The Senate amendment also permits REITs to receive rents based on the net income of the tenant, provided that the tenant's profits are derived only from sources that would be qualified rent if earned directly by the REIT.

Distribution requirement

Under the Senate amendment, any income that is accrued but not received with respect to original issue discount on a loan issued in exchange for nonpublicly traded property, or with respect to a deferred rental agreement, or any income that is recognized as the result of the failure of an exchange that the REIT intended in good faith to qualify, but that was ultimately determined not to qualify for treatment as a tax-free like kind exchange, is not subject to the distribution requirement to the extent that such amounts exceed five percent of the REIT's taxable income. The REIT is required to pay income tax on the undistributed amount.

The Senate amendment provides that the amount of a REIT's current earnings and profits will not be less than the REIT's taxable income for the purpose of determining whether a distribution was made out of earnings and profits.

Capital gains

The Senate amendment permits REITs to compute their capital gain dividends without offset for net operating losses (NOLs). NOLs not used to offset capital gain income are carried over according to the ordinary rules. REITs are permitted to send capital gain notices to shareholders with the mailing of their annual report, rather than 30 days after year end.

Prohibited transactions

Under the Senate amendment, the number of sales that a REIT is able to make within the prohibited transaction safe harbor is expanded from five to seven. The Senate amendment provides an alternative safe harbor whereby a REIT may make any number of sales during a taxable year provided that the gross income from such sales does not exceed 15 percent of the REIT's taxable income for such year (computed with certain adjustments). Any marketing or development activities with respect to properties that are sold is required to be performed by independent contractors where the REIT is taking advantage of the alternative safe harbor. The Senate amendment also increases the extent of improvements that a REIT is permitted to make from 20 percent to 30 percent of the property's adjusted basis. In addition, under the Senate amendment, losses from prohibited transactions are permitted to offset taxable income but are not permitted to offset gains from prohibited transactions.

Deficiency dividends

The Senate amendment eliminates the penalty tax under section 6697 on deficiency dividends paid by REITs.

Effective date

The provisions of the Senate amendment generally are effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment with the following modifications.

Imposition of excise tax

In general

The conference agreement imposes a nondeductible excise tax on any REIT for each calendar year equal to four percent of the excess, if any, of the "required distribution" for the calendar year, over the "distributed amount" for such calendar year. The excise tax must be paid on or before March 15 of the following calendar year.

For these purposes, the term required distribution means, with respect to any calendar year, the sum of (1) 85 percent of the REIT's "ordinary income" for the calendar year, (determined as if the calendar year were the REIT's taxable year), (2) 95 percent of the REIT's capital gain net income (within the meaning of sec. 1222(9)) for such calendar year, (determined as if the calendar year were the REIT's taxable year), and (3) the excess, if any, of the "grossed up required distribution" for the preceding calendar year over the distributed amount for such preceding calendar year. For this purpose, the term grossed up required distribution for any calendar year is the sum of the taxable income of the REIT for the calendar year (without regard to the deduction for dividends paid) and all amounts from earlier years that are not treated as having been distributed under the provision.

The REIT's ordinary income for this purpose means its real estate investment trust taxable income (as defined in sec. 857(b)(2)) determined (1) without taking into account the dividends paid deduction, (2) by not taking into account any gain or loss from the sale of any capital asset, and (3) by treating the calendar year as the REIT's taxable year.

In addition, for these purposes, the term distributed amount means, with respect to any calendar year, the sum of (1) the deduction for dividends paid (within the meaning of sec. 561) during such calendar year, (2) amounts on which the REIT is required to pay corporate tax, and (3) the excess (if any) of the distributed amount for the preceding taxable year over the grossed up required distribution for such preceding taxable year. The amount of dividends paid for these purposes is determined without regard to the provisions of section 858.

Under the conference agreement, for purposes of applying these provisions, any deficiency dividend, (as defined in sec. 860(f)), is taken into account at the time it is paid, and any income giving rise to the adjustment is treated as arising at the time the dividend is paid.

Timing of inclusion of certain dividends

Under the conference agreement, any dividend declared by a REIT in December of any calendar year and payable to shareholders of record as of a specified date in such month, shall be deemed to have been paid by the REIT, (including for purposes of section 561), and to have been received by each shareholder, on such record date, but only if such dividend is actually paid by the REIT before February 1 of the following calendar year. This provision does not apply for purposes of section 858(a), however.

Earnings and profits

Under the conference agreement, a REIT is treated as having sufficient earnings and profits to treat as a dividend any distribution during any calendar year (other than a redemption to which section 302(a) applies), which distribution is treated as a dividend by such REIT, but only to the extent that the amount distributed during such calendar year does not exceed the required distribution for such calendar year. The purpose of this provision is to prevent the REIT from failing to meet the requirements for avoiding the imposition of the excise tax where losses incurred by the REIT after December 31, but before the close of its taxable year, otherwise would prevent the REIT from having sufficient earnings and profits for its distributions to be treated as dividends.

The conference agreement does not contain the provision from the Senate amendment under which a REIT's earnings and profits for a taxable year would not be less than its real estate trust taxable income for the taxable year (without regard to the dividends paid deduction), since the conferees believe that this provision is a restatement of present law.

Treatment of certain capital losses

The conference agreement provides that, in the case of a REIT that has a taxable year other than the calendar year, for purposes of determining the amount of capital gain dividends, such REIT may distribute for a taxable year, the REIT's net capital gain for the taxable year is determined without regard to any net capital loss attributable to transactions after December 31 of such year. For these purposes, any such net capital loss is treated as arising on the first day of the next taxable year. To the extent provided in regulations, the same rule will apply for purposes of determining the REIT's net income.[1]

Distribution requirement

The conference agreement clarifies that the amount on which relief is provided from the 95 percent distribution requirement in the case of income derived from certain transactions to which section 467 or section 1274 applies, is based on the excess of those amounts that the REIT is required to recognize on account of either section 467 or section 1274 over the amounts that the REIT otherwise would recognize under its regular method of accounting. Thus, for example, in the case of a REIT using the accrual method of accounting, the provision would apply in the case of a section 467 rental agreement only to the extent that the income required to be recognized under section 467 exceeded the amount of income that the taxpayer would include under the accrual method if section 467 did not apply.

Definition of rents and interest

The conference agreement provides that for purposes of the income requirements for qualification as a REIT, and for purposes of the prohibited transactions provisions, any income derived from a "shared appreciation provision" is treated as gain recognized on the sale of the "secured property." For these purposes, a shared appreciation provision is any provision that is in connection with an obligation that is held by the REIT and secured by an interest in real property, which provision entitles the REIT to receive a specified portion of any gain realized on the sale or exchange of such real property (or of any gain that would be realized if the property were sold on a specified date). Secured property for these purposes means

[1] The conferees intend that any such regulations would prevent the avoidance of tax, particularly in circumstances where a REIT takes advantage of the rule in order to pay return of capital dividends in the following taxable year, or to offset the tax that would be incurred on capital gains recognized in the following year.

the real property that secures the obligation that has the shared appreciation provision.

In addition, the conference agreement provides that for purposes of the income requirements for qualification as a REIT, and for purposes of the prohibited transactions provisions, the REIT is treated as holding the secured property for the period during which it held the shared appreciation provision (or, if shorter, the period during which the secured property was held by the person holding such property),[2] and the secured property is treated as property described in section 1221(1) if it is such property in the hands of the obligor on the obligation to which the shared appreciation provision relates (or if it would be such property if held by the REIT). For purposes of the prohibited transaction safe harbor, the REIT is treated as having sold the secured property at the time that it recognizes income on account of the shared appreciation provision, and any expenditures made by the holder of the secured property are treated as made by the REIT.[3]

For example, under the conference agreement, if a REIT is the holder of an obligation under which it is paid a fixed percentage of interest on a fixed principal amount, and also is entitled to a payment equal to a portion of the appreciation in the property as of the time the property is sold (or at an earlier specified time), then the additional payment would be treated as gain on the sale of the property secured by the obligation for purposes of section 856(c), with the holding period of the property considered to be the shorter of the REIT's holding period of the obligation or the obligor's holding period for the secured property. This gain would be eligible for the prohibited transaction safe harbor if the applicable requirements are met.

The conferees intend no inference regarding the treatment of any shared appreciation provision for any other purposes of Federal income taxation.

The conferees wish to make certain clarifications regarding those services that a REIT may provide under the conference agreement without using an independent contractor, which services would not cause the rents derived from the property in connection with which the services were rendered to fail to qualify as rents from real property (within the meaning of section 856(d)). The conferees intend, for example, that a REIT may provide customary services in connection with the operation of parking facilities for the convenience of tenants of an office or apartment building, or shopping center, provided that the parking facilities are made available on an unreserved basis without charge to the tenants and their guests or customers. On the other hand, the conferees intend that income derived from the rental of parking spaces on a reserved basis to tenants, or income derived from the rental of parking spaces to the general public, would not be considered to be rents from real property unless all services are performed by an independent contractor. Nevertheless, the conferees intend that the income from the rental of parking facilities properly would be considered to be rents from real property (and not merely income from services) in such circumstances if services are performed by an independent contractor.

The conferees also wish to clarify that a REIT may directly select, hire, and compensate those independent contractors who will provide the customary services that may be provided by a REIT in connection with the rental of real property, rather than hiring an independent contractor to hire other independent contractors.

Income and asset requirements

The conference agreement provides that the investment of the proceeds of the public offering of debt securities that have a maturity of at least five years receives the same treatment as the investment of new equity capital. The conferees intend that debt securities for which there is an intention to call before five years would not be treated as having a maturity of at least five years.

The conferees wish to clarify that if a REIT purchases all of the stock of a corporation and makes an election under section 338 with respect to the purchased stock, then the corporation that is deemed to be newly formed pursuant to the section 338 election may qualify as a REIT subsidiary as of the time that the newly formed corporation is deemed to come into existence.

Prohibited transactions

Instead of measuring the alternative safe harbor for prohibited transactions by reference to the income of the REIT, the alternative safe harbor provided by the conference agreement is any number of sales provided that the adjusted basis of the property sold does not exceed 10 percent of the adjusted basis of all of the REIT's assets at the beginning of the REIT's taxable year. For this purpose, the total adjusted basis of all of the REIT's assets (including the property that is sold) is to be computed using depreciation deductions that are used for purposes of computing earnings and profits. The other requirements for use of the alternative safe harbor in the Senate bill continue to apply. The conferees intend no inference regarding whether sales that qualify under this safe harbor for the REIT are or are not properly considered to be sales of property held for sale to customers.

Effective date

The provisions of the conference agreement generally are effective for taxable years beginning after December 31, 1986. The provisions relating to the imposition of the excise tax are effective for calendar years beginning after December 31, 1986.

P. Mortgage-Backed Securities

Present Law

Imposition of corporate tax

In general

A corporation generally is treated as an entity separate from its shareholders. The corporation is taxed on its income, and the shareholder is taxed on the subsequent distribution of the corporation's income in the form of dividends. Corporations generally do not receive any deduction for dividends paid to shareholders, but interest on indebtedness incurred by a corporation generally is deductible.[4]

Corporations treated as conduits

Certain small business corporations ("S corporations") generally are not subject to a corporate level tax. Rather, the income of the corporation is allocated among, and taxed directly to, the shareholders. To qualify as an S corporation, a corporation must be a domestic corporation that has 35 or fewer shareholders none of whom are corporations, and also must meet certain other requirements (secs. 1361-1379).

Regulated investment companies ("RICs") and real estate investment trusts ("REITs") generally are treated as pass-through entities since they receive deductions for dividends paid to shareholders (secs. 561, 562, 852(b), 857(b)). Capital gains realized by a REIT or a RIC also may be passed through to its shareholders (secs. 852(b)(3), 857(b)(3)).

To qualify as a RIC, a corporation must derive most of its income from investments in securities, must distribute most of its income currently, and must meet certain other requirements (secs. 851, 852).

To qualify as a REIT, a corporation must derive most of its income from real estate related sources, must hold primarily real estate assets, must distribute most of its income currently, and must meet certain other requirements (secs. 856, 857). An interest in a corporate debt obligation that is secured by real property mortgages is not treated as a qualifying real estate asset for a REIT.

Certain requirements are imposed on both REITs and RICs that are intended to prevent these entities from engaging in the active conduct of a trade or business (see e.g., secs. 851(b)(3), 856(c)(4)).

Entity classification

Under Treasury regulations, certain noncorporate entities that have sufficient corporate characteristics are treated as corporations for Federal income tax purposes (Treas. Reg. sec. 301.7701-2).

In May, 1984, the Treasury Department issued proposed regulations addressing the treatment of trusts that have more than one class of ownership interest. Final regulations were issued in March, 1985 (Treas. Reg. sec. 301.7701-4(c)(1)). Under these regulations, a trust is treated as having one class of ownership if all of the beneficiaries of the trust have undivided interests in all of the trust property. More than one class of ownership may exist where, for example, some beneficiaries are entitled to receive more than their pro rata share of trust distributions in early years and other beneficiaries are entitled to more than their pro rata share in later years.

Under the regulations, an arrangement having more than one class of ownership interest generally may not be treated as a trust, but is treated as a corporation for Federal income tax purposes. Thus, if a trust held a portfolio of mortgages, and interests in the trust assets were divided so that one class of beneficiaries were to receive all principal collected by the trust and a specified rate of interest thereon until the trust had collected a specified amount of principal on the mortgages, and another class of beneficiaries were to receive all remaining amounts collected by the trust, then such trust would be treated as an association taxable as a corporation under the

[2] The conferees intend that the provisions of section 1223 are to be taken into account for purposes of determining the holding period of the person holding the secured property.

[3] The conferees intend that the REIT's holding period of the obligation to which the shared appreciation provision relates (and not the obligor's holding period of the secured property if longer than the REIT's holding period) must be at least four years for the safe harbor to apply.

[4] Present law is unclear whether interests in a corporation that are denominated as debt are properly treated as indebtedness of the corporation, where substantially all of the assets of the corporation are a single type of property, the corporation is thinly capitalized, and the rights of the owners of the interests mirror, in the aggregate, the characteristics of such property.

regulations. The regulations provide a limited exception for certain trusts with multiple classes, where the existence of multiple classes is incidental to the purpose of facilitating direct investment in the assets of the trust. The regulations apply to interests issued after April 27, 1984.

Original issue discount and market discount

Original issue discount

Under the original issue discount ("OID") rules, any OID, which is defined as the excess of the stated redemption price of a debt instrument over its issue price, is treated as interest (secs. 1272, 1273). Both borrower and lender generally are required to account for the accrual of original issue discount currently on an economic basis over the term of the debt instrument (sec. 1272(a)). The application of the OID rules is uncertain for debt instruments the maturity of which may be accelerated on account of prepayments on obligations that collateralize the debt instrument.

Market discount

Market discount generally is that portion of the excess of a debt instrument's stated redemption price at maturity over the holder's basis, which portion exceeds the amount of OID, if any, with respect to the instrument (sec. 1278(a)). The holder of a debt instrument with market discount generally treats gain on the disposition of such debt instrument as interest income to the extent of accrued market discount (sec. 1276). For this purpose, market discount is deemed to accrue ratably over the maturity of the debt instrument, unless the holder elects to treat market discount as accruing on an economic basis (sec. 1276(b)). The application of the market discount rules to debt instruments the principal of which is payable in more than one installment is uncertain.

Other

Certain thrift institutions are permitted to deduct a percentage of their taxable income as a bad debt deduction provided that a specified portion of the institution's assets are "qualifying assets," including "qualifying real property loans" (secs. 593, 7701(a)(19)). Corporate debt obligations secured by real property mortgages are not treated as qualifying real property loans.

Issuers of debt instruments that have original issue discount are required to report to certain holders, the amount of interest payments and the annual accrual of OID (sec. 6049).

House Bill

No provision.

Senate Amendment

REMICs

In general

The Senate amendment creates a new form of entity known as a "real estate mortgage investment company" ("REMIC"). A REMIC is an entity that is formed for the purpose of holding a fixed pool of mortgages secured by an interest in real property, and issuing multiple classes of interests therein. A REMIC is treated as a corporation for income tax purposes, but is given a deduction for all amounts includible in income of holders of "regular interests" regardless of whether such interests otherwise would be treated as debt for Federal income tax purposes, and also is given a deduction for amounts distributed to holders of "residual interests" up to the amount of a deemed rate of return that is based on the "long-term Federal rate." Rules are provided to prevent active business activities with respect to the REMIC's assets.

Regular and residual interests

Under the Senate amendment, all interests in a REMIC must be either regular or residual interests. Regular interests are treated as debt instruments for Federal income purposes, regardless of their form. Residual interests generally are treated as stock for Federal income tax purposes (also regardless of form), but special rules are provided for the inclusion in income of distributions with respect to residual interests, the adjustment of the holder's basis in the residual interest, and for dispositions of residual interests.

Transfers of property to a REMIC

The transfer of property to a REMIC in exchange for either regular or residual interests, or for cash or other property, results in the recognition of gain upon the transfer. Loss is recognized on the transfer of property to a REMIC for cash or other property, but if property is transferred to a REMIC in exchange for regular or residual interests, loss is deferred until the disposition of the interests.

Original issue discount and market discount rules

Original issue discount rules

The Senate amendment clarifies the application of the OID rules to debt instruments, the maturity of which is accelerated on account of prepayments on obligations that collateralize the instrument. Under the Senate amendment, OID on such an instrument is calculated taking into account prepayments as such prepayments occur and assuming that there will be no further prepayments.

Market discount rules

The Senate amendment grants regulatory authority to the Treasury Department to provide rules for the treatment of market discount on obligations the principal of which is paid in installments, whether or not such obligations are subject to prepayment.

Other

Under the Senate amendment, an interest in a REMIC is treated as a real estate asset for purposes of the requirements for qualification as a REIT, and is treated as a qualifying real property loan for purposes of the requirements relating to bad debt deductions for certain thrift institutions. Reporting requirements are expanded under the Senate amendment to include reporting of interest and OID to corporate and certain other holders of debt instruments that are subject to the OID rules prescribed by the Senate amendment. In addition, the Senate amendment treats regular, but not residual interests as subject to the provisions of section 582, providing ordinary income or loss treatment upon the sale of such interests by certain financial institutions.

The Senate amendment treats "owners' debt pools" as corporations. In general, the Senate amendment provides that an owners' debt pool is an entity that is treated as a trust or partnership, the principal activity of which is the holding of assets the principal portion of which is real estate mortgages that directly or indirectly act as collateral for debt obligations having varying maturities.

Effective date

The Senate amendment generally is effective for taxable years beginning after December 31, 1986. The OID and market discount provisions are effective for debt instruments issued after December 31, 1986. The owners' debt pool provisions generally are effective for entities formed after December 31, 1986.

Conference Agreement

Overview

In general, the conference agreement provides rules relating to "real estate mortgage investment conduits" or "REMICs." In general, a REMIC is a fixed pool of mortgages with multiple classes of interests held by investors. The conference agreement provides rules prescribing (1) the Federal income tax treatment of the REMIC, (2) the treatment of taxpayers who exchange mortgages for interests in the REMIC, (3) the treatment of taxpayers holding interests in the REMIC, and (4) the treatment of disposition of interests in the REMIC.

In general, if the specified requirements are met, the REMIC is not treated as a separate taxable entity. Rather, the income of the REMIC is allocated to, and taken into account by, the holders of the interests therein, under specified rules. Holders of "regular interests" generally take into income that portion of the income of the REMIC that would be recognized by an accrual method holder of a debt instrument that had the same terms as the particular regular interest; holders of "residual interests" take into account all of the net income of the REMIC that is not taken into account by the holders of the regular interests. Rules are provided that (1) treat a portion of the income of the residual holder derived from the REMIC as unrelated business income for tax-exempt entities or as subject to withholding at the statutory rate when paid to foreign persons, and (2) prevent such portion from being offset by net operating losses, other than net operating losses of certain thrift institutions.

The conference agreement also contains provisions relating to the application of the OID rules to certain debt instruments the timing of whose maturities is contingent upon the timing of payments on other debt instruments. In addition, the conference agreement imposes certain new information reporting requirements.

Further, the conference agreement treats as a corporation any entity or other arrangement, referred to as a "taxable mortgage pool," that is used primarily to hold mortgages, where maturities of debt instruments that are issued by the entity in multiple classes, are tied to the timing of payments on the mortgages.

Requirements for qualification as a REMIC

Under the conference agreement, any entity, including a corporation, partnership, or trust, that meets specified requirements would be permitted to elect to be treated as a REMIC. In addition, a segregated pool of assets also may qualify as a REMIC as if it were an entity meeting the requirements. To elect REMIC status, requirements relating to the composition of assets and the nature of the investors' interests must be satisfied, and an election to be treated as a REMIC must be in effect for the taxable year, and if applicable, all prior taxable years.

The asset test

Under the conference agreement, in order to qualify as a REMIC, substantially all of the assets of the entity or segregated pool, as of the close of the third calendar month beginning after the startup day and as of

the close of every quarter of each calendar year thereafter, must consist of "qualified mortgages," and "permitted investments." The conferees intend that the term substantially all should be interpreted to allow the REMIC to hold only de minimis amounts of other assets.

A "qualified mortgage" is any obligation (including any participation or certificate of beneficial ownership interest therein) that is principally secured directly or indirectly by an interest in real property, and that either (1) is transferred to the REMIC on or before the "startup day," or (2) is purchased by the REMIC within the three-month period beginning on the startup day.[5] A qualified mortgage also includes a "qualified replacement mortgage." A qualified replacement mortgage is any property that would have been treated as a qualified mortgage if it were transferred to the REMIC on or before the startup day, and that is received either (1) in exchange for a defective qualified mortgage[6] within a two-year period beginning on the startup day, or (2) in exchange for any other qualified mortgage within a three-month period beginning on the startup day. In addition, a regular interest in another REMIC that is transferred to the REMIC on or before the startup day is treated as a qualified mortgage. The startup day is any day selected by the REMIC that is on or before the first day on which interests in the REMIC are issued.

"Permitted investments" are "cash flow investments," "qualified reserve assets," and "foreclosure property."

"Cash flow investments" are any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC. The conferees intend that these are assets that are received periodically by the REMIC, invested temporarily in passive-type assets, and paid out to the investors at the next succeeding regular payment date. The conferees intend that these temporary investments are to be limited to those types of investments that produce passive income in the nature of interest. For example, the conferees intend that an arrangement commonly known as a "guaranteed investment contract," whereby the REMIC agrees to turn over payments on qualified mortgages to a third party who agrees to return such amounts together with a specified return thereon at times coinciding with the times that payments are to be made to holders of regular or residual interests, may qualify as a permitted investment.

"Qualified reserve assets" are any intangible property held for investment that is part of a "qualified reserve fund." A qualified reserve fund is any reasonably required reserve that is maintained by the REMIC to provide for payments of certain expenses and to provide additional security for the payments due on regular interests in the REMIC that otherwise may be delayed or defaulted upon because of defaults (including late payments) on the qualified mortgages. In determining whether the amount of the reserve is reasonable, the conferees believe that it is appropriate to take into account the creditworthiness of the qualified mortgages and the extent and nature of any guarantees relating to the qualified mortgages. Further, amounts in the reserve fund must be reduced promptly and appropriately as regular interests in the REMIC are retired.

Under the conference agreement, a reserve is not treated as a qualified reserve unless for any taxable year (and all subsequent taxable years) not more than 30 percent of the gross income from the assets in such fund for the taxable year is derived from the sale or other disposition of property held for less than three months. For this purpose, gain on the disposition of a reserve fund asset is not taken into account if the disposition of such asset is required to prevent default on a regular interest where the threatened default resulted from a default on one or more qualified mortgages.

"Foreclosure property" is property that would be foreclosure property under section 856(e) if acquired by a real estate investment trust, and which is acquired by the REMIC in connection with the default or imminent default of a qualified mortgage. Property so acquired ceases to be foreclosure property one year after its acquisition by the REMIC.

Investors' interests

In order to qualify as a REMIC under the conference agreement, all of the interests in the REMIC must consist of one or more classes of "regular interests" and a single class of "residual interests."

Regular interests.—A regular interest in a REMIC is an interest in a REMIC whose terms are fixed on the startup day, which terms (1) unconditionally entitle the holder to receive a specified principal (or similar) amount, and (2) provide that interest (or similar) payments, if any, at or before maturity are based on a fixed rate (or to the extent provided in regulations, a variable rate). An interest in the REMIC may qualify as a regular interest where the timing (but not the amount) of the principal (or similar) payments are contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments.

The conferees intend that regular interests in REMICs may be issued in the form of debt, stock, partnership interests, interests in a trust, or any other form permitted by state law. Thus, if an interest in a REMIC is not in the form of debt, the conferees understand that the interest would not have a specified principal amount, but that the interest would qualify as a regular interest if there is a specified amount that could be identified as the principal amount if the interest were in the form of debt. For example, an interest in a partnership could qualify as a regular interest if the holder of the partnership interest were to receive a specified amount in redemption of the partnership interest, and that the amount of income allocated to such partnership interest were based on a fixed percentage of the specified outstanding redemption amount.

The conferees intend that an interest in a REMIC would not fail to be treated as a regular interest if the payments of principal (or similar) amounts with respect to such interest are subordinated to payments on other regular interests in the REMIC, and are dependent upon the absence of defaults on qualified mortgages. Thus, the conferees intend that regular interests in a REMIC may resemble the types of interests described in Treas. Reg. sec. 301.7701-4(c)(2)(Example 2).[7]

The conferees intend that an interest in a REMIC may not qualify as a regular interest if the amount of interest (or similar payments) is disproportionate to the specified principal amount. For example, if an interest is issued in the form of debt with a coupon rate of interest that is substantially in excess of prevailing market interest rates (adjusted for risk), the conferees intend that the interest would not qualify as a regular interest. Instead, the conferees intend that such an interest may be treated either as a residual interest, or as a combination of a regular interest and a residual interest.

Residual interests.—In general, a residual interest in a REMIC is any interest in the REMIC other than a regular interest, and which is so designated by the REMIC, provided that there is only one class of such interest, and that all distributions (if any) with respect to such interests are pro rata. For example, the residual interest in a mortgage pool that otherwise qualifies as a REMIC is held by two taxpayers, one of whom has a 25 percent interest in the residual and the other of whom has a 75 percent interest. Except for their relative size, the interests of the two taxpayers are identical. Provided that all distributions to the residual interest holders are pro rata, the mortgage pool would qualify as a REMIC because there is only one class of residual interest. If, however, the holder of the 25 percent interest is entitled to receive all distributions to which residual holders combined are entitled for a specified period (or up to a specified amount) in return for the surrender of his interest, then the mortgage pool would be considered to have two classes of residual interests and would not qualify as a REMIC.

The conferees intend that the right to receive payment from the REMIC for goods or services rendered in the ordinary operation of the REMIC would not be considered to be an interest in the REMIC for these purposes.

Inadvertent terminations

The conference agreement provides regulatory authority to the Treasury Department to issue regulations that address situations where failure to meet one or more of the requirements for REMIC status occurs inadvertently, and disqualification of the REMIC would occur absent regulatory relief. The conferees anticipate that the regulations would provide relief only where the failure to meet any of the requirements occurred inadvertently and in good faith. The conferees also intend that the relief may be accompanied by appropriate sanctions, such as the imposition of a corporate tax on all or a portion of the REMIC's income for the period of time in which the requirements are not met.

Transfers of property to the REMIC

Under the conference agreement, no gain or loss is recognized to the transferor upon the transfer of property to a REMIC in exchange for regular or residual interests in

[5] The conferees intend that stripped coupons and stripped bonds (within the meaning of sec. 1286) may be treated as qualifying mortgages if the bonds (within the meaning of sec. 1286) from which such stripped coupons or stripped bonds arose would have been qualified mortgages. The conferees also intend that interests in grantor trusts would be treated as qualified mortgages, to the extent that the assets of the trusts that holders of the beneficial interest therein are treated as owning, would be treated as qualifying mortgages. In addition, the conferees intend that interests in qualifying mortgages in the nature of the interests described in Treas. Reg. sec. 301.7701-4(c)(2)(Example 2), would be treated as qualifying mortgages.

[6] For this purpose, the conferees intend that a defective qualified mortgage is a qualified mortgage with respect to which there is a default or threatened default by the obligor.

[7] The status of an interest as a regular interest in this case does not depend on whether the subordinated regular interest is sold or retained.

the REMIC. Upon such a transfer, the adjusted bases of the regular or residual interests received in the transaction are to be equal in the aggregate to the aggregate of the adjusted bases of the property transferred. The aggregate basis of the interests received is allocated among the regular or residual interests received in proportion to their fair market values.[8] The basis of any property received by a REMIC in exchange for regular or residual interests in the REMIC is equal to the fair market value of the property at the time of transfer (or earlier time provided by regulations).[9]

In the case of a REMIC that is not formed as a separate entity, but rather as a segregated pool of assets, the conferees intend that the transfer is deemed to occur and the REMIC is deemed to be formed only upon the issuance of regular and residual interests therein.

Federal income tax treatment of the REMIC

Pass-through status

In general, the conference agreement provides that a REMIC is not a taxable entity for Federal income tax purposes. The income of the REMIC generally is taken into account by holders of regular and residual interests in the REMIC as described below. Nevertheless, the REMIC is subject to tax on prohibited transactions, and may be required to withhold on amounts paid to foreign holders of regular or residual interests.

The pass-through status of the REMIC provided by the conference agreement applies regardless of whether the REMIC otherwise would be treated as a corporation, partnership, trust, or any other entity. The conferees intend that where the requirements for REMIC status are met, that the exclusive set of rules for the treatment of all transactions relating to the REMIC and of holders of interests therein are to be those set forth in the provisions of the conference agreement. Thus, for example, in the case of a REMIC that would be treated as a partnership if it were not otherwise a REMIC, the provisions of subchapter K of the Code would not be applicable to any transactions involving the REMIC or any of the holders of regular or residual interests.[10]

Prohibited transactions

Under the conference agreement, a REMIC is required to pay a tax equal to 100 percent of the REMIC's net income from prohibited transactions. For this purpose, net income from prohibited transactions is computed without taking into account any losses from prohibited transactions or any deductions relating to prohibited transactions that result in a loss. Prohibited transactions for the REMIC include the disposition of any qualified mortgage other than pursuant to (1) the substitution of a qualified replacement mortgage for a defective qualified mortgage, (2) the bankruptcy or insolvency of the REMIC, (3) a disposition incident to the foreclosure, default, or imminent default of the mortgage, or (4) a qualified liquidation (described below). In addition, the disposition of a qualified mortgage is not a prohibited transaction if such disposition is required to prevent default on a regular interest where such default on the regular interest is threatened on account of a default on one or more qualified mortgages. Other prohibited transactions include the disposition of any cash flow investment other than pursuant to a qualified liquidation, the receipt of any income from assets other than assets permitted to be held by the REMIC, and the receipt of any compensation for services.[11]

Taxation of the holders of regular interests

In general

Under the conference agreement, holders of regular interests generally are taxed as if their regular interest were a debt instrument to which the rules of taxation generally applicable to debt instruments apply, except that the holder of a regular interest is required to account for income relating to such interest on the accrual method of accounting regardless of the method of accounting otherwise used by the holder.[12] In the case of regular interests that are not debt instruments, the amount of the fixed unconditional payment is treated as the stated principal amount of the instrument, and the periodic payments (i.e., the amounts that are based on the amount of the fixed unconditional payment), if any, are treated as stated interest payments. In other words, generally consistent with the pass-through nature of the REMIC, the holders of regular interests generally take into account that portion of the REMIC's income that would be taken into account by an accrual method holder of a debt instrument with terms equivalent to the terms of the regular interest.[13]

The conferees intend that regular interests are to be treated as if they were debt instruments for all other purposes of the Internal Revenue Code. Thus, for example, regular interests would be treated as market discount bonds, where the revised issue price (within the meaning of section 1278) of the regular interest exceeds the holder's basis in the interest. Moreover, the conferees intend that the REMIC is subject to the reporting requirements of section 1275 with respect to the regular interests. In addition, the conferees intend that regular interests are to be treated as evidences of indebtedness under section 582(c)(1), so that gain or loss from the sale or exchange of regular interests by certain financial institutions would not be treated as gain or loss from the sale or exchange of a capital asset. In addition, any market premium on a regular interest could be amortized currently under section 171.

The issue price of regular interests in the REMIC are determined under the rules of section 1273(b). In the case of regular interests issued in exchange for property, however, the issue price of the regular interest is equal to the fair market value of the property,[14] regardless of whether the requirements of section 1273(b)(3) are met. A holder's basis in the regular interest generally is equal to the holder's cost therefor, but in the case of holders who received their interests in exchange for property, then as discussed above, the holder's basis is equal to the basis of the property exchanged for the REMIC interest. Where property is transferred in exchange for more than one class of regular or residual interest, the basis of the property transferred is allocated in proportion to the fair market value of the interests received.

Regular interests received in exchange for property

Under the conference agreement, where an exchange of property for regular interests in a REMIC has taken place, any excess of the issue price of the regular interest over the basis of the interest in the hands of the transferor immediately after the transfer is, for periods during which such interest is held by the transferor (or any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hands of the transferor), includible currently in the gross income of the holder under rules similar to the rules of section 1276(b) (i.e., the holder of such an interest is treated like the holder of a market discount bond for which an election under section 1278(b) is in effect). Conversely, the excess of the basis of the regular interest in the hands of the transferor immediately after the transfer over the issue price of the interest is treated for such holders as market premium that is allowable as a deduction under rules similar to the rules of section 171.

Disposition of regular interests

The conference agreement treats gain on the disposition of a regular interest as ordinary income to the extent of a portion of unaccrued OID with respect to the interest. Such portion generally is the amount of unaccrued OID equal to the excess, if any, of the amount that would have been includible in the gross income of the taxpayer with respect to such interest if the yield on such interest were 110 percent of the applicable Federal rate (as defined in sec. 1274(d) without regard to paragraph (2) thereof) determined as of the time that the interest is acquired by the taxpayer, over the total amount of ordinary income includible by the taxpayer with respect to such regular interest prior to disposition. In selecting the applicable Federal rate, the conferees intend that the same prepayment assumptions that are used in calculating OID are to be used in determining the maturity of the regular interest.

Taxation of the holders of residual interests

In general

In general, the conference agreement provides that at the end of each calendar quar-

[8] The conferees intend that a holder of a mortgage should not be permitted to recognize loss where mortgages are indirectly transferred to a REMIC. Thus, the conferees intend that no gain or loss would be recognized, for example, if pursuant to a plan, mortgages are sold by one taxpayer to another, and the buyer transfers the purchased mortgages to a REMIC in which interests are purchased by the initial seller of the mortgages.

[9] The conferees intend that the regulations may provide that the basis of qualified mortgages held by the REMIC in certain circumstances may be determined based on the fair market value of such mortgages at a reasonable time prior to transfer to the REMIC where such mortgages were purchased by the transferor solely for the purpose of transfer to the REMIC.

[10] For purposes of subtitle F of the Code (relating to certain administrative matters) the REMIC is treated as a partnership in which residual interests are the partnership interests, however. The conferees intend that the initial election of REMIC status is to be made on the first partnership information return that the REMIC is required to file.

[11] The conferees intend that payment by the obligor on a debt instrument is not to be considered to be a disposition of such debt instrument for these purposes.

[12] The conferees intend that periodic payments of interest (or similar amounts) are to be treated as accruing pro rata between the dates that such interest (or similar amounts) is paid.

[13] In the event that the amount so determined exceeds the income of the REMIC, however, there is no diminution of the required inclusions for such holders.

[14] For this purpose, the conferees intend that the fair market value of the property is to be determined by reference to the fair market value of the regular interests received in exchange.

ter, the holder of a residual interest in a REMIC takes into account his daily portion of the taxable income or net loss of the REMIC for each day during the holder's taxable year in which such holder held such interest. The amount so taken into account is treated as ordinary income or loss. The daily portion for this purpose is determined by allocating to each day in any calendar quarter a ratable portion of the taxable income or net loss of the REMIC for such quarter, and by allocating the amounts so allocated to any day among the holders (on such day) of residual interests in proportion to their respective holdings on such day.

For example, a REMIC's taxable income for a calendar quarter (determined as described below) is $1,000. There are two holders of residual interests in the REMIC. One holder of 60 percent of the residual holds such interest for the entire calendar quarter. Another holder has a 40 percent interest, and transfers the interest after exactly one half of the calendar quarter to another taxpayer. As of the end of the calendar quarter, the holder of the sixty percent interest would be treated as receiving $600 ratably over the quarter. Each holder of the 40 percent interest would be treated as receiving $200 ratably over the portion of the quarter in which the interest was held.

Distributions from the REMIC are not included in the gross income of the residual holder to the extent that such distributions do not exceed the adjusted basis of the interest. To the extent that distributions exceed the adjusted basis of the interest, the excess is treated as gain from the sale of the residual interest. Residual interests are treated as evidences of indebtedness for purposes of section 582(c).

The amount of any net loss of the REMIC that may be taken into account by the holder of a residual interest is limited to the adjusted basis of the interest as of the close of the quarter (or time of disposition of the interest if earlier), determined without taking into account the net loss for the quarter. Any loss that is disallowed on account of this limitation may be carried over indefinitely by the holder of the interest for whom such loss was disallowed and may be used by such holder only to offset any income generated by the same REMIC.

Except for adjustments arising from the nonrecognition of gain or loss on the transfer of mortgages to the REMIC (discussed below), the holders of residual interests take no amounts into account other than those allocated from the REMIC.[15]

Determination of REMIC taxable income or net loss

In general, under the conference agreement, the taxable income or net loss of the REMIC for purposes of determining the amounts taken into account by holders of residual interests, is determined in the same manner as for an individual having the calendar year as his taxable year and using the accrual method of accounting, with certain modifications. The first modification is that a deduction is allowed with respect to those amounts that would be deductible as interest if the regular interests in the REMIC were treated as indebtedness of the REMIC. Second, in computing the gross income of the REMIC, market discount with respect to any market discount bond (within the meaning of sec. 1278) held by the REMIC is includible for the year in which such discount accrues, as determined under the rules of section 1276(b)(2), and sections 1276(a) and 1277 do not apply. Third, no item of income, gain, loss, or deduction allocable to a prohibited transaction is taken into account. Fourth, deductions under section 703(a)(2) (other than deductions allowable under section 212) are not allowed.[16]

If a REMIC distributes property with respect to any regular or residual interest, the REMIC recognizes gain in the same manner as if the REMIC had sold the property to such distributee at its fair market value. The conferees intend that the distribution is to be treated as an actual sale by the REMIC for purposes of applying the prohibited transaction rules and the rules relating to qualified reserve funds. The basis of the distributed property in the hands of the distributee is then the fair market value of the property.

Adjusted basis of residual interests

Under the conference agreement, a holder's basis in a residual interest in a REMIC is increased by the amount of the taxable income of the REMIC that is taken into account by the holder. The basis of such an interest is decreased (but not below zero) by the amount of any distributions received from the REMIC and by the amount of any net loss of the REMIC that is taken into account by the holder. In the case of a holder who disposes of a residual interest, the basis adjustment on account of the holder's daily portions of the REMIC's taxable income or net loss is deemed to occur immediately before the disposition.

Special treatment of a portion of residual income

Under the conference agreement, a portion of the net income of the REMIC taken into account by the holders of the residual interests may not be offset by any net operating losses of the holder. The conference agreement provides a special exception from this rule in the case of certain thrift institutions, on account of the difficulties currently being experienced by such industry.

In addition, the conference agreement provides that the same portion of the net income of the REMIC that may not be offset by net operating losses, is treated as unrelated business income for any organization subject to the unrelated business income tax under section 511, and is not eligible for any reduction in the rate of withholding tax (by treaty or otherwise) in the case of a nonresident alien holder.

The portion of the income of the residual holder that is subject to these rules is the excess, if any, of the amount of the net income of the REMIC that the holder takes into account for any calendar quarter, over the sum of the daily accruals with respect to such interest while held by such holder. The daily accrual for any residual interest for any day in any calendar quarter is determined by allocating to each day in such calendar quarter a ratable portion of the product of the adjusted issue price of the residual interest at the beginning of such accrual period, and 120 percent of the long-term Federal rate. The long-term Federal rate used for this purpose is the Federal long-term rate that would have applied to the residual interest under section 1274(d) (without regard to section 1274(d)(2)) if it were a debt instrument, determined at the time that the residual interest is issued. The rate is adjusted appropriately in order to be applied on the basis of compounding at the end of each quarter.

For this purpose, (and for purposes of the treatment of gain or loss that is not recognized upon the transfer of property to a REMIC in exchange for a residual interest, as discussed below), the residual interest is treated as having an issue price that is equal to the amount of money paid for the interest at the time it is issued, or in the case of a residual interest that is issued in exchange for property, the fair market value of the interest at the time it is issued. The adjusted issue price of the residual interest is equal to the issue price of the interest increased by the amount of daily accruals for prior calendar quarters, and decreased (but not below zero) by the amount of any distributions with respect to the residual interest prior to the end of the calendar quarter.

In addition, the conference agreement provides that under regulations, if a REIT owns a residual interest in a REMIC, a portion of dividends paid by the REIT would be treated as excess inclusions for REIT shareholders. Thus, such income could not be offset by net operating losses, would constitute unrelated business taxable income for tax-exempt holders, and would not be eligible for and reduction in the rate of withholding tax in the case of a nonresident alien holder.

The conference agreement provides that to the extent provided in regulations, in the case of a residual interest that has does not have significant value, the entire amount of income that is taken into account by the holder of the residual interest is treated as unrelated business income and is subject to withholding at the statutory rate. In addition, in the case of such a residual, income allocated to the holder thereof may not be offset by any net operating losses, regardless of who holds the interest. The conferees intend that the regulations would take into account the value of the residual interest in relation to the regular interests, and that the regulations would not apply in cases where the value of the residual interest is at least two percent of the combined value of the regular and residual interests.[17]

The conference agreement provides that the partnership information return filed by the REMIC is to supply information relating to the daily accruals of the REMIC.

Treatment of foreign residual holders

The conference agreement provides that in the case of a holder of a residual interest of a REMIC who is a nonresident alien individual or foreign corporation, then for pur-

[15] The conferees understand that the taxable income allocated to holders of residual interests in a REMIC who purchased such interests from a prior holder after a significant change in value of the interest, could be substantially accelerated or deferred on account of any premium or discount in the price paid by such purchaser. Accordingly, the conferees recognize that certain modifications of the rules governing taxation of holders of residual interests may be appropriate where the method of taxation of holders of residual interests prescribed by the conference agreement has such consequences.

[16] The conferees intend that no gain or loss is recognized to the REMIC on the exchange of regular or residual interests in the REMIC for property. In addition, the conferees understand that the treatment of deductions allowable under section 212 will be addressed in Treasury regulations. In this regard, the conferees intend that such deductions would be allocated to all holders of interests in REMICs that are similar to single-class grantor trusts under present law. However, the conferees intend that such deductions would be allocated to the holders of the residual interests in the case of other REMICs.

[17] The conferees intend that these regulations may apply in appropriate cases to residual interests issued before regulations are issued.

poses of sections 871(a), 881, 1441, and 1442, amounts includible in the gross income of such holder with respect to the residual interest are taken into account only when paid or otherwise distributed (or when the interest is disposed of).[18] The conference agreement also provides that under regulations, the amounts includible may be taken into account earlier than otherwise provided where necessary to prevent avoidance of tax. The conferees intend that this regulatory authority may be exercised where the residual interest in the REMIC does not have significant value (as described above).

Residual interests received in exchange for property

In the case of a residual interest that is received in exchange for property, any excess of the issue price of the residual interest over the basis of the interest in the hands of the transferor of the property immediately after the transfer, is amortized and is included in the residual holder's income on a straight line basis over the expected life of the REMIC. Similarly, any excess of the transferor's basis in the residual interest over the issue price of the interest is deductible by the holder of the interest on a straight line basis over the expected life of the REMIC. In determining the expected life of the REMIC for this purpose, the conferees intend that the assumptions used in calculating original issue discount and any binding agreement regarding liquidation of the REMIC are to be taken into account.

Dispositions of residual interests

The conference agreement provides that, except as provided in regulations, the wash sale rules of section 1091 apply to dispositions of residual interests in a REMIC where the seller of the interest, during the period beginning six months before the sale or disposition of the residual interest and ending six months after such sale or disposition, acquires (or enters into any other transaction that results in the application of section 1091) any residual interest in any REMIC or any interest in a "taxable mortgage pool" (discussed below) that is comparable to a residual interest.

Liquidation of the REMIC

Under the conference agreement, if a REMIC adopts a plan of complete liquidation, and sells all of its assets (other than cash) within the 90-day period beginning on the date of the adoption of the plan of liquidation, then the REMIC recognizes no gain or loss on the sale of its assets, provided that the REMIC distributes in liquidation all of the sale proceeds plus its cash (other than amounts retained to meet claims) to holders of regular and residual interests within the 90-day period.

Other provisions

Compliance provisions

The application of the OID rules contemplated by the conference agreement requires calculations that are based on information that would not necessarily be known by any holder, and is more readily available to the issuer than any other person. Accordingly, the conference agreement requires broader reporting of interest payments and OID accrual by the REMIC, or any issuer of debt that is subject to the OID rules of the conference agreement. The conference agreement specifies that the amounts includible in gross income of the holder of a regular interest in a REMIC are treated as interest for purposes of the reporting requirements of the Code (sec. 6049), and that the REMIC or similar issuer is required to report interest and OID to a broader group of holders than is required under present law. The holders to whom such broader reporting is required include corporations, certain dealers in commodities or securities, real estate investment trusts, common trust funds, and certain other trusts. In addition to reporting interest and OID, the REMIC or similar issuer is required to report sufficient information to allow holders to compute the accrual of any market discount or amortization of any premium in accordance with provisions of the conference agreement.[19]

Treatment of REMIC interests for certain financial institutions and real estate investment trusts

Under the conference agreement, regular and residual interests are treated as qualifying real property loans for purposes of section 593(d)(1) and section 7701(a)(19), in the same proportion that the assets of the REMIC would be treated as qualifying real property loans.[20] In the case of residual interests, the conferees intend that the amount treated as a qualifying real property loan not exceed the adjusted basis of the residual interest in the hands of the holder. Both regular and residual interests are treated as real estate assets under section 856(c)(6) in the same proportion that the assets of the REMIC would be treated as real estate assets for purposes of determining eligibility for real estate investment trust status.[21] In the case of a residual interest, the fair market value of the residual interest, and not the fair market value of all of the REMIC's assets, is used in applying the asset test of section 856(c)(5). In addition, income derived from the holding of a regular or residual interest in a REMIC is treated as interest for a real estate investment trust.

Foreign withholding

The conferees intend that for purposes of withholding on interest paid to foreign persons, regular interests in REMICs should be considered to be debt instruments that are issued after July 18, 1984, regardless of the time that any debt instruments held by the REMIC were issued. The conferees intend that amounts paid to foreign persons with respect to residual interests should be considered to be interest for purposes of applying the withholding rules.

OID rules

The conference agreement provides rules relating to the application of the OID rules to debt instruments that, as is generally the case with regular interests in a REMIC, have a maturity that is initially fixed, but that is accelerated based on prepayments on other debt obligations securing the debt instrument (or, to the extent provided in regulations, by reason of other events). The OID rules provided by the conference agreement also apply to OID on qualified mortgages held by a REMIC.

In general, the OID rules provided by the conference agreement require OID for an accrual period to be calculated and included in the holder's income based on the increase in the present value of remaining payments on the debt instrument, taking into account payments includible in the instrument's stated redemption price at maturity received on the regular interest during the period. For this purpose, the present value calculation is made at the beginning of each accrual period (1) using the yield to maturity determined for the instrument at the time of its issuance (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), calculated on the assumption that, as prescribed by regulations, certain prepayments will occur, and (2) taking into account any prepayments that have occurred before the close of the accrual period.

The conferees intend that the regulations will provide that the prepayment assumption to be used in calculating present values as of the close of each accrual period, and in computing the yield to maturity used in the calculation of such present values, will be that used by the parties in pricing the particular transaction. The conferees intend that such prepayment assumption will be determined by the assumed rate of prepayments on qualified mortgages held by the REMIC and also the assumed rate of earnings on the temporary investment of payments on such mortgages insofar as such rate of earnings would affect the timing of payments on regular interests.[22]

The conferees intend that the regulations will require these pricing assumptions to be specified in the first partnership return filed by the REMIC. In addition, the conferees intend that appropriate supporting documentation relating to the selection of the prepayment assumption must be supplied to the Internal Revenue Service with such return. Further, the conferees intend that the prepayment assumptions used must not be unreasonable based on comparable transactions, if comparable transactions exist.[23]

The conferees intend that unless otherwise provided by regulations, the use of a prepayment assumption based on a recognized industry standard would be permitted. For example, the conferees understand that prepayment assumptions based on a Public Securities Association standard currently is such an industry recognized standard.

The conferees intend that in no circumstances, would the method of accruing OID prescribed by the conference agreement allow for negative amounts of OID to be at-

[18] The conferees intend that withholding upon disposition of such interests is to be similar to withholding upon disposition of debt instruments that have original issue discount.

[19] See sec. 1803(a)(13) of the conference agreement.

[20] If 95 percent of the assets of the REMIC would be treated as qualifying real property loans at all times during a calender year then the entire regular or residual interest is so treated for the calendar year.

[21] If 95 percent of the assets of the REMIC would be treated as real estate assets at all times during a calendar year, then the entire regular or residual is so treated for the calendar year.

[22] In computing the accrual of OID (or market discount) on qualified mortgages held by the REMIC, only assumptions about the rate of prepayments on such mortgages would be taken into account.

[23] The conferees intend that in the case of publicly offered instruments, a prepayment assumption will be treated as unreasonable only in the presence of clear and convincing evidence. In addition, the conferees intend that in determining whether a prepayment assumption is reasonable, the nature of the debt instruments on which prepayments are being assumed, and the availability of information about prepayments thereon, will be taken into account. Thus, for example, under currently prevailing conditions, the conferees understand that there should be less tolerance in the evaluation of prepayment assumptions relating to pools of home mortgages than prepayment assumptions relating to pools of commercial mortgages.

tributed to any accrual period. If the use of the present value computations prescribed by the conference agreement produce such a result for an accrual period, the conferees intend that the amount of OID attributable to such accrual period would be treated as zero, and the computation of OID for the following accrual period would be made as if such following accrual period and the preceding accrual period were a single accrual period.

Regulatory authority

The conference agreement grants the Treasury Department authority to prescribe such regulations as are necessary or appropriate to implement the provisions relating to REMICs. The conferees expect that, among other things, regulations will be issued to prevent unreasonable accumulations of assets in the REMIC, to require the REMIC to report information adequate to allow residual holders to compute taxable income accurately (including reporting more frequently than annually). Further, such regulations may require reporting of OID accrual more frequently than otherwise required by the conference agreement.

Treasury study

The conferees are concerned about the impact of the REMIC provisions upon the thrift industry. Accordingly, the conferees request that the Treasury Department conduct a study of the effectiveness of the REMIC provisions in enhancing the efficiency of the secondary market in mortgages, and the impact of these provisions upon thrift institutions.

Taxable mortgage pools

The conferees intend that REMICs are to be the exclusive means of issuing multiple class real estate mortgage-backed securities without the imposition of two levels of taxation. Thus, the conference agreement provides that a "taxable mortgage pool" ("TMP") is treated as a taxable corporation that is not an includible corporation for purposes of filing consolidated returns.

Under the conference agreement, a TMP is any entity other than a REMIC if (1) substantially all of the assets of the entity consist of debt obligations (or interests in debt obligations) and more than 50 percent of such obligations (or interests) consist of real estate mortgages, (2) such entity is the obligor under debt obligations with two or more maturities,[24] and (3) under the terms of such debt obligations on which the entity is the obligor, payment on such debt obligations bear a relationship to payments on the debt obligations (or interests therein) held by the entity.[25] Typically, the relationship between the assets of the entity and its debt obligations would be such that payments on the debt obligations must be made within a period of time from when payments on the assets are received.

Under the conference agreement, any portion of an entity that meets the definition of a TMP is treated as a TMP. For example, if an entity segregates mortgages in some fashion and issues debt obligations in two or more maturities, which maturities depend upon the timing of payments on the mortgages, then the mortgages and the debt would be treated as a TMP, and hence as a separate corporation. The TMP provisions are intended to apply to any arrangement under which mortgages are segregated from a debtor's business activities (if any) for the benefit of creditors whose loans are of varying maturities.

The conference agreement provides that no domestic building and loan association (or portion thereof) is to be treated as a TMP.

Special rule for REITs

The conferees intend that an entity that otherwise would be treated as a TMP may, if it otherwise meets applicable requirements, elect to be treated as a REIT. If so, the conference agreement provides that under regulations, a portion of the REIT's income would be treated in the same manner as income subject to the special rules provided for a portion of the income of a the income interest in a REMIC. The conferees intend that this calculation is to be made as if the equity interests in the REIT were the residual interest in a REMIC and such interests were issued (i.e., the issue price of interests is determined) as of the time that the REIT becomes a TMP.[26]

The conferees intend that the regulations would provide that dividends paid to the shareholders of a REIT would be subject to the same rules provided for a portion of the income of holders of residual interests in a REMIC. Thus, for example, the conferees intend that the regulations would provide that to the extent that dividends from the REIT exceed the daily accruals for the REIT (determined in the same manner as if the REIT were a REMIC) such dividends (1) may not be offset by net operating losses (except those of certain thrift institutions), (2) are treated as unrelated business income for certain tax-exempt institutions, and (3) are not eligible for any reduction in the rate of withholding when paid to foreign persons. The conferees also intend that the regulations would require a REIT to report such amounts to its shareholders.[27]

Effective Date

The provisions of the conference agreement are effective with respect to taxable years beginning after December 31, 1986. The amendments made by the conference agreement to the OID rules apply to debt instruments issued after December 31, 1986. The provisions relating to taxable mortgage pools do not apply to any entity in existence on December 31, 1991, unless there is a substantial transfer of cash or property to such entity (other than in payment of obligations held by the entity) after such date. For purposes of applying the wash sale rules provided by the conference agreement, however, the definition of a TMP is applicable to any interest in any entity in existence on or after January 1, 1986.

Q. Regulated Investment Companies

Present Law

A regulated investment company ("RIC") receives a deduction for dividends paid to shareholders during a taxable year if, for the taxable year, at least 90 percent of its ordinary income is derived from specified sources commonly considered passive investment income, if it distributes at least 90 percent of its ordinary income to shareholders, if less than 30 percent of its gross income is derived from sales of stock or securities held for less than three months, and if it also meets certain other requirements (secs. 851, 852(a)).

A RIC may adopt any fiscal year as its taxable year. RICs are permitted to treat certain dividends paid after the close of a taxable year as paid during the preceding taxable year (sec. 855(a)). Shareholders receiving such "spillover dividends" recognize income attributable to such dividends in the year of payment (sec. 855(b)).

A RIC that has long-term capital gain income may designate a dividend as a capital gain dividend in a notice sent to shareholders within 45 days after the end of its taxable year (sec. 852(b)(3)). Shareholders treat such capital gain dividends as long-term capital gain regardless of their holding period for the RIC stock, and the RIC is not required to pay any capital gains tax on the amount so designated.

If a RIC, organized as a corporation, has several "series" of stock, with each series of stock representing an interest in the income and assets of a particular fund, the RIC generally is treated as a single corporation.[28] If the RIC is organized as a business trust, it is unclear whether the RIC properly is treated as a single corporation or whether each fund properly is treated as a separate corporation.

In the case of certain summonses served upon "third party recordkeepers," certain notice requirements are imposed on the Internal Revenue Service (sec. 7609). Third party recordkeepers generally include various types of financial institutions, and others such as attorneys, accountants, and brokers, but do not include RICs.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, RICs are required to adopt a calendar year as their taxable year. In addition, a RIC is required to pay a nondeductible excise tax equal to five percent of the amount of any dividends paid after the close of its taxable year that are treated as having been paid in the preceding taxable year.

The Senate amendment clarifies the definition of "securities" by reference to the definition of securities in the Investment Company Act of 1940. In addition, permitted income for RICs is defined to include income from foreign currencies, and options and futures contracts, derived with respect to the RIC's business of investing. The Senate amendment provides regulatory authority, however, to exclude certain gains from investment in foreign currency.

The Senate amendment also provides that, in the case of RICs that have so-called series funds, each fund is treated as a separate corporation. Tax-free treatment is provided for the deemed formation of the separate corporations that are deemed to be formed under the provision.

The Senate amendment extends the time for filing notices for capital gain dividends and certain other purposes from 45 to 60

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[24] For this purpose, the conferees intend that debt instruments that may have the same stated maturity but different rights relating to acceleration of that maturity, are to be treated as having different maturities. In addition, the conference agreement provides that to the extent provided in regulations, equity interests of varying classes that correspond to differing maturity classes of debt are to be treated as debt for these purposes.

[25] For example, certain arrangements that are commonly known as "Owners' Trusts" would be treated as TMPs under the bill.

[26] If a portion of a REIT is treated as a TMP, such portion may qualify as a REIT subsidiary (see sec. 662 of the Act).

[27] If the REIT has a REIT subsidiary that is a TMP, then the conferees intend that the portion of the REIT's income that is subject to the special rules is determined based on calculations made at the level of the REIT subsidiary.

[28] *See Union Trusteed Funds* v. *Commissioner*, 8 T.C. 1133 (1947), *acq.* 1947-2 C.B. 4; Rev. Rul. 56-256, 1956-1 C.B. 316.

days. RICs are treated as third party recordkeepers under the Senate amendment.

The provisions of the Senate amendment relating to the adoption of a calendar year generally are effective for taxable years beginning after December 31, 1986. The provision of the Senate amendment relating to treatment of a RIC as a third party recordkeeper is effective for summonses served after the date of enactment. The other provisions of the Senate amendment are effective for taxable years of RICs beginning after the date of enactment.

Conference Agreement

The conference agreement generally follows the Senate amendment with the following modifications.

Imposition of excise tax

In general

The conference agreement does not require all RICs to adopt a calendar year as their taxable year and does not impose an excise tax on all "spillover" dividends. Instead, the conference agreement imposes for any calendar year, a nondeductible excise tax on any RIC equal to four percent of the excess, if any, of the "required distribution" for the calendar year ending within the taxable year of the RIC, over the "distributed amount" for such calendar year. The excise tax imposed for any calendar year is to be paid not later than March 15 of the succeeding calendar year.

For these purposes, the term required distribution means, with respect to any calendar year, the sum of (1) 97 percent of the RIC's "ordinary income" for such taxable year, (2) 90 percent of the RIC's capital gain net income (within the meaning of sec. 1222(9)) for the one year period ending on October 31 of such taxable year (as if the one year period ending on October 31 were the RIC's taxable year),[29] and (3) the excess, if any, of the "grossed up required distribution" for the preceding calendar year over the distributed amount for such preceding calendar year. For this purpose, the term grossed up required distribution for any calendar year is the sum of the taxable income of the RIC for the calendar year (determined without regard to the deduction for dividends paid) and all amounts from earlier years that are not treated as having been distributed under the provision.

The RIC's ordinary income for this purpose means its investment company taxable income (as defined in sec. 852(b)(2)) determined (1) taking into account the net capital gain of the RIC and without taking into account the dividends paid deduction, (2) by not taking into account any gain or loss from the sale of any capital asset, and (3) by treating the calendar year as the RIC's taxable year.

In addition, for these purposes, the term distributed amount means, with respect to any calendar year, the sum of (1) the deduction for dividends paid (within the meaning of sec. 561) during such calendar year, (2) amounts on which the RIC is required to pay corporate tax, and (3) the excess (if any) of the distributed amount for the preceding taxable year over the required distribution for such preceding taxable year. The amount of dividends paid for these purposes is determined without regard to the provisions of section 855 and without regard to any exempt-interest dividend (as defined in sec. 852(b)(5)).

Under the conference agreement, for purposes of applying these provisions, any deficiency dividend (as defined in sec. 860(f)) is taken into account at the time it is paid, and any income giving rise to the adjustment is treated as arising at the time the dividend is paid.

Special rule for certain regulated investment companies

The conference agreement provides that RICs that have a taxable year ending on either November 30, or December 31, may make an irrevocable election to use their actual taxable year, rather than a year ending on October 31, for purposes of applying the distribution requirement rules relating to capital gains.

Timing of inclusion of certain dividends

The conference agreement provides that any dividend declared by a RIC in December of any calendar year and payable to shareholders of record as of a specified date in such month, shall be deemed to have been paid by the RIC, (including for purposes of section 561), and to have been received by each shareholder, on such record date, but only if such dividend is actually paid by the RIC before February 1 of the following calendar year. This provision does not apply for purposes of section 855(a), however.[30]

Earnings and profits

Under the conference agreement, a RIC is treated as having sufficient earnings and profits to treat as a dividend any distribution during any calendar year which distribution is treated as a dividend by such RIC, (other than a redemption to which section 302(a) applies), but only to the extent that the amount distributed during such calendar year does not exceed the required distribution for such calendar year. The purpose of this provision is to prevent a RIC from failing to meet the requirements for avoiding the imposition of the excise tax where losses incurred by the RIC after October 31, but before the close of its taxable year, otherwise would prevent the RIC from having sufficient earnings and profits for its distributions to be treated as dividends.

Treatment of certain capital losses

For purposes of determining the amount of capital gain dividends that a RIC may distribute for a taxable year, the RIC's net capital gain for the taxable year is determined without regard to any net capital loss attributable to transactions after October 31 of such year. For these purposes, any such net capital loss is treated as arising on the first day of the next taxable year. To the extent provided in regulations, the same rule will apply for purposes of determining the RIC's taxable income.[31]

Hedging exception

The conferees believe that the requirement that a RIC derive less than 30 percent of its gross income from the sale or other disposition of stock or securities held for less than three months is an appropriate requirement to ensure that a RIC is a passive entity that is appropriately granted passthrough status. Nevertheless, the conferees recognize that this requirement may not necessarily reflect accurately the extent of the active business activities of a RIC where the RIC engages in certain hedging transactions that are otherwise consistent with the passive nature of the RIC. The conferees believe that in general, in the case of such hedging transactions, both the hedged and the hedging positions properly are considered to be single investment.

Accordingly, the conference agreement modifies the computation of gross income of a RIC for purposes of the requirement of section 851(b)(3) that less than 30 percent of the gross income of the RIC is derived from the sale or exchange of stock or securities held for less than three months. Under the conference agreement, for purposes of applying this test, any increase in value on a position that is part of a designated hedge is offset by any decrease in value (whether or not realized) on any other position that is part of such hedge. For this purpose, increases and decreases in value are taken into account only to the extent attributable to increases or decreases in value (as the case may be) during the period of the hedge. This rule applies for purposes of calculating both gains from the sale or other disposition of stock or securities held for less than three months and also the gross income of the RIC for purposes of section 851(b)(3).

For these purposes, there is a designated hedge where the taxpayer's risk of loss with respect to any position in property is reduced by reason of (1) the taxpayer having an option to sell, being under a contractual obligation to sell, or having made (and not closed) a short sale of substantially identical property, (2) the taxpayer being the grantor of an option to buy substantially identical property, or (3) under regulations prescribed by the Secretary, the taxpayer holding one or more other positions. The conferees intend that a qualified covered call (within the meaning of sec. 1092(c)) may be treated as part of a designated hedge. In addition, the positions that are part of the hedge must be clearly identified by the taxpayer in the manner prescribed by regulations.

Prior to the issuance of such regulations, the conferees intend that the identification requirement would be treated as having been satisfied with identification by the close of the day on which the hedge is established, either (a) by the placing of the positions that are part of hedge in a separate account that is maintained by a broker, futures commission merchant, custodian or similar person, and that is designated as a hedging account, provided that such person maintaining such account makes notations identifying the hedged and hedging positions and the date on which the hedge is established, or (b) by the designation by such a broker, merchant, custodian or similar person, of such positions as a hedge for purposes of these provisions, provided that the RIC is provided with a written confirmation stating the date the hedge is established and identifying the hedged and hedging positions.

Business development companies

The conference agreement provides that a business development company registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2) may qualify as a RIC.

[29] The conferees understand that in applying this rule, the period ending October 31, of each calendar year would be treated as the taxpayer's taxable year for purposes of the capital loss carryover provisions and for purposes of the year-end straddle and mark-to-market rules.

[30] Thus, a RIC that has a taxable year ending on November 30, may treat such dividends as having been paid prior to December under section 855(a).

[31] The conferees intend that any such regulations would prevent avoidance of tax, particularly in circumstances where a RIC takes advantage of the rule in order to pay return of capital dividends in the following taxable year, or to offset the tax that would be incurred on capital gains recognized in the following year.

Preference dividends

The conference agreement provides that differences in the rate of dividends paid to shareholders are not treated as preferential dividends (within the meaning of section 562(c)), where the differences reflect savings in administrative costs (but not differences in management fees), provided that such dividends are paid by a RIC to shareholders who have made initial investments of at least $10 million.

Effective date

The provisions of the conference agreement relating to the imposition of the excise tax on RICs are applicable for calendar years beginning after December 31, 1986. Other provisions of the conference agreement have the same effective date as the Senate amendment.

R. Definition of Personal Holding Company Income

Present Law

Personal holding companies are subject to a 50 percent tax, in addition to the corporate income tax, on personal holding company income that is not distributed to shareholders (sec. 541). In general, a personal holding company is a corporation more than 50 percent of whose stock is owned by not more than five individuals, and at least 60 percent of whose adjusted ordinary gross income is personal holding company income (sec. 542).

Personal holding company income includes dividends, interest, royalties, and certain other types of income (sec. 543). No exceptions are provided for royalties or interest received in connection with the development of computer software, the development of biomedical products, or the brokering or dealing in securities.

In general, certain U.S. shareholders of a foreign personal holding company are treated as having received the amount of the foreign personal holding company's undistributed foreign personal holding company income as a dividend on the last day of the corporation's taxable year (sec. 551). A foreign personal holding company generally is a foreign corporation more than 50 percent of whose stock is owned by not more than five individuals who are U.S. citizens or residents, and at least 60 percent of the gross income of which is foreign personal holding company income (sec. 552). Foreign personal holding company income includes royalties (sec. 553).

House Bill

The House bill provides an exception from the definition of personal holding company income for computer software royalties received by corporations that are engaged in the active conduct of the trade or business of developing or manufacturing computer software, provided that four conditions are met. First, the software from which the royalties are derived must be developed or manufactured by the corporation (or predecessor) in connection with such trade or business. Second, the software royalties meeting the first requirement must make up at least 50 percent of the corporation's ordinary gross income for the taxable year. Third, certain expenses incurred by the corporation must equal or exceed 25 percent of the corporation's ordinary gross income for the taxable year (or other periods in certain cases). And fourth, the corporation must distribute most of its personal holding company income (excluding computer software royalties and certain interest income).

The House bill also provides an exception from the definition of personal holding company income for interest on securities held in the inventory of a dealer in securities. In addition, under the House bill, a dealer in securities may deduct interest on certain "offsetting loans" in computing its gross interest income.

The provisions of the House bill are effective for royalties and interest received after December 31, 1985.

Senate Amendment

The Senate amendment generally is the same as the House bill with respect to computer software royalties with two modifications. First, to qualify for the exception, a corporation is not required to derive at least 50 percent of its ordinary gross income from computer software royalties. Second, under the Senate amendment, computer software royalties that qualify for the exception from the definition of personal holding company income also qualify for an exception from the definition of foreign personal holding company income.

The Senate amendment also provides an exception from the definition of personal holding company income for royalties received on account of biomedical research products of a specified biomedical research company under rules similar to those applicable to computer software royalties. In addition, the Senate amendment excludes from the definition of personal holding company income certain interest received by a specified broker-dealer in securities.

The provisions of the Senate amendment are effective for royalties received on, before, or after December 31, 1986, and for interest received after the date of enactment.

Conference Agreement

The conference agreement generally follows the Senate amendment with certain modifications. First, to qualify for the exception for certain computer software royalties under the conference agreement, the corporation receiving such royalties must meet the "fifty percent test" contained in the House bill. Second, the conference agreement does not contain the provision in the Senate amendment relating to biomedical research royalties.

The exception in the conference agreement for computer software royalties is effective for royalties received on, before, or after December 31, 1986. The exception for interest received by a specified broker-dealer in securities is effective for interest received on or after the date of enactment. In addition, the conference agreement excludes from the definition of passive investment income for purposes of subchapter S of the Code, computer software royalties derived by a specified taxpayer, which royalties would not be treated as personal holding company income under the conference agreement, effective for taxable years beginning after December 31, 1984. The conference agreement also contains an exception from the definition of personal holding company income for certain royalties derived by a specified toy manufacturer from the licensing of toys, under rules similar to those provided for computer software royalties, effective for royalties received or accrued in taxable years beginning after December 31, 1981.

S. Certain Entity Not Taxed as a Corporation

Present Law

Entities that are organized as trusts under local law may be subject to Federal income tax as corporations, rather than trusts, if they possess certain corporate characteristics. Such entities must pay corporate level tax in addition to the tax at the beneficiary level.

A certain trust (Great Northern Iron Ore Trust) has been held to be taxable as a corporation due to the existence of certain business powers.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, a certain trust (Great Northern Iron Ore Trust) will not be taxed as a corporation if, among other things, it makes an election and agrees not to exercise business powers contained in its trust instrument.

The provision is effective for taxable years beginning after the taxable year in which the election is made, provided that all conditions of the Senate amendment continue to be satisfied.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE VII. MINIMUM TAX PROVISIONS

A. Individual Minimum Tax

1. Structure

Present Law

Individuals are subject to an alternative minimum tax, applying to a broader income base (regular taxable income plus tax preferences) and at a lower rate than the regular tax, and payable to the extent in excess of regular tax liabilities.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Tax Rate

Present Law

The alternative minimum tax is imposed at a rate of 20 percent.

House Bill

The House bill provides for a minimum tax rate of 25 percent.

Senate Amendment

The Senate amendment provides for a minimum tax rate of 20 percent.

Conference Agreement

The conference agreement provides for a minimum tax rate of 21 percent.

3. Exemption Amount

Present Law

Alternative minimum taxable income is reduced by an exemption amount of $40,000 for joint returns, $30,000 for singles, and $20,000 for marrieds filing separately.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill, except that the exemption amount is reduced by 25 cents for each $1 by which alternative minimum taxable income exceeds $150,000 ($112,500 for singles and $75,000 for marrieds filing separately).

Conference Agreement

The conference agreement follows the Senate amendment.

4. Tax Preferences

a. Dividends excluded from gross income

Present Law

Dividends that are excludable from gross income (up to $100 per person, $200 for joint returns) are treated as a minimum tax preference.

House Bill

Under the House bill, the exclusion is repealed for regular tax purposes.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

b. Accelerated depreciation on real property

Present Law

The excess of accelerated over straight-line depreciation on real property, using the same useful lives, is treated as a preference.

House Bill

The House bill is the same as present law for real property placed in service before 1986. For real property placed in service after 1985, the preference is the excess of regular tax depreciation over the alternative depreciation described in the depreciation section of the conference report (15 years for certain low-income housing rehabilitation).

Senate Amendment

The Senate amendment is the same as the House bill, except (1) present law treatment applies to property placed in service in 1986, and to property grandfathered under the depreciation rules, and (2) no special rule applies to low-income housing.

Conference Agreement

The conference agreement generally follows the Senate amendment, as conformed to the alternative depreciation provision described in the depreciation section of this report. However, for property other than (1) section 1250 property and (2) property with respect to which the taxpayer elects or is required to use a straightline method for regular tax purposes, minimum tax depreciation uses the 150 percent declining balance method (switching to straightline in the year necessary to maximize the allowance) over the alternative depreciation life.

c. Accelerated depreciation on personal property

Present Law

Solely for leased personal property, the excess of accelerated over straight-line depreciation, using the same useful lives, is a preference.

House Bill

The House bill is the same as present law for personal property placed in service before 1986. For personal property placed in service after 1985, the preference is the excess of regular tax depreciation over the alternative depreciation described in the depreciation section of the conference report.

Senate Amendment

The Senate amendment is the same as the House bill, except that present law treatment applies to property placed in service in 1986 and to property grandfathered under the depreciation rules.

Conference Agreement

The conference agreement generally follows the Senate amendment, as conformed to the alternative depreciation provision described in the depreciation section of this report. However, for property other than that with respect to which the taxpayer elects or is required to use a straightline method for regular tax purposes, minimum tax depreciation uses the 150 percent declining balance method (switching to straightline in the year necessary to maximize the allowance) over the alternative depreciation life. The preference, computed using the useful life under the alternative depreciation system, applies to property placed in service in 1986 with respect to which the taxpayer elects the application of section 201 of the Act.

d. Expensing of intangible drilling costs

Present Law

The excess of expensing over 10-year amortization or cost depletion, to the extent in excess of 100 percent of net oil and gas income, is a preference.

House Bill

Under the House bill, the excess of expensing over 10-year amortization or cost depletion, to the extent in excess of 65 percent of net oil and gas income, is a preference.

Senate Amendment

The Senate amendment is the same as present law.

Conference Agreement

The conference agreement follows the House bill.

e. 60-month amortization on certified pollution control facilities

Present Law

The excess over depreciation otherwise allowable is a preference.

House Bill

The House bill is the same as present law for property placed in service before 1986. The provision is repealed for regular tax purposes, effective in 1986.

Senate Amendment

The Senate amendment treats the excess over alternative depreciation as a preference.

Conference Agreement

The conference agreement follows the Senate amendment.

f. Expensing of mining exploration and development costs

Present Law

The excess of expensing over 10-year amortization is a preference.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

g. Expensing of circulation expenditures (for newspapers, magazines, etc.)

Present Law

The excess of expensing over 3-year amortization is a preference.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

h. Expensing of research and experimentation expenditures

Present Law

The excess of expensing over 10-year amortization is a preference.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

i. Percentage depletion

Present Law

The excess over the adjusted basis of the depletable property is a preference.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

j. Net capital gain deduction

Present Law

The net capital gain deduction is treated as a preference.

House Bill

Under the House bill, a portion of the net capital gain deduction is treated as a preference, so that the minimum tax rate on capital gains, like the regular tax rate, will be 22 percent.

Senate Amendment

Under the Senate amendment, the net capital gain deduction is repealed for regular tax purposes, and net capital gains accordingly are fully included in minimum taxable income.

Conference Agreement

The conference agreement follows the Senate amendment.

k. Incentive stock options

Present Law

The excess of the fair market value of stock over the exercise price is treated as a preference.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement generally follows the House bill and the Senate amendment. However, for minimum tax purposes, the basis of stock acquired through the exercise of an incentive stock option after 1986 equals the fair market value taken into account in determining the amount of the preference.

Assume, for example, that an individual pays an exercise price of $10 to purchase stock having a fair market value of $15. The preference in the year of exercise is equal to $5, and the stock has a basis of $10 for regular tax purposes and $15 for minimum tax purposes. If, in a subsequent year, the taxpayer sells the stock for $20, the gain recognized is $10 for regular tax purposes and $5 for minimum tax purposes.

l. Tax-exempt interest

Present Law

Tax-exempt interest is not treated as a preference.

House Bill

Under the House bill, tax-exempt interest on newly issued private activity (i.e., nonessential function) bonds that continue to be exempt for regular tax purposes is treated as a preference. Certain refundings of pre-1986 bonds are not treated as a preference.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with certain modifications and clarifications. First, the preference applies only to interest on private activity bonds other than qualified 501(c)(3) bonds. Second, the preference applies only to bonds issued on or after August 8, 1986 (on or after September 1, 1986, in the case of bonds covered under the Joint Statement on Effective Dates of March 14, 1986).[1]

The conference agreement further clarifies that the House bill's exception for certain current refundings of bonds issued before August 8, 1986 (or September 1, 1986) also applies in the case of a series of current refundings of an issue originally issued before those dates. This exception does not apply to refundings of pre-August 8, 1986 (or September 1, 1986), bonds.

m. Excludable income earned abroad by U.S. citizens

Present Law

The exclusion for income earned abroad by U.S. citizens is not treated as a preference.

House Bill

Under the House bill, the exclusion for income earned abroad by U.S. citizens is treated as a preference.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

n. Completed contract and other methods of accounting for long-term contracts

Present Law

The use of a method of accounting for long-term contracts, such as the completed contract method, that permits deferral of income during the contract period, is not treated as a preference.

House Bill

Under the House bill, use of the completed contract or another method of accounting for long-term contracts that permits deferral of income during the contract period is treated as a preference, by requiring use of the percentage of completion method for minimum tax purposes on post-September 25, 1985 long-term contracts.

Senate Amendment

The Senate amendment is the same as the House bill, except that the preference applies only to post-March 1, 1986 long-term contracts.

[1] The Joint Statement on Effective Dates of March 14, 1986, provided generally that interest on bonds satisfying the present-law definition of governmental bond (as modified by an expanded security interest test like that adopted under the Senate amendment) is not a preference if the bonds are issued before September 1, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

o. Installment method of accounting

Present Law

Use of the installment method of accounting is not treated as a minimum tax preference.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, use of the installment method of accounting by dealers is treated as a preference, by not permitting use of the installment method for minimum tax purposes on sales after March 1, 1986. The provision does not apply (1) to certain sales by a manufacturer where special relief is provided under the regular tax rules, and (2) in the case of certain elections to pay interest on the deferral of income with respect to sales of timeshares and residential lots.

Conference Agreement

The conference agreement follows the Senate amendment, except that the preference applies to all transactions subject to proportionate disallowance of the installment method (i.e., dealer sales, and sales of trade or business or rental property where the purchase price exceeds $150,000).

p. Net loss from passive trade or business activities

Present Law

Net losses from trade or business activities in which the taxpayer does not materially participate are not treated as a minimum tax preference.

House Bill

Under the House bill, to the extent otherwise deductible for minimum tax purposes, the excess net loss with respect to trade or business activities (including the production of rental or royalty income) in which the taxpayer did not materially participate in management or provide substantial personal services is treated as a preference. The excess net loss is defined as net losses in excess of cash basis, which includes no more than $50,000 attributable to the taxpayer's tax shelter investments.

Senate Amendment

The Senate amendment provides that the passive loss rules of the regular tax apply to the minimum tax (using minimum tax measurements of items of income and deduction), except that the preference is reduced by the amount, if any, of the taxpayer's insolvency, and the provision is not phased in.

Conference Agreement

The conference agreement follows the Senate amendment. Changes made by the conference agreement to the regular tax passive loss provision apply for minimum tax purposes as well.

q. Losses from passive farming activities

Present Law

Net losses from farming activities in which the taxpayer does not materially participate are not treated as a minimum tax preference.

House Bill

Under the House bill, excess passive farm losses are treated as a preference. The rule is the same as the passive loss rule set forth above, except that it applies only to farming, applies separately to each farming activity, and treats as a preference only losses in excess of twice cash basis (without limiting cash basis from tax shelters).

Senate Amendment

The Senate amendment is the same as the House bill, except that (1) the preference applies to the entire net loss without regard to cash basis, (2) the preference applies to personal service corporations, (3) the preference is reduced by the amount, if any, of the taxpayer's insolvency, and (4) the definition of a passive farm activity is conformed to the passive loss rules.

Conference Agreement

The conference agreement follows the Senate amendment.

r. Charitable contributions of appreciated property

Present Law

Deductions for charitable contributions of appreciated property do not give rise to a minimum tax preference.

House Bill

Under the House bill, in the case of a charitable contribution of appreciated property, the lesser of the amount of untaxed appreciation allowed as a regular tax deduction and the amount of the taxpayer's other preferences is treated as a preference.

Senate Amendment

The Senate amendment is the same as present law.

Conference Agreement

The conference agreement follows the House bill, except that the amount of untaxed appreciation treated as a preference is not limited to the amount of the taxpayer's other preferences. The preference does not apply to carryovers of the deduction with respect to charitable contributions made before August 16, 1986.

5. Itemized Deductions

Present Law

The only itemized deductions allowed for minimum tax purposes are those for casualty and theft losses, gambling losses to the extent of gambling gains, charitable deductions, medical deductions (to the extent in excess of 10 percent of adjusted gross income), interest expenses (restricted to housing interest plus net investment income), and certain estate taxes.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill, except that the definition of net investment income is conformed to the definition for regular tax purposes.

Conference Agreement

The conference agreement generally follows the Senate amendment in conforming the definition of net investment income to the definition adopted for regular tax purposes (although determined with regard to minimum tax items of income and deduction), with an amendment providing for a carryover of investment interest deductions that are disallowed. Other regular tax itemized deductions generally are allowed for minimum tax purposes.

For minimum tax purposes, medical deductions are allowed only to the extent in excess of 10 percent of adjusted gross income, miscellaneous itemized deductions and itemized deductions for State and local taxes are not allowed, and the investment interest rule is not phased in. It is clarified

that, for minimum tax purposes, upon a refinancing of a loan that gives rise to qualified housing interest, interest paid on the new loan is treated as qualified housing interest to the extent that (1) it so qualified under the prior loan, and (2) the amount of the loan was not increased. Moreover, a residence does not constitute a qualified residence for minimum tax purposes unless it meets the requirements for a qualified residence applying for regular tax purposes. Further, the conference agreement provides that a refund of State and local taxes paid, for which no minimum tax deduction was allowed, is not included in alternative minimum taxable income.

6. Regular Tax Elections

Present Law

Taxpayers generally can elect to have minimum tax rules for measuring a particular item apply for regular tax purposes.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. Adjustments in Other Years When Taxpayer Pays Minimum Tax

Present Law

Minimum tax liability incurred by a taxpayer in one year has no effect on regular tax liability in other years.

House Bill

Under the House bill, the amount of minimum tax liability relating to deferral preferences is allowed as a carryforward credit against regular tax liability.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

8. Incentive Tax Credits

Present Law

Incentive tax credits are not allowed against the minimum tax. Credits that do not benefit the taxpayer due to the minimum tax can be used as credit carryovers against the regular tax.

House Bill

Under the House bill, incentive tax credits are not allowed against the minimum tax. Credits that cannot be used for regular tax purposes due to the minimum tax can be used as credit carryovers against the regular tax.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

9. Foreign Tax Credit

Present Law

Foreign tax credits are allowed against the minimum tax, under limits similar to those applying under the regular tax. Credits that cannot be used in the current taxable year because of these limits are carried over under a system separate from but parallel to that applying for regular tax purposes.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill, except that foreign tax credits cannot offset more than 90 percent of tentative minimum tax liability (as determined without regard to foreign tax credits).

Conference Agreement

The conference agreement generally follows the Senate amendment. It is clarified that the taxpayer's regular tax election regarding whether to treat foreign taxes as giving rise to a deduction or a credit is controlling for minimum tax purposes as well. Moreover, in light of the limitation on the use of net operating losses, described below, it is provided that foreign tax credits cannot offset more than 90 percent of minimum tax liability as determined without regard to foreign tax credits and net operating losses.

For example, assume that in 1987 a taxpayer has $10 million of alternative minimum taxable income for the year. In the absence of net operating losses or foreign tax credits, the taxpayer's tentative minimum tax liability (i.e., liability as determined without regard to the amount of regular tax liability) would equal $2.1 million. Accordingly, foreign tax credits cannot be used to reduce liability to less than $210,000, whether or not the taxpayer has any minimum tax net operating losses.

10. Net Operating Losses (NOLs)

Present Law

NOLs are allowed against alternative minimum taxable income. For years after 1982, minimum tax NOLs are reduced by the items of tax preference. Minimum tax NOLs are carried over under a system separate from but parallel to that applying for regular tax purposes.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that NOLs cannot offset more than 90 percent of alternative minimum taxable income. As with the 90 percent limitation on the use of the foreign tax credit, amounts disallowed by reason of this limitation may be carried over to other taxable years.

Thus, for example, assume that in 1987 a taxpayer has $10 million of alternative minimum taxable income for the year, and minimum tax NOLs in the amount of $11 million. The NOLs reduce alternative minimum taxable income to $1 million. This gives rise to tentative minimum tax liability of $210,000. The taxpayer carries forward $2 million of minimum tax NOLs to 1988. Since the allowability of net operating losses is determined prior to the allowability of foreign tax credits, this taxpayer would not be permitted to use any minimum tax foreign tax credits in 1987.

It is clarified that an election under section 172(b)(3)(C) to relinquish the carryback period applies both for regular tax and for minimum tax purposes.

11. Miscellaneous Changes and Clarifications

Conference Agreement

Under the conference agreement, it is clarified that Code sections suspending losses, such as sections 465, 704(d), 1366(d), and other sections specified in regulations, are recomputed for minimum tax purposes, to apply with respect to amounts otherwise deductible for purposes of the minimum tax. Thus, the amount of the deductions suspended or recaptured may differ for regular and minimum tax purposes, respectively. This clarification applies with respect to all taxpayers subject to the at-risk rules.

It is clarified that the application of the tax benefit rule to the minimum tax is within the discretion of the Secretary of the Treasury. Since the regular and minimum taxes generally are computed separately, relief from the minimum tax under the tax benefit rule is not appropriate solely by reason of the fact that a taxpayer has received no benefit under the regular tax with respect to a particular item. This clarification applies with respect to corporations as well as individuals.

In the case of an estate or trust, instead of allocating items of tax preference between the estate or trust and its beneficiaries (as under present law), it is provided that the minimum tax will apply by determining distributable net income on a minimum tax basis (except to the extent inconsistent with the modifications under section 643(a), with the minimum tax exemption amount being treated the same way as the deduction for personal exemptions under section 643(a)(2)).

12. Effective Date

House Bill

The House bill applies for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment applies for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

B. Corporate Minimum Tax

1. Structure

Present Law

Corporations are subject to an add-on tax, equalling a percentage of certain preferences minus regular tax paid.

House Bill

The House bill provides for an alternative minimum tax, applying to a broader income base (regular taxable income plus preferences) and at a lower rate than the regular tax, and payable to the extent in excess of regular tax liabilities.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Tax Rate

Present Law

The add-on tax is imposed at a rate of 15 percent.

House Bill

The House bill provides for a minimum tax rate of 25 percent.

Senate Amendment

The Senate amendment provides for a minimum tax rate of 20 percent.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Exemption Amount

Present Law

The amount of preferences that are subject to the add-on tax is reduced by an exemption amount equal to the greater of $10,000 or the taxpayer's regular tax liability.

House Bill

Alternative minimum taxable income is reduced by an exemption amount of $40,000.

Senate Amendment

The Senate amendment is the same as the House bill, except that the exemption amount is reduced by 25 cents for each $1 by which alternative minimum taxable income exceeds $150,000.

Conference Agreement

The conference agreement follows the Senate amendment.

4. Tax Preferences

a. Accelerated depreciation on real property

Present Law

The excess of accelerated over straight-line depreciation on real property, using the same useful lives, is treated as a preference.

House Bill

The House bill is the same as present law for real property placed in service before 1986. For real property placed in service after 1985, the preference is the excess of regular tax depreciation over the alternative depreciation described in the depreciation section of the conference report (15 years for certain low-income housing rehabilitation).

Senate Amendment

The Senate amendment is the same as the House bill, except (1) present law treatment applies to property placed in service in 1986 and to property grandfathered under the depreciation rules, and (2) no special rule applies to low-income housing.

Conference Agreement

The conference agreement generally follows the Senate amendment, as conformed to the alternative depreciation provision described in the depreciation section of this report. However, for property other than (1) section 1250 property and (2) property with respect to which the taxpayer elects or is required to use a straightline method for regular tax purposes, minimum tax depreciation uses the 150 percent declining balance method (switching to straightline in the year necessary to maximize the allowance) over the alternative depreciation life.

b. Accelerated depreciation on personal property

Present Law

Solely for leased personal property in the hands of a personal holding company (PHC), the excess of accelerated over straight-line depreciation, using the same useful lives, is a preference.

House Bill

The House bill is the same as present law for personal property placed in service before 1986. For personal property placed in service after 1985, the preference applies to all corporations and is the excess of regular tax depreciation over the alternative depreciation described in the depreciation section of the conference report.

Senate Amendment

The Senate amendment is the same as the House bill, except that present law treatment applies to property placed in service in 1986 and to property grandfathered under the depreciation rules.

Conference Agreement

The conference agreement generally follows the Senate amendment, as conformed to the alternative depreciation provision described in the depreciation section of this report. However, for property other than that with respect to which the taxpayer elects or is required to use a straightline method for regular tax purposes, minimum tax depreciation uses the 150 percent declining balance method (switching to straightline in the year necessary to maximize the allowance) over the alternative depreciation life. The preference, computed using the useful life under the alternative depreciation system, applies to property placed in service in 1986 with respect to which the taxpayer elects the application of section 201 of the Act.

c. Expensing of intangible drilling costs

Present Law

Solely for PHCs, the excess of expensing over 10-year amortization or cost depletion, to the extent in excess of 100 percent of net oil and gas income, is a preference.

House Bill

Under the House bill, the excess of expensing over 10-year amortization or cost depletion, to the extent in excess of 65 percent of net oil and gas income, is a preference for all corporations.

Senate Amendment

The Senate amendment is the same as the House bill, except that the preference is reduced by 100 percent of net oil and gas income.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. 60-month amortization on certified pollution control facilities

Present Law

The excess over depreciation otherwise allowable is a preference.

House Bill

The House bill is the same as present law for property placed in service before 1986. The provision is repealed for regular tax purposes, effective in 1986.

Senate Amendment

The Senate amendment treats the excess over alternative depreciation as a preference.

Conference Agreement

The conference agreement follows the Senate amendment. It is clarified that the preference applies without regard to the applicability of section 291 for regular tax purposes.

e. Expensing of mining exploration and development costs

Present Law

Solely for PHCs, the excess of expensing over 10-year amortization is a preference.

House Bill

Under the House bill, the excess of expensing over 10-year amortization is a preference for all corporations.

Senate Amendment

The Senate amendment is the same as present law.

Conference Agreement

The conference agreement follows the House bill. It is clarified that 10-year amortization applies for minimum tax purposes without regard to the applicability of section 291 for regular tax purposes.

f. Expensing of circulation expenditures (for newspapers, magazines, etc.)

Present Law

Solely for PHCs, the excess of expensing over 3-year amortization is a preference.

House Bill

Under the House bill, the excess of expensing over 3-year amortization is a preference, solely for PHCs.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

g. Expensing of research and experimentation expenditures

Present Law

Solely for PHCs, the excess of expensing over 10-year amortization is a preference.

House Bill

The House bill provides that the excess of expensing over 10-year amortization is not a preference for any corporation.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

h. Percentage depletion

Present Law

The excess over the adjusted basis of the depletable property is a preference.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

i. Capital gain preference

Present Law

The benefit of the lower corporate rate applying to capital gains is treated as a preference.

House Bill

Under the House bill, net corporate capital gains are fully included in minimum taxable income.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

j. Tax-exempt interest

Present Law

Tax-exempt interest is not treated as a preference.

House Bill

Under the House bill, tax-exempt interest on newly issued private activity (i.e., nonessential function) bonds that continue to be exempt for regular tax purposes is treated as a preference. Certain refundings of pre-1986 bonds are not treated as a preference.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with certain modifications and

clarifications. First, the preference applies only to interest on private activity bonds other than qualified 501(c)(3) bonds. Second, the preference applies only to bonds issued on or after August 8, 1986 (on or after September 1, 1986, in the case of bonds covered under the Joint Statement on Effective Dates of March 14, 1986).[2]

The conference agreement further clarifies that the House bill's exception for certain current refundings of bonds issued before August 8, 1986 (or September 1, 1986) also applies in the case of a series of current refundings of an issue originally issued before those dates. This exception does not apply to current refundings of pre-August 8, 1986 (or September 1, 1986) bonds.

k. Completed contract and other methods of accounting for long-term contracts

Present Law

The use of a method of accounting for long-term contracts, such as the completed contract method, that permits deferral of income during the contract period, is not treated as a preference.

House Bill

Under the House bill, use of the completed contract or another method of accounting for long-term contracts that permits deferral of income during the contract period is treated as a preference, by requiring use of the percentage of completion method for minimum tax purposes on post-September 25, 1985 long-term contracts.

Senate Amendment

The Senate amendment is the same as the House bill, except that the preference applies only to post-March 1, 1986 long-term contracts.

Conference Agreement

The conference agreement follows the Senate amendment.

l. Installment method of accounting

Present Law

Use of the installment method of accounting is not treated as a minimum tax preference.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, use of the installment method of accounting by dealers is treated as a preference, by not permitting use of the installment method for minimum tax purposes on sales after March 1, 1986. The provision does not apply (1) to certain sales by a manufacturer where special relief is provided under the regular tax rules, and (2) in the case of certain elections to pay interest on the deferral of income with respect to sales of timeshares and residential lots.

Conference Agreement

The conference agreement follows the Senate amendment, except that the preference applies to all transactions subject to proportionate disallowance of the installment method (i.e., dealer sales, and sales of trade or business or rental property where the purchase price exceeds $150,000).

[2] The Joint Statement on Effective Dates of March 14, 1986, provided generally that interest on bonds satisfying the present-law definition of governmental bond (as modified by an expanded security interest test like that adopted under the Senate amendment) is not a preference if the bonds are issued before September 1, 1986.

m. Bad debt reserve deductions for financial institutions

Present Law

The excess of the deduction by a financial institution for bad debts over the amount allowable under the experience method is a preference.

House Bill

The House bill is the same as present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

n. Charitable contributions of appreciated property

Present Law

A deduction for a charitable contribution of appreciated property does not give rise to a minimum tax preference.

House Bill

Under the House bill, the lesser of untaxed appreciation for which the taxpayer claimed a charitable deduction, or the amount of the taxpayer's other preferences, is treated as a preference.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the amount of untaxed appreciation treated as a preference is not limited to the amount of the taxpayer's other preferences. The preference does not apply to carryovers of the deduction with respect to charitable contributions made before August 16, 1986.

o. Excludable foreign sales corporation (FSC) income

Present Law

The exclusion by a shareholder for certain income of a FSC is not treated as a minimum tax preference.

House Bill

Under the House bill, the exclusion for FSC income is treated as a preference.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

p. Capital construction funds for shipping companies

Present Law

Deductions for contributions and tax-free inside buildup with regard to capital construction funds of shipping companies do not give rise to a minimum tax preference.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the use of a capital construction fund gives rise to a minimum tax preference.

Conference Agreement

The conference agreement follows the Senate amendment.

q. Special deduction for certain tax-exempt insurance providers

Present Law

No provision.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, the special deduction allowed for certain existing Blue Cross/Blue Shield organizations and for new organizations meeting certain requirements with respect to high risk coverages is a minimum tax preference.

r. Business untaxed reported profits

Present Law

Differences between book and tax treatment of particular items do not give rise to a minimum tax preference.

House Bill

No provision.

Senate Amendment

The Senate amendment treats as a preference 50 percent of the excess of the taxpayer's pre-tax book income over alternative minimum taxable income (determined without regard to this preference and prior to reduction by net operating losses). Book income is the income of the taxpayer as shown in financial reports or statements filed with the Securities and Exchange Commission or other Federal, State, or local regulators, or provided to shareholders, owners, or creditors. Under certain circumstances, earnings and profits may be substituted for book income.

The preference is computed by consolidating the book income of those corporations which are consolidated for tax purposes. Earnings of a corporation that does not file a consolidated tax return with the taxpayer are taken into account only to the extent of dividends received from the other corporation.

Certain Alaska native corporations may calculate book income using the asset bases determined under the Alaska Native Claims Settlement Act. Certain amounts paid to other Alaska native corporations may be treated as expenses for book purposes in the same year as the amounts are deductible for tax purposes.

Conference Agreement

Taxable years beginning in 1987, 1988, and 1989

For taxable years beginning in 1987, 1988, and 1989, the conference agreement is generally the same as the Senate amendment. It is clarified that dividends paid by cooperatives, to the extent deductible for regular tax and general minimum tax purposes under section 1382, are also deductible for book income purposes.

Further, the conference agreement provides that dividends received from a section 936 corporation and included in the recipient's book income are to be adjusted; i.e., grossed up, for purposes of measuring book income, by the amount of withholding taxes paid with respect to such dividends by such section 936 corporation. To the extent that the alternative minimum taxable income of the recipient is increased by reason of the inclusion of such dividends (including the gross-up) in book income, the related withholding taxes are treated, for minimum tax purposes, as creditable foreign taxes paid by the recipient.

Assume, for example, that a corporation receives a dividend in the amount of $90 from a section 936 corporation that has paid $10 of withholding taxes with respect to such dividend. The recipient's adjusted pretax book income includes dividends of $100. If such book income equals or exceeds other

alternative minimum taxable income of the recipient, disregarding this inclusion, then the result of the inclusion is to increase alternative minimum taxable income by $50 (50 percent of $100). Accordingly, the amount of foreign taxes creditable for minimum tax purposes by the receipient is increased by $5 (50 percent of $10).

Assume that, in the above example, the recipient's adjusted pre-tax book income, disregarding the receipt of the above dividend, is $20 less than other alternative minimum taxable income. Accordingly, after inclusion of the grossed-up dividend, book income exceeds other alternative minimum taxable income by $80, and the book preference results in a $40 increase in the amount of alternative minimum taxable income. Since this increase is 40 percent of the full amount of the grossed-up dividend, the amount of foreign taxes creditable for minimum tax purposes is increased by $4 (40 percent of $10).

In the case of an insurance company whose applicable financial statement is the financial statement prepared for regulatory purposes, the conferees intend that the measure of pre-tax book income is the amount of net gain from operations after dividends to policyholders and before Federal income taxes.

It is clarified that no item of Federal or foreign income tax expenses or benefit (other than foreign taxes deducted in lieu of claiming a foreign tax credit), including any adjustment of deferred taxes resulting from the corporate tax rate changes of this Act or any subsequent legislation, is included in the computation of adjusted pre-tax book income for minimum tax purposes.

The conference agreement provides that, under regulations prescribed by the Secretary of the Treasury, adjusted book income shall be properly adjusted to prevent the omission or duplication of any item. The conferees intend that adjustments made under this provision may include adjustments made under the principles of section 482. The Secretary may require that adjustments be made to book income where the principles of this provision otherwise would be avoided through the disclosure of financial information through footnotes and other supplementary statements.

The conference agreement also provides that a taxpayer's current earnings and profits for the taxable year may be used in certain cases for purposes of the book income preference. The conferees clarify that earnings and profits for this purpose shall be determined without diminution by reason of distributions or federal income taxes during the taxable year. Moreover, for purposes of this provision, earnings and profits shall not be determined with regard to the adjusted current earnings calculation applicable for years beginning after 1989. In calculating earnings and profits for an affiliated group of corporations filing a consolidated return, appropriate adjustments will be made, as prescribed by the Secretary of the Treasury, to prevent the double inclusion of earnings and profits through the operation of the consolidated return regulations or otherwise.

Taxable years beginning after December 31, 1989

Application of the preference in general

For taxable years in which the preference applies, alternative minimum taxable income is increased by 75 percent of the amount by which adjusted current earnings exceeds alternative minimum taxable income (before this adjustment), whether alternative minimum taxable income and adjusted current earnings are positive or negative amounts. If alternative minimum taxable income (before this adjustment) exceeds the amount of adjusted current earnings, then alternative minimum taxable income is reduced by 75 percent of such difference. However, such reduction cannot exceed the excess of the aggregate amount by which alternative minimum taxable income has been increased as a result of this provision in prior taxable years, less the aggregate amount of reductions taken in prior years.

For example, a calendar year taxpayer has adjusted current earnings of $400 in 1990, $300 in 1991, and $200 in 1992. Alternative minimum taxable income is $300 for each of those years. In 1990, adjusted current earnings exceeds alternative minimum taxable income by $100, 75 percent of which ($75) must be included as an additional item of alternative minimum taxable income. In 1992, alternative minimum taxable income exceeds adjusted current earnings by $100, creating a potential negative adjustment to alternative minimum taxable income of $75. As the aggregate increases to alternative minimum taxable income for prior years equals $75 (the amount added to alternative minimum tax in 1990) and there are no aggregate reductions, the full amount of the potential negative adjustment will reduce alternative minimum taxable income for 1992.

A positive amount is always considered to be in excess of a negative amount and a smaller negative amount in excess of a larger negative amount. Thus, adjusted current earnings of $20 exceeds alternative minimum taxable income of negative $20 by $40, and $30 (equal to 75% of the excess) would be includible in alternative minimum taxable income. Likewise, alternative minimum taxable income of negative $20 exceeds adjusted current earnings of negative $40 by $20, and $15 (equal to 75% of the excess) could be used to reduce alternative minimum taxable income if not subject to limitation.

Adjusted current earnings

In general, adjusted current earnings requires the same treatment of an item as used for purposes of computing alternative minimum taxable income (before this adjustment). In the case of exclusion items, however, adjusted current earnings requires the same treatment of an item as used for the computation of regular earnings and profits as computed for purposes of Subchapter C. An exclusion item is an item of income or expense that is included in regular earnings and profits but is never included in the computation of either regular or alternative minimum taxable income (e.g., interest on tax-exempt bonds and the portion of dividends excluded under the dividends received deduction). For this purpose, the fact that an item could eventually be included in alternative minimum taxable income on the liquidation or disposal of a business (or similar circumstances) will not prevent exclusion item treatment. Additionally, adjusted current earnings requires different treatment of certain specifically listed items.

An exclusion item that is income for regular earnings and profits purposes is included in adjusted current earnings. Generally, any item of expense that is not allowable for any year for alternative minimum tax purposes solely because it relates to an exclusion item of income will be allowed in computing adjusted current earnings. Thus, interest on all tax-exempt bonds is included in adjusted current earnings, as well as the costs incurred to carry such tax-exempt bonds. However, if such carrying costs would be limited in the computation of taxable income, even if the income to which they relate is fully taxable, then the costs will be similarly limited for adjusted current earnings. Also, the original issue discount and market discount rules will apply to tax-exempt bonds for purposes of computing adjusted current earnings in the same manner as for taxable bonds.

In determining the amount of an item of deduction or loss allowable for adjusted current earnings, no deduction is allowed for an exclusion item of expense or deduction. Thus, the dividends received deduction generally is not allowed for adjusted current earnings. However, an exception is made for deductions allowed under section 243 or 245 for a dividend qualifying for a 100-percent dividends received deduction if the payor and recipient corporation could not be members of the same affiliated group under section 1504 by reason of section 1504(b), to the extent the payor corporation is subject to Federal income tax.

For example, a foreign sales corporation (FSC) is prohibited from inclusion in its parent's affiliated group, but is subject to Federal income tax on only a percentage of its income. The portion of any dividend paid from current earnings and profits to the parent equal to the percentage of the FSC's income that is subject to tax would be eligible for exclusion from adjusted current earnings. In the case of dividends received from section 936 corporations, a dividends received deduction rule is used for adjusted current earnings that generally follows the same rule that applies with regard to the book income preference (the full amount of the dividend is included in income and a credit allowed for a percentage of the withholding tax.)

Adjusted current earnings measures pretax income without diminution by reason of any distribution made during the taxable year. Thus, the deduction for Federal and foreign income tax expense allowed for regular earnings and profits purposes is not allowed in the computation of adjusted current earnings (except for foreign taxes where the taxpayer elects to deduct such taxes rather than claim a credit). Moreover, no deduction is allowed with respect to a dividend paid.

Depreciation is computed for the adjusted current earnings using the slower of the method used in connection with the preparation of the taxpayer's applicable financial statement or the applicable earnings and profits method. For property placed in service in taxable years beginning after 1989, the applicable earnings and profits method is straight-line over the ADR midpoint life. For property placed in service after 1986 but before the first taxable year beginning after 1989 and to which the amendments made by section 301 of this agreement apply, the applicable earnings and profits method generally provides for depreciation using (1) the adjusted minimum tax basis of property as of the close of the last taxable year beginning before January 1, 1990, (2) the remaining ADR midpoint life of the property at the beginning of the first taxable year beginning after 1989, and (3) the straight line method. For property to which the section 168 (as in effect on the day before the date of the enactment of this Act) applies, the applicable earnings and profits method provides for depreciation using (1) the adjusted

regular tax basis of property as of the close of the last taxable year beginning before January 1, 1990, (2) the remaining ADR life as of the beginning of the first taxable year beginning after 1989, and (3) the straight-line method. For property placed in service before 1981, the applicable earnings and profits method is the same method as is used for regular tax purposes.

The determination of whether the method used in connection with the preparation of the taxpayer's applicable financial statement or the applicable earnings and profits method is slower is calculated by comparing the net present values of the deductions provided by each method. In the case of property placed in service in taxable years beginning before 1990, the net present value of deductions is to be determined only with regard to the remaining deductions allowable in taxable years beginning after 1989. In making this determination, the net value of deductions is computed using the same adjusted basis for both methods. It is anticipated that the Secretary of the Treasury will publish interest rates for use in computing the net present value of deductions. In the absence of such published rates, the applicable federal rate (c.f. section 1274(d)) for the period equal to the ADR life of the property may be used.

Intangible drilling and development costs allowable under section 263(c) are capitalized for adjusted current earnings and amortized over the slower of the method used in the preparation of the taxpayer's applicable financial accounting statement or the 60-month period beginning with the month in which production from the well begins. In the case of a taxpayer recovering intangible drilling and development costs through unit of production cost depletion for financial statement purposes, the determination of which method is slower will be done under regulations to be provided by the Secretary of the Treasury, taking into account reasonable estimates of the rate at which the intangible drilling and development costs are expected to be recovered for financial accounting purposes. Similar rules apply with respect to mining exploration and development costs in comparing the 120-month period with the method used in the preparation of the taxpayer's applicable financial statement.

No loss is allowed in the determination of adjusted current earnings on the exchange of any pool of debt obligations for another pool of debt obligations having substantially the same effective interest rates and maturities for the purpose of the adjusted earnings and profits method.

Special rules apply to insurers computing adjusted current earnings. In the case of a life insurance company, the acquisition expenses of any policy, for adjusted current earnings purposes, must be capitalized and amortized in accordance with the method generally required at the time such costs are insured by the Financial Accounting Standards Board (FASB), or, if the FASB has not published such a method, under guidelines issued by the American Institute of Certified Public Accountants that relate to generally accepted accounting principles. Acquisition expenses of life insurance companies are subject to this treatment on a fresh start basis, i.e., in calculating adjusted current earnings, it is assumed that life insurance acquisition expenses have been treated in the same manner as required under this provision for prior years. Acquisition expenses of property and casualty insurance companies are not subject to this treatment, because the unearned premium reserve deduction of property and casualty insurance companies is reduced by 20 percent (10 percent in the case of certain bond insurance) under the regular tax, as a method of addressing mismatching of deductible acquisition expenses and deferred premium income. In computing adjusted current earnings, the small life insurance company deduction under section 806 and the election for small property and casualty insurance companies to be taxed only on investment income under section 831(b) do not apply.

The conference agreement clarifies that inside buildup on a life insurance contract (as determined under section 7702(g)) or on an annuity policy (as determined under section 72(u)(2)) is includible in adjusted current earnings, and a deduction is allowed for that portion of any premium that is attributable to insurance coverage.

In the case of a corporation that has experienced a change of ownership after the date of the enactment of this Act, the basis of the property of the corporation many not, for adjusted current earnings, exceed the allocable portion of the purchase price paid for the corporation.

Certain other adjustments required by section 312(n) (i.e., under paragraphs 1 through 6) generally are required in determining adjusted current earnings, subject to the rules regarding dates that apply for such purposes. For example, in the case of a disposition of property occurring in 1990 or thereafter, use of the installment method is not allowable in determining adjusted current earnings even if the use of such method is otherwise allowable for minimum tax purposes.

For the purposes of section 312(n)(1), which requires the capitalization of construction period carrying charges, the conferees intend that the "avoided cost method" under section 263A shall apply to determine the amount of interest allocable to production. Under section 312(n)(1), the avoided cost method is intended to apply irrespective of whether application of such method (or a similar method) is required, authorized, or considered appropriate under financial or regulatory accounting principles applicable to the taxpayer. Thus, for example, a utility company must apply the avoided cost method of determining capitalized interest under section 312(n)(1) even though a different method is authorized or required by Financial Accounting Standards Board Statement 34 or the regulatory authority having jurisdiction over the utility. The growing of timber or other crops is not considered construction under section 312(n)(1).

The conferees intend that no inference is to be drawn from the classification of an item as a specifically listed item as to current treatment for regular earnings and profits purposes or as to whether such a specificially listed item is an exclusion item.

In calculating adjusted current earnings for an affiliated group of corporations filing a consolidated return, appropriate adjustments will be made, as prescribed by the Secretary of the Treasury, to prevent the double inclusion of any item of adjusted current earnings through the operation of the consolidated return regulations or otherwise. The determination of whether a consolidated group is eligible to decrease alternative minimum taxable income as a result of alternative minimum taxable income exceeding adjusted current earnings is expected to be made at the consolidated level.

Separate item allocation

The conferees understand that reliance on adjusted earnings and profits has consequences regarding compliance by taxpayers who already must keep records based on the regular tax and general minimum tax systems. It is intended that the adjusted earnings and profits and general minimum tax systems be integrated regarding recordkeeping to the maximum extent feasible. The conferees anticipate that before the end of 1989, the Secretary of the Treasury will provide guidance through regulations or rulings regarding such integration. The furtherance of such integration should also be considered in the Treasury study regarding book income and earnings and profits that is mandated under the Act.

Study

The conferees direct the Secretary of the Treasury to study and to report regarding the book income and earnings and profits provisions, including refinements that may be appropriate (e.g., with regard to the application of the separate item allocation election).

The final report is to be submitted, by January 1, 1989, to the House Committee on Ways and Means and the Senate Committee on Finance.

5. Regular Tax Elections

Present Law

Taxpayers generally can elect to have minimum tax rules for measuring a particular item apply for regular tax purposes.

House Bill

Under the House bill, taxpayers generally can elect to have minimum tax rules for measuring a particular item apply for regular tax purposes.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

6. Adjustments in Other Years When Taxpayer Pays Minimum Tax

Present Law

Minimum tax liability incurred by a taxpayer in one year has no effect on regular tax liability in other years.

House Bill

Under the House bill, the amount of minimum tax liability is allowed as a carryforward credit against regular tax liability.

Senate Amendment

The Senate amendment is the same as the House bill, except that the credit is allowed only with respect to minimum tax liability relating to deferral preferences.

Conference Agreement

The conference agreement generally follows the Senate amendment. The minimum tax preference, described in section X of this report, regarding deductions determined under section 833(b), is treated as an exclusion preference. Moreover, for taxable years beginning in 1990 or thereafter, the items included by reason of the preference for earnings and profits that otherwise would be permanently excluded from alternative minimum taxable income (e.g., dividends received and tax-exempt interest) are treated as exclusion items.

7. Incentive Tax Credits

Present Law

Incentive tax credits are not allowed against the minimum tax. Credits that do not benefit the taxpayer due to the minimum tax can be used as credit carryovers against the regular tax.

House Bill

Under the House bill, incentive tax credits generally are not allowed against the minimum tax. Credits that do not benefit the taxpayer due to the minimum tax can be used as credit carryovers against the regular tax. Corporations with net operating losses in two of the last three years before 1986 can use pre-1986 credits to offset 75 percent of minimum tax liability. The Puerto Rico and possessions tax credit (sec. 936) does not give rise to minimum tax liability.

Senate Amendment

The Senate amendment is the same as the House bill, except that no credits can be used by any corporation to offset minimum tax liability.

Conference Agreement

The conference agreement generally follows the Senate amendment, except that, as a transition rule, regular investment tax credits are permitted, in effect, to reduce minimum tax liability by 25 percent. Under this modification, such credits can be used to reduce regular tax liability to 75 percent of tentative minimum tax liability, rather than only to the full amount of such liability. Moreover, such credits can instead be used to offset 25 percent of the taxpayer's tentative minimum tax for the year, where this results in permitting a greater amount of such credits to be used. The amount of minimum tax that is treated as paid, for purposes of the minimum tax credit, is determined without regard to the use of investment tax credits.

For example, assume that, disregarding investment tax credits, Corporation A would have a regular tax liability of $10 million and a tentative minimum tax liability of $4 million. A can use up to $7 million of investment tax credits, reducing A's tax liability to $3 million (treated as a payment of regular rather than of minimum tax).

Moreover, assume that, disregarding investment tax credits, Corporation B would have a regular tax liability of zero and a tentative minimum tax liability of $4 million. B can use up to $1 million of investment tax credits, reducing B's tax liability to $3 million. This gives rise to a minimum tax credit of $4 million in the event that all of B's preferences are deferral preferences, since the minimum tax credit is measured without regard to the use of the investment tax credit.

Further, assume that, disregarding investment tax credits, Corporation C would have a regular tax liability of $3.5 million and a tentative minimum tax liability of $4 million. C can use up to $1 million of investment tax credits, reducing C's tax liability to $3 million. This gives rise to a minimum tax credit of $500,000, if all of C's preferences are deferral preferences.

The rule for investment tax credits is applied consistently with the amount of tentative minimum tax liability in light of the limitations, described below, on the use of foreign tax credits and net operating losses. Thus, for example, assume that a taxpayer would have no regular tax liability, and a minimum tax liability of $10 million in the absence of foreign tax credits, net operating losses, and investment tax credits. As described below, foreign tax credits and net operating losses could not be used to reduce minimum tax liability to less than $1 million. To the extent that such losses and credits did not so reduce minimum tax liability, investment tax credits could then be used to reduce such liability to $1 million.

The conference agreement provides a technical correction regarding the treatment of income eligible for the section 936 credit. Under this correction, it is clarified that income of a section 936 corporation eligible for the credit generally is excluded from alternative minimum taxable income (including the preference for book income or earnings and profits).[3] However, a taxpayer that qualifies for the section 936 credit may be subject to minimum tax with respect to income not qualifying for the credit.

It is clarified that, for purposes of the minimum tax, the megawattage of an electric generating unit is to be determined with reference to the *Summary Information Report* (NUREG-0871, Vol. No. 4, Issue Date: October 1985), published by the U.S. Nuclear Regulatory Commission.

8. Foreign Tax Credit

Present Law

Foreign preferences are not subject to the add-on tax.

House Bill

Under the House bill, foreign tax credits are allowed against the minimum tax, under limits similar to those applying under the regular tax. Credits that cannot be used in the current taxable year because of these limits are carried over under a system separate from but parallel to that applying for regular tax purposes.

Senate Amendment

The Senate amendment is the same as the House bill, except that foreign tax credits cannot offset more than 90 percent of tentative minimum tax liability.

Conference Agreement

The conference agreement generally follows the Senate amendment. For taxable years beginning in 1990 or thereafter, items included in alternative minimum taxable income by reason of the preference for earnings and profits are sourced, for purposes of the section 904 limitation, on an item-by-item basis. It is clarified that the taxpayer's regular tax election regarding whether to treat foreign taxes as giving rise to a deduction or a credit is controlling for minimum tax purposes as well. Moreover, in light of the limitation on the use of net operating losses, described below, it is provided that foreign tax credits cannot offset more than 90 percent of minimum tax liability as determined without regard to foreign tax credits and net operating losses.

For example, assume that in 1987 a taxpayer has $10 million of alternative minimum taxable income for the year. In the absence of net operating losses or foreign tax credits, the taxpayer's tentative minimum tax liability (i.e., liability as determined without regard to the amount of regular tax liability) would equal $2 million. Accordingly, foreign tax credits cannot be used to reduce liability to less than $200,000, whether or not the taxpayer has any minimum tax net operating losses.

It is clarified that, with regard to years prior to the effective date of the corporate alternative minimum tax, rules apply similar to those applying in 1982 upon the enactment of the individual alternative minimum tax. Thus, pre-effective date regular tax foreign tax credits carried forward to 1987 are treated as minimum tax foreign tax credit carryforwards, and minimum tax foreign tax credits are reduced by the amount of any foreign tax credits carried back, for regular tax purposes, to years prior to 1987.

9. Net Operating Losses (NOLs)

Present Law

Net operating losses are not directly taken into account in calculating the add-on tax. However, a taxpayer that would have an NOL even in the absence of the enumerated preferences may defer the add-on tax until the NOLs attributable to such preferences are used to offset taxable income.

House Bill

Under the House bill, the net operating loss deduction is allowed against alternative minimum taxable income. For any taxable year beginning after 1985, the minimum tax is reduced by the items of tax preference arising in that year. Minimum tax NOLs are carried over under a system separate from but parallel to that applying for regular tax purposes.

Senate Amendment

The Senate amendment is the same as the House bill for taxable years beginning after 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that NOLs cannot offset more than 90 percent of alternative minimum taxable income. As with the 90 percent limitation on the use of the foreign tax credit, amounts disallowed by reason of this limitation may be carried over to other taxable years.

Thus, for example, assume that in 1987 a taxpayer has $10 million of alternative minimum taxable income for the year, and minimum tax NOLs in the amount of $11 million. The NOLs reduce alternative minimum taxable income to $1 million. This gives rise to tentative minimum tax liability of $200,000. The taxpayer carries forward $2 million of minimum tax NOLs to 1988. Since the allowability of net operating losses is determined prior to the allowability of foreign tax credits, this taxpayer would not be permitted to use any minimum tax foreign tax credits in 1987.

It is clarified that, in light of the parallel nature of the regular tax and minimum tax systems, any limitations applying for regular tax purposes to the use by a consolidated group of NOLs or current year losses (e.g., section 1503) apply for minimum tax purposes as well. Moreover, it is clarified that an election under section 172(b)(3)(C) to relinquish the carryback period applies for both regular tax and minimum tax purposes.

10. Estimated Tax Payments

Present Law

Corporations are not required to make estimated tax payments with respect to minimum tax liability.

[3] However, as discussed above, a dividend paid by a section 936 corporation to its parent corporation may in effect be included in minimum taxable income, by adding to the amount of the parent's preference for book income or earnings and profits. In such a case, an adjustment is made for foreign taxes paid with respect to such dividends by grossing up the dividends by the amount of such taxes and treating such taxes as paid by the parent for purposes of the foreign tax credit.

House Bill

The House bill requires that estimated tax payments be made with respect to minimum tax liability.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

11. Effective Date

House Bill

The House bill applies for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment applies for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE VIII. ACCOUNTING PROVISIONS

A. Limitations on the Use of the Cash Method of Accounting

Present Law

A taxpayer generally may elect to use any method of accounting that clearly reflects income and is regularly used in keeping its books. Taxpayers using the cash method of accounting generally recognize items of income when actually or constructively received and items of expense when paid. Tax shelters using the cash method of accounting generally may not recognize items of expense prior to economic performance.

Taxpayers using the accrual method of accounting generally accrue items as income when all the events have occurred that establish the right to receive the income and the amount of income can be determined with reasonable accuracy. Taxpayers using the accrual method of accounting generally may not deduct items of expense prior to the time of economic performance. Taxpayers are required to keep inventories and to use the accrual method of accounting with respect to inventory items if the production, purchase, or sale of merchandise is a material income producing factor to the taxpayer (sec. 471). Certain corporations engaged in agricultural activities with gross receipts exceeding $1 million are required to use the accrual method of accounting (sec. 447).

House Bill

The House bill generally provides that the cash method of accounting may not be used by any C corporation, by any partnership that has a C corporation as a partner, or by a tax-exempt trust with unrelated business income. Exceptions are made for farming businesses, qualified personal service corporations, and entities with average annual gross receipts of $5 million or less for all prior taxable years (including the prior taxable years of any predecessor of the entity).

A qualified personal service corporation is a corporation that meets both a function test and an ownership test. The function test is met if substantially all the activities of the corporation are the performance of services in the field of health, law, engineering (including surveying and mapping), architecture, accounting, actuarial science, performing arts or consulting.

The ownership test is met if substantially all of the value of the outstanding stock in the corporation is owned by employees performing services for the corporation in a field satisfying the function test, retired individuals who performed services for the corporation or its predecessor(s) in such a field, the estate of such an individual, or any person who acquired its ownership interest as a result of the death of such an individual within the prior 24 months. For the purpose of applying the ownership test, stock owned by a partnership, an S corporation or a qualified personal service corporation will be considered as owned by its partners or shareholders. The ownership test is applied without regard to any community property law.

A taxpayer, other than a financial institution or a utility, is not required to accrue as income any amount to be received for the performance of services prior to the time the amount is billed. Similarly, the House bill provides that economic performance of services provided to an accrual basis taxpayer will not be considered to have occurred prior to the time the taxpayer is billed for the services, unless the services are performed by an employee of the taxpayer. In addition, a taxpayer, other than a financial institution, is not required to accrue as income any amount to be received for the performance of services that, on the basis of experience, will not be collected, as long as unpaid balances do not bear interest or result in a late payment charge.

The provision of the House bill is effective for taxable years beginning after December 31, 1985. Any change from the cash method of accounting required as a result of this provision is treated as a change in the taxpayer's method of accounting, initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment to income resulting from the change is recognized over a period not to exceed five years (not to exceed 10 years in the case of a hospital). Taxpayers may elect to continue to report income from loans, leases, and transactions with related persons, entered into before September 25, 1985, using the cash method.

Senate Amendment

The Senate amendment provides that the cash method of accounting may not be used by any financial institution, bank for cooperatives, production credit association, or finance company qualifying to use the reserve method of computing losses on bad debts.

A financial institution is any organization described in section 581 (relating to banks, including mutual savings banks, cooperative banks, and building and loan associations) and section 586 (relating to small business investment companies and business development corporations). A bank for cooperatives is an institution chartered pursuant to section 2121 of Title 12 of the United States Code. A production credit association is an institution chartered pursuant to section 2091 of Title 12 of the United States Code.

The finance companies that may not use the cash method of accounting under the amendment are those persons meeting the definition of a lending or finance company contained in section 542(c)(6) that has as a substantial portion of its business the making of loans to members of the general public. Income from a loan that arises from the sale of property or services that were sold or manufactured by the taxpayer (or an affiliate of the taxpayer) is not considered as income derived from the active and regular conduct of a lending or finance business for these purposes.

The provision is effective for taxable years beginning after December 31, 1986. Any change from the cash method of accounting required as a result of this provision is treated as a change in the taxpayer's method of accounting, initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment to income resulting from the change is recognized over a period not to exceed five years.

Conference Agreement

The conference agreement generally follows the House bill with certain modifications.

Tax shelters

The conference agreement provides that the cash method of accounting may not be used by any tax shelter. For this purpose, a tax shelter is defined in the same manner as under section 461(i) of present law. Thus, a tax shelter is (a) any enterprise (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having the authority to regulate the offering of securities for sale, (b) any syndicate within the meaning of section 1256(e)(3), or (c) any tax shelter within the meaning of section 6661(b)(2)(C)(ii). In the case of an enterprise engaged in the trade or business of farming, a tax shelter is (a) any tax shelter within the meaning of section 6661(b)(2)(C)(ii) or (b) a farming syndicate within the meaning of section 464(c).

The exceptions to the general rule for farming businesses, qualified personal service corporations, and entities with average annual gross receipts of $5 million or less do not apply in the case of tax shelters.

The conference agreement further provides that a tax shelter may not take advantage of the recurring item exception under section 461(h)(3) to the rule requiring economic performance before an accrual basis taxpayer may deduct an item of expense. However, in the case of a taxshelter economic performance with respect to the drilling of an oil and gas well will be considered to have occurred if the drilling of the well commences within 90 days of the close of the taxable year.

Qualified personal service corporations

The conference agreement also changes the requirements of the ownership test under the definition of a qualified personal service corporation. In order to meet the ownership test under the conference agreement, substantially all (i.e., at least 95 percent) of the value of the stock of the corporation must be held, directly or indirectly, by employees performing services for such corporation in connection with the qualified services performed by the company, retired employees who had performed such services, the estate of any such current or retired employee, or any other person who acquired stock by reason of the death of such an employee (for the 2-year period beginning with the death of such employee.) In applying the ownership test, the applicable community property laws of any State are to be disregarded, stock held by any plan described in section 401(a) that is exempt from tax under section 501(a) is treated as held by the employees of the entity and, at the election of the common parent of an affiliated group, all members of such affiliated group may be treated as a single entity for the purpose of applying the ownership test if substantially all of the activities of such members involve the performance of services in the same qualified field.

Farming businesses

The conference agreement provides that, for the purpose of determining whether an entity is engaged in a farming business, the

definition of farming shall include the raising or harvesting of trees (including evergreen trees that are not subject to the capitalization provisions of section 263A.)

Gross receipts test

The conference agreement provides that the gross receipts test will be considered to have been met if the entity had average annual gross receipts of $5 million or less for all prior taxable years (including the prior taxable years of any predecessor entity) beginning after December 31, 1985.

Billing rule

The conference agreement deletes the provision of the House bill providing that a taxpayer, other than a financial institution or a utility, is not required to accrue as income any amount to be received for the performance of services prior to the time the amount was billed. Similarly, the conference agreement deletes the provision of the House bill providing that economic performance of services provided to an accrual basis taxpayer generally will not be considered to have occurred prior to the time the taxpayer is billed. In not adopting these two provisions of the House bill, the conferees intend that no inference is to be drawn with regard to when economic performance occurs under present law.

Effective date

The provision of the conference agreement is effective for taxable years beginning after December 31, 1986. The provision of the House bill allowing taxpayers to elect to continue to report income from loans, leases, certain real property contracts, and transactions with related parties entered into before September 25, 1985, using the cash method, applies to tax shelters as well as other entities. Any change from the cash method required by this provision is treated as initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment required by section 481 as a result of such change generally shall be taken into account over a period not to exceed four years. It is the intent of the conferees that this apply to all changes resulting from the provision, including any changes necessitated by the rule that certain accrual taxpayers, including taxpayers presently on the accrual method of accounting, need not recognize income on amounts statistically determined not to be collectible. In the case of a hospital, the adjustment shall be taken into account ratably over a ten-year period. For this purpose, a hospital is not required to be owned by or on behalf of a governmental unit or by a 501(c)(3) organization or operated by a 501(c)(3) organization to meet the definition of a hospital.

The conferees intend that the timing of the section 481 adjustment other than for a hospital will be determined under the provisions of Revenue Procedure 84-74, 1984-2 C.B. 736. In addition, the conferees intend that (i) net operating loss and tax credit carryforwards will be allowed to offset any positive section 481 adjustment; (ii) for purposes of determining estimated tax payments, the section 481 adjustment will be recognized in taxable income ratably throughout the year in question; and (iii) the timing of a negative section 481 adjustment shall be determined as if the adjustment were positive.

The conferees are aware that taxpayers may request from the Internal Revenue Service permission to change their taxable years. In addition, the Treasury Department has issued several administrative pronouncements and regulations permitting taxpayers to change their taxable years in certain circumstances without prior permission of the Internal Revenue Service. The effective date of many of the provisions of the conference agreement relate to commencement or end of the taxpayer's taxable year. As a result, the Treasury Department may exercise its administrative authority to modify its rules to prevent the avoidance of these effective dates.

B. Simplified Dollar Value LIFO Method for Certain Small Businesses

Present Law

Taxpayers using the dollar-value LIFO (last-in, first-out) method of accounting for inventories are allowed, under Treasury regulations, to construct the indexes necessitated by the use of the LIFO method from data published by the Bureau of Labor Statistics. These indexes are constructed for any particular taxpayer by taking a weighted average of price changes for the specific categories of inventory that the taxpayer holds. A taxpayer with average annual gross receipts for its most recent three years of $2 million or less may use 100 percent of the constructed index. Taxpayers with average annual gross receipts in excess of $2 million are limited to an index equal to 80 percent of the constructed index.

Inventory values under the dollar-value LIFO method normally are determined by comparison of current prices or indexes with the prices or indexes for the same items in the first year in which the LIFO method was used (the "double-extension" method). If the permission of the Secretary of the Treasury is obtained, values also may be determined by comparing current prices or indexes with the prior year's prices or indexes to determine an annual price change component, and applying that component to all prior annual price change components (the "link-chain" method).

The LIFO method of accounting normally requires items of inventory to be grouped together in inventory pools. Wholesalers, retailers, jobbers, and distributors generally determine their pools with reference to their major lines, types, or classes of goods. Manufacturers may group all inventory items that represent a natural business unit into a single pool. A taxpayer with average annual gross receipts of $2 million or less for its three most recent taxable years may elect to use a single pool for all inventory items (Code sec. 474).

House Bill

The House bill provides an election to use a simplified dollar-value LIFO method to taxpayers whose average annual gross receipts for the three preceding taxable years (or for such portion of the preceding three taxable years that the taxpayer actively has been engaged in a trade or business) are $5 million or less. All persons who are members of a controlled group, defined as those persons who would be treated as a single employer by the Treasury regulations prescribed under section 52, are treated as a single taxpayer for the purpose of determining average annual gross receipts.

The simplified dollar-value LIFO method uses multiple pools in order to avoid the construction of weighted-average indexes individual to the taxpayer. These pools are based on the 11 general categories of the "Consumer Price Index for all Urban Consumers" in the case of retailers using the retail method, or on the 15 general categories of the "Producers Prices and Price Indexes for Commodity Groupings and Individual Items" in the case of other taxpayers. The change in the published index for the general category to which the pool relates is used as the annual price change component and the indexes necessary to compute the equivalent dollar values of prior years are developed using the link-chain method.

The election to use the simplified dollar-value LIFO method may be made without the consent of the Secretary of the Treasury. If the method is elected, it must be used for all the inventories of the taxpayer accounted for using a LIFO method and may not be revoked unless permission to change to another method is obtained from the Secretary of the Treasury or the $5 million average annual gross receipts amount is exceeded. A taxpayer that previously has used a method of accounting for its inventories that allows the value of inventories to be written down below cost must restore the amount of any such write-down to income in accordance with section 472(d)).

The simplified dollar-value LIFO method in the House bill replaces the current law rule allowing taxpayers with average annual gross receipts of $2 million or less to elect to use a single LIFO pool. Any taxpayer who has in effect a valid election to use the single pool method of present law may continue the use of such method if the taxpayer continues to meet the requirements for that election and does not elect to use the simplified dollar-value LIFO method of the House bill.

The provision is effective for taxable years beginning after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the provision of the House bill, effective for taxable years beginning after December 31, 1986.

A taxpayer using the simplified dollar-value LIFO method is required to change to a different method in the first year that it fails to meet the $5 million average annual gross receipts test. The conferees intend that any change that would be allowed if made directly from the method used immediately prior to the adoption of the simplified dollar-value LIFO method to the new method be allowed in this case. It is anticipated that a taxpayer always will be allowed to return to the method used prior to the adoption of the simplified dollar-value LIFO method. Thus, if a taxpayer had been using a first-in, first-out (FIFO) method prior to the adoption of the simplified dollar-value method, it is allowed to change to the same FIFO method it had used previously or any FIFO, LIFO, or other method that it would have been allowed to change to from the FIFO method used immediately prior to the adoption of the simplified dollar-value LIFO method.

In changing from the simplified dollar-value LIFO method to another method, it is not intended that the taxpayer be required to obtain permission from the Secretary of the Treasury for the change if it would not be required to obtain permission if changing directly from the method used immediately prior to the adoption of the simplified dollar-value method to the new method. Likewise, the administrative burden of obtaining the change in method should be no greater than it would be if the change were made directly.

C. Installment Sales

Present Law

In general

Under present law, gain or loss from a sale of property generally is recognized in the taxable year in which the property is sold. Nonetheless, gain from certain sales of property in exchange for which the seller receives deferred payments is reported on the installment method, unless the taxpayer elects otherwise (Code sec. 453). Eligible sales include dispositions of personal property on the installment plan by a person who regularly sells or otherwise disposes of personal property on the installment plan (sec. 453A) and other dispositions of property, including publicly traded property, where at least one payment is to be received after the close of the taxable year in which the disposition occurs (sec. 453(b)(1)). The installment method may not be used where a sale results in a loss.

Under the installment method, in any taxable year, a taxpayer recognizes income resulting from a disposition of property equal to an amount that bears the same ratio to the payments received in that year that the gross profit under the contract bears to the total contract price. Payments taken into account for this purpose generally include cash or other property (including foreign currency and obligations of third parties), marketable securities, certain assumptions of liabilities, and evidences of indebtedness of the purchaser that are payable on demand or are readily tradable (Temp. Treas. Reg. sec. 15A.453-1(b)(3)).

Sales under a revolving credit plan

Taxpayers who sell property under arrangements commonly known as revolving credit plans are permitted to treat a portion of the receivables arising from sales on such a plan as installment receivables, and report any income therefrom on the installment method (Treas. Reg. sec. 1.453-2(d)). In general, these regulations define a revolving credit plan to include a cycle budget account, a flexible budget account, a continuous budget account, and other similar arrangements, under which the customer agrees to pay a part of the outstanding balance of the customer's account during each period of time for which a periodic statement of charges and credits is rendered.

Dispositions of installment obligations

Generally, if an installment obligation is disposed of, gain (or loss) is recognized equal to (a) the difference between the amount realized and the basis of the obligation in the case of satisfaction at other than face value, or sale or exchange of the obligation, or (b) the difference between the fair market value of the obligation at the time of the disposition and the basis of the obligation in the case of any other disposition (sec. 453B). The basis of the obligation is equal to the basis of the property sold plus amounts of gain previously recognized, less the amount of any payments received. In general, the mere pledge of an installment obligation as collateral for a loan is not treated as a disposition.[1]

House Bill

Under the House bill, if an installment obligation is pledged as collateral for a loan, the proceeds of the loan are treated as a payment on the obligation, and a proportionate amount of the gain that was deferred under the installment method is recognized.

The House bill provides an exception under which no payments would be treated as having been received on a portion of an installment obligation, which portion is due within nine months of the receipt of the obligation, regardless of the maturity of any other payments on the obligation. For a taxpayer who sells property on a revolving credit plan, the amount eligible for the exception is that portion of the receivable balance that is determined (pursuant to a statistical sampling technique) to be paid within nine months of the related sale.

The provisions of the House bill do not apply to pledges of obligations for debt that by its terms is payable within 90 days, provided that the debt is not renewed or continued, and provided that the taxpayer does not issue additional debt within 45 days.

The House bill includes anti-avoidance rules, under which borrowed amounts may be treated as a payment on installment obligations that are not formally pledged, if it is reasonable to to expect that the lender took into account payments on the installment obligations as a source for payments on the indebtedness. The House bill provides a safe harbor from this anti-avoidance rule where more than 50 percent of the taxpayer's assets are used in an active trade or business.

The House bill applies to pledges of installment obligations after December 31, 1985, and applies as of January 1, 1986, to pledges before that date of obligations arising after September 25, 1985, unless the debt for which such obligations are pledged is repaid by December 31, 1985. The provisions of the House bill are phased in over three years for installment obligations arising from the sale of property in the ordinary course of business that are pledged in 1986, and phased in over two years for like installment obligations pledged in 1987. One residential condominium project is grandfathered.

Senate Amendment

Proportionate disallowance rule

Overview

Under the Senate amendment, use of the installment method for certain sales by persons who regularly sell real or personal property described in section 1221(1), and for certain sales of business or rental real property, is limited based on the amount of the outstanding indebtedness of the taxpayer. The limitation generally is applied by determining the amount of the taxpayer's "allocable installment indebtedness" ("AII") for each taxable year and treating such amount as a payment immediately before the close of the taxable year on "applicable installment obligations" of the taxpayer that arose in that taxable year and are outstanding as of the end of the year.

Allocable installment indebtedness

In general, under the Senate amendment, AII for any taxable year is determined by (1) dividing the face amount of the taxpayer's applicable installment obligations that are outstanding at the end of the year by the sum of (a) the face amount of all installment obligations (i.e., both applicable installment obligations and all other installment obligations) and (b) the adjusted basis of all other assets of the taxpayer,[2] (2) multiplying the resulting quotient by the taxpayer's average quarterly indebtedness, and (3) subtracting any AII that is attributable to applicable installment obligations arising in previous years that are outstanding at the end of the taxable year. In the case of an individual, this computation does not take into account certain farm property or personal use property or indebtedness that is secured by only such property.

"Applicable installment obligations" are any installment obligations that arise from the sale after February 28, 1986, of (a) certain property held for sale to customers, or (b) real property used in the taxpayer's trade or business or held for the production of rental income, provided that the selling price of the property exceeds $150,000.[3] In applying the "$150,000 exception," the aggregation rule applicable for purposes of section 1274(c)(3)(ii) is applied.

In each subsequent taxable year, the taxpayer is not required to recognize gain attributable to applicable installment obligations arising in any prior year to the extent that any actual payments on the obligations do not exceed the amount of AII attributable to such obligations. On the receipt of such payments, the AII attributable to the obligation on which the payment is received is reduced by the amount of such payments. Payments on an applicable installment obligation in excess of the AII allocable to such obligation are accounted for under the ordinary rules for applying the installment method.

Calculation of indebtedness

Under the Senate amendment, the taxpayer must compute its average indebtedness for the year in order to calculate the amount of its AII. The calculation is made, for this purpose, on a quarterly basis. In making the calculation, all indebtedness of the taxpayer that is outstanding as of the end of each quarter is taken into account, including (but not limited to) accounts payable and accrued expenses as well as other amounts more commonly considered as indebtedness (such as loans from banks, and indebtedness arising in connection with the purchase of property by the taxpayer).

Affiliated groups

Where the taxpayer is a member of an affiliated group or a group under common control, then all such members are treated as one taxpayer for purposes of making the calculations required under the Senate amendment.[4] Thus, under the Senate amendment, each member is treated for this purpose as having all of the assets and liabilities of every other member. Thus, taxpayers who are members of such groups would compute AII on a group-wide basis for each taxable year. The AII so computed would then be allocated pro rata to the applicable installment obligations of all of the

[1] *See, e.g., Town and Country Food Co., Inc.* v. *Commissioner*, 51 T.C. 1049 (1969), acq. 1969-2 C.B. XXV; *United Surgical Steel Company, Inc.* v. *Commissioner*, 54 T.C. 1215 (1970), acq. 1971-2 C.B. 3.

[2] Taxpayers may elect to use depreciation deductions as calculated under section 312(k) for purposes of computing the adjusted basis of their assets under this formula.

[3] An installment obligation is considered to "arise" at the time that the property is sold in an installment sale. This time does not change if, for example, there is a modification of the obligation that is sufficiently minor so that the obligation is not treated as having been disposed of. On the other hand, if there is a modification that results in the obligation being treated as having been disposed of with the resulting recognition of gain, then the obligation no longer would be considered to be an applicable installment obligation.

[4] The Senate amendment treats a shareholder who meets the stock ownership requirements of sec. 1504(a)(2) as a member of an affiliated group whether or not the shareholder is a corporation.

members of the group, and the allocated amount accordingly would be treated as a payment on the obligations.

The Senate amendment also provides that under regulations to be issued by the Secretary of the Treasury, use of the installment method would be disallowed in whole or in part where the provisions of the bill otherwise would be avoided through use of related parties or other intermediaries.

Special election for sales of timeshares and residential lots

The Senate amendment provides an election under which the proportionate disallowance rule would not apply to installment obligations that arise from the sale of certain types of property by a dealer to an individual, but only if the individual's obligation is not guaranteed or insured by any third person other than an individual. To be eligible for the election, the obligation must arise from the sale of a "timeshare" or of unimproved land, the development of which will not be done by the seller of the land or any affiliate of the seller.

If these conditions are met, then the seller of the property may elect not to have the proportionate disallowance rule apply to the installment obligations arising from such sale and must pay interest on the deferral of its tax liability attributable to the use of the installment method.

Exception for certain sales by manufacturers to dealers

The Senate amendment provides an exception from the proportionate disallowance rule for installment obligations arising from the sale of tangible personal property by the manufacturer of the property (or an affiliate of the manufacturer) to a dealer, but only if the dealer is obligated to make payments of principal only when the dealer resells (or rents) the property, the manufacturer has the right to repurchase the property at a fixed (or ascertainable) price after no longer than a nine-month period following the sale to the dealer, and certain other conditions regarding the ratio of the taxpayer's installment obligations to its sales to dealers are met.

Revolving credit plans

Under the Senate amendment, taxpayers who sell property on a revolving credit plan are not permitted to account for such sales on the installment method. For this purpose, the term "revolving credit plan" has the same meaning as under present law (see Treas. Reg. sec. 1.453-2(d)).

Publicly traded property

Under the Senate amendment, taxpayers who sell stock or securities that are traded on an established securities market, or to the extent provided in Treasury regulations, property (other than stock or securities) of a kind regularly traded on an established market, are not permitted to use the installment method to account for such sales.

The Senate amendment also provides that, under regulations to be issued by the Secretary of the Treasury, use of the installment method may be disallowed in whole or in part where the provisions of the bill otherwise would be avoided through use of related parties or other intermediaries.

Effective date

The elimination of the installment method for sales on a revolving credit plan and for sales of publicly traded property is effective for sales of property after December 31, 1986. Taxpayers who sell property under revolving credit plans and who may no longer use the installment method of accounting for such sales may include in income any adjustment resulting from their ceasing to use the installment method over a period not exceeding five years.

The proportionate disallowance rule is effective as of January 1, 1987, for sales made on or after March 1, 1986. In addition, the Senate amendment does not treat certain specified loans as outstanding indebtedness for purposes of the proportionate disallowance rule.

Conference Agreement

The conference agreement generally follows the Senate amendment with certain modifications.

Proportionate disallowance rule

The conference agreement generally adopts the proportionate disallowance rule contained in the Senate amendment. However, the conference agreement specifies that, in applying the proportionate disallowance rule, installment obligations arising from the sale of personal use property by an individual, and either property used or property produced in the trade or business of farming, are not treated as applicable installment obligations. Thus, for example, the proportionate disallowance rule does not apply under the conference agreement, to installment obligations arising from the sale of crops or livestock held for slaughter. In addition, personal use property, installment obligations arising from the sale of personal use property, and indebtedness substantially all the security for which is such property (or such installment obligations) are not taken into account in applying the proportionate disallowance rule under the conference agreement.

The conference agreement provides that, in applying the proportionate disallowance rule, the calculation of indebtedness is made on an annual basis, rather than a quarterly basis, for taxpayers who have no applicable installment obligations that arose from the sale on the installment method of either personal property by a person who regularly sells property of the same type on the installment method, or real property that was held for sale to customers in the ordinary course of a trade or business. The Treasury Department is given authority to issue regulations that would prevent possible avoidance of the provision where the calculation of indebtedness is made on such an annual basis.

The conference agreement modifies the aggregation rule contained in the Senate amendment for applying the proportionate disallowance rule. Under the conference agreement, all persons treated as a single employer under section 52(a) or section 52(b) (the "controlled group") are treated as one taxpayer for these purposes. Hence, in applying the proportionate disallowance rule to the controlled group, the installment percentage is determined by aggregating all of the assets of the members of the controlled group, and such installment percentage is multiplied by the aggregate average quarterly (or if appropriate, annual, indebtedness) of members of the controlled group, to determine the total allocable installment indebtedness for the controlled group. The total allocable installment indebtedness so determined then is allocated pro rata to the applicable installment obligations held by members of the controlled group, (regardless of the amount of any indebtedness that any particular member of the group has outstanding), and the regular provisions of the proportionate disallowance rule are then applied.

The conference agreement provides authority under which the Treasury Department may issue regulations that disallow the use of the installment method in whole or in part for transactions in which the effect of the proportionate disallowance rule would be avoided through the use of related parties, pass-through entities, or intermediaries. The conferees intend that the meaning of related party is to be construed for these purposes in a manner consistent with carrying out the purposes of the proportionate disallowance rule. Thus, the conferees intend that the regulations may treat any corporation, partnership, or trust as related to its shareholders, partners, or beneficiaries, as the case may be, in circumstances where the proportionate disallowance rule otherwise might be avoided.

The conferees intend that these regulations may aggregate the assets of the related parties for purposes of applying the proportionate disallowance rule. For example, the conferees intend that such regulations may aggregate the assets and indebtedness of a partnership and each of its partners in determining the extent to which each such partner may report gain arising from the installment sale of partnership assets on the installment method.

In addition, the conferees intend that the regulations may treat installment obligations arising from the sale of an interest in one related party by another as applicable installment obligations to the extent that installment obligations arising from the sale of the assets of the related party the interest in which is sold would be treated as applicable installment obligations.

The conferees intend that these regulations may in appropriate cases apply to all transactions after the general effective date of the provision, but prior to the issuance of the regulations.

The conference agreement also makes certain technical modifications to the statutory language relating to the proportionate disallowance rule.

Special election for sales of certain property

The conference agreement adopts the special provision contained in the Senate amendment relating to installment obligations arising from the sales of certain "timeshares" and residential lots. In applying the special election, the conference agreement provides that the interest rate charged is 100 percent of the applicable Federal rate that would apply to the installment obligation received in the sale (without regard to the three-month lookback rule of section 1274(d)(2)). In addition, the conference agreement clarifies that in applying the "six-week" limitation on the eligibility a timeshare interests for the special rule, to timeshare right to use (or timeshare ownership in) a specific property, which right (or ownership interest) is held by the spouse, children, grandchildren or parents of an individual, shall be treated as held by such individual.

Publicly traded property and revolving credit

For sales of publicly traded property and for sales of property pursuant to revolving credit plans, the conference agreement generally follows the Senate amendment. Under the conference agreement, such sales are treated as installment sales with respect to which all payments are received in the year of sale. The conference agreement provides that the Treasury Department has regulatory authority to disallow the use of the installment method in whole or in part

for transactions in which the rules of the conference agreement relating to sales of publicly traded property or sales pursuant to a revolving credit plan would be avoided through the use of related parties, pass-through entities, or intermediaries. The conferees intend that these regulations are to be similar to those relating to the proportionate disallowance rule.

Effective date

In general, the proportionate disallowance rule is effective for taxable years ending after December 31, 1986, with respect to sales of property after February 28, 1986. For this purpose, the conferees intend that any sales of property after February 28, 1986, but before the first taxable year of the taxpayer ending after December 31, 1986, (i.e., if the taxpayer has a calendar year as a taxable year, or has a short taxable period ending between February 28, 1986 and December 31, 1986), are to be treated as arising in the taxpayer's first taxable year ending after December 31, 1986.

In the case of installment obligations arising from the sale of real property in the ordinary course of the trade or business of the taxpayer, any gain attributable to allocable installment indebtedness allocated to any such installment obligations that arise or (are deemed to arise) in the first taxable year of the taxpayer ending after December 31, 1986, is taken into account ratably over the three taxable years beginning with such first taxable year; for installment obligations arising in the second taxable year of the taxpayer ending after December 31, 1986, any such gain is taken into account ratably over the two taxable years beginning with such second taxable year. The conferees intend that the rules of the conference agreement relating to the treatment of subsequent payments on applicable installment obligations are to be applied in this situation as if the provisions were fully effective in the first taxable year ending after December 31, 1986.

In the case of installment obligations arising from the sale of personal property in the ordinary course of the trade or business of the taxpayer, any increase in the tax liability of the taxpayer for the first taxable year of the taxpayer ending after December 31, 1986, on account of the application of the proportionate disallowance rule, is treated as being imposed ratably over the three taxable years beginning with such first taxable year; any increase in tax liability for the second taxable year of the taxpayer ending after December 31, 1986, on account of the proportionate disallowance rule (disregarding the ratable share of the increase in tax liability from the preceding taxable year), is treated as being imposed ratably over the two taxable years beginning with such second taxable year. The conferees intend that the rules of the conference agreement relating to the treatment of subsequent payments on applicable installment obligations are to be applied in this situation as if the provisions were fully effective in the first taxable year ending after December 31, 1986.

In the case of applicable installment obligations other than installment obligations arising from the sale of real or personal property in the ordinary course of a trade or business of the taxpayer, the proportionate disallowance rule is effective for taxable years ending after December 31, 1986, with respect to sales after August 16, 1986. The conferees intend that sales after August 16, 1986, and before the taxpayer's first taxable year ending after December 31, 1986 are to be treated as arising in the first taxable year of the taxpayer ending after December 31, 1986.

The provisions of the conference agreement relating to sales pursuant to a revolving credit plan are effective for taxable years beginning after December 31, 1986. Any adjustment resulting from the change in method of accounting is taken into account over a period not exceeding four years. In cases where the adjustment is taken into account over the four year period, the taxpayer would take into account 15 percent of the adjustment in the first taxable year, 25 percent in the second taxable year, and 30 percent in each of the succeeding two taxable years.

The provisions of the conference agreement relating to sales of publicly traded property are effective for sales of property after December 31, 1986.

The conference agreement excludes from the definition of applicable installment obligation, installment obligations arising from the sale of units of a specified condominum project. The conference agreement also excludes certain indebtedness of a specified taxpayer from the calculation of the taxpayer's average quarterly indebtedness. In addition, the provisions of the conference agreement are effective for taxable years ending after December 31, 1991, with respect to a specified taxpayer that incurred substantial indebtedness in connection with a specified acquisition.

D. Capitalization Rules for Inventory, Construction, and Development Costs

Present Law

1. Inventory

Manufacturers must accumulate costs of producing inventory goods in an inventory account. Accumulated inventory costs may be deducted as the goods to which they relate are sold. Treasury regulations provide for use of the "full absorption method" in determining which costs must be included in inventory. Under these regulations, all direct production costs, including costs of materials incorporated into the product or consumed during production and labor directly involved in manufacturing, must be inventoried. The treatment of indirect production costs varies according to the nature of the costs: some costs are currently deductible; others are inventoriable; and others ("financial conformity" costs) are deductible only if deducted by the taxpayer for financial reporting purposes.

Purchasers of goods for resale (e.g., wholesalers and retailers) must include in inventory the invoice price of the purchased goods plus transportation and other necessary costs incurred in acquiring possession.

2. Self-constructed property and noninventory property produced for sale

The costs of acquiring, constructing, or improving buildings, machinery, equipment, or other assets having a useful life beyond the end of the taxable year are not currently deductible. These "capital expenditures" become part of the basis of the asset, and may be recoverable over the useful life of the property through depreciation or amortization deductions if the property is held for business or investment purposes. Any unrecovered basis may be offset against the amount realized if the property is sold or otherwise disposed.

Although a taxpayer's direct costs of constructing an asset for its own use or a noninventory asset produced for sale must be capitalized, the proper treatment of many indirect costs is uncertain.

3. Interest

Interest is generally deductible in the year paid or incurred. However, interest incurred by a taxpayer during construction or improvement of real property to be held in a trade or business or activity for profit generally must be capitalized and amortized over ten years (sec. 189). The amount of interest that must be capitalized is determined under the "avoided cost" method. Under this method, the taxpayer must capitalize (in addition to interest directly traceable to construction indebtedness) any interest expense during the construction period that could have been avoided if funds had not been expended for construction.

House Bill

1. Inventory

Under the House bill, comprehensive capitalization rules (the "uniform capitalization rules") apply to the manufacture of inventory goods. These rules essentially parallel the full absorption rules of present law, but require that most financial conformity costs be inventoried. In addition, all tax depreciation, current pension and fringe benefit costs, and a portion of general and administrative expenses are treated as inventory costs. Research and experimental costs (within the meaning of sec. 174), however, are not subject to capitalization. Special rules apply to farmers (see Title IV.A.3.) and producers of timber (see Title IV.B.1.).

These provisions are effective for taxable years beginning after December 31, 1985. The section 481 adjustment is to be spread ratably over a period of not more than five years under the rules applicable to a change in a method of accounting initiated by the taxpayer.

2. Self-constructed property and noninventory property produced for sale

Self-constructed property and noninventory property produced for sale are subject to the uniform capitalization rules, effective for costs incurred after December 31, 1985.

3. Interest

Under the House bill, a taxpayer must capitalize interest on debt incurred to finance the construction or production of real property, long-lived personal property, or other tangible property requiring more than two years (one year in the case of property costing more than $1 million) to produce or construct or to reach a productive stage. The amount of interest subject to capitalization is determined under the avoided cost method. This rule applies to interest paid or incurred after December 31, 1985.

Senate Amendment

1. Inventory

The Senate amendment generally is the same as the House bill, except that the required capitalization of costs under the uniform capitalization rules is extended to apply to purchasers of goods for resale having average annual gross receipts in excess of $5 million. Thus, costs (including general and administrative costs) attributable to purchasing, processing, and storage of goods, and other similar costs, are to be treated as inventory costs. In addition, the uniform capitalization rules apply to intangible as well as tangible property. Farmers and producers of timber are excepted from the rules (see Title IV.A.3. and B.1.).

The rules apply to inventory for taxable years beginning after December 31, 1986. Excess depreciation on property placed in service before March 1, 1986, however, is not subject to the new rules. The section 481 ad-

justment is to be spread ratably over a period of not more than five years under the rules applicable to a change in a method of accounting initiated by the taxpayer.

2. Self-constructed property and noninventory property produced for sale

The Senate amendment generally is the same as the House bill, except that the uniform capitalization rules apply to intangible as well as tangible property. The rules apply to costs incurred with respect to self-constructed and noninventory property after December 31, 1986, unless incurred in connection with property on which substantial construction occurred before March 1, 1986.

3. Interest

The Senate amendment generally is the same as the House bill, except that long-lived personal property is subject to the interest capitalization rule only if the property is to be used by the taxpayer in a trade or business or activity for profit (i.e., is not to be held for sale). In addition, all taxpayers producing property under a long-term contract must capitalize interest with respect to the contract.

The interest capitalization rule applies to interest paid or incurred after December 31, 1986, unless incurred with respect to property on which substantial construction occurred before March 1, 1986.

Conference Agreement

1. Inventory

In general

The conference agreement generally follows the Senate amendment, with certain modifications and clarifications. However, the agreement follows the House bill in applying the uniform capitalization rules to taxpayers engaged in the trade or business of farming (other than timber) where the preproductive period exceeds two years (see Title IV.A.3.). In addition, the conference agreement provides that the uniform capitalization rules are to apply to all depreciation deductions for Federal income tax purposes with respect to assets of the taxpayer (i.e., the conference agreement deleted the provisions of the Senate amendment which exempted existing assets from the capitalization of all tax depreciation).

The gross receipts threshold for taxpayers acquiring property for resale is increased from $5 million to $10 million. Accordingly, present law rules continue to apply to resellers whose average annual gross receipts do not exceed $10 million.

The conference agreement provides that the uniform capitalization rules do not apply to the growing of timber and certain ornamental trees (i.e., those evergreen trees which are more than 6 years old when severed from the roots and sold for ornamental purposes). Thus, present law is retained with regard to the treatment of the preproductive expenses of growing timber and such ornamental trees.

The conferees intend that present law be retained with regard to which costs of growing timber are deductible in the year incurred and which costs must be capitalized. Thus, any costs which must be capitalized under present law would continue to be capitalized and costs incurred in growing timber which are not required to be capitalized under present law would remain deductible currently.

The definition of timber used in the conference agreement is intended to be coextensive with the definition of timber (including ornamental trees) under present law. The conferees intend that nothing in the definition of timber shall be construed to narrow the types of activities which constitutes the growing of timber for purpose of the exclusion of timber from the uniform capitalization rules.

The conferees wish to clarify their intent as to the treatment of costs incurred by taxpayers engaged in the resale of natural gas with respect to so-called "cushion gas"—gas necessary to maintain operating pressures in an underground gas storage facility sufficient to meet expected peak customer demand. It is not intended that such taxpayers be required to allocate to such gas any portion of their overhead or other indirect costs under the new uniform capitalization rules. The conferees anticipate that the Treasury Department may issue rules or regulations under which some portion of the so-called "emergency reserve" gas in such facilities also may be exempt from allocations of indirect costs under the capitalization rules of this provision.

The uniform capitalization rules are not intended to affect the valuation of inventories on a basis other than cost. Thus, the rules will not affect the valuation of inventories at market by a taxpayer using the lower of cost or market method, or by a dealer in securities or commodities using the market method. However, the rules will apply to inventories valued at cost by a taxpayer using the lower of cost or market method.

The conferees clarify that, in addition to the costs specifically excepted from capitalization under the conference agreement (e.g., research and experimental costs, selling, marketing, advertising, and distribution expenses) are not subject to capitalization under the uniform capitalization rules.

Simplified method for taxpayers acquiring property for resale

The conference agreement directs the Treasury Department to provide a simplified method for applying the uniform capitalization rules in the case of taxpayers acquiring property for resale. The conferees expect that the simplified method provided under rules or regulations generally will follow the examples described below and that, until rules or regulations are issued, taxpayers may rely on these examples.

Taxpayers not electing to use the simplified method are required to apply the new uniform capitalization rules to property acquired for resale under the same procedures and methods applicable to manufacturers. The Treasury Department may modify the simplified method or permit the use of other methods by rules or regulations. Once a taxpayer has chosen either the simplified method or the capitalization methods applicable to manufacturers, the taxpayer may not change its method without obtaining the permission of the Secretary.

For purposes of the simplified method, it is anticipated that taxpayers initially will calculate their inventory balances without regard to the new uniform capitalization rules. Taxpayers will then determine the amounts of additional costs that must be capitalized under the new rules (under the procedures described below) and add such amounts, along with amounts of additional costs contained in beginning inventory balances where appropriate, to the preliminary inventory balances to determine their final balances. Thus, for example, with respect to a taxpayer using the last-in, first-out (LIFO) method, the calculation of a particular year's LIFO index will be made without regard to the new capitalization rules. For such a taxpayer, however, costs capitalized under these rules will be added to the LIFO layers applicable to the various years for which the costs were accumulated. Likewise, in the case of a taxpayer on the first-in, first-out (FIFO) method that does not sell its entire beginning inventory during the year, a proportionate part of the additional costs capitalized into the beginning inventory under these rules will be included in ending inventory.

The simplified method will be applied separately to each trade or business of the taxpayer.

In general, four categories of indirect costs will be allocable to inventory under this simplified method:

(1) off-site storage and warehousing costs (including, but not limited to, rent or depreciation attributable to a warehouse, property taxes, insurance premiums, security costs, and other costs directly identifiable with the storage facility);[4A]

(2) purchasing costs such as buyers' wages or salaries;

(3) handling, processing, assembly, repackaging, and similar costs, including labor costs attributable to unloading goods (but not including labor costs attributable to loading of goods for final shipment to customers, or labor at a retail facility);[5] and

(4) the portion of general and administrative costs allocable to these functions.

Storage costs.—Under the simplified method, a taxpayer includes storage costs in inventory based on the ratio of total storage costs for the year to the sum of (1) the beginning inventory balance and (2) gross purchases during the year. For example, assume that a FIFO taxpayer incurred $1 million of storage costs during the taxable year, had a beginning inventory balance (without regard to any adjustments under the simplified method) of $2 million, made gross purchases of $8 million, and had an ending inventory (without regard to any adjustments under the simplified method) of $3 million. The ratio of storage costs to beginning inventory and purchases is 10 percent ($1,000,000 divided by ($2,000,000 plus $8,000,000)). Thus, for each dollar of ending inventory, the taxpayer must capitalize ten cents of storage costs. Ending inventory for the year would be increased by $300,000. The balance of the storage costs ($700,000) would be included in cost of goods sold.

In the case of a LIFO taxpayer, to the extent that ending inventory exceeds beginning inventory, additional capitalized storage costs would be calculated by multiplying the increase in inventory for the year by the applicable ratio. Accordingly, if the taxpayer in the above example used the LIFO method, an additional $100,000 (i.e., .10 x $1,000,000) of storage costs would be included in ending inventory. Moreover, in contrast to the FIFO taxpayer in the previous example, any storage costs that were included in the taxpayer's beginning inventory balance would remain in the taxpayer's ending inventory balance and would not be included in cost of goods sold for the year.

[4A] Offsite storage and warehousing costs generally include the cost of a facility whose primary function is the storage or warehousing of goods.

[5] Any reasonable method of apportioning labor costs between inventoriable and noninventoriable functions may be used. The conferees do not intend that detailed records establishing the time spent by an employee performing a particular function generally will be required to substantiate an allocation by the taxpayer. However, if such records are available, they generally should be used in making allocations.

Purchasing costs.—Purchasing costs are allocated between inventory and cost of goods sold based on the ratio of purchasing costs to gross purchases during the year. For example, assume that the taxpayer in the above example incurred $500,000 in purchasing costs during the year. The ratio of purchasing costs to gross purchases is 6.25 percent ($500,000 divided by $8,000,000). Thus, 6.25 cents of purchasing costs would be capitalized for each dollar's worth of items in ending inventory that were not in beginning inventory (i.e., were purchased during the current year). Assuming the taxpayer uses the first-in, first-out (FIFO) basis for determining inventories, $187,500 (i.e., .0625 x $3,000,000) of purchasing costs would be capitalized.

In the case of a taxpayer using the last-in, first-out (LIFO) method for valuing inventory, ending inventory consists of newly acquired items only to the extent that ending inventory exceeds beginning inventory. Capitalized purchasing costs would be calculated by multiplying the increase in inventory from the beginning of the year to the end by the applicable ratio. Accordingly, in the above example, the taxpayer would capitalize $62,500 (i.e., .0625 x $1,000,000) of purchasing costs. In contrast to a FIFO taxpayer, the purchasing costs attributable to a LIFO taxpayer's beginning inventory would be retained in the taxpayer's ending inventory balance.

Processing, repackaging, etc. costs.—Processing, repackaging, and other similar costs are allocated based on the ratio of total processing, repackaging, etc. costs to the sum of (1) the beginning inventory balance and (2) gross purchases during the year.

General and administrative expenses allocable to storage, purchasing, and processing.—General and administrative expenses that are allocable in part to storage, purchasing, and processing activities and in part to activities for which no capitalization is required under the simplified method are allocated based on the ratio of direct labor costs incurred in a particular function to gross payroll costs. For example, assume that the total cost of operating the taxpayer's accounting department for the year was $75,000, direct labor purchasing costs were $500,000, and gross payroll was $1,500,000. The portion of the accounting department cost subject to capitalization in connection with the purchasing function would be $25,000 (i.e., $500,000 divided by $1,500,000 x $75,000).

In addition, assume that direct labor warehousing costs were $250,000. The portion of the accounting department cost allocated to the storage and warehousing functions and thus subject to capitalization would be $12,500 (i.e., $250,000 divided by $1,500,000 x $75,000).

Section 481 adjustment

Under the conference agreement, the section 481 adjustment resulting from the change in accounting method is to be included in income over a period not exceeding four years. The conferees intend that the timing of the section 481 adjustment will be determined under the provisions of Revenue Procedure 84-74, 1984-2 C.B. 736. In addition, the conferees intent that (i) net operating loss and tax credit carryforwards will be allowed to offset any positive section 481 adjustment; and (ii) for purposes of determining estimated tax payments, the section 481 adjustment will be recognized ratably throughout the taxable year of the adjustment.

In computing the section 481 adjustment, taxpayers using the simplified method for property acquired for resale must apply this method in restating beginning inventory. Taxpayers using the LIFO method who lack sufficient data to compute the section 481 adjustment precisely may use the methods of approximation (based on the data for the three prior years for which increments in the inventory occurred) available to manufacturers under the Senate bill.

2. Self-constructed property and noninventory property produced for sale

The conference agreement generally follows the Senate amendment on self-constructed and noninventory property produced for sale. The conference agreement provides that the application of the uniform capitalization rules with respect to production activities is limited to tangible property.[1] On the other hand, the conference agreement provides that the extension of the uniform capitalization rules to property acquired for resale includes intangible, as well as tangible, property.

The conference agreement adopts the Senate amendment's effective date for self-constructed property. Thus, the rules apply to costs incurred after December 31, 1986, unless incurred with respect to property on which substantial construction occurred before March 1, 1986.

3. Interest

The conference agreement follows both the House bill and the Senate amendment in certain respects. Long-lived personal property is subject to the interest capitalization rules regardless of whether it is constructed for self-use or for sale, as under the House bill. In addition, taxpayers producing property under a long-term contract must capitalize interest costs to the extent income is not being reported under the percentage of completion method.

The conferees wish to clarify that the avoided cost method of determining the amount of interest allocable to production is intended to apply irrespective of whether application of such method (or a similar method) is required, authorized, or considered appropriate under financial or regulatory accounting principles applicable to the taxpayer. Thus, for example, a regulated utility company must apply the avoided cost method of determining capitalized interest even though a different method is authorized or required by Financial Accounting Standards Board Statement 34 or the regulatory authority having jurisdiction over the utility. No inference is intended that the avoided cost method is not required in such circumstances under section 189 of present law.

E. Long-Term Contracts

Present Law

The treatment of costs of producing property under a "long-term contract" varies depending on the method of accounting used by the taxpayer. In addition to an inventory method (e.g., accrual shipment or accrual delivery), taxpayers may use one of two special methods of accounting for long-term contracts: the percentage of completion method or the completed contract method. Under the percentage of completion method, gross income is recognized according to the percentage of the contract completed during each taxable year, and costs incurred under the contract are currently deductible. Under the completed contract method, the gross contract price is included in income, and costs associated with the contract are deducted, in the year that the contract is completed and accepted.

The rules relating to which costs are contract costs for purposes of the completed contract method vary depending on whether the contract is an extended period contract (generally one requiring longer than two years to complete) or a non-extended period contract. The rules applicable to extended period contracts essentially parallel the uniform capitalization rules (see D., above). Research and development costs (within the meaning of section 174) that relate to a particular extended period long-term contract must be capitalized.

Non-extended period contracts are subject to similar but somewhat less comprehensive rules. For example, research and development costs related to a particular contract need not be capitalized as part of that contract.

House Bill

Under the House bill, the income and expenses of all long-term contracts must be reported under the percentage of completion method. Revenues from such contracts must be included in gross income based on the ratio of contract costs incurred during the year to total projected contract costs; contract costs are currently deductible. Interest is payable by (or to) the taxpayer if the actual profit on a contract allocable to any year varies from the estimated profit used in reporting income. An exception is provided for contracts for the construction of real property to be completed within two years of the contract date, if performed by a taxpayer whose average annual gross receipts do not exceed $10 million. Present law capitalization rules are retained for contracts not required to be reported under the percentage of completion method. These provisions are effective for contracts entered into after September 25, 1985.

Senate Amendment

In general, all long-term contracts are subject to rules similar to the uniform capitalization rules, including the rules relating to the capitalization of interest (see D., above), unless the contract is reported on the percentage of completion method. Moreover, additional general and administrative costs attributable to cost-plus contracts and to Federal government contracts requiring certification of costs are treated as contract costs. An exception from the uniform capitalization rules (except the interest capitalization rule) is provided for real estate construction contracts not requiring more than two years to complete, if performed by a taxpayer with average annual gross receipts of $10 million or less.

The provisions are effective for contracts entered into on or after March 1, 1986.

Conference Agreement

In general

The conference agreement adopts elements of both the House bill and the Senate amendment provisions. Under the conference agreement, taxpayers may elect to compute income from long-term contracts under one of two methods: (1) the "percent-

[1] For this purpose, tangible property includes films, sound recordings, video tapes, books, and other similarly property embodying words, ideas, concepts, images, or sounds, by the creator thereof. Thus, for example, the uniform capitalization rules apply to the costs of producing a motion picture or researching and writing a book. No inference is intended as to the nature of these properties under present law or for other provisions of the conference agreement.

age of completion-capitalized cost method" (i.e., 40 percent PCM) described below or (2) the percentage of completion method. In general, percentage of completion is determined as provided in the House bill for purposes of both methods. Except in the case of certain real property construction contracts (i.e., those for which exceptions were provided under the House bill and Senate amendment), these are the exclusive methods under which long-term contracts may be reported. The conference agreement generally adopts the definition of a long-term contract in the Senate amendment. This definition is the same as present law.

The conference agreement also prescribes the treatment of independent research and development costs, effective for all open tax years.

Percentage of completion-capitalized cost method

In the case of any long-term contract not reported under the percentage of completion method, the taxpayer must take into account 40 percent of the items with respect to the contract under the percentage of completion method. Percentage of completion is determined by comparing the total contract costs incurred before the close of the taxable year with the estimated total contract costs. The contract costs taken into account in determining the percentage of completion are those for which capitalization is required under the Senate amendment in the case of long-term contracts ("capitalizable costs").

The remaining 60 percent of the items under the contract are to be taken into account under the taxpayer's normal method of accounting, capitalizing those costs as required under the Senate amendment. Thus, 60 percent of the gross contract income will be recognized, and 60 percent of the contract costs will be deducted, at the time required by the taxpayer's method. For example, if the taxpayer uses the completed contract method of accounting, these items would be taken into account upon completion of the contract. If the taxpayer uses an accrual method (e.g., an accrual shipment method), such contract items would be taken into account at the time of shipment.

Under the conference agreement, the look-back method provided in the House bill is to be applied to the 40 percent portion of the contract reported on the percentage of completion method. Thus, interest is paid to or by the taxpayer on the difference between the amount actually taken into account by the taxpayer for each year of the contract and the amount the taxpayer would have taken into account recomputing the 40-percent portion under the look-back method.

Independent research and development costs

Under the conference agreement, independent research and development costs are expressly excepted from the category of capitalizable costs. Independent research and development costs for this purpose are defined as any expenses incurred in the performance of independent research and development other than (1) expenses directly attributable to a long-term contract in existence when the expenses are incurred, and (2) any expenses under an agreement to perform research and development.[1]

In particular, the conferees intend that the contractual arrangement regarding IR&D and its allocation to the contract shall not be severed, for Federal income tax purposes, from the long-term contract in such a manner as to render IR&D ineligible for treatment as a cost of a long-term contract, or to accelerate the recognition of any income pertaining to IR&D in comparison to the recognition of income which would otherwise occur under the taxpayer's method of accounting.

The conferees are aware that the treatment of independent research and development (IR&D) is presently a subject of controversy between taxpayers and the Internal Revenue Service. Under the conference agreement, the position of the Internal Revenue Service in several recent technical advice memoranda is expressly overruled.

Exception for small construction contracts

Under the conference agreement, the required use of either the percentage of completion-capitalized cost method or the percentage of completion method does not apply to certain small construction contracts. Contracts within this exception are those contracts for the construction or improvement of real property if the contract (1) is expected to be completed within the two-year period beginning on the commencement date of the contract, and (2) is performed by a taxpayer whose average annual gross receipts for the three taxable years preceding the taxable year in which the contract is entered into do not exceed $10 million. Contracts eligible for this exception will remain subject to the rules of present law (i.e., the regulations applicable to non-extended period long-term contracts). Since such contracts involve the construction of real property, they are subject to the interest capitalization rules of the conference agreement without regard to their duration.

Effective date

The provisions of the conference agreement generally are effective for contracts entered into after February 28, 1986.

For purposes of accounting for long-term contracts, the treatment of independent research and development costs (as includible in contract price but not includible in capitalizable contract costs) applies to all open taxable years of taxpayers.

F. Reserve for Bad Debts

Present Law

Present law permits taxpayers to take a deduction for losses on business debts using either the specific charge-off method or the reserve method. The specific charge-off method allows a deduction at the time and in the amount that any individual debt is wholly or partially worthless. The reserve method allows the current deduction of the amount that is necessary to bring the balance in the bad debt reserve account as of the beginning of the year, adjusted for actual bad debt losses and recoveries, to the balance allowable under an approved method as of the end of the year. The deduction taken under the reserve method is required to be reasonable in amount, determined in light of the facts existing at the close of the taxable year.

Worthless debts are charged off, resulting in a deduction under the specific charge-off method, or an adjustment to the reserve account under the reserve method, in the year in which they become worthless. In the case of a partially worthless debt, the amount allowed to be charged off for Federal income tax purposes cannot exceed the amount charged-off on the taxpayer's books. No such requirement is applicable to wholly worthless debts.

Present law requires an actual debt be owed to the taxpayer in order to support the creation of a reserve for bad debts. An exception to this rule is provided for dealers who guarantee, endorse, or provide indemnity agreements on debt owed to others if the potential obligation of the dealer arises from its sale of real or tangible personal property.

House Bill

The House bill repeals the availability of the reserve method in computing the deduction for bad debts for all taxpayers, other than commercial banks whose assets do not exceed $500 million, and thrift institutions. Wholly worthless debts are not deductible for Federal income tax purposes until charged off on the taxpayer's books, as is the case under present law for partially worthless debts. The House bill does not address the continued use of the reserve method by dealers who guarantee, endorse, or provide indemnity agreements with regard to debt obligations arising out of the sale by the dealer of real or tangible personal property in the ordinary course of business.

The provision is effective for taxable years beginning after December 31, 1985. The balance in any reserve for bad debts as of the effective date is to be taken into income ratably over a five-year period.

Senate Amendment

The Senate amendment repeals the availability of the reserve method in computing the deduction for bad debts for all taxpayers, other than financial institutions, banks or cooperatives, production credit associations, and certain finance companies. Wholly worthless debts are not deductible for Federal income tax purposes until charged off on the taxpayer's books, as is the case under present law for partially worthless debts.

The Senate amendment also repeals the reserve method for dealers who guarantee, endorse, or provide indemnity agreements with respect to debt obligations arising out of the sale by the dealer of real or tangible personal property in the ordinary course of business (sec. 166(f)).

The Senate amendment is effective for taxable years beginning after December 31, 1986. The balance in any reserve for bad debts as of the effective date is to be included in income ratably over a five-year period. In the case of a bad debt reserve for guarantees, the amount of the reserve is first reduced by the remaining balance in any suspense account established under section 166(f)(4), and the net amount taken into income ratably over a five-year period beginning with the first taxable year beginning after December 31, 1986.

Conference Agreement

The conference agreement generally follows the House bill with regard to the availability of the reserve method for computing losses on business debts. Thus, taxpayers (other than certain financial institutions) will be required to use the specific charge-off method in accounting for losses on bad debts. In determining whether a debt is worthless, the fact that a utility is required to continue to provide services to a customer whose account has otherwise been determined to be uncollectible will not be considered as evidence that the debt is not worthless for Federal income tax purposes.

[1] The conferees intend that any costs that qualify as independent research and development costs under the Federal Acquisition Regulations System, 48 C.F.R. sec. 31.205-18 (1985), will qualify under this provision.

The conference agreement does not include the provision limiting the deduction of wholly worthless business debts to the amount written off on the taxpayer's books. Thus, a wholly worthless debt will be deductible in full in the year that it becomes worthless, as is the case under present law.

The conference agreement follows the Senate amendment in repealing the reserve method for dealers who guarantee, endorse, or provide indemnity agreements with respect to debt obligations arising out of the sale by the dealer of real or tangible personal property in the ordinary course of business.

The provision of the conference agreement is effective for taxable years beginning after December 31, 1986. Any change from the reserve method of accounting for bad debts is treated as a change in method of accounting initiated by the taxpayer with the consent of the Secretary of the Treasury. The balance in any reserve for bad debts as of the effective date is generally to be included in income ratably over a four-year period. The amount to be included in income is the full balance of the reserve account, without offset for any anticipated amounts that will not be currently accrued as income under the rules allowing accrual basis service providers to exclude from income amounts that are statistically determined not to be collectible until such amounts are actually collected (see VIII. A., supra). In the case of a bad debt reserve for guarantees, the amount of the reserve subject to inclusion is first reduced by the remaining balance in any suspense account established under section 166(f)(4).

The conferees intend that (1) net operating loss and tax credit carryforwards will be allowed to offset any positive section 481 adjustment; and (2) for purposes of determining estimated tax payments, the section 481 adjustment will be recognized in taxable income ratably throughout the year in question.

The conferees also direct the Secretary of the Treasury to study and to issue a report regarding appropriate criteria to be used to determine if a debt is worthless for Federal income tax purposes. The conferees anticipate that the report will consider under what circumstances a rule providing for a conclusive or rebuttable presumption of the worthlessness of an indebtedness is appropriate.

The final report is to be submitted, by January 1, 1988, to the House Committee on Ways and Means and the Senate Committee on Finance.

G. Taxable Years of Partnerships, S Corporations, and Personal Service Corporations

Present Law

Partnerships.—Present law requires a partnership adopting or changing a taxable year to use the same taxable year as all of its principal partners (or the calendar year, if all of the partnership's principal partners do not have the same taxable year), unless the partnership establishes to the satisfaction of the Secretary of the Treasury a business purpose for selecting a different taxable year (sec. 706). A partnership that adopted its taxable year prior to April 2, 1954, is not required to change its taxable year regardless of whether the taxable year adopted is the same as the taxable year of all of the principal partners (Treas. Reg. sec. 1.706-1(b)(6)).

In 1972, the Internal Revenue Service announced in Revenue Procedure 72-51 (1972-2 C.B. 832) that requests by a partnership to adopt or change to an accounting period differing from that of the principal partners generally will be approved where the adoption of such change would result in the deferral of income to the partners of three months or less.

S corporations.—Present law requires a corporation that makes an election to be taxed as an S corporation, or an S corporation that changes its taxable year to adopt a "permitted year" (sec. 1378). A permitted year is a calendar year or any other accounting period for which the S corporation establishes a business purpose to the satisfaction of the Secretary of the Treasury. A corporation that was an S corporation for a taxable year that includes December 31, 1982 (or that was an S corporation for a taxable year beginning in 1983 by reason of an election made on or before October 19, 1982) may retain a taxable year that is not a permitted year. However, if more than 50 percent of the stock of such an S corporation is newly owned stock, the S corporation must change its taxable year to a permitted year. Revenue Procedure 83-25 (1983-1 C.B. 689) provides procedures that the Internal Revenue Service will follow in approving a request by a S corporation desiring to change to, or to adopt, a taxable year other than a calendar year. Revenue Procedure 83-25 provides that requests will be approved where the adoption of the taxable year results in the deferral of income to shareholders of three months or less.

Personal service corporations.—A personal service corporation generally may adopt any taxable year on its first Federal income tax return that conforms with its annual accounting period. A personal service corporation desiring to change its taxable year must generally first obtain the consent of the Secretary of the Treasury.

House Bill

No provision.

Senate Amendment

In general, the Senate amendment requires that all partnerships, S corporations, and personal service corporations conform their taxable years to the taxable years of their owners. An exception to the rule is made in the case where the partnership, S corporation, or personal service corporation establishes to the satisfaction of the Secretary of the Treasury a business purpose for having a different taxable year. The deferral of income to owners for a limited period of time, such as the three months or less rule of present law, is not to be treated as a business purpose.

All partnerships generally are required to adopt the same taxable year as the partners owning a majority interest in partnership profits and capital. If partners owning a majority of partnership profits and capital do not have the same taxable year, the partnership is required to adopt the same taxable year as all of its principal partners. If neither partners owning a majority of partnership profits and capital, or all of the partnership's principal partners have the same taxable year, the partnership is required to adopt the calendar year. S corporations and personal service corporations generally are required to adopt the calendar year.

The amendment is effective for taxable years beginning after December 31, 1986. A partner in a partnership or a shareholder in an S corporation that is required to include the items from more than one taxable year of the partnership or S corporation in any one taxable year as a result of the amendment is allowed to take into account the items from the short taxable year of the partnership or S corporation ratably in each of the partner's or shareholder's four taxable years beginning after December 31, 1986, unless the partner or shareholder elects to include all such amounts in the taxable year to which they would otherwise apply.

Conference Agreement

The conference agreement generally follows the Senate amendment.

The conference agreement extends the provisions of section 267 to provide that a personal service corporation and its employee-owners are treated as related taxpayers regardless of the amount of the corporation's stock owned, directly or indirectly, by the employee-owner. Thus, a personal service corporation may not deduct payments made to employee-owners prior to the time that such employee-owner would include the payment in gross income.

The rule allowing partners or shareholders of a partnership or S corporation to include items of income from the short year of the partnership or S corporation in each of the partner or shareholder's four taxable years beginning after December 31, 1986 is applicable regardless of what type of entity the partner or S corporation shareholder is. Thus, a personal service corporation that is a partner in a partnership required to adopt a new taxable year as a result of this provision is eligible to include the partner's distributive share of partnership income over four taxable years. The rule is applicable to income from an S corporation only if such corporation was an S corporation for a taxable year beginning in 1986.

The conferees intend that any partnership that received permission to use a fiscal year-end (other than a year-end that resulted in a three-month or less deferral of income) under the provisions of Rev. Proc. 74-33, 1974-2 C.B. 489, shall be allowed to continue the use of such taxable year without obtaining the approval of the Secretary. Similarly, any S corporation that received permission to use a fiscal year-end (other than a year-end that resulted in a three-month or less deferral of income), which permission was granted on or after the effective date of Rev. Proc. 74-33, shall be allowed to continue the use of such taxable year without obtaining the approval of the Secretary.

Moreover, any partnership, S corporation, or personal service corporation may adopt, retain, or change to a taxable year, under procedures established by the Secretary, if the use of such year meets the requirements of the "25% test" as described in Rev. Proc. 83-25, 1983-1 C.B. 689 (i.e., 25% or more of the taxpayer's gross receipts for the 12-month period in question are recognized in the last two months of such period and this requirement has been met for the specified three consecutive 12-month periods).

In addition, the Secretary may prescribe other tests to be used to establish the existence of a business purpose, if, in the discretion of the Secretary, such tests are desirable and expedient towards the efficient administration of the tax laws.

The conferees intend that (1) the use of a particular year for regulatory or financial accounting purposes; (2) the hiring patterns of a particular business, e.g., the fact that a firm typically hires staff during certain times of the year; (3) the use of a particular year for administrative purposes, such as the admission or retirement of partners or shareholders, promotion of staff, and com-

pensation or retirement arrangements with staff, partners, or shareholders; and (iv) the fact that a particular business involves the use of price lists, model year, or other items that change on an annual basis ordinarily will not be sufficient to establish that the business purpose requirement for a particular taxable year has been met.]

The conferees anticipate that the Secretary of the Treasury will promulgate regulations regarding the use of the 52-53 week taxable year to prevent the evasion of the principles of this provision. It is anticipated that the regulations will provide that, for the purpose of determining when taxable income is included by a partner or S corporation shareholder, a 52-53 week taxable year of a partner, shareholder, partnership, or S corporation will be treated as ending on the last day of the calendar month ending nearest to the last day of such 52-53 week taxable year. For example, a calendar year partner will include its share of taxable income from a partnership with a 52-53 week taxable year ending on January 3, 1988 in its 1987 calendar year Federal income tax return. The Secretary of the Treasury may also prescribe similar rules to prevent the evasion of the principles of the provision through the use of a 52-53 week taxable year by personal service corporations and the shareholder-employees of such corporations. It is also anticipated that the Secretary of the Treasury will suspend the operation of Treas. Reg. sec. 1.441-2(c) allowing taxpayers in certain cases to adopt, or change to, a 52-53 week taxable year without the approval of the Secretary of the Treasury.

Some partnerships and S corporations that adopted a taxable year providing a deferral of income to owners of three months or less were required to include the amount of deferral obtained in income over a 10-year period. Any portion of such amount not taken into income as of the effective date of the provision may be used to reduce the income attributable to any short taxable year required by the provision.

H. Special Treatment of Certain Items

1. Qualified discount coupons

Present Law

Under present law, issuers of qualified discount coupons using the accrual method of accounting may elect to deduct the cost of redeeming qualified discount coupons outstanding at the close of the taxable year and received for redemption by the taxpayer within a statutory redemption period following the close of the taxable year (sec. 466). The statutory redemption period is the 6-month period immediately following the close of the taxable year, unless the taxpayer elects a shorter period.

A qualified discount coupon is a coupon which (1) is issued by the taxpayer, (2) is redeemable by the taxpayer, and (3) allows a discount on the purchase price of merchandise or other tangible personal property. The coupon must not be redeemable directly by the issuer (i.e., a direct consumer rebate) and may not by itself, or in conjunction with any other coupons, bring about a price reduction of more than $5 with respect to any item.

The election must be made with respect to each trade or business of the taxpayer and constitutes a method of accounting. Revocation of an election may be made only with permission of the Secretary of the Treasury. In certain situations, a taxpayer is required to establish a suspense account in the year of election in order to limit the bunching of deductions in that year.

House Bill

No provision.

Senate Amendment

The Senate amendment repeals the provision of present law allowing a deduction for the cost of redeeming qualified discount coupons received during a redemption period after the close of the taxable year. As a result, only those costs of redeeming discount coupons received for redemption during the taxable year will be allowed as a deduction during that taxable year.

The Senate amendment treats any taxpayer currently electing to deduct the cost of redeeming qualified discount coupons as having elected to change its method of accounting. The change will be considered to have been initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment which is required to be made by section 481 will be reduced by any balance in the suspense account of the taxpayer, and the net amount is to be taken into account over a period not to exceed five taxable years, commencing with the first taxable year beginning after December 31, 1986. It is expected that the concepts of Revenue Procedure 84-74, 1984-2 C.B. 736, generally will apply to determine the actual timing of recognition or expense as a result of the adjustments arising from this provision.

The provision of the Senate amendment is effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment. The net adjustment required to be made as a result of the provision, after reduction for any balance in the suspense account, is required to be taken into account over a period not to exceed four taxable years, commencing with the first taxable year ending after December 31, 1986.

The conferees also intend that (i) net operating loss and tax credit carryforwards will be allowed to offset any positive section 481 adjustment; and (ii) for purposes of determining estimated tax payments, the section 481 adjustment will be recognized in taxable income ratably throughout the year in question.

2. Utilities using accrual accounting

Present Law

Present law requires taxpayers using the accrual method of accounting to recognize income at the time all the events have occurred which establish the taxpayer's right to receive the income and the amount of income can be established with reasonable accuracy.

The Internal Revenue Service has allowed utilities using the accrual method of accounting to recognize income in the taxable year in which a customer's utility meter is read, providing a similar technique is used for financial accounting purpose (Rev. Rul. 72-114, 1972-1 C.B. 124). Recent judicial decisions have allowed income to be recognized in the taxable year in which a customer's utility meter is read regardless of the technique used for financial accounting purposes. *See, e.g., Orange and Rockland Utilities* v. *Commissioner*, 86 T.C. No. 14 (1986). Some courts also have held that taxpayers are allowed to defer recognition of income until such time as the taxpayer bills (or is entitled to bill) the customer for services.

House Bill

No provision.

Senate Amendment

The Senate amendment requires accrual basis taxpayers to recognize income attributable to the furnishing or sale of utility services to customers not later than the taxable year in which such services are provided to the customer. The year in which utility services are provided may not be determined by reference to the time the customer's meter is read or to the time that the customer is billed (or may be billed) for such services.

The effect of the provision is to require an estimate of the income attributable to utility services provided during the taxable year but after the final meter reading or billing date which falls within the taxable year. It is anticipated that, where it is not practical for the utility to determine the actual amount of services provided through the end of the current year, this estimate may be made by assigning a pro rata portion of the revenues determined as of the first meter reading date or billing date of the following taxable year.

Utility services subject to the Senate amendment are the provision of electrical energy, water or sewage disposal, the furnishing of gas or steam through a local distribution system, telephone and other communications services, and the transportation of gas or steam by pipeline. It is anticipated that similar rules also would be applicable to other utility services which might come into existence at some future date. Whether or not a utility service is regulated by a government or governmental agency does not affect its treatment under this provision. The Senate amendment creates no inference as to the proper Federal income tax treatment of utility services under current law.

The conferees are aware that the proper accounting for utility services is presently a matter of controversy between taxpayers and the Internal Revenue Service. In order to minimize disputes over prior taxable years, the conference agreement provides that, for any taxable year beginning before August 16, 1986, a method of accounting which took into account income from the providing of utility services on the basis of the period in which the customers' meters were read shall be deemed to be proper for Federal income tax purposes. No inference is intended as to methods of accounting for utility services not described in the preceding sentence (e.g., a method of accounting which takes income into account on the basis of the date the customer is billed for utility services).

The provision is effective for taxable years beginning after December 31, 1986. The amount of any adjustment required to be made as a result of this provision is to be included in income ratably over the first four taxable years for which the proposal is effective.

Conference Agreement

The conference agreement follows the provision of the Senate amendment.

The conferees also intend that (i) net operating loss and tax credit carryforwards will be allowed to offset any positive section 481 adjustment; and (ii) for purposes of determining estimated tax payments, the section 481 adjustment will be recognized in taxable income ratably throughout the year in question.

In addition, the conferees intend that taxpayers required to accrue income at the time the utility services are furnished to customers may accrue at such time any de-

ductions for the related costs of providing the utility services if economic performance has occurred with respect to such costs within the taxable year in question. Therefore, the conferees intend that any change in accounting method required under this provision include any related change in accounting method for the related items of expense or deduction. The section 481 adjustment is then to be computed on the net amount of the two changes and taken into income ratably over a 4-year period.

3. Contributions in aid of construction

Present law

The gross income of a corporation does not include contributions to its capital. A corporate regulated public utility that provides electric energy, gas (through a local distribution system or transportation by pipeline), water, or sewage disposal services may treat contributions received in aid of construction as a contribution to capital not includible in gross income. Such contributions may not be included in the utility's rate base for rate making purposes. Property received (or purchased with the proceeds of) a contribution to capital has no depreciable basis for Federal income tax purposes and is not eligible for the investment tax credit.

House Bill

The House bill repeals the provision of present law allowing contributions in aid of construction received by a corporate regulated public utility to be excluded from gross income. Property, including money, that is received to encourage the provision of services to, or for the benefit of, the person transferring the property must be included as an item of gross income.

The provision is effective for contributions received after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the provision of the House bill, effective for contributions received after December 31, 1986.

4. Discharge of indebtedness income of solvent taxpayers

Present Law

Present law generally requires taxpayers to include in gross income the amount of any discharge of indebtedness to the extent the taxpayer is solvent following the discharge. In the case of a discharge of qualified business indebtedness, a taxpayer may elect to reduce the basis of depreciable assets (or, by election, inventory) instead of including the amount of the discharge in gross income. Qualified business indebtedness is indebtedness incurred or assumed by a corporation or by an individual in connection with property used in the individual's trade or business.

House Bill

No provision.

Senate Amendment

The Senate amendment repeals the provision of present law that provides for the election to exclude income from the discharge of qualified business indebtedness from gross income. Thus, any discharge of indebtedness, other than a discharge in title 11 cases or a discharge that occurs when the taxpayer is insolvent, results in the current recognition of income in the amount of the discharge.

The Senate amendment does not change the present-law treatment of a discharge of indebtedness that occurs in a title 11 case or when the taxpayer is insolvent (including a farmer treated as insolvent under section 108(g) as added by the amendment, see IV. A. 7.), nor does it change the provision of present law (sec. 108(e)(5)) that treats any reduction of purchase-money debt of a solvent debtor as a purchase price adjustment, rather than a discharge of indebtedness.

The provision of the Senate amendment is applicable to discharges of indebtedness occurring after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE IX. FINANCIAL INSTITUTIONS

A. Reserves for Bad Debts

1. Commercial Banks

Present Law

In general

Under present law, commercial banks[1] are allowed to use either the specific charge-off method or the reserve method in computing their deduction for bad debts for Federal income tax purposes. Under the reserve method, a commercial bank is entitled to a deduction equal to that amount necessary to increase the year-end bad debt reserve balance to an amount computed under either the "bank experience method" or the "percentage of eligible loans method."

Experience method

The maximum allowed ending reserve balance for a bank using the bank experience method is the amount of loans outstanding at the close of the taxable year times a fraction, the numerator of which is the sum of actual bad debts for the current and five preceeding taxable years, and the denominator of which is the sum of the amount of loans outstanding at the close of the each of those years.

Percentage of eligible loans method

The maximum allowed ending reserve balance for a bank using the percentage of eligible loans method is equal to a specified percentage of the oustanding eligible loans at the close of the taxable year, plus an amount determined under the bank experience method for loans other than eligible loans. The specified percentage for taxable years beginning after 1982 is 0.6 percent.[2] Eligible loans for this purpose generally are loans incurred in the course of a bank's normal customer loan activities on which there is more than an insubstantial risk of loss.[3]

Under both the experience method and the percentage of eligible loans method, the ending reserve balance need not be less than the balance at the end of the "base year," providing that the amount of outstanding loans at the close of the current year is at least as great as the balance at the close of the base year.

A commercial bank may switch between the experience method and the percentage of eligible loans method of determining the addition to its reserve for losses on loans from one year to another. If the bad debt reserve deduction for the taxable year determined under the above rules exceeds the amount which would have been allowed as a deduction on the basis of actual experience, the deduction is reduced by 20 percent of such excess (sec. 291). Also, 59% percent of the deductible excess (after the 20-percent reduction) is treated as a tax preference for purposes of computing the corporate minimum tax (sec. 57).

The availability of the percentage of eligible loans method is scheduled to expire after 1987. For taxable years beginning after 1987, banks will be limited to the experience method in computing additions to bad debt reserves.

House Bill

Repeal of reserve method for large banks

The House bill retains present law regarding the use of reserves in computing the deduction for losses on bad debts, except in the case of "large banks." A bank is considered a "large bank" if, for the current taxable year or any taxable year beginning after December 31, 1985, the sum of the average adjusted bases of all assets of such bank (or any controlled group of which the bank is a member) exceeds $500 million. The adjusted basis of an asset generally will be considered to be the tax basis of the asset, adjusted by those amounts allowed as adjustments to basis by section 1016. In determining the sum of the average adjusted bases of all assets of a controlled group, interests held by one member of such group in another member of such group are to be disregarded. The average adjusted basis of the assets of a bank or controlled group is the average of the adjusted bases of the assets for each period of time falling within the taxable year the bank is required to report for regulatory purposes.

A controlled group for this purpose is a controlled group of corporations described in section 1563(a)(1). For the purpose of determining the sum of the adjusted bases of the assets of a controlled group, all corporations includible in the group under the ownership tests of section 1563(a) are included, without regard to their status as an "excluded member" of a controlled group as a result of the application of section 1563(b)(2), and whether or not the corporation meets the definition of a commercial bank.

Recapture of bad debt reserves

Ratable inclusion method.—A commercial bank that is determined to be a large bank generally is required to include in income the balance in any reserve for bad debts, ratably over a period of five taxable years, beginning with the disqualification year. Alternatively, the bank may elect to include in income a greater amount in the first year for which recapture is required and include

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[1] A commercial bank is defined as a domestic or foreign corporation, a substantial portion of whose business consists or receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted national banks, and who are subject by law to supervision and examination by State or Federal Authority having supervision over banking institutions (sec. 581). For the purpose of determining the deductions for bad debts, the term "commercial bank" does not include domestic building and loan associations, mutual savings banks, or cooperative nonprofit mutual banks ("thrift institutions").

[2] For taxable years beginning after 1975 and before 1982, the specified percentage was 1.2 percent. For taxable years beginning in 1982, the specified percentage was 1.0 percent.

[3] Specifically excluded from the definition of an eligible loan are a loan to a bank; a loan to a domestic branch of a foreign corporation which would be a bank were it not a foreign corporation; a loan secured by a deposit in the lending bank or in another bank if the taxpayer bank has control over the withdrawal of such deposit; a loan to or guaranteed by the United States, a possession or instrumentality thereof, or to a State or political subdivision thereof; a loan evidenced by a security; a loan of Federal funds; and commercial paper. Sec. 585(b)(4).

any remaining amount ratably over the next four years.

Cut-off method.—In lieu of recapture, the bank may elect to use a cut-off approach with regard to its outstanding loans at the time it becomes a large bank. Under the cut-off method, all charge-offs and recoveries of such loans generally will be adjustments to the reserve accounts and not separate items of income and expense. However, if the charge-off of any loan would reduce the balance in any reserve account below zero, the charge-off shall be an adjustment to the reserve account only in the amount necessary to reduce the balance in such account to zero. Any charge-offs in excess of such reserve balance, and any recoveries with regard to such loans, will be items of income and expense in the year of charge-off or recovery, as if the taxpayer had always used the specific charge-off method. Under the cut-off method, no additional deductions in the disqualification year or thereafter are allowable for additions to the reserve for bad debts.

Unless the balance of a reserve account has been reduced to zero by the adjustment required for a charged-off item, the allowable ending balance for the reserve account is computed for year end by taking into account only those debts which were outstanding on the last day of the taxable year before the disqualification year. No additional deductions may be taken for an addition to restore the reserve account to its allowable ending balance. However, income must be recognized in the amount by which the balance in any reserve account after adjustments for charge-offs and recoveries exceeds the allowable ending balance for the account.

Effective date

The provision of the House bill is effective for taxable years beginning after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

In general

The conference agreement follows the House bill with certain modifications.

Recapture of existing reserves

A large bank not electing to use the cut-off method is required to recapture its bad debt reserve by including 10 percent of the reserve balance in income in the first taxable year for which the provision is effective, 20 percent in the second, 30 percent in the third, and 40 percent in the fourth. A bank may elect to include more than 10 percent of its reserve balance in income in the first taxable year. If such an election is made, ⅞ of the remainder of the reserve balance (after reduction for the amount included in income in the first taxable year) must be included in income in the second taxable year, ⅓ of the remainder in the third taxable year and ⅚ of the remainder in the fourth taxable year.

Suspension of recapture for financially troubled banks

The conference agreement also provides that a bank, other than a bank electing to use the cut-off method, may suspend the inclusion in income of its bad debt reserve for any year in which it is a "financially troubled bank." Nonetheless, a financially troubled bank may elect to include in income currently all or a portion of the amount of its reserves that otherwise would be recaptured that year.

A bank is considered to be a financially troubled bank if the average of its nonperforming loans for the taxable year exceeds 75 percent of the average of its equity capital for the year. Nonperforming loans include (1) loans that are "past due 90 days or more and still accruing," (2) "nonaccrual" loans, and (3) "renegotiated 'troubled' debt" under the existing standards of the Federal Financial Institution Examination Council. Equity capital is assets less liabilities, as those amounts are reported for regulatory purposes. Equity capital does not include the balance in any reserve for bad debts. The average of nonperforming loans and equity capital for the year is to be determined as the average of those amounts at each time during the taxable year that the bank is required to report for regulatory purposes. In the case of a bank that is a member of a controlled group described in section 1563(a)(1), the determination of whether the bank is a financially troubled bank is made with respect to all members of that controlled group.

The inclusion in income of a portion of the bad debt reserve suspends for each year in which the bank is considered to be a financially troubled bank. For example, assume that a large bank is financially troubled in the disqualification year, is not financially troubled in the two following years, and then returns to financially troubled status in the fourth year. No portion of its bad debt reserve need be included in income during the disqualification year, since the bank meets the definition of a financially troubled bank. In the second year, the bank must begin the inclusion of its bad debt reserve in income. As the inclusion in income begins in this year, the bank may include in income either 10% of its reserve balance or a greater amount if it so elects. The bank may not elect at this time to use the cut-off method, since it has already tolled the inclusion of the bad debt reserve in income as a financially troubled bank. In the third year, the bank must include 2/9 of the bad debt reserve not included in income in the prior year. The bank returns to troubled status in the fourth year and no portion of the bad debt reserve must be included in income in that year. The bank will be required to include the amount it would have included in that year in the next year in which it is not a financially troubled bank.

The provision allowing a financially troubled bank to suspend the inclusion of its bad debt reserve in income does not affect the requirement that a large bank account for its bad debts using the specific charge-off method.

Effective date

The provision is effective for taxable years beginning after December 31, 1986.

2. Thrift Institutions

Present Law

General rule

Under present law, mutual savings banks, domestic building and loan associations and cooperative banks without capital stock which are organized and operated for mutual purposes and without profit (collectively called "thrift institutions"), are allowed to use either the specific charge-off method or the reserve method in computing their deduction for bad debts for Federal income tax purposes. For thrift institutions using the reserve method, the reasonable addition to the reserve for bad debts is equal to the addition to the reserves for losses computed under the "bank experience" method, the "percentage of eligible loans" method, or, if a sufficient percentage of the thrift's assets constitute "qualified assets," the "percentage of taxable income" method.

Permissible methods

The bank experience and percentage of eligible loans methods for thrift institutions generally are the same as for commercial banks (discussed above).

Under the percentage of taxable income method, an annual deduction is allowed for a statutory percentage of taxable income.[4] The statutory percentage for tax years beginning after 1978 is 40 percent.

The full 40-percent of taxable income deduction is available only where 82 percent (72 percent in the case of mutual savings banks without capital stock) of the thrift institution's assets are qualified. Where the 82-percent test is not met, the statutory rate is reduced by three-fourths of one percentage point for each one percentage point of such shortfall. For mutual savings banks without capital stock, the statutory rate is reduced by 1½ percentage points for each percentage point that qualified assets fail to reach the 72-percent requirement. At a minimum, 60 percent of a thrift institution's assets must be qualifying (50 percent for mutual savings banks without stock) in order to be eligible for deductions under the percentage of income method.

A thrift institution may switch between methods of determining the addition to its loan loss reserves from one year to another.

Corporate preferences and minimum tax

Under present law, if the deduction for bad debts for the taxable year determined under the above rules exceeds the amount which would have been allowed as a deduction on the basis of actual experience, the deduction is reduced by 20 percent of such excess (sec. 291). Also, 59% percent of the deductible excess (after the 20-percent reduction) is treated as a tax preference for purposes of computing the corporate minimum tax (sec. 57).

House Bill

The House bill provides that thrift institutions (mutual savings banks, domestic building and loan associations and cooperative banks) will continue to be able to compute bad debt deductions using the bank experience method and the percentage of taxable income method. The percentage of eligible loans method will no longer be available. In the case of the percentage of taxable income method, the portion of taxable income which may be deducted as an addition to a reserve for bad debts is reduced from 40 percent to 5 percent. The rules reducing the amount of the percentage of taxable income deduction available to a thrift institution which holds 60 percent of its assets in qualifying assets, but fails to hold a sufficient percentage of qualifying assets to use the maximum percentage of taxable income deduction, are eliminated. Any institution meeting the definition of a thrift institution and holding at least 60 percent of its assets as qualifying assets, will be eligible

[4] For purposes of determining the deduction under the percentage of income method, taxable income is computed without regard to any deduction allowable for any addition to the reserve for bad debts and exclusive of 18/46 of any net long-term capital gain, gains on assets the interest on which was tax-exempt, any dividends eligible for the corporate dividends received deduction and any additions to gross income from the thrift institution's own distributions from previously accumulated reserves.

for the full 5 percent of taxable income deduction. The 60-percent test applies to mutual savings banks as well as other types of thrift institutions.

Thrift institutions which claim the 5 percent of taxable income deduction allowed by the bill are not to be considered to have obtained a tax preference for purposes of the 20-percent reduction of section 291. The excess of the percentage of taxable income deduction over the deduction that would have been allowable on the basis of actual experience will be treated as a preference item for the purpose of computing the corporate minimum tax (sec. 57).

The House bill also repeals the provision of current law (sec. 586) that allows small business investment companies operating under the Small Business Investment Act of 1958 and business development companies to use the reserve method of computing losses on bad debts.

The provision is effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment reduces the percentage of taxable income that a thrift institution using the percentage of taxable income method may exclude from taxable income as an addition to a reserve for bad debts from 40 percent to 25 percent.

The rules reducing the amount of the percentage of taxable income deduction available to a thrift institution that holds 60 percent of its assets in qualifying assets, but fails to hold a sufficient percentage of qualifying assets to use the maximum percentage of taxable income deduction are changed. A thrift institution other than a mutual savings bank will reduce the maximum 25 percent of taxable income deduction by one-half of one percentage point for each full percentage point by which its qualified assets fall below 82 percent of total assets. A mutual savings bank will reduce the maximum 25 percent of taxable income deduction by a full percentage point for each percentage point by which its qualified assets fall below 72 percent of total assets.

In addition to the percentage of taxable income method, thrift institutions may continue to use the bank experience method. Thrift institutions may also use the percentage of eligible loans method for taxable years beginning before 1988.

The provision is effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement generally follows the House bill. The portion of taxable income that may be excluded from income as an addition to a reserve for bad debts is decreased from 40 to 8 percent. The provisions are effective for taxable years beginning after December 31, 1986.

B. Interest on Debt Used to Purchase or Carry Tax-Exempt Obligations By Financial Institutions

Present Law

No deduction is allowed for interest payments on debt incurred or continued to purchase or carry tax-exempt obligations. Under a long-standing judicial and administrative interpretation, financial institutions generally are permitted to invest deposited funds in tax-exempt obligations, while continuing to deduct interest paid to depositors.

The corporate tax preference rules reduce by 20 percent the amount which may be deducted by financial institutions for interest on funds allocable to tax-exempt obligations acquired after 1982. The portion of funds allocable to tax-exempt obligations is deemed to be equivalent to the ratio of (1) the average annual adjusted basis of tax-exempt obligations acquired after 1982 and held by the financial institution, to (2) the average annual adjusted basis of the financial institution's total assets.

House Bill

General rule

The House bill denies financial institutions (including foreign banks doing business in the United States) 100 percent of interest deductions that are allocable to tax-exempt obligations acquired on or after January 1, 1986. The amount of interest allocable to tax-exempt obligations is determined in the same manner as for purposes of the tax preference reduction under present law.

The present-law (i.e., 20-percent) reduction continues to apply with respect to tax-exempt obligations acquired in 1983 through 1985.

Effective date

The provision applies generally to tax-exempt obligations acquired after December 31, 1985, in taxable years ending after that date.

Transitional rules

Under the House bill, tax-exempt obligations that (1) are acquired pursuant to a direct or indirect written commitment that was entered into before September 25, 1985 or (2) are qualified tax-exempt obligations acquired during calendar years 1986, 1987 or 1988, are treated as having been acquired before January 1, 1986. A qualified tax-exempt obligation is defined as an essential function (i.e., governmental) or section 501(c)(3) organization tax-exempt bond designated by an issuer as either (i) a tax anticipation note with a term not exceeding one year, or (ii) part of an issue not exceeding $3 million (including issues for a common purpose) to provide qualified public project financing. Not more than $10 million of aggregate obligations may be designated by any issuer during any calendar year.

The exception for qualified tax-exempt obligations is limited to obligations acquired by a financial institution authorized to do business in the State of the issuer.

Senate Amendment

No provision.

Conference Agreement

General rule

The conference agreement follows the House bill, with the following modifications:

First, the provision applies with respect to tax-exempt obligations acquired after August 7, 1986 (rather than December 31, 1985). The present-law 20-percent disallowance continues to apply with respect to tax-exempt obligations acquired on or before that date. As under the House bill, the 100 percent disallowance rule is to be applied before the new rule requiring capitalization of certain expenses where the taxpayer produces property (new sec. 263A).[5] For purposes of the disallowance rule, the acquisition date of an obligation is the date on which the holding period begins with respect to the obligation in the hands of the acquiring financial institution. Thus, the acquisition of bonds as part of a tax-free reorganization is not treated as a new acquisition for purposes of this provision.

Second, a permanent exception to the provision is provided for qualified tax-exempt obligations acquired by a financial institution.[6] This exception applies whether the obligation is acquired at the original issuance or by a secondary purchaser. Under the conference agreement, qualified tax-exempt obligations include any obligation which (1) is not a private activity bond as defined by the conference agreement (see, Title XIII, below),[7] and (2) is issued by an issuer which reasonably anticipates to issue, together with subordinate entities, not more than $10 million of tax-exempt obligations (other than private activity bonds, as defined above) during the calendar year. Qualified tax-exempt obligations must be designated as such by the issuer; not more than $10 million of obligations may be so designated by any issuer (including subordinate entities) for any calendar year.[8] Refundings of outstanding bonds may qualify for this exception, and count toward the $10 million limitation, under the same terms as new issues.

For purposes of the exception for qualified tax-exempt obligations, subordinate governmental entities include entities deriving their issuing authority from another entity or subject to substantial control by another entity. For example, a sewer or solid waste authority created by a city or county in order to issue bonds for that city or county is considered a subordinate entity. An entity is not to be considered subordinate solely because of geographic inclusion in a larger entity (e.g., a city located within a larger county), if the smaller entity derives its powers independently of the larger entity and is not subject to significant control by the larger entity.

Qualified tax-exempt obligations are treated as acquired by the financial institution before August 8, 1986. Interest allocable to such obligations remains subject to the 20-percent disallowance contained in present law.

Effective date

This provision is effective for taxable years ending after December 31, 1986. Thus, bonds acquired after August 7, 1986, in taxable years ending in 1986 are subject to the 20-percent disallowance rule of present law for the taxable year ending in 1986, but are subject to the 100-percent disallowance rule of the conference agreement for subsequent taxable years.

A transitional exception is provided for tax-exempt obligations acquired after August 7, 1986 pursuant to a direct or indirect written commitment to purchase or repurchase such obligation, which commitment was entered into before September 25, 1985. Obligations qualifying for this excep-

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[5] Also as under the House bill, the special rule of present law regarding face-amount certificate companies (contained in sec. 265(2)) is repealed. These companies will therefore be subject to the 100 percent disallowance rule in the same manner as other financial institutions.

[6] The rule contained in the House bill, which limited this exception to financial institutions authorized to do business in the State of the issuer, is not included.

[7] For purposes of this provision only, qualified section 501(c)(3) organization bonds (as defined in the conference agreement) are not treated as private activity bonds. In the case of bonds issued before August 15, 1986, for purposes of this provision only, bonds are not to be treated as private activity bonds if they are not IDBs, mortgage subsidy bonds, student loan bonds, or other private ("consumer") loan bonds for which tax exemption is permitted under present law.

[8] The rule contained in the House bill, which limited this exception to political subdivisions in existence on October 23, 1985, is not included.

tion are treated as if acquired before August 8, 1986; interest allocable to such obligations thus remains subject to the 20-percent disallowance contained in present law. The conference agreement also provides certain transitional rules for specified identified projects.

C. Special Rules for Net Operating Losses of Financial Institutions

Present Law

Under present law, commercial banks or thrift institutions (mutual savings banks, domestic building and loan associations, and cooperative banks) may carry net operating losses (NOLs) back to the prior ten taxable years and forward to the succeeding five taxable years. Other taxpayers may carry net operating losses back to the prior three taxable years and forward to the succeeding fifteen taxable years.

House Bill

The House bill repeals the special rules permitting financial institutions to carry net operating losses back to the prior ten taxable years and forward to the succeeding five taxable years.

Senate Amendment

The Senate amendment provides that net operating losses incurred by a thrift institution in taxable years beginning after December 31, 1981 and before January 1, 1986, may be carried back to the prior ten taxable years and carried forward to the succeeding eight taxable years.

Conference Agreement

In general

The conference agreement follows the provisions of both the House bill and the Senate amendment. The rule allowing net operating losses incurred by a financial institution to be carried back to the prior ten taxable years and carried forward to the succeeding five taxable years generally is repealed for taxable years beginning after December 31, 1986, except for certain net operating losses of commercial banks. Net operating losses incurred by a financial institution in taxable years beginning after December 31, 1986, generally are carried back to the prior three taxable years and carried forward to the succeeding fifteen taxable years, as is the case for other taxpayers.

Special rule for thrift institutions

Net operating losses incurred by a thrift institution in taxable years beginning after December 31, 1981, and before January 1, 1986, are carried back to the prior ten taxable years and carried forward to the succeeding eight taxable years.

Special rule for commercial banks

The portion of the net operating losses of commercial banks (not including thrift institutions) for any taxable year beginning after December 31, 1986, and before January 1, 1994, that is attributable to deductions for losses on bad debts is carried back to the prior ten taxable years. The portion of the net operating loss of a commercial bank attributable to deductions for losses on bad debts is the excess of the net operating loss for the taxable year over the net operating loss for such taxable year computed without regard to any deductions for losses on bad debts.

D. Reorganizations of Financially Troubled Thrift Institutions

Present Law

Present law provides special rules which exempt the acquisition of financially troubled thrift institutions from rules otherwise applicable to such transactions. These provisions, added by the Economic Recovery Tax Act of 1981, relax certain requirements for qualification as a tax-free bankruptcy reorganization under the Code. Thus, the requirements that (1) the acquired corporation undergo formal receivership or similar proceedings and (2) the shareholders and creditors of the acquired corporation receive stock in the acquiring corporation, need not be met (sec. 368(a)(3)(D)).[9] In addition, these provisions relax the rules regarding the survival of net operating loss carryovers following a merger (sec. 382(b)(7)), and exempt certain payments from the Federal Savings and Loan Insurance Corporation (FSLIC) to the troubled thrift from income (and from the requirement in sec. 362(c) that basis in property be reduced by the amount of nonshareholder contributions to capital) (sec. 597).

House Bill

Under the House bill, the special rules enacted in the 1981 Act relating to the acquisitions of troubled thrift institutions are repealed, effective for acquisitions occurring after December 31, 1985. The repeal of the special treatment for FSLIC payments is effective for payments after December 31, 1985, unless such payments are made pursuant to a written binding contract entered into before September 27, 1985.

The House bill also clarifies that FSLIC payments within the scope of section 597 do not constitute tax-exempt income to which expenses may be allocated (and hence disallowed) under section 265(1) of the Code.

Senate Amendment

No provision.[10]

Conference Agreement

The conference agreement follows the House bill with a delayed effective date. The special reorganization rules for troubled thrift institutions are repealed effective for acquisitions and mergers after December 31, 1988. The repeal of the special treatment for FSLIC payments is effective for payments after December 31, 1988, unless such payments are made pursuant to an acquisition or merger occurring on or before that date.

E. Losses on Deposits in Insolvent Financial Institutions

Present Law

Under present law, a loss experienced by a taxpayer with respect to a deposit or account in a financial institution is treated in the same manner as any other bad debt loss. A deduction of the loss is generally allowable only in the year in which it is determined, based on all the facts and circumstances, that there is no prospect of recovery. Unless the deposit in the financial institution was created or acquired in connection with a trade or business of the taxpayer, any loss on the deposit will be considered a short-term capital loss (sec. 166(d)). An individual taxpayer generally may deduct short-term capital losses only to the extent of $3,000 plus the taxpayer's capital gains for the year (sec. 1211).

House Bill

Under the House bill, qualified individuals may elect to deduct losses on deposits in qualified financial institutions as casualty losses in the year in which the amount of such loss can be reasonably estimated, subject to the generally applicable limitations on deductibility of casualty losses (sec. 165). A qualified individual is any individual other than an owner of one percent or more of the value of the stock of the institution in which the loss was sustained, an officer of such institution, and certain relatives and related persons to such owners and officers. A qualified financial institution is any commercial bank (as defined in sec. 581), thrift institution (as defined in sec. 591), insured credit union, or similar institution chartered and supervised under Federal or State law.

The provision is effective for taxable years beginning after December 31, 1982.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The conferees understand that the election is to be made on the tax return for the taxable year and, once made, cannot be changed without the consent of the Internal Revenue Service.

The conference agreement also provides that accrued, but unpaid, interest on a deposit in a financial institution for a taxable year beginning on or before 1987 is not includible in the depositor's taxable income for that taxable year where such interest is not subject to withdrawal at the end of that taxable year. Such interest income is includible in gross income in the taxable year in which such interest is withdrawable.

TITLE X. INSURANCE PRODUCTS AND COMPANIES

A. Policyholder Issues

1. Interest on installment payments of life insurance proceeds

Present Law

Amounts paid by an insurance company to the beneficiary of a life insurance contract by reason of the death of an insured individual generally are not includible in gross income (sec. 101(a)). Under certain life insurance contracts, the insurer may agree to hold the amounts that it would otherwise pay on the death of the insured, and pay the life insurance proceeds at a later date.

If the insurer pays the insurance proceeds to a beneficiary in a series of payments after the death of the insured, a prorated amount of each payment is treated as a nontaxable payment of the death benefit, and the remainder of the payment generally is includible in gross income. However, the first $1,000 in excess of the amount treated as a payment of the death benefit received by a surviving spouse in any taxable year is excludable from gross income.

In addition, under present law, the amount held by an insurer with respect to any beneficiary is the amount that equals the present value of the amounts to be paid pursuant to the agreement, determined as of the date of death of the insured and discounted on the basis of the interest rate and mortality tables used by the insurer. The mortality tables used by an insurer for purposes of valuing the agreement described above may distinguish among individuals on the basis of sex.

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[9] Although no formal receivership or similar proceeding is required, certain certifications regarding the financial condition of the thrift institution must be received from the Federal Deposit Insurance Corporation or the Federal Home Loan Bank Board.

[10] For discussion of special rules relating to carryover of net operating losses (NOLs) of certain financial institutions following an acquisition or merger, see Title VI, Part H.

House Bill

Under the House bill, all amounts paid to any beneficiary of a life insurance policy at a date later than the death of the insured are included in gross income to the extent that the amount paid exceeds the amount payable as a death benefit. The exclusion from the gross income of a surviving spouse of the first $1,000 in excess of the amount payable as a death benefit is repealed.

The provision applies to amounts received with respect to deaths occurring after December 31, 1985, in taxable years ending after that date.

Senate Amendment

The Senate amendment is the same as the House bill, except the Senate amendment also requires, for purposes of valuing the portion of any payment deferred beyond the death of the insured that is treated as a nontaxable death benefit, that an insurer use mortality tables prescribed by the Secretary of the Treasury in regulations. Such tables are not to distinguish among individuals on the basis of sex.

This provision applies to amounts received with respect to deaths occurring after December 31, 1986, in taxable years ending after that date.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that the provision is effective for amounts paid with respect to deaths occurring after the date of enactment in taxable years ending after that date.

2. Treatment of structured settlement agreements

Present Law

Present law excludes from income the amount of any damages received on account of personal injuries or sickness, whether by suit or agreement and whether as a lump sum or as periodic payments. The person liable to pay the damages may assign to a third party (a structured settlement company) the obligation (pursuant to a structured settlement agreement) to make the periodic payments.

The net effect of the use of a structured settlement agreement is to permit a taxpayer liable for damages to an injured party to deduct the amount of the damages as if they were paid in a lump sum and to permit a structured settlement company to exclude from income the earnings on amounts used to fund its liability to make periodic payments to the injured party.

House Bill

The House bill amends present law to limit the favorable treatment of structured settlement agreements to those assignments requiring the payment of damages on account of a claim for personal injuries that involve physical injury or physical sickness of the claimant. Damages on account of a claim for wrongful death arising from physical injury or sickness are also included.

The provision applies to assignments entered into after December 31, 1985.

Senate Amendment

The Senate amendment repeals the special treatment of structured settlement agreements and replaces those rules with a new deduction election for a taxpayer assuming a liability to make damage payments to an injured party, effective for assignments entered into in taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement generally follows the House bill. Thus, the exclusion for structured settlements applies only to those qualifying structured settlement arrangements for payments of damages on account of a claim for personal injuries that involve physical injury or physical sickness of the claimant, including damages on account of a claim for wrongful death arising from physical injury or sickness, provided the arrangements meet all other applicable requirements.

Claims which do not involve physical injury or physical sickness include, for example, defamation of a third party or invasion of privacy. Claims which do not involve physical injury or physical sickness are not eligible to be treated as structured settlement arrangements.

The conferees understand that multiple claims are alleged in many personal injury actions. The conferees do not intend that allocation of damages is necessary among such multiple claims. Rather, if the action has its origin in a physical injury, then all damages that flow therefrom are included.

The provision is effective for assignments entered into after December 31, 1986, in taxable years ending after that date.

3. Life insurance policyholder loans

Present Law

Under present law, no deduction is allowed for any amount paid or accrued on indebtedness incurred or continued to purchase or carry certain life insurance, endowment or annuity contracts pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of increases in the cash value of the contract, unless the requirements of certain exceptions to this disallowance rule are satisfied (sec. 264).

In addition, no deduction is allowed for any amount paid or accrued on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment or annuity contract (sec. 264(a)(2)). Single premium contracts include contracts under which substantially all of the premiums are paid within 4 years from the date on which the contract is purchased, or contracts under which an amount is deposited with the insurer for payment of a substantial number of future premiums on the contract.

House Bill

The rule of present law regarding the disallowance of a deduction for any amount paid or accrued on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment or annuity contract is restated.

Senate Amendment

A deduction for interest on policyholder loans is not allowed to the extent that aggregate loans to any officer, employee, or person financially interested in any trade or business carried on by the taxpayer exceed $50,000. The provision is effective for interest on loans under policies purchased after June 20, 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Interest deduction

With respect to the provision disallowing a deduction for interest on certain policyholder loans in the case of a taxpayer carrying on more than one trade or business, the $50,000 amount per officer or employee or person is financially interested in any trade or business of the taxpayer is determined on an aggregate basis for each such person in all trades or businesses. For example, if an employee of a business of the taxpayer is also an officer in two other businesses of the taxpayer, the $50,000 of permitted borrowings by the taxpayer with respect to life insurance covering the person is determined by aggregating all policies covering his life with respect to which the taxpayer has borrowed. In the case of an affiliated group of corporations, it is intended that the affiliated group is considered to be one taxpayer for this purpose, and all loans with respect to policies covering the life of an officer or employee or person financially interested in, a business of any member of the group are aggregated. Similar principles are intended to apply in the event of common ownership of unincorporated trades or businesses.

Under the conference agreement, the fact that the proceeds of a loan under a life insurance contract are used in a trade or business does not affect the deductibility of interest paid on the loan. Therefore, for example, if a sole proprietor borrows under a life insurance policy on the sole proprietor's life, the interest paid on the loan (to the extent the loan exceeds $50,000) is not deductible even though the proceeds of the loan are used in the sole proprietor's trade or business.

The provision is effective for interest on loans under policies purchased after June 20, 1986, in taxable years ending after that date.

Single premium contracts

The conference agreement restates the present-law rule that no deduction is allowed for any amount paid or accrued on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment, or annuity contract (sec. 264(a)(2)). Single premium contracts include contracts where substantially all of the premiums are paid within four years from the date on which the contract is purchased, or contracts where an amount is deposited with the insurer for payment of a substantial number of future premiums on the contract. Generally, section 264(a)(2) also applies to contracts other than those where the nonpayment of premiums would cause the policy to lapse, but no inference is intended that universal life insurance policies are always treated as single premium contracts.

4. Treatment of policies to cover prearranged funeral expenses

Present Law

A life insurance contract generally is defined as a contract which meets either (1) a cash value accumulation test, or (2) a test consisting of a guideline premium requirement and a cash value corridor requirement. Future increases in death benefits may cause a contract not to qualify under these tests.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that future increases in death benefits may be taken into account in determining whether the definition of life insurance contracts is satisfied with respect to certain policies to cover prearranged funeral expenses. Such contracts can qualify as a life insurance contract if the initial death benefit is $5,000 or less (treating all contracts issued to the same contract owner as one contract), and if the contract provides for fixed annual increases in the death benefit not exceeding 10 percent of the initial death benefit or 8

percent of the death benefit at the end of the preceding year.

The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification that a contract to cover prearranged funeral expenses can qualify as a life insurance contract provided the death benefit under the contract (treating all contracts issued to the same owner as one contract) does not exceed $25,000.

The provision is effective on the date of enactment.

5. Deduction for nonbusiness casualty losses

Present Law

For property not connected with a trade or business or a transaction entered into for profit, casualty losses are deductible only if they arise from "fire, storm, shipwreck, or other casualty or theft." These personal casualty losses are deductible only to the extent that each casualty loss exceeds $100, and to the extent that all casualty losses for the year exceed 10 percent of the taxpayer's adjusted gross income (sec. 165(h)). Certain courts have ruled that a taxpayer whose loss was covered by an insurance policy could nevertheless deduct the loss if the taxpayer decided not to file a claim under the terms of the insurance policy. See *Hills* v *Commissioner*, 691 F.2d 997 (11th Cir. 1982); *Miller* v *Commissioner*, 733 F.2d 399 (6th Cir. 1984).

House Bill

Under the bill, a taxpayer is not permitted to deduct a casualty loss for damages to property not used in a trade or business or in a transaction entered into for profit, unless the taxpayer files a timely insurance claim with respect to damage to that property. This requirement applies to the extent of any insurance policy would provide reimbursement for a loss.

The provision applies to losses sustained in taxable years beginning after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the provision applies to losses sustained in taxable years beginning after December 31, 1986. The provision is clarified to apply only to the extent any insurance policy would provide reimbursement.

B. Life Insurance Companies

1. Special life insurance company deduction

Present Law

A life insurance company is taxed at corporate rates on its life insurance company taxable income (LICTI) and certain other income. A life insurance company is allowed a special deduction in computing LICTI equal to 20 percent of the income from insurance businesses that otherwise would be subject to taxation (sec. 806(a)).

House Bill

The special life insurance company deduction is repealed, effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that a special rule is provided in the case of a life insurance company owning the stock of another corporation through a partnership, which stock was acquired on January 14, 1981. For purposes of determining the small life insurance company deduction under section 806(a), tentative life insurance company taxable income is computed without taking into account income, gain, loss or deduction attributable to the ownership of such stock, and the amount of such income, gain, loss or deduction is taken into account at the rate of 46/36.8, which provides the same tax benefit to the life insurance company as is provided under present law.

This provision is effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, effective for taxable years beginning after December 31, 1986.

2. Tax-exempt organizations engaged in insurance activities

Present Law

Present law (sec. 501(c)) specifies various standards that an organization must meet in order to qualify for exemption from Federal income taxation. These standards vary depending on the basis on which the entity is seeking exemption. Certain insurance activities performed by an organization may make it ineligible for tax exemption.

At least one major organization (described in sec. 501(c)(3)), which provides life insurance and annuities to employees of tax-exempt educational institutions, has been recognized as a tax-exempt charitable organization by the IRS. At least one major health insurance provider has been treated as a tax-exempt social welfare organization.

A fraternal beneficiary society, order, or association (sec. 501(c)(8)) is entitled to tax exemption if it operates under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and provides for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

House Bill

Under the bill, an organization described in sections 501(c)(3) and (4) of the Code is exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance.

In the case of such a tax-exempt organization, the activity of providing commercial-type insurance is treated as an unrelated trade or business (sec. 513), but in lieu of the usual tax on unrelated trade or business taxable income, the unrelated trade or business activity is taxed under the rules relating to insurance companies (subchapter L).

For this purpose, commercial-type insurance generally is any insurance of a type provided by commercial insurance companies. The House bill provides that the issuance of annuity contracts is treated as providing insurance.

Several exceptions are provided to the definition of commercial-type insurance. Commercial-type insurance does not include insurance provided at substantially below cost to a class of charitable recipients. Commercial-type insurance also does not include health insurance provided by a health maintenance organization that is of a kind customarily provided by such organizations and is incidental to the organization's principal activity of providing health care. Similarly, organizations that provide supplemental health maintenance organization-type services (such as dental services) are not affected if they operate in the same manner as a health maintenance organization.

In addition, commercial-type insurance does not include property and casualty insurance (such as fire insurance) provided directly or through a wholly owned corporation by a church or convention or association of churches for the church, convention or association. This exception does not apply if the insurance is provided not only to the church, convention or association, but also to other persons.

In the case of activities of Blue Cross and Blue Shield and their affiliates with respect to high risk individuals and small groups, the House bill authorizes the Treasury Department to issue regulations providing for special treatment to such organizations in connection with the unique activities (such as open enrollment) of Blue Cross and Blue Shield and their affiliates for high risk individuals and small groups. The special treatment is not available to the extent the activities are required by applicable law.

The House bill requires that the Treasury Department audit and study fraternal beneficiary organizations (described in sec. 501(c)(8)) that received gross insurance premiums in excess of $25 million in taxable year 1984.

The provision is effective for taxable years beginning after December 31, 1985. A special rule for Mutual of America provides that this provision shall not apply with respect to that portion of its business attributable to pension business. Another special rule for Teachers Insurance Annuity Association-College Retirement Equities Fund provides that this provision does not apply to taxable years beginning before January 1, 1988, with respect to that portion of its business attributable to pension business.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with respect to the treatment of commercial-type insurance activities of organizations described in sections 501(c)(3) and (4), with modifications.

In general

Under the conference agreement, commercial-type insurance does not include property or casualty insurance provided directly or through an organization described in sec. 414(e)(3)(B)(ii) by a church or convention or association of churches for the church, convention or association. It also does not apply to the provision of retirement or welfare benefits by such organizations directly or indirectly through an organization described in sec. 414(e)(3)(A) or 414(e)(3)(B)(ii) for the employees of such organizations, or for employees' beneficiaries. This exception is not intended to apply if insurance is provided to persons other than the church or convention or association of churches and their employees.

The conference agreement does not alter the tax-exempt status of health maintenance organizations (HMOs). HMOs provide physician services in a variety of practice settings primarily through physicians who are either employees or partners of the HMO or through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

Certain health insurance providers

In lieu of the provision in the House bill authorizing Treasury regulations with respect to high risk individuals and small groups in the case of activities of Blue Cross and Blue Shield and their affiliates, the conference agreement provides the following treatment of existing Blue Cross or Blue

Shield organizations and other organizations that meet certain requirements and substantially all of whose activities are providing health insurance. Health insurance includes insurance that provides coverage of medical expenses.

The treatment applies to Blue Cross and Blue Shield organizations providing health insurance that (1) were in existence on the date of conference action (August 16, 1986), (2) are determined at any time to be tax-exempt under a determination that has not been revoked,[1] and (3) were tax-exempt for the last taxable year beginning before January 1, 1987, provided that no material change occurs in the structure or operations of the organization after August 16, 1986, and before the close of 1986 or any subsequent taxable year. The conferees intend that the following principles will be applied by the Secretary in determining whether or not a material change in operations or structure has occurred.

First, the merger or split up of 1 or more existing Blue Cross/Blue Shield organizations will not constitute a material change in operation or structure.

Second, if an existing Blue Cross/Blue Shield organization acquires a new line of business or is acquired by another business (other than a health business), the acquisition does not constitute a material change in operations or structure of the organization if (1) the assets of the other business are a de minimis percentage (i.e., less than 10 percent) of the assets of the existing Blue Cross/Blue Shield organization at the time of the acquisition, or (2) the taxpayer can demonstrate to the Secretary of the Treasury that, based on all the facts and circumstances, the acquisition does not constitute a material change in operations or structure of the existing Blue Cross/Blue Shield organization.

Third, a material change in operations occurs if an existing Blue Cross/Blue Shield organization drops its high risk coverage or substantially changes the terms and conditions under which high risk coverage is offered by the organization from the terms and conditions in effect as of August 16, 1986. A change in high risk coverage is considered substantial if the effect of the change is to defeat the purpose of high risk coverage. High risk coverage for this purpose generally means the coverage of individuals and small groups to the extent the organization (1) provides such coverage under specified terms and conditions as of August 16, 1986, or (2) meets the statutory minimum definition of high risk coverage for new organizations. A material change in operations does not occur if an existing organization alters its operations to provide high risk coverage that meets the minimum standards under the conference agreement for new Blue Cross/Blue Shield organizations.

For example, if an existing Blue Cross/Blue Shield organization provides open enrollment to all individuals and small groups of less than 5 individuals, the organization could redefine a small group for purposes of this coverage to mean the lesser of 15 individuals or the minimum number of individuals required for a small group under State law. Such a redefinition of a small group (from 5 to 15 individuals) would not be considered a material change in operations because the organization would meet the minimum standard for a new organization with respect to small group coverage.

On the other hand, if an existing Blue Cross/Blue Shield organization provides, as of August 16, 1986, high risk coverage to individuals and small groups without a premium price differential to take account of the high risk nature of the business, a change in premium structure for such individual and small group coverage that has the effect of creating a significant price differential to take account of the high risk nature of the business would be considered a material change in operations.

The conferees intend that, to the extent such determinations of tax exemption for any taxable year beginning before 1987 were not under audit or in litigation before the date of conference action (August 16, 1986), the Internal Revenue Service will not seek to revoke such determinations.

The conference agreement provides that such existing Blue Cross and Blue Shield organizations and other organizations eligible for this treatment are subject to tax as stock property and casualty insurance companies under Part II of Subchapter L of the Code, as amended under the conference agreement. Thus, such organizations are generally subject to the provisions applicable to property and casualty insurance companies in this conference agreement, except as otherwise provided.

A special deduction is provided to such organizations with respect to their health business equal to 25 percent of the claims and expenses incurred during the taxable year less the adjusted surplus at the beginning of the year. This deduction is calculated by computing surplus, taxable income, claims incurred, expenses incurred, tax-exempt income, net operating loss carryovers, etc., attributable to health business. Thus, the deduction is not allowable with respect to such items attributable to, for example, life insurance business. The expenses attributable to health business are those incurred during the taxable year in connection with the administration, adjustment or settlement of claims under health business. The deduction may not exceed taxable income attributable to health business for the year (calculated without regard to this deduction).

For organizations eligible for this deduction in the first taxable year beginning after December 31, 1986, the amount of the adjusted surplus to be applied in the first year for which the deduction is allowable is the surplus reported on the organization's annual statement (i.e., the annual statement approved by the National Association of Insurance Commissioners) at the close of the preceding year, adjusted by not taking into account distributions (such as distributions to shareholders, or contributions or loans to affiliates that reduce surplus, but not including ordinary and necessary expenses or deductible policyholder dividends) after the date of conference action (August 16, 1986). For organizations that first become eligible for the provision in a later taxable year, the amount of the adjusted surplus for the first year of the deduction is the surplus reported on the annual statement at the close of the preceding year.

The initial surplus amount is adjusted under the provision at the close of each taxable year by adding the taxable income or loss [2] of the organization for the year (determined without regard to net operating loss carryovers and without regard to the deduction under this provision), plus net tax-exempt income for the year. Net tax-exempt income means dividends for which the dividends received deduction was allowed, and interest that is tax-exempt, less the expenses of earning the tax-exempt interest that were disallowed under sec. 265, and less the adjustment that was made for proration of tax-exempt income under sec. 805(a) or sec. 832(b)(5) (as amended by the conference agreement). If an organization eligible for the deduction under this provision does not take the deduction in any year, adjusted surplus must be calculated for the intervening years between the last year the organization took the deduction and the next year in which it takes the deduction, so as to take account properly of the calculation of the deduction in the later year.

For example, assume a calendar year Blue Cross organization engaged only in health business, the State law surplus (as adjusted) of which was $100 million on January 1, 1987. In 1987, the organization has health claims and expenses incurred of $880 million and adjusted taxable income of $160 million (including net tax-exempt income of $10 million). In 1987, the organization would be entitled to a special deduction of $120 million, that is, the excess of $220 million (25 percent of the 1987 claims and expenses paid) over $100 million (the 1987 opening surplus).

As a further example, assume that in 1988, the organization has health claims and expenses incurred of $1.2 billion. Its special deduction for 1988 would be $40 million, that is, the excess of $300 million (25 percent of the 1988 health claims and expenses incurred) over the opening 1988 adjusted surplus balance of $260 million. The opening 1988 surplus is calculated by taking the sum of (a) 1987 opening surplus of $100 million, plus (b) 1987 adjusted taxable income of $160 million (including 1987 net tax-exempt income of $10 million).

The deduction applies only for regular tax purposes. Therefore, the deduction is treated as a preference item for purposes of the corporate minimum tax.

In addition to this special deduction, such organizations are given a fresh start with respect to changes in accounting methods resulting from the change from tax-exempt to taxable status. No adjustment is made under section 481 on account of an accounting method change.

Such organizations are not subject to the treatment of unearned premium reserves generally applicable to property and casualty insurance companies under the conference agreement. The conferees believe that during the period such organizations were tax-exempt, any mismatching of currently deductible premium acquisition expenses and deferred premiums (resulting from the unearned premium reserve deduction) had no significant tax impact, and therefore it is not appropriate to require these organizations to include in income a portion of the outstanding balance of the unearned premium reserve. To ease the transition from tax-

[1] The conferees intend that, to the extent such determinations of tax exemption for any taxable year beginning before 1987 were not under audit or in litigation before the date of conference action (August 16, 1986), the Internal Revenue Service will not seek to revoke such determinations.

[2] As under present law, insurance loss reserves must be reasonable (see X.C. 1., below). Generally, it is intended that the loss reserves of organizations eligible for the deduction under this provision also be reasonable, and that they be comparable to the historical loss reserves of the organization in relation to its claims and expenses.

exempt to taxable status, the conferees believe that it is appropriate to give such organizations relief from the requirement that 20 percent of the increase in unearned premium reserves be included in income.

Finally, the basis of assets of such organizations is equal, for purposes of determining gain or loss, to the amount of the assets' fair market value on the first day of the organization's taxable year beginning after December 31, 1986. Thus, for formerly tax-exempt organizations utilizing a calendar period of accounting and whose first taxable year commences January 1, 1987, the basis of each asset of such organization is equal to the amount of its fair market value on January 1, 1987. The basis step-up is provided solely for purposes of determining gain or loss upon sale or exchange of the assets, not for purposes of determining amounts of depreciation or for other purposes. The basis adjustment is provided because the conferees believe that such formerly tax-exempt organizations should not be taxed on unrealized appreciation or depreciation that accrued during the period the organization was not generally subject to income taxation.

The foregoing special provisions apply to existing tax-exempt Blue Cross and Blue Shield organizations and and to those other organizations that satisfy the additional criteria described below.

Other organizations substantially all of whose activities are providing health insurance, in order to receive the treatment under the provisions described above, must meet certain requirements.

First, at least 10 percent of the health insurance (determined as a percentage of the total number of individuals covered annually) provided by the organization must be provided to individuals and small groups (disregarding Medicare supplemental coverage). A small group is defined as the lesser of 15 individuals or the number of individuals required for a small group under the State law where the covered groups are located.

Second, the organization is required to provide continuous full-year open enrollment for individuals and small groups. Open enrollment is intended to included conversions from group to individual coverage (for example, upon separation from service with an employer who provides group coverage), without a lapse in coverage, provided the individual seeking to convert from group to individual coverage notifies the organization providing group coverage of his conversion request by the date of his separation from service. Conversion includes any change in the type of coverage (e.g., from one type of group to another).

Third, any individual seeking health insurance is required to be offered coverage which includes coverage of pre-existing conditions, and the coverage becomes effective within a reasonable waiting period after the time such coverage is sought. A reasonable waiting period is intended to be not more than three months. Further, health insurance coverage must be provided without regard to the age, income, or employment status of persons under age 65.

Fourth, at least 35 percent of the organization's health insurance premiums are determined on a community-rated basis. This percentage is determined as a percentage of the total number of persons covered on an annual basis. Community rating means that premiums are determined on the basis of the average annual cost of health insurance over the population in the community.

Fifth, the organization must be organized and operated in a manner such that no part of the net earnings inures to the benefit of any private shareholder or individual.

The conference agreement requires that the Treasury Department audit and study fraternal beneficiary organizations (described in sec. 501(c)(8)) that received gross insurance premiums in excess of $25 million in taxable year 1984. The Treasury study is due by January 1, 1988.

Effective dates

The provision is effective for taxable years beginning after December 31, 1986. Special rules for Mutual of America and for Teachers Insurance Annuity Association-College Retirement Equities Fund provide that this provision does not apply with respect to that portion of their business attributable to pension business. For this purpose, the conference agreement provides that pension business means the administration of qualified pension plans (sec. 401(a) or 403(a)), tax-sheltered annuities (sec. 403(b)), unfunded deferred compensation plans of State and local governments (sec. 457), and individual retirement arrangements (IRA's.)

Additional special rules provide that this provision does not apply to the YMCA retirement fund, to administrative services performed by tax-exempt municipal leagues, to the Missouri Hospital Association, or to dental benefit coverage by Delta Dental Plans Association through contracts with independent service providers so long as the provision of such coverage is the principal activity of such Association. No inference is intended, under this provision, as to whether the performance of administrative services by tax-exempt municipal leagues, without more, constitutes commercial-type insurance activities. Generally, however, the performance of administrative services with respect to insurance contracts by tax-exempt organizations may be subject to unrelated business tax.

3. Operations loss deduction of insolvent companies

Present Law

Prior to 1984, life insurance companies were permitted to exclude from taxable income 50 percent of the excess of gain from operations over taxable investment income. In addition, life insurance companies were allowed certain special deductions for nonparticipating contracts and for accident and health insurance and group life insurance contracts. The amounts deducted under these provisions were added to a deferred tax account known as the policyholders surplus account (PSA). The allowance of these special deductions, and the establishment of a PSA, were intended to provide a cushion of assets to protect the interests of the policyholders. The 1984 Act repealed the deduction for additions to a PSA, but continued the deferral on existing amounts in a PSA.

The deferral of tax on existing amounts held in the PSA of a life insurance company is ended if the amounts are distributed to shareholders. In certain circumstances, amounts may be required to be distributed from the PSA (i.e., the deferral of tax on such amounts is ended) if the PSA becomes too large in relation to the scope of the company's current operations. The deferral of tax on amounts in the PSA also may end if the company ceases to be taxed as a life insurance company. The amounts included in income as a result of ending deferral on amounts in the PSA cannot be offset by the company's loss from operations or loss carryovers.

House Bill

Under the bill, a life insurance company is permitted to apply its current loss from operations and its unused operations loss carryovers against the increase in its taxable income attributable to the amount distributed from its PSA if certain conditions are satisfied. First, the company must have been insolvent on November 15, 1985. Second, the company must be liquidated pursuant to the order of a court of competent jurisdiction in a title 11 or similar case. Third, as a result of the liquidation, the company's tax liability must be increased due to distributions from the PSA. Under the provision, no carryover of any loss from operations of the company arising during or prior to the year of liquidation may be used in any taxable year succeeding the liquidation year (regardless of whether the amount of the loss exceeds the amount of the distribution from the PSA).

The provision applies to liquidations on or after November 15, 1985.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective for liquidations on or after November 15, 1985.

4. Treatment of electing mutual life insurance company

Present Law

A mutual life insurance company may elect to treat all its individual noncancellable (or guaranteed renewable) accident and health insurance contracts as cancellable, for purposes of determining whether the company is taxable as a life insurance company or a property and casualty insurance company. As a condition of making this election, all stock life insurance company affiliates of an electing mutual life insurance company which is the common parent of the group are treated as mutual life insurance companies subject to tax under all provisions of the Code applicable to mutual life insurance companies, including the provisions regarding the differential earnings amount of mutual companies.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the requirement that a stock life insurance affiliate of an electing mutual life insurance company parent be treated as a mutual life insurance company is repealed, only for taxable years beginning after December 31, 1985, and before January 1, 1992.

Conference Agreement

The conference agreement follows the House bill.

C. Property and Casualty Insurance Company Taxation

1. Inclusion in income of 20 percent of unearned premium reserve

Present Law

Under present law, the income of a property and casualty insurance company (whether stock or mutual) includes its underwriting income or loss and its investment income or loss, as well as gains and other income items. Underwriting income means premiums earned on insurance contracts

during the year, less losses incurred and expenses incurred (sec. 832(b)(3)). To determine premiums earned, the increase in unearned premiums during the year is deducted from gross premiums (sec. 832(b)(4)(B)). This treatment of unearned premiums generally reflects accounting conventions imposed under applicable State law.

Property and casualty insurers may also deduct expenses incurred during the taxable year (sec. 832(b)(3)). Expenses incurred generally means expenses shown on the annual statement approved by the National Association of Insurance Commissioners. Expenses incurred are calculated by adding to expenses paid during the year the excess of unpaid expenses at the end of the current year over unpaid expenses at the end of the preceding year (sec. 832(b)(6)). Expenses incurred ordinarily include premium acquisition expenses. Expenses, to be deductible, must constitute ordinary and necessary trade or business expenses within the meaning of section 162 (sec. 832(c)(1)), although this rule does not determine the time when the deduction is allowed.

House Bill

Under the House bill, a property and casualty insurance company is required to reduce its deduction for unearned premiums by 20 percent. All items which are included in unearned premiums under section 832(b) of present law are subject to this reduction in the deduction.

The House bill also provides for the inclusion in income of 20 percent of the unearned premium reserve outstanding at the end of the most recent taxable year beginning before January 1, 1986. This income is includible ratably over a 5-year period commencing with the first taxable year beginning after December 31, 1985. In each taxable year during this period, 4 percent of the unearned premium reserve outstanding at the end of the most recent taxable year beginning before January 1, 1986, is included in income.

The provision is generally effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that life insurance reserves which are included in unearned premium reserves under section 832(b)(4) are not subject to this reduction in the deduction for unearned premiums.

In addition, the amendment provides for the inclusion in income of 20 percent of the unearned premium reserve outstanding at the end of the most recent taxable year beginning before January 1, 1987, ratably over a 7-1/2 year period commencing with the first taxable year beginning after December 31, 1986.

In the case of insurance against default in the payment of principal or interest on securities with a maturity of 5 years or more, the amendment provides that the deduction for increases in unearned premiums is reduced by 10 percent, rather than 20 percent. Thus, only 90 percent of the increase in unearned premiums is deductible and 90 percent of any decrease is includible in income.

Similarly, in the case of such insurance on securities, 10 percent, rather than 20 percent of the amount of the unearned premium reserve outstanding at the end of the most recent taxable year beginning before January 1, 1986, is included in income ratably over 7-1/2 years. Insurance on securities with a maturity of less than 5 years is subject to the general rule reducing the deduction (or inclusion) for a change in unearned premiums by 20 percent.

Under the Senate amendment, if a property and casualty insurance company ceases to be taxable as a property and casualty company, the ratable inclusion rule for outstanding unearned premium balances (for balances as of the end of the last taxable year beginning before January 1, 1987) is applied to include the remaining amount subject to the rule in income for the taxable year preceding the taxable year in which the company ceases to be subject to tax as a property and casualty insurance company.

An exception is provided to the extent a successor company (which is also a property and casualty insurance company) is subject to the requirements of section 381(c)(22) (relating to acquiring companies under Subchapter L). Further, this rule applies only if a company ceases to be a property and casualty company for a taxable year beginning before January 1, 1993.

The provision is generally effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, generally effective for taxable years beginning after December 31, 1986, with the modification that the period over which 20 percent (or 10 percent in the case of insurance on securities with a maturity over 5 years) of the outstanding balance of unearned premium reserves at the end of the last taxable year beginning before January 1, 1987, is included in income is 6 years, rather than 7-1/2 years, commencing with the first taxable year beginning after December 31, 1986.

The conference agreement also provides special treatment of title insurance unearned premium reserves (see item 3, below).

2. Treatment of certain dividends and tax-exempt interest

Present Law

Property and casualty insurance companies are subject to tax on investment income, which generally includes interest, dividends, and rents (sec. 832(b)(2)). A property and casualty company that includes interest exempt from tax (sec. 103) in its investment income may deduct this interest under section 832(c)(7) of present law. In addition, property and casualty companies are allowed the dividends-received deduction (sec. 832(c)(12)).

No reduction in the loss reserve deduction is required, under present law, to take account of the fact that deductible additions to reserves may come out of income not subject to tax. Unlike life insurance companies, property and casualty insurance companies are not required to allocate or prorate investment income (including tax-exempt investment income) so as to take account of the possibility of a double deduction where deductible additions to reserves are funded with tax-exempt income (or with the deductible portion of dividends received).

House Bill

Under the House bill, the deduction for losses incurred is reduced by a specified portion of the insurer's tax-exempt interest and of the deductible portion of dividends received (with special rules for dividends from affiliates). For this purpose, tax-exempt interest includes interest income excludable under section 103 (or deductible under sec. 832(c)(7)), the portion of interest income excludable under section 133, and other similar items. The specified portion for taxable years beginning after December 31, 1985, is 10 percent, increasing to 15 percent for taxable years beginning after December 31, 1987.

In the case of dividends from affiliates, 100 percent of which are deductible under present law, the portion which is subject to proration in the hands of the recipient property and casualty company is that portion which is attributable to tax-exempt interest or the deductible portion of nonaffiliate dividends (that is, those dividends which would not be eligible for the 100 percent dividends-received deduction).

The proration rule does not apply to tax-exempt interest and the deductible portion of dividends received or accrued on stock or obligations acquired before November 15, 1985. The portion of dividends received from an affiliate attributable to stock or obligations (the interest on which is tax-exempt) acquired by the affiliate after November 14, 1985, is subject to the proration rule. Further, if an affiliate is acquired after November 14, 1985, each share of stock or obligation (the interest on which is tax-exempt) held by the affiliate (or by its subsidiaries which are affiliates), whenever acquired by the affiliate, is treated as acquired after November 14, 1985.

The provision relating to proration of tax-exempt interest and the deductible portion of dividends received at the rate of 10 percent is effective for taxable years beginning after December 31, 1985. Effective for taxable years beginning after December 31, 1987, the rate is increased to 15 percent.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with modifications. The specified portion by which the deduction for losses incurred is reduced under the provision is 15 percent for all taxable years beginning after December 31, 1986. In addition, the proration rule does not apply to tax-exempt interest and the deductible portion of dividends (whether or not from an affiliate) received or accrued on stock or obligations acquired before August 8, 1986.

The portion of dividends received from an affiliate attributable to stock or obligations (the interest on which is tax-exempt) acquired by the affiliate after August 7, 1986, is subject to the proration rule. Similarly, the transfer of tax-exempt bonds among affiliates after August 7, 1986, is treated as an acquisition of the bonds after August 7, 1986. Further, if an affiliate is acquired after August 7, 1986, each share of stock or obligation (the interest on which is tax-exempt) held by the affiliate (or by its subsidiaries that are affiliates), whenever acquired by the affiliate, is treated as acquired after August 7, 1986.

The conference agreement clarifies the determination of the portion of a dividend that is attributable to prorated amounts. Under the conference agreement, dividends are treated as paid first out of current or accumulated earnings and profits attributable to prorated amounts; that is, it is treated as paid first out of tax-exempt income of the paying company (such as interest or the deductible portion of dividends received).

The provision is effective for taxable years beginning after December 31, 1986.

3. Loss reserves

Present Law

In general

Present law provides generally that property and casualty companies are required to include their underwriting and investment income or loss in taxable income (sec. 832(b)). Among the items that are deductible in calculating underwriting income are additions to reserves for losses and expenses incurred. Losses incurred may include unpaid losses, the amounts of contested liabilities, and amounts which are estimated (and which therefore may be subject to future change when the amounts can be determined with reasonable accuracy).

The amount of the deduction for losses incurred must be reasonable. *See* Reg. sec. 1.832-4(b) and *Hanover Insurance Co. v. Commissioner*, 598 F.2d 1121 (1st Cir. 1979), *cert. denied*, 444 U.S. 915. Thus, under present law, the Internal Revenue Service may review, and, if appropriate, adjust the amount of the deduction for unpaid losses and unpaid loss adjustment expenses.

Title insurance

Under present law, the treatment of title insurance (i.e., insurance to protect the buyer of real property against the risk that a defect in the title or an encumbrance against the property exists at the time the property is purchased) is unclear. Under Rev. Rul. 83-174, 1983-2 C.B. 108, as modified by Rev. Rul. 84-107, 1984-2 C.B. 122, for title insurers operating in jurisdictions requiring the maintenance of an unearned premium reserve, the IRS has permitted premiums received by title insurers (to the extent of the reserve required under State law) to be treated as unearned premiums for Federal income tax purposes for years beginning before November 28, 1984; however, the taxpayer may not deduct incurred but unreported losses in addition to unearned premiums for tax years beginning on or after November 28, 1983.

House Bill

The Treasury Department (in consultation with the Joint Committee on Taxation) is required to conduct a study of the treatment of loss reserves of property and casualty insurance companies. The results of the study, together with recommendations, are to be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than January 1, 1987.

Senate Amendment

In general

The Senate amendment provides for the discounting of the deduction for losses and expenses incurred to take account partially of the time value of money. The Senate amendment limits the deduction for unpaid losses (reported losses that have not been paid, estimates of losses incurred but not reported, resisted claims, and unpaid loss adjustment expenses) to the amount of discounted unpaid losses.

This modified treatment of loss reserve deductions is applicable both to loss reserves of property and casualty companies, and to loss reserves of life insurance companies that are not required to be discounted under life insurance company taxation provisions. In the case of any reserves (including reserves of property and casualty companies) which life insurance company provisions require to be discounted, the applicable life insurance reserve discounting rules apply in lieu of the new discounting rules adopted by the Senate amendment.

The Senate amendment requires all property and casualty loss reserves (unpaid losses and unpaid loss adjustment expenses) for each line of business (as shown on the annual statement) to be discounted for tax purposes. The amount of the discounted unpaid losses as of the end of any taxable year attributable to any accident year is the present value of the losses (as of the close of the taxable year) determined by using (1) the gross amount to be subject to discounting (i.e., the undiscounted loss reserves), (2) the pattern of payment of claims, including the duration in years over which the claims will be paid, and (3) the rate of interest to be assumed in calculating the discounted reserve. This discounting methodology is applied by line of business and by accident year, as reported on the annual statement filed for the year.

Interest rate

The interest rate used for purposes of applying the discounting methodology to a line of business is 5 percent for all accident years of the company beginning before or in 1987. For accident years beginning after 1987, the annual interest rate applicable to the discounting of unpaid losses is equal to 75 percent of the average of the applicable Federal mid-term rates (as defined in sec. 1274(d) converted to a rate based on annual compounding) effective as of the beginning of each of the calendar months in the base period. The base period means the most recent 60 calendar months ending before the beginning of the calendar year for which the determination is made (excluding months beginning before 1987).

Loss payment patterns

The Senate amendment requires the Secretary of the Treasury to determine a loss payment pattern with respect to each line of business reported on Schedules O and P for a determination year. This loss payment pattern will be determined by reference to the historical loss payment pattern applicable to the line of business and applies to accident years ending with (or within) the determination year and each of the four succeeding years.

The Senate amendment provides a special rule for certain long-tail lines of business. In addition, the amendment provides special rules for unallocated lines of reinsurance and international business, and for certain accident and health insurance. A taxpayer may elect to apply the reserve discounting rules by reference to the taxpayer's own historical loss payment patterns.

Title insurance

Under the Senate amendment, the treatment of unearned premiums of title insurance companies is clarified. Section 832(b)(4) does not apply to amounts denominated as unearned premiums by a title insurance company (including amounts characterized under State law as unearned premium reserves). Rather, such reserves are to be treated as reserves for unpaid losses subject to the new discounting rules. To the extent that the amount of such reserves is in excess of the unpaid loss reserves necessary for the protection of policyholders, it is not treated as a reserve amount.

Effective dates

Under the Senate amendment, the provisions relating to the treatment of loss reserve deductions for property and casualty companies apply to taxable years beginning after December 31, 1986.

Under the Senate amendment, a transitional rule is provided with respect to the unpaid losses on outstanding business before the effective date of the provision. Under this transitional rule, for purposes of calculating a company's change in unpaid losses with respect to outstanding business, the unpaid losses are determined as if the discounting provisions had applied to the unpaid losses (and unpaid expenses) in the last taxable year beginning before January 1, 1987. In addition, the interest rate and loss payment pattern assumptions with respect to such outstanding business are to be computed by using the rate and loss payment pattern applicable to accident years ending in 1987.

Further, the bill provides a fresh start adjustment with respect to undiscounted loss reserves applicable to the last taxable year beginning before January 1, 1987. Under this fresh start rule, the difference between the amount of undiscounted unpaid loss reserves and unpaid expenses (the recomputed reserves) at the end of the last taxable year beginning before January 1, 1987, and the amount of the discounted balances determined under the transitional rule, are not taken into account for purposes of determining the taxable income of an insurance company after the effective date.

Such fresh start adjustment is to be taken into account in full in the first taxable year to which the discounting provisions apply (i.e., the first taxable year beginning after December 31, 1986), for purposes of calculating any adjustment to earnings and profits. Any reserve strengthening after March 1, 1986, is to be treated as reserve strengthening for the first taxable year beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications.

Interest rate

Under the conference agreement, the interest rate to be used for purposes of applying the discounting methodology to a line of business is equal to 100 percent of the average of the applicable Federal mid-term rates (as defined in sec. 1274(d) converted to a rate based on annual compounding) effective as of the beginning of each of the calendar months in the base period. The base period means the most recent 60 calendar months ending before the beginning of the calendar year for which the determination is made. However, no calendar month before August 1986 is included in the base period. For accident years of a company beginning before or in 1987, the rate to be applied is 100 percent of the average of the applicable Federal mid-term rates effective as of the beginning of the 5 last calendar months of 1986.

Loss payment patterns

The conference agreement follows the Senate amendment provision requiring the Secretary of the Treasury to determine a loss payment pattern with respect to each line of business reported on Schedules O and P for calendar year 1987 and each 5th calendar year after 1987.

In the case of unallocated reinsurance and international lines of business, the conference agreement provides that the discounting provisions are implemented on the basis of composite discount factors derived by combining the payment patterns for all Schedule P lines. The conference agreement clarifies that international and reinsurance business that is allocated to a particular line of business and taken account of as part of that line of business is discounted in accord-

ance with the rules applicable to that line of business, not the general rules applicable to unallocated international and reinsurance business. Thus, for example, reinsurance of accident and health business that is allocated to that line of business as reported on the annual statement of the taxpayer is subject to the discounting rules applicable to that line of business. The Treasury Department may, by regulation, address the treatment of distortions in the loss payment patterns arising where, for example, reinsurance of "short tail" business is allocated to that line of business and reinsurance of "long tail" business is unallocated, or vice versa.

In the case of life insurance companies and property and casualty companies with respect to the types of accident and health insurance coverage (other than disability insurance) that are not currently subject to the life insurance company reserve requirements (such as cancellable accident and health coverage), such coverage is subject to the discounting provisions for property and casualty insurance companies with the clarification that life insurance companies may not deduct loss adjustment expenses that do not meet the all-events test applicable under sec. 461 of the Code. Thus, it is not intended that noncancellable accident and health insurance business currently subject to life insurance reserve rules (sec. 807(d)) be subject to discounting under the property and casualty discounting methodology. Similarly, life insurance companies are not intended to be permitted to deduct loss adjustment expenses by virtue of the application of the property and casualty discounting methodology with respect to cancellable accident and health insurance business, if any, of such companies.

Election to use historical experience

The conference agreement follows the Senate amendment with respect to the provision that a taxpayer may elect to apply discounting with respect to the taxpayer's own historical loss payment pattern. Authority is granted to provide in Treasury regulations that an election under this provision does not apply to a line of business in which the taxpayer does not have sufficient historical experience. Generally, it is intended that the election be available only for those lines of business for which the taxpayer's own historical experience is statistically significant. Thus, if the taxpayer's business in any line of business does not represent a meaningful portion of the total industry-wide business in that line of business, then it is intended that the election not apply with respect to that line of business. Generally, a meaningful portion would be a portion representing business in at least the 10th percentile of industry-wide reserves for a line of business for the determination year with respect to which the election is made. That is, no election would be permitted for any line of business where 90 percent of taxpayers that have reserves in that line of business, have reserves that are bigger than those of the taxpayer for the line of business for the determination year.

Extension of payment pattern for long-tail lines

The conference agreement follows the Senate amendment with respect to the discounting period for certain long-tail lines of business, with a modification. The conference agreement provides that, if the amount of losses treated as paid in the penultimate year of the payment pattern is zero or negative, then the the average of the amounts treated as paid in the 3 penultimate years of the payment pattern is the amount taken into account, for purposes of extending the loss payment pattern by up to an additional 5 years. In the event that the average of the 3 years gives rise to a negative number for any line of business, additional preceding years of the payment pattern should be averaged in successively, until the average is a positive number. This rule applies to the extension of all payment patterns, including those where the taxpayer has elected to determine its loss payment patterns on the basis of its own historical experience.

The following example illustrates the appropriate methodology for determining a payment pattern for a line of business for any given accident year. In the case of an electing taxpayer, the data used would be the annual statement data for the line of business reported on the taxpayer's most recently filed annual statement. Example 1 illustrates the development of a payment pattern for a Schedule P line, and example 2 illustrates the development of a payment pattern for a Schedule O line of business.

Example 1: payment pattern for Schedule P line

The development of reserve discount factors for a Schedule P line of business is illustrated in Table 1. This example is based on the 1985 consolidated industry totals for automobile liability. The 1985 annual statement is used because it contains the most recent loss development data.

Table 1.—Reserve Discount Factor Development, Automobile Liability

[Discount rate is assumed to be 7 percent per annum]

Years before current year	Year loss incurred	Loss and loss expense payments to date (thousands)	Total losses and loss expense incurred [1] (thousands)	Percentage				
				Cumulative fraction of loss paid [2] (percent)	Fraction of loss paid during year [3] (percent)	Fraction of loss unpaid, year-end (percent)	Discounted fraction unpaid, year-end (percent)	Reserve discount factor [4] (percent)
AY+0	1985	$10,734,519	$31,281,287	34.3161	34.3161	65.6839	58.7454	89.4365
AY+1	1984	10,397,279	28,217,053	65.1992	30.8831	34.8008	30.9119	88.8251
AY+2	1983	20,047,248	24,986,353	80.2335	15.0343	19.7665	17.5241	88.6555
AY+3	1982	19,808,529	22,243,403	89.0535	8.8200	10.9465	9.6273	87.9486
AY+4	1981	18,974,882	20,225,272	93.8149	4.7614	6.1851	5.3760	86.9181
AY+5	1980	17,105,852	17,717,213	96.5493	2.7344	3.4507	2.9238	84.7308
AY+6	1979	16,266,022	16,633,374	97.7915	1.2422	2.2085	1.8435	83.4743
AY+7	1978	14,534,843	14,766,868	98.4287	.6372	1.5713	1.3135	83.5901
AY+8	1977	12,853,464	13,027,563	98.6636	.2349	1.3364	1.1624	86.9808
AY+9	1976	11,389,407	11,506,437	98.9829	.3193	1.0171	.9135	89.8135
AY+10	Pre76	91,306,371	91,545,592	NA	.3193	.6978	.6472	92.7417
AY+11	NA	NA	NA	NA	.3193	.3785	.3622	95.6845
AY+12	NA	NA	NA	NA	.3193	.0592	.0572	96.6736
AY+13	NA	NA	NA	NA	.0592	0	0	96.6736

[1] "Total losses and loss expense incurred" equals "loss and loss expense payments" plus "losses unpaid" plus "loss expense unpaid" as defined in Schedule P.
[2] "Cumulative fraction of loss paid" equals ratio of "loss and loss expense payments" to "total losses and loss expense incurred".
[3] "Fraction of loss paid during year" equals the change in the "cumulative fraction of loss paid" from the previous year for AY+0 through AY+9 (see text for computation after AY+9).
[4] The reserve discount factor is 96.6736 in AY+12 and all subsequent years.

Schedule P of the 1985 annual statement itemizes "loss and loss expense payments" and "total losses and loss expense incurred" for the 10-year period 1976-1985 and the total for all years before 1976 (see Table 1). The number of years that have passed since the accident year through the current year (1985) is shown in the first column of Table 1; for example, the year 1976 is referred to as AY+9. From these data, the cumulative fraction of loss and loss expense paid through 1985, for losses incurred in 1976-1985, is computed as the ratio of "loss and loss expense payments" to "total losses and loss expense incurred". For AY+0 through AY+9, the fraction of loss and expense paid during each accident year is estimated as the change in the cumulative fraction of loss and expense paid from the previous accident year. Since unpaid loss and loss expense at the end of AY+9 (1.0171 percent) exceeds the amount of loss and expense payments in AY+9 (0.3193 percent), the special rule for long-tail lines is applicable. Under this rule, unpaid loss and expenses at the end of AY+9 are deemed to be paid at at a rate of 0.3193 percent in AY+10 through AY+12, and the balance, 0.0592 percent, is deemed to be paid in AY+13.

The reserve discount factors are equal to the ratio of discounted unpaid losses to undiscounted unpaid losses in each accident year. For purposes of discounting, losses are deemed to be paid in the middle of the year. For example, if the discount rate is 7 percent, then the discounted unpaid loss in AY+11 is computed as the present value of losses deemed to be paid in AY+12 and AY+13:

$$0.3622 = \frac{0.3193}{1.07^{1/2}} + \frac{0.0592}{1.07^{3/2}}.$$

Consequently, as shown in Table 1, the reserve discount factor for AY+11 is 95.6845

percent, the ratio of discounted unpaid losses (0.3622 percent) to undiscounted unpaid losses (0.3785 percent) in AY+11. The reserve discount factor for the year that the last claim is deemed to be paid (AY+13), and for all subsequent years, is the reserve discount factor for the preceding year (96.6736 percent in AY+12).

Example 2: payment pattern for a schedule O line

The development of reserve discount factors for a schedule O line of business is illustrated in Table 2. This example is based on the 1985 consolidated industry totals for fire insurance. The 1985 annual statement is used because it contains the most recent loss development data.

Table 2.—Reserve Discount Factor Development, Fire Insurance

[Discount rate is assumed to be 7 percent per annum]

Years before current year	Year loss incurred	Net losses paid in year [1] (thousands)	Unpaid losses beginning year [2] (thousands)	Fraction unpaid loss paid in year [3] (percent)	Fraction of total loss paid in year [4] (percent)	Fraction of total loss unpaid, year-end (percent)	Discounted fraction unpaid, year-end (percent)	Reserve discount factor [5] (percent)
AY+0	1985	$1,182,445	$2,142,829	55.1815	55.1815	44.8185	42.1950	94.1464
AY+1	1984	687,222	944,426	72.7661	32.6127	12.2058	11.4138	93.5114
AY+2	Pre84	196,764	462,600	NA	6.1029	6.1029	5.8999	96.6736
AY+3		NA	NA	NA	6.1029	0	0	96.6736

[1] "Net losses paid in year" equals "losses paid during the year less reinsurance received during the year" less "salvage and subrogration received in the current year" as defined in Schedule O.
[2] "Unpaid losses, beginning year" equals "net losses paid in year" plus "losses unpaid" as defined in Schedule O.
[3] "Fraction unpaid loss paid in year" equals ratio of "net losses paid in year" to "unpaid losses, beginning year".
[4] "Fraction of total loss paid in year" equals "fraction unpaid loss paid in year" times previous year's "fraction of total loss unpaid, year-end" for AY+0 and AY+1 (see text for computation after AY+1).
[5] The reserve discount factor is 96.6736 in AY+2 and all subsequent years.

Schedule O of the 1985 annual statement itemizes "losses paid" and "losses unpaid" for the 2-year period 1984-1985 and the total for all years before 1984 (see Table 2).[1] The number of years that have passed since the accident year through the current year (1985) is shown in the first column of Table 2; for example, the year 1984 is referred to as AY+1. From these data, the fraction of unpaid losses paid in 1985, for losses incurred in 1984 and 1985, is computed as the ratio of "net losses paid in year" to "unpaid losses, beginning year". For AY+0 and AY+1, the fraction of total loss paid in the current year is estimated as the fraction of unpaid losses paid in the current year times the previous year's fraction of total loss unpaid at year-end. The fraction of loss paid during AY+2 and AY+3 is deemed to be one-half of the fraction of total loss unpaid at the end of AY+1 (6.1029 percent equals one-half of 12.2058 percent).

The reserve discount factors are equal to the ratio of discounted unpaid losses to undiscounted unpaid losses in each accident year. For purposes of discounting, losses are deemed to be paid in the middle of the year. For example, if the discount rate is 7 percent, then the discounted unpaid loss in AY+1 is computed as the present value of losses deemed to be paid in AY+2 and AY+3:

$$11.4138 = \frac{6.1029}{1.07^{1/2}} + \frac{6.1029}{1.07^{3/2}}.$$

Consequently, as shown in Table 2, the reserve discount factor for AY+1 is 93.5114 percent, the ratio of discounted unpaid losses (11.4138 percent) to undiscounted unpaid losses (12.2058 percent) in AY+1. The reserve discount factor for the year that the last claim is deemed to be paid (AY+3), and for all subsequent years, is the reserve discount factor for the preceding year (96.6736 percent in AY+2).

[1] Part 1 of Schedule O contains data on losses; part 2 contains data on loss adjustment expense. In this example, loss adjustment expense is disregarded because the consolidated industry totals for part 2 data are not published. A taxpayer electing its own experience is required to compute reserve discount factors using combined loss and loss expense development data.

Title insurance reserves

In the case of title insurers, the conference agreement provides that the amount of the taxpayer's unearned premium reserve determined under present law is subject to discounting at the rate generally applicable to property and casualty insurers loss reserves.[2] The amount of the unearned premium reserve subject to discounting is the amount shown on the yearly statement filed for State insurance regulatory purposes for the year ending with or within the taxable year. The loss payment pattern to be applied for purposes of discounting these reserve amounts is the period and pattern over which such reserves for that year are to be included in income in accordance with applicable State law. The rate and amount of inclusion in income for statutory accounting purposes is considered to determine the timing of and amount of releases from such reserve which are included in income for income tax purposes. The applicable interest rate is the rate applicable, for the year the premiums are received, under the loss reserve discounting rules applicable to property and casualty insurance companies.

Title insurance case reserves (i.e., known claims reserves) are subject to discounting under the provisions generally applicable to property and casualty insurance loss reserves.

A fresh start for discounting title insurance reserves is provided, calculated in a manner similar to the fresh start for other property and casualty company loss reserves.

This treatment is provided for title insurance reserves because of the deferral and the consequent failure to acknowledge the time value of money which results under present law with respect to title insurance unearned premium reserves.

Fresh start adjustment

The conference agreement follows the Senate amendment with respect to providing a fresh start adjustment — i.e., a forgiveness of income — for the reduction in reserves resulting from discounting the opening reserves in the first post-effective date taxable year of the provision. The conference agreement modifies the Senate amendment with respect to the treatment of reserve strengthening under the fresh start income forgiveness provision. Under the conference agreement, reserve strengthening in taxable years beginning after December 31, 1985, is not treated as a reserve amount for purposes of determining the amount of the fresh start. Instead, such reserve strengthening additions to loss reserves in taxable years beginning in 1986 are treated as changes to reserves in taxable years beginning in 1987, and are subject to discounting. Reserve strengthening is considered to include all additions to reserves attributable to an increase in an estimate of a reserve established for a prior accident year (taking into account claims paid with respect to that accident year), and all additions to reserves resulting from a change in the assumptions (other than changes in assumed interest rates applicable to reserves for the 1986 accident year) used in estimating losses for the 1986 accident year, as well as all unspecified or unallocated additions to loss reserves. This provision is intended to prevent taxpayers from artificially increasing the amount of income that is forgiven under the fresh start provision.

The amount of the fresh start forgiveness of income is included in earnings and profits for the taxpayer's first taxable year beginning after December 31, 1986.

Effective date

The loss reserve discounting provisions are effective for taxable years beginning after December 31, 1986.

4. Treatment of net gain from operations

Present Law

No special provision of present law requires that the taxable income of a property and casualty insurance company bear a relationship to its net gain from operations as reported on its annual statement for financial accounting purposes.

House Bill

The House bill requires that the taxable income of a property and casualty company must bear a relationship to the company's net gain from operations (as reported on the company's annual statement for accounting purposes). This rule provides that regular taxable income of a property and casualty insurance company is not less than 20/36 of its adjusted net gain from operations, and its regular taxable loss is not more than 20/36 of its adjusted net loss from operations, as set forth in its annual statement. Tax-

[2] No inference is intended with respect to the applicability of Rev. Ruls. 83-174 and 84-107, above.

exempt income and the deductible portion of certain dividends received attributable to investments made before November 15, 1985, are excluded from adjusted net gain or loss from operations.

Pre-effective date loss carryovers may not be applied against post-effective date income, and consolidated taxable income of property and casualty members of an affiliated group is generally determined separately before being taken into account in determining consolidated taxable income of the entire consolidated group.

The provision is effective for taxable years beginning after December 31, 1987.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

5. Limiting policyholder dividend deduction for mutual companies

Present Law

Under present law, property and casualty insurance companies are generally permitted to deduct dividends and similar distributions paid or declared to policyholders in their capacity as such. Stock companies may not, however, fully deduct dividends paid to shareholders. Policyholder dividends and shareholder dividends are treated differently for tax purposes at the distributee level as well as at the company level. Policyholder dividends are generally considered price rebates and are not taxable distributions (unless the insurance premiums were deducted by the policyholder). Dividends paid to shareholders in their capacity as shareholders, on the other hand, constitute ordinary income to the recipient shareholders to the extent of the distributing corporation's earnings and profits. Unlike mutual property and casualty companies, however, mutual life insurance companies must reduce the amount of deductible policyholder dividends by an amount intended to reflect the portion of the distribution allocable to the companies' earnings on equity (as distinguished from the proportion which is a policyholder rebate).

House Bill

The Treasury Department is required to conduct a study of the tax treatment of policyholder dividends by mutual property and casualty insurance companies. The results of the study, together with recommendations, are to be submitted to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation no later than January 1, 1987.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with modifications. The scope of the study is expanded to cover corporate minimum tax issues as well as regular tax issues relating to the tax treatment of policyholder dividends of mutual property and casualty insurance companies. In addition, the study is to cover the operation and effectiveness of the conference agreement provisions relating to the regular and minimum tax of property and casualty insurance companies, and is to examine whether the revenue targets projected for the provisions are met. The study is due January 1, 1989.

6. Protection against loss account for mutual companies

Present Law

Mutual property and casualty insurance companies are permitted a deduction for contributions (which are bookkeeping entries) to a protection against loss ("PAL") account (sec. 824). The amount of the deduction is equal to the sum of 1 percent of the underwriting losses for the year plus 25 percent of statutory underwriting income, plus certain windstorm and other losses. In general, certain contributions to the PAL account are taken into income after a 5-year period. The PAL account thus effects a 5-year deferral (and, in some cases, a permanent deferral) of a portion of mutual company underwriting income.

House Bill

Under the House bill, the deduction for contributions to a PAL account (sec. 824) is repealed. PAL account balances are includible in income over the first 5 taxable years beginning after December 31, 1985. The amount includible is the greater of the amount includible for the year had the subtraction provisions of section 824 remained in effect (but no further additions had been made), or an amount equal to a required percentage of the balance remaining in the account at the close of the preceding taxable year. For taxable years beginning in 1986, the required percentage is 20; for 1987, 40; for 1988, 60; for 1989, 80; and for 1990, 100.

The repeal of the deduction for contributions to a PAL account is effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the required percentage for 1987 is 20; for 1988, 25; for 1989, 33-1/3; for 1990, 50; and for 1991, 100.

The repeal of the deduction for contributions to a PAL account is effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, effective for taxable year beginning after December 31, 1986, except that, with respect to recovery of amounts contributed to PAL accounts in taxable years beginning before December 31, 1986, the conference agreement provides that such amounts are recovered and included in income in accordance with present law (as if sec. 824 remained in effect). Therefore the ratable inclusion rule in the House bill and the Senate amendment is not adopted. The provision is effective with respect to taxable years beginning after December 31, 1986.

7. Special exemptions, rates, and deductions of small companies

Present Law

Under present law, mutual property and casualty companies are classified into three categories depending upon the amounts of the gross receipts. Mutual companies with certain gross receipts not in excess of $150,000 are tax-exempt (sec. 501(c)(15)). Companies whose gross receipts exceed $150,000 but do not exceed $500,000 are "small mutuals" and generally are taxed solely on investment income. This provision does not apply to any mutual company that has a balance in its PAL account, or that, pursuant to a special election, chooses to be taxed on both its underwriting and investment income. Additionally, small mutuals which are subject to tax because their gross receipts exceed $150,000 may claim the benefit of a special rule which phases in the regular tax on investment income as gross receipts increase from $150,000 to $250,000. Companies whose gross receipts exceed $500,000 are ordinary mutuals taxed on both investment and underwriting income. Mutual reciprocal underwriters or interinsurers are generally taxed as mutual insurance companies, subject to special rules (sec. 826).

Like stock companies, ordinary mutuals generally are subject to the regular corporate income tax rates. Mutuals whose taxable income does not exceed $12,000 pay tax at a lower rate. No tax is imposed on the first $6,000 of taxable income, and a tax of 30 percent is imposed on the next $6,000 of taxable income. For small mutual companies which are taxable on investment income, no tax is imposed on the first $3,000 of taxable investment income, and a tax of 30 percent is imposed on taxable investment income between $3,000 and $6,000.

Mutual companies that receive a gross amount from premiums and certain investment income of less than $1,100,000 are allowed a special deduction against their underwriting income (if it is subject to tax). The maximum amount of the deduction is $6,000, and the deduction phases out as the gross amount increases from $500,000 to $1,100,000.

House Bill

The House bill provides that mutual and stock property and casualty companies are eligible for exemption from tax if their net written premiums or direct written premiums (whichever is greater) do not exceed $500,000.

In addition, the House bill repeals the special rates, deductions and exemptions for small mutual companies and substitutes a single provision (sec. 847 of the Code). The new provision allows mutual and stock companies with net written premiums or direct written premiums (whichever is greater) in excess of $500,000 but less than $2 million to elect to be taxed only on taxable investment income. To determine the amount of direct or net written premiums of a member of a controlled group of corporations, the direct or net written premiums of all members of the controlled group are aggregated.

The provisions are effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the $500,000 threshold is reduced to $350,000 and the $2 million threshold is reduced to $1,200,000. The provisions are effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, effective for taxable year beginning after December 31, 1986, with the modification that, in determining whether a taxpayer is a member of a controlled group of corporations for purposes of eligibility for the provision, a 50 percent ownership test applies.

Parts II and III of Subchapter L of the Code are consolidated into Part II, under the conference agreement. Part II of Subchapter L relates generally to taxation of property and casualty insurance companies.

8. Physicians' and surgeons' mutual protection associations

Present Law

In general, the gross income of a mutual insurance company (other than a life insurance company) includes gross premiums and other consideration, gross investment income, and gain from the sale or other disposition of property. Present law provides a special deduction for dividends and similar distributions paid to policyholders in their capacity as such.

In the case of corporations, gross income does not include any contribution to capital (sec. 118). However, the provisions covering the taxation of nonlife mutual insurance companies have no specific provisions regarding paid-in capital or the distribution of such capital.

Under present law, premiums for liability insurance in carrying on any trade or business generally are deductible in the year they are paid or incurred if they represent ordinary and necessary business expenses and are not capital expenditures. For example, annual premiums paid by a physician for medical malpractice insurance generally are deductible. No deduction is allowed as an expense paid or incurred during the taxable year for a contribution to capital.

House Bill

No provision.

Senate Amendment

Contributions to a pooled malpractice insurance association are currently deductible to the extent they do not exceed the cost of a commercial insurance premium for annual coverage and are included in the association's income. Refunds of such contributions are deductible to the fund only to the extent included in income of the recipient. The provision applies to associations operating under State law prior to January 1, 1984.

The provision is effective for contributions and refunds after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, effective for contributions and refunds after the date of enactment.

TITLE XI—PENSIONS AND DEFERRED COMPENSATION; EMPLOYEE BENEFITS; EMPLOYEE STOCK OWNERSHIP PLANS (ESOPs)

A. Limitations on Treatment of Tax-Favored Savings

1. Individual Retirement Arrangements (IRAs)

Present Law

IRA deduction limit

Under present law (Code sec. 219), an individual who has not attained age 70½ generally is entitled to deduct from gross income (within limits) the amount contributed to an individual retirement arrangement (an IRA). The limit on the deduction for a taxable year generally is the lesser of $2,000 or 100 percent of compensation (earned income, in the case of income from self-employment).

Prior to the Economic Recovery Tax Act of 1981 (ERTA), deductible IRA contributions were not permitted for any taxable year if an individual, for any part of the taxable year, was an active participant in a qualified pension, profit-sharing, or stock bonus plan (sec. 401(a)), a tax-sheltered annuity program (sec. 403(b)), a qualified annuity plan (sec. 403(a)), or a governmental plan (whether or not tax qualified). Nondeductible IRA contributions were not permitted.

ERTA provided that deductible IRA contributions (within limits) could be made by all individuals, without regard to whether an individual is covered under an employer's retirement plan.

Spousal IRA deduction

Under a spousal IRA, an individual is allowed an additional deduction for contributions to an IRA for the benefit of the individual's spouse if (1) the spouse has no compensation for the year; (2) the spouse has not attained age 70½; and (3) the couple files a joint income tax return for the year. If deductible contributions are made (1) to an individual's IRA and (2) to an IRA for the noncompensated spouse of the individual (a spousal IRA), then the annual deduction limit on the couple's joint return is increased to the lesser of $2,250 or 100 percent of compensation includible in gross income. The annual contribution may be divided as the spouses choose, so long as the contribution for neither spouse exceeds $2,000. If a spouse has a small amount of compensation, including amounts less than $250, the spousal IRA deduction is not available.

Interest on loans to make IRA contributions

Under present law, no deduction is allowed for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from tax (sec. 265(2)). This provision does not apply to amounts borrowed to make IRA contributions because the interest on an IRA is not wholly exempt from tax, but instead the tax is deferred until income is withdrawn from the IRA.

Qualified voluntary employee contributions

Present law allows an employee who is a participant in a qualified plan, tax-sheltered annuity program, or government plan, a deduction for qualified voluntary employee contributions made by or on behalf of the employee to the plan. The deduction allowed for contributions to an IRA is reduced by the amount of deductible voluntary employee contributions to a plan. Thus, the deduction allowed for the total of (1) an employee's contributions to an IRA and (2) the employee's qualified voluntary employee contributions to a plan (or plans) for a year, generally is limited to the lesser of $2,000 or 100 percent of compensation for the year.

Acquisition of gold and silver coins

Present law provides that the acquisition by an IRA of any collectible is treated as a distribution from the IRA equal to the cost of the collectible and is includible in the IRA owner's income for the year in which the cost is deemed distributed. A collectible includes any stamp or coin, including stamps or coins issued by the United States.

House Bill

Coordination of IRA deductions with elective deferrals

Under the House bill, an individual's IRA deduction limit for a taxable year is reduced, dollar for dollar, by the amount of an individual's elective 401(k) or 403(b) deferrals for such year. In the case of an individual claiming a spousal IRA deduction for a taxable year, the amount of the reduction is limited to the first $2,000 of the individual's elective deferrals plus the amount (if any) of the spouse's elective deferrals for the year.

Elective 401(k) or 403(b) deferrals include, with respect to any taxable year, the sum of (1) an individual's elective deferrals under a qualified cash or deferred arrangement (to the extent the deferrals are not currently included in income under section 402(a)(8)), and (2) any contribution to a tax-sheltered annuity made pursuant to a salary reduction agreement (to the extent the contribution is not currently included in income under section 403(b)), whether or not the salary reduction agreement is evidenced by a written agreement or otherwise (see sec. 3121(a)(5)(D)).

Spousal IRA deduction

Under the House bill, the spousal IRA provision is amended to eliminate the requirement that the spouse have no compensation for the year in order to be eligible for the spousal IRA contribution. Therefore, under the bill, the spousal IRA is available either if (1) the spouse has no compensation for the taxable year, or (2) the spouse elects to be treated for the taxable year as having no compensation.

For purposes of this provision, if a spousal IRA deduction is claimed on a couple's tax return for the taxable year, the spouse for whom the deduction is claimed is deemed to have elected to be treated as having no compensation.

Effective dates

The provisions generally are effective for taxable years beginning after December 31, 1985. A special effective date is provided for purposes of the provision coordinating elective deferrals with the IRA deduction limit in the case of certain elective deferrals under a plan maintained pursuant to one or more collective bargaining agreements ratified before November 22, 1985.

Senate Amendment

IRA deduction not available to active participants

Under the Senate amendment, no deductible IRA contribution may be made for any taxable year if an individual is an active participant in an employer-maintained retirement plan for any part of the plan year ending with or within the individual's taxable year. For purposes of this rule, an employer-maintained retirement plan means (1) a qualified pension, profit-sharing, or stock bonus plan, (2) a qualified annuity plan (sec. 403(a)), (3) a simplified employee pension (sec. 408(k)), (4) a plan established for its employees by the United States, by a State or political subdivision, or by any agency or instrumentality of the United States or a State or political subdivision, (5) a plan described in section 501(c)(18), or (6) a tax-sheltered annuity (sec. 403(b)).

The Senate amendment follows the pre-ERTA rule for determining whether an individual is an active participant in an employer-maintained retirement plan.

In the case of a defined benefit pension plan, an individual is treated as an active participant if the individual is not excluded under the eligibility requirements under the plan for any part of the plan year ending with or within the individual's taxable year. Thus, for example, if an individual satisfies the conditions for eligibility under a defined benefit pension plan, but is required to make an employee contribution to accrue any benefit attributable to employer contributions under the plan, the individual is treated as an active participant even if no employee contribution is made and, thus, no benefit is accrued for the plan year.

Under a money purchase pension plan, an individual is an active participant if any employer contribution or forfeiture is required to be allocated to the individual's account

with respect to the plan year ending with or within the individual's taxable year, even if the individual is not employed at any time during the plan year (e.g., contributions are continued on behalf of a permanently disabled employee (sec. 415(c)(3)(C)) or the individual's taxable year (e.g., the individual separates from service before the beginning of the taxable year).

An individual is treated as an active participant under a profit-sharing or stock bonus plan if any employer contribution is added or any forfeiture is allocated to the individual's account during the individual's taxable year. A contribution is added to an individual's account on the later of the date the contribution is made or is allocated.

Finally, an individual is treated as an active participant for any taxable year in which the individual makes a voluntary or mandatory employer contribution. An individual is not treated as an active participant if earnings (rather than contributions or forfeitures) are allocated to the individual's account.

The determination of whether an individual is an active participant or whether amounts are contributed on the individual's behalf is made without regard to whether the individual's rights to benefits under a plan are nonforfeitable.

Nondeductible contributions to IRAs permitted

Under the Senate amendment, individuals who are active participants (and who, therefore, are not eligible to make deductible IRA contributions for a taxable year) may make designated nondeductible IRA contributions. The limit on designated nondeductible contributions for a taxable year is the lesser of 100 percent of compensation (earned income in the case of a self-employed individual) or $2,000 ($2,250 in the case of an additional contribution to a spousal IRA).

Spousal IRA deduction

The Senate amendment is the same as the House bill with respect to the spousal IRA deduction.

Interest on loans to make IRA contributions

The Senate amendment provides that no deduction is allowed for interest on indebtedness incurred or continued to make an IRA contribution. Under the Senate amendment, the interest deduction is denied whether or not a deduction is allowed for the IRA contribution.

Qualified voluntary employee contributions

Under the Senate amendment, the rules permitting deductible employee contributions analogous to deductible IRA contributions are repealed.

Acquisition of gold and silver coins

The Senate amendment exempts any gold or silver coin issued by the United States from the rules relating to IRA investments in collectibles.

Effective dates

The provisions generally are effective for taxable years beginning after December 31, 1986.

Conference Agreement

IRA deduction not available to active participants

The conference agreement generally follows the Senate amendment with modifications to retain the present-law IRA provisions for taxpayers with adjusted gross income (AGI) below certain levels, and to reduce the IRA deduction for active participants with AGI above those levels.

Under the conference agreement, an individual is permitted to make deductible IRA contributions up to the lesser of $2,000 or 100 percent of compensation (earned income, in the case of a self-employed individual) if (1) the individual (or a married couple if a joint return is filed) has AGI that does not exceed an applicable dollar amount, or (2) the individual is not an active participant (or, in the case of a married individual filing a joint return, neither the individual nor the individual's spouse is an active participant) in an employer-maintained retirement plan for any part of the plan year ending with or within the individual's taxable year.

The applicable dollar amount is (1) $25,000, in the case of an individual, (2) $40,000, in the case of a married couple filing a joint return, and (3) $0, in the case of a married couple filing separately. The IRA deduction limit is reduced by an amount that bears the same ratio to the applicable dollar limit as the taxpayer's AGI in excess of the applicable dollar amount (or, in the case of a married couple filing a joint return, the couple's AGI in excess of the applicable dollar amount) bears to $10,000. Thus, under the conference agreement, in the case of an active participant, the IRA deduction limit is $0 for (1) individuals with AGI above $35,000, (2) married couples filing a joint return with AGI above $50,000, and (3) married couples filing separately if a spouse has AGI above $10,000.

Under the conference agreement, the spousal IRA deduction limit is also proportionately reduced for AGI above the applicable dollar amount. Thus, the spousal IRA deduction limit (i.e., $2,250) is reduced by an amount that bears the same ratio to $2,250 as the excess of AGI over the applicable dollar amount bears to $10,000.

The deduction limit is rounded to the next lowest $10 in the case of a limit that is not a multiple of $10. In addition, the conference agreement provides a $200 floor on the IRA deduction limit for individuals whose AGI is not above the phaseout range. For example, an individual with AGI of $34,500 has an IRA deduction limit of $200 even though the phaseout would otherwise provide an IRA deduction limit of $100.

AGI, for purposes of determining the IRA deduction limit, is calculated without regard to any deductible IRA contributions made for the taxable year, but with regard to any taxable social security benefits (sec. 86) and with regard to any passive loss limitations (new sec. 469). In other words, AGI is calculated in the following order: (1) for purposes of the limitations on passive loss deductions, (2) for purposes of the amount of social security benefits that are taxable, and (3) for purposes of the IRA deduction limit.

The conference agreement clarifies that an unfunded deferred compensation plan of a State or local government or a tax-exempt organization (sec. 457) is not considered a plan established for its employees by a State or political subdivision, or by an agency or instrumentality of a State or political subdivision. As under the Senate amendment, the determination of active participant status under the conference agreement is made without regard to whether an individual's rights under an employer-maintained retirement plan are nonforfeitable (i.e., vested).

The conference agreement clarifies that, for purposes of the active participant rule, elective contributions (such as elective deferrals under a qualified cash or deferred arrangement) are treated as employer contributions.

The conference agreement clarifies that an individual is considered an active participant in a defined benefit plan if the individual is eligible to participate in the plan, even if the individual elects not to participate.

Under the conference agreement, the present-law rule relating to the time that contributions are required to be made is retained. Therefore, an individual may make IRA contributions for a taxable year up to the due date of the individual's tax return for the taxable year without extensions. Of course, as under present law, the individual is required to designate the taxable year to which an IRA contribution relates when making the contribution.

The provision is effective for taxable years beginning after December 31, 1986. A taxpayer may make an IRA contribution for the 1986 taxable year up to the due date of the taxpayer's 1986 tax return (without extensions) under the present-law IRA rules.

Nondeductible contributions permitted to IRAs

As under the Senate amendment, the conference agreement permits individuals to make designated nondeductible IRA contributions to the extent that deductible contributions are not allowed. Thus, an individual may make nondeductible contributions to the extent of the excess of (1) the lesser of $2,000 or 100 percent of compensation over (2) the IRA deduction limit with respect to the individual. The nondeductible IRA limit is $2,250, in the case of a spousal IRA.

In addition, the conference agreement permits a taxpayer to elect to treat deductible IRA contributions as nondeductible. An individual might make such an election, for example, if the individual had no taxable income for the year after taking into account other deductions.

Under the conference agreement, a designated nondeductible contribution means any contribution to an IRA for a taxable year that is designated as a nondeductible contribution in the manner prescribed by the Secretary. The designation is to be made on the individual's tax return for the taxable year to which the designation relates. Designated nondeductible contributions may be made up to the due date of the individual's tax return for the taxable year (without extensions).

An individual who files an amended return for a taxable year may change the designation of IRA contributions from deductible to nondeductible or vice versa. Such an amended return is to be treated as a return filed for the taxable year to which the return relates. Of course, under the usual rules, any increased tax liability that the individual may owe as a result of such a change in designation is to accompany the amended return.

An individual who makes a designated nondeductible contribution to an IRA for a taxable year or who receives a distribution from an IRA during a taxable year is required to provide such information as the Secretary may prescribe on the individual's tax return for the taxable year and, to the extent required, for succeeding taxable years. The information that may be required includes, but is not limited to (1) the amount of designated nondeductible contributions for the taxable year, (2) the aggregate amount of designated nondeductible contributions for all preceding taxable years which have not previously been withdrawn, (3) the aggregate balance of all IRAs of the individual as of the close of the calendar

year with or within which the taxable year ends, and (4) the amount of distributions from IRAs during the taxable year.

If the required information is not provided on the individual's tax return for a taxable year, then all IRA contributions are presumed to have been deductible and, therefore, are taxable upon withdrawal from the IRA. The taxpayer can rebut this presumption with satisfactory evidence that the contributions were nondeductible.

Amounts withdrawn from an IRA during a taxable year are includible in income for the taxable year under rules similar to the rules applicable to qualified plans under section 72. Under special rules applicable to IRAs for purposes of section 72, (1) all IRAs of an individual are treated as one contract, (2) all distributions during a taxable year are treated as one distribution, (3) the value of the contract (calculated after adding back distributions during the year), income on the contract, and investment in the contract is computed as of the close of the calendar year with or within which the taxable year ends, and (4) the aggregate amount of withdrawals excludable from income for all taxable years shall not exceed the taxpayer's investment in the contract for all taxable years. The conference agreement provides that, if an individual withdraws an amount from an IRA during a taxable year and the individual has previously made both deductible and nondeductible IRA contributions, then the amount includible in income for the taxable year is the portion of the amount withdrawn which bears the same ratio to the amount withdrawn for the taxable year as the individual's aggregate nondeductible IRA contributions bear to the aggregate balance of all IRAs of the individual (including rollover IRAs and SEPs).

In the case of a withdrawal from an IRA, for purposes of the rules relating to withholding on pensions, annuities, and certain other deferred income, the payor is to assume that the amount withdrawn is includible in income.

For example, assume that (1) an individual makes a $2,000 IRA contribution for the individual's 1987 tax year, $1,500 of which is deductible, (2) no withdrawals are made from the IRA during the taxable year, (3) the account balance at the end of the taxable year is $2,200, and (4) no prior IRA contributions have been made. The individual is required to report all such information on the individual's 1987 tax return. For 1988, assume (1) the individual makes a $2,000 IRA contribution to another IRA account, none of which is deductible, (2) no withdrawals are made from the IRA during the taxable year, and (3) the aggregate account balance at of the end of the taxable year for both IRAs is $4,600. In the individual's 1989 taxable year, no IRA contributions are made and $1,000 is withdrawn from the IRA to which the individual contributed during the 1987 taxable year. At the end of the 1989 taxable year, the aggregate account balance of both IRAs is $4,000. The $1,000 withdrawn from an IRA during the 1989 tax year is treated as partially a return of nondeductible contributions, calculated as the percentage of $1,000 that the total nondeductible contributions ($500 plus $2,000) is of the total account balance ($4,000) at the end of the taxable year plus distributions during the year ($1,000). Thus, 2,500/5,000 or ½ of the $1,000 withdrawal is treated as a return of nondeductible contributions (and, therefore, is not taxable).

Under the conference agreement, an individual who overstates the amount of designated nondeductible contributions made for any taxable year is subject to a $100 penalty for each such overstatement unless the individual can demonstrate that the overstatement was due to reasonable cause.

The trustee of an IRA is required to report certain information to the Secretary and to the individuals for whom an IRA is maintained for each calendar year. This information is to include (1) contributions made to the IRA during the calendar year, (2) distributions from the IRA occurring during the calendar year, and (3) the aggregate account balance as of the end of the calendar year. This information is required to be reported by the January 31 following the end of the calendar year. In the case of a failure to report the required information, as under present law, the penalty for the failure is $25 for each day during which the failure occurs, but the total amount imposed on any person for a failure to report is not to exceed $15,000.

The provisions are effective for contributions and distributions in taxable years beginning after December 31, 1986.

Spousal IRA deduction

The conference agreement follows the House bill and the Senate amendment, effective for taxable years beginning before, on, or after December 31, 1985.

Interest on loans to make IRA contributions

The conference agreement does not adopt the provision in the Senate amendment.

Qualified voluntary employee contributions

The conference agreement follows the Senate amendment, which repeals the deduction allowed for qualified voluntary employee contributions to qualified plan, effective for taxable years beginning after December 31, 1986.

Acquisition of gold and silver coins

The conference agreement follows the Senate amendment, effective for acquisitions of coins after December 31, 1986.

2. Qualified Cash or Deferred Arrangements

Present Law

Under present law, if a tax-qualified profit-sharing or stock bonus plan (or an eligible pre-ERISA money purchase pension plan) meets certain requirements described below (a "qualified cash or deferred arrangement"), then an employee is not required to include in income any employer contributions to the plan merely because the employee could have elected to receive the amount contributed in cash.

Nondiscrimination requirements

Under present law, special nondiscrimination tests apply a limit on elective deferrals that may be made by the group of highly compensated employees. This limit depends (in part) on the level of elective deferrals by nonhighly compensated employees. An employee is considered highly compensated, for this purpose, if the employee is one of the most highly compensated ⅓ of all employees eligible to defer under the arrangement. These nondiscrimination tests provide that the special treatment of elective deferrals is not available unless the cash or deferred arrangement does not disproportionately benefit highly compensated employees.

A cash or deferred arrangement meets these special nondiscrimination requirements for a plan year if (1) the actual deferral percentage for the highly compensated employees is not greater than 150 percent of the actual deferral percentage for the other eligible employees, or (2) the actual deferral percentage for the highly compensated employees does not exceed the lesser of (a) the actual deferral percentage for the other eligible employees plus 3 percentage points or (b) 250 percent of the actual deferral percentage for the other eligible employees. In calculating these deferral percentages, contributions by the employer may be taken into account as elective deferrals by employees if they (1) are nonforfeitable when made, (2) satisfy the withdrawal restrictions applicable to elective deferrals, and (3) separately satisfy the general nondiscrimination rules (sec. 401(a)(4)).

Withdrawal restrictions

Under present law, a participant in a qualified cash or deferred arrangement is not permitted to withdraw elective deferrals (and earnings thereon) prior to death, disability, separation from service, retirement, or (except in the case of a pre-ERISA money purchase pension plan) the attainment of age 59½ or the occurrence of a hardship.

Limit on elective deferrals

Elective deferrals under a qualified cash or deferred arrangement are subject to the overall limits on contributions to a defined contribution plan. Thus, under present law, the sum of an employee's elective deferrals and any other annual additions on behalf of the employee under all defined contribution plans maintained by the employer generally cannot exceed the lesser of $30,000 or 25 percent of the participant's nondeferred compensation.

House Bill

Limit on elective deferrals

Under the bill, the maximum amount that an employee can elect to defer for any taxable year under all cash or deferred arrangements in which the employee participates is limited to $7,000 a year. The $7,000 limit is coordinated with elective deferrals under tax-sheltered annuities and the annual deduction limit for IRA contributions.

If, in any taxable year, the total amount of elective deferrals contributed on behalf of an employee to any qualified cash or deferred arrangements and tax-sheltered annuities in which the employee participates exceeds $7,000, then the amounts in excess of $7,000 (the excess deferrals) are included in the employee's gross income for the year. In addition, with respect to any excess deferrals, by March 1 after the close of the employee's taxable year, the employee may allocate the excess deferrals among the qualified cash or deferred arrangements in which the employee participates and notify the administrator of each plan of the portion of the excess deferrals allocated to it. Further, not later than April 15 after the close of the employee's taxable year, each plan is to distribute to the employee the amount of the excess deferrals (plus income attributable to the excess) allocated to the plan.

Excess deferrals that are not distributed by the applicable April 15 date are not treated as employee contributions upon subsequent distribution even though such deferrals had been included in the employee's income. In addition, undistributed excess deferrals are treated as elective deferrals subject to the special nondiscrimination test.

Nondiscrimination requirements

In general

The bill modifies the special nondiscrimination tests applicable to qualified cash or

deferred arrangements by redefining the group of highly compensated employees and by modifying the special percentage tests.

Definition of highly compensated employees

The House bill provides a uniform definition of highly compensated employees for purposes of the nondiscrimination rules for qualified plans and employee benefit plans. (see the description in B.7., below).

Modification of nondiscrimination tests

The House bill alters the special nondiscrimination tests applicable to qualified cash or deferred arrangements so that the actual deferral percentage under a cash or deferred arrangement by highly compensated employees for a plan year may not exceed either (1) 125 percent of the actual deferral percentage of all nonhighly compensated employees eligible to defer under the arrangement, or (2) the lesser of 200 percent of the actual deferral percentage of all eligible nonhighly compensated employees or the actual deferral percentage for all eligible nonhighly compensated employees plus 2 percentage points.

Under the House bill, if a highly compensated employee participates in more than one qualified cash or deferred arrangement of an employer, the employee's actual deferral percentage for purposes of testing each arrangement under the special nondiscrimination tests is to be determined by aggregating the employee's elective deferrals under all of the arrangements of the employer.

Excess contributions

If the special nondiscrimination rules are not satisfied for any year, the House bill provides that the qualified cash or deferred arrangement will not be disqualified if the excess contributions (plus income allocable to the excess contributions) are distributed before the close of the following plan year. Distribution of the excess contributions may be made notwithstanding any other provision of law and the amount distributed is not subject to the additional income tax on early withdrawals.

Under the House bill, excess contributions mean, with respect to any plan year, the excess of the aggregate amount of elective deferrals paid to the cash or deferred arrangement and allocated to the accounts of highly compensated employees over the maximum amount of elective deferrals that could be allocated to the accounts of highly compensated employees without violating the nondiscrimination requirements applicable to the arrangement. To determine the amount of excess contributions and the employees to whom the excess contributions are to be distributed, the bill provides that the elective deferrals of highly compensated employees are reduced in the order of their actual deferral percentages beginning with those highly compensated employees with the highest actual deferral percentages. The excess contributions are to be distributed to those highly compensated employees for whom a reduction is made under the preceding sentence in order to satisfy the special nondiscrimination tests.

Excise tax on excess contributions

Under the House bill, a penalty tax is imposed on the employer making excess contributions to a qualified cash or deferred arrangement (sec. 4979). The tax is equal to 10 percent of the excess contributions under the arrangement for the plan year ending in the taxable year. However, the tax does not apply to any excess contributions that, together with income allocable to the excess contributions, are distributed no later than 2½ months after the close of the plan year to which the excess contributions relate.

Excess contributions (plus income) distributed within the applicable 2½ month period are to be treated as received and earned by the employee in the employee's taxable year in which the excess contributions, but for the employee's deferral election, would have been received as cash.

Other restrictions

The House bill includes several additional restrictions on qualified cash or deferred arrangements. First, no withdrawals generally are permitted under a qualified cash or deferred arrangement prior to death, disability, separation from service, bona fide plan termination or (except in the case of a pre-ERISA money purchase pension plan) the attainment of age 59½. However, a cash or deferred arrangement (other than a pre-ERISA money purchase pension plan) may permit hardship withdrawals from elective deferrals (but not income on the elective deferrals).

In addition, the House bill provides that a qualified cash or deferred arrangement cannot require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan in excess of one year of service.

Under the House bill, an employer generally may not condition, either directly or indirectly, contributions and benefits (other than matching contributions in the plan of which that arrangement is a part) upon an employee's elective deferrals.

The House bill clarifies that qualified cash or deferred arrangements are not available to employees of tax-exempt organizations or governmental entities. This restriction does not apply to a plan maintained by a rural electric cooperative (defined in sec. 457(d)(9)(B)), a national association of such cooperatives, or a plan maintained by the Tennessee Valley Authority.

The House bill provides that, in the case of employer contributions (including elective deferrals under a qualified cash or deferred arrangement) that satisfy the immediate vesting and withdrawal restrictions applicable to elective deferrals under a qualified cash or deferred arrangement, the determination of whether the plan to which the contributions are made is a profit-sharing plan is to be made without regard to whether the employer has current or accumulated profits. This is the case even if the plan does not contain a qualified cash or deferred arrangement.

Effective dates

The provisions relating to qualified cash or deferred arrangements generally are effective for plan years beginning after December 31, 1985. A special effective date is provided in the case of certain elective deferrals under a qualified cash or deferred arrangement maintained pursuant to one or more collective bargaining agreements ratified before November 22, 1985, between employee representatives and one or more employers.

The House bill also provides a transition rule for the provision that provides that public employers and tax-exempt employers may not maintain qualified cash or deferred arrangements. Under this rule, the provision does not apply to any cash or deferred arrangement maintained by a State or local government or a tax-exempt employer that (1) was adopted by the employer before November 6, 1985, and (2) with respect to which the Internal Revenue Service received, before November 6, 1985, an application for a determination letter that such arrangement is a qualified cash or deferred arrangement.

The House bill contains a special effective date for any qualified cash or deferred arrangement maintained by a State or local government and grandfathered under the preceding transition rule. Under this special effective date rule, the new special nondiscrimination tests (including the new "highly compensated employee" definition) and the new withdrawal restrictions will not apply to elective deferrals under such grandfathered arrangement for years beginning before November 22, 1987.

The House bill provides a special transition rule with respect to the prohibition on the use of elective deferrals under a cash or deferred arrangement as a condition to the receipt of any other benefits (other than employer matching contributions under the same plan). Under this rule, a cash or deferred arrangement will not be treated as violating this prohibition for plan years beginning before January 1, 1991, to the extent that the qualified cash or deferred arrangement is part of a "qualified offset arrangement" with a defined benefit pension plan.

Senate Amendment

Limit on elective deferrals

The Senate amendment is the same as the House bill except that (1) the $7,000 cap on annual elective deferrals is adjusted for inflation by reference to percentage increases in the social security wage base at the same time and in the same manner as the indexing of dollar limits on benefits under section 415(d) and (2) the $7,000 cap is not coordinated with an individual's deductible IRA contributions.

The $7,000 limit is coordinated with elective deferrals under simplified employee pensions (SEPs). In addition, the benefits under an unfunded deferred compensation plan of a State or local government (sec. 457) and a plan described in section 501(c)(18) are coordinated with the limits on elective deferrals under a qualified cash or deferred arrangement or a SEP. Moreover, for purposes of determining an individual's cap on elective deferrals for a year, the $7,000 cap (as indexed) is reduced by the amount of the individual's contributions to a tax-sheltered annuity contract to the extent that the contributions are made pursuant to a salary reduction agreement.

Special limitation for investment in employer securities

Under the Senate amendment, the $7,000 cap (as indexed) on elective deferrals is increased by up to $2,500 in the case of certain investments in employer securities. The amount of the increase in the annual cap for an individual equals the lesser of (1) $2,500 or (2) the amount of elective deferrals for the year invested in employer securities and held by an ESOP (described in sec. 4975(e)(7) or meeting the requirements of sec. 409(l)).

The Senate amendment provides that the qualified cash or deferred arrangement is required to allow all eligible participants to have up to $2,500 of elective deferrals invested in employer securities before the additional limitation is available. In addition, the employer securities allocated to the account of a participant whose elective deferrals for a year exceed $7,000 are required to

remain so allocated during the 3-year period beginning with the year following the year in which the employer securities were allocated to a participant's account. If the employer securities cease to be allocated to the participant's account, then the securities are treated as if they were distributed to the participant on the date the securities cease to be allocated to the participant's account.

Nondiscrimination requirements

The Senate amendment is the same as the House bill except that the Senate amendment (1) does not modify the permitted disparities under the special nondiscrimination test applicable to qualified cash or deferred arrangements; (2) clarifies the rules for aggregating elective contributions with certain nonelective contributions for purposes of the special nondiscrimination test; and (3) modifies the uniform definition of highly compensated employees.

Other restrictions

The Senate amendment is the same as the House bill except that the amendment modifies certain present-law restrictions and imposes several additional restrictions on qualified cash or deferred arrangements.[1] First, the amendment provides that distributions may be made to a participant in a qualified cash or deferred arrangement on account of the sale of a subsidiary, sale of a substantial portion of the assets of a trade or business, or termination of the plan of which the arrangement is a part. Under the Senate amendment, the exception for distributions upon the sale of a subsidiary is available with respect to a participant who has not separated from service with the subsidiary.

The Senate amendment is the same as the House bill with respect to the availability of qualified cash or deferred arrangements for public employers, but the Senate amendment provides that qualified cash or deferred arrangements are available to employees of tax-exempt organizations.

Effective dates

The provisions (1) relating to the annual limit on elective deferrals under qualified cash or deferred arrangements, (2) permitting distributions upon the sale of a subsidiary, (3) aggregating the elective deferrals of highly compensated employees for purposes of the special nondiscrimination tests, and (4) relating to the treatment of excess contributions generally are effective for years beginning after December 31, 1986. Other changes in the nondiscrimination requirements and other restrictions applicable to qualified cash or deferred arrangements generally are effective for plan years beginning after December 31, 1988.

The provision permitting distributions upon plan terminations, sale of a subsidiary, or sale of assets is effective for terminations occurring in years beginning after December 31, 1984.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement.

The Senate amendment provides a transition rule for the provision prohibiting State and local government employers from maintaining qualified cash or deferred arrangements. Under this rule, the provision does not apply to any cash or deferred arrangement maintained by a State or local government that was adopted by the employer before May 6, 1986.

The Senate amendment provides a special transition rule with respect to the prohibition on the use of elective deferrals under a cash or deferred arrangement as a condition to the receipt of any other benefits (other than employer matching contributions under the same plan). Under this rule, a cash or deferred arrangement will not be treated as violating this prohibition to the extent that the qualified cash or deferred arrangement is part of a "qualified offset arrangement" with a defined benefit pension plan which offset arrangement was maintained by the employer on April 16, 1986.

Conference Agreement

Limit on elective deferrals

The conference agreement is the same as the Senate amendment except that the method of indexing the $7,000 limit on annual elective deferrals is the same method that applies for purposes of adjusting the dollar limits on benefits under section 415. Therefore, the limits are adjusted for percentage increases in the Consumer Price Index (CPI), beginning in 1988.

In addition, as under the Senate amendment, the conference agreement provides that elective deferrals in excess of the annual limit are treated as elective deferrals for purposes of applying the special nondiscrimination requirements for qualified cash or deferred arrangements, except to the extent provided under rules prescribed by the Secretary. The Secretary is to prescribe rules preventing use of this rule to increase artificially the actual deferral percentage of the nonhighly compensated employees.

To the extent that an excess deferral is distributed by the first April 15 following the close of the taxable year in which the excess deferral was made, the excess deferral is not treated as an annual addition for purposes of the overall limits on contributions and benefits (sec. 415).

Similarly, excess deferrals distributed by the required date are not subject to the additional income tax on early withdrawals from qualified plans. In addition, the conferees intend that a plan distributing excess deferrals is not to be required to obtain the consent of the participant or the consent of the participant's spouse with respect to the distribution of excess deferrals. Further, a distribution of excess deferrals is not to be treated as violating an outstanding qualified domestic relations order (within the meaning of sec. 414(p)).

The provision is effective for years beginning after December 31, 1986.

Further, the provisions do not apply to elective deferrals of an employee made during 1987 and attributable to services performed during 1986 under a qualified cash or deferred arrangement if, under the terms of the arrangement in effect on August 16, 1986, (1) the employee's election to make the elective deferrals is made before January 1, 1987, and (2) the employer identifies the amount of the elective deferral before January 1, 1987.

Special limitation for investment in employer securities

The conference agreement does not adopt the provision in the Senate amendment allowing an additional $2,500 in annual elective deferrals in the case of amount invested in employer securities.

Nondiscrimination requirements

The conference agreement follows the House bill with certain modifications.

Definition of highly compensated employees

The conference agreement modifies the definition of highly compensated employees to which the nondiscrimination requirements apply and provides that this uniform definition applies generally for purposes of nondiscrimination requirements for qualified plans and employee benefit programs (*see* the description in Part B.7., below). In addition, the conference agreement adopts the provision in the Senate amendment providing a special definition of highly compensated employees for purposes of the special nondiscrimination requirements for qualified cash or deferred arrangement and in the case of a certain company.

Special nondiscrimination requirements

The conference agreement follows the House bill with respect to the special nondiscrimination tests applicable to qualified cash or deferred arrangements.

In addition, the conference agreement provides that, for purposes of applying the special nondiscrimination requirements, under rules prescribed by the Secretary, employer matching contributions that meet the vesting and withdrawal restrictions for elective deferrals under a qualified cash or deferred arrangement and qualified nonelective contributions may be taken into account. Qualified nonelective contributions are defined to mean employer contributions (other than matching contributions) with respect to which (1) the employee may not elect to have the contributions paid to the employee in cash in lieu of being contributed to the plan and (2) the vesting and distribution restrictions applicable to qualified cash or deferred arrangements are satisfied.

Excess contributions

The conference agreement follows the House bill and the Senate amendment with respect to the treatment of excess contributions (i.e., contributions to highly compensated employees that violate the special nondiscrimination requirements applicable to qualified cash or deferred arrangements). The conference agreement modifies the rules for determining the amount of income attributable to excess contributions. Under the conference agreement, the amount of income attributable to excess contributions is that portion of the income on the participant's account balance for the year that bears the same ratio as the excess contributions bears to the total account balance.

For purposes of determining the year in which the excess contributions are includible in income, the excess contributions are treated as the first contributions made for a year.

In addition, the conferees intend that the Secretary will prescribe rules relating to the coordination of an employee's excess deferrals (i.e., amounts in excess of the annual limit on elective deferrals) and the excess contributions and that, generally, the excess deferrals are to be calculated and distributed first and then the excess contributions are to be allocated among the highly compensated employees and distributed.

Under the conference agreement, the provision in the Senate amendment under which excess contributions that are distributed to a highly compensated employee are not subject to the additional income tax on early withdrawals from qualified plans is adopted. In addition, the conferees intend that a plan is not required to obtain the consent of the participant or the participant

[1] *See*, also, the discussion in Part C., below.

and spouse to distribute an excess contribution.

The conference agreement provides that a plan can distribute excess deferrals and excess contributions without regard to the terms of the plan or any other law until the first plan year for which plan amendments are required.

Effective dates

The provisions generally are effective for years beginning after December 31, 1986.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, in the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective, with respect to employees covered by the agreement, for plan years beginning before the earlier of (1) January 1, 1989, or (2) the date on which the last of the collective bargaining agreement terminates (determined without regard to any extensions in the collective bargaining agreement).

The rule relating to aggregation of a highly compensated employee's benefit under more than one qualified cash or deferred arrangement and the rules relating to the treatment of excess contributions are effective for plan years beginning after December 31, 1986.

Other restrictions

The conference agreement adopts the following provisions with respect to qualified cash or deferred arrangements:

Hardship withdrawals.—The conference agreement follows the House bill and the Senate amendment which limits hardship withdrawals from a qualified cash or deferred arrangement to the amount of an employee's elective deferrals. Therefore, hardship withdrawals are not permitted from amounts attributable to income on elective deferrals.

Under the conference agreement, employer matching contributions and nonelective contributions (to the extent taken into account for purposes of the special nondiscrimination test), and income on such matching or nonelective contributions may not be distributed on account of hardship.

The provision is effective for years beginning after December 31, 1988.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, with respect to employees covered under a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective, with respect to employees subject to the agreement, for plan years beginning before the earlier of (1) the later of January 1, 1989, or the date on which the last of the collective bargaining agreement terminates (determined without regard to any extensions in the collective bargaining agreement), or (2) January 1, 1991.

Withdrawals on account of plan termination, etc.—The conference agreement generally follows the Senate amendment with respect to the provision permitting distributions from a qualified cash or deferred arrangement upon (1) plan termination without the establishment of a successor plan; (2) the date of the sale by a corporation of substantially all of the assets used by the corporation in a trade or business if the employee continues employment with the corporation acquiring the assets; or (3) the date of the sale by a corporation of the corporation's interest in a subsidiary if the employee continues employment with the subsidiary. Under the conference agreement, a distribution upon any of the 3 events described above is permitted only if it constitutes a total distribution of the employee's balance to the credit in the cash or deferred arrangement.

The provision is effective for distributions occurring after December 31, 1984.

Conditioning other benefits on elective deferrals.—The conference agreement follows the House bill and the Senate amendment with respect to the rule that a qualified cash or deferred arrangement cannot condition, either directly or indirectly, contributions and benefits (other than matching contributions in the plan of which the arrangement is a part) upon an employee's elective deferrals.

In addition, the conference agreement adopts the provision in the House bill and the Senate amendment that any elective deferrals under a qualified cash or deferred arrangement may not be taken into account for purposes of determining whether another plan meets the coverage requirements (sec. 410(b)) or the general nondiscrimination rules (sec. 401(a)(4)) or other qualification rules. This provision does not apply for purposes of applying the average benefit percentage requirement under the coverage requirements (but does apply for purposes of the present-law classification requirement that is part of the average benefit test).

The conferees clarify that the provision relating to conditioning other benefits on elective deferrals applies in the situation in which a plan provides that voluntary after-tax employee contributions may not be made until an employee makes a minimum amount of elective deferrals under a qualified cash or deferred arrangement. The conferees also clarify that this provision precludes the use of elective deferrals to satisfy the minimum contribution required on behalf of nonkey employees in a top-heavy plan.

Further, the conference agreement follows the Senate amendment with respect to qualified offset arrangements with a clarification of the definition of an employer for purposes of the provision.

The provisions are effective for years beginning after December 31, 1988.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, with respect to employees covered under a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective, with respect to employees subject to the agreement, for plan years beginning before the earlier of (1) the later of January 1, 1989, or the date on which the last of the collective bargaining agreement terminates (determined without regard to any extensions in the collective bargaining agreement), or (2) January 1, 1991.

Eligibility to participate.—The conference agreement follows the House bill and the Senate amendment with respect to the provision that a qualified cash or deferred arrangement cannot require, as a condition of participation in the arrangement, that an employee complete a period of service greater than 1 year with the employer maintaining the plan, effective for years beginning after December 31, 1988.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, in the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective, with respect to employees covered by the agreement, for years beginning before the earlier of (1) the later of January 1, 1989, or the date on which the last of the collective bargaining agreement terminates (determined without regard to any extensions in the collective bargaining agreement), or (2) January 1, 1991.

Tax-exempt and State and local employers.—Under the conference agreement, the provision in the House bill prohibiting tax-exempt organizations and State and local governments (or a political subdivision of a State or local government) from establishing qualified cash or deferred arrangements is adopted.

The conference agreement provides that this provision does not apply to plans adopted before (1) May 6, 1986, in the case of an arrangement maintained by a State or local government (or political subdivision of a State or local government), or (2) July 2, 1986, in the case of an arrangement maintained by a tax-exempt organization. The grandfather treatment is limited to the employers who adopted the plan before the dates specified above. However, the grandfather treatment is not limited to employees (or classes of employees) covered by the plan as of the date the grandfather treatment is provided.

The provision is effective for years beginning after December 31, 1986. However, in the case of a plan maintained by a State or local government that was adopted before May 6, 1986 (and is, therefore, eligible for the grandfather rule), the following provisions in the conference agreement applicable to qualified cash or deferred arrangements do not apply until years beginning after December 31, 1988: (1) the modification of the special nondiscrimination tests, (2) the new definition of highly compensated employees, (3) the new definition of compensation, and (4) the rule aggregating highly compensated employees.

Definition of compensation

The conference agreement adopts a uniform definition of compensation for purposes of applying the special nondiscrimination requirements, effective for years beginning after December 31, 1988. (*See* description in Part B.1., below.)

3. Nondiscrimination Requirements for Employer Matching Contributions and Employee Contributions

Present Law

Under present law, a qualified plan may permit employees to make either after-tax or pre-tax contributions to a qualified plan. Employee contributions to a qualified plan may be voluntary or mandatory. Mandatory employee contributions include those made as a condition of obtaining employer-derived benefits (e.g., employee contributions made as a condition of obtaining employer matching contributions).

Present law provides that a qualified plan may not discriminate in contributions and benefits in favor of employees who are officers, shareholders, or highly compensated. Generally, this nondiscrimination requirement is satisfied with respect to employee contributions if all participants are entitled to make contributions on the same terms and conditions. In the past, voluntary em-

ployee contributions have been permitted if all participants are eligible to make such contributions and if no employee is permitted to contribute more than 10 percent of compensation, determined based on cumulative contributions and cumulative compensation during the period of participation.

House Bill

Under the House bill, special nondiscrimination rules are applied to employer matching contributions and employee contributions under all qualified defined contribution plans. These nondiscrimination tests apply in addition to the usual nondiscrimination rules applicable to qualified plans.

Qualified matching and employee contributions

Under the first test, a defined contribution plan (and the employee contribution portion of a defined benefit pension plan) will not be treated as meeting the special nondiscrimination test with respect to employer matching contributions that are qualified employer matching contributions and with respect to employee contributions (other than deductible employee contributions) for a plan year unless neither the matching contribution percentage nor the employee contribution percentage for highly compensated employees exceeds the greater of (1) 125 percent of the matching contribution percentage or the employee contribution percentage for all other eligible employees, or (2) the lesser of 200 percent of the matching contribution percentage or the employee contribution percentage for all other eligible employees or such percentage plus 2 percentage points.

In order to be qualified employer matching contributions, employer matching contributions are required to be (1) nonforfeitable when made, (2) ineligible for withdrawal prior to attainment of age 59½, death, disability, separation from service, or bona fide plan termination, and (3) no greater than 100 percent of the employee's contributions.

Nonqualified matching contributions

The House bill provides that nonqualified matching contributions (i.e., matching contributions that are not qualified matching contributions) are subject to a special nondiscrimination test under which the matching contribution percentage for highly compensated employees is limited to the greater of (1) 110 percent of the matching contribution percentage for the other eligible employees or (2) the lesser of 150 percent of the matching contribution percentage for other eligible employees or such percentage plus one percentage point.

Treatment of excess contributions

As under the provision of the House bill relating to qualified cash or deferred arrangements, if the special nondiscrimination rules are not satisfied for any year, the plan will not be disqualified if the excess contributions (plus income allocable to such excess contributions) are distributed before the close of the following plan year. Distribution of excess contributions may be made notwithstanding any other provision of the law, and the amount distributed is not subject to the additional income tax on early withdrawals.

Effective dates

The provisions relating to employer matching contributions and employee contributions generally are effective for plan years beginning after December 31, 1985.

A special effective date is provided in the case of certain contributions under a qualified plan maintained pursuant to one or more collective bargaining agreements.

In addition, these provisions apply to any plan maintained by a State or local government in existence on November 6, 1985, for plan years beginning after November 21, 1987.

Senate Amendment

In general

Under the Senate amendment, special nondiscrimination rules are applied to employer matching contributions and employee contributions under all qualified defined contribution plans and employee contributions under a defined benefit plan (to the extent allocated to a separate account on behalf of the employee). These nondiscrimination tests apply in lieu of the usual nondiscrimination rules applicable to the amount of contributions under qualified plans.

Under the first test, a defined contribution plan (and the employee contribution portion of a defined benefit pension plan) will not be treated as meeting the special nondiscrimination test with respect to employer matching contributions and with respect to employee contributions for a plan year unless the contribution percentage for highly compensated employees does not exceed the greater of (1) 150 percent of the contribution percentage for all other eligible employees, or (2) the lesser of 250 percent of the contribution percentage for all other eligible employees or such percentage plus 3 percentage points.

Employer contributions (including nonelective and elective contributions) may be treated like matching contributions if the contributions (1) are nonforfeitable when made, (2) are ineligible for withdrawal prior to attainment of age 59½, death, disability, separation from service, sale of a subsidiary, or plan termination, and (3) satisfy the general nondiscrimination rules applicable to such contributions.

The Senate amendment applies rules similar to the aggregation rules for qualified cash or deferred arrangements for purposes of the special nondiscrimination test for employer matching and employee contributions. Thus, under the Senate amendment, if a highly compensated employee participates in more than one plan, all employer matching contributions, employee contributions, elective contributions, and, if the employer so elects, qualified nonelective contributions with respect to that highly compensated employee are aggregated and a single deferral percentage is computed for purposes of applying the special nondiscrimination test under each plan in which the highly compensated employee participates. Of course, the employer could elect to aggregate plans with respect to all participating employees, rather than merely highly compensated employees, in testing whether the special nondiscrimination test is satisfied.

Effective dates

The provisions relating to employer matching contributions and employee contributions generally are effective for plan years beginning after December 31, 1988. A special effective date applies to plans maintained pursuant to a collective bargaining agreement.

Conference Agreement

The conference agreement generally follows the House bill with modifications.

Special nondiscrimination test

In general

Under the conference agreement, a special nondiscrimination test is applied to employer matching contributions and employee contributions under qualified defined contribution plans and employee contributions under a defined benefit pension plan (to the extent allocated to a separate account on behalf of an employee) including employee contributions under a qualified cost-of-living arrangement. This special nondiscrimination test is similar to the special nondiscrimination test applicable to qualified cash or deferred arrangements. The conference agreement does not follow the House bill provision under which a special nondiscrimination test applies to employee contributions and to employer matching contributions that are "qualified matching contributions" and a different nondiscrimination test applies to other employer matching contributions.

The conference agreement provides that the special nondiscrimination test is satisfied for a plan year if the contribution percentage for highly compensated employees does not exceed the greater of (1) 125 percent of the contribution percentage for all other eligible employees, or (2) the lesser of 200 percent of the contribution percentage for all other eligible employees, or such percentage plus 2 percentage points. The contribution percentage for a group of employees for a plan year is the average of the ratios (calculated separately for each employee in the group) of the sum of matching and employee contributions on behalf of each such employee to the employee's compensation for the year.

Under the conference agreement, under rules prescribed by the Secretary, an employer may elect to take into account elective contributions and qualified nonelective contributions under the plan or under any other plan of the employer. Qualified nonelective contributions are defined to mean any employer contribution (other than a matching contribution) with respect to which (1) the employee may not elect to have the contribution paid to the employee in cash in lieu of being contributed to the plan, and (2) the vesting and withdrawal restrictions applicable to qualified cash or deferred arrangements are satisfied (and hardship withdrawals are not permitted). The term "employer matching contributions" means any employer contribution made to the plan on account of an employee contribution or an employee's elective deferrals to a qualified cash or deferred arrangement. The Secretary may prescribe such other conditions on aggregating types of contributions for nondiscrimination purposes as are appropriate to carry out the intent of the provisions.

Elective and nonelective contributions may only be taken into account for purposes of the special nondiscrimination rules if the contributions taken into account satisfy the applicable nondiscrimination rules and other contributions would not fail to satisfy applicable nondiscrimination rules if the elective or nonelective contributions taken into account were disregarded.

For example, if an employer maintains a qualified cash or deferred arrangement, a plan to which after-tax employee contributions and matching contributions are made, and a profit-sharing plan with employer contributions that are qualified nonelective contributions, then the employer can elect, for purposes of the special nondiscrimina-

tion test for matching contributions and employee contributions, to aggregate (1) elective deferrals under the qualified cash or deferred arrangement, (2) after-tax employee contributions, (3) employer matching contributions, and (4) qualified nonelective contributions. Further, for purposes of the special nondiscrimination test applicable to qualified cash or deferred arrangements, the employer can elect (subject to any other rules that may apply) to aggregate (1) elective deferrals under the qualified cash or deferred arrangement, (2) employer matching contributions that satisfy vesting and distribution rules, and (3) qualified nonelective contributions.

For purposes of the special nondiscrimination test, if 2 or more plans of an employer to which matching contributions, employee contributions, or elective contributions are made are treated as a single plan for purposes of the coverage requirements for qualified plans (sec. 410(b)), then the plans are treated as a single plan for purposes of the special nondiscrimination test. In addition, if a highly compensated employee participates in 2 or more plans of an employer to which matching contributions, employee contributions, or elective contributions are made, then all such contributions made on behalf of the highly compensated employee are aggregated for purposes of the special nondiscrimination test.

Under the conference agreement, any employee who is eligible to make an employee contribution (or, if the employer takes elective deferrals into account, is eligible to make elective deferrals) or is eligible to receive a matching contribution is treated as an eligible employee for purposes of the special nondiscrimination test. In addition, under the conference agreement, if an employee contribution is required as a condition of participation in a plan, an employee who is eligible to participate, but fails to make a required contribution, is treated as an eligible employee on behalf of whom no employer contributions are made.

Definition of highly compensated employee

The conference agreement modifies the definition of highly compensated employees to which the special nondiscrimination test applies and provides that this uniform definition applies generally for purposes of the nondiscrimination requirements for qualified plans and employee benefit programs (*see* the description in Part B.7., below).

Excess contributions

The conference agreement generally follows the House bill and the Senate amendment with respect to the treatment of excess contributions (i.e., contributions for highly compensated employees that violate the special nondiscrimination requirements applicable to employer matching and employee contributions). The conference agreement modifies the rules for determining the amount of income attributable to excess contributions. Under the conference agreement, the amount of income attributable to excess contributions is that portion of the income on the participant's account balance for the year that bears the same ratio as the excess contributions bear to the total account balance.

For purposes of assessing any withholding penalties, the excess contributions are treated as the first contributions made for a year.

In addition, the conferees intend that the Secretary will prescribe rules relating to the coordination of an employee's excess deferral (i.e., amounts in excess of the annual limit on elective deferrals under a qualified cash or deferred arrangement) and the excess contributions and that, generally, the excess deferrals are to be calculated and distributed first and then the excess contributions are to be allocated among the highly compensated employees and distributed.

Under the conference agreement, the provision in the Senate amendment under which excess contributions that are distributed to a highly compensated employee are not subject to the additional income tax on early withdrawals from qualified plans is adopted. In addition, the conferees intend that a plan is not required to obtain the consent of the participant or the participant and spouse to distribute an excess contribution.

The conference agreement provides that a plan can cash out excess contributions without regard to the terms of the plan until the first plan year for which plan amendments are required (*see* Part E.5., below).

Effective dates

The provisions generally are effective for plan years beginning after December 31, 1986.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, in the case of (employees covered under) a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective for plan years beginning before the earlier of (1) January 1, 1989, or (2) the date on which the last of the collective bargaining agreement terminates (determined without regard to any extensions in the collective bargaining agreement). In the case of a tax-sheltered annuity, the provisions are effective for plan years beginning after December 31, 1988.

4. Unfunded Deferred Compensation Arrangements of State and Local Governments

Present Law

Constructive receipt

On February 3, 1978, the Internal Revenue Service issued proposed regulations that provide generally that, if payment of an amount of a taxpayer's fixed basic or regular compensation is deferred at the taxpayer's individual election to a taxable year later than that in which the amount would have been payable but for the election, then the deferred amount will be treated as received in the earlier taxable year.[5]

In the Revenue Act of 1978, Congress exempted from the scope of the proposed regulations compensation deferred under an unfunded deferred compensation plan maintained by a taxable employer. Under the 1978 Act, the year that deferred compensation is to be included in gross income under certain private deferred compensation plans is determined under the principles set forth in the rulings, regulations, and judicial decisions relating to deferred compensation that were in effect on February 1, 1978.

The 1978 Act also exempted from the scope of the proposed regulation certain unfunded deferrals under an eligible deferred compensation plan of a State or local government (sec. 457). Certain tax-exempt rural electric cooperatives are also eligible for this exemption. There is currently no specific provision governing deferred compensation arrangements of nongovernmental tax-exempt organizations.

[5] Prop. reg. sec. 1.61-16.

Eligible unfunded deferred compensation plan

Under an eligible unfunded deferred compensation plan of a State or local government, amounts of current compensation that are deferred on behalf of an employee are included in gross income when they are paid or made available. The maximum annual deferral under such a plan is the lesser of (1) $7,500, or (2) 33⅓ percent of compensation (net of the deferral). Amounts contributed to a tax-sheltered annuity (both elective and nonelective) are taken into account in calculating whether an employee's deferrals exceed the limits.

In general, amounts deferred under an eligible deferred compensation plan may not be made available to an employee before separation from service with the employer or an unforeseeable emergency.

Under an eligible deferred compensation plan, distributions must be made primarily for the benefit of participants, rather than beneficiaries. If a participant's benefits commence prior to death, the total amount of payments scheduled to be made to the participant must be more than 50 percent of the maximum amount that could have been paid to the participant if no provision were made for payments to the beneficiary.

Under an eligible plan, if a participant dies before the date the entire amount deferred has been paid out, the entire amount deferred (or the remaining portion thereof, if payment commenced before death) must be paid to the participant's beneficiary over a period not exceeding 15 years, unless the beneficiary is the participant's surviving spouse. If the beneficiary is the participant's surviving spouse, benefits must be paid over the life of the surviving spouse or any shorter period.

House Bill

Application to tax-exempt employers

The House bill applies the limitations and restrictions applicable to eligible and ineligible unfunded deferred compensation plans of State and local governments to unfunded deferred compensation plans maintained by nongovernmental tax-exempt organizations. In addition, the House bill (1) requires that amounts deferred by an employee under a qualified cash or deferred arrangement that is grandfathered under the bill be taken into account in determining whether the employee's deferrals under an eligible deferred compensation plan exceed the limits on deferrals under the eligible plan; (2) modifies the distribution requirements applicable to eligible deferred compensation plans; (3) permits rollovers between eligible deferred compensation plans; and (4) modifies the rule that an employee is taxable on deferrals under an eligible plan when such amounts are made available.

Distribution requirements

The House bill modifies the distribution requirements for eligible deferred compensation plans maintained by State and local governments and nongovernmental tax-exempt entities. As modified, distributions commencing prior to the death of a participant under an eligible deferred compensation plan are required to satisfy a payout schedule under which benefits projected to be paid over the lifetime of the participant are at least 66⅔ percent of the total benefits payable with respect to the participant.

If the participant dies prior to the date that the participant's entire interest has been distributed, or if the participant dies prior to commencement of the distribution

of benefits, the bill requires that payments to the participant's beneficiary commence within 60 days of the close of the plan year in which the participant's death occurs and that the entire amount deferred be distributed over a period not in excess of 15 years, unless the beneficiary is the participant's surviving spouse. If the beneficiary is the participant's surviving spouse, payments must be made over the life of the surviving spouse or any shorter period.

Whenever distributions (pre- or post-death) are to be made over a period extending beyond one year, the bill requires that the distribution be made in substantially nonincreasing periodic payments no less frequently than annually.

The House bill provides that benefits are not treated as made available under an eligible deferred compensation plan merely because an employee is allowed to elect to receive a lump-sum payment within 60 days of the election. However, the 60-day rule only applies if the employee's total deferred benefit does not exceed $3,500 and no additional amounts may be deferred with respect to the employee.

The House bill also amends present law to permit the rollover of benefits between eligible deferred compensation plans under certain circumstances.

State judicial plans

The House bill exempts from the new requirements for eligible deferred compensation plans any qualified State judicial plan (as defined in sec. 131(c)(3)(B) of the Revenue Act of 1978, as amended by sec. 252 of the Tax Equity and Fiscal Responsibility Act of 1982).

Effective date

The provisions are effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the rules relating to unfunded deferred compensation plans of State and local governments are not extended to tax-exempt employers.

The provisions are effective for taxable years beginning after December 31, 1988.

Conference Agreement

Application to tax-exempt employers

The conference agreement follows the House bill provision extending the rules relating to eligible unfunded deferred compensation plans of State and local governments to tax-exempt organizations. In addition, the conference agreement provides that a plan maintained by a tax-exempt organization that does not meet the requirements of an eligible deferred compensation plan is immediately treated as not meeting such requirements without regard to notification by the Secretary or a grace period. The conference agreement also provides that amounts deferred under an eligible deferred compensation plan are treated as elective contributions under a tax-sheltered annuity for purposes of the special catch-up election.

Distribution requirements

The conference agreement follows the House bill and the Senate amendment, except that the conference agreement provides that employees under an eligible unfunded deferred compensation plan are subject to the required beginning date and minimum required distribution requirements applicable to qualified plans (sec. 401(a)(9)), in addition to the special distribution rules applicable under section 457. The conference agreement permits transfers, rather than rollovers, between eligible plans.

Effective dates

The provision extending the eligible unfunded deferred compensation rules to tax-exempt employers is effective for taxable years beginning after December 31, 1986.

An exception is provided under the conference agreement for amounts deferred under a plan which (1) were deferred from taxable years beginning before January 1, 1987, or (2) are deferred from taxable years beginning after December 31, 1986, pursuant to an agreement that (i) was in writing on August 16, 1986, and (ii) on August 16, 1986, provided for a deferral for each taxable year of a fixed amount or an amount determined pursuant to a fixed formula. This exception does not apply with respect to amounts deferred in a fixed amount or under a fixed formula for any taxable year ending after the date on which the amount or formula is modified after August 16, 1986. Providing the participant with any discretion regarding the amount of the deferral constitutes a modification to this purpose.

For purposes of the grandfather rule, amounts are considered deferred from a taxable year if, but for the deferral, they would have been paid in that year. Also, in applying the limits to a deferral not grandfathered, grandfathered amounts are taken into account.

The modifications to the distribution requirements applicable to eligible unfunded deferred compensation plans generally are effective for taxable years beginning after December 31, 1988. However, the provisions (1) permitting transfers between eligible unfunded deferred compensation plans and (2) permitting cashouts of certain benefits without constructive receipt are effective with respect to transfers or distributions in years beginning after December 31, 1985.

5. Deferred Annuity Contracts

Present Law

Under present law, income credited to a deferred annuity contract is not currently includible in the gross income of the owner of the contract nor is the income taxed to the insurance company issuing the contract. In general, amounts received by the owner of an annuity contract before the annuity starting date (including loans under or secured by the contract) are includible in gross income as ordinary income to the extent that the cash value of the contract exceeds the owner's investment in the contract. A portion of each distribution received after the annuity starting date is treated as ordinary income based on the ratio of the investment in the contract to the total distributions expected to be received.

Present law provides an additional income tax on certain early withdrawals under an annuity contract. Under present law, amounts withdrawn from an annuity contract before the owner of the contract attains age 59½ are subject to an additional income tax equal to 5 percent of the amount of the withdrawal includible in income. This additional tax is not imposed if the distribution is (a) one of a series of substantially equal periodic payments made for the life of the taxpayer or over a period extending for at least 60 months after the annuity starting date, or (b) is allocable to investment in the contract before August 14, 1982.

House Bill

Income on the contract

Under the House bill, if any annuity contract is held by a person who is not a natural person (such as a corporation), then the contract is not treated as an annuity contract for Federal income tax purposes and the income on the contract for any taxable year is treated as ordinary income received or accrued by the owner of the contract during the taxable year. In the case of a contract the nominal owner of which is a person who is not a natural person (e.g., a corporation or a trust), but the beneficial owner of which is a natural person, the contract is treated as held by a natural person.

Income on the contract means the excess of (1) the sum of the net surrender value of the contract at the end of the taxable year and any amounts distributed under the contract for all years, over (2) the investment in the contract (i.e., the aggregate amount of premiums paid under the contract minus policyholder dividends or the aggregate amounts received under the contract that have not been included in income).

The provision does not apply to any annuity contract that is acquired by the estate of a decedent by reason of the death of the decedent, is held under a qualified plan (sec. 401(a) or 403(a)), as a tax-sheltered annuity (sec. 403(b)) or under an IRA, or is a qualified funding asset for purposes of a structured settlement agreement (sec. 130).

Early withdrawal tax

In addition, the House bill extends the additional income tax on early withdrawals from qualified plans and IRAs to deferred annuity contracts. In the case of a withdrawal from a deferred annuity contract prior to the owner's attainment of age 59½, death, or disability, an additional income tax is imposed equal to 15 percent of the amount includible in income. The additional income tax does not apply in the case of substantially equal periodic payments over the life of the owner or over the lives of the owner and a beneficiary.

Effective dates

The provisions of the House bill are effective for contributions made or withdrawals occurring after December 31, 1985. An exception to the provision that modifies the additional income tax on early withdrawals is provided for individuals who, as of November 6, 1985, have commenced receiving benefits under the contract pursuant to a written election designating a specific schedule of benefit payments.

Senate Amendment

Income on the contract

Same as the House bill.

Early withdrawal tax

The Senate amendment retains the present-law 5-percent early withdrawal tax and modifies the circumstances under which the tax is imposed. In the case of a withdrawal from a deferred annuity contract before the owner attains age 59½, dies, or becomes disabled, the 5-percent additional income tax applies unless the distribution is part of a series of substantially equal periodic payments over the life of the owner or over the lives of the owner and a beneficiary.

Effective dates

The provision of the Senate amendment relating to the taxation of income on a deferred annuity contract is effective for amounts invested after February 28, 1986. The provision of the bill modifying the additional income tax on early withdrawals is effective for distributions in taxable years beginning after December 31, 1986. An exception to the provision that modifies the addi-

tional income tax on early withdrawals is provided for individuals who, as of March 1, 1986, have commenced receiving benefits under the contract pursuant to a written election designating a specific schedule of benefit payments.

Conference Agreement

Income on the contract

The conference agreement follows the House bill and the Senate amendment with modifications. Under the conference agreement, the exceptions to the tax treatment of annuity contracts held by nonnatural persons is expanded in three respects.

First, an exception is provided for an annuity which constitutes a qualified funding asset (as defined in sec. 130(d), but without regard to whether there is a qualified assignment). Thus, an exception is provided for (1) qualified funding assets purchased by structured settlement companies, and (2) annuity contracts (which otherwise meet the definition of a qualified funding asset) purchased and held directly by a property or casualty insurance company to fund periodic payments for damages.

Second, the conference agreement provides an exception in the case of a deferred annuity that (1) is purchased by an employer upon the termination of a qualified plan and (2) is held by the employer until the employee separates from service with the employer.

Third, an exception is provided for an immediate annuity, which is defined as an annuity (1) which is purchased with a single premium or annuity consideration, and (2) the annuity starting date of which commences no later than 1 year from the date of purchase of the annuity.

The provision is effective for contributions to annuity contracts after February 28, 1986.

Early withdrawal tax

Under the conference agreement, the early withdrawal tax on deferred annuities is increased from 5 to 10 percent. The conference agreement follows the Senate amendment with respect to the exception to the tax in the case of certain distributions over the life (or joint lives) of the taxpayer (and the taxpayer's beneficiary) and, in addition, provides an exception to the tax in the case of an immediate annuity.

As under the Senate amendment, the conference agreement provides that if distributions to an individual are not subject to the tax because of application of the substantially equal payment exception, the tax will nevertheless be imposed if the individual changes the distribution method prior to age 59½ to a method which does not qualify for the exception. The additional tax will be imposed in the first taxable year in which the modification is made and will be equal to the tax (as determined under regulations) that would have been imposed had the exception not applied. For example, if, at age 50, an individual begins receiving payments under a distribution method which provides for substantially equal payments over the individual's life expectancy, and, at age 58, the individual elects to receive the remaining benefits in a lump sum, the additional tax will apply to the lump sum and to amounts previously distributed.

In addition, the recapture tax will apply if an individual does not receive payments under a method that qualifies for the exception for at least 5 years, even if the method of distribution is modified after the individual attains age 59½. Thus, for example, if an individual begins receiving payments in substantially equal installments at age 56, and alters the distribution method to a form that does not qualify for the exception prior to attainment of age 61, the additional tax will be imposed on amounts distributed prior to age 59½ as if the exception had not applied. The additional tax will not be imposed on amounts distributed after attainment of age 59½.

Further, the conference agreement provides an exception to the additional income tax on early withdrawals in the case of an annuity which constitutes a qualified funding asset (as defined in sec. 130(d), but without regard to whether there is a qualified assignment).

The provision is effective for taxable years beginning after December 31, 1986.

6. Elective Contributions Under Tax-Sheltered Annuities

Present Law

Under present law, public schools and certain tax-exempt organizations (including churches and certain organizations associated with churches) may make payments on behalf of an employee to purchase a tax-sheltered annuity contract (sec. 403(b)). Payments to a custodial account investing in stock of a regulated investment company (e.g., a mutual fund) are also permitted.

The amount paid by the employer is excluded from the employee's income for the taxable year to the extent the payment does not exceed the employee's exclusion allowance for the taxable year. The exclusion allowance is generally equal to 20 percent of the employee's includible compensation from the employer multiplied by the number of the employee's years of service with that employer, reduced by amounts already paid by the employer to purchase the annuity (sec. 403(b)(2)).

Employer payments to purchase a tax-sheltered annuity contract for an employee are also subject to the overall limits on contributions and benefits under qualified plans. Because tax-sheltered annuities generally are defined contribution plans, the limit on the annual additions on behalf of an employee generally is the lesser of 25 percent of compensation or $30,000. Certain catch-up elections allow an employer to contribute in excess of the usual percentage limits in certain years.

House Bill

Limit on elective deferrals

Under the House bill, the maximum amount that an employee can elect to defer for any taxable year under all tax-sheltered annuities in which the employee participates is limited to $7,000. In addition, the $7,000 limit is coordinated with elective 401(k) deferrals and the annual deduction limit for IRA contributions.

Special catch-up election

The House bill provides an exception to the $7,000 annual limit (but not to the otherwise applicable exclusion allowance (sec. 403(b) or the overall limit on contributions and benefits (sec. 415)) in the case of employees of an educational organization, a hospital, a home health service agency, or a church, or a convention or association of churches. Under this exception, any eligible employee who had completed 15 years of service with the employer would be permitted to make an additional salary reduction contribution under the following conditions:

(1) In no year can the additional contributions be more than $3,000;

(2) An aggregate limit of $15,000 applies to the total amount of contributions that, in any year, exceed $7,000; and

(3) In no event can this exception be used if an individual's lifetime elective deferrals exceed the individual's lifetime limit.

The lifetime limit on elective deferrals for an individual, solely for purposes of the special catch-up rule, is $5,000 multiplied by the number of years of service that the individual performed with the employer.

Effective dates

The provisions generally are effective for years beginning after December 31, 1985. A delayed effective date is provided for collectively bargained plans.

Senate Amendment

No provision.

Conference Agreement

Limit on elective deferrals

The conference agreement follows the House bill, except that the annual limit on elective deferrals under a tax-sheltered annuity is increased to $9,500. The $9,500 limit applies until the cost-of-living adjustments to the annual limit on elective deferrals under a qualified cash or deferred arrangement raise that limit from $7,000 to $9,500, at which time the limit on elective deferrals under a tax-sheltered annuity is also indexed in the same manner as the indexing of the annual limit for elective deferrals under a qualified cash or deferred arrangement.

The conference agreement clarifies the definition of elective deferrals to which the annual limit applies. In the case of an employer that allows employees a one-time election to participate in a contributory defined benefit pension plan with a single mandatory contribution rate or a tax-sheltered annuity program with elective deferrals, neither the election of an employee to participate in the defined benefit plan nor the employee contributions made to the defined benefit plan are to be treated as elective deferrals for purposes of the annual limit. Similarly, if an employee is required to contribute a fixed percentage of compensation to a tax-sheltered annuity as a condition of employment, the contributions are not treated as elective deferrals. This is considered elective deferrals if the employer and employee enter into temporary employment contracts. The conferees do not intend these examples to constitute the only situations in which contributions are not treated as elective deferrals. The conferees direct the Secretary to provide guidance to employers on other contributions that are not to be treated as elective deferrals.

Special catch-up election

The conference agreement follows the House bill and extends the special catch-up election to employees of health and welfare service agencies.

Effective dates

The provisions are effective for taxable years beginning after December 31, 1986.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, with respect to employees covered under a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective for plan years beginning before the earlier of (1) January 1, 1989, or (2) the date on which the last of the collective bargaining agreement terminates (determined without regard to any extensions in the collective bargaining agreement).

7. Special Rules for Simplified Employee Pensions

Present Law

Under present law, if an IRA qualifies as a simplified employee pension (SEP), the annual IRA deduction limit is increased to the lesser of $30,000 or 15 percent of compensation. The increased deduction limit applies only to employer contributions made on behalf of an employee to the SEP and does not apply to an employee's salary reduction contributions.

House Bill

No provision.

Senate Amendment

In general

The Senate amendment revises the qualification requirements relating to SEPs to permit employees to elect to have SEP contributions made on their behalf or to receive the contributions in cash. In addition, the Senate amendment makes miscellaneous changes to the SEP requirements to decrease the administrative requirements applicable to an employer maintaining a SEP.

Salary reduction SEPs

Under the Senate amendment, employees who participate in a SEP would be permitted to elect to have contributions made to the SEP or to receive the contributions in cash. If an employee elects to have contributions made on the employee's behalf to the SEP, the contribution is not treated as having been distributed or made available to the employee. Elective deferrals under a SEP are to be treated as similar to elective deferrals under a qualified cash or deferred arrangement and, thus, are subject to the $7,000 (indexed) cap on elective deferrals.

The Senate amendment provides that the election to have amounts contributed to a SEP or received in cash is available only if at least 50 percent of the employees of the employer elect to have amounts contributed to the SEP. This exception to the constructive receipt principle is available only in a taxable year in which the employer maintaining the SEP has 25 or fewer employees as of the beginning of the year.

Under the Senate amendment, the deferral percentage for each highly compensated employee cannot exceed 150 percent of the average deferral percentage for all other eligible employees. Matching and nonelective contributions may not be taken into account in determining the deferral percentage.

SEP deduction converted to exclusion from income

Under the Senate amendment, the amounts contributed to a SEP by an employer on behalf of an employee and the elective deferrals under a SEP are excludable from gross income, rather than deductible as under present law. The elective deferrals are included as wages for employment tax purposes.

In addition, the Senate amendment (1) modifies the rules relating to maintaining a SEP on a calendar year basis, and (2) prescribes rules for maintaining a SEP on a taxable year basis.

Participation requirements

Under the Senate amendment, the participation requirements for SEPs are modified to require that an employer make contributions for a year on behalf of each employee who (1) has attained age 21,[6] (2) has performed services for the employer during at least 3 of the immediately preceding 5 years, and (3) received at least $300 in compensation from the employer for the year.

In addition, the Senate amendment provides that this 100-percent participation requirement applies separately to elective arrangements and, for purposes of such elective arrangements, an individual who is eligible is deemed to receive an employer contribution. If nonelective SEP contributions are made for any employee, nonelective contributions must be made for all employees satisfying the participation requirements. Similarly, if any employee is eligible to make elective SEP deferrals, all employees satisfying the participation requirements must be eligible to make elective SEP deferrals.

Wage-based contribution limitation for SEPs

Under the Senate amendment, the $200,000 limit on compensation taken into account and the $300 de minimis threshold are indexed at the same time and in the same manner as the dollar limits on benefits under a defined benefit pension plan (sec. 415(d)).

Definition of computation period

The Senate amendment permits an employer to elect to use its taxable year rather than the calendar year for purposes of determining contributions to a SEP.

Integration rules

The Senate amendment eliminates the current rules under which nonelective SEP contributions may be combined with employer OASDI contributions for purposes of the applicable nondiscrimination requirements. In place of these rules, the Senate amendment permits nonelective SEP contributions to be tested for nondiscrimination under the new rules for qualified defined contribution plans permitting a limited disparity between the contribution percentages applicable to compensation below and compensation above the social security wage base.

Effective date

The provisions are effective for years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment with two modifications of the special nondiscrimination test applicable to salary reduction SEPs.

Under the first modification, the deferral percentage for each highly compensated employee cannot exceed the average deferral percentage for all other nonhighly compensated eligible employees by more than 125 percent.

Under the second modification, the exception from the rule of constructive receipt is limited to employers that did not have more than 25 employees at any time during the prior taxable year.

The provisions apply for taxable years beginning after December 31, 1986.

8. Deductible Contributions Permitted under Section 501(c)(18) Plans

Present Law

Under present law, a trust or trusts created before June 25, 1959, forming part of a pension plan funded solely by contributions of employees is entitled to tax-exempt status under section 501(a) of the Code (sec. 501(c)(18)).

Rev. Rul. 54-190, 1954-1 C.B. 46, concluded that contributions to a pension plan described above were deductible as union dues by an employee making such contributions. In 1982, the Internal Revenue Service declared Rev. Rul. 54-190 obsolete.[7]

House Bill

No provision.

Senate Amendment

Under the amendment, employees who participate in a section 501(c)(18) pension plan are permitted to elect to make deductible contributions if certain requirements are met. If an employee elects to make a deductible contribution to the plan, the contribution is deductible up to the lesser of $7,000 (coordinated with the limit on elective deferrals) or 25 percent of the compensation of the employee includible in income for the taxable year.

The amendment provides that the election to make deductible contributions to a section 501(c)(18) plan is available only if the plan satisfies a special nondiscrimination test similar to the test applicable to a qualified cash or deferred arrangement. If the test is not satisfied, rules similar to the rules applicable to excess contributions under a qualified cash or deferred arrangement are to apply.

Conference Agreement

The conference agreement follows the Senate amendment.

The provision is effective for contributions made in taxable years beginning after December 31, 1986.

B. Nondiscrimination Requirements

1. Minimum Coverage Requirements for Qualified Plans

Present Law

A plan generally satisfies the present-law coverage rule if (1) it benefits a significant percentage of the employer's workforce (percentage test), or (2) it benefits a classification of employees determined by the Secretary not to discriminate in favor of employees who are officers, shareholders, or highly compensated (classification test).

Percentage test

A plan meets the percentage test if (1) it benefits at least 70 percent of all employees, or (2) it benefits at least 80 percent of the employees eligible to benefit under the plan and at least 70 percent of all employees are eligible (i.e., the plan benefits at least 56 percent of all employees).

Classification test

A plan meets the classification test if the Secretary determines that it covers a classification of employees that does not discriminate in favor of employees who are officers, shareholders, or highly compensated (highly compensated employees).

Under Treasury regulations, the determination as to whether a classification discriminates in favor of highly compensated employees is to be made on the basis of the surrounding facts and circumstances of each case, allowing for a reasonable difference between the ratio of highly compensated employees who are benefited by the plan to all such employees and the corresponding ratio calculated for employees who are not highly compensated.

Published rulings (e.g., Rev. Rul. 83-58) applying the classification test include as relevant facts and circumstances the percentage of total employees covered and the compensation of the covered employees and the compensation of the excluded employ-

[6] Age 25 is reduced to age 21 under the provisions of the conference agreement making technical corrections to the Retirement Equity Act of 1984.

[7] Rev. Rul. 82-127, 1982-1 C.B. 215.

ees. The regulations also provide that a showing that a specified percentage of participants in a plan are not highly compensated is not sufficient to establish that the plan does not discriminate in favor of highly compensated employees.

Nondiscriminatory contributions or benefits

Additional tests are applied to determine whether contributions or benefits under the plan discriminate in favor of highly compensated employees (sec. 401(a)(4)). The present-law nondiscrimination requirements are satisfied if either the contributions or the benefits under a qualified plan do not discriminate in favor of highly compensated employees (sec. 401(a)(4)).

Aggregation rules

Aggregation of employers.—In applying the qualification rules (including the coverage and nondiscrimination tests), all employees of corporations that are members of a controlled group of corporations, or all employees of trades and businesses (whether or not incorporated) that are under common control, are aggregated and treated as if employed by a single employer (sec. 414(b) and (c)). Similarly, all employees of employers that are members of an affiliated service group are treated as employed by a single employer for purposes of the qualification requirements (sec. 414(m)).

In addition, for purposes of certain rules applicable to qualified plans and simplified employee pensions (SEPs), an individual (a leased employee) who performs services other than as an employee for a person and who meets certain requirements is treated as an employee of that person (sec. 414(n)). Finally, the Secretary has general regulatory authority to prevent avoidance of certain pension requirements (sec. 414(o)).

Aggregation of plans and comparability.—Under present law, an employer may designate two or more plans as a single plan for purposes of satisfying the coverage requirements.[1] However, if several plans are designated as a single plan, the plans, considered as a unit, must provide contributions or benefits that do not discriminate in favor of highly compensated employees.

In determining whether one or more plans designated as a unit provide benefits or contributions that do not discriminate in favor of highly compensated employees, it is necessary to determine whether the designated plans provide "comparable" benefits or contributions. Rev. Rul. 81-202[2] provides guidance that may be applied to determine whether the amount of employer-derived benefits or contributions provided under several plans discriminate in favor of highly compensated employees.

Excludable employees

In applying the percentage test, employees who have not met a minimum service or age requirement under the plan are disregarded. In addition, in applying the percentage test or the classification test, employees not covered by the plan and subject to a collective bargaining agreement between employee representatives and one or more employers are disregarded.

Tax-sheltered annuities

Under present law, no coverage or nondiscrimination rules prohibit an employer's tax-sheltered annuity program from favoring highly compensated employees.

a. Qualified plan coverage

House Bill

The House bill does not amend the present-law rules relating to the coverage requirements for qualified plans. However, the House bill directs the Secretary to study the effect of the present-law coverage tests and to report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, as well as the Joint Committee on Taxation, with respect to the study by July 1, 1986.

Senate Amendment

With respect to the coverage rules applicable to qualified plans, the Senate amendment (1) increases, to 80 percent of all employees, the level of coverage necessary to satisfy the "percentage test"; (2) replaces the "classification test" of present law with a "reasonable classification test" and provides the Treasury with guidance as to the manner in which the test is to be interpreted; (3) establishes an alternative method for satisfying the reasonable classification test ("alternative reasonable classification test"); (4) clarifies the circumstances under which an employee will be treated as benefiting under a plan for purposes of the coverage rules; (5) generally permits, for purposes of satisfying any of the tests, the exclusion from consideration of employees who have not satisfied certain minimum age and service requirements; (6) establishes an objective definition of those employees in whose favor discriminatory coverage is prohibited; (7) permits satisfaction of certain of the coverage rules on a line of business or operating unit basis; (8) establishes a definition of a line of business or operating unit with a special safe-harbor rule; and (9) contains a special transition rule for certain dispositions or acquisitions of a business.

The provisions of the Senate amendment generally are effective for plan years beginning after December 31, 1988. However, in the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective for plan years beginning before the earlier of (1) the later of (i) January 1, 1989, or (ii) the date on which the last of the collective bargaining agreements terminates, or (2) January 1, 1991. Extensions or renegotiations of the collective bargaining agreement, if ratified after February 28, 1986, are disregarded.

Conference Agreement

Overview

With respect to the coverage rules applicable to qualified plans, the conference agreement follows the Senate amendment, except as outlined below.

General coverage rules

Under the conference agreement, a plan is not qualified unless the plan satisfies at least one of the following requirements:

(1) the plan benefits at least 70 percent of all nonhighly compensated employees (referred to herein as the "percentage test");

(2) the plan benefits a percentage of nonhighly compensated employees which is at least 70 percent of the percentage of highly compensated employees benefiting under the plan (referred to herein as the "ratio test"); or

(3) the plan meets the average benefits test.

An employer that has no nonhighly compensated employees in its workforce is considered to pass the coverage test.

Average benefits test

A plan meets the average benefits test if (1) the plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees ("classification test"); and (2) the average benefit percentage for nonhighly compensated employees of the employer is at least 70 percent of the average benefit percentage for highly compensated employees of the employer.

Classification test.—For purposes of the average benefits test, the conferees intend that the classification test is generally to be based on the present-law section 410(b)(1)(B) (as modified judicially and administratively in the future). However, it is to be applied using the new definitions of highly compensated employees and excludable employees.

Thus, the test is to be applied on the basis of the facts and circumstances of each case, including the difference between the coverage percentages of the highly compensated employees and the other employees, the percentage of total employees covered, and the difference between the compensation of the covered employees and the compensation of the excluded employees. Nevertheless, the conferees expect that the Secretary will consider providing an objective safe harbor based on these and other relevant factors to facilitate compliance with the test.

Average benefit percentage.—The term "average benefit percentage" means, with respect to any group of employees, the average of the benefit percentages calculated separately with respect to each employee in such group. The term "benefit percentage" means the employer-provided contributions (including forfeitures) or benefits of an employee under all qualified plans of the employer, expressed as a percentage of such employee's compensation. If benefit percentages are determined on the basis of employer-provided contributions, all employer-provided benefits must be converted into contributions for testing purposes. Similarly, if benefit percentages are determined on the basis of employer-provided benefits, all employer-provided contributions are to be converted into benefits. In determining the amount of contributions or benefits, the approach of Rev. Rul. 81-202 is to be the sole rule applicable, as modified in the manner described below. Thus, in the case of benefits testing, the benefit percentages are determined based on projected benefits.

The conferees further intend that the rules of Rev. Rul. 81-202 be modified in several respects, both for purposes of the average benefit percentage test and for purposes of determining whether 2 or more plans that are treated as a single plan under the percentage test, ratio test, or classification test discriminate in favor of highly compensated employees (sec. 401(a)(4)). First, Rev. Rul. 81-202 is to be modified to reflect the new limits contained in the conference agreement on the extent to which a plan may be integrated. Also, the new limitation on the amount of compensation that may be taken into account and the new definition of compensation applies under Rev. Rul. 81-202 as they apply for all nondiscrimination rules.

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[1] Treas. Reg. sec. 1.410(b)-1(d)(3)(ii) prohibits this designation in certain cases involving TRASOPs and, prior to 1984, certain plans subject to sec. 401(a)(17). In addition, Treas. Reg. sec. 54.4975-11(e)(1) prohibits this designation in certain cases involving ESOPs.

[2] 1981-2 C.B. 93.

Rev. Rul. 81-202 is also to be modified to take into account other significant plan features. For example, determinations under Rev. Rul. 81-202 are to take into account the rate at which benefits actually accrue and, in appropriate cases, may take into account the existence of different plan options such as loans or lump-sum distributions that are available to highly compensated participants, but not to a proportionate number of nonhighly compensated participants. Moreover, the conferees clarify that under Rev. Rul. 81-202 the same actuarial assumptions are to be used in valuing different benefits or contributions. In appropriate circumstances, Rev. Rul. 81-202 may also be modified to take into account reasonable salary projections. The Secretary may also, in circumstances justifying special scrutiny, consider requiring a certificate of comparability from an enrolled actuary.

Finally, the conferees do not intend to restrict the authority of the Secretary to modify, as appropriate, aspects of Rev. Rul. 81-202 not discussed above. Also, the conferees do not intend that application of the rules of Rev. Rul. 81-202 to the average benefit percentage test be interpreted as requiring that an averaging approach be adopted for purposes of applying these rules to multiple plans being tested as a single plan under section 401(a)(4).

For purposes of determining benefit percentages, all pre-tax contributions or benefits provided under a qualified plan are considered employer-provided and must be taken into account, including, for example, elective contributions under a qualified cash or deferred arrangement. In no case may an employer disregard any qualified plan in determining benefit percentages, even if such qualified plan satisfies the percentage test or ratio test standing alone. Contributions or benefits under other types of plans or programs (such as SEPs or tax-sheltered annuity programs (sec. 403(b)) are not taken into account.

After the benefit percentage of each employee is determined in the manner described above, the average for the two groups (highly compensated employees and nonhighly compensated employees) is then to be determined by averaging the individual benefit percentages of each employee (including employees not covered by any plan) in a manner similar to the computation of the actual deferral percentage of a group of employees under a qualified cash or deferred arrangement.

Period of computing percentage.—The conference agreement provides that each employee's benefit percentage is to be computed, at the election of the employer, on the basis of contributions or benefits for (a) the current plan year, or (b) a period of consecutive plan years (not in excess of 3 years) ending with the current plan year. As under the Senate amendment, the period of consecutive plan years chosen by the employer is to be uniformly applied in computing each employee's benefit percentage, and may not be changed without the consent of the Secretary.

In addition, the conferees clarify that the fact that a failure to meet the new coverage tests was due to unforeseen circumstances does not affect application of the tests.

Employees benefiting under the plan

The conference agreement follows the Senate amendment. The conference agreement also clarifies that, for purposes of the average benefit percentage component of the average benefits test, it is actual benefits, not eligibility, that is taken into account. As under current law, this is also true for purposes of establishing comparability between plans.

Aggregation of plans and comparability

The conference agreement follows the Senate amendment, except that Rev. Rul. 81-202 is to be modified in the manner described above.

Excludable employees

For purposes of (a) the percentage test, (b) the ratio test, and (c) the average benefits test, the conference agreement generally follows the Senate amendment, with the following exceptions.

Minimum age and service.—The rules applicable under the Senate amendment to the percentage and reasonable classification tests apply to the percentage, ratio and classification tests. The rules applicable to the alternative reasonable classification test apply to the average benefits test (other than the classification test).

The conference agreement reflects the Senate amendment rule permitting employees who do not meet the age 21 and one year of service requirements to be tested separately. However, under the conference agreement, such separate testing is permissible even if such employees are not covered by a separate plan. Under the agreement, an employer may elect to test all such excludable employees separately. Alternatively, an employer may elect to test one group of excludable employees separately without testing all excludable employees separately if such group is defined in a nondiscriminatory manner solely by reference to the age or service requirements. For example, an employer may elect to test separately all employees excludable solely on the grounds that they do not have one year of service, but not include in such testing group employees excluded under the age rule. Also, the employer may test separately a group of employees who would pass an age or service requirement that is less restrictive than the age 21 or one year of service requirement. For example, an employer could test separately all employees excludable solely on the grounds that they are not age 21, but who are at least 18.

Collective bargaining agreement.—For purposes of applying (a) the percentage test, (b) the ratio test, or (c) the average benefits test to qualified plan coverage of employees who are not included in a unit of employees covered by a collective bargaining agreement, all employees covered by such an agreement are disregarded. However, in applying the same tests to employees covered by any such agreement, an employee may not be disregarded based on the fact that such employee is not covered under the collective bargaining agreement.

Separate line of business

The conference agreement follows the Senate amendment, with the modifications described in Part E.1., below. The conference agreement also clarifies that the line of business rule applies to the percentage test, as well as to the ratio test and the average benefits test.

Compensation

The conference agreement provides that, for purposes of applying the nondiscrimination rules (including the actual deferral percentage limits for cash or deferred arrangements and for employee and employer matching contributions), except as otherwise expressly provided (e.g., the definition of compensation for purposes of identifying the highly compensated employees), the term "compensation" means the total includible compensation of the employees of the employer. In addition, an employer may elect to treat salary reduction amounts under a cash or deferred arrangement, tax-sheltered annuity program, SEP, or cafeteria plan, as compensation, provided that such treatment is applied on a consistent basis. Thus, if an employer elects to treat elective deferrals under one cash or deferred arrangement as compensation, it must treat all elective deferrals under all cash or deferred arrangements as compensation. Further, the Secretary is directed to prescribe alternative definitions of compensation for use by employers in applying the nondiscrimination tests. Such alternative definitions are to include the basic or regular compensation of employees (e.g., disregarding bonuses and overtime). An employer may use an alternative definition prescribed by the Secretary only if it does not discriminate in favor of that employer's highly compensated employees; such determination is to be made in an objective fashion on the basis of the total includible compensation of employees.

Special rules for certain dispositions and acquisitions

The conference agreement follows the Senate amendment.

Former employees

Under rules prescribed by the Secretary, the coverage rules are to apply separately to former employees. The conferees intend that for this purpose rules similar to those applicable to employee benefits may be applied. (*See* Part E.1., below.)

Sanction

The conference agreement modifies the sanction applicable to a plan that fails to qualify due solely to a failure to satisfy the new coverage rules. Under the agreement, nonhighly compensated employees are not taxable on amounts contributed to or earned by the trust merely because a plan fails to satisfy the coverage requirements. Highly compensated employees, on the other hand, are taxable on the value of their vested accrued benefit attributable to employer contributions and income on any contributions to the extent such amounts have not previously been taxed to the employee. Except for these two changes, the sanctions applicable under current law are not modified. Thus, as under present law, in appropriate circumstances, apply lesser sanctions than those authorized.

Effective date

The conference agreement follows the Senate amendment.

2. Tax-Sheltered Annuities

House Bill

In general

The House bill generally applies the qualified plan coverage and nondiscrimination rules of present law (secs. 410(b) and 401(a)(4)), except to the extent otherwise modified by the House bill, to the nonelective and matching contributions or benefits of tax-sheltered annuity programs (other than those maintained for church employees). To the extent the program permits elective employer deferrals, a special coverage and nondiscrimination rule applies to those elective deferrals.

Elective deferrals

The bill provides a special coverage and nondiscrimination rule applicable to tax-

sheltered annuity programs that permit elective deferrals. If the employer provides nonelective or matching contributions or benefits under a program, the special rule applies only to the elective deferrals and the general nondiscrimination rules described above apply to the other contributions or benefits. If, however, the employer maintains a tax-sheltered annuity program that permits only elective deferrals (i.e., no nonelective or matching contributions or benefits are provided), only the special rule for elective deferrals applies.

A tax-sheltered annuity program will be considered discriminatory with respect to elective deferrals unless the opportunity to make such deferrals is available to all employees of the entity sponsoring the tax-sheltered annuity program. Thus, the employer generally is not to require any minimum dollar amount (or percentage of compensation) as a condition of participation, other than a reasonable de minimis amount (such as minimum annual contributions of $300 (or one percent of compensation) or minimum monthly contributions of $25).

Elective deferrals under a tax-sheltered annuity program consist of those employer contributions made pursuant to a salary reduction agreement, whether evidenced by a written instrument or otherwise (sec. 3121(a)(5)(D)), to the extent those contributions are excludable from the employee's gross income. In applying the special test for deferrals, no employees of the entity sponsoring the tax-sheltered annuity program (other than nonresident aliens with no U.S.-source earned income) may be excluded from consideration. For example, the qualified plan rules permitting the exclusion of certain employees based upon age and service and coverage under collective bargaining agreements do not apply.

Aggregation of employers

As with respect to qualified plans, the new coverage and nondiscrimination rules generally apply with respect to the "employer" as defined in sections 414 (b), (c), (m), and (o). In addition, the qualified plan rules relating to leased employees apply (sec. 414(n)). However, the rules relating to elective deferrals apply, pursuant to Treasury regulations, with respect to the entity of the employer sponsoring the tax-sheltered annuity program.

Employers subject to the nondiscrimination rule

In general, all employers eligible to sponsor a tax-sheltered annuity program are subject to the nondiscrimination rules added by the bill. However, these rules do not apply to tax-sheltered annuity programs maintained for church employees.

For purposes of this exclusion, the term "church" is defined to include only a church described in section 501(c)(3) or a qualified church-controlled organization. These terms generally have the same meaning as they do for purposes of exclusion from the SECA and FICA taxes (secs. 1402 and 3121). Accordingly, for purposes of this provision, the term "church" includes (1) a convention or association of churches, and (2) an elementary or secondary school that is controlled, operated, or principally supported by a church or by a convention or association of churches.

Similarly, the term "qualified church-controlled organization" means any church-controlled tax-exempt organization described in section 501(c)(3) other than an organization that both (1) offers goods, services, or facilities for sale (other than on an incidental basis) to the general public (e.g., to individuals who are not members of the church), other than goods, services, or facilities that are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities, and (2) normally receives more than 25 percent of its support from either (a) governmental sources, or (b) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses, or from (a) and (b) combined.

These nondiscrimination rules generally apply for years beginning after December 31, 1985. However, with respect to tax-sheltered annuity programs maintained by State and local governments, these nondiscrimination rules generally apply for plan years beginning after November 21, 1987.

Senate Amendment

No provision.

Conference Agreement

In general

The conference agreement generally follows the House bill, subject to the following modifications.

If an employer provides nonelective or matching contributions or benefits under a tax-sheltered annuity program, the conference agreement requires that such employer contributions or benefits satisfy the new coverage and nondiscrimination rules applicable to qualified plans, as modified or added pursuant to the conference agreement (*see* Part B.1., above), rather than the coverage and nondiscrimination rules applicable to qualified plans under present law.

Except as otherwise noted below, these rules apply in the same manner to tax-sheltered annuity programs as they do to qualified plans. Thus, the full array of rules relating to nondiscrimination apply (such as, for example, the limit on the amount of compensation that may be taken into account, the special nondiscrimination rule applicable to matching contributions, the employee leasing rules, and the minimum participation rules).

Integration

As with respect to qualified plans, employers maintaining tax-sheltered annuity programs generally may integrate contributions or benefits under the new integration rules for purposes of the average benefits test (sec. 410(b)), for establishing comparability between programs (or between a program and a plan), and for satisfying the benefits test within a plan (sec. 401(a)(4)). However, under rules prescribed by the Secretary, there is no permitted disparity under the new integration rules for employees who are not covered by social security.

Permissive aggregation

If a tax-sheltered annuity program, standing alone, fails to satisfy the percentage test, the ratio test, or the classification test, the employer may elect to treat the tax-sheltered annuity program and a qualified plan or another tax-sheltered annuity program as a single plan solely for purposes of demonstrating that the tax-sheltered annuity program satisfies the coverage requirements. If a tax-sheltered annuity program is aggregated with another tax-sheltered annuity or with a qualified plan for purposes of satisfying the coverage rules, the aggregated arrangements must provide contributions or benefits that do not discriminate in favor of highly compensated employees (secs. 401(a)(4) and 401(m)).

The requirement that such aggregated arrangements provide comparable contributions or benefits generally applies in the same manner to tax-sheltered annuity programs as it does to qualified plans. Thus, the principles of Rev. Rul. 81-202, as modified in the ways described in Part B.1., above, are to apply. However, the conferees intend that the Secretary is to prescribe rules applicable to tax-sheltered annuities that reduce the administrative burden of applying Rev. Rul. 81-202. For example, the Secretary might permit, under appropriate circumstances, testing less frequently than annually.

In applying the average benefit percentage component of the average benefits test to a tax-sheltered annuity program, an employer may at its election include all qualified plans in determining the average benefit percentages.

As under the House bill, a tax-sheltered annuity program may not be aggregated with a qualified plan for purposes of determining whether the qualified plan satisfies the applicable coverage and nondiscrimination rules, including the average benefits test.

Excludable employees

The categories of employees that are excluded in applying the coverage rules to tax-sheltered annuities are the same as those that are excluded in applying the rules to qualified plans, except that, in addition, an employer is to exclude from consideration students who normally work less than 20 hours per week. This additional category of excludable employees is treated in the same manner as the category of employees who do not meet the service requirements for qualified plans. Thus, for example, the 20-hour requirement only applies if the employer excludes all students normally working less than 20 hours per week.

Elective deferrals

The conference agreement follows the House bill, except that in applying the nondiscriminatory coverage rule applicable to elective deferrals under a tax-sheltered annuity program, the employer is to exclude from consideration students who normally work fewer than 20 hours per week, as discussed above. The conference agreement also clarifies that, in applying the average benefits test, elective deferrals under a tax-sheltered annuity are to be disregarded.

The conference agreement also clarifies the definition of an elective deferral. If an employee has a one-time election to participate in a program that requires an employee contribution, such contribution will not be considered an elective deferral to the extent that the employee is not permitted subsequently to modify the election in any manner. In addition, the Secretary is authorized to prescribe additional instances in which employer contributions to a plan will not be considered elective despite the existence of limited rights of election by the employee.

Employers subject to the nondiscrimination rule

The conference agreement follows the House bill. In addition, the conference agreement provides that for purposes of the nondiscrimination rules applicable to tax-sheltered annuity programs, the general rules regarding aggregation of employers and testing on a line of business or operating unit basis shall apply under rules prescribed by the Secretary. The Secretary may provide for a narrower definition of

employer for purposes of the rules applicable to elective deferrals.

Effective date

The application of the nondiscrimination rules to tax-sheltered annuity programs is effective for plan years beginning after December 31, 1988.

3. Minimum Participation Rule

Present Law

Under present law, an employer may designate two or more plans as a single plan for purposes of satisfying the coverage requirements applicable to qualified plans (sec. 410(b)). (*See* Part B.1., above, for a discussion of the coverage rules applicable to qualified plans.) However, if several plans are designated as a single plan, the plans, considered as a unit, must be provided for the exclusive benefit of employees and also must provide contributions or benefits that do not discriminate in favor of highly compensated employees (sec. 401(a)(4)).

In determining whether several different plans designated as a unit provide benefits or contributions that do not discriminate in favor of highly compensated employees, it is necessary to determine whether the different plans provide "comparable" benefits or contributions. Rev. Rul. 81-202 [3] provides guidance that may be applied to determine whether the amount of employer-derived benefits or contributions provided under several plans discriminate in favor of highly compensated employees. That ruling provides (1) methods for adjusting all types of benefits to a standard form; (2) methods for converting benefits into contributions, and contributions into benefits; and (3) methods for imputing the value of employer-provided social security benefits.

The ruling generally provides that the amount of employer-derived benefits provided by a plan or plans will be considered nondiscriminatory if (1) the normalized employer-provided benefits, or (2) both the actual employer contributions and the adjusted contributions do not constitute a greater percentage of nondeferred compensation for any highly compensated employee than for any nonhighly compensated employee. The ruling allows either contributions or benefits to be compared regardless of the type of plans involved.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, a plan is not a qualified plan unless it benefits no fewer than the lesser of (a) 50 employees of the employer or (b) 40 percent or more of all employees of the employer. The requirement may not be satisfied by aggregating comparable plans. Also, the requirement applies on an employer-wide basis and may not be applied on a line of business or operating unit basis. In the case of a cash or deferred arrangement or the portion of a defined contribution plan (including the portion of a defined benefit plan treated as a defined contribution plan (sec. 414(k)) to which employee contributions or employer matching contributions are made, an employee will be treated as benefiting under the plan if the employee is eligible to make contributions to the plan.

The Senate amendment generally provides that, for purposes of applying the minimum participation rules, the same categories of employees may be disregarded as may be disregarded for purposes of applying the general coverage rules. In the case of a plan covering only employees included in a unit of employees covered by a collective bargaining agreement, all employees not included in such unit may be disregarded for purposes of satisfying the minimum participation rule.

The provisions are generally effective for plan years beginning after December 31, 1988.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, in the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective for plan years beginning before the earlier of (1) the later of (i) January 1, 1989, or (ii) the date on which the last of the collective bargaining agreements terminates, or (2) January 1, 1991. Extensions or renegotiations of the collective bargaining agreement, if ratified after February 28, 1986, are disregarded.

Conference Agreement

The conference agreement follows the Senate amendment with the following modifications and clarifications.

First, the minimum participation rule generally does not apply to a multiemployer plan. However, this exemption does not apply to a multiemployer plan that covers any professional (e.g., doctor, lawyer, or investment banker). In addition, the special rule in the Senate amendment regarding plans covering only employees included in a unit of employees covered by a collective bargaining agreement also does not apply to a plan that covers any professional. No inference is intended from these rules that a plan covering a professional may be a multiemployer plan.

Second, the conference agreement provides that, under regulations prescribed by the Secretary, any separate benefit structure, any separate trust, or any separate arrangement with respect to a defined benefit plan may be treated as a separate plan for purposes of applying the minimum participation rule. Thus, for example, a plan that provides two different formulas for calculating participants' benefits or contributions may be treated as at least two plans. Also, if defined benefit plan assets are payable from more than one source, such as from more than one trust, each source of assets may be considered a separate plan. If any particular person or persons have any priority (under the terms of the plan or by arrangement outside of the plan) with respect to a source of assets for defined benefits, such as a right to some or all of a possible reversion, such person or persons may be considered the sole participant or participants with respect to that "plan."

In general, it is the intent of the conferees to define "plan" in such a way as to carry out the purposes of the minimum participation rule. Thus, if there is a single defined benefit structure and a single source of assets, there may be more than one plan for purposes of this rule if, under all the facts and circumstances (including those outside of the plan), the arrangement has an effect similar to providing a plan or account to a group of employees that would not satisfy the minimum participation rule. For example, a group of employees might agree to provide each one of them with investment authority with regard to a separate pool of assets held with respect to the defined benefit structure. If such employees may be compensated in any manner, inside or outside the plan, by reference to the results of their investments, each part of the pool of assets may be considered a separate plan benefiting the participant controlling the investment thereof.

In addition, "plan" is to be defined so as to preclude the use of structures such as defined benefit plan-defined contribution plan combinations (with benefit offsets) to avoid the rule.

If any plan, as specially defined herein, fails to satisfy the minimum participation rule, the entire plan (as otherwise defined) fails to satisfy the qualification standard (sec. 401(a)). Also, except to the extent provided in regulations, a plan will not satisfy this rule for a year unless it satisfies it on each day of the year.

The conferees also clarify how the minimum participation rules apply with respect to coverage of employees who could be excluded under the age or service rules from participation in a qualified plan. Generally, the rule is to apply as if the only employees of the employer were the excludable employees who may be tested separately under the coverage tests. However, all employees of the employer must be taken into account if any highly compensated employee is covered as an excludable employee for more than one year. Also, if any excludable employee is covered under a defined benefit pension plan, all employees of the employer are to be taken into account in applying the minimum participation rule to such plan, except where (1) the benefits provided under such coverage are comparable (or less than comparable) to the coverage of nonexcludable employees; and (2) the plan covering such excludable employees would satisfy the minimum participation rule (taking into account all employees of the employer) but for the fact that such plan has a different defined benefit structure from the plan covering the nonexcludable employees. Thus, payments with respect to defined benefits provided to excludable employees must come from the same source as payments with respect to defined benefits provided to nonexcludable employees. All employees of the employer are to be taken into account if only the excludable employees are covered by a defined benefit plan.

If excludable employees may be tested separately under the rules described above, such employees may be disregarded in applying the minimum participation rule to other employees.

The Secretary may exempt from the application of this rule two limited situations. The Secretary may, under appropriate conditions, exempt a plan that benefits no employee who is or ever has been a highly compensated employee with respect to service being credited under the plan, provided that such plan is not necessary for another plan or plans to satisfy the applicable coverage rules (sec. 410(b)).

The Secretary may, under appropriate conditions, also exempt a plan that may not be terminated on account of the provisions of the Single Employer Pension Plan Amendment Act (SEPPAA) because it is underfunded. However, such exemption may not apply unless benefit accruals cease, the plan obtains a letter of insufficiency for each plan year of exemption, and the plan eliminates, under rules prescribed by the Secretary, any different benefit structure or separate arrangement (as described above).

Further, the conference agreement provides that if (i) a plan is in existence on August 16, 1986, (ii) the plan would fail to meet the requirements of the minimum par-

[3] 1981-2 C.B. 93.

ticipation rule if such rule were in effect on August 16, 1986, and (iii) there is no transfer of assets to or liabilities from the plan, or merger or spinoff involving the plan, after August 16, 1986, such plan may be terminated and the 10-percent excise tax on the reversion of assets (*See* Part D.3., below) is not imposed on any employer reversion from such plan. Such termination and reversion are permissible even though the terminating plan relies on another plan that is not terminated for qualification. In determining the amount of any such employer reversion, the present value of the accrued benefit of any individual who is a highly compensated employee, is to be determined by using an interest rate that is equal to the maximum interest rate that may be used for purposes of calculating a participant's accrued benefit under section 411(a)(11)(B). (*See* Part E.4., below.) The Secretary is to prescribe rules preventing avoidance of this interest rate rule through distributions prior to or in lieu of a reversion.

4. Vesting Standards

Present Law

In general

To ensure that employees with substantial periods of service with the employer do not lose plan benefits upon separation from employment, the Code generally requires that under a qualified plan (1) a participant's benefits be fully vested upon attainment of normal retirement age under the plan; (2) a participant be fully vested at all times in the benefit derived from employee contributions; and (3) employer-provided benefits vest at least as rapidly as under one of three alternative minimum vesting schedules (Code sec. 411(a)). Under these schedules, an employee's right to benefits derived from employer contributions becomes nonforfeitable (vested) to varying degrees upon completion of specified periods of service with an employer.

Under one of the schedules, full vesting is required upon completion of 10 years of service (no vesting is required before the end of the 10th year). Under a second schedule, vesting begins at 25 percent after completion of 5 years of service and increases gradually to 100 percent after completion of 15 years of service. The third schedule takes both age and service into account, but, in any event, requires 50-percent vesting after 10 years of service, and an additional 10-percent vesting for each additional year of service until 100-percent vesting is attained after 15 years of service.

Patterns of discrimination

Vesting more rapid than under the 3 schedules described above may be required under a qualified plan to prevent discrimination if (1) there has been a pattern of abuse under the plan tending to discriminate in favor of employees who are officers, shareholders, or highly compensated, or (2) there has been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders, or highly compensated (sec. 411(d)(1)).

Top-heavy plans

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) required that for any plan year for which a qualified plan is top heavy, an employee's right to accrued benefits must become nonforfeitable under one of two alternative schedules. Under the first top-heavy schedule, a participant who has completed at least 3 years of service with the employer maintaining the plan must have a nonforfeitable right to 100 percent of the accrued benefit derived from employer contributions.

A plan satisfies the second alternative (6-year graded vesting) if a participant has a nonforfeitable right to at least 20 percent of the accrued benefit derived from employer contributions at the end of 2 years of service, 40 percent at the end of 3 years of service, 60 percent at the end of 4 years of service, 80 percent at the end of 5 years of service, and 100 percent at the end of 6 years of service with the employer.

Class year plans

Special vesting rules also apply to "class year plans." A class year plan is a profit-sharing, money purchase, or stock bonus plan that provides for the separate vesting of employee rights to employer contributions on a year-by-year basis. The minimum vesting requirements are satisfied if the plan provides that a participant's right to amounts derived from employer contributions with respect to any plan year are nonforfeitable not later than the close of the fifth plan year following the plan year for which the contribution was made.

Changes in vesting schedule

Under present law, if a plan's vesting schedule is modified by plan amendment, the plan will not be qualified unless each participant with no less than 5 years of service is permitted to elect within a reasonable period after the adoption of the amendment to have the nonforfeitable percentage of the participant's accrued benefit computed under the plan without regard to the amendment.

House Bill

No provision.

Senate Amendment

In general

The Senate amendment provides that a plan is not a qualified plan (except in the case of a multiemployer plan), unless a participant's employer-provided benefit vests at least as rapidly as under one of 2 alternative minimum vesting schedules.

A plan satisfies the first schedule if a participant has a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the participant's completion of 5 years of service. A plan satisfies the second alternative schedule if a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent at the end of 4 years of service, 60 percent at the end of 5 years of service, 80 percent at the end of 6 years of service, and 100 percent at the end of 7 years of service.

Top-heavy plans

The provisions of the Senate amendment relating to vesting do not alter the requirements applicable to plans that become top heavy. Thus, a plan that becomes top heavy is required to satisfy one of the two alternative vesting schedules applicable under present law to top-heavy plans.

Class-year plans

A plan with class year vesting will not meet the qualification standards of the Code unless, under the plan's vesting schedule, a participant's total accrued benefit derived from employer contributions becomes nonforfeitable at least as rapidly as under one of the two alternative vesting schedules specified in the bill.

Changes in vesting schedule

If a plan's vesting schedule is modified by a plan amendment, the plan will not be qualified unless each participant with at least 3 years of service is permitted to elect, within a reasonable period after the adoption of the amendment, to have the nonforfeitable percentage of the participant's accrued benefit computed without regard to the amendment.

Multiemployer plans

As an exception to the general vesting requirements, the bill requires that, in the case of a multiemployer plan, a participant's accrued benefit derived from employer contributions be 100 percent vested no later than upon the participant's completion of 10 years of service.

Effective date

The provisions of the Senate amendment are generally applicable for plan years beginning after December 31, 1988, to participants who perform at least one hour of service in a plan year to which the new provision applies.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, in the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective for plan years beginning before the earlier of (1) the later of (i) January 1, 1989, or (ii) the date on which the last of the collective bargaining agreements terminates, or (2) January 1, 1991. Extensions or renegotiations of the collective bargaining agreement, if ratified after February 28, 1986, are disregarded.

Conference Agreement

The conference agreement follows the Senate amendment. In addition, the conference agreement modifies the rule permitting an employer to condition participation in a plan on 3 years of service. Under the conference agreement a plan may require, as a condition of participation, that an employee complete a period of service with the employer of no more than two years. A plan that requires that an employee complete more than one year of service as a condition of participation must also provide that each participant in the plan has a nonforfeitable right to 100 percent of the accrued benefit under the plan when the benefit is accrued.

In addition, the conference agreement limits the special rule for multiemployer plans to employees covered by a collective bargaining agreement.

Also, benefits that become vested due to these provisions are to be immediately guaranteed by the PBGC (without regard to the phase-in rule).

The conference agreement also modifies the effective date so that the provision applies to all employees who have one hour of service after the effective date. This revised effective date also applies to the conference agreement modification regarding years of service required for participation.

In addition, the conference agreement limits the delayed effective date for plans maintained pursuant to a collective bargaining agreement to employees covered by such agreements.

5. Application of Nondiscrimination Rules to Integrated Plans

Present Law

In general

Present law provides nondiscrimination standards for qualified pension, profit-sharing, and stock bonus plans. These standards prohibit discrimination in favor of employees who are officers, shareholders, or highly compensated. Under these standards, coverage tests are applied to determine whether the classification of employees who participate in a plan is discriminatory. Additional tests are applied to determine whether contributions or benefits under the plan discriminate in favor of highly compensated employees.

The present-law nondiscrimination requirements are satisfied if either the contributions or the benefits under a qualified plan do not discriminate in favor of highly compensated employees.

Generally, in applying the nondiscrimination test to benefits under a plan, the benefits that are provided by the plan for highly compensated participants (as a percentage of their compensation) is compared to the benefits that are provided for other participants. A similar test may be applied to employer contributions under a plan. A plan fails the nondiscrimination standard if both benefits and contributions discriminate in favor of highly compensated employees.

Under present law, in determining whether defined benefit pension plan benefits, as a percentage of compensation, discriminate in favor of employees who are highly compensated, the portion of each employee's social security benefits that is considered to be paid for by the employer may be taken into account. For this purpose, social security benefits mean old age, survivors, and disability insurance (OASDI) benefits provided under the social security system.

Section 401(l) and Revenue Rulings 71-446 and 83-110 provide guidance for calculating the maximum amount of social security benefits that may be taken into account under an employer's qualified plan. In addition, section 401(a)(25) prevents increases in social security benefits after an employee's separation from service with an employer from reducing plan benefits. Also, section 411(b)(1)(G) provides that an employee's accrued benefit (other than a social security supplement) under a defined benefit plan may not be reduced on account of any increase in the employee's age or service. Finally, section 411(d)(6) provides that, with limited exceptions, the accrued benefit of a participant may not be decreased by plan amendment. A plan that meets the nondiscrimination standards of the Code only if social security benefits are taken into account is referred to as an integrated plan. Either benefits or contributions under a plan may be integrated.

Integration of defined benefit pension plans

Two basic approaches to integration of defined benefit pension plans have been developed: (1) the "offset" approach, and (2) the "excess" approach.

Offset plans

A defined benefit pension plan that integrates under the offset approach is referred to as an offset plan. An offset plan initially provides each employee with an annual pension benefit which (as a percentage of compensation) does not discriminate in favor of highly compensated employees. For each employee, this initial benefit is then reduced, or offset, by the employer-provided portion of that employee's social security benefit to arrive at the actual pension benefit under the plan.

In 1971, the Internal Revenue Service determined that the value of employer-provided social security benefits is equal to 83⅓ percent of the annualized primary insurance amount (PIA) to which an employee is entitled under the Social Security Act. This calculation forms the basis of the present-law rules for integrating offset plans. Consequently, an offset plan without integrated ancillary benefits could integrate its benefits with social security by providing each employee retiring under the plan an annual benefit of, for example, 50 percent of pay offset by 83⅓ percent of the employee's PIA. If an offset plan provides employees with integrated ancillary benefits (e.g., normal retirement benefits not in the form of an annuity, preretirement death benefits, and early retirement benefits), the present-law rules require that the 83⅓ percent factor be reduced.

Excess plans

A pension plan that integrates under the excess approach is referred to as an excess plan. The basic theory underlying the excess approach is that the social security system provides benefits based on only a certain portion of an employee's earnings. An excess plan is designed to provide benefits (or added benefits) based on the portion of an employee's earnings "in excess" of the integration level, on the earnings on which social security benefits are provided. An excess plan properly integrates if the benefits with respect to compensation in excess of the integration level are not greater, as a percentage of pay, than the benefits provided by social security on compensation up to the integration level.

The Internal Revenue Service determined that the employer-provided portion of benefits under social security averages 37½ percent of the average annual maximum wages on which social security benefits are based (covered compensation). This calculation forms the basis of the present-law rules for integrating excess plans. Consequently, for an employee retiring at age 65 with at least 15 years of service in 1986, an excess plan will integrate properly if it provides benefits at a rate no greater than 37½ percent of final average compensation in excess of approximately $15,000 (covered compensation for such an employee), although it provides no benefits with respect to the first $15,000 of final pay.

If an excess plan provides benefits on compensation up to covered compensation, then it can provide benefits at a higher rate on pay above the level of covered compensation. However, the rate at which benefits are provided above covered compensation cannot exceed the rate at which benefits are provided on compensation up to covered compensation by more than 37½ percent. For example, an integrated excess plan could provide benefits at the rate of 12½ percent for all final average compensation plus 50 percent (i.e., 37½ percent plus 12½ percent) of final pay in excess of covered compensation.

As is the case with an offset plan, if an excess plan has integrated ancillary benefits, the 37½ percent factor must be reduced. In addition, the 37½ percent factor must be reduced for an excess plan that uses an integration wage level higher than covered compensation (or the otherwise applicable maximum integration wage level) or determines a participant's final average compensation on the basis of a period shorter than 5 consecutive years.

A defined benefit plan formula may be either a flat benefit formula, as illustrated above, or a unit benefit formula under which the benefit is based on the number of an employee's years of service with the employer. Examples of fully integrated unit benefit formulas (assuming no required adjustments for ancillary benefits or alternative integration wage levels) are (i) annual benefit at age 65 equal to 1.4 percent of career average compensation in excess of the integration wage level (the taxable wage base) for each year of service with the employer, and (ii) annual benefit at age 65 equal to 1 percent of final average compensation in excess of covered compensation times years of service with the employer. Of course, these 1.4 percent and 1 percent factors must be reduced if the excess plan has integrated ancillary benefits or uses a higher integration wage level.

Under present law, the integration rules allow an employer to implicitly take credit for the OASDI contributions of former employers of an employee. Thus, for example, an employee who retires at age 65 with 15 years of service under a flat benefit excess plan may receive a benefit under an integrated plan of 37½ percent of final average compensation in excess of covered compensation, even though the employee worked with the employer only for the last 15 years. The current integration rules are even more generous under an offset plan because the maximum offset of 83⅓ percent could be applied to an employee retiring at age 65 with as little as one year of service. OASDI benefits are earned, however, over the entire working career of the employee.

Integration of defined contribution plans

Defined contribution plans do not provide specified benefit formulas. Defined contribution plans provide for contributions to be accumulated in a separate account for each employee. Accordingly, such plans are integrated by taking into account the employer-paid portion of social security taxes. Specifically, a defined contribution plan is integrated by reducing contributions to the plan with respect to the portion of an employee's pay subject to the social security OASDI tax (i.e., the taxable wage base or $42,000 for 1986).

Since 1983, an employer has been able to integrate a defined contribution plan by reducing contributions on behalf of an employee by no more than an amount equal to the employee's taxable wage base multiplied by the actual OASDI tax rate. Thus, a profit-sharing plan could provide contributions of 5.7 percent (the OASDI tax rate) of 1986 pay in excess of $42,000 (the 1986 taxable wage base) and no contributions for 1986 with respect to the first $42,000 of pay. Similarly, if a plan provided for 1986 contributions of 10 percent of pay in excess of $42,000, it would integrate properly only if it provided for 1986 contributions of at least 4.3 percent with respect to the first $42,000 of pay. For a profit-sharing or stock bonus plan to be properly integrated, the plan must also provide benefits only upon retirement, death, or other separation from service. Adjustments to the 5.7 percent factor are required only if the plan uses an integration wage level higher than the current taxable wage base.

Top-heavy plans

A qualified plan that is top-heavy must provide a minimum nonintegrated benefit or contribution derived from employer contributions for each employee who is a participant in the plan and who is not a key

employee (sec. 416). The rule is designed to reflect the higher proportion of tax advantages allocated to the benefit of key employees in a top-heavy plan. Generally, a plan is top heavy if more than 60 percent of the benefits it provides are for key employees (sec. 416).

A defined benefit pension plan satisfies this minimum benefit requirement if, on a cumulative basis, the accrued benefit of each participant who is not a key employee, when expressed as an annual retirement benefit, is not less than two percent of the employee's average annual compensation from the employer, multiplied by the number of the employee's years of service with the employer. However, an employee's minimum benefit is not required to exceed 20 percent of such average annual compensation. This required minimum benefit may not be eliminated or reduced on account of the employee's social security benefits (i.e., the minimum benefit is a "nonintegrated" benefit).

For a plan year for which a defined contribution plan is a top-heavy plan, the employer generally must contribute on behalf of each plan participant who is not a key employee an amount not less than three percent of the participant's compensation. The minimum contribution must be made for each year in which the plan is top-heavy. However, if the employer's contribution rate for each participant who is a key employee for the plan year is less than three percent, the required minimum contribution rate for each non-key employee generally is limited to the highest contribution rate for any key employee. The required minimum contribution must be a nonintegrated contribution.

House Bill

The House bill revises the manner in which a pension plan may be integrated with social security. Pursuant to regulations to be issued by the Secretary of the Treasury, the maximum amount of social security benefits that may be taken into account by an employer for any year of service with such employer may not exceed 1/40 of the total social security benefits permitted to be taken into account. Thus, the bill precludes an employer from taking into account benefits attributable to OASDI contributions of former employers of an employee.

Under a flat-benefit excess plan, the full 37½ percent excess amount (reduced for integrated ancillary benefits) could be applied only to an employee who had 40 years of service with the employer upon retirement at age 65. If an employee only had 20 years of service with the employer, the maximum excess benefit at age 65 would be 16.75 percent (37½ multiplied by 20/40, the ratio of 20 years of service to 40), assuming that the plan has no integrated ancillary benefits.

For an offset plan, the full 83⅓ percent offset (reduced for integrated ancillary benefits) could be applied only to an employee who retired at age 65 with 40 years of service with the employer. Thus, if an employee retired at age 65 with 30 years of service with the employer, the maximum offset would be 62.5 percent (83⅓ multiplied by 30/40, the ratio of 30 years of service to 40), assuming the plan has no integrated ancillary benefits.

The bill generally would not have a significant effect on unit benefit plans because such plans will automatically reduce the social security benefit taken into account under the plan for employees retiring with less than 37½ years of service due to the reduced number of years taken into account under the unit benefit formula for such employees. Furthermore, the bill generally would not affect the integration of defined contribution plans integrated with OASDI benefits (except to the extent such plans are determined to be nondiscriminatory on the basis of benefits). Also, the committee anticipates that similar rules would apply to the integration of other employer-provided benefits under Federal, State, or foreign law.

The provision applies to plan years beginning after December 31, 1986.

Senate Amendment

In general

The Senate amendment provides that a plan is not to be considered discriminatory merely because the contributions and benefits of (or on behalf of) employees under the plan favor highly compensated employees if the plan meets the new requirements of the bill relating to the integration of contributions or benefits.

Permitted disparity in defined contribution plans

In general.—Under the Senate amendment, a defined contribution plan meets the disparity limits for integrated plans only if the excess contribution percentage under the plan does not exceed the base contribution percentage by an amount specified in the bill. The bill provides that the excess contribution percentage is not to exceed the lesser of (1) 200 percent of the base contribution percentage, or (2) the sum of the base contribution percentage and the rate of the tax imposed on employers under the Federal Insurance Contributions Act (5.7 percent for 1986) as of the beginning of the plan year.

For example, under the Senate amendment, if a defined contribution plan provided for contributions of 10 percent of pay on compensation in excess of the taxable wage base, then the plan is required to provide contributions of at least 5 percent of pay on compensation up to the taxable wage base in order to satisfy the integration rules for defined contribution plans. Alternatively, if the plan provided contributions of 10 percent of pay on compensation up to the taxable wage base, then the contributions for compensation in excess of the taxable wage base are limited to 15.7 percent because the permitted disparity cannot be greater than the OASDI tax rate (i.e., 5.7 percent in 1986).

Contributions to a plan that are subject to the nondiscrimination rules in section 401(k) or 401(m) (or, in the case of simplified employer pensions, sec. 408(k)(6)) may not rely on these integration requirements, but rather must satisfy the separate nondiscrimination rules under such other provisions.

Excess contribution percentage.—Under the Senate amendment, the excess contribution percentage is the percentage of remuneration that is contributed under the plan with respect to that portion of remuneration in excess of the compensation level specified under the plan for the year.

Base contribution percentage.—The Senate amendment provides that the base contribution percentage is the percentage of remuneration contributed under the plan with respect to that portion of remuneration not in excess of the compensation level specified under the plan for the year.

Under the Senate amendment, the compensation level refers to the dollar amount of remuneration specified under the plan as the compensation level for the year. The compensation level specified in the plan may not exceed the contributions or benefit base under the Social Security Act (i.e., the taxable wage base) in effect at the beginning of the plan year ($42,000 for plan years beginning in 1986). In addition, an employer may not set a lower compensation level if such level discriminates in favor of highly compensated employees.

Remuneration.—Remuneration is defined as total compensation, or basic or regular compensation, whichever is used in determining contributions or benefits under the plan. With respect to a self-employed individual, the Senate amendment provides that compensation includes the individual's earned income. The self-employed individual's basic or regular rate of compensation is equal to the portion of the individual's earned income that bears the same ratio to his earned income as the regular or basic compensation of employees under the plan bears to the total compensation of such employees.

Permitted disparity in defined benefit pension plans

In general

Under the Senate amendment, a defined benefit pension plan meets the requirement for integrated plans only if it meets the requirements for integrated offset plans or those for integrated excess plans. Under a special limitation provided by the Senate amendment, a defined benefit pension plan will not fail to meet the nondiscrimination rules (sec. 401(a)(4)) merely because it limits benefits by reference to the final pay of a participant.

Excess plans

In general.—A defined benefit pension plan meets the disparity limits for integrated excess plans if (1) the excess benefit percentage does not exceed 200 percent of the base benefit percentage, and (2) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided by the plan with respect to remuneration in excess of the compensation level specified by the plan for the year is provided with respect to remuneration that is not in excess of that level.

Benefit percentages.—Under the rules for integration of defined benefit pension plans as excess plans, the excess and base benefit percentages are to be computed in the same manner as those percentages are to be computed for defined contribution plans, except that the computation is to be based on benefits rather than contributions. Thus, the term the "excess benefit percentage" refers to the benefits provided under the plan (expressed as a percentage of remuneration) with respect to that portion of remuneration in excess of the compensation level specified in the plan. The base benefit percentage refers to the benefits provided under the plan (expressed as a percentage of remuneration) with respect to that portion of remuneration not in excess of the compensation level specified in the plan.

For purposes of the rules relating to defined benefit excess plans, the terms "compensation level" and "remuneration" have the same meanings as for purposes of the rules relating to defined contribution plans.

Offset plans

In general.—A defined benefit pension plan meets the requirements for integrated offset plans if it provides that a participant's accrued benefit derived from employer contributions (sec. 411(c)(1)) may not be reduced by reason of the offset by more than 50 percent of the benefit that would

have accrued without regard to the reduction. The bill provides that a defined benefit pension plan is an offset plan if each participant's normal retirement benefit derived from employer contributions (sec. 411) is reduced (offset) by a dollar amount specified by the plan and if the same dollar amount of reduction is applicable to all plan participants. The Secretary is directed to prescribe rules for "normalizing" benefits, though not necessarily in the manner described in Rev. Rul. 81-202, and to prevent discriminatory modifications in the amount of the dollar offset from year to year.

Example.—Under an offset plan, the offset may never reduce a participant's accrued benefit by more than 50 percent, and may accrue no faster than the rate at which the participant's benefit under the plan would accrue without regard to the offset. For example, assume that a plan provides for a normal retirement benefit of 50 percent of final pay, less $20,000. The plan provides that the participant's accrued benefit is to accrue under the fractional accrual rule of section 411(b). Normal retirement age under the plan is age 65. Assume that a participant commences working for the employer and becomes a participant in the plan at age 40. Upon the date that the participant has completed 5 years of service with the employer, the participant has an accrued benefit (without regard to the dollar offset) of 5/25ths of 50 percent of final pay (or 10 percent of final pay). At that time, the value of the offset "accrued" to the participant may not exceed the lesser of (a) 5/25ths of $20,000 ($4,000), or (b) one-half of the participant's accrued benefit (determined without regard to the offset) to date.

Multiple plans

The bill provides rules that apply to a plan that benefits a highly compensated employee who participates in 2 or more plans maintained by the employer that would be considered discriminatory but for the integration rules. In such a case, the integration rules are to be applied to each of the plans by taking into account the total contributions and benefits for such highly compensated employee under all of such plans of the employer.

Benefits limited by reference to final pay

The bill provides that a defined benefit pension plan (including an offset or excess plan) is not to be considered discriminatory merely because it provides that the employer-provided accrued retirement benefit for any participant under the plan is not to exceed the excess (if any) of (1) the participant's final pay with the employer, over (2) the employer-provided retirement benefit, created under Federal law, that is attributable to the participant's service with the employer. The Secretary shall prescribe rules for "normalizing" accrued benefits for purposes of this rule. Also, this limit may not be applied to reduce minimum benefits under the top-heavy rules.

Under the bill, for purposes of determining the final-pay limit that may be imposed by an integrated defined benefit pension plan, a participant's final pay is the total compensation paid to the participant by the employer during the participant's highest year of compensation ending with or within the 5-year period ending with the year in which the participant separated from service with the employer.

Effective date

The provisions are effective with respect to benefits accrued in plan years beginning after December 31, 1988.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, in the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective for plan years beginning before the earlier of (1) the later of (i) January 1, 1989, or (ii) the date on which the last of the collective bargaining agreements terminates, or (2) January 1, 1991. Extensions or renegotiations of the collective bargaining agreement, if ratified after February 28, 1986, are disregarded.

Conference Agreement

In general

The conference agreement generally follows both the House bill and the Senate amendment with the following modifications: (1) the deemed accrual period for social security benefits in the House bill is reduced from 40 years to 35 years and is applied for purposes of integrating offset plans, flat excess plans, and unit benefit excess plans; (2) in order to limit the extent to which an employer may increase, relative to the present law integration rules, the disparity between benefits accruing with respect to compensation above and below the integration level, additional limits on such disparity are applied; and (3) the uniform definition of compensation under new section 414(s) is applied (*see* Part B.1., above).

The additional limits added by the agreement on the permitted disparity are a simplified form of the present-law integration rules, modified to eliminate the need for offset plans to determine an employee's actual lifetime social security benefit, provide for parity between offset plans and excess plans, provide uniform rules for both final average excess plans and career average excess plans, and eliminate the adjustments for integrated ancillary benefits (except for early retirement benefits).

The conferees recognize that some plans that satisfy both the present-law integration rules and the rules adopted in the House bill and the Senate amendment may not satisfy the additional limits added by the agreement. Similarly, the conferees realize that for some other plans the additional limits will permit a greater disparity in benefits above and below the integration level than that permitted under present law. However, the conferees have determined that, in attempting to limit the disparity permitted under the new rules to approximately the levels permitted under present law, the goals of simplifying the integration rules, providing consistent rules for different types of plans, and updating the rules to reflect the current social security system justify the simplified approach adopted under the agreement.

Permitted disparity in defined contribution plans

Under the agreement, a defined contribution plan meets the disparity limits for integrated plans only if the excess contribution percentage (i.e., the contribution with respect to compensation over the integration level, expressed as a percentage of compensation) does not exceed the base contribution percentage (i.e., the contribution with respect to compensation up to the integration level, expressed as a percentage of such compensation) by more than the lesser of (i) the base contribution percentage, or (ii) the greater of 5.7 percentage points or the percentage equal to the portion of the rate of tax in effect under section 3111(a) attributable to old-age insurance as of the beginning of the plan year.

The conferees understand that for 1986 the rate of tax attributable to old-age insurance is less than 5 percent. The conferees expect that the Social Security Administration will advise the Secretary when such rate becomes greater than 5.7 percent and, thereafter, will determine the amount of such rate and advise the Secretary for timely publication.

As under the Senate amendment, a plan must specify the applicable integration level for a year. The maximum integration level permitted for a year, however, is the OASDI contribution and benefit base under social security (taxable wage base) in effect at the beginning of the year ($42,000 for plan years beginning in 1986). The Secretary may develop such rules as are necessary to prevent an employer from selecting a lower integration level that discriminates in favor of highly compensated employees. Also, contributions subject to the nondiscrimination rules of section 401(k), 401(m), or 408(k)(6) may not rely on the integration rules to satisfy such rules. Finally, the agreement does not modify any other requirements currently applicable to integrated defined contribution plans, including, for example, the requirement that an integrated profit-sharing or stock bonus plan provide benefits only upon retirement, death, or other separation from service.

Permitted disparity in defined benefit pension plans

In general

The agreement provides both ratio limits and percentage point limits on the maximum disparity permitted under a defined benefit excess plan and on the maximum offset permitted under a defined benefit offset plan. The ratio limits are the same as the limits adopted in the Senate amendment. The percentage point limits are a simplified form of the present-law integration rules.

Excess plans

In general.—The agreement provides that the excess benefit percentage (i.e., benefits provided with respect to compensation in excess of the applicable integration level, expressed as a percentage of compensation) under a defined benefit excess plan may not exceed the base benefit percentage (i.e., benefits provided with respect to compensation not in excess of such integration level, expressed as a percentage of such compensation) by more than the maximum excess allowance.

Maximum excess allowance.—In the case of an excess plan, the maximum excess allowance with respect to benefits attributable to any year of service taken into account under the plan is the lesser of (i) the base benefit percentage, or (ii) 3/4 of a percentage point. The maximum excess allowance for such a plan with respect to total benefits is the lesser of (i) the base benefit percentage, or (ii) 3/4 of a percentage point times the participant's years of service (not in excess of 35) taken into account under the plan.

These limits apply to excess plans that base benefits on final average compensation as well as excess plans that base benefits on career average compensation. Under the conference agreement, an integrated final

pay plan may not base plan benefits on less than 3 years of service (or for a participant's full period of service, if less).

A year is treated as taken into account under a plan for purposes of applying the maximum excess allowance if benefits are treated as accruing on behalf of the participant for such year. Thus, for example, an excess plan that provides for the accrual of benefits over a participant's years of participation is to be treated as taking only years of participation into account.

This maximum excess allowance applies to both a flat-benefit final pay plan and a unit benefit final pay plan. For example, assume a flat-benefit plan with a benefit formula providing a retirement benefit for any participant retiring at age 65 with at least 15 years of service equal to 20 percent of the participant's final average compensation not in excess of the applicable integration level. Assume further that the plan provides for the accrual of the retirement benefit under the fractional rule of section 411(b). In order to satisfy the new integration rules with respect to a participant retiring at age 65 with 20 years of participation, the plan may not provide a benefit in excess of 35 percent of compensation over the integration level. If this participant had 35 years of participation at age 65, the plan would be precluded from providing a benefit with respect to final average compensation over the integration level in excess of 40 percent of such compensation. If an employee with 10 years of participation in this plan separated from service at age 50, such employee's accrued benefit would be 8 percent of his final average compensation up to the applicable integration level plus up to 15.5 percent of his final average compensation over the integration level.

Reductions of the 3/4 percent factor.—The Secretary is directed to prescribe regulations requiring the reduction of the 3/4 percent factor in the maximum excess allowance for plans (both final average and career average plans) using integration levels in excess of covered compensation. The conferees direct the Secretary to provide for such reductions on the basis of brackets of integration levels in excess of covered compensation. Such reductions and brackets should correspond to the comparable reductions and brackets for offset plans. The Secretary is not authorized, however, to provide for an increase in the 3/4 factor for plans using integration levels lower than covered compensation.

The term "covered compensation" has the same meaning as under present law, i.e., with respect to an employee, the average of the taxable wage bases in effect for each year during the 35-year period ending with the year the employee attains age 65, assuming no increase in such wage base for years after the current year and before the employee actually attains age 65.

The conferees intend that the reductions for higher integration levels will reflect the decreasing percentages of compensation replaced by the employer-provided PIA under social security as compensation increases above covered compensation. The Secretary is directed to consult with the Social Security Administration in developing the prescribed reductions.

Optional forms of benefits and other features.—The agreement follows the requirement in the Senate amendment that any optional form of benefit, preretirement benefit, actuarial factor, and other factor or feature under the plan provided with respect to compensation above the integration level also be provided with respect to compensation below the integration level. Thus, for example, if a lump sum distribution option, calculated using particular actuarial assumptions, is available with respect to benefits relating to compensation above the integration level, the same lump sum option must be available on an equivalent basis with respect to benefits based on compensation up to the integration level.

Multiple integration levels.—The Secretary is directed to provide rules under which an excess plan may use 2 or more integration levels. The permitted disparity with respect to each such integration level should be based on the percentages of compensation up to each such level replaced by the employer-provided portion of PIA under social security.

Offset plans

The agreement provides that in the case of a defined benefit offset plan, a participant's accrued benefit may not be reduced by reason of the offset by more than the maximum offset allowance for such participant. The maximum offset allowance with respect to a participant for any year of service taken into account under the plan is the lesser of (i) 50 percent of the benefit that would have accrued without regard to the offset reduction, or (ii) 3/4 percent of the participant's final average compensation times the participant's years of service with the employer (not in excess of 35) taken into account under the plan. For purposes of this allowance, a participant's final average compensation is to be calculated by disregarding compensation in any year over the taxable wage base for such year.

The Secretary is directed to reduce the 3/4 factor under the maximum offset allowance for participants with final average compensation in excess of covered compensation. Such reductions are to be based on the decreasing percentages of compensation replaced by the employer-provided PIA under social security as compensation increases above covered compensation. The Secretary is directed to consult with the Social Security Administration in developing such prescribed reductions. In addition, the reductions applicable to the 3/4 factor for offset plans should correspond to the reductions applicable to the 3/4 factor for excess plans using integration levels in excess of covered compensation. Finally, the conferees direct the Secretary to publish annually a table setting forth the appropriate offset factors for brackets of final average compensation in excess of covered compensation.

The term "offset plan" means any defined benefit plan under which the employer-provided benefit for each participant is reduced by an amount specified in the plan not in excess of the maximum offset allowance for such participant. In addition, an offset plan must base benefits on average annual compensation for at least the lesser of (1) a 3-year period or (2) the total number of the participant's years of service. Such term does not include a qualified plan merely because the benefits under such plan are reduced by benefits under another qualified plan. An offset plan may reduce participants' benefits by less than the maximum offset allowance so long as the offset amount or formula is specified in the plan, does not discriminate in favor of highly compensated employees, and is not otherwise inconsistent with the purposes of the integration rules.

Reductions for early retirement benefits

Under the conference agreement, the Secretary is also directed to reduce the 3/4 percent factor in the maximum excess allowance and maximum offset allowance for plans providing for unreduced benefits (other than for disability, as defined under the Social Security Act) commencing before the social security retirement age (as defined in section 415). As under current law, the 3/4 factor is to be reduced by 1/15 for each of the first five years that the benefit commencement date precedes the social security retirement age (currently age 65), and by an additional 1/30 for each of the next five years that the benefit commencement date precedes the social security retirement age. If the benefit commencement date is earlier than 10 years before the social security retirement age, the factor is to be actuarially reduced for each such additional year. Also, as under current law, the determination of whether early retirement benefits require an adjustment is based on a comparison of the benefit actually provided under the plan at the early retirement age with the benefit that would be provided under a plan at such age that has the maximum disparity permitted under the integration rules (calculated by applying the 1/15, 1/30 adjustment).

Multiple integrated plans

The agreement directs the Secretary to develop rules to prevent excessive use of the disparity permitted under this subsection with respect to any employee through the integration of more than one qualified plan. Such rules are to limit to 100 percent the sum of the percentages, calculated separately for each plan with overlapping coverage, of the maximum benefit disparity actually used in each plan.

Benefits limited by reference to final pay

The agreement adopts the Senate amendment rule permitting a defined benefit plan to limit the employer-provided accrued retirement benefit under the plan for any participant to the excess of the participant's final pay with the employer over the employer-provided PIA actually provided for such participant under social security and attributable to service by the participant with the employer. This limit is applied to the participant's accrued retirement benefit (disregarding ancillaries) under the defined benefit plan. Similarly, the limit is applied by taking into account only the worker's benefit (PIA) under social security, disregarding auxiliary benefits (spousal, survivor, children's, and disability benefits). The agreement clarifies that for purposes of determining the portion of the employer-provided PIA under social security for a participant that is attributable to service with the employer, such PIA is treated as accruing ratably over 35 years. However, the conferees do not intend that the limit also be pro rated. Finally, as under the Senate amendment, this limit may not be applied either to reduce minimum benefits under the top-heavy rules or to reduce accrued benefits within the meaning of section 411(d)(6).

Effective date

The new integration rules apply with respect to benefits accruing in plan years beginning after December 31, 1988. A special effective date applies with respect to benefits accruing under a plan maintained pursuant to a collective bargaining agreement.

6. Benefits Treated as Accruing Ratably for Purposes of Determining Whether Plan is Top Heavy

Present Law

In general

For years beginning after December 31, 1983, present law provides additional qualification requirements for plans that primarily benefit an employer's key employees (top-heavy plans) (sec. 416). These additional requirements (1) limit the amount of a participant's compensation that may be taken into account; (2) require more rapid vesting; (3) provide minimum nonintegrated contributions or benefits for plan participants who are non-key employees; and (4) reduce the aggregate limit on contributions and benefits.

Top-heavy plan calculation

A defined benefit pension plan generally is top heavy for a year if, as of the determination date for such year, the present value of the cumulative accrued benefits for participants who are key employees exceeds 60 percent of the present value of the cumulative accrued benefits for all employees under the plan. A defined contribution plan is a top-heavy plan for a year if, as of the determination date for such year, the sum of the account balances of participants who are key employees exceeds 60 percent of the sum of the account balances of all employees under the plan (sec. 416(g)).

Accrued benefits

In general, a defined benefit pension plan will not be considered a qualified plan unless participants accrue benefits at a rate that meets one of three alternative schedules (sec. 411(b)). The purpose of these schedules generally is to limit the extent to which an employer may defer (i.e., "backload") benefit accruals.

Under one of the three alternatives, known as the "fractional rule," each plan participant's accrued benefit at the end of any year must be at least equal to a fractional portion of the retirement benefit to which the participant would be entitled under the plan's benefit formula if the participant continued to earn annually until normal retirement age the same rate of compensation. The fractional portion is determined by dividing the participant's actual years of participation by the total number of years of participation that would have been completed if the participant had continued in service until normal retirement age.

In determining whether a plan is top heavy, cumulative accrued benefits are calculated using the benefit accrual method selected by the plan. If the plan is determined to be top heavy, the plan generally must provide that each participant's minimum benefit is, on a cumulative basis, at least equal to two percent of compensation for each year of service during which the plan is top heavy, not to exceed 20 percent (sec. 416(c)). Under the top-heavy rules, benefits accrued under the plan's benefit formula must be at least equal to the required minimum benefit.

House Bill

Under the House bill, a uniform accrual rule is used in testing whether a qualified plan is top heavy (or super top heavy) (sec. 416(g)(4)(f)). Thus, solely for determining whether the present value of cumulative accrued benefits for key employees exceeds 60 percent of the present value of cumulative accrued benefits for all employees (90 percent for purposes of the super top heavy plan rules), cumulative accrued benefits would be uniformly measured by applying the fractional rule. Thus, benefits will be treated as accruing no more rapidly than required fractional rule.

This rule applies only for purposes of determining whether the plan is top heavy or super top heavy. The rule does not require that the plan actually use the fractional rule for purposes of accruing benefits under the plan.

The provision applies for plan years beginning after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the provision applies for plan years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment except that the conference agreement provides that if benefits under all plans of the employer accrue at the same rate, then that accrual rate is to be used in determining whether the plans are top heavy or super top heavy. If there is no single accrual rate used by all plans of the employer, then the plans' top-heavy status is to be determined by treating the benefits of the participants in each plan as accruing no more rapidly than the slowest permitted rate under the fractional accrual rule.

The provision applies for plan years beginning after December 31, 1986.

7. Modification of Rules for Benefit Forfeitures

Present Law

When a participant in a qualified plan separates from service, and receives a distribution of the vested plan interest or incurs a five-year break in service, nonvested benefits may be forfeited. In a defined benefit pension plan, forfeitures may not be used to increase promised benefits because benefits must be definitely determinable; instead, forfeitures must be used to reduce future employer contributions or to offset plan administrative expenses.

The treatment of forfeitures in a defined contribution plan depends on whether or not the plan is a money purchase pension plan. In a defined contribution plan that is not a money purchase plan (e.g., a profit-sharing or stock bonus plan), forfeitures may be reallocated to the remaining participants under a formula that does not discriminate in favor of employees who are officers, shareholders, or highly compensated. These reallocated forfeitures increase the benefits of the remaining participants. Alternatively, forfeitures can be used to reduce future employer contributions or to offset administrative expenses.

A money purchase pension plan, like a defined benefit plan, is subject to the requirement that benefits be definitely determinable. Accordingly, a money purchase plan must contain a definite contribution formula. Present law also provides that forfeitures may not be used to increase benefits, but must be applied to reduce future employer contributions or administrative costs (sec. 401(a)(8)).

House Bill

The House bill creates uniform rules for forfeitures under any defined contribution plan. The bill permits, but does not require, forfeitures to be reallocated to other participants. Thus, forfeitures arising in any defined contribution plan (including a money purchase pension plan) can be either (1) reallocated to the accounts of other participants in a nondiscriminatory fashion, or (2) used to reduce future employer contributions or administrative costs.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and Senate amendment.

8. Definition of Highly Compensated Employees

Present Law

Under present law, an employee who is an officer, shareholder, or highly compensated is considered a highly compensated individual in whose favor discrimination is prohibited. Present law does not further define the term "highly compensated" and, under judicial and administrative precedent, the level of compensation that makes an employee highly compensated depends on the facts and circumstances of each case.

House Bill

The House bill modifies the definition of the group of employees in whose favor discriminatory contributions are prohibited under a qualified cash or deferred arrangement. An employee is treated as highly compensated with respect to a year if, at any time during the year or any of the 2 preceding years, the employee (1) is a 5-percent owner of the employer (as defined in sec. 416(i)); (2) earns in excess of $50,000 in annual compensation from the employer; or (3) is a member of the top-paid group of the employer.

The top-paid group of employees includes all employees who (1) are in the top 10 percent of all employees on the basis of compensation paid during such year, and (2) are paid more than $20,000 during such year. However, an employee is not included in the top-paid group if the employee is paid less than $35,000 and is not in the top 5 percent of all employees on the basis of compensation paid during such year.

In determining whether an employee is in the top-paid group during any year, the House bill provides that employees who may be excluded in applying the percentage test of section 410(b)(1)(A) generally are disregarded. In addition, an employee will not be treated as in the top-paid group or as earning in excess of $50,000 based on compensation during the current year unless such employee also is among the 100 employees who have earned the highest compensation during such year.

The House bill provides a special rule for the treatment of family members of certain highly compensated employees. Under the special rule, if a family member (1) benefits under the qualified cash or deferred arrangement, and (2) is a family member of either a 5-percent owner or one of the top 10 highly compensated employees by compensation, then any compensation paid to such family member and any employer contribution under the plan on behalf of such family member is aggregated with the amounts paid and contributed on behalf of the 5-percent owner or the highly compensated employee in the top 10 employees by pay. Therefore, such family member and employee are treated as a single highly compensated employee in applying the special nondiscrimination tests.

An individual is considered a family member if, with respect to an employee, the individual is a spouse, lineal ascendant or descendant, or spouse of a lineal ascendant or descendant of the employee.

The House bill does not adopt the above definition of highly compensated employees for purposes of applying the nondiscriminatory coverage rules to qualified plans.

Senate Amendment

In general

Under the Senate amendment, an employee is treated as highly compensated with respect to a year if, at any time during the year or the preceding year, the employee (1) was a 5-percent owner of the employer (as defined in sec. 426(i)); (2) received more than $100,000 in annual compensation from the employer; (3) received more than $50,000 in annual compensation from the employer and was a member of the top-paid group of the employer during the same year; or (4) was an officer of the employer (as defined in sec. 416(i)). The $50,000 and $100,000 thresholds are indexed at the same time and in the same manner as the adjustments to the dollar limits on benefits for defined benefit plans. The identity of the highly compensated employees is to be determined on an employer-wide basis.

Top-paid group

The top-paid group of employees includes all employees who are in the top 20 percent of the employer's workforce on the basis of compensation paid during the year. Under a special rule, an employer may exclude the following employees solely for purposes of determining the size of the top-paid group (but not for identifying the particular employees in the top-paid group): (1) employees who have not completed 180 days of service; (2) employees who work less than half-time; (3) employees who normally work fewer than 6 months a year; (4) except to the extent provided in regulations, employees who are included in a unit of employees covered by a collective bargaining agreement; (5) employees who have not attained age 21; and (6) employees who are nonresident aliens and who receive no U.S. source earned income. An example of an instance in which it is appropriate to consider employees covered by a collective bargaining agreement is the case in which the plan being tested is maintained pursuant to a collective bargaining agreement.

For purposes of this special rule, an employer may elect to apply numbers (1), (2), (3), and (5) above by substituting any shorter period of service or lower age than is specified in (1), (2), (3), or (5), as long as the employer applies the test uniformly for purposes of determining its top-paid group with respect to all its qualified plans and employee benefit plans (and for purposes of the line of business rules described below).

For example, assume an employer's total workforce is 100 employees, 20 of whom have not completed 180 days of service. Assume that none of the 100 employees is within any of the other excluded categories under this rule. Under the above rules, the 20 employees who have not completed the minimum requirements for eligibility may be disregarded in determining the size of the top-paid group. If the 20 employees are disregarded, the top-paid group is 20 percent of 80 employees (the number of employees who are not disregarded), or 16. Thus, the 16 employees who receive the highest compensation (including any employees who have not completed 180 days but who are among the 16 highest paid employees of the employer) are in the top-paid group. Each of these 16 employees who receives more than $50,000 a year is treated as a highly compensated employee. Other employees (and any of the 16 employees receiving less than $50,000) may also be a highly compensated employee under one of the other tests (i.e., officer or 5-percent owner).

Special rule for determining top-paid group for current year

Under the Senate amendment, an employee will not be treated as in the top-paid group, as an officer, or as receiving more than $50,000 or $100,000 solely because of the employee's status during the current year, unless such employee also is among the 100 employees who have received the highest compensation during such year. Under this rule, an individual who was a highly compensated employee for the preceding year (without regard to the one-year lookback or to the application of this special rule) remains highly compensated for the current year.

Thus, the 100-employee rule is intended as a rule of convenience to employers with respect to new employees hired during the current year, with respect to increases in compensation, and with respect to certain other factors. If any employee is not a 5-percent owner or within the top-100 employees by compensation for the current year (and was not a highly compensated employee in the preceding year (without regard to this special rule)), then that employee is not treated as highly compensated for the year, but will be treated as highly compensated for the following year if the employee otherwise falls within the definition of highly compensated employee. However, under the conference agreement, an employer may elect not to apply the 100-employee rule for the current year.

For example, assume that a calendar year employer has 12,000 total employees in 1990 and 1991, and for each year 4,000 employees may be disregarded in determining the number of employees that is to be treated as the number in the top-paid group. Thus, 1,600 (20 percent of 8,000) employees are in the top-paid group. This employer's highly compensated employees for 1991 will include the following:

(1) any employee who owned at any time during 1990 or 1991 more than 5 percent of the employer;

(2) any employee who, in 1990, (i) received more than $100,000 in annual compensation, (ii) was an officer (for top-heavy purposes), or (iii) received more than $50,000 in annual compensation and was among the 1,600 most highly compensated employees; and

(3) any employee who, in 1991, (i) was an officer (for top-heavy purposes) or received more than $50,000 in annual compensation, and (ii) was among the 100 most highly compensated employees.

Thus, an employee who is not a highly compensated employee in 1990 (without regard to this special 100-employee rule) will not be treated as highly compensated for 1991, unless such employee either (i) acquires ownership of more than 5 percent of the employer in 1991 or (ii) both becomes one of the 100 most highly compensated employees in 1991 and either becomes an officer or receives more than $50,000 in 1991.

Treatment of family members

The Senate amendment provides a special rule for the treatment of family members (as defined in the House bill) of certain highly compensated employees. Under the special rule, if an employee is a family member of either a 5-percent owner or one of the top 10 highly compensated employees by compensation, then any compensation paid to such family member and any contribution or benefit under the plan on behalf of such family member is aggregated with the compensation paid and contributions or benefits on behalf of the 5-percent owner or the highly compensated employee in the top 10 employees by compensation. Therefore, such family member and employee are treated as a single highly compensated employee.

For example, if the spouse of the most highly compensated employee of an employer is also an employee and participates in the employer's qualified cash or deferred arrangement, the elective deferrals made by the spouse and the compensation received by the spouse are aggregated with the elective deferrals made by, and the compensation received by, the most highly compensated employee for purposes of applying the special nondiscrimination test to the elective deferrals of the most highly compensated employee.

Former employees

The Senate amendment provides that an employee who has separated from service as a highly compensated employee continues to be treated as a highly compensated employee. In addition, the Secretary is to prescribe rules to treat other former employees as highly compensated employees, if appropriate.

Because an individual may attempt to avoid these rules by continuing to perform a small amount of services for the employer after retirement and maintaining that separation from service has not occurred, the Secretary is to prescribe rules to treat an individual as separated from service if the employee performs only de minimis services for the employer during the year.

Conference Agreement

In general

The conference agreement follows the Senate amendment definition of highly compensated employees, except as follows. First, the conference agreement provides that an employee with compensation in excess of $75,000 (rather than $100,000) is treated as highly compensated in all cases. Second, the $50,000 and $75,000 amounts are indexed at the same time and in the same manner as the dollar limit on benefits under a defined benefit plan (sec. 415(d).

Third, the definition of an officer is modified to mean an individual who was an officer and received compensation greater than 150 percent of the defined contribution plan dollar limit in effect for that year. For purposes of this rule, no more than 50 employees (or if lesser, the greater of 3 employees or 10 percent of the employees) are to be treated as officers. If for any year no officer has compensation in excess of 150 percent of the defined contribution plan dollar limit, then the highest paid officer of the employer for such year is treated as an officer for purposes of the rules identifying highly compensated employees. As under the rules applicable for determining top-heavy status (sec. 416), a partnership is considered to have officers.

As under the Senate amendment, the determination of the number and identity of the highly compensated employees is made on the basis of the entire employer, not on the basis of, for example, a line of business or operating unit.

Top-paid group

The conference agreement follows the Senate amendment, with certain modifications. For purposes of determining the size of the top-paid group (but not for identifying the particular employees in the top-paid

group), the following employees may be excluded: (1) employees who have not completed 6 months of service, (2) employees who normally work less than 17½ hours per week, (3) employees who normally work during not more than 6 months during any year, (4) employees who have not attained age 21, (5) except to the extent provided in regulations, employees who are included in a unit of employees covered by a bona fide collective bargaining agreement, and (6) employees who are nonresident aliens and receive no U.S. source income.

As under the Senate amendment, the employer may substitute a shorter period of service or lower age than that specified in (1), (2), (3), or (4), provided that the employer applies the test uniformly in determining its top-paid group for all purposes, including, for example, the employee benefit nondiscrimination rules and the line of business rules described below.

The conference agreement also clarifies that the determination of the top-paid group is made solely with respect to active employees. Former employees are not taken into account in determining the top 20 percent of employees by compensation.

Special rule for determining top-paid group for current year

The conference agreement follows the Senate amendment.

Treatment of family members

The conference agreement follows the Senate amendment. The conference agreement also clarifies that even if a family member is excluded for purposes of determining the number of employees in the top-paid group, such family member is subject to the aggregation rule.

Former employees

Under the conference agreement, a former employee is treated as highly compensated if the employee was highly compensated when (a) such employee separated from service or (b) at any time after the employee attained age 55. In addition, as under the Senate amendment, the conferees intend that the Secretary is to prescribe rules treating an employee who performs only de minimis services as separated from service for purposes of determining whether such employee is a highly compensated employee.

Scope of highly compensated employee definition

Under the conference agreement, the new definition of highly compensated employees applies for purposes of sections 79, 89, 106, 117(d), 120, 127, 129, 132, 274, 401(a)(4), 401(a)(5), 401(k)(3), 401(l), 401(m), 406(b), 407(b), 408(k), 410(b), 411(d), 414(m), 415(c), 423(b), 424(c), 501(c)(17), 501(c)(18), 505, and 4975 of the Code, and 29 U.S.C. sec. 1108.

Compensation

As under the Senate amendment, for purposes of identifying an employer's highly compensated employees, "compensation" is defined as compensation within the meaning of section 415 (c)(3), increased by elective contributions under a cafeteria plan (sec. 125), qualified cash or deferred arrangement (sec. 401(k)), SEP (sec. 408(k)), and tax-sheltered annuity (sec. 403(b)).

Effective date

The new definition of "highly compensated employee" is generally effective for years beginning after December 31, 1986, except to the extent that the substantive rule to which it relates is effective at a later time.

C. Treatment of Distributions

1. Uniform Minimum Distribution Rules

Present Law

Under present law, a trust is not a qualified trust unless the plan of which it is a part provides that the entire interest of each participant will be distributed no later than the participant's required beginning date (sec. 401(a)(9)). Alternatively, the requirements of present law may be satisfied if the participant's entire interest is to be distributed in substantially nonincreasing annual payments, beginning no later than the participant's required beginning date, over (1) the life of the participant, (2) the lives of the participant and a designated beneficiary, (3) a period (which may be a term certain) not extending beyond the life expectancy of the participant, or (4) a period (which may be a term certain) not extending beyond the life expectancies of the participant and designated beneficiary.

A participant's required beginning date is generally April 1 of the calendar year following the calendar year in which (1) the participant attains age 70½ or (2) the participant retires, whichever is later. If a participant is a 5-percent owner with respect to the plan year ending in the calendar year in which the participant attains age 70½, then the required beginning date is generally April 1 of the calendar year following the calendar year in which the participant attains age 70½ even though the participant has not retired.

In addition, the distribution of benefits under a qualified plan must satisfy the incidental benefits rule. Under the incidental benefits rule, a qualified plan generally is required to provide for a form of distribution under which the present value of the payments projected to be made to the participant, while living, is more than 50 percent of the present value of the total payments projected to be made to the participant and the participant's beneficiaries. However, a distribution pattern is not prohibited by the incidental benefits rule to the extent that it is required by the rules relating to qualified joint and survivor annuities.

Present law provides a minimum distribution requirement with respect to benefits payable from a qualified plan with respect to a participant who has died. The applicable rules depend upon whether benefits commenced before or after the participant's death.

With respect to tax-sheltered annuities and custodial accounts, present law provides after-death minimum distribution rules similar to the rules for qualified plans.[1]

Present law provides before- and after-death minimum distribution rules for IRAs corresponding to the rules applicable to qualified plans. Distributions from an IRA, however, are required to commence no later than April 1 of the calendar year following the calendar year in which the owner of the IRA attains age 70½ without regard to separation from service.

House Bill

The House bill establishes a uniform commencement date for benefits under all qualified plans, IRAs, tax-sheltered annuities, and custodial accounts. In addition, the House bill establishes a new sanction in the form of an excise tax, as an alternative to plan disqualification, for failure to satisfy the minimum distribution rules.

Under the House bill, distributions under all qualified defined benefit and defined contribution plans, individual retirement accounts and annuities, and tax-sheltered custodial accounts and annuities must commence no later than April 1 of the calendar year following the calendar year in which the participant attains age 70½, without regard to the actual date of retirement or termination of employment.

The sanction for failure to make a minimum required distribution to a particular participant under a qualified retirement plan is a 50-percent nondeductible excise tax on the excess in any taxable year of the amount that should have been distributed (the "minimum required distribution") over the amount that actually was distributed. The tax is imposed on the individual required to take the distribution. However, as under present law, a plan will not satisfy the qualification requirements unless it expressly provides that, in all events, the distribution under the plan must satisfy the minimum distribution requirements and the incidental benefit rule.

Under the House bill, the Secretary of the Treasury is authorized to waive the tax for a given taxpayer year if the taxpayer to whom the tax would otherwise apply is able to establish that any shortfall between the minimum required distribution for that year and the amount actually distributed during the year is due to reasonable error and that reasonable steps are being taken to remedy the shortfall.

The minimum required distribution in any given taxable year is to be determined under regulations to be issued by the Secretary.

The provisions generally apply to distributions made after December 31, 1985. However, for purposes of the required beginning date for commencement of benefits, employees who are not 5-percent owners and who have attained age 70½ by January 1, 1988, may defer the commencement of benefit payments until retirement. In addition, an employee is not subject to the 50-percent excise tax for failure to satisfy the minimum distribution requirements merely because distributions are made pursuant to a designation made before January 1, 1984, by the employee in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

Senate Amendment

The Senate amendment is the same as the House bill, except that the provision requiring that distributions from a qualified plan commence no later than April 1 of the year following the year in which a participant attains age 70½ applies only to a participant who is a highly compensated employee (as defined in the Senate amendment). The provisions of the Senate amendment do not apply to distributions under tax-sheltered annuities.

The Senate amendment is generally effective for distributions made after December 31, 1986, with an exception for distributions made pursuant to a designation made in accordance with section 242(b)(2) of TEFRA.

Conference Agreement

The conference agreement generally follows the House bill. In addition, the conference agreement extends the provisions of the House bill to unfunded deferred compensation plans of State and local governments and tax-exempt employers (sec. 457 plans).

[1] The technical corrections provisions of the House bill make it clear that both the before and after-death distribution rules applicable to qualified plans also apply to all tax-sheltered annuities.

As under the House bill, the conference agreement provides that the minimum required distribution in any given taxable year is to be determined under regulations to be issued by the Secretary of the Treasury. The conferees intend that, if a participant selects a permissible distribution option, the minimum required distribution in any given year is the amount required to be distributed in that year under the payout option selected.

With respect to a defined benefit pension plan, if the participant selects an impermissible payout option and designates a beneficiary, the minimum required distribution in any year is the amount that would have been distributable to the participant in that year had the participant selected a joint and survivor annuity payable over the joint life and last survivor expectancies of the participant and the beneficiary designated by the participant, taking into account their actual ages at the required beginning date. The survivor benefit is assumed to be the maximum percentage of the annuity payable during the participant's lifetime that will not violate the incidental benefit rule, but not a percentage in excess of 100 percent of the benefit payable to the participant. It is intended that the excise tax apply even if the distribution is described in the plan and the plan receives a favorable determination later.

If the participant selects an impermissible payout option and does not designate a beneficiary, the minimum required distribution in any year is the amount that would have been distributable to the participant in that year had the participant selected an annuity payable over the life expectancy of the participant, taking into account the participant's actual age on the required beginning date.

With respect to a defined contribution plan, the minimum required distribution is determined as under present law.

The provisions generally apply to distributions made after December 31, 1988. The conference agreement includes (1) the exception in the House bill and the Senate amendment for distributions made pursuant to a designation made in accordance with section 242(b)(2) of TEFRA and (2) the special effective date provision in the House bill relating to individuals who are not 5-percent owners and who have attained age 70½ by January 1, 1988.

The conference agreement clarifies that the provision relating to individuals who are not 5-percent owners and who have attained age 70½ by January 1, 1988, applies only if the individual is not a 5-percent owner in the plan year ending with or within the calendar year in which the individual attains age 66½ or any succeeding plan year.

A special effective date applies to collectively bargained plans with respect to individuals who are subject to the collective bargaining agreement.

2. Uniform Additional Income Tax for Early Distributions

Present Law

Withdrawal restrictions

Under present law, benefits may be distributed to a participant in a qualified pension plan only on account of plan termination or the employee's separation from service, disability, or death. Withdrawals under qualified profit-sharing or stock bonus plans are subject to fewer restrictions than those under qualified pension plans. Qualified profit-sharing or stock bonus plans generally may permit the withdrawal of employer contributions after the expiration of a stated period of time (e.g., 2 years or longer) or after the occurrence of a stated event (e.g., hardship).

Special restrictions apply to the withdrawal of benefits under a qualified cash or deferred arrangement. Under present law, a qualified cash or deferred arrangement, by its terms, may not permit a participant to withdraw elective deferrals (or earnings on such deferrals) before the participant dies, becomes disabled, separates from service, or (except in the case of a pre-ERISA money purchase pension plan) attains age 59½ or encounters hardship. Under proposed regulations, an employee is treated as having incurred a hardship only to the extent that the employee has an immediate and heavy bona fide financial need and does not have other resources reasonably available to satisfy the need.

Under present law, withdrawals under a tax-sheltered annuity program invested in a custodial account of a regulated investment company (i.e., a mutual fund) may not be made prior to the time the account owner attains age 59½, dies, becomes disabled, separates from service, or encounters financial hardship. In contrast, amounts invested in tax-sheltered annuities are not subject to any withdrawal restrictions.

Additional income tax on early withdrawals

Generally, under present law, a 10-percent additional income tax is imposed on withdrawals from an IRA before the owner of the IRA attains age 59½, dies, or becomes disabled. The tax also applies to any withdrawals from qualified plans by or on behalf of 5-percent owners who have not yet attained age 59½, died, or become disabled.

House Bill

Withdrawal restrictions

Under the House bill, a qualified cash or deferred arrangement may make distributions on account of the plan's termination (provided no successor plan is established), as well as on account of the employee's death, disability, separation from service, or (except in the case of a pre-ERISA money purchase pension plan) attainment of age 59½. (See the discussion in Part A.2., above.) The House bill provides that a distribution on account of the termination of a qualified cash or deferred arrangement must consist of the participant's total account balance under the plan. Distributions on account of hardship are permitted only to the extent of an employee's elective deferrals (but not income on those deferrals under the cash or deferred arrangement). Present law standards governing what constitutes a "hardship" continue to apply.

Under the House bill, the withdrawal restrictions currently applicable to tax-sheltered custodial accounts generally are extended to other tax-sheltered annuities. Thus, early distributions from a tax-sheltered annuity are prohibited unless the withdrawal is made on account of death, disability, separation from service, or attainment of age 59½. In addition, withdrawals on account of hardship from a tax-sheltered annuity or custodial account are permitted only to the extent of the contributions made pursuant to a salary reduction agreement (but not earnings on those contributions). The present-law standards defining "hardship" for purposes of a qualified cash or deferred arrangement will apply.

The provisions are generally effective for years beginning after December 31, 1985. The provision permitting distributions from a cash or deferred arrangement upon plan termination applies to plan terminations after December 31, 1984. The provisions relating to restrictions on distributions from tax-sheltered annuity or custodial accounts do not apply to amounts contributed to tax-sheltered annuities or custodial accounts before December 31, 1985.

Additional income tax on early withdrawals

Under the House bill, the 10-percent additional income tax on withdrawals from an IRA by the owner prior to attainment of age 59½, death, or disability is increased to 15 percent, and is extended to early withdrawals by any participant from any qualified retirement plan. Under the bill, the term "qualified retirement plan" includes a qualified defined benefit pension plan or defined contribution plan, a tax-sheltered annuity or custodial account, or an IRA. An exemption from the tax is provided for any distribution that is part of a scheduled series of substantially equal periodic payments (made not less frequently than annually) for the life of the participant (or the joint lives of the participant and the participant's beneficiary).

The provision generally applies to all distributions made in taxable years beginning after December 31, 1985. However, the bill contains an exception from the tax for individuals who, as of November 6, 1985, separated from service and commenced receiving benefits pursuant to a written election designating a specific schedule of benefit payments. The bill also exempts from the additional income tax on early withdrawals a total distribution of a participant's accrued benefit on account of a plan termination occurring prior to December 31, 1985.

Senate Amendment

Withdrawal restrictions

The Senate amendment follows the House bill with respect to distributions from a qualified cash or deferred arrangement.

In addition, the Senate amendment provides that, upon the sale by a corporation of the corporation's interest in a subsidiary, a distribution may be made to an employee of the subsidiary even if the employee continues employment with the subsidiary. The Senate amendment also permits distribution upon the sale by a corporation of substantially all the assets used by a corporation in a trade or business, even if the employee continues employment with the corporation acquiring such assets. These provisions are effective with respect to sales occurring after December 31, 1984.

Additional income tax on early distributions

The Senate amendment is generally the same as the House bill, except that (1) the Senate amendment does not extend the tax to distributions from a tax-sheltered annuity, (2) the tax is waived under certain additional circumstances, and (3) the rate of tax under the amendment varies depending on the character of the contribution to which the distribution relates.

The amendment exempts from the additional tax: (1) any distribution that is part of a scheduled series of substantially equal periodic payments over the life of the participant (or the joint lives of the participant and the participant's beneficiary) or the life expectancy of the participant (or the joint life expectancies of the participant and the participant's beneficiary), (2) a distribution to an employee (other than a 5-percent owner) who has attained age 55, separated from service, and satisfied the requirements for early retirement under the plan, (3) cer-

tain hardship distributions (other than distributions to a 5-percent owner or from an IRA), and (4) certain distributions from an employee stock ownership plan. Hardships that qualify for the exemption include certain medical expenses, casualty losses, and cessation of unemployment benefits. If the additional tax does not apply because of the substantially equal payment exception and the individual changes the method of distribution prior to age 59½ to a method that does not qualify for the exception, the tax will be imposed on all distributions received prior to age 59½.

The provisions are generally effective with respect to distributions made in taxable years beginning after December 31, 1986. The amendment provides an exception from the tax for individuals who, as of March 1, 1986, separated from service and commenced receiving benefits pursuant to a written election designating a specific schedule of benefit payments.

Direct transfer option

The Senate amendment provides that, if an employee separates from service and is to receive a distribution that could be rolled over to another qualified plan or IRA, the employer is required to offer the employee the option of electing a direct transfer of the employee's accrued benefit to an IRA or to another qualified plan. The provision is effective for years beginning after December 31, 1986.

Conference Agreement

Withdrawal restrictions

The conference agreement includes the provision in the House bill and the Senate amendment with respect to the hardship distributions from qualified cash or deferred arrangements, effective for plan years beginning after December 31, 1988. (*See*, also, the discussion in Part A.2., above.)

The conference agreement also includes the provision in the House bill and the Senate amendment with respect to distributions on termination of a qualified cash or deferred arrangement. Under the conference agreement, however, the distribution must consist of the participant's entire interest in the cash or deferred arrangement.

The conference agreement includes the provisions in the Senate amendment with respect to distributions from a qualified cash or deferred arrangement in connection with the sale of a subsidiary or substantially all the assets of a trade or business, effective with respect to sales occurring in plan years beginning after December 31, 1984. As under the termination rule, these rules apply only if the distribution consists of the participant's entire interest in the cash or deferred arrangement.

Under the conference agreement, the withdrawal restrictions with respect to amounts under a tax-sheltered annuity program invested in a custodial account are extended to elective deferrals and earnings thereon under a tax-sheltered annuity. Thus, elective deferrals and earnings thereon may not be withdrawn prior to the time the annuitant attains age 59½, dies, becomes disabled, or separates from service. The conference agreement adopts the provision in the House bill restricting hardship withdrawals from a tax-sheltered annuity or custodial account to elective deferrals (excluding earnings). The provisions are effective for taxable years beginning after December 31, 1988.

Additional income tax on early withdrawals

The conference agreement generally follows the Senate amendment, with modifications. Under the agreement, the additional income tax applies to early distributions from any "qualified retirement plan" as defined under the agreement. Thus, the tax applies to amounts distributed from plans qualified under section 401(a) of the Code, tax-sheltered annuities and custodial accounts, and IRAs, but does not apply to amounts distributed from unfunded deferred compensation plans of tax-exempt or State and local government employers (sec. 457 plans). Under the conference agreement, the rate of the tax is 10 percent for all early distributions includible in gross income, regardless of the character of the contribution to which the distribution relates.

The conference agreement includes the following exceptions to the tax: (1) a distribution that is part of a scheduled series of substantially equal periodic payments for the life of the participant (or the joint lives of the participant and the participant's beneficiary) or the life expectancy of the participant (or the joint life expectancies of the participant and the participant's beneficiary); (2) a distribution to an employee who has attained age 55, separated from service, and met the requirements for early retirement under the plan; (3) a distribution which is used to pay medical expenses to the extent that the expenses are deductible under section 213 (determined without regard to whether the taxpayer itemizes deductions), and (4) distributions after the death of the employee. The conference agreement includes the exception in the Senate amendment for certain distributions made from an employee stock ownership plan, but restricts the exception to distributions made prior to January 1, 1990.

In addition, the conference agreement exempts from the distribution tax: (1) lump-sum distributions made prior to March 15, 1987, if the distribution is made on account of separation from service in 1986 and the employee treats the distribution for Federal tax purposes as paid in 1986; (2) payments made to or on behalf of an alternate payee pursuant to a qualified domestic relations order; and (3) certain distributions of excess contributions to and excess deferrals under a qualified cash or deferred arrangement; and (4) dividend distributions under section 404(k).

The conferees intend that the additional income tax on early withdrawals does not apply to cashouts not requiring the participant's consent of amounts not in excess of $3,500.

The conference agreement does not follow the Senate amendment with respect to the exclusion of 5-percent owners from certain of the exceptions to the tax. Thus, the exceptions are available to 5-percent owners to the same extent they are available to other employees. In the case of distributions from IRAs, the early retirement, medical expense, and ESOP exceptions do not apply. The exception for distributions pursuant to a qualified domestic relations order applies to an individual retirement arrangement only to the extent the arrangement in subject to qualified domestic relations orders. The exception for substantially equal payments applies to distributions from plans qualified under 401(a) and tax-sheltered annuities and custodial accounts only if the distribution is made after separation from service.

The exception for retirement under a plan after separation from service following attainment of age 55 applies in the case of both normal and early retirement following attainment of age 55, and will continue to apply if the employee returns to work for the same employer or for a different employer. Thus, for example, the exception will apply to a distribution to an employee who retires following attainment of age 55 under a plan which provides for a normal retirement age of 55. In addition, the exception will continue to apply if the employee returns to work as long as the employee did, in fact, separate from service before the distribution.

In all cases, the exception applies only if the participant has attained age 55 on or before separation from service. Thus, for example, the exception does not apply to a participant who separates from service at age 52 and, pursuant to the early retirement provisions of the plan, begins receiving benefits at or after age 55. Of course, one of the other exceptions to the tax may still apply.

The early retirement exception applies if, upon retirement under one plan of the employer pursuant to the terms of the exception, the employee is entitled to a lump sum distribution from any other plan of the employer. For example, if an employer maintains a defined benefit plan that provides for early retirement upon separation from service after age 55 and also maintains a profit-sharing plan which permits the participant to obtain a lump sum upon retirement under the defined benefit plan, the distributions from both plans qualify for the exception.

An existing plan which does not have an early retirement provision can be amended to add an early retirement provision which qualifies for the exception.

The substantially equal payment exception is available with respect to forms of payment which contain a term certain and otherwise qualify for the exception (such as a life annuity with a 10-year certain provision).

As under the Senate amendment, the conference agreement provides that if distributions to an individual are not subject to the tax because of application of the substantially equal payment exception, the tax will nevertheless be imposed if the individual changes the distribution method prior to age 59½ to a method which does not qualify for the exception. The additional tax will be imposed in the first taxable year in which the modification is made and will be equal to the tax (as determined under regulations) that would have been imposed had the exception not applied. For example, if, at age 50, a participant begins receiving payments under a distribution method which provides for substantially equal payments over the individual's life expectancy, and, at age 58, the individual elects to receive the remaining benefits in a lump sum, the additional tax will apply to the lump sum and to amounts previously distributed.

In addition, the recapture tax will apply if an individual does not receive payments under a method that qualifies for the exception for at least 5 years, even if the method of distribution is modified after the individual attains age 59½. Thus, for example, if an individual begins receiving payments in substantially equal installments at age 56, and alters the distribution method to a form that does not qualify for the exception prior to attainment of age 61, the additional tax will be imposed on amounts distributed prior to age 59½ as if the exception had not applied. The additional tax will not be imposed on amounts distributed after attainment of age 59½. This 5-year minimum

payout rule is waived upon the death or disability of the employee.

Under the ESOP exception, certain distributions from an ESOP are exempt from the tax to the extent that, on average, a majority of the plan's assets have been invested in employee securities for the 5-plan year period immediately preceding the plan year in which the distribution occurs. In a case in which an ESOP has been in existence for less than 5 years, the plan must have been so invested during the entire period prior to distribution. In a case in which a plan is converted to an ESOP, plan assets must have been so invested for 5 plan years prior to distribution. However, a distribution from an ESOP that satisfies the preceding conditions will not qualify for this exception from the early distribution tax unless such distribution is attributable to assets that have been invested in employer securities for the 5-year period. Tacking of investment periods is permitted.

For example, amounts transferred to an ESOP would qualify for the exception 3 years after transfer provided such amounts meet the investment criteria for 2 years prior to such transfer. In addition, amounts transferred to an ESOP following a reversion from a defined benefit pension plan would qualify for this exception if a majority of such amounts are invested in employer securities upon transfer and the 5 year investment requirement is met. The conferees intend that a first-in, first-out rule be used for purposes of determining the length of time a plan has held securities distributed to a participant.

The conference agreement follows the effective date provisions of the Senate amendment.

Direct transfer option

The conference agreement does not contain the provision in the Senate amendment.

3. Taxation of Distributions

Present Law

In general

Under present law, a distribution of benefits from a tax-favored retirement arrangement generally is includible in gross income unless the amount distributed represents the employee's investment in the contract (i.e., basis). In the case of a distribution from a qualified plan or an IRA, such a distribution is includible in the year in which it is paid or distributed. Under a tax-sheltered annuity, benefits are includible in income when paid or made available.

Lump-sum distributions

Under present law, a lump-sum distribution from a qualified plan may qualify for special 10-year forward income averaging. In addition, the portion of a lump sum attributable to contributions prior to January 1, 1974, may qualify for capital gains treatment.

Basis recovery rules

Present law provides special rules for the treatment of basis (e.g., employee contributions) when an individual receives a distribution from a tax-favored retirement arrangement. If an amount is received before the annuity starting date (i.e., the date on which an amount is first received as an annuity), the individual is treated as first receiving employee contributions, which are nontaxable, and then taxable income.

In the case of amounts received after the annuity starting date, each payment received by an employee generally is treated, in part, as a return of the employee's contributions and, in part, as taxable income. The portion of each payment treated as a return of employee contributions is that amount which bears the same ratio to each payment as the employee's total contributions bear to the total expected payments over the period of the annuity. In the case of a straight-life annuity, the employee's life expectancy, as of the annuity starting date, is treated as the period over which the annuity is to be paid for purposes of computing his total expected return under the contract. Where the employee dies prior to the expiration of the employee's anticipated life expectancy, no deduction is provided for the employee's unrecovered basis. On the other hand, an employee whose actual life is longer than anticipated at the time benefits commence effectively excludes from income an amount in excess of the employee's total contributions.

In addition, under present law, a special rule applies under certain circumstances to annuity payments from qualified plans. Under the special rule, if an individual's first 3 years of annuity payments after the annuity starting date will equal or exceed the individual's aggregate employee contributions, all distributions are treated as a return of employee contributions (and thus nontaxable) until all of the individual's employee contributions have been recovered. Thereafter all distributions are fully taxable.

House Bill

Constructive receipt under a tax-sheltered annuity

Under the House bill, benefits under a tax-sheltered annuity are includible in income only when benefits are actually received. The provision is effective for distributions after December 31, 1985.

10-year averaging and pre-1974 capital gains treatment

Effective for distributions made after December 31, 1985, the House bill repeals 10-year forward averaging, phases out pre-1974 capital gains treatment over a 6-year period, makes 5-year forward averaging (calculated in the same manner as 10-year averaging under present law) available for one lump-sum distribution received by an individual after age 59½ and, under a transition rule, permits certain individuals to apply 5-year averaging to one lump-sum distribution received before age 59½.

Under the House bill, individuals are permitted to make a one-time election with respect to a single lump sum received after the individual attains age 59½ (1) to claim, pursuant to the 6-year phase-out, capital gains treatment on that portion of the lump sum (if any) attributable to amounts contributed prior to 1974 and (2) to use 5-year forward averaging on the balance of the lump sum. In addition, the House bill provides a special transition rule under which any participant who attains age 50 before January 1, 1986, is permitted to make one election with respect to a single lump-sum distribution received prior to age 59½ (1) to claim pre-1974 capital gains treatment pursuant to the 6-year phase-out, and (2) to use 5-year forward averaging on the balance of the lump sum.

The House bill also permits individuals who separate from service in December 1985 and receive a lump-sum distribution in January 1986 to elect to treat the distribution as received in 1985 and to claim 10-year averaging (and capital gains treatment if appropriate) with respect to the distribution.

Basis recovery rules

The House bill modifies the basis recovery rules applicable to distributions from plans in which there are after-tax employee contributions. Under the House bill amounts received prior to the annuity starting date are treated as being made first out of taxable amounts (employer contributions and income) and, second, as being made out of nontaxable amounts (employee contributions). If an employee is only partially vested in the portion of the employer's benefits attributable to employer contributions (for example, in the case of a plan with a graduated vesting schedule), the employee is not taxed on a distribution to the extent that the distribution, when added to any prior distributions under the plan, exceeds the sum of (1) the employee's vested benefits attributable to employer contributions, plus (2) income on the employee's contributions.

With respect to amounts received after the annuity starting date, the special three-year basis recovery rule is eliminated. Thus, an employee must include in income a portion of each payment made on or after the employee's annuity starting date.

The House bill provides that in computing the portion of each payment that may be excluded from income, the employee's expected total return is to be determined as of the date of the payment. The bill limits the total amount that an employee may exclude from income to the total amount of the employee's contribution. In addition, if an employee's benefits cease prior to the date the employee's total contributions have been recovered, the amount of unrecovered contributions is allowed as a deduciton to the annuitant for his last taxable year. For purposes of the provisions of present law relating to net operating losses, the deduction is treated as related to a trade or business of the employee.

The provisions relating to the basis recovery rules for amounts received before a participant's annuity starting date are generally effective for distributions made after December 31, 1985, but do not apply to employee contributions made prior to January 1, 1986.

The repeal of the special 3-year basis recovery rule generally is effective with respect to any individual whose annuity starting date is after July 1, 1986.

Senate Amendment

Constructive receipt under a tax-sheltered annuity

The Senate amendment is the same as the House bill, except that the provision is effective for distributions after December 31, 1986.

10-year averaging and pre-1974 capital gains treatment

The Senate amendment follows the House bill, except for the effective date and the special transition rule for individuals who have attained age 50 before January 1. The general effective date of the Senate amendment is taxable years beginning after December 31, 1986.

The Senate amendment provides a transition rule under which a participant who has attained age 50 before January 1, 1986, is permitted (1) to make one election (before or after attainment of age 59½) to use 5-year forward averaging (under the new tax rates) or 10-year averaging (under the new rates) without regard to the requirement of attainment of age 59½, and (2) to elect capital gains treatment with respect to a lump-

sum distribution, without regard to the six-year phase-out of capital gains treatment. An election under this transition rule to use income averaging on a lump sum received prior to age 59½ eliminates the availability of an election after age 59½ under the general rule.

Basis recovery rules

With respect to pre-annuity starting date distributions, the Senate amendment modifies the basis recovery rules to provide for pro-rata recovery of employee contributions. Thus, with respect to a pre-annuity starting date distribution, a participant is entitled to exclude that portion of the payment that bears the same ratio to the total payment as the participant's after-tax employee contributions (and amounts treated as after-tax employee contributions) bears to the total value of the participant's accrued benefit (or account balance) under the plan as of the date of distribution or as of such other time as the Secretary may prescribe. The Secretary is authorized to prescribe appropriate rules for estimating the amounts referred to in the prior sentence where precise calculation would be unjustifiably burdensome.

If an employee is only partially vested in the portion of the employee's benefits attributable to employer contributions (for example, in the case of a plan with a graded vesting schedule), the portion of the employee's accrued benefit that has not yet vested is not taken into account in determining the total value of the participant's accrued benefit.

With regard to post-annuity starting date distributions, the Senate amendment follows the House bill.

The Senate amendment also provides basis recovery rules for distributions from an IRA to which nondeductible contributions have been made. The rules are generally similar to the rules applicable to distributions from qualified plans.

The provisions relating to the basis recovery rules for amounts received before a participant's annuity starting date are generally effective for distributions made after December 31, 1986, but do not apply to employee contributions made prior to January 1, 1987 to the extent that, on May 5, 1986, such contributions were available for distribution under a plan before separation from service. Thus, except in the case of plans in which substantially all contributions are employee contributions, withdrawals made after the effective date, but prior to an individual's annuity starting date, are to be treated as made first from pre-1987 employee contributions that were available for in-service withdrawal. After all such contributions have been recovered, any subsequent distributions are taxed under the new pro-rata basis recovery rules of the bill. The repeal of the special 3-year basis recovery rule generally is effective with respect to any individual whose annuity starting date is after January 1, 1988.

Conference Agreement

Constructive receipt under a tax-sheltered annuity

The conference agreement follows the House bill and the Senate amendment.

10-year averaging and pre-1974 capital gains treatment

The conference agreement follows the Senate amendment. Under the conference agreement, if an individual who has attained age 50 by January 1, 1986, elects, pursuant to the transition rule, to retain the capital gains character of the pre-1974 portion of a lump sum distribution, the capital gains portion is taxed at a rate of 20 percent. The 20 percent rate applies to all taxpayers, regardless of the maximum effective capital gains rate under present law.

Basis recovery rules

Pre-annuity starting date

The conference agreement generally follows the Senate amendment. However, under the conference agreement, employee contributions to a defined contribution plan or a separate account of a defined benefit plan (and the income attributable thereto) are treated as a separate contract for purposes of section 72 and application of the pro-rata rule. Thus, under the conference agreement, if an employee withdraws employee contributions from such a plan or account, then for tax purposes, the distribution will be considered to be part nontaxable, i.e., a return of employee contributions, and part taxable, i.e., a distribution of earnings on those contributions. The distribution will not, however, be considered to be attributable to employer contributions. If an employee withdraws all amounts attributable to employee contributions and such amount is less than the employee's contributions, the employee may recognize a loss.

Post-annuity starting date

The conference agreement follows the House bill and the Senate amendment, except that it extends the separate contract rule to post-annuity starting date distributions.

Rollovers

The conference agreement modifies the rules relating to rollovers of partial distributions. Under the conference agreement, partial distributions may be rolled over only if the distribution is due to the death of the employee, is on account of the employee's separation from service (including the separation from service of a self-employed individual) or is made after the employee has become disabled. The requirement that a partial distribution not be one of a series of periodic payments is eliminated.

Under a special rule, a distribution in satisfaction of the diversification requirements applicable under the agreement to employee stock ownership plans may be rolled over even if the distribution does not otherwise qualify for rollover treatment.

The conference agreement contains a special rule permitting amounts deposited in certain financially distressed financial institutions to be rolled over into an IRA or qualified plan notwithstanding that the rollover does not occur within 60 days of the date of the original distribution to the employee. Under this rule, the 60-day period does not include periods while the deposit is frozen. In addition, the individual has a minimum 10 days after the release of the funds to complete the rollover.

Individual retirement arrangements

The conference agreement follows the Senate amendment, with modifications. (*See* discussion in Part A.1., above.)

Effective dates

The basis recovery rules are generally effective with respect to distributions received after December 31, 1986. The repeal of the 3-year basis recovery rule is effective with respect to individuals whose annuity starting date is after July 1, 1986. The provision limiting the income exclusion to the amount of the employee's investment in the contract applies to individuals whose annuity starting date is after December 31, 1986.

The new rules with respect to partial distributions are effective with respect to amounts distributed after December 31, 1986. The special rule for frozen deposits is generally effective with respect to distributions after the date of enactment. With respect to amounts which were frozen and released prior to the date of enactment, the rollover must be completed within 60 days following the date of enactment.

4. Treatment of Loans

Present Law

An individual is permitted, under present law, to borrow from a qualified plan in which the individual participates (and to use his or her accrued benefit as security for the loan) provided the loan bears a reasonable rate of interest, is adequately secured, provides a reasonable repayment schedule, and is not made available on a basis that discriminates in favor of employees who are officers, shareholders, or highly compensated. However, no loan is permitted under the Employee Retirement Income Security Act of 1974 (ERISA) or the Code from a qualified plan to an owner-employee (i.e., a sole proprietor or more than 10-percent partner). Interest paid on a loan from a qualified plan is deductible.

Subject to certain exceptions, a loan to a plan participant is treated as a taxable distribution of plan benefits. An exception to this general rule of income inclusion is provided to the extent that the loan (when added to the outstanding balance of all other loans to the participant from all plans maintained by the employer) does not exceed the lesser of (1) $50,000 or (2) the greater of $10,000 or one-half of the participant's accrued benefit under the plan. This exception applies only if the loan must, by its terms, be repaid within five years or, if the loan is used to acquire or improve a principal residence of the participant or a member of the participant's family, within a reasonable period of time.

House Bill

The House bill modifies the exception to the income inclusion rule by reducing the $50,000 limit on a loan by the participant's highest outstanding loan balance during the preceding 12-month period.

In addition, the extended repayment period permitted for purchase or improvement of a principal residence is amended to apply only to the purchase of the principal residence of the participant. Plan loans to improve an existing principal residence, to purchase a second home, and to finance the purchase of a home or home improvements for other members of the employee's family are subject to the 5-year repayment rule.

The House bill also requires that a plan loan be amortized in level payments, made not less frequently than quarterly, over the term of the loan.

The House bill also provides for the deferral of the deduction for interest paid by (1) all employees on loan secured by elective deferrals under a qualified cash or deferred arrangement or tax-sheltered annuity, and (2) key employees with respect to loans from any qualified plan or other tax-favored retirement plan. The deferral is to be accomplished by denying a current deduction for the interest paid and increasing the participant's basis under the plan by the amount of nondeductible interest paid.

The provisions would be effective for amounts received as a loan after December 31, 1985. Any renegotiation, extension, renewal, or revision after December 31, 1985,

of an existing loan is treated as a new loan on the date of such renegotiation, etc.

Senate Amendment

As under the House bill, the Senate amendment modifies the exception to the income inclusion rule by reducing the $50,000 limit on a loan by the participant's highest outstanding balance during the preceding 12-month period.

In addition, the extended repayment period permitted for purchase or improvement of a principal residence is amended to apply only to the purchase of the principal residence of the participant or a lineal descendant of the participant. Thus, for example, plan loans to improve an existing principal residence, or to purchase a second home, are subject to the 5-year repayment rule.

The provisions are generally effective with respect to loans made after December 31, 1986. Any renegotiation, extension, renewal, or revision after December 31, 1986, of an existing loan is treated as a new loan on the date of such renegotiation, etc. The provision denying basis is effective for interest paid after December 31, 1986. The general effective date applies to the provision denying a deduction for interest paid on certain loans. Of course, prior to the effective date, the deductibility of interest will be subject to the general limits on deductibility of interest contained in the conference agreement.

Conference Agreement

The conference agreement follows the House bill, with modifications and clarifications as described below.

The conference agreement follows the House bill with respect to the reduction of the $50,000 limit on loans, with a clarification. Under the conference agreement, a loan, when added to the outstanding balance of all other loans from the plan, cannot exceed $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made.

For example, a participant with a vested benefit of $200,000 borrows $30,000 from a plan on January 1. On November 1, the participant wants to borrow an additional amount without triggering a taxable distribution. At that time, the outstanding balance on the first loan is $20,000. The maximum amount the participant can borrow is $50,000, i.e., $20,000–$20,000–($30,000–$20,000).

The conference agreement follows the House bill with respect to the principal residence exception to the 5-year repayment rule and the level amortization rule. The conferees intend that the level amortization requirement does not apply to a period when the employee is on a leave of absence without pay for up to 1 year. In addition, the requirement does not preclude repayment or acceleration of the loan prior to the end of the commitment period. Thus, for example, the provision does not preclude a plan from requiring full repayment upon termination of employment.

The provisions are generally effective with respect to loans made after December 31, 1986. Any renegotiation, extension, renewal, or revision after December 31, 1986, of an existing loan is treated as a new loan on the date of such renegotiation, etc.

Under the conference agreement, the deduction of interest on all loans from a qualified plan or tax-sheltered annuity is subject to the general limits on deductibility of interest contained in the conference agreement. In addition, effective with respect to loans made, renegotiated, extended renewed, or revised after December 31, 1986, no deduction is allowed with respect to interest paid on (1) loans secured with elective deferrals under a qualified cash or deferred arrangement or a tax-sheltered annuity, and (2) any loan to a key employee (even if the interest on such loans is otherwise deductible under the general interest provisions of the agreement). Effective for interest paid after December 31, 1986, no basis is allowed with respect to any interest paid on a loan from a qualified plan or tax-sheltered annuity.

D. Tax Deferral Under Qualified Plans

1. Overall Limits on Contributions and Benefits

Present Law

In general

Under present law, overall limits apply to contributions and benefits provided to an individual under all qualified plans, tax-sheltered annuity programs, and simplified employee pensions (SEPs) maintained by any private or public employer or by certain related employers. Beginning in 1988, the limits are to be indexed for post-1986 inflation by reference to the consumer price index. Present law provides a limit on the annual addition for an employee under all defined contribution plans maintained by the same employer and a limit on the annual benefit that may be provided for an employee under all defined benefit pension plans (sec. 415). A combined plan limit applies with respect to an employee who participates in a defined contribution plan and a defined benefit pension plan of the same employer. A plan or program that does not comply with the overall limits is not a qualified plan.

Defined contribution plans

The annual addition under a defined contribution plan is limited to the lesser of (1) 25 percent of compensation for the year, or (2) $30,000. The annual addition consists of employer contributions, certain employee contributions, and reallocated forfeitures.

In applying the limits, only a portion of nondeductible employee contributions to a qualified plan is taken into account. The amount taken into account is the lesser of one-half of the employee contributions or total employee contributions in excess of six percent of compensation.

Defined benefit pension plans

Under a defined benefit pension plan, the limit on the annual benefit derived from employer contributions is the lesser of (1) 100 percent of average compensation, or (2) $90,000. The $90,000 limit is reduced for retirement benefits commencing before age 62. In no event, however, is the dollar limit applicable to benefits commencing at or after age 55 less than $75,000. If retirement benefits commence before age 55, the dollar limit is actuarially reduced so that it is the actuarial equivalent of a $75,000 annual benefit commencing at age 55. Under present law, the $90,000 limit is actuarially increased for benefits commencing after age 65.

Present law provides that reduced limits apply to participants with less than 10 years of service. The limits are reduced by 10 percent per year for each year of service less than 10.

Combined plan limit

Under present law, a combined plan limit applies if an employee participates in a defined contribution plan and a defined benefit pension plan maintained by the same employer. Present law provides no special limit on an employee's benefits from qualified plans of more than one employer.

Tax-sheltered annuity programs

Subject to limits, public schools and certain tax-exempt organizations (including churches and certain organizations associated with churches) may make payments on behalf of an employee to purchase a tax-sheltered annuity contract (sec. 403(b)). Payments to a custodial account investing in stock of a regulated investment company (e.g., a mutual fund) are also permitted.

The amount paid by the employer is excluded from the employee's income for the taxable year to the extent that the payment does not exceed the employee's exclusion allowance for the taxable year. The exclusion allowance is generally equal to 20 percent of the employee's includible compensation from the employer multiplied by the number of the employee's years of service with that employer, reduced by amounts already paid by the employer to purchase the annuity.

In addition, an increased exclusion allowance is provided for certain church employees whose adjusted gross income does not exceed $17,000. The special exclusion allowance for such employees is not less than the lesser of $3,000 or the employee's includible compensation for the year.

Employer payments to purchase a tax-sheltered annuity contract for an employee are also subject to the overall limits on contributions and benefits under qualified plans. Tax-sheltered annuities are generally defined contribution arrangements. Under the overall limits, annual additions to tax-sheltered annuities and other defined contribution arrangements for the employee may not exceed the lesser of a specified dollar amount ($30,000, for 1986), or 25 percent of the employee's compensation from the employer for the year. Under a special rule, an employee of an educational institution, hospital, home health service agency, or church may elect to compute the annual exclusion allowance for payments under a tax-sheltered annuity solely by reference to the maximum annual employer payment that could be made under the overall limit.

In addition, to allow catch-up payments for certain lower-paid employees, alternative special elections are provided to increase the overall limit for the year of the election. Catch-up payments are payments permitted under the exclusion allowance on account of prior years of service, but denied under the overall annual limit (that takes into account only the current year). An individual is allowed only one of the special elections under section 415.

Further, a church employee may make an additional election pursuant to which the church may make payments for the year in excess of the otherwise applicable overall annual limit. The election may not be made for the same year in which a catch-up election is effective.

A plan is not required to include a specific provision as a condition of meeting the requirements of the overall limits on contributions and benefits (sec. 415). The plan, however, must preclude the accrual of benefits in excess of the level permitted by the overall limits.

House Bill

Defined contribution plans

The House bill provides that the dollar limit on annual additions under a defined contribution plan is decreased to the lesser of $25,000 or 25 percent of the dollar limit for defined benefit pension plans, as adjusted for inflation. Also, under the bill, the entire amount of nondeductible employee contributions to a plan is taken into account in computing the annual addition.

Defined benefit pension plans

In general

The House bill reduces the dollar limit on the employer-derived annual benefit under a defined benefit pension plan from $90,000 to $77,000. The $77,000 limit applies for benefits commencing at age 62 or thereafter. The bill conforms the limit on benefits commencing after age 65 to the reduced limit. The bill also reduces the limits applicable to early retirement.

Early retirement benefits

Under the House bill, if retirement benefits under a defined benefit pension plan commence before age 62, then the $77,000 limit generally is reduced so that it is the actuarial equivalent of an annual benefit of $77,000 commencing at age 62. The bill provides, however, that the limit on the annual benefit for a participant who has attained age 55 is not to be less than $65,000.

The House bill provides special rules for commercial airline pilots and participants in a qualified police or firefighters' pension plan.

Under the House bill, in the case of a commercial airline pilot, the reduction in benefits for early retirement applies only to those airline pilots whose benefits begin before age 60 and the dollar limit applicable to annual benefits beginning at age 60 is $77,000. If benefits begin before age 60, the House bill provides that the dollar limit applicable to the annual benefits is determined under the general rules.

With respect to participants in a qualified police of firefighters' pension plan, the House bill provides that the dollar limit on benefits payable are never actuarially reduced to an amount less than $50,000, regardless of the age at which benefits commence.

Although the $77,000 limit provided by the House bill is adjusted for post-1986 inflation, no inflation adjustment is provided for the $65,000 limit. Under the bill, the limit on the annual benefit for a participant who has not attained age 55 is the actuarial equivalent of the limit at age 55.

Cost-of-living adjustments

The House bill does not change the rules for making cost-of-living adjustments to the dollar limit on annual benefits under a defined benefit pension plan. Under the bill, however, cost-of-living adjustments to the dollar limit on annual additions under a defined contribution plan are suspended until cost-of-living adjustments to the limit on annual benefits increase that limit to an amount in excess of $100,000.

Qualified cost-of-living arrangements

The House bill permits a defined benefit pension plan to maintain a qualified cost-of-living arrangement under which employer and employee contributions may be applied to provide cost-of-living increases to the primary benefit under the plan. If the arrangement qualifies, an employee contribution under the arrangement will not be treated as an annual addition in applying the separate limit on annual additions under defined contribution plans, but will be treated as an annual addition for purposes of applying the combined plan limit (sec. 415(e)). Further, under a qualified arrangement, the benefit attributable to an employee's contribution will be treated as a benefit derived from employer contributions for purposes of the limit on annual benefits. A qualified cost-of-living arrangement is required to comply with the dollar limits, election procedures, and nondiscrimination requirements of the bill.

Under the House bill, a key employee is generally not eligible to participate in a qualified cost-of-living arrangement. In a plan that is not top heavy, however, an employee who is a key employee solely because of officer status can participate in a qualified cost-of-living arrangement.

Phase-in of maximum benefit limit

The House bill provides that the limit on annual benefits under a defined benefit plan is phased in on the basis of years of participation in a plan instead of years of service with the employer. For an employee who has not completed 10 years of plan participation, the otherwise applicable dollar limit for such employee is multiplied by a fraction. The numerator of the fraction is the number of years of participation completed, and the demominator of the fraction is 10. The 10-year phase-in period applies with respect to an increase in benefits due to a change in the benefit structure of a plan, except as provided under Treasury regulations. The phase-in generally does not apply to cost-of-living increases (within the meaning of sec. 415(d)) or post-retirement benefit increases. The application of the phase-in to plan mergers or spin-offs is to be determined under Treasury regulations.

Includible compensation

The House bill provides a limit on compensation that may be taken into account under a plan. Under the bill, the $200,000 limit applicable under present law to top-heavy plans is reduced to seven times the limit on annual additions under a defined contribution plan ($175,000) and is applied to all qualified plans (whether or not top heavy). The limit applies for all purposes in testing a plan for discrimination (e.g., secs. 401(a)(4) and 401(k)(3)).

Excess distributions

In general

The House bill provides a new excise tax on excess distributions from tax-favored retirement savings arrangements (qualified retirement plans, tax-sheltered annuity programs, and IRAs). To the extent that aggregate annual distributions paid to a participant from tax-favored retirement savings arrangements during a calendar year are excess distributions, the distributions are subject to a 15-percent excise tax.

Generally, the excess distribution for a calendar year is the excess of (1) the aggregate amount of retirement distributions made with respect to an individual during the year, over (2) the greater of $112,500 or 125 percent of the limit for the year on annual benefits commencing at age 62 under a defined benefit pension plan. However, the bill provides that certain amounts are excluded in making this calculation. Under the bill, excludable distributions include amounts excluded from the participant's income because they are payable to a former spouse pursuant to a qualified domestic relations order (sec. 414(p)) and includible in the spouse's income. Of course, distributions payable to the former spouse are aggregated with any other retirement distributions payable to such spouse for purposes of determining whether the spouse has excess retirement distributions subject to the tax. (Distributions paid to other alternate payees (e.g., minor children) are includible in applying the limit.) In addition, distributions made with respect to a participant after the death of the participant are disregarded in applying this annual limit and are subject instead to an additional estate tax.

Under this provision, the ceiling amount is not adjusted to reflect the age at which benefit payments commence. Thus, the limit is neither decreased to reflect early commencement of benefits nor increased to reflect deferred commencement. However, this tax will be reduced by the amount, if any, of income tax on early distributions (sec. 72(t)) to the extent attributable to such excess distribution.

In applying the additional tax, all distributions made with respect to any individual during a calendar year will be aggregated, regardless of the form of the distribution or the number of recipients. Thus, for example, all distributions received during a year, whether paid under a life annuity, a term certain, or any other benefit form (including an ad hoc distribution) generally will be aggregated in applying the tax.

Lump sum distributions

A special higher ceiling applies for purposes of calculating the excess distribution for any calendar year in which an individual receives a lump sum distribution that is taxed under the favorable long-term capital gains or five-year averaging rules. The higher ceiling will be the lesser of (i) the portion of the lump sum distribution that is treated as long-term capital gains or taxed under the five-year averaging rules, or (ii) five times the otherwise applicable ceiling for such calendar year.

Post-death distributions

In lieu of subjecting post-death distributions (including distributions of death benefits) to the annual tax on excess distributions, the bill adds an additional estate tax equal to 15 percent of the individual's excess retirement accumulation (sec. 4980(A)). After the estate tax is imposed, post-death distributions are disregarded entirely in applying this tax. For example, beneficiaries who are receiving distributions with respect to a participant after the participant's death (other than certain former spouses receiving benefits pursuant to a qualified domestic relations order) are not required to aggregate those amounts with any other retirement distributions received on their own behalf.

The excess retirement accumulation is defined as the excess (if any) of the value of the decedent's interests in all qualified retirement plans, tax-sheltered annuities, and individual retirement accounts, over the present value of annual payments equal to the annual ceiling ($112,500 or, if greater, 125 percent of the applicable defined benefit plan dollar limit in effect on the date of death), over a period equal to the life expectancy of the individual immediately before death.

In calculating the amount of the excess retirement accumulation, the value of the decedent's interest in all plans, tax-sheltered annuities and individual retirement arrangements will be taken into account regardless of the number of beneficiaries. In addition, the decedent's interests are to be valued as of the date of death or, in the case of a decedent for whose estate an alternate

valuation date has been elected, such alternate valuation date (sec. 2032).

Effective dates

In general

The provision generally applies to years beginning after December 31, 1985. Special rules are provided that permit deferral, until years beginning after December 31, 1987, of the time for amendment of plans to conform to the bill. For years beginning after December 31, 1985, however, the reduced limits are to be reflected in the computation of the amount of deductible employer contributions to a plan. A special effective date is provided for collectively bargained plans.

Current accrued benefits

Transition rules are provided to insure that a participant's current accrued benefit under a defined benefit pension plan is not reduced merely because of the changes made by the provision. The protection of current accrued benefits applies to any individual who is a participant before January 1, 1985, in a plan that was in existence on November 6, 1985. Under the bill, an individual's current accrued benefit is the individual's accrued benefit as of the close of the last year beginning before January 1, 1986, expressed as an annual benefit determined pursuant to the rules in effect prior to the amendments made by the bill.

Generally, for purposes of determining an individual's current accrued benefit, no change in the terms and conditions of the plan after November 6, 1985, is taken into account. Under the bill, no later than the first plan year beginning after December 31, 1987, any accruals in excess of the greater of (1) the limit, as amended by the bill, or (2) the current accrued benefit, are to be reduced.

In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified before November 6, 1985, the current accrued benefit of an individual is the individual's accrued benefit as of the close of the last year beginning before the earlier of (1) the date on which the last of the collective bargaining agreements terminates, or (2) January 1, 1991.

Employee contributions

The provision specifies that inclusion of all employee contributions in the computation of the annual addition under a defined contribution plan does not affect the computation of the defined contribution fraction for years beginning before January 1, 1986.

Tax on excess distributions

The 15-percent tax on excess distributions applies to benefits received in taxable years beginning after December 31, 1985.

Senate Amendment

Defined contribution plans

Under the Senate amendment, the cost-of-living adjustment to the dollar limit on the annual addition under a defined contribution plan is deferred until the dollar limit on the annual benefit under a defined benefit pension plan exceeds $120,000. The Senate amendment follows the House bill with respect to the provision under which all nondeductible employee contributions to a plan are taken into account in computing the annual addition.

Defined benefit pension plans

Early retirement benefits

The Senate amendment conforms the normal retirement age used in determining the limit on annual benefits under a qualified defined benefit pension plan with the retirement age in effect under the Social Security Act (currently, age 65). Under the Senate amendment, the limit on the annual benefit under a defined benefit pension plan is actuarially reduced if the benefit commences before the social security normal retirement age. To the extent benefits commence on or after age 62, this reduction generally follows the manner in which the social security benefits are reduced for early benefit commencement. If benefits commence before age 62, the limit is the actuarial equivalent of the limit at age 62.

The provisions of the Senate amendment relating to limits on early retirement benefits for airline pilots, police, and firefighters generally are the same as under the House bill except that the Senate amendment (1) provides an exemption from the changes in the Senate amendment relating to the social security retirement age and (2) extends the special limits to certain correctional officers.

Cost-of-living adjustments

The Senate amendment provides that the limit on the annual benefit under a defined benefit pension plan is to be adjusted for increases in the social security wage base. Under the amendment, legislative changes in the wage base are not to be reflected in making the adjustment to the limit on annual benefits under a defined benefit pension plan. The amendment provides that the limit on the annual addition under a defined contribution plan is determined by reference to the limit on annual benefits under a defined benefit pension plan.

Qualified cost-of-living arrangements

The provisions of the Senate amendment relating to qualified cost-of-living arrangements are similar to the provisions of the House bill. Under the Senate amendment, however, additional rules are provided to limit accrued benefits under a qualified cost-of-living arrangement.

The Senate amendment provides that a right to an accrued benefit derived from employer contributions under a plan which contains a qualified cost-of-living arrangement is not treated as forfeitable solely because the plan provides that a participant is not entitled to receive that portion of the cost-of-living adjustment derived from employer contributions if the participant (1) fails to contribute the amount required to be paid under the plan for the cost-of-living adjustment, or (2) receives a distribution of the present value of the participant's accrued benefit derived from employer contributions in the form of a lump sum. The provision does not modify the fiduciary obligations or other rules of ERISA under which a plan administrator is to provide appropriate notice to a participant or beneficiary with respect to the consequences of a failure to make contributions required as a condition of obtaining a cost-of-living adjustment, or the consequences of receiving benefits in the form of a lump sum.

Phase-in of maximum benefit limit

The provisions of the Senate amendment relating to the phase-in of the maximum limit on the annual benefit under a defined benefit pension plan are the same as under the House bill.

Includible compensation

Under the Senate amendment the $200,000 limit on compensation that may be taken into account under a top-heavy plan is extended to all plans. The limit applies for most purposes for which compensation is taken into account under the Code, including the provisions relating to nondiscrimination. The limit is indexed at the same time and in the same manner as the dollar limit under defined benefit plans (sec. 415(d)).

Excess distributions

The Senate amendment does not adopt the House bill provision relating to the excise tax on excess distributions.

Effective dates

In general

The provision generally applies to years beginning after December 31, 1986. Special rules are provided that permit deferral, until years beginning after December 31, 1988, of the time for amendment of plans to conform to the bill. For years beginning after December 31, 1986, however, the reduced limits are to be reflected in the computation of the amount of deductible employer contributions to a plan. A special effective date is provided for collectively bargained plans.

Current accrued benefits

Transition rules are provided to insure that a participant's current accrued benefit under a defined benefit pension plan is not reduced merely because of the changes made by the provision.

The protection of current accrued benefits applies to any individual who is a participant, as of the first day of the first year to which the provision applies, in a plan that was in existence on May 6, 1986, and in all prior years satisfied the limits on contributions and benefits. Under the bill, an individual's current accrued benefit is the individual's accrued benefit as of the close of the last year beginning before January 1, 1987, expressed as an annual benefit determined pursuant to the rules in effect prior to the amendments made by the bill.

Generally, for purposes of determining an individual's current accrued benefit, no change in the terms and conditions of the plan after May 5, 1986, and no cost-of-living adjustment occurring after May 5, 1986, are to be taken into account. Under the bill, no later than the first plan year beginning after December 31, 1988, any accruals in excess of the greater of (1) the limit, as amended by the bill, or (2) the current accrued benefit, are to be reduced.

In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified before May 6, 1986, the current accrued benefit of an individual is the individual's accrued benefit as of the close of the last year beginning before the earlier of (1) the date on which the last of the collective bargaining agreements terminates, or (2) January 1, 1991. In addition, a change in the terms of the plan ratified before May 6, 1986, is treated as a change made before May 6, 1986.

Employee contributions

The provision specifies that inclusion of all employee contributions in the computation of the annual addition under a defined contribution plan does not affect the computation of the defined contribution fraction for years beginning before January 1, 1987.

Conference Agreement

In general

The conference agreement generally follows the Senate amendment with respect to the separate limits applicable to defined benefit pension plans and defined contribution plans except that the method of index-

ing the dollar limits is the same as under the House bill and present law, i.e., by reference to increases in the consumer price index. The conference agreement generally follows the House bill with respect to the imposition of an excise tax on benefit payments in excess of a specified level.

Defined benefit plans

Normal retirement age

The conference agreement follows the Senate amendment, except that the conference agreement exempts plans maintained by tax-exempt or governmental employers and a specified class of merchant seamen from the provisions relating to the normal retirement age and the elimination of the $75,000 floor for benefits beginning at age 55.

The conference agreement generally follows the special rules in the Senate amendment for commercial airline pilots and participants in a qualified police or firefighters' defined benefit pension plan. The conference agreement clarifies the definition of a qualified police or firefighters' plan and provides for indexing of the $50,000 limit applicable under the special rules for those plans. The conference agreement does not adopt the special rules for correctional officers.

In addition, the conference agreement clarifies the application of the special rules for pilots who retire before age 60. Under the conference agreement, in the case of any participant who is a commercial airline pilot, the actuarial reduction for early retirement does not reduce the limitation on benefits below (1) $75,000, if the participant's benefit begins at or after age 55 or (2) the actuarial equivalent of the $75,000 limitation at age 55, if the benefit begins before age 55. In addition, if, as of the time an individual retires, Federal Aviation Administration regulations require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before the social security retirement age, the age prescribed in such regulations is to be substituted for the social security retirement age, unless the individual separates from service prior to age 60. The conference agreement also clarifies that the special rule for commercial airline pilots is limited to individuals whose services as a pilot constitute substantially all of their services to which the benefit relates.

Phase-in of maximum benefit limit

The conference agreement adopts the House bill and the Senate amendment provision under which the dollar limit on annual benefits under a qualified defined benefit pension plan is phased in over 10 years of plan participation is adopted.

As under both bills, the conference agreement also provides that, to the extent provided in regulations, the phase-in is to be applied to any benefit increases under a plan as though such increase were a new plan. Thus, for example, an amendment improving the benefit formula may increase benefits by up to one-tenth of the applicable dollar limit under section 415 for each year of participation after the amendment. A second amendment within 10 years of a prior amendment increasing benefits is subject to the limit under the phase-in triggered by the prior amendment (along with benefit increases under the prior amendment).

In addition, the conferees do not intend the phase-in for benefit increases to apply to benefit improvements due to updating compensation in a career average pay plan, cost-of-living increases for retirees, the beginning of a new collective bargaining cycle, and other reasonable benefit improvements that are not primarily for highly compensated employees. Thus, the conferees expect that the Secretary will apply a concentration test under which the phase-in will not apply to a benefit increase if the resulting increase in benefits is not primarily for highly compensated employees. In addition, the Secretary is to provide rules permitting the tacking of participation under separate plans in circumstances not inconsistent with the purposes of the phase-in.

Qualified cost-of-living arrangements

The conference agreement generally follows the House bill with respect to qualified cost-of-living arrangements. The agreement clarifies the terms under which an employee may obtain an employer-provided cost-of-living subsidy. In addition, the conferees intend that the right to the employer-derived portion of a qualified cost-of-living benefit is part of an employee's accrued benefit subject to the vesting and benefit accrual requirements and the prohibition on a retroactive reduction in accrued benefits and is to be treated under rules similar to the rules applicable to employer-derived early retirement benefits.

For example, the employer-derived portion of the cost-of-living benefit need not be provided to an employee who fails to satisfy the applicable conditions for receipt of the benefit, including any required employee contributions. Further, the cost-of-living benefit need not be provided to an employee who has separated from service and received a distribution of the employee's benefit without making the required contributions for the cost-of-living benefit. The employee could, however, return to service and buy back the benefit by proper repayment of the cashed out benefit.

Defined contribution plans

With respect to defined contribution plans, the conference agreement adopts the rules of the House bill applicable to cost-of-living adjustments and adopts the Senate amendment with respect to the amount of the current dollar limitation ($30,000). Although cost-of-living adjustments will be made to the defined benefit pension plan limit beginning in 1988, no cost-of-living adjustments to the defined contribution plan limit will be made until the $30,000 defined contribution plan limit is equal to 25 percent of the defined benefit dollar limit. The cost-of-living adjustment will be determined by reference to the consumer price index.

Under the agreement, contributions made by retired nonkey employees for retiree medical coverage are not subject to the percentage-of-compensation limit on annual additions.

Tax-sheltered annuities

Under the conference agreement, the class of employers whose employees are entitled to the special catch-up elections for tax-sheltered annuities is expanded to include employers that are health and welfare service agencies. The agreement also provides a technical modification clarifying that the catch-up rules apply before separation from service.

Excess benefits

The conference agreement generally follows the House bill with respect to the 15-percent excise tax on benefit payments in excess of $112,500 (indexed at the same time and in the same manner as the dollar limitation on annual benefits under a defined benefit pension plan). The conference agreement also clarifies that distributions attributable to after-tax employee contributions and distributions not includible in income by reason of a rollover contribution are not taken into account in applying the tax. All other amounts not specifically exempted are taken into account.

The conference agreement does not permit accrued benefits to be reduced retroactively to avoid the excise tax.

The conference agreement also modifies the rule providing an increased limit in the case of a lump-sum distribution. Under the agreement, if an individual elects lump-sum treatment (or long-term capital gains treatment), the $112,500 limit is applied separately to such lump-sum distribution and the limit is increased to 5 times the generally applicable limit with respect to the lump-sum distribution.

Also, the conference agreement clarifies that, with respect to the special provision relating to the estate tax, the tax may not be offset by any credits against the estate tax (such as the unified credit). In addition, the conferees intend that, in calculating the excess retirement accumulation, individuals are required to use reasonable interest rates in accordance with rules prescribed by the Secretary. The Secretary may, by regulations, prescribe a range of interest rates and other permissible assumptions for purposes of applying the excise tax.

Under the conference agreement, an individual may elect to be covered by (1) a special grandfather rule which exempts from the tax benefits accrued on August 1, 1986, or (2) an alternative rule which increases the $112,500 limit.

Under the grandfather, in the case of a defined contribution plan, the accrued benefit on August 1, 1986, is the participant's account balance on that date. In the case of a defined benefit plan, the accrued benefit on August 1, 1986, is determined assuming the participant separated from service on that date.

The grandfathered amounts are treated as if received on a pro-rata basis and are taken into account in determining whether the $112,500 limit is exceeded. Under the pro-rata rule, the portion of a distribution not subject to the excise tax is determined by multiplying the distribution by a fraction, the numerator of which is the grandfathered amount and the denominator of which is the accrued benefit on the date of the distribution under all plans or programs subject to the tax. Distributions after August 1, 1986, and before the effective date will reduce the grandfathered amount in the same manner.

For example, assume that at the time of a distribution of $250,000 an individual's grandfathered benefit is equal to 80% of the individual's accrued benefit on such date under all plans or programs subject to the tax. Under the grandfather, $200,000 (80 percent of $250,000) would be exempt from the tax. The remaining $50,000 would be subject to the tax because the grandfathered amounts are taken into account in determining whether the distribution exceeds the $112,500 limit.

The Secretary also has the authority to provide for an alternative grandfather rule for such individuals. The conferees intend that the Secretary consider providing an alternative grandfather rule based on a fraction, the numerator of which is the months of service between age 35 and August 1, 1986, and the denominator of which is total months of service after age 35. This rule ap-

plies as long as grandfathered amounts are taken into account in applying the excise tax to nongrandfathered amounts (as under the general grandfather rule).

The grandfather rule applies only with respect to an individual who (1) elects to have the grandfather rule apply and (2) has a grandfathered benefit of at least five times the $112,500 limit ($562,500). The election must be made on a return for a year beginning no later than January 1, 1988, and shall be in such form and shall contain such information as the Secretary may prescribe.

If an individual does not elect the grandfather rule, then the amount of a distribution subject to the tax under the general rule is computed by substituting for $112,500 (as indexed), the greater of $150,000 and $112,500 (as indexed).

Includible compensation

The conference agreement follows the Senate amendment. Under the agreement, the $200,000 limit applies for purposes of computing allowable deductions (sec. 404) as well as for purposes of determining the qualified status of a plan.

The conferees also clarify that, with respect to a defined benefit pension plan, the $200,000 limit applies to each year's compensation (including years prior to 1987), not solely to the final average or career average compensation of an individual.

Incorporation of limits by reference

Under the conference agreement, a plan does not fail to meet the requirements for qualified status merely because the plan incorporates the benefit and contribution limits of section 415 of the Code by reference. The agreement provides that incorporation by reference is permitted except that, if the limitation may be applied in more than one manner, the plan is to specify the manner in which the limitation is to be applied.

For example, in the case of a defined contribution plan, Treasury regulations provide several methods for establishing a suspense account for excess annual additions and allocating amounts in the suspense account. Thus, the plan must specify which method is to be used.

The agreement does not change the requirements of present law relating to definitely determinable benefits and the requirement that profit-sharing and stock bonus plans must specify a definite allocation formula. Under the conference agreement, however, a plan does not fail to provide definitely determinable benefits merely because it incorporates the limits by reference. For example, if an employee participates in both a defined contribution plan and a defined benefit pension plan maintained by the same employer, the manner in which the employee's benefits will be adjusted to comply with the combined limitation (sec. 415(e)) is to be specified.

Effective dates

The conference agreement follows the Senate amendment except that it does not allow a plan to accrue benefits in excess of the new limits (or the grandfathered current accrued benefit, if higher), even during the period prior to the time the plan must be amended.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, in the case of employees covered under a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective for plan years beginning before the earlier of (1) January 1, 1989, or (2) the date on which the last of the collective bargaining agreement terminates (determined without regard to any extensions in the collective bargaining agreement).

2. Deductions for Contributions to Qualified Plans

Present Law

In general

The contributions of an employer to a qualified plan are deductible in the year for which the contributions are paid, within limits. No deduction is allowed, however, for a contribution that is not an ordinary and necessary business expense or an expense for the production of income. The deduction limits applicable to an employer's contribution depend on the type of plan to which the contribution is made and may depend on whether an employee covered by the plan is also covered by another plan of the employer. Under the Code, if a contribution for a year exceeds the deduction limits, then the excess generally may be deducted in succeeding years as a carryover. Deductions are not allowed with respect to contributions or benefits in excess of the overall limits on contributions or benefits.

Profit-sharing and stock bonus plans

In the case of a qualified profit-sharing or stock bonus plan, employer contributions for a year not in excess of 15 percent of the aggregate compensation of covered employees are generally deductible for the year paid. Under the Code, if employer contributions for a group of employees for a particular year exceed the deduction limits, then the excess may be carried over and deducted in later years. On the other hand, if the contribution for a particular year is lower than the deduction limit, then the unused limitation may be carried over and used in later years. In the case of a limitation carryover, the amount deducted in a later year is not to exceed 25 percent of the aggregate compensation of employees covered by the plan during that year.

Defined benefit pension plans

In general

Employer contributions under a defined benefit pension plan are required to meet a minimum funding standard. The deduction allowed by the Code for an employer's contribution to a defined benefit pension plan is limited to the greatest of the following amounts:

(1) The amount necessary to meet the minimum funding standard for plan years ending with or within the taxable year.

(2) The level amount (or percentage of compensation) necessary to provide for the remaining unfunded cost of the past and current service credits of all employees under the plan over the remaining future service of each employee. Under the Code, however, if the remaining unfunded cost with respect to any three individuals is more than 50 percent of the cost for all employees, then the cost attributable to each of those employees is spread over at least five taxable years.

(3) An amount equal to the normal cost of the plan plus, if past service or certain other credits are provided, an amount necessary to amortize those credits in equal annual payments over 10 years. Generally, this rule permits contributions in excess of the contributions required by the minimum funding standard.

Certain excess contributions

The minimum funding standard includes provisions (the full funding limitation) designed to eliminate the requirement that additional employer contributions be made for a period during which it is fully funded. The funding standard, however, does not prohibit employers from making contributions in excess of the full funding limitation.

Employer contributions in excess of the deduction limits provided by the Code are not currently deductible. A deduction carryover is generally allowed, however, for employer contributions to a qualified plan in excess of the deductible limits.

A pension, profit-sharing, or stock bonus plan does not meet the requirements of the Code for qualified status unless it is for the exclusive benefit of employees and their beneficiaries. Under some circumstances, employer contributions in excess of the level for which a deduction is allowed may indicate that the plan is not being maintained for the exclusive benefit of employees.

Money purchase pension plans

Employer contributions to a money purchase pension plan are generally deductible under the same rules that apply to defined benefit pension plans. Under a qualified money purchase pension plan, the amount required under the minimum funding standard is the contribution rate specified by the plan.

Combination of pension and other plans

If an employer maintains a pension plan (defined benefit or money purchase) and either a profit-sharing or a stock bonus plan for the same employee for the same year, then the employer's deduction for contributions for that year is generally limited to the greater of the contribution necessary to meet the minimum funding requirements of the pension plan for the year or 25 percent of the aggregate compensation of employees covered by the plans for the year. Deduction and limitation carryovers are provided.

House Bill

The House bill repeals the limit carryforward applicable to profit-sharing and stock bonus plans, extends the combined plan deduction limit to a combination of a defined benefit and a money purchase pension plan, requires that certain social security taxes be taken into account in applying the 15 percent and 25 percent of compensation deduction limits, and imposes a 10-percent excise tax on nondeductible contributions to qualified plans.

The provisions of the House bill relating to deduction limits generally apply to employer taxable years beginning after December 31, 1985. However, certain unused pre-1986 limit carryforwards are not affected by the provision generally repealing limit carryforwards.

Senate Amendment

The Senate amendment is the same as the House bill except that (1) the Senate amendment does not require that certain social security taxes be taken into account in applying the 15 percent and 25 percent of compensation deduction limits, and (2) the Senate amendment does not impose an excise tax on nondeductible contributions to qualified plans. The Senate amendment also clarifies that a fully insured plan (sec. 412(i)) is treated as a defined benefit pension plan for purposes of the combined plan deduction limit.

The Senate amendment is effective for employer taxable years beginning after December 31, 1986.

Conference Agreement

In general

The conference agreement generally follows the Senate amendment with modifications. The conference agreement adopts the House bill applying a 10-percent excise tax to nondeductible employer contributions. The conferees clarify that, with respect to an employer that is exempt from tax, the 10-percent excise tax is to apply to contributions that would, if the employer were not exempt, be nondeductible. The conference agreement also imposes a limit of $200,000 on the amount of compensation that may be taken into account in computing deductions for plan contributions. The limit is to be adjusted for cost-of-living increases at the time and in the manner provided for adjusting the overall limits on annual benefits under a qualified defined benefit pension plan (sec. 415(d)).

Fully insured plans

The conference agreement includes a technical modification relating to fully insured plans which provides that the annual premium payments are deemed to be the amount required to meet the minimum funding requirements in the case of a fully insured plan.

Effective date

The provisions are effective for taxable years beginning after December 31, 1986.

3. Asset Reversions Under Qualified Plans

Present Law

A qualified plan must be for the exclusive benefit of employees. Prior to the satisfaction of all liabilities with respect to employees and their beneficiaries, the assets held under a qualified plan may not be used for, or diverted to, purposes other than the exclusive benefit of employees. However, if assets remain in a defined benefit pension plan upon plan termination as a result of actuarial error, then those assets may be paid, as a reversion, to the employer after the plan has satisfied all liabilities, if the plan provides for such payment.

A surplus generally is considered to be due to actuarial error if it is not due to specific action of the employer such as decreasing employer liabilities. In general, no amounts may revert to an employer upon termination of a defined contribution plan.

House Bill

The House bill imposes a 10-percent nondeductible excise tax on a reversion occurring upon the termination of a qualified plan. The tax is imposed on the person who receives the reversion. Under the bill, the tax applies to amounts received as a reversion pursuant to the termination of a plan occurring after December 31, 1985.

Senate Amendment

The Senate amendment is generally the same as the House bill except that (1) it provides a new definition of the amount of a reversion, (2) it does not apply the tax in the case of certain amounts transferred to an employee stock ownership plan, and (3) it provides an exception to the application of the tax in the case of a certain employer.

The Senate amendment defines a reversion as the amount of cash and the fair market value of other property received (directly or indirectly) from a qualified plan. Under the Senate amendment, the amount of a reversion does not include any amount distributed to an employee (or beneficiary) if the amount could have been distributed before the termination of the plan without violating the plan qualification requirements. In determining the amount of a reversion, an obligation (e.g., an obligation to pay a benefit) that causes the disqualification of a plan (or that would cause the disqualification of the plan if the plan were otherwise qualified) is to be taken into account as a reversion if it is provided pursuant to the termination of the plan.

Under the Senate amendment, the tax applies to amounts received as a reversion pursuant to the termination of a plan occurring after December 31, 1985. The tax applies to reversions received after December 31, 1985, other than reversions attributable to plan terminations occurring on or before December 31, 1985. Under the Senate amendment, a termination is considered to occur on the proposed date of termination.

Conference Agreement

The conference agreement follows the Senate amendment under which a 10-percent nondeductible excise tax is imposed on a reversion from a qualified plan. In addition, the tax is imposed on reversions from programs described in section 403(a). The tax is imposed on the employer maintaining the plan. In the case of a partnership that is treated as the employer maintaining the plan under section 401(a), the partners are liable for the tax. The agreement provides that the excise tax does not apply to a reversion to an employer that has at all times been tax-exempt. Of course, this exception does not apply to the extent that such employer has been subject to unrelated business income tax or has otherwise derived a tax benefit from the qualified plan.

In addition, the conference agreement clarifies that a return of mistaken contributions within section 401(a)(2) is not a reversion subject to the excise tax. Similarly, amounts which may be returned under section 403(c)(2) of the Employee Retirement Income Security Act of 1974, as amended, are not considered reversions subject to the tax. A payment to an employer under a participating annuity purchased upon plan termination is treated as a reversion subject to the tax.

The conference agreement adopts the provision in the Senate amendment waiving the excise tax with respect to the portion of a reversion that is transferred to an employee stock ownership plan (ESOP) under certain circumstances. No inference is to be drawn from this exception as to the circumstances in which asset transfers will or will not satisfy the exclusive benefit rule and any other applicable qualification requirements (e.g., sec. 414(1)).

As under the Senate amendment, in order to prevent undue market disruption due to the requirement that the assets transferred to the ESOP must be invested in employer securities or used to repay a loan used to acquire employer securities within 90 days of the transfer, the Secretary is authorized to extend the 90-day period. For purposes of determining which plan participants in the defined benefit plan from which assets where transferred to the ESOP are required to be participants in the ESOP, the conferees intend that only active employees, as opposed to retirees, who are participants in the plan need be included.

The conferees clarify that the prohibition against employer contributions (including elective deferrals) to an ESOP in receipt of a transfer from a terminated defined benefit plan is not intended to prohibit contributions to an ESOP to the extent that the amount of the suspense account required to be allocated for a year, when combined with additional contributions, does not exceed the limits under section 415.

The conferees are aware that the Secretary is currently considering the circumstances in which asset transfers between ongoing plans, plan mergers and spinoffs, and transfers of plan sponsorship in connection with the sale of a business may result in income tax consequences to the employer. The conferees stress that no inference is to be drawn from the agreement as to either the income or reversion tax consequences of such transactions.

The provision generally applies to reversions received after December 31, 1985 but does not apply to a reversion received after December 31, 1985, if the termination date of the plan is before January 1, 1986. Under the agreement, the special provision for transfers to an ESOP applies with respect to reversions occurring after December 31, 1985, and before January 1, 1989, and reversions received pursuant to terminations occurring after December 31, 1985, and before January 1, 1989. Under the conference agreement, the date of termination of a plan is the dates of termination under section 411(d)(3).

E. Miscellaneous Pension and Deferred Compensation Provisions

1. Discretionary Contribution Plans

Present Law

Under present law, a profit-sharing or stock bonus plan may provide that the level of employer contributions to the plan varies from year to year at the discretion of the employer. An employer's discretion with respect to the level of contributions to a profit-sharing plan is limited by the requirement that the employer's contribution to the plan in any given year may not exceed the employer's current or accumulated profits. It is unclear under present law whether a tax-exempt employer may maintain a profit-sharing plan because a tax-exempt employer generally does not have profits in the ordinary sense.

House Bill

Under the House bill, employer contributions to a profit-sharing plan that satisfy the immediate vesting and withdrawal restrictions applicable to elective deferrals under a qualified cash or deferred arrangement (sec. 401(k)) are not limited to the employer's current or accumulated profits (whether or not the plan contains a qualified cash or deferred arrangement). This provision applies without regard to whether the employer is a tax-exempt organization. The provision applies to plan years beginning after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the provision does not require a plan to meet the vesting and distribution requirements applicable to qualified cash or deferred arrangements. The provision applies to plan years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, except that the provision is effective for plan years beginning after December 31, 1985. The conferees also intend that the Secretary may require defined contribution plans to contain provisions specifying whether they are pension plans or discretionary contribution plans.

2. Requirement That Collective Bargaining Agreements Be Bona Fide

Present Law

Under present law, many of the nondiscrimination standards and effective dates of the Code applicable to qualified plans apply separately (or do not apply) to plans or programs maintained pursuant to an agreement that is found to be a collective bargaining agreement if there is evidence that retirement benefits were the subject of good faith bargaining between the employer and employee representatives. Similar exclusions are provided with respect to certain employee benefits provided to employees. In addition, effective dates for new provisions are often delayed with respect to plans or programs maintained pursuant to a collective bargaining agreement. Present law provides no clear definition of a collective bargaining agreement, but does limit the scope of the term "employee representatives" (sec. 7701(a)(46)).

House Bill

The House bill clarifies that no agreement will be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and one or more employers. The provision is effective upon enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. Because the provision is a clarification of present law, the conferees intend that this provision be given retroactive effect where appropriate.

3. Treatment of Certain Fishermen as Self-Employed Individuals

Present Law

Under present law, certain fishermen who otherwise would be treated as common-law employees under the usual rules for determining an employer-employee relationship are treated as self-employed individuals for purposes of employment taxes (secs. 3121(b)(20) and 3306(c)(20)).

The Internal Revenue Service has held that, although these individuals are treated as self-employed individuals for employment tax purposes, they are treated as employees for purposes of determining whether a pension, profit-sharing, or stock bonus plan maintained by the owner or operator of the boat (or boats) is a qualified plan under section 401(a).[1]

House Bill

No provision.

Senate Amendment

Under the Senate amendment, members of fishing boat crews (described in sec. 3121(b)(20)) are treated as self-employed individuals for purposes of the rules relating to qualified plans. The provision applies to taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, effective for taxable years beginning after December 31, 1986.

4. Cash-Out of Certain Accrued Benefits

Present Law

Under present law, in the case of an employee who separates from service, a pension, profit-sharing, or stock bonus plan may not immediately distribute any portion of the participant's benefit without the participant's consent, if the present value of the participant's accrued benefit exceeds $3,500 (sec. 411(a)(11) of the Code and sec. 203 of the Employee Retirement Income Security Act (ERISA)). The interest rate used in determining the present value of a benefit for purposes of these cash out rules may not exceed the interest rate that would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation (PBGC) for purposes of determining the present value of a lump-sum distribution upon termination of the plan. The PBGC rate in effect at the beginning of a plan year may be used throughout the plan year if the plan so provides.

With respect to those plans subject to the automatic survivor benefit requirements (Code secs. 401(a)(11) and 417 and ERISA sec. 205), if the present value of the benefit under either the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, then the consent of the participant and spouse (or the surviving spouse if the participant has died) must be obtained before the plan can immediately distribute any part of the present value in a form other than a qualified joint and survivor annuity or a qualified preretirement survivor annuity. The interest rate used for determining the present value of a benefit may not exceed the interest rate that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of a lump sum distribution on plan termination. The PBGC rate in effect at the beginning of a plan year may be used throughout the plan year if the plan so provides.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the interest rate required to be used for purposes of determining the present value of (1) a participant's accrued benefit, (2) a qualified preretirement survivor annuity, or (3) a qualified joint and survivor annuity. Under the Senate amendment, a plan is required to compute the first $3,500 of the present value of a benefit by using an interest rate no greater than the interest rate (deferred or immediate, whichever is appropriate) that would be used by the PBGC (as of the date of distribution) upon the plan's termination. The remaining portion of the present value of the benefit is required to be determined using an interest rate no greater than 120 percent of the interest rate (deferred or immediate, whichever is appropriate) that would be used by the PBGC (as of the date of distribution) upon the plan's termination.

The provision applies to distributions after December 31, 1984, except for distributions made after December 31, 1984, and before the date of enactment if such distributions were made in accordance with the regulations issued under the Retirement Equity Act of 1984.

Conference Agreement

The conference agreement follows the Senate amendment, except that a plan is required to use an interest rate no greater than the interest rate (deferred or immediate, whichever is appropriate) that would be used by the PBGC (as of the date of distribution) upon the plan's termination for purposes of determining whether (1) a participant's accrued benefit can be cashed out without consent because the present value of the vested accrued benefit is less than $3,500 and (2) the present value of a participant's vested accrued benefit is less than $25,000.

If the present value of the vested accrued benefit is no more than $25,000, then the amount to be distributed to the participant or beneficiary is calculated using the PBGC rate.

If the present value of the accrued benefit exceeds $25,000 (using the PBGC interest rate), then the conference agreement provides that the amount to be distributed is determined using an interest rate no greater than 120 percent of the interest rate (deferred or immediate, whichever is appropriate) that would be used by the PBGC (as of the date of distribution) upon the plan's termination. In no event, however, is the amount to be distributed reduced below $25,000 when the interest rate used is 120 percent of the applicable PBGC rate.

For example, assume that, upon separation from service, the present value of an employee's total accrued benefit (including, e.g., any accrued benefits within section 411(d)(6) for which the employee is not yet eligible) is $50,000 using the applicable PBGC rate. Under the conference agreement, the plan may distribute to this employee (if the employee and, if applicable, the employee's spouse consents) the total accrued benefit, calculated using 120 percent of the applicable PBGC rate (e.g., $47,000).

The conferees recognize that the PBGC is considering adopting a new method and interest rate structure for valuing accrued benefits on plan termination. If a new method and structure are adopted, the Secretary is directed to provide timely guidance regarding the method of compliance with this provision of the conference agreement.

As under current law, the PBGC rate in effect at the beginning of the plan year may be used throughout the plan year if the plan so provides.

The provision is effective for distributions for plan years beginning after December 31, 1984, and for distributions to which section 303(c) of REA applies, except that the provision does not apply to distributions in plan years beginning after December 31, 1984, and before January 1, 1986, that were made in accordance with the temporary Treasury regulations issued under the Retirement Equity Act of 1984.

In addition, the conference agreement provides that any reduction in accrued benefits is not to be treated as an impermissible cutback in accrued benefits (sec. 411(d)(6) of the Code and sec. 204(g) of ERISA) to the extent the reduction is attributable to the calculation of the present value of an accrued benefit in a manner no less favorable to a participant than the manner of determining the present value under the provision. This rule applies if the plan is amended to provide for such calculation before the close of the first plan year beginning on or before January 1, 1989.

5. Time Required for Plan Amendments, Issuance of Regulations, and Development of Section 401(k) Model Plan

Present Law

If the qualification requirements of the tax laws are changed, present law generally requires that conforming plan amendments be adopted no later than the last day of the first plan year to which the change applies and the amendment must be effective, for

[1] Rev. Rul. 79-101, 1979-1 CB 156.

all purposes, not later than the first day of that plan year.[2]

House Bill

Plan amendments

Under the House bill, the provisions generally apply as of the separately stated effective date (generally, years beginning after December 31, 1985). However, a plan will not fail to be a qualified plan on account of changes made in the bill for any year beginning before January 1, 1988, provided—

(1) the plan complies, in operation, with the changes as of the separately stated effective date;

(2) the plan is amended to comply with the changes no later than the last day of the first plan year beginning after December 31, 1987; and

(3) the amendment applies retroactively to the first day of the first plan year beginning on the separately stated effective date.

During this period, a plan will not be disqualified merely because the plan is not operated in a manner that conforms to the plan document and, therefore, violates the requirement that (1) benefits be definitely determinable, (2) a plan's terms be set forth in a written document, or (3) the plan operate in accordance with its terms.

Senate Amendment

Plan amendments

The provisions of the Senate amendment generally apply as of the separately stated effective date (generally, years beginning after December 31, 1986, or December 31, 1988). However, a plan will not fail to be a qualified plan on account of changes required to be made by the Senate amendment for any year beginning before January 1, 1989, provided—

(1) the plan complies, in operation, with the required changes as of the separately stated effective date;

(2) the plan is amended to comply with the required changes no later than the last day of the first plan year beginning after December 31, 1988; and

(3) the amendment applies retroactively to the separately stated effective date.

During this period, a plan will not be disqualified merely because the plan is not operated in a manner that conforms to the plan document and, therefore, violates the requirements that (1) benefits be definitely determinable, (2) a plan's terms be set forth in a written document, or (3) the plan operate in accordance with its terms. Of course, plan modifications not required by the Senate amendment (e.g., benefit increases; allocation of forfeitures under a money purchase pension plan) are not within this special amendment rule and are to be made in accordance with the generally applicable rules.

Collectively bargained plans

Under the Senate amendment, the separately stated effective dates may be delayed for certain collectively bargained plans. A collectively bargained plan to which the delayed effective dates apply will not fail to be a qualified plan for any year beginning before the later of (1) January 1, 1989, or (2) the earlier of (a) January 1, 1991, or (b) the first plan year beginning after the termination of the collective bargaining agreement (determined without regard to any extension of the terms of the agreement ratified after February 28, 1986) provided three conditions are satisfied.

First, the plan must operate in compliance with the changes for the first plan year beginning after the generally applicable effective date.

Second, plan amendments must be adopted no later than the last day of the first plan year beginning after the later of (1) December 31, 1988, or (2) the earlier of (a) December 31, 1990, or (b) the termination of the collective bargaining agreement, and such amendments must be made effective as of the first day of the first plan year for which the plan amendments are required.

Issuance of regulations

The Senate amendment provides that the Secretary is to issue final regulations with respect to certain qualified plan provisions of the amendment by February 1, 1988. The provisions for which these regulations are required to be issued include (1) the rules relating to the integration of benefits; (2) the coverage requirements; (3) the minimum vesting standards; (4) the amendments applicable to qualified cash or deferred arrangements (sec. 401(k) plans); and (5) the new nondiscrimination rules for employer matching and employee contributions (sec. 401(m)).

Master and prototype and model 401(k) plans

The Senate amendment provides that the Internal Revenue Service is required, not later than May 1, 1987, to begin issuing opinion letters with respect to master and prototype plans for cash or deferred arrangements. In addition, the Secretary of the Treasury is to publish, no later than May 1, 1987, a model plan document for qualified plans that include qualified cash or deferred arrangements.

Conference Agreement

The conference agreement generally follows the Senate amendment provisions with respect to the time allowed for plan amendments and the issuance of regulations. In addition, under the conference agreement, the IRS is to issue a model amendment within 60 days after the date of enactment that plans may adopt for the period ending with the required plan amendment dates under this provision. Such model amendment is to address only those amendments that are required to be made under the conference agreement to maintain qualification for the period ending with the first plan year beginning after December 31, 1988.

The conference agreement clarifies that the rule regarding issuance of regulations applies to the coverage requirements applicable to tax-sheltered annuity programs, the definitions of highly compensated employees and the 10 percent tax on excess distributions.

Further, the conference agreement follows the Senate amendment with respect to opinion letters for master and prototype 401(k) plans, but does not adopt the Senate amendment provision relating to 401(k) model plans. The conference agreement provides that the IRS must begin accepting opinion letter requests by May 1, 1987, rather than begin issuing letters by such date.

6. Penalty for Overstatement of Pension Liabilities

Present Law

Under present law, an employer is allowed a deduction for contributions (within limits) to a trust that is part of a qualified plan. Similar rules apply to plans funded with annuity contracts.

Under present law, if the Internal Revenue Service determines that the actuarial assumptions used to calculate employer liabilities under a defined benefit plan are unreasonable, the limit on employer deductions is recalculated using reasonable assumptions and the excess deduction is disallowed.

Present law does not provide a specific penalty for overvaluations of employer liability under a defined benefit pension plan.

House Bill

The House bill provides a penalty on the taxpayer in the form of a graduated addition to tax applicable to certain income tax overstatements of deductions for pension liabilities. As an addition to tax, this penalty is to be assessed, collected, and paid in the same manner as a tax. This addition to tax applies only to the extent of any income tax underpayment that is attributable to such an overstatement.

The underpayment resulting from a valuation overstatement is the excess of the taxpayer's (1) actual tax liability (i.e., the tax liability that results from a proper valuation of deductions for pension liabilities and takes into account any other proper adjustments) over (2) actual tax liability as reduced by taking into account the valuation overstatement.

If there is an overstatement of deductions for pension liabilities, the following percentages are used to determine the applicable addition to tax:

If the valuation claimed is the following percent of the correct valuation is—	*The applicable percentage is—*
Less than 150 percent	0
150 percent or more but not more than 200 percent	10
More than 200 percent but not more than 250 percent	20
More than 250 percent	30

The valuation overstatement penalty does not apply if the underpayment for a taxable year attributable to the valuation overstatement is less than $1,000. In addition, the bill grants the Secretary discretionary authority to waive all or part of the penalty on a showing by a taxpayer that there was a reasonable basis for the deduction claimed on the return and that the claim was made in good faith.

The provision applies to taxable years beginning after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. It is expected that the IRS will assess the penalty on account of the use of unreasonable actuarial assumptions as well as on account of the use of methods that accelerate deductions with respect to a plan.

[2] This "remedial amendment period" may be further extended by the Secretary (sec. 401(b)). Under present law, disqualifying provisions created by statutory changes (other than those made by ERISA and TEFRA) generally are not "disqualifying provisions" eligible for this extended remedial amendment period.

The conference agreement recognizes that the overstatement of liabilities has taken place primarily with respect to defined benefit pension plans of professional corporations covering a small number of employees and has involved the use of unreasonable actuarial assumptions. In such instances, the enrolled actuary for the plan has used an interest rate assumption of 5 percent (or less) even though the plan's assets were invested so as to earn rates of return in excess of 9 percent. In addition, the enrolled actuary in these cases has sometimes calculated plan funding requirements (and deductions) by either explicitly or implicitly (through the use of high annuity purchase rates, based on low interest rates, at retirement) assuming cost-of-living increases in the dollar limitation of section 415 of the Code even though this is not permitted. The conferees intend that such cases should be closely scrutinized. Of course, the conference agreement does not override the rule of present law under which individual actuarial assumptions are not required to be reasonable per se, as long as all actuarial assumptions are reasonable in the aggregate.

The conferees intend that reliance on an enrolled actuary or other professional by an employer with respect to the proper amount of the deduction will not constitute a reasonable basis or good faith claim by the employer.

The provision applies to overstatements occurring after the date of enactment.

7. Retirement Equity Act of 1984 (REA) Effective Date

Present Law

Under the Retirement Equity Act of 1984 (REA), a pension plan is to provide automatic survivor benefits (1) in the case of a participant who retires under the plan, in the form of a qualified joint and survivor annuity, and (2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, in the form of a qualified preretirement survivor annuity. The qualified joint and survivor annuity and preretirement survivor annuity provisions apply to any participant who performs at least one hour of service under the plan on or after the date of enactment.

REA provided a special transition rule for participants who separated from service before the date of enactment and whose benefits were not in pay status as of the date of enactment. This provision applies if (1) a participant completed at least one hour of service under the plan after September 1, 1974, (2) the participant separated from service before the first day of the first plan year beginning on or after January 1, 1976, and (3) the plan is required to provide a qualified joint and survivor annuity. Under this special rule, the participant is to be provided the right to elect to receive benefits in the form of a qualified joint and survivor annuity.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, a plan is exempt from the survivor benefit requirements of REA if (1) the plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Federal Government during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry, and (2) under the plan, participation is substantially limited to participants who, before January 1, 1976, ceased employment covered by the plan.

The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, effective as of the date of enactment.

8. Employee Leasing

Present Law

For purposes of specified pension requirements, a leased employee is treated as the employee of the person for whom the leased employee performs services (the "recipient"). A leased employee is generally defined as any person who is not an employee of the recipient and who provides services to the recipient if 3 requirements are met. First, such services must be provided to the recipient under an agreement between the recipient and the organization providing the person's services (the "leasing organization"). Second, the person must have performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for at least one year. Third, such services must be of a type historically performed, in the business field of the recipient, by employees.

Generally, the pension requirements for which a leased employee is treated as an employee are the rules regarding nondiscrimination, vesting, limitations on benefits and contributions, top-heavy plans, and simplified employee pensions (SEPs).

A leased employee covered by a safe-harbor plan maintained by the leasing organization is not treated as an employee of the recipient. A safe-harbor plan is a money purchase pension plan that provides for immediate participation and for full and immediate vesting and that has a nonintegrated employer contribution rate of at least 7½ percent.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

In light of the substantial changes made by the conference agreement to the pension requirements to which the employee leasing rules apply, the conference agreement modifies the employee leasing rules.

The conference agreement modifies the definition of a safe-harbor plan in two ways. First, the agreement raises the required contribution rate from 7½ percent to 10 percent.

Second, the conference agreement requires that, to be a safe-harbor plan, a plan must cover all employees of the leasing organization (beginning with the date they become employees) other than (1) employees whom the leasing organization demonstrates to the satisfaction of the Secretary performed substantially all of their services for the leasing organization (rather than for recipients), and (2) employees whose total compensation from the leasing organization is less than $1,000 during the plan year and during each of the 3 prior plan years.

As under present law, an employee covered under a safe-harbor plan is to receive the required allocation regardless of the number of hours of service credited to the employee for the year, regardless of whether the employee is employed by the leasing organization on any specified date during the year and regardless of the participant's age.

In addition, a definition of compensation is provided by the agreement for purposes of the 10 percent contribution rate and the $1,000 rule. For these purposes, compensation is to have the same meaning used for purposes of the limitation on benefits or contributions (sec. 415), except that there is to be added to such amount elective deferrals under a qualified cash or deferred arrangement, SEP, or tax-sheltered annuity program and elective contributions under a cafeteria plan.

The conference agreement also provides that each leased employee is to be treated as an employee of the recipient, regardless of the existence of a safe-harbor plan, if more than 20 percent of an employee's nonhighly compensated workforce are leased employees (as specially defined below). The term "nonhighly compensated workforce" is defined to mean the number of persons (other than highly compensated employees) who are (1) employees of the recipient (other than leased employees (as specially defined below)) and have performed services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least one year, and (2) leased employees (as specially defined below) with respect to the recipient. For purposes of this 20 percent rule, the term "leased employee" includes any person who performs services for the recipient both as a nonemployee and as an employee, and who would be a leased employee if all such services were performed as a nonemployee.

The conference agreement also applies the employee leasing rules for purposes of certain employee benefit requirements (see Part F, below) and adjusts certain rules accordingly. The exemption from the application of the employee leasing rules with respect to individuals covered by a safe-harbor plan is inapplicable to employee benefits. In addition, with respect to core health benefits, the period during which an individual must perform services on a substantially full-time basis is reduced from one year to 6 months.

Also, with respect to the employee leasing rules generally, the conference agreement clarifies that in the case of an employee of the recipient (whether by reason of being a leased employee or otherwise), for purposes of the applicable requirements, service is to include any period of service during which the employee would have been a leased employee but for the requirement that substantially full-time services be performed for at least one year (6 months in the case of core health benefits). Of course, service as an employee (whether by reason of being a leased employee or otherwise) is also credited.

The conference agreement also clarifies that the rules aggregating certain employers (sec. 414(b), (c), (m), and (o)) apply for purposes of the employee leasing rules. Thus, for example, the term "recipient" includes, in addition to the employer or employers for which the services are performed, other aggregated employers.

Finally, regulations are to be issued to minimize the recordkeeping requirements attributable to the employee leasing provisions in the case of an employer that has no top-heavy plans (sec. 416) and that uses the services of nonemployees only for an insignificant percentage of the employer's total workload.

The conferees intend that this recordkeeping rule be applied for employers with respect to which the number of individuals performing substantial services as nonem-

ployees is less than 5 percent of the number of nonhighly compensated employees performing substantial services.

Further, it is intended that the Secretary is to prescribe objective rules to determine if an individual has performed substantial services. With respect to individuals performing services both as an employee and as a nonemployee, services in both capacities generally are to be taken into account and, for purposes of this recordkeeping rule, counted as service as a nonemployee. In addition, it is intended that an individual is to be treated as having performed substantial services as a nonemployee only if such individual has at least 1,500 hours of service. Also, in lieu of requiring that the number of nonhighly compensated employees performing substantial services be determined, the Secretary may generally deem the number of nonhighly compensated employees performing substantial services to be equal to the number of nonhighly compensated employees covered by a qualified plan of the employer (other than those also performing services as a nonemployee). (For an employer that does not maintain a qualified plan, the Secretary may allow use of the number of participants in, for example, a health plan.)

The conferees further intend that the Secretary is to prescribe appropriate rules to minimize the recordkeeping necessary to determine if this 5-percent test has been satisfied. Thus, for purposes of determining whether an employee has performed substantial services, the Secretary may permit an employer not to check whether an individual who performed less than substantial services at one division also performed services at another geographically separate division, unless such checking would be reasonable under the circumstances (such as in the case where the employer transfers the individual). The Secretary may also permit employers to rely on records maintained by all leasing organizations providing the services of an individual in determining the amount of services performed by such individual as a nonemployee, unless, of course, the employer has reason to believe such records are not accurate. Also, in cases where determining the exact numbers of nonemployees performing substantial services would be burdensome due to the large numbers involved, the Secretary may permit employers to rely on a statistically valid sample performed by an independent third party.

With respect to the requirement that the employer have no top-heavy plans, the Secretary, by regulation, is to adjust this requirement to apply to the other benefits to which the leasing rules now apply. In such situations, the Secretary may substitute a comparable test applicable to employee benefits. For example, the recordkeeping exemption might not be available with respect to a type of employee benefit if at least 60 percent of that type of benefit was being provided to highly compensated employees.

For an employer that satisfies the requirements for recordkeeping relief, it is intended that an employer need not treat an individual as a leased employee unless such individual provides the employer satisfactory evidence of entitlement to such treatment.

Finally, the conference agreement deletes the rule providing regulatory authority to render the employee leasing rules inapplicable in certain circumstances. The recordkeeping exemption provided under the conference agreement serves the purpose for which the regulatory authority was created.

In general, these new rules are effective with respect to services performed after December 31, 1986. The recordkeeping exemption, however, shall apply as if it were originally enacted as part of the employee leasing legislation in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), except that for plan years of recipients beginning before January 1, 1987, the only requirement for the relief is that the employer have no top-heavy plan. Further, the clarifying changes regarding crediting service and aggregating employers are effective as if originally part of the employee leasing legislation in TEFRA. The changes relating to employee benefits are effective when the new nondiscrimination rules apply to employee benefits. (See XI. F., below.)

9. Federal Thrift Savings Fund

Present Law

Under present law, beginning in 1987, an employee is allowed to contribute up to 10 percent of the employee's rate of basic pay to the Thrift Savings Plan maintained by the Federal government. These employee contributions to the Thrift Savings Plan are not includible in the employee's income for the year of deferral, but rather are includible in income when distributed from the Plan. The tax treatment of an employee's contributions to the Plan is not currently specified in the Internal Revenue Code.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides, in the Internal Revenue Code, for the tax treatment of an employee's contributions to the Thrift Savings Plan maintained by the Federal government. Under the provision, an employee's contributions to the Plan are not treated as made available merely because the employee had an election to receive the amounts in cash. Therefore, the amounts deferred are not includible in an employee's income until distributed.

The provision is effective on the date of enactment.

F. Employee Benefit Provisions

1. Nondiscrimination Rules for Certain Statutory Employee Benefit Plans

Present Law

Overview

Under present law, certain employer-provided employee benefits are excluded from the gross income of employees if provided under certain statutorily prescribed conditions. Similar exclusions generally apply for employment tax purposes.

Among those conditions that generally apply to the exclusion of employer-provided employee benefits is the requirement that employee benefits be provided on a nondiscriminatory basis. With the exception of the exclusion for employer-provided health insurance, each employee benefit exclusion is not available unless the benefit is provided on a basis that does not favor certain categories of employees who are officers, owners, or highly compensated. Failure to satisfy the applicable nondiscrimination test for a specific benefit results in a denial of the tax exclusion for all employees receiving the benefit or only for the employees in whose favor discrimination is prohibited, depending on the benefit.

Separate nondiscrimination rules apply with respect to each benefit. An individual in whose favor discrimination is prohibited for one benefit may or may not be such an individual for another benefit. Also, what constitutes impermissible discrimination and the consequences of such discrimination differ with respect to different benefits.

Health benefit plans

Under present law, a nondiscrimination test is not applied as a condition of the exclusion of health benefits provided by an employer under an insured plan, or of the exclusion of medical benefits and reimbursements provided under such insurance (secs. 105 and 106). However, if an employer provides its employees with health benefits under a self-insured medical reimbursement plan (sec. 105(h)), the exclusion of a medical reimbursement under such plan is available to a highly compensated individual only to the extent that the plan does not discriminate in favor of highly compensated employees. A self-insured health plan is discriminatory if it favors highly compensated individuals either as to eligibility to participate or as to benefits.

Group-term life insurance plans

Under present law, an exclusion is provided for the cost of group-term life insurance coverage (up to $50,000) under a plan maintained by an employer (sec. 79). If a group-term life insurance plan is determined to be discriminatory, the exclusion of the cost of $50,000 of group-term life insurance does not apply with respect to key employees. A discriminatory plan is one that discriminates in favor of key employees as to eligibility to participate or as to the type or amount of benefits available under the plan. Group-term life insurance benefits will not be considered discriminatory merely because the amount of life insurance provided to employees bears a uniform relationship to compensation.

Group legal services plans

The exclusion for contributions to or services provided under an employer-maintained group legal services plan is available to employees only if (1) the plan benefits a class of employees that does not discriminate in favor of employees who are officers, shareholders, self-employed individuals, or highly compensated, and (2) the contributions or benefits provided under the plan do not discriminate in favor of such employees (sec. 120). In addition, the exclusion is available only if no more than 25 percent of the amounts contributed during a year may be provided for 5-percent owners (or their spouses or dependents). The exclusion for group legal services benefits expired for taxable years ending after 1985. (*See* the discussion in 2., below.)

Educational assistance programs

Under present law, the amounts paid or expenses incurred (up to $5,000 a year) for an employee under an employer-provided educational assistance program are excluded from income (sec. 127). The exclusion is not available if the program benefits a class of employees that is discriminatory in favor of employees who are officers, owners, or highly compensated (or their dependents). Also, the exclusion is available only if no more than 5 percent of the amounts paid or incurred by the employer for educational assistance may be provided for 5-percent owners (or their spouses or dependents). The exclusion for educational assistance benefits expired for taxable years beginning after 1985. (*See* the discussion in 2., below.)

Dependent care assistance programs

Present law provides an exclusion from income for amounts paid or incurred for an employee under a dependent care assistance

program (sec. 129). The exclusion is not available unless (1) the program benefits a class of employees that does not discriminate in favor of employees who are officers, owners, or highly compensated (or their dependents), and (2) the contributions or benefits provided under the plan do not discriminate in favor of such employees. In addition, under the applicable concentration test, the exclusion is not available if more than 25 percent of the amounts paid or incurred by the employers for dependent care assistance are provided for 5-percent owners (or their spouses or dependents).

Welfare benefit funds

A voluntary employees' beneficiary association or a group legal services fund that is part of an employer plan is not exempt from taxation unless the plan of which the association or fund is a part meets certain nondiscrimination rules (sec. 505). (These nondiscrimination rules also apply for certain other purposes, such as the deductibility of contributions to a welfare benefit fund to provide post-retirement health benefits.) Under these rules, no class of benefits may be provided to a classification of employees that is discriminatory in favor of highly compensated employees. In addition, with respect to each class of benefits, the benefits may not discriminate in favor of highly compensated employees. A life insurance, disability, severance pay, or supplemental unemployment compensation benefit will not fail the benefits test merely because the amount of benefits provided to employees bears a uniform relationship to compensation.

Cafeteria plans

Under a cafeteria plan, a participant is offered a choice between cash and one or more employee benefits. The mere availability of cash or certain taxable benefits under a cafeteria plan does not cause an employee to be treated as having received the available cash or taxable benefits for income tax purposes if certain conditions are met (sec. 125). This cafeteria plan exception to the constructive receipt rules does not apply to any benefit provided under the plan if the plan discriminates in favor of highly compensated individuals as to eligibility to participate or as to contributions and benefits. In addition, under a cafeteria plan, no more than 25 percent of the aggregate of the statutory nontaxable benefits provided to all employees under the plan may be provided to key employees.

Eligibility tests

For purposes of the eligibility tests applicable to the employee benefits described above, the same rules applicable to the classification test for qualified plan coverage (sec. 410(b)(1)(B)) apply.

a. Overview

House Bill

The House bill establishes new nondiscriminatory eligibility and benefits rules for statutory employee benefit plans, welfare benefit funds, and cafeteria plans (sec. 89). Under the rules, a highly compensated employee who is a participant in any discriminatory plan generally is only taxed on the value of the discriminatory portion of such employee's employer-provided benefit under the plan.

The House bill (1) establishes uniform definitions of employer, highly compensated employee, and excludable employee, and (2) permits satisfaction of the nondiscrimination rules on a line of business or operating unit basis. Further, the House bill extends reporting requirements to all statutory employee benefit plans and requires that Treasury conduct a study of abuses in the health insurance area.

Senate Amendment

The Senate amendment establishes new nondiscriminatory benefits rules for accident or health plans (insured or self-insured) and group-term life insurance plans. In addition, the Senate amendment provides that a highly compensated employee who is a participant in any discriminatory plan is taxed on the value of such employee's employer-provided benefit under the plan.

The Senate amendment also: (1) establishes a new nondiscrimination benefits test applicable (at the election of the employer) to other types of statutory employee benefit plans, in lieu of certain present law nondiscrimination rules; (2) establishes a concentration test applicable to both group-term life insurance plans and accident or health plans, and an additional concentration test applicable only to group-term life insurance plans; (3) establishes uniform definitions of employer, highly compensated employee, and excludable employee; and (4) permits satisfaction of the nondiscrimination rules on a line of business or operating unit basis.

Conference Agreement

The conference agreement generally follows the House bill with regard to the amount of the inclusion in income in the case of a discriminatory plan subject to the new nondiscrimination rules. The conference agreement also (1) establishes new eligibility and benefits nondiscrimination rules applicable to group-term life insurance plans and accident or health plans (insured or self-insured); (2) allows employers to elect to apply these new rules to certain other types of plans; (3) establishes a special benefits rule for dependent care assistance programs; (4) establishes uniform definitions of employer, highly compensated employee, compensation, and excludable employee; and (5) permits satisfaction of the nondiscrimination rules for group-term life insurance plans and accident or health plans on a line of business or operating unit basis.

b. General rule for inclusion

House Bill

In general

Under the House bill, a highly compensated employee who is a participant in a discriminatory statutory employee benefit plan is required to include in income an amount equal to the employee's employer-provided benefit under the plan.

The House bill also provides that the gross income of any employee, whether or not highly compensated, includes such employee's employer-provided benefit under a statutory employee benefit plan, unless (1) the plan is in writing; (2) the employee's rights under the plan are legally enforceable; and (3) the employer established the plan with the intention of maintaining it indefinitely.

Statutory employee benefit plan

The term "statutory employee benefit plans" includes employer-maintained group-term life insurance plans, accident or health benefit plans (whether self-insured or funded through an insurance company), qualified group legal services plans (whether self-insured or funded through an insurance company), educational assistance programs, and dependent care assistance programs. With respect to disability coverage, only coverage attributable to employer contributions (including elective contributions) that provides disability benefits that are excludable from income (sec. 105(b) or (c)) is subject to the nondiscrimination rules applicable generally to statutory employee benefit plans.

Employee's employer-provided benefit

In the case of an insurance-type plan (i.e., an accident or health plan, group-term life insurance plan, or group legal services plan) the House bill defines the employee's employer-provided benefit as the value of the coverage provided during the taxable year to or on behalf of such employee, to the extent attributable to contributions made by the employer. In the case of any other plan, an employee's employer-provided benefit is defined as the value of the benefits provided to or on behalf of such employee, to the extent attributable to contributions made by the employer. Of course, in all cases, employer contributions include elective contributions under a cafeteria plan.

In the case of a discriminatory statutory employee benefit plan (other than a group-term life insurance plan), the coverage or benefit may be considered to be provided under more than one plan so that highly compensated employees are only taxed on the discriminatory portion of the benefit provided (i.e., the discriminatory excess).

Senate Amendment

In general

The Senate amendment generally is the same as the House bill, except that the definitions of the terms "statutory employee benefit plan" and "employer-provided benefit" are modified.

Statutory employee benefit plan

The Senate definition of a "statutory employee benefit plan" is the same as the House bill definition except that qualified tuition reduction programs (sec. 117(d)) and fringe benefit programs providing no-additional-cost services, qualified employee discounts, or employer-operated eating facilities (sec. 132) are also included in the definition in the Senate amendment.

Employer-provided benefit

The Senate amendment is the same as the House bill with two modifications. First, in the case of an insurance-type plan that does not satisfy the writing, enforceability, and indefinite duration requirement described above, an employee's employer-provided benefit is defined as the value of the benefits provided to or on behalf of such employee, to the extent attributable to contributions made by the employer (including elective contributions).

Second, for purposes of determining the amount includible in income of a highly compensated employee for discriminatory benefits, the employer-provided benefit of any highly compensated employee in a discriminatory plan is equal to the employer-provided benefits to such employee under all statutory employee benefit plans of the employer of the same type (i.e., the benefits are excludable from income under the same section of the Code).

Conference Agreement

The conference agreement generally follows the House bill with certain modifications. First, the conference agreement provides that group legal services plans, educational assistance programs, and dependent care assistance programs are only statutory employee benefit plans with respect to an employer if the employer elects to treat them as such.

Second, with respect to the method of determining the amount includible in the income of a highly compensated employee who participates in a discriminatory statutory employee benefit plan, the conference agreement applies the House bill rule that only the discriminatory excess is includible in income. In the case of group-term life insurance plans, the conference agreement provides that the value of the discriminatory excess, expressed in terms of insurance coverage, is the greater of the cost of the coverage under section 79(c) or the actual cost of the coverage.

The conference agreement also provides rules regarding the definition of the discriminatory excess, how to allocate the excess among highly compensated employees, timely reporting, and the year of inclusion. The discriminatory excess is defined as the amount of employer contributions (including elective contributions) that would have to have been made as after-tax employee contributions on behalf of the highly compensated employees in order for all of the nondiscrimination tests to be satisfied. In applying this definition, the objective nondiscrimination tests are, except as provided by the Secretary, to be applied in the following order: the "50-percent test", the "90-percent/50-percent test" and then the benefits test. Alternatively, the definition of the discriminatory excess be applied to the alternative 80-percent test. The determination of the discriminatory excess with respect to the third eligibility test is to be made under rules prescribed by the Secretary. See the discussion of these tests, below.

Any discriminatory excess determined with respect to the benefits test shall be allocated to highly compensated employees by reducing the tax-favored dollars of highly compensated employees (beginning with the employees with the greatest nontaxable benefits) until the plan (or plans) being tested would not be discriminatory.

The discriminatory excess is includible in the employee's income in the employee's taxable year with or within which the plan year ends.

Except to the extent provided by the Secretary, if an employer (including an employer exempt from tax) does not report the discriminatory excess to the affected employees and the IRS on Forms W-2 by the due date (with any extension) for filing such forms W-2, all benefits of the same type provided to such employees are subject to an employer-level sanction without regard to whether the employees report some or all of the benefits as income. Under this sanction, the employer is liable for an excise tax at the highest individual rate on the total value of benefits of the same type. For group-term life insurance, the value is the greater of the table cost or actual cost of all coverage. This tax is not deductible and may not be offset by credits or deductions in any manner. This tax, however, does not apply if the employer can demonstrate that the failure to report was due to resonable cause, such as a reasonable difference in valuation of health benefits prior to the issuance of valuation regulations.

This employer-level sanction applies in a similar manner to a failure by the employer to report income includible by reason of the failure to meet the writing, enforceability, and indefinite duration rule, as modified below. However, in such cases, with respect to insurance-type benefits, this sanction applies to the value of benefits, rather than the value of coverage.

The conference agreement modifies the writing, enforceability, and indefinite duration rules by adding two other requirements to such rules. First, a plan must provide for reasonable notification to employees of benefits available under the plan. With respect to dependent care assistance, this notification is to include a description of the dependent care credit (sec. 21) and the circumstances under which the credit is more advantageous than the exclusion. Second, a plan is to be maintained for the exclusive benefit of employees (or, where permissible, spouses and dependents of employees). Also, the conference agreement provides that the writing, enforceability, etc., requirements will apply except to the extent provided by the Secretary.

With respect to the requirement that a statutory employee benefit plan be legally enforceable, the conferees intend that a plan will generally not be considered legally enforceable if it is discretionary with the employer. For example, if a plan of the employer provides that medical expenses will be reimbursed at the employer's discretion, the plan would not be legally enforceable, because the employee would have no right to compel payment of benefits. A plan will not fail to satisfy the legally enforceable requirement merely because the employer has the right to terminate the plan with respect to claims not yet incurred. If, however, the employer maintained the right to terminate the plan with respect to incurred claims, those claims would not be considered legally enforceable, and payment of the claims would not be excludable. Of course, termination in some circumstances could violate the permanency requirement.

The conference agreement also applies the writing, enforceability, etc., rules, in addition to accident or health plans and group-term life insurance plans, to the following plans: qualified tuition reduction programs, group legal services plans, cafeteria plans, educational assistance programs, dependent care programs, miscellaneous fringe benefit programs subject to nondiscrimination rules (sec. 132), and benefits provided under a welfare benefit fund.

The conference agreement clarifies that if a plan fails the writing, enforceability, etc., rules, the employer-provided benefit is, as under the Senate amendment, the value of the benefits provided rather than the value of the coverage under the plan. Thus, in the case of a health plan failing these requirements, the services provided and reimbursements made are includible in income. In addition, such amount is includible in an employee's gross income in the taxable year in which such benefits are received.

The conference agreement modifies the definition of insurance-type plans to include only group-term life insurance plans and accident or health plans.

The conference agreement also clarifies that, in the case of self-insurance, the employer-provided benefit is the value of the coverage and is not limited by the actual disbursements made by the employer.

c. Nondiscrimination rules

House Bill

Eligibility test

The House bill establishes a uniform nondiscriminatory eligibility rule for all statutory employee benefit plans. A plan satisfies the new eligibility rule if (1) at least 90 percent of all employees are eligible to participate in the plan; and (2) the plan contains no provisions relating to eligibility to participate that discriminate in favor of highly compensated employees.

Benefits test

The House bill also establishes a uniform nondiscriminatory benefits rule for all benefits provided under insurance-type plans.

In the case of an accident or health plan, the bill generally provides that the plan will not be treated as meeting the nondiscriminatory benefits test if (1) 25 percent or more of the employees benefiting under the plan are highly compensated employees, and (2) less than 75 percent of the employees eligible to participate in the plan actually benefit under the plan.

The amount of benefits provided under an employer-maintained health plan may be integrated (in a manner that does not discriminate in favor of highly compensated employees) with benefits provided under Medicare or any other Federal, State, or foreign law, or under any other health plan covering the employee or a member of the employee's family.

In the case of any insurance-type plan other than an accident or health plan, the plan will be treated as not meeting the requirements of the nondiscriminatory benefits test if less than 75 percent of the employees eligible to participate in the plan actually benefit under the plan.

Under the House bill, disability coverage attributable to employer contributions (including elective contributions) is subject to the nondiscrimination rules only to the extent that benefits provided under such coverage are excludable from income (sec. 105 (b) or (c)). Coverage for such disability benefits is tested under the same nondiscriminatory benefits rules as those applicable to health coverage.

In the case of any statutory employee benefit plan that is not an insurance-type plan, the plan meets the nondiscriminatory benefits requirement if (1) all benefits available under the plan to any highly compensated employee are available on the same terms and conditions to all other employees eligible to participate in the plan; and (2) the average benefit provided on behalf of nonhighly compensated employees equals or exceeds 80 percent of the average benefit provided to or on behalf of highly compensated employees.

Senate Amendment

In general

Accident or health plans and group-term life insurance

Under the Senate amendment, an accident or health plan (whether or not insured) or a group-term life insurance plan is considered discriminatory unless the plan satisfies the (1) percentage test; (2) reasonable classification test; (3) average benefits test; or (4) average income exclusion test. These tests (other than the average income exclusion test) do not apply to plans other than accident or health plans and group-term life insurance plans. The Senate amendment follows the House bill with respect to what type of disability coverage is subject to these tests.

Other plans

A plan other than an accident or health plan or a group-term life insurance plan is generally considered discriminatory unless the plan meets the applicable present law nondiscrimination rules or the new average income exclusion test.

Percentage test

Under the Senate amendment, a plan satisfies the percentage test if it benefits 80

percent or more of all employees of the employer.

Reasonable classification test

The Senate amendment provides that a plan meets the reasonable classification test if it benefits a reasonable classification of employees that the Secretary finds does not allow more than a reasonable difference (in favor of highly compensated employees) between the coverage percentage of highly compensated employees and the coverage percentage of other employees.

Average benefit test

Under the Senate amendment, an accident or health plan or group-term life insurance plan that does not meet the reasonable classification test will be treated as meeting that test if (1) the plan meets the requirements of section 410(b)(1)(B) as in effect immediately before the date of enactment of the Tax Reform Act of 1986; (2) the average benefit provided to employees not covered by an alternative plan is at least 60 percent of the average benefit provided to employees covered by an alternative plan (or plans); and (3) in the case of an accident or health plan, at least 80 percent of the employer's nonhighly compensated employees are eligible to participate in one or more plans of the same type and the benefits available to each such employee are equal to at least 40 percent of the average benefits provided to employees covered by an alternative plan.

The term "alternative plan" is defined as any plan that meets the requirements of section 410(b)(1)(B) as in effect immediately before the date of enactment of the Tax Reform Act of 1986, but does not meet the requirements of the reasonable classification test without regard to the average benefit test.

Average income exclusion test

In general

An accident or health plan or a group-term life insurance plan that does not satisfy the reasonable classification test will be treated as satisfying the test if the plan satisfies the average income exclusion test. In addition, in the case of a statutory employee benefit plan other than an accident or health plan or a group-term life insurance plan, and in the case of a cafeteria plan, a plan that satisfies the average income exclusion requirements test will generally be deemed to satisfy the present law nondiscrimination rules (other than concentration tests) applicable to such plan.

A plan meets the requirements of the average income exclusion test if the average exclusion amount for nonhighly compensated employees is at least 80 percent of the average exclusion amount for highly compensated employees.

Under the Senate amendment, the term "average exclusion amount" with respect to highly compensated employees is an amount equal to the aggregate excludable amount provided under all plans of the same type to highly compensated employees divided by the total number of highly compensated employees of the employer. The average exclusion amount with respect to nonhighly compensated employees is determined in the same manner.

Special rules for accident or health plans

Under the Senate amendment, for purposes of applying the average income exclusion test to accident or health plans (except in the case of a cafeteria plan that offers a health plan option, as well as other types of benefits), an employer may elect to disregard any employee if the employee and the employee's spouse and dependents (if any) are covered by an accident or health plan maintained by another employer.

In addition, if an employer maintains an accident or health plan that provides family coverage, the employer may elect to test separately the coverage for employees and the coverage for spouses or dependents as if the two types of coverage constituted two different types of plans. For purposes of testing the coverage for spouses or dependents, an employer may take into account only employees with spouses or dependents who are not covered by an accident or health plan maintained by the employers of the spouses and dependents.

An employer who elects either of these options must obtain and maintain, in such manner as the Secretary of the Treasury prescribes, adequate sworn statements to demonstrate whether individuals have spouses, dependents, or other accident or health coverage.

The Senate amendment follows the House bill with respect to coordination with accident or health benefits provided under a law or other plans.

Special rule for group-term life insurance

For purposes of determining whether the average income exclusion test is satisfied for a group-term life insurance plan, or a cafeteria plan offering such a benefit, the amount attributable to the group-term life insurance benefit that is excludable from income under the plan is to be determined under section 79 for an individual who is age 30. In addition, group-term life insurance coverage in excess of $50,000 may be disregarded. These special rules do not apply for income inclusion purposes if the plan being tested is determined to be discriminatory.

Conference Agreement

The conference agreement generally follows the House bill with respect to the eligibility test and generally follows the Senate amendment with respect to the benefits test, but modifies both tests. In addition, the conference agreement adds an alternative test that may be applied in lieu of the eligibility and benefits tests.

Scope of rules

With respect to the scope of the new nondiscrimination rules, the conference agreement generally follows the Senate bill. The new eligibility and benefits tests apply only to statutory employee benefit plans. As noted above, this term generally includes only accident or health plans and group-term life insurance plans.

As under both bills, no nondiscrimination rules apply to disability coverage to the extent that the proceeds payable under such coverage would be includible in the income of the employee.

All other accident or health plans are subject to these nondiscrimination rules, including, for example, plans providing ancillary benefits such as dental or vision plans and physical examination plans. With respect to accident or health plans, it is the value of the coverage provided, not the contributions, that is subject to the nondiscrimination rules. (Correspondingly, the conference agreement modifies the exclusion section to apply to the value of the coverage, rather than the contributions under the plan.)

With respect to dependent care assistance programs, the present-law eligibility standards continue to apply, but the conference agreement adds a special benefits test. The present-law nondiscrimination rules apply to qualified tuition reduction programs, group legal services plans, educational assistance programs, and employee benefit programs providing no-additional-cost services, qualified employee discounts, or employer-operated eating facilities (sec. 132).

The reason that the new nondiscrimination rules applicable to accident or health plans and group-term life insurance plans are not applicable to group legal services plans and educational assistance programs is that the latter types of plans are generally scheduled to expire prior to the effective date of the new nondiscrimination rules. The conferees anticipate, however, that if the group legal services plans and educational assistance programs are extended to periods after the effective date of the new nondiscrimination rules, such nondiscrimination rules shall be applied.

The conference agreement permits employers to elect to treat group legal services plans, educational assistance programs, and/or dependent care assistance programs as statutory employee benefit plans, and to apply the new eligibility and benefits tests to them in lieu of the present-law nondiscrimination tests (though not in lieu of the applicable concentration tests (secs. 120(c)(3), 127(b)(3), and 129(d)(4)). Such an election will enable an employer to use these types of plans for purposes of satisfying the benefits. (*See* the description in "Benefits test" below.)

Although the new nondiscrimination rules do not mandatorily apply to plans other than accident or health plans and group-term life insurance plans, the following definitions are also applied to qualified tuition reduction programs, group legal services plans, cafeteria plans, educational assistance programs, dependent care assistance programs, miscellaneous fringe benefits (sec. 132), and welfare benefit funds: (1) highly compensated employees; (2) compensation (including the limitation on the amount that can be taken into account) with respect to those plans for which compensation is relevant; (3) excludable employees; and (4) employer (including application of the employee leasing rules). These new definitions are discussed more fully below.

Eligibility tests

Under the conference agreement, a statutory employee benefit plan must satisfy an eligibility test consisting of 3 requirements. The first requirement is that nonhighly compensated employees must constitute at least 50 percent of the group of employees eligible to participate in the plan. This requirement will be deemed satisfied if the percentage of highly compensated employees who are eligible to participate is not greater than the percentage of nonhighly compensated employees who are eligible.

For example, assume that an employer has 20 employees, 15 of whom are highly compensated employees. Because more than 50 percent of its workforce is highly compensated, that employer could make all employees eligible but still not satisfy the "50-percent test." However, if all employees are eligible, the employer would be deemed to satisfy the 50-percent test because the percentage of highly compensated employees and nonhighly compensated employees who are eligible is the same (i.e., 100 percent).

For purposes of satisfying the 50-percent test, comparable plans (as defined below) may be aggregated.

Under the second eligibility requirement, a plan is discriminatory unless at least 90 percent of the employer's nonhighly com-

pensated employees are eligible for a benefit that is at least 50 percent as valuable as the benefit available to the highly compensated employee to whom the most valuable benefits are made available. For purposes of this test, all plans of the same type (i.e., all benefits excludable under the same Code section) are aggregated. Thus, if an employee is eligible to participate in two or more plans of the same type, the employee is considered eligible for a benefit with a value equal to the sum of the values in the plans for which the employee is eligible. Also, in determining the highly compensated employee with the most valuable benefits, benefits under all plans of the same type are aggregated in the same manner.

For purposes of this 90-percent/50-percent test, available salary reduction is not taken into account. (*See* "Cafeteria plan" below for rules applicable to salary reduction.) In addition, to the extent that benefits other than salary reduction amounts are available on the condition that an employee make a salary reduction election (or an after-tax contribution), the contingent benefits may be allocated among different types of plans in any reasonable manner permitted by the Secretary and determined by the employer.

Also, for purposes of the 90-percent/50-percent test, the conference agreement provides that coverage of an employee under accident or health plans may be tested separately from coverage of an employee's spouse and/or dependents under accident or health plans. Coverage of an employee's spouse and/or dependents is tested together regardless of whether the employer creates separate plans for employees with one spouse or dependent as opposed to employees with two or more.

The third eligibility requirement provides that a plan may not contain any provision relating to eligibility to participate that by its terms or otherwise discriminates in favor of highly compensated employees. This third test is not intended to disqualify arrangements where the discrimination is quantifiable. For example, if an employer maintains one health plan for its salaried employees and one health plan for its hourly employees, the fact that the hourly plan is less valuable will not cause the salaried plan to fail the third eligibility requirement. On the other hand, if a plan is designed to suit the highly individualized needs of the highly compensated employees, it may be discriminatory even if it applies to all employees.

For example, if an employer provides unusual coverage for a rare condition to which only the owner or the employer is subject, such coverage may fail the third eligibility requirement, even if theoretically provided to all employees of the employer.

Benefits test

In general

Under the conference agreement, a plan does not satisfy the benefits test unless the average employer-provided benefit received by nonhighly compensated employees under all plans of the employer of the same type is at least 75 percent of the average employer-provided benefit received by highly compensated employees under all plans of the employer of the same type (i.e., plans providing benefits excludable under the same Code section).

For purposes of this test, the term, "average employer-provided benefit" means with respect to highly compensated employees an amount equal to the aggregate employer-provided benefits received by highly compensated employees under all plans of the type being tested divided by the number of highly compensated employees (whether or not covered by any such plans). The term is defined in the same manner with respect to nonhighly compensated employees.

Aggregation of plans

In applying the benefits test to a plan other than an accident or health plan, the conference agreement provides that the employer may aggregate different types of statutory employee benefit plans. Thus, for example, an employer may aggregate benefits provided under all group-term life insurance plans and all group legal services plans (if the employer elects to treat such plans as statutory employee benefit plans) in order to satisfy the benefits tests with respect to all such plans. In addition, an employer may aggregate all accident and health plans with plans providing benefits excludable under one or more other Code sections for purposes of satisfying the benefits test with respect to plans other than accident and health plans.

In no case, however, may an employer aggregate with other plans some but not all of the plans providing benefits excludable under a Code section. Thus, an employer may not, for example, aggregate some but not all of its group-term life insurance plans with all of its group legal services plans.

When plans excludable under different Code sections are aggregated for purposes of the benefits test, the definition of excludable employees (for purposes of determining the average employer-provided benefit) shall be made as if the plans were excludable under the same Code section. This means that the lowest age and service requirements from any plans shall apply (see "Excludable employees" below), and if members of a collective bargaining unit are not excluded for one aggregated plan, they are not excluded for the group of plans. Thus, in determining the average employer-provided benefit, the denominator shall be all nonexcludable employees, determined under the employer's most expansive definitions of such term.

Alternative to eligibility and benefits tests

The conferees also provide an alternative single test which may be applied in lieu of the eligibility and benefits tests. If a plan benefits at least 80 percent of an employer's nonhighly compensated employees, such plan is considered to satisfy both the eligibility and benefits tests. For this purpose, comparable plans may be aggregated. This alternative test will not apply if the plan (or plans) contain any provision that by its terms or otherwise discriminates in favor of highly compensated employees.

This test applies only to insurance-type plans which, under the conference agreement, are defined as accident or health plans and group-term life insurance plans. Of course, for purposes of this test, an individual will only be considered to benefit under a plan if such individual receives coverage under the plan; eligibility to receive coverage is not considered benefiting under the plan.

Special rules for accident or health plans

The conference agreement adopts the special rules in the Senate amendment relating to accident or health plans with certain modifications. For purposes of applying the benefits test to accident or health plans, an employer may elect to disregard any employee if the employee and the employee's spouse and dependents (if any) are covered by a health plan that provides core benefits and that is maintained by another employer of the employee, spouse, or dependents. Also, in testing employee coverage only under the benefits test (see discussion in this section), an employee may be disregarded if such employee is covered by a health plan that provides core benefits and that is maintained by another employer of the employee, spouse, or dependents. An employee may not, however, be disregarded in applying the benefits test to any other type of plan, even if accident and health plans are aggregated with such other type of plan for purposes of applying the benefits test to such other type of plan.

For purposes of these rules, the term "core benefits" generally has the same meaning as for purposes of determining the excludable employees (*See* "Excludable employees," below) except to the extent provided by rules prescribed by the Secretary. For example, the Secretary is to except from the definition of core benefits for this purpose, any benefits attributable to a salary reduction medical reimbursement plan or a low-level nonelective medical reimbursement plan. In addition, in no event may disability coverage be considered a core benefit.

In addition, if an employer maintains an accident or health plan that provides family coverage to those employees with spouses or dependents, the employer may elect to test separately, for purposes of the benefits test, the alternative 80-percent test, and the 50-percent component of the 90-percent/50-percent test, the coverage for employees and the coverage for spouses or dependents as if the two types of coverage constituted two different types of plans (i.e., as if excludable under different Code sections). However, in applying the benefits test to plans other than accident or health plans an employer may not aggregate with such other plans only employee coverage or only family coverage.

Included in the definition of coverage for spouses or dependents are all plans covering one or more family members of an employee, regardless of whether certain of such plans may be limited to one family member while other plans cover two or more family members.

For purposes of testing the coverage for spouses or dependents separately under the alternative 80-percent test and the 50-percent component of the 90-percent/50-percent test, the conference agreement permits an employer to take into account only employees with spouses or dependents. For purposes of the benefits test, an employer testing coverage of spouses and dependents separately may take into account only employees with spouses or dependents who are not covered by a health plan that provides core benefits and that is maintained by another employer of the employee, spouse or dependents. If the employee's spouse or any dependent is not covered under another plan, the employee is taken into account, even if certain of the family members are so covered. This rule does not apply to the benefits test if all accident and health plans are aggregated with plans of a different type for purposes of applying the benefits test to such other plans.

If an employee or a family is disregarded for purposes of the benefits test, any coverage actually provided to the employee or family is disregarded in determining the average employer-provided benefit, as is the existence of that employee or family.

An exception to this rule provides that in no case may a highly compensated employ-

ee be disregarded if the coverage provided with respect to the highly compensated employee has a value in excess of 133⅓ percent of the average employer-provided benefit with respect to nonhighly compensated employees. If family coverage is tested separately, the family of a highly compensated employee may not be disregarded if the coverage provided to such family has a value in excess of 133⅓ percent of the average employer-provided benefit with respect to families of nonhighly compensated employees.

The rules described above allowing certain employees to be disregarded apply only to the tests specifically noted. Thus, for example, the fact that an employee has other core health coverage does not mean such employee may be disregarded for purposes of the eligibility tests or the alternative 80-percent test.

The Secretary shall prescribe rules, consistent with the rules described above, for the treatment of an employee who has a spouse or dependent who is also an employee of the same employer.

An employer who elects the optional rules described above must obtain and maintain, in such manner as the Secretary prescribes, adequate sworn statements to demonstrate whether individuals have spouses, dependents, or other accident or health coverage. Alternatively, the employer may sample a statistically valid sample of employees and secure sworn statements from the sample group. The conferees intend that an employer who elects the application of these optional rules may not treat a nonhighly compensated employee as having other coverage (of the employee or the employee's family), as not having a family, or both unless the employer has a statement to that effect that includes, with respect to other coverage, the name of the insurer and the employer providing the coverage. In the case of a highly compensated employee, the conferees intend that the opposite presumptions are to apply. Thus, a highly compensated employee may not be treated as not having other coverage (of the employee or the employee's family), as having a family, or both, unless the employer has a sworn statement to that effect.

The statements required for purposes of these special rules are to be collected annually on forms provided by the Internal Revenue Service that indicate whether other coverage was provided (or is expected to be provided) for the entire plan year and whether the employee has a family. The statements need not be notarized.

The conferees also intend that employers be permitted to secure sworn statements from a statistically valid sample of employees and to use the results of the sample to project the facts regarding health plan coverage of the entire workforce. Such a sampling must be performed by an independent third party in accordance with rules prescribed by the Secretary. If this sampling rule is used, the same rules apply, including the presumptions and the annual collection on IRS forms. In addition, the report by the third party to be attached to the employer's return shall include such facts regarding the sampling as are required by the Secretary.

The conference agreement follows the House bill and the Senate amendment with respect to coordination with accident or health benefits provided under any law or other plan, except that these coordination rules only apply if the coordination is otherwise permissible under law.

Plan safe harbor

The conferees intend that the benefits test may be adapted in rules prescribed by the Secretary to permit particular plans to pass the benefits test without the need for valuing all benefits excludable under the same Code section. Because the definition of a plan generally requires that all features be identical (see the discussion below), any plan would, standing alone, pass the benefits test if, based on the entire year, the percentage of nonhighly compensated employees benefited is not less than 75 percent of the percentage of highly compensated employees benefited. An example illustrates how this special rule reduces the need to value every plan of the employer. Assume an employer has 10 health plans. Nine of those plans would, standing alone, pass the benefits test in the manner described above; the tenth would not. An employer could aggregate with the tenth plan only so many of the other nine plans as would be necessary to enable that group of plans to satisfy the benefits test. Thus, only that group of plans would have to be valued.

Special group-term life insurance rule

Under the conference agreement, in applying the benefits test and the 50-percent component of the 90-percent/50-percent test to a group-term life insurance plan, the benefit provided under the plan is determined in the same manner as such amount is determined under section 79(c) for an individual who is age 40. Except in the case where group-term life insurance plans are aggregated with plans of a different type, this amount may be adjusted depending on the compensation of the employee. The adjustment shall be made by multiplying the amount by a fraction the numerator of which is a uniform amount for all plans and the denominator of which is the employee's compensation.

An employer may avoid valuing group-term life insurance in the above manner by using the plan safe harbor described above. For example, if an employer provides group-term life insurance of one times compensation to a group that satisfies the plan safe harbor rule, such plan passes the benefits test without regard to the valuation rules described above. If the employer aggregates that plan with another plan of the same or different type, the valuation rules described above are to be used.

For purposes of the above rules, the uniform definition of compensation (including the limitation on the amount that may be taken into account) applicable to qualified retirement plans (see Part B.1., above) and welfare benefit funds (see below) applies.

In contrast to the Senate amendment, the conference agreement provides that coverage in excess of $50,000 may not be disregarded. In other words, coverage in excess of $50,000 is treated as provided through tax-favored dollars.

In determining the value of the discriminatory excess (or the value of any inclusion amount), the special valuation rules described above do not apply. See the rules described above for valuing the discriminatory excess.

Special dependent care assistance test

A special benefits test applies to dependent care assistance programs that are not statutory employee benefit programs. Under this special rule, the benefit test applicable to statutory employee benefit plans applies, with two modifications.

First, the average employer-provided benefit received by nonhighly compensated employees is required to be at least 55 percent (as opposed to 75 percent) of the average employer-provided benefit received by highly compensated employees.

Second, for purposes of applying the average benefits test to salary reduction amounts, employees with compensation (sec. 414(q)(7)) below $25,000 are disregarded. If an employer-provided dependent care assistance both through salary reduction and otherwise, the treatment of the employees with compensation below $25,000 is to be determined under rules prescribed by the Secretary.

Part-time employee rule

In applying the benefits test to accident or health plans, the conference agreement provides that an employer may elect to adjust the benefits provided to certain employees. With respect to an employee who normally works less than 22½ hours per week, an employer may deem benefits provided to have a value equal to up to double the actual value of coverage provided. With respect to an employee who normally works less than 30 hours, an employer may deem benefits provided to have a value equal to up to 1⅓ times the actual value.

If this part-time employee rule is used, it is to be used on a uniform, nondiscriminatory basis for all employees. In applying the 50-percent component of the 90-percent/50-percent test to accident or health plans, the above rule applies with respect to the amount of benefits available. However, this special part-time employee rule does not apply for any purpose in a plan year unless during such year more than 50 percent of the nonexcludable employees (determined without regard to plan provisions) normally work more than 30 hours per week. In addition, the multiplication of the benefit under this rule does not apply to elective contributions.

State-mandated benefits

The conferees authorize the Secretary, in applying the nondiscrimination rules described above to accident or health plans, to disregard State-mandated benefits under certain circumstances. For example, in comparing the benefits of employees in one State to the benefits of employees in another State, the Secretary may disregard benefits that are mandated in one of the States but are not mandated in the other.

It is intended, however, that the benefits that may be disregarded are ancillary benefits, rather than core benefits. For example, if a State mandates an HMO option, the conferees do not intend that the value of coverage under an HMO may be disregarded.

d. Highly compensated employees

House Bill

Under the House bill, a uniform definition of highly compensated employees is provided for purposes of the new nondiscrimination rules applicable to statutory employee benefit plans, and for purposes of the special nondiscrimination test for qualified cash or deferred arrangements. (*See* the description in Part B.7., above.) An employee is treated as highly compensated with respect to a year if, at any time during the year or any of the two preceding years, the employee (1) is a five-percent owner of the employer (as defined in sec. 416(i)); (2) earns over $50,000 in annual compensation from the employer; or (3) is a member of the top-paid group of the employer.

The top-paid group includes all employees who (1) are in the top 10 percent of all em-

ployees on the basis of compensation, and (2) earn more than $20,000 a year. However, an employee is not included in the top-paid group if the employee earns less than $35,000 and is not in the top 5 percent of all employees on the basis of compensation.

In addition, under all statutory employee benefit plans, a former employee is to be treated as a highly compensated employee if such employee was highly compensated at the time of separation from service or at any time after attaining age 55.

Senate Amendment

Under the Senate amendment, a uniform definition of highly compensated employees is provided and is similar to the definition in the House bill. This definition applies, however, for purposes of the nondiscrimination rules for all statutory employee benefit plans, cafeteria plans, welfare benefit funds, qualified plans, and qualified cash or deferred arrangements. (*See* the description in Part B.7., above.)

An employee is treated as highly compensated with respect to a year if, at any time during the year or the preceding year, the employee (1) was a 5-percent owner of the employer (as defined in sec. 416(i)); (2) received more than $100,000 in annual compensation from the employer; (3) received more than $50,000 in annual compensation from the employer and was a member of the top-paid group of the employer during the same year; or (4) was an officer of the employer (as defined in sec. 416(i)). The $50,000 and $100,000 thresholds are indexed by reference to the method, as of May 1, 1986, for adjusting for percentage increases in the social security wage base (i.e., at the same time and in the same manner as the adjustments to the dollar limits on benefits under defined benefit pension plans under the Senate amendment).

In addition, a former employee is to be treated as a highly compensated employee if such employee was highly compensated at the time of separation from service or at such other times as the Secretary may prescribe.

Conference Agreement

The conference agreement follows the Senate amendment with certain modifications. (*See* the detailed description in Part B.7., above.) First, the $100,000 threshold in the Senate amendment is reduced to $75,000. Second, every employer shall have at least one officer; if necessary, this means that the compensation floor required for officer status shall not apply to one individual. Third, the House rule regarding former employees is adopted in lieu of the Senate rule. Further, the method of indexing the $50,000 and $75,000 figures is the same method used to index the dollar limit for defined benefit pension plans under the conference agreement.

The definition of highly compensated employee is the same as the definition used with respect to qualified plans. One clarification applies to employee benefits, however, that does not apply to qualified plans. With respect to those benefits for which family coverage is treated as a benefit separate from employee coverage, such as accident or health benefits, the special rule aggregating family members is modified. In such instances, where a family member would be aggregated with a 5-percent owner of one of the top 10 highly compensated employees, such family member shall be treated as a nonemployee family member.

e. Excludable employees

House Bill

The House bill generally provides that certain classes of employees may be disregarded in applying the 90-percent eligibility test if neither the plan nor any other plan providing similar benefits benefits any employee in such class. The classes of excludable employees generally are (1) employees who have not completed at least 180 days of service; (2) employees who normally work less than 20 hours per week; (3) employees who normally work less than 1,000 hours during any year; and (4) employees under age 21. In addition, employees covered by a bona fide collective bargaining agreement may be disregarded if the plan does not benefit any such employee. Further, nonresident aliens who receive no United States earned income may be disregarded, regardless of whether any such individuals are covered by the plan.

Treasury regulations are to provide a limited exception to the rule that employees who otherwise are excludable as employees who do not normally work 1,000 hours a year or 180 days may not be disregarded if any plan of the employer does not exclude such employees. The limited exception will be available if (1) substantially all employees of the employer (other than supplemental employees) generally are eligible to participate in an accident or health plan (or other employee benefit plan) within 30 days after the date of hire; (2) the employer also employs supplemental employees who generally do not work more than 1,000 hours or more than 180 days; (3) the supplemental employees generally are not rehired if they have previously been supplemental employees; and (4) the supplemental employees do not exceed 15 percent of the employer's workforce.

Under this limited exception, supplemental employees who are (1) retired employees of the employer who are covered under an accident and health plan of the employer maintained for retirees or (2) students hired by the employer under a work-study program, may be disregarded in determining whether the employer's employee benefit plans satisfy the nondiscrimination requirements. Of course, this limited exception would not be available if any supplemental employees are eligible to participate in any employee benefit plan of the employer (other than a plan maintained for retired employees).

Senate Amendment

In general

The Senate amendment follows the House bill by providing that certain classes of employees may be disregarded in applying the eligibility and benefits tests if neither the plan, nor any other plan of the same type, benefits any employee in such class. The classes of excludable employees under the Senate amendment are (1) in the case of an accident or health plan (other than a plan providing only noncore benefits) employees who have not completed at least 180 days of service (or such shorter period of service as may be specified in the plan); (2) in the case of any other statutory employee benefit plan (including an accident or health plan providing only noncore benefits), employees who have not completed one year of service (or such shorter period of service as may be specified in the plan); (3) employees who normally work less than half time (or such lesser amount as may be specified in the plan); (4) employees who normally work fewer than six months during any year (or such lesser amount as may be specified in the plan); and (5) employees who have not attained age 21 (or such lower age as may be specified in the plan). In addition, employees included in a unit of employees covered by a collective bargaining agreement may be disregarded if the plan does not benefit any employee in that unit. Finally, nonresident aliens who receive no United States earned income may be disregarded, regardless of whether any such individuals are covered by a plan.

Conditions for exclusions

In applying the nondiscrimination rules, an employer may exclude from consideration a category of excludable employees only if no excludable employee in that category benefits under the plan being tested or any other employee benefit plan of the employer that provides the same type of statutory employee benefit. Statutory employee benefits are treated as being of the same type if they are eligible to be excluded from income under the same section of the Code. Thus, if an employer maintains two group-term life insurance plans, only one of which excludes employees with less than a year of service, the employer is not permitted to exclude from consideration employees with less than a year of service in testing either plan for compliance with the nondiscrimination rules.

In the case of a cafeteria plan (including a plan that would be a cafeteria plan if employees could elect cash or a taxable benefit), for purposes of applying the nondiscrimination rules, an employer may exclude a category of excludable employees from consideration only if those employees are excluded from benefiting under any option offered by the cafeteria plan.

The Senate amendment contains certain exceptions, generally described below, to the rule that if even one excludable employee is covered by a plan, all employees who are excludable on the same basis (and on no other basis) as the covered employee must be taken into account in applying the nondiscrimination rules to the plan (and any other statutory employee benefit plan offering the same type of benefits).

Core and noncore benefits

If a plan offering only noncore accident or health benefits excludes employees with less than a year of service, the employer sponsoring the plan is not required to take into consideration employees with less than a year of service merely because another plan maintained by the employer offering core accident or health benefits has a shorter service requirement. Noncore accident or health benefits consist of coverage for dental, vision, psychological and orthodontia expenses and elective cosmetic surgery.

Line of business

If an employer elects to apply the nondiscrimination rules on a separate line of business or separate operating unit basis, the employees who may be excluded from consideration are determined on a separate line of business or separate operating unit basis. Thus, for example, if (1) an employer maintains a statutory employee benefit plan for a line of business, (2) the nondiscrimination rules are applied to the plan on a line of business basis, and (3) all plans providing benefits of the same type to employees in that line of business exclude all employees who have not attained the age of 21, then the employer may exclude from consideration in applying the nondiscrimination rules to the plan, all employees in that line

of business who have not attained age 21, even if the employer maintains a plan that does not impose an age requirement for employees in another line of business.

Collective bargaining agreement

If no employee in a unit of employees covered by a collective bargaining agreement is covered by a plan, employees in that unit may be disregarded in testing a plan for discrimination, even if the employer maintains a second plan that provides similar benefits and that covers employees in such collective bargaining unit. However, for purposes of applying the average benefits test and the average income exclusion test, if any employees in a unit of employees covered by a collective bargaining agreement are covered by any plan of the type being tested, then all employees in that unit are required to be taken into account.

Nonresident aliens

Nonresident aliens with no United States source income may be disregarded regardless of whether any such individuals are covered by the plan being tested for nondiscrimination or by any other plan maintained by the employer providing the same type of benefits.

Separate testing

The Senate amendment also provides that if, for purposes of applying the nondiscrimination rules to a plan ("first plan"), certain employees ("the excludable employees") could be excluded from consideration but for the fact that certain of such employees are covered by another plan ("second plan") that provides the same type of employee benefits, the excludable employees may be disregarded for purposes of testing the first plan if the second plan satisfies the nondiscrimination rules with respect to the excludable employees (treating the excludable employees as the only employees of the employer).

Supplemental employees

The Senate amendment follows the House bill regarding supplemental employees.

Conference Agreement

The conference agreement follows the Senate amendment with certain modifications. First, in lieu of permitting the exclusion of employees who normally work less than half-time, only employees who normally work less than 17½ hours per week may be excluded. Also, the seasonal employee exclusion is modified to exclude employees who normally work during no more than six months during a year.

Third, the "separate testing" rule is modified to allow employees excludable on the basis of the age and service requirements to be tested separately even if some or all of the excludable employees are covered by a plan that also covers nonexcludable employees. Under the conference agreement, an employer may test all such excludable employees separately. Alternatively, an employer may elect to test one group of excludable employees separately without testing all excludable employees separately if such group is defined in a nondiscriminatory manner solely by reference to the age or service requirements. For example, an employer may elect to test separately all employees excludable solely on the grounds that they do not have six months of service, but not include in such testing group employees excluded under the other age and service rules. Also, an employer may test separately a group of employees who would pass less restrictive age or service requirements. For example, an employer could test separately all employees excludable solely on the grounds that they are not age 21, but who are at least age 18.

Third, an employer may exclude an employee, on the grounds that such employee has not satisfied the required period of initial service, during the period prior to the first day of the calendar month following the actual satisfaction of the initial service requirement. For example, assume an employer required 30 days of service for participation in a health plan, but did not allow participation to begin other than on the first day of a calendar month. Assume further that the employer hires two employees, A on July 2 and B on July 3. Under the terms of the employer's plan, A would be a participant on August 1 and B would be a participant on September 1. Thus, A is a participant after 30 days of service while B has to wait 60 days. Because of the special rule allowing B to be disregarded prior to the first day of the next month following satisfaction of the period of service requirement, B need not be taken into account for nondiscrimination purposes until September 1, even though B would have 30 days of service after the end of the day on August 1.

Fourth, the rule permitting exclusion of employees who have not had 180 days of service is modified by substituting 6 months of service for 180 days of service. It is also clarified that this service requirement is satisfied if an employee is continuously employed for a 6-month period without regard to the number of hours or days worked. A period during which an employee does not perform services for the employer counts toward this service requirement unless there has been a bona fide, indefinite cessation of the employment relationship. These same rules apply to the one year of service requirement.

Further, the conference agreement modifies the Senate amendment rule permitting exclusion of an employee only if no employee in the same category (e.g., under age 21) benefits under a plan of the same type. Under the conference agreement, the exclusion applies only if no employee in the same category is eligible under a plan of the same type.

Also, it is clarified that if an employer aggregates plans of different types of purposes of satisfying the benefits test, the excludable employee rules apply as if such plans were the same type. Thus, the lowest age and service requirements in any plans shall apply. The lowest age requirement may come from one plan, the shortest waiting period may come from another plan, the lowest hour requirement for part-time status may come from a third plan, etc.

The conference agreement also clarifies that, for purposes of the initial service rules, core accident or health benefits may be considered provided under a separate plan from noncore benefits.

The conference agreement modifies the supplemental employee rule by applying the rule to employees who normally work during no more than six months and to employees who do not have six months of service.

f. Separate lines of business or operating units

House Bill

The House bill provides an exception to the general eligibility rule if the employer, for bona fide business reasons, operates a separate line of business or separate operating unit. In that event, the requirements of the general eligibility rule may be satisfied separately with respect to employees in each separate line of business or operating unit.

An employer may not separately apply the nondiscrimination rule to any line of business or operating unit unless (1) there are at least 100 nonexcluded employees employed by the line of business or operating unit; and (2) at least 5 percent, but no more than 25 percent, of the employees in the line of business or operating unit are highly compensated. In addition, the House bill provides that if employees of more than one line of business or operating unit are eligible to participate in the same plan, such lines of business or operating units are treated as a single line of business or operating unit for purposes of the nondiscriminatory eligibility requirement.

Senate Amendment

In general

Under the Senate amendment, if an employer establishes to the satisfaction of the Secretary that the employer operates separate lines of business or operating units for bona fide business reasons, the reasonable classification test, the average benefits test, and the average income exclusion test may be applied separately with respect to employees in each line of business or operating unit. A plan will not be treated as satisfying the nondiscriminatory coverage rules on a line of business or operating unit basis unless the plan also satisfies the present-law classification test on an employer-wide basis.

Safe harbor

The Senate amendment provides a safe-harbor rule under which a separate line of business or operating unit is treated as being operated for bona fide business reasons if such line of business or operating unit is a separate self-sustaining unit and if (1) each line of business or operating unit has at least 50 employees who do not perform services for any other line of business or operating unit; and (2) the "highly compensated employee percentage" of the line of business or operating unit is (a) not less than one-half, and (b) not more than twice, the percentage of all employees of the employer who are highly compensated. For purposes of this requirement, the highly compensated employee percentage of a line of business or operating unit will be treated as not less than one-half of the percentage of all employees of the employer who are highly compensated employees if at least 10 percent of all highly compensated employees of the employer are employed by the line of business or operating unit. The term "highly compensated employee percentage" means the percentage of all employees performing services for a line of business or operating unit who are highly compensated employees.

Definition of line of business

The Senate amendment provides that the Secretary shall prescribe by regulation what constitutes a line of business or operating unit. The line of business or operating unit concept shall not be used to undermine the nondiscrimination rules. Thus, for example, certain job classifications (such as hourly employees or leased employees) are not considered to be separate lines of business or operating units. Also, for example, secretaries and other support service personnel shall not be treated as in a line of business or operating unit separate from the lawyers or other professionals for whom such personnel perform services, and nurses and laboratory personnel shall not be treated as in

a line of business or operating unit separate from the medical doctors for whom they perform services. In addition, the members of an affiliated service group (sec. 414(m)) may not be treated as separate lines of business or operating units.

In general, a headquarters or home office is not to be treated as a separate line of business or operating unit. It is generally intended that a line of business or operating unit include all employees necessary for preparation of certain classes of property for sale to customers or for the provision of services to customers. Certain exceptions to this rule may be established by regulation where one employer has two operations that are vertically integrated and that are traditionally operated by unrelated entities.

Combining lines of business

If a line of business or operating unit would be recognized, but for the fact that it does not satisfy the 50 employee or the highly compensated employee percentage tests, it may be combined with another line of business or operating unit to satisfy such tests. With respect to any plan maintained for employees of one of the combined lines of business, the plan is required to satisfy the coverage rules with respect to the aggregate entity.

Excludable employees

For purposes of determining (1) the number of employees in a line of business or operating unit; (2) the highly compensated employee percentage of a line of business or operating unit; and (3) the percentage of all employees of the employer who are highly compensated, an employer shall disregard the categories of employees that are disregarded for purposes of determining which employees are highly compensated employees. (See the description in B.7., above.).

Common plan for more than one line of business

If employees of more than one line of business or operating unit are eligible to participate in a plan, then all such lines of business or operating units are to be treated as one line of business or operating unit.

Conference Agreement

The conference agreement follows the Senate amendment with the following modifications. For convenience, the conference agreement uses the term "line of business" to refer both to a line of business and to an operating unit.

First, it is clarified that if the employer establishes to the satisfaction of the Secretary that the employer operates separate lines of business or operating units for bona fide business reasons, both the eligibility tests and the benefits tests (as well as the alternative 80-percent test) may be applied separately with respect to employees in each line of business or operating unit, subject to the requirement that the classification test be satisfied with respect to any plan on an employer-wide basis.

The conference agreement also clarifies the definition of a line of business or operating unit. Whether claimed separate lines of business or operating units are bona fide is a facts and circumstances determination requiring examination of each particular situation. Differences and similarities between the services provided and products produced by such claimed lines of business are of course important considerations. In addition, the manner in which the employer organizes itself is relevant. Thus, if an employer fails to treat itself as comprised of separate lines of business or operating units and treats employees from different claimed lines or units in an equivalent fashion for certain purposes, it may not be appropriate to allow such activities to be treated as separate lines of business or operating units. These factors do not, however, override the rules relating to the definition of a line of business, discussed above with respect to the Senate amendment, to the extent that such rules would deny separate line of business or operating unit status.

In addition, the conference agreement modifies the definition of an operating unit by requiring that it be operated in a significantly separate geographic area from another operating unit in the same line of business. For example, two plants in the same city would not be considered to be in significantly separate geographic areas and thus would not be considered separate operating units.

Also, the requirement that a separate line of business or operating unit have at least 50 employees is deleted from the safe harbor rule and made a substantive requirement. Thus, a line of business or operating unit shall not be treated as separate for purposes of the nondiscrimination rules unless it has at least 50 employees. As under the Senate amendment, more than one line of business or operating unit may be aggregated to satisfy this requirement.

Also, the requirement that a line of business or operating unit be a separate self-sustaining unit is deleted from the safe harbor rule, since such a requirement is part of the definition of a line of business or operating unit.

The conferees clarify the proper treatment of employees of a headquarters or home office and of other employees serving more than one line of business or operating unit (e.g., payroll personnel). Like all other employees, these employees are to be allocated to one line of business or operating unit. Generally, this allocation shall, under rules prescribed by the Secretary, be made in accordance with their performance of services. Thus, if a majority of an employee's services are performed for a particular line of business or operating unit, such employee must be allocated to that line of business or operating unit.

Other employees rendering services to more than one line of business or operating unit must be allocated in one of two ways. First, the employer may allocate such employees on a pro-rata basis among its lines of business or operating units, under rules prescribed by the Secretary. Alternatively, such employees may be allocated to any one line of business or operating unit for which they perform substantial services provided that such allocation does not cause any line of business or operating unit to violate or further violate the highly compensated percentage rule. Thus, for this purpose, the highly compensated employee percentage rule serves as a substantive rule, not a safe harbor. This means, for example, that if any lines of business or operating units do not pass the 50-percent rule, highly compensated employees at the home office or headquarters who do not perform a majority of their services for any particular line of business or operating unit must be allocated first to such lines of business or operating units. This also means that in no event may such highly compensated employees be allocated to any line of business or operating unit if after such allocation the 200-percent rule would be violated (regardless of whether it was violated prior to such allocation).

It is also intended that the Secretary is to prescribe for annual reporting by employers using the line of business or operating unit rule for purposes of the nondiscrimination rules (including the qualified plan rules). Such reporting shall include the basis for the position that an employer is maintaining separate lines of business or operating units. Where an employer maintains a line of business or operating unit that does not fall within the safe harbor rule, this must be specifically reported and may trigger additional reporting requirements.

In addition, the Secretary is also to establish guidelines identifying circumstances in which there is to be special scrutiny of claimed lines of business or operating units. For example, if a plan maintained for a claimed line of business or operating unit is significantly better or worse than plans for other lines of business or operating units, such a situation shall trigger special scrutiny. Also, if a disproportionate percentage of the accrued benefits under the plan of a claimed line of business or operating unit is for the highly compensated employees, such employer's claim of a separate line of business or operating unit shall also be specially examined.

If a claimed line of business or operating unit does not satisfy the safe-harbor rule and a plan or plans of such line of business or operating unit warrants special scrutiny under the standards set forth in the applicable guidelines, then the claimed line of business or operating unit will not be recognized for purposes of the applicable nondiscrimination rules unless the employer obtains a determination from the Secretary (e.g., by determination letter or private letter ruling) that such line of business or operating unit is separately operated for bona fide business reasons.

Further, the conferees intend to clarify that if an employer is using the separate line of business or operating unit rule with respect to any plan, all employees must be considered part of a line of business or operating unit. Thus, it would not be permissible to maintain that an employer has, in addition to one line of business with 50 employees, 10 other employees who are not part of any line of business or operating unit and who would be tested separately. The 10 other employees would have to be treated as part of one or more lines of business or operating units. Such lines of business or operating units would have to be aggregated with the 50-employee line of business in order to satisfy the requirement that to be tested separately, a line of business or operating unit must have at least 50 employees.

The conference agreement also deletes the rule providing that if employees from more than one line of business or operating unit are eligible to participate in a plan, all such lines of business and/or operating units are treated as one line of business or operating unit. This would, however, be a fact to consider in ascertaining whether an employer treats itself as comprised of separate lines of business or operating units. Instead, the conference agreement requires that benefits attributable to services for a line of business or operating unit shall be considered as provided by that line of business or operating unit. For purposes of such rules, an employee who performs services for more than one line of business or operating unit, but is allocated to one line of business or operating unit under the rules described above, shall be considered to render services solely for that line of business or operating unit.

g. Definitions and special rules

(1) Time for testing

House Bill

The House bill did not contain a provision regarding the time at which the eligibility or benefits test had to be applied. However, one component of the benefits test—the comparability test—would have to be determined based on the value of the benefits provided during the entire year.

Senate Amendment

The Senate amendment did not provide for the time at which the percentage test, the reasonable classification test, or the classification test had to be applied. However, the alternative reasonable classification test and the benefits test would be applied on the basis of the benefits provided during the entire year.

Conference Agreement

Under the conference agreement, it is clarified that the tests applied to the amount of benefits available or provided must be applied on the basis of the benefits provided during the entire year. Thus, the benefits test, the 50-percent component of the 90-percent/50-percent test, and the comparability tests all apply based on the entire year.

An example will illustrate how this rule applies for purposes of the benefits test. Assume employee A becomes nonexcludable on July 1 and on that day A is covered under a health plan that provides coverage that on an annual basis has a value of $1,000. The employer's plan year is the calendar year, so for that plan year, A only receives $500 worth of benefits. That $500 goes in the numerator in determining the average employer-provided benefit. However, because A was only taken into account for half the year, A is only counted as half an employee in the denominator.

The conferees further intend to provide, for accident or health plans and group-term life insurance plans, a rule of convenience to ease the administrative burden on employers. Under this rule of convenience, an employer may, for purposes of applying the benefits test to active employees, treat employees who separate from service during the last 3 months of the plan year as continuing to work and receive benefits for the remainder of the plan year. For employees who separate from service earlier in the plan year, an employer may treat such employees as continuing to work and receive benefits through the end of the month in which they separate. The effect of these rules is that employers will not have to use the exact day that employees separate in calculating the average employer-provided benefit. Instead, an employer may deem employees to have separated only on the end of a month and in the case of employees separating in the last quarter, on the last day of the plan year.

For purposes of this rule of convenience, employees shall be considered to receive after separation whatever benefit they had been receiving prior to separation, provided such benefit had been provided for at least 90 days prior to separation. If there had been a change in the benefit during such 90 day period, then the benefit deemed provided during the period of separation shall be the average benefit provided to the employee during the period beginning on the date in the plan year on which the employee first had to be taken into account for purposes of the nondiscrimination rules and ending on the date of separation from service.

The rule illustrated by the example treating A as only half an employee for purposes of the benefits test and the rule of convenience described do not apply to group-term life insurance plans with respect to which the employer adjusts the value of the benefit provided based on the employee's compensation. See the discussion above, for a description of the adjustment.

The rule of convenience described above shall also apply to the alternative 80-percent test, the 90-percent component of the 90-percent/50-percent test, the 50-percent test, and the plan safe harbor for the benefits test, except that for purposes of the eligibility tests, employees who have separated from service would be deemed to have available to them after separation the benefits available prior to separation. For purposes of determining the benefits available prior to separation, the same rules applicable for the actual benefits rule apply. Other than this one difference, the rule of convenience applies in the same manner. Thus, in determining whether the tests are satisfied, an employer must look at the entire year, but may use the rule of convenience to substantially reduce the administrative burden. For example, assume that an employee (A) who was not excludable on the first day of the plan year separated from service during the sixth month of the plan year. A may be considered to be employed through the end of the sixth month and have available benefits determined under the rule of convenience described above. During the second 6 months, A is not an active employee for purposes of applying the tests.

Of course, the rule of convenience under which employees are deemed to receive or have available to them benefits after separation from service does not apply in testing benefits actually received by or available to former employees. (See 8., below.)

As is true with respect to the nondiscrimination rules applicable to qualified retirement plans, the fact that a failure to meet any of the nondiscrimination rules was attributable to unforeseen circumstances does not affect the application of the rules.

The conferees also intend to provide an additional rule of convenience for employers that do not require any initial period of service for participation in a statutory fringe benefit plan. Under this second rule of convenience, an employer may, for purposes of the 90-percent/50-percent test and the benefits test, disregard benefits provided to an employee during the period between the employee's commencement of employment and the first day of the calendar month following such commencement. (This rule does not apply to an employee who commences employment on the first day of a calendar month.) However, benefits provided during such period that relate to any other period may not be disregarded. For example, if an employer pays for a year's worth of dependent care or provides an annual physical examination, only a proportionate part of the value of such benefit may be disregarded. This second rule of convenience applies to all statutory employee benefit plans. If an employer uses this rule of convenience, it must do so with respect to all employees.

(2) Employer and employees

House Bill

Aggregation

Under certain circumstances, the House bill provides that related employers are treated as a single employer for purposes of the nondiscrimination requirements (sec. 414 (b), (c), and (m)). In addition, leased employees are treated for purposes of the nondiscrimination rules as employees of the person or organization for whom they perform services (sec. 414(n)). The bill provides that the Secretary's general regulatory authority to prevent abuse of employee benefit requirements shall apply (sec. 414(o)).

Self-employed individuals

For purposes of the nondiscrimination rules governing qualified group legal services plans, educational assistance programs and dependent care assistance programs, self-employed individuals are treated as employees. An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer and a partnership is treated as the employer of each partner.

Senate Amendment

The Senate amendment follows the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment and clarifies that the aggregation of employers applies to all aspects of the employee benefit rules, not only the nondiscrimination rules.

(3) Special rules for certain dispositions and acquisitions

House Bill

No provision.

Senate Amendment

The Senate amendment contains special transition rules for certain dispositions or acquisitions of a business. Under the Senate amendment, if a person becomes or ceases to be a member of a controlled group or affiliated service group, the coverage rules will, with respect to a plan maintained by the person or group, be deemed satisfied during the transition period, provided that (1) the coverage rules were satisfied immediately before the acquisition or disposition, and (2) the coverage under the plan does not change significantly during the transition period (other than by reason of the acquisition or disposition). The transition period begins on the date of the acquisition or disposition and ends on the last day of the first plan year beginning after the transaction.

Conference Agreement

The conference agreement follows the Senate amendment.

(4) Definition of a plan

House Bill

Separate plans

Under the House bill, for purposes of both the eligibility test and the benefits tests, each option or different benefit offered under a statutory employee benefit plan is treated as a separate plan. This means, for example, that if two types of insurance coverage vary in any way (including the amount of the employee contribution), they will be considered separate plans. Thus, in t e case of health plans under which there are different levels or types of health benefit coverage, each separate level or type of health coverage must be tested as a separate plan under both the eligibility test and the applicable benefits test.

Under a special rule for an accident or health plan, an employee who has available or receives coverage both for himself and any member of his family is to be treated as having available or received two separate

coverages: individual coverage with respect to himself, and family coverage with respect to his family. Each coverage must be tested separately.

In the case of noninsurance-type plans, the House bill requires that if a highly compensated employee benefits under two or more educational assistance programs, all such plans under which such employee benefits shall be treated as one plan for purposes of applying the eligibility and benefits tests. The same rule applies to dependent care assistance programs. For purposes of satisfying the eligibility and benefits tests, an employer may elect to treat as one plan any two or more educational assistance programs. The same rule applies to dependent care assistance programs.

Single plan

The House bill provides that two or more plans which are identical in all respects, except for the group of employees covered, may be treated as a single plan. For purposes of determining what constitutes a single plan, two exceptions are provided to the rule that insurance coverage (or available noninsurance benefits) be identical. The first exception is that variations may be disregarded if the coverage varies in a purely mechanical manner that clearly favors those with less compensation, as in the case where the same health insurance is available on the same terms to employees, but the required employee contribution increases in proportion to compensation. The second exception is based on the House bill provision that allows the employer to reduce the employer subsidy for employees who normally work less than 30 hours per week. Under this provision, if the same health insurance is available on the same terms to employees, except that the employer subsidy is proportionately reduced for employees who normally work less than 30 hours per week, such health insurance is considered a single plan.

Senate Amendment

Separate plans

The Senate amendment follows the House bill, except that the amendment also provides that in the case of group-term life insurance, the provision of insurance coverage that varies in proportion to compensation is not to be considered as the provision of different options or benefits with respect to such varying coverage. In addition, the Senate amendment deletes the special aggregation rules for noninsurance type plans.

Single plan

The Senate amendment follows the House bill except that it deletes the two exceptions to the rule that coverage within a plan must be identical.

The Senate amendment also provides that, for purposes of determining what constitutes a single plan, employees should be allowed to structure options in different ways as long as all coverage within a plan is identical. For example, if the deductible for all highly compensated employees is $200 and the deductible for all nonhighly compensated employees is $50, it would be inconsistent with the purposes of these rules to classify the $200 deductible coverage as a separate plan that covers only highly compensated employees and thus is discriminatory. Instead, the employer could classify the coverage as one plan for all employees providing coverage for expenses in excess of a $200 deductible and a second plan covering costs between $50 and $200 covering only nonhighly compensated employees. Both such plans would be nondiscriminatory.

Conference Agreement

The conference agreement follows the Senate amendment, with one modification. That modification is that, as under the House bill, if accident or health coverage available or provided to employees is identical except that the employer subsidy is proportionately reduced for employees who normally work less than 30 hours per week, such health insurance may be considered a single plan.

The permissible proportionate reduction corresponds to the special rule for the benefits test and the 50-percent component of the 90-percent/50-percent test. Thus, if an employee normally works at least 22½ hours per week but less than 30 hours per week, the above rule applies if the employer subsidy is reduced by no more than 25 percent, and if the employee normally works less than 22½ hours per week, the above rule applies if the employer subsidy is reduced by no more than 50 percent. If the above rule is used, it must be used on a uniform, nondiscriminatory basis with respect to all employees. Of course, this rule does not affect the benefit actually made available or provided for purposes of any other tests.

As with the other part-time rule, this rule does not apply in any plan year unless during such year more than 50 percent of the nonexcludable employees (determined without regard to plan provisions) normally work more than 30 hours per week. Also, this special rule allowing a proportionate reduction in benefits within a plan does not apply to elective contributions.

In addition, the conference agreement clarifies that limitations on family coverage give rise to separate plans. For example, if an employer offers "employee plus one family member" health coverage and "employee plus two or more family members" health coverage, that constitutes 3 plans: (1) employee coverage, (2) coverage of one family member, and (3) coverage of additional family members.

(5) Aggregation of health plans and comparability

House Bill

For purposes of satisfying the benefits test, the House bill provides that two or more comparable accident or health plans of the same type may be aggregated if comparable. A plan is comparable to a second plan that would otherwise fail the benefits test if the average employer cost (including elective contributions) per covered employee in the first plan is at least 80 percent of the average employer cost (including elective contributions) per covered employee in the second plan.

Senate Amendment

Under the Senate amendment, if an accident or health plan standing alone would fail the reasonable classification test or the percentage test, the plan may be aggregated with one or more other accident or health plans ("helper plans"), provided that the average value of the employer-provided coverage per employee in each "helper plan" is at least 90 percent of the average value of employer-provided coverage per covered employee in the plan that would otherwise fail.

In the case of an accident or health plan that would otherwise fail the classification test, the Senate amendment provides that the plan may be aggregated with one or more other accident or health plans ("helper plans"), provided that the average value of the employer-provided coverage per employee in each "helper plan" is at least 100 percent of the value of employer-provided coverage per covered employee in the plan that would otherwise fail the classification test.

Conference Agreement

The conference agreement follows the Senate amendment with certain modifications. First, it is clarified that the 95-percent comparability standard (instead of the 100-percent standard that applies to the classification test) applies only for purposes of the 50-percent test and the alternative 80-percent test. Second, for purposes of the 50-percent test, a "helper plan" is any plan in the group of aggregated plans that satisfies such test without regard to aggregation. The average value of the employer-provided coverage per employee in the helper plan with the lowest such value must be at least 95 percent of the average value of the employer-provided coverage per employee in the nonhelper plan in the group of aggregated plans with the highest such value. For purposes of the 80-percent test, the general rule is that the average value of the employer-provided coverage per employee in the plan in the group of aggregated plans with the lowest such value must be at least 95 percent of the average value of the employer-provided coverage per employee in the plan in the group of aggregated plans with the highest such value. However, if a plan with a greater value than permitted under the previous sentence consists solely of nonhighly compensated employees, such plan may be aggregated with the group of less valuable plans for purposes of the 80-percent test.

In addition, the special part-time employee rule applicable in defining what constitutes a plan also applies for comparability purposes. Thus, if two plans that would be comparable but for the fact that the employer-provided benefit is proportionately reduced for employees who normally work less than 30 hours per week, the plans may still be comparable under rules similar to those applicable under the definition of a plan.

(6) Valuation

House Bill

Under the House bill, the Secretary will prescribe regulations that provide guidance in determining the value of insurance coverage and of noninsurance benefits. The Secretary may establish safe-harbor methods of valuing the coverage or benefits.

The Secretary may, in prescribing such regulations, provide adjustments to the safe harbors to take account of factors, such as geographical cost differences, relevant to the determination of the value of a benefit.

Senate Amendment

The Senate amendment follows the House bill with two modifications. First, the Secretary is authorized to establish administrable, mechanical methods of valuing coverage or benefits that are not only safe harbors. Second, the Secretary is directed to specify an index that takes into account differences in costs for plans maintained in geographically dispersed areas.

Conference Agreement

Under the conference agreement, the Secretary is to prescribe rules regarding valuation. With respect to health coverage, the Secretary is to set forth values for various standard types of coverage. The values shall be set forth in the form of tables which establish the relative values of plans with cer-

tain characteristics. Such tables may use as a reference point an identifiable standard plan.

Such tables shall be adjusted to take into account the specific coverage and group involved. For example, in determining the value of discriminatory coverage, the actual costs expended by the employer may be taken into account and allocated among all coverages, including the discriminatory coverage, on the basis of the relative values of such coverages, as determined under the tables. Another example is that in certain instances it may be appropriate to adjust the table value of coverage based on whether such coverage would have been provided at group rates by an insurance company. Thus, an individually designed plan shall be valued higher than a group plan with the same characteristics. Further, it is appropriate to reduce the table valuation to the extent the employer provides the same coverage under more than one plan.

With respect to group-term life insurance, special valuation rules apply for purposes of the nondiscrimination rules. However, if certain coverage is found to be discriminatory, such coverage shall be valued, as under present law, at the higher of actual cost or table cost (sec. 79).

(7) Concentration tests

House Bill

No provision.

Senate Amendment

Accident or health plans and group-term life insurance plans

The Senate amendment establishes a new concentration test for any accident or health plan or group-term life insurance plan. No more than 40 percent of the employees benefiting under such a plan may be highly compensated employees. A plan is not treated as failing to meet this requirement if it benefits all employees of the employer.

The Senate amendment also establishes a second new concentration test for group-term life insurance plans. No more than 25 percent of the value of the coverage provided under the plan may be provided to individuals who are at any time during the current or preceding year, 5 percent owners (within the meaning of section 416(i)(1)(B)(i)). A plan is not treated as failing to meet this requirement if the plan provides the same dollar amount of group-term life insurance coverage for each employee eligible to participate in the plan.

The new concentration tests apply to health plans and group-term life insurance plans in addition to the nondiscriminatory coverage rules applicable to those plans. A plan that fails an applicable concentration test is considered to be a discriminatory plan.

Other plans

The present-law concentration tests applicable to qualified group legal services plans, educational assistance programs, and dependent care assistance programs continue to apply to those types of plans in addition to the nondiscriminatory coverage requirements. Thus, regardless of whether a plan satisfies the relevant present law nondiscrimination rules, or the new average income exclusion test, the plan is also required to satisfy the applicable present-law concentration tests. A plan that fails an applicable concentration test is considered to be a discriminatory plan.

Conference Agreement

The conference agreement follows the House bill. Thus, plans must satisfy present-law concentration tests in addition to any applicable nondiscrimination tests.

(8) Former employees

House Bill

The House bill provides that, except to the extent provided by the Secretary, rules similar to the nondiscriminatory eligibility and benefits tests are to be applied separately to former employees. In applying the rules to former employees, the Secretary is to prescribe rules under which certain special rules shall apply.

Employers may generally restrict the class of former employees to be tested to those who have retired on or after a reasonable retirement age, or to those who have separated from service due to disability. In addition, employers may generally limit the class further to employees who have, for example, retired within a certain number of years. Finally, in testing whatever class of employees is chosen, employers may make reasonable assumptions regarding mortality, so that they do not have to determine those former employees who are still alive.

Senate Amendment

The Senate amendment follows the House bill as applied to the Senate amendment nondiscrimination tests.

Conference Agreement

The conference agreement follows the House bill and Senate amendment, as applied to the nondiscrimination rules of the conference agreement.

(9) Cafeteria plans

House Bill

Under the House bill, a cafeteria plan is subject to the same 90 percent nondiscriminatory eligibility test applicable to all statutory employee benefit plans.

The House bill also repeals the present-law rule that, in the case of a cafeteria plan that does not satisfy the relevant nondiscrimination rules or concentration test, benefits under the plan are taxed to highly compensated employees or key employees in the taxable year of the employee in which the plan year in which the benefit was provided ends.

Senate Amendment

Under the Senate amendment, a cafeteria plan will be considered discriminatory unless the plan satisfies (1) the nondiscrimination tests of present law applicable to cafeteria plans (sec. 125(b)(1)) or (2) the present-law eligibility test and the average income exclusion test.

For purposes of applying the average income exclusion test to a cafeteria plan, all benefits offered under the cafeteria plan are aggregated and treated as if they were the same type of benefit, except that if the employer elects, health coverage provided for spouses or dependents of employees may be tested separately. If a cafeteria plan satisfies the average income exclusion test, each of the statutory employee benefits offered under the cafeteria plan is treated as meeting the average income exclusion test, but must separately satisfy any applicable concentration test.

It is also intended that cafeteria plans may limit the elections by highly compensated employees of excludable benefits to the extent necessary to comply with the nondiscrimination rules.

Conference Agreement

The conference agreement retains the present-law eligibility test for cafeteria plans. The conference agreement deletes the special cafeteria plan benefits tests, although the concentration test is retained. Thus, each type of benefit available or provided under a cafeteria plan is subject to its own applicable nondiscrimination rules and to any applicable concentration test. For example, group-term life insurance benefits under a cafeteria plan must satisfy the eligibility and benefits tests applicable to group-term life insurance plans. As discussed above, certain aggregation of plans excludable under different Code sections is permissible for purposes of the benefits test.

The conference agreement also modifies the definition of a cafeteria plan to include a plan under which an employee may only choose among qualified benefits and may not choose cash or a taxable benefit. Also, if a cafeteria plan does not satisfy the cafeteria plan eligibility or concentration test, the benefits under the plan are taxable.

The conference agreement follows the Senate amendment by retaining present law with respect to the year of inclusion for a discriminatory cafeteria plan.

The conference agreement follows the Senate amendment allowing employers to limit the elections of highly compensated employees to the extent necessary to comply with the applicable nondiscrimination rules. However, the limitations are applied, under rules prescribed by the Secretary, in a nondiscretionary manner set forth in the plan, consistent with the rules for allocating the discriminatory excess among highly compensated employees.

The conference agreement applies the following uniform definitions applicable to statutory employee benefit plans to cafeteria plans: (1) highly compensated employees; (2) excludable employees; and (3) employer (including application of the leased employee rules). The compensation definition does not apply because compensation is not relevant for the cafeteria plan tests.

(10) Welfare benefit funds

House Bill

The House bill extends rules similar to the new nondiscriminatory eligibility and benefits tests applicable to statutory employee benefit plans to welfare benefit funds.

Senate Amendment

The Senate amendment substitutes the new definitions of highly compensated employees and of excludable employees for those applicable to welfare benefit funds under present law.

Conference Agreement

The conference agreement generally follows the Senate amendment, retaining the present-law nondiscrimination tests for the welfare benefit fund benefits that are not subject to a nondiscrimination test otherwise modified under the conference agreement.

The conference agreement applies the following uniform definitions applicable to statutory employee benefit plans to welfare benefit funds: (1) highly compensated employees: (2) compensation (including the limitation on the amount that may be taken into account) with respect to life insurance, disability, severance pay, and supplemental unemployment compensation; (3) excludable employees; and (4) employer (including application of the leased employee rules). With respect to nonemployees participating

in a plan that is part of a welfare benefit fund, the Secretary shall prescribe appropriate rules defining which of such nonemployees shall be considered highly compensated employees.

(11) Reporting requirements

House Bill

The House bill expands the present-law requirement that the employers that maintain cafeteria plans, educational assistance programs and group legal services plans file information returns in accordance with Treasury regulations (sec. 6039D). Under the House bill, this requirement would apply to all statutory employee benefit plans, as well as to cafeteria plans.

In addition, if benefits provided under a cafeteria plan or statutory employee benefit plan are includible in the income of a highly compensated or key employee, the employer is required to file an information return, pursuant to regulations to be provided by the Treasury, setting forth the amount of the benefit and the name and address of the employee in whose income the benefit is includible. The employer is also required to furnish to each such employee a written statement showing the amount of the employee benefits includible in the employee's income.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with two modifications. First, the conference agreement requires that all employers maintaining statutory employee benefit plans or cafeteria plans report the number of highly compensated employees (1) of the employer, (2) eligible to participate in the plan, and (3) participating in the plan. Second, the conference agreement clarifies that the requirement that certain employers file an additional return only applies to a representative sample of employers.

(12) Study

House Bill

The House bill requires that the Treasury Department conduct a study of abuses in the health insurance area and, not later than July 1, 1986, make recommendations for changes in the nondiscrimination rules.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

(13) Effective date

House Bill

The House bill provisions are effective for years beginning after December 31, 1986.

Senate Amendment

The Senate amendment provisions are generally effective for years beginning after December 31, 1986.

The Senate amendment contains an exception to the new rules for certain group-term life insurance plans. In the case of a plan described in section 223(d)(2) of the Tax Reform Act of 1984, such plan shall be treated as meeting the requirements of the new nondiscrimination rules with respect to individuals described in section 223(d)(2) of the Act. In addition, an employer may elect to exclude such individuals in applying the new nondiscrimination rules.

In addition, the Senate amendment provides a delayed effective date for church plans. Under the bill, such plans are not required to comply with the new nondiscrimination requirements until years beginning after December 31, 1988.

Conference Agreement

The conference agreement follows the Senate amendment except that the general effective date is plan years beginning after the later of (1) December 31, 1987, or (2) the earlier of December 31, 1988, or the date 3 months following the issuance of Treasury regulations.

A special effective date applies to plans maintained pursuant to a collective bargaining agreement. Under this special rule, in the case of employees covered under a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers ratified before March 1, 1986, the amendments are not effective for plan years beginning before the earlier of (1) January 1, 1989, or (2) the date on which the last of the collective bargaining agreement terminates (determined without regard to any extensions in the collective bargaining agreement). With respect to employees not described in the previous sentence, employees so described may be disregarded prior to the effective date of the rules for such employees.

2. Deductibility of Health Insurance Costs of Self-Employed Individuals

Present Law

Under present law, an employer's contribution to a plan providing accident or health benefits is excludable from an employee's income (sec. 106). No similar exclusion is provided for self-employed individuals (sole proprietors or partners).

Individuals who itemize deductions may deduct amounts paid during the taxable year, if not reimbursed by insurance or otherwise, for medical care of the taxpayer and of the taxpayer's spouse and dependents, to the extent that the total of such expenses exceeds five percent of adjusted gross income (sec. 213).

House Bill

No provision.

Senate Amendment

The Senate amendment provides a deduction for 50 percent of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents. This deduction is allowable in calculating adjusted gross income. A self-employed individual means an individual who has earned income for the taxable year (sec. 401(c)(1)). However, under the bill, no deduction is allowable to the extent the deduction exceeds the self-employed individual's net earnings from self employment (sec. 1402(a)) for the taxable year. In addition, no deduction is allowable for any taxable year for which the self-employed individual is eligible to participate (on a subsidized basis) in a health plan of an employer of the self-employed individual or such individual's spouse.

In addition, the deduction is not allowable unless (1) the self-employed individual provides coverage under one or more accident or health plans for all employees in all unincorporated trades or businesses with respect to which the self-employed individual is a 5-percent owner (as defined in sec. 416(i)), and (2) the nondiscrimination requirements (as modified by the amendment) applicable to accident or health plans are satisfied with respect to each such plan tested as though all coverage for which a 50-percent deduction is allowable under this section were employer-provided. Of course, this requirement is inapplicable if no unincorporated trade or business with respect to which the self-employed individual is a 5-percent owner has employees other than the self-employed individual and such individual's family members.

Under the Senate amendment, the amount allowable as a deduction for health coverage for a self-employed individual is not also taken into account for purposes of determining the amount of any medical deduction to which the self-employed individual is entitled. Thus, such amounts deductible under this provision are not treated as medical expenses of the individual for purposes of determining whether the threshold for the itemized medical expense deduction (sec. 213(a)) is met.

Further, the Senate amendment provides that the amount deductible under this provision is not taken into account in computing net earnings from self-employment (sec. 1402(a)). Therefore, the amounts deductible under this provision do not reduce the income base for the self-employed individual's social security tax.

The bill directs the Secretary of the Treasury to provide guidance to self-employed individuals to whom this deduction applies with respect to the nondiscrimination requirements applicable to insured accident or health plans.

The provision is effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, except as outlined below. First, the deduction is reduced from 50 percent of the amounts paid for health insurance to 25 percent of such amounts.

In addition, the conference agreement deletes the requirement that coverage be provided for all employees in all unincorporated trades or businesses with respect to which the self-employed individual is a 5-percent owner. Instead, the deduction is allowed only if the coverage is provided under one or more plans meeting the applicable nondiscrimination requirements, as if the coverage were employer-provided. The conference agreement also limits the deduction to the taxpayer's earned income for the taxable year. The provision allowing this deduction does not apply to any taxable year beginning after December 31, 1989.

3. Exclusions for Educational Assistance Programs, Qualified Group Legal Plans, and Dependent Care Assistance Programs

Present and Prior Law

Educational assistance

Under present law, an employee is required to include in income for income and employment tax purposes the value of educational assistance provided by an employer to the employee, unless the cost of such assistance qualifies as a deductible job-related expense of the employee. Amounts expended for education qualify as deductible employee business expenses if the education (1) maintains or improves skills required for the employee's job, or (2) meets the express requirements of the individual's employer that are imposed as a condition of employment. Under prior law, an employee's gross income for income and employment tax purposes did not include amounts paid or expenses incurred by the employer for educational assistance provided to the employee if such amounts were paid or such expenses were incurred pursuant to an educational assistance program that met certain requirements (Code sec. 127).

Under prior law, the maximum amount of educational assistance benefits that an employee could receive tax-free during any taxable year was limited to $5,000; thus, the excess benefits over this amount were subject to income and employment taxes. In the case of an employee who worked for more than one employer, the $5,000 cap applied to the aggregate amount of educational assistance benefits received from all employers.

The exclusion for educational assistance benefits expired for taxable years beginning after December 31, 1985.

Group legal services

Under prior law, amounts contributed by an employer to a qualified group legal services plan for employees (or their spouses or dependents) were excluded from an employee's gross income for income and employment tax purposes (sec. 120). The exclusion also applied to any services received by an employee or any amounts paid to an employee under such a plan as reimbursement for the cost of legal services for the employee (or the employee's spouse or dependents). In order to be a qualified plan under which employees were entitled to tax-free benefits, a group legal services plan was required to fulfill several requirements. An employer maintaining a group legal services plan was required to file an information return with respect to the program at the time and in the manner required by Treasury regulations.

In addition, under prior law, an organization, the exclusive function of which was to provide legal services or indemnification against costs of legal services as part of a qualified group legal services plan, was entitled to tax-exempt status (sec. 501(c)(20)). The tax exemption for such an organization expired for years ending after December 31, 1985.

The exclusion for group legal services benefits expired for taxable years ending after December 31, 1985.

Dependent care assistance

Under present law, amounts paid or incurred by an employer for dependent care assistance provided to an employee through a dependent care assistance program are excludable from income (sec. 129). The amount excludable is limited to the employee's earned income for the year or, in the case of married couples, the lesser of the employee's earned income and the earned income of the employee's spouse. A dependent care assistance program must be a written plan for the exclusive benefit of employees, must not discriminate in favor of employees who are officers, shareholders, or highly compensated, and must meet certain other requirements.

House Bill

The House bill retroactively extends the educational assistance and group legal services exclusions for two years. In effect, this also extends the tax-exempt status of group legal services organizations (sec. 501(c)(20)). Thus, these exclusions are scheduled to expire for taxable years beginning after December 31, 1987, and ending after December 31, 1987, respectively.

The House bill limits the exclusion for dependent care assistance to $5,000 a year ($2,500 for a married individual filing separately). The provision is effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment retroactively makes permanent the exclusions from gross income for educational assistance and group legal services and the tax exemption for qualified group legal services organizations.

In addition, the Senate amendment increases the cap on annual excludable educational assistance benefits to $5,250 from $5,000. This cap is indexed, under the Senate amendment, by reference to the method, as of May 1, 1986, for determining percentage increases in the social security taxable wage base. The Senate amendment does not contain a provision limiting the exclusion for dependent care assistance.

The Senate amendment provides a transition rule with respect to group legal services benefits provided under a cafeteria plan. Under the transition rule, the enactment of the bill is treated in the same manner as a change in family status under proposed Treasury regulations relating to cafeteria plans (Prop. Reg. sec. 1.125-1). Thus, an employee will be permitted to revoke an election to take cash or a taxable benefit after the period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage. This transition rule applies to an election made to revoke a prior benefit election if the new election is made (1) with respect to group legal services benefits and (2) within 60 days after the date of enactment of the bill.

Conference Agreement

The conference agreement follows the House bill with respect to extending for two years, rather than making permanent, the educational assistance and group legal services exclusions and the tax-exempt status of group legal services organizations. The agreement follows the Senate amendment raising the cap on annual excludable educational assistance benefits from $5,000 to $5,250, but does not adopt the Senate amendment indexing this cap. The conference agreement follows the House bill with respect to the limit on the exclusion for dependent care assistance, effective for taxable years beginning after December 31, 1986.

The conference agreement modifies the transition rule for group legal services benefits provided under a cafeteria plan. Under the modified transition rule, an employee will be permitted to revoke an election to take cash or a qualified benefit other than group legal services and to make a new election to take group legal services instead. Such revocation and new election must be made no later than 60 days after the date of enactment and may relate to any period after December 31, 1985. This transition rule is limited to cafeteria plans that, prior to the date of conference action, did not allow employees to elect group legal services benefits with respect to a period after December 31, 1985.

4. Treatment of Certain Full-Time Life Insurance Salespersons

Present Law

Under a cafeteria plan, an employee is offered a choice between cash and one or more employee benefits. If certain requirements are met, then the mere availability of cash or certain permitted taxable benefits under a cafeteria plan does not cause an employee to be treated as having received the available cash or taxable benefits for income tax purposes.

Under present law, a full-time life insurance salesperson is treated as an employee for purposes of eligibility for certain enumerated employee benefit exclusions (sec. 7701(a)(20)). However, although such a salesperson is eligible to receive certain excludable employee benefits that may be provided under a cafeteria plan, the salesperson is not treated as an employee for purposes of the cafeteria plan provisions.

House Bill

The House bill permits a full-time life insurance salesperson to be treated as an employee for purposes of the cafeteria plan provisions to the extent the salesperson is otherwise permitted to exclude from income the benefit elected.

The provision applies for years beginning after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

5. Exclusion of Cafeteria Plan Elective Contributions From Wages for Purposes of Employment Taxes

Present Law

No amount is included in the gross income of a participant in a cafeteria plan meeting certain requirements solely because, under the plan, the participant may choose among the benefits of the plan. However, the fact that remuneration is not subject to income tax withholding does not necessarily mean that such remuneration is not subject to tax under the Federal Insurance Constributions Act (FICA) or under the Federal Unemployment Tax Act (FUTA). Both the FICA and FUTA taxes apply to all remuneration for employment, with certain exceptions. There is no provision with respect to either the FICA or the FUTA which would render inapplicable the principles of constructive receipt.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement clarifies that the cafeteria plan exception from the principles of constructive receipt also applies for purposes of the FICA and FUTA taxes. This clarification does not apply to elective contributions under a qualified cash or deferred arrangement that is part of a cafeteria plan.

The provision is effective with respect to years beginning before, on, or after the date of enactment.

6. Exclusion for Post-Retirement Group-Term Life Insurance Under a Cafeteria Plan

Present Law

The cost of permanent benefits under a life insurance policy provided by an employer to an employee is includible in income. In general, a permanent benefit is a benefit with an economic value extending beyond one policy year, such as a paid-up policy for future years.

No amount is includible in the gross income of a participant in a cafeteria plan meeting certain requirements solely because, under the plan, the participant may choose among the benefits. Except with respect to elective contributions under a qualified cash or deferred arrangement, the term "cafeteria plan" does not include any plan which provides for deferred compensation.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, with respect to employees of educational institutions (within the meaning of section 170(b)(1)(A)(ii)), a cafeteria plan may allow participants to choose among cash, qualified benefits, or post-retirement life insurance coverage that meets certain conditions. The coverage would have to be fully paid up upon retirement and have no cash surrender value at any time prior to retirement from the service of the employer.

In addition, the conference agreement provides that such coverage shall be treated as term insurance for purposes of the exclusion for group-term life insurance.

7. Tax Treatment of Qualified Campus Lodging

Present Law

Section 119 excludes from an employee's gross income the value of lodging provided by the employer if (1) the lodging is furnished for the convenience of the employer, (2) the lodging is on the business premises of the employer, and (3) the employee is required to accept the lodging as a condition of employment.

Several court decisions have held that on-campus housing furnished to faculty or other employees by an educational institution does not qualify for the section 119 exclusion. Therefore, the fair rental value of the housing (less any amounts paid for the housing by the employee) was includible in the employee's gross income and constituted wages for income tax withholding and employment tax purposes in those cases.

Section 531(g) of the Deficit Reduction Act of 1984 (P.L. 98-369) prohibited the Treasury Department from issuing, prior to January 1, 1986, any income tax regulations that would provide for inclusion in gross income of the excess of the fair market value of qualified campus lodging over the greater of (1) the operating costs paid in furnishing the lodging, or (2) the rent received. This moratorium on regulations applied only with respect to qualified campus lodging furnished after December 31, 1983 and before January 1, 1986.

Qualified campus lodging was defined as lodging furnished by a school, college, or university to any of its employees, including nonfaculty employees, or to the employee's spouse or dependents. The moratorium applied only with respect to employer-furnished lodging that is located on a campus of, or in close proximity to a campus of, the educational institution. Under the 1984 Act, the moratorium did not apply with respect to any amount of the value of lodging if such amount was treated as wages or included in income when furnished.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that for Federal tax purposes, the fair market value of use (on an annualized basis) of qualified campus lodging furnished by, or on behalf of, an educational institution (within the meaning of sec. 170(b)(1)(A)(ii)) shall be treated as not greater than 5 percent of the appraised value for the lodging, but only if under rules prescribed by the Secretary an independent appraisal of the fair market value of the lodging is obtained by a qualified appraiser. Thus, the appraiser must be qualified to make appraisals of housing, and the appraisal cannot be made by the employer institution or any officer, trustee, or employee thereof.

The committee does not intend that a new appraisal must be obtained each year. However, the committee intends that the appraisal must be reviewed annually, in a manner prescribed by the Secretary, but that such review should not impose undue cost on the educational institution.

Accordingly, under the safe-harbor valuation rule of the Senate amendment, if the rent paid for qualified campus lodging is equal to or exceeds on an annualized basis five percent of the value determined by such an appraisal, no amount is included, on account of such housing, in the employee's gross income for income tax purposes or in the wage or benefit base for social security and other employment tax purposes.

The provision applies to lodging furnished to any employee of the educational institution (or to the employee's spouse or dependents), including nonfaculty employees, for use as a residence, if the employer-furnished lodging is located on a campus of, or in the proximity of, the educational institution.

If no appraisal is obtained that meets the requirements of the provision, then the fair rental value for tax purposes is to be determined in the manner as would be done absent a special rule, taking into account all the relevant facts and circumstances. This does not preclude a taxpayer whose appraisal is found defective from subsequently obtaining a qualified appraisal and using the safe-harbor rule. For purposes of applying the first sentence of this paragraph to determine the fair rental value of campus lodging, the average of the rentals paid by individuals (other than employees or students of the educational institution) during such year for lodging provided by the educational institution that is comparable to the campus lodging provided to the employee is to be considered the fair rental value.

The new provision relating to qualified campus lodging does not affect the applicability of section 119(a) to lodging that qualifies for the exclusion in section 119(a).

The provision applies for taxable years beginning after December 31, 1985.

For prior taxable years, it is intended (1) that the IRS is to follow the safe-harbor valuation rule of the bill as if in effect for those years (except with respect to any amount of value of campus lodging that was treated by the taxpayer as wages or included in income when furnished), and (2) that the value of the property as assessed by State or local tax authorities for State or local property tax purposes is to be treated as if it were the value determined by a qualified appraisal.

Conference Agreement

The conference agreement generally follows the Senate amendment (including the directive to the IRS with respect to prior taxable years).

8. Health Benefits for Retirees

Present Law

Under present law, special deduction timing rules and deduction limits govern the deductibility of employer contributions to a welfare benefit fund (sec. 419). The deduction limit for any taxable year may include a reserve to provide certain post-retirement medical benefits. This reserve is computed under the assumption that the medical benefits provided to retirees will have the same cost as medical benefits currently provided to retirees. Thus, future inflation is not to be taken into account and it is to be assumed that the level of utilization will not increase in the future.

The Deficit Reduction Act of 1984 (DEFRA) directed the Secretary of the Treasury to study the possible means of providing minimum standards for employee participation, vesting, accrual, and funding under welfare benefit plans for current and retired employees (including separated employees). The Secretary was required to report to the Congress with respect to the study by February 1, 1985. This study has not yet been completed.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that projected increases in medical costs may be taken into account in the funding for post-retirement medical benefits. The amount of such projected increases that is to be used is determined under an index specified by the Secretary of the Treasury. Thus, under the Senate amendment, the account limit for post-retirement medical benefits under a welfare benefit fund is not limited to the projected costs of such benefits assuming no increase in medical costs until such increases occur.

In addition, the Senate amendment extends the due date of the study of retiree benefits mandated by DEFRA to the date that is one year after the date of enactment of the bill.

The provision relating to the funding of retiree medical benefits is effective for taxable years beginning after December 31, 1986. The extension of the due date of the study required by DEFRA is effective on the date of enactment.

Conference Agreement

The conference agreement follows the House bill except that it adopts the Senate amendment regarding the due date of the Treasury study.

9. Accrued Vacation Pay

Present Law

Under present law, an accrual-method taxpayer generally is permitted a deduction in the taxable year in which all the events have occurred that determine the fact of a liability and the amount thereof can be determined with reasonable accuracy (the "all-events" test). In determining whether an amount has been incurred with respect to any item during the taxable year, all events that establish liability for such amount are not treated as having occurred any earlier than the time economic performance occurs (sec. 461(h)). With respect to a liability that arises as a result of another person's providing services to the taxpayer (such as the liability to provide vacation pay in exchange for services by an employee), economic performance generally occurs when such other person provides the services.

Under present law, an exception applies under which certain expenses may be treated as incurred in the taxable year in which the "all-events" test is otherwise met even though economic performance has not yet occurred. This exception applies if four conditions are met: (1) the "all-events" test (determined without regard to economic performance) is satisfied with respect to the item during the taxable year; (2) economic performance occurs within a reasonable period (but in no event more than 8½ months) after the close of the taxable year; (3) the item is recurring in nature and the taxpayer consistently from year to year treats items of that type as incurred in the taxable year in which the all-events test is met; and (4) either (a) the item is not mate-

rial, or (b) the accrual of the item in the year in which the all-events test is met results in a better matching of the item with the income to which it relates than would result from accruing the item in the year in which economic performance occurs. This exception does not apply to workers' compensation or tort liabilities.

In order to ensure the proper matching of income and deductions in the case of deferred benefits (such as vacation pay earned in the current taxable year, but paid in a subsequent year) for employees, an employer generally is entitled to claim a deduction in the taxable year of the employer in which ends the taxable year of the employee in which the benefit is includible in gross income (sec. 404(b)).[1] Consequently, an employer is entitled to a deduction for vacation pay in the taxable year of the employer in which ends the earlier of the taxable year of the employee for which the vacation pay (1) vests (if the vacation pay plan is funded by the employer), or (2) is paid.

An exception to this rule applies to amounts that are paid within 2½ months after the close of the taxable year of the employer in which the vacation pay is earned. Such amounts are not subject to the deduction-timing rules applicable to deferred benefits, but are subject to the general rules under which an employer is entitled to a deduction when economic performance occurs (i.e., when the services of the employee for which vacation pay is earned are performed). Because amounts paid within 2½ months after the close of the employer's taxable year generally will qualify for the exception to the economic performance requirements, such amounts generally will be deductible for the preceding taxable year (the year in which the vacation pay is earned).

Under a special rule of present law, an employer may make an election under section 463 to deduct an amount representing a reasonable addition to a reserve account for vacation pay (contingent or vested) earned by employees before the close of the current year and expected to be paid by the close of that year or within 12 months thereafter.

House Bill

Under the bill, the special rule allowing a deduction for additions to a reserve account for vacation pay (sec. 463) is limited to the vacation pay that is paid during the current taxable year or within 8½ months after the close of the taxable year of the employer with respect to which the vacation pay was earned by the employees. The provision applies to taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment follows the House bill, except that it applies to taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

10. Military Fringe Benefits

Present Law

Under current law, a variety of benefits provided to military personnel and their dependents is excludable from gross income. These exclusions are by statute, regulation, or long-standing administrative practice.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conferees believe that rules for the tax treatment of military benefits should be consolidated and set forth in one statutory provision. This will better enable taxpayers and the IRS to understand and administer the tax rules. Also, consolidation of these rules will make clear the intent of the conferees that, consistent with the treatment of benefits generally in the Tax Reform Act of 1984, any benefits for military personnel that are not expressly excluded under the new provision or under other statutory provisions of the Code (e.g., sec. 132) are includible in gross income. The provision does not alter the definition of wages for withholding tax purposes.

The conference agreement excludes from income benefits which were authorized by law on September 9, 1986, and which were excludable from income on such date. Benefits are excludable only to the extent of the amount authorized and excludable on September 9, 1986, except that adjustments may be made pursuant to a provision of law or regulation in effect on September 9, 1986, if the adjustments are determined by reference to fluctuations in cost, price, currency or other similar index.

The conferees understand that the allowances which were authorized on September 9, 1986, and excludable from gross income on such date are limited to the following: veteran's benefits authorized under 28 U.S.C. sec. 3101; medical benefits authorized under 50 U.S.C. sec. 2005 or 10 U.S.C. secs. 1071–1083; combat zone compensation and combat related benefits authorized under 37 U.S.C. sec. 310; disability benefits authorized under 10 U.S.C. chapter 61; professional education authorized under 10 U.S.C. secs. 203, 205, or 141; moving and storage authorized under 37 U.S.C. secs. 404–412; group term life insurance authorized under 38 U.S.C. secs. 404–412; premiums for survivor and retirement protection plans authorized under 10 U.S.C. secs. 1445–1447; mustering out payments authorized under 10 U.S.C. sec. 771a(b)(3); subsistence allowances authorized under 37 U.S.C. secs. 209, 402; uniform allowances authorized under 37 U.S.C. secs. 415–418; housing allowances authorized under 37 U.S.C. secs. 403, 403a, or 405; overseas cost-of-living allowances authorized under 37 U.S.C. sec. 405; evacuation allowances authorized under 47 U.S.C. sec. 405a; family separation allowances authorized under 37 U.S.C. sec. 427; death gratuities authorized under 10 U.S.C. secs. 1475–1480; interment allowances authorized under 10 U.S.C. secs. 1481–1482; travel for consecutive overseas tours authorized under 37 U.S.C. sec. 411; emergency assistance authorized under 10 U.S.C. sec. 133 and 37 U.S.C chapter 1; family counseling services authorized under 10 U.S.C. sec. 133; defense counsel authorized under 10 U.S.C. secs. 133, 801–940, or 1181–1187; burial and death services authorized under 10 U.S.C. sec. 1481–1482; educational assistance authorized under 10 U.S.C. 141 and 37 U.S.C. secs. 203, 209; dependent education authorized under 20 U.S.C. sec. 921 and 10 U.S.C. sec. 7204; dental care for military dependents authorized under 10 U.S.C. secs. 1074 or 1078; temporary lodging in conjunction with certain orders authorized under 37 U.S.C. sec. 404a; travel to a designated place in conjunction with reassignment in a dependent-restricted status authorized under 37 U.S.C. sec. 406; travel in lieu of moving dependents during ship overhaul or inactivation authorized under 37 U.S.C. sec. 406b; annual round trip for dependent students authorized under 37 U.S.C. sec. 430; travel for consecutive overseas tours (dependents) authorized under 37 U.S.C. sec. 411b; and travel of dependents to a burial site authorized under 37 U.S.C. sec. 411f.

The conferees intend this list to be an exhaustive list of the allowances excludable under the new provision. The list is not intended, however, to limit benefits which are excludable under another section of the Code. Further, the conferees understand that there may be benefits which may have been unintentionally omitted from the list. Accordingly, the Secretary of the Treasury is authorized to expand the list if the Secretary finds that a benefit should have been included, i.e., that the benefit is a cash or reimbursement benefit which was authorized on September 9, 1986, and excludable from income on such date. Except as provided in the preceding sentence, the Secretary of the Treasury may not, by regulation or otherwise, expand the definition of excludable military benefits.

The provision is effective for taxable years beginning after December 31, 1986.

G. Changes Relating to Employee Stock Ownership Plans

Present Law

An employee stock ownership plan ("ESOP") is a qualified stock bonus plan or a combination of a stock bonus and a money purchase pension plan which may be utilized as a technique of corporate finance and under which employer stock is held for the benefit of employees. The stock, which is held by one or more tax-exempt trusts under the plan, may be acquired through direct employer contributions or with the proceeds of a loan to the trust (or trusts). An ESOP must be designed to be invested primarily in employer securities.

ESOPs are subject to the requirements generally applicable to qualified plans. A qualified plan is required to meet minimum standards relating to coverage (sec. 410) and vesting (sec. 411). Also, a qualified plan cannot discriminate in favor of employees who are officers, shareholders, or highly compensated (sec. 401(a)(4)).

Unless a participant otherwise elects in writing, the payment of benefits from a qualified plan generally must begin no later than 60 days after the close of the plan year in which occurs the latest of (1) the date on which the participant attains the normal retirement age under the plan (or age 65, if earlier), (2) the 10th anniversary of the year the participant commenced participation in the plan, or (3) the date the participant separates from service. In no event can distribution be deferred beyond the required beginning date (sec. 401(a)(9)).

An ESOP that is top-heavy is also subject to the qualification rules applicable generally to top-heavy plans, including, for example, accelerated vesting and limits on includible compensation.

In addition to the generally applicable qualification rules, ESOPs must satisfy special qualification requirements. For example, an ESOP that is maintained by an employer that has registration-type securities must provide that each participant is entitled to direct the trustee how to vote shares allocated to the participant's account. If the employer maintaining the ESOP does not have registration-type securities, the ESOP must provide that each participant is entitled to direct the trustee in the exercise of voting rights on any corporate issue that, by

[1] Special deduction-timing rules apply to benefits provided under a qualified pension, profit-sharing, or stock bonus plan.

law or charter, must be decided by more than a majority vote of outstanding common shares voted (sec. 409(e)(3)).

An ESOP must provide that participants have the right to demand that benefits be distributed in the form of employer securities. If the employer securities are not readily tradable, the employer must provide participants with a "put option", that is, the right to require that the employer repurchase the securities under a fair valuation formula. If the put option is exercised, provision for payment must be reasonable. If payment is deferred, the payment provisions will not be considered reasonable unless the employer provides security and a reasonable rate of interest.

In order to limit the extent to which individuals can use tax-favored arrangements to provide for employee benefits under a qualified plan, present law (sec. 415) provides overall limits on contributions and benefits under qualified pension, profit-sharing, and stock bonus plans. Present law provides a special limitation on annual additions under an ESOP. Under this special rule, the usual dollar limit on annual additions ($30,000 for 1986) is increased if the ESOP provides that no more than one-third of the employer contributions for the year are allocated to the group of employees consisting of officers, 10-percent shareholders, and highly compensated employees (i.e., employees whose annual compensation exceeds twice the dollar limit on annual additions or $60,000) (sec. 415(e)(6)).

Special tax benefits are available with respect to certain transactions involving ESOPs, including the exclusion of 50 percent of the interest income received by a bank, insurance company, or a corporation actively engaged in the business of lending money with respect to loans used to finance the acquisition of employer securities, the deduction of dividends paid to ESOP participants, the deferral of gain on certain sales of stock to an ESOP and the assumption of estate tax liability by an ESOP.

An ESOP under which an employer contributes employer securities (or cash with which to acquire employer securities) in order to qualify for a credit against income tax liability is referred to as a tax credit ESOP. The tax credit is limited to a prescribed percentage of the aggregate compensation of all employees under the plan. Under present law, no tax credit is allowed after 1987.

Tax credit ESOPs are subject to the requirements generally applicable to qualified plans and ESOPs. In addition, tax credit ESOPs are subject to special qualification requirements. In general, employer securities allocated to an employee's account under a tax credit ESOP may not be distributed before the end of the 84th month after the month in which the securities are allocated. This limitation does not apply to distributions of securities in the case of the employee's separation from service, death, or disability, or in the case of certain corporate acquisitions. Distributions of employer securities are generally not permitted upon termination of a tax credit ESOP unless the 84-month rule is satisfied.

House Bill

Changes in qualification requirements relating to ESOP's

Vesting

Under the House bill, any ESOP that is not top heavy is required to provide that a participant's right to the accrued benefit derived from employer contributions must become nonforfeitable no more slowly than under a special 10-year graded vesting schedule.

Nondiscrimination rules

Under the House bill, no more than one-third of the employer's contributions for a year may be allocated to the group of employees consisting of officers, 10-percent shareholders or highly compensated individuals. An individual is considered highly compensated if the individual's compensation exceeds an amount equal to 200 percent of the dollar limit on annual additions to a defined contribution plan (i.e., for 1985, 200 percent of $30,000, or $60,000).

The bill limits the amount of compensation that can be taken into account under any qualified plan, including an ESOP. The limit is 7 times the defined contribution plan dollar limit ($175,000 for 1986).

Voting rights

Under the House bill, if the employer does not have registration-type securities, then (1) participants with fewer than 10 years of participation must have the right to direct the trustee to vote allocated securities with respect to any corporate matter that, by law or charter, must be decided by more than a majority vote, and (2) participants with 10 or more years of participation must have the right to direct the trustee to vote allocated securities on all issues.

Diversification of investments

The House bill requires an ESOP to offer partial diversification elections to participants who meet certain age and participation requirements (qualified employees). Under the bill, a qualified employee must be entitled annually during any diversification election period occurring within the employee's qualified election period to direct diversification of up to 25 percent of the participant's account balance (50 percent after attainment of age 60). To the extent that a participant elects to diversify a portion of the account balance, the bill requires an ESOP to offer at least three investment options not inconsistent with regulations prescribed by the Secretary and to complete the diversification within a specified period. Distribution to the participant within 90 days after the close of the annual diversification election period of an amount not to exceed the maximum amount for which a participant elected diversification is deemed to satisfy the diversification requirement.

Timing of distributions

Under the House bill, an ESOP must permit earlier distributions to employees who separate from service before normal retirement age. Unless an employee otherwise elects in writing, the payment of benefits from an ESOP must begin no later than 60 days after the end of the plan year following the plan year in which the employee separates from service. However, to the extent a particpant's account balance consists of securities which were financed by an acquisition loan, the distribution does not have to be made until 60 days after the close of the plan year in which the loan is repaid.

The rules added by the House bill are intended as an acceleration of the otherwise applicable benefit commencement date. Accordingly, if the general rules (secs. 401(a)(9) and 401(a)(14)) would require the commencement of distributions at an earlier date, those general rules would override this special ESOP rule.

Put option requirements

The House bill generally retains the present-law requirement that a participant who receives a distribution of employer securities from an ESOP must be given a put option with respect to distributed employer securities that are not readily tradable. However, the bill modifies the permissible periods over which the employer may pay the option price to the participant.

For a participant who receives a lump-sum distribution of employer securities from an ESOP and exercises the put option, the employer must pay the option price to the participant in substantially equal annual installments over a period not exceeding 5 years and beginning no later than 30 days after the close of the 60-day option period. The employer must provide security for the installment payments and reasonable interest.

For a participant who receives a distribution of employer securities from an ESOP other than a lump-sum distribution and elects to exercise the put option, the employer must pay the full amount of the option price to the participant no later than 90 days after the exercise of the option.

Independent appraiser

Under the House bill, all valuations of employer securities contributed to or purchased by an ESOP with respect to activities carried on by the plan must be made by an independent appraiser (within the meaning of section 170(a)(1)). The appraiser's name must be reported to the Internal Revenue Service.

Effective Dates

The qualification requirements added by the House bill apply to stock acquired after December 31, 1985.

Tax credit employee stock ownership plans

Repeal of employee stock ownership credit

The House bill repeals the special ESOP tax credit for compensation paid or accrued after 1985.

Distribution requirements

The House bill amends the tax credit ESOP distribution provisions to permit certain distributions upon plan termination. Distributions eligible to be made upon plan termination must consist of the entire balance to the credit of the participant. The provision is effective for termination distributions made after December 31, 1984.

Certain additional tax benefits relating to ESOPs

The House bill generally repeals the special tax incentives for ESOP financing at the end of 1988. Transition rules are provided.

Senate Amendment

Statement of Congressional policy

Under the Senate amendment, a statement of Congressional policy with respect to ESOPs is adopted. This statement points out that the Congress, in a series of applicable laws and under the amendment, has reflected its interest in encouraging ESOPs as a bold and innovative tool of corporate finance for purposes of strengthening the private free enterprise system. The statement describes the policy of the Congress that ESOPs be used in a wide variety of corporate financing transactions in order to encourage the participation of employees as beneficiaries of such transactions. The statement makes clear Congressional concern that the policy articulated by the Congress will be made unattainable by regula-

tions and rulings that (1) characterize ESOPs as conventional retirement plans, (2) reduce the freedom of ESOPs and employers to take the necessary steps to utilize ESOPs in a wide variety of corporate financing transactions, and (3) impede the establishment and success of these plans.

Changes in qualification requirements relating to ESOPs

Vesting

The Senate amendment does not contain a special vesting provision for ESOPs. However, the amendment requires all single-employer qualified plans, including ESOPs, to satisfy one of two alternative vesting schedules. Under the first schedule, a participant must be 100 percent vested after 5 years of service. Under the second schedule, a participant must vest no more slowly than under a 7-year graded vesting schedule.

Nondiscrimination rules

The Senate amendment does not apply special nondiscrimination rules to ESOPs, but ESOPs generally are subject to the changes made by the amendment to qualified plan requirements. Also, the Senate amendment provides that no more than $200,000 of compensation may be taken into account under any qualified plan, including an ESOP.

Voting

The Senate amendment eliminates the pass-through voting requirements of present law in the case of employer securities issued by certain newspapers whose stock is not readily traded and also permits ESOPs established by such employers to acquire nonvoting common stock in certain cases.

Timing of distributions

Under the Senate amendment, an ESOP is to permit earlier distributions to employees who separate from service before normal retirement age. Unless an employee otherwise elects in writing, the payment of benefits under an ESOP must begin no later than one year after close of the plan year (1) in which the participant terminates employment due to retirement, disability, or death, or (2) which is the fifth plan year following the participant's separation from service for any other reason (provided the participant does not return to service with the employer prior to that time). For purposes of applying this rule, the account balance of a participant does not include securities acquired pursuant to an acquisition loan until the close of the plan year in which the loan is repaid. As under the House bill, the rules added by the Senate amendment are intended as an acceleration of the otherwise applicable benefit commencement date.

The Senate amendment also provides that, unless the participant elects a longer distribution period, the plan may provide distributions over a period not longer than 5 years. If the participant's account balance exceeds $500,000, this distribution period is extended by one year (up to 5 additional years) for each $100,000 (or fraction thereof) by which the account balance exceeds $500,000. These dollar amounts are indexed at the same time and in the same manner as the dollar limits on benefits under a defined benefit pension plan (sec. 415(d)).

Put option requirements

The Senate amendment generally retains the present-law requirement that a participant who receives a distribution of employer securities from a tax credit ESOP or a leveraged ESOP must be given a put option with respect to distributed employer securities that are not readily tradable. However, the bill modifies the permissible periods over which the employer may pay the option price to the participant.

In the case of a total distribution of employer securities to a participant that are put to the employer, the Senate amendment provides that the employer must pay the option price to the participant in substantially equal annual payments over a period not exceeding 5 years and beginning not more than 30 days after the exercise of the put option. The employer is not required to provide security with respect to such installment payments, but is required to credit a reasonable rate of interest with respect to the outstanding balance of the option price. A total distribution means the distribution within one taxable year of the recipient of the account balance under the plan.

In the case of a put option exercised as part of an installment distribution, the employer is required to pay the option price within 30 days after the exercise of the option.

Extension of put option requirements to stock bonus plans

Under the Senate amendment, distributions of nonreadily tradable securities of an employer from a stock bonus plan are subject to the put option requirements applicable to ESOPs.

Modification of limitations on annual additions to ESOPs

Under the Senate amendment, the definition of an employee who is subject to the one-third allocation limit for purposes of the special limitation on annual additions to ESOPs (sec. 415(c)(6)) is modified to conform to the new definition of highly compensated employee added under the amendment for purposes of qualified pension, profit-sharing, or stock bonus plans, and for purposes of employee benefit plans.

Effective dates

The distribution requirements and the extension of the put option requirement to stock bonus plans are effective with respect to distributions attributable to stock acquired after December 31, 1986. The put option requirements are effective for distributions attributable to stock acquired after December 31, 1986, except that a plan may elect to have the put option requirements apply to all distribution after the date of enactment. The modified definition of highly compensated employees is effective for years beginning after December 31, 1988. The elimination of the pass-through voting requirements for certain plans of newspapers is effective December 31, 1986. The provision permitting certain plans of newspapers to acquire nonvoting common stock is effective with respect to acquisitions of securities after December 31, 1986.

Tax credit employee stock ownership plans

Repeal of employee stock ownership credit

The Senate amendment is the same as the House bill, except that the repeal of the special ESOP tax credit is effective for compensation paid or accrued after December 31, 1986.

Distribution requirements

The Senate amendment is the same as the House bill.

Certain additional tax benefits relating to ESOPs

Deduction for dividends paid on ESOP stock

Under the Senate amendment, effective for taxable years beginning after the date of enactment, the deduction for dividends paid on ESOP stock is expanded to apply to dividends that are used to repay ESOP loans. Such repayments are not treated differently from repayments attributable to nondeductible dividends for purposes of applying the limit on employer deductions (sec. 404(j)) or for purposes of applying the limitations on benefits and contributions (sec. 415).

Partial exclusion of interest earned on ESOP loans

The Senate amendment modifies the 50-percent exclusion for interest paid on securities acquisition loans in two respects. First, the bill provides that the exclusion is also available with respect to a loan (with an original commitment period of 7 or fewer years) to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of the loan and such contributions are allocable to participants' accounts within one year after the date of the loan. Second, the definition of a lender eligible for the interest exclusion is amended to include a regulated investment company (as defined in sec. 851). The provision is generally effective for loans used to acquire employer securities after the date of enactment.

Estate tax exclusion for sales to employees

The Senate amendment permits an exclusion from the gross estate of 50 percent of the qualified proceeds from a qualified sale of employer securities by the executor of an estate to an ESOP before the due date (including extensions) of the estate's tax return. The provision is effective for sales after the date of enactment by the executor of an estate required to file a return after that date.

Conference Agreement

Statement of Congressional policy

The conference agreement does not adopt the statement of Congressional policy relating to ESOPs contained in the Senate amendment.

Changes in qualification requirements relating to ESOPs

Vesting

The conference agreement does not include the special ESOP vesting provision contained in the House bill. Of course, ESOPs are subject to the vesting provisions applicable to all qualified plans under the conference agreement.

Nondiscrimination rules

The conference agreement does not include the special ESOP nondiscrimination rules contained in the House bill. Of course, ESOPs are subject to the provisions in the conference agreement generally applicable to all qualified plans, including, for example, the coverage and minimum participation requirements and the limit on includible compensation.

Voting

The conference agreement follows the Senate amendment. The conference agreement clarifies that the special rules for newspapers apply to employers (determined without regard to the controlled group rules) whose stock is not publicly traded and a substantial portion of whose business consists of publishing a newspaper for general circulation on a regular basis.

Diversification of investments

The conference agreement follows the House bill, except that the effective date of the diversification requirements is delayed

for one year. Thus, the diversification rules are effective with respect to acquired December 31, 1986.

Under the conference agreement, as under the House bill, a "qualified employee" is entitled annually during the participant's "qualified election period" to direct diversification of up to 25 percent of the participant's account balance (50 percent after attainment of age 60). Any employee who has attained age 55 and completed 10 years of participation is a qualified employee. An employee is entitled to an election in each year within the qualified election period.

In meeting the diversification requirements, it is not intended that plan sponsors offer employer securities as one of the diversification options. As under the House bill, the diversification requirement can be met by a distribution of the portion of the account balance for which diversification was elected, or cash in lieu thereof. If, under this rule, stock is distributed in satisfaction of the diversification requirement, the usual put option rules apply. Amounts which are distributed in satisfaction of the diversification requirement may be rolled over to an IRA or to another qualified plan. The diversification requirement is satisfied if an employer provides the option to transfer the portion of the account balance for which diversification is elected into a plan which provides for employee-directed investment and in which the required diversification options are available.

Timing of distributions

The conference agreement follows the Senate amendment.

Put option requirements

The conference agreement follows the Senate amendment, except that security is required if the employer defers payment of the option price. Thus, as under the House bill, deferred payments are not permitted unless the employer provides adequate security.

Extension of put option requirements to stock bonus plans

The conference agreement follows the Senate amendment.

Modification of limitations on annual additions to ESOPs

The conference agreement follows the Senate amendment.

Independent appraiser

The conference agreement follows the House bill, except that valuation by an independent appraiser is not required in the case of employer securities which are readily tradable on an established securities market. The requirement is effective with respect to stock acquired after December 31, 1986.

Tax credit employee stock ownership plans

Repeal of employee stock ownership credit

The conference agreement repeals the ESOP tax credit effective for compensation paid or accrued after December 31, 1986.

Distribution requirements

The conference agreement follows the House bill and the Senate amendment.

The conferees intend that, for purposes of the rule permitting distributions from a tax credit ESOP on termination of the plan, a termination includes a partial termination of such a plan as to the employees of a particular subsidiary or operating trade or business in situations where such employees no longer have a significant relationship with the sponsor of the plan.

Certain additional tax benefits relating to ESOPs

Deduction for dividends paid on ESOP stock

The conference agreement follows the Senate amendment.

Partial exclusion of interest earned on ESOP loans

The conference agreement generally follows the Senate amendment. Under the conference agreement, the interest exclusion is extended to refinancing of loans used to acquire employer securities after May 23, 1984.

Under the conference agreement, a securities acquisition loan which otherwise meets the requirements of section 133, and which is described in either section 133(b)(1)(B) or section 133(b)(3)(B) (see the technical corrections provisions of the Act), qualifies for the partial interest exclusion under section 133 if the total commitment period of the loan does not exceed 7 years. The total commitment period includes the original commitment period of the loan plus the commitment period of all refinancings of the loan.

If a loan which otherwise meets the requirements of section 133 and which is not described in either section 133(b)(1)(B) or section 133(b)(3)(B) is refinanced, the loan will continue to qualify for the partial interest exclusion under section 133 if the total commitment period of the loan does not exceed the greater of 7 years or the original commitment period of the loan.

If a securities acquisition loan which qualifies under section 133 is refinanced prior to the date of enactment of this Act and the repayment period of the loan is extended, the loan will continue to qualify under section 133 with respect to interest accruing during the first 7 years of the total commitment period of the loan. Thus, for example, if, prior to the date of enactment, an otherwise qualified securities acquisition loan with an original commitment period of 5 years is refinanced for an additional 4 years, section 133 will continue to apply with respect to interest accruing in the first 7 years of the loan. The application of section 133 is limited to interest accured during the 7-year period so that prepayment of interest that has not yet accrued does not qualify for the partial exclusion.

Of course, any refinancings must also comply with the requirements of section 4975.

With respect to loans described in section 133(b)(1)(B), the requirement that stock be transferred to the plan within 30 days is modified to provide that the stock must be transferred within 30 days of the date interest begins to accrue on the loan. Similarly, the requirement that the stock must be allocated to accounts within 1 year after the loan is modified to provide that the stock must be allocated within 1 year after the date interest begins to accrue on the loan.

With respect to the provision extending the interest exclusion to regulated investment companies, the conferees intend that a regulated investment company that is otherwise fully invested in ESOP obligations will be permitted to pay out exempt interest obligations despite having certain amounts of cash or other assets on hand at the end of a taxable quarter, and expects that the Secretary will promulgate appropriate regulations in this regard.

Because only 50 percent of the interest income from ESOP loans is exempt from tax, the conferees understand that for this purpose it may be appropriate for a mutual fund to have two classes of stock, one of which would pay exempt-interest dividends and the other of which would pay taxable dividends. (Rev. Rul. 74-177, 1974-1 C.B. 165.) Such allocation would be reflected in the notice of designation. Any such two-class arrangement would not be subject to the rules of section 654 (relating to series funds) because there will not be segregated portfolios of assets.

Tax-deferred rollover of gain derived from sales of stock to an eligible employee organization

The conference agreement does not contain the provision in the House bill.

Payment of estate tax by an employee organization

The conference agreement does not include the provision in the House bill.

Estate tax exclusion for sales to ESOPs

The conference agreement follows the Senate amendment, except that the exclusion is available only for sales after the date of enactment and before January 1, 1992.

TITLE XII. FOREIGN TAX PROVISIONS

A. Foreign Tax Credit

1. Separate Foreign Tax Credit Limitations

Present Law

The foreign tax credit is determined on an "overall" basis: a taxpayer adds up its net income and net losses from all sources outside the United States and calculates one aggregate limitation based on the total. Overall (rather than country-by-country) foreign tax credit limitations are calculated separately, or subject to special rules, for certain categories of income that frequently bear either high (for example, oil extraction income) or low (for example, FSC dividends) rates of foreign tax or that can easily be earned in low-tax countries rather than in the United States to inflate the foreign tax credit limitation (for example, passive interest). The reason for the separate limitations is to prevent distortion of the foreign tax credit.

House Bill

a. Passive income

The House bill replaces the separate limitation for passive interest income with a separate limitation for passive income generally. Passive income, for this purpose, generally is any income of a kind which would be subpart F foreign personal holding company (FPHC) income as that category of income is expanded by the House bill, except that foreign currency transaction gains of dollar taxpayers are passive income without regard to the business needs exception generally provided in the House bill's new subpart F rules for currency gains. Foreign personal holding company inclusions (under Code sec. 551) and passive foreign investment company inclusions (under the House bill's new rules for such entities) are also passive income.

The separate limitation for passive income does not apply to: banking and insurance income (which is subject to its own separate limitation (*see* b., below)); shipping income (which is subject to its own separate limitation (*see* c., below)); foreign oil and gas extraction income; or active business rents and royalties from unrelated parties.

High-taxed income is excluded from the separate limitation for passive income.

b. Financial services income

The House bill establishes a separate limitation for banking and insurance income. For this purpose, banking and insurance

income is any income derived in the conduct of a banking, financing, or similar business, or from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business. Banking and insurance income also includes any income of a kind which would be insurance income under subpart F, as subpart F is amended by the bill. Subpart F insurance income under the bill generally is any income attributable to the issuing (or reinsuring) of any insurance or annuity contract. However, insurance income generally is not subject to current taxation under subpart F if the risk insured is in the country in which the insurer is organized. For purposes of the separate limitation, this same-country risk exception does not apply.

c. Shipping income

A separate limitation is applied to shipping income, that is, income of a kind which would be foreign base company shipping income as that category of subpart F income is expanded by the House bill.

d. Foreign currency translation gains

A separate limitation for foreign currency translation gains is established.

e. Look-through rules

In applying the new separate limitations, certain payments from, and inclusions with respect to, related persons are subject to look-through rules that take into account the income of the payor.

f. Effective date

The new foreign tax credit limitation rules generally apply to taxable years beginning after 1985.

A transitional rule is provided for foreign tax credit carryforwards and carrybacks: Carryforwards from a pre-effective date year to a post-effective date year can offset U.S. tax on only the same kind of income, determined under the House bill's new rules, as the income on which the foreign taxes were actually paid. For example, pre-effective date foreign taxes on portfolio dividend income that are carried to a post-effective date year can offset the U.S. tax on only passive income in that later year. Carrybacks from a post-effective date year to a pre-effective date year can offset U.S. tax on only the same kind of income, determined under the House bill's new rules, as the income on which the foreign taxes were actually paid.

Senate Amendment

a. Passive income

Like the House bill, the Senate amendment replaces the separate limitation for passive interest income with a separate limitation for passive income generally. The Senate amendment defines passive income, for this purpose, generally as any income of a kind which would be subpart F foreign personal holding company (FPHC) income as that category of income is modified by the Senate amendment. (The Senate amendment's modifications to the definition of subpart F FPHC income differ in some respects from the House bill's modifications to that definition (*see* C.1.a., below).) FPHC inclusions (under Code sec. 551) and passive foreign investment company inclusions (under the Senate amendment's new rules for such entities) are also passive income.

Following the House bill, the Senate amendment excludes from the separate limitation for passive income: banking and insurance income (other than, under the Senate amendment, passive banking and insurance income); shipping income (other than, under the Senate amendment, passive shipping income); foreign oil and gas extraction income; and active business rents and royalties from unrelated parties.

The Senate amendment differs from the House bill in excluding from the separate limitation for passive income: interest on working capital (as under current law); dividends on working capital received from a regulated investment company; and high withholding tax interest (which is subject to its own separate limitation under the Senate amendment (*see* A.2., below)).

The Senate amendment does not include the House bill provision excluding high-taxed income from the separate limitation for passive income. Instead, under the Senate amendment, the Treasury Department may prescribe anti-abuse rules to prevent manipulation of the character of income the effect of which is to avoid the purposes of the separate limitation for passive income (or any other separate limitation).

b. Financial services income

No provision.

c. Shipping income

No provision.

d. Foreign currency translation gains

No provision.

e. Look-through rules

The Senate amendment is generally the same as the House bill except that, under a "stacking" approach, the look-through rule for payments by related persons with passive income treats payments as first attributable to the payor's passive income remaining after any subpart F FPHC inclusion with respect to the payor.

f. Effective date

The new foreign tax credit limitation rules generally apply to taxable years beginning after 1986.

The Senate amendment provides a transitional rule for foreign tax credit carryforwards and carrybacks that differs from that provided by the House bill. Under the Senate amendment, pre-effective date excess credits can be carried forward to post-effective date years only to reduce U.S. tax on income of the old-law limitation category they had been in. For example, pre-effective date foreign taxes on portfolio dividend income that are carried to a post-effective date year can offset U.S. tax on only overall limitation income in that later year. Post-effective date excess credits can be used in pre-effective date years to reduce the U.S. tax on overall limitation income only. Post-effective date credits that are excess credits solely because of the Senate amendment's rate reductions cannot be carried back to higher-rate years. These rules for carryforwards and carrybacks also apply to taxes on interest subject to the Senate amendment's separate limitation for high withholding tax interest (discussed at A.2., below).

An additional, targeted transitional rule is provided in the case of the separate limitation for passive income.

Conference Agreement

a. Passive income

Following the House bill and the Senate amendment, the conference agreement replaces the separate limitation for passive interest income with a separate limitation for passive income generally. Some of the conference agreement's rules relating to this new separate limitation follow the House bill; others follow the Senate amendment. The conference agreement also includes technical and clarifying amendments.

General definition of passive income

Following the House bill and the Senate amendment, the conference agreement generally defines passive income as any income of a kind which would be subpart F foreign personal holding company (FPHC) income. As discussed in greater detail at C.1.a., below, both the House bill and the Senate amendment modify the definition of subpart F FPHC income; the conference agreement generally adopts the Senate amendment's modifications to the subpart F FPHC income definition for both subpart F and passive "basket" purposes.

The conference agreement does not include the House bill rule that treats foreign currency transaction gains of U.S. dollar taxpayers as passive income without regard to the business needs exception provided for currency gains under the legislation's subpart F amendments. Thus, under the agreement, currency gains eligible for the business needs exception are excluded from the separate limitation for passive income, whether the taxpayer's functional currency is the U.S. dollar or a foreign currency.

FPHC and PFIC inclusions

Following the House bill and the Senate amendment, foreign personal holding company inclusions (under Code sec. 551) and passive foreign investment company inclusions (under new Code sec. 1293) are passive income.

Export financing exception

The conference agreement provides an export financing exception to the separate limitation for passive income. The agreement generally excludes from the new separate limitation (and treats as overall limitation income) interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property which is manufactured, produced, grown, or extracted in the United States by the interest recipient or a related person, and not more than 50 percent of the fair market value of which is attributable to products imported into the United States. For this purpose, the fair market value of any property imported into the United States is its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation. A related person, for this purpose is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the interest recipient, or a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the interest recipient. Control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing 50 percent or more of the total voting power of all classes of stock entitled to vote or of the total value of stock of the corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of 50 percent or more (by value) of the beneficial interests in the partnership, trust, or estate. Rules for determining stock ownership similar to those applicable for subpart F purposes (Code sec. 958) apply.

Parallel export financing exceptions are provided by the conference agreement with respect to the separate limitations for financial services income (discussed at A.1. b., below) and high withholding tax interest (discussed at A.2., below) and the termination of tax deferral for banking income of

controlled foreign corporations (discussed at C.1.a., below). The conferees include these exceptions because of their concern that this tax reform legislation might otherwise have the effect of reducing the availability of export financing in some cases, which could, in turn, have a negative impact on the volume of exports.

Financial services income exception

Income that would otherwise meet the definitions of both financial services income (which is subject to its own separate limitation (*see* b., below)) and passive income is financial services income under the conference agreement if received in a taxable year in which the recipient is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. By contrast, amounts earned by an entity not predominantly engaged in the active conduct of a banking, insurance, financing, or similar business that arguably meet the definitions of both financial services income and passive income are passive income under the agreement. The latter rule is intended to prevent entities earning passive income from characterizing it as financial services income in order to avoid the high-tax kick-out and other anti-abuse rules applicable to the separate limitation for passive income.

Shipping income exception

Following the House bill, the conference agreement excludes shipping income subject to its own separate limitation (*see* c., below) from the definition of passive income. Income, such as rental payments for the use of a vessel, that otherwise is both of a kind which would be subpart F FPHC income and of a kind which would be foreign base company shipping income is subject to the separate limitation for shipping income rather than to the separate limitation for passive income. This priority rule parallels the present-law subpart F priority rule for income that is otherwise both subpart F FPHC income and foreign base company shipping income. It conforms more closely the separate limitation and subpart F rules and thereby simplifies the application of the separate limitation rules.

Oil and gas income exception

The separate limitation for passive income does not apply to foreign oil and gas extraction income. This rule follows the House bill and the Senate amendment.

Active rents and royalties exception

The separate limitation for passive income does not apply to active business rents and royalties from unrelated parties. This rule follows the House bill and the Senate amendment. As indicated in the Reports of the Committee on Ways and Means and the Committee on Finance on this tax reform legislation, it is anticipated that the standards contained in existing regulations defining rents and royalties for purposes of excluding them from subpart F taxation (Treas. Reg. sec. 1.954-2(d)(1)) generally will be followed in determining whether rents and royalties received from unrelated parties qualify for this exclusion from passive income. The conferees expect that the Secretary, in adapting the standards contained in the existing regulations for this purpose, will, to the extent possible, substitute for the facts and circumstances test included therein more objective rules for distinguishing between active and passive rents and royalties. The conferees believe that it may be appropriate in some cases to apply such rules on a consolidated group basis in the case of U.S. recipients of rents and royalties that join in filing a consolidated return.

High withholding tax interest exception

Following the Senate amendment, the conference agreement excludes high withholding tax interest (which is subject to its own separate limitation (*see* A.2., below)) from the definition of passive income.

De minimis exception

The conference agreement does not adopt the exception for interest on working capital contained in the Senate amendment. Instead, it provides that a controlled foreign corporation has no passive income (or financial services income, shipping income, high withholding tax interest, or separate limitation dividends from a 10- to 50-percent U.S.-owned foreign corporation) in a taxable year in which the corporation has no subpart F income by reason of the applicability of the subpart F de minimis rule (Code sec. 954(b)(3)(A)), as that rule is modified by the agreement. Under the agreement, the subpart F de minimis rule generally applies if the sum of gross foreign base company income and tax haven insurance income is less than the lesser of 5 percent of gross income or $1 million.

The conference agreement adopts this separate limitation de minimis rule in the interest of administrative convenience. The amount of passive income of a controlled foreign corporation is relevant for separate limitation purposes because (as discussed in greater detail at A.1.e., below), under look-through rules, that amount determines the extent to which subpart F inclusions with respect to the corporation, and payments by the corporation to its U.S. shareholders, are included in the passive income basket. To simplify the application of the look-through rules, the conference agreement includes this rule, and others, that conform more closely the operation of subpart F and the separate limitations. As a result of the separate limitation de minimis exception, a controlled foreign corporation that has no currently taxable FPHC income for a year under the subpart F de minimis rule will have no passive income for that year for separate limitation look-through purposes. Dividends paid from the year's earnings, and interest, rents, and royalties paid to U.S. shareholders during the year, will have no passive income component.

Assume, for example, that a foreign corporation wholly owned by a U.S. company has $100 of gross income. Ninety-six dollars of that income consists of manufacturing income and nonsubpart F sales income, $1 is foreign base company sales income, and $3 is FPHC income. The foreign corporation pays $10 of interest, $5 of royalties, and no dividends to its U.S. parent. The subpart F de minimis rule applies so the U.S. parent has no subpart F inclusion with respect to the foreign corporation. Consequently, under the separate limitation de minimis rule, the $3 of FPHC income is treated as overall limitation income rather than passive income. The look-through rules need not be applied to the $10 of interest and $5 of royalty payments. These payments are overall limitation income to the parent in their entirety. In addition, for purposes of determining the foreign tax credit limitation treatment of future dividends, earnings and profits of the foreign corporation for the year have no separate limitation component.

Regulated investment company exception

Under the conference agreement, dividends received by a controlled foreign corporation from a regulated investment company may be excluded from passive income under the de minimis rule for controlled foreign corporations described immediately above.

Exception for passive income that attracts high foreign tax

The conference agreement adopts the Senate amendment provision authorizing the Treasury Department to prescribe anti-abuse rules to prevent manipulation of the character of income the effect of which is to avoid the purposes of the separate limitations. It also adopts, with the clarifications discussed below, the House bill provision excluding high-taxed income from the separate limitation for passive income (the "high-tax kick-out").

The high-tax kick-out applies after allocation of expenses at the U.S. recipient level. For example, assume that a foreign corporation that earns only passive income for the year makes a $100 rent payment to its 100-percent U.S. owner. The payment attracts a $30 foreign withholding tax. Under the look-through rule for rents, the $100 would be passive income to the U.S. owner, absent the high-tax kick-out. Before the high-tax kick-out may be applied, parent expense must be allocated to the $100 of income. Assume that $40 of parent expense is properly allocated to the $100. Pursuant to the high-tax kick-out, the $60 of net rental income is recharacterized as overall limitation income (and the $30 withholding tax is placed in the overall basket) because the foreign income tax paid with respect to that income exceeds the highest U.S. tax rate multiplied by the amount of the income after allocation of parent expense (that is, $30 > (.34 x $60)).

The conference agreement does not mandate separate application of the high-tax kick-out to individual items of income which the Secretary determines can be grouped for purposes of applying the kick-out without diminishing substantially its effect. The conferees expect the Secretary, in making such determinations, to balance the administrative convenience that may be gained from grouping particular items of income against the increased sheltering opportunities that might be created by such grouping. The conferees believe that it would generally be appropriate to apply the high-tax kick-out to the passive portion of a subpart F inclusion *in toto*, rather than separately to each item of income included in the passive income inclusion. For example, assume that a U.S. company owns two foreign corporations. With respect to the first foreign corporation, the U.S. company has a $50 subpart F FPHC inclusion. The inclusion consists of 5 $10 interest payments received by the first foreign corporation from sources in 5 different countries. In the interest of administrative convenience, the conferees believe that the high-tax kick-out generally should apply once in this instance, to the full $50 inclusion (after allocation of parent expenses), rather than separately to each $10 item reflected in the inclusion, even though the foreign tax attracted by the different $10 items may vary.

With respect to the second foreign corporation, the U.S. company has a $75 passive subpart F inclusion. The high-tax kick-out is to be applied separately to the $75 and $50 inclusions.

Dividends paid by a controlled foreign corporation generally will not be passive under the conference agreement (*see* discussion of look-through rules at e., below). Such divi-

dends are, therefore, generally to be excluded from any income grouping to which the high-tax kick-out is applied.

The conferees expect the Secretary to examine the extent to which it would be feasible, consistent with the purposes of the kick-out, to apply it to a foreign branch's total passive income carrying direct foreign tax credits, rather than separately to each item of passive income of the branch that carries a direct foreign tax credit. A foreign branch might be defined for this purpose by reference to the definition of a "qualified business unit" provided in the conference agreement's rules for the tax treatment of foreign currency exchange gain and loss (*see* F., below).

The high-tax kick-out is to apply at the U.S. person level only. For example, assume that two foreign corporations are wholly owned by a common U.S. parent. The foreign corporations are incorporated in different countries. The first foreign corporation has $100 of income (after expenses other than foreign tax). All of the corporation's gross income is passive. The $100 attracts $45 of foreign tax. (The taxpayer does not elect to exclude this income from subpart F taxation under subpart F's high foreign tax rule (Code sec. 954(b)(4)).) This income is currently taxed to the U.S. parent under subpart F. For purposes of applying the high-tax kick-out, $5 of parent expense is allocated to this income. The income is overall limitation income to the U.S. parent because the foreign tax treated as paid by the parent on the income (under Code sec. 960) exceeds the highest U.S. tax rate multiplied by the amount of the income after allocation of parent expense and the Code section 78 gross-up for deemed-paid foreign tax (that is, $45 > (.34 x $95)).

Among the first foreign corporation's expenses is a $20 royalty payment to the second foreign corporation. The only foreign tax attracted by this royalty payment is a $1 withholding tax. Under the look-through rules, the $20 would generally be passive income to the second foreign corporation. The high-tax kick-out does not apply at the controlled foreign corporation level; thus, the $45 of foreign tax imposed on the first foreign corporation's income has no bearing on the characterization of its royalty payment to the second foreign corporation. This rule simplifies the application of the high-tax kick-out. The conferees also believe that it is appropriate for two additional reasons. First, the $20 royalty payment in the example bore none of the $45 of tax paid by the first foreign corporation: rather, it reduced the first foreign corporation's taxable income; the $45 of tax was imposed on the first foreign corporation's $100 of income after deductions, including that for the royalty payment. Second, foreign taxes are relevant for foreign tax credit limitation purposes only at that point at which direct or deemed-paid foreign tax credits are provided for them. Such credits are provided only when a *U.S.* person includes the associated income in its gross income for U.S. tax purposes.

Returning to the example, the $20 of passive royalty income is subpart F FPHC income to the second foreign corporation, currently taxable to its U.S. parent. One dollar of parent expense is allocated to the subpart F inclusion for purposes of applying the kick-out. The subpart F inclusion remains passive after application of the kick-out because the $1 of foreign withholding tax treated as paid by the U.S. parent on this income (under Code sec. 960) does not exceed the highest U.S. tax rate multiplied by the amount of the income after allocation of parent expense and the Code section 78 gross-up for deemed-paid foreign tax (that is, $1 < (.34 x $19)).

The Secretary is to prescribe rules for the proper application of the high-tax kick-out in cases involving distributions of income previously taxed under subpart F that themselves attract foreign tax. With respect to such distributions, any adjustment in tax liability will normally be required in the year of the distribution rather than in the year of the subpart F inclusion, and will be consistent with present law's special rules for determining foreign tax credits with respect to distributions of earnings and profits previously taxed under subpart F (*see* Code sec. 960(b)). With respect to *all* the separate limitations, the conferees intend that foreign taxes imposed on distributions of income previously taxed under subpart F, to the extent creditable under the special rules just noted, be assigned to the same limitation basket or baskets as the prior subpart F inclusions to which they relate.

b. Financial services income

The conference agreement generally follows the House bill in establishing a separate limitation for financial services income, with the modifications described below.

The conference agreement provides an export financing exception to the separate limitation for financial services income. The agreement generally excludes from the new separate limitation (and treats as overall limitation income) interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property which is manufactured, produced, grown, or extracted in the United States by the interest recipient or a related person, and not more than 50 percent of the fair market value of which is attributable to products imported into the United States. For this purpose, the fair market value of any property imported into the United States is its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation. A related person, for this purpose, is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the interest recipient, or a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the interest recipient. Control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing 50 percent or more of the total voting power of all classes of stock entitled to vote or of the total value of stock of the corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of 50 percent or more (by value) of the beneficial interests in the partnership, trust, or estate. Rules for determining stock ownership similar to those applicable for subpart F purposes (Code sec. 958) apply.

The conference agreement renames the House bill's separate limitation for banking and insurance income the separate limitation for financial services income to emphasize the broad range of income types to which the separate limitation applies. Income derived in the active conduct of a banking, financing, or similar business normally would include income attributable to any of the activities listed in existing Treas. Reg. sec. 1.954(2)(d)(2)(ii)(A) through (G). In addition, it would normally include service fee income from investment and correspondent banking, earnings from interest rate and currency swap businesses, income from services provided to unrelated parties with respect to the management of funds, income from fiduciary services provided to unrelated parties, bank-to-bank participation income, charge and credit card services income from financing purchases from third parties, hedging gains with respect to other financial services income, and income from travellers' check services. As under the House bill, insurance income subject to the separate limitation consists of premium and other insurance income. Such income received by offshore captive insurance companies which the agreement taxes currently to these companies' U.S. owners (*see* C.1.a., below) is subject to the separate limitation.

The conference agreement provides a special rule for entities predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. If an entity is so engaged for any taxable year, then the separate limitation for financial services income will apply to any passive income earned by the entity in that year as well as to its financial services income. Income of an entity so engaged that would otherwise meet the definitions of both shipping income and financial services income will be considered the latter for separate limitation purposes. This rule generally allows active banks, insurance companies, finance companies, and similar businesses, which, under the overall limitation of present law, can credit foreign taxes on one type of financial income against U.S. tax liability on another type of financial income, to retain that ability. The cross-crediting curtailed by the new separate limitation is, by contrast, primarily that between banking, insurance, financing, and similar income and income unrelated to financial services. The predominantly engaged rule also acknowledges the practical difficulty of distinguishing passive income of a bank, insurance company, finance company, or similar business—most or all of the income of which derives from financial activity—from its active income.

The conferees expect the Secretary to prescribe rules for determining whether an entity is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. Generally, if a high percentage of an entity's income is not attributable to financial services activities of the types enumerated above, such entity is not to be considered predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In cases involving the application of the separate limitation look-through rules (*see* e., below), the predominantly engaged test is to be deemed satisfied if either the U.S. income recipient or the related payor of the income independently satisfies it. Thus, for example, if a controlled foreign corporation satisfies the predominantly engaged test, any payment that it makes to a U.S. shareholder (or subpart F inclusion of a U.S. shareholder) that would otherwise be passive income to the shareholder under the look-through rules will be treated as financial services income without regard to whether the shareholder itself satisfies the predominantly engaged test. Conversely, if a U.S. shareholder of a controlled foreign corporation satisfies the predominantly engaged test, but the controlled foreign corporation does not, inclusions by the U.S. shareholder with respect to the corporation that would otherwise be subject to the separate limitation for passive income will be

subject instead to the separate limitation for financial services income.

If an entity satisfies the predominantly engaged test, then income it earns that is integrally related to its banking, insuring, or financing activity generally is to be treated as financial services income, notwithstanding that such income might not otherwise be financial services income. For example, the conferees anticipate that income from equipment leasing, precious metals trading, commodity trading, and the financing of trade that is integrally related to the banking, insuring, or financing activity of an entity satisfying the predominantly engaged test may be treated as financial services income of that entity. However, in no event is income attributable to nonfinancial activity to be treated as financial services income. Thus, for example, income from data processing services or the sale of goods or nonfinancial services is not financial services income, even if the recipient satisfies the predominantly engaged test.

High withholding tax interest subject to its own separate limitation (*see* 2., below) is not subject to the separate limitation for financial services income. This exclusion applies whether or not the recipient satisfies the predominantly engaged test. Income that might otherwise meet the definitions of both shipping and financial services income (for example, income from insuring vessels) is financial services income for separate limitation purposes. This priority rule applies whether or not the recipient satisfies the predominantly engaged test.

Income that might otherwise meet the definitions of both passive and financial services income is passive income for separate limitation purposes when the recipient fails to satisfy the predominantly engaged test. This rule prevents entities making essentially passive investments such as occasional loans from avoiding the high-tax kick-out and other anti-abuse rules applicable to the separate limitation for passive income by taking the position that the associated income is financial services income rather than passive income.

c. Shipping income

The conference agreement establishes a separate foreign tax credit limitation for shipping income, following the House bill.

d. Foreign currency translation gains

The conference agreement does not contain the House bill provision establishing a separate limitation for foreign currency translation gains. The treatment of such gains for foreign tax credit limitation purposes is discussed at F., below.

e. Look-through rules

Dividends, interest, rents, and royalties received from controlled foreign corporations by their U.S. shareholders generally will be subject to the separate limitation for passive income, the separate limitation for financial services income, the separate limitation for shipping income, the separate limitation for high withholding tax interest (discussed at 2., below), or the separate limitation for dividends from 10- to 50-percent U.S.-owned foreign corporations (discussed at f., below) in accordance with look-through rules that take into account the extent to which the income of the payor is itself subject to one or more of these limitations. Subpart F inclusions are also subject to a look-through rule. These look-through rules generally follow those of the Senate amendment, with substantial technical modifications.

Conformity with subpart F

The conference agreement conforms the separate limitation look-through rules more closely with the subpart F rules. In general, the modifications contained in the conference agreement, detailed below, are intended to limit the application of the look-through rules and to make their application, where required, simpler for taxpayers and the IRS.

U.S. ownership requirements for application of look-through rules

The conference agreement generally applies the look-through rules only to subpart F inclusions and to dividends, interest, rents, and royalties received from U.S.-controlled foreign corporations. No look-through rules generally are applied in characterizing, for separate limitation purposes, payments from foreign entities in which U.S. persons own a 50-percent or smaller interest. The conferees have restricted the scope of look-through treatment in recognition of the difficulty that some shareholders in minority U.S.-owned corporations might have encountered in obtaining the additional income and tax information necessary to apply the look-through rules to payments of such corporations. Further, the conferees note that a primary purpose of look-through treatment is to make the foreign tax credit limitation treatment of income earned through foreign branches and income earned through foreign subsidiaries more alike by, in effect, treating income earned by a foreign subsidiary as if it were earned directly by its U.S. parent. When the U.S. interest in a foreign entity falls below a majority interest, the conferees believe that such entity frequently no longer substantially resembles a branch operation of U.S. persons.

Following the House bill and the Senate amendment, the conference agreement generally treats foreign source dividends, interest, rents, and royalties from entities in which the recipient has less than a 10-percent ownership interest the same as if such payments were received from unrelated parties (that is, no look-through rules apply). Interest, rents, and royalties received from entities in which U.S. persons have no more than a 50-percent interest by 10-percent or greater U.S. owners of such entities generally are treated the same way under the conference agreement. Thus, interest, for example, paid by foreign corporations that are not controlled foreign corporations to their U.S. shareholders is treated under the conference agreement as separate limitation passive income, subject to the agreement's high-tax kick-out.

The conferees provide this treatment because of a concern that any other rule would permit abuse of the foreign tax credit system. For instance, assume that a U.S. corporation owns 45 percent of a manufacturing corporation organized and operating in a high-tax foreign country. The foreign corporation pays the U.S. corporation an overall limitation dividend that is fully sheltered from U.S. tax by deemed-paid foreign tax credits. In addition, $17 of excess foreign tax credits are associated with the dividend. Assume that the U.S. corporation lends $400 to the foreign corporation, which it reinvests in a bank account at a slight profit. The foreign corporation pays $40 of interest to the U.S. corporation. If the conference agreement allowed cross-crediting of the foreign taxes on the dividend against U.S. tax on the interest payment, the $17 of excess credits from the dividend would be credited against the $13.60 of pre-credit U.S. tax on the interest income, leaving no residual U.S. tax on the interest income and a $3.40 excess credit to carry over. The conferees do not believe that such cross-crediting is appropriate. In the case of a controlled foreign corporation, by contrast, a look-through rule treats interest payments from a controlled foreign corporation as first carrying out the payor's passive income (*see* discussion of "netting" rule below).

As explained at f. (see below), dividends paid by 10- to 50-percent U.S.-owned foreign corporations are subject to an entity-by-entity separate limitation under the agreement.

In the following limited situations, the look-through rules will apply to inclusions with respect to minority U.S.-owned entities. They apply to inclusions with respect to more-than-25-percent U.S.-owned insurance companies that are controlled foreign corporations under Code section 957(b), as amended by the conference agreement (discussed at C.1.a., below), and inclusions with respect to captive insurance companies with dispersed U.S. ownership that are controlled foreign corporations under new Code section 953(c) (discussed at C.1.a., below). Application of the look-through rules here preserves general conformity of the subpart F and look-through rules. The conferees believe that such application will not prove administratively burdensome; they are informed that most of the offshore insurance companies likely to be affected will not have income in more than one basket.

The conference agreement requires the Secretary to prescribe such regulations as may be necessary or appropriate providing that a look-through rule similar to that applicable to interest, rents, and royalties paid by controlled foreign corporations will apply to such amounts received or accrued from entities which would be controlled foreign corporations if they were foreign corporations. Thus, under regulations, the conferees anticipate that interest, rents, and royalties received by 10-percent U.S. interest holders in noncorporate entities more-than-50-percent controlled by U.S. persons will generally be subject to look-through treatment. This rule generally follows the House bill and the Senate amendment except for the U.S. control requirement, which parallels that adopted in the conference agreement for application of the look-through rule to foreign corporations. It is also expected that foreign source interest received from more-than-50-percent U.S.-owned 80/20 companies (*see* Code sec. 861(a)(1)(B), as amended by the conference agreement; discussion at B.4.a., below) by their 10-percent U.S. shareholders will be subject to look-through treatment under regulations. (Dividends paid by 80/20 companies to U.S. shareholders are U.S. source under the conference agreement; therefore, the separate limitations are irrelevant to such payments.) This rule generally follows the Senate amendment except, again, for the U.S. control requirement.

De minimis exception for controlled foreign corporations

If a controlled foreign corporation has no foreign base company income or subpart F insurance income in a taxable year because the corporation satisfies the subpart F de minimis rule (Code sec. 954(b)(3)(A), as amended by the bill; *see* C.1.c., below) for that year, then the look-through rules will treat interest, rents, or royalties paid by the corporation during that year and dividends, to the extent treated as paid from that

year's earnings and profits, as overall limitation income. Thus, under the conference agreement, the subpart F de minimis rule also functions as a de minimis rule for the separate limitations for passive, financial services, and shipping income, and the separate limitations for high withholding tax interest (discussed at 2., below) and dividends from 10- to 50-percent U.S.-owned foreign corporations (discussed at f., below).

The conferees have adopted this de minimis exception so that U.S. shareholders of controlled foreign corporations may avoid the recordkeeping burden of applying the look-through rules to limited amounts of separate limitation income earned by controlled foreign corporations. The purpose of the de minimis rule is to simplify the application of the separate limitations in cases involving controlled foreign corporations.

If a controlled foreign corporation has no separate limitation income in a year by reason of the de minimis rule, the conferees intend that the foreign loss allocation rule adopted in the conference agreement (*see* 4., below), like the look-through rules, have no application to the corporation's income for the year.

Following the House bill and the Senate amendment, the conference agreement provides that the 70-percent full inclusion rule for foreign base company and insurance income (Code sec. 954(b)(3)(b), as amended by the conference agreement; *see* C.1.c., below) will not result in overall limitation income of a controlled foreign corporation being treated as separate limitation income.

Exception for controlled foreign corporations not availed of to reduce tax

For purposes of applying the dividend look-through rule, income of a controlled foreign corporation that would otherwise be passive, financial services, or shipping income is treated as overall limitation income under the agreement if it is established by the taxpayer that the income was subject to an effective foreign tax rate of greater than 90 percent of the maximum U.S. tax rate and the income is excluded from subpart F as a result (*see* Code sec. 954(b)(4), as amended by the conference agreement; discussed at C.1.a., below). The Senate amendment applies this rule to income of a controlled foreign corporation that would otherwise be passive. The conference agreement expands the rule's application to harmonize the operation of the subpart F and separate limitation look-through rules. Applying this conformity rule to income that would otherwise be passive or shipping income, in particular, may eliminate the need to apply the dividend look-through rule in many cases since income of a controlled foreign corporation cannot be passive or shipping income unless it is income of a kind which is subpart F FPHC or foreign base company shipping income, respectively.

The conference agreement does not apply this conformity rule to high withholding tax interest or dividends from 10- to 50-percent U.S.-owned foreign corporations. The latter separate limitation category is not closely related to any subpart F income category. Applying the conformity rule to high withholding tax interest would allow taxpayers to circumvent the separate limitation for that income. That separate limitation generally places high withholding taxes on interest in a separate basket where they may not be used to shelter low-taxed income from U.S. tax. If the conformity rule applied to such interest, U.S. shareholders of controlled foreign corporations receiving such interest could generally place it, and the associated taxes, in the overall basket with potentially low-taxed income by making the section 954(b)(4) election, since such highly taxed interest generally would satisfy the 90-percent threshold of section 954(b)(4). A similar concern sometimes arises in the case of dividends from 10- to 50-percent U.S.-owned foreign corporations. If a controlled foreign corporation makes the section 954(b)(4) election with respect to high withholding tax interest or dividends from a 10- to 50-percent U.S.-owned foreign corporation and the controlled foreign corporation qualifies for the subpart F de minimis exception for the year, the income remains high withholding tax interest or separate limitation dividend income (as the case may be) for look-through purposes.

The conformity rule does not apply for purposes of the look-through rule for interest, rents, and royalties, since those amounts are typically not subject to net tax in the hands of the payor and the 90-percent test applies on a net income basis.

Examples

The following examples show how the look-through rules, as modified by the conference agreement, will apply in certain cases.

Example 1

Assume that a foreign corporation wholly owned by a U.S. corporation earns $100. Seventy-five dollars is foreign base company shipping income and $25 is nonsubpart F services income. (For simplicity, this example assumes that net income and gross income are equal.) The $75 of shipping income includes $10 of rental income that also meets the subpart F definition of FPHC income. That $10 is treated as shipping income, not passive income, under the conference agreement. Under the 70-percent full inclusion rule of subpart F, the entire $100 is foreign base company income currently taxable to the U.S. parent. Since $75 of the $100 subpart F inclusion is attributable to income of the foreign corporation subject to the separate limitation for shipping income, $75 of the subpart F inclusion is treated as separate limitation shipping income of the parent. The remaining $25 of the subpart F inclusion is treated as overall limitation income of the parent.

Example 2

Assume that a foreign corporation wholly owned by a U.S. corporation earns $100 of gross income. Four dollars is portfolio interest (which is subpart F FPHC-type income) and $96 is gross manufacturing income (which is nonsubpart F income). Among the foreign corporation's expenses is $10 of interest paid to its U.S. parent. Because the subpart F de minimis exception applies, the $4 of portfolio interest is not taxed currently to the parent. For the same reason, all of the foreign corporation's income is overall limitation income. Under the look-through rule for interest then, the full $10 interest payment is overall limitation income to the U.S. parent. Any future dividends attributable to this year's earnings and profits will be 100-percent overall limitation income to the extent so attributable, notwithstanding the $4 of portfolio interest.

Example 3

Assume that a foreign corporation wholly owned by a U.S. corporation earns $100. Fifty dollars is shipping income of a type that is normally foreign base company shipping income. The other $50 is dividends from a second foreign corporation in which the first foreign corporation holds 45 percent of the voting stock. Foreign persons hold the other 55 percent of the voting stock of the second foreign corporation. The second foreign corporation and the controlled foreign corporation are incorporated in different countries. The dividends received by the controlled foreign corporation are, therefore, of a type that would normally be subpart F FPHC income. However, these dividends are subject to the separate limitation for dividends from 10- to 50-percent U.S.-owned foreign corporations, rather than to that for passive income (see discussion of this priority rule at f., below); while all passive income is income of a kind which would be subpart F FPHC income, not all subpart F FPHC income is passive.

The dividends and the shipping income are taxed abroad by the controlled foreign corporation's country only, at an effective rate of 40 percent. (This example assumes, for simplicity, that net income and gross income are equal.) Pursuant to Code section 954(b)(4) (as amended by the conference agreement), the U.S. parent establishes to the satisfaction of the Secretary that that effective rate exceeds 90 percent of the maximum U.S. tax rate. Therefore, neither the shipping income nor the dividends are taxed currently to the U.S. parent under subpart F.

However, the controlled foreign corporation pays all its earnings and profits for the year out as a dividend. Half of that dividend is attributable to its shipping earnings and half to the dividends it received. The half of the dividend attributable to the dividends it received is subject to the separate limitation for dividends from 10- to 50-percent U.S.-owned foreign corporations in the U.S. parent's hands; the conference agreement provision conforming certain of the separate limitation rules with the section 954(b)(4) exception does not apply to that separate limitation. The other half of the dividend is overall limitation income in the parent's hands because the conforming provision just noted treats the shipping income as overall limitation for purposes of applying the look-through rule for dividends.

Amendments to subpart F deficit rules

As discussed in detail at C.1.a., below, the conference agreement repeals subpart F's chain deficit rule (Code sec. 952(d)), modifies subpart F's accumulated deficit rule (Code sec. 952(c)(1) and (2)), and provides for the recapture of subpart F income that is eliminated by current year deficits in nonsubpart F income categories. These subpart F amendments reflect, in part, the conferees' conclusion that separate limitation income received by controlled foreign corporations (which is frequently subpart F income also) should not be eliminated by deficits of other controlled foreign corporations, prior year deficits in different income catergories, or current year deficits in nonsubpart F income categories. The conferees felt that the integrity of the separate limitation for passive income, for example, would be compromised if taxpayers could shelter passive income from U.S. tax, notwithstanding the separate limitation, simply by placing passive investments in controlled foreign corporations with accumulated losses. Preserving separate limitation income (otherwise eliminated by deficits) for foreign tax credit limitation purposes absent the indicated subpart F changes would necessitate more frequent application of the look-through rule to dividends paid

by controlled foreign corporations with passive income.

Netting of interest payments

Except to the extent provided in regulations, interest payments or accruals by a controlled foreign corporation to a U.S. shareholder with respect to the corporation (or to another controlled foreign corporation related to such a U.S. shareholder) are allocated first to gross subpart F FPHC income of the corporation that is passive, to the extent of such income. The Secretary may, by regulations, extend this "netting" rule to payments and accruals to unrelated persons. In addition, it is anticipated that the rule will be extended to U.S.-controlled noncorporate payors and U.S.-controlled 80/20 company payors to the extent that look-through treatment of their interest payments is provided under regulations.

The netting rule applies for subpart F and foreign tax credit limitation purposes. The conferees' goal in adopting this rule is to avoid creating an incentive for taxpayers to keep, or move, passive income and investments offshore. The netting rule's effect with respect to the look-through rule for interest is similar to that of the "stacking" rule included in the Senate amendment: interest payments by a controlled foreign corporation to its U.S. shareholders are separate limitation passive income to those shareholders to the full extent of the foreign corporation's gross passive income. The netting rule replaces the stacking rule. The conferees believe that the netting rule has several technical advantages over the stacking rule, among them, that it will be simpler to apply and administer. On the other hand, the netting rule reduces subpart F FPHC income (compared to present law) to the extent that it allocates interest expense to gross FPHC income that, under current law, would be allocated to nonsubpart F income. Concern about this effect of the netting rule has led the conferees to provide regulatory flexibility so that the Secretary can apply different rules when the netting rule would allow a tax advantage for offshore passive investments over domestic passive investments, or other unintended tax advantages.

An example illustrates the application of the netting rule. Assume that a U.S. corporation wholly owns a foreign corporation and that the U.S. corporation also has $1,000 of cash. That controlled foreign corporation earns $100 of overall limitation manufacturing income, on which it pays $60 of foreign tax. The U.S. parent is free to invest its cash in the United States or abroad. Assuming equally safe investments, the parent will tend to seek the highest after-tax return.

If the U.S. parent earns $100 of bank deposit interest in the United States, it will generally pay $34 of U.S. tax on that interest income under the conference agreement. The goal of the agreement in a case such as this is to make sure that the parent does not pay less than that amount of tax if it earns an equivalent amount of passive income offshore.

Assume that the parent instead lends its $1000 of cash to its controlled foreign corporation. The foreign corporation deposits that cash in a foreign bank, and earns $100 of interest on the investment. The foreign subsidiary in turn pays $100 of interest to its U.S. parent. The conference agreement provides that any interest received or accrued from a controlled foreign corporation by a U.S. shareholder in that corporation is treated as income subject to a particular separate limitation to the extent that that interest is properly allocable (under regulations prescribed by the Secretary) to income of the controlled foreign corporation that itself is subject to that separate limitation. Under the netting rule, the $100 interest payment is properly allocable in full to the controlled foreign corporation's $100 of gross bank deposit interest, which is gross subpart F FPHC income subject to the separate limitation for passive income. Thus, the $100 of interest received by the U.S. parent is subject to the separate limitation for passive income. As a result, the U.S. parent cannot cross-credit foreign taxes paid on overall limitation income against the U.S. tax liability on that income. The $100 interest payment in effect removes all the passive income at the foreign subsidiary level. There is no subpart F inclusion for this taxable year. Any future dividend from the foreign subsidiary from its $100 of pre-foreign tax manufacturing earnings will consist solely of overall limitation income.

The conference agreement does not provide explicit regulatory authority to the Secretary to extend the netting rule to rents and royalties paid or accrued by controlled foreign corporations. The Senate amendment, by contrast, applies the stacking rule to all payments to which look-through rules apply, including rents and royalties. The conferees do not believe that back-to-back (or other) rent or royalty arrangements utilizing controlled foreign corporations should permit taxpayers to reduce the U.S. tax on foreign rent or royalty income. The conferees are informed that existing regulatory standards under Code section 861 should operate to prevent taxpayers from allocating rent or royalty expense of controlled foreign corporations in order to achieve such results. The conferees have not expressly extended the netting rule to rents and royalties on the understanding that, under the present regulations, netting effectively will be required in the problem cases just described (and others). The conferees intend that the Secretary make any clarifications in the present regulations that might be necessary to ensure that netting takes place in such problem cases.

The allocation of interest expense of a controlled foreign corporation for purposes of the interest look-through rule and the foreign tax credit limitation rule maintaining the source of U.S. source income (Code sec. 904(g)(3)) is to be consistent. Thus, the netting rule, where applicable for purposes of the interest look-through, applies for purposes of the U.S. source maintenance rule too.

For example, assume that a foreign corporation wholly owned by a U.S. corporation has $1,000 of gross foreign source manufacturing income and $150 of gross subpart F FPHC income. One hundred twenty-five dollars of this $150 is U.S. source income not effectively connected with a U.S. business. The other $25 is foreign source. The foreign corporation pays $150 of interest to its U.S. parent. Under the netting rule, the $150 of interest expense is allocated in full to the foreign corporation's $150 of subpart F FPHC income and is, therefore, passive in the parent's hands. Under the conference agreement, that allocation controls for purposes of determining the U.S. source portion of the $150. Thus (under Code sec. 904(g)(3)(C)), $125 of the $150 of interest expense is properly allocable to U.S. source income of the controlled foreign corporation and, consequently, is U.S. source to its parent.

The conferees believe that using the same interest allocation method, including the netting rule where applicable, in applying present law's provision maintaining the source of U.S. source income and the separate limitation look-through provision for interest achieves a desirable conformity in the operation of these two provisions. The conferees are informed that technical difficulties have arisen under present law in coordinating the provision maintaining the source of U.S. source income with the provision maintaining the character of interest income (Code sec. 904(d)(3), which the look-through rules of the conference agreement supplant) because the allocation approaches of these two provisions differ.

The general subpart F related person definition (Code sec. 954(d)(3)), as amended by the conference agreement (*see* C.1.a., below) applies to determine whether a controlled foreign corporation is related to a U.S. shareholder for purposes of the netting rule.

Other rules

The agreement contains a clarifying amendment to the present law provision that treats distributions of income previously taxed under subpart F as other than dividends (Code sec. 959(d)). This amendment is relevant to the application of the look-through rule for dividends. (It is also relevant to the calculation of the dividends received deduction for dividends from foreign corporations (Code sec. 245, as amended by the agreement; *see* C.3., below) and the application of the dividend look-through provision of the present law rules maintaining the source of U.S. source income (Code sec. 904(g)(4)).) Under the look-through rule for dividends, a proportionate amount of a dividend is treated as separate limitation income based on the ratio of the separate limitation earnings and profits out of which the dividend was paid to the total earnings and profits out of which the dividend was paid. The amendment makes clear that the numerator or the denominator (as the case may be) of this ratio is reduced by earnings and profits attributable to income that has been previously taxed under subpart F and distributed.

As an example, assume that a foreign corporation wholly owned by a U.S. corporation and engaged in a manufacturing business earns $20 of subpart F FPHC income, $20 of same-country dividend income from a 10- to 50-percent U.S.-owned foreign corporation, and $60 of manufacturing income. It thus has $100 of earnings and profits for the year. (For simplicity, this example assumes that net income, earnings and profits, and gross income are equal.) The $20 of subpart F FPHC income is currently taxed to the U.S. parent. The controlled foreign corporation distributes $40 in the year of the subpart F inclusion. Under the look-through rule for subpart F inclusions, the $20 of subpart F FPHC income is treated as passive income. Twenty dollars of the $40 distribution is not treated as a dividend because it is attributable to the $20 already taxed under subpart F (Code sec. 959(d)). Under the look-through rule for dividends, $5 of the $20 portion of the distribution that is a taxable dividend ($20/$80 x $20) should be treated as a separate limitation dividend from a 10- to 50-percent U.S.-owned foreign corporation (*see* discussion of this separate limitation below) and $15 of that $20 ($60/$80 x $20) should be treated as overall limitation income. The clarifying amendment excludes from the denominator of the ratios

just noted the portion of the year's $100 of earnings and profits attributable to the subpart F FPHC income ($20) and thus ensures that the described result technically is achieved.

If a controlled foreign corporation has earnings and profits for the current year but an accumulated deficit, and it pays a dividend, then the basis for application of the look-through rule for dividends is the current year's earnings and profits.

For purposes of the look-through rule for dividends, the agreement provides that a dividend includes any Code section 956 inclusion triggered by an increase in earnings invested in U.S. property (Code sec. 951(a)(1)(B)). Section 956 inclusions are subject to the look-through rule for dividends rather than that for subpart F inclusions generally under the conference agreement because section 956 inclusions, like dividends, are drawn pro rata from earnings and profits; they differ from foreign base company income inclusions in not being specifically identified with particular earnings of a controlled foreign corporation. Any gain on the sale of shares in a foreign investment company that is treated as ordinary income under Code section 1246 is not a dividend for look-through purposes under the conference agreement. Instead, it is treated as passive income. Consistent with present law, distributions of income previously taxed under subpart F are not dividends for look-through purposes (*see* Code sec. 959(d)). As under the Code generally, a dividend includes any amount treated as such under Code section 1248.

For purposes of applying the look-through rules, a U.S. corporation's income "gross-up" for deemed-paid foreign taxes (Code sec. 78) is treated as increasing the corporation's subpart F inclusion (under Code sec. 951(a)(1)(A)) to the extent that the gross-up is attributable to such a subpart F inclusion. To the extent that the gross-up is attributable to a dividend or a section 956 inclusion, the gross-up is treated as a dividend for look-through purposes. Under this approach, for example, a single $100 inclusion consisting of $80 of subpart F FPHC income and a $20 gross-up for the foreign taxes deemed paid on the $80 will be subject to one look-through rule (that for subpart F inclusions under Code section 951(a)(1)(A)) rather than two (the subpart F *and* dividend look-through rules).

The conference agreement requires the Secretary to prescribe such regulations as may be necessary or appropriate for the application of the look-through rules in the case of income paid, or loans made, through one or more entities or between two or more chains of entities. For example, a controlled foreign corporation may receive interest subject to a high foreign withholding tax from a related controlled foreign corporation. To the extent necessary to preserve the integrity of the separate limitations, such interest will be characterized as passive income, financial services income, shipping income, high withholding tax interest, or dividend income from a 10- to 50-percent U.S.-owned foreign corporation for separate limitation purposes by applying the look-through rule for interest to the income of the related controlled foreign corporation. That look-through rule requires a determination of the extent to which the interest is properly allocable to the related controlled foreign corporation's passive income, financial services income, shipping income, high withholding tax interest, or dividend income from a 10- to 50-percent U.S.-owned foreign corporation.

This regulatory requirement, as it relates to income payments, is contained in the House bill and the Senate amendment. The conference agreement extends the requirement to loans so that the Secretary may prevent taxpayers from avoiding the separate limitations through the use of related party loans. Assume, for example, that a controlled foreign corporation earns $100 of low-taxed, nonsubpart F income subject to the separate limitation for financial services income. Its U.S. parent wishes to bring the $100 home. The parent would like to characterize the $100 as overall limitation income because it has excess foreign tax credits in the overall basket that would shelter the $100, if so characterized, from U.S. tax. The parent controls another foreign corporation engaged solely in manufacturing, all of the income of which is overall limitation income. The first controlled foreign corporation lends the manufacturing subsidiary $100. The manufacturing subsidiary in turn pays the U.S. parent a $100 dividend. If the general look-through rule for dividends is applied without modification, that $100 is overall limitation income to the parent. If that result were allowed to stand, however, the parent would have effectively brought home, converted into overall limitation income, the first controlled foreign corporation's $100 of financial services income. Regulations are to prevent such avoidance of the separate limitations using related party loans.

f. Separate limitation for dividends from 10- to 50-percent U.S.-owned foreign corporations

Under the conference agreement, when a foreign corporation that is not a controlled foreign corporation pays dividends that are eligible for the deemed-paid foreign tax credit (which is available for dividends from foreign corporations in which the recipient owns at least 10 percent of the voting power), a separate foreign tax credit limitation applies to the dividends received. Under this separate limitation, foreign taxes associated with that dividend income may offset U.S. tax only on dividend income from that corporation. The taxes affected by this separate limitation are foreign withholding taxes imposed on these dividends and foreign taxes deemed paid with respect to these dividends. This separate limitation also applies to dividends eligible for the deemed-paid credit that are paid by a controlled foreign corporation out of earnings and profits generated while the payor was not a controlled foreign corporation. Income subject to this separate limitation is not subject to the separate limitations for passive, financial services, or shipping income.

The conferees conclude that this general treatment of dividends paid from foreign corporations more than 10- but not more than 50-percent U.S.-owned is appropriate for several reasons. First, and most importantly, application of a look-through rule to dividends from 10- to 50-percent U.S.-owned foreign corporations is not necessary under the view, generally adopted by both Houses of Congress in connection with this tax reform legislation, that it is frequently appropriate to allow cross-crediting of taxes paid by one unit of a worldwide business against income earned by another unit of that business. In the case of controlled foreign corporations, the conferees adhere to this general view, on the theory that in many cases, whether one unit or another of a multinational enterprise is considered to earn income in a business (and whether any particular unit is considered to earn income in one country rather than another) makes little economic difference, so long as the income from that business generally inures to the benefit of the same persons. In the case of foreign corporations that are not controlled foreign corporations, however, the conferees do not believe that there is sufficient identity of interest with U.S. shareholders to treat nonmajority ownership positions as units of a worldwide business. Accordingly, the conferees do not believe it is appropriate to allow cross-crediting of taxes from nonmajority interests against income derived from controlling interests or vice versa, or of taxes from one nonmajority interest against income of another nonmajority interest.

Second, application of a look-through rule to dividends from 10- to 50-percent U.S.-owned foreign corporations (required under the House bill and the Senate amendment) might be difficult for some shareholders; for example, they may not have ready access to the tax and income information of the foreign corporation which is needed in applying the look-through rule. The conferees believe that the administrative burdens associated with the corporation-by-corporation separate limitation are much less severe than those that would arise if Congress generally required look-through consideration of dividends from foreign corporations no more than 50-percent U.S.-owned. The conferees recognize that this corporation-by-corporation approach will require a computation not required under present law: allocation of expenses to dividends from between 10- and 50-percent U.S.-owned foreign corporations on a corporation-by-corporation basis. The conferees believe that this additional computation is much easier than the application of a look-through rule to these dividends would be.

Third, the conferees believe that the passive foreign investment company (PFIC) rules (added by the conference agreement; *see* discussion at D.7., below) will often prevent cross-crediting of taxes imposed on active income against passive income arising from a non-controlled foreign corporation a major portion of whose assets generate passive income. Inclusions with respect to PFIC stock will automatically be subject to the separate limitation for passive income. The conferees would not have agreed to eliminate look-through treatment in the case of dividends from nonmajority-U.S.-owned foreign corporations without the backstop of the PFIC rules to prevent excessive cross-crediting of taxes.

An example illustrates the operation of the separate limitation for dividends from 10- to 50-percent U.S.-owned foreign corporations. A U.S. corporation owns 40 percent of a foreign corporation that is not a passive foreign investment company. No other U.S. person owns any interest in the foreign corporation. The foreign corporation pays a dividend of $80 to the U.S. corporation. A $16 withholding tax is imposed on that dividend, so the U.S. corporation receives a net payment of $64. A $40 deemed-paid credit is associated with the dividend. The U.S. corporation includes $120 in income ($80 grossed up by the $40 deemed-paid foreign tax). That $120 carries with it foreign tax credits of $56. Those foreign tax credits exceed the $40.80 of pre-credit U.S. tax on the $120. The conference agreement's limitation provides that the $15.20 of excess credits cannot offset U.S. tax on income other than prior or later dividends from this foreign corporation.

If a controlled foreign corporation owns 10 percent or more of the stock in foreign corporations that are not themselves controlled foreign corporations, then dividends from those non-controlled foreign corporations to the controlled foreign corporation that are eligible for the deemed-paid credit will be subject to separate limitations for dividends from 10- to 50-percent U.S.-owned foreign corporations. Under the look-through rules, subpart F inclusions with respect to the controlled foreign corporation, and dividends, interest, rents, and royalties received from it by its U.S. shareholders will be subject to separate limitations to the extent attributable to the foreign corporation's dividend income subject to the separate limitations.

As discussed at 2., below, the conference agreement generally establishes a separate limitation for high withholding tax interest, following the Senate amendment. A special rule relating to that separate limitation restricts deemed-paid credits for high withholding taxes on interest received by 10- to 50-percent U.S.-owned foreign corporations.

The separate limitation for dividends from 10- to 50-percent U.S.-owned foreign corporations is not to limit the application of the special foreign tax credit rules for foreign oil and gas income (Code sec. 907). For example, the look-through rules for inclusions with respect to foreign corporations with foreign oil and gas income (sec. 907(c)(3)) remain fully in effect, and will operate in conjunction with the separate limitation for dividends paid by 10- to 50-percent U.S.-owned foreign corporations.

These look-through rules are preserved with respect to dividends from 10- to 50-percent U.S.-owned foreign corporations, and deemed-paid credits carried by such dividends are limited for taxes on high withholding tax interest because the separate limitation for dividends from 10- to 50-percent U.S.-owned foreign corporations is not alone sufficient to prevent the cross-crediting of high foreign taxes on interest and oil and gas income against the U.S. tax on low-taxed income. Without the above restrictions, cross-crediting could still be achieved with respect to dividends from 10- to 50-percent U.S.-owned foreign corporations that earn low-taxed income as well as high-taxed interest or oil and gas income.

Effective date

Following the Senate amendment, the conference agreement provides that the new foreign tax credit rules described above generally apply to taxable years beginning after 1986.

The conference agreement adopts the transitional rule contained in the Senate amendment for foreign tax credit carryforwards, with one modification. Under the agreement, pre-effective date excess credits for taxes on overall limitation income can be carried to post-effective date years to reduce the U.S. tax on financial services income or shipping income, subject to a limitation.

The conference agreement also adopts the transitional rules contained in the Senate amendment for foreign tax credit carrybacks, with two technical modifications. First, the conference agreement provides that, under regulations prescribed by the Secretary, proper adjustments are to be made in the application of the rule limiting carrybacks attributable to the agreement's rate reductions to take into account the repeal of the zero bracket amount and the changes in the treatment of capital gains. Second, the conference agreement provides that post-effective date excess credits for high withholding taxes on interest may not be carried back to pre-effective date years. The latter modification is necessary because the carryback of such credits to offset the U.S. tax on pre-effective date overall limitation income would defeat the purpose of the separate limitation for high withholding tax interest.

The conference agreement adopts the Senate amendment's targeted transitional rule with respect to the separate limitation for passive income.

2. Credit for High Withholding Taxes on Interest

Present Law

The foreign tax credit is available for income, war profits, and excess profits taxes paid to a foreign country or a U.S. possession. In certain cases, a tax other than an income tax is creditable if it serves as a substitute for an income tax. Under the overall limitation, U.S. lenders can use foreign tax credits for high gross withholding taxes on a loan—the economic burden of which may be borne primarily by the borrower—to reduce the lenders' U.S. tax liability on other loan proceeds and other income.

House Bill

A foreign tax credit is allowed for gross-basis taxes on interest paid to a bank, insurance company, or other financial institution (or any related person) only to the extent of the U.S. tax on the associated interest income.

In general, the provision applies to taxable years beginning after 1985.

The provision does not apply until 1989 in the case of foreign taxes imposed on interest paid on pre-November 17, 1985 loans and restructurings thereof (adjusted upward by 3 percent per year) to borrowers in 15 less developed countries. These countries are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, the Ivory Coast, Mexico, Morocco, Nigeria, Peru, the Philippines, Uruguay, Venezuela and Yugoslavia.

Senate Amendment

The Senate amendment creates a separate foreign tax credit limitation for foreign interest earned by a bank, other financial institution, or insurance company (or a related person) in the case of interest that is subject to a foreign gross-basis tax of 5 percent or more.

The Senate amendment provides exceptions to this separate limitation for interest earned by a related person if the interest is directly related to that person's active business, and interest earned by a finance company in connection with export financing of products manufactured in the United States by a related person.

In applying the new separate limitation, certain payments from, and inclusions with respect to, related persons are subject to look-through rules that take into account the income of the payor.

In general, the provision applies to taxable years beginning after 1986.

The separate limitation does not apply (without time limit) in the case of foreign taxes imposed on interest received or accrued on pre-November 17, 1985 loans to borrowers in the same 15 less developed countries covered by the House bill's transitional rule. In general, the amount of a lender's foreign tax credits protected by this exemption is increased by 3 percent annually through 1989 with an interest rate adjustment, and the less developed country loans can be restructured until that date without any loss of the exemption.

The separate limitation also does not apply to interest received or accrued in taxable years before 1997 on other loans held by the taxpayer on November 16, 1985.

Conference Agreement

The conference agreement generally follows the Senate amendment, with the modifications described below.

The conference agreement does not limit the application of the separate limitation for high withholding tax interest to interest earned by banks, financial institutions, insurance companies, and related persons. The agreement extends the provision's application to all interest recipients (subject to the export exception) because entities other than financial institutions making high withholding tax loans may receive the same tax advantages under present law as financial institutions making such loans. The extension also permits the elimination of the related party rule.

Consistent with its extension of the provision to all interest recipients, the conference agreement extends eligibility for the export finance exception from finance companies to all interest recipients. It also clarifies generally the scope of the export finance exception. Under the conference agreement, the separate limitation for high withholding tax interest generally does not apply to interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property which is manufactured, produced, grown, or extracted in the United States by the interest recipient or a related person, and not more than 50 percent of the fair market value of which is attributable to products imported into the United States. For this purpose, the fair market value of any property imported into the United States is its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation. A related person for this purpose is defined as it is generally for subpart F purposes (Code sec. 954(d)(3), as amended by the conference agreement; *see* C.1.a., below). Interest excluded from the separate limitation for high withholding tax interest under the export finance exception is treated as overall limitation income unless the interest is received by an entity predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In the latter case, such interest is treated as financial services income.

As discussed at A.1.e., above, under the look-through rules, the separate limitation for high withholding tax interest applies if a controlled foreign corporation makes a high withholding tax loan; the separate limitation's applicability is not limited to high withholding tax loans by U.S. persons. This look-through treatment generally follows that provided in the Senate amendment. Without such look-through treatment, U.S. persons might avoid the separate limitation by originating high withholding tax loans in, or moving such loans to, controlled foreign corporations.

A similar potential for avoidance exists with respect to 10- to 50-percent U.S.-owned foreign corporations: Under current law, high withholding taxes imposed on interest income earned by a 10- to 50-percent U.S.-owned foreign corporation are eligible for the deemed-paid credit. In lieu of look-through treatment for dividends from 10- to 50-percent U.S.-owned foreign corporations, the conferees have adopted a special mecha-

nism for limiting deemed-paid credits in the case of high withholding tax loans.

Under the conference agreement, taxes on high withholding tax interest, to the extent imposed at a rate exceeding 5 percent, are not to be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid by a taxpayer with respect to dividends received from a 10- to 50-percent U.S.-owned foreign corporation.

An example illustrates the operation of this provision. Assume that an offshore bank has a 40-percent U.S. owner and a 60-percent foreign owner. It earns $2,000 of gross interest income and incurs $1,700 of interest expense. One thousand dollars of the interest income is subject to a 10-percent gross withholding tax and is, therefore, high withholding tax interest.

The foreign corporation incurs no other expenses and earns no other income. Its earnings and profits are $200 ($2,000 gross interest income less $1,700 interest expense less $100 withholding tax). It pays the full $200 out as dividends. Its U.S. shareholder receives $80 (40 percent) of the $200. The provision treats as noncreditable that portion of the 10-percent withholding tax exceeding 5 percent. Therefore, $50 (5 percent of $1,000) of the $100 withholding tax is noncreditable. The U.S. shareholder's deemed-paid credit with respect to the $80 dividend it receives is therefore reduced from $40 (40 percent of $100) to $20 (40 percent of $50).

Following the Senate amendment, the conference agreement generally makes the separate limitation for high withholding tax interest effective for taxable years beginning after 1986.

The conference agreement does not contain the general 10-year transitional rule included in the Senate amendment.

The conference agreement adopts the Senate amendment's transitional rule for foreign taxes on interest paid by borrowers in less developed countries, with the following modifications. First, the transitional rule is phased out over the five-taxable year period commencing with the taxpayer's first taxable year beginning after 1989. Eighty percent of interest received in that taxable year on a post-1989 qualified loan is not high withholding tax interest. The percentage of interest on a post-1989 qualified loan that is not high withholding tax interest in the second taxable year beginning after 1989 is 60; in the third taxable year is 40; in the fourth taxable year is 20; and in the fifth and succeeding taxable years is zero. Interest on a new loan entered into after 1989 will not be entitled to transition relief. For purposes of determining what constitutes a new loan, the conferees intend the standard of Code section 1001 to apply.

Second, interest paid by borrowers in 18 additional less developed countries is eligible for transitional relief. These countries are Costa Rica, the Dominican Republic, Guyana, Honduras, Jamaica, Liberia, Madagascar, Malawi, Mozambique, Niger, Panama, Romania, Senegal, Sierra Leone, the Sudan, Togo, Zaire, and Zambia.

Third, the amount of the lender's foreign tax credits generally protected by the transitional rule is 110 percent of the product of the base credit amount [1] and the applicable interest rate adjustment in the case of pre-1990 qualified loans, rather than, as under the Senate amendment, such product increased by 3 percent annually through 1989. The agreement clarifies that the applicable interest rate adjustment generally equals the ratio of the weighted 6-month London Interbank Offered Rate (LIBOR) for the taxable year in question to LIBOR on November 15, 1985. The conferees understand that the 11 a.m. 6-month LIBOR quoted by a major bank on November 15, 1985, was 8¼ percent and intend that this rate apply for purposes of the transitional rule.

Fourth, no relief is allowed by reason of the transitional rule for any foreign tax imposed on interest payable with respect to any qualified loan to the extent that the rate of such tax exceeds the foreign withholding tax rate applicable to interest payable with respect to such loan on November 16, 1985. This rule is intended to prevent taxpayers from deriving benefits under the transitional rule from foreign withholding tax rates that have increased since November 16, 1985. For example, if a foreign country doubles its withholding tax rate applicable to a qualified loan over the rate applicable on November 16, 1985, then 50 percent of the interest earned with respect to such loan will not be eligible for transitional relief.

Interest to which the transitional rule applies is passive income (subject to the high-tax kick-out, and the other exceptions to the separate limitation for passive income) unless received by an entity predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In the latter case, under the predominantly engaged test, such interest is subject to the separate limitation for financial services income.

3. Deemed-Paid Credit

Present Law

A U.S. corporation that owns at least 10 percent of a foreign corporation's voting stock and that has dividend income from the foreign corporation may generally take a deemed-paid credit for a share of the foreign taxes that the foreign corporation paid on the earnings out of which the dividend is paid. A similar credit applies when a 10-percent U.S. corporate shareholder includes in income a portion of a controlled foreign corporation's undistributed earnings under subpart F.

A dividend or subpart F inclusion is considered paid first from earnings and profits of the current year and then from accumulated profits of each preceding year. Actual distributions made in the first 60 days of a taxable year are generally treated as made from the prior year's earnings and profits.

Earnings and profits may be computed in a different manner for actual dividend distributions than for subpart F inclusions.

House Bill

A U.S. corporation's share of foreign taxes paid by a foreign corporation depends on the percentage of the foreign corporation's multi-year pool of accumulated earnings and profits represented by the dividend, including current year earnings and profits. The 60-day rule is repealed.

Earnings and profits are computed in the same manner for actual distributions and for subpart F inclusions, generally following the subpart F rules. However, the rules for translating foreign currency are modified.

The amendments apply to taxable years beginning after 1985. All future dividends (including those paid during the first 60 days of a taxpayer's first taxable year beginning after 1985) are to be treated as paid first out of accumulated profits of the payor derived after the effective date. Dividends in excess of that amount are to be treated as paid out of pre-effective date accumulated profits under present-law ordering rules.

Senate Amendment

The Senate amendment generally follows the House bill except that the Senate amendment draws taxes and earnings and profits from a moving 10-year pool and is effective for taxable years beginning after 1986.

Conference Agreement

The conference agreement generally follows the House bill, with the modifications described below.

First, the agreement is effective for taxable years beginning after 1986.

Second, the agreement grants the Secretary limited regulatory authority, in the case of subpart F inclusions, to modify the pooling method for computing the deemed-paid credit that the legislation otherwise prescribes. This additional grant of regulatory authority is provided primarily to permit the IRS to address certain technical difficulties which it believes may arise in implementing the pooling rules with respect to subpart F inclusions *other than* those for increases in earnings invested in U.S. property. As the Reports of the Committee on Ways and Means and the Committee on Finance on this tax reform legislation indicate, taxpayers should not be able to avoid the effect of pooling by creating subpart F inclusions.

Third, the agreement requires the Secretary to provide such regulations as may be necessary or appropriate to carry out the purposes of the subpart F deemed-paid credit provision (Code sec. 960), including rules which provide for the separate application of that provision to reflect the separate application of the foreign tax credit limitation to separate types of income and loss. The conferees anticipate that the Secretary will exercise this regulatory authority to ensure that, if subpart F income is in fact subject to little or no foreign tax, then the amount of the foreign tax credit determined under section 960 with regard to such income will properly reflect that fact.

4. Effect of Foreign and U.S. Losses on Foreign Tax Credit

Present Law

Under the overall foreign tax credit limitation, a taxpayer first uses a net loss incurred in any foreign country to reduce its income from other foreign countries. If a taxpayer's net foreign losses subject to one separate limitation exceed its foreign income subject to that limitation, the excess arguably reduces the taxpayer's U.S. source taxable income.

An overall U.S. loss first reduces foreign income earned in the loss year and hence pre-credit U.S. tax in that year.

House Bill

The House bill provides that foreign losses first reduce income in the other separate foreign tax credit limitation "baskets" before they reduce U.S. income. A recapture rule applies to foreign income earned in the loss basket after the loss year. The provision is effective with respect to losses incurred in taxable years beginning after 1985.

[1] Following the Senate amendment, the conference agreement defines the base credit amount as the principal amount of loans held by the taxpayer on November 16, 1985, multiplied by the product of the interest rate applicable to such loan on November 16, 1985, and the foreign withholding tax rate applicable to interest payable with respect to such loan on November 16, 1985.

Senate Amendment

The Senate amendment is the same as the House bill except that the Senate amendment adds a U.S. loss allocation rule requiring that U.S. losses reduce categories of foreign income pro rata, and the Senate amendment is effective with respect to losses incurred in taxable years beginning after 1986.

Conference Agreement

The conference agreement follows the Senate amendment, with several technical clarifications.

The first clarification is that the conferees intend that, where a loss is incurred in more than one foreign income basket in a particular year, each such loss be allocated proportionately to foreign income, and then to U.S. income. For example, assume that a U.S. corporation earns $200 of U.S. income and $20 of foreign income subject to the separate limitation for certain distributions from a FSC. The corporation also incurs a $20 overall limitation loss and a $5 shipping basket loss. Under the foreign loss allocation rule, the $20 and $5 separate limitation losses are to be allocated first to the $20 of FSC distributions; only after that allocation is any portion of either separate limitation loss allocated to U.S. income. Each separate limitation loss must be allocated to foreign income in proportion to the ratio of total foreign income to total foreign loss. Thus, $16 of the $20 overall limitation loss ($20 x $20/$25) reduces the $20 of FSC distributions and $4 of the $5 shipping basket loss ($5 x $20/$25) reduces the $20 of FSC distributions. The remaining $4 of overall limitation loss and $1 of shipping basket loss reduce the $200 of U.S. income. For the year, then, the corporation has $195 of U.S. income and no foreign income for foreign tax credit limitation purposes. If the corporation earns sufficient overall limitation income in a later year, then, after application of the foreign loss recapture rule of present law (Code sec. 904(f)), $16 of such income will be subject to recharacterization as FSC distribution income. If the corporation earns shipping income in a later year, then, after application of the foreign loss recapture rule, $4 of such income will be subject to recharacterization as FSC distribution income.

The second clarification relates to the overall foreign loss recapture rule of present law. In light of the new foreign loss allocation and recharacterization rules, the conferees believe that one aspect of that present-law rule's application should be clarified. The conferees intend that foreign income earned in a year following an overall foreign loss year be recharacterized as U.S. income under the overall foreign loss recapture rule only to the extent that that foreign income is of the same limitation type as the previous loss. For example, assume that a U.S. corporation incurs a $100 overall limitation loss and earns $300 of U.S. income in a taxable year. The full $100 loss is an overall foreign loss subject to recapture in a later year because U.S. income is offset by the full amount of the loss. In the following taxable year, the taxpayer earns $50 of overall limitation income, $150 of passive limitation income, and $250 of U.S. income. The conferees intend that the present-law 50-percent limitation (sec. 904(f)(1)(B)) on the amount of foreign income that must be recharacterized as U.S. income in a taxable year be applied to the full amount of the corporation's foreign income, $200, as it would be under present law. Thus, up to $100 of foreign income can be recharacterized as U.S. income under the 50-percent limitation. However, the corporation has only $50 of income of the same limitation type (overall) as the prior year foreign loss. Only that $50 then is to be recharacterized as U.S. income under the overall foreign loss recapture rule. Thus, for foreign tax credit limitation purposes, the corporation has $150 of passive limitation income, $300 of U.S. income, and no overall limitation income for the taxable year. Up to $50 of overall limitation income earned in a subsequent year will be subject to recapture because only $50 of the $100 overall foreign loss incurred in the first taxable year has been recaptured.

The third technical clarification is of the interaction of the new U.S. loss allocation rule, on the one hand, and the foreign loss allocation and recharacterization rules, on the other. The following example illustrates how these rules will operate in relation to one another.

Assume that a U.S. corporation incurs a $50 overall limitation loss abroad and a $100 U.S. loss. It also earns $600 of foreign income subject to the separate limitation for shipping income and $400 of foreign income subject to the separate limitation for passive income. The foreign loss allocation rule applies before the U.S. loss allocation rule. Under the former rule, $30 of the overall limitation loss reduces the $600 of shipping income and the remaining $20 of such loss reduces the $400 of passive income.

Before allocation of the U.S. loss then, the U.S. corporation has $570 of shipping income and $380 of passive income. Under the conference agreement, $60 of the U.S. loss reduces the $570 of shipping income and the remaining $40 of such loss reduces the $380 of passive income. Thus, for foreign tax credit limitation purposes, the corporation has no U.S. income, $510 of shipping income, and $340 of passive income for the year.

In the following year, the corporation incurs a $780 U.S. loss. It also earns $200 of overall limitation income and $600 of shipping income. The U.S. loss allocation rule applies before the foreign loss recharacterization rule. Under the former rule, $195 of the U.S. loss reduces the $200 of overall limitation income and the remaining $585 of such loss reduces the $600 of shipping income.

The corporation thus has no U.S. income, $5 of overall limitation income, and $15 of shipping income for the year before the application of the foreign loss recharacterization rule. Under that rule, $3 of the overall limitation income is recharacterized as shipping income and the remaining $2 of the overall limitation income is recharacterized as passive income. This recharacterization occurs because, in the prior year, $30 of shipping income and $20 of passive income was eliminated by a $50 overall limitation loss.

In the current year then, the corporation has no U.S. income, $18 of shipping income, and $2 of passive income for foreign tax credit limitation purposes. If the corporation earns overall limitation income in later years, up to $45 ($50−$5) of such income will be subject to the foreign loss recharacterization rule.

The fourth clarification is that the new foreign loss allocation and recharacterization rules are to apply on an affiliated group basis in the case of an affiliated group filing a consolidated tax return.

Fifth, the conferees intend that the foreign loss allocation and recharacterization rules apply to net operating loss ("NOL") carryovers. The conferees expect the Secretary to issue regulations adapting the new rules as necessary for this purpose.

The following example illustrates how the foreign loss allocation and recharacterization rules will apply in cases involving NOL carryovers: Assume that a U.S. corporation which operates primarily abroad incurs a $200 NOL. The loss is attributable to foreign activities that would generate overall limitation income. In the following year, the corporation earns $180 of overall limitation income and $30 of income subject to the separate limitation for passive income. The corporation carries the prior year's $200 NOL forward. Under the foreign loss allocation rule, the NOL offsets the $180 of overall limitation first, since the NOL arose in the overall limitation category. The remaining $20 of the loss reduces (to $10) the corporation's passive income.

In the next year, the corporation earns $220 of overall limitation income. Under the foreign loss recharacterization rule, $20 of this overall limitation income is recharacterized as passive income because $20 of passive income was offset by the overall limitation NOL in the preceding year. Thus, for foreign tax credit limitation purposes, the corporation has $200 of overall limitation income and $20 of passive income for the year.

Sixth, the conferees expect that the regulations implementing the foreign loss allocation and recharacterization rules will apply the latter rule to an entity that is a successor entity to one that benefitted from the former rule.

As under the House bill and the Senate amendment, foreign taxes on income recharacterized under the foreign loss recharacterization rule are not themselves to be recharacterized. For example, foreign taxes on overall limitation income that is recharacterized as separate limitation income in a year following an overall limitation loss year may only be credited against U.S. tax on other overall limitation income.

5. Subsidies

Present Law

Under Treasury regulation sec. 1.901-2(e)(3), a tax is not creditable if it is used directly or indirectly as a subsidy to the taxpayer or certain related persons.

House Bill

The House bill codifies the Treasury regulation that denies a foreign tax credit for taxes used as a subsidy to the taxpayer or certain related persons. The provision is applicable to foreign taxes paid or accrued in taxable years beginning after 1985.

Senate Amendment

The Senate amendment is the same as the House bill except that the Senate amendment clarifies that a direct or indirect subsidy to a party to a related transaction is subject to the credit denial rule and the Senate amendment applies to foreign taxes paid or accrued in taxable years beginning after 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

This codification of Treas. reg. sec. 1.901-2(e)(3) is not intended to modify the application of existing Treas. reg. sec. 1.901-2(f)(2)(i), which generally treats a tax as paid by the taxpayer even if another party to a transaction with the taxpayer agrees, as part of the transaction, to assume liability

for the tax. The latter regulation by its terms applies notwithstanding anything to the contrary in Treas. reg. sec. 1.901-2(e)(3).

The conferees intend that the amount of any withholding tax paid be positively established through documentation provided in accordance with the requirements of Code section 905(b) and Treas. reg. sec. 1.905-2. In this regard, the conferees emphasize that the mere fact that withholding took place does not necessarily constitute adequate proof of the amount of tax paid.

The conferees believe that the rule set forth in *Lederman v. Commissioner*, 6 T.C. 991 (1946), which suggests that payment is proved ipso facto by the act of withholding, is subject to abuse. Application of the *Lederman* rule is of particular concern in the context of a "net loan," under which the net amount paid to the U.S. payee is unaffected by the amount of tax withheld. In such a case, it is impossible to determine prima facie whether a claimed amount withheld has actually been withheld, since the amount received by the payee remains unchanged. The logic of the *Lederman* rule simply does not apply in such circumstances, and external proof of withholding and payment over should be required.

The conferees' concerns with respect to documentation of foreign taxes are heightened by the problem of subsidized foreign tax payments. The conferees are informed that in some cases amounts withheld are retained by the withholding agent, in whole or in part, with the explicit or implicit approval of the foreign sovereign. Particularly in the case of a net loan, both payee and payor stand to benefit from a high withholding "tax" that is never paid over to the government; the payor receives cash in hand (equivalent to a lower interest rate) while the payee receives a foreign tax credit for a fictional tax, without any reduction in net proceeds. Although this provision of the agreement, which codifies the prohibition of direct and indirect subsidies of foreign taxes, confirms that a foreign tax credit is disallowed in such cases, the conferees are concerned that without a strict documentation requirement the Service would find it difficult to determine when such a subsidy had been given. Therefore, the conferees expect that a receipt or other positive proof of payment will generally be required to establish the amount of foreign withholding tax paid with respect to foreign source interest income received by U.S. taxpayers.

B. Source Rules

1. Sales of Personal Property

Present Law

Income derived from the purchase and resale of tangible and intangible personal property generally is sourced where title to the property passes to the purchaser (the "title passage" rule). To the extent personal property is depreciable or subject to other basis adjustments (e.g., amortization), gain attributable to the recapture of such adjustments is also sourced where title passes.

Income derived from the manufacture and sale of personal property is treated as having a divided source. Under Treasury regulations, half of such income generally is sourced in the country of manufacture, and half of the income is sourced where title passes. The division of the income between manufacturing and selling activities must be made on the basis of an independent factory price rather than on a 50/50 basis, if such a price exists.

House Bill

The House bill provides generally that income derived from the sale of personal property is sourced in the country of the seller's residence. The bill generally treats U.S. persons as U.S. residents and other persons as nonresidents, except that individuals are considered residents in the country of their tax homes. In defining residence, however, the bill contains an anti-abuse rule that prevents U.S. citizens and resident aliens from claiming nonresidence for sales of personal property if the income derived therefrom is not subject to tax in any foreign country. In the case of inventory property, the bill provides that if a seller has a fixed place of business outside its country of residence that materially participates in the sale, the sales income is sourced in the location of the fixed place of business except in the case of sales to related parties and sales income derived in a country barred by treaty from taxing such income. In the case of sales of property used by a seller in his trade or business, recapture income is sourced where the deductions with respect to the property sold previously offset income, and income in excess of recapture income is sourced under the general residence-of-the-seller rule. The bill sources income attributable to the sale of goodwill where the goodwill was developed.

With respect to inventory property manufactured by a seller, the bill requires that at least 50 percent of the total income derived from the sale be allocated to the manufacturing activity and sourced in the country of manufacture. For property manufactured or produced by a U.S. resident in a foreign trade or business, the bill provides a special rule to ensure foreign source for income derived from these sales.

The House bill is generally effective in taxable years beginning after December 31, 1985, but contains transitional relief for sales made during 1986 under unrelated party contracts entered into before 1986.

Senate Amendment

The Senate amendment generally follows the House bill for sales of noninventory personal property by U.S. residents and for sales of all personal property by foreign residents. For sales of inventory property by U.S. residents, the amendment retains present law for sales income and for the amount of income allocated to manufacturing activity. For sales of personal property used in a seller's trade or business, the Senate amendment follows the House bill for recapture income but retains the title passage rule of present law for income in excess of recapture income. The Senate amendment modifies the House bill's rule for sourcing the income from sales by U.S. residents of noninventory, non-trade or business property (such as stocks, bonds, or other financial assets) through a fixed place of business outside the United States to require that the income be subject to at least a 10-percent foreign tax in order to be treated as foreign source income. The amendment also provides that income derived by U.S. persons from sales of stock in an 80-percent U.S.-owned foreign corporation is treated as foreign source if the corporation derives a substantial amount of its business income in the country where the sale occurs.

The Senate amendment is effective for taxable years beginning after 1986 for sales by U.S. persons and controlled foreign corporations, and for transactions entered into after March 18, 1986 for other persons.

Conference Agreement

The conference agreement follows the Senate amendment with technical clarifications and with a requirement that the Treasury Department study the effect of current law's title passage rule in light of the agreement's lower tax rates and in light of Congressional trade concerns, and report back to the House Committee on Ways and Means and the Senate Committee on Finance not later than September 30, 1987.

The managers also wish to clarify one aspect of the Senate amendment. It is intended that the 10-percent foreign tax payment requirement for foreign sourcing of income from sales of certain property through a fixed place of business be satisfied only if the income is taxed abroad at an effective rate of at least 10 percent.

2. Transportation Income

Present Law

Source of income

Treasury regulations generally allocate transportation services income between U.S. and foreign sources in proportion to the expenses incurred in providing the services. Expenses incurred outside the three-mile limit of U.S. territorial waters are treated as foreign for this calculation. Income and losses from transportation that begins and ends in the United States are sourced in the United States. Income and losses from transportation that begins in the United States and ends in a U.S. possession (or vice versa) generally are treated as 50-percent U.S. source and 50-percent possessions source. Under a special rule, income and expenses associated with the lease or disposition of a vessel or aircraft that is constructed in the United States and leased to U.S. persons are sourced in the United States, regardless of where the vessel or aircraft may be used. A similar special sourcing rule applies to transportation income and expenses associated with the lease of an aircraft (wherever constructed) to a regularly scheduled U.S. air carrier, to the extent the aircraft is used on U.S.-U.S. possessions routes.

Reciprocal exemption

The United States does not tax foreign persons' earnings from the operation of ships and aircraft registered in foreign countries that grant equivalent tax exemptions to U.S. citizens and U.S. corporations.

Gross-basis tax

The United States (in contrast with a number of countries) does not impose a gross basis tax on domestic source shipping income of foreign persons.

House Bill

Source of income

The House bill sources transportation income and loss attributable to U.S.-foreign and foreign-U.S. routes as 50-percent U.S. source and 50-percent foreign source and repeals the two special sourcing rules of present law.

Reciprocal exemption

The bill modifies the reciprocal exemption for foreign persons' shipping and aircraft income so that its availability turns on whether a foreign person's residence country gives U.S. citizens and U.S. corporations an equivalent foreign tax exemption, not on whether the country where the ship or aircraft is registered gives such an exemption. The bill does not treat corporations as residents of a country that exempts U.S. carriers unless 75 percent or more of the ultimate owners are U.S. shareholders of con-

trolled foreign corporations or are residents of countries that exempt U.S. carriers from tax.

Gross basis tax

The bill imposes a four-percent gross basis income tax on U.S. source transportation income of foreign persons, unless prohibited by treaty or reciprocal exemption (with anti-conduit rules to prevent flag shopping), or unless the income is effectively connected with a U.S. trade or business. Transportation income is not effectively connected with a U.S. trade or business under the bill unless attributable to a U.S. fixed place of business where the carrier has regularly scheduled transportation into the United States to which substantially all of the carrier's U.S. source transportation income is attributable. The bill provides for collection of the gross basis tax through a withholding requirement imposed on the last person having control over the income.

The bill is generally effective for taxable years beginning after 1985, but retains present law for certain leasing income attributable to an asset owned on January 1, 1986, if the asset was first leased before that date.

Senate Amendment

Source of income

The Senate amendment follows the House bill in determining the source of transportation income but excludes from the definition of transportation income any income derived by an employee from the performance of personal services (except on routes to and from U.S. possessions).

Reciprocal exemption

The Senate amendment generally follows the House bill in determining foreign persons' eligibility for reciprocal exemption. It modifies the House bill's rule to provide that (1) rental income on a full or bareboat basis is eligible for the reciprocal exemption; (2) the Secretary may apply the reciprocal exemption separately to different types of transportation income (such as income from regularly scheduled air transportation or bareboat charter income); and (3) corporations are not considered residents of countries that exempt U.S. persons unless 50 percent or more of the ultimate individual owners are U.S. shareholders of controlled foreign corporations or are residents of countries that exempt U.S. carriers from tax.

Gross basis tax

The amendment generally follows the House bill in imposing a four-percent gross basis tax on U.S. source transportation income of foreign persons, but limits the tax's application to residents of countries that impose gross tax on transportation income of U.S. persons (with anti-conduit rules to prevent flag shopping). The amendment does not contain the House bill rules modifying the determination of effectively connected transportation income and collecting the gross basis tax by withholding. Instead, the amendment retains present law's determination of effectively connected income and requires foreign persons to file U.S. income tax returns. The amendment allows foreign persons not resident in countries that impose gross basis tax on U.S. persons to elect to be taxed on a net basis on transportation income not effectively connected with a U.S. trade or business.

The amendment is generally effective for taxable years beginning after 1986 but adopts the House bill's grandfather rule and contains a targeted transitional rule.

Conference Agreement

Source of income

The conference agreement follows the Senate amendment. The conferees wish to clarify that income derived from personal services performed as an employee that is excluded from U.S. source gross transportation income continues to be taxed as under present law. Thus, the sourcing of such income is unchanged: income attributable to services performed in the United States or in U.S. territorial waters is U.S. source.

Reciprocal exemption

The conference agreement generally follows the Senate amendment, with the following clarifications. The agreement provides that a foreign corporation organized in a country that exempts U.S. citizens and domestic corporations from tax on shipping income will be exempt from U.S. tax on shipping income, notwithstanding that third country residents have interests in the corporation, provided at least 50 percent of its value is benefically owned by individuals that reside in countries which have reciprocal tax exemptions with the United States. Individuals that reside in countries which have reciprocal exemptions with the United States qualify for this purpose even if they are citizens or subjects of third countries that do not have such exemptions in place. Residence, for this purpose, is intended to mean the country of an individual's tax home. The conferees wish to clarify that the agreement's provisions do not deny any benefits available under present law in an income tax treaty between the United States and a foreign country.

Gross basis tax

The conference agreement follows the House bill in applying the gross basis tax and in determining a foreign person's effectively connected transportation income, but adopts the Senate amendment's method of collecting any tax due. The agreement modifies, however, the determination of effectively connected transportation income in one respect: a foreign person engaged in the leasing of ships or aircraft will derive transportation income effectively connected with a U.S. trade or business only if substantially all of the person's U.S. source gross transportation income is earned through a fixed place of business in the United States.

The agreement is generally effective for taxable years beginning after 1986 but retains present law for certain leasing income attributable to an asset owned on January 1, 1986 if the asset was first leased before that date and contains a targeted transitional rule.

3. Other Offshore Income and Income Earned in Space

Present Law

Income derived by U.S. residents from activities conducted in space or outside the territorial waters of any country is generally treated as foreign source.

House Bill

The House bill sources offshore income and income earned in space in the recipient's country of residence. The bill defines this income to include any activity for the use, or hiring or leasing for use, of a spacecraft, any activity conducted on or beneath water not within the jurisdiction (as recognized by the United States) of any country, and any activities performed in Antarctica. The bill excludes from this definition any activity giving rise to transportation income and any activity with respect to mines, oil and gas wells, or other natural deposits located within a country's jurisdiction (as recognized by the United States). The bill treats foreign corporations controlled by U.S. persons as U.S. residents. The bill is effective for taxable years beginning after 1985.

Senate Amendment

The Senate amendment generally follows the House bill but sources income from the transmission of communications from the United States to any foreign country (or vice-versa) as 50 percent U.S. source and 50 percent foreign source. The amendment is effective for taxable years beginning after 1986.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications.

The agreement does not adopt the provision that treats a foreign corporation controlled by U.S. persons as a U.S. person for purposes of the source rule. The application of the separate foreign tax credit limitation for shipping income to any space or ocean income derived by a controlled foreign corporation provides adequate assurance, in the conferee's view, that high foreign taxes on unrelated income will not inappropriately offset U.S. taxes on this generally low-taxed income.

The conference agreement modifies the Senate amendment's provision that treats international communication income as 50-percent U.S. source and 50-percent foreign source by applying this source rule to U.S. persons only. However, the conference agreement treats international communication income derived by foreign persons as U.S. source if the income is attributable to a U.S. office or other U.S. fixed place of business, and provides regulatory authority to treat other international communication income derived by a foreign person (e.,g., a controlled foreign corporation) as other than foreign source. In particular, the conferees anticipate that treatment of such income in the hands of controlled foreign corporations like similar income in the hands of U.S. persons may be necessary to preserve the integrity of the provision.

4. Dividend and Interest Income

Present Law

Dividend and interest income generally is sourced in the country of residence of the payor. However, if a U.S. corporation derives more than 80 percent of its income from foreign sources (such a corporation is referred to as an "80/20 company"), all dividends and interest paid by that corporation are treated as foreign source income. A similar exception applies to interest paid by a resident alien individual who derives more than 80 percent of his or her income from foreign sources (an "80/20 individual"). Treating this income as foreign source increases the foreign tax credit limitation of U.S. recipients and precludes imposition of U.S. withholding tax for foreign recipients.

Another exception to the residence-of-the-payor rule applies to dividends paid by U.S. corporations that have elections in effect under Code section 936 (possessions corporations). Dividends paid by possessions corporations are treated as foreign source.

Other exceptions to the general sourcing rule for interest income function as exemptions from U.S. tax for limited classes of income earned by foreign persons. For example, interest on foreign persons' U.S. bank accounts and deposits is treated as for-

eign source and, consequently, is not subject to U.S. withholding tax.

House Bill

The House bill generally repeals the special source rule for dividends and interest paid by 80/20 companies and interest paid by 80/20 individuals. Thus, the bill generally treats this income as U.S. source. The bill preserves two exceptions to U.S. sourcing, however: (1) it exempts from U.S. withholding tax interest paid to unrelated foreign persons by an 80/20 company engaged in an active trade or business in a foreign country so long as the interest is attributable to the active business, and (2) it allows unrelated U.S. financial institutions to continue to treat as foreign source interest received from 80/20 companies engaged in the active conduct of a foreign trade or business so long as the interest is attributable to the active business. The bill also retains present law for dividends paid by possessions corporations.

The House bill repeals for certain classes of income other special source rules of present law but retains a U.S. tax exemption for this income (i.e., the bill treats this income as U.S. source but excludes the income from U.S. withholding tax).

The provisions are generally effective for dividends and interest paid in taxable years beginning after 1985. Present law is retained for interest paid on debt obligations outstanding on December 31, 1985, and a targeted transitional rule for dividends is provided.

Senate Amendment

The Senate amendment provides that dividends and interest paid by an 80/20 company and interest paid by an 80/20 individual are sourced under a look-through rule that bases sourcing on the source of the income derived by the payor. The amendment follows the House bill in retaining present law for dividends paid by possessions corporations.

The amendment follows the House bill in repealing foreign sourcing, but retaining U.S. tax exemption, for certain classes of income paid by U.S. corporations.

The Senate amendment applies to interest and dividends paid in taxable years beginning after 1986.

Conference Agreement

The conference agreement generally follows the House bill in repealing the special sourcing rule of present law for dividends and interest paid by 80/20 companies, with modifications that incorporate the Senate amendment's look-through rules in certain cases (including application to 80/20 individuals). The conferees are of the view that the United States should generally retain primary tax jurisdiction over dividends and interest paid by its residents. Particularly with respect to dividends paid to U.S. persons, the conferees do not believe that dividends should be foreign source since the payor computes its foreign tax credit limitation, accounts for its foreign source income, and credits any foreign taxes imposed on that income at the payor level. The conferees believe that it is appropriate to treat interest that an 80/20 company pays its U.S. shareholders more favorably than dividends it pays them (by allowing flow-through of source for interest but not for dividends) because that interest, unlike the dividends, is likely to reduce foreign taxes that the United States may have to credit.

The conferees believe, however, that, in certain cases, U.S. sourcing of dividends and interest is not appropriate in the context of a U.S. corporation primarily engaged in an active trade or business in foreign jurisdictions (including U.S. possessions). The conference agreement provides that foreign shareholders of a U.S. corporation engaged in an active trade or business in foreign jurisdictions to which at least 80 percent of the corporation's gross income is attributable are subject to U.S. withholding tax on the percentage of the dividends paid by that corporation that the corporation's U.S. source gross income bears to the corporation's total gross income measured over the 3-year period preceding the year of payment. Interest received from a U.S. corporation that meets the above-described 80-percent active business requirement also retains foreign sourcing, as follows: unrelated U.S. and foreign recipients are to treat the entire interest payment as foreign source; related recipients must treat as U.S. source a percentage of the interest equal to the ratio of the corporation's U.S. source gross income to the corporation's total gross income (measured over the 3-year period preceding the year of payment). The agreement provides similar rules for interest paid by resident alien individuals engaged in active foreign businesses in foreign jurisdictions.

The conference agreement provides that the 80-percent active business requirement may be met by the U.S. corporation alone or, instead, may be met by a group including domestic or foreign subsidiaries in which the U.S. corporation owns a controlling interest (at least a 50-percent interest). In allowing attribution of a subsidiary's active foreign business to a controlling corporate shareholder, the conferees also intend that the character (i.e., foreign active business income) of the subsidiary's gross income be attributed to the corporate shareholder on the receipt of dividends for purposes of determining the percentage of dividends paid by the shareholder that are U.S. source. Thus, dividends received by a corporate shareholder from controlled subsidiaries, though treated as U.S. source, are to be characterized as foreign active business income in the same proportion that the controlled subsidiaries' foreign active business income bears to their total gross income for this purpose.

The agreement defines a related person as any individual, corporation, partnership, trust, or estate which owns a 10-percent interest in the payor, or in which the payor owns a 10-percent interest, as well as any 10-percent interest in a corporation, partnership, trust, or estate owned by the same persons that own a 10-percent interest in the payor.

The agreement's provisions are illustrated in the following example. Assume that a U.S. corporation and an unrelated foreign corporation jointly incorporate a second U.S. corporation to operate a mining business in a foreign country. The second U.S. corporation earns $450 of income, all of which is foreign source, from the mining operation in its first year and $50 of U.S. source income from investments in the United States. At the end of the year, the second corporation distributes a $100 dividend to each of its two shareholders. The first U.S. corporation in turn distributes $50 to its shareholders, all of whom are foreign residents. The agreement treats the $100 dividend to the first U.S. corporation as entirely U.S. source; the $100 dividend to the foreign shareholder is treated as 90 percent foreign source and as 10 percent U.S. source. Since the first U.S. corporation owns a controlling interest in the second U.S. corporation, the second corporation's active foreign business is attributed to the first corporation; therefore, assuming that the first corporation has no other income, the first corporation satisfies the agreement's 80-percent active foreign business requirement. Even though it is treated as U.S. source, the dividend from the second corporation retains the same character as the second corporation's income in determining the source of dividends paid by the first corporation. Accordingly, under the agreement, since the first corporation has no other income, 90 percent of the first corporation's dividends paid to its shareholders are foreign source and 10 percent are U.S. source. If, however, for example, the first U.S. corporation had $13 or more of non-foreign active business income in that year, the first corporation would not satisfy the 80-percent foreign active business requirement and would, therefore, pay all U.S. source dividends.

In adopting the new 80/20 standards, the conferees decided against requiring a minimum amount of dividends and interest paid to foreign persons to be subject to U.S. tax because of the agreement's minimum tax provision which ensures that profitable U.S. 80/20 corporations pay some U.S. tax (the provision that only allows 90 percent of creditable foreign taxes to offset the alternative minimum tax). The conferees are of the view that that provision achieves their policy objective: that profits flowing through U.S. corporations not escape all U.S. tax at the corporate and shareholder levels.

The conference agreement follows the House bill and the Senate amendment in (1) repealing foreign sourcing, but preserving U.S. tax exemption, for certain limited classes of income (e.g., interest on bank deposits), and (2) in retaining foreign sourcing for dividends paid by possessions corporations.

The agreement adopts the Senate amendment's general effective date but contains the House bill's grandfather rule for indebtedness outstanding on December 31, 1985 and contains a targeted transitional rule. In addition, the agreement provides that, in determining the amount of dividends paid to foreign shareholders and interest paid to related persons in 1987 that are U.S. source, a calendar year 80/20 company under present law is to use the base period 1984, 1985, and 1986 in computing its U.S. source portion. Interest paid to unrelated persons in 1987 is foreign source if paid by a corporation that is an 80/20 company under present law. The agreement provides that, for 1988 and subsequent years, the amount of dividends and interest that are treated as U.S. source under the agreement is to be determined by the payor's income measured over a base period beginning in 1987. Similar rules apply to 80/20 individuals (as defined under present law).

5. Allocation of Interest and Other Expenses (Other Than Research and Development)

Present Law

Under Treasury regulations, taxpayers generally allocate interest and other expenses between gross U.S. and gross foreign income on a separate, company-by-company basis, even if they are members of an affiliated group. The separate company allocation rule conflicts with a Court of Claims case, *International Telephone & Telegraph Corp.* v. *United States*, 79-2 USTC para. 9649, decided under the law in effect prior

to the effective date of the regulations, which indicates that expenses that are not definitely allocable against U.S. or foreign gross income should be deducted from gross income on a consolidated group basis.

Generally, under Treasury regulations, interest expense is allocated between U.S. and foreign income on the basis of the value of the taxpayer's assets that generate U.S. and foreign income. For affiliates, only stock basis is taken into account. In limited cases, interest on nonrecourse debt is directly allocated against the income from the asset financed by that debt.

Optional gross income methods for apportioning interest expense are also available under the regulations.

Taxpayers generally may take into account tax-exempt income and assets in allocating deductible interest and other expenses. Since tax-exempt income and assets are generally U.S.-based, taxpayers can derive a second tax benefit (higher foreign income and, hence a higher foreign tax credit limitation) from ownership of tax-exempt assets.

House Bill

The House bill generally requires allocation of interest expense as if an affiliated group consisted of one taxpayer. Except to the extent provided in regulations, the bill provides that a similar rule applies to other expenses not directly allocable to a class of income.

The House bill generally requires all corporate members of U.S. affiliated groups to allocate interest on a consolidated group basis but it permits some corporations that cannot join in filing consolidated returns to continue allocating expenses on a separate company basis. It permits financial institutions to allocate interest expense separately if their activities are independent of other members. The House bill modifies the asset method of allocating interest expense by looking to earnings and profits of foreign corporations as well as stock basis, and it eliminates the optional gross income methods for apportioning interest expense. Tax-exempt income and assets generating tax-exempt income are not taken into account for purposes of allocating interest expense. The House bill does not use the one-taxpayer method to allocate interest that is directly allocable under present law.

The House bill is generally effective for taxable years beginning after 1985. The allocation of interest on pre-existing loans is phased in over a three-year period. An alternative transitional rule permits up to a five-year phase-in of the consolidated group rule for recent loans, and a targeted transitional rule is provided.

Senate Amendment

The Senate amendment generally follows the House bill, with substantial modifications. Instead of basing interest expense allocation on expenses of a U.S. affiliated group only, as the House bill does, the Senate amendment provides that corporate members of affiliated groups must allocate interest between U.S. and foreign income on the basis of an expanded affiliated group, which includes foreign and possessions corporations. The Senate amendment follows the House bill with respect to the allocation of expenses other than interest.

In addition, the Senate amendment provides an exception for "qualified" debt (in general, unguaranteed debt) of lower-tier U.S. members. Upon a group-wide election, such debt of any U.S. member is treated as supporting only that member's assets. Under an equalization rule, other members' unqualified debt is allocated to foreign income to the extent necessary to reach the result under the general rule, if possible.

The Senate amendment (unlike the House bill) makes no exceptions to the interest allocation rules for financial institutions.

In connection with the consideration of interest expense of foreign affiliates, all assets of U.S., foreign, and possessions affiliates (including debt-financed assets) are taken into account for purposes of the asset method of allocating interest expense.

The Senate amendment requires the Secretary to prescribe regulations to apportion the expenses that are allocated to foreign source income among the various categories of foreign source income that are subject to separate foreign tax credit limitations.

The Senate amendment is generally effective for taxable years beginning after 1986, but the allocation of interest on existing loans is phased in over 4 years. Targeted transitional rules are provided.

Conference Agreement

In general

The conference agreement generally follows the House bill. Except to the extent provided in regulations, expenses other than interest that are not directly allocable or apportioned are to be allocated and apportioned as if all members of the affiliated group were one taxpayer. The agreement, like the Senate amendment, includes possessions corporations (sec. 936) in the group treated as one taxpayer. In addition, the agreement contains the Senate provision requiring regulations to allocate interest to income subject to the separate foreign tax credit limitations.

The conference agreement modifies the provision applying the one-taxpayer rule to banks for the purpose of interest expense allocation. The agreement makes it clear that all banks in a group are to be treated as one taxpayer (rather than each bank being treated as a separate taxpayer for this purpose).

The conference agreement extends, under regulations, the application of the one-taxpayer rule for expense allocation beyond the foreign tax credit limitations of Code section 904 to other provisions governing international taxation.

In the case of an integrated financial transaction such as a debt-financed acquisition of foreign currency debt obligations or similar arbitrage transactions, the agreement authorizes the Secretary to provide for the direct allocation of interest expense incurred on funds borrowed to acquire these assets against income from the assets involved in the integrated transaction, if appropriate. In addition, the conferees intend that the Secretary use the regulatory authority provided in the agreement to allocate interest expenses directly to interest or other passive income where such a direct allocation is necessary to prevent taxpayers from defeating the purposes of this provision.

When a taxpayer owns at least a 10-percent interest in a U.S. corporation but that corporation is not part of the group treated as one taxpayer, the taxpayer's basis in that stock is to be increased by the taxpayer's share of the earnings and profits of the U.S. corporation. This basis step-up conforms to that required for stock of foreign corporations whose dividends are eligible for the deemed-paid foreign tax credit.

Effective date and transitional rules

The conference agreement is generally effective for taxable years beginning after 1986. The conference agreement adopts the targeted transitional rules of the Senate amendment, one additional targeted transitional rule and one special rule. It adopts the general transition rules of the House bill, applying the three-, four-, and five-year transition rules for taxable years beginning after 1986 with respect to the amount of debt outstanding on November 16, 1985. For the purpose of this provision's phase-in rules for interest expense, only interest-bearing indebtedness is to be considered as debt outstanding on November 16, 1985. If a portion of a taxpayer's debt is not eligible for the benefits of a phase-in rule, the benefits of the rule are to apply to interest incurred with respect to each of the taxpayer's outstanding debt obligations on a pro rata basis.

The general three-year "phase-in" rule of the House bill applies to all the elements of the interest expense allocation (including the change to consider an affiliated group as one taxpayer, the elimination of the gross income method, and the modification of the asset method). This "phase-in" rule provides that for the first three taxable years of the taxpayer beginning after December 31, 1986, the bill's interest expense allocation rules apply only to an applicable percentage of interest expense paid or accrued by the taxpayer during the taxable year. That applicable percentage is determined with respect to an amount of indebtedness that does not exceed the amount outstanding on November 16, 1985. In the case of the first taxable year, the applicable percentage is 25 percent; in the case of the second taxable year, the applicable percentage is 50 percent; in the case of the third taxable year, the applicable percentage is 75 percent.

A separate transitional rule, adopted from the House bill, applies only to the rule requiring consideration of the consolidated group for determination of interest expense (new sec. 864(e)(1)). That rule considers only recently incurred indebtedness. In the case of an increase in the amount of a taxpayer's outstanding debt on May 29, 1985, over the amount of the taxpayer's outstanding debt on December 31, 1983, the interest expense rule that requires consideration of the consolidated group is phased in over five years. In the case of the first taxable year beginning after 1986, the rule applies only to 16-2/3 percent of the interest expenses paid or accrued by the taxpayer on the increased indebtedness. In the case of the second taxable year beginning after 1986, the rule applies to only 33-1/3 percent of the interest expenses paid or accrued by the taxpayer on the increased indebtedness, and so on, until the rule applies to 83-1/3 percent of interest expenses on the increased indebtedness in the fifth year beginning after 1986, and to all interest expense.

A similar separate four-year transitional "phase-in" rule (also adopted from the House bill) applies to certain increases in indebtedness incurred during 1983. The one-taxpayer rule will apply only to the applicable percentage of interest expenses paid or accrued on the increased indebtedness by the taxpayer during the taxable year. In the case of the first taxable year, the applicable percentage is 20; in the second year, 40; in the third year, 60; and in the fourth year, 80.

The three-, four-, and five-year phase-in rules apply to interest expenses paid or accrued with respect to an applicable amount of indebtedness. These rules allow present law to apply to a certain percentage of interest expenses on such indebtedness. The phase-in rules are not to apply indebtedness increases future years after decreasing to equal again the indebtedness outstanding on November 16, 1985. However, if, for example, a taxpayer refinances debt outstanding on November 16, 1985 by incurring new debt as it pays off old debt, and the documentation for the new debt specifically identifies the old debt being refinanced, the phase-in rules are intended to apply to the new debt.

In the case of a company that acquires another company after November 16, 1985, the debt of the target and the acquirer are to be aggregated in determining the amount of debt qualifying for transition relief. For example, if a corporation with $50 of debt outstanding on that date acquires on June 1, 1986, another corporation that had $20 of debt outstanding on November 16, 1985, the amount of debt of the group qualifying for transitional relief is $70.

6. Allocation of Research Expenses to Foreign Source Income

Present Law

A suspended Treasury Regulation (sec. 1.861-8) rule requires taxpayers with foreign source income from products in a product area in which the taxpayers do U.S. research to allocate part of their U.S. research expense against the foreign source income. In 1981, the Congress suspended this rule for two years, so that all U.S. research expenditures generally offset U.S. source income. In 1984, the Congress extended the moratorium for two additional years.

House Bill

The House bill provides that taxpayers are to apportion 50 percent of their U.S.-incurred research expense to domestic income and apportion the remainder on the basis of gross sales or gross income. The bill is generally effective for taxable years beginning after August 1, 1985 and on or before August 1, 1987.

Senate Amendment

The Senate amendment follows the House bill except that it requires taxpayers to apportion 75 percent of their U.S.-incurred research expense to domestic income and apportion the remainder on the basis of gross sales or gross income. Since the Consolidated Omnibus Budget Reconciliation Act of 1985 extended the regulation moratorium one additional year, the Senate amendment is effective for taxable years beginning after August 1, 1986 and on or before August 1, 1987.

Conference Agreement

The conference agreement follows the House bill but is effective for taxable years beginning after August 1, 1986 and on or before August 1, 1987.

Because of the importance of U.S.-based research activity, the conferees encourage the tax-writing committees to continue to study whether any additional permanent tax incentives for U.S. research might be appropriate. The conferees consider it important that the relative equity and efficiency of alternative tax incentives be fully analyzed before any decision is made to adopt a permanent tax incentive. The conference agreement does not reflect a judgment by the conferees that any provision of the existing regulation is necessarily correct or incorrect. It is anticipated that the Treasury Department will expeditiously pursue a permanent resolution of the allocation issue. The conferees do, however, consider it important that the Treasury Department reexamine its regulations in light of concerns expressed by the tax-writing committees of both Houses. Moreover, the conferees expect that the Treasury Department, in connection with the U.S. treaty process, will resolve any incompatibility with foreign tax systems that may arise if the regulations were to go into effect.

C. U.S. Taxation of Income Earned Through Foreign Corporations

1. Tax Haven Income Subject to Current Tax

Present Law

a. Tax haven income generally

In general, no current U.S. tax is imposed on the foreign income of a foreign corporation, and a U.S. investor in a foreign corporation is taxed only when income is distributed to him. However, the deferral of U.S. tax on the income of U.S.-owned foreign corporations does not apply to certain kinds of income that are suited to tax haven operations. Under the Code's subpart F rules (secs. 951-964), when a U.S.-controlled foreign corporation earns this tax haven income, the United States will generally tax the corporation's 10-percent U.S. shareholders currently.

Foreign personal holding company income

Subpart F income includes foreign base company income. One type of base company income is foreign personal holding company (FPHC) income, consisting generally of several types of passive income. Some passive income is not included in FPHC income, however.

Foreign base company shipping income

Subpart F income also includes foreign base company shipping income (which excludes shipping income reinvested in shipping operations).

Banking exceptions

Subpart F income does not generally include interest, dividends, or securities gains derived from unrelated persons by banking, financing or similar businesses, or certain interest derived by such businesses from related persons engaged in the conduct of a banking, financing, or similar business.

Insurance income

Other categories of subpart F income include certain income from the insurance of U.S. risks and foreign base company income from certain sales and services (including insuring related persons' third-country risks). Foreign corporations' earnings from insuring foreign risks of unrelated persons are not subject to current U.S. tax under subpart F. Interest, dividends, and securities gains received by foreign insurance companies from the investment of unearned premiums and reserves are not subject to current tax under subpart F either.

Formed or availed of to avoid tax

Current U.S. tax is generally not imposed under subpart F if the taxpayer establishes that a U.S.-controlled foreign corporation was not formed or availed of to avoid tax.

Controlled partnerships

Controlled partnerships are not treated as related persons for purposes of the subpart F rules that tax certain transactions with related persons.

Deficits

Under the "chain deficit" rule, if a controlled foreign corporation has a current deficit in earnings and profits, then another commonly controlled foreign corporation in the same chain of ownership may have its current earnings and profits reduced for subpart F purposes to take into account that deficit.

A controlled foreign corporation's subpart F income cannot exceed its earnings and profits for the year. Under this rule, current deficits in earnings and profits in any income category, including nonsubpart F income categories, reduce subpart F earnings and profits and, thus, subpart F income. Under the same provision, a controlled foreign corporation's deficits in earnings and profits from prior years reduce its subpart F income in the current year.

b. Determination of U.S. control of foreign corporations

The rules that impose U.S. tax currently on tax haven income of a foreign corporation apply only if a U.S. ownership requirement is satisfied: more than 50 percent of the voting power of the corporation (more than 25 percent in the case of certain insurance companies) must belong to U.S. persons each of which owns at least 10 percent of the voting power. Older, similar, but less extensive rules requiring current U.S. taxation—the foreign personal holding company rules (Code secs. 551-558)—apply only if more than 50 percent of the value of the corporation belongs to five or fewer U.S. individuals.

c. De minimis and full inclusion rules

The rules that impose current U.S. tax on foreign base company income of a foreign corporation apply only if certain threshold requirements are met. One such requirement is that 10 percent or more of the foreign corporation's gross income must be foreign base company income. If more than 70 percent of the foreign corporation's gross income is foreign base company income, all of its gross income is treated as foreign base company income.

d. Possession-chartered corporations

A corporation chartered in a U.S. possession is not treated as a controlled foreign corporation if at least 80 percent of its income is derived in the possessions and at least 50 percent of its gross income is from certain active businesses; thus, U.S. tax on its tax haven income is deferred.

House Bill

a. Tax haven income generally

Foreign personal holding company income

The House bill adds several passive types of income to foreign personal holding company (FPHC) income for subpart F purposes.

Sales of property which does not generate active income

The House bill treats as FPHC income for subpart F purposes gains from the sale of any property that gives rise to passive types of income.

Commodities transactions

The House bill treats as FPHC income, income from commodities transactions generally (subject to exceptions for hedging transactions and for active producers, processors, merchants, or handlers of commodities).

Foreign currency gains

Foreign currency gains generally (with a business needs exception) are subpart F FPHC income under the House bill.

Income equivalent to interest

No provision.

Passive leasing income

The House bill clarifies that passive leasing income generally is subpart F FPHC income.

Related person exceptions for interest, rents, and royalties

The House bill treats as subpart F FPHC income payments from related corporations in the same foreign country that reduce the subpart F income of the payors.

Same country dividend exception

No provision.

Base company rents and royalties

The House bill treats as subpart F FPHC income rents and royalties routed through a related party in a country that is neither the country of creation nor of use of the rented or licensed property.

Foreign base company shipping income

The House bill repeals the reinvestment exception so as to tax shipping income currently.

Banking exceptions

The subpart F banking exceptions are repealed.

Insurance income

The House bill amends the definition of tax haven insurance income to include income from the insurance of unrelated persons' risks outside of the insuring company's country of incorporation. In addition, it repeals the 5-percent de minimis exception for income from the insurance of U.S. risks, and repeals the exceptions for investment income from unearned premiums and reserves.

Formed or availed of to avoid tax

The House bill replaces the subjective tax-avoidance test with an objective test that looks to the rate of foreign tax paid by a U.S.-controlled foreign corporation, allowing the IRS to determine whether income (otherwise subject to subpart F) should not be treated as tax haven income.

Controlled partnerships

The House bill treats a partnership that is controlled by a controlled foreign corporation or by the person controlling the foreign corporation as a related person for purposes of subpart F.

Effective date

The foregoing subpart F amendments apply to taxable years of foreign corporations beginning after 1985.

b. Determination of U.S. control of foreign corporations

The House bill amends the U.S. ownership requirements for imposition of the anti-tax haven and foreign personal holding company rules. For the anti-tax haven rules to apply, 50 percent or more (rather than more than 50 percent) of the vote or value (not merely vote) of a foreign corporation must belong to 10-percent U.S. shareholders. Similarly, for the foreign personal holding company rules to apply, 50 percent or more (rather than more than 50 percent) of the vote or value (not merely value) of a foreign corporation must be owned by five or fewer U.S individuals.

The provision generally applies to taxable years beginning after 1985. The change to the 50-percent-or-more test does not apply to taxable years of foreign corporations beginning during 1986.

c. De minimis and full inclusion rules

The House bill applies the de minimis and 70-percent tests for foreign base company income on the basis of net income instead of gross income. The change is effective for taxable years of foreign corporations beginning after 1985.

d. Possession-chartered corporations

The exception to the anti-tax haven rules for corporations chartered in the possessions is repealed. The repeal applies to taxable years beginning after 1985. Under a transition rule, deficits in earnings and profits accrued, and property acquired, in taxable years beginning before 1986 are exempt from the application of the anti-tax haven rules that would otherwise result from the repeal of the exception.

Senate Amendment

a. Tax haven income generally

Foreign personal holding company income

Like the House bill, the Senate amendment adds several passive types of income to FPHC income for subpart F purposes. However, the Senate amendment's additions differ from the House bill's in some respects. Also, the Senate amendment exempts from subpart F FPHC treatment certain mining-related dividends that are subpart F income under present law.

Sales of property which does not generate active income

The Senate amendment provides that FPHC income includes gain from the sale of any noninventory property that gives rise to passive types of income or does not give rise to any income, with an allowance for offsetting losses from such sales.

Commodities transactions

The Senate amendment generally follows the House bill but provides an allowance for offsetting losses from commodities transactions.

Foreign currency gains

Foreign currency gains from transactions in financial assets and liabilities (with a business needs exception and an allowance for offsetting foreign currency losses) are subpart F FPHC income under the Senate amendment.

Income equivalent to interest

The Senate amendment provides that income equivalent to interest is subpart F FPHC income.

Passive leasing income

The Senate amendment is the same as the House bill.

Related person exceptions for interest, rents, and royalties

The Senate amendment is the same as the House bill.

Same country dividend exception

The same country exclusion of present law is extended to dividends attributable to specified mining-related income from a less than 50-percent owned corporation.

Base company rents and royalties

No provision.

Foreign base company shipping income

No provision.

Banking exceptions

The Senate amendment provides that the banking exceptions from subpart F apply only to bona fide, active banking operations.

Insurance income

No provision.

Formed or availed of to avoid tax

No provision.

Controlled partnerships

The Senate amendment is the same as the House bill.

Effective date

The foregoing subpart F amendments apply to taxable years of foreign corporations beginning after 1986.

b. Determination of U.S. control of foreign corporations

The Senate amendment retains the more-than-50-percent tests of present law and adopts the vote-or-value rules of the House bill.

The provision applies to taxable years beginning after 1986. Under a transition rule, deficits in earnings and profits accrued, and U.S. property acquired, in taxable years beginning before 1987 are not taken into account in applying the anti-tax haven rules. A special rule is provided for determining the portion of certain trust distributions that has been previously taxed under subpart F.

c. De minimis and full inclusion rules

The Senate amendment reduces the de minimis test for foreign base company income from 10 percent or more of gross income to 5 percent or more of gross income. It does not amend the full inclusion rule. This provision is effective for taxable years of foreign corporations beginning after 1986.

d. Possession-chartered corporations

The Senate amendment is the same as the House bill, except that it is effective for taxable years beginning after 1986 and, under a transition rule, deficits in earnings and profits accrued, and property acquired, in taxable years beginning before 1987 are not taken into account in applying the anti-tax haven rules.

Conference Agreement

a. Tax haven income generally

Foreign personal holding company income

Sales of property which does not generate active income

The conference agreement generally follows the Senate amendment. As under the House bill, however, stock and securities gains of banking, financing, insurance, and similar businesses are subpart F FPHC income under the agreement. The conferees intend that income from commodity and currency transactions that are within the scope of the special subpart F provisions for such transactions (discussed immediately below) will not be subject to tax under this provision. Thus, for example, a transaction that would be subject to tax under the special rule for commodities transactions but for the active producers' exception to that rule is not subject to tax under this provision. The provision is also not intended to apply to gain on the sale of land used by the seller in an active trade or business of the seller at the time of the sale.

Commodities transactions

The conference agreement generally follows the Senate amendment. The agreement clarifies that income from forward and similar transactions in commodities is subject to the new subpart F provision. Income from foreign currency transactions that are not Code section 988 transactions (for example, a position marked to market under Code section 1256) may be subject to current taxation under this provision. For-

eign currency gains attributable to section 988 transactions, however, are to be treated exclusively under the special subpart F provision dealing with foreign currency gains. Accordingly, the business needs exception applicable to foreign currency gains attributable to section 988 transactions will not be limited by the subpart F rules on commodities transactions.

Following the Senate amendment, the agreement excludes from subpart F FPHC income active business gains and losses from the sale of commodities by a controlled foreign corporation substantially all of the business of which is as an active producer, processor, merchant, or handler of commodities. For this purpose, active business gains and losses from commodity sales include gains and losses from financial transactions which constitute bona fide hedging transactions integrally related to a principal business of trading in physical commodities.

No inference is intended as to the types of commodity transactions that, under present law, may be considered futures transactions in a commodity on or subject to the rules of a board of trade or commodity exchange.

Foreign currency gains

The conference agreement follows the Senate amendment.

Active foreign currency gains and losses arising from a controlled foreign corporation's business as an active foreign currency dealer are excluded from subpart F FPHC income under the business needs exception to this provision.

Income equivalent to interest

Following the Senate amendment, the conference agreement treats income equivalent to interest as FPHC income for subpart F purposes. For this purpose, income equivalent to interest includes commitment fees for the actual lending of money.

Income equivalent to interest is treated as subpart F FPHC income (and passive income, for separate limitation purposes) to prevent taxpayers from continuing (notwithstanding the agreement's separate limitation for passive income and other amendments to the definition of subpart F FPHC income) to shelter passive interest-type income from current U.S. tax by rearranging the form of offshore passive investments so that the income they generate is not traditional interest income. Since the agreement repeals present law's subpart F exceptions for banking and insurance income, the conferees can see no sound policy reason for favoring activities which generate income equivalent to interest over activities of banks and insurance companies.

Passive leasing income

The conference agreement follows the House bill and the Senate amendment.

Related person exception for interest, rents, and royalties

The conference agreement follows the House bill and the Senate amendment.

Same country dividend exception

The conference agreement follows the Senate amendment except that the agreement applies only to the first five taxable years of the specified foreign corporation beginning after 1986.

Base company rents and royalties

The conference agreement does not include the House bill provision.

Foreign base company shipping income

The conference agreement follows the House bill.

Banking exceptions

The conference agreement follows the House bill except that tax deferral is preserved, to the extent otherwise available under present law, for interest derived in connection with certain export sales. Such interest must be derived in the conduct of a banking business from financing the sale (or other disposition) for use or consumption outside the United States of any property which is manufactured, produced, grown, or extracted in the United States by the interest recipient or a related person, and not more than 50 percent of the fair market value of which is attributable to products imported into the United States. For this purpose, the fair market value of any property imported into the United States is its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation. A related person is defined for this purpose in the same manner as it is defined generally for subpart F purposes (Code sec. 954(d)(3) as amended by the conference agreement; *see* discussion of controlled partnerships below).

Insurance income

The conference agreement incorporates, with modifications, the House bill provisions amending the definition of tax haven insurance income, repealing the 5-percent de minimis exception for income from U.S. risk insurance, and repealing the exceptions for investment income from unearned premiums and reserves. The conference agreement makes all tax haven insurance income eligible for the general subpart F de minimis exception and 70-percent full inclusion rule (Code sec. 954(b)(3), as amended by the conference agreement; discussed at c., below). It also contains a special rule, discussed more fully below, which reduces subpart F's U.S. ownership requirements for current taxation of a foreign corporation's income, in the case of certain related person insurance income. The purpose of this rule is to subject to current U.S. tax the related person insurance income of offshore "captive" insurance companies that avoid such tax under present law because, for example, their U.S. ownership is relatively dispersed, that is, no more than 25 percent of their voting stock is held by 10-percent U.S. shareholders.

Generally, a captive insurance company is considered to be a company organized by one or more persons primarily to provide insurance protection to its owners or persons related to its owners. The new rule will limit the unintended tax advantages presently received by U.S. taxpayers that jointly own, with a number of other persons, offshore captive insurers.

One of the major U.S. tax benefits presently claimed by certain offshore captives is exemption from current taxation under subpart F. In addition, premiums received from U.S. persons by foreign captives are often exempt from the U.S. excise tax on insurance premiums paid to foreign insurers and reinsurers under U.S. income tax treaties, such as that with Barbados. The Barbados treaty, which generally became effective in 1984, waives the insurance excise tax, notwithstanding that Barbados itself does not tax insurance companies licensed under its 1983 Exempt Insurance Act. Thus, income earned by Barbados-based captives with relatively dispersed U.S. ownership may escape current tax anywhere in the world.[1]

Another tax advantage of offshore captive insurance arrangements is that premiums paid by U.S. taxpayers to offshore captives with a relatively large number of owners have been ruled currently deductible in some instances, while no current tax is imposed on that premium income in the hands of the captive. While captive insurance arrangements are self-insurance arrangements, contributions to which are not deductible,[2] in Rev. Rul. 78-338 (1978-2 C.B. 107), the IRS ruled that amounts paid by a domestic petroleum corporation to a foreign insurance company that provided insurance against certain petroleum industry risks only for its 31 unrelated shareholders and their subsidiaries and affiliates were deductible as insurance premiums. In addition to the fact that the 31 shareholders/insureds of the insurance company were unrelated, the ruling indicated that no one owned a controlling interest and no one's risk coverage could exceed 5 percent of the total risks insured. The ruling concluded that such an arrangement allowed the economic risk of loss to be shifted and distributed among the shareholders who comprised the insured group so that it constitutes insurance. Similarly, in *Crawford Fitting Co.* v. *United States*, 606 F. Supp. 136 (N.D. Ohio 1985), sufficient risk-shifting was found for a deduction to be allowed where a risk was shifted to an insurance company which was only

[1] The unratified U.S. income tax treaty with Bermuda (signed on July 11, 1986) also waives the insurance excise tax, notwithstanding the absence of any Bermuda income tax. Were the Bermuda treaty to be ratified, captives in Bermuda with relatively dispersed U.S. ownership could escape all current tax also. In a letter to the Secretary of the Treasury, dated July 15, 1986, the Chairman of the Ways and Means Committee expressed "serious concerns about both the substance and the procedures followed by the Treasury Department in negotiating this proposed tax treaty." The letter states that the "proposed treaty, rather than preventing double taxation of income, seems to guarantee that significant sums of income will escape any taxation in either jurisdiction . . . The proposal would bless U.S.-owned Bermuda insurance companies, which, in some cases, through the use of spread captive devices, now may be avoiding all tax other than the excise tax on income earned by insuring U.S. risks. In addition, the U.S. premium payors may be deducting the premiums from U.S. taxable income. Thus, the proposed treaty, by exempting these insurance premiums from U.S. tax, would eliminate not double taxation but any taxation."

[2] In Rev. Rul. 77-316 (1977-2 C.B. 53), the IRS ruled that the amounts described as premiums paid by a domestic corporation and its domestic subsidiaries to the parent's wholly owned foreign subsidiary are not deductible premiums if the subsidiary does not also insure risks of insureds outside its own corporate family. The IRS concluded that because the insured and the "insurance" subsidiary (though separate corporate entities) represent one economic family, those who bear the ultimate economic burden of the loss are the same persons who suffer the loss. Thus, the required risk-shifting and risk-distribution of a valid insurance transaction are missing. This position of the Service was favorably cited by the Ninth Circuit in *Carnation Co.* v. *United States*, 640 F.2d 1010 (9th Cir. 1981), *cert. denied*, 454 U.S. 965. In the recent cases of *Humana, Inc. and Subsidiaries* v. *Commissioner*, 50 T.C.M. 784 (1985) and *Mobil Oil Corp.* v. *United States*, 8 Ct. Cl. 555 (1985), the courts have advanced a more developed theory and indicated that the primary criterion in distinguishing a captive from a true insurance arrangement is the absence of risk-shifting. So long as a wholly owned subsidiary of the taxpayer bears the taxpayer's risk of loss, there has not been sufficient risk-shifting to constitute true insurance, premium payments for which could be deductible.

partially commonly controlled (that is, the insurer was 80-percent owned by four separate corporations, in each of which the individual 100-percent owner of the insured corporate taxpayer had an interest).

The conferees do not believe that U.S. persons utilizing offshore captive insurance companies should be able to avoid current U.S. tax on the related person insurance income of these companies simply by spreading the ownership among a number of persons. Accordingly, the conference agreement provides that tax haven insurance income (as that category of income is expanded by the conference agreement) that is related person insurance income generally will be taxable currently under subpart F to an expanded category of U.S. persons. For purposes of taking into account such income under subpart F, the U.S. ownership threshold for controlled foreign corporation status is reduced to 25 percent or more. Any U.S. person (as defined for subpart F purposes by existing Code section 957(d)) who owns or is considered to own (under the rules of existing Code section 958(a)) any stock in a controlled foreign corporation, whatever the degree of ownership, is treated as a U.S. shareholder of such corporation for purposes of this 25-percent U.S. ownership threshold and exposure to current tax on the corporation's related person insurance income.

Related person insurance income is defined for this purpose to mean any insurance income attributable to a policy of insurance or reinsurance with respect to which the primary insured is either a U.S. shareholder (as defined above) in the foreign corporation receiving the income or a person related to such a shareholder. A related person is defined for this purpose in the same manner as it is for subpart F purposes generally (Code sec. 954(d)(3), as amended by the conference agreement). As indicated above, the definition of tax haven insurance income under the conference agreement follows the House bill. Thus, the new rule for captive insurers applies to investment income as well as to premium income attributable to related person insurance. Related person insurance income includes income attributable to policies of reinsurance issued by a foreign corporation to U.S. shareholders (as defined above) or persons related to such shareholders that previously insured the risks covered by such policies. It also includes income attributable to officers' or directors' insurance where the U.S. shareholders of the foreign corporation receiving such income (or persons related to such shareholders) directly or indirectly pay the premiums and the insureds are officers or directors of the U.S. shareholders (or persons related to such shareholders).

The agreement provides three exceptions to the new subpart F rule. First, related person insurance income of a foreign corporation will not be currently taxable by reason of the new rule if the corporation's gross related person insurance income for the taxable year is less than 20 percent of its gross insurance income for the year. Insurance income is defined for this purpose as it is generally for subpart F purposes under the agreement, except that the exclusion of income attributable to same-country risks does not apply. This rule excepts from the operation of the provision foreign insurance companies with 25-percent or more U.S. ownership that do not earn a significant proportion of related person insurance income.

Second, related person insurance income of a foreign corporation will not be currently taxable under the new provision if less than 20 percent of the total combined voting power of all classes of stock of the corporation entitled to vote and less than 20 percent of the total value (both stock and policies) of the corporation during the taxable year are owned (directly or indirectly) by persons who are the primary insureds under any policies of insurance or reinsurance issued by the corporation, or by persons related to such persons. A related person is defined for this purpose in the same manner as it is for subpart F purposes generally (Code sec. 954(d)(3), as amended by the conference agreement). This exception serves a purpose similar to that served by the exception for companies with de minimis amounts of related person insurance income.

Third, the agreement provides that a foreign corporation, the related person insurance income of which would otherwise be subject to tax under subpart F under the new rules, may elect instead to treat such income as effectively connected with the conduct of a U.S. trade or business, taxable under Code section 882. The election is to be made at such time and in such manner as the Secretary may prescribe. The election is effective in the year made and in all future years. It is revocable only with the Secretary's consent. To make such an election, the foreign corporation must waive any U.S. income tax treaty benefits with respect to its related person insurance income. The election is not effective if the electing corporation fails to meet such requirements as the Secretary shall prescribe to ensure that the tax imposed on its related person insurance income is paid. Any tax imposed on an electing corporation's related person insurance income may, if not paid by that corporation, be collected from the corporation's U.S. shareholders.

Electing offshore captives will continue to be taxed currently on their related person insurance income, since effectively connected income is taxed currently. However, the election generally will allow them to receive the same tax benefits as similarly situated U.S. insurers with respect to related person insurance activity. Thus, electing offshore captives that incur net operating losses from meeting large claims will be able to carry those losses back 3 years and forward 15 years under the net operating loss carryover rules (Code sec. 172). The availability of loss carryovers may be of particular benefit to insurers of those risks with respect to which the tax law may not permit deductions for reserves. The conferees have adopted the election primarily with such foreign insurers in mind.

The new subpart F rules for captive insurers apply to both stock and mutual insurance companies. For this purpose, the policyholders of a mutual insurance company are to be treated as its shareholders. The rules are to be adapted in appropriate respects for application to mutual companies, under regulations.

The conferees recognize that foreign mutual insurance companies that insure a significant number of U.S. persons may technically have significant amounts of related person insurance income (as defined for purposes of the agreement) solely because such companies are formally owned by their policyholders. However, the conferees understand that, in the typical non-captive case, such income derived by the insurance company is effectively connected with the conduct of a U.S. trade or business and, consequently, under present law, is taxed by the United States; the reason is that most foreign mutuals with a significant number of U.S. policyholders have permanent establishments in the United States. Under existing Code rules, subpart F income generally does not include U.S. source income that is effectively connected with the conduct of a U.S. trade or business (Code sec. 952(b)). Therefore, so long as they continue to do business in the United States through permanent establishments, it is anticipated that the income of these foreign mutual companies attributable to U.S. insureds generally will not be taxed under the new subpart F provision for captive insurers.

Premiums received by a captive insurer that is subject to the new subpart F rules, like premiums received by an offshore insurer that is subject to present law subpart F, generally remain subject to the excise tax on insurance premiums paid to foreign insurers, absent a treaty exemption. However, the excise tax does not apply to income treated as effectively connected with the conduct of a U.S. business under the "effectively connected" election. This is consistent with the present law exemption from the excise tax generally accorded to premiums that are effectively connected with the conduct of a U.S. business.

The agreement requires the Secretary to prescribe such regulations as may be necessary to carry out the purposes of the new subpart F rules for captive insurers, including regulations preventing the avoidance of the new rules through cross-insurance arrangements or otherwise. Assume, for example, that a foreign company is owned by 35 U.S. persons unrelated to one another but engaged in similar businesses. The company's primary business is insuring against certain risks of those U.S. persons. Under the agreement, it generally will have related person insurance income in profitable years, taxable currently to its U.S. owners.

Assume, however, that the captive insurance arrangement is modified as follows: The foreign company is liquidated and two new foreign companies are organized. One of the companies is owned by 18 of the U.S. persons that formerly owned the liquidated company. The other new company is owned by the other 17 persons that formerly owned the liquidated company. The primary business of the first company is insuring against certain risks of the 17 owners of the second company. The primary business of the second company is insuring against certain risks of the 18 owners of the first company.

The conferees believe that such an arrangement is essentially equivalent to a captive insurance arrangement. It can be used to achieve a similar degree of cooperative risk-sharing among similarly situated members of an industry. The conferees do not believe that U.S. shareholders should be able to obtain the deferral of U.S. tax on income attributable to insurance of risks of U.S. persons who are in turn insuring the risks of those shareholders. Accordingly, under the regulations, the income of the two companies in the example attributable to the insurance business described is to be treated as related person insurance income. The existence of a single foreign entity subject to the general subpart F rules for captives prior to the creation of such a cross-insurance arrangement is not necessary to support a finding that such an arrangement was made or availed of to avoid the captive insurer rules.

Formed or availed of to avoid tax

The conference agreement follows the House bill.

Controlled partnerships

The conference agreement follows the House bill and the Senate amendment.

Deficits

The conference agreement repeals the chain deficit rule (Code sec. 952(d)).

It also limits the present law rule (the "accumulated deficit rule") permitting a controlled foreign corporation to reduce subpart F income by the sum of its prior year deficits in earnings and profits (Code sec. 952(c)(1) & (2)). Subject to the conditions described below, the agreement provides that foreign base company shipping income, foreign base company oil related income, subpart F insurance income, or foreign personal holding company income may be reduced by accumulated deficits in earnings and profits attributable to activities that give rise to foreign base company shipping income, foreign base company oil related income, subpart F insurance income, or foreign personal holding company income, respectively. Other categories of subpart F income may not be reduced by accumulated deficits under the agreement. Subpart F insurance income may be reduced under the rule just described only if the controlled foreign corporation receiving such income was predominantly engaged in the active conduct of an insurance business (within the meaning of new Code sec. 904(d)(2)(C)(ii), discussed at A.1.b., above) in both the year in which the income was earned and the year in which the deficit arose. Foreign personal holding company income may be reduced under this new rule only if the controlled foreign corporation receiving such income was predominantly engaged in the active conduct of a banking, financing, or similar business (within the meaning of new Code sec. 904(d)(2)(C)(ii), discussed at A.1.b., above) in both the year in which the income was earned and the year in which the deficit arose. Accumulated deficits may be used only once. To be eligible for use under the rule, an accumulated deficit must arise in a year for which the foreign corporation incurring such deficit is a controlled foreign corporation. As under present law, accumulated deficits that cannot be utilized in one year may be carried over indefinitely for possible use in later years. Under the accumulated deficit rule, as modified, accumulated deficits for taxable years beginning before 1987 may not be carried forward to reduce subpart F income.

A U.S. shareholder in a controlled foreign corporation may reduce its subpart F inclusion with respect to that corporation only by the shareholder's pro rata share of accumulated deficits. A U.S. shareholder's pro rata share of any accumulated deficit is to be determined under rules similar to the rules which limit subpart F inclusions to a shareholder's pro rata share of subpart F income (Code sec. 951(a)(2)), for whichever of the following yields the smaller share: the close of the current taxable year or the close of the year in which the deficit arose. Under this rule, then, accumulated deficit use will be limited by the size of a U.S. shareholder's interest in a controlled foreign corporation in the current year and in the year in which the deficit was incurred. Under present law, subpart F and section 1248 inclusions are similarly limited by the size of a shareholder's interest in the controlled foreign corporation when the relevant earnings and profits arose.

Under the agreement, then, pre-acquisition deficits of an acquired corporation to which a controlled foreign corporation in the acquiring group succeeds will not reduce post-acquisition subpart F income of the controlled foreign corporation's shareholders (except to the extent that such shareholders had ownership interests in the acquired corporation when the deficits arose). Similarly, pre-merger deficits of a foreign corporation merged into a controlled foreign corporation will not reduce post-merger subpart F income of the controlled foreign corporation's shareholders (except to the extent that such shareholders had ownership interests in the merged corporation when the deficits arose). The conferees expect the Secretary to issue regulations implementing the above rules, including regulations limiting the use of deficits in connection with other reorganizations.

The agreement retains the present law rule permitting current deficits in earnings and profits in any income category, including nonsubpart F income categories, to reduce subpart F income for the year (Code sec. 952(c)). However, if subpart F income of a foreign corporation is reduced by reason of this rule, the agreement provides that any excess of the earnings and profits of that corporation over its subpart F income in any subsequent taxable year is to be recharacterized as subpart F income under rules similar to the agreement's separate limitation loss recharacterization rule (*see* A.4., above) and, thus, is to be currently included in the income of the corporation's U.S. shareholders in the year of recharacterization.

Under this recharacterization provision, subpart F-type income that is recaptured for foreign tax credit limitation purposes under the separate limitation loss recharacterization provision is effectively recaptured for subpart F purposes as well. For example, income of a controlled foreign corporation that is passive after application of the separate limitation loss recharacterization provision is also subpart F FPHC income currently taxable to the corporation's U.S. shareholders. The subpart F recharacterization provision thus helps to integrate subpart F and the separate foreign tax credit limitation rules.

The conference agreement restricts the use of deficits to reduce subpart F income for several reasons. First, as discussed in greater detail at A.1.e., above, the conferees have sought to simplify the operation of the separate limitation look-through rules for controlled foreign corporations by conforming them and the subpart F rules more closely. The conferees do not believe that separate limitation income received by controlled foreign corporations should be eliminated for foreign tax credit limitation purposes by deficits of other controlled foreign corporations, prior year deficits in other income categories, or current year deficits in other income categories. Preserving such separate limitation income for foreign tax credit limitation purposes without a corresponding preservation of such income for subpart F purposes would substantially complicate the application and administration of the look-through rules. This is particularly the case with respect to the separate limitations for passive income and shipping income since passive income and shipping income are defined for separate limitation purposes by reference to the subpart F categories of FPHC income and foreign base company shipping income, respectively.

Second, the conferees believe that the present law deficit rules allow U.S. taxpayers operating abroad through controlled foreign corporations to shelter too much tax haven income from current U.S. tax. Under the chain deficit rule of Code section 952(d) (as interpreted under regulations), a loss incurred anywhere in a chain of controlled foreign corporations eliminates U.S. tax on an equal amount of income earned elsewhere in the chain even though the loss may be in a nonsubpart F income category or bear little or no relation to the income it offsets. This rule is inconsistent with the "hopscotch" rule, which requires that subpart F income of a controlled foreign corporation be included currently in the gross income of the corporation's ultimate U.S. owners without regard to the income of any intermediate foreign corporation interposed between those owners and the controlled foreign corporation.

Similarly, the accumulated deficit rule of section 952(c) presently allows a controlled foreign corporation to avoid tax on subpart F income by offsetting that income with prior year deficits it incurred in nonsubpart F or unrelated income categories. Were this rule not modified, taxpayers could in many cases shelter from U.S. tax income from passive investments by moving those investments into controlled foreign corporations with prior year deficits.

The conferees note that deficits in earnings and profits incurred by foreign corporations before their acquisition by a U.S. corporation may be used to shelter post-acquisition subpart F income of the U.S. corporation from tax under present law, unless the IRS can show (under Code sec. 269) that the acquisition was made to evade or avoid income tax. Loss trafficking with respect to foreign corporations is not restricted by any rule corresponding to the special anti-loss trafficking rule (Code sec. 382) applicable to U.S. corporations. The agreement's repeal of the chain deficit rule and modifications to the accumulated deficit rule limit the use of acquired deficits.

A third factor in the conferees' decision to repeal the chain deficit rule is its inconsistency with the present law rule requiring recognition of gain upon the incorporation of a foreign loss branch (Code sec. 367(a)(3)(C)). That rule effectively prevents taxpayers that reduce their worldwide income by using losses incurred by a foreign branch from deferring U.S. tax on the foreign enterprise's subsequent profits while incorporating it tax-free when it turns profitable. Similar current utilization of losses, followed by deferral of tax on income, can be achieved, however, using controlled foreign corporations, as a result of the chain deficit rule.

Another problem with the chain deficit rule that has been brought to the conferees' attention is the ability that the provision confers upon some taxpayers effectively to utilize the same deficits twice. Assume, for example, that a U.S. corporation controls two foreign corporations. One of these foreign corporations owns the other. One of the foreign corporations (the "loss corporation") has a current deficit in earnings and profits of $100. To fund that deficit, the U.S. corporation makes an additional $100 contribution to the loss corporation's capital. That capital contribution increases by $100 the U.S. corporation's basis in its stock in the loss corporation. Under the chain deficit rule, the $100 deficit reduces the second controlled foreign corporation's currently taxable subpart F income in the year in which the deficit arises. In the following

year, the U.S. corporation's stock in the loss corporation becomes worthless. Under the rules governing the deduction of losses for worthless securities (Code sec. 165(g)), that stock is a capital asset and the U.S. corporation may therefore deduct in full its basis in the stock, including the $100 component of that basis corresponding to the prior year's additional capital contribution. The loss corporation's $100 deficit in earnings and profits thus reduces the U.S. corporation's taxable income twice, once in the first year under the chain deficit rule, and then again in the following year under the rule allowing a loss deduction for worthless securities. A similar result may be achieved when debt is used to fund a controlled foreign corporation's loss and is later written off.

The application of the accumulated deficit rule, as modified by the agreement, is illustrated in the following three examples: Assume that a controlled foreign corporation wholly owned by a U.S. corporation incurs a $100 deficit in earnings and profits in a taxable year. (For simplicity, this example and the two following assume that gross income, net taxable income, and earnings and profits are the same.) Sixty dollars of the deficit is attributable to activities that, when profitable, generate foreign base company shipping income. The other $40 of the deficit is attributable to activities that, when profitable, generate foreign base company oil related income. In the following year, the controlled foreign corporation earns $90 of foreign base company shipping income, $20 of foreign oil related income, and $10 of foreign base company services income. Under the agreement, the full $60 portion of the accumulated deficit attributable to base company shipping activity can be used to reduce (to $30) the U.S. parent's base company shipping income inclusion with respect to the foreign corporation. Twenty dollars of the $40 portion of the accumulated deficit attributable to base company oil related activity can be used to eliminate the $20 of base company oil related income. The remaining $20 of the accumulated deficit cannot be utilized to reduce the U.S. parent's base company services income or remaining base company shipping income since this deficit amount did not arise from base company services or shipping activity. For the year then, the U.S. parent's subpart F income with respect to the foreign corporation after the accumulated deficit is applied consists of $30 of base company shipping income, $10 of base company services income, and no base company oil related income. The $20 portion of the accumulated deficit attributable to foreign oil related activity which is not utilized may be carried over for possible use in characterizing distributions from the foreign corporation in later years.

Assume, as another example, that a foreign manufacturer wholly owned by a U.S. corporation incurs a $100 deficit in earnings and profits in a taxable year. The manufacturing operations of the controlled foreign corporation, when profitable, generate nonsubpart F income. In the following year, the U.S. parent sells through the foreign manufacturer to third-country buyers goods that a U.S. subsidiary of the U.S. parent produces. With respect to these sales, the foreign corporation receives $30 of foreign base company sales income, currently taxable to its U.S. parent under subpart F. The foreign corporation also earns $80 of nonsubpart F manufacturing income. The amendment to the accumulated deficit rule limits to $80 the amount of the $100 accumulated deficit which may be utilized in this year; since the accumulated deficit arose in a nonsubpart F income category, it may offset only the $80 of nonsubpart F income. For the year then, the subpart F income after the accumulated deficit is applied consists of the $30 of foreign base company sales income. The $20 portion of the accumulated deficit not utilized may be carried over by the foreign corporation to reduce nonsubpart F earnings and profits in later years.

The application of the accumulated deficit rule, as modified, is further illustrated in the following example: Assume that a foreign corporation, wholly owned by a U.S. corporation, incurs a $100 deficit in earnings and profits in a taxable year. The controlled foreign corporation is predominantly engaged in the active conduct of a banking business during that year. When profitable, the foreign corporation earns primarily foreign personal holding company income, as that category of subpart F income is expanded by the agreement. The deficit arises from activities that generate foreign personal holding company income. On the first day of the following year, 40 percent of the stock of the controlled foreign corporation is sold to a second U.S. corporation. The foreign corporation earns $300 of foreign personal holding company income and no other income during that taxable year. It is predominantly engaged in the active conduct of a banking business during that year. The second U.S. corporation's share of the subpart F income is $120 (40 percent of $300). The second U.S. corporation cannot reduce its subpart F inclusion by any portion of the $100 accumulated deficit because it owned no stock in the foreign corporation in the preceding year, when the deficit was incurred. The first U.S. corporation can reduce its $180 (60 percent of $300) share of the subpart F income by $60 (60 percent of $100) of the accumulated deficit; under the accumulated deficit rule, as modified, its pro rata share of the deficit is determined for the close of the current year because such determination yields a smaller pro rata share than a determination of such share for the close of the deficit year. The $40 portion of the accumulated deficit not utilized may be carried over for possible use by the first U.S. corporation in later years.

The interaction of the new subpart F recharacterization rule, the subpart F earnings and profits limitation retained by the agreement, and the agreement's foreign loss allocation and separate limitation loss recharacterization rules is illustrated in the following example: Assume that a foreign corporation wholly owned by a U.S. corporation has a $100 overall limitation loss. It also has $200 of passive (subpart F FPHC) income before allocation of the loss. Assume, for simplicity, that earnings and profits equal income. Under the foreign loss allocation rule (which parallels the subpart F earnings and profits limitation), the $100 loss reduces the corporation's passive income for the year from $200 to $100. The subpart F earnings and profits limitation correspondingly reduces the income currently taxable to the corporation's U.S. shareholders from $200 to $100.

The following year, the corporation earns $250 of passive (subpart F FPHC) income and $1,500 of overall limitation (nonsubpart F) income. Under the separate limitation loss recharacterization rule, an amount of this overall limitation income equal to the prior year overall limitation loss that reduced passive income, $100, is recharacterized as passive income. Thus, for foreign tax credit limitation purposes, the corporation has $1,400 ($1,500 - $100) of overall limitation income and $350 ($250 + $100) of passive income in the second year. Under the subpart F recharacterization rule, the recaptured $100 of passive income is also subpart F FPHC income since subpart F FPHC income the year before was reduced by $100 under the earnings and profits limitation and, in the current year, earnings and profits exceed tentative subpart F income by at least that amount. Thus, the subpart F inclusion of the corporation's shareholders is $350 ($250 + $100) in the second year.

Effective date

The conference agreement generally adopts the Senate amendment's effective date provisions for the subpart F amendments discussed above, except where noted otherwise. In addition, targeted transitional rules are provided.

b. Determination of U.S. control of foreign corporations

The conference agreement generally follows the Senate amendment (including its special rule for certain trust distributions), with a conforming amendment clarifying that the new vote-or-value rule applies in determining whether an insurance company is a controlled foreign corporation under the special more-than-25-percent U.S. ownership test of Code section 957(b). With respect to investments in U.S. property, the provision is effective on August 16, 1986 (rather than on January 1, 1987).

The conferees' decision not to include the House bill provision decreasing the U.S. ownership requirement for controlled foreign corporation status from more-than-50-percent to 50-percent-or-more of total ownership rests, in part, on the conferees' understanding that, under an existing Treasury regulation, the IRS can, in specified circumstances, deem foreign corporations effectively controlled by 10-percent U.S. shareholders to meet the more-than-50-percent ownership test even though that requirement would otherwise not technically be met (Treas. Reg. sec. 1.957-1(b)).

c. De minimis and full inclusion rules

Under the conference agreement, none of a controlled foreign corporation's gross income for a taxable year is treated as foreign base company income or tax haven insurance income if the sum of the corporation's gross foreign base company and gross tax haven insurance income for the year is less than the lesser of 5 percent of its gross income, or $1 million.

The conferees do not believe that U.S. shareholders of controlled foreign corporations should avoid current U.S. tax on an amount of tax haven income equal to a fixed percentage of the gross income of the controlled foreign corporation without regard to how large, in absolute dollar terms, that amount of tax haven income is. Permitting $1 million or more of tax haven income to avoid current U.S. tax, as the present law de minimis rule does in the case of a controlled foreign corporation with $10 million or more of gross income, is inconsistent with the de minimis concept in the conferees' view.

As discussed in more detail at A.1.a. and e., above, the new subpart F de minimis rule applies for separate foreign tax credit limitation purposes also. The House bill provided no de minimis exception to the application of the separate foreign tax credit limitations. The conferees have accepted a de minimis exception to the separate limita-

tions in the case of controlled foreign corporations to simplify the operation of the foreign tax credit limitation look-through rules. However, the conferees concluded that any de minimis exception applicable to the separate limitations should be a limited one, incorporating a reasonable dollar ceiling.

As discussed above at C.1.a., the conference agreement expands the definition of tax haven insurance income. The general de minimis exception is amended to apply to tax haven insurance income generally in order to preserve de minimis relief for insurance income subject to tax under subpart F under present law, and to provide such relief to the new types of insurance income (including certain captive insurance income) subjected to tax under subpart F by the conference agreement. Income from insuring U.S. risks is eligible for a special 5-percent de minimis exception under present law. However, the conference agreement repeals that exception in connection with its expansion of the definition of tax haven insurance income to include income from insuring certain unrelated party foreign risks. Income from the insurance of certain foreign risks of related parties that is subpart F income under present law is presently eligible for the general de minimis exception.

The conference agreement also extends the 70-percent full inclusion rule to tax haven insurance income generally. The conferees do not believe that a sound policy basis exists for distinguishing tax haven insurance income from foreign base company income for purposes of either the de minimis rule or the full inclusion rule.

The Tax Reform Act of 1984 generally subjects related party factoring income and similar income to taxation under subpart F without regard to the general de minimis rule. The conference agreement does not alter present law in this regard.

The amendments to the de minimis and full inclusion rules apply to taxable years of foreign corporations beginning after 1986.

d. Possession-chartered corporations

The conference agreement follows the Senate amendment except that the effective date for investments in U.S. property is August 16, 1986.

2. Application of accumulated earnings tax and personal holding company tax to foreign corporations

Present Law

The accumulated earnings tax (AET) and personal holding company (PHC) tax are imposed on corporations that accumulate earnings rather than distributing them to their shareholders. The taxes are imposed on "accumulated taxable income" and "undistributed personal holding company income," respectively. Those amounts are calculated by making several adjustments to the regular taxable income of a corporation including deductions for capital gains (and certain capital losses).

House Bill

For purposes of calculating the AET or PHC tax applicable to a foreign corporation, an adjustment is allowed for net capital gains only if they are effectively connected with the conduct of a U.S. trade or business. These amendments apply to gains and losses realized on or after November 16, 1985.

Senate Amendment

The Senate amendment is the same as the House bill except that it applies to gains and losses realized on or after March 1, 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment except that it is effective for gains and losses realized on or after January 1, 1986.

3. Deduction for Dividends Received From Foreign Corporations

Present Law

A U.S. corporation may deduct 85 percent of a fraction of dividends received from a foreign corporation that has at least 50 percent of its business in the United States. The deductible fraction is the ratio, for a 3-year period, of gross income that is effectively connected with a U.S. trade or business to total gross income. A U.S. corporation may deduct 100 percent of certain dividends from a foreign corporation all of whose gross income is effectively connected with a U.S. trade or business and all of whose stock is owned by the U.S. corporation.

House Bill

As described in VI.C., above, the House bill reduces the 85-percent dividends received deduction to 80 percent, and further reduces it to 70 percent (and the present law 100 percent deduction is reduced to 90 percent) in connection with the dividends paid deduction.

Senate Amendment

Following the House bill, the Senate amendment reduces the 85-percent dividends received deduction to 80 percent.

In addition, the Senate amendment allows the deduction for dividends received from foreign corporations only to 10-percent or greater corporate shareholders. It extends the deduction to dividends from foreign corporations that are in turn attributable to dividends from U.S. corporations 80 percent or more of whose voting stock (or value) the foreign corporation (or a wholly owned foreign subsidiary) owns, and eliminates the 50-percent business income threshold of present law. The Senate amendment bases eligibility for the deduction on net earnings of foreign corporations attributable to U.S. sources. All dividends eligible for the deduction are treated as U.S. source.

The changes to the dividends received deduction rules for dividends from foreign corporations apply to dividends received in taxable years beginning after 1986 from earnings derived after 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment with technical modifications and an amendment preventing double benefits for amounts eligible for the agreement's deduction.

The agreement provides that deemed-paid foreign tax credits are disallowed to the extent the taxes are attributable to income eligible for the dividends received deduction.

The conference agreement provides that dividends eligible for the deduction are based on the proportion of the foreign corporation's post-1986 earnings that have been subject to U.S. corporate income tax and that have not been distributed, rather than (as in the Senate amendment) the pool of earnings accumulated during the previous 10 years. The committee intends that distributions from a foreign corporation be deemed to be pro rata from the corporation's earnings that have been subject to U.S. corporate income tax and those that have not been so subject.

In a technical amendment (to Code sec. 959(d)), the agreement clarifies that any amounts of subpart F income previously taxed that are distributed to U.S. shareholders are to reduce U.S. source earnings and profits and total earnings and profits (as the case may be) in arriving at the proportionate amount of the taxable dividend eligible for the deduction.

The conference agreement also clarifies that the new provision applies to distributions out of earnings and profits for taxable years beginning after 1986.

For dividends paid from earnings and profits accumulated prior to January 1, 1987, the agreement's provisions do not apply.

D. Special Tax Provisions for U.S. Persons

1. Possessions Tax Credit

Present Law

Under present law, income from intangibles is not eligible for the possessions tax credit unless the taxpayer elects one of two optional methods of computing possessions source income: (1) cost sharing or (2) 50/50 profit split. The cost sharing payment need not be as large as an arm's-length royalty.

To be eligible for the possessions tax credit, a possessions corporation must derive at least 80 percent of its income from a possession, and at least 65 percent of its income from the conduct of an active trade or business within a possession.

Income received within the United States (excluding possessions thereof) is not eligible for the possessions tax credit.

The possessions tax credit is allowed for qualified possessions source investment income (QPSII). QPSII is limited to income derived from investments within a possession in which the taxpayer conducts an active trade or business. The Government of Puerto Rico has established rules (reg. 3087) which specify the financial institutions that may accept deposits from possessions corporations and the assets in which these funds may be invested.

U.S. corporations doing business in the Virgin Islands are eligible for tax benefits equivalent to the possessions tax credit under the Revised Organic Act of the Virgin Islands and section 934 of the Code.

House Bill

The House bill retains present law with five principal modifications.

First, the cost sharing payment required for companies that elect the cost sharing option is set equal to the greater of: (1) 110 percent of the payment required under present law or (2) the royalty payment or inclusion that would be required (under sections 482 and 367 as modified by the House bill), with respect to intangibles the possessions corporation is treated as owning under the cost-sharing option, if the possessions corporation were treated as a foreign company (whether or not intangibles actually are transferred to the possessions corporation).

For companies that elect the 50/50 profit split method, the amount of product area research expenditures (as determined under the cost sharing rules, without regard to the royalty amount) is increased by 20 percent for purposes of computing combined taxable income.

Second, the House bill deletes the rule in present law (sec. 936(b)) which denies the credit with respect to income received in the United States. As a result, the credit is not denied for tax on otherwise eligible income

solely by reason of receipt in the United States.

Third, the House bill modifies the definition of qualified possession source investment income ("QPSII") to allow the Government of Puerto Rico fully to implement its initiative to increase investment and employment in qualified Caribbean Basin ("CBI") countries. The definition of QPSII is expanded to include interest attributable to loans made by the Government Development Bank of Puerto Rico ("GDB") for investments in active business assets located in qualified CBI countries. A qualified CBI country means any "beneficiary country" (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act) which meets the requirements of clauses (i) and (ii) of Code section 274(h)(6)(A). To qualify as QPSII, the borrower must certify to the Secretary of the Treasury that the proceeds of the loan will be invested promptly in active business assets located in a qualified CBI country. In addition, the GDB must agree to permit the Secretary to examine such of its books and records as may be necessary to ensure compliance with the conditions of certification.

The committee report states that it is anticipated that the Government of Puerto Rico will pursue vigorously the twin plant initiative outlined in the "Memorandum of Agreement." [1] The Memorandum of Agreement provides, *inter alia*, that the Government of Puerto Rico will guarantee $100 million annually of new funds for private direct investment in qualified CBI countries. These funds are anticipated to be derived, without additional cost to the United States Treasury, from a variety of sources including: possessions corporations (in exchange for future Puerto Rican tax concessions); GDB funds; and grants by the Government of Puerto Rico.

Fourth, the House bill changes the active trade or business test that a U.S. corporation must meet to qualify for the possession tax credit. The active income percentage is increased from 65 percent to 75 percent. The House bill does not alter the present law requirement that 80 percent or more of gross income for a three-year period be derived from sources within a possession. As under present law, a possessions corporation must meet both the 80-percent possession source income test and the active income percentage test.

Fifth, the committee report states that the Commissioner is authorized to require the submission, with the tax return, of information relevant to section 936 tax computations. Such information may include: (1) all standard industrial classification ("SIC") codes to which research expenses relate; (2) the intangibles involved in producing and marketing the products made by the possessions corporation; (3) the method of pricing components purchased by the possessions corporation; and (4) a combined net income statement for the products manufactured by the possessions corporation.

The bill also amends section 936(d)(1) to include the U.S. Virgin Islands within the definition of "possession of the United States". This change has the effect of bringing U.S. corporations doing business in the Virgin Islands within the ambit of section 936, rather than the separate but comparable provisions of the Revised Organic Act of the Virgin Islands and section 934 of the Code.

The provision is effective for taxable years beginning after December 31, 1985. Under a transition rule, the active income percentage increases from 65 to 70 percent for taxable years beginning in 1986, and to 75 percent for taxable years beginning after 1986. The royalty provision of the cost sharing rule applies to taxable years beginning after 1985 without regard to when the transfer of intangibles (if any) was made.

Senate Amendment

The Senate amendment generally follows the House bill with certain modifications.

First, the cost sharing payment is not required to be as large as an arm's-length royalty.

Second, the Senate amendment retains the rule in present law which denies the credit with respect to income received in the United States; however, an exception is provided for otherwise eligible income (excluding QPSII) where such income is received from a person unrelated to the possessions corporation.

Third, the Senate amendment expands the definition of QPSII beyond the House bill to include income attributable to funds invested in financial institutions (including the GDB and the Puerto Rico Economic Development Bank) to the extent such funds are invested by the financial institution consistent with the goals and purposes of the Carribean Basin Economic Recovery Act in active business assets or development projects located in qualified CBI countries. Such CBI investments must be authorized specifically by the GDB. In addition, the borrower and the financial institution must certify to the Secretary and the Secretary of the Treasury of Puerto Rico that the proceeds of the loan will be used promptly for authorized purposes. Also, the borrower and the financial institution must agree to permit the Secretary and the Secretary of the Treasury of Puerto Rico to examine such of their books and records as may be necessary to ensure compliance with these provisions. The committee report does not refer to the terms of the Memorandum of Agreement.

Fourth, the Senate amendment is effective for taxable years beginning after 1986, without a transition rule for the active income percentage requirement.

Conference Agreement

The conference agreement generally follows the Senate amendment with certain modifications.

The conference agreement follows the House bill with respect to the cost sharing payment, i.e., the cost sharing payment is determined as the greater of (1) 110 percent of the payment determined under present law or (2) an arm's-length royalty (determined according to the principles of sections 482 and 367, as modified by the conference agreement).

The conference agreement follows the House bill and Senate amendment with respect to the profit split method, and makes a technical correction to the computation of combined taxable income under this method.

The conferees expect that the Secretary will take into account the significant nature of the modifications made by the conference agreement to the computation of possessions source income in cases where an electing corporation seeks to change its method of computation.

The conference agreement follows the Senate amendment with respect to income received within the United States.

The conference agreement generally follows the Senate amendment with respect to the expansion of the definition of QPSII. The conferees are of the view that for the purposes of QPSII, financial institutions may include banks, investment banks, or similar institutions. The conferees expect that the Government of Puerto Rico will make a good faith effort to carry out the twin plant initiative outlined in the Memorandum of Agreement.

The conferees authorize Treasury to issue regulations providing additional compliance measures including (1) the submission with the tax return of information relevant to computing income from intangibles, and (2) annual certification by the borrower and lender that CBI loans have been used for investments that are permitted under the QPSII rules.

The conferees agree that regulations issued under section 936(h)(7) can permit the use of the cost sharing and profit split methods in cases where the possession product is leased, rather than sold (or is used in the trade or business of a member of the affiliated group), but only if (1) an independent sales price can be determined for the product from comparable uncontrolled transactions, and (2) the appropriate member of the group agrees to be treated as having sold the possession product at such price. The conferees intend that an exception to the former requirement will be provided under conditions deemed appropriate by the Secretary. Such conditions may restrict relief to situations where (1) the cost sharing payment is no less than 100 percent of the product area research cost incurred by the affiliated group, and (2) the deemed sale of the possession product units is treated as made at a price which produced a profit to the appropriate member of the group equal to the possessions corporation's tax-exempt profit with respect to the same units (computed without regard to the cost sharing payment), reduced by one-half of the cost sharing payment allocable to such units.

The possessions tax credit provisions are effective for tax years beginning after 1986. The royalty provision of the cost sharing rule applies to tax years beginning after 1986 without regard to when the transfer of intangibles (if any) was made.

2. Taxation of U.S. Persons in Panama

a. Agreement implementing Panama Canal Treaty

Present Law

Agreements between the United States and Panama entered into in conjunction with the Panama Canal Treaty specify the rights and legal status of agencies and employees of the U.S. Government operating in Panama. One of the agreements on implementation provides an exemption from tax for U.S. employees of the Panama Canal Commission. In a diplomatic note, Panama has confirmed the United States' explanation that the exemption was intended to apply solely to Panamanian taxes. Courts have split on the question whether the exemption applies to U.S. taxes.

House Bill

The House bill clarifies that the Agreement in Implementation of the Panama Canal Treaty does not exempt U.S. taxpayers from U.S. tax on income. The clarification is effective for all open taxable years.

[1] "Memorandum of agreement between the Government of the United States and the Government of Puerto Rico (draft)," November 14, 1985.

Senate Amendment

The Senate amendment is the same as the House bill except that it applies only to taxable years beginning on or after January 1, 1987.

Conference Agreement

The conference agreement follows the House bill with one clarification. The clarification is that the Agreement in Implementation of the Panama Canal Treaty does not exempt U.S. taxpayers from any U.S. tax (not limited to the income tax). With respect to U.S. taxes not imposed with respect to a taxable year (such as the gift and estate taxes), the provision is effective for taxable events after the date of enactment (rather than for all open taxable years).

b. Tax-free allowances

Present Law

Overseas employees of the U.S. Government generally are permitted to exclude certain allowances from gross income for U.S. tax purposes. Allowances paid to U.S. employees of the Panama Canal Commission and civilian employees of the Defense Department in Panama are not presently excludable under this rule.

House Bill

The House bill provides that U.S. Government employees of the Panama Canal Commission may exclude allowances equivalent to those permitted to be excluded by State Department employees in Panama. This provision is effective for taxable years beginning after 1985.

Senate Amendment

The Senate amendment generally is the same as the House bill except that it extends tax-free allowance treatment to Defense Department employees in Panama and is effective for taxable years beginning after 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Foreign Sales Corporation (FSCs)

Present Law

The United States limits its tax on qualified income from exports when the exporter uses a "FSC"—a Foreign Sales Corporation. The FSC rules reduce taxable income by 16 percent of export income (15 percent for corporate shareholders). The Domestic International Sales Corporation (DISC) rules provide a similar benefit but only on the income from $10 million in export sales.

House Bill

The House bill changes the FSC rules to exempt 14 percent of export income (13 percent for corporate shareholders). It makes corresponding changes to the DISC rules. The changes are effective for taxable years beginning after 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

4. Exclusion for Private Sector Earnings of Americans Abroad

Present Law

U.S. citizens (other than U.S. Government employees) who live and work abroad and who satisfy certain physical presence or bona fide foreign residence tests may exclude from gross income up to $80,000 of foreign earned income per year, and may also exclude foreign housing costs that exceed a base amount. The $80,000 ceiling on excludable foreign earned income is scheduled to increase $5,000 each year beginning in 1988, up to $95,000 for taxable years beginning in or after 1990. This schedule reflects a Tax Reform Act of 1984 delay of the increases, which the Economic Recovery Tax Act of 1981 had scheduled to begin in 1984.

House Bill

The House bill reduces the foreign earned income exclusion ceiling to $75,000, effective for taxable years beginning after 1985.

Senate Amendment

The Senate amendment reduces the foreign earned income exclusion ceiling to $70,000 and denies benefits to individuals violating Federal travel restrictions. These changes are effective for taxable years beginning after 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Transfers of Intangibles to Related Parties Outside of the United States

Present Law

Transfers to related foreign corporations as licenses or sales are subject to an "arm's-length" price standard. Uncertainty exists regarding what transfers are appropriate to treat as "arm's-length" comparables and regarding the significance of profitability, including major changes in profitability of the intangible after the transfer.

Transfers to related foreign corporations as contributions to capital require the transferor to recognize annually, as U.S. source income, amounts that would have been received under an agreement providing for payments contingent on productivity, use, or disposition of the property.

Special rules apply for intangibles treated as owned by U.S. possessions corporations (see XII. D.1., above).

House Bill

Payments with respect to intangibles transferred to a foreign related party must be commensurate with the income attributable to the intangible. This standard also applies to determine the minimum cost-sharing payment with respect to intangibles treated as owned by a U.S. possessions corporation that elects the cost-sharing option. (See XII. D.1., above.)

For transfers from U.S. persons to foreign related parties, the bill applies to transfers after November 16, 1985 in taxable years ending after that date. For U.S. possessions corporations that elect the cost-sharing option, the bill applies for taxable years beginning after December 31, 1985, without regard to the date of the transfer (if any).

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The concerns addressed in the House bill originated in connection with transfers of intangibles from U.S. parties to foreign affiliates, particularly those operating in low-tax foreign countries. Consequently, the provisions of the House bill only were applied to transfers of intangibles from U.S. persons to their foreign affiliates. In view of the fact that the objective of these provisions—that the division of income between related parties reasonably reflect the relative economic activity undertaken by each—applies equally to inbound transfers, the conferees concluded that it would be appropriate for these principles to apply to transfers between related parties generally if income must otherwise be taken into account.

The conferees do not intend to affect present law concepts of what constitutes a single "license", to the extent those concepts are not inconsistent with the purposes of the new provision. Thus, for example, in the case of continuous transfers of technology under a continuing license agreement, the adequacy of the royalty may, in appropriate cases, be determined by applying the appropriate standards under the conference agreement on an aggregate basis with respect to the profitability and other relevant features of the transferred intangibles as a whole.

Similarly, the conferees do not intend to change principles that would permit offsets or other adjustments to reflect the tax impact of the taxpayer's transactions as a whole.

The conferees are also aware that many important and difficult issues under section 482 are left unresolved by this legislation. The conferees believe that a comprehensive study of intercompany pricing rules by the Internal Revenue Service should be conducted and that careful consideration should be given to whether the existing regulations could be modified in any respect.

In revising section 482, the conferees do not intend to preclude the use of certain bona fide research and development cost-sharing arrangements as an appropriate method of allocating income attributable to intangibles among related parties, if and to the extent such agreements are consistent with the purposes of this provision that the income allocated among the parties reasonably reflect the actual economic activity undertaken by each. Under such a bona fide cost-sharing arrangement, the cost-sharer would be expected to bear its portion of all research and development costs, on unsuccessful as well as successful products within an appropriate product area, and the costs of research and development at all relevant development stages would be included. In order for cost-sharing arrangements to produce results consistent with the changes made by the Act to royalty arrangements, it is envisioned that the allocation of R&D cost-sharing arrangements generally should be proportionate to profit as determined before deduction for research and development. In addition, to the extent, if any, that one party is actually contributing funds toward research and development at a significantly earlier point in time than the other, or is otherwise effectively putting its funds at risk to a greater extent than the other, it would be expected that an appropriate return would be required to such party to reflect its investment.

Effective date.—Under the conference agreement, the new provisions generally apply to taxable years beginning after December 31, 1986, but only with respect to transfers after November 16, 1985, or licenses granted after such date (or before such date with respect to property not in existence or owned by the taxpayer on such date). However, for purposes of section 936 payments, the new provisions apply to taxable years beginning after December 31, 1986, without regard to when any transfer (or license) was made.

6. Compliance Provisions Applicable to U.S. Persons Resident Abroad

Present Law

U.S. persons resident abroad are required to file U.S. tax returns, but a substantial

percentage of foreign residents fails to do so.

a. IRS information returns

The IRS formerly obtained some information about U.S. persons resident abroad from voluntary information returns filed with passport applications, but the return was discontinued because many taxpayers refused to file a voluntary return.

b. Withholding on pension payments

U.S. pension payments to foreign residents, like all U.S. pension payments, are not subject to mandatory withholding such as that which applies to wage and salary payments.

House Bill

No provisions.

Senate Amendment

a. IRS information returns

The Senate amendment requires that passport applicants and green card applicants complete an IRS information return reporting foreign residence and certain other information. Penalties for failure to file apply. The provision applies to taxable years beginning after December 31, 1986.

b. Withholding on pension payments

The Senate amendment requires withholding with respect to pension payments on U.S. persons living outside the United States. The provision applies to payments after December 31, 1986.

Conference Agreement

a. IRS information returns

The conference agreement generally follows the Senate amendment, except that the agreement applies to passport and green card applications submitted after December 31, 1987 (or, if earlier, the effective date of the initial regulations under the new information return provisions, but not before January 1, 1987). The agreement also makes the following technical amendments: First, to deter noncompliance effectively, the penalty for each failure to file the required information returns is increased from $50 to $500. Second, the agreement clarifies that no other provision of law will exempt individuals from the new return-making requirements or bar agencies collecting the returns from providing them to the Secretary, as required. Third, notwithstanding any other provision of law, agencies which collect (or are required to collect) the new information returns must provide to the Secretary the names (and any other identifying information) of any individuals who refuse to provide them as required. Fourth, the agreement authorizes the Secretary to exempt any class of individuals from the return requirements by regulations if he determines that applying the return requirements to those individuals is not necessary to carry out the provision's purposes.

b. Withholding on pension payments

The conference agreement is the same as the Senate amendment.

7. Foreign Investment Companies

Present Law

Generally, no current U.S. tax applies to the foreign income of a foreign corporation that is not a controlled foreign corporation (under subpart F) or a foreign personal holding company (under the FPHC rules) even if all its income is passive income or other tax haven income, and even if all its shareholders are U.S. persons.

When a U.S. person disposes of stock in a foreign investment company (FIC), however, the gain is not automatically subject to a favorable capital gains tax rate, even if the company is widely held. The gain is subject to ordinary income treatment to the extent of the shareholder's share of the FIC's earnings and profits. This special ordinary income rule generally applies to a foreign corporation that is primarily in the business of investing in securities or commodities, if 50 percent or more of the corporation's stock (by vote or value) is held by U.S. persons.

House Bill

The House bill modifies present law to apply the FIC rules to U.S. investors in foreign funds without regard to the degree of U.S. ownership in such funds and to allow 10-percent shareholders of FICs to claim a deemed paid foreign tax credit when the FIC is also a controlled foreign corporation.

The House bill also requires current recognition of income by U.S. investors in FICs that are passive investment vehicles by looking through to the earnings and profits of the passive foreign investment company (PFIC). The bill provides that U.S. investors in PFICs that do not currently distribute their earnings may elect to defer U.S. tax upon agreement to pay tax plus interest on receipt of distributions or on disposition of the investment. The bill requires a U.S. investor to pay tax on the investor's entire share of a PFIC's earnings and profits and to treat this income as ordinary income.

The bill defines a PFIC as any foreign investment company that derives at least 75 percent of its income from passive investments or any foreign investment company at least half of whose assets are passive assets.

The provisions are effective for taxable years of foreign corporations beginning after 1985.

Senate Amendment

The Senate amendment does not modify present law's 50-percent threshold for purposes of characterizing gain on disposition of stock in a foreign corporation, but adopts the House bill's provision that allows a deemed-paid foreign tax credit to a 10-percent shareholder of a FIC that is also a controlled foreign corporation.

Instead of the House bill provision requiring U.S. investors in passive foreign investment companies (PFICs) to pay tax currently on their share of the PFIC's earnings and profits, the Senate amendment requires an investor to pay tax plus an interest charge based on the value of deferral on receipt of distributions from a PFIC or on disposition of his or her investment in a PFIC. The Senate amendment does, however, allow an individual to elect to pay tax currently on his or her share of a PFIC's earnings. The amendment further provides that the amount subject to tax is limited to the amount of an investor's gain on disposition and provides that characterization of income at the PFIC level as ordinary or capital gain may be passed through to a U.S. investor.

The amendment defines a PFIC as any foreign corporation that derives 75 percent or more of its income from passive investments or any foreign corporation at least half of whose assets are passive assets. The amendment excludes from the definition of a PFIC any FIC that has an election in effect under section 1247.

The provisions are effective for earnings derived in taxable years of foreign corporations after 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment with respect to PFICs, but contains substantial modifications. The agreement follows the Senate amendment in not modifying present law's U.S. ownership threshold for FICs and in adopting the provision allowing a 10-percent shareholder of a FIC a deemed-paid foreign tax credit when the FIC is also a controlled foreign corporation. The agreement is effective for earnings derived by foreign corporations in taxable years after 1986.

General rule

The conference agreement provides generally that U.S. shareholders in PFICs pay U.S. tax plus an interest charge based on the value of tax deferral at the time that the shareholder disposes of his or her PFIC investment or on receipt of an "excess" distribution. This general rule applies to U.S. investors in PFICs that are not "qualified electing funds", as described below. The conferees believe that eliminating the economic benefit of deferral is necessary to eliminate the tax advantages that U.S. shareholders in foreign investment funds have heretofore had over U.S. persons investing in domestic investment funds. As does the Senate amendment, this rule provides that gain recognized on disposition of stock in a PFIC or on receipt of an "excess" distribution from a PFIC is considered to be earned pro rata over the shareholder's holding period of his investment. Under this rule, U.S. tax due in the year of disposition (or year of receipt of an "excess" distribution) is the sum of (1) U.S. tax computed using the highest rate of U.S. tax for the investor (without regard to other income or expenses the investor may have) on income attributed to prior years, plus (2) interest imposed on the deferred tax, plus (3) U.S. tax on the gain attributed to the year of disposition (or year of receipt) and to years in which the foreign corporation was not a PFIC (for which no interest is due). This rule provides that all gain recognized (and all distributions) are treated as ordinary income. The portions of distributions that are not characterized as "excess" distributions are, of course, subject to tax in the current year under normal Code rules. The agreement provides, however, that distributions from a PFIC are not eligible for the deemed paid foreign tax credit under section 902 under this rule. For purposes of claiming any withholding tax as a foreign tax credit, however, the total amount of the distribution, including any "excess" distribution amount, is included in gross income in the year of receipt.

The conference agreement defines an "excess" distribution as any current year distribution in respect of stock to the extent that it represents a ratable portion of the total distributions in respect of the stock during the year that are in excess of 125 percent of the average amount of distributions in respect of the stock during the three preceding years. This rule is necessary since an excess distribution is allocated to each day in an investor's holding period with respect to each share of stock (for purposes of tax and interest determinations), an investor may have different holding periods with respect to his or her investment, and a fund may distribute earnings more than once during a taxable year. This rule is illustrated in the following example: assume an investor's average distributions for the 3 prior years are $100 and the investor receives a $100 distribution in the first month

of the year and a $50 distribution in the eleventh month of the year. The total excess distribution of $25 is to be allocated two-thirds to the first month and one-third to the eleventh month for purposes of attributing the excess distribution to the current and prior years for computing the investor's deferred tax and interest. In cases where a fund distributes earnings only once a year (and an investor's stock holdings do not change over the 3-year period), the excess distribution will equal that portion of the year's distributions in respect of stock in excess of 125 percent of the average amount of distributions in respect of the stock during the three prior taxable years.

The excess distribution provision liberalizes the Senate amendment provision which treated all distributions as representing prior and current year earnings. This provision gives relief to investment funds which currently distribute all their ordinary earnings, for which there is no U.S. tax deferral. The agreement provides that regulations are to be prescribed making proper adjustments for stock splits and stock dividends, determining the amount of excess distributions in cases where investments are disposed of at varying times in a taxable year, determining the excess distribution amount when distributions are received in currencies other than the U.S. dollar, and aggregating stock ownership for shares with the same holding period.

The conference agreement provides that gain recognized on disposition of stock in a PFIC (or income in the form of a distribution from a PFIC) is not to be attributed to prior years and U.S. tax is not to be increased by an interest charge if the PFIC is a "qualified electing fund" (as described below) for each of the fund's taxable years that begin after December 31, 1986 and that include any portion of the investor's holding period. Any U.S. shareholder who owns stock in a PFIC which becomes a qualified electing fund may elect to mark his or her investment in the PFIC to market, pay all prior deferred tax and interest, acquire a new basis and holding period in his or her PFIC investment, and thereafter be taxed under the special rules applicable to such funds.

The conference agreement incorporates the rules in present law section 1246 relating to FICs, for stock with a substituted basis that inherits the attributes of PFIC stock, for certain entities through which PFIC stock is held interests in which are treated as PFIC stock, for stock acquired from a decedent (other than from a foreign decedent) to deny a basis step-up at date of death, and for information reporting purposes wherein 5 percent owners of PFICs must report certain information required by the Secretary. The agreement also provides the Secretary the authority to disregard any nonrecognition provision of present law on disposition of PFIC stock.

Qualified electing funds

For any U.S. investor whose PFIC agrees to supply adequate information to the IRS, the agreement provides a taxing system similar to the House bill: every U.S. person who owns stock in a "qualified electing fund" must currently include in gross income his share of the PFIC's earnings and profits (with appropriate basis adjustments for amounts not distributed and for distributions previously included in income). This inclusion rule requires current payment of tax, absent a shareholder-level election to defer tax, as described below.

The conference agreement defines a "qualified electing fund" as any PFIC which properly elects with the Secretary and which complies with the Secretary's requirements for determining earnings and profits, and ascertaining stock ownership. United States shareholders of qualified electing funds may also retain the long-term capital gain character of income derived at the PFIC level. The conferees felt that it was essential to allow the Internal Revenue Service adequate access to information about U.S. investments in foreign investment funds before U.S. shareholders of those funds receive flow-through of capital gain income and attribution of ordinary income to a particular taxable year.

The election to be a qualified electing fund for any taxable year must be made before the 15th day of the third month of the taxable year following the year for which the election is being made. If a qualified electing fund fails to meet its compliance obligations, it is intended that all U.S. investors be treated as having disposed of their stock, and that the corporation's election to be a qualified electing fund be revoked. Once an election is made, it is revocable only with the consent of the Secretary. The conferees intend that revocation be granted only in circumstances where compliance with the agreement's provisions is ensured.

The conferees are of the view that, even though U.S. investors may receive adequate income information from a PFIC, the U.S. investors may not have sufficient ownership in the PFIC to compel distributions. The agreement provides, therefore, that U.S. investors in qualified electing funds can, subject to an interest charge, elect to defer U.S. tax on amounts included in income for which no current distributions are received. An election to defer tax is not available, however, for any amounts required to be currently included in income under the foreign personal holding company (FPHC) rules (sec. 551) or the subpart F rules (sec. 951).

The conference agreement provides that an election to defer tax is treated as an extension of time to pay tax for which a U.S. shareholder is liable for interest. The agreement provides that any distribution that represents earnings previously included in a shareholder's income or any disposition of stock will terminate any extension deferring tax. A shareholder may, of course, pay any deferred tax and interest prior to a distribution or disposition.

Definition of passive foreign investment company

The conference agreement follows the Senate amendment in defining a PFIC by reference to certain passive income requirements or passive asset ownership requirements. Consistent with the Senate amendment, passive income is defined as any income of a type that would be subpart F FPHC income (income described in sec. 954(c), as modified by the agreement).

An exception to the definition of passive income is provided under the agreement for income derived by bona fide banks and insurance companies, subject to regulatory exceptions. Any foreign bank licensed to conduct a banking business under the laws of the United States or of any State will be generally presumed to be a bona fide bank for this purpose. However, the Secretary has regulatory authority to apply the PFIC provisions to any "bank" where necessary to prevent U.S. individuals from earning what is essentially portfolio investment income in a tax deferred entity. A bona fide insurance company is any foreign insurance company that would be subject to taxation under subchapter L if the company were a domestic insurance company. It is expected that bona fide underwriters of securities will be excluded from classification as a PFIC both under the asset test (because the majority of their assets, particularly securities held for sale to the public, are assets that do not give rise to subpart F FPHC income by virtue of the dealer exception in sec. 954(c)) and under the income test (because a substantial amount of their income is commission income, which is not subpart F FPHC income). Passive income derived by foreign banks and other financial businesses that are basically widely held incorporated investment vehicles will be treated as such for purposes of the PFIC definition.

The conferees do not intend that foreign corporations owning the stock of subsidiaries engaged in active businesses be classified as PFICs. To this end, the agreement attributes a proportionate part of assets and income of a 25-percent owned corporation to the corporate shareholder in determining whether the corporate shareholder is a PFIC under either the asset test or income test.

The conference agreement follows the Senate amendment by excluding from PFIC classification corporations for which an election under section 1247 is in effect and corporations in a start-up phase of an active business. The agreement expands this latter exception by excluding from PFIC classification corporations in transition from one active business to another active business. This special rule provides that if a corporation (or any predecessor) which was not a PFIC for any prior taxable year establishes to the Secretary's satisfaction that (1) its passive income is attributable to proceeds from the disposition of one or more active businesses, (2) it will not be a PFIC in any of the two taxable years after the current year, and it is, in fact, not a PFIC for either of the two taxable years after the current taxable year, then the corporation will not be classified as a PFIC for the current taxable year.

The agreement modifies the Senate amendment rule that treated a foreign corporation which once was a PFIC as forever a PFIC. It allows a shareholder to mark his or her investment to market in a corporation which does not any longer possess PFIC characteristics, to pay prior deferred tax and interest, and thereby to purge the stock of its classification as PFIC stock. For qualified electing funds, the agreement provides that stock in a PFIC will automatically cease to be classified as PFIC stock when the foreign corporation ceases to be a PFIC so long as any election to defer payment of tax and interest by a U.S. investor in any such fund terminates then and the investor pays all prior deferred tax and interest.

Other rules

The conference agreement adopts the Senate amendment's rules for attributing ownership of PFIC stock to U.S. persons, its anti-avoidance rules to prevent circumvention of the agreement's provisions, and its rule treating a pledge of PFIC stock as security for a loan as a disposition of the stock at fair market value (with a concurrent basis step-up and new holding period). The agreement adopts rules to coordinate these provisions with the subpart F and FPHC current inclusion rules and to resource PFIC inclusions as U.S. source if the PFIC

is a United States-owned foreign corporation (under sec. 904(g)) and the PFIC receives U.S. source income. The agreement further provides that PFICs are not to be treated as personal holding companies or to be subject to the accumulated earnings tax.

E. Treatment of Foreign Taxpayers

1. Branch-Level Tax

Present Law

Dividends and interest paid by foreign corporations engaged in a U.S. trade or business are not U.S. source and are not, consequently, subject to U.S. withholding tax unless 50 percent or more of their gross income for a 3-year period is effectively connected with a U.S. trade or business. If the 50-percent threshold is crossed, the United States imposes its withholding tax at a 30-percent rate (or lower rate pursuant to a treaty) on the allocable portion of the payment attributable to the payor's effectively connected income.

House Bill

The House bill generally eliminates the second-level withholding taxes of current law and replaces them with a tax on the profits considered remitted by a U.S. branch of a foreign corporation to its head office and on interest payments attributable to a branch's U.S. trade or business. The tax rate in both instances is 30 percent unless reduced by treaty. The bill is effective for taxable years beginning after December 31, 1985.

The House bill retains present law's withholding taxes in circumstances where the branch tax is not permitted by an income tax treaty but denies benefits of any U.S. treaty to shareholders of a foreign corporation that are not residents of the country in which the corporation is a resident.

The House bill eliminates the effect of the branch tax when a foreign corporation is owned by a 10-percent U.S. corporate shareholder by allowing a credit to the shareholder for a pro rata portion of the branch tax paid by the foreign corporation.

Senate Amendment

The Senate amendment generally follows the House bill with respect to the branch tax on profits but does not adopt the branch tax on interest. Instead, the Senate amendment retains present law's second-level withholding tax on interest but reduces the U.S. business income threshold to 10 percent before the tax can be imposed. When the threshold is met, interest paid by a foreign corporation is treated as U.S. source in the same proportion that the interest claimed as a deduction in the United States bears to the total interest of the corporation. In cases where the branch profits tax is prohibited by treaty, the Senate amendment generally follows the House bill by retaining the second-level withholding tax on dividends but reduces the U.S. business income threshold for imposition of the tax to 10 percent.

The Senate amendment follows the House bill in allowing U.S. income tax treaties to preclude imposition of the branch profits tax except in cases of treaty shopping. The Senate amendment denies treaty benefits with respect to the second-level withholding taxes in treaty shopping cases.

The Senate amendment does not adopt the branch tax credit, but achieves a similar result in expanding the availability of the dividends received deduction (sec. 987 of the Senate amendment).

The amendment is effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment with respect to the branch tax on profits, with substantive and technical modifications. With respect to interest, the conference agreement treats as U.S. source the greater of the interest paid or deducted by a U.S. branch of a foreign corporation. The conference agreement adopts the Senate amendment's effective date.

Branch profits tax

To achieve greater parity between the remittance of branch profits and the distribution of subsidiary earnings, the conference agreement provides that the taxable base on which the branch profits tax is imposed is the earnings and profits of a U.S. branch of a foreign corporation attributable to its income effectively connected (or treated as effectively connected) with a U.S. trade or business. Thus, for example, the branch profits tax applies to a foreign corporation engaged in a U.S. trade or business even though, for purposes of sections 897 and 6039C, the corporation has made an election under section 897(i) to be treated as a U.S. corporation. Consistent with the determination of a subsidiary's earnings and profits, the conferees intend that a branch's earnings and profits include income that would be effectively connected with a U.S. trade or business if such income were taxable, such as tax-exempt municipal bond interest. Moreover, the agreement provides that current earnings that are not reinvested in a branch's trade or business assets are subject to tax though the branch may have incurred prior year deficits. Consistent with the taxation of a subsidiary's distributions, the agreement provides that dividend distributions by a foreign corporation during a year do not reduce a branch's earnings and profits for purposes of computing the branch tax base. The conferees wish to clarify that, under regulations, the rules for determining assets and liabilities treated as connected with the conduct of a U.S. trade or business for branch tax purposes are to be consistent with the rules used in allocating deductions for purposes of computing taxable income.

The agreement excludes from the imposition of branch profits tax the following earnings and profits attributable to income effectively connected with a U.S. trade or business: (1) certain earnings derived by foreign sales corporations (income described in Code secs. 921(d) and 926(b)); (2) earnings derived by foreign transportation carriers that are exempt from U.S. tax pursuant to treaty or reciprocal exemption; (3) earnings derived from the sale of any interest in U.S. real property holding corporations; (4) earnings derived by corporations satisfying certain ownership and income requirements that are organized in certain U.S. possessions (corporations described in sec. 881(b)); and (5) earnings derived by certain captive insurance companies that elect to treat their income as effectively connected with a U.S. trade or business (*see* sec. 1221(b)(2) of the agreement, disussed at C.1.a., above). The exclusion for earnings derived by certain possessions corporations is intended to be "mirrored" so as not to apply the branch tax to U.S. corporations operating in possessions of the United States.

Since the taxable base is computed with reference to effectively connected earnings and profits, the computation of net equity, the base used to determine constructive profit remittances, is likewise based on the earnings and profits value of the branch's assets and liabilities connected with its U.S. trade or business (if these values are different from the assets' and liabilities' adjusted tax bases). For example, in computing an increase or decrease in net equity, a branch that claims accelerated depreciation on its assets for the purpose of calculating taxable income will be required to make this branch-level tax computation using the assets' basis for earnings and profits purposes.

Following the Senate amendment, the agreement provides that the branch tax base is decreased when a branch's profits are reinvested in assets connected with a U.S. trade or business. The Secretary may prescribe regulations that carry out the purpose of this provision. The conferees generally believe that the base should be decreased in stock acquisition cases if branch tax would not have been imposed had assets, rather than stock, been acquired. For example, the regulations may provide that where control of a U.S. corporation is acquired with a branch's profits it may be inappropriate to impose the branch tax.

Branch-level interest tax

Although the conference agreement generally follows the Senate amendment's approach of treating interest as U.S. source to the extent it is deducted in the United States, the agreement modifies the amendment's interest provisions to treat a branch, in effect, more like a subsidiary, as the branch tax does. The agreement provides that any interest paid by a branch's U.S. trade or business is U.S. source and subject to U.S. withholding tax of 30 percent, unless the tax is reduced or eliminated by a specific Code or treaty provision. To the extent a branch has allocated to it under Reg. section 1.882-5 an interest deduction in excess of the interest actually paid by it, the excess is treated under the agreement as interest paid by a U.S. subsidiary to the foreign corporate taxpayer on a notional loan from the taxpayer. This excess is also subject to a 30-percent tax absent a specific Code exemption or treaty reduction. The agreement treats the excess interest as paid on the last day of a corporation's taxable year and provides that any U.S. tax due is payable within the time prescribed for filing the corporation's U.S. income tax return (not including extensions).

The conference agreement provides regulatory authority to determine, for purposes of any special Code treatment, how the excess interest is to be treated. For example, the regulations may provide that where indebtedness of the home office is attributed to the branch, the excess interest is to be treated as incurred on each type of external borrowing by the corporation (*e.g.*, a bank deposit) and determined by reference to the relative principal amounts of, and the average interest rate on, each type of external borrowing. Thus, for example, in the case of a bank, the excess interest will not necessarily be treated as paid on a bank deposit. The conferees are aware that some corporations attempt to establish actual debtor-creditor relationships for funds between a branch and a home office or between one branch and another. The conferees question the legitimacy of such arrangements from a tax perspective since only one legal entity is involved. Nonetheless, if companies are able to legally establish such relationships, it is intended that the regulations address these relationships and possibly treat the excess interest as incurred on each type of inter-branch "loan". The conferees are concerned

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that taxpayers may artificially structure interbranch loans in a manner different from their external liabilities in an attempt to reduce or eliminate the tax on excess interest. The conferees, therefore, expect the regulations to address this concern.

For purposes of determining whether the tax on the excess interest is to be reduced or eliminated by treaty, the applicable treaty generally is any income tax treaty between the United States and the country of the corporation's home office. However, any treaty benefits available in this case are subject to the agreement's prohibition against treaty shopping. In the case of U.S. withholding tax on interest actually paid by a branch, since the agreement effectively treats the branch as a U.S. corporation for purposes of the tax, the appropriate treaty will be any treaty between the United States and the country of a foreign recipient, subject to the agreement's treaty shopping rules.

Interaction with income tax treaties

The conference agreement generally follows the Senate amendment in providing that existing U.S. income tax treaties may modify, reduce, or eliminate the branch profits tax, the second-level withholding tax on dividends, or the branch-level tax on interest except in cases of treaty shopping. The agreement modifies, however, the definition of treaty shopping adopted by the Senate amendment in two respects. First, the Senate amendment's ownership requirement is modified to look through all entities, not only foreign entities, in determining whether 50 percent or more of the corporation's stock is owned by local residents. Second, the agreement provides that where 50 percent or more of a foreign corporation's income is used to satisfy liabilities outside the corporation's country of residence, the corporation may not avail itself of any treaty benefits provided by an income tax treaty between its country of residence and the United States (a "base erosion" rule). This latter rule is frequently used in recent U.S. income tax treaties and the conferees feel its addition is necessary to prevent nonresidents of a treaty country from gaining benefits the treaty accords. As does the Senate amendment, the conference agreement authorizes the Secretary to prescribe regulations regarding other circumstances in which the shareholders of a foreign corporation are not treaty shopping.

The conferees understand that the Treasury Department interprets Article 24(3) of the United States 1981 Model Income Tax Treaty to preclude the imposition of the agreement's branch profits tax. The conferees also do not intend that the branch tax be imposed on income not attributable to a permanent establishment (even though the income is effectively connected with a U.S. trade or business under Code rules) if the treaty in question in fact precludes the United States from imposing its regular corporate income tax on income not attributable to a permanent establishment, so long as the shareholders of a foreign corporation are not treaty shopping.

Other rules

The conference agreement reduces present law's business income threshold for imposition of the second-level withholding tax to 25 percent. The agreement also clarifies that the second-level withholding tax on dividends is not applicable in those cases where the branch profits tax may be imposed, even though no branch tax may be due in a particular taxable year. For example, if a branch reinvests its after-tax earnings in its trade or business during a particular taxable year so that no branch tax is due that year, but the branch's business income exceeds 25 percent of the foreign corporation's total income and the corporation distributes dividends during that year, the second-level dividend withholding tax is imposed only if the treaty of the country where the foreign corporation resides precludes the United States from imposing its branch tax and permits the second-level withholding tax.

Consistent with the branch tax's application to income from the disposition of real property, the agreement also conforms present law's second-level withholding tax on dividends so that the United States collects two levels of tax on this income. No inference is intended by the modification of this provision about the interpretation of present law.

The conferees are concerned that the branch-level interest provision may lead to increased use of back-to-back loans by nontreaty residents and improper characterization of interbranch funds by both treaty and nontreaty residents to avoid U.S. tax. The conferees wish to emphasize that back-to-back loans, as generally provided under present law, will be collapsed by the IRS, and the ultimate recipient, if not treaty protected, will be subject to U.S. tax. Similarly, the conferees expect the Internal Revenue Service to closely scrutinize the characterization of interbranch transactions. The conferees recognize the difficulty that the Internal Revenue Service has in identifying these arrangements that erode the U.S. tax base and believe the tax-writing committees of the Congress should monitor collections and compliance with the interest provision adopted under the agreement to ensure its continued viability, and, if necessary, propose legislation to obviate any abuses.

2. Retain Character of Effectively Connected Income

Present Law

The United States taxes foreign persons' income that is effectively connected with a U.S. trade or business on a net basis at graduated rates, in the same manner that it taxes the income of U.S. persons. Foreign persons may not be subject to U.S. tax if they receive income that was earned by a U.S. trade or business in a year after the trade or business has ceased to exist (*e.g.*, by selling property and recognizing the gain on the installment basis) or dispose of U.S. business property at a gain in a year after the business has ceased to exist.

House Bill

The House bill provides that income or gain is treated as effectively connected with a U.S. trade or business if it is attributable to another taxable year and would have been so treated if it had been taken into account in that other year. This provision applies to taxable years beginning after 1985.

Senate Amendment

The Senate amendment generally follows the House bill, but amends present law in two additional respects. First, under the Senate amendment, a foreign person's sale of U.S. assets that formerly were used in a U.S. business is taxable. Second, the Senate amendment treats the removal of business assets from U.S. jurisdiction as a disposition, with a basis step-up for this purpose for business assets brought into the United States. The Senate amendment applies to taxable years beginning after 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment except that it does not include the provision treating the removal of business assets as a disposition, and it only treats income as being effectively connected if the assets are sold within 10 years after being used in a U.S. business.

3. Tax-Free Exchanges by Expatriates

Present Law

A U.S. citizen who gives up citizenship for a principal purpose of avoiding U.S. tax will generally continue for a period of ten years to be taxed as a citizen on U.S. source income, but not on foreign source income. U.S. source income for this purpose includes gains from sales of U.S. property. Tax-avoidance expatriates may be able to avoid tax by making a tax-free exchange of U.S. property.

House Bill

The House bill applies the tax-avoidance expatriate rules to gains on the sale of property the basis of which was determined by reference to property located in the United States, stock of a U.S. corporation, or a debt obligation of any U.S. person. This provision applies to dispositions of property acquired in tax-free exchanges after September 25, 1985.

Senate Amendment

The Senate amendment is the same as the House bill except that it applies to dispositions of property acquired in tax-free exchanges after March 1, 1986.

Conference Agreement

The conference agreement follows the House bill.

4. Excise Tax on Insurance Premiums Paid to Foreign Insurers and Reinsurers

Present Law

Foreign insurers and reinsurers frequently are not subject to U.S. income tax, but rather to an excise tax on premiums paid to them for the direct insurance or reinsurance of U.S. risks. The excise tax rates are (per dollar of premium): four cents for casualty contracts, one cent for life contracts, and one cent for all reinsurance. The tax is collected by return. Payments to some insurers and reinsurers are exempt by treaty, but reinsurance premiums paid by treaty-protected insurers and reinsurers are subject to the tax (unless the recipient is exempt by treaty).

House Bill

The House bill makes the excise tax on casualty reinsurance premiums paid to foreign insurers for U.S. risk coverage equal to that on similar casualty insurance premiums (four percent). It imposes an excise tax only once—on retained premiums received by foreign insurers or reinsurers. It makes the foreign insurer (or his agent) liable for the tax and requires the U.S. insured or broker obligated to transmit the premiums to withhold the tax.

The provision applies to premiums paid after December 31, 1985.

Senate Amendment

The Senate amendment requires the Treasury Department to study whether U.S. reinsurance corporations are at a significant competitive disadvantage vis-a-vis foreign reinsurance corporations by reason of U.S. treaties, and report before January 1, 1988. If U.S. reinsurance corporations are at such a competitive disadvantage, the Senate believes that the Treasury Department should

renegotiate the relevant treaties to eliminate that disadvantage.

Conference Agreement

The conference agreement follows the Senate amendment with an amendment treating certain captive insurance companies as controlled foreign corporations for subpart F purposes (this amendment is discussed at XII.C.1.a., above).

5. Reporting by Foreign-Controlled Corporations

Present Law

Foreign-controlled foreign corporations doing business in the United States and foreign-controlled U.S. corporations are required to report transactions with related foreign corporations.

House Bill

No provision.

Senate Amendment

The Senate amendment requires foreign-controlled foreign corporations doing business in the United States and foreign-controlled U.S. corporations to report transactions with all related foreign parties, whether or not a corporation. This provision applies to taxable years beginning after 1986.

Conference Agreement

The conference agreement follows the Senate amendment with the technical corrections and modifications described below. First, the agreement defines a related party as any person who is related to the reporting corporation under sections 482, 267(b), or 707(b)(1). The latter two Code sections provide objective related party tests, in contrast with section 482, the sole provision used in the Senate amendment for determining related party status.

Second, the agreement adds a requirement that U.S.-controlled foreign corporations, foreign-controlled U.S. corporations, and foreign-controlled foreign corporations doing business in the United States report such information as the Secretary may require for purposes of carrying out the installment sales rules described in VIII. C., above. The conferees note that the limitations imposed by section 6103, relating to confidentiality of information, are to apply to the disclosure of any information provided to the Internal Revenue Service pursuant to this latter provision.

6. Foreign Investors in U.S. Partnerships

Present Law

Foreign persons who earn wages or investment income in the United States are generally subject to withholding requirements designed to ensure collection of applicable U.S. taxes. Foreign persons with investments in U.S. partnerships, however, are not subject to U.S. withholding tax on their share of the income attributable to the partnership's trade or business.

House Bill

No provision.

Senate Amendment

The Senate amendment requires domestic partnerships that have income effectively connected with a U.S. trade or business to withhold U.S. tax at a 20-percent rate on all distributions to foreign partners. The requirement is effective for taxable years beginning after 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment, with modifications. The conference agreement applies the new withholding rule to foreign partnerships as well as to domestic partnerships. The agreement clarifies that the new withholding rule does not apply to payments that are subject to withholding under Code section 1441 or 1442, or would be so subject if a treaty did not reduce or eliminate the tax required to be withheld. In addition, the agreement provides that withheld amounts in excess of a foreign person's tax liability are to be treated as an overpayment of tax. The agreement also provides regulatory authority to coordinate the new withholding rule with the FIRPTA withholding requirements to prevent duplicative withholding.

Under the conference agreement, if a partnership's gross income effectively connected with a U.S. trade or business over a three-year period is less than 80 percent of the total gross income of the partnership over that period, then withholding is required only on the proportion of current distributions that the partnership's gross income effectively connected with its U.S. trade or business bears to the partnership's total gross income over its previous three taxable years.

Finally, the conference agreement contains general regulatory authority for the Secretary to carry out the agreement's provisions. For example, the regulations are to specify the proper withholding agent in the case of tiers of partnerships, and the appropriate withholding requirement in the case of a partnership that has effectively connected income for the first time.

The provisions apply to distributions after the date prescribed in regulations, or if earlier, December 31, 1987, but not before January 1, 1987.

7. Income of Foreign Governments

Present Law

Foreign governments are not subject to U.S. tax on income from their investments in the United States. Treasury regulations specify that income from commercial activities is not investment income and therefore is not exempt from U.S. tax. Certain international organizations (those described in Code sec. 7701(a)(18)) are completely exempt from tax.

House Bill

No provision.

Senate Amendment

The Senate amendment codifies the rule taxing the commercial activities of foreign governments, and defines commercial activity to include ownership of a controlling interest in a corporation engaged in a trade or business anywhere. It clarifies that the determination of whether a governmental entity is engaged in commercial activities is to be made by reference to its activities worldwide. The foreign government exception does not apply to income received by or from controlled entities if they or related entities engage in commercial activities anywhere. A controlled entity is defined as any entity in which the foreign government owns (by value or voting power) at least a 50-percent interest or an interest that provides effective control over the entity. Where it has a tax treaty with the United States, a foreign government will be treated as a resident of its country for purposes of the treaty. The Senate amendment is effective on July 1, 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment, with the modifications described below.

First, the conference agreement removes international organizations described in Code section 7701(a)(18) from the scope of the provision. For these international organizations, the conference agreement makes no change to present law.

Second, the conference agreement exempts from U.S. tax income derived from financial instruments in the conduct of governmental financial or monetary policy.

Third, the conference agreement deletes the provision of the Senate amendment that denied governmental treatment to any entity controlled by a foreign government if any other entity controlled by that government engaged in commercial activity. Under the conference agreement, as under the Senate amendment, if a controlled entity is itself engaged in commercial activity anywhere in the world, its income is treated like income of a privately owned entity. Income it receives is fully taxable and payments it makes are not eligible for the exemption. However, if a controlled entity is not itself engaged in any commercial activity, the agreement provides tax exemption for certain investment income earned by that controlled entity, whether or not any entity related to that controlled entity is engaged in commercial activity, and the agreement provides exemption for interest and dividend payments from the entity to the government. Thus, the conference agreement ensures taxation of income derived directly or indirectly by foreign governments from commercial activities. For this purpose, however, the conference agreement treats a foreign central bank of issue as a controlled commercial foreign entity only if engaged in commercial activities within the United States. The conferees anticipate that regulations will appropriately address shifting of income from commercial arms of foreign governments to other related entities. These regulations are to replace the rule of the Senate amendment that attributed commercial activity of one controlled entity to other controlled entities.

The conference agreement makes it clear that this provision is effective for amounts received or accrued on or after July 1, 1986, although no withholding obligation is imposed for amounts paid prior to the date of enactment.

8. Transfer Prices for Imports

Present Law

Importers may claim a transfer price for customs purposes that is too low to be consistent with the transfer price they claim for income tax purposes. (See *Brittingham*, 66 T.C. 373; 79-2 USTC 9494.)

House Bill

No provision.

Senate Amendment

Under the Senate amendment, importers cannot claim a transfer price for income tax purposes that is higher than would be consistent with the value they claim for customs purposes. This provision is effective for transactions entered into after March 18, 1986.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees expect that the Secretary will provide rules for coordinating customs and tax valuation principles, including provision for proper adjustments for amounts such as freight charges, items of American content returned, and sales commissions where customs pricing rules may differ from appropriate tax valuation rules.

9. Dual Resident Companies

Present Law

U.S. corporations that are "residents" of foreign countries may consolidate with profitable companies both here and abroad and obtain for related parties two deductions for one item of expense.

House Bill

No provision.

Senate Amendment

The Senate amendment does not allow a U.S. corporation to consolidate with other U.S. corporations if foreign parties may benefit from its losses through foreign consolidation or group relief rules, unless the income of those foreign parties is or will be subject to U.S. tax. The amendment is effective for taxable years beginning after 1986.

Conference Agreement

The conference agreement follows the approach of the Senate amendment, with substantial modifications. The agreement provides that if a U.S. corporation is subject to a foreign country's tax on worldwide income, or on a residence basis as opposed to a source basis, any taxable loss it incurs cannot reduce the taxable income of any other member of a U.S. affiliated group for that or any other taxable year. A company may be subject to foreign tax on a residence basis because its place of effective management is in a foreign country or for other reasons. Where a corporation is subject to foreign tax on a residence basis, then, for U.S. purposes, its loss will be available to offset income of that corporation in other years, but not income of another U.S. corporation. Regulatory authority is provided to exempt a U.S. corporation from this rule to the extent that its losses do not offset the income of foreign corporations for foreign tax purposes. Thus, for example, a U.S. corporation that resides in a foreign country, that has no affiliates in that country whose foreign tax its losses can reduce, and whose losses do not otherwise reduce foreign tax of a foreign corporation, will not be subject to this provision.

The conferees adopted a rule preventing use of losses, in lieu of the prohibition of consolidation that the Senate amendment contained, because of their view that the collateral implications of deconsolidation were sometimes undesirable. For example, if a U.S. corporation that is a dual resident corporation wholly owns several U.S. subsidiaries, denial of consolidation to the dual resident corporation would automatically have prevented application of the consolidated return rules to transactions between two of its U.S. subsidiaries under current regulations. The conferees saw no reason to prohibit application of the consolidated return rules in that case, so long as the dual resident corporation's losses do not reduce both the taxable income of a foreign corporation in a foreign country and the U.S. taxable income of some other U.S. corporation.

The agreement's provision applies to dual resident companies whether or not any of the income of any foreign corporation that the dual resident corporation's loss may reduce in the foreign country is or will be subject to U.S. tax. This rule expands that of the Senate amendment, which would not have applied when the income of a foreign corporation whose foreign tax the dual resident corporation's loss could reduce was or would be subject to U.S. tax. The conferees extended the impact of this provision to all foreign corporations that could benefit from a dual resident corporation's net operating loss, whether or not the foreign corporation's earnings are or will be subject to U.S. tax, for two reasons.

First, the conferees believe that this extension is fair: the conferees are not aware of a case where the use of one company's deduction by two other companies in two tax jurisdictions makes sense as a matter of tax policy. The conferees have not perceived any relevant distinction between a deduction that arises on account of interest expense and one that arises on account of some other expense, or between a deduction for a payment to a related party and one for a payment to an unrelated party.

Second, the conferees noted arguments that the Senate provision discriminated against foreign-owned U.S. corporations. As extended, the provision will apply to losses shared with foreign corporations whose earnings will be subject to U.S. tax (which are typically U.S.-controlled) and not only to losses shared with foreign corporations whose earnings are never subject to U.S. tax (which are typically foreign-controlled). The conferees are aware that some have attempted to argue that the provision as extended discriminates against foreign-controlled U.S. entities by somehow imposing on those entities some requirement for loss-sharing not imposed on U.S.-controlled U.S. entities. The conferees find no merit in this argument. If this provision somehow is found to conflict with any treaty, the provision is to be effective notwithstanding the treaty.

This provision is effective for taxable years beginning after 1986. Carryforwards attributable to losses incurred in years beginning prior to 1987 by a dual resident corporation are available to offset income that another member of the affiliated group earns in years beginning after 1986. For example, a dual resident corporation incurs a $100 net operating loss in 1986, its first year of operation, and it shares that loss with a foreign corporation. The only other member of its U.S. consolidated group earns $50 in 1986. All these corporations use the calendar year as a taxable year. In 1987, the $50 loss carryforward is available for use against 1987 income of the dual resident corporation or the other member of the U.S. affiliated group.

10. Interest Paid to Related Tax-Exempt Parties

Present Law

Certain taxpayers may reduce their tax to a significant extent by deducting interest paid or accrued to related parties who do not pay U.S. tax on the interest income.

House Bill

No provision.

Senate Amendment

The Senate amendment denies the deduction for interest paid or accrued to related, tax-exempt parties (other than ESOPs) to the extent net interest exceeds 50 percent of pre-net interest deduction taxable income. It provides carryovers for disallowed amounts. The Senate amendment's restriction on deductibility also applies to back-to-back loans that might otherwise defeat the purpose of this rule.

Conference Agreement

The conference agreement does not include the Senate amendment provision.

F. Taxation of Foreign Currency Exchange Rate Gains and Losses

1. Adoption of Functional Currency Concept

a. General rule

Present Law

There are no express statutory rules for determining the amount and timing of gain or loss arising from fluctuations in the value of foreign currency (referred to as "exchange gain or loss").

House Bill

The House bill adopts the functional currency concept, under which exchange gain or loss is recognized on a transaction-by-transaction basis in the case of certain transactions denominated in a currency other than a functional currency. Except as otherwise provided (*e.g.*, in the case of a qualified business unit), a taxpayer's functional currency is the U.S. dollar. All determinations under the Internal Revenue Code of 1985 are to be made in a taxpayer's functional currency.

Senate Amendment

The Senate amendment follows the House bill with one exception: the Secretary is authorized to issue regulations providing for Federal income tax determinations to be made in a nonfunctional currency. Pursuant to the Secretary's regulatory authority, it is contemplated that regulations will prescribe rules for the accrual of original issue discount ("OID") on nonfunctional currency denominated obligations. Pending issuance of regulations, OID is to be determined in terms of units of the nonfunctional currency and translated into the functional currency using the average exchange rate for the accrual period. The functional currency amount of OID included in income for an accrual period is added to the basis of the obligation (to determine the adjusted issue price). Similar rules apply to the calculation of bond premium.

Conference Agreement

The conference agreement follows the Senate amendment.

b. Business entities

Present Law

There are no prescribed rules for determining when the results of a foreign operation can be measured in a foreign currency before translation into dollars.

House Bill

In the case of a qualified business unit ("QBU"), a taxpayer accounts for the results of operation by measuring income or loss in the QBU's functional currency. A QBU is defined as any separate and clearly identified unit of a taxpayer's active trade or business, if such unit maintains separate books and records in a functional currency. A QBU's functional currency is the currency used by such unit in keeping its books and records, and in which a significant part of its business activities are conducted. If the activities of a QBU are primarily conducted in U.S. dollars, then the functional currency of such unit is the U.S. dollar.

Senate Amendment

The Senate amendment generally follows the House bill, with modifications. A QBU is defined as any separate and clearly identified unit of a taxpayer's trade or business, if such unit maintains separate books and records. Further, the definition of a QBU's functional currency is the currency of the economic environment in which a significant part of the unit's activities are conduct-

ed, and which is used in keeping books and records.

Conference Agreement

The conference agreement follows the Senate amendment. In general, the rule for QBUs will apply where the foreign operation constitutes a trade or business, a significant part of the activities of which are conducted in the local currency. The conference agreement contemplates that the U.S. dollar will be used as the functional currency of a foreign operation that is an integral extension of a U.S. operation (*e.g.*, a foreign corporation whose sole function is to act as a financing vehicle for affiliated U.S. corporations, or a foreign corporation used to hold portfolio stock investments or similar passive assets that could readily be carried on the parent corporation's books), or a foreign operation with a limited duration (e.g., an offshore construction project undertaken by a U.S. taxpayer). In this connection, the conferees wish to clarify that the existence of a QBU does not turn solely on the timeframe of a foreign activity. For example, in appropriate circumstances (*e.g.*, if the activity is subjected to tax in the host country), an activity of sufficient duration (*e.g.*, 12 months) may support the finding of the existence of a QBU. The conferees also anticipate that, where appropriate, the Secretary may require that dollar transactions entered into by a QBU with a functional currency other than the dollar be kept in dollars.

c. Treatment as accounting method

Present Law

There are no express statutory rules, although the case law treats the choice of a method of translating the income of a branch as a method of accounting.

House Bill

The choice of a functional currency, including an election to use the U.S. dollar (described below), is treated as a method of accounting that can be changed only with the consent of the Secretary.

Senate Amendment

The Senate amendment generally follows the House bill, but clarifies that any change in the choice of a functional currency is subject to such conditions as the Secretary may prescribe.

Conference Agreement

The conference agreement follows the Senate amendment.

d. Election to use U.S. dollar

Present Law

No provision.

House Bill

A taxpayer can elect to use the U.S. dollar as the functional currency for a QBU but only if the unit maintains its books and records in the U.S. dollar (*i.e.*, uses the separate transaction method).

Senate Amendment

The Senate amendment follows the House bill, and grants to the Secretary limited regulatory authority to permit the use of the U.S. dollar as a functional currency if the taxpayer uses a translation method that approximates dollar-based accounting.

Conference Agreement

Under the conference agreement, a taxpayer can elect to use the U.S. dollar only to the extent provided in regulations. The Secretary is authorized to prescribe regulatory exceptions in two cases: (1) if books and records are maintained in the U.S. dollar, or (2) if the method of translation used approximates the results of determining exchange gain or loss on a transaction-by-transaction basis. The conference agreement contemplates that regulations may implement the latter exception by requiring the comparison of year-end balance sheets using historical exchange rates for *all* balance sheet items, and that the Secretary may condition the application of either exception on the taxpayer making the election for all of the taxpayer's QBUs (on a worldwide basis).

The regulatory authority for the limited exception to the dollar-based books requirement was included to address the concerns of taxpayers operating in hyperinflationary economies. In such a case, local-currency based accounting might not accurately reflect the income or loss of a taxpayer with substantial fixed plant and equipment (because the local currency depreciation charge will become insignificant in relation to operating income). For these taxpayers, an election to use the U.S. dollar as the functional currency will not be conditioned on conforming books and records. The conferees wish to emphasize that there is no expectation that this exception will be made generally available to taxpayers who are not operating in hyperinflationary economies.

An election to use the U.S. dollar is effective for the taxable year for which made and all subsequent taxable years, unless revoked with the consent of the Secretary. For a U.S. person, the election is to be made on the return for the first taxable year for which a QBU exists, by making a statement that the QBU elects the U.S. dollar as its functional currency for U.S. tax purposes. For a foreign person, the election is to be made in the U.S. owner's return for the first taxable year in which the U.S. owner acquires at least a 50-percent ownership interest in the foreign person by making a statement that the foreign person's QBU elects the U.S. dollar as its functional currency for U.S. tax purposes. If there is no 50-percent U.S. shareholder, the conferees anticipate that the Secretary shall prescribe regulations providing a mechanism for an election on the occurrence of a significant event (*i.e.*, an event having U.S. tax consequences).

2. Foreign Currency Transactions

a. General rules

Present Law

Foreign currency is treated as personal property for Federal income tax purposes. Exchange gain or loss is separately accounted for, apart from any gain or loss attributable to an underlying transaction. Present law presents issues relating to the timing of recognition, the character, and the geographic source or allocation of exchange gain or loss.

House Bill

Foreign currency gain or loss is recognized with respect to certain transactions (referred to as "section 988 transactions") denominated in a nonfunctional currency: (1) the acquisition of or becoming the obligor under a debt instrument, (2) accruing or otherwise taking into account any item of expense or income to be paid on a later date, and (3) the disposition of foreign currency. The definition of foreign currency excludes any section 1256 contract (*e.g.*, a regulated futures contract) that is not part of a hedging transaction.

Foreign currency gain or loss is defined as gain or loss realized by reason of a change in the exchange rate between the date an asset is taken into account for tax purposes and the date it is paid.

The Secretary is authorized to prescribe regulatory exceptions for any class of items the taking into account of which is not necessary to carry out the purposes of the provision by reason of the small amounts or short periods involved, the regularity with which these items occur, or otherwise.

Senate Amendment

The Senate amendment generally follows the House bill, except the definition of a section 988 transaction is modified: (1) the acquisition of or becoming the obligor under a debt instrument, (2) accruing or otherwise taking into account any item of expense or gross income to be paid on a later date, (3) entering into or acquiring an interest in any forward contract, futures contract, option, or similar financial instrument (such as a currency swap) if such position is not marked to market under section 1256, or (4) the disposition of nonfunctional currency. An exception is provided for positions included in a mixed straddle that is identified under section 1256(d).

Further, the Senate amendment does not authorize the Secretary to prescribe a regulatory exception by reason of the regularity with which items occur.

Conference Agreement

The conference agreement generally follows the Senate amendment.

Rules are prescribed for the treatment of exchange gain or loss from transactions denominated in a currency other than a taxpayer's functional currency. For taxpayers using the U.S. dollar as a functional currency, the conference agreement generally retains present law principles under which the disposition of foreign currency results in the recognition of gain or loss, and exchange gain or loss is separately accounted for (apart from any gain or loss attributable to an underlying transaction). Similarly, the recognition of foreign currency gain or loss generally requires a closed and completed transaction (*e.g.*, the actual payment of a liability).

Foreign-currency denominated items are to be translated into U.S. dollars using the exchange rate that most properly reflects income; generally, the appropriate exchange rate will be the free market rate.

The conference agreement modifies the definition of a section 988 transaction by eliminating the exception for identified mixed straddles.

The conferees wish to clarify that the use of a nonfunctional currency to establish a demand or time deposit denominated in the same currency (or the conversion of such a deposit to another deposit in the same currency) is not a recognition event. This result obtains because, for purposes of the rule for dispositions of nonfunctional currency, the term nonfunctional currency includes not only coin and currency, but also nonfunctional currency demand deposits and similar instruments issued by a bank or other financial institution.

The conferees also wish to clarify an example in the committee report relating to the calculation of foreign currency gain that is accompanied by income from discharge of indebtedness. The manner in which foreign currency gain was calculated in that example is intended to have general application, and is not limited to cases in which there is income from discharge of indebtedness. In every case, to the extent that gain or loss is derived from a transaction, it is to be attributed first to exchange gain or loss measured by reference to the effect of movements in exchange rates on the units

of nonfunctional currency originally booked by the taxpayer. For example, if a taxpayer whose functional currency is the U.S. dollar acquires a debt obligation that is not part of a section 988 hedging transaction for 100 pounds when the exchange rate is 1 pound = $1 and sells the obligation for 200 pounds when the exchange rate is 1 pound = $2, $100 of the taxpayer's $300 gain ($400 sales price less $100 basis) is foreign currency gain. This is calculated by multiplying the difference in exchange rates between the booking date and the payment date by the units of functional currency originally booked by the taxpayer.

The conference agreement modifies the calculation of foreign currency gain or loss to clarify that foreign currency gain or loss is recognized only to the extent of the total gain or loss, taking into account gain or loss on an underlying transaction. Thus, in the above example, if the exchange rate had fallen to 1 pound = $.5, the taxpayer would have had no foreign currency gain or loss; if the exchange rate had fallen to 1 pound = $.75, the taxpayer would have had a $50 non-foreign currency gain; if the exchange rate had fallen to 1 pound = $.25, the taxpayer would have had a $50 foreign currency loss.

Section 267(f)(3)(C) authorizes the Secretary to prescribe regulations excepting certain foreign currency losses from the loss disallowance and loss deferral rules of section 267(a)(1) and section 267(f)(2), respectively. The statutory authorization relates to a loss sustained by a corporate lender on repayment of a foreign currency denominated loan by an affiliated corporation. Pursuant to this regulatory authority, the Secretary has issued temporary regulations. The conference agreement contemplates that the Secretary will review these temporary regulations, with a view towards conforming the regulatory exception and determining the appropriateness of applying the exception to every case that is covered by the current temporary regulations. For example, the application of the temporary regulations is limited to a loan that is "payable or denominated solely in a foreign currency;" consistent with the statutory definition of a section 988 transaction, the regulatory rule should take account of a loan where the principal is determined by reference to the value of a nonfunctional currency. Further, in connection with the section 988 regulatory authority to provide for the appropriate treatment of related-party transactions, the Secretary should determine the extent to which the scope of the section 267 regulatory exception should be limited. The conferees intend that any section 267 exceptions be narrowly drawn.

b. Treatment as ordinary income or loss

Present Law

No provision.

House Bill

Foreign currency gain or loss generally is treated as interest income or expense, except for purposes of withholding at source, information reporting requirements, or such other purposes as the Secretary may prescribe by regulation.

Senate Amendment

Foreign currency gain or loss is treated as ordinary income or loss, and as interest income or expense (for all Federal tax purposes) only as provided by regulation. Certain investment products that are not marked-to-market and are held for speculation are accorded capital gain or loss treatment if the taxpayer makes proper identification.

Conference Agreement

The conference agreement generally follows the Senate amendment.

The conference agreement modifies the Senate amendment in two respects: (1) it is clarified that the Secretary may prescribe regulations treating foreign currency gain or loss as interest income or expense for selected purposes only (and not for all Federal tax purposes), and (2) the rule for investment products accorded capital gain or loss treatment does not apply to an item that is part of a tax straddle (within the meaning of sec. 1092(c), but determined without regard to the exception for qualified covered calls in paragraph (4) thereof).

c. Special rule for hedging transactions

Present Law

No provision.

House Bill

If any transaction that would give rise to foreign currency gain or loss is part of a hedging transaction, all transactions included in the hedge are integrated.

Senate Amendment

The Senate amendment generally follows the House bill.

Conference Agreement

The conference agreement generally follows the Senate amendment.

The Secretary is authorized to issue regulations that address the treatment of transactions that give rise to foreign currency gain or loss and are part of a section 988 hedging transaction. The conferees included this regulatory authority to provide certainty of tax treatment for foreign currency hedging transactions that are fast becoming commonplace (such as fully hedged foreign currency borrowings) and to insure that such a transaction is taxed in accordance with its economic substance. No inference is intended as to the proper treatment of these transactions under present law.

A section 988 hedging transaction includes certain transactions entered into primarily to reduce the risk of (1) foreign currency exchange rate fluctuations with respect to property held or to be held by the taxpayer, or (2) foreign currency fluctuations with respect to borrowings made or to be made or obligations incurred or to be incurred by the taxpayer. A section 988 hedging transaction is to be identified by the taxpayer or the Secretary.

To the extent provided in regulations, in the case of any transaction giving rise to foreign currency gain or loss that is part of a section 988 hedging transaction (determined without regard to whether such transaction is marked-to-market under section 1256), all positions in the hedging transaction are integrated and treated as a single transaction, or otherwise treated consistently (*e.g.*, for purposes of determining the character, source, and timing of income or loss). The conferees intend that these regulations address two different categories of hedging transactions.

The first category is a narrow class of fully hedged transactions that are part of an integrated economic package through which the taxpayer (by simultaneously combining a bundle of financial rights and obligations) has assured itself of a cash flow that will not vary with movements in exchange rates. With respect to this category, the conferees intend that such rights and obligations be integrated and treated as a single transaction with respect to that taxpayer. For example, in the case of a fully hedged foreign currency borrowing, a taxpayer with the dollar as its functional currency will borrow foreign currency and hedge its exposure by entering into a series of forward purchase contracts or a single swap agreement. The forward contracts or swap agreement will assure the taxpayer of a stream of foreign currency flows to make interest and principal payments with respect to the foreign currency borrowing. The taxpayer, although it has borrowed foreign currency, is not at risk with respect to currency fluctuations because it has locked in the dollar cost of its future foreign currency requirements. The conferees intend that regulations treat the entire package as a dollar borrowing with dollar interest payments with respect to the borrower.

In the case of a foreign currency borrowing hedged with a series of forward purchase contracts, the rules of section 1271, *et seq.*, and 163(e) shall apply in determining the appropriate interest deduction. The conferees intend that similar rules apply to synthetic U.S. dollar securities (*e.g.*, a transaction in which a taxpayer with the U.S. dollar as its functional currency purchases a foreign currency denominated debt obligation and sells forward all interest and principal payments to assure itself of a stream of fixed dollar flows). The conferees intend that the regulations pertaining to integrated hedging transactions provide rules for transactions that are, in substance, equivalent to a transaction denominated in the taxpayer's functional currency. In addition, the conferees wish to clarify that the integration approach is not limited to U.S. dollar denominated transactions; thus, the rules also apply where several transactions are entered into by a U.S. dollar functional-currency taxpayer to establish a foreign currency position.

The second category of hedging transactions involves transactions that are not entered into as an integrated financial package but are designed to limit a taxpayer's exposure in a particular currency (*e.g.*, the acquisition of a foreign currency denominated liability to offset exposure with regard to a foreign currency denominated asset). These regulations need not provide for complete integration (*e.g.*, the form of a foreign currency borrowing may be respected and the interest deduction determined by reference to the spot rate on the date of payment). Where appropriate, these regulations should provide for consistent treatment with respect to character, source, and timing.

The conferees intend that both sets of regulations relating to hedging transactions provide rules to prevent taxpayers from selectively identifying only those transactions where the hedging rules are favorable to the taxpayer. The conferees are aware that rules applicable to partially hedged transactions may be necessary to achieve a hedging rule that is not susceptible to abuse. The conferees also intend that the regulations require a taxpayer to clearly identify a hedging transaction before the close of the day the transaction is entered into, in order to claim increased deductions attributable to the hedge. The Secretary may identify the transaction as a hedge at a later date. Further, (as discussed below), the Act clarifies the interaction of these rules and the tax straddle provisions, with a view towards providing an incentive for taxpayers to properly identify transactions that are part of a tax straddle.

In addition, the regulations will need to take account of the various mechanisms for hedging currency exposure. For purposes of the special regulatory rules, a hedging position may include any contract (1) to sell or exchange nonfunctional currency at a future date under terms fixed in the contract, (2) to purchase nonfunctional currency with functional currency at a future date under terms fixed in the contract, (3) to exchange functional currency for a nonfunctional currency at a future date under terms fixed in the contract (which would include parallel loans and currency swaps), or (4) to receive or pay a nonfunctional currency (*e.g.*, interest rate swaps denominated in a nonfunctional currency).

The conferees are particularly concerned about hedging transactions where a taxpayer borrows in a weak currency and eliminates virtually all risk of currency loss by establishing offsetting currency positions. If such a hedging transaction is not treated as an integrated transaction, the taxpayer may be able to defer tax on income (and to utilize capital losses, which would otherwise be unavailable, by converting ordinary income to capital gains).

d. Sourcing rules

Present Law

No provision.

House Bill

Foreign currency gain is sourced under the same rules that apply to interest income, except that such gain to a payor is sourced as though it were interest expense. Foreign currency loss is allocated and apportioned under the same rules that apply to interest expense, except such loss of a payee is sourced as though it were interest income.

Senate Amendment

In general, foreign currency gain is sourced, and foreign currency losses are allocated, by reference to the residence of the taxpayer or QBU on whose books the underlying financial asset or liability is properly reflected. For purposes of these rules, an individual's residence is defined as the country in which the "tax home" (as defined in sec. 911(d)(3)) is located. In the case of any U.S. person (as defined in sec. 7701(a)(30)) other than an individual, the residence is the United States. In the case of a foreign corporation, partnership, trust, or estate, the residence is treated as a foreign country. Where appropriate, foreign currency gain or loss that is treated under the section 988 hedging rules (discussed above) is to be sourced or allocated in a manner that is consistent with that of the hedged item.

The residence of a taxpayer's QBU (including the QBU of an individual) is the country in which the unit's principal place of business is located. A special rule is provided for purposes of determining the source or allocation of exchange gain or loss from certain related party loans. This rule was included because of a concern that the general rule that looks to residence could be manipulated to artificially increase foreign source income for purposes of computing allowable foreign tax credits. Under the special rule, for purposes of determining the source of interest income, related-party loans are marked-to-market on an annual basis, and interest income earned on the loan during the taxable year is resourced as domestic source income to the extent of any loss on the loan.

Conference Agreement

The conference agreement generally follows the Senate amendment, with modifications.

The conference agreement clarifies that the rules for sourcing or allocating foreign currency gain or loss apply to investment products with respect to which an election is made to treat gain or loss as capital. The conference agreement provides the Secretary with regulatory authority to apply rules similar to the rules for related-party loans to loans to U.S. persons.

The conference agreement contemplates that the Secretary will address the appropriate treatment of payments made to a counter-party under a swap transaction for purposes of withholding under sections 871 and 881.

e. Application to transactions of a personal nature

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The section 988 rules apply to transactions entered into by an individual only to the extent that expenses attributable to such transactions would be deductible under section 162 (as a trade or business expense) or section 212 (as an expense of producing income, other than expenses incurred in connection with the determination, collection or refund of taxes). Thus, for example, the rules would be inapplicable to foreign currency gain or loss recognized by a U.S. individual residing outside of the United States upon repayment of a foreign currency denominated mortgage on the individual's principal residence. The principles of current law would continue to apply to such transaction.

Conference Agreement

The conference agreement follows the Senate amendment, but clarifies that the determination of whether expenses would be deductible under section 212 is made without regard to the two-percent floor (added by sec. 132 of the Act) applicable to investment expenses.

f. Tax straddle provisions

Present Law

Statutory rules prevent the use of straddles (interests in actively traded personal property, the holding of one of which substantially diminishes the risk of loss from holding one or more others such interests) to defer income. Under the loss-deferral rule of section 1092, the deduction of a loss realized on disposition of a position in a tax straddle is limited to the excess of the loss over any unrecognized gain in offsetting positions. The mark-to-market rule of section 1256 treats certain investment products (referred to as "section 1256 contracts") as if they were sold for fair market value on the last day of the year. By their terms, the tax straddle rules apply to most transactions undertaken to hedge foreign exchange exposure, unless the transaction satisfies the requirements of a hedging exemption. Under a special rule, banks are not required to satisfy all of the requirements of the hedging exemption.

House Bill

The House bill repeals the special rule that permits banks to qualify for the hedging exemption without establishing all of the facts other taxpayers must show.

Senate Amendment

The Senate amendment follows the House bill. In addition, the Senate amendment coordinates the interaction of the rules for foreign currency gain or loss and the tax straddle provisions. Neither the loss deferral rule of section 1092 nor the mark-to-market regime under section 1256 will apply to a transaction that is part of a section 988 hedging transaction and described in regulations to be issued under by the Secretary. Further, as described above, the general rule that treats foreign currency gain or loss as ordinary gain or loss is inapplicable to a section 1256 contract that is marked to market. The exception for section 1256 contracts is available to taxpayers who take such contracts off the mark-to-market system by making a mixed straddle election under section 1256(d).

The Senate amendment clarifies that an obligor's interest in a foreign currency denominated obligation is a "position" for purposes of the loss deferral rule. The rationale for this treatment is that a foreign currency borrowing is economically similar to a short position in the foreign currency. In addition, the Senate amendment makes clear that foreign currency for which there is an interbank market is presumed to be "actively traded" property for purposes of the loss deferral rule.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees wish to emphasize that bank forward contracts with maturities longer than the maturities ordinarily available for regulated futures contracts are within the definition of a foreign currency contract in section 1256(g), if the requirements of that subsection are satisfied otherwise.

Regarding the amendment relating to currency for which there is an active interbank market, no inference is intended regarding the proper application of present law to a currency that is not the subject of a regulated futures contract but for which there is an active interbank market, (*e.g.*, the Australian dollar). Thus, the Internal Revenue Service is free to provide by regulations for the treatment of such currencies for taxable years after the effective date of the Economic Recovery Act of 1981 (which introduced the straddle rules) and before the effective date of this Act.

3. Foreign Currency Translation

a. Translation method

Present Law

A taxpayer operating abroad is permitted to maintain the books and records of operation in a foreign currency. The method of translating the results of a foreign operation into U.S. dollars depends on whether the activity is conducted through a branch or through a subsidiary corporation. In many instances, taxpayers have discretion to use a profit-and-loss method (under which net income or loss is translated into U.S. dollars at year end) or a net-worth method (which involves the comparison of year-end balance sheets).

House Bill

The same translation rule applies to the earnings and profits of a foreign corporation and the income or loss of a branch or other QBU. An entity that uses a nonfunctional currency to measure the results of operation is required to use a profit-and-loss method to translate income or loss into the functional currency.

Senate Bill

The Senate amendment follows the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. These translation rules apply without regard to the form of enterprise through which the taxpayer conducts business (*e.g.*, sole proprietorship, partnerships, or corporation), as long as such form of enterprise rises to the level of a QBU.

b. Determination of foreign corporation's earnings and profits and foreign taxes

Present Law

The earnings and profits of a controlled foreign corporation ("CFC") are calculated by computing the sum of the CFC's profit or loss, and adding to that amount the exchange gain or loss determined by comparing year-end balance sheets (after taking account of the translated profit or loss and other relevant items).

House Bill

For purposes of determining the tax of any shareholder of a foreign corporation, the earnings and profits of the corporation are determined in the corporation's functional currency.

On the distribution of earnings and profits from a 10-percent owned foreign corporation, a U.S. corporate shareholder is required to translate such amounts using the average exchange rate for the year in which the income arose. Exchange gain or loss with respect to such distribution is characterized as ordinary income or loss, and subject to a separate limitation for purposes of the foreign tax credit.

For purposes of determining the amount of foreign taxes deemed paid under section 902 or 960, foreign taxes are translated into U.S. dollars using the exchange rate in effect as of the date of payment, any refund of a foreign tax is translated using the rate in effect as of the original payment date, and any increase is translated at the rate in effect on the date of adjustment.

Senate Amendment

The Senate amendment codifies the result under the *Bon Ami* case (39 B.T.A. 825 (1939)) by requiring taxpayers to use a common exchange rate to translate actual distributions, deemed distributions of subpart F income, or gain that is recharacterized as dividend income on the disposition of stock in a CFC or former CFC, and foreign taxes deemed paid with respect thereto.

On the distribution of earnings and profits from a 10-percent owned foreign corporation, a U.S. shareholder is required to translate such amounts (if necessary) at the current exchange rate on the date the distribution is included in income. Similarly, in the case of gain that is treated as a distribution of earnings under section 1248, the deemed dividend is translated (if necessary) at the current exchange rate on the date the amount is included in income. Thus, for actual distributions and deemed dividends under section 1248, no exchange gain or loss is separately recognized as the result of exchange rate fluctuations between the time earnings and profits arise and the time of distribution.

In the case of deemed distributions of subpart F income, the required income inclusion is translated at the weighted average exchange rate for the foreign corporation's taxable year. Exchange gain or loss is recognized as the result of exchange rate fluctuations between the time of a deemed distribution and the time such previously taxed income ("PTI") is actually distributed. Exchange gain or loss on distributions of PTI is to be treated as ordinary income or loss from or allocable to domestic sources. The Secretary is authorized to prescribe regulations for the treatment of distributions of PTI through several tiers of foreign corporations.

For purposes of determining the amount of foreign taxes deemed paid under sections 902 or 960, a foreign income tax paid by a foreign corporation is translated into U.S. dollars (if necessary) using the same exchange rate used to translate the income inclusion with respect to which such tax is deemed paid. Adjustments to the amount of tax paid by a foreign corporation are translated into U.S. dollars using the same exchange rate used to translate the income with respect to which the adjustment was made.

Conference Agreement

Under the conference agreement, for purposes of determining the tax of any shareholder of a foreign corporation, the corporation's earnings and profits are determined in the corporation's functional currency. In the case of any U.S. person, the earnings and profits so determined are translated (if necessary) at the current exchange rate on the date the distribution is included in income. A similar rule applies to gain that is treated as a distribution of earnings under section 1248. Thus, for actual distributions and deemed dividends under section 1248, no exchange gain or loss resulting from exchange rate fluctuations between the time earnings and profits arise and the time of distribution is separately recognized.

The conference agreement follows the Senate amendment with respect to deemed distributions of subpart F income and PTI, except the weighted average exchange rate is also used for foreign personal holding company income (sec. 551(a)) and amounts defined in section 1293(a) (relating to passive foreign investment companies), and exchange gain or loss on PTI is sourced or allocated in the same manner as the associated income inclusion. In addition, the conference agreement applies the rules for recognizing exchange gain or loss with respect to PTI to amounts defined in section 1293(c).

The conference agreement follows the House bill for purposes of determining the amount of foreign taxes deemed paid under sections 902 or 960. An increase to foreign taxes is translated on the date of the payment of additional tax.

Under section 1504(d), a domestic corporation can elect to treat certain wholly owned subsidiaries organized under the laws of a contiguous foreign country (*i.e.*, Canada or Mexico) as domestic corporations. As a result of treatment as domestic corporations, these subsidiaries are included with the domestic parent corporation in the filing of a consolidated Federal income tax return. The result of a section 1504(d) election combined with use of the net worth accounting method is that gains and losses from contiguous country currency fluctuations are recognized on the U.S. tax return.

The conference agreement contemplates that the Internal Revenue Service will allow corporations to elect out of section 1504(d) status as a result of the enactment of the provision requiring use of the profit and loss method. As under present law, the revocation of a section 1504(d) election will (1) trigger excess loss accounts, if any, under Treasury regulations section 1.1502-19, (2) implicate the rules for recapture of foreign losses under section 904(f), and (3) be subject to the rules of section 367(a), among other applicable rules.

The conferees intend that any procedure adopted by the Internal Revenue Service will contain appropriate safeguards to limit recognition of exchange loss upon the revocation of a section 1504(d) election.

Foreign corporations with respect to which section 1504(d) elections are revoked are likely to succeed to earnings and profits accumulated by a foreign corporation that has been treated as a domestic corporation. As a result, section 243(d) will be applicable to distributions by a foreign corporation out of these accumulated earnings. The conferees believe it desirable to make it clear that section 243(d) applies for purposes of section 243(a)(3). Section 243(d) provides that a distribution by a foreign corporation of earnings and profits accumulated by a domestic corporation shall be treated as if made by a domestic corporation for purposes of the dividends received deduction. The conferees wish to clarify that in the case of such a distribution, the distributing corporation is to be treated as a domestic corporation for all purposes of section 243(a), including for purposes of determining under section 243(a)(3) whether the distribution is a qualifying dividend. Thus, for example, if a foreign corporation makes a distribution out of earnings and profits that were accumulated by a foreign corporation with section 1504(d) status while such corporation was a member of an affiliated group, and the distributing foreign corporation would be a member of the same affiliated group if it were a domestic corporation, then the distribution qualifies for the 100% dividends received deduction provided the domestic parent makes a section 243(b) election and that no section 1562 election was in effect during the year the earnings were accumulated. The domestic parent may make the section 243(b) election even though it files a consolidated federal income tax return. The conference agreement contemplates that the regulations relating to section 243(d) will be modified in order to reflect this clarification.

c. Translation of branch income and losses and foreign taxes

Present Law

A foreign branch that maintains a separate set of books in a foreign currency can use either a "profit and loss" or a "net worth" method to determine U.S. taxable income attributable to the branch operation.[2] Under the profit and loss method, the net profit computed in the foreign currency is translated into dollars at the exchange rate in effect at the end of the taxable year. If the branch made remittances during the year, these amounts are translated into U.S. dollars at the exchange rate in effect on the date remitted, and only the balance of the profit, if any, is translated at the year-end exchange rate.

Under the net worth method, U.S. taxable income is defined generally as the difference between the branch's net worth at the end of the prior taxable year and at the end of the current taxable year. Under this method, the branch's balance sheet is translated into U.S. dollars. In general, the values of current assets and liabilities are translated at the year-end exchange rate, and fixed

[2] *See* Rev. Rul. 75-107, 1975-1 C.B. 32 (relating to the profit and loss method); *and* Rev. Rul. 75-106, 1975-1 C.B. 31, *and* Rev. Rul. 75-134, 1975-1 C.B. 33 (relating to the net worth method).

(long-term) assets are translated at the exchange rate in effect on the date the asset was acquired (the "historical rate"). The translation of an item at its historical rate defers recognition of exchange gain or loss. Remittances are translated at the exchange rate in effect on the date of remittance, and are then added to the U.S.-dollar amount computed by comparing year-end balance sheets.

When a foreign branch remits currency in excess of the current year's profit, the basis of the excess amount must be determined in order to calculate exchange gain or loss. Present law does not provide explicit rules for calculating exchange gain or loss on remittances.

House Bill

A taxpayer with a QBU whose functional currency is a currency other than the U.S. dollar will be required to use the profit and loss method to compute income.

For each taxable year, the taxpayer will compute income or loss separately for each QBU in the unit's functional currency, converting this amount to U.S. dollars at the appropriate exchange rate. This amount will be included in income without reduction for remittances from the branch during the year.

The appropriate exchange rate is to be determined under regulations issued by the Treasury Department. In general, the appropriate exchange rate will be the weighted average exchange rate for the taxable period over which the income or loss accrued.

A taxpayer will recognize exchange gain or loss on remittances of branch profits (whether or not actually converted to dollars) to the extent the value of the currency in the year of the remittance differs from the value when earned. Remittances of foreign branch earnings (and interbranch transfers involving branches with different functional currencies) after 1985 will be treated as paid pro rata out of post-1985 accumulated earnings of the branch. In general, the value of the currency will be determined by translating the currency at an average exchange rate for the year in which received rather than the rate in effect on the date of remittance. Exchange gains and losses on such remittances will be deemed to be ordinary, and subject to separate foreign tax credit limitations.

The translation of payments of, and subsequent adjustments to, foreign taxes by a branch will be performed under the same rules that apply in determining the foreign tax credit allowable to a parent corporation with respect to taxes paid by a foreign subsidiary.

Senate Amendment

The Senate amendment generally follows the House bill, with modifications.

A taxpayer will recognize exchange gain or loss on remittances (without regard to whether or when the remittances are converted to dollars), to the extent the value of the currency at the time of the remittance differs from the value when earned. Remittances of foreign branch earnings (and interbranch transfers involving branches with different functional currencies) after 1986 will be treated as paid pro rata out of post-1986 accumulated earnings of the branch. For purposes of calculating exchange gain or loss on remittances, the value of the currency will be determined by translating the currency at the rate in effect on the date of remittance. Exchange gains and losses on such remittances will be deemed to be ordinary and domestic source or allocable thereto.

The translation of payments of, and subsequent adjustments to, foreign taxes by a branch will be performed under the same rules that apply in determining the foreign tax credit allowable to a parent corporation with respect to taxes paid by a foreign subsidiary.

Conference Agreement

The conference agreement generally follows the Senate amendment with respect to remittances except that it is clarified that (1) any remittance of property (not just currency) will trigger exchange gain or loss inherent in accumulated earnings or branch capital, and (2) exchange gain or loss on remittances will be sourced or allocated by reference to the income giving rise to post-1986 accumulated earnings (generally, the residence of the qualified business unit, unless the income of the unit is derived from U.S. sources). The conferees anticipate that regulations may treat contributions of appreciated property to a QBU as a recognition event where appropriate.

The conferees wish to clarify that the rule for triggering exchange gain or loss on remittances does not apply to transactions involving the use of a related party's assets or liabilities (*e.g.*, in the case of a bank, the deposit and withdrawal of funds in a branch). The committee anticipates that regulations will provide rules that, in the case of a branch using a functional currency other than the United States dollar, will limit the deduction of branch losses to the taxpayer's dollar basis in the branch (that is, the original dollar investment plus subsequent capital contributions and advances, unremitted earnings, and indebtedness for which the taxpayer is liable).

The conference agreement generally follows the House bill with respect to foreign taxes. Thus, the translation of foreign taxes paid by a branch will be performed under the same rules that apply in determining the foreign tax credit allowable to a corporation with respect to taxes paid by a foreign corporation. For example, assume a branch pays a tax of 100 Swiss francs in year one. In year two, the branch's tax liability is 50 francs, and the year one tax is adjusted downwards to 60 francs (so there was an overpayment of 40 francs). The 40-franc overpayment from year one is applied against the 50-franc liability for year two. In year three, the 50-franc tax paid in year two is refunded. On these facts, (1) regarding the reduction in the tax paid in year one, the 40 francs are translated at the exchange rate used to translate the tax in year one, (2) regarding the crediting of the 40-franc overpayment against the 50-franc tax liability for year two, the entire 50-franc tax is translated at the rate in effect on the date the taxpayer is treated as having paid such tax, and (3) on refund of the year-two 50-franc tax in year three, the refund is translated at the same rate that was used to translate the tax payment in year two.

The conference agreement contemplates that a prepayment of foreign tax (*e.g.*, an estimated tax payment or a withheld tax) will be translated at the exchange rates in effect on the payment date. Generally, a similar rule is to apply to installment payments of tax.

d. Application of section 905

Present Law

If the amount of foreign taxes accrued differs from the amount paid, or if a foreign tax is refunded in whole or in part, a taxpayer must notify the Internal Revenue Service and redetermine the allowable foreign tax credit for the taxable year.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that, for purposes of applying section 905(c), the determination of whether accrued taxes when paid differ from the amounts claimed as credits by the taxpayer is made by reference to the functional currency of the QBU that accrued and paid the taxes. Thus, exchange rate fluctuations with respect to a functional currency other than the U.S. dollar are not taken into account under section 905(c).

Conference Agreement

Under the conference agreement, the Secretary is authorized to prescribe regulations providing for an alternative adjustment (*e.g.*, the adjustment of a dollar-based pool of taxes) in lieu of the redetermination required by section 905(c).

4. Other Issues

Present Law

No provision.

House Bill

The Secretary is granted general regulatory authority to carry out the purposes of the new subpart relating to foreign currency transactions.

Senate Amendment

In general, the Secretary is authorized to issue such regulations as may be necessary to carry out the purposes of the new rules for foreign currency transactions, including regulations (1) setting forth procedures to be followed by taxpayers with QBUs using a net worth method of accounting before enactment of subpart J, to prevent a mismatching of exchange gain and loss, (2) limiting the recognition of foreign currency loss on remittances from QBUs (to prevent the selective recognition of exchange losses), and (3) providing for the recharacterization of interest and principal payments with respect to obligations denominated in hyperinflationary currencies. The Senate amendment contemplates that the Secretary will also issue regulatory rules providing for the treatment of U.S. branches of foreign persons (addressing issues such as the extent to which exchange gain or loss on remittances are treated as effectively connected with a U.S. trade or business).

Conference Agreement

The conference agreement follows the Senate amendment, and adds specific authority for providing for the appropriate treatment of related-party transactions (including transactions between QBUs of the same taxpayer), as well as section 905(c) adjustments (as discussed above).[3]

[3] The conferees are aware of tax shelters that are premised on the creation of debt denominated in a hyperinflationary currency. For example, in one transaction, a U.S. partnership entered into an agreement with a Brazilian Sociedade civil limitada for the performance of services in Brazil. Payment was to be made in cruzeiros on a deferred basis, beginning seven years *after* the services were performed. The taxpayers involved took the position that the foreign currency account payable could be accrued currently by the U.S. partnership, even though the actual U.S. dollars required seven years hence will be much less than the U.S.-dollar value of the amount accrued. In this transaction, stated interest was 11% per annum, which might be adequate for a dollar borrowing but is below market

5. Effective Date

House Bill

The House bill provisions are effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment provisions are effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, but provides that for purposes of claiming a deemed paid foreign tax credit under either sections 902 or 960, the agreement's provisions only apply to foreign taxes paid or accrued with respect to earnings and profits of a foreign corporation for taxable years after 1986.

G. Other Rules Applicable to U.S. Possessions

Present Law

U.S. Virgin Islands

The U.S. Virgin Islands (like Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa) generally uses the Code as it changes from time to time as its local tax code. For corporate tax purposes, the United States treats each of these possessions as a foreign country and each of these possessions treats the United States as a foreign country. This system of taxation has acquired the name "mirror system" because the possession uses the Code (but substitutes its own name for the United States and, for some purposes, treats the United States as the United States treats a possession).

The Virgin Islands may impose a surtax of up to 10 percent of the mirror tax. The Virgin Islands can rebate its mirror tax on its resident individuals and on U.S. and V.I. corporations that operate primarily in the Virgin Islands.

An "inhabitant" of the Virgin Islands pays tax to the Virgin Islands on its worldwide income, but pays no U.S. tax. Certain corporations qualify for inhabitant status, including some U.S. corporations.

A V.I. corporation is not subject to the U.S. 30-percent withholding tax on passive income so long as it meets criteria designed to prevent the use of V.I. corporations as conduits for third-country residents: the V.I. corporation must be less than 25 percent foreign-owned and earn at least 20 percent of its income from V.I. sources.

Guam, CNMI, and American Samoa

U.S. law requires that Guam use the Code as its local code. (See general description of the mirror system of taxation above.) Individual residents of the United States or Guam need file a tax return only with the place where they resided on the last day of the year. Guamanian corporations are not subject to the U.S. 30-percent withholding tax, except Guamanian corporations that are conduits (under the rules that apply to V.I. corporations). The Commonwealth of the Northern Mariana Islands (CNMI) is required to use the mirror system in basically the same way as Guam. The latter treatment generally began on January 1, 1985.

American Samoa has adopted its own income tax system. American Samoa has chosen to use the Code, with minor amendments, as its internal income tax system.

Interest income on U.S. obligations held by the Bank of Guam is treated as effectively connected with the conduct of a U.S. trade or business.

House Bill

U.S. Virgin Islands

The House bill clarifies the operation of the U.S. Virgin Islands' mirror system to prevent unintended results. It treats any bona fide V.I. resident on the last day of the taxable year as taxable only in the Virgin Islands, and not in the United States. A U.S. individual (other than a V.I. resident) who derives income from the Virgin Islands files two identical returns, one with the United States and one with the Virgin Islands, and pays a pro rata amount of tax to each. The House bill provides for cooperation between the IRS and the Virgin Islands Bureau of Internal Revenue. It provides anti-abuse rules and authorizes the Secretary to prescribe regulations for purposes of determining V.I. tax liability.

The House bill permits the Virgin Islands to impose any nondiscriminatory local income taxes in addition to those it now imposes under the mirror system.

The House bill permits the Virgin Islands to rebate tax on U.S. corporations whatever the extent of their activities in the Virgin Islands. It allows reduction of V.I. tax on V.I. income of foreign persons.

The House bill repeals the V.I. inhabitant rule. It amends the rules that prevent foreigners from using V.I. corporations as conduits to avoid the U.S. 30-percent withholding tax by substituting a requirement that 65 percent of a corporation's income be effectively connected with a trade or business in a possession or in the United States in place of the 20-percent source of income requirement in current law, and by adding a requirement that prevents a corporation from substantially reducing its taxable income with payments to persons not resident in the Virgin Islands. The Virgin Islands provisions of the House bill are effective for taxable years beginning after 1985, but certain provisions are contingent upon implementation of a U.S.-V.I. agreement to coordinate the U.S. and V.I. tax systems.

Guam, CNMI, and American Samoa

The House bill grants Guam and the CNMI full authority to determine their own income tax laws. This treatment places them on a par with American Samoa. The House bill requires that Guam and the CNMI implement tax systems that would raise at least as much revenue as their current mirror systems. Residents of Guam and the CNMI who receive income from outside those possessions have to file U.S. tax returns. The United States collects the tax on that nonpossession income, but transfers the money to the possession where the taxpayer resides. For the purpose of the U.S. 30-percent withholding tax, the bill modifies the anti-conduit rule for Guam and the CNMI in the same manner as modified for the Virgin Islands.

For American Samoa, Guam, and the CNMI, the House bill implements anti-abuse provisions to prevent the use of corporations in these possessions to avoid U.S. tax. It applies anti-abuse rules to individuals resident in a possession. It coordinates taxes among these possessions and provides for exchange of information between each possession and the United States. Each possession would receive taxes withheld on compensation of U.S. Government personnel stationed there, or taxes paid to the United States by civilian employees resident in the posession.

The House bill provides that interest income on U.S. Government obligations held by the Bank of Guam is treated as not effectively connected with the conduct of a U.S. trade or business.

The non-V.I. provisions of the House bill are generally effective for taxable years beginning after 1985, but only if (and so long as) an agreement is in effect between a possession and the United States to coordinate the U.S. and possession tax systems. The provision concerning the Bank of Guam is effective for taxable years beginning after November 16, 1985.

Senate Amendment

The Senate amendment is generally the same as the House bill, but it contains modifications specified below.

The Senate amendment allows reduction of V.I. tax on non-U.S., non-V.I. income of V.I. corporations with less than 10 percent U.S. ownership.

The Senate amendment is generally effective for taxable years beginning after 1986, but only if (and so long as) an agreement is in effect between a possession and the United States to coordinate the U.S. and possession tax systems. If an implementing agreement is not in place within one year after enactment, Treasury is to report on the status of negotiations. The provision concerning the Bank of Guam is effective for taxable years beginning after November 16, 1985. Repeal of the V.I. inhabitant rule applies to all open years.

Conference Agreement

The conference agreement generally follows the Senate amendment, with modifications described below.

The conferees express the desire that the Secretary of the Treasury consult as appropriate with officials of the Virgin Islands in formulating regulations for purposes of determining tax liability incurred to the Virgin Islands. In adopting the Senate provision allowing reduction of V.I. tax on non-U.S., non-V.I. income of V.I. corporations with less than 10 percent U.S. ownership, the conferees do not intend that other U.S. possessions offer tax advantages to non-U.S. investors beyond those available in the Virgin Islands. The agreement does not allow the Virgin Islands to reduce or rebate tax on non-V.I. income of local individuals.

The conference agreement eliminates from the definition of wages subject to withholding (under Code sec. 3401) any remuneration paid for services for the United States or any U.S. agency within a U.S. possession to the extent the United States or the agency withholds taxes on that remuneration pursuant to an agreement with the possession. Under present law, the United States must withhold on payments to U.S. employees working in certain possessions even though the possession rather than the United States is entitled to tax on those payments. At the end of the year, the United States refunds the withheld amounts to the taxpayer, who is then to satisfy his or her liability to the possession. This provision of the conference agreement allows the United States and its agencies not to withhold for the account of the U.S. government on income the tax on which is

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when compared to the analogous AFR for cruzeiros. Thus, the conferees concluded that the Secretary has adequate authority to treat this transaction in accordance with its economic substance under the rules relating to below market loans (*See* Prop. Treas. reg. sec. 1.7872-11(f)). Nevertheless, the conferees determined that the Secretary should be granted additional regulatory authority to ensure that such transactions are properly characterized under Federal tax laws, apart from whether stated interest is adequate when measured in a foreign currency.

due to a possession so long as the payor withholds for the account of the possession.

The repeal of the Virgin Islands inhabitant rule applies to taxable years beginning after 1986. With respect to income other than income from V.I. sources or income that is effectively connected with a V.I. trade or business, it applies (with targeted exceptions) to any income derived in any pre-1987 taxable year for which (on the date of enactment) the assessment of a deficiency of income tax is not barred by any law or rule of law. To the extent that the Virgin Islands either collects tax by the date of enactment or, pursuant to an assessment issued by August 16, 1986, collects tax by January 1, 1987, on non-V.I. source, non-V.I. effectively connected income of a V.I. inhabitant that is subject to U.S. tax for pre-1987 taxable years, that V.I. tax is to be creditable against the U.S. tax liability on that income. To the extent that that V.I. tax is imposed on U.S. income, it is to be creditable against U.S. tax on that particular income notwithstanding the general limitations on the foreign tax credit.

The agreement makes it clear that the possessions cannot discriminate against U.S. corporations (as well as U.S. citizens or residents) or similar persons from other possessions. In the event that any one of the contemplated implementing agreements between the United States and these possessions is not executed within a year of enactment, the conference agreement specifies that the House Committee on Interior and Insular Affairs (in addition to the House Committee on Ways and Means and the Senate Committee on Finance) is to receive the Secretary's report on the status of negotiations and the reasons for not executing the agreement.

The agreement provides that a U.S. person who becomes a resident of Guam, American Samoa, or the Northern Mariana Islands is to pay tax to the United States on U.S. source income, income effectively connected with a U.S. trade or business, and gains from sales of certain assets with a U.S. connection for the 10-year period beginning when that person became a resident. This provision applies to income earned after 1985. This provision makes it clear, for example, that a U.S. person who moves to one of these possessions while holding appreciated stock of a U.S. corporation and who sells the stock during 1986 cannot contend that the income from that sale is non-U.S. source income the tax on which a possession is free to reduce or rebate. The agreement grants regulatory authority to provide exceptions to this rule in cases where the Secretary determines that adequate tax will be collected. The conferees do not intend that any regulatory exception contain a subjective standard considering a taxpayer's intent.

TITLE XIII. TAX-EXEMPT BONDS

A. General Restrictions on Tax Exemption

Present Law

General rule

Interest on bonds issued by or on behalf of State or local governments, the proceeds of which are to be used to finance operations of such governments, is exempt from tax under Code section 103.

Trade or business use and security interest tests

Subject to certain exceptions, interest on State and local government bonds is taxable if the bonds are industrial development bonds (IDBs). IDBs are bonds which are part of an issue—

(1) more than 25 percent of the proceeds of which are to be used in a trade or business of a person other than a State or local government or section 501(c)(3) organization (the "trade or business use" test), and

(2) more than 25 percent of the principal or interest on which are secured by or to be derived from money or property to be used in such a trade or business (the "security interest" test).

Use pursuant to certain management contracts

The determination of whether use pursuant to a management contract is treated as private trade or business use, for purposes of determining whether a bond is an IDB, is made on a facts and circumstances basis. The Treasury Department has stated that, under certain conditions, it will issue an advance ruling that a facility managed by a private management company is *not* considered to be used in that company's trade or business. Under these guidelines, such a ruling will be issued if—

(1) the management services are provided for a reasonable, periodic flat fee, under a contract not exceeding 5 years' duration (including renewal options), with the exempt owner having the option to cancel the contract (without penalty) at the end of any 2-year period, or

(2) in the case of certain newly operational facilities, compensation is based on a percentage of gross revenues from the facility, for a period which generally may not exceed one year.

To qualify under (1) or (2) above, the owner of the facilities and the management company must not be subject to common control, with allowances for *de minimis* cases.[1]

Related use restriction

Except for the IDB requirements and the private loan restriction (described below), present law does not specifically require that private use of bond proceeds be related to governmental use of facilities also financed with the bonds.

Private loan restriction

Interest on private loan bonds also is taxable. Private loan bonds are bonds which are part of an issue 5 percent or more of the proceeds of which are to be used to finance direct or indirect loans to persons other than a State or local government or section 501(c)(3) organization. Exceptions to the private loan bond restriction are provided for (1) IDBs, mortgage subsidy bonds, and student loan bonds for which tax-exemption specifically is provided in the Code; (2) excluded loans, i.e., certain loans (other than for use in a trade or business) to finance governmental taxes or assessments of a general nature and for an essential governmental function; and (3) bonds issued as part of a specified veterans' land bond program and a small scale energy conservation and renewable resource loan program authorized by section 243 of the Crude Oil Windfall Profit Tax Act of 1980.[2]

[1] Similar principles are applied in determining whether advance rulings will be issued where bond-financed hospitals or similar facilities are used by nonexempt persons other than employees (e.g., use of public or private charitable hospitals by private physicians).

[2] The exception for the veterans' land program is limited to bonds issued before March 15, 1987.

Bonds for volunteer fire departments

Certain volunteer fire departments are treated as qualified issuers of tax-exempt bonds.

House Bill

General rule

As under present law, interest on bonds to finance operations of governmental units is exempt from tax.

Trade or business use and private loan tests

Under the House bill, interest on nonessential function bonds issued by State and local governments is taxable. Bonds are nonessential function bonds if—

(1) an amount equal to or exceeding the lesser of 10 percent or $10 million of the bond proceeds is to be used in a trade or business of a person other than a State or local government, or

(2) an amount equal to or exceeding the lesser of 5 percent or $5 million of the bond proceeds is to be used to make or finance direct or indirect loans to persons other than States and local governments.

Exceptions to the revised private loan restriction (item (2) above) are provided for (1) nonessential function bonds used to finance certain specified facilities, loans, and other activities; (2) excluded loans, defined as under present law but clarified to include loans to persons engaged in a trade or business; and (3) bonds issued as part of the Texas Veterans' Land Bond Program, which may be issued as nonessential function bonds without any sunset date.

Use pursuant to certain management contracts

The House bill retains the present law rules relating to management contracts.

Use pursuant to certain cooperative research agreements

The House bill provides that use of bond-financed research facilities at governmental and section 501(c)(3) universities by private businesses is not treated as a trade or business use if the use is pursuant to certain cooperative research agreements pursuant to which title to and control of any resulting patents rests exclusively with the university rather than the private business. Under this special rule, control is not treated as resting exclusively with the university if the research arrangement provides for use of resulting patents by participating private businesses in advance of development of the product which is the subject of the patent.

Bonds for volunteer fire departments

The special exception treating certain volunteer fire departments as qualified issuers of tax-exempt bonds is deleted; rather these bonds must be issued as small-issue bonds.

Senate Amendment

General rule

As under present law, interest on State and local government bonds to finance operations of such governmental units is exempt from tax under Code Section 103.

Trade or business use and security interest tests

Interest on State and local government bonds is taxable if the bonds are IDBs, defined generally as under present law. The amendment clarifies that direct or indirect payments made by a person other than a governmental unit or section 501(c)(3) organization with respect to the use of bond proceeds may satisfy the security interest test for determining whether an issue is an issue

of IDBs, whether or not formally pledged as security for the issue.

Use pursuant to certain management contracts

The Senate amendment directs the Treasury Department to liberalize its advance ruling guidelines to provide that use pursuant to management contracts not exceeding 5 years is *not* treated as private trade or business use as long as (1) compensation is not based on a share of *net* profits, and (2) the exempt owner of the bond-financed facility has the option to cancel the contract, without penalty, at the end of any 3-year period.

Use pursuant to certain cooperative research agreements

The Senate amendment follows the House bill with two modifications. First, the amendment clarifies that universities may enter into agreements permitting exclusive use of resulting patents with participating private businesses provided the private business pays a fair market price for use of the patent. Second, the amendment provides that the university may permit sponsoring private businesses to use resulting patents without charge, provided the use is on a nonexclusive basis.

Related use restriction

The Senate amendment provides that if private trade or business use of bond proceeds exceeds 5 percent, any excess must be related to the governmental use also being financed with the proceeds of the issue.

Private loan restriction

The Senate amendment retains the present-law private loan restriction. A further exception is also added for the Iowa Industrial New Jobs Training Program, subject to a $100 million ceiling on outstanding bonds.

Bonds for volunteer fire departments

The present-law treatment of certain volunteer fire departments as qualified issuers of tax-exempt bonds is retained.

Conference Agreement

Overview

Like the House bill, the conference agreement reorganizes and amends the present-law rules governing tax-exemption for interest on obligations issued by or on behalf of qualified governmental units. As part of this reorganization, the present-law rules contained in Code sections 103 and 103A are divided, by topic, into 11 Code sections (secs. 103 and 141-150). The conferees intend that, to the extent not amended, all principles of present law continue to apply under the reorganized provisions.[3] As under both the House bill and the Senate amendment, interest on bonds,[4] the proceeds of which are used to finance operations of State or local governmental units, is tax exempt under Code section 103 without regard to many of the restrictions that apply to bonds used to benefit other persons.[5] Interest on State and local government bonds is taxable if the bonds are private activity bonds unless a specific exception is included in the Code.

An issue is an issue of private activity bonds if (1) a trade or business use and security interest test (similar to the present-law IDB tests) or (2) a private loan restriction is satisfied.[6] The conference agreement also adopts the Senate amendment's related use requirement, with technical modifications, described below.

Private activity bonds qualifying for tax-exemption include exempt-facility bonds, qualified mortgage bonds and qualified veterans' mortgage bonds, qualified small-issue bonds, qualified redevelopment bonds, qualified student loan bonds, qualified 501(c)(3) bonds, and bonds issued under three specifically described programs.[7]

Exempt-facility bonds are bonds issued to finance airports, docks and wharves, mass commuting facilities, water facilities, sewage disposal facilities, solid waste disposal facilities, qualified residential rental projects, qualified hazardous waste facilities, facilities for the local furnishing of electricity or gas, or local district heating or cooling facilities. All facilities financed with such bonds must satisfy a public use requirement.

The conferees recognize that section 501(c)(3) organizations typically perform functions which governments would otherwise have to undertake. The use of the term private activity bond to classify the obligations of section 501(c)(3) organizations in the Internal Revenue Code of 1986 in no way connotes any absence of public purpose associated with their issuance. Thus, the conferees intend, and the statute requires, that any future change in legislation applicable to private activity bonds generally shall apply to qualified 501(c)(3) bonds only if expressly provided in such legislation.

Trade or business use and security interest tests

In general

Under the conference agreement, an issue is an issue of private activity bonds if—

(1) an amount exceeding 10 percent of the proceeds[8] are to be used (directly or indirectly) in any trade or business carried on by any person other than a governmental unit, and

(2) more than 10 percent of the payment of principal or interest on the issue is to be made (directly or indirectly, and whether or not to the issuer) with respect to such a trade or business use of the bond proceeds, or is otherwise secured by payments or property used in a trade or business.

Trade or business use test

The conference agreement generally retains the present-law rules under which use by persons other than governmental units is determined for purposes of the trade or business use test. Thus, as under present law, the use of bond-financed property is treated as use of bond proceeds.[9] As under present law, a person may be a user of bond proceeds and bond-financed property as a result of (1) ownership or (2) actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or (3) any other arrangement such as a take-or-pay or other output-type contract. Use on the same basis as the general public (including use as an industrial customer) is not taken into account. However, trade or business use by all persons on a basis different from the general public is aggregated in determining if the 10-percent threshold for being a private activity bond is satisfied.

For purposes of the trade or business use test, all activities of section 501(c)(3) organizations, the Federal Government (including its agencies and instrumentalities), and other nongovernmental persons who are not natural persons are treated as trade or business activities.[10]

Security interest test

The conference agreement adopts the Senate amendment's security interest test, with technical modifications. Under the revised security interest test, both direct and indirect payments made by any person (other than a governmental unit) who is treated as using the bond proceeds are counted. Such payments are counted whether or not they are formally pledged as security or are directly used to pay debt service on the bonds. Similarly, payments to persons other than the issuer of the bonds may be considered. For example, payments made by a lessee of bond-financed property to a redevelopment agency are considered under the test even though the city, as opposed to the redevelopment agency, actually issues the bonds.

Revenues from generally applicable taxes are not treated as payments for purposes of the security interest test; however, special charges imposed on persons satisfying the use test (but not on members of the public generally) are so treated if the charges are in substance fees paid for the use of bond proceeds.

For example, where bonds are used to acquire land that is to be sold for redevelopment to private persons, amounts paid by those persons for the land are payments for purposes of the security interest test, even though incremental tax revenues are the stated security for the bonds. Similarly, if a facility is leased to a nongovernmental user

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[3] As under present law, interest on certain bonds authorized under non-Code provisions of law is tax-exempt under Code section 103 if the authorizing legislation was enacted before January 1, 1984, and the bonds comply with all appropriate Code requirements. The appropriate Code requirements include all requirements that apply to Code bonds with respect to which the use of bond proceeds is comparable, including, but not limited to, the new private activity bond volume limitation, the arbitrage rules, the information reporting requirements, the limitation on bond-financing of costs of issuance, and the restrictions on issuance of tax-exempt bonds for certain specified activities.

[4] Under these rules, the term bond also includes debt obligations of a qualified governmental unit that do not involve the formal issuance of a bond or note. For example, installment purchase agreements, finance leases, and other evidences of debt issued pursuant to the borrowing power of a qualified governmental unit are treated as bonds.

[5] The conference agreement continues the present-law rule allowing bonds to be issued either by or on behalf of qualified governmental units. *See*, e.g., Rev. Rul. 63-20, 1963-2, C.B. 397.

[6] The term loan is a subset of the term use, so a use arises in every case where a loan is present. A private loan bond may not satisfy the trade or business use and security interest tests, however, in cases where the private use totals no more than 10 percent of bond proceeds or is made to an individual not engaged in a trade or business.

[7] The three programs are the Texas Veterans' Land Bond Program (with the present-law sunset deleted), the Oregon Small Scale Energy Conservation and Renewable Resource Loan Program, and the Iowa Industrial New Jobs Training Program. As with other private activity bonds, 95 percent or more of the proceeds of these private activity bonds must be used for the exempt purpose of the borrowing, no more than 2 percent of bond proceeds may be used to finance certain costs of issuance (described below), and the bonds are subject to the new State private activity bond volume limitations.

[8] In determining the amount of proceeds for this purpose, costs of issuance and amounts invested in a reserve or replacement fund are allocated between the governmental use and private use portions of the issue.

[9] Similarly, use of bond proceeds is treated as use of bond-financed property.

[10] The conferees intend that use of bond proceeds by the Bonneville Power Administration be treated as use by a governmental unit to the extent that BPA is treated as an exempt person under a transitional exception contained in present Treasury regulations, section 1.103-7(b)(2)(iii).

and receipts from a special user tax are formally pledged as security, lease payments from the private user are considered for purposes of the security interest test, even if the user tax revenues (rather than the lease or other payments) comprise the direct source for repayment of the bonds.

Use pursuant to certain management contracts

The conference agreement follows the Senate amendment's directive to the Treasury Department to liberalize its advance ruling guidelines on treatment of nongovernmental use pursuant to certain management contracts, with a modification. Under the agreement, Treasury is directed to modify its advance ruling guidelines to provide that use pursuant to management contracts not exceeding five years (including renewal options) is not treated as private trade or business use if—

(1) at least 50 percent of the compensation to any manager other than a governmental unit is on a periodic, fixed-fee basis;

(2) no amount of compensation is based on a share of net profits; and

(3) the governmental unit owning the facility may terminate the contract (without penalty) at the end of any three year period.[11]

Except for the specific changes indicated, the conferees do not intend Treasury to alter the present-law advance ruling guidelines and regulations for determining when nongovernmental use is disregarded for purposes of the trade or business use test or to limit the Treasury Department's authority to determine what constitutes (or does not constitute) a use of bond proceeds.

Use pursuant to certain cooperative research agreements

The conference agreement follows the Senate amendment on treatment of private use under certain cooperative research agreements, with a clarification that the amount charged participating private businesses for the use of patents or other resulting technology must be determined at the time the patent or technology is available for use. As under the House bill and Senate amendment, private use pursuant to research agreements not satisfying the requirements of the conference agreement is counted for purposes of the trade or business use and security interest tests and the private loan restriction (if the use in substance involves a loan).

Special rule for certain output facilities

In general

The conference agreement provides a special limit on bond-financing for output facilities used by persons other than governmental units or members of the general public. In the case of bonds 5 percent or more of the proceeds of which are to be used to finance output (e.g., power but not water) projects such as electric and gas generation, transmission, and related facilities, the maximum amount of bond-financing that may be used by nongovernmental persons on a basis other than as a member of the general public and by governmental units is $15 million.[12] Thus, with respect to any issue used to finance an output facility or related facilities, the amount of bond proceeds used by persons other than governmental units may not exceed the lesser of 10 percent or $15 million of the proceeds.[13] Additionally, in determining whether the $15 million limit is exceeded, all outstanding prior issues issued with respect to a project are counted.[14] Application of this restriction may be illustrated by the following examples:

Example 1.—Assume that a single issue of tax-exempt bonds is contemplated to finance the acquisition of an electric generating facility for $500 million. Assume further that 10 percent of the output of the facility will be sold to an investor-owned utility under an output contract. The maximum amount of tax-exempt financing that may be provided for the acquisition is $465 million (i.e., $450 million for the 90 percent of the facility that is governmentally used, and $15 million for the private use portion).

Example 2.—Alternatively, assume that the facility in Example 1, is financed with four bond issues. Assume further that the first issue is for $100 million. The maximum private use portion for this issue is $10 million (10 percent of the issue). Assume a second issue of $150 million with respect to the facility. The maximum permitted private use portion for the second issue is $5 million ($15 million less the $10 million private use portion of the first issue). For all subsequent issues for the facility, no private use financing would be permitted.

Use pursuant to certain pooling and exchange arrangements and certain spot sales of output capacity

The conferees wish to clarify that certain power pooling and exchange arrangements and certain spot sales of output capacity are treated as sales to the general public under the trade or business use and security interest tests. The conferees intend that the presence of a nongovernmental person acting solely as a conduit for exchange of power output among governmentally owned and operated utilities is to be disregarded in determining whether the trade or business and security interest tests are satisfied. In addition, exchange agreements that provide for "swapping" of power between governmentally owned and operated utilities and investor-owned utilities do not in any event give rise to trade or business use where (1) the "swapped" power is in approximately equivalent amounts determined over periods of 1 year or less, (2) the power is swapped pursuant to an arrangement that does not involve output-type contracts, and (3) the purpose of the agreements is to enable the respective utilities to satisfy differing peak load demands or to accommodate temporary outages.

The conference agreement further provides that spot-sales of excess power capacity for temporary periods, other than by virtue of output contracts with specific purchasers, are not treated as trade or business use. For purposes of this exception, a spot sale is a sale pursuant to a single agreement that is limited to no more than 30 days duration.

Related use restriction

Under the conference agreement, the amount of private use financed with an issue which use is unrelated to a governmental use also being financed or which is disproportionate to a related governmental use also being financed may not exceed 5 percent of the proceeds. If the sum of such private use for an issue exceeds 5 percent of the net proceeds of the issue, (and a 5-percent security interest test, determined with respect to such use is satisfied) then the interest on the bonds is taxable. The determination of whether a private use is related to governmental use also being financed with the bond proceeds is to be made on a case-by-case basis, emphasizing the operational relationship between the governmental and nongovernmental uses. In most—but not all—cases, this will result in a related private use facility being located within or adjacent to any governmental facility to which it is related. For example, a newsstand located in a courthouse is related to the courthouse, and a privately operated school cafeteria is related to the school in which it is located. By contrast, the use of 6 percent of school bond proceeds to build an administrative office building for a catering company that operates cafeterias for the school system is not a related use of bond proceeds and would result in interest on the bond issue from which the proceeds are derived being taxable. Similary, office space for lawyers engaged in the private practice of law is not related to financing of a courthouse or other government building.

Private-use financing provided with bond proceeds in excess of the unrestricted 5-percent portion generally may not be disproportionate to the amount of bond proceeds used for a related governmental use.[15] The determination of whether a private use which is related to a government use also being financed with the bond proceeds is disproportionate to the government use to which such private use relates is determined by comparing the amount of bond proceeds used for the related private and government uses. The related private use is disproportionate to the related government use to the extent it exceeds such use in amount. Multiple, related private use facilities for any government use are treated as one facility for purposes of this rule.[16]

The related use restriction may be illustrated by the following examples:

Example 1.—Assume County X issues $20 million of bonds for construction of a new school building and decides to use $18.1 million of the proceeds for construction of the new school building and $1.9 million of the proceeds for construction of a privately operated cafeteria in the county's administrative office building. The $1.9 million of proceeds is not related to the governmental use (i.e., school construction) being financed with the bonds; thus interest on the bonds is taxable. Had County X limited use of bond proceeds for the privately operated cafeteria to $1 million, however, the related use restriction would be satisfied since the amount of unrelated private use would not have exceeded 5 percent.

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[11] The conferees intend that similar changes will be made to these advance ruling guidelines as applied to qualified 501(c)(3) bonds. *See*, Rev. Proc. 82-15, 1982-1 C.B. 460.

[12] The conference agreement directs the Treasury Department to modify its present regulations (Treas. reg. sec. 1.103-7(b)(5)) for determining the portion of an output facility that is privately used to reflect the reduced limits on such use. Specifically, Treasury is directed to delete the special exception under which users of 3 percent or less of the output of a facility are disregarded in calculating whether the issue satisfies the trade or business use and security interest test.

[13] A parallel reduction applies to the security interest test.

[14] Issues issued before September 1, 1986, are counted for purposes of this limit.

[15] Under the general test for private activity bonds, all private use financing must be less than 10 percent of the net proceeds of the issue.

[16] If the sum of the amount of unrelated and disproportionate related private use for an issue exceeds 5 percent of the proceeds of the issue (and a 5-percent security interest test, determined with respect to such use is satisfied), then the interest on such bonds is taxable.

Example 2.—Assume City Y issues $50 million of bonds for construction of a new public safety building ($32 million) and for improvements to an existing courthouse ($15 million). (The maximum private use (related and unrelated) portion for these bonds may not exceed $5 million, and the maximum unrestricted private use portion may not exceed $2.5 million.) Assume further that Y decides to use $3 million of the bond proceeds for renovation of an existing privately operated cafeteria located in the courthouse. If there is no other private use financed with the bonds, Y's use of the $3 million for the privately operated cafeteria satisfies the related use restriction. These expenditures are treated as being derived first from the permitted related private use portion (up to $2.5 million), and then from the unrestricted private use portion ($0.5 million).

Example 3.—Assume the facts of Example 2, except City Y decides to use $1.5 million of the bond proceeds to construct a privately operated parking garage adjacent to its new public safety building (reducing the proceeds available for the public safety building to $30.5 million). Under these facts, the allocation for the privately used courthouse facilities is determined as in Example 2. The expenditures for the public safety building parking garage are treated as derived from the unrestricted private use portion ($1.5 million) since the entire 5-percent related use portion for the issue was used for the courthouse cafeteria. Thus, the related use restriction is satisfied.

Private loan restriction

The conference agreement follows the House bill's limitation on the amount of bond proceeds that may be used to make private loans to an amount exceeding the lesser of 5 percent or $5 million of proceeds. As under the House bill, the restriction applies to loans to all persons other than governmental units.

The agreement retains the present-law exceptions to the private loan restriction for all private activity bonds for which tax-exemption is provided specifically in the Code, and follows the House bill and Senate amendment clarifications of the application of the excluded loan exception for specific essential governmental functions to permit indirect loans to businesses as well as to nonbusiness persons, provided the loans are available on an equal basis to both business and nonbusiness borrowers.

The conferees intend that, as under present law, a loan may arise from the direct lending of bond proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed. Thus, the determination of whether a loan is made depends on the substance of a transaction, as opposed to its form. For example, a lease or other contractual arrangement (e.g., a management contract or an output or take-or-pay contract) may in substance constitute a loan, even if on its face, such an arrangement does not purport to involve the lending of bond proceeds. However, a lease or other deferred payment arrangement with respect to bond-financed property that is not in form a loan of bond proceeds generally is not treated as such unless the arrangement transfers tax ownership to a nongovernmental person. Similarly, an output or management contract with respect to a bond-financed facility generally is not treated as a loan of bond proceeds unless the agreement in substance shifts significant burdens and benefits of ownership to the purchaser or manager of the facility.

Volunteer fire departments

The conference agreement retains the present law treatment of volunteer fire department bonds subject to a requirement that 95 percent or more of the net proceeds be used for qualified purposes.

Effective dates

Definition of private activity bond

In general.—As provided in the Joint Statements on Effective Dates of March 14, 1986,[17] and July 17, 1986,[18] the amendments to the definition of a private activity bond generally apply to bonds (including refunding bonds) issued on or after September 1, 1986. This includes the 10 percent trade or business use test (10 percent or $15 million, for output facilities); the 5 percent unrelated use limitation; and the $5 million limitation contained in the amended private loan restriction.[19]

As provided in the Joint Statements, the September 1, 1986, effective date does *not* apply to bonds which under present law are (1) industrial development bonds (IDBs), (2) bonds that would be IDBs, treating section 501(c)(3) organizations as private persons engaged in trades or businesses, (3) student loan bonds, (4) mortgage revenue bonds, or (5) other private ("consumer") loan bonds for which tax-exemption is permitted. With respect to these bonds, these provisions of the conference agreement generally are effective for bonds (including refunding bonds) issued after August 15, 1986.

Modification of security interest test.—The amendments to the security interest test, to clarify that the test takes into account both direct and indirect payments made by users of bond-financed property (whether or not formally pledged), apply to bonds (including refunding bonds) issued after August 15, 1986.

Use pursuant to certain management contracts.—The direction to the Treasury Department to modify its advance ruling guidelines with respect to private use pursuant to certain management contracts is effective on the date of enactment.

Use pursuant to certain cooperative research agreements.—The provisions regarding use pursuant to certain cooperative research agreements generally apply to bonds (including refunding bonds) issued after August 15, 1986.

Transitional exceptions

The conference agreement includes three generic transitional exceptions to the amendments to the definition of private activity bonds (including the modification of the security interest test).[20]

Certain "in-progress" projects.—The first transitional exception is provided for bonds (other than refunding bonds) with respect to facilities—

(1) the original use of which commences with the taxpayer and the construction (including reconstruction or rehabilitation) of which began before September 26, 1985, and is completed on or after that date;

(2) the original use of which commences with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction (including reconstruction or rehabilitation) of facilities financed with the bonds was entered into before September 26, 1985 and is binding at all times thereafter, and part or all of such expenditures are incurred on or after that date; or

(3) acquired after September 25, 1985, pursuant to a binding contract entered into on or before that date and that is binding at all times after that date.

Bonds eligible for this transitional exception are bonds that, under present law, are not IDBs, qualified mortgage bonds, qualified veterans' mortgage bonds, student loan bonds, other private loan bonds for which tax-exemption is permitted,[21] or non-Code bonds comparable to any of the foregoing, but which are private activity bonds under the conference agreement.

The transitional exception applies only to facilities for which the bond financing in question was approved by a governmental unit (or by voter referendum) before September 26, 1985. Governmental approval for this purpose includes approval by means of an inducement resolution or, if the governmental unit does not generally adopt inducement resolutions for the type of bond concerned, other comparable approval.

For purposes of the exception for facilities qualifying under (1) or (2), above, construction of a facility is deemed complete when the facility is placed in service for Federal income tax purposes.

Whether or not an arrangement constitutes a contract is determined under the applicable local law. A binding contract is not considered to have existed before September 26, 1985, however, unless the property to be acquired or services to be rendered were specifically identified or described before that date.

A binding contract for purposes of this provision exists only with respect to property or services for which the taxpayer is obligated to pay under the contract. In addition, where a contract obligates a taxpayer to purchase a specified number of articles and also grants an option to purchase additional articles, the contract is binding only to the extent of the articles that must be purchased.

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[17] Joint Statement by The Honorable Dan Rostenkowski (D., Ill.), Chairman, Committee on Ways and Means, The Honorable Bob Packwood (R., Ore.), Chairman, Committee on Finance, The Honorable John J. Duncan (R., Tenn.), Ranking Member, Committee on Ways and Means, The Honorable Russell Long (D., La.), Ranking Member, Committee on Finance, and The Honorable James A. Baker, III, Secretary of the Treasury, on the Effective Dates of Pending Tax Reform Legislation, March 14, 1986.

[18] Joint Statement of Chairman Rostenkowski, Chairman Packwood, and Secretary Baker, July 17, 1986.

[19] The exceptions to the private loan restriction (including the continuation of the present-law exceptions) are effective for bonds issued after August 15, 1986.

[20] Transitional exceptions are provided to many of the effective dates of other provisions of this title under circumstances similar to those described in this section. For purposes of those transitional exceptions, the determination of whether original use commences with the taxpayer; of whether construction (including reconstruction or rehabilitation) began before (and is completed on or after) a specified date; of whether significant expenditures are made; and of whether a binding contract existed (and pursuant to which expenditures are made after a specified date) is made in the same manner as described in this section. Additionally, the determination of whether a facility is described in a properly adopted inducement resolution (or other comparable approval) is made in the same manner as that described in this section.

[21] These bonds include generally bonds issued as part of the Texas Veterans' Land Bond Program, the Oregon Small-Scale Energy Conservation and Renewable Resource Loan Program, and the Iowa Industrial New Jobs Training Program.

A contract may be considered binding on a person even though (1) the contract contains conditions which are under the control of a person not a party to the contract, or (2) the person has the right under the contract to make minor modifications as to the details of the subject matter of the contract.

A contract that was binding on September 25, 1985, will not be considered binding at all times thereafter if it is modified (other than as described in (2) above) after that date. Additionally, for purposes of the binding contract exception, payments under an installment payment agreement are incurred no later than the date on which the property that is the subject of the contract is delivered rather than the due date of each installment.

For purposes of the binding contract rule, significant expenditures means expenditures in excess of 10 percent of the reasonably anticipated cost of the facilities.

Certain current refundings.—A second transitional exception is provided with respect to certain current refunding bonds.[22] This exception applies to current refundings of bonds issued before the applicable date (including a series of refundings where the original bond was issued before that date), if—

(1) the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds, and

(2) the average maturity of the refunding issue (1) does not exceed 120 percent of the reasonably expected economic life of the property identified as being financed with the refunded bonds (in a series of refundings, the original bonds) when those bonds were issued, or (2) the final maturity date of the refunding bonds is not later than 17 years after the issuance of the refunded (original) bonds.[23]

This exception also applies to current refundings of bonds to which the "in progress" transition rule described above applies (including a series of such refundings).

Certain advance refundings.—A third transitional exception is provided permitting advance refunding of bonds that were governmental when issued (satisfying the 25-percent rather than 10-percent trade or business use test) subject to the new restrictions on advance refundings of governmental bonds.

Bonds for volunteer fire departments

The extension and modification of authority for certain volunteer fire departments to issue tax-exempt bonds is effective on the date of enactment. The repeal of the sunset date for the Texas land bond program and the provision regarding the Iowa Industrial New Jobs Training Program are effective on the date of enactment.

B. Private Activity Bonds

1. Exempt-Facility Bonds

a. Overview

Present Law

Tax-exempt industrial development bonds (IDBs) may be issued to finance the following specified categories of exempt activities: multifamily residential rental projects, sports facilities, convention or trade show facilities, airports, docks and wharves, mass commuting facilities, parking facilities, sewage disposal facilities, solid waste disposal facilities, facilities for the local furnishing of electric energy or gas, facilities for the furnishing of water, local district heating or cooling facilities, and air or water pollution control facilities.

Exempt-activity IDBs formerly were permitted for certain hydroelectric generating facilities. This exception expired generally after December 31, 1985. A special transition rule was provided for certain facilities with respect to which an application for license had been docketed with the Federal Energy Regulatory Commission before January 1, 1986.

Exempt-activity IDBs are subject to numerous targeting requirements, described below, including a requirement that at least 90 percent of proceeds of each issue be used to finance the exempt activity for which the bonds are issued. Net proceeds are defined as proceeds, in effect reduced by certain amounts, such as amounts invested in a reasonably required reserve or replacement fund and amounts used to pay costs of issuance.

House Bill

Exempt-facility bonds may be issued to finance multifamily residential rental projects, airports, docks and wharves, mass commuting facilities, sewage disposal facilities, solid waste disposal facilities, and facilities for the furnishing of water (other than irrigation facilities).

Amendments are made to the targeting rules for multifamily residential rental projects, the definitions of airports, docks and wharves, and certain of the rules applicable to all exempt-facility bonds, including a requirement that all net proceeds of each issue be used to finance the exempt facility for which the bonds are issued. Net proceeds are defined as proceeds less amounts invested in a reasonably required reserve or replacement fund and amounts used to pay costs of issuance.

Senate Amendment

Under the Senate amendment, exempt-activity IDBs may be issued to finance multifamily residential rental projects, airports, docks and wharves, sewage disposal facilities, solid waste disposal facilities, facilities for the local furnishing of electric energy or gas, facilities for the furnishing of water (including irrigation systems), local district heating or cooling facilities, and hazardous waste treatment facilities.

Amendments are made to the targeting rules for multifamily residential rental projects and the definition of airports and docks and wharves. Additionally, at least 95 percent of the net proceeds of each issue is required to be used to finance the exempt activity for which the bonds are issued including functionally related and subordinate property. Net proceeds are defined as proceeds less amounts invested in a reasonably required reserve or replacement fund and amounts used to pay costs of issuance.

Conference Agreement

Under the conference agreement, exempt-facility bonds may be issued to finance multifamily residential rental projects, airports, docks and wharves, mass commuting facilities, sewage disposal facilities, solid waste disposal facilities, facilities for the local furnishing of electric energy or gas, facilities for the furnishing of water (including irrigation systems), local district heating or cooling facilities, and certain hazardous waste disposal facilities.

Amendments are made to the targeting rules for multifamily residential rental projects, the definition of airports, docks and wharves, and mass commuting facilities, and certain of the rules applicable to all exempt-facility bonds. The conference agreement further provides that at least 95 percent of the net proceeds of each issue must be used for the exempt facility for which the bonds are issued and functionally related and subordinate property. Net proceeds are defined as proceeds less amounts invested in a reasonably required reserve or replacement fund. (No reduction is made for amounts paid for costs of issuance since those amounts are not treated as spent for the exempt purpose of the borrowing.)

b. Rules applicable to specific exempt facilities

(1) Multifamily residential rental projects

Present Law

Exempt-activity IDBs may be issued to finance projects for multifamily residential rental property. At least 20 percent (15 percent in targeted areas) of the housing units in these projects must be occupied by individuals whose income does not exceed 80 percent of the applicable area median income when they first occupy the unit, determined with adjustments for family size.

Bond-financed projects must satisfy these requirements for a qualified project period, generally the longer of 10 years or 50 percent of the term of the bonds for the project having the longest maturity.

House Bill

Exempt-facility bonds may be issued to finance projects for multifamily residential rental property. Bond-financed projects must satisfy one of the two following set-aside requirements:

(1) At least 25 percent of housing units must be occupied by persons whose income does not exceed 80 percent of area median income; or

(2) At least 20 percent of housing units must be occupied by persons whose income does not exceed 70 percent of area median income.

All income determinations are made with adjustments for family size.

The operator of each bond-financed project must certify annually to the Treasury Department that the project is in compliance with the applicable set-aside requirement, based on current tenant incomes. If noncompliance is not corrected after it reasonably should have been discovered, interest on bond financing is nondeductible to the project owner from the first day of the year in which noncompliance commenced until correction occurs.

Existing low- or moderate-income tenants continue to be counted as such unless their incomes exceed 120 percent of the otherwise applicable income ceiling. If a project ceases to comply with set-aside requirements because of increases in existing tenants' income, no penalties are imposed if each available unit after noncompliance occurs is rented to a new low- or moderate-income tenant, until the project is again in compliance.

Bond-financed projects are required to be used as rental housing for a qualified project period, generally the longer of 15 years or until the date on which bonds are no longer outstanding.

The Treasury Department is required to report annually on compliance with the set-aside requirements.

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[22] Advance refunding bonds, as defined in the conference agreement, may not be issued pursuant to this exception.

[23] This exception applies to bonds that are governmental bonds under present law but are private activity bonds under the conference agreement. This exception does not change the present-law rules which prohibit refundings of various types of bonds that were eliminated or restricted under the Deficit Reduction Act of 1984.

Senate Amendment

The Senate amendment is the same as the House bill, except—

(1) The qualified project period extends for a minimum of 12 (rather than 15) years.

(2) If a project ceases to comply with the applicable set-aside requirement because of increases in current tenants' income, only available units of comparable or smaller size are required to be rented to new low- or moderate-income tenants, until the project is again in compliance.

(3) A special rule is provided for projects that charge significantly lower than market rents to low- or moderate-income tenants and that elect to satisfy a stricter low-income set-aside requirement. Under this rule, (a) low- or moderate-income tenants continue to qualify as such, as long as their income does not exceed 150 percent of the applicable income ceiling, and (b) if the project ceases to comply with the set-aside requirements because of increases in existing tenants' income, no penalties are imposed if each available low-or-moderate income unit is rented to tenants having 50 percent or less of area median income, until the project is again in compliance.

Conference Agreement

The conference agreement generally follows the Senate amendment, with several exceptions.[24] The low-income set-aside requirements are modified to conform to the requirements applicable to the low-income housing credit provided in the conference agreement (see II.E.3, above). Thus, bond-financed projects are required to meet one of the two following set-aside requirements (to be elected by the issuer on or before the date the bonds are issued):

(1) At least 40 percent of rental housing units must be occupied by tenants having incomes of 60 percent or less of area median gross income; or

(2) At least 20 percent of rental housing units must be occupied by tenants having incomes of 50 percent or less of area median gross income. To conform with the low-income housing credit, the conference agreement further provides that existing low-income tenants will continue to count as such as long as their family incomes do not increase above 140 percent of the income qualifying as low-income with respect to the project.

The conference agreement follows the House bill with respect to the qualified project period, during which bond-financed projects are required to be used as rental housing. Thus, the qualified project period ends on the latest of (1) the date which is 15 years after 50 percent of the units are occupied, (2) the first day on which no bonds are outstanding with respect to the project, or (3) the date on which any assistance provided to the project under section 8 of the United States Housing Act of 1937 terminates.

The conference agreement also makes conforming amendments to the provision in the Senate amendment, under which special rules are applied to certain rent-skewed projects which elect to satisfy stricter targeting requirements. Under the modified rule, projects qualify for the special treatment contained in the Senate amendment only if 15 percent or more of the low-income units are occupied by individuals having incomes of 40 percent (rather than 50 percent or 60 percent) or less of area median gross income, and the average rent charged to market-rate tenants is at least 300 percent of the average rent charged to low-income tenants for comparable units. (The limitations on rent charged to low-income tenants, contained in the Senate amendment, are retained.) If a project elects to satisfy these requirements, increases in an existing tenant's income, up to 170 percent of the qualifying income, do not disqualify the tenant as a low-income tenant; upon an increase over 170 percent, only the next available low-income unit must be rented to a tenant having an income of 40 percent or less of area median income.

(2) Sports facilities

Present Law

Exempt-activity IDBs may be issued to finance sports facilities.

House Bill

Authority to issue tax-exempt bonds for sports facilities is repealed.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

(3) Convention or trade show facilities

Present Law

Exempt-activity IDBs may be issued to finance convention or trade show facilities.

House Bill

Authority to issue tax-exempt bonds for convention or trade show facilities is repealed.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

(4) Airports

Present Law

Present law allows exempt-activity IDBs to be issued to finance airports and related storage and training facilities. Under Treasury regulations, airports include runways, terminals, and other public facilities, as well as functionally related and subordinate airport hotels and commercial facilities; hangars for one or more airlines; and certain other property not for use directly by the general public.

House Bill

The House bill allows exempt-facility bonds to be used to finance governmentally owned airports, defined as ground facilities directly related and essential to the air transportation of passengers and cargo. These include runways, air traffic control towers, hangars, terminal facilities, and public parking, but do not include airport hotels, shops, and food preparation facilities.

Senate Amendment

The Senate amendment allows exempt-activity IDBs to be issued to finance airports, defined as under present law except the amendment excludes airport hotels.

Conference Agreement

The conference agreement allows exempt-facility bonds to be issued to finance airports, and related storage and training facilities. The conference agreement provides that the term airport does not include any of the following facilities if they are used in a private business use:

(1) Airport hotels (or other lodging facilities).

(2) Retail facilities (including food and beverage facilities) located in a terminal in excess of a size necessary to serve passengers[25] and employees at the airport.

(3) Retail facilities for passengers or the general public (including, but not limited to, rental car lots) located outside the airport terminal.[26]

(4) Office buildings for individuals who are not employees of a governmental unit or of the public airport operating authority.

(5) Industrial parks or manufacturing facilities.

For purposes of these exclusions, property is considered to be used in a private trade or business if it is leased to or managed by any person other than a qualified governmental unit or an airport authority acting on behalf of a qualified governmental unit.

(5) Docks and wharves

Present Law

Exempt-activity IDBs may be issued to finance docks and wharves and related storage and training facilities.

House Bill

The House bill allows exempt-facility bonds to be issued to finance governmentally owned docks and wharves, defined as facilities directly related and essential to the transportation of passengers and cargo by water. Under this definition, long-term storage facilities (generally, those with more than 30 days capacity) may not be financed with tax-exempt bonds.

Senate Amendment

The Senate amendment retains present law.

Conference Agreement

The conference agreement allows exempt-facility bonds to be used to finance docks and wharves and related storage and training facilities (including long-term storage where permitted under present law). The term dock and wharf does not include any of the following facilities, if the facilities are used in a private business use:

(1) Hotels (or other lodging facilities);

(2) Retail facilities (including food and beverage facilities) located in a terminal in excess of a size necessary to serve passengers and employees at the port;

(3) Retail facilities (other than public parking) for passengers or members of the general public located outside the port terminal;

(4) Office buildings for individuals who are not employees of a governmental unit or of the public port operating authority); and

(5) Industrial parks or manufacturing facilities.

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[24] As under present law, multifamily residential rental property is eligible for tax-exempt financing only if the housing units are used other than on a transient basis. In addition, each residential rental unit must include separate and complete facilities for living, sleeping, eating, cooking, and sanitation. Hotels, dormitories, hospitals, nursing homes, retirement homes, and trailer parks do not qualify as residential rental property.

[25] For purposes of these limitations, the term passengers includes persons meeting or accompanying persons arriving and departing on flights to and from the airport.

[26] Public airport parking is not treated as a retail facility for purposes of this limitation, but such parking must be limited to no more than a size necessary to serve passengers and employees at the airport.

For purposes of these exclusions, property is considered to be used in a private trade or business if it is leased to or managed by any person other than a qualified governmental unit or a port authority acting on behalf of a qualified governmental unit.

(6) Mass commuting facilities

Present Law

Exempt-activity IDBs may be issued to finance mass commuting facilities and related storage and training facilities. The term mass commuting facility does not include mass commuting vehicles.

House Bill

Exempt-facility bonds may be issued to finance governmentally owned mass commuting facilities, defined generally as under present law, but limited to facilities directly related and essential to the ground transportation of passengers.

Senate Amendment

Authority to issue exempt-activity IDBs for mass commuting facilities is repealed.

Conference Agreement

The conference agreement follows the House bill, and defines such facilities generally as under present law, except that the term mass commuting facilities does not include any of the following facilities, if they are used in a private business use: [27]

(1) Hotels (or other lodging facilities).

(2) Retail facilities (including food and beverage facilities) located in a mass commuting terminal in excess of a size necessary to serve passengers and employees of the mass commuting facility.

(3) Retail facilities (other than public parking) for passengers and members of the general public located outside the mass commuting terminal.

(4) Office buildings for individuals who are not employees of a governmental unit or of the public mass commuting operating authority; and

(5) Industrial parks or manufacturing facilities.

For purposes of these exclusions, property is considered to be used in a private trade or business if it is leased to or managed by any person other than a qualified governmental unit or an operating authority acting on behalf of a qualified governmental unit.

(7) Parking facilities

Present Law

Exempt-activity IDBs may be issued to finance parking facilities.

House Bill

Authority to issue tax-exempt bonds (other than small-issue bonds) for parking facilities is repealed. (This repeal does not affect the ability to issue tax-exempt bonds to finance parking facilities that are functionally related and subordinate to an exempt facility.)

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. This provision does not affect the ability to finance parking facilities which are functionally related and subordinate to another exempt facility. (*See*, B.1.D., above.)

(8) Sewage disposal facilities

Present Law

Present law allows exempt-activity IDBs to be issued to finance sewage disposal facilities.

House Bill

Exempt-facility bonds may be issued to finance sewage disposal facilities, defined generally as under present law, but limited to directly related and essential facilities.

Senate Amendment

The Senate amendment retains present law.

Conference Agreement

The conference agreement allows exempt-facility bonds to be issued to finance sewage disposal facilities, defined as under present law.

(9) Solid waste disposal facilities

Present Law

Exempt-activity IDBs may be issued to finance solid waste disposal facilities. Qualified steam-generating or alcohol-producing facilities may also be financed under this exception.

House Bill

Exempt-facility bonds may be issued to finance solid waste disposal facilities, defined generally as under present law, but limited to directly related and essential facilities. The provision regarding qualified steam-generating or alcohol-producing facilities is repealed.

Senate Amendment

The Senate amendment retains present law.

Conference Agreement

The conference agreement allows exempt-facility bonds to be issued to finance solid waste disposal facilities, defined generally as under present law. Thus, as under present law, tax-exempt financing may be provided for the processing of solid waste or heat into usable form, but not, as an exempt facility bond, for further processing that converts the resulting materials or heat into other products (e.g., for turbines or electric generators). (*See*, Temp. Treas. reg. sec. 17.1.) The special rule for certain qualified steam-generating or alcohol-producing facilities is repealed. The conferees wish to clarify that solid waste does not include most hazardous waste (including radioactive waste).

(10) Facilities for the local furnishing of electric energy or gas

Present Law

Exempt-activity IDBs may be issued to finance facilities for the local furnishing of electric energy or gas, in areas not exceeding two contiguous counties or a city and one contiguous county.

House Bill

Authority to issue tax-exempt bonds for facilities for the local furnishing of electric energy or gas is repealed.

Senate Amendment

The Senate amendment retains present law.

Conference Agreement

The conference agreement follows the Senate amendment.[28]

(11) Pollution control facilities

Present Law

Air or water pollution control facilities may be financed with exempt-activity IDBs.

House Bill

Authority to issue tax-exempt bonds for air or water pollution control facilities is repealed.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

(12) Facilities for the furnishing of water

Present Law

Exempt-activity IDBs may be issued to finance facilities for the furnishing of water, including irrigation systems.

House Bill

The House bill allows exempt-facility bonds to be issued to finance facilities for the furnishing of water, defined generally as under present law but excluding irrigation systems.

Senate Amendment

The Senate amendment retains present law.

Conference Agreement

The conference agreement allows exempt-facility bonds to be issued to finance facilities for the furnishing of water, defined as under present law (including irrigation systems).

(13) Certain hydroelectric generating facilities

Present Law

Exempt-activity IDBs were permitted to be issued to finance qualified hydroelectric generating facilities. This provision generally expired after 1985; however, the provision is extended (through 1988) for property with respect to which an application has been docketed by the Federal Energy Regulatory Commission (FERC) before January 1, 1986.

House Bill

The House bill repeals authority to issue tax-exempt bonds to finance hydroelectric generating facilities, including the transitional exception included in present law that allows certain bonds for these facilities to be issued after the provision's general December 31, 1985, termination date.

Senate Amendment

The Senate amendment follows the House bill, but retains the present law transitional exception for property with respect to which a FERC application was docketed before January 1, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, with a clarification that, in order for the present-law transitional exception to apply, an application for a license (rather than for a preliminary permit) must have been docketed with FERC by December 31, 1985.

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[27] In retaining the present-law definition of mass commuting facilities, as modified above, the conferees do not intend to prejudge the possible need in the future to allow tax-exempt financing for high-speed rail systems in a manner similar to that allowed under the agreement for mass commuting facilities.

[28] Present-law exceptions under which specified facilities are treated as facilities for the local furnishing of electricity (secs. 644 and 645 of the Deficit Reduction Act of 1984) are retained under the conference agreement.

(14) Local district heating or cooling facilities

Present Law

Exempt-activity IDBs may be used to finance local district heating or cooling facilities.

House Bill

The House bill repeals the authority to issue tax-exempt bonds for local district heating or cooling facilities.

Senate Amendment

The Senate amendment retains present law.

Conference Agreement

The conference agreement allows exempt-facility bonds to be issued to finance local district heating or cooling facilities, defined as under present law.

(15) Qualified hazardous waste facilities

Present Law

There is no provision allowing tax-exempt IDBs to be issued to finance hazardous waste treatment or disposal facilities. (Solid waste disposal facilities do not include facilities disposing of liquid or gaseous wastes, including most hazardous waste.)

House Bill

No provision.

Senate Amendment

The Senate amendment allows exempt-activity IDBs to be issued to finance hazardous waste treatment facilities. This exception is limited to facilities which are subject to final permit requirements under subtitle C of Title II of the Solid Waste Disposal Act, as in effect on the date of enactment of the Senate amendment.

Conference Agreement

Under the conference agreement, exempt-facility bonds may be issued to finance qualified hazardous waste facilities. These include facilities for the land incineration or the permanent entombment of hazardous waste, which facilities are subject to final permit requirements under subtitle C of Title II of the Solid Waste Disposal Act, as in effect on the date of enactment of the conference agreement.

Tax-exempt financing is available only for facilities (or the portion of a facility) to be used by the public as opposed to the generator of the hazardous waste.[29] The conferees further intend that the term hazardous waste not include radioactive waste, and that rules similar to the present-law rules regarding solid waste disposal IDBs will apply, including rules limiting hazardous waste to materials having no market or other value at the place at which they are located and rules limiting tax-exempt financing to that portion of a facility which is actually engaged in the incineration or entombment of hazardous waste. (*See, e.g.*, Treas. Reg. sec. 1.103-8(f)(2) and Temp. Treas. Reg. sec. 17.1.)

c. Effective dates for exempt-facility bond provisions

The repeal of specified categories of exempt-activity IDBs and the amendments to the definition of certain exempt facilities apply to bonds issued after August 15, 1986.

A transitional exception from the new rules for exempt-facility bonds is provided for bonds (other than refunding bonds) that may be issued under the present IDB rules, but which may not be issued under the conference agreement. This transitional exception applies to bonds for facilities with respect to which the commencement of construction (including reconstruction or rehabilitation) or binding contract, or acquisition, rules described in the discussion of effective dates for the new rules on governmental bonds are satisfied. (*See*, A., above.)

A second transitional exception to the exempt-facility bond provisions applies in the case of certain current refunding bonds. This exception applies to refundings (including a series of refundings) of bonds issued before August 16, 1986, which bonds qualify for tax-exemption under present law, but do not so qualify under the conference agreement, provided that the rules of the transitional exception for current refundings of certain governmental bonds (described in A., above) are satisfied.

The requirement that 95 percent of the net proceeds of exempt-facility bonds be used to finance exempt facilities (including functionally related and subordinate facilities) applies to bonds issued after August 15, 1986, except for bonds covered under the second transitional exception above (for current refunding bonds). The option to issue bonds for qualified hazardous waste facilities applies after August 15, 1986.

d. Miscellaneous restrictions on exempt-facility bonds

(1) Functionally related and subordinate test

Present Law

In the case of exempt-activity IDBs, all property that is functionally related and subordinate to the exempt activity may be financed with bond proceeds. Expenditures for such functionally related and subordinate property are treated as made for the exempt purpose of the borrowing.

House Bill

The House bill repeals the functionally related and subordinate test. Thus, only property comprising the exempt facility may be financed with exempt-facility bonds.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment with a modification providing that office space generally is not treated as functionally related and subordinate to an exempt facility (subject to the modifications described above that apply to airports, docks and wharves, and mass commuting facilities).[30] Only office space that is directly related to the day-to-day operations at an exempt facility and that is located at or within the facility may be financed with exempt-facility bonds and small issue IDBs for manufacturing. Thus, a separate office building, or an office wing of a mixed-use facility, is not treated as functionally related and subordinate to an exempt facility.

Effective date.—This provision applies to bonds (including refunding bonds) issued after August 15, 1986. A transitional exception applies in the case of certain current refunding bonds. This exception applies to refundings (including a series of refundings) of bonds issued before August 16, 1986, which bonds qualify for tax-exemption under present law, but do not so qualify under the conference agreement, provided that the rules of the transitional exception for current refundings of certain governmental bonds (described in A., above) are satisfied.

(2) Ownership of exempt-facility bond-financed property

Present Law

There are no general restrictions on private ownership of property financed with exempt-activity IDBs. Under a special rule, however, for bonds to be exempt from the present-law private activity bond volume limitations, certain transportation and other facilities must be governmentally owned.

House Bill

The House bill requires that all property financed with exempt-facility bonds for airports, docks and wharves, mass commuting facilities and water facilities be governmentally owned. Governmental ownership is determined using general Federal income tax concepts of ownership.

Senate Amendment

The Senate amendment follows present law, with a modification to the safe-harbor rules for financing airports, docks and wharves, and certain other facilities outside of the State volume limitations on IDBs. Under this safe-harbor, these exempt facilities are not treated as privately owned solely by reason of a lease (including service or management contract) if (a) the term of the lease (including renewal periods) does not exceed 80 percent of the reasonably expected economic life of the bond-financed property and (b) the private user of the facility does not have an option to purchase the facility at other than fair market value, and (c) the leasee makes an irrevocable election not to claim an investment tax credit with respect to any property financed with the issue.

Conference Agreement

The conference agreement follows the House bill in requiring that all property financed with exempt-facility bonds for airports, docks and wharves, and mass commuting facilities, be governmentally owned. The conference agreement modifies the Senate amendment's safe-harbor rule for permitting airport, dock and wharf, and solid waste bonds to be exempt from the State volume limitations as a safe-harbor test for purposes of this requirement.

Under the agreement, property is considered owned by a governmental unit if the leasee makes an election (binding on successors in interest) not to claim depreciation or an investment tax credit with respect to the property, the lease term is not more than 80 percent of the property's useful life and the leasee has no option to purchase the property at other than fair market value. In the case of a solid waste facility a lease of 20 years or less is considered to meet the 80 percent test.

Effective date.—This provision applies to bonds (including refunding bonds) issued after August 15, 1986.

A transitional exception is provided for bonds (other than refunding bonds) that may be issued under the present IDB rules, but which may not be issued under the conference agreement. This transitional exception applies to bonds for facilities with respect to which the commencement of construction (including reconstruction or rehabilitation) or binding contract or acquisition rules described in the discussion of effective

[29] This requirement is considered to be satisfied, if 95 percent or more of the net proceeds are to be used with respect to that portion of the facility used by persons other than the owner or operator of the facility (or any related person).

[30] These restrictions are identical to the restrictions that apply under present law and the conference agreement as part of the definition of manufacturing facility under the small-issue bond rules.

dates for the new rules on governmental bonds are satisfied. (*See* A., above.)

A second transitional exception to the exempt-facility bond provisions applies in the case of certain current refunding bonds. This exception applies to refundings (including a series of refundings) of bonds issued before August 16, 1986, which bonds qualify for tax-exemption under present law, but do not so qualify under the conference agreement, provided that the rules of the transitional exception for current refundings of certain governmental bonds (described in A., above) are satisfied.

2. Industrial Park Bonds

Present Law

Tax-exempt IDBs may be issued to finance acquisition or development of land as a site for an industrial park. Up to 50 percent of the proceeds of these bonds may be used to acquire land.

House Bill

The House bill repeals the tax exemption for interest on industrial park IDBs.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Effective date.—This provision is effective for bonds (including refunding bonds) issued after August 15, 1986.

A transitional exception from the repeal of authority to issue tax-exempt bonds for industrial parks applies to such bonds for facilities with respect to which the commencement of construction (including reconstruction or rehabilitation) or binding contract or acquisition rules described in the discussion of effective dates for the new rules on governmental bonds are satisfied. (*See* A., above.)

A second transitional exception to this provision applies in the case of certain current refunding bonds. This exception applies to refundings (including a series of refundings) of bonds issued before August 16, 1986, which bonds qualify for tax-exemption under present law, but do not so qualify under the conference agreement, provided that the rules of the transitional exception for current refundings of certain governmental bonds (described in A., above) are satisfied.

3. Small-Issue Bonds

Present Law

Interest on small-issue IDBs is exempt from tax. Small-issue IDBs must be part of an issue not exceeding $1 million, the proceeds of which are used to finance land or depreciable property. The $1 million limitation is increased to $10 million if an election is made to take certain related capital expenditures into account.

As with exempt-facility bonds, 90 percent of the net proceeds (defined in the same manner as under the rules on exempt-facility bonds) of small-issue bonds must be used for the exempt purpose of the borrowing.

Under a special exception to the general restriction on use of bond proceeds to finance land, described below, certain limited amounts of small-issue bond proceeds may be used to finance farmland for use by first-time farmers. *De minimis* amounts of used equipment purchased in connection with farmland also may be financed under this exception. Bonds for first-time farmers are treated as bonds for nonmanufacturing facilities.

No special restrictions are imposed on the use of small-issue IDBs to finance new, depreciable farm property.

The small-issue exception expires generally for bonds issued after December 31, 1986. In the case of small-issue bonds for manufacturing facilities only, the exception expires after December 31, 1988.

House Bill

The House bill repeals the present-law sunsets applicable to small-issue bonds, i.e., the ability to issue these bonds is indefinitely extended. As in the case of exempt-facility bonds, all bond proceeds (other than issuance costs and a reasonably required debt service reserve fund) must be used for the exempt purpose of the borrowing.

Senate Amendment

The Senate amendment retains the present-law sunset dates applicable to small-issue IDBs, but extends the presently scheduled termination of the special exception for bonds for farmland by treating those bonds as bonds for manufacturing facilities.

Additionally, 95 percent of the proceeds of each issue must be used for the exempt purpose of the borrowing.

The special exception for bonds to finance farmland for first-time farmers is expanded to include financing land for individuals who previously owned land which they disposed of while insolvent. Additionally, the amount of used equipment that may be financed for first-time farmers is increased to 25 percent of the financing provided (i.e., a maximum of $62,500), regardless of whether such equipment is financed in conjunction with financing for the purchase of farmland.

A $250,000 lifetime limit is imposed on the amount of depreciable farm property (including both new and used property) that may be financed for any principal user or related persons. Bonds issued prior to the effective date of this provision are not affected, but count in determining the amount of financing allowed to be provided to any person by subsequent issues.

Conference Agreement

The conference agreement follows the Senate amendment, except that the sunset date for issuance of manufacturing bonds (including bonds for first-time farmers) is extended for one additional year, through December 31, 1989. At least 95 percent of the net proceeds (without reduction for issuance costs) must be used for the exempt purpose of the borrowing. (*See also*, the description of new restrictions on financing costs of issuance.)

Effective date.—These provisions, including the $250,000 limit on depreciable farm property, apply to bonds (including refunding bonds) issued after August 15, 1986.

A transitional exception applies to certain current refunding bonds that may be issued under current law but that may not be issued under the conference agreement and for current refundings of small-issue bonds occurring after the prescribed termination dates. Current refundings qualifying under this exception are issues—

(1) that do not extend the maturity of the refunded issue;

(2) that have a lower interest rate than the rate on the refunded issue; and

(3) the amount of which does not exceed the outstanding amount of the refunded bonds.

4. Student Loan Bonds

Present Law

Tax-exemption is permitted for interest on student loan bonds issued in connection with the Department of Education's Guaranteed Student Loan (GSL) and Parents' Loans for Undergraduate Students (PLUS) programs. Tax-exemption is not permitted for interest on student loan bonds not issued in connection with these Federal programs (e.g., supplemental student loans).

House Bill

The House bill retains the present exemption for interest on student loan bonds issued in connection with the Federal GSL and PLUS programs, and expands the exemption to include student loan bonds issued under certain State supplemental student loan programs. Under the House bill, all proceeds of student loan bonds (other than amounts invested in a reasonably required reserve or replacement fund or used to pay costs of issuance) must be used to make or finance student loans.

Senate Amendment

The Senate amendment is the same as the House bill, except only 85 percent of the proceeds are required to be used to make or finance student loans.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with a modification requiring that at least 90 percent of net proceeds (without any reduction for issuance costs) must be used to finance student loans in the case of bonds issued in connection with the Federal GSL and PLUS programs. In the case of other student loan bonds for which tax-exemption is permitted, 95 percent is substituted for 90 percent. (*See also*, the description below of new restrictions on financing costs of issuance.)

The conference agreement also requires that a student borrower must be a resident of the issuing State or enrolled in an educational institution located within the State. Where two or more States each use a portion of the State's volume limitation in a single issue to finance student loans, the limitation described in the preceding sentence applies separately to each State's share of the issue.

Effective date.—These provisions apply to bonds (including refunding bonds) issued after August 15, 1986.

A transitional exception is provided permitting current refundings of qualified student loan bonds issued before August 16, 1986, including a series of refundings, which qualify for tax-exemption under present law, but do not qualify under the conference agreement, provided that the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds. The conferees intend that, as under present law, the period provided for financing student loans in the case of these current refunding bonds be determined from the date of issue of the refunded bonds (original bonds in the case of series of refundings) rather than a new period commenced on the date of the refunding. Additionally, the last maturity date of the refunding bonds may be no later than 17 years after the date of issuance of the refunded bonds (original bonds in the case of a series of refundings).

5. Mortgage Revenue Bonds

a. Qualified mortgage bonds and mortgage credit certificates

Present Law

Qualified mortgage bonds

Tax-exemption is permitted for interest on qualified mortgage bonds, defined as bonds all lendable proceeds of which are used to finance mortgages on single-family,

owner-occupied residences. The targeting requirements for these bonds include the following:

(1) At least 90 percent (0 percent in targeted areas) of lendable proceeds of each issue must be used to finance loans to first-time homebuyers (i.e., persons who have held no present ownership interest in a principal residence during the preceding three years);

(2) The purchase price of bond-financed residences may not exceed 110 percent (120 percent in targeted areas) of the average area purchase price applicable to that residence; and

(3) Issuers must publish and submit to the Treasury Department annual reports of their policies on the use of the proceeds of these bonds.

Mortgage credit certificates

Issuers of qualified mortgage bonds may elect to exchange part or all of their bond authority for authority to issue mortgage credit certificates (MCCs). The aggregate principal amount of MCCs issued pursuant to such an election may not exceed 20 percent of the exchanged bond authority. MCCs generally are subject to the same targeting requirements as qualified mortgage bonds.

Certain cooperative housing corporations

Tenant-shareholders of cooperative housing corporations are allowed a deduction for rents paid to the cooperative equal to their allocable share of interest and taxes paid by the cooperative. Housing units owned by cooperative housing corporations may be financed with qualified mortgage bonds; all targeting rules for qualified mortgage bonds apply to such financings.

Termination of programs

Authority to issue both qualified mortgage bonds and MCCs terminates after December 31, 1987.

House Bill

Qualified mortgage bonds

The House bill makes the following modifications to the present targeting rules for qualified mortgage bonds:

(1) All bond proceeds (50 percent in targeted areas) other than issuance costs and amounts invested in reasonably required reserve or replacement funds must be used to finance residences to first-time homebuyers;

(2) The purchase price of bond-financed residences may not exceed 90 percent (110 percent in targeted areas) of the average area purchase price applicable to that residence;

(3) The present requirements of annual Treasury Department reports and published policy statements by issuers of qualified mortgage bonds are repealed; and

(4) New Federal income limitations are imposed with respect to purchasers of homes financed with qualified mortgage bonds.

Mortgage credit certificates

Authority to issue MCCs is continued; the targeting requirements for MCCs are conformed to the revised targeting rules for qualified mortgage bonds.

Certain cooperative housing corporations

The House bill follows present law.

Termination of programs

The House bill retains the present-law termination date.

Senate Amendment

Qualified mortgage bonds

The Senate amendment retains the present-law targeting rules for qualified mortgage bonds.

Mortgage credit certificates

The Senate amendment increases the rate at which qualified mortgage bond authority may be exchanged to issue MCCs from 20 percent to 25 percent. No other amendments are made to the MCC rules.

Certain cooperative housing corporations

An exception is provided to the general cooperative housing corporation rules permitting limited equity cooperative housing corporations to elect to be eligible for tax-exempt financing under the rules applicable to multifamily residential rental property (as modified by the amendment). If such an election is made—

(1) the tenant-shareholders of the cooperative are not entitled to a deduction for interest and taxes paid by the cooperative (under sec. 216); and

(2) the volume of such bonds counts toward the state volume limitation applicable to qualified mortgage bonds.

Bonds for limited equity cooperative housing are subject to the December 31, 1987, termination date for qualified mortgage bonds.

Termination of programs

The Senate amendment is the same as the House bill.

Conference Agreement

Qualified mortgage bonds

The conference agreement follows the House bill, with the following modifications—

(1) At least 95 percent of the net proceeds of each qualified mortgage issue (without any reduction for issuance costs) must be used to finance mortgage loans to first-time homebuyers. *(See also,* the description of new restrictions on financing costs of issuance.)

(2) As under present law, there is no requirement that a minimum percentage of financing in targeted areas be provided to first-time homebuyers.

(3) The House bill's income limits for purchasers of residences financed with qualified mortgage bond proceeds are adopted, modified, as follows:

(a) All financing must be provided to borrowers whose family income does not exceed 115 percent of the higher of area or Statewide median income.

(b) In targeted areas, one-third of the financing may be provided to borrowers without regard to the limitation in (a); the balance of the financing must be provided to mortgagors having incomes not exceeding 140 percent of the higher of area or Statewide median income.

Mortgage credit certificates

The conference agreement follows the Senate amendment's increase in the exchange rate for MCCs and follows the House bill in conforming amendments to the targeting rules for recipients of the certificates to the new requirements (under the conference agreement) for qualified mortgage bonds.

Certain cooperative housing corporations

The conference agreement follows the Senate amendment with conforming amendments which require electing limited equity cooperative corporations to satisfy the revised targeting rules for multifamily residential rental projects contained in the agreement and extending the termination of the exception to parallel the new termination dates for qualified mortgage bonds and MCCs. The election to forego deductions for proportionate interest and taxes, in return for financing as multifamily rental housing, applies throughout the qualified project period (as defined for multifamily housing bond purposes).

Bonds for electing limited-equity cooperatives are counted toward the State volume limitation for private activity bonds.

Termination of programs

The conference agreement extends the scheduled termination dates for the qualified mortgage bond and MCC programs one year, to December 31, 1988.

Effective date

These provisions are effective with respect to bonds (including refunding bonds) issued, and bond authority exchanged for authority to issue MCCs, after August 15, 1986. The special provision on limited equity cooperative housing corporations applies to bonds issued after August 15, 1986.

A transitional exception is provided permitting current refundings of qualified mortgage bonds issued before August 16, 1986, which qualify for tax-exemption under present law, but do not qualify under the conference agreement, provided the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds. The conferees intend that, as under present law, the period allowed to provide financing for qualified mortgagors in the case of these current refunding bonds be determined from the date of issue of the refunded bonds (original bonds in the case of a series of refundings) rather than a new period commenced on the date of the refunding. Additionally, the last maturity date of such refunding bonds may be no later than 32 years from the date of issuance of the refunded bonds (original bonds in the case of a series of refundings).

b. Qualified veterans' mortgage bonds

Present Law

Qualified veterans' mortgage bonds are bonds 90 percent or more of the proceeds of which are used to finance loans to veterans for the purchase of single-family, owner-occupied residences. Tax-exempt qualified veterans' mortgage bonds may be issued only by the five States that issued such bonds before June 22, 1984. Mortgage loans financed with these bonds may be made only to veterans who served on active duty before 1977, and who apply for a loan before 30 years after leaving active service.

House Bill

The House bill follows present law, except consistent with the rules for other private activity bonds, all bond proceeds (other than issuance costs and amounts invested in a reasonably required reserve or replacement fund) are required to be used to finance mortgage loans to qualified veterans.

Senate Amendment

The Senate amendment retains present law.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification providing that at least 95 percent of net proceeds (without any reduction for issuance costs) must be used to finance mortgage loans to qualified veterans.

Additionally, a clarification is provided that in order not to be counted toward the

State volume limitations, current refundings of qualified veterans' mortgage bonds may not exceed the outstanding amount of the refunded bonds. The last maturity date of such refunding bonds may be no later than 32 years from the date of issuance of the refunded bonds (original bonds in the case of a series of refundings).

Effective Date.—The new provisions apply to bonds (including refunding bonds) issued after August 15, 1986.

A transitional exception is provided permitting current refundings of bonds issued before August 16, 1986, which qualify for tax-exemption under present law, but do not qualify under the conference agreement, provided the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds and that the period during which financing is provided to qualified mortgagors is determined from the date of issuance of the refunded bonds (or original bonds in the case of a series of refundings) rather than a new period commenced on the date of the refunding. Additionally, the last maturity date of the refunding bonds must be no later than 32 years after the date of issuance of the refunded bonds (original bonds in the case of a series of refundings).

6. Qualified Redevelopment Bonds

a. Overview

Present Law

No provisions in present law relate specifically to redevelopment activities; however, bonds issued for such activities are taxable if they violate the IDB or private loan bond restrictions.

House Bill

The House bill permits bonds to finance certain land acquisition and redevelopment in blighted areas, for ultimate use by nongovernmental persons, to be issued as qualified redevelopment bonds, a type of tax-exempt private activity bond.

Qualified redevelopment bonds must be part of an issue—

(1) all proceeds (other than costs of issuance and proceeds invested in a reasonably required reserve fund) of which are used for redevelopment purposes in a locally designated blighted area, and

(2) with respect to which incremental property tax revenues (i.e., additional tax revenues attributable to increased property values by reason of bond-financed redevelopment) are reserved exclusively for debt service on the issue, to the extent necessary to cover such debt service.

Real property taxes in the designated area must be imposed at the same rate and in the same manner as for similar property located elsewhere in the jurisdiction. No additional fees or charges may be imposed in the designated area that are not imposed on other similar property elsewhere in the jurisdiction.

Senate Amendment

The Senate amendment treats qualified redevelopment bonds, defined generally as under the House bill, as tax-exempt IDBs. Ninety-five percent (rather than 100 percent) of bond proceeds are required to be used for redevelopment purposes in a locally designated blighted area.

Conference Agreement

The conference agreement treats qualified redevelopment bonds as tax-exempt private activity bonds.

Qualified redevelopment bonds must be part of an issue—

(1) 95 percent or more of the net proceeds (without reduction for issuance costs) of which are to be used for redevelopment purposes in a locally designated blighted area; and

(2) the payment of principal and interest on which is secured (a) primarily by taxes of general applicability imposed by a general purpose governmental unit or (b) by a pledge of incremental property tax revenues reserved, to the extent necessary, for debt service on the issue.

Thus, under the conference agreement, qualified redevelopment bonds may be repaid, or their repayment secured, either (a) by incremental tax revenues (as under the House bill and Senate amendment), (b) by general tax revenues of the governmental unit (e.g., a pledge of the full faith and credit of the issuing jurisdiction), or (c) by a combination of (a) and (b) above. Repayment of qualified redevelopment bonds may *not* be secured by payments from any person other than such security that would render the bonds IDBs under present law (using a 10-percent use and security interest test). Additionally, the pledged tax revenues must be the primary security for repayment of the bonds. Whether such revenues are the primary security is a factual determination. This requirement is intended to be satisfied, however, only when the pledge of taxes represents a direct and substantial financial commitment by the issuer of the bonds.

As under the House bill and Senate amendment, taxes in the designated blighted area must be imposed at the same rates and using the same assessment methods as apply with respect to comparable property located elsewhere in the jurisdiction. Additionally, no fees or other charges may be imposed on owners or users of property in the designated area to which owners or users of other comparable property are not subject. (Insubstantial fees for amenities such as parking are not treated as assessments for this purpose.) Where financing is provided with respect to only a portion of a blighted area, these rules apply only with respect to the area being financed.

b. Permitted uses of bond proceeds

Present Law

No provision.

House Bill

The proceeds of qualified redevelopment bonds must be used for one or more of the following purposes:

(1) To acquire by eminent domain (or the threat thereof), clear, and prepare land in a designated blighted area for redevelopment, and to transfer real property interests to nongovernmental persons for fair market value;

(2) To rehabilitate the real property (acquired as above); and

(3) To relocate occupants of structures on the acquired real property.

Qualified redevelopment bond proceeds may not be used to construct buildings or other new structures for use by nongovernmental persons.

Senate Amendment

The Senate amendment is the same as the House bill, except that, for purposes of (1) above the Senate amendment clarifies that—

(1) the requirement that property be sold for its fair market value is determined by taking into account covenants and restrictions relating to the use of real property that are imposed by the issuer of the bonds; and

(2) the actual threat of eminent domain is not required, if the acquiring agency has the power of eminent domain and the power could be exercised with respect to the property concerned.

Conference Agreement

The conference agreement generally follows the Senate amendment. Thus, under the conference agreement, qualified redevelopment bond proceeds may be used for the following purposes:

(1) To acquire real property located in a designated blighted area, provided that the acquiring governmental unit has the power to exercise eminent domain with respect to the real property in the area.

(2) To clear and prepare land in the designated blighted area for redevelopment.

(3) To rehabilitate the real property acquired as above or otherwise owned by a governmental unit (e.g., property acquired by tax lien foreclosure).

(4) To relocate occupants of structures on the acquired real property.

Under the conference agreement, real property acquired by a governmental unit (under (1) above) need not be transferred to a nongovernmental person; however, if it is so transferred, the transfer must be for fair market value. The determination of fair market value for this purpose is made taking into account covenants and restrictions imposed on the use of the relevant real property by the issuer of the bonds.

As under the House bill and Senate amendment, qualified redevelopment bond proceeds may not be used to construct new buildings or other property, including the enlargement of any existing building.[31]

c. Designation of blighted areas

Present Law

No provision.

House Bill

Criteria for designation

Qualified redevelopment bonds may be issued only pursuant to (1) a State law that authorizes the issuance of such bonds for permitted purposes in blighted areas, and (2) a redevelopment plan adopted (before issuance of the bonds) by the governing body of the general purpose local governmental unit having jurisdiction over the blighted areas.

Designation of blighted areas also must be made by the general purpose local governmental unit having jurisdiction over the area, and must be based on prescribed State statutory criteria which take into account specified indicators of blight.

Size limitations

The following size limitations are imposed on designated blighted areas:

[31] Bonds, the proceeds of which are used to finance such governmental facilities as street paving, sidewalks, street-lighting, and similar facilities are treated as governmental bonds under the conference agreement. These bonds are, therefore, not subject to the new requirements for qualified redevelopment bonds, provided that they do not violate the restrictions pertaining to trade or business use, unrelated use, or private loans, described in A., above (i.e., provided that they are not private activity bonds). The conferees understand that both governmental activities and private redevelopment activities may be financed with a single issue of redevelopment bonds. The conferees intend that the Treasury Department will develop rules allowing such composite financing to continue by treating the governmental component and the qualified redevelopment bond component of such issues as separate issues in appropriate circumstances.

(1) The aggregate blighted areas designated by a general purpose local governmental unit may not contain real property, the assessed value of which is more than 10 percent of the assessed value of all real property within its jurisdiction.

(2) A designated blighted area may not be smaller than a contiguous ¼-square mile (160 acres).

Senate Amendment

Criteria for designation

The Senate amendment follows the House bill.

Size limitations

The Senate amendment imposes the following size limitations on designated blighted areas (in lieu of those contained in the House bill):

(1) Blighted areas designated by a local governmental unit may not exceed 25 percent of the assessed value of all real property within the jurisdiction.

(2) A designated blighted area may not be smaller than 10 contiguous acres.

Conference Agreement

Criteria for designation

The conference agreement follows the House bill and the Senate amendment with respect to designation of blighted areas. Thus, under the conference agreement, qualified redevelopment bonds may be issued only pursuant to (1) a State law which authorizes the issuance of such bonds to redevelop blighted areas, and (2) a redevelopment plan adopted by the governing body of the general purpose local governmental unit having jurisdiction over the area, before the issuance of the bonds.

The designation of blighted areas is to be based on State statutory criteria which take into account all relevant factors, including the excessive presence in the area of vacant land on which structures were previously located, abandoned or vacant buildings, substandard structures, vacancies, and delinquencies in payment of real property taxes. Designations are to be based on an affirmative finding of a substantial presence of these factors.

The conferees are aware that certain redevelopment agencies have previously adopted redevelopment plans that are consistent with the general goals of the conference agreement but that may not meet the specific criteria established by the agreement. The conferees do not intend to require existing redevelopment agencies, which had adopted redevelopment plans as of August 15, 1986, pursuant to a State law, to resubmit a new plan to the general purpose governmental unit having jurisdiction over the designated blighted area. The conferees further do not intend to require such agencies to reexamine the original criteria used to designate blighted areas. However, no new bonds may be issued for activities in such grandfathered districts which may not otherwise be financed with qualified redevelopment bonds under the conference agreement. (*See also*, the rules below on application of the 20-percent limit to these areas.)

For purposes of designating blighted areas, general purpose local governmental units are the smallest governmental units having general purpose sovereign powers over a given area.[32] Thus, in most cases, designations will be made by cities or (for areas outside any city) by county governments. The State itself and special purpose governmental units (e.g., a redevelopment agency itself) are not treated as governmental units entitled to designate blighted areas.[33]

Size limitations

Maximum area size

Under the conference agreement, the aggregate blighted areas designated by a general purpose local governmental unit may not contain real property, the assessed value of which exceeds 20 percent of the assessed value of all real property located within the jurisdiction of the governmental unit. The percentage with respect to any area is to be determined at the time the area is designated, with these percentages being aggregated for purposes of the 20 percent test. For example, assume that a city designates a redevelopment area in 1987 that contains 10 percent of the assessed value of real property located in the city (determined as of 1987). Assume further that the city designates a second area in 1992 containing 5 percent of the assessed value of all real property in the city (determined as of 1992). If the city wishes to designate a third area in 1997, that area may not contain more than 5 percent of the assessed value of real property in the city, determined as of 1997.[34] Previously designated areas cease to be taken into account, for purposes of the 20 percent test, if no qualified redevelopment bonds (or similar bonds issued under prior law) remain outstanding with respect to the area. Once an area ceases to be counted, the area must be redesignated under the rules of the conference agreement before further bonds may be issued for redevelopment therein.

Districts designated before January 1, 1986, and with respect to which qualifying activities were in progress on that date, are not subject to the 20 percent rule. However, no new districts may be designated, or existing districts expanded, until the jurisdiction is in compliance with the 20 percent limit (determined inclusive of those existing districts).

Minimum area size

A designated blighted area must satisfy one of the two following requirements:

(1) The area is comprised of at least 100 compact and contiguous acres; or

(2) The area is comprised of between 10 and 100 compact and contiguous acres, and no more than 25 percent of the bond-financed land in the area is to be provided to any one person or related persons. The 25 percent rule is not considered to be violated if more than 25 percent of financing is to be made available to one person (or related persons) on an interim basis for use in redevelopment activities and the redevelopment property is to be transferred with reasonable speed to persons satisfying the 25-percent limitation as part of a unified development plan. This latter determination is to be based on the financing provided pursuant to the overall redevelopment plan for the area, rather than on an issue-by-issue basis. For purposes of this rule, the fact that more than 25 percent may be used by a developer on a temporary, interim basis while redevelopment activities are conducted may be disregarded.

The conferees intend that the designation of blighted areas will be made in contemplation of the redevelopment of the entire designated area and that areas will not be artificially designated in order to allow bond financing for one or a few specific facilities which happen to be located in the area.

d. Application of IDB limitations

Present Law

Special targeting requirements apply to rental and owner-occupied housing constructed with tax-exempt bond proceeds. (*See*, the descriptions above on the rules for exempt-facility bonds for residential rental projects and the rules for qualified mortgage bonds.)

The financing of certain facilities (including airplanes, skyboxes, health clubs, gambling facilities, and liquor stores) with IDB proceeds is prohibited (sec. 103(b)(18) of present law). The financing of certain other facilities (including retail food and beverage establishments, automobile sales and service, recreation and entertainment facilities, and various specified types of facilities) is either restricted or prohibited with respect to small issue IDBs (sec. 103(b)(6)(O)).

House Bill

General rules

Qualified redevelopment bonds are subject to the volume and other limitations applicable to private activity bonds, except the limitation on use of bond proceeds to finance nonagricultural land.

Rental and owner-occupied housing

Owner-occupied housing rehabilitated with qualified redevelopment bond proceeds, or constructed on land financed with qualified redevelopment bonds, is permitted only if (a) the first purchaser of each residence reasonably expects it to be his or her principal residence, and (b) the residence satisfies the purchase price limitation which would apply for qualified mortgage bonds in the same location.

Residential rental housing rehabilitated with qualified redevelopment bond proceeds, or constructed on bond-financed land, must satisfy all Code targeting requirements applicable to bond-financed multifamily residential rental property throughout the qualified project period (as defined for these exempt-facility bonds).

Prohibited facilities

Facilities, the financing of which is restricted or prohibited with respect to exempt-facility or small-issue bonds, may not be located on land financed with qualified redevelopment bonds.

Senate Amendment

General rules

Qualified redevelopment bonds are treated as IDBs, and hence generally are subject to all IDB restrictions, including the volume limitation for IDBs and student loan bonds. An exception is provided from the limitation on the use of bond proceeds to finance nonagricultural land.

Rental and owner-occupied housing

The Senate amendment does not apply qualified mortgage bond or rental housing IDB targeting rules to housing rehabilitated with qualified redevelopment bonds, or constructed on land financed with these bonds.

Prohibited facilities

Except as provided in the following paragraph, no more than 25 percent of bond pro-

[32] This is similar to the test applied for purposes of allocating bond authority among overlapping units for purposes of the private activity bond volume limitation.

[33] The State is, however, required to establish the criteria for designating these areas, as described above.

[34] For purposes of determining these percentages, the total assessed value of real property in the jurisdiction includes real property located in previously designated blighted areas.

ceeds may be used for facilities with respect to which IDB financing is restricted or for land on which such facilities are to be located.

The following facilities may not be financed with redevelopment bonds or located on land financed with such bonds:

(1) Private or commercial golf courses;

(2) Country clubs;

(3) Massage parlors, hot tub facilities, or suntan facilities; and

(4) Racetracks and other facilities primarily used for gambling.

Conference Agreement

General rules

Qualified redevelopment bonds are treated as tax-exempt private activity bonds and generally are subject to the rules applicable to such bonds. An exception is provided from the limitation on use of bond proceeds to acquire nonagricultural land.[35]

Rental and owner-occupied housing

The conference agreement follows the Senate amendment. Thus, the targeting rules for qualified mortgage bonds or multifamily residential rental housing bonds are not applied to housing constructed or rehabilitated on land financed with these bonds. (No new housing (or other structures) may be constructed, or existing structures expanded, with the bond proceeds themselves; however, this housing may be financed with (1) private, taxable financing, or (2) mortgage revenue bonds or exempt-facility bonds for residential rental housing with or without conjunctive use of the new low income housing tax credit (subject to the targeting and other restrictions applicable to those bonds.)

Prohibited facilities

The conference agreement generally follows the Senate amendment. Thus, under the conference agreement, no more than 25 percent of qualified redevelopment bond proceeds may be used to finance facilities the financing of which is restricted or prohibited with respect to qualified small-issue bonds (new sec. 144(a)(8)) or for private activity bonds generally (new sec. 147(e)),[36] or the land on which such facilities are or are to be located. Additionally, no proceeds of qualified redevelopment bonds may be used to finance the following facilities (or land for such facilities):

(1) Private or commercial golf courses;

(2) Country clubs;

(3) Massage parlors, hot tub facilities, or suntan facilities;

(4) Racetracks or other facilities used primarily for gambling; and

(5) Any store the principal business of which is the sale of alcoholic beverages for off-premises consumption.

Effective date

The new rules for qualified redevelopment bonds apply to bonds issued after August 15, 1986.

[35] The limitation on use of bond proceeds to acquire existing facilities, unless rehabilitation expenditures equal or exceed 15 percent of bond-financed acquisition costs does apply to qualified redevelopment bonds. However, the conferees intend that if land and existing structures located thereon are acquired with an intent to demolish the structures, that all costs of acquiring the property are to be treated as land acquisition costs. (*See also*, sec 280B.)

[36] These parallel the present law facilities which are restricted or prohibited with respect to small issue IDBs or IDBs in general.

7. Qualified 501(c)(3) Bonds

Present Law

Interest on bonds used to finance exempt activities of nonprofit organizations described in Code section 501(c)(3) generally is tax-exempt. Bonds the proceeds of which are to be used by these organizations generally are subject to similar requirements as those for bonds for general governmental operations. Interest on these bonds is not tax-exempt if more than 25 percent of the proceeds are used in trades or businesses of the organizations unrelated to their exempt purpose and the present-law security interest is satisfied.

House Bill

The House bill permits tax-exemption for interest on qualified 501(c)(3) bonds, defined generally as bonds all proceeds (other than amounts used to pay issuance costs or invested in a reasonably required reserve or replacement fund) of which are used to finance activities directly related to the exempt purpose of the organization. Additionally, all property financed with such bonds must be owned either by a section 501(c)(3) organization or by a governmental unit. For this purpose, ownership is determined using general income tax rules.

The House bill further restricts the outstanding amount of bonds that any section 501(c)(3) organization (or group of related organizations) may have outstanding at any time to $150 million. This $150 million restriction does not apply to hospital bonds. Under the House bill, the term hospital is defined as a facility that—

(1) is accredited by the Joint Commission on Accreditation of Hospitals (JCAH), or is accredited or approved by a program of the qualified governmental unit in which such institution is located if the Secretary of Health and Human Services has found that the accreditation or comparable approval standards of such qualified governmental unit are essentially equivalent to those of the JCAH;

(2) is primarily used to provide diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons as hospital in-patients, under the supervision of physicians;

(3) has a requirement that every patient be under the care and supervision of a physician; and

(4) provides 24-hour nursing services rendered or supervised by a registered professional nurse and has a licensed practical nurse or registered nurse on duty at all times.

The term hospital does not include rest or nursing homes, day care centers, medical school facilities, research laboratories, or ambulatory care facilities (e.g., surgicenters).

Senate Amendment

The Senate amendment is the same as the House bill except only 95 percent (rather than all) bond proceeds (other than amounts used to pay issuance costs or invested in reasonably required reserve or replacement funds) must be used for the exempt activities of the section 501(c)(3) organization. The Senate amendment also does not contain the $150 million limitation on outstanding nonhospital bonds for these organizations.

Conference Agreement

The conference agreement permits tax-exemption for interest on qualified 501(c)(3) bonds, defined generally as bonds at least 95 percent of the net proceeds of which are to be used by no person other than a section 501(c)(3) organization or a governmental unit. A bond is not a qualified 501(c)(3) bond if the bond would be a private activity bond if section 501(c)(3) organizations were treated as governmental units with respect to their exempt activities and 5 percent were substituted for 10 percent in the private business use and security interest tests. Under the conference agreement as under present law, the use of bond proceeds by a section 501(c)(3) organization in an unrelated trade or business (as determined by applying sec. 513(a)) is a private use. Further, under the conference agreement, as is true of other private activity bonds, costs of issuance are not treated as spent for the exempt purpose of the borrowing. (*See also*, the description below of the new limitations on financing costs of issuance.)

The conferees understand that some governmental units issue composite issues, a part of the proceeds of which is to be used for governmental activities and a part of which is to be used for financing for section 501(c)(3) organizations operating within the jurisdiction of the issuer. The conferees do not intend to preclude continuation of such composite issues provided all applicable requirements for tax-exemption for each type of use concerned are satisfied. Thus, the conferees intend that, where an issue consists of two components—governmental financing and qualified 501(c)(3) financing—and the two components, viewed as separate issues, satisfy all requirements for tax-exemption as (a) governmental bonds and (b) qualified 501(c)(3) bonds, respectively, a composite tax-exempt issue be permitted.[37]

The conferees further are aware that certain State or local governmental universities and hospitals (including certain public benefit corporations) also have received determination letters regarding their tax-exempt status under Code section 501(c)(3). The committee intends that, to the extent that such an entity is a governmental unit or an agency or instrumentality of a governmental unit (determined as under present law), bonds for the entity will be treated as governmental bonds rather than as qualified 501(c)(3) bonds.

The conference agreement follows the House bill and the Senate amendment on the ownership requirement for property financed with qualified 501(c)(3) bonds, and follows the House bill on the $150 million per organization limitation on outstanding non-hospital bonds, with a modification providing that the limitation takes into account only qualified 501(c)(3) bonds.[38] The conferees intend that the definition of hospital include persons who are mentally ill in the term "sick persons." The conference agreement further clarifies that bonds issued before August 16, 1986, for section 501(c)(3) organizations count toward the $150 million limitation only if more than 25 percent of the proceeds were to be used directly or indirectly by a such an organization or organizations (and other nongovernmental persons) and the present-law security interest test was satisfied.[39]

[37] The portion of the composite issue that is a qualified 501(c)(3) bond is to be treated as such for all purposes, e.g., the $150 million limitation on nonhospital bonds and the change in use penalties.

[38] As under the House bill, refundings, other than advance refundings, do not count toward the $150 million limit if the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds.

[39] A special transitional exception, similar to that provided under the $40 million limit for small-issue

The conferees intend that as under the House bill, if an issue is to be used only in part for hospitals, the portion actually used for hospitals is to be exempt from the $150 million limit as a hospital bond. The conferees further are aware that some bond-financed facilities may be used partially as part of a hospital and partially as a part of a nonhospital, related facility. For example, a laboratory may serve both a hospital and private physicians' offices. Bonds used for such mixed-use facilities may be treated as hospital bonds to the extent of the proportionate share of the use of the facilities for in-patient hospital services or to the extent provided pursuant to other allocation formulae prescribed by the Treasury Department.

Additionally, the conference agreement permits section 501(c)(3) organizations to elect not to treat such bonds as qualified 501(c)(3) bonds, and to benefit thereby from exempt-facility bond and qualified redevelopment bond financing, provided that financing is subject to the new State private activity bond volume limitations. For example, a section 501(c)(3) organization may participate in a multifamily residential rental project financed with bonds subject to the State volume limitations by making such an election.

Effective date.—These provisions apply to bonds (including refunding bonds) issued after August 15, 1986, subject to the following transitional exceptions:

(1) Bonds for section 501(c)(3) organizations (other than refunding bonds) are not subject to the new ownership requirements provided the commencement of construction (including construction or rehabilitation) or binding contract rules described in the discussion of effective dates for the new rules on governmental bonds are satisfied; and

(2) Current refundings of bonds for these organizations originally issued before August 16, 1986, which refunded bonds qualify for tax-exemption under present law, but do not qualify under the agreement, are not subject to the new rules provided the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds and the maturity limitations applicable to qualified 501(c)(3) bonds under the conference agreement are satisfied.

(3) Advance refundings of bonds issued for section 501(c)(3) organizations before August 16, 1986, are permitted under a transitional exception (without regard to whether the bonds satisfy all requirements under the agreement to be qualified 501(c)(3) bonds). These advance refundings must comply with the new advance refunding restrictions applicable to qualified 501(c)(3) bonds.

8. Miscellaneous Restrictions on Private Activity Bonds

a. Use of bond proceeds for activity qualifying for tax-exempt financing and limitation on bond-financing of costs of issuance

Present Law

Under present law, at least 90 percent of the proceeds of IDBs and qualified veterans' mortgage bonds must be used for the exempt purpose of the borrowing; the remaining 10 percent may be used for any purpose. At least 85 percent of the proceeds of qualified student loan bonds must be used to make or finance student loans; the remaining 15 percent may be used for any purpose. In determining whether the 90 or 85 percent requirements are satisfied, amounts invested in a reasonably required reserve or replacement fund and amounts used to pay costs of issuance are disregarded (i.e., the 90- or 85-percent requirement is determined by reference to the bond proceeds, without regard to these amounts).

All lendable proceeds of qualified mortgage bonds must be used to finance mortgage loans; at least 90 percent of the lendable proceeds must be used to finance loans to first-time homebuyers. Lendable proceeds are defined as gross proceeds minus amounts invested in a reasonably required reserve or replacement fund and amounts used to pay costs of issuance.

At least 75 percent of the proceeds of bonds issued for section 501(c)(3) organizations must be used to finance exempt activities of the organization for which the bonds are issued. Bond-financing for activities constituting an unrelated trade or business or for other private purposes in excess of 25 percent of the issue (5 percent if used for loans) results in the bonds being taxable IDBs or private loan bonds.

No overall limitation is imposed on the amount of costs of issuance that may be financed with bond proceeds.

House Bill

The House bill requires that all net proceeds of each issue of private activity bonds be used for the exempt purpose of the borrowing. Net proceeds are defined as the proceeds of the issue minus amounts invested in a reasonably required reserve or replacement fund and amounts paid for costs of issuance.

Senate Amendment

The Senate amendment generally requires that at least 95 percent of net proceeds (defined as under the House bill) be used for the exempt purpose of the borrowing. In the case of qualified student loan bonds, the required percentage is 85, and in the case of qualified veterans' mortgage bonds, the required percentage is 90.

Conference Agreement

The conference agreement requires that at least 95 percent of the net proceeds of all issues of private activity bonds be used for the exempt purpose of the borrowing. This percentage is reduced to 90 percent in the case of qualified student loan bonds issued in connection with the Federal GSL and PLUS programs. Net proceeds is defined as the proceeds of the issue minus amounts invested in a reasonably required reserve or replacement fund.[40] Thus, amounts used to pay any costs of issuance must be paid from the so-called 5 percent "bad money" portion of an issue.

The conference agreement further restricts the amount of private activity bond proceeds that may be used to finance costs of issuance to 2 percent of the face amount of the issue. This amount is increased to 3.5 percent in the case of issues of mortgage revenue bonds the face amount of which does not exceed $20 million.

Costs of issuance subject to the two-percent limitation include all costs incurred in connection with the borrowing—in general, all costs that are treated as costs of issuance under the present Treasury Department regulations and rulings. Examples of costs of issuance that are subject to the two-percent limitation include (but are not limited to)—

(1) underwriters' spread (whether realized directly or derived through purchase of the bonds at a discount below the price at which they are expected to be sold to the public);

(2) counsel fees (including bond counsel, underwriter's counsel, issuer's counsel, company counsel in the case of borrowings such as those for exempt facilities, as well as any other specialized counsel fees incurred in connection with the borrowing);

(3) financial advisor fees incurred in connection with the borrowing;

(4) rating agency fees;

(5) trustee fees incurred in connection with the borrowing;

(6) paying agent and certifying and authenticating agent fees related to issuance of the bonds;

(7) accountant fees (e.g., accountant verifications in the case of advance refundings) related to issuance of the bonds;

(8) printing costs (for the bonds and of preliminary and final offering materials);

(9) costs incurred in connection with the required public approval process (e.g., publication costs for public notices generally and costs of the public hearing or voter referendum); and

(10) costs of engineering and feasibility studies necessary to the issuance of the bonds (as opposed to such studies related to completion of the project, but not to the financing).

As described in E., below, bond insurance premiums and certain letter of credit fees may be treated as interest expense under the arbitrage restrictions. To the extent of their treatment as interest, the initial cost of these types of costs of issuance may be financed in addition to the two-percent limit on financing other costs of issuance.

Effective date.—These provisions apply to all private activity bonds (including refunding bonds) issued after August 15, 1986.

b. Relationship of bond maturity to life of assets

Present Law

The weighted average maturity of IDBs may not exceed 120 percent of the reasonably expected economic life of the bond-financed property. The economic life of property is a factual determination; however, the ADR midpoint lives may be used as a safe-harbor. For real property, the safe-harbor is 50 years.

No special maturity restrictions apply to bonds other than IDBs.

House Bill

The House bill extends to all private activity bonds (other than mortgage revenue bonds and student loan bonds) the present-law rule that the weighted average maturity of bond-financed property may not exceed 120 percent of its reasonably expected economic life.

Senate Amendment

The Senate amendment extends the present-law restriction only to qualified 501(c)(3) bonds, with an exception for bonds issued to finance mortgage loans insured under certain FHA programs. Additionally, the Senate amendment provides that for certain pooled issues for multiple section 501(c)(3) organizations, compliance with the requirement is to be determined treating each loan as a separate issue.

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bonds applies to current refundings of 501(c)(3) bonds. This exception applies to current refunding bonds that—

(1) have a lower interest rate than the rate on the refunded issue; and

(2) the amount of which does not exceed the outstanding amount of the refunded bonds.

[40] *See also*, the description of the rules on required use of bond proceeds in the discussion of each type of private activity bond.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification providing that the safe-harbor maturity to be used for bond-financed land is 30 years.

Effective date.—This provision applies to bonds (including refunding bonds) issued after August 15, 1986.

c. Restriction on bond-financing for land and existing property

Present Law

Interest on IDBs is generally is taxable if more than 25 percent of the proceeds of an issue is used to finance land. Acquisition of existing property may not be financed with tax-exempt IDBs unless a statutory rehabilitation requirement is satisfied.

House Bill

The House bill extends the present IDB restrictions on financing land and existing property to all private activity bonds (other than mortgage revenue bonds and student loan bonds).

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

d. Restriction on bond-financing for certain specified facilities

Present Law

Interest on IDBs is not tax-exempt if any portion of the proceeds are used to provide airplanes, skyboxes or any other private luxury boxes, any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises. Small-issue bonds are subject to additional restrictions on financing of certain specified facilities.

House Bill

The House bill extends the present IDB requirements to all private activity bonds.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification providing that the restriction on health club facilities does not apply to qualified 501(c)(3) bonds if the health club facility is directly used for the purpose qualifying the section 501(c)(3) organization for tax exemption. Additionally, the conference agreement provides that qualified redevelopment bonds are subject to a specific separate list of facilities for which financing is restricted or may not be provided in lieu of this general restriction.

Effective date.—This provision is effective for bonds (including refunding bonds) issued after August 15, 1986.

Transitional exceptions are provided for bonds (other than refunding bonds) which may be issued under present law, but not under the conference agreement, if (1) the property to be financed is acquired after September 25, 1985, pursuant to a contract entered into on or before that date, and that was binding at all times thereafter, or (2) the original use of the bond-financed property begins with the taxpayer and either (a) a binding construction contract for significant expenditures was entered into before September 26, 1986, with respect to the property or (b) construction of the property commenced before that date and was completed after September 25, 1985. For purposes of this rule, the term significant expenditures has the same meaning as under the transitional exceptions for the new definition of essential function bond. *(See,* A., above.)

A further transitional exception is provided for current refundings of bonds that qualify for tax-exemption under present law, but do not qualify under the conference agreement, provided the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds and that the refunding bonds comply with the restriction, described above, on the relationship of bond maturity to economic life of bond-financed property. *(See,* A., above.)

e. Public hearing and approval or voter referendum requirement

Present Law

IDBs may be issued only after the issuer holds a public hearing and the issuance of the bonds is approved by a designated elected official. Alternatively, issuance of the IDBs may be approved by a voter referendum.

House Bill

The House bill extends this present IDB requirement to all private activity bonds.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date.—This provision applies to bonds (including refunding bonds) issued after December 31, 1986. (IDBs presently subject to the requirement are not affected by this prospective effective date.)

f. Substantial user restriction

Present Law

Interest on IDBs is taxable during any period when the bonds are held by a substantial user (or any related person) of the bond-financed facilities.

House Bill

The House bill extends the substantial user restriction to all private activity bonds, other than mortgage revenue bonds and qualified student loan bonds.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

g. Change in use of private-activity bond-financed property

Present Law

Tax-exempt bonds generally are not required to be redeemed if the use of bond-financed property changes from a use qualifying interest on the bonds for tax-exemption to a nonqualified use. In certain cases, however, interest on the bonds becomes taxable.

House Bill

The House bill provides that a change in use of property financed with private activity bonds to a use not qualifying for tax-exempt financing generally results in loss of income tax deductions for rent, interest, or equivalent amounts paid by the person using the property in the nonqualified use. Section 501(c)(3) organizations realize unrelated business income with respect to any such use.

These consequences apply in addition to any loss of tax exemption on bond interest provided under present law.

Senate Amendment

The Senate amendment follows the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Effective date.—This provision applies to changes in use of bond-financed property occurring after August 15, 1986, with respect to financing provided after that date.

C. Volume Limitations on Private Activity Bonds

Present Law

Three separate sets of volume limitations are imposed under present law with respect to certain types of private activity bonds.

Limitation on student loan bonds and most IDBs

Aggregate volume.—The amount of student loan bonds and most IDBs that may be issued within a State during any calendar year is limited to the greater of $150 for each resident of the State or $200 million. The $150 per capita limitation is scheduled to be reduced to $100 after 1986.

Allocation of bond authority.—Each State's volume limitation is allocated one-half to State issuers and one-half to localities within the State on the basis of relative populations, unless the State adopts a statute providing a different allocation. Governors of each State are permitted to issue proclamations overriding the Federal rules during an interim period before State legislatures meet. Each person allocating bond authority must certify that the allocation is not made in consideration of any bribe, gift or campaign contribution. (A special allocation rule applies for States having constitutional home rule cities.)

Carryforward of bond authority.—Bond issuers may elect to carry forward unused bond authority (for up to three years generally) for specific, identified exempt-activity IDB projects, or for the general purpose of issuing student loan bonds. Carryforward elections are not permitted for small-issue IDBs.

Qualified mortgage bonds

Aggregate volume.—The annual volume of qualified veterans' bonds that may be issued within a State is limited to the greater of (1) 9 percent of the average annual aggregate principal amount of mortgages executed during the three preceding years for single-family owner-occupied residences located in the State, or (2) $200 million.

Allocation of bond authority.—Qualified mortgage bond authority is allocated among issuers in each State pursuant to rules like those applicable to student loan bonds and most IDBs.

Carryforward of bond authority.—States may not carryforward unused qualified mortgage bond authority.

Qualified veterans' mortgage bonds

Aggregate volume.—The five States permitted to issue qualified veterans' mortgage bonds are subject to volume limitations based on the volume in which they issued bonds during the period beginning on January 1, 1979, and ending on June 22, 1984.

Allocation of bond authority.—Qualified veterans' mortgage bonds are general obligation bonds of the issuing State. This bond authority is not allocated to any local governmental issuers.

Carryforward of bond authority.—States may not carry forward unused qualified veterans' mortgage bond authority.

Private activity bonds not subject to volume limitations

No volume limitations are imposed with respect to private activity bonds the proceeds of which are to be used—

(1) by section 501(c)(3) organizations;
(2) for multifamily rental housing; or
(3) for governmentally owned airports, docks and wharves, mass commuting facilities, convention centers, and trade show facilities.

For purposes of item (3), above, facilities are not treated as privately owned solely by reason of the lease term if the lessee makes an irrevocable election not to claim depreciation on or the investment tax credit with respect to the facility.

House Bill

Unified volume limitation

A single volume limitation is imposed with respect to the following bonds issued by States and local government issuers within the State:

(1) All private activity (i.e., nonessential function) bonds with respect to which tax exemption is permitted (except certain airport and dock and wharf bonds, discussed below); and

(2) The portion of an essential function (i.e., governmental) bond issue in excess of $1 million that is used by persons other than a State or local government (i.e., the "private use" portion).

Aggregate volume.—The annual volume of tax-exempt private activity bonds (including the private use portion of essential function bonds, discussed above) issued by each State and local government issuer within the State may not exceed the greater of $175 per resident of the State or $200 million.

This per capita limitation is reduced to $125 per resident after 1987 to reflect the present-law scheduled sunset of tax exemption for qualified mortgage bonds.

Current refunding bonds are not subject to the volume limitation if the amount of the refunding bonds does not exceed the amount of outstanding refunded bonds and the bonds do not have a maturity date after expiration of 120 percent of the reasonably expected economic life of the bond-financed property (17 years for nonfacility bonds and 32 years for tax-exempt mortgage revenue bonds).

Allocation of bond authority.—Each State's volume limitation is allocated one-half to State issuers and one-half to local issuers within the State on the basis of relative populations unless the State adopts a statute providing a different allocation. Governors of each State are permitted to issue proclamations overriding the Federal allocation rules, effective during an interim period until the end of the year in which the State legislature next meets in regular session.

The present-law required certification by persons allocating bond authority is repealed.

Other administrative provisions of the present IDB volume limitation (including the rules for determining the location of property receiving volume allocations, and the special rule for States having constitutional home rule cities) apply under the new unified volume limitation.

Carryforward of bond authority.—Bond issuers may elect to carry forward unused bond authority for up to three years for specific, identified projects and for the general purpose of issuing either (a) qualified mortgage bonds, (b) qualified veterans' mortgage bonds, or (c) student loan bonds. Carryforward elections are not permitted for small-issue bonds or for the private use portion of essential function bonds.

Permanent set-aside for qualified 501(c)(3) bonds.—An annual amount equal to $25 per capita ($30 million for States having a $200 million limit) is set-aside permanently for qualified 501(c)(3) bonds.

Protection of qualified redevelopment bonds.—Unless overridden by a State statute, at least $6 per capita ($8 million for States using the $200 million limit) must be set-aside for qualified redevelopment bonds in States that issued more than $25 million in tax-increment financing bonds between July 18, 1984, and January 1, 1986.

Protection of housing bonds.—Unless overridden by a State statute, at least 50 percent (reduced to 25% after 1987 to reflect the sunset of authority to issue qualified mortgage bonds) of each State's annual unified volume limitation is required to be used for—

(1) Multifamily rental housing bonds;
(2) Qualified mortgage bonds; or
(3) Qualified veterans' mortgage bonds.

At least one-third of the housing portion must be used for multifamily housing and one-third for single-family housing, unless otherwise provided by the governor or a State statute.

Private activity bonds not subject to volume limitations

No State volume limitations are imposed with respect to:

(1) Bonds to finance airports (other than cargo handling facilities), and

(2) Bonds to finance docks and wharves (other than storage facilities).

(Tax-exempt financing for these facilities is not permitted unless the facilities are governmentally owned, which is determined by reference to general income tax concepts of ownership.)

Senate Amendment

Volume limitations

Three separate sets of volume limitations are imposed in a manner similar to present law.

Limitation on student loan bonds and most IDBs

The Senate amendment follows present law, including the reduction in the State volume limitations to $100 per capita after 1986. (Hazardous waste disposal facility bonds and qualified redevelopment bonds are subject to this volume limitation, together with student loan bonds and other IDBs (subject to the exceptions below).)

Qualified mortgage bonds

The Senate amendment retains the present-law State qualified mortgage bond volume limitations.

Qualified veterans' mortgage bonds

The Senate amendment retains the present-law qualified veterans' mortgage bond volume limitations.

Bonds not subject to volume limitations

No State volume limitations are imposed with respect to—

(1) Qualified 501(c)(3) bonds;

(2) Bonds for multifamily rental housing; or

(3) Bonds for airports, docks and wharves, sewage, solid waste disposal, and water-furnishing facilities, if the bond-financed property is governmentally owned.

Under a safe harbor rule, facilities described in (3) above, are treated as governmentally owned for purposes of this provision if (a) the lessee (including a user pursuant to a management contract or similar agreement) makes an irrevocable election not to claim depreciation or an investment tax credit with respect to the facility; (b) the term of any lease, management contract, or similar arrangement does not exceed 80 percent of the reasonably expected economic life of the property; and (c) the lessee, etc., does not have an option to purchase the facility other than at fair market value. The requirements of (b) and (c) above do not apply to bonds for solid waste disposal facilities.

Conference Agreement

Private activity bond volume limitations

The conference agreement follows the House bill, with numerous modifications. Under the agreement, the two separate sets of volume limitations that apply under present law to IDBs and student loan bonds and qualified mortgage bonds are replaced with a single private activity bond volume limitation. Qualified veterans' mortgage bonds remain subject to their present-law State volume limitations.

Allowable bond volume

The annual volume limitation for each State is equal to the greater of (1) $75 for every individual who is a resident of the State (as determined by the most recent estimate of the State's population released by the Bureau of Census before the beginning of the calendar year to which the limitation applies) or (2) $250 million. These annual State volume limitations continue through December 31, 1987, after which time each State's volume limitation is reduced to an amount equal to the greater of (1) $50 per resident of the State or (2) $150 million.

For purposes of the volume limitation, the District of Columbia is treated as a State (and therefore may receive a $250 million volume limitation until 1988, when it will receive a $150 million limitation). U.S. possessions, having populations more than that of the least populous State are limited to the $75/$50 per capita amounts. U.S. possessions having populations less than that of the least populous State receive annual volume limitations equal to the per capita amount actually received by the least populous State (i.e., the $250/$150 million safe-harbor divided by the least populous State's population).

Unlike the House bill, there are no special set-asides for specified types of private activity bonds under the new private activity bond volume limitation.

Bonds subject to the private activity bond volume limitation

Bonds subject to the new private activity bond volume limitation include most private activity bonds for which tax-exemption is permitted and the private use portion (in excess of $15 million) of governmental bonds.[41] Specifically, the volume limitation applies to (1) exempt-facility bonds (other than bonds for airports, docks and wharves, and certain governmentally owned solid waste disposal facilities), (2) qualified mortgage bonds, (3) small-issue bonds, (4) qualified student loan bonds, and (5) qualified redevelopment bonds. Certain other private activity bonds for which tax-exemption specifically is provided also are subject to the new private activity bond volume limitations.[42]

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[41] The portion of a governmental bond that may be used in a trade or business of a person other than a qualified governmental unit may not exceed 10 percent of net proceeds. Under a special restriction on bonds for output facilities, the aggregate bond-financed private use for such facilities may not exceed $15 million; therefore, private use for these facilities will never exceed the amount that renders the private use portion of governmental bonds subject to the new volume limitations.

[42] Bonds issued under the Texas Veterans' Land Bond Program, the Oregon Small-Scale Energy

An exception to the requirement that private use of governmental bond proceeds in excess of $15 million be subject to the State volume limitations is provided in the case of use by section 501(c)(3) organizations, if the proceeds used by the section 501(c)(3) organization, viewed as a separate issue, satisfy all requirements to be a qualified 501(c)(3) bond. For a more complete description of the rules on composite issues involving both governmental and 501(c)(3) use, *see* the discussion of the new rules for qualified 501(c)(3) bonds.

Mortgage credit certificates (MCCs) may continue to be issued by a qualified governmental unit provided that the aggregate annual volume of MCCs issued does not exceed 25 percent of the amount of the issuer's private activity bond volume limitation exchanged by the issuer.

Consistent with the conference agreement's treatment of advance refunding bonds as additional bonds (since the original bonds are not redeemed within 90 days), advance refundings of governmental bonds are subject to the new private activity bond volume limitations to the extent of any private use of the refunding bonds that exceeds $15 million. Generally, the portion of the proceeds of the refunding bonds attributable to private use will be determined at the time the original bonds are issued. Similarly, in the case of a second advance refunding, this private use portion is determined by reference to the original bond issue, including bonds issued before 1986. However, if there is a change in facts or circumstances, not originally anticipated at the time of the original issuance, which alters the percentage of private use of the underlying facility, the percentage of private use of the refunding bonds is to take into account the change in circumstances. Thus, for example, if a governmental participant owner of an output facility sells a portion of its ownership interest in the facility to an investor-owned utility (which sale was not anticipated at the time of original issuance), the percentage of private use of refunding bonds issued after such sale must reflect the increased percentage of private use resulting from the sale. Similarly, if a private participant sells its interest to a governmental participant, the reduction in percentage also is to be taken into account in a later refunding issue.

As under the present-law State volume limitations applicable to IDBs, a qualified governmental unit generally may not allocate its bond authority to property to be located outside the State. An exception is provided permitting a qualified governmental unit to allocate a portion of its private activity bond volume limitation to financing for facilities located outside the State's boundaries in the case of specified facilities to the extent of the State's share of the use of those facilities. Facilities located outside a State's boundaries to which a portion of its volume limitation may be allocated include (1) facilities for the furnishing of water, (2) qualified sewage disposal facilities, (3) solid waste disposal facilities, and (4) hazardous waste disposal facilities. In the case of sewage, solid waste, and hazardous waste disposal faclities, the determination of a State's share of the use of a facility is based on the percentage of the facility's total treatment provided to the State and its residents.[43]

Allocation of private activity bond volume limitation among the State and other qualified governmental units therein

The conference agreement follows the House bill's rules for allocating a State's volume limitation among issuers with the State, except there are no set-asides for specified types of bonds.[44] The conferees wish to clarify that gubernatorial proclamations issued before the date of enactment of the conference agreement, or state legislation enacted before that date, both are recognized for purposes of allocating the new volume limitations, provided that the proclamation or legislation refers to the new private activity bond volume limitation. Bonds issued before such gubernatorial proclamation or State legislation may not be denied use of a prior allocation of the new private activity bond volume limitation to the extent of the bond authority the issues received based on population.

Similar to the House bill, allocation formulae provided under a gubernatorial proclamation terminates at the end of the next year after 1986 when the legislature meets in regular session. In the case of States where the governor does not have the veto power and where any such proclamation is subject to legislative review when issued, it is the intent of the conferees that the proclamation be treated as legislation, unless specifically overridden by action of the applicable State legislature.

Three-year carryforward

An issuer may elect to carry forward any portion of its private activity bond volume limitation for up to three years for certain purposes. The election may not be made for projects to be financed with small-issue bonds or for bond volume limitation to be used to finance the private use portion of governmental bonds. Where the election applies, bonds issued in the three calendar years following the calendar year for which the election is made are not counted toward's the State's private activity bond volume limitation in the year of issuance to the extent that the proceeds from the bonds are used for the purpose for which the election is made. The bond authority specified in carryforward elections is absorbed in the order of the calendar years in which they arose.

The election to carry forward unused State volume limitation is to be made as provided in Treasury Department regulations. For purposes of this election, identification of a purpose to be financed with exempt-facility bonds, such as sewage or water facilities, is to be deemed sufficient if the type of facility is identified.

The purpose of issuing student loan bonds, of issuing qualified redevelopment bonds, of issuing qualified mortgage bonds, or of issuing MCCs is considered a separate purpose that is adequately specified for purposes of the carryforward election. As under the House bill, the authority to carryforward bond volume limitation to issue qualified mortgage bonds and MCCs is limited to bonds or credits that will be issued before expiration of authority to issue such bonds or credits (i.e., to bonds or credits that will be issued before 1989).

Except as specifically provided above, no part of any State's volume limitation may be carried forward to any portion of a succeeding year. (Carryforward elections for the present-law volume limitations of IDBs are not permitted for 1986 bond authority.) Similarly, a State may not borrow against future volume limitations.

Bonds not subject to the new private activity bond volume limitations

Qualified 501(c)(3) bonds

Qualified 501(c)(3) bonds are not subject to the new State volume limitations. Similarly, portions of a governmental bond used by 501(c)(3) organizations in excess of $15 million (and up to the permitted 10 percent private use portion) are not subject to the new volume limitations, if the 501(c)(3) portion would be a qualified 501(c)(3) bond if issued as a separate issue (and assuming appropriate allocations of items such as costs of issuance, reserve funds, and unrestricted money portions).

Certain exempt-facility bonds

Exempt-facility bonds for airports and docks and wharves are not subject to the new State private activity bond volume limitations. (Under the general rules permitting tax-exempt financing such facilities, all property financed with such bonds must be governmentally owned.)

Exempt-facility bonds for solid waste disposal facilities are not subject to the new State volume limitations, if all property to be financed with the bonds is governmentally owned. Under a safe-harbor rule, property financed with the bonds generally is treated as governmentally owned provided (1) the term of any service contract or lease (including renewal terms) does not exceed 20 years, (2) the service contractor or lessee has no option to purchase any of the property for other than its fair market value, and (3) the lessee irrevocably elects not to claim depreciation deductions (or investment tax credit under any transition rule) with respect to any property financed by the issue.

Certain refunding issues

Certain refunding bonds (other than advance refunding bonds) are not subject to the volume limitation, provided the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds. In the case of current refundings of student loan bonds and governmental bonds (having private use in excess of $15 million) subject to the new volume limitations, the refunding bonds are not subject to the new volume limitation only if the maturity of the refunding bonds does not exceed (1) the weighted average maturity date of the refunded bonds, or (2) the date that is 17 years after the date on which the refunded obligation was issued (or in the case of a series of refundings, the date on which the original issue was issued).[45] This rule is ap-

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Conservation and Renewable Resource Loan Bond Program, and the Iowa Industrial New Jobs Training Program are subject to the new private activity bond volume limitation.

[43] The fact that loans financed with student loan bonds generally must be available to all individuals attending schools within the issuing State and to all residents of the State regardless of the State in which they attend school is not affected by the limitation on financing out-of-state facilities, since those bonds are not used to finance property. *See however*, the new prohibition on financing loans for students who are enrolled in out-of-state schools and who are not residents of the issuing State.

[44] The conference agreement also follows the House bill regarding the special rule for constitutional home rule cities.

[45] The maturity of private activity bonds (including refunding bonds) the proceeds of which are used to finance facilities generally is limited to 120 percent of the economic life of the property being financed.

plied in the case of qualified mortgage bonds by substituting 32 years for 17 years.[46] For purposes of the new private activity bond volume limitation, the term refunding includes a rollover of commercial paper and other comparable actions which, under present law, constitutes a reissuance of so-called flexible bonds.

Effective date

In general

Except as specifically provided below, the new State private activity bond volume limitations apply to bonds (including refunding bonds) issued after August 15, 1986. An exception is included in the substantive rules for these limitations which exempts current refundings of bonds otherwise subject to the limitations if the amount of the refunding bonds does not exceed the outstanding amount of refunded bonds and the maturity of the refunded bonds is not extended beyond certain limits.

Advance refundings of pre-August 16, 1986, bonds, where permitted under the conference agreement, are subject to the new volume limitations to the extent that the refunded bonds would be if originally issued on the date of the advance refunding and if more than 5 percent of the refunded bond proceeds were used for output projects (other than facilities for furnishing of water). For purposes of this rule on advance refundings, the requirement that the excess over $15 million of the proceeds of a governmental bond used by private persons be allocated State volume limitations applies. However, the new definition of governmental bond (e.g., the 10-percent business use test) does not apply to make the entire issue (or any proceeds not exceeding $15 million used by private persons) subject to these volume limitations. Similarly, the 95-percent use requirement for qualified 501(c)(3) bonds does not apply to advance refundings of section 501(c)(3) organization bonds originally issued before August 16, 1986. Thus, the private use portion (not in excess of 25 percent of proceeds) of these pre-August 16, 1986, section 501(c)(3) organization bonds is not subject to the State volume limitations.

Transitional exceptions

The conference agreement includes two general transitional exceptions under which bonds issued after August 16, 1986, are not subject to the new private activity bond volume limitations. Both of these exceptions require that the bonds be issued with respect to facilities satisfying the commencement of construction or binding contract rules described under the discussion of effective dates for the new rules on governmental bonds.

If the bond-financed facilities satisfy one of the transitional exceptions, bonds that are not subject to State volume limitations under present law (e.g., bonds for multifamily residential rental property and the nongovernmental portion of governmental bonds) are not subject to the new State private activity bond volume limitations even if issued after August 15, 1986.

Second, if the bond-financed facilities satisfy one of the transitional exceptions, bonds that are subject to a State volume limitation under present law (i.e., most other IDBs, all student loan bonds, and qualified mortgage bonds), and that are issued after August 15, 1986, are not subject to the new private activity bond volume limitations to the extent that the bonds are issued pursuant to a carryforward election allowed under the current State volume limitations of bond authority for 1984 or 1985, and that carryforward election was filed with the Treasury Department before November 1, 1985.

The conferees are aware that carryforward elections may have been made with respect to only a portion of the bond authority required for a project. Bonds in excess of the amounts allocated in carryforward elections are subject to the new private activity bond volume limitations. Bonds subject to volume limitations and for which carryforward elections are not allowed under present law (e.g., qualified mortgage bonds and qualified small-issue bonds) are subject to the new volume limitations if issued after August 15, 1986.

The present-law volume limitations are repealed, effective for bonds issued after August 15, 1986. Issuance of bonds pursuant to elections to carryforward of bond authority under the present volume limitations for most IDBs and all student loan bonds is not permitted except as specifically provided above.

D. Arbitrage and Related Restrictions

1. General Restrictions Applicable to All Tax-Exempt Bonds

Present Law

Profit limitations

If bond proceeds are reasonably expected to be invested in securities or obligations (other than tax-exempt bonds) having a yield that is materially higher than the yield on the bonds, bond interest is taxable (i.e., the bonds are arbitrage bonds). For this purpose, Treasury Department regulations define bond proceeds to include original proceeds, investment proceeds, amounts accumulated in a sinking fund, other amounts replaced by bond proceeds, and transformed proceeds of a refunding issue. (Treas. Reg. sec. 1.103-13, -14.) The amount of permitted arbitrage earnings depends on whether the bond proceeds are invested in obligations related to the purpose of the borrowing or in other, nonpurpose obligations, and whether the issuer may earn unlimited arbitrage profits for certain temporary periods. Under Treasury Department regulations, an election may be made to forgo temporary periods and to earn more arbitrage over the term of the bonds. Generally, this results in the ability to earn 0.5 percentage points over the yield of the issue during the entire term of the bonds rather than 0.125 percentage points.

Exceptions

Investments during an initial temporary period, generally not exceeding 3 years, prior to use for the purpose of the borrowing, are not subject to yield restrictions. Shorter temporary periods apply in numerous specific situations. Treasury Department regulations also permit temporary periods in excess of three years in the case of certain long-term projects.

In addition to the temporary period exceptions, a minor portion (15 percent) of the proceeds may be invested without regard to the arbitrage restrictions. The minor portion is determined with reference to the original face amount of the issue unless the original proceeds determined without regard to issuing expenses is less than 98 percent of that amount. (Treas. Reg. sec. 1.103-13(b)(1)(B)(ii).) A reasonably required debt service reserve or replacement fund is the most important example of the use of this exception. Thus, if an issue qualifies for a reserve fund, the aggregate amount of proceeds, including both the reserve fund and other minor portion amounts, that may be invested in materially higher yielding investments may not exceed 15 percent of the proceeds.

Determination of bond yield

Bond yield is interpreted to mean the discount rate at which all anticipated payments of principal and interest on the bonds equals the issue price after deducting the costs of issuance. (This deduction of issuance costs permits bond issuers to earn a higher yield on the investment of bond proceeds, and thereby to pay issuance costs out of arbitrage profits.)

House Bill

Profit limitations

The House bill modifies the profit limitations applicable to all tax-exempt bonds in several ways. First, the House bill clarifies that the present-law reasonable expectations test does not protect subsequent intentional acts to create arbitrage profits. Thus, if an issuer intentionally acts to create arbitrage profits in excess of that permitted under the general arbitrage restrictions after the date of issue, the bonds are taxable arbitrage bonds.

Second, the House bill eliminates the present-law election to forgo temporary periods when unlimited arbitrage profits may be earned and thereby to be permitted to earn higher profits over the term of an issue. Thus, the definition of the term materially higher generally is limited to 0.125 percentage points.

Third, the House bill expands the types of investments of bond proceeds that are subject to the arbitrage restrictions to include all investment-type property (including other than customary prepayments) except bonds exempt from tax under Code section 103 (rather than just other taxable securities). Additionally, the House bill provides that investment property includes investment in deferred compensation arrangements. Thus, investments in annuity contracts to fund pension obligations are subject to the arbitrage restrictions in the same manner as if bond proceeds were deposited directly in the pension fund.

Exceptions

The House bill generally follows present law, except statutory temporary periods when unlimited arbitrage profits are permitted are imposed for issues the proceeds of which are used for acquisition or construction of property.

The House bill repeals the exception under which a minor portion of bond proceeds may be invested without regard to the arbitrage yield restrictions over the term of the bonds. Thus, except for amounts invested in a reasonably required reserve or replacement fund and investments during permitted temporary periods, all bond proceeds are subject to the arbitrage yield restrictions.

Determination of bond yield

The House bill provides that the yield on bonds is determined on the basis of the original issue discount rules of the Code rather than as under the present general arbitrage restrictions. Thus, yield is deter-

[46] The conference agreement provides that, for current refundings of student loan bonds and mortgage revenue bonds to be exempt from the volume limitation the period permitted for making loans to finance student loans or owner-occupied residences must be measured from the date the refunded (or original) bonds were issued. See, the discussion under the effective date provisions for the new rules on these bonds for a description of this provision.

mined based on the price at which a substantial number of the bonds are sold to the public and must reflect a current market price. (This amendment reverses the case of *State of Washington* v. *Commissioner.*)

Senate Amendment

Profit limitations

The Senate amendment is the same as the House bill, except the Senate amendment extends the present-law treatment of certain bond insurance premiums as interest expense for purposes of the arbitrage bond yield calculation to letter of credit fees.

Exceptions

The Senate amendment retains the present-law rules on temporary periods when unlimited arbitrage profits may be earned (i.e., does not include new statutory temporary periods like those of the House bill).

The Senate amendment imposes a new, statutory restriction on the amount of bond proceeds that may be invested (other than during permitted temporary periods) without regard to arbitrage yield restrictions. First, a minor portion of the proceeds of an issue not in excess of the lesser of 5 percent of the proceeds of the issue or $100,000 may be invested without regard to the general restrictions on yield. Second, the Senate amendment provides that this minor portion is determined without regard to amounts invested in a reasonably required reserve fund, defined as under present law.

Determination of bond yield

The Senate amendment is the same as the House bill.

Conference Agreement

Profit limitations

Subsequent intentional acts to create arbitrage

Under the conference agreement (as under present law), the determination of whether bonds are arbitrage bonds generally is based upon the reasonable expectations of the issuer on the date of issue. If subsequent intentional acts are taken after the date of issue to earn arbitrage, however, the reasonable expectations test does not prevent the bonds from being arbitrage bonds. *See*, e.g., Rev. Rul. 80-91, 1980-1 C.B. 29, Rev. Rul. 80-92, 1980-1 C.B. 31, and Rev. Rul. 80-188, 1980-2 C.B. 47.

For purposes of this continuing requirement, any investment with respect to which impermissible arbitrage earnings accrue may result in the interest on the issue becoming taxable, retroactive to the date the issue was issued. For example, if after the expiration of an allowable temporary period, the issuer continued to invest the bond proceeds at a materially higher yield in order to earn impermissible arbitrage, interest on the bonds would become taxable, retroactive to the date of issue. The conferees intend that the determination of whether intentional actions to earn arbitrage have been taken is made on a case-by-case basis, taking into account all facts and circumstances that a prudent investor would consider in determining whether to invest bond proceeds.

Repeal of election to forego temporary periods

The conference agreement repeals the right to elect under Treasury Department regulations to forego a temporary period during which unlimited arbitrage earnings are permitted and by doing so to receive the right to earn arbitrage of 0.5 percentage points over the yield of the issue. Thus, the definition of the term materially higher generally is limited to 0.125 percentage points over the yield on the issue, regardless of whether temporary periods when unlimited arbitrage earnings are permitted are claimed with respect to an issue.

Expansion of investments subject to yield restriction

The conference agreement follows the House bill and the Senate amendment in providing additional restrictions on the types of obligations in which bond proceeds may be invested without regard to yield restrictions.[47] Under the conference agreement, therefore, the arbitrage restrictions are expanded to apply to the acquisition of any property held for investment other than another bond exempt from tax under Code section 103. Thus, investment in any taxable security as well as any deferred payment contract (e.g., an annuity) or other property held for investment is precluded if the yield on the property is materially higher than the yield on the issue.

Treatment of certain credit enhancement fees

The conference agreement retains the present-law rules under which bond insurance premiums are treated as interest expense if the bond insurance results in a reduction in the interest rate on the issue and follows the Senate amendment provision extending this treatment to fees for certain other credit enhancement devices (i.e., letter of credit fees). Thus, if the purchase of a letter of credit results in a net present value interest savings, the fee is treated as if it were interest expense. (*See* Treas. reg. sec. 1.103-13(c)(8).) The treatment of these costs of issuance as interest for purposes of the arbitrage yield calculation is limited, however, to such fees arising from an arm's-length transaction and to fees that represent a reasonable charge for credit risk. Thus, the conferees understand that the Treasury Department may restrict this treatment to such credit enhancement devices purchased pursuant to competitive bidding by credit-enhancement providers. Additionally, the conferees intend that if a fee or premium is increased to reflect indirect payment of costs of issuance (i.e., costs in addition to a charge for transfer of credit risk), the entire fee or premium is not to be treated as interest expense.

Exceptions

The conference agreement follows the House bill and Senate amendment, with the following modifications:

Statutory temporary period rules

The conference agreement, like the House bill, imposes new, statutory restrictions on temporary periods when unlimited arbitrage earnings are permitted, but limits application of these new statutory rules to pooled financings. In the case of pooled financings, net proceeds to be used to make loans which have not been used to make loans within 6 months of the date of issue may not be invested at an unrestricted yield after such period until they have actually been used to make loans. In the case of amounts representing repayments of loans from a pool, the 6-month period is reduced to 3 months.

These limitations on pools do not extend the maximum temporary periods allowed under present law in the case of pooled financings but rather are limitations on the temporary periods allowed under present law. Thus, if, as under present law, proceeds of a pooled financing are to be used to make construction loans, the aggregate temporary period allowed to the pool and the borrowers generally may not exceed three years (a maximum of six months to the pool and a maximum of 30 additional months to the borrower). Similarly, in the case of pools for tax and revenue anticipation loan financing, the aggregate temporary period to the pool and the borrower may not exceed 13 months. Under the conference agreement, whether a financing constitutes a pool is a factual determination. In general, however, the term pool only includes issues the proceeds of which are to be used to make loans, as opposed to an issue to finance a specific project that will be jointly owned by more than one entity.

The statutory temporary period rules for pools do not apply to mortgage revenue bonds since substantive rules for those bonds require, in certain cases, that proceeds not be expended until after expiration of one year. Additionally, in the case of qualified student loan bonds issued in connection with the Federal Guaranteed Student Loan (GSL) and Parents' Loans for Undergraduate Students (PLUS) programs, 18 months is substituted for six months (for bonds issued before January 1, 1989). Tax-exempt student loan bonds other than bonds issued before 1989 in connection with these two Federal programs are subject to the six-month period provided generally for pools.

Minor portion exception

The conference agreement follows the Senate amendment's limitation of the minor portion exception from the arbitrage yield restrictions to an amount not exceeding the lesser of five percent or $100,000 of bond proceeds. As under the Senate amendment, the minor portion is in addition to the exception for amounts invested in a reasonably required reserve or replacement fund.

Reasonably required reserve fund exception

The conference agreement limits the amount of proceeds received from the sale of the bonds that may be invested in a reasonably required reserve or replacement fund to an amount not exceeding 10 percent of the proceeds of the issue to which the fund relates unless the Treasury Department determines that a larger amount is necessary with respect to an issue. The conferees intend, for example, that a reserve or replacement fund in excess of 10 percent may be allowed if the master legal document authorizing issuance of the bonds (i.e., a master indenture) was adopted before August 16, 1986, and the indenture—

(1) requires a reserve or replacement fund in excess of 10 percent of proceeds, but of not more than maximum annual debt service;

(2) is not amended after August 31, 1986, and

(3) provides that bonds having a parity of security may not be issued by or on behalf of the issuer for the purposes provided under the indenture without satisfying the debt service reserve fund requirements of the indenture.

The conferees understand that issuers may, in certain cases, pledge additional amounts as part of a reserve or replacement

[47] Section 648 of the Deficit Reduction Act of 1984 provides that, in certain cases, property held in the Permanent University Fund of the University of Texas and Texas A&M University is not treated as an investment of bond proceeds for purposes of the Code arbitrage restrictions. The conference agreement does not affect this provision regarding the Permanent University Fund.

fund, which amounts are derived other than from sale of the issue, but which are treated for purposes of the arbitrage restrictions as bond proceeds. *See*, e.g., Treasury regulation sec. 1.103-14(d)(4) and (5) regarding circumstances in which certain pledged endowment funds are treated under present law as amounts invested in a reserve or replacement fund. The 10-percent limitation on the amount of bond proceeds that may be deposited in a reasonably required reserve or replacement fund applies only to amounts of proceeds from sale of an issue that are invested in such a fund. Thus, these other amounts may continue to form part of a reserve or replacement fund (in addition to amounts of actual bond proceeds forming part of such a fund) even if they exceed the 10-percent limitation.

The conference agreement continues the present-law rule that amounts of proceeds invested in a reserve or replacement fund (up to this new 10-percent maximum) are not subject to the arbitrage yield restrictions and does not affect the present-law exceptions under the Treasury regulations (Treas. reg. sec. 1.103-14(d)).[48]

Determination of bond yield

The conference agreement follows the House bill and the Senate amendment.

Effective dates

General rule

These provisions apply generally to bonds (including refunding bonds) issued after August 15, 1986 (August 31, 1986 in the case of bonds and provisions covered under the Joint Statement on Effective Dates of March 14, 1986).

Exceptions

The restriction on investment in annuity contracts applies to bonds (including refunding bonds) issued after September 25, 1985.

The new method of determining bond yield applies to bonds (including refunding bonds) issued after December 31, 1985.

The directions to the Treasury Department to modify its regulations to delete the election to be permitted to earn higher arbitrage over the term of the bonds by foregoing temporary periods and to treat certain letter of credit fees as interest under the arbitrage regulations are effective on August 15, 1986.

2. Extension of Additional Arbitrage Restrictions to All Tax-Exempt Bonds

Present Law

Additional restrictions for most IDBs

Industrial development bonds (other than IDBs for multifamily residential rental projects) are subject to the following additional arbitrage restrictions:

(1) The arbitrage earnings on each issue of bonds must be rebated to the Federal Government at specified intervals.

(2) The amount of bond proceeds that may be invested at unrestricted yield in obligations unrelated to the purpose of the borrowing is limited to 150 percent of scheduled annual debt service.

The rebate requirement does not apply if all gross proceeds are spent for the governmental purpose of the borrowing within 6 months of issuance of the bonds, or to certain debt service funds on which less than $100,000 is earned in a bond year. Rebate payments are due at 5-year intervals, with the last payment being due within 30 days after redemption of the issue.

The restriction on investment in nonpurpose obligations does not apply to investments for an initial temporary period or to investments for temporary periods related to current debt service (as opposed to reserve funds for future debt service).

Additional restrictions for qualified mortgage bonds

The effective rate of interest on mortgage loans provided with qualified mortgage bonds may not exceed the yield on the issue by more than 1.125 percentage points.

Investment of qualified mortgage bond proceeds in obligations unrelated to the purpose of the borrowing is restricted in a manner similar to that for most IDBs. Additionally, arbitrage profits must be rebated to the Federal Government or paid or credited to the mortgagors.

Additional restrictions for student loan bonds

In 1984, the Treasury Department was directed to prescribe regulations applying additional arbitrage restrictions similar to those now applying to most IDBs to student loan bonds eliminating the present-law special rule on treatment of special assistance payments (SAP payments). These regulations have not yet been prescribed.

House Bill

The House bill extends the present-law limit on nonpurpose investments and rebate requirements that apply to most IDBs to all tax-exempt bonds, other than mortgage revenue bonds. The present nonpurpose investment and rebate requirements for qualified mortgage bonds continue to apply to those bonds, and are extended to qualified veterans' mortgage bonds. Finally, the House bill retains the 1984 direction to the Treasury Department for new arbitrage regulations for student loan bonds, to the extent that that direction is consistent with the provisions of the bill.

Senate Amendment

The Senate amendment follows the House bill, with the following modifications:

(1) Current debt service funds of governmental units with general taxing powers are exempted from the rebate requirements.

(2) An exception from the rebate requirement is provided for issues the proceeds of which are used to finance operations of or facilities for governmental units with general taxing powers if all tax-exempt bonds issued by or on behalf of the governmental unit in the year are not reasonably expected to exceed $5 million.

(3) In the case of governmental bonds and qualified 501(c)(3) bonds, a special penalty is imposed in lieu of loss of tax-exemption for certain errors in or late rebates of arbitrage profits, and the Treasury Department is directed to develop a system for monitoring rebate payments through use of the required information reports on all tax-exempt bonds (described below).

(4) Certain arbitrage profits earned on student loan bonds issued in connection with the Federal GSL and PLUS programs during an initial temporary period is exempt from the rebate requirement.

Conference Agreement

Extension of additional IDB restrictions

The conference agreement follows the House bill in extending to all tax-exempt bonds (including refunding bonds) other than mortgage revenue bonds the arbitrage rebate restrictions presently applicable to most IDBs. The limitation on the amount of bond proceeds that may be invested in materially higher yielding nonpurpose investments is extended to all private activity bonds (other than qualified 501(c)(3) bonds). These restrictions are in addition to the general arbitrage restrictions for all tax-exempt bonds, described above. The determination of amounts to be rebated, the due dates of rebate payments, and the operation of the limitation on investment in materially higher yielding nonpurpose investments generally are the same as under the present-law IDB restrictions.

The conferees intend that the Treasury Department may modify the requirement that arbitrage rebate payments be made at 5-year intervals in the case of advance refunding bond proceeds placed in escrow accounts. Escrow account investments may involve investment at differing yields over the term of the bonds which in the aggregate comply with the Code arbitrage yield restrictions. This situation is distinguished from non-escrow funds or regular variable rate debt since the yield on the issue to maturity is determined when the escrow account is established. Thus, for advance refunding escrow proceeds, the Secretary may determine that, in appropriate circumstances, rebate payments are not required until the escrow is fully paid out.

The conferees further intend that the Treasury Department may permit issuers to use such simplified accounting methods as are deemed appropriate to ease administrative burdens of complying with the rebate requirement.

Finally, a technical amendment is made providing that the last rebate payment with respect to an issue is due no later than 60 days (rather than 30 days) after redemption of the issue.

Exceptions to rebate requirement

The conference agreement retains the present-law exception to the rebate requirement that applies when all gross proceeds of an issue are expended within six months of the issue date for the purpose for which the bonds are issued. The conferees further wish to clarify that application of the six-month expenditure requirement to pooled financings, including bond banks, is to be determined by reference to when the gross proceeds of the issue are spent for the ultimate exempt purpose of the borrowing, rather than when loans are made.[49]

The conference agreement further retains the present-law exception for certain temporary investments in a bona fide debt service fund, including the $100,000 limit on earnings for funds qualifying under the exception.

The conference agreement provides three additional exceptions to the rebate requirement. First, the conference agreement liberalizes the Senate amendment's exception for bonds used to finance the activities of small governmental units. Under this liberalized exception, no rebate is required on these governmental bonds if the governmental unit reasonably expects to issue no more than $5 million in governmental bonds during the calendar year when the issuance occurs. In determining whether the $5 mil-

[48] As under present law, amounts invested in a reserve or replacement fund are not treated as having been spent for the governmental purpose of the borrowing; thus any arbitrage profits on such a fund must be rebated to the Federal Government. *See*, the discussion of the arbitrage rebate requirements, below.

[49] The conferees further intend that the Treasury Department may, by regulation, treat pooled financings as separate issues in appropriate circumstances. This regulation may not, however, change the present-law rule that the making of a loan by a pool is not treated as an expenditure of gross proceeds for the exempt purpose of the borrowing.

lion limit is reasonably expected to be exceeded, all governmental bonds issued by the issuing governmental unit and all other governmental units that are subordinate to it under applicable State or local law are counted. (Private activity bonds issued by or on behalf of the issuing governmental unit or subordinate governmental units are not so counted and are not eligible for this exception from the rebate requirement.) *See* section IX. B., for a description of subordinate governments.

A second exception is provided for governmental bonds and qualified 501(c)(3) bonds [50] if all but a minor portion of the gross proceeds of an issue are spent for the exempt purpose of the borrowing within six months after the date of issuance. Thus, if the gross proceeds of an issue, other than an amount not exceeding the lesser of five percent or $100,000 of the proceeds, are so spent, the conference agreement permits an additional six months to spend the remaining proceeds before rebate payments are required. Additionally, for purposes of this exception, unlike the general rules for the rebate requirement, redemption of the allowable *de minimis* portion of proceeds before expiration of the additional six-month period is treated as an expenditure for the purpose of the borrowing.

Third, the conference agreement provides a transitional exception from rebate for certain qualified student loan bonds issued in connection with the Federal GSL and PLUS program similar to the exception included in the Senate amendment. This transitional exception applies only with respect to bonds issued before January 1, 1989, and is designed to allow issuers of qualified student loan bonds to continue to issue bonds while they find other sources of revenue to defray administrative costs and costs of issuance. (Typically, other revenue sources such as direct Federal funding or funding from State or local governments have not been provided for these purposes in the past.)

Under this modified exception, the rebate requirement does not apply to arbitrage profits earned during the initial 18-month temporary period permitted for such bonds if the profits are used to pay cost of issuance financed with the bond proceeds and also to such profits to the extent that—

(1) the proceeds of the issue are used to make or finance qualified student loans before the end of the 18-month temporary period permitted under the conference agreement; and

(2) the arbitrage is used to pay administrative costs associated with the issue.

Arbitrage profits may not be used to pay either costs of issuance or administrative costs if those costs are to be reimbursed by borrowers.

As with the special exception to the new temporary period rules described above (i.e., an 18-month temporary period rather than 6 months is permitted for pooled financings generally), this exception does not apply to tax-exempt student loan bonds other than bonds issued in connection with the Federal GSL and PLUS programs.

Rebate safe-harbor for certain governmental financings

As under both the House bill and the Senate amendment, arbitrage profits on all tax-exempt bonds, including tax and revenue anticipation notes (TRANs) issued to fund cash-flow shortfalls of governmental units must be rebated to the Federal Government if all gross proceeds of an issue are not spent for the exempt purpose of the borrowing within six months of the date of issuance. In general, TRAN proceeds are deemed to be spent as the cash-flow shortfall for which the notes are issued occurs. The conference agreement provides a special safe-harbor exception for TRANs pursuant to which all gross proceeds are deemed to have been spent for the exempt purpose of the borrowing within six months.

Under this safe-harbor exception, if during the six-month period after issuance, the cumulative cash-flow deficit of the governmental unit issuing the TRANs has exceeded 90 percent of the issue size, all net proceeds and earnings thereon of the TRAN issue are deemed to have been spent for the purpose of the borrowing. Solely for purposes of the safe-harbor, cumulative cash-flow deficit is defined as the excess of the amount the governmental unit spends during the relevant period over the sum of all amounts (other than the issue proceeds) that are available for payment of the expenses during that period. As under the general rules on arbitrage rebate, redemption of bonds is not treated as an expenditure for the purpose of the borrowing. [51]

Limitation on loss of tax-exemption for certain rebate errors

The conference agreement modifies the Senate amendment's provision of a special penalty, in lieu of loss of tax-exemption, for certain failures to rebate arbitrage profits in the case of governmental bonds and qualified 501(c)(3) bonds. Under the conference agreement, the Treasury Department is authorized to waive loss of tax-exemption on an issue where an error in the amount rebated or a late payment occurs, if the error or late payment is not due to willful neglect. In such cases, a penalty equal to 50 percent of the amount not properly paid is imposed and interest accrues on these late payments and underpayments in the same manner as on late payments of tax. The penalty and interest may, however, be waived by Treasury.

Additional restrictions on mortgage revenue bonds

The conference agreement follows the House bill and the Senate amendment on imposing the present-law additional arbitrage restrictions for qualified mortgage bonds on both those bonds and qualified veterans' mortgage bonds. These restrictions are in lieu of the IDB-type additional restrictions that apply to all other tax-exempt bonds.

Additional restrictions on student loan bonds

The conference agreement follows the House bill and the Senate amendment in retaining the 1984 direction to the Treasury Department to develop regulations imposing additional arbitrage restrictions on tax-exempt student loan bonds, to the extent that that direction is not inconsistent with specific provisions of the agreement applicable to student loan bonds.

Effective dates

These provisions apply to bonds (including refunding bonds) issued after—

(1) August 31, 1986, in the case of bonds and provisions covered under the Joint Statement on Effective Dates of March 14, 1986;

(2) 3:00 p.m., E.D.T., July 17, 1986 in the case of application of the arbitrage rebate requirement to governmental bonds issued to fund certain pools, described below;

(3) August 15, 1986, for application of the limit on higher yielding investments in nonpurpose investments; and

(4) December 31, 1985, in the case of bonds not covered under (1) and (2).

The conferees intend that no payment of rebate be due before the date that is 60 days after the date of enactment.

Pools described in (2) are bonds satisfying one or more of the following four criteria:

(1) The proceeds of the issue are to be used to fund a pool or pools to make loans to governmental units other than governmental units subordinate (determined under applicable State or local law) the issuer (or the the governmental unit on behalf of which the issuer acts).

(2) The proceeds of the issue are to be used to fund a pool or pools with respect to which less than 75 percent of the proceeds of the issue is to be used to make loans to initial borrowers to finance projects identified (with specificity) by the issuer on the date of issue as projects to be financed with the proceeds of such issue.

(3) The proceeds of the issue are to be used to fund a pool or pools and on or before the date of issue, commitments have not been entered into by such initial borrowers to borrow at least 25 percent of the proceeds of such issue.

(4) The term of the issue exceeds 30 years and principal repayments on any loans are to be used to make or finance additional loans.

Paragraphs (2) and (3) apply only if bonds were not issued by the issuer before January 1, 1986, to fund similar governmental bond pools, or if the issuer had established a similar pool or pools before that date, issuance of bonds for such pools during 1986 exceeds 250 percent of the average annual issuance for such pools during calendar years 1983, 1984, and 1985.

For purposes of the special rule on pooled financings, an issue of bonds sold to a securities firm, broker, or other person acting in the capacity of an underwriter or wholesaler is not treated as issued before such bonds have been re-offered to the public (pursuant to final offering materials) and at least 25 percent of such bonds actually have been sold to the public.

3. Modification of Treasury Department State and Local Government Series Program

Present Law

The Treasury Department issues a special State and Local Government Series (SLGS) of Treasury obligations to enable issuers of tax-exempt bonds to avoid earning impermissible arbitrage profits. Interest rates on SLGS are set by reference to the permitted yield on each issue of tax-exempt bonds. Purchasers of SLGS must give Treasury 20 days notice of their intent to purchase the obligations. The minimum maturity of SLGS is 45 days.

House Bill

No provision.

Senate Amendment

The Senate amendment directs the Treasury Department to modify its SLGS program to provide investments similar to those offered by private money market

[50] This exception does not apply to so-called tax and revenue anticipation notes (TRANs); rather a special safe-harbor exception from the rebate requirement, described below, is provided for those governmental bonds.

[51] This safe-harbor does not affect the amount of TRANs that may be issued by a governmental unit, that qualify for a temporary period exception from arbitrage yield restrictions, or any other present-law rules governing issuance of such notes.

funds (paying yields that will eliminate impermissible arbitrage profits and thereby eliminate the need to account for such profits) and to operate the program at no net cost to the Government.

These new rules are to permit demand deposits under the SLGS program by deleting advance notice requirements related to the purchase of SLGS and by deleting minimum maturity requirements.

Conference Agreement

The conference agreement follows the Senate amendment. Thus, notwithstanding any other provisions of law, or any regulation issued pursuant to such a provision, the Treasury Department is directed to expand its SLGS program to permit demand deposits, as well as time deposits for a period specified by the purchaser (as under present law). All obligations issued as part of the revised SLGS program are to be available in the same manner as secondary market transaction, (i.e., for next day settlement unless forward settlement is specified.)

The conferees further intend that the revised SLGS program will be operated at no net cost to the Federal Government. Thus, the Treasury is authorized to charge appropriate fees and/or to establish interest rates on SLGS such as the difference between any investments of the bond proceeds and the rate paid thereon are sufficient (in connection with any fees charged) to defray costs of operating the program.

Finally, the conferees are aware that the Treasury has rigidly applied many of the requirements of the present SLGS program in the past. For example, if SLGS are not purchased on the date specified in the application, Treasury bars the issuer from investing in SLGS for 6 months. The conferees intend that the Treasury apply its regulations under the revised program in the most flexible manner possible, in light of the conferees' intent in adopting this provision (e.g., if inability to settle on a specified date is due to reasonable cause, a delayed closing date, without penalty, should be permitted).

Effective Date

This provision is effective on the date of enactment. The revised SLGS program is to be in effect on January 1, 1987.

E. Restrictions on Advance Refundings

Present Law

Bonds other than IDBs and mortgage revenue bonds may be advance refunded. IDBs and mortgage revenue bonds may not be refunded more than 180 days before the refunded bonds are redeemed. An exception, contained in proposed Treasury Department regulations, waives this 180-day rule in the case of refunded bonds having a maturity of less than three years.

House Bill

The House bill prohibits advance refundings of all private activity bonds. An exception is provided for certain bonds for section 501(c)(3) organizations that were originally issued before January 1, 1986, if the advance refunding is required to comply with a change in Federal law. Advance refundings are defined as refundings where the refunded bonds are not redeemed within 30 days after issuance of the refunding bonds. Certain new technical requirements are imposed on permitted advance refundings.

Senate Amendment

The Senate amendment prohibits advance refundings of all private activity bonds (other than bonds for section 501(c)(3) organizations). Advance refundings are defined as refundings where the refunded bonds are not redeemed within 90 days after issuance of the refunding bonds. Certain new technical requirements are imposed on permitted advance refundings.

Conference Agreement

General rules

The conference agreement follows the Senate amendment in permitting advance refundings of both governmental bonds and qualified 501(c)(3) bonds and in defining an advance refunding as a refunding where the refunded bonds are not redeemed within 90 days after issuance of the refunding bonds. A technical clarification is provided substituting 180 days for 90 days in the case of refundings that occurred before January 1, 1986.

The conference agreement follows the House bill and the Senate amendment with respect to the technical requirements that are imposed on permitted advance refundings—

(1) Issues that were originally issued before January 1, 1986, may be advance refunded a total of two times. All advance refunding issues that were outstanding on January 1, 1986, or that are issued on or after that date, are counted in determining whether the two-times limit has been reached. (A special transitional exception permits bonds that had been advance refunded two or more times before March 15, 1986, to be advance refunded one additional time after March 14, 1986.)

(2) Issues that are originally issued after December 31, 1985, may be advance refunded a total of one time.

(3) In the case of advance refundings producing a present value debt service savings—

(a) The refunded bonds must be redeemed no later than the first date on which their redemption is not prohibited if the refunded bonds are issued after December 31, 1985; and

(b) The refunded bonds must be redeemed no later than the first date on which they may be redeemed at a premium of 3 percent or less if the refunded bonds were issued before January 1, 1986.

(4) New restrictions on temporary periods when unlimited arbitrage earnings are permitted apply to both the refunded and refunding bonds—

(a) The initial temporary period for advance refunding bonds is limited to 30 days; and

(b) The initial temporary period for refunded bonds terminates no later than the date the advance refunding bonds are issued.

(5) The permitted minor portion that may be invested without regard to arbitrage yield restrictions claimed with respect to the refunded issue must be reduced to an amount no greater than that permitted under the conference agreement when an issue is advance refunded.

(6) As described more fully under the section on the new private activity bond volume limitation, proceeds of an advance refunding issue are subject to the volume limitation to the same extent as if the refunding issue were an original issue.

The conference agreement follows the Senate amendment's prohibition on advance refundings involving the use of a "device" to obtain a material financial advantage based on arbitrage other than savings arising from lower interest rates generally. The conferees do not intend to restrict *per se* so-called "low-to-high" advance refundings occurring to obtain relief from specific covenants included in the refunded bonds or to restructure debt service provided those advance refundings do not additionally involve an abusive device, as described in the Senate amendment, or Treasury regulations and rulings issued pursuant to this provision.

Effective date

The new restrictions on advance refundings apply to advance refunding bonds issued after—

(1) August 15, 1986, in the case of advance refundings of 501(c)(3) organization bonds, other private activity bonds for which advance refunding is permitted under present law, and governmental bonds originally issued after that date; and

(2) August 31, 1986, in the case of bonds and provisions covered by the Joint Statements, except December 31, 1985, in the case of provisions not included in the Joint Statements (e.g., the new 30-day initial temporary period for advance refunding bonds).

A transitional exception applies to permit advance refundings of certain tax-exempt governmental and section 501(c)(3) organization bonds that may not be issued originally under the conference agreement. These advance refundings generally are subject to the new advance refunding, and certain other, restrictions. In the case of advance refundings permitted under the transitional exception of such bonds (other than bonds for output facilities, as defined under the conference agreement), the requirement that a volume allocation be obtained for the private use portion in excess of $15 million does not apply.

An exception is provided for advance refunding bonds issued under this transitional exception with respect to the general 150 percent limitation on investment in materially higher yielding nonpurpose investments in the case of amounts deposited in an advance refunding escrow account. (Amounts invested in such an escrow account are not, however, treated as spent for the governmental purpose of the borrowing until they are used to redeem the refunded bonds; thus, the arbitrage rebate requirement applies to such proceeds, as well as to other proceeds (including transferred proceeds) for which an exception is not specifically provided under the rebate requirement, discussed above.

F. Restrictions on Early Issuance

Present Law

No specific rules require that bond proceeds be spent within a specified time following issuance; however, issuers are required to proceed with due diligence to realize the governmental purpose of the borrowing to qualify for a temporary period when unlimited arbitrage may be earned.

House Bill

Five percent or more of bond proceeds are required to be spent for the purpose of the borrowing within 30 days after bond issuance. All bond proceeds (other than costs of issuance and amounts deposited in a reasonably required reserve or replacement fund) must be spent no later than 3 years after issuance. The Treasury Department is authorized to extend the 30-day and 3-year periods in cases where undue hardship otherwise would result.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

G. Information Reporting Requirement for All Tax-Exempt Bonds

Present Law

Issuers of private activity bonds (defined as IDBs, student loan bonds, and bonds for section 501(c)(3) organizations) and mortgage revenue bonds are required to report certain information about volume and users of bond-financed property to the Treasury Department.

House Bill

Information reporting requirements similar to those contained in present law are extended to all tax-exempt bonds.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with a modification authorizing the Treasury Department to waive loss of tax-exemption on an issue if an information report is filed late and Treasury finds that the late filing is not due to willful neglect.

Effective Date

This provision applies to to bonds issued after December 31, 1986. (Bonds presently subject to information reporting requirements are not excused from those requirements by virtue of the December 31, 1986, effective date.)

H. Certain Targeted Transitional Exceptions

The conference agreement follows the House bill and the Senate amendment, with modifications, in providing certain targeted transitional exceptions for specifically described facilities. Each of these targeted transitional exceptions applies only to one described project or issue of bonds or to a limited group of described projects, and each is subject to a maximum dollar amount of bonds. Additionally, these rules generally require that the transitioned bonds be issued before January 1, 1989.

Certain transitional exceptions provided in the Deficit Reduction Act of 1984 are reenacted by the agreement. These transitional exceptions are those exempting a specifically described project, or a limited group of such projects, from one or more of the provisions of the conference agreement. The agreement further provides that the 1984 Act transitional exceptions re-enacted by the agreement are retained only if the transitioned bonds are issued before January 1, 1990.[52]

The conference agreement also includes a limited exception to the rule that FSLIC- and FDIC-guaranteed bonds issued before the prohibition of such guarantees of tax-exempt bonds may not be refunded. Permitted current refunding under the agreement must satisfy specified requirements rendering them in substance a renegotiation of interest rates.

I. General Stock Ownership Corporations (GSOCs)

Present Law

A State may establish a General Stock Ownership Corporation (GSOC) that serves as an investment fund for its citizens. GSOCs may elect to be exempt from tax with the shareholders reporting as income their prorata share of the GSOC's taxable income. (No State has used this provision.)

House Bill

The GSOC provisions are repealed as deadwood, effective as of January 1, 1984.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

TITLE XIV. TRUSTS AND ESTATES; MINOR CHILDREN; GIFT AND ESTATE TAXES; GENERATION-SKIPPING TRANSFER TAX

A. Income Taxation of Trusts and Estates

Present Law

Trusts

In general

The income taxation of a trust depends on whether the trust is a grantor or nongrantor trust. In the case of a grantor trust (i.e., one where the grantor (or other person with the power to revoke the trust) has certain powers with respect to the trust), income is taxed directly to the grantor. In the case of a nongrantor trust, each trust is treated as a separate taxable entity.

Nongrantor trusts

Calculation of tax liability.—A trust is allowed the following deductions in calculating its tax liability: (1) a deduction in lieu of a personal exemption of $100 (or $300 in cases where all trust income is required to be distributed currently); (2) no zero bracket amount or standard deduction is permitted; (3) an unlimited charitable deduction is available; and (4) a distribution deduction generally is allowed for distributions to beneficiaries.

Taxable year.—The trust may elect to use a taxable year other than that of the grantor or its beneficiaries. Beneficiaries of trusts are taxable on distributions from a trust to the extent of the trust's taxable income for taxable years ending with, or within, the taxable year of the beneficiary. If the trust is on a different taxable year than its beneficiaries, the beneficiaries defer taxable income from one taxable year to the next. A trust can elect to use any year as its taxable year.

Applicable rate.—Each nongrantor trust separately calculates its tax liability at the rate applicable to married taxpayers filing separately.

Aggregation of trusts.—Pursuant to Treasury regulations, two or more trusts will be treated as a single trust if (1) the trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose of the use of a separate trust is the avoidance of Federal income tax.

Taxation of distributions to beneficiaries.—Distributions to beneficiaries are taxed to beneficiaries and deductible by the trust to the extent of the distributable net income (DNI) of the trust. DNI is allocated first to distributions that are required to be made out of income for the year, secondly to distributions made to charity out of trust income, and lastly to other distributions.

Taxation of previously accumulated income.—Distributions to beneficiaries out of previously accumulated income are taxed to beneficiaries under a throwback rule designed to tax the income upon distribution at the beneficiaries' average marginal rate in the previous five years.

Grantor trusts

Under certain circumstances, the grantor (or other person having the power to revoke the trust) is taxed directly on trust income.

The grantor.—The grantor generally is treated as the owner of all or a portion of the trust if (1) the grantor has a reversionary interest expected to return to him within ten years; (2) the grantor has the power to control the beneficial enjoyment of the income or corpus, (3) the grantor retains certain administrative powers; (4) the grantor retains the right to revoke the trust at any time during the first ten years of the trust's existence, or (5) the income of the trust may be distributed to the grantor or the grantor's spouse during the first ten years of the trust's existence.

Persons other than the grantor.—A person other than the grantor is treated as the owner of all or a portion of the trust if (1) that person has the power to revoke the trust, or (2) that person surrendered the power to revoke and that person retained one of the powers listed above.

Estates

A decedent's estate is treated as a separate taxable entity, beginning as of the date of death. The estate may elect a taxable year different than the decedent's taxable year. Under present law, an estate is allowed a $600 deduction in lieu of a personal exemption and otherwise computes its tax liability generally in the same manner as a nongrantor trust, except that the throwback rules do not apply.

Payment of estimated income taxes by trusts and estates

Neither trusts nor estates are required to make estimated payments of their income taxes. Trusts are required to pay their income tax at the time of filing of the income tax return. Income tax of an estate is payable in four quarterly payments after the year in which the income is earned.

House Bill

The House bill limits the scope of the grantor trust rules and continues to tax the income of a grantor trust directly to the grantor. Nongrantor trusts generally are taxed at the top marginal rate of the grantor. In addition, special rules may permit the use of lower rates where the trust's beneficiaries are minor children of the grantor. Where all of the trust belongs to one beneficiary, the income generally is taxed to the trust at the top marginal rate of the beneficiary.

The provisions apply to irrevocable trusts created after September 25, 1985, and to trusts that are revocable on September 25, 1985, for taxable years beginning on or after that date. Amounts contributed after that date to a trust that is irrevocable on that date are treated as a separate trust created after that date.

Senate Amendment

Trusts

Nongrantor trusts

Rates of tax.—Nongrantor trusts and estates are taxed as under present law, except that the tax brackets applicable to such trusts and estates are narrowed. Under the revised rates for taxable years beginning after 1987, the first $5,000 of income of a trust or estate is taxed at the rate of 15 percent and income in excess of $5,000 is taxed at 27 percent. In addition, the benefit of the 15-percent bracket is phased-out for trust or estate income between $13,000 to $25,000.

[52] Re-enactment of these project-specific transition rules does not change the general prohibition contained in the 1984 Act on refunding certain obligations (e.g., private loan bonds) that may not be originally issued under that Act.

Taxable year.—Nongrantor trusts (both newly created and existing) must adopt a taxable year ending in October, November, or December.

Grantor trusts

The 10-year exception of present law (i.e., the so-called "Clifford rule") is repealed. In addition, interests and powers of the grantor's spouse are treated as interests and powers of the grantor.

Estates

The undistributed income of both existing and newly created estates is taxed at the rate of a married person filing separately for the first two years of their existence. The undistributed income of estates after the first two years of their existence is taxed at the same rates as nongrantor trusts.

Payment of estimated income taxes by trusts and estates

Trusts and estates are required to make estimated payment of income tax in the same manner as individuals. In addition, the special rule permitting estates to pay their income tax in four equal quarterly installments after the year it is earned is repealed.

Effective date

The rate changes are effective on July 1, 1987. For 1987 returns, a blended rate schedule based upon the present law rates and new rates would apply. The changes in the grantor trust provisions are effective for transfers in trust made after March 1, 1986 with an exception under which the 10-year rule of present law would continue to apply to certain trusts created pursuant to certain binding property settlements entered into before March 1, 1986.

The change in the taxable year rule is effective with respect to taxable years beginning after December 31, 1986. Distributions of distributable net income during any short taxable year arising from a required change in taxable years are to be included in income of the beneficiary evenly over a 4-year period.

The change in the rule requiring trusts and estates to pay estimated tax is effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment with the following modifications:

First, the rate schedule applicable to trusts and estates is modified to reflect the top individual rate of 28 percent. Thus, taxable income of trusts and estates in excess of $5,000 is taxed at 28 percent. In addition, the phase-out rate for the benefit of the 15-percent bracket is similarly modified so that the benefit phases out between $13,000 and $26,000. An additional rate schedule[1] is provided for taxable years beginning in 1987.

If taxable income is—	*The tax is—*
Not over $500	11% of taxable income
Over $500 but not over $4,700.	$55 plus 15% of the excess over $500
Over $4,700 but not over $7,550.	$685 plus 28% of the excess over $4,700
Over $7,550 but not over $15,150.	$1,483 plus 35% of the excess over $7,550
Over $15,150	$4,143 plus 38.5% of the excess over $15,100

[1] The income tax schedule for estates and trusts for 1987 would be as follows:

Second, the special rule providing that the tax rates applicable to estates for their first two years are the rates applicable to a married person filing separately is deleted. Thus, the rates applicable to trusts will apply to all taxable years of an estate.

Third, the conference agreement provides that estates are not required to pay estimated taxes for their first two taxable years. In addition, the conference agreement provides that, in the case of trusts making estimated payments the trustee may elect to assign any amount of its quarterly payments to a beneficiary or beneficiaries. Such an election must be made on the income tax return of the trust which is filed within 65 days after the end of the trust's taxable year. If the trustee makes such an election, the amount of credits assigned to beneficiaries is considered a distribution under the 65-day rule of section 663. Thus, the beneficiary to whom the credit is assigned is deemed to receive a distribution on the last day of the trust's year for Federal income tax purposes. Nonetheless, the beneficiary treats the credit as received on the date the election is made for purposes of the beneficiary's estimated taxes.

Fourth, both newly created and existing trusts (but not estates) are required to adopt a calendar year as their taxable year. However, the conference agreement provides an exception under which tax-exempt trusts (described in sec. 501) and wholly charitable trusts (described in sec. 4947(a)(1)) are not required to adopt a calendar year.

B. Unearned Income of a Minor Child

Present Law

If income-producing assets are transferred to a minor child, income earned on those assets generally is taxed to the child at the child's rate.

House Bill

The unearned income of a child under 14 years of age is taxed to the child at the top rate of the parents to the extent the income is attributable to property received from the parents. The provision applies with respect to a child under 14 years of age who has at least one living parent as of the close of the taxable year.

The top rate of the parents is deemed to be the top rate applicable to individuals unless the parent assigns an unused rate bracket amount at a lower rate to the child.

Earned income and unearned income derived from assets received from sources other than a parent that are placed in a qualified segregated account are taxed at the child's rate. Property eligible to be placed in a qualified segregated account includes earned income, money, or property received from someone other than the parent or step-parent, and property received by reason of the parent's or step-parent's death.

The House bill is effective for taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment generally is the same as the House bill, except that the tax payable by a child on the parental source unearned income is equal to the additional amount of tax that the parent would be required to pay if the child's parental source unearned income were included in the parent's taxable income. The Senate amendment is effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment except that the provision is applied to all net unearned income of a child under 14 years of age regardless of the source of the assets creating the child's net unearned income. Net unearned income means unearned income less the sum of $500 and the greater of: (1) $500 of the standard deduction or $500 of itemized deductions or (2) the amount of allowable deductions which are directly connected with the production of the unearned income. The $500 figures are to be adjusted for inflation beginning in 1988. The conferees expect that the Treasury Department will issue regulations providing for the application of these provisions where either the child or the parent is subject to the alternative minimum tax for the year. In addition, where the tax on capital gains of a trust is determined by reference to that income of the parent (under sec. 644 for any year for which the income of that parent's also is determined by reference to that parent, the conferees intend that the tax of the trust be determined before the tax of the child is determined.)

The following examples illustrate the tax consequences of this provision to a dependent child under age 14 in 1988.

Example 1.—If the child has $400 of unearned income and no earned income, the child's standard deduction is $400 which is allocated against the child's unearned income, so that the child has no Federal income tax liability.

Example 2.—If the child has $900 of unearned income and no earned income, the child's standard deduction is $500 which is allocated against the first $500 of unearned income. The child's net unearned income is $400. Because the child's net unearned income is less than $500, the net earned income is taxed at the child's rates.

Example 3.—If the child has $1,300 of unearned income and no earned income, the child's standard deduction is $500 which is allocated against unearned income. The child has net unearned income equal to $800 of which the first $500 is taxed at the child's rates, and the remaining $300 of unearned income is taxed at the top rate of the parents.

Example 4.—If the child has $700 of earned income and $300 of unearned income, the child's standard deduction is $700 of which $300 is allocated against unearned income and $400 is allocated against earned income. The child has no net unearned income and the remaining $300 of earned income is taxed at the child's rates.

Example 5.—If the child has $800 of earned income and $900 of unearned income, the child's standard deduction is $800 of which $500 is allocated against unearned income and $300 is allocated against earned income. The child has net unearned income of $400. Because net unearned income is less than $500, the child's net unearned income is taxed at the child's rates. The remaining $500 of earned income also is taxed at the child's rates.

Example 6.—Assume the child has $300 of earned income and $1,200 of unearned income, and itemized deductions of $400

(net of the 2-percent floor) which are directly connected with the production of the unearned income. The child has $400 of other deductions. Because of the deductions directly connected with the production of the unearned income ($400) are less than the maximum amount of deductions ($500) which are allocated against unearned income, $500 of the $800 total deductions are allocated against unearned income. Therefore, the child has net unearned income of $700 ($1,200 of unearned income less $500) of which $500 is taxed at the child's rates and $200 is taxed at the parents' rate.

Example 7.—Assume the child has $700 of earned income and $3,000 of unearned income, and itemized deductions of $800 (net of the 2-percent floor) which are directly connected with the production of the unearned income. The child has $200 of other deductions. The entire amount of deductions relating to the production of unearned income is allocated against his unearned income, because this amount ($800) exceeds $500. Therefore, the child has net unearned income equal to $2,200 ($3,000 of unearned income less $800) of which $500 is taxed at child's rates and $1,700 at the parents' top rate. The child has $200 of deductions which is allocated against earned income. The remaining $500 of earned income is taxed at the child's rates.

The provision is effective for taxable years beginning after the date of enactment.

C. Gift and Estate Taxes

1. Current Use Valuation Recapture Period for Pre-1982 Estates

Present Law

Real property used in certain farming and other closely held business activities may be valued at its current use, rather than fair market, value for estate tax purposes. A special recapture tax is imposed if the property is disposed of or ceases to be used in its qualified use within a 10-year recapture period. (In 1981, this recapture period was reduced from 15 years, effective for estates of individuals dying after December 31, 1981.)

House Bill

No provision.

Senate Amendment

The reduction in the recapture period to 10 years enacted in 1981 is extended to estates of individuals who died after 1976 and before 1982.

Conference Agreement

The conference agreement follows the House bill (i.e., retains present law).

2. Filing Estate Tax Current Use Valuation Elections

Present Law

Real property used in certain farming and other closely held business activities may be valued at its current use, rather than fair market, value for estate tax purposes. This provision is available only if it is elected on the first estate tax return filed, and only if the election, as filed, substantially complies with the requirements of Treasury Department Regulations concerning information to be supplied when making the election and execution of an agreement by all parties having an interest in the specially valued property.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that estates of individuals dying before January 1, 1986, that substantially complied with the requirements enumerated on the Federal Estate Tax Return (as opposed to Treasury Department regulations) are allowed to perfect defective elections within 90 days of being notified of errors by the Treasury. Specifically, the March 1982 edition of Form 706, Federal Estate Tax Return, did not specify that the required agreement had to be submitted with the estate tax return. This provision, therefore, permits late filing of the required agreements for estates that used the March 1982 edition of Form 706.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification adding a targeted transitional exception for the estate of an individual who died on January 30, 1984, and for whose estate the Federal estate tax return was filed on October 30, 1984.

3. Gift Tax Treatment of Certain Disclaimers

Present Law

A disclaimer is an irrevocable refusal to accept property. If a disclaimer complies with Federal rules, the disclaimed property is not treated as having been transferred by the party making the disclaimer for Federal gift tax purposes. Disclaimers made after 1976 are governed by statutory rules; disclaimers made before 1977 are governed by Treasury regulations, adopted on November 15, 1958. (The U.S. Supereme Court upheld these regulations in *Jewett* v. *Commissioner*, 455 U.S. 305 (1982).

House Bill

No provision.

Senate Amendment

Disclaimers of property transferred before November 15, 1958, that were made before December 9, 1980, are valid for Federal gift tax purposes if the requirements of the 1958 Treasury regulations (other than timing) were satisfied and the disclaimer was made within a reasonable time after the property vested (rather than was transferred, as required by the regulations).

Conference Agreement

The conference agreement follows the House bill (i.e., retains present law).

4. Gift and Estate Tax Deductions for Certain Conservation Easements

Present Law

A special exception to the general restrictions on tax deductions for charitable contributions of partial interests in property applies in the case of qualified conservation contributions (e.g., easements). (In general, gifts of less than the entire interest in property held by the donor are nondeductible.) To qualify for a gift or estate tax deduction, qualified conservation contributions must satisfy the same requirements, including a conservation purpose requirement, that apply for income tax deductions.

House Bill

No provision.

Senate Amendment

The Senate amendment permits gift or estate tax deductions to be claimed for qualified conservation contributions without regard to whether the contribution satisfies the income tax conservation purpose requirement.

Conference Agreement

The conference agreement follows the Senate amendment, with a targeted transitional exception deeming certain conservation contributions to the Acadia National Park in Maine to satisfy the conservation purpose requirement.

This provision applies to transfers occurring after December 31, 1986.

5. Special Rule for Estate of James H. W. Thompson

Present Law

Gift and estate tax deductions are permitted for charitable contributions only if property with respect to which deductions are claimed is transferred directly to a qualified organization and certain other requirements are satisfied.

House Bill

No provision.

Senate Amendment

The Senate amendment allows an estate tax deduction for certain property transferred by James H. W. Thompson to his nephew who then transferred the property to a charitable foundation pursuant to his uncle's instructions. This property is treated as if it passed directly from Thompson to the charitable foundation.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Gift and Estate Tax Marital Deduction Elections

Present Law

A deduction is allowed for gift and estate tax purposes for property transfered to a spouse. This "marital deduction" is not allowed for terminable interests (i.e. property interests that will not be subject to gift or estate tax if the property is transferred by the donee-spouse) unless the property is qualified terminable interest property ("QTIP" property) and a special election is made. This special election is made, the property is subject to gift or estate tax if the donee-spouse subsequently transfers it.

House Bill

No provision.

Senate Amendment

Estates that in good faith claim a marital deduction on property that is found to be terminable interest property on audit are permitted to make QTIP elections within 90 days after that finding if the property otherwise qualifies for the election.

Conference Agreement

The conference agreement follows the House bill (i.e., retains present law).

D. Generation-Skipping Transfer Tax

Present Law

A generation-skipping transfer tax (GST tax) is imposed on transfers under a trust or similar arrangement having beneficiaries in more than one generation below that of the grantor of the trust. Subject to certain transitional exceptions, the GST tax applies to transfers occurring after June 11, 1976.

Taxable transfers

The GST tax is imposed on taxable terminations under and taxable distributions (other than income) from a trust or a similar arrangement in which beneficiaries in more than one generation younger than that of the grantor have an interest (or certain powers over the property) (i.e., generation-sharing arrangements). Direct transfers to persons more than one generation below that of the grantor are not subject to GST tax (i.e., direct skips).

In the case of trusts having beneficiaries assigned to three or more younger generations, GST tax is imposed on the termination of the interests (or powers) of each of the intermediate younger generations (when the trust property is not subject to gift or estate tax).

Exemption from tax

There is no specific exemption or credit that a grantor may apply against GST tax; however, if a generation-skipping transfer occurs at or after the deemed transferor's death, any unused portion of the deemed transferor's gift and estate tax unified credit may be applied against GST tax. Additionally, a special $250,000 per deemed transferor exemption is permitted for transfers to grandchildren.

Tax rate

The GST tax is imposed at the gift or estate tax rate that would apply if the property were transferred to the beneficiary by a deemed transferor (generally, the parent of the beneficiary). GST tax on taxable terminations is determined on a tax-inclusive basis (like the estate tax) and taxable distributions are taxed on a tax-exclusive basis (like the gift tax).

Credit for State taxes

A limited credit against GST tax is permitted for State taxes imposed on generation-skipping transfers (based on the deemed transferor concept).

House Bill

Similar to present law, a GST tax is imposed on transfers under a trust or similar arrangement having beneficiaries in more than one generation below that of the grantor of the trust. Additionally, a GST tax is imposed on direct transfers to beneficiaries more than one generation below that of the transferor.

Taxable transfers

The modified GST tax is imposed on taxable terminations and taxable distributions (including distributions of income) under generation-sharing arrangements, defined generally as under present law. Taxable beneficiaries include only persons having interests in (as opposed to powers over) property.

The modified GST also applies to direct skips (as described under the discussion of present law).

Exemption from tax

A specific exemption of $1 million per transferor is provided in lieu of the present credit and grandchild exclusion (described in present law). Generation-skipping transfers by married individuals are treated as made one-half by each spouse pursuant to rules similar to the present gift tax rules on such gifts to third persons. A special $2 million per grandchild exemption applies to direct skips.

Tax rate

All generation-skipping transfers are subject to tax at a flat rate, equal to the maximum gift and estate tax rate (currently 55 percent; scheduled to decline to 50 percent in 1988). GST tax on taxable terminations and taxable distributions is determined on a tax-inclusive basis. GST tax on direct skips is determined on a tax-exclusive basis.

Credit for State taxes

A credit against GST tax is permitted equal to 5 percent of State taxes on generation-skipping transfers.

Effective date

The amended GST tax applies to transfers after the date of enactment, subject to the following exceptions:

(1) Inter vivos transfers occurring after September 25, 1985, are subject to the amended tax.

(2) Transfers from trusts that were irrevocable before September 26, 1985, are exempt to the extent that the transfers are not attributable to additions to the trust corpus occurring after that date.

(3) Transfers pursuant to wills in existence before September 26, 1985, are not subject to the amended tax if the testator was incompetent on September 25, 1985, and at all times thereafter until death.

The present GST tax is repealed, retroactive to June 11, 1976.

Senate Amendment

No provisions.

Conference Agreement

The conference agreement follows the House bill, with a modification providing that the special $2 million per grandchild exemption does not apply to transfers made after December 31, 1989.

A second modification provides that an election may be made to treat *inter vivos* and testamentary contingent transfers in trust for the benefit of a grandchild as direct skips if (1) the transfers occur before date of enactment, and (2) the transfers would be direct skips except for the fact that the trust instrument provides that, if the grandchild dies before vesting of the interest transferred, the interest is transferred to the grandchild's heirs (rather than the grandchild's estate). Transfers treated as direct skips as a result of this election are subject to Federal gift and estate tax on the grandchild's death in the same manner as if the contingent gift over had been to the grandchild's estate.

A third modification exempts from the revised generation-skipping transfer tax testamentary direct skips occurring under wills executed before the date of enactment if the testator dies before January 1, 1987.

The conferees adopted these delays in effective dates to permit a reasonable period for individuals to re-execute their wills to conform to the extension of GST tax to direct skips. No comparable period is provided for generation-sharing transfers because those transfers are subject to GST tax under present law.

TITLE XV. COMPLIANCE AND TAX ADMINISTRATION

A. Penalties

1. Penalties for Failure to File Information Returns or Statements

Present Law

The Code requires that information returns be filed with the IRS, and a copy be given to the taxpayer, detailing all wages, most other types of income, and some deductions. These requirements apply to a variety of specific payments, and are described in a number of Code provisions.

The Code also provides civil penalties for failure either to file an information return with the IRS (sec. 6652) or to provide a copy to the taxpayer (sec. 6678). The general penalty for failure to supply an information return to the IRS is separate from the penalty for failure to give a copy to the taxpayer. Generally, these penalties are $50 for each failure; the maximum penalty under each provision is $50,000 per year.

The Code also provides a penalty of either $5 or $50 (depending on the nature of the failure) for failure to furnish a correct taxpayer identification number (for individuals, the social security number) (sec. 6676). The Code does not provide a penalty for including other incorrect information on an information return.

House Bill

The House bill consolidates the penalty for failure to file an information return with the IRS with the penalty for failure to supply a copy of that information return to the taxpayer in the same subchapter of the Code. The general level of each of these penalties remains at $50 for each failure. The maximum penalty is raised from $50,000 to $100,000 for each category of failure.[1] Thus, a maximum penalty of $100,000 applies to failure to file information returns with the IRS, and another maximum penalty of $100,000 applies to failure to supply copies of information returns to taxpayers.

The House bill also adds to the Code a new penalty for failure to include correct information either on an information return filed with the IRS or on the copy of that information return supplied to the taxpayer. This new penalty applies to both an omission of information or an inclusion of incorrect information. The amount of the penalty is $5 for each information return or copy for the taxpayer, up to a maximum of $20,000 in any calendar year.

The House bill also clarifies the provisions relating to furnishing a written statement to the taxpayer of a number of the substantive information reporting provisions of the Code. Under present law, a number of these provisions arguably may be technically effective only if the person required to supply the copy to the taxpayer has actually provided the information return to the IRS. These provisions have been redrafted so that it is clear that the requirement to supply a copy of the information return to the taxpayer is triggered when there is an obligation to file (instead of the actual filing of) an information return with the IRS.

The provision is effective for information returns the due date of which (determined without regard to extensions) is after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment also provides that the $20,000 maximum penalty for filing inaccurate information returns does not apply in cases of intentional disregard. The Senate amendment is effective for information returns the due date of which (determined without regard to extensions) is after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, except that certain modifications of the information return provisions for interest, dividends, and patronage dividends are effective on the date of enactment (see Modification of Separate Mailing Requirement for Certain Information Reports, C.6., below).

2. Increase in Penalty for Failure to Pay Tax

Present Law

The Code provides that a taxpayer who fails to pay taxes when due must pay a penalty (sec. 6651(a)(2) and (3)). The penalty applies to a taxpayer who fails to pay taxes shown on the tax return. It also applies to a

[1] The bill also raises from $50,000 to $100,000 the maximum penalty for failure to supply taxpayer identification numbers (sec. 6676).

taxpayer who fails to pay taxes not shown on the tax return within 10 days of notice and demand for payment by the IRS. The penalty is one-half of one percent of the tax for the first month not paid, and is an additional one-half of one percent for each additional month the failure to pay continues, up to a maximum of 25 percent.

This penalty can be abated if the failure is due to reasonable cause and not willful neglect. This penalty is not deductible for tax purposes.

House Bill

The House bill modifies the penalty for failure to pay taxes that exists in present law by increasing in specified situations the amount of that penalty from one-half of one percent per month to one percent per month.[2] This increase occurs after the IRS notifies the taxpayer that the IRS will levy upon the assets of the taxpayer. The IRS can do this in either of two ways. The most common method is that the IRS sends to the taxpayer a notice of intention to levy; this notice must be sent out at least 10 days before the levy occurs (sec. 6331(d)). In these circumstances, the increase in the penalty occurs at the start of the month following the month in which the 10-day period expires. The second method may be used when the IRS finds that the collection of the tax is in jeopardy. If this occurs, the IRS may make notice and demand for immediate payment of the tax, and, if the tax is not paid, the IRS may levy upon the assets of the taxpayer without regard to the 10-day requirement (sec. 6331(a)). Under this second method, the IRS makes notice and demand for immediate payment either in person or by mail. In these circumstances, the increase in the penalty occurs at the start of the month following the month in which notice and demand is made.

The House bill also improves the coordination of the penalty for failure to pay taxes with the penalty for failure to file a tax return.

The increase in the penalty for failure to pay taxes (as well as the repeal of the special coordination rule of section 6651(c)(1)(B)) is effective for amounts assessed for periods after December 31, 1985, regardless of when the failure to pay began.

Senate Amendment

The Senate amendment is the same as the House bill, effective after December 31, 1986. In addition, the Senate amendment requires the Treasury Department to report to the Senate Committee on Finance and the House Committee on Ways and Means by March 1, 1987, with specific recommendations as to how the cost of collection charge described in the President's tax reform proposal would be implemented.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment in increasing the failure to pay penalty, generally effective for periods after December 31, 1986. The conference agreement does not include the provision of the Senate amendment requiring a report on the cost of collection charge.

[2] Once the penalty rate in effect is one percent for any month with respect to a particular taxable year and type of tax, the one-percent rate is applicable to any penalty for failure to pay taxes for that taxpayer for all subsequent months.

3. Negligence and Fraud Penalties

Present Law

Negligence

Taxpayers are subject to a penalty if any part of an underpayment of tax is due to negligence or intentional disregard of rules or regulations (but without intent to defraud) (Code sec. 6653(a)). There are two components to this penalty. The first component is 5 percent of the total underpayment, where any portion of the underpayment is attributable to negligence or intentional disregard of rules or regulations. Thus, if a taxpayer has underpaid $1,000 in taxes and the portion due to negligence is $200, the amount of the penalty is $50 (5 percent of $1,000). The second component is an amount equal to one-half the interest payable on the portion of the underpayment attributable to negligence or intentional disregard, for the period beginning on the last day prescribed for payment of the underpayment (without regard to any extension) and ending on the date of the assessment of the tax (or the date of payment of the tax, if that date is earlier).

Generally, once the IRS has determined that negligence existed, the burden is on the taxpayer to establish that the IRS' determination of negligence is erroneous. The taxpayer must meet a higher standard in the case of interest or dividend payments (sec. 6653(g)). This section provides that if the taxpayer fails to include in income an interest or dividend payment shown on an information return, the portion of the underpayment attributable to this failure is treated as due to negligence in the absence of clear and convincing evidence to the contrary. The effect of this provision is that the IRS may automatically assert the negligence penalty in these circumstances, and the taxpayer must present clear and convincing evidence that no negligence was involved in order to avoid the penalty.

The negligence penalty applies only to underpayments of income taxes, gift taxes, and the windfall profits tax.

Fraud

Taxpayers are also subject to a penalty if any part of an underpayment of tax is due to fraud (sec. 6653(b)). This penalty is in lieu of the negligence penalty. There are two components to the fraud penalty. The first component is 50 percent of the total underpayment, where any portion of the underpayment is attributable to fraud. Thus, if a taxpayer has underpaid $1,000 in taxes and the portion due to fraud is $500, this component of the penalty is $500 (50 percent of $1,000). The second component is an amount equal to one-half the interest payable on the portion of the underpayment attributable to fraud, for the period beginning on the last day prescribed for payment of the underpayment (without regard to any extension) and ending on the date of the assessment of the tax (or the date of payment of the tax, if that date is earlier). The burden of proof is on the IRS to establish that fraud existed (sec. 7454(a)) with respect to an item on the taxpayer's return.

House Bill

Negligence

The House bill expands the scope of the negligence penalty by making it applicable to all taxes under the Code. The bill also generally redrafts the negligence penalty to make it clearer and more comprehensible. One element of that redrafting involves the provision of a definition of negligence. The bill includes within the scope of the definition of negligence both any failure to make a reasonable attempt to comply with the provisions of the Code as well as any careless, reckless, or intentional disregard of rules or regulations. The bill does not, however, limit the definition of negligence to these items only. Thus, all behavior that is considered negligent under present law will remain within the scope of this negligence penalty. Also, any behavior that is considered negligent by the courts but that is not specifically included within this definition is also subject to this penalty.

The House bill also expands the scope of the special negligence penalty that is currently applicable to failures to include in income interest and dividends shown on an information return. The bill expands this provision so that it is applicable to failures to show properly on the taxpayer's tax return any amount that is shown on any information return. This penalty applies to the same information returns that are subject to the penalties for failure to provide information returns. Thus, if a taxpayer fails to show properly on the taxpayer's tax return any amount that is shown on an information return, the taxpayer's failure is treated as negligence in the absence of clear and convincing evidence to the contrary.

Fraud

The House bill modifies the fraud penalty by increasing the rate of the penalty but at the same time narrowing its scope. First, the bill increases the rate of the basic fraud penalty from 50 to 75 percent. (The time-sensitive component of the fraud penalty is not altered.) Second, the scope of the fraud penalty is reduced so that in effect it applies only to the amount of the underpayment attributable to fraud (this is essentially the same amount to which the present-law time-sensitive component of the fraud penalty applies). The bill does this by providing that, once the IRS has established that any portion of an underpayment is attributable to fraud, the entire underpayment is treated as attributable to fraud, except to the extent that the taxpayer establishes that any portion of the underpayment is not attributable to fraud. This is done so that, once the IRS has initially established that fraud occurred, the taxpayer then bears the burden of proof to establish the portion of the underpayment that is not attributable to fraud. The fraud penalty is determined at the top marginal rate applicable to the taxpayer.

These modifications to the fraud penalty do not affect the statute of limitations for false or fraudulent returns (sec. 6501(c)). Thus, if a taxpayer files a return that is in some respects fraudulent, the statute of limitations with respect to the entire return never expires.

Interaction of negligence and fraud penalties

If an underpayment of tax is partially attributable to negligence and partially attributable to fraud, the negligence penalty (which generally applies to the entire underpayment of tax) does not apply to any portion of the underpayment with respect to which a fraud penalty is imposed.

The amendments to the negligence and fraud penalties are applicable to returns the due date of which (determined without regard to extensions) is after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill. In addition, the Senate amendment modifies the negligence penalty by increasing the rate of the penalty but at the same time narrowing its scope. First, the bill increases the rate of the negligence penalty from 5 to 10 percent. (The time-sensitive component of the negligence penalty is not altered.) Second, the scope of the negligence penalty is reduced so that in effect it applies only to the amount of the underpayment attributable to negligence (this is the same amount to which the present-law time-sensitive component of the negligence penalty applies). The negligence penalty is determined at the top marginal rate applicable to the taxpayer.

The amendments to the negligence and fraud penalties are applicable to returns the due date of which (determined without regard to extensions) is after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, except that it does not increase the rate of the negligence penalty or apply it only to the portion of the underpayment attributable to negligence. Instead, the conference agreement maintains the 5-percent rate of present law, and the present-law application of that penalty to the entire amount of the underpayment, not just to the portion of the underpayment attributable to negligence.[3]

4. Penalty for Substantial Understatement of Tax Liability

Present Law

If a taxpayer substantially understates income tax for any taxable year, the taxpayer must pay an addition to tax equal to 10 percent of the underpayment of tax attributable to the understatement (sec. 6661). An understatement is substantial if it exceeds the greater of 10 percent of the tax required to be shown on the tax return or $5,000 ($10,000 in the case of most corporations). An understatement is generally the excess of the amount of tax required to be shown on a tax return over the amount of tax actually shown on the tax return. The penalty generally does not apply to amounts with respect to which (1) there was substantial authority for the taxpayer's treatment of the amount, or (2) the taxpayer discloses the relevant facts with respect to that amount on the tax return.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the addition to tax for a substantial understatement of tax liability from 10 percent to 20 percent of the amount of the underpayment of tax[4] attributable to the understatement. The increase in this addition to tax is applicable to returns the due date of which (determined without regard to extensions) is after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

B. Interest Provisions

1. Differential Interest Rate

Present Law

Taxpayers must pay interest to the Treasury on underpayments of tax (Code sec. 6601). Interest generally accrues from the due date of the tax return (determined without regard to extensions). The Treasury must pay interest to taxpayers on overpayments of tax (sec. 6611). Both the rate taxpayers pay to the Treasury and the rate the Treasury pays to taxpayers are the same rate (sec. 6621). That rate is determined semi-annually for the 6-month periods ending on September 30 and March 31. The adjusted rate takes effect on the following January 1 (for September 30 determinations) and July 1 (for March 31 determinations). The rate utilized is the prime rate quoted by large commercial banks as determined by the Board of Governors of the Federal Reserve System.

House Bill

The House bill provides that the interest rate that Treasury pays to taxpayers on overpayments is the three-month Treasury bill rate plus 2 percentage points. The bill also provides that the interest rate that taxpayers pay to the Treasury on underpayments is the three-month Treasury bill rate plus 3 percentage points. The rates are rounded to the nearest full percentage.

The interest rates are to be adjusted quarterly. The rates are determined during the first month of a calendar quarter, and become effective for the following calendar quarter. Thus, for example, the rates that are determined during January are effective for the following April through June. This reduces by one month (from three months to two) the lag that exists in present law between the determination of the interest rate and the date it becomes effective.

The interest rate is determined by the Secretary based on the average market yield on outstanding three-month Treasury bills. This is parallel to the mechanism for determining Federal rates, which are used to test the adequacy of interest in certain debt instruments issued for property and certain other obligations (see sec. 1274(d)). This provision is effective for purposes of determining interest for periods after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, except that the interest rate is based upon the Federal short-term rate. The interest rates are determined by the Secretary based on the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less. This is the mechanism for determining short-term Federal rates, which are used to test the adequacy of interest in certain debt instruments issued for property and certain other obligations (see sec. 1274(d)).

Section 6601(f) provides that, to the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax. Consequently, if an underpayment of $1,000 occurs in year 1 and an overpayment of $1,000 occurs in year 2, no interest is imposed in year 2 because of the rule of section 6601(f). The IRS can at present net many of these offsetting overpayments and underpayments. Nevertheless, the IRS will require a transition period during which to coordinate differential interest rates with the requirements of section 6601(f). The Senate amendment, therefore, provides that the Secretary of the Treasury may prescribe regulations providing for netting of tax underpayments and overpayments through the period ending three years after the date of enactment of the bill. By that date, the IRS should have implemented the most comprehensive netting procedures that are consistent with sound administrative practice.

This provision is effective for purposes of determining interest for periods after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Interest on Accumulated Earnings Tax

Present Law

The accumulated earnings tax (sec. 531) is imposed to prevent corporations from accumulating (rather than distributing) income with the intent of reducing or avoiding taxes. Interest is charged only from the date the IRS demands payment of the tax, rather than the date the return was originally due to be filed.[5]

House Bill

The House bill provides that interest is imposed on underpayments of the accumulated earnings tax from the due date (without regard to extensions) of the income tax return for the year the tax is initially imposed, effective for returns that are due (without regard to extensions) after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, effective for returns that are due (without regard to extensions) after December 31, 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective for returns that are due (without regard to extensions) after December 31, 1985.

C. Information Reporting Provisions

1. Information Reporting on Real Estate Transactions

Present Law

Brokers must, when required by Treasury regulations, file information returns on the business they transact for customers (sec. 6045). To date, the IRS has issued regulations requiring reporting only of gross proceeds of sales of securities, commodities, regulated futures contracts, and precious metals. Reporting on real estate transactions is not currently required under these regulations. The term "broker" is broadly defined as any person who, in the ordinary course of a trade or business, stands ready

[3] In a recent case, the Sixth Circuit held that the negligence penalty "should be applied only to that portion of the deficiency attributable to [the negligent action]." *(Asphalt Products Co. v. Comm'r.*, Nos. 84-1841, 84-1882, slip op. (6th Cir. July 17, 1986)). The conference agreement provides that the negligence penalty applies (once one element of negligence has been demonstrated) to the entire underpayment, not just to the portion attributable to negligence. The conference agreement is, with respect to this issue, a continuation of the rule of present law, which also provides that the negligence penalty applies to the entire underpayment, not just to the portion attributable to negligence. The conferees note that this case both inaccurately states present law and is in any event of no effect under the conference agreement.

[4] Examples of the types of taxes to which this provision applies include individual income taxes, corporate income taxes, and the unrelated business income tax.

[5] See Rev. Rul. 72-324, 1972-1 C.B. 399.

to effect sales to be made by others (Treas. Reg. sec. 1.6045-1).

House Bill

The House bill requires that real estate transactions be reported. The reporting is to be done by the settlement attorney or other stakeholder. This would generally be the person responsible for closing the transaction. Thus, in some localities the stakeholder could include either a title insurance company or a bank. If there is no stakeholder in a transaction, the reporting is to be done by the person designated in Treasury regulations.

The provision is effective for real estate transactions occurring on or after January 1, 1986.

Senate Amendment

The Senate amendment also requires that real estate transactions be reported. The title company is the first person responsible to do the information reporting. If there is no title company, then the reporting is to be done by the mortgage lender. If there is no mortgage lender, then the reporting is to be done by the settlement attorney or other person responsible for closing the transaction. If there is no settlement attorney, the reporting is to be done by the seller's broker. If there is no seller's broker, the reporting is to be done by the buyer's broker. If there is no buyer's broker, the reporting is to be done in accordance with regulations to be prescribed by the Treasury.

The Senate amendment also provides that real estate transactions will be subject to backup withholding (sec. 3406) only to the extent required by Treasury regulations. Treasury is to provide taxpayers with guidance as to how backup withholding is to be implemented with respect to real estate transactions. The provision is effective for real estate transactions with respect to which closing on the contract occurs on or after January 1, 1987.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with modifications. The conference agreement provides that the primary responsibility for reporting is on the person responsible for closing the transaction, including any title company or attorney who closes the transaction. This is generally the person conducting the settlement. Treasury may issue regulations specifying who is the person responsible for closing the transaction, because it may not be clear which of several persons is the one responsible for closing the transaction. (These regulations need not rely upon the presence or absence of a legal obligation at closing.) Thus, Treasury may provide uniform rules to determine which of the persons involved with the closing is the one with primary responsibility for the information reporting.

If there is no person responsible for closing the transaction, the reporting must be done by the mortgage lender. If there is no mortgage lender, the reporting must be done by the seller's broker. If there is no seller's broker, the reporting must be done by the buyer's broker. If there is no buyer's broker, the reporting is to be done in accordance with regulations to be prescribed by the Secretary.

The Secretary is to provide guidance to taxpayers on how this information reporting is to be accomplished well before the effective date of this provision. The Secretary should provide guidance as to what real estate transactions are subject to information reporting. The Secretary may also exclude from information reporting certain types of real estate transactions where information reporting on those transactions would not be useful. Information reporting is not required on refinancings of real estate, unless the Secretary otherwise provides. The Secretary should also provide guidance as to the gross proceeds required to be reported.

The conferees anticipate that this information reporting will be done on a Form 1099, similar to that required for other transactions effected by brokers. The conferees also anticipate that the rules requiring that information returns from brokers be filed on magnetic media (see sec. 6011(e)) will encompass these information returns on real estate. Thus, all the information returns required to be filed by one entity would generally be filed together in one magnetic media filing. Because the provision is drafted so that mandatory reporting on real estate transactions is done under the general information reporting requirements relating to brokers (sec. 6045 (a) and (b)), all penalties and related provisions that apply to the general broker reporting requirements also apply to reporting on real estate transactions.

The provision is effective for real estate transactions with respect to which closing on the contract occurs on or after January 1, 1987.

2. Information Reporting on Persons Receiving Contracts From Certain Federal Agencies

Present Law

There is no provision of present law that requires information reporting on persons receiving Federal contracts.

House Bill

The House bill requires the head of each Federal executive agency to file an information return indicating the name, address, and taxpayer identification number (TIN) of each person with which the agency enters into a contract. The Secretary is given the authority both to establish minimum amounts for which no reporting is necessary as well as to extend the reporting requirements to Federal license grantors and subcontractors of Federal contracts.

This provision is effective on January 1, 1986. Thus, all contracts signed on or after that date are subject to information reporting. In addition, all contracts signed prior to that date are subject to information reporting if they are still in effect on that date.

Senate Amendment

The Senate amendment is the same as the House bill, effective January 1, 1987.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective January 1, 1987.

3. Information Reporting on Royalties

Present Law

A number of provisions of the Code require that payors of specified payments report those payments to the IRS and provide a copy of the information report to the taxpayer receiving the payment. Section 6041 is the broadest of these provisions; this section requires information reporting on "rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income." The Treasury regulations for this section specifically require information reporting on royalties.

Information reporting under section 6041 applies to payments totalling $600 or more during the taxable year. Other information reporting provisions, such as those for interest (section 6049), dividends (section 6042), patronage dividends (section 6044), and unemployment compensation (section 6050B), apply to payments totalling $10 or more during the taxable year.

House Bill

No provision.

Senate Amendment

The Senate amendment includes a new provision of the Code that requires that persons who make payments of royalties aggregating $10 or more to any other person in a calendar year must provide an information report on the royalty payments to the IRS. A copy of this information report must be supplied to the taxpayer. If a person makes payments to a nominee, the nominee must report the information to the taxpayer and to the IRS, as required in Treasury forms or regulations. Examples of royalty payments required to be reported under this provision include royalty payments with respect to the right to exploit natural resources, such as oil, gas, coal, timber, sand, gravel, and other mineral interests, as well as royalty payments for the right to exploit intangible property, such as copyrights, trade names, trademarks, franchises, books and other literary compositions, musical compositions, artistic works, secret processes or formulas, and patents.

The generally applicable rules for information returns for payments of interest and dividends apply to this provision. Thus, the information report to the taxpayer must be provided by the end of January and the report to the IRS must be provided by the end of February of the year following the year in which the payments were made. Payors filing large numbers of these reports with the IRS are subject to the general magnetic media filing requirements of section 6011(e)(1). If the payee does not furnish the payor with the payee's taxpayer identification number (for individuals, the social security number), the royalty payments generally are subject to backup withholding.

This provision is effective for royalty payments made after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

4. Taxpayer Identification Numbers (TINs) Required for Dependents Claimed on Tax Returns

Present Law

The taxpayer (and the taxpayer's spouse, if they file a joint return) must put his taxpayer identification number (TIN) on his tax return. There is no requirement that a taxpayer claiming a dependent on a tax return report the TIN of that dependent on that tax return. A taxpayer's TIN is generally that taxpayer's social security number. Some taxpayers are exempted from social security self-employment taxes due to their religious beliefs. These taxpayers do not have a social security number; instead, the IRS administratively assigns them a taxpayer identification number.

House Bill

No provision.

Senate Amendment

A taxpayer claiming a dependent who is at least 5 years old must report the taxpayer identification number of that dependent on that tax return. This provision is effective

for returns due on or after January 1, 1987 (without regard to extensions).

Conference Agreement

The conference agreement follows the Senate amendment, effective for returns due on or after January 1, 1988 (without regard to extensions). The conferees have delayed the effective date for one year so that taxpayers may apply for and receive TINs for their dependents who do not have them well in advance of the due date of the returns on which the TINs must be provided. In addition, this delay will provide sufficient time for the IRS and the Social Security Administration to publicize this new requirement extensively.

The penalty for failing to include the TIN of a dependent (or for including an incorrect TIN) is $5 per TIN per return. In addition, the IRS may continue its current practice of denying any deduction for a dependent if it cannot be established that it is proper to claim that dependent on the tax return.

The conferees note that certain taxpayers, because of their religious beliefs, are exempted from the social security self-employment taxes (sec. 1402(g)). The conferees intend that these taxpayers and their dependents who currently acquire their TINs from the IRS continue to be permitted to do so. It is the intent of the conferees that these taxpayers continue to be exempted from the general requirement of obtaining a social security number from the Social Security Administration. Others of these taxpayers obtain their TINs under special procedures with the Social Security Administration. The conferees intend that these procedures continue to be available to these taxpayers.

Additionally, the IRS may continue its current administrative practice of directly providing TINs for nonresident aliens, rather than requiring that nonresident aliens obtain their TINs from the Social Security Administration.

5. Tax-exempt Interest Required to be Shown on Tax Returns

Present Law

There is no requirement that all taxpayers report the amount of tax-exempt interest they receive on their tax returns. The individual income tax return (Form 1040) for 1985 does, however, require that taxpayers with taxable social security benefits report the tax-exempt interest they receive.

House Bill

The House bill requires that any person required to make a return of income under section 6012 include on that return the amount of tax-exempt interest received or accrued during the taxable year. The provision is effective for taxable years beginning after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, effective for taxable years beginning after December 31, 1986.

6. Modification of Separate Mailing Requirement for Certain Information Reports

Present Law

Payors of interest, dividends, and patronage dividends are required to report to the IRS the amounts of these payments that the payors make (secs. 6042, 6044, and 6049). Payors are required to provide a copy of this information report to the taxpayer who received the payment. These information reports must be made on the official IRS form (Form 1099) or an authorized substitute. The Code requires that the copy of the information report supplied to the taxpayer must be provided either in person or in a separate, first-class mailing. Generally, nothing other than the information report is permitted to be enclosed in the envelope.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that payors of interest, dividends, patronage dividends, and royalty payments must provide copies of information returns to the taxpayer either in person (as is provided under present law) or in a statement mailing sent by first-class mail. The only enclosures that can be made with a statement mailing are: (1) a check, (2) a letter explaining why no check is enclosed (such as, for example, because a dividend has not been declared payable), or (3) a statement of the taxpayer's specific account with the payor (such as a year end summary of the taxpayer's transactions with the payor).[6] The envelope must state on the outside "Important Tax Return Document Enclosed." In addition, each enclosure (i.e. the check, the letter, or the account statement) must state "Important Tax Return Document Enclosed." A mailing is not a statement mailing if it encloses any other material such as advertising, promotional material, or a quarterly or annual report.

This provision is effective for information returns required to be filed after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment, except that the provision is effective for information returns with respect to interest, dividends, and patronage dividends filed after the date of enactment. IRS regulations permit these three types of information returns to be mailed prior to December 31 under certain conditions. Payors satisfying those conditions will be able to take advantage of this liberalized enclosure rule for those three types of information returns that are mailed after the date of enactment.

7. Information Reporting on State and Local Taxes

Present Law

Individual taxpayers who itemize deductions may deduct State and local income, real property, personal property, and general sales taxes. There is no provision of present law that requires State and local governments to provide information reports to the IRS and the taxpayer on payments of State and local income, real property, and personal property taxes.

House Bill

The House bill requires that any State or local government that imposes an income tax, a real property tax, or a personal property tax, report to the individual who paid those taxes and to the IRS the amount of those taxes paid by that individual. These information reports must be filed in accordance with the timetable generally applicable to other information returns.

The provision is effective on January 1, 1987. Thus, State and local governments will first provide information returns to individual taxpayers by the end of January 1988, and to the IRS by the end of February 1988, on taxes that were paid in 1987.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision of the House bill.

D. Tax Shelters

1. Tax Shelter User Fee

Present Law

The cost of administering the tax law with respect to tax shelters is paid as part of the overall IRS budget, which is funded from general revenues. This cost is approximately $165 million annually, and includes audits, examination, appeals, litigation, and criminal investigation. No specific fee is imposed on tax shelters or tax shelter-related audits or investigations to offset this cost.

House Bill

No provision.

Senate Amendment

The Senate amendment requires taxpayers who, with respect to each tax shelter, claim on their tax returns cumulative net losses (plus three times the value of cumulative tax credits) that exceed cumulative actual cash invested in the tax shelter to pay a user fee of 1 percent of the losses claimed and 3 percent of the credits claimed with respect to that tax shelter (as defined in section 461(i)). These percentages are set at a level that will raise revenue approximately equal to the estimated IRS cost of administering the law with respect to tax shelters.

The provision is effective for returns filed after December 31, 1986.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

2. Tax Shelter Registration

Present Law

Tax shelter organizations are required to register with the IRS tax shelters they organize, develop, or sell (sec. 6111). A tax shelter is any investment for which the ratio of the deductions plus 200 percent of the credits to the cash actually invested is greater than 2 to 1. The investment also must (1) be subject to Federal or State securities requirements, or (2) be privately placed with 5 or more investors with an aggregate amount that may be offered for sale exceeding $250,000.

House Bill

No provision.

Senate Amendment

Tax credits are multiplied by 375 percent (instead of 200 percent) to conform the tax shelter ratio computation more closely to the tax rate schedule in the Senate amendment.

This provision is effective July 1, 1987 (the same date that the rate changes are effective).

Conference Agreement

The conference agreement follows the Senate amendment, modified to conform to the new tax rate schedule agreed to in conference. The provision is effective for tax shelters in which interests are first offered for sale after December 31, 1986.

[6] These are in addition to the other enclosures, such as other information reports or tax forms, that the IRS currently permits to be enclosed.

3. Tax Shelter Penalties

a. Penalty for failure to register a tax shelter

Present Law

Specified tax shelters are required to register with the IRS and obtain a tax shelter identification number (see previous item). The penalty for failure to register a tax shelter with the IRS is $10,000 or, if less, one percent of the aggregate amount invested in the tax shelter (but in no event less than $500) (sec. 6707(a)).

House Bill

No provision.

Senate Amendment

The Senate amendment increases the level of this penalty to the greater of one percent of the aggregate amount invested in the tax shelter or $10,000. This provision is effective on the date of enactment.

Conference Agreement

The conference agreement deletes the $10,000 maximum for the penalty from present law, effective on the date of enactment.

b. Penalty for failure to report the tax shelter identification number

Present Law

If a taxpayer invests in a tax shelter that has a tax shelter identification number, the taxpayer is required to include that number on the taxpayer's tax return (sec. 6707(b)). The penalty for failure to do so is $50, unless the failure is due to reasonable cause.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the penalty for failure to report a tax shelter identification number on a tax return from $50 to $250. The present-law exception from the penalty where the failure to report the number is due to reasonable cause remains unchanged. The provision is effective for tax returns filed after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

c. Penalty for failure to maintain lists of tax shelter investors

Present Law

Organizers and sellers of specified tax shelters are required to maintain lists of investors (sec. 6112). The penalty for failure to do so is $50 for each name missing from the list, unless the failure is due to reasonable cause, up to a maximum of $50,000 per year (sec. 6708).

House Bill

No provision.

Senate Amendment

The Senate amendment increases the penalty for failure to maintain lists of tax shelter investors from $50 to $100 per name omitted. The Senate amendment also increases the maximum penalty that can be imposed in any calendar year from $50,000 to $100,000. The increase in this penalty is effective on the date of enactment.

Conference Agreement

The conference agreement raises the maximum penalty to $100,000, effective for failures occurring or continuing after the date of enactment. The conference agreement does not raise the penalty of $50 per name omitted.

4. Tax Shelter Interest

Present Law

Taxpayers who underpay their taxes must pay interest. If the interest is attributable to an underpayment of tax of more than $1,000 that is attributable to a tax-motivated transaction (such as a tax shelter), interest is computed at 120 percent of the generally applicable interest rate.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the rate of interest computed with respect to underpayments of tax attributable to tax-motivated transactions from 120 percent to 200 percent of the generally applicable interest rate. The provision is effective for interest accruing after December 31, 1986.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment increasing the rate of interest on tax-motivated transactions. The conference agreement instead makes a technical correction to the present-law provision that increases the rate of interest for tax-motivated transactions.

The Tax Court has recently held (*DeMartino v. Comm'r.*, T. C. Memo 1986-263 (June 30, 1986); *Forseth v. Comm'r.*, T. C. Memo 1985-279 (June 11, 1985)) that sham transactions that would be subject to this special interest rate were they not shams are not subject to this special interest rate because they are shams. The conferees view it as anomalous that a genuine transaction (lacking the proper profit motive) would be subject to a higher interest rate, while a sham transaction, which is significantly more abusive, would escape the higher interest rate simply because it is a sham. Accordingly, the conference agreement, consistent with the legislative intent in originally enacting section 6621(d) in 1984, explicitly adds sham or fraudulent transactions to the list of transactions subject to this higher interest rate. The intent of the conferees is to reverse the holding of these Tax Court cases on this issue.

This clarification of present law applies to interest accruing after December 31, 1984, which is the date this higher interest rate took effect. This clarification does not apply, however, to any underpayment with respect to which there was a final court decision (either through exhausting all appeals rights or the lapsing of the time period within which an appeal must be pursued) before the date of enactment of this Act.

E. Estimated Tax Payments

1. Individuals

Present Law

Individuals owing income tax who do not make estimated tax payments are generally subject to a penalty (Code sec. 6654). In order to avoid the penalty, individuals must make quarterly estimated tax payments that equal at least the lesser of 100 percent of last year's tax liability or 80 percent of the current year's tax liability. Amounts withheld from wages are considered to be estimated tax payments.

House Bill

The House bill increases from 80 percent to 90 percent the proportion of the current year's tax liability that taxpayers must make as estimated tax payments in order to avoid the estimated tax penalty. The alternate test of 100 percent of the preceding year's liability remains unchanged. This provision is effective with respect to taxable years beginning after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, effective with respect to taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective with respect to taxable years beginning after December 31, 1986. Thus, the estimated tax payment due January 15, 1987, which is the final payment for taxable year 1986, is unaffected by this provision. All subsequent estimated tax payments are, however, subject to this provision.

2. Certain Tax-Exempt Organizations

Present Law

Private foundations must pay an excise tax on their net investment income. Tax-exempt organizations are subject to tax on income from an unrelated business. These taxes are paid when the tax returns are filed.

Corporations are required to make quarterly estimated tax payments of corporate income taxes; failure to do so is subject to a penalty.

House Bill

No provision.

Senate Amendment

Quarterly estimated payments must be made of the excise tax on net investment income of private foundations and of the tax on unrelated business income of tax-exempt organizations. These quarterly estimated payments must be made under the same rules that apply to corporate income taxes. These provisions are effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Waiver of Estimated Tax Penalties

Present Law

Under present law, if the withholding of income taxes from wages does not cover an individual's total income tax liability, the individual, in general, is required to make estimated tax payments. Also, corporations are normally required to make quarterly estimated tax payments. An underpayment of an estimated tax installment will, unless certain exceptions are applicable, result in the imposition of an addition to tax on the amount of underpayment for the period of underpayment.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement makes several changes that increase tax liabilities from the beginning of 1986. Consequently, the conference agreement allows individual taxpayers until April 15, 1987, and corporations until March 15, 1987 (the final filing dates for calendar year returns) to pay their full 1986 income tax liabilities without incurring any additions to tax on account of underpayments of estimated tax to the extent that the underpayments are attributable to changes in the law made by the conference agreement.

F. Tax Litigation and Tax Court

1. Awards of Attorney's Fees in Tax Cases

Present Law

The Civil Rights Attorney's Fees Awards Act of 1976

The Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. sec. 1988) provides, in part, that in any civil action or proceeding brought by or on behalf of the United States to enforce, or charging a violation of, a provision of the Internal Revenue Code, the court in its discretion may allow the prevailing party, other than the United States, reasonable attorney's fees as a part of the costs. This provision is limited to actions brought by or on behalf of the Federal Government (that is, to cases in which the taxpayer is the defendant). Most civil tax litigation is initiated by the taxpayer who brings suit against the Government. In the United States Tax Court, the taxpayer is the petitioner in a deficiency proceeding. In the Federal district courts and the U.S. Claims Court, the taxpayer is the plaintiff suing the Government for a refund.

The Equal Access to Justice Act

In 1980, as part of Public Law 96-481, Congress enacted the Equal Access to Justice Act (28 U.S.C. sec. 2412) which, in part, authorizes awards to a prevailing party, other than the United States, of attorney's fees and other expenses, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust. This provision applies, specifically, to cases in Federal district courts and the United States Claims Court. However, the provision is not applicable to cases in the United States Tax Court.[7]

The provision became effective on October 1, 1981. The provision repealed the applicability of the Civil Rights Attorney's Fees Awards Act of 1976 to tax litigation.

Under the Equal Access to Justice Act, fees and other expenses that may be awarded to a prevailing party include the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney's fees. In general, no expert witness may be compensated at a rate that exceeds the highest rate of compensation for expert witnesses paid by the United States. Attorney's fees in excess of $75 per hour may not be awarded unless the court determines that a higher fee is justified.

Code section 7430

In general, Code section 7430 authorizes the award of reasonable litigation costs, including attorney's fees and court costs, to a taxpayer who prevails in a tax case in any Federal court. Such costs may be awarded whether the action was brought by or against the taxpayer. No award may be made to the Government if the taxpayer does not prevail, or to any creditor of a prevailing taxpayer.

Section 7430 is the exclusive provision for awards of litigation costs in any action or proceeding to which it applies.

The amount that may be awarded for litigation costs in a particular proceeding (such as a Tax Court case) may not exceed $25,000. This limitation applies regardless of the number of parties to the proceeding or the number of tax years at issue.

Section 7430 authorizes an award of reasonable litigation costs only if the taxpayer establishes that the position of the Government in the case was unreasonable and the taxpayer has substantially prevailed with respect to the amount in controversy or the most significant issue or set of issues presented. The determination by the court on this issue is made on the basis of the facts and legal precedents relating to the case as revealed in the record.

No award may be made unless the court determines that the taxpayer had exhausted all administrative remedies available within the Internal Revenue Service.

Section 7430, which was enacted in the Tax Equity and Fiscal Responsibility Act of 1982, became effective for cases begun after February 28, 1983. Under present law, the provision does not apply to any proceeding commenced after December 31, 1985.

Damages assessable for instituting proceedings before the Tax Court merely for delay

Under present law, if it appears to the Tax Court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay, or that the taxpayer's position in the proceedings is frivolous or groundless, then the court may award damages to the United States. Such damages may not exceed $5,000 (sec. 6673).

House Bill

The House bill provides for a 4-year extension of the authority to award reasonable litigation costs, including attorney's fees, under section 7430. Thus, that section applies to any proceeding commenced on or before December 31, 1989. Also, the bill provides that such awards in Tax Court cases are payable in the same manner as an award in a case before a district court.

Further, the House bill requires the Secretary of the Treasury to submit a report within 90 days after the close of each calendar year beginning after 1985 and before 1990 to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. This report is to include (1) the number of awards made under Code section 7430 during such calendar year, (2) the number of proceedings in which claims for such awards were made by substantially prevailing parties during such calendar year, and (3) the aggregate amount payable by the United States pursuant to the awards so made during such calendar year.

The House bill also gives discretion to the court in tax cases to assess all or a portion of any award under section 7430 against the IRS employee if the court determines that the proceeding resulted from any arbitrary or capricious act of the employee.

This provision applies to proceedings commenced after December 31, 1985, and on or before December 31, 1989.

Senate Amendment

The Senate amendment modifies section 7430 to conform it more closely to the Equal Access to Justice Act. Consequently, under the Senate amendment the burden of proof is on the Government to prove that its position was substantially justified or that special circumstances exist that make an award of attorney's fees and court costs unjust. (Unless the Government proves this, attorney's fees may be awarded.) This burden of proof and standard for awards replaces the rules under section 7430 that require the taxpayer to prove that the Government's position was unreasonable before the taxpayer may be awarded attorney's fees. Furthermore, under the Senate amendment, the "substantially justified" standard is applicable to prelitigation actions or inaction of Government agents as well as the litigation position of the Government.

The Senate amendment does not modify the present-law requirement that, in order to be eligible to be awarded attorney's fees, the taxpayer must either substantially prevail with respect to the amount in controversy or substantially prevail with respect to the most significant issue or set of issues presented. The Senate amendment also does not modify the present-law provision that only the taxpayer (and not the Government) may be awarded attorney's fees.

The Senate amendment eliminates the $25,000 cap on the award of attorney's fees and substitutes a $75 an hour limitation on attorney's fees, unless the court determines that a higher rate is justified. To make this determination, the court may look to an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys to deal with the particular issues involved in the case. As under prior law, only reasonable litigation costs are recoverable by the taxpayer. Unlike prior law, however, prevailing market rates are applied to determine what are reasonable expenses of expert witnesses and reasonable costs of any study, analysis, or other project necessary to the preparation of the taxpayer's case. In no event may expert witnesses be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States.

The Senate amendment also denies any award to a prevailing party who unreasonably protracts the proceedings. Although this requirement is part of the Equal Access to Justice Act, it has not previously applied to Tax Court cases.

This provision applies to proceedings commenced after December 31, 1985, with no sunset date. However, payments may not be made as a result of this provision before October 1, 1986.

Conference Agreement

The conference agreement generally follows the Senate amendment, except as to the burden of proof. Thus, the conference agreement provides that the taxpayer (as opposed to the Government) must carry the burden of proving that the Government's action was not substantially justified. The conference agreement also provides that the net worth limitations of the Equal Access to Justice Act are made applicable in tax cases. In addition to providing for attorney's fees with respect to litigation expenses, the conference agreement also provides that attorney's fees may be awarded with respect to the administrative action or inaction by the District Counsel of the IRS (and all subsequent administrative action or inaction) upon which the proceeding is based.

This provision applies to actions commenced after December 31, 1985. If a case was commenced after that date and was finally disposed of before the date of enactment, the conference agreement provides that such taxpayers may request attorney's fees with respect to those cases during the 30-day period immediately following the date of enactment. Awards of attorney's fees in cases commenced before January 1, 1986, will continue to be governed by Code section 7430, as in effect before that date.

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[7] This is because the Equal Access to Justice Act is contained in Title 28 of the United States Code, which deals with courts created under Article III of the United States Constitution. The United States Tax Court was established under Article I of the United States Constitution.

The conference agreement also provides that awards of attorney's fees in Tax Court cases are payable in the same manner as an award in a case before a district court, effective for actions or proceedings commenced after February 28, 1983.

2. Exhaustion of Administrative Remedies

Present Law

Under present law, taxpayers who are dissatisfied with proposed adjustments to their tax returns by the Examination personnel of the IRS can take their case immediately to the United States Tax Court rather than appeal administratively within the IRS.

House Bill

The Tax Court is authorized to impose a penalty equal to $120 (twice the current filing fee) if it determines the taxpayer did not use reasonable efforts in good faith in attempting to resolve the case administratively. The taxpayer is considered to have met the requirements of this provision (and therefore not be subject to this penalty) in the following situations: he is only challenging an existing regulation or ruling (or a similar matter with respect to which Appeals has no authority to negotiate); he has attended one first level Appeals meeting; he cannot attend a first level Appeals meeting because it would be unduly burdensome; the IRS has waived the Appeals meeting; or the case has been in Appeals for six months with no action. This new provision does not make exhaustion of administrative remedies a jurisdictional prerequisite to Tax Court review. This penalty is in addition to the original filing fee of the Tax Court. Exhaustion for purposes of this provision is not considered to be exhaustion for purposes of section 7430(b)(2) (relating to attorney's fees).

The exhaustion of administrative remedies penalty applies to cases filed with the Tax Court on or after January 1, 1987.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision of the House bill. Instead, the conference agreement provides that failure by a taxpayer to exhaust administrative remedies is an additional basis that the Tax Court may consider in imposing the section 6673 penalty for dilatory or frivolous proceedings in the Tax Court.

3. Report on Tax Court Inventory

Present Law

No provision requires an annual report from the Tax Court and the IRS on the Tax Court inventory.

House Bill

The House bill requires an annual report from the IRS and the Tax Court indicating the actions taken to deal with the Tax Court inventory by closing cases more efficiently.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the reports are due every two years, beginning with 1987.

4. Tax Court Provisions

a. Tax Court practice fee

Present Law

The Tax Court imposes a $25 application fee prior to admission to practice before the Court (Tax Court Rule 200). No fee is imposed after the application fee has been paid.

The Tax Court rules authorize the Court to initiate disciplinary proceedings against practitioners who appear before it (Tax Court Rule 202). The Court is authorized to appoint independent counsel to pursue disciplinary matters.

House Bill

No provision.

Senate Amendment

The Senate amendment authorizes the Tax Court to impose a periodic registration fee on practitioners admitted to practice before it. The Tax Court is to establish the level of the fee and the frequency of its collection, but the fee may not exceed $30 per year. These funds are available to the Tax Court to pay independent counsel engaged by the Court to pursue disciplinary matters. This provision is effective January 1, 1987.

Conference Agreement

The conference agreement follows the Senate amendment.

b. Clarification of jurisdiction over penalty for failure to pay tax

Present Law

The Tax Court has held that it does not have jurisdiction over the addition to tax for failure to pay the amount of tax shown on the taxpayer's return, even though it has jurisdiction to redetermine a deficiency in tax with respect to that return (*Est. of Young v. Comm'r.*, 81 T.C. 879 (1983)).

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the Tax Court has jurisdiction over this addition to tax for failure to pay an amount shown on the return where the Tax Court already has jurisdiction to redetermine a deficiency in tax with respect to that return.

Aside from resolving this jurisdictional issue, the provision does not alter the jurisdiction of the Tax Court. The provision is not intended to change existing law insofar as (1) the section 6651(a)(1) late filing addition to tax, or (2) the procedure for assessing additions to tax under section 6662(b) is concerned.

This provision is effective for any action or proceeding before the Tax Court which has not become final before the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

c. U.S. Marshals

Present Law

United States Marshals provide courtroom security, among other duties. It is not clear that the Tax Court has the authority to request the assistance of U.S. Marshals, because the Tax Court is an Article I (rather than Article III) court.

House Bill

No provision.

Senate Amendment

The Senate amendment requires that the U.S. Marshal for any district in which the Tax Court is sitting must attend any session of the Tax Court, when requested to do so by the Chief Judge of the Tax Court. This provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

d. Special Trial Judges

Present Law

The Chief Judge of the Tax Court is authorized to appoint Special Trial Judges, who assist in the work of the Court. The Code provides that their salary is determined by the procedures relating to the Commission on Executive, Legislative, and Judicial Salaries. The Executive Order implementing that provision fails to include Special Trial Judges.

Prior to January 17, 1985, Special Trial Judges were entitled to reimbursement for travel expenses on the same basis as other Federal judges. On that date, the Comptroller General determined that they were entitled only to reduced reimbursement pursuant to the Federal Travel Regulations.

House Bill

No provision.

Senate Amendment

The Senate amendment consolidates in one new section of the Code a number of the provisions relating to the Special Trial Judges. The Senate amendment also specifies that Special Trial Judges are to be paid 90 percent of the salary paid to Tax Court Judges, and that Special Trial Judges are to be reimbursed for travel and subsistence expenses to the same extent as are Tax Court Judges.

Generally, these provisions are effective on the date of enactment. The provision relating to the salary of Special Trial Judges is effective on the first day of the first month beginning after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

e. Election to practice law after retirement and receive retirement pay

Present Law

United States District Court judges meeting age and longevity of tenure requirements may resign, engage in the practice of law, and continue to receive retirement pay. This retirement pay is not, however, adjusted to reflect changes in the pay of active District Court judges.

Retired Tax Court judges who engage in the practice of Federal tax law forfeit all retirement pay. Forfeiture also occurs if a retired Tax Court judge accepts another Government position, whether compensated or not.

House Bill

No provision.

Senate Amendment

The Senate amendment permits Tax Court judges meeting specified age and tenure requirements to elect to receive full retired pay as of the date they make the election (which would not be adjusted to reflect changes in the pay of active Tax Court judges) and not be subject to the prohibition on practicing tax law. The Senate amendment also suspends retired pay for the period of time during which a retired Tax Court judge holds a compensated Government position. This provision generally is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

f. Appeals from interlocutory orders

Present Law

The Second Circuit has held that the United States Courts of Appeals do not have

jurisdiction over any interlocutory order issued by the Tax Court (*Shapiro v. Comm'r.*, 632 F.2d 170 (2d Cir. 1980)).

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement authorizes an appeal from an interlocutory order of the Tax Court if a judge of the Tax Court includes in an interlocutory order a statement that a controlling question of law is involved, that there is substantial ground for difference of opinion regarding the question of law, and that an immediate appeal from the order might materially advance the ultimate termination of the litigation.

The Court of Appeals is given discretion as to whether or not to permit the appeal. Neither the application for nor the granting of an appeal stays proceedings in the Tax Court unless a stay is ordered by either the Tax Court or the Court of Appeals.

This provision applies to any order of the Tax Court entered after the date of enactment.

g. Annuities for surviving spouses and dependent children of Tax Court Judges

Present Law

Tax Court Judges may elect to have 3 percent of their salary deducted to fund an annuity for their surviving spouses and dependent children. The survivors annuity provisions relating to other Federal judges were recently updated (Pub. L. 99-335, June 6, 1986); the survivors annuity provisions relating to Tax Court Judges were not updated at the same time.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement makes the survivors annuity provisions relating to Tax Court Judges parallel to those applicable to other Federal judges. This provision is generally effective on November 1, 1986.

G. Tax Administration Trust Fund

Present Law

The Internal Revenue Service is responsible for administering almost all of the tax laws.[8] The cost of the entire IRS is funded through annual appropriations of general revenues. There are several trust funds in the Trust Fund Code of the Internal Revenue Code, as well as some trust funds outside the Internal Revenue Code. These are generally financed from earmarked taxes.

House Bill

No provision.

Senate Amendment

The Senate amendment establishes a Tax Administration Trust Fund in the Trust Fund Code of the Internal Revenue Code. The Trust Fund is funded by appropriation of (1) all interest paid by taxpayers on deficiencies and (2) penalties (such as, for example, for fraud and negligence) and additions to tax received under the Internal Revenue Code. Amounts in the Trust Fund (subject to specified limitations) may be utilized by the IRS without additional appropriations legislation. The Trust Fund will fund a level of IRS spending approximately equivalent to current spending plus a sizeable increase each year. The increase is targeted to examination, collection, and other increased compliance measures.

The Trust Fund is effective October 1, 1986 (the start of the 1987 fiscal year). It expires on September 30, 1991. All amounts remaining in the Trust Fund after that date revert to the general fund of the Treasury.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

H. Tax Administration Provisions

1. Suspend Statute of Limitations During Prolonged Dispute Over Third-Party Records

Present Law

There is generally a three-year statute of limitations on tax returns, except in cases of fraud, failure to file, or a sizeable understatement of income (sec. 6501). The statute continues to run even if the IRS must obtain records held by third parties.[9] If the IRS must litigate to obtain access to the third-party records, the statute of limitations can expire prior to final determination as to the availability of the records.

House Bill

No provision.

Senate Amendment

If the dispute between the third-party recordkeeper and the IRS is not resolved within six months after the IRS issues an administrative summons, the statute of limitations is suspended until the issue is resolved. The issue is not resolved during the pendency of any action to compel production of the documents. Also, the issue is not resolved during the pendency of any action to quash the summons. The third-party recordkeeper is also required to provide notice of the suspension of the statute of limitations to the taxpayer whose records are the subject of the dispute if the summons requesting the records does not identify the taxpayer by name. Failure by the third party to do so does not prevent the suspension of the statute.

Also, as is the case under present law, the statute of limitations is suspended during the period when a taxpayer intervenes in a dispute between the IRS and a third-party recordkeeper. The statute is suspended from that date until the entire dispute is resolved. This provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Authority to Rescind Statutory Notice of Deficiency

Present Law

Under present law, once the IRS has issued a statutory notice of deficiency (90-day letter), the IRS does not have the authority to withdraw the letter. The statutory notice is a jurisdictional prerequisite to petitioning the Tax Court for review of the IRS determination; the notice must be issued before the expiration of the statute of limitations. Once the notice has been issued, only a Tax Court decision can alter its effect.

House Bill

Where the IRS and the taxpayer mutually agree, a statutory notice of deficiency may be rescinded. Once the notice has been properly rescinded, it is treated as if it never existed. Therefore, limitations regarding credits, refunds, and assessments relating to the rescinded notice are void and the parties are returned to the rights and obligations existing prior to the issuance of the withdrawn notice. Also, the IRS may issue a later notice for a deficiency greater or less than the amount in the rescinded notice.

Under Code section 7805, the Secretary has the authority to establish by regulation the procedures necessary to implement the withdrawal of notice provision to assure that the taxpayer has consented to the withdrawal of the statutory notice. The regulations should also clarify the effect of rescission on other provisions of the Code.

This provision is effective for statutory notices of deficiency issued on or after January 1, 1986.

Senate Amendment

The Senate amendment is the same as the House bill, effective for statutory notices of deficiency issued on or after the date of enactment.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective for statutory notices of deficiency issued on or after January 1, 1986.

3. Authority to Abate Interest Due to Errors or Delay by the IRS

Present Law

Under present law, the IRS does not generally have the authority to abate interest charges where the additional interest has been caused by IRS errors and delays. This results from the IRS' long-established position that once tax liability is established, the amount of interest is merely a mathematical computation based on the rate of interest and due date of the return. Consequently, the interest portion of the amount owed to the Government cannot be reduced unless the underlying deficiency is reduced. The IRS does, however, have the authority to abate interest resulting from a mathematical error of an IRS employee who assists taxpayers in preparing their income tax returns (sec. 6404(d)).

House Bill

In cases where an IRS official fails either to perform a ministerial act in a timely manner or makes an error in performing a ministerial act, the IRS has the authority to abate the interest attributable to such delay. No aspect of the delay can be attributable to the taxpayer. The House bill gives the IRS the authority to abate interest but does not mandate that it do so (except that the IRS must do so in cases of certain erroneous refunds of $1 million or less, described below). The interest abatement only applies to the period of time attributable to the failure to perform the ministerial act.

The provision applies only to failures to perform ministerial acts that occur after the IRS and the taxpayer have been in contact. This provision does not therefore permit the abatement of interest for the period of time between the date the taxpayer files a return and the date the IRS commences an audit, regardless of the length of that time period. Similarly, if a taxpayer files a return but does not pay the taxes due, this provision would not permit abatement of this interest regardless of how long

[8] The Bureau of Alcohol, Tobacco, and Firearms administers the alcohol, tobacco, and firearms excise taxes.

[9] The statute is, however, suspended if the taxpayer intervenes in the dispute between the IRS and the third-party recordkeeper (sec. 7609(e)).

the IRS took to contact the taxpayer and request payment.

The IRS must abate interest in certain instances in which it issues an erroneous refund check. There are two limitations on this rule. First, it is not to apply in instances in which the taxpayer (or a related party) has in any way caused the overstated refund to occur. Second, it is not to apply to any erroneous refund checks that exceed $1 million. If the taxpayer does not repay the erroneous refund when requested to do so by the IRS, interest would then begin to apply to the amount of the erroneous refund.

This provision is effective for interest accruing with respect to deficiencies or payments for taxable years beginning after 1981.

Senate Amendment

The Senate amendment is the same as the House bill, except that no significant aspect of the delay can be attributable to the taxpayer, and the provision applies only to failures to perform ministerial acts that occur after the IRS has contacted the taxpayer in writing.

Conference Agreement

The conference agreement follows the Senate amendment, except that the rule requiring the abatement of interest on erroneous refund checks of $1 million or less is only made applicable to erroneous refund checks of $50,000 or less. The provision is effective for taxable years beginning after December 31, 1978.

4. Suspension of Compounding Where Interest on Deficiency is Suspended

Present Law

Under present law, in the case of a deficiency in income, estate, gift, and certain excise taxes, a waiver of restrictions on assessment of the deficiency is filed when the IRS and the taxpayer agree on the proper amount of tax due at the conclusion of an audit. If, however, the Secretary fails to make notice and demand for payment within 30 days after the filing of the waiver, interest is not imposed on the deficiency from the 31st day after the waiver was filed until the date the notice and demand is issued. The provision does not, however, suspend the compounding of interest for the same period on the interest which previously accrued on the underlying deficiency.

House Bill

Both the interest on the deficiency as well as the compounded interest on the previously accrued interest are suspended, starting 31 days after a taxpayer has filed a waiver of restrictions on assessment of the underlying taxes and ending when a notice and demand is issued to the taxpayer. The provision is effective for interest accruing in taxable periods after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, effective for interest accruing in taxable periods after December 31, 1982.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective for interest accruing in taxable periods after December 31, 1982.

Taxpayers may obtain refunds of interest subject to this provision that they paid by filing a claim for refund of their interest with the IRS. The IRS presently does not possess the data processing capability to suspend the compounding of interest on previously accrued interest. Taxpayers who consider themselves entitled to the relief provided by this provision may apply to the IRS, and, in appropriate cases, the IRS will perform the required computations.

5. Exemption From Levy For Service-Connected Disability Payments

Present Law

Under present law, various payments, such as unemployment benefits, workmen's compensation, a minimum amount of ordinary wages, as well as certain pensions and annuities, are exempt from levy. This means that the IRS cannot seize these payments to collect delinquent taxes by serving a levy on the payment source. The IRS can collect the delinquent taxes from other nonexempt sources available to the delinquent taxpayer.

House Bill

The IRS is prohibited from levying on any amount payable to an individual as a service-connected disability benefit under specified provisions of Title 38 of the United States Code.

The term "service-connected" means that the disability was incurred or aggravated in the line of duty in the active military, naval, or air service. The exemption covers direct compensation payments, as well as other types of support payments for education and housing.

This provision is effective for payments made after December 31, 1985.

Senate Amendment

The Senate amendment is the same as the House bill, effective for payments made after December 31, 1986.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective for payments made after December 31, 1986.

6. Modification of Administrative Rules Applicable to Forfeiture

Present Law

Under present law, the IRS can seize property that is used in violating the provisions of the Internal Revenue laws. If the amount of personal property seized is valued at $2500 or less, the IRS may use administrative procedures to forfeit the property and sell it without judicial action, after both appraisal and notice to potential claimants. A claimant may post a bond of $250 and require the Government to proceed by judicial action to sell the property. These procedures are separate and distinct from those the IRS uses for routine collection of past-due taxes.

House Bill

The House bill allows the Treasury administratively to sell up to $100,000 of personal property used in violation of the Internal Revenue laws. Such sale would require both an appraisal to determine value and a notice by newspaper publication to potential claimants. Potential claimants can require a judicial forfeiture action by posting a $2500 bond. This provision is effective on January 1, 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, effective on the date of enactment.

7. Certain Recordkeeping Requirements

Present Law

In general, law enforcement officers are not subject to the substantiation rules of section 274(d) and the income and wage inclusion rules of section 132 for specified use of a law enforcement vehicle. The conference report on the repeal of the contemporaneous recordkeeping requirements for automobiles [10] provided that IRS special agents are not to be included within the term "law enforcement officers."

House Bill

The House bill provides that, for purposes of sections 132 and 274, use of an automobile by a special agent of the IRS is treated in the same manner as use of an automobile by an officer of any other law enforcement agency, effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, effective beginning after December 31, 1984.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, effective beginning after December 31, 1984.

8. Disclosure of Return Information to Certain Cities

Present Law

Section 6103 provides for the confidentiality of returns and return information of taxpayers. The conditions under which returns and return information can be disclosed are specifically enumerated in that section. Disclosure of returns and return information to local income tax administrators is not permitted. Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than 5 years, or both, under section 7213. An action for civil damages may also be brought for unauthorized disclosure under section 7431.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that any city with a population in excess of 2,000,000 that imposes an income or wage tax may, if the Secretary in his sole discretion [11] so provides, receive returns and return information for the same purposes for which States may obtain information under present law, subject to the same safeguards as apply to States under present law. Cities that receive information must reimburse the Internal Revenue Service for its costs in the same manner as a State must under present law. Population is determined on the basis of the most recent decennial United States census data available.

Any disclosure would be required to be in the same manner and with the same safeguards as disclosure is made to a State. The present-law requirements of maintaining a system of standardized requests for information and the reasons for the request and of maintaining strict security against release of the information are also made applicable to the local agencies. Disclosure will be permitted only for the purpose of, and only to the extent necessary in, the administration of a local jurisdiction tax. Disclosure of returns or return information to any elected official or the chief official (even if not elected) of the local jurisdiction will not be permitted. Any unauthorized disclosure of returns and return information by an employee of an agency receiving this information will subject the employee to the fine

[10] H. Rept. 99-67 (May 7, 1985).

[11] The Secretary may, in accordance with this discretion, implement this provision on a trial basis.

and imprisonment provided by section 7213 and to the civil action provided by section 7431.

This provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

9. Regulatory Flexibility Act Applied to IRS

Present Law

The Regulatory Flexibility Act requires that an analysis of the impact of rules and regulations (other than interpretative regulations) on small business be performed. Treasury's position is that most IRS rules and regulations are interpretative.

House Bill

No provision.

Senate Amendment

The Senate amendment applies the Regulatory Flexibility Act to all rules and regulations prescribed by the Treasury, effective on the date of enactment.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

10. Priority of Local Law in Certain Forfeitures

Present Law

If a person owing tax fails to pay that tax, a lien is created on all the taxpayer's property at the time of assessment. This lien takes priority over any other attachment to the taxpayer's property that has not been perfected at the time of assessment. Thus, under State law in a number of States, a State law enforcement agency may perform an extensive investigation of an individual, leading to the seizure and forfeiture of that individual's property. If the State has cooperated with the IRS and the IRS files a lien, the IRS lien may take priority over the State's claim to the property.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that a forfeiture under local law of property seized by a law enforcement agency of either a State or a political subdivision of a State relates back to the time of seizure. The provision does not apply to the extent that local law provides that someone other than the governmental unit has priority over the governmental unit in the property. For purposes of this provision, a State or local tax agency is not considered to be a law enforcement agency. This provision is effective on the date of enactment.

11. Release of Certain Seized Property to the Owner

Present Law

The Federal Government has the power, after proper notice and demand, to seize and sell the property of a delinquent taxpayer. As soon as practicable after seizure, the Government is required to give written notice of the seizure to the owner of the property. This notice must describe the property seized and specify the sum of money owed and demanded for release of the property. The Government also must give notice of the sale of the seized property to its owner as soon as practicable after seizure. This notice must specify the property to be sold as well as the time, place, manner, and conditions of the sale.

Before the sale, the Government is required to set a minimum price for the property, taking into account the expenses to the Government of the levy and sale. At the sale, the property is sold to the highest bidder who meets or exceeds the minimum price. If no bid meets or exceeds the minimum price, the property is deemed to be sold to the Government for the minimum price. Thus, the Government has no discretion under present law in purchasing the property itself when no bid meets or exceeds the minimum price.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement requires that, before the sale of the property, the IRS determines (based upon criteria prescribed by the Treasury) whether the purchase of the property at the minimum price is in the best interests of the Federal Government. Property would continue to be sold to the highest bidder who meets or exceeds the minimum price.

If no bid meets or exceeds the minimum price, the Government would purchase the property at the minimum price only if the purchase were in its best interests. If the purchase were determined not to be in the best interests of the Government, the property would be released back to the owner. The property would still be subject to a Government lien. Also, any expense of the levy and sale would be added to the amount of delinquent taxes due.

The provision is effective for sales of seized property conducted after the date of enactment.

12. Allocation of Employee Tips

Present Law

Employers are required, under certain circumstances, to provide an information report of an allocation of tips in large food or beverage establishments (defined generally to include those establishments that normally employ more than 10 employees). Under this provision, if tipped employees of large food or beverage establishments report tips aggregating 8 percent or more of the gross receipts of the establishment, then no reporting of a tip allocation is required. However, if this 8-percent reporting threshold is not met, the employer must allocate (as tips for information reporting purposes) an amount equal to the difference between 8 percent of gross receipts and the aggregate amount reported by employees. This allocation may be made pursuant to an agreement between the employer and employees or, in the absence of such an agreement, according to Treasury regulations.

These Treasury regulations provide that this allocation may be made by the employer in either of two ways. One is to allocate based on the portion of the gross receipts of the establishment attributable to the employee during a payroll period. The second is to allocate based on the portion of the total number of hours worked in the establishment attributable to the employee during a payroll period.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that the method of allocation based on the number of hours worked may be utilized only by an establishment that employs less than the equivalent of 25 full-time employees during a payroll period. Establishments employing the equivalent of 25 or more full-time employees would consequently have to use the portion of gross receipts method to allocate tips during the payroll period (absent an agreement between the employer and employees).

This provision is effective for any payroll period beginning after December 31, 1986.

13. Treatment of Forfeitures of Land Sales Contracts

Present Law

Generally, before Federal tax liens can be extinguished, notice must be given to the Government. Several cases have held (*Runkel* v. *United States*, 527 F.2d 914 (9th Cir. 1977); *Brookbank* v. *Hubbard*, 712 F.2d 399 (9th Cir. 1983)) that forfeitures of land sales contracts are not subject to these notice requirements. Notice provides the Government with the opportunity to redeem the property.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that forfeitures of land sales contracts are subject to these notification requirements, effective for forfeitures after the thirtieth day after the date of enactment. Thus, these two cases are explicitly overturned as to this issue. The effect of this provision is to provide the Government with both notice and the opportunity to redeem the property, which it currently has with respect to most other transfers of real estate.

I. Modification of Withholding Schedules

Present Law

The Code requires that the Secretary prescribe tables and computational procedures for determining the appropriate amount of taxes to be deducted and withheld from wages (sec. 3402(a)). Form W-4 is the form on which that calculation is done. It is completed by the employee, who furnishes it to the employer. The employer uses this form to determine the proper level of wage withholding. The employer does this by using tables issued by the Secretary that specify the proper amount of withholding, considering the employee's wage level and number of withholding allowances claimed.

The employee completes the Form W-4 by determining the proper number of withholding allowances (or exemptions) to which he is entitled. Withholding allowances may be claimed for the employee and any dependents (sec. 3402(f)) and for itemized deductions and estimated tax credits (sec. 3402(m)). Other items prescribed in regulations may also be claimed. For example, the regulations permit IRA contributions and the tax savings attributable to income averaging to be considered (see Treas. Reg. sec. 31.3402(m)-1). An employee's Form W-4 generally remains in effect until the employee revokes it and files a new one.[12]

[12] The employer is required to furnish copies of certain Forms W-4 to the IRS, such as those that claim more than 14 allowances or that claim total exemption from withholding (where wages are above $200 per week). Treas. Reg. sec. 31.3402(f)(2)-1(g). The IRS examines these forms, and if it determines that a claim of withholding allowances

The IRS has authority to issue regulations permitting employees to request, once the amount of their withholding has been determined on the basis of Form W-4 and the withholding tables, that that amount of withholding be increased or decreased. The IRS has long permitted taxpayers to request increases in withholding; the IRS has never permitted taxpayers to request decreases in withholding.

House Bill

The House bill requires that the IRS and Treasury modify the withholding schedules under section 3402 to approximate more closely tax liability under the amendments made by the bill. This modification will affect at least two major items. First, Form W-4 will be modified. Second, the withholding tables used by employers to determine the proper amount of wage withholding will also be modified.

With respect to modifying Form W-4, the IRS is to make every effort to notify taxpayers that Form W-4 has been modified and that many taxpayers will need to file the modified form with their employers. The modified form and tables are to be designed so that withholding from a taxpayer's wages approximates as closely as possible the taxpayer's ultimate tax liability.

The House bill also repeals the provision of present law giving the IRS authority to issue regulations permitting employees to request decreases in withholding. The provision relating to increases in withholding is unaffected.

The provision relating to modifications to the withholding forms and tables is effective for taxable years 1986 and following. The provision relating to decreases in withholding is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill. In addition, the Senate amendment requires that employees file a revised Form W-4 before January 1, 1988. They must do so on a Form W-4 that has been revised by the IRS to reflect the changes in the Code made by this bill.[13] If an employee does not file a revised Form W-4 before that date, the employer must withhold income taxes as if the employee claimed one allowance (if the employee checked the "Single" box on the most recent Form W-4 that the employee filed) or two allowances (if the employee checked the "Married" box).

The mandatory withholding change that takes effect if an employee does not file a new Form W-4 is effective for wages paid after December 31, 1987. The provision relating to decreases in withholding is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except that employees must file a new Form W-4 before October 1, 1987, in order to avoid the mandatory withholding change that takes effect if an employee does not file a new Form W-4, which is also effective October 1, 1987. This date will follow more closely the extensive IRS publicity campaign on withholding changes.

cannot be justified, it notifies the employer to change the employee's withholding.

[13] It is also permissible for employees to fulfill the requirements of this provision by filing on a substitute Form W-4 provided by the employer, so long as that form has been revised to parallel the official form and the substitute form complies with all IRS requirements pertaining to substitute Forms W-4.

J. Report on the Return-Free Tax System

Present Law

Taxpayers are generally required to file a paper document as their individual income tax return for the taxable year. These forms are currently the Form 1040 ("the long form"), the Form 1040A ("the short form"), and the recently created Form 1040EZ. In addition, the IRS is experimenting with magnetic tape return filing that allows approved return preparers to volunteer to file individual tax returns that they prepare with the IRS in a magnetic tape format. The return preparer retains the paper version of the tax return.

House Bill

The House bill requires a report from the IRS setting forth:

(1) the identification of classes of individuals who would be permitted to use a return-free system;

(2) how such a system would be phased in;

(3) what additional resources the IRS would need to carry out such a system; and

(4) the types of changes to the Internal Revenue Code which would inhibit or enhance the use of such a system.

The report is to be submitted within six months of the date of enactment to the Senate Committee on Finance and the House Committee on Ways and Means.

In addition, the IRS is to consider conducting an in-house feasibility test using previously filed information returns and individual income tax returns to test the practicality of the proposed system. The report is due six months after enactment of the bill.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

A number of provisions of the conference agreement provide that the Secretary of the Treasury or his delegate is to prescribe regulations. Notwithstanding any of these references, the conferees intend that the Secretary may, prior to prescribing these regulations, issue guidance for taxpayers with respect to the provisions of the conference agreement by issuing Revenue Procedures, Revenue Rulings, forms and instructions to forms, announcements, or other publications or releases. The conferees intend that the IRS provide taxpayers with this guidance as quickly as is possible.

TITLE XVI. EXEMPT AND NONPROFIT ORGANIZATIONS

A. Exchanges and Rentals of Donor or Member Lists of Certain Tax-Exempt Organizations

Present Law

Charitable and other tax-exempt organizations are subject to a tax on income from an unrelated trade or business (the UBIT), i.e., a business the conduct of which is not substantially related to the exempt functions of the organization (Code secs. 511-514).

The U.S. Court of Claims has held that income received by the Disabled American Veterans from other exempt organizations and from commercial businesses for the use of its mailing lists constitutes unrelated business taxable income, and does not constitute royalties exempted from the UBIT under section 512(b)(2). The court found that the DAV operated in a competitive, commercial manner with respect to taxable firms in the direct mail industry; that the organization regularly carried on the mailing list activities; and that these activities were not substantially related to accomplishment of exempt purposes.

House Bill

The House bill provides an exception from the UBIT, available only to tax-exempt organizations eligible to receive tax-deductible charitable contributions, for income from the exchanging or renting of membership or donor mailing lists with or to other such tax-exempt organizations. This provision is effective for exchanges and rentals of lists occurring after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

B. Distribution of Low Cost Articles by Charities

Present Law

Charitable and other tax-exempt organizations are subject to a tax on income from an unrelated trade or business (the UBIT), i.e., a business the conduct of which is not substantially related to the exempt functions of the organization (secs. 511-514).

Under Treasury regulations, the UBIT does not apply where an organization "sends out low cost items incidental to the solicitation of charitable contributions" (Reg. sec. 1.513-1(b)). The regulations do not provide a definition of low cost articles.

House Bill

The House bill provides a statutory exception from the UBIT, available only to tax-exempt organizations eligible to receive tax-deductible charitable contributions, for income from activities relating to certain unsolicited distributions of low cost articles incidental to soliciting charitable contributions. A low cost article is defined as any article with a cost not in excess of $5 (adjusted for inflation beginning in 1988). This provision is effective for distributions of low cost articles occurring after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

C. Expansion of UBIT Exception for Certain Trade Show Income

Present Law

Charitable and other tax-exempt organizations are subject to a tax on income from an unrelated trade or business (the UBIT), i.e., a business the conduct of which is not substantially related to the exempt functions of the organization (secs. 511-514).

An exception from the UBIT is provided for income derived by trade associations (sec. 501(c)(6)), or by labor, agricultural, or horticultural organizations (sec. 501(c)(5)), from qualified trade show and convention activities at which members of the sponsoring organization sell products or services (sec. 513(d)).

House Bill

No provision.

Senate Amendment

The Senate amendment expands the section 513(d) exception from the UBIT to cover (1) qualified trade shows or conventions at which suppliers to the sponsoring organization's members sell products or

services related to the exempt activities of the organization, and (2) qualified trade show and convention activities of charitable organizations (sec. 501(c)(3)) and social welfare organizations (sec. 501(c)(4)). This provision is effective for qualified trade show or convention activities conducted in taxable years beginning after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

D. Tax Exemption for Certain Title-Holding Companies

Present Law

A corporation organized to hold title to property, and to distribute the income therefrom to one or more related tax-exempt organizations, may itself be tax exempt (sec. 501(c)(2)). The IRS has taken the position that such a title-holding company is not tax exempt if two or more of its parent organizations are unrelated.

Any income of an exempt organization from debt-financed property generally is subject to the unrelated business income tax (sec. 514). However, under an exception in present law, certain educational institutions and pension plans generally are not subject to the UBIT on income from certain debt-financed real property (sec. 514(c)(9)), subject to specified limitations (including such limitations as are applicable to pass-through entities pursuant to sec. 514(c)(9)(D)).

House Bill

No provision.

Senate Amendment

The Senate amendment adds a new category of organizations that are tax-exempt under section 501(c) (new Code sec. 501(c)(25)). An organization is described in section 501(c)(25) if it is a corporation or trust that (1) is operated for the exclusive purpose of holding title to real property and distributing the income therefrom to eligible shareholders or beneficiaries, (2) has no more than 35 shareholders or beneficiaries, (3) has only one class of stock or beneficial interest, and (4) meets certain other requirements. Eligible shareholders or beneficiaries are qualified pension plans (sec. 401(a)); governmental pension plans (sec. 414(d)); Federal or State political subdivisions, agencies, or instrumentalities; and tax-exempt charitable organizations described in sections 501(c)(3) and 501(c)(25).

The Senate amendment also extends the present-law exception from the unrelated business income tax (UBIT) under the debt-financed property rules for certain real property (sec. 514(c)(9)) to organizations described in the new section 501(c) category. As under present law, the UBIT exception is subject to the limitations contained in section 514(c)(9)(B), including such limitations as are applicable to pass-through entities (sec. 514(c)(9)(D)).

The Senate amendment does not modify present law with respect to title-holding corporations (described in sec. 501(c)(2)) holding title to property for one or more related tax-exempt organizations.

These provisions are effective for taxable years beginning after December 31, 1986.

Conference Agreement

The conference agreement follows the Senate amendment.

E. Divestiture Exemption for Certain Excess Business Holdings of Private Foundations

Present Law

If on May 26, 1969, a private foundation (together with disqualified persons) had business holdings exceeding permitted limitations (generally, 20 percent), the amount of foundation/disqualified person holdings must be reduced in two phases (sec. 4943). In general, a disqualified person is a substantial contributor to the foundation, a family member of a substantial contributor, or a substantial owner of an entity that is a substantial contributor.

If the 1969 holdings exceeded 95 percent, the foundation has a 20-year period (i.e., until May 26, 1989) to reduce the combined holdings to 50 percent. Within 15 years after the first-phase deadline, the holdings must be reduced, in certain cases, to 35 percent; in addition, the foundation itself may not hold more than 25 percent of the voting stock, dependent on whether disqualified persons own more than two percent.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the 20-year exception for certain excess business holdings acquired prior to May 27, 1969, is made permanent if—

(1) the management of the foundation and the management of the business enterprise are sufficiently unrelated;

(2) no disqualified person who was not a foundation manager on May 6, 1986, becomes a foundation manager after that date;

(3) no disqualified person receives compensation (other than reasonable directors' fees) from both the foundation and the business enterprise;

(4) the foundation continues to meet the charitable payout rules of present law; and

(5) the foundation and any disqualified persons comply with the section 4943 rules applicable to any holdings in the enterprise acquired after May 26, 1969.

Conference Agreement

The conference agreement does not include the Senate amendment.

F. Reduction of Private Foundation Payout Requirement by Certain Costs of Hazardous Waste Removal

Present Law

To avoid penalty excise taxes, a private nonoperating foundation annually must make expenditures or grants for charitable purposes in an amount (the "distributable amount") equal to five percent of the fair market value of its investment assets (sec. 4942).

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the otherwise applicable distributable amount for the James Graham Brown Foundation is reduced by certain costs paid or incurred by the Foundation for removal or remedial action with respect to a hazardous substance released at a facility owned or operated by the Foundation. This provision is effective for taxable years beginning after December 31, 1982.

Conference Agreement

The conference agreement does not include the Senate amendment.

G. Exception to Membership Organization Deduction Rules

Present Law

A membership organization generally may deduct expenses relating to the furnishing of goods or services to members only from income derived from members or from transactions with members (sec. 277). This rule does not apply to certain financial institutions, insurance companies, securities or commodities exchanges, or certain other organizations.

House Bill

No provision.

Senate Amendment

The Senate amendment provides an additional exception to the section 277 deduction limitation rule for membership organizations that are engaged primarily in the gathering and distribution of news to their members for publication.

Conference Agreement

The conference agreement follows the Senate amendment, effective for taxable years beginning after the date of enactment.

H. Tax-Exempt Status for Technology Transfer Organization

Present Law

In November, 1985, the U.S. Tax Court denied tax-exempt status under section 501(c)(3) to the Washington Research Foundation, a nonprofit organization formed to assist the transfer of technology from universities and tax-exempt research institutions to the private sector. The Tax Court held that the organization was not exclusively operated for charitable purposes because its major activity of providing patenting and licensing services was commercial in nature.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that an organization that transfers technology from universities and scientific research organizations to the private sector is treated as a tax-exempt charitable organization if it meets certain requirements, including that it was incorporated on July 20, 1981. The intended beneficiary of this provision is the Washington Research Foundation. The provision is effective on enactment.

Conference Agreement

The conference agreement follows the Senate amendment. No inference is intended as to whether such technology transfer or related purposes or functions of any other organization constitute purposes or functions described in Code sections 501(c)(3) or 170(c).

TITLE XVII. MISCELLANEOUS PROVISIONS

A. Targeted Jobs Tax Credit

Present Law

Employers may claim a tax credit for wages paid to individuals from nine targeted groups (Code sec. 51). These groups include individuals who are recipients of payments under means-tested transfer programs, who are economically disadvantaged (as measured by family income), or who are disabled.

The credit generally equals 50 percent of the first $6,000 of qualified first-year wages and 25 percent of the first $6,000 of qualified second-year wages. A credit equal to 85 percent of up to $3,000 of wages of a qualified summer youth employee also is allowed.

The employer's deduction for wages must be reduced by the amount of the credit.

Under present law, the credit does not apply with respect to targeted-group individuals who begin work for the employer after December 31, 1985.

House Bill

The House bill extends the targeted jobs credit for two years (i.e., for individuals who begin work for an employer on or before December 31, 1987), with the following modifications.

The credit for first-year wages is reduced from 50 percent to 40 percent of the first $6,000 of qualified first-year wages (in the case of qualified summer youth employees, the present-law credit of 85 percent of up to $3,000 of wages is retained), and the credit for second-year wages is repealed. Under the House bill, no credit is allowed for an individual who works for the employer for fewer than 14 days. These modifications apply with respect to individuals beginning work for the employer after 1985 and before 1988. In addition, the authorization for appropriations for administrative and publicity expenses related to the credit is extended through fiscal year 1987.

Senate Amendment

The Senate amendment is the same as the House bill, except that (1) the credit is extended for three years (together with authorization for related administrative and publicity expenses); (2) a 50-percent credit is retained for first-year wages (the present-law credit for hiring qualified summer youth employees also is retained); and (3) no wages paid to a targeted-group member are to be taken into account for credit purposes unless the individual both (a) is employed by the employer for at least 90 days (14 days in the case of qualified summer youth employees), and (b) has completed at least 120 hours of work performed for the employer (20 hours in the case of qualified summer youth employees).

These provisions apply with respect to individuals beginning work for the employer after 1985 and before 1989. A special certification rule applies for targeted group individuals hired after December 31, 1985 and before the 26th day following enactment of the bill.

Conference Agreement

The conference agreement is the same as the Senate amendment except (1) the credit for first-year wages is reduced from 50 percent to 40 percent of the first $6,000 of qualified first-year wages (in the case of qualified summer youth employees, the present-law credit equal to 85 percent of up to $3,000 of wages is retained); (2) the conference agreement does not include the special certification rule in the Senate amendment; and (3) the minimum employment period rule is liberalized so that the credit is available if the targeted group member either is employed by the employer for at least 90 days (14 days in the case of qualified summer youth employees), or has completed at least 120 hours of work performed for the employer (20 hours in the case of qualified summer youth employees).

B. Olympic Trust Fund and Excise Tax

Present Law

No provision.

House Bill

Excise tax.—Under the House bill, a 10-percent excise tax is imposed on amounts paid for U.S. television and radio broadcast rights for Olympic games. This provision applies to amounts paid after November 22, 1985, other than pursuant to binding contracts in effect on that date.

Olympic Trust Fund.—An Olympic Trust Fund is established in the Treasury to receive amounts from the new excise tax. Trust fund monies, less related Treasury administrative expenses, are available to be paid to the U.S. Olympic Committee for Olympic-related expenses.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision. The conferees did not include the House provision because the International Olympic Committee and the U.S. Olympic Committee have voluntarily implemented an arrangement comparable monetarily to that contemplated by the House provision. In the event that the arrangement is terminated, the conferees intend that the Congress consider implementing such an arrangement on a statutory basis.

C. Collection of Diesel Fuel and Gasoline Excise Taxes

Present Law

Diesel fuel tax.—An excise tax of 15 cents per gallon is imposed on the sale of diesel fuel for use in a diesel-powered highway vehicle. This tax is collected at the retail level (sec. 4041).

Gasoline tax.—An excise tax on gasoline of nine cents per gallon is imposed and collected at the manufacturer's level (sec. 4081). Collection of this tax may be deferred to the last sale before retail, however, if all parties are registered with the IRS.

House Bill

The House bill permits an election to collect the diesel fuel excise tax on the sale by the wholesaler to the retailer of the fuel (or on the sale by the manufacturer where that sale is direct to the retailer) in the case of a qualified retailer. This provision is effective for sales of diesel fuel (for use in highway vehicles) after the first calendar quarter beginning more than 60 days after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

Diesel fuel tax.—The conference agreement follows the House bill and the Senate amendment, with technical modifications.

Gasoline tax.—Under the conference agreement, the gasoline tax is imposed on removal of gasoline, gasoline blend stocks and products commonly used as additives in gasoline, from the refinery (or manufacturing plant) or customs custody (sale, if earlier) effective January 1, 1988. An exception is provided permitting bulk transfers of gasoline or gasoline blend stocks or additives to registered terminals without payment of tax. In such cases, terminal operators are liable for collection of the tax upon removal of the gasoline or gasoline blend stocks or additives from the terminal.

Registered gasohol blenders are permitted to purchase gasoline at 3 cents per gallon if blending occurs at the terminal. In all other cases, gasohol blenders (like all other purchasers) must purchase gasoline and gasoline blend stocks tax-paid. Gasoline separated from gasohol is taxable at a rate of 5⅔ cents per gallon. Blenders (other than registered gasohol blenders that blend at the terminal) are taxable on the use or sale of blended gasoline. However, they may claim a credit for any tax paid on purchases of gasoline, blendstocks, or additives to the extent that such blended gasoline is not used as a fuel. The purchaser may obtain a refund upon establishing that the ultimate use was not as a taxable fuel. A special, accelerated refund procedure is provided, however, for gasohol blenders who buy tax-paid. Under the accelerated refund procedure if the Secretary has not paid a claim within 20 days of the date of filing, the claim is to be paid with interest from such date.

The Secretary will provide regulations defining the terms gasoline blend stocks and products commonly used as additives in gasoline. He may also require that all persons who must register post bond. In addition, the Secretary may register industrial users of gasoline blend stocks or additives as terminal operators permitting them to purchase such products in bulk form tax free. The Treasury Department is directed to study the incidence of evasion of the gasoline tax and to report to the Congress by December 31, 1986.

D. Social Security and FUTA Provisions

1. Allow ministers to reelect social security coverage

Present Law

The Federal Insurance Contributions Act (FICA) imposes separate payroll taxes on employers and employees equal to a percentage of wages paid as remuneration for employment. For self-employed individuals, a similar tax is imposed on self-employment income under the Self-Employment Contributions Act (SECA). These taxes are used to fund social security programs.

As a general rule, ministers of a church, members of religious orders, and Christian Science practitioners ("ministers") are treated as self-employed individuals for purposes of SECA taxes, even if otherwise they would be classified as employees (secs. 1402(c), 3121(b)(8)). However, a minister who is conscientiously, or because of religious principles, opposed to participation in a public insurance system generally may elect to be exempt from social security coverage and SECA taxes by filing with the IRS an irrevocable application for such exemption within two years of beginning the ministry (sec. 1402(e)).

House Bill

No provision.

Senate Amendment

The Senate amendment provides a limited period (generally, up to April 15, 1988) during which a minister who previously had elected out of social security coverage may make an irrevocable election back into social security coverage. An electing minister becomes subject to SECA tax, and his or her post-election earnings are credited for social security benefit purposes.

The Senate amendment also provides that a minister of a church or member of a religious order who files an application (after 1986) for exemption from social security coverage and SECA taxes on religious or conscientious grounds must include with the application a statement that he or she has informed the ordaining, commissioning, or licensing body of the church or order that he or she is opposed to the acceptance of public insurance benefits based on ministerial service. The Senate amendment also provides that an exemption application from a minister may be approved by the Treasury Department only if, subsequent to receiving the application, it separately verifies (in-person or by telephone communication)

that the applicant is aware of the grounds for exemption and seeks exemption on such grounds. The Treasury Department may enter into an agreement with the Secretary of Health and Human Services (HHS) pursuant to which such verification may be made by HHS.

Conference Agreement

The conference agreement generally follows the Senate amendment. Under the conference agreement, Treasury regulations are to provide that exemption applications filed with the IRS (after 1986) are to include information showing that the applicant has informed the church body or order of his or her religious or conscientious opposition to social security coverage, in conformity with the revised exemption procedure. The regulations may provide procedures under which, pursuant to agreement between the Secretary of the Treasury and the Secretary of Health and Human Services, HHS has the responsibility of communicating with the applicant in order to make the separate verification required as a prerequisite for approving the exemption application. The conference agreement does not require that the subsequent verification be in-person or by telephone communication, but the verification procedure must be effective to establish that the applicant is aware of the grounds for exemption from the social security system and has sought an irrevocable exemption on such grounds. Under these procedures, the disclosure of information to HHS by the IRS concerning a ministerial exemption application for such verification purposes is authorized by Code section 6103(l)(1).

2. Common paymaster rule for FICA and FUTA taxes

Present Law

The Federal Insurance Contributions Act (FICA) imposes payroll taxes on employers and employees. For 1986, the employer's FICA tax is 7.15 percent of wages paid to the employee up to $42,000. Similarly, the Federal Unemployment Tax Act (FUTA) imposes a tax on an employer with respect to all its employees. The FUTA tax is 0.8 percent on the first $7,000 of wages.

In general, when the same individual is employed by two or more employers, each employer is subject to the FICA and FUTA tax on the base wages of the individual. An exception applies where two or more related corporations concurrently employ the same individual and compensate him or her through a common paymaster, i.e., one of the related corporations. Under this exception, payroll taxes are determined as though the individual has only one employer, the common paymaster. As a result, the taxes are applied against only a single base amount of wages.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the common-paymaster exception for purposes of collection of FICA and FUTA taxes to the case where the same employee works for related corporations and/or partnerships. The same test used for determining related corporations is employed to determine whether a partnership is related. This provision is effective for wages paid or incurred after December 31, 1986.

Conference Agreement

The conference agreement does not include the Senate amendment.

3. Agricultural wages subject to FUTA

Present Law

The Federal unemployment tax (FUTA) applies to wages of workers in agricultural operations with a payroll of at least $20,000 in any calendar quarter, or with 10 or more employees in 20 weeks of the year (sec. 3306(c)(1)).

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the quarterly payroll threshold at which agricultural wages are subject to FUTA tax is increased from $20,000 to $40,000, effective for wages paid after September 30, 1986.

Conference Agreement

The conference agreement does not include the Senate amendment.

4. FUTA for certain Indian tribal governments

Present Law

Generally, Indian tribal governments are treated as any other employer and are subject to Federal unemployment tax (FUTA). No exception is provided if unemployment compensation coverage is denied by the State in which the employer conducts business. Certain Indian tribal governments have been denied unemployment compensation coverage by the State of Colorado and are not required to pay State unemployment compensation taxes.

House Bill

No provision.

Senate Amendment

The Senate amendment provides an exemption from FUTA tax for Indian tribal governments the service for which was not covered by a State unemployment compensation program on June 11, 1986. This provision is effective for services performed before January 1, 1988, including services performed prior to the date of enactment (but does not authorize a refund of any previously paid FUTA tax). It is anticipated that the State of Colorado and the affected Indian tribal governments will work out an unemployment compensation coverage agreement prior to January 1, 1988 similar to such agreements currently in effect in other States.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Treatment of certain technical personnel

Present Law

Section 530 of the Revenue Act of 1978, as amended, provides generally that taxpayers who in the past had a reasonable basis (such as past industry practice) for not treating workers as employees may continue such treatment, under certain circumstances, without incurring employment tax liabilities.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that section 530 of the Revenue Act of 1978 does not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work. This provision is effective for services performed after the date of enactment. By virtue of the exception to section 530 of the 1978 Act provided under the Senate amendment, the prohibition against issuance of regulations or rulings concerning employment tax status in section 530 of the 1978 Act does not prohibit issuance of regulations or rulings with respect to the employment tax status of individuals with respect to whom the Senate amendment applies.

Under the Senate amendment, it is intended that certain individuals retained by firms providing technical services are classified, for income and employment tax purposes, as employees or as independent contractors under the generally applicable common law (nonstatutory) standards without regard to section 530 of the Revenue Act of 1978. Technical services firms have retained engineers, designers, drafters, computer programmers, systems analysts, and other similarly skilled personnel who are engaged in lines of work similar to those listed for assignments for clients of the technical services firms. Some of these individuals have taken the position that they should be treated as independent contractors, which would relieve the technical services firms of the obligation to withhold income and employment taxes from their earnings.

The Senate amendment applies whether the services of such individuals are provided by the firm to only one client during the year or to more than one client, and whether or not such individuals have been designated or treated by the technical services firm as independent contractors, sole proprietors, partners, or employees of a personal service corporation controlled by such individual. The effect of the provision cannot be avoided by claims that such technical service personnel are employees of personal service corporations controlled by such personnel. For example, an engineer retained by a technical services firm to provide services to a manufacturer cannot avoid the effect of this provision by organizing a corporation that he or she controls and then claiming to provide services as an employee of that corporation.

This provision does not affect the application of Code section 414(n), relating to employee leasing, to technical services personnel in circumstances where that provision applies under present law. Also, the provision does not apply with respect to individuals who are classified, under the generally applicable common law standards, as employees of a business that is a client of the technical services firm.

Conference Agreement

The conference agreement follows the Senate amendment with a technical modification clarifying the language of the Senate amendment to conform to the language of section 530 of the Revenue Act of 1978 and with an amendment to the effective date. The conferees further clarify that the provision does not affect the application of the Treasury's authority under Code section 414(o) to prevent avoidance of certain employee benefit requirements. The conferees believe that the provision will provide more consistent tax treatment of individuals performing services in the technical service industry.

The conference agreement is effective for remuneration paid and services performed after December 31, 1986.

6. Payroll tax deposits

Present Law

The manner and time for depositing an employer's FICA taxes and the income and

FICA taxes withheld from employees are specified in Treasury regulations (sec. 6302). If the aggregate amount of undeposited taxes totals $3,000 or more at the end of any one-eighth-monthly period, the employer must deposit the taxes within three banking days of the close of the one-eighth-monthly period (Reg. sec. 31.6302(c)-1).

House Bill

No provision.

Senate Amendment

The Senate amendment increases from $3,000 to $5,000 the amount of undeposited payroll taxes an employer may aggregate before the one-eighth-monthly deposit rule applies, effective for months beginning after December 31, 1986.

Conference Agreement

The conference agreement does not include the Senate amendment.

E. Budget-Related Provisions

1. Revenues for budget purposes

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that any "revenue windfall" (i.e., any increase in revenues over present law) in fiscal years 1986 or 1987 that is attributable to provisions of the bill is not to be taken into account for determining total budget revenues for fiscal years 1986-1989. For fiscal years 1988 or 1989, any revenue shortfall attributable to the bill is not to be taken into account to the extent that it exceeds any fiscal year 1986 or 1987 windfall. This provision applies for determining Budget Act points of order and for purposes of sequestrations under the "Gramm-Rudman-Hollings" budget legislation.

Conference Agreement

The conference agreement does not include the Senate amendment.

2. Budget revenue fluctuations

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment includes a sense of the Senate resolution that the conference committee on the bill should report Federal tax reform legislation that produces a revenue path with minimal revenue fluctuations.

Conference Agreement

The conference agreement does not include the Senate amendment.

F. Tax Code Revisions

1. Reference to Internal Revenue Code

Present Law

The current tax code (title 26 of the U.S. Code) is referred to as the "Internal Revenue Code of 1954, as amended" or the "1954 Code."

The 1954 Code provides that no provision of the statute is to apply if it would be contrary to any treaty obligation of the United States in effect on the date of enactment of the 1954 Code (sec. 7852(d)).

House Bill

The House bill enacts into law the Internal Revenue Code of 1985. That is, the bill reenacts the provisions of the 1954 Code—as in effect on the date of enactment of the bill—together with amendments as made by the bill. The committee report states that this reenactment is not intended to change any substantive provisions of the tax law not otherwise modified by this bill.

The bill also provides that no provision of the Internal Revenue title that was in effect on August 16, 1954 shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of enactment of the 1954 Code. This provision is intended to clarify that treaty provisions that were in effect in 1954 and that conflict with the 1954 Code as originally enacted are to prevail over then-existing statutes, but not over later-enacted statutes, and that treaty benefits that are now properly available under the 1954 Code will remain available under the 1985 Code.

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, the "short title" of the tax statute is the Internal Revenue Code of 1986.

A number of provisions of the conference agreement provide that the Secretary of the Treasury or his delegate is to prescribe regulations. Notwithstanding any of these references, the conferees intend that the Treasury may, prior to prescribing these regulations, issue guidance for taxpayers with respect to the provisions of the conference agreement by issuing Revenue Procedures, Revenue Rulings, forms and instructions to forms, announcements, or other publications or releases. The conferees expect that the Treasury will provide taxpayers with this guidance as soon as feasible.

2. Moratorium on major tax revisions

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment includes a sense of the Congress resolution that the provisions of the Internal Revenue Code that are added or amended in the current legislation should remain unchanged for a period of at least five years from the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

G. Miscellaneous Provisions

1. Foster care payments

Present Law

A foster parent may exclude from gross income certain reimbursements for expenses of caring for a foster child under age 19 who has been placed in a foster family home by a government agency or a State-licensed, tax-exempt child placement agency (sec. 131). The exclusion also applies to certain difficulty of care payments with respect to a handicapped foster child (but not for more than 10 children in the foster home during a year). To obtain the exclusion, the foster parents must account for all expenses incurred for each foster child in their care.

House Bill

The House bill modifies the present-law exclusion to eliminate the requirement of detailed recordkeeping, effective for taxable years beginning on or after January 1, 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill in eliminating the requirement of detailed recordkeeping as a condition for obtaining the exclusion. This provision otherwise does not expand the types of payments eligible for the exclusion.

Also, the conference agreement deletes the present-law limitation that the exclusion applies with respect to foster care only of children under age 19. (However, in the case of any foster home in which there is a foster care recipient who has attained age 19, foster care payments, including difficulty of care payments, are not excludable to the extent made for more than five such foster care recipients.) The conferees intend that this extension of the exclusion to adult foster care is limited to cases of individuals who provide foster care within their own homes to adults who have been placed in their care by an agency of the State or political subdivision thereof specifically designated as responsible for such function. The exclusion does not apply to payments to operators of boarding homes who provide room and board to adults who have not been placed in their care through the actions of a governmental agency responsible for adult foster care.

These provisions are effective for taxable years beginning on or after January 1, 1986.

2. Rules for spouses of Vietnam MIAs

Present Law

Certain tax relief provisions applicable with respect to Vietnam MIAs and their spouses expired after 1982 (secs. 2(a)(3)(B), 692(b), 6013(f)(1), and 7508(b)).

House Bill

The House bill reinstates and makes permanent the expired provisions relating to Vietnam MIAs, effective for taxable years beginning after 1982.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Tax exemption for certain reindeer-related income

Present Law

Under the Reindeer Industry Act of 1937, the United States Government purchased all reindeer herds and improvements held by non-Alaskan natives. Since then, this property has been held in trust by the government for Alaskan natives who manage the reindeer herds. The U.S. Court of Appeals for the Ninth Circuit ruled in 1985 that reindeer-related income derived by Alaskan natives from herds is not exempt from Federal taxation.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that during the period of the trust, income derived directly from the sale of reindeer or reindeer products as provided in the 1937 Act is exempt from Federal income taxation. This provision applies as if originally included in the related provision of the 1937 Act.

Conference Agreement

The conference agreement follows the Senate amendment.

4. Information on special or unique tax treatment

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment includes a sense of the Senate resolution that the conference report on the bill should contain the name of any business concern or group receiving special or unique treatment, and the reason for and cost of such treatment.

Conference Agreement

The conference agreement does not include the Senate amendment.

5. Certain quality control studies for AFDC and Medicaid

Present Law

Under section 12301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Department of Health and Human Services (HHS) and the National Academy of Sciences (NAS) are required to undertake a study of quality control measures in connection with the administration of the Aid to Families with Dependent Children and Medicaid programs. HHS and NAS are required to report the results of their study to the Congress within one year of the date of enactment of COBRA (April 7, 1986). In addition, HHS is required to publish certain regulations relating to such quality control measures within 18 months of the date of enactment of COBRA.

House Bill

No provision.

Senate Amendment

The Senate amendment requires HHS and NAS to report the results of their quality control study within one year after contracting to undertake the study. The date by which HHS is required to publish the specified regulations is six months after the deadline for reporting the results of the quality control study to the Congress.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE XVIII. TECHNICAL CORRECTIONS

House Bill

The House bill contains technical, clerical, and conforming amendments to the Tax Reform Act of 1984 and other recently enacted tax legislation, as well as similar amendments to nontax provisions of the Deficit Reduction Act of 1984. The Committee on Ways and Means previously favorably reported H.R. 2110 (H. Rep. 99-526, Part 1), containing technical corrections to the Retirement Equity Act of 1984. The provisions in H.R. 2110 as so reported are referred to herein as being in the House bill.

Senate Amendment

The Senate amendment contains technical, clerical, and conforming amendments to the Tax Reform Act of 1984, the Retirement Equity Act of 1984 and other recently enacted tax legislation, as well as similar amendments to nontax provisions of the Deficit Reduction Act of 1984 and the Consolidated Omnibus Budget Reconciliation Act of 1985.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with respect to common provisions. Specifically, the conference agreement includes the following provisions:

The Tax Reform Act of 1984

Deferral of certain tax reductions

The conference agreement follows the Senate amendment.

Tax-exempt entity leasing

The conference agreement follows the Senate amendment except that the provision relating to subsidiary organizations applies to property placed in service after September 27, 1985.

Debt instruments

The conference agreement follows the Senate amendment except that the provision relating to amortization of bond premiums applies to bonds issued after September 27, 1985; the provision requiring accrual of interest on certain short term obligations applies to obligations acquired after September 27, 1985; and the agreement contains the provision in the House bill clarifying the effective date for the repeal of the capital asset requirement.

Market discount

The conference agreement contains a provision relating to the treatment of market discount on debt instruments, the principal of which is paid in more than one installment. Under the conference agreement, a holder of such a debt instrument takes accrued market discount into income upon receipt of amounts includible in the debt instrument's stated redemption price at maturity, to the extent of the amounts so received. Rules are provided to prevent double counting of any market discount. In addition, rules are provided to require the recognition of accrued market discount upon the stripping of a debt instrument.

The conference agreement provides that the computation of the accrual of market discount on market discount bonds is to be provided by Treasury regulations. Until such time that the Treasury Department issues such regulations, the conferees intend in the case of debt instruments to which the provision applies, holders may elect to accrue market discount either on the basis of a constant interest rate or as follows: (1) for those debt instruments that have original issue discount ("OID"), market discount shall be deemed to accrue in proportion to the accrual of OID for any accrual period (i.e., the amount of market discount that accrues during a period is equal to the product of (a) the total remaining market discount, and (b) a fraction, the numerator of which is the OID for the period and the denominator of which is the total remaining OID at the beginning of the period), and (2) for those debt instruments that have no OID, the amount of market discount that is deemed to accrue shall be the amount of discount that bears the same ratio to the total amount of remaining market discount that the amount of stated interest paid in the accrual period bears to the total amount of stated interest remaining to be paid on the debt instrument as of the beginning of the accrual period.

In the case of debt instruments that would be subject to the OID rules contained in new Code sec. 1272(a)(6) (without regard to whether the debt instrument has original issue discount), the same prepayment assumption that would be made in computing OID would be made in computing the accrual of market discount (whether or not the taxpayer elects to accrue market discount on the basis of a constant interest rate). In addition, the conferees intend that the same rules that apply to the accrual of market discount on debt instruments whose principal is paid in more than one installment, also is applied in amortizing amortizable bond premium (within the meaning of sec. 171).

Stripped tax-exempt bonds

The conference agreement provides that stripped bonds and coupons resulting from the strip of a tax-exempt obligation are subject to the general rules of section 1286, with certain modifications. In the case of such stripped bonds and and stripped coupons, the original issue discount ("OID") under section 1286(a) will be limited to the amount of OID that produces a yield to maturity (based on the purchase price of the stripped bond or coupon) equal to the lower of the coupon rate on the original tax-exempt obligation or the actual yield of the stripped bond or coupon. The conferees intend that if a taxpayer can establish the actual yield of a bond (with all coupons attached) at the time of original issue, the taxpayer may elect to use such yield for purposes of this computation in lieu of the coupon rate.

For example, assume that a tax-exempt obligation with a face amount of $100, two years remaining to maturity, and a coupon rate of ten percent (payable annually) is stripped and the right to the $100 "principal" payment is sold for $79.72 (i.e., a 12-percent yield, compounded annually). Under the conference agreement, the OID is limited to $16.74, which represents the total OID on the stripped bond, assuming a 10-percent yield and a purchase price of $79.72. The amount of OID taken into account under section 1286(a) is tax exempt and shall determine the adjusted basis of the holder in accordance with section 1288(a).

Further, the conference agreement clarifies the application of section 1286(b)(2) (relating to the treatment of the person stripping a bond) to tax-exempt obligations.

Corporate

The conference agreement follows the Senate amendment except that the provision relating to the definition of qualified stock purchase applies for purchases begun after December 31, 1985; the provision relating to collapsible corporations applies to sales after September 27, 1985; and the agreement contains the provision in the House bill retaining the prior law consolidated return rules for a specified corporation.

The conference agreement also provides that, during the applicable transition period, the affiliation requirements of the consolidated returns provisions will be applied to Alaska Native Corporations (and their wholly owned subsidiaries), and to another specified group of corporations, solely by reference to the express language in those provisions. Thus, eligibility for affiliation in the case of such corporations will be determined solely on the basis of ownership of stock satisfying the 80-percent voting power and 80-percent nonvoting stock tests, without regard (for example) to the value of the stock owned, to escrow arrangements, voting trusts, redemption or conversion rights, stock warrants or options, convertible debt, liens, or similar arrangements, or to the motive for acquisition of the stock or affiliation.

In addition, with certain specified exceptions, no provision of the Internal Revenue Code or principle of law will apply to deny the benefit of losses or credits of Native Corporations (or their wholly owned subsidiaries) to the affiliated group of which the corporation is a member or of the speci-

fied group of corporations, during the applicable transition period. Thus, in general, the benefit of such losses and credits may not be denied in whole or in part by application of section 269, section 482, the assignment of income doctrine, or any other provision of the Internal Revenue Code or principle of law.

In addition, the conference agreement makes certain modifications to the provision relating to the treatment of the transferor corporation in a tax-free reorganization (sec. 361). In any type of reorganization, no gain or loss is recognized by the acquired corporation on a disposition of stock or securities (in a party to the reorganization) received from the acquiring corporation, provided the disposition is pursuant to the plan of reorganization.[1] Gain (but not loss) is recognized on distributions pursuant to the plan of any "boot" including pre-acquisition assets of the acquired corporation. However, under the provision, boot received from the acquiring corporation will generally take a basis equal to its fair market value at the time of transfer.

For purposes of this provision, a transfer to creditors of the acquired corporation will be deemed pursuant to the plan of reorganization if the acquired corporation is liquidated or merged pursuant to the plan of reorganization (or, in the case of a "C" reorganization, the Secretary has waived the liquidation requirement), and the transfer to creditors is pursuant to such liquidation or merger. No inference is intended as to whether transfers of stock or securities to creditors in such circumstances may be regarded as pursuant to a plan of reorganization under present law.

The conference agreement also provides that a specified corporation will be treated as having made a valid section 338 election with respect to a certain stock acquisition.

The conference agreement is not intended, with respect to the golden parachute provision relating to the adoption of the affiliated group rules, to create an inference with respect to the definition of a change in control.

Partnerships

The conference agreement follows the House bill and the Senate amendment.

Trusts

The conference agreement follows the Senate amendment.

Accounting

The conference agreement follows the Senate amendment and contains the provision in the House bill relating to a certain payment to an insurance company with respect to an asbestos claim.

Settlement funds

The conference agreement generally follows the Senate bill. The conference agreement clarifies that: (1) the provision does not affect the treatment of payments made for certain personal injury liability assignment within the meaning of section 130; (2) payments from a designated settlement fund to a claimant are treated as having been made by the taxpayer for purposes of determining the claimant's taxable income; and (3) taxpayers may not both exclude an amount recovered and deduct (under this provision) an amount paid to the extent such amount is attributable to the same liability.

The conference agreement provides that except as provided in regulations escrow accounts, settlement funds, or similar funds are subject to current taxation. If the contribution to such an account or fund is not deductible, then the account or fund is taxable as a grantor trust.[2] This provision is effective for accounts or funds established after August 16, 1986.

Straddles

The conference agreement follows the House bill. Under the statute as clarified by the technical correction, generally a taxpayer engaged in the business of investment banking who regularly trades in commodities as a part of that business would be considered in the trade or business of trading commodities. If a person qualifies as a commodities dealer, the subsection (b) treatment applies with respect to any position disposed of by such person. It would, for example, apply without regard to whether the position was in a commodity regularly traded by the person, whether it was traded on an exchange on which the dealer was a member, or whether an identical position was re-established on the same trading day or subsequently. The conferees also wish to clarify that if an individual owns a seat on a commodities exchange, such individual will be treated as a "commodities dealer." Further, if a trading firm also regularly trades commodities in connection with its business, then the commodities trading will be deemed to be part of its trade or business. The latter rule applies only to the securities trading firm itself; it does not apply to separate individual trading of its partners, principals, or employees, nor to partnerships or other organizations formed for the principal purpose of marketing tax straddles.

The conference agreement also clarifies that subsection (b) treatment is available not only with respect to a loss incurred directly by a commodities dealer, but also to a loss allocable to a commodities dealer in determining such person's income with respect to an interest in a partnership, S corporation, or trust. For example, in determining the tax liability of a commodities dealer who was a shareholder in an S corporation, a loss incurred by the corporation in the trading of commodities would be treated as a loss incurred by the commodities dealer. Of course, whether an individual is a commodities dealer is no way indicated merely because such individual has an interest in a partnership, S corporation or trust engaged in the trading of commodities.

Further, the conferees clarify their intent that the Internal Revenue Service bring all outstanding pre-ERTA straddle litigation to a speedy resolution, so that the large docket of cases on this issue may be cleared, in a manner consistent with this legislation.

Depreciation

The conference agreement follows the House bill except that the provision relating to related party sale-leasebacks applies to property placed in service after December 31, 1985. In addition, the conference agreement clarifies that the depreciation recapture installment sale rule (sec. 453(i)) applies to the installment sales of partnership interests.

Foreign

The conference agreement follows the Senate amendment, with the addition of the FSC completed contract method transition rule from the House bill and a targeted transitional amendment to the separate foreign tax credit limitation for income of foreign finance subsidiaries.

Compliance

The conference agreement follows the Senate amendment. The conference agreement also requires the passthrough of information with respect to trusts and estates, parallel to the provision of the Senate amendment requiring the passthrough of information to the beneficial owners of partnership interests.

Miscellaneous

The conference agreement follows the House bill and the Senate amendment with the following modifications.

a. Tax benefit rule.—The House bill and the Senate amendment provide that the "tax benefit" rule of Section 111 applies where there was no reduction in the taxpayer's tax in a prior year. Under prior law, some taxpayers who had no taxable income for the year in which a deduction was claimed, or who were subject to the alternative minimum tax or had credits that reduced their tax liability to zero, were required to include in income in a later year a portion of the amount previously deducted. The intent of the amendment is to provide equity to taxpayers in these situations so that an amount would be included in income only if the taxpayers derived a tax benefit from the deduction in the year it was taken. It is not intended that the current simplified tax benefit computation be changed for individual taxpayers who receive refunds of State and local income taxes. A recomputation of the tax liability for the prior year is expected in these situations only if the taxpayer had no taxable income in the prior year or was subject to the alternative minimum tax or had credits that reduced their tax liability to zero. Other individual taxpayers receiving refunds of State and local income taxes must continue to follow the procedure set forth by the IRS to determine whether their refund should be included in income. This procedure involves a comparison of the refund amount with the amount by which the taxpayer's itemized deductions for the prior year exceeded the zero bracket amount (standard deduction). The lesser of the two amounts is included in income in the current year. This simple procedure, effectively, produces a result comparable to that obtained by the more complicated recomputation of the taxpayer's tax liability for the prior year.

b. Low interest loans.—The conference agreement exempts obligations issued by Israel from the below-market interest rate provisions of section 7872 if the obligation is payable in United States dollars and bears an interest rate of not less than 4 percent.

c. Related party transactions.—The conference agreement contains the provisions in the House bill.

d. Federal Home Loan Bank.—The conference agreement provides that the earnings and profits of the Federal Home Loan Bank, for purposes of section 246(a)(2), is to be determined as reported in its annual financial statement.

e. Luxury vehicles and gas guzzler tax.—The conference agreement includes all the provisions common to both bills. In addi-

[1] This provision is not intended, however, to affect the recognition of discharge of indebtedness income by the acquired corporation on a transfer to a creditor.

[2] This provision reverses the finding in Rev. Rul. 71-119, 1971-1 CB163.

tion, the conference agreement generally follows the House bill and the Senate amendment in utilizing "unloaded gross vehicle weight" for purposes of both the luxury vehicles and gas guzzler tax provisions. However, the conference agreement follows the Senate amendment by utilizing "gross vehicle weight" for purposes of the luxury vehicles provision, with respect to trucks and vans. The conference agreement follows the House bill as to the effective date.

The conference agreement exempts from the gas guzzler tax small manufacturers who lengthen existing automobiles.

Life insurance

The conference agreement follows the Senate amendment except for the following modifications.

a. Self-insured death benefits.—The provision in the Senate amendment clarifying that death benefits provided under a self-insured church plan can qualify as life insurance is not adopted.

b. Early withdrawal tax for deferred annuities.—The clarification in the Senate amendment of the exceptions to the 5-percent additional income tax for premature distributions from deferred annuity contracts is effective for contracts issued more than 6 months after the date of enactment.

c. Early withdrawal tax for annuity contracts.—An exception to the penalty is provided in the case of annuity contracts that would qualify as a qualified funding asset under a structured settlement arrangement, were the liability assigned.

d. Section 818(c) elections.—The Senate amendment provision relating to section 818(c) elections of companies acquired during 1983 is amended to provide that a section 338 election may be made with respect to such an acquired company during the 60-day period following the date of enactment; the conferees intend no inference as to the effect of the section 818(c) election on the basis of assets acquired for which a section 338 election is made. The time to make an election under section 818(c) is also extended.

e. Mortgage life insurance.—The provision in the Senate amendment with respect to the provision relating to a certain mutual insurance company engaged in nonparticipating mortgage life insurance business is not adopted.

f. Group-term life insurance.—The provision in the Senate amendment relating to a grandfathered group-term life insurance program is modified to provide that grandfather treatment is retained with respect to any employee whose benefits do not increase under the plan.

g. Modified coinsurance grandfather.—Section 255 of the Tax Equity and Fiscal Responsibility Act of 1982 repealed section 820 of the Code relating to the option treatment of modified coinsurance contracts and adopted a grandfather provision with respect to the treatment of modified coinsurance contracts for taxable years prior to 1982. Under this grandfather rule, any determination as to whether any contract met the requirements of section 820 (before repeal) (1) was to be made solely by reference to the terms of the contract and (2) the treatment of the contract was made in accordance with the regulations under section 820 as in effect on December 31, 1981. Under TEFRA, such contracts were grandfathered except in the event of fraud.

The Internal Revenue Service has recently issued "guidelines" to auditing agents instructing them to raise certain issues with respect to modified coinsurance contracts. The guidelines apply to taxable years prior to 1982 and direct agents to examine two issues: (1) the date on which modified coinsurance contracts became effective, and (2) the rate at which investment income was transferred under the contracts.

The provision clarifies the intent of Congress that, for taxable years prior to January 1, 1982, the IRS should give full and complete effect to the terms of a modified coinsurance contract. Accordingly, under the provision, the IRS is to respect the manner in which the terms of a modified coinsurance contract have been reflected on the tax return. In particular, the provision requires the IRS to recognize the investment income rate terms and the effective date terms stated in the contract.

h. Prevention of double proration.—An anti-double proration rule applicable to life insurance companies with property and casualty insurance subsidiaries is added to the life insurance anti-double proration rule in the Senate amendment.

i. Variable contracts with guarantees.—Certain variable life insurance contracts with guarantees are treated as variable contracts under section 817 with a special effective date.

j. U.S. branches of foreign life insurance companies.—Branches of foreign life insurance companies are not included in the determination of the 50 largest stock companies and the calculation for mutual companies.

k. High surplus mutual rule.—The rule determining the excess equity base for a high surplus mutual company is modified to apply where the excess equity base, for its first taxable year beginning in 1984, as determined under sec. 809(i)(2)(D) of the Code, is no more than $175,100,000.

l. Suspension of audits, time to file petition and interest and penalties.—The time to file a petition in Tax Court, the initiation and continuation of audits, and the running of interest and the collection of penalties, is suspended for a period ending August 16, 1987 with respect to certain self-insured workers compensation funds.

m. Adjustment to earnings and profits for fresh start adjustment.—The provision in the Senate amendment is modified to allow an additional company to elect to take the fresh start adjustment into account in 1985 for earnings and profits.

Private foundations

The conference agreement follows the Senate amendment.

Simplification

Except as provided below with respect to the treatment of alimony, the conference agreement follows the Senate amendment.

Alimony

The conference agreement revises the front-loading alimony rules of section 71(f). Under the conference agreement, if the alimony payments in the first year exceed the average payments in the second and third year by more than $15,000, the excess amounts are recaptured in the third year by requiring the payor to include the excess in income and allowing the payee who previously included the alimony in income a deduction for that amount in computing adjusted gross income. A similar rule applies to the extent the payments in the second year exceed the payments in the third year by more than $15,000. This rule is intended to prevent persons whose divorce occurs near the end of the year from making a deductible property settlement at the beginning of the next year. Recapture is not required if either party dies or if the payee spouse remarries by the end of the calendar year which is two years after the payments began and payments cease by reason of that event. Also the rule does not apply to temporary support payments (described in sec. 71(b)(2)(C)) or to payments which fluctuate as a result of a continuing liability to pay, for at least three years, a fixed portion or portions of income from the earnings of a business, property or services.

Thus, for example, if the payor makes alimony payments of $50,000 in the first year and no payments in the second or third year, $35,000 will be recaptured (assuming none of the exceptions apply). If instead the payments are $50,000 in the first year, $20,000 in the second year and nothing in the third year, the recapture amount will consist of $5,000 from the second year (the excess over $15,000) plus $27,500 for the first year (the excess of $50,000 over the sum of $15,000 plus $7,500). (The $7,500 is the average payments for years two and three after reducing the payments by the $5,000 recaptured from year two.)

This new provision will generally apply to divorce or support decrees and agreements executed after 1986. The provision will also apply with respect to the modification of a prior instrument where the modified instrument expressly so provides.

In addition, the conference agreement deletes the requirement that the divorce instrument specifically state there is no liability to make payments after death. The conference agreement also reduces the recapture period to three years for those divorce decrees and agreements not covered by the amendment described above.

Welfare benefit plan provisions

The conference agreement follows the Senate amendment with the following exceptions:

a. Definition of fund.—The conference agreement follows the House bill with the following modifications:

The conference agreement also modifies the exclusion from the term "fund" for amounts held by an insurance company under certain "qualified, nonguaranteed insurance contracts." A qualified, nonguaranteed insurance contract is defined as an insurance contract (including a reasonable premium stabilization reserve) under which (1) there is not a guarantee of a renewal of the contract at guaranteed premium rates, and (2) other than current insurance protection, the only payments to which the employer or employees are entitled under the contract are refunds or policy dividends that are not guaranteed, that are experience rated and that are determined by factors other than the amount of welfare benefits paid to (or on behalf of) the employees of the employer or their beneficiaries.

Thus, under the conference agreement, amounts that are held by an insurance company for an employer generally are not to be treated as a fund to the extent that the amounts are subject to a significant current risk of economic loss that is determined, in part, by factors other than the amount of welfare benefits paid to (or on behalf of) the employees of the employer. Experience refunds or policy dividends are determined by additional factors where they reflect a charge for pooling of large individual claims, where the insurance company's retention reflects a risk charge related to the insurer's actual or anticipated experience under the class of business to which the

contract belongs, or where the claims experience of other policyholders is otherwise taken into account. For example, an additional factor is present where the experience refund or policy dividend is based on the experience of a single employer together with a risk charge that is intended to assess the employer for an appropriate share of the insurance company's anticipated losses under policies where claims and expenses exceed premiums collected. The conferees do not intend, however, that a de minimis risk charge on its own will be sufficient to create a significant risk of economic loss.

The conferees emphasize that, in prescribing regulations relating to the definition of a fund, the Treasury Department is to take into account that the principal purpose of the provision is to prevent employers from taking premature deductions for expenses that have not yet been incurred. To the extent that the temporary and proposed regulations could be interpreted to include in the definition of a fund certain experience-rated insurance arrangements with a significant current risk of economic loss, the conferees do not believe that the regulations implemented this purpose. The conferees believe that significant premature deductions do not occur with respect to experience-rated group insurance because of the element of insurance risk transferred to the insurance company. Thus, by excluding qualified nonguaranteed insurance contracts from the definition of a fund, the conference agreement makes clear that typical group insurance arrangements are not to be made subject to the welfare benefit fund provisions through regulations. In addition, the conferees reiterate that any regulations defining the term "fund" should take into account that the principal purpose of the provision is to prevent premature deductions by employers.

b. Employee pay-all VEBAs.—The Senate amendment exempts certain employee pay-all VEBAs with at least 50 employees from the welfare benefit fund provisions if the amount of any refund or rebate to an employee is determined by factors other than the employee's experience. Under the conference agreement, an employee pay-all VEBA is not considered to fail to qualify for this exemption merely because an employee's refund or rebate may vary depending upon the number of years the employee contributed to the fund. For example, if a VEBA provides a set employee contribution rate that applies for 3 years, the mere fact that an employee who contributes for 3 years may receive a larger refund or rebate than an employee who contributes for less than 3 years does not cause the fund to fail to meet the requirements for exemption as long as there is a significant current risk of economic loss (i.e., the amount of the refund or rebate is also determined by factors other than any employee's experience).

c. Unfunded deferred compensation.—The provision in the Senate amendment clarifying that the deductibility of deferred compensation is governed by section 404 if the amounts would, but for section 404, otherwise be deductible under any other provision is modified to apply also for purposes of determining the deductibility of foreign deferred compensation (sec. 404A) and for purposes of the welfare benefit fund provisions.

d. Accrued vacation pay.—The transition rule for accrued vacation pay applies in the case of a fully vested vacation pay plan under which the vacation pay is expected to be paid (or is in fact paid) within 12 months following the close of the employer's taxable year.

Pension plan provisions

The conference agreement follows the Senate amendment with the following exceptions.

a. Tax-sheltered annuities.—The provision in the House bill requiring that distributions commence under a tax-sheltered annuity no later than when the employee attains age 70½ is adopted.

b. Estate tax exclusion.—The provision modifying the grandfather rule relating to the repeal in the Act (and the reduction in TEFRA) of the estate tax exclusion for pension benefits is further modified to provide that the grandfather rule is also available for individuals who separated from service before January 1, 1985, with respect to section 525(b)(2) of the Act, or before January 1, 1983, with respect to section 245(c) of TEFRA, elected a form of benefits to be paid in the future, and who was not in pay status as of the applicable dates.

c. Multiemployer Pension Plan Amendments Act effective date.—The change in the effective date of the Multiemployer Pension Plan Amendments Act of 1980 with respect to a certain employer is modified to change the effective date from January 12, 1982, to January 16, 1982, and from May 16, 1980, to May 14, 1980, in the case of another employer.

Fringe benefit provisions

The conference agreement follows the Senate amendment with the following exceptions:

a. Working condition fringe.—The conference agreement adopts the clarification in the legislative history of the House bill that the application of the product testing provision for purposes of the working condition fringe benefit exclusion in the case of automobile testing is not violated if the employer charges the employee a reasonable amount for any personal use of the automobile as long as all of the other requirements are satisfied.

b. Automobile salesmen.—The conference agreement adopts the clarification in the legislative history of the House bill relating to the working condition fringe benefit rule for full-time automobile salesmen.

c. De minimis fringe.—The conference agreement adopts the provision in the legislative history of the Senate bill clarifying the applicability of the de minimis fringe benefit exclusion to the provision of public transit passes.

d. Qualified tuition reduction.—The conference agreement adopts the House bill provision relating to an exception to the rules relating to qualified tuition reductions for certain students.

ESOPs.—The conference agreement follows the Senate amendment, with certain modifications. The agreement clarifies that, for purposes of section 1042 (relating to certain sales of stock to an ESOP), in computing whether lineal descendants of a selling taxpayer have been allocated more than 5 percent of the employer securities attributable to a sale to which section 1042 applies, all employer securities sold to the ESOP by the taxpayer which are eligible for nonrecognition treatment are taken into account.

The requirement under section 1042 that certain individuals not be allocated employer securities attributable to a sale to which the section applies, or amounts in lieu thereof, is not intended to apply to amounts which are provided to the individual outside of a qualified plan, for example, through a non-qualified deferred compensation agreement.

In addition, the conference agreement clarifies that an insurance company is treated as an operating corporation for purposes of determining whether property qualifies as qualified replacement property under section 1042.

The conference agreement adopts the provision in the Senate amendment which permits a plan sponsored by a corporation whose bylaws or charter restrict the ownership of substantially all outstanding employer securities to employees or certain trusts to distribute employer securities in certain cases. The conferees intend that, if such a plan does distribute employer securities, the distribution requirements and put option requirements generally applicable to ESOPs (except for the requirement that the employee has a right to demand that the distribution be paid in employer securities) will apply to the distribution.

Under the conference agreement, a deduction is allowed for certain dividends paid on employer stock held by an ESOP, even if the stock is not yet allocated to participant accounts. The Treasury is empowered to disallow deductions for dividends paid on stock held by an ESOP if the dividend constitutes, in substance, the evasion of taxation. The conferees intend that the deduction is to be allowed only with respect to reasonable dividends.

Further, the conference agreement provides that market discount is not created by reason of the basis adjustment resulting from the rollover provision for the sale of stock to an ESOP.

Miscellaneous employee benefit provisions

The conference agreement follows the House bill.

Tax-exempt bonds

The conference agreement contains the provisions in the House bill and also the provisions in the Senate amendment, with a modification providing that the sunset date for the exception from the private loan bond restriction is August 15, 1986. The conferees wish to restate that the provision of the House bill with regard to the specificity required for certain volume cap carryforward elections is to be self-implementing rather than an authorization of Treasury action.

Miscellaneous provisions

The conference agreement contains the provisions in the House bill and also contains the provisions in the Senate amendment.

Partnership audit provision

The conference agreement coordinates the Tax Court deficiency procedures with respect to partner level determinations arising from a partnership proceeding with the deficiency procedures applicable to the taxpayer from items unrelated to a partnership proceeding.

Windfall profit tax provision

The House bill and the Senate amendment clarify that the term "newly discovered oil" includes production from a property so long as not more than 2,200 barrels was produced from the property in 1978 and no well on the property was in production for more than 72 hours during that year (whether or not the oil was sold). For purposes of this test, a dual completion well shall be treated as two separate wells, i.e., one well for each horizon. This provision is

intended to clarify the "test well" exception described in the Conference Report accompanying the Crude Oil Windfall Profit Tax Act of 1980. No inference is intended as to the application of similar principles in areas other than section 4991(e)(2).

Social Security, Medicare, AFDC, Child Support, SSI, Social Services

Social Security amendments

The conference agreement follows the Senate amendment.

Revocation of certain church elections

It is intended that the regulations allowing a church or qualified church-controlled organization to revoke an election made under Code section 3121(w)(2) are to provide that any such revocation is not to be effective prior to January 1, 1987, unless such electing church or organization had withheld and paid over all employment taxes due, as if such election had never been in effect, during the period from the stated effective date of the election being revoked through December 31, 1986.

Medicare

The conference agreement follows the Senate amendment.

AFDC and child support

The conference agreement is as follows.

a. Stepparent work disregard.—The conference agreement follows the Senate amendment, which repeals the authority for a lower disregard in the case of part-time employment effective October 1, 1984.

b. Standard filing unit.—The conference agreement includes that portion of the Senate amendment which clarifies that the standard filing unit provision applies to the AFDC-UP program. The change is effective October 1, 1984. The agreement does not include that portion of the Senate amendment concerning Title II benefits and certain child support payments. No inference is intended with regard to current Federal regulations implementing section 402(a)(38) of the Social Security Act.

c. Definition of minor parent.—The conference agreement follows the Senate amendment, which clarifies that the definition of minor parent is based only on age, not on school attendance. The agreement also clarifies that to be considered a minor parent, an individual must be under 18 years of age.

d. Treatment of foster care payments.—The conference agreement follows the Senate amendment which clarifies that a child receiving foster care maintenance payments shall not be considered a member of the family when determining AFDC eligibility and benefits.

e. Distribution of child support collections.—The conference agreement follows the Senate amendment which clarifies that the rules regarding distribution of child support collections apply to child support paid as a result of a court order or an administrative order.

General Social Security Act provisions, SSI and Social Services

The conference agreement follows the House bill and the Senate amendment.

Effective Date of Social Security Act Amendments

The conference agreement follows the House bill and the Senate amendment. With regard to those amendments with an effective date of October 1, 1984, paragraphs (1), (2), (3) and (9) of section 1883(b) of the Senate amendment, no State shall be considered to have failed to comply with the Social Security Act or to have made overpayments or underpayments by reason of its compliance or noncompliance with these amendments for the period beginning October 1, 1984 and ending on the day preceding the date of enactment of this Act.

Unemployment compensation

The conference agreement follows the House bill and the Senate amendment.

Trade and tariff programs

The conference agreement includes the provisions in the House bill and also includes the provisions in the Senate amendment, with a further explanation of the Senate amendment relating to overtime charges for inspectional services of the Federal Government. The conference agreement clarified that this amendment relating to overtime charges is intended to reinstate the limit on weekend and holiday overtime charges for private aircraft and others not benefitting from the inspectional overtime account funded through the customs user fees.

The conference agreement also adds the following amendments.

a. Customs user fees

(1) *Vessels, barges, bulk carriers and ferrys.*—A cap of $5,955 is placed on the fees charged for the arrival of any commercial vessel of more than 100 net tons in the United States. The conferees believe that this cap is appropriate in light of a cap already in place on the arrival of trucks and rail cars. This cap on vessel fees is computed on the basis of fifteen arrivals per year. The conferees intend the fee on commercial vessels to be applicable to each arrival at a U.S. port regardless of whether these arrivals occur as a series of calls at U.S. ports on the same trip or on several trips.

A lower user fee of $100 on barges and bulk carriers arriving from Canada and Mexico is provided in light of the fact that such vessels compete with trucks and rail cars arriving by land from Canada and Mexico, which are subject to much lower user fees. A cap of $1,500, also representing fifteen arrivals, has been placed on the annual total of the user fees which such barges and bulk carriers arriving from contiguous countries must pay.

Regardless of which fee may be applicable during the calendar year, no barge or bulk carrier shall be liable for more than the $5,955 annual cap applicable to vessels.

The conference agreement exempts tugboats from the application of any vessel fees. This exemption is intended to prevent the Customs Service from applying the vessel user fee to a tugboat which provides propulsion to barges or merely accompanies vessels which are themselves subject to a user fee. This exception does not apply to tugboats which are not being used as tugboats at the time of arrival.

The conference agreement contains a definition of the term ferry for the purposes of the exemption from the user fee applicable to commercial vessels of over 100 net tons. For purposes of this exemption, a ferry includes a vessel which transports passengers, vehicles, or railroad cars or any combination thereof, for distances of 300 miles or less. While such a ferry is exempted from the fee, trucks or railroad cars carried by such a ferry would be subject to the applicable fee. In the case of commercial vessels subject to the user fee which transport vehicles or rail cars there shall be no fee assessed on the vehicles or rail cars.

The conferees note that some vessel operators have proposed the consolidation of all vessel fees into a single fee. The conferees expect the Customs Service to study all fees now applicable to vessels entering U.S. ports in an effort to determine whether a simpler and more efficient method can be proposed in administering these fees. The conferees expect the Customs Service to confer with the Finance and Ways and Means Committees in an effort to resolve this problem.

(2) *Passenger fees.*—The conference agreement clarifies that the exemption from the $5 fee applicable to passengers arriving on commercial aircraft and vessels also exempts passengers originating in the U.S. who transit only those locations to which the exemption applies, prior to reentering the U.S. The conferees further provided that overtime for customs inspections may not be charged at U.S. Customs pre-clearance facilities overseas.

(3) *Railroad cars.*—The conference agreement provides for a $7.50 fee on the arrival of each rail car carrying passengers or freight and eliminates the fee on empty railroad cars.

(4) *Customs brokers.*—The conferees clarified that the annual fee for the issuance of a broker permit is to be prorated so that the applicable fee in 1986 would be one-half the annual fee, based on the July, 1986 effective date of the fee. The Customs Service is required to provide 60 days notice of the due date for the fee, and is barred from revoking a delinquent broker's permit absent such notice.

b. Customs broker's freight forwarding

The conferees also clarified Congressional intent with respect to the compensation of customs brokers for certain services. The conference agreement provides licensed customs brokers, when performing ocean freight forwarder services on export shipments from the United States, with the benefits of the right of independent action with respect to the level of forwarder compensation in a shipping conference's freight tariff. Under present law, a conference may prohibit its members from taking independent action on forwarder compensation. This amendment makes clear that a conference must allow its members to take independent action on compensation to the extent that compensation is or will be paid to a forwarder who is also a licensed customs broker under the Tariff Act of 1930.

This provision also benefits customs brokers when they act in the capacity of a licensed freight forwarder on shipments exported from the United States. Despite the requirement of current law that conferences not deny forwarders a reasonable percentage of the carrier's freight charges as compensation for the forwarder's service, some conferences are limiting forwarders' compensation to a percentage of some, but not all, of the rates and charges assessed against the cargo in their tariffs. The purpose of this amendment is to make clear that when compensation is paid to a forwarder who is also a licensed customs broker, the compensation must be based on all the freight charges, including, but not limited to, surcharges, handling charges, service charges, terminal charges, supplements, currency adjustment factors, and any and all other charges required to be paid by the shipper or consignee under the tariff.

These amendments do not in any way modify or diminish the existing scope or protections of the Shipping Act of 1984 as applied to ocean freight forwarders in general. Their sole purpose is to impose additional requirements on conferences or carri-

er groups in their concerted dealings with forwarders who are also licensed customs brokers.

c. Foreign trade zones

The fifth proviso of section 81c. of the Foreign Trade Zones Act of 1934, as amended, prohibits operations involving the use of certain domestic merchandise in foreign trade zones. The purpose of this provision was to prevent internal revenue taxes from being avoided by the use of foreign trade zones. However, the provision also has prevented the use of domestic merchandise on which there are no internal revenue taxes or on which all internal revenue taxes have been paid.

The conference agreement permits domestic merchandise on which all internal revenue taxes, if any, have been paid to be used in manufacturing or production in foreign trade zones. The change is revenue neutral but removes the current bias in favor of new investments being placed in foreign countries, thus putting on an equal footing in this regard, investments made within the United States. This is not a vehicle to provide for redistillation of imported spirits subsequently removed (admitted) to a zone for use in the manufacture of articles. The right of U.S. Customs and other government officials to inspect and audit zone operations will insure the enforcement of this prohibition.

d. Marking of pipes, tubes and fittings

The conference agreement clarifies that the exception for marking through the tagging of containers or bundles for small diameter pipes and tubes also applies to small diameter fittings.

The Retirement Equity Act of 1984

The conference agreement follows the Senate amendment except as follows.

a. Simplified employee pensions.—The provision in the Senate amendment relating to participation requirements under simplified employee pensions is effective for plan years beginning after the date of enactment.

b. Spousal consent.—The provision relating to spousal consent to changes in benefit form is effective for plan years beginning after the date of enactment.

c. Annuity starting date.—Under the conference agreement, in the case of benefits payable in the form of an annuity, the annuity starting date is the first day of the first period for which an amount is payable as an annuity, regardless of when or whether payment is actually made. For example, a participant is to begin receiving annuity payments on the first day of the month following the participant's sixtieth birthday. After that date, but before any annuity payments are actually made, the participant dies. The annuity starting date is the first day of the month following the participant's sixtieth birthday.

Under the conference agreement, in the case of benefits not payable as an annuity, the annuity starting date is the date on which all events have occurred which entitle the participant to a benefit (e.g., separation from service, applicable consent to payment).

d. Qualified domestic relations orders.—Under present law, a domestic relations order is not a qualified domestic relations order ("QDRO") if such order requires a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan. Thus, an order generally constitutes a QDRO if it provides that payments attributable to a participant's benefits are to begin before the participant separates from service and becomes eligible for a distribution. As an exception to the rule, present law provides that a QDRO may require that an alternate payee commence receiving payments on or after the date that the participant attains the earliest retirement age under the plan, even if the participant has not yet separated from service.

Under the conference agreement, the definition of "earliest retirement age" for purposes of the QDRO provisions in the case of a defined contribution plan or a defined benefit plan is the earlier of: (1) the earliest date benefits are payable under the plan to the participant, and (2) the later of the date the participant attains age 50 and the date on which the participant could obtain a distribution from the plan if the participant separated from service.

For example, in the case of a plan which provides for payment of benefits upon separation from service (but not before then), the earliest date on which a QDRO can require payments to an alternate payee to begin is the date the participant separates from service. A QDRO could also require such a plan to begin payments to an alternate payee when the participant attains age 50, even if the participant has not then separated from service. The amount payable under a QDRO following the participant's earliest retirement age cannot exceed the amount which the participant is (or would be) entitled to receive at such time. For example, assume that a profit-sharing plan provides that a participant may withdraw some, but not all, of the participant's account balance before separation from service. A QDRO may provide for payment to an alternative payee up to the amount which the participant may withdraw.

A plan may provide for payment to an alternate payee prior to the earliest retirement age as defined under the conference agreement.

The conference agreement adopts the provisions in the Senate amendment with regard to procedures during the 18-month period. If a plan administrator determines that a domestic relations order is defective before the expiration of the 18-month suspension period, the conference committee intends that the plan administrator may delay payment of a participant's benefit until the expiration of the 18-month period if the plan administrator has notice that either party is attempting to rectify any deficiencies in the order.

Similarly, the committee intends that the plan administrator may delay payment of benefits for a reasonable period of time if the plan administrator receives notice that a domestic relations order is being sought. For example, a participant in a profit-sharing plan which is exempt from the survivor benefit rules requests a lump sum distribution from the plan. Before the distribution is made, the plan administrator receives notice that the participant's spouse is seeking a domestic relations order. The plan administrator may delay payment of benefits.

e. Loans to owner-employees.—The conference agreement adopts the provision in the House bill regarding loans to owner-employees from qualified plans.

Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

Continuing health care

The conference agreement adopts the following technical corrections to the continuing health care provisions of COBRA.

a. Notification requirement.—The conference agreement establishes a 60-day notification period for divorced or legally separated spouses of covered employees, or dependent children ceasing to be dependent children under the generally applicable requirements of the plan, to notify the plan administrator of a qualifying event entitling the spouse or dependent children to continuation health coverage.

b. Maximum period of continuation coverage.—The conference agreement clarifies that a qualified beneficiary may have more than one qualifying event which entitles the beneficiary to continuation coverage, but in no event may the coverage period with respect to such events generally exceed a 36-month period. The second qualifying event must take place during the period of coverage of the first qualifying event to be eligible for a total of 36 months continuation coverage beginning from the date of the first qualifying event.

c. Election of coverage.—The conference agreement clarifies that each qualified beneficiary is entitled to a separate election of continuation coverage. For example, if a covered employee does not elect continuation coverage, the conferees intend that the spouse or dependent children are entitled to elect such coverage. Moreover, even if the employee elects certain coverage, the spouse or dependents may elect different coverage.

d. Failure to pay premium.—The conference agreement provides that the grace period for the failure to pay premiums is the longest of (1) 30 days, (2) the period the plan allows employees for failure to pay premiums, or (3) the period the insurance company allows the plan or the employer for failure to pay premiums.

e. Type of coverage.—The conference agreement provides that, for all purposes, qualified beneficiaries are to be treated under the plan in the same manner as similarly situated beneficiaries for whom a qualifying event has not taken place. For example, if the plan provides for an open enrollment period, then qualified beneficiaries are to be permitted to make elections during the open enrollment period in the same manner as active employees. Thus, an individual who is a qualified beneficiary by reason of being a spouse of a covered employee would have the same rights as active employees during an open enrollment period and would not be limited to the rights of spouses of covered employees.

The conference agreement defines health benefits to mean health benefit plans, including dental and vision care (within the meaning of sec. 213 of the Code). The conferees do not intend that an employer could compel a qualified beneficiary to pay for noncore benefits (such as dental and vision care) even if active employees are required to purchase coverage for such benefits under the plan.

Medicare

The conference agreement follows the Senate amendment with the following clarifications: (1) correct and clarify the section regarding payments under the indirect medical education provision; (2) correct and clarify the section regarding payment under the disproportionate share provision; (3) clarify that all hospitals which have a medicare provider agreement would have to abide by the emergency care requirements of COBRA and the requirements regarding participation in the CHAMPUS program; (4) allow skilled nursing facilities to make an election to be paid on a prospective payment basis based on their costs reporting

periods rather than on a Federal fiscal year basis; (5) clarify that the medicare HI tax on state and local governments does not apply to certain campaign workers; (6) clarify that a one-year transition period is provided for foreign medical graduates who have not passed the FMGEMS; (7) allow the Secretary to announce HMO/CMP rates by September 7 of each year rather than publish them; (8) clarify the effective date of the provision regarding penalties for billing for assistants at surgery for certain cataract procedures; (9) allow temporary use of carrier prepayment screens as a substitute for preprocedure review; (10) clarify that the termination date of the ACCESS demonstration project is July 31, 1987; and (11) correct citation, indentation and other technical errors.

Single Employer Pension Plan Amendments Act

The conference agreement adopts technical and conforming amendments to the Single Employer Pension Plan Amendments Act of 1986.

Table A.1. Summary of Estimated Budget Effects of H.R. 3838, as Approved by the Conference Committee, Fiscal Years 1987–1991

[Millions of Dollars]

Title and Provision	1987	1988	1989	1990	1991	1987–91
I. Individual Income Tax Provisions						
Individual	−27,374	−70,736	−71,724	−57,849	−60,376	−288,059
Corporate	891	1,452	1,551	1,736	1,871	7,501
Total	−26,483	−69,284	−70,173	−56,113	−58,505	−250,558
II. Capital Cost Provisions						
Individual	3,216	2,994	4,815	7,693	9,740	28,458
Corporate	14,510	17,187	25,059	30,404	37,928	125,088
Total	17,726	20,181	29,874	38,097	47,668	153,546
III. Capital Gains and Losses						
Individual	(1)	(1)	(1)	(1)	(1)	(1)
Corporate	(1)	(1)	(1)	(1)	(1)	(1)
Total	(1)	(1)	(1)	(1)	(1)	(1)
IV. Agriculture, Timber, Energy, and Natural Resources						
Individual	122	256	214	192	186	960
Corporate	−210	153	238	237	165	583
Excise	−5	−3	−1	(2)	(2)	−9
Customs	(2)	(2)	(2)	(2)	(2)	(1)
Total	−103	406	451	429	351	1,534
V. Tax Shelters; Interest Expense						
Individual	1,832	9,191	14,082	19,785	22,289	67,179
Corporate	−483	−1,687	−2,961	−4,581	−4,656	−14,368
Total	1,349	7,504	11,121	15,204	17,633	52,811
VI. Corporate Taxation						
Individual	730	1,428	721	755	790	4,424
Corporate	−6,430	−19,483	−26,770	−29,138	−31,461	−113,282
Total	−5,700	−18,055	−26,049	−28,383	−30,671	−108,858
VII. Minimum Tax Provisions						
Individual	848	3,904	2,251	862	334	8,199
Corporate	3,087	5,378	5,072	4,466	4,155	22,158
Total	3,935	9,282	7,323	5,328	4,489	30,357
VIII. Accounting Provisions						
Individual	444	1,180	1,269	1,183	905	4,981
Corporate	9,902	14,694	13,638	12,562	9,262	60,058
Total	10,346	15,874	14,907	13,745	10,167	65,039
IX. Financial Institutions						
Individual	−120	−371	−683	−941	−1,189	−3,304
Corporate	815	1,453	1,858	2,342	1,872	8,340
Total	695	1,082	1,175	1,401	683	5,036
X. Insurance Products and Companies						
Corporate	1,303	2,246	2,499	2,671	2,809	11,528
Total	1,303	2,246	2,499	2,671	2,809	11,528
XI. Pensions and Deferred Compensation; Employee Benefits; ESOPs						
Individual	3,141	8,305	9,058	10,044	11,012	41,560
Corporate	1,101	954	265	110	27	2,457
Excise	305	100	80	50	50	585
Employment	−137	−23				−160
Total	4,410	9,336	9,403	10,204	11,089	44,442
XII. Foreign Tax Provisions						
Individual	24	34	45	56	61	220
Corporate	579	1,489	1,952	2,369	2,894	9,283
Total	603	1,523	1,997	2,425	2,955	9,503
XIII. Tax-Exempt Bonds						
Individual	18	78	139	224	257	716
Corporate	−2	−9	−25	−32	−26	−94
Total	16	69	114	192	231	622
XIV. Trusts and Estates; Minor Children; Estate and Gift Tax; Generation-Skipping Transfer Tax						
Individual	1,706	851	624	669	720	4,570
Estate and Gift	−3	−7	−7	−8	−8	−33
Total	1,703	844	617	661	712	4,537
XV. Compliance and Tax Administration						
Individual	1,859	1,962	1,441	1,842	1,937	9,041
Corporate	378	445	337	441	515	2,116

Table A.1. Summary of Estimated Budget Effects of H.R. 3838, as Approved by the Conference Committee, Fiscal Years 1987–1991—Continued

[Millions of Dollars]

Title and Provision	1987	1988	1989	1990	1991	1987–91
Excise	4	4	4	4	4	20
Estate & Gift	4	4	4	4	4	20
Total	2,245	2,415	1,786	2,291	2,460	11,197
XVI. Exempt and Nonprofit Organizations						
Individual	−2	−6	−11	−19	−28	−66
Corporate	−13	−28	−42	−62	−87	−232
Total	−15	−34	−53	−81	−115	−298
XVII. Other Provisions						
Individual	−24	−50	−68	−52	−38	−232
Corporate	−133	−206	−204	−123	−70	−736
Excise	5	317	193	195	198	908
Employment	8	16	18	20	22	84
Total	−144	77	−61	40	112	24
XVIII. Technical Corrections						
Individual	−360	−68	−50	−54	−62	−594
Corporate	−140	−99	34	34	28	−143
Excise	−3	−6	−6	−5	−5	−25
Total	−503	−173	−22	−25	−39	−762
Totals, Tax Reform						
Individual	−13,950	−41,048	−37,877	−15,610	−13,462	−121,947
Corporate	25,169	23,939	22,501	23,436	25,226	120,271
Excise	306	412	270	244	247	1,479
Employment	−129	−7	18	20	22	−76
Estate & Gift	1	−3	−3	−4	−4	−13
Customs	(2)	(2)	(2)	(2)	(2)	(2)
Grand Total	11,397	−16,707	−15,091	8,086	12,029	−286

Footnotes to table A.1:
[1]Amounts have not been assigned to footnotes for summation purposes. Therefore, totals do not include estimates represented by footnotes.
[2]Gain of less than $5 million.

Table A.2.—Estimated Budget Effects of the Provisions of H.R. 3838, as Approved by he Conference Committee, Fiscal Years 1987–1991

[Millions of dollars]

Title and Provision	1987	1988	1989	1990	1991	1987–91
I. Individual Income Tax Provisions						
Rate reductions [1]	−16,900	−56,812	−53,725	−39,039	−40,626	−207,102
Increase in standard deduction	−1,127	−6,183	−8,276	−8,864	−9,493	−33,943
Personal exemption increase	−13,414	−26,298	−26,530	−27,678	−28,876	−122,796
Repeal second earner deduction	1,379	6,016	6,177	6,572	6,995	27,139
Repeal income averaging	430	1,814	1,928	2,077	2,239	8,488
Increase the earned income tax credit [2]	−97	−2,040	−3,872	−4,367	−4,925	−15,301
Taxation of unemployment compensation	230	764	749	723	701	3,167
Limit exclusion of scholarships and fellowships	8	64	130	160	164	526
Taxation of prizes and awards	−21	−59	−63	−66	−69	−278
Repeal sales tax deduction						
Individual	744	4,876	4,442	4,667	4,908	19,637
Corporate	224	321	266	240	223	1,274
Increase medical expense deduction floor	186	1,223	1,141	1,276	1,427	5,253
Repeal deduction for special needs adoption expenses [2]	1	5	6	6	6	24
Housing allowances for clergy and military personnel	(*)	(*)	(*)	(*)	(*)	(*)
Limitations on deductions for meals, travel, and entertainment						
Individual	513	937	1,112	1,291	1,422	5,275
Corporate	667	1,131	1,285	1,496	1,648	6,227
Miscellaneous itemized deductions, employee business expense	668	4,447	4,466	4,771	5,095	19,447
Revise treatment of moving expenses	26	183	250	268	288	1,015
Repeal political contributions tax credit		327	341	354	368	1,390
Subtotal, Individual Income Tax						
Individual	−27,374	−70,736	−71,724	−57,849	−60,376	−288,059
Corporate	891	1,452	1,551	1,736	1,871	7,501
Total	−26,483	−69,284	−70,173	−56,113	−58,505	−280,558
II. Capital Cost Provisions						
Depreciation, expensing						
Individual	−502	−584	498	1,980	3,304	4,696
Corporate	−3,280	−2,844	192	444	9,231	7,740
Investment tax credit						
Individual	3,860	3,862	4,679	5,653	6,119	24,173
Corporate	18,801	20,979	25,132	25,618	28,148	118,678
Repeal finance leasing						
Corporate		125	335	449	444	1,353
Credit limitations [10]						
Corporate	346					346
Incremental research tax credit						
Individual	−92	−78	−59	−15	−9	−253
Corporate	−1,337	−1,105	−774	−414	−250	−3,880
Orphan drug credit						
Corporate	−7	−15	−15			−37
Amortization of trademarks and tradenames						
Individual	1	4	8	14	20	47
Corporate	3	9	17	27	38	94
Repeal 50-year amortization of railroad tunnels and bores						
Corporate	(*)	(*)	(*)	(*)	(*)	(*)
Bus operating authorities						
Corporate	−20					−20

Table A.2.—Estimated Budget Effects of the Provisions of H.R. 3838, as Approved by the Conference Committee, Fiscal Years 1987–1991—Continued

[Millions of dollars]

Title and Provision	1987	1988	1989	1990	1991	1987–91
Expensing for removal of architectural barriers						
Corporate	−26	−18	−19	−20	−21	−104
Rehabilitation tax credit						
Individual	16	114	394	1,072	1,445	3,041
Corporate	27	51	187	299	334	898
Low-income housing credit						
Individual	−67	−324	−705	−1,011	−1,139	−3,246
Merchant Marine Capital Construction Fund						
Corporate	3	5	4	4	4	20
Subtotal, Capital Cost						
Individual	3,216	2,994	4,815	7,693	9,740	28,458
Corporate	14,510	17,187	25,059	30,404	37,928	125,088
Total	17,726	20,181	29,874	38,097	47,668	153,546
III. Capital Gains and Losses						
Capital gains						
Individual	(1)	(1)	(1)	(1)	(1)	(1)
Corporate	(1)	(1)	(1)	(1)	(1)	(1)
Incentive stock options						
Individual	(4)	(4)	(4)	(4)	(4)	(5)
Straddles						
Individual	(6)	(6)	(6)	(6)	(6)	(5)
Subtotal, Capital Gains and Losses						
Individual	(5)	(5)	(5)	(5)	(5)	(5)
Corporate	(5)	(5)	(5)	(5)	(5)	(5)
Total	(5)	(5)	(5)	(5)	(5)	(5)
IV. Agriculture, Timber, Energy, and Natural Resources						
Special expensing provisions						
Individual	31	25	23	22	22	123
Corporate	19	12	11	11	10	63
Dispositions of converted wetlands and highly-erodible croplands						
Individual	(6)	(6)	(6)	(6)	(6)	(5)
Preproductive period expenses of farmers						
Individual	56	161	144	121	110	592
Corporate	42	62	53	50	48	255
Prepayments of farming expenses						
Individual	14	30	10	11	14	79
Discharge of farm indebtedness						
Individual	−9	−10	−8	−7	−5	−39
Intangible drilling costs						
Corporate	70	113	119	114	54	470
Oil, gas, geothermal depletion						
Individual	20	49	45	45	45	204
Mining exploration and development						
Corporate	23	34	28	24	21	130
Hard minerals depletion						
Corporate	11	16	15	16	17	75
Energy credits and related incentives						
Individual	(4)	1	(4)	(4)	(4)	1
Corporate	−380	−87	11	22	15	−419
Excise	−5	−3	−1	(6)	(6)	−9
Customs	(6)	(6)	(6)	(6)	(6)	(5)
Subtotal, Agriculture, Timber, Energy, and Natural Resources						
Individual	122	256	214	192	186	960
Corporate	−210	153	238	237	165	583
Excise	−5	−3	−1	(6)	(6)	−9
Customs	(6)	(6)	(6)	(6)	(6)	(5)
Total	−103	406	451	429	351	1,534
V. Tax Shelters; Interest Expense						
At-risk rules						
Individual	46	192	343	483	753	1,817
Corporate	−70	−207	−313	−460	−720	−1,770
Limitation on passive losses						
Individual	1,166	4,488	7,479	10,932	11,939	36,004
Corporate	−413	−1,480	−2,648	−4,121	−3,936	−12,598
Limitation on deduction for nonbusiness interest						
Individual	620	4,511	6,260	8,370	9,597	29,358
Subtotal, Tax Shelters, Interest Expense						
Individual	1,832	9,191	14,082	19,785	22,289	67,179
Corporate	−483	−1,687	−2,961	−4,581	−4,656	−14,368
Total	1,349	7,504	11,121	15,204	17,633	52,811
VI. Corporate Taxation						
Corporate rate reductions						
Corporate	−6,711	−20,068	−27,505	−29,999	−32,415	−116,698
Dividends received deduction						
Corporate	140	223	225	239	253	1,080
Dividend exclusion						
Individual	212	573	580	605	631	2,601
Extraordinary dividends						
Corporate	30	52	54	57	60	253
Stock redemption payments						
Corporate	2	3	3	3	3	14
NOL carryovers						
Corporate	9	29	39	38	29	144
Recognition of gain or loss in liquidations						
Individual	−1	−13	−32	−44	−53	−143
Corporate	16	193	380	504	604	1,697
Basis allocation						
Individual	−2	2	9	13	16	38
Corporate	60	55	58	63	66	302
Related party sales						
Corporate	4	5	5	5	5	24
Amortizable bond premium						
Corporate	2	3	3	3	3	14

Table A.2.—Estimated Budget Effects of the Provisions of H.R. 3838, as Approved by the Conference Committee, Fiscal Years 1987–1991—Continued

[Millions of dollars]

Title and Provision	1987	1988	1989	1990	1991	1987–91
Cooperative housing corporations						
Individual	(4)	(4)	(4)	(4)	(4)	(5)
Real estate investment trusts						
Individual	37	(5)	1	1	2	41
Mortgage backed securties						
Corporate	−5	−17	−36	−59	−79	−196
Regulated investment companies						
Individual	484	866	163	180	194	1,887
Corporate	63	49	13	15	16	156
Personal holding companies						
Corporate	−40	−10	−9	−7	−6	−72
Certain entity not taxed as a corporation						
Subtotal, Corporate						
Individual	730	1,428	721	755	790	4,424
Corporate	−6,430	−19,483	−26,770	−29,138	−31,461	−113,282
Total	−5,700	−18,055	−26,049	−28,383	−30,671	−108,858
VII. Minimum Tax Provisions						
Revise the individual alternative minimum tax						
Individual	848	3,904	2,251	862	334	8,199
Revise corporate minimum tax						
Corporate	3,087	5,378	5,072	4,466	4,155	22,158
Subtotal, Minimum Tax						
Individual	848	3,904	2,251	862	334	8,199
Corporate	3,087	5,378	5,072	4,466	4,155	22,158
Total	3,935	9,282	7,323	5,328	4,489	30,357
VIII. Accounting Provisions						
Limitation on the use of cash accounting						
Corporate	290	595	631	646	650	2,812
Simplified LIFO for certain small businesses						
Individual	−11	−18	−28	−44	−69	−170
Corporate	−120	−189	−289	−469	−738	−1,805
Recognition of gain on pledges of installment obligations						
Individual	12	42	31	32	33	150
Corporate	1,319	1,719	1,387	1,401	1,439	7,265
Capitalization of inventory, construction and development costs						
Individual	146	479	583	639	608	2,455
Corporate	4,110	6,972	7,405	7,746	6,009	32,242
Long-term contracts						
Individual	98	109	103	62	42	414
Corporate	2,791	3,188	2,175	907	567	9,628
Repeal of reserve for bad debt for nonfinancial institutions						
Individual	32	97	100	101	76	406
Corporate	1,177	1,816	1,737	1,751	967	7,448
Partnership, Sub S, and personal service tax year conformity						
Individual	165	467	477	390	213	1,712
Qualified discount coupons						
Corporate	16	31	34	35	21	137
Require utilities to accrue earned but unbilled income						
Corporate	191	356	384	387	200	1,518
Contributions in aid of construction						
Corporate	70	125	110	104	103	512
Discharge of indebtedness						
Individual	2	4	3	3	2	14
Corporate	58	81	64	54	44	301
Subtotal, Accounting						
Individual	444	1,180	1,269	1,183	905	4,981
Corporate	9,902	14,694	13,638	12,562	9,262	60,058
Total	10,346	15,874	14,907	13,745	10,167	65,039
IX. Financial Institutions						
Limitation on bad debt reserves						
Corporate	647	1,092	1,218	1,406	631	4,994
Disallow interest to carry tax-exempt bonds						
Individual	−117	−370	−682	−940	−1,188	−3,279
Corporate	168	420	687	923	1,154	3,352
Special NOL carryover rules for depository institutions						
Corporate		−59	−93	−92	−77	−321
Special reorganization rules for troubled thrifts						
Corporate			46	105	164	315
Treatment of losses on deposits in insolvent institutions						
Individual	−3	−1	−1	−1	−1	−7
Subtotal, Financial Institutions						
Individual	−120	−371	−683	−941	−1,189	−3,304
Corporate	815	1,453	1,858	2,342	2,872	8,340
Total	695	1,082	1,175	1,401	683	5,036
X. Insurance Products and Companies						
Life insurance products						
Corporate	2	5	6	7	8	28
Life insurance companies						
Corporate	430	787	857	919	959	3,952
Property and casualty insurance companies						
Corporate	871	1,454	1,636	1,745	1,842	7,548
Subtotal, Insurance Products and Companies						
Corporate	1,303	2,246	2,499	2,671	2,809	11,528
Total	1,303	2,246	2,499	2,671	2,809	12,528
XI. Pensions and Deferred Compensation; Employee Benefits; ESOPs						
Individual retirement arrangements (IRAs)						
Individual	1,708	4,962	5,203	5,694	6,207	23,774
Other plans (401(k), 403(b), 457)						
Individual	310	628	691	809	924	3,362
Repeal exclusion of current annuity income of corporations						
Corporate	3	12	27	41	52	135

Table A.2.—Estimated Budget Effects of the Provisions of H.R. 3838, as Approved by the Conference Committee, Fiscal Years 1987–1991—Continued

[Millions of dollars]

Title and Provision	1987	1988	1989	1990	1991	1987–91
Simplified employee plans (SEPs)						
Individual	−15	−32	−35	−41	−47	−170
Minimum standards for qualified plans						
Individual	(a)	(a)	(a)	(a)	(a)	(a)
Uniform distribution requirements						
Individual	(a)	(a)	(a)	(a)	(a)	(a)
Excise		(a)	(a)	(a)	(a)	(a)
Tax on pre-retirement distributions, uniform basis recovery rules						
Individual	97	209	241	288	353	1,188
Replace 10-year averaging with limited 5-year averaging						
Individual	20	37	49	62	76	244
Repeal 3-year basis recovery rule for contributory plans						
Individual	1,096	1,763	2,001	2,015	2,030	8,905
Loan provisions						
Individual	(a)	(a)	(a)	(a)	(a)	(a)
Increase early retirement age						
Individual	315	869	960	1,097	1,259	4,500
Excise tax on excess retirement distributions						
Excise	(a)	(a)	(a)	(a)	(a)	(a)
Adjustments to sec. 404 limitations						
Individual	17	42	45	49	54	207
Excise tax on qualified plan reversions						
Excise	305	100	80	50	50	585
Employee leasing						
Individual	(a)	(a)	(a)	(a)	(a)	(a)
Extension of the exclusion for group legal plans						
Individual	−134	−25				−159
Employment	−58	−11				−69
Extension of the exclusion for education assistance						
Individual	−137	−23				−160
Employment	−79	−12				−91
Limit employer provided child care to $5,000						
Individual	(a)	(a)	(a)	(a)	(a)	(a)
Discrimination rules for employee benefits						
Individual		72	128	140	154	494
Faculty housing						
Individual	(a)	(a)	(a)	(a)	(a)	(a)
Self-employed health insurance						
Individual	−141	−205	−227	−71		−644
Limitation on accrual of vacation pay						
Individual	5	8	2	2	2	19
Corporate	85	63	17	18	15	198
Changes related to ESOPs						
Corporate	1,013	879	221	51	−40	2,124
Subtotal, Pensions and Employee Benefits, ESOPs						
Individual	3,141	8,305	9,058	10,044	11,012	41,560
Corporate	1,101	954	265	110	27	2,457
Excise	305	100	80	50	50	585
Employment	−137	−23				−160
Total	4,410	9,336	9,403	10,204	11,089	44,442
XII. Foreign Tax Provisions						
Separate limitation for passive income						
Corporate	275	471	442	470	502	2,160
Separate limitation for high tax interest income						
Corporate	103	163	152	261	404	1,083
Deemed paid credit						
Corporate	6	20	60	86	97	269
Effect of losses						
Corporate	9	21	23	25	26	104
Transportation income						
Corporate	8	16	18	25	30	97
Transfer of intangibles						
Corporate	24	59	82	108	137	410
Allocation of interest and other expenses						
Corporate	174	428	686	858	1,113	3,259
Application of research expenses to foreign source income						
Corporate	−252	−149				−401
Tax haven (Subpart F) income						
Corporate	74	144	141	156	170	685
Delayed effective date for 1984 E&P changes						
Corporate	−15	−15				−30
Possessions tax credit						
Corporate	37	67	66	73	79	322
Reduce foreign earned income exclusion						
Individual	24	34	45	56	61	220
Foreign investment companies						
Corporate	10	17	16	18	20	81
Branch-level tax						
Corporate	13	20	23	26	28	110
Income of foreign governments						
Corporate	23	43	48	53	58	225
Dual resident companies						
Corporate	72	124	130	138	148	612
Interest paid to related tax-exempt parties						
Corporate	12	26	27	29	33	127
Captive offshore insurance companies						
Corporate	20	34	38	43	49	184
Tax treatment of posssessions						
Corporate	−14	(a)	(a)	(a)	(a)	−14
Subtotal, Foreign Tax						
Individual	24	34	45	56	61	220
Corporate	579	1,489	1,952	2,369	2,894	9,283
Total	603	1,523	1,997	2,425	2,955	9,503
XIII. Tax-Exempt Bonds						
Individual	18	78	139	224	257	716
Corporate	−2	−9	−25	−32	−26	−94
Total	16	69	114	192	231	622

Table A.2.—Estimated Budget Effects of the Provisions of H.R. 3838, as Approved by the Conference Committee, Fiscal Years 1987–1991—Continued

[Millions of dollars]

Title and Provision	1987	1988	1989	1990	1991	1987–91
XIV. Trusts and Estates; Minor Children; Estate and Gift Tax; Generation-Skipping Transfer Tax						
Revise income taxation of estates and trusts						
Individual	69	217	234	253	275	1,048
Taxable years of trusts; estimated tax payments by trusts						
Individual	1,150	128	133	135	137	1,683
Estimated income tax payments by estates						
Individual	427	311	31	32	34	835
Unearned income of children under age 14						
Individual	60	195	226	249	274	1,004
Conservation easement donations						
Individual	(4)	(4)	(4)	(4)	(4)	(5)
Generation skipping transfer tax						
Estate & Gift	−3	−7	−7	−8	−8	−33
Subtotal, Trusts and Estates, etc.						
Individual	1,706	851	624	669	720	4,570
Estate & Gift	−3	−7	−7	−8	−8	−33
Total	1,703	844	617	661	712	4,537
XV. Compliance and Tax Administration [6]						
Penalty provisions						
Individual	287	319	336	341	346	1,629
Corporate	61	117	140	138	137	593
Excise	4	4	4	4	4	20
Estate and gift	4	4	4	4	4	20
Interest provisions [7]						
Individual	112	165	134	198	248	857
Corporate	180	251	185	290	370	1,276
Information reporting provisions						
Individual	75	396	866	1,022	1,068	3,427
Corporate	(8)	70	5	5	(8)	80
Revise estimated tax rules						
Individual	1,385	75	44	104	80	1,688
UBIT and private foundations estimated tax						
Corporate	137	7	7	8	8	167
Employee withholding schedule						
Individual		1,007	61	177	195	1,440
Subtotal, Compliance and Tax Administration						
Individual	1,859	1,962	1,441	1,842	1,937	9,041
Corporate	378	445	337	441	515	2,116
Excise	4	4	4	4	4	20
Estate & Gift	4	4	4	4	4	20
Total	2,245	2,415	1,786	2,291	2,460	11,197
XVI. Exempt and Nonprofit Organizations						
Distribution of low-cost articles and member list rentals						
Corporate	−4	−8	−8	−9	−11	−40
Trade shows						
Corporate	−4	−8	−12	−16	−22	−62
Tax exemption for certain title holding companies						
Individual	−2	−6	−11	−19	−28	−66
Corporate	−5	−12	−22	−37	−54	−130
Nonprofit newsgathering organization						
Corporate	(4)	(4)	(4)	(4)	(4)	(5)
Subtotal, Exempt and Nonprofit						
Individual	−2	−6	−11	−19	−28	−66
Corporate	−13	−28	−42	−62	−87	−232
Total	−15	−34	−53	−81	−115	−298
XVII. Other Provisions						
Extend targeted jobs tax credit						
Individual	−19	−34	−38	−20	−4	−115
Corporate	−133	−197	−190	−109	−56	−685
Diesel fuel and gasoline excise tax collection						
Individual		−8	−21	−21	−22	−72
Corporate		−9	−14	−14	−14	−51
Excise	5	317	193	195	198	908
Allow ministers to reelect social security coverage						
Employment	1	5	6	6	6	24
FUTA for certain Indian tribes						
Employment	(9)	(9)	(9)	(9)	(9)	(5)
Treatment of certain technical personnel						
Employment	7	11	12	14	16	60
Exclusion of certain foster care payments						
Individual	−5	−8	−9	−11	−12	−45
Rules for spouses of MIAs						
Individual	(4)	(4)	(4)	(4)	(4)	(5)
Exempt certain reindeer income from tax						
Individual	(4)	(4)	(4)	(4)	(4)	(5)
Subtotal, Other						
Individual	−24	−50	−68	−52	−38	−232
Corporate	−133	−206	−204	−123	−70	−736
Excise	5	317	193	195	198	908
Employment	8	16	18	20	22	84
Total	−144	77	−61	40	112	24
XVIII. Technical Corrections						
Individual	−360	−68	−50	−54	−62	−594
Corporate	−140	−99	34	34	28	−143
Excise	−3	−6	−6	−5	−5	−25
Total	−503	−173	−22	−25	−39	−762
Total, Tax Reform						
Individual	−13,950	−41,048	−37,877	−15,610	−13,462	−121,947
Corporate	25,169	23,939	22,501	23,436	25,226	120,271
Excise	306	412	270	244	247	1,479
Employment	−129	−7	18	20	22	−76

Table A.2.—Estimated Budget Effects of the Provisions of H.R. 3838, as Approved by the Conference Committee, Fiscal Years 1987–1991—Continued

[Millions of dollars]

Title and Provision	1987	1988	1989	1990	1991	1987–91
Estate & Gift	1	−3	−3	−4	−4	−13
Customs	(*)	(*)	(*)	(*)	(*)	(5)
Grand Total	11,397	−16,707	−15,091	8,086	12,029	−286

Footnotes to table:
[1]Rate reduction lines include the effects relating to capital gains as well as interactions between rate changes and other provisions of the bill.
[2]Includes increased outlays. Changes to the earned income credit will increase outlays by $83 million in 1987, $1,731 million in 1988, $3,149 million in 1989, $3,481 million in 1990 and $3,848 million in 1991.
[3]An outlay of magnitude similar to the amount shown here is anticipated as a result of section 1711 of the Act, concerning payment of expenses relating to the adoption of children with special needs.
[4]Loss of less than $5 million.
[5]Amounts have not been assigned to footnotes for summation purposes. Therefore, totals do not include estimates represented by footnotes.
[6]Section dealing with attorney's fees will increase outlays by less than $5 million annually.
[7]Includes outlay effects. Changes to the interest provisions will reduce outlays by $22 million in 1987, $10 million in 1988, $27 million in 1990 and $6 million in 1991.
[8]Gain of less than $5 million.
[9]Loss of less than $1 million.
[10]The effect of this provision after calendar year 1986 is included in the corporate minimum tax.

DAN ROSTENKOWSKI,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
RICHARD A. GEPHARDT,
MARTY RUSSO,
DONALD J. PEASE,
JOHN J. DUNCAN,
GUY VANDER JAGT,
Managers on the part of the House.

BOB PACKWOOD,
BOB DOLE,
JOHN H. CHAFEE,
RUSSELL B. LONG,
LLOYD BENTSEN,
SPARK M. MATSUNAGA,
BILL BRADLEY,
DANIEL PATRICK MOYNIHAN,
Managers on the part of the Senate.

PERMISSION FOR COMMITTEE ON MERCHANT MARINE AND FISHERIES TO SIT FRIDAY, SEPTEMBER 19, 1986, DURING THE UNDER 5-MINUTE RULE

Mr. JONES of North Carolina. Mr. Speaker; I ask unanimous consent that the Committee on Merchant Marine and Fisheries be permitted to sit Friday, September 19, 1986, while the House is reading for amendment under the 5-minute rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

Mr. WALKER. Reserving the right to object, Mr. Speaker, and I shall not object, I just take the time to see whether we can find out what the schedule is for the rest of the evening.

The SPEAKER pro tempore. The Chair will advise the gentleman that the legislative business of the House has been concluded for the day. It is not expected there will be any further rollcall votes. There may be some commemorative measures presented.

Mr. WALKER. Mr. Speaker, if the Chair would allow me, is it the understanding of the Chair that the measures to come before us will be those measures out of the Post Office and Civil Service Committee which are essentially unanimous-consent requests and that is the only legislative business?

The SPEAKER pro tempore. The gentleman is correct.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there ojection to the request of the gentleman from North Carolina [Mr. JONES]?

There was no objection.

NATIONAL HISTORICALLY BLACK COLLEGES WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 357) to designate the week of September 15, 1986, as "National Historically Black Colleges Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 357

Whereas there are one hundred and one Historically Black Colleges and Univerities in the United States;

Whereas such colleges and universities provide the quality education so essential to full participation in a complex, highly technological society;

Whereas black colleges and universities have a rich heritage and have played a prominent role in American history;

Whereas such institutions have allowed many underprivileged students to attain their full potential through higher education; and

Whereas the achievements and goals of the Historically Black Colleges are deserving of national recognition: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of September 15, 1986, through September 21, 1986, is designated as "National Historically Black Colleges Week" and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States and interested groups to observe such week with appropriate ceremonies, activities, and programs, thereby demonstrating support for Historically Black Colleges and Universities in the United States.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

□ 1905

AMERICAN LIVER FOUNDATION NATIONAL LIVER AWARENESS MONTH

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 202) designating November 1985 as "American Liver Foundation National Liver Awareness Month," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but would simply like to inform the House that the minority has no objection to the legislation now being considered.

Mr. COURTER. Mr. Speaker, will the gentleman yield?

Mr. HANSEN. I yield to the gentleman from New Jersey [Mr. COURTER], who is the chief sponsor of House Joint Resolution 127.

Mr. COURTER. Mr. Speaker, I thank the gentleman for yielding, and I appreciate the gentleman from New York taking this issue out of order.

Mr. Speaker, this is something that the gentleman knows that I have been very much involved with. There are some personal friends of mine that have gone through a very serious situ-

ation with regard to liver transplantation.

I know that all the Members of this body want people to be more aware of the fact that when children have liver diseases, the only way in which they can survive is by a liver transplant. It is not something that can be solved by medication.

One of the main detriments and one of the main problems or stumbling blocks to the salvation of these children is the fact that people are unaware that they can contribute, they can donate various organs, livers being one of those particular organs. It is a growing situation in the United States, and therefore this type of resolution, which brings to the attention of the American people the fact that the opportunity that we can have in serving each other and those that survive by engaging in organ transplants is something that not only is going to save money, but it is going to preserve human life, which is the greatest calling that we can possibly have.

Also I might add that a successful liver transplant saves the Federal Government more money than liver dialysis treatment year after year, so in one sense we are saving money, we are preserving human life, and we are giving the opportunity for people to serve when tragedy strikes.

I thank the gentleman for putting this on the calendar, and I would hope that we accept this particular resolution by unanimous consent.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. OLIN). Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 202

Whereas there are more than one hundred liver diseases which are progressive debilitating and often fatal;

Whereas liver diseases claim fifty thousand lives annually and are the fourth leading cause of death of Americans between the ages of fifteen and sixty-five.

Whereas liver diseases strike infants, children, adolescents, and adults, regardless of sex, race, or economic status;

Whereas there are no known causes, effective treatments (other than liver transplants), or cures for the vast majority of liver diseases;

Whereas there are many conditions which can lead to liver diseases, including congenital or inherited abnormalities, severe reactions to drugs, prolonged exposure to environmental toxins, parasitic and other diseases, as well as alcoholism;

Whereas people with a liver disease suffer not only physically from the disease but also emotionally from the unjust stigma placed on them due to the common, but mistaken notion that liver disease is caused only by alcoholism;

Whereas the American Liver Foundation is the only national organization to focus on the full array of liver diseases;

Whereas the Foundation is a network of volunteers, families, researchers, health care professionals located throughout the United States, dedicated to funding and increasing research to find the causes, treatments, cures, and ways to prevent these devastating diseases; and

Whereas the Foundation is committed to promoting the health of Americans by increasing public awareness of all conditions which can lead to a liver disease, providing health and therapy information and education programs about liver diseases for lay persons and professionals, and supporting and enhancing the quality of life for those individuals and their families who must cope with a liver disease: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 1985 is designated as "American Liver Foundation National Liver Awareness Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to—

(1) learn more about the liver and how to prevent liver diseases;

(2) support the search for the causes and possible cures for liver diseases;

(3) aid those who suffer from the crushing physical, psychological, and financial burden of a liver disease; and

(4) observe such month with other appropriate activities.

AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GARCIA: Page 2, line 3, strike "November 1985" and insert "October 1986".

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from New York [Mr. GARCIA].

The amendment was agreed to.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. GARCIA: Amend the title so as to read: "Joint resolution designating October 1986 as 'American Liver Foundation National Liver Awareness Month'."

The title amendment was agreed to.

A motion to reconsider was laid on the table.

9-1-1 EMERGENCY NUMBER DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate joint resolution (S.J. Res. 405) to designate September 11, 1986, as "9-1-1 Emergency Number Day", and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but I simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 405

Whereas protecting life and insuring safety are important responsibilities of local governments;

Whereas the ability of all persons to quickly summon help in an emergency is essential to a community's well-being;

Whereas thousands of municipalities throughout the United States have established 911 emergency telephone systems;

Whereas 911 emergency telephone systems have made it possible to save many lives, thereby enhancing the quality of life in communities throughout the Nation; and

Whereas 911 emergency telephone systems increase public confidence and provide efficient emergency services with greater response capabilities and cost savings to the public: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That September 11, 1986, is designated as "9-1-1 Emergency Number Day". The President of the United States is requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

AMENDMENT OFFERED BY MR. GARCIA

Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GARCIA: Page 2, line 3, strike "1986" and insert "1987,".

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from New York [Mr. GARCIA].

The amendment was agreed to.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. GARCIA: Amend the title so as to read: "Joint Resolution to designate September 11, 1987, as '9-1-1 Emergency Number Day'.".

The title amendment was agreed to.

A motion to reconsider was laid on the table.

NATIONAL DRUNK AND DRUGGED DRIVING AWARENESS WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 362) to designate the week of December 14, 1986, through December

20, 1986, as "National Drunk and Drugged Driving Awareness Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but I would simply like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation, I would just like to just take a moment, if I may, and point out that in October 1981 I had the privilege of going to the White House and talking to the President regarding this particular issue. He likened it to cancer at that particular time, and thought that it would be well if we could stamp this out.

He got Secretary Drew Lewis, who was then Secretary of Transportation, and the Presidential Commission on Drunk Driving was established. Possibly in that 2½ years there was more said about the driving habits of America than has ever been done. We found that many Americans drive under the influence of alcohol, and 20,000 people a year die as a result of that, and 750,000 people a year are paraplegic, quadriplegic, or have serious back injuries.

We further found out that many of our great police officers around America did not have the ability to determine if someone was drunk, and in the District of Columbia every moving violation was checked out to see in effect if that person had been drinking. Some of our police officers in America were absolutely shocked to find out that people who seemed stone sober were actually over 0.10 blood alcohol count.

In America today most of our States have a blood alcohol count of 0.10, except for my home State of Utah, which has 0.08. We found out that people who have only a 0.05 blood alcohol count cannot control their cars. We also found out, to the satisfaction of some and the disrespect of others, that people in the District of Columbia, the majority of them, after 6 o'clock, have over a 0.10 blood alcohol count. I do not know what to attribute that to, possibly the receptions that we attend or other things, but it made you feel awfully good that the person who is driving could very likely be on your side of the street and could not control his car.

We found out an awful lot about the speeding habits of America in a very extensive study which we did. What we did find out, Mr. Speaker, was that the people in America cannot control it like our Swedish friends, who drink a third more than we do, and that possibly we had to instill in the hearts and minds of Americans that possibly they should slow up or if they are going to go out and party, that one person should stay stone sober.

It was an extremely interesting thing that we discovered. Out of that came the recommendation, and in this body, that people now go to the age 21 before they drive, because their judgment seems to be much better.

Mr. Speaker, I would just like to conclude by saying that probably one of the greatest problems that has occurred is the person who uses drugs, the person who uses alcohol, and then gets in 2 tons of steel and barrels down the highway, and the heartache that that brings into families with children in deaths and fatalities and serious injuries is unbelievable.

I would hope that this awareness week would bring to the minds and the thoughts of people that they should be careful with this very, very deadly drug that is out, that we call alcohol and drugs, before they get in cars and kill people around America.

Mr. GILMAN. Mr. Speaker, I rise in support of House Joint Resolution 694, designating the week of December 14, 1986, through December 20, 1986, as the National Drunk and Drugged Driving Awareness Week.

I want to commend the distinguished gentleman from Maryland, Mr. BARNES, for once again introducing this measure which affords us the opportunity to focus attention on the tragic results from driving under the influence of drugs. Although drunk driving is usually associated with alcohol, we should never forget that all too often, individuals who have consumed heroin, cocaine, crack, marijuana, PCP, and other illicit drugs, are also driving under the influence of these deadly substances, thereby creating a danger to themselves and to everyone on the highway.

As the ranking minority member of our Narcotics Select Committee and as a parent who lost a daughter to a reckless, intoxicated driver several years ago, I want to commend the distinguished gentleman from Maryland for his efforts and leadership in focusing attention on this problem that is causing so much suffering to so many people and accordingly, I urge my colleagues to support this measure.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 362

Whereas traffic accidents cause more violent deaths in the United States than any other cause, approximately forty-four thousand in 1985;

Whereas traffic accidents cause thousands of serious injuries in the United States each year;

Whereas about 54 per centum of drivers killed in single vehicle collisions and 38 per centum of all drivers fatally injured in 1985 had blood alcohol concentrations of 0.10 or above;

Whereas the United States Surgeon General has reported that life expectancy has risen for every age group over the past seventy-five years except for Americans fifteen to twenty-four years old, whose death rate, the leading cause of which is drunk driving, is higher now than it was twenty years ago;

Whereas the total societal cost of drunk driving has been estimated at more than $26,000,000,000 per year, which does not include the human suffering that can never be measured;

Whereas there are increasing reports of driving after drug use and accidents involving drivers who have used marijuana or other illegal drugs;

Whereas driving after the use of therapeutic drugs, either alone or in combination with alcohol, contrary to the advice of physician, pharmacist, or manufacturer, may create a safety hazard on the roads;

Whereas more research is needed on the effect of drugs either alone or in combination with alcohol, on driving ability and the incidence of traffic accidents;

Whereas an increased public awareness of the gravity of the problem of drugged driving may warn drug users to refrain from driving and may stimulate interest in increasing necessary research on the effect of drugs on driving ability and the incidence of traffic accidents;

Whereas the public, particularly through the work of citizens groups, is demanding a solution to the problem of drunk and drugged driving;

Whereas the Presidential Commission on Drunk Driving, appointed to heighten public awareness and stimulate the pursuit of solutions, provided vital recommendations for remedies for the problem of drunk driving;

Whereas the National Commission Against Drunk Driving was established to assist State and local governments and the private sector to implement these recommendations;

Whereas most States have appointed task forces to examine existing drunk driving programs and make recommendations for a renewed, comprehensive approach, and in many cases their recommendations are leading to enactment of new laws, along with stricter enforcement;

Whereas the best defense against the drunk or drugged driver is the use of safety belts and consistent safety belt usage by all drivers and passengers would save as many as ten thousand lives each year;

Whereas an increase in the public awareness of the problem of drunk and drugged driving may contribute to a change in society's attitude toward the drunk or drugged driver and help to sustain current efforts to develop comprehensive solutions at the State and local levels;

Whereas the Christmas and New Year holiday period, with more drivers on the roads and an increased number of social functions, is a particularly appropriate time to focus national attention on this critical problem;

Whereas designation of National Drunk and Drugged Driving Awareness week in each of the last four years stimulated many activities and programs by groups in both the private and public sectors aimed at curbing drunk and drugged driving in the high-risk Christmas and New Year holiday period and thereafter; and

Whereas the activities and programs during National Drunk and Drugged Driving Awareness Week have heightened the awareness of the American public to the

danger of drunk and drugged driving: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 14, 1986, through December 20, 1986, is designated as "National Drunk and Drugged Driving Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL DRUG ABUSE EDUCATION AND PREVENTION WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 354) to designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. GILMAN. Mr. Speaker, I rise in support of House Joint Resolution 619, designating the week of October 5, 1986 through October 11, 1986, as the National Drug Abuse Education and Prevention Week.

As the ranking minority member of our Narcotics Select Committee, and as a cosponsor of House Joint Resolution 619, I want to commend the distinguished gentleman from Florida [Mr. BENNETT] for his leadership, his tireless efforts in helping to combat narcotics trafficking and drug abuse, and for introducing this resolution.

Mr. Speaker, this resolution is extremely timely. Just last week the House overwhelmingly passed, by a vote of 392–16, H.R. 5484, the Omnibus Drug Enforcement, Education and Control Act of 1986, which among other provisions, provides $350 million for drug prevention education assistance that would beef-up Federal, State, and local efforts to help prevent drug abuse. Along with the President's announcement equating drug trafficking and drug abuse as a national security threat and his recent proposal to focus attention on creating drug-free schools and a drug-free work environment, we are now beginning to see an increased awareness by the public as to the dangers of drug trafficking and drug abuse.

This measure which the distinguished gentleman from Florida has introduced and which I am very proud to cosponsor, will go a long way in helping to raise the public's consciousness as to the dangers that heroin, cocaine—and now the new deadly derivative crack—marijuana, PCP, and other deadly drugs, are having upon our citizens and upon our society.

Accordingly, Mr. Speaker, I urge my colleagues to support this measure.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 354

Whereas the illegal drug trade consists of approximately $100 billion in retail business per year;

Whereas removing the demand for drugs would reduce the illegal drug trade;

Whereas drug abuse destroys the future of many of the young people and adults in the Nation;

Whereas the eradication of drug abuse requires a united mobilization of national resources, including law enforcement and educational efforts; and

Whereas the most effective deterrent to drug abuse is education of parents and children in the home, classroom, and community: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 5, 1986, through October 11, 1986, is designated as "National Drug Abuse Education and Prevention Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to participate in drug abuse education and prevention programs in their communities and encourage parents and children to investigate and discuss drug abuse problems and possible solutions.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

□ 1915

NATIONAL ADULT DAY CARE CENTER WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 617) to designate the week beginning September 21, 1986, as "National Adult Day Care Center Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. (Mr. OLIN). Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 617

Whereas more than 1,000 adult day care centers are in operation nationwide, providing safe and positive environments to functionally disabled adults and senior citizens who are in need of daytime assistance or supervision;

Whereas adult day care centers have comprehensive programs providing a variety of services related to health, including medical therapy, medication monitoring, counseling, and health education;

Whereas adult day care centers are operated by professional staffs which identify individual health needs and give appropriate advice;

Whereas adult day care centers assist functionally disabled adults and senior citizens in maintaining a maximum level of independence;

Whereas adult day care centers provide opportunities for social interaction to individuals who otherwise may be socially isolated; and

Whereas adult day care centers offer relief to families who otherwise must provide constant care to functionally disabled adults and senior citizens, including victims of Alzheimer's disease and other forms of dementia: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning September 21, 1986, is designated "National Adult Day Care Center Week". The President is requested to issue a proclamation calling on the people of the United States to observe such week with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL CHILDREN'S TELEVISION AWARENESS WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 710) to designate the week beginning October 6, 1986, as "National Children's Television Awareness Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 710

Whereas children on average spend 4 hours of each day watching television and will have spent almost 15,000 hours watching television by the time they finish high school;

Whereas television can create an intellectual and emotional environment which can play a critical role in shaping a child's development and perception of the world;

Whereas television has the power to promote and reinforce the pro-social values parents try to teach their children regarding health and safety;

Whereas television often serves as a companion and babysitter for children with working parents;

Whereas many people do not realize television's great potential for enriching family life and for improving children's education;

Whereas families need to be shown how to use television as an educational resource;

Whereas national attention must be focused on the positive role that television can play in child development to insure that broadcasters uphold their obligation to serve the child audience;

Whereas schools, libraries, religious institutions, and community groups need to work with broadcasters in helping parents and children take advantage of television's potential as an educational and learning device; and

Whereas greater awareness must be achieved regarding how television can be effectively utilized and further developed to enhance the education of children: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning October 6, 1986, is designated as "National Children's Television Awareness Week". The President is requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GARCIA:

Page 3, line 3, strike "October 6" and insert "October 12".

The question is on the amendment offered by the gentleman from New York [Mr. GARCIA].

The amendment was agreed to.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. GARCIA: Amend the title so as to read as follows:

"Joint resolution to designate the week beginning October 12, 1986, as National Children's Television Awareness Week"."

The title amendment was agreed to.

A motion to reconsider was laid on the table.

NATIONAL APLASTIC ANEMIA AWARENESS WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 611) to designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week", and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. CARPER. Mr. Speaker, I am pleased that the House has adopted House Joint Resolution 611, a bill that designates the week of December 1–7, 1986, as National Aplastic Anemia Awareness Week.

Senators BIDEN and ROTH joined me on April 22, 1986, in introducing this legislation at the urging of the father of an 11-year-old Delaware girl, Nicole Kathleen, Cerchio, who lost a long battle with the disease last year. Like many Americans, I was not really familiar with Aplastic Anemia. As a result of my work on this bill, I now know that Aplastic Anemia is a fatal disease of the bone marrow which strikes 2,000 American every year. It occurs when bone marrow stops producing blood cells—red cells, white cells, and platelets. The only known cure is a bone marrow transplant, an operation for which it is very difficult to find suitable donors.

It is clear that more research is required to understand how to attack this little-known killer. With Federal research budgets reduced due to current fiscal constraints, private contributions must be increased. I have been informed by the Aplastic Anemia Foundation of America that its fundraising efforts for research have been hampered by the lack of public awareness of the disease. I hope that designation of this commemorative week will make more Americans aware of the fight against Aplastic Anemia and other bone marrow diseases. If even a few more private individuals join this fight as a result of our resolution, we'll be closer to our goal of beating this illness.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 611

Whereas aplastic anemia is a rare but extremely serious disorder that results from the unexplained failure of the bone marrow to produce blood cells;

Whereas aplastic anemia fatally strikes 2,000 Americans of all ages each year;

Whereas the causes of aplastic anemia are not known and there is only a limited understanding of how to treat the disease; and

Whereas increased public education on aplastic anemia will facilitate the battle against all bone marrow diseases: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period of December 1, 1986, through December 7, 1986, is designated as "National Aplastic Anemia Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the American public to observe such period with appropriate activities to assure a better understanding of aplastic anemia.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL JOB SKILLS WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 721) to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 721

Whereas one of the most critical problems facing the Nation is to design and engineer a national work force that can meet the challenges of today and tomorrow;

Whereas work in the United States is undergoing rapid and profound change;

Whereas advances in technology will require new skills not now held by the national work force;

Whereas it is predicted that during the decade beginning in 1980, businesses will experience a shortage of skilled workers;

Whereas the skills of many young adults and teenagers are inadequate to perform jobs that are becoming available, thereby contributing to a much greater than normal unemployment rate among young people;

Whereas the ability to maintain a competitive and productive edge necessary for a strong economy and relatively high quality of life standard are dependent on the national work force;

Whereas the productivity and ability of the Nation to compete in a world economy are dependent on the national work force; and

Whereas a National Job Skills Week can serve to highlight the many changes that are underway in the workplace which have necessitated the learning of new skills, concentrate attention on private and public job training efforts, and bring attention to present and future work force needs: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 12, 1986, through October 18, 1986, is designated as "National Job Skills Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States and interested groups to observe such week with appropriate programs and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

UNITED STATES-CANADA DAYS OF PEACE AND FRIENDSHIP

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 402) designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 402

Whereas, since the War of 1812, the people of the United States and Canada have peacefully shared and extended the longest border in the world;

Whereas more cultural and economic exchanges are made between the United States and Canada than any other two countries;

Whereas the United States and Canada have welcomed immigrants from all nations everywhere, resulting in rich and similar cultures in each country;

Whereas the United States and Canada share common ideals and institutions, including freedom, democracy, human rights, justice under law, and an ardent desire for a peaceful world;

Whereas the United States and Canada have been allies against tyranny in two World Wars;

Whereas the United States and Canada have confronted differences between the two countries with diplomacy and goodwill;

Whereas the United States and Canada are rich in resources and, together, represent an ever-more-powerful prospect for world economic progress;

Whereas the United States and Canada demonstrate the dynamism of democracy and, together, contribute to establishing lasting peace in the world;

Whereas a similar resolution commemorating continued peace and friendship between the United States and Canada has been proposed in the Canadian Parliament;

Whereas in Canada July 1 is Canada Day;

Whereas in the United States July 4 is Independence Day; and

Whereas the days between Canada Day and Independence Day are appropriate annual days on which to commemorate the friendship between the United States and Canada: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That July 2 and 3, 1987, are designated as "United States-Canada Days of Peace and Friendship", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such days with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMERICAN BUSINESS WOMEN'S DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 196) designating September 22, 1986, as "American Business Women's Day," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from Florida [Mr. SHAW] who is the chief sponsor of House Joint Resolution 379, to authorize and request the President to issue a proclamation designating September 22, 1986, as "American Business Women's Day."

Mr. SHAW. Mr. Speaker, this legislation designates September 22 as "American Business Women's Day."

This day would mark the importance of American business women to the whole Nation and allow us to focus our attention on the expanding role of women in business. Indeed, this is a day to truly celebrate.

I would like to give special thanks to the American Business Women's Association, for without their help, this day would not have been possible.

The Association, known as ABWA, is a national association that promotes professional and educational advancement for women. This organization awards scholarships to women not only entering college, university or vocational training programs, but also to women who need to refresh job skills before reentering the work force and to women who need certain courses in order to qualify for promotion and career advancement.

Since 1949, the ABWA has awarded a total of $21 million in scholarships. Just last year, ABWA awarded $3 million in scholarships to more than 6,000 women.

Mr. Speaker, we are entering a new era as never before in business, politics, science and philosophy. Organizations such as the ABWA encourage today's women to pursue their dreams and then gives them the help to make those dreams reality.

The ABWA deserves congratulations on behalf of their efforts for all American business women and for women across our Nation.

Mr. GILMAN. Mr. Speaker, I am pleased to rise today in support of House Joint Resolution 379, designating September 22, 1986, as "American Business Women's Day." Women who are leaders in the business community are seldom recognized for their outstanding contributions to our economy.

A recent report issued by the Bureau of the Census illustrates their key role among our nations entrepreneurs. The Bureau of the Census determined that 2.9 million businesses—one fourth of all businesses nationwide (excluding large corporations) are women-owned firms. Businesses owned by women accounted for $98.3 billion in gross receipts nationally.

In my own State of New York, over 189,000 women-owned firms contribute over $8 billion in sales and receipts to the states' economy.

It is fitting that September 22, 1986 is under consideration for designation as American Business Women's Day. Later that same week, I will join with my good friend and colleague Congressman HAMILTON FISH, JR., in hosting the women leaders of our congressional districts. Women Business Leaders will be joined by women leaders in local government and the professions in participating in a conference on issues of national concern. The subjects for this year will include the implications of tax reform, long-term prospects of the Federal role in health care, the budget, and a forum discussion on one of our Nation's most serious problems—narcotics abuse.

I again applaud the long-overdue recognition of women in business. I commend the gentleman from Florida [Mr. SHAW] for his leadership in sponsoring this measure.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 196

Whereas the American Business Women's Association is a national educational association that promotes professional and educational advancement for women;

Whereas the American Business Women's Association awarded $2,900,000 in scholarships to over six thousand women in 1984, and has awarded more than $18,000,000 in scholarships since 1949;

Whereas the American Business Women's Association has more than one hundred and ten thousand members and two thousand one hundred chapters throughout the United States and its territories;

Whereas the American Business Women's Association encourages women to expand horizons, diversify skills, and set higher personal and career goals; and

Whereas Congress recognizes the important contributions of American businesswomen to our Nation's continuing vitality: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That September 22, 1986, is designated "American Business Women's Day". The president is authorized and requested to issue a proclamation calling upon the people of the United States to observe that day with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL SCHOOL-AGE CHILD CARE AWARENESS WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 60) to designate the week beginning September 1, 1985, as "National School-Age Child Care Awareness Week," with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendments, as follows:

Page 2, line 3 strike out "September 1, 1985" and insert "September 15, 1986".

Amend to title so as to read: "Joint resolution to designate the week beginning September 15, 1986, as 'National School-Age Child Care Awareness Week'."

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from Maine [Mr. MCKERNAN] who is the chief sponsor of House Joint Resolution 60, to authorize and request the President to issue a proclamation designating the week beginning September 15, 1986, as National School-Age Child Care Awareness Week.

(Mr. MCKERNAN asked and was given permission to revise and extend his remarks.)

Mr. MCKERNAN. Mr. Speaker, I rise in support of House Joint Resolution 60, designating this week as National School-Age Child Care Awareness Week. I introduced this bill to draw attention to the problems of children in self-care—the so-called latchkey children.

Two years ago, Congress passed, and the President signed, a similar bill, setting aside a week in September for Americans to learn about, and respond to, the special problems of the millions of children who are in self-care in our country each day. National School-Age Child Care Awareness Week provides a focal point around which local communities, States, and national organizations can conduct activities to heighten public awareness of the problems of latchkey children.

As the fabric of our society changes, so do the needs of our families and children. Today, more than half of America's children have two parents in the work force, and one in five children grows up in a one-parent family. In my State of Maine, a survey revealed that close to 25,000 Maine children between the ages of 6 and 12 are spending time in self-care each week.

As this group continues to expand, the associated problems can be expected to grow, too. A shortage of good, affordable day care has been identified time and again in hearings held by the House Select Committee on Children, Youth and Families, on which I serve. Children in self-care are often found to be lonely, frightened, and vulnerable. We can take a big step toward addressing these issues by lending recognition to the problems.

I want to sincerely thank Senator HAWKINS for her assistance in passing this legislation in the Senate, and to ask the support of my House colleagues for this measure.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

A motion to reconsider was laid on the table.

NATIONAL DAY OF EXCELLENCE IN HONOR OF THE CREW OF THE SPACE SHUTTLE "CHALLENGER"

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 588) commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the space shuttle *Challenger,* and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. KOLBE. Mr. Speaker, January 28, 1987, will provide this country the opportunity to appropriately recall the sacrifice of the crew of the space shuttle *Challenger* and to honor the dedication and commitment to the pursuit of excellence exemplified by those seven American heroes.

House Joint Resolution 588, proclaims January 28 a "National Day of Excellence" in honor of the *Challenger* Crew who gave their lives while striving for an excellence of technology, of goal, and of personal achievement.

It should, most emphatically, not be a holiday. On the contrary, it should be a day when Americans rededicate themselves to the simple, but sometimes forgotten, pursuit of excellence, performing their work with the greatest pride and success that is possible. In lieu of a passive or static event, this tribute will provide an opportunity for all of us to participate, and to be made better by virtue of our participation. It is to be a time to focus our attention on the rewards and, yes, the risks of extending our reach beyond the familiar and mediocre toward new knowledge, toward new insights, and toward a final embrace of the ideal of excellence pursued so fervently by the crew of the *Challenger.*

It is to be a day when the best cars roll off the assembly line, when educators teach their best lessons, and when the best national ideas are born; a time set aside to excel in each of our endeavors. Each year we should see product labels marked "Manufactured January 28" and know, this is America's finest.

The vision of a "National Day of Excellence" was first proposed by Ed McDonald, a Tucson schoolteacher of handicapped children. Since our original discussions, House Joint Resolution 588 has been endorsed by educational organizations, city governments, and aerospace organizations. Particularly satisfying to me personally has been the enthusiastic support of the Young Astronauts Council.

I ask you to join me today in accepting this challenge of the space shuttle *Challenger* by designating January 28, 1987, as a "National Day of Excellence."

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 588

Whereas on January 28, 1986, the seven crew members of the space shuttle Challenger, Commander Francis R. Scobee, Pilot Michael J. Smith, Mission Specialist Ellison S. Onizuka, Mission Specialist Ronald E. McNair, Mission Specialist Judith Resnik, Payload Specialist Gregory B. Jarvis, Teacher-Observer S. Christa McAuliffe, were killed in a tragic explosion shortly after liftoff;

Whereas each of the crew members of the Challenger was a true American hero who represented the best and the brightest that our Nation has to offer;

Whereas the crew of the Challenger gave their lives while striving for an excellence of technology, of goal, and of personal achievement which fills all Americans with a sense of pride in their fellow human beings and countrymen;

Whereas the most appropriate tribute we could pay the crew of the Challenger is a national day when Americans would dedicate themselves in all their endeavors to the pursuit of excellence which makes our country great;

Whereas the American spirit is most responsive to a living tribute in which all citizens can participate and be enriched by such participation; and

Whereas this is a day for which our national character cries out: Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That January 28, 1987, is designated as a "National Day of Excellence". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe such a day—

(1) by resolving that in the course of their regular activities they will pursue the spirit of excellence represented by the crew of the space shuttle Challenger; and

(2) with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL HOSPICE MONTH

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 317) to designate the month of November 1986 as "National Hospice Month," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 317

Whereas hospice care has been demonstrated to be a humanitarian way for terminally ill patients to approach the end of their lives in comfort with appropriate, competent, and compassionate care in an environment of personal individuality and dignity;

Whereas hospice advocates care of the patient and family by attending to their physical, emotional, and spiritual needs and specifically, the pain and grief they experience;

Whereas hospice care is provided by an interdisciplinary team of physicians, nurses, social workers, pharmacists, psycholoIgical and spiritual counselors, and other community volunteers trained in the hospice concept of care;

Whereas hospice is rapidly becoming a full partner in the Nation's health care system;

Whereas the recent enactment of the medicare hospice benefit makes it possible for many more elderly Americans to have the opportunity to elect to receive hospice care;

Whereas private insurance carriers and employers have recognized the value of hospice care by the inclusion of hospice benefits in health care coverage packages; and

Whereas there remains a great need to increase public awareness of the benefits of hospice care: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of November 1986 is designated "National Hospice Month". The President is requested to issue a proclamation calling upon all Government agencies, the health care community, appropriate private organizations, and people of the United States to observe that month with appropriate forums, programs, and activities designed to encourage national recognition of and support for hospice care as a humane response to the needs of the terminally ill and a viable component of the health care system in this country.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL INDEPENDENT RETAIL GROCER WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 263) to designate the week of September 7 through September 13, 1986, as "National Independent Retail Grocer Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but would simply like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 263

Whereas the independent retailer has served the American consumer for over two hundred years;

Whereas independent retail grocers account for 64 per centum of all grocery stores in the United States and are responsible for nearly one-half of the grocery product distributed;

Whereas the independent retail grocer exemplifies the small business entrepreneur, the backbone of the American free enterprise system; and

Whereas the independent retail grocer offers a wide array of services to the community where the grocer lives and does business: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That September 7 through September 13, 1986, be proclaimed as "National Independent Retail Grocer Week".

AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GARCIA: Page 2, strike lines 3 and 4 and insert the following:

That September 1986 be proclaimed "National Independent Retail Grocer Month".

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from New York [Mr. GARCIA].

The amendment was agreed to.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Amendment to the title offered by Mr. GARCIA: Amend the title so as to read: "Joint resolution to designate September 1986 as 'National Independent Retail Grocer Month'."

The title amendment was agreed to.

A motion to reconsider was laid on the table.

RECOGNIZING UNITED WAY'S 100TH ANNIVERSARY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 684) calling for recognition of United Way's 100th anniversary, and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but would simply like to inform the House that the minority has no objection to the legislation now being considered.

Mr. GILMAN. Mr. Speaker, as a cosponsor of House Joint Resolution 684, a resolution commemorating the United Way's 100th anniversary, I welcome this opportunity to express my support and praise of this worthy organization. The United Way has proposed invaluable assistance to many communities within my own congressional district, and to many others throughout the Nation. I commend the distinguished gentleman from Illinois, the minority leader, Mr. MICHEL, and the distinguished gentleman from Texas, the majority leader, Mr. WRIGHT, for introducing this important resolution. I would also like to thank my colleague from New York, Mr. GARCIA, for the leadership he has provided.

The United Way has been assisting people and communities for a full century by funding a wide variety of programs, ranging from halfway houses to advanced learning seminars. The United Way has become America's premiere voluntary organization, with over 2,000 chapters contributing to and supporting over 37,000 agencies and programs. The beneficial influence of United Way has been felt by virtually every town in the United States. While we are reminded of the United Way's efforts every time we watch a professional football game, it is especially appropriate in this, its 100th year, to applaud its past efforts and encourage it to continue its important work and achieve its goal of doubling its effective resources by 1991.

Accordingly, I urge my colleagues to support House Joint Resolution 684, which recognizes the laudable endeavors of the United Way and commemorates its 100th anniversary, and hope for its expeditious enactment.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 684

Whereas voluntarism, the fundamental fiber which has made America the most giving nation in the world, is becoming even more vital, and is being strongly encouraged and endorsed by the administration and this Congress;

Whereas America's United Way, our country's premiere organized voluntarism entity is celebrating the end of its first century of service to America, and is looking forward to its second century;

Whereas there are more than two thousand two hundred United Way organizations across America helping communities meet critical health and human care needs through an ingenious system of local charitable groups;

Whereas these United Way organizations involve tens of thousands of caring and concerned volunteers from all walks of life in a catalytic process of solving community problems;

Whereas these organizations are responsible for garnering voluntary contributions to support more than thirty-seven thousand charities providing services and programs to aid tens of millions of people throughout our country; and

Whereas to help meet this Nation's urgent health and human care needs United Way will launch a Second Century Initiative, with the goal of doubling its volunteers and financial resources by 1991: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress of the United States hereby expresses its gratitude and that of the American people for the outstanding contribution made by the America's United Way over the last century; congratulates the America's United Way on the event of its one hundredth anniversary; applauds and encourages America's United Way to continue its fine work and achieve its goal of doubling its effective resources by 1991.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the various pieces of commemorative legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

GENERAL LEAVE

Mr. ROWLAND of Georgia. Mr. Speaker, I ask unanimous consent that all Members be permitted 5 legislative days in which to extend their remarks and to include therein extraneous material on the joint resolution, House Joint Resolution 732, which passed the House today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

REPORT SUMMARIZING FIRST 2 DAYS OF PROCEDURES OF THE WORLD TRADE TALKS

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and to include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, the World Trade Talks continue this week in Uruguay and they are watched by all American producers, including farmers who are observing the changing conditions to compete in international trade. It is vital that we recognize that not only are the conditions changing but the rules to trade will change.

This week, we begin a round of trade talks to rewrite the rules of international commerce among our trading partners. I submit herewith a report from the U.S. Representative, Mr. Yeutter, which summarizes the first 2 days of the proceedings.

OFFICE OF THE U.S.
TRADE REPRESENTATIVE
Washington, September 17, 1986.

To: House Leadership.
From: Sol Mosher, Assistant USTR for Congressional Affairs.
Subject: GATT Ministerial Meeting, Punta Del Este, Uruguay.

In an effort to keep you informed of ongoing events at the GATT Ministerial meeting in Punta del Este, Uruguay, I am enclosing (1) a report on the press briefing by U.S. officials yesterday afternoon, and (2) a copy of Ambassador Yeutter's opening remarks on Monday.

We will attempt to keep you updated on the progress of the meeting throughout this week.

SOL MOSHER.
September 17, 1986.

NEWS FROM PUNTA DEL ESTE

Ambassador Yeutter has reported that the atmosphere at Punta Del Este remains positive, despite the continuing hard-line taken by Brazil and India against including services in the Uruguay Round. Whirlwind plenary, small group and bilateral meetings are underway, with today a "day of decisions". In particular, Chairman Iglesias indicated yesterday that he will decide today on a draft text for the communique. Time pressures intensified when the Japanese and the five Southeast Asian nations indicated that they will join us in leaving Punta this weekend.

On agriculture, Secretary Lyng and Ambassador Smith are cautiously optimistic that satisfactory treatment can be worked out. Similarly, intellectual property seems to be moving forward. Ambassador Smith again reminded the participants that something on investment must be included, and that just a study "doesn't do it." Before leaving for Washington yesterday, Congressman Frenzel warned that the Congress will not extend U.S. negotiating authority if it does not like the new round agenda.

Ambassador Smith, Ambassador Samuels and Under Secretary Amstutz held a 30-minute, on the record briefing to the world press

Ambassador Smith said a growing number of countries beyond the original G-48 seem to believe that the W-47 text should be used

as a working document. Ambassador Samuels said there are probably 57-59 nations in this category.

All three briefers reiterated that the U.S. does not want to open that text without an overwhelmingly pursuasive reason to do so.

Ambassador Samuels debunked a rumor that Colombia had changed its position on services saying the Colombians had today reiterated their strong support for the U.S. position and that they were concerned that their speech was being misinterpreted.

Undersecretary Amstutz said the U.S. has seen no proposed French language changes on agriculture but that the U.S. has no interest in changing the export subsidy phase-out concept. He reiterated. However, that actual negotiations will not take place in Punta Del Este, and that we are only here to launch the round. Ambassador Smith dismissed a suggestion by the Europeans that GATT does not permit phase-outs.

Following the briefing, Ambassador Smith held a background briefing with the Washington Post, New York Times, Wall Street Journal, and Times of London. He said that given the lack of movement by Brazil and India, Minister Iglesias will have to decide soon when to announce that the W-47 text is the one from which the CPS are working. He suggested that it will have to happen by noon tomorrow if we are to keep the Friday night deadline.

Ambassador Smith repeated that the Friday night deadline is firm because of Saturday morning travel plans by many delegations including the U.S.

He said it looks like agriculture and intellectual property will be worked out—that Australian Minister Dawkins and EC Commissionen De Clercq are talking amicably and that the U.S. is playing a role as a buffer. He said the French are working on agriculture language which the other EC nations were reviewing. He said the U.S. would only accept changes that could be characterized as technical in nature.

Ambassador Smith said the Indians are beyond making a deal on services and that we have to read the Ambassadors speech as a doorslammer. He predicted that if India forced a vote on this issue it would lose.

Investment, he said, remains the hardest issue. He said we must have something on this to go home, that a study doesn't do it.

Ambassador Smith said both South Africa and the Soviet Union appear to be low-key issues.

When asked which countries might be peeled off the G-10, Ambassador Smith said Argentina, Egypt and Yugoslavia were the most likely.

Earlier in the afternoon Congressman Frenzel briefed the world press for 20 minutes. Congressman Frenzel said Congress believes that it is extraordinarily important that the new round go forward and that it have a responsible agenda. He said he has a good feeling about this meeting in contrast to how he felt at the 1982 ministerial.

He indicated that a successful new round launching could dampen congressional enthusiasm for a trade bill, adding that Congress will not extend U.S. negotiating authority if it does not like the new round agenda.

[Telegram]

U.S. INFORMATION AGENCY

Mr. Chairman, fellow delegates, this week GATT faces an historic challenge. Our task is more difficult than any that has confronted world trade since the very creation of GATT in 1947. What we do in Punta Del Este will determine whether GATT remains a functional, dynamic institution serving the interests of its members or declines into a static and passive association that is irrelevant to the needs of international trade.

Our task may be daunting but it is one from which we must not shirk. The world trading system is in trouble. All of us, to one degree or another, have slipped from the GATT ideals of free and open trade. Some have slipped considerably, making protectionism dangerously more commonplace. Many now overlook the tremendous benefits that these ideals made possible during the last 40 years. The expansion of trade can enable more individuals to participate in the world economy, thereby improving their quality of life and standard of living.

Rather than allow permanent damage to the world trading system, we must reaffirm the basic principles established by the founders of GATT. Such a reaffirmation must recognize the realities of international trade today. This means extending GATT principles to all major areas of trade. For too long, GATT rules and disciplines have not applied to many of the most important sectors of the world economy, leading to global trade distortion and economic disequilibrium that can no longer be tolerated.

The United States, with a trade deficit approaching $250 billion, is the major victim of this disequilibrium. President Reagan has forcefully resisted a tide of domestic protectionism in the face of this gigantic trade deficit, but he cannot do so forever. GATT members need to work together to move the world back toward economic equilibrium—to the benefit of all. If other countries are not interested in doing so, the U.S. will have no choice but to defend its own interests in its own way. We are prepared to do so if we must.

The United States advocates a new round because we believe that GATT can be responsive to the rapidly-changing requirements of international commerce. We are prepared to modernize it for the benefit of every country. This will require a firm commitment by all GATT member countries to work together toward a common goal.

The vast majority of GATT members have already demonstrated such a commitment. The process for launching a new round was begun by the unanimous consensus of the contracting parties last November. During the first 7 months of this year, the preparatory committee met to draft an agenda for the new round. Out of those meetings came the text upon which we will base our discussion for the final ministerial declaration. This text resolved a number of issues, leaving others to be decided here. It was a significant accomplishment. It leaves me confident that the decision to launch a new round is within our grasp.

The negotiators who drafted that text represent countries of all characterizations: developed, developing and newly industrialized northern and southern, eastern and western. Colombia and Switzerland deserve particular mention for chairing the deliberations but all 40 or 50 participating nations deserve credit.

The diverse composition of the drafting group demonstrates conclusively that support for a new round is widespread and not limited to one nation or group of nations. It also disproves the assertion that there is a GATT conflict between the LDCS and the developed nations. Indeed, the developing nations provided much of the leadership that went into drafting the W-47 declaration.

The contribution of the developing countries to the preparatory committee process is only the most recent example of how important the LDCS have become to world trade. The United States welcomes the growth and increasing stature of the developing nations.

We buy nearly two-thirds of the manufactured goods sent from the LDCS to the developed countries and we look forward to increasing our exports to LDC markets. We believe the United States can only benefit as developing countries become more prosperous.

By deciding to meet here in Punta Del Este, the GATT has demonstrated that the LDCS are full partners in the GATT process and just as committed to GATT principles as the developed nations. Mr. Chairman, I thank you for your nation's generous offer to host this meeting and I know your able leadership will ensure its success.

Uruguay is just one of the many developing nations that understands it too has a tremendous stake in the expansion of world trade. They know that protectionism threatens developing nations far more than it does the United States. We are large enough and self-sufficient enough to adjust to close markets, thereby limiting the damage. Resurgent protectionism would slow our economic expansion and reduce our standard of living but it would not devastate our economy as it would smaller and more export-dependent nations.

The new round will not only help LDCS by reversing protectionist trends; it will also provide many opportunities for expanding trade. The U.S. position on such issues as agriculture, services, investment and intellectual property is well-known, but not so widely recognized is the support we enjoy from progressive LDCS that realize they will also benefit from inclusion of these issues in the new round.

For example, it is clear that the main victims of agricultural protectionism are smaller, agrarian economies that cannot complete with massive export subsidies nor penetrate import barriers that the GATT currently permits. The agricultural language in the draft ministerial declaration offers hope for change that will benefit not just U.S. farmers but others around the globe.

Similarly, the lack of rules for trade in services does not restrict the U.S. only. Many LDCS that are competitive in services or hope to evolve into service economies find significant markets closed to them by their neighbors protectionist policies. A services code guaranteeing nondiscriminatory treatment and equitable access would threaten no nation, especially since none will be forced to sign such a code. Furthermore, services facilitate trade in goods. The two are complementary, and as international commerce becomes more sophisticated, will forever be interrelated—in all countries.

As for investment, the lack of basic principles penalizes LDCS by creating uncertainty and risk for investors. There is an urgent need throughout the developing world for increased foreign investment, particularly among nations that need to reduce their reliance on debt capital but need equity capital to stimulate growth. As long as there are no meaningful rules in this area, investment in these countries will remain risky and unattractive.

Finally, we need better rules on intellectual property, not simply for the protection of the developed world but also for the LDCS, who benefit from research and development wherever it is conducted. The concept of

protecting intellectual property is not new, but it is time to recognize that the issue affects trade and ought to be addressed by the GATT. The current lack of protection for intellectual property virtually guarantees that only the developed nations can afford to invest heavily in vital research, which will keep the LDCS from progressing as rapidly as they could otherwise.

We regard the issues of agriculture, services, investment and intellectual property as critical to the future of all GATT members. We cannot envision—nor agree to—comprehensive new trade negotiations that do not include these four issues on the agenda. Without them, there will be no meaningful standstill-rollback commitment, no reduction in tariff and non-tariff barriers, no negotiations of a safeguards code, no improvement in the GATT dispute settlement mechanism or subsidy rules, and no discipline over the "gray area" measures that so plague international trade today.

Today GATT stands at crossroads. Regardless of what we do here, world events will go forwards. We cannot stop change, but we can work to set our own destiny. If we leave Punta Del Este without taking steps to strengthen and modernize GATT, we will have failed to grasp an opportunity to improve the lives of all citizens of the world for years to come. But if we act decisively we will be worthy successors to the statesmen who created GATT 45 years ago. Let their vision inspire us to work to invigorate GATT for future generations.

TRIBUTE TO THE HONORABLE M.G. (GENE) SNYDER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky [Mr. NATCHER] is recognized for 60 minutes.

Mr. NATCHER. Mr. Speaker, when the 99th Congress is finally adjourned, our friend GENE SNYDER will retire as a Member and return to his home in Kentucky. He has been good for Kentucky and for our country and has established an outstanding record as a Member of this Congress.

I have served with about 2,000 Members since I have been a Member of Congress, and I have served with none more loyal, more energetic, and with more ability than GENE SNYDER.

During his tenure, he has served for many years as a member of the Committee on Public Works and Transportation. He is now the ranking minority member on this committee and has served with distinction and honor. I have said on more than one occasion that it will be many a day before the Commonwealth of Kentucky again has a ranking minority member on this outstanding committee. As you know, Mr. Speaker, we only have seven Members in the House from Kentucky and it not only takes time, but recognition and ability to fill the seat that GENE SNYDER has filled on the committee since he has been a Member of Congress.

One of the nicest things that has happened to me since I have been a Member is the opportunity that I have had to serve with him in the Congress. He loves this House and he knows that our country is the greatest country of all. His concept of public trust is without parallel and never has he hesitated to speak out against any proposal which he felt was not sound and in the best interests of our people. In every position he has held, either public or private, he has achieved distinction. His service in all of his assignments was marked by a high sense of conscience and duty. He will have a high place in the history of our country and in the hearts of all of our people.

Mr. Speaker, we will miss our friend GENE SNYDER and especially does this apply in my home State of Kentucky. He has served his people in his congressional district in an excellent manner and this applies not only to his district, but his State and his country.

I want to wish GENE SNYDER and the members of his family the best of everything in the future; and, GENE, we want you to come back and visit with us as often as possible.

At this time, Mr. Speaker, I yield to the distinguished gentleman from New Jersey [Mr. HOWARD], the chairman of the Committee on Public Works and Transportation.

Mr. HOWARD. Mr. Speaker, I am pleased to participate in this tribute to my colleague GENE SNYDER, a longtime friend with whom I have worked closely on many important issues.

GENE and I have been in Congress together for almost two decades. He lost his seat for one term during the Lyndon Johnson election of 1964, the first year that I was elected. Since he returned in 1966, we have served to gether on the Public Works and Transportation Committee.

For the last 4 years, GENE has been the ranking Republican on the committee. Without reservation, I can say that it has been a pleasure working with GENE on the Public Works and Transportation Committee during those years.

On issues other than those involving the committee, GENE and I rarely agree. In fact, he is one of those Members whose votes tell me to vote the other way. That difference has not prevented us, however, from developing an extremely good working relationship on the committee. That includes virtually all issues—environmental, transportation, aviation, economic development, and public buildings and grounds.

There have even been some Public Works and Transportation Committee issues on which we have disagreed. But there is one thing about GENE SNYDER that has never changed. You always know where he stands on an issue. He may not agree with you but he doesn't leave you in any doubt about his position.

I am proud to have had GENE SNYDER as a friend during my time here. He is a Member of Congress who knows what he wants and does not hesitate to get it. But he also does not hesitate to use the same means to assist others who he thinks are right. He is willing to go out of his way to ensure the right position prevails.

GENE SNYDER and I represent vastly different districts. He represents the suburban areas of Kentucky and some of the rural areas along the Ohio River. I represent the beach towns of the New Jersey Shore. Out political views are different, but over the years we have developed a close and harmonious relationship. I will miss his assistance and support on the Committee on Public Works and Transportation in the next Congress.

I will miss him as a good friend in Congress. He is a strong and effective advocate for his position but also someone who is considerate of his colleagues' concerns and someone who can be counted on in tough situations.

I want to thank BILL NATCHER for taking this special order to honor GENE SNYDER. It is a tribute that has been well earned and well deserved.

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Mr. NATCHER. Mr. Speaker, at this time I yield to the distinguished gentleman from Kentucky [Mr. MAZZOLI.]

Mr. MAZZOLI. I thank the chairman very much

Mr. Speaker, I appreciate the gentleman from Kentucky, the dean of our delegation, taking this time to allow us to honor our friend and soon to be departing friend GENE SNYDER.

As the chairman knows, the gentleman from Kentucky, Mr. SNYDER, and I share Jefferson County, which is my home base, and of course GENE goes up the Ohio River to include parts of northern Kentucky, but we do share Jefferson County.

In that connection we have had the opportunity of jointly representing our people for the 16 years that I have been in the Congress.

I can say unequivocally that GENE and his people, Bill Tanner and his office folks work very hard for the people in Jefferson County.

So from the standpoint of losing a friend and also a colleague in the closest sense, GENE's departure will be a loss.

Second, with GENE's departure, of course, will go one of the major influential figures in public works.

As the chairman, the gentleman from Kentucky [Mr. NATCHER] our dean, knows, that is very important to Kentucky: roads, harbors, and water projects. Specifically in Jefferson County, once again, the gentleman from Kentucky [Mr. SNYDER] has been very strong and assertive being sure that we get for Jefferson County our fair share of the public works fundings.

So when GENE leaves, while we will have strong support from the gentleman from Alabama [Mr. BEVILL] and others, it is going to be a far more difficult task.

I might also say that when GENE leaves and takes with him his beautiful wife, Pat, she is a delightful person to be with and in that sense of the word it adds to the Snyder influence here in Congress.

Last, Mr. Chairman, but not least, once again GENE and I have over these last 16 years become good friends. We have flown back and forth more times to Kentucky than probably he or I could remember. I think in that sense of the word we have worked together affably and harmoniously.

So I want to extend to him—he is in the Chamber—and to all who would be watching and to Pat my best wishes for much health and happiness and prosperity in the future.

We will miss you and we appreciate you.

Mr. NATCHER. Mr. Speaker, at this time I yield to the distinguished gentleman from Arkansas [Mr. HAMMERSCHMIDT].

Mr. HAMMERSCHMIDT. Mr. Speaker, I am very appreciative to my distinguished colleague from Kentucky [Mr. NATCHER] for arranging this special order.

Mr. Speaker, the retirement of my good friend and colleague, the Honorable GENE SNYDER, at the end of this Congress, bings down the curtain on a truly distinguished career in this body. His services will be sorely missed by this House, the Nation, and the great Commonwealth of Kentucky.

Over the course of by two decades of service with GENE SNYDER in the House and on the Public Works and Transportation Committee, I have never seen his equal as a master of the legislative process and the art of negotiation.

For 22 years, he has served effectively and with great ease as one of the stalwarts of our party, as a protector of the interests of his constituents, and as a key player in landmark legislation of national, if not global, importance.

With his great legislative skills, his accomplished art of persuasion, and his ability to forge compromises with straightforward common sense and logic, GENE SNYDER has always been a Member in great demand during legislative battles. He has always been one of those Members you wanted to have on your side. In that way you had the advantage of having him as a persuasive ally, and perhaps just as important, you did not have to face him as the fierce and equally persuasive adversary he could be.

The great highway, aviation, water, and environmental legislation enacted over the course of the past 20 years have had the mark of GENE SNYDER. Most recently, he was a prime mover in forcing the compromise necessary to break the impasse over the programmatic issues surrounding Superfund.

As ranking minority member of the Public Works and Transportation Subcommittee on Aviation for 8 years, until 1983, and as the ranking member of our full committee for the past 4 years, he has provided the strongest possible leadership in guiding the committee's efforts to shape a sound national transportation and water policy.

He has also served on the Merchant Marine and Fisheries Committee for almost 16 years, and was ranking minority member of that committee in the 97th Congress. He played an important leadership role in the major legislation drafted in that committee, including the Shipping Act of 1984, and in efforts to revitalize the merchant marine industry.

Through more legislative endeavors than I can possibly mention, I have served beside GENE SNYDER on the Public Works Committee and stood with him here on the floor in support of legislation to keep this Nation economically healthy and militarily strong.

It has been more than a pleasure to serve with GENE. It has been a delight. His homespun humor has produced some of the best stories I have ever heard or ever expect to hear. I know that my colleagues will echo my assessment of GENE as truly a master story teller.

I know also that the folks back in the Fourth District of Kentucky will miss their spokesman and defender in this body. The many federally funded projects throughout his district amply demonstrate Congressman GENE SNYDER's abiding concern for addressing the needs of his constituents. He has never been one to give up on a project with real merit, and in that regard, his long-running campaign in support of the Falmouth Dam is legendary.

His constituents have expressed their appreciation many times and in many ways, the most recent being the renaming of Louisville's great Jefferson Freeway as the "Gene Snyder Freeway." Just as his fellow Kentuckians appreciate what he has done during his distinguished congressional career, so do my fellow Arkansans and indeed all Americans who enjoy a national transportation network without equal and a system of public facilities that gives us a standard of living unmatched anywhere in the world.

As my good friend, Congressman GENE SNYDER, closes out his service in the House, I wish him and his lovely wife, Pat, continued success, prosperity, and good health in the years ahead.

Mr. NATCHER. Mr. Speaker, at this time I yield to the distinguished gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. I thank the chairman for yielding.

Mr. Speaker, it truly is an honor for me to participate in this special order and pay tribute to our distinguished colleague from the Fourth District of Kentucky, GENE SNYDER, who is retiring upon the sine die adjournment of this 99th Congress.

Before I formally begin my remarks in GENE's honor, I would like to take just a moment and commend the Kentucky delegation, especially BILL NATCHER and RON MAZZOLI, the Chairman of the Committee on Public Works and Transportation, JIM HOWARD, and our soon-to-be ranking minority member of the committee, JOHN PAUL HAMMERSCHMIDT, for reserving this special order.

As some might know, GENE and I have had a very unique working relationship throughout the 18 years in which I have been a Member of Congress.

You see, as fate would have it, my two committee assignments throughout all these years are identical to GENE's. We are both a member of the Merchant Marine and Fisheries Committee and the Public Works and Transportation Committee. So every time we've had a hearing, markup, or caucus at either of these committees, GENE and I have been there. And, as we all can understand, when you spend that much time with an individual, you begin to learn a little about them.

And I can say without hesitation that GENE SNYDER has been a positive force on these committees and has been a real fighter for his district and his constituents. Because of his effectiveness and success as a legislator, GENE is looked upon as a leader by Members on both sides of the aisle. And, quite frankly, if you really took the time to analyze his long record of accomplishments, you would never know that he is not a Member of the majority party. I say this because, more often than not, he comes out on top on those issues that are important to the Fourth District of Kentucky. In fact, I would guess that his legislative track record is far better than most of our own.

Now it's no secret that GENE and I didn't agree on every issue which confronted us in committee or on this floor. But I'll tell you something, you always know where GENE is coming from and appreciate his motives for taking a position on a particular matter. Which is highly commendable.

I've always had the deepest respect for GENE SNYDER and I sincerely shall miss his guidance, counsel and quick wit. He has served his country well and his many contributions, particularly in the area of improving our Na-

tion's public infrastructure, will be remembered for many years to come.

Good luck GENE, all of us are going to miss you and your charming wife, Pat.

Mr. NATCHER. Mr. Speaker, at this time I yield to the distinguished gentleman from Kentucky [Mr. HUBBARD].

Mr. HUBBARD. I thank the gentleman from Kentucky.

Mr. Speaker, I join with my colleagues from Kentucky and other States tonight in these special orders honoring our retiring colleague, Congressman GENE SNYDER of Kentucky's Fourth Congressional District.

Congratulations to Congressman GENE SNYDER upon his many accomplishments as a Member of the U.S. Congress.

I wish for Congressman SNYDER and his lovely wife Pat the very best of everything in the future.

Mr. NATCHER. Mr. Speaker, at this time I yield to the distinguished gentleman from Pennsylvania [Mr. SHUSTER].

Mr. SHUSTER. Thank you very much, Chairman NATCHER, for this time.

Mr. Speaker, I rise to express my deep respect, affection and appreciation for GENE SNYDER and his service to all of us and most importantly his service to this country. When I came to Congress as a freshman, I quickly learned on the Committee on Public Works and transportation that although at that time I did not know GENE SNYDER personally, I quickly learned that he was a man that I should learn from, a man who quite obviously was providing leadership to the committee, whose every utterance was articulate, capable, tough, bright; a man who indeed was able to persuade in the best sense of the word.

As I moved into my second and third terms, I began to realize working closer with GENE that he not only had those capabilities but he was an absolute master legislative strategist.

Then as I got to know GENE better and more personally, I realized that he also not only had this legislative capability but indeed was and is a man of great integrity, high character and deep personal responsibility, a man of honor in the best and most broad sense of that hallowed term.

You know, there is a saying that "familiarity breeds contempt." But I would say from my experience in getting to know GENE SNYDER better, in that case familiarity breeds respect and, indeed, the more I got to know GENE SNYDER, the more closely we worked together, the more highly I respected the gentleman.

Indeed, there is nobody in this Congress, in my judgment, who is not only more capable, but also more congenial, warmer, more helpful, indeed a loyal friend.

So it is a great privilege and pleasure for me to join with the gentleman from Kentucky [Mr. NATCHER] and all of our colleagues here this evening to rise and help honor our distinguished friend and colleague, GENE SNYDER.

America is better because GENE SNYDER served in the Congress of the United States, as is his home State of Kentucky.

GENE, we will miss you and your lovely wife Pat. You are entirely too young and too vigorous to be retiring. So while you are leaving the Congress, we expect to continue to be hearing great things about GENE SNYDER.

We will miss you sorely. We wish you well.

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Mr. NATCHER. Mr. Speaker, I yield to the distinguished gentleman from Kentucky [Mr. HOPKINS].

Mr. HOPKINS. Mr. Speaker, let me first of all thank the dean of our delegation, Mr. NATCHER, for taking this time and allowing all of us to pay a small tribute to one of our colleagues, GENE SNYDER.

Mr. Speaker, particularly for those of us in the Kentucky delegation, and on this side of the aisle, we reluctantly join our colleagues in bidding farewell to our distinguished fellow Member and friend GENE SNYDER.

We are saddened by his decision but, nonetheless, proud to join in praising his service to the Nation and to our Commonwealth.

I would note that our reluctance to accept our friend's retirement is somewhat tempered on this side of the aisle by the fact that the latest polls in Kentucky affirm that his successor also will be seated on this side when the 100th Congress convense next January.

In addition to the many other expressions of respect and deserved tribute for GENE SNYDER's long record of public service, it can accurately be said and fondly remembered that he was unyielding in his philosophy of government and equally resolute in his personal commitments.

He has been a resourceful and staunch friend and a formidable opponent.

But friend and foe alike know him as one whose word is his bond.

He gave his word to serve the people of the Fourth Distict of Kentucky and today the record will show without question that in his 20 years here, he has steadfastly kept his promise.

There is a direct correlation between the effective, visionary stewardship of Congressman GENE SNYDER and the dynamic growth and progress of that part of Kentucky which he has so ably represented since coming to the House in 1962.

In a district historically hostile to members of our party, GENE SNYDER inspired his constituents to rise above partisanship by staying in touch, by listening, and by faithfully reflecting through his actions here the commonsense patriotism and the highest aspirations of the people of his district.

The people of the Fourth District—and those who have served with GENE SNYDER—will miss his presence here.

On a personal note, I observe his impending retirement with a keen sense of personal loss because of the freindship he has shown me and the assistance he has given me over the years.

No single individual was more helpful during my orientation as a freshman Member of this House.

And I will always remember with special appreciation that GENE SNYDER was among the very first persons who not only encouraged me to seek this office but also helped me to be successful in that initial campaign.

I want again today to express my appreciation to GENE, and in bidding farewell on his departure from the House, to extend to him and the members of his family my warmest personal regards and best wishes.

Mr. NATCHER. At this time, Mr. Speaker, I yield to the distinguished gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I thank the dean of the Kentucky delegation for yielding to me, and I want to at the outset, extend my highest greetings and good will to him.

Mr. Speaker, I have been carried away with this presentation here tonight, and we are expressing our encomiums to our good friend, GENE SNYDER, so I have a solution to solve all this sadness that I hear. I do not know whether I can do this, Mr. Dean, at this time in the activities of the House, but I was going to offer a unanimous consent request that GENE SNYDER's term be extended for 2 years. I think would vitiate all the sadness we have and we would be able to hang on to one of the best Members we have in this House. And I do not say that in any facetious way at all, because I think it is too bad we cannot do it that way. Lots of times around here it is some of our very, very best of Members who decide to take on some other work.

I do not look at this night as being a sad night. I am highly honored to be able to join in this well-deserved congressional salute to my good friend, GENE SNYDER, my personal good friend, who has decided to retire from the House of Representatives after 22 years of outstanding service to the people of Kentucky, but equally important, I think that should be stressed to the people of this Nation.

While I am most pleased that we are honoring GENE today, I guess maybe I have to join in a little bit of the sadness that we all feel, but for a different reason; not sadness alone, but a

feeling that we will miss his strong voice that was raised so many times on this floor in key support and in support of key issues vital not only to this congressional district, but vital to my congressional district, the State of New Jersey, the State of Kentucky and every other State throughout this Nation.

GENE SNYDER is widely recognized by his colleagues as one of the most effective Members of this legislative body. I think it is fair to say today that the work we are doing in our conferences, all of us joining together with the Senate on our water resources omnibus bill which has taken 3 years to get to the point it is at, the clean water legislation which we are working on, that even as late as today, GENE SNYDER took the lead and helped resolve. In fact, had it not been for his leadership, two or three of the very key policy issues of this country would not have been decided, if he in his own way did not get those matters resolved.

During the many years we worked together on the Public Works and Transportation Committee, GENE demonstrated a unique devotion to his work that won the admiration and praise of all those who have had the privilege of working with him.

As the ranking Republican member of the Public Works and Transportation Committee, GENE SNYDER has been a strong leader in efforts to improve our Nation's infrastructure.

The water supplies the people drink, the private people drink, the roads they travel on, the airlines that we have flying today would not be there in large measure if it had not been for the leadership of GENE SNYDER.

As was mentioned earlier by some of our other colleagues, he was highly honored by the people of Kentucky, recently by Governor Collins, dedicating the Jefferson County Freeway in his name. And that was no idle gesture where somebody was singing encomiums to his good work. He worked on that for 20 years to finally get it to be achieved. I think that says something about a person's stick-to-itiveness.

Mr. Speaker, let me close on two points. I also had the opportunity to travel earlier this year with GENE SNYDER to China. Lest that we think he devotes all of his time to Kentucky and to the needs of the Nation, we had a chance to travel to China. Being the ranking Member as he was on that particular tour, I think we achieved many things in consultation and in cooperation with the Chinese Government that would not have been able to have been achieved certainly without his presence, which is an honor to him and to our country.

So, I want to say to GENE, not with any sadness, I expect the gentleman will be back here every day seeing what we are doing and keeping an eye on us. He owes that to the people of the 4th District of Kentucky, to the people of Kentucky, and the people of this country.

I want to extend my highest regards and personal best wishes to both GENE SNYDER and to his lovely wife, Pat and all of the family for many, many, many years. And when GENE gets tired of turning over the sod and working with the plants and the flowers, maybe a little tobacco down there in Kentucky, we want him to come on back. We need him.

Mr. NATCHER. At this time, Mr. Speaker, I yield to the gentleman from Kentucky [Mr. ROGERS].

Mr. ROGERS. Mr. Speaker, I thank the gentleman for taking this special order and giving us the chance to say these words about our personal friend and our colleague who is leaving our delegation.

Mr. Speaker, I can speak about GENE SNYDER in a number of ways, as can all of us. I guess that probably the word that comes to mind more than any other though is just "friend." I guess we can all say that, those of us who have known him for a period of time.

As a Member of the Kentucky delegation, when I first came here as a freshman, like Mr. HOPKINS, I can think of no one who helped me personally more in getting used to this place as you can than GENE did; and even before I came here. It was GENE SNYDER who encouraged me to seek the office from the fifth district in Kentucky at a very critical time.

I shall never forget the telephone call that he gave to me at a particular time that I will not describe here that was very critical to whether or not I sought this office.

□ 2000

Then you could speak about GENE SNYDER as the successor of Henry Clay. Probably the most distinguished Kentuckian ever to serve in the Congress of the United States, having served as Speaker the first day he served here. Then, of course, going on to serve in the Senate for all those years and then as Secretary of State and candidate for President four times; nearly victorious twice, but best known, perhaps because he was the designer and the pusher of what he called the "American Plan." That was to build the infrastructure of this young Nation at that time. The things that we call public works, and that is a good name for them because they are works for the benefit of people, the public.

That has consumed GENE SNYDER for his career, not just in the Congress even, but even before that when he served as a magistrate of the Jefferson Fiscal Court in Kentucky. I guess maybe that is where GENE learned some of the toughness that he sometimes demonstrates here in this body where he has earned the title of being a tough competitor. A man who, when he believes his way, is willing to take no prisoners in those beliefs. We all heard that phrase. GENE was named by a leading columnist in this country a few years back as one of the most effective Members of the Congress, ranking, I think, in the top 10 or thereabouts. Even though he is a minority Member of this body.

We could refer to GENE as an ally, in projects certainly, on our side of the aisle, a philosophical ally; a person who feels very strongly and deeply about his conservative philosophy and is willing to fight for it, and of course an ally in the Kentucky delegation. A delegation that historically has worked very closely together across the aisle and still does. When I came here, that was the lesson that I learned from people like GENE SNYDER and of course our dean, BILL NATCHER and our late, great friend, Carl Perkins and the others about working together for the benefit of our State. GENE has carried on that tradition.

We could refer to GENE as a devoted public servant; a person who has spent those nights and days and weekends and time away from family and time away from home and time away from business and time away from all other activities devoted to this place and to this Nation and to people like you and I.

A person who loves this body as few do, a person who is devoted to his people and the people of this great land as few are, and a pure public servant. We know GENE SNYDER is a man of his word. When he tells you something, you can write it down and put it in the bank because it is there and will be there, regardless of the temptations or the pressures that might come from other directions. If he has given you his word, that is it. He will stay with you. A man who will fight for your causes as well his own and has demonstrated that so many times.

Of course, then we could say a man who has fought for his beliefs strongly. A man who is willing to go the extra mile, to get in the arena, get dirty, get dusty and do the right thing for the causes in which be believes. That is why we are here tonight crowning GENE SNYDER with this crown of flowers as we relunctantly wish him goodbye and Godspeed from this body.

Mr. Speaker, I am going to quote a poem written by Theodore Roosevelt which talks about the victor's crown which says many things that I wish I could say better but cannot. Quoting from Teddy Roosevelt in that poem, he said:

> It is not the critic who counts; it is not the man who points out how the strong man stumbled or whether the doer of the deed could have done better. The credit belongs to the man who is actually in the arena,

whose face is marred by the dust, sweat and blood. Who strives valiantly, who errs, to come short again and again because there is no effort without error and shortcoming.

It is the man who does actually strive to do the deeds, who knows the great enthusiasm, the great devotion, who spent himself in a worthy cause, who at best knows in the end the triumph of high achievement, and who, at the worst, if he fails, at least fails while daring greatly. So that his place shall never be with those cold and cruel souls who know neither victory nor defeat.

The victor's crown belongs tonight and forever more in our book to GENE SNYDER. GENE, to you and Pat and to all of those you hold dear, we wish you Godspeed, a happy vacation, and we hope you come back here almost as often as you do now.

Mr. NATCHER. Mr. Speaker, I yield to the gentleman from Georgia [Mr. ROWLAND].

Mr. ROWLAND of Georgia. I thank the gentleman for yielding to me.

Mr. Speaker, I wish to express my appreciation to the gentleman from Kentucky [Mr. NATCHER] for this special order this evening giving all of these people here an opportunity to express their feelings about our dear friend GENE SNYDER.

I could talk about a lot of things that have already been talked about here tonight. The ability that my good friend, GENE SNYDER has in the Public Works and Transportation Committee. He has really done an outstanding job in highways and byways and airways and waterways and buildings and all of the things that the Public Works and Transportation Committee is concerned with.

He is a man of uncommon ability in those areas and that has already been stated. Let me tell you about the special relationship that has developed between GENE SNYDER and myself over the past 2 years.

I came to the Public Works Committee 4 years ago and learned a little bit about him during that period of time. But for the past 2 years I have sat just in front of and just below GENE SNYDER.

Some 2 years ago, he invited me to a dinner that he had been having for a good many years with other friends of his. He, I found out, is a man of uncommon good will. I say that because he had Members from both sides of the aisle to come to this dinner that he has had on several occasions. He said, "Why do you not bring some friend from your side of the aisle to this dinner for this good fellowship, for this good food and to enjoy each other."

Mr. Speaker, he has done a lot for the good will, the building of good will on both sides of the aisle here. While he has been a man that has been devoted to building such things as bridges across rivers and streams, he has also been a man who has been devoted to building good will between people.

GENE, I want you to know how much I appreciate your friendship; it has really been a great thing for me. It has given me an opportunity to get to know other people who I probably would not have gotten to know so well. I am going to miss you; I wish you were not leaving. But since you are, Godspeed to you and Pat and I look forward to you coming back.

Mr. NATCHER. Mr. Speaker, for a great many years, we had a Member in this House from Youngstown, OH, by the name of Mike Kerwin. When Mike Kerwin liked a Member, served with him a long time, he had an expression that said this, Mr. Speaker: "He tests well." Mike Kerwin would always say, "He tests well."

The next gentleman that I am going to yield to, Mr. Speaker, can tell you whether or not GENE SNYDER tests well. That is the distinguished gentleman from Missouri, GENE TAYLOR.

Mr. TAYLOR. I thank the gentleman for yielding to me.

Mr. Speaker, first of all, I would like to express my appreciation to our good colleague, the distinguished and able and well-respected gentleman from Kentucky, the dean of the Kentucky delegation, Mr. NATCHER, for arranging for this time for us to say the few words that we can say that are totally inadequate relative to the retirement of our good friend, GENE SNYDER.

Mr. Speaker, when the gentleman from Kentucky [Mr. SNYDER] retires from this body at the end of this session, we will be losing one of our true leaders, and I will miss one of my closest friends. Our association has been molded in the bonds of friendship and it is an association that I will always revere and always remember.

GENE SNYDER has stood for many things. Integrity, ability, leadership, dependability, courage, legislative skills, and all of the qualities that have enabled him to be a major and effective participant in many of the most important bills that this House has ever considered.

□ 1840

GENE SNYDER'S word is his bond. He has never wavered in the face of adversity, nor has he ever foregone his principles.

He is a talented debater who concedes no ground, yet holds no animosity when the battle has ended. We all will miss GENE SNYDER. I know that he, in turn, will miss this body because of his intense interest in Government and his affection for these halls, where he has served the Commonwealth of Kentucky and this Nation with such distinction.

As I sat here this evening and listened to the recitation of the accomplishments of GENE SNYDER with his colleagues on the Committee on Public Works, where I was privileged to serve with him for a number of years, I thought of the great accomplishments that have been attained by the work of that committee. They have built facilities that have made this Nation a much richer place in which to live.

Yes, GENE SNYDER was one of those builders. I could not help but be reminded by the words of a poet. "I saw them tearing a building down, a gang of men in a dusty town, with a yo-heho and a lusty yell, they swung a beam, and the sidewall fell. I asked the foreman if these men were skilled and the kind he'd hire if he had to build. He laughed and said, 'Oh, no, indeed, common labor is all I need. For these men could wreck in a day or two what it would take a builder years to do.' Then I thought as I went my way, what kind of role am I to play? Am I the builder who builds with care, measuring life with rule and square, or am I the wrecker who stalks the town simply content to be tearing down?"

Mr. Speaker, I am sure we all agree here tonight, the man that we honor here tonight has been a builder, a builder for this Nation, a builder for his district, a builder for the Commonwealth of Kentucky.

I wish him and his lovely wife, Pat, well, and I know that the U.S. House of Representatives is tonight a better place because he came this way.

Mr. NATCHER. Mr. Speaker, at this time I yield to the gentleman from Minnesota [Mr. STANGELAND].

Mr. STANGELAND. Mr. Speaker, I thank the gentleman from Kentucky [Mr. NATCHER] very much for calling for this special order for our good friend, the gentleman from Kentucky, GENE SNYDER, and for giving me the opportunity to speak.

Mr. Speaker, the end of any Congress is always a sad occasion, regardless of what has been accomplished, because we always say goodbye to some of our colleagues. In many cases, they are some of our senior Members, such as my friend and committee colleague, Congressman GENE SNYDER.

The gentleman from Kentucky has been a powerful force in this body for over two decades. He has dominated the scene with his intelligence, preparation, toughness, wit, and candor. He has been a forceful spokesman for fiscal sanity and integrity in Government almost from the day he arrived in this city. In fact, he introduced a balance-the-budget resolution in 1962, the year he was elected to the House. His must have been something akin to a voice crying in the wilderness on the subject in those days.

As a long-time member of both the Merchant Marine and Fisheries Committee and the Public Works and Transportation Committee, with services as ranking minority member of both, GENE SNYDER has played a

strong leadership role in the development of sound and sensible transportation and water policy.

I personally am immensely proud to have had the opportunity to serve with him in the House and especially on the Public Works Committee. Not only has he been of great assistance to me with matters of concern to my constituents, he has provided a valuable education in the art of negotiation. Time and again, he has demonstrated his ability to help break legislative logjams and pull together support for controversial and complex pieces of legislation, such as the Superfund reauthorization bill. He has also frequently been successful in his opposition to legislation, as proponents of coal slurry pipeline deregulation, among others, have learned on occasion.

While his legislative prowess is well known and appreciated by those of us in this Chamber, tributes to the effectiveness of GENE SNYDER have come from outside the Halls of Congress as well. No less than syndicated columnist Jack Anderson, who passes out criticism by the truckload, rates GENE SNYDER as one of the 12 most effective House Members.

His Fourth District constituents certainly know first hand of GENE SNYDER's effectiveness. The tributes they have paid and continue to pay him are testimony enough to his good works on their behalf.

I know that GENE will continue to be successful in his various endeavors when he leaves this body. And I would simply wish him and his lovely wife, Pat, the very best in all of their future pursuits.

I want him to know that I personally will miss him very much.

I hope to see very much of him in the future as he comes back here to visit with us. As one of our former colleagues says, "Keep us on the straight and narrow."

GENE, a job well done. This body, Kentucky, the country, all owe you a debt of thanks and gratitude for what you have done.

Mr. NATCHER. Mr. Speaker, at this time, I yield to the gentleman from Kentucky [Mr. PERKINS].

Mr. PERKINS. Mr. Speaker, I am honored to have this opportunity tonight. I am honored to be able to speak tonight about a man who, I think, everybody in this room knows how special he is.

I am honored to have an opportunity as Kentucky's junior elected Congressman to hear all six of the remaining Congressmen from our great State speak and tell GENE SYNDER a little bit about how we feel about him and how much we are going to miss him.

I have a number of informational items here on GENE SNYDER's life, but I am not going to read those because it is going to sound like a eulogy and he looks like he is living pretty well up there right now. But I am just going to take this opportunity to speak a little bit about what has happened over the years so that maybe some of the people across this great land will have some sort of idea of what GENE SNYDER did, first of all, in his district.

In 1968, he was instrumental with the southwest Jefferson County floodwall; in 1970, the Markland Dam Bridge; in 1970, the Clayway Bailey Bridge in Covington; in 1974, the Banklick Creek watershed flood control project; in 1977, the Dayton floodwall; in 1982, highway bill, a highway that was recently renamed the Gene Snyder Freeway; the Falls of the Ohio Wildlife Conservation Area, in 1984; the renovation of the Louisville Post Office and Courthouse in 1984; the new terminal at Standiford Field in 1983; two bridges that are not under construction yet, but the money is coming and the money is there at Covington and Newport this year, 1986; and numerous other sewer and water plant and line projects, and, of course, the Gene Snyder Airport at Falmouth, KY, in 1984.

Maybe when you start listing just a few of the things that GENE SNYDER has done in terms of his district, you will have a better idea of what he has done across the Commonwealth of Kentucky and across the United States of America.

I know that myself, when I came here as a freshman Member this term of Congress, was not sure exactly what kind of relationship I was going to have with GENE SNYDER, but he opened his arms to me in friendship and kindness. He took me in under his wing; he helped me with projects, and I thank him for the people of eastern Kentucky for helping us to try to get those projects because we need those things to improve the quality of life.

When I am standing here today, I am not just standing here and saying, as a friend, which I consider myself to be, thank you for all the things you have done for us. I am thanking you for the people that you have helped in Kentucky and across America.

GENE, you know that you always have a way of saying something that you always kind of figure out where you stand. I like that. It is something we do not have enough of in this country. It is something that you get tired of seeing, people speak out of both sides of their mouths, but GENE SNYDER, you know where he stands.

I want to say that I am proud to have served and to have had the honor to serve with GENE SNYDER in this distinguished House of Representatives, and I know that we will be seeing, a lot of GENE SNYDER in future years in other areas. But he just has to know that on both sides of this aisle, Democrats and Republicans, and I guess if you are going to go on that liberal/conservative scale in Kentucky, I am about as far away from GENE SNYDER as you would want to get. On both sides of this aisle, and on both ends of the political spectrum, there are people who appreciate GENE SNYDER for the fine American that he is and the fine job that he has done for America.

Mr. NATCHER. Mr. Speaker, at this time, I yield to the gentleman from New York [Mr. MOLINARI].

□ 2020

Mr. MOLINARI. Mr. Speaker, I thank the gentleman for yielding this time to me.

I made a promise to Mr. SNYDER that when I got up that I would not tell the truth, but I will.

I am a graduate of the Professor Snyder school of politics. I recall after GENE became ranking member of the Public Works and Transportation Committee that he had an amendment before the committee. It was the Snyder amendment and I voted against it. After the vote was over, he came over and tapped me on the shoulder, and he said, "Were you aware that was my amendment that you voted against?"

I said, "Yes, I was aware."

"Oh."

Then at the end of the day he called me up and asked me to come to his office. I came to his office and he pointed to the wall and there was this gadget hanging along the wall.

And he said, "Do you know what that is?"

It was silver, and I said, "No, I have never seen it before."

And he said, "Well, back home they use that to castrate cattle."

I got my first lesson and I felt mighty, mighty uncomfortable, and I was indoctrinated into the world, the real world of GENE SNYDER.

You know, there has been too much of a eulogy here. GENE SNYDER is alive and there is another side to him.

Let me also say, and it is no secret and I think GENE would not mind me saying this, we have had some serious differences. In fact, I must confess that I have been angry with this man on more than one occasions, but at no time, and this is important, at no time, no matter how angry I was, did I ever lose the immense respect that I had for GENE SNYDER, the Congressman, GENE SNYDER, the intellect, GENE SNYDER, the man who put together on the ranking side teamwork like I had never seen before, who put together a staff that loved to work extraordinary hours for him.

And yes, that part of discipline is what set him apart and made him so effective.

He was a very difficult opponent. It is better to be on your side, Mr. SNYDER, than to be opposed to you. On

the other hand, it was a great learning experience.

I echo that which has been said before me. One of the joys of government is serving with some people who are unique and special and who leave an indelible imprint, and it is nice that we can take a few minutes out like we do here to pay tribute to someone who has served over 20 years in the style in which he has.

I am not going to repeat everything that has been said, except to say, yes, indeed, you do rank up there with the tops who have served in this body, and whatever my differences have been with you in the past, I love you for what you have done for your country and for your district. You have done a great job.

Mr. NATCHER. Mr. Speaker, at this time I yield to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. Mr. Speaker, I thank the gentleman from Kentucky for having this special order here this evening.

I also want to thank the gentleman from New York for breaking up a very long funeral.

I think that some of the stories that all of us can tell who have worked with GENE over the years, I think could fill a very large book. I can say that a lot of them would be very humorous and a lot of them I think would be very inspirational.

I, too, GUY, have been to GENE's office. I have seen that delicate instrument of surgery. You cannot help but hurt when you look at it.

I think that beyond all that, and I have disagreed with my friend, GENE, on many occasions, and when you do disagree with GENE, he will tell you right up front. He will tell you again and he will remind you sometime later. He is a man of great memory.

But this strong personality goes beyond just the man, GENE SNYDER, and the position that he holds, because it goes out and it carries forward in the representation and confidence that he has among those he leaves, those who have been ranking members on the various committees under GENE have known that he has always stood by us very strongly and that he has not tried to dominate the areas which we felt strongly about.

I think all of us in the Congress, and I have been here 6 years, have been allowed to grow under the tutelage of GENE SNYDER. I feel because of that that we are stronger people and we will become stronger leaders as our time comes to lead as we gain seniority.

One of the things that I think is so important about this job here in Congress, and I think perhaps I would say that the only real pleasure that you get out of this job that keeps you coming back is the friendship and the association and all the extraordinary people that you meet, the cross-section of people, the different personalities.

There are men who have left huge footsteps that we will never be able to fill entirely.

GENE, you certainly will be missed. You have been a tremendous friend to me and Emily over the years as we have got to know you and Pat better and better. You have been a great teacher and you have been a great leader. We are certainly much better off for having been with you and for that we thank you and we bid you all the happiness that you certainly deserve in your next career and, please, go after a career or you are going to drive Pat crazy.

Mr. NATCHER. At this time, Mr. Speaker, I yield to the gentleman from Tennessee [Mr. SUNDQUIST].

Mr. SUNDQUIST. Mr. Speaker, I thank the distinguished gentleman, the chairman, the dean of the delegation from Kentucky, for taking this special order to recognize our good friend, GENE SNYDER.

The leadership of the gentleman from Kentucky in both the House and in our Public Works and Transportation Committee will be sorely missed.

As the ranking Republican on this committee, the guidance and direction he has provided, particularly to the younger members, the results of that and his influence have been immeasurable.

I have worked with him on almost every issue and occasionally against him, and I think it was only one time, I learned my lesson very well, but I remember him as being forceful and committed and always fair.

My business partner had a saying about one of his relatives. He said, "Sometimes he is right and sometimes he is wrong, but he is never in doubt."

GENE SNYDER has never been in doubt and he not been wrong very many times, in my opinion.

From him I learned a valuable lesson about discipline, about loyalty and about teamwork, not just to a party, but to a principle, to a concept, to some progress.

Somebody else mentioned Jack Anderson a few minutes ago. I think Jack Anderson also said that GENE SNYDER is one of the most dangerous men in Congress to cross. I never found that. I found that GENE SNYDER was principled and tough. I consider him a close and a revered colleague and a true friend.

Given GENE's love of life, his obvious sacrifices and his many accomplishments, his dedication to the commonwealth of Kentucky and to this country, he has provided and obtained the admiration of this Member and I think has set an example that all of us will have to work hard to follow. As Members of Congress we should all seek to maintain the bipartisan manner in which he sought to work problems out.

I think it is also important for us to mention that he has put together a staff that is second to none. That is always a reflection of the Member or the chairman or the ranking member, what kind of staff does he have? That is a reflection of what he accomplishes.

The thing that has impressed me so much about GENE SNYDER through his staff is that they remember the little things. They are sensitive to the political needs of both Democrats and Republicans in the follow-through that they have. I appreciate that and I think all my colleagues value that.

There is no doubt in my mind that next year the Public Works and Transportation hearings will take on a different personality, and that is the way life is, because we are all individuals.

There is no doubt also that back in that corner over there behind the rail and by the rail it will not be the same as we look over there and look for that man with the bright colored coat and the matching pipe and his quick wit.

It has been said that real wealth in life is not measured in money and it is not measured in property and it is not measured in jewelry. Real wealth in life is the effect that we have on the lives of others, those we have touched as we have come into contact with them in our day-to-day activities.

GENE, based on the friends you have made, the lives you have touched, I think you are a wealthy man. We will miss you.

Mr. NATCHER. Mr. Speaker, at this time I yield to the gentleman from Connecticut [Mr. ROWLAND].

Mr. ROWLAND of Connecticut. Mr. Speaker, and Mr. Chairman, thank you for hosting this special order.

It is quite obvious from the comments that have been made for this past hour or so that this great affection and respect for GENE SNYDER is considerable.

There have also been some fun stories and some fun jokes.

Just some personal thoughts that we share with GENE, I happen to be the newest member of the Public Works Committee, the newest member because approximately a year ago there was a vacancy and GENE SNYDER decided that someone from New England was actually going to serve on the Public Works Committee.

GENE, as so many others have said, did indeed take me under his wing and brought me into the powerful Public Works and Transportation Committee.

The interesting thing is that many of us on both sides of the aisle have heard so many stories and so many anecdotes about the Public Works Committee, we always heard about the loyalty and we always heard stories

about how discipline and teamwork was so important.

I remember, oh, I do not think I was on the committee for a week or 2 weeks that a caucus was called, a meeting, and I always regarded a caucus as an opportunity for party members, one particular party or the other, to get together to decide on strategy and issues and how people were going to vote. This particular caucus was for both sides of the aisle, Republicans and Democrats meeting to decide how we were going to take an issue through the whole Congress. That issue was pretty simple and all of us had decided we were going to stay and work together.

The next day the vote came up. We all voted the same way. I remember I cast my vote, it was on a rule, and I realized about an hour or so later when I had a call from GENE and a call from a few staff people that I had voted the other way.

I was so upset by that, I went to GENE and we talked back and forth and I tried to tell him that it was a pure mistake. I must have pressed the wrong button. I thought about it for a number of hours and I was so upset that at the very first opportunity I had to show loyalty and discipline.

I finally called the computer company, personally got on the phone and asked them to track the whole vote to make sure that something did not go wrong. Quite ironically, there was a wrong transmission from the computer to the actual tally. So I was very pleased to run back to my ranking member and so many others on the committee to explain to them that it was a computer error.

I think all of us have said how much we do not like to be on the other side, and as a new member of that committee, I did not want to start out on the other side of GENE SNYDER. It was going to be a very, very long year.

In all seriousness, GENE has really been a rare breed of Congressman, a rare breed of public servant. It is obvious he is devoted to his constituents. It is obvious that he is devoted to his work here in the Congress.

As a new Member of the Congress and of this committee and I think some of us have spoken of him as almost a father figure, we really do feel that way.

I think we also feel that his leadership and his guidance and his honesty have been a great inspiration to many of us.

I think the thing I like about GENE SNYDER the most, I think the thing all of us like about him the most, is his ability to work with both sides of the aisle, Democrats and Republicans, his ability to work with liberals and conservatives, and, yes, his ability to work with southerners and northerners.

He will be missed. His sense of humor will be missed. His hard work will be missed and he will be missed by those of us who have learned in just a very short while from him.

Many of us have talked about the relationship we have had going back a few years, some going back 22 years. I will always remember my relationship with GENE SNYDER for the past 2 years and know that he is one of the people, and we all hope we are going to be here a long, long time, that he is one of the people who has taught me how the process works, has taught me how to work within that process, with compassion and devotion, and your compassion and devotion, GENE, to your colleagues, and especially to your staff is so greatly appreciated.

Thank you and best wishes to you and your wife.

Mr. MINETA. Mr. Speaker, it is indeed a pleasure to join with my colleagues on the floor of the House of Representatives to honor our distinguished colleague from Kentucky, GENE SNYDER, who will be retiring from the Congress at the end of the session. All of us who have worked with Mr. SNYDER, since he was first elected to the House 24 years ago, know first hand just how smart an individual and how knowledgeable in the ways of the House our colleague from Kentucky's Fourth District is. Mr. SNYDER is truly a Member of Congress in the great tradition of the House of Representatives. He has learned the process and worked his way up to the top leadership of the House Public Works and Transportation Committee, where he serves as our ranking member, and to a prominent role in the House.

Mr. SNYDER has accomplished this by relying on his intelligence, sense of fair play and his extensive knowledge of the intricacies of the congressional system.

I must also note here parenthetically that I am most certain that Mr. SNYDER's role on the Public Works and Transportation Committee will be most ably filled in the 100th Congress by my good friend and distinguished colleague, the gentleman from Arkansas, JOHN PAUL HAMMERSCHMIDT, who has been a leader in the House for a long time.

Getting back to the business at hand—that is, honoring Representative SNYDER, I learned first hand, when the gentleman from Kentucky served with me as the ranking member of the Aviation Subcommittee, just how awesome and wily an adversary Mr. SNYDER can be. I have always preferred to be on the same side of an issue as he is, although I have not always been so fortunate and I am not so lucky at this point in time.

Nonetheless, even when we have been on opposing sides, working with GENE SNYDER has been an honor, a privilege and an education.

We will all miss him.

Mr. APPLEGATE. Mr. Speaker, I rise today to join with my colleagues in paying special tribute to a friend and colleague, Congressman GENE SNYDER. I am pleased to have the opportunity to add my personal thanks and appreciation to Mr. SNYDER for his dedication, devotion, and for his good advise whenever I asked for it.

As a member of the Public Works and Transportation Committee for the past 10 years, I have had the distinct pleasure of serving with GENE. As the ranking minority member, GENE has been an effective and respected leader. Under his leadership, the committee has adopted some of the most important infrastructure legislation in decades. His leadership and experience assisted the full committee in our efforts to secure passage of a water quality renewal bill, a Superfund reauthorization bill, a highway reauthorization bill, and a clean water bill. These pieces of legislation represent significant gains for our environment and our Nation's infrastructure policy. I know for a fact that he has diligently worked with the leadership of the committee in securing minority support for each and every piece of legislation that is considered by the committee.

GENE SNYDER is one Member of Congress who can take a great deal of pride in his accomplishments as a Member of Congress. His record speaks for itself and his accomplishments will have a major impact on the future of the Public Works Committee. GENE SNYDER will be sorely missed, not only by the voters in Kentucky, but by all of us who had the opportunity to work with him. We will miss his leadership, dedication, hard work, and of course his unique sense of humor. I personally wish him the best in his retirement and am confident that he will continue his efforts on behalf of several important issues and policies.

Mr. PETRI. Mr. Speaker, I rise to join with my colleagues in praising the accomplishments of the distinguished gentleman from Kentucky, GENE SNYDER.

The condition of our Nation's public works infrastructure is an issue which has received a great deal of attention over the years. GENE has had the opportunity to be involved in many aspects of our infrastructure during his long service on both the Merchant Marine and the Public Works and Transportation Committees.

As a member of the Public Works Committee for the past two Congresses, I have seen firsthand GENE's dedication to the preservation and expansion of that infrastructure. He has consistently supported the Federal role in maintaining America's transportation systems. He has been instrumental in the passage of highway and water resources legislation. In this Congress, the committee has produced landmark legislation in these areas.

GENE has not neglected the other responsibilities of this committee as he has put his considerable energies toward working out compromises on environmental issues such as Superfund and the Clean Water Act. Again, with GENE's able assistance, the Public Works Committee has steered crucial environmental issues through the House and is now in conference with the other body.

As a minority member of the Public Works Committee, I can only regret the loss of such knowledge, experience and ability on the retirement of our ranking member, GENE SNYDER, at the end of this Congress. I wish him the best on his return to his native Kentucky.

Mr. NOWAK. Mr. Speaker, it is a pleasure to join my colleagues in this tribute to the distin-

guished gentleman from Kentucky, Representative GENE SNYDER, the ranking minority member on the House Committee on Public Works and Transportation.

In my 12 years in the House, I have been privileged to serve on this committee with GENE SNYDER, where we have joined forces on both sides of the aisle to work to address our Nation's infrastructure needs.

The motto of the State of Kentucky is "United we stand, divided we fall." That philosophy succinctly reflects the manner in which GENE SNYDER has worked within the Public Works and Transportation Committee. The highway, bridge, airport, water pollution control, flood control and economic development needs of this Nation are a nonpartisan and bipartisan concern.

GENE SNYDER'S approach to dealing with remedial legislative action to deal with these needs has reflected the commonality of our concerns. On many occasions, he was instrumental in helping forge the compromise and consensus that make meaningful legislative action possible.

Thus, he had been a leader in the development of a balanced transportation network in this country and to target our limited Federal resources in the most efficient way possible to meet our infrastructure needs.

We on the committee certainly will miss his leadership, cooperative spirit and good counsel as he ends his career here in the Congress.

At the same time, we wish him well in all his future endeavors.

Good luck, GENE.

Mr. DE LUGO. Mr. Speaker, I am pleased to join with my colleagues on the Public Works Committee and my good friends, Mr. NATCHER and Mr. MAZZOLI, in paying tribute to GENE SNYDER. It has been a pleasure to have known and worked with GENE, and I am indebted to him for his support on extremely important projects for the U.S. Virgin Islands, in particular the St. Thomas Airport.

I, too, share in the respect all of us have for this true Kentucky gentleman, for his skill as a legislator, and for his wit and wisdom in handling the issues. His brilliant wit, which he uses like a rapier to underscore his point and disarm his opposition, has made him one of the most-quoted Members of this body.

Some of his best lines have never been published, and I personally will never forget the comment he made 2 years ago after a particularly interesting duel we had on the Virgin Island Jones Act exemption. I am going to miss you, GENE, especially your sense of timing. I don't know what I am going to use for campaign material now.

We are all going to miss him, on both sides of the aisle. I salute him and wish him Godspeed and success in achieving those new goals he has set for himself.

Mr. CLINGER. Mr. Speaker, there are few people I have enjoyed working with more in Congress than GENE SNYDER. His leadership on the Public Works and Transportation Committee has served as an inspiration to all the members of the committee, both on the majority side and the minority side of the aisle. He has been dedicated to the committee's work to strengthen and improve this Nation's infrastructure. He has been energetic and enormously effective at working with the Members on both sides of the aisle to forge the compromises that are the end results of the work of a truly effective congressional committee as the Public Works and Transportation Committee has been.

I can personally vouch for his legendary legislative skills having been on the opposite side from GENE on one or two occasions. Needless to say my side didn't win. As a matter of fact, we were buried and in large measure the extent of the rout was due to GENE. There is no Member of this body more expert at building a coalition for his causes. He has an awesome knowledge of the rules of the committee and the House. He never enters a battle unless he knows the facts cold. He is an extremely accomplished debater who has been known to reduce opponents to incoherent babbling, and when all else fails there is his extraordinary charm. One way or another GENE usually wins his battles and in the process the Nation's public works facilities and transportation networks win as well.

There is so much I have learned from GENE and there are so many things that I am grateful to him for that it would be impossible to list them all during this special order. But there is one thing that I must speak of. He has been a superb ranking member. Everyone knows that GENE is a strong and forceful leader. Only those of us who serve on the committee know that he is a thoughtful and sensitive leader as well—one who goes to great lengths to protect and serve the vital interests of his members. He counsels with us when we have problems. He advises us on strategy. Time and time again he has prevented me from committing embarrassing blunders. GENE is a conservative and from his vantage point I am a leftwing radical flake—although I prefer the term "moderate." Nevertheless, our philosophical differences—actually not that major—have never stopped GENE from working with me, and from helping me do a better job.

It takes awhile for GENE to get to know you and vice versa. I remember that from my first year on the committee GENE kept confusing me with JERRY SOLOMON but once he gets to know you there is no more loyal or supportive friend in the world. He is also a great storyteller although I must confess that I have been unable to repeat most of them before the Rotary Club back home much less the League of Women Voters.

I hope I don't sound too pretentious if I close my remarks with a quotation—because GENE is far from a pretentious man. But it seems to me that Robert Whitinton's classic description of Sir Thomas More, penned in the 16th century could not be more apt when we speak of GENE SNYDER.

A man of angel's wit and singular learning; I know not this fellow. For where is the man of that gentleness, lowliness and affability? And as time requireth, a man of marvelous mirth and pastimes; and sometimes of as sad a gravity; a man for all seasons.

We are all going to miss GENE. I am going to personally miss GENE, and wish him just the very best in everything he endeavors to do once he leaves his friends and colleagues in the House of Representatives.

Mr. LIPINSKI. Mr. Speaker, it is with great pride and great pleasure that I rise today before my fellow Members of Congress to honor the illustrious career of my old friend and colleague, Congressman GENE SNYDER of Kentucky. Yet it is with some sadness that we note GENE will be retiring following this term after a quarter century of dedicated service in the House of Representatives.

I have had the unique honor of serving with GENE on both the Committee on Public Works and Transportation, where he sits as the ranking minority member, and the Committee on Merchant Marine and Fisheries. In my frequent dealings with him I have always found him to be a knowledgeable and competent legislator as well as an amiable gentleman who worked well in a nonpartisan manner.

GENE has also had a full life outside of his congressional activity. He has had his hand in a number of business ventures throughout the years including construction, real estate, farming, insurance, and a law practice. His extensive involvement in community organizations includes local political work that began in his youth. This wealth of experience has added to the base of knowledge from which he has drawn allowing him to be a more effective legislator.

GENE'S rise in the political world has been swift and sure. His success in the House of Representatives is noted by his longevity and his accomplishments. Since I have shared committees with him, GENE has been a key player in every piece of major legislation to come out of Public Works and Transportation as well as Merchant Marine and Fisheries. He has also been recognized as one of the prime movers of the Airport Development Aid Program to fund safety improvements for airports. Recently, GENE was recognized in his own district by having the freeway of Jefferson County, KY, renamed the Gene Snyder Freeway.

Our loss at his retirement, however, is his family's gain. His wife, Patricia, and their four children are certainly looking forward to the end of his long weekly commute between the District of Columbia and his own home district in Kentucky.

I will miss you, GENE, and the House of Representatives will miss you. I'm sure all your colleagues will join me in wishing you continued luck and success in your furture endeavors.

GENERAL LEAVE

Mr. NATCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the retirement of our friend, GENE SNYDER.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

THE TAX REFORM BILL

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from Minnesota [Mr. FRENZEL] is recognized for 60 minutes.

Mr. FRENZEL. Mr. Speaker, tonight with some help from some other distinguished Members of Congress, I am going to discuss the tax reform bill on which the House will have the opportunity to vote sometime late next week. I expect to be joined in my discussion by the distinguished gentleman from Texas [Mr. ARCHER], a member of the Ways and Means Committee and perhaps some others as well.

□ 2035

It is not a very interesting thing to carry on a discussion with rows and rows of empty chairs on any subject, much less tax reform, but it is necessary that the Members of this body have on the record information about tax reform so that they will be able to cast responsible votes when the matter is before us.

My personal opinion is that much of what we read about tax reform is material which has been released by the drafters of the bill, and tends to oversell the advantages of tax reform, and to overlook what I think are monumental disadvantages.

I will concede that tax reform had a noble origin, that it had lofty goals, and that the participants who worked on the bill did their dead level best to produce a good tax reform bill.

I will further concede that the tax reform bill achieves some notable goals: A lowering of marginal tax rates for individuals and corporations; a removal of 6 million relatively low-income Americans from the tax schedules completely—that is, they will have no tax liability; and a modification or elimination of a number of tax preferences which were obsolete, unfair, undesirable, or whatever. One must admit that this bill contains some of these advantages and achieves some of its goals.

However, as we begin to discuss the bill, I think that it is important to gauge the bill against what it set out to accomplish, and it is my personal judgment that when we look the bill over, we are going to find (a) that it is antigrowth, particularly in the short run; (b) that it is antisavings and anticapital accumulation; (c) that it is antimanufacturing and antitrade; (d) that while it claims to bring more fairness, if it does, the fairness is only marginal; (e) that it brings not one whit of simplicity, but rather complicates the Tax Code; and (f) that it hurts many industries and many sectors of our society which in large measure do not know that they are going to be affected by this bill and have no idea what is going to happen to them.

I would like to talk first about the matter of negative growth, which I believe that the tax reform bill presents. The difficulty is, of course, that when the President put his first tax proposal on the table, the title of it was "fairness, simplicity, and growth." Well, whatever the original idea was, I think that it is clearly the consensus of economists that growth is not going to be what comes from this bill, particularly in the early years.

When you get beyond 5 years, the crystal balls tend to get fuzzy, and people have difficulty making predictions, but certainly in the first 2 or 3 years the predictions range anywhere from 1-percent decline in GNP, compared to what would be the case under the current Tax Code, to even higher numbers in the first 2 or 3 years. That is particularly grievous in an industrial society like our own, because 1 percent of the GNP could represent nearly a million jobs in our society, and I think that anyone in this country who wants to voluntarily give up that many jobs is not thinking in the best interests of our economy or of our Republic.

So as I look at the various economists who have cast their own horoscopes about the future of this bill, it seems to me that the overwhelming consensus is that we are going to lose ground in the first couple of years. Beyond that, a number of them, particularly those who claim to be supply-side economists, believe that the tax rate incentives, the lowered rates, are going to push us up to a greater rate of recovery. I think that that remains to be seen, and we will talk about that later in connection with discussions on savings and capital accumulation incentives that have been modified within the bill.

With respect to growth, the suggestions that there is growth in this bill in early years are restricted to a very small number of economists, and as I said earlier, the general consensus is that there will not be growth.

Moving on to the anticapital situation, or to my allegation that the bill is antisavings and anticapital accumulation, I think that it is fair to note that the major incentives that we had in the Tax Code for savings and capital accumulation were all pretty badly wounded. The investment tax credit was repealed completely—retroactively, I might add, but I will have something to say about that later in the section on fairness. We also stretched out depreciation and removed some of the savings incentive from the depreciation schedules.

Perhaps the worst blow of all in my judgment was the removal of the lower capital gains tax, one of the really good incentives in our Tax Code for capital formation.

Moving on, we had some other savings in the so-called section 415 pension program, which allows businesses to deduct moneys contributed to pension programs for their employees. Those have been not only reduced in the limitations, but in addition, the Tax Code has been strewn with new rules about how those pensions will be administered and run to such an extent that it is my considered belief that many smaller companies will withdraw from their pension systems completely, and that new-forming companies will never form pensions. Particularly I think that this is true with respect to guaranteed-benefit plans.

Mr. ARCHER. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the distinguished gentleman from Texas [Mr. ARCHER], a member of the Committee on Ways and Means.

Mr. ARCHER. I thank the gentleman for yielding, and I want to compliment him on his comments, particularly relative to the removal of incentives for savings that lie within this tax reform bill.

Mr. Speaker, in the particular area of pensions and employee benefits and thrift operations, I want to just give the gentleman a quote from Mr. Richard Raskin, who is a consulting actuary with the Wyatt Co. in New York. He says that this bill contains a strong incentive to cause companies and individuals to think about an actual reduction in the level of benefits.

Further, I would like to quote Mr. Gerald Faciani, who is the president of Faciani Co. in Cleveland, an actuarial firm that designs plans for companies all over this country and for organizations all over this country. He says as follows: "This bill will have a deleterious effect on continued plan maintenance and new plan formation in the small-plan business sector. The day will come, I think in 5 years, when small employers will have nothing but traditional profit-saving plans."

□ 2045

I thank the gentleman for yielding just so that I could insert that at this point.

Mr. FRENZEL. I thank the gentleman. I think he is dead right.

The gentleman probably has a more vivid memory than I do on this, but looking at ERISA changes and pension tax changes, I believe in the last 4 years we have had three major changes, each of which necessitates rewriting the plan at the business level. If you are a small employer and you have some 10 to 100 employees, after you have to pay those legal and actuarial fees for the third time in a row, you say, hey, wait a minute, my plan cannot stand the overhead, my employees cannot stand it, I will put it in the paycheck. That is just the phenomenon I think the gentleman was suggesting.

Mr. ARCHER. Absolutely. And it is estimated that it will cost $1 billion of administrative costs just to rewrite all of the plans in the United States. That

is a tremendous waste of effort, and those extra changes that will be placed on the people who have the plans, in many instances, will not be affordable.

I would also like to insert in the RECORD for our colleagues the fact that we have had four major changes in the last 5 years relative to pension plans under the Tax Code. We have the 1982 TEFRA changes. Actually, in 1983 we had a gain in participants in plans, but, as a result of the 1982 TEFRA changes, in 1984 we had a net reduction in the number of people in the United States who were included in plans. It went up for an increase of 1½ million people to 1984 when there was a net reduction of 250,000 people covered by pension plans. In 1985 there was a loss of 3½ million and the pension actuaries that I talked to tell me that this bill will accelerate that very, very negative trend of fewer and fewer people being covered by private pension plans.

Mr. FRENZEL. I thank the gentleman for his comments and I yield to the distinguished gentleman from Washington [Mr. CHANDLER], who chaired the tax committee in his own legislature and is an expert in the field of pension law.

Mr. CHANDLER. I thank the gentleman for yielding. The urgency is that my wife will arrive at National Airport in about 25 minutes, and I need to get over and not stand her up.

Mr. FRENZEL. We empty chairs appreciate the gentleman being here.

Mr. CHANDLER. I appreciate your raising the point of the whole retirement income issue. When you were talking about small employers, and the gentleman from Texas was talking about that, I think if you will look at the studies that have been done you will find that we are actually on a negative trend. Not only are they not adopting plans, but they are terminating. That is the growth industry in the pension industry today, terminating plans.

We have about 50 percent, I think the gentleman said, 50 percent of the people in the United States who are not covered by any pension plan, and a demographic for the future that is really against us is the dependency ratio of Social Security, those working to those already retired, which today is 3.2 to 1. By the time people of my generation, and a little bit younger—I was born in 1942—the 1945 to 1955 years, young people born in that time, by the time they retire the ratio will be 2 to 1, two people working for every one that is retired. The conflict between generations, or the potential for conflict between generations that that creates is obviously enormous, and so the need for citizens to provide for themselves something in addition to Social Security is obvious.

As you have pointed out, the tax bill not only changes the rules, the thing I think Members of Congress need to understand is it costs just as much for Fred's Cleaners to amend his plan, make the plan amendments as it does General Motors, virtually the same process, virtually the same costs.

I do not believe the gentleman mentioned IRA's. This is another area that troubles me. We are saying, all right, if you are a joint taxpayer and you and your spouse earn $40,000 a year, then we start declining the amount that you can defer income for a later time for retirement and savings. By the time I believe it is at $55,000, then you are not allowed to defer any income at all, although you can make a contribution to shelter the income that you generate from the interest.

The gentleman has mentioned the 401(k) plans. The thing I think we have to remember is we have a voluntary system in the United States where employers have a choice of whether to provide a pension plan or not, a voluntary system. If General Motors, or Boeing, or Weyerhaeuser, or Fred's Cleaners provides a pension plan, it is because they chose to do so. Nobody requires that, nor should they.

I was at a meeting one day when I said that we need to provide incentives, and someone said, yes, you need to appeal to their greed. Greed or self-interest, it basically comes down to the same thing. If there is no incentive there to do it, people will tend not to do so.

I predict that one of the biggest things lawyers are going to be doing with the passage of this bill is forming subchapter S companies for previously incorporated companies and employers are then going to take their income, all of it as ordinary income and not defer any of it, terminate whatever pension plan exists, because it is no longer in the self-interest, no longer appeal to their greed, if that is your inclination, to provide that.

So when they do not provide it for themselves, then they do not provide it for their employees, and there is the tragedy, I think, within this bill.

We need a retirement income policy for the United States. We need to look at the problem, set some objectives, and then establish a means of reaching those objectives.

I do not want any more than my friend from Minnesota or Texas to kill this bill. That is not my objective at all. I join with you on all the other concerns you have raised.

My suggestion is let us not kill tax reform, but let us not pass this bill. Then let us come back in the 100th Congress and do it right. There are still 2 years left of President Reagan's term, and that would be a fine way for him to leave office, for us to pass a tax bill in which we can take great pride, which will provide growth, which will provide the incentives for the provision of retirement income, and will simplify the code as we thought was a goal that we would achieve.

I thank the gentleman for yielding, and I must go.

Mr. FRENZEL. I thank the gentleman for his participation, and agree that he is embarking on a nobler mission at the moment.

I want to finish up the discussion on savings by suggesting that severe limitations have been imposed on 401(k) plans and 403(b) plans as well as on IRA plans. But let no one have the idea that we have imposed them with any fairness across the board. We have not touched Keough plans. It is possible to have a Keough plan and a 401 plan. It is possible to have various combinations.

The persons I think who are disadvantaged in the various combinations that are available are employees who have to make important contributions of their own to their pension plans in after-tax dollars, for they, if they are anywhere near high income people, are not going to have an IRA opportunity, but they will not have the same pension and 401(k) opportunities that other people have.

I think the one other comment I would have on the antisavings features of this bill is the one about capital gains. The reason all of these incentives have been cut back and modified is to pay for the new low rates that the tax bill promises.

The problem is that I have some serious reservations about the revenue that is going to occur by these reductions. I remember in 1969 when we raised the capital gains tax. The result was, you guessed it, the tax revenues declined because people did not want to pay that high tax. They did not take their gains and try to handle their financial affairs in another way.

In 1978 and 1981 when we lowered the capital gains rate, you guessed again what happened, we took in more money because people, at a lower rate of capital gains, were willing to take the gains that they had.

□ 2055

With this slightly higher rate and the no differential rate, not only will there be a disincentive to save, there will be an incentive to make gainers into heirlooms, that people will want to pass on death rather than convert under the new higher tax law.

Mr. Speaker, I now yield to my distinguished colleague on the Committee on Ways and Means, the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. First of all, let me congratulate the gentleman from Minnesota [Mr. FRENZEL] for having taken this special order, because I think this is one of the most serious debates that we will have this year, and perhaps for

a number of years to come in terms of its potential implications; and your stress on the capital gains rate changes is one that I do not think has been given proper consideration.

Mr. Speaker, by 1988 the maximum capital gains tax will have gone from 20 to 33 percent. In 1987 it will go to 28 percent, and that is almost a 50-percent increase in just 1986 versus 1987.

I think the other important thing to keep in mind, is in assessing this kind of a tax on capital gains, they have factored into their computations in preparing this bill a revenue increase.

Now to be sure, if I were heavily invested in the stock market, I would try and take my lower 20-percent capital gains rate between now and the end of 1986 because of the fact that come January 1, I am going to get hit at least with 28 percent, and looking ahead to 1988, 33 percent.

There has been a lot of speculation as to what is going on in the market right now. If you were a broker and you were handling my account, and I were in the maximum bracket, what would you suggest that I do, if I am heavily invested in the market?

Mr. FRENZEL. I would suggest the gentleman take some gains now at the 20-percent rate rather than paying 28 percent if he needed to sell in the future.

Mr. CRANE. What impact do you think that might have? Between now and the end of the year.

Mr. FRENZEL. Well, Mr. Speaker, of course if there are more sellers than buyers in the market, it is going to have the negative impact that I think we have seen in the market, in the last week.

Mr. CRANE. Now there have been many other rationalizations to explain that, but this point has not been stressed, and I think your point is well taken.

I would certainly want to capitalize on that lower rate; and instead of the revenue gains that are anticipated with an increase in the capital gains tax, I have seen private studies that suggest over a 5-year period, instead, there could be anywhere from a $44 to $100 billion revenue loss as a consequence of taking the maximum capital gains tax up to 33 percent.

Mr. FRENZEL. I thank the gentleman for his contribution.

Mr. ARCHER. Mr. Speaker, will the gentleman yield to me on that same subject?

Mr. FRENZEL. I yield to the gentleman from Texas.

Mr. ARCHER. Mr. Speaker, one thing that is often overlooked is that we tend to think that capital gains are items that come only to those who are rather wealthy. There have been a number of studies on this; one done by Martin Feldstein of Harvard.

These studies show that the biggest losers really are the lower and middle income people, because they are not paying the 20-percent maximum rate today; they have the opportunity to disregard 60 percent of whatever their gain is, and then pay their regular, normal tax on 40 percent of the gain.

That will be eliminated from the code. From a relative percentage standpoint, the lower and middle income people will be disadvantaged to a greater extent than those who are in the higher income brackets by this change that is proposed in the tax reform bill.

Mr. FRENZEL. The gentleman is dead right, and, of course, the typical capital gain event in the United States is the sale of a home or a farm, which does not occur only to rich people.

I yield again to PHIL CRANE, the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, something that just came to mind in that regard is, for example, all of the pension funds that are invested in the market. With that increase, will that not negatively impact on pensions?

Mr. FRENZEL. It is possible, if there is a decline in general market values due to a sell-off because of capital gains rate-inspired transactions; sure. The value of their portfolios is going to decline. At least, that is the only way that I can see it.

Mr. CRANE. I thank the gentleman.

Mr. FRENZEL. Mr. Speaker, let me conclude with savings; and again the gentleman from Texas [Mr. ARCHER] may want to speak up here, because he has some special background in this area as well.

The savings rate in the United States is the lowest in the industrialized world; and that is one of the reasons why we have high rates of interest in the United States, because we do not save enough to take care of our borrowing needs. Most of the borrowing needs, of course, occasioned by the profligacy of the Congress, spending more money than we take in; and, of course, we have this enormous trade imbalance which is partly a cause and partly a result of the whole thing.

What this bill is going to do, in removing the principal savings incentives, is to cause the rate of saving to be lowered. I notice that some of the sponsors of the bill, or the proponents of the bill, are telling us that the cuts in personal rates are going to increase savings; that this is going to be a cut which is going to inspire people to work and save and invest.

Mr. Speaker, I think the gentleman from Texas [Mr. ARCHER] had some statistics on what happened in 1981 when we cut taxes and we expected people to save more.

I yield to the gentleman from Texas.

Mr. ARCHER. Mr. Speaker, I thank the gentleman for making this point; and it is a very important one.

The reduction of individual rates, which does put more money in the pocket of the average individual in this country, occurred massively in the 1981 bill, which all three of us supported.

Many of the promoters of the tax reductions at that time urged that it would increase savings dramatically. The reality was that before the bill was passed, the percent of personal savings in this country relative to income, of disposable income, was over 7 percent.

After the bill passed, it has declined in succeeding years to where today it is 5 percent or less of disposable income. So the claim that by having a 25-percent reduction in personal income tax rates would generate extra savings has just not occurred. The reality is it has not occurred.

Another interesting figure when you talk about savings and the importance of savings to having capital to create jobs, to increase our standard of living; is that 79 percent of all of our private savings in the United States are generated by businesses, not by individual savers.

The incentives that were put in the 1981 Code of course did encourage greater saving at the business level by accelerated depreciation, et cetera.

Now it seems clear to me that with the added tax on business that is represented in this bill, that we must see a significant decline in savings at the business level.

In fact, the economists that I have heard speak to this subject say that cash flow for businesses will definitely deteriorate if this bill is passed: There will be less cash flow through the businesses of this country.

One of two things, then, has to happen. Either they are not going to invest as much to modernize, to keep America competitive in the world marketplace, to create jobs, or they are going to have to borrow the money.

Since we are no longer as a nation saving enough to provide our own capital, that means we will have to depend more on foreign capital and foreign investment in the United States.

I do not think that is a direction that Americans want to go.

Mr. FRENZEL. I thank the gentleman.

Mr. Speaker, I yield to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Mr. Speaker, this is a quote from a study done by Jerry Jasinowski, the vice president and chief economist of the National Association of Manufacturers.

On this point he said:

> Finally, while tax reform purports to achieve greater neutrality and it does so in some respects, it is not neutral on the tax treatment of income and consumption. In this respect, it moves the tax system even further away from taxation of consumption and further penalizes savings and investment.

So the distinguished gentleman from Minnesota [Mr. FRENZEL] is in good company on that point.

Mr. FRENZEL. Thank you very much.

Mr. ARCHER. Mr. Speaker, if the gentleman will yield to me again, we must admit that in this bill, we tend to see a leveling out so that in some instances capital can be allocated on a more efficient basis in the tax reform bill.

The proponents claim that, and that is accurate.

Mr. FRENZEL. I can see that.

Mr. ARCHER. However, all of the economists that testified before the Joint Economic Committee that I heard—and maybe there was one or two that did not agree—but out of 11 economists who testified in the last week, they said that the cost of capital, the increased cost of capital that this bill would generate, more than offset whatever benefit from the more efficient allocation of capital.

□ 2105

I think that is important. One of the points that they made, in fact Mr. Sommers from Harvard made the point very effectively, was that the corporate rate reduction did not offset the cost of capital because it primarily benefited old capital that was already in place. So the machinery and equipment, the manufacturing capacity that is in place will benefit from the rate reduction. But you cannot get any greater efficiency out of existing capital that is in place. You cannot get greater productivity. Relative to new investment that is required for greater productivity, the tax rate reductions do not operate as an incentive. It is more retrospective than it is prospective.

And he commented that the true cost of capital and to business was far more than the $120 billion that the proponents say they are shifting from individuals to business because that 120 is net after the rate reduction. So if you add back the fact that the rate reduction does not benefit investments in new capital but primarily benefits old capital, you have a much greater charge on capital investment for the future.

Succinctly, he said this bill would favor old capital in contrast to new capital and would make it even more difficult for new corporations to get into the arena and to compete with those who already have their capital invested.

Mr. FRENZEL. I thank the gentleman, and I yield to the distinguished gentleman from Washington, Mr. LOWRY.

Mr. LOWRY of Washington. I thank the gentleman from Minnesota for yielding.

I just turned on my TV and did not notice how much time the gentleman from Minnesota has. Does the gentleman have adequate time for me to take part?

Mr. FRENZEL. Of course we have time for you.

Mr. LOWRY of Washington. I thank the gentleman. I was over there eating my raisins and trying to catch up on some mail which I am behind on. I was delighted to see the gentleman from Minnesota, who I think is one of the best fiscal thinkers in this body, holding this special order on the tax bill. I am not going to use the term tax reform bill. I myself do not find that. I think this bill is a drastic mistake. I am very much against the passage of this bill. I am not quite sure what else has been said earlier here, but I would like to say why I am working against this bill.

Mr. FRENZEL. Why does not the gentleman tell us what is lying on his heart?

Mr. LOWRY of Washington. The first thing that I would like to mention is, I think it hurts badly on the battle of the deficit.

In every way that I have tried to find that not to be the case I have found answers by proponents of this bill to be pure malarkey.

Now, the easy way, first, to look at it is the immediate effect on the deficit of the bill itself which I want to say on the record today I think is overly optimistic. I think, in other words, it will be worse than the estimates given because the estimates used by the professionals giving the estimates are all on existing static economic statistics, and I think that will prove to be inaccurate.

But even using those estimates, in the next 2 crucial years of the battle of the deficit, in the year 1988 which we will face next year, even those overly optimistic estimates say that this bill will increase the deficit $17 billion. In the following year, $15 billion.

Now I happen to serve on the Committee on the Budget, and I have for 3 days been in the little mini-conferences about how we even find the money to meet our Gramm-Rudman-plus-10, $154 billion target right now. The only way we are going to find it is by making economically unwise selling of assets of this Government to meet just this year's relatively easy target. The way we are going to come up with the $15 billion reconciliation package that I support given the alternatives, is to sell export-import loans which I am for doing. It is a bad mistake but I will do it, given the alternative; sell other loans at a loss, at a discount, take that money and move it forward so we can hit the $154 billion this year. What that really does is it says, "Let's move those future dollars in the next 2 years out of there out to here, at the same time that this bill even under the most optimistic estimates will increase the deficit $32 billion."

So I continue to say to the proponents of this bill on my side that keep walking around with their transition rules trying to buy out votes over here saying, "If you will vote for this, here is your transition rule," and I keep saying to them, what are we going to do about this deficit in the future?

Now here come the answers. If I could only get this over to the Members of this body. Here comes their answer. They say, "Well, have you looked at the 1987 rate formula by which we transist onto 1988 in which, of course, we do not go to the 28 and the 15 that we have been telling everybody in this country we are doing, but of course in 1987 we have a rate structure that goes from 38 to 11." And so we do not have to move ahead and go to 1988. They say this to me, who they know my primary concern is the deficit, you see. I am saying answer me how we are going to raise this revenue. They say, "Well, we will freeze it at 1987." Now, think of that, listen to that, every Member in this body: Their answer we will freeze this rate, exactly the opposite of what we are telling the people in this country, at the 1987 rate.

Now, if the gentleman would allow me, I would like to talk about that rate for a minute.

For the $45,000 taxable income bracket, joint return in 1987, that rate will be 35 percent.

Well, right now today under the Tax Code at $47,000 you pay 33 percent. So these people are trying to tell me when I asked them, "How are we going to raise the revenue in the future on this drastic problem?"

Mr. FRENZEL. Plus that they added a marriage penalty to that couple.

Mr. LOWRY of Washington. Added the marriage penalty, take away the IRA because at $50,000, you know, the IRA is totally gone as a deduction, take away the sales tax deduction, take away the interest deduction on the car to be used for going to work in the $45,000 family. So how are we going to meet this deficit question? They say, "freeze that." They are trying to tell me today, when we cannot even get a $6.5 billion excise tax up on this floor to be voted for because we cannot pass that, that is how we are going to answer it.

One of two things happened in this bill, one of two things: We either drastically increase the deficit or we go totally back upon the American people and turn around and raise the rates before they even got the cut. I think that is disgusting.

Mr. FRENZEL. I thank the gentleman for his contribution.

I yield to the gentleman from Texas.

Mr. ARCHER. I have an add on to the problem of the deficits.

I share the concern of the gentleman. I think the deficits in this country that this country faces are the biggest problem that looms into the future. It will not just be the difficulty on the revenue side that the gentleman mentioned and articulated very, very well—and I would only add to that, also, that they expect $11 billion above the current law in 1987, and I believe that this Congress will embrace that to meet the Gramm-Rudman targets, but then we will lose that $11 billion and we will have another minus $17 billion in 1988, the combination of which is not just $17 billion but $28 billion for the Budget Committee to pick it up to get back to scratch before they can find the $36 billion to meet the Gramm-Rudman targets a year from now going into 1988. That is almost an insurmountable barrier, in my opinion, to moving toward a balanced budget. But even worse, I believe, the gentleman is right when he says that the revenue estimates are unreliable.

Dr. Brunner of DRI testified to the Joint Economic Committee that his econometric model showed that the revenue results in 1987 would be $21 billion less than what the estimators say this bill will produce. In 1988 they would be $25 billion below current law. The total of those two is $46 billion of extra deficit in 1988 plus the $36 billion that we will have to find to get to the Gramm-Rudman targets, or an $82 billion job of deficit closure when we come back a year from now, and that is a virtually impossible task.

But let me add another bit to that. That is only on the revenue side.

This bill by changing incentives in the code for low-income housing, for defense contractors and for a number of other areas is going to put the pressure on the Treasury to appropriate the money to make those things happen in our society. If the private sector because of no longer having tax incentives does not build low-income housing, then the majority in the Congress most certainly will have to appropriate more money to HUD to build those houses. And that on the spending side is going to exacerbate the deficit. By taking $3.5 billion out of the completed contract method of accounting, it is going to cost defense contractors to have added costs of roughly $3.5 billion which will be passed on to the Defense Department and increase the cost of procurement of military hardware and equipment.

Now, the proponents of this bill even admit to this in one small area which is the area of adoptions, because there is currently in the code a tax credit for those who adopt orphan children.

Well, they say we have got to remove that in the name of tax reform but we recognize there is a need for that money to be provided by the public. Therefore, we are going to appropriate the money out of the treasury in lieu of having the tax credits.

All of these factors are going to widen the deficit by putting greater pressure on the spending side. One of the major reasons for this is that as this tax bill went through its process basically most Members were mesmerized by the tax tables without regard to the economic impact and what that would do to budget neutrality, not just what it would do to revenue neutrality. I thank the gentleman for his contribution.

Mr. FRENZEL. I thank the gentleman and I yield to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. I thank the gentleman for yielding.

Now, on the point that was made here about when you kick into that 35-percent bracket on a joint return, for some of our successful yuppies out there they should recognize that next year they are going to be kicked into that 35-percent bracket at $27,000 if they are still single and many of them are. I made a calculation with the increase in the standard deduction provided for in this bill and with the increase in the personal exemption and factoring only those two into the determination of the amount of taxes that an individual will pay if he gets to $39,440, the dollar amount, if you made $39,440 or you make it next year, under this change—and this is not counting the loss of some of the other deductions that we have done in other potential reforms in this code—the dollar amount of taxation for that individual is $8,410.

Now, that is a rather substantial increase in taxes, that that person anticipates, over what he would be paying with the same income today. And I would repeat these figures only for the benefit of any American that may be able to go back and quickly resurrect last year's tax form.

Thirty-nine thousand, four hundred forty dollars income in 1987, you will be paying $8,410 in tax. That is, as I indicated, only by calculating in the standard deduction as a subtraction from that overall income figure and subtracting the increased personal exemption.

I thank the gentleman for raising what to me was a very significant point.

Mr. FRENZEL. I thank the gentleman for his contribution.

We have been discussing the antigrowth elements of the tax bill, the anti-capital-formation and savings element and then most recently the problems that the tax bill raises with respect to our budget deficit.

I would now like to move into my allegation that the tax bill is antimanufacturing and antiexport. I think most analysts do not deny that the burden of the repeal of ITC falls most heavily on manufacturing concerns and especially most heavily on the heartland of America, that area between Pennsylvania and Chicago, where our country's basic industries, already under siege from foreign competition, is located.

Now, everybody, I think, knew the ITC was going to go. I do not think everybody knew the ITC was going to go retroactively, however. Nor did everyone expect it to go all at once. There was much to be said, I think, for the idea of some kind of graceful phasing out of the ITC while America's manufacturing firms, particularly smaller ones, learned how to cope with the problem.

□ 2120

Of course, I have already discussed the stretchout of depreciation, which also adds costs in these areas.

The problem, of course, is that with the transfer of the new costs, the new costs, from individuals to corporations in the ways that I have just indicated, the products of American manufacturing are going to be increased in price. This means that compared to their foreign competitors, America's prices will go up, this, of course, at a time when we are putting consumption stimulus into the code, if indeed, as the gentleman from Washington suggests we may not do, we lower the tax rates. If that happens, the consumption stimulus will be largely devoted to the purchase of foreign goods while the higher-priced American goods are likely to languish.

So much for manufacturing. Let me talk a little bit about export business now.

In the current Tax Code, we have four primary incentives that benefit American efforts offshore. The first is foreign tax credit, the second is tax deferral, the third the foreign sales corporation and, finally, section 911, the exclusion of income earned abroad by Americans who are put there to sell American products usually.

None of these were repealed, but all of them have been modified in such a way as to reduce incentives for American firms to be active abroad, this at a time when American exports are under heavy fire in foreign markets and at a time when we are not sure that we can maintain our market share, much less increase it. Of all the times in the world we would choose to reduce export incentives, strange that it would come at a time when America has a $150 billion trade deficit; that was last year's number, this year it will be in the neighborhood of $170 billion or perhaps slightly higher.

So the prejudicing of manufacturing exacerbated by the discrimination against export orientation is part of the growth problem, which I referred to earlier and suggested that we had

at least a 1-percent negative influence on growth in the first 2 or 3 years.

I would like to talk a little bit about fairness now, and one of the reasons is I see the gentleman from Washington here, and I note that one of the descriptions of the bill in addition to growth and simplicity was fairness.

Now there are some good things in the bill. One that I indicated earlier was the elimination of 6 million people from individual tax liability who should not have had any in the first place.

Nevertheless, if one looks at the bill from top to bottom, it is very difficult to conclude that the bill is more fair than the current tax law and, if indeed it is, it is only marginally more fair.

The first item I would like to discuss is the deduction of State sales taxes, which is not preserved, against the deductions of property taxes, which are largely preserved, and State income taxes, which are wholly preserved. My State relies heavily on income taxes. My deductions for paying State income taxes are going to be preserved. Yet my State spends its income taxes on the same thing that Mr. ARCHER's State spends its sales taxes and Mr. LOWRY of Washington's State spends its sales taxes.

What makes my State's taxes more sacred than theirs? What it does is simply a decision of the committee that this was the money they needed, and so they fed State sales taxes into the mull of tax reform. But in my humble judgment, it certainly may have been necessary to support a lower rate. It certainly does not do anything for the bill's image of fairness.

We have already talked about the problem of relatively affluent people paying a higher marginal rate because of the phaseout of the 15-percent rate and the phaseout of the individual exemption, than people who earn $1 million a year. I am not sure that anybody in the Congress would have suggested that was a desirable result of tax reform, but it happened.

The gentleman from Texas was suggesting to me earlier, what happens to you if you are elderly and blind? If both of those situations apply—well, I think I will let the gentleman from Texas talk to that.

Mr. ARCHER. I just wanted to simply say that the result of the tax rate schedule which, for all practical purposes, provides that if you make over $200,000 a year in taxable income, you pay 28 percent marginal rate. But if you are a single individual and you make over $43,000, your excess income is taxed at a 33-percent marginal rate.

This is the first time that I know of in the history of this country where the people who earn more income pay a smaller marginal rate on their top income. This is called the bubble in terms of the vernacular that is being used by the committee. It is clearly unfair. It is clearly inequitable. And I do not think any Americans would believe that it meets the test of fairness.

But getting back to the people who perhaps have some of the greatest need in this country, the elderly blind, today the elderly blind individual gets a triple exemption, three times the regular personal exemption, which is roughly going to be about $1,000 next year. So they would get under the current law a personal exemption of roughly $3,300. But under the new tax reform bill, they only get a personal exemption of $1,900. So there is a dramatic difference in treatment.

Admittedly, if you have a standard deduction and you do not itemize, then there is a provision for an increase in the standard deduction which tends to offset that. But if you are an itemizer, you have to bear the difference, the negative difference, between $1,900 and $3,300 in 1987.

But add to that a couple of other items and see how the blind elderly are impacted.

If they have high medical expenses, which is not at all uncharacteristic, then the deductibility of their medical expenses is impacted negatively to the extent of 2½ percent of their adjusted gross income, and they lose the deduction of a significant part of their medical expenses.

Then add to that if they are a renter, all of the econometric projections I have seen for this bill are that rents will increase.

I talked to an individual today who owns rent property for moderate-income people, and he said already as a result of this bill he is going to have to anticipate the increasing of his rentals by somewhere around 15 or 20 percent.

So this elderly person that may be in a renting mode is going to be hit in a number of different ways that are going to be adverse compared to the current law.

Mr. FRENZEL. I yield to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. I thank the gentleman for yielding.

Our colleague from Texas, I think, has raised a very significant point on the impact on rental costs.

Martin Feldstein, the noted economist, pointed out that the new tax bill approximately has the depreciation allowances in the first year.

To see how this would impact on rental property, he noted there will probably be somewhere in the neighborhood of at least a 10- to 15-percent increase in rental costs because of the treatment of depreciation.

Now a couple of questions come to mind. Who are renters? The elderly that have sold off their home and tried to move into smaller dwellings and husband their resources on reduced income?

The other typical renters tend to be those people at the beginning of their economic career who are not yet affluent and not yet in a position to be able to own a home. These people are going to get hit not only with that increase, but there is another unfairness in the distinction made between the homeowner who can borrow on the value of his home based upon what he initially paid for it and deduct that consumer credit, but the renter, of course, is not in that enviable position. As a result, we are discriminating once more against middle- and lower- middle-income people.

Martin Feldstein gave an example of the typical taxpayer, married with a median income of about $25,000 a year. Under the new bill, this taxpayer is expected to save about $20 per month in taxes. Such a typical taxpayer who rents pays about $500 per month in rent. If rents rise by about 10 to 15 percent, as they probably will with the new depreciation rules, our typical taxpayer will find that the increase in rents will swamp the meager reduction in taxes.

□ 2130

I think that once more, while there has been talk about trying to address the concerns and interests and justifiable apprehensions of middle- and lower-income people that here is one more flagrant example of how the very people that in theory we were going to try and help end up getting clobbered.

Mr. FRENZEL. The gentleman is, of course, correct and Dr. Feldstein who was formerly chairman of the Council of Economic Advisors to the President did indicate that the typical case that he looked at was for someone who got a $10-a-month tax cut and a $40-a-month rental increase. That can hardly be described as justice.

I yield to the gentleman from Texas [Mr. ARCHER].

Mr. ARCHER. I was just going to add that I think it is important for us to recognize that although on average individuals within all of the various income brackets are alleged to receive a tax reduction, for those who are what we might call lower and middle income, the extent of that would be somewhere between $2 or $4 or $5 a week maximum.

What that does not tell you is that within each income tax bracket there are going to be, according to the estimators now, and I am talking about the estimators that the proponents of this legislation rely on, 25 percent of the middle-income people are going to have tax increases. They are not talking about that a lot, but it is in here, and when those individuals who get the tax increases fill out their tax returns, they are going to be very surprised.

We have already talked about some of the types of people who will get the increases. The elderly, blind itemizer will get a tax increase under this bill. Are those really the kind of people that in the name of fairness and equity that we want to increase taxes on? Particularly if they have extensive medical expenses, it becomes even more exasperating.

I think that this is an area of fairness that the Congress should address.

Mr. FRENZEL. I thank the gentleman.

I yield to the gentleman from Washington [Mr. LOWRY].

Mr. LOWRY of Washington. I thank the gentleman for yielding.

Mr. Speaker, as my friend from Illinois was talking, I wanted to hold a newspaper advertisement that I took out of the Washington Post yesterday on the question of fairness between renters and homeowners. This newspaper advertisement by one of the financial institutions says: "Don't worry about losing your interest deduction on car loans and things like that because all you have to do is go get a second mortgage on your first or second residence."

That renter, of course, cannot do that. On top of that, that renter that we are talking about on the younger end of the age scale, especially the person that has to finance a car by which to drive to work. I would like to have the people in this body that are so interested with that middle income person trying to work themselves up, to tell them to drive their second home to work, because under this tax bill that is the only thing they could write off.

On top of driving rents up, that person who is the one who cannot pay for a car outright, who cannot go get second mortgage on their first or second home by which to still be able to deduct the interest has now lost the interest on buying the car let alone the other things they have to do. Extreme inequity.

Mr. FRENZEL. I yield to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. My wife and I were Depression babies and the only thing we ever bought on time was a home. The operating rule was if you could not afford to lay cash down for it, you did not buy it. We did without a lot. A lot of sacrifices during our early years of marriage especially.

The fact of the matter is there have been significant changes. Now this gets personal with me because I have a daughter, working daughter, very hard, very conscientious worker, who bought a new car. I am driving a 10-year-old vehicle and I have got a young daughter in her twenties driving a new car. But she anticipated that she would have the deduction for the interest payment on the car which, of necessity, she must buy over time.

Under the provisions of this bill, my working daughter, whose income does not begin to approximate mine, my working daughter is going to lose that interest deduction. There have to be any number of working Americans, again, the people who tend to buy on time, especially in the post World War II era, are young marrieds. They cannot afford to go out and lay the cash down for the refrigerator or the stove or the automobile. They are people who are buying on time and apartment dwellers.

GENERAL LEAVE

Mr. FRENZEL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of this special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

THE TAX REFORM BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. ARCHER] is recognized for 60 minutes.

Mr. ARCHER. Mr. Speaker, before I begin, I wish to yield to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. I thank the gentleman for yielding to me.

Mr. Speaker, I wanted to pick up on the point that Mr. CRANE ended the last hour of discussion on. It comes under the general heading of retroactivity. I wanted to just pick out a few things for discussion before the gentleman begins his discussion.

The first one, of course, refers to retirement of public employees where retirees suddenly found, retroactively, that their contributions to the pension program, their own pension program, which are after-tax contributions, are going to be subject to taxes. The rule has been changed. People who made life-long plans for retirement are finding out that the money they saved for their retirement is not there because of a retroactive change.

Now, that is just purely mean spirited. That is money grubbing. We did not have to do that. Whenever we change people's plans, we usually let those who are close to retirement go out under the old system, have a transition class below that, and then make the new rules apply later to those who have time to plan for them.

We did not do it. Mr. CRANE has talked about retroactivity on a purchase for which interest used to be deductable. I find that a number of my constituents have sold their homes and houses and they have taken a down payment on those homes and paid with the 60-percent deduction we now get under the capital gains rate.

As soon as January 1 is crossed, under this tax bill, all of those sales, whatever is left on them, are going to be taxed at a higher rate even though the sale was consummated, the contract was completed last year, year before or many years into the past.

I have already talked about ITC retroactivity back to the first of this year which to me is unfair. It is unfair to cancel preferences before you cut rates. That retroactivity is unjustified. I would like to suggest that there is a final issue of retroactivity. There are more than the ones I have cited, they are important, and that is the person who has engaged in investment for so-called passive income and has taken deductions. The typical case is a limited partnership on some kind of a real estate investment, again, typically low-income housing.

For this individual, the deductions which had been anticipated under that investment are not going to be available or are going to be reduced and phased out. The net result of this problem is going to be that people who do not have the money will have to pony up additional funds in the future and they will undoubtedly have to borrow them. Their borrowings will not be deductible; the interest on their borrowings. What, of course, will happen is that is one of the things that will cause the net reduction in rental housing stocks and cause increases in prices of housing at the same time we are, I think, unfairly treating these people.

I think retroactivity is a word that we have only begun to hear with respect to this tax bill and the Members of this House are going to be talking about it with respect to literally dozens of features within the tax bill.

Mr. ARCHER. Will the gentleman agree that the retroactivity in this bill is the equivalent of the government breaking its word to all Americans, and would the gentleman further agree that keeping one's word is one of the hallmarks on which this country was founded and that we teach our children as they grow up? Are we now setting a bad precedent, a bad example for this government to have this retroactivity and break its word to the people of this country?

□ 2140

Mr. FRENZEL. I think that is true. No American has an ironclad guarantee that the tax law will not ever change, but every time, at least since I have been on the Committee on Ways and Means, that we have changed the tax laws, we have given people a little warning. We have let them rearrange their business, phase in or out certain kinds of arrangements that they had, and this is the first time that I can remember we have dropped the anvil right on their heads in contravention

of what I think has almost the sacredness of a contract.

Mr. CRANE. Will the gentleman yield on that?

Mr. FRENZEL. I am happy to yield to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. I could not agree with the gentleman from Texas more. I think this is the most unconscionable aspect of what we are considering doing.

The people who made the investments in the case of the passive loan loss provisions, or passive loss provisions, these people may have been taking advantage, and many said they were, of a loophole in the Tax Code. But who put the loophole in the Code and why did they do it? The Congress of the United States put this so-called loophole in the Code to achieve a social objective, namely, to promote the construction of apartments and office buildings and the like.

I think there is a good case that can be made that it should not have been in there. But on the other hand, to those people who entered into solemn contractual commitments that go over quite a number of years and who now, because of the retroactive application of the change in the Code may be facing the prospect of substantial losses over the years on into the future, are very apt to just walk away from those investments.

This leads to another dimension of some of the economic consequences of what we are contemplating that could be profound.

If they walk away from those investments, who is left holding the bag: the financial institutions, the same financial institutional that are losing, if they are over $500 million, their bad-debt reserve deduction, with the exception of the 20 that Mr. Volcker rushed to rescue by giving them an exemption because they are in oil States and he was contemplating the prospect of 20 fairly sizable banks going belly-up because of the loss of that deduction and apparently some of our colleagues conceded that so they said, yes, we will make the exemption here.

Mr. ARCHER. If the gentleman will yield on that, I cannot see where that is going to be very helpful anyway because these banks are already in a loss position. They might be very well better off to recapture their loan loss reserves when they do not have to pay any tax on them while they are in a loss position. They are already in such bad shape that the so-called troubled bank provision that is supposed to help the troubled banks and applies only to those that have 75 percent nonperforming loans already is not the answer.

Preventive maintenance is the answer. I agree with the gentleman and I would like for him to continue.

Mr. CRANE. The concern I have is that bank-bashing can be a favorite pastime of a lot of people. I know that we have all probably at one time or another engaged in that, sometimes deservedly, as far as the banks are concerned.

On the other hand, we had the 100th bank go belly-up this year on Monday of this week. They are projecting more bank failures this year than last year, and last year set a record since the Great Depression, the bank failures of the Great Depression.

It just seems to me that, given this current climate, this is a very fragile industry and the potential repercussions of a significant failure of any number of these institutions boggles the mind in terms of what it could do psychologically to an already unnerved public, rather, thinking back to what happened in Ohio with the savings and loans institutions that were not covered under FSLIC.

The Federal Deposit Insurance Corporation has raised the number of banks on its troubled list this year, since January, from 1,150 to over 1,400 banks. Every major bank in this country is on that troubled list. It is equally important, I think, for Members to keep in mind that FDIC does not have the reserves to cover more than one Continental Bank of Chicago failure.

It is a very delicate situation and, once more, it is one where I think in the rush to achieve so-called tax reform, we were not circumspect where we should have proceeded with the utmost kind of caution and if we were going to change these kinds of ground rules, at least absolutely guarantee that we would honor all existing contracts and any of these changes, looking down the road, would be prospective.

You can say, come January 1, 1987, these deals are off; you cannot get into these kinds of investments. Come January 1, 1987, maybe you will want to change the rules with regard to the large banks, but we could be creating the foundation of something more horrifying than anybody in this Chamber or any of the American people realize.

That, to me, is another one of the profound areas of concern in this bill and I thank the gentleman for yielding.

Mr. ARCHER. The gentleman has made some excellent points, and to continue with the concept of fairness that the gentleman from Minnesota [Mr. FRENZEL] has introduced into this discussion, to talk about some of the things that are unfair, to my knowledge, for the first time in the history of our Tax Code, we will be seeing the taxing of true economic losses recognized as economic losses, but completely again, captivated by the concept that irrespective of what your situation is, you have got to pay taxes.

A corporation that loses money in one year and makes exactly the same amount of money in the next year should be awash. The Government should not take from what is a neutral profit situation, but under this bill, for the first time, the economic losses of the first year will be taxed; at least 10 percent of them will be taxed.

There is a provision for double taxation of foreign earnings. The gentleman from Minnesota has spent a great deal of his time in attempting to find ways to make this country more competitive in the world marketplace and to open up trade opportunities so that we could export and create jobs.

Our corporations that have to be out there on the firing line and compete against foreign corporations, that pay no tax whatsoever on their foreign-source income, are now put at a greater disadvantage because a part of their earnings overseas will be double taxed for the first time under the minimum tax and they will not get credit for their foreign tax credits in full.

So when they pay tax to the Government overseas in which they operate, they will have to pay a tax again on the same income back in the United States. It will be a very, very large deterrent against our capability to compete with our foreign competitors, which is the name of the game in the world today.

There is an area that I think needs to be understood.

What is going to be the impact on the cost of local government? Our local governments issue bonds which in the past have produced interest which is tax exempt, and as a result, they get a lower interest rate. It reduces the cost of each of us as individual citizens when a new school building has to be built or a new city hall or any other type of construction that is part of our local municipality.

This bill, for the first time, provides the taxation, at least in part, of the interest on what are called tax-exempt bonds, and it does it in a number of ways. Financial institutions today held 50 percent of the municipal bonds that have been issued. This bill is going to tend to drive banks out of buying municipal bonds. There will be a smaller market for our cities and our school districts to market their bonds and the interest rates will go up.

We as individual taxpayers will wonder why our mayor is saying, I am sorry, but we have got to increase your property taxes, or we have got to increase your local sales tax or increase your local income taxes, as the case may be. But it will be to some extent because the cost of construction of projects for that local governmental unit will go up because the interest on the bonds that they have to issue will go up.

This is an unintended result, but necessarily a real result of this tax reform bill.

For colleges and universities and philanthropic organizations that depend upon large comtributions of appreciated property, this bill, for the first time, will make those contributions subject to the minimum tax, and will be a deterrent for people to give property badly needed by our colleges and universities that are having a very difficult time today.

□ 2150

The result of that will be, of course, less money flowing into the colleges and universities and many other philanthropic organizations, charitable organizations. It will mean they will not be able to do their job as well. It will mean pressure for increased tuition to students in private colleges.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I am happy to yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, I would like to comment on that. The Head of the American Council on Education called this bill the greatest catastrophe for higher education in 25 years. One of the reasons he did so was because of the fact the gentleman mentioned, that is, if one gives a farm or a business or shares of stock to a charity, most likely an educational institution, the amount of appreciated value of that asset immediately goes into the minimum tax and is charged against the contributor. The contributor probably does not contribute, lacking the incentive of the tax deduction.

The universities of the United States computed that they were more likely to lose in the next couple years about $800 million of contributions to their enterprises, which I think if not the most important, is one of the most important functions of our society. It would have cost the taxpayers or the Treasury $300 million in reduced taxes, but it does seem to me that that was money well spent. It was seed money drawing in other private money.

I would like to go forward a little bit. I am not going to talk about the fact that we knocked out the charitable deduction for nonitemizers. We let rich people take charitable deductions. We do not let poor people, because we are talking about education, but I would like to talk about the scholarships that schools and universities give to their incipient professor candidates for additional degrees who will now be paying taxes on part of the stipend that they receive, previously not being able to do it.

I would also like to comment on the inability of the universities to float bonds because of the limitations imposed in this bill.

Yes, the 501-3(c)'s are allowed to issue bonds, but with the limits imposed State by State and by educational institutions, they are not going to be able to do it.

You put all those things together and not only have you killed—not killed, but maimed the American tradition for charitable contributions, you have given higher education a blow from which it will take years to recover.

I thank the gentleman.

Mr. ARCHER. Mr. Speaker, does the gentleman agree also that it will make it even more difficult for private higher education to compete with public higher education?

Mr. FRENZEL. Well, I do, in many ways. The privates have competed mainly by getting gifts from generous alumni or admirers who have made the same kind of contribution that the taxpayers make to the land grant colleges. They have been able to keep up. They have also been able to issue dormitory bonds, for instance, to keep up with the growth of their school, which I think will now be much more difficult for them.

I believe the privates are taking a kick in the head, but so are the land grant colleges and the public institutions through some of these other devices.

Mr. ARCHER. Would the gentleman like to comment on the impact of this new tax revision bill on the ability of students to deduct the interest on the loans that they use to go to college?

Mr. FRENZEL. Yes. I did not mention two other big problems. One even comes before they deduct, and that is getting the student loan. Most States issue student loan bonds. Those are also reduced by the limitations in this bill so that my State, for instance, will not be able to issue the student loan bonds it wants to issue.

Now, if the student does as the gentleman suggests, borrows money for higher education, or the family does, the interest on that kind of borrowing, which again I give about a No. 1 priority to in our society for that kind of borrowing, the interest is not deductible. In my judgment, that is a serious mistake. If we believe in America and we believe in the ability of people to improve themselves, to go out and work for their education, borrow money to get it and then we kick them in the head by giving them no deductibility, we have made a serious policy error.

Mr. ARCHER. Mr. Speaker, I thank the gentleman for that input.

I would add also that as I understand the bill, and interestingly enough, we have not seen a copy of it even now as we speak, it is not in writing. We understand it will be 1,500 to 2,000 pages of additional legislative code to add to the 13,000 pages that are currently on the books; but if I understand correctly what is intended by the proponents of the bill, it will provide that scholarships will be partially taxed to all students, so that if a student gets a scholarship beyond tuition, a scholarship that includes room and board, the value of the room and board will for the first time be taxed.

Does the gentleman understand that to be the case?

Mr. FRENZEL. That is imputed income to the student and he or she has the great privilege of paying taxes for that amount.

Mr. LOWRY of Washington. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Washington [Mr. LOWRY].

Mr. LOWRY of Washington. Mr. Speaker, I thank the gentleman for yielding and I thank the gentleman from Texas for his insight and leadership on this issue.

I should mention education. I rise to address that and what the extreme inequity in this bill will do to education in my State of Washington and will also be true of education in other States.

When we found out after two gentlemen sat down by themselves after we had recessed for the Labor Day break and found out they had totally eliminated the deductibility from the Federal income tax of sales tax, that brought a terrible inequity and terrible pressure upon the services to be delivered in many States in this Union and I would like to address that in the State of Washington.

In the State of Washington, 60 percent of our State revenue comes from the sales tax. This is because we have a constitutional prohibition against an income tax. The elected officials in the State of Washington have tried twice in the last 15 years to amend the Constitution so as to move away from that heavy reliance upon the sales tax. We have never come within a 3-to-1 vote of being able to do that; the point being that in our State the sales tax is going to continue to be somewhere in the area of 60 percent of all the revenue to pay for services in the State of Washington and of those services, of course, education is the highest amount that any State and our State appropriates. It is again about 60 percent, both on the higher education level and on the common school level.

So now when two gentlemen sat down and took that position, they have just plain put a tremendous additional pressure upon the State of Washington's education system because they have decreased the cost of that sales tax because the taxpayers in the State of Washington can no longer deduct it.

Now, the position of the House of Representatives when it left here was 100-percent deductible of all State and local taxes, as all three gentlemen on

this floor well know. The position of the Senate was 60-percent deductible.

Two men sat down and knocked that out totally, came back and got a unanimous-consent request that most of us did not know about to waive points of order about the fact that was totally out of the scope of the conference, so that we could not even go to the Rules Committee to bring it up.

So now the children in the State of Washington because of that process are going to have their education cut because the deductibility of the sales tax is being taken away and thereby the cost of the sales tax is going to be greater, and as we face those same problems that all States around the Nation do, that is going to mean lower services for education.

Now, that is the height of unfairness. It is unfair in discriminating between the taxes and in the process was extremely unfair. That is why I stood on the floor of the house the other night and objected to the request of the chairman of the Ways and Means Committee to be able to waive the rules and file the report, because they wanted to shove the bill through sooner. By being able to file the report, that meant the bill could have been up today.

I find it very interesting that since they filed the report last Monday, we still cannot find out what is in the report until next Monday.

Now, last week there was a great hurry to be able to get unanimous consent to change the rules to file the report for the tax bill to be up today, but we cannot even find out what is in that tax bill until next Monday.

Do you know why? Because they do not want anybody to see what is in that tax bill. We are going to get it next Monday night when this thing is scheduled for Thursday.

There is no fairness in this bill. The process of bringing this bill to the floor has been extremely unfair.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I am happy to yield to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. My understanding is that they will make the midnight deadline tonight for filing the bill.

I think the problem really was one of drafting the language. The perversity of the action taken by the conference was that when that vote was taken on whether to report the legislation out, there was no document. It is important, I think, for Americans to realize that it has been almost a month since that action taken by the conference reporting favorably on this legislation without any written document before it and we still not have seen a written document, that there were, as I understand it, an estimated $7 billion worth of transition rules divided evenly between the House and the Senate. The Senator from Oregon was able to try to accommodate some of his colleagues and our distinguished chairman of the Ways and Means Committee was able to accommodate some of his colleagues here.

I think we should all very carefully examine when we have a written document before us and very carefully examine some of the things that went in that were never under discussion, that never came up in any of the debates in the conference, because the potential for skilled craftsmen to put ingenious little remedies for this individual or that who happened to get his foot in the door and get his special dispensation is awesome to contemplate, and that is what we should all make sure we understand before we are asked to render a final judgment on the finished product.

Mr. ARCHER. The gentleman is absolutely correct. It is going to be extremely difficult for us to be able to understand what is in this massive document if we receive it only 24 to 48 hours before we are asked to vote on it.

It is the most complex revision of the Code that we have ever had. It is going to be extremely difficult to evaluate.

There are some who say, oh, we have discussed all these things a thousand times and we do not need to look at it anymore. I do not say that is the way we should go into this type of a process.

Mr. LOWRY of Washington. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I am happy to yield to the gentleman from Washington.

Mr. LOWRY of Washington. I think all three of these gentleman, frankly, are more gentlemanly than I am.

I think it even goes a little bit further than somebody being able to get their foot in the door. I have observed the process with transition rules going on as a way by which those who are trying to sell the bill get the number of votes necessary to get it and that is specifically what has been going on for over a week.

Policy aside, policy and unfairness aside, policy and the economy and the deficit aside, what is going on with the transition rules is that they are being used to get people who have problems with this bill to decide to vote for it.

Mr. ARCHER. Well, this is an area where I hope we have enough time to evaluate the fairness or unfairness in an important part of the bill, because it is patently unfair to give one city a retroactive tax exemption on its bond issue if the same type of bond issue that is being issued by another city is not given the very same treatment.

We have already seen some vestiges of this where a stadium in one city, a football stadium, was given special tax treatment, but another one being planned in another city was not given the same tax treatment. That is wrong. It is not the American system.

I suspect that when we see these transition rules where one company operating in a certain way is given special tax treatment, but another company operating in exactly the same way is not accorded the same treatment, that it will certainly not smack a fairness, not at least according to the way this gentleman looks at things.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I am happy to yield to the gentleman from Illinois.

Mr. CRANE. I could not agree more. This gets very, very close to home.

The New Republic had an interesting article, which I will not get into, dealing with the complex ways in which these dispensations get put into the Code. Some deep point into our 1,400-page House document, like page 645, there was a reference to a deviation from contraction of these tax-exempt bonds for those communities that met the criteria of another; 139 pages back in the bill, and you turn there and you have got yet more criteria as to what communities would be eligible, but they had to meet the criteria then of another provision of the bill 200 pages forward and you jump up there and there is some esoteric reference to some date certain of some act having taken place.

□ 2205

When you go through that whole Sherlock Holmes process, as it turns out, there is only one community that qualifies.

I could not agree more with the gentleman about this favoritism to those who happen to get there first, and whatever tradeoffs were necessary, and I know that that is a part of the political process, but again, talk about unfairness. This was not generic treatment for all businesses that qualify in this category or that, which would be the fair approach. It is just those that got there "fustest with the mostest."

I would like to make one other observation too. My understanding is—and I made reference to this during the debate on the House version of so-called tax reform last December—one paragraph of the 1984 Tax Code I have been told has already produced 126 pages of interpretation. I noted at that time that this immense Chamber will not be able to accommodate the volumes of interpretations that will be made over the next 25 years of this bill if, perish the thought, it becomes law. That is something else that I think that every one of us should be concerned about, because, as the gentleman in the well noted earlier, our colleagues are going to have a very limited number of hours. There is theoretically the possibility, if indeed the conference report itself is 1,000

pages, which is almost the size of our tax bill that came out of the House, if it is 1,000 pages, there is a good chance that this may be a 4,000-page legal document, and who is going to understand that, and who in fact is going to stay up 24 hours a day for 2 or 3 days running to try and make his way painstakingly through that.

In fact, the process of writing that document was not done by the Members of Congress, it was done by staff. I am sure the Joint Committee on Taxation, probably some input from Treasury. Those are the people who then end up interpreting their bill. That is something that all Americans should be concerned about, too.

Mr. ARCHER. One thing that is certainly clear about this bill is its complexity, and the uncertainties that it creates, which are not subject to anticipation or prognosis. In the area of complexity it is absolutely a positive result that there will be plenty of business for tax accountants and for tax lawyers, and I would say that for those who are in that profession, they can view this as a very positive document for their profession, because the clientele throughout America is going to need more help in figuring out how to handle the new tax changes than they have needed before.

One of our colleagues on the Committee on Ways and Means, ANDY JACOBS, said that even though the tax form itself may not appear to be much more complicated—and I am not sure that that is true, but let us assume that that is true—the computations that one must make to get to the point of determining whether they have to fill in a return or how they are going to fill it in are such that by the time they get there, it is Miller time. I think that there is a lot of truth in that. Taxpayers are going to have to face this.

Corporations are for the first time going to have to keep three sets of books. Individuals are going to have to go through computations as to whether they do or do not fall within the minimum tax even if they do not fall within the minimum tax, and this is going to be extremely complex. The regulations are going to be literally massive coming out of the IRS. I worry about these things.

I would like to also add that there are a couple of parts of the bill that we have not talked about that I think are negatives in their costs that have to be taken into consideration.

One is that the property and casualty insurance companies will be taxed an additional $6 to $8 billion. Most of these companies are having a great deal of difficulty making a profit today, and insurance premiums are going up enormously—so much so that tort reform is becoming an extremely important issue to the Congress, and should be an important issue to the Congress.

It is not just that premiums are going up. In many instances the insurance is not available at all. At this very inappropriate time this tax reform bill will tax the insurance companies an additional $6 to $8 billion, and that must be passed on in higher premium costs or unavailability of insurance to those who desperately need it.

In addition, other provisions of the bill make it even more difficult for the hard-hit professional people, the doctors and others, to get coverage. That is going to be the result. Maybe we want to tax these offshore companies, and the reform bill says yes, we should add a significant additional bit of tax on the offshore insurance companies. But in doing so the result is going to be less availability of insurance to people who desperately need it in this country.

These are the types of things that I think that the public needs to know when they face difficulties in the marketplace.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Illinois.

Mr. CRANE. I thank the gentleman for yielding.

Mr. Speaker, the gentleman from Texas [Mr. ARCHER] certainly understands better than most of us the horrible condition of the gas and oil industry in America today. I think that it is safe to describe it as in a state of depression. We have gone, as I understand it, from 4,500 producing wells in the summer of 1981 to 653 in July.

Mr. ARCHER. Drilling rigs.

Mr. CRANE. We choose this time to come in with anywhere from a $4 to $10 billion increased tax burden on that already depressed industry. The timing is very bad.

The same is true with agriculture. I received a letter just today from the Illinois Farm Bureau, and they said tax reform has not been accomplished.

The tax reform conference report does not appear to have accomplished fairness, growth, and simplicity. The conference report has complicated tax reform far beyond the word "simplicity." Results are very uncertain, and we may be buying a pig in a poke. It was our hope to see across-the-board tax reform. This will not be the case. Farmers will be faced with the loss of capital gains, income averaging, and investment credit tax provisions. These changes are coming at a time when farmers can ill afford the loss. American agriculture will be forced into even more of a dilemma. H.R. 3838 does not provide the right answers for tax reform.

Agriculture—I come from a State that is a major agricultural State, and I can attest to the fact that even with a great crop yield this summer, we know that the overall effect of that will be further to depress the price of their product, and we certainly are familiar with the plight of the farmers down in the Southeast, and we choose this time to come in and beat up on the farmers.

In addition I mentioned the plight of the banks with the treatment of the passive losses. There is the potential for a negative impact on building and construction trades.

The other point that I would make is that every econometric study that I have seen—now that is Chase Econometrics, Wharton Econometrics, Evans, Meyer & Associates for the chamber, Data Resources, Inc.—every one of those analyzing the House and Senate versions reached the same conclusions on four points: First, the cost of capital will increase quite dramatically.

Second, it will have a depressing effect on the growth of GNP.

Third, it will aggravate unemployment.

And the final point is, it will aggravate the budget deficit.

Now these indeed may be the astrologists of the 20th century, but I would argue that they still would not be in business if they did not have some kind of reliability in making these prognostications into the future. They certainly have the capability of factoring more considerations into their studies than I can factor into my head. When they reach the same conclusions, even though maybe some of their percentages are at variance with one another, that should be cause for pause on the part of this Congress before it contemplates precipitous action that could produce those horrible consequences.

Mr. ARCHER. I thank the gentleman for his perceptive comments.

All of these potential negatives come at a time when we might reasonably expect that we are nearing the end of the upside of a normal business cycle in any event. The economy is fragile today, and to me it is not worth taking these sorts of risks as were outlined by the various economists that the gentleman mentioned.

□ 2215

I think it is a very dangerous thing. When you are talking about agriculture, an unseen potential cost in this bill is that banks, since they no longer can deduct reserves in advance for tax purposes, and can only deduct when they charge the loans off, and when they foreclose, will be more inclined to foreclose earlier on troubled farmers so that they can get the benefit of the tax deduction. I think that pushes things in the wrong way.

There is so much more really that we have not covered, and we have gone now for almost 2 hours. I would like to reiterate some of the negatives in simple synopsis form before I close on my special order.

One of them has already been very well articulated by the gentleman from Minnesota [Mr. FRENZEL] when he said this is a big negative on our ability to compete internationally. America is no longer an island unto itself. We interrelate with all of the rest of the world, both socially and economically. It is extremely important that we increase our capacity to compete.

The strange thing about this bill is that the businesses in America that are hit the hardest by foreign competition and foreign imports are the ones that are the most adversely affected by this tax reform bill.

The bill has a potential negative impact on private savings, private pensions, IRA's, capital investment, job creation, productivity, economic growth, domestic energy production, nondeductibility of sales taxes, real estate values, trade deficits, competition with imports, tax penalties on the elderly and blind, increased rents, and the marriage penalty, among many, many others.

I say it is time to pause and to think and to go back to the drawing boards. I continue to be a proponent of broad based tax reform, reform that truly is fair, that can induce growth, that can create simplicity. The American people want the Code to be simpler. They do not want it to be made more complex. They do not want the judicial system to be clogged by further cases of litigation. They do not want to have to go out and spend more in the private sector to get their returns done and find ways to understand and cope with the complexities of this new law.

One thing is certain. The flaws in this bill, although it is historic, it is primarily historic in scope, and the flaws in this bill will most certainly generate the need for a tax repair bill in the next Congress.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I am happy to yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, I think the gentleman has done an outstanding job of summarizing what are the deficiencies. One of the concerns I had from the very outset of this whole debate on tax reform was putting too heavy a burden on the Congress of the United States within too short a timeframe to be able adequately to deal with the complex problems in achieving the desired goals of simplicity, fairness, and growth that the gentleman from Texas embraces, as does my colleague from Minnesota and our colleague from Washington.

When we get here and criticize the product that has been produced, it is important for everyone to know that that is no deviation from the desired objectives. The criticisms are focused on the fact that unfortunately, given the time constraints, perhaps, the pressures that we were under, we have not achieved the objectives. We have fallen short of the mark on all three of those fundamental criteria.

I share the gentleman's concern for getting back to the drawing board. For those who say, oh, but this is a once in a lifetime opportunity, as Senator LONG, who had a distinguished career in the other body for so many years, and is departing now, but probably has forgotten more tax law than all of the rest of us have learned, he made the observation recently that this bill will, indeed, create the kind of a future that the gentleman from Texas addressed when he said we will be back to the drawing boards trying to effect remedies, a technical correction bill, and then we will be dealing with unintended consequences. The Senator proposed that it might involve 5 years of annual work just trying to remedy the mistakes.

I think it is a great public service that the gentleman from Texas and the gentleman from Minnesota performed by having these special orders tonight. I would hope that while the chamber does not reflect necessarily the level of concern on the part of our colleagues, I would hope that many of them may be watching on television if there are questions in their minds, in their own offices, and finally, and most importantly, probably the American people have a better insight as to what the future may hold if we sadly pass out the bill, H.R. 3838.

Mr. ARCHER. I thank the gentleman from Illinois [Mr. CRANE] for his contribution.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, I thank the gentleman for yielding. I think that we are all winding down here, although there is much more material that I would like to go over. We have not really gone into the simplicity part of the bill.

But I remember when Secretary Baker testified a year ago, June, suggesting that they hoped for simplicity, but it was only going to lie in the fact that by 1990 they might get a nonreturn filing system for nonitemizers. But he said, if you think this is simplicity for corporate tax filers, disabuse yourself of that notion, because it is not.

Since then, of course, we could not clean out all of the tax credits that were necessary to secure a no-return filing system. So there is no simplicity. There is a good deal more complexity.

We are told that changing 2 rates for 14, or however many rates are in the schedule, was a great act of simplification. Actually, there is an infinite number of rates in the new schedule because of the phaseout of two of the important elements, the 15-percent rate and the personal exemption. It does not make any difference whether there are 2 rates or 20 rates, you still have to go into the table, and that is how you find your tax.

So I find just more complexity and no simplicity.

I want to take one more shot at fairness and talk here about the burden rates of tax cuts through the income ranges. Everybody knows the big tax cuts are at the bottom end of the tax range where many people are relieved of tax burdens completely. On the other hand, those cuts are in the range of a couple hundred bucks a year, or a hundred bucks a year, because those people never had very much liability.

As you get higher up in the schedule, as I recall, you get about an 8- or 9-percent cut that is effective by 1988. When you get up into the $20,000, $30,000, $40,000, but by the time you cross $50,000 of income you are at a 1-percent cut, which obtains through $100,000 of income and beyond that, you have another larger percentage tax reduction.

Everything is not perfect in the world, and it was hard to get a uniform reduction. But I think what bothers me is that the people of the high income ranges are going to be able to adjust their habits and their financial affairs so that they are not going to be contributors to the tax system as much as the framers of this bill thought they were.

For instance, everybody knows that the hottest selling item on Wall Street is the limited partnership that has actually got some income which can be used to set off the passive losses which, if they were not nullified by the new income partnership, would be less deductible than in the past and ultimately phased out. Everybody also knows that the largest class of individual taxpayers that has no income tax, the richest class, are those people who rely wholly on income from tax exempt bonds. It is still possible for those individuals to secure all of their income from tax exempt bonds and pay no taxes, and I expect to see quite a shift in the upper income ranges in that regard.

□ 2225

The net of it is going to be, in my judgment, less of a contribution to the tax pot from the higher income people, and approximately as advertised by the lower income people; so you are going to see a little more shift, a little decline in the progressivity which this bill claims to have.

I think that is an important thing for Members to consider. We really are flattening the tax, particularly in the very high ranges. It is fair to say, I think, that the $38,000 single filer

pays at the same marginal rate as the person who earns $1 million a year.

I am not insisting on a highly progressive rate, but having the same rate for those two taxpayers does not fit my concept of the American dream.

I think as people go through this bill, they are going to be disappointed by growth, by savings, by cost of capital, by increased cost for low income people, by fairness and complexity; and I do not think that there is a chance at the moment for the bill to be defeated; and yet I think those of us who carry the burden of the knowledge of what this bill is going to do to our economy and our society and our taxpayers, still have it incumbent upon ourselves to reveal that knowledge, to let people know what this bill is really going to do to the country; and even though our voices are not heeded, it is our duty to tell the story.

I thank the gentleman from Texas [Mr. ARCHER] for being one of the best narrators of the evening.

Mr. ARCHER. I thank the gentleman for his contribution.

Mr. Speaker, the gentleman has piqued my interest in a couple of things which we have not talked about. Although he touched upon the fact that those out in the private sector who have the capability to do so will find ways around a complex tax bill; that has been the case in the past, it will be the case in the future.

An interesting thing is happening right now, that some financial institutions are already drawing the plans to take a second mortgage on an individual's home, issue them a special Visa-type, using that term, or American Express or whatever you want to call it, a type of credit card which be a revolving credit that can be taken for the purpose of shopping for clothes or any other consumer item that you want; and as long as that home stands as security for this new credit card, the interest will be deductible.

So this is one of the things that is already on the drawing boards that will defeat the revenue estimates that are planned for this bill; and there are many, many others that we are going to see as time goes on.

The sad thing about it is that only the homeowner will get the benefit of this, and that is inequitable. So there is much, much more that we could talk about. The sad thing is that it is very easy to talk about the good in this bill; and there is, as you have mentioned, a lot of good in this bill, and I agree with that. It takes 5 or 10 minutes to articulate the good.

To talk about the cost of the good, because there is no such thing as a free lunch. If we are going to reduce the marginal rates, somebody has got to pay, and if we think we are going to do it through the corporations and nobody pays for it, you are going to be hiddenly taxed in the price of the products that the corporations produce, as a consumer tax.

Someone is going to pay in some way or another: The individual who loses his or her job because their employer can no longer compete. That individual that loses a 401(k) plan or a retirement plan because of the negative impact that is in this bill; that is part of the cost, and so it goes on and on and on.

It is very difficult to lay all this out, and I only hope that through the media and through television, and hopefully with a span of attention that is longer than is normal in this country, that the American people will evaluate the good and the bad in this bill, because I believe that the risk of loss is much greater than the chance of gain.

Mr. Speaker, I yield back the balance of my time.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. IRELAND (at the request of Mr. MICHEL), for today and the balance of the week, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. HANSEN) to revise and extend their remarks and include extraneous material:)

Mrs. ROUKEMA, for 60 minutes, on September 24.

Mr. BURTON of Indiana, for 60 minutes, today.

(The following Members (at the request of Mr. ROWLAND of Georgia) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 60 minutes, on September 19.

Mr. HOYER, for 60 minutes, on September 19.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. RAY, prior to the vote, on House Joint Resolution 732.

Mrs. ROUKEMA, on H.R. 1426, in the Committee of the Whole today.

Mr. CARPER, on House Joint Resolution 611, in the House today.

(The following Members (at the request of Mr. HANSEN) and to include extraneous matter:)

Mr. TAUKE.
Mr. HENRY.
Mr. COURTER.
Mr. CLINGER.
Mr. BLAZ.
Mr. CRANE in two instances.
Mr. SAXTON.
Mr. LIVINGSTON.
Mr. GREEN.
Mr. PETRI.
Mr. DANNEMEYER.
Ms. SNOWE.
Mr. GILMAN.
Mrs. MARTIN of Illinois.
Mr. MCDADE.
Mr. MCCAIN.

(The following Members (at the request of Mr. ROWLAND of Georgia) and to include extraneous matter:)

Mr. MAVROULES.
Mr. FLORIO.
Mr. RODINO in two instances.
Mr. ROYBAL.
Mr. DOWNEY of New York.
Mr. FLIPPO.
Mr. LEVINE of California.
Mr. VISCLOSKY.
Mr. CARPER.
Ms. KAPTUR.
Mr. FASCELL.
Mr. YATRON.
Mr. ECKART of Ohio in two instances.
Mr. HOYER.
Mr. EDWARDS of California.
Mr. TORRICELLI in two instances.
Mr. TRAXLER.
Mr. GARCIA in three instances.
Ms. OAKAR.
Mr. STALLINGS.
Mr. HERTEL of Michigan.
Mr. APPLEGATE.
Mr. KOSTMAYER.
Mr. ACKERMAN.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3002. An act to provide for the establishment of an experimental program relating to the acceptance of voluntary services from participants in an executive exchange program of the Government, and

H.R. 4530. An act to amend the Department of Defense Authorization Act, 1985, to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports of the Commission, and to extend the availability of funds appropriated to the Commission.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2095. An act to reauthorize the Tribally Controlled Community College Assistance Act of 1978 and the Navajo Community College Act.

ADJOURNMENT

Mr. FRENZEL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 30 minutes p.m.) the House adjourned until tomorrow, Friday, September 19, 1986, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4223. A letter from the Under Secretary of State for Security Assistance, Science and Technology, transmitting a report examining U.S. policies concerning the export of conventional arms and possible approaches to developing multilateral limitations on conventional arms sales, pursuant to 22 U.S.C. 2751 nt.; to the Committee on Foreign Affairs.

4224. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of political contributions by Everett E. Bierman, of Virginia, Ambassador Extraordinary and Plenipotentiary-designate to Papua New Guinea and Solomon Islands, and members of his family, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4225. A letter from the Director, Administrative Office of the United States Courts, transmitting, a draft of proposed legislation to authorize additional judicial positions for the Courts of Appeals and District Courts of the United States; to the Committee on the Judiciary.

4226. A letter from the Assistant Secretary (Civil Works), Department of the Army, transmitting a report dated July 12, 1986, from the Chief of Engineers, Department of the Army, on Upper Alameda Creek Urban Study, CA, together with other pertinent reports; to the Committee on Public Works and Transportation.

4227. A letter from the Deputy Administrator, General Services Administration, transmitting an informational copy of the lease prospectus for the Internal Revenue Service in Austin, TX, pursuant to Public Law 86-249, section 7(a) (86 Stat. 217); to the Committee on Public Works and Transportation.

4228. A letter from the National Council on Public Works Improvement, transmitting the first of three reports on the state of the Nation's infrastructure, pursuant to 42 U.S.C. 3121 nt.; to the Committee on Public Works and Transportation.

4229. A letter from the Secretary of Labor, transmitting the second report on the impact of the Caribbean Basin Economic Recovery Act on U.S. labor, pursuant to 19 U.S.C. 2705 (Public Law 98-67, section 216); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 4961. A bill to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years, 1987, 1988, 1989, and for other purposes; with amendments (Rept. 99-835, Pt. 1). Ordered to be printed.

Mr. GARCIA: Committee on Post Office and Civil Service. Senate Joint Resolution 159. Joint resolution to designate the rose as the national floral emblem (Rept. 99-836). Referred to the House Calendar.

Mr. BONKER: Committee on Foreign Affairs. H.R. 5506. A bill to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken (Rept. 99-837). Referred to the Committee of the Whole House on the State of the Union.

Mr. MOAKLEY: Committee on Rules. House Resolution 552. Resolution providing for the consideration of H.R. 4300, a bill to entitle employees to parental leave in cases involving the birth, adoption, or serious health condition of a son or daughter and temporary medical leave in cases involving inability to work because of a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave (Rept. 99-838). Referred to the House Calendar.

Mr. HALL of Ohio: Committee on Rules. House Resolution 553. Resolution providing for the consideration of H.R. 5495, a bill to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes (Rept. 99-839). Referred to the House Calendar.

Mr. PEPPER: Committee on Rules. House Resolution 554. Resolution providing for the consideration of H.R. 4154, a bill to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes (Rept. 99-840). Referred to the House Calendar.

Mr. ROSTENKOWSKI: Committee of Conference. Conference report on H.R. 3838 (Rept. 99-841). Ordered to be printed.

Mr. GARCIA: Committee on Post Office and Civil Service. H.R. 4302. A bill to establish a commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower; with an amendment (Rept. 99-842). Referred to the Committee of the Whole House on the State of the Union.

[Omitted from the Record of September 17, 1986]

SUBSEQUENT ACTION ON A REPORTED BILL SEQUENTIALLY REFERRED

H.J. Res. 626. Under clause 5 of rule X the following action was taken by the Speaker: The Committees on the Judiciary and Armed Services discharged. Referral to the Committee on Merchant Marine and Fisheries extended for a period ending not later than September 19, 1986.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WAXMAN (for himself, Mr. MADIGAN, Mr. DINGELL, Mr. LENT, Mr. SCHEUER, Mr. LUKEN, Mr. WIRTH, Mr. FLORIO, Mr. MARKEY, Mr. WALGREN, Mr. LELAND, Mr. SHELBY, Mrs. COLLINS, Mr. SYNAR, Mr. WYDEN, Mr. ECKART of Ohio, Mr. DOWDY of Mississippi, Mr. RICHARDSON, Mr. SIKORSKI, Mr. BRYANT, Mr. BATES, Mr. TAUKE, Mr. ECKERT of New York, and Mr. LAFALCE):

H.R. 5546. A bill to amend the Public Health Service Act to establish a National Vaccine Program for the development of new vaccines and the improvement of existing vaccines and a program to compensate the victims of vaccine-related injuries and deaths, and for other purposes; jointly, to the Committees on Energy and Commerce, and Ways and Means.

By Mr. ST GERMAIN:

H.R. 5547. A bill to provide for the stability of the domestic banking and thrift systems, to improve housing, to protect the American consumer of financial services, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. NEAL (for himself, Mr. ST GERMAIN, Mr. LEVIN of Michigan, Mr. NELSON of Florida, Mr. MANTON, Mr. WYLIE, Mr. LEACH of Iowa, and Mr. CHANDLER):

H.R. 5548. A bill to amend the Export-Import Bank Act of 1945; to the Committee on Banking, Finance and Urban Affairs.

By Mr. ENGLISH:

H.R. 5549. A bill to require the Secretary of Agriculture to pay restitution to certain cattle producers for losses incurred in connection with the sale of cattle during a period in which excessive dairy cattle were slaughtered under the whole-herd buy-out program; to the Committee on Agriculture.

By Mr. FLIPPO (for himself, Mr. BEVILL, Mr. NICHOLS, Mr. DICKINSON, Mr. SHELBY, Mr. ERDREICH, and Mr. CALLAHAN):

H.R. 5550. A bill for the relief of the Alabama Space Science Exhibit Commission, to the Committee on the Judiciary.

By Mr. FRANK:

H.R. 5551. A bill for the relief of certain manufacturers or suppliers that provided asbestos materials and products to the United States; to the Committee on the Judiciary.

By Mr. LEVINE of California (for himself, Mr. SMITH of New Jersey, Mr. SMITH of Florida, and Mr. MORRISON of Connecticut):

H.R. 5552. A bill to require specific congressional authorization for certain sales, exports, leases, and loans of defense articles, and for other purposes; jointly, to the Committees on Foreign Affairs, and Rules.

By Ms. SNOWE (for herself, Mr. BIAGGI, and Mr. CONTE):

H.R. 5553. A bill to authorize the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology Assessment to undertake various programs for individuals with Alzheimer's disease and related dementias; to the Committee on Energy and Commerce.

By Mr. GARCIA (for himself, Mr. ST GERMAIN, Ms. KAPTUR, Mr. MITCHELL, Mr. NEAL, Mr. HUBBARD, Ms. OAKAR, Mr. LUNDINE, Mr. BARNARD, Mr. SCHUMER, Mr. FRANK, Mr. LEHMAN of California, Mr. MORRISON of Connecticut, Mr. COOPER, Mr. ERDREICH, Mr. TORRES, Mr. KANJORSKI, Mr. GORDON, Mr. MANTON, Mr.

FUSTER, Mr. HAWKINS, Mr. WILLIAMS, Mr. MARTINEZ, Mr. CHANDLER, Mr. HOYER, and Mr. GREEN):

H.R. 5554. A bill to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the fund; to the Committee on Banking, Finance and Urban Affairs.

By Mr. McDADE (for himself, Mr. SEIBERLING, Mr. YOUNG of Alaska, Mr. GAYDOS, Mr. GEKAS, Mr. WALKER, Mr. SCHULZE, Mr. COYNE, Mr. GOODLING, Mr. SHUSTER, Mr. FOGLIETTA, Mr. KANJORSKI, Mr. EDGAR, Mr. CLINGER, Mr. RIDGE, Mr. MURTHA, Mr. WALGREN, Mr. KOLTER, Mr. RITTER, Mr. COUGHLIN, Mr. MURPHY, Mr. BORSKI, Mr. YATRON, Mr. KOSTMAYER, and Mr. GRAY of Pennsylvania):

H.R. 5555. A bill to designate certain property located in Scranton, PA, as the Steamtown National Historic Site; to the Committee on Interior and Insular Affairs.

By Mr. TRAFICANT:

H.R. 5556. A bill to amend the Controlled Substances Act to impose the death penalty or life imprisonment for violations involving 10 or more kilograms of certain controlled substances; jointly, to the Committees on Energy and Commerce and the Judiciary.

H.R. 5557. A bill to amend the Controlled Substances Act to impose the death penalty or life imprisonment for murder in the course of a controlled substances related pattern of racketeering activity and for murder of a law enforcement officer in the course of a controlled substances violation; jointly, to the Committees on Energy and Commerce and the Judiciary.

By Mr. WHITTEN:

H.J. Res. 732. Joint resolution making urgent supplemental appropriations for the fiscal year ending September 30, 1986, for emergency assistance to the Government of the Philippines; considered and passed.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1213: Mr. MICA.

H.R. 1223: Mr. FASCELL.

H.R. 2287: Mr. STAGGERS.

H.R. 3513: Mr. MAVROULES.

H.R. 3654: Mr. BUSTAMANTE and Mr. KOLBE..

H.R. 4142: Mr. BOUCHER, Mr. MCKERNAN, Mr. TAYLOR, Mr. GOODLING, Mr. JONES of North Carolina, Mr. GORDON, Mr. DORNAN of California, Mr. GALLO, Mr. STANGELAND, Mr. STENHOLM, and Mr. NEAL.

H.R. 4424: Mr. MARTINEZ.

H.R. 4460: Mrs. BENTLEY.

H.R. 4564: Mr. COLEMAN of Texas.

H.R. 4711: Mr. CLAY and Mr. SHAW.

H.R. 4715: Mr. CALLAHAN, Mr. STRANG, Mr. BRUCE, Mr. BONIOR of Michigan, Mr. GUARINI, Mr. MCDADE, and Mr. DANIEL.

H.R. 4762: Mr. SMITH of New Jersey, Mr. GEJDENSON, and Mr. SAXTON.

H.R. 4820: Mr. LEVIN of Michigan.

H.R. 5100: Mr. BADHAM, Mr. SMITH of New Hampshire, Mr. COBEY, Mr. BENNETT, and Mr. NELSON of Florida.

H.R. 5154: Mr. HAWKINS and Mrs. LONG.

H.R. 5196: Mr. LAGOMARSINO, Mr. WORTLEY, Mr. SUNIA, Mr. PURSELL, Mr. BRYANT, Mr. HENRY, and Mrs. JOHNSON.

H.R. 5225: Mr. MOORHEAD, Mr. ECKERT of New York, Mr. DANNEMEYER, Mr. GARCIA, Mr. MCDADE, and Mr. HORTON.

H.R. 5274: Mrs. LLOYD.

H.R. 5386: Mr. STANGELAND and Mr. LIPINSKI.

H.R. 5387: Mr. STANGELAND, Mr. LIPINSKI, and Mr. KINDNESS.

H.R. 5397: Mr. FAZIO.

H.R. 5402: Mr. ATKINS, Mrs. BURTON of California, and Mr. TOWNS.

H.R. 5407: Mr. BEREUTER.

H.R. 5413: Mr. JENKINS, Mr. DARDEN, Mr. TOWNS, and Mr. SWIFT.

H.R. 5497: Mr. COATS, Mr. DINGELL, Mr. DORGAN of North Dakota, Mr. HUGHES, Mr. SKEEN, and Mr. STRATTON.

H.R. 5500: Mr. ANNUNZIO, Mr. LIPINSKI, Mr. DONNELLY, Mr. HOYER, Mr. SCHUMER, Mrs. BOXER, Mr. DOWNEY of New York, and Ms. OAKAR.

H.R. 5501: Mr. FEIGHAN and Mr. PERKINS.

H.R. 5541: Mr. FRANK, Mr. BERMAN, Mr. HUGHES, Mr. BRYANT, Mr. FISH, Mr. KINDNESS, Mr. BROWN of Colorado, Mr. SWINDALL, Mr. COBLE, and Mr. SHAW.

H.J. Res. 133: Ms. OAKAR, Mr. CARPER, Mr. MCDADE, Mr. STALLINGS, Mr. SMITH of New Jersey, Mr. DANNEMEYER, Mr. MAZZOLI, Mr. LENT, Mr. BROWN of California, Mr. DYMALLY, Mrs. VUCANOVICH, Mr. GOODLING, Mr. KEMP, Mr. FLIPPO, Mr. NICHOLS, Mr. MCCOLLUM, Mr. KOLBE, Mr. WILSON, Mr. CHAPMAN, Mr. BOEHLERT, Mr. BIAGGI, Mr. BARTLETT, Mr. DENNY SMITH, Mr. SCHEUER, Mr. ROBERTS, Mr. STANGELAND, Mr. MINETA, Mr. BREAUX, Mr. LIVINGSTON, Mr. BORSKI, Mr. JEFFORDS, Mr. LIPINSKI, and Mr. BONER of Tennessee.

H.J. Res. 379: Mr. JACOBS.

H.J. Res. 524: Mr. SIKORSKI, Mr. OBERSTAR, Mr. SKEEN, Mr. FRENZEL, Mr. STENHOLM, Mr. SNYDER, Mr. OWENS, Mr. LOWERY of California, Mr. TOWNS, Mr. EVANS of Iowa, Mr. BADHAM, Mr. MARKEY, Mr. ROSE, Mr. WOLF, and Mr. PARRIS.

H.J. Res. 586: Mr. ATKINS, and Mr. KRAMER.

H.J. Res. 588: Mr. RUDD, Mr. TOWNS, Mrs. BYRON, Mr. WALKER, Mr. FUQUA, and Mr. ATKINS.

H.J. Res. 648: Mr. BUSTAMANTE, Mr. KOSTMAYER, Mr. GEJDENSON, Mr. WEISS, Mr. GRAY of Pennsylvania, Mr. ATKINS, Mr. GUARINI, Mr. BARNES, Mrs. BENTLEY, Mr. ACKERMAN, Mr. WISE, Mr. VENTO, Mr. SEIBERLING, Mr. VISCLOSKY, Mr. KILDEE, Mr. CROCKETT, Mr. MITCHELL, and Mr. LEVINE of California.

H.J. Res. 681: Mr. SABO.

H.J. Res. 684: Mr. CONTE, Mr. FRANK, Mr. IRELAND, and Mr. SMITH of Iowa.

H.J. Res. 699: Mr. YOUNG of Alaska, Mr. HUCKABY, and Mr. HANSEN.

H.J. Res. 708: Mrs. BENTLEY, Mrs. LLOYD, Mr. BLILEY, Mr. ROSE, Mr. TOWNS, Mr. FROST, Mr. MACK, Mr. TAUKE, Mr. LEACH of Iowa, Mr. MACKAY, Mr. SISISKY, Mr. FRENZEL, Mr. MARTINEZ, Mr. OXLEY, Mr. BOUCHER, Mr. FUQUA, Mr. MADIGAN, Mr. LOWRY of Washington, Mr. DENNY SMITH, Mr. BERMAN, Mr. MILLER of Washington, Mr. OLIN, Mr. DASCHLE, Mr. DANIEL, Mr. SWINDALL, Mr. KOSTMAYER, Mr. GREGG, Mr. STUMP, Mr. TAUZIN, Mr. WOLPE, Mr. WOLF, Mr. HUGHES, Mr. BATEMAN, Mr. DUNCAN, Ms. OAKAR, Mr. FUSTER, Mrs. HOLT, Mr. LIPINSKI, Mr. MCDADE, Mr. REID, Mr. ROE, Mr. HAYES, Mr. PARRIS, Mr. HORTON, Mr. EVANS of Illinois, Mr. FAZIO, Mr. LEVIN of Michigan, Mr. WYDEN, Mr. HUTTO, Mr. FASCELL, Mrs. BYRON, Mr. LELAND, Mr. WEAVER, Mrs. BOXER, Mr. FIELDS, Mr. BEDELL, Mr. MONSON, Mr. SHAW, Mr. FOLEY, Mr. CHANDLER, Mr. KASICH, Mr. CARPER, Ms. KAPTUR, Mr. HOYER, and Mr. HENRY.

H.J. Res. 728: Mr. MOODY, Mr. TALLON, Mr. GEJDENSON, Mr. SCHEUER, Mr. ST GERMAIN, Mr. DYMALLY, Mr. EVANS of Illinois, Mr. OWENS, Mr. RAHALL, Mrs. KENNELLY, Mr. CAMPBELL, Mr. FEIGHAN, Ms. MIKULSKI, Mr. MORRISON of Connecticut, Mr. BOEHLERT, and Mr. PERKINS.

H.J. Res. 731: Mr. BARTON of Texas.

H. Con. Res. 129: Mr. ROBINSON, Mr. PERKINS, Mr. ROTH, Mr. COURTER, Mr. MILLER of Washington, Mr. HYDE, Mr. TRAFICANT, Mr. WYLIE, Mr. SMITH of Iowa, Mr. LUNGREN, Mr. DORGAN of North Dakota, Mr. QUILLEN, Mr. FRENZEL, Mr. ROBERT F. SMITH, Mr. MAVROULES, Mr. SMITH of New Jersey, Mr. OWENS, Mr. HENRY, Ms. FIEDLER, Mr. BARNARD, Mr. ROYBAL, Mrs. HOLT, Mr. SHUMWAY, Mr. ANDERSON, Mr. BUSTAMANTE, Mr. KRAMER, Mr. HATCHER, Mr. MOLLOHAN, and Mr. SHARP.

H. Con. Res. 332: Mr. WEBER, Mr. MACK, and Mr. ROWLAND of Georgia.

H. Con. Res. 359: Mr. BIAGGI and Mrs. MEYERS of Kansas.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 2482

By Mr. BEDELL:

—Section 821(a) of the text of H.R. 5440 (the Amendment in the Nature of a Substitute to H.R. 2482), is amended (page 138, lines 2 through 10) to read as follows:

"SEC. 821. LIABILITY FOR LAWFUL APPLICATION.

"(a) Pesticide Use and No Private Right of Action—

"(1) Liability under Federal environmental statutes for the costs of response or damage incurred with respect to a release or threatended release into the environment of a pesticide shall, in any case where the application was in compliance with label instructions and other applicable law, be imposed on the registrant or other responsible parties, not the agricultural producer, unless the producer has acted negligently, recklessly, or with the intent to misuse such pesticide. There shall be a rebuttable presumption that the application was in compliance with label instructions and otherwise lawful. For purposes of the preceding sentence, the terms "damages", "response", "release", and "environment" shall have the meanings assigned them of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The term "Federal environmental statutes" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Clean Water Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and this Act. Neither this section nor any other provision of this Act shall be construed, interpreted or applied to preempt or, except as provided above, displace liability under other Federal or State laws, whether statutory or common.

(2) Nothing in this section shall be construed as conferring a private right of action on any person for the purposes of this Act or any other Federal law.".

—Page 134, strike out line 5 and all that follows through line 6 on page 135 and insert in lieu thereof the following:

SEC. 814. GROUNDWATER AUTHORITY.

(a) DEFINITIONS.—Section 2 (7 U.S.C. 136) (as amended by section 802) is amended by adding at the end the following:

"(ll) GROUNDWATER.—The term 'groundwater' means water below the land surface in a zone of saturation.

"(mm) RELIABLE ANALYTICAL DATA.—The term 'reliable analytical data' means scientific information that verifies the presence of a pesticide in a groundwater sample and that is of a reliable scientific quality according to generally recognized standards and good laboratory practices for sampling and analysis of pesticides in groundwater.

"(nn) POTENTIAL SOURCES OF DRINKING WATER.—The term 'potential sources of drinking water' means the portion of an aquifer or aquifer system that contains sufficient quantity and is of sufficient quality to supply potable water to a drinking water well, taking into account (1) geographic considerations and depth to drinking water, (2) any State criteria or guidelines for siting new wells established under section 1428 of the Public Health Service Act or other State authority, and (3) shallow groundwater that is not potential drinking water.

"(oo) DRINKING WATER WELL.—The term 'drinking water well' means a well or spring currently supplying water for human consumption

"(pp) GROUNDWATER SAMPLING POINT.—The term 'groundwater sampling point' means a public or community water supply, a private water supply, a spring, or a monitoring well or other groundwater source if the well or source is reasonably designed and of adequate depth to permit the collection of representative groundwater samples.

"(qq) GROUNDWATER RESIDUE GUIDANCE LEVEL.—The term 'groundwater residue level' means a groundwater residue guidance level established under section 1429 of the Public Health Service Act.".

(b) AUTHORITY.—The Act (as amended by section 202) is amended by adding after section 31 the following:

"SEC. 32. PROTECTION OF GROUNDWATER.

"(a) NOTIFICATION.—

"(1) REQUIREMENT.—When a registrant of a pesticide obtains or learns of reliable analytical data that a pesticide has—

"(A) been detected at any groundwater sampling point and no groundwater residue guidance level has been issued for the pesticide under subsection (e),

"(B) has been detected at a groundwater sampling point at a concentration higher than known previously to have been reported to the Administrator at such groundwater sampling point, or

"(C) has been detected at any groundwater sampling point at a concentration at or greater than 20 percent of the groundwater residue guidance level issued for the pesticide under subsection (e).

the registrant shall file a report containing such information within 15 working days with both the Administrator, the State in which the groundwater sampling point is located, and the owner of the property in which the groundwater sampling point is located, if known.

"(2) CONTENT OF REPORT.—A report required by paragraph (1) for detection of a pesticide shall contain information known to the registrant of the pesticide on the level of detection of the pesticide, the frequency of detection of the pesticide, location (including depth) where the pesticide was detected, date of the pesticide detection, well construction if the pesticide was detected in a well, soil type where the pesticide was detected, and analytical method use to make the pesticide detection, including information on the precision, accuracy, and limits of the method of detection and any quality assurance and control procedures used in the pesticide detection.

"(b) REVIEW FOR FURTHER ACTION.—Upon receiving information of a detection of a pesticide at any groundwater sampling point, the Administrator shall promptly review the information to determine the realiability of the detection and to determine whether action should be taken to protect groundwater.

"(c) MONITORING.—

"(1) CONFIRMATION OF DETECTIONS.—If the Administrator receives reliable, analytical data indicating that—

"(A) a pesticide has been detected in a drinking water well,

"(B) the concentration of the pesticide equals or exceeds any groundwater, residue guidance level issued under subsection (b) for that pesticide, and

"(C) the presence of the pesticide in the drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or widespread and commonly recognized practices involving the pesticide,

the Administrator may require the registrant of the pesticide detected to conduct such analysis of samples of groundwater from the drinking water well involved as is necessary to determine whether the pesticide is present at a concentration that equals or exceeds such groundwater residue guidance level. A monitoring requirement imposed under this paragraph shall be completed within 90 days of notice to the registrant. The procedures of section 3(c)(2)(B) shall govern any monitoring requirement imposed under this paragraph.

"(2) REQUIREMENT FOR MONITORING.—If the Administrator determines that additional data on the presence of a pesticide in groundwater are required to maintain in effect an existing registration of the pesticide, the Administrator may, under section 3(c)(2)(B), require the registrant of the pesticide to conduct groundwater monitoring. The Administrator shall consult with the Secretary of Agriculture, the heads of other appropriate Federal agencies, and the States concerning the design and scope of monitoring requirements imposed under this paragraph. The design and the scope of the monitoring requirement should take into account all relevant information, including the magnitude and frequency of the detection of the pesticide involved, pattern of pesticide use and soil types involved in the detection, physical and chemical properties of the pesticide, rainfall patterns, well construction if the pesticide was detected in a well, rates of degradation, reliability and analytical accuracy of the detection, and results of State or other sponsored monitoring. To the extent feasible, monitoring should be at representative geographical and hydrogeological areas associated with locations and conditions of concern as determined by the Adminstrator.

"(3) JUDICIAL REVIEW.—Monitoring requirements imposed under paragraph (2) shall be subject to judicial review under section 16.

"(d) REPONSE TO GROUNDWATER CONTAMINATION.—

"(1) REQUIREMENT.—If the Administrator determines that a pesticide is present in a drinking water well at a concentration that exceeds the final groundwater residue guidance level applicable to the pesticide and that the presence of the pesticide in the drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or as a result of widespread and commonly recognized practice involving the pesticide, the Administrator shall notify the State in which the drinking water well is located of the Administrator's determination and shall provide it with all information relevant to the determination. Such State shall take action within 90 days of such notification to prevent potential adverse effects on human health and the environment from such pesticide. In taking such action, the State shall take appropriate action regarding the sale or use of the pesticide detected at such drinking water well to bring and retain concentrations of the pesticide at such drinking water well at or below the final groundwater residue guidance level applicable to the pesticide.

"(2) ACTION BY THE ADMINISTRATOR.—

"(A) If a State does not have the authority to take the action required by paragraph (1) with respect to a pesticide detected in a drinking water well or fails to take such action within the time period prescribed by such paragraph, the Administrator shall take appropriate action under this Act to bring and retain the concentration of the pesticide detected at such drinking water well at or below the final groundwater residue guidance level applicable to the pesticide and my take such other action under this Act as the Administrator deems necessary to prevent potential adverse effects on human health and the environment from the pesticide. If the Administrator takes such action, the Administrator shall publish notice of the action in the Federal Register and take appropriate steps to inform the registrant of the pesticide involved, potentially affected persons, and interested members of the public. Such notice shall specify the findings and conclusions upon which such action was based.

"(B) Any person adversely affected by action taken under subparagraph (A) or the failure of the Administrator to take such action may request an expedited hearing, under the procedures in section 6(c)(2), to determine whether the action was taken in accordance with subparagraph (A) or whether the Administrator was required to take action. Such a hearing shall be held and a determination made within 75 days from the date of the receipt of the request for the hearing.

"(C) The Administrator shall provide reasonable procedures for petitions to modify or terminate an action taken under subparagraph (A) when the drinking water well involved no longer has the pesticide in a concentration that exceeds the applicable groundwater residue guidance level and will likely remain below such level.

"(3) JUDICIAL REVIEW.—Judicial review of actions taken under this subsection shall be governed by section 16.

"(e) REGISTRATION AMENDMENTS.—

"(1) REQUIREMENT.—

"(A)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities, the Administrator shall promptly require amendments to the registration of the pesticide with respect to which the find-

ing was made that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final groundwater residue guidance level involved in the finding to be exceeded in drinking water wells. The Administrator shall make any such determination public.

"(ii) If the Administrator proposes to require registration amendments under clause (i) for a pesticide, the Administrator shall notify the registrant of the pesticide of such amendments and shall publish notice of such proposal in the Federal Register. Such notice shall include the Administrator's determination whether the presence of the pesticide in drinking water wells appears to have been the result of the use of the pesticide in accordance with its labeling or the result of widespread and generally recognized practice.

"(B) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in potential drinking water in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in potential drinking water in different localities, the Administrator shall promptly require amendments to the registration of the pesticide with respect to which the finding was made that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final groundwater residue guidance level involved in the finding to be exceeded in potential drinking water. If the Administrator proposes to require registration amendments under this subparagraph for a pesticide, the Administrator shall notify the registrant of the pesticide of such amendments. In establishing such amendments, the Administrator shall—

"(i) meet the procedural requirements of subparagraph (A)(ii),

"(ii) take into account information submitted by States on land or groundwater use classification or other governmental actions that could affect when groundwater may be used for drinking water, and

"(iii) consider the views of the Secretary of Agriculture, the heads of other appropriate Federal agencies, and States as required in paragraph (2).

"(2) CONSULTATION WITH STATES.—In taking action under paragraph (1), the Administrator shall consult with the Secretary of Agriculture and the State where the pesticide involved has been detected in any groundwater sampling point and each other State in which there is significant use of the pesticide. The Administrator shall notify such State of the Administrator's determination that there is a reasonable likelihood that a groundwater residue guidance level will be exceeded and shall, in accordance with section 10(h), provide the State with all information relevant to this determination. Each State that is notified under this paragraph shall promptly provide the Administrator with information that is relevant to taking action under paragraph (1) and shall make recommendations with respect to any proposed registration amendments.

"(3) SCOPE OF AMENDMENTS.—

"(A) Amendments to the registration of a pesticide under paragraph (1) may include—

"(i) limitations on the purposes for and locations at which the pesticide may be used, considering factors such as environmentally sensitive areas and conditions,

"(ii) limitations on the rate at which the pesticide is applied,

"(iii) limitations on the time or frequency of pesticide use,

"(iv) limitations on the method of pesticide application, storage, handling, or disposal,

"(v) reporting or other requirements, including label changes or changes in classification,

"(vi) requirements for the training or certification of pesticide applicators or other persons using the pesticide,

"(vii) required site specific responses, or

"(viii) any other requirement to ensure that the applicable groundwater residue guidance level will not be exceeded.

"(B) Amendments to the registration of a pesticide under paragraph (1) should, to the extent feasible, be directed to the same or similar use of the pesticide, same or similar geographical and hydrogeological areas, and other similar conditions that led to the determination under subparagraph (A) or (B) of paragraph (1).

"(C) In taking regulatory action under paragraph (1), the Administrator may use recommendations made by a State under paragraph (2).

"(D) In requiring amendments to the registration of a pesticide under paragraph (1), the Administrator shall consider the effect of any voluntary actions by registrants or other persons, including actions by a State, to prevent the groundwater residue guidance level involved from being exceeded and to comply with other environmental laws.

"(4) PROCEDURE.—Registration amendments under paragraph (1) shall be imposed in accordance with the procedural requirements of this Act.

"(f) INFORMATION ON PESTICIDES IN GROUNDWATER.—The Administrator may collect and make available through a public information file information concerning the detection of pesticides in any groundwater sampling point. The file may, among other things, summarize for each pesticide that has been detected in groundwater, based on reliable analytical data, whether the pesticide has been detected at a concentration that exceeds the applicable groundwater residue guidance level and whether the presence of the pesticide in groundwater appears to have been caused by the use of the pesticide in compliance with this Act.

"(g) TECHNICAL ASSISTANCE TO STATES.—The Administrator shall provide technical information to States to assist in implementing this section. Subject to section 10(h), the technical information provided respecting a pesticide shall include data on the toxicity, environmental fate, or physical or chemical characteristics of the pesticide, predictive modeling, exposure and other relevant subjects. In addition, the Administrator shall provide information, to the extent reasonably available, on alternative methods of pest control and on agricultural or other management practices that could minimize the presence of pesticides in groundwater.

"(h) SPECIAL REVIEW.—Upon receiving reliable analytical data that a pesticide has been detected above the applicable groundwater residue guidance level but not in a drinking water well or potential drinking water, the Administrator may initiate a public interim administrative under section 3(c)(8) to determine whether the pesticide may cause unreasonable adverse effects on the environment from such use.

"(i) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall limit the authority of the Administrator or of any State under other provisions of this Act or under any other law.".

(c) GROUNDWATER RESIDUE GUIDANCE LEVEL.—Section 1412 of the Public Health Service Act is amended by adding at the end the following:

"(f)(1) The Administrator, on the Administrator's own initiative, may issue a groundwater residue guidance level for a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator shall issue a groundwater residue guidance level for a pesticide whenever the Administrator registers or reregisters a pesticide under such Act if the Administrator determines that the pesticide has the potential to leach into groundwater. In addition, the Administrator shall issue a groundwater residue guidance level for a pesticide if—

"(A) based on reliable analytical data, the pesticide has been detected at groundwater sampling points in 3 different geographical areas,

"(B) based on reliable analytical data, the pesticide has been detected in a drinking water well or wellfield that serves a population of over 500 people, or

"(C) a Federal agency or a State petitions the Administrator to set a groundwater residue guidance level for the pesticide.

"(2)(A) If the Administrator has promulgated or promulgates a maximum contaminant level under subsection (b)(3) that applies to a pesticide, the groundwater residue guidance level required under paragraph (1) for the pesticide shall be set at such level within 30 days of being required under such subsection.

"(B) If a maximum contaminant level that would be applicable to a pesticide for which a groundwater residue guidance level is required by paragraph (1) has not been established under subsection (b)(3), the Administrator, in the Administrator's discretion, may use a health advisory level established under this Act in establishing such groundwater residue guidance level. The groundwater residue guidance level established by the Administrator for such pesticide shall reflect the level of the pesticide in drinking water at which no known or anticipated adverse effects on the health of persons occur, the need for an adequate margin of safety, the nature of the toxic effects caused by the pesticide, and the validity, completeness, and adequacy of data about the pesticide. If all required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the groundwater residue guidance level for the pesticide shall be at the limit of detection. If any required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the groundwater residue guidance level for the pesticide shall include an additional margin of safety that takes into account the absence of such data.

"(3)(A) Before issuing a final groundwater residue guidance level for a pesticide, the Administrator shall publish an interim groundwater residue guidance level for the pesticide in the Federal Register and allow public comment for at least 30 days. During the public comment period, the Administrator shall invite comment on the level involved from the Secretary of Agriculture and States.

"(B) If the Administrator is required under paragraph (1) to issue a groundwater residue guidance level for a pesticide and the groundwater residue guidance level is to

be issued under paragraph (2)(B), the Administrator shall issue an interim groundwater residue guidance level for the pesticide within 30 days after the requirement to issue the groundwater residue guidance level takes effect.

"(C) Within 3 months after establishing an interim groundwater residue guidance level, the Administrator shall establish a final groundwater residue guidance level. Until a final groundwater residue guidance level is established under paragraph (1) for a pesticide, an interim groundwater residue guidance level established for the pesticide shall remain in effect.

"(4) The Administrator may revise a groundwater residue guidance level for a pesticide. The Administrator shall allow at least 30 days for public comment on any proposed revision.

"(5) An interim groundwater residue guidance level shall not be subject to judicial review before the expiration of 3 months after its issuance. Judicial review of any final groundwater residue guidance level or failure to establish an interim or final groundwater residue guidance level shall be governed by section 1448. A groundwater residue guidance level established under paragraph (2)(A) shall not be subject to judicial review.".

Page 131, line 7, strike out "or", in line 10 strike out the period and insert in lieu thereof "; or", and after line 10 insert the following:

"(U) to violate any action required under section 32(e)(2).".

EXTENSIONS OF REMARKS

IMPRESSION OF HOOSIERS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, September 17, 1986 into the CONGRESSIONAL RECORD:

IMPRESSIONS OF HOOSIERS

Traveling around the Ninth District to public meetings and civic events puts me in touch with more people, with a greater variety of views, on all kinds of subjects, in a briefer period of time than any endeavor I know.

Hoosiers are keenly aware of the problems and the opportunities in America today. They acknowledge there are no easy answers or magic bullets in confronting our challenges. They are, for example, uncertain about what specifically government should do to deal with budget deficits or even the farm crisis. Given this uncertainty, most Hoosiers are more concerned about the character and integrity of the individuals that will be making the choices for them, than about their stand on specific issues. They want leaders whose values and priorities they trust. They want leaders who take care of things at home, who put the interests of Hoosiers first.

Hoosiers are skeptical about politics, and they do not impress me as ideological. They are more pragmatic than conservative or liberal. They really do not care much about labels. What they want to know is if a proposed solution works, if it makes sense, and if it is right for the times. They want representatives with good solutions, and they don't care if they come from the left, center or right. They are uneasy about the influences of political action committees; they are fed up with what they see as the dominance of special interests in Washington and statehouses across the country. They feel the average person loses out when political deals are cut behind closed doors.

While politics may not be at the top of their concerns, Hoosiers are very worried about the future of the country. They reflect the basic values that made the country great, and they often express traditional concerns about jobs, family, children, retirement and peace.

THE ECONOMY

In 1986, Hoosiers are feeling squeezed. They worry because family income is not growing, but declining. They work hard and want to be recognized for their fundamental contribution to America. They see themselves caught in a world of big forces and big institutions, including big government and big corporations.

They worry about the unevenness of the recent economic recovery. In Indiana, and across the country, islands of prosperity are surrounded by seas of stagnation that have left many Americans facing job losses, foreclosures, and bankruptcies.

Hoosiers mention often the unfairness of the tax code. They don't like to pay for other peoples' tax shelters. They know that in our complex tax system many of the richest individuals and corporations pay no taxes, while the tax burden of the middle and lower classes is heavy.

They know that the one trillion dollars added to the national debt in recent years is neither right, nor good economic policy. Hoosiers believe that a balanced budget on a regular basis should be one of the highest priorities of fiscal policy. They are fearful that the uncontrolled deficits are mortgaging our children's future, soaking up the country's savings, and discouraging business investment that the economy now desperately needs.

They are worried about the $170 billion trade deficit, especially the deficit in agriculture. They see the old industries, like steel, and new industries, like semiconductors, are equally threatened by foreign competition. They worry that the once powerful American manufacturing industries are losing their ability to compete in the world, and that a lot of Americans are losing jobs. Hoosiers want their government to be more aggressive in trade negotiations. They don't like to lose jobs or industries to countries which don't permit equal access to American products.

Hoosiers want strong action to help both the American farmer and rural communities. Hoosier farmers want the nation to recognize that their productivity and their way of life are worth preserving. They are saying that the farm crisis is not over and that it must be addressed; that the economic recovery, such as it is, has not solved the problem of the small family farm. They want to know how they can best get Washington's attention focussed on the farm crisis.

NATIONAL SECURITY

Hoosiers want a secure nation. They don't believe in military power for its own sake, but they believe the Soviet threat is real. They are prepared to defend our way of life as a free people, and believe that we should stand, as we always have, as a beacon for the oppressed and a refuge for those denied liberty.

Hoosiers want a strong national defense, but they worry about waste and unpreparedness in our armed forces. They understand that there is a difference between an expensive defense, and an effective one. Some are troubled that one trillion dollars spent on defense in the last six years have not brought us a greater sense of security or peace.

THE FAMILY

Hoosiers are puzzled by the changes occurring in the family. Today, two-wage earner families and single parent families account for 4 out of 5 working families. Family incomes are declining and parents are finding it harder to provide for their children and for their own retirement.

Hoosiers want above all else a decent life for themselves and for their children: a chance to own a home; to send their children to college; to retire in reasonable security. They want to work, get better at their jobs, and contribute to the well-being of their families and communities. They believe government should act to favor and strengthen the family, not weaken it. They think government should give them a fair break, reward hard work, help the family, and encourage savings. They want leadership that provides independence, security, and opportunity. They want leaders who promote policies to raise family incomes and help keep families together, broaden educational opportunities for their children, and make home ownership and saving for retirement easier.

TWO SHOOTINGS, ONE LESSON: GUN CONTROL

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. GREEN. Mr. Speaker, I would like to bring to the attention of my colleagues the following article published in the September 15, 1986 New York Times. Ursula Schwerin, president of New York City Technical College, concludes that only through stricter handgun control can events such as the recent letter carrier's shooting spree in Oklahoma on August 20, 1986, be prevented.

Again, I commend this article to my colleagues:

TWO SHOOTINGS, ONE LESSON: GUN CONTROL

(By Ursula Schwerin)

On Aug. 12, a 29-year-old student entered the campus of a college and went on a shooting spree that left one faculty member dead and six others injured.

Eight days later an Oklahoma letter carrier killed or wounded 20 of his fellow workers before fatally shooting himself.

Both of these acts were committed by emotionally disturbed people in places where, in effect, they belonged. Van Anthony Hull, the student accused of the shootings at New York City Technical College, had been enrolled at the college's Brooklyn Heights campus for four years.

Pat H. Sherrill was reporting for work at 7 A.M. the day of the murders, wearing his blue mail carrier's uniform and carrying a mail bag just as he would on any other day. Their senseless acts occurred on familiar territory where their presence went unquestioned.

The response about how to prevent similar acts in the future was the same. The president of the National Association of Postmasters called for stepped-up security and the stationing of armed guards and metal detectors in post offices throughout the country. After the shootings at City Tech, dozens of people suggested arming the college's security guards and installing plexiglass office windows to separate staff and students.

At City Tech, I have rejected these recommendations because they are not solutions

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

but, instead, part of the problem. Encasing ourselves in fortresses with armed guards will not guarantee protection from violent acts committed by disturbed individuals. And increasing the weapons we carry will not give us greater security.

The more guns with which our society equips itself, the greater the likelihood for accidents or violent acts involving firearms. Each year, 1,200 people are killed in accidents involving handguns, and someone is injured by a handgun every two and a half minutes. More than 200,000 privately owned handguns are stolen annually. More guns in more hands will serve only to produce a false sense of security and an even more dangerous sense of power.

Moreover, a college campus cannot survive behind barricades and metal detectors. How can a college foster collegiality when its staff speaks with students from behind plexiglass partitions? For an institution that is part of the City University system—with its mission of serving all people, regardless of race, ethnicity or income—this final capitulation to barbarism would be sadder still.

The way to prevent future acts of violence is much more complex. It requires education and the devotion of greater resources toward helping and identifying the emotionally ill. Above all, it means stricter handgun controls.

Federal legislation requiring background checks and a 21-day waiting period for the purchase of a handgun could have prevented the tragedy at City Tech. If such a bill were law, Van Anthony Hull could not have made a 20-hour sojourn to his boyhood home in Augusta, Ga., and flashed an outdated Georgia identification card as proof of residence for the purchase of deadly arsenal. And a simple background check would have revealed his history of mental instability.

These reforms are supported by the law enforcement community, including the International Association of Chiefs of Police. Their adoption, rather than guns and barricades, is what will help create a safer society—inside as well as outside the ivory tower.

AIDS EPIDEMIC

HON. WILLIAM E. DANNEMEYER

OF CALIFORINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. DANNEMEYER. Mr. Speaker, I commend to the Members' attention the article reprinted below which appeared in the September issue of the American Council On Science and Health News & Views Journal. The author, Ms. Elizabeth Whelan, has a master of public health and is the executive director of the American Council on Science and Health.

Her assessment of the public health community's reticence to take the necessary steps to protect the public health in the fare of the AIDs epidemic in American is welcome and long overdue. Ms. Whelan brings a perspective to the crisis which has been obscured too long by the rhetoric of civil rights activists.

THE AIDS EPIDEMIC: MOVING FROM COMPLACENCY TO ACTION

(By Elizabeth M. Whelan)

Acquired Immune Deficiency Syndrome (AIDS) in the United States is one of the gravest public health threats of this century. One would think that in our health conscious society, we would be doing everything in our power to stop the spread of this disease. But we are not. The same population that threw out its muffin mix two and a half years ago because of the purely hypothetical risk posed by trace residues of the pesticide EDB seems oddly blasé about AIDS, a condition which in the past five years has claimed at least 10,000 lives and currently leaves another 15,000 Americans mortally ill.

It is urgent that we now shift from relative complacency to action in preventing future cases of AIDS. We can begin by discarding those naive assumptions and simplistic solutions which to date have so hampered aggressive preventive medicine policy.

MEDICAL TECHNOLOGY WILL SAVE US

We live in an age of great medical confidence about the control of human disease, an age when many young doctors have never seen a case of measles or polio, and once life-threatening infections are cured within days. But we must not be diverted by an assumption that a vaccine or cure for AIDS is imminent. The AIDS virus is highly variable. This could make the development of an effective vaccine difficult, since an individual who was immunized against one variant of the virus might not necessarily be protected against another.

Although genetic engineering techniques offer some hope that a safe vaccine against AIDS might someday be developed, extensive and lengthy testing of any new vaccine would be required before it could become available to the general public. Thus, a vaccine against AIDS is unlikely to be available for many years, if ever.

A cure for AIDS does not appear to be right around the corner, either. To put things in perspective, it is useful to consider that scientists have never developed a cure for a single viral disease, let alone one as challenging as AIDS.

The AIDS virus has a complex life cycle which greatly complicates the search for a cure. Because it essentially becomes part of the cells it infects, it may not be possible to eliminate it completely from the body. Since the virus infects the brain cells, to be effective, a drug must be able to cross the so-called blood-brain barrier (a mechanism whereby substances, including many drugs, are prevented from reaching the brain). And even if a drug can be found to combat the AIDS virus, if it is administered in the late stages of infection, the person's immune system will already have been destroyed. Additional treatment will probably be required to reconstitute the immune system.

It is also likely that any drug treatment for AIDS would have to be given on an intermittent basis for life. Thus, a successful drug would have to be relatively nontoxic and tolerated for long periods of time.

That is a pretty tall order for any drug and so far none has met the challenge.

The viral pathogen here is a formidable opponent. Hundreds of thousands of Americans may die before medical technology conquers AIDS.

THERE ARE RELATIVELY FEW CASES

We have had only a bitter taste of the AIDS entree to come. In addition to the 25,000 cases worthy of the strict definition that the Centers for Disease Control have for AIDS, an estimated 200,000 Americans are now ill with diseases which closely resemble AIDS, the so-called AIDS Related Complex (ARC). Further, as many as two million asymptomatic Americans are infected with the virus and are daily spreading the disease to others. The best guess is that 25-30 percent of the infected population will develop AIDS. In the calendar year 1991 alone there will be some 55,000 U.S. deaths from AIDS, substantially more than the number of deaths attributable to auto accidents. No longer will it be just those of us living in New York, San Francisco, Los Angeles, Miami and Washington who are seeing friends and colleagues die in agony. AIDS is quickly becoming a nationwide problem.

IT AFFECTS "THEM", NOT "US"

Although AIDS did not initially present itself as an equal opportunity disease (90 percent of current cases are homosexual or bisexual men, or IV drug users), there is a good deal of informed concern among epidemiologists that the disease has begun to move outside the original risk groups. A recent study showed that in the New York metropolitan area six of 1,000 women, and eight of 1,000 men who applied for military service were infected with the AIDS virus—a ratio of nearly one to one. Heterosexual transmission of AIDS, while currently accounting for only 1 or 2 percent of the total patient load, has now been convincingly documented. Studies in Haiti suggest that a majority of AIDS cases there are acquired through heterosexual contact. In Africa, heterosexual transmission also appears to be an important mode. There is a potential for AIDS to cause enormous health havoc in that segment of the heterosexual community with multiple sexual partners. In San Francisco, for example, it is estimated that more than 3,000 women may have been exposed to the AIDS virus through sexual contact with bisexual men from June 1984 to February 1985. These women may then have passed the virus on to their sexual partners. Female prostitutes in several American cities have shown evidence of infection with the AIDS virus suggesting they might serve as a source of infection for heterosexual men.

AIDS PATIENTS POSE NO HEALTH RISK IN THE WORKPLACE, IN SCHOOL, ETC.

Although there is scientific consensus that AIDS is almost exclusively spread through the exchange of blood and semen, and that casual contact poses no risk of AIDS, new evidence raises questions about blanket assurances that AIDS patients do not jeopardize the health of others: a substantial minority of AIDS patients develop tuberculosis, a highly communicable disease. The finding renders ridiculous generalized policies about the presence of AIDS victims in public places. It also underscores our need for compassion, not only for those suffering with AIDS, but also for those who, with or without scientific merit, are terrified of becoming ill as result of social interaction with an AIDS patient. Education is our only tool here.

WE ARE DOING ALL WE CAN TO PREVENT THE SPREAD OF AIDS

Spectacular progress has been made in a very short time: defining high risk groups, identifying and isolating the causative viral agent. And much is now in progress: sophisticated surveillance to detect any change in disease incidence and pattens, a search for a vaccine and cure; research into possible cofactors to explain why some infected people develop AIDS and others do not; massive education about how the disease is and is not transmitted.

But there are other options, to date, we have avoided out of fear of being labeled discriminatory or an understandable reluctance to seemingly endorse antisocial behavior. (If AIDS were a disease that predominantly affected people with grey eyes, instead of a vocal, well established, well organized minority group, would we be more aggressively seeking to halt the epidemic?)

A more preventive approach may be in order. Individual states should evaluate the efficacy of classic "tracking" protocols (known as case-contact investigations) in curbing the spread of AIDS. (Tracking has long been used with other sexually transmitted diseases.) Our society's failure during the "liberated" 1970s to intervene in this fashion to stop the epidemic of common and exotic venereal diseases afflicting the gay community is considered by some to be a great failure of public health policy, one which may have left this population vulnerable to the AIDS virus.

An "index" case (here, it would be an individual diag nosed as having AIDS, ARC or antibodies to the virus would be interviewed, names and addresses of sexual contacts would be obtained; these sexual contacts would be notified of possible exposure to the AIDS virus and urged to undergo a blood test to determine if they are antibody positive. If a positive finding is confirmed, the individual would be given specific instructions as to the implications of continued sexual activity of the type that would spread the disease, and further questioned as to names and addresses of his or her sexual contacts, with subsequent public health follow-up of contacts for testing and guidance.

Tracking would be extraordinarily more difficult, time consuming and expensive in dealing with AIDS as opposed to other sexually transmitted diseases. The vast numbers of partners—many of them anonymous—which frequently characterize homosexual encounters, and the relatively long latency period of this disease pose formidable challenges here. Indeed, one might argue that it is already too late to track in the two high risk groups (gays and IV drug users) because such an extraordinarily large percentage of these subgroups is already infected. Case contact investigations may have their most cost-effective value in confronting the possible spread of AIDS in the heterosexual community.

Tracking has not yet begun in any formal way in any state. But a number of states currently are, or are seriously considering, requiring reporting of the names and addresses of individuals diagnosed with either AIDS or AIDS Related Complex. Six states now require physicians to report the names of individuals whose blood shows evidence of AIDS exposure. So a framework for possible future tracking is already being built.

But will tracking of the sexual partners of AIDS and ARC patients—and perhaps those of individuals who in voluntary, random blood screening, are found to test positive—be enough to stymie this epidemic? We will not know until we see the results of these efforts. In the worst possible scenario, should the disease rapidly spread into the general population, mandatory blood screening might have to be considered an option with educational intervention and tracking of sexual partners. Given the current epidemiology of the disease, that is its confinement to two risk groups, general screening is currently impractical. But in early 1986, U.S. Federal health officials acknowledged the usefulness of screening by recommending that high risk individuals regularly and voluntarily have their blood tested.

Surely we will have outcries about the violation of individual rights, and emotional declarations that it is inhumane to terrify an individual who may never develop AIDS by notifying him of his AIDS antibody status. But hopefully, reason and common sense will prevail: The AIDS virus does not have rights, nor do individuals who persist in engaging in activities which put the lives of others at risk. It is blatantly selfish for an individual to reject knowledge that would help him prevent the death of another person. Confidentiality has been an integral part of other preventive medicine protocols, and could be here too. And there is the possibility that such screening and identification might in the future allow for the type of intervention that could reduce the infected person's risk of developing the advanced stages of AIDS.

We should try the unthinkable: providing junkies with clean needles and syringes, along with all the standard education of the health hazards of drug use. Given that this group holds the most potential for introducing AIDS to the general population by means of sexual contact, it's time we remove our ideological glasses and take a close up look at anything that might lessen the burden of this terrifying disease.

FINANCIAL DISCLOSURE, 1985

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. MAZZOLI. Mr. Speaker, it has been my custom to submit a statement of financial disclosure every year that I have served in the House of Representatives. While the law now dictates that Members of Congress submit financial statements in May of each year, I continue to file this more detailed family financial report. In this way, my constituents are kept fully and completely informed concerning my financial status.

The financial statement follows:

Romano L. and Helen D. Mazzoli income and expenses for calendar year 1985—income

Interest and dividends: U.S. Treasury Bills (GS7-2-400-40-3938-01; GT5-2-400-40-3938-01; GL2-2-400-40-3938-01; HK2-2-400-40-3938-01; JF2-2-400-40-3938-01)	$1,786.60
Liberty National Bank & Trust, IRA Acct. 01-527329	915.78
Liberty National Bank & Trust, IRA Acct. 29-508123	167.99
Lincoln Federal Savings & Loan, Acct. 37339-5	225.00
Lincoln Federal Savings & Loan, IRA Acct. 1-01-205323/1-01-205992	243.08
Lincoln Federal Savings & Loan, IRA Acct. 1-01-205694	235.53
American United Life Insurance Co., Policy 1116312	25.77
American United Life Insurance Co., Policy 1011729	13.64
Meritor Savings Bank, Acct. 05-99-76	85.24
Meritor Savings Bank, Acct. 5-18-241	83.23
Meritor Savings Bank, Acct. 05-96-1906	$335.15
Government Services Savings & Loan, Acct. 80-450336-2	68.16
Congressional Federal Credit Union, 62976-0	3.91
Total interest and dividends	4,189.08
Honorariums:	
Seyforth-Shaw, Fairweather & Geraldson, Attys. at Law (February)	1,000.00
Food Service Lodging Institute (February)	500.00
Laffer Institute (March)	1,000.00
Grinnell College (April)	700.00
National Association of Broadcasters (May)	1,500.00
National Association of Manufacturers (May)	500.00
Kentucky Country Day School (June)	500.00
Northern Kentucky Chamber of Commerce (June)	238.00
National Cable Television Association (June)	1,500.00
Motion Picture Association of America (August)	2,000.00
Consul General of Italy (December)	250.00
The Brookings Institution (December)	300.00
Total honorariums	9,988.00
Salary:	
U.S. House of Representatives (R.L. Mazzoli)	74,891.63
V.V.K.R., Inc. Architects (Helen Mazzoli)	961.54
Data Management Specialists, Inc. (Helen Mazzoli)	18,119.19
Total salaries	93,972.36
Gross income	108,149.44

Romano L. and Helen D. Mazzoli statement of financial worth as of December 31, 1985

Cash on deposit:	
Lincoln Federal Savings & Loan, Acct. 10373390	4,205.96
Meritor Savings Bank, NOW Acct. 5-99-76	1,202.88
Meritor Savings Bank, CD Acct. 05-18-00241	894.90
Meritor Savings Bank, M.M. Acct. 05-96-1906	4,104.15
Sergeant At Arms, U.S. House of Representatives, Acct. 5348	2,502.98
Congressional Federal Credit Union, 62976-0	79.87
Total	12,990.74
Individual retirement accounts:	
Liberty National Bank & Trust Co., IRA Acct. 29-508123	2,167.99
Liberty National Bank & Trust Co., IRA Acct. 01-527329	10,224.58
Lincoln Federal Savings & Loan, IRA Acct. 1-01-205992	2,622.63
Lincoln Federal Savings & Loan, IRA Acct. 1-01-205694	2,392.37
Total	17,407.57
Bonds and Treasury bills:	
U.S. Government Bonds, Series E	1,798.78
U.S. Treasury Bill, Acct. KFO-2-400-40-3938-01	10,000.00

U.S. Treasury Bill, Acct. JR6-2-400-40-3938-01	$10,000.00
Total	21,798.78
Real property:	
939 Ardmore Drive, Louisville, Kentucky (Assessed Value)	42,000.00
Less: Mortgage, the Cumberland S&L Assn.	6,735.79
Total	35,264.21
1030 Anderson Street, Alexandria, Virginia (Assessed Value)	109,200.00
Less: Mortgage, Cowger & Miller Co.	43,637.56
Total	65,562.44
Cash surrender value of life insurance policies:	
American United Life Insurance Co., Policy 1011729	4,915.31
American United Life Insurance Co., Policy 1116312	1,015.63
Total	5,930.94
Federal employees retirement system: accumulated contributions	65,767.00
Automobiles:	
1965 Rambler	200.00
1973 Chevrolet	1,199.00
1985 Chevrolet, Assessed Value, $9,531; less mortgage, Congressional Fed. C.U. $7,061.69	2,469.31
Total	3,868.31
Household goods and miscellaneous personal property	8,000.00
Total assets	236,589.99
Liabilities:	
Congressional Federal Credit Union, Loan 62976-3	658.38
Miscellaneous	1,000.00
Total	1,658.38
Net assets	234,931.61

Romano L. and Helen D. Mazzoli, 1985 income tax recapitulation (Federal, State, and local)

Federal:	
Gross Income	$107,358.00
Adjustments to Income	8,708.00
Adjusted Gross Income	98,650.00
Deductions and Exemptions	18,933.00
Taxable Income	79,717.00
Tax Due (With Applicable Tax Credits)	23,027.00
Tax Withheld	24,944.00
Refund	1,917.00
Kentucky:	
Tax Withheld and Tax Credit	3,357.00
Tax Due	3,118.00
Refund	239.00
Virginia:	
Tax Withheld	893.00
Tax Due	332.00
Refund	561.00
Louisville and Jefferson County (Kentucky) Tax Due	364.00

TAX REFORM

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, September 3, 1986, into the CONGRESSIONAL RECORD:

TAX REFORM

Last week a House-Senate conference committee agreed to the most sweeping revision of the federal tax code in its 73-year history. the bill will affect every American and every corner of the economy. The tax bill will be sent to the House and Senate for one up or down vote, with no amendments permitted. It is almost sure to be approved by Congress and signed by the president.

The effects of this legislation aren't easy to predict, but the bill represents a fundamental change in tax policy. It reasserts the income tax's primary purpose as a collector of revenue, and reverses a 40-year practice of using the code as a major tool for hidden industrial policies and social and economic engineering. It attempts to lessen the importance of the tax code in daily decision-making. It goes a long way toward leveling the economic playing field. It attempts to achieve equity and guarantee that poor people don't pay more taxes than some millionaires, and that people in the middle class will no longer pay taxes at a higher rate than some corporations. The result is a simpler, more efficient code with sharply lower tax rates for both individuals and corporations and restrictions on most loopholes.

The hardest bargaining was over the distribution of tax benefits and burdens. The bill shifts about $120 billion in taxes from individuals to corporations over the next 6 years, ending a 30-year slide in business's share of the federal tax burden. The lower rates in the bill are the real reform, and the overwhelming reason for its appeal. The top individual rate will drop from 50% to 28%. Most taxpayers would fall into a second, 15% bracket. By nearly doubling the personal exemption and boosting the standard deduction, the bill will cut taxes for most people earning less than $20,000 a year. It virtually ends tax shelters and repeals the preferential low rate for capital gains, benefits enjoyed predominantly by the wealthy. Tough minimum taxes make it harder for wealthy individuals and corporations to avoid taxes. The bill is also a major anti-poverty program. The taxes of the poor have risen in recent years, and this bill redresses that by removing over 6 million poor households from the federal tax rolls.

Equally significant, the bill keeps tax benefits important to the middle class. Deductions for mortgage interest and for state and local property and income taxes stay intact. The deduction for Individual Retirement Accounts, though restricted, survives. Other popular deductions—notably the one for consumer interest payments—would be cut back. But for most taxpayers, the rate cuts and increased personal exemption and standard deduction would more than offset any lost deductions. Over 80% of all taxpayers will get a tax cut.

The bill is not without critics. By replacing the current 14 brackets with only 2, the bill drops the appearance of steeply progressive tax rates, once a symbol of the commitment to increasing the equality of income distribution. But the rich have used loopholes and shelters to avoid high tax rates, and the bill takes away their major dodges. The plan does not redistribute the tax burden between the rich and the middle class. Despite claims that the bill eliminates loopholes, many preferences remain, and many new ones were added. Most of the new provisions are narrow, and the sharp reduction in rates means all tax breaks will be worth less. Simplification, always an objective of tax reform, has not been achieved for all taxpayers. Many features of the bill will complicate tax preparation for some people. Moreover, tax reform does not necessarily mean tax relief. The average tax cut would be a modest 6%—between $2.50 and $8 a week for most taxpayers. Some taxpayers will pay more.

The bill could hurt some taxpayers. Some worry that the reduction in the depreciation allowance, coupled with the repeal of the investment tax credit and the loss of preferential rates for capital gains, will depress investment in plants and equipment and hurt competitiveness, especially in capital-intensive industries like steel and autos. Colleges and universities fear that changes in the charitable deduction and limits on the use of tax exempt bonds will cause a drop in gifts to them and slow new construction. Industries like real estate, banking, defense and oil and gas say they have been hit so hard that the entire economy will suffer.

Reformers hope that lower business tax rates will stimulate the economy, offsetting the loss of preferences. The bill cuts the top corporate rate from 46% to 34%. Lower rates and the end of many shelters should lead to more efficient allocation of capital and create a uniform tax burden among individual companies and among sectors of the economy. Individuals and companies should make investments based on their potential for profits, not phony tax losses. By historical standards, the corporate tax burden is still very low, and the new code sets U.S. corporate rates below those of most of its trading partners. But because the tax code interacts with so many aspects of the economy, it is impossible to predict the bill's impact on the economy with certainly. Inevitably, tax reform will have unforeseen consequences.

Even with its flaws, I think the bill is a welcome shift in tax policy. The idea was to make the system fairer, to restore market efficiences to industries that have been stimulated by tax rules, and to take the tax system out of ordinary economic decision-making. More fundamentally, the bill may reduce widespread discontent with the tax system and with government in general. The tax system affects more Americans than any other government program. If it seems to operate unfairly or inefficiently, it erodes public trust in government. As tax breaks multiplied, everyone wanted to exploit old ones and create new ones. Many of the breaks were worthy, but together they made the tax system inconsistent and unfair. This bill breaks that cycle.

No one expects this bill to be the final chapter in tax reform, but I hope that Congress will resist pressure to start adding special breaks back to the fairly rational tax system of this tax bill. It would be best to let tax matters settle for a while.

WHO PAYS FOR PROTECTIONISM?

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. GRADISON. Mr. Speaker, protectionism is costly. Protecting jobs in one sector is paid for in two ways—by lost jobs in other sectors, and by increases in prices paid by consumers.

In this regard, I wish to call to the attention of my colleagues some startling new data on the costs to consumers from protectionism. They appear in the following editorial from the September 13-19, 1986, Economist, and is drawn from a study by the World Bank.

SOAKED BY PROTECTIONISTS

IT IS CONSUMERS WHO PAY FOR THE JOBS THAT TRADE BARRIERS PURPORT TO SAVE

Mention the eighth round of negotiations on the General Agreement on Tariffs and Trade (GATT) which begins in Punta del Este next week, and most people will suddenly remember that they need to top up their drink. Yet buyers of just about everything, from cars to clothes to computers to corn, will pay more for lower quality stuff if these seemingly boring talks in an obscure seaside town in Uruguay are a failure.

All of which illustrates a sad truth. Protectionism costs money and consumers foot the bill. But the particular interest of makers of, say, "rubber shoes with canvas uppers" (tradespeak for trainers) to keep out competitive products overrides the general interest of consumers to keep down the prices of tennis, gym and jogging shoes. So protectionist lobbies continue to get away with import restrictions, voluntary restraint agreements, market-sharing arrangements and 101 other deals that rob the consumer.

COUNTING THE COST

Most such deals are sold to the public, and to the politicians they elect, as necessary to save jobs. It is a spurious pitch by the lobbyists. The World Bank's 1986 Development Report puts the "efficiency loss" of each job saved by protectionist measures in the American clothing industry at $169,600 in 1980; in the European clothing industry at $124,700, also in 1980; and in the American steel industry at $71,100 in 1985. Another study puts the cost of saving a job in the non-leather shoe industry in Britain at about 12 times the cost of adjusting to free trade. It reckons that, to keep British shoemakers permanently in business, the cost (discounted back to today's money) would be £2.35 billion ($3.5 billion), about £117 for every household.

Consumers seldom spot what is happening, except when a trade barrier is suddenly brought between them and their favourite import. A "voluntary export restraint" agreement rationed the sale of Japanese cars in the United States; in 1984 American buyers of Japanese cars found that they were paying an average of $1,300 more per car than they would have done if the Japanese had not been forced to volunteer for anything. Britain has had a similar "agreement" with Japan for years, so the British are less aware that they pay about 15% more than they need to for cheaper Japanese cars.

Since just about everybody wears clothes, the cost of protectionism in textiles and clothing should rouse almost every voter against it. One British study reckons that abolishing the Multifibre Arrangement, which protects textile businesses in the rich countries from third-world competitors, would let Britons pay 5-10% less for their clothes. In the EEC as a whole, the cost of protecting clothing producers was put at $1.4 billion as long ago as 1980; in America, at $1.5 billion.

The cost has certainly risen since then—and it is the poorest consumers that get the worst deal. Think of the costs of protection as a tax, and treat it as a surcharge on the income tax that people pay. That is what the World Bank did; it found that, based on 1984 figures, import restrictions in America amount to an income-tax surcharge of 66% on people earning around $8,000 a year. For those on $60,000, the surcharge falls to 5%.

Since every country is protectionist (though some more than others), all are impoverishing themselves. Trade liberalisation would bring big gains to consumers everywhere, especially if it were extended to farming. On admittedly heroic assumptions, the World Bank reckons that industrial countries would reap an efficiency gain of $48.5 billion (in 1980 dollars) if they unilaterally liberalised their agricultural trade and that developing countries would gain $28.2 billion if they did the same. The only (short-term?) loser would be Eastern Europe, which feeds its cattle subsidised American grains and its people subsidised EEC butter.

So why won't trade ministers be banging their desks in Punta del Este in support of free trade? Blame sectional interests. Producers of uncompetitive products—American semiconductor chips, British coal, French video-cassettes, Japanese rice, Australian cars, Indonesian petrochemicals, Belgian textiles—can bend the ears and swing the careers of local politicians. The loudest voices are those that warn of the social costs of the closure of this factory or that mine, and the votes that can be lost as a result.

The scattered, shotgun interest that consumers have in freer trade is often no match for the rifle-fire precision of those with a narrow vested interest in protectionism. Yet if the negotiators for the 92 countries in the GATT round do not put the consumers first, just about everybody will be a loser, by amounts that it is absurd to foist on ordinary households.

H.R. 5259, ADAMHA

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. WALGREN. Mr. Speaker, I am pleased that the House yesterday passed H.R. 5259, the bill extending research on alcohol, drug abuse and mental health. Undergirding the strong antidrug abuse effort the House adopted last week with my support should be a strong research effort to identify the causes of addiction and to find cures.

I would like to highlight an amendment I authored that directs the National Institute of Mental Health to make the mental health needs of the elderly a priority. I am grateful to the Energy and Commerce Committee for unanimously adopting my amendment.

In light of the "graying of America," the growing number of elderly people, I believe that NIMH should be focusing more attention on a long-overlooked area, the mental health needs of the aged.

The President's Commission on Mental Health estimated that 15 percent of the population at large is at risk for mental illness, but among the elderly, 20 to 25 percent are at risk and in need of mental health intervention. Experts tell us that mental decline is not a normal aspect of aging and much of what was thought to be senility has been found to be an acute—and treatable—mental health problem. Researchers have found that many elderly have been misdiagnosed as "senile" and left untreated when they were actually experiencing depression or anxiety, from involuntary events like loss of a spouse, declining physical health, loneliness, disruption. Additionally, NIMH has estimated that 58 percent of nursing home residents suffer from chronic mental illness, but the 1977 National Nursing Home Survey found that only 20 percent have been diagnosed as having mental illness.

It is our hope that elevating the mental health needs of the elderly in research will create more awareness of these problems, more understanding and ultimately better training of health care personnel. The bill continues an important research effort of the Federal Government.

THE HOOSIER IMPRINT ON WASHINGTON

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, August 20, 1986 into the CONGRESSIONAL RECORD:

THE HOOSIER IMPRINT ON WASHINGTON

Washington city planners are now working on designs for Indiana Plaza, a square on Washington D.C.'s Indiana Avenue. The plaza recognizes the Hoosier contribution to the Nation and its Capital. In a city practically built with Indiana limestone, whose football team fields Indiana-trained quarterback Babe Laufenberg, and whose latest cabinet addition, Secretary of Health and Human Services Otis Bowen, is a former Indiana governor, acknowledging Indiana with a park may seem an unnecessary gesture. But we Hoosiers who work in or visit Washington appreciate it anyway.

The Indiana Washington Society, a club for Hoosier displaced in the capital, has raised $15,000 to pay for improvements. The square's centerpiece is an obelisk memorializing the Grand Army of the Republic (GAR), an organization of Civil War veterans which flourished around the turn of the century.

The statues of two Hoosiers who were well known to those veterans stand in this town. In 1864, an Act of Congress allowed each state to put 2 statues in the Capitol building. Among the bronze and marble likenesses of Will Rogers (Oklahoma) and Queen Lililoukalani (Hawaii) are Hoosier Lew Wallace of Brookville and Oliver P. Morton of Centerville. Both were instrumental in raising the army of Indiana volunteers that stood between the capital city and the Confederate invaders. Both distin-

guished themselves in later careers, Wallace as the author of "Ben Hur," and Morton as a statesman, Governor and Senator.

Indiana's artistic contribution to Washington does not end at those two statues. Three blocks up 7th Street from Indiana Plaza, at the Museum of American Art, visitors can view works by William Merritt Chase, originator of a style of American Impressionism called the "Hoosier School." Here also are two works by Indiana painter Donald Mattison. One, entitled "Indiana Farming," was a rough draft of a mural Mattison designed for the post office in Tipton, Indiana. In 1984, the Museum hosted a travelling exhibit of works by Robert Indiana, the modern artist (known to friends in New Castle, Indiana, as Robert Clark) who took on the name of his home state. His sculpture in New York City's Central Park of the word "love" with its letters stacked and its leaning 'o' became a pop artifact, as much a part of the sixties as lava lamps and beanbag chairs.

Indiana also contributes to the lively arts in Washington. Indiana University and Hanover College theater groups have performed at the Kennedy Center. In February, Joshua Bell, the prodigy violinist from Bloomington, gave a concert at the Library of Congress where Scott Watkins, a pianist from Madison, performed last November.

The state's most evident contribution to the nation's capital is undoubtedly limestone. As a student at Indiana University I noticed that one quality of an Indiana limestone building is its reddish sheen at sunset as angled light hits the stone walls. The same effect can be seen all over Washington at this time of year. The National Cathedral, the Pentagon, several Smithsonian Buildings, a large number of agency office buildings, and most recently the Capitol itself are faced with stone quarried around Bloomington and Bedford. Stonecutters at the Bybee Stone Company near Ellettsville are currently carving column caps to replace the ones crumbling from the Capitol's West Front. The Virginia sandstone of the building's original wall is being replaced by Indiana limestone, rated by the Architect of the Capitol as a superior building material.

Indiana sends thousands of tourists to Washington each year. In many of the landmarks they visit are reminders of their home state. Hoosiers touring the FBI building, for instance, will see weapons used by John Dillinger's gang to raid banks in Indiana and across the Midwest. In the Air and Space Museum are planes flown by the Amelia Earhart, once Purdue's Dean of Women.

Numerous items from Indiana's past can be seen in the Museum of American History. In that museum's exhibit of inventions submitted to the U.S. Patent Office are many models from Indiana inventors. Richard J. Gatling of Indianapolis applied on November 4, 1862 for a patent on his Improved Revolving Machine Gun. His "improvement," which can be seen in the exhibit, revolutionized warfare in the latter 19th century. With the Gatling gun are models of the Cox and Fanning school desk, made in Richmond, Indiana, which was familiar to schoolchildren across the country early in this century, and the Bevil windmill, built in Indianapolis.

In the automotive section is everything from Elwood Haynes's two-cycle, single-cylinder, one-horsepower horseless carriage built in Kokomo in 1894 to the STP-Brawner Hawk that carried Mario Andretti to the winner's circle at Indianapolis in 1969 at an average speed of 156.8 mph.

The American Maritime Enterprise Exhibit has a display on the propeller ship Indiana, one of the first steamships to use screw propulsion. Built in 1858 in Vermillion, Ohio, the Indiana plied the Great Lakes for ten years before it sank in Lake Superior. In 1979, it was rediscovered and divers working in 32 meters of near-freezing water raised the remnants of its powerplant. No other commercial maritime engine or propeller of comparable antiquity is known to survive. Museum officials hope to reconstruct the Indiana's entire engine and include it in the display. Also in the maritime exhibit are models of tugs used on the Ohio River such as the Jack D. Wofford, built in 1966 for American Commercial Barge Lines.

Our state's most notable contribution to the nation's capital, however, is undoubtedly the people: Two presidents (Benjamin Harrison and William H. Harrison), four Vice-Presidents, a Supreme Court Justice, 14 cabinet members including 3 Secretaries of Agriculture and 3 Secretaries of State, 3 Postmasters General, and other generals and legislators. They have all left their mark. Almost every week I discover new evidence of the contributions of Hoosiers. This list is far from complete. Those given here are just a few examples of the many ways in which Indiana has placed its imprint on Washington.

DR. WILLIAM SPEIGHT AND CONGRESSMAN AUGUSTUS HAWKINS; MAKING MAJOR CONTRIBUTIONS TO THE LARGEST BLACK COMMUNITY ON THE WEST COAST

HON. PARREN J. MITCHELL

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. MITCHELL. Mr. Speaker, in 1967, shortly after "the long hot summer" of 1965 when riots exploded in Watts, the largest black community on the west coast, the Watts Health Center was first opened to render health care to a struggling community.

The following editorial, which appeared in the Washington Post on September 7, is a tribute to Dr. William Speight of the Watts Health Center, and to my good friend and colleague Congressman AUGUSTUS HAWKINS, chairman of the House Education and Labor Committee, for their significant contributions to this community.

[From the Washington Post, Sept. 7, 1986]

AN OASIS OF HOPE IN THE WATTS COMMUNITY

(By Colman McCarthy)

LOS ANGELES.—At the Watts Health Center, which serves about 180,000 patients a year from the largest black community on the West Coast, Dr. William Speight is the senior physician. Of the 33 full-time doctors, he has been here the longest—nearly 20 years. That goes back to 1967 when the center, about seven miles southeast of downtown Los Angeles, served its first patient.

At the time, the streets of Watts were like its spirit—smoldering and recovering. Two years before, when "burn baby burn" was the call to action and "the long hot summer" was the nervous phrase of politicians fearing the worst, Watts exploded in blood-flowing riots.

The rampage left 35 dead, 900 injured, more than 4,000 arrested and nearly $200 million in property damage. The National Guard sent in 15,000 troops, with the U.S. Army adding three brigades of its 40th Armored Division. Los Angeles mayor Sam Yorty blamed the communists. The communists, in Pravda, ran a cartoon showing Lyndon Johnson dispatching troops to two war zones, Vietnam and Watts.

Dr. Speight remembers those days. But he would rather talk about how the community, spent of it rage, revived itself to organize such lasting strength as the health center. Speight, a graduate of Howard University Medical School, estimates that he has seen tens of thousands of patients. Ranging from family to emergency medicine, he averages between 35 to 45 patients a day.

In a clinic hallway, Speight said, "We're giving a great amount of good health care here to a larger number of people than in 1967. We've made quite an impact on the health of the community." As to why he has stayed all these years, Speight, in eloquent simplicity, says: "I went into medicine to render service where it was needed. I found my place."

One of the reasons I stopped by the Watts Health Center the other day was sentimental. I was here on opening day in September 1967, working at the time for the Office of Economic Opportunity, which had funded the center for $2.4 million. Although spending for the war in Vietnam was about to drain any kind of meaningful money for the war on poverty, federal officials spoke then in language that is heard nowhere today.

In a speech at dedication ceremonies for the center, Sargent Shriver said that it represented "a human victory. It will not treat bodies, it will deal with people. It will not be a financial success, it will be a human success . . . Do we have the psychic strength to eliminate poverty? Are we going to buckle under to the pressure of riots? Can we stretch ourselves to include all Americans in our national pride? This is how a country grows to greatness."

Two decades later, Watts, and the rest of the country, has an administration that has shifted from a war on poverty to a war on the poor. Despite heroic citizens like William Speight and successes like the health center, Watts remains an enclave of victims. In 1965, two weeks after the riots, Gov. Edmund Brown appointed former CIA director John McCone to head a commission to recommend rungs on which Watts could ladder up from poverty. The McCone Report came back with the inevitable list: better schools, better job programs, better transportation, housing and social services.

In 1985, the Los Angeles county and city human-relations commissions did a "McCone Revisited" study. Among the findings:

"Of the 600 low-cost housing units authorized, only 300 have been built during the 19 years since the riots, and no single-family housing has been built in the area."

"While black infant mortality declined from 26.8 per 1,000 births in [Watts], it is still more than twice the 10.5 per 1,000 rate for white infants."

"Unemployment for black teenagers is close to 50 percent."

"McCone Revisited" concluded that the blights today "are substantially the same as those in 1965."

In Congress, Watts has been served since 1962 by Rep. Gus Hawkins, a liberal Democrat who has not become lost in the neo-liberal or neo-conservative clouds of mist now

turning American politics into a dull sogginess. Hawkins is 79 and the chairman of the House Education and Labor Committee through which much of the current misery of the poor passes. His liberalism has remained impeccably conscientious as well as practical: Initial investments of federal money into social programs save enormous costs later. The investments have now been slashed, with larger and larger bills soon coming due.

At the Watts Health Center, the savings have been large. If the cost-analysis crowd needs a precise number, let it spend time talking with the staff and the families it serves. Start with William Speight. His contributions, in skill and soul, have probably been the most cost-effective of all. He has saved lives.

CONGRESS INTENDED THE NORTHWEST POWER COUNCIL TO BE MORE THAN A MERE "ADVISORY" BODY

HON. AL SWIFT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. SWIFT. Mr. Speaker, just under 6 years ago, Congress enacted the Pacific Northwest Power Planning and Conservation Act. As the prime sponsor of H.R. 8157, the House substitute to S. 885, I have maintained a special interest in the successful implementation of this legislation, which is of such vital importance to the Northwest region of the country.

Since enactment of the Northwest Power Act, many people have placed apparently inconsistent interpretations on several of the provisions contained in the act. These statements, from time to time, have been made a part of the record, including one as recently as August 15, 1986. I believe that it is important to clarify the record regarding this most recent matter, which has to do with the function and authority of the council authorized to be established under section 4 of the act.

Before doing so, however, I would like to describe the legislative history in the actual legislative context, reiterating certain points which I made in the RECORD of December 1, 1980, shortly before the President signed the bill into law. As I stated on that occasion:

"There is * * * no conference report on this bill. There is no conference report because there was no conference. There was no conference not because the Senate was necessarily pleased with every provision of the House-passed bill, but because both House and Senate sponsors of the bill were very well aware that it was imperative for this bill to be signed into law this year (1980). The luxury of a conference that might, at this stage in the session, effectively scuttle the bill, was not something that the sponsors in either House could afford."

Because of this legislative context, the Senate accepted the House bill. Nothing can change that fact. I do not mean to reduce the significance or value of the contributions of the Senate or of individual Senators to the development of this act, for those contributions were vitally important. I simply mean to point out that the bill eventually enacted into law was originated in the House, and accepted by the Senate, and that in the absence of a conference report the legislative history created in the House should govern.

This brings me to the main point of my remarks today regarding the Northwest Power Council. It is clear from the plain language of the act, as well as from the legislative history, that the Northwest Power Council is more than a mere "advisory" body, as was specifically suggested in the RECORD of August 15, 1986.

First, section 4(d) of the act states that "all actions of the Administrator—of the Bonneville Power Administration—shall be consistent with the plan—adopted by the council—and any amendment thereto, except as otherwise specifically provided in this act." It doesn't say that the Administrator's actions "may" be consistent with the council's plan. Nor does it say that the Administrator's actions shall be consistent with the plan "to the extent he determines feasible," as did section 4(d) of S. 885 as originally passed by the Senate. It clearly states that the Administrator's actions "shall" be consistent with the plan.

Second, this clear statement was included in H.R. 8157, the House substitute which I introduced, for the first time; therefore, the floor debate in the House is particularly important to an accurate interpretation of the legislative history. As Mr. FOLEY of Washington, a cosponsor of H.R. 8157, stated on September 29, 1980, the first day of the House floor debate:

"The heart of the regional planning provisions, the council's role relative to BPA has become much more clearly defined as the bill progressed. Instead of a mere planning body, or a mere advisory body, it now has a mix of mandatory and discretionary oversight functions and control."

Both the plain language of the statute, as well as the relevant legislative history, show that the council is to be more than merely "advisory." This does not mean that the council is a Federal agency. In fact, section 4(a)(2)(A)(iv) of the act specifically states that the council, "except as otherwise provided in this Act, shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law * * *." Furthermore, section 4(a)(3) of the act declares that "[t]he members and officers and employees of the council shall not be deemed to be officers or employees of the United States for any purpose." The council is a creature of the laws of the four States of the Pacific Northwest. It was established pursuant to the laws of those States, not pursuant to Federal law; although Congress, in section 4(a)(2) of the Northwest Power Act, consented to an interstate compact that would establish the council, the council itself was established by the States. Its members are appointed according to the laws of each State, and serve at the pleasure of the States.

No constitutional difficulty arises by virtue of the fact that the council, a creature of the four Pacific Northwest States, exercises certain functions that constrain the actions of the BPA Administrator. The ninth circuit court of appeals recently, and in my view correctly, upheld the constitutionality of the Northwest Power Council and its authority vis-a-vis the BPA Administrator. Judge Alfred T. Goodwin, writing for the court, stated:

"There is no bar against Federal agencies following policies set by nonfederal agencies. The Federal Government has in fact agreed to be bound by State law in several areas. * * * The Federal Government can be subject to State law where there is a clear congressional mandate and specific legislation which makes the authorization of State control clear and unambiguous." (*Seattle Master Builders* v. *Pacific Northwest Electric Power and Conservation Planning Council,* 786 F.2d 1359, 1364 (1986).

Nor does the recent decision of Supreme Court in Bowsher versus Synar create any constitutional problems for the Northwest Power Council. In striking down Gramm-Rudman's automatic sequestration provisions, the Supreme Court did not rule that Congress cannot constitutionally vest authority over executive functions in an entity beyond the President's power of removal. What it did rule is that Congress cannot reserve for itself executive authority, including the power to remove officers who exercise executive functions.

Throughout the court's decision in Synar, the issue is clearly presented as one of the separation of legislative and executive powers within the Federal Government. As Chief Justice Burger stated for the majority:

"By placing the responsibility for execution of the Balanced Budget and Emergency Deficit Control Act in the hands of an officer who is subject to removal only by itself, Congress in effect has retained control over the execution of the act and has intruded into the executive function. The Constitution does not permit such intrusion." (*Bowsher* v. *Synar,* No. 85-1377 (U.S. Supreme Court, decided July 7, 1986).)

As Judge Goodwin pointed out in the Seattle Master Builder case, "[b]ecause Congress neither appoints nor removes the members of this council, the balance of powers between Congress and the President is unaffected." (Seattle Master Builders, supra, 1365)

Mr. Speaker, the Pacific Northwest Power Act has worked well. One of the primary reasons it has done so is because in that act Congress consented to the establishment, by the States, of a Northwest Power Council which does exercise a certain limited amount of authority over the BPA Administrator. Working out the exact nature and parameters of that authority is an evolving process, but it is important that there be no confusion about the fact that the council is more than a mere "advisory" body.

TRIBUTE TO CPL. JOSEPH E. VITTORI

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. MAVROULES. Mr. Speaker, 35 years ago the United States was heavily embroiled in a war with North Korea. During that war, we lost a great many good men, all of whom were heroes in their own right. This week, the

city of Beverly, MA, is honoring one of those men—Cpl. Joseph E. Vittori—Beverly's only recipient of the Congressional Medal of Honor. Corporal Vittori received his medal posthumously for "conspicuous gallantry and intrepidity at the risk of life above and beyond the call of duty while serving in the Marine Corps Reserve against enemy forces in Korea.

I am enclosing for the RECORD a copy of his citation, signed by then President Harry S Truman which tells the story of Corporal Vittori's valorous actions far better than I. Now I take this opportunity to express my own thanks and admiration for this man who courageously and selflessly gave his life for his country.

The President of the United States in the name of The Congress takes pride in presenting the MEDAL OF HONOR posthumously to

CORPORAL JOSEPH VITTORI, UNITED STATES MARINE CORPS RESERVE

for services as set forth in the following citation:

For conspicuous gallantry and intrepidity at the risk of his life above and beyond the call of duty while serving as an Automatic Rifleman in Company F, Second Battalion, First Marines, First Marine Division (Reinforced), in action against enemy aggressor forces in Korea on 15 and 16 September 1951. With a forward platoon suffering heavy casualties and forced to withdraw under a vicious enemy counterattack as his company assaulted strong hostile forces entrenched on Hill 749, Corporal Vittori boldly rushed through the withdrawing troops with two other volunteers from his reserve platoon and plunged directly into the midst of the enemy. Overwhelming them in a fierce hand-to-hand struggle, he enabled his company to consolidate its positions to meet further imminent onslaughts. Quick to respond to an urgent call for a rifleman to defend a heavy machine gun positioned on the extreme point of the northern flank and virtually isolated from the remainder of the unit when the enemy again struck in force during the night, he assumed position under the devastating barrage and, fighting a singlehanded battle, leaped from one flank to the other, covering each foxhole in turn as casualties continued to mount, manning a machine gun when the gunner was struck down and making repeated trips through the heaviest shellfire to replenish ammunition. With the situation becoming extremely critical, reinforcing units to the rear pinned down under the blistering attack and foxholes left practically void by dead and wounded for a distance of 100 yards. Coporal Vittori continued his valiant stand refusing to give ground as the enemy penetrated to within feet of his position, simulating strength in the line and denying the foe physical occupation of the ground. Mortally wounded by enemy machine-gun and rifle bullets while persisting in his magnificent defense of the sector where approximately 200 enemy dead were found the following morning, Corporal Vittori, by his fortitude, stouthearted courage and great personal valor, had kept the point position intact despite the tremendous odds and undoubtedly prevented the entire battalion position from collapsing. His extraordinary heroism throughout the furious night-long battle reflects the highest credit upon himself and the United States Naval Service. He gallantly gave his life for his country.

/S/ HARRY S. TRUMAN.

AGRICULTURAL EXPORTS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, September 10, 1986 into the CONGRESSIONAL RECORD:

AGRICULTURAL EXPORTS

Over the past few years, many of us have felt that boosting agricultural exports was the best way to improve the farmer's plight, giving him a fair return on his investment and labor. Congress last fall passed a new farm program with aggressive export promotion as its major theme. It reduced our farm support prices in order to make our commodities more competitive overseas, and set up several export promotion programs. America was poised for a major farm export boom. Yet none has happened. Even with the devaluation of the U.S. dollar further reducing the price of our goods overseas, we have not seen a rebound in exports. Agricultural exports, $44 billion in 1981, fell to $31 billion last year. The latest estimates are that they will be down again in 1986, to less than $27 billion. There is growing concern that agricultural exports will never return to the glory days of the late 1970's.

To add insult to injury, imports have been increasing—to the extent that the United States, the world's greatest food producer, recently became a net agricultural importer. In May, agricultural trade recorded a deficit, after more than twenty years of continuous monthly surpluses. Expanded coffee imports at higher prices were a major factor. Moreover, transportation advances have allowed record imports of fresh fruits and vegetables. Brazilian growers, for example, can produce juice oranges at one-third the costs of Florida growers. Mexican growers supply more than 70 percent of our winter vegetables and control half of the market in other months. Even wheat is being imported from Canada. But overall, the major factor in our declining trade balance has been our falling exports.

There are several reasons for the continued slump in U.S. exports. First, although the U.S. dollar declined sharply against many major currencies, it did not weaken against the currencies of our major export competitors, such as Canada, Australia, and Argentina. Second, many importing countries have been delaying their purchases in anticipation of the lower U.S. commodity support prices to take effect this fall. Third, many of our export competitors are determined not to lose their market share. The European Commodity in particular has shown a willingness to subsidize its agricultural exports as much as needed. Fourth, strong U.S. export promotion schemes at times run into State Department opposition because they can undermine foreign policy objectives and cause major rifts with our allies. Fifth, falling oil and raw material prices and burdensome debt have sharply cut the buying power of many Third World importers. Sixth, there has been a growing number of complaints by foreign buyers about the quality of U.S. grain.

Perhaps the most import factor in our export slump is the structural world food oversupply. Global surpluses have developed as other exporting countries have boosted production, and as countries that experienced food shortages in the mid-1970's have aggressively improved their farm production incentives and techniques. The results have been remarkable. Countries like China and India, which only a few years ago were major grain importers, are now exporters. Although world food demand will continue to grow, experts believe that the developing countries may be able to meet most of their increasing food needs from their own production. The global food market has tightened considerably.

However, it would be premature to abandon our efforts to boost U.S. farm exports. Exports sales are enormously important to U.S. farmers, and our recent farm policy changes should improve our competitive position. Yet we must recognize that when we pin our hopes on exports, some instability is inevitable because of the ever-changing world supply/demand picture. The boom in U.S. exports in the late 1970's was driven primarily by sharply increased world demand combined with droughts and major crop production failures overseas. These same conditions do not apply today. They are not factors that the U.S. control.

Nonetheless, there are several steps that we can and should take to improve our agricultural exports. We must revise our remaining protectionist commodity programs, such as the sugar program, which are impediments to getting other countries to reduce their barriers to our products. We must continue our efforts to get agriculture on the "fast track" of international trade negotiations under GATT, in order to reduce international subsidies of agricultural exports. We must do what we can to assist the debt-ridden economies of our Latin American neighbors, which represent our biggest potential growth market. We need to improve the quality of our grain exports, increase acreage set-asides to reduce surpluses, and pursue more barter agreements. We should also concentrate our efforts on selling high-valued, processed food products, rather than just grain.

We should also provide export subsidies on a selective basis to counter unfair trade practices by our competitors, expand our food aid programs abroad, and consider new approaches for boosting exports (such as the "marketing loan" concept under which the government makes up the difference between the government loan rate and the world price). However, major new export subsidies could face some resistance. Congress in recent years has shown an extraordinary willingness to support agriculture, as farm program costs have increased from an average of less than $3 billion per year before 1981 to some $30 billion this year. Export subsidies alone now total more than $3 billion anually. It is uncertain to what extent taxpayers would be willing to provide additional major export subsidies at a time when the federal deficit crisis has forced sharp cutbacks in many other popular programs.

Most experts are predicting that our farm export picture will improve later this fall and throughout 1987. There is much we can and will do to ensure an improved world market share. Yet agricultural exports cannot be expected to return soon to the boom levels of the 1970's. That would take more than US farm policy changes; it would

take a return to very favorable world market conditions like those in the 1970's. Agricultural exports will not be a miracle cure for the American farmer, but they will be a plus.

A TRIBUTE TO THE 91ST ANNIVERSARY OF THE ALLIANCE OF POLES OF AMERICA

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. HERTEL of Michigan. Mr. Speaker, September 22 marks the 91st anniversary of service by the Alliance of Poles of America which, although founded in Ohio, is now extremely strong and active in my district in Michigan.

A fraternal organization, the Alliance of Poles was founded to advance and preserve the culture, music, language, and traditions of Poland. Since its inception in 1895, the alliance has continued to grow and prosper. In 1925, the work and expansion of the alliance necessitated the building of a national headquarters.

The Alliance of Poles of America has an admirable record of service. During both World Wars, the alliance mobilized great amounts of time, money, and other contributions to assist in the war effort, particularly in aid of the countless suffering citizens of Poland.

Today, the Alliance of Poles continues the tradition of giving, both to its members in the United States and to the oppressed people in Poland. The alliance publishes a semimonthly newsletter, the Alliancer. It also provides full insurance coverage, low interest loans, and full credit union services. In addition, the alliance provides scholarships, arranges tours, and sponsors radio shows, plays, and other cultural activities. Sports programs involve old and young alike in activities such as skiing, golf, bowling, and soccer. There is also a ladies' guild, a Polish-English library, and a senior citizens' club.

The Alliance of Poles provides more than just community service in America. It can unfailingly be depended on to give to any needy cause in Poland. It sends everything from money to clothing for causes ranging from Poland's blind children to medical ships and more.

The sacrifices and successes of the Alliance of Poles could never be fully recognized, nor could each person be individually commended for the generosity of spirit which has been apparent over the last 91 years. I ask my colleagues to join me in commending, as a whole, the Alliance of Poles of America. They certainly deserve our recognition and support.

WORLD TRADE TALKS IN URUGUAY

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. ALEXANDER. Mr. Speaker, this week the member nations of the General Agreement on Tariff and Trade [GATT] are meeting in Punta del Este, Uruguay. Every American producer for export in international trade will certainly be interested in the progress of the talks as the future of farmers and manufacturers will be affected.

I include a review prepared by the CRS for the RECORD:

WORLD TRADE TALKS

An agenda and starting date for a new round of multilateral trade negotiations (MTNs) to revise the General Agreement on Tariffs and Trade (GATT) is expected to be set this September in Punta del Este, Uruguay, at a meeting of trade ministers of member countries. The actual negotiations will likely begin in early 1987. As it has since the establishment of GATT in 1947, the United States has taken the lead in calling for a new round of MTNs. Agricultural issues will be prominently featured in this new round, largely at the insistence of the United States, which has seen its farm exports drop 37 percent over the past six years. At the September ministerial meeting the United States is expected to propose "fast track" negotiations on agricultural trade issues with the objective of completing them in 2 to 3 years, rather than the 4 to 10 years likely to be needed for other GATT matters.

WHAT'S AT STAKE FOR U.S. AGRICULTURE

WHAT IS THE GATT?

The GATT is a document of rights and obligations that individual sovereign nations have agreed to observe in conducting world trade. Since the United States and 22 other countries signed the GATT in 1947, its membership has grown to include 92 contracting parties, 31 countries that apply it *de facto*, and one country that has acceded to it provisionally. Although these countries account for nearly 90 percent of world trade, a number of significant players in trade remain outside the GATT, most notably the Soviet Union. China is also a nonmember, but has announced its intention to join.

In addition to a code of principles and rules for the conduct of international trade, the GATT provides a framework for consultation, dispute settlement, and negotiation on trade issues arising among its contracting parties.

A common misunderstanding of the GATT is that it has the power to enforce its rules. In fact, it has no enforcement mechanisms and at best performs a mediating role in world trade. All decision-making bodies of the GATT are composed of representatives of contracting parties, and decisions are made on a consensus basis. The need to reach agreement among all concerned members is often difficult but has been perceived by members as necessary since most countries, including the United States, are unwilling to cede control over national trade policies to an international body.

The GATT is an evolutionary product which represents a commitment on the part of its signatories to a *progressive* liberalization of world trade within the multilateral context. The GATT recognizes the incremental nature of trade liberalization and thus also serves as a forum for multilateral trade negotiations to revise or expand the principles contained in the General Agreement.

Negotiations under the GATT are carried out in sessions, termed "rounds," that often last several years. There have been seven of these rounds since GATT's inception, the last of which ended in 1979 (the Tokyo Round, 1973-79). New rounds are generally prompted by a desire or perceived need to broaden or clarify prevailing GATT rules. The eighth round scheduled this fall is no exception, particularly in the area of agricultural trade.

CONGRESS' ROLE IN THE UPCOMING ROUND

Although the Administration, through an interagency process, sets the agenda and objectives for the United States and does the actual negotiating, Congress retains a powerful voice in MTN rounds.

Before the United States can fully participate in a new round of MTNs, Congress must grant authority to the President, and through him to negotiators headed by the U.S. Trade Representative (USTR), to negotiate both tariff and nontariff barriers to trade. Congress began delegating authority to the President to negotiate and proclaim reductions in tariffs under the Reciprocal Trade Agreements Act of 1934.

This authority has always been subject to specific congressionally mandated conditions and limitations. Congress last gave the President basic tariff negotiating authority in the Trade Act of 1974 and extended this authority through January 2, 1980. Congress also authorized the President to negotiate nontariff barriers and extended this authority to January 2, 1988.

Congress must grant similar authority to the President for U.S. participation in the upcoming round. Several bills granting that authority are currently pending before Congress. However, many of these bills contain a variety of other trade provisions that the Administration does not support. The Administration reportedly will wait until after the November elections to request legislation authorizing U.S. participation in the new round in the hope that protectionist sentiment in the Congress will have dissipated.

Whereas tariff concessions granted in a MTN have become effective for the United States by Presidential proclamation alone, and have not needed specific congressional approval, nontariff barrier agreements become U.S. law only if implementing legislation is passed by Congress and signed by the President. This requirement imposes some limitations on U.S. negotiators, who must remember that review and final approval of agreements negotiated in the GATT rests with the U.S. Congress.

AGRICULTURE AND THE GATT

Critics have charged that, up to now, agriculture has been largely ignored or inadequately dealt with under the GATT. They contend that as these inadequacies have become more and more evident over the past few years, confidence in the entire GATT system has been eroded. Unresolved agricultural trade issues, such as export subsidies and quantitative import restrictions, have become critical sources of conflict among the United States and its trading partners, notably the European community and Japan, as global economic recession and worldwide surpluses of agricultural commodities have fueled protectionist pressures and intensified competition for stagnant world markets.

By most accounts, GATT has been relatively successful in dismantling tariff barriers to trade, including those applied to agriculture, because it has traditionally focused its attention on this area. But, because of this focus on tariffs, GATT has been more successful in liberalizing trade in industrial products which have been more

widely protected through tariffs than have agricultural products.

The relative lack of success in removing trade barriers in agriculture is due largely to:

(1) special provisions for agriculture in the GATT;

(2) widespread use of nontariff barriers—such as voluntary export restraint agreements, variable levies, and quotas—in agriculture and the difficulties in negotiating their removal; and

(3) the strong links between individual nations' domestic agricultural policies and trade.

These issues, along with the GATT dispute settlement process itself, are critical areas for attention in the new round. Most trade analysts agree that progress in these areas, particularly in dealing with the trade effects of domestic agricultural policies, is essential for GATT to continue as a viable mechanism for facilitating world agricultural trade. However, they also tend to be somewhat pessimistic about the outcome of the new round, given the difficulties inherent in addressing sovereign domestic agricultural policies within a multilateral context.

AGRICULTURE'S SPECIAL STATUS

There are two major exceptions to the basic GATT principles, allowing export subsidies and quantitative restrictions in agricultural trade, that give agriculture a special status under GATT. This special treatment of agriculture in the GATT essentially reflects the domestic agricultural policies of most member countries, including the United States, which are designed, in part, to protect farmers from adverse effects of free market forces.

These exemptions for agriculture are contrary to the basic GATT goal of trade liberalization in that they continue to provide a precedent for other members to use restrictive measures to protect their agricultural sectors. They also provide countries with a rationale for pursuing domestic policies which may adversely affect the trade of others.

First, Article XVI contains a general prohibition against the use of export subsidies. However, it only dissuades member countries from subsidizing exports of primary (nonprocessed) products, whether agricultural or nonagricultural, enjoining the GATT participants to commit themselves to "seek to avoid" the use of export subsidies on these products. Moreover, if contracting parties do apply export subsidies on primary products, they should do so in a manner that will not give them "more than an equitable share of world export trade" in the products concerned.

What constitutes an "equitable share", however, is not defined precisely in GATT rules. This special treatment has led to numerous trade disputes within the GATT and is currently the most contentious agricultural trade issue between the United States and the European Community.

Second, Article XI of the General Agreement contains a general prohibition on the use of quantitative restrictions, such as quotas, by the contracting parties. There are, however, three exceptions to this general prohibition that relate to agriculture, the most important of which permits import restriction agricultural or fisheries products where such restrictions are necessary to the enforcement of domestic marketing or production restriction programs or for the removal of temporary surpluses.

In addition to this general exception to Article XI, in 1955 the United States was granted a special waiver of its obligations under Article XI (as well as Article II concerning the non-discriminatory application of concessions) to reconcile provisions in domestic law with its international obligations under GATT.

The United States requested the waiver because of a 1951 amendment to its "Section 22" import relief law which required that no trade agreement could be applied in a manner inconsistent with Section 22's requirements. Section 22 authorized the President to impose fees or quotas on imported agricultural commodities that render in effective or materially interfere with the operation of any U.S. Department of Agriculture domestic commodity program whether or not it included production or marketing controls. This now famous waiver, which effectively permits the United States to apply unilaterally quantitative restrictions on a wide range of agricultural products, further highlights the special status of agriculture in the GATT.

The United States and other GATT members have stressed the need to bring agriculture more fully under GATT rules, which means addressing those issues that give agriculture its special status. Any progress in eliminating quantitative restrictions on agricultural trade will require the United States to put its special Section 22 waiver on the bargaining table, and U.S. officials have indicated a willingness to do so. Some analysis, however, believe that it is unlikely that the United States will give up this protection in the face of powerful pressure from domestic farm lobby groups whose commodities are currently protected under Section 22 imports quotas. (Quotas are now in effect for peanuts, cotton, milk and various other dairy products.)

The same holds true with regard to the European Community and its use of agricultural export subsidies. The United States has repeatedly insisted that the new round should seek to phase out all export subsidies with only very limited exceptions, such as food aid donations. The European Community's Common Agricultural Policy (CAP), however, is predicated on the use of export subsidies to maintain high domestic farm prices.

EC officials, who face tremendous political pressure at home to maintain this practice, have continued to resist efforts to have agricultural export subsidies discussed in the new round. Recent press reports indicate that a stalemate between the United States and the EC on this issue threatens to derail the upcoming talks.

NONTARIFF BARRIERS

Nontariff barriers to trade, such as licensing procedures, technical and administrative requirements, voluntary export restraint agreements, excessive health and sanitary regulations, import quotas, and variable levies, are widely used to protect agriculture.

Reductions or elimination of nontariff barriers have been difficult to negotiate within the GATT framework for a number of reasons. First, nontariff barriers are not as "transparent" as tariffs, which are clearly visible to all trading partners and, therefore, easier to negotiate. Second, many countries consider their nontariff barriers to be part of their domestic agricultural policy, and therefore not negotiable under GATT. And third, since many nontariff barriers are inconsistent with GATT rules, countries adversely affected by NTBs are unwilling to grant concessions in exchange for the removal or reduction of measures that should not have been imposed by their GATT counterparts in the first place.

The United States has been particularly concerned with EC and Japanese nontariff barriers to U.S. farm exports. According to officials in the Office of the U.S. Trade Representative, the European Community's variable levy is probably the single most important barrier to U.S. agricultural exports. (A variable levy is, in effect, a tax on imports which is constantly being adjusted to make the imported product noncompetitive with the domestic product.) Announced U.S. objectives for the new round in this area include increased market access through the phase-out and elimination of access barriers as well as greater harmonization of animal and plant health-related regulations that have an impact on international trade. Other options to reduce nontariff barriers include bringing bilateral voluntary export restraint agreements under GATT rules and establishing increasing minimum access commitments or maximum self-sufficiency ratios in order to reduce the effects of domestic support policies and ensure market access.

EFFECTS OF DOMESTIC POLICY ON AGRICULTURAL TRADE

The widely acknowledged link between domestic agricultural policies and trade make the use of adjusting domestic policies to facilitate trade an important and contentious issue in multilateral trade negotiations. All of the issues discussed above are tied to this.

Almost all countries pursue agricultural policies that provide some degree of protection to their domestic producers. The United States is no exception. Despite enjoying a clear comparative advantage in many agricultural products over other nations, the United States still finds it necessary to employ a variety of measures that protect domestic producers from foreign competition in both U.S. and third country markets, as well as to operate a number of programs to support farm income and prices, and to subsidize farm exports.

Many other countries, without the advantages enjoyed by the United States, also find it necessary to employ domestic policies that have hindered free trade. The EC and Japan have domestic policies that particularly tend to distort trade. The EC's CAP both significantly limits imports and heavily subsidizes exports. Japan's agricultural policy, however, primarily limits access to Japanese markets in order to maximize self-sufficiency and maintain farm income at a level equal to urban income.

Once these types of programs and policies are in effect they are extremely difficult to reduce or remove. A case in point was the Reagan Administration's attempts in both 1981 and 1985 to reduce the Federal Government's support of agriculture. Opponents countered that the safety net provided by Federal support was essential to protect the declining farm sector and were successful in maintaining a relatively high degree of Government support to farmers. The political strength of the farm sector in the United States, Japan, and EC as well as in other GATT countries will continue to make it difficult to reduce the trade effects of domestic farm programs.

There are, however, some indications that progress in this area of negotiations may be possible. First, there appears to be a growing appreciation on the part of major trading countries that it is the trade effects of

domestic polices—and not the domestic policies themselves—that would be subject to negotiation. Although some modification of domestic policies may have to result, neither the objectives of the domestic policies, nor the instruments used, would have to be replaced on a wholesale basis.

Second, there has been some, albeit limited, progress in strengthening GATT provisions on export subsidies. The next logical step may be to strengthen GATT rules and principles with respect to domestic subsidies and other trade-affecting policies. In fact, if the United States wants to address export subsidies, it can expect to have a number of its own domestic subsidies, such as target prices and marketing loans, put on the bargaining table.

Finally, the strongest factor encouraging reforms in domestic agricultural policies is the growing budgetary cost of these programs, especially in the United States and the European Community. Efforts to reduce the cost of domestic support programs may not only result in reduced budget deficits, but also in reduced trade distortions.

How might these reforms be accomplished? Proposals include: (1) developing international arrangements for consultation among agricultural and trade policymakers on the trade effects of domestic agricultural policies; (2) negotiating international commodity agreements with economic provisions (e.g., pricing and/or market sharing or stocking provisions); and (3) reducing or binding the level of price support and phasing out over time the protection provided by domestic policies that affect import requirements or export availabilities.

GATT DISPUTE SETTLEMENT PROCEDURES

Articles XXII and XXIII of the GATT provide procedures for consultation and settlement of disputes between GATT members in all areas of trade, including agriculture. While the specific mechanisms and time limits vary, depending on the Code or Article under which a dispute is filed, common steps include:

(1) provisions for bilateral or multilateral consultations seeking to reach a mutually satisfactory solution without resorting to dispute settlement;

(2) the right of any signatory to a panel of 3 to 5 impartial experts from countries not party to the dispute, which reviews the dispute and makes findings of fact or law; and

(3) submission of panel findings to the GATT council for review and approval and possible authority for retaliatory action.

While the GATT dispute settlement procedure covers all trade areas, it is in the area of agricultural trade disputes that the process has come under increasing fire. Criticism centers around two issues: (1) the time it takes to settle a dispute (a U.S. wheat flour case filed in the GATT in 1981 has not yet been settled, at least to the satisfaction of U.S. interests); and (2) the consensus and nonbinding nature of the decision-making process, which means the decisions can be easily blocked by a party to the dispute. Thus, both the EC and the United States have blocked GATT panel decisions that would have been unfavorable to their respective interests.

The present problems with the GATT procedure for settling agricultural trade dispute are, in part, a manifestation of the continued agricultural trade problems between the United States and the EC, particularly in the area of export subsidies. According to the U.S. International Trade Commission, all subsidy cases brought before GATT since 1975 have concerned agricultural commodities. Almost 40 percent of all GATT cases since 1948 have been agricultural diputes. Nearly 70 percent of these cases were brought against the EC.

In many instances, the complainant was the United States, which has participated in more dispute settlement cases than any other GATT member. While strengthening the dispute settlement process should make decisions more timely, unburdening the system by resolving the fundamental trade differences between the United States and the EC should result in an even more effective dispute settlement process.

The United States has stated that one of its objectives in the new round is the improvement of the dispute settlement procedures. Proposals include significantly shortening the time necessary to arrive at a decision, requiring binding arbitration, and strengthening the code of conduct to make legal obligations thereunder more precise, which should reduce the number of disputes brought to the GATT for resolution.

PROSPECTS FOR SUCCESS

The United States has taken the lead in calling for the new round of multilateral trade negotiations with a major objective of bringing agriculture more fully under GATT rules. Agreement on a new round, with agriculture featured on the agenda, reflects a continuing commitment on the part of GATT members to work toward further liberalization of world agriculture trade—as well as a recognition that GATT, as it presently structured, is inadequate to that task.

Despite agreement among GATT members of these fundamental points, prospects for successfully addressing critical issues in agriculture are less than promising, given the probable intense resistance in many countries by politically powerful domestic farm groups who benefit under the current system. This holds true particularly in the United States, the European Community, Japan which are traditionally the key players in MTNs.

Increasing market access by lowering tariff and nontariff barriers to farm products, and reducing or eliminating reliance on export subsidies wil necessitate painful readjustment in a number of agricultural economies around the world, including in this country. While always difficult, this readjustment over the next several years will be an especially formidable task under the current depression in the U.S. and world agricultural markets. It is ironic that the same stresses and strains that have prompted a new round of MTNs also cloud the chances for progress in opening up world agricultural markets.

GATT TALKS: NOT A PANACEA FOR U.S. FARM EXPORTS

From a peak of $43.8 billion in FY 1981, U.S. farm exports are expected to drop to $27.5 billion this year, the lowest level since 1978. With imports remaining relatively steady or rising slightly, the declines in agricultural exports have significantly cut into what had been a healthy agricultural trade surplus—exports exceeding imports annually by over $10 billion between 1974 and 1985, and in some years, more than twice that amount.

The agricultural trade surplus for FY 1986 is forecast at $7.5 billion, the lowest level since 1973. And, in a more startling development, the Commerce Department recently reported that farm imports (valued on CIF-basis) exceeded farm exports by some $348.7 million in May, the first monthly agricultural trade defict since August 1971. The United States has been running an annual trade deficit in processed food products since 1983.

These declines have had a number of serious repercussions throughout the U.S. economy. Since farmers look to the export market to take production from more than one-third of their cropland, falling exports have resulted in significant declines in farm income and farm employment—it is often estimated that for every $1 billion drop in export sales, some 35,000 agricultural jobs are lost, as many as 60,000 non-farm jobs are lost for every $1 billion decline. And for every $1 lost in agricultural export activity, an additional $1 or more worth of supported business activity is foregone.

Several factors have contributed to the decline in U.S. farm exports: abundant food supplies worldwide; relatively weak demand due to global recession and large debt loads of importing countries; keen price competition among exporters, including new competitors, to increase market share or capture new foreign commercial markets; a strong dollar which made U.S. commodities more expensive to foreign purchasers; and domestic farm programs which, in effect, increased the price of U.S. farm products.

Although steps have been taken to bring down the dollar's value and farm programs have been revised, the effect of these measures has not yet been reflected in increased agricultural export levels. At the same time competition to boost sagging export levels has intensified, deteriorating world economic conditions have fueled protectionism worldwide, placing servere stress on trade relations.

GATT can do little to solve the underlying problem of world excess capacity in agriculture competing for stagnant markets. It can, however, mediate disputes that arise from this intense competition and develop rules which limit "unfair" trading practices that benefit one country, or a group of countries, to the exclusion of others.

DEVELOPING THE RESOURCES OF MOUNT ST. HELENS

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. BONKER. Mr. Speaker, on May 18, 1980, southwest Washington was the site of an incredible natural phenomenon, the volcanic eruption of Mount St. Helens. Since that time my district and the State of Washington have been working to cope with and adapt to the changes wrought by this dramatic event.

While this event was in many ways a disastrous and tragic one for the area, with 59 people dying in the explosion and 150,000 acres of forest leveled, the volcano also provides unique opportunities. The mountain, originally one of the most beautiful in the world, now is one of the most fascinating. It provides an exciting outdoor educational experience and a testimony to the importance of exploring mankind's relationship with nature.

In recognition of the volcano's importance, Congress established the Mount St. Helens National Volcanic Monument in 1982. Congress has followed up on this commitment by providing access and facilities which will enable more visitors to enjoy the monument

and safely tour the area. This includes trail and road construction, and building on an interpretive center. These efforts will greatly enhance visitors' understanding of the eruption and the natural forces at work within the mountain.

On a recent visit to the monument, Mr. Tom Koenninger, editor of the Columbian, in Vancouver, WA, saw firsthand some of the results of congressional and Forest Service efforts. He eloquently describes the beauty and power of a visit to the volcano. I would like to share his comments with my colleagues to highlight the good work that is going on and the vast potential for the volcanic monument. In order to realize all these hopes, continued funding will be necessary. As the article notes, this money is being put to good use.

MOUNT ST. HELENS ERUPTS WITH PLANS, DEVELOPMENTS

(By Tom Koenniger)

It is shortly after 9 a.m. on Saturday a week ago. Gifford Pinchot National Forest Supervisor Bob Williams and I are standing on a knoll with Mouht St. Helens at our backs.

As we look east, we see the split of solid rock marking the beginning of Ape Canyon. The chasm extends for hundreds of feet downward.

The landscape is visible far below through the blue haze of a warm summer morning.

From our mini-peak, we see Mount Rainer, Mount Adams, Mount Hood and Mount Jefferson in the distance, and Mount St. Helens, the gray giant up close. A different view is at our feet—the tracks of an elk.

The previous day we stood on a rock outcropping the size of a card table. This is the brim of Lava Canyon in the Lahar on the southeast side of Mount St. Helens. We see the creek 100 feet below—plenty of rocks and a little water. A warning about slipping on loose rock rivets us to the spot.

These are but two of the many memorable experiences that included a visit to the crater of Mount St. Helens Friday and Saturday a week ago.

Four Columbian staffers were guided on this trip by Williams and Ken Johnson, manager of the Mount St. Helens National Volcanic Monument—that 110,000 acre area that includes the mountain. We were joined by three other Forest Service specialists at various times during the 2-day visit. They were Ronald Emstaz, Monument Recreation Assistant; Jim Slagel, forest trail specialist; and Francisco Valenzuela, monument recreation planner.

Columbian people included Al Thomas, outdoor editor; Jay Bookman, who covers the Gifford Pinchot as part of his news beat; and photographer Casey Madison and me.

We got around the mountain in 2 days by walking 12 to 14 miles and riding a helicopter.

We wanted to know more about the mountain so we could tell you of plans and developments. We found enough to keep us busy writing and publishing pictures for some time to come.

What we found was the Forest Service planning for public access to the mountain in ways that will make such a visit even more spectacular than it is today, including:

Plans for a viewing area—an observatory—on Johnson Ridge northwest of the crater by 1991. Visitors will look right down the throat of the volcano. They will be able to see scientists at work and to talk with them.

A trail system that will go around the mountain, some 25 miles in circumference.

"We want people to spend two or three days on St. Helens as a learning experience," Williams said.

Another change in philosophy that will see a trail constructed in Lava Canyon for the disabled with wheelchair access to several good viewing areas.

An emphasis on the 404 research projects now in progress in the monument area.

A program that will stretch public dollars for trails as the Forest Service frets about taking on more projects with the same budget.

Use of Larch Mountain honor camp inmates to work on the Lava Canyon Trail, near Ape Cave.

An "adoption" program that invites any individual or group to accept responsibility for a planting area or work project. The Aid Association for Lutherans of St. John Lutheran Church of Vancouver adopted a planting area at one entrance to the mountain.

Plans for a shelter and larger parking area for snowmobiles and cross-country skiers at the 83-8312 road junction north of Cougar.

A program to open the mountain to climbing on the south side by late fall or early winter.

Many changes and adjustments in roads and trails to accommodate the 400,000 people who visit the forest each year, and a trail cleanliness policy that labels anyone who drops a candy wrapper or pop can an instant chump.

Our first day of hiking takes us along the route of a trail marked only with red ribbons. Each new ridge reveals a different sight—a rock, a mudflow, a small forest, Indian paint brush and heather and semi-sweet huckleberries to refresh a weary hiker.

The trail route follows the 4,000-foot level to extend the hiking season to the maximum. Walking it won't be a picnic, but it will provide a rich outdoor experience. Climbing down and up the loose pumice of some of the steeper ravines was a memorable experience.

We end our first day at Blue Lake, a mountain droplet of blue-green water.

On Saturday, we hike the Plains of Abraham—gray, desolate and almost lifeless. Our path is clear, marked by rock cairns.

Our group scrambles up and over rocks and pumice of windy pass to catch our first view of Spirit Lake.

We marvel at signs of life: A lady Bug * * * a spider * * * evergreen branches poking through the surface at distant intervals.

After lunch it's on to the "desert"—the crater of Mount St. Helens. The impact of standing in that vast crater at the foot of the dome is dramatic and spiritual. The crack and rumble of rock falling from all sides is a constant sound.

Except for a couple of toenails that opted for early retirement, we came through our mountain experience unscathed.

We have looked at the present and future of Mount St. Helens and both views are magnificent.

THE NEED FOR MEDICARE FUNDING FOR INFLUENZA VACCINATION

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. WHITEHURST. Mr. Speaker, on December 6, 1979, I introduced H.R. 6066, which would have provided funding under Medicare for both pneumococcal pneumonia and influenza vaccines. The pneumococcal provision was included in legislation passed (H.R. 8406) by the Congress in late 1980, but at that time there was not sufficient documentation to justify including influenza vaccine.

In November 1979, I had written to then Chairman STAGGERS to ask that he request the Office of Technology Assessment to do a study of influenza vaccines as a followup to their fine work on pneumococcal pneumonia. Their report, "Cost Effectiveness of Influenza Vaccination," was published in December 1981, and it made a strong case for including it under Medicare. On the basis of that report, I introduced H.R. 5481 in 1982, to provide for Medicare coverage of influenza vaccine and its administration.

Regrettably, the bill was not passed, at least in part because it lacked administration support. I reintroduced it in the 99th Congress as H.R. 482, and I continue to hope that this important step in preventive medicine will be taken without too much further delay.

The September 1986, issue of Reader's Digest contains an article entitled "Six Shots to Save Your Life," and I am pleased to share it with my colleagues at this point in the RECORD. I would call particular attention to the section on influenza, which points out that the Center for Disease Control recommends flu shots for all those age 65 or older and makes it clear that the new vaccine is much safer than its predecessors.

Mr. Speaker, it seems to me that it is far more cost-effective to prevent an illness such as influenza by encouraging the use of the vaccine than to provide hospital care for those who contract the disease and are then subjected to life threatening complications. To refuse to fund influenza vaccine under Medicare is, at best, penny-wise and pound-foolish.

[From the Reader's Digest]

SIX SHOTS TO SAVE YOUR LIFE

(By Stanley L. Englebardt)

Only 10 to 15 percent of at-risk American adults are taking advantage of one of the easiest, safest and least-expensive ways of preventing catastrophic disease: vaccination. The need for inoculations does *not*, as many adults believe, end with school years.

"We've done a very poor job educating patients about vaccinations," says Dr. Richard J. Duma, president of the National Foundation for Infectious Diseases. "We could avoid a tremendous amount of suffering by immunizing all at-risk adults against a small number of preventable diseases." These are:

Influenza. Flu epidemics race across the United States almost every year, affecting millions. In the epidemic of 1980-81, experts estimate that 45,000 people died from complications brought on by the disease; 80 to 90 percent of the excess deaths that oc-

curred in the years 1973-81 were of persons age 65 or older. If these high-risk patients had been inoculated, most of these infections could have been prevented, or the disease at least held to a minor illness.

The U.S. Centers for Disease Control (CDC) in Atlanta pinpoints several high-risk groups: persons with chronic heart and lung diseases; residents of nursing homes and other chronic-care facilities; all those age 65 or older; people with chronic diseases such as diabetes, anemia and asthma; and health-care workers.

Though many people avoid the annual flu shot for fear of side effects, doctors say that less than one-third of patients experience soreness around the vaccination site; anything more serious is infrequent. But people with a history of severe allergic reaction should consult their doctors before getting a shot. ("Unlike the 1976 swine-influenza vaccine," says the CDC, "subsequent vaccines, prepared from other virus strains, have not been associated with an increased frequency of Guiullain-Barré syndrome"—a progressive muscular weakness.)

Pneumonia. While viral pneumonia usually is overcome by bed rest, fluids and aspirin, pneumococcal pneumonia, the most common form of bacterial pneumonia that sweeps through communities, can be an unmanageable killer. Last year, this type of pneumonia hit an estimated half-million Americans, killing about 25,000.

Essentially the same population at risk of flu should be inoculated against pneumococcal pneumonia. A single injection usually will provide protection for at least five years.

About half the patients can expect one to two days of soreness at the injection site, and a very small percentage may experience some transient fever. The CDC recommends not giving the vaccine to pregnant women who are otherwise healthy.

Hepatitis. There are two major types caused by different viruses. Hepatitis A is unpleasant but seldom causes permanent damage. Hepatitis B, on the other hand, is a more severe infection that can be spread through unsterilized hypodermic needles, unclean dental or surgical instruments, blood products and transfusions, and sexual contact. It's no wonder the disease has been increasing. There are between 400,000 and 800,000 carriers in the United States at this time; an estimated 50,000 people with clinical signs of the disease; 10,000 yearly hospitalizations and 5,000 annual deaths.

Moreover, the hepatitis-B virus was recently identified as the single most important worldwide cause of liver cancer, an invariably fatal disease.

The recommended recipients of the hepatitis-B vaccine: all health-care workers who deal with blood; hemodialysis patients, certain blood-product users; homosexually active men; prostitutes; drug adicts; and pregnant women in any high-risk group, such as refugees from the Far East. The cost of the vaccine is high—about $100 for a series of three shots—but a pittance compared with the cost of the disease.

Rubella. In 1964-65 when an epidemic of rubella (often called German measles) swept the country, the toll was staggering: 20,000 infants with birth defects and 11,000 instances of fetal death due to miscarriage or therapeutic abortion. And then a new vaccine virtually eliminated rubella.

Rubella, however, still remains a problem; 604 cases were reported by the CDC in 1985. Experts urge all non-pregnant females in their childbearing years who do not have a clear-cut record of a rubella vaccination to get one now.

Measles. Though measles was all but eliminated by an effective vaccine, enough children manage to slip through the immunization net each year to produce relatively small outbreaks, most notably on college campuses. While measles is rarely fatal, it can cause serious complications: ear infections, pneumonia and encephalitis among them. Any young adult with no record of measles, and no vaccination with a live-measles vaccine in childhood, should consult a physician.

Tetanus. If you step on a nail, chances are your doctor will give you a tetanus shot while treating the wound. "Tetanus is a terrible disease with a high death rate," explains an emergency-room physician, "so prevention is a top priority."

Yet waiting to get a shot in an emergency—particularly if the wound is deep and dirty, and some time has elapsed—may decrease your protection. The best bet: a booster injection every ten years. The CDC recommends the combined tetanus-diphtheria vaccination (though they can be given separately). The incidence of diphtheria is low, but a booster shot every ten years is "safe, inexpensive and good insurance," says Dr. Duma.

Immunization is one of the best bargains around. "If you're not up-to-date," states Dr. Duma, "*now* is the time to make an appointment with your physician."

SUPPORT FOR THE CONTRAS: AMERICA'S DELICATE BET

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. KOLBE. Mr. Speaker, I understand aid to the Contras will probably be included in the continuing resolution which we are considering on the House floor this week. This issue has been particularly controversial in the House of Representatives, and the decision to oppose or support this assistance has required a great deal of soul searching for many Members of this body.

Today, I am submitting an article from September 6, 1986, edition of the Economist on Contra aid. I believe this piece provides a balanced, objective analysis of the dilemma the United States and other supporters of democracy in Nicaragua face. I urge my colleagues to review this article carefully and to continue to support adequate assistance to the Nicaraguan freedom fighters.

The article follows:

[From the Economist, Sept. 6, 1986]

WHY THE CONTRAS?

President Reagan is about to receive from Congress, no last-minute hitch intervening, a bill that will authorize him to spend $100m to help the contra guerrillas wage a war against Nicaragua's Sandinist government: a war that has already cost more than 15,000 lives. It has taken all of Mr. Reagan's vast powers of persuasion to wring approval of this "wanton, bloody war", as the New York Times has called it, out of the Senate and the House of Representatives. He has done so against the apparent wishes of most Americans. West Europeans are antagonistic. It is hard to find a Latin American voice raised in public in support of Mr. Reagan, even though the emotions the Sandinists privately inspire among most Latin Americans are dislike and fear.

This is a remarkable storm over a country of 3m people. But the Sandinists are at the center of a debate that the West, and particularly the United States, has seemed incapable of settling for the past quarter-century. How far can it go in trying to turn events in the third world in a democratic direction? How far should the superpower contest intrude on the third world? What has Vietnam taught America about the uses of its power? Mr. Reagan does not have many doubts: he now says that the contras may have to take over Nicaragua by force if they do not succeed in making the Sandinists accept a fully open and supervised election.

Are his instincts right? That depends on two things: whether Nicaragua is becoming a Leninist state; and whether American support for an armed attack on a Latin American government serves the interests of the United States and of Latin America.

Not many people doubt that the Sandinists are running a nasty regime that is impoverishing their country. Most civil liberties have been suppressed, the last voice of an independent press was silenced this year, the church is harried and whole groups of Indians have been forced out of their homes. Economic miseries have been piled on political ones. Nicaragua's foreign debt of $6 billion is far larger than the country's shrinking GDP, manufacturing industry has collapsed, even rice and beans are now rationed in peasant diets.

The wisest policy toward such a regime is usually to let it self-destruct. the Sandinists seem well on their way to that. The guess of some observers is that perhaps only a fifth of city-dwellers, and a slightly higher proportion of peasants, now back the government. But the worry about the Sandinists is that that they may be putting themselves in a position where no amount of unpopularity or incompetence will ever make any difference to their grip on power. Their 75,000-man army (Central America's largest by far) and 44,000-man reserve are there, very likely, not just to fight contras but also to impose a full-blooded communist government on the country.

COMMUNISTS ARE DIFFERENT

For democrats, the prospect of another communist government matters not so much because such regimes are unpleasant as because they seem irreversible. Francoists give way in Spain, Marcoses depart from the Philippines, Duvaliers leave Haiti, Somozas eventually get thrown out of Nicaragua; but after too many decades of experience the world has yet to see a single communist regime dislodged. These regimes stay in place, even when their people would overwhelmingly wish them to go, because the single permitted party has established a monopoly of control—over the economy, education, culture and communications, as well as ordinary politics—far tighter than that achieved by any conventional dictatorship. That leaves democrats little room for manoeuvre. If a country is sliding into Leninism, more modest instruments of pressure, like economic sanctions, are often useless. Military force is frequently the only thing that can stop it, and the decision has to be made at an early stage: once a country has crossed the line, it is lost.

Are the Sandinists really the communists Mr. Reagan claims? A few people in Nicara-

gua, if they are prominent enough, can still speak out; a private sector still functions; the Sandinists allowed a fairish election in 1984; there is a small, though largely ignored, democratic opposition. Different currents of thought exist within the government, and Sandinism has a distinctly Nicaraguan flavour. But most of the evidence is on the other side. Much of the repressive apparatus of an East European state is already in place: "neighbourhood committees", a large Cuban-trained secret police, an army and propaganda system named after the regime. The Sandinists have asked for "comprehensive integration" with Comecon, the Soviet-bloc economic group.

Many people object that the Sandinists are being driven against their will into Russian arms by the American threat against them; but the record belies that. In 1979-80 United States gave $118m in aid to the Sandinists, while they were opening the door to Cuban arms and advisers. The Sandinists took advantage of the long pauses that the American Congress forced in Mr. Reagan's pro-contra campaign to show their attachment to Moscow and to tighten their internal repression. They have so far refused to agree to a regional peace treaty drawn up by the Contadora group. The more plausible conclusion is that the only thing sparing the Nicaraguan people Cuba's fate is the contra guerrillas' military harassment of the Sandinist regime.

Some of Mr. Reagan's critics accept this, but argue that the contra cure is worse than the Sandinist disease. The contras are still widely seen in the West as a murderous rabble consisting mainly of left-over thugs from Somoza's despised National Guard. This view no longer has much to support it. The contras have done atrocious things, but no more than most groups of men, of left or right, who fight this shapeless sort of war (and certainly no more than the guerrillas in Afghanistan). They include 2,000-3,000 ex-Somoza men. But they have almost as many disillusioned ex-Sandinists in their ranks, and their civilian leaders—like Adolfo Calero, Arturo Cruz and Alfonso Robelo—have good democratic credentials. The most telling thing about the contra army is its size. The 2,000 former National Guardsmen of five years ago have grown into an army of 16,000, three times as big as the Sandinist army was when it marched into Managua. The new recruits are not press-ganged; they are fleeing from the Sandinists.

THE WIDER WAR

For all that, Nicaragua is a tiny country. If America's policy is to make sense, it must serve broader interests. One of those involves America's contest with Russia. Local explosions, however strong their local causes, also weigh in the balance of advantage and disadvantage that the world's two global powers keep with each other. A People's Democratic Republic of Nicaragua would be an example for revolutionaries elsewhere in Latin America, and another willing forward base of Leninism in the western hemisphere. No democrat in the West—even those who think Mr. Reagan is wrong about Nicaragua—could welcome that.

Still, the United States took such a blow in Vietnam, and lived in its defeat to see a mostly flourishing Southeast Asia. Is Mr. Reagan misjudging the importance of Nicaragua for the rest of Central America?

The civil wars which that wretched region has been enduring for the past decade have killed perhaps 150,000 people out of a total population of 20m. They are in part the product of deep changes in economies and societies still cruelly divided by race. They are also the result of too many decades of right-wing and military repression, which the United States, to its great discredit, did nothing to try to relieve. In the past five years, however, the Americans have helped to nudge hard-right regimes in Guatemala, El Salvador and Honduras towards the centre. All three countries now have democratically elected presidents (even though each is still too little the master of his country's generals). The danger of an unchecked Nicaragua is that it could drag other Central American countries back into the anti-democratic turmoil from which they are just beginning to escape.

Until they became preoccupied with the contras a couple of years ago, the Sandinists were giving a good deal of help to El Salvador's guerrillas, and smaller amounts to the smaller insurgent groups in Guatemala and Honduras. The Sandinists said then that "the revolution goes beyond our borders". It is possible that even unrestrained by the contras, Nicaragua's leaders would not resume the revolution-exporting business; but it is not probable. Their inclination to keep to themselves is probably about equal to their inclination not to create a Leninist state.

AMERICA'S DELICATE BET

As Congress has discovered, the United States has an unenviable choice. It does not really know whether the Sandinists are enough of a threat to their own people, or to the rest of Central America, to warrant sponsoring a war against them; but if it does not keep the contras alive now it may, if things go badly, have no instrument short of its own army to put a stop to the advance of communism in Central America.

This dilemma is not reflected in Mr. Reagan's unruffled certitude. He wants the Sandinists out, period. The proper aim of the United States should be limited to getting them to agree to a regional arms-cutting treaty and regular elections (which would almost certainly block the emergence of a one-party Leninist state), both under international supervision. The uncertainties about Nicaragua justify no more assertive a course. But even that will remain out of reach unless the Sandinists are put under pressure. The United States has tried friendship and aid; economic sanctions; and now support for the contras. This last element, for all its crudeness, still seems a necessary part of the pressure if it is to have any chance of success.

NICARAGUAN DEPORTATIONS

HON. JOE MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. MOAKLEY. Mr. Speaker, today I sent a letter to Assistant Secretary of State for Inter-American Affairs Elliott Abrams supporting his recent statement that the Reagan administration is intending to "reconsider the political refugee status of Nicaraguans currently in the United States."

Mr. Abrams made his statement, according to an Associated Press wire story, at a dinner hosted by the Miami based Nicaraguan American Bankers Association and the Nicaraguan American Private Enterprise Council.

I believe that the violence inflicted on Nicaraguan civilians—by both the Sandinistas and the Contra forces—should have compelled this administration, long ago, to halt Nicaraguan deportations.

While I applaud Mr. Abrams' recent remarks, I also encourage him not to ignore the equally tragic plight of the Salvadoran refugees. Despite the best intentions of Salvadoran President Duarte, there is still great cause for concern with regard to human rights in El Salvador.

Mr. Speaker, to advocate, as I and many other Members do, the temporary suspension of Salvadoran and Nicaraguan deportations should not be interpreted as a statement for or against United States foreign policy in the region. The issue of protecting Salvadorans and Nicaraguans is not a political or partisan matter—it is a humanitarian concern. I hope my colleagues will keep this in mind as we debate this issue in the coming days.

For the benefit of my colleagues, I am submitting my letter to Mr. Abrams for the RECORD.

HOUSE OF REPRESENTATIVES,
Washington, DC, September 16, 1986.

Hon. ELLIOTT ABRAMS,
Assistant Secretary of State for Inter-American Affairs, Department of State, Washington, DC.

DEAR MR. ABRAMS: An Associated Press wire story which ran on September 16, indicated that, in a speech before 900 people at a dinner hosted by the Nicaraguan American Bankers Association and the Nicaraguan-American Private Enterprise Council, you stated the Administration's intention to reconsider the political refugee status of Nicaraguans currently in the United States.

I am very encouraged by your statement and want you to know that I would fully support halting the deportation of Nicaraguans. As you may know, I have voiced strong humanitarian concerns about deporting Nicaraguans back to their homeland which is currently engulfed in a violent struggle. On July 23, the Subcommittee on the Rules of the House, of which I am Chairman, held hearings on Congressman Barney Frank's, bill H.R. 4893, which would temporarily suspend Nicaraguan deportations. Sadly, the Administration chose not to testify. I am an original sponsor of the Frank bill and have urged its prompt consideration by the House. The human rights abuses by both the Sandinistas and the Contras should have compelled the Administration, long ago, to offer Nicaraguans extended voluntary departure (EVD) status.

Similarly, the same humanitarian concerns you have raised with regard to Nicaragua—hold true for El Salvador. Though we can be heartened that Jose Napoleon Duarte, a man committed to peace and democracy, is currently president of that war-torn country, there is still great cause for concern. Random violence resulting from the war is commonplace. There continues to be abuses of human rights by the Salvadoran military and, it would appear, that violence against civilians by the guerrillas is on the rise. Though the total number of civilian deaths each year has decreased, it is still at an unacceptable high level. This is why, for the past three years, I have been advocating legislation (H.R. 822) that would provide Salvadorans EVD.

During House consideration of the Immigration Bill, it is my intention to include a

provision which would offer temporary protection to both Salvadoran and Nicaraguan refugees. I am aware that the Administration has been opposed to such action in the past. However, in light of your recent statement and your continued concern for human rights, I hope that the Administration will reconsider its position. The protection of refugees is not a partisan or political issue—it is a humanitarian issue.

Sincerely,

JOE MOAKLEY.

THE U.S. CONSTITUTION REVISITED

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. KOLTER. Mr. Speaker, I rise on this occasion to draw attention to the rapid approach of the 200th anniversary of the adoption of our U.S. Constitution. It may have been through the Declaration of Independence that we proclaimed our liberty, but it has been through the Constitution that we have made it work.

When the Founding Fathers assembled, they too represented backgrounds as diverse as those we here today represent. And yet, they forged a unity—the Constitution itself—by recognizing the strengths of the individual and the advantages of debate. This Congress, together with the executive and judicial branches of Government are tangible manifestations of this ideal born 200 years ago. And this ideal is as relevant today as it was back then. We have indeed come a long way in two centuries. Our great Nation has known times of triumph as well as despair; but it has been through the respect of the individual and the orderly operation of law, that we have thrived.

It is, therefore, only right, then, that we join the Chief Justice in paying tribute to the supreme law of the land. It is a time for all Americans to recognize the significance of this Constitutional achievement.

And with that, Mr. Speaker, I call to my colleagues' attention today an article written by Prof. Charles L. Kennedy of the Pennsylvania State University, York Campus. Professor Kennedy praises the Founding Fathers for their faith in the American people, and is striving to raise the level of public awareness regarding this momentous event in our Nation's history and the impact it has on all Americans. It is the spirit of proud individuals like Professor Kennedy that has made our Nation great and helps us all look confidently toward our third century of nationhood under the best system of govenment ever devised:

THE U.S. CONSTITUTION REVISITED

(By Charles L. Kennedy) [1]

The Bicentennial of the United States Constitution will be observed and celebrated throughout the land in 1987.

The challenge to all Americans is to have a meaningful Bicentennial. It should involve more than parades, flag waving, bells ringing and tall ships marching.

The Bicentennial of the U.S. Constitution should serve as an "American renewal." It should be a renewal of the spirit of the Constitutional Convention, a renewal of responsibility and individual awareness, and a new sense of civic duty.

The ultimate goal should be to generate the sort of responsible, exacting thought on questions of human nature and conduct that characterized the deliberations of the Constitutional Convention of 1787.

As emphasized in the "American Renewal" series by Time in 1981, "If there is one political belief that Americans cherish as an article of faith, it is the belief that their system of constitutional government is the best ever devised by the mind of man." This has been called the American sense of mission. It is a belief in an ever better tomorrow, the conviction that obstacles exist to be overcome and that the United States has a strong and beneficial role to play in the world.

Yet, when the founding fathers assembled in Philadelphia in 1787, they not only did not design a blueprint for the America of the 1980s, but had not the slightest idea what it would be like. They made a commitment, however, not to wealth and power, but to a vision of what the nation could become. The ultimate genius of the founding fathers was their recognition of the pluralistic nature of American society.

It is important to emphasize that the delegates to the Constitutional Convention brought to Philadelphia very different attitudes, motivations, personal beliefs and political pressures.

The founding fathers recognized the spirit of faction that permeated throughout the Constitutional debates. They recognized the capacity of the American citizens to reach a measure of consensus, unity and accommodation through the creative interplay of the competing factions.

The convention was about problems that have always confronted society. The founding fathers focused on several of these universal problems that continue to have immediate significance to the citizens of the United States in the 1980s.

The Constitutional Convention was an attempt to reconcile a host of conflicting interests and prejudices. As the first successful national convention in modern history, it has become a model for subsequent constitutional conventions. It covered the spectrum of fundamental issues any group would face in forming a new government. It also focused on efforts to improve the quality of life and society's institutions.

The challenge to all groups and organizations in the United States in their observance of the Bicentennial will be to revive its responsibility by bringing together a wide range of citizens to renew and continue the debates of the founding fathers.

We must revive speculations and observations about man and society, about the best means of bringing about social justice.

As did the founding fathers, we must endeavor to effect workable compromises for those issues, practical and ideological, upon which we disagree. We will have differences in perception, purpose, philosophy and values, as did the founding fathers, and the Republic itself.

We need to stimulate creative thought and develop a sense of responsibility in the individual citizens for the many problems currently confronting the country.

Most importantly, however, our observance of the Bicentennial of the U.S. Constitution should be based on confidence and trust in individual Americans: "those countless citizens who, despite all the doubts, the heedlessness, the disorder of the society, go about their lives with courage and patience, slangy competence and cheerful persistence, with some anger and some kindness and above all with the odd conviction that their country is still an experiment and that it must stand for something beyond mere survival."

If we can do this, then we will continue to meet the challenge of the ages.

[1] Charles L. Kennedy is a part-time instructor of political science at York Campus and executive director of the Manufacturers' Association of the Tri-Counties.

SOVIET JEWRY

HON. BILL SCHUETTE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. SCHUETTE. Mr. Speaker, I would like to bring to the attention of my colleagues the plight of Lev Ovsishcher and his wife, Tatiana Ulanovskaya, refuseniks living in Moscow.

Mr. Ovsishcher was born December 14, 1919, in the Vitebsk region of western Russia. Ovsishcher joined the Red Army when he was 20, as an aviation mechanic. In 1941 he attended pilots' school, graduating as a pilot, and then becoming a political organizer. As a member of the Communist Party, he was sent to a special Political Commissars' school and became a Political Commissar in 1942. Lev distinguished himself during World War II. He was credited with making 24 flights over German lines and fought on the Kursk front and at the Battle of Kniev. After the war, he went to the Air Force Academy, and in 1950 was promoted to commander. He retired with the rank of colonel in 1961.

During the Doctor's Trial of 1953, Ovsishcher began to question the fact that the officials were trying to prove that the doctors who had allegations made against them were Jews. He began to study Jewish history and began to understand that Jews are the people who often suffer more than others. He began to think about emigrating to Israel.

Ovsishcher first applied for an exit visa in 1971. This request was denied in January 1972. Since then he has repeatedly been denied permission to leave his native country.

In 1972 he was summoned to court with three other senior officers, who had applied to go to Israel. For 6 months preparations were made for a trial on a charge of anti-Soviet activity. After the intervention of a U.S. Senator, the trial was abandoned. Ovsishcher lost his colonel's rank, being made a private, and was deprived of his colonel's pension.

For 12 years Ovsishcher has waited for a visa. In 1978 his daughter Tanya was allowed to leave for Israel after waiting for a visa for 8 years. In 1984 Ovsishcher married Tatiana Ulanovskaya, also a refusenik who was living in Moscow.

Tatiana Ulanovskaya was born in Moscow, March 11, 1927. In 1950 she received a master's degree in radio engineering, then worked in her field for 30 years. After applying for an exit visa in December 1980 she has not been

allowed to work. Her son, Lev Ulanovskaya, was allowed to emigrate in 1979.

Ovsishcher and his wife have not spoken against the Soviet Government, only requested permission to leave for Israel where they have been granted Israeli citizenship.

Lev and Tatiana are only 2 of at least 400,000 Soviet Jews who have been refused permission to leave their own country. Refusing to allow them to emigrate is in direct violation of international law as expressed in article 13, section 2 of the Universal Declaration of Human Rights which states: "Everyone has the right to leave any country, including his own, and to return to his country."

Because basic human rights are being denied to these Jewish refuseniks, Members of Congress and the American people should continue to support the Call to Conscience Vigil for Soviet Jews.

TRIBUTE TO JAMES BIERY, SR.

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. RITTER. Mr. Speaker, Jim Biery will live on in memory as a gentleman with a great sense of humor. He will be remembered as a man with a zest for life and a willingness to get involved with his community. He'll be remembered as a leader—amongst veterans, sportsmen, conservationists and just plain people. He was my friend and a pioneer in more ways than one.

JAMES BIERY, SR., SPORTSMAN, ACTIVE IN ALLENTOWN FAIR

James S. Biery Sr., 87, of 835 Chew St., Allentown, died Wednesday in Allentown Hospital. He was the husband of Ella I. (Bartholomew) Biery. They observed their 61st wedding anniversary in July.

He was an electrical inspector for the City of Allentown for 20 years, retiring in 1969.

A superintendent in Agricultural Hall at the Allentown Fair for 65 years before retiring in 1984, he developed much of the wiring for the grandstand and major fair buildings, and was in charge of the electrical system for shows for 48 years.

Born in Allentown, he was a son of the late Samuel F. and Rosa E. (Schubert) Biery.

He was a member of Trinity United Church of Christ, Allentown.

An Army veteran of World War I serving in the Medical Corps, he was a past commander of the local World War I Veterans group.

Active in sportsmen's organizations since 1921, he was inducted into the Pennsylvania Federation of Sportsmen's Clubs Hall of Fame in 1974. In 1979 he received citations from the state Senate and House of Representatives and the Pioneer Fish and Game Protective Association for his work in conservation. He received the Allentown Spirit Award in 1983 for his work with senior citizens and fishermen.

Biery was a director of the Lehigh County Federation of Sportsmen's Clubs, an emeritus member of the executive board of the Pioneer Fish and Game Protective Association and was fish committee chairman for the State Federation of Sportsmen's Clubs for five years.

He was a past president of many sportsmen's clubs including Pioneer, Southeast Division of the Federation of Sportsman's Clubs, Lehigh County Federation of Sportsman's Club, and Queen City Sportsman's Association. He was chairman of the Queen City Sportsman's Trout Rearing Committee for the past 36 years, and served 50 years as a Pennsylvania Waterway patrolman.

Surviving with his widow are a son, James S. Jr. of Harrisburg; two daughters, Marilyn L., wife of Chester Gierula of Brookville, Md., and Ann Marie, wife of Donald Eshleman of Kirkwood, N.J.; a brother, Woodrow of Allentown; a sister, Mrs. Eleanor Sage of Northampton; eight grandchildren, and three great-grandchilden.

JOHN CAMPBELL IN AUSTRALIA

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. BEREUTER. Mr. Speaker, the article following was written by John Campbell, a native of Nebraska, who is a member of the staff of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry now enrolled for postgraduate study in agricultural economics at the University of Sydney in Australia.

Mr. Campbell first addresses the concerns recently raised by Australia about the use of the Export Enhancement Program by the United States Government for agricultural exports; second, compares the farm and agricultural export programs of the European Community, Australia, and the United States; and third, assesses the economic and international trade impact of the United States 1985 farm bill.

Among other major points made by Mr. Campbell, he notes that all of the major wheat exporting nations have support schemes for wheat farmers, but the United States is the only one operating a scheme to reduce production and keep supplies off the market. The result of this unilateral supply management, he says, is that America has lost its share of a shrinking market to such countries as Australia and the countries of the European Community. These conditions result not from any impact of the 1985 farm bill—we are now in the harvest season of its first year—but from the U.S. farm policy during the last 6 or more years. During the political season when rash and irrational statements about U.S. agricultural policy are almost the norm, I urge my colleagues to read these relevant excerpts from Mr. Campbell's article printed in the August 6, 1986, edition of the Sydney Morning Herald:

WHEAT: AUST'S FREE RIDE ENDS

(By John Campbell)

The other day I rang Telecom information to get the telephone number of the US Agricultural Attache. The operator, recognising my obvious American accent, said the US could take its agriculture "up on the next space shuttle".

There has always been room for more rational discussion of agricultural problems. The near-panic generated by US Congressional proposals to widen the American export subsidy program to include the Soviet Union and China makes it even more necessary to examine the reasons for this "crisis".

The problem is a combination of three fundamental facts. First, the world does not want to buy in international trade as much wheat as it did only a few years ago. Since the 1980-81 crop year, world wheat trade has been flat or falling and now stands at about 10 percent less than it did six years ago and 13.5 per cent less than it did only two years ago.

Second, production of wheat by exporting countries, on the whole, has not changed. Production in Australia and the EC has been rising over the past five years with offsetting production declines in the US and Argentina.

Third, only one country, the US, has had a deliberate policy of trying to reduce production and hold stocks off the market in an effort to keep prices as high as they were when demand was stronger.

It may seem like common sense that when consumers do not want to buy as much, but producers keep the same amount on the market, prices go down. I have used wheat as the example, but the same could be said of cotton, coarse grains and rice. Why then do farmers insist on various forms of government intervention to shield them from the realities of the market place?

Before the new US farm bill became law, American farmers had a vast network of subsidies all aimed at idling land and keeping stocks off the market so that prices would be kept high. Australian wheat farmers have, until 1984, had a scheme whereby domestic users paid a higher price for wheat than the world market price and taxpayers footed the bill if world market prices were not as high as the guaranteed minimum export price. The Australian wheat scheme only protects export prices and is expected to pay wheat farmers if prices drop because of the US subsidy plan.

European farmers have a system whereby domestic consumers pay a price vastly higher than the world price and all production in excess of domestic needs is dumped on the world market for whatever price it will bring.

Although all of the major wheat exporting nations have support schemes for wheat farmers, only the US is operating a scheme to reduce production and keep supplies off the market. The outcome has been that America has lost its share of a shrinking market while its competitors, including Australia, have gained. American wheat farmers listen grimly to US Department of Agriculture predictions that their wheat exports will fall 44 percent from the 1983-84 crop, the largest year-to-year drop in exports ever recorded. Overall, since the peak export year of 1980-81, American wheat farmers have lost 40 percent of their market share.

Meanwhile, Australian farmers during this period have been happily producing and exporting more and more as if nothing had changed in the world market place. In fact, the Australian Wheat Board recently predicted their third straight record export year on a volume basis. Australia's market share has risen from roughly 11 percent in crop year 1980 to more than 17 percent in crop year 1985—more than a 50-percent increase. The European Community has also increased its market share in the face of falling world demand.

How could this happen? Most of the blame can be laid directly at the doorstep of past US farm policy. The rest can be blamed on exchange rate fluctuations and refusal by the EC to moderate their export dumping policies. As stated earlier, American farm policy has attempted unilaterally to

alter supply and demand conditions. The result: US markets have been taken up (American farmers would say stolen) by Australia and others at just below the US asking price.

The 1983 US payment-in-kind program is a good example. In that year, 32 million hectares were taken out of production—more than one and a half times the entire amount of Australian land in broadacre production. American farmers were compensated for idling this massive amount of land. Combined with a summer drought, production was reduced and prices were increased.

How did US competitors react? As could be expected with higher prices, they increased the area sowed to wheat by 26 million hectares, almost cancelling the impact of the US program.

Enter the new US farm bill. Seeing the error of past American farm policy, Congress moved decisively to reduce the price of American wheat, coarse grains, cotton, and rice, to limit the amount of land taken out of production in a year, and to close loopholes in farm programs which rewarded increased output when a farmer's acreage was reduced. To protect American farmers from bankruptcy because of these sharply lower prices, direct cash subsidies were kept fairly high, but not as high as in the past.

In addition to these direct income subsidies, American farmers were assured they would not be left on their own to fight unfair competition sponsored by foreign governments. The export subsidy program so much in the news today was an effort on the part of Congress to assure hard-pressed farmers that the Government was fighting for them against the European Community and other governments perceived to be predatory competitors.

Despite the possible negative consequences of the export subsidy program or third countries such as Australia, the 1985 farm bill has much to offer in the way of improving the environment for agricultural production and trade.

The 1985 farm bill will force American farmers to face the realities of the market place to a greater degree than has been the case in the past. Over the life of the bill, subsidies are being reduced. It will also end the free ride Australian and other competitors have used to increase their share of the world market at the expense of American farmers and taxpayers. The most efficient farmers and best marketing systems will have a better chance of finishing ahead.

Finally, by dramatically increasing the cost of European farm programs, it may even bring the EC to change its farm policy—something long sought by Australians as well as Americans. * * * American farmers should not demand their markets back in one year after taking six to lose them. And Australian farmers should not mimic American farmers by demanding that their government shield them.

(John Campbell is a member of the staff of the US Senate Committee on Agriculture, Nutrition and Forestry. He is doing postgraduate study in agricultural economics at the University of Sydney.)

CRIME CONTRIBUTES TO POVERTY

HON. MARGE ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mrs. ROUKEMA. Mr. Speaker, although there has been much interest on the complex causes of poverty in this country, little mention has been made about the contribution crime makes to the poverty problem. However, a recent column by William Raspberry sheds light on this issue.

For a long time, Republicans have stressed the need for a greater crackdown on crime. As we all know, serious crime occurs most often in the poorest neighborhoods, disproportionately hurting those who are working to get themselves out of poverty. Mr. Raspberry's column discusses a recent article written by the director of the Justice Department's National Institute of Justice, James K. Stewart.

Mr. Stewart believes that crime in inner-city areas has made it harder for residents of poor neighborhoods to avail themselves of income boosting opportunity, thereby making it harder for them to get out of poverty. It also, he believes, strangles opportunity directly by driving business and jobs out of low-income neighborhoods. Mr. Stewart offers hope by providing four examples of communities which, by getting tough on crime, had a job-producing economic turnaround.

I am pleased to share the text of Mr. Raspberry's column with my colleagues.

WASHINGTON.—In the days when decent people used to worry about the "roots of crime," a lot of us were convinced that one of the chief causes of crime was poverty.

We believed that poverty, because it produced hunger, dehumanizing living conditions, alienation and despair, tended to make people antisocial and predispose them to criminal activity. Poverty, we said, causes crime.

But the director of the Justice Dept.'s National Institute of Justice has turned the idea on its head. Crime, says James K. Stewart, writing in the summer issue of Policy Review, causes poverty. The former Oakland, Calif., police official does not mean merely that crime impoverishes its victims by stealing their goods and cash (and sometimes their health and life), though he does contend that these direct costs of crime hit hardest at the poor who are least able to afford insurance or replace stolen necessities.

"The less-direct costs of crime to the poor may be even more destructive," he argues. "The traditional means by which poor people have advanced themselves—overtime, moonlighting or education to improve furture opportunities—can easily be obstructed by crime and fear. Why risk a late job or night school if the return home means waiting at deserted bus stops and walking past crowds of threatening teen-agers?

"A secretary declines overtime opportunities if they extend into the evening because she fears being robbed between the taxi and her front door. A husband gives up night school rather than leave his wife and young children alone at home."

If crime makes it harder for residents of poor neighborhoods to avail themselves of income-boosting opportunity, it also strangles that opportunity directly, by driving business—and jobs—out of low-income neighborhoods.

"A number of economic features ought to attract capital to revive inner cities," says Stewart. "Most poor neighborhoods are located in or near the center of our cities and therefore should be prime locations for commerce. The inner city usually provides easy access to railheads, highways, water and power, as well as to a ready labor supply. It already has the infrastructure often missing from the suburbs and exurbs."

But to a dismaying extent, the inner city also has crime: Crime that translates into unacceptable losses through theft and burglary for the business owners, crime that makes suppliers and contractors reluctant to come into the area, crime that leads many workers to look for jobs in less-menacing neighborhoods.

What is the solution? Not enterprise zones, which afford relief from taxes and government regulation, but not from crime.

But there is another way. Stewart offers the examples of four communities—East Brooklyn, Oakland, Watts and Portland, Ore.—that managed a job-producing economic turnaround by launching a direct assault on crime.

The East Brooklyn Industrial Park (with city help) knocked down abandoned buildings, installed burglar alarms, trained private security guards and patrols and provided escort services for businesses and residents. Portland undertook a similar effort along its Union Ave. commerical strip.

Clorox, IBM and other tenants of Oakland's Bramalea Corp. spend $300,000 a year for enhanced police security and a program to "curtail incivilities and disorderly behavior." Watts, a high-crime area of south central Los Angeles, has created an oasis of safety in the Martin Luther King, Jr. Shopping Center, an impressive center complete with wrought-iron fence around its perimeter, closed circuit monitoring, private guards and a city police field office.

Obviously, crime isn't the only thing that causes poverty (just as poverty isn't the only cause of the antisocial attitudes that produce crime). There are countless people who, though deprived, are not depraved. And there are scores of communities whose residents, though reasonably law-abiding, remain poor.

I don't think Stewart would argue the matter. His point is not that decent behavior automatically creates businesses and jobs, but that too much crime can destroy business and employment opportunities and make it harder for poor people to break out of their poverty.

"Crime," he says, "is the ultimate tax on enterprise. It must be reduced or eliminated before poor people can fully share in the American dream."

SOVIET POET IRINA RATUSHINSKAYA

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. BILIRAKIS. Mr. Speaker, today marks the fourth anniversary of the arrest of the Russian Christian poet, Irina Ratushinskaya. On this day in 1982, Irina was arrested and

charged with agitation and propaganda. Her crime, like that of so many other Soviet citizens charged with this kind of offense, was no more than refusing to surrender her personal beliefs and talents to the Communist state.

It is hard for an American to understand how writing poetry which reflects her orthodox Christian faith would make Irina a criminal in the eyes of her government. What possible threat could five poems pose to the mighty Soviet state? Yet, we should not be surprised. A society which does not value freedom of individual thought or speech necessarily views any independent expressions of faith as a threat.

Since 1983, Irina has been serving the maximum sentence for her "crime"—7 years of hard labor, to be followed by 5 years of internal exile. Irina is the first woman ever to receive that sentence.

During her imprisonment, she has been allowed to see her husband, Igor Gerashchenko, only once, in August of this year. She has suffered serious head injuries from beatings and was subjected to forced feedings when she undertook hunger strikes to protest prison conditions. She has numerous very serious health problems which she developed in prison for which she is not receiving appropriate medical care.

This summer, Irina was transferred from the strict regime labor camp in Mordavia to the KGB prison in Kiev for a period of "reeducation." Despite efforts to make her incriminate herself, this brave, 33-year-old woman in failing health who has endured so much remains, in the words of a fellow prisoner, "a person of clear and precise intellect, a courageous human rights activist."

Her courage and faith in the face of what must seem like insurmountable odds should serve as an example to us all and inspire us to redouble our own efforts to speak out on behalf of Irina and all her fellow prisoners of conscience. Our voices can make a difference and I encourage all my colleagues to join me in pressuring Soviet officials to release Irina Ratushinskaya.

As a tribute to Irina, I wanted to share with you a poem she wrote while in prison, which speaks volumes of her tremendous faith and courage:

I WILL LIVE AND SURVIVE

I will live and survive and be asked:
How they slammed my head against a trestle,
How I had to freeze at nights,
How my hair started to turn grey . . .
I will smile. And will crack some joke
And brush away the encroaching shadow.
And I will render homage to the dry September
That became my second birth.
And I'll be asked: "Doesn't it hurt you to remember?"
Not being deceived by my outward flippancy.
But the former names will detonate in my memory—
Magnificent as old cannon.
And I will tell of the best people in all the earth,
The most tender, but also the most invincible,
How they said farewell, how they went to be tortured,
How they waited for letters from their loved ones.
And I'll be asked: what helped us to live
When there were neither letters nor any news—only walls,
And the cold of the cell, and the blather of official lies,
And the sickening promises made in exchange for betrayal.
And I will tell of the first beauty
I saw in captivity.
A frost-covered window! No doors, nor walls,
Nor cell-bars, nor the long-endured pain—
Only a blue radiance of a tiny pane of glass,
A cast pattern—none more beautiful could be dreamt!
The more clearly you looked, the more powerfully drawned
Those brigand forests, campfires and birds!
And how many times there was bitter cold weather
And how many windows sparkled after that one—
But never was it repeated,
That upheaval of rainbow ice!
And anyway, what good would it be to me now,
And what would be the pretext of that festival?
Such a gift can only be received once,
And once is probably enough.

(Written in prison camp.)

TRIBUTE TO RUTGERS UNIVERSITY PRESIDENT EDWARD J. BLOUSTEIN

HON. BERNARD J. DWYER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. DWYER of New Jersey. Mr. Speaker, this year marks an especially important one for Rutgers, the State university of New Jersey, and its 17th president, Dr. Edward J. Bloustein, who is marking his 15th year with the university.

During Dr. Bloustein's 15 years as president, Rutgers has grown vastly in size and scope, and his ambitions for Rutgers to become a major university have been crucial in its development.

Many of Rutger's graduate programs are rated at or near the top, and the university now has 25 colleges and schools. Cook College was established in 1973 as a complete multipurpose professional school of agriculture, environmental, and life sciences—one of the first of its kind in the Nation. In 1976, under Dr. Bloustein's leadership, the Mason Gross School of the Arts was created and named in honor or Dr. Bloustein's predecessor who had been active in expanding cultural opportunities in the State. And most recently, Rutgers opened a new undergraduate school of business, a professional school, consolidating and expanding previously separate accounting, management, and marketing departments.

The list of growth and accomplishment goes on and on at Rutgers University campuses throughout the State. Dr. Bloustein's tenure at Rutgers has been distinguished by its sense of purpose, achievement, and planning for the future. He has been a driving force in reorganization and the expansion of the university's educational and cultural exchange programs. He has translated his vision for Rutgers' future into meaningful plans to help the institution continue to flourish into the 21st century. In fact, as a former chairman of the National Association of State Universities and Land Grant Colleges, Dr. Bloustein launched an important project on the future role of State research universities nationwide as we move toward the year 2000.

Dr. Bloustein has been a champion of the partnerships between Federal, State, private, business, and university sources which are so essential to sustained economic growth in New Jersey and nationwide. His personal leadership and dedication helped garner crucial support for New Jersey's jobs, science and technology bond issue in 1984, and helped move Rutgers dramatically into the high-technology era.

Dr. Bloustein serves in a variety of capacities beyond his duties as president of Rutgers. He is currently chairman of the Middle States Association of Colleges and Schools and serves as a member of the conference board. His commitment to teaching also has endured. He teaches a course on philosophy and the law and gladly accepts invitations to serve as a guest lecturer in courses being taught by his faculty colleagues. Dr. Bloustein has published extensively in the fields of freedom of expression, privacy, the first amendment, and public policy on nuclear energy.

Rutgers University has benefited greatly from the inspired leadership of Ed Bloustein. He is a gifted scholar, a dedicated administrator and above all, one of our country's most eloquent and effective advocates for higher education. As he enters his 16th year at the helm of Rutgers, we offer him our deep appreciation, and wish him continued success.

SPEAK OUT FOR PEACE

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. PEPPER. Mr. Speaker, recently, I had the occasion to speak before the International Platform Association here in Washington, DC. At that gathering I had the pleasure of hearing a wonderful and vibrant woman eloquently deliver a poem she had composed. The poem is entitled, "Speak Out For Peace," and its author is Ms. Laurene J. Tibbetts. Ms. Tibbetts has earned great distinction for her fine work. Among other honors, she is the poet laureate for the State of Minnesota and has won the Carl Sandburg Award in Poetry. "Speak Out For Peace" won the award for poetry at the International Platform Association competition and has been selected to be put to music by international composer, Dr. Victor DeLisa. The following is the text of Ms. Tibbetts' award-winning composition:

SPEAK OUT FOR PEACE

When Public Speakers mount the stand,
Their message to convey—
Are they aware how much their role
Toward Global Peace could sway?
More mighty than the sword are words
And forceful they must be.
When pragmatic power politics
Threatens our democracy.

Speak for what can right the wrongs
In voices loud and clear—
The value of plain common sense
Is needed now and here.

There is no winning nuclear war,
No victory to be found,
No people, plants or animals
Would even be around.

Bellicose talk of nuclear war
Heightens mounting tension—
Academies Promoting Peace
Could aid toward war prevention.

America has always stood
For Freedom from all fear—
Our streets may not be paved with gold
But dreams are realized here.

If people can be trained for war
They can be trained for Peace—
If the Golden Rule were followed
Hostilities could cease.

Oh, I know this sounds simplistic,
Hostilities run deep—
When there are terrorists at large,
More hatred do they reap.

Violence begets violence,
And has, since Time began;
Is there not one among us
To promote a Peaceful Plan?

We seek not a Utopia,
We ask only that there be
A chance to live life fully
In Peace and dignity.

Five major Nations, it is said,
Are in the nuclear race—
But they have people, same as we,
Frightened by the nuclear pace.

Confidence, is being prepared,
Yet, we must strive for Peace,
If Public Speakers would speak out
would not mounting tensions cease?

Belief in God, and in God's laws
Helped to build our Nation.
Our Faith, our Freedom, and our dreams
Reflect our firm foundation.

There was a time when it was thought
Some wars were justified,
But seeking Peace for all mankind
Through love, should be our guide.

More mighty than the sword are words—
So, speak for Liberty.
Speak out for Peace to save mankind—
Seek justice and equality.

There is no winning nuclear war,
No victory to be found,
No people, plants or animals
Would even be around.

When Public Speakers take their stand,
There message to convey,
May they know their every word
Toward Global Peace could sway!

CIGARETTE TAX INCREASES

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. DUNCAN. Mr. Speaker, in view of the fact that the Committee on Ways and Means is presently grappling with raising revenues under the reconciliation process, I commend this letter for consideration. Mr. David Wilhelm, the executive director for Citizens for Tax Justice outlines precisely the reasons why Federal cigarette excise taxes should not be increased.

CITIZENS FOR TAX JUSTICE,
Washington, DC, September 13, 1986.

DEAR WAYS AND MEANS COMMITTEE MEMBER: I am writing today to urge you to vote against a proposal to raise the federal cigarette tax as a vehicle to meet revenue targets of the FY 1987 budget resolution.

The principle of fairness—the idea that profitable corporations and wealthy individuals should bear their fair share of the federal tax burden—has been the driving force behind the campaign for federal tax reform.

The federal tax on cigarettes, like all taxes based on consumption, flies in the face of the principle of fairness. It hits hardest those people who are least able to pay—the poor, minorities, and the elderly.

The data on this point, compiled from the Bureau of Labor Statistics' most recent Consumer Expenditure Survey, are compelling:

"As a share of household income, the federal cigarette tax burden is 6 times greater for households in the bottom 20% than for the households in the top 20%.

"As a share of total income, households headed by persons 65 or older pay 2½ times the amount of cigarette taxes than the richest 20% of all households pay.

"As a share of total income, households with a single parent and at least one child under the age of eighteen pay three times the amount of cigarette taxes than the richest 20% of all households pay."

The federal deficit is a problem that demands swift corrective action. But no one could possibly argue that the cause of the deficit can be traced to reduced taxes on the poor! Indeed, the past few years have seen both skyrocketing deficits and skyrocketing taxes on the poor. The solution to the deficit must be found elsewhere—in the resurrection and continued application of the principle of fairness.

This year's tax reform bill gives some long overdue relief to those families that were being taxed into poverty—or deeper into poverty—under our current system. Now is the time to raise the type of tax that would offset this badly needed relief.

We urge you to reject the proposal to raise federal cigarette taxes. Thank you for consideration of our views.

Sincerely,

DAVID WILHELM,
Executive Director.

RETIREMENT OF FRANK GUS TSUTRAS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. SKELTON. Mr. Speaker, I would like to take this time to announce to my colleagues the retirement of an outstanding public servant, Frank Gus Tsutras, who recently stepped down as the executive director of the Congressional Rural Caucus.

Mr. Tsutras is retiring after 26 years of active involvement in governmental and nongovernmental affairs, including 22 years as a professional staff member in the U.S. House of Representatives. For 13 of these 22 years, he served as the director of the Congressional Rural Caucus, an official legislative service organization of approximately 100 bipartisan Members of Congress concerned with the growth and development of rural America.

I would like to compliment Frank Tsutras on his longtime support and devotion to rural America through his active participation in and leadership of the Congressional Rural Caucus. He has contributed his time, effort, and energy to the welfare of America's heartland. I would like to further recognize his service to all the members of the Rural Caucus.

Mr. Speaker, I feel certain that our colleagues join me in praising this dedicated American for his many years of service to rural America, and in wishing Frank Tsutras, his wife Helen, and their son Dean all the best in the many years to come.

THE BERETTA VOTE

HON. MARJORIE S. HOLT

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mrs. HOLT. Mr. Speaker, The recent decision by the House Appropriations Committee to cancel the Army's contract with Beretta USA for 9mm automatic pistols was a gross display of pork lust by a couple of senior Congressmen.

The Beretta 9mm pistol won the contract after extensive tests by the Army. The Smith & Wesson Co. of Massachusetts lost in fair competition conducted by the Army to choose the most reliable weapon. An effort is not being made to grab the contract by political devices that have no relevance to merit.

I would remind the House that Beretta would manufacture the guns in the United States at the plant in Maryland. The contract with Beretta means jobs for Americans, although the parent company of Beretta USA is a distingushed Italian firm noted for quality firearms.

I submit for the RECORD an article in Defense News quoting Gen. Bernard A. Rogers, Supreme Allied Commander of NATO, expressing the confusion and dismay of our European allies concerning the Beretta vote of the Appropriations Committee.

[From the Defense News, Sept. 8, 1986]

ROGERS: HOUSE ACTION ON BERETTA PISTOL CONTRACT AN EXAMPLE OF MIXED SIGNALS

(By David Fulghum)

WASHINGTON.—The United States' senior officer in Europe says the House Appropriations Committee erred when it recommended that the Army's $75 million contract for Beretta 9mm pistols be cancelled and competition for a standard U.S. military handgun be reopened.

Speaking with Pentagon reporters on Aug. 29, Gen. Bernard A. Rogers, Supreme Allied Commander Europe, said "I think it's wrong for parochial interests within the Congress to have sufficient influence to have the Congress try to overturn the procedures which they certainly have been insisting the Defense Department establish in the past years."

Rogers was referring to the efforts of Congress over the years to push the military into replacing the 30-odd types of revolvers and automatic pistols and 100 kinds of ammunition used by the military with a single 9mm handgun compatible with similar NATO weapons. To that end, the Army selected and is buying the Beretta pistol.

However, he said, the House committee action jeopardized these U.S. efforts to end duplication within NATO in the purchase of arms.

As a result of the committee recommendation, NATO allies "don't know what's going on and I can't blame them," the general said.

Among some experts there is agreement with Rogers that Congress is giving out confusing and sometimes contradictory directives on international arms purchases.

"There was always an understanding that purchase of military equipment should be a two-way street in NATO, but for years it has been one-way in America's direction," said Dr. Edward Ezell, a small-arms authority and curator of the Smithsonian Institution's Division of Armed Forces History.

Therefore, last year the Reagan administration cited the Beretta contract as an example of its efforts to ease the imbalance in the arms trade between United States and its allies.

But while there is federal legislation to at least "give military products of our NATO allies a fair shake" when awarding contracts, at the same time there is other legislation to "buy American," said Ezell. Such mixed signals put the Army and other services in an awkward situation.

"From where I sit, I think the proper procedures were followed by the Army to make a decision, procedures that had been established by the Defense Department," said Rogers. "And under those procedures, the Army property let the contract to Beretta."

On Aug. 14, the House Appropriations Committee voted 24-12 to cancel the five-year, 315,939-pistol contract with Beretta USA Corp. and reopen the competition. Leaders of the assault on the Army's choice of pistol were U.S. Reps. Edward Boland, D-Mass., and Silvio Conte, R-Mass., whose constituents include the 2,000 workers at the Smith & Wesson Division of Lear Siegler Inc. in Springfield, Mass. Smith & Wesson was among the firms that had sought the military handgun contract awarded to Beretta in April 1985.

It was this decision that prompted Rogers' comments.

A Smith & Wesson executive asked how any decision could be more political or more parochial than the one awarding the contract to an Italian firm.

"The Secretary of Defense [Caspar Weinberger] personally called the defense minister of another country [Giovanni Spadolini of Italy] to announce it," said Robert Haas, Smith & Wesson's senior vice president for marketing. "If that isn't parochial, I don't know what is."

Haas and other Smith & Wesson officials believe their company was unfairly eliminated from the competition that Beretta won. They say results of the competition were incorrectly analyzed, but officials of Beretta and the Army contend the fairness of the tests was upheld when the courts rejected two legal challenges by Smith & Wesson.

"That's where the confusion comes from," said Haas. "The judges did not say the tests were correct, he only said the Army's evaluation was not irrational. But that is not a ringing vote of confidence."

Haas says Rogers' statement is entirely consistent with a Department of Defense bias toward the Italian-manufactured handgun.

"I sympathize with the problem he is going to have explaining this to his NATO allies, but I assure you he would have more problems explaining it to unemployed workers in Springfield, Mass.," Haas said.

"We've also noted that Defense Minister Spadolini has taken the position that he intends to fight our Congress in their appropriation of defense funds," he said. "If a U.S. official said such a thing about another country's defense budget, we would immediately hear statements about outrageous interference in someone else's domestic affairs.

Ezell said the controversy points out the complexity of U.S. defense policies. The House committees that recommended cancellation of the Beretta contract and the Army, which chose the Beretta pistol, are going at the problem "from different starting points so that what is reasonable to the Army is unreasonable to the House," he said.

"The Europeans buy high-ticket items from the United States and they can't understand why we can't buy some low-ticket arms from them in a token acknowledgement that this is a two-way street", Ezell said.

This lack of a quid pro quo has bedeviled the alliance since the formation of NATO in 1949 and has resulted in extremely slow progress toward standardizing the equipment, arms and ammunition of the participating nations.

HONORING THE 25TH ANNIVERSARY OF ST. JOSAPHAT'S UKRAINIAN CHURCH

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. HERTEL of Michigan. Mr. Speaker, I rise today in honor of the 25th anniversary of St. Josaphat's Ukrainian church.

In 1961, Bishop Joseph M. Schmondiuk recognized an increasing need for spiritual guidance in the growing city of Warren, MI. In response to that need, he founded St. Josaphat's and appointed its first pastor. Today, St. Josaphat's is the cornerstone of the community. It is now surrounded by the new rectory, the new Ukrainian Cultural Center, a senior citizens' home and a community bank.

While the parish is large, serving 630 families in two counties, it is a close knit and supportive congregation. St. Josaphat's provides excellent guidance for its youth and works to preserve the rich Ukrainian heritage for young and old alike. The parish is presently involved in the special Harvard project which will ultimately prove the original baptism of the Ukrainian Church 1,000 years ago, a heritage to be proud of.

Past high points of St. Josaphat's have included the building of a new rectory, a visit by the President, and the acquisition, with another church, of a school for their children. In addition, the church is looking forward to a visit by His Excellency Bishop Innocent Lotocky, OSBM, in honor of St. Josaphat's silver jubilee celebration.

The present pastor, Father Constantine Wysochanski, OSBM, has been at St. Josaphat's for 10 years. He exemplifies the generous and giving spirit of the entire church. He and his parishioners "welcome tomorrow and the challenges tomorrow is certain to bring."

I ask my colleagues to join me in honoring St. Josaphat's Ukrainian Church. It has endured and grown for 25 years and will certainly continue to prosper for the next 25 years and beyond.

THE DRUG BILL IN RETROSPECT

HON. LES AuCOIN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. AuCOIN. Mr. Speaker, I was an original cosponsor of the Omnibus Drug Enforcement, Education, and Control Act of 1986, and a cosponsor of many of the individual bills which were combined to form the core of this bill. But I voted for its final passage with grave concerns over some provisions adopted on the floor.

As reported by 12 different House committees last month, the original version of this bill was a tough, well thought-out attack on drugs. It was crafted with Democrats and Republicans working together to achieve these common goals: stop the flow of drugs into this country, educate our young to the dangers of drug abuse, impose tough mandatory sentences on drug dealers, and assist local law enforcement officials in their front-line battle against drugs. Those were the goals, and they were admirably met in the original version of this bill.

It is unfortunate, however, that in the rush to pass this legislation Members in several instances lost sight of these basic goals. In the rush to appear "tough" on drugs, this body approved several amendments of questionable constitutionality, amendments which run roughshod over certain civil liberties, and adopted an amendment which would divert the Armed Forces from their mission of defense to that of policemen.

These amendments were very serious proposals, not to be taken lightly, or passed with only 10 minutes of debate. I opposed many of them and hope they will be deleted from the bill by the Senate or in the House/Senate Conference Committee.

It is in this hope that I voted in favor of this bill; any other vote would have eliminated all hope of passing a tough omnibus drug bill this year. But I am discouraged with what I saw take place on the floor of the House during consideration of this bill.

BEREA'S SESQUICENTENNIAL BIRTHDAY

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Ms. OAKAR. Mr. Speaker, on September 21, Berea, OH, which I am privileged to represent in the U.S. Congress, will be celebrating its 150th birthday. I invite my colleagues to join me in congratulating them on their sesquicentennial.

Berea is a picturesque town, located about 10 miles southwest of downtown Cleveland, and is adjacent to the Rocky River. Family owned shops and over 100 clubs and organizations bind the town together with traditional American values and a lively community spirit. It is also an economically integrated community and the home of Baldwin-Wallace College, a highly respected institution.

Berea was first settled in 1809 by Jared Hickox who migrated there from England. In 1836, the residents of the settlement came together to name their village. Two biblical place names were suggested—Berea and Tabor. To settle the issue, a coin was tossed, and the village was named Berea.

In 1842 a sandstone vein was discovered by John Baldwin, and soon thereafter Berea became known as the "Grindstone Capital of the World." The Berea building stone was shipped throughout the world to build such famous houses as the Palmer House in Chicago and the Parliament building in Canada. The emergence of Cleveland as a large market for farm products, the development of the quarrying industry, and the construction of the Cleveland-Columbus Railroad provided the real roots for Berea's growth. In 1946 the quarry industry ended, and the quarries were turned into beautify parks and lakes for future generations to enjoy.

The village government was established in 1850 with John Baldwin as its first mayor. The village's first newspaper, the Advertiser, was founded in 1868. In March 1883 the Berea Library Association was organized and a village high school was opened. The merge of Baldwin and German Wallace Colleges in 1913 and the growth of the new Baldwin-Wallace College added to the quality of life of Berea.

Presently, Berea is the home of 40 light industrial plants, although the city is not industrial by nature. Some of the notable attractions of the area are the Cuyahoga County Fairgrounds, site of the largest county fair in the State, Baldwin-Wallace College, and the Metropolitan Park district with its recreational facilities that run through the center of the city.

To celebrate its birthday, Berea has scheduled a number of special events during the weekend of September 27. On Friday, September 26, Berea High School will feature special half-time ceremonies. The historic Berea trolley tours will be given on Saturday, and a flower show will be on display at the Baldwin-Wallace College Art and Drama Center. In addition, there will be an antique auto exhibit at the Baldwin-Wallace Lang Hall.

The highlight of the celebration will be the reenactment of the historic coin toss and the sesquicentennial parade. Floats, marching bands, and civic groups will be featured with parade units being judged by a panel from the All American Judges Association.

On Sunday the Cleveland metro parks will feature crafts, displays and demonstrations from the pioneer period at its Frostville Museum and the Rocky River Nature Center. The weekend will be capped by an Ecumenical Choirfest at the high school sponsored by Berea churches.

Berea has much to be proud of, and I salute them for their achievements over 150 years and offer them my congratulations. I hope that the next 150 years will be as successful as Berea's first 150 years.

THE 25TH ANNIVERSARY OF THE PEACE CORPS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. SKELTON. Mr. Speaker, I rise today to honor an organization that not only serves our Nation, but the entire world. I am speaking of the Peace Corps, which is commemorating its 25th year of service.

The Peace Corps has maintained the ideals of world peace through education, work, and service to others. It has taken our knowledge to all corners of the Earth and returned home to enrich our country with the culture of the diverse world around us. These volunteers have strived to overcome economic, cultural, and language barriers to serve in the ultimate goal, peace.

It is an honor to bring this outstanding organization to the attention of my colleagues in the U.S. House of Representatives. I ask that the Members of this body join me in saluting the Peace Corps.

CONSUMER RESPONSE TO LOWER CREDIT CARD INTEREST RATES

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. SCHUMER. Mr. Speaker, about 2 weeks ago a mid-sized bank in Buffalo, New York, the Key Bank of western New York, announced that it was lowering its credit card interest rate to 9.9 percent. The bank figured it would get a healthy response from consumers, but the avalanche of applications it received exceeded all expectations. The bank received 20,000 applications in only 3 days. The response was so strong that the bank decided it could not handle them all, and has decided to accept applications only from people within the bank's local operating region.

Consumers' response was only logical. Despite the fact that the cost of money used to fund credit cards has plunged dramatically in recent years, the average credit card interest rate is still 18.3 percent, and has hardly budged since its peak in the early 1980's.

In a competitive market, such rates could not be sustained. But the market for credit cards is not competitive. One of the major reasons for this is that card issuers are not disclosing enough information about their cards. In a survey by the Bank Credit Card Observer, a credit card newsletter, over 60 percent of those surveyed believed that banks could reveal a great deal more about the financial obligations of credit cards. In another survey, 95 credit card applications were examined, and less than half even mentioned interest rates, not to mention the other important credit card charges. The conclusion? Comparison shopping for credit cards is extremely difficult, if not impossible.

Before the recess, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance approved an amendment I offered with Mr. ROTH of Wisconsin, based on H.R. 4197, the Full Credit Card Disclosure Act, which would require financial institutions which offer credit cards to disclose the rate, annual fee, grace period, and other important information in any pre-approved solicitation or application for a credit card.

I am hopeful that this legislation can be considered by the full House before we adjourn, and would urge my colleagues to cosponsor our legislation, and to support credit card disclosure when it is considered on the floor of the House.

Key Bank is not the only bank to lower its credit card interest rates. The combined pressure from consumers, national and State legislators, and media attention has begun to crack the market. A few other banks have cut their rates and have been similarly rewarded by a rush of new applicants. But if Congress enacts disclosure legislation, it could break the market wide open, and these banks will have lots of company. Disclosure could trigger a wave of competition, with many more 9.9 percent cards on the market. The winner in this competition will be the consumer, who at last will be getting a fair deal from credit card issuers.

The text of the article follows:

[Newsday, Sept. 10, 1986]

BUFFALO BANK CURTAILS APPLICATIONS FOR CARD

(By Al Gordon)

A Buffalo bank expected its bargain-basement credit-card rates would get a big reception, but it wasn't sure how big. Now it knows: Demand is so great the bank is shutting off applications from consumers outside its upstate region.

A week ago, Key Bank of Western New York introduced Visa and MasterCards with a 9.9 percent annual interest rate, one of the lowest in the country. The cards have a $25 annual fee but, in contrast to other low-rate cards, still have a 25-day grace period to repay purchases without interest charges. Key Bank, a subsidary of Albany-based KeyCorp, had not previously offered Visa or MasterCards.

Ellen Conboy, a Key Bank marketing assistant vice president, said yesterday that in the first three days the cards were offered, the bank received 20,000 applications. It was expecting to issue only about 40,000 or 50,000 cards altogether. "We can't handle the volume," she said.

She said the bank had received numerous applications and telephone inquiries from people outside its upstate region who had heard about the card. Key Bank did not market the card outside the Buffalo-Rochester area. "We were all sort of hoping it would go great guns," Conboy said, but the bank didn't think it would have to limit applications.

The bank will accept applications from people outside its area who already have accounts. Conboy also said the limit wasn't permanent, but she did not know when such applications would be accepted again.

In another development, Empire of America Federal Savings Bank, also based in Buffalo, entered the lowered-rate credit-card

sweepstakes yesterday with a 13.75-rate card it is calling Visa Lite.

Joseph N. Pastwik, senior vice president, said consumer demand and competitive pressures, led it to offer the new card, which has no grace period and is intended for consumers who plan to make time payments. Payments may be stretched out as long as 48 months; there is an $18 annual fee.

The card will be marketed in New York, Michigan, Florida, Texas and Southern California, but Pastwick said applications will be accepted from anywhere. The bank hopes to issue 100,000 of the cards.

WE NEED TO STOP SHIFTING FEDERAL BUDGET BURDENS TO THE STATES THROUGH UNFUNDED MANDATES

HON. DOUG BARNARD, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. BARNARD. Mr. Speaker, today I introduce legislation aimed at preventing an existing problem with Congress from becoming much worse. That problem is the growing tendency to circumvent budgetary controls on new Federal domestic spending by enacting national policy mandates and then requiring State and local governments to pick up the tab.

This tendency is not associated with any one political party or any particular ideological persuasion. Conservatives sometimes support imposing mandates on States and localities as a roundabout way to return domestic responsibilities from Washington. Liberals on occasion see unfunded mandates as the only available avenue for pursuing desirable social objectives. Both in Congress and within the administration, such efforts are often rationalized by comparison of the Federal budget deficit to the relatively sound fiscal condition of States and localities. Of course, virtually all State and local governments are required by constitution or statute to approve and maintain balanced budgets, and it hardly seems fair to penalize them for succeeding where we have so far failed.

The legislation I introduce today would not flatly prohibit the imposition of new costs on State and local governments, but it would ensure that such actions are not taken without due analysis and debate of the consequences. How many Members were aware that our fiscal year 1986 budget reconciliation bill imposed massive new costs on our constituents back home through mandatory extension of Medicare coverage to new State and local employees? This initiative and many others of the same nature may well be sound Federal policy. My point is that it is fiscally irresponsible to impose such new costs without careful analysis, and a guaranteed opportunity to assess and debate the impact on our constituents as State and local taxpayers.

This bill will address both objectives through two simple amendments to the Congressional Budget Act of 1974. The first section creates a point of order, waivable through the normal procedures of each Chamber, against any legislation imposing a new obligation on State and local governments costing on a national basis more than $50 million per year. Sequestrations under the Gramm-Rudman-Hollings legislation are specifically exempted from this point of order. The second section beefs up the existing requirement, honored primarily in the breach, that the House and Senate Budget Committees conduct detailed analysis accompanying the budget resolution report of the impact of budgetary decisions on State and local governments. In combination, these two provisions would help guarantee that massive new costs for our constitutents would no longer be adopted unintentionally or negligently, buried in the fine print of some fast-moving bill.

Some Members may object that this bill adds yet another procedural requirement to an already overburdened congressional budget process. I would respond that the fundamental purpose of the budget process is endangered if we fail to recognize efforts to shift costs back to our constituents in the guise of reducing or containing Federal spending. As a former Governor of my State, George Busbee, used to say when he was chairman of the National Governors' Association, "you can't save a buck by passing the buck." Imposing Federal costs on States and localities clearly violates the spirit of the Congressional Budget Act, and this bill would simply place the most minimal safeguards into the letter of the Act.

I want to make a special appeal to those Members who have over the years supported termination or reduction in the General Revenue Sharing Program for States and localities. As you know, revenue sharing for the States was eliminated back in 1980, and payments to cities and counties may well end on October 1. In my opinion, the best argument for revenue sharing has been that it provides some assistance in offsetting the cost of unfunded Federal mandates, in areas ranging from environmental protection to wage rates on Federal projects. If our position is that we no longer can afford to help pay for existing unfunded obligations, then I think the least we can do is make some effort to ensure that major new obligations are not imposed on States and localities without some compelling national need. Otherwise, Governors, State legislators, and city and county officials, not to mention our constituents, may justifiably conclude that we are indifferent to our entire system of federalism.

This bill is strongly supported by the bipartisan National Governors' Association and National Conference of State Legislatures. It would become effective in January, for the Congress.

I urge Members from both parties to offer immediate support for this legislation, symbolizing a bipartisan commitment to adopt a fresh and honest approach with State and local officials, without whom all our efforts toward fiscal responsibility will come to naught.

TRIBUTE TO IRA B. COLDREN, JR.

HON. AUSTIN J. MURPHY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. MURPHY. Mr. Speaker, on the evening of September 23, the Uniontown, PA, Rotary Club will honor Attorney Ira B. Coldren, Jr. who was recently elected president of the Pennsylvania Bar Association. Mr. Coldren is the first Fayette Countian to attain that honor, having been recognized by his peers for his long tenure of service to the bar association and to the legal community as well.

After graduating from the U.S. Military Academy at West Point in 1945, Mr. Coldren was commissioned a 2d lieutenant in the Regular Army and served as an infantry officer in Germany and Austria from 1945 to 1948. He was an instructor at the Ground General School at Fort Riley, KS from 1948 to 1949.

In 1949, Mr. Coldren began the study of law at the University of Pennsylvania Law School, graduating cum laude in 1952. He began his legal career and continued his Army career at the same time by serving as a captain in the Judge Advocate General's Corps in the Department of the Army Headquarters in Washington, DC. He served in Korea for 16 months as Staff Judge Advocate of the Seventh Major Port, Pusan, Korea. Ira subsequently taught at the Judge Advocate General's School in Charlottesville, VA, in 1955 and 1956. Mr. Coldren resigned from the Regular Army in 1956 but continued to serve his country through the Reserves, retiring from the U.S. Army Reserve as lieutenant colonel in 1968.

Ira Coldren entered the private practice of law in Uniontown, PA, in 1956. He is presently the senior member of the nine-lawyer firm known as Coldren, DeHaas, and Radcliffe. Ira took time out from his law practice to receive a masters of laws degree in estate planning from the University of Miami Law School in May 1982.

During his career, Ira has always found time to take an active role in professional organizations and community activities. On the local level, Ira has served as director and as a committee chairman of the Fayette County Bar Association; and as its president in 1983. At the State level, he rose from director, to treasurer, to secretary, to vice president and finally to president of the Pennsylvania Bar Institute. Mr. Coldren has been a member of the American Bar Association since 1952, a member of the American Judicature Society since 1960 and a member of the International Association of Insurance Counsel since 1970. He was named a fellow at the American Bar Association in 1982 and at the American College of Probate Counsel in 1983.

Beginning in 1976, Ira was elected to the house of delegates of the Pennsylvania Bar Association. In 1979 he began service on the board of governors, in 1985 he served as vice president of the Pennsylvania Bar and just recently was selected as its president.

I join with Ira Coldren's many friends in recognizing his contributions and achievements in

the legal community. He is truly worthy of this special tribute.

THE PLIGHT OF IRINA RATUSHINSKAYA

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. LANTOS. Mr. Speaker, today is the anniversary of an event which illustrates one of the ugliest sides of mankind. The arrest and imprisonment of Irina Ratushinskaya 4 years ago today is a testament to what man is able to do to his fellow man; an example of the cruelty and inhumanity to which some people are subject. On September 17, 1982, a beautiful young Russian Orthodox poet was arrested and charged with "anti-Soviet agitation and propoganda." When sentenced in 1983, Irina Ratushinskaya became the first woman ever to receive the maximum sentence of 12 years—7 years in a Soviet labor camp and 5 additional years of internal exile. Since then, she has been beaten and abused in the many prisons and labor camps to which she has been transported.

Physically, Ms. Ratushinskaya is not well. Recently, as she was being transported between prisons, her head was thrust against metal bars in the rear of the transport bus. She was allowed to see a doctor and was diagnosed as having suffered a severe concussion. But when she was placed in her new cell, she was subjected to a horrendous new round of beatings by four male KGB agents and prison wardens. She has a critical heart condition which recently seems to have deteriorated further. Her husband, who was allowed to visit Irina last month for the first time since her conviction, reported that she said that she had experienced chest pains of such intensity in the past few months that she had lost consciousness on a number of occasions. All of this, in a woman only 33 years old.

Her mistreatment in prison is an outrage and we, as concerned Members of Congress and as responsible citizens of the world, must voice our indignation. It is my hope that the Soviet Government will live up to the commitments it made at Helsinki and in the United Nations, to the people of their own country and to the people of the world, to respect the fundamental human rights of all people. We must call on them to act in good faith and to release the scores of prisoners of conscience currently being held for no other reason than their attempts at self-expression.

Irina Ratushinskaya's only crime was to express what was in her heart. As a devout Russian Orthodox, she has written religious poetry dedicated to her struggle to maintain her belief in God, and as a responsible human being she has written about her struggle to maintain her belief in the benevolent spirit of man. I would like to insert into the RECORD, a poem written by Miss Ratushinskaya on November 12, 1983, and dedicated to two of her fellow prisoners, "To Tanya and Vanya (Osipova and Kovalyov)."

I will travel through the land—
With my retinue of guards,
I will study the eyes of human suffering,
I will see what no one has seen—
But will I be able to describe it?
Will I cry how are we able to do this—
Walk on partings as on water?
How we begin to look like our husbands—
Our eyes, foreheads, the corners of our mouths.
How we remember them—down to each last vein of their skins—
The who have been wrenched away from us for years,
How we write to them: 'Never mind,
You and I are one and the same,
Can't be taken apart!'
And, fettered to the ground,
'Forever' sounds in answer—
That most ancient of words,
Behind which, without shadow, is the light.
I will tramp out my deportation,
And I will remember everything—
By heart!—They won't be able to take it from me!—
How we breathe—
Each breath outside the law!
What we live by—
Until the morrow.

Such words inspire us to continue the fight against human rights violations wherever they may occur. Irina Ratushinskaya is an example to us all. Through her suffering she remains strong—and today her friends in the United States must stand with her.

A TRIBUTE TO JUDGE BILL GUNTER, A MAN OF MANY TALENTS

HON. ED JENKINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. JENKINS. Mr. Speaker, recorded in the 25th chapter of St. Matthew is Jesus's parable on the talents. He used the parable to teach the disciples about what they should be doing until he returned a second time.

When I heard of William Barrett (Bill) Gunter's death and recalled some highlights of his life, I thought about how Judge Gunter compared to the servant who received five talents from his master while the master was out of the country. The servant doubled the holdings the master had entrusted to him, as did the servant who received two talents. But the servant to whom the master gave one talent hid the money in a hole in the ground.

Bill Gunter received many talents, and by the time he died a month ago tomorrow, he had multiplied those talents many times over.

From Commerce, GA, Gunter graduated from the McCallie School in Chattanooga, TN, then in 1940 cum laude and Phi Beta Kappa from the University of Georgia, and the university's law school in 1942. For his military service in the European Theatre in World War II, he received the Silver Star and the Bronze Star.

He practiced law in Georgia for more than 30 years, served as Hall County's Representative in the Georgia General Assembly for 6 years, leading the efforts to desegregate public schools and to abolish the county unit system for electing State officials, and served as Gainesville's city attorney for 14 years during which he designed a reorganization plan which saved the city from the threat of bankruptcy.

During his 5 years on the Georgia Supreme Court bench, his carefully constructed dissenting opinions later often had the force of law.

Politically, Gunter used his talents as a member of the National Democratic Committee, to convince his friend Jimmy Carter to first run for the governorship of Georgia and later to advise him during his years in the Governor's office and in the White House, and to advise three other Georgia Governors during their terms. After Judge Gunter had returned to private practice in Atlanta, President Carter called him as a special assistant to resolve a dispute among New England Indian tribes.

Advisor and counselor describes more than Bill Gunter's political life and his career as a jurist. His lifelong commitment to theological studies earned him not only a place among the leaders of his church as an elder in the Presbyterian Church, but the respect of a teacher and counselor who shared his faith with others.

The evidence of Bill Gunter's use of his talents was reflected in the wide array of politicians, attorneys, judges, and theologians who came to pay tribute to his life in a thanksgiving service.

As the servants who multiplied the talents of their master, so had Bill Gunter multiplied those entrusted to him for 67 years. As Jesus told the parable in the 25th chapter of Matthew, when the master returned he told the two servants who had multiplied the talents he had left with them, "Well done, good and faithful servant; thou hast been faithful over a few things, I will make thee ruler over many things: enter thou into the joy of the Lord."

IN HONOR OF MAYOR STANLEY "SKEETER" SHIELDS

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. DUNCAN. Mr. Speaker, Mayor "Skeeter" Shields is being honored by citizens in Maryville, TN, not for his fine work as mayor of that city, but for his longstanding association with the Maryville High School football team. He is the public announcer for the games. The football field will be named the "Shields Field" in honor of his 38 years of service to the school.

I congratulate Skeeter on his faithful service to the team. This Daily Times article provides a good account of his performance and service.

SHIELDS HAS BEEN REBELS' "GUIDING" VOICE SINCE 1948

(By Gary Turner, sport editor)

"Run it, Archie!"

The voice carries above the roar of the crowd as Maryville High wingback Archie Anderson rolls to his right, holding a football in the hand of his cocked right arm.

It's 1961, and Anderson, a senior for the Rebels' football team, is in a dilemma. Maryville is opening the season at home against arch-rival Lenoir City. Anderson is a

wingback in Maryville's single-wing offense. He's carrying out a play called the left reverse pass. He's looking for the Maryville tight end, who's supposed to be in the end zone. However, all he sees is a wide-open field ahead.

"Lenoir City's disappeared," Anderson says. "But, like the well-coached player I am, I'm still gonna throw the pass."

"Run it! Run it!" rings out through the stadium again.

This time, Anderson takes off.

"I've started about the 10-yard line, and I think I get down right next to the goal," he explains. "I've waited too long, though. By the time I get started, Lenoir City's recovered a little. If I listen and run earlier, I've scored. But we score anyway, and go on and beat 'em."

It's not the first time voices from above have talked to Maryville High football players on the field. It's not the last, either. It's just the only time anybody remembers that the voice has had any affect on the game's outcome.

The voice belongs to Stanley B. "Skeeter" Shields, mayor of Maryville and the school's public address announcer for the past 38 football seasons.

In those, 38 years, he's aged from 32 to 70. The hair's turned from brown to silver. But don't expect to see an old man when you find Skeeter Shields. Racquetball and hundreds of trips up and down the bleachers of the Maryville High Stadium, have given him the body and vitality of a man 25 years younger.

And the eyes and mouth still team up for a glow-in-the-dark smile, especially when he talks about his beloved Maryville Rebels.

Other than a gray cowboy hat with a Rebel flag on the front and the title of mayor (he's worn both nearly 20 years), you imagine there's little difference in the "Skeeter" Shields of 1948 and the 1986 version.

In a recent interview, Shields recalled how he began his career with the microphone.

"I was broadcasting football games for WGAP, when Jim Renfro (the Maryville coach at the time) asked me to take over the P.A. system," Shields recalled in a recent interview.

Shields soon learned that his broadcasting skills didn't necessarily help him when it came to keeping a high school football crowd informed about a game.

"You've got a blind audience (on radio) you're trying to describe the play to, and here I am doing it (game description) over the P.A.," he remembered.

In addition to normal "First and 10 at the Maryville 10," Shields' press box calls were filled with "It's a pass!" "Watch out for the reverse!" and "The quarterback has the ball!"

Shields said one player, a defensive back, would tell him "I wait to hear you call the play, before I make a move."

Maryville players may have appreciated the help, but opposing coaches sometimes didn't take too kindly to the voice from above.

"One coach, man he just got so teed off at me for calling out what was going on in their backfield," Shields remembered. "That was in the beginning, and I couldn't blame him really."

But, Shields couldn't help it.

A former player at Walland and Maryville high schools and Maryville College, his knowledge of the game and the area coaches spilled over when the game was on the line.

"Each coach did basically the same thing, year in and year out. You'd know just about what was going to happen at the start of every play," Shields explained.

Former Maryville coach Ted Wilson, who led the Rebels from 1965 until 1980, laughed as he recalled being stopped by the opposing head coach as he walked off the field after a game one night.

"He was hot," Wilson said of his counterpart. "He said, 'You need to do something about that P.A. guy.' I asked him, 'What would you do if your P.A. was the mayor of your town?' He said, 'I'd do just like you and let him call it.' "

For the most part, it seems Shields has generated little ill will with his announcing style.

"I've always had a real good relationship with the fans," he said. "I'd talk to 'em a lot, especially when we were in the old press box. You were closer to 'em, right in amongst 'em really."

It may be that the fan in Shields is what helps people accept and enjoy his style.

Bob Navratil, who has helped Shields in his other P.A. job, at Maryville College football games, said, "When he oohs and aahs over the microphone, it's something everybody in the stadium is doing."

"To me, he's pro-home without being offensive," Anderson said. "He'll talk to people in the stands, just like they're sitting next to him—welcome them to the stadium, wish 'em happy birthday."

"Skeeter's the type of person who's a friend to everybody. It's hard to get peeved at him," J.P. Stewart said.

Stewart is the former superintendent of schools in Maryville. He has worked with Shields in the Maryville High press box for 25 seasons, helping him pick out players, figuring out what yard line the ball is on.

Occasionally, Steward performs other duties.

"Every once in a while, I'll cut the (microphone) off to keep our voices off the speaker," he says.

"J.P. always has to get after him a little bit, especially when we're in the TSSAA playoff games" Skeeter's daughter, Karen Shields, says with a chuckle.

Karen and her brother Steve have both accompanied their dad to the press box since their growing-up days in the '50s.

Steve has even taken his dad's place at the microphone the three times Skeeter's missed a game in 38 seasons.

"The times I have done it, as soon as I turn the thing on and just say, "Good evening," everybody turns around and has a look like, 'That's a strange voice up there, the wrong voice,' " Steve said.

And, after a few stints in the press box, Steve understood how his dad fell into the habit of letting stray comments slip.

"If you've ever sat up there and worked the mike, it's easy to forget to turn the thing off, especially in the old booth," Steve said. "That thing, you never knew whether it was on or not. You'd push the button, and it wouldn't click, then you'd fiddle with it, then you'd forget about it and get caught up in the excitement of the game."

Steve and his dad are paired in a tale told about Skeeter's announcing.

As the story goes, Steve, who played football for Maryville from 1960 to 1962, took off on a long touchdown run one night. His dad was so excited, all he could do was yell, "Go, son, go!" repeatedly.

Neither father nor son remember things happening exactly that way, but both admitted it could have.

In fact, Skeeter says details of games escape him. It's not that his 70 years of memories are fading. It's just that, after 38 years of announcing nearly 500 junior high, high school and college games, "they all run together on me."

There are some memories which do stick out, memories like:

The October and November nights in the press box at the old Maryville High stadium, a planks and nails structure, with more than a few cracks for the wind to whistle through—"Man, it was cold in that thing."

The hard-to-pronounce names—"We had a kicker Gurks, Gerkin (the name was Ryan Gehrts—pronounced Gertz), I never did learn how to say. (Steve) Oliveira (Oliverra), I couldn't get his name out right either."

The five Maryville coaches whose teams have heard Shields' voice—"(Jim) Renfro, (Ken) Shepherd, (Don) Rawls, (Ted) Wilson, (Don) Story, all fine men, all excellent coaches."

And mainly, the time spent at the games—"The years have been rewarding. What better way to watch a game you liked to play, and a team which is your favorite, and do it in the best seat in the house."

CREDIT CARD CAP PROPOSAL

HON. WYCHE FOWLER, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. FOWLER. Mr. Speaker, although I understand that the Subcommittee on Consumer Affairs and Coinage recently rejected a cap on credit card interest, I respectfully resubmit my credit card cap proposal for the members consideration. It is my firm belief that the interest charged on bank credit cards is out of hand and that Congress must force banks to respond to the marketplace. I have spoken with many of you about my proposal. I offer it again for your consideration.

A SALUTE TO "MAINSTREET"

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. PORTER. Mr. Speaker, I want to take this opportunity to recognize an outstanding example of community service provided by the MainStreet department stores of Chicago, IL. The store developed an educational program entitled, "Safety Starts With Me" designed to help young children distinguish the potential dangers associated with child abduction. "Safety Starts With Me" is a 40-minute presentation attended by children grades K–4 during school assemblies.

Hosted by a local magician in the role of the "Mayor of MainStreet," the show addresses the issues of strangers and how to avoid abduction. Through magic, games and role playing the emcee creates an atmosphere of fun used to instill confidence rather than fear while teaching children to deal with dangerous situations effectively.

Through a series of entertaining skits the program focuses on three specific situations

in which children may encounter strangers. These include car strangers, telephone strangers, and doorbell strangers.

The end of the show serves to reinforce the three magic words which can be applied in all dangerous or fearful situations. The phrase "Say No, Run, Tell Someone," is repeated in order to reemphasize its importance for the childrens' safety.

In light of the increasing awareness surrounding the tragedy of child abduction, I am pleased to inform you of MainStreet's initiative in establishing the MainStreet child safety show. It represents a practical response to the anxieties shared by all of us with young children. The more we educate our children about potentially dangerous situations, the safer they will be in our communities. With our encouragement and support, hopefully we will see even greater participation.

On behalf of the parents and children of Illinois, I acknowledge the invaluable service provided by the staff and management at MainStreet department stores.

THE NEW RACE PROGRAM

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. FAZIO. Mr. Speaker, in July I joined several of my colleagues on the Budget Committee, Chairman BILL GRAY, Mr. MARVIN LEATH, Mr. TOM DOWNEY, Mrs. BARBARA BOXER, and Mr. CHET ATKINS, on a factfinding mission to the Far East. Our trip included a visit to Thailand, where I had the opportunity to meet Thai officials and discuss rice export policy, a topic of great importance to the Thais as well to rice growers in my district.

The Thais forced their concern on the current U.S. rice program. As you know, the farm bill we approved last December included provisions which were intended to put rice producers in the United States on equal footing with their counterparts elsewhere in the world. In my view, the new program has been very successful thus far and rice growers in my district are pleased with its results. The Thais, however, did not agree.

They made the same claims to us as they charged in the U.S. press earlier this year, mainly that the U.S. rice program would devastate the Thai rice industry. Thai agricultural officials claimed exports would drop precipitiously by 1 to 1.5 million tons in 1986 from a 4-million-ton level in 1985 and that export earnings would decline from $1 billion last year to less than $800 million. Thailand's exports to Africa and the Middle East—the largest markets for Thai rice—were predicted to drop as much as 50 percent. While these forecasts brought forth loud complaints from Thailand, they were also taken very seriously by officials in our own State Department, who believed the program could affect United States relations with a key ally in Southeast Asia.

Fortunately, none of these fears have borne fruit.

In early August, a mere 5 months after Thai and State Department officials said the bottom would fall out of the world rice market, front page articles appeared in Bankok's major English-language dailies proclaiming that Thailand—already the world's No. 1 rice exporter—was set to enjoy its biggest exporting year ever. The Thais shipped 2.9 million tons of rice to overseas buyers during the first 7 months of 1986—a rate almost 4 percent higher than the alltime record 1984 crop year and 12 percent over the same period for 1985. Further, despite fears that the lower loan rate called for in the U.S. rice program would drive the world price downward, the price has instead stabilized, and started to increase in the past several months.

It is my understanding that the Thai's concern with the rice program hinged upon provisions in the 1985 farm bill which permit the Secretary of Agriculture to base the U.S. loan rate on the world market price instead of setting an artificial price floor far above the world price, as the old farm bill required. U.S. rice producers could sell their rice abroad at the world market price and receive payments from the Treasury for the difference between the world price and the current loan rate.

The Thais contend that the provisions unfairly subsidize United States rice producers and permit them to sell their rice at predatory levels. No matter how low the world price goes, they claimed, the U.S. farmer would be able to sell lower knowing the Treasury would cover his losses.

In fact, in order to soften the effect of the rice program on Thailand and other rice exporters, the United States has not engaged in predatory pricing and has followed, not led, world price movements. Obviously, the rice program has had an effect on Thai rice exports, as the stated intention of the rice program is to increase United States rice exports. But in the 5 months since its inception the U.S. rice program has not incurred significant harm upon Thai rice producers; instead, the opposite seems to be the case.

Meanwhile, the new rice program has been a shot in the arm for the beleaguered U.S. rice industry. In the 4 years between 1981 and 1985 U.S. rice exports fell from 3 million metric tons to 1.8 million metric tons, while Thai rice exports rose from 2.7 million metric tons in 1980 to 4 million metric tons in 1985. Thai exports may exceed 4.5 million metric tons this year. California rice growers were particularly hard hit by the drop in U.S. rice exports: between 1980 and 1985 exports of processed California rice fell 72 percent—from 1.3 metric tons to 0.3 million metric tons. Rice production in the State has fallen accordingly: in 1980 rice production in California was 1.65 million metric tons; by 1985 the level had fallen to 1.34 million metric tons.

In recent months, however, U.S. rice producers have seen a dramatic turnaround. Total U.S. rice exports from April to July of this year are 107 percent higher than they were for the same period in 1985 and advance sales for next year are up over 118 percent from last year's level. Not only are rice exports soaring, but forfeitures to the Commodity Credit Corporation have fallen over 50 percent—resulting in an estimated $140 million savings to the taxpayer. The increase in exports are having a rippling effect in hundreds of rice growing communities in California, Texas, Arkansas, Louisiana, Mississippi, and Florida, where local truckers, millers, bankers, elevator operators, brokers, and shippers are all enjoying the rewards of increasing rice sales overseas.

Meanwhile, the Thais and our other rice-growing competitors will have to get used to the fact that U.S. rice producers will again be tough adversaries in international markets. The Rice Millers' Association recently set an example of just how tough they can be by petitioning the U.S. Trade Representative to investigate the Japanese Government's use of unfair barriers to rice imports. If the Japanese fully liberalized their rice market their imports could rise from two-tenths of 1 percent to 37 percent of domestic consumption. This would create a huge new market for U.S. rice producers.

The Rice Millers' action, in combination with the new rice program, present our rice producers with innovative alternatives to past policies and should provide an orderly transition from dependence on Government to reliance on the marketplace.

KILDEE PAYS TRIBUTE TO THE ST. GEORGE ORTHODOX CHURCH

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. KILDEE. Mr. Speaker, I rise today to bring to the attention of my colleagues and the Nation an event that will be held September 21, 1986, in Flint, MI, commemorating the founding of the St. George Orthodox Church. On this day the St. George Orthodox Church will celebrate its 50th anniversary.

Historic St. George Orthodox Church can trace its humble beginnings to the determined efforts of several pious Arab immigrants. In 1936, the group began to meet in the homes of parishioners to worship together. In 1938, the devoted congregation initiated construction of the St. George Orthodox Church at its initial location in the north end of Flint. For the next 30 years St. George served as the center of orthodox worship for Flint's Arab American community. Its current building, a recipient of the Society of American Architects gold medal, was erected in 1971 to meet the needs of a parish which had grown from 25 to over 150 families. Through its 50 years in existence, the St. George Orthodox Church has faithfully served its parishioners and the community in a very unselfish and admirable manner, preserving both its rich Arab culture and orthodox tradition of worship.

Mr. Speaker, the St. George Orthodox Church continues to represent a warm and friendly home for community ethnic activities and as a cathedral of worship where the spiritual needs of parishioners are fulfilled in the traditional orthodox Christian faith. Under the spiritual leadership of its current rector, Rev. Father Basil Kalekas, St. George continues its fine record of providing Christian leadership and a base for ethnic tradition within the community. It is indeed a great honor for me to

pay tribute to the esteemed church on the occasion of its 50th anniversary.

NAACP FREEDOM SUNDAY

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. RODINO. Mr. Speaker, it will be my great honor to speak at the 72d annual NAACP Freedom Sunday Observance on September 21 in Newark.

This year's ceremonies will take place at the Mount Calvary Missionary Baptist Church, Rev. J. Wendell Matson, pastor. The guest speaker is Rev. Dr. Calvin O. Butts III, executive minister of the Abyssinian Baptist Church in New York City. Reverend Butts will discuss the great historical role played by the NAACP and churches in forging a more fair and compassionate America.

Mr. Speaker, the Freedom Sunday Observance is of special significance to me and to thousands of Americans who care deeply about justice and equality. It is a time to reflect upon the difficult struggles—sit-ins, marches and legislative battles—necessary to bring to the laws of the land a respect for citizens of all races and creeds. It is a time to celebrate the warm friendships forged in those difficult times. And it is a time to recommit ourselves to the challenges that lie ahead—challenges posed by those in the Reagan administration who seek to turn back the clock on civil rights and return to a constitutional "dark ages."

Mr. Speaker, I salute civil rights champions like Keith Jones, president, Newark NAACP; John D. Woods, first vice president; Dolores C. Carter, second vice president; Daisy Stokes, secretary; Denise McCoy, assistant secretary; and Mamie Hale, treasurer, all of the Newark branch of the NAACP. Thanks to their devotion to justice and equality and their hard work, this Nation will remain a place where all of its citizens are free to pursue and realize their dreams.

HONORING THE HISPANIC FAMILY OF THE YEAR

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. TORRES. Mr. Speaker, on Friday, September 19, 1986, the second annual Hispanic Family of the Year banquet will be held in Los Angeles, CA. This event will honor Hispanic families for exemplary community service, teamwork, and individual growth. This important program helps to promote family unity, cultural pride, and provide role models for the Hispanic community.

I am honored to serve as cochairman of this year's program along with Mrs. Barbara Bush. The program is also endorsed by the American Family Society, whose national chairwoman is Mrs. Nancy Reagan. The program in Los Angeles County was founded by Bernard and Evelyn Kemp to recognize the significant community contributions of Hispanic families.

On behalf of my colleagues, I want to commend the 19 families who have been nominated by community organizations for this prestigious honor. The following families are to be commended for their exemplary achievements and contributions to their community and family: Jesus and Emma Acosta of Los Angeles, Hon. Benjamin III and Emma Aranda of Torrance, Jaime and Armida Caro of Los Angeles, Pedro and Onelia Chirino of Panorama City, Octavio and Caruca Costa of Los Angeles, Castulo and Beatriz De La Rocha of Hacienda Heights, Anthony and Kathryn De Los Reyes of Los Angeles, Frank and Elva Donnell of Lennox, Angel and Ida Gaitan of San Marino, Robert and Ofelia Guzman of Montebello, Jaime and Blanca Jarrin of San Marino, Mrs. Manuela Urbina Knecht of Los Angeles, Gregorio and Guadalupe Aguilar Lopez of Los Angeles, Elco and Lupe Miramontes of Hacienda Heights, Milton and Belia Navarrete of San Gabriel, Juan and Winnie Sanchez of Huntington Park, Mrs. Virginia Serna of Santa Monica, Ethridge and Gilda Altagracia Smith of Woodland Hills, and Luis and Ruth Valera of Valencia.

The nominated families provide a wide range of community services, from collecting food for needy families, to participation in volunteer community education, youth gang violence reduction programs and child guidance clinics.

I am particularly pleased to be part of this program that recognizes the important role that families play in our society. Several of the nominated families are from my own district and I ask that my colleagues join me in recognizing all of these families for their contributions to our country.

PENN STATE WILKES-BARRE CELEBRATES 70 YEARS

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. KANJORSKI. Mr. Speaker, I am pleased to bring to your attention the 70th anniversary of the Wilkes-Barre chapter of the Pennsylvania State University. The Wyoming Valley has benefited greatly from the presence of the Wilkes-Barre campus of Penn State, and I am proud to join in congratulating the chapter on its anniversary.

In the fall of 1916 a community group worked with the Wilkes-Barre Rotary and Chamber of Commerce and approached officials at Penn State to request a local chapter for the Wilkes-Barre area. That November, the first classes were held in the Wilkes-Barre High School building, where approximately 150 students enrolled in courses on surveying, reinforced concrete, mechanics, and advanced mathematics. The chapter was then called the engineering extension school.

By 1922, increased interest resulted in the establishment of a 3-year course in engineering, the only one of its kind in the region. During World War II, the extension school expanded to provide tuition-free courses in more than 27 subject areas to help the country in its production of war materials. After the war, veterans in the area benefited from the addition of day classes to the formerly evening-only schedule, and the school became the Wyoming Valley Day Technical Institute. The school moved to the Guthrie Building in Wilkes-Barre's north end section in 1950, and in 1953 a 2-year Associate Degree Program for engineering was initiated.

The former residence of Mr. and Mrs. John Conyngham in Lehman became the permanent campus in the mid-1960's, as a gift from Mr. and Mrs. Richard Robinson. Carriage houses on the property were converted into a student commons, and later student lounges and a bookstore were added. The 48-acre campus was named the Penn State/Wilkes-Barre campus when the first classes on the new property were held in the fall of 1968.

Today more than 900 students and 100 faculty members call Penn State Wilkes-Barre home. A gymnasium is scheduled to be completed by 1988, and a new center of technology is being planned. After 70 years of excellence, Penn State Wilkes-Barre has proven to be a tremendous asset to the community, and it is a great pleasure for me to join students, alumni, faculty members, and every member of the community in wishing Penn State Wilkes-Barre well on its 70th birthday.

PERSONAL EXPLANATION

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. CLINGER. Mr. Speaker, on September 11, 1986, I intended to vote against the McCollum amendment to H.R. 5484, the Omnibus Drug Act, but I am recorded as having voted for this amendment. I would like the record to show that I did, in fact, want to vote against this amendment.

FLIGHT OF THE VIN FIZ

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. SCHULZE. Mr. Speaker, I am pleased today to have this opportunity to call my col-

leagues attention to the 75th anniversary of a great American historical event, the first transcontinental airplane flight.

On September 17, 1911, a 32-year-old flyer named Calbraith Rodgers, took off from Sheepshead Bay, Long Island, in a Model EX Wright biplane, for an 84-day voyage to the coast of California.

The biplane was christened The Vin Fiz, after the financial backers of the event. The Vin Fiz Co. officials also sponsored a private train that paralelled the flight of the Vin Fiz across the country. The train passengers included Rodger's wife, Mabel, managers, mechanics, workmen, and representatives of the Vin Fiz Co.

Rodgers piloted the Vin Fiz up the Erie Railroad line of Pennsylvania, across the farmlands of Ohio and Indiana to Chicago, over the Mississippi River to Kansas City, through the heartland of America to Dallas, Austin and San Antonio, along the southern borders of New Mexico and Arizona, to Phoenix, and completed his cross country odyssey in Long Beach, CA.

By the time Rodgers landed in Long Beach, he had covered 4,231 miles, (railroad mileage), in 82 hours and 4 minutes at an average speed of 51.56 mph in a voyage that included more than 80 stops in 76 different towns.

Calbraith Perry Rodgers was immediately elevated to hero status. His name and story graced the front pages of our Nation's newspapers. He was the grand marshall for Pasadena's Rose Day parade. He received a gold medal from President William Howard Taft in recognition for his courage and spirit that characterizes a man as a hero.

Men of this caliber deserve continual recognition throughout the years. They are the role models for our children and constitute the stories in our history books. Calbraith Perry Rodgers exemplifies the freedom and determination that characterizes our country. I am sure that my colleagues will join me in honoring the 75th anniversary of this great achievement.

SALUTING PHILIP H. POWER

HON. CARL D. PURSELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. PURSELL. Mr. Speaker, I would like to take this opportunity to compliment one of my constituents for his outstanding work. Mr. Philip Power recently was honored by the National Alliance for Business as that group's "Business Volunteer of the Year."

Phil serves as chair of the Michigan Job Training Coordinating Council, and it was through this role the National Alliance for Business recognized him for the outstanding work in training individuals for work and jobs.

It almost goes without saying that the value of job training work in a State such as Michigan—which has been hit hard by unemployment in recent years—is beyond measure.

Through his efforts, others have found ways to make a living and to continue supporting themselves and their families.

Phil Power also contributes to the betterment of Michgan's Second Congressional District through his role as owner of an important local newspaper group—the Observer & Eccentric Newspapers.

Community journalism long has been the backbone of an informed society and Phil's company continues to make its contributions to that tradition.

Mr. Speaker, I believe it's worthwhile to encourage and support the efforts of civic-minded persons such as Philip Power.

It wasn't too many years ago that Phil served as a staff member here in the House, so I believe it's only fitting that his recent accomplishments be recognized here in the House today. On behalf of the people of my district, I thank Phil for his work and contributions to our community.

A NEAR RECESSION JUSTIFICATION FOR DEFUSING GRAMM-RUDMAN-HOLLINGS

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1986

Mr. ROYBAL. Mr. Speaker, Congress recognized the special circumstances of a recession or near recession when it enacted Gramm-Rudman-Hollings. Special provisions were incorporated expressly for the purpose of defusing Gramm-Rudman-Hollings when our enconomy could no longer absorb its impact. I believe that we have reached just such a state of affairs. I believe that it is time to defuse Gramm-Rudman-Hollings for fiscal year 1987.

How do we justify defusing Gramm-Rudman-Hollings? We need only look at the "recession trigger" language in Gramm-Rudman-Hollings. If real economic growth is "less than I percent for two consecutive quarters," the recession provisions would trigger. Let me assure you that we are "whisker close" to pulling the recession trigger.

Over the past two quarters, real economic growth has slowed dramatically. Over the last two quarters, real growth has averaged less than 1 percent (1.1 percent in the previous quarter; 0.6 percent in the last quarter). If the Gramm-Rudman-Hollings recession trigger had read "averaging less than 1 percent for two consecutive quarters," the recession trigger would be pulled for fiscal year 1987 and the process of defusing Gramm-Rudman-Hollings would begin.

As our Nation nears recesion levels, Gramm-Rudman-Hollings must be defused for fiscal year 1987 and the justification is a U.S. economy in near recession.

I and many other Members of Congress believe that past cuts and the good faith efforts of our appropriations, reconciliation and tax legislation will reduce the 1987 deficit as low as is appropriate given the state of the economy. Now is not the time to place further stress on an already shaky economy.

INTRODUCTION OF THE ARMS EXPORT REFORM ACT OF 1986

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. LEVINE of California. Mr. Speaker, today I, along with Congressmen SMITH of Florida, SMITH of New Jersey, and MORRISON of Connecticut, are introducing the Arms Export Reform Act of 1986. The purpose of this legislation is to enhance Congress' ability to fulfill its foreign policy role in the are of arms sales. Senator BIDEN, along with his colleagues, Senators PELL and BOSCHWITZ, are simultaneously introducing an identical bill in the other body.

Mr. Speaker, nowhere is the desire to get a handle on administration of the law more apparent than in the overlapping, sensitive fields of foreign affairs and national security. The device most frequently relied upon in recent years to carry out these congressional purposes was the one- and two-House resolutions of approval or disapproval of proposed executive branch actions in the area of foreign affairs.

All this was changed when the Supreme Court handed down its famous INS versus Chadha decision, holding a one-House legislative veto unconstitutional, and a subsequent High Court ruling in United States Senate versus Federal Trade Commission, invalidating a two-House veto provision. Both these decisions have had widespread implications for foreign policy.

What I am concerned with today is the impact of these Supreme Court actions on the legislative veto as they relate to arms exports.

The basic statutory control mechanism regulating transfers, sales and leases of arms is the Arms Export Control Act [AECA]. The original law established a procedure enabling Congress to receive advance notification of significant U.S. arms transfers to foreign nations and to disapprove such transfers by concurrent resolution. The AECA provides for legislative vetoes in three general circumstances: First, cash, credit, or commercial sales of defense articles and services; Second, third country transfers of U.S. Government-supplied defense articles and services; and third, leases or loans of U.S. defense articles. Sections 36(b)(1), 36(c)(1), and 63(a)(1) stipulate three monetary thresholds beyond which a sale is subject to congressional disapproval.

Because the Chadha decision held the one-House veto unconstitutional, it was necessary to enact into law a constitutional mechanism which would give Congress a role in decisions related to arms sales. Therefore, I introduced in the House, and Senator CRANSTON iftroduced in the Senate, identical bills to provide for expedited procedure for joint resolutions of disapproval introduced pursuant to section 36(b) of the Arms Export Control Act. This bill became law earlier this year. Unlike concurrent resolutions, joint resolutions must go through the same procedure as bills. That is, they must be passed by both bodies and presented to the President for action, thus fulfilling the Constitution's presentment requirements.

As we all will readily recall, earlier this year Congress was engaged in a major battle with the administration over arms sales to Saudi Arabia. Originally the administration planned to propose a $1 billion arms sales package for that country. The package reportedly was to include Sidewinder, Stinger, and Harpoon missiles, Blackhawk combat helicopters, and other sophisticated equipment for F-5 and F-15 combat aircraft. Because of congressional opposition to the magnitude of the sale, the administration changed its plans and sent to Congress a $354 million arms sales package of Stinger, Sidewinder, and Harpoon missiles.

As the leader in the House of the fight to oppose this sale, I had the unique opportunity to view the intricacies of the legislative process as they relate to these important and controversial arms sales. What I saw gave me cause for great concern.

In the first round, both the House and Senate voted overwhelmingly to disapprove the missile sale to Saudi Arabia. In the House the vote on the resolution of disapproval was 356 to 62; in the Senate 73 to 22. Predictably, the President vetoed the resolution. However, after dropping the controversial Stingers from the package, and after unrelenting arm twisting on the part of the administration, the Senate failed to override the President's veto by only one vote.

In essence, this highly controversial arms sale to a country in perhaps the most volatile region of the world survived the legislative process with the support of only 14 percent of the House and one-third plus one of the Senate.

Clearly, the legislative process as it now stands is improperly weighted. That such controversial, important sales can survive with such scant congressional support makes a mockery of the legislative process and Congress' decisionmaking role in an area of such great importance to our national security and national interest. There must be a better way to make major foreign policy decisions.

The purpose of the legislation I am introducing today is to better enable Congress to fulfill its role in decisions pertaining to important arms sales, and to enable it to better execute its responsibilities in the foreign policy area. This bill would ensure that if major foreign policy initiatives like these controversial arms sales are to survive, they must do so with the support of a majority of the Congress, not a minority.

This bill would amend the Arms Export Control Act in two ways.

First, it would change the definition of sales which would be subject to congressional approval. The three thresholds the AECA stipulates beyond which a sale is subject to congressional disapproval are $14 million for major defense equipment, $50 million for defense articles or services, and $200 million for design and construction projects. Any sale above these levels requires formal notification of Congress, which may then act to disapprove a sale.

Under provision of this bill, Congress would continue to receive notification of all sales above these thresholds. What would change is the criterion governing which sales would be subject to congressional consideration. The bill, while still requiring notification for sales above the already mentioned thresholds, would completely eliminate the congressional review process for all sales of nonsensitive weapons and equipment. However, it would require that all sales of sensitive weaponry, no matter what the dollar amount, be subject to congressional review and action.

The bill defines sensitive weapons as:

Those items of types and classes currently used or to be used by the Armed Forces of the United States (other than the Army National Guard or the Air National Guard or a Reserve component of an Armed Force of the United States) or produced solely for export, as follows:

(1) Turbine-powered military aircraft; rockets; missiles, anti-aircraft artillery and associated control, target acquisition and electronic warfare equipment and software;

(2) Helicopters designed or equipped for combat operations;

(3) Main battle tanks and nuclear-capable artillery; and

(4) Submarines, aircraft carriers, battleships, cruisers, frigates, destroyers, and auxiliary warships.

The purpose of this change is to focus the congressional review system where it should be focused—on especially important and controversial arms sales—while allowing the executive branch to proceed unencumbered on more routine sales.

Second, this bill would change the mechanism of congressional approval or disapproval of arms sales. Present law distinguishes two categories of nations. The first are NATO and NATO member countries, the Anzus countries, which are Australia and New Zealand and Japan. Because the strong presumption in the case of sales to any of these countries is that Congress will consider them favorably, the AECA provides a shorter review period of 15 days for sales to them.

This bill would maintain the favored standing of sales to these countries, and would add "any country which is a party to the Camp David accords or an agreement based on such accords." That is, both Egypt and Israel would be added to the above list of nations.

Thus, this legislation provides that nations with favored standing regarding arms sales are those with which we are formally allied and those which are the two principal recipients of American military aid. There is a historical consensus regarding U.S. arms transfers to these nations. This bill would continue to reflect a presumption in favor of such transfers, which would continue to be subject only to a joint resolution of disapproval.

What would change under this legislation is the procedure for governing the sale of highly sophisticated weaponry to all other nations. For them, a new procedure would be established requiring affirmative congressional action to approve any major sales. This would mean, in essence, that for these other nations there would be no presumption of favor of any such transfer.

Thus, the proposed transfer of sophisticated U.S. arms would have to be approved by a majority of both Houses, rather than the currently required one-third plus one in either House.

As in the present law, however, there would be a provision allowing the President to circumvent the requirement of congressional approval if he certifies "that an emergency exists which requires the proposed sale, export, lease, or loan, as the case may be, in the vital national security interests of the United States."

In summary, this bill completely removes all nonsensitive sales from the need for congressional approval, allowing the executive branch to act immediately on certain arms sales. Where approval is required, this bill provides that a joint resolution of approval will be subject to expedited procedure, enabling prompt consideration by both Houses. These procedures should allow for swift dispensation of both noncontroversial and controversial sales, while allowing Congress to focus its attention on those of special foreign policy and national security significance.

Mr. Speaker, this is an important piece of legislation which will ensure Congress its rightful and constitutional role in the consideration of matters of national security and national interest, and in the formulation of foreign policy. Let those nations that wish to purchase sophisticated arms from the United States be under no illusion that the Executive can make promises of sales, on his own, without input from Congress. Let them understand that the President can no longer act on matters of great foreign policy and national security importance without congressional approval. Whether the Executive likes it or not, Congress is an equal partner in the formulation of foreign policy. This bill would enhance our ability to fulfill our responsibilities and obligations to this Nation to carry out this important role.

I hope my colleagues will join me in supporting this legislation.

H.R. —

A bill to require specific congressional authorization for certain sales, exports, leases, and loans of defense articles, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Arms Export Reform Act of 1986".

SEC. 2. (a) Notwithstanding any other provision of law, in the case of—

(1) any letter of offer to sell under the Arms Export Control Act,

(2) any application by a person (other than with regard to a sale under section 21 or 22 of the Arms Export Control Act) for a license for the export of, or

(3) any agreement involving the lease under chapter 6 of the Arms Export Control Act, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961, to any foreign country or international organization for a period of one year or longer of,

any item described in subsection (d), before such letter of offer or license is issued or before such agreement is entered into or renewed, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification containing—

(A) in the case of a letter of offer to sell, the information described in section 36(b)(1) of the Arms Export Control Act and section 36(b)(2) of such Act, as redesignated by section 3(a)(2) of this Act,

(B) in the case of a license for export (other than with regard to a sale under section 21 or 22 of such Act), the information described in section 36(c) of such Act, as amended by section 3(b)(1) of this Act, and

(C) in the case of such an agreement, the information described in section 62(a) of such Act unless section 62(b) of such Act applies,

without regard to the dollar amount of such sale, export, lease, or loan.

(b) Notwithstanding any other provision of law and except as provided in subsection (e)—

(1) no letter of offer may be issued under the Arms Export Control Act with respect to a proposed sale,

(2) no license may be issued under such Act with respect to a proposed export, and

(3) no lease may be made under chapter 6 of such Act and no loan may be made under chapter 2 of part II of the Foreign Assistance Act of 1961,

of any item described in subsection (d) to a country or international organization (other than a country or international organization described in subsection (c)) unless the Congress enacts a joint resolution or other provision of law authorizing such sale, export, lease, or loan, as the case may be.

(c) Except as provided in subsection (e), no such letter of offer or license may be issued and no such lease or loan may be made with respect to a proposed sale, export, lease, or loan, as the case may be, of any item described in subsection (d) to the North Atlantic Treaty Organization (NATO), any member country of such Organization, Japan, Australia, New Zealand, or any country which is a party to the Camp David Accords or an agreement based on such Accords, if the Congress within fifteen calendar days after receiving the appropriate certification enacts a joint resolution prohibiting the proposed sale, export, lease, or loan, as the case may be.

(d) The items referred to in subsections (a), (b), and (c) are those items of types and classes currently used or to be used by the Armed Forces of the United States (other than the Army National Guard or the Air National Guard or a Reserve component of an Armed Force of the United States) or produced solely for export, as follows:

(1) turbine-powered military aircraft; rockets; missiles; anti-aircraft artillery, and associated control, target acquisition and electronic warfare equipment and software;

(2) helicopters designed or equipped for combat operations;

(3) main battle tanks and nuclear-capable artillery; and

(4) submarines, aircraft carriers, battleships, cruisers, frigates, destroyers, and auxiliary warships.

(e) The requirements of subsections (b) and (c) shall not apply if the President states in his certification that an emergency exists which requires the proposed sale, export, lease, or loan, as the case may be, in the vital national security interests of the United States. If the President so states, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer or license for export or lease or loan and a discussion of the vital national security interests involved.

(f)(1) Except as otherwise provided in this paragraph and paragraph (3), any joint resolution under subsection (b) or (c) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976. For purposes of consideration of a joint resolution under subsection (c)(1), the motion to discharge provided for in section 601(b)(3)(A) of such Act may be made at the end of 5 calendar days after the resolution is introduced. If a joint resolution under subsection (b) deals with more than one certification, the references in section 601(b)(3)(A) of such Act to a resolution with respect to the same certification shall be deemed to be a reference to a joint resolution which relates to all of those certifications.

(2) For the purpose of expediting the consideration and adoption of joint resolutions under subsections (b) and (c), a motion to proceed in the House of Representatives to the consideration of any such resolution after it has been reported by the Committee on Foreign Affairs shall be highly privileged.

(3) If the text of a joint resolution under subsection (b) contains more than one section, amendments which would strike out one of those sections shall be in order, but amendments which would add an additional section shall not be in order.

(4)(A) The joint resolution required by section (b) is a joint resolution the text of which consists only of one or more sections, each of which reads as follows: "The proposed to described in the certification submitted pursuant to section 2(a) of the Arms Export Reform Act of 1986 which was received by the Congress on (Transmittal number) is authorized.". with the appropriate activity, whether sale, export, lease, or loan, and the appropriate country or international organization, date, and transmittal number inserted.

(B) The joint resolution required by subsection (c) is a joint resolution the text of which consists of only one section, which reads as follows: "That the proposed to described in the certification submitted pursuant to section 2(a) of the Arms Export Reform Act of 1986 which was received by the Congress on (Transmittal number) is not authorized.", with the appropriate activity, whether sale, export, lease, or loan, and the appropriate country or international organization, date, and transmittal number inserted.

SEC. 3. (a) Section 36(b) of the Arms Export Control Act is amended—

(1) by striking out the last two sentences of paragraph (1) and by striking out paragraphs (2) and (3); and

(2) by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively.

(b) Section 36(c) of such Act is amended—

(1) by striking out "(c)(1)" and inserting in lieu thereof "(C)"; and

(2) by striking out paragraphs (2) and (3).

(c)(1) Section 62(a) of such Act is amended by striking out "Not less than 30 days before" and inserting in lieu thereof "Before".

(2) Section 63 of such Act is repealed.

(3) Section 64 of such Act is redesignated as section 63.

SEC. 4. The provisions of this Act shall apply with respect to any letter of offer or license for export issued, or any lease or loan made, after the date of enactment of this Act.

THE LEAGUERS CELEBRATE 40 YEARS OF HELPING THE YOUTH OF NEWARK

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. RODINO. Mr. Speaker, this year marks the 40th anniversary of one of Newark's finest organizations dedicated to nurturing the city's greatest resource—its young people.

In 1946, a group of caring businessmen and professionals, led by Dr. Reynold Burch and his wife, Mary, established an organization aimed at providing educational, social, recreational, and cultural opportunities to black youngsters in need of a helping hand, a sense of direction.

At a time when our Nation paid pitifully little attention to the hopes and dreams of the black community, the Leaguers stepped in to fill that void and to provide scholarships, social activities, counseling, and job training to black youngsters in Newark.

I applaud the Leaguers—particularly its leaders, founders Mary and Reynold Burch, and executive director, Shiela Oliver—and their fine contributions to our community. Thanks to them, black youngsters in Newark will get the opportunity to make their dreams come true.

Mr. Speaker, I include the following article on the Leaguers, which was published by the Newark Star Ledger on August 18, 1986.

LEAGUERS HISTORY REFLECTS FOUR DECADES OF SOCIAL TRENDS AMONG YOUTH—DESPITE CHANGE, GROUP CONTINUES TO SURVIVE, GROW

(By Dan Holly)

Through the eyes of the Leaguers Inc., one gets a fascinating view of the changes in Newark, and perhaps society as a whole, over the past 40 years.

The organization has offered educational, social recreational and cultural programs to the city's youth for four decades, and its staff has been in a good position to judge social trends.

Perhaps the most notable trend—and the most depressing one to Shiela Oliver, the executive director—is that there has been little change, if any, in the conditions that prompted the group's formation.

And attitudes have changed for the worse, she said.

When the Leaguers was formed in 1946, in an effort to motivate black youths to pull themselves up from poverty, people placed more faith in the up-from-the-bootstraps philosophy, Oliver said.

There is still poverty, but the emphasis on "instant gratification" makes it more difficult to get youth to concentrate on their future, she now believes.

Glorification of materialism in the media, drug abuse and the breakdown of the family structure—all of these have "made it tough working with a population of young people," she said.

As the Leaguers prepares to celebrate its 40th anniversary in November—when the group will honor its most distinguished alumna, singer Dionne Warwick—the executive director rejoiced that the organization has not only survived, but is prospering. As another milestone, it moved in January into new headquarters at 731 Clinton Ave., a renovated supermarket.

Over the years, Oliver said, the Leaguers has had to keep pace with changing times and circumstances.

"If you look at our 40-year history, it can be divided into three segments," she noted. "In the first 15, we were staunchly, staunchly into scholarships, pre-college preparation and broadening people socially," she said.

"When we moved into the 1960s, the Leaguers, because of the environment it was located in, began to reassess itself. We thought we needed to become community advocates, perhaps become issue-oriented."

At that time, she said, the group's board of trustees experienced a change, going from fewer businessmen and professionals to "grass roots," she said. One sign of the times, in 1969, was the establishment of a black studies hall in where Afro-American history was taught.

"In the '60s, we began to focus on systemic problems, but we focused so much on the system that we drew attention away from the fact that every individual is responsible for what becomes of him or herself," she said.

The moving force behind the Leaguers always has been its founder, Mary Burch, whose motto is "opportunity through education." She and her husband, Dr. Reynold Burch, for whom the new headquarters is named, were responsible for not only bringing in donations from institutions and wealthy individuals, but for establishing its philosophy and the tone given its programs and projects.

Mrs. Burch retired as executive director several years ago and named Oliver as her worthy successor.

Until the late 1970s, the nonprofit organization was funded totally by private donations, Oliver said. Now, it receives funding from the city, state and federal government. The program now has 46 staff members and serves 1,000 young people.

Today, the Leaguers serves many more people than the teenagers Mary and Reynold Burch first wanted to help find "self-realization, diligence and mature citizenship."

"What the past five years or so has shown us is that the Leaguers must begin to intervene at an earlier age," Oliver said.

As a result, preschool and afterschool programs for first- through sixth-graders have been established.

The Leaguers has also expanded its work into such areas as family counseling, employment and job training. And, the Clinton Avenue headquarters now serves as the senior citizen service center for the city's South Ward.

South Ward Councilman Donald Payne, a Leaguer alumni, credits the group with helping decide on a career in public service. He remembers his high school guidance counselor telling him that he had good "manual dexterity."

His experiences as a Leaguer, he said, had "a great deal to do" with his entrance into politics rather than some other field, he said.

"I remember how we all went down to the state Legislature in 1949," he said. "A bunch of black kids going to the Statehouse? In 1949 that was unheard of . . . They (the Burches) gave us a positive view about ourselves as young people."

Today's participants are just as fortunate.

Joanne Smith, a 16-year-old Vailsburg High School student, is spending the summer taking classes in music, recreation and career exploration.

As part of the program, she and her friends went to a taping of "Midday With Bill Boggs" in New York.

"That's an experience I'll never forget," she said.

N.Y. POST ON TARGET: DANILOFF AFFAIR A DISGRACE

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. COURTER. Mr. Speaker, the New York Post is absolutely correct to call the deal made for reporter Nicholas Daniloff "a national disgrace." I was astonished by the President's approval of the notion of any deal at all, and I hope that he moves immediately to rectify his mistake.

The forementioned commentary by the Post will be of interest to my colleagues.

[From the New York Post, Sept. 13, 1985]

THE DANILOFF AFFAIR: A NATIONAL DISGRACE

The deal that Washington made with Moscow to free Nick Daniloff is, from the American standpoint, an unmitigated disgrace. From the Soviet vantage point, the episode is a triumph.

The administration's natural desire to liberate an innocent American from a KGB prison cell reflected the sentiments of the nation at large—the concern of the American people for the captive journalist was real and heartfelt.

But permitting a linkage of any sort between the fate of Daniloff, an innocent victim of a KGB frame-up, and that of Gennady Zakharov, an accused spy, has had the inevitable effect of legitimating and rewarding Soviet coercion.

Nick Daniloff is no spy. The U.S. knows this. Moscow knows it. And President Reagan, in a rare personal letter to Mikhail Gorbachev, said—indeed pledged—just that: Daniloff is not an American agent.

What he is—as Secretary of State George Shultz reiterated yesterday—is a hostage; an American citizen seized by the Kremlin in order to force Washington to alter its conduct toward an accused Soviet agent.

And that, in fact, is just what happened. Moscow won.

This case may well instruct future adversaries as to how and why—when dealing with the U.S. government—hostage-taking can work.

Indeed for Shultz—in the course of explaining what Washington will do with Zakharov, in return for Daniloff's release—actually to have acknowledged that the U.S. government still considers Daniloff a hostage, is nothing short of extraordinary.

It represents a virtual invitation to Moscow to take an American hostage—a journalist, a ballet dancer, whatever—any time the FBI nabs a Soviet spy over here.

The only thing more extraordinary, in this whole affair, is the Soviet Union's sheer gall—not to speak of the U.S. government's abject capitulation.

All this from an administration headed by Ronald Reagan? Jimmy Carter might well have showed more backbone.

The details of the U.S.-Soviet deal are of little consequence—though it's interesting to note that Washington agreed, not just to a linkage between the two cases, but to absolutely parity: Daniloff to the custody of his ambassador, Zakharov to the custody of his.

A perfect equation—between a veteran correspondent for *U.S. News and World Report* and a Soviet UN employe who'd been paying thousands of dollars, over several years, for what he believed to be classified military documents.

There may well be, down the road, an attempt by the U.S. to cloud the transaction: to trade Zakharov for, say, a famous Soviet dissident (with Nick Daniloff's return home, a sidebar to the swap).

But who, even then, will be fooled by the camouflage? What happened in this affair is plain.

The only thing left to hope for, in this whole unhappy business, is that Washington's surrender was prompted—largely, at least—by humanitarian considerations. Let's hope, in other words, that Daniloff's personal wellbeing was the administration's dominant concern.

That, to be sure, would be disquieting in itself. But not nearly so troubling as the possibility that Washington's capitulation was animated by a desire not to scuttle the Shultz-Shevardnarze talks—or, heaven forbid, the Great Event: the Reagan-Gorbachev summit.

For if the administration is so anxious for a U.S.-Soviet diplomatic rapprochement that it's prepared to abandon principle altogether—*as well as* any sense of *realpolitik*—then the ship of state is indeed in dire straits.

THE D.C. AIDS INSURANCE ACT IS ANTI-CONSUMER

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. DANNEMEYER. Mr. Speaker, I commend this letter to my colleagues for their review:

COMMITTEE AGAINST D.C. ACT 6-170—OPEN LETTER TO MEMBERS OF CONGRESS

DEAR CONGRESSMEMBER: As co-sponsors of the proposed referendum to reject D.C. Act 6-170, the "AIDS Insurance Act", we would like to urge the Congress to take appropriate legislative action to reject the AIDS Insurance Act for the following reasons:

I. The AIDS Insurance Act is anti-consumer:

D.C. Act 6-170 basically forces insurers to treat persons in high risk categories for AIDS as standard risks, even though persons testing positive for the AIDS antibody are at considerably higher risk for premature death and costly medical care. (E.g., a recent Center for Disease Control study reported in the Progressive Review (formerly known as the D.C. Gazette) finds that the per patient hospital cost for AIDS averages $147,000.)

Requiring insurers to treat persons at high risk for AIDS as standard risks will force insurance rates up. Low and moderate income persons will, as a result, either be forced to "go bare" (do without insurance) or to pay more in order to subsidize AIDS, so they can provide themselves and their families with insurance protection.

D.C. Act 6-170's draconion penalties—up to $10,000 *per day* for insurers (a cute legal fiction whereby each day a violation continues, even while it is being litigated, counts as a separate violation)—and the actuarial uncertainties it poses (particularly for smaller companies), have forced several out of the District. This substantially reduces competition, resulting in higher prices, potentially poorer quality, and limited consumer choice. D.C. Act 6-170 is a consumer rip off!

II. D.C. Act 6-170 is discriminatory:

This Act treats AIDS—a disease typically contracted through illegal lifestyle choices (sodomy and intravenous drug use)—differently from the way insurers treat other diseases. By prohibiting insurers from denying insurance to high-risk persons and for five years from charging them higher rates, and by even prohibiting insurers from trying to ascertain whether an applicant is in a high-risk category, while continuing to permit insurers to engage in such practices in other areas (e.g., persons with diabetes or a family history of heart disease, smokers, drivers below age 25, etc.), D.C. Act 6-170 accords preferential treatment to persons at risk for AIDS.

Because a disproportionate number of AIDS patients in D.C. are white (about half in a city two-thirds black), the AIDS Insurance Act could have the effect of regressively redistributing income by having black folks subsidize whites. D.C. Act 6-170 is not race-neutral in its effects—it most painfully penalizes persons struggling up the economic ladder, trying to break out of poverty and welfare dependence, who need insurance protection, in D.C. a group which is overwhelmingly black.

By forcing insurance rates up, individuals and religious and other non-profit institutions which provide insurance coverage to their employees could be forced to subsidize a lifestyle they find objectionable on religious or ethical grounds. We believe this is contrary to the spirit of religious freedom so dearly embroidered into the American cultural fabric.

III. Congress, in fulfilling its constitutional responsibility to "exercise exclusive legislation in all cases whatsoever" over the District of Columbia (Article I, Section 8 of the U.S. Constitution), has ample grounds based on national interest for overturning the D.C. AIDS Insurance Act.

Preventing the discriminatory effects described in the preceding section from taking effect.

If affordable insurance becomes scarce in D.C., it may become difficult for the Federal Government to attract and hold qualified personnel. Members of Congress may even find their staffs having difficulties with insurance if costs go up too much—a possibility if D.C. becomes a mecca for persons in high risk categories.

If D.C. becomes a mecca for persons infected with AIDS and intravenous drug users, it will cease to be a place Americans from all over this country hold in high regard as their Nation's Capital and desire to visit as tourists.

In some quarters this bill is being touted as model legislation. Some suggest that Gov. Cuomo in New York is awaiting the outcome of Congress' legislative action on the D.C. AIDS Insurance Act before deciding whether to recommend something similar in New York. This bill has more than just local implications.

A legislative victory for the D.C. AIDS Insurance Act would send a very strange kind of message to the national public. Congress, which five years ago disapproved a D.C. Council-passed bill legalizing sodomy, would now authorize its subsidization—as well as the subsidization of intravenous drug use—the two most prevalent causes of AIDS accounting for 90 percent of total cases nationally.

We would like to draw a distinction between homosexuality and sodomy. Homosexuality is a state of the human condition. Irrespective of whether it is inherent, chosen freely, or some of both, just because one is homosexual does not mean that one has to sodomize, just as a never-married heterosexual does not have to fornicate. Whether Congress eventually prohibits discrimination against persons because of their sexual orientation remains for the future to tell. But, for Congress to implicitly legitimize sodomy by letting D.C. Act 6-170 stand before barring discrimination based on sexual orientation puts the cart-before-the-horse to say the least. It issues the contradictory message that sodomy is all right, even though homosexuality has no legal sanction.

IV. D.C. Act 6-170 is rife with technical problems:

Part of the reason D.C. citizens did not catch on to this bill until it had passed is because the title and "short title" ("summary statement" would be a better term than "short title") are vague and misleading. (The title and "short title" are all that are listed in the "Council Calendar of the Week" mailed out to Advisory Neighborhood Commissioners, civic leaders, etc., and very often are all that active citizens have available to them to use to determine whether or not to pursue an issue since they could not possibly request and digest copies of every bill in the Council.)

The Act's title, "Prohibition of Discrimination in the Provision of Insurance Act of 1986" hardly prohibits most forms of discrimination. Though its title gives no indication of this, it only prohibits certain alleged forms of "discrimination" as relates to AIDS.

The Act's "short title" which summarizes the bill addresses two points—prohibition of testing and exclusion of benefits. It gives no hint to the average reader of the "Council Calendar of the Week" that it also prohibits taking demographic, personal, and other non-medical statistical factors (i.e., "age, marital status, geographic area of residence, occupation, sex, sexual orientation, or any similar factor" to quote the Act's language) into account, or that it prohibits for five years insurers charging differential premiums for persons in high-risk categories, or that it, after five years, places additional regulatory obstacles before insurers requesting differential premiums.

In their lawsuit against the referendum, the plaintiffs (who include the Act's sponsor, D.C. Council member John Ray) even concede that the bill's short title is "inaccurate and misleading". (See attached excerpt from court filing.) The summary statement ultimately adopted by the Court is widely different from the Council's language which was never seriously considered by any of the parties to the case based on their presentations. (See sample petition form side one also attached.)

If citizens can be required to have an accurate and impartial summary statement before the matter can be placed before the electorate, is it not only fair that the Council be required to do the same before it passes legislation and transmits it to Congress. Too often the Council makes rules for everybody else, while exempting itself. This "don't-do-as-I-do, do-as-I-say" attitude is the kind of irresponsible exercise of power that Congressional review was intended to check.

In their lawsuit, Council member Ray, et al. sought to block the referendum by claiming D.C. Act 6-170 is part of the D.C. Human Rights Act, and, therefore, not proper subject for referendum, despite the fact that the Act is codified in the insurance code and contains no provision that it is part of the Human Rights Act. Clearly, Congress is being asked to buy a "pig-in-a-poke".

We do not wish to imply that these anomalies represent any conscious effort by the D.C. Council to fool the public. Rather, we raise these concerns to demonstrate that D.C. Act 6-170 is poorly crafted legislation and merits rejection on Technical and procedural—as well as substantive—grounds. That D.C. citizens have doubts about this legislative concoction is evidenced by the fact that in the two brief weeks referendum petitions were being circulated, approx. 4,000 signatures were gathered. At this rate, had we had the six months initiative petitioners would be given, we would have accumulated 50,000 signatures—four times the required number!

V. The AIDS Insurance Act is a slap in the face to Congress for rejecting the "Sex Reform Act" in 1981:

In 1981 the D.C. Council passed a bill to recognize the notion that a husband could rape his wife. Slipped into the bill was an obscure rider repealing the legal prohibitions on sodomy and fornication. Religigus and civic leaders petitioned Congress for disapproval of the legislation and the House of Representatives (in pre-Chada days when a one-House veto sufficed for disapproving D.C. criminal code changes) decisively voted to reject the Council-passed bill. This year, the D.C. Council passes a law saying insurance companies have to provide insurance to high-risk persons at standard rates and everybody else has to pay for it, even while continuing to permit insurers to deny benefits and charge higher rates to law-abiding applicants for a variety of conditions—including those the applicant has no ability to control. Congress as an institution ought act with consistency. Congress cannot vote to criminalize sodomy, as it did five years ago, and turn around and sanction subsidizing its consequences—particularly in a manner which accords special preference to sodomy-related conditions. Congress will be the laughing stock of the District Building if it fails to reject the AIDS Insurance Act, and may face further legislation in the same vein, like a ressurrected "Sex Reform Bill".

We do not petition Congress for redress of grievances in this matter lightly and with-

out forethought. We recognize homerule was Congress' sincere attempt to begin a gradual process of ending colonial governance of the Nation's Capital which would put us on the path to full self-determination at some later juncture. It is for this reason that we sought to undo the AIDS Insurance Act through local mechanism, first approaching the Council and asking its members to support action to remand the matter to the electorate, and, stiffly rebuffed there, the Board of Elections and Ethics seeking referendum.

We gave the Mayor and all Councilmembers signed copies of the attached letter. We verbally suggested to Councilmember Ray that Council action calling the bill back would prevent whatever embarrassment might befall homerule by Congresssional disapproval. The Councilmember brushed aside our proposal by pointing out "Congressional disapproval is part of homerule.". While at first astounded by this observation, later reflection indicates its accuracy. Congressional disapproval was part of the package D.C. voters endorsed in the Homerule Referendum; indeed many of those desiring fuller self-determination (Statehood) voted against the Homerule Referendum.

In retrospect we can see that homerule was poorly structured—it ignored the Founding Fathers' guiding wisdom and 200 years of subsequent history. Where national and State constitutions have sanctioned division of power between Federal, State, and local government levels, and established large bi-cameral legislatures, Congress vested the usual powers and legislative scope of a state legislature and a modern big-city council with some Federal responsibilities in a single legislative body one-third the size of the nation's smallest lower house in the nation's smallest state! The Founding Fathers, who realized that no person's property or rights are secure so long as the legislature is in session, structured inefficiencies and checks-and-balances into legislative bodies—very few of which Congress included in the D.C.'s legislature, modelling it after a standard city council.

The Founding Fathers were very concerned that the system they were crafting ought have ample checks-and-balances, even though they had little concern for, and some opposed, notions of universal suffrage which have become accepted at subsequent junctures in American history. A system lacking proper checks-and-balances is clearly the greater anathema to the Founding Fathers. Yet, except for Mayoral veto, itself subject to Council override, Congressional review is virtually the only check-and-balance on a system with scarce few. To insure that there is some check-and- balance in the system Congress must, from-time-to-time, review and reject D.C. legislation on its merits. To fail to do so accords the kind of unbridled power to the D.C. Council that the Founding Fathers would have abhorred.

Homerule is not an end in itself; it is rather a means to achieve local self-determination and universal suffrage. Yet, it is the D.C. Council that stacks the referendum process against the electorate by requiring the same number of signatures be gathered in the couple of weeks or months of Congressional review to stop a Council action as petitioners for initiative would have six months to gather. It is the D.C. Council whose referendum law excludes major categories of legislation ("human rights" and budgetary matters) from the referendum process. And it is the city council whose members go to court seeking to block citizen efforts to carry ballot measures to the electorate so there can be real self-determination in this city.

When the city politicians cry "Homerule", these cries should be seen not as advocacy for universal suffrage or local self-determination, but rather as bids for frustrating any effort to check the Council's unbridled power. Such cries should not cower Congress into acquiescing to the AIDS Insurance Act. The "Homerule Argument" is not an empty drum which beaten upon makes an enormous noise, but which inside is completely hollow. Congressional review is an integral and indispensable part of homerule as now structured.

Indeed, Congressional review is necessary to prevent a civic abomination—a legislature lacking check-and-balance. Sen. Helms, by successfully sponsoring Senate action attaching to the Debt Ceiling Bill language sufficient to reject D.C. Act 6-170, has afforded Congress the opportunity to stop the AIDS Insurance Act. We urge all members of Congress to support Sen. Helms' amendment, and any other action that may be put forward to reject D.C. Act 6-170, the AIDS Insurance Act.

Respectfully,

REV. JOHN D. BUSSEY.
DINO JOSEPH DRUDI.

SOVIET CANCER PATIENTS SEEK RIGHT TO TREATMENT

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. FLORIO. Mr. Speaker, my recent visit to the Soviet Union included a number of meetings with Soviet refuseniks that continue to fight for the right to leave the Soviet Union and join their families in circumstances where they can live in freedom. My meeting with a group of cancer victims and their families was one of the most moving experiences of the entire visit and I wanted to share with my colleagues my impressions of this meeting with a group of very courageous individuals.

Inna Kitrosskaya-Meiman, Tatjana Kheifetz-Bogolmonaya, and Benjamin Charny are not unique in their long-term efforts to obtain visas from the Soviet Government in order to emigrate and join families and friends living in Israel and the United States. Their tragedy, shared by thousands of Soviet Jews in similar straits, is further compounded by the fact that all three have been stricken with serious forms of cancer while waiting for visas that never come. All three have some hope of further treatment in the West where there has been significant progress in successfully treating some forms of cancer. All three have, by necessity, undergone operations and painful treatments that have not worked and have exacerbated other ailments. All three have repeatedly applied to the OVIR for visas to emigrate but have been repeatedly denied. Yet all three are continuing their efforts to leave the Soviet Union and show their courage and humanitarianism by serving as models for other refuseniks.

I returned firmly convinced that the only way to pressure the Soviet authorities to allow these individuals the right to emigrate to seek further treatment and the right to be reunited with their families at such a difficult time is to ensure that international attention be brought to this situation and that government leaders hold the Soviet authorities accountable for their lack of action.

I would like to direct the attention of my colleagues to a news conference held last week on Capitol Hill to publicize the plight of these victims of a cruel regime. Several members of the other body were joined by the families of the refuseniks as well as by two National Cancer Institute physicians and the chief of the U.S. delegation to the International Conference on Security and Cooperation in Europe. They were able to receive a call from several of the patients calling from Moscow.

I wanted to share with my colleagues a Washington Post article which details this conference. I call attention to this situation in order to underscore the tragedy of the system the refuseniks face daily—a system that is so rigid that even a life-threatening disease such as cancer and the prospect of better treatment is not enough to convince the Soviet authorities that the freedom of movement and emigration is essential. The article follows:

[From the Washington Post, Sept. 12, 1986]

A REFUSENIK CANCER WARD—PHONE CALL TO UNITED STATES FROM AILING SOVIETS UNDERSCORES BATTLE OF DISEASE AND POLITICS

(By Cristine Russell)

Until the phone rang, it was a standard sort of Washington news conference in a crowded Senate office building room. Eight Senators, joined by a U.S. ambassador and top cancer researchers, had come to publicize the plight of five Soviet citizens with advanced cancer who have been refused permission to join their families and seek treatment in the West.

Several of the family members, who had flown in from California, New York and Massachusetts, sat quietly on folding chairs nearby. But the statements stopped and the tears began when Tatyana Bogomolny and several of the other patients called from her Moscow apartment.

It was early evening there, lunchtime here, as the 47-year-old breast cancer patient began an emotional talk with her father and sister, their conversation switching frequently between English and Russian.

"How do you feel?" asked Natasha Sverbilov, now of San Francisco. "I'm trying to be brave . . ." said Bogomolny, who underwent a mastectomy last year and also had chemotherapy once the cancer was found to have spread. "The best cure for us would be to be reunited with our families," she said.

Bogomolny and the other cancer patients are Jewish refuseniks who had first been denied permission to emigrate from the Soviet Union before they became seriously ill, and continue to be turned down.

They went public with their problems in a Moscow news conference last June and since then support has grown across the United States and Canada, spearheaded by physicians and politicians.

"Their situation is deadly urgent," said Dr. Gerald Batist, a cancer researcher from Montreal who examined some of the patients on a trip to the Soviet Union last spring and has since founded the International Cancer Patients Solidarity Committee on their behalf.

Batist said that, as cancer patients, they deserve the right to a second medical opinion and possible experimental therapies that might not be available in the Soviet Union. And, he added, "they have a right to live in a supportive environment in facing the real possibility of death. This means being with their families."

He was joined by two National Cancer Institute physicians, Dr. Bruce Chabner, head of the division of cancer treatment, and Dr. Steven A. Rosenberg, the surgeon spokesman for the team that treated President Reagan for colon cancer last year and the developer of a highly experimental new immunolgical cancer therapy.

"They should be allowed to leave, while there is still time," said Chabner. A number of American and Canadian medical centers have offered free medical care, said Batist.

Bipartisan Senate supporters from Massachusetts, California, New Jersey, Colorado, New York, Illinois, Arizona and other states largely stressed the need to place humanitarian concerns above politics.

"We'd like to put aside global politics," said Sen. Frank R. Lautenberg (D-N.J.) "The request is very simple: Give them a chance to live."

"We're not talking about politics . . . What we're talking about is health and family," said Sen. Pete Wilson (R-Calif.).

But Sen. Alfonse M. D'Amato (R-N.Y.) and Ambassador Warren Zimmerman, chief of the U.S. delegation to the international conference on security and cooperation in Europe later this year, spoke of possible linkage of the cancer patients to other issues. "When we get to Vienna, we will put this case in the forefront of our efforts in dealing with the Soviets," said Zimmerman, charging the Soviets with breaking the Helsinki accords' commitment to "reunification of families."

Tatyana Bogomolny was denied permission to leave as recently as June, said her sister Natasha Sverbilov. She noted that Tatyana's husband, Benjamin, who has sought to leave since 1966, has even been named in the "Guinness Book of World Records" as the Russian who has waited longest for an exit visa. Meanwhile, 26 of their relatives have been allowed to go, leaving the couple alone to cope in dealing with her illness, said Sverbilov. "She is in a very stressful condition."

The other Soviet cancer patients listed in a new appeal from Lautenberg and other senators sent yesterday to Soviet leader Mikhail Gorbachev include:

Benjamin Charny, 48, of Moscow, who has a skin cancer called malignant melanoma, a tumor on his neck and a serious heart condition.

Inna Meiman, 53, of Moscow, who has cancer of the spine. She reportedly has undergone four operations in the last three years and is being treated with chemotherapy; her tumor is considered inoperable in the Soviet Union. She is married to human rights activist and mathematician Naum Meiman.

Rimma Bravve, 31, of Moscow, has advanced ovarian cancer now considered untreatable there.

Leah Mariasin, of Riga, Latvia, who has had several tumors since 1980.

In addition, Lautenberg said a 7-year-old Odessa boy, Edward Erlikh, is dying of leukemia and needs a bone marrow transplant. He said the boy's New York relatives have offered to pay for it and care for him.

DONALD BECKLEY: PEACE CORPS VOLUNTEER OF THE YEAR

HON. THOMAS J. TAUKE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. TAUKE. Mr. Speaker, it is with great pleasure that I rise today to honor Donald Beckley, a constituent of mine from Bellevue, IA. Don is one of the three Peace Corps volunteers who have been named "Volunteer of the Year" and will be honored this weekend during ceremonies celebrating the Peace Corps' 25th anniversary.

Don applied for a Peace Corps post in May 1983. A year later he won his assignment and sold his auto and farm equipment repair shop. On July 1, 1984, Don arrived in Chikai, Niger, the village he has called "home" for the past 2 years.

During those 2 years, Don has learned to dine on camel and has become accustomed to chasing scorpions. He has suffered two bouts of amoebic dysentery.

His primary work has been on a project originally begun in 1975 by a Canadian priest. "Project Tapis Vert"—Project Green Carpet—is aimed at turning sub-Sahara sands into a green area for the farmers and nomadic herders who live there. Although Don's main goal was to teach the villagers to maintain their five automobiles and other machines, he has helped install six windmills for pumping water, an irrigation system, and a biogas unit that converts animal manure to methane gas.

And it is for this hard work that Don Beckley has been named the Peace Corps "Volunteer of the Year" from the Africa region.

Over 120,000 individuals from across America, from every walk of life and of every age have served as Peace Corps volunteers in over 90 countries since its inception in 1961. There are currently more than 5,700 volunteers serving in 64 countries.

Today, my home State of Iowa has nearly 125 active Peace Corps volunteers. Since 1961, some 675 Iowans have served in the Peace Corps. Don Beckley exemplifies not only his fellow Iowans, but the more than 120,000 individuals who, during the past 25 years, have served as Peace Corps volunteers. And, of the nearly 6,000 volunteers presently serving in 64 countries, we in Iowa are deeply honored that Don has been chosen to receive this highest of Peace Corps recognitions.

Don Beckley, who will return to Chikai, Niger on October 1, understands fully that the goals of the Peace Corps—to promote a better understanding of Americans abroad and greater knowledge of the Third World here at home—are but a prerequisite for a peaceful and better world.

Don's parents, Bob and Mary, and several of his 11 brothers and sisters are visiting Washington this week to attend the ceremonies honoring their son and brother. I know that they are all singularly proud of Don's achievements. I join with them and many other Iowans in paying my utmost respect to Don for the fine work he has accomplished for his country and the high honor being bestowed upon him.

Mr. Speaker, I am submitting for the RECORD the following article from the August 10, 1986 Dubuque, IA Telegraph Herald which details Don's 2 years in the Peace Corps.

The article follows:

MECHANIC GETS PEACE CORPS AWARD

[By Ross Blalema]

BELLEVUE, IOWA.—Don Beckley of rural Bellevue, a tall lanky Iowa farm boy, always had a soft spot in his heart for the television images of starving people shown in ads for charities.

So he sold his auto and farm equipment repair shop to his older brothers, and became a Peace Corps volunteer in Niger, Africa, to help subsistence farmers there.

While dining on camel meat, chasing scorpions from camp and suffering two bouts of amoebic dysentery during the 25-month assignment, he never imagined he would be chosen as one of three Peace Corps award winners worldwide.

Peace Corps officials named Beckley, 27, Volunteer of the Year from the Africa region in July.

As the mechanic-turned-humanitarian puts it: "I just can't believe that a country boy like me without a college education can win an award like that, but I guess I can. The only way I could get my name in the paper before was with a speeding ticket, but now I have no problem."

Beckley, his parents, Bob and Mary Beckley of rural Bellevue, and a few of his 11 brothers and sisters will travel to Washington, D.C., next month to participate in the Peace Corps' 28th anniversary ceremony. Beckley and two other volunteers—chosen from about 6,000 workers serving in 83 countries—will receive their awards on Sept. 21.

The next day he is scheduled to meet President Reagan in the Rose Garden for congratulatory words. Beckley seems calm about the meeting.

"I know a lot of Iowa farmers that have a message for me to give him," he says with an easy grin.

The former 4-H leader applied for a Peace Corps post in May 1983 and was accepted in summer 1984. After a five-day training session in Philadelphia, he flew to Niger (pronounced NI-JEAR), a former French colony now ruled by military dictatorship. He began work there July 1, 1984.

Beckley was a cog in a project begun in 1975 by a Canadian priest. "Projet Tapis Vert" (Project Green Carpet) is aimed at turning sub-Sahara sands into a green area for the farmers and nomadic herders. Recent droughts have killed many of the herders' goats and cattle, and forced the nomads to become beggars in Niamey, the largest city near Beckley's home village of Chikaj.

Although Beckley's main goal was to teach the villagers to maintain their four Toyota Land Cruisers, one British Land Rover and other machines, he also helped install six windmills for pumping water, an irrigation system, a bio-gas unit that converts-animal manure to methane gas, and acres of wire fences.

His toughest job was learning French which he started during a three-month crash course in Niger, and learning the native language of the House, the tribe he primarily helped.

He blamed the food and water for his dysentery bouts. To avoid the spicy, sometimes contaminated food, he used his Yankee in-

genuity in an offbeat way. The villagers frequently asked him to repair their motorcycles, and Beckley performed the work in exchange for chickens.

He bought a leg of meat once in a market, and didn't learn until after the purchase that it was camel, not beef.

"You've got to cook the heck out of it," he says. He compares the taste to venison.

Because car parts are expensive (tires are $300 each and alternators are $450), Beckley and his chief trainee, Ibrahim Abdou, learned to use materials at hand for spot repairs. Beckley received a budget from the Peace Corps, and occasionally traveled to Niamey for vital car parts.

Volunteer John DeMarco, an electrical engineer from Canada, designed a system of hinges that would allow easier erection of the Nebraska-made windmills.

"You're forced to use your brain more than you ever were in the United States," Beckley says.

Although the Hausa farmers' techniques of donkey-drawn plows and hand cultivation won't help American farmers, Americans can learn something from the religious Hausa, he insists.

"The Muslims are really, really close to God," he says. "No matter how bad the situation is, they are still happy people."

The Northeast Iowa Technical Institute-Peosta graduate also admires the Hausa customs, which include a weekly tom-tom during which young men court women at a drum-accompanied dance. The men approach the dancing women and hold money to the women's foreheads. The men release the bills, and the women grab for the falling money to accept the date.

Beckley will return to Niger Oct. 1, and continue his work for three months. He doesn't regret joining the Peace Corps because it has prompted several job offers, but he does question trying to rapidly modernize a proud and colorful people.

His advice to other Peace Corps volunteers is: "Put your heart and soul in it. That's all you can do. Be honest with the people and it's going to come back to you tenfold. Don't be worried that you don't have enough education because if you have any education, you have more than they do."

PEACE CORPS

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. PETRI. Mr. Speaker, since the Peace Corps was founded in 1961, over 3,000 citizens from the State of Wisconsin have served in that organization, helping to bring improved health, skills, and a better way of life to the underdeveloped world. It is with a great deal of pride that I can count myself in that number.

The Peace Corps isn't for everybody. But for those who want to offer help to others, and who want to learn more about themselves by meeting the challenges of life in distant lands, the Corps can provide one of life's most rewarding experiences.

From time to time, I have recommended that the people of Wisconsin's Sixth District consider service in the Peace Corps. Now that the Corps is celebrating its 25th anniversary, I am pleased to repeat that recommendation. And in honor of the Corps, I would like to insert in the RECORD at this point my weekly column of September 12, 1986. The column is entitled "The Toughest Job You'll Ever Love."

THE TOUGHEST JOB YOU'LL EVER LOVE

One of the most rewarding periods of my life was the time I spent as a Peace Corps volunteer in Somalia. Now, with the Peace Corps celebrating its 25th Anniversary this month, I'm happy to join with tens of thousands of former volunteers in praise of this valuable organization. And to those who have thought that they might like to join the Corps, I'd like to repeat the Corps' slogan. "It's the Toughest Job You'll Ever Love!"

The Peace Corps is looking for a wide range of volunteers with specific skills. Particularly needed are people with experience in special education, agriculture, forestry, math, and health.

Also, there is a wide range of additional assignments including: civil engineering; nutrition and home economics; the skilled trades such as auto/diesel mechanics, general construction, carpentry, and electricity; and business, such as accounting, cooperative formation, and general business management. U.S. citizens with a college degree or at least two years' experience in any of these or related fields are encouraged to apply.

Since 1961, over 120,000 Americans have served as Peace Corps volunteers in developing nations around the world. Currently, close to 6,000 volunteers serve in 62 countries. Peace Corps volunteers are tackling some of the most critical problems facing developing countries today.

In addition to the personal satisfaction gained from sharing their skills and energy with the people of the host countries, Peace Corps volunteers gain valuable career experience. And by facing the challenges of Peace Corps service, volunteers almost inescapably learn a great deal about themselves, and about others as well.

Although it is a volunteer program, there are substantial tangible benefits in Peace Corps service. Volunteers receive paid transportation to and from their assigned country, extensive training particularly in the language of the country, a monthly living allowance for expenses while in service, health care, vacation time and a readjustment allowance of $175 per month served payable upon completion of the two year assignment (approximately $4,200).

In addition, volunteers receive non-competitive eligibility for federal jobs for one year following service. This is a valuable benefit for those interested in federal employment upon return.

Any U.S. citizen with a commitment to helping others and a willingness to devote two years of his or her life to fulfilling that commitment is eligible to apply for Peace Corps service.

Although the minimum age is 18, very few applicants under 21 have the skills or experience to qualify for an assignment. But on the other hand, there is no upper age limit. Many seniors and retired people think the Peace Corps is exclusively for young people. But in fact that isn't so. The Peace Corps needs the skills and experience of older Americans.

For further information, write: Peace Corps Recruiting Office, Old Federal Building, Room 104, 212 Third Avenue, South, Minneapolis, MN 55401.

THE POLICE FOUNDATION

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. RODINO. Mr. Speaker, I would like to pay tribute here to an organization that has been contributing to the whole realm of law enforcement issues since it was established 16 years ago. This is the Police Foundation, an organization dedicated to improving police work and public safety through a comprehensive program of research and experimentation.

Police work may be the most difficult and demanding of occupations. Police officers are putting their lives on the line day after day. So it is critical that we find ways to help the police carry out their work safely and productively. To assist the police really translates into a better and safer society for us all.

It is prescisely in this mission of improving American police work that the Police Foundation has excelled over the years. Through research and experimentation, the foundation has made significant contributions to the control of crime and the maintenance of public safety in the United States. In so doing, the organization has made police work more effective and productive—and our Nation a safer place to live.

Over the years I have had the great privilege of knowing the president of the foundation, Hubert Williams, who previously served as the police director in my hometown of Newark, NJ. Under his direction, the foundation has furthered its ouput of high quality material, and I congratulate him for its successes.

As chairman of the Judiciary Committee, I value the work produced by the Police Foundation. This organization is contributing to American life in a vitally important way that few others can match. The tangible results of the foundation's research—helping to save lives and reduce fear—are things every American can appreciate.

SALUTE TO PEACE CORPS

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. COURTER. Mr. Speaker, as one of five Members of the House who enjoyed the challenges of service in the Peace Corps before coming to Washington, I wish to salute the Corps for a quarter century of service to the world. The experiences the volunteers had and the efforts they made have had profound effects in many foreign countries. But they are as valuable to us here at home. We enjoy the benefit of the international good will Peace Corps volunteers engender. We also have among us 120,000 former volunteers, and through them we learn a great deal about the culture, geography, and interests of peoples living all over the world.

My own service began in 1967 in Venezuela. I was one of a group of city planners and

attorneys. In the town of Valera, volunteers such as myself worked at establishing a municipal tax system and improving the roads and sanitation systems. You could see the tangible changes we made, and you still can see them now. Over the years, I have looked back on my service in Valera with such pleasure that I have given a great deal of thought to rejoining the Corps some time after my 60th year.

It is good to know that more than 5,000 Americans are serving abroad this year, but I am troubled about what budget cuts may bring. Last year, the Congress saw fit to aim for 10,000 volunteers; today we have barely half that many, and there is talk of further reductions. Both my own Peace Corps experience and my judgments about America's foreign relations lead me to believe that the Corps is a splended medium of both foreign aid and public diplomacy, and we should do all that is necessary to enhance its strength.

HOUSE OF REPRESENTATIVES—*Friday, September 19, 1986*

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. FOLEY].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
September 18, 1986.

I hereby designate the Honorable THOMAS S. FOLEY to act as Speaker pro tempore on Friday, September 19, 1986.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Remind us, O gracious God, that we are all bound together in this covenant of life which You have freely given. As we become aware of this unity we possess and our common aspirations and shared values, make us more responsible to assist each other, to care for one another's needs, to use our resources for those less fortunate and to remember others in prayer and concern. Bless and encourage each person who seeks to use the gift of faith in acts and deeds of love. Amen.

THE JOURNAL

The Speaker pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 4260. An act to provide the Small Business Administration continuing authority to administer a program for small innovative firms, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2032. An act to amend the Securities Exchange Act of 1934 to provide improved protection for investors in the government securities market, and for other purposes;

H.R. 5175. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1987, and for other purposes;

H.R. 5205. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes; and

H.R. 5234. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1987, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4421) "An act to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990 to carry out the Head Start, Follow Through, Dependent Care, Community Services Block Grant, and Community Food and Nutrition Programs, and for other purposes".

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 1963) "An act to direct the Secretary of the Interior to convey certain interest in lands in Socorro County, NM, to the New Mexico Institute of Mining and Technology."

The message also announced that the Senate agrees to the amendments of the House to the joint resolution (S.J. Res. 207) "Joint resolution to designate November 1, 1985, as 'National Philanthropy Day'."

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5175) an act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1987, and for other purposes, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. SPECTER, Mr. HATFIELD, Mr. MATTINGLY, Mr. DOMENICI, Mr. LAUTENBERG, Mr. HARKIN, and Mr. STENNIS to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5205) an act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. ANDREWS, Mr. COCHRAN, Mr. ABDNOR, Mr. KASTEN, Mr. D'AMATO, Mr. HATFIELD, Mr. CHILES, Mr. STENNIS, Mr. BYRD, and Mr. LAUTENBERG to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5234) an act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1987, and for other purposes, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MCCLURE, Mr. STEVENS, Mr. LAXALT, Mr. GARN, Mr. COCHRAN, Mr. ANDREWS, Mr. RUDMAN, Mr. WEICKER, Mr. BYRD, Mr. JOHNSTON, Mr. LEAHY, Mr. DECONCINI, Mr. BURDICK, Mr. BUMPERS, and Mr. HOLLINGS to be the conferees on the part of the Senate.

WILLIAM B. PENNEKAMP

(Mr. NATCHER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. NATCHER. Mr. Speaker, the House has lost one of its most able employees and the Office of Official Reporters one of its most valuable floor reporters with the passing on September 1 of William B. Pennekamp at the age of 58.

Bill had, as a highly experienced court reporter and expert Gregg shorthand writer, joined the House staff in 1974. He worked steadily until a brief illness this past summer which resulted in a diagnosis of cancer and his ultimate death just before the House was scheduled to resume its session after Labor Day.

Before coming to Washington, Bill had a long career as a court reporter, working as an official reporter in various jurisdictions, more recently as a reporter for the Court of Common Pleas in Cleveland, OH. He was a veteran of the U.S. Navy and following the Korean war had completed a tour of duty as a civil service appointee, serving in both Japan and South Korea. A native of Wisconsin, he graduated from high school and later from Gregg College in Chicago, where he received his training for the reporting profession. Before his work in Cleveland and his appointment in Washington, he had fulfilled court reporting assignments in Florida and Lincoln, NE.

Court and legislative reporters are often identified as quiet professionals

who perform their duties without fanfare. In that respect, Bill was typical, but in his competence and professional skill he was most atypical. He had, in his work with the House, acquired a high level of competence and special knowledge and his willingness to share it with younger, less experienced members of the staff earned him a reputation as a valuable team member.

Bill's legacy—the mark he left on the House—is epitomized by the printed words in volumes of the CONGRESSIONAL RECORD. The words and phrases of countless speeches and debates reached the pages of the RECORD through the conduit of Bill's interpretive mind and his fountain pen. And there is yet another mark of excellence he has left behind for us here in the Capitol. Bill had developed an interest in calligraphy, and after several years of instruction and practice, he eventually became so skilled that friends and acquaintances prevailed upon him to produce samples of his work.

In a lighter mood, Bill was fond of calling himself "just a country boy who can be easily confused," but those who knew him saw in him a delightful mixture of depth of character and simplicity.

His passing has left a void in the offices of the Official Reporters that can never be filled completely, and, Mr. Speaker, all who knew him are truly saddened at the loss of a real friend.

Mr. Speaker, I am attaching a copy of the obituary which appeared in the Washington Post, as follows:

William B. Pennekamp, 58, a shorthand stenographer with the U.S. House of Representatives, died of lung cancer Sept. 1 at his home in Alexandria.

Mr. Pennekamp was born in Tennyson, Wis., and served in the Navy. He was a shorthand stenographer in Florida, Korea and Japan before joining the stenographic reporting staff of the House of Representatives in 1974.

Survivors include four brothers, Lawrence, of Kieler, Wis, George, of Potosi, Wis., Joseph, of Cassville, Wis., and Ralph, of Edgerton, Wis.; and four sisters, Alice Pennekamp, Gertrude Reese and Ada Osterholz, all of Platteville, Wis., and Marie Van Natta of Belmont, Wis.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair wishes to announce that 1-minute speeches will be postponed until the end of the day.

EXTENDING DATE BY WHICH THE HOUSE MUST VOTE ON HOUSE JOINT RESOLUTION 723, COMPLYING WITH CERTAIN REQUIREMENTS OF BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

Mr. COELHO. Mr. Speaker, I ask unanimous consent that the date by which the House must vote on House Joint Resolution 723, pursuant to section 254(a)(4) of Public Law 99-177, be extended until September 25, 1986, and that the joint resolution shall not be in order for consideration in the House unless called up by the chairman of the Committee on the Budget or his designee, or unless called up by the ranking minority member of said committee or his designee.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. MICHEL. Reserving the right to object, Mr. Speaker, I shall not object, but I think that we probably owe the House some explanation of what we are really doing here.

Mr. COELHO. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from California.

Mr. COELHO. Mr. Speaker, basically as I understand it we are permitting the privileged status of this resolution to be extended until Thursday.

Mr. MICHEL. Mr. Speaker, I might say that it has been with the full discussion by both sides of the aisle by which we have come to this agreement. By the dates prescribed under Gramm-Rudman we were to have made a decision, come to some resolution, by Monday. I think that it is pretty well agreed on both sides that we really would prefer to have the reconciliation measure, at least have an attempt to resolve that, before making a determination on whether or not it really would be necessary for us to get to the point where we would have to sequester and all the other things that follow.

So this is really to the advantage of all of us. I think that if we agree to this unanimous-consent request, put that over until Thursday——

Mr. COELHO. That is correct.

Mr. MICHEL. Then in the meantime, as I understand, the distinguished majority leader is here, we would be taking up the reconciliation and the continuing resolution prior to consideration of this, and I think that that will then probably further be disclosed in a discussion of the program for next week.

Mr. COELHO. We will be taking that up on Wednesday.

Mr. MICHEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT AMENDMENTS OF 1986

The SPEAKER pro tempore. Pursuant to House Resolution 536 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2482.

□ 1008

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2482) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, with Mr. MCHUGH in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Thursday, September 18, 1986, title I of the text of H.R. 5440, which is considered as an original bill for the purpose of amendment, was open for amendment at any point.

Are there further amendments to title I?

Mr. DE LA GARZA. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take this time to remind Members again of what I mentioned briefly yesterday before we started debate on this legislation. I get the feeling somehow that we cannot relate, as we speak of pesticides, insecticides, and so forth, to the extent to which what we are dealing with in this legislation is related to the whole food chain, to farmers, who are having a most difficult time, to the quality and type of food which is eventually available to the consumer, to the cost of that food as the consumer eventually gets it in the markets or in the restaurants, and to the protection of the ecological balance of the entire ecosystem basically.

I want us to think of that and not necessarily that we are thinking of chemical companies or formulators or applicators, or who buys or who does not buy or who registers or who does not register.

□ 1010

In the end we are speaking of the farmer and the costs and tools that he needs for the production of food and fiber which gives this country the best quality food in the world, in the history of the world for the lowest amount of disposable income per family in the world, in the history of the world. This fungicide, pesticide, rodenticide, these chemicals are part of the tools which the farmers use for that productivity, for that quality which you get at the store, that you get in a beautiful apple, or beautiful vegetables, or in cereals or other grains that you get, or the beef, or the lamb at the supermarket. It is not a miracle in itself. It is that you had a dedicated farmer who produced them.

He needed the tools and to have the tools, some of which could have dangerous consequences to the ecological

system, or to mankind, or the farmer himself, we need a regulator and we need to provide the basic law that regulates. So that is what we do here. We regulate from the registration, from the research, all the way to the final use.

I want our colleagues as they vote to understand, and hopefully support the committee who has dedicated itself to bringing to you the best legislation possible. As I mentioned, it is not perfect, because perfect legislation is an impossibility. But there are many technical areas that would be very difficult for a Member just to draft offhand an amendment. I would hope that Members would support the committee who has the technical language that will do what we hope is the intent of the vast sector of the population to give us that protection, to give us that safety, but yet to allow the farmer the tools to continue giving us that quality food at those prices that we have in this great country of ours.

Farmers are having a very difficult time. Since the Great Depression, this is probably the most difficult time agriculture has had. Without those tools it would be very difficult for many of them to survive.

So it is not the small and the big, it is not East and West, it is not North and South, but it is government's responsibility to work with the farmer, and it is our responsibility to see that we strike a balance between the need of the farmer, the collective need of society, and our responsibility as human beings to the protection of the ecosystem.

I hope Members will support the committee throughout the process during the day and that we can conclude this legislation today.

AMENDMENT OFFERED BY MR. MARLENEE

Mr. MARLENEE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MARLENEE: Page 43, line 7, insert after "section 16(b)." the following new sentence:

"Notwithstanding any other provision of law, no attorneys fees or expenses shall be awarded for any civil action brought under this section for failure to meet deadlines."

Mr. BERMAN. Mr. Chairman, I reserve a point of order on the amendment.

Mr. MARLENEE. Mr. Chairman, what this amendment does is to assist in the expediting of the process of testing and evaluation by avoiding the draining off of funds for litigation, funds that are desperately needed to complete the process and to meet deadlines.

This bill sets up the impossible task of meeting 1,100 deadlines. It then handicaps EPA by saying we are going to short you $50 million. Then, in shortsightedness, the bill exacerbates the problem by allowing that if they do not meet the deadlines, we are going to allow nonprofit groups and individuals to bring lawsuits against EPA, and EPA will use your funds that you could have used to meet further deadlines, use those funds to pay their attorney fees, pay the fees of anyone who wants to sue EPA if they have not met a deadline.

A tremendous catch-22 is therein created with 1,100 deadlines, $50 million short in funds to meet those deadlines, lawsuits that pay attorneys less money to complete the work, more time lost, more lawsuits until this whole merry-go-round collapses into a cloud of star-sprinkled dust where the attorneys go drifting off in a state of euphoria.

This amendment ends that abuse by allowing the litigant to pick up his own legal fees, not the taxpayer, not the farmer, not the folks who pay $150,000 to $500,000 per application for a registration, but those who brought the suits because one of the 1,100 deadlines was missed.

Make no mistake about it, lawsuits will be filed. The first incentive to file is that many nonprofits have in-house counsel that do not make the kinds of wages they think they should be entitled to, and the bill, without my amendment, is berry-picking heaven. It sure enhances their salaries and the coffers of the organization that files the suit.

The second incentive to file a lawsuit is that under the Equal Access to Justice Act, which applies to this bill and EPA, the courts have already awarded exorbitant fees to environmental activists as a reward for filing lawsuits.

For example, the third judicial circuit awarded the National Resources Defense Council [NRDC], $34,375.85 when that group filed suit because EPA failed to meet notice and comment requirements for rulemaking under the Clean Water Act (*NRDC* v. *EPA*, 703 F.2d 700). In another case, the NRDC and three other environmental groups were awarded $100,976.14 when they brought suit to compel EPA to perform certain nondiscretionary acts in connection with section 307 of the Federal Water Pollution Control Act (*NRDC* v. *Costle*, 12 E.R.C. 1181).

The theory is that the public benefits because the lawsuit forces the agency to act. However, these suits are really a convenient way for the plaintiffs and their attorneys to pour some more money into their coffers. Rarely, if ever, have these lawsuits forced the agency to do more than they are already doing, because the problem is a lack of revenue, and that problem is exacerbated because money is drained off for litigation.

The administration supports the enactment of my proposed amendment.

I include for the record a letter from the U.S. Department of Justice.

The letter follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, September 16, 1986.

Hon. RON MARLENEE,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN MARLENEE: Attorney General Meese has asked me to respond to your letter of July 31, 1986, regarding your proposed amendment to H.R. 2482, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Amendments of 1986. The Administration supports the enactment of your proposed amendment.

The amendment you propose provides: "Notwithstanding any other provision of law, no attorneys fees or expenses shall be awarded for any civil action brought under this section for failure to meet deadlines."

As you note in your letter, H.R. 2482 would impose a great many deadlines for Environmental Protection Agency (EPA) action, which the Agency has already stated it cannot meet. In turn, EPA will be faced with lawsuits to compel agency action which could result in liability for attorneys' fees and expenses under the Equal Access to Justice Act (EAJA). Similarly, the recent Resource Conservation and Recovery Act and Safe Drinking Water Act Amendments assign the EPA a long list of new deadlines with the attendant exposure to lawsuits and fee awards.

Our records indicate that over $2.6 million have been awarded against the United States in 61 attorneys' fees cases handled by the Land and Natural Resources Division alone since 1980. Attorneys' fees provisions, for the most part, provide little or no guidance as to when an award of attorneys' fees is appropriate, or what constitutes a reasonable award. *See generally, City of Riverside* v. *Rivera*, 106 S.Ct. 2686 (1986). Indeed, in some cases, attorneys' fees awards have greatly exceeded the relief obtained by the parties to the preceeding.

In addition, deadline cases tend to be both legally and factually straightforward. As a result, unbridled fee awards may attract abusive litigation, the real object of which is a fee award rather than the advancement of the environmental goals of FIFRA. Clearly, the taxpayers' money spent on attorneys' fees awards and the administrative expenses of defending such actions is better spent to implement substantive statutory provisions.

Therefore, we concur with your conclusion that allowing attorneys' fees for breaches of every statutory deadline makes little sense and we support your proposed amendment to the 1986 FIFRA Amendments. At a minimum, some restraint on the amount of fee awards should be imposed in deadline cases. The problem of such relatively unproductive litigation could also be addressed through a cap on the allowable hourly rate which courts may award. Please contact us if we can be of any additional assistance on this important matter.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Mr. MARLENEE. In a letter dated September 16, 1986, the U.S. Department of Justice concurs in my conclusion that allowing attorneys' fees for breaches of every statutory deadline

makes little sense and supports the proposed amendment.

The letter, furthermore, notes that the Justice Department records indicate that over $2.6 million have been awarded against the United States in 61 attorneys' fees cases handled by the Land and Natural Resources Division alone since 1980. Attorneys' fees provisions, according to the Justice Department, for the most part, provide little or no guidance as to when an award of attorneys' fees is appropriate, or what constitutes a reasonable award.

□ 1020

I believe that my amendment is particularly important for FIFRA due to the very unusual step that the House Agricultural Committee is taking to make registrants pay user fees to EPA to conduct the program to reregister pesticides.

The justification for the reregistration fees is that the committee believed that the public could not afford to pay the cost of the program. This fact alone supports my amendment since the public, which cannot afford to pay for reregistration, also cannot afford to pay attorney's fees to other groups to oversee the program. Oversight of this program and the job of ensuring that EPA meets the requirements of reregistration is a task for Congress, not for the courts and litigants.

This amendment has no impact on farmers and producers. It precludes the award of attorneys' fees only for lawsuits to enforce reregistration deadlines. Farmers would be very unlikely to file a reregistration deadline suit. As a representative of a farm State, I can assure you that this amendment will not affect in any way a farmer or a producer's right to ask for attorneys' fees under the EAJA in a legitimate action under FIFRA to vindicate rights abused by EPA.

My amendment ensures that EPA will be able to direct its resources toward the running of the reregistration program, rather than having them siphoned off in the form of attorneys' fees. The amendment is very limited in scope and applies only to the reregistration section of FIFRA. It preserves completely the right of any individual or group to sue EPA to enforce a deadline. It simply provides that any such lawsuit is funded by the litigant himself, not by the taxpayer.

I would appreciate your support of my amendment as written to H.R. 2482.

Mr. ROBERTS. Mr. Chairman, I rise in support of the gentleman's amendment.

Mr. Chairman, there are some who say that this entire FIFRA bill is little more than a congressional enforcement of legal deadlines. I think it is much more than that, but I think it is a point to be made; there are deadlines all throughout this bill; and as the gentleman has pointed out, under the Equal Access to Justice Act, as amended, in 1985.

This bill would then allow the awarding of attorneys fees for deadline suits by public interest groups. Now, FIFRA is referenced in the bill, so all of the deadline suits under FIFRA would be subject to reimbursement out of the Agency's budget; but we are into user fees.

More to the point, those fees are paid as that cost is passed onto the farmer-stockman. That means a large portion of the user fees would be going to pay attorney fees for the deadline suits.

Now, I do not want to perjure the intent of any public interest group. The record of the EPA on this matter is a very legitimate issue, and without public citizen groups, why I think obviously that catalyst for speedy action and even this bill would not exist.

I would like to refer to a letter that I have received, or a copy of a letter that went to the Speaker from 21 pesticide user groups or farm groups.

In that letter, they are pointing out to the Speaker that there is little doubt that lawsuits will be filed to force EPA to somehow redirect its resources to meet these deadlines. These suits are common; they consist of little more than a simple recitation of the fact that the deadline has not been met.

Mr. MARLENEE. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Montana.

Mr. MARLENEE. Mr. Chairman, I think if we want to pipeline taxpayers' money into the legal departments of environmental groups, let us be honest about it: Let us vote by directly appropriating it to those causes. But then again, maybe that is exactly what this vote will be about.

Mr. ROBERTS. Reclaiming my time, Mr. Chairman, the gentleman makes an excellent point, and we raised that amendment in the full committee, in the Committee on Agriculture, but that particular version lost because we did not want to pay for it out of the appropriated funds.

It was not an intent to muzzle any interest group; it was simply how we pay for it. These awards, however, could be disastrous in light of the fact that the reregistration program mandated by this bill is still some $50 million short, and so the direct cost to the public is very high. Generally, about $50,000 per lawsuit to simply pay the attorneys fees.

This amendment would simply ensure that EPA would be able to direct its finances toward the running of the reregistration program; in other words, to make the FIFRA reform bill work rather than having them siphoned off in the form of these attorneys fees.

The amendment is very limited in scope, it applies only to the reregistration section of FIFRA; it preserves completely the right of any individual or group to sue the EPA to enforce a deadline; I am for that, I do not quarrel with that.

This simply provides that any such lawsuit is funded by the litigant himself, and not by the taxpayer.

POINT OF ORDER

Mr. BERMAN. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN. The gentleman will state it.

Mr. BERMAN. Mr. Chairman, I make the point of order that the amendment offered by the gentleman from Montana is in violation of clause 7 of House rule XVI which prohibits the consideration of amendments on a subject different from that under consideration. Mr. Chairman, the amendment offered by the gentleman from Montana carves out an exemption from the Equal Access to Justice Act, which authorizes the awarding of legal fees in certain cases brought against the Federal Government. The bill before us, H.R. 2482, amends the Federal Insecticide, Fungicide, and Rodenticide Act which concerns itself solely with the regulation of pesticides. Neither FIFRA nor this bill address the issue of the awarding of legal fees. Indeed, the amendment offered by the gentleman says that "Notwithstanding any other provision of law," indicating clearly that he intends to reach outside the scope of this bill and the law which it amends. The amendment goes to a totally different and nongermane matter to the business before the committee, and on this basis I ask that the point of order be sustained.

The CHAIRMAN. Does the gentleman from Montana [Mr. MARLENEE] wish to be heard on the point of order?

Mr. MARLENEE. Yes, Mr. Chairman.

Mr. Chairman, my amendment, I submit, is germane for the following reasons:

First, the title of the bill it is for "other purposes" than amending FIFRA.

Second, other examples of enactments amended by this bill or by the underlying FIFRA Act are: the Federal Hazardous Substances Act; the Poison Prevention Packaging Act; the Federal Food Drug and Cosmetics Act; and title 5 of the United States Code.

Third, the section and the bill reauthorize programs and funding for the pesticide programs. It also adds a new program (reregistration—section 3A of FIFRA) that is amended by my amendment. Both the section and the bill relate to fees and funding for the

reregistration program. Some of that funding for the reregistration program will come from fees assessed against registrants (see page 42 of the bill) and some will come from appropriated funds (section 816 of the bill).

My amendment would state how some of those funds could not be utilized and I submit does not violate the rules of the House on germaneness.

Fourth, my amendment is narrowly drawn and applies only to "fees or expenses shall be awarded for any civil action brought under this section for failure to meet deadlines."

Representatives from the Environmental Protection Agency and others have estimated that as high as over 1,000 deadlines are included in section 3A of the bill.

Yesterday on this floor in the debate we were told that this bill was underfunded by $48 million when an amendment to increase registrant's fees was considered and defeated.

Certainly my amendment that relates directly to that underfunding of the bill can be considered as germane to this bill.

Fifth, this bill, other than the section I am amending, contains provisions relating to the actions against the United States for just compensation (page 53, section 202, under section 1491, title 28, United States Code), and amends section 3(c)(D) of the FIFRA A t relating to the payment of fees to arbitrators and utilizing the Federal Mediation and Conciliation Service.

The bill also contains provisions relating to the false statement statute (18 U.S.C. 1001) and prosecutions thereunder.

Sixth, section 9 of the FIFRA Act gives the EPA Administrator authority to obtain and execute warrants and section 12 authorizes the Administrator to make certain certification to the U.S. Attorney General. Section 701 of the act discusses patent term extension for registrations of pesticides.

The foregoing merely illustrate the diversity of the provisions contained in the bill and the underlying FIFRA that, I submit, argue for the germaneness of my amendment.

Seventh, I understand, although I have not seen the basis of Mr. Berman's point of order, that it asserts the nongermaneness of my amendment based on the fact that it amends the Equal Access to Justice Act.

However, section 2412 (b) and (d) of title 28 (Equal Access to Justice Act) specifically provide with respect to fees and expenses of attorneys that those subsections only apply "Unless expressly prohibited by statute," (subsection (b)) and "Except as otherwise specifically provided by statute," (subsection (d)).

It is submitted that this bill which reauthorizes the FIFRA programs and funding can be utilized to effect the exception provided for in the Equal Access to Justice Act. It is therefore submitted that my amendment is germane to this bill.

The CHAIRMAN (Mr. McHUGH). The Chair is prepared to rule.

The gentleman from California makes the point of order that the amendment offered by the gentleman from Montana [Mr. MARLENEE] is not germane to the text of title I of H.R. 5440. The amendment waives all provisions of law which would otherwise permit the awarding of attorneys fees in FIFRA-related court cases.

The Chair would first note that the gentleman's argument reaches into and relates to titles of the bill which have not yet been reached in the amendment process.

The law being waived, moreover, is not the FIFRA law, but is the Equal Access to Justice Act, a law within the jurisdiction of another committee and a law not amended or referenced in the pending title of the bill. Nothing in title I amends existing law pertaining to judicial review and procedures.

The gentleman from Montana has made the point correctly that the Equal Access of Justice Act says that there can be exceptions specified by other statutes.

□ 1030

However, that does not remove jurisdiction from the Judiciary Committee or necessarily change the test of germaneness of amendments to other laws. And therefore, in the opinion of the Chair, the amendment addresses an issue within the jurisdiction of another committee and is not germane to the pending title.

The Chair therefore sustains the point of order.

Are there additional amendments to title I?

AMENDMENT OFFERED BY MR. BEDELL

Mr. BEDELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BEDELL: After line 24, page 44 of the bill, add the following section and renumber subsequent sections accordingly:

NEUROTOXICOLOGICAL AND BEHAVIORAL EFFECTS TESTING

SEC. 106. Section 3 (7 U.S.C. 136a) is amended by adding a new subsection (h) as follows:

"The Administrator shall develop methods for testing to accurately detect neurotoxic and behavioral effects of pesticides, and their ingredients, and shall, as such methods are developed, require to the extent appropriate and necessary, that data from such testing be submitted by persons seeking to obtain or maintain pesticide registrations."

Mr. BEDELL. Mr. Chairman, I offer this amendment on behalf of our colleague, Mr. BROWN of California. It is my understanding that it has been explained to all parties and there is no objection to the amendment.

This amendment is not a major item in this bill, but it does plug one small hole which was left in the revisions which we are considering. I urge adoption of the amendment.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Kansas.

Mr. ROBERTS. I thank the gentleman for yielding.

I just want to inform the gentleman and my colleagues that we have no objection on our side and wish to associate myself with the remarks of the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa [Mr. BEDELL].

The amendment was agreed to.

The CHAIRMAN. Are there additional amendments to title I?

If there are no additional amendments to title I, the Clerk will designate title II.

The text of title II is as follows:

TITLE II—INFORMATION DISCLOSURE

SEC. 201. PUBLIC RIGHT TO KNOW.

(a) FACT SHEETS AND REPORTS.—Section 7 (7 U.S.C. 136e) is amended by adding at the end thereof the following new subsection:

"(e) PUBLIC RIGHT TO KNOW.—

"(1) Any producer operating an establishment in any State shall prepare or obtain a fact sheet complying with this subsection for each active ingredient manufactured or used at the establishment. The producer shall maintain copies of the fact sheet at the establishment and shall furnish a copy to any person on request.

"(2) Each fact sheet for an ingredient required under paragraph (1) shall—

"(A) contain the chemical name, each common name, and any trade name of the ingredient and a summary of relevant health, safety, and environmental data concerning the ingredient, and

"(B) be revised as often as is necessary to reflect current information about the ingredient.

The Administrator may require a fact sheet to be amended to provide accurate and clear information to the public.

"(3) Each producer to whom this subsection applies shall furnish to the Administrator annually, in accordance with regulations published by the Administrator, a report that includes—

"(A) for each establishment operated by the producer in any State, the name of each ingredient for which a fact sheet is required that is manufactured or used at that establishment, and

"(B) for each ingredient for which a fact sheet is required, the location of each establishment where such ingredient is manufactured or used by the producer, and

"(C) a current copy of each required fact sheet.

"(4) The fact sheets required by paragraph (1) and the annual reports required by paragraph (3) shall be available to the public.".

(b) CONFIDENTIAL INFORMATION.—Section 7(d) (7 U.S.C. 136e(d)) is amended by inserting "and production locations" after "names".

SEC. 202. DATA DISCLOSURE TO STATES.

(a) STATES.—Section 10 (7 U.S.C. 136h) is amended by adding at the end thereof the following new subsection:

"(h) DATA DISCLOSURE TO STATES.—

"(1) IN GENERAL.—The Administrator may disclose to a State any data or information acquired under this Act if the State assures the Administrator, and the Administrator determines, that the submitter of the data or information will receive no less protection with respect to the disclosure and use of the data or information by the State than is provided by section 3 and this section.

"(2) ACTION FOR JUST COMPENSATION.—For the purpose of any action that may lie against the United States for just compensation under section 1491 of title 28, United States Code—

"(A) the disclosure or use of data or information provided by the Administrator under paragraph (1) to a State in a manner inconsistent with this section or section 3 shall be considered a taking of property, and

"(B) the act of a State with respect to such data or information shall be considered an act of the United States.

"(3) REQUIRED DISCLOSURE.—The Administrator shall disclose to a State any data or information acquired under this Act if the State assures the Administrator, and the Administrator determines, that—

"(A) the submitter of the data or information will receive no less protection with respect to the disclosure and use of the data or information by the State than is provided by section 3 and this section, and

"(B) the law of the State allows the submitter of the data or information to recover just compensation in a civil action against the State for losses resulting from the disclosure or use of the data or information by the State or its employees or agents in a manner inconsistent with section 3 or this section.".

(b) DATA SYSTEM.—Section 31 (7 U.S.C. 136y) is redesignated as section 33 and the following new section is inserted after section 30:

"SEC. 31. COLLECTION, DISSEMINATION, AND USE OF DATA.

"(a) DATA SYSTEMS.—The Administrator shall establish, administer, and be responsible for the continuing activities of a committee within the Environmental Protection Agency that shall design, establish, and coordinate an efficient system, within such agency, for the collection, dissemination to other Federal departments and agencies or States, and use of the data submitted to the Administrator under this Act. The Administrator shall ensure the completion, within 36 months after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, of the design and implementation of the system and procedures required by this subsection. The agency committee so established shall solicit advice from data users outside the Federal Government through means of a permanent advisory committee that shall consist of representatives from private groups, State governments and organizations, and industry, and other representatives as may be appropriate.

"(b) DATA RETRIEVAL.—The Administrator, in consultation and cooperation with the Secretary of Agriculture and other heads of appropriate Federal and State departments and agencies, shall design, establish, and coordinate an efficient and effective system for the retrieval of pesticidal, toxicological, and other scientific data that could be useful to the Administrator in carrying out this Act. Systematized retrieval shall be developed for use by all Federal and State departments and agencies with responsibilities in the area of regulation or study of pesticides and their effect on man and the environment.

"(c) INDEX.—In designing and implementing the systems required by subsections (a) and (b), the Administrator shall index information by pesticide name, Chemical Abstracts Service registry number, establishment site, and submitter so that information can be retrieved in a timely and useful manner.

"(d) REPORT.—The Administrator, within 24 months after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, shall submit a report to Congress on the progress made in designing and implementing the systems for information management required by this section. The report shall address the handling of information submitted before the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 as well as the procedures established to ensure that collection of information after such date will comply with this section.

"(e) CONFIDENTIALITY.—Dissemination of information and data collected under this section to any State shall be subject to section 10.

"(f) AUTHORIZATION.—There are authorized to be appropriated for fiscal years 1987, 1988, 1989, 1990, and 1991 such sums as may be necessary to carry out this section.".

AMENDMENT OFFERED BY MR. COLEMAN OF MISSOURI

Mr. COLEMAN of Missouri. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLEMAN of Missouri: Page 56, insert after line 19 the following:

SEC. 203. NOTICE FOR STORED CANCELLED OR SUSPENDED PESTICIDES.

(a) NOTICE.—Section 6 (7 U.S.C. 136d) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following:

"(f) NOTICE.— Any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, pesticide testing facility, commercial applicator, or any person who distributes or sells any pesticide which has in its possession any pesticide which has had its registration canceled or suspended under this section shall notify the Administrator and appropriate State and local officials of—

"(1) such possession,

"(2) the quantity of such pesticide in its possession, and

"(2) the place at which such pesticide is stored.

The Administrator shall transmit a copy of each notice submitted under this subsection to the regional office of the Environmental Protection Agency which has jurisdiction over the place of pesticide storage identified in the notice.".

(b) ENFORCEMENT.—Subparagraph (K) of section 12(a)(2)(7 U.S.C. 136j) is amended to read as follows:

"(K) except as provided in section 6(a)(1), to violate any cancellation of a registration of a pesticide under section 6 and to fail to submit a notice in accordance with section 6(f);".

Page 2, in the table of contents, insert at the end of title II the following:

Sec. 203. Notice for stored cancelled or suspended pesticides.

Mr. COLEMAN of Missouri [during the reading]. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. COLEMAN of Missouri. Mr. Chairman, I ask unanimous consent, further, that, in that amendment which was published in the RECORD, as required under the rule, on page H6961, the word "and" following "section 6" in paragraph (b) entitled "ENFORCEMENT" be struck and insert in lieu thereof the word "or".

Is there objection to the request of the gentleman from Missouri?

There was no objection.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. COLEMAN of Missouri, as modified: Page 56, insert after line 19 the following:

SEC. 203. NOTICE FOR STORED CANCELLED OR SUSPENDED PESTICIDES.

(a) NOTICE.—Section 6 (7 U.S.C. 136d) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following:

"(f) NOTICE.—Any procedure or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, pesticide testing facility, commercial applicator, or any person who distributed or sells any pesticide which has in its possession any pesticide which has had its registration cancelled or suspended under this section shall notify the Administrator and appropriate State and local officials of—

"(1) such possession,

"(2) the quantity of such pesticide in its possession, and

"(2) the place at which such pesticide is stored.

The Administrator shall transmit a copy of each notice submitted under this subsection to the regional office of the Environmental Protection Agency which has jurisdiction over the place of pesticide storage identified in the notice.".

(b) ENFORCEMENT.—Subparagraph (k) of section 12(a)(2)(7 U.S.C. 136j) is amended to read as follows:

"(K) except as provided in section 6(a)(1), to violate any cancellation of a registration of a pesticide under section 6 or to fail to submit a notice in accordance with section 6(f);".

Page 2, in the table of contents, insert at the end of title II the following:

Sec. 203. Notice for stored cancelled or suspended pesticides.

Mr. COLEMAN of Missouri. Mr. Chairman, just over 1 month ago, ethylene dibromide, commonly known as EDB, was discovered leaking from 1- and 5-gallon containers in the basement of a warehouse in St. Joseph, MO. The leak was found by two policemen who, while investigating a possi-

ble burglary, were overcome by the fumes of this toxic pesticide. At the time, the only government officials who knew that 64,000 gallons of EDB were stored at this warehouse were employees of the EPA Office of Pesticides here in Washington. Local fire and health officials were unaware of the presence of the EDB, officials of the Missouri Department of Natural Resources and regional EPA officials did not know of the location of the stored pesticide. Had there been a fire at this warehouse, the responding firefighters would not have known that EDB and 245-T, which contains dioxin, were stored in the warehouse and that they had a chemical fire on their hands. A fire at this warehouse could have caused serious injury and have had long-term environmental consequences.

In the near future, EPA will be reviewing the registrations on more than 600 pesticides. EPA foresees suspending several of these registrations, which will mean even more pesticides will be placed in storage for indefinite periods of time.

The problem with putting suspended or canceled pesticides into storage is that the containers pesticides are stored in for sale are not designed to last for long periods of time. For example, the containers that St. Joseph EDB were stored in were not meant to last for more than 1 year. Since EDB is a corrosive material and it has been sitting in these containers for 3 years, it is not surprising that many of these containers were found leaking.

Today I am offering two amendments to H.R. 2482, to provide the Environmental Protection Agency as well as State and local officials with the authority they need to deal with the difficult problem of suspended or canceled pesticides in offsite storage facilities.

My amendments take the first steps in closing a wide gap in Federal law by providing for oversight on the storage of suspended or canceled pesticides. I have consulted with the EPA on the texts of these amendmets and they believe that these initiatives provide new mechanisms which are workable and would help in ensuring that suspended and canceled pesticides are handled safely.

My first amendment requires that any producer, seller, exporter, distributor of pesticides, a commercial applicator or pesticide testing facility that has possession of a pesticide which has had its registration canceled or suspended must notify the administrator of EPA and the appropriate local and State officials of the location, type and quantity of a suspended or canceled pesticide they have in storage. Included in this amendment is the requirement that the EPA Administrator notify the regional office with jurisdiction over the stored suspended or canceled pesticide.

Mr. DE LA GARZA. Mr. Chairman, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Texas, the chairman of the committee.

Mr. DE LA GARZA. I thank the gentleman for yielding.

Mr. Chairman, we think the gentleman makes a positive contribution to this legislation, and we would have no objection to his amendment on this side.

Mr. COLEMAN of Missouri. I thank the gentleman for those comments.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Chairman, I know of no objections to this amendment and commend the gentleman from Missouri for offering this amendment.

The public right-to-know section is one of the positive things that is in the FIFRA rewrite that we are considering today. The public is concerned over chemicals that are being produced and manufactured in their hometowns. They have a right to know that the plant down the street is producing toxic substances.

The local police and fire officials have the right to know. It helps them plan for emergencies and know what types of equipment to have on hand.

The FIFRA rewrite we are considering establishes the requirement that chemical manufacturers supply material data safety sheets to the EPA so that these can be distributed to concerned public officials and citizens.

However, the gentleman from Missouri has discovered a point in the FIFRA bill that Agriculture Committee overlooked. Our bill only covers current manufacturing and processing facilities. It doesn't address that warehouse that appears to be storing only harmless products but has, in fact, become a dumping ground or storage site for canceled or suspended pesticides. I commend the gentleman from Missouri for the amendment. It is a worthwhile addition to FIFRA and I urge my colleagues to support it.

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Iowa.

Mr. BEDELL. I thank the gentleman for yielding.

Mr. Chairman, I also wish to commend the gentleman from Missouri for his amendment, I support the amendment and believe it improves the bill.

Mr. COLEMAN of Missouri. Mr. Chairman, I thank my colleagues for their voices of support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri [Mr. COLEMAN], as modified.

The amendment, as modified, was agreed to.

AMENDMENT OFFERED BY MR. COLEMAN OF MISSOURI

Mr. COLEMAN of Missouri. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Chair would inquire, is this amendment directed to title II?

Mr. COLEMAN of Missouri. Mr. Chairman, I believe it is to title III.

Mr. Chairman, since the amendment relates to what I just did, I would ask unanimous consent to offer this amendment out of order since it relates directly to the previous amendment and by explanation thereof.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

Mr. DE LA GARZA. Mr. Chairman, reserving the right to object, we have no objection to the amendment or to the unanimous-consent request made by the gentleman.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. COLEMAN of Missouri: Page 88, line 8, insert after the comma the following: "and to enter any place where a pesticide which has had its registration cancelled or suspended under section 6 is stored".

Mr. COLEMAN of Missouri (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. COLEMAN of Missouri. Mr. Chairman, we just agreed to an amendment requiring notification of canceled pesticides and their location. This amendment authorizes the EPA to inspect facilities where canceled or suspended pesticides are stored. Since reporting in and of itself is not sufficient to ensure the safety of people living and working near stored suspended or canceled pesticides, I believe that it is essential to give EPA the discretionary authority to conduct inspections at storage facilities. This authority should be invoked in cases of high volumes of suspended or canceled pesticides in long-term storage.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri [Mr. COLEMAN].

The amendment was agreed to.

The CHAIRMAN. Are there any further amendments to title II?

If not, the Clerk will designate title III.

The text of title III is as follows:

TITLE III—REVIEW AND CANCELLATION

SEC. 301. PUBLIC INTERIM ADMINISTRATIVE REVIEW.

(a) SECTION 3(c)(8).—Paragraph (8) of section 3(c) (7 U.S.C. 136a(c)(8)) is amended to read as follows:

"(8) PUBLIC INTERIM ADMINISTRATIVE REVIEW PROCEEDINGS.—

"(A) IN GENERAL.—A public interim administrative review process to determine whether the use of a pesticide (including a category of pesticides) may cause unreasonable adverse effects on the environment shall be conducted in accordance with this paragraph.

"(B) CRITERIA FOR INITIATING A PUBLIC INTERIM ADMINISTRATIVE REVIEW.—

"(i) Criteria for initiating a public interim administrative review of a pesticide shall be set forth in regulations published by the Administrator.

"(ii) Such criteria shall be established on the basis of levels of risk and may include consideration of currently available exposure data.

"(iii) Absence of exposure data shall not delay or preclude initiation of a public interim administrative review. The Administrator may decline to initiate a public interim administrative review solely on the basis of exposure only if adequate data on all relevant means of exposure have been considered.

"(C) REVIEW REQUIREMENT.—The Administrator may not initiate a public interim administrative review process to develop a risk-benefit evaluation of the ingredients of a pesticide or any of its uses before initiating a formal action to cancel, suspend, or deny the registration of such pesticide required under this Act unless such public interim administrative review process is based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment.

"(D) PREREVIEW NOTICE PROCEDURES.—

"(i) On receipt of information respecting a pesticide demonstrating that the criteria for initiating a public interim administrative review established under subparagraph (B) have been met, the Administrator shall immediately notify all registrants of such pesticide and provide the registrants with appropriate information and an explanation of the manner in which the criteria have been met.

"(ii) Not later than 30 days after receipt of a notice provided under clause (i), a registrant may respond to such notice.

"(iii) Not later than 60 days after the Administrator provided a notice under clause (i) concerning a pesticide, the Administrator shall determine whether a public interim administrative review of the pesticide shall be initiated.

"(E) NOTICE.—If the Administrator intends to initiate a public interim administrative review of a pesticide that is registered for agricultural uses, the Administrator shall notify the Secretary of Agriculture of the intention to initiate such review and the reasons therefor.

"(F) REVIEW PROCEDURE.—

"(i) Any public interim administrative review proceeding shall be initiated and conducted in accordance with regulations published by the Administrator. Such regulations shall provide that a public interim administrative review shall include—

"(I) a notice of initiation of the public interim administrative review and opportunity for public comment on such notice,

"(II) a notice of a preliminary determination and opportunity for public comment on such notice, and

"(III) a notice of a final determination,

except that such regulations may authorize the Administrator to combine or forgo any such notice.

"(ii) Any proposed determination of the Administrator shall be submitted to the Scientific Advisory Panel established under section 25(d) at its next scheduled meeting for comment solely on relevant scientific issues. The public may submit comments to the Scientific Advisory Panel concerning such issues.

"(iii) The notice of the initiation of a public interim administrative review or the notice of a preliminary determination shall state the basis for such review or determination and include a request for any additional data needed and a bibliography of all scientific data and studies and expert analyses concerning the risks or benefits of the pesticide that are under review. Information in the bibliography shall be made available to the public consistent with the requirements of section 10. The Administrator shall determine, to the extent feasible, before the initiation of the public interim administrative review which data in the bibliography may be disclosed to the public under section 10(d)(1). If the Administrator receives additional data concerning such risks or benefits, the Administrator, within 30 days after receiving the additional data, shall revise the bibliography to reflect such data and make the revised bibliography available to the public.

"(iv) Not later than 90 days after the publication of a notice of the initiation of a public interim administrative review or a notice of a preliminary determination, comments may be submitted on such review or determination. Any person who submits comments shall disclose to the Administrator all scientific data and studies and expert analyses in such person's possession concerning the risks or benefits of the pesticide that are under review that were not included in the bibliography included in such notice. If such person receives additional scientific data or studies or expert analyses of such data or studies that were not included in such bibliography, the person shall disclose such scientific data, studies, and expert analysis to the Administrator within 30 days after receipt.

"(v) Not later than 18 months after the initiation of a review, the Administrator shall decide which regulatory action (if any) to take regarding the pesticide that is the subject of the review and shall publish the decision.

"(vi) The time limits specified in this subparagraph may not be extended, except in exceptional circumstances in which—

"(I) additional data critical to a fair and accurate determination of risks posed by the pesticide subject to review are required,

"(II) the extension is for a period limited to the time required to obtain such data on an expedited basis and in no event to exceed 1 year, and

"(III) the Administrator acted to obtain the additional data at the time the public interim administrative review was initiated unless the Administrator could not have reasonably known of the need for such data at such time.

"(G) JUDICIAL REVIEW.—Any person may seek judicial review under section 16(a) of the failure of the Administrator to act within the time period prescribed under this paragraph.".

(b) SCIENTIFIC ADVISORY PANEL.—The first sentence of section 25(d) (7 U.S.C. 136w(d)) is amended by striking out "The" and inserting in lieu thereof "Except with respect to a referral under section 3(c)(8)(F), the".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply to public interim administrative reviews under section 3(c)(8) of the Federal Insecticide, Fungicide, and Rodenticide Act initiated after January 1, 1987.

SEC. 302. PROCEEDINGS UNDER SECTION 6.

Section 6 (7 U.S.C 136d) is amended by redesignating subsection (f) as subsection (i) and by inserting after subsection (e) the following:

"(f) HEARING PROCEDURES AFTER PUBLIC INTERIM ADMINISTRATIVE REVIEW.—

"(1) GENERAL RULE.—Subsection (d), as modified by the special rules of paragraphs (2) and (3) of this subsection, shall govern any hearing under subsection (d) that results from the Administrator's final determination in a public interim administrative review proceeding under section 3(c)(8) that is initiated after January 1, 1987, that includes an opportunity for comment on a notice of preliminary determination issued in connection with such review, and for which the time between the first public notice for such review under section 3(c)(8)(F) and the close of the last comment period provided for such review is not less than 180 days.

"(2) REQUEST FOR HEARING.—Any person who is adversely affected by a decision of the Administrator respecting a pesticide (including a person without an economic interest in such pesticide) following a public interim administrative review described by paragraph (1) may request, or intervene in, a hearing in the manner provided by subsection (b)(2)(B) within 30 days after such decision. A person may request a hearing, or intervene in a hearing, only if that person submitted comments during the public interim administrative review proceeding and otherwise complied with section 3(c)(8)(F).

"(3) PROCEDURES.—

"(A) At the request of a party, the administrative law judge conducting the hearing may receive into evidence portions of the public interim administrative review record and other evidence if the party demonstrates that such portions of the record and other evidence are relevant and material to the disputed issues and are not unduly repetitious and a competent witness is made available to be cross-examined on all matters relating to such evidence. Direct testimony of witnesses concerning scientific data or studies that were not, but could have been, obtained and submitted in the public interim administrative review proceeding by the exercise of due diligence by the offering party shall not be admissible.

"(B) The right of other parties to confront and cross-examine witnesses with respect to such evidence shall be preserved with respect to material issues of adjudicative fact, so long as such cross-examination is not unduly repetitious.

"(C)(i) Not later than 120 days after the administrative law judge is appointed, prehearing matters shall be completed and the hearing shall commence.

"(ii) The administrative law judge may establish a schedule for prehearing matters, including discovery and motions, and shall ensure that the hearing schedule is met. The administrative law judge shall issue such orders as are appropriate for the purpose of simplifying and clarifying issues,

specifying the order of presentation of witnesses, and allocating the time for cross-examination, briefing, and decision.

"(iii) Discovery shall be permitted after the expiration of 120 days after the appointment of the administrative law judge on a determination by the administrative law judge that (I) such discovery shall not in any way unreasonably delay the proceeding, (II) the information to be obtained is not otherwise obtainable, and (III) such information has significant probative value and is necessary to obtain relevant evidence needed to resolve a material issue in dispute.

"(D) Any challenge to—

"(i) the authority to issue, or

"(ii) the procedural correctness of the issuance of,

any notice of intent to cancel or change classification or to any request for a hearing or motion to intervene shall be filed with the administrative law judge not later than 30 days before the commencement of the evidentiary phase of the hearing.

"(E) Not later than 30 days before the hearing commences, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits that the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and narrative summaries of expected testimony amended on motion by a party.

"(F) If new studies become available that were not available during the public interim administrative review, the administrative law judge, on request of any party and when in the judgment of the administrative law judge it is necessary, may submit such studies to the Scientific Advisory Panel established under section 25(d) for supplemental comment on an expedited basis under such time limits as may be established by the administrative law judge.

"(G) The administrative law judge shall schedule the presentation and examination of witnesses so that the presentation of evidence is completed within 60 days after the commencement of the hearing, except that the schedule shall not prejudice the right of a party to present evidence. The person who requested a hearing on an issue shall have the burden of going forward to present an affirmative case and shall have the burden of proof as to that issue.

"(H) A hearing conducted in accordance with this subsection shall be completed and the Administrator shall make a final decision within 300 days after the issuance of the notice that gave rise to the hearing. The time limit imposed by this subparagraph may not be extended, except in exceptional circumstances in which such extension is essential for a fair and accurate determination of pivotal facts central to the proceeding. In no event may such time limit be extended more than 180 days. Any other time limit imposed by this paragraph may be extended for good cause.

"(I) Failure to complete a hearing and make a final decision within the time period prescribed by subparagraph (H) shall be grounds for a civil action in a district court of the United States seeking an order to establish a schedule requiring the prompt completion of the hearing, but shall not be grounds for termination of the hearing or for making a final decision respecting the pesticide that is the subject of the hearing.".

SEC. 303. CANCELLATION AND CHANGE IN CLASSIFICATION OR LABELS.

Subsection (b) of section 6 (7 U.S.C. 136d(b)) is amended to read as follows:

"(b) CANCELLATION AND CHANGE IN CLASSIFICATION OR LABELS.—

"(1) NOTICE OF CANCELLATION OR CHANGE IN CLASSIFICATION.—

"(A) If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with this Act or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, the Administrator may issue a notice of intent—

"(i) to cancel its registration or to change its classification together with the reasons (including the factual basis) for the action of the Administrator, or

"(ii) to hold a hearing to determine whether or not its registration should be canceled or its classification changed.

"(B) A notice issued under subparagraph (A) shall be sent to each registrant of the pesticide with respect to which the notice is issued and shall be made public.

"(C) In determining whether to issue a notice under subparagraph (A), the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy.

"(D)(i) Not later than 60 days before sending a notice to a registrant or making public such notice under subparagraph (B), whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of the proposed notice under subparagraph (A) and an analysis of the impact of the proposed action on the agricultural economy. The Secretary of Agriculture shall provide comments on such notice and analysis to the Administrator within 30 days after receiving the copy of such notice.

"(ii)(I) If the Secretary of Agriculture provides such comments in writing within 30 days after receiving the copy of such notice, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the comments of the Secretary.

"(II) If the Secretary of Agriculture does not provide such comments in writing within 30 days after receiving the copy of such notice, the Administrator may notify the registrant and make public the notice at any time after such 30-day period.

"(iii) The time requirements imposed by this subparagraph may be waived or modified to the extent agreed on by the Administrator and the Secretary of Agriculture.

"(E) If the Administrator finds that suspension of a pesticide registration is necessary to prevent an imminent hazard to human health, the Administrator may waive the requirements of notice to the Secretary of Agriculture prescribed by subparagraph (D) and submission to the Scientific Advisory Panel under section 25(d) and proceed in accordance with subsection (c).

"(2) HEARING.—

"(A) The action proposed in a notice issued under paragraph (1)(A) shall become final and effective at the end of 30 days after receipt by the registrant or publication of a notice issued under paragraph (1)(B), whichever occurs later, unless within that time—

"(i) the registrant makes the necessary corrections, if possible, or

"(ii) a request for a hearing is made by a person adversely affected by the notice.

"(B) Whenever a request for a hearing is made, the request shall—

"(i) identify with particularity the findings and conclusions of the decision of the Administrator that are disputed, and

"(ii) include a complete statement of the reasons and factual basis that support the request for a hearing.

"(C) Any party to the proceeding may identify findings and conclusions in dispute.

"(D) If a hearing is held pursuant to such a request or the determination of the Administrator under paragraph (1)(A)(ii), a decision pertaining to registration or classification issued after completion of such hearing shall be final.

"(E) On receipt of a request for a hearing from a person without an economic interest in the pesticide with respect to which the hearing is requested, the Administrator shall convene such hearing if the request presents a substantial issue of fact, as determined by the Administrator, pertaining to whether such pesticide poses an unreasonable risk to man or the environment.

"(3) FACTORS.—In taking any action under paragraph (1), the Administrator shall—

"(A) consider restricting a use or uses of a pesticide as an alternative to cancellation and fully explain the reasons for such restriction, and

"(B) consider the impact of such action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and publish in the Federal Register an analysis of such impact.

"(4) LABEL CHANGES.—

"(A) The Administrator may notify the registrant of a pesticide of a label change proposed by the Administrator that may be made by rulemaking under subparagraph (B) and provide that the registrant may submit comments to the Administrator on such proposed change in the 30-day period beginning on the date of the receipt of such notice. If a registrant who is notified by the Administrator of a proposed label change notifies the Administrator that the registrant does not object to such change, such change shall take effect as prescribed by the Administrator. If a registrant who is notified by the Administrator of a proposed label change does not submit comments to the Administrator in such 30-day period, the Administrator shall send such registrant a second notice stating that, if such registrant does not submit any comments to the Administrator in the 30-day period beginning on the date the registrant receives the second notice, the registration of such registrant shall be cancelled without a hearing or further notice. The registration of a registrant who does not submit comments on a second notice within such 30-day period shall be cancelled without a hearing or further notice. If in response to a notice under this subparagraph a registrant submits comments to the Administrator objecting to a proposed label change, the Administrator may proceed under subparagraph (B).

"(B) The Administrator may require changes to the label of a pesticide by informal rulemaking under this paragraph unless the changes—

"(i) are equivalent to a cancellation of a use,

"(ii) render the pesticide unmarketable, or

"(iii) otherwise have a major economic impact on persons affected by such changes.

If the Administrator may not require changes to the label of a pesticide by informal rulemaking under this paragraph because of clause (i), (ii), or (iii), the Administrator may only require such changes by a proceeding authorized by other provisions of this Act.

"(C) After the promulgation of a regulation under subparagraph (B), the Administrator shall notify each registrant of the pesticide subject to the regulation of the label change required by the regulation and provide a 30-day period for each registrant to apply to the Administrator for an amendment to the registration to comply with the regulation. If a registrant does not apply for such an amendment within such period, the Administrator shall issue a notice of intent to cancel the registration of such registrant in accordance with paragraph (2). For purposes of paragraph (2), such notice shall be deemed to have been issued under paragraph (1).

"(D) A registrant or user of a pesticide subject to a regulation issued under subparagraph (B) may request a hearing under subsection (d) on such regulation in accordance with paragraph (2). The scope of the hearing shall be limited to—

"(i) whether the pesticide complies with the regulation,

"(ii) whether the regulation by its terms is applicable to such pesticide, and

"(iii) whether, because of significant information that was not (and could not reasonably have been) presented in the proceeding wherein the regulation was promulgated, it would be unreasonable to require such pesticide to comply with the regulation.

"(E)(i) Except as provided in clause (ii), in an action under 16(e) for review of a regulation issued under subparagraph (B), the court, on request, shall postpone the effective date of the regulation until completion of the review action if the petitioner shows—

"(I) a likelihood of success on the merits in such action, and

"(II) that the implementation of the regulation before completion of the action would cause a risk of substantial harm to the petitioner.

"(ii) A court in a review action under section 16(e) shall not postpone the effective date of a regulation issued under subparagraph (B) if the Administrator shows that failure to implement the regulation before completion of the action would cause a risk of substantial harm to health or the environment.".

SEC. 304. PUBLIC HEARINGS AND SCIENTIFIC REVIEW.

Section 6(d) (7 U.S.C. 136d(d)) is amended—

(1) by striking out the fifth through ninth sentences,

(2) in the tenth sentence—

(A) by striking out "(including the report of the Academy)", and

(B) by striking out "90 days thereafter" and inserting in lieu thereof "18 months after issuance of the notice that gave rise to the hearing",

(3) by inserting before the last sentence the following: "The time period prescribed by the preceding sentence may be extended by the Administrator under extraordinary circumstances for not more than one year.", and

(4) in the heading, by striking out "AND SCIENTIFIC REVIEW".

SEC. 305. ADMINISTRATIVE CHANGES.

(a) AMENDMENT TO SECTION 6.—Section 6 (7 U.S.C. 136d) is amended by inserting the following new subsection after subsection (f) (as added by section 302):

"(g) GENERAL PROVISIONS.—

"(1) VOLUNTARY CANCELLATION.—A registrant at any time may request that any of its pesticide registrations be cancelled or be amended to delete one or more uses. Before acting on any such request, the Administrator shall publish in the Federal Register a notice of the receipt of the request. Thereafter the Administrator may approve such a request.

"(2) PUBLICATION OF NOTICE.—A notice of denial of registration, intent to cancel, suspension, or intent to suspend issued under this Act, a notice issued under subsection (d)(4) or (e)(5)(A) of section 3A, or a notice issued under the third sentence of subsection (b)(4)(A) shall be published in the Federal Register and shall be sent by certified mail, return receipt requested, to the registrant's or applicant's address of record on file with the Administrator. If the mailed notice is returned to the Administrator as undeliverable at that address, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery of the notice to the registrant or applicant after making reasonable efforts to do so, the notice shall be deemed to have been received by the registrant or applicant on the date the notice was published in the Federal Register.

"(3) EXISTING STOCKS.—The Administrator may permit the continued use, the continued distribution or sale, or both, of existing stocks of a pesticide whose registration is cancelled under any provision of this Act to such extent, under such conditions, during such periods, and for such uses as the Administrator may specify if the Administrator determines that such distribution, sale, or use is not inconsistent with the purposes of this Act and will not cause unreasonable adverse effects on the environment.

"(4) ADDITIONAL INFORMATION.—If at any time after the registration of a pesticide the registrant has additional information regarding unreasonable adverse effects on the environment of the pesticide, the registrant shall submit such information to the Administrator. For purposes of this paragraph, the term 'information' includes factual information and expert opinion regarding risks or benefits.".

(b) CONFORMING AMENDMENTS.—

(1) SECTION 3(c)(6).—Section 3(c)(6) (7 U.S.C. 136a(c)(6)) is amended by striking out the period at the end and inserting in lieu thereof the following: "except as otherwise provided in this paragraph. A request for a hearing under section 6 shall be made within 30 days after the receipt of such notification. The Administrator may issue regulations governing the right to a hearing under section 6 with regard to the denial of any application for the registration of a pesticide containing an ingredient that was cancelled under section 6. Under such regulations, due weight shall be given to the desirability of finality of prior proceedings and determinations and the extent that the applicant had an opportunity to participate in earlier proceedings. Section 6(g)(2) applies with respect to the publication of a notice of a denial of a registration.".

(2) SECTION 6(a)(2).—Section 6(a) (7 U.S.C. 136d(a)) is amended—

(A) by striking out paragraph (2), and

(B) by striking out "(1) PROCEDURE.—", by striking out ": *Provided*" and all that follows in the first sentence and inserting in lieu thereof a period, and inserting the matter in paragraph (1) after the subsection heading so that it is flush with the full left-hand margin of the section.

(3) SECTION 6(e).—Paragraph (1) of section 6(e) (7 U.S.C. 136d(e)) is amended by striking out ": *Provided*" and all that follows in that paragraph and inserting in lieu thereof a period.

SEC. 306. CANCELLATION OF REGISTRATION BASED ON FALSE OR INVALID DATA.

Section 6 (7 U.S.C. 136d) is amended by inserting the following new subsection after subsection (g) (as added by section 305(a)):

"(h) SUSPENSION AND CANCELLATION OF REGISTRATION BASED ON FALSE OR INVALID DATA.—

"(1) NOTICE.—The Administrator shall immediately issue an order of suspension and a notice of intent to cancel the registration of a pesticide if—

"(A) before the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator has previously determined in the Industrial Biotest validation process conducted by the Administrator that data submitted by the registrant of the pesticide to the Administrator in support of such registration were invalid,

"(B) the data referred to in subparagraph (A)—

"(i) have not been replaced as of the effective date of such Act, or

"(ii) are in the process of being replaced on the effective date of such Act but are not submitted to the Administrator by April 1, 1988, and

"(C) such data are material to the registration.

"(2) INVALID DATA.—If, after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator determines that invalid data are submitted by a registrant to the Administrator in support of a registration of a pesticide, the Administrator may—

"(A) require the registrant to submit valid replacement studies or data on an expedited schedule and to submit interim progress reports, or

"(B) issue a notice of intent to cancel such registration if the Administrator determines that such action would be in the public interest, taking into account the scope of the invalid data and the need to use the data to determine whether the pesticide may cause unreasonable adverse effects on the environment.

"(3) FALSE DATA.—If a registrant willfully submits material data known to be false in support of the registration of a pesticide, the Administrator shall immediately issue notices of intent to suspend and cancel such registration.

"(4) HEARING.—

"(A) Any suspension or cancellation under this subsection shall become final and effective at the end of the 30-day period beginning on the date of receipt by the registrant of a notice issued under this subsection unless during such period a request for a hearing is made by a person adversely affected.

"(B) A hearing under this paragraph shall be conducted in accordance with the procedures prescribed by subsection (c) or (d), as appropriate.

"(C) In the case of a hearing held with respect to action proposed to be taken under paragraph (1), the only matters for resolution shall be whether—

"(i) in response to a notice of the Administrator issued under section 3(c)(2)(B) or other formal notice, data previously determined by the Administrator to be invalid—

"(I) have not been replaced as of the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, or

"(II) are in the process of being replaced on the effective date of such Act but are not submitted to the Administrator by April 1, 1988, and

"(ii) the data are material to the registration.

"(D) In the case of a hearing held with respect to action proposed to be taken under paragraph (2), the only matters for resolution shall be whether data are invalid, material, and necessary to adequately determine whether a pesticide may cause unreasonable adverse effects on the environment.

"(E) In the case of a hearing held with respect to action proposed to be taken under paragraph (3), the only matters for resolution shall be whether a registrant willfully submitted material data known to be false.

"(F) A decision after completion of a hearing conducted under this paragraph shall be final.

"(G) Notwithstanding any other provision of this Act, a hearing shall be held, and a determination made, under this subsection within 75 days after the receipt of a request for such hearing.".

The CHAIRMAN. Are there any amendments to title III?

If not, the Clerk will designate title IV.

The text of title IV is as follows:

TITLE IV—RECORDS AND INSPECTIONS

SEC. 401. RECORDS.

(a) SECTION 8.—Section 8 (7 U.S.C. 136f) is amended to read as follows:

"SEC. 8. RECORDS.

"(a) AUTHORITY TO REQUIRE RECORDS.—The Administrator, by regulation, may require any producer or exporter of pesticides, registrant, applicant for registration, applicant for or holder of an experimental use permit, pesticide testing facility, or commercial applicator, or any person who distributes or sells any pesticide—

"(1) to prepare, and to maintain for reasonable periods of time, such records as the Administrator finds to be necessary for the effective implementation or enforcement of this Act,

"(2) to furnish to the Administrator reports stating the location where the records are maintained, and

"(3) to furnish a copy of any such record to the Administrator on written request.

Except as provided in subsections (c), (d), and (e), the Administrator may not require any person who distributes or sells at retail a registered pesticide that is not subject to a restricted use classification under section 3 to prepare, maintain, or furnish any record under this subsection with respect to such pesticide.

"(b) LIMITATIONS.—The Administrator may not, under the authority of subsection (a), require any person to maintain records of—

"(1) financial data, sales data, or pricing data,

"(2) personnel data, except for data concerning exposure of employees to pesticides or ingredients of pesticides, or concerning health effects on employees that could reasonably be attributable to such exposure, or

"(3) research or test data (other than data relating to registered pesticide, data relating to any pesticide for which an application for registration or for an experimental use permit has been filed, or data relating to testing at a pesticide testing facility).".

(b) DEFINITION.—Section 2 (7 U.S.C. 136) (as amended by section 105(c)) is amended by adding at the end the following:

"(hh) PESTICIDE TESTING FACILITY.—The term 'pesticide testing facility' means any person that conducts any test, study, survey, or investigation of the properties, effects, or behavior of any pesticide (or any ingredient, metabolite, or degradation product thereof) on its own behalf or on behalf of any registrant, applicant for registration, or other person who sells or distributes the pesticide (or contemplates selling or distributing it). The term does not include any person solely on account of such person's participation as a cooperator in field testing of a pesticide in compliance with an experimental use permit under section 5.".

(c) CONFORMING AMENDMENTS.—The second sentence of section 26(c) (7 U.S.C. 136w-1(c)) is amended—

(1) by striking out "8(b) of this Act" and inserting in lieu thereof "9",

(2) by striking out "9(a) of this Act" and inserting in lieu thereof "9", and

(3) by striking out "Not withstanding the provisions of section 2(e)(1) of this Act" and inserting in lieu thereof "Notwithstanding section 2(kk)".

SEC. 402. INSPECTIONS.

(a) SECTION 9(a).—Section 9(a) (7 U.S.C. 136g(a)) is amended to read as follows:

"(a) AUTHORITY TO ENTER, INSPECT, AND COPY.—Officers or employees of the United States or of any State, duly designated by the Administrator, are authorized at reasonable times, as provided by this section—

"(1) to enter any place where any pesticide, active ingredient, or device is distributed or sold, to inspect and obtain samples of any pesticide, active ingredient, or device being distributed or sold at such place or of any packaging or labeling of any such pesticide, active ingredient, or device,

"(2) to enter any place where there are located any records required under this Act or any place reported under section 8(a) as a location where such records are maintained, to inspect and obtain copies of such records,

"(3) to enter any pesticide testing facility, to inspect the facility and the testing being conducted at the facility and to inspect and obtain copies of any records required by or under the authority of this Act to be maintained by the pesticide testing facility, and

"(4) to enter any place where such officer or employee has reason to believe that the Act has been or is being violated by any person other than a person acting in the capacity of a private applicator, to inspect such place to obtain evidence of such violation.".

(b) SECTION 9(b).—Section 9(b) (7 U.S.C. 136g(b)) is amended to read as follows:

"(b) WARRANTS.—Officers or employees of the United States or of any State, duly designated by the Administrator, are empowered to obtain and execute warrants authorizing—

"(1) entry for the purposes of this section,

"(2) inspection and copying of all records required under this Act, and

"(3) seizure of any pesticide or device that is in violation of this Act.".

(c) PROCEDURE AND COORDINATION.—Section 9 (7 U.S.C. 136g) is further amended by adding at the end the following:

"(d) PROCEDURE.—Before any entry or inspection of any premises not open to the general public is made under this section, the person conducting the inspection shall present to the person in charge of the premises appropriate credentials, and a written statement of the reason for the entry or inspection and whether a violation of this Act is suspected. Each entry or inspection shall be commenced and completed with reasonable promptness. If the person conducting the entry or inspection obtains any samples of pesticides or devices, before leaving the premises such person shall give to the person in charge of the premises a receipt describing the samples and, if requested and practicable, a portion of each such sample equal in volume or weight to the portion retained. If an analysis of any such sample is made, a copy of the results of such analysis shall be furnished on request to the person in charge of the premises.

"(e) COORDINATION.—The Administrator shall coordinate actions taken under this section with actions taken under other Federal laws for the purpose of avoiding duplication of inspections.".

The CHAIRMAN. Are there any amendments to title IV?

If not, the Clerk will designate title V.

The text of title V is as follows:

TITLE V—EXPORTS

SEC. 501. DEFINITION OF MISBRANDED.

Section 2(q)(1) (7 U.S.C. 136(q)(1)) is amended—

(1) by striking out "or" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting after the close quotation marks "; or", and

(3) by adding at the end thereof the following new subparagraph:

"(I) in the case of a pesticide intended for export that is substantially similar in composition and use pattern to a pesticide registered under section 3, the label is not written in an appropriate language as required by section 17(a)(4)(A) or does not contain the same health, safety, and hazard precautions as the pesticide registered under section 3, unless such precautions on the label are in conflict with the law of the importing country.".

SEC. 502. DEFINITION OF IMPORTING COUNTRY.

Section 2 (7 U.S.C. 136) (as amended by section 401(b) of this Act) is amended by adding at the end thereof the following new subsection:

"(ii) IMPORTING COUNTRY.—The term 'importing country' means the first country to which a pesticide, device, or active ingredient, subject to the notification requirements of section 17(a), is exported from the United States.".

SEC. 503. PESTICIDES AND DEVICES INTENDED FOR EXPORT.

(a) IN GENERAL.—Subsection (a) of section 17 (7 U.S.C. 136o(a)) is amended to read as follows:

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—

"(1) VIOLATIONS.—Notwithstanding any other provision of this Act, no pesticide or device, or active ingredient used in producing a pesticide, intended solely for export to any foreign country shall be considered in violation of this Act when prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices and active ingredients used in producing pesticides shall be subject to section 2(p), subparagraphs (A), (C), (D), (E), (G), (H), and (I) of section 2(q)(1), subparagraphs (A), (B), (C)(i), (C)(iii), and (D) of section 2(q)(2), sections 7 and 8, and paragraphs (2), (3), and (4) of this subsection.

"(2) RESTRICTED USE OR UNREGISTERED PESTICIDES.—

"(A) This paragraph applies to a pesticide, device, or active ingredient—

"(i) for which a restricted use classification has become effective under section 3,

"(ii) for which a cancellation or suspension has become effective under section 6,

"(iii) the registration of which has been voluntarily withdrawn by the registrant, if such withdrawal is associated with concern over potential adverse public health or environmental effects, or

"(iv) that is not registered under section 3 for any use.

"(B) No pesticide, device, or active ingredient described in subparagraph (A) may be exported to any foreign country by any person unless, at least 30 days before the first shipment each year of such pesticides, devices, or active ingredients to such country, such person has—

"(i) notified, under paragraph (3), the person importing the pesticide, device, or active ingredient and the appropriate government regulatory office in the importing country,

"(ii) received written evidence that the notification was delivered to the appropriate government regulatory office, and

"(iii) submitted a copy of the notification (in English) and evidence of delivery to the Administrator.

"(C) Documents referred to in subparagraph (B) shall be made available to the public, on request.

"(3) NOTIFICATION SPECIFICATIONS.—The notification required under paragraph (2) shall be made in an appropriate language and shall contain the following information—

"(A) the name of the pesticide and the common and chemical names of each active ingredient,

"(B) the name and address of the person exporting the pesticide, device, or active ingredient,

"(C) the name and address of the person importing the pesticide, device, or active ingredient,

"(D) the name and address of the appropriate government regulatory office in the importing country,

"(E) a statement of the reasons why the registration of the pesticide was cancelled, suspended, voluntarily withdrawn, or the pesticide is not registered in the United States or is classified for restricted use, and the list of restrictions, and

"(F) the name and address of the office of the United States Environmental Protection Agency that, on request by the importer or official of the importing country, can provide additional information on the pesticide, device, or active ingredient.

"(4) LABELS.—

"(A) The label of a pesticide intended for export from the United States shall be written in an appropriate language.

"(B) Except as provided in section 2(q)(1)(H), such label may not refer to compliance with the laws of the United States unless the label also contains or is accompanied by a description of the relevant requirements of such laws.

"(5) RECORDS.—The Administrator, by regulation, may require any person subject to this subsection to prepare, maintain, and submit such records as may be necessary to carry out this subsection.".

(b) EFFECTIVE DATES AND IMPLEMENTATION.—

(1) Section 17(a) (2) and (3) of the Federal Insecticide, Rodenticide, and Fungicide Act (as amended by subsection (a) of this section) shall become effective 90 days after the date of enactment of this Act.

(2) Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall publish in the Federal Register a list of the names, addresses, and international telecommunications codes of appropriate regulatory offices required to receive notices under section 17(a)(2)(B) of the Federal Insecticide, Rodenticide, and Fungicide Act, as amended by subsection (a).

(3) Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Administrator shall revise the list required under paragraph (2).

(4) Not later than 90 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register preliminary guidelines regarding—

(A) the form of the notification required under section 17(a) of the Federal Insecticide, Rodenticide, and Fungicide Act, as amended by subsection (a),

(B) translation of the notification and labels required under such section 17(a) into the appropriate language,

(C) preparation and retention of records under such section 17(a), and

(D) procedures for public access to documents submitted by exporters under such section.

SEC. 504. CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.

Subsection (b) of section 17 (7 U.S.C. 136o(b)) is amended to read as follows:

"(b) NOTICES OF REGULATORY ACTION FURNISHED TO FOREIGN GOVERNMENTS.—

"(1) ISSUANCE.—Whenever—

"(A) a registration, or a cancellation or suspension of the registration, of a pesticide becomes effective or ceases to be effective, or

"(B) a pesticide is classified for restricted use,

the Administrator shall promptly transmit through the Secretary of State a notice, at such time and annually thereafter, to the appropriate governmental regulatory offices of other countries and to appropriate international agencies.

"(2) CONTENTS.—A notice under paragraph (1) shall include—

"(A) the reasons for the regulatory action taken,

"(B) for canceled or suspended registrations, information concerning other pesticides that are registered under section 3 and that could be used in lieu of such pesticide, and

"(C) the name and address of the office of the United States Environmental Protection Agency that, on request, can provide additional information on the pesticide.".

The CHAIRMAN. Are there any amendments to title V?

If not, the Clerk will designate title VI.

The text of title VI is as follows:

TITLE VI—CERTIFICATION AND TRAINING

SEC. 601. CERTIFICATION, TRAINING, AND RECORD-KEEPING FOR PESTICIDE APPLICATORS.

(a) DEFINITIONS.—

(1) Section 2(e) (7 U.S.C. 136(e)) is amended to read as follows:

"(e) APPLICATOR.—

"(1) COMMERCIAL APPLICATOR.—

"(A) Except as provided in subparagraph (B), the term 'commercial applicator' means a person (whether or not the person is a private applicator with respect to some uses) who—

"(i) uses or supervises the use, for any purpose or on any property, of any pesticide that is classified for restricted use,

"(ii) uses or supervises the use of any pesticide for hire as the principal part of the person's business or work, or

"(iii) as an employee of a person described in clause (ii), uses or supervises the use of any pesticide.

"(B) The term does not include a person who uses or supervises the use of a pesticide as described in paragraph (2).

"(2) PRIVATE APPLICATOR.—The term 'private applicator' means a person who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity—

"(A) on property owned or rented by such person or such person's employer, or

"(B) on other property if applied without compensation (other than trading of personal services between producers of agricultural commodities).

"(3) CERTIFIED APPLICATOR.—The term 'certified applicator' means a commercial or private applicator who is certified under section 4.

"(4) UNDER THE DIRECT SUPERVISION OF A CERTIFIED APPLICATOR.—Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a person acting under the direct supervision and the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is used.".

(2) Section 2 (as amended by section 502) is amended by adding at the end the following:

"(jj) PESTICIDE DEALER.—

"(1) Except as provided in paragraph (2), the term 'pesticide dealer' means any person who, in the ordinary course of business, distributes or sells any pesticide that is classified for restricted use or designated under section 8(d)(2).

"(2) Such term does not include a person who only distributes or sells pesticides that are classified for general use and that are not designated under section 8(d)(2).".

(b) SECTION 4.—

(1) Section 4 (7 U.S.C. 136b) is amended by adding at the end the following:

"(d) PROVISIONS REGARDING COMMERCIAL APPLICATORS.—

"(1) It shall be a violation of this Act for any person to use any pesticide as a commercial applicator unless such person is—

"(A) a certified commercial applicator, or

"(B) a registered commercial applicator under the direct supervision of a certified applicator who is a certified commercial applicator.

"(2) To be considered to be a certified commercial applicator, a person, at a minimum, shall—

"(A) have met the standards prescribed under subsection (a) and have received training—

"(i) prescribed by the State agency, including training in the material referred to in subsection (g),

"(ii) conducted by a trainer who has met the requirements prescribed under subsection (h), and

"(iii) that satisfies the minimum standards for training programs prescribed under subsection (h),

"(B) have had field, institutional, or industrial experience in pesticide use and application,

"(C) have passed an examination prescribed by such State agency, and

"(D) possess a valid commercial applicator certification issued by such State agency.

"(3) To be considered to be a registered commercial applicator, a person, at a minimum, shall—

"(A) have received training—

"(i) prescribed by the State agency, including training in the material referred to in subsection (g), and

"(ii) conducted by a trainer who has met the requirements prescribed under subsection (h), and

"(B) possess a valid registration issued by such State agency.

A person may obtain a registration by providing to the State agency a report, signed and dated by the trainer and by the person who received the training, stating that the prescribed minimum training has been provided and received.

"(e) PROVISIONS REGARDING PRIVATE APPLICATORS.—

"(1) A restricted use pesticide shall be considered to have been applied by, or under the direct supervision of, a certified private applicator only if it is applied by a person who is either—

"(A) a certified private applicator, or

"(B) a supervised private applicator who uses the pesticide under the direct supervision of a certified private applicator.

"(2) To be considered to be a certified private applicator, a person, at a minimum, shall—

"(A) have met the standards prescribed under subsection (a) and have received training—

"(i) prescribed by the State agency, including training in the material described in subsection (g),

"(ii) conducted by a trainer who has met the requirements prescribed under subsection (h), and

"(iii) that satisfies the minimum standards for training prescribed under subsection (h), and

"(B) possess a valid private applicator certification issued by such State agency.

"(3) To be considered to be a supervised private applicator, a person, at a minimum, shall have received basic instruction—

"(A) prescribed by the State agency or based on material prescribed by such State agency, including basic instruction material concerning the use of appropriate pesticide application and safety procedures, appropriate clothing and protective equipment for pesticide applications, the detection of common symptoms of pesticide poisoning, the means of obtaining emergency medical treatment, hazards posed by pesticides to workers, the public health, and the environment, and the requirements of applicable laws, regulations, and labeling, and

"(B) given by a certified private applicator, a commercial applicator who is certified in the pest control category appropriate for the instruction being provided, or a trainer who has met the requirements prescribed under subsection (h).

The State agency may require the employer of a supervised private applicator to confirm that the basic instruction described in subparagraph (A) has been received.

"(f) RECERTIFICATION AND REREGISTRATION.—Each certified applicator and each registered commercial applicator within a State shall undergo refresher training and be recertified or reregistered within a period established by the State agency of such State. Such period may not be more than 5 years. The refresher training shall be prescribed by the State agency and shall include training in the materials referred to in subsection (g) and in the relevant requirements of other subsections of this section and sections 3(d), 12, and 14. To be recertified, an applicator, at a minimum, shall meet the requirements of paragraphs (2)(A), (2)(B), and (2)(D) of subsection (d) or the requirements of paragraphs (1) and (2) of subsection (e). To be reregistered, a commercial applicator, at a minimum, shall meet the requirements of subsection (d)(3).

"(g) TRAINING MATERIAL.—The Administrator, in consultation with the Secretary of Agriculture, shall develop training material on the use of appropriate procedures for the application of pesticides, safety procedures for pesticide application, clothing and protective equipment for pesticide application, the detection of common symptoms of pesticide poisoning, the means of obtaining emergency medical treatment, hazards posed by pesticides to workers, the public health, and the environment, specific commercial application categories, and the requirements of applicable laws, regulations, and labeling. Within 12 months after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator, in consultation with the Secretary of Agriculture, shall revise and make current such material and thereafter shall update such material as needed.

"(h) MINIMUM STANDARDS FOR TRAINERS AND TRAINING PROGRAMS.—

"(1)(A) The Administrator shall establish within one year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986—

"(i) minimum standards of competency, and experience or expertise, for trainers referred to in subsection (d), and

"(ii) minimum standards for the training programs referred to in subsection (d).

"(B) Training programs prescribed by any State under subsection (d) shall comply with the minimum standards established by the Administrator under subparagraph (A) not later than 2 years after the effective date of such standards. If on the expiration of such 2-year period a State's training program fails to meet such minimum standards, or if a State fails to prescribe such a program, the Administrator shall notify the State of such failure. After receipt of a notice, a State shall have 90 days to bring its training program into compliance with such standards. If on expiration of such 90-day period, the State's training program does not meet such standards, the Administrator shall prescribe such training programs referred to in subsection (d) for use in such State.

"(2)(A) The Administrator shall establish within 2 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986—

"(i) minimum standards of competency, and experience or expertise, for trainers referred to in subsection (e), and

"(ii) minimum standards for the training programs referred to in subsection (e).

"(B) Training programs prescribed by any State under subsection (e) shall comply with the minimum standards established by the Administrator under subparagraph (A) not later than 2 years after the effective date of such standards. If on the expiration of such 2-year period a State's training program fails to meet such minimum standards, or if a State fails to prescribe such a program, the Administrator shall notify the State of such failure. After receipt of a notice, a State shall have 90 days to bring its training program into compliance with such standards. If on expiration of such 90-day period the State's training program does not meet such standards, the Administrator shall prescribe the training programs referred to in subsection (e) for use in such State.

"(i) PRIVATELY ADMINISTERED TRAINING PROGRAMS.—A State agency may approve any privately administered training program that it determines meets—

"(1) the requirements established under this section, or

"(2) requirements established by the State agency,

whichever are more stringent.

"(j) ENFORCEMENT OFFICER TRAINING.—Federal and State field personnel responsible for on-site observations and inspections of pesticide use shall have training that, as a minimum, includes training covering materials specified in subsection (g) for the commercial application categories for which they are assigned enforcement responsibility.

"(k) SEPARATE STANDARDS.—In establishing standards under this section applicable to applicators, the Administrator shall establish separate standards for commercial applicators and private applicators.

"(l) STATE AGENCY DEFINED.—For purposes of this section, the term 'State agency' means the agency of a State that is designated under subsection (a)(2)(A) if the State has primary enforcement responsibility for pesticide use violations, as provided for by section 26. In the case of a State that does not have such primary enforcement responsibility or that does not have an agency designated under subsection (a)(2)(A), a reference to a State agency shall be considered a reference to the Administrator.".

(2)(A)(i) Except as provided in clauses (ii) and (iii), subsection (d) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall take effect in a State on the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (d) are to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under subsection (h).

(ii) If an applicator in a State is certified as a commercial applicator under subsection (a) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act before the effective date prescribed by clause (i) and the Administrator has determined that the previous certification or recertification requirements in that State do not conform to the requirements of subsection (d) of such section, such applicator shall be recertified—

(I) within 2 years after the date the training programs of such State under subsection (d) comply with such minimum standards of the Administrator, or

(II) within such earlier time as the State may prescribe.

(iii) The requirements of subsection (d) of section 4 for registered commercial applicators shall take effect 1 year after the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (d) are to be in compliance with minimum standards prescribed by the Administrator

of the Environmental Protection Agency under subsection (h).

(B)(i) Except as provided in clauses (ii) and (iii), subsection (e) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall take effect in a State on the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (e) are to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under subsection (h).

(ii) If an applicator in a State is certified as a private applicator under subsection (a) of section 4 before the effective date prescribed by clause (i) and the Administrator has determined that the previous certification or recertification requirements in that State do not conform to the requirements of subsection (d) of such section, such applicator shall be recertified—

(I) within 2 years after the date the training programs of such State under subsection (e) comply with such minimum standards of the Administrator, or

(II) within such earlier time as the State may prescribe.

(iii) The requirements of subsection (e) of section 4 for supervised private applicators shall take effect 1 year after the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (e) are to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under such subsection.

(C) The requirements of subsection (j) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall take effect 1 year after the Administrator issues the training materials specified in subsection (g) of such section.

(c) SECTION 8.—

(1) Section 8 (7 U.S.C. 136f) (as amended by section 401) is amended by adding at the end the following:

"(c) RECORDS OF APPLICATORS.—

"(1) COMMERCIAL APPLICATORS.—The Administrator shall require each commercial applicator to maintain records of each pesticide application, including the identity and amount of pesticide applied and the date and location of such application, for a period of 2 years after each such application.

"(2) PRIVATE APPLICATORS.—No regulations issued by the Administrator to carry out this Act may require any private applicator to maintain any records or file any reports or other documents.

"(d) RECORDS OF PESTICIDE DEALERS.—The Administrator, by regulation, shall require each pesticide dealer to maintain a record of each sale or distribution of—

"(1) a pesticide classified for restricted use, and

"(2) any other pesticide designated for purposes of this subsection by the Administrator by regulation because the pesticide may cause significant adverse effects on health or the environment.

Such records shall include the identity of the pesticide sold or distributed, the identity of the person to whom the pesticide was distributed or sold, the date of the distribution or sale, and the amount of the pesticide distributed or sold. A pesticide dealer shall maintain the records required under this subsection for 3 years after the date of the distribution or sale.

"(e) ACCESS.—

"(1)(A) Any pesticide dealer or commercial applicator shall afford to any employee or former employee of such dealer or applicator access to records required to be kept under subsections (c) and (d) that directly relate to the employee's employment duties.

"(B) Any pesticide dealer or commercial applicator shall afford to any customer of such dealer or applicator access to the records that directly relate to any pesticide that the customer purchased from the dealer or that relate to any pesticide application made by such an applicator at the request of the customer or under a contract with a customer.

"(C) Each State enforcement agency, as part of an investigation or enforcement action in response to a formal complaint, shall make available reports of the findings of such investigation or action to the complainant. On the request of a complainant, such agency shall provide in a timely manner a progress report or interim report that contains, at a minimum, the records required to be kept under subsections (c) and (d) and obtained in the investigation or action.

"(D) The records for which access is provided under subparagraph (A), (B), or (C) shall be accessible within 30 days after a request made under such subparagraph, except that if necessary to protect the public health or in a medical emergency, such records shall be provided as soon as possible, but no later than 24 hours after the request is made.

"(2) A copy of any record to be required to be maintained under subsection (c) or (d) shall be submitted to a State agency that has primary enforcement authority under section 26 on request by such State agency to the commercial applicator or dealer required to maintain such records.

"(f) INFORMATION FOR EMPLOYEES.—An employer who uses or supervises the use of a pesticide shall know or have access to the brand name and common or chemical name of the pesticide and to the safety, first aid, and antidote information listed on the labeling of the pesticide and shall be responsible for promptly making such information available, on request, to any employee exposed to the pesticide and to treating medical personnel.".

(2) Section 11 (7 U.S.C. 136i) is repealed.

(d) SECTION 12.—Section 12(a)(2) (7 U.S.C. 136j(a)(2)) is amended by striking out "or" at the end of subparagraph (O), by striking out the period at the end of subparagraph (P) and inserting in lieu thereof a semicolon, and by adding after subparagraph (P) the following:

"(Q) to obtain and use records acquired under section 8(e) in furtherance of a commercial purpose;".

The CHAIRMAN. Are there any amendments to title VI?

If not, the Clerk will designate title VII.

The text of title VII is as follows:

TITLE VII—DATA COMPENSATION

SEC. 701. DEFENSIVE DATA.

(a) AMENDMENTS.—

(1) Section 3(c)(2)(B)(ii) (7 U.S.C. 136a(c)(2)(B)(ii)) is amended to read as follows:

"(ii)(I) Each registrant of a pesticide for which a notice is issued under clause (i) shall provide evidence within 90 days after receipt of such notification that it is taking appropriate steps to secure the additional data that are required under such notice.

"(II) Each registrant of a pesticide that contains an active ingredient that is only used for application in the production of food, feed, or fiber shall, by the ninetieth day after notification, agree to develop jointly the additional data concerning that active ingredient that are required under such notice or to share in the cost of developing such data and advise the Administrator of their intent. Any such registrant who agrees to develop jointly, or to share in the cost of producing, the data shall be entitled to examine and rely upon such data in support of maintenance of such registration.

"(III) In the case of any other pesticide, two or more registrants of such pesticides may agree to develop jointly, or to share in the cost of developing, such data if they agree and advise the Administrator of their intent within 90 days after notification. Any such registrant who agrees to develop jointly, or to share in the cost of producing, the data shall be entitled to examine and rely upon such data in support of maintenance of such registration.

"(IV) If a pesticide contains active ingredients that are used for application in the production of food, feed, or fiber and for other purposes, the registrants of the pesticide who are subject to a requirement to submit additional data shall be subject to subclause (II) or (III), whichever the majority of the registrants of the pesticide shall agree to.".

(2) The first sentence of section 3(c)(2)(B)(iv) (7 U.S.C. 136a(c)(2)(B)(iv)) is amended by inserting after "under this subparagraph" the following: "or if the Administrator determines that a registrant has failed to take the action required by clause (ii)(II)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to notices issued under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

SEC. 702. DATA COMPENSATION AND ARBITRATION.

Section 3(c)(1)(D)(ii) (7 U.S.C. 136a(c)(1)(D)(ii)) is amended by inserting "(I)" after "(ii)" adding at the end the following:

"(II) If the term of a patent for a pesticide registered under this section is extended after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 under an Act of Congress that amends title 35, United States Code, to authorize an extension of the term of a patent for a pesticide that had not expired before the date of enactment of such Act of Congress irrespective of the date the pesticide completed a regulatory review period as defined in such title, the amount of compensation to be paid under arbitration under subclause (I) for the use of data submitted to the Administrator for such pesticide shall be a fair share of the cost of producing the data plus a value premium not to exceed that share, as determined in the arbitration process.

"(III) In the case of a pesticide the term of the patent for which has expired, the terms and amount of compensation, for data that was submitted for such pesticide, to be paid by a person who intends to file an application for registration of a pesticide that cites such data may be fixed before the submission of such application by arbitration under subclause (I) initiated by such person. The arbitration shall be binding on the original data submitter and shall be binding

on such person after the date such persons's application is submitted. Each party to the first arbitration under this subclause to determine the terms and amount of compensation for the use of particular data shall share equally in the payment of the fees and expenses of the arbitrators and shall each pay its own attorney's fees. In all subsequent arbitrations under this subclause to determine the terms and amount of compensation for the use of such data, the party to such subsequent arbitration who seeks to cite the data of the original data submitter shall pay the fees and expenses of the arbitrators and the attorney's fees of the original data submitter. The provisons of subclause (I) apply to arbitrations under this clause, except as otherwise provided in this subclause.".

The CHAIRMAN. Are there any amendments to title VII?

If not, the Clerk will designate title VIII.

The text of title VIII is as follows:

TITLE VIII—GENERAL

Subtitle A—Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act

SEC. 801. STATE REGISTRATIONS.

Section 24(c) (7 U.S.C. 136v(c)) is amended—

(1) by striking out the period at the end of paragraph (1) and inserting in lieu thereof a comma and the following: "and such registration shall expire and be of no further effect, without further action by the Administrator—

"(A) at the end of the period, if any, provided as the duration of the registration by the State that approved it, or

"(B) 10 days after the date the Administrator publishes in the Federal Register a notice stating that the State that issued the registration has informed the Administrator that the State no longer desires the registration to continue in effect.", and

(2) by adding at the end of paragraph (2) the following: "The Administrator shall establish criteria that define the conditions under which a special local needs registration may be disapproved, taking into account geographic patterns of use.".

SEC. 802. DEFINITIONS.

(a) AMENDMENTS.—

(1) SECTION 2(bb).—Section 2(bb) (7 U.S.C. 136(bb)) is amended by adding at the end the following: "For purposes of this subsection, the term 'man' includes unborn human beings from the moment of conception.".

(2) SECTION 2(ee).—Section 2(ee) (7 U.S.C. 136(ee)) is amended—

(A) by inserting before the comma at the end of clause (1) "unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency", and

(B) in clause (3), by inserting after "labeling" the following: "unless the labeling specifically states that the product may be applied only by the methods specified on the labeling".

(3) NEW DEFINITION.—Section 2 (as amended by section 601(a)(2)) is amended by adding at the end the following:

"(kk) TO DISTRIBUTE OR SELL.—The term 'to distribute or sell' means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. The term does not include the holding or application of registered pesticides or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served.".

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a) (7 U.S.C. 136a(a)) is amended to read as follows:

"(a) REQUIREMENT OF REGISTRATION.—Except as provided by this Act, no person in any State may distribute or sell to any person any pesticide that is not registered under this Act.".

(2) Section 12(a) (7 U.S.C. 136j(a)) is amended—

(A) in paragraph (1) by striking out "distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—" and inserting in lieu thereof "distribute or sell to any person—", and

(B) in paragraph (2)(F) by striking out "to make" and inserting in lieu thereof "to distribute or sell, or to make".

SEC. 803. INFORMATION REQUESTED.

Section 7 (7 U.S.C. 136e) (as amended by section 201) is amended by adding at the end the following:

"(f) INFORMATION REQUESTED.—Consistent with section 3507(a)(1) of title 44, United States Code, the Administrator shall catalogue and retrieve data in such manner as to eliminate or reduce burdensome requests to registrants for submission of information, particularly those requests that require the submission of duplicate confidential data.".

SEC. 804. COOPERATIVE AGREEMENTS.

Section 23(a) (7 U.S.C. 136u(a)) is amended to read as follows:

"(a) COOPERATIVE AGREEMENTS.—The Administrator may enter into cooperative agreements with States and Indian Tribes for the following:

"(1) To delegate to any State or Indian Tribe the authority to cooperate in the enforcement of this Act through the use of its personnel or facilities, to train personnel of the State or Indian Tribe to cooperate in the enforcement of this Act, and to assist States and Indian Tribes in implementing cooperative enforcement programs through grants.

"(2) To provide an amount equal to 50 percent of the anticipated cost of each State or Indian tribe, as agreed under such cooperative agreements, of conducting training programs for certification of applicators. Funds shall be distributed among States and Indian tribes on a formula basis, as developed cooperatively between the Secretary of Agriculture and the Administrator.

"(3) To provide an amount equal to 50 percent of the anticipated cost to each State or Indian tribe, as agreed under such cooperative agreements, of conducting pesticide certification and licensing programs, and in the case of a State, for administering the State plan of each State approved under section 4(a)(2). Funds shall be distributed among the States and Indian tribes on a formula basis as specified by the Administrator.

There are authorized to be appropriated such sums as may be necessary for cooperative agreements and grants under this subsection.".

SEC. 805. SCIENTIFIC ADVISORY PANEL.

Section 25(d) (7 U.S.C. 136w(d)) is amended—

(1) by striking out "consist of 7 members" and inserting in lieu thereof "be permanent and consist of 9 members", and

(2) by striking out the sentence beginning "The advisory panel established".

SEC. 806. AUTHORITY FOR EPA ACTION.

The second sentence of section 27(a) (7 U.S.C. 136w-2(a)) is amended to read as follows: "If a State—

"(1) does not promptly initiate appropriate investigative action after receiving such referral, or

"(2) does not initiate appropriate enforcement action within 90 days after receipt of such referral,

the Administrator may act on such complaint or information in accordance with this Act.".

SEC. 807. EXPIRATION OF STATE PRIMARY ENFORCEMENT RESPONSIBILITY.

Section 26 (7 U.S.C. 136w-1) is amended by adding at the end the following:

"(d) EXPIRATION.—Notwithstanding subsections (a) and (b), the primary enforcement responsibility of a State under this section for pesticide use violations shall expire on January 1, 1989, unless the Administrator determines that the State has the authority to impose civil and criminal penalties at least equal to those provided in section 14.".

SEC. 808. UNLAWFUL ACTS.

(a) SECTION 12(a).—Section 12(a) (7 U.S.C. 136j(a)) (as amended by section 601(d)) is amended—

(1) by amending paragraph (1)(A) to read as follows:

"(A) any pesticide that is not registered under section 3 or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this Act;",

(2) by amending paragraph (2)(B) to read as follows:

"(B) to refuse to (i) prepare, maintain, or submit any records required by or under this Act, (ii) submit any reports required by or under this Act, or (iii) allow any entry, inspection, copying of records, or sampling authorized by this Act;",

(3) by amending paragraph (2)(J) to read as follows:

"(J) to violate any suspension order issued under section 3(c)(2)(B), 3A, or 6;",

(4) by amending paragraph (2)(K) to read as follows:

"(K) to violate any cancellation order issued under this Act;",

(5) in paragraph (2)(M), by striking out "section 8" and inserting in lieu thereof "this Act", and

(6) by adding at the end paragraph (2) the following:

"(R) to willfully falsify all or part of any information relating to the testing of any pesticide (or any ingredient, metabolite, or degradation product thereof), including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by this Act;

"(S) to willfully submit to the Administrator data known to be false in support of a registration; or

"(T) to violate any regulation issued under section 3(a), 19(a), 25(c)(3), or 25(f) of this Act.".

(b) ACTS OF OFFICERS, AGENTS, ETC.—

(1) Section 12 (7 U.S.C. 136j) is amended by adding at the end the following:

"(c) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of this Act, the act, omission, or fail-

ure of any officer, employee, agent, or other person acting for or employed by any person shall be deemed to be the act, omission, or failure of such person as well as that of the person employed.".

(2) Paragraph (4) of section 14(b) (7 U.S.C. 1361(b)) is repealed.

SEC. 809. PENALTIES AND SUBPOENAS.

(a) SECTION 14(a).—Section 14(a) (7 U.S.C. 1361(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—

"(A) Any registrant, applicant for a registration, producer, or pesticide testing facility that violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $25,000 for each offense. If a registrant, applicant for a registration, producer, or pesticide testing facility violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $50,000 for such subsequent violation.

"(B) Any—

"(i) commercial applicator of restricted use pesticides, or

"(ii) any other person not described in subparagraph (A) who distributes or sells pesticides or devices,

that violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $10,000 for each offense. If such person violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $20,000 for such subsequent violation.",

(2) by amending paragraph (2) to read as follows:

"(2) PRIVATE APPLICATOR.—Any private applicator who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, and any other person not included in paragraph (1) that violates any provision of this Act, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense. If such person violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $2,000 for such subsequent violation. The Administrator may waive the requirement for a warning or citation for a first offense by a private applicator if the Administrator determines that the violation was intentional or caused significant harm to health or the environment.",

(3) by adding at the end of paragraph (3) the following: "If the person neither resides nor has its principal place of business in the United States, the Administrator may designate a site for the hearing in the United States that is reasonably convenient for the parties.", and

(4) in the first sentence of paragraph (4), by inserting "the economic benefit (if any) resulting from the violation," after "to continue in business,".

(b) SECTION 14(b).—

(1) Section 14(b)(1) (7 U.S.C. 1361(b)(1)) is amended to read as follows:

"(1) IN GENERAL.—

"(A) Any registrant, applicant for a registration, producer, or pesticide testing facility that knowingly violates any provision of this Act shall be fined not more than $50,000 or imprisoned for not more than one year, or both.

"(B) Any commercial applicator of a restricted use pesticide, or any other person not described in subparagraph (A) who distributes or sells pesticides or devices, that knowingly violates any provision of this Act shall be fined not more than $25,000 or imprisoned for not more than one year, or both.".

(2) Section 14(b)(2) (7 U.S.C. 136l(b)(2)) is amended (A) by striking out "$1,000" and inserting in lieu thereof "$2,000", and (B) by striking out "30" and inserting in lieu thereof "60".

(c) SUBPOENAS.—Section 14(a) (7 U.S.C. 136l(a)) is amended by adding at the end the following:

"(6) SUBPOENAS.—The Administrator, in connection with administrative proceedings under this subsection, may issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum and may request the Attorney General to bring an action to enforce any subpoena issued under this paragraph. The district courts of the United States shall have jurisdiction to enforce such subpoenas and impose sanctions.".

SEC. 810. CONGRESSIONAL REVIEW.

Section 25(a)(4) (7 U.S.C. 136w(a)(4)) is amended to read as follows:

"(4) CONGRESSIONAL REVIEW OF REGULATIONS.—Simultaneously with the promulgation of any rule or regulation under this Act, the Administrator shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. The rule or regulation shall not become effective until the passage of 60 calendar days after the rule or regulation is so transmitted.".

SEC. 811. REVIEW OF REGULATIONS.

Section 16 (7 U.S.C. 136n) is amended by adding at the end thereof the following:

"(e) REVIEW OF REGULATIONS.—

"(1)(A) Any regulation issued under this Act and first published in the Federal Register in final form after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 shall be reviewable only as provided by this subsection. Any person may obtain judicial review of the regulation by filing a petition for review in the United States court of appeals for the circuit wherein the person resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Any petition under this paragraph for review of a regulation shall be filed within 120 days after the date of promulgation of the regulation as designated by the Administrator in the Federal Register.

"(B) Any refusal by the Administrator of a petition to modify or rescind a regulation issued under this Act shall be reviewable only as provided by this subsection. Any person may obtain judicial review of the refusal by filing a petition for review in the United States court of appeals for the circuit wherein the person resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Any such petition for review of a refusal to modify or rescind a regulation shall be filed within 120 days after such refusal.

"(C) The scope of review under subparagraph (A) or (B) shall be as specified in section 706 of title 5, United States Code. The commencement of a proceeding under subparagraph (A) or (B), unless specifically ordered by the court to the contrary, shall not operate as a stay of the regulation.

"(2) A regulation issued by the Administrator or a refusal by the Administrator of a petition to modify or rescind a regulation issued under this Act shall not be subject to judicial review—

"(A) in any suspension, cancellation, or denial proceeding under this Act or in any appeal therefrom, or

"(B) in any proceeding under section 13 or 14(a), or subsection (c), or in any appeal therefrom except on request of a person who, as an agricultural producer, is adversely affected by such action.

"(3) If a person who is a party to a proceeding described in subparagraph (A) or (B) of paragraph (2) that is based on a regulation issued under this Act petitions the Administrator to modify or rescind such regulation, the application of such regulation in the proceeding shall be stayed until the Administrator issues a final decision on the petition.

"(4) As used in this subsection, the term 'agricultural producer' means a nongovernmental producer of agricultural commodities who (A) uses or supervises the use of any pesticide for the production of such commodities on property owned or rented by the producer or the producer's employer, or (B) without compensation other than the trading of personal services, assists another agricultural producer with the application of pesticides on such producer's land.".

SEC. 812. DELEGATION AND COOPERATION.

Section 22 (7 U.S.C. 136t) is amended by adding at the end the following:

"(c) EFFECT ON CERTAIN OTHER LAWS.—The Administrator, in exercising any authority under this Act, shall not, for the purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health to the extent that the Administrator and the Secretary of Labor by agreement specify that such exercise of authority by the Administrator under this Act is not to be considered an exercise of statutory authority for purposes of section 4(b)(1). To ensure the safety and health of workers, the Administrator and the Secretary of Labor shall seek to reach such agreements and to coordinate the exercise of their statutory authority.".

SEC. 813. INDEMNITY REPORT BY EPA.

Section 15 (7 U.S.C. 136m) is amended by adding at the end the following:

"(c) REPORT.—If the Administrator takes an action that under subsection (a) requires the payment of indemnification, the Administrator shall report to the Committee on Agriculture of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate—

"(1) the action taken that requires the payment of indemnification,

"(2) the reasons for taking such action,

"(3) the estimated cost of the payment,

"(4) the effect such payment would have on the budget of the Administrator to implement this Act without a specific additional appropriation for the payment, and

"(5) a request for the appropriation of funds for such payment.".

SEC. 814. GROUNDWATER AUTHORITY.

The Act (as amended by section 202) is amended by adding after section 31 the following:

"SEC. 32. GROUNDWATER AUTHORITY.

"(a) IN GENERAL.—The Administrator, as appropriate and necessary, shall use the authorities under this Act to provide for the

protection of drinking water and groundwater against contamination by pesticides.

"(b) USE OF OTHER AUTHORITIES.—In carrying out subsection (a), the Administrator shall use maximum contaminant levels established under title XIV of the Public Health Service Act, whenever available, as groundwater residue guidance levels.

"(c) CONSULTATION WITH STATES.—In carrying out subsection (a), the Administrator shall consult with, and take into account the views of, the States on—

"(1) the distinction between drinking water, shallow groundwater that is not a potential source of drinking water, and groundwater that is a potential source of drinking water,

"(2) degradation of pesticides in groundwater, and

"(3) appropriate means for responding to and preventing pesticide contamination of drinking water and groundwater.

"(d) CONSULTATION WITH SECRETARY OF AGRICULTURE.—In carrying out subsections (a) and (c), the Administrator shall consult with the Secretary of Agriculture.".

SEC. 815. WORKER HEALTH AND SAFETY.

Section 25 (7 U.S.C. 136w) is amended by adding at the end the following:

"(f) WORKER HEALTH AND SAFETY.—

"(1)(A) The Administrator, as soon as practicable, shall promulgate regulations that require the protection, as appropriate and necessary, of employees who mix, load, or apply pesticides and agricultural employees who work in pesticide-treated areas.

"(B) The Administrator shall promulgate regulations that provide for the training, as appropriate and necessary, of employees who mix, load, or apply pesticides. Any training requirement that may be established by the Administrator under this subparagraph shall not apply to any person who is required to receive the training described in subsection (d) or (e) of section 4.

"(C) For purposes of subparagraphs (A) and (B), the term 'employees' does not include employees occupationally exposed to pesticides or pesticide residues as a result of the use of pesticides on livestock or other animals.

"(2)(A) The Administrator shall promulgate regulations under paragraph (1) for employees not described in subparagraph (B) not later than 3 years after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

"(B) The Administrator shall provide a period of at least 6 months for comments on proposed regulations issued under paragraph (1) that apply to agricultural employees who mix, load, or apply pesticides or who work in pesticide-treated areas. Such regulations shall be promulgated not later than 2 years after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

"(3) Not later than 6 months after the date of the publication of the notice of proposed rulemaking issued for the regulations for employees described in paragraph (2)(B) to be promulgated under paragraph (1), the Secretary of Agriculture shall submit to the Administrator a report on the impact, cost, and effectiveness of such regulations on the agricultural community. The Secretary shall submit a copy of such report to Congress.

"(4) Simultaneously with the promulgation of regulations under paragraph (1), the Administrator shall transmit a copy of such regulations to the Secretary of the Senate and the Clerk of the House of Representatives. Such regulations may not become effective until the expiration of 120 days after the date such regulations are so transmitted.".

SEC. 816. AUTHORIZATION FOR APPROPRIATIONS.

Effective October 1, 1986, section 33 (7 U.S.C. 136y) (as redesignated by section 202(b)) is amended to read as follows:

"SEC. 33. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated to carry out this Act (other than sections 23(a) and 31) $78,363,500 for fiscal year 1987, of which not more than $13,735,500 shall be available for research under this Act, $87,414,200 for fiscal year 1988, of which not more than $14,343,600 shall be available for research under this Act, $91,673,400 for fiscal year 1989, of which not more than $14,978,200 shall be available for research under this Act, $98,305,800 for fiscal year 1990, of which not more than $15,625,900 shall be available for research under this Act, and $106,808,700 for fiscal year 1991, of which not more than $16,300,100 shall be available for research under this Act.".

Subtitle B—Other Provisions

SEC. 821. LIABILITY.

(a) PESTICIDE USE.—An agricultural producer shall not be liable in any action brought after the effective date of this Act under any Federal statute for damages caused by pesticide use unless the producer has acted negligently, recklessly, or intentionally. Proof that the agricultural producer used the pesticide in a manner consistent with label instructions shall create a rebuttable presumption that the agricultural producer did not act negligently.

(b) FIFRA PENALTIES.—An agricultural producer shall not be held liable in an action brought under section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act for civil penalties for a violation of section 12(a)(2)(G) of such Act unless the producer used the pesticide in a manner inconsistent with its labeling. Proof that the pesticide was used in a manner consistent with its label instructions shall create a rebuttable presumption that the agricultural producer did not violate such subsection.

(c) DEFINITION.—As used in this section, the term "agricultural producer" means a nongovernmental producer of agricultural commodities who (1) uses or supervises the use of any pesticide for the production of such commodities on property owned or rented by the producer or the producer's employer, or (2) without compensation other than the trading of personal services, assists another agricultural producer with the application of pesticides on such producer's land.

SEC. 822. EVALUATION BY THE COMPTROLLER GENERAL.

(a) EVALUATION.—The Comptroller General of the United States shall conduct an evaluation of the programs and activities authorized by the amendments to the Federal Insecticide, Fungicide, and Rodenticide Act made by this Act and shall make a final report of such evaluation to Congress no later than December 31, 1988. The Comptroller General shall include in such evaluation the effect that the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, is having on the cost and availability of pesticides to farmers as well as other producers of food and fiber. Such evaluation shall include an analysis of the reregistration program under such Act and any program conducted by the Administrator of the Environmental Protection Agency under such Act relating to groundwater.

(b) RECORDS.—For the purpose of conducting program evaluations required under subsection (a), the Comptroller General, or the duly authorized representatives of the Comptroller General, shall have access to and the right to examine all documents, papers, records, data, pesticide study documentation, or other recorded information within the possession or control of the Administrator of the Environmental Protection Agency or within the possession or control of pesticide registrants subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act. The Comptroller General and the representatives of the Comptroller General shall be subject to the same restrictions regarding the disclosure of trade secret information as are the employees of the Environmental Protection Agency.

SEC. 823. IR4 PROGRAM.

Section 2(c) of the Act of August 4, 1965 (7 U.S.C. 450i(c)), is amended by inserting before the first sentence after paragraph (2) the following: "The Secretary in making grants under paragraph (2)(B) shall provide support for the interregional project number 4 program (commonly referred to as the 'IR4 program').".

SEC. 824. PESTICIDE RISK RATING.

(a) STUDY.—Subject to subsection (b), the Administrator of the Environmental Protection Agency shall contract with the Board of Agriculture of the National Academy of Sciences to conduct a study to determine the feasibility of establishing an environmental risk rating for pesticides used in the production of agricultural commodities. Such risk rating shall take into consideration methods of application, chronic and acute toxicity, and anticipated losses to and persistence in the environment. In conducting the study, the National Academy of Sciences shall seek information and advice from recognized public and private sector scientists and provide opportunity for public comment on the preliminary findings relating to the development of a risk rating. The National Academy of Sciences shall report the findings of such study to the Administrator and to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate within 18 months after the date of the enactment of this Act.

(b) LIMITATION.—The study required by subsection (a) shall be conducted at such cost as the Administrator, in consultation with the National Academy of Sciences, may establish.

(c) CONTRACT AUTHORITY.—The authority of the Administrator to enter into contracts under this section shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 825. STUDY OF NONAGRICULTURAL PESTICIDES.

The Administrator of the Environmental Protection Agency shall study and report to Congress within one year after the date of the enactment of this Act on the pesticide volume, use sites, and target insects for nonagricultural pesticides.

SEC. 826. DIOXIN STUDY.

The Administrator of the Environmental Protection Agency shall collect and analyze samples of human breast milk for residues of isomers of chlorinated dioxins and dibenzofurans. Not later than 2 years after the date of the enactment of this Act, the Administrator shall report to Congress the findings from the analysis of such samples.

SEC. 827. PESTICIDE DRIFT.

The Administrator of the Environmental Protection Agency, within 2 years after the date of enactment of this Act, shall report to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate on the incidence and potential adverse effects on human health and the environment of the drift of pesticides from the site of application at the time of application.

SEC. 828. SURVEY OF NATURALLY OCCURRING AGENTS THAT ACT AS PESTICIDES.

The Administrator of the Environmental Protection Agency shall conduct a survey to determine what research has been, or is being, conducted to establish the extent to which agents that act as pesticides are manufactured by plants and thereby exist naturally in fruits, vegetables, grains, legumes, and oilseeds commonly consumed by persons in the United States. The Administrator shall provide a report on the findings of the survey to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than December 31, 1987, and shall release such findings to the public. The report shall include information on the extent to which such naturally occurring agents have been identified, the nature of such agents, and the extent to which such agents have been shown to be toxic, carcinogenic, or mutagenic.

The CHAIRMAN. Are there any amendments to title VIII?

AMENDMENT OFFERED BY MR BEDELL

Mr. BEDELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BEDELL: Page 134, strike out line 5 and all that follows through line 6 on page 135 and insert in lieu thereof the following:

SEC. 814. GROUNDWATER AUTHORITY.

(a) DEFINITIONS.—Section 2 (7 U.S.C. 136) (as amended by section 802) is amended by adding at the end the following:

"(11) GROUNDWATER.—The term 'groundwater' means water below the land surface in a zone of saturation.

"(mm) RELIABLE ANALYTICAL DATA.—The term 'reliable analytical data' means scientific information that verifies the presence of a pesticide in a groundwater sample and that is of a reliable scientific quality according to generally recognized standards and good laboratory practices for sampling and analysis of pesticides in groundwater.

"(nn) POTENTIAL SOURCES OF DRINKING WATER.—The term 'potential sources of drinking water' means the portion of an aquifer or aquifer system that contains sufficient quantity and is of sufficient quality to supply potable water to a drinking water well, taking into account (1) geographic considerations and depth to drinking water, (2) and State criteria or guidelines for siting new wells established under section 1428 of the Pacific Health Service Act or other State authority, and (3) shallow groundwater that is not potential drinking water.

"(oo) DRINKING WATER WELL.—The term 'drinking water well' means a well or spring currently supplying water for human consumption.

"(pp) GROUNDWATER SAMPLING POINT.—The term 'groundwater sampling point' means a public or community water supply, a private water supply, a spring, or a monitoring well or other groundwater source if the well or source is reasonably designed and of adequate depth to permit the collection of representative groundwater samples.

"(qq) GROUNDWATER RESIDUE GUIDANCE LEVEL.—The term 'groundwater residue guidance level' means groundwater residue guidance level established under section 1429 of the Public Health Service Act.".

(b) AUTHORITY.—The Act (as amended by section 202) is amended by adding after section 31 the following:

"SEC. 32. PROTECTION OF GROUNDWATER.

"(a) NOTIFICATION.—

"(1) REQUIREMENT.—When a registrant of a pesticide obtains or learns of reliable analytical data that a pesticide has—

"(A) been detected at any groundwater sampling point and no groundwater residue guidance level has been issued for the pesticide under subsection (e),

"(B) has been detected at a groundwater sampling point at a concentration higher than known previously to have been reported to the Administrator at such groundwater sampling point, or

"(C) has been detected at any groundwater sampling point at a concentration at or greater than 20 percent of the groundwater residue guidance level issued for the pesticide under subsection (e),

the registrant shall file a report containing such information within 15 working days with both the Administrator, the State in which the groundwater sampling point is located, and the owner of the property in which the groundwater sampling point is located, if known.

"(2) CONTENT OF REPORT.—A report required by paragraph (1) for detection of a pesticide shall contain information known to the registrant of the pesticide on the level of detection of the pesticide, the frequency of detection of the pesticide, location (including depth) where the pesticide was detected, date of the pesticide detection, well construction if the pesticide was detected in a well, soil type where the pesticide was detected, and analytical method used to make the pesticide detection, including information on the precision, accuracy, and limits of the method of detection and any quality assurance and control procedures used in the pesticide detection.

"(b) REVIEW FOR FURTHER ACTION.—Upon receiving information of a detection of a pesticide at any groundwater sampling point, the Administrator shall promptly review the information to determine the reliability of the detection and to determine whether further action should be taken to protect groudwater.

"(c) MONITORING.—

"(1) CONFIRMATION OF DETECTIONS.—If the Administrator receives reliable, analytical data indicating that—

"(A) a pesticide has been detected in a drinking water well,

"(B) the concentration of the pesticide equals or exceeds any groundwater residue guidance level issued under subsection (d) for that pesticide, and

"(C) the presence of the pesticide in the drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or widespread and commonly recognized practices involving the pesticide,

the Administrator may require the registrant of the pesticide detected to conduct such analysis of samples of groundwater from the drinking water well involved as is necessary to determine whether the pesticide is present at a concentration that equals or exceeds such groundwater residue guidance level. A monitoring requirement imposed under this paragraph shall be completed within 90 days of notice to the registrant. The procedures of section 3(c)(2)(B) shall govern any monitoring requirement imposed under this paragraph.

"(2) REQUIREMENT FOR MONITORING.—If the Administrator determines that additional data on the presence of a pesticide in groundwater are required to maintain in effect an existing registration of the pesticide, the Administrator may, under section 3(c)(2)(B), require the registrant of the pesticide to conduct groundwater monitoring. The Administrator shall consult with the Secretary of Agriculture, the heads of other appropriate Federal agencies, and the States concerning the design and scope of monitoring requirements imposed under this paragraph. The design and the scope of the monitoring requirement should take into account all relevant information, including the magnitude and frequency of the detection of the pesticide involved, pattern of pesticide use and soil types involved in the detection, physical and chemical properties of the pesticide, rainfall patterns, well construction if the pesticide was detected in a well, rates of degradation, reliability and analytical accuracy of the detection, and results of State or other sponsored monitoring. To the extent feasible, monitoring should be at representative geographical and hydrogeological areas associated with locations and conditions of concern as determined by the Administrator.

"(3) JUDICIAL REVIEW.—Monitoring requirements imposed under paragraph (2) shall be subject to judicial review under section 16.

"(d) RESPONSE TO GROUNDWATER CONTAMINATION.—

"(1) REQUIREMENT.—If the Administrator determines that a pesticide is present in a drinking water well at a concentration that exceeds the final groundwater residue guidance level applicable to the pesticide and that the presence of the pesticide in the drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or as a result of widespread and commonly recognized practice involving the pesticide, the Administrator shall notify the State in which the drinking water well is located of the Administrator's determination and shall provide it with all information relevant to the determination. Such State shall take action within 90 days of such notification to prevent potential adverse effects on human health and the environment from such pesticide. In taking such action, the State shall take appropriate action regarding the sale or use of the pesticide detected at such drinking water well to bring and retain concentrations of the pesticide at such drinking water well at or below the final groundwater residue guidance level applicable to the pesticide.

"(2) ACTION BY THE ADMINISTRATOR.—

"(A) if a State does not have the authority to take the action required by paragraph (1) with respect to a pesticide detected in a drinking water well or fails to take such action within the time period prescribed by such paragraph, the Administrator shall take appropriate action under this Act to bring and retain the concentration of the pesticide detected at such drinking water well at or below the final groundwater residue guidance level applicable to the pesticide and may take such other action under this Act as the Administrator deems necessary to prevent potential adverse effects on human health and the environment from

the pesticide. If the Administrator takes such action, the Administrator shall publish notice of the action in the Federal Register and take appropriate steps to inform the registrant of the pesticide involved, potentially affected persons, and interested members of the public. Such notice shall specify the findings and conclusions upon which such action was based.

"(B) Any person adversely affected by action taken under subparagraph (A) or the failure of the Administrator to take such action may request an expedited hearing, under the procedures in section 6(c)(2), to determine whether the action was taken in accordance with subparagraph (A) or whether the Administrator was required to take action. Such a hearing shall be held and a determination made within 75 days from the date of the receipt of the request for the hearing.

"(C) The Administrator shall provide reasonable procedures for petitions to modify or terminate an action taken under subparagraph (A) when the drinking water well involved no longer has the pesticide in a concentration that exceeds the applicable groundwater residue guidance level and will likely remain below such level.

"(3) JUDICIAL REVIEW.—Judicial review of actions taken under this subsection shall be governed by section 16.

"(e) REGISTRATION AMENDMENTS.—

"(1) REQUIREMENT.—

"(A)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities, the Administrator shall promptly require amendments to the registration of the pesticide with respect to which the finding was made that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final groundwater residue guidance level involved in the finding to be exceeded in drinking water wells. The Administrator shall make any such determination public.

"(ii) If the Administrator proposes to require registration amendments under clause (i) for a pesticide, the Administrator shall notify the registrant of the pesticide of such amendments and shall publish notice of such proposal in the Federal Register. Such notice shall include the Administrator's determination whether the presence of the pesticide in drinking water wells appears to have been the result of the use of the pesticide in accordance with its labeling or the result of widespread and generally recognized practice.

"(B) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in potential drinking water in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in potential drinking water in different localities, the Administrator shall promptly require amendments to the registration of the pesticide with respect to which the finding was made that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final groundwater residue guidance level involved in the finding to be exceeded in potential drinking water. If the Administrator proposes to require registration amendments under this subparagraph for a pesticide, the Administrator shall notify the registrant of the pesticide of such amendments. In establishing such amendments, the Administrator shall—

"(i) meet the procedural requirements of subparagraph (A)(ii),

"(ii) take into account information submitted by States on land or groundwater use classification or other governmental actions that could affect when groundwater may be used for drinking water, and

"(iii) consider the views of the Secretary of Agriculture, the heads of other appropriate Federal agencies, and States as required in paragraph (2).

"(2) CONSULTATION WITH STATES.—In taking action under paragraph (1), the Administrator shall consult with the Secretary of Agriculture and the State where the pesticide involved has been detected in any groundwater sampling point and each other State in which there is significant use of the pesticide. The Administrator shall notify such State of the Administrator's determination that there is a reasonable likelihood that a groundwater residue guidance level will be exceeded and shall, in accordance with section 10(h), provide the State with all information relevant to this determination. Each State that is notified under this paragraph shall promptly provide the Administrator with information that is relevant to taking action under paragraph (1) and shall make recommendations with respect to any proposed registration amendments.

"(3) SCOPE OF AMENDMENTS.—

"(A) Amendments to the registration of a pesticide under paragraph (1) may include—

"(i) limitations on the purposes for and locations at which the pesticide may be used, considering factors such as environmentally sensitive areas and conditions,

"(ii) limitations on the rate at which the pesticide is applied,

"(iii) limitations on the time or frequency of pesticide use,

"(iv) limitations on the method of pesticide application, storage, handling, or disposal,

"(v) reporting or other requirements, including label changes or changes in classification,

"(vi) requirements for the training or certification of pesticide applicators or other persons using the pesticide,

"(vii) required site specific responses, or

"(viii) any other requirement to ensure that the applicable groundwater residue guidance level will not be exceeded.

"(B) Amendments to the registration of a pesticide under paragraph (1) should, to the extent feasible, be directed to the same or similar use of the pesticide, same or similar geographical and hydrogeological areas, and other similar conditions that led to the determination under subparagraph (A) or (B) of paragraph (1).

"(C) In taking regulatory action under paragraph (1), the Administrator may use recommendations made by a State under paragraph (2).

"(D) In requiring amendments to the registration of a pesticide under paragraph (1), the Administrator shall consider the effect of any voluntary actions by registrants or other persons, including actions by a State, to prevent the groundwater residue guidance level involved from being exceeded and to comply with other environmental laws.

"(4) PROCEDURE.—Registration amendments under paragraph (1) shall be imposed in accordance with the procedural requirements of this Act.

"(f) INFORMATION ON PESTICIDES IN GROUNDWATER.—The Administrator may collect and make available through a public information file information concerning the detection of pesticides in any groundwater sampling point. The file may, among other things, summarize for each pesticide that has been detected in groundwater, based on reliable analytical data, whether the pesticide has been detected at a concentration that exceeds the applicable groundwater residue guidance level and whether the presence of the pesticide in groundwater appears to have been caused by the use of the pesticide in compliance with this Act.

"(g) TECHNICAL ASSISTANCE TO STATES.—The Administrator shall provide technical information to States to assist in implementing this section. Subject to section 10(h), the technical information provided respecting a pesticide shall include data on the toxicity, environmental fate, or physical or chemical characteristics of the pesticide, predictive modeling, exposure and other relevant subjects. In addition, the Administrator shall provide information, to the extent reasonably available, on alternative methods of pest control and on agricultural or other management practices that could minimize the presence of pesticides in groundwater.

"(h) SPECIAL REVIEW.—Upon receiving reliable analytical data that a pesticide has been detected above the applicable groundwater residue guidance level but not in a drinking water well or potential drinking water, the Administrator may initiate a public interim administrative review under section 3(c)(8) to determine whether the pesticide may cause unreasonable adverse effects on the environment from such use.

"(i) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall limit the authority of the Administrator or of any State under other provisions of this Act or under any other law.".

(c) GROUNDWATER RESIDUE GUIDANCE LEVEL.—Section 1412 of the Public Health Service Act is amended by adding at the end the following:

"(f)(1) The Administrator, on the Administrator's own initiative, may issue a groundwater residue guidance level for a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator shall issue a groundwater residue guidance level for a pesticide whenever the Administrator registers or reregisters a pesticide under such Act if the Administrator determines that the pesticide has the potential to leach into groundwater. In addition, the Administrator shall issue a groundwater residue guidance level of a pesticide if—

"(A) based on reliable analytical data, the pesticide has been detected at groundwater sampling points in 3 different geographical areas,

"(B) based on reliable analytical data, the pesticide has been detected in a drinking water well or wellfield that serves a population of over 500 people, or

"(C) a Federal agency or a State petitions the Administrator to set a groundwater residue guidance level for the pesticide.

(2)(A) If the Administrator has promulgated or promulgates a maximum contaminant level under subsection (b)(3) that applies to a pesticide, the groundwater residue

guidance level required under paragraph (1) for the pesticide shall be set at such level within 30 days of being required under such subsection.

"(B) If a maximum contaminant level that would be applicable to a pesticide for which a groundwater residue guidance level is required by paragraph (1) has not been established under subsection (b)(3), the Administrator, in the Administrator's discretion, may use a health advisory level established under this Act in establishing such groundwater residue guidance level. The groundwater residue guidance level established by the Administrator for such pesticide shall reflect the level of the pesticide in drinking water at which no known or anticipated adverse effects on the health of persons occur, the need for an adequate margin of safety, the nature of the toxic effects caused by the pesticide, and the validity, completeness, and adequacy of data about the pesticide. If all required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the groundwater residue guidance level for the pesticide shall be at the limit of detection. If any required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the groundwater residue guidance level for the pesticide shall include an additional margin of safety that takes into account the absence of such data.

"(3)(A) Before issuing a final groundwater residue guidance level for a pesticide, the Administration shall publish an interim groundwater residue guidance level for the pesticide in the Federal Register and allow public comment for at least 30 days. During the public comment period, the Administrator shall invite comment on the level involved from the Secretary of Agriculture and States.

"(B) If the Administrator is required under paragraph (1) to issue a groundwater residue guidance level for a pesticide and the groundwater residue guidance level is to be issued under paragraph (2)(B), the Administrator shall issue an interim groundwater residue guidance level for the pesticide within 30 days after the requirement to issue the groundwater residue guidance level takes effect.

"(C) Within 3 months after establishing an interim groundwater residue guidance level, the Administrator shall establish a final groundwater residue guidance level. Until a final groundwater residue guidance level is established under paragraph (1) for a pesticide, an interim groundwater residue guidance level established for the pesticide shall remain in effect.

"(4) The Administrator may revise a groundwater residue guidance level for a pesticide. The Administrator shall allow at least 30 days for public comment on any proposed revision.

"(5) An interim groundwater residue guidance level shall not be subject to judicial review before the expiration of 3 months after its issuance. Judicial review of any final groundwater residue guidance level or failure to establish an interim or final groundwater residue guidance level shall be governed by section 1448. A groundwater residue guidance level established under paragraph (2)(A) shall not be subject to judicial review.".

Page 131, line 7, strike out "or", in line 10 strike out the period and insert in lieu thereof "; or", and after line 10 insert the following:

"(U) to violate any action required under section 32(e)(2).".

Mr. BEDELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. BEDELL. Mr. Chairman, this amendment is intended to provide a framework for monitoring and responding to pesticide contamination in ground water. Consistent with current authority under FIFRA, the thrust of the amendment is to regulate use of the pesticide found in ground water, rather than to regulate ground water itself as provided under other environmental statutes.

Briefly, the amendment requires those holding pesticide registrations to report to EPA and the States any reliable analytical data that indicates that pesticides have been discovered in ground water. In addition, EPA must establish certain trigger levels—called ground water residue guidance levels [GRGL's]—that would force action by the States and EPA in response to potentially harmful levels of pesticides detected in ground water.

If the EPA Administrator determines that a pesticide is present in a drinking water well at a level that exceeds the ground water residue guidance levels, the Administrator must notify the State in which the contamination occurs and allow the State 90 days to take action to address the problem. The State must act to prevent potential adverse effects on human health and the environment, and must seek to bring the level of pesticide contamination at or below the ground water residue guidance level. In taking steps to reduce contamination below the guidance level, the State has authority to regulate the sale or use of the pesticide.

If the State does not act as required then the EPA Administrator must use authority under FIFRA to bring and retain the concentration of the pesticide in the drinking water well below the ground water residue guidance level or take such other actions under FIFRA as the Administrator deems necessary to prevent adverse effects on human health and the environment.

In cases where the Administrator believes, based on reliable analytical data, that a ground water residue guidance level for a pesticide will be exceeded in drinking water wells or potential drinking water wells in different localities, the Administrator must promptly require amendments to the registration of the pesticide in order to ensure that the guidance levels will not be exceeded.

In determining whether there is a "reasonable likelihood" that the ground water residue guidance level will be exceeded, the Administrator shall consider the concentration of the pesticide detected relative to the ground water residue guidance level. There shall be a presumption that pesticides detected above 25 percent of the ground water residue guidance level meet the "reasonable likelihood" standard, unless the Administrator determines that the reasonable likelihood standards has not been met after considering the circumstances surrounding the presence of the pesticide in ground water, taking into account all relevant information, including the frequency and time of occurrence at the site of detection and elsewhere, use patterns, soil types, physical and chemical properties of the pesticide, rainfall patterns, well construction, analytical accuracy, and rates of degradation.

Mr. Chairman, throughout this amendment, EPA is directed to work with the States, the Department of Agriculture, and affected individuals to assure that pesticide contamination in ground water is addressed in a manner that recognizes the special local and regional nature of ground water problems.

Finally, Mr. Chairman, I would like to emphasize that in crafting this amendment, considerable care was given to working within existing FIFRA authority to regulate use of the detected pesticide. Responsibility for addressing problems related to ground water per se is left to the authorities under other environmental statutes.

I urge adoption of the amendment.

□ 1045

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Chairman, I would like to associate myself with the remarks of my friend and colleague, and want to inform my colleagues we have no objection to this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa [Mr. BEDELL].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ROBERTS

Mr. ROBERTS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Has this amendment been printed in the RECORD?

Mr. ROBERTS. The amendment has been printed in the RECORD, Mr. Chairman.

The Clerk read as follows:

Amendment offered by Mr. ROBERTS: Section 821(a) of the text of H.R. 5440 (the Amendment in the Nature of a Substitute to H.R. 2482), is amended (page 138, lines 2 through 10) to read as follows:

"SEC. 821. LIABILITY FOR LAWFUL APPLICATION

(a) PESTICIDE USE AND NO PRIVATE RIGHT OF ACTION.—(1) Liability under Federal environmental statutes for the costs of response

or damage incurred with respect to a release or threatened release into the environment of a pesticide shall, in any case where the application was in compliance with label instructions and other applicable law, be imposed on the registrant or other responsible parties, not the agricultural producer. There shall be a rebuttable presumption that the application was in compliance with label instructions and otherwise lawful. For purposes of the preceding sentence, the terms "damages", "response", "release", and "Environment" shall have the meanings assigned them of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The term "Federal environmental statutes" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Clean Water Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and this Act. Neither this section nor any other provision of this Act shall be construed, interpreted or applied to preempt or, except as provided above, displace liability under other Federal, or State laws, whether statutory or common.

(2) Nothing in this section shall be construed as conferring a private right of action on any person for the purposes of this Act or any other Federal law.

Mr. ROBERTS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. ROBERTS. Mr. Chairman, I have an amendment at the desk dealing with producer liability. FIFRA is an agricultural statute that spells out the rights, duties, and responsibilities of agricultural producers who apply pesticides. FIFRA is a licensing statute for agricultural chemicals.

A chemical manufacturer of pesticides applies for a registration and a label from the Environmental Protection Agency. The EPA approves that label, which the farmer is bound by FIFRA to follow or he will be in violation of Federal law and subject to penalty. Implicit in this is the simple fact that under FIFRA as long as the producer can prove in a court of law that he has applied the pesticide in accordance with label instructions the farmer is not liable for monetary damages, equitable remedies such as providing a table water, site cleanup costs, and any other remedies that do not include criminal penalties or fines.

However, in recent years the question of liability and the meaning of the pesticide label has come in to question on issue of farmer liability. The amendment I am offering today would say that if the farmer can prove that he has applied the pesticide according to the label, then the liability for damages will be shifted to the registrant and other responsible parties who created and approved the label.

The question can be raised, does my amendment leave the public unprotected? It does not. My amendment merely allocates responsibility among the parties according to the circumstances which are under their responsibility and control. Contamination by a pesticide arises from one of two sources—either the product is unsafe, or it was not used properly. If the product was unsafe the manufacturer should be held liable; if the product was not used according to label instructions then the farmer is held liable. Either way the public is protected.

I understand that this provision also clarifies the problems that other committees have with the liability section contained in the bill.

I urge my colleagues to support this amendment. This amendment merely shifts the liability to where it belongs—the manufacturer of pesticides or the producer who has not acted responsibly in applying and using the pesticide.

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Iowa.

Mr. BEDELL. Mr. Chairman, I want the gentleman from Kansas to know that I certainly support the amendment. I think it is an excellent amendment, and we support it on this side.

Mr. DE LA GARZA. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the chairman of the full committee, the gentleman from Texas.

Mr. DE LA GARZA. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I have only one question to clarify the legislative intent. Is the thrust of the gentleman's amendment directed only at agricultural producers, at pesticide or chemical use in an agricultural endeavor?

Mr. ROBERTS. That is correct.

Mr. DE LA GARZA. Not in any other use?

Mr. ROBERTS. No; not industrial.

Mr. DE LA GARZA. So when the gentleman says in the text of his amendment not the agricultural producer, that means the initial use, because the beginning language is somewhat broad and does not clearly define, we are speaking of a use solely in an agricultural endeavor?

Mr. ROBERTS. I think the gentleman makes an excellent point. It is the intent of this gentleman and of this amendment to limit the scope of this amendment to that as the gentleman has described.

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Iowa.

Mr. BEDELL. Mr. Chairman, I thought the gentleman was offering a slightly different amendment.

Mr. Chairman, I have a substitute which I would like to offer. The only change is one sentence, which reads, "* * * unless the producer has acted negligently, recklessly, or with the intent to misuse such pesticide."

Mr. ROBERTS. Mr. Chairman, I have no objection to that substitute, and am always encouraged when the gentleman is able to improve our mutual legislation.

AMENDMENT OFFERED BY MR. BEDELL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. ROBERTS

Mr. BEDELL. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. BEDELL as a substitute for the amendment offered by Mr. ROBERTS: Section 821(a) of the text of H.R. 5440 (the Amendment in the nature of a Substitute to H.R. 2482), is amended (page 138, lines 2 through 10) to read as follows:

SEC. 821. LIABILITY FOR LAWFUL APPLICATION.

(a) PESTICIDE USE AND NO PRIVATE RIGHT OF ACTION.—(1) Liability under Federal environmental statutes for the costs of response or damage incurred with respect to a release or threatened release into the environment of a pesticide shall, in any case where the application was in compliance with label instructions and other applicable law, be imposed on the registrant or other responsible parties, not the agricultural producer, unless the producer has acted negligently, recklessly, or with the intent to misuse such pesticide. There shall be a rebuttable presumption that the application was in compliance with label instructions and otherwise lawful. For purposes of the preceding sentence, the terms "damages", "response", "release", and "environment" shall have the meanings assigned them of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The term "Federal environmental statutes" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Clean Water Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and this Act. Neither this section nor any other provision of this Act shall be construed, interpreted or applied to preempt or, except as provided above, displace liability under other Federal or State laws, whether statutory or common.

(2) Nothing in this section shall be construed as conferring a private right of action on any person for the purposes of this Act or any other Federal law.

Mr. BEDELL (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. BEDELL. Mr. Chairman, this is the very same amendment as was offered by my friend, the gentleman from Kansas, only with the addition of the words, "* * * unless the producer has acted negligently, recklessly, or with the intent to misuse such pesticide," in the body of the amendment.

Mr. DE LA GARZA. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Texas.

Mr. DE LA GARZA. Mr. Chairman, the gentleman from Kansas stated he had no objection, and certainly we have no objection.

The CHAIRMAN. The question is on the amendment offered by Mr. BEDELL as a substitute for the amendment offered by Mr. ROBERTS.

The amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kansas [Mr. ROBERTS], as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. GLICKMAN

Mr. GLICKMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GLICKMAN: Page 137, redesignate section 816 as section 817 and insert before line 8 the following:

SEC. 816. ANTIMICROBIAL STANDARDS.

(a) GENERAL.—Section 3 (7 U.S.C. 136a) is amended by adding at the end thereof the following new subsection:

"(h) ANTIMICROBIAL STANDARDS.—

(1) "STANDARDS.—The Administrator shall—

"(A) establish efficacy standards for antimicrobial control agents (including disinfectants) used to control pest microorganisms that pose a threat to human health, including standards for disinfectants used in hospitals and other health care facilities,

"(B) conduct representative monitoring (including testing) of the compliance of the agents with the standards, and

"(C) implement an enforcement program under which the agents must comply with the standards or be prohibited from sale or distribution as an antimicrobial agent.

"(2) DEFINITION.—As used in paragraph (1), the term 'efficacy' means the capacity of an antimicrobial control agent (including a disinfectant) to produce the desired effect or the effectiveness of such an agent.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 60 days after the date of enactment of this Act.

Page 3, redesignate the item relating to section 816 as an item relating to section 817 and insert before such item the following:

816. Antimicrobial standards.

Page 154, line 3, strike out "after" and insert in lieu thereof "at the end of" and insert after line 4 the following:

"(h) Antimicrobial standards.

"(1) Definition.

"(2) Standards.".

Mr. GLICKMAN (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. GLICKMAN. Mr. Chairman, I discussed this amendment with Mr. BEDELL and Mr. ROBERTS, and I think the EPA is also agreeable to this amendment, but I want to explain it very quickly.

This amendment would require the Administrator of the EPA to establish, monitor, and enforce efficacy standards for antimicrobial control agents used to control pest microorganisms that pose a threat to human health.

Primarily, once I get through the scientific jargon, what I am talking about here is disinfectants, disinfectants used in hospitals.

More than 3,000 disinfectants are registered with the EPA. They are intended to destroy germs that cause tuberculosis, typhoid fever, pneumonia, blood poisoning, food poisoning, strep throat, influenza and staphylococcus infection. Hospital disinfectants are used to clear floors, walls, bed table tops, medical equipment and certain instruments that are inserted into the body.

For the 3 years before the Federal lab in Beltsville, which did testing on these agents, was closed, the failure rate for disinfectants selected for testing because of questionable effectiveness was 46 percent, 59 percent, and 72 percent for the 3 years.

Without EPA monitoring of efficacy, the current failure rate of antimicrobials is unknown. However, recently the EPA admitted there was a generic efficacy problem, and estimated that there would be a 20-percent failure rate if all registered disinfectants were tested.

□ 1055

Let me just state the problem is very serious. Disinfectants, if they fail to kill bugs, germs, they create an enormous possibility for infections in medical facilities around this country. In fact, during the past 5 to 10 years, we have had a dramatic increase in infections in hospitals in America. There may be other reasons for this, but the purpose of the amendment is merely to require the EPA to begin this kind of testing program. Again, requiring the Administrator to monitor efficacy requirements for basically disinfectants and antimicrobial control agents in hospitals. The EPA basically says that this is a serious problem, and I am hopeful that the committee will accept the amendment.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from Kansas.

Mr. ROBERTS. I would like to associate myself with the gentleman's remarks. I know that he has worked long and hard on this amendment, as has his father. In this regard, we have no objections to it.

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from Iowa.

Mr. BEDELL. I certainly have no objection and support the amendment and congratulate the gentleman on his amendment.

Mr. SCHEUER. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from New York.

Mr. SCHEUER. I strongly support the gentleman's amendment.

Mr. Chairman, hospitals, some hospitals are becoming quickly places that are dangerous to our health. I think about 20,000 Americans die of these so-called nosocomium infections which are hospital-derived infections. Infections that patients do not have when they go to the hospital but they have as a gift of the hospital when they leave.

This is an urgently needed amendment. When the program was stopped by this administration it was assumed that States would take over the testing, but they have not. There are only four States that have. This is a pitful gap in our arsenal against sickness and death. Even when hospitals want to do the job, and the overwhelming majority of them do; they all do, they do not have the tools to do it because they do not have the resources to do that kind of testing themselves. The States are not doing it. Now that the Federal Government is not doing it, nobody is doing it.

We urgently need this amendment.

Mr. GLICKMAN. Mr. Chairman, I would just make one final comment.

This proposal for testing is supported by industry, the Chemical Specialty Manufacturers' Association and is supported by hospital officials around this country. Now that we are not doing any testing, we jeopardize people who have to go into hospitals. I think we need to start the testing again. Hopefully the amendment will be adopted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kansas [Mr. GLICKMAN].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title VIII?

AMENDMENT OFFERED BY MR. SCHEUER

Mr. SCHEUER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SCHEUER: Page 143, insert the following after line 5:

SEC. 829. PESTICIDE RESISTANCE MANAGEMENT PROGRAM.

(a) PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a Pesticide Resistance Management Program—

(1) to conduct research on pesticide resistance and pesticide resistance management techniques to control or reduce the development of pesticide resistance,

(2) to develop and demonstrate such management techniques, and

(3) in cooperation with the Secretary of Agriculture, to disseminate information obtained from the Program to appropriate entities, including growers and their organizations, manufacturers, pesticide advisors, pesticide applicators, State agriculture officials, and cooperative State extension services.

In establishing and conducting the Program the Administrator may, as appropriate, consult with the Science Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) TRAINING REQUIREMENTS.—The Administrator may include training in pesticide resistance and pesticide resistance management techniques as part of the minimum standards established for commercial pesticide applicators by the Administrator under section 4(h) of the Federal Insecticide, Fungicide, and Rodenticide Act.

Page 3, in the table of contents, add after the item relating to section 828 the following:

Sec. 829. Pesticide resistance management program.

Mr. SCHEUER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SCHEUER. Mr. Chairman, the bill before us today is an excellent bill and contains many new important programs. It does not, however, address one issue that is becoming increasingly important both to farmers and to environmentalists. That is the alarming increase in the number of insects and other pests which have grown resistant to pesticides and which no longer can be either killed or controlled by pesticides.

Entire classes of once highly effective pesticide compounds have now been rendered entirely useless due to the fact that a genetic defense has been built among the insect and pest population of our country.

Seventeen species of insects are now resistant to all of the five classes of chemical compounds in existence, including the ones that are the result of recent products of highly sophisticated, high-tech research and development.

Already we have no effective pesticides against some major crop pests. In Long Island, for example, in the State in which I serve, New York State, potato farmers have no effective pesticides against one of the potato crop's major insect predators.

The prestigious National Academy of Science warned in a 1986 report:

The bright future for crop protection and public health has resulted in the introduction of synthetic organic pesticides is now open to serious question because of an alarming increase in resistance.

Mr. Chairman, our traditional answer to pesticide resistance; that is, switching to another pesticide, is rapidly becoming impossible because finding effective new chemical pesticides is being made more difficult and more expensive all the time as resistance grows and grows and grows. Compounding this problem and making the problem all the more difficult is the fact that many pests that develop resistance to one group of chemicals also turn out to be resistant to other groups of chemical pesticides.

This tragedy is not just one that afflicts our country; it has global significance. It is represented in human terms, starkly and tragically by the World Health Organization's ill-fated attempt in the 1970's to control malaria mosquitos by the widespread use of DDT.

Now the malarial mosquito is widely resistant to DDT and malaria is surging back in epidemic proportions. Unfortunately, scientists fear that DDT-resistant genes will not only protect mosquitos against DDT but against other pesticides that are available too.

Fortunately, we do have an answer, and scientists all over the world are working on pesticide management techniques. These management techniques can greatly retard the development of pesticide resistance. For example, the National Academy of Science report that I just read from very briefly includes a number of options that can help. Developing new sequences for pesticide applications, and alternating and rotating the use of pesticides.

The amendment that I have proposed would give EPA for the first time explicit authority to address this urgent problem. The amendment will direct the EPA to establish a pesticide resistance management program to conduct research and testing on management methods which can enable us to control the growing pesticide resistance among the insect predators.

The amendment also directs EPA, in consultation with the Secretary of Agriculture, to share the information developed by the program with farmers, farm organizations, and pesticide manufacturers and applicators.

Mr. Chairman, pesticide resistance cannot be dismissed as a future problem. The problem is now. Unless we take action now to reduce the explosive growth of pesticide resistance, we may find ourselves in the 21st century with an exhausted chemical arsenal against pests, facing 19th century ravages of nature on our health, our crops, and our environment.

I urge my colleagues to support this modest step.

Mr. DE LA GARZA. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from Texas.

Mr. DE LA GARZA. I apologize for interrupting the gentleman but he has made such a good case and we think that he has a good and positive amendment which contributes and enhances our legislation, we would have no objection to accepting the amendment on this side.

Mr. SCHEUER. I thank the gentleman.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from Kansas.

Mr. ROBERTS. I want to also thank the gentleman for his contribution. The thought occurs to me, I wonder in the legislative history or in the discussion of this bill we can single out the Longworth Building cockroach as one of the first test case studies. I have long been concerned about that; I think that would be an excellent test case to start with right there in regard to the thrust of the gentleman's amendment.

Mr. Chairman, I support the amendment; we have no objection to it.

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from Iowa.

Mr. BEDELL. I wish to commend the gentleman for not only his amendment but for his interest in so many issues of this type and for the great work he does in that regard.

Mr. SCHEUER. I thank the gentleman from Iowa.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCHEUER].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. LEVINE OF CALIFORNIA

Mr. LEVINE of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVINE of California: Page 143, insert after line 5 the following:

SEC. 429. STUDY.

The Administrator of the Environmental Protection Agency, in cooperation with the Commissioner of the Food and Drug Administration, shall conduct a thorough evaluation of the health effects of DDT and other contamination of fish in Santa Monica Bay, California and in surrounding waters. The evaluation shall include an assessment of—

(1) the level of contamination of edible fish caught in the Bay and surrounding waters,

(2) the rate of consumption of contaminated fish from the Bay and surrounding waters by residents of Santa Monica and Los Angeles, California, and surrounding communities, and

(3) the health risks associated with the consumption of such contaminated fish.

The Administrator shall complete the evaluation within 6 months of the date of the enactment of this Act and shall report the results of the evaluation to the Congress.

Mr. LEVINE of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LEVINE of California. Mr. Chairman, I rise today in support of my amendment which would direct the Administrator of the Environmental Protection Agency, in cooperation

with the Commissioner of the Food and Drug Administration, to conduct a thorough evaluation of the health effects on consumers who eat fish which contain unacceptably high levels of DDT and other pesticides.

My concern about this matter arises from a situation in my district. During the last 2 years, fish caught in the Santa Monica Bay have been found to have potentially dangerous levels of DDT and other toxic chemicals. Every day local fishermen catch and sell fish from the bay to local stores, restaurants, and wholesalers.

Signs have been posted along area beaches by the California State Department of Health Services warning pregnant women, children, and others not to swim in the bay or eat the fish caught in its waters. Because of concern about the issue, some local restaurants have found it necessary to assure their customers that they do serve locally caught fish.

Yet, no one really knows what effects, if any, will result from the consumption of fish caught in the Santa Monica Bay, or elsewhere, which contain high levels of DDT or other pesticides. The reason for this is that there have been no EPA studies of the human health consequence of eating contaminated fish.

For 26 years, the Montrose Chemical Co., which produced one-half of the world's DDT before the pesticide was banned, had a permit to dump DDT into Santa Monica Bay. It discharged 400 to 600 pounds of DDT daily between 1946 and 1972. In 1972, the Environmental Protection Agency, in acknowledging the adverse affects of the uses of DDT on public health and the environment, canceled all approved agricultural uses of the pesticide.

Unfortunately, the damage had already been done to the Santa Monica Bay. Fourteen years later, we are experiencing a situation where fish that are caught in the bay now contain large concentrations of DDT. Some experts believe that this poses a threat to those who eat them.

A Loma Linda University research team has concluded that commercially sold fish caught in waters off southern California have the highest overall concentration of DDT found anywhere in the Nation. Their findings were made after examination of more than 150 individual fish bought from a half dozen supermarkets and fresh fish markets. David Steinman, who organized the survey, said that nearly all species, including white croaker, cod, rockfish, and ocean perch, had concentrations of DDT and PCB's that were up to 50 times above that of the national average.

In a hearing before the Subcommittee on Health and the Environment, Los Angeles City Deputy Mayor Tom Houston noted that DDT is the No. 1 indentified health hazard in the bay. Dr. David Brown, of the southern California coastal water research project, has testified that in a survey, fish collected from Malibu Beach had two to six times the contamination levels of fish ever collected in Commencement Bay in Puget Sound, which is a superfund site. Dr. Brown also noted that fish from the Santa Monica Bay had up to 20,000 times higher concentration of DDT than fish from Commencement Bay.

There are other sources of major concern that are contributing to the contamination of fish in the bay. It seems to me that, for much too long, the Santa Monica Bay has been considered a waste repository for public and private entities. The Chevron Corp. was fined in June 1985, for dumping excessive amounts of treated refinery wastes into the bay. These included grease, ammonia, chromium, and other chemical byproducts. Although Chevron has a license to pump treated wastewater from its refinery into the bay by pipeline, it is required to keep the refinery byproducts at certain levels to minimize pollution.

Last month, the Department of Justice filed suit against Chevron, charging them with 880 violations of Federal pollutant discharge limits since 1981 and for fines that could total as much as $8.8 million. On February 14, 1986, for example, Chevron was cited for exceeding its allowable limit of 2,155 pounds of oil and grease for the day by dumping 20,922 pounds into the bay.

Between September 1984 and September 1985, 2.8 million gallons of raw sewage were discharged into the bay by the city of Los Angeles' Hyperion Waste Treatment Plant. As a result of these and other raw sewage spills, the city was fined and the California Department of Health Services posted signs warning against swimming in certain parts of the bay. On Labor Day Weekend 1985, a 100,000-gallon spill forced the closing of Will Rogers Beach State Park.

In addition to these concerns, every day the city of Los Angeles discharges approximately 600 tons of sludge 7 miles out into the bay. These solids contain most of the toxics and heavy metals leaving the Hyperion Treatment Plant.

Mr. Chairman, this is not a parochial issue affecting a few residents in the area. The Santa Monica Bay beaches are the most heavily used recreational beaches in the country. Every year, millions of people from all over the country flock to the area to use our beaches. In addition, fish caught in the bay are sold to consumers locally and in other States.

It is vital that an assessment be made of the potential dangers involved from eating fish caught in the bay and elsewhere, with high concentrations of DDT and other dangerous substances. It is my hope that this legislation will help provide that much needed information.

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Mr. de la GARZA. Mr. Chairman, will the gentleman yield?

Mr. LEVINE of California. I am happy to yield to the gentleman from Texas.

Mr. de la GARZA. Mr. Chairman, we share the concern of our distinguished colleague, the gentelman from California [Mr. LEVINE] and would be very happy to cooperate with him in his endeavor.

We have no objection to the amendment on this side.

Mr. LEVINE of California. I thank the committee chairman.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. LEVINE of California. I am happy to yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Chairman, I also want to thank the gentleman for his contribution and would just simply make the observation that this proves once again that beef is a very healthy product and that if consumers have a choice, certainly they should be eating more beef, as opposed to the fish.

I am not trying to perjure the gentleman's product out there in California, but beef is a very healthy product.

Mr. LEVINE of California. Mr. Chairman, I thank the gentleman.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. LEVINE].

The amendment was agreed to.

MODIFICATION OF AMENDMENT OFFERED BY MR. ROBERTS, AS AMENDED

Mr. BEDELL. Mr. Chairman, I ask unanimous consent that technical corrections be permitted on the Roberts liability amendment, as amended by my substitute.

The CHAIRMAN. Without objection, the request is agreed to.

There was no objection.

The text of the amendment offered by Mr. ROBERTS, as amended, as modified, is as follows:

Section 821(a) of the text of H.R. 5440 (the amendment in the nature of, a substitute to H.R. 2482), is amended (page 138, lines 2 through 10) to read as follows:

"SEC. 821. LIABILITY FOR LAWFUL APPLICATION.

"(a) Pesticide Use and No Private Right of Action—

"(1) Liability under Federal environmental statutes for the costs of response to, or damage incurred with respect to, a release or threatened release into the environment of a pesticide shall, in any case where the application was in compliance with label instructions and applicable law, be imposed on the registrant or other responsible party and not on the agricultural producer unless the agricultural producer has acted negligently, recklessly, or with the intent to misuse such pesticide. There shall be a re-

buttable presumption that the application of the pesticide was in compliance with label instructions and otherwise lawful. For purposes of the preceding sentence, the terms 'damages', 'response', 'release', and 'environment' shall have the meanings assigned them by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the term 'Federal environmental statutes' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Clean Water Act, the Resource Conservation and Recovery Act, title XIV of the Public Health Services Act, and this Act. Neither this section nor any other provision of this Act shall be construed, interpreted, or applied to preempt or, except as provided in this paragraph, displace liability under other Federal or State laws, whether statutory or common.

"(2) Paragraph (1) shall not be construed as conferring a private right of action on any person for the purposes of this Act or any other Federal law."

The CHAIRMAN. Are there any further amendments to title VIII?

If not, the Clerk will designate title IX.

The text of title IX is as follows:

TITLE IX—CLARIFYING AND TECHNICAL AMENDMENTS

SEC. 901. CLARIFYING AMENDMENTS.

(a) SECTION 3.—

(1) Section 3(a) (7 U.S.C. 136a(a)) (as amended by section 802(b)) is amended by adding at the end the following: "To the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered under this Act and that is not the subject of an experimental use permit under section 5 or an emergency exemption under section 18.".

(2) Section 3(d) (7 U.S.C. 136a(d)) is amended—

(A) in paragraph (1)(A), by striking out "on the initial classification", and

(B) in paragraph (1)(C), by striking out the colon preceding clause (i) and inserting in lieu thereof a period, by striking out clause (i), by striking out "(ii)", and by running in the material after "restricted use." so that the margin is the same as the margin of paragraph (1)(C).

(3) Section 3(c)(7)(A) (7 U.S.C. 136a(c)(7)(A)) is amended—

(A) by striking out "submit" each place it occurs and inserting in lieu thereof "submit or cite",

(B) by striking out "submission" and inserting in lieu thereof "submission or citation", and

(C) by striking out "submitted" and inserting in lieu thereof "submitted or cited".

(b) SECTION 4.—The last sentence of section 4(a)(1) (7 U.S.C. 136b(a)(1)) is amended by inserting "by regulation" after "may".

(c) SECTION 7.—Section 7(c) (7 U.S.C. 136e(c)) is amended—

(1) by striking out "shall inform the Administrator" and inserting in lieu thereof "shall, in accordance with regulations promulgated by the Administrator, submit to the Administrator a report",

(2) by striking out "of the" and inserting in lieu thereof "describing", and

(3) by striking out "information" and inserting in lieu thereof "report".

(d) SECTION 25.—Section 25(c) (7 U.S.C. 136w(c)) is amended—

(1) by inserting "or by regulation" after "hearing", and

(2) in paragraph (5), by striking out "prescribe regulations requiring" and inserting in lieu thereof "require".

SEC. 902. TECHNICAL AMENDMENTS.

(a) SECTION 2.—Section 2 (7 U.S.C. 136) is amended—

(1) in subsection (c), by striking out "if:" and inserting in lieu thereof "if—",

(2) in subsections (p)(2) and (u), by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services",

(3) in subsection (q)(2)(A), by striking out "if:" and inserting in lieu thereof "if—",

(4) in subsection (q)(2)(C)(iii), by striking out ": Provided, That" and inserting in lieu thereof ", except that",

(5) by striking out in subsection (u) ": *Provided*, That" and inserting in lieu thereof ", except that", by striking out "(1)(a)", by striking out "or (b)", by striking out "(2) that" and inserting in lieu thereof "that", and by striking out "an article covered by clause (1) of this proviso" and inserting in lieu thereof "a new animal drug", and

(6) by striking out in subsection (ee) ": *Provided*, That the term" and inserting in lieu thereof ", except that the term", by striking out "or" before clause (4), by striking out ": *Provided further*, That the term also shall not include" and inserting in lieu thereof ", (5)", by striking out "or any use" and inserting in lieu thereof "or (6) any use", and by striking out ": *And provided further*, That after" and inserting in lieu thereof a period and "After".

(b) SECTION 3.—Section 3 (7 U.S.C. 136a) is amended—

(1) by striking out ": *Provided*, That such" in subsection (c)(1)(D)(i) and inserting in lieu thereof a period and "Such",

(2) by striking out the semicolons at the end of clauses (i), (ii), and (iii) of subsection (c)(1)(D) and inserting in lieu thereof a period, by striking out "except as" in subsection (c)(1)(D)(ii) and inserting in lieu thereof "Except as", and by striking out "after expiration" in subsection (c)(1)(D)(iii) and inserting in lieu thereof "After expiration",

(3) in subsection (c)(1)(D), by striking out "subsection (c)(2)(D) of this section" and inserting in lieu thereof "paragraph (2)(D)",

(4) in subsection (c)(1)(D)(ii), by striking out "subparagraph (D)(i) of this paragraph" and inserting in lieu thereof "clause (i)",

(5) in subsection (c)(1)(D)(iii), by striking out "subparagraphs (D)(i) and (D)(ii) of this paragraph" and inserting in lieu thereof "clauses (i) and (ii)",

(6) by striking out ": *Provided*, That the" in subsection (c)(2)(B)(iv) and inserting in lieu thereof a period and "The",

(7) in subsection (c)(2)(B)(v), by striking out "subsection (c)(1)(D) of this section" and inserting in lieu thereof "paragraph (1)(D) of this subsection",

(8) by striking out "subsection (c)(5) of this section" in subsection (c)(7) each place it occurs and inserting in lieu thereof "paragraph (5)" and by striking out ": *Provided*, That if" in subsection (c)(7)(A) and inserting in lieu thereof a period and "If",

(9) by striking out ", provided that if" in subsection (d)(1)(A) and inserting in lieu thereof a period and "If" and by striking out ": *Provided, however*, That the" in such subsection and inserting in lieu thereof a period and "The",

(10) in subsection (d)(1)(C)(ii), by amending the last sentence to read as follows: "Any such regulation shall be reviewable in accordance with section 16(e).", and

(11) by striking out ": *Provided*, That as" in subsection (f)(2) and inserting in lieu thereof a period and "As".

(c) SECTION 4.—Section 4 (7 U.S.C. 136b) is amended—

(1) in subsection (a)(1), by striking out ": *Provided, however*, That the" and inserting in lieu thereof a period and "The", and

(2) by striking out ": *Provided*, That such" in subsection (c) and inserting in lieu thereof a period and "Such".

(d) SECTION 5.—Section 5(g) (7 U.S.C. 136c(g)) is amended by striking out ": *Provided*, That such" and inserting in lieu thereof a period and "Such".

(e) SECTION 6.—Section 6 (7 U.S.C. 136d) is amended—

(1) in subsection (c), by striking out "Agency" each place it occurs and inserting in lieu thereof "Administrator",

(2) in subsection (c)(1), by running into the second sentence the undesignated paragraph in that subsection,

(3) in subsection (c)(3), by striking out "(i)" and inserting in lieu thereof "(A)" and by striking out "(ii)" and inserting in lieu thereof "(B)", and

(4) in subsection (e)(2), by striking out ": *Provided*, That the" and inserting in lieu thereof a period and "The".

(f) SECTION 10.—Section 10 (7 U.S.C. 136h) is amended—

(1) by striking out ": *Provided*, That the" in subsection (d)(1) and inserting in lieu thereof a period and "The",

(2) by striking out ": *Provided further*, That this" in subsection (d)(1) and inserting in lieu thereof a period and "This", and

(3) by striking out ": *Provided*, That where" in subsection (d)(3) and inserting in lieu thereof a period and "Where".

(g) SECTION 12.—Section 12(a)(2)(F) is amended by striking out ": *Provided*, That it" and inserting in lieu thereof a period and "It".

(h) SECTION 13.—Section 13 (7 U.S.C. 136k) is amended—

(1) in subsection (b), by taking the last sentence in paragraph (3) and inserting it after such paragraph as a full measure sentence, and

(2) in subsection (c), by striking out ": *Provided*, That upon" and inserting in lieu thereof a period and "On".

(i) SECTION 15.—Section 15(a) (7 U.S.C. 136m(a)) is amended by striking out "(i)" and "(ii)".

(j) SECTION 16.—Subsection (a) of section 16 (7 U.S.C. 136n) is amended to read as follows:

"(a) DISTRICT COURT REVIEW.—Except as otherwise provided in this Act, the refusal of the Administrator to cancel or suspend a registration or to change a classification not following a hearing and other final actions of the Administrator not committed to agency discretion by law are judicially reviewable by the district courts of the United States.".

(k) SECTION 17.—Section 17 (7 U.S.C. 136o) is amended—

(1) by striking out ": *Provided*, That the" in subsection (c) and inserting in lieu thereof a period and "The", and

(2) by striking out ": *And provided further*, That all" in subsection (c) and inserting in lieu thereof a period and "All".

(l) SECTION 18.—The heading for section 18 (7 U.S.C. 136p) is amended by inserting "AND STATE" after "FEDERAL" and by running in the second sentence after the first sentence.

(m) SECTION 19.—Section 19(a) (7 U.S.C. 136q(a)) is amended by striking out "can-

celed under section 6(c)" and inserting in lieu thereof "suspended under section 6(c) and canceled".

(n) SECTION 21.—Section 21 (7 U.S.C. 136s) is amended—

(1) by inserting "SECRETARY OF AGRICULTURE.—" before "The" in subsection (a),

(2) by inserting "VIEWS.—" after "(b)", and

(3) by inserting "NOTICE.—" after "(c)".

(o) SECTION 24.—Section 24 (7 U.S.C. 136v) is amended—

(1) by inserting "STATE REGULATION.—" after "(a)",

(2) by inserting "UNIFORMITY.—" after "(b)", and

(3) by inserting "ADDITIONAL USES.—" after "(c)".

(p) SECTION 25.—Section 25 (7 U.S.C. 136w) is amended—

(1) in subsection (a)(3), by striking out "Committee on Agriculture and Forestry" and inserting in lieu thereof "Committee on Agriculture, Nutrition, and Forestry", and

(2) in subsection (e), by striking out ": *Provided*, That whenever" and inserting in lieu thereof a period and "Whenever".

(q) SECTION 26.—Section 26 (7 U.S.C. 136w-1) is amended—

(1) by inserting "IN GENERAL.—" after "(a)" in subsection (a),

(2) by inserting "SPECIAL RULES.—" after "(b)" in subsection (b),

(3) by inserting "ADMINISTRATOR.—" after "(c)", and

(4) in subsection (a)(1), by striking out "; *Provided*, That the" and inserting in lieu thereof ", except that the".

(r) SECTION 27.—Section 27 (7 U.S.C. 136w-2) is amended—

(1) by inserting "REFERRAL.—" after "(a)",

(2) by inserting "NOTICE.—" after "(b)", and

(3) by inserting "CONSTRUCTION.—" after "(c)".

SEC. 903. TABLE OF CONTENTS AMENDMENTS.

The table of contents contained in section 1(b) (7 U.S.C. prec. 121) is amended—

(1) by striking out the item relating to section 2(e) and inserting in lieu thereof the following:

"(e) Applicator.
"(1) Commercial applicator.
"(2) Private applicator.
"(3) Certified applicator.
"(4) Under the direct supervision of a certified applicator.";

(2) by adding at the end of the items relating to section 2 the following:

"(ff) Outstanding data requirement.
"(1) In general.
"(2) Factors.
"(gg) Antimicrobial.
"(hh) Pesticide testing facility.
"(ii) Importing country.
"(jj) Pesticide dealer.
"(kk) To distribute or sell.";

(3) by striking out the term relating to section 3(a) and inserting in lieu thereof the following:

"(a) Requirement of registration.";

(4) by striking out the item relating to section 3(c)(8) and inserting in lieu thereof the following:

"(8) Public interim administrative review.
"(A) In general.
"(B) Criteria for initiating a public interim administrative review.
"(C) Review requirement.
"(D) Prereview notice procedures.
"(E) Notice.
"(F) Review procedure.
"(G) Judicial review.";

(5) by adding at the end of the items relating to section 3(c) the following:

"(9) Preregistration access to data.";

(6) by amending the item relating to section 3(g) to read as follows:

"(g) Priority list and data requirements for inert ingredients.
"(1) Establishment of list.
"(2) Publication of list.
"(3) Judicial review.
"(4) Number of ingredients.
"(5) Additional data.
"(6) Evaluation.
"(7) Construction.";

(7) by inserting after the items relating to section 3 the following:

"Sec. 3A. Reregistration of registered pesticides.
"(a) General rule.
"(b) Special authorities of Administrator.
"(1) Guidelines.
"(2) Monitoring.
"(3) Suspensions and penalties.
"(c) Reregistration phases.
"(d) Phase one.
"(1) Priority for reregistration.
"(2) Reregistration lists.
"(3) Judicial review.
"(4) Notice to registrants.
"(e) Phase two.
"(1) In general.
"(2) Notice of intent to seek or not to seek reregistration.
"(3) Missing or inadequate data.
"(4) Time periods.
"(5) Cancellation and removal.
"(f) Phase three.
"(1) Information about studies.
"(2) Time periods.
"(3) Cancellation.
"(g) Phase four.
"(1) Independent review and identification of outstanding data requirements.
"(2) Time periods.
"(h) Phase five.
"(1) Data review.
"(2) Reregistration and other actions.
"(i) Compensation of data submitter.
"(j) Fees.
"(1) Initial fee for food or feed pesticide active ingredients.
"(2) Final fee for food or feed pesticide active ingredients.
"(3) Fees for other pesticide active ingredients.
"(4) Reduction or waiver of fees for minor use and other pesticides.
"(5) Other fees.
"(6) Apportionment.
"(k) Exemption of certain registrants.
"(l) Reregistration fund.
"(m) Judicial review.";

(8) by adding at the end of the items relating to section 4 the following:

"(d) Provisions regarding commercial applicators.
"(e) Provisions regarding private applicators.
"(f) Recertification and registration.
"(g) Training material.
"(h) Minimum standards for trainers and training programs.
"(i) Privately administered training programs.
"(j) Enforcement officer training.
"(k) Separate standards.
"(l) State agency defined.";

(9) by striking out the items relating to section 6(a)(1) and 6(a)(2);

(10) by striking out the item relating to section 6(b) and inserting in lieu thereof the following:

"(b) Cancellation and change in classification or labeling.
"(1) Notice of cancellation or change in classification.
"(2) Hearing.
"(3) Factors.
"(4) Label changes.";

(11) by amending the item relating to section 6(d) to read as follows:

"(d) Public hearings.";

(12) by striking out the item relating to section 6(f) and inserting in lieu thereof the following:

"(f) Hearing procedures after public interim administrative review.
"(1) General rule.
"(2) Request for hearing.
"(3) Procedures.
"(g) General provisions.
"(1) Voluntary cancellation
"(2) Publication of notice.
"(3) Existing stocks.
"(4) Additional information.
"(h) Suspension and cancellation of registration based on false or invalid data.
"(1) Notice.
"(2) Invalid data.
"(3) False data.
"(4) Hearing.
"(i) Judicial review.";

(13) by adding at the end of the items relating to section 7 the following:

"(e) Public right to know.
"(f) Information requests.";

(14) by striking out the items relating to section 8 and inserting in lieu thereof the following:

"Sec. 8. Records.
"(a) Authority to require records.
"(b) Limitations.
"(c) Records of applicators.
"(d) Records of pesticide dealers.
"(e) Access.
"(f) Information for employees.";

(15)(A) by amending the item relating to section 9(a) to read as follows:

"(a) Authority to enter, inspect, and copy.";

and

(B) by adding at the end of the items relating to section 9 the following:

"(d) Procedure.
"(e) Coordination.";

(16) by adding at the end of the items relating to section 10 the following:

"(h) Data disclosure to States.
"(1) In general.
"(2) Action for just compensation.
"(3) Required disclosure.";

(17) by striking out the items relating to section 11;

(18) by adding at the end of the items relating to section 12 the following:

"(c) Acts of officers, agents, etc.";

(19) by adding at the end of the items relating to section 14(a) the following:

"(6) Subpoenas.";

(20) by striking out the item relating to section 14(b)(4);

(21) by adding at the end of the items relating to section 15 the following:

"(c) Report.";

(22) by adding at the end of the items relating to section 16 the following:

"(e) Review of regulations.";

(23) by striking out the items relating to subsections (a) and (b) of section 17 and inserting in lieu thereof the following:

"(a) Pesticides and devices extended for export.
"(1) Violations.
"(2) Restricted use or unregistered pesticides.
"(3) Notification specifications.
"(4) Labels.
"(5) Records.
"(b) Notices of regulatory action furnished to foreign governments.
"(1) Issuance.
"(2) Contents.";

(24) by amending the item relating to section 18 to read as follows:

"(Sec. 18. Exemption of Federal and State agencies.";

(25) by adding below the item relating to section 21 the following:

"(a) Secretary of Agriculture.
"(b) Views.
"(c) Notice.";

(26) by adding at the end of the items relating to section 22 the following:

"(c) Effect on certain other laws.";

(27) by adding below the item relating to section 24 the following:

"(a) State regulation.
"(b) Uniformity.
"(c) Additional uses.";

(28) by adding at the end of the items relating to section 25(a) the following:

"(4) Congressional review of regulations.";

(29) by adding at the end of the items relating to section 25 the following:

"(e) Peer review.
"(f) Worker health and safety.";

(30) by adding below the item relating to section 26 the following:

"(a) In general.
"(b) Special rules.
"(c) Administrator.
"(d) Expiration.";

(31) by adding below the item relating to section 27 the following:

"(a) Referral.
"(b) Notice.
"(c) Construction.";

and

(32) by striking out the item relating to section 31 and inserting in lieu thereof the following:

"Sec. 31. Collection, dissemination, and use of data.
"(a) Data systems.
"(b) Data retrieval.
"(c) Index.
"(d) Report.
"(e) Confidentiality.
"(f) Authorization.
"Sec. 32. Groundwater authority.
"(a) In general.
"(b) Use of other authorities.
"(c) Consultation with States.
"(d) Consultation with Secretary of Agriculture.
"Sec. 33. Authorization for appropriations.".

The CHAIRMAN. Are there any amendments to title IX?

If not, the Clerk will designate title X.

The text of title X is as follows:

TITLE X—EFFECTIVE DATE

SEC. 1001. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect upon the expiration of 60 days after the date of enactment of this Act.

The CHAIRMAN. Are there any amendments to title X?

If not, the Clerk will designate title XI.

The text of title XI is as follows:

TITLE XI—TOLERANCES AND INTERNATIONAL COOPERATION

SEC. 1101. TOLERANCES FOR AGRICULTURAL COMMODITIES.

(a) REVOCATIONS AND SUSPENSIONS.—Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended by adding at the end the following:

"(p)(1)(A) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity—

"(i) has been cancelled by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act,

"(ii) has voluntarily been cancelled under such Act, or

"(iii) has voluntarily been withdrawn under such Act,

due in whole or in part to risks to humans, the Administrator, not later than 60 days after the effective date of such cancellation or after receipt of information of such withdrawal, shall revoke any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). In revoking a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used.

"(B) The effective date of a revocation under subparagraph (A) may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—

"(i) the use of the cancelled pesticide before the date of its cancellation,

"(ii) the use of existing stocks of such pesticide as authorized under the order cancelling the registration of the pesticide, or

"(iii) unavoidable residual environmental contamination.

"(2) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity has been suspended by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act due in whole or in part to risks to humans, the Administrator, not later than 60 days after the effective date of such suspension, shall suspend any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). The effective date of such suspension may be delayed to permit distribution in commerce of food that bears residues of the active on inert ingredient as the result of—

"(A) the use of the suspended pesticide before the date of its suspension,

"(B) the use of existing stocks of such pesticide as authorized under the order suspending the registration of the pesticide, or

"(C) unavoidable residual environmental contamination.

In suspending a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used. The suspension of a tolerance or an exemption from a tolerance for a pesticide chemical shall be effective as long as the registration of the pesticide to which the tolerance or exemption is applicable is suspended under the Federal Insecticide, Fungicide, and Rodenticide Act. If the registration of the pesticide ceases to be suspended and is not cancelled under such Act, the Administrator shall rescind any such suspension of a tolerance or exemption.

"(3) At the time the Administrator makes a determination under section 3A(h)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act regarding an ingredient of a pesticide, any tolerance established under subsection (b) for residues of a pesticide chemical that is or contains such ingredient or any exemption from the need for such a tolerance established under subsection (c) shall be reassessed and tolerance or exemption shall be established, amended, or revoked as necessary.".

(b) PROCEDURE.—Section 408(m) of such Act (21 U.S.C. 346a(m)) is amended by striking out "The" and inserting in lieu thereof "Except as provided in subsection (p), the".

SEC. 1102. COOPERATION IN INTERNATIONAL EFFORTS.

Subsection (d) of section 17 (7 U.S.C. 136o(d)) is amended to read as follows:

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall—

"(1) in cooperation with the Secretary of State, other appropriate Federal agencies, and nongovernmental and international organizations, actively participate in international efforts to develop improved pesticide research and regulatory programs,

"(2) provide foreign countries with technical assistance to develop comprehensive pesticide regulatory programs,

"(3) within 1 year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, and every 3 years thereafter, conduct and publish a survey of all countries that import pesticides from United States exporters or from which the United States imports agricultural commodities, to ascertain what procedures are in place in each country—

"(A) regarding registration, labeling, and training to ensure safe handling, transportation, application, and disposal of pesticides, and

"(B) to control residues on foods to meet tolerances established under United States law, and

"(4) report to Congress annually on the activities conducted under this subsection and the results thereof.".

AMENDMENT OFFERED BY MR. ROBERTS

Mr. ROBERTS. Mr. Chairman, I offer an amendment made in order under the rule.

The Clerk read as follows:

Amendment offered by Mr. ROBERTS: At the end of title XI, insert a new section 1103 as follows:

SEC. 1103. FOOD PRODUCTION AND MARKETING UNIFORMITY.

The Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof a new section as follows:

"SEC. 34. FOOD PRODUCTION AND MARKETING UNIFORMITY.

"(a) INTENT.—It is the intent of Congress to assure a safe and reasonably priced food supply for consumers. In order to achieve this goal, it is declared to be the express intent of Congress to require national uniformity in the regulation of the levels of residues of pesticides in or on food in order to permit national marketing of all food products without jurisdictional barriers.

"(b) NATIONAL UNIFORMITY.—(1) Except as provided in subsections (e) and (h), no State or political subdivision thereof may establish, continue in effect, or enforce any requirement or prohibition that—

"(A) directly or indirectly establishes a permissible level for a residue of a pesticide in or on food, if such a level has been established under a Federal law or a regulation or other enforcement requirement issued thereunder, and

"(B) is not identical with the requirements or prohibitions of such Federal law and of the regulations and enforcement requirements issued thereunder,

if the use of the pesticide resulting in the residue is registered with the Administrator on the basis of data meeting the requirements of paragraph (2) of this subsection or if the use of the pesticide resulting in the residue has not been registered with the Administrator, or has been registered with the Administrator on the basis of data meeting the requirements of paragraph (2) of this subsection and later canceled or suspended, and the permissible level for the residue has been established or reaffirmed by the responsible Federal official on or after the date of enactment of this subsection.

"(2) For purposes of this subsection, a pesticide shall be deemed to be registered with the Administrator with respect to a use on the basis of data meeting the requirements of this paragraph if—

"(A) the initial registration or reregistration of the pesticide for that use was approved under section 3(c)(5) of this Act on or after April 25, 1985, or

"(B) the initial registration or reregistration of the pesticide for that use was approved under section 3(c)(5) of this Act prior to April 25, 1985, on the basis of data determined by the Administrator to meet the requirements of the provisions in 40 C.F.R. part 158 that became effective on April 25, 1985.

"(c) CONCURRENT JURISDICTION.—(1) Any State or political subdivision thereof may exercise concurrent jurisdiction over the levels of residues of pesticides in or on food for the purpose of enforcing requirements or prohibitions identical with those established in such Federal law and in the regulations and interpretations issued thereunder.

"(2) For purposes of paragraph (1), the Federal official responsible for the implementation of any Federal law referred to in subsection (b)(1) shall—

"(A) cooperate with and provide relevant information to State and local officials engaged in the regulation of the levels of residues of pesticides in or on food; and

"(B) provide training and enter into contracts with such officials to facilitate more effective uniform national regulation of the levels of residues of pesticides in or on food, except that the authority to enter into contracts under this paragraph shall be to such extent or in such amounts as are provided in appropriations acts.

"(d) PETITION.—(1) Any State may petition the Federal official responsible for the implementation of a Federal law referred to in subsection (b)(1) to adopt by regulation as a Federal requirement or prohibition an existing or proposed State requirement or prohibition relating to the levels of residues of pesticides in or on food.

"(2) Within 180 days after receipt of any such petition, such Federal official shall, after receiving comments from the scientific Advisory Panel established under section 25(d) containing an evaluation of relevant data and risk to human health—

"(A) respond specifying the substantive action that is being taken on such petition; and

"(B) if such action includes the adoption of a new Federal requirement or prohibition, initiate the appropriate administrative proceeding to implement such action.

"(3)(A) If such Federal official fails to respond or to initiate any appropriate action within the 180 days specified in paragraph (2) of this subsection, the State which submitted the petition may, notwithstanding the provisions of subsection (b), establish and enforce within its own jurisdiction the requirement or prohibition which was the subject of the petition, as an interim requirement or prohibition.

"(B) Such an interim requirement or prohibition may be contested by any person under the declaratory judgment provisions of section 2201 of title 28, United States Code, on the ground that the interim requirement or prohibition does not meet the standards established in paragraphs (1) and (2) of subsection (e). In any such action, the State shall bear the burden of proving that such interim requirement or prohibition meets such standards.

"(C) Such an interim requirement or prohibition may remain in effect until—

"(i) the Federal official takes action on the petition and initiates any appropriate administrative proceeding pursuant to paragraph (2) of this subsection and such action rejects the interim requirement or prohibition, or

"(ii) a court determines that the interim requirement or prohibition has not been shown by the State to meet the standards established in paragraphs (1) and (2) of subsection (e),

whichever occurs earlier.

"(e) EXEMPTIONS.—Upon petition of a State, the Federal official responsible for the implementation of a Federal law referred to in subsection (b)(1) may, by regulation promulgated after notice and opportunity for an oral hearing, exempt from subsection (b), under such conditions as may be prescribed in such regulation, a requirement or prohibition of such State relating to the levels of residues of pesticides in or on food in that State if such requirement—

"(1)(A) is justified by compelling local conditions or

"(B) is justified because the subject matter regulated by such requirement or prohibition is primarily local in nature and the Federal official responsible for the implementation of such Federal law is not exercising jurisdiction over the subject matter regulated by such requirement or prohibition, and

"(2)(A) protects an important public interest that would otherwise be unprotected,

"(B) would not cause any food to be in violation of any applicable requirement or prohibition under Federal law, and

"(C) would not unduly burden interstate commerce.

"(f) ADVISORY COMMITTEE.—For purposes of assuring effective and uniform implementation of all laws regulating the levels of residues of pesticides in or on food, the Federal officials responsible for implementation of such Federal laws shall establish an advisory committee comprised of eleven State and local officials engaged in the regulation of the levels of residues of pesticides in or on food.

"(g) RESPONSIBLE FEDERAL OFFICIAL.—A petition submitted under subsection (d) or (e) shall be acted upon by the highest Federal official responsible for the implementation of the Federal law involved, which authority shall not be delegated. The advice of the advisory committee established under subsection (f) shall be obtained before action is taken upon any such petition unless the petition relates to an imminent hazard determination under subsection (h).

"(h) IMMINENT HAZARD.—(1) Notwithstanding the provisions of subsection (b), a State may establish and enforce within its own jurisdiction any requirement or prohibition which directly or indirectly establishes a permissible level for a residue of a pesticide in or on food if—

"(A) after an opportunity for written comment and a public hearing, it has been demonstrated that—

"(I) the permissible level for a residue of that pesticide in or on food established under a Federal law or a regulation or interpretation issued thereunder constitutes an imminent hazard to public health in that State because it presents a substantial risk of serious harm to human health, and

"(II) the additional protection provided by such requirement or prohibition is necessary to prevent such imminent hazard, and

"(B) within ten days after the state announces that it is promulgating the requirement or prohibition, the State has submitted a petition under subsection (d) or (e).

"(2) Any requirement or prohibition established or enforced under paragraph (1) may be contested by any person under the declaratory judgment provisions of section 2201 of title 28, United States Code, on the ground that such requirement or prohibition does not meet the standards established in subparagraph (A) and (B) of paragraph (1). In any such action, the state shall bear the burden of proving that such requirement or prohibition meets such standards.

"(3) Any requirement or prohibition established or enforced under paragraph (1) may remain in effect until—

"(A) The Federal official takes action on the petition submitted under subsection (d) or (e) and such action rejects such requirement or prohibition, or

"(B) a court determines that the requirement or prohibition has not been shown by the State to meet the standards established in subparagraphs (A) and (B) of paragraph (1),

whichever occurs earlier.".

Mr. ROBERTS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. ROBERTS. Mr. Chairman, this is the Stenholm-Roberts uniform tolerance amendment that many of our colleagues have heard so much about via the "Dear Colleague" route and personal conversations.

As you recall, a few years ago when EDB was the front burner issue, several States took it upon themselves to establish tolerances that were different from the Federal tolerance. That created what I believe to be a burden on interstate commerce, and for farmers, and for all of those who are involved in marketing our national food products, as well as the consumer. You had the situation where flour, pancake mixes, and so forth, were legal in one State and not in another State.

Let me put it another way. Aunt Jemima was OK in Oklahoma, but not in Texas; Betty Crocker could be marketed in the State of Massachusetts, perhaps, but not in the State of Maine.

For instance, in my district I have one of the largest makers of frozen pizza in the world. But if that pizza maker had used flour containing EDB those pizzas might have been legal for sale in one State and not in another State. This is I believe an extremely unfair burden on interstate commerce.

The uniform tolerance amendment I am offering today is supported by numerous trade, producer, and farm groups. There are, Mr. Chairman, 60 farm organizations who are in support of the Stenholm-Roberts version. However, they would like to say that the Federal tolerance is the final word. The amendment that Mr. STENHOLM and I are offering is a compromise version of what they want. We have the compromise.

I am offering this amendment as a compromise version that would establish the federal tolerance uniform, if the chemical has completed the reregistration process outlined in the FIFRA bill.

If, in fact, this bill is such a good reform, if, in fact, we go through 600 chemicals and we are Ivory Soap pure to the extent that science can determine it, then and then only does our uniform tolerance apply. Or if the chemical has been registered after April 25, 1985, this date was chosen because it is the date that EPA issued the regulation spelling out precisely what the data requirements are for a chemical to be registered. Let me stress that point again.

The uniform tolerance amendment that we are supporting would apply only to those chemicals that have been given a clean bill of health by the EPA and FDA through this reform bill.

This amendment would only apply to those chemicals that have a complete data package on file at EPA. States would still have the right to set tolerances as they see fit on the old chemicals.

Any public interest group, any State that has any desire to send up the warning flag on any old chemical that has not been washed through this reform bill, they can do that. They can still do that under this amendment.

One final point: to safeguard the States' ability to establish lower tolerances the amendment contains a petition process whereby States could petition the Federal Government to establish a stronger tolerance and as an additional safeguard it grants the States imminent hazard authority to impose tolerances.

Imminent hazard, 30 days, forces the EPA to move. It makes little sense for us to have the EPA and the FDA to establish tolerances based upon, hopefully, the best scientific evidence, then have States establish their own tolerances in some cases without scientifically valid reasons.

More to the point, this FIFRA bill has a focus of getting all of the chemicals now registered, reregistered and making sure that they have complete data package on file at the EPA. If EPA does the job that we have outlined in the new FIFRA bill there shouldn't be a need for different tolerances by each State on these new or reregistered chemicals.

This is a crucial issue for farmers, for stockmen, for agricultural producers, for shippers, for everybody in our national food-marketing chain and for the consumer as well.

I urge my colleagues to support the Stenholm-Roberts uniform tolerance amendment.

Mr. Chairman, the Food Production and Marketing Uniformity Amendments of 1986 add a new section 33 to the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA] to provide for national uniformity in the regulation of the levels of residues of pesticides in or on food in order to permit national production and marketing of all food products without jurisidictional barriers.

BACKGROUND

These amendments are needed because virtually every State has one or more laws regulating the levels of residues of pesticides in or on food, and repeated attempts to achieve national uniformity in the enforcement of these laws been unsuccessful. Pesticides are of critical importance to food production in this country, and our nationwide food production and marketing system depends upon uniformity in their regulations.

The growth of State and local laws: In the early days of this country, food was consumed where it was grown. As urban cities began to develop in the 1800's, local food markets were established to fill the need. Town ordinances were adopted to regulate the food supply in those days. As our cities grew larger, and food distribution expanded, county laws were established to regulate the food supply as well. By the mid-1800's, States were also enacting regulatory laws in this area. Because food production and distribution was still primarily a local or regional matter throughout the 1800's, however, there was no Federal law establishing a nationwide food safety policy until after 1900.

The enactment of Federal laws: Shortly after 1900, Congress enacted two laws to regulate pesticides in food: the Food and Drugs Act of 1906, and the Insecticides Act of 1910. Because of the narrow interpretation of the Commerce Clause by the Supreme Court at that time, however, both statutes were very limited in their jurisdiction. Food produced and distributed locally was not covered. Supreme Court decisions during the early 1900's therefore ruled that these Federal laws did not preclude different requirements in State and local laws.

Both of these early Federal laws were subsequently replaced by more modern laws that regulate virtually every aspect of the safety of pesticides in food: the Federal Food, Drug, and Cosmetic Act of 1938, and the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, both of which have since been amended numerous times. By the time these laws were enacted, however, it was too late for them to serve as a made for State and local legislation or to make enactment of State and local legislation unnecessary in this areas. The tradition of State and local laws regulating the levels of pesticides in food was already well-established and has continued to this day.

The repeated failure of non-legislative attempts to achieve national uniformity: Following enactment of the Food and Drugs Act of 1906, FDA's predecessor agency, the USDA Bureau of Chemistry, mode major efforts to achieve national uniformity in this area. The 1914 Annual Report of the Bureau of Chemistry reported cooperative efforts with State officials that "should very largely overcome the lack of uniformity." A report on the progress achieved during the first 10 years under the 1906 act, contained in the 1917 annual report, related attempts to deal with "much confusion and apparent conflict between the local and Federal laws and the local and Federal administration of the laws," resulting in "extra cost, which naturally was passed on to the ultimate consumer." The 1921 annual report similarly reflected the fact that "both officials and manufacturers complained greatly of the lack of uniformity in the exercise of food control by the Federal and State Governments":

Lack of uniformity increases the cost of doing business, and the increased cost is usually passed on to the consumer. It arises not merely from differences in the various laws but also from differences in the interpretation of the laws by the officials and the application by them of different standards to the same product in different jurisdictions.

FDA has repeatedly sought to deal with this problem in the years since then.

State and local officials have also been concerned about this problem. The Association of Food and Drug Officials [AFDO], whose membership includes regulatory officials from all of the States, was formed in 1897 for the purpose of producing national uniformity in food and drug regulation and has continuously urged that principle ever since. In 1941, for example, the association's president criticized "trade barriers that forced many producers and manufacturers to live under the virtual dictatorship of localized bureaucracy" and urged State food and drug officials to discourage the enactment of laws that make it impossible for legitimate industry of one State to engage in trade in another under conditions which are fair and equitable." That year, AFDO adopted a resolution expressing "disapproval of the tendency toward the enactment of legislation which constitutes definite barriers to commerce between the States." Numerous similar resolutions have been adopted by AFDO since then. Nonetheless, in 1973 the association passed yet another resolution acknowledging, as well as disapproving, "a growing trend that * * * some States and local agencies are passing laws, regulations, or ordinances which are inconsistent with the principle of uniformity to which AFDO is committed." More recently, AFDO has established still another committee to study the matter.

Numerous other national reports have reflected on, and disapproved, nonuniform laws and regulations in this area. In 1939, a USDA report on "Barriers to Internal Trade in Farm Products" found varying or inconsistent State requirements created increasingly serious barriers to national food distribution. A study conducted by the Public Administration Service for FDA in 1963 on State and local food and drug programs concluded that:

The general food and drug laws of the States fail to reveal a basic uniformity among themselves or an adequate correspondence with federal legislation. * * * Differences in law and regulations are excessive, and many serve no useful purpose; the total body of state and local food and drug laws is a confusing and disjointed mass.

The National Commission on Food Marketing, established by Congress in 1964 to appraise the marketing structure of the food industry, stated that "conflicts among the profusion of State regulations * * * are a significant burden on interstate trade in food products" and concluded that:

We therefore believe that a concerted effort should be made to effect uniformity among State regulations that obstruct trade in foods across State lines."

The Report of the White House Conference of Food, Nutrition and Health in 1969 similarly found that "under present Federal, State and local law, different and often inconsistent regulatory requirements prevail throughout the Nation" and that these requirements:

result in artificial trade barriers that impede the orderly marketing of foods, hinder sound nutrition, raise the cost of new foods to consumers, and directly interfere with the public interest. * * * This situation cannot be justified on public health grounds, and reflects the lack of any attempt to establish and maintain a national policy on foods that reflects the interest of consumers.

The Report of the White House Conference therefore recommended "Uniform application of all regulatory requirements throughout the Nation, enforceable by Federal, State, and local officials."

Congress has also recognized the unproductive burden that inconsistent State requirements impose upon farmers, food processors, and consumers. The 1906 House report on the legislation that ultimately became the Food and Drugs Act of 1906 stated that:

the laws and regulations of the different States are diverse, confusing, and often contradictory. What one State now requires the adjoining State may forbid. Our food products are not raised principally in the States of their consumption.

State boundary lines are unknown in our commerce, except by reason of local regulations and laws, such as State pure-food laws. It is desirable, as far as possible, that the commerce between the States be unhindered.

When Congress considered enactment of a new national food and drug law in the 1930's, the 1935 Senate report on that legislation, which ultimately became the Federal Food, Drug, and Cosmetic Act of 1938, acknowledged the "problem of uniformity" and stated that the "States have unanimously urged the Federal Government to take leadership in modernizing existing law." Neither the 1906 act nor the 1938 act expressly required national uniformity, however, and such uniformity has therefore not been achieved.

None of these nonlegislative attempts have brought the country closer to national uniformity in the regulation of the safety of pesticide in or on foods. It is apparent that nonlegislative approaches have repeatedly failed and will continue to fail in the future.

The importance of pesticides to food production: Pesticides make a major contribution to a plentiful and wholesome food supply by protecting it from insect destruction and insect-carried disease. USDA has estimated that losses due to pests, insects, and disease run as high as 40 percent in some countries. The National Academy of Sciences has stated that, in the United States, insect control annually prevents about $6.5 billion in agriculture losses. Pesticides thus increase farm income, reduce inflation in food costs, and permit American families to spend less of their income on food.

The critical need for uniformity in a nationwide food production and marketing system: Although food production and marketing began as an entirely local matter in the early 1800's, the United States has now become one large nationwide food market. Pesticides are used in food production throughout the country, and that food is in turn distributed in every State throughout the Nation. Local and even regional markets have disappeared.

Nonuniform laws, regulations, and other requirements have a direct and immediate impact upon food production. Conflicting prohibitions or requirements for residues of pesticides in food, or different labeling requirements, discourage food processors from using the food, confuse and scare food retailers and consumers, add substantial cost to the distribution and marketing of food, and thus disrupt farm markets and reduce farm income. Uniform national regulation of the levels of residues of pesticides in or on food is essential to a sound national agricultural program.

Inconsistent determinations, or additional regulatory requirements, result in an enormous economic burden upon consumers, for no public health benefits. Taxpayers should support a single uniform pesticide residue level determination, not duplicative determinations in every State throughout the country. Conflicting or additional regulatory requirements in different jurisdictions require the food industry to pay more for compliance, disrupt normal marketing practices, and thus increase food prices to consumers.

Citizens who live in one part of the country are no less entitled to protection than those who live in another. Our citizens also travel widely throughout the country, and are entitled to the same protection in every State they visit. Determinations about the levels of residues of pesticides in or on food must therefore be consistent in every jurisdiction in this country.

State and local enforcement of uniform requirements for the levels of residues of pesticides in or on food will enhance a safe food supply throughout the country and thus increase consumer protection. Deploying State and local resources away from duplicative and conflicting pesticide residue level determinations, and into enforcement of uniform national regulatory policies, represents the wisest expenditure of public funds.

In an article published in 1983, the Counsel to the Vice President stated that President Reagan's New Federalism initiative, which is designed to encourage greater responsibility at the State and local level, includes:

Recognition that state and local administration of regulatory programs may conflict in some instances with other goals of regulatory relief or with other important federal interests. For example, individual states may operate specific programs more effectively than the federal government, but the combined effect of disparate state regulatory standards may intolerably burden interstate commerce, thus requiring uniform federal regulation.

Recognizing "the need for a strong central government to promote commerce and other Federal interests," he distinguished between those matters that are primarily local in nature and those that involve such "burdens on interstate commerce" that national uniformity is required.

In December 1984, the Administrative Conference of the United States issued a report and recommendation that echoed these principles. While recognizing that "State governments are normally in a better position than the Federal Government to determine the types of regulations that will serve the interest of the States' citizens," the report also found that "States sometimes have an incentive, however, to impose regulations that advance State interests at the expense of other States' interests or of national interests." The report concluded that, because of the limited "checks on State regulation that harms the national interest":

states possess, in practice, the power to make regulatory choices that produce net benefits within the state but that produce substantial net detriments on a national

level. Without an additional federal constraint on state regulatory power, states can be expected to regulate in this manner frequently.

The Administrative Conference therefore recommended that Congress and the Federal agencies directly address the problem of national uniformity in regulatory policies in order to protect nationwide interests.

THE FOOD PRODUCTION AND MARKETING UNIFORMITY AMENDMENTS OF 1986

These amendments reflect the intent of Congress to assure a safe and reasonably priced food supply for consumers. They protect the interests of food producers, food distributors, and food consumers alike.

The purpose of the amendments: The amendments are designed to assure national uniformity in both the determinations of permissible levels of pesticide residues in or on food and the resulting regulatory requirements and prohibitions involved in the regulation of the levels of pesticide residues in or on food. Federal laws, regulations, and enforcement requirements will be controlling throughout the country. State and local officials will enforce these Federal determinations, thus assuring more widespread, complete, and thorough application of these uniform determinations. To make certain that any local needs are not overlooked however, the amendments also provide for exemptions from the general rule of national uniformity where they are justified.

The coverage of the amendments: The amendments provide for national uniformity in the regulation of the levels of pesticide residues in or on food under two Federal statutes: The Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. Under these statutes, EPA registers pesticides, establishes tolerances for residues in or on raw agricultural commodities of a pesticide registered for use with those commodities, and promulgated food additive regulations for residues in processed food made from the raw agricultural commodities for which a pesticide has been registered. FDA establishes concern levels, action levels, tolerances, enforcement levels, and other forms of regulatory requirements—including prohibitions—for pesticide residues for which EPA has not taken appropriate action under its authority, establishes all requirements for food labeling related to the safety of pesticides, and enforces both EPA and FDA pesticide requirements as they relate to food products. Taken together, these Federal statutes authorize EPA and FDA to regulate every aspect of the safety of pesticides in or on food.

These amendments refer throughout to regulation of the levels of "residues of pesticides in or on food." This is intended to be given a very broad interpretation, and to include any inert ingredient, metabolite, breakdown product, or similar substance in or on food that results from the use of a pesticide.

The two categories of decisions involved: The amendments are carefully limited to grant national uniformity with respect to only two categories of Federal and State decisions regarding permissible pesticide residues in or on food. Any other decision relating to pesticide residues, that does not fall within one of these two categories, is not subject to the requirement of national uniformity under these amendments and therefore is subject to the general legal principles established by the judiciary relating to burden on interstate commerce and the supremacy of Federal law.

The first category of pesticide residue decisions for which national uniformity applies includes any pesticide residue resulting from a registered use, where that use was registered under section 3(c)(5) of FIFRA on the basis of data meeting current EPA requirements. Uses registered under other provisions of FIFRA—for example, conditional registration under section 3(c)(7)) are thus not included.

The amendments define the requirements of current data by reference to the regulations prepared by EPA to establish data requirements for pesticide registration which were proposed in 47 Fed. Reg. 53191 (November 24, 1982), promulgated in 49 Fed. Reg. 42856 (October 24, 1984), and made effective in 50 Fed. Reg. 16234 (April 25, 1985), and are now codified in C.F.R. part 158. Although promulgated by EPA in final form on October 24, 1984, these regulations became effective, after congressional review, on April 25, 1985. Accordingly, any registration of a pesticide use approved by EPA under section 3(c)(5) on or after April 25, 1985, is automatically deemed to have been approved on the basis of current data requirements.

It is apparent that many registrations of pesticide uses approved by EPA prior to April 25, 1985, were also approved on the basis of data that satisfy current EPA requirements. Probably all of the registrations approved by EPA after the regulations were promulgated on October 24, 1984, virtually all of the registrations approved by EPA after the regulations were proposed on November 24, 1982, and many of the registrations approved while the regulations were under consideration prior to November 24, 1982, were approved on the basis of data that met the requirements contained in the regulations as now found in 40 C.F.R. part 158. Accordingly, the amendments provide that all registered use that have in fact been determined to meet the requirements of those regulations, in the form in which they were promulgated on October 24, 1984, and became effective on April 25, 1985, are also subject to the national uniformity provisions.

In accordance with congressional mandate, EPA has begun a detailed process of reregistration of fold pesticides, to assure that they meet modern standards. Until the uses of these old pesticides are reregistered, they are not subject to the national uniformity provisions in these amendments. Once any use of an old pesticide has been reregistered on the basis of data satisfying the requirements of 40 CFR part 158 as they were promulgated on October 24, 1984, and became effective on April 25, 1986, however, it would be fully subject to the provisions on national uniformity.

Once a pesticide use has been approved on the basis of current data requirements, a permissible residue level in or on food may be established under a Federal law or a regulation or enforcement requirement—including any prohibition—thereunder in a variety of ways—for example, by the passthrough provision in the proviso in section 402(a)(2) of the Federal Food, Drug, and Cosmetic Act, or by a food additive regulation in section 409 of the act, or by an action level or other regulatory decision issued by FDA. All of these actions would be equally subject to national uniformity.

Because science is constantly evolving, new information may be required at some time in the future for any pesticide use registered or reregistered on the basis of data meeting or equivalent to the requirements of 40 CFR part 158 as they were promulgated on October 24, 1984, and became effective on April 25, 1985. The requirements in those regulations may change, or new data may be required for a particular pesticide. This would not mean that the pesticide use was no longer subject to national uniformity. National uniformity would continue to apply under these statutory provisions, and States would be authorized to request that EPA or FDA establish new Federal requirements or prohibitions or grant exemptions for the States, and could take their own immediate action if an imminent hazard existed, as provided elsewhere in the amendments. Thus, the amendments provide balance by preserving the principle of national uniformity, where decisions were based on the specified EPA data requirements, but allowing the States to press for new decisions where new information warrants a change.

The second category of pesticide residue decisions for which national uniformtiy applies relates to those uses that have not been registered and are not intended to be registered, or that were registered on the basis of current requirements and later were canceled or suspended. For example, accidental contamination of food with a pesticide, resulting from an inherently unregistered use, requires EPA and FDA to determine whether the residue precludes use of the food. This can arise with both domestic and foreign food. Similarly, when a pesticide use that was registered on the basis of data satisfying the current requirements of 40 CFR part 158 is no longer permitted, and its registration is thus canceled or suspended, residues may nonetheless remain in the food chain for some time and EPA and FDA must therefore establish permissible levels outside the registration process. It would not include such pesticides as EDB, which was not registered on the basis of current data requirements.

In all of these situations involving unregistered uses, only those determinations that are made or reaffirmed after the date of enactment of these Amendments will be subject to national uniformity. EPA and EDA must make an affirmative new determination with respect to any permissible food residue level resulting from an unregistered use of a pesticide before national uniformity would apply under the amendments. This provision is therefore entirely prospective in its application.

The types of regulatory decisions included: The amendments apply to a variety of regulatory decisions made by EPA and FDA within the scope of the two Federal statutes involved. These include decisions made under the two statutes in the form of formal regulations and informal enforcement requirements. EPA and FDA decisions relating to the levels of residues of pesticides in or on food may, for example, be announced through promul-

gated regulations or through other enforcement requirements—including prohibitions—such as FDA action levels and enforcement levels, which are adopted by the agencies as official regulatory positions. The U.S. Supreme Court recently confirmed FDA's power to regulate food contaminants through informal enforcement requirements in lieu of formal tolerances in Young versus Community Nutrition Institute, June 17, 1986.

It is important that EPA and FDA make available to the States their formal and informal enforcement requirements, on a timely basis. This can be accomplished through routine administrative action, as part of the Federal-State cooperative provisons in these amendments.

Federal decisions covered by the amendments may come in the form of specific regulatory requirements or prohibitions, or in the form of explicit conclusions that no enforcement or other regulatory action is justified. For example, EPA and FDA may impose limits on residues, a requirement for information to appear on product labels, or posters in stores or restaurants, or may specifically decide any or all of these are not warranted. EPA may exempt a pesticide from the requirement of a specific tolerance in food, thus permitting any level lawfully to occur in that food. FDA may conclude that de minimis residues are safe and should not be the subject of enforcement action. All of these types of explicit Federal regulatory decisions establish a permissible level for a pesticide in or on food and thus are included within the amendments.

These amendments do not, however, cover regulatory decisions relating to the safety or pesticides other than in or on food. Thus, the amendments do not relate to the registration or application of pesticides. They do not in any way cover the safety of workers who manufacture pesticides or the safety of workers who are applying pesticides to foods or who are in the vicinity when pesticides are applied to food.

Nor do these amendments cover regulatory inaction that is not based upon an explicit decision made by EPA or FDA. Only a specific Federal determination relating to a permissible level for a residue of a pesticide in or on a food is covered by these amendments. An FDA decision not to bring enforcement action against illegal pesticide levels because of a lack of resource or other priorities would not preclude State enforcement action. The failure of the Federal agencies to make a determination about the safety of a pesticide residue would also leave the States free to take their own action, until EPA or FDA make a specific regulatory decision on the matter. Thus, the amendments make certain that only documented explicit Federal determinations trigger the requirement of national uniformity.

Once an explicit Federal determination is made relating to a permissible level of a residue of a pesticide in or on food, a State or local government cannot establish a different requirement or prohibition, either directly or indirectly. Thus, a State could not ban food meeting the Federal level, or take any other form of enforcement action based on that level, such as imposing civil fines or criminal penalties. Nor could the State use other indirect means to impose its own regulatory burdens relating to a pesticide residue level permitted under Federal law, such as a labeling requirement or posters in stores and restaurants, where EPA campaign directed at undermining the Federal determination. Once permissible Federal levels are explicitly set, they establish a uniform national system of regulation unless and until a State obtains an exemption pursuant to subsection (e) or (h) of these amendments authorizing it to impose its own local requirements or prohibitions.

Federal-State cooperation: The amendments explicitly provide that State and local officials may exercise concurrent jurisdiction with EPA and FDA to enforce requirements or prohibitions indentical with those established under Federal law. Such State and local enforcement will greatly strengthen consumer protection. To facilitate uniform national regulation, the amendments require EPA and FDA to cooperate with State and local officials by providing relevant information and training programs, and by entering into contracts for enforcement activities as authorized by appropriations statutes. These requirements reflect a longstanding joint commitment of Federal and State officials to uniform national enforcement of regulatory requirements and prohibitions relating to the levels of residues of pesticides in or on food.

Adoption of State requirements as Federal requirement: The amendments reflect the fact that State, with long experience in the regulation of food, may well have useful suggestions for improving EPA and FDA implementation of the Federal statutes regulating the levels of pesticide residues in or on food. Any State may petition EPA or FDA to adopt by regulation, as a Federal requirement or prohibition, an existing or proposed State requirement or prohibition. The responsible Federal official must submit a State petition and any supporting data to the Scientific Advisory Panel established under section 25(d) of FIFRA, and must receive comments from the Panel prior to taking final action on the petition. Within 180 days after receipt of any such petition, EPA or FDA must respond, specifying the substantive action that is being taken on it, either granting or denying the petition in whole or in part. If that substantive action is a denial of the petition, that ends the matter except for any court appeal. If that substantive action grants the petition, in whole or in part, EPA or FDA must also initiate, within that statutory 180-day period, whatever administrative proceedings are required to implement it. This would ordinarily be a notice of proposed rulemaking.

Thus, the amendments require a substantive decision by EPA or FDA, and any implementing action, within 180 days. The Federal agencies are granted no discretion in complying with this time limit. It is intended that any failure to comply with the 180-day requirement would be handled by a mandamus order from a Federal court, requiring immediate compliance.

If the Federal agencies nonetheless do not provide a substantive decision and any implementing action within the required 180 days, the State is authorized to establish in its own jurisdiction the requirement or prohibition that is the subject of its petition, on an interim basis. This interim requirement or prohibition can be contested by any person through a declaratory judgment action in the courts. If such a challenge is brought, the State bears the burden of proving that the interim requirement or prohibition meets the statutory standards. The interim requirement or prohibition will remain in effect until the Federal agency rules on the underlying petition and initiates any appropriate administrative action, or a court determines that the interim requirement or prohibition does not meet the statutory standards, whichever occurs earlier.

These provisions will assure State officials that their voices will be heard, and will require EPA and FDA to review and take prompt action upon any State suggestion. In this way, the experience of State officials will be directly reflected in Federal decisions.

Exemptions for States: Although, as a general rule, requirements and prohibitions involving the levels of residues of pesticides in or on food should be uniform throughout the country, there may be come situations where exceptions are justified on a local basis. The amendments therefore specifically allow States to petition EPA and FDA for an exemption from the general rule of national uniformity. The responsible Federal official must submit a State petition to the Scientific Advisory Panel established under section 25(d) of FIFRA, and must receive comments from the Panel prior to taking any action on the petition. The Federal agency involved may promulgate a regulation granting such an exemption, after notice and opportunity for an oral hearing, under whatever conditions are appropriate to protect Federal interests.

To justify such an exemption, the State must demonstrate either that there are compelling local conditions or that the subject matter involved is primarily local in nature and the Federal agencies are not exercising jurisdiction over it. If the matter involves national rather than local conditions, the prior remedy is for the State to request Federal action rather than a location exemption. In both cases, the exemption must be further justified by a showing that the State requirement or prohibition protects an important public interest, would not cause any food to be in violation of Federal law, and would not unduly burden interstate commerce. Under these circumstances, a State would be permitted, through the exemption, to impose its own nonuniform requirement or prohibition that is in addition to or different from the Federal requirements and prohibitions, but no other jurisdiction could do so without obtaining its own exemption.

The State and Local advisory committee: Because a truly effective uniform national implementation of all laws regulating the levels of residues of pesticides in or on food depends upon strong State and local cooperation, the amendments provide for the establishment by EPA and FDA of an advisory committee comprised of eleven State and local officials engaged in this area of regulation. This advisory committee is charged with assuring that State and local interests are fully protected and considered in EPA and FDA decisions relating to the levels of residue of pesticides in or on food. It is responsible for coordinating the views of all State and local officials work-

ing in this area, for presentation to EPA and FDA, and in turn disseminating important information from EPA and FDA to State and local governments. In this way, communication and coordination will be substantially improved and more effective enforcement of the law will be fostered throughout the country.

The highest Federal official must decide the matter: State officials uniformly fear that Federal agencies will pay little or no attention to their petitions. To add further assurance that this will not happen, the amendments provide that any petition by a State requesting that the Federal agency adopt a State requirement or prohibition or that the State be granted an exemption, must be decided by the highest Federal official responsible for the implementation of the Federal law involved—for example, the Commissioner of FDA or the Administrator of EPA. This authority cannot be delegated. Before that highest Federal official decides the matter, moreover, the advice of the advisory committee comprised of State and Local officials must also be obtained, except where an imminent hazard is involved. These provisions thus assure that State petitions will receive adequate review and attention at the highest level of the Federal Government.

Exemptions to prevent an imminent hazard: The amendments also recognize the need for a State to establish, within its own jurisdiction, a requirement or prohibition that is necessary to prevent an imminent hazard. After the State has provided an opportunity both for written comment and for a public hearing, the State is authorized to adopt its own permissible level for a pesticide residue in or on food that is different from the Federal level if it has been demonstrated that there is an imminent hazard to public health and that the additional protection provided by the State is necessary to prevent that immiment hazard. An imminent hazard is defined as a hazard that presents a substantial risk of serious harm to human health. Within 10 days after announcing that a requirement or prohibition is being promulgated under this provision, the State must submit a petition to the responsible Federal agency for a Federal requirement under subsection (d) or for an exemption under subsection (e). If no such petition is submitted, the State action is automatically void.

Like the interim level that can be established when a Federal agency fails to respond to a petiton within the 180-day statutory period, the imminent hazard level can remain in effect only until such time as the Federal agency takes appropriate action on the petition submitted by the State or a court rules that the State level does not meet the statutory standards. Any person may challenge the State level through a declaratory judgment action in the courts, and the State bears the burden of demonstrating compliance with the statutory standards.

This provision recognizes the need of State officials to have adequate authority to protect the public health within their jurisdictions, without imposing an undue burden on interstate commerce. Where an imminent hazard has in fact been shown to exist, based upon an adequate public record, State officials remain free to take action to prevent that hazard. Where no such hazard exists, however, the general rule of national uniformity would continue to prevail.

ORGANIZATIONS IN SUPPORT OF THE STENHOLM-ROBERTS NATIONAL UNIFORMITY AMENDMENT

American Farm Bureau Federation.
American Bakers Association.
American Butter Institute/National Cheese Institute.
American Dairy Products Institute.
American Frozen Food Institute.
American Meat Institute.
American Seed Trade Association.
Association of Food and Drug Officials.
American Soybean Association.
Biscuit and Cracker Manufacturers Association.
California Almond Growers.
California Chamber of Commerce.
California Grain & Feed Association.
California League of Food Processors.
Sun-Diamond Growers of California.
Sunkist Growers, Inc.
Chamber of Commerce of the United States.
Corn Refiners Association.
Evaporated Milk Association.
Florida Citrus Mutual.
Illinois Pork Producers Association.
Institute for Shortening and Edible Oils.
International Apple Institute.
International Association of Ice Cream Manufacturers.
Kansas Association of Wheat Growers.
Kansas Co-op Council.
Kansas Farm Bureau.
Kansas Fertilizer and Chemical Association.
Kansas Grain and Feed Dealers Association.
Milk Industry Foundation.
Millers' National Federation.
National American Wholesale Grocers Association.
National Association of Meat Purveyors.
National Association of Wheat Growers.
National Broiler Council.
National Cattlemen's Association.
National Corn Growers Association.
National Council of Farmer Cooperatives.
National Dry Bean Council.
National Food Brokers Association.
National Food Processors Association.
National Grain Trade Council.
National Milk Producers Federation.
National Pasta Association.
National Peanut Council.
National Pork Producers Council.
National Soft Drink Association.
New York/New England Apple Institute.
North Carolina Department of Agriculture.
North Carolina Peanut Growers Association.
Northwest Food Processors Association.
Peanut Butter & Nut Processors Association.
The Potato Chip/Snack Food Association.
Southwest Peanut Growers' Association.
Texas Agricultural Chemicals Association.
Texas Corn Producers Board.
Texas Farm Bureau.
United Fresh Fruit & Vegetable Association.

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AMENDMENT OFFERED BY MR. PANETTA TO THE AMENDMENT OFFERED BY MR. ROBERTS

Mr. PANETTA. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. PANETTA to the amendment offered by Mr. ROBERTS: Strike out all after the section designation of the proposed new section and insert in lieu thereof the following:

UNIFORM TOLERANCES AND FOOD ADDITIVE REGULATIONS.

(a) TOLERANCES.—Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended by redesignating subsections (m), (n) and (o) as subsections (n), (o), and (p), respectively, and by adding after subsection (l) the following:

"(M)(1)(A) The Administrator may be regulation prescribe that a tolerance established under subsection (d) or (e) for a pesticide described in subparagraph (B) shall be uniform through the States if the Administrator determines that—

"(i) uniformity in the tolerance is necessary to prevent significant disruption of the marketing of raw agricultural commodities containing such pesticide, and

"(ii) variations from the tolerance are not necessary to protect human health.

In promulgating a regulation under this subparagraph, the Administrator shall respond to comments submitted by States in the rulemaking proceeding.

"(B) The pesticide chemical referred to in subparagraph (A) is a pesticide chemical—

"(i) that was registered after the date of the enactment of this subsection under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act,

"(ii) that was reregistered after such date under section 3(g) of such Act, or

"(iii) that was registered under such section 3(c)(5) or reregistered under such section 3(g) before the date of the enactment of this subsection on the basis of data submitted to the Administrator which met the requirements of part 158 of 40 Code of Federal Regulations as in effect April 25, 1985.

"(C) Any interested person may petition the Administrator for the issuance of a regulation under subparagraph (A). The Administrator shall, within 180 days of the date of the submission of a petition, determine if the regulation proposed in the petition meets the criteria prescribed in clauses (i) and (ii) of such subparagraph. If the Administrator determines that a regulation proposed in a petition meets such criteria, the Administrator shall issue such regulation as a proposed regulation.

"(2) Except as authorized by paragraph (3), no State may establish or enforce a tolerance for a pesticide chemical in or on a raw agricultural commodity which is different from a tolerance established under subsection (d) or (e) for such pesticide chemical if the Administrator has prescribed uniformity for the tolerance under paragraph (1).

"(3)(A) A State may petition the Administrator for authority to establish in the State a tolerance which is more stringent than a tolerance for which the Administrator has prescribed uniformity under paragraph (1).

"(B)(i) A petition under subparagraph (A) for a tolerance shall be supported by—

"(I) scientific data about the pesticide chemical subject to the tolerance or chemically related pesticides, data on the consumption of food treated with the pesticide, data on exposure of humans to the pesticide, or information about the pesticide that reasonably raises concerns about the effect of the pesticide on human health, and

"(II) data or information described in subclause (I) that has been developed since the date the regulation of the Administrator

under paragraph (1)(A) prescribing uniformity for the tolerance took effect, that was unavailable at the time the regulation took effect, that was not considered by the Administrator at the time the regulation was promulgated, or that shows that the uniformity prescribed for the tolerance cannot be supported by the data or information used by the Administrator in promulgating the uniformity regulation.

"(ii) A petition under subparagraph (A) shall be referred to an advisory committee appointed in accordance with subsection (g).

"(iii) Not later than the expiration of 180 days after the date a petition which meets the requirements of clause (i) is filed with the Administrator, the Administrator shall authorize the action requested by the petition or deny the petition. The Administrator may deny the petition only if the Administrator determines that the action requested by the petition is unnecessary to protect human health in the State of the petitioner.

"(4)(A) Except as provided in subparagraph (B), if a processed food—

"(i) contains a raw agricultural commodity containing a pesticide for which a tolerance, established under subsection (d) or (e), has been made uniform under paragraph (1), and

"(ii) is not adulterated under the proviso in section 402(a)(2),

no State may establish a tolerance for such pesticide in such processed food which is different from the tolerance made uniform under paragraph (1).

"(B) If a State has had a petition approved under paragraph (3) authorizing the State to establish a more stringent tolerance for a pesticide, such State may establish a tolerance for such pesticide in such processed food which is more stringent that the tolerance made uniform under paragraph (1).".

"(b) FOOD ADDITIVE REGULATIONS.—Section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) is amended by adding at the end the following:

"Uniform Food Additive Regulations

"(j)(1) The Administrator shall by regulation prescribe that a food additive regulation issued under subsection (c) or (d) for a pesticide in a food containing a raw agricultural commodity which contained such pesticide for which a uniform tolerance was established under section 408(m)(1)(A) with respect to such commodity shall be uniform throughout the States if the Administrator determines that variations from the food additive regulation are not necessary to protect human health.

"(2) Except as authorized by paragraph (3), no State may establish or enforce a food additive regulation for a food which is different from a food additive regulation issued under subsection (c) or (d) which is applicable to such food if the Administrator has prescribed uniformity for the food additive regulation under paragraph (1).

"(3) If the Administrator has promulgated a regulation under paragraph (1) establishing uniformity for a food additive regulation for a food containing a raw agricultural commodity which contained a pesticide for which a uniform tolerance was established under section 408(m)(1)(A) with respect to such commodity and if a State has had a petition approved under section 408(m)(3) authorizing the State to establish a tolerance which is more stringent than such tolerance, such State may establish a food additive regulation for such food which is more stringent than the food additive regulation for which uniformity has been prescribed.".

Mr. PANETTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. PANETTA. Mr. Chairman, this amendment to the amendment that I offer seeks to deal with the concerns that have been raised by the gentleman from Kansas with regard to the uniform standards, but also seeks in addition to that to establish an appropriate balance between the Federal responsibility and the State responsibility to protect public health.

Public health and safety is a responsibility not just of the Federal Government, but also of State governments. That balanced responsibility has to be recognized.

There is a common goal here, not an adversial goal, that hopefully a common goal of trying to set limits or tolerances for the amount of pesticide residue that can appear in a food product. That common goal is one in which both the Federal Government and State governments ought to be able to join in trying to establish just exactly what those levels are.

Today as the bill is reported, States have the opportunity to establish stricter standards. They have that power under existing law.

The problem that the gentleman from Kansas [Mr. ROBERTS] points out, and I believe it is a legitimate problem, is the problem of where you have a food product that is in interstate commerce and in which 50 States establish the possibility of 50 different standards; although I must point out that that has never happened, but if the States were to do that, you would have 50 different standards and, indeed, it seems to me you would have the potential of disrupting interstate commerce, a disruption that would impact on farmers, it would impact on food processors and it would impact on retailers. I understand that and I think that is a legitimate concern.

The Roberts solution, however, goes to the extreme, to the other extreme, which is basically to say that the EPA will automatically preempt all State tolerances with no process for State input prior to the development of those tolerances, and that concerns me.

Why does that concern myself and I think others?

First of all, the EPA does not have the best record and the EPA is the first to tell you that they have not done a very good job in terms of being able to register and reregister and to reassess all the pesticides. We are talking about 50,000 pesticides, and they are the first to say they have not done a very good job; so there is some concern about allowing a Federal agency that does not have a very good track record to now be able to automatically determine what the tolerance levels will be.

Second, the States do have good evidence. They have health departments, they have agencies, they are looking at the same facts.

What is wrong with allowing the States to participate in a rulemaking process that makes this evidence available to the Federal Government?

This proposal, or the amendment offered by the gentleman from Kansas, does not provide for that process.

Let me give you one example of what took place in my district. It does not relate necessarily to pesticides, but it is a type of it. It is frost ban. Frost ban is a bacteria in which experimentations are now being conducted to see if it can be used to prevent frost from appearing on various plants.

The EPA decided, without talking to the State, and without talking to local government, that they would allow the test to take place in what was supposed to be an isolated area. The EPA never went to our county. They never talked to the State officials. They never talked to the local officials, but they decided that this was a good place for a test in an isolated area. When you looked at the area, it was right next to a major residential area in our county.

Now, that was the judgment of the EPA, but they did not look at the State and the local level for their input.

Now, that is the kind of a precedent that I am afraid of establishing with the Roberts proposal.

The CHAIRMAN. The time of the gentleman from California has expired.

(By unanimous consent, Mr. PANETTA was allowed to proceed for 3 additional minutes.)

Mr. PANETTA. What my amendment basically does, Mr. Chairman, is it gives the EPA the power to establish uniform standards. I agree with that. They ought to have that power. They ought to be able to establish standards where they can prove that there is a disruption in terms of interstate commerce and it does not jeopardize public health, and that is another requirement in my amendment.

If they proceed to do that, then the State is given the opportunity to participate in that process through rulemaking. This is the process that is used by a number of agencies. You propose a regulation, you go through rulemaking, you allow the States basically to have their input in that process. If the States feel that the final rule does not apply, then they have

the right to petition for a change as well.

What this does, let me point out to the membership, what this does it protects the ability of the States to participate in the process.

Yes, the EPA can establish a standard; yes, the EPA can move toward doing a uniform standard where it feels interstate commerce is disrupted, but it gives the State input into that process.

Let me conclude by saying this. We are not just talking here about rules and procedures and regulations. We are talking about a matter of public health. We are talking about the problem and the potential of cancer, of birth defects. We are talking about an impact that could affect literally millions of American citizens. We are talking about 50,000 pesticides that today have been fully reassessed and hopefully under this legislation will be reassessed and put up to current standards.

We are talking about an EPA that does not have an efficient record, a good track record of being able to do the job today.

So does it not make good sense where it involves the public health to give the States the ability to participate in this process with the information that they have and to establish a procedure that gives the State input into that process?

If we get this amendment, then not only can we establish uniform tolerances that benefit farmers and benefit producers and benefit retailers, but we also, and more importantly, protect the public interest in that process.

Mr. Chairman, I urge the committee to vote for the amendment to the amendment.

AMENDMENT OFFERED BY MR. STENHOLM AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. ROBERTS

Mr. STENHOLM. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. STENHOLM as a substitute for the amendment offered by Mr. ROBERTS: Page 162, insert after line 16 the following:

(c) NATIONAL UNIFORMITY.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended by adding after section 412 the following new section 413:

"FOOD PRODUCTION AND MARKETING UNIFORMITY

"SEC. 413. (a) INTENT.—It is the intent of Congress to assure a safe and reasonably priced food supply for consumers. In order to achieve this goal, it is declared to be the express intent of Congress to require national uniformity in the regulation of the levels of residues of pesticides in or on food in order to permit national marketing of all food products without jurisdictional barriers.

"(b) NATIONAL UNIFORMITY.—(1) Except as provided in subsections (e) and (h), no State or political subdivision thereof may establish, continue in effect, or enforce any requirement or prohibition that—

"(A) directly or indirectly establishes a permissible level for a residue of a pesticide in or on food, if such a level has been established under a Federal law or a regulation or other enforcement requirement issued thereunder and

"(B) is not identical with the requirements or prohibitions of such Federal law and of the regulations and enforcement requirements issued thereunder if the use of the pesticide resulting in the residue is registered with the Administrator of the Environmental Protection Agency on the basis of data meeting the requirements of paragraph (2) of this subsection or if the use of the pesticide resulting in the residue has not been registered with the Administrator, or has been registered with the Administrator on the basis of data meeting the requirements of paragraph (2) of this subsection and later cancelled or suspended, and the permissible level for the residue has been established or reaffirmed by the responsible Federal official on or after the date of enactment of this subsection.

"(2) For purposes of this subsection, a pesticide shall be deemed to be registered with the Administrator of the Environmental Protection Agency with respect to a use on the basis of data meeting the requirements of this paragraph if—

"(A) the initial registration or reregistration of the pesticide for that use was approved under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act on or after April 25, 1985, or

"(B) the initial registration or reregistration of the pesticide for that use was approved under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act prior to April 25, 1985, on the basis of data determined by the Administrator of the Environmental Protection Agency to meet the requirements of the provisions in 40 CFR part 158 that became effective on April 25, 1985.

"(c) CONCURRENT JURISDICTION.—(1) Any State or political subdivision thereof may exercise concurrent jurisdiction over the levels of residues of pesticides in or on food for the purpose of enforcing requirements or prohibitions identical with those established in such Federal law and in the regulations and interpretations issued thereunder.

"(2) For purposes of paragraph (1), the Federal official responsible for the implementation of any Federal law referred to in subsection (b)(1) shall—

"(A) cooperate with and provide relevant information to State and local officials engaged in the regulation of the levels of residues of pesticides in or on food; and

"(B) provide training and enter into contracts with such officials to facilitate more effective uniform national regulation of the levels of residues of pesticides in or on food, except that the authority to enter into contracts under this paragraph shall be to such extent or in such amounts as are provided in appropriations acts.

"(d) PETITION.—(1) Any State may petition the Federal official responsible for the implementation of a Federal law referred to in subsection (b)(1) to adopt by regulation as a Federal requirement or prohibition an existing or proposed state requirement or prohibition relating to the levels of residues of pesticides in or on food.

"(2) Within 180 days after receipt of any such petition, such Federal official shall, after receiving comments from the Scientific Advisory Panel established under Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act containing an evaluation of relevant data and risk to human health—

"(A) respond specifying the substantive action that is being taken on such petition; and

"(B) if such action includes the adoption of a new Federal requirement or prohibition, initiate the appropriate administrative proceeding to implement such action.

"(3)(A) If such Federal official fails to respond or to initiate any appropriate action within the 180 days specified in paragraph (2) of this subsection, the State which submitted the petition may, notwithstanding the provisions of subsection (b), establish and enforce within its own jurisdiction the requirement or prohibition which was the subject of the petition, as an interim requirement or prohibition.

"(B) Such an interim requirement or prohibition may be contested by any person under the declaratory judgment provisions of section 2201 of title 28, United States Code, on the ground that the interim requirement or prohibition does not meet the standards established in paragraphs (1) and (2) of subsection (e). In any such action, the State shall bear the burden of proving that such interim requirement or prohibition meets such standards.

"(C) Such an interim requirement or prohibition may remain in effect until—

"(i) the Federal official takes action on the petition and initiates any appropriate administrative proceeding pursuant to paragraph (2) of this subsection and such action rejects the interim requirement or prohibition or

"(ii) a court determines that the interim requirement or prohibition has not been shown by the State to meet the standards established in paragraphs (1) and (2) of subsection (e),

whichever occurs earlier.

"(e) EXEMPTIONS.—Upon petition of a state the Federal official responsible for the implementation of a Federal law referred to in subsection (b)(1) may, after receiving comments from the Scientific Advisory Panel established under Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act containing an evaluation of relevant data and risk to human health, by regulation promulgated after notice and opportunity for an oral hearing, exempt from subsection (b), under such conditions as may be prescribed in such regulation, a requirement or prohibition of such State relating to the levels of residues of pesticides in or on food in that State if such requirement—

"(1)(A) is justified by compelling local conditions or

"(B) is justified because the subject matter regulated by such requirement or prohibition is primarily local in nature and the Federal official responsible for the implementation of such Federal law is not exercising jurisdiction over the subject matter regulated by such requirement or prohibition, and

"(2)(A) protects an important public interest that would otherwise be unprotected,

"(B) would not cause any food to be in violation of any applicable requirement or prohibition under Federal law, and

"(C) would not unduly burden interstate commerce.

"(f) ADVISORY COMMITTEE.—For purposes of assuring effective and uniform implementation of all laws regulating the levels of

residues of pesticides in or on food, the Federal officials responsible for implementation of such Federal laws shall establish an advisory committee comprised of eleven State and local officials engaged in the regulation of the levels of residues of pesticides in or on food.

"(g) RESPONSIBLE FEDERAL OFFICIAL.—A petition submitted under subsection (d) or (e) shall be acted upon by the highest Federal official responsible for the implementation of the Federal law involved, which authority shall not be delegated. The advice of the advisory committee established under subsection (f) shall be obtained before action is taken upon any such petition unless the petition relates to an imminent hazard determination under subsection (h).

"(h) IMMINENT HAZARD.—(1) Notwithstanding the provisions of subsection (b), a State may establish and enforce within its own jurisdiction any requirement or prohibition which directly or indirectly establishes a permissible level for a residue of a pesticide in or on food if—

"(A) after an opportunity for written comment and a public hearing, it has been demonstrated that—

"(I) the permissible level for a residue of that pesticide in or on food established under a Federal law or a regulation or interpretation issued thereunder constitutes an imminent hazard to public health in that State because it presents a substantial risk of serious harm to human health, and

"(II)) the additional protection provided by such requirement or prohibition is necessary to prevent such imminent hazard, and

"(B) within ten days after the State announces that it is promulgating the requirement or prohibition, the State has submitted a petition under subsection (d) or (e).

"(2) Any requirement or prohibition established or enforced under paragraph (10 may be contested by any person under the declaratory judgment provisions of section 2201 of title 28, United States Code, on the ground that such requirement or prohibition does not meet the standards established in subparagraphs (A) and (B) of paragraph (1). In any such action, the State shall bear the burden of proving that such requirement or prohibition meets such standards.

"(3) Any requirement or prohibition established or enforced under paragraph (1) may remain in effect until—

"(A) the Federal official takes action on the petition submitted under subsection (d) or (e) and such action rejects such requirement or prohibition or

"(B) a court determines that the requirement or prohibition has not been shown by the State to meet the standards established in subparagraphs (A) and (B) of paragraph (1),

whichever occurs earlier."

Mr. STENHOLM (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The Chair would like to be clear on this. As the Chair understands, this is a substitute for the Roberts amendment?

Mr. STENHOLM. That is correct, Mr. Chairman.

The CHAIRMAN. The gentleman from Texas [Mr. STENHOLM] is recognized for 5 minutes in support of his substitute amendment.

Mr. STENHOLM. Mr. Chairman, the only change that I make in the substitute is that we amend the Food and Drug Act, rather than the FIFRA Act.

This is a further attempt on the part of the gentleman from Kansas [Mr. ROBERTS] and myself and those others who are extremely interested in the question of uniformity and State tolerances.

This is a further attempt for us to meet those objections, particularly the objections from the Energy and Commerce Committee and the chairman of that committee, the gentleman from Michigan [Mr. DINGELL], concerning jurisdictional problems.

I think this amendment offered as a substitute should be the final answer to questions of all those who have concerns in two areas of this amendment; one is on the question of States rights and the State's position concerning the uniformity question and whether or not Federal law shall supersede State law, and also the amendment of the gentleman from California a moment ago in which he spoke of the health concerns.

I would like to associate myself with every remark that the gentleman from California [Mr. PANETTA] made concerning the health concerns of this entire issue. That is not the question that we are debating at this moment, though.

The question now is uniformity and whether or not we can have a law of the magnitude of this law that meets the health concerns of all the citizens of the United States and at the same time provides for the constitutional restraints and requirements that we have concerning the regulation of commerce, and I want to speak to both of those issues.

The general issue of preemption, and for those of my colleagues who are concerned about the States' rights issue in this argument, let me submit this:

Since the turn of the century federal legislation under the commerce clause has penetrated deeper and deeper into areas once occupied by the regulatory power of the States. One result is that state laws on subjects about which Congress has legislated have been more and more frequently attacked as being incompatible with the acts of Congress.

The constitutional principles of preemption, in whatever particular field of law they operate, are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter.

* * * the power to regulate commerce is the power to prescribe conditions and rules for the carrying-on of commercial transactions, the keeping-free of channels of commerce, the regulating of prices and terms of sale. Even if the clause granted only this power, the scope would be wide, but it extends to include many more purposes than these.

From what am I quoting? I am quoting from the Constitution of the United States of America, the Analysis and Interpretation of June 29, 1972. Quoting further:

To be sure, in cases of flat conflict between an act or acts of Congress regulative of such commerce and a state legislative act or acts, from whatever state power ensuing, the act of Congress is today recognized, and was recognized by Chief Justice Marshall, as enjoying an unquestionable supremacy.

Again, I come back to a basic and fundamental point, and this is the issue between the amendment offered by the gentleman from Kansas [Mr. ROBERTS] and myself, the amendment offered by Mr. PANETTA and the amendment offered as a substitute that I offer on behalf of the gentleman from Kansas [Mr. ROBERTS] and myself.

We all agree on the need for maximum protection of the general public of the United States concerning the use of insecticides, fungicides, pesticides, and so forth. We all agree to that.

The basic question is whether or not we can have 50 individual interpretations of this law without infringing and completely destroying interstate commerce under the Constitution of the United States. The question is uniformity.

Now, let me answer and point out further what is in the Roberts-Stenholm amendment, as amended. We provide for three opportunities for a State to petition the EPA for a pesticide residue tolerance.

To those who suggest that in our amendment we are precluding States from having a say-so in what is in fact a health hazard for an individual State or community, you have not read the amendment.

We provide for three things:

First, following a State's determination of an imminent hazard; if you have an imminent hazard, we have it in our amendment that allows that State to recognize that and to petition the EPA for action.

Second, we require, or to request an exemption from a Federal tolerance because of compelling local circumstances.

Again, the gentleman from California makes a very compelling argument and certainly we have recognized that in our amendment in the spirit of compromise to provide for where you have local circumstances you have the wherewithal within this legislation and within our amendment.

□ 1130

The CHAIRMAN. The time of the gentleman from Texas [Mr. STENHOLM] has expired.

(By unanimous consent, Mr. STENHOLM was allowed to proceed for 5 additional minutes.)

Mr. STENHOLM. Mr. Chairman, the third point concerning our States and the issues, and the fact that the gentleman from Kansas [Mr. ROBERTS] and I in our amendment recognize the importance of listening to our States, and working with our States, we provide the opportunity to request that an existing or proposed State requirement be adopted as a Federal requirement.

Within this general construct, the question has been raised as to whether a State can petition and receive approval for a tolerance different from a Federal tolerance based on scientific considerations, for example, gaps in the data base or new scientific studies.

Another way of stating this question is whether, based solely on scientific grounds, two different standards of safety for a pesticide residue level could or should exist in the United States. Where we have States and Federal Government making independent judgments, can we have this?

With regard to case 1, imminent hazard, a different State tolerance would be justified if there was increased consumer risk from exposure to a pesticide residue. This could occur as a result of ground water contamination or an accident involving misapplication of a pesticide. Clearly, the determination of increased risk is a scientific determination arising from relatively limited regional conditions and necessitating immediate action.

With regard to case 2, exemption based on local conditions, a different State tolerance also would be justified if there was increased consumer risk arising from those conditions. This too, is a scientific determination.

With regard to case 3, "an existing or proposed State requirement," a request for a different tolerance would arise as a result of different scientific views of consumer risk, generally attributable to different interpretations of data, data gaps or new data. In such circumstances, different State and Federal tolerances would be illogical, and would create unequal consumer protection with respect to the same product exposure. The approach that should be taken in this case is to submit the petition for an evaluation by the Science Advisory Panel established by FIFRA for this purpose. The Panel's safety determination should be applied on a nationally uniform basis.

Mr. Chairman, I conclude my remarks by again saying that the basic issue that we will vote on today is whether or not we believe that we can have the free exchange of interstate commerce and have the possibility reigning at any time that we can have 50 individual States' determinations of what in fact is a safe tolerance for various chemicals, et cetera.

My argument, and the reason that we offer this amendment, and the reason that we have offered this again as a compromise to meet the valid concerns of the Committee on Energy and Commerce, particularly those of the chairman, the gentleman from Michigan [Mr. DINGELL], is that in fact we cannot have interstate commerce, we cannot have the free exchange, by going in the direction of the amendment of the gentleman from California [Mr. PANETTA]. It just will not allow interstate commerce to move without disruption that will in fact be costly and will not prove anything of significance.

Not all States disagree, and I would conclude by saying that Missouri, Michigan, and North Carolina have shown their support in letters which I have in front of me. AFDO, the Association of Federal Drug Organizations. I have a very strong letter from Mary Heflin of Connecticut in which she says:

> We believe this bill, the Stenholm-Roberts amendment, through its petitioning process provision, provides the individual States with an opportunity for its public voice to be heard. Other provisions also insure the State's role in the regulatory process.

This is the association of State officials that has taken a deep and abiding look at this and has come to the same conclusion as so many other organizations and individuals concerned about the free exchange of interstate commerce, and they support and we urge Members to support the Roberts-Stenholm amendment, as amended.

Mr. LUKEN. Mr. Chairman, will the gentleman yield?

Mr. STENHOLM. I am delighted to yield to the gentleman from Ohio.

Mr. LUKEN. Mr. Chairman, I would like the gentleman to respond to the issue of the burden of proof. I understand that the burden of proving a negative in this instance, or so it is charged, would be on the EPA in order to establish national uniformity. Will the gentleman respond to that?

Mr. STENHOLM. Which amendment?

Mr. LUKEN. Not under your amendment, under the other amendment.

Mr. STENHOLM. Under the other amendment, the gentleman is entirely correct. I understand.

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding.

Mr. Chairman, the gentleman is referring obviously to the amendment that we have made to the amendment. It does not change the burden of proof. What it requires is that EPA establish that there is an impact on interstate commerce. That is the whole point here. If it affects interstate commerce, then EPA has to show that, in fact, that is the case.

What the Roberts amendment does is presume interstate commerce is affected in terms of tolerances.

Mr. STENHOLM. Mr. Chairman, I would submit that the amendment of the gentleman from California will not only presume it, but will make it almost impossible to determine uniformity.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Panetta amendment.

Since 1906, when the predecessor of the Federal Food, Drug, and Cosmetic Act was enacted, States have had the authority to set tougher pesticide residue levels. We now hear from food companies that this longstanding State authority should be repealed.

The food companies argue that States have already abused their authority and will continue to do so in the future. They predict a confusing maze of different State standards that disrupt interstate commerce.

Their claims are unfounded. History does not bear them out.

There are 400 food use pesticides. States have regulated two of them. In both cases, the pesticides were declared to be carcinogenic by EPA. States took action to protect their citizens when EPA failed to act.

States have been responsible and restrained. Their record is not the real issue, though. The food companies are really concerned about the future. They fear the EPA will not do the job this bill requires of them. They fear that States will become increasingly active as EPA plods through years of reviewing the safety of the pesticides now in use.

The food companies want Congress to eliminate the possibility that States might regulate pesticides in the name of public health. They want the States preempted—totally and unconditionally.

I understand there is a potential for disruption in our nationwide food marketing system if there are multiple State standards in addition to the EPA standard. I am prepared to support an amendment that provides the companies with assurance that it will not happen. In addressing their concern, though, we cannot ignore that there are other important issues that also must be resolved.

Is the public protected from unsafe pesticide residue levels when the States are preempted?

Do the States have the opportunity to be heard on their health concerns before preemption occurs?

Is anyone determining whether preemption is needed in any particular case?

These three questions are the best measure of whether we are acting responsibly. The Roberts amendment fails badly because it answers "no" three times. The Panetta compromise was created specifically to address these three questions.

I would like to take a moment to contrast the major points of these two amendments.

The Roberts amendment is based on the presumption that preemption is needed in every case. In other words, the marketing of every food containing a pesticide residue is subject to disruption. Under the Roberts amendment, preemption is automatic. There will be no review by EPA to determine that preemption needs to occur.

In contrast, the Panetta compromise calls on EPA to review the facts. If two sensible tests are met, then EPA would preempt the States. If food products which are moving in a nationwide distribution system will be disrupted when a State sets a more stringent standard, and if the EPA residue level will protect everyone in the country, then EPA can preempt the States.

We should not preempt unless we know that it is needed, and that the EPA standard will protect public health. If we are going to prohibit a State from regulating pesticides to protect a particular group that the State believes is vulnerable, EPA must determine that its standard will take care of the State's concern. For instance, a State may believe that its children or an ethnic group consume larger than average amounts of a particular food. In such a case, the EPA standard may subject them to serious health risks.

The Panetta compromise authorizes preemption, but with the necessary evaluation that it is needed and will be done well.

Under the Roberts amendment, States have no input before preemption occurs. States do get to participate in an advisory committee. But, an advisory committee is a poor trade for the right to regulate.

In contrast, the Panetta compromise protects the States by guaranteeing them the opportunity to comment on EPA-proposed preemption before preemption would occur. If the States are to be preempted, we must at least give them the opportunity to explain any health concerns they have. For example, one of EPA's greatest weaknesses is its lack of updated information on how much of a particular food with a specific pesticide is consumed. States could be invaluable sources of this consumption data. After the States commented, EPA can know whether or not the tolerance that EPA proposes to make uniform will protect the health concerns of the States.

In the final analysis, the most important test is whether people will be subjected to unsafe pesticide residues after States are preempted. The Roberts amendment fails again.

Under the Roberts amendment, a State may petition EPA for the authority to set a stronger standard in the State. The criteria are so strict, though, that States cannot act to remedy a serious health concern. The Roberts amendment only allows a State to address "local conditions." But, as we all know, health hazards presented by pesticides on food are not local matters. Even in the face of new scientific data identifying a pesticide as a carcinogen, States could do nothing under the Roberts amendment.

In contrast, the Panetta compromise lets States set more stringent pesticide residue levels if they present EPA with new information and EPA determines that the stronger State standard is necessary to protect human health.

The Roberts amendment does not just preempt the States; it endangers public health. Given EPA's current track record, we have no reason to believe that future EPA tolerances will adequately protect human health. The Roberts amendment preempts the States nevertheless.

The Panetta compromise also preempts the States. But it does so in a thoughtful and balanced way. EPA will be authorized to prevent undue disruption in our nationwide food marketing system. States will have ample opportunity to make their views known. Public health will be protected by the mandate that EPA consider the health concerns raised by the States and other interested parties.

The Panetta compromise balances these different interests in a fair and effective way. I urge support for the compromise.

□ 1140

Mr. GREEN. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I am pleased to yield to my colleague from New York.

Mr. GREEN. Mr. Chairman, I rise to commend the gentleman from California for his statement and to support the Panetta compromise. It seems to me that, particularly after the Supreme Court decision in the Garcia case in which the Court just about told the case that if they are going to be protected in their traditional intergovernmental immunities they must look to the Congress rather than the courts for that protection, it would come with ill grace for us now to be sweeping the traditional rights that States have had—the police power of the States to protect the health and safety of their citizens.

The Panetta amendment recognizes the traditional role of the State in our Federal system. The Panetta amendment recognizes that States know better than Federal bureaucrats here in Washington, often at large distances away, the problems of their citizenry and the local conditions that they face.

At the same time, the Panetta compromise does indeed vindicate the right of a national government when interstate commerce is being interrupted to deal with that situation.

I urge my colleagues to support the Panetta compromise.

Mr. ROBERTS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the Waxman-Panetta amendment.

Mr. Chairman, I guess this is Friday and we are in Washington, we are still in session. I had a little doubt there for a while because when I am hearing people like CHARLIE STENHOLM, and PAT ROBERTS, and TOM LOEFFLER, and a Mr. Bliley from Virginia, and Mr. LOTT and others who are cosponsors of the Stenholm-Roberts approach are opposed to States rights, I thought it might be Alice in Wonderland, and especially in regards to the gentleman from California, Mr. WAXMAN, who is a known defender, and rightly so, of strong Federal involvement to protect public health and has now assumed the championship of States rights. We are a little bit turned around.

There is nobody in this Congress that is more determined to protect States rights. This is not States rights, this is States fights.

We had six States in the northeastern part of the United States who rightly, who rightly were complaining about the record of the EPA in not standing up to the issue of public safety. That is what this bill is all about. That is why we force deadlines on the EPA. That is why we mandate that they take this reform.

Those six States, all of them have different standards for EDB. It is a matter of record, and the same thing now applies to the preservative for peanuts and for apples.

If, in fact, that is the case, if, in fact, it is an unsafe pesticide, let us get it through this FIFRA reform bill, but then make the tolerance level for all 50 States.

No process for State input. The gentleman simply has not read the amendment or is just reaching a different conclusion. States have every opportunity to come in and set stringent standards. But yet, yes, the burden of proof is on that State, so that this State does not set a standard that will disrupt the marketing of every farmer every stockman, every food shipper, every consumer that would like to buy any products.

Frost damage in California. Let the record show for my good friend and colleague from California, Mr. PANETTA, I am opposed to frost damage in California, and I am opposed to EPA practices that would come in and not recognize the gentleman's problem.

That has been part of the reason why we are so supportive of this total FIFRA reform bill.

Let me also say that the proponents, yes, food companies too, and the gentleman from California talks about food companies, food companies as if it were a pejorative—my word, what would the food companies want unless it were safe products to market to consumers all around America? Yes, the food companies want our bill, the Stenholm-Roberts bill. But, as I said before, so do 60 farm organizations, and 60 farm organizations oppose the Waxman amendment or the Waxman-Panetta version of this bill.

Why? Because we are all concerned about public safety and health. That is why we have the doggone bill in the first place.

As I indicated before, maybe one of the big concerns is access by the public, State involvement prior to this process in terms of the whole business of uniform tolerance. The gentleman from California [Mr. PANETTA] will try to make the argument, has made the argument that under Stenholm-Roberts tolerances would be automatic, would provide no opportunity for public comment. Read the bill. The whole bill involves the process of public involvement. One of the major provisions of the bill is section 101 entitled preregistration access to data. This enables public entities and other interested persons the opportunity to look at health and safety data and allow them to have all sorts of public comment on that data for 60 days. The whole bill does that.

So the data that the EPA bases its tolerances upon is available for public comment.

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I am happy to yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding.

If the gentleman believes that States should be part of the process, then what objection does the gentleman have to allowing States to participate in a rulemaking process before the uniform standard is established?

Mr. ROBERTS. The only grounds for denying a State petition to establish a different tolerance would be for EPA to formally determine a variance that was unnecessary to protect human health. And, in addition, the gentleman also says that that action is needed to prevent significant disruption. The gentleman knows that no EPA administrator, and by the way, they have the current authority to do that right now, but if the gentleman is unhappy with the EPA now, no uniform tolerance has ever been set because, as the gentleman knows, no EPA administrator is bound to do that. So you have to come in with the burden of proof first to have the uniform tolerance, and then the State comes in. If you folks in California have every good reason to come in for more stringent tolerances, hey, I will join you. I will go down there to EPA with your good friend and your colleague, and your Governor, and your State health officials, and we will go in there and we will press for more stringent standards. But our scientific evidence has to be at least equal to the scientific advisory panel that the gentleman supported in the whole FIFRA bill.

Mr. PANETTA. Again, the gentleman really has avoided an answer to the question. The basic question is why not allow the States to participate in the rulemaking process. If the gentleman wants to listen to the States, build the process to let them do it.

□ 1150

Mr. STENHOLM. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. Without objection, the gentleman from Texas [Mr. STENHOLM] is recognized for 5 minutes.

There was no objection.

Mr. STENHOLM. Mr. Chairman, I would like to answer the question of the gentleman from California [Mr. PANETTA] in saying in the amendment, the substitute that we offer, we provide under section 34(d), any State may petition the Federal official responsible for the implementation of the Federal law referred to under subsection. We provide that.

We also provide that, where there is an imminent health hazard, that State may in fact move on its own; but the burden of proof is on the State. That is the difference between the gentleman's approach and mine.

The gentleman's approach says, "Let the State be preeminent." That is where we get into the problem of interstate commerce. What we are saying is, "Let's go through, let's give the States, let's use all of the knowledge and the wisdom provided in all of our States." Let us utilize that, but let's do it under a law of uniformity that will avoid those problems like EDB and like some of the other problems we are running into today, in which you have a judgment not substantiated by scientific knowledge and reason.

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman.

Mr. PANETTA. I thank the gentleman for yielding, and I thank him for pointing out that provision, because that provision is at the heart of the difference between the Panetta compromise and the Roberts compromise.

Essentially, Mr. Chairman, that petition process only takes place after EPA has established the uniform tolerance level, and it is only at that point that the State can then come in.

Under the Panetta compromise, the State can present that evidence during the rulemaking process leading to a uniform standard. That is the basic difference here.

Are you going to listen to the States after the Federal Government has acted, or are you going to listen to the States before they have acted to establish a uniform tolerance level?

Mr. STENHOLM. Mr. Chairman, if I can reclaim my time, the answer is both. The Stenholm-Roberts does both. We listen before and after and make them a part of the process; you do not.

Mr. SYNAR. Mr. Chairman, I rise in opposition to the substitute amendment.

Mr. Chairman, for those who are watching out there in their offices and for those who are following this debate, this is one of the most interesting debates we are going to have on an issue that involves not only the Agriculture Committee and those committees that have jurisdiction over the EPA; and I suspect that when the vote finally comes, people are going to rush in here, and as we too often do, we are going to summarize this debate in the context of, it is a States rights issue, it is a non-States rights issue; it is an issue of whether or not there is going to be free exchange of commerce.

Well, as everyone knows, I am from Oklahoma, and my family has for three generations been involved in agriculture; and I would be first in line to tell you the benefit that we have had from the use of pesticides and chemicals in agriculture; that it has helped make this country the greatest country in the world in the production of food fiber.

I would also say that there is a great growing concern in this country with respect to our farmers and ranchers that maybe we have used things in the past that may not be in the best long-term health interests of the public.

What is at issue today is not the health risk of this Nation, because there is not a person that will speak on this issue on either side that will, that could be classified as someone who is not concerned about the protection of the consumer.

My dear friend from Texas, Mr. STENHOLM, has said that this issue is an issue of uniformity, an issue where we do not want to have 50 State standards so that a company would have to meet 50 different State standards in order to sell their products.

He has also said that, in his estimation, that this violates the commerce clause of our Constitution and that unless we are able to accept the Stenholm-Roberts substitute, we will have a violation of the free exchange of commerce in our country.

Well I really, with all due respect, must disagree with the gentleman from Texas [Mr. STENHOLM], because I think the burden of proof is on him, Mr. Chairman, to show that because of the present structure that we have, that there has been that "interruption of free exchange of commerce."

Over the last 40 years, only twice have States ever intervened in order to try to protect their citizens against what they considered a potential problem. Why did they intervene? Did they intervene because they wanted to overdo what the Federal Government was doing? Did they want to set a standard that was so high to interrupt the exchange of those products? No.

The record is very clear, and as chairman of the Subcommittee on Environment, Energy, and Natural Resources which has oversight jurisdiction over EPA, the reason that the States have intervened, on both occasions, is because the EPA has refused to do its job, very simply.

In the case of EDB, it took them 10 years, 10 years to make a decision. Ten years of unnecessary exposure to the American public of a product that we know is cancer causing.

Now, I think those who are arguing for this substitute today really have the burden on them to prove that this type of change, in eliminating the States as part of the process, is necessary. I say that is is not. In fact, I think that if one looks at what the oversight committees on EPA have done in the last couple of years, we can conclude that what the gentleman from Texas [Mr. STENHOLM] and the gentleman from Kansas [Mr. ROBERTS] are trying to do is premature. Premature.

Not only is it unnecessary, Mr. Chairman, but it is premature very simply because the hearings have pointed out time and time again that we have a dismal failure of a program down at EPA in protecting the American public.

If the American public cannot turn to its Federal Government and EPA to protect them, by gosh, we ought to be able to let our State health departments and our States at least protect them.

Now, this amendment may be a good amendment 1 year from now, 2 years from now, because I think with the oversight work that we have done, EPA is beginning to clean their act up in this area; but it is premature.

So I ask those who are considering, and who are watching this: Do not summarize this issue as one of the commerce clause or States rights, do not summarize it as being pro health protection or antihealth protection, or proagriculture or antiagriculture or pro commerce or anticommerce.

Look at the structure that exists today in this country. Look at what exists at EPA. Look at their failure. Look at their track record. Anyone who would objectively look at that would take great credence in the fact that we are going to allow our States to do that.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Panetta amendment.

Mr. Chairman, as indicated, I rise today to urge my colleagues to vote for the Panetta amendment to Roberts-Stenholm.

I am keenly aware of the problems and the disruption to commerce which can result when pesticides are not uniformly treated nationally, and I recognize the strong need to do so; but I am also very much concerned about the need of States to participate in this process for the protection of their citizens, and the needs of individual States to exercise their powers to protect their citizens in special circumstances.

I find the provisions of the Roberts-Stenholm amendment to be deficient in this particular. I believe there are other reasons to support the amendment offered by the gentleman from California [Mr. PANETTA]; and that is that new information must be able to be utilized when it comes from science into Government, both to strengthen the requirements of regulations with regard to pesticide applications and pesticide residue.

Failure to do this raises real possibility that essentially the law will find that it freezes in place provisions which provide either inadequate protection for consumers or inadequate opportunity for liberalization of existing rules and regulations, to enhance the needs of agriculture, to protect the producers or to afford processors of food the opportunities to move forward with substances which might otherwise be banned, either in toto or in sufficient part as to cause an adverse situation with regard to the food distribution chain.

I believe that my colleague from California, Mr. PANETTA, has worked hard to compromise a difficult problem. His actions, I believe would balance the need to safeguard human health against the need to protect interstate commerce.

I find no prejudice to the free flow of goods across our State line under the Panetta substitute. The amendment acknowledges both the deliberative processes of EPA and the historic rights of the States to participate when necessary not only in the decisionmaking process, but also in the protection of their citizens from special circumstances.

□ 1200

It also sets reasonable standards when non-Federal tolerances can be overturned. It permits the use of new information in a speedy way, but it protects processors from frivolity, frivolous misbehavior, unwise intervention, the actions of cranks, and it ensures that the actions of EPA will be taken in instances of this kind in a deliberative and a careful fashion to ensure that new information enters the decisionmaking process in a timely fashion.

Regrettably, both the committee bill and the Roberts-Stenholm amendment are deficient in these circumstances. The balances and the safeguards that I find in the Panetta amendment are not present in the Roberts-Stenholm amendment.

I urge my colleagues very strongly to support the Panetta amendment. It does no hurt to industry but it affords a necessary balance to the process and it assures necessary protection to citizens and an assurance to citizens and industry alike that the process will work fairly for the benefit and the protection of all.

Mr. Chairman, I yield back the balance of my time.

Mr. DURBIN. Mr. Chairman, I move to strike the requisite number of words.

Let me say at the outset that I find myself in a difficult position on this particular amendment because I have such high regard for the various proponents of both sides. I know them from my experience on the House Committee on Agriculture to be people of good will who are genuinely looking for solutions to very difficult problems.

I might also add that this bill is long overdue. I want to salute my colleague, BERKLEY BEDELL of Iowa, for his yeoman efforts to make certain that this issue comes before the Congress.

Let me add one other footnote before I address this particular amendment. I am a member of the Committee on Appropriations and as such we have jurisdiction over the Food and Drug Administration. This bill is a necessary effort by the Congress to address domestic standards in the United States for the application of pesticides and the like. But let us not overlook the fact that we in America consume so many products, particularly fruits and vegetables imported from overseas, that the inspection standards that are being applied to them do not necessarily meet the level which most Americans would be happy to hear.

For instance, I was advised by the Administrator of the FDA that only 3 percent, 3 percent of the fruits and vegetables imported into the United States are inspected to determine what kind of pesticide residue levels they bring to the consumers at our stores. And of that 3 percent that are inspected, 30 percent are in noncompliance. Almost a third of the imported fruits and vegetables that we eat do not meet the standards that we are

now establishing for domestic producers in our country.

This speaks not only to the necessity of this bill but to address the very real need to make certain that we look to our imports as well.

Now, I come from a farming area in Illinois, and there is a genuine concern. The concern—and I might address my question first to the gentleman from California; the concern is this, if in fact we harvest our corn or soybeans, if we apply some pesticide in the process, if we are going to put our product into national or international commerce, what protects us from the possibility that one State might say, "We are establishing a standard where your pesticide that you used in Illinois on the corn or the soybean crop is unacceptable," thereby making certain that our product that we would otherwise like to sell in commerce could not be exported to that State? What protection is there for that producer?

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. DURBIN. I would be happy to yield to the gentleman from California [Mr. PANETTA].

Mr. PANETTA. I thank the gentleman for yielding.

That is the exact problem that I think the Roberts amendment tries to legitimately address, which is the interruption in interstate commerce, and the need for a uniform standard. What this proposal, my compromise, tries to do is to require for the first time in clear law that the EPA shall establish uniform standards. But it goes beyond that because it says that where—and I address the gentleman specifically to page 2 of the amendment M1(c)—where any interested person, be it a farmer, be it a company, be it a retailer, whatever, any interested person may petition the Administrator for the issuance of a regulation, in other words for the issuance of a uniform standard and the Administration shall—this is not "may," not a discretionary power on the part of EPA—the Administrator shall within 180 days of the submission of that petition determine if the regulation proposed in the petition meets the criteria we lay out within the legislation.

So we have built in a mandate, a mandate, a clear mandate that when a petition is filed for a uniform standard, the head of the EPA must move within 180 days.

Mr. DURBIN. If the gentleman would continue this dialog, I am concerned about the case where such a petition is filed and let us say that the Illinois corn producer is concerned about the established standard in some State, and has petitioned the EPA, is now waiting for the 180-day period to expire and for the decision to be made, what if EPA for lack of resources or staff fails to make that decision within 180 days, what recourse does that producer or farmer have to make certain that he has his day in court?

Mr. PANETTA. Mr. Chairman, will the gentleman continue to yield?

Mr. DURBIN. I yield to the gentleman.

Mr. PANETTA. Like any clear mandate that we establish in law where we say the Administrator shall, if the Administrator fails to do that, then the recourse is to go to court and get an order to require that the Administrator abide by the clear statement in the law. So the most we can do in any instance is make it a mandatory requirement on the part of the Administrator and then if the Administrator, in view of that clear mandate, turns away from it, then a court can clearly order the Administrator to proceed.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. DURBIN. I would be happy to yield to the gentleman from Kansas.

Mr. ROBERTS. I thank the gentleman for yielding.

I would like to respond, if I could. That is the basic difference in this approach. Under the Stenholm-Roberts approach, uniform tolerance is the norm, and States may come back for more stringent kinds of tolerances.

(On request of Mr. ROBERTS and by unanimous consent, Mr. DURBIN was allowed to proceed for 2 additional minutes.)

Mr. ROBERTS. Under the Panetta substitute or amendment, let me repeat again the agency may—it is discretionary with the Administrator—may grant uniformity only after certifying, No. 1, that action is needed to prevent significant disruption in interstate commerce. Now, I do not know whether or not the EPA Administrator would think that your corn producers and the problems they would go through with EDB, which was the case in the past year—and we do not use any EDB anymore, that is not the case—or maybe the peanut grower or maybe the apple grower in regard to one pesticide that is under question now, I do not know if he is going to act or not because I do not know to what extent a significant disruption would amount to. But I doubt it.

Then the second requirement is variations from the tolerance are not necessary to protect human health.

We have heard a lot of talk about EPA here and how they drag their feet and have not acted. What EPA Administrator is going to do that knowing he is going to face a court case? I submit to you that your corn producer would know, under the Stenholm-Roberts approach, that the norm is in fact tolerance. He could predict that that pesticide used on his crop would in fact, after it is washed clean through this whole FIFRA reform process, that he could use that and market his crop.

Now, EPA currently has such discretionary power to assert uniformity. Did they do it with EDB? No. Did they do it with daminozide, I think it is called, which is the pesticide that was used? We are right now in that process. Maine and Massachusetts have different uses for that product. What does the peanut grower have to do? What does the apple grower have to do? What we want to do is to get that chemical washed through this process and declare it safe. Under our approach that producer is protected because the tolerance is uniform. Under the other approach it is discretionary and the producer is left simply hanging in the air.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(By unanimous consent, Mr. DURBIN was allowed to proceed for 2 additional minutes.)

Mr. DURBIN. If I may ask my colleague from Kansas—what confidence does he have if we were establishing responsibility of the Federal EPA to set these standards, that they either have the resources or the will to do so? I have to share the feelings of the speech made by my colleague, Mr. SYNAR of Oklahoma, that to this date the EPA because either of volume of work or of policy decisions made has not shown the initiative to establish the standard in the very case that the gentleman mentioned, EDB.

Mr. ROBERTS. Mr. Chairman, will the gentleman continue to yield?

Mr. DURBIN. I would be happy to yield.

Mr. ROBERTS. I thank the gentleman.

That is precisely the concern of this gentleman. It was, over the past 4 years in working with Mr. BROWN and working with Mr. BEDELL to give the Office of Pesticide Programs and Enforcement, Dr. John Moore, the ability to do this. I was part of an effort to provide the Moore funds for more personnel to do this. That is why we are going through user fees to pay for it.

This legislation at best is a deadline enforcement bill, if you will, to get EPA to do its job. For those who want that part of it, once we get there from here and force EPA to do that job, then it seems to us that that tolerance level should be uniform in all 50 States.

We are going to do that job.

Mr. DURBIN. I thank the gentleman.

Mr. STENHOLM. Mr. Chairman, will the gentleman yield?

Mr. DURBIN. I would be happy to yield to my colleague from Texas.

Mr. STENHOLM. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman brings up the fundamental question, and I hope that the gentleman is not satisfied with the answer Mr. PA-

NETTA gave him regarding his amendment and its approach to that question, the disruption, because he does not provide for it. We do within our amendment. In that situation where a corn grower in Illinois has raised and produced a crop and has entered it into the commerce into the sale process and a State determines that something is wrong with that particular corn because of some misapplication or something that has been derived scientifically, we provide in our amendment that a State may petition and within 10 days action be granted, within 10 days. Now, the gentleman from California has told you that at that point there is 180 days in which the administrator may, not shall, may promulgate the regulations.

Mr. DURBIN. If I may reclaim my time, I think the language is mandatory, it uses the word "shall." I thank the gentleman.

Mr. Chairman, I yield back the balance of my time.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Panetta amendment.

Mr. Chairman and Members of the House, I rise in support of the Panetta compromise amendment which I think strikes that balance between the rights of the States to govern and to protect its citizens and the need for industry to make sure that the stream of commerce can be continued.

I think that position as outlined struck support within the National Governors Association which has gone on record as supporting the Panetta approach, to a number of Governors who have taken it upon themselves to write the Congress in support of the Panetta approach, including the State of Massachusetts, Vermont, Wisconsin, New Jersey, South Carolina, West Virginia, Minnesota, New York, Florida, Maine, Texas, California, my own Governor has taken time out. It is bipartisan. I think they recognize it. You are talking about some of the major agricultural States in this country and States also that are very diverse in their agricultural products and putting them into the streams of commerce throughout the entire year for a number of different uses.

We also see that this compromise has struck that balance between the agricultural community, the chemical community and the environmental community. The fact of the matter is it allows something that so many people historically have gotten up and asked for, that is the continue right of local governments to exercise this prerogative and to be effective. And if you do not go for this, what you really have is the notion that the States are an afterthought, after the Federal Government makes up its mind, after the Federal Government has completed a process that may or may not be effective, that may or may not lend itself to local consideration, then the States are brought in after that.

The Panetta amendment is very reasonable, it has been worked out after weeks and weeks of negotiation, and I think that the House ought to support this and let us move on and get what is a very, very important piece of legislation in terms of the protections of the consumers, of our food products in this country. We have gone through the hassle of EDB where it took illnesses on the part of workers, on the part of consumers, the daminozide where we now see our children threatened with the possibility of cancer-producing agents in their bodies, where we saw foot-dragging, where we saw States sought to respond and did. The fact of the matter is we have not seen great disruption where even more leeway is given currently to the States than would be given under the Panetta amendment.

Finally, I would like to thank Congressman BEDELL, who I think has done an outstanding job in processing this legislation, getting it to the floor before we adjourn so we can address this. I would hope that my colleagues would understand that the Panetta amendment is supported by the National Governors Association. I believe they only take a position when two-thirds of the members go on record favoring that position; that they represent both consumer States and large agricultural States, diverse agricultural States. It also reconciles both the industry and consumers.

I would just hope that we would come to a vote on this, we would do it with a great sense of urgency and in understanding that the Panetta amendment allows that process to continue to work with the best interests of our consumers at heart.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. PANETTA] to the amendment offered by the gentleman from Kansas [Mr. ROBERTS].

The question was taken, and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. STENHOLM. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 157, noes 183, not voting 91, as follows:

[Roll No. 398]

AYES—157

Ackerman	Boggs	Carper
Anderson	Boner (TN)	Chapman
Annunzio	Bonior (MI)	Coble
Atkins	Bonker	Coleman (TX)
AuCoin	Borski	Collins
Barnes	Bosco	Conte
Bates	Boxer	Coughlin
Bedell	Brooks	Courter
Beilenson	Bruce	Coyne
Berman	Bryant	Daschle
Boehlert	Carney	Dellums
Derrick	Kostmayer	Rodino
Dicks	LaFalce	Roe
Dingell	Lantos	Roemer
Donnelly	Leland	Rose
Dorgan (ND)	Levin (MI)	Roukema
Downey	Levine (CA)	Roybal
Durbin	Lipinski	Sabo
Dwyer	Long	Savage
Eckart (OH)	Lowry (WA)	Saxton
Edwards (CA)	Lundine	Scheuer
Evans (IL)	Markey	Schneider
Fascell	Martinez	Schroeder
Feighan	Matsui	Schumer
Fish	Mavroules	Seiberling
Florio	McCain	Sharp
Foglietta	McHugh	Sikorski
Foley	McKernan	Smith (FL)
Ford (MI)	Meyers	Smith (NJ)
Frank	Mica	Smith, Robert (NH)
Frost	Miller (CA)	Snowe
Gallo	Miller (WA)	Solarz
Gaydos	Mineta	Spratt
Gejdenson	Mitchell	St Germain
Gonzalez	Moakley	Staggers
Gray (IL)	Molinari	Stark
Gray (PA)	Morrison (CT)	Swift
Green	Murtha	Synar
Guarini	Neal	Torres
Hall (OH)	Nowak	Torricelli
Hayes	Oberstar	Towns
Hertel	Obey	Traficant
Howard	Olin	Vento
Hoyer	Owens	Walgren
Huckaby	Panetta	Waxman
Hughes	Pease	Weaver
Hutto	Pepper	Wheat
Jacobs	Pickle	Wise
Jeffords	Price	Wolpe
Kastenmeier	Rahall	Wyden
Kennelly	Rangel	Yates
Kildee	Reid	
Kleczka	Rinaldo	

NOES—183

Alexander	Flippo	McDade
Andrews	Frenzel	McEwen
Anthony	Gekas	McGrath
Applegate	Gilman	McKinney
Archer	Glickman	McMillan
Armey	Goodling	Michel
Bartlett	Gordon	Miller (OH)
Bateman	Gunderson	Mollohan
Bennett	Hall, Ralph	Montgomery
Bentley	Hamilton	Moorhead
Bereuter	Hammerschmidt	Morrison (WA)
Bevill	Hatcher	Murphy
Bilirakis	Hendon	Myers
Bliley	Henry	Natcher
Boulter	Holt	Nelson
Broomfield	Hopkins	Nichols
Brown (CO)	Horton	Nielson
Burton (IN)	Hubbard	Oxley
Byron	Hunter	Parris
Callahan	Hyde	Pashayan
Carr	Jenkins	Penny
Chandler	Johnson	Perkins
Chappie	Jones (NC)	Petri
Clinger	Jones (TN)	Porter
Coats	Kanjorski	Pursell
Coelho	Kaptur	Ray
Coleman (MO)	Kasich	Regula
Combest	Kolter	Ridge
Craig	Kramer	Ritter
Crane	Lagomarsino	Roberts
Daniel	Leach (IA)	Robinson
Darden	Leath (TX)	Rogers
Daub	Lehman (CA)	Roth
Davis	Lightfoot	Rowland (CT)
de la Garza	Livingston	Rowland (GA)
DeLay	Lloyd	Sensenbrenner
DeWine	Lowery (CA)	Shaw
DioGuardi	Lujan	Shelby
Dornan (CA)	Luken	Shumway
Dreier	Lungren	Shuster
Duncan	Mack	Sisisky
Dyson	MacKay	Skeen
Eckert (NY)	Manton	Skelton
Edwards (OK)	Marlenee	Slattery
Emerson	Martin (IL)	Slaughter
English	Martin (NY)	Smith (IA)
Erdreich	Mazzoli	Smith (NE)
Evans (IA)	McCandless	Smith, Denny (OR)
Fawell	McCloskey	Smith, Robert (OR)
Fiedler	McCollum	
Fields	McCurdy	

Snyder	Tauzin	Whittaker
Solomon	Taylor	Whitten
Spence	Thomas (GA)	Williams
Stallings	Valentine	Wolf
Stenholm	Vander Jagt	Wortley
Strang	Visclosky	Wright
Stump	Volkmer	Wylie
Sundquist	Vucanovich	Young (AK)
Sweeney	Walker	Young (FL)
Swindall	Watkins	Young (MO)
Tauke	Weber	

NOT VOTING—91

Akaka	Fuqua	Mrazek
Aspin	Garcia	Oakar
Badham	Gephardt	Ortiz
Barnard	Gibbons	Packard
Barton	Gingrich	Quillen
Biaggi	Gradison	Richardson
Boland	Gregg	Rostenkowski
Boucher	Grotberg	Rudd
Breaux	Hansen	Russo
Brown (CA)	Hartnett	Schaefer
Burton (CA)	Hawkins	Schuette
Bustamante	Hefner	Schulze
Campbell	Hiler	Siljander
Chappell	Hillis	Stangeland
Cheney	Ireland	Stokes
Clay	Jones (OK)	Stratton
Cobey	Kemp	Studds
Conyers	Kindness	Tallon
Cooper	Kolbe	Thomas (CA)
Crockett	Latta	Traxler
Dannemeyer	Lehman (FL)	Udall
Dickinson	Lent	Waldon
Dixon	Lewis (CA)	Weiss
Dowdy	Lewis (FL)	Whitehurst
Dymally	Loeffler	Whitley
Early	Lott	Wilson
Edgar	Madigan	Wirth
Fazio	Mikulski	Yatron
Ford (TN)	Monson	Zschau
Fowler	Moody	
Franklin	Moore	

□ 1225

The Clerk announced the following pair:

On this vote:

Mr. Russo for, with Mr. Barnard against.

Messrs. LIPINSKI, MILLER of Washington, GONZALEZ, and PRICE changed their votes from "no" to "aye."

So the amendment to the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. WEISS. Mr. Chairman, on rollcall No. 398, the Panetta amendment to H.R. 2482, had I been present—and I missed that vote because of congressional business off the Hill—I would have voted "aye."

□ 1235

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. STENHOLM] as a substitute for the amendment offered by the gentleman from Kansas [Mr. ROBERTS].

The amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kansas [Mr. ROBERTS], as amended.

The question was taken; and the chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. PANETTA. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 214, noes 121, not voting 96, as follows:

[Roll No. 399]

AYES—214

Alexander	Gilman	Pashayan
Andrews	Glickman	Pepper
Annunzio	Goodling	Perkins
Anthony	Gordon	Petri
Applegate	Gray (IL)	Pickle
Archer	Gunderson	Price
Armey	Hamilton	Pursell
Bartlett	Hammerschmidt	Rahall
Bateman	Hatcher	Ray
Bedell	Hendon	Regula
Bennett	Henry	Ridge
Bentley	Holt	Ritter
Bereuter	Hopkins	Roberts
Bevill	Horton	Robinson
Bilirakis	Hubbard	Rogers
Bliley	Huckaby	Rose
Boggs	Hutto	Roth
Bonker	Jenkins	Rowland (CT)
Bosco	Johnson	Rowland (GA)
Boulter	Jones (NC)	Sensenbrenner
Brooks	Jones (TN)	Sharp
Broomfield	Kanjorski	Shaw
Brown (CO)	Kaptur	Shelby
Bryant	Kasich	Shumway
Burton (IN)	Kolter	Shuster
Byron	Kramer	Sisisky
Callahan	Lagomarsino	Skeen
Carper	Leach (IA)	Skelton
Carr	Leath (TX)	Slattery
Chandler	Lehman (CA)	Slaughter
Chapman	Lightfoot	Smith (IA)
Chappie	Lipinski	Smith (NE)
Clinger	Livingston	Smith, Denny (OR)
Coats	Lloyd	Smith, Robert (NH)
Coble	Long	Smith, Robert (OR)
Coelho	Lowery (CA)	Snyder
Coleman (MO)	Lujan	Solomon
Coleman (TX)	Luken	Spence
Combest	Lungren	Spratt
Craig	Mack	Stallings
Crane	MacKay	Stenholm
Daniel	Manton	Strang
Darden	Marlenee	Stump
Daub	Martin (IL)	Sundquist
Davis	Martin (NY)	Sweeney
de la Garza	Mazzoli	Swindall
DeLay	McCandless	Tauke
Derrick	McCloskey	Tauzin
DeWine	McCollum	Taylor
Dicks	McCurdy	Thomas (GA)
DioGuardi	McDade	Traficant
Donnelly	McEwen	Valentine
Dorgan (ND)	McHugh	Vander Jagt
Dornan (CA)	McKinney	Visclosky
Dreier	McMillan	Volkmer
Duncan	Mica	Vucanovich
Durbin	Michel	Walker
Dyson	Miller (OH)	Weber
Eckert (NY)	Mollohan	Whittaker
Edwards (OK)	Montgomery	Whitten
Emerson	Moorhead	Williams
English	Morrison (WA)	Wolf
Erdreich	Murphy	Wortley
Evans (IA)	Murtha	Wright
Fiedler	Myers	Wylie
Fields	Natcher	Young (AK)
Flippo	Neal	Young (FL)
Foley	Nelson	Young (MO)
Frenzel	Nichols	
Frost	Nielson	
Gaydos	Oxley	
Gejdenson	Panetta	
Gekas	Parris	

NOES—121

Ackerman	Boehlert	Coughlin
Anderson	Bonior (MI)	Courter
Atkins	Borski	Coyne
AuCoin	Boxer	Daschle
Barnes	Bruce	Dellums
Bates	Carney	Downey
Beilenson	Collins	Dwyer
Berman	Conte	Eckart (OH)
Edwards (CA)	Levine (CA)	Roybal
Evans (IL)	Lowry (WA)	Sabo
Fascell	Lundine	Savage
Fawell	Markey	Saxton
Feighan	Martinez	Scheuer
Fish	Matsui	Schneider
Florio	Mavroules	Schroeder
Foglietta	McCain	Schumer
Ford (MI)	McGrath	Seiberling
Frank	McKernan	Sikorski
Gallo	Meyers	Smith (FL)
Gonzalez	Miller (WA)	Smith (NJ)
Gray (PA)	Mineta	Snowe
Green	Mitchell	Solarz
Guarini	Moakley	St Germain
Hall (OH)	Molinari	Staggers
Hayes	Moody	Stark
Hertel	Morrison (CT)	Swift
Howard	Nowak	Synar
Hoyer	Oberstar	Torricelli
Hughes	Obey	Towns
Hyde	Olin	Vento
Jacobs	Owens	Walgren
Jeffords	Pease	Waxman
Kastenmeier	Penny	Weaver
Kennelly	Porter	Weiss
Kildee	Rangel	Wheat
Kleczka	Reid	Wise
Kostmayer	Rinaldo	Wolpe
LaFalce	Rodino	Wyden
Lantos	Roe	Yates
Leland	Roemer	
Levin (MI)	Roukema	

NOT VOTING—96

Akaka	Franklin	Monson
Aspin	Fuqua	Moore
Badham	Garcia	Mrazek
Barnard	Gephardt	Oakar
Barton	Gibbons	Ortiz
Biaggi	Gingrich	Packard
Boland	Gradison	Quillen
Boner (TN)	Gregg	Richardson
Boucher	Grotberg	Rostenkowski
Breaux	Hall, Ralph	Rudd
Brown (CA)	Hansen	Russo
Burton (CA)	Hartnett	Schaefer
Bustamante	Hawkins	Schuette
Campbell	Hefner	Schulze
Chappell	Hiler	Siljander
Cheney	Hillis	Stangeland
Clay	Hunter	Stokes
Cobey	Ireland	Stratton
Conyers	Jones (OK)	Studds
Cooper	Kemp	Tallon
Crockett	Kindness	Thomas (CA)
Dannemeyer	Kolbe	Torres
Dickinson	Latta	Traxler
Dingell	Lehman (FL)	Udall
Dixon	Lent	Waldon
Dowdy	Lewis (CA)	Watkins
Dymally	Lewis (FL)	Whitehurst
Early	Loeffler	Whitley
Edgar	Lott	Wilson
Fazio	Madigan	Wirth
Ford (TN)	Mikulski	Yatron
Fowler	Miller (CA)	Zschau

□ 1245

The Clerk announced the following pairs:

On this vote:

Mr. Lewis of Florida for, with Mr. Dixon against.

Mr. Packard for, with Mr. Hawkins against.

Mr. Ireland for, with Mr. Campbell against.

Mr. ROYBAL changed his vote from "aye" to "no."

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. HOYER] having assumed the chair, Mr. MCHUGH, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2482) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, pursuant to House Resolution 536, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. MARLENEE

Mr. MARLENEE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. MARLENEE. I am opposed to the bill in its present form, Mr. Speaker.

PARLIAMENTARY INQUIRY

Mr. GLICKMAN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. GLICKMAN. Mr. Speaker, at what point would it be appropriate to reserve a point of order on the motion to recommit?

The SPEAKER pro tempore. After it is read.

The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. MARLENEE moves to recommit the bill, H.R. 2482 (as amended by H.R. 5440) to the Committee on Agriculture with the instructions that it adopt the following amendment and forthwith report it back to the House:

Amendment to the text of H.R. 5440 (the amendment in the nature of a substitute to H.R. 2482), after page 163, line 21, insert the following new title:

TITLE XII—LIMITATION ON USE OF FUNDS

FEES AND EXPENSES IN CIVIL ACTIONS

SEC. 1201. The Act is amended by inserting the following new section after section 31:

"SEC. 32. Notwithstanding any other provision of law, no attorneys fees or expenses shall be awarded for any civil action brought under section 3(a) of this Act for failure to meet deadlines.".

POINT OF ORDER

Mr. GLICKMAN. Mr. Speaker, I make a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. GLICKMAN. Mr. Speaker, I make a point of order on the motion to recommit that the motion is not germane under clause 7 of rule XVI of the rules of the House. The language of this motion to recommit is substantially identical to an amendment that was offered on this floor which the Chair ruled nongermane.

The rule of germaneness as previously applied by this body applies to the instructions in a motion to recommit a bill to the Committee of the House, so I make the point of order that the motion to recommit is not germane.

The SPEAKER pro tempore. Does the gentleman from Montana wish to be heard on the objection?

Mr. MARLENEE. I do, Mr. Speaker.

Mr. Speaker, my amendment, I submit, is germane for the following reasons:

The title of the bill is for "other purposes" than amending FIFRA.

Other examples of enactments amended by this bill or by the underlying FIFRA Act are the Federal Food, Drug and Cosmetics Act.

The bill authorizes a program and funding for the pesticide program. It also adds a new program, reregistration, new section 3(a) of FIFRA. Both this section and the bill relate to fees and funding for the Reregistration Program. Some of that funding for the Reregistration Program will come from fees assessed against registrants (see page 42 of H.R. 5440) and some will come from appropriated funds.

My amendment would state how some of those funds could not be utilized, and I submit does not violate the rules of the House on that germaneness.

The bill (title VIII) is rife with references to courts and court review.

My amendment is narrowly drawn and applies only to "fees or expenses that shall be awarded for any civil action brought under section 3(a) of the act for failure to meet deadlines."

□ 1300

The SPEAKER pro tempore (Mr. HOYER). The Chair is prepared to rule.

The gentleman from Kansas [Mr. GLICKMAN] makes a point of order that the amendment proposed by the instructions in the motion to recommit offered by the gentleman from Montana [Mr. MARLENEE] is not germane. Volume III, section 2709 of Cannon's Precedents indicates that it is not in order to include in a motion to recommit instructions to insert an amendment not germane to the section of the bill to which offered. While an earlier version of this amendment was held not germane when offered as an amendment to title I of the bill being read title by title, this amendment proposes to add a new title at the end of the bill limiting the award of attorneys' fees in certain civil actions brought under section 16 of the FIFRA law. The test of germaneness is now properly measured against the bill taken as a whole. The Chair notes that section 202 of the bill deals with civil actions against the United States for just compensation, and that the bill extensively amends other sections of the FIFRA law in titles VIII and IX. In the opinion of the Chair, since the bill already deals with issues relating to administrative procedure and judicial review of actions taken under this act, the amendment is germane to the bill as a whole, and the point of order is overruled.

The gentleman from Montana [Mr. MARLENEE] is recognized for 5 minutes in support of his motion to recommit.

Mr. MARLENEE. Mr. Speaker, I will only take a moment to explain what this motion to recommit with instructions does.

It expedites the process of testing and evaluation by avoiding the draining off of funds for litigation that are desperately needed to complete the process to meet deadlines.

This bill sets up the impossible task of meeting 1,100 deadlines. It then handicaps EPA by saying, "We are going to short you $50 million." Then in shortsightedness the bill exacerbates the problem by allowing groups to file lawsuits—nonprofit groups and individuals—against EPA, and then takes the money for that litigation, those people who brought the litigation, takes the money out of funds that could be used to meet the deadlines.

This is a tremendous catch-22 situation which we have created. We have 1,100 deadlines, $50 million short, lawsuits to pay attorneys' fees, less money to complete the work, more time lost, more lawsuits, until this whole merry-go-round collapses into a cloud of star-sprinkled dust where the attorneys go drifting off in a state of euphoria with their fists full of money.

This amendment ends that abuse by allowing the litigant to pick up his own legal fees, not the taxpayer, not the farmer, not the folks who paid the $150,000 to $500,000 for fees for application to get registration, but those who brought the lawsuit on a failure to meet a deadline which is going to only be extended by the Department of Justice anyway, or by EPA anyway.

Make no mistake about it, lawsuits will be filed. The first incentive is to file, because many nonprofits have in-house counsel that do not make the kind of wages that they think that they should be entitled to, and the bill without my amendment is berry-picking heaven for those people.

The second incentive to file the lawsuits is that under the Equal Access to Justice Act, which applies to this bill and to EPA, the courts have already awarded exorbitant fees to environmental activists as a reward for filing lawsuits.

I want to reemphasize that the Equal Access to Justice Act will still apply to all other sections of the bill. The only place that the instructions in this amendment apply to are in missing deadlines, the 1,100 deadlines that we have set up in this bill.

Mr. Speaker, I urge a "yes" vote for recommitment with instructions.

Mr. ROBERTS. Mr. Speaker, will the gentleman yield?

Mr. MARLENEE. I am happy to yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Speaker, I rise in support of the motion to recommit offered by the gentleman from Montana [Mr. MARLENEE].

Mr. Speaker, I submit for the RECORD a letter from the Department of Justice in support of the gentleman's position, and a letter from 16 farm groups also in support of the gentleman's position.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, September 16, 1986.

Hon. RON MARLENEE,
House of Representatives, Washington, DC

DEAR CONGRESSMAN MARLENEE: Attorney General Meese has asked me to respond to your letter of July 31, 1986, regarding your proposed amendment to H.R. 2482, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Amendments of 1986. The Administration supports the enactment of your proposed amendment.

The amendment you propose provides: "Notwithstanding any other provision of law, no attorneys fees or expenses shall be awarded for any civil action brought under this section for failure to meet deadlines."

As you note in your letter, H.R. 2482 would impose a great many deadlines for Environmental Protection Agency (EPA) action, which the Agency has already stated it cannot meet. In turn, EPA will be faced with lawsuits to compel agency action which could result in liability for attorneys' fees and expenses under the Equal Access to Justice Act (EAJA). Similarly, the recent Resource Conservation and Recovery Act and Safe Drinking Water Act Amendments assign the EPA a long list of new deadlines with the attendant exposure to lawsuits and fee awards.

Our records indicate that over $2.6 million have been awarded against the United States in 61 attorneys' fees cases handled by the Land and Natural Resources Division alone since 1980. Attorneys' fees provisions, for the most part, provide little or no guidance as to when an award of attorneys' fees is appropriate, or what constitutes a reasonable award. See generally, *City of Riverside* v. *Rivera*, 106 S.Ct. 2686 (1986). Indeed, in some cases, attorneys' fees awards have greatly exceeded the relief obtained by the parties to the proceeding.

In addition, deadline cases tend to be both legally and factually straightforward. As a result, unbridled fee awards may attract abusive litigation, the real object of which is a fee award rather than the advancement of the environmental goals of FIFRA. Clearly, the taxpayers' money spent on attorneys' fees awards and the administrative expenses of defending such actions is better spent to implement substantive statutory provisions.

Therefore, we concur with your conclusion that allowing attorneys' fees for breaches of every statutory deadline makes little sense and we support your proposed amendment to the 1986 FIFRA Amendments. At a minimum, some restraint on the amount of fee awards should be imposed in deadline cases. The problem of such relatively unproductive litigation could also be addressed through a cap on the allowable hourly rate which courts may award. Please contact us if we can be of any additional assistance on this important matter.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

AN IMPORTANT LETTER FROM PESTICIDE USERS VITALLY INTERESTED IN PRECLUDING REREGISTRATION FEES FROM BEING USED TO PAY FOR ATTORNEYS' FEES IN LAWSUITS BROUGHT TO ENFORCE DEADLINES IN THE REREGISTRATION SECTION OF H.R. 2482

SEPTEMBER 16, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, DC.

DEAR CONGRESSMAN O'NEILL: We are writing to urge your support of the enclosed amendment to H.R. 2482 that will be offered during consideration of the bill by the entire House of Representatives. This amendment, sponsored by Congressman Ron Marlenee (R-MT), would preclude the awarding of attorney's fees to prevailing plaintiffs in lawsuits brought to enforce numerous deadlines in the reregistration section of this bill.

There is no specific attorney's fee provision in FIFRA or in H.R. 2482. However, the Equal Access to Justice Act (EAJA), 28 U.S.C. Section 2412(d), directs the courts to award attorneys' fees to a prevailing party in a suit against the United States unless the court finds that the position of the U.S. is substantially justified. H.R. 2482 specifically states that EPA's failure to meet reregistration deadlines is subject to judicial review and authorizes lawsuits by anyone when EPA misses a deadline. Therefore, these lawsuits brought under FIFRA could result in large attorneys' fees being awarded to the plaintiffs.

There is little doubt that lawsuits will be filed to force EPA to somehow redirect its resources to meet the reregistration deadlines. These suits are increasingly common and consist of little more than a recitation of the deadline, the fact that it has been missed and a request that the court order EPA to act. If the deadline has indeed been missed, EPA often agrees that it did in fact miss the deadline, usually because of insufficient resources and other demands. The Agency then consents to a new court-ordered, realistic "deadline". However, because EPA often acknowledges that it has missed the deadline, the court rules in favor of the plaintiff and pursuant to the EAJA, the plaintiff is entitled to attorney's fees (which may run as high as $150 per hour). Therefore, it is conceivable that a good portion of the revenues collected for reregistration (up to $150,000 per active ingredient in a pesticide) will be used to pay attorneys' fees awarded in deadline suits. These awards could be disastrous in light of the fact that the reregistration program mandated by H.R. 2482 is at least $48 million short. The direct cost to the public is very high-generally about $50,000 per lawsuit to pay plaintiff's attorneys' fees.

The Marlenee amendment would ensure that EPA would be able to direct its finances toward the running of the reregistration program, rather than having them siphoned off in the form of attorneys' fees. The amendment is very limited in scope and applies only to the reregistration section of FIFRA. It preserves completely the right of any individual or group to sue EPA to enforce a deadline. It simply provides that any such lawsuit is funded by the litigant himself, not by the taxpayer.

The groups listed below, and the hundreds of thousands of individuals we represent, respectfully urge your support of the Marlenee amendment to H.R. 2482, as written.

American Association of Nurserymen.
American Pulpwood Association.
American Seed Trade Association.
American Wood Preservers Institute.
Bedding Plants, Inc.
Center for Commercial Floriculture.
Chemical Specialties Manufacturers Association, Inc.
Farm & Industrial Equipment Institute.
Florida Sugar Cane League.
Interior Plantscape Association.
International Apple Institute.
International Sanitary Supply Association.
National Agricultural Aviation Association.
National Arborist Association.
National Association of Wheat Growers.
National Cattlemen's Association.
National Club Association.
National Corn Growers Association.
National Cotton Council of America.
National Council of Agricultural Employers.
National Council of Farmer Cooperatives.
National Fertilizer Solutions Association.
National Food Processors Association.
National Forest Products Association.
National Peach Council.
National Pest Control Association.
Northwest Horticultural Council.
Pesticide Producers Association.
Pesticide Public Policy Foundation.
Professional Ground Management Society.
Professional Lawn Care Association of America.
Rio Grande Valley Sugar Cane Growers Cooperative.
Roses, Inc.
Society of American Wood Preservers, Inc.
United Fresh Fruit and Vegetable Association.
U.S. Beet Sugar Association.

Mr. MARLENEE. Mr. Speaker, the Justice Department does in fact strongly support this position.

Mr. GLICKMAN. Mr. Speaker, I rise in opposition to the motion to recommit.

Mr. Speaker, in the first place, it is important to know that the Committee on Agriculture rejected this amendment.

In the second place, it is important to know that we have something called the Equal Access to Justice Act,

which says that private parties can get their lawyers' fees reimbursed from the Government if the Government acts improperly. That is applied pretty much across the board.

What we do in this amendment is say, "However, if the EPA does not do their job, if they do not reregister pesticides on time, if they act improperly, in those cases, when you try to force the Government to do what is right, you cannot get your legal fees."

The effect of this will be to take all the pressure off the EPA for meeting their deadlines. If the Members here and our constituents want to make sure that the EPA is properly registering pesticides, we need this club over their head to make sure that they do it the right way. That is why we have the Equal Access to Justice Act across the board, the club over the head of the Government to make sure that they are responding in the right way.

To do the proper environmental thing, and to comply with the Equal Access to Justice Act, I urge Members to vote down this amendment.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. MARLENEE. Mr. Speaker, I demand a recorded vote.

A recorded vote was refused.

So the motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DE LA GARZA. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 329, noes 4, not voting 98, as follows:

[Roll No. 400]

AYES—329

Ackerman	Bliley	Clinger
Alexander	Boehlert	Coats
Anderson	Boggs	Coble
Andrews	Bonior (MI)	Coelho
Annunzio	Bonker	Coleman (MO)
Anthony	Borski	Coleman (TX)
Applegate	Bosco	Collins
Archer	Boulter	Combest
Armey	Boxer	Conte
Atkins	Brooks	Coughlin
AuCoin	Broomfield	Courter
Barnes	Brown (CO)	Coyne
Bartlett	Bruce	Craig
Bateman	Bryant	Daniel
Bates	Burton (IN)	Darden
Bedell	Byron	Daschle
Beilenson	Callahan	Davis
Bennett	Carney	de la Garza
Bentley	Carper	DeLay
Bereuter	Carr	Dellums
Berman	Chandler	Derrick
Bevill	Chapman	DeWine
Bilirakis	Chappie	Dicks
Dingell	Levine (CA)	Rose
DioGuardi	Lightfoot	Roth
Donnelly	Lipinski	Roukema
Dorgan (ND)	Livingston	Rowland (CT)
Dornan (CA)	Lloyd	Rowland (GA)
Dreier	Long	Roybal
Duncan	Lowery (CA)	Sabo
Durbin	Lowry (WA)	Savage
Dwyer	Lujan	Saxton
Dyson	Luken	Scheuer
Eckart (OH)	Lundine	Schneider
Eckert (NY)	Lungren	Schroeder
Edwards (CA)	Mack	Schumer
Edwards (OK)	MacKay	Seiberling
Emerson	Manton	Sensenbrenner
English	Markey	Sharp
Erdreich	Martin (IL)	Shaw
Evans (IA)	Martin (NY)	Shelby
Evans (IL)	Martinez	Shumway
Fascell	Matsui	Shuster
Fawell	Mavroules	Sikorski
Feighan	Mazzoli	Sisisky
Fiedler	McCain	Skeen
Fields	McCloskey	Skelton
Fish	McCollum	Slattery
Flippo	McCurdy	Slaughter
Florio	McDade	Smith (FL)
Foglietta	McEwen	Smith (IA)
Foley	McGrath	Smith (NE)
Ford (MI)	McHugh	Smith (NJ)
Frank	McKernan	Smith, Denny (OR)
Frenzel	McKinney	Smith, Robert (NH)
Frost	McMillan	Smith, Robert (OR)
Gallo	Meyers	Snowe
Gaydos	Mica	Snyder
Gejdenson	Michel	Solarz
Gekas	Miller (OH)	Solomon
Gilman	Miller (WA)	Spence
Gingrich	Mineta	Spratt
Glickman	Mitchell	St Germain
Gonzalez	Moakley	Staggers
Goodling	Molinari	Stallings
Gordon	Mollohan	Stark
Gray (IL)	Montgomery	Stenholm
Gray (PA)	Moody	Strang
Green	Moorhead	Stump
Guarini	Morrison (CT)	Sundquist
Gunderson	Morrison (WA)	Sweeney
Hall (OH)	Murphy	Swift
Hamilton	Murtha	Swindall
Hatcher	Myers	Synar
Hayes	Natcher	Tauke
Hendon	Neal	Tauzin
Henry	Nelson	Taylor
Hertel	Nichols	Thomas (GA)
Holt	Nielson	Torricelli
Hopkins	Nowak	Towns
Horton	Oberstar	Traficant
Howard	Obey	Valentine
Hoyer	Olin	Vander Jagt
Hubbard	Owens	Vento
Huckaby	Oxley	Visclosky
Hughes	Panetta	Volkmer
Hunter	Parris	Vucanovich
Hutto	Pashayan	Walgren
Hyde	Pease	Walker
Jacobs	Penny	Waxman
Jenkins	Pepper	Weaver
Johnson	Perkins	Weber
Jones (NC)	Petri	Weiss
Jones (TN)	Pickle	Wheat
Kanjorski	Porter	Whittaker
Kaptur	Price	Whitten
Kasich	Pursell	Williams
Kastenmeier	Rahall	Wise
Kennelly	Rangel	Wolf
Kildee	Ray	Wolpe
Kolter	Regula	Wright
Kostmayer	Reid	Wyden
Kramer	Ridge	Wylie
LaFalce	Rinaldo	Yates
Lagomarsino	Ritter	Young (AK)
Lantos	Roberts	Young (FL)
Leach (IA)	Robinson	Young (MO)
Leath (TX)	Rodino	
Lehman (CA)	Roe	
Leland	Roemer	
Levin (MI)	Rogers	

NOES—4

Crane	Marlenee
Kleczka	McCandless

NOT VOTING—98

Akaka	Aspin	Badham
Barnard	Garcia	Mrazek
Barton	Gephardt	Oakar
Biaggi	Gibbons	Ortiz
Boland	Gradison	Packard
Boner (TN)	Gregg	Quillen
Boucher	Grotberg	Richardson
Breaux	Hall, Ralph	Rostenkowski
Brown (CA)	Hammerschmidt	Rudd
Burton (CA)	Hansen	Russo
Bustamante	Hartnett	Schaefer
Campbell	Hawkins	Schuette
Chappell	Hefner	Schulze
Cheney	Hiler	Siljander
Clay	Hillis	Stangeland
Cobey	Ireland	Stokes
Conyers	Jeffords	Stratton
Cooper	Jones (OK)	Studds
Crockett	Kemp	Tallon
Dannemeyer	Kindness	Thomas (CA)
Daub	Kolbe	Torres
Dickinson	Latta	Traxler
Dixon	Lehman (FL)	Udall
Dowdy	Lent	Waldon
Downey	Lewis (CA)	Watkins
Dymally	Lewis (FL)	Whitehurst
Early	Loeffler	Whitley
Edgar	Lott	Wilson
Fazio	Madigan	Wirth
Ford (TN)	Mikulski	Wortley
Fowler	Miller (CA)	Yatron
Franklin	Monson	Zschau
Fuqua	Moore	

□ 1320

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 2482

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 2482, the Clerk be authorized to make certain technical and clerical changes, including spelling, section numbers and cross-references in error, and the Bedell technical amendments printed on page H7069 of the RECORD of September 17, 1986.

The SPEAKER pro tempore (Mr. HOYER). Is there objection to the request of the gentleman from Texas?

There was no objection.

The Bedell technical amendments referred to are as follows:

Page 44, strike out lines 4 though 9 and insert in lieu thereof the following:

(2) Section 2(u) (7 U.S.C. 136(u) is amended by striking out "and" immediately before the first clause (2) and by adding after "dessicant" a comma and the following: "and (3) any substance or mixture of substances intended for purposes described in subsection (gg)".

Page 116, line 12, insert "and by" before "adding".

Page 140, line 17, strike out "the Board of Agriculture of".

Page 161, line 10, strike out "on" and insert "or".

Page 161, line 10, strike out "ingredient" and insert "ingredient".

Page 162, line 10, insert "such" after "and".

Page 158, after line 10, strike out the item relating to subsection (d).

GENERAL LEAVE

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2482, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERMISSION FOR COMMITTEE ON AGRICULTURE TO HAVE UNTIL MIDNIGHT, SEPTEMBER 20, 1986, TO FILE REPORT ON H.R. 5407

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that the Committee on Agriculture be permitted to have until midnight, September 20, 1986, to file its report on H.R. 5407.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERMISSION FOR COMMITTEE ON MERCHANT MARINE AND FISHERIES TO FILE REPORT ON H.R. 5262, BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE

Mr. THOMAS of Georgia. Mr. Speaker, I ask unanimous consent that the Committee on Merchant Marine and Fisheries have until 6 p.m. on Friday, September 19, 1986, to file the report on H.R. 5262, legislation to establish the Bayou Sauvage Urban National Wildlife Refuge.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. WALKER. Mr. Speaker, reserving the right to object, I do so to ask the gentleman, has this been cleared with the minority? We do not seem to have a record of it.

Mr. THOMAS of Georgia. If the gentleman will yield, yes, it has been cleared with the minority.

Mr. WALKER. Is the bill that the gentleman is filing the report on H.R. 3252?

Mr. THOMAS of Georgia. The gentleman is correct; yes.

Mr. WALKER. 3252.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I would like to inquire of the distinguished majority whip the program for next week.

Mr. FOLEY. Mr. Speaker, will the distinguished minority leader yield?

Mr. MICHEL. I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, we will conclude the business of the House, except for some unanimous-consent requests today; and when we adjourn today we will adjourn to meet at noon on Monday.

There are 24 suspensions under the suspension rule scheduled for Monday. Unless Members wish, I will not read them. They will be voted on on Tuesday; all votes occurring or ordered on those 24 suspensions will be postponed until Tuesday.

On Tuesday, September 23, the House will meet at noon and consider four suspensions, designating the rose as the national floral emblem; the Dwight David Eisenhower Centennial Commission Act; the Bayou Sauvage Wildlife Refuge; and the Maine Central Railroad dispute settlement. With these suspensions, again, any votes will be taken after the debate.

Also to consider H.R. 4134, the age discrimination in employment; and the NASA authorization for 1987; open rule, 1 hour of debate. The age discrimination bill has a modified open rule, 1 hour of debate.

On Wednesday and the balance of the week, the House will meet at 10 a.m. and consider the Omnibus Budget Reconciliation Act, subject to a rule being granted; continuing appropriations, subject to a rule being granted; and the Tax Reform Act.

□ 1330

A rule has already been granted on that by unanimous consent. That has been cleared for action.

I should advise Members that there is a very high probability of a Friday session next week.

In accordance with the earlier announcement of the leadership, Fridays are probable days for the scheduling of action on the floor with votes, and that will apply to next week as it has to this week. So Members should assume that there will be a session from 10 a.m. until 3 p.m. next Friday with recorded votes.

I do not have a precise schedule for that day. It will depend on action on other bills earlier in the week. But the probability is extremely high.

Mr. MICHEL. And is it not true on Wednesday then we would definitely take up reconciliation first, as the first order of business?

Mr. FOLEY. Yes. The plan is to adopt a rule, to go to the Rules Committee on Tuesday for the reconciliation bill, take that up on Wednesday before the continuing appropriations.

Mr. MICHEL. Yes. And if perchance there was to be a possible action on a joint House-Senate Budget Committee report, say for example sequestering, it would not take place until Thursday, is that not correct?

Mr. FOLEY. Well, under the unanimous-consent agreement that has been reached this morning that is subject to being called up only by the chairman of the Committee on the Budget or his designee or the ranking Republican member, Mr. LATTA, or his designee. But I would assume that those two Members would not wish to call up any sequestration assuming the adoption of a satisfactory reconciliation act.

Mr. MICHEL. And on the tax bill is it more likely to come up on Thursday?

Mr. FOLEY. Thursday.

Mr. MICHEL. Definitely on Thursday?

Mr. FOLEY. I believe it will be on Thursday. I cannot give the gentleman an assurance that it is not possible that some of this legislation may be coming up on Friday, but there is no plan to bring the tax bill up on Friday. The assumption is it will be Thursday.

Mr. MICHEL. Well, I just have several of the Members of the Committee on Ways and Means on the floor. I would hope that that printed report will be available to Members.

Mr. FOLEY. I am told the report will be available on Saturday, tomorrow.

Mr. MICHEL. Tomorrow, in other words.

Mr. FOLEY. Yes. I hope there is not sufficient distrust that they thought that I meant Saturday a week from now.

Mr. ARCHER. Will the gentleman yield further on the scheduling of the tax bill?

Mr. MICHEL. I yield to the gentleman from Texas.

Mr. ARCHER. There is no opportunity or possibility that it will come up on Wednesday?

Mr. FOLEY. No; we are not planning for the bill to come up then.

Mr. ARCHER. Thursday would be the earliest possible date then for debate on the tax bill.

Mr. FOLEY. Yes; the gentleman is correct.

Mr. ARCHER. I thank the gentleman.

Mr. MICHEL. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

I have just a question: The gentleman has indicated a very strong possibility of a Friday session. From what I have been hearing discussed here, I do not hear from the schedule that we have been presented that there would be any real need for a Friday session based upon that schedule. Are we expecting additional legislation to come to the floor that is giving the gentle-

man a reason to suggest a Friday session?

Mr. FOLEY. Possibly we will take up some rules that would be adopted next week, on Friday. It is anticipated the Committee on Rules will be acting on some bills, and it is possible Friday would be a day on which rules would be considered.

I again repeat: Members should not assume the likelihood of a Friday session being canceled. They should assume the strong possibility, if not the certainty, that Friday will be a working day with votes. I do not like to put it in terms of odds, but the odds are about 10 to 1 that we will be voting on Friday.

Mr. MICHEL. Might I make the observation that if we are serious about getting out on October 3 I think it is absolutely imperative that we do some of the kinds of things that the gentleman is talking about on next Friday in order to be in a position the following week to drive toward that adjournment, if that is the will of the House.

Mr. WALKER. If the gentleman would yield further, I understand that. I think that that makes a lot of sense. The only problem is with taking up rules that that is in fact something that could be done on Thursday rather than doing it on Friday.

What I am concerned about is that there may be major legislation sitting around that we are planning to bring up that we are not seeing reflected in the schedule.

Mr. FOLEY. Let me give the gentleman a supposition which I hope does not occur, but in the event that a rule on one of the major bills was not agreed to and it was necessary to go back and do another rule and to consider that rule again, this would be one of the factors that could push us into a Friday session.

So I just tell the gentleman that there are not only contingencies but there are also possibilities of other legislation having rules granted that we would want to consider those rules or perhaps do some general debate in order to move the House forward. As the distinguished leader has said, we are struggling to achieve an October 3 adjournment date. That is going to be difficult at best. I think it would require us working on Fridays from now until the end of the session, and next Friday will be a working day, in my judgment.

Mr. WALKER. I thank the gentleman for yielding.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from California.

Mr. LUNGREN. I thank the gentleman for yielding.

I just noticed I guess there are about 32 separate legislative items here. One that is not, and I would assume it is not just an oversight, is the immigration bill. Judging from this calendar should we feel that in fact there is no hope that the immigration bill will be scheduled for action next week?

Mr. FOLEY. No; I do not think we should assume there will be no action on the immigration bill next week. The Committee on Rules is meeting on the bill on Tuesday, and it is possible that the rule might be considered later in the week. The scheduling time that has been originally set for the committee to consider the bill on the floor was next week, but because of the changes in the schedule on the continuing resolution and the reconciliation bill, it now appears impossible to actually consider the bill next week and the schedule was tentatively set for the 29th and 30th. The chairman of the Judiciary Committee, who is in the Chamber, has advised us that on that day he, as chief manager on the part of the managers of the House in the impeachment proceedings in the other body, together with the ranking member of the committee and other prominent Members on both sides of the aisle, will be engaged in the impeachment proceeding before the full Senate. It is thus our task now to try to find a date before the adjournment of the House and Senate in which to conclude the legislation.

We are not slack in our efforts in finding a date. This is an unfortunate problem that many significant members, important members, ranking members of the Judiciary Committee, including its chairman and its ranking Republican member, are engaged in an historical trial in the other body on a matter which requires their presence. They are, in effect, the prosecuting managers on behalf of the House.

So the scheduling of that bill on that date now appears impossible.

Mr. LUNGREN. If the gentleman would yield further, I appreciate the gentleman's comments, and I am sure the people living on the Southwest border will be relieved to know that we are not slack in our responsibilities in attempting to deal with this. It may be just coincidence but the gentleman will recall two Congresses ago this was put to the very end in a lame duck session, and of course we failed to act, even get it out of the House. Two years ago in the last Congress, we worked on it very, very late, got it through a conference very late, only with a month to deal with it. Now the gentleman is telling me because of other circumstances, unfortunate as they may be, we will at best hope to have this on the floor in the last 5 days, have scheduled, and then maybe be able to go to a conference and have it completed.

Mr. FOLEY. We can accommodate the original dates by a change in the other body's calendar on the trial. But that would be a changed circumstance. But I cannot promise the gentleman that that is going to happen. We just have to deal with this reality as it occurs. The gentleman is a member of the committee. He knows there is an historic impeachment trial in the other body. We have not experienced one in this country for 50 years. Under the Constitution, as the gentleman knows it is the charge of the House of Representatives to present the evidence of the full Senate. That is a matter that just unfortunately appears to be at this moment on the 29th and 30th to be in direct conflict, and it is required that the chairman of the Committee on the Judiciary as the chief manager, and the ranking Republican member and other members be present in the other body if the present other body's schedule is as presently announced.

Mr. LUNGREN. I understand what the gentleman is saying. I am just saying some of us were saying to the leadership on the other side of the aisle last January and last year that we would find ourselves in exactly the spot we have now, on immigration reform. The gentleman says we have not had a major impeachment in 50 years. That is true.

I do note on the Suspension Calendar we are commending the Peace Corps' 25th and the ACDA 25th anniversary. We might be here next year having an anniversary date of 25 years since we last dealt with immigration in a comprehensive fashion. That is the problem. Maybe I should have gone in that direction for commemorative legislation and then we would have accomplished something.

But I appreciate the excuses we have now, and I realize they are sincere. But this is precisely what we suggested was going to happen to us last year and the year before, and again it is occurring.

Mr. FOLEY. I hope the gentleman will attempt to be constructive.

Mr. RODINO. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from New Jersey.

Mr. RODINO. Only for a moment, and only because the majority whip indicated some suggestion that possibly the other body might be able to change that date. That has been written into the resolution under which the impeachment issue was taken up in the other body. That is set on the beginning of the week of the 29th that the other body, the full Senate will take up this impeachment.

ADJOURNMENT TO MONDAY, SEPTEMBER 22, 1986

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 12 noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

DESIGNATION OF HON. THOMAS S. FOLEY TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS UNTIL SEPTEMBER 23, 1986

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
September 19, 1986.

I hereby designate the Honorable Thomas S. Foley to act as Speaker pro tempore to sign enrolled bills and joint resolutions until Tuesday, September 23, 1986.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the designation is agreed to.

There was no objection.

EXTENDING SBA PILOT PROGRAMS UNDER SECTION 8 OF SMALL BUSINESS ACT

Mr. MITCHELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2787) to extend through fiscal year 1988 SBA pilot programs under section 8 of the Small Business Act, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, after line 2, insert:

TITLE I—SMALL BUSINESS PILOT PROGRAMS

Page 1, line 3, strike out "SECTION 1." and insert "SEC. 101.".

Page 1, line 9, strike out "SEC. 2." and insert "SEC. 102.".

Page 1, line 13, strike out "SEC. 3." and insert "SEC. 103.".

Page 2, after line 2, insert:

TITLE II—TECHNOLOGY TRANSFER INSTITUTE AUTHORIZED

SEC. 201. (a) The Secretary of Education (hereafter in this title referred to as the "Secretary") is authorized to provide financial assistance, in accordance with the provisions of this title, to pay the Federal share of the cost of construction and related expenses for the establishment of the Technology Transfer Institute at the University of Bridgeport, located at Bridgeport, Connecticut, to be used to revitalize the competitiveness of small business industry in America, particularly in the international marketplace, and to serve as a regional demonstration center transferring emerging technology to small businesses.

(b)(1) No financial assistance may be made under this section unless an application is made at such time, in such manner, and continuing or accompanied by such information as the Secretary may reasonably require.

(2) The Federal share may not exceed 50 percent of the cost of the project authorized by this title.

(c) There are authorized to be appropriated such sums, not to exceed $10,000,000, as may be necessary to carry out the provisions of this title. Funds appropriated pursuant to this section shall remain available until expended.

Mr. MITCHELL (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Maryland?

Mr. BEREUTER. Reserving the right to object, I reserve the right simply to give the gentleman from Maryland an opportunity to explain the purpose of the legislation, and I yield to the gentleman for that purpose.

Mr. MITCHELL. I thank the gentleman for yielding.

Mr. Speaker, this legislation was introduced by our late colleague, the gentleman from New York [Mr. ADDABBO] in June 1985, reported in December 1985. The purpose of the bill is to extend through 1988 two pilot programs administered by the SBA, the procurement pilot program and the surety bond waiver pilot program.

Under both of these programs which have been in operation under the last pilot program, which proved to be successful, the House passed the bill under suspension of the rules by voice vote on December 16, 1985. The other body did not amend the substantial provisions of the House bill, but instead on June 25, 1985, added an amendment authorizing a technological transfer institute at the University of Bridgeport.

That is the only change that was made. Yesterday I was advised that the Senate amendment which would be within the jurisdiction of the House Committee on Education and Labor, we got clearance from that committee and we were also advised that this is acceptable to the ranking minority member on the Small Business Committee, Congressman MCDADE.

Mr. BEREUTER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Maryland?

There was no objection.

A motion to reconsider was laid on the table.

COMMEMORATING 100TH ANNIVERSARY OF THE BIRTH OF DAVID BEN-GURION

(Mr. YATES asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. YATES. Mr. Speaker, I am filing today a House concurrent resolution to commemorate the 100th anniversary of the birth of David Ben-Gurion, the first Prime Minister of the State of Israel and the man generally acknowledged to be the person most responsible for the creation of that nation.

The Ben-Gurion Centennial, proclaimed by Israel's parliamentary body, the Knesset, will take place from October 19, 1986, until May 4, 1987. Its celebration will take place in Israel, in the United States and many other countries. President Ronald Reagan will act as honorary chairman of the Ben-Gurion Centennial Committee for the United States.

Mr. Speaker, I am appending to my statement a brief summary of the high points in Ben-Gurion's career. I am also appending a copy of the House concurrent resolution I have filed today.

DAVID BEN-GURION

"He was born before he had a homeland, he was a leader in war before he had an army, he became a statesman before he had a state. He derived his strength from imagination."

So writes Shimon Peres, Prime Minister of Israel, of his mentor, David Ben-Gurion. Clearly, Ben-Gurion was the soul of his nation. But how did such a remarkable life take shape?

He was named David Yosef Gryn at his birth in Plonsk, Poland, under Czarist Russian rule, on October 16, 1886. As a teenager, he founded the Zionist Ezra Society. At 29, he emigrated to Palestine, an act he considered his second birth and later commemorated by changing his surname to Ben-Gurion

In 1915, expelled from Palestine by the Turkish government, he set sail for New York where he continued his activities on behalf of his brethren. The year 1917 saw two events that deeply affected his life: the Balfour Declaration, proclaiming support for Palestine as the Jewish homeland and his marriage to Paula Munweiss, with whom he would have three children.

Years of challenge followed as Ben-Gurion was elected in 1920 to be the head of Histadrut, the Israel Federation of Labor. In 1935, Ben-Gurion assumed the leadership of the Jewish Agency, the de facto Jewish government in Palestine.

The Biltmore Conference held in 1942 proclaimed that the establishment of a Jewish State was the goal of the Jews

worldwide. In the aftermath of World War II, Ben-Gurion reluctantly acceded to the United Nations' decision to partition Palestine into two states, Arab and Jewish. On May 14, 1948 he proclaimed the establishment of the State of Israel. President Harry Truman, on behalf of the United States of America, recognized the Jewish State just eleven minutes later. Hours later, in his dual role as Prime Minister and Minister of Defense, Ben-Gurion found himself defending the new nation against the invading armies of five Arab countries.

At the height of his powers, Ben-Gurion moved again to live the life of a pioneer. He needed to participate in what he had been preaching for all those years, the greening of the desert. In December of 1953, he retired to a kibbutz in the Negev Desert, but destiny would not let him rest. In 1955, then 69 years old, he was called back to head the government during a crisis and served as Prime Minister until 1960. Political defeat and disappointment followed and the "Old Man," as he was affectionately called, retired once again and finally to the Negev Desert, where he spent his time quietly studying, writing, and reading with friends. He died on December 3, 1973 at the age of 87.

H. CON. RES. 392

Concurrent resolution commemorating the 100th anniversary of the birth of David Ben-Gurion.

Whereas David Ben-Gurion is a man of great historical importance, not only to the Jewish people but to all people striving for freedom;

Whereas his leadership made realizable the ingathering of the exiles that brought millions of homeless Jews scattered throughout the world to Israel where they were united with each other and with their ancient homeland;

Whereas the Declaration of Independence of the State of Israel, a milestone in the life of David Ben-Gurion, echoes our own Declaration in its recognition of the universal equality of man;

Whereas as Israel's first Prime Minister and Minister of Defense, Ben-Gurion led the newly formed State through its most difficult period, directing the desperate efforts to secure Israel's survival and independence;

Whereas his pragmatic solutions to Israel's overwhelming problems, paralleled with his desire to create a society based on justice and peace, guided the fledgling State and formed the values on which Israel rests today and the basis for what Israel strives for in the future;

Whereas Ben-Gurion's vision of the Greening of the Desert through the application of science and technology continues to be an important aspect of Israel, as well as a factor that can help solve food production problems in arid regions all over the world;

Whereas this year marks the hundredth anniversary of the birth of David Ben-Gurion, leader of his people for two generations;

Whereas the United States and Israel share many of the same fundamental values of democracy and freedom, and a common history of accepting immigrants from all over the globe: Now, therefore, be it

Resolved by the House (the Senate concurring), That the Congress of the United States, in this the centennial of David Ben-Gurion's birth, joins in the celebration of this great statesman, urges all Americans to take note of this commemoration, and applauds The David Ben-Gurion Centennial Committee of the United States of America in its work promoting the yearlong national celebration of David Ben-Gurion and his achievements: Be it further

Resolved, That the Congress urges the President of the United States to issue a proclamation in honor of this celebration.

❑ 1345

OIL IMPORT FEE

(Mr. LUJAN asked and was given permission to address the House for 1 minute.)

Mr. LUJAN. Mr. Speaker, in the past I have been what you might call lukewarm to cool in my feelings toward oil import fees. Like many of my colleagues, I basically believe in the free market system.

In recent months, however, it has become apparent that the United States is about to be victimized by a slick maneuver on the part of OPEC to control the world oil markets for many years to come.

I strongly believe that OPEC has as one of its goals the elimination of the independent oil producer in the United States. They also aim to put an end to other high-cost exploration around the world, particularly in China and in the North Sea.

Once that happens—when the majority of our independent producers have been forced out of business—the price of oil will start to climb and the United States will be at the mercy of the Saudis and other OPEC countries.

I have been joined by some of my colleagues in asking the President to impose an oil import fee under section 232 of the Trade Expansion Act of 1962. Under the provisions of that act, the President is supposed to act when imports are a threat to national security and when it is apparent that a vital domestic industry is threatened.

There is no question but what this is a national security issue. And if the present trend continues, the majority of our independent oil producers will be out of business within a year.

The independent producers have always been the backbone of the Nation's oil industry. If they are forced out of business, consumers everywhere will start paying the price.

What we have right now is not a free market system at work, but an organized long-term program to dominate world oil markets.

I hope the President acts soon on an oil import fee. If he does not, this body will soon have the opportunity to do so when we consider the budget reconciliation resolution.

It is time we take action. It will produce some badly needed revenues, perhaps $10 billion next year, it will save many of our stripper oil wells which otherwise will be lost forever, and it will be an important step toward maintaining national energy security.

MORNING IN AMERICA

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, 2 years ago we were told it was morning in America. Missouri family farmers wanted to believe morning had arrived, a new day had begun. But for many, night has now fallen.

The family farmer today believes three things: This administration misled them with its theory of lower prices/higher exports; this administration is content to sit back while many family farmers suffer; and the administration and others, including the Farm Bureau, are anticipating the death of the family farmer.

My farmers are looking at bumper crops this fall. But they are also looking at the lowest prices since the early 1970's. If lower prices mean higher exports, then right now our export numbers would be going off the charts. They aren't. In fact, in the past few months we have imported more agricultural products than we exported. And still this administration and the Farm Bureau call for lower prices. Dick Johnston, president of the Missouri Farm Bureau, last week called for lower prices. My farmers can't afford lower prices. I know this administration realizes lower prices are ruining family farmers. And I suspect that has been the adminstration's plan all along. Morning in America to the administration and to the Farm Bureau conjures up visions of the Sun rising on huge corporate farmers, not on our family farmers.

TAX REFORM IS ON COLLISION COURSE WITH TAXPAYERS

(Mr. MARLENEE asked and was given permission to address the House for 1 minute to revise and extend his remarks.)

Mr. MARLENEE. Mr. Speaker, I would urge the people of this country not to let their Congressman steamroller them. I would want them to beware the runaway steamroller of tax reform or simplification is on a collision course with the taxpayers of America.

Not only does so-called tax reform smash IRA's, investment credit, capital gains, and other incentives to create jobs and productivity, but the great tax simplification fraud is also paving the way for tax increases.

The engineer of the tax reform steamroller himself, the House Ways and Means Committee chairman, has said, "everyone knows we need a tax increase" and "the increase in revenue should come through higher progressive taxes on income."

The plot is simple: Trade deductions for lower rates, then raise the rates. And middle America pays again.

Stripped of tax shelters by the fraud of tax simplification, taxpayers will have no protection from these higher progressive taxes.

The runaway steamroller of tax reform is on a collision course all right. Everything in its way will be laid flat. Taxpayers will be flat broke, and the economy will be flat on its back.

I urge everyone to speak out now and oppose the tax simplification fraud. It is easier to do it now than when you are flat on your back.

A TRIBUTE TO N.J. FORD, A POLITICAL PATRIARCH

(Mr. JONES of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. JONES of Tennessee. Mr. Speaker, yesterday Mr. N.J. Ford, the father of our colleague Representative HAROLD FORD, was laid to rest in Memphis, TN. I call this to the attention of our colleagues in the event they might want to extend their sympathies to HAROLD and his family.

I also bring it up at this time because Mr. N.J. Ford, and the legacy he leaves, is worthy of our admiration and our respect. He was a man who faced the difficulties of discrimination in the South, who rose above them, and who was not content with letting the status quo remain so. He instilled in his family the desire and the need to be active and constructive in their community. Consequently, 4 of his 12 children have been elected to public office. Three, including our colleague HAROLD FORD, continue to serve their people in a public capacity.

It is the kind of heritage that all of we Americans can be proud of and it is that devotion and commitment to his community and his race that N.J. Ford leaves to his children, his grandchildren, all Tennesseans, and all Americans. We can all be proud that N.J. Ford shared his visions with us. We can be thankful that we will personally continue to share his vision through his son and our colleague HAROLD FORD.

I am inserting in the RECORD the newspaper clipping that appeared in the Memphis Commercial Appeal newspaper this morning in memory of Mr. N.J. Ford and extend my deepest sympathy to his family.

N.J. FORD "GOES HOME" IN A CELEBRATION—SENATORS, MAYORS, CONGRESSMEN ATTEND POLITICAL PATRIARCH'S FUNERAL

(By Michael Kelley and Terry Keeter)

Memphis's best-known political patriarch was buried yesterday to a chorus of praise from the city's black community and a number of white admirers as well.

"We're celebrating N.J. Ford's homegoing, you all—it's a celebration," said Rev. Samuel Billy Kyles. And mourners at the Pentecoastal Temple Institutional Church of God in Christ took the admonition to heart.

Speakers were applauded, singers, including Carla Thomas and Maggie Bratcher were cheered, and a successful man's life was reviewed with admiration. Mr. Ford, whose close, intimate circle of friends called him Brother, was the father of Harold Ford, a U.S. Representative; John Ford, a state senator, James Ford, a city councilman; Emmitt Ford, a former state representative, and eight other children.

Mr. Ford died suddenly on Saturday at the age of 72.

In the front row at his funeral service were Tennessee's U.S. Sens. Jim Sasser and Albert Gore, Jr., Democratic gubernatorial candidate Ned McWherter, Public Service Commissioner Jane Eskind and Mr. Ford's widow, Vera.

Four of Harold Ford's fellow Democratic House members—Rep. Ron Dellums of California, Rep. Louis Stokes of Ohio, Rep. Mickey Leland of Texas, and Rep. Charles Rangel of New York—attended. Also present was Tennessee Lt. Gov. John Wilder.

Shelby County's six state senators—including Republicans Curtis Person and Leonard Dunavant—and most of the county's House members were prsent, as was Steve Hewlett, the Democratic nominee for the PSC seat being vacated by Mrs. Eskind.

Mayor Dick Hackett and county Mayor Bill Morris were both there along with a number of members of the City Council and county commission.

The auditorium, which holds 2,500 people, was filled with admirers.

The body lay in a slate-colored casket adorned with red and white roses and carnations, sprays of red, white and pink roses, antheriums and carnations flanking it on the royal blue carpet.

The music included a violin solo by Shelly Branch, one of Mr. Ford's 40 grandchildren.

The eulogy was delivered by Dr. Benjamin L. Hooks, executive director of the NAACP. Messages of condolence came from such figures as Jesse Jackson of Operation PUSH.

"He came up in a time when he rode in the back of the streetcar, in the front of the train, and sat in the third balcony in the movie theater," Dr. Hooks said.

"Yet he lived to see the day when we would drive the trains, own the buses and sit wherever we wanted in the movie theater . . .

"He lived to see a son in the Congress, another in the Senate . . . another in the City Council, and he, himself, a delegate to a constitutional constitution.

"From the back side of Southwest Shelby County, he leaped to the pinnacle . . . because there was something within him that would not yield to obvious circumstances."

Bishop J.O. Patterson of the Church of God in Christ said: He raised his family during a period "when fathers felt responsible for for their children."

Burial was in Ford's Chapel AME Zion Church Cemetery.

AMERICAN MIA'S AND POW'S IN VIETNAM

(Mr. SMITH of New Jersey asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of New Jersey. Mr. Speaker, the difficult and the heartbreaking mission of accounting for American POW's and MIA's in Southeast Asia continues.

Currently there are over 110 active cases of live sightings under investigation by DIA, at least 63 of those cases deal with Americans held prisoner.

In testimony before the House task force on POW/MIA's of which I am a member, former Director of DIA General Tighue, said "I would not be at all surprised if there are today some 50 American military personnel still alive in Vietnam."

Last February, Mr. Speaker, I joined several members of our task force in Hanoi for talks with high level Vietnamese officials.

Our meetings with Deputy Foreign Minister Hoang Bich Son, who heads the POW/MIA effort for the Vietnamese produced some significant breakthroughs.

Mr. Son admitted that there may be American servicemen in Vietnam, but he emphasized that they were not under his government's control. The Vietnamese could be signaling that they now are looking for a way to "find" some Americans while at the same time, "saving face." For years they have adamantly contended that there were no Americans in Vietnam. Additionally, Mr. Son said that three search teams were formed to investigate "live sightings" and to continue the search for remains of deceased U.S. servicemen. Mr. Son held out the possibility that American investigators might join Vietnamese search teams in the near future. He said he hoped this "humanitarian" issue could be resolved within 2 years.

Clearly the time has come, Mr. Speaker, to accelerate our efforts so as not to leave a single stone unturned. American POW/MIA's deserve no less.

MARKET-ORIENTED SECTOR SPECIFIC TALKS

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, just last month, the United States sent a team of negotiators to Tokyo to begin the new round of bilateral trade talks regarding auto parts. These negotiations, the market-oriented sector specific [MOSS] talks, are essential in a time of $70 billion deficits with Japan, half of that being in autos and auto parts. With a $15 billion share of our market, Japanese firms use less than 2 percent of United States manufactured parts in their production in Japan. But even more disturbing is that many of the parts imports coming into this country from Japan as original equipment parts are being shipped

directly to Japanese transplant auto assemblies here in the United States. The real shame is that makers of these parts are not competing fairly with American manufacturers because American manufacturers aren't even allowed to bid on the business. How can we let this happen in our own country.

The U.S. negotiators thus far have missed two key negotiating points. First, foreign investment must be included in the MOSS negotiations, because many of the barriers our companies face in getting a two-way street in trade are imbedded in the closed relationship between Japanese manufacturers and Japanese suppliers, both the United States and in Japan. Our companies and our workers are imploring the administration and the Japanese Government to consider the effects of direct foreign investment in the United States by the Japanese and to recognize the effects that these behavioral impediments have on free and fair trade.

Finally, Mr. Speaker, we must set targets for the Japanese to purchase American-made automotive parts. Because of the nature of the barriers present, there will be no other way to measure success than by numbers. American automotive parts companies hold about 23 percent of the world auto market, and less than 1 percent of the market in Japan. We should expect that within 5 years, we would hold 23 percent of the Japanese market, and 75 percent of our own market. As a Member of the House auto parts caucus watching these negotiations. I am expecting great things, and Japan should be certain that we will measure such success.

□ 1355

HOUSE CONCURRENT RESOLUTION 129, LEGISLATION TO CREATE COMMISSION TO FREE U.S. POW'S IN SOUTHEAST ASIA

(Mr. DREIER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER of California. Mr. Speaker, I rise today to once again remind this body that there are still over 2,400 missing Americans in Southeast Asia. As we mark POW/MIA Recognition Day, I think we should also recognize the families of these missing heroes.

Despite the efforts of the past three administrations, the families have waited patiently as the fates of their husbands, fathers, sons, and brothers have been held hostage—some for over 20 years now. Just as America sought to gain the release of the hostages held in Iran and just as we seek to free those in Lebanon, it should be our urgent duty to account for missing servicemen in Vietnam and Laos.

In an attempt to review this effort, I am particularly pleased to announce that, as of today, nearly 240 of our colleagues have agreed to cosponsor House Concurrent Resolution 129 to establish a congressional commission to free U.S. POW's who are being held in Southeast Asia. This commission would be named for that great American who invested so much of his own time and effort for our POW's—Mr. H. Ross Perot.

Mr. Speaker, I want to thank my colleagues who have signed on to this legislation and I urge the House to consider it favorably before we adjourn this session. Let's bring our missing men home at last.

CONGRESS MUST ACT TO BAN THE SCRAMBLING OF TELEVISION SIGNALS

(Mr. WISE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WISE. Mr. Speaker, I speak today in behaof of the satellite dish owners of the United States and particularly West Virginia. There is a scrambling problem, Mr. Speaker. In many rural areas there is not adequate television reception. In other areas, cable TV is either not accessible, not affordable or simply not available.

Now, more and more program producers are scrambling their signals. The result is a blackout in many rural areas. No one objects to a fair price but $400 for a decoder plus a high monthly fee simply is too much. Many of us have been pushing for lower prices, but so far we have not been successful. We need to be able to put pressure to accomplish this.

Already I have cosponsored three bills to stop scrambling or at least ban it for 2 years while we try and work our way through this problem. In furthering this, I have also signed a discharge petition to bring the bill to the floor to stop scrambling.

Our hope is to bring it to the floor for immediate consideration and to put the pressure on that we so badly need. To guarantee fair-priced and adequate television viewing, this Congress must act soon to ban scrambling of television signals. I hope others will join me in this effort.

GRAVE HUMAN RIGHTS SITUATION OF IOAN CONSTANTINE RUTA

(Mr. FRENZEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. FRENZEL. Mr. Speaker, I would like to invite the attention of the Members of this House the grave human rights situation of Mr. Ioan Constantine Ruta of Bucharest, Romanio. Mr. Ruta has been imprisoned since February of this year on charges of "bribery" in the Jilava secret police prison in Bucharest. He was detained shortly after his wife, Mrs. Rodica Ruta was granted political asylum in the United States. Mr. Ruta and his daughter Alina are waiting for exit permits to join Mrs. Ruta in the United States.

Last week Alina Ruta was finally granted permission to see her father. Prior to this visit she had been permitted to see him only once. Mr. Ruta, who entered prison with a heart condition, told his daughter that he had suffered two heart attacks since his detention. He has also lost 70 pounds and is suffering from a liver ailment.

Despite assurances from the Romanian Embassy that Mr. Ruta is in good health, I have learned that Mr. Ruta is not receiving any medical treatment. Recently, at a court hearing on Mr. Ruta's case, three doctors testified that he should be transferred to a hospital. Repeated requests by Alina to supply medication to her father have all been denied.

I have always been a strong supporter of most-favored-nation status for Romania. Among other reasons, the renewal of MFN each year allows us to evaluate human rights in Romania. Unfortunately, my patience with the Romanians wears thin when presented with such serious human rights violations like those against Mr. Ruta. It is violations like this which encourage Members of Congress to oppose MFN status.

I have written a letter to President Ceausescu of Romania requesting his personal assistance in the transfer of Mr. Ruta to a hospital and providing him with appropriate medical treatment. I will report to the House on his response.

FAIRNESS CALLED FOR IN ROMANIAN INCIDENT

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. Mr. Speaker, I want to rise in support of what Congressman FRENZEL said with regard to the case of the individual who is being held by the Romanian Government. We, today, got a letter signed by about 30-some Members of Congress who support modifying or doing away with the MFN.

I want to tell the Romanian Government something clearly: If you do not allow this individual to get out of jail and be released and get medical treatment and sent to the United States, we in this body are going to knock out MFN. So here is a chance for Presi-

dent Ceausescu. Release this guy and show that you mean something or, if you do not, you are going to lose MFN.

THE HOPES OF ALL HUMANITY

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, Soviet Foreign Secretary Shevardnadze has arrived in the United States to discuss with Secretary of State Shultz the upcoming summit meeting between President Reagan and Secretary Gorbachev. The hopes of all of humanity rest on the outcome of those meetings because the very future of humanity may in fact depend on our two leaders, the leaders of these two major superpowers, taking steps toward the reversal of the nuclear arms race.

The House of Representatives a few weeks ago in adopting the Department of Defense authorization bill adopted a provision by a margin of 80 votes which mandated a moratorium on the testing of nuclear explosives of over 1 kiloton so long as the Soviet Union itself adheres to that same test.

It is to be hoped that President Reagan will follow the lead of the House and undertake to negotiate with the Soviet Union a comprehensive test ban agreement.

It is time for the Reagan administration to get serious about banning nuclear explosions once and for all.

Nuclear testing permits the superpowers to develop new weapons that are more powerful, more accurate, and more dangerous than ever before. It helps drive the arms race forward.

For this reason every President from Dwight Eisenhower through Jimmy Carter has pursued a comprehensive test ban treaty. For this reason, the American public wholeheartedly supports a test ban. For this reason, both the House of Representatives and the Senate have previously passed nonbinding resolutions calling on the President to reopen negotiations with the Soviet Union. And for this reason, the House recently passed as part of the Department of Defense authorization bill a ban on nuclear tests over 1 kiloton.

But up to this moment Ronald Reagan would have none of it. He is the first President of the nuclear age who does not include a comprehensive test ban treaty as one of his major foreign policy objectives. He has ignored the pleas of the American people to negotiate. He has ignored the will of Congress. And he has ignored the overtures of the Soviets, who have refrained from nuclear testing for more than a year and have permitted seismic monitoring equipment to be placed in their nation by United States scientists.

The President claims that a test ban can't be verified. He claims that we need to explode our weapons to see if they really work. But these claims are simply not true. The real reason the President clings to nuclear testing is that a ban will threaten the development of new weapon systems, including the dangerous and costly star wars program.

If the President persists in his position he will be responsible for a monstrous arms race on Earth and in space. Better by far if he and Mr. Gorbachev take the path of peaceful cooperation and arms control.

A ban on nuclear testing will be a major step forward in the fight to achieve a freeze and eventual reductions in nuclear arms. We must continue to work through the legislative channels to enact a bilateral ban on nuclear testing. And we must pressure the administration to make a comprehensive test ban treaty an important part of any summit agenda.

We can achieve a nuclear test ban. We can achieve a freeze and reductions in nuclear arms. We can achieve a safer future for all of humanity.

WE NEED AN INCREASE IN THE OIL IMPORT TARIFF

(Mr. DORGAN of North Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORGAN of North Dakota. Mr. Speaker, I want to echo the sentiments expressed by Mr. LUJAN earlier. I think it is time for an oil import tariff in this country, and next week, a couple of my colleagues and I, during reconciliation on the Ways and Means Committee, intend to offer that subject once again.

What we were previously required to pay to the OPEC countries we are now unwilling to pay to ourselves to help reduce the Federal deficit. An oil import tariff makes sense on a couple of fronts: First, it would help reduce the Federal deficit; and second, behind it we could once again revive some domestic energy exploration.

The proposal we would offer would have some carveouts for home heating fuel, for agricultural use, but by and large it would establish a $22 floor and a variable tariff on the world price to that floor.

I think Mr. LUJAN said it quite well:

It is time for this government to seriously consider, at a time when our oil imports are radically increasing once again, it is time for us to consider an oil import tariff in this country.

It is especially time when we are searching for such desperately needed revenue to reduce the Federal deficit. To impose that tariff, dedicate the revenue to drive down the Federal deficit, and then allow the domestic exploration industry to once again be somewhat revived.

ANY INCREASE IN OIL IMPORT TARIFF IS A BAD IDEA

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, over the last several days we have heard a number of calls on the floor for either raising the oil import tariffs or raising gasoline taxes. Let us understand that when anybody takes that particular position what they are really saying to the American people is we want to raise the price of your home heating oil and we want to raise the price of transportation. We want to increase inflation in this country because energy prices are spread across the whole economy. We want to damage the economic recovery that is taking place because higher inflation means higher interest rates. We are really talking about something that will have a massive economic impact to the detriment of the consumers of this country and to the detriment of our economy as a whole.

It is a bad idea; it ought not be endorsed by this Government or by this Congress.

□ 1405

AGRICULTURE IN THE GATT

The SPEAKER pro tempore (Mr. WEISS). Under a previous order of the House, the gentleman from Nebraska [Mr. BEREUTER] is recognized for 5 minutes.

Mr. BEREUTER. Mr. Speaker, on Monday, September 15, 1986, the United States and the other 91 nations that are members of the General Agreement on Tariffs and Trade [GATT] began a new round of global trade talks at Punta del Este, Uruguay, which this Member hopes will result in the broader coverage of trade items under GATT and a GATT that is more effective in reducing unfair trade practices.

This Member is confident that the interests of the United States will be well represented by my constituent, our U.S. Special Trade Representative, Ambassador Clayton Yeutter. He is an exceedingly knowledgeable and energetic trade representative who has a reputation as a tough negotiator and the most knowledgeable person on agriculture ever to serve in that position.

The need for the United States to negotiate aggressively and successfully at the new GATT round is necessitated by an ever increasing trade deficit and a growing impatience and anger on the part of the American people with the unfair trading practices of our foreign trading partners. These meetings, preliminary to any new

round of multilateral trade negotiations under GATT, will therefore have an important impact on the future ability of this country to compete fairly, and thus successfully, in the world market.

I am pleased to see that this administration expressed the intent to take a very tough stand on trade issues at these preliminary meetings to set the agenda for the new GATT round. I am also pleased that the administration is willing to walk away from the GATT round in Uruguay if most or all of America's five top priorities are not included in the agenda. These priorities include:

First, a workable definition of, and an end to, export subsidies in farm trade;

Second, stricter international rules against piracy of intellectual property;

Third, an end to barriers to trade in services;

Fourth, free flows of investment funds; and

Fifth, strengthening of GATT's dispute settlement procedures.

Mr. Speaker, one of the two highest level priorities for the next GATT round, along with bringing services under the GATT umbrella, is the definition and phasing out of agricultural export subsidies. The United States has early support in that effort from 14 agricultural exporting nations, including such major producers as Australia, Canada, and Argentina. For that reason, I would like to take a few minutes today to discuss why it is absolutely crucial that agricultural export subsidies be included in the agenda for the new GATT round.

I think most Members of the House are aware that agricultural exports and trade are vital factors in the wellbeing of our Nation's economic system. Employment for one-quarter of our Nation's work force is linked to our ability to maximize opportunities arising in the domestic and world market for basic agricultural commodities and value-added products.

In my own State of Nebraska, for example, agricultural exports generate more than $5 billion in economic activity within the State each year. Cash receipts of $2.6 billion from exports in 1984 accounted for 31 percent of the State's total agricultural sales. Farmers in Nebraska derived $85 million in net income from exports in 1984. Agricultural exports account for nearly 30,000 of the State's farm and nonfarm workers. Feed grains and products, Nebraska's leading export commodity, accounts for over one-half of the State's agricultural revenue—$1.13 billion. This same export also accounts for 12 percent of the Nation's total export of feed grain products.

The United States is still the largest exporter of agricultural commodities and products in the world, despite the fact that our farm export sales have declined from a peak of $43.8 billion in 1981 to an estimated $27.5 billion this year. Nationally, crops from nearly two out of five acres harvested were exported in 1984. During that same year, nearly half of the wheat, soybeans, rice, cotton, and sunflower seeds produced in the United States were exported, and more than one-third of the tobacco, feed grains, and tallow were also exported.

In recent years, U.S. agriculture has suffered a serious and substantial setback in agricultural trade. A variety of factors has contributed to the recent decline in U.S. agricultural competitiveness. Only some of these factors, such as fluctuations in exchange rate values and levels of worldwide economic growth, can logically be said to arise from a free play of world economic forces. More often, the outcome of competition in world markets results from the direct actions of government.

Unfair trade practices of other nations lessen our opportunities in our own market and in markets overseas. Unfortunately, reform of domestic policies must take place in an international context. Such policies are the subject of conflicting agendas and loyalties, and of jurisdictional privilege. In an increasingly competitive environment, efforts to overturn the unfair trade practices of other sovereign nations becomes greatly more difficult.

In setting the agenda for the new GATT round, the European Community, and the French in particular, have indicated a reluctance to include the subject of agricultural subsidies in the upcoming GATT discussion. However, inclusion of agriculture in the GATT should ultimately be just as much in the interest of citizens of France as it is in the interest of the citizens of the United States of America.

It is clearly in the self-interest of the United States and the European Community as a whole to negotiate some international rules on agricultural subsidies that will begin to reduce the level of fiscal insanity and farm income instability that prevails as a result of agricultural trade today.

In recent years, both the United States and Western Europe are putting enormous amounts of financial resources in agriculture. We are both stimulating agricultural production at a time when there are insufficient markets for that production. It is an incongruous situation that simply must be changed.

In many agricultural products, the international market share for the United States has been going down while the international market share for European Community exports has been going up. This is primarily the result of the EC's very aggressive export subsidy policy, and until some recent progress, a very passive export policy on the part of the United States.

For the first time in many years, the United States is becoming more active in using export subsidy programs. This has created concerns not only in Western Europe, but also other export competitors in developing countries which are hurt by the process.

From an economic standpoint, most of what is happening in the world of agriculture today makes very little sense. Where is the wisdom of our actions when the taxpayers of Western Europe, the taxpayers of the United States and their consumers on both continents are paying the price—particularly in the European Community? Other producing countries like Australia and even lesser developed nations are also paying the price in reduced world price levels that is cutting into their incomes.

There are practical solutions to even what appear to be some of the most intractable problems facing U.S. agriculture in the world trade arena. During the past year, this Member has been an active participant in a commission created by this Congress to study the problems associated with the decline in U.S. agricultural exports.

The National Commission on Agricultural Trade and Export Policy in June of this year issued its final report which contains its recommendations that will increase U.S. agricultural exports. An emphasis on the problems of agricultural trade subsidies and barriers in the next GATT negotiation was a major issue addressed by the Agricultural Export Commission. In regard to GATT, the Commission made the following recommendations:

GATT Reform

The following reforms should be undertaken in respect to the GATT:

(a) Achievement of tighter GATT enforcement powers.

The enforceability of GATT rulings is undermined by the consensus nature of GATT decision-making, the veto power of signatories, and the absence of binding requirements on signatories in the event of a finding of unfair export subsidization. The rule of unanimous consent should be eliminated. The current GATT process makes it too easy for GATT violators to sidestep their treaty obligations. The process should be undergirded by automatic and admissible retaliatory actions that are binding on all GATT signatories.

(b) Clarification of Criteria Relating to Unfair Trade Practices contained in the Subsidies and Countervailing Duties Code & Article XVI of GATT.

Current criteria contained in the Subsidies Code governing GATT definition of export subsidies need greater clarification. The Subsidies Code was intended to refine the definition of admissible and inadmissible trade practices referred to in Articles VI, XVI and XIII of the GATT. In practice, however, the Code provides cover and lends an air of legitimacy to trade practices that

are clearly in violation of fair trade precepts.

Export subsidies applied to primary products should face the same restrictions as are currently applied to subsidies on non-primary products. Every effort should be made to provide for specific prohibition of such subsidies regardless of current criteria, which allows such practices in the event that their use does not result in exports above an "equitable share" of world markets.

Consideration should be given to amendment to GATT to allow the imposition of countervailing duties on subsidized imports without a finding of injury to a domestic industry or at a lower standard of injury than the present "material injury" standard.

(c) Extension of GATT applicability to State trading activities.

State trading activities are common in world agricultural trade and yet issues arising from the incidence of unfair state trading are unaddressed by GATT. State selling agencies engage in export subsidy and dumping activities and state importing agencies engage in preferential, "closed door" purchasing; however, it is currently virtually impossible to determine the extent of their involvement. GATT rules are needed to govern the activities of state trading organizations to include:

(i) Provision for greater transparency on exporter and importer sales transactions, as to prices, credit terms, or other transactions by state exporting and importing organizations;

(ii) Tightening of state practices in regard to export sales at prices different from internal sales prices, and internal sales prices unrelated to world prices;

(iii) Open bidding for all imports.

(d) Improved and Expedited Dispute Settlement within GATT.

GATT dispute mechanisms are currently far too cumbersome and slow. By contrast, determinations of the International Trade Commission and subsequent Executive action in countervailing and anti-dumping cases are subject to a much more stringent and legally binding time constraint.

The Commission believes that time constraints and procedures under Section 301 of the Trade Act of 1974 should be no less binding than legislatively mandated requirements under Section 201-203 of the 1974 Act, and Section 337 and Title VII of the 1930 Tariff Act.

Consideration should be given to the following improvements in the GATT dispute settlement process:

(i) Allow the Director-General of GATT to intervene more effectively to bring disputing parties into mediation and arbitration;

(ii) Bind disputing parties to voluntarily agree in advance to submit their case to a neutral arbitration panel and to abide by the panel's decision.

(iii) Designate pre-selected, non-governmental individuals, rather than government representatives, to serve on "expert panels";

(iv) Establish a reasonable timetable for consideration and action by "experts"; and provide uniform guidelines for information to be contained in such reports;

(v) Provide for automatic publication of all panel reports. The adoption of or alteration of panel recommendations should be separated from the panel report.

(e) Retain Appropriate Safeguards and Retaliatory Capabilities to Ensure Greater Cooperation in Trade Matters.

The United States government and U.S. negotiators in international fora should have appropriate ammunition to aggressively pursue international cooperation in trade matters. Great care should be taken in the selection and preparation of U.S. negotiators. In addition, as recommended elsewhere, to encourage timely action on 301 cases, the U.S. Trade Representative should be required to take retaliatory action against nations utilizing unfair trade practices within 15 to 18 months of the filing of a 301 petition, except if (a) he determines within such time that action in respect to the 301 petition is unwarranted; (b) determination is made by appropriate and binding GATT mechanisms that the U.S. position is unsubstantiated; or (c) agreement is entered into with the offending nation to eliminate such practices.

Appropriate attention should be given to the maintenance of programs designed to protect U.S. industries from the effect of unfair import competition.

As we proceed with the meetings in Punta del Este, Uruguay, preparatory to a new GATT round, the administration and this Congress should keep in mind that American agriculture is under unprecedented assault by foreign governments employing aggressive and unfair trade practices.

Today, despite the desire of this administration, there is in reality almost no free market in world agriculture. Furthermore, policies of government, rather than market forces, increasingly dictate the terms and conditions under which competition takes place. If this situation continues to prevail, the U.S. Government must take a far stronger position on matters of trade.

Trade barriers beget trade barriers and unfair import competition begets protectionism. As a rule, there are always more losers than winners in a trade war. However, if the major trade issues affecting the United States are not going to be addressed in a new GATT round, the U.S. Government should be prepared and willing to utilize, and then actually use, all appropriate retaliatory capabilities, and employ all other effective means to counter the disruptive affect of foreign export subsides, nontariff and tariff trade barriers and unfair import competition on American agriculture and food industries. That is the view of this Member of Congress and I urge the administration to take this approach.

FHA ASSISTANCE TO SALAMANCA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. LUNDINE] is recognized for 5 minutes.

Mr. LUNDINE. Mr. Speaker, today I am introducing a bill designed to provide a very special kind of assistance to a small city in our district, Salamanca, NY. This provision is noncontroversial: It was part of the housing bill which has already passed the House of Representatives.

This legislation enables the Federal Housing Administration to ensure, under the provisions of the National Housing Act, residential mortgages secured by property located on land that is within the Allegany Reservation of the Seneca Indian Nation. This revenue-neutral provision is of paramount importance to Salamanca.

The city of Salamanca is in a unique situation. Approximately 85 percent of the land upon which the city is located lies within the Allegany Reservation of the Seneca Nation of Indians. The Indian lands are occupied under 99-year leases which are due to expire in 1991. The leases were ratified by Congress in February of 1892, under authority of two special acts of Congress.

The impending expiration of these leases and the uncertainties surrounding the method of renewal or renegotiation of the leases have been causing extreme economic hardships for the citizens of Salamanca. While the lease situation has resulted in a gradual erosion of the city's economic base for nearly 10 years, the situation is becoming increasingly urgent due to the complete lack of mortgage financing in the community. As of January 1, 1985, the city's lending institutions have refused to make any loans in Salamanca beyond a 5-year-term.

The lack of available financing for industrial, commercial, and even residential transaction has brought most economic activity to a standstill. Failure to address this problem will continue to have serious implications for the city's ability to attract new business, create jobs, and stimulate economic growth. The lack of money for residential mortgages has been a tremendous hardship for families wishing or needing to relocate, as well as for those families wishing to purchase a home in Salamanca.

If there is any community in the country that needs or deserves FHA assistance, it is certainly Salamanca. This city desperately needs the rejuvenation that FHA insurance of residential mortgages will make possible. While the ultimate resolutions of this problem must be achieved by the city and the Seneca Nation, the situation in Salamanca is now so serious I feel that outside assistance is essential. Time is running out for Salamanca. Adoption of the legislation I am introducing today will give the city the boost it desperately needs and deserves.

This measure is revenue neutral. Further it does not represent an unreasonable risk for FHA. The law under which these leases were ratified in 1892 clearly allows for renewal of the leases; the only unresolved question is the terms of the renewal. All parties involved have a common interest in assuring that these terms are reasonable that they foster residential and commercial growth for Salamanca's future.

I urge the Members of this body to pass this legislation expeditiously.

THE TAX BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. ARCHER] is recognized for 60 minutes.

Mr. ARCHER. Mr. Speaker, I come again to the floor of the House, as I

have the last 2 days, to shed additional light on the forthcoming broad-based tax revision bill which is expected to be on the floor Thursday of next week for debate and vote.

I think it is extremely important that we understand the impact of the provisions of the bill so that the American people, as well as my colleagues here in the House and in the other body, will be able to cast an intelligent vote.

This bill is frequently called the tax simplification bill and nothing could be farther from the truth. It should be called the tax increase complexity bill.

We now know for the first time, because the bill was officially filed in writing with the House yesterday, late, that it contains 2,400 new pages in the document that we will vote on next week.

Currently, if you wish to practice tax law, it takes 33 feet of shelf space just for the volumes of the Internal Revenue Code and the IRS regulations that one must have as a resource in order to understand the law.

That does not include all of the pages of judicial decisions which must also be considered. This new broad-based revision bill, and I call it that rather than a reform bill because reform implies that it is in a total way good, with its additional 2,400 pages that will be passed on by the Congress next week will add many, many additional new feet of shelf space for the volumes that must be looked on in order to interpret and determine what the code is. It will not be a reduction in the amount of regulations or pages of the Tax Code. It will not be a reduction in the amount of outside private activity that will be required on the part of private practitioners to deal with the increased number of IRS agents which this documents anticipated.

□ 1415

Now, make no mistake about it, it is complexity, not simplicity. There are other features in the bill, of course, that are good, but one of them is not simplicity.

A part of the bill that my colleagues, the gentleman from Illinois [Mr. CRANE] and the gentleman from Minnesota [Mr. FRENZEL] did not discuss last night in any great depth was what is going to happen to those people who have retirement programs and have contributed their own dollars after taxation, not tax deductible dollars, but their own dollars, put them aside in anticipation of having a retirement benefit when they reach that age?

Well, what is going to happen to them, and it is going to happen retroactively, is that they will in effect be doubled taxed on their earnings. They paid taxes once on the money that they put into their fund. When the retirement benefits come out and they receive their own money back, they will pay taxes once again on these retirement benefits.

I classify that as being unfair. I think it weighs on the scales of balance of what is fair and unfair in this bill.

Mr. Speaker, I yield to the gentleman from Virginia [Mr. WOLF] who has a very, very strong interest in this area, for what comments the gentleman would like to make at this time.

Mr. WOLF. Mr. Speaker, I want to thank the gentleman from Texas [Mr. ARCHER] for taking the leadership, and the gentleman from Illinois [Mr. CRANE] on this effort to recommit.

To those who are listening back in their offices and those who are listening in their homes throughout this country, what we would urge you to do after you listen to the gentleman from Texas [Mr. ARCHER] and the gentleman from Illinois [Mr. CRANE] is to tell your Congressmen and Senators to support next week the motion to recommit of the gentleman from Texas [Mr. ARCHER].

Let me give you a couple reasons why. The people who ought to be listening to what I am going to say are a certain category of people.

One, if you are a policeman or if you are a friend or related to a policeman, this what I am going to say affects you. If you happen to be a congressional staffer or mother or father or uncle or aunt of a congressional staffer, this affects you. If you happen to be a fireman, this affects you. This is your bill. If you happen to be a State or local or country employee or executive, this impacts on you. If you happen to be an FBI agent or DEA agent or a cancer researcher at NIH or something like that, this bill affects you.

If you have to be cutting your Social Security checks, this affects you, or quite frankly, if you are getting a Social Security check, this really impacts on you.

So the rest of you can kind of tune out maybe, but those of you, 20 million of you, this what I am going to say impacts on you.

Let me just tell you, like many in the House, I see the need for tax reform. I wholeheartedly support the elimination of special preferences and loopholes and believe that all individuals and corporations should pay their fair taxes. Everyone I think would agree with that.

I support the intent of the legislation to make the Tax Code more fair and simpler.

Unfortunately, this bill that we have before us, which will be here next week, as the gentleman from Texas [Mr. ARCHER] said, is very complex. It is not simple; but I think more important than that, it is not fair. It is unfair. It is really a very unfair piece of legislation.

Let me put the question to you that hundreds of my constituents and people all over this country have asked in letters in the last week alone. Why should public servants who contribute to and pay taxes, as the gentleman from Texas [Mr. ARCHER] said on their retirement plans be targeted, be impacted?

It is almost like the people on the Ways and Means Committee and the people on the Senate Finance Committee zeroed in on these individuals. There must be some reason why.

Is it fair to single out the 20 million individuals at local, State, and Federal levels, who make this country work, teachers—and I forgot to mention, if you are a teacher and you are watching, or the husband or the wife of a teacher, or if you are a student watching, this impacts on your teachers. It impacts on teachers very severely. These are men and women who have dedicated their lives to the public good and should they have to pay for this package to the tune of $1.8 billion in 1987 and $2 billion thereafter?

The conference committee did not stop at repealing the 3-year recovery period. As Congressman ARCHER said, they also made the provision retroactive.

Supporters of tax reform ask why the poor should bear the burden of taxation in this country. I ask in reference, why should the public servants bear this burden?

Let me read a letter to you that I just received the other day, and I wish all the Members of the House could hear this, because I know if you heard this letter you would vote for the motion to recommit of the gentleman from Texas [Mr. ARCHER].

I want to tell the Members who are listening and the people back in their homes in Buffalo and Toledo and other places——

The SPEAKER pro tempore (Mr. WEISS). If the gentleman will desist for a moment, under the rules, and the Chair thinks the gentleman is aware of this, but may have forgotten, whatever addresses or comments are made have to be addressed to the Members of the body and not to anyone else who may be in an audience elsewhere.

Mr. WOLF. I thank the Speaker.

I would direct these comments to my colleagues to listen to this letter. This just came in the other day. It says:

DEAR MR. WOLF: I am sending this letter to you to try to get your support against the discrimination against government workers who are about to retire as I am. I am 61 years old and 3 months short of retiring and suddenly they are trying to slip the rug from under me by not giving me an opportunity before taking taxes from my annuity.

I first started working for the government in 1943—

And I would tell the Members that many of the people who are being hurt the most are veterans, many vet-

erans who work for the Government who were originally veterans would be hurt very much. Let me continue with the letter:

I first started working for the government in 1943, but took time out to raise my children and started back to work in December of 1959 when my husband became disabled. Since that time the government took taxes from me on the money they took out of my salary to put into the retirement fund. Believe me, it was difficult in those days to take care of a family of six on a Grade-3 salary. Anyway, about six years ago my husband had a stroke and is very disabled physically and mentally and I have severe hypertension and planned to retire at the end of December. I tried and tried to get solid information—

And she underlines "solid information—

about the tax bill and how it would affect me.

Parenthetically, I might say to my colleagues, and I know they will understand this, Members of Congress have tried and tried to get information and have not been able to get information, so I understand what she is saying.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield for a question?

Mr. ARCHER. Yes, I am happy to yield to the gentleman from Texas for the purpose of asking a question of the gentleman from Virginia.

Mr. GONZALEZ. Mr. Speaker, I thank my colleague from Texas.

The reason I rise is that it has to do with the confusion surrounding just what the tax bill really finally looks like, but also with respect to the statement the gentleman made in which he indicated that State and local retirees would be taxed.

My understanding, the last report I had was that really the gross unfairness of that provision was that the Federal retirees were being singled out and that local and State retirees were being exempted. Which is right?

Mr. ARCHER. Well, I would say to the gentleman that although we still do not have a printed copy, hopefully by tomorrow afternoon we will and we can look at the wording in it.

People have been asked to cast their votes up to this point without knowing what the document is and many are already committed, and I think that is unfortunate; but what we do understand at this time is that all retirees who have contributed their own funds into their retirement program, after tax dollars, funds that have already been taxed, who currently under the law when they begin to draw their retirement benefits get that back without taxation, which is appropriate, are now prohibited from getting their money back in the first 3 years and must spread it out over whatever their actuarial life is and that applies to any retiree, any program where there has been a contribution with after-tax dollars by the employee.

My understanding is—again not having seen the document—that it will apply uniformly to everyone who fits in that category and I assume that is the understanding of my colleague, the gentleman from Virginia, and of the gentleman from Illinois.

Mr. WOLF. Mr. Speaker, if the gentleman will yield, that is correct. That is the understanding that I have and, of course, if that is the case, and that is what we have been told, that is absolutely terrible; but should the gentleman be right or should it be that just Federal employees are covered and not State and local, that would be equally bad, because then you would be really discriminating against these people.

Mr. GONZALEZ. I agree with that. The question I was raising was whether or not in effect this final version does contain the exemption of the local and State retirees.

Mr. ARCHER. My understanding, I will say to my friend from Texas, is that it does cover State and local employees, the same as it does Federal employees.

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman.

Mr. CRANE. Mr. Speaker, will the gentleman yield on that point?

Mr. ARCHER. I am happy to yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, that is also my understanding. I have had numerous communications from people back home in Illinois, schoolteachers, policemen, firemen, as indicated by the gentleman from Virginia; that is also their understanding of what is in the bill, too.

I thank the gentleman for yielding.

Mr. WOLF. Mr. Speaker, if I could just continue to read this letter.

Mr. ARCHER. I yield to the gentleman from Virginia.

Mr. WOLF. The letter goes on that her husband had suffered a stroke and had been disabled and since that time the Government took taxes from her. She says:

Believe me, it was difficult in those days to take care of a family of six on a Grade-3 salary. Anyway, about six years ago my husband had a stroke and is very disabled physically and mentally and I have severe hypertension and planned to retire at the end of December.

I tried and tried to get some solid information about the tax bill and how it would affect me. It was a deep, dark mystery, until suddenly they decided to take that one part of its pertaining to people who could not help themselves or make any changes in their planning and "put one over on them". I call that dirty pool.

I certainly think some kind of clause should be grandfathered in the bill so that it would not affect persons who had no opportunity to change their plans. At best, I will barely get enough to support us. I have a second trust that will be paid off in a little over two years and I had been planning in the past eight years that just about the time it would be paid in full I would have to start paying income taxes and it would just about take care of it. That has been my plan for the past eight years.

Now what can I do, go to jail for nonpayment of income taxes or do I lose my house? I really haven't had many choices. There is only so much pie and it is already spread pretty thin.

Mr. Speaker, I will not go through all these other letters, but I will submit these other letters for the RECORD.

I think what we are trying to say here, and I will be very brief, you may want to support this bill. You may think it is a good bill. If that is the attitude of my colleagues, although I disagree, I respect that clearly, but you can still vote for the bill on final passage and then vote before that for the motion to recommit of the gentleman from Texas [Mr. ARCHER]. The motion to recommit, and the gentleman from Texas [Mr. ARCHER] will spend more time explaining this, will simply send the bill back to the conference committee and say to the conference committee: Correct these points: One, allow an individual to retire effective January 1, 1987, and elect whether or not they want to retire without being hurt. Give the policemen on the beat in the city of Cleveland, Buffalo, or Toledo the opportunity to decide, do they want to leave? Give the teacher an opportunity to decide if he or she wants to leave. Give the FBI agent who is working on that organized crime case and wants to finish it the opportunity to see if he or she wants to leave. Give the person at NASA the opportunity, who is working on a shuttle launch situation, the opportunity to make that decision.

So all we are asking is that the retroactivity provision and this provision and other provisions be taken out.

I want again to thank the gentleman from Texas [Mr. ARCHER] and the gentleman from Illinois [Mr. CRANE] for their efforts with this motion to recommit.

This I think may be the key vote in the Congress. This may actually be the key vote. You can still vote for the bill on final passage, but you can still put an element of fairness and a sense of fairness back into this provision to take care of those people who have been dedicated public servants. My dad was a policeman for 20-some years in the city of Philadelphia. These are policemen who risk their lives to protect us and our loved ones; teachers who have taught our youngsters, as the father of five children; firemen who have helped us when our houses were in danger; rescue squad people who have come out in the middle of the night in all types of weather, and local and county executives who have helped in so many different ways; FBI agents that have cracked down on organized crime; drug enforcement agents that work to keep drugs out of our schools; cancer researchers at

NIH, all these people who have paid such a tremendous price for us, this motion to recommit, the Archer motion to recommit, will give them relief, and that I think is something that every Member should seriously consider doing.

□ 1430

I know that there might be some Members who will say, "I don't know that I want to go against the leadership. I don't know that I want to be against Senator PACKWOOD or the chairman of the Committee on Ways and Means."

Well, you do not have to be against them completely. You can vote to represent these public servants and still vote for final passage, but the key vote, and I would ask all of my colleagues, please, in the interests of fairness, support the Archer motion to recommit. It is a good vote, it is a fair vote, and it is a vote that will really improve this bill.

Mr. Speaker, like many in this House, I see the need for tax reform. I wholeheartedly support the elimination of special preferences and loopholes, and believe that all individuals and corporations should pay their fair share of taxes. I support the intent of this legislation—to make the Tax Code more fair. Unfortunately, the bill that we have before us today is grossly unfair.

Let me put to you the question that hundreds of my constituents have asked me in letters in the last week alone: Why should public servants who contribute to and pay taxes on their retirement plans be targeted in this bill?

Is it fair to single out the 20 million individuals at the local, State and Federal level who make this country work—the teachers, policemen and firemen who educate our children and protect our families? Is it just that these men and women who have dedicated their lives to the public good should have to pay for this tax package to the tune of $1.8 billion in 1987 and $2 billion every year thereafter? Some who wrote me said they would lose anywhere from $6,700 to $15,000.

The conference committee did not stop at repealing the 3-year recovery period. They also made this provision retroactive. So not only are these public servants losing money on which they have already paid taxes, but they are told it is too late to do anything about it. This is not fair and it is not sound public policy.

Supporters of tax reform ask why the poor should bear the burden of taxation in this country; I ask you, in reference to this provision—why should public servants bear that burden?

Following are excerpts from letters received on this serious issue:

DEAR MR. WOLF: I am sending this letter to you to try to get your support against the discrimination against government workers who are about to retire as I am.

I am 61 years old and 3 months short of retiring and suddenly they are trying to slip the rug from under me by not giving me an opportunity to retire before taking taxes from my annuity.

I first started working for the government in 1943, but took out time to raise my children and started back to work in December of 1959 when my husband became disabled. Since that time the government took taxes from me on the money they took out of my salary to put into the retirement fund. Believe me it was difficult in those days to take care of a family of 6 on a grade 3 salary. Anyway about 6 years ago my husband had a stroke and is very disabled (physically and mentally) and I have severe hypertension, and plan to retire the end of December. I tried and tried to get some *solid information* about the tax bill and how it would affect me. It was a deep dark mystery until suddenly they decided to take that one part of it pertaining *to people who could not help themselves* or make any changes in their planning and "put one over on them." I call it dirty pool.

I certainly think some kind of clause should be grandfathered in the bill so it would not affect persons who have no opportunity to change their plans. At best I will barely get enough to support us. I have a 2nd trust that will be paid off in a little over two years and I had been planning for the past 8 years that just about the time it would be paid in full, I would have to start paying income taxes and it would just about take care of it. *That has been my plan for the past 8 years. Now, what can I do?* Go to jail for nonpayment of income taxes? Or do I lose my house? I really haven't many choices. There is only so much pie and it is already spread pretty thin.

* * * * *

I agree that we must all share the tax burden; however, the fact that the bill proposes a retroactive date does not seem fair or equitable. I believe some advance notice of changes in the law affecting [public servants'] employment should be given. This will provide time for each person to decide his future with government, especially if he or she is already eligible for retirement.

* * * * *

I am a federal employee eligible for retirement and have planned on this tax-free period. I have been waiting on clarification of the new retirement bill passed in early June of this year and how the new tax bill would affect my retirement. Without an understanding of how these bills affect our retirement system, it has been impossible to make an intelligent decision.

Additionally, we have received no official information regarding the possibility of a retroactive date on this section of the tax bill from our agency heads, personnel offices or elected representatives.

If this provision is made retroactive, then employees should be permitted to retire retroactive to June 30, 1986, prior to the retroactive date of this section of the tax bill.

* * * * *

Elimination of the three-year pension recovery rule * * * in the joint version of the proposed tax act, without reasonable grandfathering or even an appropriate window to effect retirement, is unconscionable and basically dishonest in nature. Not only was the proposed elimination not grandfathered, but it was made retroactive to 30 June of this year. The so-called "retirement window" cannot be considered a legitimate window, because there was disagreement between House and Senate and the actual content of the final tax act proposal was unknown. In addition, no one actually believed that honorable men would seriously consider, much less agree upon, such a shockingly unfair, unjust proposal as retroactive elimination of the pension recovery rule.

I hope some sense of fairness and decency will prevail and that the elimination of the pension recovery rule will be deleted or, at least, appropriately amended so * * * at least, as serious reasonable retirement window is included.

* * * * *

I work for NASA and, as I am sure you are aware, we are in the process of trying to rebuild the civil space program. In May, the new Administrator was confirmed with the understanding that he would be expected to lead us toward an effective recovery. He asked that I continue to work for the Agency during this recovery effort, even though I had been giving consideration to retirement. At the time I knew that if the provisions of the tax reform act became effective before I retired, my net income would be much less than if I retired immediately and I would never recover the loss even if the tax rates were lowered to the percentage levels in the Senate version. I decided, however, to continue to work for the time being in the belief that Congress would not pass a retroactive change in the conditions under which we work. As I understand it, the present bill does just that.

[By my calculations, the net reduction in my net retirement benefits after taxes would be a loss of approximately $17,000.] The real effect, however, will be more than this amount because of the adverse effects on prior investments.

I've been willing, though not anxious, to work the 50-60 hour weeks when necessary to contribute to the recovery [of the space program], but I am sure you would agree that it is unreasonable that I should lose money in the process.

I know several other NASA officials who are in the same situation * * *.

This letter comes from a nuclear chemist/health physicist employed with the U.S. Nuclear Regulatory Commission:

This [retroactive] change is totally unfair, but what's worse is that people aren't even going to be afforded the opportunity to retire before the change goes into effect.

As a Federal employee, I relied on the government's promise that I would be able to receive my contribution to my retirement pension (which I have already paid taxes on) before I began receiving the taxable portion of my annuity. I made plans for my retirement based on the current tax law and now the law could be changed without even allowing me to plan for the impact of that change.

I've been responsible in planning for my retirement. It is time for the Congress to be responsible, too.

The frustration felt by these individuals is best expressed by this constituent:

* * * I am a federal employee. I take my position seriously and I want you to know there are those of us who are performing important functions by working for the government. We are not here for a free ride, and we do not deserve the mistreatment rent upon us. We are not dumb, we are not asleep, and we are observing the decisions and actions being made by legislators * * *."

Mr. ARCHER. Mr. Speaker, I thank the gentleman for his contribution, and I particularly compliment my colleague, the gentleman from Virginia [Mr. WOLF], for his hard work in

behalf not only of his constituents, but in behalf of fairness under this bill.

He has very poignantly articulated one of the problems of retroactivity which permeates the bill, and it is an important area of unfairness. I think, quite frankly, in my own view if we are going to change the rules of the game on how we tax retirement benefits, we should give at least a 5-year prospective date so that people have a chance to be able to rearrange their plans, and I think that a minimum of 5 years is absolutely essential.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Minnesota.

Mr. FRENZEL. I thank the gentleman for yielding and for taking the special order.

Mr. Speaker, I want to salute also the gentleman from Virginia [Mr. WOLF] for the kind of appeal that he has made.

He has mentioned of course only one brand of retroactivity in this bill. We also have retroactivity in interest deductions, retroactivity in capital gains payments, retroactivity in carry-forward of ITC credits, retroactivity of passive income limitation, and when you go through the bill, you find all this retroactivity. My point is, I will tell the gentleman from Texas, that when the Congress has altered tax law before, it has not done it in this way. Our precedent has always been to give those people who are on the edge of investment decision, retirement, purchase of a house, whatever, a little chance to get used to the new system to make their own changes in their own financial conditions, and have the fully effective date be a few years down the road to let Americans plan for these kinds of problems.

Of course, as the gentleman from Virginia has pointed out so effectively, there are an awful lot of people out there who have wanted to retire, who have been looking at this bill. Suddenly they find that the bill is almost a fait accompli and they have no way to get through the window of retirement no matter how long they have planned.

Some of these are people who have been told by their bosses, "Just stay with me until the tax bill is passed," or, "Just stay with me; you'll have a chance to get out when you want to." They do not have a chance to get out. Their plans have been made.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Illinois.

Mr. CRANE. I thank the gentleman for yielding.

Mr. Speaker, I again want to congratulate the gentleman from Texas [Mr. ARCHER] for calling attention to some of the unintended consequences of this so-called tax reform bill. We have heard from our good colleague, the gentleman from Virginia [Mr. WOLF], of the impact on pensions with respect to those people who worked in government, whether at the national or the State level, or are publicly employed, but I have a specific case study which I would like to work through with the Members—in fact, three of them—that were called to my attention. One of these is in my district, one is in a neighboring congressional district in Illinois, and one is in Missouri.

In the first—and I will preserve their anonymity by using pseudonyms—Mr. and Mrs. Smith are a retired couple. He was a union electrician. They receive a pension of about $25,000 a year. Their additional dividend and interest income has brought their modest retirement income to $36,000.

Mr. Smith unfortunately is suffering from glaucoma and is now blind, and his wife, Mrs. Smith, became severely ill last year, and the couple has $7,500 in unreimbursed medical expenses.

Their total income, to work through these figures, is $36,000, as I indicated, they have a $7,500 medical expense, and currently they can deduct $5,700 of that, but under the change in the Tax Code, they will only be able to deduct $4,800 of that. Their $250 sales tax deduction will be lost under this bill, and their miscellaneous deductions amounting to $300 will be lost.

The tax paid under the current law is $3,000, and in 1987, with this change, for this elderly retired couple with the husband now blind and his wife having medical problems, they will pay in 1987 a 13-percent tax increase over what they are paying under current law; namely $3,375, and in 1988, when we are told that the five rates that will be in effect for 1987 will then be reduced to three rates of 33 percent, 28 percent, and 15 percent, their tax increase is 16 percent for 1988, or $3,460.

We were told during the debate on this subject that we were taking care of those people who were disadvantaged. To be sure, we got 6 million people off the tax rolls altogether. On the other hand, there are instances such as I have just cited that are not unique. I know that you can reproduce the Smiths' case many, many times over.

Let me give Members yet another example, the one from Missouri. This couple, whom we will call the O'Briens, ages 75 and 70 respectively, have a meager pension of $15,000. They have interest and dividend income of $200. Since Mr. O'Brien is chronically ill, the couple had to sell some stock to pay the high medical expenses resulting from his illness, $250 gross capital gain to pay $7,200 in unreimbursed medical expenses. They make a small charitable contribution also to their local church.

The new tax law will raise them from the current 11-percent bracket to the 15-percent bracket of the new bill, and to work through the figures, in their situation they currently pay $270 in Federal income taxes. Next year, if this becomes law, in 1987 they suffer a 104-percent tax increase. They go to $550 in taxes. In 1988 they suffer a 138-percent tax increase, and they will be paying $640.

To get to the specifics of their situation: pension income of $15,000; interest and dividends, $200; gross capital gains, $850; medical expense, $7,200; plus a small charitable deduction and sales tax deduction.

So, looking at people who are suffering as a result of this in the retirement brackets, it is not confined just to those who are going to be disadvantaged as a result of the new treatment for public employees when they go into retirement. The various provisions of this bill I think hamper and in some instances very severely when you are talking of the modest kinds of income involved in the cases of the two couples that I have just cited.

Once more, I would stress that this was an unintended consequence, but until we get to revision of the Tax Code, which may be 2 years down the line dealing with these kinds of unintended consequences, in the meantime there is going to be severe injury to those who should be least exposed to that kind of injury.

Mr. ARCHER. Mr. Speaker, the gentleman has given us a much, much better insight into some of the particular applications that will result from this legislation.

□ 1440

We do know even from the proponents that many middle income Americans will have tax increases under this bill. Many middle income Americans will have tax increases, although they continually tout the fact that it is going to be a rate reduction.

You have begun to cite some of the specific types of Americans who will have tax increases. Certainly in the instance where people have higher medical bills, they should not be the ones to pay tax increases under what is being presented as a tax reform bill in the name of fairness.

Mr. CRANE. If the gentleman will yield further, I could not agree with you more.

Let me give you another hypothetical, but it is one that I think we can all relate to. We were assured that lower income and middle income people were going to be given a break with this tax legislation. The gentleman talks about that lower income person. He is in all probability a renter. He does not own his home. As a renter, with the changes in the Tax Code, Martin Feldstein provided a breakdown analysis of

exactly what is going to happen to those people who own rental properties. It is going to result, he concluded, in a rental increase from anywhere from 10 to 15 percent.

So you assume this couple in his hypothetical paradigm is making $25,000 a year. They will experience a $20 a month cut in their taxes, to be sure. But they will also probably be paying in the neighborhood of $500 a month for their apartment, and as a result they are going to suffer an apartment rental increase of $50 to $75. It dwarfs the tax cut they will be enjoying.

In addition to that, this same couple are people who normally buy on time, and with the loss of the consumer credit interest deduction, how is that going to affect this individual if he is paying for his car on an installment basis, and he probably is, if he is buying a refrigerator on an installment basis, which he probably is, or a stove, or a television, or any other article? That is before you get to the potential impact if, perish the thought, they sustain unreimbursed medical expenses which are adversely impacted, too.

So I think it is clear that this bill does not address the objectives that we set forth for ourselves, and it contains a potential for enormous injury.

One final point I would mention on the care for middle income. That is an arbitrary definition. During the conference, we took the range $20,000 to $50,000 and we said we will define that as middle income for the sake of the debate.

When you phase out the IRA's on a joint return starting at $40,000, you are talking about the bottom rung of middle income. That is a husband making $20,000 and a wife making $20,000. So it is clear that whether you are looking at lower middle, or lower, or middle income that the bill does not meet the standard that we set for ourselves at the beginning.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I am happy to yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, I just want to follow up on the point of the gentleman from Illinois. That low income renter who is going to get a $10 a month tax cut and a $40 a month rental increase is also going to have the cost of nearly everything he or she buys increased, because there is a transfer of tax liability from individuals to corporations of roughly $120 billion in this bill, more or less. Corporations, of course, are going to integrate those costs into their price structure. The price of things that that family buys are going to go up.

So, not only is the tax cut going to be dwarfed by the rent increases, it is also going to be dwarfed by the increase of clothing, of food, of school books, of everything, you name it, cars, et cetera.

I thank the gentleman for yielding.

Mr. ARCHER. I yield to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. I thank the gentleman for yielding further. I focused here on the injury to the people in lower income brackets up through middle income. But to give you another example of inequities, the accounting firm of Arthur Young pointed out that the tax rate for a family of 6 with income between $71,900, and $214,999 would be 33 percent in 1988, while the rate would be only 28 percent for a 6-member family with income over $214,000.

Mr. ARCHER. So the six-member family with $1 million of income is paying a lower marginal rate than those who have under $200,000?

Mr. CRANE. Right, between $71,000 and $214,000 they are in a 33-percent rate with these givens, and yet you go beyond that, and as you say, become a millionaire and you are paying a lower rate.

Mr. ARCHER. If the gentleman will yield back just a minute, I think it is very, very important we reiterate this over and over again. The proponents of this bill cite that it is a two-tiered tax rate, and they claim that is a simplification. Even if it were only two tiers, you would still have to go to the rate schedule to determine which tier you are in, so it really does not matter whether you have two tiers or whether you have 10 or 15 tiers. You find your income level, go to the rate schedule, find out what your tax is. There is no simplification in that.

The reality though is in 1987, under this so-called tax reform bill, there are five tiers of rate differentials with a maximum of 38½ percent. The proponents do not talk about that. It is written into the law. It will be the legal tax rate schedule for 1987.

In 1988, if the bill is not changed before that time, there will be a three-tier rate schedule which will vary depending upon the number of exemptions that you have, and will be extremely difficult for people to understand. But it will have a top marginal rate, as you mentioned, not of 28 percent, but 33 percent. That should be clearly understood by the people of this country. It is not a top marginal rate of 28 percent, no matter what the proponents of the bill say.

Mr. CRANE. If the gentleman will yield further, I think the gentleman's point cannot be stressed enough. In this Arthur Young study they cited yet another example of this.

A couple filing jointly with no dependents and earning more than $71,900 would remain in the 33-percent bracket until their earnings topped $171,090. An individual with no dependents, say, with earnings between $34,150 and $100,000 would be in the 33-percent bracket, and then he would fall back to 28 percent after that, according to this accounting firm calculation.

But it is complicated, as you say. You cannot describe that as a simplification of the code on the one hand.

But it has these built-in inequities that really just confound one when you hear the charge made that this bill conforms to the criteria of fairness, which was one of the important considerations, and simplicity.

Let me add just one other thing, and this is from Stanford economist Michael Boskin, who is an expert on tax legislation. He pointed out that this bill is inherently unstable, and he is predicting tax changes in the future already. But in addition, he said there will be a tremendous technical corrections bill which may change interpretations of the new law even before its effective date.

Then he went on and he said, "In all, the reform plan has been tremendously oversold. The notion that this is simplification," he said, "is ridiculous."

Mr. ARCHER. I think he also commented that the one thing that is certain about this bill, in the midst of all of the other uncertainties, is that it will require a tax repair bill in the next Congress. And if there is something that we should shoot for in taxes in this country, it is certainty, so that people can know where they are going, they can make their plans and not be juggled around from one year to the next with new rules.

We have been having massive tax changes now in 1981, in 1982 and in 1984. Now in 1986 we are talking about this wholesale revision, and in 1987 and 1988 we are going to be making changes again, and that is not what we need in the United States, in my opinion.

I think all of us agree that we are for reform, we are for true reform. We are for the types of things that are not going to make us come back the very next year in order to undo the frailties and the flaws and the inequities in the bill that we pass.

□ 1450

If we send this bill back to the conference committee, we will have a chance to focus on these; it will be more time expended to determine what is in the bill, and we will have a chance that we can have a bill returned that would be true tax reform.

Mr. CRANE. Mr. Speaker, if the gentleman will yield again, the gentleman's pending motion, which will occur on the day of the discussion and debate of the conference report, and as I understand it that now appears to be next Thursday, will come at the end of that debate.

That means that we have 6 days left before this body will render a judgment on something so sweeping in scope and with such portentous possible consequences based upon what the tax experts tell us, based upon what the economists tell us, based upon the various econometric studies that have been run on it, that I think our colleagues would be well-advised to heed the gentleman from Texas' [Mr. ARCHER] appeal for support on his motion that will be proposed at that time to recommit the bill with some guidelines to try and remedy these various obvious flaws and defects in this legislation.

We have waited a long time to arrive at a consensus that our code is Byzantine and too complicated for anyone but the most arcane experts in tax law to understand; that our Tax Code also is grossly unfair when one big corporation a couple of years ago could make $6.5 billion in profits this year and actually get a $283 million tax rebate, and a mom and pop operation is out there paying their fair share of the taxes, and we certainly know that it is not capable of producing the kind of growth that potentially it could when we provide such disincentives in the code to savings and investment, as already exist.

Those colleagues hopefully will have a chance to talk to their constituents over the weekend while they are home, and most of them will be leaving town for their districts; and I think the people back home have based upon reports that have appeared in print, they have a growing perception of the deficiencies and the impact that will be felt by them, and sooner rather than later; and as a result we will have colleagues better prepared to jump on the bandwagon and support my colleagues' motion to recommit when that is presented next Thursday.

Mr. ARCHER. Mr. Speaker, the renowned economist, Alan Greenspan said before the Joint Economic Committee earlier this week that there are at least 20 major problems in this bill. The difficulty is that we do not know what they are.

Perhaps as a result of the colloquy that we are having here on the floor and which we had last night, more of the Members will have an opportunity to perhaps project what some of these problems are; but there are still many others that even we cannot anticipate when you have such a small amount of time to try to examine a bill that is containing the complexities that this bill has within its framework.

An interesting thing is that as the tax accounts tell us, that under the new bill, it will cost twice as much for the same preparation as it did under the current law, and I have had many accountants tell me that, saying, "How am I going to explain to my clients next year that this wonderful tax reform bill is going to cost them twice as much for my fees to prepare their returns?"

Mr. CRANE. And that will not be deductible, either, will it?

Mr. ARCHER. Well, that is the point I was going to make; and that is proof of the complexities.

The interesting thing is that the bill, in the name of fairness, not only increases the cost of preparation but it for the first time denies the deductibility for tax purposes of that cost, as it does many other ligitimate business expenses that people undertake for the purpose of earning income. Legitimate cash expenses for the purpose of earning income which are currently carried as miscellaneous deductions on the return in the current code, will be forced to exceed 2 percent of the adjusted gross income provision.

So the first 2 percent of adjusted gross income will no longer be deductible, and the tax preparer's fee is going to be the first part of what is not deductible under this bill.

I yield to the gentleman from Illinois.

Mr. CRANE. I thank the gentleman for yielding, and would like to comment on another group that is going to be adversely impacted that is hardly one that this is an appropriate time to injure; and that is the people in our farming community.

We all know the tragic plight of the American farmer. He is far and away the most efficient producer that ever walked the face of this Earth, and yet when he puts his efficiency together with God's blessing and is favored with sunshine and rain in the appropriate season, he invariably comes in, as our Illinois farmers will again this year, with an all-time bumper crop.

Sad to say, when that happens it has the effect of pushing the price of his product through the basement; and so even when the farmer succeeds, too often times he does not enjoy the benefits of that success, and that is divorced from the tragic plight of our farmers in the Southeastern States who, because of drought early on this season, had to plow their corn crops under.

Now, because of the uncertainties in the farming community of our income year to year, one of the major reasons for what is called income averaging, when you have a good year and make out very well in contrast to maybe 2 or 3 lean years, you can spread your tax obligation out over several years.

We debated in the conference, when they talked about elimination of income averaging; Well, what about the farmer? We have many farmers in desperate straits right now and there was, I thought, a consensus that we were going to at least exempt the farmer from the elimination of income averaging.

However, Mr. Speaker, to the best of our knowledge, and we could be pleasantly surprised, maybe, if something went on unbeknownst to us, to reinsert the American farmer with regard to this income averaging opportunity, something I do not think we reasonably expect to see.

Income averaging will be gone for the American farmer. In addition to that, you cannot engage in big time farming today without an enormous investment in equipment and machinery, and he is going to lose his investment tax credits, and many of his decisions going several years into the future may well have rested primarily upon the availability of the investment tax credit and the retroactive repeal of that going back to January of this year is one more area where the American farmer is going to be hit.

Then in terms of capital gains, we know that that farmer, if he has been in a fairly modest profit picture, notwithstanding the heavy investment in his equipment and land, that farmer may be pushed from an effective capital gains rate of 15 percent. In this bill he could be pushed from that up to 33 percent.

In other words, a doubling or a trebling of his capital gains tax; and that is one of those areas where a lot of people, as they contemplate leaving the farms, and they have been doing that consistently since the early 1800's, under our current Tax Code that farmer has built up an equity in that farm, and he is not going to see, with the sale of that, such a devastating impact on his ultimate retirement when he leaves the farm.

Mr. ARCHER. I would say further to the gentleman that there are many farmers who bought their land at a very low price, but over the years have been forced to mortgage it for increasing amounts in order to continue to operate.

It may be that they are pressed into a position today that they have got to sell their property in order to pay their loan; or they may be foreclosed on today.

Even in the event of foreclosure, they would be faced with a capital gains tax of significant dimensions because the property would be sold at a value above what they paid for it.

That capital gains hits at a 61-percent increased level, from 20 percent to 33 percent, in a very, very tough way on that type of individual.

Mr. CRANE. Mr. Speaker, will the gentleman elaborate more fully on why, with changes in our treatment of banks, why those banks might be more inclined to foreclose on that family farm than to give that farmer a chance, maybe over a couple of years, to get back on his feet?

Mr. ARCHER. Well, in my opinion, at one of the worst possible times,

when our banking establishment is more fragile since it was in the Depression years, in fact there have been more writeoffs of loans in the last year, since 1936, that do change the provisions in the Tax Code that permits banks to accumulate reserves in anticipation of losses and adds to the stability on which we all depend when we make a deposit of our savings with that bank, to pull out from underneath them the ability to develop those reserves on a tax deductible basis, could not be more untimely.

□ 1500

But in addition the new law would require, if passed, that the only deduction for bad debts that the bank could take was when they actually foreclose. So if that is the only way they can get their tax reduction, there is going to be more pressure on them to quickly foreclose rather than to try to work along with the farmer who is having difficulty making his loan payments to the bank. The pressures will be now toward more expeditious foreclosure in a shorter term.

Mr. CRANE. In short, if the gentleman will yield further, at a time when our farmers are suffering, at a time when we have this very frightening fragility within the banking community, we have chosen to hammer on both of them. And I think in connection with the banks the point the gentleman makes about the number of bad loans being without precedent since 1936, he also is aware that the 100th bank failed this year, just this week, and that we are going to be faced with more bank failures this year than last year and last year set a record since the Great Depression.

The head of the Federal Deposit Insurance Corporation has increased the number of banks totally on his troubled list from 1,150 in January of this year to over 1,400 at the present time. The situation was so critical with just a discussion of this tax bill that Paul Volcker, the head of the Federal Reserve System, made an urgent appeal to the chairman of the Committee on Ways and Means, to at least exempt 20 fairly good-sized banks, mostly in oil patch States, from the application of the loss of this bad debt reserve deduction for fear that we might have 20—and these all would be over $500 million in assets because under $500 million they still enjoy the bad debt reserve. But we are talking of fairly big banks, the possibility of 20 of them going belly up if this kind of exemption of application of this change in the code were not made for them.

Mr. ARCHER. I would say to the gentleman that Mr. Volcker was joined by the President of the United States through his Secretary of the Treasury, Mr. James Baker, in urging the very same thing. But the conference committee paid no heed. And they take this hit at the loan loss reserves of the banks.

Mr. CRANE. There is another area, and it is intimately related, I think, with the plight of banking, and that is the gentleman's home State of Texas, and it is not confined to Texas. It affects Louisiana, Oklahoma, it even affects Illinois. We had a little resurgence in oil production when the price of oil was up there pushing $40 a barrel. But any oil-producing State, the changes in the banking code when there have been extensions more than the ordinary in our other States that are not necessarily oil States, the extension of loans by these banks to the oil and gas industry were quite significant, and that, sad to say, was coincident with the plummeting price of oil and the devastating impact that that has had on the oil and gas industry.

We had, and correct me if I am wrong because you are an expert from down there in an oil State, but my understanding is 4,500 producing wells as recently as 1981——

Mr. ARCHER. Drilling rigs.

Mr. CRANE. I am sorry, drilling rigs. And that number was down to 653 by July of this year.

Mr. ARCHER. That is right.

Mr. CRANE. This is a virtual state of depression, not recession but depression that exists in the oil and gas industry in this country. Under the provisions of this bill at a time when that industry is suffering depression, the tax bill would come forward and add another estimated $10 billion in tax burden on that depressed industry over the next 5 years.

Now, even if one thinks that that is an advisable thing to do, I would suggest that this is bad timing. There are a number of the hints of reform in this tax bill that I, myself, under different circumstances could probably support, but not when you have the kind of fragility that exists in the oil and gas industry, in agriculture, in banking, in building and construction trades. Multifamily units, they are predicting, are going to be cut in half next year.

New construction starts, if this bill becomes law, we have it in heavy manufacturing industry and we choose this time to come in and bash capital-intensive industries which are struggling enough right now to try to remain competitive in world markets. Instead of providing assistance to guaranteeing that, this bill moves in the exact opposite direction.

I think it was an overstatement when we had the Textile Protection Act up to compare it to Smoot-Hawley. That was an exaggeration, to be sure. But with the trade deficit this year going higher than it was last year and at a time when we have a lot of heavy industry that is still struggling—and they have made their calls here to Washington to try to get some dispensations against competition from abroad—we are disadvantaging them in the changes proposed in this Tax Code. And what that could produce next year is a swarm of people from virtually every industry in this country crawling over this body demanding that we put the tariff walls up in this country to protect American industry here at home at the expense of the consumer, but to protect American industry and that in turn could produce something that does bear a marked resemblance to the Smoot-Hawley bill in 1930, which threw the tariff walls up and guaranteed the commencement of that Depression which became worldwide and endured for a decade. And I thank the gentleman for yielding.

Mr. ARCHER. The gentleman has made an outstanding contribution. Certainly the reason for the effort to pass a textile tariff bill or quota bill, the effort of the steel industry to obtain protection is because we are losing jobs. We are losing jobs by the hundreds of thousands to foreign imports. This bill, interestingly enough, has its most adverse impact on those industries that are having the most difficult job competing with foreign imports. They get hit the hardest. The result, as the gentleman has ably pointed out, is that many of them will not be able to survive.

What is important to all Americans and should be to our colleagues here is that means jobs, that means jobs for Americans.

It also means an extra impact in a negative way on the budget deficit because if the jobs are not there and people are laid off, unemployment compensation is going to go up and the Government budget is going to be strained further by paying the unemployment compensation benefits and all the rest of it that is entailed.

It has been contended over the years that a 1-percent increase in unemployment is a $25 billion extra cost to the Federal Government. At a time when our deficits are growing and we are having so much difficulty coping with them, at least getting a majority of both bodies of this Congress to do anything that is adequate, here we are talking about jeopardizing more jobs.

You know, I wish as I look our here that there were more colleagues on the floor today to join in with us and to be able to begin to try to understand what is in this broad based tax reform bill. I can only hope that the printed record which is being transcribed now and which will be available in the CONGRESSIONAL RECORD, will be looked at by all of our colleagues so that the very, very intense information and comprehensive information that we are presenting today, as we did yesterday and the day before, will be carefully studied and

that a judgment can be made on this bill from a knowledgeable standpoint.

I sometimes think that I am cursed as a Member of Congress because I try to read the fine print. Sometimes it is a lot easier not to read the fine print and to just vote on the rhetoric. This is one of those bills where we cannot afford to do that, in my opinion.

I yield to the gentleman from Illinois.

Mr. CRANE. I could not agree more heartily with our distinguished spokesman on the Committee on Ways and Means, the gentleman from Texas [Mr. ARCHER].

I want to reassure everyone of another point, and that is, as witnessed by the presence of our other distinguished colleague from Texas from the other side of the aisle today, and our distinguished colleague on the other side of the aisle from Washington last might who participated in our special order, that this is not a partisan consideration.

The fact of the matter is on both sides of the aisle I know there are many Members troubled by the increased understanding of deficiencies in this bill, who did not have the opportunity for any input into the bill. When the gentleman in the well presents his motion to recommit this bill next Thursday with instructions to address some of these egregious flaws, that will be the only opportunity that our colleagues will have to have had any input. In fact, there was, I must say, precious little input from our side of the aisle in the crafting of it. In fact, increasingly there was precious little input from any number of Members of the House or the other body as the respective cochairmen handled most of the details.

But the opportunity will occur for Members on both sides of the aisle to get behind the motion to recommit that will be submitted by the gentleman in the well and they will then have the opportunity to be able to confirm to their constituents back home that they had a chance to make a difference and they determined to make that difference in a positive way to give this country a code that is truly simplified, is truly fair and is truly calculated to produce growth.

I thank the gentleman for yielding.

Mr. ARCHER. I yield to the gentleman from Minnesota for any closing comments that he may like to make.

Mr. FRENZEL. I thank the gentleman for yielding. I am grateful for the opportunity to participate in this special order to talk about the tax reform bill that will confront this body probably next Thursday. It is a very big bill. It comes highly recommended by the President, the chairmen of our tax writing committees, the press seems infatuated by the bills. All we hear about are its advantages.

I think what the gentleman's special order has done is to present the other side of the coin. To me the coin is much more heavily weighted on the other side. The fact that this bill presents negative growth, it is against capital, it is antisavings, it is tough on manufacturing, tough on export, tough on banking, tough on housing, tough on education, tough on charities, you go right down the list, most of the values that America holds high, most of our economic ambitions are all frustrated by this bill. I am delighted to have participated.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER pro tempore (Mr. WEISS). Under previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, I rise to remind my colleagues that I have been speaking out on these matters, as today we saw clearly just a few minutes ago, that are so agitating us, at a time when we were not agitated.

I go back to my second year in the House of Representatives, 1963. As a member of the Banking and Currency Committee, as it was then designated, I was very much intrigued by the fact that that year was the first year that under a new chairman, another very distinguished colleague from Texas, Wright Patman, we inaugurated for the first time in committee procedure the 5-minute rule. That is, each member would be recognized for no less than 5 minutes, no matter how lowly he was on the totem pole in that committee.

My first year in 1962, there was no such rule, and the chairman, who was quite up in years, called actually only two committee meetings, full committee meetings of the Committee on Banking and Currency in that 2d session of the 87th Congress in 1962.

So that in 1963 I was very much intrigued by the request of the then Secretary of the Treasury, one of those who were in the Kennedy Cabinet known as the bipartisan Cabinet. You will remember President Kennedy had two of the most powerful members of his Cabinet that were members of the Republican Party, his Secretary of Defense McNamara and his Secretary of the Treasury, Mr. Dillon.

□ 1515

Mr. Dillion appeared before our committee and was appearing on behalf of the repeal of the silver transactions tax.

I was sitting and listening to the very informative discussion a few minutes ago by my colleagues with respect to the tax dilemma, and I could not help but think and rethink and go back over the trail, mentally speaking, going back to that discussion on the silver transaction tax and the repeal of it.

First, I know that the silver transaction tax was a wartime-imposed tax. I remembered that the private ownership of gold, for instance, in 1932, in an attempt to resolve then the terrible financial dilemma that the country faced and the closing of all of the national banks, and part of the package of laws that were passed under emergency situations, included the limitation of the purchase by private American citizens of gold, and the reason, of course, goes to the rather complicated history. But essentially what it meant was the banks had taken their depositors' money and had set it up to the New York investment stock speculative markets in the middle and late twenties who, in turn, invested in what was then the high-yields, and those were the Government bonds of some countries that do not even exist any longer, but who as of today's "developing countries" would never had had the means of paying off those loans.

But among the recipients of the benefits of the credit that they derived was the Japanese Imperial Government. Interestingly enough, in 1921 they floated 20-year bonds to mature in 1941 and, of course, we got the payment at Pearl Harbor.

The German Government, through the brilliant wizard, Hjalmar Schacht, who also had dual citizens—he was an American when he was here. He spent quite a bit of time in Wisconsin and was also a Wall Street international financier. He was also a German citizen. If he ever set foot in Germany, he was a German citizen. He turned out to be the great Hitler financial wizard. It was his idea that today, ironically, has been reinstituted on this question of world trade and international finance. Of course, the whole object was for the debtor nations, and the only creditor nation in World War I was the United States, to get away, of course, in Germany's case, the prostration of the imposed harsh terms of the Versailles Treaty, which imposed onerous reparations on the German people, and, of course, later became the basis in fact for the rise of such a monstrous development as the Hitlerian era.

We are living through an equivalent period of time, and have been since about the sixties or the middle sixties.

I spoke first when Mr. Dillon came before us, and I had my 5 minutes, when I asked him, "Why are you now seeking the outright repeal of the silver transactions tax, which was a war-imposed tax?"

He said, "Because, as I have explained before, the commercial demand for silver is so great that our use of silver"—that is we were then monetizing our currency with both

gold and silver—he said, "We will not be able to maintain the very, very tradition of monetized coinage or currency and, besides that, the commercial enterprises are hard put because of the development of electronics and photography, the use of silver has just simply risen exponentially.

I said, "Well, but then is that not the reason why you imposed the silver transaction tax to begin with during war?"

He blinked his eyes. He said, "I'm afraid I don't understand your question. What are you driving at?"

I said, "The real reason, as I understand my history, for the imposition of the silver transaction tax as well as other what we call control laws during war was to, one, control speculation and war profiteering and the like."

He said, "Well, yes, but the war is over with."

I said, "But not the conditions that existed during war and continue in what we call times of peace."

Then I remember that I think I spoke a little too much when I said, "You know, I don't believe that we have terminated World War II. There is no peace treaty."

I will say that again tonight. I think we in the United States forget that there really is not any termination of a formal nature in the way of a peace treaty to World War II. We have over 300,000 troops in Germany alone, and the sequel of the Korean war causes us to maintain 45,000 in Korea in a very volatile situation. All of those imply international financial transactions that impact on what we like to say is our American standard of living.

So my 5 minutes were up and I asked unanimous consent that I ask Mr. Dillon in writing at a subsequent date for the questions. One of those additional questions was, "What are you prepared to do if we repeal the transaction tax on silver to obviously control what will be a speculative market?"

When I finally got the printed copy of the proceedings with the reply, I had no reply.

The truth is that that is today one of the most highly speculative areas of endeavor in the world, as is the gold market.

In January 1976 the United States actually allowed for what we call the private holding of gold by individual citizens without any protection. I alone in the subcommittee and in the Banking Committee resisted the repeal of the 1932 act with respect to gold on the basis that, at the time the act was placed, there were at least some limitations in law on speculating in gold. Those were all going to be repealed.

The only thing I had again was the first time that the Chairman of the Federal Reserve Board called me and asked me to have breakfast with him. That was the first time. He said, "You know, you are right. However, we are committed to having private ownership. We have reached an era in the world's development where demonetization of currencies is the thing. The world never has produced enough gold to make it a practical or a feasible medium. And the truth of the matter is that the dollar is still and will continue to be into the indefinite future the international basic unit of exchange."

Then I remembered what I had been told in 1963, when Mr. Dillon said in answer to the last question that the chairman and the unanimous consent allowed me to.

I said, "Well, if the repeal does not resolve the reduced nature of the silver market and the supply, and you have this continuing, how long do you think it will be before it will impact on us to the point where we will have to remove silver and gold from our currency?"

He said, "Oh, not until the foreseeable future."

□ 1525

That was April 1963. Exactly 2 years later in 1965 in April they came back to ask us to demonetize our currency and we did. If you will look, if you still have any coins, even a dime that is dated 1964 you might hold onto it; it has some silver content. After 1965, we had what we call the copper clads, and this is the reason for it.

Emerson says that when the Treasury is empty or broke and has no gold it resorts to paper. Well, of course, that has always been true. More importantly, the main thing involved as I see it and continues to be the issue is that at no time since 1923 have the Congress nor the executive branch of the Government actually functioned as it was contemplated initially in the version approved by the Congress of the Federal Reserve Board Act of 1913.

This is further complicated by the fact that we are talking about a subject matter as the gentlemen a few minutes ago were talking about the complications of a tax measure, but that does not mean that they are so esoteric, that they are so involved or complicated that an average citizen does not have an idea what is going on. They may not know all of the jargon involved but they know when they have been rooked.

The truth of the matter is that going back to that early 1960 period, then the first credit crunch on June the 19th, 1966, which was the first time in the history of our country, something that did not even happen during the height of the Civil War, the financial institutions, the main ones, overnight jacked up the prime interest rate by 1 percent.

Now, the prime interest rate as was defined on June the 19th, 1966, is not the same prime interest rate as defined today in 1986. We will not go into that because I know that by then everybody among my colleagues will be thoroughly confused.

The main thing is that, as Louis Carroll says in "Alice in Wonderland," "The issue is not the words; the issue is who has the power."

What we have done in our country is to turn over the power to those interests that from time immemorial, unrestrained, and who could be the restraining hand? Only the Government as chosen by the people to look out for its interests could be that restraining force. Only the absence of the restraining force has allowed such entities as the Federal Reserve Board, which is not a Federal agency, it does not even have an Inspector General. They fight us tooth and nail whenever we introduce any measure calling for an audit or what I would call an independent audit. They say they have an audit; they do not have any IG. They have had scandals; they can get away with it.

So I find it hard to get excited when the same people that have refused to want to look at that come in and vote for the 1981 Reagan recovery tax bill. That is what they called it. The economic recovery and reform tax bill of 1981. That was the one that Mr. Reagan said had to pass, and it did, with the help of enough so-called members of the majority party and a solid backup vote on the part of the minority Members of the House.

Today, for those same voices who voted for that bill to decry the fact that you have billion-dollar corporations that are not only not paying any taxes, meaning income taxes, but are deriving over $250, $300 million in tax benefits in that. That law made it possible for them to buy the tax credits from lesser corporations that they can do anything with.

What we are witnessing in the United States, sadly, is the passage of control from the people through their elected Representatives, be they in the legislative branch or in the executive branch, their total inability to control, even in a minimal way, those who now have arrogated to themselves the power to dictate the destinies of our country insofar as fiscal, monetary or generally economic matters are concerned. That means standard of living for America.

Why is that? Because those oligarchical interests in our country, megabank corporations, they may be based in the United States, but they do not have any allegiance to the United States. Their allegiance is to the profit, and if they can make profit speculating against the dollar as all of them have, since we went on a floating

exchange basis in 1971 when Mr. Nixon devalued the dollar and took us off the Gold Exchange System. I did not hear too much outcry. In fact, there was not one newspaper in our country that defined it as a devaluation of the dollar. Not in 1971, when we had the second devaluation. We called it that because then we had to pass a resolution that emanated from the Banking Committee. I think I was about the lone one that voted "no," but I gave my reasons then.

What we are seeing today is the ultimate consequences of a debauchery based on inordinate greed because all through history, as I started to say a while ago, these forces, wherever they have existed, in any country under any clime, are never satiated. They are insatiable. The more they have, the more they want. These are these powerful, oligarchical, financing banking institutions. Our corporate structure is so interconnected today, or they use the words in banking jargon, "interlocked," that it is all one, little pinnacle of oligarchical control that is ruling, totally for the first time, the dictates of the policies that we say should emanate from the Congress. The national policymaking body. The representatives of the people. Together with the President. After all, the Constitution does give the President certain legislative prerogatives. He comes before us; he has the power to submit bills to the Congress. He does. That is the way it ought to be.

But the Federal Reserve Board has run amok. It accounts to nobody. Certainly nobody on Earth. We all, I am sure, ultimately are accountable to the God almighty, but I do not see any avenging angel coming down from heaven to rule the Federal Reserve roost. Rather, they have become more powerful. But, as all such entities, as all such groups of men, they can meet their match. Then we can see for ourselves the suffering entailed to our entire Nation, which is what is happening to us. Whether it is in the farm area: whether it is in the Rust Belt area. Remember that these crises have come to us piecemeal. I can remember over 10 years ago, 14 years ago, a distinguished Member from Pennsylvania, John Dent, taking this floor, speaking day after day and certainly there was no TV coverage; nobody could accuse him of talking to a TV audience.

He was saying, "We have been sold out. My area will see blight. It will see unemployment."

□ 1535

"It will see the producing center of our community dormant, idle, nonproducing." I believe that the most unfortunate thing of all, as reported in today's newspaper, is the President of the United States going down to a southern State, Louisiana, and instead of saying, "I promised you leadership to resolve these problems," the headlines say that he blames the Democrats.

I do not think the article said Jimmy Carter any longer. Finally, after some 6 years, he has left poor old Jimmy Carter alone, but for 4 years, 5 years after he had the power, he was still blaming Jimmy Carter for everything. I think that is tragic because, as the distinguished colleagues who were discussing the tax issue just before me said, these are bipartisan problems. They affect us all. They are not susceptible to partisan solution. But they are, of course, susceptible to solution.

The pathetic thing is that not all of us can say that we were sucked in from the beginning, beginning, as I said, in 1963. Mr. Dillon did not get my vote. Unfortunately, what I felt in my bones turned out to be right. He did not get my vote later.

Mr. Bill Simon, the Secretary of the Treasury when he pushed for a return to the private ownership of gold with no restrictions, no reenactment of the laws that had restrained somewhat, and again that was the second time I was called to have breakfast by the then Chairman of the Federal Reserve Board who said, "Well, I will agree with you to this extent: that we have got to have some controls" What he meant was on the banks.

In the meanwhile, a Senator, still in the Senate from Carolina, put in a provision in a bill that was not germane, but it had to be passed, and this was just about a year after 1976, so it must have been 1977, which provides for gold indexing of contracts.

You say, what is that? What that meant was that it threw all of our international transactions in competition with countries that had never accepted demonetization, such as France. Let me point out by way of parenthesis that about two-thirds of the treasure that we sank in Vietnam—and I used to say this and I was not shouting it because I did not want to join those that were adding to the cacophony, raising their fists and saying, "Hey, hey, LBJ, how many babies have you killed today?" I did not think that added to anything. I was critical. I tried to control my criticism. I tried to be constructive, but I used to say to some of his advisers, and it angered them, I think we can do more good and I think history will show if we were to get that $30 billion figure, which reached $30 billion in 1965, that you are putting in Vietnam and just convert it to dollar bills, put it into C130's or C5A's, pull our boys out and then just throw all our money out there and we will get more good from that than what we are doing.

Mr. BEREUTER. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I am delighted to yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Speaker, while the gentleman from Texas confers with the gentleman from Maryland [Mr. HOYER], I just wanted to say that I want to commend the gentleman from Texas for his continued effort to inform his colleagues here on the floor to establish a record on this important set of events that has taken place.

The gentleman and I do not always agree but I always appreciate the candor and the ability that he brings to his speeches.

I want to thank the gentleman for his continuing efforts to educate this House and also the American people.

Mr. GONZALEZ. Mr. Speaker, I deeply thank the gentleman from Nebraska [Mr. BEREUTER], who serves on the same committee with me, the Committee on Banking, Finance, and Urban Affairs, and who comes from an area that has been very hard hit, but which has been the wonder of the world in food and fiber production. The fact is that it is a sorry, sorry confession to make that just in the last year, or little bit more, for the first time, we are importing more food into the United States than that which we are exporting. In other words, our economy has been reversed.

We are also, unlike World War I and World War II, now the biggest debtor in the world. That had not happened since 1914 when Teddy Roosevelt decided to build the Panama Canal. We did not have the credit resources. We had to go to Paris, France, and borrow $40 million; $40 million then was like a billion today. $40 million from the French bankers, the traditional gold-holders, if not gold-hoarders.

France has never, never said we no longer consider gold as a main basis of a reserve. So what I am coming up to, and I wanted to round out because I think we ought to know this, if we are going to resolve the problem of the farmer; if we are going to resolve the problem of the laborer in our production belt, and instead of a rust belt, make it a gold buckle belt; if we are going to resolve the problem of the standard of living which has deteriorated in America for all, but particularly the dangerous trend where we are developing a class system like in Europe, a proletariat and these regressive tax bills, the most regressive of all being in 1971 because it gave away $755 billion. This year, at the beginning of this year, we reached that $700 billion giveaway. To whom? By taking off that tax burden from the richest individuals, the richest corporations. We sank our country in a monstrous debt, never before a sum quite by any country or combination of any countries in the world.

In the meanwhile, in Europe, whether you take the 6, what they call the Group of 6 or the Group of 10, they have developed, as I have said here,

several years, going back to 1979, when they first unveiled it, that we are confronted with the gravest threat to our creditor standing in the history of our Nation, even when we were a colony.

In fact, the revolution was fought basically for that purpose, so that the Americans in the new world would determine their destinies through the allocation of credit resources and not somebody in England who said, "No matter how good you can manufacture cloth in Philadelphia, you cannot manufacture. You send us the raw goods; we will manufacture them in Leeds and Manchester and we will send them back to you."

That was the merchantile system. It is a travesty. It is a shame. It is a sin that when we are about and have not quite reached the 200th anniversary of our form of government, that will not be until 1989, that we would have been put in this debased situation of a reverse merchantile system where we are no longer a producing nation; we are a consuming nation, and the President boasts of his economic recovery, all of which is based on an illusion because it is based on borrowed money. What is worse; it is borrowed foreign money, which is fickle and certainly not consecrated to the greatest interest of the greatest number in America.

What has happened here more immediately that has gone completely unnoticed, as far as I know, my voice is the only in either House that has mentioned the ECU, the European Currency Unit, the EMS, the European Monetary System. The whole purpose of that is to supplant the dollar as the international unit of currency.

□ 1545

They have started in a big way as of the beginning of this year. They put it in place 1 month before Mr. Reagan went to Germany on May 1, 1985; but all we read about was his trip to the German cemetery to honor foreign Nazis; but you did not read the real thing and that was that these ministers finally gave an accomplished fact to Mr. Reagan's—whoever he took, the Secretary of the Treasury or whoever else, and that is because in Palermo, Italy, exactly 1 month before in April, the finance ministers from these European countries met there and finally fleshed out the European currency unit, the European monetary system.

Why? Because between the 6, and much more with the 10, their gold holdings as reserves exceeded what we had by way of gold.

The Secretary of the Treasury, Mr. Simon, told me in January 1976, he said, "We are even going to sell it, Henry. We are going to even sell it."

I said, "But how can you do that? It is going to end up in the vaults of the bank of France."

He said, "No, we are going to limit the bids to 9 central banks."

I could not believe it. What was to prevent a proxy from putting the bid behind it and it ended up in the vaults of France, anyway.

This is what I said to the advisers of a good friend, President Johnson. He did not know much about international finance. He was not arrogant, either. He admitted to it. I was saying that, well, two-thirds of your money is going in the form of gold into France, because French Indochina even to this day has far more cultural ties, industrial ties and commercial ties, than with any other country.

Unfortunately, we have failed to understand that. We have reached the point, though, where now we are in a dog-eat-dog quandary. There huge mastadon institutions that are fearing bankruptcies are doing everything they can, thrashing about, trying to swallow each other up.

I cannot feel very much indignation for some poor guy that in the mistaken belief that he can save his little bank by investing in a speculative venture is found guilty of violating the SEC laws and is put in jail.

We come back to what the English people going through similar times, except perhaps on a different scale, but comparatively the same would say, "The law locks up both man and woman who steal the goose from off the common, but lets the greater felon loose who steals the common from the goose."

Mr. Speaker, at this point I place into the RECORD two articles that appeared in today's New York Times, Friday, September 19. One of them is entitled "Sharp Drop in Dollar's Value Fails to Cut U.S. Trade Deficit," and the second one in section D, page D-1, "Dollar Off After Baker Comments."

The articles are as follows:

[From the New York Times, Sept. 19, 1986]

SHARP DROP IN DOLLAR'S VALUE FAILS TO CUT U.S. TRADE DEFICIT

(By Clyde H. Farnsworth)

WASHINGTON.—A year ago the five major industrial powers forged a historic compact to drive down the value of the dollar in hopes of easing a crushing trade imbalance.

The drop in the dollar has been stunning. Since the meeting of the five nations last Sept. 22 at the Plaza Hotel in New York, the dollar has plunged 55 percent in value against the yen and 40 percent against the West German mark.

But the broader objectives of correcting trade flows and reinforcing international cooperation have proved stubbornly elusive.

ANOTHER RECESSION IS FEARED

The United States faces a trade deficit approaching $200 billion this year—up sharply from $148.5 billion in 1985—along with a rising clamor for protectionism and increasing strife with its leading trading partners over their reluctance to spur economic growth.

"Deep fissures in the world economy" have appeared, Paul A. Volcker, chairman of the Federal Reserve Board, told a gathering in Venice last month.

Things are so serious that some economists are warning that if the rest of the world does not grow fast enough to buy more American products, the United States will stumble into another recession. And a slowing of the American economy, in turn, would likely choke off demand for foreign goods, thus touching off a dangerous downward spiral throughout the world.

"Frankly, I'm very worried about the recessionary danger," said Rimmer de Vries, senior vice president of the Morgan Guaranty Trust Company. "We're not getting the growth abroad."

Robert D. Hormats, a former senior Reagan Administration economic official and now an investment banker with Goldman, Sachs & Co. said, "I think we must call a Plaza II meeting to deal with the trade imbalances that are threatening economic disaster."

Plaza I, the secretly convened Sunday gathering a year ago that produced the agreement to lower the dollar's value, was born out of the huge and prolonged rise in the currency from mid-1980 until February 1985, the largest such movement in history.

U.S. TRADE AFFECTED

By lifting prices of exports and lowering prices of imports, the inflated dollar undermined American international competitiveness.

The Plaza participants—the United States, Japan, Britain, France and West Germany—reasoned that deflating the dollar would help put world trade back in balance, setting the stage for more stable and consistent growth. But economists say several factors deprived the accord of its expected results.

The concentration of the monetary changes on too small a cluster of currencies, leaving out several of the United States' most important trading partners.

The preference of many foreign companies to reduce profits or even take losses rather than cede market share in the United States.

The reluctance of West Germany and Japan to spur economic growth, which would enhance American export opportunities, for fear of renewed inflation.

The immediate perverse effect in all devaluations. The trade deficit at first widens because, with the lower value of the dollar, imports come in at a higher value. It is only later that higher prices curb their volume.

The erosion of the American agricultural trade balance because of foreign subsidies and a global grain surplus.

The growing pressure on debtor countries to use their export earnings to pay interest to banks on their foreign debt instead of buying goods from the United States and other industrial countries.

NEW TALKS SEPT. 26

Finance ministers from the five countries involved in the Plaza accord customarily meet several times a year. They conferred at the economic summit conference last May in Tokyo and at the Interim Committee meeting of the International Monetary Fund last April.

The question of the trade imbalances is certain to arise at a session they are tentatively scheduled to hold in Washington on Sept. 26, on the eve of the annual meeting of the International Monetary Fund and the World Bank. This session of the finance ministers could conceivably lead to some fresh monetary decisions affecting trade.

Meanwhile, major trading nations are locked in tough debate in Punta del Este,

Uruguay, over the shape of a future trading system that could open up markets for the United States in data transmission, insurance and other services in which the American economy has special strength.

PROFITS AND JOBS AFFECTED

Although the dollar began to ease in early 1985, Treasury Secretary James A. Baker 3d invited his counterparts from West Germany, Japan, Britain and France to New York last September to hasten the process.

Mr. Baker's action came in response to enormous pressure from American business and labor whose profits and jobs were being hurt by the high dollar.

It marked the reversal of an earlier policy of benign neglect, in which Washington did little to influence the dollar's market movements. Yet the dollar may have been primed to move in any case, as some economists have noted.

"The market was ready for a change, ready, we may say, with the benefit of hindsight, to prick the speculative bubble that in 1984 developed and pushed the dollar to its excessive high," Gottfried Haberler, resident scholar of the American Enterprise Institute, wrote in the recent paper.

AN IMPLICIT THREAT

In the Plaza accord, which spoke of closer cooperation to "encourage" a weaker dollar, was the implicit threat of dollar sales from government treasuries. Market operators took note and sold dollars more quickly than they might have otherwise.

But the plan to push the dollar lower relative to the currencies of the other four participants had a flaw that did not become apparent until months after the meeting. The currencies of other important trading partners did not rise with those of the Plaza countries. Indeed, about half of American trade by volume is with countries whose currencies have stayed flat or even declined against the dollar.

Against both the peso of Mexico, this country's third-most-important trading partner, after Canada and Japan, and the cruzeiro of Brazil, which is No. 12, the dollar is now sharply higher.

The Canadian dollar is still below the level of last Sept. 22, at the time of the Plaza meeting. South Korea's currency, the won, moves with the dollar. Taiwan's dollar has appreciated a modest 10 percent.

All these countries have built large trade surpluses with the United States.

CURRENCY SHIFTS SOUGHT

Mindful of the devaluation gap, American negotiators are now seeking discussions with a number of these countries to increase the value of their currencies, Commerce Secretary Malcolm Baldrige told Congress earlier this month. He singled out the Canadian dollar as a currency that should be stronger.

The Federal Reserve Board's "Trade-weighted U.S. Dollar Index" has fallen more than 30 percent from its peak in February 1985. But because of the exclusion of Mexico, Brazil, Taiwan, South Korea, Hong Kong and others from this indicator, the decline is exaggerated, many economists say.

Steve H. Hanke, a professor of economics at Johns Hopkins and chief economist of Friedberg Commodities Management Inc. of Chicago, placed the dollar's real fall at "6 to 7 percent" on the border trade-weighted basis.

While ushering in some new currency talks, the Plaza agreement also set off what some are calling "the war of the growth rates."

Underlying the accord was the pledge of the five countries to more closely coordinate their economic policies. Each participant outlined intentions to provide "a more balanced expansion with low inflation."

The United States said it would "implement fully" a budget deficit reduction package. West Germany promised "vigorous, job-creating growth in the context of stable prices and low interest rates." Japan said it would increase private consumption and investment and provide a "progrowth environment for the private sector"

The zenith of cooperation was reached last March when coordinated policies led to interest rate cuts by the United States, West Germany and Japan. In the United States there have now been four successive cuts in the Federal Reserve discount rate, which stands at 5½ percent, the lowest level since 1977.

CHARGES TRADED

But in recent months there have been mutual recriminations as the United States has stepped up pressure on West Germany and Japan to increase economic growth, while those countries have criticized the United States for laxity in reducing its budget deficit.

To try to get its way, the United States has been using the dollar as a kind of monetary battering ram, some analysis say.

Mr. Baker and Mr. Volcker have warned both Bonn and Tokyo that Washington might be forced to let the dollar fall even more against the mark and the yen if those countries did not cut their interest rates further or take other steps to increase growth.

[On Wednesday, West German and Japanese central bankers reiterated earlier statement that they did not expect to cut their interest rates. In reaction, Mr. Baker again said that the dollar might need to decline further. On Thursday, the currency fell below two marks to the dollar, the lowest point in five years.]

By raising export prices, the higher mark and yen tend to have a depressing effect on the German and Japanese economies.

Yet both countries are afraid of stoking the fires of inflation, which they say could result from greater economic stimulus.

This view finds strong political support, especially in West Germany, which fears inflation more than most countries because of the hyperinflation of the 1920's that helped to usher in the Hitler era.

"The financial markets are betting on renewed inflation," said David M. Jones, senior vice president of Aubrey G. Lanston & Company, government bond dealers in Wall Street. "If there's a choice between world recession and world inflation, the markets are saying we'll choose inflation."

[From the Washington Post, Sept. 18, 1986]

DOLLAR OFF AFTER BAKER COMMENTS

(By James Sterngold)

The dollar dropped sharply yesterday after Treasury Secretary James A. Baker 3d was quoted as saying that it might have to come down to help reduce America's trade deficit.

Currency traders described the foreign exchange market as hectic, with the Bank of France and the Bank of England reportedly having intervened briefly to steady their currencies.

"In my opinion, the markets were disorderly; the dollar would gap up, then for some reason gap down," said Albert Soria, manager of foreign exchange trading at the Swiss Bank Corporation in New York. "There was tremendous volume and it was almost a one-way street."

But the broader fear was that using the dollar as a tool in an international disagreement over the United States' yawning trade deficit might unleash forces that might prove uncontrollable.

"A very significant thing happened today," said John Prout, a senior vice president and head of currency options trading at Donaldson, Lufkin & Jenrette. "The dollar is being used as a political weapon. The danger is what happens if they push it down, and then can't stop it?"

In the credit markets, prices on Treasury securities fell, partly in response to Mr. Baker's comments, which traders said would discourage foreign buying of Treasury securities. For foreign investors, a drop in the value of the dollar erodes the value of dollar-based securities.

DOLLAR LOWEST SINCE '81

Against the mark, the dollar hit its lowest level since early 1981, crashing through the two mark barrier. Several traders said that it was largely a strong mark, rather than a weak dollar, that drove trading. Late yesterday in New York, the dollar was quoted at 1,9875 marks, down from 2,0250 marks on Wednesday. The dollar also fell to 153,465 Japanese yen, down from 154.95 on Wednesday.

The British pound was also weaker, because of concerns over oil prices and the British economy, traders said.

The sudden flurry of dollar selling was set off by a warning by Mr. Baker that if West Germany and Japan continued to resist American pressures to lower their interest rates and thus stimulate their economies, the United States would have to push the dollar's value lower as an alternative means of reducing the huge American trade deficit.

"As we have indicated in the past, unless there are additional measures to promote higher growth abroad, there will need to be further exchange rate changes to reduce trade imbalances," Mr. Baker said in an interview with Reuters.

"We would really prefer not to have to rely on exchange-rate adjustments alone to remedy trade imbalances, but clearly the current trade deficit cannot be allowed to continue indefinitely," he added.

The comments were first published late Wednesday and circulated around the world, and they followed remarks from senior Japanese and West German officials that they would not cut their interest rates.

Traders immediately began to sell dollars for marks and other currencies, beginning in Japan early yesterday and extending through the European trading day and also in New York yesterday.

SOWING GRAPES OF WRATH WITH FEDERAL EMPLOYEES

The SPEAKER pro tempore (Mr. GONZALEZ). Under a previous order of the House, the gentleman from Maryland [Mr. HOYER] is recognized for 60 minutes.

Mr. HOYER. Mr. Speaker, I have taken this hour to speak on a subject that has been previously addressed on the floor of the House today by Congressman FRANK WOLF. He dealt exclusively with the 3-year provision of the tax bill which is going to adversely affect retirees from the State, county,

municipal governments, and Federal employees, as well as those who contribute to their pensions in the private sector. I am going to speak more broadly today, Mr. Speaker, on the issue of the current situation as it relates to the pay and benefits of Federal employees.

Mr. Speaker, I rise today to bring to the attention of the House a few of the many serious concerns which exist among the Nation's 3,065,000 Federal work force.

They are, Mr. Speaker, disillusioned and demoralized. They no longer possess, for the most part, the basic trust which is essential to successful employee-employer relations. They are uncertain as to their future and are increasingly choosing to leave Federal service for the pay, benefits, and basic respect they see their counterparts in the private sector enjoying.

And who can blame them, Mr. Speaker? They have continually faced an annual assault by the President proposing to reduce their benefits. Recently they have suffered under the desperate attempts of the Congress to reduce the deficit. We have frozen their pay, threatened their retirement system, and robbed retirees of their cost of living adjustments.

Mr. Speaker, I suggest that we are sowing the grapes of wrath. The civil service is finding it harder and harder to retain quality workers. When they leave, we cannot attract replacements. Young people who once thrilled at the chance to serve their country no longer see the civil service as a viable career path. We cannot, we must not continue along this path.

Mr. Speaker, let me review the situation as it relates to pay. As we are all aware, the President in his fiscal year 1987 budget request recommended a 3-percent pay adjustment for Federal employees. At the same time, however, he recommended an increase in employees' contributions to the retirement system of 2 percent, yielding a real increase that the President proposed of a 1-percent increase in pay.

Last year, as my colleagues recall, the President proposed a 5-percent cut in pay and we responded by freezing Federal pay rates, providing no comparability adjustment for the current year. What we ignored in doing so was that the employment cost index, for all employees throughout the Nation, which measures the increase in wage and salary increases, rose last year 4.7 percent.

This year the Advisory Committee on Federal Pay recommended to the President a comparability increase again based on the increase in the employment cost index, which was 4.2 percent. Again, I stress that that employee cost index was across the board for all private sector employment.

The Advisory Committee did not include any catch-up for last year's 4.7-percent shortfall in their recommendation. Instead, they only suggested a 4-percent increase, ranging from 3 to 5 percent for GS-13's and above. This is significant, because once again Federal employees are allowed to fall further and further behind compared to pay rates in the private sector.

In fact, the Advisory Committee totally ignored the report of the President's Pay Agent, which specified the average increase necessary to make Federal pay rates comparable with private rates. That adjustment, the Pay Agent said, would have to be 23.79 percent. This is because since 1981 the private sector average wage increase has totaled 40.2 percent; that is to say since 1981 private sector employees have increased their salaries by some 40 percent, while Federal pay raises have only increased a total of 16 percent, a disparity of more than 2 to 1.

Significantly, this year in an attempt to make the comparison between private and public pay rates more stringent, the Pay Agent expanded their survey to include establishments with 50 or more employees, which increased the survey from 43,000 establishments to 156,000 establishments for purposes of comparing Federal pay rates with private sector pay rates.

Mr. Speaker, this is significant, because the former Director of the Office of Personnel Management continually asserted that there was not a fair comparison being made between the private sector and the Federal sector, and as a result, he argued, there was a bad percentage figure from the Department of Labor for the difference between private sector and public sector pay.

I argued against it. I suggested that he come up with a new system. In fact, the Office of Personnel Management came up with a new system. The survey was expanded. The figures, however, Mr. Speaker, have not gotten better. The result of this expansion, which it was hoped would significantly reduce the private-public pay gap was to reduce the void between private and Federal pay rates from 23.89 percent to 23.79 percent. In other words, the only difference was approximately one-tenth of 1 percent in terms of the wide gap that exists between Federal and private sector pay rates.

This 23.79-percent gap is all too real to Federal employees and it is the result of the past 8 years' decisions not to implement the full comparability increase. In other words, not to follow the law as was contemplated in the early 1970's. It is a gap which is making it harder and harder to retain quality workers and attract quality new hires into the Federal civil service.

Mr. Speaker, David Packard, chairman of the board of Hewlett-Packard and one of the outstanding private sector leaders in this country, highlighted this point and stated it in testimony before the House Subcommittee on Compensation and Employees' Benefits.

I might point out again that Hewlett-Packard is considered one of the quality places to work in this country because its employees are treated so well and its benefits are good.

Mr. Packard said—now this is not, Mr. Speaker, a leader of a Federal employee union. This is not a disgruntled Federal employee. This is not the spouse or the family of a Federal employee complaining about wages. This is David Packard, a leader in private industry, a person who has shown through the leadership of his own company and ability to assess his own employees and their work. He says this:

> The pay disparity between government and industry began to grow with the last cycle of inflation, when increases in federal salaries failed to keep pace.

He went on to say:

> Not only are federal salaries noncompetitive—

Let me reiterate that. It is well that the President of the United States, the chief employer, the leader of the executive department, take heed to Mr. Packard's words when he says:

> Not only are federal salaries noncompetitive, but fringe benefits are eroding as well. Although the federal pension plan is still relatively generous, it has been affected by recent budget cuts and is often matched or exceeded in the private sector. Federal health and life insurance provisions and annual and sick leave allowances are far less generous than those offered by many private companies and universities.

Again, Mr. Speaker, that is a leader in private industry, not a public sector advocate.

Since 1950, Mr. Speaker, the Federal civilian payroll as a percentage of budget outlays has fallen from 15.7 percent to only 7.8 percent. The percentage of Federal civilian employees as a part of the labor force has also fallen from 3.34 percent in 1950 to 2.54 percent in 1983. I can assure this body that we have not reduced, however, Federal services by an equal amount. In fact, this Congress has placed more and more demands on our Federal work force, expecting them to enforce our trade quotas, stop the flow of drugs on our streets, and collect the revenues we need to function. We continually expect more for less, and pay less and less.

In fact, in freezing Federal salaries last year, we inflicted damages far beyond the failure to allow a working wage. When you freeze salaries, the retiree's 3 highest year's income is also reduced, and the annuity which is determined based on these 3 years is also therefore lost. The average employee retiring this year will lose $2,772 over

the next 10 years of his or her annuity because of this effect.

□ 1600

If we were to factor in the loss that the employee has incurred because of the failure of his or her pay to keep pace with the CPI over the past 10 years, the loss in the next 10 years of annuity payments would equal $36,378.

Essentially what that means is that as a result of the failure of this Government to meet its commitment to its employees, the retirees over the next 10 years will suffer a loss of what they had a right to expect of $36,378.

I am particularly distressed, and Federal employees are outraged, when the President ignores the Pay Agent's reported pay gap of 23.79 percent, and ignores the Advisory Commission's recommendation of a small fraction of that, 4 percent, and ignores the congressional budget allowance for a 3-percent pay increase, and instead, Mr. Speaker, the President recently recommended only a 2-percent comparability adjustment.

Mr. Speaker, you will recall that I brought to the attention of the House and of our audience that there was no pay raise last year. That means that Federal employees would have received, if we adopted the President's suggestion, a 1-percent pay raise per year over the last 2 years. This 2-percent increase ignores the increase in health-benefit premiums which will be required of employees this year.

On average, employee premiums in nationwide health plans will increase by $225.50. About 90 percent of all Federal employees belong to these types of plans. Yet if we consider a 2-percent raise for a GS-4, it equals an increase of $257.50, yielding an increase in salary of only $32 for a 12-month period after you subtract the increased health premium. For a GS-9, a 2-percent raise equals $436, yielding a $210 raise over a 4-year period.

Yesterday, Mr. Speaker, I offered, and the full Committee on Appropriations accepted, an amendment which would provide Federal civilian and military employees a 3-percent comparability adjustment for fiscal year 1987. This amendment is identical to that already adopted by both Houses in the budget, and it is consistent with the authorization bill of the House Committee on Armed Services.

Federal employees have given enough. They have sustained more than their fair share of the burden of deficit reduction. Last year they surrendered their pay raise altogether and fell further behind.

If we were to be fair, this House would adopt the Advisory Commission's recommendation of 4.2 percent—a minimal figure, but a fair one—so that at the very least they could keep pace with this year's private-sector increase.

To be totally fair, of course, we should restore last year's ECI increase of 4.7 percent as well, but I do not expect that, and Federal employees do not expect it. We only ask that this House provide what is already recommended in the budget, which is a 3-percent comparability adjustment for fiscal year 1987. To do anything less, Mr. Speaker, is to shortchange our Federal workers for a quick hit on the deficit, and it is a cheap shot which will come back to haunt us as the quality of the work force is jeopardized.

Mr. Speaker, I am sure that all Members of this House in dealing with the service given to them by each of their staff, and that every Member of this House, in contemplating the service given to us by our central staff, including the officers at the desk in this Chamber, know full well that they give freely of their time, and that they exercise great talent and judgment in the administration of their duties. To shortchange them once again is unconscionable and terrible employee policy.

Let me now speak of benefits, another component of the compensation of any employee, and of Federal employees.

Federal employees, Mr. Speaker, receive their health coverage under a plan called the Federal Employee Health Benefit Program. Over 396 health insurance carriers compete for Federal employee enrollment in their plans. The plan was designed to be a model of free-market competition which would presumably offer employees good health coverage at reasonable cost.

In 1982, due to a shortfall in the funds necessary to fund the Government's contribution to the plan, benefits were cut by more than 6 percent. However, notwithstanding the cut in benefits, premiums rose an average of 31 percent, and annual deductibility amounts rose as much as 300 percent in some plans. Premiums continued to surge ahead, rising as much as 75 percent from 1982 to 1984.

At that time the House Committee on Post Office and Civil Service commissioned a study by the Mercer Co. to compare the health insurance coverage by the Federal Government with that offered by the private sector and by State governments.

One of the reasons that it did that, Mr. Speaker, was because we hear so often demagogery in political campaigns. Demagogery by this administration, demagogery in fact by the previous administration, that the pay and benefits of Federal employees far outstrip the pay and benefits of the private sector. It is important, therefore, that we have this kind of study conducted.

Mercer, who does work for many private-sector firms, found that the Federal Employee Health Benefit Plan was 19 percent behind the average public-sector plans. In other words, not only were the Federal employees not comparable to the private sector, but were behind States and municipalities by an average of 19 percent.

Indeed, Mercer found that they were 21 percent less valuable than the average private-sector plan. So not only, Mr. Speaker, do we have a situation where the pay agent says that Federal employees are 23.79 percent behind the private-sector pay for comparable jobs, but we also find that they are 21 percent behind and have a less generous health benefit plan.

Since then, Hay Associates has also found that the Federal health plan lags significantly behind the private sector. This year the average premium increase will total 14 percent for this plan. As has already been discussed, this will increase the average employee's premium by $225.50. Yet we have not provided any substantial increase in benefits short of providing a small amount, appropriately so, for drug rehabilitation. The lag will therefore continue and worsen once again. In other words, the pay and benefits of Federal employees are again being adversely affected.

As I have mentioned in the past, this lag is no surprise to me. In fact, I continue to take my own health insurance through Prince Georges County Board of Education, for whom my wife works. I do so because its benefits are significantly better than the benefits available to Federal employees. Therefore, in effect, Mr. Speaker, I have put my money where my mouth is today.

Overall, the Hay Associates study found that total Federal compensation, consisting of both total cash compensation and the value of benefits—there are only two significant benefits that Federal employees have, their health benefit and their retirement benefit—is about 16 percent below the private sector as of March 1986. This is an 8.6-percent increase since March 1984, when Hay last reviewed this data. Again, the trend is negative. Again, the employee loses. Is it any wonder why the demoralization of which we read so much is so pervasive?

Let us talk about Federal retirees. This year the Congress resolved a 3-year battle which began when the Congress restructured the Social Security System in 1983. We adopted a new retirement system for Federal retirees hired since that time, which includes civil servants in the Social Security System. The new system raises the minimum retirement age from 55 to 57. It also provides that no cost-of-living adjustment will be paid until age 62, after which time the COLA is

reduced by a percentage point if the CPI is more than 3 percent.

□ 1610

These reductions in benefits will provide $42 million in savings next year and produce a 5-year savings of approximately $7.2 billion. That is a lot of money.

Where does the savings come from? It comes from the pocket of the retiree. It comes from the pocket of the retiree who worked probably 30 years for the Federal Government believing that his or her employer was going to keep its contract with them, was going to provide the benefits that they expected as they worked those 20, 25 or 30 years for their employer.

The Federal Government contribution for the current employee is about 31 percent of payroll. The new plan, however, even with full employee participation in the savings thrift plan will only cost the Government an estimated 22.9 percent of payroll.

What does that mean? It means that the Federal Government contributes 9 percent less toward the pay and benefits of Federal employees than it did previously. Again, this is money out of the pocket of our employees.

So make no mistake about it, though the reform was the best compromise which could be reached, it is another reduction of Federal participation in the benefits of Federal employees. There is no question that the Federal retirement system was, and I would suggest still is, the most attractive benefit of the entire package. Yet it was far from the gildeed system many had made it out to be. In fact, the average pension after taxes was $1,064 a month, or about $12,700 a year, which definitely does not provide for an extravagant retirement. It certainly is no golden parachute.

Without contribution to the thrift plan, the average employee will receive less than employees under the previous retirement system.

Another point, Mr. Speaker, we should consider, is how we treat those who have concluded their service and depend on their Federal retirement for their existence. Last year, Federal retirees were the first to suffer the cuts of Gramm-Rudman, the very first. I would suggest that the public, which ultimately will suffer if the quality of Federal workers declines further, if the quality of Federal service reaches a point where we cannot recruit quality people, then it will be us as a people, us as a Nation who will suffer. I would call the public's attention to the continued reductions of which I am speaking and the fact that when we adopted Gramm-Rudman last year, the very first group of people that suffered were the Federal retirees. Not only was their COLA eliminated, but it was canceled 3 months earlier than other budget cuts required by Gramm-Rudman.

The Federal employee continues to be an easy target. The Federal employee continues to be an easy object of demagoguery. It ought to stop. It ought to stop for the welfare of our Nation and the quality of our Government.

This Gramm-Rudman cut was done notwithstanding the fact that Social Security recipients were exempted. Notwithstanding the fact that veterans' compensation and pensions were exempted. Notwithstanding the fact that unemployment compensation was exempted. In fact, Mr. Speaker, inflation has risen 10.1 percent over the past 3 years, during which time Social Security recipients have maintained pace with inflation.

Let me make it clear, Mr. Speaker. That is appropriate. We ought not to retreat from that policy. We ought to keep people on a level at least even with inflation.

Federal retirees, however, have not been so lucky and have only received one COLA during that period, leaving them 7.6 percent behind Social Security recipients, or said another way, making the value of their pensions 7.6-percent less valuable. This gap worsens each year, because without a COLA in one year, the baseline for the next year's COLA is lower, further robbing Federal retirees of their ability to keep pace with inflation.

This year the President requested another freeze on the COLA, no adjustments. Wisely, however, this Congress rejected this proposal, and this year's budget has provided for a full COLA for our retirees. This House has also overwhelmingly adopted H.R. 4060, which would include Federal and military retirees' COLA's in the list of programs exempted from Gramm-Rudman automatic cuts.

However, this bill has not yet become law, and there will, of course, be a temptation to again take an easy hit for deficit reductions against this vulnerable group.

Mr. Speaker, let me discuss another item. Holiday furloughs. I cannot think of anything that is more demoralizing and petty than the action which the Department of Agriculture and the Office of Personnel Management attempted to take this year which would have furloughed employees on the Federal holidays. This is yet another attack on Federal employee benefits, and a petty one at that.

OPM strongly contends that it would be legal to furlough Federal employees on holidays, even though it is clear that a furlough is defined as being relieved from duties without pay. Since no duties are required on holidays, one cannot be relieved from them without pay.

Correctly, the Comptroller General disagreed with OPM's interpretation and blocked the institution of furloughs. Unfortunately, the administration is challenging the authority of the GAO over its agencies decisions. The pressure of Gramm-Rudman cuts could lead to another attempt to perform these furloughs.

Let me try to perhaps explain just a little more what I mean by these furloughs. If one gets off Christmas in the middle of the week, one expects to get paid for that day. It is, in effect, a paid holiday. But if, however, your employer decides on that one day he is going to furlough you, and therefore does not pay you for that day, you feel cheated. The Federal employees, ladies and gentlemen, feel equally cheated with that kind of proposal and with that kind of treatment.

The Congress has designated 10 holidays for employees and provided that employees should receive normal compensation for each one. We should ensure that our policy for observance of holidays is preserved, and block any future attempt to pursue such a petty, vindictive furlough policy.

Mr. Speaker, another issue which I would like to address is the suggestion for drug testing. The President has recently come down with a proposal which would require administrators, directors, and heads of agencies to adopt a policy to test employees who are in "sensitive" positions. Frankly, Mr. Speaker, the definition of sensitive employees has not been made clear, and apparently there is much discretion in the agency head.

Suffice it to say, this is another denigration of the respect accorded to Federal employees who now have it implied by their President that they somehow need to be tested across the board. We do not know how broad the President's proposal is. But there certainly is the proposal of a task force sponsored by the President which recommends across-the-board testing without cause, probable, substantial or de minimis, without cause testing.

Mr. Speaker, I will have more to say about that proposal when it becomes more clear specifically what it is. However, we ought not, as concerned as we are about the drug problem confronting our Nation, which is a serious problem and one with which we must deal and deal with honestly, we ought not to allow it to lead us to a position where we diminish and ignore not only the constitutional rights of our Federal employees, but their rights to privacy and their rights to be treated with dignity and consideration.

Mr. Speaker, I started this special order with an observation that a number of individuals had talked about the tax bill and had talked about the impact of the tax bill on Federal employees. Again, a significant piece of legislation, and as has been historically true, the Federal em-

ployee as well as other public employees, are diminished by portions of that bill.

□ 1620

The issue which Federal employees feel now threatens to further undermine their economic well-being, is the conference report on the tax reform bill. This bill would repeal, retroactively; it would go back to get employees—the 3-year recovery rule.

The 3-year recovery rule allows employees who contribute to their retirement system to recover that contribution without further taxation in the first 3 years of their retirement.

Now why does it do that? The great majority of private sector employees do not contribute to their retirement program. There are approximately 5 million in the private sector who do. There are another 12 million in State, county, and municipal employ who contribute to their retirement programs, and there are 3 million Federal employees who do so. Making a total of approximately 20 million Americans who contribute to their retirement programs.

They contribute after-tax dollars. That simply means that the amount that they contribute to their retirement program has already been taxed. As a result, under present law, they are deemed to take out their contributions first upon their retirement, and obviously, because of the fact that they have already paid taxes on those sums, they are not taxed a second time.

Current law allows these employees to receive that contribution in effect up front. Mr. Speaker, I want to make it clear that this includes the millions of State and local employees as well. As I said, this is not just undermining Federal employees. It is undermining State, county, and municipal employees as well.

We talk about this bill as helping the average American. I suggest to you that the policeman in Chicago, a public employee contributing to his pension plan, is an average American. I suggest to you that the teacher in Los Angeles contributing to her retirement program is an average American. I suggest to you that the clerk in New York is an average American. I suggest to you indeed that all of these 20 million people participating in contributory pension plans, in the private sector and public sectors, are average Americans, and those average Americans are the only average Americans or Americans of any type, being retroactively and adversely affected with respect to personal income taxes in this tax conference committee bill.

No other American is having retroactively an adverse impact on their income taxes. One of the saddest things about this proposal is that when I first talked, some 6 months ago, to the staff of the Ways and Means Committee about this bill, they thought that it only affected Federal employees.

There are still members of the Ways and Means Committee who, as recently as 3 days ago, on this floor, implied that it only affected Federal employees.

Why do I make the point? I make that point because people feel it is easy to target Federal employees. In this case, however, we are talking about 20 million average Americans.

I, along with many of my colleagues in both bodies, have argued continuously to the conferees that the 3-year recovery rule should not be repealed. Unfortunately, not only has the conference repealed the rule, as I said earlier they have made it retroactive in nature.

As proposed by the conference, any employee who retired after July 1, 1986, that is to say, 2 months ago, would lose the 3-year recovery of their contribution.

In its place, the employee's contribution would be spread over the expected life of the annuitant. For example, if an employee is expected to live 15 more years, he or she would only be credited with one-fifteenth of his or her total contribution each year.

Mr. Speaker, I cannot begin to describe the sense of betrayal that Federal employees feel about this retroactive provision. The average Federal retiree will pay an additional $2,154 in taxes during the first year alone as a result of this retroactive provision.

Let me repeat that: Because we will hear on this floor next week that no average American is adversely affected by this bill. The average Federal employee retiree next year will pay $2,154 more in taxes because of this proposal.

Calls are coming from police officers, firemen, letter carriers and scores of civil servants. And they will not stop; they will get much worse because people are only beginning to realize what the conference committee has done.

We should act to repeal, retroactively this provision which impacts personal income; is unfair; and should be undone.

I would encourage the chairman to act to restore fairness and equity to this bill, so that those of us who want so badly to support this bill, which has some good provisions in it, can do so in good conscience without singling out those who have contributed to their own retirement. They are the people who guard our Nation, police our streets, implement our laws, and educate our children.

Mr. Speaker, let me speak about morale. Over the recess, the Washington Post published two series on Federal workers which I would commend to my colleagues, and indeed to the general public.

One series on U.S. Customs made it clear the disillusionment Federal workers now feel. Agents, who have proudly served their country, now advise their children against joining the Federal workforce. Carol MacClary, who heads an import team for Customs in Miami, was quoted as saying about her son:

> He's one of the brightest kids, in the top 5 percent in SAT's. I would never recommend him to go into government. And the President cannot expect to draw that type of person unless he raises up the image and stops berating us in public.

Let me reiterate that: A Federal employee talking to her child, who she says is one of the brightest, in the top 5 percent in SAT's, says: "I would never recommend him to go into Government." She further said, the President cannot expect to draw the type of person unless he raises up the image and stops berating us in public.

That admonition is true for the President, the chief employer, the head of the executive department of this Government, and it ought to be true of each and every one of us as well.

Robert Van Etten, who is in charge of all antidrug operations in New York for Customs, a critically important job and a great responsibility described the dismaying situation that even though his employees are committed to their jobs, there is a strong concern over the failure of their wages to remain competitive. He said, and I quote:

> From the standpoint as the basic head of household, as the family provider and all that, they see adverse impacts on their own income. They have children they want to send to college. And now we're looking at—we may get a 4 percent pay increase this year. Four percent, after they take out 1.5 percent for medical benefits gives you 2½ percent. Then if you count inflation, you're lucky if you break even * * *. Their problem is going to come down to this: If we ever stop enjoying it, then the outside will look a lot more attractive.

□ 1630

In other words, the reason Mr. Van Etten is staying and the only reason he thinks we can compete in the job market is because we have some very interesting, very exciting jobs to be performed. But that will not last, Mr. Speaker. We are treading on dangerous ground as it relates to the quality of America's work force.

Mr. Speaker, it is clear that Mr. Van Etten is an optimistic person. He believes that he and his coworkers will see a 4-percent raise this year. That, unfortunately, is not going to happen. In reality even with approval of my amendment providing a 3-percent civil comparability adjustment, he will not keep pace with inflation, and he will

not keep pace with the private sector increase in this area.

In the second Washington Post series on the careers of various Federal employees, an elite Presidential intern, Michele Zuckerman, described how most of her friends work in the private sector and that she has noticed few young people pursuing a career in the civil service. She said, "I don't think people see that as a career path. You don't hear folks say, 'Why don't you go off and work for the Government?'"

This is indicative of a much larger problem. Federal workers are disillusioned and demoralized, and a 2-percent comparability increase and the other negative trends we have discussed here today offend workers because it implies that they are not worth as much as private sector workers and that they are not really appreciated.

Let me say at this point, Mr. Speaker, as you know, I represent 63,000 Federal employees, but I do not delude myself nor do they; the most important sector in this Nation is the private sector. What has made this country great is private enterprise. What provides most of our jobs is private enterprise. But it follows like night follows day that we must have an effective Government work force if our private sector is to be able to operate effectively as well.

Mr. Speaker, this failure to recognize pay and benefits also fails to recognize that Federal workers have already contributed their share toward deficit reduction. As a result of reduced pay, Federal workers—and I would like you to make sure you get this figure—Federal workers have contributed over $31 billion that they would have otherwise received over the past 10 years, to deficit reduction. What do I mean that they would have otherwise received? If their employer had not changed the rules, if their employer had not failed to meet the contract, if their employer had not said, "I am going to take it out of your pocket rather than somebody else's pocket," they would have received in pay and benefits over the last 10 years an extra $31 billion, which would have been consistent with their understanding of what their pay and benefits were supposed to be under their contract. Perhaps not a legal contract but certainly a moral contract that this Government, this employer should keep.

I would like to insert for the RECORD a chart prepared by the Congressional Research Service which compares the average increase in pay between the private sector and the Federal Government to show the gap which has been reinforced year after year.

The chart referred to is as follows:

PERCENT INCREASE IN AVERAGE WHITE-COLLAR SALARIES

Date	Federal pay raise	Date	Private sector average wage increase (all surveyed occupations)
Oct. 1, 1981	4.8	March 1980–1981	9.7
Oct. 1, 1982	4.0	March 1981–1982	9.5
Jan. 1, 1984	4.0	March 1982–1983	7.4
Jan. 1, 1985	3.5	March 1983–1984	4.7
Jan. 1, 1986	0.0	March 1984–1985	4.5
Jan. 1, 1987		March 1985–1986	4.4

Source: U.S. BLS. National Survey of Professional, Administrative, Technical, and Clerical Pay, various years, and U.S. Congress. Committee on Post Office and Civil Service. Current Salary Schedules of Federal Officers and Employees Together with a History of Salary and Retirement Annuity Adjustments, Committee Print 99-1, pp. 24-25.

When this demoralization causes our employees, experienced and talented individuals, to leave Federal service, we will face the other horn of this dilemma in that we will be unable to recruit talented young people to fill these jobs.

At NASA, just for example, the starting salary for an engineer runs $7,000 behind the private sector. For one job, a critical position, there is a $7,000 disparity.

Is it any wonder that we will find ourselves and do find ourselves competitively disadvantaged? Is it any wonder that the best and brightest in our Nation will be unavailable for public service?

This vicious cycle, Mr. Speaker, must end. Let us provide a pay raise as we have budgeted for, let us treat our employees with the fairness and equity that they deserve.

To close, Mr. Speaker, I would like to stress a point which should be clear to both the President and every Member of the House. I agree with the President that we should adopt the strengths of the private sector and incorporate them into our own employment policies.

One of the leading innovations of the private sector in recent years is the pursuit of better employee-employer managerial relations while cutting costs.

This year as in the past this administration has not pursued such a policy but has, instead, continued the adversarial position which is usually reserved for campaign rhetoric.

The President's budget requested a 3-percent raise which was, as I have said previously, in reality a 1-percent raise.

Further, the President proposed no cost of living for retirees, raising their retirement age, changing the annuity calculation from the highest 3 to the highest 5 years, capping the Federal contribution to Federal employees health benefit plans and substituting student survivor benefits. In every instance cutting back on the pay and benefits that we give to those that we ask to carry out the policies of this Government and this people.

Year after year these assaults have continued. This is not the way, Mr. Speaker, Mr. President, to build positive management-employee relationships. It is not a cooperative approach but, rather, one which seeks to rob employees' benefits and rights. It seeks to take, not to trade or to negotiate.

Recently in Charlottesville a meeting of 29 Federal senior executives gathered with the Brookings Institution for a seminar on executive leadership. I want to repeat some of their comments which, I believe, describe the seriousness of the problem that this adversarial approach created. They said, and I quote, "I believe we have destroyed the purpose of working in Government." Another said, "I think the greatest thing we have lost is not pay or pension benefits for the future. What we are being robbed of is a sense of purpose."

Another said, "I worry about the future and what this work force will become."

Last, one said, "I think Ronald Reagan's lasting contribution to Government in the next decade or so will be that he completely illegitimized Government service. Whatever the Kennedy administration did to make Government attractive to people of talent has been absolutely undone and reversed. What? Your kid is working for the Federal Government? What is the matter with him?"

These comments of 29 Federal senior executives, leaders of our Government, describe a work force tired of abuse and apprehensive of the future. I would urge the President and all my colleagues to work together to reverse this dangerous trend. We should work to create an environment in the Federal work force where it would be inconceivable for us to hear these comments. We must restore a sense of purpose and we can begin by restoring a sense of fairness.

That is all these employees are asking for. They should not expect anything less, nor should we provide anything less.

Mr. FAZIO. Mr. Speaker, I would like to thank my esteemed colleague from Maryland, Congressman STENY HOYER, for inviting me to participate in this special order. Congressman HOYER has been a true champion of the Federal work force. He has been a leader on legislation which promotes and supports our excellent civil servants and those who have retired from Government service.

I applaud the efforts of my colleague because it is absolutely essential that those of us who believe in a top-notch, productive, energized and dedicated work force speak out on behalf of our employees. For far too long we have been deluged with anti-Government, anti-Government-worker rhetoric. The public needs to know the truth.

The Washington Post just ran an excellent series of articles on what it is like to be a Fed-

eral employee today. These articles really brought to life the human toll resulting from years of "Government bashing."

As one who works closely with individuals who are employed by the Government, I could readily relate to the frustrations expressed by all who were interviewed, when they said: "We are constantly being asked to do more with less." and "You don't have any respect from your neighbors, and there can be no sense of pride in the work; its overwhelming * * * I take strong exception to people saying we don't work hard when I'm working as hard as I can." And "It's very frustrating for me to hear people come in the office and berate what we're doing. That hurts me personally. I'd like to say it doesn't, but it does."

Our greatest resources—the people who have devoted their lives to serving our Nation—are bearing the brunt of the anti-Government sentiment which is all too prevalent throughout the country.

It seems that every week there is a new assault on workers. After advocating a pay cut in fiscal year 1986 and eventually acquiescing to a pay freeze, President Reagan just announced in the last week of August a 2-percent pay raise despite Federal pay data that shows civil service pay lags about 24 percent behind the private sector in comparable jobs. Further, the administration continues to advocate COLA freezes, increased contracting out, reduced health care, additional furloughs and layoffs, and mandatory drug testing for all. To add insult to injury, the Joint House Ways and Means and Senate Finance Conference Committee on the Tax Reform bill just came out with an agreement to make the elimination of the 3-year rule, the tax free annuity period, retroactive to July 1, 1986. Further, that same committee gutted the benefits from the lump-sum payment provision in the recently enacted civil service retirement legislation.

As a member of the House Budget Committee and the House Appropriations Committee, and as cochair of the Federal Government services task force, a pro-Federal employee congressional caucus, I, along with my colleagues STENY HOYER, BILL FORD, MARY ROSE OAKAR, BARBARA MIKULSKI, PAT SCHROEDER, MIKE LOWRY, MIKE BARNES, and many others have fought against all efforts of either officials in the administration or Members of Congress that are harmful to the long-term well-being of our Federal work force. The ill-conceived and ill-advised efforts to erode pay, benefits, confidence and image of our employees is taking an enormous toll. We are experiencing an unprecedented exodus of top-notch people and we are failing to attract the numbers of new talent that is needed.

We must turn this around. Of course, the effort to do so must start from the top. But a series like the one that appeared in the Post and special orders like this one are a good way to show the flip-side of all the anti-Government rhetoric.

Again, I thank my colleague Congressman HOYER for his efforts tonight. I look forward to continuing our long-term work on behalf of Federal employees and retirees, including our efforts to change the tax reform bill's treatment of annuities and lump-sum payments, increasing this year's pay raise and ensuring a COLA in fiscal year 1987 for retirees.

Mr. FORD of Michigan. Mr. Speaker, there is, to be sure, much merit in the Tax Reform Act. Many of the changes embodied in it have long been needed to make the Tax Code more equitable and more palatable.

There is one part of this bill, however, that is extremely unfair and which, in my opinion, detracts from the rest of the bill. This is the portion of the bill that would require Federal employees to pay tax when they withdraw their contributions to pension funds. It is, plainly, a tax on money that has already been taxed. Could anything be more unfair?

I want to make sure that everyone in this body fully understands what we are attempting to do here. We are proposing repeal of what is known as the 3-year basis recovery rule for qualified pension plans requiring employee contributions. Employees pay tax on this money before it goes into the fund. So what we are doing here is asking them to pay tax on it again when they take it out.

Where is the equity?

If we can do this, what then is to prevent us from passing a law to tax withdrawals from savings at the corner bank? I see absolutely no difference.

This double taxation is bad enough. But now we want to make it retroactive to July 1 of this year. This would be a terrible disservice to those who retired after July 1, and to those who were persuaded by supervisors to stay after that date because their services were needed.

To those people we are now saying, "to show our appreciation to your devotion and dedication we are now going to double-tax your contributions to the pension fund."

There is a misconception in this body that this provision would only affect Federal employees. This is not the case. In addition to the 2.8 million Federal employees and postal workers, this bill will deal a cruel blow to almost 12 million State and local workers across the Nation.

A 1978 report by the Committee on Education and Labor showed that 85 percent of employees covered by State and local pension plans are required to make contributions—all the way up to 9 percent.

What this means is that we are not just talking about Federal workers who get kicked around every time we want to cut the size of the Federal budget. We are also, in this case, kicking around teachers, nurses, firemen, policemen, and all those other people who work for our cities and States.

Just by way of example, a 60-year-old Ohio public employee would have to pay $1,300 more in taxes during the first 2 years of retirement under this bill.

If we pass this provision we are going to have a lot of unhappy workers—State and local as well as Federal—to answer to.

I think their anger will be justified. And I don't want to be the one who has to face their wrath.

Mr. BIAGGI. Mr. Speaker, I want to express my strong opposition to a particular provision of the tax reform conference agreement, which would retroactively eliminate the 3-year basis recovery rule that allows public servants to recover their contributions to a mandatory participation plan.

It is disturbing to me that while many of the changes in the tax reform package—like the consumer interest deduction—would be phased in over a period of time, elimination of the 3-year basis recovery rule would occur retroactively to July 1, 1986. Simply put, we are changing the rules in midgame and not allowing anyone who had developed a game plan based on the old rules to stop playing.

For many years, some 20 million Americans have made financial plans under the fair assumption that they would be able to recover their mandatory retirement contributions during the first 3 years after retirement. After all, that was the rule when they decided to become a public servant. But now, those same people are being told to forget those plans because Congress has decided to change the rules and nobody can escape this penalty, no matter how much financial hardship it may cause.

This new law will penalize public servants in amounts ranging from $5,000 to $30,000. That is a very sizable loss. For some, it may mean not being able to pay for a child's college tuition; for others, it may mean having to extend their current employment or to find new work just to make ends meet. Either way, it's wrong.

Our Nation's public servants did not expect to get rich when they decided to become police officers, firefighters, teachers, or government workers. However, neither did they expect to be treated so shabbily when they neared the end of their many years of devoted public service.

Mr. Speaker, I do not agree with the elimination of the 3-year basis recovery rule, in principle. Yet, I am especially concerned that we would apply that change on a retroactive basis. At least, let's give those who cannot afford this severe penalty the opportunity to avoid it, if they are in a position to do so. That is the fair and responsible course of action and the one I will work toward implementing.

Frankly, this single provision makes my decision on the entire tax reform package a very difficult one. I know I am not the only one burdened with this dilemma. A number of my colleagues have publicly stated similar concerns and the estimated 20 million Americans harmed by this provision are not sitting quietly on the sidelines. I have received hundreds of letters, visits and phone calls from constituents urging me in the strongest possible terms to oppose this retroactive repeal of the 3-year basis recovery rule—and the pressure is intensifying. In fact, just this week, countless members of the Fraternal Order of Police, our Nation's largest law enforcement organization, have been walking the Halls of Congress urging Members to oppose this provision.

As representatives of the people, it is difficult to ignore such a loud and understandable public outcry. I am hopeful that we will have an opportunity to delegate this harmful provision from the tax reform package.

Mr. HALL of Ohio. Mr. Speaker, I commend my colleague, the gentleman from Maryland [Mr. HOYER] for organizing this special order to draw attention to the problems facing our Federal civil servants.

Perhaps during no time in the history of our Nation has the service in our Federal Govern-

ment been so demoralized. Once men and women aspired to Federal service as the highest calling. Today, there is broad dissatisfaction among Federal workers, and fewer young people seek out the Federal Government as an employer.

Who can blame them? Irresponsible office-seekers campaign on a platform that "Government is the enemy." To a patriotic American who has spent a lifetime in Federal service, that surely must sting.

Perhaps even worse, Congress has regularly picked away at the package of pay and benefits for Federal employees, with results that often produce little in the way of saving money; but collectively, destroying the reliability of the Government as an employer.

Never has this been clearer than with a provision in the tax reform package which would levy a retroactive tax penalty against retirement-eligible Federal employees.

The tax reform package contains a provision which eliminates the 3-year basis recovery rule, which affects about 20 million workers who make contributions to their pension plans with after-tax dollars.

The rule gives workers 3 years immediately after they retire to "recover" the contributions they made into the system and on which they have already paid taxes. In effect, this gives the retired workers a tax-free period on their pensions, because they have already paid the taxes.

Those affected include most Federal, State, and local government workers, including teachers, policemen, and firefighters, plus some private sector employees.

However, Federal civil servants and postal workers are most affected because of the high percentage of their salaries which they contribute to their pension plan.

I oppose the original House version of the tax reform bill for reasons which included the provision which eliminated the 3-year rule. I believe that the 3-year rule provides an appropriate way for workers to recover the pension contributions on which they have already paid taxes. Moreover, many workers have made investment decisions based on the tax-free period following retirement. It would be a breach of faith for the Government to change the rules so suddenly for employees. Finally, Congress has a special obligation to protect the interests of the Federal workers who carry out the laws and programs which are mandated by Congress.

The penalty which is created by the elimination of the 3-year rule can result in a significant tax increase for many who are affected. According to figures provided by the Congressional Research Service [CRS] of the Library of Congress, a retired employee earning average wages and who has no income other than a pension would be socked with an extra $1,200 in taxes during 1987 if he retires under the new provision.

However, higher income workers and those who have planned investment strategies calling for selling assets during their tax-free period would be even harder hit. According to CRS, a high wage earner who retires from Government service who has an additional $20,000 income in assets would face an $8,500 tax increase in that 1 year.

As a member of the Rules Committee, I was unsuccessful in obtaining a rule which would permit an amendment to keep the 3-year rule. I believe that if the House was offered a straight vote on the 3-year rule, it would not make the change.

The original House bill would affect workers who retire on or after July 1, 1986. As consideration of tax reform dragged on in the Senate and approached that date, the possibility developed that Congress would end up enacting the July 1 date retroactively if it gave final approval to the bill after that date.

To prevent this possibility, I, along with my colleagues Ms. OAKAR and Mr. WOLF, introduced a resolution expressing the sense of the House that no change in the 3-year rule should take effect retroactively. To date, 95 House members have cosponsored the resolution.

Retroactive tax penalties affecting individual income are extraordinarily rare. Moreover, press accounts widely reported that House-Senate conferees would pick a prospective effective date, or adopt the Senate version, which phased in the effective date beginning January 1, 1988.

The Washington Post reported on May 13, 1986, that a retroactive date would be "unlikely."

The Los Angeles Times reported on June 4, 1986:

> Officials do not expect the tax rule . . . to become effective retroactively.

The Atlanta Journal & Constitution reported on June 22, 1986:

> Capitol Hill insiders believe that the tax bill that emerges from Congress will delay from July 1 until at least 1988 the repeal date for the pension measure.

Most interesting is an article from June 30, 1986, in the Weekly Federal Employees' News Digest:

> Key members of the House Ways and Means Committee have quietly passed the word to government union leaders that the House will yield in conference on its July 1 provisions for repeal of the three-year recover period in federal and postal retirement . . . House committee members indicated that the House is ready to compromise on the issue and the effective date of the repeal won't be until at least sometime in 1987.

Despite these assurances, many Government workers had too much money at stake, and they didn't want to take the chance that Congress might actually put in the retroactive date. Those who had no faith in the Government and who put personal finances ahead of Government service retired to beat the July 1 deadline.

It turns out they were the smart ones.

Almost unbelievably, the agreement reached between House and Senate negotiators included the retroactive tax penalty. This, despite the prospective date in the Senate version. This, despite the strong support in the House against a retroactive date. This, despite the overwhelming precedent for tax penalties which affect individual income to be effective prospectively. This despite the fact that no other provision in the bill affecting individual income is retroactive.

Why?

Why have Government employees been singled out for this shocking and grossly unfair treatment?

It isn't to raise revenues. In a letter of March 27, 1986, from Treasury Secretary James A. Baker III to Representative STENY H. HOYER, Baker writes:

> It is true that the proposal is unlikely to be a revenue-gainer over the long run. Even though the proposal is estimated to increase Federal receipts by $7.5 billion over the 1986-1990 period, over the long run the proposal would be closer to revenue neutral. The reason for proposing repeal of the 3-year basis recovery rule is not to gain revenue.

According to a Ways and Means Committee estimate, Federal receipts would increase by $1.8 billion by setting the effective date at July 1, 1986, instead of January 1, 1987. However, this is only a short-term windfall, and cannot be considered a true revenue raising measure.

A $1.8 billion temporary windfall is not worth trashing the integrity of the Federal Government as an employer.

Some have suggested that the retroactive effective date is necessary in order to block a mass exodus of Government workers who would suddenly retire if given another opportunity to retire under the old tax treatment. Again, I quote Secretary Baker's letter, who didn't think this would be much of a problem:

> Projections of the number of optional retirements induced by repeal of the 3-year basis recovery rule made by some of those objecting to its repeal are likely to be overstated. Federal employees who expect a rising stream of taxable income over their retirement—such as those who do not expect to begin receiving social security benefits until a few years after retirement—will actually benefit from repeal of the 3-year basis recover rule and therefore should not retire in order to beat the effective date. In addition, those with modest retirement income will be less affected by the provision's repeal and therefore are less likely to retire because of this change. Finally, because retirement benefits are based on the number of years of service as well as the years of highest pay, the benefit to employees of working longer will in many cases offset the short-term benefit of retiring before the repeal of the 3-year rule.

If the purpose of eliminating the 3-year rule is not to raise revenues, why is it being proposed? Once more, I defer to Secretary Baker in a March 27, 1986, letter to Senator PAUL S. TRIBLE:

> Repeal of the 3-year basis recovery rule is part of an entire package of retirement proposals meant to make retirement tax policy more consistent and equitable for taxpayers.

In other words, Congress is poised to enact one of the most patently inequitable tax penalties in a rare retroactive move—all this, in the name of consistency and equity.

Once again, I ask why?

Though the reasons are unclear, the effect is not. It will destroy the trust that exists between the Government as an employer, and further erode the moral of Government workers which is already at rock bottom levels. The main winners are those who favor the dismantling of the Federal Government because

it will surely discourage capable workers from the Federal service.

Moreover, by enacting the retroactive tax penalty, we are rewarding the ones who deserted the Government to get out under the old tax laws. The ones who had faith and who stuck to their jobs get slapped with a hefty tax penalty for their loyalty.

Finally, the use of the Tax Code to single out groups of people for treatment which is so obviously unfair could very well undermine the faith in the tax system. Such is the result of what appears to be nothing more than a shameless slap at Government workers.

Don't think for a moment this law will go unnoticed by Federal employees and young people considering the Federal service. A sample of my constituent mail follows:

I have been an employee of the Federal Government for over 35 years. My retirement plans have been based on the rules that have existed for virtually my entire career. Now I find that the rules are being changed. Not only that, they are being changed retroactively. The change in the law on how Federal retirees pay taxes is cruel, unfair and unethical.

During my 35 year career, I trusted my employer, the United States Government. I had faith that I would be treated fairly. But now, at the end of my career, the rules are being changed. All of the plans I have made for retirement are worthless.

After years of loyal, dedicated service my employer demonstrates appreciation by changing the rules. I am frustrated, bitter and angry and there is nothing I can do about it. Must I spend my retirement years regretting my entire career with the United States Government?

Another letter:

In passing the bill, Congress would deny informed choices to scores of potential retirees. If the judicial branch operated with the same reckless abandon as the legislative, the citizenry would live in mortal fear of committing a retroactive felony. Fortunately, certain safeguards exist which prevent such occurrences. Yet, the Congress can seem to expect clairvoyance on the part of government employees who are considering retirement.

And another:

If this is allowed to become law, it will definitely have the following effects:

1. Completely demoralize the federal work force to the extent they will encourage people not to work for the government.

2. Compound the current problem of being able to retain qualified people.

3. Make it impossible fo fill current positions, especially in the scientific and technical areas.

The above effects will result in such future problems as $6,000 toilet seats instead of the purported $600 ones of recent vintage. Cost overruns, poorly designed aircraft systems, lost expertise to maintain our sophisticated systems and resulting erosion of our total defense posture are but a few of the things that will result from this penny-wise and pound-foolish philosphy.

Another:

I am retiring effective 1 Sept 86 after more than 37 terms of Federal service, 35 of these years with the Air Force at the Aeronautical Systems Division at Wright-Patterson AFB. Needless to say, I could have and would have retired on 30 Jun 86 had I known then what I know now. At that time, I never thought that Congress would do what they apparently plan to do. I obviously had more faith in their integrity and sense of fair play than recent events appear to justify. My reasons for retiring [later] were in part, job related; i.e., to complete an assignment made this past spring. Without getting into details, I have been acting as item captain in the source selection of a major weapon system which has Congressional visibility.

One more:

I was eligible to retire before [July 1, 1986], but instead, faithfully and naively felt obligated to fulfill my professional obligations this summer, since it would have been difficult at best, if even possible for my Department to carry out my workload if I had retired before the above date.

Since the Senate's version of the proposed tax reform bill was not scheduled to start prior to Feb. 1987, I naively thought that no one would be so unfair as to make Federal employees subjected to a retroactive tax before 1987.

I now believe that members of the House and Senate committees have deliberately misled Federal employees so as to prevent massive retirements and the subsequent disruption of Government functions. This certainly has hurt morale, attitude, and disillusionment on the faith we had in the integrity of our elected representatives.

I could go on and on.

This is a deeply disturbing treatment of Government workers who have dedicated their life to public service. These aren't faceless, desk-bound bureaucrats we are punishing. These are law enforcement officials, air traffic controllers, scientists, and mail carriers.

I represent almost 14,000 Federal employees in the Third Congressional District of Ohio. Some work at the Dayton Veterans' Administration Medical Center. Others work at the Dayton Electronic Supply Center. Most work at Wright-Patterson Air Force Base, which is headquarters to the Air Force Logistics Command and the Aeronautical Systems Division.

The security of our Nation depends on the work these people perform. Unless Congress can treat them more fairly, the best of them will leave, and we will be able to expect little from those who are left. As a start, let's clean up the tax bill to remove retroactive tax penalties against Government workers.

GENERAL LEAVE

Mr. HOYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include statements in the RECORD on the subject of my special order.

The SPEAKER pro tempore (Mr. GONZALEZ). Is there objection to the request of the gentleman from Maryland?

There was no objection.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BOLAND (at the request of Mr. WRIGHT), on September 19, on account of a necessary absence.

Mr. CHAPPELL (at the request of Mr. WRIGHT), on September 19, on account of official business.

Mr. LEWIS of Florida (at the request of Mr. MICHEL), for today, on account of a necessary absence.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. BEREUTER) to revise and extend their remarks and include extraneous material:)

Mr. BEREUTER, for 5 minutes, on September 19.

Mr. CRANE, for 60 minutes, on September 19.

Mr. ARCHER, for 60 minutes, on September 23.

Mr. ARCHER, for 60 minutes, on September 24.

Mr. ARCHER, for 60 minutes, on September 25.

Mr. FRENZEL, for 60 minutes, on September 23.

Mr. FRENZEL, for 60 minutes, on September 24.

Mr. EDWARDS of Oklahoma, for 60 minutes, on September 23.

Mr. EDWARDS of Oklahoma, for 60 minutes, on September 24.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. NEAL, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. LUNDINE, for 5 minutes, today.

Mr. LEVINE of California, for 60 minutes, today.

Mr. MURTHA, for 60 minutes, on September 24.

Mr. GAYDOS, for 60 minutes, on September 23 and 24.

Mr. LEVINE of California, for 60 minutes, on September 22, 23, and 24.

Mr. GONZALEZ, for 60 minutes, on September 22.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. BEREUTER) and to include extraneous matter:)

Mr. LAGOMARSINO.

Mr. BOEHLERT.

Mr. MCEWEN.

Mr. TAUKE.

Ms. SCHNEIDER.

Mr. GUNDERSON.

Mr. FRENZEL in five instances.

Mr. GILMAN.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. WOLPE.

Mr. MCCLOSKEY.
Mr. PEASE.
Mr. TRAXLER.
Mr. ACKERMAN.
Mr. CARR.
Mr. LUNDINE.
Mr. LELAND.
Mr. ECKART of Ohio.
Mr. STARK.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that the committee had examined and found truly enrolled bills and joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3358. An act to reauthorize the Atlantic Striped Bass Conservation Act, and for other purposes;

H.R. 4421. An act to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990 to carry out the Head Start, Follow Through, dependent care, community services block grant, and community food and nutrition programs, and for other purposes; and

H.J. Res. 60. Joint resolution to designate the week beginning September 15, 1986, as "National School-Age Child Care Awareness Week."

SENATE ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to an enrolled bill and joint resolutions of the Senate of the following title:

S. 290. An act for the relief of Catherine and Robert Fossez;

S.J. Res. 196. Joint resolution designating September 22, 1986, as "American Business Women's Day"; and

S.J. Res. 357. Joint resolution to designate the week of September 15, 1986, through September 21, 1986, as "National Historically Black Colleges Week."

BILLS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

H.R. 4530. An act to amend the Department of Defense Authorization Act, 1985, to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports of the Commission, and to extend the availability of funds appropriated to the Commission, and

H.R. 3002. An act to provide for the establishment of an experimental program relating to the acceptance of voluntary services from participants in an executive exchange program of the Government.

ADJOURNMENT

Mr. HOYER. Mr. Speaker, I move that the House do now adjourn.

(The motion was agreed to; accordingly (at 4 o'clock and 40 minutes p.m.), under its previous order, the House adjourned until Monday, September 22, 1986, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4230. A communication from the President of the United States, transmitting amendments to the request for appropriations for fiscal year 1987 that would provide a total of $694,392,000 to implement the Drug Free America Initiative, pursuant to 31 U.S.C. 1107 (H. Doc. No. 99-267); to the Committee on Appropriations and ordered to be printed.

4231. A letter from the Acting Director, Defense Security Assistance Agency, transmitting information concerning a proposed loan; to the Committee on Armed Services.

4232. A letter from the Director, Office of Legislative Affairs, Agency for International Development, transmitting a report on amounts obligated and expended in Nicaragua for international security and development assistance for the period January 1, 1986, to June 30, 1986, pursuant to Public Law 97-113, section 724(e) (95 Stat. 1553); to the Committee on Foreign Affairs.

4233. A letter from the Acting Deputy Chief of Staff for Installations and Logistics, Department of the Navy, transmitting the report on the retirement plan for the civilian employees of the U.S. Marine Corps exchanges, recreation funds, clubs, messes, and the Marine Corps Exchange Service, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4234. A letter from the Chairman, National Transportation Safety Board, transmitting a report on compliance with the requirements of the internal accounting and administrative control system, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Operations.

4235. A letter from the Deputy Associate Director for Royalty Management, Department of the Interior, transmitting a report on proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4236. A letter from the Deputy Associate Director for Royalty Management, Department of the Interior, transmitting a report on proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4237. A letter from the Chairman, Merit Systems Protection Board, transmitting the Board's fifth annual report on the significant actions of the Office of Personnel Management [OPM], pursuant to 5 U.S.C. 1209(b); to the Committee on Post Office and Civil Service.

4238. A letter from the Secretary of Transportation, transmitting the Urban Mass Transportation Administration quarterly report for the third quarter of 1986, pursuant to 49 U.S.C. app. 1603(h)(i); to the Committee on Public Works and Transportation.

4239. A communication from the President of the United States, transmitting a statement of policy regarding the Nation's renewable resources of the forest, range, and other associated lands, pursuant to 16 U.S.C. 1606(a); jointly, to the Committee on Agriculture and Interior and Insular Affairs.

4240. A letter from the Comptroller General, General Accounting Office, transmitting a report entitled, "Financial Audit—Federal Crop Insurance Corporation's Financial Statements for 1985 and 1984" (GAO/AFMD-86-58), pursuant to 31 U.S.C 9106(a); jointly, to the Committee on Government Operations and Agriculture.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. House Joint Resolution 626. Resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes (Rept. 99-663, Pt. 4). Referred to the Committee of the Whole House on the State of the Union.

Mr. HAWKINS: Committee on Education and Labor. H.R. 2127. A bill to establish a U.S. Boxing Commission, and for other purposes; with an amendment (Rept. 99-791, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. HAWKINS: Committee on Education and Labor. H.R. 1689. A bill to create an American Boxing Corporation; with an amendment (Rept. 99-843, Pt. 1). Ordered to be printed.

Mr. HUGHES: Committee on the Judiciary. H.R. 5076. A bill to renew authority to contract for the detection and treatment of drug-dependent offenders, and for other purposes; with an amendment (Rept. 99-844). Referred to the Committee of the Whole House on the State of the Union.

Mr. HUGHES: Committee on the Judiciary. H.R. 5394. A bill to amend the Controlled Substances Act and the Controlled Substances Import and Export Act to provide more effective criminal penalties (including special fines for organizations), to make technical and conforming changes in such Act, and for other purposes; with an amendment (Rept. 99-845, Pt. 1). Ordered to be printed.

Mr. HUGHES: Committee on the Judiciary. House Joint Resolution 631. Resolution providing for a White House Conference on Narcotics Abuse and Control; with amendments (Rept. 99-846, Pt. 1). Ordered to be printed.

Mr. HUGHES: Committee on the Judiciary. H.R. 5393. A bill to authorize appropriations for Federal, State, and local drug law enforcement, and for other purposes; with an amendment (Rept. 99-847). Referred to the Committee of the Whole House on the State of the Union.

Mr. HUGHES: Committee on the Judiciary. H.R. 5246. A bill to amend the Controlled Substances Act to prohibit certain conduct with respect to controlled substance analogs; with an amendment (Rept. 99-848, Pt. 1). Ordered to be printed.

Mr. HUGHES: Committee on the Judiciary. H.R. 4885. A bill to amend chapter 44 of

title 18, United States Code, to include serious drug offenses and violent felonies as offenses subject to enhanced penalties under the career criminal provisions of such title (Rept. 99—849). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce. H.R. 5465. A bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances; with an amendment (Rept. 99—850). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 4216. A bill to provide for the settlement of certain claims of the Papago Tribe arising from the operation of Painted Rock Dam, and for other purposes; with amendments (Rept. 99—851). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 4217. A bill to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolik Dam, and for other purposes; with an amendment (Rept. 99—852). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5166. A bill to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other puposes; with an amendment (Rept. 99-853, Pt. 1). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 816. An act to establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes; with amendments (Rept. 99-854, Pt. 1). Ordered to be printed.

Mr. HAWKINS: Committee on Education and Labor. Report on section 302(b) of the Congressional Budget Act of 1974 (Rept. 99-856). Referred to the Committee of the Whole House on the State of the Union).

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 5262. A bill to establish the Bayou Sauvage Urban National Wildlife Refuge in the State of Louisiana; with amendments (Rept. 99-857). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. HUGHES: Committee on the Judiciary. H.R. 5217. A bill to amend title 18 of the United States Code to prohibit certain methods of concealing the proceeds of crime, and for other purposes; with an amendment; referred to the Committee on Banking, Finance and Urban Affairs for a period ending not later than September 26, 1986, for consideration of such portions of the bill and amendment as fall within that committee's jurisdiction pursuant to clause 1(d) of rule X (Rept. 99-855, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. RODINO:

H.R. 5558. A bill to amend title III of the Immigration and Naturalization Act to provide for administrative naturalization, and for other purposes; to the Committee on the Judiciary.

By Mr. MAZZOLI:

H.R. 5559. A bill to amend the Immigration and Nationality Act to improve the administration of the immigration and nationality laws, and for other purposes; to the Committee on the Judiciary.

By Mr. HUGHES:

H.R. 5560. A bill to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes; to the Committee on the Judiciary.

By Mr. BOEHLERT:

H.R. 5561. A bill to direct the Secretary of Transportation to study and make recommendations on a default protection plan for airline passengers; to the Committee on Public Works and Transportation.

By Mr. BRYANT:

H.R. 5562. A bill to amend the Immigration and Nationality Act to modify the responsibility of carriers for detention of excludable aliens; to the Committee on the Judiciary.

By Mr. GUNDERSON (for himself, Mr. MARTIN of New York, Mr. JEFFORDS, Mr. LUNDINE, Mr. OBERSTAR, Mr. STANGELAND, Mr. ROTH, Mr. PETRI, Mr. TAYLOR, Mr. MCDADE, Mr. TRAXLER, Mr. HORTON, Mr. NATCHER, Mrs. MARTIN of Illinois, and Mr. VANDER JAGT):

H.R. 5563. A bill to require the Secretary of Agriculture to submit to the Congress an analysis of the effect that the use of bovine growth hormone will have on the milk price support program and on the milk production industry in the United States; to the Committee on Agriculture.

By Mr. LUNDINE:

H.R. 5564. A bill to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance; to the Committee on Banking, Finance and Urban Affairs.

By Mr. ST GERMAIN:

H.R. 5565. A bill to provide for the stability of the domestic banking and thrift systems, to improve housing, to protect the American consumer of financial services, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

H.R. 5566. A bill to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island; to the Committee on Interior and Insular Affairs.

By Mr. STARK (for himself and Mr. ROSTENKOWSKI):

H.R. 5567. A bill to amend title XVIII of the Social Security Act to require Medicare hospitals and organ procurement agencies to provide preference to U.S. citizens and permanent residents in organ transplants; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. DE LA GARZA (for himself, Mr. ANTHONY, Mr. BEDELL, Mrs. BENTLEY, Mr. BONER of Tennessee, Mr. BONIOR of Michigan, Mr. BOSCO, Mr. BOUCHER, Mr. BRUCE, Mr. BRYANT, Mrs. BURTON of California, Mr. CARNEY, Mr. CARR, Mr. CHAPMAN, Mr. COELHO, Mr. COLEMAN of Texas, Mr. DASCHLE, Mr. DAUB, Mr. DE LUGO, Mr. DORGAN of North Dakota, Mr. DORNAN of California, Mr. DYMALLY, Mr. DYSON, Mr. EDGAR, Mr. EMERSON, Mr. EVANS of Illinois, Mr. FUSTER, Mr. GUNDERSON, Mrs. HOLT, Mr. HORTON, Mr. JEFFORDS, Mr. JONES of Tennessee, Mr. JONES of North Carolina, Mr. LAGOMARSINO, Mr. MORRISON of Washington, Mr. OLIN, Mr. ORTIZ, Mr. PASHAYAN, Mr. ROBERTS, Mr. ROSE, Mr. ROWLAND of Georgia, Mr. SCHUETTE, Mr. STAGGERS, Mr. STALLINGS, Mr. STARK, Mr. TALLON, Mr. VALENTINE, Mr. WHITLEY, and Mr. WORTLEY):

H.J. Res. 733. Joint resolution to designate October 4, 1986, as "National Outreach to the Rural Disabled Day"; to the Committee on Post Office and Civil Service.

By Mr. PARRIS (for himself and Mr. FAUNTROY):

H.J. Res. 734. Joint resolution approving of the action of the District of Columbia Council in approving the "Closing of a Portion of 8th Street, N.W., and the Public Alleys in Square 403 Act of 1984"; to the Committee on the District of Columbia.

By Mr. YATES:

H. Con. Res. 392. Concurrent resolution commemorating the 100th anniversary of the birth of David Ben-Gurion; to the Committee on Post Office and Civil Service.

By Mr. FRANK:

H. Res. 555. Resolution to refer the bill (H.R. 5551) entitled, "A bill for the relief of certain manufacturers or suppliers that provided asbestos materials and products to the United States" to the chief judge of the U.S. Claims Court for a report thereon; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1375: Mr. NICHOLS, Mr. LEWIS of California, and Mr. MOODY.

H.R. 3737: Mr. YOUNG of Florida.

H.R. 3800: Mr. DARDEN and Mr. TAUZIN.

H.R. 3989: Mr. APPLEGATE, Mr. ENGLISH, Mr. FAWELL, and Mr. SMITH of New Jersey.

H.R. 4568: Mr. BEILENSON, Mr. LANTOS, and Mr. ATKINS.

H.R. 4885: Mr. BRYANT, Mr. TRAFICANT, Mr. JONES of Oklahoma, Mr. RODINO, Mr. GUARINI, Mr. ENGLISH, Mr. AUCOIN, Mr. WIRTH, Mr. ZSCHAU, and Mr. EDGAR.

H.R. 4953: Mr. HARTNETT and Mr. LEACH of Iowa.

H.R. 5076: Mr. BRYANT, Mr. JONES of Oklahoma, Mr. RODINO, Mr. GUARINI, Mr. ENGLISH, Mr. WIRTH, and Mr. EDGAR.

H.R. 5133: Mr. FEIGHAN.

H.R. 5135: Mr. FEIGHAN.

H.R. 5136: Mr. FEIGHAN.

H.R. 5137: Mr. FEIGHAN.

H.R. 5138: Mr. EVANS of Illinois and Mr. FEIGHAN.

H.R. 5140: Mr. COLEMAN of Texas, Mr. STARK, Ms. KAPTUR, and Mr. BONIOR of Michigan.

H.R. 5217: Mr. BRYANT, Mr. JONES of Oklahoma, Mr. GUARINI, Mr. ENGLISH, Mr. AUCOIN, Mr. MILLER of Ohio, Mr. WIRTH, Mr. ZSCHAU, Mr. PETRI, and Mr. EDGAR.

H.R. 5225: Mr. BUSTAMANTE and Mr. NIELSON of Utah.

H.R. 5246: Mr. BRYANT, Mr. KANJORSKI, Mr. JONES of Oklahoma, Mr. RODINO, Mr. GUARINI, Mr. ENGLISH, Mr. MILLER of Ohio, Mr. WIRTH, Mrs. BOXER, Mr. ZSCHAU, and Mr. EDGAR.

H.R. 5255: Mr. SAVAGE, Mr. BIAGGI, Mr. KOLBE, Mr. GARCIA, Ms. KAPTUR, and Mr. HYDE.

H.R. 5262: Mr. ROEMER, Mrs. LONG, Mr. TAUZIN, and Mr. HUCKABY.

H.R. 5326: Mr. HORTON.

H.R. 5328: Mr. DANIEL, Mr. ECKART of Ohio, Mr. ATKINS, Mr. RIDGE, Mrs. BENTLEY, Mr. KLECZKA, and Mr. SISISKY.

H.R. 5393: Mr. ZSCHAU, Mr. AUCOIN, and Mr. EDGAR.

H.R. 5394: Mr. JONES of Oklahoma, Mr. RODINO, Mr. ENGLISH, and Mr. EDGAR.

H.R. 5396: Mr. MRAZEK and Mr. GARCIA.

H.R. 5425: Mr. FEIGHAN.

H.R. 5465: Mr. PANETTA, Mr. HOPKINS, Mr. FAZIO, Mr. DWYER of New Jersey, Mr. WALKER, Mr. MINETA, Mr. ROBINSON, Mrs. BOXER, Mr. SUNDQUIST, Mr. SLATTERY, MR. LUKEN, and Mr. KILDEE.

H.R. 5485: Mr. MCCOLLUM and Mr. SCHUETTE.

H.R. 5501: Mr. STAGGERS.

H.R. 5512: Mr. DYSON, Mr. MYERS of Indiana, Mr. NIELSON of Utah, Mr. GRAY of Illinois, Mr. STENHOLM, Mr. DWYER of New Jersey, Mrs. HOLT, and Mr. WILSON.

H.R. 5520: Mr. WALDON, Mr. HORTON, Mr. PERKINS, Mr. GOODLING, Mr. WOLPE, Mr. SIKORSKI, Mr. KILDEE, Mr. WOLF, Mr. LEHMAN of Florida, Mr. REID, Mr. MORRISON of Connecticut, Mr. CONTE, Mr. MITCHELL, Mr. MILLER of California, Mrs. JOHNSON, Mr. MCKINNEY, Mr. FAZIO, Mr. SMITH of Florida, and Mr. ATKINS.

H.R. 5529: Mr. DORNAN of California, Mr. COURTER, Mr. WORTLEY, Mr. WALKER, Mr. MACK, Mrs. HOLT, and Mr. DENNY SMITH.

H.R. 5538: Mr. MCKINNEY.

H.J. Res. 438: Mr. MOORHEAD, Mr. LOEFFLER, Mr. BARTLETT, Ms. SNOWE, Mr. TAUKE, Mr. CRANE, Mr. TAYLOR, Mr. MACK, and Mrs. VUCANOVICH.

H.J. Res. 550: Mr. HORTON, Mr. WORTLEY, Mr. COATS, Mr. COYNE, Mr. BADHAM, Mr. LAFALCE, Mr. BOSCO, Mr. FRANK, Mrs. KENNELLY, Mrs. JOHNSON, Mr. WOLPE, Mr. ROBERTS, Mr. BILIRAKIS, Mr. WYLIE, Mr. MINETA, Mr. WIRTH, Mr. KRAMER, Mr. ROSE, Mr. BORSKI, Mr. BERMAN, Mr. BARNARD, Mr. BOUCHER, Mr. BEVILL, Mr. CHAPPIE, Mr. COELHO, Mr. CONTE, Mr. DOWDY of Mississippi, Mr. EDGAR, Mr. FLIPPO, Mr. FOGLIETTA, Mr. FRENZEL, Mr. CONYERS, Mr. DIOGUARDI, and Mr. HENRY.

H.J. Res. 584: Mr. DYSON, Mrs. BURTON of California, Mr. BATEMAN, Mr. FEIGHAN, Mr. YOUNG of Missouri, Mr. WALGREN, Mr. SUNIA, Mr. GUARINI, Mr. WOLPE, Mr. WEISS, Mr. TALLON, Mr. WALDON, Mr. MCGRATH, Mr. CAMPBELL, Mr. LEWIS of Florida, Mr. LIGHTFOOT, Mr. DENNY SMITH, Mr. ROBERT F. SMITH, Mr. BROWN of California, Mr. MORRISON of Connecticut, Mr. JEFFORDS, Mr. MILLER of Washington, Mr. HUGHES, Mr. DASCHLE, Mr. DIOGUARDI, Mr. LUNGREN, Mr. DYMALLY, Mr. FIELDS, Mr. STOKES, Mr. MYERS of Indiana, Mr. KRAMER, Mr. ANDREWS, Mr. NICHOLS, Mr. PANETTA, Mr. LANTOS, Mr. DINGELL, Mr. SAVAGE, Mr. SMITH of New Hampshire, Mr. BRYANT, Mr. HENDON, Mr. ROWLAND of Georgia, Mr. BERMAN, Mr. LAFALCE, Mr. RAHALL, Mr. KOSTMAYER, Mr. LIPINSKI, Mr. ROSE, and Mr. LEVIN of Michigan.

H.J. Res. 631: Mr. EDGAR.

H.J. Res. 639: Mr. BARNES, Mr. GUARINI, Mr. GUNDERSON, Mr. BOULTER, Mr. MOORHEAD, Mr. VANDER JAGT, Mr. BOLAND, Mr. JEFFORDS, Mr. WILSON, Mr. LOTT, Mr. MONTGOMERY, Mr. FRANKLIN, Mr. DURBIN, Mr. MILLER of Washington, Mr. ALEXANDER, Mr. HANSEN, Mr. RINALDO, Mr. BEDELL, Mr. ROBERTS, Mr. BREAUX, Mr. PEPPER, Mr. CHAPPIE, Mr. DASCHLE, Mr. WALGREN, Mr. FOLEY, Mr. BLAZ, Mr. FROST, Mr. STAGGERS, Mr. FRENZEL, Mr. WHITTEN, Mr. LELAND, Mr. PACKARD, Mr. LUKEN, Mr. OBERSTAR, Mr. DARDEN, Mr. CONYERS, Mr. LOWRY of Washington, Mr. YATRON, Mr. SCHEUER, Mr. WEBER, Mr. LEHMAN of California, Mr. STARK, Mr. GREEN, Mr. KASTENMEIER, Mr. LEVIN of Michigan, Mr. STANGELAND, Mr. WYDEN, Mr. MOORE, Mr. LOWERY of California, Mr. LIVINGSTON, Mr. LANTOS, Mr. AUCOIN, Mr. WEISS, Mrs. KENNELLY, Mr. GRAY of Illinois, Mr. CARR, Mr. DANNEMEYER, Mr. SMITH of Iowa, Mr. ROWLAND of Connecticut, Mr. SAXTON, Mr. COYNE, Mr. MAVROULES, Mr. BONIOR of Michigan, Mr. CLAY, Mr. MCCOLLUM, Mr. ROBINSON, Mr. GRAY of Pennsylvania, Mr. DIXON, Mr. ANTHONY, Mr. KEMP, Mr. HAMILTON, and Mr. BATES.

H.J. Res. 643: Mr. DERRICK, Mr. DORGAN of North Dakota, Mr. SKELTON, Mr. CHAPPELL, Mr. TALLON, Mr. COATS, Mr. LEWIS of Florida, Mr. YOUNG of Florida, Mrs. LLOYD, Mr. BARNARD, and Mr. GALLO.

H.J. Res. 657: Ms. MIKULSKI, Mr. BERMAN, Mr. DYSON, Mr. VANDER JAGT, Ms. KAPTUR, Mr. COURTER, Mr. WYLIE, Mr. ATKINS, and Mr. YOUNG of Florida.

H.J. Res. 709: Mr. WHITTEN, Mr. BONIOR of Michigan, Mr. KOSTMAYER, Mr. BERMAN, Mr. SWINDALL, Mr. WIRTH, Mrs. HOLT, Mr. TAUZIN, Mr. FRENZEL, Mr. CARNEY, and Mr. LEVINE of California.

H.J. Res. 728: Mr. SPENCE, Mr. COELHO, and Mr. DYSON.

H. Con. Res. 129: Mr. MOODY, Mrs. MARTIN of Illinois, Mr. ATKINS, Mr. LEHMAN of California, Mr. JACOBS, and Mr. ZSCHAU.

H. Con. Res. 233: Mr. BRYANT and Mr. ROBINSON.

H. Con. Res. 389: Mr. LAGOMARSINO, Mr. HORTON, Mr. FAUNTROY, Mr. WILSON, and Mr. YOUNG of Missouri.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions, and papers were laid on the Clerk's desk and referred as follows:

482. By the SPEAKER: Petition of the Board of County Commissioners, Monroe County, FL, relative to funds for Key Deer Refuge acquisition; to the Committee on Appropriations.

483. Also, petition of Samuel Rosenstrauch et al, Federal Correctional Institute, Butner, NC, relative to anti-Semitism; to the Committee on the Judiciary.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 5495

By Mr. TORRICELLI:

—Strike out section 108 (page 12, lines 10 through 25) and insert in lieu thereof the following:

SEC. 108. (a) The Administrator of the National Aeronautics and Space Administration shall prepare and submit to the Congress, no later than March 31, 1987, a comprehensive acquisition strategy and plan for the continued procurement of space shuttle solid rocket boosters. The acquisition strategy and plan shall specifically address (1) the decisions made by the Administration for upgrading the motor design, (2) alternatives for establishing and maintaining competition in future procurements, and (3) the costs and benefits of each such alternative.

(b) Within 60 days after the submission to the Congress of the comprehensive acquisition strategy and plan, the Administrator shall issue a request for proposal for a second source for the boosters. The Administrator shall consult with the Comptroller General of the United States in preparing the request for proposal in order to ensure that it is designed to achieve full and open competition for the procurement as required by the Competition in Contracting Act.

(c) The Administrator, after consulting with the Comptroller General, shall determine whether a request to the Congress for second source qualification funding is necessary or desirable in order to permit the second source to compete with the incumbent on a fair and effective basis, consistent with the Competition in Contracting Act.

(d) There are authorized to be appropriated (in addition to any other amounts authorized to be appropriated pursuant to this Act) such sums as may be necessary to enable the Administrator to prepare the strategy and plan under subsection (a), issue the request for proposal under subsection (b), and make the determination under subsection (c).

SENATE—*Friday, September 19, 1986*

(Legislative day of Monday, September 15, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

God of justice, mercy, and peace, today is a day of remembrance when our thoughts go to Vietnam to our unknown heroes who are prisoners of war and missing in action. With deep gratitude we remember those thousands who sacrificed with their lives during this period in history so filled with controversy, vituperation, and dissension. We recall with shame our indifferent response to the brave men and women who returned from the war who should have been welcomed with honor and thankfulness.

But most of all, Father in Heaven, we remember those who did not return who are still alive. We pray for their wives and children who have had to endure the worst kind of uncertainty and unrelieved apprehension. As this day renews their pain, may it be a reminder to them that their loved ones have not been forgotten—that there are those who refuse to forget—who continue to care and seek answers which will mitigate irresolution and bring consolation. Gracious God, guide those who persevere in their unrelenting search for a solution. In His name who never leaves us or forsakes us. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE of Kansas.

Mr. DOLE. I thank the distinguished Presiding Officer, the Senator from South Carolina, Senator THURMOND.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each. We have seven special orders of 5 minutes each for Senators HAWKINS, PROXMIRE, HEINZ, SASSER, WALLOP, BAUCUS, and MATTINGLY; to follow the leaders' time; and routine morning business not to extend beyond the hour of 10:30 a.m.

At the conclusion of morning business, we will resume the pending business, S. 2706, the reconciliation bill. If there should be a gap of an hour or two, rather than just stand in recess, I hope we might be able to take care of some other legislation.

I would also indicate to my colleagues that I understand the reconciliation package has been drafted. There is just one little piece they are checking on with the Finance Committee—with Senator PACKWOOD and Senator LONG. It may be that, with some luck, we could start on it this morning.

Under the agreement, there will be 8 hours from the time that Senator DOMENICI and Senator CHILES offer their amendment. Hopefully, we could conclude action by mid or late afternoon. I hope debate would not extend beyond that. I understand, in visiting with Senator DOMENICI last evening, there is a need to go back to check with the chairman and ranking member of each committee that may be affected, so they will understand perfectly what is involved. If Senator DOMENICI and Senator CHILES are ready at 10:30, then I hope we could start on reconciliation at 10:30.

If we complete action on reconciliation today, it would be my hope we could postpone the vote on the so-called sequester until after there has been a conference with the House on reconciliation. The House does not take up reconciliation until sometime next week. If we could meet the deficit targets—and I understand it is almost met in the package that Senator DOMENICI and Senator CHILES have been working on—then that vote may not have to occur.

POW/MIA DAY—WE WILL NEVER FORGET

Mr. DOLE. Mr. President, as Chaplain Halverson has just indicated, today is a special day of recognition for a group of very special Americans. It is POW/MIA Day—a day devoted to our servicemen who are still missing in action, or who are still held as prisoners of war on foreign soil.

Later this morning, a ceremony honoring our POW's and MIA's—and their families—will take place on the Capitol Grounds. I am pleased that so many of my colleagues will join me in this proud event, especially Senator JEREMIAH DENTON of Alabama and Representative JOHN MCCAIN of Arizona, both of whom survived the nightmare of imprisonment in Southeast Asia.

DEMAND A FULL ACCOUNTING

Today is a day not only for remembering the sacrifices of these brave servicemen and their families, but also for making a pledge—a pledge that we will never forget, nor will we ever rest until we have a full accounting of all our POW's and MIA's.

We are deeply moved by the courage of the loved ones of our missing heroes. Their determination in the face of such personal anguish is a real inspiration. I salute their dedication and ask that every American join them in their long struggle to bring their sons home.

Mr. President, today's ceremony on Capitol Hill will be matched by hundreds and hundreds across this great land. Let us join with the ceremonies in our home States by pledging to work together to finally resolve this national sorrow.

KANSAS HEROES—38 BRAVE MEN

In ceremonies in Topeka and Wichita today, our Kansas MIA's will be remembered with the solemn reading of our list of honor. Mr. President, I ask unanimous consent that the following list of Kansans be printed in the RECORD, so that generations to come will have the opportunity to recall the sacrifice of these brave Americans.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

U.S. CASUALTIES IN SOUTHEAST ASIA

Alphabetic listing—Kansas

Military service	Country of casualty	Name	Loss rank	Date of incident	Date of birth	Home of record city
Air Force	LA	Adam, John Quincy	E3	May 22, 1968	Dec. 22, 1947	Bethel.
Marine Corps	VS	Allgood, Frankie Eugen	O5	Mar. 26, 1968	May 01, 1930	Fort Scott.
Navy	LA	Anderson, Denis Leon	O2	Jan. 11, 1968	Oct. 24, 1942	Hope.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

U.S. CASUALTIES IN SOUTHEAST ASIA—Continued

Alphabetic listing—Kansas

Military service	Country of casualty	Name	Loss rank	Date of incident	Date of birth	Home of record city
Marine Corps	VS	Bennfield, Steven Henry	E3	Jul.29, 1967	Dec. 24, 1947	Girard.
Marine Corps	VS	Breeding, Michael Hugh	02	Feb.12, 1970	Mar. 19, 1945	Blue Rapids.
Navy	VN	Christian, David Marion	02	Jun. 02, 1965	Jan. 15, 1941	Lane.
Air Force	VN	Claflin, Richard Ames	03	Jul. 26, 1967	Jul. 02, 1939	Kansas City.
Air Force	LA	Donovan, Michael Leo	03	Sep. 30, 1971	Nov. 09, 1944	Norton.
Air Force	LA	Gillen, Thomas Eldon	04	Feb. 18, 1970	May 08, 1933	Kingman.
Air Force	VN	Graham, Dennis L.	03	Mar. 28, 1968	May 11, 1941	Greensburg.
Air Force	LA	Harrold, Patrick K.	02	Dec. 05, 1969	Dec. 07 1944	Fort Leavenwhorth.
Marine Corps	VS	Hendrix, Jerry Wayne	E6	Jul. 11, 1972	Dec. 27, 1942	Wichta.
Air Force	LA	Hoskins, Charles L.	02	Feb. 16, 1971	Aug. 05, 1944	Shawnee Mission.
Air Force	VN	Jewell, Eugene M.	02	Sep. 04, 1965	Jan. 15, 1941	Topeka.
Air Force	VS	Karst, Carl F.	04	Nov. 16, 1968	Oct. 27, 1930	Galatia.
Air Force	VN	Klenda, Dean Albert	02	Sep. 17, 1965	Aug. 20, 1940	Manhattan.
Marine Corps	VS	La Plant, Kurt Elton	E3	Jun. 06, 1968	Dec. 11, 1948	Lenexa.
Air Force	VN	Lehreoff, Howard M.	03	Nov. 18, 1967	Mar. 14, 1936	Scott.
Navy	VN	Lindahl, Hohn Carl	03	Jan. 06, 1973	Mar. 20, 1941	Lindsborg.
Air Force	VS	Long, George Wendell	E3	May 12, 1968	Sept. 30, 1948	Medicine Lodge.
Air Force	VN	Martin, Larry E.	03	Jul. 15, 1968	Feb. 11, 1940	Wakefield.
Air Force	VN	Mc Cubbin, Glenn Dewayne	02	May 19, 1968	Aug. 21, 1942	Almena.
Marine Corps	VS	Mc Gomigie, William Dee	E2	May 10, 1968	Oct. 29, 1948	Wichita.
Army	VS	Mc Kain, Robby Lyh	W2	May 03, 1968	Feb. 11, 1946	Garden City.
Navy	VN	Moore, William R.	E5	Oct. 02, 1969	Dec. 21, 1945	Princeton.
Navy	VS	Mowrey, Richard Lynn	02	Dec. 24, 1966	Apr. 01, 1943	Sharlet Mission.
Navy	VS	Neil, Fred Albert	04	Jan. 16, 1966	Mar. 17, 1932	Fort Scott.
Navy	VS	Patton, Ward Karl	E6	Jul. 27, 1968	Jan. 18, 1934	Fontana.
Air Force	LA	Pugh, Dennis Gerard	02	Mar. 19, 1970	Feb. 10, 1944	Salina.
Army	VS	Robinson, Floyd Henry	E5	Mar. 12, 1969	Jan. 28, 1949	Burlington.
Army	VS	Schuliz, Ronald James	E3	Jul. 21, 1970	May 27, 1948	Hillsboro.
Air Force	VS	Smith, Richard O.	03	Mar. 11, 1965	Aug. 16, 1937	Whichita.
Air Force	LA	Standerwick, Robert L.	05	Feb. 03, 1971	Jun. 23, 1930	Mankato.
Air Force	LA	Sutter, Frederick John	03	Dec. 31, 1971	Feb. 26, 1946	Leanwood.
Navy	VN	Thompson, William Joseph	04	Jan. 16, 1968	Dec. 13, 1930	Kansas City.
Navy	VN	Tiderman, John Mark	04	Mar. 21, 1966	Aug. 23, 1934	Kansas City.
Army	VS	Welsh, Larry Don	E5	Jan. 07, 1969	Jun. 16, 1947	Kansas City.
Marine Corps	VS	Zutterman, Joseph A. Jr.	E5	Apr. 20, 1968	Oct. 03, 1944	Marysville.

Mr. DOLE. Mr. President, there are 38 Kansans on that list.

We will never forget. We will always remember.

HOUSE VOTES RIGHT FOR A CHANGE

Mr. DOLE. Mr. President, from time to time, I have been critical of actions taken by the other body, by the House of Representatives, because I held a different view and I believe the Senate generally held a different view. So I think it is only fair that I take a moment now to commend the House for a very positive vote.

The day before yesterday, the House voted in a solid, bipartisan way to strip from its intelligence authorization bill the so-called "Hamilton Amendment." The real impact of that amendment would have been to scuttle any effective United States assistance for Jonas Savimbi's democratic resistance forces in Angola [UNITA].

The House vote this week is the latest indication that the majority in both Houses want aid to continue, until the Marxist regime in Angola sends home all the Cuban troops there, and begins to negotiate in good faith the transition to a real representative government in Luanda.

Southern Africa is in ferment. We are rightly concerned about the situation in South Africa. But, as we pursue efforts to end the apartheid system there, we cannot afford to lose sight of the fact that we have other important interests in the region, too. We cannot afford to ignore the real danger of Soviet expansionism, or the military threat posed by those Cuban troops.

Aid to [UNITA] is an important way to further our security interests. We ought to provide the aid that is needed, on a timely basis. The House vote is a major step in allowing the administration to do just that. I commend the House for its action, and I urge the administration now to redouble its efforts to help Jonas Savimbi and [UNITA] pursue the struggle that serves so well both the cause of freedom in Angola and the national interests of the United States.

Mr. President, I reserve any time I have remaining.

VITIATION OF SPECIAL ORDER FOR SENATOR WALLOP

Mr. DOLE. Mr. President, I ask unanimous consent that the special order for Senator WALLOP be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

QUESTIONS ABOUT THE PHILIPPINE BASES

AQUINO ADDRESS EXCELLENT

Mr. DOLE. Mr. President, like every other Senator, I have spoken to over the past 24 hours, I was deeply impressed with President Aquino's eloquent address to our joint meeting. And, having had the opportunity to meet with her in my office after her speech yesterday, I was equally impressed on a personal level with her quiet determination, commitment to democracy and willingness to meet the difficult responsibilities she bears for her country.

President Aquino deserves U.S. support, and her country deserves U.S. assistance. And, of course, we have already provided substantial sums for fiscal year 1986 and will undoubtedly be approving additional large sums for fiscal year 1987. We are also taking a look at the possibility of some supplemental aid this year, though that request will have to be weighed against the very difficult budget dilemma we face and the other equally high priority demands for any additional funds we can scrape up.

IMPORTANCE OF U.S. BASES

One issue I did raise with her in our meeting yesterday was the U.S. bases. I expressed appreciation for her commitment to abide by the bases agreement through 1991 and understanding for her desire not to address the issue in detail on this trip. It is the right course for both countries to take up this issue in detail at the appropriate time, under the provisions of the agreement itself. In the meantime, though, it is also the appropriate course for both sides to keep their powder dry—to avoid any actions which seriously complicate or raise questions about the issue. That was what I understood her position to be, and it is the position I embrace, as well.

CONCERN ABOUT CONSTITUTIONAL COMMISSION ACTIONS

For that reason, I am concerned about press accounts of the actions of the Philippine Constitutional Commission, whose members were in fact appointed by President Aquino. Yesterday, the commission approved a provision for the new constitution which will require any extension of the bases agreement to be done by treaty rather

than executive agreement. Under that provision, it could even well be that the bases issue will end up being submitted to the Philippine people in a referendum. It seems to me that this whole procedure practically guarantees that the bases issue will turn out to be an explosive domestic political issue in the Philippines and subject to being made a hostage to the broader political struggle in the country.

I should also add that it is almost as disturbing that the Commission, by a relatively narrow margin, turned back an attempt to include in the Constitution right now a ban on the bases after 1991.

ANOTHER OMINOUS NOTE

New press reports this morning add another ominous note. These reports say that the Commission is poised to adopt for the Constitution yet another provision declaring the Philippines a "nuclear free country," in which nuclear weapons could not be stockpiled or stored. How this would impact on the bases, where we have many ships and aircraft that are capable of carrying nuclear weapons and are an essential component of our nuclear deterrent in the Pacific, remains unclear. But this whole issue raises a new, huge question mark over the future of Clark and Subic.

Now let me make clear that I fully acknowledge that these are issues within the sovereign right of the Philippines to decide. It is up to the Filipino people to decide whether and how they want to deal with these issues in their own Constitution.

But it is hard to square President Aquino's desire—which, again, I understand—not to address the bases issue with us now with the fact that, at the very same time, the Commission which she herself appointed seems to be taking major steps to shape—and shape may be much too weak a word—the options we have for dealing with this issue down the road. If the Philippine side wants to take fundamental decisions on the bases issue now—and I don't think we have to, but if they do—then the Philippine side ought to be prepared to discuss this issue directly and in detail with us now, too.

Mr. President, I strongly urge the administration to take advantage of President Aquino's presence here to raise these concerns with her and to obtain from her assurances that—if we want to put off decisions on this issue for now, as we should—then her side is not going to take any irrevocable, unilateral decisions, either.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The able and distinguished Democratic leader, Senator ROBERT BYRD of West Virginia.

Mr. BYRD. Mr. President, I thank the Chair.

SCHEDULE

Mr. BYRD. Mr. President, would the distinguished majority leader be in a position at this time to indicate whether or not, in his judgment, the Senate will be in tomorrow and, in any case, what the program will likely be for Monday and Tuesday, the early part of next week?

Mr. DOLE. At this time, I would see no need for a Saturday session if we complete action on reconciliation. I guess that is the caveat. It would be my hope that we can complete reconciliation this evening, postpone the sequester vote, and then return on Monday.

On Monday, by agreement, there will be no votes after 3 or 3:30 p.m. in the afternoon. Perhaps we will be able to discuss product liability or discuss other matters that do not require votes after that time.

I am hopeful that as soon as we introduce our bill on drug legislation—I have already had a letter from the distinguished minority leader indicating a willingness to sit down immediately and go to work on that—we can work on that early next week.

We are waiting for the House to act on the continuing resolution. We are waiting for the House to act on the tax conference report.

I am advised by the chairman of the Appropriations Committee that he would rather not bring up any more appropriations bills. The highway bill could be resolved by Monday. They had a good discussion yesterday. Members are now meeting, as I understand, to try to resolve some of the differences on that bill. We could take up the highway bill Monday but there will be no votes after 3 or 3:30. Then I would guess Tuesday, Wednesday, Thursday, Friday, and Saturday of next week we will have a pretty full plate.

Mr. BYRD. May I ask the leader, Mr. President, what is the likelihood, as he sees it at this time, for a conference report on the Superfund legislation?

Mr. DOLE. I was advised yesterday morning while I was attending a Finance Committee meeting that Senators PACKWOOD and BENTSEN would be meeting, I think this morning or late yesterday on Superfund. They did not indicate whether or not they were going to complete the conference. They have to find some way to pay for the Superfund. I will try to find out what happened and make that available for all of our colleagues. That is important legislation and I hope we end up with an extended program, not just a 6-month extension of the present program.

Mr. BYRD. I also hope we will end up with a program that will not force our chemical companies to go out of business. I have reference to the waste end tax which would be very detrimental to chemical companies.

My discussions with management and labor at the chemical companies in West Virginia indicate very clearly that the chemical industry in that State would suffer considerably if there is a waste end tax. I have contacted our conferees urging that that legislation be brought back to the Senate as soon as possible, and also expressing opposition to a waste end tax.

May I say, I am interested very much in the announcement by the distinguished majority leader that Senate Republicans will have a drug bill which will be revealed later today in a news conference.

The House has sent a drug bill to the Senate. The Democrats appointed by me on a working group several weeks ago have already outlined the provisions of a drug bill which has been introduced some days ago on this side.

The President has announced his drug package.

I hope that the distinguished majority leader, as soon as possible after his news conference, will be able to think about scheduling drug legislation in the Senate for action.

I stand ready, and have already indicated to my staff that they should work with the majority leader's staff. Senator CRANSTON, Senator CHILES, Senator BIDEN, and others, have their staffs already working with our group. I do think it is imperative, in the 2 weeks remaining before the hoped-for sine die adjournment on October 3, that we schedule drug legislation well in advance so that the Senate will have adequte time to debate it and it can go to conference and be put on the President's desk before adjournment.

Mr. DOLE. If the minority leader will yield, I do not have any quarrel with that. In fact, what we have done is to try to work with the administration to take care of some of the glitches in advance. I think we have done that, but maybe we have not. We also have incorporated some of the excellent provisions in the Democratic bill, some in the House bill, some ideas that Senators on each side have had since the bill was introduced. I hope we would be in a position to start some negotiation before we bring it to the floor to save some time. We can do that over the weekend.

The Senator is exactly right. We know it will take at least a week on the CR. If we are going to leave on October 3, our days to do much else are rather few.

Mr. BYRD. They are indeed. I think the majority leader is being realistic in saying so. My staff is ready and pre-

pared. This is a bipartisan problem and we want to work together. We stand ready, I assure the majority leader.

Mr. DOLE. Mr. President, I vitiated the special order for Senator WALLOP. I should have asked for Senator DANFORTH to have that time.

The PRESIDING OFFICER (Mr. DANFORTH). Without objection, it is so ordered.

Mr. BYRD. Mr. President, while the distinguished majority leader is still on the floor, with respect to the sequester resolution, may I make a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. BYRD. What will occur at midnight this day in the event a reconciliation resolution has not been passed by that time or by the close of business today?

The PRESIDING OFFICER. The Chair will put the question on the passage of the sequester resolution.

Mr. BYRD. Would that occur precisely at the hour of midnight?

The PRESIDING OFFICER. If the Senate is in session, yes.

Mr. BYRD. And if the reconciliation measure has not been disposed of or has been disposed of, in either case?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Does the distinguished majority leader have any question?

Mr. DOLE. I agree with that.

Mr. BYRD. May I just say that Senators DOMENICI and CHILES and others have been working frenetically in an attempt to develop a reconciliation resolution in the meantime. They have been spending many hours in that effort.

THE SHULTZ-SHEVARDNADZE MEETING

Mr. BYRD. Mr. President, the Foreign Minister of the U.S.S.R. and the United States Secretary of State are meeting today, exploring the prospects for a summit. In such a preparatory situation, a positive atmosphere is needed to enhance the prospects for progress at any summit meeting which may be held, and I have been among the foremost in promoting a second summit meeting. If we are to see any real possibility of an arms control agreement in the near future, I think it is essential for a summit to occur.

It does not have to occur tomorrow or next week, but I think a summit is essential.

The atmosphere, as is obvious to everyone, has been clouded over with respect to Mr. Daniloff's incarceration and his indictment. He is still not free to leave the Soviet Union. Mr. Gorbachev, in some tough talk yesterday, insisted that Mr. Daniloff is a spy and accused the United States of damaging our overall relationship. This is baloney, or whatever the Russian equivalent of baloney happens to be. It has been obvious to everyone, including Mr. Gorbachev, that making a hostage out of a newsman was only calculated to win the quick release of a Soviet citizen caught red-handed in an espionage attempt in New York. That turned out to be a miscalculation.

Mr. President, I was gratified to hear that Mr. Shevardnadze stated yesterday that "solutions are possible" in the Daniloff affair. Let us hope that the Soviets remove this growing carbunkle in our relationship now. Mr. Shevardnadze also stated that the "Soviets are ready for a summit."

The Daniloff and U.N. spy questions are dominating the overall United States-Soviet relationship now to a dangerous degree. These matters must be handled with a view toward the overall relationship. The issues which are capable of resolution at a summit meeting are very, very important. They should not be jeopardized because of a need to be macho, to defend one's national ego at all costs, or to score points among competing internal bureaucracies. Such matters should not be allowed to be manipulated by actions the purpose of which is to derail real progress on the issues that really count.

So, Mr. President, maximum effort needs to be made to sober up, cut through the macho, end the news splashes, and act like superpowers with a sense of responsibility. Let us hope the two foreign ministers will make some tangible progress today.

Mr. President, do I have any time left?

The PRESIDING OFFICER. The Senator has used his time.

Mr. BYRD. I thank the Chair.

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. Under the previous order, the Senator from Florida [Mrs. HAWKINS] is recognized for not to exceed 5 minutes.

DRUG DILEMMA UNSOLVABLE WITHOUT ADEQUATE TREATMENT PROGRAMS

Mrs. HAWKINS. Mr. President, all the time, effort, and money spent to fight illegal drugs is greatly diminished unless the millions of Americans who have drug problems are properly treated. Crop eradication, interdiction, education, testing, and law enforcement are all essential elements of the formula needed to combat drug abuse. But effective drug treatment is also essential. Without effective treatment for the men and women, boys and girls whose lives have been shattered by drug abuse, there can be no victory in the war on drugs. This war is about people. It is not about slogans or political campaigns, it is about healing and protecting people from the ravages of drug abuse.

I know there has been growth in drug abuse programs, but they are still grossly inadequate. Demand far outstrips supply.

Making matters even worse, rehabilitation costs are now beyond the reach of many drug abusers and their families. Many treatment centers charge a flat sum, $2,500 or $3,000 for example, plus a monthly fee for food and incidentals. Others operate on a daily or monthly basis. Daily costs in some of the more sophisticated programs can run up to $500. Most insurance policies do not cover drug treatment, meaning that a drug user is on his own when he seeks professional help. While some employers may be sympathetic, they claim that without insurance, they cannot afford to cover treatment costs for an employee who needs rehabilitation.

Clinics and residential programs funded by Government grants and private donations, which tend to cost less, are bursting at the seams. They cannot admit all the drug users who need to get in for help. A 3-month waiting list for these subsidized treatment centers is not uncommon.

Many insurance companies that cover treatment for alcoholism and mental health ignore chemical dependency. This is sad and shortsighted. It is an outmoded policy that is out of step with the times.

There are professional disagreements about drug treatment procedures. Some experts think that a patient should be removed from his home or work environment on the theory that these could be factors hindering rehabilitation. Others think the home and workplace are anchors without which a drug user would be completely adrift. There are highly structured programs such as Straight and Genesis Two, which impose strict discipline on their clients, with a generous dose of group encounter sessions. Other programs are more casual in their approach, with heavy emphasis on group therapy to reshape drug users' attitudes. The length of an effective drug treatment program can run 1 or 2 years. Drug users require followup care and counseling, sometimes as long as 5 years to ensure that they remain "drug free." There are differences among drug rehabilitation experts about methods and what is the best approach. I am for anything that works. That's the advantage of using the private sector for treatment programs. The drug abuse patient and his or her family can choose the program based on factors such as cost and history of success.

But there is also a role for the Federal Government. Federal money to help devise and operate drug treat-

ment programs has grown steadily since 1982. These dollars fund public and private drug rehabilitation centers, in the form of block grants to States based on need. But it is still clear that we need to channel additional resources from both the Government and the private sector into drug treatment. Drug rehabilitation is an essential element in the war on drugs. Unless we are willing to recognize this fact and give it the priority it deserves, we will never heal our Nation of the pain caused by drug abuse.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 5 minutes.

Mr. PROXMIRE. I thank the Chair.

LET'S GET THE UNITED STATES OUT OF ANGOLA LOCK, STOCK, AND BARREL

Mr. PROXMIRE. Mr. President, on September 17, the crazy, mixed-up saga of the United States at war with itself in Angola took another major twist. The House of Representatives voted to support the expenditure of $20 million of "covert" aid to Jonas Savimbi, the Marxist rebel in Angola, who has the support of South Africa. Savimbi is trying to overthrow the Communist government of Angola. That Communist Angolan government is propped up by some 30,000 Cuban troops, a massive amount of Russian war equipment and the presence of a substantial cadre of Russian military advisers. But the real support for the Communist government of Angola comes not from Castro's Cubans or from Soviet military sources. Where does it come from? Mr. President—get this—it comes from an American oil company, enthusiastically and aggressively financed by American banks and—are you ready for a shocker—subsidized by loans from a Federal agency, the Export Import Bank. That means the Soviet Cuban Communist government of Angola has been ultimately paid for by the American taxpayer.

Is that outrageous? Its worse. Over the last 10 years, the Cubans and Soviets have pushed more than $4 billion of military assistance into that Communist puppet government of Angola.

If you believe that sounds like quite a commitment by the Cubans and Soviets to the Communist cause in southern Africa, you're wrong. It was no commitment at all. It hardly cost the Russians and Cubans a penny. That Cuban and Russian presence was mosty paid for by the revenues from the royalties and taxes paid to the Angolan Government by whom? It was paid by the Chevron Gulf Oil Co., an American corporation.

So what side is the United States on in Angola? Do we support the Marxist revolutionary Jonas Savimbi? We sure do. The House of Representatives has just voted $20 million of "covert" aid to do exactly that. But wait a minute. We also support far more generously the very pro-Soviet, pro-Cuban government we are paying Savimbi $20 million to overthrow.

How do we do that? Here's how. We do it with the American corporation—the Chevron-Gulf Oil Co. that provides most of the funds that pay for the Cuban troops and the Russian equipment with the help of more than $200 million of subsidized loans from the United States Export-Import Bank. Does this mean this country supports the pro-Russian, pro-Cuban, pro-Communist government of Angola? It sure does. But not with $20 million. No, indeed. This time we are talking real money.

Over the past 10 years, the government Savimbi is trying to overthrow with millions of dollars of American covert aid has received literally billions of dollars of American funds in royalties and taxes. That pro-Cuban, pro-Russian Communist government is still receiving those taxes and that royalty payment. I mean right now, today. Last July the Senate passed legislation that would end the export-import loan subsidy to the Government of Angola in the future.

The White House has a similar provision in a companion bill. Later this year, the House and Senate are expected to act on a conference report that will prevent American-taxpayer-subsidized loans from being made to Angola in the future.

But that will only take care of a minor part of the problem. Chevron Gulf is still pouring hundreds of millions of dollars a year into the Angolan Government. Those funds are still used primarily to pay for Cuban troops and Russian equipment. In all fairness we have done something—not much—but something about this outrage. Last July, the Senate, in the same legislation I discussed earlier, requested that the President use his "special authority under the International Emergency Economic Powers Act to block United States business transactions which conflict with United States security interests in Angola." That request has no corresponding provision in the House bill. It is not expected at this time to survive the conference and become law. Even if it does, it is doubtful that the President would comply with this request. Until he does, this country is engaging in an expensive war with itself in Angola. This is an outrageous, absurd waste of the $20 million we are giving the Marxist rebel Savimbi while we continue through Chevron Oil to pour billions into the very government we are spending millions to overthrow.

Mr. President, the solution to this mess is very simple. We should just get out of Angola entirely. We should persuade the President to use his international emergency economic powers to shove Chevron Gulf out of Angola. That would cut off the funding of Cuban troops and Soviet advisers and equipment. And then let us save the $20 million the House has voted for the Marxist rebel Savimbi. Let South Africa support him. What is wrong with solving this problem by exercising some good, old fashioned Ben Franklin thrift? Let us save the money on both sides.

THE MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, the myth of the day is that Congress and the administration are confident that the legislation we will pass over the next 3 weeks will help the economy. Before we adjourn, we will pass a far-reaching tax bill, possibly a fix for the Gramm-Rudman law, and a wimpy deficit reduction bill. Every one of these bills will be heralded as ensuring prosperity.

What is the truth? Even more than is usual in this Chamber, we will be voting with our fingers crossed. Winston Churchill's famous comment about Russia—a riddle wrapped in a mystery inside an enigma—applies with equal force to our economy. And we know it.

Start with the data. Some statistics are up, some down, and others unchanged. When economists look at this data, some see a coming boom, others a recession, and still others predict that next year will be a carbon copy of this one. Congress and the administration have voted with the optimists. The data do not support this vote, but they do not refute it either. It was based more on hope than on solid analysis.

We will pass a tax bill, but we do not know with any certainty the effect of that bill on the economy. Some economists think it will help in the long run, but hurt in the short term. Still others think it is a revolutionary change and will revitalize the economy. The only certainty is uncertainty.

Last year, Congress passed the Gramm-Rudman bill, which specifies a balanced budget by fiscal year 1991. Here we are, a year later, and the chairman of the Senate Budget Committee is publicly despairing that we may never balance the budget. Instead of making a good-faith effort to meet the $144 billion target, we are going to punt. We are going to end up doing exactly what we said we were not going to do: Use the $10 billion in additional revenues from the tax bill to reduce the deficit.

What is wrong with that? Next year, in fiscal year 1988, the tax bill loses around $15 billion. By using the $10 billion this year, we will be digging ourselves a deep hole next year.

The only certainty here is that we will not meet the $144 billion target. Optimists believe the deficit will be around $180 billion, and hope that a deficit of this magnitude will help the economy grow. Pessimists believe it will be around $200 billion, and fear that it will drag the economy down.

Mr. President, we are going to be busy over the next 3 weeks. But whether our long hours will help or hurt the economy is up in the air. We will be taking a riverboat gamble no matter how confident we sound on this floor. The American people should realize this fact.

A TRIBUTE TO ESTHER PETERSON

Mr. PROXMIRE. Mr. President, Esther Peterson has been a part of the American consumer movement since its early days. Her enormous contributions have improved the quality of American life and have helped us reorder our national priorities. Her commitment and tenacity as an advocate for the consumer remain unsurpassed.

She served the Government with great distinction as Assistant Secretary of Labor for Labor Standards under President Kennedy. In 1970, she served as a consumer adviser to Giant Food Co., returning to the White House in 1977 as special assistant to President Carter for consumer affairs.

Mrs. Peterson has been called the "grande dame of consumerism." A dynamo of enthusiasm and energy, she has a nationwide reputation for her political skills, legislative experience, and knowledge in consumer matters.

Esther Peterson has made many friends over the years. Her profound convictions, sincerity, knowledge, determination, and brilliance have awed all those who have had the privilege of working with her. One of her current activities is working with the International Organization of Consumers Unions, located in the Netherlands. This organization adopted a consumer policy in May 1986 regarding the rights of the modern consumer. Its theme is that the conditions in which consumers have to live must become better and more equitable. It contains an outline of goals aimed at before the end of this century to protect and represent consumers fairly. The title of this policy is the "Consumer Manifesto 2000." Mr. President, I ask unanimous consent that the "Consumer Manifesto 2000" be printed in the RECORD.

There being no objection, the manifesto was ordered to be printed in the RECORD, as follows:

CONSUMER MANIFESTO 2000

The modern consumer movement, born more than 50 years ago, has become an important means to achieve a just and fair society.

As we move toward the year 2000 it remains committed to this aim. Its theme is that the conditions in which consumers have to live must become better and more equitable. It applauds economic growth only when this leads to well-being and happiness.

By careful research and concerted action, it sets out to redress the imbalance in knowledge and power between suppliers and consumers. It has concrete economic and social ills to challenge, specific market abuses to change, and shortsighted exploitative and destructive use of resources to expose. It draws attention to the need to change bad systems, as well as to deal with their unpleasant symptoms.

The principal needs of the consumer—access to essential goods and services and fair choice, safety, information, representation, redress, consumer education, and a healthy environment—form the agenda of the consumer movement. The marketplace and public authorities alike should become more responsive to those needs.

Such responsiveness includes:

Participation by consumer organizations, on an equal footing with other corporate groups in society, in the formation of policies that affect those they represent;

Ensuring that the basic needs of all consumers are met: adequate food, clothing, shelter, health care, sanitation and education;

Measures to enhance fair competition and to control harmful business and professional practices; for example, to oppose practices that mislead, restrict choice, or erect barriers to trade so as to "protect" business and state enterprises at the expense of the private individual;

Laws and standards that safeguard consumers from hazardous goods and services, as well as from the social costs of environmental pollution; procedures, formal and informal, to provide effective redress to aggrieved consumers at all income levels;

Accurate and adequate information to help consumers choose, an example of the consumer movement's own contribution being the publication by IOCU's affiliates of comparative test and survey results; and

Consumer education to ensure that all people may acquire the knowledge and skills necessary to be informed and active consumers exercising their rights and fulfilling their economic role; special attention must be given to the needs of vulnerable groups such as children, handicapped and the elderly.

We assert the right of organized consumers to be represented, heard and heeded—nationally, regionally, and internationally.

Through IOCU, consumer representatives have successfully called these needs and interests to the attention of the United Nations. The Guidelines for Consumer Protection, adopted by Resolution of the General Assembly, map out a future that it is our duty to advocate and realize for all consumers. By "all", we mean five billion consumers, organized and unorganized, in richer countries and poorer, whose wish is to dwell in peace and safety, enjoying goods and services that are a fair reward for honest work.

The following are among the goals we aim at before this century is over:

1. Full implementation in all countries of the United Nations Guidelines for Consumer Protection and the establishment within the United Nations of a monitoring and assistance system for such implementation.

2. Adoption by the United Nations and full implementation by governments of a Code of Conduct on Transnational Corporations.

3. Promoting the fulfillment of basic needs of all consumers, in particular of the poor, low income and disadvantaged groups.

4. Establishment of national and international laws that prohibit trade in hazardous products and eliminate double standards in international trade.

5. Establishment of stringent international guidelines on the siting and operations of potentially hazardous industrial and agricultural plants, processes and practices, including the right to full information by the local community and the workers.

6. Elimination of economic practices which inhibit the equitable distribution of food and the encouragement of national and international food policies aimed at meeting people's need for safe and nutritious food.

7. Implementation of policies on new information technology which ensure on the one hand the fair protection of consumers and on the other that they can make full use of that technology for their own benefit.

8. Development of testing and research with particular reference to the needs of Third World countries, building on the experience, skills and resources of IOCU's testing organizations.

9. The reduction and finally dismantling of trade barriers which have a negative impact on consumers and the establishment of national bodies with consumer representation to analyse and publish the relevant information concerning the costs and benefits of proposed and existing trade controls.

10. Ensuring responsiveness of monopolies providing services to consumers, including ways to measure their performance in relation to meeting the needs of consumers and to ensure accountibility.

Looking towards the year 2000, IOCU and its member organizations reaffirm their commitment to produce social change. We shall do so by striving to attain the goals set out above. We shall vigorously continue to work within and strengthen the networks and programmes already established to fight hazardous commercial practices. We shall intensify our efforts to seek fair protection of consumers and representation of their interests in the economic field. In all this our aim will be to further a society responsive to the consumer interest.

□ 1000

RECOGNITION OF SENATOR HEINZ

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania [Mr. HEINZ] is recognized for not to exceed 5 minutes.

Mr. HEINZ. I thank the Chair.

ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK ACT

Mr. HEINZ. Mr. President, there is new evidence of human organs being peddled to the highest bidder. That in-

formation was released last month in a report by the U.S. Department of Health and Human Services. I must tell you I read with shock and I read with outrage that almost 300 foreign nationals got kidney transplants ahead of the nearly 8,000 Americans on the waiting list. Another 250 kidneys were exported out of the country, and they were exported at a cost to the Medicare Program of some $8,000 to $10,000 apiece.

This may seem like a modest problem to some people, but if you are sick, if you are ill, it is literally a vital question, and we have to put an immediate halt to the practice I have described. We need to ensure that donated organs are given to those who need them most, not just those who can most afford them. So today I am introducing legislation to do exactly that. My bill will give the Government the power to enforce medical need, I repeat, medical need, as the primary criteria of who receives an organ transplant in this country and I think we will thereby protect our voluntary system of organ donation.

Mr. President, very simply, human organs are a scarce national resource that is only available because of the generous spirit of the American people. To ensure that this generosity continues, we have to build confidence into this system on a foundation of equity and fairness. Such faith is eroded when we and the American people hear from the inspector general of the Department of Health and Human Services that each year the pool of available organs is drained by those who skip ahead of others in line if the price is high enough.

The implications of this greed and favoritism are both alarming and deeply troubling. For the individual, it means a longer wait for an organ transplant. For others it is a threat to health, and for still others life itself. For the Nation, organ sharing is discouraged, Medicare costs are increased, and organ donation is jeopardized when preference is made for financial gain.

Earlier this week the Senate Finance Committee adopted a provision I sponsored which would give Medicare better control over the agencies which procure the organs and the hospitals which transplant them. The legislation I introduce today would further strengthen our existing organ procurement network and it incorporates recommendations made by the task force on organ transplantation.

This legislation will provide the enforcement tools to make medical need, as I mentioned, the primary criteria for the distribution of organs for transplants in this country. The network will have exclusive responsibility for organ assignment when the organ cannot be used in the region in which it is donated, routing the current practice of cronyism which is employed by some hospitals in the sharing of organs.

Under this bill, any person who exports or imports organs outside the authority of the network will be subject to a fine, a jail sentence or both. Persons caught advertising or soliciting potential nonimmigrant organ donors also will face stiff fines or heavy jail sentences. This bill also states that it is the sense of Congress that States should prohibit the sale of insurance policies which would give the holder of that insurance policy preference over others or access to an exclusive pool of organs for transplantation. States are called upon to actively and aggressively enforce the 1984 National Organ Transplant Act to ensure that this precious natural resource is used in the public interest.

Since the first blood transfusion in 1918, advancements in medical technology have enabled us to transplant kidneys, heart, skin, heart-lung, lung, pancreas, liver, bone, and bone marrow. As the benefits of such technology multiply, so will the temptation to profit at the expense of the needy. The legislation I propose today reaffirms the intent of Congress that there be equal access for all who need a transplant operation and gives us the measure of prevention necessary to ensure that such miracles will not become a luxury only the rich can afford.

RECOGNITION OF SENATOR DANFORTH

The PRESIDING OFFICER (Mr. D'AMATO). Under the previous order, the Senator from Missouri [Mr. DANFORTH] is recognizerd for 5 minutes.

THE U.S. ECONOMY

Mr. DANFORTH. Mr. President, today's Washington Post carries a story, the headline of which is, "U.S. Economy Nears a Standstill—Spring Performance Is Weakest Since 1982 Recession, Report Says."

Two of the paragraphs in the article are as follows:

The U.S. economy was at a near standstill this spring with growth at a slight 0.6 percent annual rate, the weakest performance since the end of the recession in 1982, the Government reported yesterday.

And then the second paragraph from the same article:

The GNP report said the trade deficit subtracted $28 billion from GNP growth in the April-June quarter, $3.4 billion worse than the earlier estimates. Exports declined at an annual rate of 9.8 percent, in part because of a slump in U.S. farm sales overseas, while imports were rising at a rate of 18.5 percent.

Mr. President, I ask unanimous consent that this article from the Washington Post be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 19, 1986]

U.S. ECONOMY NEARS A STANDSTILL—SPRING PERFORMANCE IS WEAKEST SINCE 1982 RECESSION, REPORT SAYS

(By Martin Crutsinger)

The U.S. economy was at a near standstill this spring with growth at a slight 0.6 percent annual rate, the weakest performance since the end of the recession in 1982, the government reported yesterday.

The Reagan administration cited recent economic reports to support a belief that better days are ahead, but private analysts were not as optimistic.

The new report on growth in the gross national product from April through June represented no change in the overall figure from an earlier estimate a month ago even though the country's trade performance was even weaker than originally believed.

Inflation continued at extremely low levels, with a price index tied to the GNP rising at an annual rate of just 1.8 percent.

This increase in the GNP deflator, which measures a changing selection of goods, was the lowest since the spring of 1967 and reflected the dramatic plunge in energy prices this year.

Administration officials, who have been forecasting substantially higher growth in the second half of the year, said they were not disappointed that the GNP figure for the second quarter was not revised upward.

White House spokesman Larry Speakes, traveling with President Reagan on a campaign trip to Louisiana and Alabama, noted there have been signs of stronger economic activity in the current quarter, including declines in unemployment and increases in industrial production. "In short, we expect a solid performance in the second half of the year and see no signs of an end to the Reagan economic expansion," Speakes said.

The administration is calling for the GNP to expand this year by 3.2 percent, which would mean the economy must grow in the second half of the year at a 4.2 percent annual rate to reach that target.

While economists are looking for some pickup in activity in the second half, most believe the increase will be far below the administration's expectations. A few are expressing the minority view that the country is skating dangerously close to a recession because of the deteriorating trade problems.

The GNP report said the trade deficit subtracted $28 billion from GNP growth in the April-June quarter, $3.4 billion worse than the earlier estimate. Exports declined at an annual rate of 9.8 percent, in part because of a slump in U.S. farm sales overseas, while imports were rising at a rate of 18.5 percent.

Concern over the deteriorating trade situation prompted new tough talk from Treasury Secretary James A. Baker III, who warned that the administration is prepared to drive the dollar's value lower against other currencies unless Japan and West Germany do more to stimulate economic growth.

The Commerce Department two months ago estimated growth in the second quarter at 1.1 percent, revising that to 0.6 percent last month and in the current report.

While the new report did increase the trade deficit by $3.4 billion, this was canceled by a revision in business inventories. Inventory growth still plummented during the quarter at an annual rate of $24.8 bil-

lion, but this decline was $3.5 billion less than estimated last month.

Personal consumption spending continued to carry the economy in the April-June quarter, rising at an annual rate of $35.7 billion, a 3.4 percent advance. Also providing strength was a 14.5 percent rise in housing construction, which has benefited from falling mortgage rates this year.

Business investment fell again in the second quarter, reflecting continued large reductions in oil and gas exploration because of falling prices.

In a separate report, the government said after-tax profits of U.S. corporations rose 2.1 percent in the second quarter following a 3 percent decline in the first three months of 1986. This was a revision from a report last month that put the gain in profits at a stronger 4.1 percent.

TAX OVERHAUL

Mr. DANFORTH. Mr. President, 2 days ago, on June 17, another article appeared in the Washington Post by Anne Swardson. The title of this article is, "Congresssional Tax Overhaul Provisions Could Harm U.S. Multinational Companies."

It is pointed out in this article that the effect of the tax bill, which we will be taking up in the Senate the end of next week or the following week, will add $6 billion in new taxes which are specifically aimed at American businesses struggling to do business abroad.

Mr. President, I ask unanimous consent that this article in the September 17 Washington Post be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 17, 1986]

CONGRESSIONAL TAX OVERHAUL PROVISIONS COULD HARM U.S. MULTINATIONAL COMPANIES

(By Anne Swardson)

Foreign operations of U.S. multinational companies could be reduced as a result of provisions of the sweeping tax-overhaul legislation awaiting final approval by Congress, tax experts believe.

The net effect of the complex foreign tax provisions, agreed upon in secret by a congressional conference committee last month, could encourage U.S. firms to have fewer overseas subsidiaries and expand their exports instead, analysts said.

"I don't know if you can break it down by industry, but certainly U.S.-based multinationals are going to bear the brunt of it," David Benson, international tax manager for the accounting firm of Coopers & Lybrand, said of the bill's foreign tax provisions. "With some exceptions, what they have done is taken the worst of the House bill and the worst of the Senate bill."

Almost every U.S. multinational firm would be touched in one way or another by the massive bill. Even though its foreign provisions are only a small part of the package, they affect basic issues of international taxation and would raise the taxes of many companies involved overseas.

"To me, the straightforward bottom line is that they added $8 billion in new taxes specifically aimed at this sector, at a time when it's questionable whether any increase can be absorbed," said Raymond J. Wiacek, tax counsel with the law firm Jones Day Reavis & Pogue.

Several of the bill's provisions would most affect firms that operate in high-tax countries such as West Germany and France, but a surprise item inserted at the last minute also could remove much of the incentive for companies to set up operations in low-tax countries such as Ireland.

The principal provisions affecting multinationals are there:

It would be harder to take the foreign tax credit, which offsets U.S. taxes on foreign-earned income to the extent that it is taxed overseas. Income would be placed in different categories—shipping, banking, passive and active—and credits generated from one category could not be averaged with those from another to reduce U.S. taxes.

"It's not quite a nightmare, but the administrative burden posed by the change in the foreign tax credit is extremely significant," Benson said. "For small firms, it is entirely possible it will discourage investment abroad."

In one of the few areas left unchanged, companies exporting goods from the United States could continue to report half of export revenue as if most or all of it were earned overseas. The House bill would have deemed the income earned in the United States, so that the foreign tax credit could not be taken against it if the company also earned income abroad.

"This obviously helps to keep our exports more competitive here at home and keeps the cost of being a U.S. exporter down," said William Canis, Washington representative of Caterpillar Inc.

A last-minute addition to the conference bill would affect companies that transfer "intangibles," such as patents or licenses, to a foreign manufacturing subsidiary. They would have to take in payment for the intangible an amount equal to the income that would come from sale of the manufactured product.

Thus, for example, almost all of a hypothetical $1,000 earned from a plant in Ireland would have to be repatriated to the U.S. parent firm and taxed at those rates, rather than at the low rates offered in Ireland.

"I represent 60 companies with $700 billion in worldwide sales and 5 million workers. Almost all of my companies would be affected" by the intangibles provision, said Robert McNeill, executive vice chairman of a lobbying group called Emergency Committee for American Trade.

The same provision would affect many U.S. firms with operations in Puerto Rico and other U.S. possessions. Because much of the income from those operations would have to be returned to the United States, the tax credit that essentially wipes out taxes on profits earned in U.S. possessions would have little value.

In a resolution of a long-standing dispute, the legislation would require that a portion of research and development expenditures be allocated to overseas operations. Generally, companies prefer to allocate expenses to their domestic operations and income to the foreign operations, in order to maximize use of the foreign tax credit.

Similarly, interest expenses would have to be spread among related companies based on the proportion of assets located overseas, so that the deductions cannot be taken only in the United States.

Companies no longer could shelter foreign-earned income from taxation by investing it in banking or shipping operations outside the United States. Although foreign-earned income generally is not taxed until it returns to American shores, banking and shipping income would be subject to taxation immediately wherever it is earned.

Perhaps as important as this entire list is the bill's sharp reduction in the corporate tax rate, which would fall from the current 46 percent to 40 percent in 1987 and 34 percent thereafter. The reduced rate would leave firms with operations in high-tax countries with excess foreign tax credits.

For example, a U.S. subsidiary operating in The Netherlands, which has a corporate tax rate of 43 percent, would pay $43 to that country on a $100 sale and could reduce its U.S. taxes by $43, so that the tax paid to the United States would be $3. If the U.S. rate fell to 34 percent, $9 in foreign tax credits could not be applied to U.S. income and the firm would get no net benefit from the corporate-rate reduction.

A REVOLUTIONARY TAX BILL

Mr. DANFORTH. Mr. President, we are going to be debating in the next week or so what has been accurately described as a revolutionary tax bill, perhaps the most revolutionary tax legislation we have ever had. We are going to be taking up the conference report on the tax bill against a background of economic events in which the gross national product is limping along at a lower pace since the recession of 1982. We are taking up the tax bill against a background of American investment in new equipment declining since last year, and we are taking up a tax bill against the background of record and increasing deficits in trade.

We are meeting those problems by a bill which finances individual and business rate cuts by targeting tax increases against Americans who are trying to do business abroad and against our industrial sector which is struggling to keep up with foreign policy.

□ 1010

I raised the question at this time because I believe that when the conference report comes to us, it deserves something more than summary consideration on the part of the Senate.

The test of any tax bill should not be who gets what but, rather, what the tax bill does for the economy of our country and for the long-term health of the United States.

I will be raising questions during the debate as to whether a bill which is designed to increase consumer spending and to make it more expensive to modernize our plants and to do business abroad serves the best interests of our country. I submit that it does not. The debate, of course, will continue.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR SASSER

The PRESIDING OFFICER. Pursuant to the previous order, the Senator from Tennessee [Mr. SASSER] is recognized for not to exceed 5 minutes.

□ 1020

THE MEDICARE PARADOX

Mr. SASSER. Mr. President, most Americans breathed a sigh of relief when Medicare came into existence in 1965. They felt confident they could now count on full health care coverage in old age. Cruelly, many of them have been disappointed.

Now no one can deny that the Medicare Program has been a blessing to our senior citizens. It pays for critical health care services that many older Americans would otherwise not be able to afford.

Yet, there is a fundamental paradox in the Medicare Program. Medicare—the Federal Government's health care program for senior citizens—virtually ignores that age group's unique health care needs.

Medical experts tell us that health care for the elderly is substantially different from health care for younger persons. The elderly are not simply older patients. They are plagued by a host of chronic, age-related conditions—conditions such as arthritis, osteoporosis, urinary incontinence, depression, and senile dementia. These conditions require preventive care to avoid further disability. They require long-term care once patients can no longer be managed at home.

However, the Medicare Program does not reflect these basic health differences between the young and the aged. It does not cover preventive or long-term health care services—the very services many elderly cannot live without.

We have this contradiction in our health care system for older citizens partly because the Medicare system was designed, I think, inappropriately after private health insurance programs that were in existence at that time for employees. These job-based health insurance programs protect beneficiaries primarily against the costs of hospitalization for acute illness. Such coverage for short-term acute illnesses are appropriate for young and middle-age working people, because their major health care threat is acute illness.

Yet, the major threat to the elderly's financial security is not the cost of short-term acute care. It is the cost of long-term care resulting from chronic physical and mental disabilities that looms as the major health care risk for many elderly Americans.

In essence, Medicare helps the elderly survive short-term acute illnesses only to deny them treatment or let them fall into poverty when they need long-term health care.

We have turned the huge problem of long-term care over to Medicaid. But the unfortunate fact with this is that Medicaid comes to the aid of patients only after they and their families have lost their financial independence and spent themselves into poverty in an effort to meet their health care needs. Along the way, many lose their self-respect as they have to apply for Medicaid.

Mr. President, Medicare gives many senior citizens a false sense of security. The painful truth is that Medicare does not meet the health needs of the age group for which it was created. There are great gaps in Medicare coverage—gaps which the elderly now have to fill with money out of their own pockets.

Medicare pays for only about 45 percent of the elderly's average health care costs. Medicare does an adequate job of helping seniors pay the costs of short-term hospitalization. But it does virtually nothing to help elderly persons pay for the tremendous costs associated with chronic, catastrophic illnesses.

Partly out of frustration and partly our of fear, senior citizens are purchasing supplemental health insurance—commonly referred to as medigap policies. About 90 percent of all elderly now own these policies.

Many elderly believe their supplemental Medi-Gap policies will pick up everything that Medicare does not pay. That is not a fact. They do not. In fact, most of these policies cover none of the costs of nursing home care. As a result, they so not fill the largest gap left by Medicare.

Dr. Robert Butler, one of America's foremost authorities on aging, states that—

> Present Medi-Gap policies are a sham. They are wasteful, consuming $10 to $12 billion that could be put back into a decent, comprehensive, restructured Medicare.

Clearly, Medi-Gap policies are not the best solution to the shortcomings in the Medicare program. Our senior citizens need comprehensive health care coverage. We must restructure Medicare to meet their needs. And we must begin to act now on this very critical and crucial problem.

President Reagan has asked the Secretary of Health and Human Services, Dr. Otis Bowen, to conduct a yearlong study of catastrophic health insurance. The truth is that the time for studying this particular problem is long past. I agree with Dr. Butler who states:

> We have been studying this topic ad nauseum. We need action. We need a tight timeframe. We need specific, concise recommendations to act upon. People who are suffering today cannot wait.

That is why I have introduced legislation which eliminates the fundamental contradiction in Medicare. My legislation, S. 2358, focuses on the special health care needs of the elderly.

Let me just explain to my colleagues what this bill does.

First, the bill expands Medicare coverage to pay for the costs of long-term care, such as nursing home care and extended hospital stays. This will offer protection to millions of Americans from the financial ravages of long-term care. No longer will elderly Americans have to impoverish themselves, sell their homes, sell their possessions, to pay for long-term care.

Second, it pays for certain types of preventive care—such as periodic physicals and dental, eye, and hearing examinations. Preventive care is critical to older persons, because it can spot potential problems early on—which if undetected—could become debilitating.

Mr. President, I urge my colleagues to join my efforts in restructuring the Medicare Program. It will not be an easy task but it is an essential one.

We must not forget that today's children will be tomorrow's senior citizens. Actions we take now to ease the suffering of our elderly will offer hope of a better life for our children as they approach their golden years.

RECOGNITION OF SENATOR MATTINGLY

The PRESIDING OFFICER. Under the previous order, the Senator from Georgia [Mr. MATTINGLY] is recognized for a period not to exceed 5 minutes.

The Senator from Georgia.

MIA/POW DAY OF RECOGNITION

Mr. MATTINGLY. Mr. President, today, September 19, 1986, is National POW/MIA Recognition Day. It was so designated when the President signed into law Senate Joint Resolution 220 on June 19 of this year. I had introduced Senate Joint Resolution 220 at about this time last year. It passed the Senate with 61 cosponsors and was subsequently passed by the House of Representatives after a companion resolution introduced by Congressman SOLARZ garnered 237 cosponsors.

The broad bipartisan support for this resolution serves as a clear signal of the importance that Congress and thus the American people place on this issue.

Seven previous, similar days of recognition have been designated by Congress. I know that every Member joins me in the hope and the prayer that

the day will soon be upon us when we will have finally obtained the full accounting that we have sought for so long on the fate of the more than 2,400 Americans who remain missing in Southeast Asia.

There may be differing ideas on how best to reach this goal, but there is no dispute about the goal itself or about the need for every American to become involved in the effort, whether that involvement takes the form of a quiet prayer, a contribution of time or other resources, or through any number of other ways to help this cause.

In one of his weekly radio addresses this summer, the President caught the spirit that motivates the efforts to achieve the fullest possible accounting of servicemen still missing.

"We mean to end your heartache and uncertainty," the President said, addressing himself to relatives of the missing. "We will vigorously pursue the answers you seek and deserve", he continued. "All Americans, after all, have a common goal in this endeavor. * * * They were our loved ones and our fellow Americans and they were, I am certain time will tell, part of a noble cause", the President concluded.

Mr. President, the resolution itself honors all Americans in all wars who have served our Nation so bravely under such terribly difficult conditions. But it has special meaning for those who still await word on the fate of loved ones who remain missing in Southeast Asia. I commend the efforts that have been made on behalf of this cause by the National League of Families of American Prisoners and Missing in Southeast Asia, its executive director, Ms. Ann Mills Griffiths, and its entire membership.

Finally, Mr. President, it seems to me to be entirely appropriate today to remember in our prayers those Americans who are held against their will in other parts of the world and who, in a sense, are prisoners in a war being waged against all Americans and every principle for which America stands.

I hope all my colleagues will join me today, Mr. President, in appropriate reflection, tribute and vows of renewed effort toward the goals that we seek and share.

□ 1030

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for not to extend beyond the hour of 10:30 a.m. with statements limited therein to 5 minutes each.

OPPOSITION TO THE PROVISION OF BUDGET RECONCILIATION LEGISLATION REQUIRING MANDATORY MEDICARE ENROLLMENT FOR STATE AND LOCAL WORKERS

Mr. HECHT. Mr. President, I rise today to express my firm opposition to a provision included in the Senate Finance Committee's budget reconciliation package which would require all current State and local employees to enroll in the Medicare Program.

At present, in my own State of Nevada, a very small percentage of municipal workers are enrolled in Medicare—due to the excellent health care benefit packages offered these employees at the local level. Consequently, enactment of this mandatory enrollment provision would cost the State's municipal employers and employees nearly $30 million per year—a rather hefty sum by Nevada standards. Nevada, however, is not alone in this situation, a number of other States, the municipal employees of which also presently have locally administered health plans, would likewise be subjected to a comparably large, unexpected, and problematic expenditure requirement.

Mr. President I wish to point out to all of my colleagues, and particularly to those from States in a similar circumstance, that such an added financial burden, coming at a time of large reductions in Federal funding received by municipalities, and concurrent increased outlays for numerous required local Government expenses—such as liability insurance premiums—would inevitably cause tremendous fiscal hardship for local governments.

Moreover, the adverse impact of such a requirement would be compounded by the proposed implementation date of July 1, 1987. Under such a timeframe, State and local governments would have very little margin for the modification of their planned budgets which this mandate would necessitate.

Mr. President, as is standard practice in a number of States, Nevada maintains a cap on the amount in which municipalities may increase taxes each year. Such caps, in wide use across the country and effective heretofore at achieving the goal of fiscal conservatism for which they were established, would make it very difficult to raise the additional moneys that this mandatory enrollment provision would require. For I dare say, many jurisdictions in the affected States would need to increase taxes due to this requirement.

Mr. President, for the reasons set forth herein let me reiterate my firm opposition to this proposal, and encourage the Senate to drop it during floor or conference consideration of the budget reconciliation bill. I would also ask that a letter received by me from the city of North Las Vegas, NV, be inserted along with my remarks, as I feel that this correspondence aptly demonstrates the concerns of all of the local governments in my State.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CITY OF NORTH LAS VEGAS,
North Las Vegas, NV, August 6, 1986.

Senator CHIC HECHT,
Hart Building, Washington, DC.

DEAR SENATOR HECHT: We wish to express our strong opposition to Federal legislation which is being considered that would require employees of local governments, such as ours, to join the Federal Medicare Health Insurance Program beginning May 1, 1987.

For the City of North Las Vegas, the cost would be $175,000 annually based on a 1.45% rate applied against salaries paid to our existing work force. Indeed, the cost may well be double that amount considering that employee organizations may look to the City, as employer, to pay employees' share of that cost because that increase cost had not been contemplated when bargaining agreements were negotiated.

The City of North Las Vegas could ill afford paying an additional $175,000 let alone $350,000 in fringe benefit costs because with present financial conditions, revenues are not keeping pace with expenditures.

The City has an attractive group medical plan as well as an HMO, offered to both current and retired employees, which covers all medical expenditures. The plan, in which the employee may elect to participate upon retirement, has associated premiums much lower than otherwise available and we will certainly continue to offer this alternative.

Sincerely,

JAMES K. SEASTRAND,
Mayor.
THERON H. GOYNES,
Mayor pro tempore.
MARY J. KINCAID,
Councilman.
WILLIAM ROBINSON,
Councilman.
W. BRENT HARDY,
Councilman.

Mr. MATTINGLY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that the order for the quorum call be rescined.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1040

AGRICULTURAL ASSISTANCE TO THE PHILIPPINES

Mr. MELCHER. Mr. President, I have strong confidence in the Filipino people and the Government of their President, Corazon Aquino, to succeed in their economic recovery, but they need prompt help from the United States. The first and most urgent need is instant credit, that is, cash. But also, and just as urgent, is at least a com-

mitment by the United States on what additional assistance we will provide to them over the next 12 months.

Yesterday's action in the House of Representatives appropriating $200 million in cash is a positive step, but not nearly sufficient to assure the start of Philippine economic recovery. To increase the U.S. commitment, I shall propose an amendment to add $600 million in surplus commodities of wheat, milk, cheese, butter, soybeans, and cotton. This will be a donation of surplus commodities, all in Federal ownership and storage. It is off-budget and does not add to the Federal deficit, but does not cut the trade deficit.

Yesterday, during the luncheon hosted by the Senate Foreign Relations Committee for President Aquino, I gave my proposal to Agriculture Minister Mitra, Trade Minister Concepcion and Ambassador Pelaez. During the past several months I had discussed the matter with each of them. On Wednesday when the Senate Agriculture Committee met with Minister Mitra, he stated the Philippines could well use wheat, diary products and soybeans. Yesterday, Trade Minister Concepcion suggested adding cotton.

The urgency of the need for helping the Philippines must be stressed. These food commodities are urgently needed for families, for mothers, infants and schoolchildren. The commodities will be provided under a variety of U.S. assistance programs which permit monetizing a portion. That means that part of the commodities would be sold on the local Philippine market and the money would be used as capital for grassroots economic redevelopment throughout the country.

The food shipments from the United States would be spread over the next year in quantities that could be absorbed most beneficially by the Philippines in order to permit efficient handling. I have twice over the past 3 years had lengthy visits in the Philippines and well understand not only their needs but also the determined capacity and capability of the Filipino people for economic recovery.

These surplus food donations will up the U.S. commitment in the House action by 300 percent. I am confident that the new government of President Aquino is competent and reliable and can and will use the food donations properly and effectively.

But there has been and still remains opposition to may proposal. That opposition centers in the Agency for International Development [AID] and others in the State Department. Last May when I proposed a modest donation of wheat and milk to the Philippines, AID Director McPherson pulled out all the stops and was able to convince Senator KASTEN and others that such a donation was premature and that we needed to assess Philippine needs.

With big league hardball political strategy, McPherson called Philippine Ambassador Pelaez, who had originally conceived the premise of the $10 million food donation, threatening the Ambassador to publicly withdraw his support or State Department would hold up other Philippine assistance. Ambassador Pelaez politely refused, but McPherson then prevailed on the National Association of Business Cooperatives to write a letter to Senator KASTEN stating that the $10 million donation was premature. Senator KASTEN read the letter on the Senate floor during debate on the amendment to bolster McPherson's stand. And so, that proposal went down the drain.

That was last May and in the final days of this Congress the Senate must make the determination if it is still premature to provide this significant assistance. Unless we make that determination now, another 6 months will pass before we can again assess whether the United States should not provide urgently needed help to our friends in the Philippines.

McPherson was successful in stalling in May a very modest proposal. After Congress adjourns in less than 3 weeks from now, it will be February or March before we can reverse the inaction of the State Department should they continue their endless assessment of Filipino needs.

Meanwhile, there are overriding reasons why the commitment of food assistance at least of this magnitude should be made. The first and foremost reason is the need of Filipinos, but there are important facts that the United States can no longer ignore. The U.S. trade deficit is leading us to the edge of severe economic recession.

Farmers, have produced big crops, the farm programs put the surplus of those crops in Federal storage, and unless the United States starts to use the surplus for friendly countries such as this proposal for the Philippines provides, commodity prices will continue to sink lower and our trade deficit will increase even more. The State Department has been isolated from the severe damage that the lack of exports causes American agriculture and agribusiness.

Farmers, when they plant the wheat or soybeans, know that three out of four of the seeds are put into the ground to grow food for people abroad. Those crops are now harvested and the time for assessment by AID Director McPherson is over. The time has come to export the surplus.

There is no better country than the Philippines for us to start the needed exports of these surplus foods. There are other countries in Africa and there is also India, Bangladesh and some of our neighbors to the south that also need these food assistance programs. But if we leave town after adjournment without having at least demonstrated through our votes here in the Senate that we are determined that these off-budget food assistance programs will be utilized, the country can only anticipate the continuation of the bureaucratic delay and worsening U.S. trade deficit and a continuation of a deteriorating U.S. economy.

In effect, now is the time to come to the aid of the cause.

Mr. President, I am going to yield the floor, but before I do I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1050

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

BUSINESS AS USUAL, AGAIN

Mr. ARMSTRONG. Mr. President, I have been trying to figure out what in the world is going on over in the State Department and I must report that I have not been successful. I want to take just a moment to express my utter frustration over the way the administration has handled the Daniloff business. I had thought that, at some point, there would be some convincing explanation for the lack of firmness in the administration policy toward the Soviet Union on this matter. I could not believe that after several days, there would not be some explanation for our complete failure to show the signs of outrage, to take some concrete steps to make it clear that we are not going to tolerate this kind of barbaric behavior on the part of the Soviet Union, and that we would do something that would be a convincing demonstration that in fact, we are a big, tough, important country that has certain principles that we believe in and one of them is that they should not run around arresting journalists.

In fact, we have done just the opposite. We have blustered, but then we have gone on with business as usual.

The effect, Mr. President, is just to reinforce the already contemptuous attitude the Soviet Union and probably a number of other countries have for us. It was evident after they shot down the Korean airliner. We did not do anything about it. We made a lot of loud and unpleasant noises, but the fact is we did not do anything. We did not take one concrete step that imposed upon the Soviet Union any kind of real price for that act of terrorism. We just did not do anything. In the process, we confirmed the worst suspicions that maybe we did not have the internal desire and fortitude to actually do anything.

Then came the Daniloff affair and many people had expected that because this involved a journalist and because of the unique status which journalists enjoy in the thought life of this country, perhaps we would respond in a different way. Instead, after announcing that we were not going to make a trade of Daniloff for the Soviet spy Zakharov, that is exactly what we did.

The transaction has not been consummated as yet, but what we have done is confer a sort of moral equality on the arrest of the spy here and the arrest of the journalist in Moscow because we have permitted the two cases to be treated exactly the same, with each being released to his respective Ambassador.

Well, Mr. President, I do not raise these issues for any reason other than just to have it in the RECORD that there are at least a few people in the Senate and undoubtedly elsewhere who think we are making a terrible mistake, who fully expect, as I do, that the result of this unwise response is to put at risk every journalist everywhere in the world and, for that matter, other American citizens.

□ 1100

What we have really shown is that any time the Soviet Union wants to spring one of their arrested spies, they can do it by picking up a journalist or perhaps a diplomat or somebody else on some kind of trumped-up charge or another.

Mr. President, I do not know how many people had occasion to read the observations of George Will in yesterday's Washington Post, but I ask unanimous consent that his commentary on this matter be placed in the RECORD because what he has said about this makes far more sense than anything I have heard thus far from any official source. Let me quote one paragraph in which Mr. Will, a former member of the staff of the U.S. Senate I might note in passing, sums up what in his opinion is the appropriate response. I quote:

> No talks about anything, no subsidized grain sales, no credits, no cultural exchanges, no support for the United Nations, no Soviet ships in U.S. ports, no landings here by Soviet airlines, no nothing until Daniloff is released, unconditionally.

That is a good policy. I hope that at some point somebody down at the State Department or at the National Security Council or the White House or someplace, for Heaven's sake, will pay attention not just to George Will but to a lot of us who think that would be a good policy.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

REAGAN BOTCHED THE DANILOFF AFFAIR

(By George F. Will)

When an administration collapses, quickly and completely, like a punctured balloon, as the Reagan administration has done in the Daniloff debacle, a reasonable surmise is that the administration, like a balloon, had nothing in it but air.

The trouble began not in a peripheral crevice in the bureaucracy, but in the president's presence in Santa Barbara, where the first reaction to the hostage-taking was to say that the unpleasantness should not disrupt the Big Picture. Secretary of State George Shultz soon said "there can be no question of equating" the cases of Nicholas Daniloff and the accused spy Gennadi Zakharov, and there could be no trade.

But soon came the equation, in the form of the interim trade whereby Daniloff and Zakharov were placed in the custody of officials of their respective governments. The United States thereby paid the first—probably only the first—installment of the ransom (Henry Kissinger used that word to characterize the transaction) demanded by the hostage-takers.

Sen. Richard Lugar (R-Ind.), chairman of the Foreign Relations Committee and candidate to receive the administration's Good Soldier Trophy, says, delicately, "August is a difficult month, apparently, for administration coordination." So is September, so perhaps the problem is with thinking, not coordinating.

Totalitarians specialize in making victims collaborate in their victimization. It took Mikhail Gorbachev less than two weeks to turn the U.S. ambassador in Moscow into the keeper of Daniloff, who, Shultz rightly said, remained a hostage. Reagan was jubilant when announcing this transaction. Conservatives constantly say Reagan's "instincts" are splendid, the problem is only—only!—susceptibility to bad advice. Well.

Leave aside the question of whether policy should be controlled by the instinctual mechanisms of any individual. In the Daniloff affair, Reagan's instinct has prevailed, and has been wrong. It has been identical to Carter's instinct in the Iranian hostage crisis. It has been to make the national interest hostage to the goal of easing the hostage's plight. He wanted Daniloff in more comfortable confinement.

Reagan wrote a letter to Gorbachev, dignifying the Soviet charges by denying them. Gorbachev, displaying the contempt that U.S. behavior is earning, promptly branded Reagan a liar by disregarding Reagan's assurances.

Senator Pat Moynihan (D-N.Y.), former U.N. ambassador, responding to the assertion that this crisis began when Zakharov was arrested, replied: "We began this chain of events 30 years ago when we started letting the Soviets fill up the U.N. Secretariat with spies, in direct violation of the Charter." The morning Moynihan said that, the lead story in The New York Times reported administration efforts to reduce cuts Congress has voted in subsidies for the United Nations. The cuts are intended to express "among other things" anger that the United Nations, where U.S. taxpayers pay one-fourth of the bills, is flagrantly used by the Soviet bloc for espionage.

What must they be saying in the Kremlin, in merry disbelief? "Next, will Reagan want U.S. taxpayers to subsidize grain sales to us?" In 69 years of U.S.-Soviet relations, no U.S. president has been treated with the disdain Gorbachev has now shown toward Reagan, which is especially rude considering that Reagan does indeed want U.S. taxpayers to subsidize grain sales.

George Carver, a senior fellow at Georgetown University's Center for Strategic and International Studies, says that the United States has, in effect, agreed to play by Soviet rules regarding espionage and has placed a mantle of protection over Soviet spies: "The next time the FBI catches a Soviet, the mattress mice in the State Department and the White House will be out wringing their hands and saying, 'Oh no, we can't arrest him! We don't want another Daniloff thing; there's too much going on.'"

One of the things the administration is eager to have go on during the Daniloff affair is a "town meeting" with U.S. participants in Riga in the Soviet Union. When the interim trade was arranged, the administration wanted the Americans who had pulled out to go to Riga after all. The administration knew this would imply the respectability of the ransom payment. Several clear thinkers, including Jeane Kirkpatrick and Robert McFarlane, refused to be used, and stayed home.

Two Sundays ago an undersecretary of state evidently thought he was being stern when he said the unresolved Daniloff case will "intrude itself" into all decisions with the Soviet Union. Even today, the administration cannot bring itself to say what it should have said immediately, even instinctively:

"No talks about anything, no subsidized grain sales, no credits, no cultural exchanges, no support for the United Nations, no Soviet ships in U.S. ports, no landings here by Soviet airlines, no nothing until Daniloff is released, unconditionally."

Today the deflated administration is reduced to saying that if Daniloff is not released, his case will be at the top of the agenda for the Shultz-Shevardnadze talks. Wow! That'll teach 'em. That will mean that Shultz will complain and Shevardnadze will drum his fingers and roll his eyes, and then they will proceed with business as usual, the Soviet side confirmed in its contempt.

Mr. ARMSTRONG. I thank the Chair.

My concern about this matter is heightened by the fact that not only have we failed to respond in any affirmative way, we have not even taken the simplest steps that we could have taken to at least express some degree of displeasure of what has happened. It has come to my attention that following the arrest of Nicholas Daniloff two U.S. Government delegations traveled to the Soviet Union to conduct routine business under the terms of two United States-Soviet bilateral agreements, specifically one delegation headed by a Deputy Assistant Secretary for Housing and Urban Development conducted a working group meeting under the housing agreement, the other delegation headed by the director of the jet propulsion laboratory conducted expert talks under the space cooperation ageement.

I have no particular objections to these talks going on under normal circumstances. The question is whether or not, when they are arresting U.S. journalists on trumped-up charges, transparently trumped-up charges,

that is a time for business as usual. My belief is that by permitting these talks to go forward, by not doing something to express our concern, we are excusing it. I just regret that very much.

I also want to put in the RECORD, Mr. President, an interesting article from this morning's paper by Charles Krauthammer, who is a journalist who really has a way with words. He analyzes the Soviet strategy and outlines what he thinks it is the Soviets sought to achieve, what in fact they have achieved, and what price they have paid. Well, what he thinks they have achieved is, first, to get their spy out of the hands of the FBI, and that has been achieved. Second, to establish that the Soviets can create instant human bargaining chips by grabbing an American at will, which they have achieved. No. 3, immunity for Soviet spies, and a "bonus" objective, as he describes it, is a presummit demonstration of Soviet toughness. And they have achieved all of that.

Now, what is the price they are going to pay? The price they are going to pay is that the next time Secretary Shultz and Mr. Shevardnadze sit down to have tea and crumpets, the opening gambit by our side will be an expression of concern.

Well, I do not think that is very much. In fact, I think it is humiliating, and, Mr. President, at some point we are going to pay the price for this kind of weak, pusillanimous response to serious world developments. I do ask unanimous consent that the second article also be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 19, 1986]

THOSE "BLUNDERING" RUSSIANS

(By Charles Krauthammer)

There they go again, those muscle-bound, muscle-brained Russians, arresting an American journalist and thus undermining their own interests. "Clumsy stupidity," writes James Reston. The Soviets "misjudged badly," says Newsweek. "They miscalculated," offered Daniloff's boss, U.S. News & World Report editor-in-chief Mortimer Zuckerman. They "didn't anticipate the enormous public outcry."

So there you have it. It seems that for the sake of a two-bit Russian spy the great Gorbo, PR master, has fatally, stupidly compromised his worldwide good-guy campaign.

The second most dismaying thing about the Daniloff affair is that it has invited yet another display of the American habit of equating (Soviet) toughness with stupidity. (Most dismaying, but amply deplored elsewhere, is the administration surrender to Soviet terms.) Stupidity? Let's review the scoring thus far on the Garbo Gambit.

Daniloff is now out of a KGB jail, but may not leave Moscow. In return for his release, Soviet spy Gennadi Zakharov was released from an American jail and, more important, from FBI interrogation. Negotiations are now continuing on how to make the final trade of Daniloff for Zakharov (letting each return home) without Ronald Reagan's losing too much face. Reportedly, the administration is trying to get the Soviets to throw a draft choice, perhaps a dissident or two, into the deal.

So Soviet objective No. 1, to get Zakharov out of the hands of his interrogators, has already been achieved. Likewise objective No. 2, to establish that the Soviets can create instant human bargaining chips by grabbing an American at will. Which achieves objective No. 3, immunity for Soviet spies. A bonus is objective No. 4, a pre-summit demonstration of Soviet toughness. Gorbachev shows Reagan that he is willing to risk a summit even for a two-bit spy. If there is going to be a summit, Gorbachev comes in one-up.

What did it cost Gorbachev? A little editorial outrage, which within weeks of any final "arrangement" (Secretary of State George Shultz's preferred usage for "deal") will be remembered only by historians. And the presence of Richard Perle, Jeane Kirkpatrick and Bud McFarlane at a Soviet-American people-to-people conference in Riga, Latvia. They stayed home, but the Soviets forfeited neither the conference itself nor the presence of the president's top Soviet adviser. Nor *any* talks with the United States. At least three sets of talks scheduled during the time of Daniloff's incarceration, and now detention, have gone forward.

The Daniloff "blunder" is only one of many such Western sightings in the communist world. Daniel Ortega, you will recall, was reputed to have shot himself in the foot by going to Moscow in 1985 shortly after Congress had rejected aid to the contras. The result of this "miscalculation"? Congress voted $27 million in aid for the contras. And Moscow voted Ortega about $200 million. Stupidity that brings a 7-1 return deserves another name.

Consider another blunderer. Remember the reaction when Gen. Wojciech Jaruzelski crushed Solidarity and jailed its leaders? A leading Polish dissident called the crackdown a tactical blunder that would "only strengthen reaction against the government." A broken heart can be forgiven such misjudgments. But more distant observers in the Western press persisted in seeing Jaruzelski's coup as foolish and impossible. How do you crush such a national movement? A Pyrrhic victory, at best. If Jaruzelski were smart he would offer Solidarity dialogue and accommodation.

Jaruzelski ignored the advice and offered monologue and repression. Pyrrhus would have envied the result. Poland is now so pacified, Solidarity so crushed, that Jaruzelski has just released, at no risk, the last of his political prisoners. The gesture will likely earn him a welcome in Italy and perhaps the Vatican, a papal visit to Poland, and soon the reopening of Western credits. Some blunderer.

We like to think of Soviet bloc leaders as hidebound thickheads whose addiction to ruthlessness undermines their diplomacy and injures their own interests. Addicted to ruthlessness they are. But the corollary—that this injures their interests—presupposes that ruthlessness is met with a significant Western riposte. It is not.

Did the Soviets not calculate the depth of our reaction to the Daniloff affair? Who knows? What is clear, however, is that they have contempt for the depth of our reactions. Why shouldn't they? After the rape of Poland, trivial sanctions. After the shooting down of a Korean airliner, words. After the invasion of Afghanistan, yes, something—a grain embargo, reversed 15 months later by a new, hard-line president. The grain will now be subsidized.

"Just another blundering American," says Maj. Strasser in "Casablanca." "We musn't underestimate American blundering," responds Capt. Renault. "I was with them when they blundered into Berlin in 1918." In the 43 years since that exchange, it is the Soviets who have blundered into Berlin—and Prague and Warsaw and Kabul and Managua. Last week they blundered a spy out of a New York jail. Soon they will blunder him back to Moscow.

Mr. ARMSTRONG. I thank the Chair and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Gorton). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1110

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RECONCILIATION PACKAGE

Mr. ARMSTRONG. Mr. President, it is my understanding that, in short order, the chairman of the Budget Committee and the ranking minority member of the committee will come here to present a reconciliation package. Rather than await their arrival, I should like to make my observations about that package in advance, and then I am going to go back to my office and hope that lightning will strike and it turns out a lot better than I think it will.

In essence, as we all know, we face the prospect of a sequester—that is, an automatic, across-the-board cutback in terms of the Gramm-Rudman-Hollings legislation. This is an awesome prospect to a lot of people. The notion that we would actually have to trigger a sequester and things would be cut back automatically is such a shocking possibility to a lot of people that everybody has been running around in a dither, trying to figure out some way to postpone it, put if off, escape it, or something.

The reconciliation bill is probably the latest and best manifestation of the desire to avoid the crunch. I regret this very much. I wish we were handling this the way the State of Texas is handling it. They have a constitutional provision which says that they have to balance the budget. We have been treated, in recent weeks, to the spectacle of special sessions, arguments between the Governor and the Speaker, pulling and hauling as to whether or not there are going to be tax increases or spending cuts. But everybody knows they are going to solve the problem.

The same thing has happened in my State of Colorado. Our State says that

you have to balance the budget every year, good years and bad years. Whether the economy is booming or is languishing, you have to balance the budget. That is the law and I think it is the law in about three dozen States. So, year after year, often with great difficulty, with sacrifice by Governors and legislators, often with the slaughter of sacred cows, they get the job done.

I wish that is what we are going to do. But just as surely as everybody knows that Colorado and Texas and about 36 other States will balance the budget, everybody knows that Congress is not about to do that. Instead, we are going to take up the reconciliation bill.

To put it in prespective, in order to avoid the sequester under Gramm-Rudman-Hollings, I am advised that we have to somehow come up with $14.5 billion in so-called budget savings from the estimates which are now before us. All this is estimates, of course. It is the best we have.

□ 1120

But the experts say that unless we can find a way to narrow the gap by $14.5 billion, bringing the projected deficit down to $154 billion, then we are going to trigger Gramm-Rudman-Hollings. So we are going to have in short order the reconciliation package. But what is the matter with that?

Mr. President, there are two things the matter with it. The first is that the package itself is a travesty on responsible budgeting. It is a package of golden gimmicks. It is a package of smoke and mirrors.

While it many meet the technical requirement of Gramm-Rudman-Hollings, it does so in a way that makes a mockery out of any kind of a sound budget process.

In the first place, it does not reach $14.5 billion, which is the amount that is thought to be necessary. It reaches only $13.66 billion according to the estimate which has been provided to me. The other billion and a half is accounted for by the so-called tax reform bill which we will pass shortly, which did not turn out as Senators know to be revenue neutral, but in fact turns out to have a one-time revenue gain of pretty substantial proportions. So we are going to borrow a billion and a half out of that pool of money to meet our responsibilities on the spending side.

In addition, in order to get to the $13 billion, there is very nearly $5 billion of just plain tax increases, $4.919 billion in so-called revenues, accelerating State and local deposits—cigarette tax I guess has been taken out of the package—oil pollution compensation and increase in IRS compliance, and I have an uneasy feeling, Mr. President, this is going to be like the asterisk we put in the budget one year. Senators may remember in those dizzy first months of the new administration that the Budget Committee and the Budget Director got together and came up with the idea we are going to have unidentified savings and those were just put in as an asterisk.

I have a horrible hunch—I cannot prove it, of course—all that is going to be is just an estimate which will never be fulfilled, but anyway that is in there for $2.4 billion. We are going to accelerate excess tax collections by $300 million and increase IRS penalties by about $1 billion.

So if you take all of those at face value, a very questionable assumption, in my opinion, we end up with round figures of $5 billion in increase in taxes. Then what about the other $8 billion, that is the difference between the $13 billion total package and the $5 billion in tax increases that are suggested? Is the $8 billion a series of carefully crafted spending reductions? No, my friends, it is not anything of the kind. It is the sort of budget package that recalls the fable of a family that was under threat by a wolf and the decision by the parents reluctantly made was to feed one of their children to the wolf, thinking that thus satisfied, the rest of the family would be OK. That is exactly what they did and the wolf was satisfied until the next day when he came back and they fed him another of their children and so on.

Well, you all know the story and the ultimate outcome. That is what we are doing. We are getting ready to sell a bunch of Federal assets. We are not talking about, in the main, saving anything. We are not talking about reducing any Federal spending with some minor exceptions. We are not talking about even restraining the growth of Federal spending. What we are talking about doing is selling off a bunch of assets.

I do not happen to object to that particularly. We are going to sell Conrail in this bill, which I think is a very good idea, but it is an idea which is clearly separate from the notion of reducing or restraining the growth of Federal spending. It is just a different kind of an idea.

As far as I am concerned, they can sell the Russell Building, they can sell the Hart Building. I do not care about that. If that is something we want to do, that is fine.

I see in here, for example, we are going to sell off a bunch of loans of mortgages in the portfolio of the U.S. Government. I do not have a problem with that. That is a good idea as far as I am concerned. It would be fine if we had not made a lot of those loans in the first place.

But anybody who thinks that that is budget restraint or budget reform or reducing spending or doing anything but digging us into a bigger hole for next year really is not tuned in on the problem.

We are going to have sale of loan assets from the SBA portfolio. We are going to sell off some of our college housing loans. We are going to sell Conrail. I mentioned that. That is a $2.1 billion item. We are going to sell off some EDA notes. We are going to have—here is an item which I do not understand, but I expect will be explained to us in due course—this is crude oil overcharges. I am not sure exactly what that is. We are going to sell $1.5 billion of loans in the portfolio of the Eximbank. Maybe I should rephrase that. We are going to sell loans in the portfolio of the Eximbank for which we expect to realize $1.5 billion. I would judge that the face amount of these loans may be substantially larger because I assume that a lot of these things we are selling will be sold at a large discount reflecting the fact that the quality of these loans is not very high and the expected default rate is quite large.

Well, Mr. President, I just wanted to mention these little concerns. I do not want to be cranky about it, but I just do not think any Senator ought to vote for this package believing that we have in any way fulfilled the spirit of the Budget Act or that we have in any way gone down the path toward balancing the budget under Gramm-Rudman-Hollings. All we have here at the very best is a near technical compliance with the Gramm-Rudman-Hollings Act.

You remember our target was not $154 billion; it was $144 billion. But we built into the system a $10 billion cushion that we would not trigger the sequester. By the way, I do not have a great horror of a sequester. A lot of people think this will just be the end of the world. I do not feel that way. Anyway, we are going to have a target this year of $144 billion deficit. If we did not reach that we would have a sequester. Then we said no, we better build in a $10 billion slack that took us up to $154 billion. To reach the $154 billion we have to reach savings of $14.5 billion. We do not even do that. We only get to $13 billion with this. We are going to borrow $1.5 billion of the extra revenues in the tax reform bill. So that is what we are getting ready to do.

It might surprise you having spoken perhaps in a somewhat critical manner about the nature and heritage of this legislative package that I am going to vote for it, not because I think it is any good, not because I think it balances the budget or even moves in the right direction, but actually I do favor selling off a bunch of these assets. I wanted to get rid of Conrail for a long time. Earlier this year, I fully was prepared to give it away to anyone who

would take it, along with Amtrak, as a package deal.

I am going to vote for this, but I am also going to make it clear that we are just digging ourselves into a deeper hole for next year. How deep are we digging ourselves in? Next year Gramm-Rudman-Hollings deficit target is $108 billion, and I would like to meet privately with any Senator who thinks that there is a way that we can meet a target of $108 billion for next year. That would require savings in the next budget year of at least $60 billion and maybe as much as $80 billion.

Now, if we have not guts enough to come up with even $8 billion of savings, or $13 billion, or $14.5 billion, any one of which would have been some kind of a benchmark for this year, how in the world are we going to get to $60 billion, let alone to $80 billion in savings next year? It is going to be an exciting year.

Mr. President, I just want to close by saying that while I am very disappointed, indeed I am highly critical of the package of reconciliation legislation which has been presented to us, I do not want that to be taken as a criticism of the chairman and the ranking minority member. I really think they honestly do the best they can. I am not sure whether they are doing the right thing.

I am going to support the package just as the best thing that is available, even though I think it is not very desirable. But, you know, in the final analysis the leaders around here, the majority leader, minority leader, the chairman, and the ranking minority member of the Budget Committee are actually constrained by what we are willing to do as a Senate. They have a lot of clout. They have a lot of influence. Many of us try to defer to them whenever we can, particularly on issues of this kind. But in the final analysis they have to put something up that can get votes enough to pass.

I do not sense in this Chamber and certainly not in the other body any real desire to make budget savings. I do not know what happened, but somewhere along the way the sense of urgency about the budget gradually disappeared. It certainly disappeared over in the administration. I am hopeful they are about to get pumped up on this subject again and really come out swinging and maybe veto the continuing resolution and maybe some of the other bills.

I noticed the other day, for example, that we put through the Interior appropriations that was about $3 billion above the President's request. He certainly ought to veto that if he is serious about it. We put through a Labor-HHS bill that is way above the President's request. I am assuming no matter what happens, the continuing resolution will be way above what the President has suggested is necessary to run the Government for next year.

So I hope he will veto a bunch of bills. The result of that might turn out to be some chaos, maybe a delay in the adjournment of the session, and I would regret that, but it would be a far less regret on my part than to have this session of Congress adjourn without making any real progress toward getting Federal spending under control.

□ 1130

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1140

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS BUDGET RECONCILIATION ACT, 1987

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the pending business, which the clerk will state.

The legislative clerk read as follows:

A bill (S. 2706) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987 (S. Con. Res. 120, Ninety-ninth Congress).

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, in behalf of myself and the ranking minority member of the committee, Senator CHILES, we are prepared to start reconciliation. As I understand it, there are now 8 hours remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. Mr. President, I am going to yield myself 15 minutes off the bill rather than send to the desk the so-called leadership amendment, so that I will have time to discuss it generally. Once I send it to the desk, there will be 1 hour of debate on each side. We do have one or two items that we want to discuss with the majority leader and the minority leader that are in the package, and I want to talk about whether or not we should make some adjustments early on.

Let me proceed for 15 minutes and have it charged against the Senator from New Mexico on the time remaining on the bill and not against the amendment I will offer shortly.

Let me see if I can summarize quickly where we are.

First of all, I heard the distinguished Senator from Colorado talk about this reconciliation bill. I was very pleased to hear somewhere near the end of the discussion, after my good friend from Colorado, in his good style, indicated his criticisms of it, that he indicated he would vote for it.

Well, I hope he is joined by many, many Senators. I do not know that there will be very many Senators who will not vote for this. I hope there will be many Senators vote for it. In fact, I do not know why anyone would vote against it. I think when they finish reviewing it, and realize what will happen if we do not adopt it, they might be more inclined to vote for it.

This does not mean that this is even close to a good solution to the fiscal problems of this Nation. However, it has a very good chance, if it were adopted by both Houses and signed by the President, of helping us to avoid a sequester come October.

Also, if adopted, it should be enough to convince the U.S. Senate that they ought to postpone a sequester vote. If they do not want to postpone it permanently, perhaps for a week so that we can go to conference with the House. The House will be voting on a reconciliation bill next Wednesday.

The continuing resolution will be working its way through that process. If we can adopt this, I see no reason for a sequester as mandated by law today.

Let me first thank all the people involved in preparing this package. The cooperation has been excellent. Those representing the President, through the Office of the Director of the Budget, and particularly Director Miller, have been extremely helpful.

Hopefully, I can report later that they support this approach. At this point I am not able to state that.

Senator CHILES has been most helpful. Almost every member and chairmen of the committees affected by this bill have been helpful. They seem to be well aware of the fact that we have to do something so we do not have the across-the-board cuts contemplated by our failure to reach $154 billion this coming October when we finally finish appropriations and start a new fiscal year.

□ 1150

With that, Mr. President, let me tell the Senate what the package contains. First, the so-called leadership amendment would be an amendment to the pending bill. The pending bill saves $3.9 billion and includes among its many provisions a new cigarette tax of 8 cents, which would yield $1.6 billion in revenue. There are many other provisions in the bill and what we propose to do is offer a major leadership amendment that, in its totality would reduce the deficit by $13.3 billion.

That is made up of two categories: On the revenue side, this amendment would delete the cigarette tax that is

in the bill pending before the Senate. It would substitute, a total of $4.1 billion on the revenue side, resulting in revenue increases of $4,877 billion. These revenues are principally made up of accelerated State and local deposits on Social Security, State and local Medicare coverage, increased IRS compliance, increased IRS penalties, and accelerated excise tax collections.

Most of those are not new taxes. They simply make those who collect them collect them more promptly. When you add those up, we can credit the revenue side of the ledger for $4.9 billion.

We then have the remainder of that $13.3 billion that we are going to save. We have REA loan prepayments of an additional $500 million; RDIF—rural development insurance fund—loan asset sales, $1 billion; rural housing loan asset sales, $1.4 billion; Eximbank sales, $1.5 billion; Ship Mortgage Act amendment, $12 million; Coast Guard user fees, $38 billion; crude oil overcharge, $336 million.

What that is, I quickly tell the Senate, is the remnants of the regulatory schemes of 8, 9, and 10 years ago, where certain companies had overcharged under the regulations that existed during the oil crisis. We are going to collect money from them. This is merely saying on some of those products that the money is going to come to the Federal Government instead of getting distributed out there among the States. The States have already received over $2 billion. This is some of that. We think we are entitled to it, we think it is timely, we think we can get it.

Federal Energy Regulatory Commission fees, $33 million; Nuclear Regulatory Commission fees, $21 million; Environmental Protection Agency fees, $10 million; sale of EDA notes of $50 million; broaden the Federal Deposit Insurance Corporation assessment base, $310 million. I am sure there will be people down here talking about that one. We have it in the proposed leadership amendment.

We will sell Conrail. That should yield $2.1 billion. I note the House has been following suit. We have been working on this for 3 or 4 years. It will finally reach fruition today. I complement the Members who have given us amendments that make it palatable to everyone.

Sale of college housing loans, almost $600 million; small business loan assets sales, about $361 million. Farm deficiency payments are going to be in the package as we contemplate it. We have not sent it to the desk yet.

Let me, so that every one will have all the details, ask unanimous consent that the chart I send to the desk be printed in the RECORD. It is a tabloid explanation of the details of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SAVINGS IN SENATE RECONCILIATION PACKAGE AS AMENDED

[In millions of dollars]

Revenues	Senate bill	Domenici/ Chiles amendment	Amended bill
Accelerate State/local deposits		388	388
State/local medicare coverage	789		789
Cigarette excise tax	1,593	−1,593	0
Increase IRS compliance [1]		2,400	2,400
Accelerate excise tax collections		300	300
Increase IRS penalties [1]		1,000	1,000
Subtotal, revenues	2,382	2,495	4,877
Outlays:			
REA loan prepayments		−500	−500
RDIF loan asset sales	−555	−445	−1,000
Rural housing loan asset sales	−1,405		−1,405
Eximbank loan asset sales	−500	+1,000	−1,500
Coast Guard user fees	−38		−38
Ship Mortgage Act admendments	−12		−12
Crude oil overcharges	−100	−236	−336
FERC fees	−26	−7	−33
NRC user fees	−21		−21
EPA fees	−10		−10
Sale of EDA notes	−50		−50
Broaden FDIC assessment base		−310	−310
Highway programs			0
Sell Conrail		−2,100	−2,100
Medicare	1,901	1,235	666
Medicaid	121		121
Assistance payments	14		14
Civil service retirement	−205		−205
Sale of college housing loans	−579		−579
GSL changes	−30		−30
SBA loan asset sales		−361	−361
Advance final GRS payment		−680	−680
Eliminate COLA triggers		808	808
Farm deficiency payments [2]			
Part-time retirement computation		−10	−10
Subtotal, outlays	−1,495	−6,076	−7,571
Other congressional action			−380
Debt service savings			−475
Total deficit reductions	−3,877	−8,571	−13,303

[1] Preliminary Treasury and OMB estimates.
[2] This provision has no cost against CBO's Gradison base.
Notes.—All loan asset sales are without recourse.

Mr. DOMENICI. Mr. President, I say to my fellow Senators that Senator CHILES and I have arranged to distribute that summary to everyone. If it is not on your desk now, it is available and we are prepared to answer questions about anything in it. Most of the provisions that either sell assets, impose user fees, increase revenues, or change the Medicare Program of this country, have been drafted by the appropriate authorizing committees and I can only say thanks to them all. They and their staffs have been very cooperative. If we need the chairman or ranking member to explain their provisions, let me indicate to any Senator who wants to inquire, that they are willing to come down and answer questions about them.

Mr. President, let me state the parliamentary situation so Senators can be thinking about what they might want to do. This amendment that will be offered by the Senator from New Mexico and the Senator from Florida [Mr. CHILES]—hopefully to be joined by many other Senators from both sides of the aisle and most of the leadership, is under the Budget Act and the Byrd amendment on extraneous material subject to a point of order. Clearly, that point of order would be because of the Byrd amendment on the extraneous material and because of the traditional precedent of this body with reference to germaneness on a reconciliation agreement. It would not be germane. But this is curable by the will of the Senate.

The point of order does not mean that we cannot adopt it; it merely means that if somebody wants to raise that point of order we would be required to have 60 votes for its adoption or 60 votes to waive the impediment against its adoption. We think that eventually, there would be 60 Senators who would be willing to vote for this. We do not know that yet, but we think so. In fact, as I said a few minutes ago, I think there will be more than that.

On the other hand, we would like very much to consider a unanimous-consent approach that would make this in order with a majority; then we would like to do the same for amendments that people would ask us about so that they, too, could offer their amendments without the impediment of being subject to a point of order.

I do not know if we can do that. We already have a list of 20 or so amendments. Clearly, there are Senators who would want to raise points of order against those amendments. They are substantive changes in the law. They change rescission procedures, they transfer airports, they do all kinds of things. Some of them result in legislative savings of money that we just have not been able to include in our package. So, what we are going to do after we introduce the amendment is start asking Senators which they prefer: would they prefer to try to work out a unanimous-consent agreement or would they prefer that we proceed and if we can get our 60 votes, then that amendment will be adopted?

Then I must remind my fellow Senators that if we go that latter route, all their amendments are going to require 60 votes. That may be all right by some of them. I just want them to know that we would like to adopt this because we think it has broad support. Perhaps it has to be modified a bit. We also think it comes very, very close to avoiding a sequester and to justifying our putting off the preliminary across-the-board mandate that is pending before the close of business today.

Almost everyone has been helpful. Some of the chairmen have questions on maybe two or three of these items. We shall be glad to go over those with them. I particularly want to thank one chairman, the chairman of the Committee on Appropriations, Mr. HATFIELD, because basically he has worked with us in such a way that we can now be assured that the Internal Revenue Service will get the increased revenues

it has been seeking, so as to enforce the laws of this land in what they perceive to be an adequate manner. We have worked out with the administration the requisite money for that, and the appropriators, with Senator HATFIELD's assistance, have helped us with language that will assure that funding in the continuing resolution, thus justifying the increased revenues through the year by way of enforcing the laws of our country in a manner that is more apt to cause taxpayers to pay what they owe.

□ 1200

Having said that, I need a few minutes to confer with the majority leader. I believe the distinguished Senator from Florida would like to make some comments, so I am going to yield the floor. We are running our time, but we have not started to run time against the amendment, which I will offer shortly.

The PRESIDING OFFICER (Mr. MATTINGLY). The Senator from Florida.

Mr. CHILES. Mr. President, over the years I have been here, I have learned that you do not always get everything you want. That lesson was repeated for me early this year on the budget. Senator DOMENICI and I brought to the floor a budget with a combination of spending cuts and revenues that would have brought the deficit down to within the $144 billion deficit target for this year. We would not be here today on a reconciliation bill like this had we been able to adopt the budget with which we came out of the Budget Committee.

Even with the reestimates due to a slower economy, we would have a deficit low enough to avoid a sequester with no further action. We lost some revenues on the floor, but we would still be within $2 billion of avoiding sequester under the Senate-passed budget resolution.

But by the time the budget came back from the House, most of the original revenues were gone.

I knew then that we would be in for it this fall. I knew then we would either have to come up with much deeper and more painful spending cuts, or face a sequester which would mean across-the-board cuts in most programs. That is where we are right now.

As the Budget Act requires, we have reconciliation before us. It is the bill that makes the statutory changes to enforce the budget resolution. It is a disappointment to me that this bill, as it stands now, would only reduce the deficit by roughly $3.5 billion.

Everybody here knows that is not nearly enough. It does not have a real impact on the deficit. It does not even get us within the $10 billion security zone that would allow us to avoid a sequester. And it certainly does not come close to reaching the $144 billion deficit target.

So what we have done is put together a package of additional spending cuts which we now bring before the Senate.

In all, this package amounts to about $13 billion in deficit reduction.

One of the virtues of the package is that it accounts for spending Congress is certain to allow before we adjourn. Provisions are made for removal of the Social Security trigger threshold, and to allow for farm deficiency payments.

In addition, it builds on the Senate-reported reconciliation package and adds further substantial savings.

As to the specifics, let me briefly describe some of the provisions.

For example, it reduces Medicare spending by $1.2 billion through modifications to the provisions that require prompt payment of claims. The package would still require prompt payment, and interest would still be paid on claims which do not meet timely payment standards.

We were also able to tighten up some provisions, and 3 days have been added to the length of the payment cycle to achieve these savings. There are no other changes to the committee-reported Medicare provisions. We still have the cap on increases in the deductible, and we still have a 1.5-percent increase for hospital admissions.

We also advance the fourth—and final—quarter payment for revenue sharing from October 5 to September 30 which saves $680 million in fiscal 1987.

There are revenue provisions in the package. They include $1 billion of rural development loan asset sales, and accelerated payment of excise taxes on distilled spirits and tobacco products. It also reduces outlays by $361 million through the sale of SBA section 503 loan. A complete list of the revenue provisions is available on the desk of each Senator.

This amendment assumes the House revenue provision regarding oil spill liability legislation. It would assess a 1.3 cent per barrel tax on oil, and deposit these funds in the oil spill liability trust fund.

And it mandates the use of advanced farm deficiency payments at current levels in fiscal 1987.

It also directs the Secretary of Transportation to conduct a public offering of Conrail common stock in fiscal 1987.

Guaranteed student loan applicants would have to meet a financial need test, and the interest rate for new borrowers would increase from 8 to 10 percent.

And Coast Guard user fees are expected to bring in $138 million between fiscal 1987 and fiscal 1989.

And before anybody asks me, I will just say right now it is not what I wanted. I would put this package in that category I mentioned in the beginning as "least-worst."

The ideal situation would be to reach the Gramm-Rudman-Hollings deficit target. This reconciliation package won't do that. What it will do, is get the deficit down below $154 billion, and avoid the need for a sequester.

I know some will want to ask: "If it's only second best, why should anybody vote for it?"

Well, Mr. President, to answer that question, let us put this package in its proper context. This package is midway between the best we can do, and the worst that can happen under Gramm-Rudman-Hollings. There is one option that's worst of all, and that would be to do absolutely nothing, ignore the law, and settle for a deficit this year of over $175 billion.

But among the realistic options we have open to us, this reconciliation package is in the middle. And if I read the sentiments in this body correctly, it is probably the best we can do.

There is no way we can actually reach the $144 billion deficit target—short of a sequester—without additional revenues. The White House will not go along with that. They say despite the soft economy, despite the record trade deficit, there will be no extra revenues to help meet the deficit target.

On the opposite end of the problem is the sequester resolution. We could defeat this reconciliation package, and the Senate would then have to vote on the sequester order. I will concede to this body that adopting the sequester resolution will get us down to this year's deficit target.

But I remind the Senate that a sequester would fall equally on both domestic spending and on defense spending. Many worthwhile and necessary domestic services would be sharply cut. And for those of us concerned about maintaining the defenses of this country, the military would be in for further reductions. The Appropriations Committee did yeoman work keeping the DOD bill within a tight outlay target, with no phony accounting—there is no water left there to squeeze.

So all of us would lose. But those of us in the Senate would lose perhaps a little more.

We would be saying to the country that the men and women sent here to watch over the course of economic affairs simply could not do the job. We would say to the country that we had one final chance to put our thoughts and best efforts into the deficit fight, but we backed away and allowed a formula to rule national affairs.

So what we have are three basic choices.

We can adopt a reconciliation package with cuts large enough to avoid a sequester.

Or we could surrender the chance to make a rational choice, and instead, vote for a procedure which will take the power of choice and judgment from our hands, and cut the good programs with the bad.

Or, finally, we could defeat this package, vote down sequester and say to the country, "We just couldn't cut it."

For my part, I will support this reconciliation package and urge my colleagues to do so, as well. Is it a perfect package? No, it is not.

Is it an easy choice? No, it is not.

Will it solve the deficit problem for this year? No, it will not.

This package will help us get by this year. But it does not meet the obligations under Gramm-Rudman-Hollings for steady progress on a 5-year path.

Senator DOMENICI, Senator GORTON and I and others have all proposed plans in the past that would have produced growing savings and a balanced budget in 5 years. The Senate turned those down. We have been stuck on 1-year proposals. And this is another one.

But I say to my colleagues that a sequester is next to surrender. Given the present condition of the economy, we have to do the best we can, rather than cause dramatic dislocations and disruption just when the economy is unsteady and unsure.

Mr. President, during World War II, a pilot wrote these words that are appropriate for the situation we are in now. He said:

> We believe that our advance is incomplete, that tomorrow's truth derives from yesterday's error, and that the contradictions to be overcome are the very mainsprings of growth.

There is no question that our advance is incomplete, in the same way that this proposed solution is incomplete. But if we want this economy to grow, we have to act now and keep moving in the best, most rational and responsible way we can.

This reconcilation package is a chance to move ahead, to learn from our first-year problems under Gramm-Rudman-Hollings and do the best we can for this economy.

They tell me that today is a "triple witching hour" on Wall Street. Well, we are facing our own triple witching hour. We have to pass reconciliation, pass appropriation, and pass a debt limit bill. We hit one witching hour at midnight tonight—we have to vote on a sequester resolution. When we hit that witching hour, the sequester is a bubbling cauldron. I hope we do not fall into that cauldron and get burned.

I hope my colleagues will support this package.

It is tempting to think some magic could release us. But not this time. Starting right now, the only formula we have involves equal measures of hard work, clear thinking, and gumption.

That is not the kind of formula you find in a book. It is the kind of formula that originates inside each Member of the Senate.

It comes down to the old rhyme:

Boil, boil,
Toil and Trouble
If we fail in this,
We'll all be rubble.

Mr. DOLE. I commend Senators DOMENICI and CHILES because we now have a measure before us. The clock is running and we have plenty of time. There are still almost 8 hours. And I would hope we could have a resolution of this matter by midafternoon. It seems to me, they put together a very sensible approach which almost meeting the targets, a bit short, I guess about a billion dollars.

I would hope that we could get some agreement. I know there are a number of amendments floating around. But most of them are not germane, which means it is going to take 60 votes to approve them. If someone can get 60 votes for a nongermane amendment, they can probably get it passed.

But I do believe, that if we could get consent to offer the amendment of Senator DOMENICI and Senator CHILES, I am going to join in sponsoring the amendment. And I hope the minority leader will, as well, after he has had an opportunity to look at it carefully. There may be some areas that still need to be negotiated.

Generally, I commend both Senators for a full day's work yesterday and earlier in an effort to bring it this far. They worked with the House and with colleagues on both sides of the aisle, the committee chairmen and ranking minority members. I do not know how many different meetings were held but a number, and they were still meeting at 8:30 p.m. last evening. After that there was a lot of drafting going on.

Mr. BYRD. Mr. President, on that subject, will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. Mr. President, I hope that the Senate can be in recess for an hour beginning at 12:30, because I have called a conference of Democrats at the request of Mr. CHILES, so that we can hear from him an explanation of what the provisions are in the package that would be brought to the floor. Inasmuch as, under the order of yesterday, the total time remaining on the reconciliation measure is limited to 8 hours to begin running at such time as the manager or the ranking manager are ready to proceed, would the distinguished majority leader be in a position to recess the Senate so that we might have an hour's discussion that would not be interrupted by quorum calls, et cetera?

Mr. DOLE. Would that be charged against the 8 hours or not?

Mr. BYRD. That would not be charged against the 8 hours under the order of yesterday.

Would the majority leader want to charge it against the 8 hours?

Mr. DOLE. I want to leave ample time for the managers. There are 25 amendments pending and if we have votes on 25 amendments, we are looking at a 2 or 3 a.m. event here tomorrow morning.

Mr. BYRD. Rather than charge it against the time, I would just as soon the Senate continue in session, because I think it is important that there be an ample amount of time of 8 hours on the package.

Mr. DOLE. I agree with that.

Mr. BYRD. Mr. President, I speak from a misunderstanding to start with. I did not realize the clock had already begun running and the two managers had already proceeded. So I withdraw a bit from my earlier stance.

I would take the manager's advice at this point as to whether or not the manager on either side is willing to charge the hour of the recess against the 8 hours.

Mr. DOLE. That would be 30 minutes on a side. We would be happy to accept 30 minutes.

Mr. BYRD. Mr. President, Mr. CHILES has indicated he thinks it would be well worth having the recess—we will have the recess—but he thinks it would be worth it to have the discussion charged against the 8 hours. Otherwise, discussions would be going on on the floor. In that way, we could have the discussions without any interruptions and we would not have rollcall votes or anything else to distract our attention.

ORDER FOR 1-HOUR RECESS AT 12:30

Mr. DOLE. Mr. President, I ask unanimous consent that at 12:30 we stand in recess for 1 hour and that the time be equally charged to each side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to proceed for 1 minute and that it be charged against my half hour off the bill as previously ordered.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I want to say to the Senators who are here on the floor or who might be interested in this reconciliation bill—and I assume they all are—that while we have not submitted the so-called leadership amendment, it is in final form. A chart showing each of the items in terms of their effect on this reconciliation bill is available. The staff of the Budget Committee and the staffs of various authorizing appropriating and finance committees have them. We will be glad, during the next hour, to make them available. The Senator from New Mexico will be available if

anyone wants me to explain what it is we have done.

Mr. President, everything in this was either previously voted out of committees by reconciliation or debated and discussed around the Senate and in committees heretofore. On the revenue side, with one exception, all the items there have been before the committees and at one time or another on the floor of the U.S. Senate.

So we are available again to go through them and I understand that the Finance Committee staff, on the tax part, is, also. Most of the other committees have touched on the issues that are here, either in the reconciliation bill pending or in the previous sale of assets or user fee impositions.

So while we are not having a caucus on our side, this distribution of information is taking place and we are available to consult with anyone who is interested.

I yield the floor.

RECESS UNTIL 1:30 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess.

Thereupon, at 12:33 p.m., the Senate recessed until 1:33 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GRASSLEY).

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Iowa, suggests the absence of a quorum and makes the point that the time be divided equally.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Chair asks that the calling of the quorum be dispensed with.

I observe no objection.

RECESS FOR 30 MINUTES

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Iowa, asks that the Senate stand in recess for a period of 30 minutes and that the time be equally divided between the two sides.

Thereupon, at 1:34 p.m., the Senate recessed until 2:06 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. QUAYLE].

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Indiana, suggests the absence of a quorum, with the time for the quorum to be divided equally.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DENTON). Without objection, it is so ordered.

NICHOLAS DANILOFF THANKS U.S. SENATE

Mr. PELL. Mr. President, in the course of a recent trip to Moscow by staff members of the Foreign Relations Committee to review the status of the new U.S. Embassy Building, the committee's minority counsel, David Keaney, had an opportunity to meet with Nick Daniloff of U.S. News & World Report on three separate occasions. During the last meeting, Mr. Daniloff expressed his deep appreciation for the action of the Senate in passing Senate Resolution 486, and asked Mr. Keaney to bring back a letter to the Senate setting forth his personal thanks.

His letter reads as follows:

U.S. NEWS & WORLD REPORT,
Washington, DC, September 16, 1986.

To the Senate of the United States:

DEAR FRIENDS: My wife Ruth conveyed to me the news of the congressional resolution in support of myself. I cannot express in words how your support bolstered my morale as I sat, without legal counsel and in isolation from the outside world, in a basement all in Lefortovo Prison. Your resolution was all the more touching for me because, as a journalist, I covered your debates, your committee hearings, your agonizing appraisals, and your decisions between 1974-1980.

I am today, September 16, 1986, still a hostage. Released into the custody of the American Embassy is *not* a swap. The exchange of an innocent journalist for a Lt. Col. of the KGB is extremely distasteful to me.

I realize that for the sake of U.S.-Soviet relations—to say nothing of my family—some kind of political solution must be reached. I believe this will require extraordinary diplomatic skill and may take a while.

So far as letting the Soviets get away with this outrage—I do not believe they have succeeded. They will bear international propaganda scars for years to come!

Respectfully,

NICK DANILOFF.

In conclusion, and speaking now personally, I know, like, and admire Nick Daniloff and wish him the very best of luck and God's help.

I also admire and commend his selflessness in having said that he did not want to see his case result in cancellation of the summit. And I agree with him on this.

I yield the floor.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS BUDGET RECONCILIATION ACT, 1987

The Senate continued with the consideration of the bill.

Mr. DOMENICI. Mr. President, is the pending business the reconciliation bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. How much time remains on the pending business?

The PRESIDING OFFICER. Two hours 47 minutes for the Senator from New Mexico, and 2 hours 53 minutes for the Senator from Florida.

Mr. DOMENICI. Mr. President, I thank the Chair.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

The PRESIDING OFFICER. Without objection, it will be charged equally.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1436

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Mr. President, I yield such time as the Senator may require.

Mr. HOLLINGS. Mr. President, with regard to the proposed reconciliation package to be presented by our distinguished leaders, the chairman of the Budget Committee, Senator DOMENICI, and the ranking member, Senator CHILES, I rise in support and welcome this opportunity to explain my reasons for the support.

First, however, let me make a statement regarding the vote on across-the-board cuts that would be required no later than midnight tonight under Gramm-Rudman-Hollings.

Last week, I met with my colleagues, the Senator from Texas [Mr. GRAMM] and the Senator from New Hampshire [Mr. RUDMAN], and we made a gentleman's agreement that on this day, Friday, under the rule, we would not force our colleagues to accept a particular report as long as they were engaged in an effort to reduce the deficit. We concluded that the work being done on both sides of the aisle was significant, and that it serves the purpose of Gramm-Rudman-Hollings better to withhold the vote on across-the-board cuts in order to see if a delay could bring about compliance with Gramm-Rudman-Hollings. The idea here is to make headway and not headlines. However, I understand now that there are certain colleagues who will raise an objection to unanimous consent and have a vote on the across-the-board cuts even if an adequate reconciliation package is voted today.

I appreciate the dilemma that Senator DOMENICI and Senator CHILES find themselves in.

Over on the House side there are two hurdles: First, the ruling by the Parliamentarian that the House will not vote, despite the requirement of Gramm-Rudman-Hollings, unless and until the distinguished Speaker calls the matter for consideration. Second, if the Speaker calls it for a vote after the House has worked its will on reconciliation, then the House would vote down the sequester order saying, "Look, we have complied. Voting for a sequester would be only symbolic. There is no need for these cuts from defense and social programs because we have complied, we have exercised our will with respect to the reconciliation bill."

My point, Mr. President, is that there is no sense going in two different directions at the same time: both a reconciliation bill and a sequester vote. This is especially so in light of the impending enactment of tax reform, which will bring in another $11 billion.

Despite this commonsense approach, there are some around here who want to force the sequester vote, even at the cost of sowing chaos.

Let me address that particular point.

There are two alternatives here, as the Senator from South Carolina views it. One is to force the President of the United States to agree to additional revenues, and the other alternative is chaos. In both instances the President politically wins. Politically he has said time and again he is not for revenues.

Within recent months, I have sought to raise $15 billion in new revenues through an oil import fee.

For 5 years running, I have proposed the Hollings budget freeze which, through a mix of new revenues and judicious cuts, would bring about an orderly reduction of these outrageous deficits—deficits that approximate, this year, some $230 billion.

Regrettably, the President is fixed in concrete and, in response, the House is fixed in concrete. We in the Senate act as though what we do here is going to be enacted in the House and signed by the President, the very parties calling for budget chaos.

So the President says, "I am not going to permit new revenues, I'll stick with the status quo." The President would not call it chaos, but that is exactly what follows from his stance. He tries to shift blame for the ensuing chaos by saying "that spendthrift Congress failed to recommend cuts." He will say, "We worked with the leadership in the House and the leadership in the Senate and I have had my budget director meeting for the last 72 hours around the clock and here is the list of things that we practically agreed upon."

Then he would run down this long list of user fees and asset sales and the rest of his grabbag of gimmicks. I can practically write his speech. He would say: "I asked them to accept the cuts I was willing to make. Of course, they would not make the cuts. All they wanted to do was to sow chaos, shut down the Government, or more specifically wreck the Department of Defense and the security of this Nation. Now, Mr. and Mrs. America I—as President—am taking care of the security of this Nation. I have authority now for these loan-asset sales. So I am going to make $4 billion or $5 billion in additional asset sales under the previous years' budget authority. I am going to take care of national defense and the people of America can know that as long as Ronald Reagan is in the White House, America and the world will be secure."

I can write the speech.

Yet here I am, beating my head against the wall with Gramm-Rudman-Hollings, and hearing, "You did not comply" and "you broke the discipline," and so on.

So faced with the choice of trying to bring in revenues or submitting to chaos, I throw my support behind this reconciliation package, despite its flaws. I will explain my reservations, but first let me salute the expertise, the dedication and the industry of Senator DOMENICI and Senator CHILES.

You cannot ask for better Senators. They have labored around the clock.

For several days, now, I have carefully studied Senator DOMENICI's proposal. He outlines a realistic approach of both revenues and cuts.

I ask unanimous consent that Senator DOMENICI's proposal be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Possible components of an amendment to Senate reported reconciliation bill

[In millions of dollars]

Needed savings to avoid sequester	14.5
Options available to avoid sequester:	
1. Senate reported reconciliation	3.7
2. Senate adopt some House reconciliation savings not in Senate bill	
(a) Maritime guarantees	(1)
(b) Accelerated Social Security payroll	.4
3. Reconcile sale of Conrail	2.0
4. Reconcile sale of naval petroleum reserve	2.2
5. Modify Senate oil overcharge proposal	.4
6. Small Business Committee compliance	.3
7. Finance Committee reduce adds	1.1
8. Banking Committee Exim asset sales	1.0
9. Revenues or other spending reductions	3.4
Total options	14.5

[1] Less than $50,000,000.

Needed deficit reduction to avoid Oct. 1 sequester

[In billions of dollars]

CBO/OMB Aug. 20 deficit snapshot	163.4
OMB:	
Legislation adding to deficit:	
COLA	
Farm deficiency payments	+4.3
Appropriations:	
Appropriated entitlements	+1.7
Appropriations at Senate levels	+1.7
CBO:	
Legislation adding to deficit:	
COLA	+.8
Farm deficiency payments	
Appropriations:	
Appropriated entitlements	
Appropriations at Senate levels	+1.7
Legislation adding to deficit	+5.1
CBO/OMB Oct. 1 deficit snapshot	168.5
Deficit needed to avoid sequester	154.0
Deficit reduction needed	14.5

Mr. HOLLINGS. What we have here is a deliberate and a balanced approach, quite in contrast to the Mickey Mouse of loan-asset sales.

By supporting the reconciliation package and its loan-asset sales, I am losing my running debate with the distinguished Senator from New York, DANIEL PATRICK MOYNIHAN. He has been recommending loan-asset sales for several years, and even before Senator MOYNIHAN, the distinguished Senator from California [Mr. CRANSTON], also recommended this approach.

I have resisted. I know we can sell the Washington Monument. I know we can do away with various military bases. I know I can take the portfolio of farm loans and FDIC loans and so on, sell them at a discount for some quick cash, even if in the long run that will make it harder to bring down the deficits.

My objection to the approach we have taken in this special reconciliation package is that it does not solve the problem in the long range, as Senator DOMENICI's proposal would have. As the conscientious chairman of the Budget Committee, he was not content just for a quick fix to get us out of here in October for the 1986 election. He was interested in sound fiscal policy in the outyears. He sought to put in place a policy and program that would continue to reduce the deficit in the years to come. His plan was to truly bite the bullet and begin to kick this addiction to deficit spending.

In recent weeks, Mr. President, we have been saying the country is on drugs and the country needs treatment and the country needs drying out centers and country needs the death penalty for drug murders.

In reality, it is we who need the drying out. And the public will give us the death sentence politically if we do not start acting responsibly. We have been hooked on the drug of deficit spending now for some 5 years. It took us 205 years and 38 Presidents to get a $1 trillion debt, and it took us only one President 5 years to get to reach $2

trillion. It has been up, up, and away, a couple hundred billion in new debt each year. Yet there are those who cling to the fiction that we will grow our way out of these deficits.

I would like a mayor of a city to announce, "I am going to cut our revenues 25 percent because we are going to get growth in this city."

He would find out in 90 days' time that he had lost his credit rating, that he could not sell his municipal bonds, that he would have to fire policemen and firemen.

When I was sworn in as Governor in 1959, the first thing I did was not only to make budget cuts but to raise revenues. We obtained a triple A rating and thereupon I could go to blue chip corporations and say, "Invest in this State. We are acting responsibly. We have met our fiscal responsibilities and, therefore, there will be growth." Unfortunately, this philosophy has been out of fashion in the United States.

I repeat, Senator DOMENICI and Senator CHILES attempted a long-range approach. But what we have on the table now are loan repayments, assets sales, and advancing the general revenue-sharing payment.

Nonetheless, the package before us is the best we can hope for given the position taken by the administration and the House of Representatives. This document represents a reasonable solution.

Let me emphasize specifically in regard to the Conrail sale. I do not support the Conrail sale by way of a public offering.

We worked for 3 years with Secretary Dole and the administration. We had bids for the sale of Conrail. We listened to the public. We made an affirmative vote here on the floor of the U.S. Senate and called for the sale to Norfolk Southern.

Now, due to opposition from the distinguished chairman on the House side, we have now flip-flopped, opting for a public sale, which had previously been considered in depth and turned down.

If the Conrail sale is to be included, I have suggested language to ensure that when we go into conference we will include the same covenants, the same requirements, the same restrictions that we wanted with respect to the sale to the private operator.

□ 1448

Mr. President, the problem is that this reconciliation package is looking for quick money and Senator HOLLINGS from South Carolina is looking for continued railroad service. Conrail is operating, it is operating at a profit, it is operating with outstanding service, everyone has agreed on both sides of the aisle. It is just that some want to get the Government out of the railroad business.

But look at this the way the money boys on Wall Street do. There is at this time $950 million in cash. In the pension fund, there is an overage against obligations to that particular fund of some $400. So without a sale, if we want to make a cash transaction from this pocket into this pocket, as the House of Representatives wants to do—they have a $1 billion 700 million sale and they take $300 million from the Conrail itself to make up the total revenues from the sale. Why take $300 million? Let us take $1 billion 350 million. And you do not have to sell it. We still have a railroad. We have not lost anything, if we want to make cash transactions.

I want to make certain that we do not approve something like that Morgan Stanley operation—they were just buying the cash and had no real obligation to continue rail service, and after they had made their money, if it worked, fine business; if it did not, they could write off all their losses and make even more money, and you and I back here in the Government would end up with a defunct railroad to try to regenerate somehow or other to continue that service to the shipping public in America.

I will insist on the same covenants and requirements previously adopted by the Senate, but I do not want to be misunderstood. I am not in favor of a Conrail sale, and might yet work against it, if they opt for a so-called public sale. That would accomplish nothing but a transfer of our money into the hands of sharp investors who have no idea how to run a railroad.

Having said that, let us look at the big picture of what has happened under Gramm-Rudman-Hollings this year.

We have saved some $12 billion in the March cut under Gramm-Rudman-Hollings. Additionally, we have now, according to the joint CBO-OMB figures, reduced next year's deficit to $163.4 billion. If we come in with no reconciliation whatsoever, we still have a reduction from 1986 to 1987 of $78.6 billion. Now, that is quite a different thing from going from $212 billion in 1985 up to $242 billion in 1986.

You see, Mr. President, if we had not cut that $12 billion in March we would have had a 1986 deficit of $242 billion instead of $230 billion. Let me be a little more candid than I would otherwise like to be. The distinguished financial minds will tell you that the 1987 deficit is really not $163.4 billion, it will be about $170 billion. If it is $170 billion and we reduce it by the $13 billion proposed in the Domenici-Chiles amendment, then we are talking about a deficit cut between 1986 and 1987 of $85 billion.

But assume that this is one-half smoke and mirrors. At least, you have $6.5 billion in real savings.

That is no mean achievement. Bear in mind, Gramm, Rudman, and Hollings are not financial experts. We had to lay out a plan. The economy changes. When we wrote the measure, no one envisioned a 1986 deficit of $242 billion. We were talking then in terms of $216 billion. So the deficit was even more out of control than we thought at the time of enactment. In this context, our achievement on the 1987 budget is a good start. It does not, however, solve the problem. It does not build in the long-range solutions that Senator DOMENICI and Senator CHILES want.

There is no question in my mind that by next year, Mr. President, we are going to run out of smoke and we are going to run out of mirrors and we are going to have to raise revenues.

Looking at my leaders now, I see we might run out of time, so I want to yield that time back to my distinguished friend from Florida. I appreciate his giving me these few moments. Because I am one of the three authors, I have to look at it in the broad. I can nitpick this reconciliation package. I can sow chaos, and there are people on my staff who would love it, just tear down the temple walls, make a lot of headlines, call everybody else spendthrifts, and go home and get reelected. But I like to see results. What we have in Domenici-Chiles is the best result under the circumstances.

I shall be delighted to answer questions about it. I would be delighted to debate it in the time alloted me as we continue this evening. For now, I have explained the major points, the options we have, and the good job done under the circumstances.

Mr. DOMENICI. Mr. President, I want to say to my good friend [Mr. HOLLINGS] he has been fighting a good fight. I think he has it analyzed perfectly right. This is the best we can do. This moves us toward avoiding a Gramm-Rudman-Hollings sequester, which the Senator never intended to use. He had it there as a pressure on Congress and the President to do their job. We have done the best we can.

I think he is right; this is not going to do the job in 1988, 1989, or 1990. It does not even come close. Almost all of them are one-event transactions. What does that mean? That means if you sell Conrail, you do not sell it every 4 years. You get your $1 billion, $2 billion one time. If you changed the program that was spending out and changed it so it would come down, it would come down every year. That is what the Senator is speaking of.

If we raise some revenues that were going to be there and were permanent, they come in every year. We do not even do that here except on two or three items because we cannot do that, because the U.S. House of Representatives will not do that, because they say

unless the President will do that, they will not. And 'round and 'round we go. So we have done the best we can.

We thank the Senator from South Carolina for his help, not only as ranking member of the committee that has jurisdiction over a number of items including Conrail, but because of his understanding. If we do not vote something like this in, we have just told the American people we passed a law that told us to do our work and we are not even going to come close. We are going to let everybody, agriculture, defense, servicemen, everybody—take a cut because we do not have the courage at least to do something.

I thank the Senator for that. I want to tell him that it is my intention, along with Senator CHILES and other cosponsors, to move right along and let the Senate vote on this as soon as possible and get on with the job of seeing if they have any other amendments. Hopefully, we can wrap this up today and have the conference with the House next week. We will not come back with any less, I do not think, from conference and we will be at least on our way, when coupled with the continuing resolution and tax reform, of being able to tell the people of the country there will not be a sequester, there will not be October doomsday—cut even regardless of whether they are good programs or bad ones—we have done the job at least for this year.

I ask my friend from Florida if he is ready to join me in the offering of the amendment.

□ 1500

Mr. CHILES. Mr. President, my understanding is that there is a technical amendment that we will do in about 5 minutes. I guess we could send the modification to the desk. It is a $10 million item.

AMENDMENT NO. 2850

(Purpose: To provide for increased budgetary savings)

Mr. DOMENICI. Mr. President, on behalf of myself, the distinguished Senator from Florida, and the distinguished majority leader, Senator DOLE, I send an amendment to the desk and ask for its immediate consideration. We have not had a chance to check around for additional cosponsors; I assume that there will be a number.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Mr. CHILES, and Mr. DOLE, proposes an amendment numbered 2850.

Mr. DOMENICI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. The amendment is as follows:

On page 2, line 10, strike "$555,000,000" and insert in lieu thereof "$1,000,000,000".

On page 3, between lines 14 and 15, insert the following new sections:

SEC. . ADVANCE DEFICIENCY PAYMENTS.

Notwithstanding any other provision of law, the Secretary of Agriculture shall, in accordance with criteria in section 107C of the Agriculture Act of 1949, make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice: *Provided*, That the percentage of the projected payment rate used in computing such payments shall not be less than (1) 40 percent in the case of wheat and feed grains, and (2) 30 percent in the case of rice and upland cotton.

SEC. . PREPAYMENT OF REA LOANS.

SEC. 102. The Secretary of the Treasury shall issue final regulations implementing the provisions of the undesignated paragraph captioned "PREPAYMENT OF LOANS BY RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS" appearing at 100 Stat. 713-14 in Public Law 99-349 (7 U.S.C. 936 note) to permit the prepayment of loans made by the Federal Financing Bank and guaranteed under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936), by the Administrator of the Rural Electrification Administration, in such amounts as to realize net proceeds of not less than $1,720,000,000 from such loan prepayments during fiscal year 1987.

On page 6, line 6, strike "$500,000,000" and insert in lieu thereof "$1,500,000,000".

On page 8, between lines 14 and 15, insert the following new section:

SEC. . FDIC PREMIUMS ON FOREIGN DEPOSITS OF UNITED STATES BANKS.

The Federal Deposit Insurance act is amended—

(1) by striking "except as provided in section 7(b)(5)," after "(A)" in section 3(1)(5);

(2) by striking out "and" at the end of clause (A) of section 7(b)(5); and

(3) by striking out the period at the end of section 7(b)(5) and inserting in lieu thereof the following: "; and

"(C) any deposits received in any foreign branch of international banking facility, other than any foreign branch of a foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978.".

On page 12, between lines 4 and 5, insert the following new section:

SEC. . SALE OF CONRAIL

The Secretary of Transportation is directed in fiscal year 1987 to sell the interest of the United States in the common stock of the Consolidated Rail Corporation (Conrail). Consistent with the public interest convenants provided for pursuant to S. 638, the "Conrail Sale Amendments Act of 1985" as passed by the Senate on February 4, 1986, the Secretary, as part of such sale, shall ensure that Conrail's rail service is continued, that the interests of rail labor are protected, that it is in the strongest possible financial condition after the sale, that it is viable long-term, and that the return to the Federal Government is maximized.

On page 12, line 8, strike insert "OR PETROLEUM PRODUCTS" after "CRUDE OIL".

On page 12, line 18, insert "or petroleum products" after "crude oil".

On page 19, line 21, strike out the period and insert in lieu thereof ": *Provided*, That the Commission shall increase fees and annual charges sufficient to increase offsetting receipts by at least $33,000,000 in fiscal year 1987 above current collections.".

On page 27, line 18, strike "1½" and inset in lieu thereof "1.3".

On page 49, line 6, strike "24" and insert in lieu thereof "the applicable number of".

On page 49, strike line 8 through 11 and insert in lieu thereof the following:

"(B) In this paragraph—

"(i) the term 'clean claim' means a claim which meets the requirements of section 1814(a)(1) and any other requirements of this title for payment under this part, and

"(ii) the term 'applicable number of calendar days' means—

"(I) with respect to claims received in the 12-month period beginning October 1, 1986, 27 calendar days,

"(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

"(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

"(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.".

On page 50, line 1, strike "24" and insert in lieu thereof "the applicable number of".

On page 50, strike lines 3 through 5 and insert in lieu thereof the following:

"(B) In this paragraph—

"(i) the term 'clean claim' means a claim which meets the requirements of section 1814(a)(1) and any other requirements of this title for payment under this part, and

"(ii) the term 'applicable number of calendar days' means—

"(I) with respect to claims received in the 12-month period beginning October 1, 1986, 27 calendar days,

"(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

"(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

"(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.".

On page 50, beginning with line 11, strike all through line 21 on page 51 and insert in lieu thereof the following:

"(e)(1) If for three consecutive calendar months, an agency or organization with an agreement with the Secretary under section 1816 meets the requirements of subsection (c)(2) of such section, the Secretary shall discontinue periodic interim payments (under 42 C.F.R. 405.454(j)) with respect to all providers of services (other than providers of the type described in paragraph (3)) paid through the agency or organization until such time as the agency or organization fails to meet such requirements for three consecutive calendar months.

"(2) If for three consecutive calendar months, an agency or organization with an agreement with the Secretary under section 1816 meets the requirements of subsection (c)(2) of such section, the Secretary shall provide for periodic interim payments with respect to all subsection (d) hospitals (as defined in section 1886(d)(1)(B)) that request such payments and that are paid through the agency or organization until such time as the agency or organization meets such requirements for three consecutive calendar months.

On page 52, line 4, strike "1842" and insert in lieu thereof "1842(c)".

On page 52, line 7, strike "(A)".

On page 52, line 8, strike "24 days after a clean claim as defined in paragraph (2)(B)"

and insert thereof "the applicable number of calendar days (as defined in clause (ii) of paragraph (2)(B)) after a clean claim (as defined in clause (i) of such paragraph)".

On page 52, line 14, strike "made." and insert in lieu thereof "made.'.".

On page 52, strike lines 15 through 19 and insert in lieu thereof the following:

(3) Section 1816(c) of such Act, as amended by subsection (a), is further amended by adding at the end thereof the following new paragraph:

"(3) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of paragraph (2)(B)) after a clean claim (as defined in clause (i) of such paragraph) is received from a provider of skilled nursing facility services, home health services, or hospice services that is not receiving periodic interim payments with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalities for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.".

On page 52, line 21, strike "The" and insert in lieu thereof "Except as provided in paragraph (2), the".

On page 52, between lines 22 and 23, insert the following:

(2) The amendments made by paragraphs (2) and (3) of subsection (c) shall apply to claims received on or after April 1, 1987.

On page 52, line 23, strike "(2)" and insert in lieu thereof "(3)".

On page 115, between lines 14 and 15, insert the following:

SEC. 653. REVENUE SHARING PAYMENTS.

Nothwithstanding section 6702(b) of title 31, United States Code, the Secretary of the Treasury shall make the installment payment of revenue sharing funds under chapter 67 of such title that is otherwise required to be paid on or before October 5, 1986, by no later than September 30, 1986.

On page 117, beginning with line 21, strike out all through page 118, line 2, and insert the following:

(c) TERMINATION OF OPTIONAL COVERAGE.—Subsection (v) of section 218 of the Social Security Act is repealed.

On page 120, beginning with line 17, strike all through line 18 on page 123.

On page 123 between lines 18 and 19, insert the following new sections:

SEC. . DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATES AND LOCAL GOVERNMENT EMPLOYEES.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.".

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.
"Sec. 3127. Short title.".

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", or ", and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act,".

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or".

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), and (t) of section 218 of the Social Security Act are repealed; and subsections (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218", and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

(C) Section 218(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)", and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (1)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

(F) Section 224(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

SEC. . CERTAIN EXCISE TAX DEPOSITS ACCELERATED.

(a) TOBACCO.—Subsection (b) of section 5703 of the Internal Revenue Code of 1954 (relating to method of payment of tax) is amended by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) Time for payment of taxes.—

"(A) IN GENERAL.—In the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period, the last day for the payment of such taxes shall be the 14th day after the last day of such semimonthly period.

"(B) SPECIAL RULE WHERE 15TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this subparagraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(b) DISTILLED SPIRITS.—Section 5061 of the Internal Revenue Code of 1954 (relating to method of collecting tax) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TIME FOR PAYMENT OF TAXES ON DISTILLED SPIRITS.—

"(1) IN GENERAL.—If—

"(A) any tax is imposed on distilled spirits under this part, and

"(B) such distilled spirits are withdrawn under bond for deferred payment of tax or from bonded premises (including customs custody),

the last day for payment of such tax shall be the 14th day after the last day of the semimonthly period during which such withdrawal occurred.

"(2) EXCEPTION WHERE EARLIER PAYMENT REQUIRED.—Paragraph (1) shall not apply to any tax imposed on distilled spirits if the due date for the payment of such tax is earlier under subsection (b).

"(3) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this paragraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(c) EFFECTIVE DATE. —

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid after September 30, 1986, for semimonthly periods ending on or after such date.

(2) SPECIAL RULE FOR SEMIMONTHLY PERIOD ENDING SEPTEMBER 15, 1986.—With respect to remittances for taxes imposed on tobacco products and cigarette papers and tubes under section 5701 of the Internal Revenue Code of 1954 for the semimonthly period ending on September 15, 1986, the last day for such remittances shall be October 14, 1986.

SEC. . INCREASES IN CERTAIN PENALTIES.

(a) AGGREGATE NEGLIGENCE AND SUBSTANTIAL UNDERSTATEMENT PENALTIES NOT TO BE LESS THAN 25 Percent.—

(1) IN GENERAL.—Subchapter A of chapter 68 of subtitle F (relating to additions to tax) is amended by redesignating section 6662 as section 6663 and by inserting after section 6661 the following new section:

"SEC. 6662. AGGREGATE PENALTY ON CERTAIN UNDERPAYMENTS NOT TO BE LESS THAN 25 PERCENT.

"(a) GENERAL RULE.—If there is a tax imposed under section 6653(a) or 6661, or both, on any portion of the underpayment or understatement, then there is hereby imposed a tax equal to the excess (if any) of—

"(1) 25 percent of the amount of such portion, over

"(2) the aggregate amount of taxes imposed under sections 6653(a) and 6661 on such portion.

"(b) DEFINITIONS.—For purposes of this section, the terms 'underpayment' and 'understatement' have the meanings given such terms by section 6653(c)(1) and 6661(b)(2), respectively."

(b) INCREASE IN TAX ON FAILURE TO MAKE DEPOSIT OF TAXES.—Section 6656(a) (relating to underpayment of deposits) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(c) CONFORMING AMENDMENTS.—The table of sections for subchapter A of chapter 68 of subtitle F is amended by striking out the item relating to section 6662 and inserting in lieu thereof the following new items:

"Sec. 6662. Aggregate penalty on certain underpayments not to be less than 25 percent.
"Sec. 6663. Applicable rules."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after the date of enactment of this Act.

SEC. . APPROPRIATIONS FOR IRS ENFORCEMENT.

The conference agreement on the appropriations measure providing funding for the Internal Revenue Service for the fiscal year ending September 30, 1987, will include the following funding levels: for "Salaries and Expenses", $95,147,000; for "Processing Tax Returns", $1,332,902,000; for "Examinations and Appeals", $1,623,162,000; and for "Investigation, Collection, and Taxpayer Service", $1,196,581,000: *Provided*, That the allocation to the Senate Committee on Appropriations pursuant to section 302(a) of the Budget Act, as amended, under Senate Concurrent Resolution 120, the concurrent resolution on the budget for fiscal year 1987, is increased by $300,000,000 in both new budget authority and outlays.

On page 191, lines 11 and 12, strike "together with any underlying Federal guaranty,".

On page 191, lines 22 and 23, strike "be with recourse to the Federal Government and shall".

At the end of the bill, add the following new titles:

TITLE .—SOCIAL SECURITY COLAS

SEC. . REMOVAL OF THREE PERCENT THRESHOLD FOR COST-OF-LIVING ADJUSTMENTS.

(a) SHORT TITLE.—This title may be cited as the "Cost-of-Living Adjustment Reform Act of 1986".

(b) IN GENERAL.—

(1) Section 215(i) of the Social Security Act is amended by striking out "is 3 percent or more" in paragraph (1)(B) and inserting in lieu thereof "is greater than zero".

(2) Section 215(i)(1)(B) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out "exceeds, by not less than 3 per centum, such Index" and inserting in lieu thereof "exceeds such Index".

(3) Section 2159(i)(2)(C) of such Act is amended—

(A) by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(B) by striking out "under clause (ii)" in clause (ii) as so redesignated and inserting in lieu thereof "under clause (i)".

(4) Section 215(i)(2)(C) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out clause (i) and by striking out "(ii)".

(5) Section 215(i)(4) of such Act is amended by inserting "and by the Cost-of-Living Adjustment Reform Act of 1986" after "Social Security Amendments of 1983".

(6) Section 215(i)(5)(A)(i) of such Act is amended by striking out "because the wage percentage increase was less than 3 percent" and inserting in lieu thereof "because there was no wage percentage increase greater than zero".

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the month benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

(d) EFFECTIVE DATE.—

(1) Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to cost-of-living increases determined in 1986 and all subsequent years.

(2) The amendments made by paragraphs (3) and (4) of subsection (b) shall apply with respect to months beginning after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

TITLE—MISCELLANEOUS PROVISIONS

SEC. . COMPUTATION OF RETIREMENT ANNUITY FOR PART-TIME EMPLOYMENT.

(a) Subsection (b) of section 15204 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272; 100 Stat. 335) is repealed.

(b) Subsection (c) of such section is redesignated as subsection (b).

SEC. . MAKING RULES ON EXTRANEOUS PROVISIONS PERMANENT.

(a) Section 20001(c) of Public Law 99-272 is amended by striking out "and shall remain in effect until January 2, 1987".

(b) Senate Resolution 286, adopted December 19, 1985, is amended by striking "section 1201" each place it appears and inserting in lieu thereof "section 20001".

SEC. . MODIFICATION OF DEADLINE FOR SUBMISSION OF PRESIDENT'S BUDGET.

(a) Section 1105(a) of title 31, United States Code, is amended by striking out "first Monday after January 3 of each year (or on or before February 5 in 1986)" and inserting in lieu thereof "first Tuesday in February of each year".

(b) Section 300 of the Congressional Budget Act of 1974 is amended by striking out "First Monday after January 3" and inserting in lieu thereof "First Tuesday in February".

(c) Section 1109(a) of title 31, United States Code, is amended by striking out "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)" and inserting "Concurrently with each budget submitted pursuant to section 1105(a) of this title".

SEC. . TREATMENT OF LOAN ASSET SALES FOR DIRECT REDUCTION.

(a) In order to achieve the purposes of the concurrent resolution on the budget for fiscal year 1987, S. Con. Res. 120, 99th Congress, and notwithstanding any other provision of this Act, any sale of debentures, as well as any underlying Federal guaranty, by the Secretary of the Treasury, or any other agent of the United States, pursuant to provisions of this Act, shall be without recourse to the Federal Government and shall discharge the Federal Government's obligations with respect to any individual purchaser or assigneee of such debenture.

(b) In the interest of budgetary savings, it is the intent of the Congress that this section be interpreted by the Secretary of the Treasury, or any other agent of the United States, and any court of law, as superseding any provison of this Act appearing to set forth a contrary requirement.

Mr. DOMENICI. Mr. President, we will talk about the amendment for a while and ask Senators if they would like to let us waive the 60-vote requirement on the amendment so that it may be adopted by simple majority. We have plenty of reasons to ask for it, but obviously it is only if the Senate decides, by unanimous consent, that it wants to grant us that privilege.

Let me state briefly why we believe such a request would be appropriate.

If you look at the Budget Act, you will find that for this particualr time in the fiscal policy history, there was a provision hoping to permit a new reconciliation bill to solve the problems; but we cannot use it this year because it will go way up into October 20 or thereabout. So we are stuck with an old reconcilation bill and no process to bring it current as a formal reconiliation matter. Because of that, we cannot properly amend this, even with the total work of the Senate, without being confronted with the so-called Byrd rule, which says that you cannot

add extraneous material, and the traditional rule that you cannot amend this with add-ons because they are not germane. Because of that, we will need 60 votes to adopt it, in the event the Senate decides, in its wisdom, not to grant us consent to waive those provisions. We will go into that a little later.

Let me just tell the Senate what I think the adoption of this amendment means, so long as it is not amended to delete the total of $13.2 billion in deficit reduction.

This is not the last business of the year. The House will take up their reconciliation on Wednesday. They will take up the continuing resolution for appropriating for our country on Thursday and a tax bill on Friday. If we pass our reconciliation today, we still have to do the appropriation process next week, and a tax bill is working its way through, coming from conference to the House, and then over here.

I say to my colleagues that if we adopt the Domenici-Chiles amendment and come out of conference with the House with at least that amount, that, coupled with the other things we are going to do, permits me to predict with as much certainty as I can predict, with numbers and assumptions, that we will not have a sequester in October.

Let me repeat: If this is adopted and we do the rest of our business as planned, and there is no disaster, we add $10 billion in appropriations, that is not going to happen; the tax bill is modified, changed, gutted—if those kinds of things would happen, with the adoption of this amendment and it becoming law a week or 10 days from now, clearly we will have done our work, and no sequester would be in order, and in my mind there would be no need for the temporary sequester, because we would have done our work.

There are two things in this amendment which we call to the attention of Members. One, we have mandated the advance deficiency farm payments. We know it will happen. We know that the Congressional Budget Office has already charged us for them, as if they happened; and we want the Senate to be on record that we are saying, "Pay the advance deficiency payments." This is the third year in a row. It is bookkeeping. We do not double pay. We pay early, and next year we pay less. It helps the farmers of America tremendously.

We know that sooner or later this year, we are going to modify the Consumer Price Index inflationary language add-on for Social Security recipients, so that they will receive them annually, regardless of how small inflation is. Right now, if they are not under 3 percent—if inflation is not—they do not get it.

The amendment is in this, which will say that Social Security, along with all other cost-of-living index recipients, will get their cost-of-living, regardless of how small inflation is.

Those are the two matters that everyone should understand are in here. That costs a little money. Actually, the advance deficiency payments do not cost, because they have already been charged by CBO, but this makes it unavoidable.

First, I believe it is fair that the White House, operating through the Budget Director, has worked diligently with us in arriving at this package.

Second, I believe it is fair to say that they support this package and that Mr. Miller concurs in the adoption of it and the other matters I have indicated must occur this year, and that there will be no sequester, come October.

Mr. President, I am not going to say that I am proud of the product; but, all things considered, it is about as good as we can do, and we ought to adopt it. I hope Senators do not expect to amend this with a lot of extraneous material, because this is a ripe bill for the last couple of weeks to add on anything they want. We cannot accommodate you. If you have 60 votes, you can waive the law. If not, we are going to have to be pretty restrictive and ask the Senate to send this bill to the House as clean as possible, as we sent it to the desk; but we are prepared to consider modifications, to consider their ideas, or perhaps even some mistakes that we might have made. If Senators will call them to our attention, we will work with everyone.

Mr. President, when I sent the amendment to the desk, the Domenici-Chiles amendment, we had a modification that we did not get in, and I ask unanimous consent that I be permitted to modify the amendment at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification is as follows:

On page 29 (at bottom) of Domenici amendment No. 2850, strike lines 3 through 9 and insert the following:

SEC. . COMPUTATION OF RETIREMENT ANNUITY FOR PART-TIME EMPLOYMENT.

(a)(1) Subsection (b) of section 15204 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272; 100 Stat. 335) is repealed.

(2) The provision of title 38, United States Code, that was repealed by such subsection is revived.

(b) Subsection (c) of section 15204 of such Act is redesignated as subsection (b).

(c) This section is effective with respect to individuals who retire after September 19, 1986.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER (Mr. SIMPSON). The Senator from Washington.

Mr. EVANS. Mr. President, let me preface my remarks by saying that I have the highest regard for the chairman of the Budget Committee and the ranking minority member of the Budget Committee.

The Senator from New Mexico and the Senator from Florida have worked together as a team and have never wavered in their devotion toward fully meeting the requirements of the Gramm-Rudman Act. But, more important, they have never wavered from their desire and their devotion to doing a responsible job of budgeting. But they can only go so far as the rest of us in this body are willing to allow them to go.

On this reconciliation bill, we have the first chance to really prove ourselves. Are we believers or are we charlatans?

Gramm-Rudman has been called many things. It has been blamed for everything from the drought to the plague and certainly to the reduction in many of the appropriations that are now going through Congress and many of the services that citizens throughout the country receive. That, in my mind, is a bum charge.

Gramm-Rudman accomplished one major thing which needed accomplishing. It put us on a par with cities, counties, and State governments; it put us on a par with businesses, small and large, throughout this country; it put us on a par with every individual budget-maker in their own family situation; and that par was a requirement that no longer allows us to hide behind floating deficits.

□ 1510

In the past it has been too easy. When we found that raising taxes was tough on the one hand and cutting spending was tough on the other hand, we could just wink at both, renegotiate or reestimate the economic predictions for the future and kid ourselves into believing that there would be no increase in deficits.

Mr. President, we now know what our task is. The final numbers were set on August 15. We now know that the combination of expected revenues for the next year and the allowed deficit is a certain figure. But that in itself does not cut anyone's budget. We still have the privilege of providing a huge increase in the military budget. We still have the opportunity to broaden spending and increase it in Medicare, in higher education, in almost any service that people of this Nation might conceivably want.

We can be liberal in our spending patterns, but now we have to pay for it. We cannot duck. We cannot dodge. We cannot ignore. We may pay for it.

Or we can cut continuing spending if we choose not to raise taxes and make sure that we have cut them sufficiently so we hit this fixed target, or we can do a little bit of both.

But, Mr. President, we cannot and we should not use one-time savings in

order to meet this budgetary requirement.

I fear that the proposal now put before us to a far greater extent than it should uses one-time savings. We are engaged in a massive Government garage sale, putting out our assets, which can only be sold once. If we do that this year and then next year find it too difficult to cut continuing spending or to raise taxes, we will go through the garage one more time. We will find out that there are still a few trinkets left. But you can only continue that until the house is empty, until there is nothing more to sell, and then we simply have to face up to reality.

In my view, we cannot and should not, as some would suggest, use the unusual excess which will be available in 1987 from the workings of the tax reform bill which most likely will pass this Congress. That $11 billion excess next year is ephemeral indeed. It will be replaced in 1988 by a $17 billion deficit.

Now, I know the leadership is working hard to put together this package and have worked hard to bring it to passage today. But I fear that there are many, many signs that indicate that rather than having our eyes on the horizon, rather than having our eyes focused on caring about our children, our Nation and our future. We have eyes on our feet, and those feet are running rapidly toward reelection.

Our focus of time is November 5, rather than 1987, 1988, or the rest of this century. The end result is that we are most likely to run into a brick wall next year, find a rude awakening in budgets, find that the Gramm-Rudman Act has burned to ashes and start once more on that awful cycle of recession, inflation, and soaring deficits.

With that, Mr. President, let me detail some of the problems. And we ought to understand that these problems are inherent in the package that is now laid before us, that garage sale that I mentioned. When you consider that we have only found a reduction in spending of a little over $7 billion in this package, $4.8 billion of that $7.3 billion are the sale of loan assets and once those are sold they are gone. We cannot sell them again. We will not have them next year.

In addition to that, there is the suggestion that we sell Conrail which may well be a responsible and an appropriate thing to do. But we can only sell it once. Once we have sold it, it is gone and the $2 billion that is received from that sale will not be available to us next year and we have to find something else in the attic to put up for that garage sale.

Mr. President, with that let me turn to the spending needs. I do not think for 1 minute we are likely to get through all of the appropriation bills and the continuing resolution and ignore certain urgent spending requirements which are now before us and which simply have not been dealt with yet.

We heard yesterday morning one of the most dramatic and moving speeches by a foreign leader who has ever spoken to a joint meeting of Congress. President Aquino of the Philippines stated very clearly that hers indeed was a cheap revolution; we did not have to fund or support or pay for it, or the mercenaries who fought it. It was a revolution of the people in the Philippines. They brought back free government and now they are asking for our support in maintaining that free government.

How in the world, Mr. President, can we cheer in the morning at that courageous and dramatic speech and then duck in the afternoon when it comes time to provide the money she so desperately needs?

It is said that foreign aid has no constituency in Congress. And it is very true that every time you take a poll and when people are asked where would you like to cut the budget, two answers always come forward: foreign aid and welfare. Those are the easy ones. It is someone else's cut; it does not appear to affect us directly or immediately.

But, Mr. President, appropriate foreign aid is in America's best interest as well as the Philippines.

We have security interests in the Pacific. Those security interests deeply involve the Philippines. I believe very strongly that this is the cheapest and best and wisest investment we could make, and it is not just in the Philippines that we find this true. I fear that there are those in this body who could cut the foreign aid bill and particularly cut support to the United Nations.

But cuts in foreign aid and cuts in the United Nations will cripple important activities which we need to support. Let me detail just two.

The International Atomic Energy Agency which is headquartered in Vienna is an agency of the United Nations. In spite of the fact that our appropriators would like to continue support for that group, if they cut back sufficiently on the rest of the budget for the United Nations, we simply cannot carry on that activity as well as we might. This happens just at the time when they are on the verge of signing important international agreements dealing with the problems of nuclear accidents, and for the first time in history have the Soviet Union as willing participants. That is an important thing to continue and we ought not to cut back in that important field.

Both Houses of Congress are seeing how they can outdo each other in attempting to meet the challenge of drugs and their controls. Here again the Division of Narcotic Drugs of the United Nations General Headquarters in Vienna is working hard right now toward international agreements which will allow us to stop suspected drug dealers or shippers on the high seas. These efforts will extend extradition help to more nations and would effectively lead to better international control of narcotic traffic. And yet, in a frenzy of antiforeign aid activity, our appropriators would cut that budget.

So these are spending requirements that will be in front of us in the foreign aid field. I intend to speak out later when the drug bill is on the floor as it almost certainly will be.

But let us not kid ourselves. We cannot promise to the American people that we intend to conduct a war on drug traffic in this Nation and then turn around and say it will not cost anything and that somehow we can just transfer money from existing accounts. Mr. President, instead of saying that a war costs money—and a war against drugs does cost money. We must stand up front and say that and then find the money through taxes or through cutting budgets somewhere else.

As I mentioned earlier, if that were not enough, that long list of spending mandates out there which I believe we must meet up with, then the tax bill itself which is going through conference and will be in front of this body shortly has tempting short-term assets.

Mr. President, we must not use the $11 billion of extra money which the tax bill will provide for fiscal year 1987. We have already used the flexibility that the Gramm-Rudman Act gives to us. We have already used up the maximum ability we have to duck or to avoid hard choices. We did that when we used the 7-percent flexibility in the Gramm-Rudman target instead of $144 billion which was the target specified in law. We are now desperately trying to reach $154 billion which includes that maximum flexibility I have mentioned.

Mr. President, there is a very good reason for ensuring that we do not use that extra money which will be available in the tax bill next year. It simply must be set aside so we have some chance, some small chance, of continuing to meet these budgetary targets in the years after 1987.

Mr. President, I would ask the chairman of the Budget Committee to listen carefully and see if I am on the right track in my expectation or understanding of what is about to go on.

If we pass this reconciliation bill and as it goes through conference and is finally adopted it were of a sufficient amount to bring the budgetary deficit down to $154 billion, we then would have, but just barely, met the Gramm-

Rudman targets and would not face any sequester; is that not correct?

Mr. DOMENICI. The Senator is correct.

Mr. EVANS. Then, at the same time we are doing this, we are basing that deficit on the current tax laws as they now exist; that, too, is correct?

Mr. DOMENICI. That, too, is correct.

Mr. EVANS. If, after that, we were to pass this new tax reform act and all of the expectations for the next year were correct and the tax bill did produce $11 billion more than the current tax bill, then the deficit at the end of next year would be something close to $143 bilion by subtracting the $11 billion from that $154 billion; is that, too, correct?

Mr. DOMENICI. The Senator is correct.

Mr. EVANS. I thank the chairman.

It seems to me that is a terribly important reason that we should not dig in, not even one dime's worth, to that extra amount of money which the tax bill might bring, because it does give us some chance, combined with this Reconciliation Act, to end up the next year almost precisely at the target set by the Gramm-Rudman Act.

Mr. President, our finest hour in this Senate, when it came to budget and appropriation matters, I believe, was late on the night of May 10, 1985, when Senator WILSON joined us from the hospital bed and cast the vote necessary to break a tie. That vote was a tough vote. But it was an honest vote because it ensured that continuing spending would be trimmed sufficiently so that for the first time in years the growth of continuing spending would be at a slower rate than the growth of continuing revenues. And that is where we must get to, Mr. President. We must get to the point where we, on a year-to-year basis, on our continuing spending responsibilities grow more slowly than in the natural revenue our economy brings us.

If we do that, I believe strongly two things will happen: Well, naturally, without the wrenching, tough decisions we are making now, continue to move toward a balanced budget; and, second, we will give such confidence in the economy that it, too, will help us in meeting these targets. For the first time in a long time, people in this country, businesses in this country, State and local governments, might have some confidence in this Congress. The Senate and the House and the administration will be working honestly in the long term toward budget responsibility.

With all of my concerns, with all of my concerns, Mr. President, about this package, it is perhaps the best we can do. I commend the tireless efforts of Senators DOMENICI and CHILES. But our choices remain few: to cut continuous spending to meet our targets, to raise revenues to meet our targets, or to do something of both. Many say that it is too tough in an election year and that they will choose the fourth choice. And the fourth choice is to duck, to find phony ways, as some call in this body, smoke and mirrors, to purportedly reach a budget balance.

Mr. President, I believe the American people are too smart for that. They can understand the difference between someone who is courageous and who votes in a way that may not be popular, but at least is right, as compared with another candidate who says all the things that candidate believes the voter wants to hear, but who is not voting honestly.

There are those in this Chamber and in the other body who waffle and posture and piously proclaim their undying allegiance to all current programs, never wanting to cut a one and, at the same time, pledging their undying enmity to all new taxes. They then finally claim their devotion to balanced budgets.

People who would say that and who are candidates during this election deserve defeat this fall. They need to be replaced by someone with more courage, for they have forsaken the future of the Nation for the glitter of reelection.

Now on this bill, today or tomorrow, we have a chance to prove our worth, to set the Nation on a solid fiscal course and a solid economic course.

Two hundred years ago, Thomas Paine, speaking during our Revolution, spoke of his colleagues when he said:

> These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands it now, deserves the love and thanks of man and woman."

Mr. President, today, will the summer tax soldier and the sunshine spending patriots prevail? Will we truly shrink from the service of our country? I devoutly hope not.

By our actions—and we know what we should do—let us deserve the love and thanks of all Americans now, this year, for this election and for the years to come.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from Florida has control of the time.

Mr. CHILES. I yield 5 minutes to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. The Senator form Nebraska.

Mr. EXON. Mr. President, I have been yielded 5 minutes. I very likely will either ask for an extension of that to be allowed to speak on this further.

I first want to compliment the chairman of the Budget Committee, Senator DOMENICI, and the ranking member of that committee, Senator CHILES, for working so hard to try and find a reasonable solution. I have serious questions, though, as to whether they have accomplished that fact of a reasonable solution.

While we are going to hear lots of talk today about serving America, I think that we should explore, in more detail than simple rhetoric, what we are evidently about to do here.

First, let me say, Mr. President, that any remarks that I make here are not challenging the integrity or the job that Members of the Senate, my colleagues, are trying to do. Whatever I say today in this regard is simply to try and explain, as best I can with this one voice, what I am fearful that we are about to do. And that is the basic reason why this Senator, at least at this juncture in the debate, is fundamentally opposed to the reconciliation that is being proposed under time agreements.

Now, let us first get back to where we are and how we got into this position. It first should be made clear, and I concede, I admit, or putting it another way, I take pride in the fact that I was one of the 23 Senators in this body who opposed Gramm-Rudman from the beginning. The record is clear as to where I stood and why I stood there. Among other reasons, I was confident that we would be in the no-win situation that we find ourselves in today.

As I told some of my colleagues today when we were about the process that we are going through—which I think emasculates basically the duties that we were elected here to perform, it emasculates the heart and soul of Gramm-Rudman that all but 23 Members of this body and a majority of those on the other side endorsed, to save America from the peril of ever-increasing deficits—the heart and soul of that proposal was the sequester order.

That was the fear factor, that concept, and up until October 1986, we were going to say, "If you did not straighten out the mess that this country is in, regardless of whose fault it is, we are going to sequester," which means that we are going to have an across-the-board cut in the budget. And the across-the-board proposition has stuck with the American people. And far too many of them believe that it is an across-the-board cut, which it is not, because there were all kinds of exemptions written into the Gramm-Rudman bill. To sell it for political reasons and to get the votes to pass it in the first instance, more than half, more than half, Mr. President, of the total budget of the United States is exempt from any cuts under the sequester.

Now, that may have solved itself. Some of us warned at the time that, probably the way the sequester order

was originally placed and passed under the Gramm-Rudman legislation, it was unconstitutional, and the courts have since said it was unconstitutional. But then, of course, there was the famous and well-known and well-debated fallback provision that said if the courts decide that the sequester was out of order in the first instance, then we had a fallback provision that said a sequester would take place unless the Congress took action to correct the budget to bring it down to the limits as specified in Gramm-Rudman—$144 billion, specifically, for the next fiscal year.

□ 1536

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CHILES. I yield an additional 3 minutes to the Senator.

Mr. EXON. Mr. President, I will not take more than 3 minutes now, but I will be on the floor later if I can get the time to try to explain my position further. I will use the additional 3 minutes.

I would simply say that what we have concocted here is a saving measure but it saves only, Mr. President, the responsibility to vote for cuts as supposedly mandated by Gramm-Rudman. I hope the debate proves me wrong, but I happen to feel that with all the best intentions of my colleagues, what we are sending forth here is a perverted, phony, unrealistic approach that does not really begin to meet the $144 billion figure mandated by Gramm-Rudman, which is the law of the land. It does not even come close in real terms to the $154 billion which we can use because of the fudge factor.

I remember well the excellent remarks that the distinguished chairman of the Budget Committee made in front of the joint Senate-House Budget Committee when we met last week. At that time, he pointed out very clearly that there is no way that we are going to realistically meet the $144 billion mandate of Gramm-Rudman for this year, and he said even if we do it with smoke and mirrors we are going to be so far away from the $108 billion maximum deficit required for the following year that there is no way we are going to match it.

I am saying, Mr. President, that the action we are likely to take here today, over the objections of this Senator from what I know now, is to try to fool the American people into believing that Gramm-Rudman is working to the full extent.

Certainly, it has worked to some extent. Certainly the deficit would be higher if Gramm-Rudman had not been enacted.

The point is, over the 5-year period it is a phony, it is not going to work in the future, and massive tax increases in the future, not this year before the election, will occur. I think that should be driven home clearly to the American people, that there is no way out if we continue to follow the mandate of Gramm-Rudman, which was not realistic in the beginning.

Mr. President, I yield back any remainder of my time and I advise the Chair and managers of the bill that I will seek time later on.

Mr. CHILES. Mr. President, I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, I thank my distinguished friend, the senior Senator from Florida, who has done such an outstanding job for our party, Mr. President, on the Budget Committee.

THE EXTENSION OF MANDATORY MEDICARE COVERAGE TO ALL STATE AND LOCAL GOVERNMENT EMPLOYEES, A MAJOR CONCERN

Mr. DIXON. Mr. President, I am very concerned about a provision in the Budget Reconciliation Act, S. 2706, which would extend hospital insurance—Medicare—coverage on a mandatory basis to all employees of State and local governments who are not otherwise covered under present law.

I call to the attention of my colleagues the fact that the House reconciliation proposal does not include this provision. In addition, I remind my colleagues of action we took in the Consolidated Omnibus Budget Reconciliation Act of 1985 [COBRA], which extended mandatory Medicare coverage to all employees of State and local governments hired after March 31, 1986. Additionally, COBRA authorized local governments to enroll existing employees in the system voluntarily.

It appears to me that the new proposed extension of mandatory Medicare coverage in S. 2706 would undermine our earlier congressional action. I believe that we should reject the proposal for the following reasons:

First. Imposing mandatory coverage upon existing employees would have an immediate and severe fiscal impact upon State and local governments. The harshness of this impact was fully debated and avoided through the phase-in provision approved in COBRA. The goal of covering most employees will be met, since the turnover rate for State and local government employees is approximately 9 percent per year. I see no reason to change the decision now, only a few months after COBRA became law.

Second. The Internal Revenue Service and the Social Security Administration are working to provide guidelines for coverage to governments affected by COBRA. The Medicare coverage proposal would add another category of government employees with yet another set of instructions that would prove extremely cumbersome.

Third. Illinois, like many other States, has committed resources to the effort of improving the quality of education. We are attempting to attract and retain high quality teachers. The Medicare tax burden would be a further disincentive for persons to enter or remain in the teaching profession, one whose salaries are already inferior to those in the private sector.

Fourth. Imposing mandatory Medicare coverage, in conjunction with other administration proposals, such as the elimination of revenue sharing and deductible State taxes, and the limitation of tax exemptions of certain governmental bonds, will force a reduction in State and local governmental programs and services or force an increase in local taxes.

Fifth, the tax cut anticipated by millions of Americans who do not now participate in the Medicare Program would be more than offset by the added Medicare coverage tax. As an example, mandatory Medicare coverage would require the average Illinois teacher retirement system contributor to pay $394 per year in new taxes, while the contributor would receive an estimated cut of less than $200 under the tax reform bill, as agreed in conference. Thus, the Medicare proposal would run directly counter to the expressed intention of many Members of this Congress to provide a tax cut to the middle class.

While my voting record supports my belief that we must reduce the Federal budget deficit, I do not believe that this proposal is a fair approach and I believe it would have an adverse effect on many State and local governments and their employees.

Mr. President, I urge my colleagues to reject this mandatory Medicare tax proposal.

I yield back the remainder of my time, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. DIXON. Mr. President, in the absence of any other Senator on the floor, I would like to present further remarks on the Conrail sale.

May I have an additional 5 minutes, Mr. President? I am told I can have it from my side.

Mr. DOMENICI. I will yield 5 minutes to the Senator.

Mr. DIXON. I thank the distinguished chairman of the Budget Committee, the distinguished Senator from New Mexico.

CONRAIL SALE PROVISIONS OF THE RECONCILIATION BILL

Mr. DIXON. Mr. President, I am pleased that the reconciliation bill before us today authorizes the Secretary of Transportation to sell Conrail through a public offering. Returning Conrail to the private sector through a public offering is an objective that I have supported for a long time. I be-

lieve this approach is best for rail service in the Northeast and Midwest, and that it is the only approach that protects shippers, local communities and others that need to deserve good, cost-effective, and competitive rail service.

While I fully support the inclusion of Conrail sale provisions in the reconciliation bill, however, I am disturbed by the fact that the sale provisions before us seem to be a blank check to the Secretary of Transportation. As my colleagues know, I am an original sponsor of he so-called "Morgan Stanley" public sale proposal. That was a very detailed proposal; it covered a wide variety of issues that need and deserve congressional attention.

I would also note that on Wednesday, September 17, the full House Energy and Commerce Committee reported its public sale legislation. Like the Morgan Stanley bill, it addresses a wide variety of concerns to ensure that the public offering will succeed, that Conrail's independence will be preserved, and that the railroad is given the kind of start it needs to maintain and even improve the fine record of profitable operation it has achieved in the last few years.

I will not take the time of my colleagues to go into these matters in detail. I know we need to reach final action on the reconciliation bill as quickly as possible. I will simply mention one issue that I think the Senate should be aware of: the question of how the public offering should be managed.

The House proposal requires the Secretary of Transportation to select two or more investment bankers to serve as lead managers of the public offering—the House bill calls them colead managers. Further, the House bill requires that the colead managers be selected in a manner that considers and recognizes the contributions made by particular investment banking firms in demonstrating and promoting the long-term financial viability of Conrail and the feasibility of a public stock offering.

I would like to remind my colleagues, therefore, that it was Morgan Stanley that demonstrated that the financial community believed in the long-term viability of an independent Conrail, and that it was Morgan Stanley that assembled a group of blue-chip investors prepared to purchase the entire amount of a Conrail public stock offering.

I would not argue that Morgan Stanley should be the sole investment banking firm involved in the public offering. However, I do suggest that it was the Morgan Stanley proposal that, in fact, made the public offering proposal possible that we are considering today. Let there be no doubt, the House of Representatives simply was not going to accept the Department of Transportation's anticompetitive proposal to sell Conrail to one of its major Eastern competitor. The House was not going to accept doing that kind of violence to our antitrust laws. Without the Morgan Stanley public offering proposal, therefore, it would not be possible to pass Conrail sale legislation this year.

I think Morgan Stanley has provided a real public service, and that we continue to need their enthusiasm and advocacy to ensure that the public offering is the kind of success that I know it can be. Morgan Stanley has not ever minimized the chances of a successful public offering, and has not advocated other alternatives that could give it a conflict of interest, or the appearance of such a conflict, in moving to implement a public offering.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DIXON. May I have another 2 minutes, Mr. President?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. There is no one on the floor who can yield time.

Mr. SIMON. I will yield the time.

Mr. DIXON. My colleague has yielded me the time, which he does not control. I thank him.

Frankly, Mr. President, I had given some thought to offering an amendment to fill in some of the blanks in the public offering proposal now before us. However, given the short time we have left, and because the House has come up with the kind of detailed approach that ensures all issues will be considered in the conference on the reconciliation bill, I will not push such an amendment. I urge my colleagues who will be on the conference, however, to ensure that the final bill that emerges addresses all the issues that must be resolved to maximize the chances for a successful public offering, and the chances for future financial success for an independent, private sector Conrail. I also urge them to consider the contributions Morgan Stanley has made in bringing the public offering proposal to this stage.

I would like to conclude by thanking the committee for moving to the public offering approach. I know it will work. It will provide the Government with a substantial return, perhaps as much as $2 billion or more. It will return an independent Conrail to the private sector, where it belongs, without doing violence to the antitrust laws. I continue to strongly support this concept, and I am glad that the reconciliation bill offers the prospect for achieving a final resolution of the long and difficult question of how to sell Conrail.

I thank the Chair. I yield back the remainder of my time. I thank my distinguished colleague, the senior Senator from New Mexico.

I congratulate him on his work on this reconciliation bill and I want him to know that the Senator from Illinois will support him in the vote on the final product on the Senate floor tonight.

Mr. DOMENICI. Mr. President, I thank my friend from Illinois for his support and also for the remarks he has made. While I do not agree with all of them, obviously, what he said with reference to avoiding a sequester and doing our work, what we have tried to do here in a bipartisan manner, I think is true. He has said this is not the greatest package, this is not the best way to reduce the deficit, but obviously, we have a U.S. House, we have a President, we are a U.S. Senate. We are free to do whatever we want. The President has to sign a bill. We have to send something over to the House in the waning moments that has a reasonable chance. We do not have a month to go to conference. And they are moving down a similar path.

The Senator from Illinois has alluded to Conrail. It is very similar. They will have to go to conference, with a few differences on the revenue side, but as we look at what he proposes, they are moving down this track in a very similar manner.

As my good friend from Illinois knows, all of it is aimed at avoiding that very onerous across-the-board cut called sequester—not because we do not like the law that put the restraint on us, but because, to the best of our ability, we want to avoid it because we told the people that is what we would do. Our people do not expect us to solve budget problems by annually doing our work and then having a 10-percent cut or 8-percent cut without reference to one program's being better than another, one being worse than another, how much is right on defense, just cut them all. This is what we are trying to do.

I want to tell him if he votes for this, as he said he will, what he is doing, and he can say it loud and clear to his people: There are a few things in it that I do not like or that you do not like. But which would you prefer, that I said no to this, cutting 6 percent across the board, cut defense 5.5 or 6 percent across the board, without reference to one thing being more important than another? Which do you prefer? I prefer the prudent one in saying I will vote for it.

Mr. DIXON. Will my friend yield for a moment?

Mr. DOMENICI. I am happy to yield.

Mr. DIXON. Mr. President, I appreciate those comments by my warm friend, the distinguished senior Senator from New Mexico, who understands this subject matter and has contributed so much of his time and

energy. May I say I fully agree. There are many things in this mix of $13 billion in revenues and cuts that this Senator does not like. There are a number of them. But I agree with what my distinguished colleague has said, that this is better than sequestration.

As I understand it, and I would like to be corrected if I am wrong, if a Senator discharges his responsibilities on the floor and votes for this reconciliation bill in the final form that is crafted by the distinguished manager, who is here on the floor with me now, and our distinguished ranking member, then would it not be the responsibility of each Member to vote against sequestration on the grounds that we have done our job in the reconciliation bill and sequestration is not required? Is that the distinguished manager's understanding of what we ought to do procedurally in this whole reconciliation question?

Mr. DOMENICI. Mr. President, I am going to answer very quickly and very simply, then compliment the Senator and tell him my opinion.

The answer is yes, obviously. As the Senator may know, that may not be the opinion of others. I am not speaking in that capacity as one who is charged with carrying out the processes of this institution. All of us are. I would say if this passes, at the very minimum, we ought to put the sequester off for about a week and take a look.

Why do we vote on it? We vote on it because we want to be sure we keep the pressure on to avoid it at the end, in October. The first choice would be OK, keep the process alive, put it off. As prudent people, we have done something. Go to the House, see what they have done, take an accounting about next Friday, see where the tax bill is, where the continuing resolution is. If there is some real relevance to the sequester then it is still there.

But if somebody says, let us vote now, at 12 o'clock tonight, it seems to me the Senator has made a very logical assessment of how one might vote and how one might, subsequent to the vote, justify indeed saying, I have done my job.

Mr. DIXON. I thank the manager. I say I would have no objection to putting off the sequestration vote. I understand it takes unanimous consent to do that. This Senator would not object to putting it off. I want to make it clear this Senator will support our distinguished manager and ranking member but this Senator then believes he has obviated the necessity of voting for sequestration. I consider that I have met my obligations to achieve the threshold requirements of Gramm-Rudman-Hollings this year.

Mr. DOMENICI. I thank the Senator for his remarks.

Mr. President, how much time remains on the amendment for each side?

The PRESIDING OFFICER. The Senator from New Mexico has 25 minutes, the Senator from Florida has 20 minutes.

Mr. DOMENICI. Mr. President, I yield myself 3 minutes.

I send a modification to the desk that was asked for by the Energy Committee, technical in nature. I believe I am entitled to modify my amendment.

The PRESIDING OFFICER. The Senator has that right.

Mr. DOMENICI. It has been cleared by Senator CHILES.

The modification to the amendment (No. 2850) is as follows:

On page 5 of the amendment, between lines 9 and 10, insert the following:

On line 24 of page 13, before the word "party" insert the word "private".

Mr. DOMENICI. Let me talk with the Senate about the last colloquy I had with the distinguished Senator from Illinois. Frankly, in about 3½ hours, I guess, 4 if we use our time here to the fullest, we are going to decide whether we are going to pass the reconciliation bill that has about $13.2 or $13.3 billion in savings that will be credited as such by the practices that we have developed in this very complicated and cumbersome process. We have a couple of other options: We can defeat it. We can defeat the amendment and return to the underlying bill. It is very controversial. It has $3.7 billion total in reductions and has a cigarette tax on it. It probably will not get anywhere. The House will not do the cigarette tax. That is what I was alluding to with my friend from Illinois. The President will not sign it. So we can go down that path.

The other path is to adopt something like the Domenici-Chiles substitute, go to conference with the House and, while we cannot predict with certainty, that ought to yield a $13 or $14 billion deficit package, using the same accounting practices and techniques we are talking about. We only do this if we are given credit under the accounting practices mandated by the laws of the Senate and House.

Or we can defeat it in toto, this one and the underlying one, say we just do not want to do anything like this because there are parts of it that do not meet our fancy. Or we have something else in mind. Maybe we have in mind just to make ourselves go through the process of voting for a $19.5 billion across-the-board cut temporary in nature and waiting around until October to see the real effect.

I do not know if anybody wants to do that. I think some would like to have assurance that they can tell the people of this country, under the circumstances, we did the best we could; appropriations have been held down, this bill has been passed, we have done our tax reform, if that is the will of the Senate, and we are going to reach the targets of Gramm-Rudman-Hollings and there will be no second layer of cuts after we have done our work, arbitrary in nature, without regard to one program or another being better, this one being worse, just cut them all.

□ 1600

So I think we should take the path of passing a reconciliation bill between $13 billion and $14 billion. There is not a lot of gamble in that. Then we can go to the House and come out about like that and add it up and we will not have a sequester.

Mr. President, the Senator from Illinois raised the issue of the sequester, a preliminary, temporary sequester that is pending at the desk, and he talked about what we should do next, and do we vote on it today, do we put if off, and he indicated that he is going to vote for the reconciliation bill and then is going to vote "no" on sequester.

Everyone should know that that across-the-board, temporary sequester is hanging over us so long as this clock does not get to 12 o'clock before somebody insists that we call it up or the Parliamentarian informs the Chair that it is to be the pending business.

I believe we ought to get this work done first, and then I think Senators ought to consider seriously whether they want to vote for sequester tonight, up or down, whether they want to put it off for a reasonable period of time; and whether they want to vote on it may depend upon whether the sequester passes.

I hope everybody listened to that. I think it is a very good point made by the distinguished Senator from Illinois.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER (Mr. STEVENS). Who yields time?

Mr. CHILES. I yield the Senator from Arkansas 3 minutes.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 3 minutes.

SEA REDUCES THE DEFICIT

Mr. BUMPERS. Mr. President, I rise to express my grave concern about the leadership's amendment which has been offered to this budget reconciliation measure regarding the Senate Small Business Committee's portion of this bill. The budget resolution for fiscal year 1987 required out committee to come up with $343,000,000 in outlay savings for 1987, $55,000,000 in 1988 and $14,000,000 in 1989. That was not an easy task, especially considering the fact that we reduced SBA's spending by $2.5 billion in the 1986 reconciliation bill.

Our only alternative, Mr. President, was to consider asset sales, which I

consider generally a foolhardy and deplorable fiscal policy. This course was, however, virtually dictated by the Budget Committee. Asset sales, which seem to be the major portion of all the so-called savings in this reconciliation bill, are merely temporary fixes—BandAids—which seek to postpone the inevitable. Ultimately, spending and revenues must be brought into line.

First, the Small Business Committee considered the Budget Committee's policy assumption. Their proposal was that we should sell SBA's portfolio of disaster loans, of which several thousand have been made over the years. Our committee immediately rejected this suggestion. Because the Budget Committee evidently also intends to allow the continuation of the Disaster Loan Program at SBA, sale of the disaster loans which are now being repaid would leave us with an empty revolving fund and continuing needs for loan money. SBA indicated that we would need to recapitalize the disaster loan fund to the tune of several hundred million dollars, perhaps as soon as next year. Additionally, selling these disaster loans to investors would mean putting thousands of small business owners, home owners, and farmers at the mercy of collection agents who could foreclose at the first delayed payment, taking people's homes and businesses in the liquidation process.

Our committee concluded, instead, that the sounder policy from both the humanitarian standpoint and the fiscal standpoint would be to offer for sale certain of the economic development loans which have been made under section 503 of the Small Business Act. These loans have a good repayment record, on the whole, and they carry interest rates slightly above the comparable Treasury rate for the relevant period. Since many of these loans carry interest rates above currently prevailing rates, the investment market told us that the Government could get a much better price, perhaps above par, if the loans were sold with recourse. Two investment banking firms estimated that the section 503 loans could be sold for $1.12 or $1.13 per dollar of face value if the SBA guarantee of timely payment—which is now part of the loan—continued to apply. That is to say, the loans would have to be sold with recourse to the Government in order to obtain this price.

Initially, CBO, OMB and the Senate Budget Committee rejected the notion of selling any loans with recourse. Their reasons were never clear to me, and the Small Business Committee overwhelmingly rejected the idea of selling these SBA loans without recourse based on the very clear statements and evidence by the investment community. The 503 program has a relatively low difficult rate and a very low loss rate at this point. To date, the program has lost only about 1.5 percent of the loans made, and SBA projects an ultimate loss rate of no more than 7 percent—8 percent over the life of the program.

Yet the investment bankers made clear that investors would charge an enormous penalty if the loans were sold without recourse, despite a generally good repayment record. Estimates were that without recourse sales could bring between 60 and 80 cents on the dollar, versus as much as $1.13 cents on the dollar with recourse. Some said there was no telling what we might get for these loans, and that the market might treat them as "junk bonds." It was very clear to us the Government's actual risk of loss through guaranteeing the loans was vastly less than the penalty which the market would extract for sales without recourse. So it just didn't make good business sense to Senator WEICKER and me, and others on the committee, to sell these loans at fire-sale prices in order to avoid a fairly small exposure to the government from anticipated defaults.

Further, in our markup of this measure, Senator LEVIN, with his usual foresight and attention to detail, suggested that we could protect against the risk of loss from selling with recourse by selling a modest additional quantum of loans to raise enough additional money to cover any losses which might occur. So the committee made rough calculations, based on our best estimate of losses, and added this amount to the amount of loans authorized to be sold, and that is what we reported to the Budget Committee.

And for all our trouble, the Budget Committee and CBO gave us an "F." They continue to insist that these loans be sold without recourse, no matter what the cost to the taxpayers.

In their wisdom, CBO, OMB, and the Senate Budget Committee said that we hadn't accomplished a thing by selling these loans for $1.13 on the dollar. In fact, they said this was just like borrowing by the Treasury, so they said our bill didn't save a dime.

The trouble with OMB and CBO's reasoning, of course, is that it assumes that all the loans will default and SBA will have to pay for every one of them, and that is simply nonsense. The record of repayment is clear, and so is the outcome of a sale without recourse. We will take a bath on these loans without recourse, but that is exactly what this amended bill will do.

Their reasoning, as best I can tell, is purely philosophical. They want the Government out of these loans, no matter the price as long as we can pick up a little change to forestall tax increases and spending reductions. Senator WEICKER and I, and other members of the Small Business Committee, would, frankly, like to fight this issue. But we can count votes, too.

The only way to demonstrate how bad this policy really is may be to let OMB and CBO have their way this time and see what the results are. Sadly, the taxpayers will be the losers in this process.

I commend the leadership of the Budget Committee for their work in trying to avoid the sequester order under Gramm-Rudman-Hollings. But I deplore this $300 million mistake in a very necessary $14.5 billion reconciliation bill.

The Senate Small Business Committee will be brought into compliance with the budget resolution's instructions by the leadership's amendment. I do not believe, however, that we were ever out of compliance. CBO and OMB are simply wrong on this issue. The required $343 million in deficit reduction will be achieved for fiscal year 1987 by our committee, but we may end up giving up an $800 million loan portfolio to reach this total, and that price is too high.

Mr. DOMENICI. Mr. President, I thank the distinguished Senator from Arkansas for his comments. While I will not address them specifically at this time, I want to make two other comments, and then I will talk about selling our loan portfolio in general; because what the Senator from Arkansas raises with reference to the committee—he has an extreme interest in the Small Business Committee's portfolio—is not unique.

In my remarks, I forgot to mention one thing about the reconciliation bill that is pending, the Domenici-Chiles amendment worked out with many people on the Senate floor, the chairman and the ranking minority member and others.

The cigarette tax, which was part of that bill, is taken out. It will not be in the substitute, if the substitute is adopted. Obviously, some may want to offer that, just as the Senator from New Mexico may want to offer an import fee later, if we have time today. I am not sure about that. Any amendments of that type will require 60 votes, as everyone knows, because we have just about decided not to try to get the 50 majority vote rule to apply to our amendment. We are about ready to concede that we will have to get 60 votes.

Let me say that the removal of the cigarette tax, I think everybody understands, was done because the White House said they would not sign it, the House said they did not want it, so we did not see any reason to jeopardize our getting reconciliation through and completed. So we took it out and found some substitutes that are acceptable.

Mr. President, I yield myself 2 additional minutes, and I want to talk about loan asset sales.

It has been alluded to on the floor that as many as 7 years ago, people started talking about the sale of Government assets. I do know that 7 years ago we were talking about selling our loan portfolios to solve deficit problems. Maybe we were. Obviously, from time to time, a government as large as ours ought to look at a loan portfolio as perhaps business people would and see what we should do with it. Maybe that is what was talked about 7 years ago.

Two or three years ago, somebody said that we can get rid of the deficit by selling assets. The Senate turned that down; the committee turned that down. But every time we turned a corner and we would have a deficit target to meet and could not meet it, somebody would come up with this miraculous, marvelous, simple way of selling Eximbank notes, which are moneys due and owing to the U.S. Government that is coming in slowly every year as per the payment plan. Why don't we cash them out?

Well, this Senator resisted it. We put a little bit in last year. I was much like the Senator from Arkansas. I do not think it is a solution. But now it is dawning on people, as they look at this kind of activity, that as the Senator from Arkansas says, you have to discount them for the most part in order to get cash.

So the Eximbank portfolio that is going to be sold here—part of it—you are not going to get face value for that. On the other hand, you are going to get cash to reduce the deficit. Somebody else is going to pick up the payments, and they have to be paid for that. Some of them are risky. So it is not unique to see that in taking face value versus what we will have to sell them for, we will lose.

On the other hand, let me talk about loan sales with recourse and without recourse.

The way we have handled the loan portfolio sales with the Congressional Budget Office and the Office of Management and Budget is that these loan assets are on budget. When you sell them, you take them off budget, and to take them off budget and get credit for it, you cannot have strings attached to the Federal Government or you will not get credit on the consolidated budget for the sale. That is the way it has been from the beginning.

So if we have recourse, it is presumed that we have not really saved the money; because we still remain liable in a contingent manner, so we do not get the credit. That, in essence, is why we have this situation about which Senator BUMPERS has spoken.

□ 1610

But we do get cash to liquidate this huge debt and in this case we get cash to avoid a sequester.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

There are 13 minutes remaining to the Senator from New Mexico and 15 minutes remaining to the Senator from Florida.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator?

Mr. DOMENICI. Mr. President, I assume the Senator wants to speak on the amendment.

Mr. BUMPERS. I do not. I simply want to address a question to the Senator from New Mexico to find out if he can give us any idea at all about the timing of the rest of this afternoon and evening and when he thinks or if he has some thoughts about when we might finish up the votes on the amendment and the sequester vote.

As I understand it, we are going to vote when the time elapses. The Chair just announced 13 minutes on the Senator's side and 15 minutes on the side of the Senator from Florida, and we will then vote on the amendment; is that correct?

The PRESIDING OFFICER. I might say to the Senator from New Mexico the time necessarily is coming out of his in terms of the question by the Senator from Arkansas.

Mr. DOMENICI. That is all right. I understand that. I thank the Chair.

We probably will vote but we are still talking with one Senator about something that is contentious that may cause us to spend a lot more time, and we are trying to see if we can work that out so we may have to use some time off the bill once the time is out in quorum calls to work it out. But it should not be too long until we have a vote on this major substitute, the Domenici-Chiles proposal. After that there is not too much time left. It will be a couple of hours. But there are a lot of amendments around.

This process is pretty self-enforcing, however. Once the time is up, you do not get to debate those amendments. So if Senators want to offer them——

Mr. BUMPERS. Can they be offered and voted on?

Mr. DOMENICI. They can be offered and voted on. Probably each one I have seen will be subject to a point of order. Therefore, they would have to have 60 votes to get around the point of order under the supermajority aspects of germaneness in Gramm-Rudman-Hollings.

Mr. BUMPERS. Following that we will go to the sequester vote?

Mr. DOMENICI. I have no idea about that.

Mr. BUMPERS. Is there an automatic time allocation under the Gramm-Rudman law giving how much time we have to debate that, or is it simply we have to do something before midnight tonight?

Mr. DOMENICI. Let me say if sequester is ever pending, and that is what we are all talking about, the statute is pretty clear. It is not amendable and there is 1 hour on each side.

Mr. BUMPERS. I thank the Senator.

Mr. DOMENICI. I yield the floor.

I suggest the absence of a quorum and ask unanimous consent that it be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I understand the distinguished Senator from Iowa, Senator GRASSLEY, desires 8 minutes to speak.

I yield him 8 minutes of my time off the bill.

The PRESIDING OFFICER. The Senator from Iowa is yielded 8 minutes off the bill, and the Chair has just been informed that the Senator from New Mexico has 1 hour and 34 minutes on the bill.

Mr. DOMENICI. How much do I have on the amendment and how much does Senator CHILES have on the amendment?

The PRESIDING OFFICER. The Senator from New Mexico has 9 minutes on the amendment and the Senator from Florida has 14 minutes on the amendment.

Mr. DOMENICI. I thank the Chair.

The PRESIDING OFFICER. And the Senator from Florida has 146 minutes on the bill.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, by the end of this month, the fiscal year 1987 deficit will be estimated at either $144 billion or $154 billion, depending on whether there is a sequester.

If there is one thing certain other than death and taxes, it is that next year's deficit will be much greater than $154 billion.

It is for that reason that we need a maximum deficit reduction effort right now, that we must not depend unduly on the imbalance of revenues in the new tax bill.

I urge my colleagues to support the reconciliation measure and the amendment package offered by the chairman and ranking member of the Senate Budget Committee.

Just 1 year ago, Mr. President, the Congressional Budget Office predicted that this year's deficit would be $175 billion.

The actual deficit will be $230 billion. That's an error in only 12 months of $55 billion. Half of the error is because we spent more than we estimated. The other half is because we got fewer revenues than we thought.

Last year's deficit was $212 billion. The year before that, CBO thought it would be only $176 billion. That's an error of $36 billion. Again, the error was half revenues, half outlays.

This has been a common pattern since 1980, Mr. President. Only the numbers have changed.

If we apply this likelyhood to the present, the fiscal year 1987 deficit will be closer to $200 billion than to $154 billion. That is as certain as death and taxes.

And failing to support this deficit reduction package would perhaps ensure an actual deficit next year of $200 billion. Moreover, it would increase the odds next year for a gigantic tax increase, or a deep-sixing of the Gramm-Rudman law. I know it sounds glib for me to stand here and say we will once again underestimate the deficit.

Just because we have underestimated it every year since 1980 does not mean we will do it again. The law of averages just has to catch up to it.

We do not really know the deficit will be larger next year than we predict. Just because the Sun has risen every morning does not mean we know it will rise tomorrow. But just for the sake of argument, Mr. President, let us create a hypothetical. Let us say, no matter how remote, that there is a scintilla of a possibility that we could be underestimating the deficit for next year. Let us examine how this $154 billion deficit just might become $200 billion.

First, this reconciliation bill gets bogged down, or the sale of these myriad assets fails to materialize. We lose $10 billion of savings.

Then we spend $5 to $7 billion more for appropriated accounts then we budgeted for. That includes money for drug programs, supplementals, and so forth. Then we spend an additional $5 to $7 billion on farm payments, the way that program is going.

Defense outlays exceed projections by $5 billion. And the economy grows at a 2.5-percent clip, rather than the projected 3.5 percent. We lose $20 billion. The sum of these possibilities is $50 billion, which would make our $154 billion deficit in excess of $200 billion.

Even if we count the revenues from the tax bill, which yesterday totaled $11 billion, which today totals $10 billion, and which tomorrow will total only $6 billion, we still have a $200 billion deficit for next year, a far cry from today's $154 billion figure. Now, certainly, Mr. President, I would never suggest there would be the slightest possibility of this actually occurring.

Besides, there is no way of knowing that this would ever come about.

The British empiricist Thomas Hobbes once said that we do not know that each time we hold out a pencil and release it that each time it will fall to the ground.

In Hobbes' time, empiricist philosophers held that one can know nothing, with any certitude. Hobbes, therefore, said you must take it on faith. And so, Mr. President, let me clarify my observation on this deficit matter. As Hobbes would say, I believe the deficit next year will be closer to $200 billion than to $154 billion. I take it on faith.

I cannot make an assertion to that effect, just as I cannot assert the Sun will rise tomorrow morning, or that if I release this pencil it will fall to the Senate floor.

I base my belief on the unblemished record of our deficit estimates since 1980. Every single one has shown a deficit underestimated. This doctrine of faith has never failed me, Mr. President. This dogma of the deficit has been my guiding light through concurrent budget resolutions.

I was right here before you last year saying I would be here this year saying "I told you so".

And here I am again before you, saying I will be here next year saying "I told you so."

I do not wish to belabor the point, Mr. President.

My purpose is to proselytize—to win converts among my colleagues.

The more of us who become converts to the deficit dogma, the more Congress will be willing to maximize our deficit reduction efforts up front.

If we can remain skeptical until proven otherwise, life in the budget process will be so much more rewarding.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I understand the distinguished Senator from Texas, Senator GRAMM, would like 10 minutes, and I yield that off the bill.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes to come off the bill.

Mr. GRAMM. Mr. President, I thank the distinguished chairman of the Budget Committee for yielding. We are coming to the end of a long and difficult budget process. This year, for the first time in a long time, we set out a process that told the American people what we were going to do to restore fiscal responsibility. Assuming we stay on the path that we find ourselves on with the continuing resolution, we have now come to the final action in that process. No old schoolteacher like I am could come to speak on this subject without giving a grade as to what we achieved and what we did not achieve.

The numbers do not really tell you much, except that not a lot happened. For fiscal year 1986, we now project revenues of $765.2 billion. For the fiscal year 1987, we project revenues of about $827 billion. If our economic projections hold up, we are looking at revenue growth that will come from the growth of the economy. The contribution to deficit reduction from the people who do the work and pay the taxes and pull the wagon in America will amount to $61.9 billion in new revenues.

In terms of the outlay reductions, by the time we adopt the reconciliation bill, which I will vote for and support, we are going to have the outlay reduction level down to about $2.3 billion. That is going to mean a deficit reduction of about $64 billion, give or take $1 billion. And that is the bottom line.

Now, what kind of achievement is that? Well, I think you have to look at it in perspective. In an election year, with the economy flat on its back in many areas, the fact that we will complete the budget today on the basis of the baseline set out in the Gramm-Rudman-Hollings bill by holding the growth of spending compared to current services to only about a break-even point is no easy achievement.

You are going to have a lot of people who are going to say, "Well, the Congress did not cut anything." And in a very real sense, they are right. But if you look back at election years during the Reagan era and the Carter era and the Ford era, you see that come election time, spending skyrocketed. I submit, Mr. President, it tells you a lot about what we are doing here and it tells you a lot about the Gramm-Rudman-Hollings law, as imperfect as it is, that in this election year, relative to current services, spending is actually declining, not growing.

I wish we could have done more. I am disappointed. I would be dishonest if I did not say so. I was willing to vote to do more, but I did not propose it because the votes were not here. And, trying to work within the process, I thought that doing so would not contribute to the long-term objective that we sought.

The good news is that under the Gramm-Rudman-Hollings bill, with this action today, we are going to meet the target. There will be no across-the-board cut, whether we vote to pull the trigger under the sequester order or not. In fact, Mr. President, that has really become a political issue. We are going to meet the target here today. Now the question is: Should we pull the trigger and make Members vote on it so that people opposing them back home can say they voted for an across-the-board cut or should we not?

The objective of Gramm-Rudman was to meet targets, not to pull triggers; to discipline the Congress, not to play politics. And I submit, Mr. President, as imperfect as this reconciliation bill is, that we have achieved that goal.

In an election year, we have brought the deficit down to within the target and we will achieve that target. And

let me also say, looking at a windfall revenue of about $11 billion coming from the tax bill, that we are not claiming that revenue to meet this target.

So people are going to talk about how ephemeral these savings are, and they are. But there was $11 billion sitting on the table that we did not claim. And I cannot help but believe that the country and the budget process and the economy will be better off for it.

Now those are the achievements. We passed a bill. We set out a target. We have met the first year of that target. That is the good news.

□ 1630

Mr. DOMENICI. Will the Senator yield?

Mr. GRAMM. I am happy to yield.

Mr. DOMENICI. Mr. President, I ask that the time I use in my observation not be taken out of his 10 minutes, but rather out of my time on the bill.

The PRESIDING OFFICER. The Senator's request will be honored.

Mr. DOMENICI. Let me say to my friend from Texas, your remarks at this point, in my opinion, have been an excellent summary.

I want to make one other observation. While we have not been able to dramatically reduce the expenditure side of the Federal Government's ledger, as you have described, I would think, without going back and looking—and perhaps you can think about it and give me your views—if this country ever came close to a static expenditure line for 4 or 5 years in the past during those critical expenditure years, the kind of deficits we now have would not be around.

Unless we were going up 6, 7, 8 percent in real terms—and I can remember 9 percent real growth in many accounts—we thought that was restraint. We are almost where it has stayed constant in real terms, as I understand the Senator's description here today. And I think that is a real achievement.

Now, I acknowledge it is not the best way to do some of these; they are not going to recur. But I think at this point you have made an excellent summary. I wish we could have done better, so do you.

I do not think we have the votes to do much better. I do not think we have found a way to polarize the enthusiasm. The President goes one way; we go another; the House goes another. I think in the middle is about where we turn out. And we lose an awful lot of reform, and awful lot of restraint in that process.

But I want to compliment you for the overview and for the assessment. I think it is accurate. I, too, say I wish we could have done better.

Mr. GRAMM. I thank the distinguished chairman.

The good news is we are going to meet the targets in an election year. And there is no doubt in my mind, had we not had the binding process that has brought us to this point, that we would be looking at a $230 billion deficit.

The bad news is that there has been no fundamental reform of the spending system; and many of the savings we used to reach this point are one-time savings, nonrecurring.

Let's look at the package that we have before us in reconciliation. We end up saving about $13.3 billion. About 37 percent of that will come from new revenues, mostly through compliance and enforcement; 64 percent of that represents one-time savings; 5 percent represents reforms and user fees; and then we have got an add-back of 13 percent in new spending, all coming out to the final total of the bill.

Now the problem we face is about next year and about the future. Yes, we are going to get under the wire and meet the targets for Gramm-Rudman the first year and we are going to do it by undertaking a lot of one-time savings.

But when we committed to the Gramm-Rudman-Hollings bill, we committed to a 5-year program, not a 1-year program. We are going to make it on the first rung of the ladder, but we have put that rung pretty close to the floor. We started out with a 6-foot ladder. We had six rungs. We put the first one very close to the floor by doing all the easy stuff the first year. Next year, we are going to have to take a big step up that ladder between the first and second rungs. If the tax bill next year loses revenue, we are going to have to make that revenue up with new revenue or we are going to have to drastically reduce the rate of growth in spending, reform entitlements, and terminate programs. Now I am willing to do that.

But some think that because in this election year we met the targets of Gramm-Rudman and that the process is over; and there are those who are pronouncing that Gramm-Rudman is dead. To these people I want to make a couple of things clear. First, it is not dead. If the Congress wants it dead, they are going to have to kill it, and it is going to be clear to the American people who the murderers are. I, for one, intend to stay with the process.

We did the easy things this year, and maybe in an election year that was the best we could do. Next year, we are going to have to do more. We are going to have to do a lot more. We are going to have to make difficult decisions.

And I, for one, intend to be here. If somebody wants to repeal Gramm-Rudman, let them offer the amendment to do it. I intend to oppose it, and I intend to see that there is a vote. If there are those here who want to waive points of order under that law, I intend to oppose it and to ask for a record vote on that. If there are those who are hoping that this is going to be a quiet death, that having met the target once we are going to hope it all fades away, I, for one, do not intend to let that happen.

I think we did something good here. We committed to a process. I am proud we met the first year's target, but there is a lot more work to be done.

I intend to support this reconciliation, and I intend to commit myself, as I am sure others will and the chairman of the Budget Committee will, to seeing that we meet the targets next year.

I thank the distinguished chairman for yielding.

The PRESIDING OFFICER. Who yields time?

□ 1636

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. Mr. President, speaking for this side, I yield myself 5 minutes of the time under the control of Mr. CHILES.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. RIEGLE. Mr. President, the main test on Gramm-Rudman is not next year, fiscal 1987.

Gramm-Rudman, when it was signed into law—and I voted against it because I thought it was a bad law and would not work, and I think subsequent events have proven that to be the case—the first year in which Gramm-Rudman is to control the deficit is not next year but this year.

We have a Gramm-Rudman target for fiscal year 1986. That is the fiscal year that we are just completing, and it will end in roughly 2 weeks.

The Gramm-Rudman target for this year is roughly $172 billion. By law, we are not supposed to be able to have a deficit higher than $172 billion according to Gramm-Rudman right now. But as everyone knows, the budget deficit for this fiscal year is now estimated to not be within those limits of $172 billion, but to actually be at $230 billion or higher.

If it comes in after all the numbers are added up at the end of the next 2 weeks at a figure of $230 billion, then Gramm-Rudman will have failed its first test by $58 billion.

That is what is happening right now.

The sponsors of Gramm-Rudman do not want to talk about right now. They never want to talk about right now. They always want to talk about what it is going to do in the future. The reason that they do that, the

reason that they keep moving the focus of the discussion forward, is that all the evidence today shows that Gramm-Rudman is not working. It has not worked this fiscal year. It has been exceeded by at least, I would say, $58 billion, and the figure may well prove to be higher.

We are not going to hit $144 billion next year. There really is not anybody I find in the Chamber who believes that. That is not a believable figure. In fact, we are hoping maybe we will come in within $10 billion of that.

I would make the prediction today that the deficit next year with Gramm-Rudman will be no less than $185 billion, and I fear it is going to be higher than that. It may well exceed $200 million. I hope I am wrong.

It is my belief as a member of the Budget Committee that the deficit will be much more in that range than it will be in the range of the stated $144 billion Gramm-Rudman target. We have not met this year's target; we are not going to meet next year's target.

In the third year, the target is to be a $108 billion Federal deficit. I do not think that is within each, either. It would be nice if it were. You have to have a balanced package as the Budget Committee put together early in the year if we are going to have any hopes of meeting that target. That was a bipartisan effort. I was party to the bipartisan construction of that package. We passed it in the Senate and the House agreed on it, but the Reagan administration said they would not agree. They would not agree to the defense cuts or any small increases in revenues. We are not talking about across-the-board small tax increases. So we have not been able to go ahead and implement the budget resolution that we put together on a bipartisan basis that would in fact come close to meeting the targets in the future.

So we are not meeting the targets. We are not meeting them today and we are not going to meet them next year. Virtually everbody that I have talked to on the Budget Committee will acknowledge, at least in private conversation, that these so-called savings here in this reconciliation package are at least half smoke and mirrors. Some people say it is 100-percent smoke and mirrors. Some say it is 75 percent. I have not found anybody yet who says it is any better than half smoke and mirrors.

So we are going through an exercise here which is totally pretending that we are meeting the Gramm-Rudman targets for next year when in fact we are not meeting them. The proof of that is that we are not meeting them this year. I wish for once I could get one of the principal sponsors of the Gramm-Rudman legislation to talk about the fact that Gramm-Rudman is $58 billion over this year's target. For the life of me, we are not able to get them to do that. They do not want to talk about this year because this year is the measure of the fact that it is not working. What they want to do is to move the discussion out into the future where it cannot be measured accurately.

I predict what will happen next year at this time is we will have deficits much higher than the $144 billion mandated in Gramm-Rudman and they will not want to talk about that at this time. They will then want to talk about the year that is then a year out in the future. That is where they will want to put the focus of that discussion at that time. That is the only time you can even maintain any plausibility about whether or not Gramm-Rudman can be made to work.

Gramm-Rudman is a mistake. It is not an answer to our problem. It is a detour around the problem. It is not working presently. It is not going to work in the future. The sooner everybody faces that fact and we go back to something that is real, like the bipartisan budget plan that we developed in the Senate Budget Committee——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. RIEGLE. I ask for 30 additional seconds.

Mr. CHILES. I yield.

Mr. RIEGLE. If we can go back to something that is authentic like the budget package that we put together on a bipartisan basis in the Budget Committee, then we have some realistic hope of meeting those downward deficit targets in the future. To do that, we will need the President, Don Regan, and others in the administration to come along with us. So far they have shown no indication to do that. Those are really the hard facts and there is no other way they can be described.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. How much time has the Senator from Florida remaining?

The PRESIDING OFFICER. The Senator from Florida has 8 minutes remaining and the Senator from New Mexico 9 minutes.

Mr. STAFFORD. Mr. President, as the Senate considers S. 2706, the Sixth Omnibus Budget Reconciliation Act, I wanted to make clear to my colleagues that the provisions which are now contained in S. 2706 with regard to savings in the Guaranteed Student Loan Program, the College Housing Loan Program and the Academic Facilities Loan Program are not identical to those which will emerge in the eventual conference agreement on reconciliation legislation.

For the last 2 months, a conference committee on the reauthorization of the Higher Education Act has met at great length to produce legislation which would improve the GSL Program and College Housing and Academic Facilities Loan Programs while at the same time saving the taxpayers over a billion dollars in these three programs. The instructions contained in the concurrent budget resolution for fiscal year 1987 require that $1.194 billion be saved in these programs. Our final conference agreement on the reauthorization of the Higher Education Act, S. 1965, will include additional savings as well. S. 1965, should be considered by both Houses of Congress in the next week.

If the conference report of the Higher Education Act is enacted promptly, the provisions on the GSL and Higher Education Act Loan Programs will be incorporated by reference in the final conference report on reconciliation of which S. 2706 will be a part. If the conference report is not enacted, then the relevant provisions in the reconciliation conference will be modified to reflect the changes in the Higher Education Act conference report to date. Either way, sufficient savings to comply with the budget authorization will be obtained.

Mr. President, I ask unanimous consent that a Congressional Budget Office analysis of the provisions agreed to in S. 1965 which reduce costs in the GSL Program be included in the RECORD following my statement. This will give Members a description of the items to be eventually included in S. 1965 and the reconciliation conference report.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

TENTATIVE CONFERENCE AGREEMENT—ESTIMATED BUDGET AUTHORITY AND OUTLAY IMPACTS FROM CHANGES INCLUDED IN THE CONFERENCE PROPOSAL ON THE HIGHER EDUCATION ACT AMENDMENTS OF 1986 TO THE GUARANTEED STUDENT LOAN PROGRAM UNDER CBO FEBRUARY 1986 ECONOMIC AND PROGRAMMATIC ASSUMPTIONS INCLUDING THE IMPACTS OF PUBLIC LAW 99-177 AND PUBLIC LAW 99-272 [1] ASSUMING AN OCTOBER 1986 IMPLEMENTATION

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Current law estimates (Including impacts of Public Law 99-177 and Public Law 99-272):						
Budget authority	3,042	3,219	3,175	3,118	2,929	2,699
Outlays	3,063	3,183	3,161	3,131	2,962	2,806
Reconcilation targets included in S. Con. Res. 120:						
Budget authority		−25	−150	−250		
Outlays		−25	−135	−235		
Estimate of the combined effects of all the proposals stated below						
Budget authority		−80	−145	−285	−305	−320
Outlays		−70	−115	−270	−300	−315

TENTATIVE CONFERENCE AGREEMENT—ESTIMATED BUDGET AUTHORITY AND OUTLAY IMPACTS FROM CHANGES INCLUDED IN THE CONFERENCE PROPOSAL ON THE HIGHER EDUCATION ACT AMENDMENTS OF 1986 TO THE GUARANTEED STUDENT LOAN PROGRAM UNDER CBO FEBRUARY 1986 ECONOMIC AND PROGRAMMATIC ASSUMPTIONS INCLUDING THE IMPACTS OF PUBLIC LAW 99-177 AND PUBLIC LAW 99-272 [1] ASSUMING AN OCTOBER 1986 IMPLEMENTATION—Continued

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Requested proposals estimated separately from current law (Including Public Law 99-177 and Public Law 99-272): [2]						
Determine programs eligibility by a financial needs test using the uniformed methodology; treats independent students with dependents and married students differentially:						
Budget authority		−15	−145	−300	−380	−415
Outlays		−10	−110	−280	−370	−410
Federal processing cost of loan applications for uniform needs analysis:						
Budget authority		13	14	14	15	15
Outlays		13	14	14	15	15
Define an independent student age 24 or older with specific exceptions for graduate students, married students, students with dependents, proof of two years prior financial independence and minimum income levels:						
Budget authority			−10	−21	−25	−25
Outlays			−10	−20	−25	−25
Increase loan limits for undergradaute underclassmen by $125:						
Budget authority			15	25	35	40
Outlays			10	25	30	35
Increase loan limits for undergraduate upperclassmen by $1,500:						
Budget authority		5	35	80	105	115
Outlays		3	25	75	100	115
Increase loan limits to graduate students by $2,500:						
Budget authority		10	65	140	180	205
Outlays		5	50	130	175	200
Increase loan limits for PLUS/ALAS program by $1,000 parents and students:						
Budget authority		1	5	15	25	30
Outlays			5	15	25	30
Expand deferments to teachers who teach in areas of national need for 3 years (new borrowers only):						
Budget authority				5	10	15
Outlays				5	10	15
Loan consolidation—H.R. 3700 as passed w/ $5,000 min. cumulative loan level 9 percent interest floor over life of loan:						
Budget authority		10	25	20	10	10
Outlays		5	25	20	10	10
Expand deferments for international fellows, parental leave, and others:						
Budget authority						
Outlays						
Sale of rehabilitated loans back to lender for 3 years, unemployed and institutionalized						
Budget authority						
Outlays						

TENTATIVE CONFERENCE AGREEMENT—ESTIMATED BUDGET AUTHORITY AND OUTLAY IMPACTS FROM CHANGES INCLUDED IN THE CONFERENCE PROPOSAL ON THE HIGHER EDUCATION ACT AMENDMENTS OF 1986 TO THE GUARANTEED STUDENT LOAN PROGRAM UNDER CBO FEBRUARY 1986 ECONOMIC AND PROGRAMMATIC ASSUMPTIONS INCLUDING THE IMPACTS OF PUBLIC LAW 99-177 AND PUBLIC LAW 99-272 [1] ASSUMING AN OCTOBER 1986 IMPLEMENTATION—Continued

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Increase the interest rate on GSL's to 10 percent in fifth year of repayment (new borrowers only):						
Budget authority						
Outlays						
Reduce lender yield .25 percent to a total yield of T + 3.25:						
Budget authority		−10	−30	−55	−75	−95
Outlays		−5	−25	−50	−70	−90
Establish a reinsurance fee for State agencies dependent upon their default rate:						
Budget authority		−20	−40	−45	−45	−45
Outlays		−15	−35	−45	−45	−45
Recall $35 million in State agency advances in fiscal year 1989:						
Budget authority				−35		
Outlays				−35		
Extend unemployment deferment to allow for multiple periods accumulating to a maximum of 24 months:						
Budget authority		−60	−30	−30	−30	−30
Outlays		−60	−30	−30	−30	−30

[1] The CBO projections for the fiscal year average 91-day Treasury Bill for 1986 through 1991 respectively are 6.9, 6.7, 6.5, 6.2, 5.8, and 5.5.
[2] The separate proposals are NOT additive due to programmatic interaction.

Mr. DOMENICI. Mr. President, my good friend from Vermont, Senator STAFFORD, has been a reliable and cooperative supporter of the budget process over these last few difficult years. Many times he has voted for restraint in education programs, when, in an ideal world, I know that he would prefer to increase funding for education many times over.

I am pleased that the Congressional Budget Office's preliminary scoring of the higher education conference report indicates that the conference report for the Guaranteed Student Loan Program contains $455 million in savings over the fiscal year 1987 through 1989 period, slightly more than what was assumed in the budget resolution. This represents a very significant effort on the part of the chairman of the Education Subcommittee, and I thank him for his responsible efforts.

As the chairman knows, the budget resolution also assumed the savings in the College Housing and Academic Facilities Loan Program—accomplished through the sale of loan assets. The legislative language requiring these sales is contained in S. 2706, the Reconciliation Act before the Senate now, and is also in the HEA conference report. I am assured that it is the intention of my good friend from Vermont to retain this language in the reconciliation conference.

The combination of these two provisions, the Higher Education Act conference report language on the Guaranteed Student Loan Program and the language requiring sale of College Housing and Academic Facilities Loans now appear to yield total savings that slightly exceed those assumed in the budget resolution earlier this year. This seems to me a highly desirable outcome to the reconciliation conference and I congratulate the Senator from Vermont for his efforts in this regard.

Mr. COHEN. Mr. President, I would like to be recognized on the point of order raised by the distinguished chairman of the Judiciary Committee, Senator THURMOND.

The program fraud provision of the reconciliation bill, which I sponsored along with Senators ROTH, LEVIN, and CHILES, is clearly not extraneous to the bill for the following two reasons.

First, the program fraud provision saves money. The Congressional Budget Office estimates in a July 1986 letter that the program fraud bill "would result in a net reduction in the deficit as a result of increased civil penalty collections and/or some decrease in fraudulent activity."

Although CBO is reluctant to provide a firm estimate on how much the bill would save—because of uncertainty as to the amount of fraud and the extent to which the new remedy would be used—the program fraud provision, nonetheless, passes the extraneous criteria set forth in last year's reconciliation bill.

Second, the program fraud provision has always been solely within the Governmental Affairs Committee's jurisdiction. For the past three Congresses, the program fraud bill has been introduced and referred to our committee for consideration.

In fact, the Judiciary Committee has never once had jurisdiction over any of the program fraud bills, and did not even seek sequential referral of the bill this Congress when it was reported from Governmental Affairs last November.

Nevertheless, we have advance notice from the Parliamentarian that Senator THURMOND's point of order against certain sections of the program fraud provision will be upheld. This is unfortunate and contrary to my understanding of how this point of order for extraneous material is to be interpreted.

Mr. ROTH. I wholeheartedly agree with the senior Senator from Maine and, for that reason, I move to waive those provisions of section 20001 of Public Law 99-272 under which this point of order was raised for the purpose of preserving those sections of

the program fraud provision subject to such point of order.

As Senator COHEN points out, the program fraud provision is solely within the Governmental Affairs Committee jurisdiction and always has been. In fact, I sponsored and held extensive hearings on the original program fraud bills, S. 1780 in the 97th Congress and S. 1566 in the 98th Congress, which served as predecessor bills to S. 1134 this Congress and the language subsequently contained in reconciliation.

I would like to emphasize that none of the provisions contained in any of these program fraud bills was taken from another committee's bill. The provisions subject to the point of order have been in each of the Governmental Affairs Committee's program fraud bills from the very beginning.

I, therefore, object to the proposed use of this point of order and yield to the distinguished chairman and ranking member of the Budget Committee, Senators DOMENICI and CHILES, for their interpretation of how section 20001 was intended to be construed.

Mr. DOMENICI. Mr. President, first let me say that I believe that the inclusion of nonbudgetary provisions in a reconciliation bill is inconsistent with the spirit and letter of the Budget Act and damages the credibility of the budget process. I understand that there is some disagreement as to whether the program fraud provisions reported by the Governmental Affairs Committee fall into this category.

The problem of so-called extraneous matters first became a major issue in 1981 during Senate consideration of the Omnibus Reconciliation Act of 1981. Earlier this year, with the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [COBRA], a new procedure was instituted for the identification and elimination of extraneous material.

Section 20001 of COBRA provides a point of order against extraneous material. A provision is considered extraneous if it, first, produces no change in outlays or revenues—with certain exceptions—second, increases outlays or decreases revenues, and the committee does not meet its instructions; third, is within the jurisdiction of another committee; or fourth, produces changes in outlays or revenues which are "merely incidental" to its nonbudgetary components.

As Senator COHEN points out, the Congressional Budget Office has estimated that enactment of the program fraud bill "would result in a net reduction in the deficit as a result of increased civil penalty collections and/or some decrease in fraudulent activity." Therefore, the bill as a whole is not extraneous from a cost standpoint. The issue here, however is whether a piece of that bill, which if considered alone would be another committee's jurisdiction, can be pointed to and removed from the reconciliation bill as being extraneous.

The jurisdictional test of section 20001 is intended to prevent the abuses we have seen in the past where committees have included in their submissions to the Budget Committee bills that are clearly not within their jurisdiction.

Now, I understand that the Parliamentarian is going to construe the jurisdictional test in such a way that certain key provisions of the program fraud bill would be considered extraneous and, therefore, would be stricken. While this ruling may be technically correct, it is not necessarily consistent with the drafters of this language.

I will support the motion offered by the distinguished chairman of the Governmental Affairs Committee.

Mr. CHILES. Mr. President, I would like to second the comments made by the Senator from New Mexico. Why, if a bill that saves money and is in a committee's own jurisdiction isn't a suitable candidate for inclusion in reconciliation, I don't know what is.

I am a member of the Governmental Affairs Committee and of the Oversight Subcommittee which considered the program fraud bill. In fact, I am proud to be a cosponsor of this legislation. In hearings on this bill we heard the Department of Justice and the inspectors general testify about the millions of dollars that is lost to fraud each year because we don't litigate many fraud cases under $100,000. The program fraud bill, according to the Justice Department, would save tens, if not hundreds of millions of dollars each year.

I feel that this is not an appropriate case for application of section 20001, and I would be happy to work with interested Senators, including members of the Governmental Affairs Committee, on revisions to this rule so that this problem does not arise in the future.

Mr. President, I will support the waiver motion.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum with the time to be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll and the time will be charged equally to both sides.

The assistant legislative clerk proceeded to call the roll.

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Mr. President, I think for the Members we should advise them that we are down to about 8 minutes on one side and 9 minutes on the other side. Shortly, we will probably be facing a vote on the amendment that the Senators from New Mexico and the Senator from Florida are proposing to put before the Senate amending the reconciliation bill.

Basically, what we are saying is the reconciliation bill only raises $3.5 billion. We all know that we are short approximately $19 billion with the snapshot numbers that have come out from OMB and CBO showing our deficit of $163 billion. So we are $19 billion higher than the Gramm-Rudman-Hollings total of $144 billion. To avoid a sequester, we have to be under $154 billion.

The purpose of this amendment is to put together a package of additional revenues and/or cuts that would total a little over $13.2 billion to assure us that we would not have a sequester.

Because of parliamentary problems that we have, which were germaneness provisions and other provisions, we find ourselves in the situation where we would either have to have unanimous consent to offer the amendment or we would have to have 60 votes. It looks like there is not unanimous consent, that there are people who object. So we will have to have 60 votes.

I hope the Senate will give us those 60 votes, regardless of how some people feel about the package itself or parts of the package itself. I want to explain why.

I did not think there was anything in the rules that we put in there under the germaneness provisions or others that was trying to keep the committee of principal jurisdiction, in this instances the Budget Committee, from being able to present a matter before this body that would certainly be pertinent to the whole budgetary problem and give us a chance to avoid a sequester, across-the-board cuts, that could cut the domestic spending program about 7.6 percent and cut defense programs about 5.6 percent, and to put ourselves into a box where we have to have a supermajority or 60 votes to occasion by accident more than what the germaneness rule was designed for.

Nothing could be more germane in the process we are in than a package of additional cuts in spending. Regardless of how you agreed on those or not—and they all would be subject to a motion to strike with 51 votes being sufficient—they are all subject to a motion to add. So I think it would be sort of a dark day for the Senate if we could not get this package before us if we had 58 votes, 57 votes, or 51 votes and find ourselves in the situtation where, by midnight tonight, we would have to adopt the sequester or vote on the sequester without a chance to say that we had a reconciliation act that would get us within the budget. We would find ourselves caught by the sequester rule.

In fact, Gramm-Rudman-Hollings provides for a fast track reconciliation

process that would let us do just what we have done. However, the timing of those provisions were not carefully thought through. That is why we are moving here to waive germaneness, and to waive the germaneness rule it will occasion us to have to have 60 votes.

I again want to reiterate that one's vote to waive germaneness I do not think locks one into having to vote for the reconciliation package. It certainly does not lock him into having to support all the provisions in here. It does not lock him in from not being able to offer additional revenue packages or spending cuts if he wished to do that.

□ 1648

I think the Senator from New Mexico and I have taken a stand that we will try to help anyone who legitimately is trying to add money to this package through the germaneness proposition. We will not thwart anybody who is trying to strike something from this package by seeing him stopped by the provision of the germaneness itself. So, given the fact that the Budget Committee has started work early this year and has produced a budget that, if it had been adopted, we would not be here; that the Senate itself produced a budget that, if it had been adopted, we would find ourselves within about $2 billion of the target.

I hope the body will allow us now to take up this amendment even though we are going to have to waive the germaneness provisions and, therefore, will have to seek a supermajority vote of 60 votes.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time? The Senator from Florida has 2 minutes left, the Senator from New Mexico has 8 minutes left. A quorum has been requested. Does the Senator request that that time come out of both sides?

Mr. CHILES. Mr. President, I yield the Senator from Iowa 5 minutes off the bill.

The PRESIDING OFFICER. The Senator is yielded 5 minutes off the bill.

Mr. HARKIN. Mr. President, there have been a lot of speeches about this reconciliation measure that is before us right now, but I think the most telling comment of all was made by my good friend and colleague from Nebraska [Mr. EXON] when he termed it totally unrealistic. I think Senator EXON was right on point when he said it was unrealistic.

Quite frankly, the reconciliation amendment that we have before us is nothing less than a giant smokescreen and we are trying to fool the American people if we really think we are going to achieve some savings here, because there are no savings in this. It is as phony as a $3 bill. As I said, Senator EXON was right on point when he said it was not realistic. Gramm-Rudman was not realistic and this is not realistic. All we are doing is shifting a bunch of money, using unrealistic numbers.

For example, we are shifting revenue sharing one day. We can shift revenue sharing one day, from October 1 to September 30, and lo and behold, we save $680 million—just by shifting it one day. Quite frankly, the effect of it is nothing.

Another example is the sale of assets. Sure, you get money now but you lose later. One-third of this total package is simply the sale of assets. You get a little money now but you lose later. The Senator from Arkansas pointed out, on the sale of the 503 loans in the SBA, we are actually getting a little money now and losing more money later on. So that is really what we are talking about here, buying a little time but not really doing anything at all.

The Senator from Texas, one of the authors of the Gramm-Rudman bill, said the purpose of Gramm-Rudman was to discipline Congress. What kind of discipline do we have here? We have a lot of yelling but no spanking. Much sound and fury, but nothing is happening. There is no discipline here at all. It is all smoke and mirrors.

The real problem that we have here with this reconciliation amendment, as we do with all of Gramm-Rudman, is simply that we are going after the wrong culprit. I would like to draw an analogy with the farm programs. We were told last year if all we could do was get the price to the farmers down, we could get our exports up. Well, they got it half right: They got the prices to the farmers down and the exports have come down, too. This is the third month in a row that we have imported more food into our country than we have exported. What is wrong with the farm bill is that they were chasing the wrong rabbit. What is wrong here with this reconciliation package, as it was with Gramm-Rudman in the beginning, is that they are chasing the wrong rabbit.

We have these huge deficits right now because of three things: misguided monetary and fiscal policies of this administration and the Federal Reserve; second, runaway military spending; and third, a total surrender on world trade, a loss of our agricultural base and a loss of our manufacturing base because of this surrender on trade.

If we want to reduce the deficit, do not go chasing the wrong rabbit like Gramm-Rudman, or like this phony reconciliation thing. Fix these three things. You fix those and then we will be on the road to recovery. Then we will have real discipline around here, because then we will have the revenues necessary to balance with our outlays and we will be able to invest in the future of this country.

The Gramm-Rudman bill, as I said, was unrealistic in the beginning and this reconciliation package, with all of its phony numbers, with all of the supposed savings that we are going to have that are not savings at all, is going to dig us deeper in the hole. We will be back again next year, as my colleague from Iowa pointed out, with a deficit of around $200 billion. And what will we do then? Reach into the future, grab some more money, yank it back again, and keep pushing it off, time after time?

The time has come to face up to the reality that we are losing our manufacturing base, we are losing our agricultural base, our monetary and fiscal policies are out of whack, we have runaway military spending, and we have given up on foreign trade. That is where we ought to attack the problem. Yet, like the ostrich sticking its head in the sand, we are about to do the same thing here: come up with some phony numbers.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HARKIN. I need 2 more minutes, Mr. President.

Mr. DOMENICI. Mr. President, I yield 2 minutes on behalf of Senator CHILES on their side off the bill.

The PRESIDING OFFICER. The Senator is yielded 2 minutes off the bill.

Mr. HARKIN. I thank the Chair.

We have those phony numbers here. We are trying to pull the wool over the eyes of the American people. I do not think we ought to do that. We ought to defeat this reconciliation package. Let us go ahead and move into sequestration. Let us go ahead and see if the people who voted for Gramm-Rudman really want to make the cuts that Gramm-Rudman talked about. There is your discipline.

But oh, no, we do not want to do that. We do not want to have the full force of Gramm-Rudman go into effect. We do not want to cut defense spending by $19 billion and nondefense spending by $16 billion in authority. No; we do not want that to happen, because there is an election coming up. So much for the discipline of Gramm-Rudman.

As I say, it is like a father who yells at his kids all the time and pretty soon the kids figure out he is never going to spank them. So no matter how he yells, the kids are not going to pay attention.

There is only one thing to do with this reconciliation package. This is a garbage can; this is a reconciliation package. We ought to throw the reconciliation package in the garbage can, because it is not going to work.

Mr. President, I yield back whatever time remains.

Mr. CHILES. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Florida has 2 minutes on the amendment and 1 hour and 40 minutes on the bill.

Mr. DOMENICI. Mr. President, how much time remains to me?

The PRESIDING OFFICER. The Senator from New Mexico has 8 minutes on the amendment and 1 hour and 14 minutes on the bill.

Mr. DOMENICI. I suggest the absence of a quorum and ask unanimous consent that it be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I wonder if I may have 5 minutes off the bill?

Mr. CHILES. I yield 5 minutes off the bill.

The PRESIDING OFFICER. The Senator from Ohio is yielded 5 minutes on the bill.

Mr. METZENBAUM. Mr. President, I rise with some reservations, yet I feel I cannot hold my chair and talk about this effort to meet the Gramm-Rudman targets. I have real reservations about and voted against Gramm-Rudman because I did not think it would solve the problem. I said then and I say now that the only way you solve the problem is by biting the bullet. But the fact is that there are games being played with this amendment.

□ 1700

What we are doing is selling some of the great assets this Nation owns and saying that in some way that is going to balance the budget. They are changing dates and throwing things from one fiscal year into another fiscal year and saying that will balance the budget.

There are those who are standing on the floor and patting themselves on the back and saying: "We have gone far; we have shown what Gramm-Rudman can do," and they are self-congratulatory. I do not think there is any reason to be so self-congratulatory.

I think the sponsors call it imperfect, but they claim it will meet the target. The fact is that it is a very imperfect proposal. It does not do that which basically has to be done in order to balance the budget. In order to balance the budget, you have to look at revenues and at expenditures. What we are doing here is using some gamesmanship. We are pretending the achievement of things and saying we are achieving that which is supposed to be achieved, but it is not being done. It is sleight-of-hand. It is so much smoke that you cannot even see the mirror, and that is what concerns me about this—what concerns me about this approach to meeting the Gramm-Rudman target.

We have not done that which we are obligated to do. We do not need Gramm-Rudman to tell us what we ought to do. We know what we ought to do, and that is, we ought to move forward and do that which has to be done, and that is to cut spending and probably increase revenues.

There is some increase of revenues in here, but it is a different kind of revenue. You say it is not a tax increase. Well, I suppose that is just a question of how you figure. But when it comes to money and you take more money away from people, whether you call it a tax increase or anything else, it all comes out the same way.

Then there is the $2.4 billion that we are going to pick up by increasing compliance with the Internal Revenue laws. We could do that any day of the week, but that is not what we are called upon to do in order to balance the budget.

What this proposal is all about is just kidding the American people that we are achieving the objective. We all know that next year the problem is going to be five times as bad, and we are not going to achieve the objective unless we do some truly meaningful acts. In my opinion, this amendment does not do that which should be done, and I believe we are only kidding the people of this country in telling them that it will do that.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Does any Senator seek recognition?

Mr. DOMENICI. Mr. President, how much time remains on the amendment?

The PRESIDING OFFICER. Eight minutes to the Senator from New Mexico and 2 minutes to the Senator from Colorado.

Mr. LEVIN. Mr. President, will the Senator yield for a question?

Mr. DOMENICI. I yield.

Mr. LEVIN. It has been argued in the last few hours that this amendment is unrealistic and represents just blue smoke and mirrors. I am wondering whether the chairman of the Budget Committee or the ranking minority member would comment on that.

That is an important issue for a lot of us, as to whether or not it is real savings. Many of us were disappointed that we are using the revenues in the tax bill for tax cuts rather than deficit cuts, but that is a different issue.

My question to the chairman is this: What is his answer or comment to the allegation and the charge we have heard repeatedly, that this is just unreal, blue smoke and mirrors, and that these savings are not real savings?

The PRESIDING OFFICER. Does the Senator wish this time to come off the bill?

Mr. DOMENICI. I do. I ask unanimous consent that it be taken out of my 8 minutes, until it gets down to 2 minutes, and then the time would come off the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Perhaps I should answer the Senator this way: Some Senators have taken to the floor and said that these are predominantly one-shot savers—that is, 1-year events—which will cause the bookkeeping of the National Government to reflect a reduction in deficits, the sum total of which is $13.3 billion, whether it is on the revenue side up or the expenditure side down. That is true. Many of them will not occur again. Consequently you do not carry that $13.3 billion off of the current account totals of the Government and say it will be that much less the next year.

The Senator from Michigan is aware of that better than most. He has worked hard on the Gramm-Rudman-Hollings amendment and is familiar with its intricacies, its baselines, and all these difficult concepts. That statement is true. We will have to find many of these savings again next year, as part of the annual, periodic diminution in the deficit prescribed by Gramm-Rudman-Hollings.

If we were right on target and we had to get to next year's target, we would have to find more than the difference, because some of these are going to be replaced by spending.

In a sense I am not pleased with it. I have said over and over on the floor that I would do it differently. I work for a committee; I work for the Senate; I work with Senators and with the President. When parameters are set—no permanent revenue increases—what you get are one-shot revenues. I cannot help that. So those statements about nonrecurrence are true. But I can tell the Senator that, for the purpose of reducing the deficit, with the same degree of accuracy and certainty that we are going to reach the targets that he supported in Gramm-Rudman-Hollings, these are just as effective and credible and real as those targets are, because those targets would be measured by this kind of activity of Government.

If you actually picked up revenues because of enforcement but it was not going to recur, it would be applied in your notion of Gramm-Rudman-Hollings as you fought for it and modified it and helped amend it.

If you sold some loan assets and got money in the Treasury, you would clearly mark that up against the target you were fighting for, and you would not wait until the end of the year to do it. You would ask the Congressional Budget Office, and it says we are going to do it, and how much credit we get.

I am telling you that in every respect, that is how we did this. That is not blue smoke and mirrors. It is real.

Mr. LEVIN. I thank the Senator. I wonder if he suggests at the end of his comments that the CBO has approved this.

Mr. DOMENICI. Up until this morning, some of the items in this package were being modified, because they were scrutinizing them as to whether it was $200 million one year and $400 million in another. The CBO has agreed to this scoring.

The PRESIDING OFFICER. (Mr. CHAFEE). The Senator from Florida.

Mr. CHILES. Mr. President, I think the distinguished Senator from New Mexico has answered the Senator from Michigan, but I want to say that I concur that they are real savings. CBO has said they would score them, and we are operating off their scoring, not OMB's scoring system.

Mr. President, I do not like asset sales.

Loan sales do not reduce the Federal deficit. They simply bring future year receipts forward.

For every dollar of loan sales scored as savings, the Treasury loses an equivalent dollar amount of revenues in the form of lost receipts that would have occurred had the Government retained the loan portfolio.

In order to sell, deep discounts will be necessary for almost all loans to be sold. Therefore, outyear revenue losses will be greater than receipts from the loan sales. Thus loan sales result in greater future deficits.

Loan sales to reduce the deficit do not reduce the Government's demands on credit markets. Loan sales simply replace U.S. Treasury securities with loans originated by the United States as a means of financing the deficit. The deficit is reduced only because a loan sale is treated as an off-setting collection while a U.S. Treasury security is treated in the budget as a means of financing.

Loan sales do not reduce the Federal Government's interest costs. Even though the Government may reduce its own debt outstanding by $1 for every $1 of loans liquidated, the fact that the loans are sold at steep discounts means that only a part of the Government's debt associated with the loans will be retired.

If loans are sold without a Federal guarantee, they are likely to sell at "fire sell" rates. If, however, they are guaranteed, the Government retains all the associated risk and consequently, outyear revenue losses are increased.

If loans are sold with a guarantee, this transaction becomes nothing more than an inefficient form of Federal borrowing since the Government has not sold a loan, but rather has entered an obligation to make a series of payments to an investor that is not dependent on the stream of payments of the underlying loan assets. This view is consistent with CBO and OMB scorekeeping as well as with the view of the Financial Accounting Standards Board.

□ 1710

Mr. DOMENICI. Mr. President, I yield back any time I have on the amendment.

Mr. CHILES. Mr. President, I yield back any time I have left.

Mr. DOMENICI. Mr. President, pursuant to section 904 of the Budget Act, I move to waive section 305(b)(2) of that act as it relates to germaneness.

The PRESIDING OFFICER. There is 1 hour equally divided on the motion.

Mr. DOMENICI. Mr. President, I yield back the time I have.

Mr. CHILES. I yield back the time I have.

Mr. HARKIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. How many votes does it take to adopt this waiver?

The PRESIDING OFFICER. Sixty.

Mr. DOMENICI. Mr. President, I yield myself 1 minute off the bill.

Mr. President, I have been telling Senators here on the floor and as we met for the last few days that this amendment was not germane. Senator CHILES from Florida has explained why. We did not expect to have this job and these rules and so what we are asking is for 60 Senators to waive this section so that we can adopt this amendment, the amendment that Senator DOMENICI from New Mexico and Senator CHILES have pending. If we get the 60 votes, the amendment will be in order. We can then adopt it if it is the will of the Senate and go on from there.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Mexico.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—87 yeas, 10 nays, as follows:

[Rollcall Vote No. 268 Leg.]

YEAS—87

Abdnor	Gorton	Mitchell
Armstrong	Gramm	Murkowski
Baucus	Grassley	Nickles
Bentsen	Hatch	Nunn
Biden	Hatfield	Packwood
Bingaman	Hawkins	Pell
Boren	Hecht	Pressler
Boschwitz	Heflin	Proxmire
Broyhill	Heinz	Pryor
Bumpers	Helms	Quayle
Byrd	Hollings	Rockefeller
Chafee	Humphrey	Roth
Chiles	Inouye	Rudman
Cochran	Johnston	Sarbanes
Cohen	Kassebaum	Sasser
Cranston	Kasten	Simon
D'Amato	Kennedy	Simpson
Danforth	Kerry	Specter
DeConcini	Lautenberg	Stafford
Denton	Laxalt	Stennis
Dixon	Leahy	Stevens
Dodd	Levin	Symms
Dole	Long	Thurmond
Domenici	Lugar	Trible
Durenberger	Mathias	Wallop
Eagleton	Mattingly	Warner
Evans	McClure	Weicker
Ford	McConnell	Wilson
Gore	Melcher	Zorinsky

NAYS—10

Andrews	Glenn	Moynihan
Bradley	Harkin	Riegle
Burdick	Hart	
Exon	Metzenbaum	

NOT VOTING—3

Garn	Goldwater	Matsunaga

So the motion was agreed to.

□ 1736

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CHILES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum with the time to be charged to my side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I understand that the Domenici-Chiles amendment, which is pending as an amendment to the reconciliation bill, is now germane. We have just voted to remove that impediment.

But I further understand, and ask if my understanding is correct, that subject to the rules that apply, it is open for amendment at this point.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is correct.

Mr. DOMENICI. And, further, as a parliamentary inquiry, amendments that are in order, as I stated, must be germane to that amendment. Is that correct?

The PRESIDING OFFICER. The amendments to be germane must be germane either to the amendment or to the underlying bill.

Mr. DOMENICI. I thank the Chair.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 2851

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 2851 to Domenici amendment numbered 2850, as modified.

Strike all from line 18, page 18(B) through line 23, page 18(C).

Mr. STEVENS. Mr. President, I ask unanimous consent that the provision I would strike be printed in the RECORD at this point.

There being no objection, the provision was ordered to be printed in the RECORD, as follows:

SEC. . INCREASES IN CERTAIN PENALTIES.

(a) AGGREGATE NEGLIGENCE AND SUBSTANTIAL UNDERSTATEMENT PENALTIES NOT TO BE LESS THAN 25 PERCENT.—

(1) IN GENERAL.—Subchapter A of chapter 68 of subtitle F (relating to additions to tax) is amended by redesignating section 6662 as section 6663 and by inserting after section 6661 the following new section:

"SEC. 6662. AGGREGATE PENALTY ON CERTAIN UNDERPAYMENTS NOT TO BE LESS THAN 25 PERCENT.

"(a) GENERAL RULE.—If there is a tax imposed under section 6653(a) or 6661, or both, on any portion of the underpayment or understatement, then there is hereby imposed a tax equal to the excess (if any) of—

"(1) 25 percent of the amount of such portion, over

"(2) the aggregate amount of taxes imposed under sections 6653(a) and 6661 on such portion.

"(b) DEFINITIONS.—For purposes of this section, the terms 'underpayment' and 'understatement' have the meanings given such terms by section 6653(c)(1) and 6661(b)(2), respectively."

(b) INCREASE IN TAX ON FAILURE TO MAKE DEPOSIT OF TAXES.—Section 6656(a) (relating to underpayment of deposits) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(c) CONFORMING AMENDMENTS.—The table of sections for subchapter A of chapter 68 of subtitle F is amended by striking out the item relating to section 6662 and inserting in lieu thereof the following new items:

"Sec. 6662. Aggregate penalty on certain underpayments not to be less than 25 percent.

"Sec. 6663. Applicable rules."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after the date of enactment of this Act.

Mr. STEVENS. This is an amendment to strike the increased penalties under the Internal Revenue Code.

Let me state straightforwardly that I am not a tax expert, but as I understand this, as I have studied it, what it will do is increase from 10 percent the penalties that are owed for a negligent failure to pay taxes or negligent understatement of income which leads to an underpayment of taxes.

As I understand it, that would apply to a taxpayer who, relying upon professional advise, files a return and the IRS finds that it is either understated or as a result of a nondisclosure of income the tax——

Mr. STENNIS. May we have order in the Chamber, Mr. President?

The PRESIDING OFFICER. The Senator's request is a fair one. There is not order in the Chamber. We will not proceed until there is order in the Chamber.

The Senator from Alaska.

Mr. STEVENS. I inquired as to the explanation that had been provided to the committee for the amendment that I seek to strike. I just want to read it to the Senate and that is my argument.

The proposal would increase the penalties paid by taxpayers in two areas in order to raise $1.0 billion.

(a) The penalties for underpayment of taxes and for negligent underpayment would be adjusted so that the total penalty assessed would equal at least 25 percent of the taxes owed. E.g. If the taxpayer underpaid his taxes by $1000, he would normally owe $50 or $100 in penalties depending on the circumstances. This proposal would increase the penalty amount.

It would be either 5 times the amount of the current penalty or 2½ times of the penalty.

(b) Businesses make quarterly payments of the withholding tax collected from employees. The proposal would double the penalty for not depositing the withholding collections in a timely fashion.

Mr. President, I want to support the change in the reconciliation bill, but I see no reason to use this excuse to increase the penalties on taxpayers for negligence under circumstances as they are stated here. This is a negligent underpayment. As I said, the result would be to increase by not less than 25 percent. Meaning it would not be less than a 5-times increase or at least 2½ times the increase under the existing law. I frankly do not think this is proper for the Treasury and the Internal Revenue Service to ask us at such a late hour to make such a significant change in the penalties imposed upon taxpayers who find that the IRS disagrees with them.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Might I ask my friend from Alaska, since a number of Senators are asking about amendments, and I do not have any control over amendments other than each amendment has a prescribed time, how much additional time did the Senator from Alaska want to use on the amendment?

Mr. STEVENS. Mr. President, I have made my case.

Mr. DOMENICI. Mr. President, I thank the distinguished Senator from Alaska.

I do not see Senator PACKWOOD, the chairman of the Finance Committee, here. He and his staff helped with this at the encouragement of the Treasury Department. They suggested this to us. That is why it is in this bill.

As I understand it, if this amendment is adopted, the estimated loss of revenues to the Treasury will be $1 billion. So we will have effectively reduced our revenue estimates by $1 billion if we strike this. Instead of $12.9 billion, we will have $11.9 billion in 15 minutes.

The proposal, as I understand it, is aimed at the penalties and fines as described by the Senator from Alaska. According to those who calculate the response, this does not mean people will be fined that much more. It means people will be that much more careful, that much more unwilling to deceive the Federal Government and, thus, we will collect more money.

You have two things happening out there. One is the enforcement and the other is what people think is going to happen. Since the fines and penalties are low now, when you raise them, the behavior will be, "We better be more careful, we better be more responsive," and you will get more revenues. If I had my druthers, I might pass some other tax bill or revenue bill. This was recommended by the administration and I think we ought to adopt it.

I have the greatest respect for my friend from Alaska and concern about this issue, but I think we ought to see if it is going to work. I believe it will, since the Treasury Department assumes there will be better performance on the part of taxpayers, CPA's, and others, and, indeed, we will raise more revenue to the tune of $1 billion.

Mr. DIXON. Will the manager yield?

Mr. DOMENICI. I am glad to yield.

Mr. DIXON. Is it not true that these penalties are imposed not for inadvertence but actual negligence in connection with the filing of a return?

Mr. DOMENICI. The Senator is correct.

Mr. DIXON. Is it not true that one of the real problems we have in the country now is the difference between the amount owed to our Government and the amount actually paid?

Mr. DOMENICI. The Senator is more expert than I.

Mr. DIXON. I understand the evidence is that the revenue that should have been collected from taxpayers is about $100 billion over the years. I would suggest the manager is exactly right. In those cases where negligence is not involved in connection with the

filing of a return, I do not know why a taxpayer ought to pay a penalty for that. Certainly, as we look at a number of other things in this reconciliation bill I would have difficulties with, I certainly have no difficulty in collecting another $1 billion from people who negligently file returns that are not accurate.

Mr. STEVENS. Mr. President, I do not want to argue this too long as there are other amendments coming. But I would say to my friends from Illinois there are already penalties involved, and this amendment would increase those from 2½ to 5 times on a minimum basis. This says the tax imposed for negligence can be not less than 25 percent on either a negligent understatement or a negligent underpayment, notwithstanding that it was based upon professional advice, notwithstanding the fact that it was professional advice, that the negligence was involved in professional advice obtained by the taxpayer. I think the penalties under these circumstances are sufficient already.

But further I say to my friend from Illinois, the effective date section says, "The amendments made by this section shall apply to penalties assessed after the date of enactment of this act."

This goes back 5 years at least. I might say it might have a salutary effect talking about the future. But this says penalties assessed after the date of this act. If you assess them on a tax return filed in 1981 and it is under review, you could well have an increase in the penalty if that audit is not complete, any one of these things stil open. There would be no discretion on the part of the IRS. They could not assess you less than 25 percent of the amount that was either understated or underpaid.

□ 1750

I think that is wrong to do it retroactively in the first place, but I think it is wrong to do it in a bill like this now. Where was this during the tax bill? This is a bill under emergency circumstances to raise revenues to meet this Reconciliation Act target.

I am perfectly willing to offer an amendment, if there is an order, to impose an oil import fee: that is a new tax, a new revenue. But this is increasing penalties under existing law without any notice to anybody, retroactively for at least 5 years.

Mr. President, I just want to vote for this amendment to delete that. If the Senate wants to keep it in, they can do it. I yield back the remainder of my time.

Mr. DOMENICI. Mr. President, I am going to yield my time in a moment. We are going to vote.

I am going to read the language. It is "taxes due to an intentional or negligent disregard of rules or regulations." This has been recommended by the Department of the Treasury of the United States. I repeat, we will decrease our revenue $1 billion if we adopt the Stevens amendment.

I yield back the remainder of my time. I move to lay the amendment of the Senator from Alaska on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment of the Senator from Alaska [Mr. STEVENS] on the table. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from Hawaii [Mr. MATSUNAGA] are necessarily absent.

The PRESIDING OFFICER (Mr. COCHRAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 77, nays 19—as follows:

[Rollcall Vote No. 269 Leg.]

YEAS—77

Andrews	Glenn	Moynihan
Baucus	Gore	Nunn
Bentsen	Gorton	Packwood
Biden	Gramm	Pell
Bingaman	Grassley	Pressler
Boschwitz	Harkin	Proxmire
Broyhill	Hart	Pryor
Bumpers	Hawkins	Quayle
Burdick	Hecht	Riegle
Byrd	Heinz	Rockefeller
Chafee	Hollings	Roth
Chiles	Inouye	Rudman
Cochran	Johnston	Sarbanes
Cohen	Kassebaum	Sasser
Cranston	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Leahy	Stennis
Dodd	Levin	Thurmond
Dole	Lugar	Trible
Domenici	Mattingly	Wallop
Eagleton	McConnell	Warner
Evans	Melcher	Weicker
Exon	Metzenbaum	Zorinsky
Ford	Mitchell	

NAYS—19

Abdnor	Heflin	Murkowski
Armstrong	Helms	Nickles
Bradley	Humphrey	Stevens
D'Amato	Laxalt	Symms
Durenberger	Long	Wilson
Hatch	Mathias	
Hatfield	McClure	

NOT VOTING—4

Boren	Goldwater
Garn	Matsunaga

So the motion to lay the amendment on the table (amendment No. 2851) was agreed to.

□ 1810

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Indiana.

AMENDMENT NO. 2853

(Purpose: To establish procedures for the expedited consideration by the Congress of certain bills and joint resolutions submitted by the President)

Mr. QUAYLE. Mr. President, I send an amendment to the desk on behalf of myself, Senators EXON, NICKLES, ZORINSKY, HUMPHREY, GRAMM, and WARNER and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. QUAYLE] for himself and Mr. EXON, Mr. NICKLES, Mr. ZORINSKY, Mr. HUMPHREY, Mr. GRAMM, and Mr. WARNER proposes an amendment numbered 2853.

Mr. QUAYLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the text of the bill insert the following: (Section) that (a) the President may, within 3 days of the time the President approves any appropriation bill, transmit to both Houses of Congress, one or more special messages in accordance with subsection (b) proposing to rescind all or part of any item of appropriation provided in the appropriation bill, such special messages shall be considered in accordance with the provisions of this resolution.

(b)(1) Each special message transmitted under subsection (a) shall specify, with respect to each item of appropriation (or part thereof) proposed by the message to be rescinded, the matters referred to in paragraphs (1) through (5) of section 1012(a) of the Impoundment Control Act of 1974 (2 U.S.C. 683(a)).

(2) Each special message transmitted under subsection (a) shall be accompanied by a draft bill or joint resolution that would, if enacted, rescind each item of appropriation (or part thereof) proposed by the message to be rescinded.

(c)(1)(A) On the day on which a special message proposing to rescind an item of appropriation is transmitted to the House of Representatives and the Senate under subsection (a), the draft bill or joint resolution accompanying such special message shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by the Members of the House designated by the majority leader and the minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by the Members of the Senate designated by the majority leader and the minority leader of the Senate. If either House is not in session on the day on which a special message is

transmitted, the draft bill or joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which such House is in session.

(B) A bill or joint resolution introduced in the House of Representatives or the Senate pursuant to subparagraph (A) shall be referred on the date of introduction to the Committee on Appropriations of such House. The committee shall report the bill or joint resolution without substantive revision (and with or without recommendation) not later than 5 calendar days of continuous session of the Congress after the date on which the bill or joint resolution is introduced. A committee failing to report a bill or joint resolution within the 5-day period referred to in the preceding sentence shall be automatically discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(C) A vote on final passage of a bill or joint resolution introduced in a House of the Congress pursuant to subparagraph (A) shall be taken on or before the close of the 10th calendar day of continuous session of the Congress after the date of the introduction of the bill or joint resolution in such House. If the bill or joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a bill or joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a bill or joint resolution agreed to in the Senate) shall cause the bill or joint resolution to be engrossed, certified, and transmitted to the other House of the Congress on the same calendar day on which the bill or joint resolution is agreed to by such House.

(2) If prior to the passage by one House of a bill or joint resolution introduced in that House under this section, that House receives a bill or joint resolution containing the same provisions from the other House pursuant to subparagraph (C) of paragraph (1), then—

(A) the procedure in the House receiving the bill or joint resolution with respect to the bill or joint resolution introduced in that House shall be the same as if the bill or joint resolution had not been received from the other House; but

(B) the vote on final passage shall be on the bill or joint resolution of the other House.

(3)(A) A motion in the House of Representatives to proceed to the consideration of a bill or joint resolution under this section shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on a bill or joint resolution under this section shall be limited to not more than 4 hours, which shall be divided equally between those favoring and those opposing the bill or joint resolution. A motion to postpone, made in the Houe of Representatives with respect to the consideration of a bill or joint resolution under this section, and a motion to proceed to the consideration of other business, shall not be in order. A motion further to limit debate shall not be debatable. It shall not be in order to move to table or to recommit a bill or joint resolution under this section or to move to reconsider the vote by which the bill or joint resolution is agreed to or disagreed to.

(C) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill or joint resolution under this section shall be decided without debate.

(D) Except to the extent specifically provided in the preceding provisions of this paragraph, consideration of a bill or joint resolution under this section shall be governed by the Rules of the House of Representatives applicable to other bills and joint resolutions in similar circumstances.

(4)(A) A motion in the Senate to proceed to the consideration of a bill or joint resolution under this section shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on a bill or joint resolution under this section, and all debatable motions and appeals in connection therewith, shall be limited to not more than 4 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with a bill or joint resolution under this section shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or joint resolution, except that in the event the manager of the bill or joint resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill or joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(D) A motion in the Senate to further limit debate on a bill or joint resolution under this section is not debatable. A motion to table or to recommit a bill or joint resolution under this section is not in order.

(d) No amendment to a bill or joint resolution considered under this section shall be in order in either the House of Representatives or the Senate. No motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) For purposes of this section—

(1) "item of appropriation" means any numerically expressed amount of budget authority set forth in an appropriation bill;

(2) "appropriation bill" means any general or special appropriation bill, and any bill or joint resolution making supplemental, deficiency, or continuing appropriations;

(3) "appropriation Act" means any appropriation bill that has been approved by the President and become law;

(4) "budget authority" has the meaning given to such term in section 3(2) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 622(2)); and

(5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congess sine die, and the days on which either House is not in session because of an adjuournment of more than 3 days to a day certain shall be excluded in the computation of the 5-day and 10-day periods referred to in subsection (c) of this section. If a special message is transmitted under this section during any Congress and the last session of the Congress adjourns sine die before the expiration of 10 calendar days of continuous session (or a special message is transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been transmitted on the first day of the succeeding Congress and the 5-day and 10-day periods referred to in subsection (c) of this section shall commence on the day after such first day.

(f) The provisions of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at anytime, in the same manner, and to the same extent as in the case of any other rule of such House.

Mr. DOMENICI. Mr. President, will the Senator from Indiana yield for a question?

Mr. QUAYLE. I yield for a question to the distinguished chairman of the Budget Committee.

Mr. DOMENICI. Mr. President, I want to inquire of the junior Senator from Indiana. I understand that he might be willing to agree to a time limit on his amendment. Does he have some amount of time in mind?

Mr. QUAYLE. I personally will need about 10 to 15 minutes. Senator EXON may want 5 minutes. So, our side 15 or 20 minutes at max.

Mr. DOMENICI. The Senator from Indiana asks for 20 minutes, he says, on his side.

Mr. CHILES. Mr. President, I would hope they would not take that long just for our colleagues because we have so many Senators who want to offer amendments. If we do not limit Senators to about 5 minutes, in very short time there will be no time for anyone on an amendment.

I will take 3 minutes on this side to argue the other side of it. I hope that we will not have to have 20 minutes.

Mr. EXON. Five.

Mr. CHILES. If colleagues want time, that is OK. Once time is used, that is it.

Mr. QUAYLE. I would say, Mr. President, I would like to accommodate the chairman and ranking minority member and also accommodate the colleagues.

I am acutely aware we are running out of time.

This amendment should not take a long time to explain. I do want to have it presented to the Senate so there is an understanding of what the amendment is all about.

As I said at max it will be 10 to 15 minutes. The Senator from Nebraska

said 5 minutes. I may not use all 20 minutes. I may only use 15 minutes.

Mr. EXON. Mr. President, will the Senator yield?

Mr. QUAYLE. I yield to the Senator from Nebraska.

Mr. EXON. I would say I think both the Senator from Indiana and this Senator wants to cut this down. I might suggest a compromise that we simply agree that we will not take more than 20 minutes on our side and possibly we can start out with 8 minutes for the Senator from Indiana.

I say I want to cut down the time. Could I say we proceed without wasting a lot of time on discussion on this and agree to not more than 20 minutes for our side of this. If the Senator from Indiana would start off with maybe 8 minutes I will take 5 and maybe less. Maybe we can finish up. Twenty minutes would be the outside.

Mr. DOMENICI. Mr. President, I ask unanimous consent that there be no more than 20 minutes for proponents and 10 minutes for opponents.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. QUAYLE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. QUAYLE. Mr. President, this amendment is a very straightforward amendment dealing with the budget process of rescission.

This amendment is very compatible, though technically not germane. It is certainly compatible with reconciliation and certainly the budget process.

The current picture is this: Under the procedure now in the Budget Impoundment Control Act a rescission that is sent to Congress has to be passed by both the House of Representatives and the Senate. But the problem is, Mr. President, that there is no way to get a vote and to have an accountability on the rescissions that the President feels are necessary.

This is not a line-item veto. It is not even a substitute for a line item veto. But it is a substitute for a process that was contemplated during the Budget Impoundment Control Act that needs a little bit of fine tuning.

Under the Budget Impoundment Control Act we dealt with the deferral policy, a one-House veto which has not been stricken down as unconstitutional or a question of the constitutionality because of the Chadha decision.

My amendment, the amendment we offer with the Senator from Nebraska and others, says that when the President sends up a rescission there will be a mandated expedited process for a vote on that rescission and if in fact both Houses, meaning the House of Representatives and the Senate, vote by majority vote to agree with the rescission, then it becomes law.

If either House lacks a majority vote, then it does not become law.

What we have seen over the last couple years is that we have had 327 rescissions in the nature of requests that have been sent to Capitol Hill, totalling about $12 billion.

How many of those rescission messages do you think in the last 2 years we voted on? The answer to that is zero. There have not been rescissions coming before Congress because there is no expedited process and they simply come up here and they lay somewhere in the committee structure.

We all know what the situation is with the deficit and the national debt. We have heard articulate statements by Senators on both sides of the aisle lamenting the fact of this huge Federal deficit, the national debt, that is approaching over $2 trillion; the Federal budget deficit is $230 billion.

I can guarantee, Mr. President, that this amendment, if in fact adopted, will not only help the budget process but will have a positive impact on the deficit. There is no doubt that this is a budget saver, that this will not increase the budget deficit. There is absolutely no way that could happen.

I know there are some concerns about going back into perhaps doing something with the Budget Impoundment Control Act. But we have had a court case that has determined the deferral process of questionable constitutionality. We do have a budget deficit problem. We do have a situation where we legislated by continuing resolution year in and year out. What we have really come to, Mr. President, in my opinion is that we are in fact spending money in many cases with only a minority support.

And the very essence of this bill and this amendment is that you are going to continue to have the spending but you are going to have a spending assuming that there is a majority support in both the House of Representatives and the Senate for it.

But when we lop everything in in a continuing resolution or whatever it may be, we tuck this in here and tuck that in there, the President may like 80 percent of it and 20 percent he does not like, we are giving him the opportunity to send that recission measure back up to the Hill within a 3-day period of time and then within 10 days after that Congress will have to vote on it. If they want to spend the money they will spend the money. It does not take two-thirds to override it. It only takes a majority vote, a very simple direct process, Mr. President.

You could say that this amendment is in the nature of a porkbuster amendment because I am sure that is exactly what the President or any President is going to use it for unnecessary expenditures. He is going to send it back up to Congress and say "Really, if you want to spend it," and I would imagine that many of the rescission measures we would not have any idea what the spending was in the first place, and all of a sudden then we will be confronted and look at that rescission measure and make an intelligent judgment. If we want him to spend it, we say, "Yes, spend it." If we do not we say, "No."

At least you are going to get it before Congress and going to have an opportunity, Mr. President, to not just have these rescissions kicked in the waste can. You are going to have an opportunity to be able to vote up or down on the rescission measures.

Mr. President, this is a necessary amendment to address, I believe, a procedural problem that we do have with the whole budget process.

Rescission was put in there for a very good means, rescission to give the President the opportunity to say, "Look, I do not really want to spend this money".

But what happened in reality is, though, rescission measures are just basically and totally ignored, 327 in the last 2 years, and not one of them, Mr. President, has come before this body for a vote; $12 billion of rescission measures and yet not one has been taken up.

I think that is a very, very sad commentary, and I believe that the essence of this amendment goes in the direction that it will have a positive impact on the budget deficit. It will work to help reduce this budget deficit. It will help to eradicate the problem that we have in not being able to address some of these spending measures.

So I hope the full Senate understands the nature of this amendment. The amendment is very simple and straightforward dealing with increasing the rescission authority of the process that we presently have. It is a minor adjustment to the Budget Control Impoundment Act that was written in 1975 and 1976. But it is a modest amendment.

I think in contemporary times in lieu of the court decision with Chadha, in lieu of the deferral issue that has come before the administration and Congress, as we know right now the President and the administration from time to time has opted for a policy that defers, so they now have agreement with Congress that they are not going to do that any more.

They can get around it. They do not have to deal with the policy deferrals any more. You will have the tool of rescission in getting a vote on that. We could settle this once and for all.

I believe this goes in the spirit and the direction of budget reconciliation that tries to reduce the budget deficit. That is a modest attempt to try to adjust the procedure.

So often we ought to and particularly this time and this era give as many

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powers as we possibly can and as many procedures that are favorable to reducing the budget deficit. So often we create procedures and processes and things of that sort that lend to a bias toward increasing spending and we have seen that accommodate over the past couple decades.

We have seen the institutional process work in a bias in favor of more spending. This will work in the opposite direction. It will work in the opposite direction. It will work in a direction where the process itself will be biased against Federal spending. It will institute a procedure that will sit there and have truth in lending or truth in reporting as far as budget deficits are concerned, because the President will be able to send these messages up to Congress and say, "I don't want to spend this money" and Congress is going to have to make that decision whether they want to spend it or they do not want to spend it.

Right now I dare say we do, in fact, have a situation where you have a minority forcing spending and this simply says if you are going to spend it let us at least get a majority vote.

That is what this amendment calls for.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. QUAYLE. Mr. President, I yield 5 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

Mr. EXON. Mr. President, I thank my colleague and I thank the Chair.

Mr. President, I am pleased to join my good friend from Indiana in offering an innovative proposal which has come to be called the "pork buster" amendment. Since we are here wrestling with the tremendous deficit problem and the necessity to cut expenditures of Government, there could not be anything that is more timely or more necessary than this amendment. Our amendment improves the Presidential rescission authority and puts the brakes on wasteful Federal spending.

The amendment is simple. Under our legislation, once the President signs an appropriations bill, he must, Mr. President, in 3 days, send the Congress his line-item rescissions. The Appropriations Committees then have 5 days to consider the request; determine if the President complied with the act; and make their recommendation to the full Congress. At the end of those 5 days, the rescission request is reported to each House of Congress. Three days after the request has been on the calendar, any Member can request that it be called up for consideration. The rescission request is unamendable and debate is limited to 4 hours.

This procedure guarantees an up or down vote on Presidential line-item rescission requests within 10 days.

This body has voted for appropriations bills containing unwise or wasteful spending provisions, and we all know it. Many of these provisions, popularly referred to as pork, would not garner sufficient congressional or Presidential support if forced to stand alone.

The old-fashioned pork barrel politics have frustrated the efforts of those of us who are seriously interested in reducing Federal deficits.

The Quayle-Exon amendment would simply allow the President to send pork barrel legislation back to the Congress for additional review. However, unlike the line-item veto, the outcome is not prejudged. The President's request can be rejected with a simple majority. If no Member calls for a vote on a line-item rescission within 10 days, the privileged nature of the rescission request is extinguished.

Mr. President, the existing rescission authority in the Budget Act has been of little use in reducing the deficit. Of the 227 rescission requests the President has sent to the Congress in the last 3 years, not one has received a Senate vote.

The Quayle-Exon proposal is different from existing rescission authority in two key ways. It offers an expedited procedure and it requires congressional and Presidential accountability.

As we all know, the Congress frequently sends the President "Christmas tree" appropriations bills often under difficult time restraints. The Quayle-Exon amendment simply allows the President to temporarily remove a few "ornaments" from the "Christmas tree" and ask the Congress if it really believes that the American people can afford a particular piece of tinsel.

In this era of $220 billion deficits and accumulated national debts which exceed $2 trillion, the American taxpayer can no longer afford pork barrel politics. I urge the adoption of this amendment.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? Time is controlled on one side by the Senator from New Mexico and on the other side by the Senator from Indiana.

Mr. DOMENICI. Mr. President, how much time does the Senator from Indiana have remaining?

The PRESIDING OFFICER. The Senator from Indiana has 8 minutes remaining.

Mr. DOMENICI. How much time does the Senator from Florida desire at this time?

Mr. CHILES. I desire about 2 minutes.

Mr. DOMENICI. I yield 2 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. CHILES. Mr. President, I am going to be very brief on this. I know that so many Senators have amendments and we are running out of time.

I would say that this is the prime reason we have the Byrd amendment, and I am going to raise a point of order on this so that it will take 60 votes. This is a major piece of legislation.

We spend an awful lot of time on this floor talking about line-term vetoes and talking about amendments to the debt ceiling. And here on this piece of legislation we are going to put a major, major change on here and just run it through on that kind of basis. That is not what the Reconciliation Act was all about.

We debated for hours and hours, when we were in the Budget Committee—no, not the Budget Committee, the Committee on Budget Affairs—what the Budget Act would look like, how a rescission would be handled, how an impoundment would be handled, what the different authority would be. We have been through the Nixon era of seeing the kind of impoundments that we had and we were not able to do anything.

Now we are going to come out here on a reconciliation bill and make a major change like this. There is no way the body should adopt this. This is why we have the germaneness amendment, the Byrd amendment. This certainly ought to be turned down. We should not be discussing the merits now.

What committee should this be discussed in? Three or four—Government Affairs; it ought to be discussed in the Budget Committee. We are talking about whether we are going to change the Budget Act or not. This is a major, major change and it should not be here.

The PRESIDING OFFICER. Who yields time?

Mr. QUAYLE. I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. QUAYLE. Mr. President, I might point out, we just waived the germaneness rule on a previous amendment that was far more comprehensive than this amendment, 10 times more comprehensive. So I do not believe that this body should be reluctant to waive the germaneness rule on this amendment that does something in a very modest way.

We have debated time and again the procedure in the budget process around here. Many of us have tried to institutionalize serious reforms. We have not gotten very far. We get a

hearing every once in a while, but we have not gotten very far.

So, therefore, we are relegated to vehicles like this. This is a vehicle and it is certainly compatible and in the spirit of budget reconciliation, because this amendment, Mr. President, will save the taxpayers money. This amendment will have a positive impact on reducing the budget deficit.

Now, here is the conclusion and the result of adopting this amendment: In order for this proposal to be enacted, or when this proposal would be enacted, what we are saying is that the President and a majority of both Houses of Congress must agree to spend the money. Wow. That is really a very serious change in the way we do things.

Let me repeat that. This amendment will require the President and a majority of the Senate and a majority of the House of Representatives to agree to spend money.

Now, I would imagine a lot of people will say: "Well, shouldn't that be the process?" And I would say, "Yes."

But, unfortunately, the way that we do things around here in such a hurried-up fashion, the rescission measure has absolutely no bearing in fact. Those measures are simply discarded once they come here.

The only thing we are doing is to guarantee a right, mandate a vote on this. So I do not think it is too much to ask this body to do when they spend the taxpayers' money. And they ought to think about this when they are voting. When they are spending the money of John Jones and Susie Smith out there, a majority of the House and a majority of the Senate and the President ought to agree upon that. Now, that is not too much, in my opinion, to ask this body to agree upon tonight.

I yield such time as the Senator from Nebraska desires.

Mr. EXON. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The proponents of the amendment have 5 minutes and 10 seconds remaining.

Mr. EXON. Mr. President, I thank my friend for yielding. I agree with everything he said.

I am quite surprised at the attitude of the Senator form Florida on this measure. Gramm-Rudman, which is what this is all about, never went to a committee and was never considered by any committee. Did anyone in the United States think that was not a major piece of legislation?

This is not a major piece of legislation. All this is doing is fine-tuning a piece of legislation that we already have on the books.

The President already has, Mr. President—and every person in the Senate that is going to vote on this should understand—the President already has the authority to send back pork barrel items for rescission. The problem with that bill is that it does not require us to vote up or down.

All that the Quayle-Exon amendment does—and I suspect it would not need a lot of study. I think that is not a decent argument against this at all. All that we are saying is that when the President sends back a rescission, under the Quayle-Exon amendment, we have to vote up or down on it. And, by a simple majority, it can go either way.

I reserve the remainder of our time.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. DOMENICI. I yield 3 minutes to the distinguished chairman of the Appropriations Committee.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I am concerned that we put this whole matter into context. We went through an impoundment piece of legislation that brought forth all kinds of difficulty between the executive branch and the legislative branch when President Nixon was the President. Out of all of that background evolved the rescission process that we now have in place.

The Senator from Indiana bemoans the fact that there has been $14 billion of rescission sent up here. I would like to ask the Senator from Indiana, has the Senator from Indiana ever used the procedure to bring that matter to the floor? There is in place today a procedure that any Senator—the Senator from Nebraska, if he sees a pork barrel rescission; and let me inform the Senator from Nebraska, those rescissions involve nutrition and involve human need programs. They involve certainly not water projects of the West, which is so prone to be identified as pork barrel projects.

Those $14 billion, we have appropriated that many dollars in the water projects that are called pork barrel.

Let us bear in mind that this administration has a very low priority on some of the issues and programs that this Senate has a very high priority on. And so to say that somehow this is a place where it dead-ends in the Appropriations Committee is not true.

Any Senator can submit a resolution to support a rescission. And the Senate Appropriations Committee, if it fails to act on that resolution, is discharged in 25 days and it comes directly to the calendar. You have that procedure in place now.

If we are going to move beyond that impoundment history and rescission history, let us move it in a policy manner with an authorizing committee and some hearings and judge this kind of imbalance we are going to create between the executive and legislative branches of government. This is not the place to do it. I am willing to go and debate the issue at any time on the whole action of rescission and the action between the House and the Senate and the executive branch. But this is not the place to do it at this hour of night.

I am very hopeful that the Senate will turn it down.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. DOMENICI. I just want to yield myself 1 minute and I want to say something to the Senator from Indiana.

I want to say to Senator QUAYLE, you said something in your argument that since the Senate waived the germaneness rule on the major amendment, the Domenici-Chiles amendment, that they ought to waive it on this. I was not going to say very much, but I do not think that is a fair statement. I think this waiver that you are seeking of the germaneness really ought to address the issue of whether you want to put a form of the rescission law of the land on reconciliation.

Yes; this point of how many dollars, how many provisions the amendment of Domenici-Chiles which we waived germaneness on by 80-some votes, all of those are either tax reform, revenue raisers, or cut the budget. This is the substantive law of the country. I wanted to distinguish it for you.

Mr. QUAYLE. Will the Senator yield?

Mr. DOMENICI. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. QUAYLE. How much time have I remaining?

The PRESIDING OFFICER. Three minutes and 42 seconds.

Mr. QUAYLE. I yield myself such time as I may consume.

Let me address the points of the Senator from New Mexico. What I was responding to was the assertion of the Senator from Florida that this was too major an issue to waive germaneness. I said if that is the case, we just waived germaneness on a more major issue than in this particular amendment. That was the point of reference which the Senator from Indiana made.

The Senator from Oregon, the chairman of the Appropriations Committee, points out this discharge procedure that is available. He is absolutely correct; that is available. I believe that it certainly goes to prove my point. We do not discharge committees around here, even though it is available, and we do not bring rescission measures before the Senate, either. Therefore, I think that the present rescission process is fundamentally flawed, that it needs to be improved upon. Again, the only thing that I am asking this Senate to go along with is to agree

with the principle that the President of the United States and a majority of the House and a majority of the Senate must agree on spending money of the American taxpayers. That is what we are asking. That is all this amendment does. I dare say that we do need to improve upon the rescission process. It has not worked, it is broken, and it needs to be fixed.

I yield the remainder of my time to the Senator from Nebraska.

Mr. EXON. Mr. President, let me be brief. I appreciate the remarks of the distinguished chairman of the Appropriations Committee. What this amendment of ours does is to streamline that procedure, to speed it up.

Under the present procedure, there are all kinds of ways that that Presidential rescission can be pigeonholed somewhere along the line so that the whole body never gets to vote on it.

The Quayle-Exon amendment simply says that we are going to vote up or down, for or against it, and if we want to by majority vote pass it, then it stands.

This is a streamlining measure. It does not make any direct major change in the process that we have now except it forces us to take a stand on every rescission that the President makes.

I yield the remainder of my time back to the Senator from Indiana.

Mr. CHAFEE. Will the Senator yield for a question?

Mr. QUAYLE. I am glad to yield for a question.

Mr. CHAFEE. As I understand the present system, when a rescission order comes up, it goes to the Appropriations Committee. If a Senator asks for a vote on that, the Appropriations Committee is discharged from that in 5 days. It then comes to the calendar. They you have to go through the procedure of calling it up from the calendar. In other words, you have to proceed by motion to get it off the calendar.

What your procedure would do would say that every rescission order would automatically come before us for a vote in 5 days.

Mr. QUAYLE. Ten days.

Mr. CHAFEE. So we are liable to be having a host of rescission orders flow through here, are we not?

Mr. QUAYLE. No. I think what would happen is that the President on each appropriations bill would have maybe one or two and we could limit that, if that is a concern of the Senator from Rhode Island.

The PRESIDING OFFICER. The time has expired.

Mr. QUAYLE. I move to waive the germaneness rule under section 305 pursuant to section 904 and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DOMENICI. A parliamentary inquiry, Mr. President. I do not believe I yielded back my time.

The PRESIDING OFFICER. The Senator is correct, he has not yielded back his time. The motion is premature.

The Senator from New Mexico.

Mr. DOMENICI. I believe it is premature and I make a point of order against his motion.

The PRESIDING OFFICER. If the Senator seeks recognition, he will be recognized. He has time remaining.

The Senator from New Mexico.

Mr. DOMENICI. Let me say to my friend from Indiana I wonder if you really think that the Senate ought to adopt this amendment. I think we might have 400 or 500 rescission votes. You can talk on my time for a minute. How are we going to do that? If the President takes a bill and goes through it and picks out the pieces and sends them over here, it is automatic. As I understand, every time that happens you will have a vote.

Mr. QUAYLE. If the Senator will yield, the President would have the authority to put it into one package, as many rescission proposals as he wanted to, so far as line items. He could have just one per each appropriations bill. If he wants to have two, he could have two. As I said, if that is a concern to the Senator from New Mexico, I would be happy to entertain my kind of modification that would limit the number of rescissions. I do not believe that is the major problem. We looked at it. We do not have the limitation in there. But neither do we have a limitation that each rescission is by line item. He can put all sorts of line items in one rescission measure and, therefore, we would not spend all our time voting. I do not want that to happen, either.

The PRESIDING OFFICER. The Senator from New Mexico has the floor.

Mr. DOMENICI. Does the Senator want to speak in opposition?

Mr. BYRD. Yes.

Mr. DOMENICI. I yield the remainder of my time to the distinguished minority leader in opposition to the amendment.

Mr. BYRD. How much time remains?

The PRESIDING OFFICER. Two minutes and 25 seconds.

Mr. BYRD. Mr. President, this is a back-door way of getting a line item veto and it is worse than a line item veto. I say that with all respect to the authors of the amendment.

The President will send up a rescission. He may line 100 items in it, he may put 200 items in it, he may include items that are vitally important to the State of Louisiana, to the State of Maryland, the State of Nevada, the State of Nebraska, or West Virginia, items that are important to a Member's State, items that in that Member's judgment are very critical; yet who may, for one reason or another, feel compelled to vote for the rescission.

Let us say the President may say to Senator BYRD, "Senator BYRD, I want your vote on the MX. How do you stand?"

"Well, Mr. President, I will not vote for the MX."

He may say, "Well, Senator BYRD, I am going to be sending up a rescission measure in a few days and in that rescission measure I am going to put this, this, this, and this."

And "This and this and this and this" may be, to some Members, vitally important to their own States.

We may call it blackmail or we may not. That would not be the intention of the President. But that kind of pressure on a Member may be the kind of pressure he cannot resist if he hopes to save projects or funds which are so vital to him and his State, such as funding for emergency relief. That kind of pressure on any Member, Democrat or Republican, of the House or Senate, can be made and made effectively under this amendment.

This is worse than a line-item veto. That rescission measure, when it hits the floor, cannot be amended under this proposal. There is no amendment that can be offered. Under a line-item veto, at least the Appropriations Committee can so word the provisions that the President would find it exceedingly difficult to line item.

Mr. CHILES. I raise the point of order that the amendment is not germane.

Mr. BYRD. I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Senators had better know what they are doing on this amendment. This amendment was not brought before committees. There have been no hearings on it. It is far reaching. I daresay Senators will rue the day they voted for this amendment because if there is anything that we can put into the hands of a President that can enable him to bring undue pressure on Members and force them to vote his way, give him this. I would rather give him a line-item veto than give him this. When this rescission is brought on the floor you cannot amend it. It has a beartrap time limitation on it. Let the President call the Senator from Texas and Arkansas down and have him say, "How are you going to vote?" And they say, "No." The President would say, "I have a rescission coming up in a few days and so you better think it over."

Mr. President, Senators had better think this amendment over.

Mr. CHILES. I make the point of order that the amendment is not germane.

Mr. HATFIELD. Mr. President, I oppose this amendment. Using the typical "fiscal responsibility" jargon, this amendment would seriously erode congressional authority over the budget while further constipating an already sluggish and inefficient budget process.

What this amendment does is reverse the presumption against rescission messages. Under current law, funds identified in a rescission message must be spent unless Congress specifically approves the rescission within 45 days of its submission. This amendment would place the burden on Congress to act affirmatively to disapprove the rescission message.

In other words, we would be required to do our work twice. Mr. President, if our budget and appropriations process is to maintain its integrity as a representative process, it must be allowed to work completely. The budget resolutions and appropriation bills agreed to by the Senate represent the accommodation of differing priorities and needs. These bills are the product of great effort and well-reasoned debate. If the budget package differs from the President's priorities, so be it; Congress as a representative body has worked its will.

Rescissions and deferrals, intended to help fine tune the budget, are now being used by this administration as continued sniper fire at a budget already agreed to by Congress. The President is not compelled to submit just one message but may deliver separate rescission messages, all of which must be incorporated into separate bills and reported to the Senate. The process is inefficient and time-consuming enough as it is. The passage of Gramm-Rudman has made a cumbersome process more so. So why adopt a measure which will require a revisitation by this body of the same budgetary issues, the same spending decisions, that have been previously decided?

At best, this amendment needlessly would increase the workload of the Senate. At worst, the integrity of the congressional budget process would be weakened by altering the constitutional political power balance between the congressional and executive branches of Government. I urge my colleagues to vote this amendment down.

□ 1850

Mr. QUAYLE. Mr. President, I move to waive germaneness under section 305, pursuant to section 904.

The PRESIDING OFFICER. If the Senator will suspend, the Chair will state the situation.

The Senator from Florida makes the point of order that the amendment is not germane.

Mr. QUAYLE. Mr. President, I move to waive the germaneness requirement under section 305 pursuant to section 904. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Do the Senators yield back their time on the motion to waive? All time is yielded back.

The question is on agreeing to the motion of the Senator from Indiana. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] and the Senator from Oklahoma [Mr. BOREN] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 34, nays 62—as follows:

[Rollcall Vote No. 270 Leg.]

YEAS—34

Armstrong	Hecht	Roth
Boschwitz	Helms	Rudman
Broyhill	Humphrey	Simon
Chafee	Kasten	Stevens
Danforth	Kennedy	Symms
Denton	Laxalt	Trible
Dixon	Lugar	Wallop
Dole	Mattingly	Warner
Exon	McConnell	Wilson
Gramm	Nickles	Zorinsky
Grassley	Pressler	
Hawkins	Quayle	

NAYS—62

Abdnor	Ford	Melcher
Andrews	Glenn	Metzenbaum
Baucus	Gore	Mitchell
Bentsen	Gorton	Moynihan
Biden	Harkin	Murkowski
Bingaman	Hart	Nunn
Bradley	Hatch	Packwood
Bumpers	Hatfield	Pell
Burdick	Heflin	Proxmire
Byrd	Heinz	Pryor
Chiles	Hollings	Riegle
Cochran	Inouye	Rockefeller
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kerry	Simpson
DeConcini	Lautenberg	Specter
Dodd	Leahy	Stafford
Domenici	Levin	Stennis
Durenberger	Long	Thurmond
Eagleton	Mathias	Weicker
Evans	McClure	

NOT VOTING—4

Boren	Goldwater
Garn	Matsunaga

□ 1900

The PRESIDING OFFICER. The motion to waive is rejected. The point of order is well taken. The amendment falls.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2854

(Purpose: To provide for the lease of the Metropolitan Washington Airports)

Mr. TRIBLE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Virginia [Mr. TRIBLE], for himself and Mr. WARNER, proposes an amendment numbered 2854.

Mr. TRIBLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, add the following new title:

TITLE X—METROPOLITAN WASHINGTON AIRPORTS

SEC. 1001. SHORT TITLE AND TABLE OF CONTENTS.

This title may be cited as the "Metropolitan Washington Airports Act of 1986".

TABLE OF CONTENTS

Sec. 1001. Short title and table of contents.
Sec. 1002. Findings.
Sec. 1003. Purpose.
Sec. 1004. Definitions.
Sec. 1005. Lease of Metropolitan Washington Airports.
Sec. 1006. Capital improvements, construction, and rehabilitation.
Sec. 1007. Airports Authority.
Sec. 1008. Federal employees at the Metropolitan Washington Airports.
Sec. 1009. Relationship to and effect of other laws.
Sec. 1010. Authority to negotiate extension of lease.
Sec. 1011. Separability.
Sec. 1012. Nonstop flights.

SEC. 1002. FINDINGS.

The Congress finds that—

(1) the two federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the two federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the Federal Government has a continuing but limited interest in the operation of the two federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95-504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the two airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and State governments involved;

(7) in recognition of the limited need for a Federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the Nation;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

SEC. 1003. PURPOSE.

(a) IN GENERAL.—It is therefore declared to be the purpose of the Congress in this title to authorize the transfer of operating responsibility under long-term lease of the two Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control over the management, operation, and development of these important transportation assets.

(b) INCLUSION OF BWI NOT PRECLUDED.—Nothing in this title shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

SEC. 1004. DEFINITIONS.

In this title—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) AIRPORTS AUTHORITY.—The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body to be created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of section 1007.

(3) EMPLOYEES.—The term "employees" means all permanent Federal Aviation Administration personnel employed on the date the lease under section 1005 takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

(4) METROPOLITAN WASHINGTON AIRPORTS.—The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

(5) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(6) WASHINGTON DULLES INTERNATIONAL AIRPORT.—The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

(7) WASHINGTON NATIONAL AIRPORT.—The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686).

SEC. 1005. LEASE OF METROPOLITAN WASHINGTON AIRPORTS.

(a) AUTHORITY TO ENTER INTO LEASE.—The Secretary is directed to enter into a lease of the Metropolitan Washington Airports with the Airports Authority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority within nine months after the date of the enactment of this title.

(b) PAYMENTS.—

(1) LEASE PAYMENTS.—The lease shall provide for the Airports Authority to pay to the general fund of the Treasury $150,000,000 over the term of the lease, in equal annual installments.

(2) RETIREMENT OBLIGATIONS.—

(A) DISCONTINUED SERVICE.—Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under section 8336(d)(1) of title 5, United States Code, of employees who elect not to transfer to the Airports Authority.

(B) UNFUNDED LIABILITY.—Not later than two months after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (i) the future cost of benefits payable from the Fund and due the employees covered under section 1008(e) of this title that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under section 1008(e). In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

(c) MINIMUM TERMS AND CONDITIONS.—The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) OPERATION OF AIRPORTS AS A UNIT.—The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(2) AIRPORT PURPOSES.—The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this Act is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport purposes, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

(3) AIP REQUIREMENTS.—The Airports Authority shall be subject to the requirements of section 511(a) of the Airport and Airway Improvement Act of 1982 and the assurances and conditions required of grant recipients under such Act as of the date the lease takes effect. Notwithstanding section 511(a)(12) of such Act, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of such airports.

(4) CONTRACTS.—In acquiring by contract supplies or services for an amount estimated to be in excess of $200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5) CONTINUATION OF REGULATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), all regulations of the Metropolitan Washington Airports (14 C.F.R. part 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) EXCEPTIONS.—The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 159.59(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) OPERATIONS.—The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this Act and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6) TRANSFER OF RIGHTS, LIABILITIES, AND OBLIGATIONS.—

(A) IN GENERAL.—Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the

Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secretary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) EXCEPTIONS.—The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(C) PAYMENTS INTO EMPLOYEES' COMPENSATION FUND.—The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the date the lease takes effect in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(D) COLLECTIVE BARGAINING RIGHTS.—The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

(7) AUDITS.—The Comptroller General of the United States may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) CODE OF ETHICS.—The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by the board and its employees.

(9) RESTRICTION ON USE OF CERTAIN REVENUES.—Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) GENERAL AVIATION FEES.—The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

(11) OTHER TERMS.—The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this title.

(d) SUBMISSION TO CONGRESS.—The Secretary shall submit the lease entered into under this section to Congress. The lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, whichever occurs later.

(e) ENFORCEMENT OF LEASE PROVISIONS.—The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party.

SEC. 1006. CAPITAL IMPROVEMENTS, CONSTRUCTION, AND REHABILITATION.

(a) IMPROVEMENTS.—It is the sense of the Congress that the Airports Authority should—

(1) pursue the improvement, construction, and rehabilitation of the facilities at Washington Dulles International Airport and Washington National Airport simultaneously; and

(2) to the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by section 1007 of this title for any such improvement, construction, or rehabilitation.

(b) SECRETARY'S ASSISTANCE.—The Secretary shall assist the three airports serving the Washington, D.C., metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

SEC. 1007. AIRPORTS AUTHORITY.

(a) POWERS CONFERRED BY VIRGINIA AND THE DISTRICT OF COLUMBIA.—The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

(b) PURPOSE.—The Airports Authority shall be—

(1) independent of the Commonwealth of Virginia and its local governments, the District of Columbia, and the Federal Government; and

(2) a political subdivision constituted solely to operate and improve both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(c) GENERAL AUTHORITIES.—The Airports Authority shall be authorized—

(1) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;

(2) to issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds—

(A) shall not constitute a debt of either jurisdiction or a political subdivision thereof; and

(B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or part from the proceeds of such bonds;

(3) to acquire real and personal property by purchase, lease, transfer, or exchange, and to exercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

(4) to levy fees or other charges; and

(5) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on the date of enactment of this title.

(d) CONFLICT-OF-INTEREST PROVISIONS.—The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirement of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under section 1005(c)(8) of this title the standards by which members will determine what constitutes a substantial financial interest and the circumstances under which an exception may be granted.

(e) BOARD OF DIRECTORS.—

(1) APPOINTMENT.—The Airports Authority shall be governed by a board of directors of 11 members, as follows:

(A) 5 members shall be appointed by the Governor of Virginia;

(B) three members shall be appointed by the Mayor of the District of Columbia;

(C) two members shall be appointed by the Governor of Maryland; and

(D) one member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(2) RESTRICTIONS.—Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President shall not be required to reside in that area.

(3) TERMS.—Members shall be appointed to the board for a term of 6 years, except that of members first appointed—

(A) by the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) by the Mayor of the District of Columbia, 1 shall be appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for 4 years.

(4) REMOVAL OF PRESIDENTIAL APPOINTEES.—A member of the board appointed by the President shall be subject to removal by the President for cause.

(5) REQUIRED NUMBER OF VOTES.—Seven votes shall be required to approve bond issues and the annual budget.

(f) BOARD OF REVIEW.—

(1) COMPOSITION.—The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review, of the Airports Authority, established by the board of directors. The Board of Review shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) 4 members of the House of Representatives from a list provided by the Speaker of the House;

(B) 4 members of the Senate from a list provided by the President pro tempore of the Senate; and

(C) one member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. A member of the House of Representatives or the Senate from Maryland or Virginia and the Delegate from the District of Columbia may not serve on the Board of Review.

(2) TERMS.—Members of the Board of Review appointed under subparagraphs (A) and (B) of paragraph (1) shall be appointed for terms of 6 years, except that of the members first appointed one member under each of subparagraphs (A) and (B) shall be appointed for a term of two years and one member under each of subparagraphs (A) and (B) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (C) shall be appointed for terms of 2 years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

(3) PROCEDURES.—The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board shall meet at least once each year and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) shall be by a vote of 5 members of the Board.

(4) DISAPPROVAL PROCEDURE.—

(A) SUBMISSION REQUIRED.—An action of the Airports Authority described in subparagraph (B) shall be submitted to the Board of Review at least 30 days (or at least 60 days in the case of the annual budget) before it is to become effective.

(B) ACTIONS AFFECTED.—The following are the actions referred to in subparagraph (A):

(i) the adoption of an annual budget;

(ii) the authorization for the issuance of bonds;

(iii) the adoption, amendment, or repeal of a regulation;

(iv) the adoption or revision of a master plan, including any proposal for land acquisition; and

(v) the appointment of the chief executive officer.

(C) 30-DAY DISAPPROVAL PERIOD.—If the Board of Review does not disapprove an action within 30 days of its submission under this paragraph, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Airports Authority and shall give reasons for the disapproval.

(D) EFFECT OF DISAPPROVAL.—An action disapproved under this paragraph shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

(5) REQUEST FOR CONSIDERATION OF OTHER MATTERS.—The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

(6) PARTICIPATION IN MEETINGS OF AIRPORTS AUTHORITY.—Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

(7) STAFF.—The Board of Review may hire one staff person, to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board may require.

(8) LIABILITY.—A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

(g) CERTAIN ACTIONS TO BE TAKEN BY REGULATION.—Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(h) LIMITATION ON AUTHORITY.—If the Board of Review established under subsection (f) is unable to carry out its functions under this title by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required by subsection (f)(4) to be submitted to the Board of Review.

SEC. 1008. FEDERAL EMPLOYEES AT THE METROPOLITAN WASHINGTON AIRPORTS.

(a) EMPLOYEE PROTECTION.—Not later than the date the lease under section 1005 takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interests of employees during the 5-year period beginning on such date. These arrangements shall include provisions—

(1) which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) for the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under section 5 takes effect except in cases of reassignment, separation for cause, resignation, or retirement;

(3) for the payment by the Airports Authority of basic and premium pay to transferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) for credit during the 5-year period commencing on the date the lease takes effect for accrued annual and sick leave and seniority rights which have been accrued during the period of Federal employment by transferred employees retained by the Airports Authority; and

(5) for an offering of not less than one life insurance and three health insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date the lease takes effect which are reasonably comparable with respect to employee premium cost and coverage to the Federal health and life insurance programs available to employees on the day before such date.

(b) LABOR AGREEMENTS.—

(1) ADOPTION.—The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under section 1005 takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary before the expiration of that 5-year period. Such agreements shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with chapter 71 of title 5, United States Code.

(2) CONTINUATION.—The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(c) RIGHTS OF TERMINATED EMPLOYEES.—Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under section 1005 takes effect shall be entitled, as a condition of any lease entered into in accordance with section 1005 of this title, to rights and benefits to be provided by the Airports Authority that are similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

(d) ANNUAL AND SICK LEAVE.—Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under section 1005 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in section 6103 of title 5, United States Code.

(e) CIVIL SERVICE RETIREMENT.—Any Federal employee who transfers to the Airports Authority and who on the day before the date the lease under section 1005 takes effect is subject to subchapter III of chapter

83 of title 5, United States Code, or chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employment by the United States Government for purposes of such subchapter and chapter. The Airports Authority shall be the employing agency for purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

(f) SEPARATED EMPLOYEES.—An employee who does not transfer to the Airports Authority and who does not otherwise remain a Federal employee shall be entitled to all of the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the Federal Government.

(g) ACCESS TO RECORDS.—The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under section 1005 takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

SEC. 1009. RELATIONSHIP TO AND EFFECT OF OTHER LAWS.

(a) OTHER LAWS.—In order to assure that the Airports Authority has the same proprietary powers and is subject to the same restrictions with respect to Federal law as any other airport except as otherwise provided in this title, during the period that the lease authorized by section 1005 of this title is in effect—

(1) the Metropolitan Washington Airports shall be considered public airports for purposes of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.); and

(2) the Acts entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686), "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and "An Act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes", approved October 9, 1940 (54 Stat. 1030), shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

(b) INAPPLICABILITY OF CERTAIN LAWS.—The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of fee simple title to such airports or by reason of the authority of the Board of Review under section 1007(f).

(c) POLICE POWER.—The Commonwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

(d) PLANNING.—

(1) IN GENERAL.—The authority of the National Capital Planning Commission under section 5 of the Act of June 6, 1924 (40 U.S.C. 71d) shall not apply to the Airports Authority.

(2) CONSULTATION.—The Airports Authority shall consult—

(A) with the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport, and

(B) with the National Capital Planning Commission before undertaking development that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(e) OPERATION LIMITATIONS.—

(1) HIGH DENSITY RULE.—The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this title and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) ANNUAL PASSENGER LIMITATIONS.—The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 93.124) shall cease to be in effect on the date of the enactment of this title.

SEC. 1010. AUTHORITY TO NEGOTIATE EXTENSION OF LEASE.

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under section 1005(a).

SEC. 1011. SEPARABILITY.

Except as provided in section 1007(h), if any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 1012. NONSTOP FLIGHTS.

A person may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,000 statute miles away from Washington National Airport.

The PRESIDING OFFICER. The Senate will please be in order.

The Senator will suspend until the Senate is in order.

Senators will please take their seats and refrain from conversation. The Senator from Virginia is entitled to be heard in support of his amendment.

Mr. TRIBLE. Mr. President, Senator SIMON and Senator CHAFEE have asked that I yield to them briefly so that they can talk about another matter. They have other responsibilities this evening. Therefore, I yield 4 minutes of my time to Senator CHAFEE.

Mr. DOMENICI. How much time does the Senator need on this amendment, including what he intends to yield?

Mr. TRIBLE. Forty minutes on this side would be ample.

Mr. CHAFEE. Mr. President, would that include 4 minutes for me and 4 minutes for the Senator from Illinois? We want to discuss briefly a separate matter. The Senator from Illinois has an appointment.

Mr. TRIBLE. I will be content with 20 minutes, and I will yield to my two distinguished colleagues.

Mr. DOMENICI. Mr. President, let me suggest, on my time on the bill, that I do not mind yielding to anyone on matters that do not pertain to the amendment. But I remind Senators that many Senators have amendments, and we are going to run out of time on the bill for amendments that are in order. So I hope we do not make a practice of this.

At this point, we need 20 minutes in opposition. So I ask unanimous consent that the time on this amendment be limited to 20 minutes for the proponents and 20 minutes for the opponents, not to include the 8 minutes to the two Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Virginia.

Mr. TRIBLE. Mr. President, without losing my right to speak on this amendment, I yield to the Senator from Rhode Island the time allotted by the manager of the bill.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, one of the provisions in the original reconciliation package was an increase of 8 cents in the cigarette excise tax which would bring the total tax on one package of cigarettes to 24 cents. It does not earmark the revenues. This proposal would decrease the deficit by approximately $1.6 billion in fiscal year 1987 and approximately $5 billion over the next 3 years.

The substitute package before us today would eliminate this increase in the excise tax.

Earlier today I was prepared to offer an amendment to restore the 8-cent increase in the cigarette excise tax reported out of the Finance Committee. I have decided not to offer that amendment because I have received a letter from the President stating that if it was adopted he would veto the entire reconciliation bill.

A veto of the reconciliation bill would force us to vote to reduce the deficit through a Gramm-Rudman sequestration order. Such an across-the-board cut would be devastating to many important programs.

A veto would also mean that many of the provisions in this bill which make positive changes to meet the needs of the elderly, disabled, poor women, and children. I would like to outline a few of those changes for my colleagues.

The package includes a provision to allow States to provide Medicaid coverage for poor, elderly, or disabled in-

dividuals whose income is up to 100 percent of the Federal poverty level. This proposal will insure that the health care safety net is secure for the elderly poor and disabled.

We were also able to include a proposal to improve the delivery of prenatal care and health services to low-income women and their children. Under current law, health care services offered through the Medicaid Program reach fewer than one-half of all infants living in poverty. This proposal will begin to close this gap. It extends to States the option of providing prenatal, delivery, and postpartum care to low-income pregnant women. In addition, medical assistance can be provided for low-income infants and children under 6 years of age in families living at the poverty level without requiring that they also meet the eligibility standards for aid to families with dependent children.

It has been estimated that half the birth defects which occur in this country could be prevented through proper prenatal care. Prenatal services can drastically reduce the frequency of low birthweight babies who are 40 times more likely than other infants to die within the first year and who tend to suffer a wide range of long term health problems. This proposal will help mitigate these problems.

Another situation we were able to address is the rising cost of the part A deductible. Last year alone the part A deductible for Medicare increased by an unprecedented 23 percent—from $400 to $492. The projected increase for 1987 is another $80—which would bring the first day deductible to $572. This situation has caused tremendous hardship for many Medicare beneficiaries.

The proposal adopted in the Finance Committee would cut the increase in the part A deductible by more than one-half. Instead of increasing to the projected rate of $572 in 1987, the deductible would increase to about $520. It would also slow the increase in future years.

So, Mr. President, I do not desire to endanger the passage of this bill. There are too many good provisions in the bill and it does move us down the road on deficit reduction.

However, I want to make it clear to my colleagues that an increase in the cigarette excise tax is the least difficult decision we will face in the coming years. This is a fair tax, it is a user fee and its time has come.

I also want to make it clear that I will propose this cigarette tax again next year, and next year it will pass. Why? Because we will be facing a deficit reduction target of $108 billion and to meet that target, we will need to achieve an extraordinary amount of spending reductions and revenue increases. I strongly believe that it would be unfair to cut programs like Medicaid and Medicare rather than increasing a tax on a product that places such enormous costs on those very same programs.

Although, I do not intend to offer my amendment, I want to share some information on the issue with my colleagues.

Each of us, whether a smoker or not, pays for the health care needs of smokers—either through health insurance premiums or taxes.

According to the Office of Technology Assessment, cigarette smoking accounts for $22 billion in medical care costs and $43 billion in lost economic productivity annually. Cigarette smoking cost taxpayers $4.2 billion through the Medicare and Medicaid programs.

Dr. Gerald Oster, an economist with Policy Analysis, Inc. of Boston, testified before the House Ways and Means Committee in June 1985 that reimbursement to society for all of these costs would require an increase in the cigarette tax to $3 per package, and reimbursement for medical care costs alone would require an increase in the tax to 30 cents a package.

Medical evidence of the incidence of tobacco-related diseases among users of cigarettes demonstrates the correlation between smoking and increased health care costs. An increased Federal excise tax on cigarettes is a tax imposed on tobacco users for the resulting excess health care costs they impose on our health care system.

All of us clearly have an interest in promoting better health in the general population, the long-term benefits for federally funded health care programs are clear. In these times of fiscal austerity, we must closely examine the health care costs imposed on taxpayers by tobacco users. The deficit is increasing and health care spending accounts for a major portion of the Federal budget. It is fair to ask smokers to contribute more for the costs they impose on our health care programs.

Not only is an increased excise tax on this product fair, but it will also help discourage smoking.

In the Tax Equity and Fiscal Responsibility Act [TEFRA], Congress doubled the excise tax on cigarettes from 8 to 16 cents. In "Cigarette Taxation: Doing Good by Doing Well," author Kenneth Warner stated that the doubling of the excise tax caused 1¼ million adult Americans to stop smoking and one-half of a million teenagers to stop or not start smoking. Teenage smoking decreased by 14 percent. Adult smoking decreased by 4 percent.

By helping to discourage smoking, an increased excise tax will help improve the overall health of the country. Cigarette smoking is the No. 1 preventable cause of death and disability in this country. Over 350,000 die of smoking related diseases annually; 9 million people suffer from chronic bronchitis and emphysema due to smoking.

There are those who say that smoking is a decision each of us should make and that Congress should not be attempting to influence these decisions through an excise tax. However, there are some personal decisions which have a great impact on all of society—smoking falls into this category. It creates an increased demand on our health care system, much of which is subsidized by the Federal Government. All of us, whether we smoke or not, pay for the health care needs of smokers—either through insurance premiums or our taxes.

Last year, I held a hearing on the issue of an increase in the cigarette excise tax in the Subcommittee on Taxation and Debt Management of the Finance Committee. It was clear from those hearings that there is a great deal of support for an increase in the excise tax from a wide variety of health organizations.

I ask unanimous consent that a list of these organizations be inserted in the RECORD at this point:

There being no objection, the list was ordered to be printed in the RECORD, as follows:

AD HOC GROUP FOR A 32 CENT FEDERAL CIGARETTE EXCISE TAX

1. *American Heart Association.*—One of the largest voluntary health agencies in the United States, and the only such agency that devotes all of its resources to the goal of reducing premature death and disability due to cardiovascular disease and stroke.

2. *American Lung Association.*—The nation's oldest voluntary health organization, committed to the prevention and control of lung disease.

3. *American Cancer Society.*—The world's largest voluntary health agency, devoted to research, education, and service to the cancer patient, with over 2.3 million members.

4. *American Public Health Association.*—An association of over 50,000 community health leaders and health professionals working for the public health.

5. *American Association of Retired Persons.*—The largest organization representing older persons, with 18 million members; committed to advocacy and programs to meet the needs of the older population.

6. *Association of State & Territorial Health Officials.*—The professional organization representing the chief health officials of every state and territory in the U.S.

7. *Children's Defense Fund.*—A national public charity that provides a strong and effective voice for children and adolescents, particularly those from poor and minority families, in public forums.

8. *National Board, Young Women's Christian Association (YWCA) of The U.S.A.*—An organization of 2.5 million members and participants working to promote equity, justice, peace, freedom and dignity for all people, but particularly for women and girls.

9. *National Council on the Aging, Inc.*—A national organization representing providers of services to the elderly which serves as a principal advocate for issues of concern to our older population.

10. *National Association of Elementary School Principals.*—A professional organization serving more than 22,000 elementary and middle school principals in the United States and overseas, and believing that the progress and well-being of the child must be at the forefront of all elementary and middle school plans and operations.

11. *American Association of Dental Schools.*—An organization representing all sixty dental schools in the United States, their faculties and students, and their dental hygiene and hospital-based residency programs.

12. *American Diabetes Association.*—A national voluntary health organization whose two-fold mission is to search for a preventive and cure for diabetes and to improve the well-being of all people who have diabetes and their families; consisting of 220,000 members, 6,400 professional members, 58 affiliates, and 700 chapters.

13. *American Medical Student Association.*—An independent organization of more than 30,000 medical students committed to improvement of medical education and ensuring access to quality health care services.

14. *Adventist Health Network.*—People who enjoy helping others, through education and direct assistance, in 800 centers connected with Adventists churches and schools across the country.

15. *American Association of Preferred Provider Organizations.*—A professional association of competitive alternative health care delivery systems.

16. *Association of American Cancer Institutes.*—All 59 privately and publicly funded cancer centers across the country, providing research, care and teaching.

17. *Joint Council of Allergy and Immunology.*—Is comprised of the American Academy of Allergy & Immunology, the American College of Allergists, and the American Association for Clinical Immunology and Allergy, and represents the specialty of immunology in the socio-economic and political spheres.

18. *Asthma & Allergy Foundation of America.*—A nationwide network of over 100 chapters and support groups and tens of thousands of concerned individuals banded together with a common mission to eradicate asthma and allergic diseases.

19. *American Gastroenterological Association.*—4,000 physicians concerned with digestive diseases.

20. *Center for Science in the Public Interest.*—A consumer advocacy membership organization that seeks to improve national policies with regard to health and nutrition.

21. *Association of Schools of Public Health.*—Representing the 23 accredited graduate schools of public health in the United States.

22. *National Tax Equality Association.*—A business coalition examining current tax reform, with 1,500 business members.

23. *American Association of Respiratory Care.*—A 27,000 member professional association for respiratory therapy practitioners across the country.

24. *American Academy of Otolaryngology-Head & Neck Surgery, Inc.*—A professional association concerned with ear, throat, nose, head and neck surgery, with approximately 7,500 members.

25. *American College of Osteopathic Pediatricians.*—A professional organization of osteophathic physicians providing care to children.

26. *Association of Junior Leagues.*—An international women's volunteer organization with 244 member leagues in the U.S. representing approximately 149,000 individual members, promoting the solution of community problems through voluntary citizen involvement, and training members to be effective voluntary participants in their communities.

27. *National Perinatal Association.*—An interdisciplinary organization of professionals providing health care to infants and pregnant women.

28. *American Academy of Otolaryngic Allergy.*—An organization of physicians specializing in the treatment of the ears, nose, throat and related structures of the head and neck, with 1,200 members.

29. *American Society of Clinical Oncology.*—4,500 clinical oncologists specializing in the treatment of cancer.

30. *American Nurses Association.*—The largest professional association representing registered nurses in the country, with 185,000 members.

31. *American Society of Internal Medicine.*—Representing 20,000 physicians who specialize in internal medicine, and are concerned with the socioeconomics of medical care delivery.

32. *National Association of Children's Hospitals and Related Institutions (NACHRI).*—Represents 90 children's hospitals in the United States and Canada. Its goal is to serve as an advocate for improved child health and the delivery of comprehensive quality health services for all children.

33. *American College of Chest Physicians.*—Is a professional medical specialty society representing more than 11,000 physicians, scientists and educators specializing in pulmonary and cardiovascular diseases.

34. *American Council on Science and Health (ACSH).*—Is a national consumer education association directed and advised by a panel of scientists from a variety of disciplines. ASCH is committed to providing consumers with scientifically balanced evaluations of issues relating food, chemicals, the environment and health.

35. *American Academy of Pediatrics.*—An organization of 27,000 pediatricians dedicated to the health, safety and well-being of infants, children and adolescents in North, Central and South America.

36. *The United Methodist Church, Department of Human Welfare.*—The United Methodist Church, has 9.5 million members; the Department of Human Resources is responsible for the Church's positions on issues of public health and policy.

37. *American Licensed Practical Nurses' Association*—A professional association of more than 3,000 licensed practical and vocational nurses who provide bedside nursing in settings including nursing homes, hospitals, clinics, and community health centers.

38. *American College of Cardiology.*—A 14,000 member, non-profit professional medical society and teaching institution, dedicated to ensuring optimal care for persons with cardiovascular disease or those with the potential of developing cardiovascular disease, and through education and socioeconomic activities, to contributing significantly to prevention of cardiovascular disease.

39. *American Nephrology Nurses' Association.*—An organization representing approximately 3,000 registered professional nurses and allied health professionals involved in all modalities of care and treatment, including hemodialysis, peritoneal dialysis, and transplantation, of patients with renal disease.

40. *National Alliance of Senior Citizens, Inc.*—A national membership organization which focuses its attention on major issues facing older Americans; it is moderate to conservative in political philosophy, and has a membership of more than 3.5 million persons.

41. *Terri Gotthelf Lupus Research Institute.*—Founded as a national research center for the support and coordination of research and education on lupus and related immune system disorders.

42. *American Medical Association.*—A voluntary society of physicians founded to promote and improve the science and art of medicine and the betterment of public health. With approximately 250,000 members, the AMA's varied activities are directed toward achieving excellence among physicians and assuring the American public of the highest quality medical care possible.

43. *American College of Obstetricians and Gynecologists.*—A non-profit organization representing over 26,000 obstetricians and gynecologists dedicated to the health of mothers and infants.

44. *American College of Physicians.*—The College represents over 60,000 doctors of internal medicine, subspecialists, and physicians-in-training; the membership includes private practitioners delivering primary health care; medical specialists in such fields as gastroenterology, endrocrinology and cardiology; medical educators; and researchers

45. *United States Conference of Local Health Officers.*—A national organization representing the interests of local health department officials.

46. *American Speech-Language-Hearing Association.*—Represents over 47,000 speech-language pathologists and audiologists nationwide who provide services and conduct research and training, in the area of communication disorders.

47. *COSSMHO (The National Coalition of Hispanic Health and Human Services Organizations).*—COSSMHO is the only national Hispanic organization with a focus on health and human services. It is a cross-cultural, multi-disciplinary network of organizational and individual members in Hispanic communities in more than 220 urban and rural sites in 32 states, the District of Columbia, and Puerto Rico.

Mr. CHAFEE. Mr. President, I have talked generally about the health risks involved with cigarette smoking, I'd like to take a moment to be more specific.

SMOKING FACTS

First. Over 350,000 Americans die each year of the effects of cigarette smoking: that is 1,000 every day.

Second. Cigarette smoking costs our society in excess of $41 billion annually in health care costs, lost work time, and lost productivity.

Third. More than one out of every seven deaths in this country are smoking related.

Fourth. Some 80 percent of all lung cancer deaths in this country are caused by smoking.

Fifth. Cigarette smoking causes one-third of all heart disease deaths in this country and heart disease accounts for nearly one-half of all deaths.

Sixth. Perhaps almost 10 percent of all persons now alive—or 24 million Americans—may die prematurely of heart disease attributable to cigarette

smoking, unless smoking habits are changed.

Seventh. Children of smoking parents have an increased risk of bronchitis and pneumonia early in life and seem to have a small but measurable difference in the growth of lung functions.

Eighth. Maternal smoking during pregnancy significantly increases the risk of spontaneous abortion, miscarrige, bleeding during pregnancy, stillbirth, and sudden infant death syndrome.

These are just some of the health risks associated with cigarette smoking. And all of them cost the Federal Government money. They either cost the Government money directly through programs like Medicare and Medicaid, or through increased premiums in private health insurance for which we provide a tax deduction.

Why is it argued that it is wrong to ask those individuals who smoke to pay a little more—just 8 cents more per package—for the costs they impose on the rest of us?

One objection to raising the excise tax is that it is regressive—that is it affects the poor, minorities, and the elderly more than other groups. Research by Dr. Jeffery Harris of the Massachusetts Institute of Technology indicates, however, that low-income Americans smoke less than middle-income Americans. Professor Harris also finds that older Americans have much lower smoking rates than the general population. He also found that in considering the number of cigarettes smoked per day, the actual dollar burden of a cigarette tax increase is greater for whites than for blacks in every income category.

These findings are confirmed by the 1979 Surgeon General's report on smoking and health. That report documented that smoking rates among males are highest among middle-income levels, while smoking rates for women rise steadily with income. The poorer the woman, the less likely she is to smoke.

In short, the cigarette tax falls most heavily on people who are well able to afford it.

If we look at cigarette excise taxes from a historical perspective the increase we are proposing in this amendment is clearly not extreme. Inflation has resulted in a reduction in cigarette taxes in real terms and as a percentage of the price of cigarettes. The Federal excise tax was increased only twice during the post-war period; from 7 cents per pack in 1950 to 8 cents in 1951; and from 8 cents to 16 cents in 1982. This translates to a decline in the tax rate measured in 1984 dollars from 37.5 cents in 1946 to 8.6 cents in 1982, followed by an increase to 16 cents in 1984. The Federal tax—as a percentage of the price per package of cigarettes—declined from 42.2 percent to 10.7 percent between 1947 and 1982; it now stands at 16.6 percent, about the same rate as in 1975.

Now, Mr. President, another argument we will be listening to today is that an increase in the excise tax will signal the death knell of the tobacco farmer. No one who supports an increase in the excise tax wants to see these farmers bankrupt.

But, the fact is that consumption will continue to decrease without this amendment—although probably at a slower rate. I don't think that we can in good conscience, especially in these days of tremendous deficits, vote on this issue based on a desire to continue encouraging the production of a product that results in such huge health care costs to the Federal Government.

President Reagan has written to the majority leader stating that he is strongly opposed to the reconciliation targets being achieved through an increase in Federal excise taxes. Indeed, he says in his letter written today, addressed to the majority leader, "In order that there can be no misunderstanding concerning my views, I assure you that I will not sign a budget reconciliation bill that includes any new increase in cigarette excise taxes."

Because we have a package here which includes many things that are favorable—prenatal care and health services to low-income working women and their children, postpartum care to low-income pregnant women, and a host of measures such as that—I am not going to proceed with an amendment that would restore the cigarette tax. But I will say that in future years we will, because I think that tax should be incorporated.

Mr. President, I ask unanimous consent to have the letter from the President printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, September 19, 1986.

Hon. BOB DOLE,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR BOB: I am writing to express my concern about proposals that are now being considered to achieve budget reconciliation targets through an increase in Federal taxes. Specifically, the Senate reconciliation bill, S. 2706, as reported, would increase the Federal excise tax on cigarettes from 16 cents to 24 cents per pack. As I have stated on many occasions, I cannot support this or any other tax increase.

In order that there can be no misunderstanding concerning my views, I assure you that I will not sign a budget reconciliation bill that includes any new increase in cigarette excise taxes.

Sincerely,

RONALD REAGAN.

Mr. TRIBLE. Mr. President, without yielding the floor, I now yield to Senator SIMON to use the time allotted generously by the manager of the bill.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. SIMON. I thank my colleague for his courtesy. Mr. President, up until an hour ago, I planned to offer an amendment increasing the cigarette tax. Senator CHAFEE showed me a letter that was signed by the President, to Senator DOLE, saying that he would veto the bill if that were in there.

Frankly, I find the President's action incredible and irresponsible. It is incredible and irresponsible for two reasons.

One reason is that, fiscally, you are talking in the next 3 years about the loss of $5 billion in revenue which we can ill-afford to lose.

Second, why are the cigarette companies so concerned about this? It is not you and me, not people our ages. It is teenagers. Every study shows that the teenage population is very sensitive to price. As of right now, only about 21 percent of 18-year-olds are smoking. The Harvard study shows clearly that if you put this tax on, there will be a decline in teenage smoking.

I join the Senator from Rhode Island in hoping that soon we will move on this, both for the economic health of this Nation and for the physical health of this Nation.

Here is an easy way to get more revenue and at the same time protect the future of our country.

I yield back the remainder of my time.

Mr. FORD. Mr. President, I am pleased that my colleagues have decided not to offer this amendment. Just 6 months ago this body doubled the cigarette excise tax from 8 cents to 16 cents. Now we would be asking the same industry for another 8 cents. We would be asking that the 101,000 farm families in Kentucky who depend upon tobacco for their very livelihood bear the burden of deficit reduction not for 1 fiscal year, but for 2 in a row. It would not be fair; it would not be right; it would not be necessary.

We just enacted the Tobacco Reform Act this year—a no net cost to the Government program that is working to ensure that tobacco farmers in Kentucky and across this Nation will not go under, and that the Government will not bear the loss of warehoused tobacco. As a part of that package, the tobacco industry agreed not to fight the doubling of the cigarette tax earlier this year. And we all believed that the issue had been put to rest. Had this amendment been offered we would have found ourselves back where we started. My colleagues would be saying to the farmers in my State: "We don't approve of your business and we are going to tax it out of existence."

First, the new tobacco program has only been in effect for 5 months—and it is working. Only 5 percent of the tobacco going to market is going under loan, compared to 27 percent at this time last year.

Second, that means farmers are selling more tobacco. Maybe now, some of them will be able to pay off their Government loans instead of defaulting. Sure, you can get some easy revenue by raising the tax, but you will lose that revenue on the other end when these farmers can't pay their loans.

Third, tobacco-producing States traditionally have some of the lowest delinquency rates on FmHA loans. But if this tax were raised, the companies will buy more foreign tobacco because it is cheaper. That means American farmers will have less income, and those delinquency rates will go up.

These farmers are hard-working people * * * they are not asking for a handout. Only 5 months ago, they took a 30-cent cut in the support price to keep their program alive. Then they took a Gramm-Rudman cut on top of that.

It is not fair to continue to call on the same industry—an industry that grows and produces a legal product which contributes millions of dollars to our economy—to bear the burden of deficit reduction. The compromise before us represents a more fair and equitable way of reducing the deficit and I am pleased my colleagues will not offer their amendment.

Mr. McCONNELL. Mr. President, I was prepared, as was my distinguished colleague Senator FORD, to debate a cigarette excise tax increase amendment as long as was necessary. I appreciate that President Reagan, in a short letter, stated the argument against a tax increase far more eloquently than I could have.

I wish to thank my friends, Senator CHAFEE and Senator SIMON, for not offering a cigarette tax increase amendment. Their feelings on this issue are well intentioned, but I thank them for delaying the inevitable debate to another day. I must say, Mr. President, that I have a much different view of the excise tax debate and I believe that my colleagues deserve to hear another side of the issue even though an amendment was not offered.

In last year's budget reconciliation bill, a number of Senators from tobacco-producing States reluctantly agreed to a permanent increase in the cigarette excise tax from 8 cents to the current 16 cents in order that a comprehensive tobacco program reform package might be included in the reconciliation instructions. The reforms were eventually enacted, as was the 8-cent increase in the cigarette excise tax. An 8-cent increase, Mr. President. A 100-percent tax increase over the previous level, Mr. President.

And here again, only 5 months later and another cigarette excise tax increase proposal was considered as a possible amendment to reconciliation. I ask my colleagues: How much blood can you get from a turnip? Excise taxes already provide over $9.1 billion to Federal, State, and local treasuries annually. And now, here was another effort to raise taxes on cigarettes again, when 34 percent of the retail cost of the product is already tax.

Presumably, this tax increase would have been proposed as a revenue raiser to lessen the need for spending reductions to meet Gramm-Rudman-Hollings deficit targets. I say to my colleagues, perhaps we need to look somewhere else, if we are sincerely committed to dealing with the deficit problem. Let me quote a GAO staff study on consumption taxes:

> With the exception of taxes on motor fuels, no product subject to excise taxes is large enough to produce the sizable revenues that would be required to materially reduce the deficit. Accordingly, if considerably more revenue is wanted from excises, new taxes must be devised.

So there you have it, Mr. President. An independent agency which has never been a friend to the tobacco industry has concluded that an increase in the cigarette excise tax is ineffective in dealing with the deficit problem. Furthermore, every poll from every source I have seen shows that Americans are summarily opposed to tax increases to reduce the deficit. So there appears to be little enthusiasm among the American people for instituting a new excise tax. Certainly, Ronald Reagan has made his intentions very clear. Mr. President, the plain truth of the matter is that the proponents of the cigarette tax increase are again dragging up the health issue and are covering it up with the smoke of the budget deficit.

This is not a health debate. It is an economic debate. If a tax increase of the magnitude considered by Senators CHAFEE and SIMON is eventually approved by the Congress, States, and localities will find themselves confronted with lost revenues of $144.3 million in the first year. On the one hand, we in Washington tell States they will be required to assume a greater role in the management of government programs, yet, by a single preemptive action, we could have made it more difficult for them to afford to do so. Historically, Mr. President, the Federal Government has largely shied away from excise tax increases because such taxes are a primary revenue-raising measure for State and localities. Unbelievably, here we go again, apparently set to raise Federal excise taxes at the expense of State and local governments, only because we in the Congress can't find the political courage to make difficult spending reduction decisions.

Moreover, enactment of an increased cigarette excise tax will cost Kentucky farmers nearly $40 million annually. That is right. $40 million. I say to my colleagues that this is $40 million right out of farmers' pockets after they were forced to absorb a 20-percent reduction in the tobacco price support level to make our tobacco more competitive in the world marketplace. No other commodity group has been required to take an immediate prices support reduction—not one, Mr. President. And our thanks to these farmers who were willing to sacrifice price for competitiveness is that their beloved Federal Government is going to enact legislation which will cost them more money.

The Senate Agriculture Committee yesterday heard testimony about the current plight of the Farm Credit System which illuminated quite clearly just how bad the farm economy is in parts of the United States. Kentucky has largely been spared from the kind of economic pain which has devastated the Midwest, not because Kentucky farmers are necessarily better farmers, but because production of tobacco has provided a stable source of income. I want my colleagues to clearly understand the implications of an increase in the cigarette excise tax. It has a direct, negative, monetary effect on the livelihood of Kentucky family farmers. The very stake of the rural Kentucky economy is dependent on a viable tobacco industry.

To the best of my knowledge, no one has advocated making tobacco illegal. People are going to smoke cigarettes. Given those two facts, it seems a little unreasonable that tobacco growers should be subjected to an endless stream of attacks against them. This is a very serious issue for my Kentucky tobacco farmers; continual attempts to increase cigarette excise taxes are a very real threat to their livelihoods. The Senate, though not tonight, will sometime be in a position to once and for all put an end to the proposition that every time we need a few billion dollars we're going to hit tobacco farmers again.

Mr. President, this goose has laid just about all the golden eggs she has. Cigarette excise taxes have long since ceased to be the great Federal revenue raiser the Congress needs to cope with the burgeoning Federal budget deficit. Raising cigarette excise taxes accomplishes nothing other than to drive another nail in the coffin of the Kentucky tobacco grower.

AMENDMENT NO. 2854

Mr. TRIBLE. Mr. President, on behalf of myself and Senator WARNER, I have offered an amendment to the amendment that would ratify Senate action taken earlier this year.

It would provide for the transfer of Washington National and Dulles Airports to a local authority.

Since the Senate debated this issue for 9 days and approved the bill overwhelmingly, I will not dwell on the merits.

Quite simply, the Senate agreed that the only practical way to modernize and expand these facilities was to transfer the airports to a local authority.

Regrettably, the House of Representatives is unable to act in a timely fashion on this transfer legislation. The Transportation Subcommittee has acted, but the bill is encumbered by two issues—the buying and selling of slots, and the perimeter controversy.

To ensure prompt action, we are taking those peripheral issues away from this bill, and we are offering an amendment that will effect the transfer; and that is acceptable, I believe, to an overwhelming majority of our colleagues here as well as in the other body. This action will reduce the deficit for fiscal year 1987 by $22 million, and it will spare the Federal Government nearly $1 billion in expenditures in the days ahead.

Mr. President, this amendment does not meet the very strict germaneness requirement, but it is directly related to what we are about. It will impact favorably our budgetary situation. It will substantially increase revenues to the Federal Government, and it will thereby diminish the deficit we face.

Let me briefly tell Senators how this bill differs from what we voted on before.

The amendment parallels legislation passed by the House aviation subcommittee, which largely adopted the provisions of the Senate-passed bill, with three major changes. I will enumerate those for my colleagues.

First, the payment to the Federal Government is substantially increased.

□ 1920

The total payment envisioned by this amendment is $187 million. That includes $150 million for the lease and $37 million compensation to the pension program. In all this represents a $187 million contribution to the Federal budget.

Again, in fiscal year 1987, the contribution will be a $22 million increase in revenues and a decrease in the deficit. Moreover as a consequence of this action, we will spare the Federal Government nearly $1 billion in expenditures.

Point 2, this amendment envisions a permanent lease. All the language in our past bill about the sale is gone. Here we envision a 50-year lease at $150 million.

There is no talk about negotiations or a future sale. The airport property will remain in Federal hands. This change meets squarely the concerns of many of the colleagues

Third, this amendment establishes a board of review composed of four Senators, four Congressmen, and a ninth member that will alternate between the House of Representatives and Senate. This board has the right to veto certain substantial actions of the regional authority. It can veto actions including budgets, bond issues, and capital improvement projects.

What we are endeavoring to do is to meet the concerns of many Members of this body who did not want to yield total authority; they want to be able to exercise some oversight on what the locals do.

These changes strengthen the bill and meet the concerns of many Members by providing more money, a permanent lease arrangement—no sale—and a board of review composed of our colleagues in the House of Representatives and Senate who will have substantial authority over the operation of these airports.

These changes, I think, meet the reasonable concerns voiced by Members of this body. They strengthen the bill and I commend this measure to the attention of my colleagues and ask for their support.

At this point, I yield such time as my distinguished colleague from Virginia would require.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, as an original cosponsor of my distinguished colleague, I think it benefits all Senators at this time if we just allow those who are interested in the bill other than ourselves to speak and then we will reply.

Mr. TRIBLE. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. WILSON). Who yields time?

Mr. SARBANES. Mr. President, I yield myself 5 minutes in opposition to the amendment.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, this is exactly what reconciliation should not be used for. This is not a reconciliation amendment. This is a major substantive proposition.

The Senate considered this matter at great length, as many recall, earlier in the year, involving the transfer of Washington National and Dulles Airports. Eventually that was passed. It went to the House of Representatives where it has encountered some difficulty.

The proposition before us has been changed in three major ways as the Senate has indicated. So it is not even the legislation passed by the Senate. But in any event, this is an abuse of the reconciliation process.

It is clearly not germane and at the appropriate time, which is not now, that point, of course, will be made and I hope Members will protect and defend the integrity of the reconciliation process.

Second, the CBO when this bill passed before, and there has been no major change that would affect these dollars figures—you have a larger amount of money over a longer period of time, so it still works out to a very small amount each year—said the following. "In the absence of this bill"—in other words, if the bill was not passed—"receipts are projected to grow to $62 million in 1987"—these are the receipts of these two airports—"and to $74 million by 1990. Thus receipts are projected to exceed outlays by $21 to $24 million annually over the 1987 to 1990 period. And this net income to the Government would be lost if the bill is enacted."

So in fact, enactment of the bill runs directly counter to the objective of reconciliation with respect to addressing the budget deficit, and that is a direct quote from the report of the committee at the time that this legislation was considered in the Senate.

The substantive arguments against this proposition have been addressed at great length, as Members will recall, in the course of previous consideration by the Senate of this measure.

I do not intend to go into all of that again, because I would regard that in itself as being an abuse of the reconciliation process.

Reconciliation was not designed, since it has time limits on the amount of time which a measure can be discussed, to allow major substantive proposals to in effect be run through the back door under limited debate and then put to a vote of the Senate. We just went through that on a previous amendment whose motion to waive its germaneness requirement was overwhelmingly defeated, and I would hope when the Senate comes to vote on this measure that it will do the same.

This bill has encountered difficulties in the House of Representatives. It is a highly controversial and complex measure.

What the Senator is really doing now is rewriting in some significant degrees and bringing it back, recycling it as it were, and trying to put it through on reconciliation.

I would hope the Senate would stand by the integrity of the reconciliation process and clearly rule at the appropriate time that this amendment is not germane and save ourselves undercutting a very important process and allow us to get on to deal with the other important issues that are embraced within the reconciliation proposal.

Mr. President, I reserve the remainder of my time.

Mr. TRIBLE. Mr. President, I do not believe it will be necessary for us to use all the time.

Let me respond very briefly to two points raised by my colleague from Maryland.

We debated this issue for 9 long days. It was necessary to break a filibuster and finally when our colleagues voted on the merits this proposition was decisively approved. So I am not surprised the Senator from Maryland has chosen to oppose this amendment on the basis of procedure rather than the substance.

Let us talk about procedure for a moment. I would suggest to you that this amendment is not all that different from the leadership package that authorizes the sale of Conrail, results in a net gain of revenues and diminishes the Federal deficit.

□ 1930

Morever, I would point out the terms of the Conrail sale proposal by which this body has found to be germane were also substantially changed in the leadership amendment and yet that was not an obstacle to decisive action by this Senate.

Second, I would just hasten to underscore to my colleagues that both the Budget Committee and CBO have validated the $22 million net increase in revenues in the next year. We are talking about over $150 million in additional revenues to the Federal Government over the longer term. We are talking about sparing the Federal Government the expenditure of nearly $1 billion to improve and enhance these airports. But in the fiscal year the Budget Committee and CBO have both validated the assertion that $22 million in additional revenues will flow to the Federal Government. And those are net increases that considers any losses from other areas.

So I would suggest to you that the amendment here is directly related to the reduction of the Federal deficit and it parallels the action just taken by this body in finding the proposal to sell Conrail germane.

The PRESIDING OFFICER. Who yields time? If neither side yields time, time will be divided equally.

Mr. CHILES. Does the Senator desire to use more time on your side or could we yield back the time?

Mr. BENTSEN. The Senate approved S. 1017 in April of this year. That legislation was similar to the Trible-Warner amendment currently pending before the Senate, except that it contained a provision modifying the Washington National Airport perimeter rule. The perimeter rule is a Federal regulation that prohibits nonstop flights of more than 1,000 miles from Washington National. I sought to modify the perimeter rule so that nonstop flights up to 1,250 miles would be permitted from Washington National. The floor managers of S. 1017 accepted my modification.

The perimeter rule is neither a noise rule nor a safety rule, but was put in place in 1966 to prevent a diversion of traffic from Dulles Airport to Washington National. In the early 1960's Dulles was plagued by problems of inaccesibility and inconvenience. There were no restrictions on the number of flights from Washington National. The Federal Aviation Administration was properly concerned that Dulles might not survive over the long term. The perimeter rule offered adequate protection to Dulles, but Dulles is now enjoying a rapid increase in traffic and no longer needs the protection.

There are other reasons why the perimeter rule should be modified. It has an unfair effect on many of the Nation's airlines which, in the wake of deregulation, have reordered the structure of their routes in "hub-and-spoke" configurations. The requirement of an additional stop along the way makes that kind of service less attractive to passengers. This is to say nothing of the waste that results when aircraft make short "hops" from Washington National to Dulles and Baltimore-Washington International Airport on their way to their true destinations.

I have not proposed to abolish the perimeter rule. Rather, I have argued that Congress should extend the limit on nonstop flights from 1,000 miles to 1,250 miles, about the maximum range of the aircraft that operate routinely from Washington National. Such an extension would present the cities of Dallas, Fort Worth, and Houston with immediate opportunities for better service from Washington National. There is no reason to believe that the extension would result in poorer service between Washington National and smaller cities within the 1,000-mile limit.

I regard the perimeter rule as an anachronism that has been left on the Federal statute books despite the fact that it no longer serves any useful purpose. Therefore, I was quite pleased when the Senate decided to approve my modification back in April. Out of deference to my distinguished colleagues from Virginia, I refrained from offering it as an amendment to the Trible-Warner amendment in order to assist them in their effort to move the provisions of S. 1017 that are of special concern to them. I appreciate the assurances of my distinguished colleagues that they will do their best to gain approval of my amendment modifying the perimeter rule on the first germane legislative vehicle that becomes available in the Senate next year.

I am happy to support the Trible-Warner amendment today.

Mr. TRIBLE. If the opponents of the amendment are prepared to yield back, then I would certainly go along with that.

Mr. CHILES. I think the opponents are prepared to yield back their time.

Mr. TRIBLE. I would agree to do so, also.

Mr. ROCKEFELLER. Will the Senator from Virginia yield?

Mr. TRIBLE. I yield to my distinguished friend from West Virginia.

Mr. ROCKEFELLER. Will the Senator yield me 2 minutes?

Mr. TRIBLE. I am delighted to yield such time as my colleague from West Virginia requires.

Mr. ROCKEFELLER. Mr. President, I simply would like to say that I agree very strongly with the Senator from Virginia. I know the debate will not be long on this, but I think the record points out that there will be revenue involved, in terms of helping the budget, and I think that makes this issue suitable under the reconcilation process.

I consider this airport transfer legislation to be an extremely important matter for the Senate to now act on. I think it is the only way we are going to see an improvement in the quality of the airports and the air service in this area.

People say that the airport trust fund could be used for that purpose, but the fact of the matter is, given the present financial and political situation, we are not going to see that happen. The authority which would be created by this amendment would have the ability to sell bonds which, in turn, would be the best way for National Airport and Dulles Airport to make improvements and increase their capacity so as to serve the Nation's Capital and the surrounding States.

The legislation being offered is generally approved, I might point out to my colleagues, by most of the House Members from Maryland and the present State administration of Maryland.

In any event, Mr. President, I think this is an important opportunity to do something which we may not later be able to do. I believe it fits within the reconciliation process, and I hope that the Senate will support my two colleagues from Virginia.

Mr. WARNER. Mr. President, my colleague and I wish to express our appreciation to the distinguished Senator from West Virginia. This, indeed, is a bipartisan issue.

In preparing for this, I have had conversations with the distinguished Senator from Texas and the distinguished Senator from Kansas, both of whom had matters of vital interest in the earlier legislation and now are willing to recognize the importance of getting this bill through to improve the mode of transportation that will help many of us, if not all of us, in the future.

Mr. TRIBLE. Mr. President, I am prepared to yield back my time. I understand the opponents of the measure are prepared to do so, as well.

Mr. CHILES. Mr. President, I believe the distinguished Senator from Maryland would like to speak. I yield to him.

Mr. MATHIAS. Mr. President, I do not want to take the time of the Senate. I want to associate myself with the position of my colleague from Maryland. This has been a troublesome issue. It is one that is obviously not appropriate to consider under the procedures on which we are now operating.

It is a matter that has a difficult road in the other body. I would hope the Senate would not bend the procedures to go into this substantive legislative question.

Mr. CHILES. Mr. President, the Senator from South Carolina is on the floor now and he desires to speak. I yield him such time as he might desire.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, since there is a limit on time, the bottom line is that there never really has been any trouble with either Washington National or Dulles that money from the aviation trust fund would not cure.

The unique thing is that everyone agrees that the Federal Aviation Administration has been operating these airports in a very efficient and responsive manner, both Washington National and Dulles Airports. Traffic is growing, especially at Dulles, and they are making profits. They are meeting the challenges, the competition and the developments, as well as they can. The midfield terminal is being developed voluntarily by the airlines out at Dulles. They are trying to make room. And we know we need additional parking out at National Airport, as well as the modernization of the facilities there.

But, instead of asking for money, which is there, we come about with this discombobulation of leasing and bonding, which combined will cost the Federal Government many, many more times the millions that we have already invested in these airports. I would dare say, in my 20 years, I have paid my fair share in airline ticket taxes and I have not gotten a dime back in improvements at National or Dulles. They tax me on every one of my airline tickets.

Now, the receipts from these taxes, which go into that trust fund, have gone to lengthening the runway at St. Thomas, to the tune of $90 million; to President Carter and the rebuilding of the Atlanta Airport to the tune of $100 million; and $150 million to Dallas-Fort Worth. We have in that trust fund more than $8 billion, but somehow we cannot find $250 million for the modest improvements needed at Dulles and Washington National, the people's airports.

And rather than this mishmash of Senators starting to serve on an oversight board, beginning with leases and the issuance of bonds and further expensive arrangements, I would hope we would take this complicated measure and not put it on the reconciliation. I am prepared to raise a point of order under 305(b)(2) of the Budget Act that this amendment is not germane. It is not appropriate—much less germane. It is certainly not appropriate on this bill. NORMAN MINETA and the House Public Works Committee have been working around the clock to try to reconcile the differences, but they have not come up with a better solution than this body did.

I hope we would not put this measure on this bill. Let us simply utilize the money the Government already has. We do not spend the money we have, but we are running around spending the money that we do not have, running up further interest costs and destroying the economy and future of this Nation.

So, when the time is yielded back, I would be glad to raise that point of order.

I yield the floor.

Mr. CHILES. Mr. President, I yield back the remainder of my time on the amendment.

Mr. TRIBLE. I yield the remainder of my time, as well.

Mr. CHILES. Mr. President, I raise the point of order that the amendment is not germane.

Mr. TRIBLE. Mr. President, I move to waive the committee's requirement under the Budget Act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has been yielded back. The question is on the motion to waive. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Nevada [Mr. LAXALT] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Colorado [Mr. HART], and the Senator from Hawaii [Mr. MATSUNAGA] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—49 yeas, 45 nays, as follows:

[Rollcall Vote No. 271 Leg.]

YEAS—49

Abdnor	Gramm	Packwood
Armstrong	Grassley	Pressler
Bentsen	Hatch	Quayle
Boschwitz	Hecht	Rockefeller
Broyhill	Heinz	Roth
Chafee	Helms	Rudman
Cochran	Inouye	Simpson
Cohen	Kassebaum	Specter
Danforth	Kasten	Stafford
Denton	Lautenberg	Stevens
Dixon	Long	Symms
Dodd	Lugar	Trible
Dole	McConnell	Wallop
Durenberger	Metzenbaum	Warner
Evans	Murkowski	Wilson
Gore	Nickles	
Gorton	Nunn	

NAYS—45

Andrews	Ford	McClure
Baucus	Glenn	Melcher
Biden	Harkin	Mitchell
Bingaman	Hatfield	Moynihan
Bradley	Hawkins	Pell
Bumpers	Heflin	Proxmire
Burdick	Hollings	Pryor
Byrd	Humphrey	Riegle
Chiles	Johnston	Sarbanes
Cranston	Kennedy	Sasser
D'Amato	Kerry	Simon
DeConcini	Leahy	Stennis
Domenici	Levin	Thurmond
Eagleton	Mathias	Weicker
Exon	Mattingly	Zorinsky

NOT VOTING—6

Boren	Goldwater	Laxalt
Garn	Hart	Matsunaga

□ 2100

The PRESIDING OFFICER. Sixty votes being required for waiver, the point of order is well taken. The amendment falls.

Mr. DOMENICI. I move to reconsider the vote by which the motion was rejected.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I yield 20 minutes to the distinguished Senator from Maine [Mr. COHEN] off the bill.

The PRESIDING OFFICER (Mr. TRIBLE). The senior Senator from Maine is recognized.

Mr. COHEN. I thank the Chair.

Mr. President, I would like to beg the indulgence of my colleagues for a few moments. I am taking the rather extraordinary procedure of anticipating a motion that I expect to be made in a short period of time, but since time is running out, my fear is that we will have a very complex issue come before the body with no time to explain it. So I would like to take just a few moments this evening to explain a matter that is of great significance to this Congress and, I believe, to the country.

I anticipate a motion will be made by the chairman of the Judiciary Committee, Senator THURMOND, at a later time to strike a provision of the reconciliation package which pertains to program fraud. I would like to take a moment to talk about this motion. It

will be presented to you as a procedural motion, something that is technical in nature and not really dealing with the substance or merits of the bill. I ask Senators to listen carefully so they will not be mislead by that siren call, the contention that we are only dealing with procedure, a mere technicality not involving the merits of this measure.

Everyone in this Chamber from time to time, either in the Chamber or back in their home districts or States, complains about three words: fraud, waste, and abuse, be it in the Food Stamp Program, in a government contracting program, or in the defense industry. Time after time people rail against fraud, waste, and abuse.

It is time that we start doing something about it instead of just talking about it. And that is what the Governmental Affairs Committee has tried to do. Senator ROTH, who is the chairman of the Governmental Affairs Committee, initiated this program fraud measure 5 years ago, and he has tried unsuccessfully since 1981 to shepherd this type of legislation through the Congress.

The General Accounting Office in 1981 released a study of some 77,000 cases of fraud that were committed during a 3-year period against you and me and every taxpayer in this country—77,000 cases of fraud against the Government. More than 60 percent of the cases that were referred to the Justice Department were not prosecuted on a criminal basis or indeed even proceeded against on a civil basis, and the reason for that is the dollar amount is not significant enough. In other words, it would cost more money for the Justice Department to proceed in court against those individuals who are cheating the Federal Government, the Federal taxpayer, than would be recovered. Therefore, the Justice Department doesn't litigate the cases, and the fraud continues. According to the Justice Department, we are losing tens, if not hundreds, of millions of dollars every year due to fraud and abuse perpetrated by citizens who submit false and fictitious claims to the Government. Those perpetrating this fraud certainly have very little reason to fear prosecution, either on a civil or criminal basis.

And so Senator ROTH and others who serve on the committee—Senator LEVIN, Senator CHILES, and so many others—became concerned as to how we fashion an appropriate remedy to deal with this problem. We have produced the so-called Program Fraud Civil Remedies Act. The bill was an effort to prevent those who are cheating us of millions of dollars every single year, without depriving them of due process. We established, pursuant to the recommendation of the Administrative Conference back in 1972, I would point out to my colleagues, a procedure to deal precisely with these types of small-dollar fraud cases that are now not prosecuted.

The committee working the past 5 years finally produced a product which has virtually the unanimous support of the committee, one dissenting vote only. I will list those individuals and institutions in a moment which support this administrative procedure.

Upon an allegation that there has been a false or fictitious claim or statement filed or made, the investigating official, usually the inspector general, would conduct a preliminary investigation to see whether there was sufficient evidence to proceed against a given contractor or individual. The inspector general would accumulate the evidence and then present it to a reviewing official within the agency. If the reviewing official is satisfied that there is sufficient evidence that the agency should proceed on a civil basis against these contractors who are perpetrating the fraud, then the case goes to the Justice Department. The agency asks the Justice Department, "Do we have your permission to proceed against these individuals based upon the facts that we have established to date?"

The Justice Department has an absolute veto over that particular procedure. Its officials can say, "No, you shall not proceed. We don't think it is meritorious," or, "The amount is too high, we think there is much more involved." For any reason, the Department can say no, or can give an affirmative, allowing the agency to proceed against the individuals who have allegedly perpetrated this fraud.

Once given the go-ahead by the Justice Department, a hearing is set up pursuant to the Administrative Procedure Act. There is an administrative law judge who presides over the hearing. The person who is the defendant as such, the one who is complained against, has the right of notice, has the right to appear, of course, with counsel, the right of discovery, the right to cross-examine during the course of the procedure, all pursuant to the well-established Administrative Procedure Act.

Assuming that that individual or company is ruled against, they have a right of appeal to the head of the agency, and from there, if not satisfied with the result, can appeal the ruling to the Federal court of appeals. That is the procedure in the bill that we have produced from the Governmental Affairs Committee.

Well, who supports such a procedure? I mentioned Chairman ROTH, Senator CHILES, Senator LEVIN, Senator RUDMAN, Senator HATCH, and so many others in this Chamber. I might say that one of the reasons this measure is being objected to is because the provisions for due process, according to the Parliamentarian, might fall within the jurisdiction of the Judiciary Committee. It is an ironic situation that we have here. If this bill were free standing before us, it would be solely within the jurisdiction of the Governmental Affairs Committee. This bill has been introduced since 1981. Every year it has been referred to the Governmental Affairs Committee. There is no joint referral. The Judiciary Committee has never had referral over it. There has never been a sequential referral. The Judiciary Committee has never even requested referral over the program fraud bill. But notwithstanding that, at the conclusion of the introduction of our bill, I testified before the Judiciary Committee at the request of Senator HATCH and Senator THURMOND, and both of those distinguished Senators were present and asked questions. I tried to respond to their concerns. So the Judiciary Committee has actually had a hearing on this measure.

Now, who supports the bill? The Justice Department supports the bill. I will not take the time right now to read the very, very strong letter from the Justice Department saying this may be the most important piece of legislation to help combat fraud, waste, and abuse that we could produce this year and the years to come. The Congressional Budget Office has said it will produce a "net reduction in the deficit." This is why it is in reconciliation. Eighteen inspectors general are strongly in favor of this bill, saying this is vital if they are going to do the job that we have mandated for them.

How about the Packard Commission that we keep hearing so much about? The Packard Commission recommended this particular proposal. The Office of Management and Budget did as well. In a letter from OMB to the Washington Post that I will submit for the RECORD, the Deputy Director of OMB says:

> To the Editor: Your August 7th article, Defense Lobbyists Bottle Up Bill on Contractor Fraud, does a fine job of pointing out how a few well-financed lobbyists can senselessly hold up a solid piece of legislation with broad-based support. Unfortunately, a few contractors, some of which are currently being investigated for possible fraud, have apparently managed to thwart the passage of antifraud legislation.

So we have the Justice Department, the GAO, the inspectors general, the Packard Commission, and OMB in support of the program fraud bill.

Now, is this something that is unprecedented in our history? The answer is clearly no. As a matter of fact, an amendment passed in the 1981 reconciliation package which included the Civil Monetary Penalties Act—a provision very similar to this bill. In that statute, we authorized the Department of Health and Human Serv-

ices to proceed on a civil basis to go after those health care providers who were defrauding the Federal Government by billing services they never actually performed.

□ 2010

The Department of Health and Human Services has been tremendously successful under this similar procedure. So we have Justice, GAO, the IG, the Packard Commission, OMB, Health and Human Services, and so forth, who support this legislation.

Now, who opposes this legislation? The senior Senator from South Carolina opposes it. The chamber of commerce opposed it at one time, but no longer do. The aerospace industry opposed it. They no longer oppose it because we made the changes that Senator HATCH and several other Senators had proposed to the bill. So we have just a handful of people who now object to the provisions of the bill because they maintain that there is no right to a jury trial here.

Mr. President, the issue of a jury trial has been settled by none other than the Supreme Court of the United States. In the 1977 Atlas Roofing case, the Supreme Court ruled on a procedure virtually identical to this measure and held it to be completely constitutional.

Not only has the Supreme Court ruled upon it, but also the Justice Department has said it is constitutional; the American Law Division of the Congressional Research Service has said it is constitutional; the Federal Bar Association has said it is constitutional. A number of prominent constitutional scholars all reject the charge that it is unconstitutional.

So we have here a rather unique procedural provision. The bill is referred to the Governmental Affairs Committee for the last 6 years. No sequential referral to the Judiciary Committee has even been sought. A hearing was held before the Judiciary Committee even though it was never granted a referral.

I subsequently worked out a compromise bill with Senator HATCH to address his objections.

If the bill were to come before the Senate as a freestanding measure, there could be no parliamentary challenge to it. It is completely within the jurisdiction of the Governmental Affairs Committee. But because it has been included in the reconciliation package, the Parliamentarian—erroneously, in my judgment—believes that the procedural provisions would be ruled to be extraneous because they might properly fall within the jurisdiction of the Judiciary Committee.

Therefore, if the senior Senator from South Carolina is correct and he files a motion to delete this based upon the provisions being extraneous, we will have a program fraud bill without any due process protections, which the senior Senator from South Carolina is so concerned about. He would then knock out the entire bill after that, saying: "Well, you have an antifraud statute with no procedure. How can you have that? Let's kill the whole thing."

So I am asking Senators to look at this carefully. It is merely a technicality, that the Judiciary Committee ought to have jurisdiction over the procedure. In fact, the bill has always been with Governmental Affairs, and the Governmental Affairs Committee went to the Judiciary Committee this year and presented the bill for their consideration. So the bill is now before us as part of the reconciliation package because, No. 1, it is within the Governmental Affairs, and, No. 2, CBO has said that it will save money.

So I appeal to my colleagues to reject the motion which I expect to be made by the Senator from South Carolina.

I also would like to rebut the argument that the Senator, I anticipate, will make that everybody is entitled to a jury trial. That is not the law. The law says that if you are proceeded against criminally you are entitled to a jury trial. This is civil procedure, and it is not new ground for any of us.

There are over 200 statutes on the books right now which allow for civil monetary penalties to be imposed.

So we are doing precisely the thing the Administrative Conference of the United States recommended in 1973. None other than Judge Scalia—do you remember his name? Just yesterday we confirmed the nomination of Judge Scalia to the Supreme Court—who wrote this recommendation from the Administrative Conference. It was Judge Scalia.

This is in a memo randum dated December 1973. He was Chairman of the Administrative Conference. I will read what the Conference said:

. . . authority should be sought to impose such penalties in administrative proceedings rather than in the courts, with the agencies' determinations subject to review on a substantial evidence test, but not subject to a trial de novo.

So you have the Supreme Court decision made in 1977 that affirms the constitutionality of the bill. We have numerous legal scholars who concur. We have Judge Scalia, whose nomination we confirmed unanimously to the Supreme Court, saying that this is an appropriate and desirable procedure to proceed on. We have the American Law Division of CRS, Federal Bar Association, and many others. Yet, the chairman of the committee is going to move to strike this provision because there is not a jury trial.

We will then find ourselves in a position of having insisted upon a jury trial, which will never take place because the Justice Department will never prosecute the claims under $100,000. The beat will go on and on, with millions of dollars lost to contractor fraud. Everyone who has constantly campaigned about waste, fraud, and abuse, in my opinion, will have subverted the process itself.

Mr. President, I yield such time as he needs to Senator ROTH, and then I will yield to Senator LEVIN the remaining time.

Mr. ROTH. Mr. President, first, I want to congratulate the distinguished Senator from Maine for his eloquent and articulate presentation of the program fraud legislation. I also congratulate him for the leadership and fine job he has done in refining and fashioning this legislation.

□ 2020

As he has already pointed out within the Government Affairs Committee every member on both the Republican and Democratic side except one voted in support of this bill.

It does represent, as Senator COHEN has alread pointed out, a most important reform.

Let me point out that several years ago the Comptroller General of the United States issued a very fine two-volume report on fraud in government programs.

The importance of this problem I think is demonstrated in its opening statement where it says, "GAO believes that the prevention of fraud and related acts through effective systems of internal control is top priority"—is top priority.

It also recognizes the deterrent effects of punishing perpetrators. Because a number of cases make it impossible for the Department of Justice to prosecute every case of fraud referred to by Federal agencies, it is even more important that Federal agencies take effective administrative actions when warranted. In addition, GAO believes that civil fine authority would be a useful enforcement tool for agencies whose cases the Department of Justice decided to act on.

Mr. President, time restraints prevent me from saying more because I know at this stage we only have 1 minute and I wish to yield to Senator LEVIN for any comments he may care to make.

The PRESIDING OFFICER. The Senator from Michigan [Mr. LEVIN].

Mr. LEVIN. Mr. President, I rise to strongly support the effort of the Senator from Maine in this area. The critical fact is that 60 percent of the fraudulent claims against the United States go unrecovered, because the Justice Department cannot afford to go to Federal court.

We have here an administrative process which has been found to be constitutional by everybody who has looked at it, saying it totally complies with due process.

There has been no effort for a sequential referral by the Judiciary

Committee. Rather we expect there will now be a rather technical attempt to knock this program fraud section from the bill.

Let me also emphasize that the program fraud provisions are already in this bill. This is not an effort being made by us to add it to the bill. This is already in the reconciliation bill, and we expect that the effort that will be made will be to knock it out of the reconciliation bill.

It was put into the bill by a nearly unanimous vote in the Governmental Affairs Committee, with all but one member of the committee voting for this bill. It is a bipartisan bill. It fills the gaping hole in existing law to try to recover money obtained through fraudulent claims against the U.S. Government, and that is the reason why we strongly hope we can keep it in the bill.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. THURMOND. Mr. President, I presume I will have the same time to reply.

The PRESIDING OFFICER. The time is controlled by the Senator from New Mexico and the Senator from Florida.

Who yields time?

Mr. DOMENICI. Mr. President, let me say to my friend, Senator THURMOND, the chairman of the Judiciary Committee, I cannot give him 20 minutes. I only have 26 for the rest of the bill. Senator COHEN asked for 20 minutes so I gave them to him. I did not know the Senator from South Carolina wanted 20 minutes or I would not have given Senator COHEN 20.

Mr. THURMOND. The Senator knows I want to reply, of course.

Mr. DOMENICI. How about 10 minutes?

Mr. THURMOND. Ask for additional time and give me 20 minutes equal time to reply. Just ask unanimous consent. Ask unanimous consent.

Mr. DOMENICI. Mr. President, the distinguished Senator from Florida is going to yield 10 minutes of his time to me, and I yield that 10 minutes and ask unanimous consent that an additional 10 minutes be granted to the distinguished chairman of the Judiciary Committee Senator THURMOND. I ask that that time not be counted against anyone.

Mr. CHILES. The Senator is yielding another 10 minutes?

Mr. DOMENICI. I will either have to do that or give him all of my time and have none left, whichever is preferred.

Mr. CHILES. I hate to see us add time to the overall bill and everything else. I will yield some of my time and happy to do that.

Mr. DOMENICI. Give me 10 more and we will be in business.

Mr. CHILES. I cannot give the Senator 20 minutes.

The PRESIDING OFFICER. Will the Senator from New Mexico state the unanimous consent.

Mr. DOMENICI. I will not restate it until it is all right with Senator CHILES. He knows what I said.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Charge it to me.

Mr. CHILES. I give him 10 and later if Senator DOMENICI needs additional time I will yield to him.

Mr. DOMENICI. I yield 20 minutes to the distinguished Senator, the chairman of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from South Carolina, Mr. THURMOND, is yielded 20 minutes.

Mr. THURMOND. I wish to thank the able Senator from New Mexico.

I want to say first that the provision here has been introduced and is on the calendar now. This bill stands the same chance of being brought up as any other piece of legislation.

Why should this piece of legislation come ahead of the lobbying bill? Why should it come ahead of any other piece of legislation here?

They stuck it in here because they could not get it up. There are a lot of matters I wanted to get up and could not get up.

Last year, the leaders here in the Senate, Senator DOLE and Senator BYRD, led a movement and passed a bill to keep out extraneous matters. That was the law. That was passed. And this is extraneous. We will let the Parliamentarian rule whether it is. And if it is extraneous, why should it be included? Why should we make an exception for this over any other piece of legislation?

Mr. President, another thing, the distinguished Senator from Iowa had a bill on this subject, and the main difference between his bill and the bill here of the distinguished Senator from Maine is that the bill of the Senator from Iowa provided for a jury trial.

What they are trying to do here in this bill is to have people who are bureaucrats fine people $100,000 without a trial by jury.

Senator GRASSLEY's bill which we have already passed in the Senate provides for a jury trial.

The seventh amendment to the Constitution provides for a jury trial. I want to read it.

> In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of common law.

Mr. President, we have already passed the Grassley bill and it provides to punish fraud, and I am in favor of punishing fraud and we ought to punish fraud and we have already done that except we have provided that when anyone is charged they can get a trial by jury.

What they would do in this bill is to deny trial by jury.

Is there anyone here who is in favor of passing a bill to deny someone the right of trial by jury if he can be fined $100,000?

Mr. President, as I say, this bill that is contained here now is extraneous matter. I think it will be admitted it is extraneous matter. If it is extraneous matter, why should it go on this bill? The law was passed last year by both of the leaders and the entire Senate to keep off extraneous matters.

I want to say this: I voted tonight against an amendment by the able and distinguished Senator from Virginia, who had a good amendment here, but it was held extraneous. It was extraneous and that is the reason I voted against it.

Are we going to let other amendments come in here that are extraneous, too, and pass them? If so, we are discriminating against the Senator from Virginia. We are discriminating against the Senator from Indiana, who had a good amendment. I favored his amendment. But I did not vote for it because it is an extraneous matter. And we had decided to keep off extraneous matters. And therefore, why should we give exception here to particular special favoritism? Why does the Senator want special favoritism?

Of course, there is fraud. We are against fraud. The Grassley bill will punish fraud. This amendment will limit the punishment up to $100,000. The Grassley bill has no limit. They can go up to millions of dollars which they ought to do maybe in some cases if there is a fraud.

Let us treat everybody fair on this matter.

Mr. President, I want to say further——

Mr. COHEN. Mr. President, will the Senator yield for a question?

Mr. THURMOND. No, I will not yield now because my time is so limited. I did not interrupt the Senator and I am sure he understands.

Mr. COHEN. I think the Senator is misrepresenting the facts.

Mr. THURMOND. I say this, Mr. President, I have a lobbying bill here I have been trying to get up for a long time. Should I be allowed to put the lobbying bill in here? It would be extraneous. I have not offered it here for that reason. We have been trying for weeks and weeks to get it up.

Others of you have tried to get up matters and you have not gotten them up.

Are we going to let this come up or are we going to vote on this? It is just as extraneous as mine is. It is just as extraneous as many other pieces of legislation.

As I say, the Grassley bill has already been passed and the Grassley bill provides for a trial by jury. Why should not one have a trial by jury and why should he be fined $100,000 without a trial jury? That is what this bill does.

A bureaucrat can fine him $100,000 without a trial by jury. I am in favor of a trial by jury.

But aside from the merits of the bill, I want to say here that we are following procedure and the procedure is to keep off extraneous matters.

□ 2030

This is admitted to be extraneous. And if it is admitted to be extraneous, why should we treat with favoritism this particular matter and turn down the others which we have already turned down tonight? I say, what is fair for the goose is fair for the gander. Let us treat them all alike. Let us keep off all extraneous matters. If we do that, Mr. President, then we are treating everybody equally.

Mr. President, I am now going to yield to the distinguished Senator from North Carolina, Senator HELMS, who wanted to speak on this.

Mr. President, how much time do we have left?

The PRESIDING OFFICER. There are 14 minutes and 17 seconds remaining.

Mr. THURMOND. How much time remains?

The PRESIDING OFFICER. The Senator from South Carolina, Mr. THURMOND, has 14 minutes and 17 seconds remaining.

The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I thank the Senator for yielding to me. I will not use much of this time, but I want to get this matter clear in my own mind.

Now, it is true that the Judiciary Committee has reported a bill on this subject, is that correct?

Mr. THURMOND. That is correct. It is already passed the Senate. It gives a trial by jury and you can fine them more than $100,000.

Mr. HELMS. Does the Judiciary Committee bill provide for a vast bureaucracy to handle this matter?

Mr. THURMOND. No, it does not, it does not provide for all this bureaucracy. And I do not think any bureaucrat in the Government ought to be allowed the power to fine people $100,000. I think they ought to have a trial by jury.

Mr. HELMS. That is the Senator's point.

Mr. THURMOND. That is what the Senate bill from the Judiciary Committee did, which we have already passed here.

Mr. HELMS. But the proposed Cohen amendment would provide for the bureaucracy, is that correct?

Mr. THURMOND. It would, up to $100,000. It would be limited to that.

Mr. HELMS. Now, I will ask either the Senator from Maine or the Senator from South Carolina—I am just trying to get the facts straight in my mind—the bill which was reported from the Judiciary Committee provided for a trial by jury and was passed by the Senate. Now the Senator's amendment originated, as I understand it, in the Governmental Affairs Committee, is that correct?

Mr. COHEN. Will the Senator yield for clarification? I do not have an amendment pending. The program fraud bill is in the reconciliation bill. I do not even have an amendment pending. The program fraud bill is part of the reconciliation package passed by the Governmental Affairs Committee because, first, the bill was within our jurisdiction. Second, the Congressional Budget Office said it would save money. That is why it was included in the reconciliation package.

Mr. HELMS. I am not a lawyer and do not pretend to be one—and sometimes I thank the Lord I am not—but it bothers me that such fines as have been indicated can be ordered without a jury trial and without other existing safeguards.

Mr. COHEN. Will the Senator yield for one other point on the fines issue?

Mr. HELMS. Well, I suggest I will do that on your time.

Mr. COHEN. I do not have any time.

Mr. HELMS. Maybe on Senator CHILES' time. I do not want to use up Senator THURMOND's time.

Mr. COHEN. I think the $100,000 figure has been bandied about and that is not the situation. I thought it should be clarified before you make an error in judgment and think it is a $100,000 fine. It is a $10,000 fine per false statement filed or double the amount actually claimed, but you can never proceed on any occasion where the total claimant is more than $100,000.

Mr. HELMS. But, in any case, the defendant, or however you might describe him or her, would not have a trial by jury.

Mr. COHEN. For those cases where they are that small amount.

Mr. HELMS. I do not consider $10,000 a small amount.

Mr. COHEN. But what is happening, if I could continue, we are losing millions of dollars due to people cheating the Government, cheating you, in cases involving under $100,000 that the Justice Department refuses to prosecute. The Justice Department said we need this assistance. Justice Scalia, whom you and I voted for yesterday, wrote the memo saying we should set this process up.

Mr. HELMS. I thank the Senator. I thank the Senator from South Carolina.

Mr. THURMOND. Mr. President, I want to say again that the seventh amendment to the Constitution—you can look it up—provides that for $20 and above you can have a jury trial.

In suits at common law, where the value in controversy shall exceed $20, the right to trial by jury shall be preserved.

That is the wording of the Constitution. I have resisted the erosion of this constitutional guarantee in the past and do so again today.

Actions brought under this bill are common law actions for fraud or misrepresentation for which damages are sought. Therefore, these actions are legal in nature, and the accused must be given a jury trial. Although these program fraud provisions are referred to as "assessments" and "civil penalties," they are trying to change it. They say they are assessments and civil penalties. Well, if they can assess a civil penalty of $100,000, what is the difference? Although these program fraud provisions are classified that way, we know that it is the same as any other punishment. They are, in fact, damages and punitive damages—that is what it amounts to—for which the defendant is entitled to have a jury trial.

No Supreme Court decision has ever held that common law actions for fraud do not mandate a right to jury trial. In Atlas Roofing Company versus Occupational Safety and Health Commission, the Supreme Court upheld the imposition of civil penalties for the violation of new statutory obligations. The Court was careful to distinguish these statutorily created causes of action from common law actions: "[Congress] created a new cause of action, and remedies therefore unknown to common law, and placed their enforcement in a tribunal supplying speedy and expert resolutions of the issues involved."

These program fraud provisions are clearly rooted in common law fraud. Proponents of the legislation themselves have referred to the bill on which these provisions are based, S. 1134, as a "mini-False Claims Act," which has, since it first became law in 1863, provided for a jury trial for defendants accused of perpetrating a fraud. The False Claims Act has never allowed an administrative adjudication for fraudulent claims, a common law action. The seventh amendment clearly states that a right of jury trial attaches for common law actions. I vigorously oppose this effort to subvert the plain meaning of the Constitution.

Mr. President, I repeat, first, we have already passed a bill on fraud and it is not limited to $100,000, but it gives a jury trial to anyone that is so accused. That is the Grassley bill.

The Cohen bill is on the calendar now. It can be taken up if he wants to consider it and I will be glad for it to

be considered. I would like for my bill to be considered, as I stated, on lobbying and maybe we can reach some agreement that they can both be considered. But that is a matter that the Senate will have to determine.

On this question, it is purely whether you are going to put extraneous matters in this bill and allow them to stay in there; whether they are in there or whether you add them there, are you going to allow extraneous matters here?

The law we passed last year said we will not have extraneous matters and, therefore, that is the reason I am going to make a motion to take this out. We have already killed the other extraneous matters tonight and it would be unfair to allow this one to stay in where you have already killed some others.

Mr. President, in closing, I feel this is a very important matter. I feel this is a matter that involves the jurisprudence of this country. Are we going to set a precedent here?

A few years ago, we had a housing bill and that allowed the bureaucrats to assess a civil penalty up to $10,000. The committee would not report it out, even. They never did report it out.

Well, this bill goes to $100,000. Are you going to allow people to be assessed a civil penalty up to $100,000 and not have a trial by jury? Well, that is what this bill does.

The Grassley bill allows a trial by jury. What is wrong with that?

I say, let us stand by the Constitution and stand by jurisprudence that is sound in this country.

For those reasons, Mr. President, I will offer a motion to delete this because we think it is unfair.

I reserve the remainder of my time.

Mr. CHILES. Mr. President, I yield 1 minute off my time on the bill to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, I want to clarify a couple of quick points. I am really shocked to hear the Senator from South Carolina argue that we are subverting the Constitution. How in good conscience could he argue for us to support Judge Scalia to that high bench when, in fact, it was Judge Scalia who wrote and ruled that this was entirely consistent with due process? I find that shocking, that we could support a man who would subvert the Constitution.

Certainly, I would point out—and I was not going to take the time—that there is ample precedent. The Civil Monetary Penalties Act passed in 1981 is almost identical to this measure.

Finally, I would submit for the RECORD, and I will not take the time, but to my colleague, Senator HELMS, on the Agriculture Committee, we have a statute which allows for the imposition of a $10,000 fine for agriculture stockyard dealers, egg promotion, agriculture swine health, agriculture horse protection, and on and on and on. There are 200 statutes currently on the books that allow for the imposition of substantial fines pursuant to civil monetary penalties for which this Congress has authorized and advocated on many occasions in the past.

Mr. President, I ask unanimous consent that a table of statutes authorizing enforcement through administrative imposition of civil penalties be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE OF STATUTES AUTHORIZING ENFORCEMENT THROUGH ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES

Statute and Dept./ Agency (Regulatory Concern)	Max. penalty per violation	Administrative process	Judicial review (standard)
7 U.S.C. § 86(c)(d)—Agriculture (grain weighing and sampling).	$75,000	APA Hearing (5 U.S.C. § 554).	Dist. Court (De Novo).
7 U.S.C. § 149(a)—Agriculture (insect pests and plant diseases).	[1]	APA Hearing	Ct. of Appeals (Substan. Evid.)
7 U.S.C. § 149(b)—Agriculture (same as above).	1,000	do	Do.
7 U.S.C. § 150gg—Agriculture (plant press).	1,000	do	Do.
7 U.S.C. § 163—Agriculture (nursery stock, other plants).	1,000	do	Do.
7 U.S.C. § 193(b)—Agriculture (meat packers).	10,000	do	Do.
7 U.S.C. § 213—Agriculture (stockyards, dealers).	10,000	do	Do.
7 U.S.C. § 2149—Agriculture (animal welfare).	1,000	do	Do.
7 U.S.C. § 2714(b)—Agriculture (egg promotion).	5,000	do	Do.
7 U.S.C. § 3805—Agriculture (swine health).	10,000	do	Do.
15 U.S.C. § 1825—Agriculture (horse protection).	2,000	do	Do.
16 U.S.C. § 5140(a)—Agriculture, Commerce and Interior (endangered species).	10,000	do	Dist. Court (Substan. Evid.).
21 U.S.C. § 117(b)—Agriculture (preventing contagion spread).	1,000	do	Ct. of Appeals (Substan. Evid.).
21 U.S.C. § 122—Agriculture (same as above).	1,000	do	Do.
21 U.S.C. § 127—Agriculture (quarantined animals).	1,000	do	Do.

TABLE OF STATUTES AUTHORIZING ENFORCEMENT THROUGH ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES—Continued

Statute and Dept./ Agency (Regulatory Concern)	Max. penalty per violation	Administrative process	Judicial review (standard)
21 U.S.C. § 134e—Agriculture (same as above).	1,000	do	Do.
21 U.S.C. § 135a(b)—Agriculture (same as above).	1,000	do	Do.
7 U.S.C. § 2048(b)—Labor (farm labor contractors).	1,000	do	Dist. Court (Substan. Evid.)
29 U.S.C. § 216(e)—Labor (child labor).	1,000	do	Do.
Public Law No. 97-470 (to be codified in 29 U.S.C. §§ 1801 et seq.)—Labor (migrant and seasonal agricultural workers).	1,000	do	Do.
30 U.S.C. § 933—Labor (black lung).	1,000	do	Court of Appeals (Substan. Evid.).
29 U.S.C. § 666(a)—Occupational Safety and Health Review Cmsn. (occupational safety and health).	10,000	do	Do.
29 U.S.C. § 666(b)-(d), (h)—OSHRC (same as above).	1,000	do	Do.
30 U.S.C. §§ 815(a), 820(a)—Fed. Mine Safety and Health Review Cmsn. (health, safety in coal mines).	10,000	do	Do.
30 U.S.C. § 815(b), 820(b)—FMSHRC (same as above).	1,000	do	Do.
30 U.S.C. § 820(g)—FMSHRC (same as above).	250	do	Do.
16 U.S.C. § 971e(e)(1)(A)—Commerce (Atlantic Tunas Conv.).	50,000	do	Dist. Court (Substan. Evid.).
16 U.S.C. § 971e(1)(B)—Commerce (as above).	5,000	do	Do.
16 U.S.C. § 971e(1)(C)—Commerce (as above).	100,000	do	Do.
16 U.S.C. § 1433—Commerce (marine sanctuaries).	50,000	do	Do.
16 U.S.C. § 3373—Commerce, Interior and Agriculture (illegally taken fish, wildlife).	10,000	do	Dist. Court (De Novo).
16 U.S.C. § 1858—Commerce (fishery conservation).	25,000	do	Ct. of Appeals (Substan. Evid.).
16 U.S.C. § 668(b)—Interior (protection of eagles).	5,000	do	Dist. Court (Substan. Evid.).

TABLE OF STATUTES AUTHORIZING ENFORCEMENT THROUGH ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES—Continued

Statute and Dept./Agency (Regulatory Concern)	Max. penalty per violation	Administrative process	Judicial review (standard)
16 U.S.C. § 1375(b)—Interior, Commerce and Coast Guard (marine mammal protection).	10,000	....do	Do.
30 U.S.C. § 1268—Interior (surface mining reclamation).	5,000	....do	Do.
43 U.S.C. § 1350(b)—Interior (submerged lands).	10,000	Informal Hearing	Do.
30 U.S.C. § 1462—Adm'r., Nat'l. Oceanic & Atmospheric Admin. (mineral lands and mining).	25,000	APA Hearing	Do.
16 U.S.C. § 2407—Dir. Nat'l. Science Foundation (Antarctic conservation).	10,000	....do	Do.
12 U.S.C. § 505 Fed. Reserve Bd. (banking).	100	....do	Ct. of Appeals (Substan. Evid.)
12 U.S.C. § 1847—Fed. Reserve Bd. (banking).	1,000	....do	Do.
12 U.S.C. § 504—Comptroller of the Currency, or Fed. Reserve Bd. (banking).	1,000	....do	Do.
12 U.S.C. § 1817(j)(15)—Comptroller of the Currency, Fed. Reserve Bd., or Fed. Deposit Ins. Corp. (banking).	1,000	Submission of data, views, argument.	Dist. Court (De Novo)
12 U.S.C. § 1818(i)—Same as above.	1,000	APA Hearing	Ct. of Appeals (Substan. Evid.).
12 U.S.C. § 1972(2)(F)—Same as above.	1,000	....do	Do.
12 U.S.C. § 1828(j)(3)—FDIC (banking).	1,000	....do	Do.
12 U.S.C. § 1464(d)(8)(B)—Fed. Home Loan Bank Bd. (banking).	1,000	....do	Do.
12 U.S.C. § 1730(k)(3)—Fed. Home Loan Bank Bd. (banking).	1,000	....do	Do.
12 U.S.C. § 1730(q)(16)—Fed. Home Loan Bank Bd. (banking).	10,000	Submission of data, views, argument.	Dist. Court (De Novo).
12 U.S.C. § 1730a(j)(4)—Fed. Home Loan Bank Bd. (banking).	1,000	APA Hearing	Ct. of Appeals (Substan. Evid.).
12 U.S.C. § 1786(j)(2)—Nat'l. Credit Union Admin. Bd. (banking).	1,000	....do	Do.
19 U.S.C. § 1592—Treasury/Customs Service (Tariff Act of 1930).	[2]	Notice, § 1618 proceeding.	District Court (De Novo)..
15 U.S.C. § 3414(b)(6)—Fed. Energy Regulatory Cmsn. (natural gas policy).	5,000	Notice	Do.
42 U.S.C. § 6303(d)—Energy or Fed. Trade Cmsn. (Energy Conservation).	100	APA Hearing [3] Order.	Court of Appeals (Substan. Evid.) [4] Dist. Court (De Novo).
42 U.S.C. § 8220(d)—Energy (residential energy conservation).	25,000	Same as above	Same as above.
42 U.S.C. § 8433(d)—Energy (powerplant and industrial fuel).	25,000	....do	Do.
42 U.S.C. § 1320a–7a—Health & Human Services (Medicare fraud).	[5]	APA Hearing	Ct. of Appeals (Substan. Evid.)..
42 U.S.C. § 1320c–9—HHS (Medicare fraud).	[6]	....do	Dist. Court (Substan. Evid.).
15 U.S.C. § 2008—Transportation (automotive efficiency).	10,000	....do	Ct of Appeals (Substan. Evid.).
46 U.S.C. § 170(17)—Transportation (shipping).	10,000	....do	Dist Court (De Novo).
49 U.S.C. § 1371(n)(5)—Transportation (Fed. Aviation).	10,000	....do	Ct. of Appeals (Substan. Evid.).
49 U.S.C. § 1371(n)(5)(6)—Civil Aeronautics Bd. [Transportation as of 1–1–85] (Fed. Aviation).	1,000	....do	Do.
49 U.S.C. § 1809—Transportation/Fed. Railroad Admin. (hazardous material).	10,000	Hearing (49 C.F.R. Part 209).	Dist. Court (Substan. Evid.).
33 U.S.C. § 244—Coast Guard (navigation rules of Great Lakes.	500	"Hearing" (33 C.F.R. § 1.07).	Do.
33 U.S.C. § 361—Coast Guard (Rpt. of maritime accidents).	100	Hearing	Do.
33 U.S.C. § 362—Coast Guard (Rpt. of probable loss of vessel).	100	....do	Do.
33 U.S.C. § 471—Coast Guard (Anchorage grounds).	100	....do	Do.
33 U.S.C. § 474—Coast Guard (Anchorage Regs. for St. Mary's River).	200	....do	Do.
33 U.S.C. § 1005—Coast Guard (water pollution).	10,000	....do	Dist. Court (De Novo).
33 U.S.C. § 1208—Coast Guard (Bridge-to-bridge communications).	500	....do	Dist. Court (Substan. Evid.).
33 U.S.C. § 1232—Coast Guard (navigational rule).	25,000	....do	Do.
33 U.S.C. § 1415—Coast Guard (dumping in ocean waters).	50,000	....do	Do.
33 U.S.C. § 1321(b)(6)(A)—Coast Guard (water pollution).	5,000	....do	Do.
33 U.S.C. § 1321(j)(2)—Coast Guard or Environ. Protection Agency (as above).	5,000	....do	Do.
33 U.S.C. § 1322(j)—Coast Guard (as above).	5,000	....do	Do.
33 U.S.C. § 1608—Coast Guard (collisons at sea).	500	....do	Do.
46 U.S.C. § 83i—Coast Guard (false statement on tonnage).	1,000	....do	Do.
46 U.S.C. § 83j—Coast Guard (failure to display tonnage mark).	30	....do	Do.
46 U.S.C. § 152—Coast Guard (berths for passengers).	5	....do	Do.
46 U.S.C. § 153—Coast Guard (light, air, and accommodations for passengers).	250	....do	Do.
46 U.S.C. § 155—Coast Guard (hospitals, surgeons on steamship).	250	....do	Do.
46 U.S.C. § 159—Coast Guard (death of passengers).	50	....do	Do.
46 U.S.C. § 203—Coast Guard (omitting log entries).	25	....do	Do.
46 U.S.C. § 216e—Coast Guard (unregistered pilot).	500	....do	Do.
46 U.S.C. § 224—Coast Guard (licensing of officres).	500	....do	Do.
46 U.S.C. § 224a—Coast Guard (licensing of crew).	100	....do	Do.
46 U.S.C. § 229b—Coast Guard (licensing radio-telegraph operators).	100	....do	Do.
46 U.S.C. § 229f—Coast Guard (exhibition of license).	100	....do	Do.
46 U.S.C. § 232—Coast Guard (exhibition of license).	100	....do	Do.
46 U.S.C. § 235—Coast Guard (watch duty).	100	....do	Do.
46 U.S.C. § 246—Coast Guard (certificate of registry Great Lakes).	100	....do	Do.
46 U.S.C. § 362—Coast Guard (notice of compliance with safety standards).	10,000	....do	Do.
46 U.S.C. § 390d—Coast Guard (small passenger-carrying vessel).	1,000	....do	Do.

TABLE OF STATUTES AUTHORIZING ENFORCEMENT THROUGH ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES—Continued

Statute and Dept./Agency (Regulatory Concern)	Max. penalty per violation	Administrative process	Judicial review (standard)
46 U.S.C. § 391a(14)(A)—Coast Guard (inspection of steam vessels).	25,000	...do	Do.
46 U.S.C. § 398—Coast Guard (navigating barge w/o certificate).	500	...do	Do.
46 U.S.C. § 402—Coast Guard (receiving passengers in absence of unexpired certificate of approval).	100	...do	Do.
46 U.S.C. § 420(f)—Coast Guard (inspection of steam vessels).	1,000	...do	Do.
46 U.S.C. § 436—Coast Guard (failure to make repairs).	500	...do	Do.
46 U.S.C. § 457—Coast Guard (regattas).	500	...do	Do.
46 U.S.C. § 461—Coast Guard (list of passengers).	100	...do	Do.
46 U.S.C. § 481—Coast Guard (Lifesaving and firefighting equip., master lists, tackle and hawsers, bilge sys.).	1,000	...do	Do.
46 U.S.C. § 482—Coast Guard (Copies of laws governing marine vessels).	20	...do	Do.
46 U.S.C. §§ 497,222—Coast Guard (Failure to comply w/title 52 of revised statutes).	500	...do	Do.
46 U.S.C. § 526o—Coast Guard (Motor boat violations).	200	...do	Do.
46 U.S.C. § 562—Coast Guard Merchant Seaman: (Indenture of apprentice.).	100	...do	Do.
46 U.S.C. § 567—Coast Guard Merchant Seaman: (Shipping without agreement).	200	...do	Do.
46 U.S.C. § 568—Coast Guard (Knowingly shipping seamen without articles).	200	...do	Do.
46 U.S.C. § 571—Coast Guard (Shipping seamen in foreign ports).	100	...do	Do.
46 U.S.C. § 575—Coast Guard (Shipping without article).	20	...do	Do.
46 U.S.C. § 577—Coast Guard (Posting copy of agreement).	100	...do	Do.
46 U.S.C. § 623—Coast Guard (Neglect of Master).	200	...do	Do.
46 U.S.C. § 641—Coast Guard (Mode of discharge).	50	...do	Do.
46 U.S.C. § 642—Coast Guard (Accounting as to wages).	50	...do	Do.
46 U.S.C. § 652—Coast Guard (Examination of witnesses).	100	...do	Do.
46 U.S.C. § 653—Coast Guard (Complaint that vessel is unseaworthy).	500	...do	Do.
46 U.S.C. § 660-1—Coast Guard (Space and accommodations for crew; hospital compartments).	500	...do	Do.
46 U.S.C. § 662—Coast Guard (Complaint as to provisions or water).	100	...do	Do.
46 U.S.C. § 664—Coast Guard (Permission from master).	100	...do	Do.
46 U.S.C. § 667—Coast Guard (Failure to keep medicines).	100	...do	Do.
46 U.S.C. § 668—Coast Guard (Weights and measures).	50	...do	Do.
46 U.S.C. § 669—Coast Guard (Clothing and heat).	100	...do	Do.
46 U.S.C. § 670—Coast Guard (Slop chests).	500	...do	Do.
46 U.S.C. § 672—Coast Guard (Requirements as to crew).	500	...do	Do.
46 U.S.C. § 673—Coast Guard (Requirements as to watches, duties of seaman).	500	...do	Do.
46 U.S.C. § 677—Coast Guard (Production of copy of list on return of vessel).	400	...do	Do.
46 U.S.C. § 710—Coast Guard (Sheath knives).	50	...do	Do.
46 U.S.C. § 882—Coast Guard (No. of passengers cargo vessels may carry).	500	...do	Do.
46 U.S.C. § 883-1—Coast Guard (Corporations; passengers for hire).	200	...do	Do.
46 U.S.C. § 883a—Coast Guard (U.S. vessels built abroad).	200	...do	Do.
46 U.S.C. § 1484—Coast Guard (Boating Safety Act).	[6] 2,000	...do	Do.
15 U.S.C. § 2615—EPA (Toxic substances).	25,000	APA Hearing	Ct. of Appeals (Substan. Evid.).
33 U.S.C. § 1415(a)—EPA (Ocean dumping).	50,000	...do	Dist. Court (Substan. Evid.).
42 U.S.C. § 7420—EPA (Clean air).	[7] Value of noncompliance	...do	Ct. of Appeals (Substan. Evid.).
7 U.S.C. § 9—Commodity Futures Trading Cmsn. (Commodities Trading).	100,000	...do	Do.
42 U.S.C. § 9—Commodity Futures Trading Cmsn. (Commodities Trading).	100,000	...do	Do.
42 U.S.C. §§ 2282, 2167(a), 5846(b)—Nuclear Regulatory Cmsn. (Atomic Energy).	100,000	Written argument [5] ..... Admin. Hearing	Dist. Court (De Novo).[5] Ct. of Appeals (Substan. Evid.).
46 U.S.C. § 815—Fed. Maritime Cmsn. (Maritime shipping).	25,000	APA Hearing	Ct. of Appeals (Substan. Evid.).
46 U.S.C. § 820—FMC (Maritime shipping).	100	...do	Do.
46 U.S.C. § 821(a)—FMC (Maritime shipping).	50,000	...do	Do.
46 U.S.C. § 831—FMC (Maritime shipping).	5,000	...do	Do.
47 U.S.C. § 503(b)(3)(A)—Fed. Comm. Cmsn. (Communications).	20,000	...do	Do.
50 U.S.C. App. § 2410(c)—Any appropriate department (Nat'l. Defense).	100,000	...do	Dist. Court (De Novo).

[1] Cost of disinfection, cleaning.
[2] Domestic value of merchandise.
[3] $2,000 and double the amount claimed.
[4] Greater of $5,000 or cost of unnecessary services.
[5] Or on election of defendant.
[6] Violation ($10,000 total) for violation of section 1416(a); $500 for violation of any other provision.
[7] Value of noncompliance.

□ 2040

Mr. CHILES addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. I yield 1 minute to the Senator from Michigan.

Mr. LEVIN. In supporting the Senator from Maine, let me read from a letter from one of the most distinguished administrative law professors in this country, Professor Bruff of the University of Texas Law School. He wrote:

Another question has been raised whether the seventh amendment might require jury trial in program fraud contests. This is quite simply not a serious contention.

Then he goes on to quote from the case of the Atlas Roofing Co.

Again, we already have 200 statutes in this country which allow for the administrative imposition of civil penalties. This would be the 201st, and it is long overdue. The difference between this and the other so-called extraneous matters, by the way, is that this legislation is in the reconciliation bill already. This would be a technical

effort to strip it from the bill and an excessively technical interpretation, may I say, of the Reconciliation Act.

Mr. CHILES. Mr. President, I yield myself such time as I may require.

Mr. President, I think a key point here is the jurisdiction provision of the Byrd amendment. I helped work on the Byrd amendment. I was one of the ones who kept raising concerns about it. I want to remind the Senate of the cases that triggered the provision that we are talking about here on extraneous matters, especially in regard to committee jurisdiction.

The supporters of the tobacco support program did not have the votes in the Agriculture Committee in order to get that program re-authorized in the Agriculture Committee. So the majority leader at that time rounded up the votes in the Finance Committee and they tackled that on reconciliation.

We saw another instance in which the chairman of the Commerce Committee did not have the votes at that time in order to report out a major communications bill, so that bill went to the Finance Committee. It got tacked onto a reconciliation bill and that major bill came out.

This bill does not fit into that situation at all. We are talking about a bill that has three times been referred to the Committee on Governmental Affairs. It never had a sequential reference. No one ever mentioned that it should be referred to another committee. This started back in 1981, I think with a report from the Budget Committee saying to Governmental Affairs, "We need to do something about this."

Of course, we were hearing from every inspector general saying "For goodness sake, give us some help." We were hearing from the Justice Department saying, "We cannot prosecute all these cases. We have to have another way of doing it."

The distinguished Senator from Maine took this task on and has been laboring with it along with the chairman of the Governmental Affairs Committee and others since that time.

So we are not talking about once but three times under the normal procedures of the Senate.

Again a point I want to make is that this is not a provision that was contained in the amendment that we have adopted, an amendment by the Senator from New Mexico and myself. This is a provision that was in the regular reconciliation bill, the $3.5 billion that was reported out. This is something that Governmental Affairs reported out. CBO clearly said this was a money saver, saving tremendous funds for the Federal Government, and it was proper.

But, because of that language having to do with jurisdiction, the Parliamentarian has ruled that there are a couple of subsections in this bill that the Judiciary Committee could say they have some jurisdiction over, certainly not enough to get them a reference. They did not seek that reference.

The distinguished Senator from Maine has said he went to their committee and had them hold a hearing on the bill. He appeared at their committee. So it is not likely they have not had a chance to hear it.

So when you say that this is like the other matters that we have knocked out, not at all. On the other matters we have knocked out, none of them have been under the Byrd amendment. Each one of them so far have been under the general provisions where we had to take up germaneness. This is totally different.

This is the first rule that would be requested, if the distinguished Senator from South Carolina makes that request, under the Byrd amendment. It is totally different from germaneness. What we were trying to stop with the Byrd amendment was someone who could not move a bill in a committee taking it out and shopping it and taking it to another committee, as we have seen happen several times, and taking it on with a time limitation. Nothing could be further in this bill itself.

I do not think there is any reason that it should fall under those provisions, but I am not the Parliamentarian. Technically, he has ruled that it has.

Mr. COHEN. I will move the provisions, but the Members should know if that is unsuccessful on that part, what we will end up with is a continuation of fraud and abuse on the part of contractors dealing with the Federal Government with no effective relief to recover those moneys.

Mr. CHILES. Everybody in here wants to talk about what he does on waste, fraud, and abuse and what he does to try to stop it. We have a letter from the inspector general of the Department of Defense who says,

> I believe that your fraud bill is the single most important weapon to combat fraud, although it should be applicable across the board wiithout a monetary gap.

What he is saying is that this is too weak.

I think this is the one where you will get a chance to see how you stand on waste, fraud, and abuse.

Mr. THURMOND. How much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes and 24 seconds.

Mr. THURMOND. Mr. President, I just want to say that someone suggested that I seek a referral of this bill to another committee. I did not want to delay it. It could go on the calendar and it is on the calendar. It can be considered in due course.

But, again I say if it is extraneous, it should not be on this bill. If you put this on here it would be unfair to others who are trying to put in other bills that are good bills, too.

Of course, we are against fraud. We have laws against fraud. The Grassley bill is a good bill on fraud. It provides for a jury trial. This does not. Just wait until somebody has a case here and is assessed a civil penalty of $100,000 and then what are the people going to say? They will say, "What in the world is the Senate doing that does not give a person a trial by jury but he gets a civil penalty of $100,000?"

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

PROGRAM FRAUD CIVIL REMEDIES ACT

Mr. MATHIAS. Mr. President, I rise to commend the senior Senator from Maine, Senator COHEN, for his diligent efforts to combat fraud against the Government.

As a member of the Governmental Affairs and Judiciary Committees, I have followed several pieces of legislation that address the problem of false claims against the Government. The Program Fraud Civil Remedies Act—legislation often described as a "mini" False Claims Act—establishes a remedy for combatting the contemptible frauds that Americans hear about all too frequently.

At a time when every Federal department and agency is struggling to keep up with budgetary demands, it is infuriating to know that Americans are being cheated out of desperately needed funds. During arduous times marked by the elimination of Government programs, these frauds are particularly loathsome because they undermine the confidence in which Americans hold their Government.

While many might be tempted to react to this problem with an overly broad and instrusive response, it is comforting to find that Senator COHEN, sponsor of the legislation, has been sensitive that due process protections vital to our legal system are not overlooked.

For example, the bill demands a standard of intent that ensures that individuals who act in good faith with no wrongful purpose are not punished. I was pleased to see that the committee report accompanying the bill explicitly states that errors arising from mere negligence, mistake, momentary thoughtlessness or inadvertence will not result in liability. This standard of intent will help to ensure that innocent people are not unjustly hounded.

I would ask the Senator from Maine to clarify two issues of critical interest. The first involves the possibility that this legislation could subject Federal employees to disingenuous charges or "witch hunts," if you will.

While I have no sympathy for the civil servant who cheats his friends and neighbors by engaging in fraudulent activities, I am concerned about the overwhelming majority of Government employees who are hard working and conscientious individuals—men and women whose work is vital to the smooth operation of the many services and programs that we have come to take for granted. I would like to ask my friend from Maine whether he intends for the legislation to supersede the various regulations and procedures that have been implemented to protect Government employees involved in simple disputes with their supervisors.

Mr. COHEN. I would first like to thank the senior Senator from Maryland, who has long been a strong advocate for Federal employees' rights, for his supportive comments. In response to the Senator's inquiry, I want to assure him that we do not intend for the program fraud bill to supersede the time-tested disciplinary proceedings provided under current law. The committee report accompanying S. 1134 specifically states that these disciplinary proceedings are separate and distinct from the program fraud proceedings, and that employees' rights provided under current law would remain unchanged.

Mr. MATHIAS. It nonetheless concerns me, Mr. President, that under certain circumstances, a simple, run-of-the-mill dispute between a government employee and his or her supervisor might be actionable under this bill. I'd like to ask Senator COHEN whether S. 1134 safeguards against potential abuse like this?

Mr. COHEN. The bill most certainly does safeguard against potential abuse. There are numerous checks and balances inherent in the program fraud proceeding, which, coupled with the due process protections adopted from the Administrative Procedure Act, provide sufficient insulation between actors to ensure objective, independent, and fair decisions.

First, investigations are conducted by the agency's "investigating official," usually the inspector general, who is independent of the agency. Any allegations of wrongdoing are considered by the agency's "reviewing official," a person separate from the investigating official's office, to determine whether there is adequate evidence to believe that a false claim or statement has been made. The reviewing official is expected to provide an objective assessment of the evidence, free from any prosecutorial bias, to screen the meritorious cases from those that lack merit.

If the reviewing official determines there is adequate evidence, the matter is referred to the Justice Department for review and approval. This procedure ensures that the Department will have an opportunity to review the charges and elect, if it so chooses, to litigate in Federal court. If the Department declines litigation and approves administrative action, the agency may commence proceedings against the person alleged to be liable.

In the case of a "run-of-the-mill" dispute, as described by my friend from Maryland, I do not believe that the Justice Department should initiate litigation or approve administrative action. If the charges so require, however, the reviewing official would issue a "complaint," notifying the person of the charges and of his or her right to a hearing.

An administrative law judge—an independent, trained hearing examiner—would conduct the hearing to determine whether or not the person is liable and the amount of penalty and assessment, if any, to be imposed. The hearing itself would be conducted pursuant to the due process safeguards of the Administrative Procedure Act, which entitles the person to a written notice of the allegations, the right to be represented by counsel, and the right to present evidence on his or her own behalf. The bill even goes beyond these APA protections by granting the person expansive discovery rights.

Finally, the person accused of wrongdoing has the right, after having exhausted all administrative appeals, to seek judicial review in the U.S. Court of Appeals for the circuit in which the person resides or in which the claim or statement found to be liable was made.

Taken together, I believe these procedural safeguards will effectively serve to preclude any such "witch hunts."

Mr. MATHIAS. I thank the senior Senator from Maine for that explanation. My second concern, Mr. President, is the possibility that the legislation could be used against beneficiaries of Government programs, such as Medicare, Medicaid, or food stamp recipients, who may inadvertently submit erroneous claims to the Government through mere negligence or mistake. I am concerned because, in many instances, the beneficiaries are elderly or poorly educated.

I would like to ask my colleague, Senator COHEN, how he foresees this administrative proceeding being used in beneficiary fraud cases, and, again, whether he believes there is a potential for abuse in these cases.

Mr. COHEN. The program fraud bill is intended to apply Governmentwide, since fraud in benefit and assistance programs is just as costly as fraud in defense procurement. While most of the "horror" stories we read about in the papers involve procurement fraud, there is substantial evidence of fraud in benefit programs as well.

As I've mentioned, the program fraud bill is designed to serve as an administrative counterpart of the civil False Claims Act, which covers anyone who submits a false claim to the Government. The bill, therefore, would capture conduct already prohibited by the False Claims Act—including fraud in benefit programs—which could be litigated in court but is not.

Concerning the potential for abuse, I would again emphasize to my friend, Senator MATHIAS, that the safeguards provided in the bill will prevent any such abuse. In addition to the protections already mentioned, the bill also requires that the agency, before proceeding with administrative action against a person alleged to be liable, must assess the prospects for collecting money from that person. If there are no prospects for collection, which may frequently be the case with low-income beneficiaries, it is our intent that the agency should not go forward with administrative action. In addition, we would oversee implementation of the bill, if passed, to ensure that it is not used to harass bona fide recipients of Government benefits.

In my judgment, Mr. President, persons who receive benefits through fraud cheat the legitimate beneficiaries who need these assistance programs. In addition to recouping money lost to fraud, then, the program fraud bill would enhance public support for these programs by helping to deter persons who are ineligible to participate.

Mr. MATHIAS. I agree and congratulate my colleague for his excellent work. I am pleased to see the bill pass the Senate with the clarifications provided by the Senator from Maine.

Mr. DOMENICI. Let me say to my good friend, Senator THURMOND, that I am most appreciative. I am sorry it was difficult for me to yield but I did not have much time. As I understand it, before I started talking, I had 16 minutes on my side.

The PRESIDING OFFICER. That is correct.

Mr. DOMENICI. The issue that has been debated has not yet been raised. Sometime in the next couple of hours it will get raised. You will all remember the arguments, I assume, and decide how you are going to vote.

I understand the distinguished Senator from Kansas would like to offer an amendment. I wonder if she can tell us how much time she will use.

Mrs. KASSEBAUM. I thank the Senator from New Mexico. I believe 10 minutes on my side. I would like to have a little bit more but I can do it in 10 minutes.

□ 2050

Mr. DOMENICI. Why do we not try 10 on the Senator's side and 5 in opposition for now and let us see where we end up.

Mrs. KASSEBAUM. That is all right, Mr. President.

The PRESIDING OFFICER. Does the Senator make a unanimous-consent request?

Mr. DOMENICI. Mr. President, I ask unanimous consent that sub be the time allowed on this amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Kansas [Mrs. KASSEBAUM] is recognized.

AMENDMENT NO. 2855

(Purpose: To provide for unform standards of liability for harm arising out of general aviation accidents)

Mrs. KASSEBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM], for herself, Mr. DOLE, Mr. NICKLES, Mr. DENTON, Mr. HARKIN, Mr. PRESSLER, Mr. GARN, Mr. ABDNOR, Mr. HEINZ, Mr. KASTEN, Mr. GOLDWATER, Mr. INOUYE, Mr. SIMPSON, Mr. EXON, Mr. SPECTER, Mr. ZORINSKY, Mr. WALLOP, Mr. MURKOWSKI, Mr. RUDMAN, and Mrs. HAWKINS, proposes an amendment numbered 2855.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the amendment, add the following:

TITLE .—AVIATION ACCIDENT LIABILITY

SHORT TITLE

SEC. 01. This title may be cited as the "General Aviation Accident Liability Standards Act of 1986".

FINDINGS AND PURPOSE

SEC. 02. (a) THE CONGRESS FINDS THAT—

(1) transportation by air of passengers continues to comprise an increasingly important component of the Nation's overall transportation system;

(2) although the incidence of injuries to passengers in general aviation accidents has decreased, the number of general aviation accident liability claims against general aviation aircraft manufacturers and the amount of damages sought in such claims is increasing at disproportionate rates, beyond any relationship to the quality of the aircraft manufactured and in use;

(3) the current system for determining liability and damages for compensating individuals injured in general aviation accidents is inadequate;

(4) competent general aviation manufacturers and component part manufacturers are ceasing or limiting production of general aviation aircraft or some models of such aircraft because of the increasing costs and unavailability of product liability insurance;

(5) the increase in the number of liability claims and the size of awards and settlements, and the excessive time and expense devoted to the resolution of such claims, impose a substantial economic burden on general aviation manufacturers and their dealers;

(6) the Federal Government has an interest in the general aviation accident liability system because the Federal Government has established a comprehensive system for regulating general aviation, including—

(A) establishing standards for design, construction, and certification of general aviation aircraft,

(B) establishing standards for maintenance of aircraft, licensing of repair facilities, and licensing of persons who may perform or approve maintenance, repairs, and inspections,

(C) establishing standards for training and licensing of pilots,

(D) establishing a comprehensive air control system,

(E) conducting investigations to determine the probable cause of aviation accidents and prevent future accidents, and

(F) conducting other activities necessary to assure a safe air transportation system,

and this Federal system is the exclusive legal authority for regulating aviation operations and safety;

(7) it is in the national interest to reduce unnecessary expenditures related to general aviation accident liability claims while providing more rapid and more efficient compensation for individuals harmed in general aviation accidents; and

(8) Federal action to reform the general aviation accident liability system will result in—

(A) the maintenance of airworthy general aviation aircraft; and

(B) a more rational general aviation accident liability system.

(b) It is the purpose of this title to establish standards for determining liability for harm arising out of general aviation accidents.

DEFINITIONS

SEC. 03. As used in this title, the term—

(1) "Administrator" means the Administrator of the Federal Aviation Administration;

(2) "claimant" means any person who brings a general aviation accident liability action subject to this title, and any person on whose behalf such an action is brought, including—

(A) the claimant's decedent; and

(B) the claimant's parent or guardian, if the action is brought through or on behalf of a minor or incompetent;

(3) "general aviation accident" means any accident which arises out of the operation of any general aviation aircraft and which results in harm;

(4) "general aviation aircraft" means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.), which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than twenty passengers, and which is not, at the time of the accident, engaged in scheduled passenger carrying operations as defined in regulations issued under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.);

(5) "general aviation manufacturer" means—

(A) the builder or manufacturer of the air frame of a general aviation aircraft;

(B) the manufacturer of the engine of a general aviation aircraft; and

(C) the manufacturer of any system, component, subassembly, or other part of a general aviation aircraft;

(6) "harm" means—

(A) property damage or bodily injury sustained by a person;

(B) death resulting from such bodily injury;

(C) pain and suffering which is caused by such bodily injury; and

(D) emotional harm (including bereavement and loss of affection, care, or society) which is caused by such bodily injury;

(7) "product" means a general aviation aircraft and any system, component, subassembly, or other part of a general aviation aircraft; and

(8) "property damage" means physical injury to tangible property, including loss of use of tangible property.

PREEMPTION; APPLICABILITY

SEC. 04. (a) This title supersedes any State law regarding recovery, under any legal theory, for harm arising out of a general aviation accident, to the extent that this title establishes a rule of law or procedure applicable to the claim.

(b) Nothing in this title shall be construed to supersede or to waive or affect any defense of sovereign immunity asserted by the United States or any State.

(c) Nothing in this title shall be construed to affect the liability of a manufacturer, owner or operator of any aircraft that is not a general aviation aircraft, or a person who repairs maintains, or provides any other support for any aircraft that is not a general aviation aircraft, for damages for harm arising out of the operation of an aircraft that is not a general aviation aircraft.

(d) No right of action for harm exists under this title if that right would be inconsistent with the provisions of any applicable workers' compensation law.

(e) The provisions of this title shall only apply to—

(1) any manufacturer, owner, or operator of any general aviation aircraft, and any person who repairs, maintains, or provides any other support for such an aircraft;

(2) any occupant of a general aviation aircraft at the time of a general aviation accident, and any person who brings an action for harm caused by such accident on behalf of such occupant; and

(3) any nonoccupant of a general aviation aircraft at the time of a general aviation accident, only if such nonoccupant is bringing an action for harm caused by such accident which arises out of the harm to an occupant of such aircraft at the time of such accident.

UNIFORM STANDARDS OF LIABILITY FOR GENERAL AVIATION ACCIDENTS

SEC. 05. (a) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a party and may recover damages from such party, if such party was negligent and such negligence is a proximate cause of the claimant's harm.

(b)(1) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) the product, when it left the control of the manufacturer, was in a defective condition unreasonably dangerous for its intended purpose, according to engineering and manufacturing practices which were reasonably feasible;

(B) the defective condition is a proximate cause of the claimant's harm; and

(C) the general aviation aircraft was being used at the time of the accident for a pur-

pose and in a manner for which it was designed and manufactured.

(2) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) at the time the product left the control of the manufacturer, the manufacturer—

(i) knew, or in the exercise of reasonable care should have known, about a danger connected with the product that caused the claimant's harm; and

(ii) failed to provide the warnings or instructions that a person exercising reasonable care would have provided with respect to the danger which caused the harm alleged by the claimant, unless such warnings or instructions, if provided, would not have materially affected the conduct of the user of the product; or

(B) after the product left the control of the general aviation manufacturer, the manufacturer—

(i) knew, or in the exercise of reasonable care should have known, about the danger which caused the claimant's harm; and

(ii) failed to take reasonable steps to provide warnings or instructions, after the manufacture of the product, which would have been provided by a person exercising reasonable care, unless such warnings or instructions, if provided, would not have materially affected the conduct of the product user;

and the failure to provide warnings or instructions described in subparagraph (A) and (B) of this paragraph is a proximate cause of the claimant's harm.

(3) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) the manufacturer made an express warranty with respect to the product;

(B) such warranty relates to that aspect of the product which caused the harm;

(C) the product failed to conform to such warranty; and

(D) the failure of the product to conform to such warranty is a proximate cause of the claimant's harm.

(c)(1) In an action governed by subsection (b) of this section, a general aviation manufacturer shall not be liable if such manufacturer proves, by a preponderance of the evidence, that—

(A) the defective condition could have been corrected by compliance with action described in an airworthiness directive issued by the Administrator or a service bulletin issued by the manufacturer of the product; and

(B) such directive or service bulletin was issued at a reasonable time before the date of the accident and after the product left the control of the general aviation manufacturer.

(2) In any action governed by subsection (b) of this section, evidence of compliance with standards, conditions or specifications established, adopted or approved by the Federal Aviation Administration shall be admissible with regard to whether the product was defective and unreasonably dangerous for its intended purpose.

COMPARATIVE RESPONSIBILITY

SEC. 06. (a) All actions for harm arising out of a general aviation accident shall be governed by the principles of comparative responsibility. Comparative responsibility attributed to the claimant's conduct shall not bar recovery in an action under this title, but shall reduce any damages awarded to the claimant in an amount proportionate to the responsibility of the claimant. The trier of fact shall determine comparative responsibility by making findings indicating the percentage of total responsibility for the claimant's harm attributable to the claimant, each defendant, each third-party defendant, and any other person not a party to the action.

(b) Except as provided in subsection (c) of this section, a defendant is severally but not jointly liable in any action for harm arising out of a general aviation accident, and the liability of any defendant in any such action shall be determined on the basis of such defendant's proportionate share of responsibility for the claimant's harm.

(c) In any action for harm arising out of a general aviation accident—

(1) a general aviation manufacturer who is the builder or manufacturer of the airframe of the general aviation aircraft involved is jointly and severally liable for harm caused by a defective system, component, subassembly, or other part of such aircraft that the manufacturer installed or certified as part of the original type design for such aircraft; and

(2) a general aviation manufacturer who is the manufacturer of a system or component of the general aviation aircraft involved is jointly and severally liable for damages caused by a defective subassembly or other part of such system or component.

(d) A general aviation manufacturer and any other person jointly liable under subsection (c) of this section shall have the right to bring an action for indemnity or contribution against any person with whom they are jointly liable under subsection (c) of this section.

TIME LIMITATION OF LIABILITY

SEC. 07. (a) Except as provided in subsection (b) of this section, no civil action for harm arising out of a general aviation accident which is brought against a general aviation manufacturer may be brought for harm which is alleged to have been caused by an aircraft or a system, component, subassembly, or other part of an aircraft and which occurs more than—

(1) twenty years from—

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such as aircraft; or

(2) with respect to any system, component, subassembly, or other part which replaced another product in, or which was added to, the aircraft, and which is alleged to have caused the claimant's harm, twenty years from the date of the replacement or addition.

(b) Subsection (a) of this section does not apply in the case of harm to a claimant which occurs after the period set forth in subsection (a) of this section if the general aviation manufacturer or the seller of the product that caused the claimant's harm gave an express warranty that the product would be suitable, for the purpose for which it was intended, for a longer period of time.

(c) Nothing in this section shall be construed to affect a person's duty to provide, after the sale or lease of an aircraft, to aircraft owners, and to repair facilities to which a license or certificate to perform repairs has been issued by the Administrator, additional or modified warnings or instructions regarding the use or maintenance of such aircraft or any system, component, or other part of such aircraft.

SUBSEQUENT REMEDIAL MEASURES

SEC. 08. In any general aviation accident liability action governed by this title, evidence of any measure taken after an event which, if taken previously, would have made the event less likely to occur is not admissible to prove liability. Such evidence is admissible to the extent permitted under rule 407 of the Federal Rules of Evidence.

ADMISSIBILITY OF CERTAIN EVIDENCE

SEC. 09. In an action governed by this title, evidence of Federal, State, or local income tax liability or any social security or other payroll tax liability attributable to past or future earnings, support, or profits and the present value of future earnings, support, or profits alleged to have been lost or diminished because of harm arising out of a general aviation accident is admissible regarding proof of the claimant's harm.

PUNITIVE DAMAGES

SEC. 10. (a) Punitive damages may be awarded in an action under this title for harm arising out of a general aviation accident only if the claimant establishes by clear and convincing evidence that the harm suffered was the direct result of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by use of the general aviation aircraft involved.

(b) Evidence regarding the financial worth of a defendant or the defendant's profits or any other evidence relating solely to a claim for punitive damages under this title is not admissible unless the claimant establishes, before any such evidence is offered, that the claimant can present evidence that will establish prima facie proof of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by use of the general aviation aircraft involved.

(c) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages pursuant to the provisions of this title regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

TIME LIMITATION ON BRINGING ACTIONS

SEC. 11. (a) Any action for harm arising out of a general aviation accident shall be barred, notwithstandng any State law, unless—

(1) the complaint is filed within 2 years after the date on which the accident occurred which caused the claimant's harm; and

(2) the summons and complaint are properly served upon the defendant within one hundred and twenty days after the filing of such compliant, unless the party on whose behalf such service is required can show good cause why such service was not made within such one hundred and twenty-day period.

Paragraph (2) of this subsection shall not apply to service of process in a foreign country pursuant to Rule 4(i) of the Federal Rules of Civil Procedure or any similar State law.

SANCTIONS

SEC. 12. It is the intent of Congress that, with respect to any action governed by this title, the sanctions for violation of rule 11 of the Federal Rules of Civil Procedure, including orders to pay to the other party or parties the amount of their reasonable expenses, including a reasonable attorney's fee, be strictly enforced.

SEC. 13. (a) The district courts of the United States, concurrently with the State courts, shall have original jurisdiction, without regard to the amount in controversy, in all civil actions for harm arising out of a general aviation accident and in all actions for indemnity or contribution described in section—06(d) of this title.

(b) A civil action which is brought in a State court may be removed to the district court of the United States for the district embracing the place where the action is pending without the consent of any other party and without regard to the amount in controversy, by any defendant against whom a claim in such action is asserted for harm arising out of a general aviation accident.

(c) In any case commenced in or removed to a district court of the United States under subsection (a) or (b) of this section, the court shall have jurisdiction to determine all claims under State law that arise out of the same general aviation accident, if a substantial question of fact is common to the claims under State law and to the Federal claim, defense, or counterclaim.

(d)(1) A civil action in which the district courts of the United States have jurisdiction under subsection (a) of this section may be brought only in district in which—

(A) the accident giving rise to the claim occurred; or

(B) any plaintiff of defendant resides.

(2) In an action pending in a district court of the United States under paragraph (1) of this subsection, a district court may, on motion of any party or its own motion, transfer the action to any other district for the convenience of parties and witnesses in the interest of justice.

(3) For purposes of this subsection, a corporation shall be considered to be a resident of any State in which it is incorporated or licensed to do business or is doing business.

SEVERABILITY

SEC. 14. If any provision of this title or the application of the provision to any person or circumstance is held invalid, the remainder of this title and the application of the provision to any other person or circumstance shall not be affected by such invalidation.

EFFECTIVE DATE

SEC. 15. (a) This title shall apply to any civil action for harm arising out of a general aviation accident which is filed on or after the date of enactment of this Act.

(b) If an action governed by this title is filed within one hundred and eighty days after the date of enactment of this Act, liberal leave shall be given to a party to amend any pleading, motion, statement of jurisdiction or venue, or other matter to conform to the provisions of this title.

Mrs. KASSEBAUM. This is the General Aviation Liability Standards legislation, Mr. President. I should like to read the cosponsors of this legislation because it is a strong bipartisan list of Senators:

Senators DENTON, HARKIN, PRESSLER, GARN, ABDNOR, HEINZ, KASTEN, GOLDWATER, DOLE, INOUYE, SIMPSON, EXON, SPECTER, ZORINSKY, WALLOP, MURKOWSKI, NICKLES, RUDMAN, and HAWKINS.

I want briefly to state why I think general aviation should receive individual treatment. Many have asked why it should be broken out in a separate fashion from any comprehensive liability legislation. I think, Mr. President, a good case can be made because there is a unique Federal interest in aviation. There is no other area which is so heavily federally regulated as aviation. I should like briefly to say what this amendment would do.

One, it would establish Federal jurisdiction and rules of strict liability and negligence for airframe and component manufacturers;

It would require damages to be allocated based on comparative responsibility but hold general aviation manufacturers jointly liable with respect to all parts of an original airplane;

It would allow claims for punitive damages only if claimant first shows evidence of a "conscious, flagrant indifference to the safety" of others;

It would establish a 20-year statute of repose for aircraft and replacement parts; and

It would permit recovery of attorneys' fees by plaintiffs and defendants in cases of frivolous suits, motions, and so on.

Mr. President, I wish also to say what this bill does not do. It does not cap any damages. It does not impose any restrictions on lawyer's contingency fees;

It does not waive the responsibility to supply warnings against dangers regardless of the age of the product;

It does not affect the rights of persons who are injured on the ground;

It does not affect other, more general areas of product liability law.

One of the reasons I think this is such a pressing issue, Mr. President—and let me say we have had a lengthy hearing and it has passed the Commerce Committee by a unanimous vote. The reason I think it is so pressing that I am going to attempt to add it to the reconciliation measure—and I realize all the difficulties of doing that—is that general aviation is in dire straits today. One of the reasons is the soaring cost of liability insurance. I might just give an example: In Ohio, Macauley Division of Cessna Aircraft, is located near Dayton, OH. Since 1979, more than 200 jobs have been lost and the cost of product liability insurance has gone from 7,000-some dollars in 1970 to about $1.2 million next year.

It is estimated today that the cost of liability insurance adds about $80,000 per plane. This is why I think it is very important for us to take a piece of legislation, which we have worked out with amendments to try to meet some of the Members' concerns, that I think is a very constructive way to assist not only the needs of general aviation but consumers as well.

Mr. President, I wish to yield a few minutes to the majority leader.

Mr. DOLE. Mr. President, I am pleased to be a cosponsor of the General Aviation Liability Standards Act of 1986, introduced by my colleague and friend from the State of Kansas. I commend her for her efforts to address a critical issue facing the aircraft manufacturers in this country, especially those in my home State.

STATE OF THE INDUSTRY

Since 1978, there has been a steep and continuous decline in the manufacturing of general aviation aircraft across the country. Sales of light aircraft have been dropping for a number of reasons: high-interest rates, barriers to foreign trade, uncertainty overtax law changes, a big supply of good and inexpensive used aircraft, and the effects of skyrocketing insurance premiums. Six years of declining sales have trimmed the work force at Cessna, Beech Aircraft Corp., and Gates Learjet Corp., from a peak of 25,700 in late 1979 to about 10,650 in Wichita today.

This reduction has caused great concern among many in my home State—and rightfully so. The sad state of the agricultural economy, in addition to the declining number of those employed by the aircraft industry, should certainly be a reason for alarm among those concerned with our States economy and the future of Kansas. After all, the aircraft industry in Kansas is second only to agriculture as our State's largest employer. Approximately 15,000 people work for Boeing Military Airplane Co. alone.

IMPACT ON CESSNA ALONE

Mr. President, recently, Cessna Aircraft Co. of Wichita announced it would lay off an additional 900 employees—the sharpest reduction in its history. Cessna is the world's largest manufacturer of light aircraft and has built more than 176,000 planes, including almost 1,400 business jets and 2,000 military jet planes. In the first 4 months of this year—through April—Cessna sold only 153 airplanes worth $55 million. That compares to 268 planes worth $151.8 million in the first 4 months of 1985—the year that was the light aircraft industry's worst. The Cessna layoff means a payroll loss of about $20 million and an economic loss to the city of Wichita of about $50 million.

According to Russ Meyer, chairman of Cessna Aircraft Co. and a panelist, the layoffs are the result of a decision by Cessna to immediately stop producing its smallest plane: the single and multiengine piston-powered aircraft that are the backbone of its learn-to-fly operations. Russ and other company officials, attribute the small-aircraft shutdown to a continuing slump in sales and most importantly, to the

overall effects of skyrocketing product liability costs. Because these costs must be added to the price of a airplane, today's buyer is paying over $70,000 per airplane in insurance costs alone.

SKYROCKETING INSURANCE COSTS

Although business aviation's safety record continues to improve, the industry's product-liability insurance bill has climbed an average of 500 percent per company since 1981. Beech Aircraft Co. alone, shelled out more than $20 million to insure itself against product-liability claims in 1985.

UNIFORM STANDARD MAKES SENSE

Mr. President, aviation is a natural candidate for Federal product liability standards. General aviation products are federally regulated in design, production, and maintenance. Pilots and mechanics are regulated through training, licensing, and operating procedures. The air traffic control system is federally operated and interstate in scope. It would make sense to create a uniform standard whereby everyone would be treated equally under the law.

The General Aviation Liability Standards Act of 1986 will go a long way toward addressing one of the most serious concerns of the aircraft industry. I am pleased to be a cosponsor of this important piece of legislation.

The state of the general aviation industry is grave. We cannot wait another year, or 2 years, to address this problem because many of these manufacturers simply will not last that long. I don't know if a consensus can be reached on the overall question of product liability this session, but, as it affects general aviation, both Senators from Kansas believe we can and should enact legislation this year.

Mr. President, I want to underscore the argument just made by my distinguished colleague [Mrs. KASSEBAUM]. She indicated in her statement that this adds about $80,000 to the cost of an airplane. She has also indicated what it has done as far as employment is concerned. Just to give an idea I mentioned that 6 years of declining sales have trimmed the workforce at Cessna, Beech Aircraft Corp. and Gates Learjet from a peak of 25,700 in late 1979 to about 10,650 in Wichita today.

We cannot sell airplanes. We have added $40,000 to $80,000 to the cost of an airplane because of product liability. It certainly has caused great concern in our State, and I think other States as well. You add this to the troubled farm economy, and we are also in the so-called oil patch and that has been depressed, and it becomes quite a burden on any State, particularly a small State.

Senator KASSEBAUM has taken the lead on this legislation for the past several months. She has been working every day to see if we could not get some action. That is why she is taking this unusual step this evening.

We know it takes 60 votes. We know we should not clutter up reconciliation bills with a lot of extraneous legislation. But there is a procedure and if you can get 60 votes, then I think it is worth doing. In any event, I think the American people should understand that the Senate made an effort and I believe it will be a successful effort. So I join my colleague on this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Will the junior Senator from Kansas yield for a question?

Mrs. KASSEBAUM. I shall be happy to yield.

Mr. BUMPERS. The Senator has made a very eloquent, impassioned plea for help to the depressed part of the economy of Kansas, and certainly all of us understand that. I do not know how I am going to vote on the amendment, but as ranking member on the Small Business Committee, let me say we held hearings on this very issue. I heard one horror story after another; for example, a bus company in Little Rock, AR, literally being put out of business.

How would the Senator answer the criticism that we are taking care of one segment of the economy when the whole economy—and especially small business people are the ones that are really being most impacted by product liability rates?

Mrs. KASSEBAUM. Mr. President, I certainly agree with the Senator from Arkansas. My answer to that is I am a cosponsor of the comprehensive product liability legislation as well. But starting out, I spoke to the uniqueness of the aviation industry. Today, there are individual pilots who simply cannot afford to have a small plane because of the cost of the liability insurance. I think that there are some Federal standards that have to be met by pilots, by the manufacturers, that it is an industry which is really regulated from start to finish. That is why I think it can be addressed and handled in a separate manner.

Mr. BUMPERS. I say to the Senator she is always very eloquent and persuasive in these cases, but I must say I am a little hesitant to vote for the Senator's amendment because it will be difficult to explain to some depressed and hard-pressed people in my State, for example, who are not getting the same relief. I do not blame the Senator for taking care of a segment of her economy. We all try to take care of constituents in our respective States.

Mrs. KASSEBAUM. I wish to say to the Senator from Arkansas that I shall be more than glad to try to work with him on any additional product liability legislation. I, too, think it is very important.

Mr. BUMPERS. I thank the Senator.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mrs. KASSEBAUM. I am happy to yield.

Mr. JOHNSTON. I thank the distinguished Senator.

Mr. President, I will say the whole subject of product liability insurance is to me a very troubling, very difficult, very complicated subject and a cause of great concern. I should like, where possible, to put reasonable limits on that to the end that business can continue and we do not put people out of business. But I wonder, does the Senator feel that we should pass this legislation without even having a copy of the legislation before us? I do not know whether it is even possible to get a copy of the legislation.

Mrs. KASSEBAUM. Mr. President, we can. There have been several of the Senator's colleagues who have gone around on this in extensive hearings and modifications made in the legislation when we had markup in the Committee on Commerce. I went down the basic provisions, but I shall be happy to get a copy of the bill to the Senator.

Mr. JOHNSTON. If the Senator will yield further, I said this as not so much being hostile to the idea at all, but I just hesitate to legislate on a complicated subject in this manner.

□ 2100

The other night we passed one amendment, another amendment was described and we passed still another amendment, and we had to go back and straighten that out. The reason for that was we acted in great haste, and I fear that we are doing that at this time.

Mrs. KASSEBAUM. Mr. President, I know there are going to be many who share that concern because it is a comprehensive and complex area of legislation. But we so thoroughly went through it, I believe, in the Commerce Committee, trying to address the concerns of Senator HOLLINGS and Senator INOUYE and others who did have some concerns about it. But we are supportive of Senator EXON and others and I think took care, I would hope, of a number of issues that were raised in the Commerce Committee. Unfortunately, because of the time constraints——

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. KASSEBAUM [continuing]. We are out of time.

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. Mr. President, I yield 4 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, this is a very controversial piece of legislation. There is some merit to it. There is a considerable amount of demerit to it. But there is no argument that this does not belong on the budget reconciliation measure. As a matter of fact, this measure came out of the Commerce Committee and then the distinguished chairman and ranking member of the Judiciary Committee wrote to the chairman of the Commerce Committee asking for subsequent referral to the Judiciary Committee. And that has not occurred. Suddenly we find ourselves confronted with this measure as an add-on to the budget reconciliation bill.

Now, let us not kid ourselves. This is a major, major piece of legislation. It would deprive the States of jurisdiction in courts having to do with aviation liability where small claims are involved. Are we at one moment, in the middle of the night, going to take away from the States the jurisdiction to hear these cases and decide that because there is a problem, which I do not deny, we are going to in one fell swoop, without the Judiciary Committee ever having had an opportunity to look at the legislation, add it on to the budget reconciliation measure?

I believe that would be irresponsible. I also believe that it would be very unfair to all of those who are injured in airplane accidents. Where have we been for all of these years that we suddenly decided that we have to do this for the airplane manufacturers; the poor airplane manufacturers suddenly need our pity this evening at 9 o'clock at night in order to give them relief.

Well, if you happen to be—may I have order in the Senate, Mr. President, without it being on my time.

The PRESIDING OFFICER. The efforts to restore order will not be assessed against the Senator from Ohio. He is correct. The Senate is not in order. We will not proceed until there is a measure of order in the Chamber. Senators are asked to take their seats.

Staff is ordered to cease conversing in the rear of the Chamber. There are five Republican staffers who are making too much noise. Those Senators engaged in conversation in the back of the Chamber on the Democratic side are asked to take their seats so their Democratic colleague can be heard.

The Senate is once again in order. The Senator from Ohio [Mr. METZENBAUM] is once again recognized.

Mr. METZENBAUM. I thank the Chair. Let me explain what this bill does. It has a statute of repose. I must say in all the years I have practiced law I never heard of a statute of repose, but this one says that at a certain period you cannot bring an action based upon the conduct of the airplane manufacturers some years earlier. It changes the standard of liability. It limits joint and several liability. It provides a new statute of limitations of 2 years.

Now, there may be some of these matters that arguably have some merit to them but not on this bill. This is not the way it should be coming to the floor, and the Judiciary Committee should not be denied the opportunity to which it is entitled under the rules of the Senate. Senator STROM THURMOND and Senator JOSEPH BIDEN asked for an opportunity to have this bill come before our committee.

Mr. President, I believe that nothing could be more further away from the reality of this legislation, nothing could be less germane than this bill to the whole question of budget reconciliation.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. METZENBAUM. I certainly do yield.

Mr. JOHNSTON. There was an airplane accident in my hometown not too long ago where a plane took off and the motor went out and the pilot, they say, should have reacted in some way to the motor going out, but he failed to take that action and the plane crashed, killing the assessor of my local parish, or county as you would call it.

Now, as I read this, it eliminates joint and several liability between the aircraft manufacturer and those persons over which the manufacturer has no control, such as the pilot.

Now, in that case, if there was a clearly defective product, that is, a motor was defective and therefore went out, then if they decided that the pilot was 50-percent negligent and the manufacturer was 50-percent negligent, if the pilot was broke, which he probably would be, which is more often the rule——

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. JOHNSTON. Then the claimant would be out of luck, would he not?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. METZENBAUM. In response to the Senator from Louisiana, he is 100 percent correct.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CHILES. Mr. President, there is 1 minute left?

The PRESIDING OFFICER. There is 1 minute remaining under the control of the Senator from Florida (Mr. CHILES).

Mr. CHILES. Mr. President, there is merit to the proposition that the Senator from Kansas raises. This issue has been brought to me, very frankly, by Piper Aircraft and others talking about the fact that they no longer really can afford to make private aircraft; the insurance and the costs have gotten so high that they are having a very, very tough time. Reluctantly, though, I have to oppose this as I have opposed the others because it should not be done on this bill. It is a piece of legislation that clearly should not be done here. This again is what we are trying to keep from happening to the reconciliation bill. With that in mind, Mr. President, I yield back any of the remaining time that I have and raise the point of order that this is not germane.

Mrs. KASSEBAUM. Mr. President, I move to waive the point of order and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The motion is debatable.

Mr. CHILES. I yield back the time.

Mrs. KASSEBAUM. Mr. President, I yield back any time that I may have remaining.

The PRESIDING OFFICER. All time having been yielded, the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS (when his name was called). Present.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from Hawaii [Mr. MATSUNAGA] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 43, nays 52, as follows:

[Rollcall Vote No. 272 Leg.]

YEAS—43

Abdnor	Hecht	Pressler
Armstrong	Heinz	Quayle
Broyhill	Helms	Rockefeller
Chafee	Humphrey	Rudman
Danforth	Inouye	Simpson
Denton	Kassebaum	Specter
Dodd	Kasten	Symms
Dole	Laxalt	Trible
Evans	Lugar	Wallop
Exon	Mathias	Warner
Ford	Mattingly	Weicker
Gorton	McClure	Wilson
Harkin	McConnell	Zorinsky
Hatch	Murkowski	
Hawkins	Nickles	

NAYS—52

Andrews	Durenberger	Metzenbaum
Baucus	Eagleton	Mitchell
Bentsen	Glenn	Moynihan
Biden	Gore	Nunn
Bingaman	Gramm	Packwood
Boschwitz	Grassley	Pell
Bradley	Hart	Proxmire
Bumpers	Hatfield	Pryor
Burdick	Heflin	Riegle
Byrd	Hollings	Roth
Chiles	Johnston	Sarbanes
Cochran	Kennedy	Sasser
Cohen	Kerry	Simon
Cranston	Lautenberg	Stafford
D'Amato	Leahy	Stennis
DeConcini	Levin	Thurmond
Dixon	Long	
Domenici	Melcher	

ANSWERED "PRESENT"—1

Stevens

NOT VOTING—4

Boren Goldwater
Garn Matsunaga

So the motion was rejected.

□ 2120

Mr. CHILES. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Florida [Mr. CHILES] is recognized.

Mr. CHILES. Mr. President, I yield 3 minutes off the bill to the distinguished Senator from Massachusetts [Mr. KERRY].

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized.

□ 2130

Mr. KERRY. Mr. President, I rise on behalf of myself, Senator SIMON, Senator MITCHELL, Senator GLENN, Senator STEVENS, and Senator MURKOWSKI, and I believe some others who have statements they wish to place in the RECORD.

We are not planning to offer an amendment with respect to the matter about which I am concerned, but I did want to bring it to the attention of the distinguished chairman of the Budget Committee. We have talked about it and I believe he is in agreement that during the conference we would like him to try to do something about it, and that is the matter of the mandatory shift of Medicare coverage to State and local employees.

In many States, because of the required date of effective undertaking of this shift, there would be an immediate May 1 transition. That transition comes in the middle of the current fiscal year for most of those States. We believe that it would place an unfair burden on those States, not necessarily ultimately to make these transitions, which I think most of the Congress decided might or should be made, but to do it on the current timetable. And to do it on the current timetable will require, for instance, in the State of Massachusetts, the government to raise some $78 million in 1987 and nearly $400 million over the next 5 years. In addition, the employees of our State and local government would have to pay a similar amount as their contribution to the Medicare system.

Coming as it does in the middle of the fiscal year when the States have already fixed their plans for spending, this will require an increase in property taxes because that is the only means the local communities have to pay for it. In a State like Massachusetts, where we have a restriction on the growth in the rate of the property taxes, that places an onerous burden on the Commonwealth.

So we are hopeful that, while this may have to happen in the conference committee, the chairman and the ranking member will, as they have discussed, make an effort to try to push that effective date back if, indeed, it is not possible to accede to the House, which has not included this particular amendment.

Mr. GLENN. Mr. President, the budget bill before the Senate mandates the Medicare payroll tax to all State and local public employees, not already under Social Security, beginning April 30, 1987.

Federal deficit reduction should not consist of sudden and major cost-shifting to State and local governments. Yet, the bill before the Senate would impose a new and substantial tax burden on State and local governments next year. It would not give States and municipalities much time to decide whether to raise revenue or cut other spending to pay for the tax.

According to estimates, the proposed tax will raise $5 billion over the next 3 years. Five billion dollars. The Governor's office in Ohio estimates that this new Medicare tax will cost my home State and local governments more than $200 million in the first year. It will cost Ohio's school systems alone about $100 million.

I am sure that many of my colleagues share my concern about what the tax will cost their local governments, school systems, and fire and police departments—not to mention the taxpayers who pay the costs of their community governments. The tax is 2.9 percent of salary; with equal employer and employee contributions of 1.45 percent.

Because the Medicare tax impacts municipalities in almost every State, I urge my colleagues to take a moment and think about how they are going to explain the new tax to local policemen, schoolteachers, and firefighters in their home State. For example, most of us in this body agree that our Nation's schoolteachers are underpaid, and we have said we wish we could pay our children's teachers more. However, if the Medicare tax proposal becomes law, teachers will be taking a 1.45-percent pay cut next spring.

As we all know, most local governments have a regressive property tax as their basic source of revenue. Otherwise, they are largely dependent on funds from the State and Federal Government. We have been steadily cutting the Federal revenue to States and communities. All of us are well aware that a number of State treasuries are now suffering shortfalls due to problems associated with unfair trade practices, severe fluctuations in the oil market and farm failures. Do we really want to impose an immediate tax on these governments? Does anyone here want to be even remotely responsible for an immediate pay cut for our teachers, our firefighters, and our policemen?

Since most State governments already participate in Social Security, the proposed Medicare tax will only really affect State employees and State retirement programs in seven States, my home State of Ohio being one of those States. I have always argued that those governments, whether State or local, which took the initiative to set up retirement benefit systems as good as or better than Social Security should not be penalized because they had the foresight and leadership to establish these systems.

When the Social Security Act was passed in 1935, State and local workers were excluded from participating in it because there were constitutional concerns about Federal taxation of these governments. In 1951, they were allowed to join Social Security on a voluntary basis, but only if they did not benefit from any State or local government retirement program, and if they were not police and firefighters. It was only later that we opened Social Security's doors to almost any State and local employee group who wanted to join the Federal system.

Until we changed the law earlier this year, with enactment of the Consolidated Omnibus Budget Reconciliation Act [COBRA], State and local government employees were only covered under Social Security and Medicare if they had chosen to be. However, this year, we changed the law to mandate the Medicare tax.

Mr. President, we changed the law to mandate the Medicare tax on public employees hired after March 1986—that is, on "newly hired" workers. Therefore, under the law that we just passed last April, with job turnover, eventually all public employees will pay the Medicare tax. It was the judgment of this Congress last spring that such a significant new tax, 2.9 percent of payroll, should be gradually phased in. Now, in the rush to meet the Gramm-Rudman deficit reduction targets, we have abandoned that course of action.

Mr. President, I do not think it is fair to tell the State of Ohio, or any other State government, that the Federal Government is going to impose a new tax on their employees, but it will be phased in over time, and then, less than a year later, expand the tax to include all their workers. I would also like to remind my colleagues that many of us in this body have argued that Social Security and Medicare trust fund decisions should not be made for the purposes of Federal deficit reduction. We vocally support this

idea. However, the kinds of decisions we are making today are continuing to be made in the context of the budget deficit reduction legislation.

Mr. President, I do not believe that mandating the Medicare payroll tax on all public local employees is a fair tax or a fair proposal. Federal deficit reduction goals should not be met by asking State and local governments to send more money to Washington, and particularly, when those States that took the lead in responsible retirement provisions for their citizens, are now the one's being penalized.

Mr. KERRY. Mr. President, I asked the distinguished chairman if he would respond with respect to the Medicare coverage and our discussion with respect to the conference committee to try to push that date back.

Mr. DOMENICI. Mr. President, let me say to my friend, the junior Senator from Massachusetts, we are well aware of the fact, the way this tax is imposed, that it might work not only the normal burden that is going to be there on States but a rather inordinate one because of the time of it. It may come into play and put a burden on States when they do not have their legislatures in session, when they do not have an opportunity to work their own budgets.

So we are going to do everything we can to accommodate the Senator. As the Senator knows, the House does not plan to raise revenues in this manner. They may still. They have 4 or 5 more days. But, currently, they do not plan to do their reconciliation this way.

So we will go to the conference, and Senator PACKWOOD and the Finance Committee members will have this measure and the House will probably have something different. I understand that they are willing to attempt to ease this burden which you have described here well this evening to the Senate.

Mr. KERRY. I thank the distinguished chairman very much for that assurance.

As the chairman knows, this body is reluctant to raise any kind of tax and I think it is unfair and unfortuntate to shift to the States a requirement that they raise their property tax.

MEDICARE COVERAGE OF STATE AND LOCAL EMPLOYEES

Mr. MITCHELL. Mr. President, I rise today to join with a number of my colleagues to express my concern about the provision included in the budget reconciliation bill which mandates Medicare coverage for all State and local government employees, effective July 1, 1987.

As I have expressed in the past, I am very concerned about the negative impact this provision will have on State governments and municipalities across the Nation. Seven States have independent State retirement systems and therefore have a small percentage or none of their State employees covered under the Social Security Program. This mandate will result in an additional financial burden at a time when State and municipal governments are attempting to deal with cutbacks in Federal funding in a variety of programs.

Local governments have been hit hard over the last 5 years as a result of Federal Government budget cuts. If this provision is adopted, most cities and towns will be forced to increase their property taxes in order to raise the additional revenues. As a matter of tax equity, I do not believe it is fair to mandate an increase in our most regressive public revenue source, the property tax.

An effective date of July 1, 1987 will force most States and municipalities to incorporate these additional costs in their budgets in the middle of a fiscal year.

The House budget reconciliation bill does not mandate Medicare coverage for State and local government employees. I urge the Senate conferees on this bill to defer to the House and drop this provision from the final bill.

Short of eliminating this provision from the bill entirely, I would urge the conferees to delay the implementation date by 1 year. Such a delay would give State and local governments an opportunity to develop a workable plan to finance the employer share of Medicare coverage for their employees.

Mr. SIMON. Mr. President, section VI-A—revenue provisions—of the reconciliation bill provides for coverage of all State and local government employees in Medicare effective April 30, 1987. This amounts to a combined employer-employee hospital insurance tax rate of 2.9 percent of the first $42,000 of wages—this amounts to 1.45 percent for each the employer and the employee.

Mr. President, I rise this evening out of concern for both the employers and the employees who will be affected by this change. I fully understand the reasons for this proposed change, as stated in the report language:

Often, State and local government employees qualify for Medicare benefits ever if the governmental work is excluded from coverage—this happens as a result of work performed in other employment or through a spouse.

Entitlement to Medicare gives full coverage whether the employee has contributed for the minimum number of quarters or a lifetime.

We need a truly national system of health care. Right now, many people are not covered who need to be covered in this country.

Most importantly, many people fall through the cracks. For instance, the average teacher only teaches for 6 years. Once that teacher finishes teaching, where he or she has not paid into Medicare, and goes into a new profession, the former teacher has no protection should health care be needed if the person becomes disabled in some unfortunate accident. Perhaps even more tragically, retired public employees need health care and end up paying exorbitant amounts for Medicare coverage because they hadn't contributed during their career.

While I understand the need for including State and local governmental employees in the Medicare system, the Consolidated Omnibus Budget Reconciliation Act of 1985 included all those State and local government employees hired after March 31, 1986, in mandatory Medicare coverage. This is enough of a burden to place on these governmental entities at this time. I would like to strongly encourage the conferees from the Senate to consider a proposal to extend the effective date until January 1, 1988, at the earliest to give the school districts, local governments, and State governments time to prepare for the added burden of paying their share of the Medicare coverage for all employees. This will also allow the employees and their representative organizations time to prepare for the payment of their 1.45 percent of the Medicare fee.

Some evidence of the burden which these governmental entities will have to bear is as follows:

The cost to the State of Illinois the first year alone would be almost $34.5 million.

In the education community alone, 171,785 Illinoisans will be affected by the change—this includes people who paid into the Illinois Teachers' Retirement System, State Universities Retirement System, and the Chicago Teachers' Retirement System.

The total number of affected employees is around 214,000—this includes the above plus the members of the Policemen's Annuity and Benefit Fund of Chicago and the Municipal Employees' Annuity and Benefit Fund of Chicago.

I have received two letters from retired Illinois teachers who now have to pay into Medicare to receive the services. They cannot afford the constantly escalating payments.

I ask unanimous consent that these letters be reprinted in full at the end of this statement.

If this passes—as I assume it will—we ought to be protecting these retired teachers. I may introduce legislation to modify this incredible situation.

These retired teachers are pleading that something be done to help reduce their unreasonable payments. While this proposal will not assist those already retired, it will assist those still in the various professions not now covered under Medicare.

I ask again though that the effective date be delayed until at least 1988 to allow for effective preparation for the additional tax needed. It seems to me that this would be the only fair and equitable way to approach such new coverage.

I thank my colleagues who will be the conferees on this bill for considering these views.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEAR SENATOR SIMON: I am writing to you about those of us who must pay $229.50 a month for Medicare. We, who have been teachers and have no social security, find that a huge sum to pay out of our teacher's pension.

It is fair that we pay, but every January the amount goes up—last January it was a $40 raise. Can not a ceiling be put upon the amount? We, of course, must have Medicare, but when we are in a very low bracket, we find $229.50 a month a hardship.

I trust that you can do something about a ceiling of say $200.00 a month.

Sincerely,

MURIEL PETERSON.

HON. PAUL SIMON,
U.S. Senate,
Washington, DC.

DEAR SENATOR SIMON: It was with great surprise that I read that the Senate is considering a proposal that would extend Medicare coverage to teachers who are not on Social Security.

I'm one of those retired teachers who does not qualify for Social Security and my monthly payments for Medicare coverage now amounts to $227.40 and this is to increase in January. Teachers in my situation do not draw large pensions and Medicare plus a Medicare supplement takes a great chunk out of each monthly check.

When this proposal is discussed, please do everything possible to help us. We do not ask to be included in Social Security, just some type of legislation that would bring Medicare payments within reasonable range for all retired as well as active and future teachers.

Thank you for any help you can give us.

Very truly yours,

MARGUERITE HENRY.

Mr. MURKOWSKI. Mr. President, I am concerned about a provision in the Senate Finance Committee's version of the Budget Reconciliation Act of 1986 that mandates Medicare coverage for all State and local public employees. Such a provision would further burden State and local governments in severely economically depressed areas and add a new payroll tax to their employees. The House Ways and Means Committee has not yet included such a measure in their reconciliation bill.

Mr. President, the issue of mandatory Medicare coverage for State and local public employees was resolved in last year's Budget Reconciliation Act. We agreed under the act to require only those State and local public employees hired after March 31, 1986, to obtain Medicare coverage. State and local government's are required to contribute into the Medicare trust fund 1.45 percent of the salary of every employee covered under Medicare.

There was good reason in last year's reconciliation bill to not require all State and local public employees to be under mandatory Medicare coverage. It allowed for the phasing in of mandatory Medicare coverage to enable State and local governments to have time to adjust to their added Medicare contribution costs.

To now summarily require all State and local employees to obtain Medicare coverage is not only a breach of faith but creates enormous difficulties for State and local governments. It would not only force expensive and confusing changes in the accounting systems of State and local governments but place an extreme hardship on those States experiencing declining revenues. For example, this would annually cost the State of Alaska $7 million during a time when in 1 year its annual revenue is estimated to drop by nearly two-thirds. It would also annually cost the city of Anchorage, AL, approximately $700,000 when it is experiencing a budget deficit of $4 million—300 anchorage municipal employees have already lost their jobs this year and the city is faced with having to increase taxes in a depressed economy. Other communities in Alaska and throughout America will also be affected.

Mr. President, the appropriate method of implementing Medicare coverage of State and local government employees was already fully debated. The goal of complete mandatory Medicare coverage will eventually be phased in without changing the law and without having to put undue hardship on State and local governments.

Yes, mandatory Medicare coverage for all State and local public employees is attractive. It raises revenue during a time of Federal deficits. But it will do so only in the short term. In the long run the Federal Government will be obligating itself to provide Medicare coverage to a far greater number of beneficiaries. When the long-term effects are considered, the revenue generated by this provision will be much smaller than suggested by the Finance Committee.

Finally, Mr. President, mandatory Medicare coverage more than offsets the tax cut that 4 to 5 million middle-class and lower middle class Americans outside the Medicare system expect to receive from the tax bill. According to the Joint Committee on Taxation the tax reform bill would provide taxpayers with incomes in the range of $20,000 to $30,000 with a cut equivalent on the average to $191. Thus, the average Government employee whose annual salary is $23,000 would be subject to a new Medicare tax of $333.50. This is more than 150 percent of the cut that the employee would receive under the tax bill!

Mr. President, I request that this body leave intact present law or at the very least extend the effective date of any provision that mandates Medicare coverage to all State and local public employees.

The PRESIDING OFFICER (Mr. STEVENS). The Senator's time has expired.

Who yields time?

Mr. D'AMATO. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself, Mr. GARN, Mr. MOYNIHAN, Mr. RIEGLE, Mr. MURKOWSKI, Mr. HECHT, and Mr. HEINZ, proposes an amendment numbered 2856:

Strike lines 2 through 15 inclusive on page 4 of the amendment.

Mr. DOMENICI. Mr. President, might I ask the Senator from New York, could we have a time agreement? What would you consider fair? I only have 8 minutes left on my side. I would like to have 2 or 3 left when you are finished. Could you get by with 8 minutes?

Mr. D'AMATO. Yes.

Mr. DOMENICI. Eight minutes on your side; and 6 minutes in opposition, Mr. President.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, before we do that, might I ask, does the distinguished Senator from Florida have any objection to the time coming out of the bill in the manner that leaves the Senator from New Mexico with 4 minutes when we are finished with this? I think you will have about 20.

Mr. CHILES. No, I would not object to that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I offer this amendment not only on behalf of myself, but on behalf of Senator GARN, Senator MOYNIHAN, and Senator RIEGLE.

In the absence of Senator GARN, and speaking in his behalf, I am sure he would, if he were here this evening, move to strike lines 2 through 15 inclusively because what those lines do is place an assessment of FDIC insurance premiums on foreign deposits held in banks overseas. The chairman of the Senate Banking Committee, Senator GARN, who, as we all know, is recovering from surgery and cannot be here, has opposed assessing deposit insurance premiums on foreign deposits

when Senator PROXMIRE previously has raised the subject in the Senate Banking Committee.

The committee has never held hearings on the effects of this provision. We are deeply concerned about the adverse impact on international trade and on the competitiveness of American banks and on the safe and soundness. In our search for additional funds, we run risks that far outweigh any benefits obtained.

I severely question the figure of $300 million that came, I believe, from almost the air. Senator GARN, were he here, and based on his past actions and the actions of the committee, almost certainly would have opposed this provision and it never, never would have been in the reconciliation amendment.

I cannot help but think about an earlier statement that the distinguished senior Senator from Florida, Senator CHILES, made when he said that the reconciliation package was not designed for Members to shop the legislation around on the floor of the Senate that they could not get out of committee. Let me suggest that that is exactly what is taking place here.

The Banking Committee has opposed this. It flies in the face of what we have done. It will wind up costing American taxpayers millions and millions of dollars and tens of thousands of jobs.

Let me just give you one little example. In 1981, we passed the International Banking Facilities Act to help bring more business in international banking onto U.S. shores. We were losing it. The banking capitals were moving to London, moving offshore.

One of the key ways of doing that was to exempt deposits in international banking facilities from FDIC premiums. That makes a difference, makes them competitive.

Well, what has happened since then? Five hundred and twenty-four banking facilities have been created and they are presently in the United States in 24 States. Twenty-four States have 525 institutions employing thousands and thousands of Americans. And, of course, in terms of international banking, we now have $360 billion in deposits.

Let me tell you, you tax these deposits and you assume a liability that you presently do not have with the FDIC and you are going to lose these. They are going to go to other banks. It does not make sense.

I know there are others who would like to speak on this.

Mr. President, I hope that we would strike this provision. We do have a method of offsetting these revenues. Earlier, the Senate Banking Committee passed title I of the banking bill. It is on the calendar, S. 2752. It will raise at least several hundred million dollars. We are not able to obtain a firm estimate at this time. But we are confident that, by passing the regulators bill, we would raise at least the $300 million necessary to offset this $300 million.

Mr. HEINZ. Will the Senator yield me a minute and a half?

Mr. D'AMATO. Yes, I will.

Mr. HEINZ. Mr. President, I thank the Senator for yielding. I ask unanimous consent that I be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, the Senator from New York has explained very clearly and I think very effectively what this amendment to the bill and what he is trying to strike would do to the international competitiveness of U.S. banks if it is allowed to stay in the bill. But I would like to talk to the principle of what we are doing.

□ 2140

The principle of the Federal Deposit Insurance Corporation is to insure deposits because the banks involved, and they are all currently foreign banks in the United States of America, are held to a standard of underwriting of the employment of those deposits that guarantees the safety and soundness, not just of the banking system but of the way an individual bank is run and, therefore, the deposits.

Even in this country, with all those heavy regulations we have, we have seen plenty of bank failures, and what the committee amendment does is to insure deposits by not just Americans but by foreigners in foreign banks which we cannot regulate. What we are doing is putting the assets of the Federal Deposit Insurance Corporation at risk, at the mercy, of foreigners regulating foreign banks.

Mr. President, that is about as dumb an idea as I have ever heard. I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Wisconsin is recognized for 6 minutes.

Mr. PROXMIRE. Mr. President, I strongly support the provision in the Domenici-Chiles amendment to charge FDIC insurance premiums against the foreign deposits of U.S. banks. This provision will reduce the deficit by $310 million in fiscal year 1987, according to CBO, and FDIC has about the same figures. It also accomplishes a long delayed deposit insurance reform first recommended by the U.S. Treasury in January 1985.

Mr. President, an amendment has been offered by Senator D'AMATO to strike this provision. Mr. President, whatever the merits or demerits of this amendment, there is one overwhelming argument against it.

It will eliminate $310 million in revenues in increasing amounts in every following year. As a result, the Domenici-Chiles amendment will not meet the Gramm-Rudman targets. This runs the danger that a sequester will be triggered.

If we want to avoid a sequester, we must vote down this amendment. It is that simple.

But even on the merits, this amendment should be rejected. Here is why:

The Federal Deposit Insurance Act now requires banks to pay an insurance premium of one-twelfth of 1 percent of their total deposits received in the United States. Deposits received and payable only at foreign branches are excluded and therefore are not subject to a premium charge.

This exclusion had little practical effect when the Federal Deposit Insurance Act was written over 50 years ago when foreign deposits were almost nonexistent. But since the 1950's, foreign deposits of U.S. banks have skyrocketed to the point where they now total $350 billion or about one-fifth of all bank deposits.

Indeed, the foreign deposits of some of our major money center banks exceed their domestic deposits. For example, Citibank had $30 billion in domestic deposits at the end of 1984 and $49 billion in foreign deposits. At Morgan Guaranty, the figures are $14 billion in domestic deposits and $26 billion in foreign deposits.

By shifting their deposit-gathering operations to their overseas branches, these money center banks can cut their FDIC deposit insurance premiums by half or more. And yet there is no question but that the FDIC and ultimately the U.S. Treasury stands fully behind these deposits even though they are technically not insured.

The need for including foreign deposits in the FDIC premium base was made dramatically clear in the wake of the Continental Illinois rescue package. One of the reasons the bank suffered a loss in market confidence was due to its heavy reliance on foreign deposits. Moreover, the bank regulators felt compelled to save Continental in order to maintain the confidence of foreign depositors in all U.S. financial institutions.

Although foreign deposits figured prominently in the bailout of Continental, they did not contribute one penny of revenue to the FDIC insurance funds. In effect, foreign depositors in large U.S. banks enjoy the benefits of deposit insurance without having to pay for it. Instead, the cost is shifted to the FDIC, and ultimately, the rest of the banking industry and their customers. Thus the smaller and medium-sized banks are forced to pay for the excesses of the largest banks.

Let me repeat that: The smaller and medium-sized banks are forced to pay for the excesses of the largest banks. This works to the disadvantage of

about 98 percent of the banks in this country.

This built-in discrimination against smaller banks will become even worse now that we have firmly established the precedent that we will not allow a large bank to fail. Large banks now have de facto 100-percent Federal deposit insurance on all their deposits including foreign deposits while the depositors in smaller banks are at risk if their deposit exceeds $100,000. This difference gives a substantial and unjustified competitive advantage to the big money center banks.

The provisions in the reconciliation bill will help to reverse this competitive inequity while strengthening the reserves of the FDIC deposit insurance fund. What kind of private insurance company would be willing to insure over $350 billion in deposits without collecting a single penny in premiums to cover its risk? Why should the largest banks be able to enjoy the protection of Federal deposit insurance on their foreign deposits without paying any premiums? Since these foreign deposits contribute substantially to the risk of the FDIC fund, it is only fair that they be assessed a premium.

Mr. President, let me conclude by pointing out that the deposit insurance provision in the Domenici-Chiles amendment will provide for real and continuing deficit reductions: $310 million in 1987, $330 million in 1988, $350 million in 1989, $375 million in 1990, and $405 million in 1991, and so on, according to CBO.

We are not talking about one-time savings resulting from phony asset sales. We are talking about real savings.

The Domenici-Chiles amendment has been criticized for engaging in smoke and mirrors savings. But the Senator's amendment would remove one of the few genuine deficit reduction measures from the Domenici-Chiles proposal.

Mr. DOMENICI. Will the Senator yield 30 seconds?

Mr. PROXMIRE. Yes.

Mr. DOMENICI. They keep calling this the Domenici-Chiles amendment but basically Treasury and OMB sent us proposals. The first one said, "You ought to raise $2.6 billion from FDIC."

That got chopped around and pretty soon it turned into $1 billion.

Then everybody said, "That is crazy, there is no way to find $1 billion."

About a half-day later they suggested, the Pennsylvania Avenue part of the Government suggested this measure, and it got chopped around and they said they would settle for $310 million, that it sounded reasonably good.

I am not saying they wholeheartedly support it. I did not invent it nor did Senator CHILES. But that is how it evolved. It does precisely what the Senator said. The results? You hear two versions. I do not know which is right.

But that is how it came into being.

You know what it does, it taxes the foreign deposits of American banks for FDIC insurance as they pay for it here in America.

The PRESIDING OFFICER. All time has expired. The Senator from New York has 2 minutes, 5 seconds.

Mr. D'AMATO. Mr. President, we are absolutely kidding the American public if we are intending that this is going to help the budget deficit because these are FDIC funds and they cannot be used for any other purpose other than paying off the depositors of those banks.

This provision is a sham and we have to take it into the tax implications, into the implications of loss of jobs.

I want to tell you something. If we are talking about usurping jurisdiction, I can assure you if Senator GARN was here this never would have found its way into this bill. Treasury does not support it. They started off strongly in favor and now they have mellowed out. I think if you gave them another 48 hours they would be telling you, "Do not do this."

We have a way of raising revenues. I would have offered it. The only problem is we cannot get the exact dollars from CBO in terms of title I of the Banking Act which would offset this.

This is the wrong thing to do.

We have $260 plus billion that are on shore that have been deposited as a result of what we have done in exempting it from FDIC. You have $360 billion abroad in international markets. It will not be there. You will lose a significant amount of it.

If you want to play politics, if you want to use flimflam numbers, $300 million, it will not close the budget deficit. It only can be used by the FDIC to pay off failing banks. That is why we moved to strike. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from New York.

Mr. D'AMATO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has been yielded back. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Colorado [Mr. HART], and the Senator from Hawaii [Mr. MATSUNAGA], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 32, nays 63, as follows:

[Rollcall Vote No. 273 Leg.]

YEAS—32

Abdnor	Hatch	Quayle
Armstrong	Hawkins	Riegle
Biden	Hecht	Roth
Bradley	Heinz	Rudman
Chafee	Kerry	Specter
Cranston	Laxalt	Stevens
D'Amato	Mattingly	Symms
Danforth	McClure	Thurmond
Dixon	McConnell	Warner
Evans	Moynihan	Wilson
Gorton	Murkowski	

NAYS—63

Andrews	Glenn	Melcher
Baucus	Gore	Metzenbaum
Bentsen	Gramm	Mitchell
Bingaman	Grassley	Nickles
Boschwitz	Harkin	Nunn
Broyhill	Hatfield	Packwood
Bumpers	Heflin	Pell
Burdick	Helms	Pressler
Byrd	Hollings	Proxmire
Chiles	Humphrey	Pryor
Cochran	Inouye	Rockefeller
Cohen	Johnston	Sarbanes
DeConcini	Kassebaum	Sasser
Denton	Kasten	Simon
Dodd	Kennedy	Simpson
Dole	Lautenberg	Stafford
Domenici	Leahy	Stennis
Durenberger	Levin	Trible
Eagleton	Long	Wallop
Exon	Lugar	Weicker
Ford	Mathias	Zorinsky

NOT VOTING—5

Boren	Goldwater	Matsunaga
Garn	Hart	

So amendment No. 2856 was rejected.

□ 2210

Mr. CHILES. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHILES. Mr. President, I yield 5 minutes on the bill to the Senator from Nebraska.

Mr. DOMENICI. Mr. President, will the Senator yield to me for 30 seconds, on my time?

Mr. EXON. I yield.

Mr. DOMENICI. Mr. President, I say to Senators that I think we have two or three more votes. The leader wants to keep the votes to 15 minutes, so we should expedite matters. I think there will be at least two or three more. There is not much time, but we still have to vote. Voting time does not count, so we will keep it to 15 minutes.

Mr. EXON. I thank my colleague.

The PRESIDING OFFICER.The Senate will be in order.

Mr. EXON. Mr. President, I will not unduly delay the Senate.

Unfortunately, the difficulty we have is that we have been talking es-

sentially about everything but the main bill. We have a series of amendments—good, bad, and indifferent—that are not, in my opinion, critical to the matter we are going to vote on shortly.

This Senator does not delude himself to think that anything he says tonight is going to make a difference in the vote that is going to be cast in favor of the reconciliation package.

There have been few arguments against this, and I appreciate the Senator from Florida yielding time to me to oppose something that he supports, with reluctance.

This reconciliation package is a farce.

Mr. President, I choose not to continue until the Senate is in order. I will save everybody's time if we can have order in the Senate, and JIM EXON will make his speech, and everyone will vote the way they were going to vote anyway.

The PRESIDING OFFICER. The Senator will suspend. Staff members will cease conversations. The Senator is entitled to order.

Mr. EXON. Mr. President, I have only 5 minutes, and we have used at least a minute in getting order. I hope the Chair does not count that time against me.

The PRESIDING OFFICER. Time when the Senate suspends is not charged against the Senator.

Mr. EXON. Mr. President, the reconciliation package is a farce. It purports to bring the fiscal 1987 budget in line with the dictates of the famed Gramm-Rudman amendment. It does not, under any rational mathematical formula.

With the clever invention of the Gramm-Rudman Act, Congress now only attempts to "avoid a sequester." That is what we are about tonight. "Avoiding a sequester" is not the same as "reducing the deficit." The compromise reconciliation package is a prime example of that fact.

The reconciliation package takes the easy way out. Gramm-Rudman was supposed to produce a "grand compromise" where the Congress would reduce spending and the President would agree to increased revenues. That has not happened.

Instead, the Congress is about to enact a reconciliation package which is long on clever accounting methods and short on meaningful, long-term action. This path only leads to a tremendous problem in the coming years.

If the tax reform bill is enacted and falls short of its optimistic projections of "revenue neutrality," the coming years could be devastating.

The reconciliation package turns cartwheels to avoid a sequester by spotlighting fiscal year 1987 and then cleverly shoves spending backward into 1986 and forward into 1988 and accelerating the collection of receipts that would otherwise accrue to hold down deficits in future years.

Mr. President, some ideas may be good accounting practices, but the American people should not be fooled into thinking that these accounting procedures are equal to deficit reduction. For example:

Loan asset sales: What this does is bring short-term cash into the Treasury in 1987 but costs the Treasury in the long term because of the loss of long-term cash flows. That is not a bad proposition in and of itself. But, make no mistake—this is a one-shot, long-term proposition. Essentially, what we are talking about here are a whole series of asset selling and not spending cuts.

Sell Conrail: It is still a questionable sale at $2.1 billion. Another one-shot liquidation. It helps only in 1987. This is another sale of assets, not a spending reduction.

Revenue sharing: This is probably the most outrageous example of tomfoolery in accounting. What we do is make the final payment under revenue sharing in 1986, this year, rather than in 1987, as planned and programmed, and we claim a $68 million saving in that package. What kind of responsible accounting is that? By changing the revenue sharing payment date from early October to September 30, Congress claims a deficit reduction in 1987. Tomfoolery.

Accelerate State and local deposits: What this does is accelerate the payment of Social Security contributions to the trust fund. The Federal Government still collects the same amount of money, only sooner. Claimed savings: $388 million. This is not a saving. Again, it is money-changing for bookkeeping purposes only.

Accelerate collection of excise taxes: Same as above. The same amount of money, only we collect it a little sooner and count it as a saving. Claimed saving: $380 million. Taxes which are due after 30 days will now be due after 14 days—just an accounting procedure. Reconciliation is meant to be a vehicle to save money. This package spends money.

Social Security COLA's: Does not cut; it authorizes a COLA for 1987 and eliminates the 3-percent CPI trigger in current law. Claimed cost: $808 billion.

Gramm-Rudman promised a $172 billion deficit for 1986. It will likely exceed $225, an all-time record. Thats just the first mistake of this bad legislation but demonstrates its flimsy figures.

The promise of a $144 billion deficit for 1987 is being met with a package which on paper reduces the deficit to $154 billion. In reality, the deficit will be in the $163 to $170 range, or more.

The 1987 projections are built upon optimistic economic assumptions.

Each day, the "first year" bonus in the tax bill shrinks and the second and third year losses grow. What enactment of the bill will produce is truly a mystery.

Gramm-Rudman forces have consumed two budget cycles with their "folly." The deficit has grown, the economy has slowed, the Nation's competitiveness has weakened, and the President and the Congress have fooled themselves into thinking that they are doing something to reduce the deficit.

The American people will not be fooled. The reconciliation is like a tenant not paying his or her rent. Sooner or later, the tenant will be evicted.

AMENDMENT NO. 2857

(Purpose: To ensure the preservation of employee seniority rights in airline mergers and similar transactions)

Mr. DANFORTH. Mr. President, I send an amendment to the desk on behalf of myself, Senator EAGLETON, and Senator KASSEBAUM.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH], for himself, Mr. EAGLETON, and Mrs. KASSEBAUM, proposes an amendment numbered 2857.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . (a) Section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) is amended by adding at the end the following new subsection:

"EMPLOYEE SENIORITY RIGHTS

"(g)(1) In any case in which the Secretary determines that the transaction which is the subject of the application would result in the operational integration or partial operational integration of the affected carriers and that such integration would have an adverse effect on the seniority of any air carrier employee, the acquiring carrier, and the surviving collective bargaining representative (if any), shall provide for the development, in a fair and equitable manner, of integrated seniority ranking lists for all employee groups. In the event of a failure to agree, the dispute may be submitted by either party for adjustment in accordance with paragraph (2) of this subsection.

"(2)(A) if any dispute or controversy arises regarding integration of seniority lists under paragraph (1) of this subsection and such dispute or controversy cannot be resolved by the parties within 20 days after such dispute or controversy arises, the parties may refer such dispute or controversy to an arbitrator for consideration and determination. To assist in the selection of such an arbitrator, the National Medication Board shall furnish to such parties a panel of seven names. The parties shall select such arbitrator by alternating in the deletion of names from such panel until one name remains, and such person shall serve as arbitrator. The arbitrator may conduct

hearings regarding such dispute or controversy, but any such hearings shall be conducted in an expedited manner. The arbitrator shall render a determination regarding such dispute or controversy within 90 days after the dispute or controversy arises, unless an extension of such period is agreed to by all parties to such dispute or controversy. The determination of such arbitrator shall be binding on all such parties.

"(B) The salary and expenses of the arbitrator shall be borne equally by the carrier involved and the organization or organizations representing the employee or employees or, if no such representation exists, by the employees or group of employees.

"(C) The provisions of this paragraph shall not apply if all parties to such dispute or controversy agree that a different method for settling such dispute or controversy, or an alternative procedure for selecting an arbitrator, is appropriate in the particular circumstances. A party shall not be relieved from complying with the provisions of this paragraph by the recommendation of a different or alternative method or procedure unless such recommendation is agreed to and implemented by all parties to such dispute or controversy.".

(b) The amendment made by subsection (a) of this section shall apply with respect to any transaction approved by the Secretary of Transportation under section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) on September 12, 1986, and with respect to any transaction for which an original application is filed after the date of enactment of this Act: *Provided, however,* * * * by subsection (a) of this section shall not apply with respect to any transaction in which the parties invoke and are able to satisfy the requirements of the failing company doctrine.

(c) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 408 is amended by adding at the end the following:

"(g) Fair treatment of employees.".

Mr. DANFORTH. Mr. President, the agreement is that I will take 1 minute on this amendment.

The amendment I propose is very similar to S. 2713, introduced by Senator KASSEBAUM. The amendment is limited in the sense that it provides only for mandatory seniority list integration by the surviving carrier if the Transportation Secretary finds that a merger would result in complete or partial "operational integration" of the affected carriers. Either party, that is, management or labor, could require binding arbitration of controversies arising in the list integration process.

My amendment would apply the provisions of that bill retroactively, to cover the TWA-Ozark acquisition. No completed acquisitions other than TWA-Ozark would be affected by my amendment.

Future acquisitions would be covered only if the original application is filed after the date of enactment. Therefore, no pending transactions would be affected.

It is my intention in sponsoring this amendment that the arbitrators should weigh heavily the business needs of the air carrier and the need for greater economic efficiencies sought through the merger or acquisition. Indeed, there will be times when the arbitrators must consider factors other than straight integration by seniority. It is the survival of the airline that is paramount, because in the end, that offers the greatest labor protection.

An exception is provided for failing companies. The failing company doctrine, as provided in the Federal Aviation Act of 1958, has traditionally been interpreted to require that the parties are unable to operate the failing company under bankruptcy procedures, that they must have attempted to have shopped the company, and that the company is insolvent.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CHILES. Has all time expired?

The PRESIDING OFFICER. The time of the Senator from Missouri has expired.

The manager of the bill controls time in opposition, if he is in opposition to the amendment.

Mr. CHILES. Mr. President, I yield back the remainder of my time, and I raise the point of germaneness on the amendment.

The PRESIDING OFFICER. The point of germaneness has been raised.

Mr. DANFORTH. Mr. President, I move to waive the Budget Act.

The PRESIDING OFFICER. A motion to waive germaneness has been made.

Mr. METZENBAUM. Mr. President, is that a debatable motion?

The PRESIDING OFFICER. It is a debatable motion, if the Senator has time yielded to him for that purpose.

Mr. METZENBAUM. Will the Senator yield 2 minutes?

Mr. CHILES. I yield 1 minute.

The PRESIDING OFFICER. The Senator is recognized for 1 minute on the time of the Senator from Florida.

Mr. METZENBAUM. Mr. President, I think this is an excellent amendment. I think the proposal is right on target, and I am just concerned about it being defeated by reason of the fact that it is not germane and will get the normal motion to table.

Some of us have been trying to support the committee. I wonder whether the distinguished chairman of the Commerce Committee could find another vehicle to which he might attach this amendment, rather than this one.

□ 2220

I think many of us would like to support him but have difficulty on this bill.

Mr. DANFORTH. Mr. President, I do not have enough time to respond. If I can have 15 seconds?

Mr. DOMENICI. I yield 15 seconds on the Senator's 1 minute.

Mr. DANFORTH. Mr. President, I think the timeliness is of the essence. I think that is the reason for doing it at this point.

Also obviously because of the procedural circumstances here, it could not be filibustered.

The PRESIDING OFFICER. The time has expired.

Mr. SYMMS. Mr. President, will the Senator yield 30 seconds so I can ask the Senator from Missouri a question?

Mr. DOMENICI. I yield 30 seconds.

Mr. SYMMS. I thank the Senator for yielding.

I say I received a letter today that is pertinent pertaining to the Texas Air buyout of now bankrupt Frontier Airlines and the employees who live and work in my State for Frontier Airlines; I understand that cannot take place.

Mr. DANFORTH. It is excluded in the amendment.

Mr. SYMMS. It is excluded.

So it will have no impact on Texas Air.

The PRESIDING OFFICER. Time has expired.

Who yields time?

Mr. DOMENICI. I yield myself 30 seconds.

Mr. President, I have great sympathy for the cause, but I really cannot believe that after we turned down all kinds of amendments here tonight on the issue of germaneness, to borrow a phrase from my good friend, Senator METZENBAUM, at 10:20 at night when we do not even know what we are doing, we are going to adopt a major merger change in American transportation law, and I do not really think it has the merits. I think we better find some other way to handle it and to be consistent, 60 votes are going to be needed on the Senator's motion to waive the Budget Act.

Has he asked for the yeas and nays?

Mr. DANFORTH. I have not.

Mr. DOMENICI. I ask for the yeas and nays on the waiver request.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

LABOR PROTECTION PROVISION

Mr. EAGLETON. Mr. President, together with other members of the Missouri congressional delegation, I supported the merger of TWA and Ozark Airlines which was approved this week by the Department of Transportation. I took that action because I was convinced that the future of both airlines hung in the balance.

My support of the merger, however, was coupled with a demand that there be a labor protection provision to protect the interests of the Ozark and TWA employees affected. Unfortunately, the Department failed to give this elementary consideration to the employees and that is why we need this legislation.

This week the House by an overwhelming vote passed H.R. 4838 which would require labor protection provisions as a condition of any future airline merger or acquisition. I would much prefer that bill, but in the circumstances we face in the Senate, the present amendment may well be the best we can do pragmatically.

In view of the labor problems still afflicting TWA and the potential that the merger with Ozark will result in displacement, or dismissal of some employees, I believe it is essential that a labor protection provision be attached to the merger approval. At the very least, there should be a requirement for fair and equitable integration of employee seniority lists. That is what this amendment would do for all future, approved mergers and for the TWA-Ozark merger.

There is more to the question of airline mergers than the future of the companies involved. The future of thousands of employees are on the line as well. We need to balance these interests by conditioning merger approval on fair and reasonable protection of employee rights.

The PRESIDING OFFICER. All time has expired.

Mr. DOMENICI. Mr. President, does the distinguished Senator insist on the yeas and nays?

Mr. DANFORTH. I do not know how to determine whether there is 60 votes without the yeas and nays.

Mr. CHILES. We could ask for a division.

Mr. DOMENICI. We could ask for a division.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Utah [Mr. STAFFORD], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], and the Senator from Hawaii [Mr. MATSUNAGA], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—43 yeas, 52 nays, as follows:

[Rollcall Vote No. 274 Leg.]

YEAS—43

Andrews	Dixon	Inouye
Baucus	Dodd	Kassebaum
Biden	Dole	Kennedy
Boschwitz	Eagleton	Kerry
Bradley	Ford	Lautenberg
Bumpers	Gore	Leahy
Burdick	Grassley	Levin
Cranston	Harkin	Mathias
D'Amato	Hart	Melcher
Danforth	Heflin	Mitchell
DeConcini	Heinz	Moynihan
Packwood	Riegle	Specter
Pell	Sarbanes	Stevens
Pressler	Sasser	
Pryor	Simon	

NAYS—52

Abdnor	Hatch	Nunn
Armstrong	Hatfield	Proxmire
Bentsen	Hawkins	Quayle
Bingaman	Hecht	Rockefeller
Broyhill	Helms	Roth
Byrd	Hollings	Rudman
Chafee	Humphrey	Simpson
Chiles	Johnston	Stennis
Cochran	Kasten	Symms
Cohen	Laxalt	Thurmond
Denton	Long	Trible
Domenici	Lugar	Wallop
Durenberger	Mattingly	Warner
Evans	McClure	Weicker
Exon	McConnell	Wilson
Glenn	Metzenbaum	Zorinsky
Gorton	Murkowski	
Gramm	Nickles	

NOT VOTING—5

Boren	Goldwater	Stafford
Garn	Matsunaga	

□ 2040

The PRESIDING OFFICER. On this vote, the yeas are 43 and the nays are 52. The motion to waive the Budget Act is rejected.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. DOMENICI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was rejected.

The PRESIDING OFFICER. The amendment of the Senator from Missouri has new subject matter and, therefore, is not germane and falls for that reason.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wonder if the Senator from Florida will yield me 3 minutes.

Mr. CHILES. Mr. President, I yield 5 minutes.

Mr. DOMENICI. Mr. President, I yield 3 minutes to the distinguished Senator from Oklahoma.

AMENDMENT NO. 2858

(Purpose: To delete cigarette tax increase and to amend the Internal Revenue Code of 1954 to impose a fee on the importation of crude oil or refined petroleum products to protect the national and energy security interests of the United States)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself, Mr. DOMENICI, Mr. MURKOWSKI, and Mr. BOREN, proposes an amendment numbered 2858.

Mr. NICKLES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, insert the following new section:

SEC. . FEE ON IMPORTED CRUDE OIL OR REFINED PETROLEUM PRODUCTS.

(a) IN GENERAL.—Subtitle E of the Internal Revenue Code of 1954 (relating to alcohol, tobacco, and certain other excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 54—IMPORTED CRUDE OIL OR REFINED PETROLEUM PRODUCTS

"Sec. 5881. Imposition of tax.
"Sec. 5882. Definitions.
"Sec. 5883. Registration.
"Sec. 5884. Procedures; returns; penalties.

"SEC. 5881. IMPOSITION OF TAX.

"(a) IMPOSITION OF TAX.—In addition to any other tax imposed under this title, an excise tax is hereby imposed on—

"(1) the first sale within the United States of—

"(A) any crude oil, or

"(B) any refined petroleum product, that has been imported into the United States, and

"(2) the use within the United States of—

"(A) any crude oil, or

"(B) any refined petroleum product,

that has been imported into the United States if no tax has been imposed with respect to such crude oil or refined petroleum product prior to such use.

"(b) RATE OF TAX.—

"(1) CRUDE OIL.—For purposes of paragraphs (1)(A) and (2)(A) of subsection (a) the rate of tax shall be $4 per barrel, reduced by an amount which is equal to the excess of—

"(A) the energy policy price per barrel, over

"(B) $18.

"(2) REFINED PETROLEUM PRODUCT.—For purposes of paragraphs (1)(B) and (2)(B) of subsection (a), the rate of tax shall be equal to 150 percent of the rate of tax determined under paragraph (1) of this section.

"(3) FRACTIONAL PARTS OF BARRELS.—In the case of a fraction of a barrel, the tax imposed by subsection (a) shall be the same fraction of the amount of such tax imposed on the whole barrel.

"(C) DETERMINATION OF ENERGY POLICY PRICE.—

"(1) IN GENERAL.—For purposes of this section, the energy policy price with respect to any week during which the tax under subsection (a) is imposed shall be determined by the Secretary and published in the Federal Register on the first day of such week.

"(2) BASIS OF DETERMINATION.—For purposes of paragraph (1), the energy policy price for any week is the weighted average international price of a barrel of crude oil for the preceding 4 weeks as determined by the Secretary, after consultation with the Administrator of the Energy Information Administration of the Department of Energy, pursuant to the formula for determining such international price as used in publishing the Weekly Petroleum Status Report and as in effect on the date of the enactment of this section.

"(d) LIABILITY FOR PAYMENT OF TAX.—

"(1) SALES.—The taxes imposed by subsection (a)(1) shall be paid by the first person who sells the crude oil or refined petroleum product within the United States.

"(2) USE.—The taxes imposed by subsection (a)(2) shall be paid by the person who uses the crude oil or refined petroleum product.

"(3) TAX-FREE EXPORTS.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter on the sale of

crude oil or refined petroleum products for export or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT.—Where any crude oil or refined petroleum product has been sold free to tax under subparagraph (A), such subparagraph shall cease to apply with respect to the sale of such crude oil or refined petroleum product, unless, within the 6-month period which begins on the date of the sale, the seller receives proof that the crude oil or refined petroleum product, has been exported.

"SEC. 5882. DEFINITIONS.

"For purposes of this chapter—

"(1) CRUDE OIL.—The term 'crude oil' means crude oil other than domestic crude oil (within the meaning of chapter 45).

"(2) BARREL.—The term 'barrel' means 42 United States gallons.

"(3) REFINED PETROLEUM PRODUCT.—The term 'refined petroleum product' shall have the same meaning given to such term by section 3(5) of the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 752(5)).

"(4) EXPORT.—The term 'export' includes shipment to a possession of the United States; and the term 'exported' includes shipment to a possession of the United States.

"SEC. 5883. REGISTRATION.

"Every person subject to tax under section 5881 shall, before incurring any liability for tax under such section, register with the Secretary.

"SEC. 5884. PROCEDURES; RETURNS; PENALTIES.

"For purposes of this title, any reference (other than in chapter 45 or section 6429) to the tax imposed by section 4986 shall be treated, except to the extent provided by the Secretary by regulation where such treatment would be inappropriate, as a reference to the tax imposed by section 5881.".

(b) CONFORMING AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end thereof the following new items:

"CHAPTER 54. IMPORTED CRUDE OIL OR REFINED PETROLEUM PRODUCTS.".

(c) DEDUCTIBILITY OF IMPORTED OIL TAX.—The first sentence of section 164(a) (relating to deductions for taxes) is amended by inserting after paragraph (5) the following new paragraph:

"(6) The imported oil taxes imposed by section 5881.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales and use of imported crude oil or imported refined petroleum products on or after October 1, 1986.

Mr. NICKLES. Mr. President, the amendment would place a variable fee up to $4 per barrel on imported crude oil and a fee on imported product equal to 150 percent of the oil fee. Revenues from the fee in fiscal year 1987 are projected to be $6.27 billion.

Imports of crude oil and petroleum products are threatening our national security interests. Crude oil imports have increased 61.8 percent since last year for the 4-week period ending September 5, 1986. The United States now relies on imports for approximately 40 percent of its needs. For that reason, I am sponsoring this amendment to impose a fee on oil imports.

This oil import fee will go a long way toward reversing our dependency on OPEC and bolstering our domestic supply of oil and gas. The domestic energy industry is clearly in a depression. It is important to focus not just on the import fee proposal but on the Federal Government's entire energy policy.

It may be good politics for many in Congress to bash "Big Oil" back home, but this rhetoric fuels the drive which has led to a regressive national energy policy.

Fearing "Big Oil" in 1980, Congress imposed the windfall profit tax on domestic producers. This tax had the effect of penalizing our American energy industry and encouraging foreign imports of oil.

On July 31, 1986, the Senate took the appropriate action of repealing this tax for the purpose of encouraging future domestic production. It is now up to the House of Representatives to follow suit.

The amount of windfall profit tax collected since passage in 1980 is summarized in the following table:

	1980	1981	1982	1983	1984	1985
Gross	6.9	23.4	18.5	12.2	9.2	6.6
Net	4.3	13.8	9.5	5.7	3.9	3.2

This represents an equivalent tax per barrel as indicated below:

1980	6.65
1981	9.03
1982	6.35
1983	4.25
1984	3.91
1985	2.96

Where is the wisdom in penalizing our domestic producers and giving OPEC a free ride? This Senator sees none.

At the very minimum, a fair and thoughtful policy on oil should be exactly the opposite of what we have today. The windfall profit tax should be repealed and imports should at least pay an amount equal to what our own producers have been required to pay.

I stated to President Reagan on several occasions that I hoped he would reconsider his position on the oil import fee based on the premise that it was not a tax but an equalization fee.

World oil prices have fallen by more than $18 per barrel or by 60 percent since December. This recent decline in oil prices has not been caused by the demise of OPEC but by the calculated strategy of a couple of major exporting nations trying to manipulate the market for future gain. Therefore, we don't see pure market principles at work but calculated maneuvers by government entities to increase their control over the world oil market.

I believe it would be unwise for our Government to sit idly by and allow countless American producers and refiners to go bankrupt while the Saudis and others are tightening the screws on oil producing countries. As a bare minimum, let's require that they pay at least the same tax that our domestic producers have been forced to pay since 1980. The average windfall profit tax for the lower 48 States has averaged more than $5 per barrel since passage of the windfall profit tax.

I would hope that an equalization fee would be used not to create new Federal spending programs but to decrease the national deficit.

There are other issues which should be addressed in reforming U.S. energy policy, such as the deregulation of natural gas. In the Energy Committee we have been working to reverse current punitive policies, and I would encourage this body to join us in this effort.

An oil equalization fee would be a first step toward regaining the losses we have suffered in years past at the hands of OPEC. Let us not lose this present opportunity to make a positive change.

Mr. President, as I said, this amendment calls for a $4 fee on imported oil. Instead of calling it an import fee, I would very much like to call it an importation tax because we have never taxed imports but only taxed domestic producers.

Mr. President, I think it is imperative that this country awaken to the fact that we are relying on imports and that reliance has increased substantially.

Eight months ago it was 27 percent and today it is 42 percent. That figure is rising on a daily basis.

Mr. President, I do not think it is wise for us as a country to become more and more dependent basically not because of free markets but to allow a few countries—actually in this case a couple of countries—to manipulate oil prices and drive us to where our domestic industry is basically being put on a death bed, making us more dependent on foreign sources where we would be more vulnerable to outside pressures.

Mr. President, this would be a $4 oil import fee, raising about $2.7 billion per year. It would phase out if the price of oil exceeded $22.

I think this is a commonsense approach. I compliment my good friend and colleague from New Mexico for helping us with this amendment. I think it is needed. I think America needs to wake up to our dependency on foreign resources.

Mr. DOMENICI. Mr. President, how much time have I remaining?

The PRESIDING OFFICER. The Senator from Oklahoma has 1 minute on his time and the Senator from New Mexico has 4 minutes left on his time.

Mr. DOMENICI. Mr. President, I yield myself 1 minute.

OIL IMPORT FEE

Mr. DOMENICI. Mr. President, I am very pleased that yesterday in New Orleans the President has called for a "high-level review of America's energy-related national security concerns," through assessment of the economic security impact of petroleum imports and the problems facing the oil industry. I followed with interest his statement yesterday in Louisiana where he unveiled his study initiative. Such a study will reiterate the impact of oil imports on the national security interests of the United States. My assessment is that we are vulnerable to economic terrorism because we stand to lose 35 to 40 percent of our domestic industry by the end of the year, and the only place we can turn to is the very unstable Middle East.

There have been many excellent speeches given in recent months and even in the last few days about what is going on and the impact the oil situation is having, and will continue to have for years to come. Nevertheless, the President is taking a first step in focusing on the problem and the study would constitute the foundation for the President's policy.

I think there are several of us in the Senate who could dictate a report for the President off the top of our heads right now. There are many of us ready right now to implement the necessary policy for our energy security. We could use reconciliation as the vehicle and an oil import fee as the means.

The way we think the fee should be structured is a $4 fee that begins to phase out when the price of oil reaches $18 per barrel.

CBO has already prepared a study and it determined that an oil import fee would provide the best means of discouraging imports and strengthening the U.S. energy industry.

In a few months, I will predict that the President will come around to our same conclusion—only the country will be worse off for waiting.

America uses 16 million barrels of oil per day, every day. Our great economic engine does not fire a piston without oil. Our great military industrial complex does not run without oil.

Oil imports now comprise 31 percent of supplies versus 27 percent at the beginning of the year. JEC reports that by 1988 we will pass the record level of 47 percent which we set back in 1977. Oil imports have increased by 25 percent in the past year.

OPEC manipulates the supply and price of oil. It wants to eliminate the marginal high-cost producers. That is our small independent producers. There are 450,000 U.S. stripper wells that produce less than 3 barrels per day per well. Average production of domestic nonstripper well is 45 barrels per day. In the Middle East, an average well produces over 1,600 barrels per day.

Likewise OPEC wants to prevent the development of energy alternatives which could compete with or displace oil in the world market. Sheik Yamani, the Saudi oil minister says: "The golden age of Arab oil was not in the 1970's but will be in the 1990's."

The $13 oil means very little exploration. That in turn means we are likely to lose one-third more of our production capacity. And that makes us more vulnerable than ever to OPEC by the decade of the 1990's.

This is somethings called a regional issue—the energy States versus the Northeast. Not true. This is a national issue, an issue of survival for us all.

When OPEC get us by the throat, it will be the people of New England as well as New Mexico who choke.

I ask unanimous consent that an application of the amendment appear in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATION OF AMENDMENT

Imposes a $4 per barrel oil import fee on crude oil and refined product.

Fee phases out, dollar for dollar, penny for penny as the average weighted world price for oil exceeds $18 per barrel.

If price of oil is less than $18, the fee would be $4.

When the average price reaches $19, the fee would drop to $3.

When the average price reaches $20, the fee would drop to $2.

When the average price reaches $21, the fee would drop to $1.

When the average price reaches $22, the fee would drop to $0.

Example: If the weighted world price is $18.50 the fee would be $3.50.

The average weighted price used in the bill is already being calculated on a weekly basis by the Department of Energy. The weekly average is used to be as price sensitive as possible and to maximize free market independence. Using the weighted average eliminates the potential for market manipulation.

The fee is structured in such a way as not to be inflationary since the fee would automatically terminate at $22 per barrel, a price at least $5 below the February CBO base price.

Bill imposes the import fee as an excise tax. Since excise taxes are deductible, the fee can be higher, thereby helping the industry more, without having the full cost passed on to consumers.

Excise tax can be administered by IRS without getting the government involved in the regulation of energy prices.

A $4 would raise the price of gasoline at the pump slightly. However, in view of the recent 30 to 50 percent gasoline price decline, this is a small price to pay for energy security and to guarantee our energy independence.

Fee would be paid by the first person who sells the crude oil or refined petroleum product within the United States, i.e., the importer.

Provides for tax exempt exports.

Unofficial revenue estimates from Joint Tax indicate that this bill would raise $6.9 billion in fiscal year 1987 and $19 billion over the next three years.

Cosponsors: Domenici, Boren, Nickles, Bingaman, Bentsen, Long, Johnston, Simpson, Stevens, Murkowski, Kassebaum, Pryor, and Levin.

The import fee would raise $6.9 billion of the $14.5 needed to reach the budget goal, however there are several compelling nonbudgetary reasons to support an oil import fee now.

Allowing our foreign oil dependency to increase jeopardizes our national security.

Relying on OPEC for our oil leaves us vulnerable to economic terrorism once our own oil industry withers away.

Inaction will mean the demise of 35 to 40 percent of the U.S. domestic industry by the end of this year.

Drilling activity is at a 46-year low with the latest rig count of about 700 in use, compared to a 1981 peak of 3,970.

Inaction will cost the U.S. 500,000 barrels per day in stripper well production by 1991.

Allowing the across-the-board cuts is not responsible. For example, DOD estimates that it would have to discharge 310,000 active-duty military personnel to meet the outlay savings required of the military personnel budget. A reduction of this magnitude may distrupt plans for modernization. Likewise, the across-the-board approach would indiscriminately damage many essential domestic programs.

The Congressional Budget Office completed a report this past April, "The Budgetary and Economic Effects of Oil Taxes", that studied the energy policy and fiscal policy effects of an oil import fee. We believe the study's finding show that an oil import fee combines good fiscal policy with good energy policy. The report indicates the danger of the current oil glut.

In 1973 an embargo was directed against the United States. Our total dependence on foreign oil was 37 percent, of which 18 percent was provided by OPEC. Last month our dependency was 40 percent. Fifty percent of our imports were provided by OPEC for the first quarter of 1986.

Concern for this trend spurred the President's National Security Adviser, John Poindexter, to write Senator PACKWOOD on August 5 that there is "an emerging national security concern related to oil production in the Persian Gulf. * * * Sometime in the early 1990's we are likely to see our oil imports rise to 7 to 10 million barrels per day and the Persian Gulf will once again become the major supplier to the free world. * * * The Persian Gulf is likely to remain an unstable region as we enter the 1990's. We cannot ensure against this instability merely by purchasing oil from non-Gulf sources."

The price of oil dropped from $28 per barrel to below $13 when Saudia Arabia decided to increase production by 2 million barrels per day. It is predicted that if the Saudis were to create a 5 million barrel shortage instead, the price of oil would quickly jump to $40 per barrel.

We should show some foresight. Everyone remembers all too well how

vulnerable this country was during the 1970's to this economic terrorism, and we don't wish to see us in the same situation again.

We urge you to consider our proposal and talk with us about the energy and fiscal implications. We believe that we must take action to curb the deficit, maintain jobs for thousands of Americans and protect a critical national security industry. The oil import fee is an important and responsible part of the solution.

Mr. BOREN. Mr. President, today I join with Senator DOMENICI and 12 of my colleagues in offering the Energy Security Act of 1986 as an amendment to the Budget Reconciliation Act. This amendment seeks to place a $4 per barrel import fee, in the form of an excise tax, on every barrel of imported crude oil and refined petroleum product that enters this country.

Our proposal will allow for the gradual phase out of the fee as the price rises above $18 per barrel. Structured in this manner our fee will not be inflationary. If 100 percent of the fee were passed on to the consumer gasoline prices would rise 8 to 10 cents per gallon. However, as a result of using an excise tax mechanism, which is deductible, it is unlikely that 100 percent of the fee will be passed on and gasoline prices will rise much less than 10 cents per gallon. Mr. President, this is a small price to pay for increased energy security.

In September 1985, the United States was importing 27 percent of our total crude oil needs. Ten months later our reliance on foreign sources of crude oil has jumped to over 38 percent. We are well on our way to an excessive and very dangerous reliance on foreign oil. As an obvious example one need only look at our crude oil purchases from Saudi Arabia over the past 10 months. Where we were once importing 27,000 barrels per day of crude oil, we are now importing over 700,000 barrels per day. This past January we were importing 3.3 million barrels of crude oil daily. By June imports had jumped to over 4.5 million barrels per day. When will we learn the lessons that history has tried to teach? Can we not remember the tremendous shock to our economy that resulted from the embargoes of 1973 and 1979? Isn't it obvious that when Shiek Yamani says the Saudis are flooding the market to drive out high cost producers he means to shut down our domestic industry?

Mr. President, in December 1981, there were over 4,500 drilling rigs operating in the continental United States. Today, there are barely 700 rigs operating. That is 200 fewer rigs than were operating in Oklahoma alone in 1981. How many rigs must be shut down before our national security is at risk?

If the current trend of domestic production is not enough to put our national security at risk, then perhaps we should consider the impact of these so-called market conditions on our future ability to produce our own energy. Four years ago nearly 7,000 students were studying petroleum engineering, geology, and geophysics at the University of Oklahoma, the University of Texas, Texas A&M University, and Louisiana State University. This fall semester that number will drop below 3,000. To quote the dean of petroleum engineering at the University of Oklahoma, Dr. Ray Knapp, "We are losing the pool of wisdom, the mental resources that come from those wise heads that are now surplus to the industry—we are making the industry less attractive for young minds to enter. We are losing much of the pool of wisdom that would sustain the industry for the next 20 to 25 years. And it is not a happy prospect." How many young minds must we close before our national security is at risk?

Mr. President, I began discussing the need for an import over a year ago. In fact, I introduced my first version of an oil import fee last July. Since that time the price of oil has dropped by over 50 percent. Now is the time for action. I am pleased that so many of my colleagues have joined in our efforts to ensure our domestic energy security, and I urge the rest of my colleagues to consider the tremendous long term benefits such an import fee will bring to our Nation.

[From the New York Times, Dec. 24, 1985]

IN THE NAME OF SANITY, TAX OIL

All-America, running a $200 billion deficit for the fourth consecutive year, desperately needs to reorder its finances. Congress knows that and so does the President: They've just committed themselves by law to cut the deficit $55 billion next year and eliminate it entirely by 1991. Now the opportunity to take a long stride toward that goal is enhanced by the collapse of OPEC, the oil cartel. The way to do it is to tax imported oil.

Doing so in this time of declining prices would raise huge sums for the Treasury without triggering inflation or causing hardship to consumers. Hardly anyone would feel the pinch. Gasoline and heating oil prices now reflect an average cost of about $28 a barrel of crude.

If the collapse of OPEC cuts the price to $20, as is now anticipated, an $8 fee on each imported barrel would have the effect of paying ourselves what we have been paying to foreign oil producers. The Treasury would be enriched by $30 billion—$15 billion directly from the import tax or "fee" and aother $15 billion in income and windfall taxes on domestic oil.

An import fee offers additional benefits. Most taxes, even if necessary for revenue, are wasteful because they drive a wedge between real costs and prices, discouraging effort and reducing demand. But an oil import fee would actually improve efficiency, forcing consumers to absorb the hidden costs of dependence on unstable foreign supplies.

Those hidden cost can be enormous. The first oil shock in 1973–74 sent the world into a recession that reduced output by a *trillion* dollars. Another shock might be easier to asborb but it would still be costly. At the least, oil consumers should pay the true cost of the product, which includes the billions spent on military preparations to defend foreign oil fields and shipping lanes.

A further benefit is that consumers alone would not pay the entire $8 import fee; a portion would be paid by foreign oil producers. The higher the price, the lower the demand for oil and gasoline. And the lower the demand, the lower the world price for crude. Some of the income of foreign oil exporters would thus be transferred to importers; Senator Gary Hart estimates that about one-third of an import fee would, in effect, be rebated to consumers.

Irresponsibly, Americans have refused through all the wrenching years of high oil prices to use an oil tax to retain some revenue for themselves. Politicians fear the public would revile any plan to tax oil at home rather than enrich Arabs abroad. But in a time of falling prices, there's every reason to believe that oil-producing states like Texas would support an import fee. The fee, after all, would increase demand for domestic oil, creating jobs and revenues.

Yes, President Reagan so opposes any new taxes that he would veto even this sensible one. But, as will soon be clear, Federal spending cuts alone will not suffice to reduce the deficit on the schedule required by law. Even Mr. Reagan may prefer some taxes to gutting his military buildup. And he would not be wrong in contending that an oil import fee is less a tax than a charge on the use of a valuable public resource.

The President favors user charges on everything from national parks to Coast Guard rescues. Why, then, reject charges for oil imports that create military obligations and threaten our security?

[From the New York Times, Feb. 1, 1985]

MAKE OPEC PAY OUR DEBT

The world is awash in oil. With or without permission from the OPEC ministers meeting in Geneva, prices are tumbling.

It couldn't happen to a nicer bunch. Twice in a decade the oil exporters have exploited political crises in the Mideast with shocking increases in oil prices, triggering recessions that cost the world a trillion dollars in lost production. Now economic reality has intervened. At the official cartel price of $29 a barrel, supply far exceeds demand. And Saudi Arabia, which had single-handedly kept prices up by limiting exports, seems to have lost control.

But as nice as it is to see monopolists in trouble, crowing about OPEC's problems distracts attention from the golden opportunity offered by falling oil prices. Congress could insure that OPEC remains on the run, and also raise revenues with little pain by quickly imposing a big tax on imported oil.

Two years ago, gasoline prices hovered at about $1.25 a gallon. Now gas is available for less than a dollar. If bearish industry analysts are correct and the world supply of crude oil keeps increasing, prices to consumers, adjusted for inflation, will soon fall to the level of the mid-1960's!

Why not sit back and enjoy it? First, because the oil glut won't last unless steps are taken to prolong it. Oil will be plentiful for several years, but the long-term outlook remains bleak. It is a depleting resource and there is still no practical substitute for it as

transportation fuel. Moreover, most remaining reserves of oil that can be exploited at low cost are in politically unstable countries. Thus its demand keeps inching up toward the limits of potential production, a repeat of the 1974 or 1979 oil shocks becomes ever more likely.

There's another reason not to sit on our glut. A program to contain the demand for oil could yield a timely bonus: tax revenue. America badly needs to reduce its budget deficit, $200 billion and growing. A duty of, say, $10 a barrel on imports would yield about $20 billion directly and generate $25 billion more in higher income and windfall taxes on domestic oil. Best of all, much of the revenue would come from OPEC's pockets; conservation would reduce the world price for oil and diminish the incentive for Saudi Arabia to limit output.

Conventional wisdom says Americans won't stand for a tax at the pump. But compare the pain of such a tax with the pain of Draconian spending cuts—or of higher income taxes. A $10-a-barrel import tax would raise a lot of revenue, put OPEC to rout and still leave gasoline prices lower than they were in 1982. Never has there been a better moment to strike a blow for energy independence.

[From the New York Times, Apr. 25, 1986]

AN IMPORT TAX WOULD PROVIDE RELIEF FOR OIL STATES

To the Editor:

Uwe E. Reinhardt's April 13 letter ("Cheap Oil, Dear Oil and National Security") makes many sound points and offers a deserved criticism of the Vice President, but I would like to suggest some improvements to Professor Reinhardt's recommendations for action.

Like most, if not all, fellow economists, I share his two basic propositions, that cheap oil is highly beneficial to our country—the cheaper the better—but that it seriously hurts a small segment of the country: the oil producing states. I also share his third proposition (though here I may part company with some of my colleagues) that that small sector deserves some relief.

But instead of his approach of providing the desired relief through a program of "massive search for new oil reserves on our soil," financed by putting "an excise tax on all forms of energy consumption," I would suggest relying on a mechanism that has already been suggested; namely, to levy an appropriate excise tax on imported oil.

Such a tax would have the effect of raising the domestic price of crude oil above the world price by the extent of the tax, thus raising also the price of domestically produced oil. This would provide the desired relief directly to the oil producers, who are the current losers and also, somewhat indirectly, to the oil-exploring industry, which is anyway far less important.

One particular reason this approach is equitable, besides being economically sound, is that when the price of oil was sky high, we took away some of the potential profits of the producers by imposing a so-called windfall-profits tax. We thereby, in effect, nationalized and shared part of the industry's "excess" profits. It seems only fair that we should today symmetrically nationalize and share some of its windfall losses. Under an excise tax on imported oil, this would be done at no cost to the Treasury.

Another differential effect of this proposal, compared with Professor Reinhardt's, is that some of the gain to oil producers would spread, through higher prices, to other producers of energy (gas, coal). I would regard this an advantage because these industries are also suffering windfall losses as a result of the crash in the oil price.

My proposal, like Professor Reinhardt's, implies forgoing some of the advantage of cheap oil to domestic users. But in my version this loss is offset by the additional oil-tax revenue accruing to the Treasury. This is an important advantage at a time when we are making little progress in reducing the budget deficit, the country's No. 1 economic priority.

The suggested approach would be further refined by setting the rate of the import tax on a sliding scale, varying inversely with the world price. This would serve the desirable purpose of stabilizing the price paid by domestic users and received by domestic producers at some chosen level, at least as long as the world price does not exceed that level. Even if it did exceed that price, stability of the producers' effective price could be achieved by reinstituting the "windfall-profits" tax. This stability would have great advantages, especially at a time like the present, when the price of oil may well go through large, economically undesirable gyrations.

Franco Modiglian.

CAMBRIDGE, MA., *April 14, 1986.*

(The writer, Institute Professor at the Massachusetts Institute of Technology, received the 1985 Nobel Memorial Prize in Economic Science.)

[From the Boston Globe, Jan. 23, 1986]

TAXING OIL NOW

The sound of falling oil prices all over the world ought to wake up legislators on Beacon Hill and in Washington. They can help solve several pressing problems, relatively painlessly, by increasing state and federal gasoline taxes and imposing a tariff on oil imports.

Gasoline prices, both state and federal, lag well behind increases justified by inflation. The Massachusetts tax, at 11 cents a gallon, is less than twice its 6.5 cent level in 1967, even though prices have more than tripled in the interval. A tax of 20 cents a gallon is justified by inflation alone, and would raise about $200 million annually to help pay for the state's enormous backlog of road and transportation projects.

Similarly, the federal tax at nine cents a gallon falls well short of keeping pace with inflation. Congress established a four-cent level in 1957 and did not raise it until 1982.

An oil-import fee of, say, $10 a barrel would raise about $16 billion at current import levels of about 1.6 billion barrels a year. With the current spot market for crude as low as $20 a barrel, such a fee would still leave prices below the 1981 peaks of around $34. Furthermore, they would stimulate domestic exploration and development efforts that now threaten to flag in the face of falling prices.

In normal circumstances, increases in energy taxes might be shunned because they might weigh more heavily on lower-income consumers. These are not normal circumstances. Massachusetts has unwisely dismantled a portion of its income tax on the eve of declining federal subsidies and rising local needs. The Reagan administration has led an even more severe assault on the federal income tax and continues to tolerate large deficits with little prospect of increasing revenues.

Each of these problems, only partially masked by the economic rebound of the past two years, demands that every available opportunity be seized to expand sources of revenue. The oil-price fall presents a unique chance for one such expansion.

[From the New York Times, Mar. 30, 1986]

A PERIL TO SECURITY

(By Fred L. Hartley)

LOS ANGELES.—The collapse of the Geneva talks involving members of the Organization of Petroleum Exporting Countries and oil-producing countries that are not OPEC members leaves the world with no mechanism to restore the stability of oil prices. And as long as Saudi Arabia sticks to its program of increased production, prices will continue to plunge. This problem not only harms the United States' petroleum industry but also threatens national security. The answer is an oil import fee.

Americans who hope for a price war do not appreciate what it would cost the nation. Cheap oil threatens our security and economic vitality by crippling the petroleum industry. The Government should immediately enact a tax on all imported crude oil and petroleum products.

Since 1979, the world's demand for crude has decline from 54 million barrels per day to about 46 million, and OPEC's market share has dropped from 31 million a day to 16 million. In December, Saudi Arabia acted to regain its dominant market position: It doubled production and initiated a price war that cut world oil prices by more than half. The Saudis hold the upper hand. They have one-fourth of the world's known oil reserves, virtually all of the world's readily available oil and the world's lowest production costs. They can increase production to 10 million barrels per day and drive prices below $10 per barrel, a price that would stimulate demand even as it shut down American production and virtually ended this country's search for new energy resources.

The tactic is working and is devastating America's strategic petroleum position. Drilling is down more than one-third since December. Petroleum companies are slashing capital budgets and canceling exploration and production programs. Producers are closing higher cost wells. At this rate, domestic production will drop this year by at least one million barrels per day. Producers, drillers and suppliers are struggling to avoid bankruptcy.

While low prices spur demand, domestic production will drop sharply, frontier exploration will halt and imports will more than double in the next four years. Those increased imports will come from OPEC—and all control over world oil prices will have reverted to the cartel.

This is not the free market at work; it is predatory pricing on an unprecedented scale. Low-price oil carries high costs—lost tax revenues, increased unemployment, weakened banks and a ruined petroleum industry. The prospect of oil shortages and skyrocketing prices threatens our national security, economic health and ability to control our foreign policy.

To avoid a serious new energy crisis, Washington must impose an import fee—with no exceptions—on all imported crude oil, petroleum products and petroleum-derived chemicals. It should be levied without special deals or privileges. If arrangements are needed to protect relationships with Canada and Mexico, they should be worked out on a case-by-case basis.

The fee would create a floor price of, say, $27 per barrel, which should be high enough to support continued American exploration and development but low enough to provide gasoline and other products at prices comparable to what consumers paid three months ago. The fee, paid by the importer and passed to the consumer, would amount to the difference between the import price and floor price. If the average import price were $15 per barrel, the fee would be $12; if the import price were $27, the fee would disappear. The primary purpose of the fee would not be to raise the price of imported oil but to support the price of American crude at a level that enabled our industry to remain fully productive. An import fee would thus protect the industry while the oil exporters' predatory price war went on.

Some consumers and policy makers oppose an oil import fee, believing it would interfere with the free market and unfairly penalize certain sectors of the economy. But oil is a strategic commodity necessary to national security. Without it, we cannot defend ourselves. And without a strong domestic oil industry, we will again become dangerously dependent on foreign—OPEC—oil. Such dependence can generate damaging, inflationary prices for all United States industries and consumers, force a severe drain in the balance of payments and make our Nation ever more vulnerable to political and social upheavals abroad.

America cannot afford so-called cheap oil.

[From the New York Times, Aug. 19, 1986]

TOWARD DOMESTIC OIL PROSPERITY

(By Bernard L. Weinstein and Harold T. Gross)

DALLAS.—When oil prices began to plummet earlier this year, the event was met with a general euphoria by residents and politicians in energy-consuming states. Within weeks, Texas-bashing became the nation's No. 1 pastime. Newspaper and magazine articles carried headlines like "Texas Takes a Tumble" and "The Great Texas Oil Bust," and Yankee pundits had a field day writing columns titled "Let 'Em Rot in the Sun" and "Cap a Well and Starve a Texan."

Cheap oil, they predicted, would help restore international competitiveness for American industry, increase disposable income and prolong the national economic expansion. But that hoped-for scenario has not materialized, and it now seems that the costs of cheap oil may have far exceeded the benefits.

On the other hand, the recent agreement of the Organization of Petroleum Exporting Countries to restrict output and raise oil prices has unduly raised expectations of a return to a stable market. Given OPEC's track record, we should be wary of talk of a quick recovery.

Rather, as we fill up our gas tanks for $10 or less, it might be helpful to remember that the oil industry was until very recently the largest employer in the United States. More than a million people make a living in various aspects of the oil business, and although these jobs are concentrated in the Southwest, the indusry is a major employer in every state.

Thus it is not surprising that the contraction of the oil industry also pulled down many other sectors of the national economy. In July, for example, the Commerce Department reported that second-quarter growth in the gross national product had slowed to a mere 1.1 percent annual rate, primarily because of weakness in energy and related sectors.

Any short-term advantages for the national economy from cheap oil must be weighed against the prospect of greater political and economic vulnerability. As we substitute "cheap" foreign oil for "expensive" domestic oil, American exploration and drilling diminish. Should an emergency arise, it would be extremely costly to boost domestic production, and it would take years. It took six years for domestic production to increase after the first OPEC shock in 1973. The cost of reopening a plugged oil well is almost as high as the cost of drilling a new one.

The domestic oil industry can only prosper if prices are stabilized at a level high enough to secure reserves and to encourage a modest level of exploration and drilling. Some might argue that the recent accord within OPEC will restore confidence and cause a new surge of oil exploration. But this is unlikely. Too many previous OPEC accords have dissolved under the temptation to violate production quotas.

Rather than delude ourselves into believing that oil prices now reflect the interplay of supply and demand in a free market, we should take advantage of OPEC's disarray to reassert our position in the marketplace. The United States is, after all, still the second-largest oil producing nation and the world's chief oil consumer. Because of that position, we can quickly and painlessly bring order to the world oil market by adopting a variable tariff on crude imports and by letting American producers export their oil.

A variable tariff, aimed at stabilizing oil prices around $18 a barrel, would halt the steep slide in domestic production and mitigate the nation's growing dependence on imports. Similarly, a repeal of the prohibition on the export of American crude oil would stimulate domestic production and allow the United States to narrow its trade imbalances with major energy-consuming nations like Japan, South Korea and Taiwan.

Fears that oil priced at $18 a barrel would harm the Frost Belt are unfounded. In fact, that region's remarkable economic rebirth began in the early 1980's, when oil prices were well over $30 a barrel. Most important, the combination of an oil import fee and entry into the crude export market would halt the decline of an industry that contributes enormously to the gross national product, and would prevent another slide toward a severe national recession.

[From the Christian Science Monitor, July 31, 1986]

IMPORT FEE URGED TO SAVE U.S. OIL INDUSTRY

(By David R. Francis)

Thousands of American bankers and oil industry executives would be delighted if the Organization of Petroleum Exporting Countries agreed on national quotas during its current meeting in Geneva.

The resulting limit on supply would boost the price of crude, thereby saving the banks' oil loans from default and returning prosperity to the petroleum business.

Given the deep divisions within OPEC, however, many observers consider such a deal unlikely.

So Sam Nakagama, a Wall Street economist, thinks Uncle Sam should ride to the rescue. Indeed, he suspects that "the powerful pressure of events—economic, political and geopolitical—will force the White House to adopt a variable oil-import fee by late summer."

That fee, he suggests, should establish a floor of $18 a barrel and grant Mexico and Canada tax-free quotas.

Otherwise, Mr. Nakagama predicts, the price of crude could plunge to $5 a barrel, threatening to destabilize North America. Such a low price, he says, would:

1. Cause more serious damage to the United States banking system, especially in the Southwest.

2. Probably prompt a collapse of the Mexican debt refinancing package.

3. Lead to the economic and political destabilization of Mexico, resulting in disorders on the southern US border.

4. Destroy the domestic oil industry and deepen economic problems in the Southwest.

5. Increase the probability of the Republicans losing control of the Senate in November. The flow of Republican Party funds from Texas could shrink, he adds.

6. Produce a downward spiral of falling incomes and imports among oil-producing countries, thereby leading to further cutbacks in world trade and US exports.

7. Collapse confidence in the dollar in the face of financial and economic disorders.

8. Result in soaring oil prices by 1990 as the US and other countries get hooked on cheap oil again.

At the $5-a-barrel price, says Nakagama, "in five years OPEC will be back in the driver's seat."

That's a phrase which echoes. Two economists with Merrill Lynch Economics Inc., Jack Wolfman and John Hill also talk of OPEC's being "once again back in the driver's seat" by 1990, with oil prices climbing to at least $20 a barrel.

All these analysts figure the current decline in oil prices will clobber enough non-OPEC oil production, at the same time American consumption of oil is once more rising, that the US will become significantly dependent on Mideast and other OPEC oil sources.

"With the OPEC countries now engaged in a price war, it's more and more obvious that the United States cannot bemuse itself with the idea we are watching free markets at work," states Nakagama. "In fact, an avowed aim of OPEC is to drive marginal, high-cost producers out of the market. And that means especially the low-volume producers of the United States. In effect, the primary aim of OPEC now is the destruction of the US oil industry."

Nakagama finds it "astounding that the Reagan administration should simply sit there and let this happen. Indeed, this behavior is so amazing and lacking in common sense that we think it must come to an end before the arrival of autumn."

The plunge in oil prices has already had an important impact on production.

US crude oil production in May was down 3.6 percent (327,000 barrels a day—b.p.d.) compared with the same month a year ago as uneconomic "stripper" wells (10 b.p.d. or less) were shut down. In 1985, 450,000 stripper wells accounted for 15 percent, or 1.35 million b.p.d. of US output. The average cost of production of these wells, including taxes and other expenses, is said to be $12 to $15 a barrel. Nowadays, some grades of crude are going for $8 a barrel.

Robert O. Anderson, chairman of Atlantic Richfield Company, estimates US oil output will drop by at least 1 million b.p.d. next year as marginal wells are shut in.

In the meantime, the long slide in petroleum usage has ended. In the US, which accounts for 35 percent of world oil consump-

tion, domestic demand this year through June 23 is up 3.1 percent from the same period in 1985.

OPEC is producing around 20 million b.p.d., well above the 17.9 million ceiling a majority of its members agreed on in theory at its last meeting, in June. That ceiling would aim at a price range of between $17 and $19 a barrel.

If OPEC can't set such a goal by establishing country quotas at this Geneva meeting, it will have a strong incentive to do so should the US impose oil-import fees, Nakagama says. The oil-producing countries would want to recapture the US fee, which would be reckoned by subtracting the world price of oil from $18.

The $18 price, Nakagama figures, would stabilize incomes, rescue the domestic oil industry, and prevent more financial troubles. As for the administration's reluctance to act because it doesn't want to interfere in a "free market," he comments: "Tell me another joke."

Mr. DOMENICI. Mr. President, I ask unanimous consent that five articles from the New York Times and the Boston Globe talking about sanity in energy policy be made a part of the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the New York Times, Feb. 1, 1985]

MAKE OPEC PAY OUR DEBT

The world is awash in oil. With or without permission from the OPEC ministers meeting in Geneva, prices are tumbling.

It couldn't happen to a nicer bunch. Twice in a decade the oil exporters have exploited political crises in the Mideast with shocking increases in oil prices, triggering recessions that cost the world a trillion dollars in lost production. Now economic reality has intervened. At the official cartel price of $29 a barrel, supply far exceeds demand. And Saudi Arabia, which has single-handedly kept prices up by limiting exports, seems to have lost control.

But as nice as it is to see monopolists in trouble, crowing about OPEC's problems distracts attention from the golden opportunity offered by falling oil prices. Congress could insure that OPEC remains on the run, and also raise revenues with little pain by quickly imposing a big tax on imported oil.

Two years ago, gasoline prices hovered at about $1.25 a gallon. Now gas is available for less than a dollar. If bearish industry analysts are correct and the world supply of crude oil keeps increasing, prices to consumers, adjusted for inflation, will soon fall to the level of the mid-1960's!

Why not sit back and enjoy it? First, because the oil glut won't last unless steps are taken to prolong it. Oil will be plentiful for several years, but the long-term outlook remains bleak. It is a depleting resource and there is still no practical substitute for it as transportation fuel. Moreover, most remaining reserves of oil that can be exploited at low cost are in politically unstable countries. Thus if demand keeps inching up toward the limits of potential production, a repeat of the 1974 or 1979 oil shocks becomes ever more likely.

There's another reason not to sit on our glut. A program to contain the demand for oil could yield a timely bonus: tax revenue. America badly needs to reduce its budget deficit, $200 billion and growing. A duty of, say, $10 a barrel on imports would yield about $20 billion directly and generate $25 billion more in higher income and windfall taxes on domestic oil. Best of all, much of the revenue would come from OPEC's pockets; conservation would reduce the world price for oil and diminish the incentive for Saudi Arabia to limit output.

Conventional wisdom says Americans won't stand for a tax at the pump. But compare the pain of such a tax with the pain of Draconian spending cuts—or of higher income taxes. A $10-a-barrel import tax would raise a lot of revenue, put OPEC to rout and still leave gasoline prices lower than they were in 1982. Never has there been a better moment to strike a blow for energy independence.

[From the New York Times, Dec. 24, 1985]

IN THE NAME OF SANITY, TAX OIL

All America, running a $200 billion deficit for the fourth consecutive year, desperately needs to reorder its finances. Congress knows that and so does the President: They've just committed themselves by law to cut the deficit $55 billion next year and eliminate it entirely by 1991. Now the opportunity to take a long stride toward that goal is enhanced by the collapse of OPEC, the oil cartel. The way to do it is to tax imported oil.

Doing so in this time of declining prices would raise huge sums for the Treasury without triggering inflation or causing hardship to consumers. Hardly anyone would feel the pinch. Gasoline and heating oil prices now reflect an average cost of about $28 a barrel of crude.

If the collapse of OPEC cuts the price to $20, as is now anticipated, an $8 fee on each imported barrel would have the effect of paying ourselves what we have been paying to foreign oil producers. The Treasury would be enriched by $30 billion—$15 billion directly from the import tax or "fee" and another $15 billion in income and windfall taxes on domestic oil.

An import fee offers additional benefits. Most taxes, even if necessary for revenue, are wasteful because they drive a wedge between real costs and prices, discouraging effort and reducing demand. But an oil import fee would actually improve efficiency, forcing consumers to absorb the hidden costs of dependence on unstable foreign supplies.

Those hidden costs can be enormous. The first oil shock in 1973-74 sent the world into a recession that reduced output by a *trillion* dollars. Another shock might be easier to asborb but it would still be costly. At the least, oil consumers should pay the true cost of the product, which includes the billions spent on military preparations to defend foreign oil fields and shipping lanes.

A further benefit is that consumers alone would not pay the entire $8 import fee; a portion would be paid by foreign oil producers. The higher the price, the lower the demand for oil and gasoline. And the lower the demand, the lower the world price for crude. Some of the income of foreign oil exporters would thus be transferred to importers; Senator Gary Hart estimates that about one-third of an import fee would, in effect, be rebated to consumers.

Irresponsibly, Americans have refused through all the wrenching years of high oil prices to use an oil tax to retain some revenue for themselves. Politicians fear the public would revile any plan to tax oil at home rather than enrich Arabs abroad. But in a time of falling prices, there's every reason to believe that oil-producing states like Texas would support an import fee. The fee, after all, would increase demand for domestic oil, creating jobs and revenues.

Yes, President Reagan so opposes any new taxes that he would veto even this sensible one. But, as will soon be clear, Federal spending cuts alone will not suffice to reduce the deficit on the schedule required by law. Even Mr. Reagan may prefer some taxes to gutting his military buildup. And he would not be wrong in contending that an oil import fee is less a tax than a charge on the use of a valuable public resource.

The President favors user charges on everything from national parks to Coast Guard rescues. Why, then, reject charges for oil imports that create military obligations and threaten our security?

[From the Boston Globe, Jan. 23, 1986]

TAXING OIL NOW

The sound of falling oil prices all over the world ought to wake up legislators on Beacon Hill and in Washington. They can help solve several pressing problems, relatively painlessly, by increasing state and federal gasoline taxes and imposing a tariff on oil imports.

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Each of these problems, only partially masked by the economic rebound of the past two years, demands that every available opportunity be seized to expand sources of revenue. The oil-price fall presents a unique chance for one such expansion.

[From the New York Times, Mar. 30, 1986]

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(By Fred L. Hartley)

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gram of increased production, prices will continue to plunge. This problem not only harms the United States' petroleum industry but also threatens national security. The answer is an oil import fee.

Americans who hope for a price war do not appreciate what it would cost the nation. Cheap oil threatens our security and economic vitality by crippling the petroleum industry. The Government should immediately enact a tax on all imported crude oil and petroleum products.

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The tactic is working and is devastating America's strategic petroleum position. Drilling is down more than one-third since December. Petroleum companies are slashing capital budgets and canceling exploration and production programs. Producers are closing higher-cost wells. At this rate, domestic production will drop this year by at least one million barrels per day. Producers, drillers and suppliers are struggling to avoid bankruptcy.

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To avoid a serious new energy crisis, Washington must impose an import fee—with no exceptions—on all imported crude oil, petroleum products and petroleum-derived chemicals. It should be levied without special deals of privileges. If arrangements are needed to protect relationships with Canada and Mexico, they should be worked out on a case-by-case basis.

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Some consumers and policy makers oppose an oil import fee, believing it would interfere with the free market and unfairly penalize certain sectors of the economy. But oil is a strategic commodity necessary to national security. Without it, we cannot defend ourselves. And without a strong domestic oil industry, we will again become dangerously dependent on foreign—OPEC—oil. Such dependence can generate damaging, inflationary prices for all United States industries and consumers, force a severe drain in the balance of payments and make our nation ever more vulnerable to political and social upheavals abroad.

America cannot afford so-called cheap oil.

[From the New York Times, March 30, 1986]

WHY CHEAP OIL IS NO BOON FOR THE U.S.

A THREAT TO SUPPLIES

(By H. Erich Heinemann)

The dramatic gyrations in the price of oil this year are certain to provide a significant short-run boost to the world economy. Prices have dropped so far and so fast that consumers will pay much less for energy on average this year than last, even if the cartel of major oil exporting nations were to succeed soon in pushing petroleum prices back up again.

However, consumers, investors, and policy makers alike should pause before they extrapolate headlines about declining oil prices into expectations of an extended era of cheap energy and low inflation. These benefits are likely to be temporary. Besides, oil prices are likely *to rebound by next year.* Contrary to popular impression, both the producers and the consumers of oil have a community of interest in maintaining petroleum prices well above current levels.

Producers want secure revenues and consumers want secure supplies. Neither would be likely if the oil price wars were to continue. It is perfectly true that the Organization of Petroleum Exporting Countries still has a very long way to go to find a formula to control production and boost oil prices. The $28 a barrel price that OPEC recently promised to "defend" is at present a wish, not a threat.

But it would be foolish to bet that OPEC's effort will fail. And Washington is full of talk about possible energy taxes to put a floor under oil prices and encourage domestic oil exploration. It would therefore be wrong to assume that inflation is dead and for Capitol Hill or the Federal Reserve Board to seize on lower oil prices as an excuse to pursue stimulative economic policies.

To be sure, lower oil prices mean that the United States and other oil importers will in effect be wealthier. People will spend more on goods and services and invest more in capital assets. But all of these desirable events represent onetime changes. The true, underlying rate of inflation is a function not of oil prices but of such fundamental factors as growth in productivity, the labor force, capital investment and the money stock. Unless the United States adopts a disinflationary policy of slow and stable growth in money, inflation will return to higher levels in 1987 and thereafter.

It is too early to know when oil prices will rebound—or to what level. But the economics of oil suggest a price closer to $25 than $15 a barrel, well above the average price that major oil consumers are paying at present.

The key to understanding the oil market is the fact that, except for Saudi Arabia and Kuwait, the major oil exporters have been losing substantial amounts of revenue as a result of the decline in oil prices. In some countries, Britain for example, oil production is already at capacity and cannot be increased. In others, such as Nigeria, production cannot be increased enough to make up for the losses in revenue owing to lower prices.

Obviously, the oil exporters have a common interest in stabilizing prices as high as possible. Even with an enforced cut in production, they can expect higher revenues than they will get if oil prices stay where they are now. Keep in mind, too, that there are only four major oil exporting nations outside OPEC—the Soviet Union, Mexico, Britain and Norway. It is a good bet that most of these countries will cooperate with the cartel one way or another.

Saudi Arabia, which triggered the oil price war, has been open in saying that its goal now is an "arrangement" to share production cutbacks equitably and thus stabilize prices. The Saudis have no interest in destroying OPEC. Nor would that be politically feasible.

In the end, geopolitics will count most. The OPEC members as a group hold practically all of the reserves that are relatively inexpensive to develop and bring to market. Therefore, if the price of oil were to stay well below $20 a barrel, exploration and development outside the OPEC area would dwindle and the industrialized nations once again would become dependent on the Middle East for energy supplies.

At last week's OPEC meeting in Geneva showed, hard bargaining is under way to slice up shares of the oil market. The oil producing nations need money, and the consumers, such as the United States, West Germany and Japan, do not want to be vulnerable to another oil embargo. This is hardly a remedy of which the economist Adam Smith would approve, but it is a good description of the way the world works.

Mr. DOMENICI. Mr. President, I urge that my friend from Oklahoma withdraw the amendment. I do state that the President of the United States seems to be listening to what some of us are saying. I understand that he has now ordered that a study under the National Security Act be made by his security adviser and the Commerce Department with reference to the impact on national security that is resulting from our continued, growing dependence upon foreign oil. I hope that that study will reveal the true facts. If it does, it seems to me that we will have served a purpose in the last couple of months in reminding the President and others here in the Congress that we are on a path of energy insanity in the name of some kind of "let's be fair today." We are going to penalize the future generations unmercifully when we begin to be more and more dependent on foreign oil.

I hope my friend will withdraw the amendment. We will be back another day.

OIL IMPORT FEES

Mr. WEICKER. Mr. President, I rise today to reiterate my strong and continued opposition to any tax on imported oil and to urge my colleagues to maintain their opposition to such a tax. On several occasions the Senate has seen the wisdom in rejecting this tax and I am hopeful that it will be rejected again today.

An oil import fee is neither fair nor economically sound. Not only would it lay a disproportionate burden on those industries and States which are most dependent on petroleum products, but its overall effects on the economy would be burdensome and inflationary.

There are countless studies which evidence the disproportionate impact of an oil import fee on those regions which are most dependent on oil for an energy source and raw materials. But you do not need to be a scientist or an economist to figure that out. Those that use more of a product pay a heavier burden when its price rises. Proponents of an oil import fee like to gloss over this simple fact—or argue that, notwithstanding these problems, an oil import fee is in the national interest. Well, the truth is, it is not in the national interest. There are just as many studies to show that an import fee would be burdensome to the national economy. Again, you do not need to be an economist to understand that increasing the price of a basic commodity such as oil, increases prices throughout the economy, causing inflation. Furthermore, using a tax to hold U.S. oil prices above the world oil price level puts all U.S. manufacturers who use a significant amount of oil at a disadvantage to their foreign competitors. In both cases an oil import fee undermines the economy, and its own original intent to reduce the deficit and strengthen the economy.

The proponents of the oil import tax always speak glowingly of the benefits of such a tax and ignore its costs. The truth of the matter is the costs of an import fee outweigh the benefits. For every winner there is a loser. An oil import fee is robbing Peter to pay Paul on a national scale. And believe me, those of us who are in the position of Peter, those of us in the Northwest and Midwest who have had to struggle with the supply disruptions and price spikes and price increases of the last 15 years will oppose these taxes at every opportunity.

Sure, I understand that producing States have problems now that prices have fallen. Perhaps now those States can come to appreciate what some of us in the Northeast and Midwest have been going through for the past 15 years. You say you are losing jobs—we have been losing jobs and industries for years because of spiralling energy costs. You say you are losing revenues—we have never had any petroleum revenues to lose. Our utilities have had to raise rates, our State governments have had to tax, tax and tax to meet the higher costs associated with petroleum use.

Now—when we finally have a breather from these high oil prices and others are faced with realities with which we have learned to live, it is suggested that perhaps we should just have another tax—but a tax on those other guys—a tax for those who have been struggling with high oil prices and no oil revenues for years. Well, let met tell you—forget it—because it is not going to happen, not as long as I can do anything to stop it.

The Nation, and particularly the Northeast and Midwest have had to pay more than our share for the energy crisis and finally we get a break—it is absolutely unacceptable that now we should have to pay for the energy glut as well.

Mr. MITCHELL. Mr. President, I rise in strong opposition to the amendment which would impose a $4 tariff on every barrel of crude oil or petroleum product imported to the United States. My objections to the amendment are simple and remain essentially the same as those stated in previous debates on this subject.

An oil import fee would have a clearly adverse impact on the economy of Maine and New England. In addition, an oil import fee is a regressive, inefficient method of raising revenues, particularly when this Senate stands poised to pass tax reform legislation purporting to bring fairness and equity to this Nation's Tax Code.

First, an import fee would adversely affect my State.

The imposition of a fee on imported crude oil or refined product would also increase the price of domestically produced oil. Although the fee would be levied only against imported oil, domestic oil prices would rise by an amount equivalent to the fee.

I can state categorically that the residents of my State of Maine would be among those most adversely affected by such a price increase because oil accounts for 80 percent of the total energy consumption in Maine.

For comparison, the rest of the Northeastern States utilize oil for 50 percent of their energy, and the country as a whole uses oil for 44 percent of its energy.

Homeowners and businesses in Maine rely disproportionately on oil for direct heating. An increase in the price of that product, therefore, is virtually certain to impose an enormous drain on the incomes, investments and savings of Maine citizens.

Alternatives to oil for heating in Maine—a major and significant component of the cost of living and doing business in New England—are limited to wood and electricity. Our electricity in Maine is largely generated by hydro, coal and nuclear fuels, but oil still accounts for 19 percent of generating capacity—a proportion roughly three times the national average.

A second major disadvantage of any oil import fee proposal is that the fee is perhaps the least efficient revenue-raising option now under serious discussion. An oil import fee would of course raise revenues. And, clearly, our present budgetary situation makes it irresponsible to hastily and out of hand reject any potentially productive revenue measure. My opposition is not hastily reached.

A number of previous studies on oil import fees in the early 1980's estimated that the revenues generated by a $5-per-barrel fee would be in the range of $9 billion per year over the next 5 years. But the cost to consumers was estimated to range from $20 to $30 billion per year.

In testimony presented to the Finance Committee this February, Roger Mentz, Acting Assistant Treasury Secretary, said that while the burden of the fee would fall on foreign producers and domestic consumers, the "benefits would be shared by the Federal Government and the domestic oil industry." I believe that is putting the case charitably to say the least.

Mr. Mentz went on to say that Treasury analysis indicated that, based solely on the increase in oil prices, the domestic oil industry would realize after-tax benefits equal to $1.75 for every $1 of tax collected by the Treasury.

Last, Mr. President, an oil import fee is regressive in nature.

A May 1986 Congressional Research Service study on the revenue and economic effects of oil import fees said, "An oil import tax would also affect the way in which income is distributed over the U.S. population by income bracket. More specifically, the percentage reduction in income in response to an oil import tax tends to decline as the level of household income increases."

That study went on to say that higher crude oil prices will cause the price of other energy forms, such as natural gas, electricity and coal to be higher than otherwise. Because total energy spending is more concentrated in lower incomes than is fuel oil and gasoline spending, the oil import tax would tend to be more regressive in the long run than in the short run.

It is ironic that at a time when we are seeking to eliminate Government-induced distortions into our capital and investment markets through a major tax overhaul; when we are attempting to ease the tax burden on many low-income families by taking them off the tax rolls; when we are trying to bring much needed fairness to our Tax Codes; that we should be asked to consider a measure which

would have the effect of creating significant new distortions in our markets and heap additional regressive tax burdens on millions of Americans.

To sum up, Mr. President, I believe that a fee on imported oil would adversely and unfairly hurt Maine's economy, and would serve as an inefficient and regressive means of raising revenues.

Mr. President, in hockey, when a player scores three goals in one game, he is said to have scored a "hat trick." Already in this Congress, the Senate has approved, by votes of 82 to 15 and 78 to 18, motions to table oil import fee amendments. It is my hope that when the Senate votes on this amendment, it will score a "hat trick" by overwhelmingly rejecting for the third time the notion of oil import fees in the 99th Congress.

Mr. NICKLES. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. HART. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. The 1 minute has expired. The Senator from Oklahoma has 1 minute remaining.

Mr. HART. Will the Senator yield?

Mr. NICKLES. I will be happy to yield 30 seconds.

Mr. HART. The Senator from Colorado offered a similar amendment several weeks ago. I cannot recollect whether the Senator from New Mexico supported that amendment or not.

Mr. DOMENICI. I did. It was not quite similar. The amendment of the Senator from Colorado was for $10 and this one is for $4. It phases out at $22.

Mr. HART. We are serious about energy independence, though.

Mr. NICKLES. Mr. President, I hope our colleagues did hear the Senator from New Mexico. This is not a $10 fee but a $4 fee. This is where the fee totally phases out when the price reaches $22. The price last year was $28. This is a reasonable approach.

We can count votes. We know we do not have the votes tonight. I hope Members will pay attention. I think the President's task force will study this. The National Security Adviser has good ideas. I hope this body will wake up.

I have followed the request of my cosponsor and withdrawn the amendment.

Mr. BENTSEN. Mr. President, I want to congratulate the Senator from New Mexico for offering this amendment. And I am delighted to be an original cosponsor. In this debate, he has spoken of the revenues which this amendment will raise. And that is a feature which will certainly attract some support as we continue working to close the deficit gap.

But my support for this amendment is not budgetary. My support is tied to our national security.

I have been active in public affairs for a good portion of the postwar period. And as I think back, the most traumatic and stressful period I believe we endured during peacetime over that 40-year span was the oil embargo during the late seventies. We are a proud and sturdy nation. But I remember all too well the appalling sight of Americans lined up for miles, waiting patiently—and some not so patiently—in their cars for hours to buy a precious tankful of gasoline.

Everyone in this Chamber I suspect sat in those lines. Indeed, I don't believe that this Nation in its entire history has been through another such dramatic episode—one where a foreign power successfully blockaded the supply of a critical resource like oil. Even during the darkest days of World War II, the Axis powers were unable to accomplish what OPEC pulled off. OPEC was successful because we allowed foreign oil imports to soar, reaching 47 percent of domestic demand in 1977.

By permitting our domestic energy industry to deteriorate, we opened the door to OPEC's embargo and the blackmail of our foreign policy.

A combination of higher prices, energy conservation and enhanced production helped us out of that hole. By last year we had reduced our dependence on foreign oil to 27 percent.

In fact, domestic oil production last year was 10 percent above the 1976 level and reserves were up.

That success reflected a national consensus that our foreign policy and economic well-being must not again fall hostage to OPEC. But I must say frankly that this progress was made with only lukewarm support from this administration. By its deeds, it has shown that it is not necessarily part of that consensus.

Indeed, it has more often than not pursued policies which have increased our dependence on foreign oil. It has continued to support the misnamed windfall profits tax, and the Fuel Use Act. And it has dragged its feet in complying with congressional mandates to fill the strategic petroleum reserve. Moreover, it has not supported tougher laws to improve auto fuel efficiency or to conserve heating and cooling energy use in Federal buildings.

But perhaps the most telling indication of administration indifference to the OPEC threat has been its response to the latest OPEC crisis. Since December, OPEC's leading producer, Saudi Arabia, has engineered a collapse of the American oil industry. OPEC oil has swamped world markets in an overt effort to drive American oilmen into bankruptcy in order for OPEC to regain control over supply and prices. And the administration has sat idly by while OPEC pursued its strategy, barely able to believe its good luck.

According to Salomon Brothers, oil exploration by the majors is down 50 percent this year. And independents—who drill 90 percent of our risky exploratory wells—have cut budgets by 48 percent.

With onshore wildcat wells costing a minimum of $230,000 and offshore wells at least $2.7 million, oil firms simply cannot afford to gamble with that kind of money when oil prices are soft, and may grow softer at the whim of OPEC.

According to the Hughes Tool Co., 4,530 drilling rigs were operating at our peak back in December of 1981.

In recent months, the rig count has plunged so far that it set a record low in mid-July of 663 rigs in operation—and it would be even lower except that many firms must continue drilling or lose valuable leases.

Nationally, industrial capacity utilization is running at 78 percent. In the oil industry today, it is barely 20 percent and falling. A staggering one job in four in the oil industry has been lost in the past year.

The oil patch is full of geologists and geophysicists looking for any job they can find. Enrollment in our geology departments at colleges across the country has plunged. Every oil firm in the Nation has laid off workers—pushing unemployment in Texas and elsewhere across the oil patch to 10 percent and higher.

Oil production this year is down 140,000 barrels a day so far. And widespread predictions of further declines from stripper wells and reservoirs being worked with enhanced oil recovery techniques run far higher—upward of 1 million barrels of lost production by year's end. Oil reserves fell slightly last year and will plunge dramatically this year. Indeed, we've lost over $6 billion in oil lease payments because firms have been too strapped to bid on Federal oil leases.

With each oil job supporting five other jobs, the depression in oil has sent ripples far and wide. Last year, oil and gas spending accounted for 24 percent of total U.S. capital spending. Its off more than 50 percent this year. No wonder total U.S. capital investment is expected to decline 2.5 percent in 1986. Moreover, lower oil prices have not spurred the economy.

Goldman Sachs has concluded that lower oil prices failed to move us onto a higher growth path. And the conference board found that the net economic impact of falling oil prices has been negative.

That's bad news for the national economy. But it's even worse news for our Nation's security. Falling oil prices in the past have not meant just falling production. It has also meant rising

demand. And the widening supply gap has been filled with foreign oil. Evidence since December shows overwhelmingly that the same thing is happening this time around, too. Domestic demand is up a sharp 565,000 barrels a day this year.

With production plunging and demand rising, foreign oil has made up that difference. And our dependence on foreign oil has leaped to 40 percent now—far above the 27 percent scored last year. In recent months, the decline in domestic production and rise in consumption has accelerated. And imports have skyrocketed.

Interior Secretary Hodel said recently that oil imports would rise 1 million barrels daily within a year. Well, the latest Department of Energy data shows that oil imports in August were already 2 million barrels a day higher than in 1985.

The sharp rise in oil imports may be catching the administration by suprise. But, its not a surprise to oil and national defense experts.

I recently asked the CBO, the Congressional Research Service at the Library of Congress, and DRI to project oil imports at $15 per barrel. Their conclusions were unequivocal: oil imports will exceed the danger level of 50 percent of U.S. consumption sometime during the next 3 to 5 years—sometime between 1988 and 1990.

As a result of the OPEC price strategy, we will shortly be relying on foreign oil for one-half of all domestic oil consumption.

That would only be an unpleasant fact if all that imported oil was from Canada or the North Sea. But it won't be. Most of the increase in imported oil will come from the Middle East because alternative non-OPEC resources are already producing flat out. North Sea and Alaskan North Slope production will peak next year, for example.

Canadian production and Latin American production in countries like Mexico and Venezuela has plateaued. Indeed, rising U.S. oil demand has already created rising dependence here on OPEC. Saudi Arabia, for example, was only the 15th largest source of oil imports last year. In June 1985, we imported a bare 26,000 barrels per day of Saudi oil. Yet, by last January, that had soared to 664,000. And in February, Saudi Arabia jumped to second place, joining Mexico, Canada, and Venezuela as major suppliers of United States oil imports.

OPEC now accounts for 43 percent of U.S. imports, compared to 36 percent in 1985. Last year, a bare 1 barrel in 9 of our oil as from OPEC.

At present trends, OPEC will be supplying over one-half of all U.S. oil imports by 1988. And by 1990, 1 of every 3 barrels of oil we consume will be OPEC oil.

There are signs that the administration has belatedly come alert to the national security dangers posed by falling production and soaring OPEC imports.

Last month, Admiral Poindexter, the President's National Security Adviser, urged the tax conferees to retain incentives for oil development and exploration. He warned that imports would double by the early nineties, and specifically cited the national security concern related to our looming dependence on OPEC. More recently Secretary Hodel said, and I quote, "We're in very grave danger as a nation of finding ourselves in a very short time back in the grasp of OPEC."

The administration's acknowledgment of the security dangers of rising oil imports is a good first step. But it needs to be followed by a second step—the establishment of policies to hold that dependence at manageable levels—to head off OPEC. Thus far, we've seen little progress toward establishment of a sound energy security policy.

Senator DOMENICI's amendment will help the administration take that second step.

The $4 per barrel import fee on oil in this amendment will move national security to the front burner in energy policy. By restoring some stability to the domestic industry, this provision will slow our headlong rush toward reliance on OPEC. And the $2 differential for product imports will ensure that the domestic refining industry is held harmless by this provision, as well.

The use of an oil import fee for national security reasons will be welcomed by defense experts. Former Defense Secretary Harold Brown, for example, endorsed such a fee in testimony before the Finance Committee on August 13.

Going further back, President Reagan used oil import restraints under section 232 of the Trade Expansion Act to stop Libyan oil sales to the United States. And even further back in the midfifties, President Eisenhower drew on his military experience, and acted to limit foreign oil imports in order to stabilize the domestic oil industry.

Foreign oil producers didn't like those actions, and among the criticisms sure to be raised by OPEC this time around is that this amendment will harm American competitiveness in world markets.

But a number of factors indicate that this fear is greatly exaggerated. First, the dollar has fallen over 30 percent on a trade-weighted basis in the last 18 months—an improvement in American competitiveness more than outweighing any duty.

Second, the sheer size and importance of the U.S. market means that foreign producers will be forced to absorb some of the import duty—prices here will not rise by the full amount of the duty in today's glutted world markets.

And third, energy costs to business in the United States are generally less than those in other Western industrial nations.

According to the International Energy Agency, in the last quarter of 1985, for example, the costs of light fuel oil, heavy fuel oil, and gasoline in Japan were 63 percent, 58 percent, and 125 percent, respectively, above the costs of those products in the United States. Light fuel oil in the United Kingdom was nearly 25-percent higher. And heavy fuel oil in both the United Kingdom and Germany was more than 25-percent higher.

Those differentials may narrow, but American firms will continue to enjoy a favorable cost advantage in energy over European and Japanese competitors.

Let me dicuss one further point. Some have suggested that this amendment may reduce economic growth, produce inflation, and lose rather than gain tax revenue as a result of that slower growth. Let's keep this issue in perspective.

The administration has proposed to tax Americans for some $850 billion in fiscal year 1987. This provision will increase those receipts by far less than 1 percent. If $850 billion in taxes won't cause growth to slow, $855 billion won't either.

Moreover, an economy running at 78-percent capacity with over 7 million men and women looking for work without success is hardly one on the verge of an inflationary binge. This provision is an economic asterisk.

To conclude, let me stress again that we must deal effectively with the OPEC threat now. We know the folly of delay. We've seen the consequences of permitting our domestic oil industry to fall into disrepair. The actions needed to restore its health and limit foreign oil dependence are not easy ones to take. But they are far more palatable than the alternative—which is spending hours waiting in gas lines in 1988 or 1989 with a foreign policy held hostage to OPEC whims.

Mr. DOMENICI. Mr. President, I have three or four cleanup matters.

Will Senator THURMOND make a motion with reference to a part of this bill?

Mr. THURMOND. After your amendment is adopted, I will do that.

Mr. DOMENICI. I understand Senator GORTON has an amendment.

Mr. MOYNIHAN. Senator GORTON will have an amendment.

Mr. DOMENICI. I will do the cleanup before that with the understanding that there are those amendments. The distinguished Presiding Officer has an REA amendment which is acceptable to the Senator from New Mexico. I un-

derstand it is being cleared on this side and it is being cleared on the Democratic side.

Mr. DOMENICI. I ask that a letter from Director Miller indicating how the appropriated account will be used so as to yield $2.4 billion through the Internal Revenue Service be made part of the RECORD. We understand that is a commitment on their part.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, September 19, 1986.

Hon. PETE DOMENICI,
U.S. Senate,
Washington, DC.

DEAR PETE: As you know, the President's request of $4,097.8 million for IRS spending in 1987 includes a revenue initiative that would increase 1987 Federal tax revenue collections by an estimated $1.8 billion through improved examination and collection efforts. The House appropriation of $4,247.8 million for 1987 includes an additional $150 million to expand these 1987 revenue initiatives. The $4,247.8 million approved by the House would produce an additional $1 billion in 1987 tax collections. If the Congress appropriates funds for the IRS at the House-passed level, the Administration would use the additional funding for examination and collection, thereby increasing revenues for 1987 an additional $2.8 billion above the revenues OMB estimated in its August 20 Gramm-Rudman-Hollings report.

Sincerely yours,

JAMES C. MILLER III,
Director.

MEDICARE PROMPT PAYMENT OF CLAIMS

Mr. CHILES. Mr. President I would like to engage some of my colleagues in a discussion of one of the items in this bill—the prompt payment of Medicare claims.

We found just a few months ago that many Medicare benificiaries, physicians, home health agencies and other providers were having to wait for up to several months before receiving payment on their legitimate Medicare claims. The bill we now have before us would go a long way to correct this problem. It sets a prompt pay standard under which 95 percent of clean claims must be paid within 27 days next year. It would gradually get that down to 24 days. The bill would require that beneficiaries and many providers, including home health agencies, nursing homes and hospices, receive interest if claims are not paid within that time. For hospitals, interest would not be paid on late claims, but they could continue to receive advance, periodic interim payments in the event the prompt pay standard is violated.

But there is one area I still have some concern about. I would have liked to do more. Once these new standards are implemented, I am afraid we may have left a loophole in our distinction between "clean" and "dirty" claims.

The bill mandates a timely payment standard for "clean" claims. These are, in essence, those claims which meet all Medicare statutory and regulatory requirements for legitimate payment. It has to be on paper, it has to be signed, it has to provide required information on the type of medical service rendered. Some providers have to give detailed information on the services provided as well as backup documentation, for example, on patient history and the need for service.

This is not unusual in any insurance claim situation, and Medicare is a complicated program. There are screening and utilization safeguards built into its administration to ensure ligitimate decisions regarding eligibility and coverage, as well as prevent unnecessary utilization. For these reasons, I understand and support the need for allowing some flexibility on the payment standard for "dirty" claims—that is claims which are not complete and cannot be paid without going back to request additional information.

What concerns me, however, is that this administration—or any other administration under pressure to save money by holding back on Medicare payments—could see this as a loophole. They could arbitrarily classify thousands of claims as "dirty." They could then simply hold them for long periods of time before they were even processed. And these "dirty" claims would not come under the prompt pay standard.

The original bill Senator DURENBERGER introduced, and which I cosponsored, at least recognized this possibility by applying the timeliness standard to processing "dirty" claims. In the case of a clean claim, if it was not paid within a certain timeframe the interest penalty would kick in. In the case of a "dirty" claim, notice of the need for additional information had to be sent to the claimant within the same time period, or interest would be paid. In other words, there would also be a deadline for reviewing claims to ensure that they are error-free.

My understanding is that we have not been able to include this notice process in the bill because the administration opposes it. They say they fear the administrative costs. I am sorry this is the case. I still believe we need to have some safeguard to avoid confusion and charges of bad faith in the future—particularly on the part of unassigned part B claims submitted by Medicare beneficiaries. I fear that unless we have a way to monitor the classification and handling of so-called dirty claims it will come back to haunt us.

Mr. DURENBERGER. Mr. President, as the original sponsor of the prompt payment bill—which has been incorporated in large part in the Senate's reconciliation package—I, too, am concerned about the effect of the requirements in S. 2706 on Medicare beneficiaries.

By requiring timely payment of "clean" claims—that is, those which are fully completed and ready for processing—we will see to it that Medicare deals fairly and responsibly with the providers from whom it purchases services for Medicare beneficiaries. As chairman of the Finance Health Subcommittee with jurisdiction over the Medicare Program, this is something which I feel very strongly about, and I know that Dr. Roper, the Administrator of the Health Care Financing Administration shares this commitment with me.

My concern, however, is for Medicare beneficiaries whose claims are not taken on assignment. When providers do not accept assignment on Medicare claims—or do not accept Medicare's determination of a "reasonable charge" as payment in full—then the Medicare patient has to pay the bill, fill out a Medicare claim himself, and wait for Medicare to reimburse him for some portion of the amount he has already paid.

Doctors and hospitals have trained staff people to fill out these forms and deal with the Medicare payment network of carriers and fiscal intermediaries. But Medicare beneficiaries are on their own in dealing with this system. They do not have any training in how to fill out these forms, nor do they have access to Watts lines or electronic billing terminals with which to communicate with insurance carriers.

For these reasons, I am afraid that these unassigned claims from Medicare beneficiaries could come to make up an increasing part of the total of "unclean" claims—and those claims are not subjected to the prompt payment requirements.

In the bill I originally introduced—along with Senator CHILES and a number of other distinguished cosponsors—I required that Medicare's insurance carriers send a notice to Medicare beneficiaries within the prompt pay deadline if their claims were not "clean" and couldn't be processed within the required processing time for clean claims. I envisioned this working in such a way that the carrier could simple check off a box on a preprinted form and have that box explain to the beneficiary what item on the claim was incomplete or incorrectly completed—just as banks do if you submit an incomplete loan application.

I saw this provision as something that would not be unduly burdensome to the carriers, but would be a very important protection for the beneficiary. This timely notice to beneficiaries would enable them to correct or complete their claims and to keep the processing system on the track. It would give beneficiaries information

which would empower them to make the system work for them.

I believe that, with a little more time, we could convince the administration that this provision is very important to Medicare beneficiaries, and that it will not be too burdensome to set up. Therefore, I would like to ask Senator PACKWOOD, Finance Committee chairman, if he would agree to reconsider this provision when we go to conference with the House.

Mr. CHILES. I would like to ask Senator PACKWOOD, as Chairman of the Finance Committee, if he agrees with our concerns on this issue. I wonder if he agrees that we should take another look at this issue when this bill is in conference with the House. Shouldn't we at least require that some notice be given to beneficiaries on unassigned part B claims?

Would the Senator agree that we should ask the Secretary to develop and publish standards for payment of all "dirty" claims? And provide us with reports on the volume and types of claims which fall outside the prompt pay standard? My concern here is that we at least give beneficiaries and providers some idea of what to expect and that we have a way of watching what is happening as the new prompt pay standard is implemented.

Mr. PACKWOOD. Mr. President, I would like to assure my esteemed colleagues that I share your concerns that Medicare beneficiaries and providers be promptly paid for legitimate claims they incur for covered services. As we all know, the cost of health care has risen substantially over the last decade. Even one delayed payment may represent a substantial burden to an elderly person on a fixed income or to a small provider who already has a substantial amount of accounts receivable. These individuals and small providers cannot afford to underwrite the administrative costs of the Medicare Program. Thus, our reconciliation bill includes a requirement that 95 percent of clean claims (those that have complete information) be paid promptly. We define promptly as 27 days which we believe is a reasonable amount of time for the Medicare intermediaries and carriers to process the majority of claims. We do not require a full 100 percent as the standard, even though we expect that many contractors will, in fact, exceed the 95-percent standard. We know there are circumstances that may occur from time to time to delay some claims and we felt that our minimum standard should have some flexibility.

Our concern today is what happens with the other claims, the so-called dirty claims that are missing information essential for payment. Senators CHILES and DURENBERGER feel that we need a system to monitor the classification and handling of these dirty claims and I agree. Their concern is that there be a method to assure that the exclusion of dirty claims from the timeliness and penalty requirements does not create a situation where an increasing number of claims are classified inappropriately as incomplete, in particular, claims where the physician does not accept assignment. They also suggest that we may wish to require that the Secretary establish minimum standards, for example, minimum standards for notifying beneficiaries or providers that their claims have been received and that additional information is required. I think that this is a valid approach and hope that the specific details can be worked out in the conference. I also intend to ask the conferees to consider an approach to monitor the clean claims that do not meet the 95-percent standard to assure that there is no undue burden on certain types of facilities or beneficiaries in certain areas.

Mr. MITCHELL. Mr. President, I have been concerned about the issue of Medicare prompt payments for some time. In my home State of Maine, providers report delays of up to 8 months for payment for Medicare claims.

Clearly this situation cannot be allowed to continue. During the past year, HCFA began a deliberate policy of slowing down Medicare payments to providers through its fiscal intermediaries and carriers in the States.

Several months ago I joined with a number of my colleagues on the Finance Committee in cosponsoring legislation which would require prompt payment of Medicare claims. During deliberation on the fiscal year 1987 budget reconciliation bill, the committee agreed to include a provision which mandates prompt payment of "clean claims" within 24 days. Failure to comply with this mandate would result in fiscal penalties.

It is my understanding that the new package being submitted by the chairman will eliminate important provisions in the prompt-payment section of the bill, and will lengthen the payment schedule to 27 days.

Mr. President, I am particularly concerned about the definition of "clean claim" in the prompt payment provision. Many Maine providers have expressed their deep concern about the definition of "clean claim." Since fiscal intermediaries and carriers only have to comply with the prompt-payment time deadline for "clean claim," some have made arbitrary decisions about which claims are clean and which are not.

The definition of a "clean claim" must be tightened up so that carriers from one State to another have uniform criteria to follow to determine which claims can be returned to the providers for additional information and which must be reimbursed within the 27-day time period. We cannot allow this exception for "clean claims" to result in noncompliance with the prompt-payment provision.

Mr. HUMPHREY. Mr. President, I would like to engage my colleague, the distinguished chairman of the Finance Committee, in a brief discussion about a provision in the House reconciliation bill which authorizes a national adoption information clearinghouse. The Senate reconciliation bill does not address this issue.

Mr. Chairman, many Americans are seeking information about adoption. Infertility affects between 15 to 20 percent of the population, and there is some evidence that the incidence of infertility is rising. At the same time, the Department of Health and Human Services estimates that approximately 36,000 children remain in foster care and institutions, even though they are free for adoption.

I serve as a cochairman of the Congressional Coalition on Adoption, a nonpartisan, bicameral alliance of over 60 Members of Congress who are dedicated to the promotion of infant, special needs, and intercountry adoption. I know there is a need for an adoption clearinghouse because since the Congressional Coalition on Adoption was formed, my office has received telephone calls and letters from people all over the country seeking information on adoption.

Adoptive parents' groups, adoption specialists, public interest groups, and agencies are doing their best to provide adoption information in their local communities. But as the telephone calls to my office attest, many of those interested in adoption do not know where to turn for some of the most basic information, and are discouraged by the formidable barriers to adoption. A national adoption information clearinghouse would collect and disseminate to the American public current and complete information relating to all aspects of adoption.

Mr. Chairman, I know that you are well aware of the importance of adoption since the Federal Adoption Assistance and Foster Care Programs fall within the jurisdiction of the Finance Committee. I would simply ask that you give serious consideration to the House adoption clearinghouse provision when you go to conference on the reconciliation bill. I appreciate your willingness to do so and hope that you and your fellow conferees will look favorably on this provision.

Mr. PACKWOOD. I thank my colleague from New Hampshire for sharing his views on the adoption clearinghouse provision approved by the House of Representatives. I am indeed aware of the need for more information about adoption and foster care in this country.

Just last week, when the Finance Committee marked up H.R. 1868 relat-

ing to Medicare and Medicaid fraud, we included an amendment to provide for the collection of adoption and foster care data from the States. I supported that amendment and I can understand your desire to ensure that the American people are provided the information they need as soon as possible. I would like to assure my colleague that when we go to conference on this bill we will closely examine the provision establishing a national adoption information clearinghouse, and will give every consideration to including it in the final conference agreement.

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Mr. HOLLINGS. Will the Senator from New Mexico yield?

Mr. DOMENICI. Yes, Mr. President.

Mr. HOLLINGS. Mr. President, the good news today is that, lo and behold, Gramm-Rudman-Hollings is working. At the 11th hour, we are poised to pass another $14 billion in cuts and bring the 1987 budget under $154 billion. And there is not a man or woman in this Chamber who believes that would have happened without the discipline imposed by Gramm-Rudman-Hollings.

To the American people and to the Nation's financial markets, Gramm-Rudman-Hollings is communicating a powerful message: That the Federal Government, at long last, is committed to a strict, long-term regimen of budget discipline. We are meeting the test for fiscal year 1987, and we will stick to our guns in the years that follow.

Consider, Mr. President, what Gramm-Rudman-Hollings has accomplished in its first year. Without G-R-H, the 1986 deficit would have been $242 billion. With G-R-H, we are now looking at a 1987 budget of $150 billion or less. That is a 1-year reduction of more than $92 billion.

It is a fact of life here in Washington that politicians don't see the light until they feel the heat. Well, Gramm-Rudman-Hollings is the heat, and things stand to get a lot warmer each year until 1991 when G-R-H will bring us a balanced budget. The specter of automatic, across-the-board cuts and sequestration acts like a Sword of Damocles over the politicians' heads. Congress and the President have each been forced to accept sacrifices in their pet programs. The Senate has economized on defense, the House on domestic programs, and the White House in both areas. The result is a 1987 budget that confounds the naysayers and offers genuine hope to ordinary Americans.

Concerning this reconciliation package, however, I must express several reservations. The doctor ordered a root canal, and what we have here is a lot of drilling and filling. The reconciliation package calls for several billion in loan asset sales, and that is just plain bad public policy. It is a sign of desperation that we are resorting to this kind of pseudo-budget-cutting. Moreover, loan asset sales offer 1-year benefits only, and they make next year's budget goals all the harder to reach.

Mr. President, I would commend the original effort of the distinguished Senators from New Mexico and Florida—the chairman and ranking minority member of the Budget Committee, respectively—who put together a reconciliation package that was all bread and no air. It called for $14 billion in real cuts, but regrettably was watered down by the House and the administration.

Nonetheless, I intend to vote for this second-best reconciliation package as a package. It gets the job done. It begins to pay the bills.

Mr. President, despite our success with instilling discipline in the 1987 budget, let me emphasize that the battle of the budget is far from won. The hardest choices still lie ahead of us.

In recent days, we have witnessed a teapot tempest on the subject of drug abuse. Fighting drugs is the perfect, no-lose, mom-and-apple pie issue for an election year. And it beats talking about buget cuts, deficits, and taxes. But let us not forget the real issue facing this Nation and the next Congress. The American people may have a $110 billion a year illegal drug habit. But the Federal Government this year has a $224 billion addiction to deficit spending that is every bit as dangerous to our Nation's future.

Last December, Senators GRAMM and RUDMAN and myself sponsored our version of the "Just Say No!" campaign. And, so far, it is working. But it verges on the hypocritical for Congress to preach and moralize about drug abuse until we have ended our own peculiar addiction. We cannot presume to talk to American youth about self-discipline until we have truly demonstrated that we, too, are capable of discipline.

To that end, this fiscal year 1987 budget is an important milestone. But this is just an initial skirmish. The truly bloody battles of the budget still lie ahead of us.

In fiscal year 1988, we must bring the budget down to $108 billion—at least another $42 billion in cuts beyond what we have achieved for fiscal year 1987. And it is sheer silliness to think budget cuts alone will do it. Another $42 billion in budget cuts will either hurt the national defense or hurt people, and neither option is acceptable.

Consider today's Federal budget. In round numbers, it totals just over $1 trillion: $300 billion for defense, $300 billion for entitlements and $200 billion for interest costs, leaving $200 billion for all the rest of Government, including NASA, highways, law enforcement, and so on. Even if you abolished that last $200 billion for all the rest of Government, you'd still be left with a deficit of nearly $30 billion. Clearly, spending and revenues are grossly out of balance, and Federal spending is out of control.

The point, Mr. President, is this: If Congress and the President—Democrats and Republicians alike—agree that we need a trillion-dollar Government, then we are going to have to pony up the trillion dollars to pay for it. Ordinary citizens have to pay their bills each month, and so should we. Inevitably, that is going to entail adjustments on the revenue side.

That said, we should be allowed to savor this limited victory on the 1987 budget. It is a major step in the right direction.

AMENDMENT NO. 2859

Mr. DOMENICI. Mr. President, I send an amendment to the desk for myself and Mr. CHILES. This is a technical amendment to the small business section of this bill. It has been cleared with the staff of the Small Business Committee in the Senate. As a matter of fact, they asked us to do this. It does not in any way affect the bill in terms of its effectiveness. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] for himself and Mr. CHILES, proposes an amendment numbered 2859.

Mr. DOMENICI. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 19, line 23 of the pending amendment, strike all through page 20, line 3, and insert in lieu thereof the following: "Beginning on page 191, line 1, strike all through page 192, line 12, and insert in lieu thereof the following:

TITLE IX—COMMITTEE ON SMALL BUSINESS

PILOT LOAN ASSET SALE

SEC. 901. Title V of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new section:

"SEC. 506. (a) Except as provided in subsection (c), notwithstanding any law, rule, or regulation, the Secretary of the Treasury shall sell to the public, by private placement or otherwise as the Secretary determines to be appropriate, all of the right, title, and interest in debentures issued pursuant to section 503 of this title and held by the Federal Financing Bank in such amounts as to realize net proceeds of—

"(1) $343,000,000 from such sales during fiscal year 1987;

"(2) $55,000,000 from such sales during fiscal year 1988; and

"(3) $14,000,000 from such sales during fiscal year 1989.

"(b) Simultaneously with the sale referred to in subsection (a), the Administration shall assign all of its interest in notes, mortgages, guarantees, security interest, or other interest in underlying collateral supporting any debenture sold pursuant to this section to the purchaser of such interest.

"(c) Any sales by the Secretary under this section shall be on a nonrecourse basis to the Federal Government and shall provide that for purposes of disbursements, collections, and payments of receipts to purchasers the companies certified under section 503 of this title shall continue to have the right to service the loans underlying such debentures.

"(d) In the event of default on a debenture, the liability of the relevant certified development company shall be limited to all payments made by the small business concern to the certified development company and the collateral securing the defaulted loan.

"(e) With the sale of each debenture as specified in subsection (a), the Administration's guarantee of timely payment of principal and interest on the debenture will be deemed discharged. The Administration shall incur no liability or obligation to the Secretary or the Federal Financing Bank in connection with any sale of a debenture under this section.".

SEC. 902. In order to achieve the budget savings specified in the amendment made by section 901 of this Act, neither the Secretary of the Treasury nor the Administration shall sell any loans, portions of loans, or notes or debentures guaranteed by the Administration pursuant either to the Small Business Act or the Small Business Investment Act of 1958 except those specified in the amendment made by section 901, except that this section shall not apply to the sale of debentures or other securities provided for in sections 321 and 504 of the Small Business Investment Act of 1958.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2859) was agreed to.

AMENDMENT NO. 2860

(Purpose: To deny foreign tax credits, and income tax deferral on income, attributable to activities conducted in foreign countries with which the United States does not conduct diplomatic relations or which repeatedly provide support for acts of international terrorism)

AMENDMENT NO. 2861

(Purpose: To ensure that Food for Peace funds not yet obligated shall be expended for the intended purposes)

AMENDMENT NO. 2862

(Purpose: To provide for appropriate reimbursement to large rural hospitals that serve a significantly disproportionate number of low-income patients)

Mr. DOMENICI. Mr. President, I have been asked by Senators LEAHY, GRASSLEY, and STENNIS to submit amendments in their behalf. I submit them en bloc. Each is accompanied by their statement. These amendments have been approved on both sides by both managers, the chairman and ranking member of each authorizing committee that has jurisdiction over them. They do not contain extraneous matter to the pending amendment and will have no adverse effect and are acceptable.

I send them to the desk and ask that they be considered en bloc.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

The amendments will be stated en bloc.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for Mr. LEAHY, Mr. GRASSLEY, Mr. STENNIS, and others purposes amendments numbered 2860, 2861, and 2862.

The amendments are as follows:

At the appropriate place in the Committee amendment, insert the following:

SEC. . DENIAL OF CERTAIN TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES.

(a) DENIAL OF FOREIGN TAX CREDIT.—Section 901 (relating to taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) DENIAL OF FOREIGN TAX CREDIT, ETC. WITH RESPECT TO CERTAIN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—Notwithstanding any other provision of this part—

"(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) during the taxable year to any country to which this subsection applies, and

"(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income for such taxable year from sources within any country so identified.

"(2) COUNTRIES TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any foreign country—

"(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

"(ii) with respect to which the United States has severed diplomatic relations,

"(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

"(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

"(B) PERIOD FOR WHICH SUBSECTION APPLIES.—This subsection shall apply to any foreign country described in subparagraph (A) during the period—

"(i) beginning on the later of—

"(I) January 1, 1987, or

"(II) 6 months after such country becomes a country described in subparagraph (A), and

"(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

"(3) PART-YEAR RULE.—If this subsection applies to any foreign country for any period less than an entire taxable year, paragraph (1) shall be applied by taking into account only that proportion of the taxes and income described in paragraph (1) for the taxable year as the portion of the taxable year which includes such period bears to the entire taxable year."

(b) Denial of Deferral of Income.—

(1) GENERAL RULE.—Section 952(a) (defining subpart F income) is amended by striking out "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", and", and by inserting immediately after paragraph (4) the following new paragraph:

"(5) the income of such corporation derived from any foreign country during any period during which section 904(i) applies to such foreign country."

(2) INCOME DERIVED FROM FOREIGN COUNTRY.—Section 952 (defining subpart F income) is amended by adding at the end thereof the following new subsection:

"(e) INCOME DERIVED FROM FOREIGN COUNTRY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 904(i) applies if such income was, without regard to such entities, derived from such country."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

ANTITERRORISM

Mr. GRASSLEY. Mr. President, I am offering this amendment to deny foreign tax credits to companies operating in terrorist countries, or countries that the United States does not recognize or has severed diplomatic relations, or countries with which the United States does not conduct relations.

Mr. President, this measure has already passed the Senate by unanimous consent as an amendment to the debt ceiling. Therefore, the Senate has determined that our tax policy should conform with our foreign policy, and that American taxpayers should not be indirectly subsidizing terrorist countries or nations whose conduct is contrary to the interests of the United States.

In addition, this amendment is expected to raise over $100 million over a 5-year period for the Federal Government. In this age of annual budget deficits, every dollar counts, and it is this Senator's opinion that the American people should be given $100 million rather than those that directly subsidize terrorism, or those nations that directly support terrorism.

Therefore, I urge my colleagues to join me and my fellow cosponsors, Senators LAUTENBERG, D'AMATO, PROXMIRE, DENTON, DOLE, MATTINGLY, HARKIN, CHILES, DECONCINI, HOLLINGS, and HAWKINS in this vote against terrorism.

I ask unanimous consent that the amendment be adopted.

Mr. CHILES. Mr. President, I rise in support of this amendment. It would

eliminate an inconsistency which currently exists between our foreign policy and our tax policy.

This amendment would eliminate tax breaks which are currently available to U.S. companies doing business with illegitimate governments. It terminates a situation where our Government's foreign policy is undermined by a business as usual attitude from our corporations.

To show displeasure with foreign governments, the State Department divides countries into several groups. They refuse to recognize Albania, Angola, Mongolia, and North Korea. We have severed relations with Cuba, Iran, South Yemen, Vietnam, and Iran. And we recognize as sponsors of terrorism, Libya, Syria, and Nicaragua.

To allow tax credits to companies that do business in these countries does not make sense. We cannot convey one message with our tax policy and another from the State Department.

By repealing the foreign tax credit, U.S. companies would no longer be able to credit, dollar for dollar, all income taxes paid to any of these governments. The tax revenues help support the Governments of Syria and Angola, and this is clearly not a policy we should approve. Denying these tax credits also raises further revenue for the Government.

Mr. President, this amendment rights a previous wrong. We cannot support a policy which takes with the one hand only to give with the other.

AMENDMENT NO. 2861

At the appropriate place, add a new section as follows:

SEC. . Funds made available by title IV of the Agriculture, Rural Development, and Related Agencies Appropriations Act of 1986 for Public Law 480, title II programs, and not otherwise obligated on the date of enactment of this section, shall be obligated during fiscal year 1986 for the purposes for which they were made available only.

Mr. LEAHY. Mr. President, we have received disburbing reports that the administration has again locked up the funding for Food for Peace Program shipments for the remainder of this fiscal year; $50 million remains in the title II, food donation account which Congress appropriated for overseas humanitarian use. The funds were previously budgeted and appropriated—for fiscal year 1986. The amendment requires that the administration use the funds as intended.

This is the second time this summer the administration, without public announcement, halted new obligations of food aid. The last time, following protests by Congress, the hold was temporarily lifted.

This time, we are dangerously close to the end of the fiscal year. If the Senate does not take immediate action to mandate the use of the remaining funds, we will be cutting our commodity exports by $50 million.

At a time of crisis for many American farmers, our surplus commodity levels have reached record proportions. While substantial hunger and need exists overseas, we are spending close to $2 billion to store surplus stocks in the United States.

Common sense says that this is not the time to let our Food for Peace Program lapse. Farmers, commodity groups, and shipppers say, we have the food, we can't even find a place to store it—this is not the time to let our Food for Peace Program lapse. We will continue to see hunger and need in developing countries—for the sake of humanity, this is not the time to let our Food for Peace Program lapse.

Supporting this amendment protects program funding vital to ongoing overseas food assistance. This amendment effectively uses U.S. agriculture products that are currently in surplus.

I urge my colleagues to support this effort to ensure that funds appropriated for food aid are used for that purpose.

AMENDMENT NO. 2862

At the appropriate place in the bill, add the following new section:

SEC. . MEDICARE PAYMENTS TO LARGE RURAL HOSPITALS SERVING A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS.

(a) IN GENERAL.—Section 1886(d)(5)(F)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(v)) is amended—

(1) by striking "or" at the end of subclause (II), and

(2) by striking subclause (III) and inserting in lieu thereof the following new subclauses:

"(III) such percentages as are determined by the Secretary to be appropriate for hospitals located in a rural area which have 300 or more beds, or

"(iv) 45 percent if the hospital is located in a rural area and has less than 300 beds."

(b) CONFORMING CHANGE.—Section 1886(d)(5)(F)(iv) of such Act is amended—

(1) in subclause (I) by inserting ", or is located in a rural area and has 300 or more beds," after "beds,", and

(2) in subclause (III) by inserting "and has less than 300 beds" after "area".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 1986.

Mr. DOMENICI. Mr. President, I am offering this amendment on behalf of Senator STENNIS and Senator COCHRAN which has been cleared on both sides of the aisle. The amendment would give the Secretary of Health and Human Services discretion in determining appropriate Medicare reimbursement for certain large hospitals in rural areas.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 2860, 2861, and 2862) were agreed to en bloc.

Mr. DOMENICI. I move to reconsider the vote by which the amendments were agreed to en bloc.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I yield the floor.

Mr. CHILES. Mr. President, I yield 1 minute to the Senator from Washington.

AMENDMENT NO. 2863

(Purpose: To provide protections for certain retirement benefits)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated. The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] for himself and Mr. HOLLINGS, Mr. GRASSLEY, Mr. MOYNIHAN, Mr. DOMENICI, Mr. MATTINGLY, and others proposes an amendment numbered 2863.

Mr. GORTON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new title:

TITLE —MISCELLANEOUS RETIREMENT BENEFITS PROTECTIONS

Subtitle A—Protections From Extraordinary Public Debt Management

SEC. 01. INVESTMENT AND RESTORATION OF TRUST FUNDS.

(a) IN GENERAL.—Subsection (d) of section 201 of the Social Security Act (42 U.S.C. 401(d)) is amended—

(1) by striking out "(1) on original issue" and inserting in lieu thereof "(A) on original issue",

(2) by striking out "(2) by purchase" and inserting in lieu thereof "(B) by purchase";

(3) by striking out "It shall be" and inserting in lieu thereof "(1) It shall be", and

(4) by adding at the end thereof the following new paragraphs:

"(2) If—

"(A) any amounts in the Trust Funds have not been invested solely by reason of the public debt limit, and

"(B) the taxes described in clause (3) or (4) of subsection (a) with respect to which such amounts were appropriated to the Trust Funds have actually been received into the general fund of the Treasury of the United States,

such amounts shall be invested by the Managing Trustee as soon as such investments can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title.

"(3)(A) Upon expiration of any debt limit impact period, the Managing Trustee shall immediately—

"(i) reissue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations held by such Trust Fund that—

"(I) were redeemed during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of standard investment

procedures for such Trust Fund in effect on the day before the date on which the debt limit impact period began, would not have been redeemed if the debt limit impact period had not occurred, and

"(ii) issue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations which—

"(I) were not issued during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of such standard investment procedures, would have been issued if the debt limit impact period had not occurred.

"(B) Obligations issued or reissued under subparagraph (A) shall be substituted for obligations that are held by the Trust Fund, and for amounts in the Trust Fund that have not been invested, on the date on which the debt limit impact period ends in a manner that will ensure that, after such substitution, the holdings of the Trust Fund will replicate to the maximum extent practicable the obligations that would be held by such Trust Fund if the debt limit impact period had not occurred.

"(C) In determining, for purposes of this paragraph, the obligations that would be held by a Trust Fund if the debt limit impact period had not occurred, any amounts in the Trust Fund which have not been invested, and any amounts required to be invested under paragraph (2), shall be treated as amounts which were required to be invested upon transfer to the Trust Fund.

"(4) The Managing Trustee shall pay, on the first normal interest payment date that occurs on or after the date on which any debt limit impact period ends, to each of the Trust Funds, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Managing Trustee to be equal to the excess of—

"(A) the net amount of interest that would have been earned by such Trust Fund during such debt limit impact period if—

"(i) amounts in such Trust Fund that were not invested during such debt limit impact period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to such Trust Fund which occurred during such debt limit impact period solely by reason of the public debt limit had not occurred, over

"(B) the sum of—

"(i) the net amount of interest actually earned by such Trust Fund during such debt limit impact period, plus

"(ii) the total amount of the principal of all obligations issued or reissued under paragraph (3)(A) at the end of such debt limit impact period that is attributable to interest that would have been earned by such Trust Fund during such debt limit impact period but for the public debt limit.

"(5) For purposes of this section—

"(A) The term 'public debt limit' means the limitation imposed by subsection (b) of section 3101 of title 31, United States Code.

"(B) The term 'debt limit impact period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) AVAILABILITY OF FUNDS.—Subsection (a) of section 201 of the Social Security Act is amended by adding at the end thereof the following new sentence: "All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under any other provisions of law directly related to the programs established by this title.".

SEC. 02. CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) INVESTMENT AND RESTORATION OF THE FUND.—Section 8348 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if necessary to ensure that the public debt of the United States does not exceed the public debt limit.

"(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

"(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would be held by the Fund if the debt issuance suspension period had not occurred.

"(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

"(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

"(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

"(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

"(5) For purposes of this subsection and subsections (k) and (l) of this section—

"(A) the term 'public debt limit' means the limitation imposed by section 3101(b) of title 31; and

"(B) the term 'debt issuance suspension period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) SALES AND REDEMPTIONS BY THE FUND.—Section 8348 of title 5, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(k) The Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund only for the purpose of enabling the Fund to make payments authorized by the provisions of this subchapter or chapter 84 of this title or related provisions of law. If the Fund holds any amounts which, by reason of the public debt limit, are not invested, the Secretary may nevertheless make such sales and redemptions if, and only to the extent, necessary to ensure that such payments are made in a timely manner.".

(c) REPORTS REGARDING THE OPERATION AND STATUS OF THE FUND.—Section 8348 of title 5, United States Code, as amended by subsections (a) and (b), is further amended by adding at the end the following new subsection:

"(l)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States.

"(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.".

SEC. 03. COST-OF-LIVING ADJUSTMENTS IN CERTAIN FEDERAL BENEFITS.

(a) IN GENERAL.—Benefits which are payable in calendar year 1987, 1988, 1989, 1990, or 1991, under programs listed in section 257(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), including any cost-of-living adjustment in such benefits, shall not be subject to modification, suspension, or reduction in such calendar year pursuant to a Presidential order issued under such Act.

(b) DEFINITION.—For purposes of this section, the term "cost-of-living adjustment" means any increase or change in the amount of a benefit or in standards relating to such benefit under any provision of Federal law which requires such increase or change as a result of any change in the Consumer Price Index (or any component thereof) or any other index which measures costs, prices, or wages.

SEC. 04. EXEMPT PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.—Section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)) is amended by inserting after the item relating to Compensation of the President the following new item:

"Dual benefits payments account (60-0111-0-1-601);".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to fiscal years beginning after September 30, 1986.

Subtitle B—Older Americans Pension Benefits

SEC. 10. BENEFIT ACCRUAL BEFORE MAXIMUM NORMAL RETIREMENT BENEFIT.

Section 4(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(f)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(3) in subparagraph (B) (as so redesignated)—

(A) by striking out "and" after "hire any individual,"; and

(B) by inserting before the semicolon at the end thereof a comma and "and no employee benefit plan shall require or permit the suspension of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age before accruing the maximum normal retirement benefit under the plan unless the plan is a defined benefit pension plan that provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan"; and

(4) by adding at the end thereof the following new paragraph:

"(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing the terms of an employee benefit plan that—

"(A) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052(a)(2)); or

"(B) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

SEC. 11. BENEFIT ACCRUAL BEYOND NORMAL RETIREMENT AGE.

(a) ERISA AMENDMENTS.—

(1) IN GENERAL.—Subsection (a) of section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(a)) is amended to read as follows:

"(a) Each pension plan shall satisfy the requirements of subsection (b)(3), and—

"(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1); and

"(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2).".

(2) DEFINED BENEFIT PLANS.—Section 204(b)(1) of such Act is amended by adding at the end thereof the following new subparagraph:

"(H)(i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the terms of the plan, an employee's benefit accrual is suspended or the rate of an employee's benefit accrual is reduced solely because of age before accruing the maximum normal retirement benefit under the plan unless the plan provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan.

"(ii) A defined benefit plan shall not be treated as not satisfying the requirements of this subparagraph solely because the plan—

"(I) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2); or

"(II) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

(3) DEFINED CONTRIBUTION PLANS.—Section 204(b) of such Act is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2)(A) An individual account plan satisfies the requirements of this paragraph if, under the plan, employer contributions to the employee's account are not suspended or reduced solely because of age.

"(B) A target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury) shall not be treated as not satisfying the requirements of this paragraph solely because the plan excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2).

"(C) An individual account plan (including such a target benefit plan) shall not be treated as not satisfying the requirements of this paragraph solely because the plan imposes a limitation on the contributions that may be made or on the number of years for which contributions will be made under the plan with respect to an employee.".

(4) CERTAIN PLAN AMENDMENTS.—Section 204(g)(2) of such Act is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (1), in the case of a plan that on the date of enactment of the Sixth Omnibus Budget Reconciliation Act, 1986, provided for the distribution or the commencement of distribution of the entire interest of an employee under the plan on or after attaining the normal retirement age under the plan regardless of whether the employee has separated from service, an amendment that postpones the date as of which such distribution will be made or commence, and which is adopted within the 12-month period following the date on which section 204(b)(1)(H) or section 204(b)(2) (as amended by such Act) becomes applicable to the plan, shall not be treated as reducing accrued benefits.".

(b) CODE AMENDMENTS.—

(1) DEFINED BENEFITS PLANS.—Section 411(b)(1) of the Internal Revenue Code of 1954 (relating to accrued benefit requirements) is amended—

(A) by striking out "GENERAL RULES.—" and inserting in lieu thereof "DEFINED BENEFIT PLANS.—"; and

(B) by adding at the end thereof the following new subparagraph:

"(H) CONTINUED ACCRUAL BEYOND NORMAL RETIREMENT AGE.—

"(i) IN GENERAL.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the terms of the plan, an employee's benefit accrual is suspended or the rate of an employee's benefit accrual is reduced solely because of age before accruing the maximum normal retirement benefit under the plan unless the plan provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan.

"(ii) EXCEPTION.—A defined benefit shall not be treated as not satisfying the requirements of this subparagraph solely because the plan—

"(I) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 410(a)(2); or

"(II) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

(2) DEFINED CONTRIBUTION PLANS.—Section 411(b) of such Code is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) DEFINED CONTRIBUTION PLANS.—

"(A) IN GENERAL.—A defined contribution plan satisfies the requirements of this paragraph if employer contributions to the employee's account are not suspended or reduced solely because of age.

"(B) TARGET BENEFIT PLANS.—A target benefit plan (as defined under regulations prescribed by the Secretary) shall not be treated as not satisfying the requirements of this paragraph solely because the plan excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 410(a)(2).

"(C) INDIVIDUAL ACCOUNT PLANS.—An individual account plan (including such a target benefit plan) shall not be treated as not satisfying the requirements of this paragraph solely because the plan imposes a limitation on the contributions that may be made or on the number of years for which contributions will be made under the plan with respect to an employee.".

(3) CERTAIN PLAN AMENDMENTS.—Section 411(d)(6)(B) of such Code (relating to amendments that reduce accrued benefits) is amended by adding at the end thereof the following sentence: "For purposes of subparagraph (B), in the case of a plan that on the date of enactment of the Sixth Omnibus Budget Reconciliation Act, 1986, provided for the distribution or the commencement of distribution of the entire interest of an employee under the plan on or after attaining the normal retirement age under the plan regardless of whether the employee has separated from service, an amendment that postpones the date as of which such distribution will be made or commence, and which is adopted within the 12-month period following the date on which section 411(b)(1)(H) or section 411(b)(2) (as amended by such Act) becomes applicable to the plan, shall not be treated as reducing accrued benefits.".

(4) INTEGRATED PLANS.—Section 401(a)(5) of such Code (relating to a nondiscriminatory classification of employees) is amended by inserting after the second sentence the following new sentence: "Nor shall a plan be considered discriminatory within the meaning of such provisions merely because, in the case of an employee who has attained the normal retirement age under the plan, the plan provides for a rate of benefit accrual or contributions (including retirement benefits created under State or Federal law) that does not exceed the rate of benefit accrual or contributions under the plan (including retirement benefits created under State or Federal law) in the case of an employee who has not attained the normal retirement age under the plan.".

(5) CONFORMING AMENDMENT.—The first sentence of section 411(a) of such Code (relating to minimum vesting standards) is amended by striking out "paragraph (2) of subsection (b), and" and all that follows through the end thereof and inserting in lieu thereof "subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).".

SEC. 12. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this subtitle shall apply only to employees who are employed after December 31, 1988. In the case of such employees, such amendments shall apply to accrual computation periods beginning after December 31, 1986. In the case of employees not employed after December 31, 1988, the amendments made by this subtitle shall apply only to accrual computation periods beginning after December 31, 1988.

(b) PLAN AMENDMENTS.—If any amendment made by this subtitle requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment; and

(2) such plan amendment applies retroactively to the period after such amendment takes effect and before such first plan year. A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions merely because it operates in accordance with this provision.

(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this subtitle shall not apply to plan years beginning before the earlier of—

(1) the later of—

(A) January 1, 1989, or

(B) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

(2) January 1, 1991.

(d) FINAL REGULATIONS.—The Secretary of Labor or the Secretary of the Treasury, as the case may be, shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle.

Mr. GORTON. Mr. President, I send a modification to the amendment to the desk.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The modification is as follows:

At the appropriate place, add the following new title:

TITLE.—SOCIAL SECURITY TRUST FUNDS

SEC. 201. SHORT TITLE.

This title may be cited as the "Social Security Trust Funds Management Act of 1986".

SEC. 202. INVESTMENT AND RESTORATION OF TRUST FUNDS.

(a) Subsection (d) of section 201 of the Social Security Act (42 U.S.C. 401(d)) is amended—

(1) by striking out "(1) on original issue" and inserting in lieu thereof "(A) on original issue",

(2) by striking out "(2) by purchase" and inserting in lieu thereof "(B) by purchase";

(3) by striking out "It shall be" and inserting in lieu thereof "(1) It shall be", and

(4) by adding at the end thereof the following new paragraphs:

"(2) If—

"(A) any amounts in the Trust Funds have not been invested solely by reason of the public debt limit, and

"(B) the taxes described in clause (3) or (4) of subsection (a) with respect to which such amounts were appropriated to the Trust Funds have actually been received into the general fund of the Treasury of the United States,

such amounts shall be invested by the Managing Trustee as soon as such investments can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title.

"(3)(A) Upon expiration of any debt limit impact period, the Managing Trustee shall immediately—

"(i) reissue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations held by such Trust Fund that—

"(I) were redeemed during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of standard investment procedures for such Trust Fund in effect on the day before the date on which the debt limit impact period began, would not have been redeemed if the debt limit impact period had not occurred, and

"(ii) issue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations which—

"(I) were not issued during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of such standard investment procedures, would have been issued if the debt limit impact period had not occurred.

"(B) Obligations issued or reissued under subparagraph (A) shall be substituted for obligations that are held by the Trust Fund, and for amounts in the Trust Fund that have not been invested, on the date on which the debt limit impact period ends in a manner that will ensure that, after such substitution, the holdings of the Trust Fund will replicate to the maximum extent practicable the obligations that would be held by such Trust Fund if the debt limit impact period had not occurred.

"(C) In determining, for purposes of this paragraph, the obligations that would be held by a Trust Fund if the debt limit impact period had not occurred, any amounts in the Trust Fund which have not been invested, and any amounts required to be invested under paragraph (2), shall be treated as amounts which were required to be invested upon transfer to the Trust Fund.

"(4) The Managing Trustee shall pay, on the first normal interest payment date that occurs on or after the date on which any debt limit impact period ends, to each of the Trust Funds, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Managing Trustee to be equal to the excess of—

"(A) the net amount of interest that would have been earned by such Trust Fund during such debt limit impact period if—

"(i) amounts in such Trust Fund that were not invested during such debt limit impact period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to such Trust Fund which occurred during such debt limit impact period solely by reason of the public debt limit had not occurred, over

"(B) the sum of—

"(i) the net amount of interest actually earned by such Trust Fund during such debt limit impact period, plus

"(ii) the total amount of the principal of all obligations issued or reissued under paragraph (3)(A) at the end of such debt limit impact period that is attributable to interest that would have been earned by such Trust Fund during such debt limit impact period but for the public debt limit.

"(5) For purposes of this section—

"(A) The term 'public debt limit' means the limitation imposed by subsection (b) of section 3101 of title 31, United States Code.

"(B) The term 'debt limit impact period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) Subsection (a) of section 201 of the Social Security Act is amended by adding at the end thereof the following new sentence: "All amounts so transferred shall be immediately available exculusively for the purpose for which amounts in the Trust Fund are specially made available under this title or under any other provisions of law directly related to the programs established by this title.".

SEC. 203. REPEAL OF NORMALIZED TAX TRANSFER.

(a) Subsection (a) of section 201 of the Social Security Act is amended by striking out the matter following clause (4) and inserting in lieu thereof the following: "The amounts appropriated by clauses (3) and (4) shall be transfered from the general fund of the Treasury of the United States to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred from the general fund of the Treasury to the Federal Disability Insurance Trust Fund, upon receipt by the general fund of taxes specified in clauses (3) and (4) of this subsection (as estimated by the Secretary). Proper adjustments shall be made in amounts subsequently transferred to the extent amounts previously transferred were in excess of, or were less than, the taxes specified in such clauses (3) and (4). All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under other provisions of law directly related to the programs established by this title.".

(b) The amendment made by subsection (a) shall take effect on July 1, 1990.

SEC. 204. FAITHFUL EXECUTION OF DUTIES BY MEMBERS OF BOARD OF TRUSTEES OF TRUST FUNDS.

Section 201(c) of the Social Security Act is amended by striking the last sentence and inserting the following: "A person serving on the Board of Trustees (including the Managing Trustee) shall not be considered to be a fiduciary, but each such person shall faithfully execute the duties imposed on such person by this section. A person serving on the Board of Trustees (including the Managing Trustee) shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.".

SEC. 205. REPORTS REGARDING THE OPERATION AND STATUS OF THE TRUST FUNDS.

Subsection (c) of section 201 of the Social Security Act is amended—

(1) by striking "once" in the fourth sentence and inserting "twice",

(2) by redesignating paragraphs (1) and (2) as subparagraph (A) and (B), respectively,

(3) by redesignating paragraphs (3), (4), and (5) as subparagraphs (D), (E), and (F), respectively,

(4) by inserting after subparagraph (B) (as redesignated by paragraph (2) of this section) the following:

"(C) Report to the Congress as soon as possible, but not later than the date that is 30 days after the first normal interest payment date occurring on or after the date on which any debt limit impact period for which the Managing Trustee is required to take action under paragraph (3) or (4) of subsection (d) ends, on—

"(i) the operation and status of the Trust Funds during such debt limit impact period, and

"(ii) the actions taken under paragraphs (3) and (4) of subsection (d) with respect to such debt limit impact period,",

(5) by striking out "in paragraph (2) above" and inserting in lieu thereof "in subparagraph (B) above",

(6) by inserting "(1)" after "(c)", and

(7) by adding at the end thereof the following:

"(2) The Managing Trustee shall report monthly to the Board of Trustees concerning the operation and status of the Trust Funds and shall report to Congress and to the Board of Trustees not less than 15 days prior to the date on which, by reason of the public debt limit, the Managing Trustee expects to be unable to fully comply with the provisions of subsection (a) or (d)(1), and shall include in such report an estimate of the expected consequences to the Trust Funds of such inability.".

SEC. 206. ELIMINATION OF UNDUE DISCRETION IN THE INVESTMENT OF TRUST FUNDS.

(a) Section 201(d) of the Social Security Act is amended, in the first sentence—

(1) by inserting "immediately" after "to invest"; and

(2) by striking ", in his judgment,".

(b)(1) Paragraph (2) of section 201(d) of the Social Security Act, as added by section 202 of this Act, is amended to read as follows:

"(2) If any amount in either of the Trust Funds is not invested solely by reason of the public debt limit, such amount shall be invested as soon as such investment can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title."

(2) The amendment made by paragraph (1) shall take effect on July 1, 1990.

SEC. 207. SALES AND REDEMPTIONS BY TRUST FUNDS.

Section 201(e) of the Social Security Act is amended—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2)(A) The Managing Trustee may effect any such sale or redemption with respect to either Trust Fund only for the purpose of enabling such Trust Fund to make payments authorized by this title or under any other provisions of law directly related to the programs established by this title. If either of the Trust Funds holds any amounts which are not invested by reason of the public debt limit, the Managing Trustee is nevertheless directed to make such sales and redemptions if, and only to the extent, necessary to assure timely payment of benefits and other payments authorized by this title or by any other provisions of law directly related to the programs established by this title, but the principal amount of obligations sold or redeemed pursuant to this sentence shall not exceed the principal amount of obligations that would have been sold or redeemed under normal operating procedures in order to make such payments.".

SEC. 208. EFFECTIVE DATE.

Except as otherwise provided by this title, the amendment made by this title shall take effect on the date of enactment of this Act.

Mr. GORTON. Mr. President, this amendment simply adds two amendments that were added to the debt limit on August 1 for myself, exempting from Gramm-Rudman the COLA's for civil service and military retirees, and amendments on the disinvestment of the Social Security trust fund of the distinguished Senator from New York [Mr. MOYNIHAN] and a provision by Senator GRASSLEY on the continuation of the accrual of pension benefits from employees who choose to remain employed past the age of 65.

Mr. President, I rise today with my distinguished colleagues—Senator HOLLINGS and Senator GRASSLEY—to offer amendment No. 2863. This amendment is a package of miscellaneous retirement benefit protections, all of which is designed to protect the retirement benefits of older Americans.

There are five major provisions in this bill. First, is a provision that will ensure that Social Security benefits will continue to be paid, even when the debt ceiling is approached. This provision will permit the disinvestment of the Social Security trust funds if its necessary, but requires that the trust funds be reimbursed in full—with interest.

Second, is a provision that is virtually identical to the first, but involves the civil service trust funds instead of the Social Security trust funds.

Third, is a provision exempting civil service, military, and railroad tier II retiree COLA's from a future sequester.

Fourth, is a provision that requires employers to continue to accrue pension benefits for employees who choose to remain employed past the age of 65.

Mr. President, on August 1, 1986, I offered the provision of this amendment that guarantees COLA's for military, civil service and railroad Tier II retirees as an amendment to the debt limit bill. This amendment was adopted by the Senate, but the House and the Senate have yet to successfully conference the debt limit bill. It is not fair Mr. President to let these retirees fall through the cracks, just because the House would not agree to the Gramm-Rudman-Hollings provision in the debt limit bill.

It is time that the inequities with respect to these retirement issues be resolved. This amendment not only creates equity by treating all retirement programs the same in sequester situations, it is consistent with the Domenici-Chiles amendment that provides that all retirees will get full COLA's, regardless of the level of inflation. Under current law, Social Security recipients would not receive COLA's this year because inflation has to exceed 3 percent in order to get a COLA. With inflation currently at 1 to 1½ percent this creates a scenario under current law wherein Social Security retirees would not receive a COLA this year. Mr. President, in my role on the Budget Committee I worked with the leadership to see to it that full COLA's would be provided regardless of the rate of inflation.

Lastly, Mr. President, I would like to address the provision regarding disinvestment of the Social Security and civil service trust funds. Time and time again retirees in my State have expressed fear over the fact that money could be borrowed from the trust funds, get used for other programs and never get repaid. I believe this amendment will absolve these fears because it lays everything out in black and white and guarantees that if there ever is a need to borrow from the trust fund, that the money borrowed will be repaid in full—with interest.

I thank my colleagues Senator Hollings and Grassley for working with me to create this package. In closing, I would like to urge my colleagues to join me in protecting the previously mentioned retirement benefits by voting in support of this amendment.

Mr. HOLLINGS. Mr. President, I am very pleased to cosponsor this amendment, the major purpose of which is to provide for equitable treatment in the payment of all Federal COLA's. The amendment corrects the present inequity in the law and ensures that military and Federal civilian retirees will receive their COLA's in 1987 and exempt their COLA's from automatic sequestration through 1991. This means that everyone will be treated alike. We will not have a repeat of the unfortunate and unfair situation that occurred in 1986 when only military and civilian retirees among all COLA receipts were denied a COLA.

This is basically the amendment that Senator GORTON and I, along with many of our colleagues, successfully offered to the debt limit legislation on August 1. Since the outcome of that issue is in doubt, we have decided that the reconciliation bill, with the certainty of its passage and signature by the President, is the most proper vehicle to ensure the passage of our legislation.

As I have stated on numerous occasions, we should treat all of our retirees alike. The Government has a commitment to them and this commitment must be honored. In the interest of fairness, we must correct the inequity and be responsible toward those who have served their country with years of patriotic service. Mr. President, I urge the passage of this COLA fairness amendment.

Mr. MOYNIHAN. Mr. President, I express my appreciation to the distinguished Senator from Washington for his modification, which adds to his original proposal the full complement of measures with respect to disinvestment and the Social Security trust fund which were added to the debt ceiling bill earlier this year, which my distinguished friend from Michigan [Mr. RIEGLE] joined in offering.

Mr. GORTON. Mr. President, I wish to acknowledge the tremendous contribution to this amendment by the distinguished Senator from Tennessee [Mr. SASSER]. I ask unanimous consent that he be added as a cosponsor.

The PRESIDING OFFICER (Mr. MURKOWSKI). Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, would the Senator include me as a cosponsor and answer a question? Is this the same amendment we adopted on the debt limit with reference to the COLA's on Gramm-Rudman?

Mr. GORTON. This is the amendment we adopted on the debt limit on COLA's on Gramm-Rudman, together with the amendment of the Senator from New York [Mr. MOYNIHAN] on the debt limit with respect to the disinvestment and repayment of interest of the Social Security trust fund and a provision with respect to the accrual of pension benefits to employees who choose to remain employed past the age of 65 by the distinguished Senator from Iowa [Mr. GRASSLEY].

I ask unanimous consent that the distinguished Senators from Florida [Mr. CHILES] and New Mexico [Mr. DOMENICI] be added as cosponsors, along with Senators SPECTER, COHEN, CHAFEE, DECONCINI, and HEINZ.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I rise in support of the amendment. I would like to briefly discuss a provision of the Gorton-Hollings-Grassley amendment that is of particular interest to me. That provision requires employers to accrue additional benefits under a qualified pension plan to employees who work past normal retirement age, which, in the case of most plans, is age 65.

This provision is similar to S. 1427, which I introduced last July. S. 1427 has been cosponsored by Senator MATSUNAGA, the ranking minority member of the Subcommittee on Aging, Senator HEINZ, Senator PELL, and Senator ZORINSKY. Like S. 1427, the amendment we are currently considering addresses what I regard as an anomaly in the current law. As my colleagues are aware, under the Age Discrimination in Employment Act, an employee cannot be forced to retire before the age of 70. However, due to an interpretative ruling issued by the Department of Labor, an employer is permitted to stop accruing additional benefits to an employee under that employer's pension plan when the employee reaches the plan's normal retirement age. It is therefore possible under current law for an individual to work up to 5 years between age 65 and age 70 and not have those years of service reflected in his or her pension benefit simply because he or she took advantage of the protections offered by the Age Discrimination in Employment Act and worked past normal retirement age.

Post-65 pension accrual is an important economic issue for the 150,000 to 200,000 employees 65 through 69 years of age who have their benefit accruals frozen at age 65. An employee in such a situation can lose nearly half of the lifetime value of his or her pension. It has been estimated that total benefits lost to employees who have their pension benefits frozen is approximately $450 million annually.

On the other hand, the aggregate cost to employers of continuing to accrue pension benefits past age 65 is relatively low. The annual cost to employers has been estimated at between $600 million and $1.4 billion, or between 1 and 2 percent of annual private sector employer contributions. However, I should point out that these additional costs will not necessarily require employers to increase their contributions to pension plans. This is the case because the present value of an employee's pension is highest at age 65. Pension costs fall for every year an employee works past that age, even if additional accruals are factored in. Therefore, if a plan's actuaries anticipate that persons covered by the plan will retire at age 65, actual dollar contributions will probably not have to be increased. In addition, if post-65 accruals result in more persons staying in the work force past age 65, there will actually be a saving to employers and to the Federal Treasury. For example, if there is a 50-percent increase in the employment of workers aged 65 to 69, employers would realize annual savings of more than $600 million within 15 years, according to a study commissioned by the American Association of Retired Persons. That same study estimated potential Social Security savings of as much as $1.5 billion annually.

Permitting employers to freeze pension accruals at age 65 is not consistent with current national retirement policy. According to the National Commission on Employment Policy, the practice of freezing benefit accruals at age 65 provides a disincentive for persons to continue to work. Congress has already made major changes in the Social Security System in order to encourage employees to work beyond age 65. These changes include gradually raising Social Security's normal retirement age from 65 to 67 after the year 2000, increasing the delayed retirement credit, and reducing the withholding rate under Social Security's earnings test. It is inconsistent to encourage employees to work longer through the Social Security Act, while at the same time permitting employers to freeze pension benefits at age 65.

Mr. President, the bottom line question is one of equity. It is not fair to make it the law of the land that a person can work up to age 70, but to allow employers to continue to set a lower age limit on pension accruals. This is particularly true in light of the fact that employers must provide other employer-sponsored benefits in a nondiscriminatory manner to employees through age 69. This is the position that has been adopted twice by the Equal Employment Opportunity Commission. It is also the position that has been adopted by a large number of employers in this country who voluntarily provide post-65 accruals.

In addition to requiring pension plans to continue to accrue benefits past age 65, the amendment contains a number of provisions to clear up ambiguities in S. 1427 and minimize the impact on private pensions of the change contemplated by the amendment. The effective date of this particular provision has been moved to January 1, 1989, in order to give ample time for plans to be amended to comply. There is a "look back" provision that provides that in the case of employees who reach age 65 on or after January 1, 1987, and who continue to work on or after January 1, 1989, years of employment between January 1, 1987, and January 1, 1989, must be counted. The language of the amendment also clarifies that plans may continue to observe the so-called 5-year rule, which provides that a plan may exclude from coverage individuals hired within 5 years of the plan's normal retirement age. It also allows plans that place a maximum limit on years of service or on the benefits the plan provides to continue to do so. The amendment also permits plans that commence benefits at normal retirement age regardless of continued employment to be amended to postpone the date at which such benefits commence, and permits plans to continue to integrate plan benefits with Social Security after normal retirement age. Finally, the amendment provides that those plans that provide for an actuarial increase after normal retirement

age need not also provide additional accruals.

Mr. President, I urge the adoption of the Gorton-Hollings-Grassley amendment.

Mr. HEINZ. Mr. President, I want to express my support for the package of retirement provisions put together by my distinguished colleagues, Senators GORTON, GRASSLEY and HOLLINGS. The theme of this package is security. It will affect retirees in three important areas, each of which will greatly improve the sense of security of our older citizens.

First, the package removes Federal retirement COLA's from the Gramm-Rudman sequestration formula, extending Federal retirees the same protection that we provide to Social Security recipients. This change will affect military retirees, civil service retirees, tier 2 railroad retirees, and several smaller Federal retirement programs. I am sure that my colleagues will agree that it was manifestly unfair to subject some retirees to a COLA freeze while protecting others.

This packagae will also protect from cuts recipients of vested dual benefits under the Railroad Retirement Program, which were hit especially hard by the 1986 sequester. Because of what I believe was an oversight in the design of the sequester formula, vested dual benefits were reduced from an average of $104 per month to an average $96 per month. Although the cut may seem small in nominal dollars, it had a profound affect on the 312,000 recipients who need every cent of their fixed incomes. Making these two changes in the sequestration formula will mean that hundreds of thousands of retirees can now count on receipt of their benefits without having to count on Congress to somehow avoid a Gramm-Rudman sequester.

The second provision in the package protects the Social Security and civil service trust funds from uncontrolled disinvestment in the face of a debt ceiling crisis. As most of us remember, last year's disinvestment, even though it was fully repaid with interest, greatly damaged public confidence in the stability of the trust funds. The provisions in this package mirror the plan developed by the Finance Committee. Under this plan, the Treasury can disinvest the trust funds only for the purpose of paying benefits; the borrowed money must be repaid with interest as soon as borrowing authority becomes available; and the Secretary of the Treasury must provide advance notice of any disinvestment decisions. Enactment of this plan will send a message to retirees that the trust funds are not subject to the uncontrolled manipulation that occurred in the past.

Mr. President, I am also pleased with the third part of this package—the provision which requires employers to continue to make pension contributions for older employees who work beyond age 65. I especially commend Senator GRASSLEY for his long and diligent efforts to gain passage of this legislation.

Senator GRASSLEY and I have long been committed to striking down barriers to the employment of older Americans. My commitment is reinforced each day as I hear from older persons across the country who want to be able to continue to work past age 65, especially in part-time jobs. Unfortunately, the current interpretation of the Age Discrimination in Employment Act [ADEA] permits employers to cease pension contributions and pension credits for active employees who work beyond the normal retirement age. This problem exists despite the fact that the ADEA protects workers between the ages of 40 and 70 from discrimination based solely on age.

Mr. President, the absence of accruals can be very costly to older employees. While relatively few older persons choose to work after age 65, halting pension accruals for those who do choose to work after age 65 results in a substantial loss of retirement benefits. A recent analysis indicates that an employee delaying retirement can lose up to half the value of benefits accrued at age 65. The loss of retirement benefits acts as a disincentive to continued employment and may discourage employees who would prefer deferred retirement. In the fact of serious economic pressures on this Nation's retirement income systems, it is imperative that we encourage rather than discourage continued employment for older workers. We must not penalize older Americans who choose to continue to work for economic or for personal reasons.

While the Equal Employment Opportunity Commission has announced its intention to withdraw current regulations and to issue new ones that require continued accruals, they have become hopelessly stalled. In 1985, Senator GRASSLEY introduced legislation, which I cosponsored, to prohibit the suspension of benefit accruals.

Requiring pension contributions will not significantly affect current practices. More than half of defined benefit pension plan participants in medium and large firms are already covered by plans that offer some adjustment for service after the plan's normal retirement age. Furthermore, there is no cost justification for limiting accruals. A study commissioned by the American Association of Retired Persons and printed by the special committee on aging shows that contributions to pension funds would increase by less than 1 percent and would be invested in capital markets that promote economic growth. There would also be savings to the Social Security trust fund as a result of this amendment. Last, and most important, continued accruals result in substantial benefits to those older workers who continue to work.

Enactment of the ADEA, almost two decades ago, represented a major step toward promoting equal employment opportunities for older persons based on ability rather than on age. While pernicious forms of age discrimination still exist, passage of these pension accrual provisions will eliminate one more obstacle to employing older workers and providing them fair pension treatment.

Mr. STEVENS. Mr. President, would the Senator yield for one question?

Mr. GORTON. I do.

Mr. STEVENS. Is there any provision in this bill pertaining to the Federal Employees Health Benefit Act that has not been approved previously?

Mr. GORTON. There is not.

Mr. FORD. Mr. President, would the distinguished Senator from Washington add the Senator from Kentucky as a cosponsor?

Mr. GORTON. I shall be happy to do so. I ask unanimous consent also that the Senator from Oklahoma [Mr. NICKLES] and Senator MELCHER be added.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 2863) was agreed to.

Mr. MOYNIHAN. I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2864

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself, Mr. ANDREWS, Mr. ABDNOR, and Mr. BOREN, proposed an amendment numbered 2864.

At the end of sec. 102 insert the following new language: "Such regulations shall not prohibit full transferability and assignability of such loans without condition, and shall not require unreasonable reductions in rates to customers."

Mr. STEVENS. Mr. President, I ask unanimous consent that I may proceed for 1 minute to read this statement.

The PRESIDING OFFICER. Without objection, the Senator from Alaska may proceed.

Mr. STEVENS. Mr. President, the REA refinancing section already in the bill directs the Secretary of the Treasury to issue final regulations on refinancing to realize net proceeds of not less than $1.72 billion in fiscal year 1987. The Treasury Department's

draft refinancing regulations are far too restrictive to accomplish this goal. This amendment would facilitate the realization of the needed savings by directing the Secretary and drafting the final regulations to permit transferability and assignability of obligations involved in refinancing.

The amendment would prevent the requirement of unreasonable rate reductions as a result of the refinancing. Other benefits to consumers such as rate stabilization should be adequate to qualify for the refinancing. The draft regulations that were issued in August would have imposed a 25-percent reduction in the rates to consumers. Such a requirement would have been unreasonable. Such a requirement rendered those draft regulations unworkable. Any requirement to reduce rates should take into account other methods of reducing consumer rates such as rate stabilization.

Mr. President, I understand there is an exception to this bill by the managers. I think the Senator from North Carolina [Mr. HELMS] may wish to address the question.

□ 2300

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. My concern is that I learned about this amendment less than a half-hour ago. We have had no hearings on it. The potential implications of it, as I understand the amendment, are enormous in terms of the flooding of the market with all sorts of Federal financing bank loan refinancing, not merely REA. I hope the Senator will allow the Agriculture Committee to have hearings on this and decide where we are going to go. This is too big a thing to handle this late at night on this bill.

Mr. STEVENS. Mr. President, I would be happy to accede to the request of the Senator from North Carolina if he will take the provision out of the bill which addresses the proposed regulations. The bill extends the Secretary authority that he does not have under existing law. My amendment limits that authority by saying he cannot prohibit refinancings by requiring a 25-percent reduction on consumer rates. Now, what we are saying is, his regulations cannot prohibit that, and this is a limitation on his authority. But the authority is granted in the bill not only to do so but to increase the amount to $1.72 billion; thus announcing a savings of $500 million which is taken in this resolution as a credit toward reconciliation.

Now, we are not extending any authority to him. In this amendment we are saying he cannot issue his regulations in a manner so as to prohibit the refinancing based upon a failure of the REA Co-op to carry through a 25-percent reduction in notes to consumers, which we consider to be unreasonable rate reduction. That would result in the REA's not being able to refinance because those REA's are subject to State regulation and it is not possible to comply with that regulation. Therefore, we are saying he can bring about other forms of benefits to consumers such as rate stabilization but he can not promulgate regulations, as the initial regulations did, on the basis of the concept of the 25-percent reduction in rates to consumers. We are not, I assure my friend, authorizing the issuance of any more loans or any more refinancing other than is in the bill itself. We are limiting that by saying the regulations cannot require that the benefit to the consumer in the form of a 25-percent rate reduction is a condition to refinancing or a waiver of the penalty for refinancing.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. All time has expired.

Mr. DOMENICI. Mr. President, will the Senator yield me 1 minute on this?

The PRESIDING OFFICER. All time has expired. All time has expired.

Mr. DOMENICI. Let me say to the chairman of the Agriculture Committee I think the Senator ought to accept the amendment. The provisions of the leadership amendment require a minimum of $1.72 billion in refinancing, but do not compel the Treasury to conduct any more refinancing of the FFB's debt. This is what you agreed to. We cannot refinance any more loans than the level you agreed to.

Mr. HELMS. I agree with the chairman of the Budget Committee that this amendment will not require more than $1.72 billion in refinancing, but I still wish that I had known about the amendment so that we could have analyzed it. I am told, I will say to my friend from Alaska, that this will open a floodgate of FFB refinancing, which could be equivalent to the total deficit of the Federal Government for this year, because the pressures from all the Federal lending agencies will be to do the same thing.

Mr. STEVENS. I tell my friend the amendment that is in the bill says the Secretary can accept refinancing, and the amount that he issues will raise at least $1.72 billion. In addition, the amendment is not intended to prevent the Treasury from requiring that a refinancing package of REA guaranteed loans be presented to the market with non-REA guaranteed loans or securities in a manner to assure that such refinancing package will not unreasonably compete with the marketing of Treasury issues.

The PRESIDING OFFICER. All time for debate has expired.

Mr. STEVENS. But he cannot do it unless we accept this amendment. If what I have said is wrong, we will change it in conference. I urge adoption of the amendment.

Mr. DOLE. Regular order.

The PRESIDING OFFICER. Regular order has been called for. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 2864) was agreed to.

Mr. DOMENICI. I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the amendment of the Senator from New Mexico, as amended.

The amendment (No. 2850), as amended, was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, I understand the Senator from South Carolina is going to make a motion now. I just wanted to say briefly before that motion is made——

The PRESIDING OFFICER. Debate is not in order at this time.

Mr. CHILES. I ask unanimous consent for 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. HART. Reserving the right to object, Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The parliamentary situation is that all time for debate has expired. Amendments may be disposed of without debate.

Mr. CHILES. I ask unanimous consent for 2 minutes for myself and 2 minutes for the distinguished Senator from South Carolina.

Mr. WEICKER. I object.

The PRESIDING OFFICER. Is there objection?

Mr. WEICKER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. THURMOND addressed the Chair.

Mr. DOMENICI. May we have order in the Senate?

PROGRAM FRAUD

The PRESIDING OFFICER. The Senate will be in order.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I have conferred with the Parliamentarian. It is clear that the material from

page 139, line 1, through page 161, line 17, and from page 162, line 1 through line 24 is extraneous matter in contravention of the intention of section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and accordingly I raise a point of order against it in keeping with the action taken otherwise here this evening on such extraneous matters.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. I move to waive those provisions of section 20001 of Public Law 99-272 under which this point of order was raised for the purpose of reserving those sections of the program fraud provision that is contained in the reconciliation bill subject to such a point of order. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to waive. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Oregon [Mr. PACKWOOD], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from Hawaii [Mr. MATSUNAGA] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 79, nays 15, as follows:

[Rollcall Vote No. 275 Leg.]

YEAS—79

Abdnor	Ford	Metzenbaum
Andrews	Glenn	Mitchell
Armstrong	Gore	Moynihan
Baucus	Gorton	Murkowski
Bentsen	Gramm	Nickles
Biden	Grassley	Nunn
Bingaman	Harkin	Pell
Boschwitz	Hart	Pressler
Bradley	Hatch	Proxmire
Bumpers	Hatfield	Pryor
Burdick	Hecht	Quayle
Byrd	Heinz	Riegle
Chafee	Humphrey	Rockefeller
Chiles	Inouye	Roth
Cohen	Johnston	Rudman
Cranston	Kassebaum	Sarbanes
D'Amato	Kasten	Sasser
Danforth	Kennedy	Simon
DeConcini	Kerry	Specter
Dixon	Lautenberg	Stevens
Dodd	Laxalt	Trible
Dole	Leahy	Warner
Domenici	Levin	Weicker
Durenberger	Mathias	Wilson
Eagleton	Mattingly	Zorinsky
Evans	McConnell	
Exon	Melcher	

NAYS—15

Broyhill	Helms	Simpson
Cochran	Hollings	Stennis
Denton	Long	Symms
Hawkins	Lugar	Thurmond
Heflin	McClure	Wallop

NOT VOTING—6

Boren	Goldwater	Packwood
Garn	Matsunaga	Stafford

□ 2320

The PRESIDING OFFICER. The vote is 79 yeas and 15 nays. The motion to waive has the three-fifths vote required. The point of order fails.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate is not in order. Senators will please return to their seats and cease conversation.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I raise a point of order under section 20001 of Public Law 99-272 that section 403 of the bill as reported is extraneous because the provision increases outlays and the committee which reported the provision is not in compliance.

The PRESIDING OFFICER. The Chair is informed that the provision specified by the Senator from Texas will result in an increase in outlays and therefore leave the reporting committee out of compliance and would violate section 20001, and the point of order is therefore sustained.

Mr. METZENBAUM. Mr. President, I move to waive the provisions and ask for the yeas and nays.

Mr. GRAMM. Mr. President, that motion is not timely.

The PRESIDING OFFICER. The motion to waive is ruled to be too late.

Mr. METZENBAUM. Mr. President, will the Chair be good enough to explain how it is too late at this point?

The PRESIDING OFFICER. The motion to waive must be made prior to the ruling of the Chair.

Mr. METZENBAUM. Mr. President, I, therefore, appeal the ruling of the Chair.

The PRESIDING OFFICER. The Senator from Ohio has appealed the ruling of the Chair.

Is the Senator from Ohio appealing the ruling that the motion was too late, the appeal itself was too late?

Mr. METZENBAUM. Yes.

I am appealing the ruling of the Chair that the Senator from Ohio was not in a position to move to waive the provisions of the act, because it is not my understanding that the provisions of the act require the waiver to be made at that point. This is a provision of the bill that was included by the Energy Committee, the provision of the bill that the Governors across the country all support. I cannot believe the Senator from Ohio is not entitled to a vote.

The PRESIDING OFFICER. The question is shall the ruling of the Chair stand as the judgment of the Senate——

Mr. CHILES. A parliamentary inquiry.

The PRESIDING OFFICER [continuing]. That the appeal taken by the Senator from Ohio was lodged too late.

Mr. CHILES. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Florida will so state it.

Mr. CHILES. The parliamentary inquiry is if the Senator from Ohio was on his feet seeking recognition would he not be entitled to recognition before the Chair made its ruling?

The PRESIDING OFFICER. If the Senator was on his feet seeking recognition——

Mr. CHILES. The Senator was on his feet.

The PRESIDING OFFICER [continuing]. He would be entitled to be recognized.

Mr. METZENBAUM. I was on my feet. I was seeking recognition.

□ 1330

The PRESIDING OFFICER. The Chair heard no such appeal.

Mr. METZENBAUM. No such appeal?

The PRESIDING OFFICER. No such appeal was heard by the Chair in a timely fashion.

Mr. CHILES. Mr. President, parliamentary inquiry. I thought the Chair was listening to the Parliamentarian at the time. The Senator from Ohio was on his feet. I observed that he was on his feet. I think it is bad for us to have a motion overruling the Chair.

Mr. LONG. A point of order, Mr. President. There is more involved than the Senator from Ohio being on his feet. He must get recognized by the Chair. He must by saying, "Mr. President." There are a lot of people on their feet at this very moment. They are not all saying, "Mr. President," addressing the Chair. The question is, was the Senator from Ohio on his feet addressing the Chair, which means, did he say, "Mr. President; Mr. President; Mr. President." I did not hear that.

The PRESIDING OFFICER. The Chair did not observe the Senator from Ohio on his feet addressing the Chair in a timely manner.

Mr. DOMENICI. Mr. President, I ask unanimous consent that I may have 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, the truth of the matter is Senator METZENBAUM made a mistake, that is all. He really was waiting around thinking that he should have made this after you ruled, and that was wrong. If he

wants us now to undo all of our rules, we can, but he just made a mistake. He was asking how to do it and you were ruling and he had to already make it before you started ruling. I mean, that is the way we have been doing it all day. Everybody here has been standing up and, before you rule, they moved and he just did not do that.

Now, the Senate can fix it any way they want. But the Chair is not dealing unfairly with the Senator. That is just the breaks at this point. There is just no question about it.

Mr. METZENBAUM. Mr. President, I am not suggesting the Chair is dealing unfairly with me.

Mr. DOMENICI. I do not think he made a mistake at all on this.

Mr. METZENBAUM. I have two choices. I can ask unanimous consent to offer the waiver motion at this point, as I understand it, or appeal the ruling of the Chair. Does the Parliamentarian agree with that?

The PRESIDING OFFICER. The Senator from Ohio has, in fact, appealed the ruling of the Chair that the original appeal was not timely.

Mr. METZENBAUM. I am appealing the ruling that the Chair made that it was not timely.

The PRESIDING OFFICER. That is the pending question.

Mr. DOMENICI. Parliamentary inquiry. Does it take 60 votes to overrule the Chair on this?

The PRESIDING OFFICER. It takes a majority vote to sustain the Chair on this.

Mr. DOMENICI. If the Chair is not sustained, will the Senator not have to go through the 60 votes on a point of order, assuming he properly makes the motion?

The PRESIDING OFFICER. The Senator from New Mexico is correct.

Mr. DOMENICI. Why do we not just do that by consent?

Mr. METZENBAUM. That is perfectly agreeable with me, that I have an opportunity to have a vote. No problem.

Mr. DOMENICI. I do not think we ought to have precedents overruling the Chair when the Chair is right and allow the Senator to do something.

Mr. METZENBAUM. This is a committee amendment in the committee that was adopted. I am perfectly willing to stand on the basis of the rules and ask for the opportunity to offer the motion to waive. If I get 60 votes, fine.

I, therefore, offer the motion to waive the rule.

The PRESIDING OFFICER. Is there objection to that request? Without objection, then, it is so ordered.

The question is now on the motion to waive.

Mr. GRAMM. Mr. President, I ask unanimous consent that we may both have 30 seconds to explain the issue.

The PRESIDING OFFICER. Is there objection? Thirty seconds was asked for. There is no objection.

Mr. GRAMM. Mr. President, the issue here is very simple. The distinguished minority leader made a point the last time we went through this process that people were using reconciliation to spend money. That is the issue here, pure and simple. The committee missed its reconciliation target by $1.2 billion and the Sentor added on $256 million of new spending on a bill that is supposed to save money. We have an opportunity to do here what we all said we were going to do last year, strip this add-on out. I urge my colleagues to vote that way.

Mr. METZENBAUM. Mr. President, the CBO has said this has no budgetary impact. The Energy Committee agreed to put this provision into the measure. The National Governors Conference totally supports this amendment. We are talking about conservation amendments. We are talking about conservation amendments. We are talking about energy conservation amendments.

I believe that it came out of the committee with it. It is in the bill at the present time. there is no attempt to break the budget. I have no desire to do that. I supported every motion this evening with respect to that.

The PRESIDING OFFICER. The time of the Senator from Ohio has expired.

Mr. FORD. Mr. President, I ask unanimous consent that I might proceed for 15 seconds.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. FORD. What is the amendment all about? What does it do? We have not heard that. We will be able to read that, but we have not heard any explanation of what the amendment does.

Mr. METZENBAUM. Mr. President, 5 seconds.

The PRESIDING OFFICER. The Senate is not in order.

Mr. METZENBAUM. I ask for 5 seconds.

Mr. DOMENICI. If you want 5, I will take 5.

Mr. METZENBAUM. Fine.

The PRESIDING OFFICER. Does the Senator from Ohio have a request of the Chair?

Mr. METZENBAUM. Yes. I ask unanimous consent that I may have 5 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Five minutes.

Mr. DOLE. I object to 5 minutes.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. Let us vote. I object.

The PRESIDING OFFICER. There is an objection.

The question is on the motion to waive.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I may have 1 minute.

Mr. DANFORTH. I object.

The PRESIDING OFFICER. Is there objection?

Mr. DANFORTH. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the motion to waive. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Arkansas [Mr. PRYOR] and the Senator from Colorado [Mr. HART] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 32, nays 61, as follows:

[Rollcall Vote 276 Leg.]

YEAS—32

Andrews	Gore	Mitchell
Biden	Harkin	Pell
Bingaman	Inouye	Riegle
Bradley	Johnston	Rockefeller
Cohen	Kennedy	Sarbanes
DeConcini	Kerry	Sasser
Dixon	Lautenberg	Simon
Durenberger	Leahy	Specter
Exon	Levin	Warner
Ford	Melcher	Zorinsky
Glenn	Metzenbaum	

NAYS—61

Abdnor	Gorton	Moynihan
Armstrong	Gramm	Murkowski
Baucus	Grassley	Nickles
Bentsen	Hatch	Nunn
Boschwitz	Hatfield	Packwood
Broyhill	Hawkins	Pressler
Bumpers	Hecht	Proxmire
Burdick	Heflin	Quayle
Byrd	Heinz	Roth
Chafee	Helms	Rudman
Chiles	Hollings	Simpson
Cochran	Humphrey	Stennis
Cranston	Kassebaum	Stevens
D'Amato	Kasten	Symms
Danforth	Laxalt	Thurmond
Denton	Long	Trible
Dodd	Lugar	Wallop
Dole	Mathias	Weicker
Domenici	Mattingly	Wilson
Eagleton	McClure	
Evans	McConnell	

NOT VOTING—7

Boren	Hart	Stafford
Garn	Matsunaga	
Goldwater	Pryor	

So the motion was rejected.

□ 2350

The PRESIDING OFFICER. On the motion to waive the Budget Act, there are 32 yeas, 61 nays. The motion is not agreed to.

Mr. HOLLINGS. I move to reconsider the vote by which the motion was rejected.

Mr. DOMENICI. I move to lay that motion on the table.

The PRESIDING OFFICER. And the point of order is sustained.

Mr. SYMMS. Mr. President, I would like to comment on the budget reconciliation bill before us today. First though, I would like to say that I intend to vote for it and any amendments to it which increase its meager budget cuts. But I will do so with minimal enthusiasm.

Technically, this bill represents $3.7 billion in "savings." And that, technically, is why I will cast my vote in favor of it. But that $3.7 billion is far from impressive, and far short of what must be done to bring Federal spending under control.

First of all, just in order to avoid an October 1 sequester we need to cut $14.5 billion—and even then we're missing the Gramm-Rudman target of $144 billion by $10 billion. Anyone can see that this bill's $3.7 billion reduction is not very significant.

Second, a cursory examination of the provisions in this reconciliation package reveals that it includes few real cuts. At its core is $2.4 billion in cigarette taxes and extended Medicare taxes. Added to that budget cut are several user fees and loan sales. In short, its reductions are largely fluff.

Now, these revenue enhancers may be fine when combined with significant budget cuts, but they make pretty weak legislation on their own.

The third major problem with this legislation is that it literally is three steps forward and two steps back. In addition to the taxes, fees, loan sales, and other spending cuts, this bill also includes $2 billion in increased spending.

Mr. President, this is a strange way to balance the budget. But its the way we've been going about it all along. I opposed this year's budget in committee because of similar, though more serious, weakness.

Our whole approach to deficit reduction has been flawed and ineffective. Congress has demonstrated, throughout this process, an unwillingness or an inability to actually make real budget cuts. Politically, I can understand this reluctance because real budget cuts invariably have negative side-effects for some interest groups. But sooner or later, we will run out of fluff, and if we intend to actually eliminate this massive deficit we will have to start making significant cuts.

We are still a great distance from our goal of a balanced budget and an end to deficit spending. In our refusal to make significant budget cuts we have avoided the only direct approach. The path we have chosen has been so roundabout, and our advance so timid, that I question whether we have made any real progress at all.

This reconciliation bill seems to be just one more stop on this oblique scenic route to deficit reduction.

Mr. President, dispite my criticisms of this bill, and my serious reservations about the way we are handling the deficit problem, I respect the efforts of the distinguished chairman of the Budget Committee. He has the frustrating responsibility of trying to forge some sort of consensus on the question of deficit reduction. He has worked to make this a bipartisan effort, and has faced many roadblocks. I do not envy him his task.

I will vote for this bill—because it represents at least a modest attempt at deficit reduction. I will vote for amendments which strengthen its impact. I hope we can achieve some compromise combination which will avoid a sequester on October 1.

But I hope after this cycle runs its course, that we can come back next session having learned from the failures of this one and finally address the budget problem head on.

CHANGING THE FDIC INSURANCE FUND IN THE RECONCILIATION BILL IS A MISTAKE

Mr. DIXON. Mr. President, the Domenici-Chiles amendment contains a provision that, for the first time, imposes Federal deposit insurance premiums on the foreign deposits of American banks. This provision is designed to raise roughly $310 million.

Insurance premiums, are, or course, user fees. Under current budgetary procedures, they do count as Federal revenues. I also understand that there are legitimate arguments for including foreign deposits in the insurance base of the FDIC fund. Foreign deposits, like domestic deposits, are effectively protected by the FDIC in cases where a bank falls into financial difficulty. On the other side, there are also strong arguments, relating to the impact this change would have on the international competitiveness of U.S. banks, the impact this change would have on our trade deficit, and the impact of the tax reform bill on banks, for not making this kind of change.

However, this is a question that I think should be addressed by the Senate Banking Committee. I do not think it is appropriate to address this issue in the reconciliation bill. The reason I do not is simple: The FDIC fund is currently growing rapidly and there is no need for additional revenues. The fund currently receives about $1.5 billion in insurance premiums, and an additional $1.5 billion investment income on the unused surplus in the fund.

The FDIC fund has never used any of its investment income to address bank problems, or even to meet its administrative expenses. The number of bank failures has been rising dramatically in recent years, but the insurance fund has continued to grow.

Whether to include foreign deposits in the fund's premium base, therefore, should not be viewed as a revenue issue. I am not convinced that the fund needs an additional $310 million in revenue—that case has not been made before the Banking Committee—and since there is no clear need for additional revenue, I do not believe this provision belongs in a reconciliation bill.

I hope everyone in the banking industry understands that, under this bill, the additional revenue could not be used to lower the insurance premiums for all banks. It has to be used to increase the fund balance; otherwise, it provides no net new money to the fund.

I would like to offer an amendment to delete this provision, but given the posture we are in, and the need to avoid across-the-board sequestration, such an amendment would likely not be successful. There should be an opportunity, however, in the upcoming House-Senate conference on the reconciliation bill, to find a more appropriate way to meet the G-R-H targets. I hope this provision can be deleted, and the issue returned to the Banking Committee for decision, which is where it belongs.

Mr. MOYNIHAN. Mr. President, we have before us a reconciliation bill, which putatively would reduce the deficit to $154 billion. That would be a deficit small enough to prevent the necessity of an across-the-board, Gramm-Rudman-Hollings sequester order.

The deficit will, in fact, be much higher: $170 billion or $180 billion. The fact is we don't know what the deficit will be for fiscal year 1987. Economics is not a perfect science, and history has shown that we cannot predict the course of the economy with the degree of accuracy required by Gramm-Rudman-Hollings.

It discourages me to have to say this, but despite the good intentions of those who crafted the proposal, it will not achieve the $13.2 billion of deficit reduction it promises.

The legislation claims to reduce the deficit by $2.4 billion through increased tax compliance. Yet I ask my colleagues how much of an increase in tax revenues through increased compliance is actually possible?

Moreover, if the economy continues as it is, instead of at the relatively optimistic growth rate assumed in the OMB and CBO calculations, there will be more spending than expected, and less revenues flowing to the Treasury. In fact, if the Blue Chip consensus forecast were substituted for OMB/CBO economics, the expected deficit

would be $3 billion to $5 billion greater than projected.

Another $680 million of deficit reduction comes from advancing the final payment for general revenue sharing from October 5, 1986, to September 30, thus moving the expenditure into fiscal year 1986. So, we will increase the deficit in fiscal year 1986 and reduce it by an equal amount—through an accounting practice—in fiscal year 1987.

That is not serious deficit reduction.

Congress should not say it is doing something that it knows it cannot do.

Congress ought not misrepresent the facts. What has happened is that we passed a bad law—"a bad idea whose time had come," so to speak—and now, instead of repealing that law as I have urged, we instead seek to cover our tracks through financial wizardry.

We may realistically expect $5 billion to $7 billion of deficit reduction from this proposal. That would be fine with me, if we told the public that $5 billion to $7 billion of deficit reduction is all we can achieve without causing harm to the economy.

Mr. President, an interesting note with regard to this reconciliation proposal. Last year, Senator LAUTENBERG joined me in offering a proposal to sell over $100 billion of Federal loan assets over 3 years. That proposal was, well, raucously rejected by the Senate Budget Committee. As I recall, on that occasion, the chairman asked whether this was my proposal to sell the Grand Canyon.

Later, on the Senate floor, we offered an amendment to establish a pilot program of loan asset sales, calling for the sale of $8 billion in rural housing loans for each of the next 3 years. At that time, another distinguished member of the committee, designated to oppose our proposal on behalf of the majority, referred to it as the "flim-flam" amendment. That proposal got just 26 votes.

Just before the Budget Committee voted out the budget resolution on March 19 of this year, I asked our indefatigably good-natured chairman whether his proposal for "loan asset sales" in function 500 was similar to the proposal Senator LAUTENBERG and I had offered last year—to the incredulity, nay hilarity, of other members of the committee.

It was, in fact, the very same. What was hooted at by the majority a year ago is quietly adopted 1 year later.

Loan asset sales were contained in the final budget resolution and in the reconciliation bill assembled by the Budget Committee on July 31. That bill—the unamended S. 2706—contained about $3 billion of loan asset sales.

Now we will have more. The amended bill calls for $4.8 billion of loan asset sales.

That does not trouble me. The Government's loans are better serviced by the private sector and, if sold properly—on an overcollaterized basis—could reduce the deficit.

I believe that at least part of our problem stems from the fact that the Senate has seemingly abandoned the committee process in the last 2 years.

There were no hearings held before the Senate passed, let alone considered, the Gramm-Rudman-Hollings legislation.

Increasingly, we find ourselves forced to vote on such important propositions without full committee debate and in a rushed manner on the Senate floor. That is no way to do the business of the Nation.

THE SALE OF CONRAIL

Mr. ROCKEFELLER. Mr. President, I rise to offer my view on the provisions of this bill relative to the sale of the Consolidated Rail Corporation—Conrail.

Mr. President, throughout the congressional review process on the sale of Conrail, I was an advocate of the public offering concept. I am gratified that the action the Senate will take in this bill will lead to that eventual conclusion. I offer my support for the inclusion of the Conrail provision in this bill and encourage my colleagues who might conference with the House to pay special attention to additional provisions which might make a public sale more successful.

When we debated Conrail, Mr. President, I backed the Morgan Stanley public offering plan because for West Virginia and the Nation it is the better option. For West Virginia, it keeps alive and intact the direct and indirect forces of competition from three strong railroads; it likewise avoids the considerable negative impact that might occur from the substantial diversions of coal from one rail line to another, or from one State to another.

For the Nation, in addition to addressing concerns about competition and the diversion or disruption of traffic, I believe the public offering alternative will best serve the future of our Nation's rail system.

Although there was strong support in the Senate for the public offering concept, the Senate backed the Secretary of Transportation's choice. I compliment her for her hard work and success in the Senate, even though I disagreed with her choice. But that option is no longer before us. The House of Representatives wisely refused to go along, and the Norfolk Southern bid has been withdrawn.

Mr. President, under the circumstances, I think we must move ahead to sell the railroad. As a Government, we clearly need the revenues, whether the sale price is $1.7 billion—the minimum amount chosen by the House Energy and Commerce Committee—or a larger figure as some have predicted.

Furthermore, the health, strength, and viability of Conrail makes now the time to sell. The railroad has chalked up a solid financial performance in the last 5 years and continues to demonstrate its capability to modernize, adapt, and profit, even though most other economic indicators are flat. The mere fact that the investment house of Morgan Stanley has developed and maintained a group of over 40 sophisticated investors to purchase the railroad for over a year speaks to the degree of confidence Wall Street places in the future of this railroad.

Mr. President, our decision to include the sale of Conrail in this bill should not be half-hearted, or without the substantive provisions necessary to make the sale a success. After all of our work on the Conrail issue, all of our indepth review of both the Secretary's proposal and the public offering alternative, I think the reconciliation bill passed by the Congress should give as much guidance to the Secretary as is practical to consummate a successful sale.

As it stands, Mr. President, the sale language included in the bill before us references the provisions of the Senate-passed Conrail bill. But that bill did not contemplate a public offering. We have the knowledge and information with which to help structure a sale of Conrail in this manner and we should not fail to exercise reasoned judgment merely because it is late in the session.

Mr. President, how this sale is structured—the manner of offering, the future restrictions and covenants on the railroad, even the way the investment sales team is developed—is critical to receipt of the best sales price. This will be the largest public offering of stock in history. It will likely involve most of Wall Street to bring it to a successful conclusion. As such, it will be absolutely critical to the success of the offering that it be designed and managed in such a way as to maximize the return to the Government as well as to ensure the future health of the railroad.

The House of Representatives, Mr. President, seems poised to deal with such substantive issues and the Energy and Commerce Committee has oriented its Conrail provisions specifically for a public offering. I haven't studied every provision of the bill that the House Energy and Commerce Committee has pieced together; in fact, I'm disappointed that they narrowly rejected much-needed Staggers Act reform amendments. I would urge, nonetheless, that the conferees and the Senate as a whole be prepared to give careful consideration to the package of amendments they have prepared, including the guidance they have given regarding the structure of the Conrail sales team.

Mr. President, I believe we are on the right track as we move toward a public offering of Conrail. We should be mindful to give the Secretary as much guidance as is practical to make the sale a success. We owe it to the railroad, and its thousands of employees, and we owe it to the American people who have invested billions of dollars in Conrail to help it back to financial health.

Mr. DENTON. Mr. President, the Congress once again confronts a most important issue before the American people: How can we reduce and control the Federal deficit, and ultimately balance the budget?

We have before us a package that may relieve the Congress for a short period of the necessity to take decisive action. It does not, however, go to the heart of the problem, and the fundamental difficulties will remain to be dealt with at a future time. The bill simply does not deal with the fundamental and difficult question of how to reduce overall spending for the long run.

The Congress must cut Federal expenditures. And it must reform Federal programs in a way that will effectively reduce those expenditures over the long term. On many occasions, I have spoken about the need for institutional reform of our welfare and entitlement programs. I have recalled for my colleagues the observation of Dr. Thomas Sowell, of Stanford University, who has pointed out that at least two-thirds of the money appropriated for welfare programs does not reach the poor. He says that if only one-third of the money appropriated to fight poverty actually reached poor people, we would have no one left in poverty.

I believe that Dr. Sowell is exactly correct. The Congress must address the issues, and we have not.

If we are to reduce spending over the long term, we must reform programs to meet the legitimate needs of the American public at less cost than is now the case. There has got to be a better way. We cannot do it with cosmetics. We cannot do it with "creative" accounting. We have to do it with a new and revolutionary approach.

There are many existing programs in which the Congress can find ways to reduce costs. We must target public assistance programs to those most in need. GRS, EDA, UDAG's, and other programs should be reformed to help those areas most in distress and in need of Federal assistance, and to put an end to the process of providing Federal funds to areas that are not in need.

We must continue to look at ways to reduce Federal expenditures while continuing the really vital programs.

There are three provisions of the amendment that I want to mention specifically. I support the provisions to eliminate the COLA trigger for Social Security, the provision allowing the prepayment of rural electric loans, and the deficiency payments to farmers for the fiscal year 1987 crops of wheat, feed grains, upland cotton, and rice.

I strongly support eliminating the trigger for Social Security COLA's. I have cosponsored a bill that would delete the trigger requirement. The current trigger provision requires that the consumer price indicator (CPI) rise at least 3 percent during the computation period or the COLA is postponed until the first year in which the combined CPI rise since the last COLA given is at least 3 percent. The COLA trigger creates costs for the Social Security system. I believe that the passage of the provision in the amendment is in the best interests of our Social Security recipients, of the Federal Treasury, and of America's taxpayers.

I support the refinancing of the Rural Electric Program so that it can continue to operate in an efficient and orderly manner. The Rural Electricity Program in Alabama helps to bring energy to the farm areas of my State. Without that vital program, the rural areas of Alabama and other States would not have light in the early morning when children leave for school, or electricity for farm equipment and tools during the day. Farm wives would not be able to perform their household functions except in the most laborious ways. We need the Rural Electric Program for our factories, for our farms, and for our families.

This year, more than any other that I can remember, farmers in Alabama vitally need the Deficiency Payments Program. Because of the drought in the southeastern part of the United States, our farm community has suffered through one of the worst years in history. For most farmers who participate in the Deficiency Payment Program, it provides the only hope that they have this year. The Deficiency Payment Program means the difference in whether farmers in Alabama and in the Southeast will stay in farming or get out of that business. The program means the difference in whether a farmer feeds his family and keeps his farm or declares bankruptcy.

Finally, Mr. President, let me say that I support the provisions in the bill that provide for more effective enforcement of our tax laws. I don't support those provisions because of the revenues that they will generate. I support them because they will help to assure that all taxpayers bear their share of taxes, and will ease the burden on the working men and women of Alabama and of our entire Nation. I know that most Americans are willing to do their part, but they justifiably expect that everyone will do the same.

Mr. President, I will support the amendment and the bill. I do so reluctantly, however, because we have not yet been willing to take on the fundamental financial problems that we face. We will have to come back to those problems, sooner or later, and we will have to solve them, sooner or later.

Otherwise, Mr. President, the people of our States will have no alternative but to find representatives who will be both willing and able to do what needs to be done.

Thank you, Mr. President.

Mr. LAUTENBERG. Mr. President, I rise to support passage of this reconciliation bill. But, let there be no mistake. This bill does not provide a long-term solution to the deficit problem.

The bill would cut the deficit by over $13 billion. That is almost $10 billion more in cuts than the bill would have provided, had it come before us without amendment. Those reductions are welcome and needed.

The bill would increase revenues by close to $4 billion through increased enforcement of and compliance with our tax laws. That would close a small part of the $90 billion revenue gap: revenue that is due and owing to the Federal Government, but which goes uncollected.

I support taking these and additional steps in this area. Faced with a deficit of close to $230 billion, we should do all we can to collect the revenue that is due the Government. Certainly we should do that before imposing additional burdens on the public, through increased taxes or reduced Government services.

The bill would also secure close to $5 billion in deficit reduction through the sale of loan assets. I have urged on other occasions the sale of loan assets, to promote better management of Federal credit programs and to secure the present value of these assets.

The bill also includes legislation authorizing the sale of Conrail, for a deficit reduction of $2.1 billion. I have supported the sale of Conrail, if appropriate conditions were met.

Mr. President, under the provisions of the Gramm-Rudman-Hollings law, there is pending in the Senate a joint resolution to make an across-the-board cut of 7.6 percent in certain nondefense programs, and a cut of 5.6 percent in certain defense programs. I would oppose such a resolution, just as I opposed the Gramm-Rudman-Hollings law. Blind, arbitrary, and indiscriminate cuts in spending is no way for us to exercise our responsibility and to cut the budget deficit.

While the reconciliation bill is not perfect, it is preferable to the Gramm-Rudman-Hollings across-the-board cut.

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While the reconciliation bill is not perfect, it reflects priorities of the Senate. And that is what we are elected to do: set priorities.

Yet, Mr. President, while this bill contains elements that I support, the bill falls short of the kind of action we need to reduce the deficit. We cannot sell Conrail again next year. The Federal Government's loan portfolio is not limitless.

We need to take steps that will get the deficit down and keep it down. In some cases, that will involve increased revenues. The bill as amended removes a provision I supported: an increase in the tax on cigarettes. That was a provision that would have increased revenues by $1.6 billion, while reducing health care costs associated with smoking-related diseases. We cannot reduce the deficit in a lasting way without also making additional cuts in spending. Those cuts are not in this bill. Neither the Senate nor the American people should be under the impression that this bill will secure a permanent reduction of the deficit of the kind we need.

The CBO projects a deficit for next year of $171 billion, assuming current levels of spending. With likely increases in spending, the deficit would be at least $2 billion larger, to accommodate a slight increase in appropriations, to provide for a fourth shuttle, and to provide a Social Security cost-of-living increase. I might add that the CBO's estimate is based on a projection of economic growth of 3.2 percent. That is 0.5 percent higher than the growth rate projected by the Blue Chip consensus of private forecasters. A 1 percent error in projecting the GNP growth would result in an $8-billion error in the deficit projection.

I recognize that the tax reform bill, if passed as expected, is projected to add $11 billion in additional revenue in fiscal year 1987. But if we drink from the tax reform bill's cup, we will have one giant hangover in fiscal year 1988. Because in fiscal year 1988, the tax bill will lose $22 billion.

In sum, Mr. President, the deficit reduction in this bill is welcome, but it does not go far enough.

ON TITLE IX OF S. 2706, RECONCILIATION BILL FOR FY 1987

Mr. WEICKER. Mr. President, I rise to oppose the provision of the leadership amendment to the reconciliation bill, S. 2706, which would change title IX of the reconciliation bill to direct that the Small Business Administration [SBA] section 503 certified development company loans be sold without recourse to the Federal Government. I believe it is a big mistake to sell loans without recourse. The leadership amendment purports to bring the small business provisions of the bill into technical compliance by having loans sold without recourse so that under the Congressional Budget Office and Office of Management and Budget new scorekeeping practices, the sale may be scored as achieving budget savings.

It is our view, however, that this scorekeeping approach has important policy implications and should not be left to the wishes of the OMB and CBO to see loan sales take place without recourse. The Small Business Committee's decision to sell section 503 loans with recourse is based on a desire to maximize our resources to reduce the Federal budget deficit and not to waste valuable Government assets.

The budget resolution, for fiscal year 1987, Senate Concurrent Resolution 120, required the Small Business Committee to achieve outlay savings of $343 million in fiscal year 1987, $55 million in fiscal year 1988, and $14 million in fiscal year 1989, for a 3-year total of $412 million. The budget resolution assumed these savings would be achieved through the sale of SBA's $4 billion disaster loan portfolio. Senator BUMPERS and I rejected those assumptions because, in our judgment, based on comments we reviewed from investment bankers and financial analysts, to sell these loans they would have to be deeply discounted, as low as 30 cents on the dollar, if they could be sold at all.

Furthermore, selling the entire disaster loan portfolio, while at the same time continuing the program, would only require an appropriation to recapitalize the revolving fund in the upcoming fiscal year.

Finally, selling disaster loans without recourse would provide no protections to the homeowners, businesses, and farmers who have received SBA disaster loans. Instead of following the Budget Committee's assumption, we proposed the sale of SBA section 503 development company debentures currently held at the Federal financing bank. Furthermore, we recommended, and the members of the Small Business Committee voted unanimously, that such sales take place with recourse to the Federal Government.

Mr. President, we did not decide lightly to take this action. The committee received estimates that the sale of 503 loans on a nonrecourse basis could yield from 60 to 70 cents on a dollar. On the other hand, investment bankers estimated that a sale of 503 debentures with recourse would yield as much as $1.13 on the dollar. In other words, the difference between the sale of recourse and nonrecourse debentures could be as much as 50 cents on a dollar. On the sale of loan portfolio of approximately $1 billion, this could cost the Federal Government $500 million. In my judgment, a nonrecourse sale is simply too costly and the taxpayer is the loser in the long run. Therefore, we directed that these loans be sold with recourse, in order to maximize our resources.

Now the CBO has scored the committee's recommendation as providing no savings, but rather they estimated there would be a cost to Government. According to the OMB and CBO, the sale of loans with recourse to the Government should be scored as providing budget savings because such sales create another form of borrowing. They argue that because loans sold with a Federal guarantee of timely payment of principle and interest, that is, with full recourse, have a contingent liability that the Government may have to honor at some point in time, none of the proceeds from such sales should be counted. That argument ignores the economic reality that from the sale of an asset the Government collects cash which can be applied to reduce the deficit, and the practical reality that most Federal loan programs have historical loss rates which make the losses in these programs somewhat predictable. Mr. President, I recognize that a liability still exists on loans sold with a guarantee and that there will be losses. But I reject the notion that no savings are achieved. Rather than ignore the proceeds from the sale, sound public policy would dictate that we take notice of the historical loss rate of the program and provide a certain amount from the sale to cover losses.

Recognize that fact, the Small Business Committee provision of S. 2706 called for the sale of a sufficient amount of loans to achieve $430 million of savings, rather than the $412 million over 3 years as required by the budget resolution. The additional $18 million was added during committee makeup at the suggestion of Senator LEVIN in order that there would be an additional cushion to pay for losses. In my view, that would be a better approach for us to take. But that is not the approach taken by the leadership.

In conclusion, Mr. President, sale of loan assets with recourse is in the best interest of the taxpayer and of the Congress. As Senators seek to reduce the Federal deficit, we must be vigilant in our efforts to hold to a realistic, fiscally responsible path. We cannot abandon good sense.

Mr. President, I want to register my objection to that portion of the leadership amendment concerning asset sales. I realize little can be done to stop this initiative. However, I want to be clearly on record indicating that this is not the best way to proceed.

Mr. BINGAMAN. Mr. President, I would like to take a few minutes to explain my concern about the budget measure we are being asked to vote on today.

Let me be clear about what I feel is going on, Mr. President. We are being told this action is important to avoid

the automatic sequestration cuts that would apply under the Gramm-Rudman-Hollings Act, and we are being told it is important to act today to reduce our budget deficit. But, I feel the American people deserve to know the facts about this process and this bill.

At this time we are considering the reconciliation bill—the sixth omnibus budget reconciliation Senate report (S. Rept. 99-348), reconciliation is an important tool to restrain Federal spending. It is authorized and described in title III of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344). The reconciliation procedure allows Congress to consider changes in spending and revenues.

Mr. President, the purpose of the Reconciliation Act may be to restrain spending and to consider changes in spending and revenues, but this bill doesn't meet these lofty goals. This bill instead side-steps any meaningful effort to deal with the deficit crisis. It is unfair to mislead the American people by saying this bill significantly restrains Federal spending, and it is unfair to say it changes spending and revenues, it simply doesn't. The truth is the President has made it clear he is unwilling to consider new revenues and the Congress and President are unwilling to consider real spending restraint.

Last year Congress passed another budget tool, the Gramm-Rudman-Hollings Act. The American public was told that this act would provide the mechanism for solving our budget crisis. It was to put the country on a simple glide path to a balanced budget. It was to force hard choices and avoid unpleasant actions. Less than 1 year later we are passing a bill that is a clear device to avoid doing what every one knows needs to be done. In fact we have not only avoided real action but we have clouded any ability to get at the numbers with elaborate procedures and unrealistic estimates.

The Gramm-Rudman-Hollings target for this year is $144 billion. Next year, we said, we would get it down to $108 billion. And, in 3 years we will eliminate the deficit. Although the Congressional Budget Office/Office of Management and Budget deficit snapshots for the 1987 deficit averaged out to be $163.4 billion on August 20, 1986, the CBO/OMB October 1, 1986 snapshot grew to $168.5 billion as a result of $5.1 billion in additional legislation. The Congress couldn't even exercise spending restraint during the preceding month. And, because there is a $10 billion cushion under G-R-H, we need $14.5 billion to meet the target.

The $10 billion cushion is itself a creative devise and, of course it does not just disappear. As the distinguished ranking minority member of the Budget Committee has pointed out, if we miss by $10 billion this year, and miss by $10 billion in each of the next 4 years we end up $50 billion short of the goal of the balanced budget. We also know that the overrun continues to compound.

The current Federal deficit for fiscal year 1986 is actually in excess of $200 billion. The conference board budget specialists have concluded that next year's deficit will really be about $225 billion, a staggering $81 billion above the G-R-H goal.

Higher actual deficits are no big surprise. The General Accounting Office in its recent testimony to the Temporary Joint Committee on the Reduction of the Deficit stressed that the estimates are based on "a complex set of tenuous assumptions." These assumptions include uncertainty about future Federal spending, the economy, and the effect of the tax bill. The GAO concludes that "considering all these factors together, we think there is a strong possibility that the deficit for 1987 will ultimately prove to be significantly higher than the current estimate under the act."

So the question is, How do we achieve the necessary $14.5 billion needed to meet the target? Do we cut spending or increase revenues or a combination of both? Or, do we continue to sell assets and use accounting procedures. Both the chairman and the ranking minority member of the Budget Committee at various times have expressed their personal skepticism on the ability of the Congress to take realistic action.

The plan before us not only is unrealistic and overstated, but it also includes extraneous matters unrelated to the goal of deficit reduction—in violation of Senate rules. The plan includes selling off Government assets, imposing user fees on Government services, administrative savings, compliance savings and other similar mechanisms. The savings anticipated are simply not realistic, and we know it.

The package includes $4 billion for tougher enforcement of tax laws, a one-shot savings of more than $2 billion for sale of the Conrail system, and several billion dollars for the sale of Government agency loan portfolios and other assets. Some of these assets, of course, are being sold at fire sale prices and everyone knows we can only sell these loans and assets once. We shouldn't, and I do not blame the Budget Committee for the situation. It is difficult to cope with the combined pressures of the need to take some action, any action, the President's refusal to bargain, and the difficulty in getting Congress to act on real changes, particularly with an election approaching.

The truth is that by adopting this reconciliation act and doing nothing more to raise revenues or cut spending this year we are virtually insuring that the deficit targets in Gramm-Rudman-Hollings for 1988, 1989 and 1990 cannot be met. We are giving ourselves a politically impossible task next year. The $108 billion target for the deficit will be unattainable absent a major tax increase, and a major tax increase will likely be politically impossible and economically unwise.

We ought to be taking real, meaningful action. We ought to have a balanced package of spending cuts and tax increases.

Mr. President, in spite of my disappointment with this reconciliation bill, I will vote for it and hope that even yet we can do something more. This is not half a loaf—it is scarcely a slice.

CONRAIL

Mr. PRESSLER. Mr. President, I am pleased that the budget reconciliation package includes a provision for the transfer of Conrail back to the private sector. We need to go forward with this transaction so we can finally sell this railroad and help balance the budget. It is my understanding that our House colleagues will be including a Conrail transfer section in their budget reconciliation package as well. I support the Conrail transfer provisions of that measure.

However, I also understand that the House Conrail measure includes a number of ancillary matters unrelated to the Conrail transfer per se. I rise today to express grave concern over those provisions, and to introduce a sense of the Senate resolution which provides that any part of the Conrail measure which is not directly related to the transfer of the interest of the United States in Conrail stock should not be included as part of this act or any other law providing for the transfer of Conrail.

Let me explain my concern. What the House of Representatives has done is to essentially turn the Conrail transfer bill into an omnibus rail bill. This is a mistake. Its non-Conrail provisions could have enormous impact on the railroad industry, and would for all practical purposes forever prohibit what has become a very positive development in the rail industry.

Over the past decade, thousands of miles of light density railroad lines throughout the country have been abandoned because the larger railroads have been unable to operate them at a profit. Until very recently, there has been no option except to abandon these lines. But during the past few years we have seen a new and very positive alternative to abandonment. Instead of abandoning these lines, we have discovered that smaller operators can run them more effectively and more efficiently than can the large class I lines. As a result, we have seen the birth of a substantial

number of regional and short-line railroads which now profitably operate lines which otherwise would have been abandoned.

A classic example of this is the 965-mile Dakota, Minnesota & Eastern [DM&E] railroad which began operations earlier this month in South Dakota, North Dakota, and Minnesota. Without the DM&E, hundreds of miles of track would have been abandoned. But fortunately we were able to work out a sale arrangement between the Chicago & North Western railroad and the L.B. Foster Co., which ultimately led to the creation of the new DM&E. Today we have a vital and vigorous new line which, under the leadership of J.C. "Pete" McIntyre, is serving dozens of communities which would be without rail service today had the House-passed labor provisions been in effect 2 years ago. The DM&E will not be affected by the House language. It is already established. But there are dozens of other "DM&E's" out there which will almost certainly be lost if this language is not changed.

There are many reasons why a smaller railroad can operate more efficiently than a larger one. I will not go into great detail here on the economics of short-line and regional railroads. But it is important to point out that one of the key reasons they can survive is because of more flexible work rules and because the line can be transferred to the smaller operator without having onerous labor protection requirements being imposed on the selling railroad. If the labor protection is required, the selling railroad is forced to increase the sale price to an amount which is prohibitive for the smaller operator, thereby making the transfer impossible.

We recently held hearings in the Senate Commerce Committee on the development of regional and short-line railroads. Virtually every witness agreed that these lines resulted in a "win-win" situation, and their development should be encouraged by Congress. The House bill does exactly the opposite. And it does not simply discourage their development. It makes it absolutely impossible in the majority of cases. This was done, I believe, without realizing the negative impact it would have on regional and short-line railroad development. The ICC, the FRA, small railroads operators, and rail consultants all testified at the hearing that if these kinds of labor protections are imposed, it will mean an end to short-line and regional rail development in the United States.

Imposing labor protection requirements on these marginal light density lines will hurt rather than help rail labor. The option we have here is choosing between a job with a short-line or regional railroad or no job at all. Those who actually work on the line would be harmed by the House language. So this is not an "anti-laborer" amendment—although it might be considered by some to be an "anti-labor establishment" issue. There will be fewer jobs available in the long run under the House language than if my amendment is adopted. The ICC and the administration are unanimous and unequivocal on this point.

The impact of the House language would be devastating. It would basically give labor leaders the right to unilaterally "veto" any transaction involving the creation or sale of regional and short-line railroads. No other industry in the country is saddled with this kind of requirement, not to mention the already very generous labor protection requirements already imposed on the industry. There is no justification for it being included in a Conrail transfer bill.

Mr. President, the amendment would put the Senate on record in clear opposition to these extraneous provisions in the House Conrail sale bill, which I understand they will include in their budget reconciliation package. We should go forward with the sale of Conrail. But we should not turn it into an omnibus railroad bill, the ramifications of which have not been adequately considered by either body.

So I urge my colleagues to support this amendment. We should not sell Conrail at the expense of light density lines in States throughout the country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COALITION OF REGIONAL RAILROADS,
September 19, 1986.

Hon. LARRY PRESSLER,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR PRESSLER: Wednesday, the House Commerce Committee reported legislation to transfer Conrail to the private sector and to require labor protection on a National basis on lines sales and transfers. We understand that the Senate may authorize the Conrail sale as a part of the Budget Reconciliation Bill presently on the floor of the Senate.

As Regional Railroads, we applaud current efforts in the House Commerce Committee to transfer Conrail to the private sector through a public sale. However, we adamantly oppose an extraneous non-Conrail related proposal requiring the Interstate Commerce Commission to impose substantial labor protection on railroad line sales and transfers. This matter is critically important to us, and we would urge defeat of any legislation containing such a provision.

Prior to the Staggers Act, the large railroads addressed marginal lines by downgrading service and abandonment. Since the Staggers Act, the ICC has used its discretion to not impose labor protection when the large railroad opts to sell a line to a new regional carrier. As a result, literally thousands of miles of rail lines are in operation today under the management of entrepreneurial new companies, enthusiastically serving a multitude of shippers in hundreds of communities. These smaller companies can operate these lines at a profit, where the large railroads could not. Most important, their employees are individuals who would have lost their jobs had the lines been abandoned. As the new regional railroads prosper, and there is every indication they will, it is very possible that total railroad employment will ultimately exceed the level that would have existed given the large scale abandonments contemplated by the Class I railroads.

Most of these regional carriers have labor agreements with the unions. While these agreements differ from the National Class I Railroad arrangements, they are both fair to employees and suitable to the economic conditions of the regions they serve. In many instances, they incorporate some very innovative profit sharing provisions. Thus, these carriers can compete in a deregulated environment with other modes of transportation, and preserve investment, service, and jobs in a manner which is not possible for the larger carriers.

It would be a tragedy if this one bright development in railroading was killed by requiring the ICC to impose onerous labor protection on these transactions. Please assist us in helping to defeat any such proposal.

House provisions mandating labor protection would virtually kill regional and short-line railroad development. We urge you to do everything in your power to have the Senate oppose the House provisions mandating labor protection. We strongly support your amendment in this regard.

Sincerely

Mike Barron, Chief Executive Office, Ann Arbor Railroad; S.R. Tedder, President, Ashley, Drew & Northern Railway; Walter Travis, President, Bangor & Aroostook Railroad; Gordon Fay, Chairman, Bay Colony Railroad; J.E. Heley, President, Chicago Central & Pacific; J.A. Darling, Chairman, Chicago South Shore & South Bend Railroad; J.C. McIntrye, President, Dakota Minnesota & Eastern Railroad Corporation; Walter Rich, President, Delaware Otsego Corporation, New York Susquehanna & Western Railway, Lackawaxen & Stourbridge Railroad (PA); Staten Island Railway; J.C. Larkin, President, Escanaba & Lake Superior Railroad; George C. Betke, Jr., Chairman and Chief Executive Officer, Farmrail; Mortimer Fuller, III, President, Genesee & Wyoming Railroad, Rochester & Southern Railroad; Tad Trantum, President, Gulf & Mississippi Railroad; Daniel Cleary, General Manager—Freight, Long Island Rail Road Company; Alfred Smith, Vice President, Operations, Maryland & Pennsylvania Railroad; Glen Bowden, President, Michigan & Wisconsin Transportation Company; E.L. Moyers, President, MidSouth Rail Corporation; Mark Levin, General Counsel, Paducah & Louisville Railroad; John Reale, Vice President for Traffic, Pittsburg & Shamut Railroad; Bernie Cahill, President, Rahway Valley Railway Company; A.P. Smith, Vice President, West Virginia Northern Railroad Company.

Mr. PRESSLER. Mr. President, I would like to engage the distinguished chairman of the Senate Commerce Committee in a short colloquy regard-

ing the Conrail provisions of this bill. It is my understanding that the House reconciliation bill will contain Conrail sale language which includes a great deal of extraneous language not related to the sale. In particular, it includes mandatory labor protection language which would essentially prohibit the development of regional and short-line railroads. The development of these lines is essential to the light density lines in rural States. They are our only alternative to abandonment. So I would like to offer an amendment on this matter.

We held a hearing in the Commerce Committee recently on this issue. It became clear that labor protection of the sort included in the House bill would absolutely kill any future these lines might have. I have a letter from 20 regional and short-line railroads opposing the House language. I ask unanimous consent that it, along with my extended remarks, appear in the RECORD at this point.

I have prepared an amendment on this issue which I would like to offer. There has been one objection to the amendment based on germaneness. But I am prepared to go forward with a vote unless I can get some assurances from the chairman regarding the Senate's position on this issue going into the conference. I hope to be on that conference, but I would like to ask the distinguished chairman of the Commerce Committee whether it is possible to get a clear understanding here that the Senate conferees' position on this issue would be to vigorously oppose these labor protection provisions?

Mr. DANFORTH. Mr. President, the Senator from South Dakota makes an excellent point. Based on the hearings in the Commerce Committee, it is clear that the House language would certainly put an end to the development of these railroads. That would be a serious mistake. I agree with him, and it is my intention to oppose strongly not only that kind of extraneous language, but also any other extraneous matters in the conference committee.

Mr. PRESSLER. I thank the distinguished chairman of the Commerce Committee, and appreciate his assurances.

Mr. PELL. Mr. President, it is with considerable doubt and many reservations that I vote in favor of the budget reconciliation as presented to the Senate today.

Indeed, about the only good thing that can be said about this reconciliation bill is that it holds some promise of preventing the imposition of deep Gramm-Rudman formula spending cuts in nearly all Federal Government programs.

The Gramm-Rudman Act requires that the Congress either reduce the deficit to $154 billion for the 1987 fiscal year or face the alternative of formula spending cuts in nearly every Federal Government program.

And, according to the official estimates, unless we are able to reduce the estimated deficit to $154 billion, nearly all domestic programs would be cut by 7.6 percent and defense spending would be cut by 5.6 percent under the Gramm-Rudman Act.

In my view, such mindless, across-the-board budget cuts are wrong and an abrogation of the responsibility of the Congress. That is why I voted against the entire Gramm-Rudman Act.

The reconciliation bill before us would avoid those formula Gramm-Rudman budget cuts by providing for about $13 billion in deficit reduction for the coming year. Regrettably, however, these deficit reduction proposals are badly flawed, and the bill consequently, is little more than a thin fig leaf to cover the embarrassing failure of the Gramm-Rudman Act. This is what is wrong with this reconciliation bill:

First. The bill eliminates a cigarette tax increase previously approved by the Senate Finance Committee, and which would raise $1.8 billion in revenue in the coming year.

Second. Many, if not most, of the savings in the bill are 1 year savings produced by what is best described as a "lawn sale" of Government assets—the sale of Conrail, and a whole range of loans made by various Government agencies. These sales do nothing whatsoever about the long-term deficit problem of the Government. Indeed, the loan sales may well make deficits in future years larger by reducing revenues that would be expected in those years.

Third. I do not favor the provision of the bill that would impose for the first time fees for the use of services provided by the U.S. Coast Guard.

Fourth. It includes as savings some provisions which merely shift expenses from 1 year to the next. For example a saving of $680 million is claimed by giving to the local governments their final general revenue sharing payments in this fiscal year instead of next year.

Fifth. It includes provisions totally extraneous to deficit reduction, such as a requirement that farmers be given advanced deficiency payments in 1987.

Indeed, the sponsors concede that many of the provisions of the reconciliation bill are less than ideal, and have indicated they share many of the misgivings that I have.

The one saving grace of this legislation is that it may avoid the foolishness of the across-the-board formula grants required by the Gramm-Rudman Act. For that reason alone I vote for it.

TITLE I OF S. 2706

Mr. ZORINSKY. Mr. President, the statutory changes recommended by the Committee on Agriculture, Nutrition, and Forestry to meet the savings target under the budget resolution are contained in title I of S. 2706. The legislation—as reported by the committee—would require the Secretary of Agriculture to sell notes and other obligations held in the Rural Development Insurance Fund in such amounts as to realize net proceeds to the Government of not less than $555 million during fiscal 1987, $549 million during fiscal 1988, and $543 million during fiscal year 1989. The sale of these notes and obligations would be on a nonrecourse basis.

The bill, as revised by the Domenici-Childs amendment, would achieve higher budgetary savings by: First, increasing the amount to be generated from the sale of loans from the Rural Development Insurance Fund during fiscal year 1987 to $1 billion and, second, permitting the repayment of certain Rural Electrification Administration loans without prepayment penalties. The amended bill would also require the Secretary of Agriculture to make advance deficiency payments for the 1987 wheat, feed grains, upland cotton, and rice programs.

SALE OF NOTES FROM THE RURAL DEVELOPMENT INSURANCE FUND

The notes and obligations in the Rural Development Insurance Fund represent loans made by the Farmers Home Administration under the water and waste disposal program and the community facilities program. The water and waste disposal program provides financing for the construction of water and waste disposal systems in rural areas and towns having populations of up to 20,000 people. The program offers credit at favorable rates of interest to public bodies, corporations operated on a nonprofit basis, and Indian tribes that are unable to obtain credit at reasonable rates and term from other sources.

Under the community facilities programs, financing is made available to rural communities and nonprofit organizations for community facilities that provide rural residents with essential services, such as fire protection, hospitals and libraries.

Loans under the water and waste disposal program and the community facilities program may have repayment terms of up to 40 years. In addition, the interest rate on these loans may be as low as 5 percent or as high as the rate on comparable municipal tax-exempt obligations.

Currently, the Rural Development Insurance Fund contains notes representing outstanding loans of over $7 billion. I understand that most of these notes are of high quality. Therefore, there should be little problem for

the Secretary of Agriculture to sell sufficient numbers of these loans to meet the revenue targets in the bill. In this regard, to ensure that there will be a viable and competitive market for these notes and obligations, the institutions of the Farm Credit System would be authorized to purchase and service the loans. The sale of the loans to a farm credit institution would be on such terms and conditions as are agreed to by the institution and the Secretary and approved by the Farm Credit Administration.

The Farm Credit System is well suited to purchase and service these loans inasmuch as the system institutions provide similar financing to cooperatives and other organizations in rural areas. In addition, the acquisition of a substantial number of these high quality loans by the farm credit institutions should improve the overall quality of the system's loan portfolio and help to stabilize its financial condition.

Mr. President, unlike many Government programs, the water and waste disposal and community facilities programs have been very successful. Traditionally, loans made under these programs have had a very low default rate, and they have been important tools in improving the quality of life in rural America. I believe that these programs warrant the continued strong support of the Congress, and I am hopeful that title I of the legislation before us will ultimately benefit the programs by allowing the Farmers Home Administration to better utilize available program resources to finance additional worthy projects. Therefore, I support its enactment.

ADVANCE DEFICIENCY PAYMENTS

Title I, as amended by the Senate, would also require the Secretary of Agriculture to make advance deficiency payments available under section 107C of the Agricultural Act of 1949 for the 1987 crops of wheat, feed grains, upland cotton, and rice. The percentage of the projected payment rate for a commodity that is to be used for computing the advance payment would be not less than: First, 40 percent in the case of wheat and feed grains, and second, 30 percent in the case of upland cotton and rice.

Mr. President, this provision is very important to our farmers and ranchers. It will ensure that part of the deficiency payments that a farmer would receive for participating in the programs will be made shortly after they sign up to participate. If these advances are not made, the farmer would not receive any deficiency payments under the programs until after the crops are harvested. Advance payments will provide producers with funds that they would otherwise have to borrow to finance the production of their 1987 crops. Many farmers are currently financially hard-pressed and do not have any source of operating credit available to them. My colleague from Nebraska, Senator EXON, and I, and other Senators, offered a, similar amendment to House Joint Resolution 668, the joint resolution to increase the public debt limit that was adopted by the Senate. Inasmuch as House Joint Resolution 668 has not yet been enacted into law, I am glad that the advance deficiency payment provision is part of the reconciliation bill.

PREPAYMENT OF RURAL ELECTRIFICATION ADMINISTRATION LOANS

Title I, as amended by the Senate, would also produce additional revenues of $500 million by requiring the Secretary of Treasury to permit the prepayment of loans made to rural electric and telephone systems by the Federal Financing Bank, and guaranteed by the Adminstrator of the Rural Electrification Administration, in the manner provided for in Public Law 99-349. Public Law 99-349 provided supplemental appropriations for the fiscal year ending September 30, 1986. Under that act, prepayment of such loans are permitted without the payment of a penalty equal to 1 year's interest on the loan. Although it may be preferable to allow the prepayment of all of these loans without penalty, I believe that the provision requiring the Secretary of the Treasury to issue revised regulations that will permit the repayment of loans in such amounts as to realize net proceeds of not less than $1.72 billion from such prepayments during 1987 is a definite improvement, and I am glad that the provision is included in the bill.

Mr. President, I commend Senators DOMENICI and CHILES for their efforts in developing the amendment to revise title I. I urge my colleagues to join me in supporting title I of S. 2706.

Mr. BYRD. Mr. President, the amount of the budget deficit that the Federal Government has been incurring for the past 5 years is a national disgrace. The cumulative effect of these deficits when added to those of prior years—our national debt—is beyond disgrace. I would like to remind my colleagues of some pertinent statistics.

The budget deficit incurred in fiscal year 1981—the last year for which the budget was prepared by the Carter administration—was $78.9 billion. In fiscal 1982, under the first Reagan administration budget, the deficit soared to $127.9 billion. In fiscal 1983 it leapt over the $200 billion mark for the first time in our history: to $207.8 billion. In fiscal 1984, we moved slightly downward to a $185.3 billion deficit, only to charge back to a $212.3 billion deficit in fiscal 1985. I think it is pertinent, Mr. President, that President Reagan and his administration did not submit even one budget during this entire period of time that provided for a balanced budget.

What has been the effect of these monstrous deficits on top of deficits? President Reagan, who campaigned for office in 1980 with a platform which had as one of its principal components a demand for a balanced budget, has succeeded in doubling the national debt in the short space of 5 years. What it had taken 39 other Presidents 191 years to accomplish—amassing a national debt of $1 trillion—President Reagan was able to accomplish in 5 short years by adding over $1 trillion more to the national debt. Before we adjourn sine die this year, we will be forced to increase the debt ceiling to approximately $2.3 trillion.

But this is far from the end of the tale. Because despite the enactment of the many-fabled and much-heralded Gramm-Rudman-Hollings law which was supposed to assure we would climb on a glide path that would yield a balanced budget in 1991, we continue to see deficits in the $200 billion range.

The budget process and the reconciliation bills that are a part of it—with the Gramm-Rudman-Hollings deficit targets as a backdrop—are supposed to result every year in those policy and spending changes that are necessary to take us to the balanced budget target in 1991.

I need not spend much time talking about how difficult this is. Cutting a current policy budget by $30 to $40 billion in 1 year—and doing this in 5 consecutive years—is a tough mission. Although I believed at the time the Senate voted on it that the Gramm-Rudman-Hollings process was fatally flawed, and voted against it for that reason, the Congress and the President did make it the law of the land. And, irrespective, I strongly concur in the necessity of reasserting control over the budget, obtaining real and lasting deficit reduction, and achieving a balanced budget—soon.

I regret to say, Mr. President, that the measure before us today is only a perilously thin reed. It does not take us very far down the long and arduous path we must traverse, and many—perhaps most—of its provisions will result in only one-time, 1-year quick fixes of budget reduction. These provisions will not place us on a glide path toward a balanced budget. In fact, several of them actually will make the deficit gap we must close next year—in order to reach the Gramm-Rudman-Hollings deficit reduction targets—even larger and harder to close.

In this respect, Mr. President, we sadly are squandering an important chance to make a real dent in the deficit. This amendment avoids the hard choices that we all know are necessary.

But, Mr. President, as the old saying goes, beggars can't be choosers. While the measure before us doesn't do

enough, and it doesn't result in placing us on a glide path toward a balanced budget, it does, in fact, produce some deficit reduction. And it will result in some diminution of the interest we will be forced to pay on the national debt in future years.

It is a mystery to me, Mr. President, why he has done so—and how he has done so with no apparent political detriment; but President Reagan simply has turned in his equipment and left the budget playing field. On the subject of the budget, the Reagan administration seems to me quite like an old Victrola when the needle got stuck in a groove. The record continues to go around and around, a bunch of squawking continues to come out of the speaker, but there is absolutely no progress.

Time and again, the President or some of his lieutenants have rattled the veto saber at any fair and balanced deficit reduction proposal. That occurred once again as the chairman and the ranking member of the Budget Committee sought on a bipartisan basis to devise a strong, balanced, fair reconciliation proposal over a period of several months this year that would point us certainly toward a balanced budget. I want to commend them at this point, Mr. President, for struggling mightly and valiantly—especially during the past few days. But their efforts were thwarted—largely by the Reagan administration's intransigence. They did the best they could under the circumstances.

That brings us to tonight, Mr. President. I may never cast a vote with less enthuasism. In fact, I think the correct term to describe how I feel about this vote is "resigned." But we have come down to the point where, quite literally, it is this or nothing.

That's really the irreducible kernel of this debate. It is this or nothing—at least so far as reconciliation spending reductions are concerned this year.

Although we are going to vote on it later this evening, I feel confident in predicting that the Gramm-Rudman-Hollings backup sequestration resolution for fiscal year 1987 will never become law. Assuming it were to pass both Houses of the Congress—and I have a large question about its ability to obtain a majority vote in either House—I predict the President would veto it. I believe he will veto it because, despite the fact that he was one of the loudest cheerleaders for Gramm-Rudman-Hollings and signed it into law, and despite the fact that I told him personally and others told him that it likely would have this effect, the sequestration will make deep and harmful cuts in our defense capability.

There will be no sequestration in October, Mr. President. If we are to reduce the deficit this year, the bill before us is the means.

Next year the Congress is going to confront a budget crisis like nothing we have seen. It is quite conceivable that we will face a projected budget deficit that will be $70 or $80 billion above the fiscal year 1988 Gramm-Rudman-Hollings target. When the Director of the President's Office of Management and Budget, Mr. Miller, was asked recently in a hearing how that could be done, he replied, "with difficulty." And when he was asked how it could be done without resorting to new revenues, he replied, "with great difficulty." Those two replies may go down among the greatest understatements in history.

Mr. President, we will never reach the fiscal year 1988 target with only the kinds of one-shot, 1-year, smoke-and-mirrors provisions that make up the bulk of this reconciliation bill. We have run out of "magic asterisks;" we have run out of smoke and mirrors. I hope none of my colleagues will be surprised next year when the chickens we are hatching tonight come home to roost.

Next year, regardless of our party affiliation, regardless of which party controls the Senate, we all are going to be playing on the frontline. It is going to be as pleasant as playing in a football game in a blinding rainstorm on a muddy field with the temperature just above freezing and falling.

But, with the President having abondoned the cause of realistic efforts toward deficit reduction, that will not occur until next year. Tonight we are dealing with this year. I suggest to my colleagues that we accept what is here and ready for us to vote on, recognizing it for what it is. It is better than nothing, but not much. It will reduce the deficit in fiscal year 1987. It will result in somewhat lower-interest payments on the national debt. There are some worthwhile policy and program changes included in the bill.

I will vote aye, Mr. President.

Mr. DOMENICI. Third reading.

The PRESIDING OFFICER. Are there further amendments?

Mr. HARKIN addressed the Chair.

Mr. DOLE. Third reading.

The PRESIDING OFFICER. If there are no further amendments, third reading of the bill.

Mr. HARKIN. Mr. President, yeas and nays on third reading.

The PRESIDING OFFICER. Is the Senator asking for the yeas and nays on third reading?

Mr. HARKIN. Mr. President, I ask for the yeas and nays on third reading.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HARKIN. Yeas and nays on third reading.

Mr. METZENBAUM. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. METZENBAUM. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Ohio will state his inquiry.

Mr. METZENBAUM. Has the amendment of Senator DOMENICI and Senator CHILES been adopted?

The PRESIDING OFFICER. That amendment has been adopted.

Mr. METZENBAUM. So the matter before us now is the bill as amended with the Domenici-Chiles amendment on it?

The PRESIDING OFFICER. The Senator from Ohio is correct.

If there are no further amendments—

AMENDMENT NO. 2865

Mr. HARKIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. the clerk will please report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 2865:

On page 10 of the amendment, strike lines 8 and 9.

The PRESIDING OFFICER. There is no pending amendment. The amendment is therefore out of order.

Mr. HARKIN. Mr. President, parliamentary inquiry.

Mr. DOLE. Third reading, Mr. President.

Mr. HARKIN. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state the inquiry.

Mr. HARKIN. Could the Chair inform the Senator why that amendment was out of order?

The PRESIDING OFFICER. The amendment was drafted to the pending amendment and there is no pending amendment.

Mr. HARKIN. Mr. President, I ask for the yeas and nays on third reading.

Mr. DOLE. Mr. President, third reading.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HARKIN. I ask for the yeas and nays on third reading, Mr. President.

The PRESIDING OFFICER. There is not a sufficient second.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. DOLE. I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this

question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from Hawaii [Mr. MATSUNAGA] are necessarily absent.

The PRESIDING OFFICER (Mr. EVANS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—88 yeas, 7 nays, as follows:

[Rollcall Vote No. 277 Leg.]

YEAS—88

Abdnor	Gore	Mitchell
Andrews	Gorton	Murkowski
Armstrong	Gramm	Nickles
Baucus	Grassley	Nunn
Bentsen	Hatch	Packwood
Biden	Hatfield	Pell
Bingaman	Hawkins	Pressler
Boschwitz	Hecht	Proxmire
Bradley	Heflin	Pryor
Broyhill	Heinz	Quayle
Bumpers	Helms	Rockefeller
Burdick	Hollings	Roth
Byrd	Humphrey	Rudman
Chafee	Inouye	Sarbanes
Chiles	Johnston	Sasser
Cochran	Kassebaum	Simon
Cohen	Kasten	Simpson
Cranston	Kennedy	Specter
D'Amato	Kerry	Stennis
Danforth	Lautenberg	Stevens
DeConcini	Laxalt	Symms
Denton	Leahy	Thurmond
Dixon	Levin	Trible
Dodd	Long	Wallop
Dole	Lugar	Warner
Domenici	Mathias	Weicker
Durenberger	Mattingly	Wilson
Eagleton	McClure	Zorinsky
Evans	McConnell	
Ford	Melcher	

NAYS—7

Exon	Hart	Riegle
Glenn	Metzenbaum	
Harkin	Moynihan	

NOT VOTING—5

Boren	Goldwater	Stafford
Garn	Matsunaga	

So the bill (S. 2706), as amended, was passed, as follows:

S. 2706

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sixth Omnibus Budget Reconciliation Act, 1986".

TITLE I-AGRICULTURAL SECURITIES

SEC. 101. SALE OF AGRICULTURAL NOTES AND OTHER OBLIGATIONS.

(a) The Secretary of Agriculture shall, under such terms as the Secretary may prescribe, sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a) in such amounts as to realize net proceeds of not less than—

(1) $1,000,000,000 from such sales during fiscal year 1987;

(2) $549,000,000 from such sales during fiscal year 1988; and

(3) $543,000,000 from such sales during fiscal year 1989.

(b) The second sentence of section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended by—

(1) inserting "and other obligations" after "Notes"; and

(2) striking out the period at the end thereof and inserting the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes and other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.".

(c) Notwithstanding any other provision of law, institutions of the Farm Credit System operating under the Farm Credit Act of 1971 (12 U.S.C. 2001) shall be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institutions' interests in such notes and other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and such purchasing institutions and as are approved by the Farm Credit Administration.

SEC. 102. ADVANCE DEFICIENCY PAYMENTS.

Notwithstanding any other provision of law, the Secretary of Agriculture shall, in accordance with the criteria in section 107C of the agricultural Act of 1949, make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice: *Provided,* That the percentage of the projected payment rate used in computing such payments shall not be less than (1) 40 percent in the case of wheat and feed grains, and (2) 30 percent in the case of rice and upland cotton.

SEC. 103. PREPAYMENT OF REA LOANS.

The Secretary of the Treasury shall issue final regulations implementing the provisions of the undesignated paragraph captioned "PREPAYMENT OF LOANS BY RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS" appearing at 100 Stat. 713-14 in Public Law 99-349 (7 U.S.C. 936 note) to permit the prepayment of loans made by the Federal Financing Bank and guaranteed under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936) by the Administrator of the Rural Electrification Administration in such amounts as to realize net proceeds of not less than $1,720,000,000 from such loan prepayments during fiscal year 1987. Such regulations shall not prohibit full transferability and assignability of such loans without condition, and shall not require unreasonable reductions in rates to customers.

TITLE II—COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

SEC. 201. SALE OF RURAL HOUSING LOANS.

(a) IN GENERAL.—The Secretary of Agriculture (hereinafter referred to as the "Secretary") shall ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide from the proceeds of such sales a net reduction in outlays of—

(1) not less than $1,158,000,000 in fiscal year 1987;

(2) not less than $500,000,000 in fiscal year 1988; and

(3) not less than $500,000,000 in fiscal year 1989.

(b) PROCEDURES AND TERMS OF SALES.—

(1) The Secretary shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of such loans, including whether such loans should be subject to any form of Federal guarantee, the kind of protections that should be provided to borrowers, and terms that will ensure that the sale of such loans will be made at the lowest practicable cost to the Federal Government.

(2) The sale of loans under this section shall not be subject to paragraph (2) or (3) of section 517(d) of the Housing Act of 1949.

(c) REPORTS TO CONGRESS.—

(1) The Secretary shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under this section, and an analysis of the net reduction in outlays provided by the sale of such loans. The Secretary shall submit the first report under this paragraph not later than 90 days after the date of the enactment of this Act, and shall submit subsequent reports each 90 days thereafter through the end of fiscal year 1987.

(2) The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary described in each report submitted under paragraph (1), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

SEC. 202. SALE OF EXPORT-IMPORT BANK LOANS.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 45. SALE OF BANK LOANS.

"(a) IN GENERAL.—The Board of Directors shall take such steps as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $1,500,000,000 in fiscal year 1987 from the proceeds of such sales.

"(b) PROCEDURES AND TERMS OF SALES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). Such guidelines shall be developed after consultation with the Secretary of the Treasury. The guidelines shall address the procedures and terms applicable to the sale of such loans, including terms that will ensure that the sale of such loans will bring the highest possible return to the Federal Government, taking into account the requirements of subsection (c).

"(c) RESTORATION OF CAPITAL.—The Bank is hereby authorized to issue capital stock in an amount equal to any reduction in the capital and reserves of the Bank resulting from the implementation of this section.

The Secretary of the Treasury is authorized and directed to purchase such stock, and for such purpose he may use the proceeds from obligations issued under chapter 31 of title 31, United States Code.

"(d) REPORTS TO CONGRESS.—

"(1) BANK REPORTS.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b), a description of the loans sold under this section, and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

"(2) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

"(e) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan under this section shall be deemed to be a sale of exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as may be necessary in the public interest or for the protection of investors.".

SEC. 203. FDIC PREMIUMS ON FOREIGN DEPOSITS OF UNITED STATES BANKS.

The Federal Deposit Insurance Act is amended—

(1) by inserting "except as provided in section 7(b)(5)," after "(A)" in section 3(1)(5);

(2) by striking out "and" at the end of clause (A) of section 7(b)(5); and

(3) by striking out the period at the end of section 7(b)(5) and inserting in lieu thereof the following: ";

"(C) any deposits received in any foreign branch or international banking facility, other than any foreign branch of a foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978.".

TITLE III

COAST GUARD USER FEES

SEC. 301. (a) Notwithstanding the provisions of section 2110 of title 46, United States Code, the Secretary of the department in which the Coast Guard is operating (hereinafter in this section referred to as the "Secretary") shall establish and implement a system for the collection, commencing January 1, 1987, of $38 million in fiscal year 1987 and $50 million in each of fiscal years 1988 and 1989 in receipts from payments by users of services provided by the Coast Guard, other than services associated with emergency search and rescue.

(b) The Secretary shall, by January 1, 1987, issue regulations to carry out the provisions of subsection (a) of this section. Such regulations shall include a schedule of fees which shall be established in accordance with the provisions of section 9701 of title 31, United States Code.

(c)(1) The system established and implemented under subsection (a) of this section shall include collections of payments of—

(A) the sale of Support of Services Stamps, possession of which will entitle the holder of such stamps to specified services without charge; and

(B) fees to be charged to users of such specified services who have not purchased such a Support of Services Stamp.

(2) In developing such system and issuing regulations under this section, the Secretary shall consider collection of receipts from payments for nonemergency search and rescue, as well as other services provided by the Coast Guard.

(d) The Secretary shall, to the maximum extent practicable, ensure that such system minimizes adverse economic effects upon commercial towing services and other segments of the maritime industry.

(e) The Secretary shall report to the Congress on or before December 1, 1986, regarding activities undertaken to establish and implement such system and on or before December 1, 1987, regarding the implementation and effects of such system.

(f) Nothing in this section shall alter or expand the duties and liability of the United States under existing law for the performance of functions for which fees or payments are collected. The collection of such fees or payments shall not constitute an express or implied undertaking by the United States to perform any service or activity in a certain manner or to provide any service at a particular time or place.

LOAN GUARANTEES

SEC. 302. (a) Section 362(b) of title 11, United States Code, is amended—

(1) by striking the period in paragraph (11) and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

"(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively), or under applicable State law; or

"(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.".

(b) The amendments made by subsection (a) of this section shall apply only to petitions filed under section 362 of title 11, United States Code, which are made after August 1, 1986.

SALE OF CONRAIL

SEC. 303. The Secretary of Transportation is directed in fiscal year 1987 to sell the interest of the United States in the common stock of the Consolidated Rail Corporation (Conrail). Consistent with the public interest convenants provided for pursuant to S. 638, the "Conrail Sale Amendments Act of 1985" as passed by the Senate on February 4, 1986, the Secretary, as part of such sale, shall ensure that Conrail's rail service is continued, that the interests of rail labor are protected, that it is in the strongest possible financial condition after the sale, that it is viable long-term, and that the return to the Federal Government is maximized.

TITLE IV—COMMITTEE ON ENERGY AND NATURAL RESOURCES

Subtitle A—Department of Energy Programs

SEC. 401. CRUDE OIL OR PETROLEUM PRODUCTS OVERCHARGE FUNDS.

(a) RESTITUTIONARY AMOUNTS.—Sections 402 and 403 specify the procedure for the distribution of the following restitutionary amounts—

(1) amounts held in escrow on the date of enactment of this Act, and

(2) amounts received after the date of enactment of this Act,

which are held or received as a result of a settlement, order, or judgment (including a declaratory judgment) involving overcharges resulting from alleged crude or petroleum products oil pricing violations under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970.

(b) STATUTE OF LIMITATIONS.—Section 18 of the Emergency Petroleum Allocation Act of 1973 is amended by—

(1) inserting the subsection designator "(a)" before "Notwithstanding"; and

(2) adding the following new subsection:

"(b)(1) Except as provided in paragraph (4) of this subsection, the commencement of an enforcement action by Proposed Remedial Order or Proposed Order of Disallowance under section 503 of the Department of Energy Organization Act or by complaint filed in a district court of the United States under section 209 of the Economic Stabilization Act of 1970 (referred to in this subsection as "section 209") shall be barred unless such action is filed before the later of (A) January 1, 1987; or (B) six years after the date of the violation upon which the action is based.

"(2) After the date of enactment of this subsection, and except as provided in paragraph (4) of this subsection, an action for enforcement of an order that constitutes final agency action brought by the United

States or an officer or agency thereof which is founded upon section 209 shall be barred unless a complaint is filed or an application for modification is filed under section 7 of the Federal Energy Administration Act of 1974 within one year after the order has been issued or one year after the final compliance date prescribed by the order, whichever is later.

"(3) An appropriate district court of the United States shall have jurisdiction over a petition for review brought by a private party subject to a final agency action determined under section 503 or 504 of the Department of Energy Organization Act if the petition is filed within 60 days after the effective date of that final agency action, or within 60 days of the date of enactment of this subsection, whichever occurs later.

"(4) In computing the periods established in paragraphs (1) and (2) of this subsection, there shall be excluded all periods—

"(A) during which any person who is or may become the subject of an enforcement action is outside the United States, has absconded or concealed himself, or is not subject to legal process;

"(B) during which facts material to the enforcement action could not, by reason of that person's actions, be known;

"(C) prior to full compliance with any valid subpoena or special report order issued under section 13 of the Federal Energy Administration Act of 1974;

"(D) prior to the issuance of an order which constitutes final agency action on a request for adjustment from any rule, regulation, or order under section 504 of the Department of Energy Organization Act; or

"(E) of extensions, to which the President or the President's delegee and the person who is or may become the subject of an enforcement action have consented in writing, prior to the expiration of the time periods prescribed in paragraphs (1) and (2) of this subsection.

"(5) Laches shall be available as a defense against any enforcement action covered by this subsection.".

SEC. 402. DISTRIBUTION OF RESTITUTIONARY AMOUNTS.

(a) Any of the restitutionary amounts described in section 401 to which the Federal Government is entitled pursuant to the express terms of a settlement, order, or judgment described in section 401 entered prior to the date of enactment of this Act shall be credited to the general fund of the Treasury. Nothing in this subtitle shall affect any amounts to which persons or classes of persons have an enforceable right, created or vested as of the date of enactment of this Act, pursuant to such a settlement, order, or judgment, including the settlement, approved on July 7, 1986, in "In Re: The Department of Energy Stripper Well Exemption Litigation," M.D.L. No. 378, in the United States District Court for the District of Kansas.

(b) Except as provided for in subsection (a), effective on the date of enactment of this Act, any of the amounts described in section 401 which remain after the identification of and restitution to persons or classes of persons who have sustained economic injury shall be credited to the general fund of the Treasury.

SEC. 403. FEDERAL ENERGY MANAGEMENT.

Section 545(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8255(a)(2)), relating to Federal energy management, is amended by striking "marginal" and inserting "average" in its place.

SEC. 404. MANUFACTURERS ENERGY CONSUMPTION SURVEY.

(a) Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding a new subsection after subsection (h) to read as follows:

"(i)(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States on at least a triennial basis and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information on such topics as—

"(A) quantity of fuels consumed,

"(B) energy expenditures,

"(C) fuel switching capabilities, and

"(D) use of non-purchased sources of energy, such as cogeneration and waste by-products.

"(2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).".

(b) Part E of title III of the Energy Policy and Conservation Act (42 U.S.C. 6341-6346) is hereby repealed.

SEC. 405. CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

(a) IN GENERAL.—(1) The Secretary of Energy, acting with the Energy Information Administration, shall conduct a study of domestic crude oil production and petroleum refining capacity and the effects of imports thereon in order to assist the Congress and the President in determining whether such production and capacity are adequate to protect the national security.

(2) The study provided for by this section shall be carried out within available appropriations.

(b) PUBLIC COMMENT.—The Secretary shall provide notice and reasonable opportunity for public comment with respect to conducting the study carried out under this section.

(c) REPORTING DATE.—The Secretary shall, within 60 days of enactment of this Act, transmit to the Congress and the President a copy of the findings and conclusions of the study carried out under this section. Such findings and conclusions shall be referred to the Committee on Energy and Natural Resources of the Senate and appropriate authorization committees of the House of Representatives.

(d) ACTION BY THE PRESIDENT.—The President shall, within 45 days after the date on which such report is transmitted to him, report his views concerning the levels at which imports of crude oil and refined petroleum products become a threat to the national security and advise the Congress what his views are on what legislative or administrative action, or both, will be required to prevent imports of crude oil and refined petroleum products from exceeding those import levels that threaten out national security.

Subtitle B—Federal Energy Regulatory Commission

SEC. 411. FERC FEES AND ANNUAL CHARGES.

(a) AUTHORIZATION.—The Federal Energy Regulatory Commission shall be authorized to collect fees and annual charges as provided in this subtitle.

(b) IN GENERAL.—The Federal Energy Regulatory Commission shall assess and collect fees and annual charges in amounts sufficient to reimburse the United States for all of the costs incurred by the Commission: *Provided*, That the Commission shall increase fees and annual charges sufficient to increase offsetting receipts by at least $33,000,000 in fiscal year 1987 above current collections.

(c) BASIS FOR ASSESSMENTS.—The fees or annual charges assessed shall be computed based on methods that the Commission determines, by rule, to be fair and equitable.

(d) USE OF FUNDS.—All moneys received under the provisions of this section shall be credited to the general fund of the Treasury.

(e) WAIVER.—The Commission may, by rule or order, waive all or part of any fee or annual charge assessed under this subtitle for good cause shown.

Subtitle C—Department of the Interior Program

SEC. 421. GREAT SWAMP NATIONAL WILDLIFE REFUGE.

(a) No later than 60 days after the enactment of this section, the Secretary of the Interior shall appoint an interagency task force to develop a systematic and comprehensive environmental clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey. Such a plan shall include, but not be limited to:

(1) the appointment of appropriate field personnel to direct the clean-up effort;

(2) an assessment and ranking of environmental threats to the refuge to be updated as new information becomes available;

(3) a detailed clean-up schedule and work plan to be updated on a regular basis; and

(4) an annual report on the progress made toward the clean-up effort of the refuge.

(b) No later than 240 days after the enactment of this section, the Secretary shall provide the appropriate Committees of Congress with a report on the progress of establishing such a task force and the implementation of the clean-up effort.

(c) The development of the plan set out in subsections (a) and (b) shall be carried out with unobligated funds available to the U.S. Fish and Wildlife Service.

TITLE V—COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

SEC. 501. FEES OF THE ENVIRONMENTAL PROTECTION AGENCY.—(a) The Administrator of the Environmental Protection Agency is authorized to assess and collect fees and charges for services and activities carried out pursuant to the statutes which are administered by the Agency in the amount of $20 million annually for the fiscal years 1987, 1988 and 1989. The amount of any fee or charge assessed pursuant to this section shall be established by rule, after notice and opportunity for public comment.

(b) Except as may otherwise be specifically provided by law with regard to fees and charges, and their deposit and retention, any fees and charges established and collected by the Administrator of the Environmental Protection Agency pursuant to this section or other statutes administered by the Agency shall be deposited in a special fund in the United States Treasury which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fee or charge is made.

(c) Not later than September 30, 1987, the Administrator of the Environmental Protection Agency shall transmit to the Congress a report on the implementation of this section and on other fees and charges that might be assessed to defray the costs of administering the statutory authorities assigned to the Agency. Such report shall be made available to organizations representing State and local officials who have been

delegated authority to administer programs under these statutes for comment, and summaries of such comments shall be included in the report.

SEC. 502. 42 U.S.C. 2213 is amended to read as follows:

"SEC. 7601. NUCLEAR REGULATORY COMMISSION REVENUES.

"(a) For fiscal years 1987, 1988, and 1989, the Nuclear Regulatory Commission is authorized to assess and collect annual charges from its licensees on a fiscal year basis for costs incurred by the Commission with respect to such licensees in an amount that, when added to other amounts collected by the Commission for each such fiscal year under other provisions of law, does not exceed 38 percent of the funds appropriated to the Commission each such fiscal year.

"(b) Any such charge assessed pursuant to this section for costs incurred by the Commission with respect to its licensees shall be reasonably related to the regulatory service provided by the Commission for each such individual licensee and shall fairly reflect the actual cost of the Commission of providing such service to each such individual licensee.

"(c) The amount of the charges assessed pursuant to this section shall be established by rule, after reasonable opportunity for notice and comment by all interested persons.".

SEC. 503. SALES OF NOTES.—(a) Notwithstanding any other provision of law, the Secretary of Commerce shall, under such terms as the Secretary may provide, sell defaulted notes held in the Economic Development Administration's Revolving Fund in such amounts as to realize net proceeds of not less than $50,000,000 from such sales during fiscal year 1987.

(b) The Secretary is authorized to sell such notes on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed, had the borrower remained indebted to the Secretary.

SEC. 504. HIGHWAY PROGRAM.—(a) There is authorized to be appropriated for Federal-aid highways and highway safety construction programs $13,082,000,000 for each of the fiscal years ending September 30, 1987, 1988 and 1989.

(b)(1) Notwithstanding any other provisions of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed $12,350,000,000 for each of the fiscal years ending September 30, 1987, 1988, and 1989. These limitations shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, and projects under section 157 of title 23, United States Code.

(ii) For each of the fiscal years 1987, 1988 and 1989, the Secretary of Transportation shall distribute the limitation imposed by paragraph (i) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

(iii) During the period October 1 through December 31, 1986, no State shall obligate more than 35 per centum of the amount distributed to such State under paragraph (ii) for fiscal year 1987, and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection for such fiscal year.

(iv) Notwithstanding paragraph (ii) and (iii), the Secretary shall—

(A) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State;

(B) after August 1 of each of the fiscal years 1987, 1988 and 1989 revise a distribution of the funds made available under paragraph (ii) for such fiscal year if a State will not obligate the amount distributed during such fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during such fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(C) not distribute amounts authorized for administrative expenses, Federal land highways, and the Strategic Highway Research Program.

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Subtitle A—Provisions Relating to the Medicare Program

PART 1—PROVISIONS RELATING TO PART A OF MEDICARE

SEC. 601. PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

(a) APPLICABLE PERCENTAGE INCREASE.—

(1) Section 1886(b)(3)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended—

(A) in subclause (II) by striking "1987 and 1988" and inserting in lieu thereof "1988 and 1989",

(B) in subclause (III) by striking "1989" and inserting in lieu thereof "1990",

(C) by redesignating subclauses (II) and (III) as subclauses (III) and (IV), respectively, and

(D) by inserting after subclause (I) the following:

"(II) for fiscal year 1987, 1.3 percent,".

(2)(A) Section 1886(d)(3)(A) of such Act is amended by striking "1985 and 1986" and inserting in lieu thereof "1986 and 1987".

(B) Section 1886(e)(4) of such Act is amended by striking "1987" and inserting in lieu thereof "1988".

(3)(A) In the case of a subsection (d) hospital, the amendments made by paragraph (1) shall apply to payments made under section 1886(d)(1)(A)(ii)(II) of such Act made on the basis of discharges occurring on or after October 1, 1986.

(B) In the case of a subsection (d) hospital, the amendments made by paragraph (1) shall apply to payments under section 1886(d)(1)(A)(ii)(I) of such Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting periods beginning on or after October 1, 1986.

(C) In the case of a hospital that is not a subsection (d) hospital, the amendments made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1986.

(D) For purposes of this paragraph, the term "subsection (d) hospital" has the meaning given to such term in section 1886(d)(1)(B) of such Act.

(b) OUTLIER PAYMENTS FOR SMALL RURAL HOSPITALS AND SOLE COMMUNITY HOSPITALS.—

(1) Section 1886(d)(5)(A) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(A)) is amended by adding at the end the following new clause:

"(v)(I) The total amount of the additional payments made under this subparagraph for discharges from a hospital described in subclause (II) may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made to all such hospitals based on DRG prospective payment rates for discharges in that year.

"(II) For purposes of subclause (I), a hospital is described in this subclause if it is a sole community hospital (as defined in subparagraph (C)(ii)) with an average occupancy of 50 beds or less for the most recently completed Federal fiscal year or a small rural hospital (as described in section 1883(b)(1)).".

(2)(A) The Prospective Payment Assessment Commission shall include in its annual report an analysis of the appropriate thresholds for outliers which are necessary to ensure that outlier payments will be made in accordance with the requirements of section 1886(d)(5)(A) of the Social Security Act.

(B) Section 9113(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by inserting "and sole community providers" after "rural hospitals with less than 100 beds".

(3) The amendment made by paragraph (1) shall apply to discharges occurring after September 30, 1986, and before the first October 1 that is more than 270 days after the date on which the Secretary of Health and Human Services submits the report required under section 9113 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(c) COMPUTING URBAN AND RURAL AVERAGES.—Section 1886(d)(3)(A) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(A)) is amended by adding at the end the following: "With respect to discharges occurring on or after October 1, 1986, the Secretary shall compute urban and rural averages on the basis of discharge weighting rather than hospital weighting, making appropriate adjustments to ensure that computation on such basis does not result in total payments under this section that are greater or less than the total payments that would have been made under this section but for this sentence, and making appropriate changes in the manner of determining the reductions under subparagraph (C)(ii).".

(d) RURAL REFERRAL CENTERS.—

(1)(A) The criteria established by the Secretary of Health and Human Services under section 1886(d)(5)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)) shall provide that a rural hospital that—

(i) has a case mix equal to or greater than the median case mix for urban hospitals located in the same census region or the Nation (other than hospitals with approved teaching programs),

(ii)(I) has 5,000 or more discharges a year, or

(II) in the case of a rural osteopathic hospital, meets the criterion established by the Secretary under such section with respect to the annual number of discharges for such hospitals, and

(iii) meets any other criteria established by the Secretary under such section,

shall be classified as a rural referral center.

(B) Subparagraph (A) shall apply to payments for discharges occurring on or after October 1, 1986.

(2) Any hospital that is classified as a rural referral center under section 1886(d)(5)(C)(i) of the Social Security Act on the date of the enactment of this Act shall continue to be classified as a rural referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

(3) Paragraphs (1) and (2) shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act are not increased or decreased by reason of the classifications required by such paragraphs.

SEC. 602. PAYMENTS FOR HOSPITAL CAPITAL-RELATED COSTS.

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

"(R)(i) Except as provided in clause (ii), in determining the amount of the payments that may be made under this title with respect to the capital-related costs of inpatient hospital services of a subsection (d) hospital (as defined in section 1886(d)(1)(B)), the Secretary shall reduce the amounts determined to be reasonable (without regard to this subparagraph) by—

"(I) 3 percent for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1987,

"(II) 5 percent for cost reporting periods beginning on or after October 1, 1987, and before October 1, 1988, and

"(III) 6 percent for cost reporting periods beginning on or after October 1, 1988, and before October 1, 1989.

"(ii) This subparagraph shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in section 1886(d)(5)(C)(ii)).".

SEC. 603. CHANGES IN INPATIENT HOSPITAL DEDUCTIBLE.

(a) IN GENERAL.—Section 1813(b) of the Social Security Act (42 U.S.C. 1395e(b)) is amended to read as follows:

"(b)(1) The inpatient hospital deductible shall be $520 in the case of any spell of illness beginning in calendar year 1987. The inpatient hospital deductible for any spell of illness beginning in any succeeding year shall be an amount equal to the inpatient hospital deductible for spells of illness beginning in the preceding calendar year, changed by the same percentage change as applies for purposes of DRG prospective payment rates under section 1886(b)(3) or section 1886(e)(4) (whichever is applicable) for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4).

"(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section between September 1 and September 15 of the year preceding the year to which they will apply.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to spells of illness beginning in or after calendar year 1987.

SEC. 604. NOTICE OF HOSPITAL DISCHARGE RIGHTS; DISCHARGE PLANNING.

(a) REQUIREMENT FOR HOSPITALS TO PROVIDE STATEMENT.—

(1) Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(A) by striking the "and" inserted at the end of the subparagraph (I) by section 9122(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985,

(B) by striking the period at the end of subparagraph (J) and inserting in lieu thereof a comma,

(C) by redesignating the subparagraph (I) inserted by section 9403(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 as subparagraph (K) and by inserting it after subparagraph (J), and

(D) by inserting "and" at the end of subparagraph (K), as redesignated, and

(E) by inserting after subparagraph (K) the following new subparagraph:

"(L) in the case of hospitals, to provide to each individual who is entitled to benefits under part A (or to a legally responsible person or persons acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

"(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this title,

"(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

"(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

"(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal.".

(2) The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(L) of the Social Security Act not later than six months after the date of the enactment of this Act. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.

(b) REQUIRING HOSPITALS TO PROVIDE DISCHARGE PLANNING.—

(1) Section 1861(e)(6) of the Social Security Act (42 U.S.C. 1395x(e)(6)) is amended—

(A) by inserting "(A)" after "(6)", and

(B) by inserting before the semicolon at the end the following: "and (B) has in place a discharge planning process that meets the requirements of subsection (ee)".

(2) Section 1861 of such Act is further amended by adding at the end the following new subsection:

"DISCHARGE PLANNING PROCESS

"(ee)(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to insurance benefits under this title and if it meets the guidelines and standards established by the Secretary under paragraph (2).

"(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

"(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

"(B) The hospital must provide a discharge planning evaluation for patients

identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

"(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

"(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

"(E) The results of a discharge planning evaluation must be made available to the patient (or the patient's representative) and the patient's physician for use in establishing an appropriate discharge plan.

"(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

"(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.".

(3) The second sentence of section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended—

(A) by inserting "or, (3) requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)," after "the same purpose" the second place it appears, and

(B) by striking "or 1861(e)(8)" and inserting in lieu thereof "1861(e)(8), or 1861(ee)".

(4) The requirements of section 1861(ee) of the Social Security Act shall become effective one year after the date of the enactment of this Act.

(c) ESTABLISHMENT OF DEMONSTRATION PROJECT.—

(1)(A) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall develop and carry out a demonstration project to determine whether prior and concurrent authorization for skilled nursing facility services and home health services, when used in place of the current medicare waiver of liability for skilled nursing facilities and home health agencies, will protect beneficiaries against liabilities incurred as a result of claim denials.

(B) The Secretary shall monitor the acceptance of individuals entitled to benefits under title XVIII of the Social Security Act by providers to ensure that the placement of such individuals is not delayed until the results of prior and concurrent review are known.

(2) The demonstration project shall be initiated not later than January 1, 1987, and shall continue for not more than two years.

(3) The Secretary may require providers participating in the demonstration project to submit such information as the Secretary determines necessary to evaluate the project.

(4) Not later than April 2, 1988, the Secretary shall report on the results of the demonstration project to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART 2—PROVISIONS RELATING TO PARTS A AND B OF MEDICARE

SEC. 611. MEDICARE AS SECONDARY PAYER; COVERAGE REQUIREMENTS FOR CERTAIN OTHER PAYERS.

(a) REPEAL.—Section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is repealed.

(b) COVERAGE REQUIREMENTS; MEDICARE AS SECOND PAYER.—Title XVIII of such Act is amended by adding at the end the following:

"MEDICARE AS SECONDARY PAYER; COVERAGE REQUIREMENTS FOR CERTAIN OTHER PAYERS

"SEC. 1890. (a)(1) A workers' compensation law or plan of the United States or of a State, an automobile or liability insurance policy or plan (including a self-insured plan), and no fault insurance may not take into account that an individual is eligible for or receives benefits under this title.

"(2)(A) A group health plan may not take into account that an individual who is entitled to benefits under this title solely by reason of section 226A is eligible for or receives benefits under this title during the 12-month period that begins with the earlier of (i) the month in which a regular course of renal dialysis is initiated, or (ii) in the case of an individual who receives a kidney transplant, the first month in which he would be eligible for benefits under this title (if he had filed an application for such benefits) under the provisions of section 226A(b)(1)(B).

"(B) A group health plan may not differentiate in the benefits it provides, in the premiums it charges, or in any other manner between individuals who have end stage renal disease and other individuals, except that the plan may take into account entitlement to benefits under this title to the extent permitted under subparagraph (A).

"(3)(A) A large group health plan may not take into account that an active individual (other than an individual described in paragraph (2)(A)) is eligible for or receives benefits under this title.

"(B) A large group health plan may not differentiate on the basis of age in the benefits it provides, in the premiums it charges, or in any other manner between active individuals who have attained age 65 and other active individuals.

"(4) The preceding paragraphs create a private cause of action for which damages shall be doubled.

"(5) For purposes of this subsection—

"(A) the term 'group health plan' means a plan contributed to by an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families,

"(B) the term 'large group health plan' means a group health plan that covers employees of at least one employer that normally employed at least 20 employees on a typical business day during the previous calendar year, and

"(C) the term 'active individual' means an employee (as defined in regulations), a former employee under age 65, the employer, an individual associated with the employer in a business relationship, an individual under age 65 formerly associated with the employer in a business relationship, or a member of the family of any of those persons.

"(b)(1) Payment may not be made under this title with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under subsection (a). Any payment under this title with respect to the item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this title. In order to recover payment made under this title for the item or service, the United States may bring an action against any entity which is required under subsection (a) to pay with respect to the item or service (and may collect double damages against that entity), or against any other entity that has received payment from that entity with respect to the item or service, and may join or intervene in any action related to the events that gave rise to the need for the item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right under subsection (a) of an individual or any other entity to payment with respect to the item or service. The Secretary may waive (in whole or in part) the provisions of this paragraph in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this title.

"(2) If payment required under subsection (a) is less than the amount of the charge for the item or service and is not payment in full, payment may be made under this title (without regard to deductibles and coinsurance under this title) for the remainder of the charge, but—

"(A) payment under this title may not exceed an amount that would be payable under this title for the item or service in the absence of the payment required under subsection (a), and

"(B) payment under this title, when combined with the amount payable under subsection (a), may not exceed—

"(i) in the case of an item or service for which payment is determined under this title on the basis of reasonable cost (or other cost-related basis) or under section 1886, the amount that would be payable under this title on that basis, and

"(ii) in the case of an item or service for which payment is determined under this title on another basis, the greater of the amount that would be payable under subsection (a) (without regard to deductibles and coinsurance) and the reasonable charge or other amount that would be payable under this title (without regard to deductibles and coinsurance under this title).".

(c) SPECIAL ENROLLMENT PERIOD.—

(1) Section 1837(i)(1) of such Act (42 U.S.C. 1395p(i)(1)) is amended—

(A) by striking subparagraph (A),

(B) in subparagraph (B), by striking "a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or the individual's spouse's) current employment" and inserting in lieu thereof "a group health plan as an active individual (as those terms are defined in section 1890(a)(5))", and

(C) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(2) Section 1837(i)(2) of such Act (42 U.S.C. 1395p(i)(2)) is amended—

(A) by striking subparagraph (A),

(B) in subparagraph (B)(ii), by striking "(1)(B)" and inserting in lieu thereof "(1)(A)",

(C) in subparagraph (C), by striking "a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individ-

ual's (or the individual's spouse's) current employment" and inserting in lieu thereof "a group health plan as an active individual (as those terms are defined in section 1890(a)(5))", and

(D) by redesignating subparagraphs (B) through (D) as subparagraphs (A) through (C), respectively.

(3) Section 1837(i)(3) of such Act (42 U.S.C. 1395p(i)(3)) is amended by striking "a group health plan described in section 1862(b)(3)(A)(iv) by reason of current employment" and inserting in lieu thereof "a group health plan as an active individual (as those terms are defined in section 1890(a)(5))".

(4) The second sentence of section 1839(b) of such Act (42 U.S.C. 1395r(b)) is amended by striking "has attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or the individual's spouse's) current employment" and inserting in lieu thereof "can demonstrate that the individual was enrolled in a group health plan as an active individual (as those terms are defined in section 1890(a)(5))".

(d) TAX IMPOSED ON NONCONFORMING PLANS.—

(1) Subtitle D of the Internal Revenue Code of 1954 (relating to miscellaneous excise taxes) is amended by adding at the end the following new chapter:

"CHAPTER 47—CERTAIN GROUP HEALTH PLANS

"Sec. 5000. Certain group health plans.

"SEC. 5000. CERTAIN GROUP HEALTH PLANS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any employer or employee organization that contributes to a nonconforming group health plan a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each group health plan to which the employer or employee organization contributes.

"(b) GROUP HEALTH PLAN.—For purposes of this section, the term 'group health plan' means a plan contributed to by an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

"(c) NONCONFORMING GROUP HEALTH PLAN.—For purposes of this section, the term 'nonconforming group health plan' means a group health plan that at any time during a calendar year does not comply with the requirements of section 1890(a)(2) of the Social Security Act, as in effect on the date of the enactment of this subsection, or if a large group health plan (as defined in section 1890(a)(5)(B) of such Act), with the requirements of section 1890(a)(3) of such Act.

"(d) GOVERNMENT ENTITIES.—For purposes of this section, the term 'employer' does not include a Federal or other governmental entity.".

(2) The table of chapters of subtitle D of such Code is amended by adding at the end thereof the following:

"CHAPTER 47. Certain group health plans.".

(e) MEDICAID PAYMENTS.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end the following:

"(v) The Secretary shall reduce the amount payable under this section to a State for a quarter by 25 percent of the amount of the expenses incurred by the State (or by a State or local governmental entity) during that quarter for each group health plan (as defined in section 1890(a)(5)(A)) to which the State (or a State or local governmental entity) contributes if any such plan at any time during that quarter does not comply with the requirements of section 1890(a)(2), or, if a large group health plan (as defined in section 1890(a)(5)), with the requirements of section 1890(a)(3).".

(f) REPEAL.—

(1) Section 4(g) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g)) (relating to entitlement to coverage under the group health plan) is repealed.

(2) Section 12(a) of such Act (29 U.S.C. 631(a)) is amended by striking "(except the provisions of section 4(g))".

(g) EFFECTIVE DATES.—

(1) The amendments made by subsections (a), (b), and (d) through (f) shall apply to items and services furnished in calendar quarters beginning on or after October 1, 1986.

(2) The amendments made by subsection (c) shall apply to enrollments occurring on or after, and premiums for months beginning on or after, October 1, 1986.

SEC. 612. PAYMENT OF MEDICARE CLAIMS.

(a) PAYMENTS UNDER PART A.—Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended—

(1) by inserting "(1)" after "(c)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Each agreement under this section shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

"(i) which are clean claims, and

"(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph—

"(i) the term 'clean claim' means a claim which meets the requirements of section 1814(a)(1) and any other requirements of this title for payment under this part, and

"(ii) the term 'applicable number of calendar days' means—

"(I) with respect to claims received in the 12-month period beginning October 1, 1986, 27 calendar days,

"(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

"(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

"(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.".

(b) PAYMENTS UNDER PART B.—Section 1842(c) of the Social Security Act (42 U.S.C. 1395u(c)) is amended—

(1) by inserting "(1)" after "(c)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

"(i) which are clean claims, and

"(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph—

"(i) the term 'clean claim' means a claim which meets the requirements of section 1814(a)(1) and any other requirements of this title for payment under this part, and

"(ii) the term 'applicable number of calendar days' means—

"(I) with respect to claims received in the 12-month period beginning October 1, 1986, 27 calendar days,

"(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

"(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

"(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.".

(c) PERIODIC INTERIM PAYMENTS; PAYMENT OF INTEREST.—

(1) Section 1815 of the Social Security Act (42 U.S.C. 1395g) is amended by adding at the end the following new subsection:

"(e)(1) If for three consecutive calendar months, an agency or organization with an agreement with the Secretary under section 1816 meets the requirements of subsection (c)(2) of such section, the Secretary shall discontinue periodic interim payments (under 42 CFR 405.454(j)) with respect to all providers of services (other than providers of the type described in paragraph (3)) paid through the agency or organization until such time as the agency or organization fails to meet such requirements for three consecutive calendar months.

"(2) If for three consecutive calendar months, an agency or organization with an agreement with the Secretary under section 1816 fails to meet the requirements of subsection (c)(2) of such section, the Secretary shall provide for periodic interim payments with respect to all subsection (d) hospitals (as defined in section 1886(d)(1)(B)) that request such payments and that are paid through the agency or organization until such time as the agency or organization meets such requirements for three consecutive calendar months.

"(3) Notwithstanding paragraphs (1) and (2), the Secretary shall not discontinue periodic interim payments (under 42 C.F.R. 405.454(j)) with respect to inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1886(d)(1)(B)), skilled nursing facility services, or home health services if the provider of such services elects to receive, and qualifies for, such payments.".

(2) Section 1842(c) of such Act, as amended by subsection (b), is further amended by adding at the end the following new paragraph:

"(3) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of paragraph (2)(B)) after a clean claim (as defined in clause (i) of such paragraph) is received, interest shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalities for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.".

(3) Section 1816(c) of such Act, as amended by subsection (a), is further amended by adding at the end thereof the following new paragraph:

"(3) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of paragraph (2)(B)) after a clean claim (as defined in clause (i) of such paragraph) is received from a provider of skilled nursing facility services, home health services, or hospice services that is not receiving periodic interim payments with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalities for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.".

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to claims received on or after October 1, 1986.

(2) The amendments made by paragraphs (2) and (3) of subsection (c) shall apply to claims received on or after April 1, 1987.

(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.

SEC. 613. PAYMENTS FOR HOME HEALTH SERVICES.

(a) LIMITATIONS ON PAYMENT FOR HOME HEALTH SERVICES.—Section 1861(u)(1)(L) of the Social Security Act (42 U.S.C. 1395x(u)(1)(L)) is amended—

(1) by inserting "(i)" after "(L)", and

(2) by striking "the 75th percentile" and all that follows through "as the Secretary may determine." and inserting in lieu thereof "for cost reporting periods beginning on or after—

"(I) July 1, 1985, and before July 1, 1986, 120 percent,

"(II) July 1, 1986, and before July 1, 1987, 115 percent, or

"(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

"(ii) Effective for cost reporting periods beginning on or after October 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.".

(b) GAO REPORT.—The Comptroller General shall study and report to Congress, not later than September 1, 1987, on the appropriateness of applying the per visit cost limits for home health services under the medicare program on a discipline-specific basis, rather than on an aggregate basis for all home health services furnished by an agency.

SEC. 614. MODIFICATION OF WAIVER OF LIABILITY AND APPEAL PROVISIONS RELATING TO HOME HEALTH SERVICES.

(a) WAIVER OF LIABILITY.—

(1) Section 1879 of the Social Security Act (42 U.S.C. 1395pp) is amended—

(A) in subsection (a)(1), by inserting "or by reason of a coverage denial described in subsection (f)" after "section 1862(a) (1) or (9)";

(B) in the first sentence of subsection (a), by inserting "and as though the coverage denial described in subsection (f) had not occurred" before the period at the end;

(C) in the third sentence, by inserting "or by reason of a coverage denial described in subsection (f)" after "section 1862(a) (1) or (9)";

(D) in subsection (c), by inserting "or by reason of a coverage denial described in subsection (f)" after "section 1862 (a)(1) or (a)(9)"; and

(E) by adding at the end the following new subsection:

"(f) The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1814(a)(2)(C) or 1835(a)(2)(A) in that the individual—

"(1) is not or was not confined to his home, or

"(2) does not or did not need skilled nursing care on an intermittent basis.".

(2) Not later than July 1, 1987, the Secretary of Health and Human Services shall publish in the Federal Register final regulations specifying the criteria in effect on January 1, 1986, that were used in determining under sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Social Security Act whether an individual—

(A) is or was confined to his home, and

(B) does or did need skilled nursing care on an intermittent basis.

(b) PERMITTING REVIEW OF TECHNICAL DENIALS.—Section 1869 of such Act (42 U.S.C. 1395ff) is amended—

(1) in subsection (a), by inserting ", the amount of benefits with respect to home health services under part B, and any other determination with respect to a claim for benefits under part A" after "part A,", and

(2) in subsection (b)(1)—

(A) by inserting ", or" at the end of subparagraph (C), and

(B) by inserting after subparagraph (C) the following new subparagraph:

"(D) any other denial (other than under part B of title XI) of a claim for benefits under part A or a claim for benefits with respect to home health services under part B,".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to coverage denials occurring on or after July 1, 1987.

SEC. 615. PROVIDER REPRESENTATION OF BENEFICIARIES ON APPEALS.

(a) PERMITTING PROVIDER REPRESENTATION OF BENEFICIARIES.—Section 1869(b)(1) of the Social Security Act (42 U.S.C. 1395ff(b)(1)) is amended by adding at the end the following new sentence: "Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. No person that furnishes services or items to an individual and represents the individual under this subsection may impose any financial liability on such individual in connection with such representation.".

(b) TREATMENT OF COSTS OF UNSUCCESSFUL APPEAL.—Section 1861(v)(1) of such Act (42 U.S.C. 1395x(v)(1)), as amended by section 602 of this Act, is further amended by adding at the end the following new subparagraph:

"(S) In determining such reasonable cost, costs incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination described in section 1869(b) shall not be allowable as reasonable costs.".

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of the enactment of this Act.

SEC. 616. ESTABLISHMENT OF PATIENT OUTCOME ASSESSMENT PROJECT.

(a) IN GENERAL.—Section 1875 of the Social Security Act (42 U.S.C. 1395ll) is amended by adding at the end the following new subsection:

"(c)(1) The Secretary, through the Assistant Secretary for Planning and Evaluation, shall establish a patient outcome assessment project (in this subsection referred to as the 'project') to promote research with respect to patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness. The project shall include—

"(A) reorganization of data relating to claims under parts A and B of this title in a manner that facilitates research with respect to patient outcomes,

"(B) assessments of the appropriateness of admissions and discharges,

"(C) assessments of the extent of professional uncertainty regarding efficacy,

"(D) development of improved methods for measuring quality-of-life patient outcomes,

"(E) model evaluations of patient outcomes, and

"(F) evaluation of the effects on physicians' practice patterns of the dissemination to physicians and peer review organizations with contracts under part B of title XI of the findings of the research conducted under subparagraphs (B), (C), (D), and (E).

"(2) In selecting treatments and procedures to be studied, the Secretary shall give priority to those medical and surgical treatments and procedures—

"(A) for which data indicate a highly (or potentially highly) variable pattern of utilization among beneficiaries under this title in different geographic areas, and

"(B) which are significant (or potentially significant) for purposes of this title in terms of utilization by beneficiaries, length of hospitalization associated with the treatment or procedure, costs to the program, and risk involved to the beneficiary.

"(3) For purposes of carrying out the project, there shall be available from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund—

"(A) $6,000,000 for fiscal year 1987,

"(B) $5,500,000 for fiscal year 1988, and

"(C) $3,500,000 for fiscal year 1989.

One-half of the amount specified in subparagraph (A), (B), or (C) for a fiscal year shall be available from each such Trust Fund.

"(4) Not less than 90 percent of the amount appropriated for any fiscal year to carry out the project shall be used to fund grants to, and cooperative agreements with, non-Federal entities to conduct the activities described in paragraph (1). The remainder may be used by the Secretary to provide for such activities by Federal entities and for administrative costs.

"(5) The project shall be administered by the National Center for Health Services Research and Health Care Technology established under section 305 of the Public Health Service Act (in this subsection referred to as the 'Center'). The Center shall establish application procedures for grants

and cooperative agreements, and shall establish peer review panels to review all such applications and all research findings. The Center shall consult with the council on health care technology (established under a grant under section 309 of the Public Health Service Act) in establishing the scope and priorities for the project and shall report periodically to such council on the status of the activities conducted under the project.

"(6) The Secretary shall make available data derived from the programs under this title and other programs administered by the Secretary for use in the project.

"(7) The Center shall report to the Congress not later than 18 months after the date of the enactment of this Act, and annually thereafter, with respect to the findings under the project. In cooperation with appropriate medical specialty groups, the Center shall disseminate such findings as widely as possible, including disseminating such findings to each peer review organization which has a contract under part B of title XI.".

(b) PERMITTING SERVICES TO BE PROVIDED UNDER RESEARCH PROGRAM.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by striking the semicolon at the end of subparagraph (D) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(E) in the case of research conducted pursuant to section 1875(c), which is not reasonable and necessary to carry out the purposes of that section;".

PART 3—PROVISIONS RELATING TO PART B OF MEDICARE

SEC. 621. PAYMENTS FOR PHYSICIANS' SERVICES.

(a) PROCEDURES FOR ESTABLISHMENT OF SPECIAL LIMITS ON REASONABLE CHARGES.—

(1) Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting "(A)" after "(8)"; and

(C) by adding at the end the following new subparagraph:

"(B)(i) The factors described pursuant to subparagraph (A)(i) with respect to payment for physicians' services shall include, but shall not be limited to, the following:

"(I) prevailing charges for a service in a particular locality are significantly in excess of or below prevailing charges in other comparable localities;

"(II) the programs established under this title and title XIX are the sole or primary sources of payment for a service;

"(III) the marketplace for a service is not truly competitive because of a limited number of physicians who perform that service;

"(IV) there have been increases in charges for a service that cannot be explained by inflation or technology;

"(V) the charges do not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs; or

"(VI) the prevailing charges for a service under this part are substantially higher than the payments made for the service by other purchasers in the same locality.

"(ii) The factors considered under subparagraph (A)(ii) shall take into account regional differences in fees, unless there is substantial economic justification for a uniform fee or a uniform payment limit. Such substantial economic justification must be explained by the Secretary in the notice and final determination required by paragraph (9).".

(2) Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) the following new paragraph:

"(9)(A) In the case of any physicians' service with respect to which the Secretary—

"(i) determines that the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

"(ii) proposes to establish a reasonable charge that is realistic and equitable or a methodology for arriving at such a charge,

the Secretary shall publish notice of such proposal in the Federal Register.

"(B) A notice required by subparagraph (A) shall—

"(i) specify the charge or methodology proposed to be established with respect to a service and shall explain the factors and data that the Secretary took into account in determining the charge or methodology so specified, and

"(ii) evaluate the impact of the charge or methodology proposed to be established with respect to the service on accessibility of the service to individuals entitled to benefits under this part and on the amounts payable by such individuals with respect to such service,

"(C) After publication of the notice required by subparagraph (A), the Secretary shall allow not less than 60 days for public comment on the proposal.

"(D) In addition to carrying out its functions under section 1845, the Physician Payment Review Commission (hereafter in this paragraph referred to as the 'Commission') shall comment on any such proposal within the period of comment allowed by the Secretary pursuant to subparagraph (C).

"(E)(i) Taking into consideration the comments made by the Commission and the public, the Secretary shall publish in the Federal Register a final determination with respect to the reasonable charge or methodology to be established with respect to the service.

"(ii) A final determination published pursuant to clause (i) shall explain the factors and data that the Secretary took into consideration in making the final determination, and shall include and respond to the comments made by the Commission pursuant to subparagraph (D).".

(3) Not later than October 1, 1987, the Secretary of Health and Human Services (in this paragraph referred to as the "Secretary") shall review the inherent reasonableness of the reasonable charges for each of the ten most costly procedures with respect to which payment is made under part B of title XVIII of the Social Security Act (determined on the basis of the aggregate annual payments under such part with respect to each such procedure). The Secretary may review procedures in addition to the procedures with respect to which review is required under this paragraph.

(4) The amendments made by paragraphs (1) and (2) shall apply to regulations promulgated as final regulations after July 1, 1986.

(b) DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM.—

(1) Not later than July 1, 1987, the Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary") shall consolidate the payment methodology under the HCFA Common Procedure Coding System to ensure that such methodology minimizes the possibility of overstating the intensity or volume of services provided.

(2) Not later than July 1, 1987, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act, and each fiscal intermediary which processes claims under part B of title XVIII of such Act, shall require hospital providers of outpatient hospital services to report services and claims using the HCFA Common Procedure Coding System for purposes of such part.

(3) Not later than January 1, 1988, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act, and each fiscal intermediary which processes claims under part B of title XVIII of such Act, shall report services and claims using the payment methodology based on the HCFA Common Procedure Coding System (as revised by the Secretary in accordance with paragraph (1)) for purposes of such part.

(c) RECOMMENDATIONS.—

(1) Section 1845(e) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4)(A) In making recommendations with respect to the application of the relative value scale for purposes of establishing a fee schedule, the Secretary shall—

"(i) develop and assess an appropriate index to be used for making adjustments to reflect justifiable differences in the costs of practice based upon geographic location without exacerbating the geographic maldistribution of physicians, and

"(ii) assess the advisability and feasibility of developing an appropriate adjustment to assist in attracting and retaining physicians in medically underserved areas.

"(B) In carrying out the requirements of subparagraph (A), the Secretary shall take into consideration the recommendations made by the Physician Payment Review Commission.

"(C)(i) The Secretary shall develop an interim index under subparagraph (A)(i) prior to July 1, 1987, based upon the most accurate and recent data that are available with respect to the costs of practice.

"(ii) The Secretary shall collect data with respect to the costs of practice (including, but not limited to, data on nonphysician personnel costs, malpractice insurance costs, and commercial rents) for the purpose of refining the index under subparagraph (A)(i) prior to December 31, 1989, and periodically updating the index thereafter.

"(D) In conjunction with developing an index under subparagraph (A), the Secretary shall conduct a study of the advisability of redefining the localities designated by carriers for payment purposes.".

(2) Section 1845(b)(3) of such Act is amended by inserting "and respecting the index and the adjustment described in subsection (e)(4)(A)" after "subsection (e)".

(3) Section 1845(e)(3) of such Act is amended—

(A) by striking "July 1, 1987" and inserting in lieu thereof "July 1, 1989", and

(B) by striking "on or after January 1, 1988" and inserting in lieu thereof "after December 31, 1989".

SEC. 622. MEDICARE ECONOMIC INDEX FOR PHYSICIANS' SERVICES.

(a) IMPLEMENTATION OF CERTAIN ADJUSTMENTS.—The adjustment to the medicare economic index for physicians' services pro-

posed by the Secretary of Health and Human Services (in this section referred to as the "Secretary") to take into account the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index for periods prior to January 1, 1985, shall be made in two stages, with one-half of such adjustment to be made to the index to become effective January 1, 1987, and one-half of such adjustment to be made to the index to become effective January 1, 1988.

(b) NOTIFICATION OF CHANGES.—The Secretary shall publish notice of any proposed change in the methodology, basis, or elements of the medicare economic index for physicians' services in the Federal Register and shall allow not less than 60 days for public comment on the proposal. Taking into consideration the comments made by the public, the Secretary shall publish in the Federal Register a final determination with respect to such proposal.

(c) DEFINITION.—For purposes of this section, the term "medicare economic index for physicians' services" means the index used by the Secretary for purposes of the fourth sentence of section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)).

SEC. 623. END STAGE RENAL DISEASE PAYMENTS.

(a) MONTHLY CAPITATION PAYMENTS FOR PHYSICIANS' OUTPATIENT DIALYSIS SERVICES.—Not later than August 1, 1986, the Secretary of Health and Human Services shall implement the changes in the monthly capitation payments for physicians' outpatient maintenance dialysis services (and the methodology for computing such payments) set forth in the notice of July 2, 1986 (51 Fed. Reg. 24226-24231).

(b) PROSPECTIVE PAYMENTS FOR ESRD FACILITIES AND PROVIDERS.—

(1) The Secretary may not, during the period beginning with the publication of the proposed notice of May 13, 1986 (51 Fed. Reg. 17537-17549), and ending with (and including) September 30, 1986, reduce the prospective payment rates for outpatient dialysis services established under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) below the rates that were in effect on the first day of such period.

(2)(A) Effective with respect to dialysis services provided on or after October 1, 1986, and before October 1, 1988, the Secretary shall reduce by $1.00 each of the prospective payment rates established under section 1881(b)(7) of such Act that were in effect during the period referred to in paragraph (1).

(B) The Secretary may not reduce further the payment rates under section 1881(b)(7) of such Act with respect to services for which the payment rates under such section are reduced in accordance with subparagraph (A).

(3) The Comptroller General shall—

(A) conduct a study of the appropriateness of—

(i) the prospective payment rates in effect during the period specified in paragraph (2), and

(ii) the rates proposed in the notice referred to in paragraph (1) (or any subsequent revision thereof); and

(B) submit a report to the Congress on the results of the study not later than September 30, 1987.

SEC. 624. PAYMENTS FOR AMBULATORY SURGERY.

(a) AMOUNTS PAYABLE; ANNUAL UPDATING.—

(1)(A) Section 1833(a)(4) of the Social Security Act (42 U.S.C. 1395l(a)(4)) is amended to read as follows:

"(4) in the case of facility services described in section 1832(a)(2)(F), and outpatient hospital services furnished in connection with surgical procedures specified by the Secretary pursuant to section 1833(i)(1)(A), the applicable amount as determined under paragraph (2) or (3) of subsection (i).".

(B) Section 1833(i) of such Act (42 U.S.C. 1395l(i)) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and inserting after paragraph (2) the following new paragraph:

"(3)(A) The amount of the payment to be made under this part for outpatient hospital services furnished in connection with a surgical procedure specified under paragraph (1)(A) shall be equal to the lesser of—

"(i) the amount determined with respect to such services under subsection (a)(2)(B); or

"(ii) 80 percent of the standard overhead amount payable with respect to the same surgical procedure when provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A).

"(B)(i) In the case of outpatient hospital services for which the amount of the payment to be made under this part is the amount determined under clause (ii) of subparagraph (A), the payments specified in clauses (ii) and (iii) of this subparagraph shall be in addition to such amount.

"(ii) With respect to costs incurred in cost reporting periods beginning before October 1, 1987, payment shall be made with respect to the costs of anesthesia services provided by a certified registered nurse anesthetist in the same manner as such payments are made with respect to outpatient hospital services to which this subsection does not apply.

"(iii) Payment with respect to the direct costs of graduate medical education shall be made in the manner specified in section 1886(h).".

(2)(A) Subparagraphs (A) and (B) of section 1833(i)(2) of such Act are each amended by striking "shall be reviewed periodically" and inserting in lieu thereof "shall be reviewed and updated not later than July 1, 1987, and annually thereafter".

(B) Section 1833(i)(1) of such Act is amended by adding at the end (after and below subparagraph (B)) the following:

"The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than annually.".

(3)(A) Section 1833(a)(1)(F) of such Act is amended by striking "subsection (i)(3)" and inserting in lieu thereof "subsection (i)(4)".

(B) Section 1833(b)(3) of such Act is amended by striking "or (i)(4)" and inserting in lieu thereof "or (i)(5)".

(b) FACILITY SERVICES TO INCLUDE RELATED SERVICES.—

(1) Section 1833(i) of the Social Security Act (42 U.S.C. 1395l(i)), as amended by subsection (a), is further amended by adding at the end the following new paragraph:

"(6) For purposes of this section, 'facility services' and 'outpatient hospital services' shall include all medical and other health services (as defined in section 1861(s)) which are furnished in connection with a surgical procedure specified under paragraph (1), other than the physicians' services.".

(2)(A) Section 1832(a)(2)(F) of such Act (42 U.S.C. 1395k(a)(2)(F)) is amended by striking "services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(s) and" and inserting in lieu thereof "physicians' services and facility services, including all preoperative and postoperative services,".

(B) Section 1833(i)(4) (as redesignated by subsection (a)(1)(B)) is amended by striking all beginning with "services (including" through "1861(s) and" and inserting in lieu thereof "physicians' services".

(C) Section 1833(i)(5)(A) of such Act (as so redesignated) is amended by striking "and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services)" and inserting in lieu thereof "and the physicians' services".

(c) PRO REVIEW.—

(1) Section 1154(a)(1) of the Social Security Act (42 U.S.C. 1320c-3(a)(1)) is amended by inserting "and subject to the requirements of subsection (d)" after "subject to the terms of the contract".

(2) Section 1154 of such Act is amended by adding at the end the following new subsection:

"(d) Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) will include review of all ambulatory surgical procedures specified pursuant to section 1833(i)(1)(A) which are performed in the area, or, at the discretion of the Secretary (and except as provided in section 1164(b)(4)) a sample of each such procedure.".

(d) COINSURANCE AND DEDUCTIBLE TO APPLY WITHOUT REGARD TO SETTING OF AMBULATORY SURGERY.—

(1) Clauses (i) and (ii) of section 1832(a)(2)(F) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)) are each amended by inserting "standard overhead" before "amount".

(2)(A) Section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended by striking paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4).

(B) Subparagraphs (A) and (B) of section 1833(i)(2) of such Act are each amended by inserting "80 percent of" before "a standard overhead amount".

(e) DEVELOPMENT OF PROSPECTIVE PAYMENT METHODOLOGY FOR OUTPATIENT HOSPITAL SERVICES.—Section 1135 of the Social Security Act (42 U.S.C. 1320b-5) is amended by adding at the end the following new subsection:

"(d) The Secretary shall—

"(1) develop—

"(A) groupings of preoperative and postoperative services that are related to each surgical procedure appropriately performed in a hospital outpatient department, and

"(B) a model system for the payment of hospitals for outpatient hospital services on a prospective basis that may be applied for reimbursement of hospitals under part B of title XVIII; and

"(2) report to the Congress on the groupings and system developed pursuant to paragraph (1) not later than January 1, 1991.".

(f) STUDY AND REPORT.—The Secretary of Health and Human Services shall conduct a study on educational activities in hospital outpatient settings and report the results of the study to the Congress not later than two years after the date of the enactment of this Act, together with recommendations with respect to proper payment for graduate medical education (GME) related to outpatient hospital services.

(g) EFFECTIVE DATES.—

(1) The amendments made by subsection (a)(1) shall apply to services furnished in cost reporting periods beginning on or after July 1, 1987.

(2) The amendments made by subsections (b) and (d) shall apply to services furnished after June 30, 1987.

(3) The amendments made by subsection (c) shall apply to contracts entered into or renewed after January 1, 1987.

SEC. 625. OCCUPATIONAL THERAPY SERVICES.

(a) COVERAGE.—Subparagraph (C) of section 1832(a)(2) of the Social Security Act (42 U.S.C. 1395k(a)(2)) is amended to read as follows:

"(C) outpatient physical therapy services (other than services to which the second sentence of section 1861(p) applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1861(g));".

(b) LIMITATION ON PAYMENTS.—Section 1833(g) of such Act (42 U.S.C. 1395l(g)) is amended—

(1) by striking "next to last sentence" and inserting in lieu thereof "second sentence", and

(2) by adding at the end the following new sentence: "In the case of outpatient occupational therapy services which are described in the second sentence of section 1861(p) through the operation of section 1861(g), with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b).".

(c) CERTIFICATION STANDARD.—

(1) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended—

(A) by inserting "or outpatient occupational therapy services" after "outpatient physical therapy services",

(B) in clause (i), by inserting "or occupational therapy services, respectively," after "physical therapy services", and

(C) in clause (ii), by inserting "or qualified occupational therapist, respectively," after "qualified physical therapist".

(2) The second sentence of section 1835(a) of such Act and section 1866(e) of such Act (42 U.S.C. 1395n(a), 1395cc(e)) are each amended—

(A) by inserting "(or meets the requirements of such section through the operation of section 1861(g))" after "1861(p)(4)(A)" and after "1861(p)(4)(B)", and

(B) by inserting "or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services" after "(as therein defined)".

(d) DEFINITION AND INCLUSION WITH OTHER PART B SERVICES.—

(1) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by inserting after subsection (f) the following new subsection:

"OUTPATIENT OCCUPATIONAL THERAPY SERVICES

"(g) The term 'outpatient occupational therapy services' has the meaning given the term 'outpatient physical therapy services' in subsection (p), except that 'occupational' shall be substituted for 'physical' each place it appears therein.".

(2) Section 1861(s)(2)(D) of such Act (42 U.S.C. 1395x(s)(2)(D)) is amended by inserting "and outpatient occupational therapy services" after "outpatient physical therapy services".

(3) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by inserting "(including through the operation of section 1861(g))" after "section 1861(p)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred for outpatient occupational therapy services furnished on or after October 1, 1986.

PART 4—PEER REVIEW ORGANIZATIONS

SEC. 631. PRO REVIEW OF HOSPITAL DENIAL NOTICES.

(a) IN GENERAL.—Section 1154 of the Social Security Act (42 U.S.C. 1320c-3) is amended by adding at the end the following new subsection:

"(d)(1) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

"(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1879) of the determination that inpatient hospital services are no longer medically necessary.

"(2) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

"(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) the validity of the hospital's determination.

"(3) If a patient (or a patient's representative)—

"(A) has received a notice under paragraph (1), and

"(B) while the patient is still an inpatient in the hospital, requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative of the results of the review not later than 2 calendar days after the date the organization receives the request. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or the patient will be liable for payment for such continued care.

"(4) If—

"(A) a request is made under paragraph (3) not later than 1 day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

"(B) the conditions described in section 1879(a)(2) with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished on a day before the fourth day that begins after the date of receipt of the notice under paragraph (1).

"(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to denial notices furnished by hospitals to individuals on and after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

SEC. 632. PRO REVIEW OF INPATIENT HOSPITAL SERVICES AND READMISSIONS.

(a) TIMELY PROVISION OF HOSPITAL INFORMATION.—Section 1153 of the Social Security Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

"(g) The Secretary shall provide that fiscal intermediaries furnish to peer review organizations, each month on a timely basis, data necessary to initiate the review process under section 1154(a) on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.".

(b) REQUIRING REVIEW OF EARLY READMISSION CASES.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)) is amended by adding at the end the following new paragraph:

"(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an 'early readmission case' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge.".

(c) EFFECTIVE DATES.—

(1) The Secretary shall implement the amendment made by subsection (a) not later than 6 months after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to contracts entered into or renewed on or after January 1, 1987.

SEC. 633. PRO REVIEW OF QUALITY OF CARE.

(a) ALLOCATION OF FUNDS FOR QUALITY CARE REVIEW.—

(1) Section 1154(a)(4) of the Social Security Act (42 U.S.C. 1320c-3(a)(4)) is amended by adding at the end the following: "Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations) for which potential problems of quality have been identified.".

(2) Section 1154 of such Act (42 U.S.C. 1320c-3), as amended by section 631 of this Act is amended by adding at the end the following new subsection:

"(e) The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4)) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.".

(3)(A) The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after January 1, 1987.

(B) The amendment made by the paragraph (2) shall become effective on the date of the enactment of this Act.

(b) APPROPRIATE INVESTIGATION OF COMPLAINTS REQUIRED.—

(1) Section 1154(a) of the Social Security Act (42 U.S.C. 1320c-3(a)), as amended by section 632 of this Act, is further amended by adding at the end the following new paragraph:

"(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by a individual entitled to benefits for such services under such title (or a person acting on the individual's behalf). The fact that such

a complaint is made and the name of the complainant shall be treated as confidential. The organization shall inform the individual (or representative) that the organization has received the complaint and will take appropriate action.".

(2) The amendment made by paragraph (1) shall apply to complaints received on or after the first day of the first month that begins at least 9 months after the date of the enactment of this Act.

(c) SHARING OF INFORMATION BY PROs.—

(1) Section 1160(b)(1) of the Social Security Act (42 U.S.C. 1320c-9(b)(1)) is amended—

(A) in subparagraph (C), by striking "is required" and inserting "are required",

(B) by striking "and" at the end of subparagraph (B), and

(C) by adding at the end the following new subparagraph:

"(D) to assist—

"(i) national accreditation bodies which are acting, pursuant to section 1865, in accrediting providers for purposes of meeting the conditions described in provisions in title XVIII, and

"(ii) State licensing authorities having responsibility for assuring the qualifications of providers or practitioners,

which data and information shall be provided by the peer review organization to any such body upon request relating to a specific provider or practitioner, but only to the extent that such data and information are related to the quality of care furnished by a provider or practitioner and only if the peer review organization determines that the data and information may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets professionally recognized standards of health care, and that the data and information are needed by the body in carrying out official duties;".

(2) The amendments made by paragraph (1) shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act.

Subtitle B—Provisions Relating to the Medicaid Program

SEC. 641. OPTIONAL COVERAGE OF POOR PREGNANT WOMEN, INFANTS, AND CHILDREN.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUP.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking ", or" at the end of subclause (VII) and inserting a semicolon,

(2) by inserting "or" at the end of subclause (VIII), and

(3) by adding at the end the following new subclause:

"(IX) subject to subsection (h)(4), who are described in subsection (h)(1);".

(b) DESCRIPTION OF GROUP.—Section 1902 of such Act is amended by inserting after subsection (g) the following new subsection:

"(h)(1) Individuals described in this paragraph are—

"(A) women during pregnancy (and during the 60-day period following pregnancy),

"(B) infants under one year of age,

"(C) children who have attained one year of age but have not attained two years of age,

"(D) children who have attained two years of age but have not attained three years of age,

"(E) children who have attained three years of age but have not attained four years of age, and

"(F) children who have attained four years of age but have not yet attained five years of age,

who are not described in subsection (a)(10)(A)(i), whose family income does not exceed the maximum income level established by the State under paragraph (2) for a family size equal to the size of the family.

"(2) For purposes of paragraph (1), the State shall establish a maximum income level which is not more than 100 percent of the nonfarm income official poverty line defined by the Office of Management and Budget (and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(3) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(ii)(IX)—

"(A) application of a resource standard shall be at the option of the State,

"(B) the resource standard and methodology (if any) to be applied shall be—

"(i) the resource standard and methodology that is applied under the State plan under part A of title IV,

"(ii) the resource standard and methodology that is applied under title XVI or under subsection (f), or

"(iii) the resource standard and methodology that is applied under subsection (a)(10)(C)(i)(III);

"(C) the income standard to be applied is the income standard established under paragraph (2), and

"(D) family income shall be determined in accordance with the methodology employed under the State plan under part A or E of title IV, and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

"(4)(A) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) unless the State has in effect, under its plan established under part A of title IV, payment levels that are not less than the payment levels in effect under its plan on the date of the enactment of this subsection.

"(B)(i) A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

"(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover individuals described in subparagraph (C), (D), (E), or (F) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.".

(c) LIMITED BENEFITS FOR NEWLY ELIGIBLE PREGNANT WOMEN.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in the matter after subparagraph (D)—

(1) by striking "and" before "(VI)" and inserting a comma, and

(2) by inserting before the semicolon at the end the following: ", and (VII) the medical assistance made available to an individual described in subsection (h)(1)(A) who is eligible for medical assistance only because of subparagraph (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions which may complicate pregnancy".

(d) CONTINUATION OF MEDICAL ASSISTANCE FOR CERTAIN PREGNANT WOMEN DURING PREGNANCY AND FOR CERTAIN INFANTS AND CHILDREN RECEIVING INPATIENT SERVICES.—Section 1902(e) of such Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraphs:

"(6) At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), the plan may provide that any woman described in such subsection and subsection (h)(1)(A) shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last day of her pregnancy.

"(7) If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), in the case of an infant or child described in subparagraph (B), (C), (D), (E), or (F) of subsection (h)(1)—

"(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

"(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection,

the infant or child shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) and subsection (h)(1) until the end of the stay for which the inpatient services are furnished.".

(e) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(17) of such Act (42 U.S.C. 1396(a)(17)) is amended by inserting "except as provided in subsection (h)(3)," after "(17)".

(2) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting "for any individual described in section 1902(a)(10)(A)(ii)(IX) or" after "as medical assistance".

(f) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2)(A) Subparagraph (C) of section 1902(h)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1987.

(B) Subparagraph (D) of section 1902(h)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1988.

(C) Subparagraph (E) of section 1902(h)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1989.

(D) Subparagraph (F) of section 1902(h)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1990.

SEC. 642. OPTIONAL COVERAGE OF ELDERLY AND DISABLED POOR AND OF POOR MEDICARE BENEFICIARIES.

(a) OPTIONAL COVERAGE OF ELDERLY AND DISABLED POOR FOR ALL MEDICAID BENEFITS.—

(1)(A) Subsection (a)(10)(A)(ii) of section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 641 of this Act, is further amended—

(i) by striking "or" at the end of subclause (VIII),

(ii) by striking the semicolon at the end of subclause (IX) and inserting ", or", and

(iii) by adding at the end the following new subclause:

"(X) subject to subsection (l)(3), who are described in subsection (l)(1);".

(B) Section 1902 of such Act is further amended by adding at the end the following new subsection:

"(l)(1) Individuals described in this paragraph are individuals—

"(A) who are 65 years of age or older or are disabled individuals (as determined under section 1614(a)(3)),

"(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

"(2)(A) The income level established under paragraph (1)(B) may not exceed 100 percent of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).".

(2) Section 1902(l) of such Act, as added by subsection (a), is further amended by adding at the end the following new paragraphs:

"(3) A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X) unless the plan provides coverage of some or all of the individuals described in subsection (h)(1).

"(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X)—

"(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.".

(3) The amendments made by this subsection shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(b) OPTIONAL COVERAGE OF QUALIFIED MEDICARE BENEFICIARIES FOR MEDICARE COST-SHARING.—

(1) Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by inserting "and" at the end of subparagraph (D), and

(C) by inserting after subparagraph (D) the following new subparagraph:

"(E) at the option of a State but subject to subsection (l)(3), for making medical assistance available for medicare cost-sharing (as defined in section 1905(o)(3)) for qualified medicare beneficiaries described in section 1905(o)(1);".

(2) Section 1905 of such Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

"(o)(1) The term 'qualified medicare beneficiary' means an individual—

"(A) who is entitled to hospital insurance benefits under part A of title XVIII (including an individual entitled to such benefits pursuant to an enrollment under section 1818),

"(B) who, but for section 1902(a)(10)(E) and the election of the State, is not eligible for medical assistance under the plan,

"(C) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(D) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

"(2)(A) The income level established under paragraph (1)(C) may not exceed 100 percent of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).".

(3)(A) Section 1902(l) of such Act, as added by subsection (a), is amended—

(i) in paragraph (3), by inserting "or coverage under subsection (a)(10)(E)" after "subsection (a)(10)(A)(ii)(X)", and

(ii) by adding at the end the following new paragraph:

"(5) Notwithstanding subsection (a)(17), for qualified medicare beneficiaries described in section 1905(o)(1)—

"(A) the income standard to be applied is the income standard described in section 1905(o)(1)(C), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.".

(B) Section 1902(e) of such Act, as amended by section 641 of this Act, is further amended by adding at the end the following new paragraph:

"(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1905(o)(1)), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1903(a), such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.".

(4) Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1395a(a)(10)), as amended by paragraph (1) of this subsection and by section 641 of this Act, is further amended, in the matter after subparagraph (E)—

(A) by striking "and" before "(VII)" and inserting a comma, and

(B) by inserting before the semicolon at the end the following: ", and (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1905(o)(1) shall be limited to medical assistance for medicare cost-sharing (described in section 1905(o)(3)), subject to the provisions of subsection (m) and section 1916(b)".

(5) Section 1905(o) of such Act, as added by paragraph (2) of this subsection, is further amended by adding at the end the following:

"(3) The term 'medicare cost-sharing' means the following costs incurred with respect to a qualified medicare beneficiary:

"(A) Premiums under part B and (if applicable) under section 1818.

"(B) Deductibles and coinsurance described in section 1813.

"(C) The annual deductible described in section 1833(b).

"(D) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to '80 percent' therein were deemed a reference to '100 percent'.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1876.".

(6) Section 1902 of such Act, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(m) In the case of medical assistance furnished under this title for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under title XVIII with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.".

(7)(A) Section 1902(a)(10)(C) of such Act (42 U.S.C. 1396a(a)(10)(C)) is amended, in the matter before clause (i), by inserting "or (E)" after "subparagraph (A)".

(B) Section 1903(a)(1) of such Act (42 U.S.C. 1396b(a)(1)) is amended—

(i) by inserting "deductible amounts under part A and" after "(including expenditures for",

(ii) by inserting "(and, in the case of qualified medicare beneficiaries described in section 1905(o)(1), part A)" after "premiums under part B", and

(iii) by striking "or (B)" and inserting "(B) are qualified medicare beneficiaries described in section 1905(o)(1), or (C)".

(C) Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before subdivision (i), by inserting "or, in the case of a qualified medicare beneficiary described in section 1905(o)(1), if provided after the month in which the individual becomes such a beneficiary" after "makes application for assistance".

(D)(i) Section 1902(a)(15) of such Act (42 U.S.C. 1396a(a)(15)) is amended by inserting "are not qualified medicare beneficiaries (as defined in section 1905(o)(1)) but" after "older who".

(ii) Subsections (a) and (b) of section 1916 of such Act (42 U.S.C. 1396o) are each amended by striking "section 1902(a)(10)(A)" and inserting "subparagraph (A) or (E) of section 1902(a)(10)".

(8) The amendments made by this subsection shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 643. RESPIRATORY CARE SERVICES FOR VENTILATOR-DEPENDENT INDIVIDUALS.

(a) REQUIRED SERVICES.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396b(e)), as amended by sections 641 and 642 of this Act, is further amended by adding at the end the following new paragraph:

"(9)(A) A State plan approved under this title must include as medical assistance respiratory care services for any individual who—

"(i) is medically dependent on a ventilator for life support at least six hours per day;

"(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

"(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and would be eligible to have payment made for such inpatient care under the State plan;

"(iv) has adequate social support services to be cared for at home; and

"(v) wishes to be cared for at home.

"(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, skilled nursing facilities, or intermediate care facilities.

"(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.".

(b) WAIVER OF COMPARABILITY.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)), as amended by sections 641 and 642 of this Act, is further amended, in the matter following subparagraph (E)—

(1) by striking "and" before "(VIII)" and inserting in lieu thereof a comma; and

(2) by inserting before the semicolon at the end thereof the following: ", and (IX) the making available of respiratory care services in accordance with subsection (e)(9) shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A), provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after October 1, 1986.

SEC. 644. HOLD-HARMLESS PROVISION FOR CHANGE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE FOR PURPOSES OF MEDICAID PROGRAM.

(a) IN GENERAL.—Section 9528 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

"(c) HOLD-HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payment to a State under section 1903 of the Social Security Act, the amendments made by subsection (a) shall not apply to a State if the effect of applying the amendments would be to reduce the amount of payment made to the State under that section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 at the time of its enactment.

SEC. 645. NEW JERSEY RESPITE CARE PILOT PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of New Jersey for the purpose of conducting a pilot project (in this section referred to as the project) under title XIX of the Social Security Act for providing respite care services for—

(1) elderly and disabled individuals eligible for benefits under such title, and

(2) other elderly and disabled individuals, for whom such services are not otherwise reasonably and actually available or provided, and who would be reasonably anticipated to require institutional care without the availability of such services.

(b) CONDITIONS.—The agreement with the Secretary under this section shall—

(1) provide that the project shall be administered by a State health services agency designated for such purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act);

(2) provide that the agency designated shall, to the maximum extent feasible, arrange for coordinating its activities under the agreement with activities of other State agencies having related responsibilities;

(3) provide that respite care services provided under the project to individuals specified in subsection (a)(2) shall be available without regard to the income of the individual requiring such services, but that a reasonable fee will be charged (on a sliding-scale basis related to income) for services provided to individuals who have income (as determined in accordance with a methodology designated by the State) in excess of the income standard established by the State pursuant to section 1902(a)(10)(C)(i)(III) of the Social Security Act;

(4) provide that, in making respite care services available to individuals specified in subsection (a)(2), special priority will be given to individuals who would be eligible for benefits under title XIX of the Social Security Act upon institutionalization;

(5) provide for a system of continuing independent professional review by an appropriate panel, which is not affiliated with the entity providing the services involved, to assure that respite care services provided only to individuals reasonably determined to be in need of such services;

(6) provide for evaluation of the project and review of all agencies providing services under the project;

(7) submit periodic reports to the Secretary as he may require; and

(8) meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(c) DEFINITION.—For purposes of this section, the term "respite care services" shall include—

(1) short-term and intermittent—

(A) companion or sitter services (paid as well as volunteer),

(B) homemaker and personal-care services,

(C) adult day care,

(D) inpatient care, and

(E) emergency respite; and

(2) peer support and training for family caregivers.

(d) PAYMENTS.—The agreement under this section shall be entered into between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as an additional payment under section 1903 of the Social Security Act for each quarter, an amount equal to 50 percent of the reasonable costs incurred (less the Federal share of any related fees collected) by such State during such quarter in carrying out the project under this section. The Federal payment shall not exceed $1,000,000 for fiscal year 1987, and $2,000,000 for each of the fiscal years 1988, 1989, and 1990. No payments shall be made pursuant to this section for any fiscal year beginning after September 30, 1990.

(e) DURATION.—The project under this section shall be of a maximum duration of four years, plus an additional time period of up to six months for final evaluation and reporting.

(f) REPORTS.—The Secretary shall submit annual reports to the Congress evaluating the project carried out under this section, and shall submit a final report to the Congress not more than six months after receiving the final report from the State participating in such project.

(g) WAIVERS.—The Secretary shall and is hereby authorized to, waive such requirements, including formal solicitation and approval requirements, as will further the expeditious and effective implementation of this section.

SEC. 646. OPTIONAL PRESUMPTIVE ELIGIBILITY PERIOD FOR PREGNANT WOMEN.

(a) STATE OPTION.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following:

"(47) at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1920.".

(b) PRESUMPTIVE ELIGIBILITY.—Title XIX of the Social Security Act is amended by redesignating section 1920 as section 1921 and inserting after section 1919 the following new section:

"PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN

"SEC. 1920. (a) A State plan approved under section 1902 may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

"(b) For purposes of this section—

"(1) the term 'presumptive eligibility period' means, with respect to a pregnant woman, the period that—

"(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

"(B) ends with (and includes) the earlier of—

"(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan, or

"(ii) the day that is 45 days after the date on which the provider makes the determination referred to in subparagraph (A); and

"(2) the term 'qualified provider' means any provider that—

"(A) is eligible for payments under a State plan approved under this title,

"(B) provides services of the type described in subparagraph (A) or (B) of section 1905(a)(2) or in section 1905(a)(9),

"(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

"(D)(i) receives funds under—

"(I) section 329 or section 330 of the Public Health Service Act, or

"(II) title V of this Act;

"(ii) participates in a program established under—

"(I) section 17 of the Child Nutrition Act of 1966, or

"(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973; or

"(iii) participates in a State perinatal program.

"(c)(1) The State agency shall provide qualified providers with—

"(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

"(B) information on how to assist such women in completing and filing such forms.

"(2) A qualified provider that determines under subsection (b)(1)(A) that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

"(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

"(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan within 14 calendar days after the date on which the determination is made.

"(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan within 14 calendar days after the date on which the determination is made.

"(d) Notwithstanding any other provision of this title, ambulatory prenatal care that—

"(1) is furnished to a pregnant woman—

"(A) during a presumptive eligibility period,

"(B) by a qualified provider; and

"(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1903.".

(c) CONFORMING CHANGE.—Section 1903(u)(1)(D) of such Act (42 U.S.C. 1396b(u)(1)(D)) is amended by adding at the end the following:

"(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1920(b)(1)).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987.

Subtitle C—Miscellaneous Provisions

SEC. 651. REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURE TO PROHIBIT RETROACTIVE MODIFICATION OF CHILD SUPPORT ARREARAGES.

(a) IN GENERAL.—Section 466(a) of the Social Security Act (42 U.S.C. 666(a)) is amended by inserting between paragraph (8) and the matter following paragraph (8), the following:

"(9) Procedures which insure that each obligation under any child support order, whether such order was issued in such State or in another State, is fully enforceable and entitled to full faith and credit on and after the date such obligation becomes due and is not subject to retroactive modification, except that such procedures may permit modification with respect to any period during which there is pending an active application for modification but only from the date that notice of such application has been given to the obligee and to the court or other entity which issued such order.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective with respect to any State ninety days after the close of the first legislative session of such State which ends at least sixty days after the date of enactment of this Act.

SEC. 652. HOLD-HARMLESS PROVISION FOR CHANGE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE FOR PURPOSES OF AFDC PROGRAM.

(a) IN GENERAL.—Section 9528(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as added by section 644 of this Act, is amended by striking "section 1903" and inserting in lieu thereof "sections 403 and 1903".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 at the time of its enactment.

SEC. 653. REVENUE SHARING PAYMENTS.

Notwithstanding section 6702(b) of title 31, United States Code, the Secretary of the Treasury shall make the installment payment of revenue sharing funds under chapter 67 of such title that is otherwise required to be paid on or before October 5, 1986, by no later than September 30, 1986.

TITLE VI-A—COMMITTEE ON FINANCE: REVENUE PROVISIONS

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SEC. 661. MEDICARE COVERAGE OF, AND APPLICATION OF HOSPITAL INSURANCE TAX TO, ALL STATE AND LOCAL GOVERNMENT EMPLOYEES.

(a) APPLICATION OF HOSPITAL INSURANCE TAX TO ALL STATE AND LOCAL GOVERNMENT EMPLOYEES.—

(1) IN GENERAL.—Paragraph (2) of section 3121(u) of the Internal Revenue Code of 1954 (relating to application of hospital insurance tax to Federal, State, and local employment) is amended by striking subparagraphs (C) and (D).

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 3121(u)(2) of such Code (relating to State and local employment) is amended by striking "subparagraphs (B) and (C)" and inserting in lieu thereof "subparagraph (B)".

(3) TECHNICAL AMENDMENT.—Clause (i) of section 3121(u)(2)(B) of such Code (relating to exception for certain services) is amended—

(A) by striking "or" at the end of subclause (III),

(B) by striking the period at the end of subclause (IV) and inserting in lieu thereof ", or", and

(C) by adding at the end thereof the following:

"(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.".

(b) ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS.—

(1) IN GENERAL.—Section 210(p) of the Social Security Act is amended by striking paragraphs (3) and (4).

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 210(p)(1) of such Act is amended by striking "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph (2)".

(3) TECHNICAL AMENDMENT.—Paragraph (2) of section 210(p) of such Act is amended—

(A) by striking "or" at the end of subparagraph (C),

(B) by striking the period at the end of subparagraph (D) and inserting in lieu thereof ", or", and

(C) by inserting after subparagraph (D) and before the matter following such subparagraph the following new subparagraph:

"(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.".

(c) TERMINATION OF OPTIONAL COVERAGE.—Subsection (v) of section 218 of the Social Security Act is repealed.

(d) EFFECTIVE DATES.—

(1) HOSPITAL INSURANCE TAXES.—Except as provided in paragraph (4), the amendments made by subsection (a) shall apply to service performed after April 30, 1987.

(2) MEDICARE COVERAGE.—

(A) IN GENERAL.—Except as provided in paragraph (4), the amendments made by subsection (b) shall take effect after April 30, 1987.

(B) TREATMENT OF CERTAIN DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to the amendments made by subsection (b) or the provisions of subsection (e), on

the basis of medicare qualified government employment (as defined in section 210(p)(1)(B) of such Act), no individual may be considered to be under a disability for any period beginning before May 1, 1987.

(3) TERMINATION OF OPTIONAL COVERAGE.—The amendment made by subsection (c) shall take effect after April 30, 1987.

(4) ELECTION WORKER EXCEPTION.—The amendments made by subsections (a)(3) and (b)(3) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(e) TRANSITIONAL PROVISIONS.—

(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act, in the case of any individual who—

(A) performs service during May 1987 which constitutes medicare qualified government employment (as defined in section 210(p)(1)(B) of such Act), and

(B) performed service before May 1, 1987, which would constitute such medicare qualified government employment if performed after May 1, 1987,

such individual's State and local government employment performed before May 1, 1987, shall be considered to be "employment" (as defined for purposes of title II of such Act), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act.

(2) APPROPRIATIONS.—There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year, on account of—

(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act solely by reason of paragraph (1) of this subsection,

(B) the additional administrative expenses resulting or expected to result therefrom, and

(C) any loss in interest to such Trust Fund resulting from the payment of those amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.

SEC. 662. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by an officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.".

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.
"Sec. 3127. Short title.".

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", or ", and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act;".

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or".

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), and (t) of section 218 of the Social Security Act are repealed; and subsections (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218", and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

(C) Section 218(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)", and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (1)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

(F) Section 24(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

SEC. 663. CERTAIN EXCISE TAX DEPOSITS ACCELERATED.

(a) TOBACCO.—Subsection (b) of section 5703 of the Internal Revenue Code of 1954 (relating to method of payment of tax) is amended by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) TIME FOR PAYMENT OF TAXES.—

"(A) IN GENERAL.—In the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period, the last day for the payment of such taxes shall be the 14th day after the last day of such semimonthly period.

"(B) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this subparagraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(b) DISTILLED SPIRITS.—Section 5061 of the Internal Revenue Code of 1954 (relating to method of collecting tax) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TIME FOR PAYMENT OF TAXES ON DISTILLED SPIRITS.—

"(1) IN GENERAL.—If—

"(A) any tax is imposed on distilled spirits under this part, and

"(B) such distilled spirits are withdrawn under bond for deferred payment of tax or from bonded premises (including customs custody),

the last day for payment of such tax shall be the 14th day after the last day of the semimonthly period during which such withdrawal occurred.

"(2) EXCEPTION WHERE EARLIER PAYMENT REQUIRED.—Paragraph (1) shall not apply to any tax imposed on distilled spirits if the due date for the payment of such tax is earlier under subsection (b).

"(3) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this paragraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid

after September 30, 1986, for semimonthly periods ending on or after such date.

(2) SPECIAL RULE FOR SEMIMONTHLY PERIOD ENDING SEPTEMBER 15, 1986.—With respect to remittances for taxes imposed on tobacco products and cigarette papers and tubes under section 5701 of the Internal Revenue Code of 1954 for the semimonthly period ending on September 15, 1986, the last day for such remittances shall be October 14, 1986.

SEC. 664. INCREASES IN CERTAIN PENALTIES.

(a) AGGREGATE NEGLIGENCE AND SUBSTANTIAL UNDERSTATEMENT PENALTIES NOT TO BE LESS THAN 25 PERCENT.—

(1) IN GENERAL.—Subchapter A of chapter 68 of subtitle F (relating to additions to tax) is amended by redesignating section 6662 as section 6663 and by inserting after section 6661 the following new section:

"SEC. 6662. AGGREGATE PENALTY ON CERTAIN UNDERPAYMENTS NOT TO BE LESS THAN 25 PERCENT.

"(a) GENERAL RULE.—If there is a tax imposed under section 6653(a) or 6661, or both, on any portion of the underpayment or understatement, then there is hereby imposed a tax equal to the excess (if any) of—

"(1) 25 percent of the amount of such portion, over

"(2) the aggregate amount of taxes imposed under sections 6653(a) and 6661 on such portion.

"(b) DEFINITION.—For purposes of this section, the terms 'underpayment' and 'understatement' have the meanings given such terms by section 6653(c)(1) and 6661(b)(2), respectively."

(b) INCREASE IN TAX ON FAILURE TO MAKE DEPOSIT OF TAXES.—Section 6656(a) (relating to underpayment of deposits) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(c) CONFORMING AMENDMENTS.—The table of sections for subchapter A of chapter 68 of subtitle F is amended by striking out the item relating to section 6662 and inserting in lieu thereof the following new items:

"Sec. 6662. Aggregate penalty on certain underpayments not to be less than 25 percent.

"Sec. 6663. Applicable rules."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after the date of enactment of this Act.

SEC. 665. APPROPRIATIONS FOR IRS ENFORCEMENT.

The conference agreement on the appropriations measure providing funding for the Internal Revenue Service for the fiscal year ending September 30, 1987, will include the following funding levels: for "Salaries and Expenses", $95,147,000; for "Processing Tax Returns", $1,332,902,000; for "Examinations and Appeals", $1,623,162,000; and for "Investigation, Collection, and Taxpayer Service", $1,196,581,000: *Provided,* That the allocation to the Senate Committee on Appropriations pursuant to section 302(a) of the Budget Act, as amended, under Senate Concurrent Resolution 120, the concurrent resolution on the budget for fiscal year 1987, is increased by $300,000,000 in both new budget authority and outlays.

TITLE VII—GOVERNMENTAL AFFAIRS

PART A—POSTAL SERVICE MATTERS

SEC. 701. METHOD OF COMPUTING FORGONE REVENUE RESULTING FROM REDUCED POSTAGE RATES.

(a) IN GENERAL.—Section 3626 of title 39, United States Code, is amended by adding at the end thereof the following new subsection:

"(i)(1) For the purposes of this subsection—

"(A) the term 'regular rate category of mail' means a class of mail or kind of mailer which is not covered by the provisions of law referred to in section 2401(c) of this title; and

"(B) the term 'reduced rate category of mail' means a class of mail or kind of mailer for which rate schedules are established pursuant to subsection (a) of this section.

"(2) The assumption prescribed in paragraph (3) shall be used for the purposes of—

"(A) distinguishing the costs expected to be recovered under this subchapter from rates and fees charged for reduced rate categories of mail from the costs expected to be recovered under this subchapter from rates and fees charged for regular rate categories of mail; and

"(B) determining the amount of any appropriation to be requested for a fiscal year under section 2401(c) of this title with respect to the reduced rate categories of mail.

"(3) For the purposes stated in paragraph (2) of this subsection, it shall be assumed that the total amount of postage and appropriations expected to be received with respect to each reduced rate category of mail bears the same ratio to the costs attributed (pursuant to subsection (a)) to each reduced rate category of mail as the amount of the revenues expected to be received from the use of the most closely corresponding regular rate category of mail (as estimated in determining the rates for such category) bears to the costs attributed (pursuant to section 3622(b)(3) of this title) to that category.".

(b) CONFORMING AMENDMENT.—Section 2401(c) of title 39, United States Code, is amended by inserting "(a)-(h)" after "3626" in the first sentence.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the earlier of—

(1) January 1, 1989; or

(2) the effective date of the first general change in postage rates and postal fees taking effect under section 3625 of title 39, United States Code, on or after the date of the enactment of this Act.

PART B—FEDERAL EMPLOYEES RETIREMENT SYSTEM

SEC. 711. ELECTIONS TO PARTICIPATE IN THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM.—Section 301(a) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335) is amended—

(1) by striking out "June 30, 1987," each place it appears in paragraphs (1)(A) and (2)(A) and inserting in lieu thereof "March 31, 1987,"; and

(2) by striking out "July 1, 1987," in paragraph (1)(B) and inserting in lieu thereof "April 1, 1987,".

(b) ELECTIONS FOR CERTAIN INDIVIDUALS SERVING CONTINUOUSLY SINCE DECEMBER 31, 1983.—Section 301(b)(1) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335) is amended by striking out "June 30, 1987," and inserting in lieu thereof "March 31, 1987,".

(c) ELECTIONS TO PARTICIPATE IN THRIFT SAVINGS PLAN.—Section 206(b) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335) is amended to read as follows:

"(b) Notwithstanding subsection (a)(2) of section 8351 of title 5, United States Code (as added by subsection (a)(1)), an election may first be made by an employee of the Federal Government or a Member of Congress under such section during an election period prescribed for the purposes of this subsection by the Executive Director of the Federal Retirement Thrift Investment Board. Such period shall begin on April 1, 1987.".

PART C—PROGRAM CIVIL FRAUD

SEC. 721. SHORT TITLE.

This part may be cited as the "Program Civil Fraud Remedies Act of 1986".

SEC. 722. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) false, fictitious, and fraudulent claims and statements in Government programs are a serious problem;

(2) false, fictitious, and fraudulent claims and statements in Government programs result in the loss of millions of dollars annually by allowing persons to receive Federal funds to which they are not entitled;

(3) false, fictitious, and fraudulent claims and statements in Government programs undermine the integrity of such programs by allowing ineligible persons to participate in such programs; and

(4) present civil and criminal remedies for such claims and statements are not sufficiently responsive.

(b) PURPOSES.—The purposes of this part are—

(1) to provide Federal agencies which are the victims of false, fictitious, and fraudulent claims and statements with an administrative remedy to recompense such agencies for losses resulting from such claims and statements, to permit administrative proceedings to be brought against persons who make, present, or submit such claims and statements, and to deter the making, presenting, and submitting of such claims and statements in the future; and

(2) to provide due process protections to all persons who are subject to the administrative adjudication of false, fictitious, or fraudulent claims or statements.

SEC. 723. PROVISION OF ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS.

(a) ESTABLISHMENT OF REMEDIES.—Title 5, United States Code, is amended by inserting after chapter 7 the following new chapter:

"CHAPTER 8—ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

"Sec.
"801. Definitions.
"802. False claims and statements; liability.
"803. Hearing and determinations.
"804. Subpoena authority.
"805. Judicial review.
"806. Collection of civil penalties and assessments.
"807. Right to setoff.
"808. Limitations.
"809. Regulations.
"810. Reports.
"811. Effect on other law.
"812. Prohibition against delegation.

"§ 801. Definitions

"(a) For purposes of this chapter—

"(1) 'authority' means—

"(A) an executive department;

"(B) a military department;

"(C) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department; and

"(D) the United States Postal Service;

"(2) 'authority head' means—

"(A) the head of an authority; or

"(B) an official or employee of the authority designated, in regulations promulgated by the head of the authority, to act on behalf of the head of the authority;

"(3) 'claim' means any request, demand, or submission—

"(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

"(B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority—

"(i) for property or services if the United States—

"(I) provided such property or services;

"(II) provided any portion of the funds for the purchase of such property or services; or

"(III) will reimburse such recipient or party for the purchase of such property or services; or

"(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

"(I) provided any portion of the money requested or demanded; or

"(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

"(C) made to an authority which has the effect of decreasing an obligation to pay or account for property, services, or money,

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954;

"(4) 'hearing examiner' means—

"(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of this title apply, an administrative law judge appointed in the authority pursuant to section 3105 of this title or detailed to the authority pursuant to section 3344 of this title; or

"(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who—

"(i) is selected under chapter 33 of this title pursuant to the competitive examination process applicable to administrative law judges;

"(ii) is appointed by the authority head to conduct hearings under section 803 of this title;

"(iii) is assigned to cases in rotation so far as practicable;

"(iv) may not perform duties inconsistent with the duties and responsibilities of a hearing examiner;

"(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of this title and subchapter III of chapter 53 of this title;

"(vi) is not subject to performance appraisal pursuant to chapter 43 of this title; and

"(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board;

"(5) 'investigating official' means an individual who—

"(A)(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

"(ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 803(a)(1) of this title; or

"(iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

"(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 or above under the General Schedule;

"(6) 'knows or has reason to know', for purposes of establishing liability under section 802, means that a person, with respect to a claim or statement—

"(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

"(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

"(C) acts in reckless disregard of the truth or falsity of the claim or statement.

"(7) 'person' means any individual, partnership, corporation, association, or private organization;

"(8) 'reviewing official' means any officer or employee of an authority—

"(A) who is designated by the authority head to make the determination required under section 803(a)(2) of this title;

"(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 or above under the General Schedule; and

"(C) who is—

"(i) not subject to supervision by, or required to report to, the investigating official; and

"(ii) not employed in the organizational unit of the authority in which the investigating official is employed; and

"(9) 'statement' means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry—

"(A) with respect to a claim; or

"(B) with respect to—

"(i) a contract with, or a bid or proposal for a contract with;

"(ii) a grant, loan, or benefit from;

"(iii) an application for insurance from; or

"(iv) an application for employment with,

an authority, or any State, political subdivision of a State, or other party acting on behalf of, or based upon the credit or guarantee of, an authority,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1954.

"(b) For purposes of paragraph (3) of subsection (a)—

"(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim;

"(2) each claim for property, services, or money is subject to this chapter regardless of whether such property, services, or money is actually delivered or paid; and

"(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

"(c) For purposes of paragraph (9) of subsection (a)—

"(1) each written representation, certification, or affirmation constitutes a separate statement; and

"(2) a statement shall be considered made, presented, or submitted to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

"§ 802. False claims and statements; liability

"(a)(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

"(A) is false, fictitious, or fraudulent;

"(B) includes or is supported by any statement which is described in clause (i) or (ii) of paragraph (2)(A); or

"(C) is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $10,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

"(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

"(A) the person knows or has reason to know—

"(i) asserts a material fact which is false, fictitious, or fraudulent; or

"(ii)(I) omits a material fact;

"(II) as a result of such omission, such statement is false, fictitious, or fraudulent; and

"(III) the person making, presenting, or submitting such statement has a duty to include such material fact in the statement; and

"(B) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $10,000 for each such statement.

"(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim prior to the date on which a notice is issued with respect to such claim under section 803(d)(1) of this title.

"(b)(1) Except as provided in paragraphs (2) and (3) of this subsection—

"(A) a determination under section 803(a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section, or

"(B) a determination under section 803 of this title that a person is liable under subsection (a) of this section,

may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.

"(2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

"(3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

"§ 803. Hearing and determinations

"(a)(1) The investigating official of an authority may investigate allegations that a person is liable under section 802 of this title and shall report the findings and conclusions of such investigation to the reviewing official of the authority. The preceding sentence does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General.

"(2) If the reviewing official of an authority determines, based upon the report of the investigating official under paragraph (1) of this subsection, that there is adequate evidence to believe that a person is liable under section 802 of this title, the reviewing official shall transmit to the Attorney General a written notice of the intention of such official to refer the allegations of such liability to a hearing examiner of such authority. Such notice shall include—

"(A) a statement of the reasons of the reviewing official for the referral of such allegations;

"(B) a statement specifying the evidence which supports such allegations;

"(C) a description of the claims or statements for which liability under section 802 of this title is alleged;

"(D) an estimate of the amount of money or the value of property or services requested or demanded in violation of section 802 of this title; and

"(E) a statement of any exculpatory or mitigating circumstances which may relate to such claims or statements.

"(b)(1) Within 90 days after receipt of a notice from a reviewing official under paragraph (2) of subsection (a), the Attorney General or an Assistant Attorney General designated by the Attorney General shall transmit a written statement to the reviewing official which specifies—

"(A) that the Attorney General or such Assistant Attorney General approves or disapproves the referral to a hearing examiner of the allegations of liability stated in such notice;

"(B) in any case in which the referral of allegations is approved, that the initiation of a proceeding under section 803 of this title with respect to such allegations is appropriate; and

"(C) in any case in which the referral of allegations is disapproved, the reasons for such disapproval.

"(2) A reviewing official may refer allegations of liability to a hearing examiner only if the Attorney General or an Assistant Attorney General designated by the Attorney General approves the referral of such allegations in accordance with paragraph (1) of this subsection.

"(3) If the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to an authority head a written finding that the continuation of any hearing under this section with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such hearing shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

"(c) No allegations of liability under section 802 of this title with respect to any claim made, presented, or submitted by any person shall be referred to a hearing examiner under paragraph (2) of subsection (b) if the reviewing official determines that—

"(1) an amount of money in excess of $100,000; or

"(2) property or services with a value in excess of $100,000,

is requested or demanded in violation of section 802 of this title in such claim or in a group of related claims which are submitted at the time such claim is submitted.

"(d)(1) On the date on which a reviewing official is permitted to refer allegations of liability to a hearing examiner under subsection (b) of this section, the reviewing official shall mail, by registered or certified mail, or shall deliver, a notice to the person alleged to be liable under section 802 of this title. Such notice shall specify the allegations of liability against such person and shall state the right of such person to request a hearing with respect to such allegations.

"(2) If, within 30 days after receiving a notice under paragraph (1) of this subsection, the person receiving such notice requests a hearing with respect to the allegations contained in such notice—

"(A) the reviewing official shall refer such allegations to a hearing examiner for the commencement of such hearing; and

"(B) the hearing examiner shall commence such hearing by mailing by registered or certified mail, or by delivery, of a notice which complies with paragraphs (2)(A) and (3)(B)(i) of subsection (g) to such person.

"(e)(1)(A) Except as provided in subparagraph (B) of this paragraph, at any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to review, and upon payment of a reasonable fee for duplication, shall be entitled to obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to such allegations and upon which the findings and conclusions of the investigating official under paragraph (1) of subsection (a) are based.

"(B) A person is not entitled under subparagraph (A) to review and obtain a copy of any document, transcript, record, or material which—

"(i) is privileged under Federal or State law; or

"(ii) is an interagency or intraagency letter, memorandum, analysis, or other material which would not be available by law to a party other than an agency in a legal action to which an agency is a party.

"(2) At any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to obtain all exculpatory information in the possession of the investigating official or the reviewing official relating to the allegations contained in such notice. The provisions of subparagraph (B) of paragraph (1) do not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

"(f) Any hearing commenced under paragraph (2) of subsection (d) shall be conducted by the hearing examiner on the record in order to determine—

"(1) the liability of a person under section 802 of this title; and

"(2) if a person is determined to be liable under such section, the amount of any civil penalty and assessment to be imposed on such person.

Any such determination shall be based on the preponderance of the evidence.

"(g)(1) Each hearing under subsection (f) of this section shall be conducted—

"(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of this title apply, in accordance with—

"(i) the provisions of such subchapter to the extent that such provisions are not inconsistent with the provisions of this chapter; and

"(ii) procedures promulgated by the authority head under paragraph (3) of this subsection; or

"(B) in the case of an authority to which the provisions of such subchapter do not apply, in accordance with procedures promulgated by the authority head under paragraphs (2) and (3) of this subsection.

"(2) An authority head of an authority described in subparagraph (B) of paragraph (1) shall by regulation promulgate procedures for the conduct of hearings under this chapter. Such procedures shall include:

"(A) The provision of written notice of the hearing to any person alleged to be liable under section 802 of this title, including written notice of—

"(i) the time, place, and nature of the hearing;

"(ii) the legal authority and jurisdiction under which the hearing is to be held; and

"(iii) the matters of facts and law to be asserted.

"(B) The provision to any person alleged to be liable under section 802 of this title of opportunities for the submission of facts, arguments, offers of settlement, or proposals of adjustment.

"(C) Procedures to ensure that the hearing examiner shall not, except to the extent required for the disposition of ex parte matters as authorized by law—

"(i) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to the hearing to participate; or

"(ii) be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

"(D) Procedures to ensure that the investigating official and the reviewing official do not participate or advise in the decision required under subsection (h) of this section or the review of the decision by the authority head under subsection (i) of this section, except as provided in subsection (j) of this section.

"(E) The provision to any person alleged to be liable under section 802 of this title of opportunities to present such person's case through oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

"(F) Procedures to permit any person alleged to be liable under section 802 of this title to be accompanied, represented, and advised by counsel or such other qualified

representative as the authority head may specify in such regulations.

"(G) Procedures to ensure that the hearing is conducted in an impartial manner, including procedures to—

"(i) permit the hearing examiner to at any time disqualify himself; and

"(ii) permit the filing, in good faith, of a timely and sufficient affidavit alleging personal bias or another reason for disqualification of a hearing examiner or a reviewing official.

"(3)(A) Each authority head shall promulgate by regulation procedures described in subparagraph (B) of this paragraph for the conduct of hearings under this chapter. Such procedures shall be in addition to the procedures described in paragraph (1) or paragraph (2) of this subsection, as the case may be.

"(B) The procedures referred to in subparagraph (A) of this paragraph are:

"(i) Procedures for the inclusion, in any written notice of a hearing under this section to any person alleged to be liable under section 802 of this title, of a description of the procedures for the conduct of the hearing.

"(ii) Procedures to permit discovery by any person alleged to be liable under section 802 of this title only to the extent that the hearing examiner determines that such discovery is necessary for the expeditious, fair, and reasonable consideration of the issues, except that such procedures shall not apply to documents, transcripts, records, or other material which a person is entitled to review under paragraph (1) of subsection (e) or to information to which a person is entitled under paragraph (2) of such subsection. Procedures promulgated under this clause shall prohibit the discovery of the notice required under subsection (a)(2) of this section. Procedures promulgated under this clause shall provide that requests for discovery under this clause shall not be denied unreasonably.

"(4) Each hearing under subsection (f) of this section shall be held—

"(A) in the judicial district of the United States in which the person alleged to be liable under section 802 of this title resides or transacts business;

"(B) in the judicial district of the United States in which the claim or statement upon which the allegation of liability under such section was made, presented, or submitted; or

"(C) in such other place as may be agreed upon by such person and the hearing examiner who will conduct such hearing.

"(h) The hearing examiner shall issue a written decision, including findings and determinations, after the conclusion of the hearing. Such decision shall include the findings of fact and conclusions of law which the hearing examiner relied upon in determining whether a person is liable under this chapter. The hearing examiner shall promptly send to each party to the hearing a copy of such decision and a statement describing the right of any person determined to be liable under section 802 of this title to appeal the decision of the hearing examiner to the authority head under paragraph (2) of subsection (i).

"(i)(1) Except as provided in paragraph (2) of this subsection and section 805 of this title, the decision, including the findings and determinations, of the hearing examiner issued under subsection (h) of this section are final.

"(2)(A)(i) Except as provided in clause (ii) of this subparagraph, within 30 days after the hearing examiner issues a decision under subsection (h) of this section, any person determined in such decision to be liable under section 802 of this title may appeal such decision to the authority head.

"(ii) If, within the 30-day period described in clause (i) of this subparagraph, a person determined to be liable under this chapter requests the authority head for an extension of such 30-day period to file an appeal of a decision issued by the hearing examiner under subsection (h) of this section, the authority head may extend such period if such person demonstrates good cause for such extension.

"(B) Any authority head reviewing under this section the decision, findings, and determinations of a hearing examiner shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (f) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the hearing examiner for consideration of such additional evidence.

"(C) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty and assessment determined by the hearing examiner pursuant to this section. The authority head shall promptly send to each party to the appeal a copy of the decision of the authority head and a statement describing the right of any person determined to be liable under section 802 of this title to judicial review under section 805 of this title.

"(j) The reviewing official has the exclusive authority to compromise or settle any allegations of liability under section 802 of this title against a person without the consent of the hearing examiner at any time after the date on which the reviewing official is permitted to refer allegations of liability to a hearing examiner under subsection (b) of this section and prior to the date on which the hearing examiner issues a decision under subsection (h) of this section. Any such compromise or settlement shall be in writing.

"§ 804. Subpoena authority

"(a)(1) For the purposes of an investigation under section 803(a)(1) of this title, an investigating official is authorized—

"(A) to administer oaths or affirmations; or

"(B) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the authority.

"(2) In conducting an investigation under section 803(a)(1) of this title, the Inspector General of an authority may require by subpoena the attendance and testimony of witnesses if—

"(A) such Inspector General transmits a written notice to the Attorney General specifying that—

"(i) such attendance and testimony are necessary to the conduct of such investigation; and

"(ii) means other than a subpoena to obtain such attendance and testimony are inadequate; and

"(B) within 30 days after the Attorney General receives the notice required by subparagraph (A) of this paragraph, the Attorney General, the Deputy Attorney General, or an Associate Attorney General designated by the Attorney General transmits to such Inspector General a written statement approving such subpoena.

"(3)(A) Within 30 days after receiving a notice under subparagraph (A) of paragraph (2), the Attorney General, the Deputy Attorney General, or an Associate Attorney General designated by the Attorney General, shall transmit to such Inspector General a written statement approving or disapproving the subpoena with which such notice is concerned.

"(B) If a subpoena has been issued under this subsection to a person with respect to a particular allegation or set of allegations of liability under section 802 of this title, the Attorney General, the Deputy Attorney General, or an Associate Attorney General designated by the Attorney General, may not approve an additional subpoena under this subsection to such person with respect to such allegation or set of allegations unless such person requests the issuance of an additional subpoena under this subsection or unless—

"(i) the Attorney General, the Deputy Attorney General, or an Associate Attorney General designated by the Attorney General determines, after investigation, that an additional subpoena under this subsection to such person is necessary; and

"(ii) the Attorney General, the Deputy Attorney General, or such Associate Attorney General requires the Inspector General issuing such subpoena to include with such subpoena a statement specifying the determination of the Attorney General, the Deputy Attorney General, or such Associate Attorney General under clause (i) of this subparagraph and the reasons for such determination.

"(4)(A) An Inspector General of an authority may not delegate the authority of such Inspector General under paragraph (2) of this subsection to require by subpoena the attendance and testimony of witnesses to any officer or employee of the authority.

"(B) For purposes of this paragraph and paragraph (2), the term 'Inspector General' means an Inspector General of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law.

"(5)(A) Each subpoena issued under this subsection shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) describe the procedures under which, in accordance with this section, such testimony will be taken;

"(iii) notify the person receiving the subpoena of the right to be accompanied by an attorney and any other representative;

"(iv) describe the general purpose for which the subpoena is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the subpoena; and

"(v) identify the investigating official designated by the Inspector General who shall conduct the investigation.

"(B) The date prescribed under clause (i) of subparagraph (A) for the commencement of oral testimony pursuant to a subpoena issued under this subsection shall be a date which is not less than 7 days after the date on which such subpoena is received, unless the Attorney General, the Deputy Attorney General, or an Associate Attorney General designated by the Attorney General, determines that exceptional circumstances are present which warrant the commencement

of such testimony within a lesser period of time.

"(6)(A) Any investigating official before whom oral testimony is to be taken shall put the person giving such testimony under oath or affirmation and shall personally, or by any individual acting under the direction and in the presence of such investigating official, record and transcribe the testimony of such person.

"(B) Any investigating official before whom oral testimony under this section is to be taken shall exclude from the place where the testimony is to be taken all persons except the person giving the testimony, the attorney and any other representative for the person giving the testimony, the attorney for the investigating official, any person who may be agreed upon by the investigating official and the person giving the testimony, and any stenographer taking such testimony.

"(C) The oral testimony of any person taken pursuant to a subpoena issued under this subsection shall be taken in the judicial district of the United States in which such person resides or transacts business, or in such other place as may be agreed upon by such person and the investigating official before whom the oral testimony of such person is to be taken.

"(D) Any person compelled to appear under a subpoena issued under this subsection may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

"(E)(i) After the testimony of any person is fully transcribed, the investigating official shall afford the person (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript of such testimony. The transcript shall be read to or by such person, unless such examination and reading are waived by such person. Any changes in form or substance which such person desires to make shall be entered and identified upon the transcript by the investigating official with a statement of the reasons given by such person for making such changes. The transcript shall then be signed by such person, unless such person in writing waives the signing, is ill, cannot be found, or refuses to sign.

"(ii) If the transcript is not signed by the person within 30 days after the date upon which the person is first afforded a reasonable opportunity to examine the transcript, the investigating official shall sign the transcript and state on the record the fact of the waiver, illness, absence of such person, or the refusal to sign, together with any reasons given for the failure to sign.

"(F) The investigating official shall certify on the transcript that the person giving testimony was duly sworn by the investigating official and that the transcript is a true record of the testimony given by such person.

"(G) The investigating official shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the person giving testimony.

"(H) Any person appearing for the taking of oral testimony pursuant to a subpoena issued under this subsection shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

"(b) For the purposes of conducting a hearing under section 803(f) of this title, a hearing examiner is authorized—

"(1) to administer oaths or affirmations; and

"(2) to require by subpoena the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the hearing examiner considers relevant and material to the hearing.

"(c) In the case of contumacy or refusal to obey a subpoena issued pursuant to subsection (a) or (b) of this section, an investigating official or a hearing examiner, as the case may be, may request the Attorney General to invoke the aid of any district court of the United States in the district in which such investigation or hearing is being conducted, or where the person receiving the subpoena resides or conducts business. The district courts of the United States shall have jurisdiction to issue an appropriate order for the enforcement of any such subpoena. Any failure to obey such order of the court is punishable by such court as contempt.

"§ 805. Judicial review

"(a)(1) A determination by a reviewing official under section 803 of this title shall be final and shall not be subject to judicial review.

"(2) Unless a petition is filed under this section, a determination under section 803 of this title that a person is liable under section 802 of this title shall be final and shall not be subject to judicial review.

"(b)(1)(A) Any person for whom a determination of liability under section 802 of this title has been made pursuant to section 803 of this title may obtain review of such determination in—

"(i) the United States Court of Appeals for the circuit in which such person resides or transacts business;

"(ii) the United States Court of Appeals for the circuit in which the claim or statement upon which the determination of liability is based was made, presented, or submitted; or

"(iii) the United States Court of Appeals for the District of Columbia Circuit.

"(B) Such review may be obtained by filing in any such court a written petition that such determination be modified or set aside. Such petition shall be filed—

"(i) only after such person has exhausted all administrative remedies under this chapter; and

"(ii) within 60 days after the date on which the authority head sends such person a copy of the decision of such authority head under section 803(i)(2) of this title.

"(2) The clerk of the court shall transmit a copy of a petition filed under paragraph (1) of this subsection to the authority head and to the Attorney General. Upon receipt of the copy of such petition, the authority head shall transmit to the Attorney General the record in the proceeding resulting in the determination of liability under section 802 of this title. Except as otherwise provided in this section, the courts of appeals of the United States shall have jurisdiction to review the decision, findings, and determinations in issue and to affirm, modify, remand for further consideration, or set aside, in whole or in part, the decision, findings, and determinations of the hearing examiner and the authority head, and to enforce such decision, findings, and determinations to the extent that such decision, findings, and determinations are affirmed or modified.

"(c) The findings of the hearing examiner with respect to questions of fact shall be final and conclusive, and shall not be set aside unless the decision of the hearing examiner is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or if such findings are not supported by substantial evidence.

"(d) Any court of appeals reviewing under this section the decision, findings, and determinations of a hearing examiner or an authority head shall not consider any objection that was not raised in the hearing conducted pursuant to section 803(f) of this title unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the court shall remand the matter to the hearing examiner for consideration of such additional evidence.

"(e) Upon a final determination by the court of appeals that a person is liable under section 802 of this title, the court shall enter a final judgment for the appropriate amount in favor of the United States, and such judgment may be recorded and enforced by the Attorney General to the same extent and in the same manner as a judgment entered by any United States district court.

"§ 806. Collection of civil penalties and assessments

"(a) The Attorney General shall be responsible for judicial enforcement of any civil penalty or assessment imposed pursuant to the provisions of this chapter.

"(b) Any penalty or assessment imposed in a determination which has become final pursuant to section 803 of this title may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under section 803(f) of this title or pursuant to judicial review under section 805 of this title may be raised as a defense, and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

"(c) The district courts of the United States and of any territory or possession of the United States shall have jurisdiction of any action commenced by the United States under subsection (b) of this section.

"(d) Any action under subsection (b) of this section may, without regard to venue requirements, be joined and consolidated with or asserted as a counterclaim, crossclaim, or setoff by the United States in any other civil action which includes as parties the United States and the person against whom such action may be brought.

"(e)(1) The United States Claims Court shall have jurisdiction of any action under subsection (b) of this section to recover any penalty and assessment if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court. The United States may join as additional parties in such counterclaim all persons who may be jointly and severally liable with the person against whom such counterclaim is asserted.

"(2) No cross-claims or third-party claims not otherwise within the jurisdiction of the United States Claims Court shall be asserted among additional parties joined under paragraph (1) of this subsection.

"(f) The Attorney General shall have exclusive authority to compromise or settle

any penalty and assessment the determination of which is the subject of a pending petition pursuant to section 805 of this title or a pending action to recover such penalty or assessment pursuant to this section.

"(g)(1) Except as provided in paragraph (2) of this subsection, any amount of penalty and assessment collected under this chapter shall be deposited as miscellaneous receipts in the Treasury of the United States.

"(2)(A) Any amount of a penalty or assessment imposed by the United States Postal Service under this chapter shall be deposited in the Postal Service Fund established by section 2003 of title 39, United States Code.

"(B) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with old age and survivors benefits under title II of the Social Security Act shall be deposited in the Federal Old Age and Survivors Insurance Trust Fund.

"(C) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with disability benefits under title II of the Social Security Act shall be deposited in the Federal Disability Insurance Trust Fund.

"(D) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part A of title XVIII of the Social Security Act shall be deposited in the Federal Hospital Insurance Trust Fund.

"(E) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part B of title XVIII of the Social Security Act shall be deposited in the Federal Supplementary Medical Insurance Trust Fund.

"§ 807. Right to setoff

"(a)(1) The amount of any penalty or assessment which has become final under section 803 of this title, or for which a judgment has been entered under section 805(e) or 806 of this title, or any amount agreed upon in a settlement or compromise under section 803(j) or 806(f) of this title, may be deducted from any sum, except for a refund of an overpayment of Federal taxes, then or later owing by the United States to the person liable for such penalty and assessment.

"(2) The authority head shall transmit written notice of each deduction made under this paragraph to the person liable for such penalty and assessment.

"(3) All amounts retained pursuant to this paragraph shall be remitted to the Secretary of the Treasury for deposit in accordance with section 806(g) of this title.

"(b) An authority head may forward a certified copy of any determination as to liability for any penalty or assessment which has become final under section 803 of this title, a certified copy of any judgment which has been entered under section 805(e) or 806 of this title, or a certified copy of any settlement or compromise under section 803(j) or 806(f) of this title, to the Secretary of the Treasury for action in accordance with subsection (a) of this section.

"§ 808. Limitations

"(a) A hearing under section 803(d)(2) of this title with respect to a claim or statement shall be commenced within six years after the date on which such claim or statement is made, presented, or submitted.

"(b) A civil action to recover a penalty and assessment under section 806 of this title shall be commenced within three years after the date on which the determination of liability for such penalty and assessment becomes final.

"(c) If at any time during the course of proceedings brought pursuant to this chapter the authority head receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to the Attorney General, and in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, to the Inspector General of that authority.

"§ 809. Regulations

"(a) Within 180 days after the date of enactment of this chapter, each authority head shall promulgate rules and regulations necessary to implement the provisions of this chapter. Such rules and regulations shall—

"(1) ensure that investigating officials and reviewing officials are not responsible for conducting the hearing required in section 803(f) of this title, making the determinations required by subsections (f) and (h) of section 803 of this title, or making the collections under section 806 of this title; and

"(2) require a reviewing official to include in any notice required by section 803(a)(2) of this title a statement of the reviewing official which—

"(A) specifies that the reviewing official has determined that there is a reasonable prospect of collecting, from a person with respect to whom the reviewing official is referring allegations of liability in such notice, the amount for which such person may be liable; and

"(B) describes the financial data specified in subsection (c) of this section.

"(b) The determination required under paragraph (2)(A) of subsection (a) shall be made by the reviewing official after the consideration of the financial data specified in subsection (c) of this section.

"(c) The financial data referred to in subsections (a)(2)(B) and (b) of this section may include—

"(1) a commercial credit report with respect to the person alleged to be liable under this chapter;

"(2) an agency investigative report specifying the assets, liabilities, income, and expenses of such person;

"(3) a financial statement of such person specifying the assets, liabilities, income, and expenses of such person;

"(4) an audited balance sheet of such person; or

"(5) such financial information as is reasonably available to the authority.

"§ 810. Reports

"Not later than October 31 of each year, each authority head shall prepare and transmit to the appropriate committees and subcommittees of the Congress an annual report summarizing actions taken under this chapter during the most recent twelve-month period ending the previous September 30. Such report shall include—

"(1) a summary of matters referred by the investigating official of the authority to the reviewing official of the authority under section 803(a)(1) of this title during such period;

"(2) a summary of matters transmitted to the Attorney General under section 803(a)(2) of this title during such period;

"(3) a summary of all hearings conducted by hearing examiners under section 803(f) of this title, and the results of such hearings, during such period; and

"(4) a summary of the actions taken during such period to collect any civil penalty or assessment imposed under this chapter.

"§ 811. Effect on other law

"(a) This chapter does not diminish the responsibility of any agency to comply with the provisions of chapter 35 of title 44.

"(b) This chapter does not supersede the provisions of section 3512 of title 44.

"(c) For purposes of this section, the term 'agency' has the same meaning as in section 3502(1) of title 44.

"§ 812. Prohibition against delegation

"Any function, duty, or responsibility which this chapter specifies be carried out by the Attorney General, the Deputy Attorney General, an Associate Attorney General designated by the Attorney General, or an Assistant Attorney General designated by the Attorney General, shall not be delegated to, or carried out by, any other officer or employee of the Department of Justice.".

(b) TECHNICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting after the item relating to chapter 7 the following new item:

"8. Administrative Remedies for False Claims and Statements ..... 801.".

(c) CONFORMING AMENDMENTS.—Section 504(b)(1)(C) of title 5, United States Code, is amended—

(1) by striking out "and" before "(ii)"; and

(2) by inserting before the semicolon a comma and "and (iii) any hearing conducted under chapter 8 of this title".

SEC. 724. EFFECTIVE DATE.

This part and the amendments made by this part shall take effect on the date of enactment of this Act, and shall apply to any claim or statement made, presented, or submitted on or after such date.

TITLE VIII—COMMITTEE ON LABOR AND HUMAN RESOURCES

SEC. 801. This title may be cited as the "Education Budget Savings Act of 1986".

NEEDS BASIS FOR THE GUARANTEED STUDENT LOAN PROGRAM

SEC. 802. (a) NEEDS BASIS REQUIRED.—(1) Section 428(a)(2)(B) of the Higher Education Act of 1965 (hereafter in this title referred to as the "Act") is amended to read as follows:

"(B) For the purpose of clause (ii) of subparagraph (A), a student shall qualify for a portion of an interest payment under paragraph (1) if the eligible institution has provided the lender with a statement evidencing a determination of need for a loan and the amount of such need.".

(2)(A) Section 428(a)(2)(B) of the Act is amended to read as follows:

"(D) The schedule of expected family contributions required by section 482 shall apply to the determination required by this paragraph.".

(B) Section 428(a)(2)(E) of the Act is repealed.

(b) INSTITUTIONAL RESPONSIBILITY FOR DETERMINATION OF NEED.—Section 428(a)(2)(F) of the Act is amended to read as follows:

"(E)(i) For the purpose of subparagraph (B), the amount of the loan which is quali-

fied for a payment under paragraph (1) is the amount of the need of such student as determined by the eligible institution.

"(ii) An eligible institution may not, in carrying out the provisions of subparagraphs (A) and (B) of this paragraph, provide a statement which permits the student to receive any loan under this part in excess of the maximum amount applicable to such loan.".

(c) EXPECTED FAMILY CONTRIBUTION OFFSET.—Section 428(a)(2) of the Act is amended by adding at the end thereof the following new subparagraph:

"(F) For the purpose of subparagraphs (B) and (C) of this paragraph, any loan obtained by a student or a parent under section 428B of this Act or under any State-sponsored or private loan program for an academic year for which the determination is made may be used to offset the expected family contribution of the student for that year.".

(d) REPEAL OF GUARANTEED STUDENT LOAN FAMILY CONTRIBUTION SCHEDULE.—Section 9 of the Student Financial Assistance Technical Amendments of 1982 is repealed.

INTEREST RATE FOR NEW BORROWERS

SEC. 803. (a) NEW BORROWERS.—Section 427A of the Act is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by adding after subsection (c) the following new subsection:

"(d) INTEREST RATES FOR NEW BORROWERS AFTER SEPTEMBER 30, 1986.—Notwithstanding subsections (a) and (b) of this section, with respect to any loan (other than a loan made pursuant to section 428B and section 428C) to cover the cost of instruction for any period of enrollment beginning on or after October 1, 1986, to any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, the applicable rate of interest shall be—

"(1) 8 percent per year on the unpaid principal balance of the loan during the period beginning on the date of the disbursement of the loan and ending with the commencement of the repayment period; and

"(2) 10 percent per year on the unpaid principal balance of the loan during the repayment period.".

(b) CONFORMING AMENDMENTS.—Section 427A is amended—

(1) by inserting after the subsection designation (a) the following: "RATES TO BE CONSISTENT WITH BORROWER'S ENTIRE DEBT.—";

(2) by inserting after the subsection designation (b) the following: "REDUCTION FOR CERTAIN BORROWERS AFTER DECLINE IN CERTAIN RATES.—";

(3) by inserting after the subsection designation (c) the following: "RATES FOR SUPPLEMENTAL AND PARENTAL LOANS.—";

(4) by inserting after the subsection designation (e) (as redesignated by subsection (a)) the following: "LESSER LOAN RATES PERMITTED.—"; and

(5) by inserting after the subsection designation (f) (as redesignated by subsection (a)) the following: "DEFINITIONS.—".

RULE FOR REINSURANCE BASED ON DEFAULT RATES

SEC. 804. Section 428(c)(1)(B) of the Act is amended—

(1) by striking out "90 per centum" in clause (i) and inserting in lieu thereof "80 per centum"; and

(2) by striking out "80 per centum" in clause (ii) and inserting in lieu thereof "70 per centum".

SPECIAL ALLOWANCE

SEC. 805. (a) GENERAL RULE.—Section 438(b)(2)(A) of the Act is amended by striking out "3.5 per centum" and inserting in lieu thereof "3 per centum".

(b) SPECIAL RULE FOR HOLDERS OBTAINING LOANS FROM TAX EXEMPT OBLIGATIONS.—The first sentence of section 438(b)(2)(B)(i) of the Act is amended by inserting before the period at the end thereof a comma and the following: "except that in setting the rate under this division the per centum prescribed in clause (iii) of subparagraph (A) shall be 3.5 per centum.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) of this section shall take effect with respect to loans made on or after October 1, 1986.

DEFINITION OF INDEPENDENT STUDENT

SEC. 806. Section 482(c)(2) of the Act is amended to read as follows:

"(2)(A) For the purpose of this title, the term 'independent student' means a student who is determined, pursuant to regulations of the Secretary, to be independent of the parents or legal guardians of the students.

"(B) In carrying out subparagraph (A) of this paragraph, the Secretary shall apply the criteria specified in subparagraph (C) for the relevant years described in subparagraph (D).

"(C) A student qualifies as an independent student for an award year if the student—

"(i) does not, during any of the relevant years described in subparagraph (D), live for more than 6 weeks in the home of the student's parent for whom income must be reported;

"(ii) is not, for any of the relevant years described in subparagraph (D), claimed as a dependent for Federal income tax purposes by such parent; and

"(iii) does not, during any of the relevant years described in subparagraph (D), receive financial assistance of more than $750 from such parent.

"(D) Except as provided in subparagraph (E), to qualify as an independent student for any award year—

"(i) an unmarried student who has not attained 23 years of age by January 1 of the first calendar year of the award year must satisfy the criteria set forth in subparagraph (C) for the first calendar year of an award year and the 2 preceding calendar years;

"(ii) an unmarried student who has attained 23 years of age by January 1 of the first calendar year of the award year must satisfy the criteria set forth in subparagraph (C) for the first calendar year of an award year and the preceding calendar year;

"(iii) a married student must satisfy the criteria set forth in subparagraph (C) for the first calendar year of the award year and the preceding year; and

"(iv) an unmarried student with minor dependents (excluding a minor spouse) must satisfy the criteria set forth in subparagraph (C) for the first calendar year of the award year and the preceding year.

"(E) Any student will qualify to be an independent student if, before the end of the award year—

"(i) the student is an orphan;

"(ii) the student is declared a ward of a court; or

"(iii) the student is a veteran.

"(F) A student qualifies as an independent student for an award year if, in addition to the requirements otherwise applicable under this paragraph, the student demonstrates to the satisfaction of the institution, in accordance with guidelines prescribed by the Secretary, how, for any of the relevant years prescribed, such student was self-supporting.".

RECOVERY OF OUTSTANDING ADVANCES TO GUARANTY AGENCIES

SEC. 807. Section 422(d)(1) of the Act is amended—

(1) by inserting after the first sentence the following new sentence: "The Secretary shall, in accordance with the requirements of paragraph (2), recover (and so deposit) an amount equal to $20,000,000 during fiscal year 1987."; and

(2) by inserting "additional" before "$75,000,000" in the last sentence.

HOUSING AND OTHER EDUCATIONAL FACILITIES LOANS REAUTHORIZED

SEC. 808. (a) Title VII of the Act is amended—

(1) by redesignating part D as part E;

(2) by redesignating section 741 and section 742 as section 751 and section 752, respectively; and

(3) by adding after part C the following new part:

"PART D—HOUSING AND OTHER EDUCATIONAL FACILITIES LOANS

"FEDERAL ASSISTANCE IN THE FORM OF LOANS

"SEC. 741. (a) AUTHORITY AND CONDITIONS FOR LOANS.—To assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculties, the Secretary may make loans of funds to such institutions for the construction, reconstruction, or renovation of such facilities. No such assistance shall be provided unless—

"(1) the educational institution involved is unable to secure the necessary funds for the construction or purchase from other sources upon terms and conditions equally as favorable as the terms and conditions applicable to loans under this title; and

"(2) the Secretary finds that any such construction will be undertaken in an economical manner, and that any such facilities are not or will not be of elaborate or extravagant design or materials.

"(b) USE OF LOANS FOR PREVIOUSLY MADE CONTRACTS.—Any undergraduate postsecondary educational institution which, prior to the date of enactment of this section, has contracted for housing or other educational facilities may, in connection therewith, receive loans authorized under this title, as the Secretary may determine. No such loan shall be made for any housing or other educational facilities, the construction of which was begun prior to the effective date of this section, or completed prior to the filing of an application under this title.

"(c) AMOUNT AND CONDITIONS OF LOANS.—A loan to an undergraduate postsecondary educational institution—

"(1) may be in an amount not exceeding the total development cost of the facility, as determined by the Secretary;

"(2) shall be secured in such manner and be repaid within such period, not exceeding forty years, as may be determined by the Secretary; and

"(3) shall bear interest at a rate determined by the Secretary of the Treasury which shall not be more than the average current yield on outstanding obligations of the United States of comparable maturities

in the month preceding the month in which the contract for such loan is made.

"(d) USE OF FUNDS FROM TITLE IV OF THE HOUSING ACT OF 1950.—Funds obtained pursuant to section 401(d) of the Housing Act of 1950 shall be available for the purposes of carrying out this part. For such purposes, the total amount of notes and obligations which the Secretary may continue to issue and have outstanding for purchase by the Secretary of the Treasury shall not exceed the amount issued and outstanding under such section 401(d) as of September 30, 1985. Such notes and other obligations shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations issued to obtain funds for loan contracts entered into after the effective date of the Education Savings Act of 1986 shall bear interest at a rate determined by the Secretary of the Treasury which shall not be more than the average current yield on outstanding obligations of the United States of comparable maturities in the month preceding the month in which the contract for such loan is made. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued under this part and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such notes and other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired under this part. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"(e) USE OF FUNDS.—Not less than 10 percent of the funds held by the Secretary under subsection (d) of this section shall be made available for loans under this part for each fiscal year.

"(f) APPROPRIATION TO COVER NOTES AND OBLIGATIONS NOT COVERED BY LOAN REPAYMENT.—There are authorized to be appropriated to the Secretary such sums as may be necessary, together with principal and interest payments made by postsecondary educational institutions assisted with loans made under this part (or under title IV of the Housing Act of 1950), for payment on notes and obligations issued by the Secretary under this part or such title.

"GENERAL PROVISIONS

"SEC. 742. (a) BUDGET AND ACCOUNTING.—In the performance of, and with respect to, the functions, powers, and duties under this part, the Secretary, notwithstanding the provisions of any other law, shall—

"(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31, United States Code; and

"(2) maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of chapter 35 of title 31, United States Code, but such financial transactions of the Secretary, as the making of loans and vouchers approved by the Secretary, in connection with such financial transactions shall be final and conclusive upon all officers of the Government.

"(b) USE OF FUNDS.—Funds made available to the Secretary pursuant to the provisions of this part shall be deposited in a checking account or accounts with the Treasurer of the United States. Receipts and assets obtained or held by the Secretary in connection with the performance of functions under this part, and all funds available for carrying out the functions of the Secretary under this part (including appropriations therefore, which are hereby authorized), shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Secretary in connection with the performance of such functions.

"(c) LEGAL POWERS.—In the performance of, and with respect to, the functions, powers, and duties under this part, the Secretary, notwithstanding the provisions of any other law, may—

"(1) prescribe such rules and regulations as may be necessary to carry out the purposes of this part;

"(2) sue and be sued;

"(3) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other agreement, and bid for and purchase at any foreclosure or any other sale any property in connection with which the Secretary has made a loan pursuant to this part;

"(4) in the event of any such acquisition, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease and otherwise deal with, such property, but any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

"(5) sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as the Secretary may fix;

"(6) obtain insurance against loss in connection with property and other assets held;

"(7) subject to the specific limitations in this part, consent to the modification, with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which the Secretary is a party or which has been transferred to the Secretary pursuant to this part granting to a borrower of a loan made before October 1, 1986, the option of repaying the loan at a discount computed in accordance with subsection (d); and

"(8) include in any contract or instrument made pursuant to this title such other covenants, conditions, or provisions as may be necessary to assure that the purposes of this part will be achieved.

"(d) COMPUTATION OF ALLOWABLE DISCOUNTS.—The Secretary shall compute the discount which may be offered to a borrower as an inducement to early repayment under subsection (b)(7) in an amount determined by the Secretary to be in the best financial interests of the Government, taking into account the yield on outstanding marketable obligations of the United States having maturities comparable to the remaining term of such loan, if (1) the repayment is made from non-Federal sources, (2) the Secretary has received satisfactory assurances that the housing or other educational facilities financed with the loan will continue to be used for purposes related to the educational institution for the original term of the loan, and (3) the repayment is made prior to October 1, 1991.

"(e) CONTRACTS FOR SUPPLIES OR SERVICES.—Section 3709 of the Revised Statutes shall not apply to any contract for services or supplies on account of any property acquired pursuant to this part if the amount of such contract does not exceed $1,000.

"(f) APPLICABILITY OF GOVERNMENT CORPORATION CONTROL ACT.—The provisions of section 9107(a) of title 31, United States Code, which are applicable to corporations or agencies subject to chapter 91 of such title, shall also be applicable to the activities of the Secretary under this part.

"(g) WAGE RATES.—The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors or any project assisted under this part, the construction or rehabilitation of which was commenced after the date of enactment of the Housing Act of 1950—

"(1) shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (Davis-Bacon Act), as amended; and

"(2) shall be employed not more than forty hours in any one week unless the employee receives wages for his employment in excess of the hours specified above at a rate not less than one and one-half times the regular rate at which he is employed;

but the Secretary may waive the application of this subsection in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such project, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the educational institution undertaking the construction.

"(h) SALES OF OBLIGATIONS REQUIRED.—The Secretary shall sell, at public or private sale, obligations held under this title upon such terms as the Secretary may fix and in such amounts as the Secretary determines will carry out the directions in the concurrent resolution on the budget for the fiscal year 1987 (S. Con. Res. 120, 99th Congress, agreed to June 27, 1986).

"APPORTIONMENT; PRIORITIES; LIMITATION

"SEC. 743. (a) APPORTIONMENT.—Not more than 12.5 percent of the amount of the funds provided for in this part in the form of loans shall be made available to educational institutions within any one State.

"(b) PRIORITIES.—In awarding loans under this part, the Secretary shall give priority—

"(A) to loans for renovation or reconstruction of undergraduate academic facilities;

"(B) to loans for renovation or reconstruction of older undergraduate academic facilities and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period.

"(c) LIMITATION.—No loan application may be made under this part until 10 years after the date on which an undergraduate postsecondary educational institution received a loan under this part.

"DEFINITIONS

"SEC. 744. For the purposes of this part—

"(1) HOUSING.—The term 'housing' means—

"(A) new or existing structures suitable for dwelling use, including single-room dormitories and apartments; and

"(B) dwelling facilities provided for rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for the proposed dwelling use.

"(2) EDUCATIONAL INSTITUTION.—The term 'undergraduate postsecondary educational institution' means—

"(A)(i) any educational institution which offers, or provides satisfactory assurance to the Secretary that it will offer within a reasonable time after completion of a facility for which assistance is requested under this part, at least a two-year program acceptable for full credit toward a baccalaureate degree (including any public educational institution, or any private educational institution no part of the net earnings of which inures to the benefit of any private shareholder or individual); or

"(ii) any public educational institution which—

"(I) is administered by a college or university which is accredited by a nationally recognized accrediting agency or association;

"(II) offers technical or vocational instruction; and

"(III) provides residential facilities for some or all of the students receiving such instruction;

"(B) any hospital operating a school of nursing beyond the level of high school approved by the appropriate State authority, or any hospital approved for internships, by recognized authority, if such hospital is either a public hospital or a private hospital, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

"(C) any corporation (no part of the net earnings of which inures to the benefit of any private shareholder or individual)—

"(i) established for the sole purpose of providing housing or other educational facilities for students or students and faculty of one or more institutions included in clause (A) of this paragraph without regard to their membership in or affiliation with any social, fraternal, or honorary society or organization; and

"(ii) upon dissolution of which all title to any property purchased or built from the proceeds of any loan which is made under section 741, will pass to such institution (or to any one or more of such institutions) unless it is shown to the satisfaction of the Secretary that such property or the proceeds from its sale will be used for some other nonprofit educational purpose;

"(D) any agency, public authority, or other instrumentality of any State, established for the purpose of providing or financing housing or other educational facilities for students or faculty of any educational institution included in clause (A) of this paragraph, but nothing in this paragraph shall require an institution included in clause (A) of this paragraph to obtain loans or grants through any instrumentality included in this clause; and

"(E) any nonprofit student housing cooperative corporation established for the purpose of providing housing for students or students and faculty of any institution included in clause (A) of this paragraph.

In the case of any loan made under section 741 to a corporation described in clause (C) of this paragraph which was not established by the institution or institutions for whose students or students and faculty it would provide housing, or to a student housing cooperative corporation described in clause (E) of this paragraph, and in the case of any loan which is obtained from other sources by such a corporation, the Secretary shall require that the note securing such loan be cosigned by such institution (or by any one or more of such institutions). Where the law of any State in effect on the date of enactment of the Housing Act of 1964 prevents the institution or institutions, for whose students or students and faculty housing is to be provided, from cosigning the note, the Secretary shall require the corporation and the proposed project to be approved by such institution (or by any one or more of such institutions) in lieu of such cosigning.

"(3) UNDERGRADUATE ACADEMIC FACILITIES.—(A) Except as provided in subparagraph (B) of this paragraph, the term 'undergraduate academic facilities' means structures suitable for use as classrooms, laboratories, libraries, and related facilities, the primary purpose of which is the instruction of students pursuing a baccalaureate degree, or for administration of the educational programs serving such students, of an institution of higher education, and maintenance, storage, or utility facilities essential to operation of the foregoing facilities, as well as infirmaries or other facilities designed to provide primarily for outpatient care of student and instructional personnel. Plans for such facilities shall be in compliance with such standards as the Secretary may prescribe or approve in order to insure that projects assisted with the use of Federal funds under this title shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by handicapped persons.

"(B) The term 'undergraduate academic facilities' shall not include—

"(i) any facility intended primarily for events for which admission is to be charged to the general public,

"(ii) any gymnasium or other facility specially designed for athletic or recreational activities, other than for an academic course in physical education or where the Secretary finds that the physical integration of such facilities with other undergraduate academic facilities included under this part is required to carry out the objectives of this part,

"(iii) any facility used or to be used for sectarian instruction or as a place for religious worship, or

"(iv) any facility which (although not a facility described in the preceding clause) is used or to be used primarily in connection with any part of the program of a school or department of divinity.

"(4) DEVELOPMENT COST.—The term 'development cost' means costs of the construction of the housing or other educational facilities and the land on which it is located, including necessary site improvements to permit its use for housing or other educational facilities; except that in the case of the purchase of facilities such term means the cost as approved by the Secretary.

"(5) FACULTIES.—The term 'faculties' means members of the faculty and their families.

"(6) OTHER EDUCATIONAL FACILITIES.—The term 'other educational facilities' means (A) new or existing structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries or other inpatient or outpatient health facilities, or for other essential service facilities, and (B) structures suitable for the above uses provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for such uses.".

(b) Title IV of the Housing Act of 1950 is repealed.

EFFECTIVE DATE

SEC. 809. Except as otherwise provided in this Act, the amendments made by this title shall take effect on October 1, 1986.

TITLE IX—COMMITTEE ON SMALL BUSINESS

SEC. 901. PILOT LOAN ASSET SALE.

Title V of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new section:

"SEC. 506. (a) Except as provided in subsection (c), notwithstanding any law, rule, or regulation, the Secretary of the Treasury shall sell to the public, by private placement or otherwise as the Secretary determines to be appropriate, all of the right, title, and interest in debentures issued pursuant to section 503 of this title and held by the Federal Financing Bank in such amounts as to realize net proceeds of—

"(1) $343,000,000 from such sales during fiscal year 1987;

"(2) $55,000,000 from such sales during fiscal year 1988; and

"(3) $14,000,000 from such sales during fiscal year 1989.

"(b) Simultaneously with the sale referred to in subsection (a), the Administration shall assign all of its interest in notes, mortgages, guarantees, security interest, or other interest in underlying collateral supporting any debenture sold pursuant to this section to the purchaser of such interest.

"(c) Any sales by the Secretary under this section shall be on a nonrecourse basis to the Federal Government and shall provide that for purposes of disbursements, collections, and payments of receipts to purchasers the companies certified under section 503 of this title shall continue to have the right to service the loans underlying such debentures.

"(d) In the event of default on a debenture, the liability of the relevant certified development company shall be limited to all payments made by the small business concern to the certified development company and the collateral securing the defaulted loan.

"(e) With the sale of each debenture as specified in subsection (a), the Administration's guarantee of timely payment of principal and interest on the debenture will be deemed discharged. The Administration shall incur no liability or obligation to the Secretary or the Federal Financing Bank in connection with any sale of a debenture under this section.".

SEC. 902. In order to achieve the budget savings specified in the amendment made by section 901 of this Act, neither the Secretary of the Treasury nor the Administration shall sell any loans, portions of loans, or notes or debentures guaranteed by the Administration pursuant either to the Small Business Act or the Small Business Investment Act of 1958 except those specified in the amendment made by section 901, except that this section shall not apply to the sale of debentures or other securities provided for in sections 321 and 504 of the Small Business Investment Act of 1958.

TITLE X—SOCIAL SECURITY COLAS

SEC. 1001. REMOVAL OF THREE PERCENT THRESHOLD FOR COST-OF-LIVING ADJUSTMENTS.

(a) SHORT TITLE.—This title may be cited as the "Cost-of-Living Adjustment Reform Act of 1986".

(b) IN GENERAL.—

(1) Section 215(i) of the Social Security Act is amended by striking out "is 3 percent or more" in paragraph (1)(B) and inserting in lieu thereof "is greater than zero".

(2) Section 215(i)(1)(B) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out "exceeds, by not less than 3 per centum, such Index" and inserting in lieu thereof "exceeds such Index".

(3) Section 215(i)(2)(C) of such Act is amended—

(A) by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(B) by striking out "under clause (ii)" and clause (ii) as so redesignated and inserting in lieu thereof "under clause (i)".

(4) Section 215(i)(2)(C) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out clause (i) and by striking out "(ii)".

(5) Section 215(i)(4) of such Act is amended by inserting "and by the Cost-of-Living Adjustment Reform Act of 1986" after "Social Security Amendments of 1983".

(6) Section 215(i)(5)(A)(i) of such Act is amended by striking out "because the wage percentage increase was less than 3 percent" and inserting in lieu thereof "because there was no wage percentage increase greater than zero".

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the month benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

(d) EFFECTIVE DATE.—

(1) Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to cost-of-living increases determined in 1986 and all subsequent years.

(2) The amendments made by paragraphs (3) and (4) of subsection (b) shall apply with respect to months beginning after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

TITLE XI—MISCELLANEOUS PROVISIONS

SEC. 1101. COMPUTATION OF RETIREMENT ANNUITY FOR PART-TIME EMPLOYMENT.

(a)(1) Subsection (b) of section 15204 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272; 100 Stat. 335) is repealed.

(2) The provision of title 38, United States Code, that was repealed by such subsection is revived.

(b) Subsection (c) of section 15204 of such Act is redesignated as subsection (b).

(c) This section is effective with respect to individuals who retire after September 19, 1986.

SEC. 1102. MAKING RULES ON EXTRANEOUS PROVISIONS PERMANENT.

(a) Section 20001(c) of Public Law 99-272 is amended by striking out "and shall remain in effect until January 2, 1987".

(b) Senate Resolution 286, adopted December 19, 1985, is amended by striking "section 1201" each place it appears and inserting in lieu thereof "section 20001".

SEC. 1103. MODIFICATION OF DEADLINE FOR SUBMISSION OF PRESIDENT'S BUDGET.

(a) Section 1105(a) of title 31, United States Code, is amended by striking out "first Monday after January 3 of each year (or on or before February 5 in 1986)" and inserting in lieu thereof "first Tuesday in February of each year".

(b) Section 300 of the Congressional Budget Act of 1974 is amended by striking out "First Monday after January 3" and inserting in lieu thereof "First Tuesday in February".

(c) Section 1109(a) of title 31, United States Code, is amended by striking out "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)" and inserting "Concurrently with each budget submitted pursuant to section 1105(a) of this title".

SEC. 1104. TREATMENT OF LOAN ASSET SALES FOR DEFICIT REDUCTION.

(a) In order to achieve the purposes of the concurrent resolution on the budget for fiscal year 1987, S. Con. Res. 120, 99th Congress, and notwithstanding any other provision of this Act, any sale of debentures, as well as any underlying Federal guaranty, by the Secretary of the Treasury, or any other agent of the United States, pursuant to provisions of this Act, shall be without recourse to the Federal Government and shall discharge the Federal Government's obligations with respect to any individual purchaser or assignee of such debenture.

(b) In the interest of budgetary savings, it is the intent of the Congress that this section be interpreted by the Secretary of the Treasury, or any other agent of the United States, and any court of law, as superseding any provision of this Act appearing to set forth a contrary requirement.

SEC. 1105. DENIAL OF CERTAIN TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES.

(a) DENIAL OF FOREIGN TAX CREDIT.—Section 901 (relating to taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) DENIAL OF FOREIGN TAX CREDIT, ETC. WITH RESPECT TO CERTAIN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—Notwithstanding any other provision of this part—

"(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) during the taxable year to any country to which this subsection applies, and

"(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income for such taxable year from sources within any country so identified.

"(2) COUNTRIES TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any foreign country—

"(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

"(ii) with respect to which the United States has severed diplomatic relations,

"(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

"(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

"(B) PERIOD FOR WHICH SUBSECTION APPLIES.—This subsection shall apply to any foreign country described in subparagraph (A) during the period—

"(i) beginning on the later of—

"(I) January 1, 1987, or

"(II) 6 months after such country becomes a country described in subparagraph (A), and

"(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

"(3) PART-YEAR RULE.—If this subsection applies to any foreign country for any period less than an entire taxable year, paragraph (1) shall be applied by taking into account only that proportion of the taxes and income described in paragraph (1) for the taxable year as the portion of the taxable year which includes such period bears to the entire taxable year."

"(b) DENIAL OF DEFERRAL OF INCOME.—

"(1) GENERAL RULE.—Section 952(a) (defining subpart F income) is amended by striking out "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", and", and by inserting immediately after paragraph (4) the following new paragraph:

"(5) the income of such corporation derived from any foreign country during any period during which section 904(i) applies to such foreign country."

(2) INCOME DERIVED FROM FOREIGN COUNTRY.—Section 952 (defining subpart F income) is amended by adding at the end thereof the following new subsection:

"(e) INCOME DERIVED FROM FOREIGN COUNTRY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 904(i) applies if such income was, without regard to such entities, derived from such country."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 1106. FOOD FOR PEACE FUNDS.

Funds made available by title IV of the Agriculture, Rural Development, and Related Agencies Appropriations Act of 1986 for Public Law 480, title II programs, and not otherwise obligated on the date of enactment of this section, shall be obligated during fiscal year 1986 for the purposes for which they were made available only.

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SEC. 1107. MEDICARE PAYMENTS TO LARGE RURAL HOSPITALS SERVING A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS.

(a) IN GENERAL.—Section 1886(d)(5)(F)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(v)) is amended—

(1) by striking "or" at the end of subclause (II), and

(2) by striking subclause (III) and inserting in lieu thereof the following new subclauses:

"(III) such percentages as are determined by the Secretary to be appropriate for hospitals located in a rural area which have 300 or more beds, or

"(IV) 45 percent if the hospital is located in a rural area and has less than 300 beds."

(b) CONFORMING CHANGE.—Section 1886(d)(5)(F)(iv) of such Act is amended—

(1) in subclause (I) by inserting ", or is located in a rural area and has 300 or more beds," after "beds,", and

(2) in subclause (III) by inserting "and has less than 300 beds" after "area".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 1986.

TITLE XII—MISCELLANEOUS RETIREMENT BENEFITS PROTECTIONS

Subtitle A—Protections From Extraordinary Public Debt Management

SEC. 1201. INVESTMENT AND RESTORATION OF TRUST FUNDS.

(a) IN GENERAL.—Subsection (d) of section 201 of the Social Security Act (42 U.S.C. 401(d)) is amended—

(1) by striking out "(1) on original issue" and inserting in lieu thereof "(A) on original issue",

(2) by striking out "(2) by purchase" and inserting in lieu thereof "(B) by purchase";

(3) by striking out "It shall be" and inserting in lieu thereof "(1) It shall be", and

(4) by adding at the end thereof the following new paragraphs:

"(2) If—

"(A) any amounts in the Trust Funds have not been invested solely by reason of the public debt limit, and

"(B) the taxes described in clause (3) or (4) of subsection (a) with respect to such amounts were appropriated to the Trust Funds have actually been received into the general fund of the Treasury of the United States,

such amounts shall be invested by the Managing Trustee as soon as such investments can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title.

"(3)(A) Upon expiration of any debt limit impact period, the Managing Trustee shall immediately—

"(i) reissue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations held by such Trust Fund that—

"(I) were redeemed during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of standard investment procedures for such Trust Fund in effect on the day before the date on which the debt limit impact period began, would not have been redeemed if the debt limit impact period had not occurred, and

"(ii) issue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations which—

"(I) were not issued during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of such standard investment procedures, would have been issued if the debt limit impact period had not occurred.

"(B) Obligations issued or reissued under subparagraph (A) shall be substituted for obligations that are held by the Trust Fund, and for amounts in the Trust Fund that have not been invested, on the date on which the debt limit impact period ends in a manner that will ensure that, after such substitution, the holdings of the Trust Fund will replicate to the maximum extent practicable the obligations that would be held by such Trust Fund if the debt limit impact period had not occurred.

"(C) In determining, for purposes of this paragraph, the obligations that would be held by a Trust Fund if the debt limit impact period had not occurred, any amounts in the Trust Fund which have not been invested, and any amounts required to be invested under paragraph (2), shall be treated as amounts which were required to be invested upon transfer to the Trust Fund.

"(4) The Managing Trustee shall pay, on the first normal interest payment date that occurs on or after the date on which any debt limit impact period ends, to each of the Trust Funds, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Managing Trustee to be equal to the excess of—

"(A) the net amount of interest that would have been earned by such Trust Fund during such debt limit impact period if—

"(i) amounts in such Trust Fund that were not invested during such debt limit impact period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to such Trust Fund which occurred during such debt limit impact period solely by reason of the public debt limit had not occurred, over

"(B) the sum of—

"(i) the net amount of interest actually earned by such Trust Fund during such debt limit impact period, plus

"(ii) the total amount of the principal of all obligations issued or reissued under paragraph (3)(A) at the end of such debt limit impact period that is attributable to interest that would have earned by such Trust Fund during such debt limit impact period but for the public debt limit.

"(5) For purposes of this section—

"(A) The term 'public debt limit' means the limitation imposed by subsection (b) of section 3101 of title 31, United States Code.

"(B) The term 'debt limit impact period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) AVAILABILITY OF FUNDS.—Subsection (a) of section 201 of the Social Security Act is amended by adding at the end thereof the following new sentence: "All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Funds are specifically made available under this title or under any other provisions of law directly related to the programs established by this title.".

SEC. 1202. CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) INVESTMENT AND RESTORATION OF THE FUND.—Section 8348 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if necessary to ensure that the public debt of the United States does not exceed the public debt limit.

"(2) Any amounts of the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

"(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would be held by the Fund if the debt issuance suspension period had not occurred.

"(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

"(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

"(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

"(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

"(5) For purposes of this subsection and subsections (k) and (l) of this section—

"(A) the term 'public debt limit' means the limitation imposed by section 3101(b) of title 31; and

"(B) the term 'debt issuance suspension period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) SALES AND REDEMPTIONS BY THE FUND.—Section 8348 of title 5, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(k) The Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund only for the purpose of enabling the Fund to make payments authorized by the provisions of this subchapter or chapter 84 of this title is related provisions of law. If the Fund holds any amounts which, by reason of the public debt limit, are not invested, the Secretary

may nevertheless make such sales and redemptions if, and only to the extent, necessary to ensure that such payments are made in a timely manner.".

(c) REPORTS REGARDING THE OPERATION AND STATUS OF THE FUND.—Section 8348 of title 5, United States Code, as amended by subsections (a) and (b), is further amended by adding at the end the following new subsection:

"(l)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States.

"(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.".

SEC. 1203. COST-OF-LIVING ADJUSTMENTS IN CERTAIN FEDERAL BENEFITS.

(a) IN GENERAL.—Benefits which are payable in calendar year 1987, 1988, 1989, 1990, or 1991, under programs listed in section 257(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), including any cost-of-living adjustment in such benefits, shall not be subject to modification, suspension, or reduction in such calendar year pursuant to a Presidential order issued under such Act.

(b) DEFINITION.—For purposes of this section, the term "cost-of-living adjustment" means any increase or change in the amount of a benefit or in standards relating to such benefit under any provision of Federal law which requires such increase or change as a result of any change in the Consumer Price Index (or any component thereof) or any other index which measures costs, prices, or wages.

SEC. 1204. EXEMPT PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.—Section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)) is amended by inserting after the item relating to Compensation of the President the following new item:

"Dual benefits payments account (60-0111-0-1-601);".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to fiscal years beginning after September 30, 1986.

Subtitle B—Older Americans Pension Benefits

SEC. 1210. BENEFIT ACCRUAL BEFORE MAXIMUM NORMAL RETIREMENT BENEFIT.

Section 4(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(f)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(3) in subparagraph (B) (as so redesignated)—

(A) by striking out "and" after "hire any individual,"; and

(B) by inserting before the semicolon at the end thereof a comma and "and no employee benefit plan shall require or permit the suspension of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age before accruing the maximum normal retirement benefit under the plan unless the plan is a defined benefit pension plan that provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan"; and

(4) by adding at the end thereof the following new paragraph:

"(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing the terms of an employee benefit plan that—

"(A) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052(a)(2)); or

"(B) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

SEC. 1211. BENEFIT ACCRUAL BEYOND NORMAL RETIREMENT AGE.

(a) ERISA AMENDMENT.—

(1) IN GENERAL.—Subsection (a) of section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(a)) is amended to read as follows:

"(a) Each pension plan shall satisfy the requirements of subsection (b)(3), and—

"(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1); and

"(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2).".

(2) DEFINED BENEFIT PLANS.—Section 204(b)(1) of such Act is amended by adding at the end thereof the following new subparagraph:

"(H)(i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the terms of the plan, an employee's benefit accrual is suspended or the rate of an employee's benefit accrual is reduced solely because of age before accruing the maximum normal retirement benefit under the plan unless the plan provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan.

"(ii) A defined benefit plan shall not be treated as not satisfying the requirements of this subparagraph solely because the plan—

"(I) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2); or

"(II) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

(3) DEFINED CONTRIBUTION PLANS.—Section 204(b) of such Act is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2)(A) An individual account plan satisfies the requirements of this paragraph if, under the plan, employer contributions to the employee's account are not suspended or reduced solely because of age.

"(B) A target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury) shall not be treated as not satisfying the requirements of this paragraph solely because the plan excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2).

"(C) An individual account plan (including such a target benefit plan) shall not be treated as not satisfying the requirements of this paragraph solely because the plan imposes a limitation on the contributions that may be made or on the number of years for which contributions will be made under the plan with respect to an employee.".

(4) CERTAIN PLAN AMENDMENTS.—Section 204(g)(2) of such Act is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (1), in the case of a plan that on the date of enactment of the Sixth Omnibus Budget Reconciliation Act, 1986, provided for the distribution or the commencement of distribution of the entire interest of an employee under the plan on or after attaining the normal retirement age under the plan regardless of whether the employee has separated from service, an amendment that postpones the date as of which such distribution will be made or commence, and which is adopted within the 12-month period following the date on which section 204(h)(1)(H) or section 204(b)(2) (as amended by such Act) becomes applicable to the plan, shall not be treated as reducing accrued benefits.".

(b) CODE AMENDMENTS.—

(1) DEFINED BENEFITS PLANS.—Section 411(b)(1) of the Internal Revenue Code of 1954 (relating to accrued benefit requirements) is amended—

(A) by striking out "GENERAL RULES.—" and inserting in lieu thereof "DEFINED BENEFIT PLANS.— "; and

(B) by adding at the end thereof the following new subparagraph:

"(H) CONTINUED ACCRUAL BEYOND NORMAL RETIREMENT AGE.—

"(i) IN GENERAL.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the terms of the plan, an employee's benefit accrual is suspended or the rate of an employee's benefit accrual is reduced solely because of age before accruing the maximum normal retirement benefit under the plan unless the plan provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan.

"(ii) EXCEPTION.—A defined benefit shall not be treated as not satisfying the requirements of this subparagraph solely because the plan—

"(I) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 410(a)(2); or

"(II) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

(2) DEFINED CONTRIBUTION PLANS.—Section 411(b) of such Code is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) DEFINED CONTRIBUTION PLANS.—

"(A) IN GENERAL.—A defined contribution plan satisfies the requirements of this paragraph if employer contributions to the employee's account are not suspended or reduced solely because of age.

"(B) TARGET BENEFIT PLANS.—A target benefit plan (as defined under regulations prescribed by the Secretary) shall not be treated as not satisfying the requirements of this paragraph solely because the plan excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 410(a)(2).

"(C) INDIVIDUAL ACCOUNT PLANS.—An individual account plan (including such a target benefit plan) shall not be treated as not satisfying the requirements of this paragraph solely because the plan imposes a limitation on the contributions that may be made or on the number of years for which contributions will be made under the plan with respect to an employee.".

(3) CERTAIN PLAN AMENDMENTS.—Section 411(d)(6)(B) of such Code (relating to amendments that reduce accrued benefits) is amended by adding at the end thereof the following sentence: "For purposes of subparagraph (B), in the case of a plan that on the date of enactment of the Sixth Omnibus Budget Reconciliation Act, 1986, provided for the distribution or the commencement of distribution of the entire interest of an employee under the plan on or after attaining the normal retirement age under the plan regardless of whether the employee has separated from service, an amendment that postpones the date as of which such distribution will be made or commence, and which is adopted within the 12-month period following the date on which section 411(b)(1)(H) or section 411(b)(2) (as amended by such Act) becomes applicable to the plan, shall not be treated as reducing accured benefits.".

(4) INTEGRATED PLANS.—Section 401(a)(5) of such Code (relating to a nondiscriminatory classification of employees) is amended by inserting after the second sentence the following new sentence: "Nor shall a plan be considered discriminatory within the meaning of such provisions merely because, in the case of an employee who has attained the normal retirement age under the plan, the plan provides for a rate of benefit accrual or contributions (including retirement benefits created under State or Federal law) that does not exceed the rate of benefit accrual or contributions under the plan (including retirement benefits created under State or Federal law) in the case of an employee who has not attained the normal retirement age under the plan.".

(5) CONFORMING AMENDMENT.—The first sentence of section 411(a) of such Code (relating to minimum vesting standards) is amended by striking out "paragraph (2) of subsection (b), and" and all that follows through the end thereof and inserting in lieu thereof "subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).".

SEC. 1212. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this subtitle shall apply only to employees who are employed after December 31, 1988. In cases of such employees, such amendments shall apply to accrual computation periods beginning after December 31, 1986. In the case of employees not employed after December 31, 1988, the amendments made by this subtitle shall apply only to accrual computation periods beginning after December 31, 1988.

(b) PLAN AMENDMENTS.—If any amendment made by this subtitle requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment; and

(2) such plan amendment applies retroactively to the period after such amendment takes effect and before such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions merely because it operates in accordance with this provision.

(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1 1986, the amendments made by this subtitle shall not apply to plan years beginning before the earlier of—

(1) the later of—

(A) January 1, 1989, or

(B) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

(2) January 1, 1991.

(d) FINAL REGULATIONS.—The Secretary of Labor or the Secretary of the Treasury, as the case may be, shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle.

TITLE XIII—SOCIAL SECURITY TRUST FUNDS

SEC. 1301. SHORT TITLE.

This title may be cited as the "Social Security Trust Funds Management Act of 1986".

SEC. 1302. INVESTMENT AND RESTORATION OF TRUST FUNDS.

(a) Subsection (d) of section 201 of the Social Security Act (42 U.S.C. 401(d)) is amended—

(1) by striking out "(1) on original issue" and inserting in lieu thereof "(A) on original issue",

(2) by striking out "(2) by purchase" and inserting in lieu thereof "(B) by purchase";

(3) by striking out "It shall be" and inserting in lieu thereof "(1) It shall be", and

(4) by adding at the end thereof the following new paragraphs:

"(2) If—

"(A) any amounts in the Trust Funds have not been invested solely by reason of the public debt limit, and

"(B) the taxes described in clause (3) or (4) of subsection (a) with respect to which such amounts were appropriated to the Trust Funds have actually been received into the general fund of the Treasury of the United States,

such amounts shall be invested by the Managing Trustee as soon as such investments can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title.

"(3)(A) Upon expiration of any debt limit impact period, the Managing Trustee shall immediately—

"(i) reissue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations held by such Trust Fund that—

"(I) were redeemed during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of standard investment procedures for such Trust Fund in effect on the day before the date on which the debt limit impact period began, would not have been redeemed if the debt limit impact period had not occurred, and

"(ii) issue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations which—

"(I) were not issued during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of such standard investment procedures, would have been issued if the debt limit impact period had not occurred.

"(B) Obligations issued or reissued under subparagraph (A) shall be substituted for obligations that are held by the Trust Fund, and for amounts in the Trust Fund that have not been invested, on the date on which the debt limit impact period ends in a manner that will ensure that, after such substitution, the holdings of the Trust Fund will replicate to the maximum extent practicable the obligations that would be held by such Trust Fund if the debt limit impact period had not occurred.

"(C) In determining, for purposes of this paragraph, the obligations that would be held by a Trust Fund if the debt limit impact period had not occurred, any amounts in the Trust Fund which have not been invested, and any amounts required to be invested under paragraph (2), shall be treated as amounts which were required to be invested upon transfer to the Trust Fund.

"(4) The Managing Trustee shall pay, on the first normal interest payment date that occurs on or after the date on which any debt limit impact period ends, to each of the Trust Funds, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Managing Trustee to be equal to the excess of—

"(A) the net amount of interest that would have been earned by such Trust Fund during such debt limit impact period if—

"(i) amounts in such Trust Fund that were not invested during such debt limit impact period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to such Trust Fund which occurred during such debt limit impact period solely by reason of the public debt limit had not occurred, over

"(B) the sum of—

"(i) the net amount of interest actually earned by such Trust Fund during such debt limit impact period, plus

"(ii) the total amount of the principal of all obligations issued or reissued under paragraph (3)(A) at the end of such debt limit impact period that is attributable to interest that would have been earned by such Trust

Fund during such debt limit impact period but for the public debt limit.

"(5) For purposes of this section—

"(A) The term 'public debt limit' means the limitation imposed by subsection (b) of section 3101 of title 31, United States Code.

"(B) The term 'debt limit impact period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) Subsection (a) of section 201 of the Social Security Act is amended by adding at the end thereof the following new sentence: "All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under any other provisions of law directly related to the programs established by this title.".

SEC. 1303. REPEAL OF NORMALIZED TAX TRANSFER.

(a) Subsection (a) of section 201 of the Social Security Act is amended by striking out the matter following clause (4) and inserting in lieu thereof the following: "The amounts appropriated by clauses (3) and (4) shall be transferred from the general fund of the Treasury of the United States to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred from the general fund of the Treasury to the Federal Disability Insurance Trust Fund, upon receipt by the general fund of taxes specified in clauses (3) and (4) of this subsection (as estimated by the Secretary). Proper adjustments shall be made in amounts subsequently transferred to the extent amounts previously transferred were in excess of, or were less than, the taxes specified in such clauses (3) and (4). All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under other provisions of law directly related to the programs established by this title.".

(b) The amendment made by subsection (a) shall take effect on July 1, 1990.

SEC. 1304. FAITHFUL EXECUTION OF DUTIES BY MEMBERS OF BOARD OF TRUSTEES OF TRUST FUNDS.

Section 201(c) of the Social Security Act is amended by striking the last sentence and inserting the following: "A person serving on the Board of Trustees (including the Managing Trustee) shall not be considered to be a fiduciary, but each such person shall faithfully execute the duties imposed on such person by this section. A person serving on the Board of Trustees (including the Managing Trustee) shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.".

SEC. 1305. REPORTS REGARDING THE OPERATION AND STATUS OF THE TRUST FUNDS.

Subsection (c) of section 201 of the Social Security Act is amended—

(1) by striking "once" in the fourth sentence and inserting "twice",

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(3) by redesignating paragraphs (3), (4), and (5) as subparagraphs (D), (E), and (F), respectively,

(4) by inserting after subparagraph (B) (as redesignated by paragraph (2) of this section) the following:

"(C) Report to the Congress as soon as possible, but not later than the date that is 30 days after the first normal interest payment date occurring on or after the date on which any debt limit impact period for which the Managing Trustee is required to take action under paragraph (3) or (4) of subsection (d) ends, on—

"(i) the operation and status of the Trust Funds during such debt limit impact period, and

"(ii) the actions taken under paragraphs (3) and (4) of subsection (d) with respect to such debt limit impact period;",

(5) by striking out "in paragraph (2) above" and inserting in lieu thereof "in subparagraph (B) above",

(6) by inserting "(1)" after "(c)", and

(7) by adding at the end thereof the following:

"(2) The Managing Trustee shall report monthly to the Board of Trustees concerning the operation and status of the Trust Funds and shall report to Congress and to the Board of Trustees not less than 15 days prior to the date on which, by reason of the public debt limit, the Managing Trustee expects to be unable to fully comply with the provisions of subsection (a) or (d)(1), and shall include in such report an estimate of the expected consequences to the Trust Funds of such inability.".

SEC. 1306. ELIMINATION OF UNDUE DISCRETION IN THE INVESTMENT OF TRUST FUNDS.

(a) Section 201(d) of the Social Security Act is amended, in the first sentence—

(1) by inserting "immediately" after "to invest"; and

(2) by striking ", in his judgment,".

(b)(1) Paragraph (2) of section 201(d) of the Social Security Act, as added by section 202 of this Act, is amended to read as follows:

"(2) If any amount in either of the Trust Funds is not invested solely by reason of the public debt limit, such amount shall be invested as soon as such investment can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title."

(2) The amendment made by paragraph (1) shall take effect on July 1, 1990.

SEC. 1307. SALES AND REDEMPTIONS BY TRUST FUNDS.

Section 201(e) of the Social Security Act is amended—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2)(A) The Managing Trustee may effect any such sale or redemption with respect to either Trust Fund only for the purpose of enabling such Trust Fund to make payments authorized by this title or under any other provisions of law directly related to the programs established by this title. If either of the Trust Funds holds any amounts which are not invested by reason of the public debt limit, the Managing Trustee is nevertheless directed to make such sales and redemptions if, and only to the extent, necessary to assure timely payment of benefits and other payments authorized by this title or by any other provisions of law directly related to the programs established by this title, but the principal amount of obligations sold or redeemed pursuant to this sentence shall not exceed the principal amount of obligations that would have been sold or redeemed under normal operating procedures in order to make such payments.".

SEC. 1308. EFFECTIVE DATE.

Except as otherwise provided by this title, the amendments made by this title shall take effect on the date of enactment of this Act.

Passed the Senate September 20 (legislative day, September 15), 1986.

Attest:

Secretary.

□ 0010

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMPLIANCE WITH CERTAIN REQUIREMENTS OF THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT

The PRESIDING OFFICER. Under the provisions of Public Law 99-177, the hour of 12 midnight having arrived, the Senate will now turn to the consideration of Senate Joint Resolution 412.

The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 412) complying with the requirements of section 274(f)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Mr. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, the joint resolution is not longer debatable, nor may it be amended.

The joint resolution will be read the third time.

The joint resolution was read a third time.

□ 0020

The PRESIDING OFFICER. The question is on final passage of the joint resolution.

The Senator from Florida.

Mr. CHILES. Mr. President, how much time is available now?

Mr. DOLE. None.

The PRESIDING OFFICER. No time is available. All time has expired.

The question is on the passage.

AGENDA

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute so I might ask the distinguished majority leader what his plans are for the remainder of the evening and Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I thought there might be one additional vote on a Daniloff resolution. I understand there will be an objection to that. So there will be no vote on that.

Am I correct there will be an objection?

Mr. PELL. As long as the summit meeting or arms control is related to the release of Daniloff there would be.

Mr. DOLE. So there will be an objection. So this will be the last vote tonight.

We will not be in—this is Saturday. We will not be in today. We will not have votes on Monday. We will discuss product liability on Monday, probably starting about noon or lasting to 4 or 5 o'clock, but there will be no votes on Monday. There will be votes on Tuesday. We hope to go to the highway bill on Tuesday.

Mr. BYRD. May we have order so the majority leader may be heard?

The PRESIDING OFFICER. The Senator is correct. The Senate is not in order. Those standing in the aisles or well of the Senate please take their seats and cease conversation. The Senate will not continue until the Senate is in order. Those who are conversing in the aisles, please take their seats.

Mr. DOLE. I would indicate there will be votes on Tuesday. We will be in a week from today, Saturday, and we will probably have a number of late nights this next week because I am still convinced we can conclude our business by the third. Our respective staffs, Republican and Democratic staffs, have been working on the drug bill starting this afternoon, will be working on the weekend and Monday. There is a chance we might work out a bipartisan approach on that.

It does seem to me we ought to at least have the managers have a couple minutes on each side before we vote on this rather important issue. I hope there would be unanimous consent to do that.

Mr. BYRD. Yes.

The PRESIDING OFFICER. The question is on final passage.

Mr. DOLE. I ask unanimous consent we may proceed for 3 minutes on a side.

Mr. ARMSTRONG. Mr. President, reserving the right to object, and of course I will not object, it would appear to me that both managers may be of the same mind on this issue. It would be well to divide the time in a way that would afford an opportunity for someone who wishes to speak in favor of passage of the motion.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. DOLE. Mr. President, let me indicate whatever the outcome is I will vote with the prevailing side. I say that for a reason. Then I will enter a motion to reconsider.

If the House does not comply as we have complied today, then I will bring up the motion to reconsider and we will then vote for sequester or whatever.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I will ask on our side who does the leader——

The Senator from Texas favors; I oppose. He favors the adoption of the sequester resolution.

Mr. GRAMM. I do, Mr. President.

Mr. DOMENICI. I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am not going to vote for sequester because I just heard the distinguished majority leader say that whatever happens tonight, he is going to enter a motion to reconsider. That will keep this matter before the Senate.

The only possible reason to vote for it is to be concerned if the U.S. House will not do their job. We have done ours. The very reason that we had this temporary sequester which we are going to vote on in a few minutes, the very reason for it being in the law is to make sure we do our job.

Some may not like the way we did our job, but I do not believe anyone can say we have not done our job. That means that the American people——

The PRESIDING OFFICER. The Senator has used his 1 minute.

Mr. DOMENICI. I will yield the floor and save 2 minutes to me. I yield to the distinguished Senator from Texas.

Mr. GRAMM. I had 3 minutes. The Senator still has 2 minutes left.

Mr. DOLE. No, 3 minutes together.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, how much time do I have?

The PRESIDING OFFICER. Three minutes.

Mr. DOLE. That is right.

The PRESIDING OFFICER. Three minutes to the side of those who favor the resolution.

Mr. GRAMM. Mr. President, I will vote "aye" on this motion to conform with the law. But let me make the vote clear to everybody. The purpose of this vote is to serve as a disciplining agent. When we cast this vote tonight, this vote is meaningless so far as the U.S. Senate is concerned. Under Gramm-Rudman-Hollings no one can go back at this point and change the economic base numbers, that is set by law. The Appropriations Committee has set out a pattern and bills that will clearly meet the targets of Gramm-Rudman and, as the distinguished chairman has said, while we may not in groups or individually like the way this was achieved, it meets the targets.

The distinguished majority leader will move to reconsider the vote. The vote will be left open. If the House does not do its job, we can come back and pull the trigger and put the heat on everybody.

So I submit that in a very real sense this is simply a political vote. I intend to vote for it to conform with the process. But I urge my colleagues to make their own judgment as to whether they want to vote "aye" or "nay", but to be prepared if the House does not act, if we do not come to a conference, if we do not meet the target, to pull the trigger at that point. At that point the vote will become meaningful. Tonight it is not meaningful and I ask my colleagues to vote on that basis.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. I yield 1 minute to the distinguished Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, I intend to vote "no" tonight. I urge my colleagues to vote "no."

I think by an overwhelming vote we have provided the savings that allow us to meet the targets. I see no reason why we should vote now to sequester defense 5.6 percent, $9.7 billion, to sequester the domestic programs, 7.6 percent, a total of $9.7 billion, to freeze Federal Reserve COLA's for the second year in a row, and one reason I am going to vote "no" is that I do not want to cast that vote, and I think I can do that with good conscience because we have done our job and we have met the target.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. One minute and 24 seconds.

Mr. GRAMM. Let me respond by saying the vote tonight does none of those things. It confirms what the deficit is. CBO and OMB had a finding regarding the size of the deficit. It is $163 billion.

Tonight we certify that finding; if we vote for it here or by waiting, we have an opportunity to bring it back up. We can do that when the time comes.

I yield the remainder of my time to the distinguished Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I will take 30 seconds.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. What we are doing here with this vote is following a process that many people in this Chamber said that we ought to follow. They did not like the automatic procedure. The Supreme Court overruled it. They said let us vote. This is the chance to vote.

I make one final point. This is not a unicameral legislative body. The U.S. Senate did a great work tonight. The Senator from New Mexico and the Senator from Florida deserve tremendous thanks and commendation of the body. We have done our work but the work is not done. It is not yet the law. We should set the benchmark for Americans to see, cast the vote the people said they want a chance to cast and hope the other body does its work.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, how much do I have?

The PRESIDING OFFICER. It is 54 seconds.

Mr. DOMENICI. I can assure Members of the U.S. Senate, that come October there will be no sequester. With the passage of this bill holding resolution at the desk and with what is going to happen in both Houses, there will be no sequester in October.

If that is the case, what do we want to vote in a temporary sequester for tonight—to prove our macho. All it does is hold some budget authority in abeyance until October to see if we meet the targets.

I think we have met them. They told us to do this. That is what this process said. It has worked. I commend its sponsors. It has worked. It puts us here tonight. It put the appropriators where they are not spending over the budget resolution. When you add it up, there will not be a sequester. What do we want to have a temporary one held out there for? You know it will just hold all the budget authority around and confuse things for October.

The PRESIDING OFFICER. The time has expired.

SEVERAL SENATORS. Vote.

The PRESIDING OFFICER. Who yields time?

SEVERAL SENATORS. Vote, vote.

Mr. GRAMM. I yield back.

Mr. DOMENICI. I yield back my time.

The PRESIDING OFFICER. All time has expired.

Mr. LEVIN. Mr. President, I supported the reconciliation deficit reduction package offered by Senators DOMENICI and CHILES. I looked at this package with two questions in mind: Is this an ideal way to reduce the deficit and reach the Gramm-Rudman target for 1987; and, if it is not idea, is it least a real way to reduce the deficit?

It is clear to me that this is not an ideal approach. First of all, many of the elements in this package are one year savings. The sale of loan assets, for example, will bring in revenue 1987, but we cannot sell the same asset 2 years in a row. The goal we should have in terms of spending restraint is to make changes in the law now which are lasting in their effect, resulting in deficit reduction in 1987 and beyond.

Second, a better way to reduce the deficit, which would have had an effect in 1987 and beyond, would have been to combine spending restraint with revenue increases from tax reforms such as a tough minimum tax on profitable corporations and wealthy individuals who are not now paying anything in taxes. In that way, we could have achieved greater fairness in the Tax Code and done something lasting about the deficit. Unfortunately, that tax reform revenue is now being used to fund uneven tax cuts in the tax reform bill. I oppose the tax reform bill for a number of reasons, but one of them is that by using those revenues to fund uneven tax cuts, we are putting ourselves in the position in the future of reducing the deficit through raising revenues from regressive taxes such as excise taxes on telephone bills and beer and through unwise or temporary spending restraint. So, for those who find this particular reconciliation package distasteful, let me state as clearly as I can—we have an option that is far better.

But if this is not an ideal deficit reduction package, is it adequate to meet the deficit reduction target of Gramm-Rudman for 1987? Chairman of the Budget Committee, Senator DOMENICI, and the ranking minority member, Senator CHILES have assured the Senate that the Congressional Budget Office is scoring the actions contained in this package as resulting in real deficit reduction for 1987. In the past, we in this body have looked to CBO as the impartial yardstick for measuring projected spending, revenues and deficits. Many in this body have looked to its analysis of the President's budget each year in order to determine the credibility of his budget. With our track record of trust in CBO, I believe we should trust CBO in its evaluation that the deficit reduction in this package will result in our meeting the Gramm-Rudman target for 1987.

Having supported a reconciliation package which CBO certifies will meet the 1987 target, I now believe it is possible to vote against putting in place a mechanism which would provide for across-the-board cuts in the event we miss the target. That is why I oppose the sequester order.

The theory behind Gramm-Rudman has always been that across-the-board cuts are only better than no action at all to reduce the deficit. The goal of having the possibility of across-the-board cuts was to set up a threat which would force us to take real action to reduce the deficit. And as it has turned out, the threat of having to vote for the across-the-board cuts has forced us to take real action. It is not ideal action, but it is real action. As imperfect as the process is, and as imperfect as the reconciliation bill itself is, I am convinced that without the presence of Gramm-Rudman hovering over us, there would have been very little real deficit reduction this year. Therefore, the reconciliation bill's being passed and the sequester order's being defeated are vindications of the Gramm-Rudman process and not signs of its demise.

If the reconciliation bill fails in the House of Representatives, the majority leader has assured us we will be able to reconsider the sequester resolution. He will accomplish this by moving to reconsider the vote on the sequester resolution and keeping that motion pending until the House acts. That is significant assurance that our action on reconciliation tonight, and basing defeat of sequester upon that action, will not be illusory. The discipline will remain intack therefore.

Mr. PELL. Mr President, the resolution being considered by the Senate would make possible deep spending cuts in nearly every Federal Government spending program—spending cuts mindlessly calculated by computers following a rigid formula. I shall vote against this resolution.

The proposal before us is a central part of the Gramm-Rudman Act enacted by the Congress late in 1985. I was one of just 24 Senators who voted consistently against the Gramm-Rudman Act in each of the three different versions brought before the Senate. The elaborate Gramm-Rudman process is simply the wrong way and a bad way to achieve a good end—reducing the annual Federal Government deficits.

The resolution before us today is a clear demonstration of what is wrong with the Gramm-Rudman process. This resolution would require spending cuts of 7.6 percent in nearly all nondefense spending programs and a reduction of 5.6 percent in defense spending. These cuts would be made without any consideration of whether some Federal Government programs are of greater or lesser value, or a higher or lower priority, than others. All would be cut by the same percentage—education, air traffic control, tobacco subsidies, foreign aid, health research, or military aid to the Contras in Nicaragua—all get the same treatment.

This is no way to run a government and no way to establish our national priorities. No family would manage its budget this way; no corporation would manage its business this way, and the Federal Government should not either.

The Congress in fact has a procedure for establishing spending priorities. We establish priorities by enacting appropriations bills for each government agency and program, deciding how much or how little should be spent on each.

But, with the Gramm-Rudman Act in effect, that procedure has been all but abandoned this year. Of the 14 annual appropriations bills, the Senate this year has considered and acted on only seven. The Senate has had no opportunity to establish priorities by acting on spending bills for the Departments of State, Defense, Justice, Energy, Agriculture, Treasury, Housing and Urban Development or for foreign assistance.

And yet, by the resolution before us, we would willy-nilly cut these programs and the programs of all other departments by precisely 7.6 percent or, in the case of defense spending by 5.6 percent. And we are asked to approve this process even though we have not determined to what spending level the cut will apply.

Supporters of the Gramm-Rudman process contended from the outset that the threat of formula spending cuts would force the Congress to act in a timely and responsible manner on the Federal Budget. The fact is that with Gramm-Rudman in effect for the first year, we have not acted in a timely and responsible manner on Federal spending bills. The Congress has not completed action on one—not one—spending bill for the fiscal year that begins in just 3 weeks. The fact that this resolution is before us is a measure of the failure of the Gramm-Rudman Act.

Even now, with less than 3 weeks remaining before the start of the 1987 fiscal year on October 1, we are told that no one wants these formula cuts to take place, but the threat of them is necessary to force us to act on an alternative. In short, we are told we must load this pistol and hold it against our foreheads to remind us that we have a serious budgetary responsibility to fulfill. That is childish nonsense.

The truth is that there will be severe penalties if we do not bring Federal deficits under control. If deficits continue as they have during these past 5 years, our Nation will face a growing threat of inflation, we will become increasingly a debtor among the nations of the world, and we will find it increasingly difficult to reduce our huge trade deficits. With those kinds of real world penalties for budget deficits, do we really need to add these artificial threats of cutting funds for education, scientific research, air traffic safety, and drug enforcement by 7.6 percent?

It is argued that the resolution before us is only a technicality, that we are being asked only to affirm the accuracy of the deficit estimates for the coming fiscal year.

Well, the fact is that if this resolution is approved, the Gramm-Rudman formula cuts in spending will be possible. If the resolution is defeated, the Gramm-Rudman formula cuts will not be possible.

I am opposed to the Gramm-Rudman process. I am opposed to many of the program cuts this resolution would make possible. For that reason I shall vote against the resolution.

Mr. BYRD. Mr. President, the Gramm-Rudman chicken is coming home to roost tonight. Shortly, we will be voting on the sequester resolution that was reported by the temporary joint committee. That resolution incorporates the contents of the report of the directors of CBO and OMB, which estimates the deficit next year at $163.4 billion and calls for $19.4 billion in outlay reductions to meet the $144 billion deficit target. That will require outlay reductions of 5.6 percent in defense programs and 7.6 percent in affected nondefense programs.

These are not dry numbers. Let me explain what some of these cuts will mean. This sequestration resolution would cut $19.1 billion in spending authority from national defense. That includes $3.8 billion from military personnel, and $4.2 billion from operation and maintenance activities. These are at the heart of our military readiness budget.

The sequester resolution would strike directly at military personnel levels, possibly forcing drastic and dangerous reductions in troop strength. And it would start a return to the days of the "hollow" army, when planes could not fly for want of spare parts—when ships could not sail for want of trained personnel—when soldiers did not have enough ammunition for training, let alone defending out national interests.

I do not believe that the world situation has relaxed to the point where such reductions are wise. If the resolution only made these cuts in the defense budget, I would strongly oppose it. But it also makes penny-wise and pound-foolish cuts in domestic programs.

Let me illustrate some of these cuts. At a time of declining margins of safety in air travel, the sequester resolution would cut $174.6 million in spending authority from the FAA's operation budget. This Nation's air traffic control system is dangerously undermanned right now. Cutting the FAA's budget is exactly the wrong step to take if we are interested in reversing the slide in the margins of aviation safety.

Another example, the budget of the National Cancer Institute would be slashed by $89 million next year. I ask my colleagues to consider whether sufficient progress has been made in the war against cancer to justify this kind of cut? I believe that we must do more, not less in searching for a cure for this dreaded disease.

Moreover, the sequester resolution would cut financial assistance to college students by $367 million next year. How on earth is this Nation going to become competitive in the world economy if we consume our seed corn and do not provide for the education of our children? Again, this is an ill-considered and unwise policy.

I could name many other areas in which this resolution would do serious damage to the national interest. But let me conclude with just one. This Senate is rightfully concerned with the epidemic of drug use that is enveloping this country. No area of activity is safe from its pernicious effects. It is destroying productive lives, and is wreaking untold damage on our children.

Yet, this resolution would cut $28 million from the Drug Enforcement Administration's budget next year, $89 million from the FBI, and over $60 million from the Customs Service. How can we be serious about the need to strengthen efforts to eradicate illegal drugs if we cut the budget of those agencies that are on the front line of the drug war? This is just one more example of the unsound, wrongheaded, and just plain foolish budget cuts that this resolution would make.

Mr. President, these are but a few examples of the absurdities of the across-the-board budget cuts mandated by Gramm-Rudman. Even some of the President's key advisers who were among the strongest cheerleaders for the Gramm-Rudman proposal last year are counseling a veto of this resolution now that the consequences of it are apparent. I warned the President last year that Gramm-Rudman could have a detrimental effect on our defense capabilities and important domestic programs. And now those predictions are coming true.

This resolution is an abdication of the fundamental responsibility of the Congress to set fiscal priorities—to determine which programs are essential to our Nation and which can be reduced. But this resolution reduces programs by equal percentages. It assumes, for instance, that cancer research is no more important than construction of new office buildings.

Mr. President, this resolution, if it becomes law, would be a disaster to this country. Thus, I will vote against it and urge my colleagues to do likewise.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Vermont [Mr. STAFFORD], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from Hawaii [Mr. MATSUNAGA], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 15, nays 80—as follows:

[Rollcall Vote No. 278 Leg.]

YEAS—15

Armstrong	Hecht	Proxmire
Cohen	Helms	Rudman
Danforth	Hollings	Stennis
Gramm	Humphrey	Wallop
Hatch	Long	Wilson

NAYS—80

Abdnor	Ford	Metzenbaum
Andrews	Glenn	Mitchell
Baucus	Gore	Moynihan
Bentsen	Gorton	Murkowski
Biden	Grassley	Nickles
Bingaman	Harkin	Nunn
Boschwitz	Hart	Packwood
Bradley	Hatfield	Pell
Broyhill	Hawkins	Pressler
Bumpers	Heflin	Pryor
Burdick	Heinz	Quayle
Byrd	Inouye	Riegle
Chafee	Johnston	Rockefeller
Chiles	Kassebaum	Roth
Cochran	Kasten	Sarbanes
Cranston	Kennedy	Sasser
D'Amato	Kerry	Simon
DeConcini	Lautenberg	Simpson
Denton	Laxalt	Specter
Dixon	Leahy	Stevens
Dodd	Levin	Symms
Dole	Lugar	Thurmond
Domenici	Mathias	Trible
Durenberger	Mattingly	Warner
Eagleton	McClure	Weicker
Evans	McConnell	Zorinsky
Exon	Melcher	

NOT VOTING—5

Boren	Goldwater	Stafford
Garn	Matsunaga	

So the joint resolution (S.J. Res. 412) was rejected.

□ 0040

Mr. DOLE. Mr. President, I enter a motion to reconsider the vote by which Senate Joint Resolution 412 was defeated.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to extend beyond the hour of 1 a.m.

Mr. HUMPHREY. Mr. President, reserving the right to object.

Mr. President, I withdraw the reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

MARINE CENTRAL RAILROAD CO. AND PORTLAND TERMINAL CO. LABOR-MANAGEMENT DISPUTE

Mr. COHEN. Mr. President, Wednesday night the Senate passed Senate Joint Resolution 415, a bill to provide for a settlement to the Maine Central Railroad Co. and Portland Terminal Co. labor-management dispute.

This dispute, which began more than 6 months ago and threatens to disrupt rail transportation services essential to Maine and the Nation, remains unresolved.

The parties involved in the dispute are as far apart today as they were 6 months ago, despite two congressionally imposed cooling off periods. No resolution of the differences between the parties is in sight. Negotiations are at a standstill.

The most recent cooling off period expired yesterday. At this time, both parties are free to unilaterally take whatever steps are warranted by the circumstances. Guilford Transportation Industries, owner of the Maine Central Railroad, has publicly stated that it intends to swiftly and unilaterally impose a 20-percent wage cut and extensive work rule changes. The union has stated that it will not accept this course of action and will strike. The strike is certain to spread quickly throughout the Nation, crippling the flow of interstate commerce. The stage is set for a nationwide strike.

I fully support the collectives bargaining process and would prefer to see the parties in this dispute work out their differences through this process. Congress extended the cooling off period last month in order to allow the parties additional time to resolve their differences on their own. Unfortunately, no progress was made by the parties and they remain at an impasse.

The flow of interstate commerce is critical to the Nation's economic well-being and transcends the narrow interests of any party. Congress is obligated to protect the flow of interstate commerce. It has no option other than to take the steps necessary to prevent a nationwide rail strike from occurring.

The Congressional Advisory Board, a second independent panel established by Congress to investigate this dispute, found the Presidential Emergency Board's recommendations reasonable and well-founded and recommended them as a reasonable settlement of the dispute.

These recommendations constitute Senate Joint Resolution 415 and I am pleased that the Senate acted so quickly in adopting this resolution. The speed with which the Senate has acted will increase the chances that a national railroad strike can be averted. That is good news for Maine and the Nation.

NATIONAL POW/MIA RECOGNITION DAY

Mr. SIMPSON. Mr. President, it is particularly appropriate that we commemorate "National POW/MIA Recognition Day," a day set aside to honor those who are missing or who have been or are prisoners of war. It is my fervent hope that this day of recognition will serve as a reminder that there are missing American citizens who have not been accounted for, and that a full accounting of those Americans remains a highest priority of this administration. Until that accounting has been made and all of our imprisoned Americans are returned, this great Nation will itself yet remain a prisoner of the conflict in Southeast Asia.

There are some 2,430 Americans who are still unaccounted for from the Vietnam war. Six of those were from my native State of Wyoming. The location and condition of each of these persons should be a matter of vital concern to each of us. For those who may still be living, our concern must be to make every possible effort to bring about their return as swiftly as possible. For those for whom the heavy struggle has ceased, we must labor to provide answers to their families in order that the horrible uncertainly with which they daily contend can be resolved at last.

I earnestly commend the efforts of those who remind us all of the commitment of this Nation to the return of those living and a final accounting of all of those who gave their lives for this great country.

POW/MIA DAY OUR CONTINUED COMMITMENT

Mr. BYRD. Mr. President, earlier today, the distinguished majority leader called attention to the observance of this day as National POW/MIA Day. I commend him for recognizing this significant occasion. As my colleagues know, the issue of our countrymen missing in action, or otherwise unaccounted for, has been of profound concern to me. I sponsored successful legislation to award a congressional medal to the families of the missing, in recognition of their sacrifice and their determination to keep this issue high on the list of our national priorities. I wrote to the former Postmaster General to encourage him to have a stamp issued to recognize this important piece of unfinished national business.

These are tangible symbols of our concern—our commitment—to a full

accounting of those missing in the service of their country. But the real evidence of our commitment is to be found in the fact we continue to press for that accounting. When I had the privilege of addressing the National League of Families of American Prisoners and Missing in Southeast Asia, I quoted from the book of Matthew, chapter 10, in which Jesus said "are not two sparrows sold for a farthing? And one of them shall not fall on the ground without your father. But the very hairs of your head are all numbered. Fear ye not therefore, ye are of more value than many sparrows."

God does not lose us. He has not lost sight of those nearly 2,000 of our countrymen missing in Southeast Asia. While these Americans are beyond our sight, they are not beyond our thoughts. We will continue to insist upon the fullest possible accounting.

It is only fitting that we recognize POW/MIA Day. I commend the families of those brave Americans. Their perseverance and resolve will assure the full accounting that all Americans require.

SUPERFUND

Mr. BROYHILL. Mr. President, I am pleased to be a cosponsor of the programmatic portions of the conference report on H.R. 2005 being introduced today by the chairman of the Environment and Public Works Committee.

As an original cosponsor of the House bill, I congratulate the members of the Superfund Conference Committee on forging a good compromise bill. This compromise will greatly expand and strengthen the Superfund Program at a time when this program has been starving for funds since its original funding authorization expired last September 30—almost 1 year ago.

Despite the uncertainties in funding, and the long wait for additional authorities, the EPA has been doing what it can to clean up the most critical waste sites.

My office has been informed that, beginning Sunday, September 28, EPA Southeast region will begin evacuating 22 families near the Sanford Plating Superfund site in Sanford, NC. The evacuation is a precaution to ensure their safety while the EPA is chemically altering cyanide found in the site. The evacuation is expected to last 3 or 4 days.

The Sanford Plating site is on the national priority list as a heavy metals and plating waste site. Located near Route 5 and Deep River Road, the site contains 15,000 gallons of plating solutions and 50 tons of contaminated soil and sludge. Preliminary work on the site began in August under EPA's immediate removal phase of the Superfund Program.

The families are being asked to stay in local motels at Government expense. EPA has already transferred $30,000 to FEMA to cover the temporary relocation expense.

The families are being evacuated as a precautionary measure. EPA intends to threat the plating acids and cyanide wastes at the site. There is the possibility that the chemical treatment process could produce small amounts of cyanide gas, thus the precaution of removing the families. EPA will establish a complete air-monitoring system around the site during the treatment period.

Once the wastes are rendered inert, EPA intends to transport the material to one or more approved disposal sites.

I inform my colleagues of this action in North Carolina to illustrate that EPA is moving forward to cleanup abandoned hazardous waste dumps as quickly as funding and resources will allow. We in the Congress must do our part to ensure that the Superfund Program not only continues, but is expanded to ensure the permanent elimination of these hazardous waste dumpsites.

FORMER SENATOR NORRIS COTTON

Mr. RUDMAN. Mr. President, I ask unanimous consent that an article appearing in the Manchester, NH, Union Leader dated September 17, 1986, about a former colleague and a Member of this body, Senator Norris Cotton, of the State of New Hampshire, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Manchester (NH) Union Leader, Sept. 17, 1986]

UNDER THE STATE HOUSE DOME

(By Donn Tibbetts)

The history of Warren, a town far up in the foothills of New Hampshire, has just been published by author Roland Bixby.

In a preface, a famous Warren son, former U.S. Sen. Norris Cotton writes: "Perhaps no other New Hampshire town is quite so closely pinched by hills and mountains as Warren. Legend has it that Daniel Webster in his early days visited Warren and later remarked that a cobbler plying his trade in Warren couldn't pull out his last without bumping his elbow against the pressing hills.

Cotton, 86, says that Bixby "has a remarkable talent for reaching into the past and painting such a vivid picture of long-ago events that he breathes life into them and makes them sound as if they were recent occurrences."

"Being native born and of kindred spirits with the residents of Warren," said Bixby, "it has been a satisfying undertaking to preserve the account of their pains, their dilemmas, their adventures, their advances, their God-given abilities and their attitudes about life."

"One cannot help but be awestruck by the admiring qualities of a people who are anything but naive to the ways of the modern world," wrote Bixby.

In writing about Cotton, Bixby recalls: "When after his retirement, a large statewide banquet was planned with a high price plate, Norris objected, saying, 'It was the people who sent me to Washington and gave me a successful career. Charge them $10 a plate or I'll not be there.'

"And they did, and he was there. This was the real Norris Cotton, second only to Daniel Webster who also hailed from New Hampshire and the small town of Franklin," wrote Bixby.

It all whets the appetite for Bixby's "Standing Tall—The Life Story of Norris Cotton" due out later this year.

DAVID A. WINSTON

Mr. DOLE. Mr. President, last week David A. Winston, a former Senate staff member, White House consultant, and health-care expert died. Mr. Winston's premature death at age 44 was sad news to all of us who had the honor of working with him over the past 10 years.

I speak as a Senator with great interest in quality health care and quality Federal health policy when I say that David Winston's contributions toward achieving these same goals were noteworthy. And those of us who have been involved in the health field will miss his leadership, dedication, and ability on this issue.

During the late 1970's, when this Nation was making significant decisions about health policy, Mr. Winston served as a staff member to the ranking member, Senator Schweiker, and the whole committee. Later, Mr. Winston served as the head of President Reagan's health transition team and as a consultant to the White House.

At this point I would like to introduce three letters: The first from the President, the second from the Secretary of Health and Human Services Dr. Otis Bowen; and the third from former Senator and Health and Human Services Secretary, Richard Schweiker.

Mr. President, I want to extend my sympathies to Mr. Winston's family and friends. David Winston was trusted and admired by everyone who ever worked with him, on the Hill and in the executive branch. And his presence will be much missed.

There being no objection the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, September 19, 1986.

Hon. ROBERT DOLE,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR BOB: With the untimely death of David A. Winston all of us have lost a dear friend and trusted adviser. David contributed greatly to our efforts to improve the Nation's health care, and we will all miss him. I appreciate the opportunity to share my thoughts for this eulogy for David.

My association with David Winston goes back to my days in California. In progres-

sively responsible positions, he advised the State Assembly Health Committee, he served as Deputy Secretary of the California Health and Welfare Agency, and he was Chief Deputy Director of the California Department of Health. Throughout that time he was instrumental—indeed indispensible—in helping us accomplish many of the goals we sought to achieve for the people of California.

With his store of experience on the State level, David next turned the focus of his attention to the national level, serving on the Senate staff as a trusted and valued aide to Dick Schweiker.

From the outset of my first team, David was adviser to all my appointees as Secretary of Health and Human Services. In 1982, he took on the additional role of advising us at the White House on health issues.

David was the kind of person who made a trememdous contribution by working largely behind the scenes, but those who knew him were keenly aware of his central role. His passing deprives us of his continued counsel and help, and his family of a loving husband and father whose integrity and strength matched his public character in every respect.

We will all miss David's intelligence and dedication, but we should remember him for what he gave us, and be grateful for the splendid work he did for the land he loved so much. The Nation is better off, and we each are better off, because of David Winston. May the Lord who welcomes him to the everlasting City of God console all those who mourn him here in this City of Man.

Sincerely,

RONALD REAGAN.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, September 16, 1986.

Hon. ROBERT DOLE,
U.S. Senate,
Washington, DC.

DEAR BOB: We have both lost a dear friend and respected colleague with the untimely death of David A. Winston. Each of us who strives to improve our Nation's health care knows our work will be harder without him. I am, therefore, grateful for the opportunity to share with you some thoughts for your eulogy for David.

I first came to know David Winston in 1982 when I was Chairman of the Advisory Council on Social Security. We renewed acquaintances and became good friends when I became Secretary in 1985. I quickly endorsed what my immediate predecessors, Secretary Schweiker and Secretary Heckler, had done in making David Winston an unofficial albeit trusted advisor. David's advice on all occasions was not only invaluable but also so incisive that it became immediately clear to me why so many of our nation's leaders had come to rely on him.

It is always hard to feel satisfied with any single characterization of an individual especially one with as many talents and virtues as David possessed. His insight and wisdom were always valued. However, there are two pespectives of David which I will always remember best.

First, was the way in which he blended his graciousness and his superior knowledge of health policy with an intense dedication to integrity. When David made a commitment, whether it was for or against you, you knew where you stood. Most of all, when you had a "yes" you did not have to worry; you had his bond.

Just as important was David's role as a teacher whose influence and inspiration touched everyone he dealt with. I am honored to include myself in that company. Further, it is amazing the extent to which David Winston's "students" are represented in the senior leadership of this Department. Yet, this should be no surprise: each learned from David his high standards of integrity, dedication, and professionalism. This made these individuals so attractive and essential both to me and my predecessors. Those who learned from David learned well how to handle the responsibilities of public office. Certainly all of the "Bowen team" have profited from the sage advice and counsel that he so graciously and unselfishly provided.

Senator Hatch once described David Winston as a "symphony of professionalism." How fitting a description for a man who was in every sense of the word a virtuoso and who seemed never to have played a discordant note.

As John Donne has written "No man is an island. . . ." and with David's passing many Americans throughout this great country must feel as if a part of themselves is floating away. He will be sorely missed in so many ways, yet we can take solace in the knowledge that we are all better for his having passed our way.

Sincerely,

OTIS R. BOWEN, M.D.

AMERICAN COUNCIL OF LIFE INSURANCE,
Washington, DC, September 17, 1986.

Hon. ROBERT DOLE,
Senate Majority Leader,
U.S. Capitol, Washington, DC.

DEAR BOB: The tragic and untimely death of David A. Winston reminds us all of the outstanding contributions he has made to his government, his profession and his family. David was a dedicated public servant, a skilled health professional, and a devoted family man.

Very early in his career David made a strong commitment to the state of California by serving the Governor of California and the State Assembly. He continued that strong commitment to public service by coming to Washington to work for me as Senator by serving as Minority Staff Director of the Senator Labor, Health and Human Resources Committee.

Even when he went to the private sector, he voluntarily served me when I was Secretary of the Department of Health & Human Services, and he also served President Reagan in both unofficial and official capacities in the health care field. He was able to blend a very unique knowledge of health care issues in both the public and the private sectors.

His leadership, ingenuity and creativity in the health care field was clearly evident in his work on health policy issues for the Senate Health Subcommittee and for the Senate Appropriations Subcommittee on Labor, Health, Human Services and Education on which I served as ranking Republican. His initiative, professional and administrative abilities made him a very effective health issues manager for the committee and me.

It is not surprising that when he entered the private sector in the health care field that he served as President of the National Committee on quality Health Care and Vice President of American Health Capital as well as Vice President of the Voluntary Hospitals of America. All of these positions testified to his unique ability.

In his role as my key health advisor he was able to develop a credible and creative alternative to the federal regulatory approach to health policy matters.

During his extensive career in public service to California, to President Reagan and to me, he was able to demonstrate a commitment of time and energy to his wife, Susan, and their two children, Heath and Shannon, which was exemplary.

All of us will miss his strong leadership in the health policy area as well as his kind and friendly personality that made working with him so interesting and enjoyable.

Sincerely,

RICHARD S. SCHWEIKER,
Former Secretary of Health, and Human Services.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Foreign Relations.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:02 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendments of the Senate to the following joint resolution:

H.J. Res. 60. Joint resolution to designate the week beginning September 1, 1985, as "National School-Age Child Care Awareness Week."

The message also announced that the House has passed the following joint resolutions, without amendment:

S.J. Res. 196. Joint resolution designating September 22, 1986, as "American Business Women's Day";

S.J. Res. 317. Joint resolution to designate the month of November 1986 as "National Hospice Month";

S.J. Res. 354. Joint resolution to designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week";

S.J. Res. 357. Joint resolution to designate the week of September 15, 1986, through September 21, 1986, as "National Historically Black Colleges Week";

S.J. Res. 362. Joint resolution to designate the week of December 14, 1986, through December 20, 1986, as "National Drunk and Drugged Driving Awareness Week"; and

S.J. Res. 402. Joint resolution designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship."

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 2:02 p.m., a message from the House of Representatives delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 290. An act for the relief of Catherine and Robert Fossez;

H.R. 3358. An act to reauthorize the Atlantic Striped Bass Conservation Act, and for other purposes;

H.R. 4421. An act to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990 to carry out the Head Start, Follow Through, dependent care, community services block grant, and community food and nutrition programs, and for other purposes;

S.J. Res. 196. Joint resolution designating September 22, 1986, as "American Business Women's Day";

S.J. Res. 357. Joint resolution to designate the week of September 15, 1986, through September 21, 1986, as "National Historically Black Colleges Week"; and

H.J. Res. 60. Joint resolution to designate the week beginning September 15, 1986, as "National School-Age Child Care Awareness Week."

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

At 4:13 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendments of the Senate to the bill (H.R. 2787) to extend fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act.

The message also announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 1298. An act to coordinate and expand services for the prevention, identification, and treatment of alcohol and drug abuse among Indian youth, and for the other purposes.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4759. An act to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

ENROLLED BILLS SIGNED

At 5:34 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker pro tempore [Mr. FOLEY] has signed the following enrolled bills:

H.R. 1483. An Act to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes; and

H.R. 3622. An act to reorganize the Department of Defense and strengthen civilian authority in the Department of Defense, to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense, to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands and ensure that the authority of those commanders is fully commensurate with that responsibility, in increase attention to the formulation of strategy and to contingency planning, to provide for more efficient use of defense resources, to improve joint officer management policies, otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore [Mr. THURMOND].

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4759. An act to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The following joint resolution, previously received from the House of Representatives, was read the first and second times by unanimous consent, and placed on the calendar:

H.J. Res. 732. Joint resolution making urgent supplemental appropriations for the fiscal year ending September 30, 1986, for emergency assistance to the Government of the Philippines.

The Committee on Labor and Human Resources was discharged from the further consideration of the following bill, which was placed on the calendar:

H.R. 4244. An act to authorize funds to preserve the official papers of Joseph W. Martin, Jr.

MEASURES HELD AT THE DESK

The following bills were ordered held at the desk pending further disposition by unanimous consent:

H.R. 4754. An act to amend the Federal Food, Drug, and Cosmetic Act to require the appointment of the Commissioner of Food and Drugs to be subject to Senate confirmation;

H.R. 4873. An act to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes.

ENROLLED BILL AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, September 19, 1986, she had presented to the President of the United States the following enrolled bill and joint resolutions:

S. 290. An act for the relief of Catherine and Robert Fossez;

S.J. Res. 196. Joint resolution designating September 22, 1986, as "American Business Women's Day"; and

S.J. Res. 357. Joint resolution to designate the week of September 15, 1986, through September 21, 1986, as "National Historically Black Colleges Week."

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3748. A communication from the President's Personal Representative for Micronesian Status Negotiations, transmitting, pursuant to law, a report on the constitutional approval process and the status thereof in Palau; to the Committee on Energy and Natural Resources.

EC-3749. A communication from the Deputy Associate Director for Royalty Management, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayment of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3750. A communication from the Deputy Associate Director for Royalty Management, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayment of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3751. A communication from the Deputy Chief for Programs, Minerals Management Service, Department of Agriculture, transmitting, pursuant to law, a cover letter to accompany the previously submitted Deer Creek Watershed Plan in Oklahoma; to the Committee on Environment and Public Works.

EC-3752. A communication from the Deputy Administrator, General Services Administration, transmitting, pursuant to law, a proposed lease prospectus for the Internal Revenue Service in Austin TX; to the Committee on Environment and Public Works.

EC-3753. A communication from the Administrator of General Services, transmitting, pursuant to law, copies of proposed lease prospectuses; to the Committee on Environment and Public Works.

EC-3754. A communication from the Administrator of General Services, transmitting, pursuant to law, a copy of an amended lease prospectus; to the Committee on Environment and Public Works.

EC-3755. A communication from the Administrator of General Services, transmitting, pursuant to law, a proposed prospectus for leasing space in Rockville, MD; to the Committee on Environment and Public Works.

EC-3756. A communication from the Administrator of General Services, transmitting, pursuant to law, a report of building project survey for Tacoma WA; to the Committee on Environment and Public Works.

EC-3757. A communication from a member of the National Council on Public Works Improvement, transmitting, pursuant to law, the first of three reports on the state of the Nation's infrastructure; to the Committee on Environment and Public Works.

EC-3758. A communication from the Administrator of the Saint Lawrence Seaway Development Corporation, transmitting, pursuant to law, the annual report of the

Corporation for fiscal year 1985; to the Committee on Environment and Public Works.

EC-3759. A communication from the Secretary of Labor, transmitting, pursuant to law, the second annual report on the trade and employment effects of the Caribbean Basin Economic Recovery Act; to the Committee on Finance.

EC-3760. A communication from the Acting Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report on the provision of emergency military assistance to Chad; to the Committee on Foreign Relations.

EC-3761. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, a report on the implementation of an internal control review system under the Federal Managers Financial Integrity Act and a report on activities under that act for calendar year 1985; to the Committee on Governmental Affairs.

EC-3762. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, the annual report of the Board on the significant actions taken by the Office of Personnel Management; to the Committee on Governmental Affairs.

EC-3763. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, a report entitled "Getting Involved: Improving Federal Management With Employee Participation;" to the Committee on Governmental Affairs.

EC-3764. A communication from the Director of the Administrative Office of the United States Courts, transmitting a draft of proposed legislation to authorize additional judicial positions for the Courts of Appeals and District Courts of the United States; to the Committee on the Judiciary.

EC-3765. A communication from the President of the United States Capitol Historical Society, transmitting, pursuant to law, the annual report of the Society for the year ending January 31, 1986; to the Committee on Rules and Administration.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-856. A joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation.

"ASSEMBLY JOINT RESOLUTION NO. 91

"Whereas, the coast of California is a place of rare beauty and incalculable value to the spirit of humankind as well as for its economic well-being, and it is a national treasure admired and loved by all who have been refreshed by it; and

"Whereas, the oil industry intends to drill for oil off this spectacular coast, which will result in a new and noxious chemical odor in the air that will never leave; the potential destruction of seabirds and marine life; possible contamination of the food chain, including seafood shipped throughout California; large-scale air and water pollution from tankers, rigs, drill ships, trucks, and refineries; added pressure on highways, already badly in need of repair, as well as on other local services and resources; and

"Whereas, the plan to drill the north coast of California is related not to the real energy needs of Americans, but rather to federal decisions that discarded regulations regarding fuel-efficient cars, threw out government funding of alternative energy research, ended tax incentives for conservation and alternative energy use, and scrapped the once highly touted Synfuels program; and

"Whereas, despite the Department of the Interior's contention that California is not supplying its fair share of the nation's energy, this state is in reality a net energy exporter, producing far more energy than it consumes, and leading the nation in the development of alternative energy and conservation methods; and

"Whereas, The drilling for oil off of the north coast of California will not result in an increase in local employment or an improvement in the local economy as has been cynically promised, but will actually threaten the few remaining economic bases of the north coast, such as the commercial fishing and tourism industries, all for about one week's worth of energy for the nation; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact legislation creating a zone of permanent protection for the northern California coast, from Point Buchon to the Oregon border, from 200 miles offshore to the tide and submerged lands of the State of California, and that this zone be set aside as a marine sanctuary, where extraction of fossil fuels, minerals, and other nonrenewable materials, and the dumping or burning of toxic wastes, are forbidden and the protection of the marine environment and the needs of the commercial and sports fisheries are assured forever, and be it further

"Resolved, That the Legislature respectfully requests that, as part of the establishment of this zone of permanent protection, recommendations be developed and submitted to California for the establishment of compatible zones in adjacent state waters; and be it further

"Resolved, that the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-857. Resolutions adopted by the Catholic War Veterans of the United States relative to observance of certain commemorative periods; to the Committee on the Judiciary.

POM-858. A petition from the President of the Brotherhood of Maintenance of Way Employees relative to the dispute between the Brotherhood of Maintenance of Way Employees and Maine Central and Portland Terminal Railroad Companies; to the Committee on Labor and Human Resources.

POM-859. A joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources.

"ASSEMBLY JOINT RESOLUTION NO. 94

"Whereas, Federal law applies to persons injured in the course of martime employment; and

"Whereas, applicable legislation appears to be mutually exclusive, in that workers covered under the Jones Act do not have access to the remedies available under any other federal act; and

"Whereas, rising insurance rates for commercial fishing vessels which are subject to the Jones Act have increased costs and slowed expansion in this vital industry; and

"Whereas, the Jones Act has no provision rendering inoperative state laws which create parallel remedies such as workers' compensation; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature respectfully memorializes the President and the Congress of the United States to amend the Jones Act to allow commercial fishermen the option of coverage by the state workers' compensation program or other remedies which may resolve the problem of rising insurance rates for commercial fishing vessels; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Carl P. Rose:									
United States	Dollar				2,103.00				2,103.00
Philippines	Peso	14,780	720.00					14,780	720.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
David R. Dyer:									
United States	Dollar				2,103.00				2,103.00
Philippines	Peso	14,780	720.00					14,780	720.00
Isabel Christy Lee:									
United States	Dollar				2,103.00				2,103.00
Philippines	Peso	14,780	720.00					14,780	720.00
Darryl D. Nirenberg:									
United States	Dollar				2,103.00				2,103.00
Philippines	Peso	14,780	720.00					14,780	720.00
Jay S. Poole:									
United States	Dollar				2,101.00				2,101.00
Korea	Won	651,950	735.00					651,950	735.00
Total			3,615.00		10,513.00				14,128.00

JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
Aug. 6, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
John G. Shank:									
Argentina	Peso	80.17	91.00					80.17	91.00
Chile	Dollar		89.00						89.00
Peru	Sol	2,610.00	150.00					2,610.00	150.00
Colombia	Peso	33,126.70	176.00					33,126.70	176.00
United States	Dollar				3,632.00				3,632.00
Total			506.00		3,632.00				4,138.00

MARK O. HATFIELD,
Chairman, Committee on Appropriations, July 30, 1986.

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM JAN. 1 TO MAR. 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator J. Bennett Johnston:									
France	Franc	6,206	864.00					6,206.00	864.00
United States	Dollar				1,893.00				1,893.00
Senator Dennis DeConcini:									
China	Dollar		801.00		307.00				1,108.00
Hong Kong	Dollar	1,946.25	250.00					1,946.25	250.00
Total			1,915.00		2,200.00				4,115.00

MARK O. HATFIELD,
Chairman, Committee on Appropriations, July 25, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM APRIL 1 TO JUNE 30, 1985

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Edward McGaffigan:									
Honduras	Lempira	171.20	85.60					171.20	85.60
Nancy Wolicki:									
Canada	Dollar	112.75	82.00					112.75	82.00
William Cresswell:									
England	Dollar		826.00						826.00
France	Dollar		490.00						490.00
Belgium	Dollar		150.00						150.00
United States	Dollar				1,978.76				1,978.76
James McGovern:									
Belgium	Franc	20,111	324.00					20,111	324.00
France	Franc	6,711.6	714.00					6,711.6	714.00
Gerald Smith:									
Belgium	Franc	20,000	324.00					20,000	324.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM APRIL 1 TO JUNE 30, 1985—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
France	Franc	6,711.6	714.00					6,711.6	714.00
Senator J. James Exon:									
Belgium	Franc	20,111	324.00					20,111	324.00
France	Franc	5,593	595.00					5,593	595.00
Switzerland	Franc	282.80	109.00					282.80	109.00
Carl M. Smith, Jr.:									
France	Franc	9,851.20	1,048.00					9,851.20	1,048.00
United States	Dollar				545.74				545.74
Total			5,785.60		2,524.50				8,310.10

BARRY GOLDWATER,
Chairman, Committee on Armed Services, July 8, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Barry Goldwater:									
Korea	Won	185,120	208.00					185,120	208.00
Taiwan	Dollar	15,540.20	388.00					15,540.20	388.00
Singapore	Dollar	442.92	234.00					442.92	234.00
Oman	Riyal	55.304	160.00					55.304	160.00
Saudi Arabia	Riyal	711.75	195.00					711.75	195.00
Switzerland	Franc	617.15	297.00					617.15	297.00
United Kingdom	Pound	191.80	276.00					191.80	276.00
Gerald J. Smith:									
Korea	Won	185.120	208.00					185,120	208.00
Taiwan	Dollar	15,540.20	388.00					15,540.20	388.00
Singapore	Dollar	442.92	234.00					442.92	234.00
Oman	Riyal	55.304	160.00					55.304	160.00
Saudia Arabia	Riyal	711.75	195.00					711.75	195.00
Switzerland	Franc	617.15	297.00					617.15	297.00
United Kingdom	Pound	191.80	276.00					191.80	276.00
William W. Quinn:									
Korea	Won	185,120	208.00					185,120	208.00
Taiwan	Dollar	15,540.20	388.00					15,540.20	388.00
Singapore	Dollar	442.92	234.00					442.92	234.00
Oman	Riyal	55.304	160.00					55.304	160.00
Saudia Arabia	Riyal	711.75	195.00					711.75	195.00
Switzerland	Franc	617.15	297.00					617.15	297.00
United Kingdom	Pound	191.80	276.00					191.80	276.00
Robert Bayer:									
Japan	Yen	59,388	294.00					59,388	294.00
Korea	Won	185,120	208.00					185,120	208.00
Philippines	Peso	1,518.40	80.00					1,518.40	80.00
Hong Kong	Dollar	2,917.50	375.00					2,917.50	375.00
Senator Edward M. Kennedy:									
France	Franc	980.88	134.00					980.88	134.00
United States	Dollar				4,048.34				4,048.34
Soviet Union	Dollar		200.00						200.00
England	Pound	1,010.16	138.00					1,010.16	138.00
Thomas Longstreth:									
France	Franc	980.88	134.00					980.88	134.00
United States	Dollar				4,048.33				4,048.33
Soviet Union	Dollar		200.00						200.00
England	Pound	1,010.16	138.00					1,010.16	138.00
Lawrence Horowitz:									
France	Franc	980.88	134.00					980.88	134.00
United States	Dollar				4,048.33				4,048.33
Soviet Union	Dollar		200.00						200.00
England	Pound	1,010.16	138.00					1,010.16	138.00
Senator Phil Gramm:									
Philippines	Peso	6,080	320.00					6,080	320.00
People's Republic of China	Yuan	758.4	273.00					758.4	273.00
Korea	Won	275,195.4	309.00					275,195.4	309.00
James F. McGovern:									
Philippines	Peso	6,080	320.00					6,080	320.00
People's Republic of China	Yuan	758.4	273.00					758.4	273.00
Korea	Won	275,195.4	309.00					275,195.4	309.00
Alan Ptak:									
Philippines	Peso	6,080	320.00					6,080	320.00
People's Republic of China	Yuan	758.4	273.00					758.4	273.00
Korea	Won	275,195.4	309.00					275,195.4	309.00
Senator Gary Hart:									
Great Britian	Pound	292.89	414.00					292.89	414.00
United States	Dollar				2,240.00				2,240.00
Switzerland	Franc	227.86	113.00					227.86	113.00
Senator William Cohen:									
Germany	Mark	833.80	379.00					833.80	379.00
Senator Pete Wilson:									
Germany	Mark	833.80	379.00					833.80	379.00
James F. McGovern:									
Germany	Mark	833.80	379.00					833.80	379.00
James Dykstra:									
Germany	Mark	833.80	379.00					833.80	379.00
Judith Freedman:									
Germany	Mark	833.80	379.00					833.80	379.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Mark Albrecht:									
Germany	Mark	833.80	379.00					833.80	379.00
James Bodner:									
Germany	Mark	833.80	379.00					833.80	379.00
Russel Milnes:									
Korea	Won	370,240	416.00					370,240	416.00
Philippines	Dollar		80.00						80.00
Total			14,029.00		14,385.00				28,414.00

BARRY GOLDWATER,
Chairman, Committee on Armed Services, July 8, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b)—COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1985

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
James Steinberg:									
Switzerland	Franc	759.5	310.00					759.5	310.00
Gregory Craig:									
Switzerland	Franc	1,146.6	468.00					1,146.6	468.00
Senator Pete Wilson:									
Mexico	Peso		75.00						75.00
United States	Dollar				793.88				793.88
Dr. Mark Albrecht:									
Mexico	Peso		75.00						75.00
United States	Dollar				657.00				657.00
Francisco Herrera:									
Mexico	Peso		75.00						75.00
United States	Dollar				657.00				657.00
Alan Yuspeh:									
England	Dollar		236.00						236.00
United States	Dollar				1,024.00				1,024.00
Senator Jeff Bingaman:									
Soviet Union	Ruble	391.38	831.57	633.85	3,044.32			1,025.23	3,875.89
Edward McGaffigan:									
Soviet Union	Ruble	391.38	831.57	512.35	2,864.15			903.74	3,695.72
Senator Phil Gramm:									
Japan	Yen	63,990	270.00					63,990	270.00
Korea	Won	353,600	400.00					353,600	400.00
Alan Ptak:									
Japan	Yen	63,990	270.00					63,990	270.00
Korea	Won	353,600	400.00					353,600	400.00
Drew A. Harker:									
Panama	Dollar		89.00						89.00
Costa Rica	Colon	7,627.50	150.00					7,627.50	150.00
Honduras	Lempira	576	288.00					576.00	288.00
James F. McGovern:									
Belgium	Franc	9,500	166.00					9,500	166.00
Germany	Mark	1,061.25	375.00					1,061.25	375.00
Denmark	Krone	1,561	156.00					1,561.00	156.00
Norway	Krone	3,362.3	408.00					3,362.3	408.00
Carl M. Smith:									
Belgium	Franc	9,500	166.00					9,500	166.00
Germany	Mark	1,273.5	450.00					1,273.5	450.00
United States	Dollar				25.00		120.00		145.00
Denmark	Krone	1,561	156.00					1,561	156.00
United States	Dollar				10.00		45.00		55.00
Norway	Krone	3,362.3	408.00					3,362.3	408.00
United States	Dollar				25.00		140.00		165.00
Russel Milnes:									
Germany	Dollar		900.00						900.00
Senator Sam Nunn:									
Scotland	Pound	137.15	192.00					137.15	192.00
Soviet Union	Dollar		200.00						200.00
Arnold Punaro:									
Scotland	Pound	137.15	192.00					137.15	192.00
Soviet Union	Dollar		200.00						200.00
Robert Bell:									
Scotland	Pound	137.15	192.00					137.15	192.00
Soviet Union	Dollar		200.00						200.00
Senator Carl Levin:									
Switzerland	Franc	998.90	463.79					998.90	463.79
United States	Dollar				1,867.04				1,867.04
Total			9,593.93		10,967.39		305.00		20,866.32

BARRY GOLDWATER,
Chairman, Committee on Armed Services, July 8, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, FOR TRAVEL FROM APR. 1 to JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Steve Harris:									
Philippines	Peso	948	492.00					948	492.00
United States	Dollar				2,103.00				2,103.00
Lamar Smith:									
Philippines	Peso	948	492.00					948	492.00
United States	Dollar				2,103.00				2,103.00
Total			984.00		4,206.00				5,190.00

JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs,
July 24, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
John Walsh: [1]									
Costa Rica	Colon	16,260	300.00					16,260	300.00
Total			300.00						300.00

[1] Reported previously with Lamar Smith traveling to Costa Rica. The correct name should have been John Walsh. The other informaton stays the same.

JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban affairs,
July 24, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE BUDGET, FOR TRAVEL FROM JAN. 1 TO MAR. 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Paul T. Heilig:									
Korea	Won	185,120	208.00					185,120	208.00
Japan	Yen	59,388	294.00					59,388	294.00
Hong Kong	Dollar	2,917.50	375.00					2,917.50	375.00
Philippines	Peso	1,518.40	80.00					1,518.40	80.00
United States	Dollar				2,937.50				2,937.50
Charles O. Flickner:									
Guatemala	Dollar		75.00						75.00
El Salvador	Dollar		225.00						225.00
Costa Rica	Dollar		300.00						300.00
United States	Dollar				1,097.00				1,097.00
Stephen E. Bell:									
Guatemala	Dollar		75.00						75.00
El Salvador	Dollar		225.00						225.00
Costa Rica	Dollar		300.00						300.00
United States	Dollar				1,097.00				1,097.00
Total			2,157.00		5,131.50				7,288.50

PETE DOMENICI,
Chairman, Committee on the Budget, Aug. 6, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
John D. Hardy:									
Denmark	Krone	3,171.85	392.00					3,171.85	392.00
United States	Dollar				1,551.00				1,551.00
Robert E. Eisenbud:									
Sweden	Dollar		990.00		1,462.00				2,452.00
Total			1,382.00		3,013.00				4,395.00

JACK DANFORTH,
Chairman, Committee on Commerce, Science and Transportation,
July 24, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL DANFORTH, AUTHORIZED BY THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL JAN. 5–17, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John Danforth:									
Korea	Won	299,040	336.00					299,040	336.00
Japan	Yen	143,420	710.00					143,420	710.00
Hong Kong	Dollar	2,773.26	356.46					2,773.26	356.46
Senator James Exon:									
Korea	Won	327,520	368.00					327,520	368.00
Japan	Yen	145,440	720.00					145,440	720.00
Hong Kong	Dollar	3,594.36	462.00					3,594.36	462.00
Senator John Rockefeller:									
Korea	Won	339,722	381.71					339,722	381.71
Japan	Yen	181,800	900.00	139,700	691.58			321,500	1,591.58
Hong Kong	Dollar	2,458	316.00					2,458	316.00
Ralph Everett:									
Korea	Won	370,240	416.00					370,240	416.00
Japan	Yen	145,440	720.00					145,440	720.00
Hong Kong	Dollar	3,687.70	474.00					3,687.70	474.00
Jack Lewis:									
Korea	Won	370,240	416.00					370,240	416.00
Japan	Yen	145,440	720.00					145,440	720.00
Hong Kong	Dollar	3,687.70	474.00					3,687.70	474.00
Allen Moore:									
Korea	Won	370,240	416.00					370,240	416.00
Japan	Yen	145,440	720.00					145,440	720.00
Hong Kong	Dollar	3,687.70	474.00					3,687.70	474.00
Alex Netchvolodoff:									
Korea	Won	370,240	416.00					370,240	416.00
Japan	Yen	145,440	720.00					145,440	720.00
Hong Kong	Dollar	3,687.70	474.00					3,687.70	474.00
Susan Schwab:									
Korea	Won	370,240	416.00					370,240	416.00
Japan	Yen	145,440	720.00					145,440	720.00
Hong Kong	Dollar	3,687.70	474.00					3,687.70	474.00
Ira Shapiro:									
Korea	Won	370,240	416.00					370,240	416.00
Japan	Yen	181,800	900.00	103,800	513.86			285,600	1,413.86
Hong Kong	Dollar	2,458	316.00					2,458.00	316.00
Delegation Expenses: [1]									
Korea							4,045.05		4,045.05
Japan							4,528.47		4,528.47
Hong Kong							4,345.05		4,345.05
Total			14,232.17		1,205.44		12,918.57		28,356.18

[1] Delegation expenses include direct payments and reimbursement to the Department of State and to the Department of Defense under authority of sec. 502(B) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S.Res. 179, agreed to May 25, 1977. The following individuals traveled with the delegation under authorizations as noted: Senator Thomas F. Eagleton, Committee on Foreign Relations; Senator Max Baucus, Committee on Finance; Senator Alan K. Simpson, Jan Paulk, Sally Walsh, Majority Leader. Reports of their expenditures appear in the report of the authorizing source.

JACK DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation,
June 25, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Lloyd Bensten:									
Mexico	Peso	54,000	112.50	74,601	147.72			128,601	260.22
Jeffrey M. Lang:									
Mexico	Peso	108,000	225.00					108,000	225.00
Total			337.50		147.72				485.22

BOB PACKWOOD,
Chairman, Committee on Finance, June 30, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Larry Pressler:									
Italy	Lira	127,280	80.00					127,280	80.00
United States	Dollar				3,916.00				3,916.00
France	Franc			620	86.23			620	86.23
France	Franc			1,280	161.82			1,280	161.82
France	Franc	1,820	250.00					1,820	250.00
France	Franc	1,095.20	148.00					1,095.20	148.00
Senator Paul S. Trible, Jr.:									
People's Republic of China	Yuan	3,314.41	1,039.00					3,314.41	1,039.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Claude Allen:									
Belize	Dollar		99.00						99.00
United States	Dollar				595.00				595.00
Geryld B. Christianson:									
United Kingdom	Pound	680.29	1,010.00	100	148.00			780.29	1,158.00
Ireland	Pound	364.18	468.00	51.56	66.00			415.74	534.00
United States	Dollar				627.75				627.75
Ryan Malarkey:									
Belize	Dollar		99.00						99.00
United States	Dollar				595.00				595.00
Richard Messick:									
United Kingdom	Pound	551.64	810.63					551.64	810.63
Ireland	Pound	415.74	534.00					415.74	534.00
United Kingdom	Pound	228.65	336.00					228.65	336.00
United States	Dollar				401.00				401.00
Ireland	Dollar				137.38				137.38
John Miller:									
People's Republic of China	Yuan	3,314.41	1,039.00					3,314.41	1,039.00
Nancy Stetson:									
Sweden	Krona	1,342.70	187.00					1,342.70	187.00
Switzerland	Franc	789.60	420.00					789.60	420.00
Amendments:									
Fred Z. Brown (1st quarter 1986):									
Philippines	Peso	8,800	400.00					8,800	400.00
Mark Helmke:									
Philippines	Peso	8,800	400.00					8,800	400.00
Peter Galbraith (4th quarter 1984):									
France	Franc	5,418	602.00					5,418	602.00
India	Rupee	8,464.3	689.84	5,045.5	416.37			13,509.8	1,106.21
Nepal	Rupee	6,600	375.00					6,600	375.00
United Kingdom	Dollar		260.00						260.00
United States	Dollar				3,150.00				3,150.00
Total			9,246.47		10,300.55				19,547.02

RICHARD G. LUGAR,
Chairman, Committee on Foreign Relations, July 3, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
June Walton:									
United Kingdom	Pound	433.55	628.00					433.55	628.00
France	Franc	5,294.55	705.00					5,294.55	705.00
United States	Dollar				3,147.89				3,147.89
James Lofton:									
United Kingdom	Pound	433.55	628.00					433.55	628.00
France	Franc	5,294.55	705.00					5,294.55	705.00
United States	Dollar				3,147.89				3,147.89
Ian Butterfield									
United Kingdom	Pound	339.16	479.00	52	73.32			391.16	552.32
Senator William Roth:									
Japan	Dollar		198.00						198.00
Total			3,343.00		6,369.10				9,712.10

WILLIAM ROTH, JR.,
Chairman, Committee on Governmental Affairs, Aug. 6, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
John Starrels (4th quarter 1985):									
Soviet Union	Dollar		470.00		980.00				1,450.00
Donald Terry (1st quarter 1986):									
Costa Rica	Colon	16,260	300.00					16,260	300.00
Donald Terry (2d quarter 1986):									
United States	Dollar				1,365.00				1,365.00
Hong Kong	Dollar	2,020.20	260.00					2,020.20	260.00
Japan	Yen	95,040	576.00					9,5040	576.00
Scott R. Lilly:									
United States	Dollar				1,365.00				1,365.00
Hong Kong	Dollar	2,020.20	260.00					2,020.20	260.00
Japan	Yen	95,040	576.00					95,040	576.00
Alfred Watkins:									
United States	Dollar				2,013.00				2,013.00
Switzerland	Franc	1,092	600.00					1,092	600.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
David Smith:									
United States	Dollar				2,013.00				2,013.00
Switzerland	Franc	648	360.00					648	360.00
Total			3,402.00		7,736.00				11,138.00

DAVID R. OBEY,
Chairman, Joint Economic Committee, Aug. 1, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL HATCH, AS AUTHORIZED BY THE SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Orrin G. Hatch				225.00					225.00
				161.00					161.00
				216.00					216.00
				97.00					97.00
				208.00					208.00
Senator Chic Hecht				225.00					225.00
				161.00					161.00
				216.00					216.00
				97.00					97.00
				208.00					208.00
Dee Benson				225.00					225.00
				161.00					161.00
				216.00					216.00
				97.00					97.00
				208.00					208.00
Chris Williams				225.00					225.00
				161.00					161.00
				216.00					216.00
				97.00					97.00
				208.00					208.00
Delegation expenses [1]								509.56	509.56
								2,601.11	2,601.11
								641.48	641.48
								1,129.73	1,129.73
								1,287.28	1,287.28
								1,872.74	1,872.74
								497.37	497.37
Total				3,628.00				8,539.27	12,167.27

[1] Delegation expenses include direct payments and reimbursements to the State Department and to the Defense Department under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

ORRIN HATCH,
Delegation Chairman.
DAVID DURENBERGER,
Chairman, Select Committee on Intelligence, Apr. 28, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL MURKOWSKI, AUTHORIZED BY THE COMMITTEE ON VETERANS' AFFAIRS, FOR TRAVEL JAN. 13–21, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Frank H. Murkowski:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	8,769	330.00					8,769	330.00
Laos	Dollar		75.00						75.00
Vietnam	Dollar		75.00						75.00
Senator Dennis DeConcini:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	8,769	330.00					8,769	330.00
Laos	Dollar		75.00						75.00
Vietnam	Dollar		75.00						75.00
Anthony J. Principi:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	8,769	330.00					8,769	330.00
Laos	Dollar		75.00						75.00
Vietnam	Dollar		75.00						75.00
Dennis Fradley:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	8,769	330.00					8,769	330.00
Laos	Dollar		75.00						75.00
Vietnam	Dollar		75.00						75.00
Mary Hawkins:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	8,769	330.00					8,769	330.00
Laos	Dollar		75.00						75.00
Vietnam	Dollar		75.00						75.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL MURKOWSKI, AUTHORIZED BY THE COMMITTEE ON VETERANS' AFFAIRS, FOR TRAVEL JAN. 13–21, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Robert Maynes:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	8,769	330.00					8,769	330.00
Laos	Dollar		75.00						75.00
Vietnam	Dollar		75.00						75.00
C. James Moore:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	8,769	330.00					8,769	330.00
Laos	Dollar		75.00						75.00
Vietnam	Dollar		75.00						75.00
Steve Hansen:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	14,628	550.50					14,628	550.50
Judy Leiby:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	14,628	550.50					14,628	550.50
Donna Pagano:									
Philippines	Peso	759.20	40.00					759.20	40.00
Thailand	Baht	14,628	550.50					14,628	550.50
Delegation expenses:									
Thailand							4,998.21		4,998.21
Laos							1,601.44		1,601.44
Vietnam							1,269.78		1,269.78
Philippines							1,269.77		1,269.77
Total			5,411.50				9,139.20		14,550.70

[1] Delegation expenses include direct payments and reimbursements to the Department of State and to the Department of Defense under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

FRANK MURKOWSKI,
Chairman, Committee on Veterans' Affairs, June 24, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jerry M. Tinker:									
United States	Dollar				3,851.00				3,851.00
Ethiopia	Birr	1,303.56	846.00					1,303.56	846.00
Italy	Lira	191,880	120.00					191,880	120.00
Sudan	Dollar		540.00						540.00
Switzerland	Franc	756.65	381.00					756.65	381.00
John Wise:									
United States	Dollar				3,851.00				3,851.00
Ethiopia	Birr	1,303.56	846.00					1,303.56	846.00
Italy	Lira	191,880	120.00					191,880	120.00
Sudan	Dollar		540.00						540.00
Switzerland	Franc	756.65	381.00					756.65	381.00
Total			3,774.00		7,702.00				11,476.00

STROM THURMOND,
Chairman, Committee on the Judiciary, June 30, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON RULES AND ADMINISTRATION, FOR TRAVEL FROM OCT. 1 TO DEC. 31, 1985

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Charles McC. Mathias, Jr.:									
France	Franc	1,830.08	224.00					1,830.08	224.00
Denmark	Krone	1,551.85	160.00					1,551.85	160.00
United States	Dollar				2,268.24				2,268.24
France	Franc	3,654.54	474.00	530	68.74			4,184.54	542.74
Belgium	Franc	3,324	64.50					3,324	64.50
Total			922.50		2,336.98				3,259.48

CHARLES McC. MATHIAS, JR.,
Chairman, Committee on Rules and Administration, July 30, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON RULES AND ADMINISTRATION, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Charles McC. Mathias, Jr.:									
Norway	Krone	3,491.60	488.00					3,491.60	488.00
Italy	Lira	553,320	320.00					553,320	320.00
United States	Dollar				1,882.00				1,882.00
Robert M. Brown:									
Norway	Krone	3,491.60	488.00					3,491.60	488.00
Italy	Lira	553,320	320.00					553,320	320.00
United States	Dollar				1,946.00				1,946.00
Christine Sarcone:									
Norway	Krone	3,491.60	488.00					3,491.60	488.00
Italy	Lira	553,320	320.00					553,320	320.00
United States	Dollar				1,946.00				1,946.00
Total			2,424.00		5,774.00				8,198.00

CHARLES McC. MATHIAS, JR.,
Chairman, Committee on Rules and Administration, July 30, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON RULES AND ADMINISTRATION, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Charles McC. Mathias, Jr.:									
England	Pound	241.18	366.60					241.18	366.60
United States	Dollar				1,978.00				1,978.00
Robert M. Brown, Jr.:									
England	Pound	338.59	515.00					338.59	515.00
United States	Dollar				1,978.00				1,978.00
Total			881.60		3,956.00				4,837.60

CHARLES McC. MATHIAS, JR.,
Chairman, Committee on Rules and Administration, July 30, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY LEADER FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Janice K. Benson:									
People's Republic of China	Yuan	3,314.41	1,039.00					3,314.41	1,039.00
Yvonne L. Hopkins:									
People's Republic of China	Yuan	3,154.91	989.00					3,154.91	989.00
Total			2,028.00						2,028.00

ROBERT DOLE,
Majority Leader, June 25, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL BOREN, AS AUTHORIZED BY THE DEMOCRATIC LEADER, FOR TRAVEL FEB. 6–16, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator David Boren:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		28.00						28.00
Senator David Pryor:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		40.00						40.00
Senator Carl Levin:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	337.50	225.00					337.50	225.00
Philippines	Dollar		14.00						14.00
David Pratt:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		80.00						80.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL BOREN, AS AUTHORIZED BY THE DEMOCRATIC LEADER, FOR TRAVEL FEB. 6–16, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Peter Glavas:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		52.00						52.00
David Holliday:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		80.00						80.00
Yvonne Hopkins:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		45.00						45.00
Peter Lennon:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		50.00						50.00
Don Harrell:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		60.00						60.00
Marvin Ott:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		80.00						80.00
Sally Walsh:									
New Zealand	Dollar	432.69	231.38					432.69	231.38
Australia	Dollar	445.50	297.00					445.50	297.00
Philippines	Dollar		50.00						50.00
Delegation expenses: [1]									
New Zealand							3,953.29		3,953.29
Australia							4,137.78		4,137.78
Philippines							1,397.86		1,397.86
Total			6,319.18				9,488.93		15,808.11

[1] Delegation expenses include direct payments and reimbursements to the State Department and to the Defense Department under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

DAVID BOREN,
Delegation Chairman.
ROBERT C. BYRD,
Democratic Leader, May 12, 1986.

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE DEMOCRATIC LEADER, FROM JAN. 1, TO MAR. 31, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Lawrence J. Stein:									
Guatemala	Quetzal	150	75.00					150	75.00
Honduras	Lempira	208	75.00					208	75.00
Costa Rica	Colon	4,046.25	75.00					4,046.25	75.00
Total			225.00						225.00

ROBERT C. BYRD,
Democratic Leader, Aug. 11, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), ARMS CONTROL OBSERVER GROUP, AUTHORIZED BY THE MAJORITY AND MINORITY LEADERS, FOR TRAVEL, MAY 28–31, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ted Stevens:									
United States	Dollar				2,037.00				2,037.00
Switzerland	Franc	690.92	367.51					690.92	367.51
Senator Albert Gore:									
Switzerland	Franc	829.10	441.00					829.10	441.00
Senator John D. Rockefeller IV:									
Switzerland	Franc	829.10	441.00					829.10	441.00
Robert G. Bell:									
Switzerland	Franc	829.10	441.00					829.10	441.00
Scott Bunton:									
Switzerland	Franc	1,105.45	588.00	558.00	296.81			1,663.45	884.81
Wallace D. Burnett:									
Switzerland	Franc	829.10	441.00					829.10	441.00
Lucia M. Chavez:									
Switzerland	Franc	829.10	441.00					829.10	441.00
Kenneth A. Myers:									
Switzerland	Franc	829.10	441.00					829.10	441.00
Delegation expenses: [1]									
Switzerland							10,959.75		10,959.75

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), ARMS CONTROL OBSERVER GROUP, AUTHORIZED BY THE MAJORITY AND MINORITY LEADERS, FOR TRAVEL, MAY 28–31, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Total			3,601.51		2,333.81		10,959.75		16,895.07

[1] Delegation expenses include direct payments and reimbursements to the State Department and to the Defense Department under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

ROBERT DOLE,
Majority Leader.
TED STEVENS,
Delegation Chairman, Aug. 15, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), ARMS CONTROL OBSERVER GROUP, AUTHORIZED BY THE MAJORITY AND THE MINORITY LEADER, FOR TRAVEL FEB. 7–15, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ted Stevens:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	241.95	342.00					241.95	342.00
Senator Malcolm Wallop:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,177.64	584.00					1,177.64	584.00
United States	Dollar				1,823.23				1,823.23
Senator John Warner:									
Belgium	Franc	3,960.9	81.00					3,960.9	81.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	193.85	274.00					193.85	274.00
Senator Warren Rudman:									
Switzerland	Franc	588.82	292.00					588.82	292.00
Great Britain	Pound	241.95	342.00					241.95	342.00
United States	Dollar				1,601.00				1,601.00
Senator Claiborne Pell:									
Belgium	Franc	4,139	84.64					4,139	84.64
Switzerland	Franc	883.23	438.00					883.23	438.00
Senator Sam Nunn:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,237.30	613.59					1,237.30	613.59
United States	Dollar				1,032.92				1,032.92
Senator Daniel Patrick Moynihan:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	883.23	438.00					883.23	438.00
Great Britain	Pound	241.95	342.00					241.95	342.00
Czechoslovakia	Crown	1,125.5	102.60					1,125.5	102.60
United States	Dollar				428.00				428.00
Senator Albert Gore:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	483.90	684.00	240.00	339.24			723.90	1,023.24
George Ashworth:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,460.25	724.15					1,460.25	724.15
Great Britain	Pound	241.95	342.00					241.95	342.00
Robert Bell:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	181.46	256.50					181.46	256.50
Wallace D. Burnett:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	241.95	342.00					241.95	342.00
L. Monica Chavez:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	241.95	342.00					241.95	342.00
Richard D'Amato:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	241.95	342.00					241.95	342.00
George Murphy:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	241.95	342.00					241.95	342.00
Kenneth Myers:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	241.95	342.00					241.95	342.00
Jan Paulk:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	241.95	342.00					241.95	342.00
Elaine Sewell:									
Belgium	Franc	4,939	101.00					4,939	101.00
Switzerland	Franc	1,472.05	730.00					1,472.05	730.00
Great Britain	Pound	169.14	237.30					169.14	237.30
Delegation expenses: [1]									
Belgium							2,920.21		2,920.21
Switzerland							14,044.82		14,044.82
Great Britain							4,917.36		4,917.36

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), ARMS CONTROL OBSERVER GROUP, AUTHORIZED BY THE MAJORITY AND THE MINORITY LEADER, FOR TRAVEL FEB. 7–15, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Total			17,673.78		5,224.39		21,882.39		44,780.56

[1] Delegation expenses include direct payments and reimbursements to the Department of State and to the Department of Defense under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

TED STEVENS,
Chairman, Arms Control Observer Group, June 9, 1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Samuel Wise:									
Switzerland	Franc	4,255.47	2,184.00			104	53.38	4,359.47	2,237.38
United States	Dollar				1,779.00				1,779.00
Deborah Burns:									
Switzerland	Franc	2,998.92	1,560.00			126	65.54	3,124.92	1,625.54
United States	Dollar				1,004.00				1,004.00
Orest Deychakiwsky:									
Switzerland	Franc	2,998.92	1,560.00			84	43.70	3,082.92	1,603.70
United States	Dollar				1,929.00				1,929.00
Robert Hand:									
Switzerland	Franc	3,217.80	1,651.00					3,217.80	1,651.00
United States	Dollar				1,929.00				1,929.00
Michael Hathaway:									
Sweden	Krona	1,088	154.00					1,088	154.00
United States	Dollar				1,904.00				1,904.00
John Finerty:									
Switzerland	Franc	3,292.95	1,810.00					3,292.95	1,810.00
United States	Dollar				1,336.46				1,336.46
Luxembourg	Franc	4,919	110.00					4,919	110.00
Samuel Wise:									
Switzerland	Franc	1,754.10	963.00			263.90	144.88	2,018	1,107.88
United States	Dollar				2,018.00				2,018.00
Sweden	Krona	4,028.10	561.00					4,028.10	561.00
Germany	Mark	1,036.88	452.00					1,036.88	452.00
Robert Hand:									
Switzerland	Franc	2,338.80	1,284.00			52	28.55	2,390.80	1,312.55
United States	Dollar				4,076.46				4,076.46
Barbara Edwards:									
Switzerland	Franc	2,338.80	1,284.00			52	28.55	2,390.80	1,312.55
United States	Dollar				4,076.46				4,076.46
Orest Deychakiwsky:									
Switzerland	Franc	1,380.40	749.00			52	28.22	1,432.40	777.22
United States	Dollar				4,077.46				4,077.46
Samuel Wise:									
Belgium	Dollar		116.00						116.00
France	Dollar		432.00						432.00
Austria	Dollar		137.00						137.00
Italy	Dollar		125.00						125.00
West Germany	Dollar		120.00						120.00
Sweden	Dollar		154.00						154.00
United Kingdom	Dollar		286.00						286.00
United States	Dollar				2,567.00		80.75		2,647.75
Total			15,692.00		26,696.84		473.57		42,862.41

ALFONSE D'AMATO,
Chairman, Commission on Security and Cooperation in Europe, July 23,1986.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), U.S. SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
David G. Shoultz:									
Brazil	New Cruzeiro	8,840.34	642.00					8,840.34	642.00
United States	Dollar				1,470.00				1,470.00
James T. Schollaert:									
Brazil	New Cruzeiro	8,840.34	642.00					8,840.34	642.00
United States	Dollar				1,470.00				1,470.00
Sheila E. Rogan:									
Brazil	New Cruzeiro	8,840.34	642.00					8,840.34	642.00
United States	Dollar				1,470.00				1,470.00
John Dudinsky, Jr.:									
Australia	Dollar	969.62	729.00					969.62	729.00
United States	Dollar				3,823.00				3,823.00
Charles Smith:									
Australia	Dollar	969.62	729.00					969.92	729.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), U.S. SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1986—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				3,823.00				3,823.00
Total			3,384.00		12,056.00				15,440.00

PAULA HAWKINS,
Chairman, U.S. Senate Caucus on International Narcotics Control,
June 26, 1986.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs, without amendment:

H.R. 2721. A bill to amend title 13, United States Code, to require the collection of statistics on domestic apparel and textile industries (Rept. No. 99-450).

By Mr. ROTH, from the Committee on Governmental Affairs, with amendments:

H.R. 2722. A bill to amend title 13, United States Code, to eliminate the requirement relating to decennial censuses of drainage (Rept. No. 99-451).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

S. 767. A bill to direct the Secretary of the Interior to permit access across certain Federal lands in the State of Arkansas, and for other purposes (Rept. No. 99-452).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 977. A bill to establish the Hennepin Canal National Heritage Corridor in the State of Illinois, and for other purposes (Rept. No. 99-453).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment:

S. 2384. A bill to amend Public Law 95-625 to permit the acquisition of certain lands for an administrative site for the New River Gorge National River, WV (Rept. No. 99-454).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

H.R. 2067. A bill to validate conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to the Central Pacific Railway Company (Rept. No. 99-455).

S. 1026. A bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program (Rept. No. 99-456).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 2370. A bill to allow the Francis Scott Key Park Foundation, Inc. to erect a memorial in the District of Columbia (Rept. No. 99-457).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2506. A bill to establish a Great Basin National Park in the State of Nevada and for other purposes (Rept. No. 99-458).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute, and an amendment to the title:

H.R. 2205. A bill to erect a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces of the United States who served in the Korean war (Rept. No. 99-459).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

H.R. 4212. A bill to provide for the reauthorization of the Deep Seabed Hard Mineral Resources Act, and for other purposes (Rept. No. 99-460).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

H.J. Res. 36. Joint resolution authorizing establishment of a memorial in the District of Columbia or its environs (Rept. No. 99-461).

H.J. Res. 142. Joint resolution to authorize the Black Revolutionary War Patriots Foundation to establish a memorial in the District of Columbia at an appropriate site in Constitution Gardens (Rept. No. 99-462).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

H.J. Res. 666. Joint resolution expressing the sense of Congress in support of a commemorative structure within the National Park System dedicated to the promotion of understanding, knowledge, opportunity and equality for all people (Rept. No. 99-463).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 1004. A bill to authorize and direct the Secretary of Energy to establish a program to provide for reclamation and other remedial actions with respect to mill tailings at active uranium and thorium processing sites (with additional and minority views) (Rept. No. 99-464).

By Mr. ROTH, from the Committee on Governmental Affairs, without amendment:

H.R. 3168. A bill to require the Director of the Office of Management and Budget to prepare an annual report consolidating the available data on the geographic distribution of Federal funds, and for other purposes.

By Mr. THURMOND, from the Committee on the Judiciary, without amendment and with a preamble:

H.J. Res. 547. Joint resolution to designate October 1986 as "Polish American Heritage Month."

By Mr. ROTH, from the Committee on Governmental Affairs, without amendment:

S. 2452. A bill to designate the United States Post Office to be constructed in Barnwell, South Carolina, as the "Solomon Blatt, Sr., Post Office Building."

By Mr. THURMOND, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 329. Joint resolution to designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week."

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week."

S.J. Res. 385. Joint resolution to designate October 23, 1986 as "National Hungarian Freedom Fighters Day."

S.J. Res. 395. Joint resolution to designate the period October 1, 1986, through September 30, 1987, as "National Institutes of Health Centennial Year."

S.J. Res. 396. Joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week."

S.J. Res. 401. Joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week."

S.J. Res. 413. Joint resolution to designate the month of October 1986 as "Learning Disabilities Awareness Month."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Diarmuid F. O'Scannlain, of Oregon, to be U.S. circuit judge for the Ninth Circuit;

Frederic N. Smalkin, of Maryland, to be U.S. district judge for the district of Maryland:

James L. Graham, of Ohio, to be U.S. district judge for the southern district of Ohio; and

George Landon Phillips, of Mississippi, to be U.S. attorney for the southern district of Mississippi for the term of 4 years.

By Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry:

W. Kirk Miller of Wisconsin, to be Administrator of the Federal Grain Inspection Service.

(The above nomination was reported from the Committee on Agriculture, Nutrition, and Forestry with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and

testify before any duly constituted committee of the Senate.)

By Mr. LUGAR, from the Committee on Foreign Relations:

Treaty Doc. 97-12. Inter-American Convention on Commercial Arbitration (Ex. Rept. No. 99-24); and

Treaty Doc. 99-11. Hague Convention on the Civil Aspects of International Child Abduction (Ex. Rept. No. 99-25).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MATTINGLY (for himself and Mr. NUNN):

S. 2838. A bill to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. D'AMATO:

S. 2839. A bill to the relief of Jozo Karoglan and Ilana Karoglan, husband and wife, and their child, Matthias Karoglan; to the Committee on the Judiciary.

By Mr. STAFFORD (for himself, Mr. CHAFEE, Mr. DURENBERGER, Mr. MITCHELL, Mr. BURDICK, Mr. HART, Mr. MOYNIHAN, Mr. HUMPHREY, Mr. LAUTENBERG, Mr. BROYHILL, Mr. ROTH, Mr. BAUCUS, Mr. ABDNOR, Mr. SIMPSON, Mr. DOMENICI, and Mr. RIEGLE):

S. 2840. A bill entitled the "Superfund Amendments and Reauthorization Act of 1986", by unanimous consent, ordered held at the desk until the close of business on September 22, 1986.

By Mr. HEINZ (for himself and Mr. NICKLES):

S. 2841. A bill to strengthen the Organ Procurement and Transplantation Network, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DANFORTH (for himself, Mr. CHAFEE, Mr. BENTSEN, Mr. WILSON, Mr. CRANSTON, Mr. GORE, Mr. HEINZ, and Mr. SASSER):

S. 2842. A bill to encourage the use of copy-code scanners on digital audio tape recording machines; to the Committee on Finance.

By Mr. MATTINGLY:

S. 2843. A bill to amend the Congressional Budget Act of 1974 to minimize the impact on State and local governments of unexpected provisions of legislation proposing the imposition of large unfunded costs on such governments, and for other purposes; to the Committee on Rules and Administration.

By Mr. BOREN (for himself, Mr. MELCHER, Mr. BAUCUS, Mr. HEFLIN, Mr. ABDNOR, and Mr. PRYOR):

S. 2844. A bill to require the Secretary of Agriculture to pay restitution to certain cattle producers for losses incurred in connection with the sale of cattle during a period in which excessive dairy cattle were slaughtered under the whole-herd buy-out program; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. KASSEBAUM (for herself, Mr. HART, Mr. ARMSTRONG, Mr. DANFORTH, Mr. DOLE, Mr. BOREN, Mr. NICKLES, Mr. EAGLETON, Mr. BINGAMAN, Mr. DOMENICI and Mr. MCCLURE):

S. 2845. A bill to designate the Sante Fe Trail as an Historic Trail under the National Trails System Act; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY (for himself and Mrs. HAWKINS):

S. 2846. A bill to provide for research concerning Alzheimer's disease and related dementias; to the Committee on Labor and Human Resources.

By Mr. KASTEN:

S.J. Res. 416. A joint resolution to give special recognition to the birth and achievements of Aldo Leopold; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HUMPHREY (for himself, Mr. DOLE, Mr. MOYNIHAN, Mr. WALLOP, Mr. MCCLURE, Mr. QUAYLE and Mr. WILSON):

S. Res. 491. A resolution calling for a strong response to the Daniloff arrest; ordered to lie over under the rule.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MATTINGLY (for himself and Mr. NUNN):

S. 2838. A bill to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

GEORGIA WILDERNESS ACT

Mr. MATTINGLY. Mr. President, today I join with my colleague from Georgia in introducing the Georgia Wildeness Act of 1986. I ask that the bill be considered read twice and referred to the appropriate committee.

This bill will establish approximately 42,000 acres of additional wilderness area in the State of Georgia, and I sincerely urge all of our Senate colleagues to assist Senator NUNN and me in expediting passage of the measure during this session of Congress. I further ask that the bill be printed in the CONGRESSIONAL RECORD, and that the RECORD be held open throughout the remainder of the day for any additional statements, and that such statements be included as though delivered at the time of introduction of the bill.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2838

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Georgia Wilderness Act of 1986".

SEC. 2. In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131-1136), the following lands in the State of Georgia are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System—

(a) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 8,562 acres, as generally depicted on a map entitled "Raven Cliffs Wilderness—Proposed," dated September 1986, and which shall be known as the Raven Cliffs Wilderness;

(b) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 10,924 acres, as generally depicted on a map entitled "Brasstown Wilderness Proposed," dated 1986, and which shall be known as Brasstown Wilderness;

(c) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 9,702 acres, generally depicted on a map entitled "Tray Mountain Wilderness—Proposed," dated 1986, and which shall be known as the Tray Mountain Wilderness;

(d) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 9,649 acres, generally depicted on a map entitled "Rich Mountain Wilderness Proposed," dated 1986, and which shall be known as the Rich Mountain Wilderness; and

(e) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 2,940 acres, as generally depicted on a map entitled "Cohutta Wilderness addition Proposed," dated 1986, and which is hereby incorporated in and shall be part of the Cohutta Wilderness as designated by Public Law 93-622.

SEC. 3. As soon as practicable after enactment of this Act, the Secretary of Agriculture shall file a map and legal description of each wilderness area designated by this Act with the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and with the Committee on Agriculture, Nutrition, and Forestry of the United States Senate. Each such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such map and description shall be on file and available for public inspection in the Office of the Chief of the Forest Services, Department of Agriculture.

SEC. 4. Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

By Mr. STAFFORD (for himself, Mr. CHAFEE, Mr. DURENBERGER, Mr. MITCHELL, Mr. BURDICK, Mr. HART, Mr. MOYNIHAN, Mr. HUMPHREY, Mr. LAUTENBERG, Mr. BROYHILL, Mr. ROTH, Mr. BAUCUS, Mr. ABDNOR, Mr. SIMPSON, Mr. DOMENICI, and Mr. RIEGLE):

S. 2840. A bill entitled the "Superfund Amendments and Reauthorization Act of 1986"; ordered held at the desk until close of business on September 22, 1986.

SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT

Mr. STAFFORD. Mr. President, I rise to introduce, and ask to be held at the desk until close of business today, September 19, a 5-year, $8.5 billion extension of the Superfund law. I also ask the leadership to attempt to seek a unanimous consent agreement for passage of this bill, with no amendments to be in order.

Other Members who join me in this proposal include Senators BENTSEN, CHAFEE, DURENBERGER, MITCHELL, BURDICK, HART, MOYNIHAN, HUMPHREY, LAUTENBERG, BROYHILL, ROTH, BAUCUS, ABDNOR, SIMPSON, and DOMENICI.

The bill is identical to the committee of conference bill on Superfund reauthorization that was agreed to by the Senate and House conferees on July 31, 1986. That agreement covers the Superfund Program.

Unfortunately, this bill contains no tax provisions to provide special funding for the program. That is because the conferees who are members of the House Committee on Ways and Means and the Senate Committee on Finance have been unable to agree on such tax provisions. I deeply regret this because it means the Superfund Program will remain comatose. It has been months since any new cleanups were started or old ones continued. Meanwhile Americans across this land remain at risk from the hazards of poisonous chemical releases.

Mr. President, 2 years ago I feared this would happen and even predicted that it might. I urged at that time in the strongest terms that the administration and the Congress come to grips with the difficult and controversial issues surrounding the Superfund Program.

My pleas went unheeded.

Indeed, the administration successfully prevented congressional action during 1984. It is no secret that the administration opposition helped to block Senate action on Superfund. The Congress ended without action on a Superfund reauthorization and the thousands of hours of work invested in Superfund by Members of the Congress were wasted. The Superfund extension died.

So, we began again. We scheduled hearings for February of 1985. The administrator of the Environmental Protection Agency, acting on behalf of the administration, asked that the hearings be canceled. The Senate Committee on Environment and Public Works refused. We went forward and reported a bill to extend Superfund. That bills was S. 51 and it was reported favorably on March 7, 1985, and was referred to the Finance Committee.

The Finance Committee did not act immediately. The administration sought, and received, a delay.

When the Finance Committee reported a bill on May 23, 1985, the bill did not go immediately to the floor. It was sequentially referred to the Committee on Judiciary at the request of that committee. The bill was discharged on June 14, 1985, with that committee having taken no formal action on the bill.

The bill was available for Senate consideration during June, July, August, and early September of last year. Despite several requests for consideration, the bill was not scheduled for action.

Instead, it was not until September 17, 1985, 1 year ago, that the Senate began debate. The bill was passed by the Senate by a rollcall vote of 86 to 13 on September 24, 1985, some week before the tax-supported Superfund expired.

Because the tax that financed the Superfund Program expired on September 30, 1985, this Senator and others sought to win passage of a short-term funding extension. The administration opposed that idea and it failed.

Later, this Senator sought to pass a long-term funding extension. The administration also opposed that, and it failed.

The bill languished in the House until December. The program had no new money, so when the reconciliation bill became available as a vehicle for funding, this Senator and other members of the committee urged that the Committee on Finance and other conferees agreed to a 5-year funding extension for the program.

The conferees did, but not quite. An amendment was added, but money for Superfund would have become available only after the nontax conferees reached agreement. Despite the controversy which surrounded the Superfund tax during the closing days of the last session, the press, the public and the majority of the Congress lost sight of that fact. The amendment provided not one penny of immediate funding for the program.

But that is an academic point. The administration opposed the measure, taking the position that the pressure would be removed from the nontax conferees if funding were provided. The amendment died.

When the second session of the Congress began, the administration continued its opposition to even short-term funding for the program until late March, when it finally relented.

A 90-day emergency appropriation from general revenues was approved by the House and the Senate only hours before we left for the Easter recess. Much of the credit for that extension properly belongs to Representative JAMIE WHITTEN, chairman of the House Appropriations Committee, who listened late one evening to the pleas of this Senator and responded by adding the money to the continuing resolution.

By this time, the committee of conference had begun to work in earnest on the differing bills on Superfund between the House and Senate. The nontax conferees were meeting regularly and making some progress. But the going was slow. The side-by-side comparison of the two bills was more than a thousand pages in length and it told of many thousand of differences between the two bills.

Again, members of the nontax conference wrote to and spoke with the tax conferees, reporting on our decisions and urging them to meet.

Time came and went. A second emergency funding extension was passed in mid-August. The money provided by that extension was only enough to keep power supplied to the respirator that is keeping Superfund at the minimum survival level. Even that money runs out in 11 days, on October 1, 1986.

For nearly 2½ years, the overwhelming majority of the members of the Senate Committee on Environment and Public Works have pressed ourselves, other Members of Congress and the administration to join in the effort to reauthorize the Superfund Program.

And, for nearly 2½ years, we have been frustrated at every turn.

I know of no other task we could have undertaken or any other effort we could have made that would have made a differnce. We have exhausted every possibility, made every plea, solicited every interest. Yet, 2 days past 1 year since the Senate acted, and virtually 2 years since the bill died in the last Congress, it appears we have accomplished nothing.

Meanwhile Americans across this land remain at risk from the hazards known to all of us. Yet the law designed to protect Americans from these hazards is dying a slow—but sure—death.

Swift action on the bill I introduce today is the only way I know of to reverse this situation. It is my hope that this bill will pass the Senate and pass it soon. There is no more time left on the clock for the Senate, for the House, for the administration or for the public.

Mr. President, I ask unanimous consent that the bill and a summary be printed in the RECORD.

S. 2840

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments and Reauthorization Act of 1986".

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SEC. 2. CERCLA AND ADMINISTRATOR.

As used in this Act—

(1) CERCLA.—The term "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 3. LIMITATION ON CONTRACT AND BORROWING AUTHORITY.

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specified in section 121(b) of this Act or in any other provision of titles I, II, III, and IV of this Act, the amendments made by titles I through IV of this Act shall take effect on the enactment of this Act.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SEC. 101. AMENDMENTS TO DEFINITIONS.

(a) INDIAN TRIBE.—Paragraph (16) of section 101 of CERCLA (defining "natural resources") is amended by striking "or" the last time it appears and inserting before the punctuation at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(b) STATE OR LOCAL GOVERNMENT LIMITATION.—Paragraph (20) of section 101 of CERCLA (defining "owner or operator") is amended as follows:

(1) Add the following new subparagraph at the end thereof:

"(D) The term 'owner or operator' does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107.".

(2) Amend clause (iii) of subparagraph (A) to read as follows: "(iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.".

(3) Capitalize the first word of subparagraphs (B) and (C) and substitute a period for the semicolon at the end of subparagraphs (A), (B), and (C).

(c) RELEASE.—Paragraph (22) of section 101 of CERCLA (defining "release") is amended by inserting after "environment" the following: "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)".

(d) REMEDIAL ACTION.—Paragraph (24) of section 101 of CERCLA (defining "remedy" and "remedial action") is amended as follows:

(1) Strike "welfare. The term does not include offsite transport" and all that follows down through the semicolon at the end of such paragraph and insert "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.".

(2) Strike "or" before "contaminated materials" and insert "and associated".

(e) RESPONSE.—Section 101(25) of CERCLA (defining "respond" and "response") is amended by inserting at the end thereof the following: ", all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto.".

(f) ADDITIONAL DEFINITIONS.—Section 101 of CERCLA is amended by striking out "; and" at the end of paragraph (31) and substituting a period, by changing the semicolons at the end of paragraphs (1) through (29) to periods, by inserting "The term" at the beginning of paragraphs (1) through (22) and paragraphs (28) and (31), by inserting "The terms" at the beginning of paragraphs (23) through (27) and paragraphs (29),(30), and (32) by striking out ", the term" in the material preceding paragraph (1), and by adding the following new paragraphs at the end thereof:

"(33) The term 'pollutant or contaminant' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term 'pollutant or contaminant' shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

"(34) The term 'alternative water supplies' includes, but is not limited to, drinking water and household water supplies.

"(35)(A) The term 'contractual relationship', for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds or other instruments transferring title

or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

"(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

"(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

"(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 107(b)(3)(a) and (b).

"(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

"(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

"(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

"(36) The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

SEC. 102. REPORTABLE QUANTITIES.

Section 102(a) of CERCLA is amended by adding at the end thereof the following new sentences: "For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988.".

SEC. 103. NOTICES; PENALTIES.

Section 103(b) of CERCLA is amended by striking out "paragraph" in the last sentence and inserting in lieu thereof "subsection" and by adjusting the left hand margin of the text of such subsection following "federally permitted release," the third place it appears so that there is no indentation of such text.

SEC. 104. RESPONSE AUTHORITIES.

(a) RESPONSE BY POTENTIALLY RESPONSIBLE PARTIES; PUBLIC HEALTH THREATS.—Section 104(a)(1) of CERCLA is amended by striking ", unless the President determines" and all that follows down through "party." and inserting a period and the following: "When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.".

(b) REMOVAL ACTION.—Section 104(a)(2) of CERCLA is amended to read as follows:

"(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in section 122) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.".

(c) LIMITATIONS ON RESPONSE.—Section 104(a) of CERCLA is further amended by adding after paragraph (2) the following new paragraphs:

"(3) LIMITATIONS ON RESPONSE.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

"(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

"(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

"(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(4) EXCEPTION TO LIMITATIONS.—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if, in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.".

(d) COORDINATION OF INVESTIGATIONS.—Section 104(b) of CERCLA is amended by inserting "(1) INFORMATION; STUDIES AND INVESTIGATIONS.—" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) COORDINATION OF INVESTIGATIONS.—The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.".

(e) INITIAL OBLIGATION OF FUND.—

(1) LIMITATION.—Section 104(c)(1) of CERCLA is amended by striking out "$1,000,000" and "six months" and inserting in lieu thereof "$2,000,000" and "12 months", respectively.

(2) CONTINUED RESPONSE.—Section 104(c)(1) of CERCLA is amended by inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken".

(f) FACILITIES OWNED AND OPERATED BY STATES.—Paragraph (3) of section 104(c) of CERCLA is amended by striking out "(ii) at least" and all that follows through the period at the end thereof and inserting "(ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term 'facility' does not include navigable waters or the beds underlying those waters.".

(g) CROSS REFERENCE TO CLEANUP STANDARDS.—Section 104(c)(4) of CERCLA is amended to read as follows:

"(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).".

(h) STATE CREDITS.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (4):

"(5) STATE CREDITS.—

"(A) GRANTING OF CREDIT.—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited

to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

"(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

"(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

"(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

"(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

"(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this paragraph.

"(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the date of the enactment of this paragraph, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

"(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.".

(i) TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION.—Section 104(c) of CERCLA is amended by adding the following new paragraphs after paragraph (5):

"(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

"(7) LIMITATION ON SOURCE OF FUNDS FOR O&M.—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this Act.".

(j) RECONTRACTING.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (7):

"(8) RECONTRACTING.—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed $2,000,000.".

(k) SITING.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (8):

"(9) SITING.—Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

"(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

"(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

"(C) are acceptable to the President, and

"(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act.".

(l) COOPERATIVE AGREEMENTS WITH STATES.—Section 104(d)(1) of CERCLA is amended to read as follows:

"(1) COOPERATIVE AGREEMENTS.—

"(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

"(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

"(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on the date of the enactment of this subparagraph for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this Act shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this Act.".

(m) INFORMATION GATHERING AND ACCESS AUTHORITIES.—Section 104(e) of CERCLA is amended by redesignating paragraph (2) as paragraph (7) and aligning the margin of such paragraph with paragraphs (1) through (6) of such subsection, by inserting "CONFIDENTIALITY OF INFORMATION.—" before "(A) Any records", by striking out paragraph (1), and by striking out "(e)" and inserting in lieu thereof the following:

"(e) INFORMATION GATHERING AND ACCESS.—

"(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

"(2) ACCESS TO INFORMATION.—Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

"(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

"(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

"(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

"(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

"(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

"(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

"(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

"(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

"(4) INSPECTION AND SAMPLES.—

"(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

"(B) SAMPLES.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(5) COMPLIANCE ORDERS.—

"(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

"(B) COMPLIANCE.—The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

"(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

"(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.".

(n) BASIS FOR WITHHOLDING INFORMATION.—Paragraph (7) of section 104(e) of CERCLA (formerly paragraph (2), as redesignated by subsection (l) of this section) is amended by adding the following new subparagraphs at the end thereof:

"(E) No person required to provide information under this Act may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

"(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

"(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

"(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

"(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

"(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

"(i) The trade name, common name, or generic class or category of the hazardous substance.

"(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

"(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

"(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

"(v) The location of disposal of any waste stream.

"(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

"(vii) Any hydrogeologic or geologic data.

"(viii) Any groundwater monitoring data.".

(o) ACQUISITION OF PROPERTY.—

(1) IN GENERAL.—Section 104 of CERCLA is amended by adding the following new subsection at the end thereof:

"(j) ACQUISITION OF PROPERTY.—

"(1) AUTHORITY.—The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this Act. There shall be no cause of action to compel the President to acquire any interest in real property under this Act.

"(2) STATE ASSURANCE.—The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the President, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

"(3) EXEMPTION.—No Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection.".

SEC. 105. NATIONAL CONTINGENCY PLAN.

(a) SUBSECTION (a) OF SECTION 105.—Section 105 of CERCLA is amended as follows:

(1) HEADING.—Insert "(a) REVISION AND REPUBLICATION.—" after "105.".

(2) HAZARD RANKING SYSTEM.—In paragraph (8)(A) insert the following after "ecosystems,": "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,".

(3) NATIONAL PRIORITY LIST.—In paragraph (8)(B):

(A) Strike out "at least four hundred of".

(B) Strike out "facilities at least" and insert in lieu thereof "facilities".

(C) Insert after "in such State." the following: "A State shall be allowed to designate its highest priority facility only once.".

(4) CONFORMING AMENDMENT.—In paragraph (9) insert after "therefor" the following: "and including consideration of minority firms in accordance with subsection (f)".

(5) STANDARDS AND PROCEDURES FOR INNOVATIVE TREATMENT TECHNOLOGIES.—Strike out "and" at the end of paragraph (8), strike out the period at the end of paragraph (9) and insert in lieu thereof "; and", and insert after paragraph (9) the following new paragraph:

"(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act.".

(b) NEW SUBSECTIONS.—Section 105 of CERCLA is amended by adding the following new subsections at the end thereof:

"(b) REVISION OF PLAN.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as 'the National Hazardous Substance Response Plan' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

"(c) HAZARD RANKING SYSTEM.—

"(1) REVISION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule pro-

mulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after enactment of the Superfund Amendments and Reauthorization Act of 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

"(2) HEALTH ASSESSMENT OF WATER CONTAMINATION RISKS.—In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

"(3) REEVALUATION NOT REQUIRED.—The President shall not be required to reevaluate, after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

"(4) NEW INFORMATION.—Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this Act.

"(d) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

"(e) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up To Date' on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

"(f) MINORITY CONTRACTORS.—In awarding contracts under this Act, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this Act, the participation of minority firms in contracts carried out under this Act. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this Act and of the efforts made by the President to encourage the participation of such firms in programs carried out under this Act.

"(g) SPECIAL STUDY WASTES.—

"(1) APPLICATION—This subsection applies to facilities—

"(A) which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 were not included on, or proposed for inclusion on, the National Priorities List; and

"(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities, including any such facility from which there has been a release of a special study waste.

"(2) CONSIDERATIONS IN ADDING FACILITIES TO NPL.—Pending revision of the hazard ranking system under subsection (c), the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

"(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

"(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

"(3) SAVINGS PROVISIONS.—Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

"(4) INFORMATION GATHERING AND ANALYSIS.—Nothing in this Act shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of information which will enable the President to consider the specific factors required by paragraph (2).".

SEC. 106. REIMBURSEMENT.

Section 106(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Strike out "who willfully" and insert "who, without sufficient cause, willfully".

(3) Add at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954.

"(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

"(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

"(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

"(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28 of the United States Code.".

SEC. 107. LIABILITY.

(a) FOREIGN VESSELS.—Section 107(a)(1) of CERCLA is amended by striking out "(otherwise subject to the jurisdiction of the United States)".

(b) RECOVERABLE COSTS AND DAMAGES.—Section 107(a) of CERCLA is amended by striking out "and" at the end of subparagraph (B), striking out the period at the end of subparagraph (C) and inserting "; and" and inserting at the end thereof the following:

"(D) the costs of any health assessment or health effects study carried out under section 104(i).

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. For purposes of applying such amendments to interest under this subsection, the term 'comparable maturity' shall be determined with reference to the date on which interest accruing under this subsection commences.".

(c) RENDERING CARE OR ADVICE; EMERGENCY RESPONSE ACTIONS.—Section 107(d) of CERCLA is amended to read as follows:

"(d) RENDERING CARE OR ADVICE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no person shall be liable

under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ('NCP') or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

"(2) STATE AND LOCAL GOVERNMENTS.—No State or local government shall be liable under this title for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

"(3) SAVINGS PROVISION.—This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.".

(d) NATURAL RESOURCES.—

(1) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—Section 107(f) of CERCLA is amended by inserting "(1) NATURAL RESOURCES LIABILITY.—" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

"(A) FEDERAL.—The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act and such section 311 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

"(B) STATE.—The Governor of each State shall designate State officials who may act on behalf of the public as trustee for natural resources under this Act and section 311 of the Federal Water Pollution Control Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and such section 311 for those natural resources under their trusteeship.

"(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act.".

(2) USE OF RECOVERED FUNDS.—Section 107(f)(1) of CERCLA (as designated by paragraph (1) of this subsection) is amended by striking out the third sentence and inserting in lieu thereof the following: "Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource".

(3) DEADLINE FOR SECTION 301 REGULATIONS.—Section 301(c)(1) of CERCLA is amended by adding the following at the end thereof: "Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

(e) FEDERAL AGENCIES.—Section 107(g) of CERCLA is amended to read as follows:

"(g) FEDERAL AGENCIES.—For provisions relating to Federal agencies, see section 120 of this Act."

(f) FEDERAL LIEN.—Section 107 of CERCLA is amended by adding at the end thereof the following new subsection:

"(l) FEDERAL LIEN.—

"(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

"(A) belong to such person; and

"(B) are subject to or affected by a removal or remedial action.

"(2) DURATION.—The lien imposed by this subsection shall arise at the later of the following:

"(A) The time costs are first incurred by the United States with respect to a response action under this Act.

"(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

"(3) NOTICE AND VALIDITY.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954.

"(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

"(m) MARITIME LIEN.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.".

SEC. 108. FINANCIAL RESPONSIBILITY.

(a) EVIDENCE OF FINANCIAL RESPONSIBILITY.—Section 108(b)(2) of CERCLA is amended by adding the following at the end thereof: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

(b) PHASE-IN PERIOD.—Section 108(b)(3) of CERCLA is amended by striking out "over a period of not less than three and no more than six years" and inserting in lieu thereof "as quickly as can reasonably be achieved but in no event more than 4 years".

(c) DIRECT ACTION; LIABILITY.—Subsections (c) and (d) of section 108 of CERCLA are amended to read as follows:

"(c) DIRECT ACTION.—

"(1) RELEASES FROM VESSELS.—In the case of a release or threatened release from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

"(2) RELEASES FROM FACILITIES.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or ar-

rangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) LIMITATION OF GUARANTOR LIABILITY.—

"(1) TOTAL LIABILITY.—The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 107 for the purpose of satisfying the requirement for evidence of financial responsibility.

"(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.".

SEC. 109. PENALTIES.

(a) VIOLATIONS AND CRIMINAL PENALTIES.—

(1) NOTICE.—Section 103(b) of CERCLA is amended as follows:

(A) Insert after "knowledge of such release" the following: "or who submits in such a notification any information which he knows to be false or misleading".

(B) Strike out "not more than $10,000 or imprisoned for not more than one year, or both" and insert in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(2) DESTRUCTION OF RECORDS.—Section 103(d)(2) of CERCLA is amended by striking out "not more than $20,000, or imprisoned for not more than one year or both." and inserting in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.".

(3) FALSE INFORMATION.—Section 112(b)(1) of CERCLA is amended by striking out "up to $5,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(b) SECTION 106 PENALTY.—Section 106(b) of CERCLA is amended by striking out "$5,000" and inserting in lieu thereof "$25,000".

(c) CIVIL PENALTIES AND AWARDS.—Section 109 of CERCLA is amended to read as follows:

"SEC. 109. CIVIL PENALTIES AND AWARDS.

"(a) CLASS I ADMINISTRATIVE PENALTY.—

"(1) VIOLATIONS.—A civil penalty of not more than $25,000 per violation may be assessed by the President in the case of any of the following—

"(A) A violation of the requirements of section 103(a) or (b) (relating to notice).

"(B) A violation of the requirements of section 103(d)(2) (relating to destruction of records, etc.).

"(C) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(D) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(E) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

"(2) NOTICE AND HEARINGS.—No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

"(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

"(4) REVIEW.—Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

"(5) SUBPOENAS.—The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(b) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

"(1) A violation of the notice requirements of section 103(a) or (b).

"(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

"(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in accordance with section 554 of title 5 of the United States Code. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(c) JUDICIAL ASSESSMENT.—The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

"(1) A violation of the notice requirements of section 103(a) or (b).

"(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

"(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than $75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of civil penalties for failure to comply with a request or order under section 104(e) (relating to information gathering and access authorities), see section 104(e).

"(d) AWARDS.—The President may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this Act, including any violation of section 103 and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 111.

"(e) PROCUREMENT PROCEDURES—Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this Act, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this Act and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

"(f) SAVINGS CLAUSE.—Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this Act.".

SEC. 110. HEALTH-RELATED AUTHORITIES.

Section 104(i) of CERCLA is amended as follows:

(1) Insert "(1)" after "(i)" and redesignate paragraphs (1), (2), (3), (4), and (5) as subparagraphs (A), (B), (C), (D), and (E).

(2) In paragraph (1), strike "and" after "Health Administration," and insert after "Social Security Administration," the following: "the Secretary of Transportation, and appropriate State and local health officials,".

(3) Insert after "chromosomal testing" in subparagraph (D)(as redesignated by paragraph (1) of this subsection) the following: "where appropriate".

(4) Add the following new paragraphs at the end thereof:

"(2)(A) Within 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

"(B) Within 24 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

"(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

"(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

"(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

"(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

"(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

"(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

"(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

"(iv) where there is a possibility of obtaining human data, the collection of such information.

"(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

"(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

"(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

"(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

"(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

"(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

"(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility

on the National Priorities List established under section 105. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.

"(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

"(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

"(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

"(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

"(F) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

"(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

"(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this Act. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

"(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

"(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

"(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

"(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

"(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

"(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

"(10) Two years after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

"(A) health assessments and pilot health effects studies conducted;

"(B) epidemiologic studies conducted;

"(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

"(D) registries established under paragraph (8); and

"(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

"(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

"(A) provision of alternative water supplies, and

"(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

"(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

"(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

"(14) In the implementation of this subsection and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

"(15) The activities of the Administrator of ATSDR described in this subsection and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

"(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

"(17) In accordance with section 120 (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

"(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.".

SEC. 111. USES OF FUND.

(a) AMOUNT OF FUND.—Section 111 of CERCLA is amended by inserting after "(a)" the following: "IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund).".

(b) USES OF FUNDS UNDER SECTION 111(a).—Section 111(a) of CERCLA is amended by striking out "; and" at the end of paragraph (3) and inserting a period, by striking out the semicolons at the end of paragraphs (1) and (2) and inserting in lieu thereof a period, by capitalizing the first letter in paragraphs (1) through (4), and by adding at the end thereof the following:

"(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

"(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.".

(c) NATURAL RESOURCE DAMAGE CLAIMS.—

(1) LIMITATION.—Section 111(b) of CERCLA is amended by inserting "(1) IN GENERAL.—" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) LIMITATION ON PAYMENT OF NATURAL RESOURCE CLAIMS.—

"(A) GENERAL REQUIREMENTS.—No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107.

"(B) DEFINITION.—As used in this paragraph, the term 'natural resource claim' means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the cost of natural resource damage assessment.".

(2) CONFORMING AMENDMENT.—Section 111(h) of CERCLA is repealed.

(d) SUBSECTION (c) AMENDMENTS.—

(1) SECTION 111(c)(4).—Section 111(c)(4) of CERCLA is amended by striking out "the costs of epidemiologic studies" and inserting "Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles".

(2) NEW PARAGRAPHS IN SECTION 111(c).—Section 111(c) of CERCLA is amended by striking out "; and" at the end of paragraph (5) and inserting a period, by striking out the semicolons at the end of paragraphs (1) through (4) and inserting in lieu thereof a period, by capitalizing the first letter in paragraphs (1), (2), (3), (5), and (6), and by adding at the end thereof the following:

"(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

"(8) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

"(9) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

"(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

"(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 123, except that during the 5-fiscal-year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

"(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $10,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

"(13) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d).

"(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).".

(e) LIMITATION ON CERTAIN CLAIMS.—Section 111(e)(2) of CERCLA is amended by adding at the end the following: "No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.".

(f) FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES.—Section 111(e)(3) of CERCLA is amended by inserting the following before the period: "; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party".

(g) INSPECTOR GENERAL.—Section 111(k) of CERCLA is amended to read as follows:

"(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is

being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act) carrying out response actions under this title and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.".

(h) NEW SUBSECTIONS.—Section 111 of CERCLA is amended by adding after subsection (l) the following new subsections:

"(m) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i) not less than $50,000,000 per fiscal year for each of fiscal years 1987 and 1988, not less than $55,000,000 for fiscal year 1989, and not less than $60,000,000 per fiscal year for each of fiscal years 1990 and 1991. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—

"(1) SECTION 311(b).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

"(2) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

"(A) For the fiscal year 1987, $3,000,000.
"(B) For the fiscal year 1988, $10,000,000.
"(C) For the fiscal year 1989, $20,000,000.
"(D) For the fiscal year 1990, $30,000,000.
"(E) For the fiscal year 1991, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

"(3) SECTION 311(d).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).

"(o) NOTIFICATION PROCEDURES FOR LIMITATIONS ON CERTAIN PAYMENTS.—Not later than 90 days after the enactment of this subsection, the President shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 111 of CERCLA is amended by adding the following subsection numbered accordingly:

"( ) GENERAL REVENUE SHARE OF SUPERFUND.—

"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

"(A) For fiscal year 1986, $212,500,000.
"(B) For fiscal year 1987, $212,500,000.
"(C) For fiscal year 1988, $212,500,000.
"(D) For fiscal year 1989, $212,500,000.
"(E) For fiscal year 1990, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.

"(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 221(b)(1)(B) for the prior fiscal year.".

SEC. 112. CLAIMS PROCEDURE.

(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—Section 112(a) of CERCLA is amended to read as follows:

"(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—No claims may be asserted against the Fund pursuant to section 111(a) unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.".

(b) PROCEDURES.—Section 112(b) is amended by striking "(b)(1)" and inserting "(b)(1) PRESCRIBING FORMS AND PROCEDURES.—" and by striking paragraphs (2), (3), and (4) and inserting the following:

"(2) PAYMENT OR REQUEST FOR HEARING.—The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

"(3) BURDEN OF PROOF.—In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

"(4) DECISIONS.—All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

"(5) FINALITY AND APPEAL.—All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

"(6) PAYMENT.—Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.".

(c) STATUTE OF LIMITATIONS.—Section 112(d) of CERCLA is amended to read as follows:

"(d) STATUTE OF LIMITATIONS.—

"(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of all response action.

"(2) CLAIMS FOR RECOVERY OF DAMAGES.—No claim may be presented under this section for recovery of the damages referred to in section 107(a) unless the claim is presented within 3 years after the later of the following:

"(A) The date of the discovery of the loss and its connection with the release in question.

"(B) The date on which final regulations are promulgated under section 301(c).

"(3) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

"(B) against an incompetent person until the earlier of the date on which such person's incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.".

(d) DOUBLE RECOVERY PROHIBITED.— Section 112 of CERCLA is amended by adding the following new subsection at the end thereof:

"(f) DOUBLE RECOVERY PROHIBITED.—Where the President has paid out of the Fund for any response costs or any costs specified under section 111(c)(1) or (2), no other claim may be paid out of the Fund for the same costs.".

SEC. 113. LITIGATION, JURISDICTION, AND VENUE.

(a) NATIONWIDE SERVICE OF PROCESS.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:

"(e) NATIONWIDE SERVICE OF PROCESS.—In any action by the United States under this Act, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) CONTRIBUTION; STATUTE OF LIMITATIONS.—Section 113 of CERCLA is amended by adding the following new subsections after subsection (e):

"(f) CONTRIBUTION.—

"(1) CONTRIBUTION.—Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution

claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 106 or section 107.

"(2) SETTLEMENT.—A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(3) PERSONS NOT PARTY TO SETTLEMENT.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.

"(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

"(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

"(g) PERIOD IN WHICH ACTION MAY BE BROUGHT.—

"(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following:

"(A) The date of the discovery of the loss and its connection with the release in question.

"(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 120 (relating to Federal facilities), or any vessel or facility at which a remedial action under this Act is otherwise scheduled, an action for damages under this Act must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this Act with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or section 120 (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) ACTIONS FOR RECOVERY OF COSTS.—An initial action for recovery of the costs referred to in section 107 must be commenced—

"(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

"(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of an administrative order under section 122(g) (relating to de minimis settlements) or 122(h) (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

"(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) ACTIONS TO RECOVER INDEMNIFICATION PAYMENTS.—Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 119, an action under section 107 for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

"(6) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

"(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.".

(c) PRE-ENFORCEMENT REVIEW.—

(1) CONFORMING AMENDMENT.—Section 113(b) of CERCLA is amended by striking out "subsection" and inserting in lieu thereof "subsections" and inserting "and (h)" after "(a)".

(2) TIMING OF REVIEW; ADMINISTRATIVE RECORD.—Section 113 of CERCLA is amended by adding at the end thereof the following new subsections:

"(h) TIMING OF REVIEW.—No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 104, or to review any order issued under section 106(a), in any action except one of the following:

"(1) An action under section 107 to recover response costs or damages or for contribution.

"(2) An action to enforce an order issued under section 106(a) or to recover a penalty for violation of such order.

"(3) An action for reimbursement under section 106(b)(2).

"(4) An action under section 310 (relating to citizens suits) alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

"(5) An action under section 106 in which the United States has moved to compel a remedial action.

"(i) INTERVENTION.—In any action commenced under this Act or under the Solid Waste Disposal Act in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

"(j) JUDICIAL REVIEW.—

"(1) LIMITATION.—In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

"(2) STANDARD.—In considering objections raised in any judicial action under this Act, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

"(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

"(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

"(1) ADMINISTRATIVE RECORD.—The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the

public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

"(2) PARTICIPATION PROCEDURES.—

"(A) REMOVAL ACTION.—The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

"(B) REMEDIAL ACTION.—The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

"(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

"(ii) A reasonable opportunity to comment and provide information regarding the plan.

"(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2)(relating to public participation).

"(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

"(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code to carry out the requirements of this subparagraph.

"(C) INTERIM RECORD.—Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this Act shall not include an adjudicatory hearing.

"(D) POTENTIALLY RESPONSIBLE PARTIES.—The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

"(l) NOTICE OF ACTIONS.—Whenever any action is brought under this Act in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.".

SEC. 114. RELATIONSHIP TO OTHER LAW.

(a) USED OIL.—Section 114 (c) of CERCLA is amended to read as follows:

"(c) RECYCLED OIL.—

"(1) SERVICE STATION DEALERS, ETC.—No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil—

"(A) is not mixed with any other hazardous substance, and

"(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

"(2) PRESUMPTION.—Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

"(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

"(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

"(3) DEFINITION.—For purposes of this subsection, the terms 'used oil' and 'recycled oil' have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act and regulations promulgated pursuant to that Act.

"(4) EFFECTIVE DATE.—The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act.".

(b) DEFINITION OF SERVICE STATION DEALER.—Section 101 of CERCLA is amended by inserting the following at the end thereof:

"(37)(A) The term 'service station dealer' means any person—

"(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

"(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

"(B) For purposes of section 114(c), the term 'service station dealer' shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

"(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.".

SEC. 115. DELEGATION; REGULATIONS.

Section 115 of CERCLA is not amended.

SEC. 116. SCHEDULES.

Title I of CERCLA is amended by adding the following new section after section 115:

"SEC. 116. SCHEDULES.

"(a) ASSESSMENT AND LISTING OF FACILITIES.—It shall be a goal of this Act that, to the maximum extent practicable—

"(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

"(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

"(b) EVALUATION.—Within 4 years after enactment of the Superfund Amendments and Reauthorization Act of 1986, each facility listed (as of the date of such enactment) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 105 under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

"(c) EXPLANATIONS.—If any of the goals established by subsection (a) or (b) are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

"(d) COMMENCEMENT OF RI/FS.—The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, in accordance with the following schedule:

"(1) not fewer than 275 by the date 36 months after the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and

"(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after such date of enactment, an additional 200 by the date 5 years after such date of enactment, and a total of 650 by the date 5 years after such date of enactment.

"(e) COMMENCEMENT OF REMEDIAL ACTION.—The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to the date of enactment of the

Superfund Amendments and Reauthorization Act of 1986, at a rate not fewer than:

"(1) 175 facilities during the first 36-month period after enactment of this subsection; and

"(2) 200 additional facilities during the following 24 months after such 36-month period.".

SEC. 117. PUBLIC PARTICIPATION.

Title I of CERCLA is amended by adding the following new section after section 116:

"SEC. 117. PUBLIC PARTICIPATION.

"(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 104, 106, 120, or 122, the President or State, as appropriate, shall take both of the following actions:

"(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

"(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 121(d)(4) (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

"(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

"(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan—

"(1) if any remedial action is taken,

"(2) if any enforcement action under section 106 is taken, or

"(3) if any settlement or consent decree under section 106 or section 122 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

"(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

"(2) AMOUNT.—The amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.".

SEC. 118. MISCELLANEOUS PROVISIONS.

(a) PRIORITY FOR DRINKING WATER SUPPLIES.—Title I of CERCLA is amended by adding the following new section after section 117:

"SEC. 118. HIGH PRIORITY FOR DRINKING WATER SUPPLIES.

"For purposes of taking action under section 104 or 106 and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.".

(b) REMOVAL AND TEMPORARY STORAGE OF CONTAINERS OF RADON CONTAMINATED SOIL.—Not later than 90 days after the enactment of this Act, the Administrator shall make a grant of $7,500,000 to the State of New Jersey for transportation from residential areas in the State of New Jersey and temporary storage of approximately 14,000 containers of radon contaminated soil which is the subject of a remedial action for which a remedial investigation and feasibility study has been initiated before such date. Such containers shall be transported to and temporarily stored at any site in the State of New Jersey designated by the Governor of such State. For purposes of section 111(a) of CERCLA, the grant under this subsection for transportation and storage of such containers shall be treated as payment of governmental response cost incurred pursuant to section 104 of CERCLA.

(c) UNCONSOLIDATED QUATERNARY AQUIFER.—Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quaternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946-2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This subsection may be enforced under sections 309(a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this subsection shall be considered a violation of section 301 of such Act.

(d) STUDY OF SHORTAGES OF SKILLED PERSONNEL.—The Comptroller General shall study the problem of shortages of skilled personnel in the Environmental Protection Agency to carry out response actions under CERCLA. In particular the Comptroller General shall study—

(1) the types of skilled personnel needed for response actions for which there are shortages in the Environmental Protection Agency,

(2) the extent of such shortages,

(3) pay differential between the public and private sectors for the skilled positions involved in response actions,

(4) the extent to which skilled personnel of Federal and State governments involved in response actions are leaving their positions for employment in the private sector,

(5) the success of programs of the Department of Defense and the Office of Personnel Management in retaining skilled personnel, and

(6) the types of training required to improve the skills of employees carrying out response actions.

The Comptroller General shall complete the study required by this subsection and submit a report on the results thereof to Congress not later than July 1, 1987.

(e) STATE REQUIREMENTS NOT APPLICABLE TO CERTAIN TRANSFERS.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

(3) The facility at which the release or threatened release has occurred is identified as the McColl Site in Fullerton, California.

The terms used in this section shall have the same meaning as when used in title I of CERCLA.

(f) STUDY OF LEAD POISONING IN CHILDREN.—(1) The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1987, submit to the Congress, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information—

(A) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(B) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(C) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead and including but not limited to, diminution in intelligence, increases in morbidity and mortality; and

(D) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(2) Such report shall also score and evaluate specific sites at which children are

known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(3) The costs of preparing and submitting the report required by this section shall be borne by the Hazardous Substance Superfund established under subchapter A of chapter 98 of Internal Revenue Code of 1954.

(g) FEDERALLY LICENSED DAM.—For purposes of CERCLA in the case of the Milltown Dam in the State of Montana licensed under part 1 of the Federal Power Act and designated as FERC license number 2543-004, if a hazardous substance, pollutant, or contaminant—

(1) has been released into the environment upstream of the dam, and

(2) has subsequently come to be located in the reservoir created by such dam

notwithstanding section 101(20) of such Act, the term "owner or operator" does not include the owner or operator of the dam unless such owner or operator is a person who would otherwise be liable for such release or threatened release under section 107 of such Act.

(h) COMMUNITY RELOCATION AT TIMES BEACH SITE.—For purposes of any Missouri dioxon site at which a temporary or permanent relocation decision has been made, or is under active consideration, by the Administrator as of the enactment of this Act, the terms "remove" and "removal" as used in CERCLA shall be deemed to include the costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare. In the case of a business located in an area of evacuation or relocation at such facility, such terms may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and 30 days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, such terms may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974; except that the costs of such assistance shall be paid from the Trust Fund established under amendments made to the Internal Revenue Code of 1954 by this Act. Section 104(c)(1) of CERCLA shall not apply to obligations from the Fund for permanent relocation under this paragraph.

(i) LIMITED WAIVERS IN STATE OF ILLINOIS.—

(1) MOBILE INCINERATORS.—In the case of remedial actions specifically involving mobile incinerator units in the State of Illinois, if such remedial actions are undertaken by the State under the authority of a State Superfund law or equivalent authority, the State may, with the approval of the Administrator, waive any permit requirement under subtitle C of the Solid Waste Disposal Act which would be otherwise applicable to such action to the extent that the following conditions are met:

(A) NO TRANSFER.—The incinerator does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to an offsite facility.

(B) REMEDIAL ACTION.—The remedial action provides each of the following:

(i) Changes in the character or composition of the hazardous substance or pollutant or contaminant concerned so that it no longer presents a risk to public health.

(ii) Protection against accidental emissions during operation.

(iii) Protection of public health considering the multimedia impacts of the treatment process.

(C) PUBLIC PARTICIPATION.—The State provides procedures for public participation regarding the response action which are at least equivalent to the level of public participation procedures applicable under CERCLA and under the Solid Waste Disposal Act.

(2) EFFECT OF WAIVER.—The waiver of any permit requirement under this subsection shall not be construed to waive any standard or level of control which—

(A) is applicable to any hazardous substance or pollutant or contaminant involved in the remedial action; and

(B) would otherwise be contained in the permit.

Such waiver of any permit requirement under subtitle C of the Solid Waste Disposal Act shall only apply to the extent that the facility or remedial action involves the onsite treatment with a mobile incineration unit of waste present at such site. The waiver shall not apply to any other regulated or potentially regulated activity, including the use of the mobile incineration unit for actions not authorized by the State.

(3) EXPIRATION OF AUTHORITY.—The authority of this subsection shall terminate at the end of 3 years, unless the State demonstrates, to the satisfaction of the Administrator, that the operation of mobile incinerators in the State has sufficiently protected public health and the environment and is consistent with the criteria required for a permit under subtitle C of the Solid Waste Disposal Act.

(j) STUDY OF JOINT USE OF TRUCKS.—

(1) STUDY.—The Administrator, in consultation with the Secretary of Transportation, shall conduct a study of problems associated with the use of any vehicle for purposes other than the transportation of hazardous substances when that vehicle is used at other times for the transportation of hazardous substances. At a minimum, the Administrator shall consider—

(A) whether such joint use of vehicles should be prohibited, and

(B) whether, if such joint use is permitted, special safeguards should be taken to minimize threats to public health and the environment.

(2) REPORT.—The Administrator shall submit a report, along with recommendations, to Congress on the results of the study conducted under paragraph (1) not later than 180 days after the date of the enactment of this Act.

(k) RADON ASSESSMENT AND MITIGATION.—

(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act, the Administrator shall submit to the Congress a report which shall, to the extent possible—

(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

(B) assess the levels of radon gas that are present in such structures;

(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

(E) include guidance and public information materials based on the findings or research of mitigating radon.

(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

(B) ANNUAL REPORTS.—The Administrator shall submit annual reports not later than February 1 of each year (beginning February 1, 1987) on the status of the demonstration program carried out under this subsection and on any such demonstration program initiated prior to enactment.

(C) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

(l) GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(m) RADON PROTECTION AT CURRENT NATIONAL PRIORITIES LIST SITES.—It is the sense of the Congress that the President, in selecting response action for facilities included on the National Priorities List published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 because of the presence of radon, is not required by statute or regulations to use fully demonstrated methods, particularly those involving the offsite transport and disposition of contaminated material, but may use innovative or alternative methods which protect human health and the environment in a more cost-effective manner.

(n) SPILL CONTROL TECHNOLOGY.—

(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection, the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

(A) documents and archives spill control technology;

(B) investigates and analyzes significant hazardous spill incidents;

(C) develops and provides generic emergency action plans;

(D) documents and archives spill test results;

(E) develops emergency action plans to respond to spills;

(F) conducts training of spill response personnel; and

(G) establishes safety standards for personnel engaged in spill response activities.

(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection.

(o) PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(3) OPERATION OF CENTER.—

(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section 201(i) of Public Law 96-517 which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30, 1986, not more than $5,000,000. All sums appropriated under this subparagraph shall be provided to the Administrator by the Secretary of Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(p) SILVER CREEK TAILINGS.—Effective with the date of enactment of this Act, the facility listed in Group 7 in EPA National Priorities List Update #4 (50 Federal Register 37956, September 18, 1985), the site in Park City, Utah, which is located on tailings from noncoal mining operations, shall be deemed removed from the list of sites recommended for inclusion on the National Priorities List, unless the President determines upon site specific data not used in the proposed listing of such facility, that the facility meets requirements of the Hazard Ranking System or any revised Hazard Ranking System.

SEC. 119. RESPONSE ACTION CONTRACTORS.

Title I of CERCLA is amended by adding the following new section after section 118:

"SEC. 119. RESPONSE ACTION CONTRACTORS.

"(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

"(1) RESPONSE ACTION CONTRACTORS.—A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this title or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

"(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

"(3) EFFECT ON WARRANTIES; EMPLOYER LIABILITY.—Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

"(4) GOVERNMENTAL EMPLOYEES.—A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—The defense provided by section 107(b)(3) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) and the preceding sentence, nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

"(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

"(c) INDEMNIFICATION.—

"(1) IN GENERAL.—The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

"(2) APPLICABILITY.—This subsection shall apply only with respect to a response action carried out under written agreement with—

"(A) the President;

"(B) any Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title; or

"(D) any potentially responsible party carrying out any agreement under section 122 (relating to settlements) or section 106 (relating to abatement).

"(3) SOURCE OF FUNDING.—This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 3732 of the Revised Statutes (41 U.S.C. 11) or to section 3 of the Superfund Amendments and Reauthorization Act of 1986. For purposes of section 111, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 104. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

"(4) REQUIREMENTS.—An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

"(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

"(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

"(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

"(5) LIMITATIONS.—

"(A) LIABILITY COVERED.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

"(B) DEDUCTIBLES AND LIMITS.—An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

"(C) CONTRACTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(i) DECISION TO INDEMNIFY.—In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

"(ii) CONDITIONS.—The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

"(D) RCRA FACILITIES.—No owner or operator of a facility regulated under the Solid Waste Disposal Act may be indemnified under this subsection with respect to such facility.

"(E) PERSONS RETAINED OR HIRED.—A person retained or hired by a person described in subsection (e)(2)(B) shall be eligible for indemnification under this subsection only if the President specifically approves of the retaining or hiring of such person.

"(6) COST RECOVERY.—For purposes of section 107, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

"(7) REGULATIONS.—The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

"(8) STUDY.—The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

"(d) EXCEPTION.—The exemption provided under subsection (a) and the authority of the President to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

"(e) DEFINITIONS.—For purposes of this section—

"(1) RESPONSE ACTION CONTRACT.—The term 'response action contract' means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

"(A) the President;

"(B) any Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this Act; or

"(D) any potentially responsible party carrying out an agreement under section 106 or 122;

to provide any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

"(2) RESPONSE ACTION CONTRACTOR.—The term 'response action contractor' means—

"(A) any—

"(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and

"(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 311(b); and

"(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action.

"(3) INSURANCE.—The term 'insurance' means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

"(f) COMPETITION.—Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this Act. Such procedures shall be followed by response action contractors and subcontractors.".

SEC. 120. FEDERAL FACILITIES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

"(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

"(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or re-

quirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the 'docket') which shall contain each of the following:

"(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

"(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

"(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

"(d) ASSESSMENT AND EVALUATION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

"(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases; and

"(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RI/FS.—Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

"(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

"(4) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

"(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(5) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

"(C) A brief summary of the public comments regarding each proposed interagency agreement.

"(D) A description of the instances in which no agreement was reached.

"(E) A report on progress in conducting investigations and studies under paragraph (1).

"(F) A report on progress in conducting remedial actions.

"(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

"(6) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

"(f) STATE AND LOCAL PARTICIPATION.—The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

"(g) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

"(h) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) NOTICE.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released,

or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

"(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

"(A) to the extent such information is available on the basis of a complete search of agency files—

"(i) a notice of the type and quantity of such hazardous substances,

"(ii) notice of the time at which such storage, release, or disposal took place, and

"(iii) a description of the remedial action taken, if any, and

"(B) a covenant warranting that—

"(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

"(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

"(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(j) NATIONAL SECURITY.—

"(1) SITE SPECIFIC PRESIDENTIAL ORDERS.—The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments and Reauthorization Act of 1986.".

(b) LIMITED GRANDFATHER.—Section 120 of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act with respect to facilities—

(1) owned or operated by the United States and subject to the jurisdiction of such Department;

(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency.

SEC. 121. CLEANUP STANDARDS.

(a) AMENDMENT OF CERCLA.—Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) SELECTION OF REMEDIAL ACTION.—The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106 which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

"(b) GENERAL RULES.—(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

"(A) the long-term uncertainties associated with land disposal;

"(B) the goals, objectives, and requirements of the Solid Waste Disposal Act;

"(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

"(D) short- and long-term potential for adverse health effects from human exposure;

"(E) long-term maintenance costs;

"(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

"(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

"(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

"(c) REVIEW.—If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 104 or 106, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

"(d) DEGREE OF CLEANUP.—(1) Remedial actions selected under this section or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

"(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

"(i) any standard, requirement, criteria, or limitation under any Federal environ-

mental law, including, but not limited to, the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, or the Solid Waste Disposal Act; or

"(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 304 or 303 of the Clean Water Act, where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

"(B)(i) In determining whether or not any water quality criteria under the Clean Water Act is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

"(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

"(I) there are known and projected points of entry of such groundwater into surface water; and

"(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

"(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water then the assumed point of human exposure may be at such known and projected points of entry.

"(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1), of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

"(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

"(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

"(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

"(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

"(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

"(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

"(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

"(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the ground water or surface water or soil.

"(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

The President shall notify the owner or operator of such facility of determinations under this paragraph.

"(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

"(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

"(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

"(C) compliance with such requirements is technically impracticable from an engineering perspective;

"(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

"(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

"(F) in the case of a remedial action to be undertaken solely under section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

"(e) PERMITS AND ENFORCEMENT.—(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

"(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this Act in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

"(f) STATE INVOLVEMENT.—(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

"(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

"(B) Allocation of responsibility for hazard ranking system scoring.

"(C) State concurrence in deleting sites from the National Priorities List.

"(D) State participation in the long-term planning process for all remedial sites within the State.

"(E) A reasonable opportunity for States to review and comment on each of the following:

"(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

"(ii) The planned remedial action identified in the remedial investigation and feasibility study.

"(iii) The engineering design following selection of the final remedial action.

"(iv) Other technical data and reports relating to implementation of the remedy.

"(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4).

"(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

"(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plan under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

"(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.

"(2)(A) This paragraph shall apply to remedial actions secured under section 106. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

"(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 106 before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

"(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

"(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

"(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

"(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.

"(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.

"(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.

"(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with such standard, requirement, criteria, or limitation.".

(b) EFFECTIVE DATE.—With respect to section 121 of CERCLA, as added by this section—

(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the Record of Decision (hereinafter in this section referred to as the "ROD") was signed, or the consent decree was lodged, before date of enactment.

(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act, the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA.

Any ROD signed before enactment of this Act and reopened after enactment of this Act to modify or supplement the selection of remedy shall be subject to the requirements of section 121 of CERCLA.

SEC. 122. SETTLEMENTS.

(a) NEW SECTION.—Title I of CERCLA is amended by adding the following new section after section 121:

"SEC. 122. SETTLEMENTS.

"(a) AUTHORITY TO ENTER INTO AGREEMENTS.—The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 104(b)) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

"(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(1) MIXED FUNDING.—An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 107 or under other relevant authorities.

"(2) REVIEWABILITY.—The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

"(3) RETENTION OF FUNDS.—If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

"(4) FUTURE OBLIGATION OF FUND.—In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

"(c) EFFECT OF AGREEMENT.—

"(1) LIABILITY.—Whenever the President has entered into an agreement under this section, the liability to the United States under this Act of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in

the agreement pursuant to a covenant not to sue in accordance with subsection (f). A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

"(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the President may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

"(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

"(B) The authority of the President to maintain an action under this Act against any person who is not a party to the agreement.

"(d) ENFORCEMENT.—

"(1) CLEANUP AGREEMENTS.—

"(A) CONSENT DECREE.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under section 106, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g), the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

"(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(C) STRUCTURE.—The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

"(2) PUBLIC PARTICIPATION.—

"(A) FILING OF PROPOSED JUDGMENT.—At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

"(B) OPPORTUNITY FOR COMMENT.—The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

"(3) 104(b) AGREEMENTS.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

"(e) SPECIAL NOTICE PROCEDURES.—

"(1) NOTICE.—Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 104(b)) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

"(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 107(a)), to the extent such information is available.

"(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this Act shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

"(2) NEGOTIATION.—

"(A) MORATORIUM.—Except as provided in this subsection, the President may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 104(b), including remedial design, during the negotiation period.

"(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 104(b).

"(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(3) PRELIMINARY ALLOCATION OF RESPONSIBILITY.—

"(A) IN GENERAL.—The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after completion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

"(B) COLLECTION OF INFORMATION.—To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

"(C) EFFECT.—The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

"(D) COSTS.—The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

"(E) DECISION TO REJECT OFFER.—Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall

be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

"(4) FAILURE TO PROPOSE.—If the President determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the President determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(b).

"(5) SIGNIFICANT THREATS.—Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection.

"(6) INCONSISTENT RESPONSE ACTION.—When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this Act, has initiated a remedial investigation and feasibility study for a particular facility under this Act, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

"(f) COVENANT NOT TO SUE.—

"(1) DISCRETIONARY COVENANTS.—The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

"(A) The covenant not to sue is in the public interest.

"(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

"(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

"(D) The response action has been approved by the President.

"(2) SPECIAL COVENANTS NOT TO SUE.—In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

"(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 3004 (c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

"(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under this Act for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 106 or 107 with respect to such release or threatened release at a future time.

"(3) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.

"(4) FACTORS.—In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

"(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

"(B) The nature of the risks remaining at the facility.

"(C) The extent to which performance standards are included in the order or decree.

"(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

"(E) The extent to which the technology used in the response action is demonstrated to be effective.

"(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

"(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

"(5) SATISFACTORY PERFORMANCE.—Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

"(6) ADDITIONAL CONDITION FOR FUTURE LIABILITY.—(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

"(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

"(C) The President is authorized to include any provisions allowing future enforcement action under section 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

"(g) DE MINIMIS SETTLEMENTS.—

"(1) EXPEDITED FINAL SETTLEMENT.—Whenever practicable and in the public interest, as determined by the President, the President shall, as promptly as possible, reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

"(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

"(i) The amount of the hazardous substances contributed by that party to the facility.

"(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

"(B) The potentially responsible party—

"(i) is the owner of the real property on or in which the facility is located;

"(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

"(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

"(2) COVENANT NOT TO SUE.—The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

"(3) EXPEDITED AGREEMENT.—The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

"(4) CONSENT DECREE OR ADMINISTRATIVE ORDER.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed $500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the At-

torney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

"(5) EFFECT OF AGREEMENT.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(6) SETTLEMENTS WITH OTHER POTENTIALLY RESPONSIBLE PARTIES.—Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this Act.

"(h) COST RECOVERY SETTLEMENT AUTHORITY.—

"(1) AUTHORITY TO SETTLE.—The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed $500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

"(2) USE OF ARBITRATION.—Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed $500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

"(3) RECOVERY OF CLAIMS.—If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

"(4) CLAIMS FOR CONTRIBUTION.—A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(i) SETTLEMENT PROCEDURES.—

"(1) PUBLICATION IN FEDERAL REGISTER.—At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h), or under subsection (g) in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

"(2) COMMENT PERIOD.—For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

"(3) CONSIDERATION OF COMMENTS.—The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

"(j) NATURAL RESOURCES.—

"(1) NOTIFICATION OF TRUSTEE.—Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

"(2) COVENANT NOT TO SUE.—An agreement under this section may contain a covenant not to sue under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

"(k) SECTION NOT APPLICABLE TO VESSELS.—The provisions of this section shall not apply to a release from a vessel.

"(l) CIVIL PENALTIES.—A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 120 (relating to Federal facilities) or which is a party to an agreement under section 120 and which fails or refuses to comply with any term or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 109.

"(m) APPLICABILITY OF GENERAL PRINCIPLES OF LAW.—In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this Act shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.".

(b) CONTRIBUTION.—Section 308 of CERCLA is amended by adding the following at the end thereof: "If an administrative settlement under section 122 has the effect of limiting any person's right to obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.".

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Title I of CERCLA is amended by adding the following after section 122:

"SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

"(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

"(b) REIMBURSEMENT.—

"(1) TEMPORARY EMERGENCY MEASURES.—The President is authorized to reimburse local community authorities for expenses incurred (before or after the enactment of the Superfund Amendments and Reauthorization Act of 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

"(2) LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this section shall not supplant local funds normally provided for response.

"(c) AMOUNT.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

"(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

SEC. 124. METHANE RECOVERY.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 123:

"SEC. 124. METHANE RECOVERY.

"(a) IN GENERAL.—In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this Act:

"(1) The owner or operator of such equipment shall not be considered an 'owner or operator', as defined in section 101(20), with respect to such facility.

"(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 107 of this Act.

"(3) The owner or operator of such equipment shall not be subject to any action under section 106 with respect to such facility.

"(b) EXCEPTIONS.—Subsection (a) does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) if either of the following circumstances exist:

"(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a).

"(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 107 with respect to such release or threatened re-

lease if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) shall be liable under this Act only for costs or damages primarily caused by the activities of such owner or operator.".

(b) REGULATION UNDER THE SOLID WASTE DISPOSAL ACT.—Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act, the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.

SEC. 125. CERTAIN SPECIAL STUDY WASTES.

Title I of CERCLA is amended by adding the following new section after section 124:

"SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

"(a) REVISION OF HAZARD RANKING SYSTEM.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

"(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

"(2) The extent of, and potential for, release of such hazardous constituents into the environment.

"(3) The degree of risk to human health and the environment posed by such constituents.

"(b) INCLUSION PROHIBITED.—Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.".

SEC. 126. WORKER PROTECTION STANDARDS.

(a) PROMULGATION.—Within one year after the date of the enactment of this section, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970, promulgate standards for the health and safety protection of employees engaged in hazardous waste operations.

(b) PROPOSED STANDARDS.—The Secretary of Labor shall issue proposed regulations on such standards which shall include, but need not be limited to, the following worker protection provisions:

(1) SITE ANALYSIS.—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.

(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

(5) ENGINEERING CONTROLS.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

(6) MAXIMUM EXPOSURE LIMITS.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

(7) INFORMATIONAL PROGRAM.—A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operations.

(8) HANDLING.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

(9) NEW TECHNOLOGY PROGRAM.—A program for the introduction of new equipment or technologies that will maintain worker protections.

(10) DECONTAMINATION PROCEDURES.—Procedures for decontamination.

(11) EMERGENCY RESPONSE.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

(c) FINAL REGULATIONS.—Final regulations under subsection (a) shall take effect one year after the date they are promulgated. In promulgating final regulations on standards under subsection (a), the Secretary of Labor shall include each of the provisions listed in paragraphs (1) through (11) of subsection (b) unless the Secretary determines that the evidence in the public record considered as a whole does not support inclusion of any such provision.

(d) SPECIFIC TRAINING STANDARDS.—

(1) OFFSITE INSTRUCTION; FIELD EXPERIENCE.—Standards promulgated under subsection (a) shall include training standards requiring that general site workers (such as equipment operators, general laborers, and other supervised personnel) engaged in hazardous substance removal or other activities which expose or potentially expose such workers to hazardous substances receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. The requirements of the preceding sentence shall not apply to any general site worker who has received the equivalent of such training. Workers who may be exposed to unique or special hazards shall be provided additional training.

(2) TRAINING OF SUPERVISORS.—Standards promulgated under subsection (a) shall include training standards requiring that onsite managers and supervisors directly responsible for the hazardous waste operations (such as foremen) receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional hours of specialized training on managing hazardous waste operations. The requirements of the preceding sentence shall not apply to any person who has received the equivalent of such training.

(3) CERTIFICATION; ENFORCEMENT.—Such training standards shall contain provisions for certifying that general site workers, onsite managers, and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard.

(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities.

(e) INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final regulations under this section within 60 days after the enactment of this section which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act of 1970 found in subpart C of part 1926 of title 29 of the Code of Federal Regulations. Such interim final regulations shall take effect upon issuance and shall apply until final regulations become effective under subsection (c).

(f) COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES.—Not later than 90 days after the promulgation of final regulations under subsection (a), the Administrator shall promulgate standards identical to those promulgated by the Secretary of Labor under subsection (a). Standards promulgated under this subsection shall apply to employees of State and local governments in each State which does not have in effect an approved State plan under section 18 of the Occupational Safety and Health Act of 1970 providing for standards for the health and safety protection of employees engaged in hazardous waste operations.

(g) GRANT PROGRAM.—

(1) GRANT PURPOSES.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

(2) ADMINISTRATION.—Grants under this subsection shall be administered by the National Institute of Environmental Health Sciences.

(3) GRANT RECIPIENTS.—Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

SEC. 127. LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS.

(a) DEFINITION OF INCINERATION VESSEL.—Section 101 of CERCLA is amended by adding the following after paragraph (37):

"(38) The term 'incineration vessel' means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.".

(b) LIABILITY.—Section 107 of CERCLA is amended as follows:

(1) Subsection (a)(3) is amended by inserting "or incineration vessel" after "facility".

(2) Subsection (a)(4) is amended by inserting ", incineration vessels" after "facilities".

(3) Subparagraph (A) of subsection (c)(1) is amended by inserting ", other than an incineration vessel," after "vessel".

(4) Subparagraph (B) of subsection (c)(1) is amended by inserting "other than an incineration vessel," after "other vessel,".

(5) Subparagraph (D) of subsection (c)(1) is amended by inserting "any incineration vessel or" before "any facility".

(c) FINANCIAL RESPONSIBILITY.—Section 108(a) of CERCLA is amended as follows:

(1) Paragraph (1) is amended by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";

(2) Add a new paragraph to read as follows:

"(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.".

(d) SAVINGS CLAUSE.—Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended by adding the following new subsection at the end thereof:

"(g) SAVINGS CLAUSE.—Nothing in this Act shall restrict, affect or modify the rights of any person (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement of this Act or any permit under this Act.".

(e) MARITIME TORT.—Section 107(h) of CERCLA is amended by inserting ", under maritime tort law," after "with this section" and by inserting before the period "or the absence of any physical damage to the proprietary interest of the claimant".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. POST-CLOSURE LIABILITY PROGRAM STUDY, REPORT TO CONGRESS, AND SUSPENSION OF LIABILITY TRANSFERS.

Subsection (k) of section 107 of CERCLA is amended by adding at the end the following new paragraphs:

"(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 232 of this Act prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

"(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

"(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

"(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

"(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

"(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

"(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

"(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

"(i) the current and future financial capabilities of facility owners and operators;

"(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

"(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

"(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

"(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

"(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

"(ii) voluntary risk pooling by owners and operators;

"(iii) legislation to require risk pooling by owners and operators;

"(iv) modification of the Post-Closure Liability Trust Fund previously established by section 232 of this Act, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

"(v) private insurance;

"(vi) insurance provided by the Federal Government;

"(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

"(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

"(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.".

SEC. 202. HAZARDOUS MATERIALS TRANSPORTATION.

(a) REGULATION REQUIREMENT.—Section 306(a) of CERCLA is amended (1) by striking out "within ninety days after the date of enactment of this Act" and inserting in lieu thereof "within 30 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986" and (2) by inserting "and regulated" before "as a hazardous material".

(b) CONFORMING AMENDMENT.—Section 306(b) of CERCLA is amended by inserting "and regulation" after "prior to the effective date of the listing".

SEC. 203. STATE PROCEDURAL REFORM.

(a) IN GENERAL.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

"(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

"(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

"(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

"(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to

any cause of action brought under section 107 of this Act.

"(b) DEFINITIONS.—As used in this section—

"(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

"(2) APPLICABLE LIMITATIONS PERIOD.—The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

"(3) COMMENCEMENT DATE.—The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

"(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

"(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term 'federally required commencement date' means the later of the date referred to in subparagraph (A) or the following:

"(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

"(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect with respect to actions brought after December 11, 1980.

SEC. 204. CONFORMING AMENDMENT TO FUNDING PROVISIONS.

(a) HAZARDOUS SUBSTANCES SUPERFUND.—Section 221(a) of CERCLA is amended by striking out "Hazardous Substance Response Trust Fund" and inserting in lieu thereof "Hazardous Substances Superfund".

(b) CROSS REFERENCE TO FUNDING PROVISIONS.—Section 221(c) of CERCLA is amended to read as follows:

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 shall be available for expenditure only as provided in section 111 of this Act.".

SEC. 205. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) DEFINITION OF PETROLEUM.—Section 9001(2)(B) of the Solid Waste Disposal Act is amended by striking out all that follows "petroleum" and inserting in lieu thereof a period. Section 9001 of such Act is amended by adding at the end thereof the following:

"(8) The term 'petroleum' means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).".

(b) STATE INVENTORIES.—Section 9002 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) STATE INVENTORIES.—Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

(c) FINANCIAL RESPONSIBILITY.—

(1) REQUIREMENTS.—Section 9003(c) of the Solid Waste Disposal Act is amended by striking "and" at the end of paragraph (4), striking the period at the end of paragraph (5) and substituting "; and" and by adding the following new paragraph at the end thereof:

"(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.".

(2) CONFORMING AMENDMENT.—Section 9003(d) of such Act is amended by striking out paragraph (1) and renumbering paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(3) OTHER METHODS.—Section 9003(d)(1) of such Act (as redesignated by paragraph (2) of this subsection) is amended by striking out "or" after "credit," and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.".

(4) Section 9003(d) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

"(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

"(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

"(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

"(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

"(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

"(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

"(v) Such other factors as the Administrator deems pertinent.

"(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

"(i) steps are being taken to form a risk retention group for such class of tanks; or

"(ii) such State is taking steps to establish a fund pursuant to section 9004(c)(1) of this Act to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).".

(d) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding after subsection (g) the following new subsection:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) BEFORE REGULATIONS.—Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

"(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

"(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

"(2) AFTER REGULATIONS.—Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

"(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

"(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Leaking Underground Storage Tank Trust Fund are necessary to assure an effective corrective action.

"(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 9006 or with the order of a State under this subsection to comply with the corrective action regulations.

"(3) PRIORITY OF CORRECTIVE ACTIONS.—The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

"(4) CORRECTIVE ACTION ORDERS.—The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4). A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 9004 of this subtitle. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 9006.

"(5) ALLOWABLE CORRECTIVE ACTIONS.—The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

"(6) RECOVERY OF COSTS.—

"(A) IN GENERAL.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

"(B) RECOVERY.—In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5).

"(C) EFFECT ON LIABILITY.—

"(i) NO TRANSFERS OF LIABILITY.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

"(ii) NO BAR TO CAUSE OF ACTION.—Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

"(D) FACILITY.—For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"(7) STATE AUTHORITIES.—

"(A) GENERAL.—A State may exercise the authorities in paragraphs (1) and (2) of this subsection, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and including the authorities of paragraphs (4), (6), and (8) of this subsection if—

"(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

"(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Leaking Underground Storage Tank Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

"(B) COST SHARE.—Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

"(8) EMERGENCY PROCUREMENT POWERS.—Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

"(9) DEFINITION OF OWNER.—As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

"(10) DEFINITION OF EXPOSURE ASSESSMENT.—As used in this subsection, the term 'exposure assessment' means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

"(11) FACILITIES WITHOUT FINANCIAL RESPONSIBILITY.—At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Leaking Underground Storage Tank Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 9006 of this subtitle to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.".

(e) FINANCIAL RESPONSIBILITY IN STATE PROGRAMS.—

(1) Section 9004(c)(1) of the Solid Waste Disposal Act is amended by striking out "financed by fees on tank owners and operators and".

(2) Section 9004(c)(2) of the Solid Waste Disposal Act is amended by striking out "or" after "credit" in the first sentence and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.". Such section is further amended by adding after the word "terms" in the second sentence the following: "including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 9003(d)(5)".

(f) AUTHORITY TO ENTER FOR CORRECTIVE ACTIONS.—

(1) Section 9005(a) of the Solid Waste Disposal Act is amended by inserting the words "taking any corrective action" after the

word "study", inserting the words "acting pursuant to subsection (h)(7) of section 9003 or" after the words "or representative of a State", striking the word "and" before the words "permit such officer", and inserting the words "and permit such officer to have access for corrective action" after the words "relating to such tanks" in the first sentence thereof. Such section is further amended by inserting the words "taking corrective action," after the word "study," in the second sentence thereof.

(2) Section 9005(a) of the Solid Waste Disposal Act is amended by striking the word "and" at the end of paragraph (2), striking out the period at the end of paragraph (3) and inserting "; and", and adding the following new paragraph at the end thereof—

"(4) to take corrective action.".

(3) Section 9005 of the Solid Waste Disposal Act is amended by changing the heading thereof to read as follows—

"INSPECTIONS, MONITORING, TESTING AND CORRECTIVE ACTION".

(g) COORDINATION WITH OTHER LAWS.—Section 9008 of the Solid Waste Disposal Act is amended to read as follows:

"STATE AUTHORITY

"SEC. 9008. Nothing in this subtitle shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subtitle or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.".

(h) POLLUTION LIABILITY INSURANCE.—

(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act and the operation of the Water Quality Insurance Syndicate.

(2) REPORT.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all cleanup costs and damages that may result from reasonably foreseeable releases and events.

(i) CRIMINAL PENALTIES RELATING TO USED OIL.—Subtitle C of the Solid Waste Disposal Act is amended as follows:

(1) In paragraphs (4) and (5) of section 3008(d) after "hazardous waste" insert "or any used oil not identified or listed as a hazardous waste under this subtitle".

(2) Delete "accompanied by a manifest; or" in paragraph (5) and insert "accompanied by a manifest;".

(3) Insert "; or" after paragraph (6).

(4) Add the following new paragraph after paragraph (6):

"(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under subtitle C of the Solid Waste Disposal Act—

"(A) in knowing violation of any material condition or requirement of a permit under this subtitle C; or

"(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this Act;".

(5) In section 3008(e):

(A) Insert "or used oil not identified or listed as a hazardous waste under this subtitle" immediately after "this subtitle".

(B) Strike "or" immediately before "(6)".

(C) Insert ", or (7)" immediately after "(6)".

(j) STATE PROGRAMS FOR USED OIL.—Section 3006 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(h) STATE PROGRAMS FOR USED OIL.—In the case of used oil which is not listed or identified under this subtitle as a hazardous waste but which is regulated under section 3014, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subtitle.".

SEC. 206. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC. 310. CITIZENS SUITS.

"(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsections (d) and (e) of this section and in section 113(h) (relating to timing of judicial review), any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act (including any provision of an agreement under section 120, relating to Federal facilities); or

"(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this Act, including an act or duty under section 120 (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 311 (relating to research, development, and demonstration).

"(b) VENUE.—

"(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred.

"(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under subsection (a)(2) may be brought in the United States District Court for the District of Columbia.

"(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the President or other officer to perform the act or duty concerned.

"(d) RULES APPLICABLE TO SUBSECTION (a)(1) ACTIONS.—

"(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

"(A) The President.

"(B) The State in which the alleged violation occurs.

"(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

"(2) DILIGENT PROSECUTION.—No action may be commenced under paragraph (1) of subsection (a) if the President has commenced and is diligently prosecuting an action under this Act, or under the Solid Waste Disposal Act to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

"(e) RULES APPLICABLE TO SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

"(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) INTERVENTION.—In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 113.

"(h) OTHER RIGHTS.—This Act does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 113(h) or as otherwise provided in section 309 (relating to actions under State law).

"(i) DEFINITIONS.—The terms used in this section shall have the same meanings as when used in title I.".

SEC. 207. INDIAN TRIBES.

(a) DEFINITION.—For definition of Indian tribe, see the amendments made by section 101 of this Act.

(b) FUTURE MAINTENANCE AND COST SHARING.—Section 104(c)(3) of CERCLA is amended by adding at the end thereof the following: "In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the Presi-

dent shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.".

(c) LIABILITY.—Section 107 of CERCLA is amended as follows:

(1) In subsection (a) by inserting "or an Indian tribe" after "State";

(2) In subsection (f):

(A) Insert after "State" the third time that word appears the following: "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation".

(B) Insert "or Indian tribe" after "State" the fourth time that word appears.

(C) Add before the period at the end of the first sentence the following: ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe".

(D) Insert "or the Indian tribe" after "State government".

(3) In subsection (i) insert "or Indian tribe" after "State" the first time it appears.

(4) In subsection (j) insert "or Indian tribe" after "State" the first time it appears.

(d) NATURAL RESOURCES CLAIMS, DELEGATION, ETC.—Section 111 of CERCLA is amended as follows:

(1) In subsection (b), insert before the period at the end thereof the following: ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation";

(2) In subsection (c)(2) insert "or Indian tribe" after "State".

(3) In subsection (f) insert "or Indian tribe" after "State"; and

(4) In subsection (i) insert after "State," the following: "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,".

(e) TREATMENT OF TRIBES GENERALLY.—Title I of CERCLA is amended by adding the following new section after section 125:

"SEC. 126. INDIAN TRIBES.

"(a) TREATMENT GENERALLY.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding health authorities) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

"(b) COMMUNITY RELOCATION.—Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

"(c) STUDY.—The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

"(d) LIMITATION.—Notwithstanding any other provision of this Act, no action under this Act by an Indian tribe shall be barred until the later of the following:

"(1) The applicable period of limitations has expired.

"(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this Act.".

SEC. 208. INSURABILITY STUDY.

Section 301 of CERCLA is amended by adding the following new subsection at the end thereof:

"(g) INSURABILITY STUDY.—

"(1) STUDY BY COMPTROLLER GENERAL.—The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

"(A) Persons who generate hazardous substances: liability for costs and damages under this Act.

"(B) Persons who own or operate facilities: liability for costs and damages under this Act.

"(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

"(2) CONSULTATION.—In conducting the study under this subsection, the Comptroller General shall consult with the following:

"(A) Representatives of the Administrator.

"(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

"(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

"(D) Representatives of property and casualty insurers.

"(E) Representatives of reinsurers.

"(F) Persons responsible for the regulation of insurance at the State level.

"(3) ITEMS EVALUATED.—The study under this section shall include, among other matters, an evaluation of the following:

"(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

"(B) Current trends in statutory and common law remedies.

"(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

"(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this Act on the protection of human health and the environment and on the availability, underwriting, and pricing of insurance coverage.

"(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

"(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding the enactment of this subsection.

"(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

"(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this Act on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

"(4) SUBMISSION.—The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after the enactment of this subsection.".

SEC. 209. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

(a) PURPOSE.—The purposes of this section are as follows:

(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

(4) To enhance the Environmental Protection Agency's internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies.

(b) AMENDMENT OF CERCLA.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 311. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

"(a) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

"(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services (herein-

after in this subsection referred to as the Secretary), in consultation with the Administrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

"(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

"(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

"(ii) Methods to assess the risks to human health presented by hazardous substances.

"(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

"(B) Training, which may include each of the following:

"(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

"(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

"(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this Act.

"(2) DIRECTOR OF NIEHS.—The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

"(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

"(A) Generators of hazardous wastes.

"(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

"(C) Owners and operators of facilities at which hazardous substances are located.

"(D) State and local governments.

"(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act shall be followed under this subsection.

"(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the 'Advisory Council') which shall consist of representatives of the following:

"(A) The relevant Federal agencies.

"(B) The chemical industry.

"(C) The toxic waste management industry.

"(D) Institutions of higher education.

"(E) State and local health and environmental agencies.

"(F) The general public.

"(6) PLANNING.—Within nine months after the date of the enactment of this subsection, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this Act. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

"(b) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH AND DEMONSTRATION PROGRAM.—

"(1) ESTABLISHMENT.—The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the 'program') which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

"(2) ADMINISTRATION.—The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

"(3) CONTRACTS AND GRANTS.—In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

"(4) USE OF SITES.—In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 104 for the purposes of carrying out research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

"(5) DEMONSTRATION ASSISTANCE.—

"(A) PROGRAM COMPONENTS.—The demonstration assistance program shall include the following:

"(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

"(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

"(iii) The development of detailed plans for innovative technology demonstration projects.

"(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

"(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

"(B) SOLICITATION.—Within 90 days after the date of the enactment of this section, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 104. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

"(C) APPLICATIONS.—Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

"(D) PROJECT SELECTION.—In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

"(E) SITE SELECTION.—The Administrator shall propose 10 sites at which a response may be undertaken under section 104 to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.

"(F) DEMONSTRATION PLAN.—Within 60 days after the selection of the site under this paragraph to be the location of a demonstra-

tion project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

"(G) SUPERVISION AND TESTING.—Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

"(H) PROJECT COMPLETION.—Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

"(I) EXTENSIONS.—The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

"(J) FUNDING RESTRICTIONS.—The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

"(6) FIELD DEMONSTRATIONS.—In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 104, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

"(7) CRITERIA.—In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

"(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

"(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

"(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

"(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

"(8) TECHNOLOGY TRANSFER.—In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 of the United States Code and section 1905 of title 18 of the United States Code, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

"(A) trade secrets; or

"(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18 of the United States Code. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

"(9) TRAINING.—The Administrator is authorized and directed to carry out, through the office of technology demonstration, a program of training and an evaluation of training needs for each of the following:

"(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

"(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

"(10) DEFINITION.—For purposes of this subsection, the term 'alternative or innovative treatment technologies' means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

"(c) HAZARDOUS SUBSTANCE RESEARCH.—The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

"(d) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

"(2) RESPONSIBILITIES OF CENTERS.—The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

"(3) APPLICATIONS.—Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

"(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

"(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

"(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

"(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

"(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

"(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

"(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of the enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

"(7) LIMITATION ON USE OF FUNDS.—No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

"(8) ADMINISTRATION THROUGH THE OFFICE OF THE ADMINISTRATOR.—Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

"(9) EQUITABLE DISTRIBUTION OF FUNDS.—The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

"(10) TECHNOLOGY TRANSFER ACTIVITIES.—Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

"(e) REPORT TO CONGRESS.—At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a), a report on the progress of the research, development, and demonstration program authorized by subsection (b), including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

"(f) SAVING PROVISION.—Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

"(g) SMALL BUSINESS PARTICIPATION.—The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b).".

SEC. 210. POLLUTION LIABILITY INSURANCE.

CERCLA is amended by adding the following new title at the end thereof:

"TITLE IV—POLLUTION INSURANCE

"SEC. 401. DEFINITIONS.

"As used in this title—

"(1) INSURANCE.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) POLLUTION LIABILITY.—The term 'pollution liability' means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

"(3) RISK RETENTION GROUP.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) PURCHASING GROUP.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

"SEC. 402. STATE LAWS; SCOPE OF TITLE.

"(a) STATE LAWS.—Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

"(b) SCOPE OF TITLE.—The authority to offer or to provide insurance under this title shall be limited to coverage of pollution liability risks and this title does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

"SEC. 403. RISK RETENTION GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from the following:

"(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

"(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(b) EXCEPTIONS.—

"(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following:

"(A) Comply with the unfair claim settlement practices law of the State.

"(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

"(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

"(c) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of pollution liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(d) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 404. PURCHASING GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

"(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

"(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(5) A State law, rule, or order which requires that a purchasing group must have a

minimum number of members, common ownership or affiliation, or a certain legal form.

"(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

"(b) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to the following:

"(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(A) a purchasing group; or

"(B) any person who is a member of a purchasing group.

"(2) The sale of any one of the following to a purchasing group or a member of the group:

"(A) Pollution liability insurance and comprehensive general liability coverage.

"(B) Insurance related services.

"(C) Management services.

"(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 405. APPLICABILITY OF SECURITIES LAWS.

"(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

"(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.".

SEC. 211. DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) IN GENERAL.—(1) Title 10, United States Code, is amended—

(A) by redesignating section 2701 as section 2721; and

(B) by inserting after chapter 159 the following new chapter:

"CHAPTER 160—ENVIRONMENTAL RESTORATION

"Sec.
"2701. Environmental restoration program.
"2702. Research, development, and demonstration program.
"2703. Environmental restoration transfer account.
"2704. Commonly found unregulated hazardous substances.
"2705. Notice of environmental restoration activities.
"2706. Annual report to Congress.
"2707. Definitions.

"§ 2701. Environmental restoration program

"(a) ENVIRONMENTAL RESTORATION PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program'.

"(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA') (42 U.S.C. 9601 et seq.).

"(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

"(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

"(b) PROGRAM GOALS.—Goals of the program shall include the following:

"(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

"(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

"(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

"(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

"(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

"(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

"(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

"(C) Each vessel owned or operated by the Department of Defense.

"(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA (relating to settlements).

"(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

"(d) SERVICES OF OTHER AGENCIES.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any offsite contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

"(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to response action contractors (as defined in that section) who carry out response actions under this section.

"§ 2702. Research, development, and demonstration program

"(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA. The program shall include research, development, and demonstration with respect to each of the following:

"(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

"(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

"(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

"(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

"(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

"(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

"(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

"(d) INFORMATION COLLECTION AND DISSEMINATION.—

"(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and manage-

ment technologies that are researched, developed, and demonstrated under this section.

"(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

"§ 2703. Environmental restoration transfer account

"(a) ESTABLISHMENT OF TRANSFER ACCOUNT.—

"(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be known as the 'Defense Environmental Restoration Account' (hereinafter in this section referred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary of Defense relating to environmental restoration under this chapter or any other provision of law shall be appropriated to the transfer account.

"(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

"(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.—Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

"(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged with and available for the same purposes and for the same period as the account or fund to which transferred.

"(c) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this chapter or environmental restoration functions under any other provision of law.

"(d) BUDGET REPORTS.—In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this chapter or any other Act.

"(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.

"§ 2704. Commonly found unregulated hazardous substances

"(a) NOTICE TO HHS.—

"(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

"(2) DEFINITION.—In this subsection, the term 'unregulated hazardous substance' means a hazardous substance—

"(A) for which no standard requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

"(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

"(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

"(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

"(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA. The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

"(d) EPA HEALTH ADVISORIES.—

"(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

"(A) for which no advisory exists;

"(B) which is found to threaten drinking water; and

"(C) which is emanating from a facility under the jurisdiction of the Secretary.

"(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

"(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

"(e) CROSS REFERENCE.—Section 104(i) of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

"(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency of Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA.

"§ 2705. Notice of environmental restoration activities

"(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

"(1) The discovery of releases or threatened releases of hazardous substances at the facility.

"(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

"(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

"(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

"(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

"(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

"(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

"(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

"§ 2706. Annual report to Congress

"(a) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

"(b) MATTERS TO BE INCLUDED.—Each such report shall include the following:

"(1) A statement for each installation under the jurisdiction of the Secretary of the number of individual facilities at which a hazardous substance has been identified.

"(2) The status of response actions contemplated or undertaken at each such facility.

"(3) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

"(4) A report on progress on conducting response actions at facilities other than facilities on the National Priorities List.

"§ 2707. Definitions

"In this chapter:

"(1) The terms 'environment', 'facility', 'hazardous substance', 'person', 'release', 'removal', 'response', 'disposal', and 'hazardous waste' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

"(2) The term 'Administrator' means the Administrator of the Environmental Protection Agency.".

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are each amended by inserting after the item relating to chapter 159 the following new item:

"160. Environmental Restoration ..... 2701".

(3) The table of sections at the beginning of chapter 161 of such title is amended to reflect the redesignation made by paragraph (1)(A).

(b) MILITARY CONSTRUCTION PROJECTS.—(1) Chapter 169 of title 10, United States Code, is amended by inserting at the end of subchapter I the following new section:

"§ 2810. Construction projects for environmental response actions

"(a) Subject to subsection (b), the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under chapter 160 of this title or under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(b)(1) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include—

"(A) the justification for the project and the current estimate of the cost of the project; and

"(B) the justification for carrying out the project under this section.

"(2) The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

"(c) In this section, the term 'response action' has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).".

(2) The table of sections at the beginning of subchapter I of such chapter is amended by adding at the end thereof the following new item:

"2810. Construction projects for environmental response actions.".

(c) EFFECTIVE DATE.—Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.

SEC. 212. REPORT AND OVERSIGHT REQUIREMENTS.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(h) REPORT AND OVERSIGHT REQUIREMENTS.—

"(1) ANNUAL REPORT BY EPA.—On January 1 of each year the Administrator of the Environmental Protection Agency shall submit an annual report to Congress of such Agency on the progress achieved in implementing this Act during the preceding fiscal year. In addition such report shall specifically include each of the following:

"(A) A detailed description of each feasibility study carried out at a facility under title I of this Act.

"(B) The status and estimated date of completion of each such study.

"(C) Notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion.

"(D) An evaluation of newly developed feasible and achievable permanent treatment technologies.

"(E) Progress made in reducing the number of facilities subject to review under section 121(c).

"(F) A report on the status of all remedial and enforcement actions undertaken during the prior fiscal year, including a comparison to remedial and enforcement actions undertaken in prior fiscal years.

"(G) An estimate of the amount of resources, including the number of work years or personnel, which would be necessary for each department, agency, or instrumentality which is carrying out any activities of this Act to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

"(2) REVIEW BY INSPECTOR GENERAL.—Consistent with the authorities of the Inspector General Act of 1978 the Inspector General of the Environmental Protection Agency shall review any report submitted under paragraph (1) related to EPA's activities for reasonableness and accuracy and submit to Congress, as a part of such report a report on the results of such review.

"(3) CONGRESSIONAL OVERSIGHT.—After receiving the reports under paragraphs (1) and (2) of this subsection in any calendar year, the appropriate authorizing committees of Congress shall conduct oversight hearings to ensure that this Act is being implemented according to the purposes of this Act and congressional intent in enacting this Act.".

SEC. 213. LOVE CANAL PROPERTY ACQUISITION.

(a) CONGRESSIONAL FINDINGS.—

(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA to deal with these problems.

(2) Because Love Canal came to the Nation's attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation or selection of any other response actions at Love Canal or at any other facilities.

(b) AMENDMENT OF SUPERFUND.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 312. LOVE CANAL PROPERTY ACQUISITION.

"(a) ACQUISITION OF PROPERTY IN EMERGENCY DECLARATION AREA.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') may make grants not to exceed $2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

"(b) PROCEDURES FOR ACQUISITION.—No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

"(c) STATE OWNERSHIP.—The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

"(d) MAINTENANCE OF PROPERTY.—The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 104(c)). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

"(e) HABITABILITY AND LAND USE STUDY.—The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

"(1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;

"(2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and

"(3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

"(f) FUNDING.—For purposes of section 111 and 221(c) of this Act, the expenditures authorized by this section shall be treated as a cost specified in section 111(c).

"(g) RESPONSE.—The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

"(h) DEFINITIONS.—For purposes of this section:

"(1) EMERGENCY DECLARATION AREA.—The terms 'Emergency Declaration Area' and 'Love Canal Emergency Declaration Area' mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on the date of the enactment of this section.

"(2) PRIVATE PROPERTY.—As used in subsection (a), the term 'private property' means all property which is not owned by a department, agency, or instrumentality of—

"(A) the United States, or

"(B) the State of New York (or any public agency or authority thereof).".

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SEC. 300. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Emergency Planning and Community Right-To-Know Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. 300. Short title; table of contents.

Subtitle A—Emergency Planning and Notification

Sec. 301. Establishment of State commissions, planning districts, and local committees.
Sec. 302. Substances and facilities covered and notification.
Sec. 303. Comprehensive emergency response plans.
Sec. 304. Emergency notification.
Sec. 305. Emergency training and review of emergency systems.

Subtitle B—Reporting Requirements

Sec. 311. Material safety data sheets.
Sec. 312. Emergency and hazardous chemical inventory forms.
Sec. 313. Toxic chemical release forms.

Subtitle C—General Provisions

Sec. 321. Relationship to other law.
Sec. 322. Trade secrets.
Sec. 323. Provision of information to health professionals, doctors, and nurses.
Sec. 324. Public availability of plans, data sheets, forms, and followup notices.
Sec. 325. Enforcement.
Sec. 326. Civil Actions.
Sec. 327. Exemption.
Sec. 328. Regulations.
Sec. 329. Definitions.
Sec. 330. Authorization of appropriations.

Subtitle A—Emergency Planning and Notification

SEC. 301. ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES.

(a) ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSIONS.—Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) ESTABLISHMENT OF EMERGENCY PLANNING DISTRICTS.—Not later than nine months after the date of the enactment of this title, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subtitle are within such emergency planning district.

(c) ESTABLISHMENT OF LOCAL EMERGENCY PLANNING COMMITTEES.—Not later than 30 days after designation of emergency planning districts or 10 months after the date of the enactment of this title, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) REVISIONS.—A State emergency response commission may revise its designations and appointments under subsections (b) and (c) as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

SEC. 302. SUBSTANCES AND FACILITIES COVERED AND NOTIFICATION.

(a) SUBSTANCES COVERED.—

(1) IN GENERAL.—A substance is subject to the requirements of this subtitle if the substance is on the list published under paragraph (2).

(2) LIST OF EXTREMELY HAZARDOUS SUBSTANCES.—Within 30 days after the date of the enactment of this title, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) THRESHOLDS.—(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after the date of the enactment of this title, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) REVISIONS.—The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) FACILITIES COVERED.—(1) Except as provided in section 304, a facility is subject to the requirements of this subtitle if a substance on the list referred to in subsection (a) is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subtitle, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) EMERGENCY PLANNING NOTIFICATION.—Not later than seven months after the date of the enactment of this title, the owner or operator of each facility subject to the requirements of this subtitle by reason of subsection (b)(1) shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subtitle. Thereafter, if a substance on the list of extremely hazardous substances referred

to in subsection (a) first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subtitle.

(d) NOTIFICATION OF ADMINISTRATOR.—The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subtitle by notifying the Administrator of—

(1) each notification received from a facility under subsection (c), and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2).

SEC. 303. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) PLAN REQUIRED.—Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after the date of the enactment of this title. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) RESOURCES.—Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) PLAN PROVISIONS.—Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subtitle, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 304).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) PROVIDING OF INFORMATION.—For each facility subject to the requirements of this subtitle:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after the date of the enactment of this title, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) REVIEW BY THE STATE EMERGENCY RESPONSE COMMISSION.—After completion of an emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) GUIDANCE DOCUMENTS.—The national response team, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after the date of the enactment of this title.

(g) REVIEW OF PLANS BY REGIONAL RESPONSE TEAMS.—The regional response teams, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

SEC. 304. EMERGENCY NOTIFICATION.

(a) TYPES OF RELEASES.—

(1) 302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b).

(2) OTHER 302(a) SUBSTANCE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice as described in subsection (b), but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA,

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA.

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b).

(3) NON-302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of a substance which is not on the list referred to in section 302(a) occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA, the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA, the owner or operator shall provide notice as described in subsection (b).

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERLCA—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA.

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b).

(4) EXEMPTED RELEASES.—This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) NOTIFICATION.—

(1) RECIPIENTS OF NOTICE.—Notice required under subsection (a) shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 301(c), for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) CONTENTS.—Notice required under subsection (a) shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 302(a).

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) FOLLOWUP EMERGENCY NOTICE.—As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) TRANSPORTATION EXEMPTION NOT APPLICABLE.—The exemption provided in section 327 (relating to transportation) does not apply to this section.

SEC. 305. EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS.

(a) EMERGENCY TRAINING.—

(1) PROGRAMS.—Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) STATE AND LOCAL PROGRAM SUPPORT.—There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) OTHER PROGRAMS.—Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) REVIEW OF EMERGENCY SYSTEMS.—

(1) REVIEW.—The Administrator shall initiate, not later than 30 days after the date of the enactment of this title, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 302(a) for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after such date of enactment, and issue a final report of findings and recommendations to the Congress not later than 18 months after such date of enactment. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) REPORT.—The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) RECOMMENDATIONS.—The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

Subtitle B—Reporting Requirements

SEC. 311. MATERIAL SAFETY DATA SHEETS.

(a) BASIC REQUIREMENT.—

(1) SUBMISSION OF MSDS OR LIST.—The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act (15 U.S.C. 651 et seq.) shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) CONTENTS OF LIST.—(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) TREATMENT OF MIXTURES.—An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) AVAILABILITY OF MSDS ON REQUEST.—

(1) TO LOCAL EMERGENCY PLANNING COMMITTEE.—If an owner or operator of a facility submits a list of chemicals under subsection (a)(1), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) TO PUBLIC.—A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 324. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 324.

(d) INITIAL SUBMISSION AND UPDATING.—(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after the date of the enactment of this title, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a), a revised sheet shall be provided to such person.

(e) HAZARDOUS CHEMICAL DEFINED.—For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

SEC. 312. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS.

(a) BASIC REQUIREMENT.—(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this title referred to as an "inventory form") to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1)) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2)) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) HAZARDOUS CHEMICALS COVERED.—A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 311.

(d) CONTENTS OF FORM.—

(1) TIER I INFORMATION.—

(A) AGGREGATE INFORMATION BY CATEGORY.—An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(B) REQUIRED INFORMATION.—The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) MODIFICATIONS.—For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) TIER II INFORMATION.—An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e):

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324.

(e) AVAILABILITY OF TIER II INFORMATION.—

(1) AVAILABILITY TO STATE COMMISSIONS, LOCAL COMMITTEES, AND FIRE DEPARTMENTS.—Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d), to the person making the request. Any such request shall be with respect to a specific facility.

(2) AVAILABILITY TO OTHER STATE AND LOCAL OFFICIALS.—A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) AVAILABILITY TO PUBLIC.—

(A) IN GENERAL.—Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) AUTOMATIC PROVISION OF INFORMATION TO PUBLIC.—Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 324. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 324 to the person making the request.

(C) DISCRETIONARY PROVISION OF INFORMATION TO PUBLIC.—In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 324 to the person.

(D) RESPONSE IN 45 DAYS.—A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) FIRE DEPARTMENT ACCESS.—Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) FORMAT OF FORMS.—The Administrator shall publish a uniform format for inventory forms within three months after the date of the enactment of this title. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

SEC. 313. TOXIC CHEMICAL RELEASE FORMS.

(a) BASIC REQUIREMENT.—The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) COVERED OWNERS AND OPERATORS OF FACILITIES.—

(1) IN GENERAL.—(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) in excess of the quantity of that toxic chemical established under subsection (f) during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemcial, or

(II) as part of an article containing the toxic chemical.

(2) DISCRETIONARY APPLICATION TO ADDITIONAL FACILITIES.—The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) TOXIC CHEMICALS COVERED.—The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (including any revised version of the list as may be made pursuant to subsection (d) or (e)).

(d) REVISIONS BY ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator may by rule add or delete a chemical from the list described in subsection (c) at any time.

(2) ADDITIONS.—A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) DELETIONS.—A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) EFFECTIVE DATE.—Any revision made on or after January 1 and before December 1 any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(e) PETITIONS.—

(1) IN GENERAL.—Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2). Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3).

(B) Publish an explanation of why the petition is denied.

(2) GOVERNOR PETITIONS.—A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2). In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2), or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) for adding a chemical to the list.

(f) THRESHOLD FOR REPORTING.—

(1) TOXIC CHEMICAL THRESHOLD AMOUNT.—The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) REVISIONS.—The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section.

The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) FORM.—

(1) INFORMATION REQUIRED.—Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) USE OF AVAILABLE DATA.—In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or where such data are not readily available, reasonable esti-

mates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) USE OF RELEASE FORM.—The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 324(a), to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) MODIFICATIONS IN REPORTING FREQUENCY.—

(1) IN GENERAL.—The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.

(C) A specific toxic chemical.

(D) A specific facility.

(2) REQUIREMENTS.—A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (h), based on—

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5, United States Code.

(3) DETERMINATIONS.—The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-YEAR REVIEW.—Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) NOTIFICATION TO CONGRESS.—The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) JUDICIAL REVIEW.—In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) APPLICABILITY.—A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) EFFECTIVE DATE.—Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA MANAGEMENT OF DATA.—The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) REPORT.—Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) MASS BALANCE STUDY.—

(1) IN GENERAL.—The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after the date of the enactment of this title.

(2) PURPOSES.—The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this title.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) INFORMATION COLLECTION.—(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after the date of enactment of this title initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) MASS BALANCE DEFINITION.—For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

Subtitle C—General Provisions

SEC. 321. RELATIONSHIP TO OTHER LAW.

(a) IN GENERAL.—Nothing in this title shall—

(1) preempt any State or local law,

(2) except as provided in subsection (b), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) EFFECT ON MSDS REQUIREMENTS.—

(1) Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 311. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets at-

tached to the data sheet or such other means as the State or locality considers appropriate.

(2) If any State or local law—

(A) is enacted after August 1, 1985, and

(B) requires such a facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish a material safety data sheet to such other facility owner or operator,

such requirements shall be identical to the requirements under section 311(a).

SEC. 322. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.—

(1) GENERAL AUTHORITY.—(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 303(d)(2), 303(d)(3), 311, 312, or 313 to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c), if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) REQUIREMENTS.—(A) A person is entitled to withhold information under paragraph (1) if such person—

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b),

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b), including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

(i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) LIMITATION.—The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c), is not a trade secret.

(b) TRADE SECRET FACTORS.—No person required to provide information under this title may claim that the information is entitled to protection as a trade secret under subsection (a) unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) TRADE SECRET REGULATIONS.—As soon as practicable after the date of enactment of this title, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4), such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter.

(d) PETITION FOR REVIEW.—

(1) IN GENERAL.—Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) INITIAL REVIEW.—Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) FINDING OF SUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimaint may seek judicial review of the determination.

(4) FINDING OF INSUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS.—Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 323.

(f) PROVIDING INFORMATION TO THE ADMINISTRATOR; AVAILABILITY TO PUBLIC.—Any information submitted to the Administrator under subsection (a)(2) or subsection (d)(3) (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

(g) INFORMATION PROVIDED TO STATE.—Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) and subsection (d)(3).

(h) INFORMATION ON ADVERSE EFFECTS.—(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 301 shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 313(j) and is provided to any person requesting information about such toxic chemical.

(i) INFORMATION PROVIDED TO CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this title shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

SEC. 323. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) MEDICAL EMERGENCY.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 322 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTIVE MEASURES BY LOCAL HEALTH PROFESSIONALS.—

(1) PROVISION OF INFORMATION.—An owner or operator of a facility subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d).

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(2) WRITTEN STATEMENT OF NEED.—The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) REGULATIONS.—As soon as practicable after the date of the enactment of this title, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsections (a) and (c) and the confidentiality agreement under subsection (d).

SEC. 324. PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, FORMS, AND FOLLOWUP NOTICES.

(a) AVAILABILITY TO PUBLIC.—Each emergency response plan, material safety data sheet, list described in section 311(a)(2), inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 322, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 312(d)(2) to be contained in an inventory form as tier II information.

(b) NOTICE OF PUBLIC AVAILABILITY.—Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a).

SEC. 325. ENFORCEMENT.

(a) CIVIL PENALTIES FOR EMERGENCY PLANNING.—The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 302(b)(2)) to comply with section 302(c) and section 303(d). The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES FOR EMERGENCY NOTIFICATION.—

(1) CLASS I ADMINISTRATIVE PENALTY.—(A) A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 304.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) JUDICIAL ASSESSMENT.—The Administrator may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

(4) CRIMINAL PENALTIES.—Any person who knowingly and willfully fails to provide notice in accordance with section 304 shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

(c) CIVIL AND ADMINISTRATIVE PENALTIES FOR REPORTING REQUIREMENTS.—(1) Any person (other than a governmental entity) who violates any requirement of section 312 or 313 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 311 or 323(b), and any person who fails to furnish to the Administrator information required under section 322(a)(2) or requested by the Administrator under section 322(d) shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES WITH RESPECT TO TRADE SECRETS.—

(1) CIVIL AND ADMINISTRATIVE PENALTY FOR FRIVOLOUS CLAIMS.—If the Administrator determines—

(A)(i) under section 322(d)(4) that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 322(d)(3)(A), that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous, the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) CRIMINAL PENALTY FOR DISCLOSURE OF TRADE SECRET INFORMATION.—Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 322 shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

(e) SPECIAL ENFORCEMENT PROVISIONS FOR SECTION 323.—Whenever any facility owner or operator required to provide information under section 323 to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 323.

(f) PROCEDURES FOR ADMINISTRATIVE PENALTIES.—

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 326. CIVIL ACTIONS.

(a) AUTHORITY TO BRING CIVIL ACTIONS.—

(1) CITIZEN SUITS.—Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 304(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1) (unless such requirement does not apply because of the second sentence of section 312(a)(2)).

(iv) Complete and submit a toxic chemical release form under section 313(a).

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 312(g).

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 313(g).

(iv) Establish a computer database in accordance with section 313(j).

(v) Promulgate trade secret regulations under section 322(c).

(vi) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a).

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request.

(2) STATE OR LOCAL SUITS.—

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 302(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Make available information requested under section 311(c).

(iv) Complete and submit an inventory form under section 312(a) containing tier I information (unless such requirement does not apply because of the second sentence of section 312(a)(2)).

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) or for failure to submit tier II information under section 312(e)(1).

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g).

(b) VENUE.—

(1) Any action under subsection (a) against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) NOTICE.—

(1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) LIMITATION.—No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (in-

cluding reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) OTHER RIGHTS.—Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) INTERVENTION.—

(1) BY THE UNITED STATES.—In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) BY PERSONS.—In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

SEC. 327. EXEMPTION.

Except as provided in section 304, this title does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this title, including the transportation and distribution of natural gas.

SEC. 328. REGULATIONS.

The Administrator may prescribe such regulations as may be necessary to carry out this title.

SEC. 329. DEFINITIONS.

For purposes of this title—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ENVIRONMENT.—The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) EXTREMELY HAZARDOUS SUBSTANCE.—The term "extremely hazardous substance" means a substance on the list described in section 302(a)(2).

(4) FACILITY.—The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 304, the term includes motor vehicles, rolling stock, and aircraft.

(5) HAZARDOUS CHEMICAL.—The term "hazardous chemical" has the meaning given such term by section 311(e).

(6) MATERIAL SAFETY DATA SHEET.—The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) PERSON.—The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) RELEASE.—The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) TOXIC CHEMICAL.—The term "toxic chemical" means a substance on the list described in section 313(c).

SEC. 330. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this title.

TITLE IV—RADON GAS AND INDOOR AIR QUALITY RESEARCH

SEC. 401. SHORT TITLE.

This title may be cited as the "Radon Gas and Indoor Air Quality Research Act of 1986".

SEC. 402. FINDINGS.

The Congress finds that:

(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

(A) the measurement of various pollutant concentrations and their strengths and sources,

(B) high-risk building types, and

(C) instruments for indoor air quality data collection;

(2) research relating to the effects of indoor air pollution and radon on human health;

(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

(B) design measures to avoid indoor air pollution; and

(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act, the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

(e) REPORT.—Not later than 2 years after the enactment of this Act, the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

SEC. 404. CONSTRUCTION OF TITLE.

Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

SEC. 405. AUTHORIZATIONS.

There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2).

SUMMARY OF THE DOMENICI/CHILES AMENDMENT TO S. 2706 THE SIXTH OMNIBUS RECONCILIATION ACT OF 1986, SEPTEMBER 19,1986

The FY 1987 Budget Resolution instructed nine Committees of the Congress to

change programs within their jurisdiction to reduce spending or increase revenues in FY 1987-1989. The Domenici-Chiles amendment expands upon these savings to meet the amount of savings which would be required under the August CBO/OMB deficit estimates (taking into account the probable passage of legislation which would increase these estimates to avoid the need for a sequester in FY 1987.

The Joint COB/OMB report estimated the FY 1987 deficit at $163.4 billion. The effect of current appropriations bills and other likely legislation is likely to raise the CBO/OMB estimate due in October to $168.5 billion. This would require the Congress to enact $14.5 billion in savings before October 1st to avoid a sequester. This amendment expands the provisions included in a original Senate-reported reconciliation and adds new provisions, coupled with the assumption of other savings legislation, savings will reach about $13.3 billion. The following is a summary of the amendment:

REVENUES

Accelerate State and local deposits

State and local governments currently deposit social security contributions into the trust fund twice each month and make a separate report to the Social Security Administration. The amendment would require state and local governments to make deposits in the same way and on the same schedule as private employers. This amendment would not affect beneficiaries in any way.

Oil pollution compensation

The amendment assumes the revenue provision included in the House-reported reconciliation bill with respect to oil spill liability legislation. This legislation assesses a 1.3 cent a barrel tax on oil and deposits these funds in an Oil Spill Liability Trust Fund.

Accelerate collection of excise taxes on all distilled spirits and cigarettes

The amendment reduces the time period in which excise tax payments on distilled spirits and tobacco products are payable to the federal government. Instead of coming due 15 to 30 days after the close of the semimonthly period in which the excise liability is incurred, the period is shortened to 14 days.

Appropriations for IRS compliance at House-passed levels

The amendment directs the Appropriations Conferees to fund the FY 1987 IRS budget at the budget authority levels contained in the House-passed Treasury-Postal Appropriations bill. At the appropriate time, Section 302(a) and (b) allocations under the Budget Act will be adjusted to avoid a point of order as a result of the increased funding. OMB and CBO are expected to attribute $2.4 billion in increased revenues for FY 1987 at the time this appropriation is enacted.

Cigarette tax

The Senate-reported reconciliation bill contains an 8 cent increase in the excise tax on cigarettes. This amendment strikes the cigarette tax provision.

Increased compliance through penalties

The amendment increases penalties for substantial under-statement of taxes and for negligent underpayment to 25 percent of the total taxes owed. In addition, this amendment would double the penalty for not depositing withholding tax collections in a timely fashion.

OUTLAYS

REA loan prepayments

The amendment increases the amount of Rural Electrification Administration loan prepayments permitted under the current Treasury regulations by $500 million.

Rural development insurance fund loan asset sales

The amendment expands upon the provision in the Senate-reported reconciliation bill directing the Secretary of Agriculture to sell notes or other obligations in the Rural Development Insurance Fund (RDIF). The original Senate-reported provision required the sale to raise $555 million in net proceeds. The amendment increases this amount to $1.0 billion.

Eximbank loan asset sales

This amendment expands the net proceeds from the sale of Eximbank loans from $500 million in the original Senate-reported version to $1.5 billion.

Petroleum oil overcharges

The amendment retains all provisions in the Senate Energy Title regarding overcharge fund and conservation programs, but requires the recoupment of petroleum product overcharge monies collected by the Department of Energy. This provision does not affect the Stripper Well Agreement.

Federal energy regulatory administration fees

The amendment retains the provisions in the Senate-reported reconciliation bill but requires that both direct and indirect costs of the NRC be recovered in fees. This slightly increases the fee collections contained in the Senate-reported reconciliation.

FDIC fee on foreign deposits

Under current law, banks pay a premium for deposit insurance based on their domestic deposits only. The amendment expands the assessment base of the Federal Deposit Insurance Corporation by including deposits at foreign branches of U.S. banks.

Sale of Conrail

The amendment directs the Secretary of Transportation to sell CONRAIL in FY 1987. The sale of CONRAIL was assumed in the FY 1987 budget resolution adopted by the Congress but was not reconciled.

Medicare

The Finance Committee fully met its original reconciliation instruction. However, in the interim, OMB has implemented regulations that save more than would the Finance Committee's proposed legislation. This amendment would increase savings in the reported reconciliation to provide for prompt payment of most hospital and physician bills in an average of 27 days, in FY 1987 and 24 days by FY 1990, compared to the 24 days in the original package.

Small Business Administration loan sales (Section 503)

This amendment strikes the recourse provisions in Title IX of the Senate-reported reconciliation package requiring the sale of SBA's Section 503 loan assets.

Advance final general revenue sharing payments

The amendment would direct the U.S. Treasury to make the payments due under General Revenue Sharing for the last quarter of FY 1986 by September 30th, 1986, Ordinarily this payment would be made in the first few days of October 1986.

OTHER NEW PROVISIONS CONTAINED IN THE AMENDMENT

Social Security COLA's

The amendment includes a provision eliminating the 3 percent COLA trigger for Social Security recipients. Under this amendment, Social Security beneficiaries will be paid a COLA at whatever the actual inflation rate is.

Byrd language on extraneous and germane amendments

The Byrd language establishing strict standards for extraneous and germane amendments that was adopted in P.L. 99-270, the Consolidated Omnibus Reconciliation Act of 1985, enacted earlier this year is made permanent.

President's budget

This amendment provides that the date of the submission of the President's budget be changed from the first Monday after January 3 to the first Tuesday in February.

Advanced deficiency payments

This amendment requires the Secretary of Agriculture to make advanced deficiency payments for the 1987 crops of wheat, feed grains, upland cotton, and rice. These payments are not to be less than 40 percent for wheat and feed grains, or 30 percent for rice and upland cotton.

Mr. DOLE. Mr. President, I want to indicate that I hope that we can resolve the Superfund issue.

My understanding is Senators PACKWOOD and BENTSEN did meet yesterday and there will be a meeting sometime next week to figure out how to finance it. I think that is the big unresolved question.

Mr. STAFFORD. That is the only question.

Mr. DOLE. But I certainly share the views expressed by the distinguished Senator from Vermont.

Mr. ROTH. Mr. President, I am extremely pleased to cosponsor this Superfund legislation today. We are considering legislation that was agreed to by the conferees on the programmatic portion of the Superfund Conference after many months of tough and enormously complex negotiations. These negotiations were led by my distinguished colleague and very good friend from Vermont, Senator STAFFORD. It was because of his outstanding leadership on many of the controversial issues that the Superfund conferees were able to complete this important piece of legislation.

This bill would authorize $8.5 billion in Superfund spending during the next 5 years. This represents a fivefold increase from the $1.6 billion authorized for the program's initial 5 years. In addition, the bill authorizes another $500 million for the New Underground Petroleum Tank Clean-Up Program.

This bill does not contain the tax title for the Superfund Program, and was introduced because of the delay in coming to an agreement on the funding components of Superfund. Personally I hope that a funding agreement can be arrived at shortly, and I will do

all I can to assist in this objective. We must not allow the hard work of our colleagues on the programmatic portion of this legislation to go for naught.

Mr. President, the Congress has spent more than 2 years working on this legislation, and it would be extremely unfortunate if we did not act on it. I wholeheartedly support what has been done thus far. The legislation is a compromise of several hundred issues that separated the House and Senate passed versions, and it includes stiff new requirements that I hope will lead to a better program. It is intended to ensure speedier, more thorough cleanup of the Nation's hazardous waste sites. It provides increased health protection for people who live near sites and increased opportunities for them to take part in cleanup decisions.

My only concern however is that we have a stable long-term funding solution to clean up our hazardous waste sites. We must not allow the national hazardous waste cleanup efforts to be delayed.

As a conferee on the tax portion of the conference I shall do all that I can to help bring about a timely agreement on a financing mechanism. As a staunch supporter of the Superfund Program, I feel that we must continue our efforts to establish and develop an effective and aggressive program to clean up our hazardous waste dumps. These efforts must go down the drain.

SUPERFUND

Mr. LAUTENBERG. Mr. President, I am pleased to join Senator STAFFORD, and other members of the Environment and Public Works Committee, in introducing this bill today.

In introducing this legislation, it is important to understand how we have gotten where we are on Superfund. Due to administration opposition in 1984, attempts by Congress to reauthorize Superfund died with the conclusion of the 98th Congress. Continued administration resistance to an expanded and strengthened Superfund was evident in the 99th Congress. The Environment and Public Works Committee, on which I serve, began the new Congress in 1985 by scheduling Superfund hearings in February, despite EPA requests that such hearings be canceled.

Mr. President, committed to acting on a bill early in the session, to avoid disruption in the program, the Environment and Public Works Committee acted swiftly. Under the leadership of our chairman, Senator STAFFORD, and ranking minority member, Senator BENTSEN, we completed action on a Superfund bill on March 7, 1985. The bill was then referred to the Senate Finance Committee, where, due again to administration concerns, final consideration was delayed until May 23, 1985. Finally, the Senate Judiciary Committee requested review of the bill, and completed its consideration in June.

Mr. President, despite this action by the three committees, the Superfund bill was not scheduled for consideration by the Senate until September 17. The Senate passed S. 51 on September 24, 1985, by a vote of 86–13. This was 1 week before taxing authority was to expire for raising funds for the program. However, Mr. President, the House of Representatives did not approve a Superfund bill until December 10, 1985. The Congress recessed for the year without sending a final bill to the White House.

Mr. President, when we returned in 1986, conferees were appointed by the House, and what was to be one of the most contentious, hard fought conferences between the House and Senate in recent times, began. As a member of that conference, I was determined to ensure that we produced a bill that truly addressed the threat of toxic wastes in my State and throughout the Nation.

That's why I fought during the Superfund Conference for the initiatives I had succeeded in having included in the Senate bill. And we were successful. In July the Conference agreed to the programmatic provisions of the bill. They would significantly advance environmental protection.

The conference report contains a strong Federal right-to-know program, which I sponsored, which is modeled on New Jersey's program. The right to know provisions are designed to give our citizens and emergency response personnel the information they need in the event of a chemical release, and to prevent such releases from occurring. I also successfully pursued a strong radon program to address this serious health risk.

Other provisions I sponsored are also in the conference report, and are important to New Jersey. The provisions would:

Overturn the Supreme Court's Exxon versus Hunt decision, which would preempt State taxing authority for State spill funds, such as New Jersey's.

Uphold the Boonton decision allowing municipalities to sue for cost recovery under the same Superfund provisions available to States, and to serve as trustees for natural resource damages.

Require the replacement of household, not just drinking water, at sites with water contamination.

Require Federal facilities to submit annual reports to Congress on the hazards and cleanup progress at their sites.

Allow States to receive Superfund funding for 10 years for operation and maintenance costs associated with cleaning up surface and groundwater contaminated at Superfund sites. New Jersey is dotted with such sites, especially in the South, which is dependent on groundwater for drinking water supplies.

Provide for State credits for work done at Superfund sites.

Clarify that States may transfer funds to EPA and the Army Corps of Engineers on an incremental basis for cleanups, and that States be credited with interest earned prior to actual application of the funds as the work progresses.

Provide health programs, which include health assessments at all existing NPL sites by 1988.

To ensure that we do not lose these and other important provisions in the bill, I have joined in supporting this bill today. This legislation consists of the legislative language agreed to by the programmatic conferees in the conference report to accompany H.R. 2005. It is my understanding that the report language to accompany this bill will consist of that in the joint explanatory statement of the committee of the conference to accompany the conference report on H.R. 2005.

In introducing this legislation today, we are responding to the pressing need to save the programmatic provisions of the Superfund bill, and get them to the President for his signature, should the Superfund tax conferees not reach agreement. Because of their work on tax reform, the tax conferees have not been able to complete the finance provisions of the Superfund bill. In order to ensure that we do not sacrifice all the work of the nontax conferees, we are introducing this measure.

Mr. President, I want to emphasize that in cosponsoring this bill, I am in no way deterred from my commitment and determination to see a complete Superfund bill, including taxing provisions, approved by the Congress, and signed by the President. We need equitable Superfund Tax provisions to provide the full $8.5 billion authorized in H.R. 2005 for the Superfund program.

Before we adjourn this session of Congress, we must reauthorize Superfund. We cannot afford to lose the advances incorporated in the reauthorization legislation. In addition to the initiatives I have already mentioned, this bill includes tough, new cleanup standards; a leaking underground storage tank program; and research and development provisions, which include grants for establishing university hazardous substance research centers. These R&D provisions can provide funds for renovation of existing building, such as those at EPA's Edison, New Jersey facility, if such facilities are used for joint research by EPA and the consortium of universities operating the National Science Foundation Industry/University Cooperative Center for Research in Hazardous and

Toxic Substances. This Consortium is headquarted at the New Jersey Institute of Technology. We cannot afford to lose these and many other significant advances in environmental protection, agreed to by the conferees.

To ensure that these provisions become law, we must get a bill, consisting of the nontax provisions we have agreed to in conference, to the President, before we adjourn. If we act quickly, should the President turn his back on the environment and veto the bill, we will be able to override that veto.

That's what this legislation is all about. Making sure that we do not forsake the important gains of the Superfund conferees and of this Congress. If the tax conferees do not complete the finance provisions—and I sincerely hope that they do—we are prepared to move ths bill, and to give this country the Superfund Program that it needs.

By Mr. DANFORTH (for himself, Mr. CHAFEE, Mr. BENTSEN, Mr. WILSON, Mr. CRANSTON, Mr. GORE, Mr. HEINZ and Mr. SASSER):

S. 2842. A bill to encourage the use of copy-code scanners on digital audio tape recording machines; to the Committee on Finance.

DIGITAL AUDIO TAPE TARIFF ACT

● Mr. DANFORTH. Mr. President, I am today introducing, along with Senators CHAFEE, BENTSEN, WILSON, CRANSTON, GORE, HEINZ, and SASSER, a tariff bill designed to offer an interim response to the urgent threat posed by the anticipated introduction of digital audio tape—DAT—recorders, a new technology that could result in widespread pirating of prerecorded music.

Let me state at the outset that we are not offering this measure as a general solution to the audio home taping problem, a complex copyright matter with which the Congress has been struggling for the last 5 years. Rather, we introduce this legislation with the intention of simply preserving the status quo until Congress has an opportunity to consider a comprehensive response to the home taping issue.

The Judiciary Committee now has pending before it copyright legislation dealing with the home taping issue, but there is a serious question as to whether the Congress will be able to act on that legislation in the time remaining before adjournment. Yet a flood of imports of new DAT machines from Japan could begin at any time, causing great potential damage to our music industry, and undermining Congress' effort to legislate a permanent solution to the problem.

Only last month, the administration, after considerable study, stated that they intend to work toward a solution to the audio home taping problem; namely, the mandatory installation in new tape recorders of an electronic chip—known as copy-code scanners—that can prevent the taping of copyrighted recordings that are encoded with an inaudible signal. In its statement before the Judiciary Committee, the administration specifically noted that this approach was particularly appropriate as a response to the new problem posed by DAT machines.

Clearly, if this approach is to be a part of any congressional solution, it must be implemented before not after, the new DAT machines flood the marketplace. Accordingly, our legislation seeks to preserve Congress' legislative options by discouraging the importation of any DAT machines that are not equipped with copy-code scanners. The bill seeks to accomplish this by imposing a 35-percent duty on DAT machines without copy-code scanners, and the current tariff rate of 4.1 percent on DAT machines that are equipped to protect unauthorized copying of copyrighted recordings.

I am advised that the EEC has been moving in the same direction in attempting to fashion a response to the new DAT technology. The EEC is seriously considering legislation or regulations that would require the installation of copy-code scanners in any DAT machines manufactured in, or imported into, the Common Market. Indeed, I understand that the EEC has already informally notified representatives of MITI, the Japanese trade ministry, that such a requirement is likely to be imposed. By enacting the legislation we are introducing today, the United States would be joining forces with the European nations in developing a unified response to DAT. Conversely, should the United States fail to act promptly, we are likely to become, by default, the only major market for the Japanese electronics manufacturers, as they divert their exports from Europe to America.

Mr. President, I ask that the bill be printed in the RECORD, together with an article that recently appeared in Billboard magazine.

There being no objection, the Material was ordered to be printed in the RECORD, as follows:

S. 2842

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Digital Audio Tape Tariff Act of 1986".

SEC. 2. DIGITAL AUDIO TAPE RECORDERS.

(a) The headnotes to part 5 of schedule 6 of the Tariff Schedules of the United States are amended by adding at the end thereof the following new headnote:

"7. For purposes of items 685.40 and 685.41, a 'copy-code scanner' is an integrated electrical circuit or system of circuitry which—

"(a) is built into the recording mechanism of an audio recording device,

"(b) if removed, bypassed, or deactivated, would render inoperative the recording capability of the audio recording device,

"(c) is capable of continuously detecting, within the audio frequency range of 3,500 to 4,100 hertz, a notch or absence of sound resulting from the removal of sound signals, in an encoded phonorecord, and

"(d) upon detecting such a notch or absence, is capable of preventing the audio recording device from recording the sounds embodied in the encoded phonorecord by causing the recording mechanism of the device to stop recording for at least 25 seconds.".

(b) Part 5 of schedule 6 of the Tariff Schedules of the United States is amended—

(1) by redesignating items 685.41 and 685.42 as items 685.42 and 685.43, respectively,

(2) by striking out item 685.40 and inserting in lieu thereof the following new items with a superior heading having the same degree of indentation as the item 685.40 that is struck:

	"Tape recorders and dictation recording and transcribing machines, and parts thereof:			
685.40	Digital audio tape recorders without copy-code scanners, and parts thereof.	35% ad val.		70% ad val.
685.41	Other	4.1% ad val.	3.9% ad val. (D). Free (A*, E, I).	35% ad val.".

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date that is 15 days after the date of enactment of this Act.

(b) STAGED RATE REDUCTIONS.—

(1) The rate of duty in column number 1 for item 685.41 of the Tariff Schedules of the United States shall be subject to all staged rate reductions for item 685.40 of such Schedules that—

(A) take effect after the date of enactment of this Act, and

(B) were proclaimed by the President before the date of enactment of this Act.

(2) The rate of duty in column number 1 for item 685.43 of the Tariff Schedules of the United States shall be subject to all staged rate reductions for item 685.42 of such Schedules that—

(A) take effect after the date of enactment of this Act, and

(B) were proclaimed by the President before the date of enactment of this Act.

[From the Billboard, Sept. 6, 1986]

AN OPEN LETTER TO JAPAN—ERASING THE THREAT OF DIGITAL AUDIO TAPE

(By Stanley M. Gortikov)

An "assissination" is in the making. The targeted victim is the world's music industry. The assailants are Japan's equipment makers. The chosen weapon is DAT—digital audio tape.

You of Japan invent marvelous machines, but you damn those who fuel them. In DAT you have built a system for rapturous sounds, but you imperil the creators of those sounds.

You blithely assume that our music forever will flow to feed your mechanical inventories. Yet, you deliberately jeopardize musical opportunities . . . limit musical careers . . . heighten musical risks . . . mini-

mize musical incentives . . . and don't care if you stifle musical sales.

You excel in design, but know little of fairness. You treasure your own technical know-how, but demean the intellectual property rights of others. You wish to implant and spread the use of DAT, but you punitively expect to ignore all potential harm from that use.

DAT holds fantastic promise in its concept: miniaturization . . . sound . . . portability . . . flexibility. Those qualities could be harnessed for the benefit of all of us. However, it appears that the intended beneficiaries will be confined to you who make DAT equipment, plus digital tapers whose stealing you would facilitate.

DAT's intent is not just to become another (but better) medium to copy our industry's recordings. Instead, DAT literally will *clone* our music, making perfect replications of master quality.

The creation of such masters, however, is the business and right of the originators of a given recording—certainly not the right of a DAT equipment manufacturer, or of DAT buyers.

No longer should you ignore the source and soul of our recordings. Whitney Houston, for example, sings magnificently; her voice and performance are hers, not yours. Bob Dylan writes a unique song; it is his, not yours. A&M releases a fantastic recording; it is A&M's property, not yours.

Neither is it the right of digital tapers to clone onto digital audio tape Houston's voice or Dylan's song or A&M's record.

A recent Billboad commentary on DAT (Aug. 16), authored by an American spokesman for one Japanese company, acknowledged that 84 companies has "agreed on the specifics of the medium and were clearly aware of the impact that DAT might have on the software market."

If true, then why your deafeningly silent refusal to address the underlying intellectual property issues?

How can American recording companies blindly trust your expection that everything somehow will turn out all right, if only they individually commit their catalogs to DAT, release their new recorded talent, and thus risk all their assets?

Your country overtly demonstrates that it has contempt for the copyright owners of foreign recordings. You allow, for example, 2,400 record rental shops to operate in your country, even renting CDs for home taping for a fee of about 65 cents per day.

Sure, you do pemit a modest rental royalty for Japanese record enterprises . . . but not one cent for the American companies or performers who create what is pilfered.

With DAT waiting in the wings, ready to invade our borders, we have no choice but to be suspicious and apprehensive. We can only fear that we are perceived as just another American industry to be trampled on or exploited by Japan.

A reasonable music industry response to DAT equipment has already been introduced in the European Economic Market countries. This is a legislative initiative that calls for the mandatory inclusion in DAT recorders of a copy-code chip that would thwart the duplication of compatibly encoded copyrighted recordings. This low-cost copy-code chip, when installed within the recording circuitry, would "recognize" encoded copyrighted recordings and would decline to record them.

Copying of non-encoded and noncopyrighted recordings would not be inhibited. Playback, of course, also would not be affected. That sensible approach merits adoption in the U.S. and worldwide.

Even the Reagan Administration, in recent testimony before the U.S. Senate, affirmed that the problems of home taping merit a legislative solution. Further, the U.S. Administration called for the mandatory use of an antidumping protection system and a ban on the manufacture, sale, or importation of equipment without decoder protection.

It is not too late for a constructive about-face. No DAT machine has yet been offered for sale here. No retailer could be burdened with unsold inventory. No consumer has yet bought DAT equipment, so no consumer would be encumbered with a useless investment.

Protective U.S. legislation to control DAT's anticopyright impact could be mutually beneficial. With copy-code security assured, we also would not need to seek bans and trade sanctions. A prerecorded DAT software industry could then flourish.

Japan has achievable options for immediate action. As a start, talk with us, do not continue to shun us. Welcome key executives of American companies to meet to Japan with counterparts in DAT equipment companies, as well as with Japan's Trade Ministry (MITI). Offer us your proposals to protect our property and our talent.

Consider, rather than arbitrarily reject, the positive aspects of the copy-code system. Allow it to fulfill DAT's potential while assuring security for musical resources and rights owners.

A constructive prerequisite for us both is modification of attitude. We would prefer to perceive you as partner, not predator. But we need a positive signal from you.

You must find a way to accept the American music industry as your opportunity, not your victim.●

● Mr. CHAFEE. Mr. President, I am pleased to join my distinguished colleague, Senator DANFORTH, as an original cosponsor of this bill crafted to react swiftly to an immediate and threatening new technology which will exacerbate the troublesome problem of home taping of copyrighted music. Home taping has become an enormous problem for the American music community. Taping presently displaces about one-third of the industry's sales.

The harmful effects of home taping are felt first by the copyright owners as well as the composers of music and lyrics who rely on selling their prerecorded music. But everyone who listens to music is hurt too, because inevitably less music is produced as a consequence. Home taping can also result in higher record prices, because record companies will be forced to spread their costs of production over the fewer albums that are sold. In other words, those who buy records will pay more, so that those who tape can pay nothing.

This bill addresses only one type of taping equipment, the new digital audio tape recorder [DAT], a device which will permit the unauthorized duplication of absolutely perfect sound recordings. The DAT is the tape version of compact disc technology. Only blank tapes are available for this DAT machine; obviously, then, it can only be used for copying phono records.

I do not expect that this legislation will resolve the copyright problems of home taping. Indeed it cannot. As my colleagues are aware, House and Senate Judiciary Committees have been grappling with this issue, and I expect that the 100th Congress will be presented with comprehensive legislation to address the issue.

This tariff bill, however, is a useful interim step to take—a trade measure to maintain the status quo pending full congressional consideration of this new threat to copyrights and royalty rights of the American music industry. First the bill seeks a technological solution to this technological problem. It encourages the installation in these new tape recorders of an electronic chip that can prevent or permit the copying of a particular sound recording depending upon the presence of a corresponding signal on the recording itself. The bill places a 35-percent tariff on DAT machines without such a chip and a much lower tariff on those with the chip.

Second, the bill sends a message to the Japanese manufacturers of these machines and their government. The message is this: The Congress of the United States recognizes that the home taping of American music is a serious problem for our creative community—musicians and lyricists. We urge the parties to this controversy to work together to present us with a proposal for a long-term resolution of this problem.

Mr. President, American music is one of the Nation's great assets. Our music is heard around the world and it lives only because of the vitality and strength of our copyright and trade laws. As has been well documented, home taping has caused a massive displacement of record sales and has thereby undermined the music community's ability to continue to produce the diversified music that has been a hallmark of the American musical tradition. We owe it to our music community, to ourselves, and to our children as consumers of music to take great care that the exciting new technologies, developed solely to perform our great music, come into the market in a fair way, respectful of the rights of our creators.

For once we have the opportunity to deal with a potential problem before it becomes unmanageable. By setting up this differential tariff, we can hope to convince exporters to our market to adopt a simple, inexpensive, and equitable solution to this problem.●

By Mr. MATTINGLY:

S. 2843. A bill to amend the Congressional Budget Act of 1974 to minimize the impact on State and local governments of unexpected provisions of leg-

islation proposing the imposition of large unfunded costs on such governments, and for other purposes; to the Committee on Rules and Administration.

PROHIBITION AGAINST CONSIDERATION OF LEGISLATION IMPOSING LARGE UNFUNDED COSTS TO STATE AND LOCAL GOVERNMENTS

● Mr. MATTINGLY. Mr. President, today I am introducing legislation which addresses a serious problem that exists in the congressional decisionmaking process. Specifically, there is a growing tendency in Congress to address desirable national policy objectives by imposing obligations on State and local governments without providing offsetting Federal funds.

All too often, these "unfunded mandates" are enacted without any debate or analysis of the consequences for State and local governments. Many of these legislative initiatives are sound Federal policy. However, it is irresponsible to impose new costs on local governments without careful analysis. Congress accomplishes very little when it attempts to achieve national objectives with no consideration of the cost that this imposes on our State and local governments.

The legislation I am introducing today is designed to ensure that Congress fully recognizes and considers, prior to enactment, the impact of the major new costs on State and local governments. It would create a point of order, waivable under the rules of each House, against any legislation creating new unfunded obligations of more than $50 million annually. The bill, which is supported by the National Governors' Association and National Conference of State Legislatures, would also strengthen the existing requirement that the Budget Committees analyze the effects of our annual budget resolutions on programs affecting State and local governments.

I believe it is unfair and unwise to reduce Federal aid to local governments without a corresponding reduction in costly bureaucratic redtape and federally imposed mandates. It is time Congress reduced the financial burdens that are placed upon State and local governments. I urge my colleagues to join me in this effort.●

By Mr. BOREN (for himself, Mr. MELCHER, Mr. BAUCUS, Mr. HEFLIN, Mr. ABDNOR, and Mr. PRYOR):

S. 2844. A bill to require the Secretary of Agriculture to pay restitution to certain cattle producers for losses incurred in connection with the sale of cattle during a period in which excessive dairy cattle were slaughtered under the whole-herd buy-out program; to the Committee on Agriculture, Nutrition, and Forestry.

CATTLE RESTITUTION ACT

Mr. BOREN. Mr. President, on behalf of Senator MELCHER, Senator BAUCUS, Senator HEFLIN, Senator ABDNOR, Senator PRYOR, and myself, I am introducing today a bill which will require the Secretary of Agriculture to pay restitution to certain cattle producers for losses incurred in connected with the sale of cattle during the period in which excessive dairy cattle were slaughtered under the Dairy Termination Program, the so-called whole-herd buy-out program.

The Food Security Act of 1985 authorized a program whereby milk producers would discontinue their dairy operations in exchange for payments.

When this proposal was first considered, there was concern about the possible impact the whole-herd buy-out could have on the cattle market. At the time the program was included in the farm bill, we took adopted to provisions designed to assure that any adverse effect on the cattle industry would be negligible. First, the act required the Secretary to provide for the orderly and timely flow of cattle that are marketed as a result of the Dairy Program. Further, the act required the Secretary to purchase 400 million pounds of red meat in addition to those quantities normally purchased and distributed by the Department.

Properly administered, the Dairy Program could have reduced the production of milk without affecting red meat market prices at the same time.

However, the USDA required two-thirds of the scheduled dairy slaughterings to occur in the first period of the program, instead of spacing them out over the entire life of the program. In fact, in my home State of Oklahoma, 74 percent of the scheduled dairy slaughterings were to occur during the first buy-out period.

Not only did the Department of Agriculture fail to carry out the intent of the orderly marketing provisions by frontloading cattle, they also failed to implement the red meat purchase plan on a timely basis. Even though, by the Department's own estimates, over 44,000 dairy cattle had been exported and 96,000 slaughtered prior to the program announcement, they did not begin red meat purchases until the week of April 15. At that time, the Department only purchased 5.8 million pounds of red meat, which was approximately equal to less than 6 percent of the dairy cattle slaughtered as of that date.

The effect on beef markets was immediate and disasterous. Market prices dropped by as much as $10 per hundredweight.

For States like Oklahoma which have a substantial cattle feeding industry and a spring wheat cattle marketing program, the decline in prices could not come at a worse time. The market price fell at exactly the same time that Oklahoma beef producers normally market their cattle. For many producers in Oklahoma and other States with similar marketing patterns, the lower prices represented a reduction in their gross sales of 20 to 25 percent.

Mr. President, cattle market prices have begun to stabilize following the Department of Agriculture's gross mismanagement of the whole-herd buy-out program this spring, but unfortunately, the damage has already been done to the Nation's farmers and ranchers.

The Nation's cattle producers had to face huge losses due to the gross mismanagement which could easily have been avoided if the Department had followed the intent of Congress. Simply put, Government negligence imposed great hardships on our Nation's cattle industry.

Because the Department of Agriculture truly ignored the intent of Congress and completely mismanaged the whole-herd buy-out, I believe we have an obligation to provide compensation to the cattle producers for the damage inflicted upon them.

Mr. President, the bill I am introducing today will provide restitution to cattle producers who suffered losses due to the Department's mishandling of the Dairy Program. The Cattle Restitution Act of 1986 would provide cattle producers who marketed cattle between March 28 and June 30 with a direct payment. The payment would be $6 per hundredweight, based on the live weight of the cattle at the time of the sale. The Secretary would have the discretion of making this payment in cash or with commodities held by the Commodity Credit Corporation.

This bill is similar to one introduced yesterday in the House of Representative by Oklahoma Congressmen GLENN ENGLISH.

Regretfully, this bill will not come in time for many Oklahoma cattlemen who suffered severe losses as a result of this program and were forced out of business this year. Perhaps, though, some producers will be enabled to remain in business if Congress adopts this proposal.

I urge my colleagues to join in support of this legislation.

By Mrs. KASSEBAUM (for herself, Mr. HART, Mr. ARMSTRONG, Mr. DANFORTH, Mr. DOLE, Mr. BOREN, Mr. NICKLES, Mr. EAGLETON, Mr. BINGAMAN, Mr. DOMENICI, and Mr. MCCLURE):

S. 2845. A bill to designate the Santa Fe Trail as an historic trail under the National Trails System Act; to the Committee on Energy and Natural Resources.

SANTA FE TRAIL HISTORIC TRAIL STATUS

Mrs. KASSEBAUM. Mr. President, the mass migration West along the California and Oregon Trails during the mid-1800's is a story which many Americans study with great interest,

admiration, and more than a little awe. Stories have been handed down from generation to generation about the hardships endured by men and women alike. However, their journey along the trails was only the beginning, the hard part was taming the land and transforming it into what is known today as the "Breadbasket of the World."

Few people, however, realize another trail preceded both the California and Oregon Trails by more than 20 years. In 1821, the Santa Fe Trail, one of America's great trans-Mississippi pathways to the West, was opened, and commerce between the United States and Mexico ballooned into a million-dollar-a-year business. The trail was filled with caravans of freight wagons headed to Santa Fe, NM, and poured Mexican silver and raw products into the marketplace creating an economic boom for the region.

Because I feel this history should be preserved, I am introducing legislation which gives the Santa Fe Trail national trail status. Senators HART, ARMSTRONG, DANFORTH, DOLE, NICKLES, BOREN, EAGLETON, BINGAMAN, and DOMENICI are joining me in this effort.

An identical bill was passed by the House of Representatives on September 16. This legislation assures the recognition of current land uses and protects the landowner from property acquisition. Further, it complies with the National Trails System Act and requires the Secretary of the Interior to submit to Congress a comprehensive management and use plan for the development of the trail, including the identification of all significant natural, historical, and cultural resources which should be preserved.

Right now, this region is experiencing economic problems with which we are all too familiar. By giving this trail national status, we create a greater potential for economic growth by increased tourism. Followers of the trail will have the opportunity to retrace the wagon tracks of pioneer merchants from Missouri, listen to the quiet prairies of Kansas and Oklahoma, and experience the breathtaking beauty of the Colorado and New Mexico mountains.

Mr. President, giving the Santa Fe Trail national trail status will have two very positive effects upon this region and the United States. First, it cannot help but generate an interest by more people to explore this part of their national history, thereby prompting increased tourism. And more importantly, the legislation commemorates a part of history which all Americans, especially those of us who have walked along the trail, are especially proud.

Mr. President, I ask unanimous consent that the full text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2845

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

(a) DESIGNATION.—Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended by adding the following new paragraph at the end thereof:

(14) The Santa Fe National Historic Trail, a trail of approximately 950 miles from a point of Old Franklin, Missouri, through Kansas, Oklahoma, and Colorado to Santa Fe, New Mexico, as generally depicted on a map entitled "The Santa Fe Trail" contained in the Final Report of the Secretary of the Interior pursuant to subsection (b) of this section, dated July 1976. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Santa Fe Trail except with the consent of the owner thereof. Before acquiring any easement or entering into any cooperative agreement with a private landowner with respect to the trail, the Secretary shall notify the landowner of the potential liability, if any, for injury to the public resulting from physical conditions which may be on the landowner's land. The United States shall not be held liable by reason of such notice or failure to provide such notice to the landowner. So that significant route segments and sites recognized as associated with the Santa Fe Trail may be distinguished by suitable markers, the Secretary of the Interior is authorized to accept the donation of suitable markers for placement at appropriate locations.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 10(c)(2) of such Act (16 U.S.C. 1249(c)(2)) is amended by striking out "(13)" and inserting in lieu thereof "(14)".

Mr. HART. Mr. President, no three words evoke the spirit of the American West more vividly than the words "Sante Fe Trail."

When Congress passed the National Trails System Act and created the historic trail designation, it sought to commemorate the courage and sacrifice of those who opened the West to commerce and settlement. The many trails that led America westward are rich in such courage and sacrifice, and surely none is richer than the Sante Fe.

Earlier this week, the House of Represenatatives approved this designation. At the time, one of the sponsors observed that most Americans probably assume the Sante Fe already enjoys historic status. Indeed, it is time that it did.

The bill we introduce today has been written to protect the rights of private property owners, as well as the integrity of the trail. This Senator is pleased to join in introducing it and urging its early approval.

Along these 950 miles—stretching from Old Franklin, MO through the territories of Kansas, Oklahoma and Colorado—coursed the hopes and aspirations of our national spirit. At its peak before the Civil War, several thousands of traders and settlers used the trail within a single year.

The Sante Fe was truly a pioneering trail. Even as Lewis and Clark explored their way to the Pacific in the early years of the 19th century, other pathfinders were working their way from the Mississippi River, across the plains and into the American southwest. By 1821, William Becknell of Missouri had traced the route that would become the trail's main trunk.

In the following year, Becknell substituted wagons for packhorses, ushering in the era of wagon trains—an enduring symbol of our Nation's expansion.

Becknell's route reached west and then turned south along three branches, two of which crossed the territory that became Colorado. The wagon trains took West the tools necessary to build a modern economy. They brought back silver, furs, and a new creature that came to be known as the Missouri mule.

The trail enjoyed a leading role until the advent of the railroads in the 1880's. The Sante Fe passed into history, then, nearly a century ago. Yet even today, in a few isolated areas, the old wagon ruts can still be discerned in the terrain.

The travelers of the Sante Fe Trail risked more than their possessions in making this journey. The way was arduous, the risks were real. By granting this trail historic status, we not only honor its contribution to our national success, we honor those individual men and women who paid the cost.

Nineteen sites along this trail have been selected for the National Historic Landmark Program. Interest in the trail has been heightened by such programs as the three-day seminar held this month at Trinidad State Junior College in Colorado—attended by more than 200 scholars and history enthusiasts from the States along the trail.

With formal designation, we promote this interest. We encourage more Americans to visit this part of their country and heritage. Most of all, we salute the brave men and woman who brought this trail to life. Let the mark they made on our history be remembered long after the last marks of the trail have faded into the earth.

Mr. BINGAMAN. Mr. President, I am pleased to add my name as an original cosponsor of the legislation introduced today by my distinguished colleague from Kansas to designate the Santa Fe Trail as a national historic trail.

I would like to point out that similar legislation, introduced by my distinguished colleague from New Mexico, Congressman RICHARDSON, has already been passed by the House of Representatives. H.R. 4794, as reported by the House Interior Committee, passed the House of Representatives yesterday under the Consent Calendar.

Both the House-passed bill and the Senate legislation would grant historical status to the 920-mile Santa Fe Trail. The trail begins in Independence, MO, continues through Kansas, Oklahoma, and Colorado, and ends in New Mexico. One route of the trail in New Mexico goes through Raton to Cimarron, Taos, Fort Union, La Junta (now Watrous), Las Vegas, across the Pecos River through Glorieta Pass and into Santa Fe. The other route carried travelers from Oklahoma, through eastern New Mexico to the Canadian Cross, through Wagon Mound, La Junta (Watrous), Las Vegas, the Glorieta Pass and into Santa Fe.

The Santa Fe Trail, opened in 1821, became one of the great trans-Mississippi pathways to the American West. It was once the major overland route between the central United States and the Western frontier.

This celebrated overland route is rich in historic and cultural value. It not only played a central role in the expansion of the West, but it was a major thoroughfare for commerce between the United States and the Republic of Mexico.

The historic trail designation would help to preserve the trail and be a spur to increased tourism in New Mexico and elsewhere. According to the New Mexico Economic Development and Tourism Department, the trail designation would mean an additional $160,000 for the travel industry annually in Northeast New Mexico, particularly in economically depressed Colfax, Mora, and San Miguel counties.

The designation would also be a great distinction for the trail and the State, since the national historic trail status is shared by only two other trails in America, the Oregon and California Trails. The legislation complies with the National Trails System Act, which requires the Secretary of the Interior to submit to Congress a comprehensive management and use plan before requesting funding.

The legislation is also carefully crafted not to disturb the land rights of individual landowners. The bill, as drafted, insures that no private land would be appropriated for the trail without the consent of the landowner. In addition, before acquiring any easement or entering into any cooperative agreement with a private landowner, the Secretary would be required to notify the landowners of the potential liability for public injury from physical conditions that may exist on the landowner's land.

The Santa Fe Trail is the last major overland wagon road to be considered for national historic trail designation. I feel it particularly deserving of this distinction. Passage of this bill would preserve and protect the trail. It would bring needed tourism to rural areas of New Mexico and other States. And it has strong local community support.

I encourage my colleagues to support this worthwile legislation.

Thank you, Mr. President.

By Mr. GRASSLEY (for himself and Mrs. HAWKINS):

S. 2846. A bill to provide for research concerning Alzheimer's disease and related dementias; to the Committee on Labor and Human Resources.

ALZHEIMER'S DISEASE AND RELATED DEMENTIAS SERVICES RESEARCH ACT OF 1986

● Mr. GRASSLEY. Mr. President, today I am introducing a bill which, if passed, will provide authority for the support of services relevant research on Alzheimer's disease, upgrade the coordination in the Department of Health and Human Services of all research on Alzheimer's disease, and will improve dissemination of information about Alzheimer's disease and about services available for the care of those who have it. The bill was introduced in the House of Representatives yesterday by Representative SNOWE. My colleague, Mrs. HAWKINS, joins me as a cosponsor of this bill.

Mr. President, as most of my colleagues know, Alzheimer's disease is terribly costly. An estimated 1.5 million people have severe dementia and another 1 to 5 million have mild to moderate dementia. The emotional burden on the families of those with Alzheimer's disease is heavy and destructive. The financial cost is great; some estimates of the direct cost to the Nation of caring for Alzheimer's disease and other dementia victims run as high as $40 billion. Recently, at a hearing on Alzheimer's disease of the Subcommittee on Aging, a witness from the Office of Technology Assessment estimated that people with dementia constitute probably somewhere between 60 and 70 percent of those who stay in nursing homes longer than 3 months. As invariably noted, correctly, in discussions of dementia, the number of those with it will increase. By the year 2000, it is estimated that the number of those with severe dementia will increase by 60 percent.

At the same time, Mr. President, although our effort in biomedical research on Alzheimer's disease and related dementias is up and running, our effort directed to better understanding how to take care of people with Alzheimer's disease is the here and now—on services relevant research, in other words—is minimal. In a survey of relevant Federal agencies conducted by the subcommittee, we found that, in contrast to the $50 million being spent for basic biomedical research, only about $500,000 to $1 million is being spent on services relevant research focused on those with dementia. It is true that these figures do not include research on long-term care systems which may have implications for caring for people with Alzheimer's disease; they include research specific to caring for Alzheimer's disease victims. While we must look to biomedical research for eventual solutions to the problem of Alzheimer's disease and related dementias, we must look to services relevant research to help us better understand how to take care of the great numbers of people who are presently afflicted with dementia.

In order to look into this situation, earlier this year the Subcommittee on Aging, of which I am the chairman, held two workshops on Alzheimer's disease. One workshop was devoted to "Health Services Research Related to Dementia" and the other to "Financing Care for Patients With Alzheimer's Disease and Related Disorders." The Subcommittee on Human Services of the House Select Committee on Aging, the Office of Technology Assessment, and the Alzheimer's Disease and Related Disorders Association joined the subcommittee in sponsoring these workshops. In addition, nine other Senators and seven Members of Congress joined us as cosponsors. The participants in these workshops were very knowledgeable people chosen for the sponsors by the Office of Technology Assessment which has underway a major project of Alzheimer's disease. In each case, they devoted one day to a disciplined discussion of key issues.

What emerged clearly from both of these workshops is that we are not in a position to answer most of the questions we have to answer before we can make sensible policy for caring for those with Alzheimer's disease or related dementias or for keeping the families, on which the greatest burden falls, involved in caring for their relatives who have this disease. Even such simple questions as "How many people have dementia?" "What is the cost of dementia?" and "What is the prevalence of dementia in nursing homes?" Despite my presentation earlier in this statement of numbers which purport to answer these questions, probably cannot be answered with precision. Others which cannot be answered with confidence include: How reliable are the diagnostic tools presently available for dementia patients? What is the course of illness for most of the dementias, and how does the course of illness relate to service needs? Is the burden of caring for patients with dementia more severe than for other disorders? Does special care for patients

with dementia reduce disability? Would improving the care of people with dementia cost more than current methods? Are those with dementia more expensive to care for? Should quality assurance programs in nursing homes and other settings in which dementia victims are cared for be organized differently than for other patients? Many other questions were addressed at the "Workshop on Services Relevant Research on Alzheimer's Disease and Related Dementias."

The second workshop sponsored by the subcommittee, "Financing Care for Patients With Alzheimer's Disease and Related Disorders," also concluded that additional research was essential if we are to make sensible policy in this area. In a background and summary paper written for the subcommittee, Dr. Karen Davis of Johns Hopkins Universiisty, in the course of summarizing discussion at the workshop, noted:

* * * concern about the potential budgetary impact of policy intiatives to provide assistance to Alzheimer's patients and their families is a major barrier to action. Continuing efforts to obtain more precise estimates of prevalence of Alzheimer's patients by degree of impairment, sources and extent of informal * * * support, utilization of health and long-term care services, cost of providing health and long-term care services, and distribution of expenditures by type of patient, type of service, and source of financing should all be important elements of future research efforts.

The bill I am introducing today authorizes annually $2 million each for the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services research for the support of services relevant research which falls within the general mandate of each agency.

In addition, the bill would authorize the existing Secretary's Task Force on Alzheimer's Disease, created administratively by Secretary Heckler and continued under Secretary Bowen. The bill gives the same mandate to the task force as that given it by Secretary Heckler, but also requires it to report to the Congress and the public at least annually and requires it to assist the three agencies in the development of a plan for the expenditure of the $6 million authorized for services relevant research. No additional funds are provided for the task force. By authorizing the Secretary's Task Force on Alzheimer's Disease as a Council of the Department for the 5-year authorization period, we will increase the status of, and emphasis placed on, the problem of Alzheimer's disease in the Department.

The present task force has worked well and has certainly made an important contribution to the increased emphasis placed on Alzheimer's disease and related dementias in recent years; the authorization of this Council by the Congress and the requirement that it report annually to the Congress and the public will serve to reinforce the high priority which should be placed by the Department on dealing with dementia and the problems it creates. This Council would also be required to assist the National Institute on Aging, the National Institute of Mental Health and the National Center for Health Services Research in making the plan they will be required to make prior to spending any of the money authorized by this bill. I hope that this provision will help to assure that there is adequate coordination within the Department of the research activities related to Alzheimer's disease.

Finally, the bill would authorize the National Institute on Aging to spend $1.5 million for the dissemination of information about current research efforts in the Federal Government and about services available for the care of people with Alzheimer's disease.

The bill authorizes all the activities I have described for 5 years, 1987–91; funds would be provided, however, for 4 years, 1988–91.

Mr. President, I think the program contemplated by the bill I am introducing today, for a relatively small amount of money, can help us get answers to some of the key questions that stand in the way of improving the treatment of these Alzheimer's victims.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD after my statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2846

Be it enacted by the Senate and House of Respresentatives of the United States of America in Congress assembled, That this Act may be cited as the "Alzheimer's Disease and Related Dementias Services Research Act of 1986".

FINDINGS

SEC. 2. The Congress finds that—

(1) best estimates indicate that between 2,000,000 and 3,000,000 Americans presently have Alzheimer's disease or related dementias;

(2) estimates of the number of individuals afflicted with Alzheimer's disease and related dementias are unreliable because current diagnostic procedures lack accuracy and sensitivity and because there is a need for epidemiological data on incidence and prevalence of such disease and dementias;

(3) studies estimate that between one-half and two-thirds of patients in nursing homes meet the clinical and mental status criteria for dementia;

(4) the care for patients with Alzheimer's disease and related dementias falls primarily on their families, and such care is very often financially and emotionally devastating;

(5) the cost of caring for patients with Alzheimer's disease and related dementias is great and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

(6) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias and more progress can be expected in the near future, there is little likelihood of a breakthrough in the foreseeable future which would eliminate or substantially reduce the number of patients with such disease and dementias or the difficulties of caring for such patients;

(7) attempts to reduce the emotional and financial burden of caring for demential patients is impeded by a lack of knowledge about such patients, how to care for such patients, the costs associated with such care, the effectiveness of various modes of care, the quality and type of care necessary at various stages of the disease, and other appropriate services that are needed to provide quality care;

(8) the results of the little research that has been undertaken concerning dementia has been inadequate or the results have not been widely disseminated;

(9) more knowledge is needed concerning—

(A) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias;

(B) the development and evaluation of reliable and valid multidimensional diagnostic and assessment procedures and instruments;

(C) the understanding of the optimal range and cost-effectiveness of community and institutional services for patients with Alzheimer's disease and related dementias and their families, particularly with respect to the design, delivery, staffing, and mix of such services and with respect to the relationship of formal to informal support services;

(D) the understanding of optimal methods to combine formal support services by health care professionals with informal support services provided by family, friends, and neighbors of patients with Alzheimer's disease, and the identification of ways family caregivers can be sustained through interventions to reduce psychological and social problems and physical problems induced by stress;

(E) existing data that are relevant to Alzheimer's disease and related dementias; and

(F) the costs incurred in caring for patients with Alzheimer's disease and related dementias; and

(10) it is imperative to provide appropriate coordination of the efforts of the Federal Government in the provision of services for patients with Alzheimer's disease and related dementias.

TITLE I—COUNCIL ON ALZHEIMER'S DISEASE

ESTABLISHMENT

SEC. 101. (a) There is established in the Department of Health and Human Services (hereinafter referred to as the "Department") the Council on Alzheimer's disease (hereinafter referred to as the "Council"). The Council shall be composed of—

(1) the Assistant Secretary for Health;

(2) the Surgeon General of the United States;

(3) the Assistant Secretary for Planning and Evaluation;

(4) the Director of the National Institute of Allergy and Infectious Diseases;

(5) the Director of the National Institute of Mental Health;

(6) the Director of the National Institute of Neurological and Communicative Diseases and Stroke;

(7) the Director of the National Institute on Aging;

(8) the Commissioner of the Administration on Aging;

(9) the Administrator of the Health Care Financing Administration (or the designee of such Administrator);

(10) the Director of the National Center for Health Services Research and Health Care Technology Assessment;

(11) the Administrator of Veterans' Affairs (or the designee of such Administrator); and

(12) such additional members as the Secretary of Health and Human Services (hereinafter referred to as the "Secretary") considers appropriate.

(b) The Secretary shall select a Chairman for the Council from among its members.

(c) A majority of the members of the Council shall constitute a quorum, but a lesser number may hold hearings.

(d) The Council shall meet periodically at the call of the Chairman, but not less than twice each year.

(e) The Secretary shall appoint an Executive Secretary for the Council and shall provide the Council with such additional administrative staff and support as may be necessary to enable the Council to carry out its functions.

FUNCTIONS

SEC. 102. (a) The Council shall—

(1) coordinate continuing research conducted by or through the Department on Alzheimer's disease and related dementias;

(2) establish a mechanism for the sharing of information among all officers and employees of the Department involved in carrying out programs serving elderly individuals;

(3) identify the most promising areas of research concerning Alzheimer's disease and related dementias;

(4) establish mechanisms to use the results of research concerning Alzheimer's disease and related dementias in the development of policies, programs, and means to improve the quality of life for older Americans; and

(5) assist the National Institute on Aging, National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology Assessment in developing and coordinating the plans for research required under titles II, III, and IV, and in making revisions in such plans.

(b)(1) Not later than 9 months after the date of enactment of this Act, the Council shall transmit to the Congress and make available to the public a report detailing the plans for research prepared by the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Service Research and Health Care Technology Assessment under titles II, III, and IV. Such report shall—

(A) describe, insofar as feasible, the activities to be carried out under such titles during each of the fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) ensure that activities carried out under such titles are coordinated with, and use, to the maximum extent feasible, the resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 445 of the Public Health Service act, centers supported by the National Institute of Mental Health on psychopathology of the elderly, relevant activities of the Administration on Aging, other centers supported by Federal funds involved in research on Alzheimer's disease and related dementias, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department.

(2) Within 1 year after the date on which the report required by paragraph (1) is transmitted to the Congress, and annually thereafter, the Council shall transmit to the Congress, and make available to the public, a report on—

(A) the revisions made by the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology in the plans for research required by titles II, III, and IV;

(B) progress made by research sponsored by the Federal Government on Alzheimer's disease and related dementias; and

(C) new directions in research on Alzheimer's disease and related dementias which the Council considers potentially important.

TITLE II— RESPONSIBILITIES OF THE NATIONAL INSTITUTE ON AGING

RESEARCH PROGRAM AND PLAN

SEC. 201. (a) The Director of the National Institute on Aging shall conduct, or make grants for the conduct of, research relevant to appropriate services for patients with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Institute on Aging shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for research concerning—

(i) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias; and

(ii) the development and evaluation of reliable and valid multidimensional diagnostic and assessment procedures and instruments; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related deamentias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute on Aging shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Institute on Aging shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 202. The Director of the National Institute on Aging shall disseminate the results of research conducted under this title to appropriate professional entities and to the public.

AUTHORIZATION

SEC. 203. To carry out this title, there are authorized to be appropriated $2 million for fiscal year 1988, $2 million for fiscal year 1989, $2 million for fiscal year 1990, and $2 million for fiscal year 1991.

TITLE III—RESPONSIBILITIES OF THE NATIONAL INSTITUTE OF MENTAL HEALTH

RESEARCH PROGRAM AND PLAN

SEC. 301. (a) The Director of the National Institute of Mental Health shall conduct, or make grants for the conduct of, research relevant to appropriate services for patients with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for research concerning—

(i) mental health services, assessments, and treatment modalities relevant to the mental, behavioral, and psychological problems associated with Alzheimer's disease and related dementias;

(ii) the optimal range and cost-effectiveness of community and institutional services for patients with Alzheimer's disease and related dementias and their families, particularly with respect to the design of such services, appropriate staffing for the provision of such services, the timing of such services during the progression of such disease or dementias, and the appropriate mix and coordination of such services;

(iii) the efficacy of various special care units in the United States for patients with Alzheimer's disease, including an assessment of the costs incurred in operating such units, appropriate standards to be used by such units, and the measurement of patient outcomes in such units;

(iv) methods to combine formal support services provided by health care professionals for patients with Alzheimer's disease and related dementias with informal support services provided for such patients by their families, friends, and neighbors, including services such as day care services, respite care services, home care services, and nursing home services, and an evaluation of the services actually used for such patients and the sources of payment for such services;

(v) methods to sustain family members who provide care for patients with Alzheimer's disease and related dementias through interventions to reduce psychological and social problems and physical problems induced by stress; and

(iv) improved methods to deliver services for patients with Alzheimer's disease and related dementias and their families, including services such as outreach services, comprehensive assessment and care management services, outpatient treatment services, home care services, respite care services, adult day care services, parital hospitalization services, and nursing home services; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 445 of the Public Health Service Act, centers support-

ed by the National Institute of Mental Health on psychopathology of the elderly, relevent activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other program relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Institute of Mental Health shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 302. The Director of the National Institute of Mental Health shall disseminate the results of research conducted under this title to appropriate professional entities and to the public.

AUTHORIZATION

SEC. 303. To carry out this title, there are authorized to be appropriated $2 million for fiscal year 1988, $2 million for fiscal year 1989, $2 million for fiscal year 1990, and $2 million for fiscal year 1991.

TITLE IV—RESPONSIBILITIES OF THE NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

RESEARCH PROGRAM AND PLAN

SEC. 401. (a) The Director of the National Center for Health Services Research and Health Care Technology Assessment shall conduct, or make grants for the conduct of, research relevant to appropriate services for patients with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Center for Health Services Research and Health Care Technology Assessment shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for the inventory and analysis of existing date and studies relevant to Alzheimer's disease and related dementias, including data an studies available through the Health Care Financing Administration, the Administration on Aging, the National Center for Health Statistics, the Office of Human Development Services, the Office of the Assistant Secretary for Planning and Evaluation, and the Veterans' Administration;

(B) research concerning the costs incurred by patients with Alzheimer's disease and related dementias in obtaining services, particularly services which are essential to such patients and which are not needed by other patients under long-term care; and

(C) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Center for Health Services Research and Health Care Technology Assessment shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Center for Health Services Research and Health Care Technology Assessment shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 402. The Director of the National Center for Health Services Research and Health Care Technology Assessment shall disseminate the results of research conducted under this title to appropriate professional entities and to the public.

AUTHORIZATION

SEC. 403. To carry out this title, there are authorized to be appropriated $2 million for fiscal year 1988, $2 million for fiscal year 1989, $2 million for fiscal year 1990, and $2 million for fiscal year 1991.

TITLE V—DISSEMINATION

CLEARINGHOUSE ON ALZHEIMER'S DISEASE

SEC. 501. (a) The Director of the National Institute on Aging shall establish the Clearinghouse on Alzheimer's Disease (hereinafter referred to as the "Clearinghouse"). The purpose of the Clearinghouse is the dissemination of information concerning services available for patients with Alzheimer's disease and related dementias and their families. The Clearinghouse shall—

(1) compile, archive, and disseminate information concerning research, demonstration, evaluation, and training programs and projects concerning Alzheimer's disease and related dementias; and

(2) annually publish a summary of the information compiled under paragraph (1) during the preceding 12-month period, and make such information available upon request to appropriate individuals and entities, including educational institutions, research entities, and Federal and public agencies.

(b) The Clearinghouse may charge an appropriate fee for information provided through the toll-free telephone line established under subsection (a)(3).

(c) The Director of the National Institute on Aging, the Director of the National Institute of Mental Health, and the Director of the National Center for Health Services Research and Health Care Technology Assessment shall provide to the Clearinghouse summaries of the findings of research conducted under titles II, III, and IV.

DISSEMINATION PROJECT

SEC. 502. (a) The Director of the National Institute on Aging shall make a grant to, or enter into a contract with, a national organization representing patients with Alzheimer's disease and related dementias for the conduct of the activities described in subsection (b).

(b) The organization receiving a grant or contract under this section shall—

(1) establish a central computerized information system to—

(A) compile and disseminate information concerning initiatives by State and local governments and private entities to provide programs and services for individuals with Alzheimer's disease and related dementias; and

(B) translate scientific and technical information concerning such initiatives into information readily understandable by the general public, and make such information available upon request; and

(2) establish a national toll-free telephone line to make available the information described in paragraph (a), and information concerning Federal programs, services, and benefits for patients with Alzheimer's disease and related dementias and their families.

(c) The organization receiving a grant or contract under this section may charge appropriate fees for information provided through the toll-free telephone line established under subsection (b)(2), and may make exceptions to such fees for individuals and organizations who are not financially able to pay such fees.

(d) In order to receive a grant or contract under this section, an organization shall submit an application to the Secretary. Such application shall contain—

(1) information demonstrating that such organization has a network of contracts which will enable such organization to receive information necessary to the operation of the central computerized information system described in subsection (b)(1);

(2) information demonstrating that, by the end of fiscal year 1991, such organization will be financially able to, and will, carry out the activities described in subsection (b) without a grant or contract from the Federal Government; and

(3) such other information as the Secretary may prescribe.

AUTHORIZATION

SEC. 503. To carry out this title, there are authorized to be appropriated a total of $1,500,000 for fiscal years 1988 through 1991.

By Mr. KASTEN:

S.J. Res. 416. A joint resolution to commemorate the 100th birthday of Aldo Leopold and to recognize his contribution to the protection and wise management of renewable natural resources; to the Committee on the Judiciary.

COMMEMORATING THE 100TH BIRTHDAY OF ALDO LEOPOLD

● Mr. KASTEN. Mr. President, January 11, 1987, will mark the 100th anniversary of the birth of Aldo Leopold. Leopold was a man of conviction. He was a tireless advocate for the stewardship of our renewable natural resources. To professionals and laymen alike, Leopold was a titan in the conservation movement. He was more than a man ahead of his time; Aldo Leopold is a legend.

Born in Burlington, Iowa, Leopold spent his childhood years along the bottom lands of the Mississippi River which was then a wilderness unimpeded by levees, locks and other manmade structures. There, with a reverent eye cast toward the sky, he watched unending skeins of waterfowl wing their

way south in the fall and return to the north in the spring. These were formative years for Leopold, who would later mold the concept of scientific wildlife management, pioneer the doctrine of wilderness ecology, and bring life to the word "conservation."

This man has been described as a professional forester, game manager, scientist, teacher, writer, philosopher, and a gentleman. Leopold graduated with a Ph.D from Yale University Forestry School. After leaving Yale in 1908, he entered the U.S. Forest Service as a forest assistant in Arizona. He also served as supervisor of the Carson National Forest in New Mexico and as assistant district forester of the southwestern district of the Forest Service. Leopold's experiences as a forest manager sparked his interest in the preservation of wilderness areas and, largely through his determined efforts, he helped establish the Gila Wilderness Area in New Mexico as the first national forest wilderness.

Leopold is perhaps best known for the years he spent in my home State of Wisconsin. He was associate director of the Forest Products Laboratory in Madison, WI, and became a game and forestry consultant in 1928. While privately employed, Leopold completed the now classic treatise, "Game Management." In 1933, he was appointed professor of game management at the University of Wisconsin, a chair that he held with distinction until his death in 1948.

Leopold was also very active in a number of conservation organizations. He was an organizer of the Wildlife Society and the Wilderness Society and also served as president and vice president of these organizations. At various times, Leopold was director of the National Audubon Society and vice president of the American Forestry Association. He served on the council of the Society of American Foresters. Leopold also served as president of the Ecological Society of America.

While Leopold will be remembered for his professional endeavors, he also will be remembered for his work, "A Sand County Almanac." Leopold's "sand farm" in Wisconsin inspired writings that were collectively published posthumously in 1949. Like any literary classic, "Sand County" has withstood the test of time and is still read enthusiastically by college students and weekend naturalists alike. His opening passage in the foreword sets the tone of this masterpiece:

> There are some who can live without wild things, and some who cannot. These essays are the delights and dilemmas of one who cannot.
>
> Like winds and sunsets, wild things were taken for granted until progress began to do away with them. Now we face the question whether a still higher 'standard of living' is worth its cost in things natural, wild, and free. For us of the minority, the opportunity to see geese is more important than television, and the chance to find a pasqueflower is a right as inalienable as free speech.
>
> These wild things, I admit, had little human value until mechanization assured us of a good breakfast, and until science disclosed the drama of where they come from and how they live. The whole conflict thus boils down to a question of degree. We of the minority see a law of diminishing returns in progress; our opponents do not.

The conservation ideology that Leopold espoused and the focus of his philosophy of resource stewardship is embodied in what he described as a "land ethic." He stated in his "Sand County Almanac" that: "A land ethic changes the role of homo sapiens from conqueror of the land-community to plain member and citizen of it. It implies respect for his fellow-members, and also respect for the community as such." The exemplary dedication to resource conservation that Leopold demonstrated as a professional and as a private citizen prompted the National Wildlife Federation to name him to its conservation hall of fame in 1965.

Leopold's land ethic is timeless. The continued drainage and conversion of our wetlands; the despoiling of our air, soil, and water; the unabated erosion and denuding of our prairies, deserts and ranges; and the accelerated destruction of our forests, bear witness to this fact. The very conservation issues Leopold identified more than 35 years ago are still to be resolved. Many, in fact, have grown in scope and magnitude.

In order to commemorate the 100th birthday of the man who truly is the father of conservation, I would like to introduce the following Senate joint resolution. I hope my colleagues will join me in marking January 11, 1987, as a day for all citizens of this great Nation to celebrate the monumental achievements of Aldo Leopold.●

ADDITIONAL COSPONSORS

S. 173

At the request of Mr. LEAHY, the names of the Senator from Maine [Mr. MITCHELL], the Senator from Arizona [Mr. DECONCINI], the Senator from Alabama [Mr. DENTON], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of S. 173, a bill to settle and adjust the claim of the Tehran American School for $13,333.94.

S. 519

At the request of Mr. EVANS, the names of the Senator from Vermont [Mr. LEAHY] and the Senator from Maine [Mr. COHEN] were added as cosponsors of S. 519, a bill to require a study of the compensation and related systems in executive agencies, and for other purposes.

S. 670

At the request of Mr. PELL, the name of the Senator from Delaware [Mr. BIDEN] was added as cosponsor of S. 670, a bill to amend the National Labor Relations Act to give employers and performers in the performing arts rights given by section 8(e) of such act to employers and employees in similarly situated industries, and to give to employers and performers in the performing arts the same rights given by section 8(f) of such act to employers and employees in the construction industry, and for other purposes.

S. 1026

At the request of Mr. PRESSLER, the name of the Senator from Illinois [Mr. DIXON] was added as cosponsor of S. 1026, a bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program.

S. 1060

At the request of Mr. D'AMATO, the name of the Senator from South Dakota [Mr. ABDNOR] was added as cosponsor of S. 1060, a bill to amend the title II of the Social Security Act to protect the benefit levels of individuals becoming eligible for benefits in or after 1979 by eliminating the disparity (resulting from changes made in 1977 in the benefit computation formula) between those levels and the benefit levels of persons who became eligible for benefits before 1979.

S. 1296

At the request of Mr. MATHIAS, the name of the Senator from Arizona [Mr. DECONCINI] was added as cosponsor of S. 1296, a bill to amend the Immigration and Nationality Act to modify the requirement for naturalization of an understanding of the English language.

S. 2230

At the request of Mr. ROTH, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2230, a bill to improve the management of the Government by establishing an Office of Federal Management in the Executive Office of the President, and for other purposes.

S. 2454

At the request of Mr. MURKOWSKI, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act 1985, relating to the liability of Government contractors for injuries or losses or property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2479

At the request of Mr. TRIBLE, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2479, a bill to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

S. 2588

At the request of Mr. DOMENICI, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 2588, a bill to provide permanent authorization for White House Conferences on Small Business.

S. 2711

At the request of Mr. DODD, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 2711, a bill to restrict procurement by the Department of Defense of ball bearings and roller bearings, and for other purposes.

S. 2734

At the request of Mr. MATHIAS, the names of the Senator from Illinois [Mr. SIMON] and the Senator from Georgia [Mr. NUNN] were added as cosponsors of S. 2734, a bill to amend chapter 83 of title 5, United States Code, to provide civil service retirement credit for service performed under the Railroad Retirement Act, and for other purposes.

S. 2781

At the request of Mr. EVANS, the name of the Senator from New Hampshire [Mr. RUDMAN] was added as a cosponsor of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

S. 2794

At the request of Mrs. KASSEBAUM, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 2794, an original bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

S. 2799

At the request of Mr. MITCHELL, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 2799, a bill to consolidate and improve Federal laws providing compensation and establishing liability for oil spills.

S. 2802

At the request of Mr. TRIBLE, the names of the Senator from Delaware [Mr. ROTH] and the Senator from Nevada [Mr. LAXALT] were added as cosponsors of S. 2802, a bill to prohibit foreign assistance to countries which fail to take steps to prevent and punish the laundering of drug-related profits in their territory, and for other purposes.

S. 2806

At the request of Mr. METZENBAUM, the names of the Senator from Illinois [Mr. SIMON], and the Senator from Indiana [Mr. QUAYLE] were added as cosponsors of S. 2806, a bill to amend title II, United States Code, to clarify the current meaning of section 1113, relating to the regulation of collective bargaining agreements by debtors in bankruptcy.

S. 2823

At the request of Mr. GORE, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 2823, a bill to amend the Communications Act of 1934 to provide for security and fair marketing practices for certain encrypted satellite communications.

S. 2836

At the request of Mr. BUMPERS, the names of the Senator from South Dakota [Mr. ABDNOR], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 2836, a bill to amend the Agricultural Act of 1949 to modify the support price and marketing loan program for the 1986 crop of soybeans, and for other purposes.

SENATE JOINT RESOLUTION 112

At the request of Mr. PELL, the names of the Senator from Oregon [Mr. HATFIELD], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE JOINT RESOLUTION 395

At the request of Mr. HATCH, the names of the Senator from Pennsylvania [Mr. HEINZ], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 395, a joint resolution to designate the period October 1, 1986, through September 30, 1987, as "National Institutes of Health Centennial Year."

SENATE JOINT RESOLUTION 415

At the request of Mr. GLENN, his name was added as a cosponsor of Senate Joint Resolution 415, a joint resolution to provide for a settlement to the Maine Central Railroad Co. and Portland Terminal Co. labor-management dispute.

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE CONCURRENT RESOLUTION 157

At the request of Mr. QUAYLE, the name of the Senator from Virginia [Mr. TRIBLE] was added as a cosponsor of Senate Concurrent Resolution 157, a concurrent resolution to express the sense of the Congress that colleges and universities should enforce strict but fair antidrug use policies.

SENATE RESOLUTION 491—CALLING FOR A STRONG RESPONSE TO THE DANILOFF ARREST

Mr. HUMPHREY (for himself, Mr. DOLE, Mr. MOYNIHAN, Mr. WALLOP, Mr. MCCLURE, Mr. QUAYLE, and Mr. WILSON), submitted the following resolution; which was ordered to go over under the rule:

S. RES. 491

Whereas on August 30, 1986, Nicholas Daniloff was arrested, apparently in response to the arrest of the Soviet spy Gennadi F. Zakharov;

Whereas on September 5, 1986, President Reagan sent a message to Soviet General Secretary Gorbachev offering the President's personal assurances that Mr. Daniloff was not a spy;

Whereas despite the President's assurances, the Soviet Union indicted Mr. Daniloff on September 7, 1986;

Whereas the Soviet Union demonstrated an unprecedented disregard for the word of a United States President, while continuing to blatantly distort and conceal the facts surrounding the detention of Mr. Daniloff;

Whereas such mendacity jeopardizes the furtherance of any constructive relationship between the United States and the Soviet Union; and

Whereas hundreds of Soviet espionage agents operate at the United Nations, under cover of the Soviet mission to the United Nations and as members of the Secretariat of the United Nations: Now, therefore, be it

Resolved by the Senate of the United States that the Senate,

Declares that the Soviet action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognized standards of human rights and civil conduct and raises profound doubts about Soviet willingness to live up to its responsibilities and commitments under any international or bilateral agreement, including arms control agreements.

Urges the President to continue his forthright demands for the immediate and unconditional release of Mr. Daniloff, including through the reiteration of that demand in his September 22, 1986, speech to the United Nations.

Calls on the President to condition his agreement to a summit meeting with Secretary General Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

Urges the President to limit further discussions on arms control issues with the Soviet Union, and to refrain from concluding any arms control agreements with the Soviet Union, until that country, by permitting Mr. Daniloff unconditionally to depart the Soviet Union, demonstrates its willingness to observe basic and fundamental standards of international conduct, which is a precondition to such good faith discussions.

Declares that the Senate of the United States shall not ratify any arms control agreement negotiated with the Soviet Union until that country has unconditionally released Mr. Daniloff.

Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union, until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

Calls on the President to demand in his September 22 speech to the United Nations that the Soviet Union remove its spies from its United Nations mission and from the United Nations Secretariat and to take all measures necessary to bring an end to such direct Soviet violations of Article 100, Section 2, of the United Nations Charter.

AMENDMENTS SUBMITTED

OMNIBUS BUDGET RECONCILIATION ACT

DOMENICI (AND OTHERS) AMENDMENT NO. 2850

Mr. DOMENICI (for himself, Mr. DOLE, and Mr. CHILES) proposed an amendment which was subsequently modified, to the bill (S. 2706) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987 (S. Con. Res. 120, 99th Congress); as follows:

On page 2, line 10, strike "$555,000,000" and insert in lieu thereof "$1,000,000,000".

On page 3, between lines 14 and 15, insert the following new sections:

SEC. . ADVANCE DEFICIENCY PAYMENTS.

Notwithstanding any other provision of law, the Secretary of Agriculture shall, in accordance with criteria in section 107C of the Agriculture Act of 1949, make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice: *Provided*, That the percentage of the projected payment rate used in computing such payments shall not be less than (1) 40 percent in the case of wheat and feed grains, and (2) 30 percent in the case of rice and upland cotton.

SEC. . PREPAYMENT OF REA LOANS.

SEC. 102. The Secretary of the Treasury shall issue final regulations implementing the provisions of the undesignated paragraph captioned "PREPAYMENT OF LOANS BY RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS" appearing at 100 Stat. 713-14 in Public Law 99-349 (7 U.S.C. 936 note) to permit the prepayment of loans made by the Federal Financing Bank and guaranteed under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936), by the Administrator of the Rural Electrification Administration, in such amounts as to realize net proceed of not less than $1,720,000,000 from such loan prepayments during fiscal year 1987.

On page 6, line 6, strike "$500,000,000" and insert in lieu thereof "$1,500,000,000".

On page 8, between lines 14 and 15, insert the following new section:

SEC. . FDIC PREMIUMS ON FOREIGN DEPOSITS OF UNITED STATES BANKS.

The Federal Deposit Insurance act is amended—

(1) by striking "except as provided in section 7(b)(5)," after "(A)" in section 3(1)(5);

(2) by striking out "and" at the end of clause (A) of section 7(b)(5); and

(3) by striking out the period at the end of section 7(b)(5) and inserting in lieu thereof the following: "; and

"(C) any deposits received in any foreign branch of international banking facility, other than any foreign branch of a foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978.".

On page 12, between lines 4 and 5, insert the following new section:

SEC. . SALE OF CONRAIL

The Secretary of Transportation is directed in fiscal year 1987 to sell the interest of the United States in the common stock of the Consolidated Rail Corporation (Conrail). Consistent with the public interest convenants provided for pursuant to S. 638, the "Conrail Sale Amendments Act of 1985" as passed by the Senate on February 4, 1986, the Secretary, as part of such sale, shall ensure that Conrail's rail service is continued, that the interests of rail labor are protected, that it is in the strongest possible financial condition after the sale, that it is viable long-term, and that the return to the Federal Government is maximized.

On page 12, line 8, strike insert "OR PETROLEUM PRODUCTS" after "CRUDE OIL".

On page 12, line 18, insert "or petroleum products" after "crude oil".

On line 24 of page 13, before the world "patry" insert the world "private".

On page 19, line 21, strike out the period and insert in lieu thereof ": *Provided*, That the Commission shall increase fees and annual charges sufficient to increase offsetting receipts by at least $33,000,000 in fiscal year 1987 above current collections.".

On page 27, line 18, strike "1½" and inset in lieu thereof "1.3".

On page 49, line 6, strike "24" and insert in lieu thereof "the applicable number of".

On page 49, strike line 8 through 11 and insert in lieu thereof the following:

"(B) In this paragraph—

"(i) the term 'clean claim' means a claim which meets the requirements of section 1814(a)(1) and any other requirements of this title for payment under this part, and

"(ii) the term 'applicable number of calendar days' means—

"(I) with respect to claims received in the 12-month period beginning October 1, 1986, 27 calendar days,

"(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

"(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

"(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.".

On page 50, line 1, strike "24" and insert in lieu thereof "the applicable number of".

On page 50, strike lines 3 through 5 and insert in lieu thereof the following:

"(B) In this paragraph—

"(i) the term 'clean claim' means a claim which meets the requirements of section 1814(a)(1) and any other requirements of this title for payment under this part, and

"(ii) the term 'applicable number of calendar days' means—

"(I) with respect to claims received in the 12-month period beginning October 1, 1986, 27 calendar days,

"(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

"(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

"(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.".

On page 50, beginning with line 11, strike all through line 21 on page 51 and insert in lieu thereof the following:

"(e)(1) If for three consecutive calendar months, an agency or organization with an agreement with the Secretary under section 1816 meets the requirements of subsection (c)(2) of such section, the Secretary shall discontinue periodic interim payments (under 42 C.F.R. 405.454(j)) with respect to all providers of services (other than providers of the type described in paragraph (3)) paid through the agency or organization until such time as the agency or organization fails to meet such requirements for three consecutive calendar months.

"(2) If for three consecutive calendar months, an agency or organization with an agreement with the Secretary under section 1816 meets the requirements of subsection (c)(2) of such section, the Secretary shall provide for periodic interim payments with respect to all subsection (d) hospitals (as defined in section 1886(d)(1)(B)) that request such payments and that are paid through the agency or organization until such time as the agency or organization meets such requirements for three consecutive calendar months.

On page 52, line 4, strike "1842" and insert in lieu thereof "1842(c)".

On page 52, line 7, strike "(A)".

On page 52, line 8, strike "24 days after a clean claim as defined in paragraph (2)(B)" and insert thereof "the applicable number of calendar days (as defined in clause (ii) of paragraph (2)(B)) after a clean claim (as defined in clause (i) of such paragraph)".

On page 52, line 14, strike "made." and insert in lieu thereof "made.'.".

On page 52, strike lines 15 through 19 and insert in lieu thereof the following:

(3) Section 1816(c) of such Act, as amended by subsection (a), is further amended by adding at the end thereof the following new paragraph:

"(3) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of paragraph (2)(B)) after a clean claim (as defined in clause (i) of such paragraph) is received from a provider of skilled nursing facility services, home health services, or hospice services that is not receiving periodic interim payments with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.".

On page 52, line 21, strike "The" and insert in lieu thereof "Except as provided in paragraph (2), the".

On page 52, between lines 22 and 23, insert the following:

(2) The amendments made by paragraphs (2) and (3) of subsection (c) shall apply to claims received on or after April 1, 1987.

On page 52, line 23, strike "(2)" and insert in lieu thereof "(3)".

On page 115, between lines 14 and 15, insert the following:

SEC. 653. REVENUE SHARING PAYMENTS.

Nothwithstanding section 6702(b) of title 31, United States Code, the Secretary of the Treasury shall make the installment payment of revenue sharing funds under chapter 67 of such title that is otherwise required to be paid on or before October 5, 1986, by no later than September 30, 1986.

On page 117, beginning with line 21, strike out all through page 118, line 2, and insert the following:

(c) TERMINATION OF OPTIONAL COVERAGE.—Subsection (v) of section 218 of the Social Security Act is repealed.

On page 120, beginning with line 17, strike all through line 18 on page 123.

On page 123 between lines 18 and 19, insert the following new sections:

SEC. . DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATES AND LOCAL GOVERNMENT EMPLOYEES.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.".

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.
"Sec. 3127. Short title.".

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", or ", and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act,".

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or".

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), and (t) of section 218 of the Social Security Act are repealed; and subsections (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218", and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

(C) Section 218(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)", and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (1)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

(F) Section 224(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

SEC. . CERTAIN EXCISE TAX DEPOSITS ACCELERATED.

(a) TOBACCO.—Subsection (b) of section 5703 of the Internal Revenue Code of 1954 (relating to method of payment of tax) is amended by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) TIME FOR PAYMENT OF TAXES.—

"(A) IN GENERAL.—In the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period, the last day for the payment of such taxes shall be the 14th day after the last day of such semimonthly period.

"(B) SPECIAL RULE WHERE 15TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this subparagraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(b) DISTILLED SPIRITS.—Section 5061 of the Internal Revenue Code of 1954 (relating to method of collecting tax) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TIME FOR PAYMENT OF TAXES ON DISTILLED SPIRITS.—

"(1) IN GENERAL.—If—

"(A) any tax is imposed on distilled spirits under this part, and

"(B) such distilled spirits are withdrawn under bond for deferred payment of tax or from bonded premises (including customs custody),

the last day for payment of such tax shall be the 14th day after the last day of the semimonthly period during which such withdrawal occurred.

"(2) EXCEPTION WHERE EARLIER PAYMENT REQUIRED.—Paragraph (1) shall not apply to any tax imposed on distilled spirits if the due date for the payment of such tax is earlier under subsection (b).

"(3) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this paragraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(c) EFFECTIVE DATE. —

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid after September 30, 1986, for semimonthly periods ending on or after such date.

(2) SPECIAL RULE FOR SEMIMONTHLY PERIOD ENDING SEPTEMBER 15, 1986.—With respect to remittances for taxes imposed on tobacco products and cigarette papers and tubes under section 5701 of the Internal Revenue Code of 1954 for the semimonthly period ending on September 15, 1986, the last day for such remittances shall be October 14, 1986.

SEC. . INCREASES IN CERTAIN PENALTIES.

(a) AGGREGATE NEGLIGENCE AND SUBSTANTIAL UNDERSTATEMENT PENALTIES NOT TO BE LESS THAN 25 Percent.—

(1) IN GENERAL.—Subchapter A of chapter 68 of subtitle F (relating to additions to tax) is amended by redesignating section 6662 as section 6663 and by inserting after section 6661 the following new section:

"SEC. 6662. AGGREGATE PENALTY ON CERTAIN UNDERPAYMENTS NOT TO BE LESS THAN 25 PERCENT.

"(a) GENERAL RULE.—If there is a tax imposed under section 6653(a) or 6661, or both, on any portion of the underpayment or understatement, then there is hereby imposed a tax equal to the excess (if any) of—

"(1) 25 percent of the amount of such portion, over

"(2) the aggregate amount of taxes imposed under sections 6653(a) and 6661 on such portion.

"(b) DEFINITIONS.—For purposes of this section, the terms 'underpayment' and 'understatement' have the meanings given such terms by section 6653(c)(1) and 6661(b)(2), respectively."

(b) INCREASE IN TAX ON FAILURE TO MAKE DEPOSIT OF TAXES.—Section 6656(a) (relating to underpayment of deposits) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(c) CONFORMING AMENDMENTS.—The table of sections for subchapter A of chapter 68 of subtitle F is amended by striking out the item relating to section 6662 and inserting in lieu thereof the following new items:

"Sec. 6662. Aggregate penalty on certain underpayments not to be less than 25 percent.
"Sec. 6663. Applicable rules."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after the date of enactment of this Act.

SEC. . APPROPRIATIONS FOR IRS ENFORCEMENT.

The conference agreement on the appropriations measure providing funding for the Internal Revenue Service for the fiscal year ending September 30, 1987, will include the following funding levels: for "Salaries and Expenses", $95,147,000; for "Processing Tax Returns", $1,332,902,000; for "Examinations and Appeals", $1,623,162,000; and for "Investigation, Collection, and Taxpayer Service", $1,196,581,000: *Provided,* That the allocation to the Senate Committee on Appropriations pursuant to section 302(a) of the Budget Act, as amended, under Senate Concurrent Resolution 120, the concurrent resolution on the budget for fiscal year 1987, is increased by $300,000,000 in both new budget authority and outlays.

On page 191, lines 11 and 12, strike "together with any underlying Federal guaranty,".

On page 191, lines 22 and 23, strike "be with recourse to the Federal Government and shall".

At the end of the bill, add the following new titles:

TITLE .—SOCIAL SECURITY COLAS

SEC. . REMOVAL OF THREE PERCENT THRESHOLD FOR COST-OF-LIVING ADJUSTMENTS.

(a) SHORT TITLE.—This title may be cited as the "Cost-of-Living Adjustment Reform Act of 1986".

(b) IN GENERAL.—

(1) Section 215(i) of the Social Security Act is amended by striking out "is 3 percent or more" in paragraph (1)(B) and inserting in lieu thereof "is greater than zero".

(2) Section 215(i)(1)(B) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out "exceeds, by not less than 3 per centum, such Index" and inserting in lieu thereof "exceeds such Index".

(3) Section 2159(i)(2)(C) of such Act is amended—

(A) by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(B) by striking out "under clause (ii)" in clause (ii) as so redesignated and inserting in lieu thereof "under clause (i)".

(4) Section 215(i)(2)(C) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out clause (i) and by striking out "(ii)".

(5) Section 215(i)(4) of such Act is amended by inserting "and by the Cost-of-Living Adjustment Reform Act of 1986" after "Social Security Amendments of 1983".

(6) Section 215(i)(5)(A)(i) of such Act is amended by striking out "because the wage percentage increase was less than 3 percent" and inserting in lieu thereof "because there was no wage percentage increase greater than zero".

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the month benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

(d) EFFECTIVE DATE.—

(1) Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to cost-of-living increases determined in 1986 and all subsequent years.

(2) The amendments made by paragraphs (3) and (4) of subsection (b) shall apply with respect to months beginning after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

TITLE—MISCELLANEOUS PROVISIONS

SEC. . COMPUTATION OF RETIREMENT ANNUITY FOR PART-TIME EMPLOYMENT.

(a) Subsection (b) of section 15204 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272; 100 Stat. 335) is repealed.

(b) Subsection (c) of such section is redesignated as subsection (b).

SEC. . MAKING RULES ON EXTRANEOUS PROVISIONS PERMANENT.

(a) Section 20001(c) of Public Law 99-272 is amended by striking out "and shall remain in effect until January 2, 1987".

(b) Senate Resolution 286, adopted December 19, 1985, is amended by striking "section 1201" each place it appears and inserting in lieu thereof "section 20001".

SEC. . MODIFICATION OF DEADLINE FOR SUBMISSION OF PRESIDENT'S BUDGET.

(a) Section 1105(a) of title 31, United States Code, is amended by striking out "first Monday after January 3 of each year (or on or before February 5 in 1986)" and inserting in lieu thereof "first Tuesday in February of each year".

(b) Section 300 of the Congressional Budget Act of 1974 is amended by striking out "First Monday after January 3" and inserting in lieu thereof "First Tuesday in February".

(c) Section 1109(a) of title 31, United States Code, is amended by striking out "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)" and inserting "Concurrently with each budget submitted pursuant to section 1105(a) of this title".

SEC. . TREATMENT OF LOAN ASSET SALES FOR DIRECT REDUCTION.

(a) In order to achieve the purposes of the concurrent resolution on the budget for fiscal year 1987, S. Con. Res. 120, 99th Congress, and notwithstanding any other provision of this Act, any sale of debentures, as well as any underlying Federal guaranty, by the Secretary of the Treasury, or any other agent of the United States, pursuant to provisions of this Act, shall be without recourse to the Federal Government and shall discharge the Federal Government's obligations with respect to any individual purchaser or assigneee of such debenture.

(b) In the interest of budgetary savings, it is the intent of the Congress that this section be interpreted by the Secretary of the Treasury, or any other agent of the United States, and any court of law, as superseding any provison of this Act appearing to set forth a contrary requirement.

STEVENS AMENDMENT NO. 2851

Mr. STEVENS proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

Strike all from line 18, page 18(b) through line 23, page 18(c).

CONSOLIDATED FEDERAL FUNDS REPORT AMENDMENTS OF 1986

DURENBERGER AMENDMENT NO. 2852

(Ordered to lie on the table.)

Mr. DURENBERGER submitted an amendment intended to be proposed by him to the bill (H.R. 3168) to require the Director of the Office of Management and Budget to prepare an annual report consolidating the available data on the geographic distribution of Federal funds, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. This Act may be cited as the "Consolidated Federal Funds Report Amendments of 1986".

SEC. 2. (a) Title 31, United States Code, is amended by inserting after chapter 61 the following new chapter:

"Chapter 62—Consolidated Federal Funds Report

"Sec.
"6201. Definitions.
"6202. Content, form, and data for report.
"6203. Printing and distribution of reports and machine-readable records.
"6204. Delegation.
"6205. Availability of information.
"6206. Data consistency and uniformity of data elements.
"6207. Authorization of appropriations.

"§ 6201. Definitions

"As used in this chapter, the term—

"(1) 'Director' means the Director of the Office of Management and Budget;

"(2) 'State' means any State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

"(3) 'municipality' means any subcounty unit of general local government that received Federal assistance in the fiscal year that is the subject of a report under this chapter.

"§ 6202. Content, form and data for report

"(a) For fiscal years 1986, 1987, 1988, 1989, and 1990, not later than 180 days after the end of each fiscal year, the Director shall prepare a Consolidated Federal Funds Report presenting the total amount of Federal funds that were obligated for expenditure or expended in each State, county or parish, congressional district, and municipality of the United States in appropriate general categories of Federal funds during the preceding fiscal year. To the extent practicable, such categories shall be consistently constituted from year to year. The report shall be in the form described in sub-

section (b) of this section and shall be based on the data referred to in subsection (c) of this section.

"(b) The Director shall include in each report required by subsection (a) of this section—

"(1) the total amount of Federal funds that were reported obligated for expenditure in each State, county or parish, congressional district, and municipality of the United States in appropriate general categories of Federal funds in the fiscal year preceding the fiscal year in which the report is made; or

"(2) the total amount of Federal funds that were reported actually expended in each State, county or parish, congressional district, and municipality of the United States in appropriate categories in the fiscal year preceding the fiscal year in which the report is made.

"(c) The report required by subsection (a) of this section shall be based on the data included in—

"(1) the assistance awards information system established pursuant to section 6102a of this title;

"(2) the Federal Procurement Data System established pursuant to section (6)(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4));

"(3) the appropriate data files of the Office of Personnel Management;

"(4) the payroll, pension, and grants files of the Office of the Secretary of Defense;

"(5) the appropriate data files of the United States Postal Service and the Postal Rate Commission;

"(6) the data system used by the Bureau of the Census to prepare the annual Federal aid to States report;

"(7) the retirement and disability files of the United States Coast Guard, the Tennessee Valley Authority, the Commissioned Corps of the Public Health Service, the Commissioned Corps of the National Oceanic and Atmospheric Administration, and the Foreign Service;

"(8) the insurance claims files of the Federal Emergency Management Agency and the Department of Agriculture;

"(9) the grants files of the Legal Services Corporation;

"(10) the excess earned income tax credit file of the Internal Revenue Service;

"(11) the appropriate data files of the National Railroad Passenger Corporation; and

"(12) the payroll file of the Federal Bureau of Investigation.

"(d) For the purposes of subsection (b) of this section, the general categories of Federal funds presented in each report required by subsection (a) of this section shall include data with respect to grants, loans, purchases and contracts, cooperative agreements, direct Federal payments to individuals, pay of civilian employees of the Government, military pay, annuities, retirement pay, pensions, and disability compensation.

"§ 6203. Printing and distribution of reports and machine-readable records

"(a)(1) The Director shall—

"(A) prepare—

"(i) printed copies of each of the reports required by this chapter; and

"(ii) machine-readable records of such reports; and

"(B) make the printed copies of the reports and the machine-readable records available to the public for purchase at a price fixed under subsection (b) of this section.

"(2) The Director shall transmit free of charge one of each of the printed copies of the reports required by this chapter to—

"(A) each Federal regional depository library;

"(B) the Committees on Government Operations, the Budget, and Appropriations of the House of Representatives; and

"(C) the Committee on Governmental Affairs, the Budget, and Appropriations of the Senate.

"(3) The Director shall also transmit promptly after the end of each calendar year, free of charge, one machine-readable record of the report required by section 6202 of this title to the Committee on Rules and Administration of the Senate and to the Committee on House Administration of the House of Representatives.

"(4) Subject to subsection (b) of this section, the Director may, at his discretion, waive all or part of the fee required by subsection (a)(1)(B) of this section.

"(b) In carrying out subsection (a)(1)(B) of this section, the Director shall, based on the estimates made under paragraphs (1) through (4) of this subsection, fix the price of each printed copy and each machine-readable record of the report so that the aggregate revenues obtained in each fiscal year under subsection (a) of this section will cover as much as is feasible of the incremental costs incurred in making such reports and machine-readable records available for purchase by the public. In computing such costs the Director shall not consider the costs of the activities set forth in sections 6102a and 6205 of this title but shall consider—

"(1) the cost of compiling the reports required by this chapter;

"(2) the cost of preparing the printed copies and machine-readable records under subsection (a) of this section;

"(3) the cost of distributing the printed copies and the machine-readable records of the report for each fiscal year; and

"(4) the number of printed copies and the number of machine-readable records of the report that will be purchased.

"§ 6204. Delegation

In order to carry out sections 6202 and 6203 of this title, the Director may delegate to any authority of the executive branch of the Federal Government the responsibility for carrying out such sections. The Director shall oversee the activities of any authority to which responsibilities are delegated under this section and shall monitor the compliance of each authority with respect to the requirements set forth in section 6205 of this title.

"§ 6205. Availability of information

Each head of any authority of the Government having custody of the data files and systems referred to in section 6202(c) of this title—

"(1) shall make available to the Director (or other authority to which the Director has delegated the responsibility to carry out such section) the information requested in the form designated; and

"(2) is authorized to make available to the Director (or such other authority) such administrative services, equipment, personnel, and facilities (and funds appropriated therefor) as the Director or such authority requires to carry out such section.

"§ 6206. Data consistency and uniformity of data elements

"The Director shall designate a single organizational unit to provide for data consistency and uniform reporting of data elements.

"§ 6207. Authorization of appropriations

"There are authorized to be appropriated to carry out this chapter such sums as may be necessary for each of the fiscal years 1986, 1987, 1988, 1989, and 1990.".

(b)(1) Section 6102a of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) the Director shall transmit promptly after the end of each calendar quarter, free of charge, the data in the system required by subsection (a) to the Committee on Rules and Administration of the Senate and to the Committee on House Administration of the House of Representatives.".

(2) Section 6101(4)(B) of such title is amended by striking out "a department, agency, or instrumentality of the Government" and inserting in lieu thereof "Assistance from an agency for an agency".

(c) The table of chapters for subtitle V of title 31, United States Code, is amended by inserting after the item pertaining to chapter 61 the following new item:

"62. Consolidated Federal Funds Report

(d) The Consolidated Federal Funds Report Act of 1982 is repealed.

● Mr. DURENBERGER. Mr. President, I rise today in support of H.R. 3168, the Consolidated Federal Funds Report Amendments of 1985. The bill is a straightforward reauthorization of a very valuable document—the consolidated Federal funds report or CFFR. The CFFR provides important information on Federal outlays to individual States, counties, cities, and congressional districts. The categories include grants to State and local governments and individuals, cooperative agreements, loans, salaries, contracts, et cetera.

The CFFR pulls together this data from many different sources and agencies and presents it is a clear and consistent format—a format useful both to administrators and managers in Federal agencies and to those of us here on the Hill who want a clear understanding of the distribution and impact of Federal aid. The report is also useful at the State and local level where managers and planners rely heavily on the CFFR in developing their budgets and assessing the proposed impact of Federal policy changes.

The CFFR is the only complete source of information on Federal aid distribution. Prepared by OMB and Census, the report has received favorable comments from every quarter. GAO and OMB are anxious to continue its production and have endorsed this reauthorization.

Since the Consolidated Federal Funds Report Program began in 1983, the administration has funded it through reimbursement made to the Bureau of the Census by the participating agencies. Although section 6207 authorizes appropriations for the CFFR, the administration intends to continue to fund this program using the current reimbursement mecha-

nism. It is my understanding that both the House and Senate are in agreement that this approach should continue to be used in the spirit of cooperation among the participating agencies.

I should also note that I am offering a set of technical amendments to the bill. These amendments are noncontroversial and have been agreed to by the House managers of the bill.

The Consolidated Federal Funds Report Amendments of 1986 will reauthorize a report which will produce information of value of Federal, State, and local governments across the country. I urge its immediate passage.●

OMNIBUS BUDGET RECONCILIATION ACT

QUAYLE (AND OTHERS) AMENDMENT NO. 2853

Mr. QUAYLE (for himself, Mr. EXON, Mr. NICKLES, Mr. ZORINSKY, Mr. HUMPHREY, Mr. GRAMM, and Mr. WARNER) proposed an amendment to the bill (S. 2706), supra; as follows:

At the appropriate place in the text of the bill insert the following: (Section) that (a) the President may, within 3 days of the time the President approves any appropriation bill, transmit to both Houses of Congress, one or more special messages in accordance with subsection (b) proposing to rescind all or part of any item of appropriation provided in the appropriation bill, such special messages shall be considered in accordance with the provisions of this resolution.

(b)(1) Each special message transmitted under subsection (a) shall specify, with respect to each item of appropriation (or part thereof) proposed by the message to be rescinded, the matters referred to in paragraphs (1) through (5) of section 1012(a) of the Impoundment Control Act of 1974 (2 U.S.C. 683(a)).

(2) Each special message transmitted under subsection (a) shall be accompanied by a draft bill or joint resolution that would, if enacted, rescind each item of appropriation (or part thereof) proposed by the message to be rescinded.

(c)(1)(A) On the day on which a special message proposing to rescind an item of appropriation is transmitted to the House of Representatives and the Senate under subsection (a), the draft bill or joint resolution accompanying such special message shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by the Members of the House designated by the majority leader and the minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by the Members of the Senate designated by the majority leader and the minority leader of the Senate. If either House is not in session on the day on which a special message is transmitted, the draft bill or joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which such House is in session.

(B) A bill or joint resolution introduced in the House of Representatives or the Senate pursuant to subparagraph (A) shall be referred on the date of introduction to the Committee on Appropriations of such House. The committee shall report the bill or joint resolution without substantive revision (and with or without recommendation) not later than 5 calendar days of continuous session of the Congress after the date on which the bill or joint resolution is introduced. A committee failing to report a bill or joint resolution within the 5-day period referred to in the preceding sentence shall be automatically discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(C) A vote on final passage of a bill or joint resolution introduced in a House of the Congress pursuant to subparagraph (A) shall be taken on or before the close of the 10th calendar day of continuous session of the Congress after the date of the introduction of the bill or joint resolution in such House. If the bill or joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a bill or joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a bill or joint resolution agreed to in the Senate) shall cause the bill or joint resolution to be engrossed, certified, and transmitted to the other House of the Congress on the same calendar day on which the bill or joint resolution is agreed to by such House.

(2) If prior to the passage by one House of a bill or joint resolution introduced in that House under this section, that House receives a bill or joint resolution containing the same provisions from the other House pursuant to subparagraph (C) of paragraph (1), then—

(A) the procedure in the House receiving the bill or joint resolution with respect to the bill or joint resolution introduced in that House shall be the same as if the bill or joint resolution had not been received from the other House; but

(B) the vote on final passage shall be on the bill or joint resolution of the other House.

(3)(A) A motion in the House of Representatives to proceed to the consideration of a bill or joint resolution under this section shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on a bill or joint resolution under this section shall be limited to not more than 4 hours, which shall be divided equally between those favoring and those opposing the bill or joint resolution. A motion to postpone, made in the House of Representatives with respect to the consideration of a bill or joint resolution under this section, a motion to proceed to the consideration of other business, shall not be in order. A motion further to limit debate shall not be debatable. It shall not be in order to move to table or to recommit a bill or joint resolution under this section or to move to reconsider the vote by which the bill or joint resolution is agreed to or disagreed to.

(C) All appeals froam the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill or joint resolution under this section shall be decided without debate.

(D) Except to the extent specifically provided in the preceding provisions of this paragraph, consideration of a bill or joint resolution under this section shall be governed by the Rules of the House of Representatives applicable to other bills and joint resolutions in similar circumstances.

(4)(A) A motion in the Senate to proceed to the consideration of a bill or joint resolution under this section shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on a bill or joint resolution under this section, and all debatable motions and appeals in connection therewith, shall be limited to not more than 4 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with a bill or joint resolution under this section shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or joint resolution, except that in the event the manager of the bill or joint resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill or joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(D) A motion in the Senate to further limit debate on a bill or joint resolution under this section is not debatable. A motion to table or to recommit a bill or joint resolution under this section is not in order.

(d) No amendment to a bill or joint resolution considered under this section shall be in order in either the House of Representatives or the Senate. No motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) For purposes of this section—

(1) "item of appropriation" means any numerically expressed amount of budget authority set forth in an appropriation bill;

(2) "appropriation bill" means any general or special appropriation bill, and any bill or joint resolution making supplemental, deficiency, or continuing appropriations;

(3) "appropriation Act" means any appropriation bill that has been approved by the President and become law;

(4) "budget authority" has the meaning given to such term in section 3(2) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 622(2)); and

(5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 5-day and 10-day periods referred to in subsection (c) of this section. If a special message is transmitted under this section during any Congress and the last session of the Congress adjourns sine die before the expiration of 10 calendar days of continuous session (or a special mes-

sage is transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 5-day and 10-day periods referred to in subsection (c) of this section shall commence on the day after such first day.

(f) The provisions of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

TRIBLE (AND WARNER) AMENDMENT NO. 2854

Mr. TRIBLE (for himself and Mr. WARNER) proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill (S. 2706), supra; as follows:

At the end of the amendment, add the following new title:

TITLE X—METROPOLITAN WASHINGTON AIRPORTS

SEC. 1001. SHORT TITLE AND TABLE OF CONTENTS.

This title may be cited as the "Metropolitan Washington Airports Act of 1986".

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SEC. 1002. FINDINGS.

The Congress finds that—

(1) the two federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the two federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the Federal Government has a continuing but limited interest in the operation of the two federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95-504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the two airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and State governments involved;

(7) in recognition of the limited need for a Federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the Nation;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

SEC. 1003. PURPOSE.

(a) IN GENERAL.—It is therefore declared to be the purpose of the Congress in this title to authorize the transfer of operating responsibility under long-term lease of the two Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control over the management, operation, and development of these important transportation assets.

(b) INCLUSION OF BWI NOT PRECLUDED.—Nothing in this title shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

SEC. 1004. DEFINITIONS.

In this title—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) AIRPORTS AUTHORITY.—The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body to be created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of section 1007.

(3) EMPLOYEES.—The term "employees" means all permanent Federal Aviation Administration personnel employed on the date the lease under section 1005 takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

(4) METROPOLITAN WASHINGTON AIRPORTS.—The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

(5) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(6) WASHINGTON DULLES INTERNATIONAL AIRPORT.—The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

(7) WASHINGTON NATIONAL AIRPORT.—The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686).

SEC. 1005. LEASE OF METROPOLITAN WASHINGTON AIRPORTS.

(a) AUTHORITY TO ENTER INTO LEASE.—The Secretary is directed to enter into a lease of the Metropolitan Washington Airports with the Airports Authority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority within nine months after the date of the enactment of this title.

(b) PAYMENTS.—

(1) LEASE PAYMENTS.—The lease shall provide for the Airports Authority to pay to the general fund of the Treasury $150,000,000 over the term of the lease, in equal annual installments.

(2) RETIREMENT OBLIGATIONS.—

(A) DISCONTINUED SERVICE.—Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under section 8336(d)(1) of title 5, United States Code, of employees who elect not to transfer to the Airports Authority.

(B) UNFUNDED LIABILITY.—Not later than two months after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (i) the future cost of benefits payable from the Fund and due the employees covered under section 1008(e) of this title that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under section 1008(e). In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be ex-

pected to earn when invested in the Treasury of the United States.

(c) MINIMUM TERMS AND CONDITIONS.—The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) OPERATION OF AIRPORTS AS A UNIT.—The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(2) AIRPORT PURPOSES.—The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this Act is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport purposes, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

(3) AIP REQUIREMENTS.—The Airports Authority shall be subject to the requirements of section 511(a) of the Airport and Airway Improvement Act of 1982 and the assurances and conditions required of grant recipients under such Act as of the date the lease takes effect. Notwithstanding section 511(a)(12) of such Act, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of such airports.

(4) CONTRACTS.—In acquiring by contract supplies or services for an amount estimated to be in excess of $200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5) CONTINUATION OF REGULATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), all regulations of the Metropolitan Washington Airports (14 C.F.R. part 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) EXCEPTIONS.—The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 159.59(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) OPERATIONS.—The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this Act and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6) TRANSFER OF RIGHTS, LIABILITIES, AND OBLIGATIONS.—

(A) IN GENERAL.—Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secretary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) EXCEPTIONS.—The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(C) PAYMENTS INTO EMPLOYEES' COMPENSATION FUND.—The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the date the lease takes effect in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(D) COLLECTIVE BARGAINING RIGHTS.—The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

(7) AUDITS.—The Comptroller General of the United States may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) CODE OF ETHICS.—The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by the board and its employees.

(9) RESTRICTION ON USE OF CERTAIN REVENUES.—Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) GENERAL AVIATION FEES.—The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

(11) OTHER TERMS.—The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this title.

(d) SUBMISSION TO CONGRESS.—The Secretary shall submit the lease entered into under this section to Congress. The lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, whichever occurs later.

(e) ENFORCEMENT OF LEASE PROVISIONS.—The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party.

SEC. 1006. CAPITAL IMPROVEMENTS, CONSTRUCTION, AND REHABILITATION.

(a) IMPROVEMENTS.—It is the sense of the Congress that the Airports Authority should—

(1) pursue the improvement, construction, and rehabilitation of the facilities at Washington Dulles International Airport and Washington National Airport simultaneously; and

(2) to the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by section 1007 of this title for any such improvement, construction, or rehabilitation.

(b) SECRETARY'S ASSISTANCE.—The Secretary shall assist the three airports serving the Washington, D.C., metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

SEC. 1007. AIRPORTS AUTHORITY.

(a) POWERS CONFERRED BY VIRGINIA AND THE DISTRICT OF COLUMBIA.—The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

(b) PURPOSE.—The Airports Authority shall be—

(1) independent of the Commonwealth of Virginia and its local governments, the Dis-

trict of Columbia, and the Federal Government; and

(2) a political subdivision constituted solely to operate and improve both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(c) GENERAL AUTHORITIES.—The Airports Authority shall be authorized—

(1) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;

(2) to issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds—

(A) shall not constitute a debt of either jurisdiction or a political subdivision thereof; and

(B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or part from the proceeds of such bonds;

(3) to acquire real and personal property by purchase, lease, transfer, or exchange, and to exercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

(4) to levy fees or other charges; and

(5) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on the date of enactment of this title.

(d) CONFLICT-OF-INTEREST PROVISIONS.—The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirement of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under section 1005(c)(8) of this title the standards by which members will determine what constitutes a substantial financial interest and the circumstances under which an exception may be granted.

(e) BOARD OF DIRECTORS.—

(1) APPOINTMENT.—The Airports Authority shall be governed by a board of directors of 11 members, as follows:

(A) 5 members shall be appointed by the Governor of Virginia;

(B) three members shall be appointed by the Mayor of the District of Columbia;

(C) two members shall be appointed by the Governor of Maryland; and

(D) one member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(2) RESTRICTIONS.—Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President shall not be required to reside in that area.

(3) TERMS.—Members shall be appointed to the board for a term of 6 years, except that of members first appointed—

(A) by the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) by the Mayor of the District of Columbia, 1 shall be appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for 4 years.

(4) REMOVAL OF PRESIDENTIAL APPOINTEES.—A member of the board appointed by the President shall be subject to removal by the President for cause.

(5) REQUIRED NUMBER OF VOTES.—Seven votes shall be required to approve bond issues and the annual budget.

(f) BOARD OF REVIEW.—

(1) COMPOSITION.—The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review, of the Airports Authority, established by the board of directors. The Board of Review shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) 4 members of the House of Representatives from a list provided by the Speaker of the House;

(B) 4 members of the Senate from a list provided by the President pro tempore of the Senate; and

(C) one member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. A member of the House of Representatives or the Senate from Maryland or Virginia and the Delegate from the District of Columbia may not serve on the Board of Review.

(2) TERMS.—Members of the Board of Review appointed under subparagraphs (A) and (B) of paragraph (1) shall be appointed for terms of 6 years, except that of the members first appointed one member under each of subparagraphs (A) and (B) shall be appointed for a term of two years and one member under each of subparagraphs (A) and (B) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (C) shall be appointed for terms of 2 years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

(3) PROCEDURES.—The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board shall meet at least once each year and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) shall be by a vote of 5 members of the Board.

(4) DISAPPROVAL PROCEDURE.—

(A) SUBMISSION REQUIRED.—An action of the Airports Authority described in subparagraph (B) shall be submitted to the Board of Review at least 30 days (or at least 60 days in the case of the annual budget) before it is to become effective.

(B) ACTIONS AFFECTED.—The following are the actions referred to in subparagraph (A):

(i) the adoption of an annual budget;

(ii) the authorization for the issuance of bonds;

(iii) the adoption, amendment, or repeal of a regulation;

(iv) the adoption or revision of a master plan, including any proposal for land acquisition; and

(v) the appointment of the chief executive officer.

(C) 30-DAY DISAPPROVAL PERIOD.—If the Board of Review does not disapprove an action within 30 days of its submission under this paragraph, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Airports Authority and shall give reasons for the disapproval.

(D) EFFECT OF DISAPPROVAL.—An action disapproved under this paragraph shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

(5) REQUEST FOR CONSIDERATION OF OTHER MATTERS.—The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

(6) PARTICIPATION IN MEETINGS OF AIRPORTS AUTHORITY.—Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

(7) STAFF.—The Board of Review may hire one staff person, to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board may require.

(8) LIABILITY.—A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

(g) CERTAIN ACTIONS TO BE TAKEN BY REGULATION.—Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(h) LIMITATION ON AUTHORITY.—If the Board of Review established under subsection (f) is unable to carry out its functions under this title by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required by subsection (f)(4) to be submitted to the Board of Review.

SEC. 1008. FEDERAL EMPLOYEES AT THE METROPOLITAN WASHINGTON AIRPORTS.

(a) EMPLOYEE PROTECTION.—Not later than the date the lease under section 1005 takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interests

of employees during the 5-year period beginning on such date. These arrangements shall include provisions—

(1) which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) for the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under section 5 takes effect except in cases of reassignment, separation for cause, resignation, or retirement;

(3) for the payment by the Airports Authority of basic and premium pay to transferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) for credit during the 5-year period commencing on the date the lease takes effect for accrued annual and sick leave and seniority rights which have been accrued during the period of Federal employment by transferred employees retained by the Airports Authority; and

(5) for an offering of not less than one life insurance and three health insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date the lease takes effect which are reasonably comparable with respect to employee premium cost and coverage to the Federal health and life insurance programs available to employees on the day before such date.

(b) LABOR AGREEMENTS.—

(1) ADOPTION.—The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under section 1005 takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary before the expiration of that 5-year period. Such agreements shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with chapter 71 of title 5, United States Code.

(2) CONTINUATION.—The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(c) RIGHTS OF TERMINATED EMPLOYEES.—Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under section 1005 takes effect shall be entitled, as a condition of any lease entered into in accordance with section 1005 of this title, to rights and benefits to be provided by the Airports Authority that are similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

(d) ANNUAL AND SICK LEAVE.—Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under section 1005 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in section 6103 of title 5, United States Code.

(e) CIVIL SERVICE RETIREMENT.—Any Federal employee who transfers to the Airports Authority and who on the day before the date the lease under section 1005 takes effect is subject to subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employment by the United States Government for purposes of such subchapter and chapter. The Airports Authority shall be the employing agency for purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

(f) SEPARATED EMPLOYEES.—An employee who does not transfer to the Airports Authority and who does not otherwise remain a Federal employee shall be entitled to all of the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the Federal Government.

(g) ACCESS TO RECORDS.—The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under section 1005 takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

SEC. 1009. RELATIONSHIP TO AND EFFECT OF OTHER LAWS.

(a) OTHER LAWS.—In order to assure that the Airports Authority has the same proprietary powers and is subject to the same restrictions with respect to Federal law as any other airport except as otherwise provided in this title, during the period that the lease authorized by section 1005 of this title is in effect—

(1) the Metropolitan Washington Airports shall be considered public airports for purposes of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.); and

(2) the Acts entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686), "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and "An Act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes", approved October 9, 1940 (54 Stat. 1030), shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

(b) INAPPLICABILITY OF CERTAIN LAWS.—The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of fee simple title to such airports or by reason of the authority of the Board of Review under section 1007(f).

(c) POLICE POWER.—The Commonwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

(d) PLANNING.—

(1) IN GENERAL.—The authority of the National Capital Planning Commission under section 5 of the Act of June 6, 1924 (40 U.S.C. 71d) shall not apply to the Airports Authority.

(2) CONSULTATION.—The Airports Authority shall consult—

(A) with the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport, and

(B) with the National Capital Planning Commission before undertaking development that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(e) OPERATION LIMITATIONS.—

(1) HIGH DENSITY RULE.—The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this title and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) ANNUAL PASSENGER LIMITATIONS.—The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 93.124) shall cease to be in effect on the date of the enactment of this title.

SEC. 1010. AUTHORITY TO NEGOTIATE EXTENSION OF LEASE.

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under section 1005(a).

SEC. 1011. SEPARABILITY.

Except as provided in section 1007(h), if any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 1012. NONSTOP FLIGHTS.

A person may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,000 statute miles away from Washington National Airport.

KASSEBAUM (AND DOLE) AMENDMENT NO. 2855

Mrs. KASSEBAUM (for herself, Mr. DOLE, Mr. HEINZ, Mr. KASTEN, Mr. GOLDWATER, Mr. DENTON, Mr. GARN, Mr. SIMPSON, Mr. INOUYE, Mr. EXON, Mr. SPECTER, Mr. ABDNOR, Mr. HARKIN, Mr. PRESSLER, Mr. ZORINSKY, Mr. WALLOP, Mr. RUDMAN, Mrs. HAWKINS, Mr. MURKOWSKI, and Mr. NICKLES) proposed an amendment to amend-

ment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

TITLE .—AVIATION ACCIDENT LIABILITY

SHORT TITLE

SEC. 01. This title may be cited as the "General Aviation Accident Liability Standards Act of 1986".

FINDINGS AND PURPOSE

SEC. 02. (a) The Congress finds that—

(1) transportation by air of passengers continues to comprise an increasingly important component of the Nation's overall transportation system;

(2) although the incidence of injuries to passengers in general aviation accidents has decreased, the number of general aviation accident liability claims against general aviation aircraft manufacturers and the amount of damages sought in such claims is increasing at disproportionate rates, beyond any relationship to the quality of the aircraft manufactured and in use;

(3) the current system for determining liability and damages for compensating individuals injured in general aviation accidents is inadequate;

(4) competent general aviation manufacturers and component part manufacturers are ceasing or limiting production of general aviation aircraft or some models of such aircraft because of the increasing costs and unavailability of product liability insurance;

(5) the increase in the number of liability claims and the size of awards and settlements, and the excessive time and expense devoted to the resolution of such claims, impose a substantial economic burden on general aviation manufacturers and their dealers;

(6) the Federal Government has an interest in the general aviation accident liability system because the Federal Government has established a comprehensive system for regulating general aviation, including—

(A) establishing standards for design, construction, and certification of general aviation aircraft,

(B) establishing standards for maintenance of aircraft, licensing of persons who may perform or approve maintenance, repairs, and inspections,

(C) establishing standards for training and licensing of pilots,

(D) establishing a comprehensive air control system,

(E) conducting investigations to determine the probable cause of aviation accidents and prevent future accident, and

(F) conducting other activities necessary to assure a safe air transportation system,

and this Federal system is the exclusive legal authority for regulating aviation operations and safety;

(7) it is in the national interest to reduce unnecessary expenditures related to general aviation accident liability claims while providing more rapid and more efficient compensation for individuals harmed in general aviation accidents; and

(8) Federal action to reform the general aviation accident liability system will result in—

(A) the maintenance of airworthy general aviation aircraft; and

(B) a more rational general aviation accident liability system.

(b) It is the purpose of this title to establish standards for determining liability for harm arising out of general aviation accidents.

DEFINITIONS

SEC. 03. As used in this title, the term—

(1) "Administrator" means the Administrator of the Federal Aviation Administration;

(2) "claimant" means any person who brings a general aviation accident liability action subject to this title, and any person on whose behalf such an action is brought, including—

(A) the claimant's decedent; and

(B) the claimant's parent or guardian, if the action is brought through or on behalf of a minor or incompetent;

(3) "general aviation accident" means any accident which arises out of the operation of any general aviation aircraft and which results in harm;

(4) "general aviation aircraft" means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.), which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than twenty passengers, and which is not, at the time of the accident, engaged in scheduled passenger carrying operations as defined in regulations issued under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.);

(5) "general aviation manufacturer" means—

(A) the builder or manufacturer of the airframe of a general aviation aircraft;

(B) the manufacturer of the engine of a general aviation aircraft; and

(C) the manufacturer of any system, component, subassembly, or other part of a general aviation aircraft;

(6) "harm" means—

(A) property damage or bodily injury sustained by a person;

(B) death resulting from such bodily injury;

(C) pain and suffering which is caused by such bodily injury; and

(D) emotional harm (including bereavement and loss of affection, care, or society) which is caused by such bodily injury;

(7) "product" means a general aviation aircraft and any system, component, subassembly, or other part of a general aviation aircraft; and

(8) "property damage" means physical injury to tangible property, including loss of use of tangible property.

PREEMPTION; APPLICABILITY

SEC. 04.(a) This title supersedes any State law regarding recovery, under any legal theory, for harm arising out of a general aviation accident, to the extent that this title establishes a rule of law or procedure applicable to the claim.

(b) Nothing in this title shall be construed to supersede or to waive or affect any defense of sovereign immunity asserted by the United States or any State.

(c) Nothing in this title shall be construed to affect the liability of a manufacturer, owner, or operator of any aircraft that is not a general aviation aircraft, or a person who repairs maintains, or provides any other support for any aircraft that is not a general aviation aircraft, for damages for harm arising out of the operation of an aircraft that is not a general aviation aircraft.

(d) No right of action for harm exists under this title if that right would be inconsistent with the provisions of any applicable workers' compensation law.

(e) The provisions of this title shall only apply to—

(1) any manufacturer, owner, or operator of any general aviation aircraft, and any person who repairs, maintains, or provides any other support for such an aircraft;

(2) any occupant of a general aviation aircraft at the time of a general aviation accident, and any person who brings an action for harm caused by such accident on behalf of such occupant; and

(3) any nonoccupant of a general aviation aircraft at the time of a general aviation accident, only if such nonoccupant is bringing an action for harm caused by such accident which arises out of the harm to an occupant of such aircraft at the time of such accident.

UNIFORM STANDARDS OF LIABILITY FOR GENERAL AVIATION ACCIDENTS

SEC. 05. (a) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a party and may recover damages from such party if such party was negligent and such negligence is a proximate cause of the claimant's harm.

(b)(1) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) the product, when it left the control of the manufacturer, was in a defective condition unreasonably dangerous for its intended purpose, according to engineering and manufacturing practices which were reasonably feasible;

(B) the defective condition is a proximate cause of the claimant's harm; and

(C) the general aviation aircraft was being used at the time of the accident, for a purpose and in a manner for which it was designed and manufactured.

(2) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) at the time the product left the control of the manufacturer, the manufacturer—

(i) knew, or in the exercise of reasonable care should have known, about a danger connected with the product that caused the claimant's harm; and

(ii) failed to provide the warnings or instructions that a person exercising reasonable care would have provided with respect to the danger which caused the harm alleged by the claimant, unless such warnings or instructions, if provided, would not have materially affected the conduct of the user of the product; or

(B) after the product left the control of the general aviation manufactuer, the manufacturer—

(i) knew, or in the exercise of reasonable care should have known, about the danger which caused the claimant's harm; and

(ii) failed to take reasonable steps to provide warnings or instructions, after the manufacture of the product, which would have been provided by a person exercising reasonable care, unless such warnings or instructions, if provided, would not have materially affected the conduct of the product user;

and the failure to provide warnings or instructions described in subparagraph (A) or (B) of this paragraph is a proximate cause of the claimant's harm.

(3) Any person claiming damages for harm arising out of a general aviation accident

may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufactuer if—

(A) the manufacturer made an express warranty with respect to the product;

(B) such warranty relates to that aspect of the product which caused the harm;

(C) the product failed to conform to such warranty; and

(D) the failure of the product to conform to such warranty is a proximate cause of the claimant's harm.

(c)(1) In an action governed by subsection (b) of this section, a general aviation manufacturer shall not be liable if such manufacturer proves, by a preponderance of the evidence, that—

(A) the defective condition could have been corrected by compliance with action described in an airworthiness directive issued by the Administrator or a service bulletin issued by the manufacturer of the product; and

(B) such directive or service bulletin was issued at a reasonable time before the date of the accident and after the product left the control of the general aviation manufacturer.

(2) In any action governed by subsection (b) of this section, evidence of compliance with standards, conditions or specifications established, adopted or approved by the Federal Aviation Administration shall be admissible with regard to whether the product was defective and unreasonably dangerous for its intended purpose.

COMPARATIVE RESPONSIBILITY

SEC. 06. (a) All actions for harm arising out of a general aviation accident shall be governed by the principles of comparative responsibility. Comparative responsibility attributed to the claimant's conduct shall not bar recovery in an action under this title, but shall reduce any damages awarded to the claimant in an amount proportionate to the responsibility of the claimant. The trier of fact shall determine comparative responsibility by making findings indicating the percentage of total responsibility for the claimant's harm attributable to the claimant, each defendant, each third-party defendant, and any other person not a party to the action.

(b) Except as provided in subsection (c) of this section, a defendant is severally but not jointly liable in any action for harm arising out of a general aviation accident, and the liability of any defendant in any such action shall be determined on the basis of such defendant's proportionate share of responsibility for the claimant's harm.

(c) In any action for harm arising out of a general aviation accident—

(1) a general aviation manufacturer who is the builder or manufacturer of the airframe of the general aviation aircraft involved is jointly and severally liable for harm caused by a defective system, component, subassembly, or other part of such aircraft that the manufacturer installed or certified as part of the original type design for such aircraft; and

(2) a general aviation manufacturer who is the manufacturer of a system or component of the general aviation aircraft involved is jointly and severally liable for damages caused by a defective subassembly or other part of such system or component.

(d) A general aviation manufacturer and any other person jointly liable under subsection (c) of this section shall have the right to bring an action for indemnity or contribution against any person with whom they are jointly liable under subsection (c) of this section.

TIME LIMITATION ON LIABILITY

SEC. 07. (a) Except as provided in subsection (b) of this section, no civil action for harm arising out of a general aviation accident which is brought against a general aviation manufacturer may be brought for harm which is alleged to have been caused by an aircraft or a system, component, subassembly, or other part of an aircraft and which occurs more than—

(1) twenty years from—

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such an aircraft; or

(2) with respect to any system, component, subassembly, or other part which replaced another product in, or which was added to, the aircraft, and which is alleged to have caused the claimant's harm, twenty years from the date of the replacement or addition.

(b) Subsection (a) of this section does not apply in the case of harm to a claimant which occurs after the period set forth in subsection (a) of this section if the general aviation manufacturer or the seller of the product that caused the claimant's harm gave an express warranty that the product would be suitable, for the purpose for which it was intended, for a longer period of time.

(c) Nothing in this section shall be construed to affect a person's duty to provide, after the sale or lease of an aircraft, to aircraft owners, and to repair facilities to which a license or certificate to perform repairs has been issued by the Administrator, additional or modified warnings or instructions regarding the use or maintenance of such aircraft or any system, component, or other part of such aircraft.

SUBSEQUENT REMEDIAL MEASURES

SEC. 08. In any general aviation accident liability action governed by this title, evidence of any measure taken after an event which, if taken previously, would have made the event less likely to occur is not admissible to prove liability. Such evidence is admissible to the extent permitted under rule 407 of the Federal Rules of Evidence.

ADMISSIBILITY OF CERTAIN EVIDENCE

SEC. 09. In an action governed by this title, evidence of Federal, State, or local income tax liability or any social security or other payroll tax liability attributable to past or future earnings, support, or profits and the present value of future earnings, support, or profits alleged to have been lost or diminished because of harm arising out of a general aviation accident is admissible regarding proof of the claimant's harm.

PUNITIVE DAMAGES

SEC. 10. (a) Punitive damages may be awarded in an action under this title for harm arising out of a general aviation accident only if the claimant establishes by clear and convincing evidence that the harm suffered was the direct result of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by use of the general aviation aircraft involved.

(b) Evidence regarding the financial worth of a defendant or the defendant's profits or any other evidence relating solely to a claim for punitive damages under this title is not admissible unless the claimant establishes, before any such evidence is offered, that the claimant can present evidence that will establish prima facie proof of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by use of the general aviation aircraft involved.

(c) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages pursuant to the provisions of this title regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

TIME LIMITATION ON BRINGING ACTIONS

SEC. 11. (a) Any action for harm arising out of a general aviation accident shall be barred, notwithstanding any State law, unless—

(1) the complaint is filed within 2 years after the date on which the accident occurred which caused the claimant's harm; and

(2) the summons and complaint are properly served upon the defendant within one hundred and twenty days after the filing of such complaint, unless the party on whose behalf such service is required can show good cause why such service was not made within such one hundred and twenty-day period.

Paragraph (2) of this subsection shall not apply to service of process in a foreign country pursuant to Rule 4(i) of the Federal Rules of Civil Procedure or any similar State law.

SANCTIONS

SEC. 12. It is the intent of Congress that, with respect to any action governed by this title, the sanctions for violation of rule 11 of the Federal Rules of Civil Procedure, including orders to pay to the other party or parties the amount of their reasonable expenses, including a reasonable attorney's fee, be strictly enforced.

JURISDICTION

SEC. 13. (a) The district courts of the United States, concurrently with the State courts, shall have originally jurisdiction, without regard to the amount in controversy, in all civil actions for harm arising out of a general aviation accident and in all actions for indemnity or contribution described in section 06(d) of this title.

(b) A civil action which is brought in a State court may be removed to the district court of the United States for the district embracing the place where the action is pending, without the consent of any other party and without regard to the amount in controversy, by any defendant against whom a claim in such action is asserted for harm arising out of a generic aviation accident.

(c) In any case commenced in or removed to a district court of the United States under subsection (a) and (b) of this section, the court shall have jurisdiction to determine all claims under State law that arise out of the same general aviation accident, if a substantial question of fact is common to the claims under State law and to the Federal claim, defense, or counterclaim.

(d)(1) A civil action in which the district courts of the United States have jurisdiction under subsection (a) of this section may be brought only in a district in which—

(A) the accident giving rise to the claim occurred; or

(B) any plaintiff or defendant resides.

(2) In an action pending in a district court of the United States under paragraph (1) of this subsection, a district court may, on motion of any party or its own motion, transfer the action to any other district for the convenience of parties and witnesses in the interest of justice.

(3) For purposes of this subsection, a corporation shall be considered to be a resident of any State in which it is incorporated or licensed to do business or is doing business.

SEVERABILITY

SEC. 14. If any provision of this title or the application of the provision to any person or circumstance is held invalid, the remainder of this title and the application of the provision to any other person or circumstance shall not be affected by such invalidation.

EFFECTIVE DATE

SEC. 15. (a) This title shall apply to any civil action for harm arising out of a general aviation accident which is filed on or after the date of enactment of this Act.

(b) If an action governed by this title is filed within one hundred and eighty days after the date of enactment of this Act, liberal leave shall be given to a party to amend any pleading, motion, statement of jurisdiction or venue, or other matter to conform to the provisions of this title.

D'AMATO (AND OTHERS) AMENDMENT NO. 2856

Mr. D'AMATO (for himself, Mr. GARN, Mr. MOYNIHAN, Mr. RIEGLE, Mr. MURKOWSKI, Mr. HECHT, and Mr. HEINZ) proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

Strike lines 2 through 15 inclusive on page 4 of the amendment.

DANFORTH (AND OTHERS) AMENDMENT NO. 2857

Mr. DANFORTH (for himself, Mr. EAGLETON, and Mrs. KASSEBAUM) proposed an amendment to the bill S. 2706, supra; as follows:

At the appropriate place, insert the following:

SEC. . (a) Section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) is amended by adding at the end the following new subsection:

"EMPLOYEE SENIORITY RIGHTS

"(g)(1) In any case in which the Secretary determines that the transaction which is the subject of the application would result in the operational integration or partial operational integration of the affected carriers and that such integration would have an adverse effect on the seniority of any air carrier employee, the acquiring carrier, and the surviving collective bargaining representative (if any), shall provide for the development, in a fair and equitable manner, of integrated seniority ranking lists for all employee groups. In the event of a failure to agree, the dispute may be submitted by either party for adjustment in accordance with paragraph (2) of this subsection.

"(2)(A) If any dispute or controversy arises regarding integration of seniority lists under paragraph (1) of this subsection and such dispute or controversy cannot be resolved by the parties within 20 days after such dispute or controversy arises, the parties may refer such dispute or controversy to an arbitrator for consideration and determination. To assist in the selection of such an arbitrator, the National Mediation Board shall furnish to such parties a panel of seven names. The parties shall select such arbitrator by alternating in the deletion of names from such panel until one name remains, and such person shall serve as arbitrator. The arbitrator may conduct hearings regarding such dispute or controversy, but any such hearings shall be conducted in an expedited manner. The arbitrator shall render a determination regarding such dispute or controversy within 90 days after the dispute or controversy arises, unless an extension of such period is agreed to by all parties to such dispute or controversy. The determination of such arbitrator shall be binding on all such parties.

"(B) The salary and expenses of the arbitrator shall be borne equally by the carrier involved and the organization or organizations representing the employee or employees or, if no such representation exists, by the employees or group of employees.

"(C) The provisions of this paragraph shall not apply if all parties to such dispute or controversy agree that a different method for settling such dispute or controversy, or an alternative procedure for selecting an arbitrator, is appropriate in the particular circumstances. A party shall not be relieved from complying with the provisions of this paragraph by the recommendation of a different or alternative method or procedure unless such recommendation is agreed to and implemented by all parties to such dispute or controversy.".

(b) The amendment made by subsection (a) of this section shall apply with respect to any transaction approved by the Secretary of Transportation under section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) on September 12, 1986, and with respect to any transaction for which an original application is filed after the date of enactment of this Act: *Provided, however,* * * * by subsection (a) of this section shall not apply with respect to any transaction in which the parties invoke and are able to satisfy the requirements of the failing company doctrine.

(c) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 408 is amended by adding at the end the following:

"(g) Fair treatment of employees.".

NICKLES (AND OTHERS) AMENDMENT NO. 2858

Mr. NICKLES (for himself, Mr. DOMENICI, Mr. MURKOWSKI, and Mr. BOREN) proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

At the end of the bill, insert the following new section:

SEC. . FEE ON IMPORTED CRUDE OIL OR REFINED PETROLEUM PRODUCTS.

(a) IN GENERAL.—Subtitle E of the Internal Revenue Code of 1954 (relating to alcohol, tobacco, and certain other excise taxes) is amended by adding at the end thereof the following new chapter:

"Chapter 54—Imported Crude Oil or Refined Petroleum Products

"Sec. 5881. Imposition of tax.
"Sec. 5882. Definitions.
"Sec. 5883. Registration.
"Sec. 5884. Procedures; returns; penalties.

"SEC. 5881. IMPOSITION OF TAX.

"(a) IMPOSITION OF TAX.—In addition to any other tax imposed under this title, an excise tax is hereby imposed on—

"(1) the first sale within the United States of—

"(A) any crude oil, or

"(B) any refined petroleum product, that has been imported into the United States, and

"(2) the use within the United States of—

"(A) any crude oil, or

"(B) any refined petroleum product,

that has been imported into the United States if no tax has been imposed with respect to such crude oil or refined petroleum product prior to such use.

"(b) RATE OF TAX.—

"(1) CRUDE OIL.—For purposes of paragraphs (1)(A) and (2)(A) of subsection (a) the rate of tax shall be $4 per barrel, reduced by an amount which is equal to the excess of—

"(A) the energy policy price per barrel, over

"(B) $18.

"(2) REFINED PETROLEUM PRODUCT.—For purposes of paragraphs (1)(B) and (2)(B) of subsection (a), the rate of tax shall be equal to 150 percent of the rate of tax determined under paragraph (1) of this subsection.

"(3) FRACTIONAL PARTS OF BARRELS.—In the case of a fraction of a barrel, the tax imposed by subsection (a) shall be the same fraction of the amount of such tax imposed on the whole barrel.

"(c) DETERMINATION OF ENERGY POLICY PRICE.—

"(1) IN GENERAL.—For purposes of this section, the energy policy price with respect to any week during which the tax under subsection (a) is imposed shall be determined by the Secretary and published in the Federal Register on the first day of such week.

"(2) BASIS OF DETERMINATION.—For purposes of paragraph (1), the energy price for any week is the weighted average international price of a barrel of crude oil for the preceding 4 weeks as determined by the Secretary, after consultation with the Administrator of the Energy Information Administration of the Department of Energy, pursuant to the formula for determining such international price as used in publishing the Weekly Petroleum Status Report and as in effect on the date of the enactment of this section.

"(d) LIABILITY FOR PAYMENT OF TAX.—

"(1) SALES.—The taxes imposed by subsection (a)(1) shall be paid by the first person who sells the crude oil or refined petroleum product within the United States.

"(2) USE.—The taxes imposed by subsection (a)(2) shall be paid by the person who uses the crude oil or refined petroleum product.

"(3) TAX-FREE EXPORTS.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter on the sale of crude oil or refined petroleum products for export or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT.—Where any crude oil or refined petroleum product has been sold free of tax under subparagraph (A), such subparagraph shall cease to apply with respect to the sale of such crude oil or refined petroleum product, unless, within the 6-months period which begins on the date of the sale, the seller receives proof that the crude oil or refined petroleum product, has been exported.

"SEC. 5882. DEFINITIONS.

"For purposes of this chapter—

"(1) CRUDE OIL.—The term 'crude oil' means crude oil other than domestic crude oil (within the meaning of chapter 45).

"(2) BARREL.—The term 'barrel' means 42 United States gallons.

"(3) REFINED PETROLEUM PRODUCT.—The term 'refined petroleum product' shall have the same meaning given to such term by section 3(5) of the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 752(5)).

"(4) EXPORT.—The term 'export' includes shipment to a possession of the United States; and the term 'exported' includes shipment to a possession of the United States.

"SEC. 5883. REGISTRATION.

"Every person subject to tax under section 5881 shall, before incurring any liability for tax under such section, register with the Secretary.

"SEC. 5884. PROCEDURES; RETURNS; PENALTIES.

"For purposes of this title, any reference (other than in chapter 45 or section 6429) to the tax imposed by section 4986 shall be treated, except to the extent provided by the Secretary by regulation where such treatment would be inappropriate, as a reference to the tax imposed by section 5881.".

(b) CONFORMING AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end thereof the following new item:

"Chapter 54. Imported crude oil or refined petroleum products.".

(c) DEDUCTIBILITY OF IMPORTED OIL TAX.—The first sentence of section 164(a) (relating to deductions for taxes) is amended by inserting after paragraph (5) the following new paragraph:

"(6) The imported oil taxes imposed by section 5881.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales and use of imported crude oil or imported refined petroleum products on or after October 1, 1986.

DOMENICI AMENDMENT NO. 2859

Mr. DOMENICI proposed an amendment to amendment No. 2850 proposed by him (and others) to the bill S. 2706, supra; as follows:

Beginning on page 19, line 23 of the pending amendment, strike all through page 20, line 3, and insert in lieu thereof the following:

"Beginning on page 191, line 1, strike all through page 192, line 12, and insert in lieu thereof the following

TITLE IX—COMMITTEE ON SMALL BUSINESS

PILOT LOAN ASSET SALE

SEC. 901. Title V of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new section:

"SEC. 506. (a) Except as provided in subsection (c), notwithstanding any law, rule, or regulation, the Secretary of the Treasury shall sell to the public, by private placement or otherwise as the Secretary determines to be appropriate, all of the right, title, and interest in debentures issued pursuant to section 503 of this title and held by the Federal Financing Bank in such amounts as to realize net proceeds of—

"(1) $343,000,000 from such sales during fiscal year 1987;

"(2) $55,000,000 from such sales during fiscal year 1988; and

"(3) $14,000,000 from such sales during fiscal year 1989.

"(b) Simultaneously with the sale referred to in subsection (a), the Administration shall assign all of its interest in notes, mortgages, guarantees, security interest, or other interest in underlying collateral supporting any debenture sold pursuant to this section to the purchaser of such interest.

"(C) Any sales by the Secretary under this section shall be on a nonrecourse basis to the Federal Government and shall provide that for purposes of disbursements, collections, and payments of receipts to purchasers the companies certified under section 503 of this title shall continue to have the right to service the loans underlying such debentures.

"(d) In the event of default on a debenture, the liability of the relevant certified development company shall be limited to all payments made by the small business concern to the certified development company and the collateral securing the defaulted loan.

"(e) With the sale of each debenture as specified in subsection (a), the Administration's guarantee of timely payment of principal and interest on the debenture will be deemed discharged. The Administration shall incur no liability or obligation to the Secretary or the Federal Financing Bank in connection with any sale of a debenture under this section.".

SEC. 902. In order to achieve the budget savings specified in the amendment made by section 901 of this Act, neither the Secretary of the Treasury nor the Administration shall sell any loans, portions of loans, or notes or debentures guaranteed by the Administration pursuant either to the Small Business Act or the Small Business Investment Act of 1958 except those specified in the amendment made by section 901, except that this section shall not apply to the sale of debentures or other securities provided for in sections 321 and 504 of the Small Business Investment Act of 1958.

GRASSLEY (AND OTHERS) AMENDMENT NO. 2860

Mr. DOMENICI (for Mr. GRASSLEY, for himself, Mr. LAUTENBERG, Mr. D'AMATO, Mr. PROXMIRE, Mr. DENTON, Mr. DOLE, Mr. MATTINGLY, Mr. HARKIN, Mr. CHILES, Mr. DECONCINI, Mr. HOLLINGS, and Mrs. HAWKINS) proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

At the appropriate place in the Committee amendment, insert the following:

SEC. . DENIAL OF CERTAIN TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES.

(a) DENIAL OF FOREIGN TAX CREDIT.—Section 901 (relating to taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) DENIAL OF FOREIGN TAX CREDIT, ETC. WITH RESPECT TO CERTAIN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—Notwithstanding any other provison of this part—

"(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) during the taxable year to any country to which this subsection applies, and

"(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income for such taxable year from sources within any country so identified.

"(2) COUNTRIES TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any foreign country—

"(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

"(ii) with respect to which the United States has severed diplomatic relations,

"(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

"(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

"(B) PERIOD FOR WHICH SUBSECTION APPLIES.—This subsection shall apply to any foreign country described in subparagraph (A) during the period—

"(i) beginning on the later of—

"(I) January 1, 1987, or

"(II) 6 months after such country becomes a country described in subparagraph (A), and

"(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

"(3) PART-YEAR RULE.—If this subsection applies to any foreign country for any period less than an entire taxable year, paragraph (1) shall be applied by taking into account only that proportion of the taxes and income described in paragraph (1) for the taxable year as the portion of the taxable year which includes such period bears to the entire taxable year."

(b) DENIAL OF DEFERRAL OF INCOME.—

(1) GENERAL RULE.—Section 952(a) (defining subpart F income) is amended by striking out "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", and", and by inserting immediately after paragraph (4) the following new paragraph:

"(5) the income of such corporation derived from any foreign country during any period during which section 904(1) applies to such foreign country."

(2) INCOME DERIVED FROM FOREIGN COUNTRY.—Section 952 (defining subpart F income) is amended by adding at the end thereof the following new subsection:

(3) INCOME DERIVED FROM FOREIGN COUNTRY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 904(i) applies if such income was, without regard to such entities, derived from such country."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

LEAHY AMENDMENT NO. 2861

Mr. DOMENICI (for Mr. LEAHY) proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

At the appropriate place, add a new section as follows:

SEC. . Funds made available by title IV of the Agriculture, Rural Development, and Related Agencies Appropriations Act of 1986 for Public Law 480, title II programs, and not otherwise obligated on the date of enactment of this section, shall be obligated during fiscal year 1986 for the purposes for which they were made available only.

STENNIS (AND COCHRAN) AMENDMENT NO. 2862

Mr. DOMENICI (for himself, Mr. STENNIS, and Mr. COCHRAN) proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

At the appropriate place in the bill, add the following new section:

SEC. . MEDICARE PAYMENTS TO LARGE RURAL HOSPITALS SERVING A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS.

(a) IN GENERAL.—Section 1886(d)(5)(F)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(v)) is amended—

(1) by striking "or" at the end of subclause (II), and

(2) by striking subclause (III) and inserting in lieu thereof the following new subclauses:

"(III) such percentages as are determined by the Secretary to be appropriate for hospitals located in a rural area which have 300 or more beds, or

"(IV) 45 percent if the hospital is located in a rural area and has less than 300 beds."

(b) CONFORMING CHANGE.—Section 1886(d)(5)(F)(iv) of such Act is amended—

(1) in subclause (I) by inserting ", or is located in a rural area and has 300 or more beds," after "beds,", and

(2) in subclause (III) by inserting "and has less than 300 beds" after "area".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 1986.

GORTON (AND OTHERS) AMENDMENT NO. 2863

Mr. GORTON (for himself, Mr. HOLLINGS, Mr. GRASSLEY, Mr. MOYNIHAN, Mr. DOMENICI, Mrs. HAWKINS, Mr. WARNER, Mr. DENTON, Mr. RIEGLE, Mr. MATTINGLY, Mr. SASSER, Mr. CHILES, Mr. SPECTER, Mr. COHEN, Mr. CHAFEE, Mr. DECONCINI, and Mr. HEINZ) proposed an amendment which was subsequently modified, to the amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

At the end of the bill, add the following new title:

TITLE —MISCELLANEOUS RETIREMENT BENEFITS PROTECTIONS

Subtitle A—Protections From Extraordinary Public Debt Management

SEC. 01. INVESTMENT AND RESTORATION OF TRUST FUNDS.

(a) IN GENERAL.—Subsection (d) of section 201 of the Social Security Act (42 U.S.C. 401(d)) is amended—

(1) by striking out "(1) on original issue" and inserting in lieu thereof "(A) on original issue",

(2) by striking out "(2) by purchase" and inserting in lieu thereof "(B) by purchase";

(3) by striking out "It shall be" and inserting in lieu thereof "(1) It shall be", and

(4) by adding at the end thereof the following new paragraphs:

"(2) If—

"(A) any amounts in the Trust Funds have not been invested solely by reason of the public debt limit, and

"(B) the taxes described in clause (3) or (4) of subsection (a) with respect to which such amounts were appropriated to the Trust Funds have actually been received into the general fund of the Treasury of the United States,

such amounts shall be invested by the Managing Trustee as soon as such investments can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title.

"(3)(A) Upon expiration of any debt limit impact period, the Managing Trustee shall immediately—

"(i) reissue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations held by such Trust Fund that—

"(I) were redeemed during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of standard investment procedures for such Trust Fund in effect on the day before the date on which the debt limit impact period began, would not have been redeemed if the debt limit impact period had not occurred, and

"(ii) issue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations which—

"(I) were not issued during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of such standard investment procedures, would have been issued if the debt limit impact period had not occurred.

"(B) Obligations issued or reissued under subparagraph (A) shall be substituted for obligations that are held by the Trust Fund, and for amounts in the Trust Fund that have not been invested, on the date on which the debt limit impact period ends in a manner that will ensure that, after such substitution, the holdings of the Trust Fund will replicate to the maximum extent practicable the obligations that would be held by such Trust Fund if the debt limit impact period had not occurred.

"(C) In determining, for purposes of this paragraph, the obligations that would be held by a Trust Fund if the debt limit impact period had not occurred, any amounts in the Trust Fund which have not been invested, and any amounts required to be invested under paragraph (2), shall be treated as amounts which were required to be invested upon transfer to the Trust Fund.

"(4) The Managing Trustee shall pay, on the first normal interest payment date that occurs on or after the date on which any debt limit impact period ends, to each of the Trust Funds, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Managing Trustee to be equal to the excess of—

"(A) the net amount of interest that would have been earned by such Trust Fund during such debt limit impact period if—

"(i) amounts in such Trust Fund that were not invested during such debt limit impact period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to such Trust Fund which occurred during such debt limit impact period solely by reason of the public debt limit had not occurred, over

"(B) the sum of—

"(i) the net amount of interest actually earned by such Trust Fund during such debt limit impact period, plus

"(ii) the total amount of the principal of all obligations issued or reissued under paragraph (3)(A) at the end of such debt limit impact period that is attributable to interest that would have been earned by such Trust Fund during such debt limit impact period but for the public debt limit.

"(5) For purposes of this section—

"(A) The term 'public debt limit' means the limitation imposed by subsection (b) of section 3101 of title 31, United States Code.

"(B) The term 'debt limit impact period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) AVAILABILITY OF FUNDS.—Subsection (a) of section 201 of the Social Security Act is amended by adding at the end thereof the following new sentence: "All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under any other provisions of law directly related to the programs established by this title.".

SEC. 02. CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) INVESTMENT AND RESTORATION OF THE FUND.—Section 8348 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if necessary to ensure that the public debt of the United States does not exceed the public debt limit.

"(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

"(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the

holdings of the Fund will replicate to the maximum extent practicable the obligations that would be held by the Fund if the debt issuance suspension period had not occurred.

"(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

"(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

"(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

"(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

"(5) For purposes of this subsection and subsections (k) and (l) of this section—

"(A) the term 'public debt limit' means the limitation imposed by section 3101(b) of title 31; and

"(B) the term 'debt issuance suspension period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) SALES AND REDEMPTIONS BY THE FUND.—Section 8348 of title 5, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(k) The Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund only for the purpose of enabling the Fund to make payments authorized by the provisions of this subchapter or chapter 84 of this title or related provisions of law. If the Fund holds any amounts which, by reason of the public debt limit, are not invested, the Secretary may nevertheless make such sales and redemptions if, and only to the extent, necessary to ensure that such payments are made in a timely manner.".

(c) REPORTS REGARDING THE OPERATION AND STATUS OF THE FUND.—Section 8348 of title 5, United States Code, as amended by subsections (a) and (b), is further amended by adding at the end the following new subsection:

"(l)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States.

"(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.".

SEC. 03. COST-OF-LIVING ADJUSTMENTS IN CERTAIN FEDERAL BENEFITS.

(a) IN GENERAL.—Benefits which are payable in calendar year 1987, 1988, 1989, 1990, or 1991, under programs listed in section 257(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), including any cost-of-living adjustment in such benefits, shall not be subject to modification, suspension, or reduction in such calendar year pursuant to a Presidential order issued under such Act.

(b) DEFINITION.—For purposes of this section, the term "cost-of-living adjustment" means any increase or change in the amount of a benefit or in standards relating to such benefit under any provision of Federal law which requires such increase or change as a result of any change in the Consumer Price Index (or any component thereof) or any other index which measures costs, prices, or wages.

SEC. 04. EXEMPT PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.—Section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)) is amended by inserting after the item relating to Compensation of the President the following new item:

"Dual benefits payments account (60-0111-0-1-601);".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to fiscal years beginning after September 30, 1986.

Subtitle B—Older Americans Pension Benefits

SEC. 10. BENEFIT ACCRUAL BEFORE MAXIMUM NORMAL RETIREMENT BENEFIT.

Section 4(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(f)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(3) in subparagraph (B) (as so redesignated)—

(A) by striking out "and" after "hire any individual,"; and

(B) by inserting before the semicolon at the end thereof a comma and "and no employee benefit plan shall require or permit the suspension of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age before accruing the maximum normal retirement benefit under the plan unless the plan is a defined benefit pension plan that provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan"; and

(4) by adding at the end thereof the following new paragraph:

"(2) Nothing in this section shall to construed to prohibit an employer, employment agency, or labor organization from observing the terms of an employee benefit plan that—

"(A) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052(a)(2)); or

"(B) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

SEC. 11. BENEFIT ACCRUAL BEYOND NORMAL RETIREMENT AGE.

(a) ERISA AMENDMENTS.—

(1) IN GENERAL.—Subsection (a) of section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(a)) is amended to read as follows:

"(a) Each pension plan shall satisfy the requirements of subsection (b)(3), and—

"(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1); and

"(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2).".

(2) DEFINED BENEFIT PLANS.—Section 204(b)(1) of such Act is amended by adding at the end thereof the following new subparagraph:

"(H)(i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the terms of the plan, an employee's benefit accrual is suspended or the rate of an employee's benefit accrual is reduced solely because of age before accruing the maximum normal retirement benefit under the plan unless the plan provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan.

"(ii) A defined benefit plan shall not be treated as not satisfying the requirements of this subparagraph solely because the plan—

"(I) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2); or

"(II) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

(3) DEFINED CONTRIBUTION PLANS.—Section 204(b) of such Act is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2)(A) An individual account plan satisfies the requirements of this paragraph if, under the plan, employer contributions to the employee's account are not suspended or reduced solely because of age.

"(B) A target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury) shall not be treated as not satisfying the requirements of this paragraph solely because the plan excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 202(a)(2).

"(C) An individual account plan (including such a target benefit plan) shall not be treated as not satisfying the requirements of this paragraph solely because the plan imposes a limitation on the contributions that may be made or on the number of years for which contributions will be made under the plan with respect to an employee.".

(4) CERTAIN PLAN AMENDMENTS.—Section 204(g)(2) of such Act is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (1), in the case of a plan that on the date of enactment of the Sixth Omnibus Budget Reconciliation Act, 1986, provided for the distribution or the commencement of distribution of the entire interest of an employee under

the plan on or after attaining the normal retirement age under the plan regardless of whether the employee has separated from service, an amendment that postpones the date as of which such distribution will be made or commence, and which is adopted within the 12-month period following the date on which section 204(b)(1)(H) or section 204(b)(2) (as amended by such Act) becomes applicable to the plan, shall not be treated as reducing accrued benefits.".

(b) CODE AMENDMENTS.—

(1) DEFINED BENEFITS PLANS.—Section 411(b)(1) of the Internal Revenue Code of 1954 (relating to accrued benefit requirements) is amended—

(A) by striking out "GENERAL RULES.—" and inserting in lieu thereof "DEFINED BENEFIT PLANS.—"; and

(B) by adding at the end thereof the following new subparagraph:

"(H) CONTINUED ACCRUAL BEYOND NORMAL RETIREMENT AGE.—

"(i) IN GENERAL.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the terms of the plan, an employee's benefit accrual is suspended or the rate of an employee's benefit accrual is reduced solely because of age before accruing the maximum normal retirement benefit under the plan unless the plan provides that the employee's retirement benefit is actuarially increased to reflect a retirement date that occurs after the month in which the employee attains the normal retirement age under the plan.

"(ii) EXCEPTION.—A defined benefit shall not be treated as not satisfying the requirements of this subparagraph solely because the plan—

"(I) excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 410(a)(2); or

"(II) imposes a limitation on the benefits that the plan provides or on the number of years of service or years of participation that the plan recognizes with respect to an employee.".

(2) DEFINED CONTRIBUTION PLANS.—Section 411(b) of such Code is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) DEFINED CONTRIBUTION PLANS.—

"(A) IN GENERAL.—A defined contribution plan satisfies the requirements of this paragraph if employer contributions to the employee's account are not suspended or reduced solely because of age.

"(B) TARGET BENEFIT PLANS.—A target benefit plan (as defined under regulations prescribed by the Secretary) shall not be treated as not satisfying the requirements of this paragraph solely because the plan excludes from participation (on the basis of age) employees who have attained a specified age in accordance with section 410(a)(2).

"(C) INDIVIDUAL ACCOUNT PLANS.—An individual account plan (including such a target benefit plan) shall not be treated as not satisfying the requirements of this paragraph solely because the plan imposes a limitation on the contributions that may be made or on the number of years for which contributions will be made under the plan with respect to an employee.".

(3) CERTAIN PLAN AMENDMENTS.—Section 411(d)(6)(B) of such Code (relating to amendments that reduce accrued benefits) is amended by adding at the end thereof the following sentence: "For purposes of subparagraph (B), in the case of a plan that on the date of enactment of the Sixth Omnibus Budget Reconciliation Act, 1986, provided for the distribution or the commencement of distribution of the entire interest of an employee under the plan on or after attaining the normal retirement age under the plan regardless of whether the employee has separated from service, an amendment that postpones the date as of which such distribution will be made or commence, and which is adopted within the 12-month period following the date on which section 411(b)(1)(H) or section 411(b)(2) (as amended by such Act) becomes applicable to the plan, shall not be treated as reducing accrued benefits.".

(4) INTEGRATED PLANS.—Section 401(a)(5) of such Code (relating to a nondiscriminatory classification of employees) is amended by inserting after the second sentence the following new sentence: "Nor shall a plan be considered discriminatory within the meaning of such provisions merely because, in the case of an employee who has attained the normal retirement age under the plan, the plan provides for a rate of benefit accrual or contributions (including retirement benefits created under State or Federal law) that does not exceed the rate of benefit accrual or contributions under the plan (including retirement benefits created under State or Federal law) in the case of an employee who has not attained the normal retirement age under the plan.".

(5) CONFORMING AMENDMENT.—The first sentence of section 411(a) of such Code (relating to minimum vesting standards) is amended by striking out "paragraph (2) of subsection (b), and" and all that follows through the end thereof and inserting in lieu thereof "subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).".

SEC. 12. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this subtitle shall apply only to employees who are employed after December 31, 1988. In the case of such employees, such amendments shall apply to accrual computation periods beginning after December 31, 1986. In the case of employees not employed after December 31, 1988, the amendments made by this subtitle shall apply only to accrual computation periods beginning after December 31, 1988.

(b) PLAN AMENDMENTS.—If any amendment made by this subtitle requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment; and

(2) such plan amendment applies retroactively to the period after such amendment takes effect and before such first plan year. A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions merely because it operates in accordance with this provision.

(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this subtitle shall not apply to plan years beginning before the earlier of—

(1) the later of—

(A) January 1, 1989, or

(B) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

(2) January 1, 1991.

(d) FINAL REGULATIONS.—The Secretary of Labor or the Secretary of the Treasury, as the case may be, shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle.

At the appropriate place, add the following new title:

TITLE II—SOCIAL SECURITY TRUST FUNDS

SEC. 201. SHORT TITLE.

This title may be cited as the "Social Security Trust Funds Management Act of 1986".

SEC. 202. INVESTMENT AND RESTORATION OF TRUST FUNDS.

(a) Subsection (d) of section 201 of the Social Security Act (42 U.S.C. 401(d)) is amended—

(1) by striking out "(1) on original issue" and inserting in lieu thereof "(A) on original issue",

(2) by striking out "(2) by purchase" and inserting in lieu thereof "(B) by purchase";

(3) by striking out "It shall be" and inserting in lieu thereof "(1) It shall be", and

(4) by adding at the end thereof the following new paragraphs:

"(2) If—

"(A) any amounts in the Trust Funds have not been invested solely by reason of the public debt limit, and

"(B) the taxes described in clause (3) or (4) of subsection (a) with respect to which such amounts were appropriated to the Trust Funds have actually been received into the general fund of the Treasury of the United States,

such amounts shall be invested by the Managing Trustee as soon as such investments can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title.

"(3)(A) Upon expiration of any debt limit impact period, the Managing Trustee shall immediately—

"(i) reissue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations held by such Trust Fund that—

"(I) were redeemed during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of standard investment procedures for such Trust Fund in effect on the day before the date on which the debt limit impact period began, would not have been redeemed if the debt limit impact period had not occurred, and

"(ii) issue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations which—

"(I) were not issued during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of such standard investment procedures, would have been issued if the debt limit impact period had not occurred.

"(B) Obligations issued or reissued under subparagraph (A) shall be substituted for obligations that are held by the Trust Fund, and for amounts in the Trust Fund that have not been invested, on the date on which the debt limit impact period ends in a manner that will ensure that, after such substitution, the holdings of the Trust Fund will replicate to the maximum extent practicable the obligations that would be held by such Trust Fund if the debt limit impact period had not occurred.

"(C) In determining, for purposes of this paragraph, the obligations that would be held by a Trust Fund if the debt limit impact period had not occurred, any amounts in the Trust Fund which have not been invested, and any amounts required to be invested under paragraph (2), shall be treated as amounts which were required to be invested upon transfer to the Trust Fund.

"(4) The Managing Trustee shall pay, on the first normal interest payment date that occurs on or after the date on which any debt limit impact period ends, to each of the Trust Funds, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Managing Trustee to be equal to the excess of—

"(A) the net amount of interest that would have been earned by such Trust Fund during such debt limit impact period if—

"(i) amounts in such Trust Fund that were not invested during such debt limit impact period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to such Trust Fund which occurred during such debt limit impact period solely by reason of the public debt limit had not occurred, over

"(B) the sum of—

"(i) the net amount of interest actually earned by such Trust Fund during such debt limit impact period, plus

"(ii) the total amount of the principal of all obligations issued or reissued under paragraph (3)(A) at the end of such debt limit impact period that is attributable to interest that would have been earned by such Trust Fund during such debt limit impact period but for the public debt limit.

"(5) For purposes of this section—

"(A) The term 'public debt limit' means the limitation imposed by subsection (b) of section 3101 of title 31, United States Code.

"(B) The term 'debt limit impact period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) Subsection (a) of section 201 of the Social Security Act is amended by adding at the end thereof the following new sentence: "All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under any other provisions of law directly related to the programs established by this title.".

SEC. 203. REPEAL OF NORMALIZED TAX TRANSFER.

(a) Subsection (a) of section 201 of the Social Security Act is amended by striking out the matter following clause (4) and inserting in lieu thereof the following: "The amounts appropriated by clauses (3) and (4) shall be transferred from the general fund of the Treasury of the United States to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred from the general fund of the Treasury to the Federal Disability Insurance Trust Fund, upon receipt by the general fund of taxes specified in clauses (3) and (4) of this subsection (as estimated by the Secretary). Proper adjustments shall be made in amounts subsequently transferred to the extent amounts previously transferred were in excess of, or were less than, the taxes specified in such clauses (3) and (4). All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under other provisions of law directly related to the programs established by this title.".

(b) The amendment made by subsection (a) shall take effect on July 1, 1990.

SEC. 204. FAITHFUL EXECUTION OF DUTIES BY MEMBERS OF BOARD OF TRUSTEES OF TRUST FUNDS.

Section 201(c) of the Social Security Act is amended by striking the last sentence and inserting the following: "A person serving on the Board of Trustees (including the Managing Trustee) shall not be considered to be a fiduciary, but each such person shall faithfully execute the duties imposed on such person by this section. A person serving on the Board of Trustees (including the Managing Trustee) shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.".

SEC. 205. REPORTS REGARDING THE OPERATION AND STATUS OF THE TRUST FUNDS.

Subsection (c) of section 201 of the Social Security Act is amended—

(1) by striking "once" in the fourth sentence and inserting "twice",

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(3) by redesignating paragraphs (3), (4), and (5) as subparagraphs (D), (E), and (F), respectively,

(4) by inserting after subparagraph (B) (as redesignated by paragraph (2) of this section) the following:

"(C) Report to the Congress as soon as possible, but not later than the date that is 30 days after the first normal interest payment date occurring on or after the date on which any debt limit impact period for which the Managing Trustee is required to take action under paragraph (3) or (4) of subsection (d) ends, on—

"(i) the operation and status of the Trust Funds during such debt limit impact period, and

"(ii) the actions taken under paragraphs (3) and (4) of subsection (d) with respect to such debt limit impact period;",

(5) by striking out "in paragraph (2) above" and inserting in lieu thereof "in subparagraph (B) above",

(6) by inserting "(1)" after "(c)", and

(7) by adding at the end thereof the following:

"(2) The Managing Trustee shall report monthly to the Board of Trustees concerning the operation and status of the Trust Funds and shall report to Congress and to the Board of Trustees not less than 15 days prior to the date on which, by reason of the public debt limit, the Managing Trustee expects to be unable to fully comply with the provisions of subsection (a) or (d)(1), and shall include in such report an estimate of the expected consequences to the Trust Funds of such inability.".

SEC. 206. ELIMINATION OF UNDUE DISCRETION IN THE INVESTMENT OF TRUST FUNDS.

(a) Section 201(d) of the Social Security Act is amended, in the first sentence—

(1) by inserting "immediately" after "to invest"; and

(2) by striking ", in his judgment,".

(b)(1) Paragraph (2) of section 201(d) of the Social Security Act, as added by section 202 of this Act, is amended to read as follows:

"(2) If any amount in either of the Trust Funds is not invested solely by reason of the public debt limit, such amount shall be invested as soon as such investment can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title."

(2) The amendment made by paragraph (1) shall take effect on July 1, 1990.

SEC. 207. SALES AND REDEMPTIONS BY TRUST FUNDS.

Section 201(e) of the Social Security Act is amended—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2)(A) The Managing Trustee may effect any such sale or redemption with respect to either Trust Fund only for the purpose of enabling such Trust Fund to make payments authorized by this title or under any other provisions of law directly related to the programs established by this title. If either of the Trust Funds holds any amounts which are not invested by reason of the public debt limit, the Managing Trustee is nevertheless directed to make such sales and redemptions if, and only to the extent, necessary to assure timely payment of benefits and other payments authorized by this title or by any other provisions of law directly related to the programs established by this title, but the principal amount of obligations sold or redeemed pursuant to this sentence shall not exceed the principal amount of obligations that would have been sold or redeemed under normal operating procedures in order to make such payments.".

SEC. 208. EFFECTIVE DATE.

Except as otherwise provided by this title, the amendments made by this title shall take effect on the date of enactment of this Act.

STEVENS AMENDMENT NO. 2864

Mr. STEVENS (for himself and Mr. ANDREWS) proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

At the end of section 102 insert the following new language: "Such regulations shall not prohibit full transferability and assignability of such loans without condition, and shall not require unreasonable reductions in rates to customers.".

HARKIN AMENDMENT NO. 2865

Mr. HARKIN proposed an amendment to amendment No. 2850 proposed by Mr. DOMENICI (and others) to the bill S. 2706, supra; as follows:

On page 10 of the amendment strike lines 8 and 9.

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HELMS. Mr. President, I wish to announce that the Committee on Agriculture, Nutrition, and Forestry, has

scheduled hearings on the following days:

Wednesday, September 24, 1986, 10 a.m., in SR332—the full committee has scheduled a hearing to consider the nomination of Jim R. Billington, of Oklahoma, to be a member of the Farm Credit Administration Board, Farm Credit Administration; and

Thursday, September 25, 1986, 9:30 a.m., in SR332—the Subcommitte on Agricultural Research, Conservation, Forestry, and General Legislation, of the Committee on Agriculture, Nutrition, and Forestry, will hold a hearing to address two pieces of legislation; S. 2685, the Tennessee Wilderness Act of 1986 and S. 2782, the Sipsey Wild and Scenic River and Sipsey Wilderness Addition Act of 1986.

For further information, please contact the committee staff at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCES CONSERVATION

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, Reserved Water and Resource Conservation of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Friday, September 19, to hold a hearing on the following:

S. 1971, to transfer certain lands under the jurisdiction of the Secretary of the Interior to the city of Mesquite, Nevada;

S. 2194, to authorize the conveyance of 40 acres in Nevada to the Catholic Diocese of Reno/Las Vegas;

S. 2599, to declare that the United States holds certain public domain lands in trust for the Pueblo of Zia;

S. 2698, to transfer certain public lands in Nevada to the Toiyabe, Humboldt, and Inyo National Forests;

S. 2758, to authorize the exchange of certain lands in the States of Nevada and Florida;

S.J. Res. 372, authorizing establishment of a memorial to honor America's astronauts;

S. 2812 and H.R. 4037, relating to the Indiana Dunes National Lakeshore, and for other purposes; and

H.R. 4645, an act to modify the boundaries of the Cuyahoga Valley National Recreation Area.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AVIATION

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that Aviation Subcommittee of the Committee on Commerce, Science and Transportation be authorized to meet during the session of the Senate on Friday, September 19, to conduct a hearing on cabin air quality.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

PHILADELPHIA, 1787

● Mr. ARMSTRONG. Mr. President, 199 years ago this week, a small band of American patriots concluded their deliberations on a constitution for the United States. They had worked for only about 100 days, but their work culminated in the great, organic charter of the land that was to become the freest, richest, and most powerful nation the world has ever known. Our success is due, in large measure, to the inspired foundation that the framers laid to "form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty * * *."

On September 17 in 1787, in the State House in Philadelphia, 38 men put their signatures to a document that has withstood the roaring tempests of wars, the exhilaration of growth, and the ravages of depressions. And while military, political, and economic troubles are not strangers in our own time, yet it may be that our generation is called on to defend the Constitution against more insidious threats. Our external enemies present an ominous threat, but greater dangers may lie in our own affluence, apathy, and decadence.

On Monday, September 17, 1787, as the last delegates were filing forward to sign the new Constitution, Benjamin Franklin, the world-famous diplomat and scientist who was at the time the President of Pennsylvania, directed the attention of some of the delegates to the chair that was occupied by Gen. George Washington, the Convention's President. On the chair's back was a carved, gilded sun. Franklin observed that painters had found it difficult to distinguish in their art a rising from a setting sun, and he had often during their deliberations looked at that chair without being able to tell whether the sun was rising or setting. "But now at length," said the wise Franklin as the final names were being subscribed, "I have the happiness to know that it is a rising and not a setting sun."

Mr. President, in an attempt to honor and remember the work of the founders, I ask that a copy of Dr. Franklin's address to the convention on September 17, 1787, be placed in the RECORD:

ADDRESS OF BENJAMIN FRANKLIN

"Mr. President

"I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in Religion, think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele, a Protestant in a Dedication tells the Pope, that the only difference between our Churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who in a dispute with her sister, said "I don't know how it happens, Sister but I meet with no body but myself, that's always in the right"—*Il n'y a que moi qui a toujours raison."*

"In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an Assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good—I have never whispered a syllable of them abroad—Within these walls they were born, and here they shall die—If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign Nations as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any Government in procuring and securing happiness to the people, depends, on opinion, on the general opinion of the goodness of the Government, as well as of the widom and integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

"On the whole, Sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a

little of his own infallibility—and to make manifest our unanimity, put his name to this instrument. . . ."

NATIONAL POW-MIA RECOGNITION DAY

● Mr. ANDREWS. Mr. President, on POW-MIA Recognition Day we are painfully reminded how very high is the price of freedom. Since the Revolutionary War, Americans have been willing to sacrifice their lives when necessary to preserve the ideal of freedom that we as civilized humans so deeply cherish. Therefore, today we honor those brave individuals who have made a supreme sacrifice—not certain death, but that of an undetermined fate which leaves their families unaware and uncertain of their fate.

It is particularly tragic to imagine the fate of those 2,434 brave Americans still unaccounted for in Southeast Asia over 11 years after the last American transport left and Saigon fell to North Vietnam. This day illuminates this sorrowful fact as we honor those still lost to us and console the many families whom remain uninformed about the whereabouts of their fathers, sons, husbands, or brothers.

These servicemen are missing throughout Vietnam, Cambodia, and Laos. While these countries' governments maintain that there are no longer any POW's—only MIA's—it is difficult to take these claims as anything more than empty rhetoric.

In Vietnam, 591 prisoners were freed by Hanoi between February and April 1973. Then the Vietnamese allowed 68 stranded Americans to return home in 1976. Although we have seen an increase in the release of names and remains from the Vietnamese Government in the last 2 years, their motives remain questionable and the total number of bodies returned since the war's end is only 147.

An estimated 556 Americans remain unaccounted for in Laos and there has been little information released about the fate of these soldiers. While the Laotians did allow a joint United States-Laotian excavation at a crashsite near Pakse in 1985, gestures of compassion from this government appear slow in coming and infrequent and never without hints of a quid pro quo for United States aid or normalized relations.

Most sadly, Cambodia remains a mystery. Some of the Americans listed missing were captured in this country where atrocities against their own people have been a way of life. Unfortunately, the continuing political and military upheavals in Cambodia have resulted in almost a complete lack of information concerning our military personnel.

These three countries have demonstrated little, if any, humanitarian concerns for our POW-MIA's. Time will only tell if this condition will change. But, we have both the responsibility and the obligation to those missing Americans to remain unceasing in our efforts to resolve the question of the fate of these men and bring an end to the prolonged anguish of their families and of the Nation. We must bring our POW's-MIA's home where they belong; home to honor these Americans, living or at final peace, who have paid the supreme price for our freedom.●

THE ENGLISH PROFICIENCY ACT OF 1986

● Mr. CRANSTON. Mr. President, I am delighted to join with my good friend, the Senator from New Mexico [Mr. BINGAMAN] in introducing the English Proficiency Act of 1986. This bill, S. 2835 is much needed legislation. It is designed to help solve one of the most disabling problems an individual can have. That problem is illiteracy.

Thirteen percent of all Americans are illiterate, Mr. President, unable to read or to write. A total of one-third of all Americans are functionally illiterate—seriously impaired in their reading and writing abilities.

Previous attempts to combat illiteracy have lacked a careful sense of direction. This bill is aimed at bringing in as participating members of our society both those who cannot read and write in any language, and those who are not truly illiterate, but rather, are not yet proficient in English.

Mr. President, many people in our Nation can read and write in their native language, but not in English. Nearly half of those whose native tongue is not English have limited English proficiency. In effect, this may be as disabling to their participation in society as if they were truly illiterate.

As always, California is leading the Nation with new trends, new ideas, and new arrivals. The majority of California's new populations are young. Some have families. Others have found their way to my great State alone. Many cannot participate effectively in the society around them because of their inability to read and write English.

Hispanics are particularly plagued by limited English proficiency. In Los Angeles alone, there are an estimated 10,000 Hispanics on waiting lists for adult English instruction. Our democratic system—and the Nation as a whole—suffers when any substantial part of its population cannot fully participate. Some studies estimate that at least partial lack of English literacy among Hispanics may range as high as 56 percent.

Our bill targets this problem and strives to diminish the staggering inequity illiteracy and limited English proficiency create in our society.

English helps bind us together as a nation. Those who don't speak, read or write English are denied participation in the mainstream of society.

This legislation is a great first step toward integrating—socially, politically, and economically—into our society those with a language deficiency.

S. 2835 represents an investment in our future. Without this legislation, by the year 2000 an estimated 2.6 million children in this country may lack English proficiency.

Nonliterate children are in jeopardy of becoming underachieving adults. Parents determine much of the environment children become accustomed to and learn to accept. Low levels of literacy among parents create new generations of children with low levels of literacy, which reflects itself in limited employment opportunities. This legacy—passed on from one generation to another—results in many problems for individuals and for society.

Without parents who understand the doors that can be opened through literacy, children will fall victim to the malady of illiteracy.

Our Hispanic population is young and rapidly growing. By the year 2000 Hispanics may comprise 10 percent of the Nation's work force. And, obviously, Hispanics are not the only segment of our population in which this problem shows up. We cannot afford the possibility that a some large portion of our labor force will be a subclass, constrained by limited ability in English.

At present, attempts to improve literacy—public and private—are woefully inadequate. Most volunteer and publicly funded literacy programs do not accept those with limited English proficiency. They are designed for those who need improvement in English, rather than basic English instruction. And, private instruction is often too costly and requires too much of those who are struggling to survive in our society without proficiency in English.

I believe this legislation will go far in bringing into the mainstream of our society those who, up until now, have had no chance.

I am proud to be an original cosponsor of S. 2835. I believe it is legislation of great importance and hope my colleagues will join me, not only in cosponsoring it, but also in seeing it enacted before adjournment sine die of this Congress.●

A TRIBUTE TO WILLIAM R. THAYER

● Mr. GRASSLEY. Mr. President, I would like to take this opportunity to acknowledge a fellow Iowan—Mr. William R. Thayer—for his dedicated efforts on behalf of this State and our Nation's elderly citizens. As president of the American Association of Homes

for the Aging [AAHA] since November 1984, Bill Thayer has worked tirelessly to ensure that the elderly receive the care and services they need and deserve.

Bill is living proof of the traditional American ideal that you can come from a small town but still make a big difference in the lives of millions of your fellow citizens. As president of a nationwide association of nonprofit providers of care and services to America's elderly, Bill's dedication to compassionate and quality care has touched not only the lives of the 170 residents of Iowa's Madrid Home for the Aging where he is administrator, but also has enhanced the quality of the lives of hundreds of thousands of older persons in homes throughout America.

AAHA is celebrating its silver anniversary as a national organization during its annual meeting in New York City on September 28 through October 1, 1986, and during the ceremonies will pay tribute to Bill Thayer. As a member of the Special Committee on Aging and chairman of the Aging Subcommittee of the Senate Labor and Human Resources Committee, I wish to congratulate AAHA on 25 years of service to and advocacy on behalf of our older citizens. I take particular pleasure in joining with AAHA, and with my fellow Iowans of the Iowa Association of Homes for the Aging, in honoring Bill Thayer for the leadership he has provided the association as he completes his 2-year term.

Bill has distinguished himself as an effective and compassionate advocate for the elderly. He puts into practice every day the kind of personal concern and professional values which promote dignity and understanding for the senior members of our society.

Bill's experience in the field of aging amply prepared him to assume leadership of AAHA. He holds undergraduate and graduate degrees from Dakota Wesleyan University, Mitchell, SD, and the College of St. Thomas, St. Paul, MN. He has also continued to pursue additional study of health systems management at Harvard University. Before becoming administrator of Iowa's Madrid Home, Bill served as operations director, comptroller and administrator of the Ebenezer Society of Minneapolis, MN, and as an instructor with the Lutheran Homes for the Aging.

His concern for the elderly took a national perspective in 1981 when he was named a delegate to the White House Conference on Aging. And, he attained a number of elected State and national offices in the association prior to his election as AAHA president in 1984.

When Bill assumed AAHA's highest office, he announced an ambitious goal for the organization's membership to grow to 3,000 facilities by the time of its 25th anniversary. This goal was achieved in August. Under Bill's guidance, the association established a Midwest regional office in Chicago and welcomed community service providers as association members.

Bill personifies the association's nonprofit ethic of charity and philanthropy. All AAHA member facilities must be not-for-profit and most are affiliated with religious organizations. Members are joined together in a tradition of community involvement for the betterment of life of the elderly.

Working with AAHA Executive Vice President Sheldon Goldberg, Bill has overseen the expansion of association programs enhancing the effectiveness of nonprofit facilities. AAHA has sponsored group liability insurance for its members at a time of crisis in the insurance industry. Operational efficiency of nonprofit homes has also been encouraged through use of AAHA's group purchasing and a money-saving food purchasing program.

During Bill's tenure, the association inaugurated its Professional Development Institute. High-quality continuing education programs are offered to enhance the skills of professional long-term care and housing managers. Yet another major achievement of his term has been the launching of the Continuing Care Accreditation Commission to promote standards of professional practice in the life care industry. The program is already regarded as an effective means of helping consumers assess retirement community services.

Bill Thayer brings courage and insight to his work. He strives in all he does to make his dreams for the elderly a reality and a model for the long-term care field.

Mr. President, those of us in Congress who work to promote quality care for America's elderly join AAHA in celebrating Bill Thayer's achievements and his service to older Americans.

CONGRATULATIONS TO ROBERT WINER ON HIS 60TH BIRTHDAY

● Mr. LAUTENBERG. Mr. President, on September 29, Robert Winer, a close personal friend, will celebrate his 60th birthday. Today I want to offer him my congratulations.

Besides our personal friendship, I offer special recognition to Bob Winer today because of the contributions he has made to Paterson, my birthplace, and to the State of New Jersey. Bob Winer believes deeply in our democratic system. He supports that commitment by maintaining the manufacturing and production of products in the United States despite the attraction of lower cost production overseas and the very seductive benefits of foreign credit assistance and facilities.

Mr. President, Winer Industries, has its national headquarters in Paterson, NJ, where Bob's father started the family business almost 50 years ago. His father came to these shores without knowing what was ahead. But he had a deep belief that America was the country in which he wanted to live and bring up his family. Winer Industries now employes more than 1,000 people from Paterson, NJ, to Tennessee and Arizona. Winer Industries is a company which exemplifies not only good business leadership, but community leadership as well. That is because Bob Winer made it his personal mission to train and employ those without the career choices higher education affords.

In cities across America, company after company has deserted the urban settings in which they started. But Bob Winer has resisted this temptation. Instead he has created a modern facility, employing people in productive labor near their homes and families.

Winer Industries produces competitive, high quality products because the spirit of its employees and management combined leads to the production of the best products in their price line that customers can buy. As a result, Winer Industries was selected as one of the 100 best suppliers of 12,000 that service Sears Roebuck & Co. This award brought credit to the company and its workers and reflects the determination of Bob Winer to continue the legacy his father left behind. His mission is to be competitive in his industry, but to treat his employees and customers fairly, and to reinvest in facilities and new products to continue the family dream.

All of us in New Jersey take pride in Bob Winer's accomplishments and business leadership and wish him continued good health, happiness, and success. I am pleased to call him my friend.●

SOVIET JEWS AND THE BRODSKY CASE

● Mr. BINGAMAN. Mr. President, I rise today to celebrate the release from prison and emigration from the Soviet Union of Vladimir Brodsky and his family.

After serving more than 12 months in a Soviet labor camp on the charge of "hooliganism," Mr. Brodsky, his wife Dina, and their young child earlier today stepped off a plane to freedom. They landed in Vienna, and they are scheduled to fly to Israel Sunday.

My pleasure in seeing Soviet Jews seeking emigration be allowed to leave is always great, but this case has particular significance to me. On my trip to the Soviet Union last summer, I had the chance to meet personally with Dina, Brodsky, who was then pregnant

with their child. Since then I have corresponded with Dina and with General Secretary Gorbachev and other Soviet officials on the Brodskys' behalf. This is a happy ending to a story which began sadly years ago when the Brodskys first sought visas to emigrate. Their plight was exacerbated by Vladimir's "crimes," that is, his participation in peace activities. His civic concern and participation led to his conviction last August to 3 years in a labor camp.

Fortunately, Brodsky, a physician by profession, was singled out by a group with some leverage in Moscow—the International Physicians for the Prevention of Nuclear War, the group which won the 1986 Nobel Peace Prize. The team announced in May that Brodsky would be released. Yet it took until mid-September for him to be released from prison and taken to get a visa.

Unfortunately, only a tiny minority of those Soviet citizens being persecuted for their religious beliefs and cultural practices are lucky enough to be adopted by a group with such influence. The others must wait out their terms in prison and labor camps, isolated from their families, often restricted from even corresponding with them.

Such is the case of another refusenik whom I adopted after my trip last summer, Roald Zelichonok. Like the Brodsky case, I first learned of Mr. Zelichonok's troubles through his wife Galina, whom I met in Leningrad. Zelichonok was sentenced to 3 years in a Soviet labor camp for slandering the Soviet state. What was his real crime? Simply teaching Hebrew.

Mr. Zelichonok is elderly and in poor health, suffering from high blood pressure and severely underweight. Since his confinement, he has had to ensure sporadic solitary confinement and the denial of medical treatment. The Soviet authorities have periodically cut off his correspondence with his wife. In a recent letter to Galina, however, he was able to maintain his sense of humor. He spoke about the harsh conditions, which had worsened in recent weeks, but added that "if only I had the chicken soup, all of the other things would take care of themselves."

Roald's and Galina's courage in the face of such terror from day to day is an example to us all. But how long can they be expected to endure this? I wrote to General Secretary Gorbachev just this week for the second time in the past 3 months on the Zelichonoks behalf, but I fear that my protests fall on deaf ears. The Soviets cannot continue to underestimate the damage done to United States-Soviet relations by making Soviet Jews and individuals from other religious minorities, and most recently American journalist Nicholas Daniloff, pawns in the superpower chess game.

Those of us here in the Congress of the United States will not forget about Soviet human rights violations. We cannot allow ourselves to forget. As we rejoice in the Brodsky departure from the Soviet Union, we cannot forget about the Zelichonoks, and about the thousands of others struggling to survive and to leave the Soviet Union.●

UNITED NATIONS REFORM

● Mr. KENNEDY. Mr. President, over the past several months there has been an understandable concern expressed in many quarters of Congress over the need to achieve some fundamental reforms in the U.N. system. And strong criticism has been voiced over the operations and effectiveness of several U.N. agencies in recent years.

At the same time, Mr. President, there has also been a tendency to simply bash the United Nations for being the focus and the voice of international controversy.

But as the distinguished chairman of the House Committee on Foreign Affairs, Representative DANTE FASCELL, wrote today in the New York Times, there has been "enough U.N.-bashing." It is time to focus on the constructive and positive roles that the U.N. plays—not the least among its specialized agencies.

In fact, Mr. President, substantial progress has been achieved in the effectiveness of many of the U.N. agencies. One example today is the Office of the U.N. High Commissioner for Refugees. The new High Commissioner, Jean-Pierre Hocke, has undertaken some fundamental reforms that will increase the effectiveness of his operations in the field as well as strengthen the role of the central office in Geneva.

This is merely one example of the United Nations responding to our concerns and criticisms—when they are constructively offered. But I agree with Chairman FASCELL that the time for "U.N.-bashing" should be over.

For the RECORD, Mr. President, I would like to pay tribute to the important management and other reforms that have been achieved by the new U.N. High Commissioner for Refugees, and in doing so echo the points raised by our distinguished colleague, the chairman of the House Foreign Affairs Committee, Representative DANTE FASCELL.

I ask that a letter I have received with Senator SIMPSON from the Deputy U.N. High Commissioner for Refugees be printed at this point in the RECORD, along with today's outstanding article by Chairman FASCELL in the New York Times.

The material follows:

ENOUGH U.N.-BASHING

(By Dante B. Fascell)

WASHINGTON.—United Nations-bashing, an increasingly popular sport in the Administration, the Congress and a large segment of the public, has gotten out of hand. Unless all sides step back and rethink where they are going, crippling—perhaps fatal—damage will be inflicted on an organization that once was held as mankind's last best hope for peace.

There have been signs in the last week that the Administration may be moderating its stance toward the United Nations. I hope so. The organization's fate may be decided in coming weeks when Congress determines not whether to cut America's contributions to the organization but rather how deep those cuts should be.

Frustration has been building for some time, with good reason. The United Nations has been its own worst enemy, abdicating its responsibilities in favor of increasingly irresponsible—almost hysterical—anti-Western rehetoric and posturing. Still, America is not in the United Nations because it makes us feel good or because it "plays well" in Peoria, but because it is in our long-term interest to be there.

America has tried to shake the United Nations into an awareness that it has been pursuing a self-defeating course. When the United Nations granted recognition and observer status to the Palestine Liberation Organization, we withheld part of our contribution rather than benefit the P.L.O. And, of course, there is concern about Eastern bloc spies in the Secretariat and in Government missions.

Then, there is the issue of poor management and the budgetary process. America, which supplies 25 percent of the United Nations's funds, has no more say in how the money is spent than any other nation, some of which contribute virtually nothing.

Last year, in order to force budgetary reform, the Senate voted for an amendment calling for a reduction in America's assessment from 25 to 20 percent unless major donors were able to vote in proportion to their share of their contributions. A similar House amendment would have cut our share to 15 percent in protest against inflated United Nations salaries and pension benefis.

Since then, the Administration has responded with its own cuts. For example, in formulating its fiscal 1987 budget request, it decided, prematurely, to delete $79.1 million from our required payment because it determined that the United Nations would not achieve the budget reforms mandated by the Senate amendment. This decision exceeded the intent of the amendment, which simply requires that 20 percent of our total be "withheld" but not deleted from the budget until the United Nations had satisfied the requirement of the amendment.

In addition, the Administration's budget request eliminated $60 million more from America's required payment to the United Nations for a variety of other reasons. Thus, the Administration cut nearly $140 million out of our required payment before Congress began work on the 1987 budget.

Congress, faced with near-Draconian spending cuts mandated by the Gramm-Rudman-Hollings budget reduction process, has seen a flood of appropriations amendments aimed at trimming our contribution further. In the House, we were able to halt further cuts at $48 million because of the timely intervention of America's chief delegate to the United Nations, Vernon Walters.

Unfortunately, the Senate Appropriations Committee imposed a budget outlay restriction on America's payment that will cause a further $130 million cut in our required payment. While the combination of the cuts imposed by the Administration and the House is dangerously high, the Senate position would be tantamount to abdicating our membership.

The United Nations has gotten the message and has begun putting its house in order. Reforms will not be completed overnight. An 18-member group of experts on United Nations reform has just released its report with 71 recommendations hailed by Alan Keyes, Assistant Secretary of State for International Organizations, as "just what we've been waiting for." While not resolving the proportionate voting issue, the recommendations include big cuts in the size of the staff and other pending reforms.

Our nation should support that effort. The President must exercise his leadership in behalf of improving the United Nations. The Congress must provide adequate funding to enable the United Nations to get on with the more serious business at hand. And the public should recognize that the United Nations is more than a sterile debating society.

UNITED NATIONS, THE DEPUTY HIGH COMMISSIONER FOR REFUGEES,
August 11, 1986.

Hon. EDWARD M. KENNEDY,
U.S. Senator, Russell Office Building, U.S. Senate, Washington, DC

DEAR SENATOR KENNEDY: In his absence, Jean-Pierre Hocké has asked me to follow-up on your luncheon discussion in Washington with a note describing the general concept of the reforms he is implementing in UNHCR.

The fundamental objective of these reforms is to strengthen UNHCR's performance and cost-effectiveness in field operations which protect and assist refugees. Desirable derivative effects would be to set an example for greater UN effectiveness to the extent that UNHCR can facilitate better coordination and mutual reinforcement in the UN family, while also exemplifying ways in which other UN agencies could similarly be reformed.

Well before the General Assembly selected Jean-Pierre Hocké as High Commissioner, there was wide concern both within and outside the office that the UNHCR had lost its sense of identity and purpose. It lacked a clear command structure fixing responsibilities and accountability and it lacked the field orientation needed to move refugees out of increasingly stagnating and costly subsistence phases toward solutions to their tragic and intensely human problems.

After years of audits and studies and ultimata, certain UN members serious about reform recognized that the so-called "going for the jugular" approach was probably the only one with much chance of success. This meant the top leadership had to change. Jean-Pierre brought to UNHCR an impressive track record based on the time-tested fundamentals of leadership and teamwork. Application of these fundamentals would seem to be the obvious therapeutic response to the organization's drift and demoralization; instead, perhaps because the treatment was delayed so long, it has proved to be radical surgery. The surgery dealt with UNHCR's operating philosophy, with its structure, and with its procedures.

The old philosophy had the practical effect of establishing UNHCR as a headquarters-oriented entity, as a funding conduit from donors to NGOs, or government implementers, where everyone and therefore no one was responsible and accountable. The new philosophy emphatically asserts that the UNHCR is operational in the way that a general turn-key contractor is operational. UNHCR is responsible and accountable to the refugees and the international community for the conduct of operations which assist and protect refugees in the field.

The old structure consisted of a compartmentalized assistance and protection layer separating the High Commissioner from field operations. The new structure recognizes that nearly every refugee mission today must be an integrated protection/assistance operation, therefore the chain of command runs from the High Commissioner directly to five regional bureau chiefs, and on to representatives in the field. Responsibility and accountability rest in this chain of command for everything that goes right or wrong within the discharge of UNHCR's protection and problem-solving mandate. One could say that the primacy of refugee protection is decreed under the new integrated structure—not left to chance as could be the case in the old compartmentalized structure. The new Division of Refugee Law and Doctrine articulates the interrelationship of law and action and supports the regional bureaus in discharging their combined protection/assistance responsibilities.

The operational support part of the structure consists of budget, finance, personnel program management, technical services, emergency back-up, and social service elements, which report directly to the Deputy High Commissioner. Support services exist to help the Regional Bureau Chiefs do their job in the field.

UNHCR's new procedures are the sinews which tie leadership and teamwork together. The operational chain of command and the support elements need to be constantly communicating and coordinating with each other. This horizontal relationship is facilitated through integrated task forces dealing with our field emergencies, and through working groups dealing with on-going issues. An international management consulting firm is helping us introduce and fine-tune the new procedures, with the active participation of our own in-house working groups.

As is to be expected, there has been considerable internal trauma associated with such sharp changes in direction. Now I see us entering a consolidation phase where we can begin to implement those more routine but fundamental improvements needed to avoid recurring mistakes of the past and to position ourselves better for our longer term responsibilites. Some of these measures have already been implemented while others are in process. They include: (1) Developing mission statements and Representatives' responsibilities for each country where we operate; (2) Producing individual job descriptions and work objectives and mandating objective personnel evaluations against these standards—to use as a personnel management tool, and as a guide for rewards and sanctions for individuals performance; (3) Insuring that any external recruitment gives us the skills our current mission requires; (4) Taking into account that many of the current staff were recruited for a different UNHCR, with a different mission, and that large scale recruitment or replacements is impractical—we must enter a rigorous training period at every level; (5) We are already benefitting from objective, unsparing internal evaluations and "lessons-learned" from our field operations; (6) and we are currently assessing where we can eliminate lower priority posts so as to shift personnel to new posts which would be in the mainstream of our mission.

Jean-Pierre looks forward to keeping in touch with you on our progress, and values very much your strong support for refugees and UNHCR. We would also welcome your ideas as to ways we might help in the overall objective for what could be a ripple effect of reform within individual UN agencies, and the achievement of enhanced effectiveness when these agencies need to work together as a team.

From the High Commissioner and myself, warmest personal regards,

Sincerely,

ARTHUR E. DEWEY.●

THE GREAT PEACE MARCH

Mr. METZENBAUM. Mr. President, a few days ago, the Great Peace March, working its way from California to Washington, DC, began the portion of its trek that takes it through my home State of Ohio.

The 600 marchers who make up the body of the march have already traveled more than 2,700 miles, through 10 States. They have another 500 miles to travel before they will complete their arduous, sometimes seemingly impossible, sometimes controversial journey.

I joined the Great Peace March in my hometown of Cleveland on September 13. I was impressed by the spirit, by the persistance, by the depth of feeling the marchers possessed. I am a supporter of a mutual and verifiable freeze on nuclear weapons development and testing, and so perhaps it is natural that I became interested and involved in this remarkable effort by so many people.

But I have also become interested in the march through the vigorous and moving example of a longtime friend and former Clevelander, Irving Zeiger. Irving Zeiger has transplanted himself to Los Angeles where he is a successful businessman, and a devoted husband, father, and grandfather.

He joined the march and wrote a very moving piece about it which was published in the Cleveland Plain Dealer.

Because Irv Zeiger's personal statement about the Great Peace March is so moving, I ask that it be printed in the RECORD.

The article follows:

[From the Cleveland Plain Dealer, Aug. 16, 1986]

THE PEACE MARCH IS STILL ON THE ROAD

(By Irving Zeiger)

When I informed a few of my friends I was planning to spend a week on the Great Peace March for Global Nuclear Disarmament, I was met with understandable incredulity. When they learned I was serious, the immediate question was, "Will it do any good?" Besides, "Hasn't the march collapsed?"

My daughter, Leni Wildflower, and my grandson, Jesse Potter, and I flew to North Platte, Neb., and joined up. It was an unforgettable experience. The peace march has not collapsed. Six hundred dedicated, determined and patriotic Americans are alive and well, suntanned and fit, and have now walked more than halfway across the United States.

Kearney, Neb., is 1,733 miles from the Pacific. The peace march paraded through Kearney, complete with police escort. A peace city key was presented to the mayor. We planted a tree. The peace march has planted trees in more than 50 cities through which it has passed. The mayor welcomed us and proclaimed that the City Council had declared Kearney a nuclear free zone, the first city west of the Mississippi to take that action.

The sights and sounds as we walked along Nebraska Highway 30 will be with me for a long time. When that first freight train passed, with whistle blowing and engineer waving, a chill went through me, as it did with each succeeding train. I can't remember the last time I heard a train whistle; the truck drivers in their magnificent rigs slowing down, giving us room and flashing the peace sign; waving children in automobiles, and more peace signs; those wonderful Nebraskans greeting us, applauding, thanking, making us comfortable with water, food, flowers, small financial contributions, telling us they were glad we were there, anxious to do something; all this in an agricultural state suffering a huge decline in farms, population, industry and hope—while our government is consumed with Star Wars and more nuclear missiles. "Farms not arms," we chanted.

Who are the 600 marchers? They are everybody: workers, retirees, vets, students, children, homeowners, professionals, scholars, unemployed and highly employed. They have put their jobs on hold, their careers on hold, their education on hold, their family lives on hold in order to make the march. They have come together for uncommon reasons, but for the same purpose—to do something about the nuclear buildup that must be stopped.

Is the peace march reaching the American people? It has touched thousands in California, Nevada, Arizona, Utah, Colorado, Nebraska and now Iowa. It has touched them in a different way, in a people-to-people way.

Gov. Richard Lamm greeted the marchers in Colorado. Dozens of mayors have welcomed the marchers. Three Nebraska state senators visited the march. One senator, who had just run for governor, drove 150 miles from Lincoln to Shelton with his teenage daughters. All three walked with us for 15 miles. In Lincoln, Gov. Robert Kerrey greeted and endorsed the peace march. Sen Tom Harkin greeted the march in Iowa City.

As the peace march moves forward, marchers visit community organizations, churches and temples, Scout troops, local press and radio, businessmen's luncheons, Rotary Clubs, etc., bringing the message. The response from the people is quiet and powerful. They want an end to the threat of nuclear winter.

How is the march financing itself? The hard way. The march is in terrible shape financially. The early dollars are gone, small contributions trickle in. Marchers are being fed for $2 per day. Restaurants, YMCAs and churches occasionally provide food and shelter.

There is a rare miracle, as when a stranger in Denver appeared and contributed $25,000. Marchers are soliciting door-to-door. The marchers are undaunted. The march that almost died has become the march that won't quit.

Why was I there, I kept wondering. Why should I leave my comfortable home in the Hollywood Hills, leave my wife of 42 years for a week, leave a business that needs my attention, walk 10 to 15 miles a day in a blistering sun, survive on a diet of rice, grain and other unfamiliar foods, develop confidence in the portable latrines, sleep in a tent that I struggled to assemble in a country fairground, an alfalfa field, a sheep pasture, or worse—me with my 68 years and two artificial hips?

My answer is probably the same as for all the marchers. I wanted to do something. Surely the peace march is a noble moment in American history. When the march reaches Washington, D.C. on Nov. 15, as it most certainly will, America and people everywhere will acknowledge this heroic pilgrimage for the greatest of all purposes—peace on Earth. To have shared this experience with my daughter and grandson made it all the more memorable.

After six days and about 60 miles of marching, I boarded a plane at Grand Island, heading for home and my wife, my tennis and gin game, my business and my Dodgers. I thought about the question, "Will it do any good?" The question itself tells me the asker is worried. So am I. So are the people I met in Nebraska. I feel better since I met them. Will it do any good? I think so. I hope so.

It was President Eisenhower who said there may come a time when the government is going to have to get out of the way of the people. This might be the time. Ready or not, here comes the peace march.●

ARKANSAS' LIEUTENANT GOVERNOR WINSTON BRYANT

● Mr. PRYOR. Mr. President, recently I shared with my colleagues the acceptance address given by our Governor, Bill Clinton, on the occasion of his being elected head of the National Governors Association.

Today I wish to bring to the attention of my colleagues a leadership position undertaken by another Arkansas elected official.

Arkansas' Lieutenant Governor Winston Bryant was installed as chairman last month of the National Conference of Lieutenant Governors at the conference's annual meeting in Sante Fe, NM.

Winston will serve in this capacity for a 1-year period and act as official spokesman for the Nation's Lieutenant Governors. He is the first Arkansan to hold this position and only the third Southerner to serve in this national leadership post.

We in Arkansas are proud that the 49 other States have recognized the caliber of leadership we have in our State, a tribute to both our elected officials and our people.●

NATIONAL POW/MIA RECOGNITION DAY, SEPTEMBER 19, 1986

● Mr. NICKLES. Mr. President, today we pause in our deliberations to recognize, remember, and thank our Nation's POW/MIA's for their sacrifices in defense of the freedom that as Americans, we continue to enjoy. This Nation's former prisoners of war deserve our highest respect and honor—for they have endured a most painful experience, separation from country, loved ones and often, separation from their comrades-in-arms. Subjected to physical and spiritual torment by captors, they endured with valor, fortitude, and courage. Today many continue to bear the scars.

As a cosponsor to S. 1446, S. 2168, and S. 2422, all of which would improve benefits for former prisoners of war, I would like to remind the Members of this body that our POW's should not have to endure the financial and other strains of ill health by their sacrifices for us.

As I speak today, there are still 2,430 American Vietnam era service-members listed as missing-in-action, 49 of whom are Oklahomans. I believe that it is imperative that every American service-member know that when a person is lost, defending his or her country, that the United States will not rest until his or her family is cared for and an exact accounting is obtained.

In the past year, more remains of our missing soldiers have been returned to us than anytime since the end of the war in Vietnam. Although high-level talks with the Governments of Southeast Asian countries are continuing, the pace is frustrating. We have agreed with the Hanoi Government that technical talks will continue, that they will investigate and issue written reports on live sightings of Americans, that we will discuss specific crash sites and that they will permit our experts access to their information. In policy discussions with Laos they have agreed to accelerate cooperation and issue written reports on missing Americans.

America cannot rest knowing there is a chance that an American may still be held captive under the type of conditions our service-members were held in North Vietnam during the war. I believe it is imperative that each bit of information be investigated in detail and that each of the countries involved do their utmost to cooperate to bring the MIA's home.

I urge my colleagues to take several minutes today and be thankful for those of our POW/MIA's who have returned home, and to pray for the return of those still missing.●

NATIONAL POW/MIA RECOGNITION DAY

● Mr. BINGAMAN. Mr. President, today is "National POW/MIA Recognition Day," a day when across this country Americans will come together to remember the over 2,400 American men still missing from the Vietnam war. As Americans gather today, they will share a unity of purpose on this issue, namely a desire for the fullest possible accounting of those still unaccounted for in Southeast Asia.

All Americans support the priority which President Reagan has given to this issue. He has repeatedly promised that this Government will apply every resource it has available to achieving the fullest possible accounting of these brave men who have given so much to their Nation.

As a result of the administration's efforts, which enjoy bipartisan support in the Congress today, there is movement on this issue and the glimmer of hope that it may one day be satisfactorily resolved. Over the past 2 years there has been slow progress in the administration's negotiations with both Vietnam and Laos and the result has been the return of more of the remains of our men to their families than at any time since the end of the war more than a decade ago.

But much more needs to be done and we need much more cooperation from the Laotian and Vietnamese Governments. Convincing those Governments that it is in their interest to cooperate in resolving this humanitarian issue has been a long and frustrating process. It is a process in which we must continue to persevere with undiminished determination. We must make clear to the Southeast Asian governments that we mean it when we say that we will be satisfied with nothing less than the fullest possible accounting of our missing men.

The most troubling question we face, of course, is that of the possibility of living American prisoners in Indochina. While the governments of Indochina have repeatedly said that they are holding no one, they have never provided an accounting of some Americans whom our Government is absolutely sure were once in their hands alive. The President has said that the U.S. Government operates on the assumption that there are some Americans still held captive and therefore he has increased the intelligence resources devoted to this issue and they have pursued every lead, every piece of evidence to the fullest extent. That is the only thing that we can do until we get the answers we need.

My heart today goes out especially to the families of those missing in action in Southeast Asia. Currently, 31 of these families reside in my home State of New Mexico. I want today especially, to recognize Mrs. Virgie A. Townley, region IV of New Mexico State coordinator for the National League of Families of American Prisoners and Missing in Southeast Asia, for her undaunted spirit, courage and dedication to the plight of our POW/MIA's and their families.

There are many other Virgie Townleys across the country whose perseverance and dedication are keeping the flame of hope alive. I look forward to the day when their constancy is rewarded with a full accounting of their loved ones. That is the goal in which Americans are unified. And perhaps it is a sign of America's strength and resilience that such unity of purpose has emerged from our most divisive war.●

DORIS SMITH

● Mr. PRYOR. Mr. President, next week I will lose a dedicated staff member when Doris Smith retires. Born and raised in Monticello, IL, Doris' career in Government service began with employment at age 17 with the Treasury Department in Chicago. In 1945, she moved to Washington where she worked for 4 years for Treasury here. After marrying Jimmy Smith in 1947, she took a sabbatical from full-time work in 1949 that was to last for 20 years to raise two sons and a daughter.

She returned to work full-time in 1969 when she handled mail on the gun control issue for Senator Everett Dirksen. When Senator Dirksen died, she worked for his successor, Senator Ralph T. Smith. She then worked for Senators Adlai Stevenson III, Robert Taft, and Birch Bayh. It was my good fortune to hire Doris when I came to the Senate in 1979.

While a congressional mail operation may not be considered one of the most glamorous positions on the Hill, I can tell you that I rate an efficient mail room operation as essential to effective responsiveness to the people of my State. We've been so lucky to have someone like Doris who relishes that role.

Doris plans to take a well-deserved cruise and then plans to visit relatives back home in Illinois and in Maryland where she has resided since her move to the Washington area.

All of us will miss Doris greatly, but we know her retirement was well-earned by her lengthy service to the many people in Illinois, Ohio, Indiana, and Arkansas throughout her career.●

CATARACT SURGERY FEES

● Mr. BROYHILL. Mr. President, subsequent to my departure from the other body, the Energy and Commerce Committee, where I was ranking member, agreed to an unusually large reduction in Medicare payments for one specific procedure—the removal of cataracts and implantation of an intraocular lens. Furthermore, the administration, as part of its regulatory scheme to reduce payments for certain procedures in the Medicare Program proceeded with a regulatory proposal to reduce fees paid to cataract surgeons.

I have heard from ophthalmologists in North Carolina, and I'm sure that many of my colleagues have heard from the surgeons in their States, of the inequites that would result if the House provision becomes law, or if the administration is permitted to implement its current proposal.

I would like to ask the chairman of the Finance Committee, Mr. PACKWOOD, whether this matter will be open for consideration during the House-Senate conference?

● Mr. PACKWOOD. I understand your concern. The Finance Committee package addresses the issue of "inherent reasonableness" for physician services by placing parameters around the Secretary's application of his authority and specifies factors which are to be considered in determining the inherent reasonableness of charges. Because the Ways and Means and the Energy and Commerce Committees each have different positions in this area, it will undoubtedly be revisited during the conference.

● Mr. BROYHILL. The formula used by the administration in developing their regulation has resulted in inequitable reductions in physicians fees across the country. For instance, according to the American Academy of Ophthalmology, the range is from 5 percent to 51 percent. Ophthalmologists in North Carolina stand to lose an average of 31 percent per case. The State of California will lose an average of 7 percent. The irony of these reductions is this. In California, Medicare is willing to pay close to $2,100 for this procedure. In my State of North Carolina, the reimbursement is $1,200 for the same procedure.

● Mr. PACKWOOD. Yes, I know. While I believe "inherent reasonableness" can be used to reduce Medicare payments for overpriced procedures, clearly, the intent of the legislation is not to exacerbate current payment disparities.

PHYSICIAN PAYMENT

● Mr. DURENBERGER. Mr. President, I have a number of concerns that I'd like to express regarding the changes to Medicare's physician payment methodology that the Health Care Financing Administration is proposing, and their relation to the physician payment provisions included in the reconciliation package before us today.

As Chairman of the Finance Health Subcommittee, and an original sponsor of the "Medicare Physician Payment Reform Act" which is included in full in our reconciliation bill, I feel strongly that Medicare's physician payment

methodology has to be revised. The current methodology is riddled with inequitable disparities in allowed charges—disparities in fees paid in different goeographic areas, disparities in fees paid for cognitive versus procedural services, disparities in fees paid to "new" doctors versus doctors whose fees are constrained by the application of the Medicare Economic Index to the fees they charged 10 years ago, and disparities in fees allowed for surgical procedures which once represented risk, innovation, and the cutting edge of technological development, and now have become less "extraordinary" measures.

One example of this last disparity is cataract surgery involving intraoccular lens implantation. HCFA has cited evidence to show that this procedure is relatively overpriced under Medicare's physician payment system—and no one disputes that evidence.

I am concerned, however, about the way in which HCFA has proposed reducing these fees.

Last year's reconciliation bill gave HCFA the authority to reduce the disparities I cited above and to set "inherently reasonable" fees.

This year's reconciliation bill gives HCFA more specific direction as to the policy goals or factors to be used in making those adjustments.

But HCFA's first proposed exercise of this authority is not consistent with my understanding of what "inherent reasonableness" revisions are meant to accomplish.

Rather than reducing geographic disparities in cataract fees, the HCFA proposal would continue these disparities.

Rather than determining a fee that is appropriate for cataract operations with intraoccular lens implants, based on the time, risk, complexity, and resources involved, the HCFA proposal abrogates that responsibility and simply ties the fee for operations with IOL insertions to the fee for operations without IOL's. But operations without IOL insertions are rarely done anymore, and the fees for screens for those operations are at least as distorted as the fees for IOL insertions, if not more so. Linking the two fees together can result in forcing opthamologists in two different States who charge the same fees for IOL implants to be subjected to very different fee reductions if the fees they charge for operations without implants differ. This result is certainly not an "inherently reasonable" fee that appropriately reimburses cataract procedures across the country.

Clearly, tieing a fee for one operation to an equally distorted fee for another operation is not the way in which I envisioned "inherent reasonableness" being injected into Medicare's physician payment methodology.

I realize that won't be easy to make "inherently reasonable" revisions to physician payment on a gradual or incremental basis. But we'll simply have to work with HCFA to make the most fair and rational adjustments possible until the relative value scale, called for in COBRA, is completed.

There is a second reason to be particularly cautious in reducing cataract fees: many cataract operations are performed in ambulatory surgery centers, or A.S.C.'s. These A.S.C.'s are paid on a flat, prospectively set facility fee per procedure. Those facility fees have not been updated for 6 years—they are based on 1980 cost data.

This year's reconciliation package includes provisions, which I authored, which would require that those facility fees be updated. This is essential if we are to expect these convenient, low-cost facilities to be kept open and available to Medicare beneficiaries.

Any reduction in physicians' fees for cataract surgery should not jeopardize the continued existence of that important alternative site of care.

Mr. President, as the author of the ambulatory surgery provisions in the reconciliation package and as an original sponsor of the physician reimbursement provisions in the package, I would like to urge my distinguished colleague Senator PACKWOOD, Chairman of the Finance Committee, to consider these concerns as we go into conference on this bill.

● Mr. BROYHILL. The problems with this regulation and the Energy and Commerce Committee provision are apparent. I am not challenging the need for rationalization of Medicare payments for cataract surgery, only how we go about achieving that reduction.

I ask that when the Chairman takes this bill to conference that he consider an alternative developed by the American Academy of Ophthalmology. This alternative would in my opinion, rectify the major drawbacks in the administration's and Energy and Commerce Committee's plans.

First, it would base cuts on the current state-of-the-art cataract surgery, on current fee data. The HCFA regulation and Energy and Commerce provisions use an outdated procedure as the basis for reductions.

Second, it would make the distribution of the reductions more equitable, without the very large, unfair disparities caused by the other proposals.

Third, through a sliding scale approach, it would offer some protection from deep cuts to those ophthalmologists who have kept their fees lower. Over 3 years, the House proposal would save $410 million; the administration proposal would save $335 million; and the American Academy of Ophthalmology's alternative would save $215 million.

● Mr. PACKWOOD. The ophthalmologist's alternative saves less?

● Mr. BROYHILL. Yes, but do not forget, the Congress will gain more cataract-related savings from the Finance Committee's proposal to equalize payments for outpatient surgery, as well as the House provision to reduce anesthesia fees during cataract surgery. Mr. Chairman, the cumulative savings from all of these reductions is substantial for a procedure that we all agree is highly successful, safe and beneficial to our citizens.

● Mr. PACKWOOD. Thank you. I will take your comments into consideration as we proceed with the conference committee deliberations.

● Mr. BOREN. Mr. President, I rise to associate myself with comments expressed earlier by my distinguished colleague from North Carolina [Mr. BROYHILL] regarding proposed changes in Medicare reimbursement for cataract surgery.

These changes, which have been proposed by the Health Care Financing Administration, will only serve to perpetuate gross inequities in reimbursement policy. Rather than addressing true problems of "inherent unreasonableness," wide variations in reimbursement levels from State-to-State will continue.

I join with my colleague from North Carolina in urging the conference committee to take action in addressing this problem. I look forward to working with him in this effort.●

GLAMORIZED DRUG USE IN MOTION PICTURES: THE NEED FOR AN ADDITIONAL RATING

Mr. PRESSLER. Mr. President, on Monday I intend to introduce a resolution, which I will also file as an amendment, to help combat the drug epidemic facing our Nation. This sense-of-the-Senate resolution will attempt to resolve some of the mixed signals our young people are receiving regarding drug use.

Our educators, school administrators and parents have led the fight against drug use in our schools and communities for some time now. Students are repeatedly taught of the dangers of illegal drugs and how to say no to drugs. However, when students are out of the classroom during the weekends, they may see drug use depicted in a different light—at the movies.

Many of the popular films showing in our neighborhood movie theaters depict drug use in a benign or glamorous light. The heroes or the most popular characters many times use drugs, and their drug use in turn makes them more popular. Mr. President, this is sending a very mixed signal to the youth of our Nation.

Therefore, the resolution I will introduce on Monday calls on the

Motion Picture Association to adopt a "D" subcategory in their voluntary rating system for movies which clearly depict drug use in a benign or favorable light, so that parents can make an informed choice about the movies their children attend.

Currently, this resolution is endorsed by the National Association of Secondary School Principals (NASSP) and the national PTA. I expect many more organizations to join us in supporting this initiative after it is introduced.

Mr. President, the Motion Picture Association of America has already demonstrated its ability and willingness to respond to the needs of parents by implementing its overwhelmingly popular voluntary rating system over 18 years ago. Let us send them a unified and clear message that we need the cooperation and support of their influential industry to fight this war on drugs.●

NAUM AND INNA MEIMAN: CRUEL AND UNUSUAL PUNISHMENT

● Mr. SIMON. Mr. President, imagine living without a telephone. Imagine the time that it would take to accomplish even the simplest task. When a person is ill, the telephone is no longer an item of convenience—it is an essential method of communication in emergencies.

Two close friends, Naum and Inna Meiman, have been trying to emigrate from Moscow to Israel for over a decade. Since their initial application, the Soviet Government has harassed them continuously. Naum, a physicist, was fired and prohibited from working in his field. Both Naum and Inna have been followed. Their home has been ransacked.

The Soviets most recently disconnected the Meimans' telephone. Inna is deathly ill with cancer. Without a telephone, Inna has no means of acquiring immediate assistance in an emergency.

While the Soviets use resources to intimidate and frighten the Meimans, Inna's cancer is, unfortunately, progressing. The Soviets have refused to give Inna any more treatment. Experimental treatment, however, is available in the West.

The cost to the Soviets is minimal. The value of goodwill gestures is immeasurabale.

I strongly encourage the Soviets to let the Meimans emigrate to Israel.●

A NATIONAL CEMETERY IN ARIZONA

● Mr. DECONCINI. Mr. President, I am enormously pleased and grateful to my colleagues in the U.S. Senate on their action today to authorize the establishment of a national cemetery in Arizona as well as in nine other States. This is the culmination of a dream which the veterans of Arizona have had for more than 50 years.

I, and other members of the Arizona congressional delegation, have submitted legislation on this matter time and time again. Each session of Congress has passed with hope deferred for yet another year. The patience and determination of the veterans of Arizona have been tested to the limit, but it has not been found wanting. They have persevered as they did in combat on uncounted battlefields, and they have overcome.

We have erected noble and richly deserved memorial to the veterans of almost every conflict in which this country has engaged—from Valley Forge to Vietnam, from Chancellorsville to the Chosen Reservoir, from the Argonne to Anzio. Far too many of the youth of this land have lost their lives in those far-away places and now rest in the hallowed grounds in our national cemeteries.

It is only appropriate that memorials be built and dedicated to veterans who serve their Nation in time of conflict. These memorials very graphically demonstrate the gratitude of our Nation for the sacrifice of our brave military men and women. They are also lessons of history which will, hopefully, bring lasting peace to world weary of war.

We in the Senate now move to ensure that present day veterans will continue to receive a benefit long promised by a grateful Nation—burial in a national cemetery if so desired. In the eyes of the families and friends of veterans, an honored final resting place among their comrades-in-arms who shared in their awful travail of combat is the most lasting and most significant memorials of all. Veterans are very special people who deserve very special treatment throughout their lives and, ultimately, in death. Veterans deserve to be buried in close proximity to their families and this legislation makes that possible.

They have given of themselves—their youthful years, growing old before their time in combat or in prisoner-of-war camps; their health, impaired by disease and injury on battlefields in many foreign lands; their family life, with children born and growing up without them.

Although this moment has been so eagerly awaited, there is a bittersweet irony to passage at this point in time. The Arizona State Veteran's Cemetery has become the final resting place of many of my dear veteran friends. Those friends, along with other veterans, despite their failing health, never lost hope, refused to accept defeat in this matter. I feel sure there is comfort to their families that their dream is finally being realized.

I thank Chairman MURKOWSKI, Senator CRANSTON and other members of the Senate Committee on Veterans' Affairs for their help and support in getting this legislation passed.

THE HUMAN SERVICES AUTHORIZATION CONFERENCE REPORT

● Mr. DODD. Mr. President, last night the Senate adopted the human services authorization of 1986 conference report. I am delighted to have been a chief sponsor of this important measure.

This legislation includes under a separate title the "Child Development Associate Scholarship Assistance Act," a bill I introduced last year to provide scholarships for child care workers seeking on the job training along with a professional credential. I wish to thank Senator STAFFORD, author of the original package, and Senator HAWKINS, Chair of the Subcommittee on Children, Family, Drugs, and Alcoholism on which I serve as ranking minority, for agreeing to include my bill, S. 804, as a part of the conference report we adopted yesterday.

I am also pleased to join Senators HAWKINS, HATCH, STAFFORD, PELL, and RIEGLE in sponsoring the reauthorization of the Headstart, Dependent Care Block Grant, Follow Through, Community Service Block Grant, the Community Food and Nutrition, and Low Income Energy Programs contained in this omnibus measure. These six programs, which will be reauthorized for 4 years, are critical to the health, education, and welfare of millions of children and families at risk in this country.

THE CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

As founder and cochairman of the Senate children's caucus, I can attest to the skyrocketing demand for quality, affordable child care in this country. At the first children's caucus policy forum in June 1983, we learned that as many as 15 million children between the ages of 5 and 12 lack any adult supervision after school because their parents must work. That estimate does not include the millions of preschool age children with parents in the labor force who need child care services.

One sure way to improve the quality of child care in this country is to improve the skills and performance of child care workers. The child development associate scholarship title of this omnibus reauthorization will provide eligible child care staff with training scholarships to perfect their skills through the Child Development Associate [CDA] Assessment and Credentialing Program.

Mr. President, the Child Development Associate National Credentialing

Program provides performance/based training for child care providers. The training focuses on 13 core areas, essential building blocks of quality child care, from providing a safe environment to encouraging parental involvement.

The CDA credential is the only national credential formally certifying professional child care skills. We are very much indebted to a constituent of mine, Prof. Ed Zigler of Yale University, who established the CDA Credentialing Program over a decade ago during his tenure as director of the Office of Child Development in the then Department of Health, Education, and Welfare.

The overwhelming majority of child care workers are women who work exceedingly long hours for very little pay. Close to 90 percent of all family day care providers, for example, earn less than the minimum wage. Yet such work provides an income for many women who would otherwise be dependent on the Aid for Dependent Children [AFDC] Program. Just as importantly, child care workers make it possible for other mothers to enter the work force and gain self sufficiency.

The child development associate scholarship title will provide low-income child care workers with scholarships to enable them to obtain CDA training and credentialing. The cost of my proposal is modest, totaling only $1.5 million on a yearly basis. Yet the benefits will be enormous for the workers who receive training and formal recognition of their skills as well as for the children in their care.

At present, some 3,000 child care workers a year receive CDA certificates. With the scholarship program now included in this reauthorization, an additional 1,000 to 2,000 low-income child care providers could be trained and certified.

THE HEADSTART REAUTHORIZATION

As the New York Times noted in an editorial: "* * * American society does know one sure way to lead poor children out of a life of poverty * * *—project Headstart." Given the crisis of children in poverty in this country, Headstart is good news indeed. For the biggest risk to the health, safety, and future well-being of close to 14 million American children is poverty. One out of every four children under the age of 6 now lives in a family whose income falls below the poverty line. For minority preschoolers, that figure is even higher: Every other black child and close to every other Hispanic child will celebrate their sixth birthdays in poverty.

But with the Headstart program, we have a well-proven way to help children escape from poverty. The High/Scope Educational Research Foundation conducted a landmark study of high quality preschool programs like Headstart. This study, entitled "changed lives," followed a group of poor children from age 3 to adulthood. Half had attended a high quality preschool. The other half had not. Those with the preschool experience were twice as likely to graduate from high school, go on to college or vocational training, and to get jobs. Those without the preschool experience were more likely to drop out of school, to become teen parents, and to end up unemployed and dependent upon the welfare system. As we celebrate the 20th anniversary of Headstart, we must keep in mind that at present, we only reach 18 percent of all children who are eligible for such services.

THE DEPENDENT CARE BLOCK GRANT REAUTHORIZATION

The dependent care block grant was authorized 2 years ago in response to new facts about the risks facing latchkey children in this country. This block grant was designed to provide start-up costs for afterschool care programs and child care resource and referral programs. The need for such programs is great. Thus, I am pleased to join in the reauthorization of this program. It is my hope that we will be able to send a stronger signal to the administration this time, such that funds appropriated for the dependent care block grant are released to States immediately.

THE COMMUNITY SERVICES BLOCK GRANT REAUTHORIZATION

The Community Services Block Grant Program continues to serve children and families in most need. Millions of younger and older Americans receive food assistance under this program, combating hunger and malnutrition. Millions more receive housing, transportation, and employment assistance. Last but never least, countless other Americans are able to get educational and job training services through the community services block grant helping them to become self-supporting.

In addition to permitting community action agencies to deliver the above-described services to hard-pressed communities across the country, this legislative package also reauthorizes the Community Food and Nutrition Program. This program has been exemplary in my State of Connecticut in encouraging low-income communities to start child nutrition projects. I am delighted that such innovative attempts to meet the nutritional needs of children and adults in my State will continue.

LOW-INCOME ENERGY ASSISTANCE REAUTHORIZATION

Finally, the conference report the Senate adopted yesterday reauthorizes the Low-Income Energy Assistance Program. This program is very important to many residents in my State of Connecticut, where freezing winter temperatures and high heating costs all too often force choices between paying for fuel or paying for food. The Low-Income Energy Assistance Program wisely prevents younger and older Americans from making such draconian choices.

In closing, Mr. President, we know that millions of Americans have joined the ranks of the poor since 1979. The biggest number of these Americans have been children. More alarming still is the fact that many such children come from two-parent homes where one parent is working full-time, year-round. Since 1978, two out of every three children added to the poverty rolls come from homes with working parents. The conference report adopted yesterday will provide many of these children and their families with critical supports, from Head Start, to Child Care, to Community Services, to Energy Assistance. I urge the President to sign this legislation as an important step toward giving such children and their families a head start.●

TIBET: THE TRAVAIL CONTINUES

● Mr. PELL. Mr. President, on the roof of the world, the travail of the 4 million Tibetan people continues. Recent years have brought great changes. Some of these changes have been very much for the better and the Chinese occupiers deserve some credit for seeking to reverse the worst abuses of the cultural revolution. On the other hand the goal of a Tibet for the Tibetans remains as elusive as at any time in the last three decades.

The Chinese Government has publicly recognized that it has committed "mistakes"—a polite euphemism to be sure—in Tibet. These mistakes include the deaths of some 10 percent of the Tibetan people, deaths caused directly by killings or indirectly through permitted starvation and unchecked disease. The admitted mistakes also include the effort to eradicate Tibet's fabulously rich religious and cultural heritage. In the 1960's and 1970's the Chinese occupiers prohibited the practice of Lamaist Buddhism, imprisoned or rusticated the monks, and tore down thousands of monasteries. Along with the monasteries, many of which were magnificent architectural achievements, priceless works of Tibetan art and scholarship were also pointlessly destroyed.

Religion is now back in Tibet. Recently two members of the minority staff of the Foreign Relations Committee visited that country and reported many examples of Buddhism's revival. Monks, in the traditional red garb, can be seen everywhere. In Lhasa the main monasteries are being restored and yak butter lamps again burn before the sacred images. Once

again pilgrims prostrate themselves as they circle the sacred Jokhang monastery in the center of Lhasa. This religious revival is the surest sign of the indomitable will of the Tibetan people and of their determination to preserve their culture and way of life.

Beneath the surface, however, all is not well in Tibet. Racial discrimination and the influx of Chinese colonizers are costing indigenous Tibetans their livelihood. While the recent opening of Tibet to foreigners has created employment in the construction and tourism sectors, most of the employment so generated goes to Chinese immigrants and not to Tibetans. Even the much vaunted policy of religious freedom has its limits.

Most alarming, however, is the Chinese colonization of Tibet. Within the boundaries of historic Tibet, Tibetans are losing ground. In Amdo, northeastern Tibet, 2,500,000 Chinese now outnumber 700,000 Tibetans. In Kham, eastern Tibet, there are now estimated to be some 2 million Chinese settlers. The Chinese have occupied the more fertile farmland pushing the Tibetans into the hills and mountains.

Even in the Tibetan autonomous region—the truncated part of historic Tibet set aside for the Tibetans—the Chinese are fast becoming the dominant population group in the major towns. Strikingly, the committee staff found that the Chinese officials do not even speak Tibetan. The conquered people then can only communicate with officials in the tongue of the conqueror.

Tibet has offered much to the world in terms of art, scholarship and above all spirituality. Its gentle and brave people have suffered horribly in the last 35 years. As some aspects of their situation improve, the world community must raise its voice to be sure this rich and wonderful society is not swamped by the numbers and might of the occupier.●

ABORTION AND INFORMED CONSENT: DELAWARE

● Mr. HUMPHREY. Mr. President, yesterday in remarks about a letter from Connecticut I discussed how abortion is not the "quick-fix" that its advocates claim. Adoption and parenting are obviously permanent outcomes to unplanned pregnancy because the baby is given life. Simply because the baby is killed in abortion does not mean he or she is gone. Abortion, too, is a permanent solution with grave consequences for the mother and worse for the child—even if the mother is a child. Since all outcomes are permanent, it seems eminently sensible that the one which preserves the life of the child and promotes the health of the mother be encouraged.

This is certainly the view of Edith in Delaware. There is nothing I could add to the poignancy of her letter. I hope my colleagues who advocate the so-called rape/incest exclusion will read her letter carefully. Very young women in these circumstances desire and need to know all the facts before they make a decision as irreversible as abortion. It is quite obvious that they do not currently receive this information, and such outrageous neglect must be rectified.

The letter follows:

WILMINGTON, DE,
June 2, 1986.

DEAR SENATOR HUMPHREY: How it saddens me that there is a need to write this letter. All surgical procedures require informed consent and the giving of alternatives when they exist. Is abortion and its two victims any different? More and more women are coming forth with more "if onlys"—"if only someone had told me the truth," "if only I was given an alternative," "if only the procedure had been explained and I knew about the possible complications," "if only I knew my baby would feel pain," if only * * * if only. * * * The list could go on for pages.

I had an abortion several years ago. The abortion was supposedly for all the "right reasons," it was "in my best interest." Besides the death of my baby, who I saw, the abortion complications began immediately. I have had years of physical pain, infections and operations, the last being April 18, 1986. There have also been psychological problems—nightmares, depression and suicidal tendencies. These are not all of the psychological complications I've had, there were and are a lot more.

At the time of my abortion, I was a 12-year-old incest victim. The abortion had a greater impact on my life than the incest. With the incest I lost my virginity; with the abortion my baby lost her life, and I've suffered both physically and psychologically. Abortion is no respecter of motives.

Every woman has a right to know the truth about abortion and its alternative. When a woman decides to have an abortion, it is a decision made in the "urgency of the moment," not rationally. There is no thought given to short- or long-term consequences. To them it is the end of their "problems." Informed consent would allow the woman to make an intelligent, responsible decision based on fact.

I have been where these women have been and I've been where they have to go!

In the service of Christ of All Life,

EDITH YOUNG.●

RESOLUTION PERTAINING TO NICHOLAS DANILOFF—SENATE RESOLUTION 491

Mr. HUMPHREY. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

Mr. President, just for the benefit of those who might be listening—

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HUMPHREY. Yes.

Mr. BYRD. Mr. President, I will not object to the introduction of the resolution. I can do that. I will simply object to the request that the Senate move to its immediate consideration.

The PRESIDING OFFICER. The resolution will go over under the rule.

Mr. HUMPHREY. That will not be necessary, Mr. President. I withdraw the resolution.

The PRESIDING OFFICER. The Senator has a right to withdraw his resolution.

Mr. HUMPHREY. As I was saying, Mr. President, because little was said before objection was raised, no one can understand what just transacted except perhaps a handful. I ask that the resolution be returned to my desk.

I think virtually every Senator in the Chamber is concerned about the fate of Nicholas Daniloff. We will all leave here and go to the comfort of our homes. Mr. Daniloff cannot do that. It seems to me highly unfortunate. I know Senator BYRD is objecting on behalf of one of his colleagues on that side of the aisle. This is certainly not directed toward him. I consider it highly unfortunate that objection has been raised against the immediate consideration of this resolution.

In my view, the response of the United States to the outrageous taking of Mr. Daniloff as hostage has been very weak, indeed. It has hardly been 7 or 8 days since this body unanimously passed a resolution condemning that act. Mr. Daniloff is still being held captive, still being held hostage. The administration, in the view of this Senator, and I believe in the view of a majority of Senators, has acted far too weakly in this matter. It has continued to conduct business as usual. Indeed, I believe the underlying reason the administration continues to conduct business as usual with the Soviets is the wish to preserve the extravagancy of a summit.

So we might go beyond saying it is business as usual and say that it is show business as usual.

I am still waiting for the resolution.

The PRESIDING OFFICER. The resolution will be returned.

□ 0050

Mr. HUMPHREY. Mr. President, I just want to touch upon the highlights.

The PRESIDING OFFICER. If the Senator will withhold, under the precedents of the Senate, the resolution cannot be withdrawn. The resolution will go over under the rule.

Mr. HUMPHREY. Very well, Mr. President.

Before concluding, I want to touch upon the highlights of the resolution.

The resolution in the "Resolved" section does the following: It declares that the Soviet action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognize standards of human rights and civil conduct and raised profound doubts about Soviet willingness to live up to its responsibilities and commitments under any international

or bilateral agreement, including arms control agreements.

The resolution urges the President to continue his demands for the immediate and unconditional release of Mr. Daniloff; it calls upon the President to condition his agreement to a summit meeting with Secretary General Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union; urges the President to limit further discussions on arms control and refrain from concluding any agreements, any arms control agreements, with the Soviet Union; and further declares that the Senate of the United States shall not ratify any arms control agreement negotiated with the Soviets until that country has unconditionally released Mr. Daniloff. Those are the highlights, Mr. President.

Again, I register my regret that Senators, or at least a Senator on the Democratic side of the aisle, has blocked immediate consideration of this resolution at a time when it might well be instrumental in giving his administration some backbone, such that our national honor and principles might be preserved, along with the safety of Mr. Daniloff.

I thank the Chair. I thank my colleagues for their forebearance in this matter.

Mr. BYRD. Mr. President, the distinguished Senator, I am sure, is disappointed that the objection was lodged to his request for immediate consideration of the resolution, but it was clearly stated 30 minutes to an hour ago, I suppose, by a Senator on this side that there would be an objection to immediate consideration of this resolution tonight. The Department of State has indicated that it would be very much opposed to the adoption of this resolution at this particular time——

Mr. HUMPHREY. Will the Senator yield?

Mr. BYRD. And has suggested that the adoption of this resolution might very well be counterproductive to the intentions and desires of the distingushed author of the amendment.

Yes, I shall be glad to yield.

Mr. HUMPHREY. Mr. President, I might just observe that at least from my point of view, the Department of State's objection to this resolution is a commendation and recommendation to this body to pass it. We can safely assume that the State Department has been guiding our policy with regard to Mr. Daniloff or our reaction to Mr. Daniloff's being taken hostage and I think they have done a perfectly miserable job. I take their opposition to be a recommendation for passage of this resolution.

I thank the Senator.

Mr. BYRD. I thank the distinguished Senator.

Mr. President, I almost wholeheartedly agree with the Senator's observations; nevertheless, I thought I should state for the record that I have been informed that the Department of State was very much opposed to this. That may mean something to some Senators in this Chamber. I thought it was appropriate to say it for the Record.

May I say to the distinguished Senator from New Hampshire, I would offer a suggestion to him. If he wishes to redraw the resolution and try again at some point early next week and include in the resolution a provision to prohibit the further selling of wheat, of grain, to the Soviet Union at prices that are subsidized by the American taxpayer, I might join him in cosponsorship of that type of resolution. But as I have stated, I can understand the Senator's disappointment and perhaps after a good weekend of rest and reflection, a different resolution might be drawn which might receive immediate consideration.

Mr. WALLOP. Mr. President, let me suggest that I regret very much, too, that we were not able to consider this resolution tonight. Let me suggest that the distinguished chairman of the Committee on Foreign Relations was not the one to object. We have heard a lot of heroic Red-bashing from that side of the aisle and I suggest that it is a cheap piece of heroism. When asked to put it into performance, it has not come about.

I regret that, because, I say to my friend from West Virginia, the distinguished minority leader, I do not believe that the reason for the objection is the objection of the State Department. I believe the reason for the objection is that it calls on the Senate and the President and the Government of the United States to react with some spine to the situation that has been created by the hostage-taking of the Soviet Union and by the accusation by the Secretary General of the President of the United States that he is a liar. We could have done something about that tonight. Yes, we could wait until it is perfect, and indeed, we could make it perfect by dribbling and drabbling along for a little bit longer over the course of time.

But we could have done something with 95 Senators here. We could have done something that meant something instead of sitting here talking about how heroically we detest the Sovet Union for their behavior in the Daniloff case. We could have put that into action. But no, the minority side of the aisle, which is the side of the aisle that directs the President as to how he must and must not negotiate arms control treaties of the United States, which ties his hands with regard to Asat testing, which seeks to limit the SDI, which seeks to limit the amount of strategic response this country is capable of raising against the Soviet threat, which seeks in every single way to tie the hands of the President, has invited by their actions this adventure on the part of the Secretary General.

I think it is a shame that there is one American that is a hostage who has been the target of all this. We could have done something tonight, Mr. President, but we chose not to. We chose not to by an objection raised from the minority side of the aisle.

I think that that level of Red-bashing that we have heard over the last few weeks is just that. It is accompanied by an unwillingness to take action that all of us could have collectively tonight. I regret to say, it was not done collectively, by the objection of one person on the minority side of the aisle we have not been able to do that. It is a pity.

Daniloff will live through the weekend but he might have taken some heart from an action by the Senate that sought to make some sense out of what is really nonsense.

Mr. BYRD. Mr. President, the distinguished Senator from Wyoming has made the statement that the objection was made, that the objection of the State Department was the reason the objection was made here. I did not say that. I did not say I was objecting because the State Department had advised that the action on this resolution at this time might be, probably would be counterproductive. I simply stated that as a fact for the record, the fact being that I have been informed that the State Department feels that action on this resolution tonight would be very counterproductive. I did not say that was the reason why I objected. I did not say that.

Mr. WALLOP. If I misspoke on behalf of the minority leader, certainly, I am sorry. My point was that that was not a point that was raised by the distinguished chairman of the Foreign Relations Committee. I would have thought that had that been of major concern to him, he might have raised it himself.

Mr. BYRD. The chairman of the Foreign Relations Committee, Mr. LUGAR, is not here to speak for himself.

Mr. WALLOP. Not any more, but he was here in plenty of time to know of the existence of this resolution and it was not he who raised the objection to its consideration.

Mr. BYRD. It was made clear on this side of the aisle by the distinguished ranking member of the Foreign Relations Committee that he would object.

Mr. WALLOP. That is my point.

Mr. BYRD. Yes, Mr. President, and I am making the point that when the objection was just made, I merely said that the State Department was opposed to this. I did not say that was the reason I was objecting.

Mr. WALLOP. I did not mean to imply that it was the minority leader who was in fact the objecter. He was objecting on behalf of the ranking member of the Foreign Relations Committee, as I understand it.

Mr. BYRD. But I did not indicate the Senator on whose behalf I was objecting.

□ 0100

Mr. WALLOP. True enough, but I suggest to the minority leader that none of us need guess.

Mr. BYRD. Of course we do not need to guess. The distinguished Senator from Rhode Island stood on his feet and openly stated he was objecting. And if the distinguished Senator from Wyoming had wanted to remonstrate at that time or debate with the distinguished Senator or criticize the distinguished Senator, the distinguished Senator from Wyoming had his opportunity then. At this point the Senator from Rhode Island has left the floor.

Mr. WALLOP. I would say to the minority leader that he only indicated that he would. That is not the time to debate it. The time to debate it is when he does it.

Mr. BYRD. The time to criticize the Senator is whenever he does, that is right. When he indicated that he would object, the distinguished majority leader did not press the matter. And so I agree with the distinguished Senator from Wyoming; the time to criticize the Senator from Rhode Island, if there is any criticism or any debate to be had, is whenever he makes this objection. He simply stated he would if the request was made. The request was not made.

MEASURE HELD AT DESK

Mr. SIMPSON. Mr. President, after conferring with the Democratic leader on various matters, I ask unanimous consent that S. 2840, the Stafford superfund bill, be held at the desk until the close of business Monday, September 22, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPERFUND

Mr. STAFFORD. Mr. President, I ask unanimous consent that at such time as S. 2840, as passed by the Senate is also passed by the House of Representatives, the Committee on Environment and Public Works be authorized to print as a committee document the statement of managers which has been agreed upon by the nontax conferees on H.R. 2005. I further ask unanimous consent that the document be considered, for purposes of construing, interpreting, clarifying, or otherwise explaining the legislative language of S. 2840 or the intent underlying it, the relevant legislative history.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE HELD AT DESK

Mr. SIMPSON. Mr. President, I ask unanimous consent that once the Senate receives from the House H.R. 4873, to authorize certain transfers affecting the Pueblo at Santa Ana in New Mexico, and for other purposes, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURES PLACED ON CALENDAR

Mr. SIMPSON. I ask unanimous consent that House Joint Resolution 732, making supplemental appropriations to the Government of the Philippines, be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of H.R. 4244, dealing with official papers of Joseph W. Martin, and that it be placed upon the calendar.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

VETERANS CEMETERY AT CLEVELAND, OH

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of calendar item 908, H.R. 4345 dealing with a national cemetery near Cleveland, OH.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4345) to authorize the Administrator of Veterans Affairs to establish a national cemetery in or near Cleveland, Ohio.

The Senate proceeded to consider the bill which had been reported from the Committee on Veterans' Affairs, with an amendment to strike out all after the enacting clause, and insert the following:

SPECIAL 1. AUTHORITY TO ESTABLISH NATIONAL CEMETERIES.

(a) AUTHORITY.—The authority of the Administrator of Veterans' Affairs under chapter 24 of title 38, United States Code, to develop and acquire cemeteries as part of the National Cemetery System includes, but is not limited to, the authority to establish additional national cemeteries to serve the needs of veterans and their families in—

(1) San Francisco, California;
(2) Chicago, Illinois;
(3) Cleveland, Ohio;
(4) Pittsburgh, Pennsylvania;
(5) Dallas/Fort Worth, Texas;
(6) Miami, Florida;
(7) Seattle, Washington;
(8) Atlanta, Georgia;
(9) Phoenix/Tucson; Arizona;
(10) Birmingham, Alabama; and
(11) and other State in which a national cemetery is not available for the burial of veterans.

(b) LAND ACQUISITION.—The Administrator may acquire land necessary for a cemetary authorized by subsection (a) of this section by donation, purchase, condemnation, exchange of lands in the United States public domain, or otherwise.

Mr. SIMPSON. Mr. President, I move the adoption of the committee substitute.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs, I am pleased to rise in support of the pending measure, H.R. 4345, as reported by the committee with an amendment in the nature of a substitute. As amended, this measure would restate the administrator of Veterans' Affairs' authority to establish national cemeteries in 10 areas of the country which have been identified as "most in need" of new cemeteries, as well as in any State where there is no open National cemetery.

The committee's amendment to this measure was derived from a proposal Senator DECONCINI and I made based on a 1984 draft report reassessing the regional cemetery concept in connection with expansion of the VA's National Cemetery System. This report identified 10 geographic areas "where establishment of an appropriately sized and scoped national cemetery would have the maximum impact on service to veterans on the basis of present and future demographic conditions." The report noted that these areas "are where the largest number of veterans are and will continue to be concentrated within an area that can be practically served by an open national cemetery." Listed in order, according to the size of the veteran population involved, these areas are:

Northern California, Chicago, IL, Cleveland, OH, Pittsburgh, PA, Dallas/Fort Worth, TX, Miami, FL, Seattle, WA, Atlanta, GA, Phoenix/Tucson, AZ, and Birmingham, AL.

Thus, Mr. President, the reported bill would specify that the authority of the Administrator to establish national cemeteries includes the authority to establish national cemeteries in each of these 10 areas.

Mr. President, I'm delighted to note that the VA is already taking steps to establish a new national cemetery in northern California with the development of a site in Santa Nella, CA, and,

as a result of my efforts in urging the VA Administrator to expedite that project, the VA now plans to have that new national cemetery in operation before the end of 1990—about 2 years before initially scheduled.

In addition, in recognition of the fact that there are currently 18 States without open national cemeteries—only 3 of which are represented on the list of 10—and that a number of other States have open cemeteries but are not expected to have burial space in them to meet the demand for much more than 5 years, the committee bill would similarly specify that the authority of the Administrator to establish national cemeteries includes the authority, which is not time limited, to establish cemeteries in States where there is no burial space available for veterans and their families in a national cemetery.

Mr. President, I urge the Senate to approve the pending measure.

Mr. GLENN. Mr. President, I rise to express my support for this bill which authorizes the Administrator of Veterans' Affairs to establish national cemeteries in certain locations. As my colleagues may be aware, this bill began as a House initiative to authorize the establishment of a national cemetery in or near Cleveland, OH, and it is to that particular authorization that I wish to address my remarks.

With the virtual completion of the regional national cemeteries, questions are already being raised about the system's ability to meet future needs for reasonably accessible burial space for eligible deceased veterans. Interments in national cemeteries are increasing each year, and the projected peak period will be between the years 2000 and 2015, when the number of veterans age 65 and older will increase from about 4 million to about 9 million.

The Veterans' Administration has already identified the 10 areas of the country most in need of a national cemetery, and Cleveland is at or very near the top of that list. The Cleveland area has a veteran population of over 790,000 and the establishment of a national cemetery there could provide burial for nearly 8 percent of our Nation's veterans who are presently unserved by a national cemetery. The closest regional cemetery to Cleveland is at Fort Custer, MI, a long 257 miles away; to date there are only two Ohio veterans buried in that cemetery. Ohio's only open national cemetery, in Dayton, is projected to close in the year 2001.

I recognize that the Veterans' Affairs Committee's report calls attention to pending legislation which requires reports from the VA on the future of the National Cemetery System. I have no problem with those reports, but I need no study to tell me a veterans' cemetery is needed in the Cleveland area. People should not have to drive over 250 miles to honor and bury their loved ones who have served their country.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having read the third time, the question is, Shall it Pass?

So the bill (H.R. 4345) was passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read: "An Act to authorize the Administrator of Veterans' Affairs to establish national cemeteries in certain locations."

ORDER FOR H.R. 4754 TO BE HELD AT THE DESK

Mr. SIMPSON. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 4754, dealing with the appointment of Commissioner of Food and Drugs, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR MONDAY, SEPTEMBER 22, 1986

ORDER FOR RECESS

Mr. SIMPSON. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 12 noon on Monday, September 22, 1986.

ORDER FOR RECOGNITION OF CERTAIN SENATORS

Mr. President, I ask unanimous consent that following the recognition of the two leaders on Monday under the standing order, the following Senators be recognized for special orders, for not to exceed 5 minutes each: Senators COCHRAN, PROXMIRE, PRESSLER, and CHILES.

ORDER FOR ROUTINE MORNING BUSINESS

Mr. President, I ask unanimous consent that following the special orders just identified, there be a period for the transaction of routine morning business, not to extend beyond 1 p.m., with Senators permitted to speak therein for not more than 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SIMPSON. Mr. President, at 1 p.m. on Monday, it will be the intention of the majority leader to turn to the consideration of a motion to proceed to the product liability measure.

Rollcall votes will not occur during Monday's session.

I believe the majority leader has indicated that next week there will be some vigorous nighttime activity, in order that we might conclude our efforts on October 3, toward ajournment, and let our colleagues be aware of that schedule.

Does the Democratic leader have any further business?

Mr. BYRD. Mr. President, I thank the distinguished acting Republican leader. I have no further business.

I would like at this point, however, to wish him a restful and enjoyable weekend with his nice family. I look forward to seeing him on Monday next, the good Lord willing.

Mr. SIMPSON. I thank the Democratic leader. It is not quite morning in the Rockies yet, but I do reciprocate the Senator's comments and his kindness.

RECESS UNTIL MONDAY SEPTEMBER 22, 1986

Mr. SIMPSON. Mr. President, there being no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess.

The motion was agreed to, and at 1:06 a.m., Saturday, September 20, the Senate recessed until Monday, September 22, 1986, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate September 19, 1986:

DEPARTMENT OF STATE

Everett Ellis Briggs, of New Hampshire, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Honduras.

Theodore E. Gildred, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Argentina.

Donald K. Petterson, of California, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Republic of Tanzania.

Walter Edward Stadtler, of New York, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Republic of Benin.

UNITED NATIONS

The following-named persons to be representatives and alternate representatives of the United States of America to the 41st session of the General Assembly of the United Nations:

Representatives:

Vernon A. Walters, of Florida.

Herbert Stuart Okun, of the District of Columbia.

Thomas F. Eagleton, U.S. Senator from the State of Missouri.

Larry Pressler, U.S. Senator from the State of South Dakota.

Helen Marie Taylor, of Virginia.

Alternate representatives:

Patricia Mary Byrne, of Ohio.

Hugh Montgomery, of Virginia.

Joseph Verner Reed, of New York.

John Kerry, U.S. Senator from the State of Massachusetts.

Paul S. Trible, Jr., U.S. Senator from the State of Virginia.

DEPARTMENT OF STATE

Paul A. Russo, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Barbados, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotenitary of the United States of America to the Commonwealth of Dominica, Ambassador Extraordinary and Plenipotentiary of the United States of America to Saint Lucia, Ambassador Extraordinary and Plenipotentiary of the United States of America to Saint Vincent and the Grenadines, Ambassador Extraordinary and Plenipotentiary of the United States of America to Antigua and Barbuda, and Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Christopher and Nevis.

UNITED NATIONS

Noel Gross, of New Jersey, to be an alternate representative of the United States of America to the 41st session of the General Assembly of the United Nations.

EXTENSIONS OF REMARKS

THE LAST 2 YEARS OF SALVADOR ALLENDE

HON. PHILIP M. CRANE
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. CRANE. Mr. Speaker, in 1980, 67 percent of the Chilean people voted in favor of a new Constitution. This Constitution provides that democracy will be restored and elections will be held in 1989. Thus by 1989, Chile, too, will join the growing number of Latin American countries that have successfully made a peaceful transition back to democracy. But this doesn't seem to be good enough for Chile's critics. Many of them demand democracy immediately, and in their haste to force Chile to acquiesce, they threaten sanctions and embargoes to speed up the process. This is particularly alarming in light of the recent terrorist developments in Chile.

The assassination attempt on General Pinochet, coupled with the huge weapons caches uncovered thus far, are clear indications of what the Communist opposition has in mind for the future of Chile. The outlawed Communist Party, still considered to be the second largest in the country, maintains close ties with the Soviet leadership and has publicly endorsed the use of violence as a means of defeating the Pinochet regime. Knowing that they will be unable to win support with ballots, they have chosen bullets instead. Before Congress acquiesces in this violent takeover, I urge my colleagues to read the following article on the last 2 years of the Allende regime. Perhaps then, even the most ardent critics will understand why the people of Chile do not want to be enslaved by a repressive Communist regime again.

Reviewed by Alvin Bernstein in Commentary magazine, "The Last 2 Years of Salvador Allende" was written by the U.S. Ambassador to Chile who served from 1971 to 1973. Nathaniel Davis, our Ambassador to Chile when the coup occurred that toppled Salvador Allende, provides a firsthand account of Chile under Communist control. I commend it to my colleagues attention. The Bernstein review follows:

THE LAST 2 YEARS OF SALVADOR ALLENDE
(By Nathaniel Davis, Reviewed by Alvin H. Bernstein)

This past March, after Ferdinand Marcos left the Philippines, President Reagan dispatched a message to Congress declaring his opposition to right as well as left-wing tyrannies. He followed it with an unprecedented step, sponsoring a condemnation of Chile's military regime before the United Nations Commission on Human Rights. Though the White House publicly denied it, this represented a substantial change in policy. Donald Regan, White House Chief of Staff, later underlined the President's message when he was asked on television if the U.S. intended to topple General Pinochet's government "Not at this moment, no," he replied.

Nathaniel Davis was the U.S. Ambassador to Chile from 1971 to 1973, when the coup occurred that toppled Salvador Allende and resulted in his violent death. He was therefore present at the creation of the military regime that is now proving an embarrassment to the Reagan administration. His political memoir is a conscientious, detailed, and informative account of Allende's presidency, his fall, and the U.S. role in both. As an apologia pro vita sua of sorts, it also reflects Davis' determined quest to find out what really happened in Chile while he was the U.S. Ambassador there. In the process, Davis provides insights into the nature of Chilean politics that ought to be useful to contemporary policymakers now struggling publicly with the dilemma of Pinochet's Chile.

Davis argues, in brief, that the fall of the Allende government owed little or nothing to U.S. actions. The Chilean economy collapsed more because of the regime's mishandling of it than because of any campaign by the U.S. government and the multinational corporations. What is more, Davis says, the 1973 coup was an exclusively Chilean affair and Allende was not murdered but committed suicide.

Davis has a hard row to hoe in making his case, after the 1975 revelations of the Church Committee about the pre-accession shenanigans on the part of the U.S. (These had included not only a plan, rejected by Davis's predecessor Edward Korry, to bribe Chilean Congressmen, but also the botched kidnapping of the army's commander-in-chief, an inconveniently strict constitutionalist, which resulted in his being mortally wounded. Three submachine guns were smuggled into the country for the kidnapping via the U.S. diplomatic pouch.) Despite the back-drop, however, few fair-minded readers will come away from The Last Two Years of Salvador Allende without knowing that they have just spent their hours with a truthful man. This is not just because the author's straightforward integrity touches every page but also because his analysis of what really happened in Chile between the autumns of 1971 and 1973 has real consistency.

It reveals three constants. One is the U.S. desire to appear clean. Immediately after Allende's inauguration, the National Security Council directed that the U.S. pursue policies designed to hurt the Chilean economy, prevent Allende from consolidating his grip on the country, and limit his ability to act against U.S. interests. At the same time, it insisted that the U.S. maintain a correct public posture to avoid providing Allende with an external target. As is often the case, the wish to appear honest, together with the lack of any effective options but the dire and dangerous, limited what could be done behind the scenes. The second constant is the Chileans' idea of acceptable political behavior. These pages draw for us a cumulatively striking portrait of a people whose independence and parliamentary traditions made them shrink instinctively from violating constitutional rules. At every turn men would appear who followed those rules in preference to parochial self-interest. The third constant is the steady aversion of the Ambassador himself to "dirty tricks". These three inhibitions set the parameters within which those who wished to see a Chile without Allende could operate.

How much of what happened to the Chilean economy during Allende's presidency can be laid at the door of the U.S., either government or corporations, acting openly or secretly? The economy did not begin screaming the first year, as President Nixon wanted, though it did whine a bit. This was certainly not the CIA's doing, however. Davis shows in detail how circumstance, together with domestic mismanagement of a morass of financial problems caused by the regime's political composition and its Marxist economic policies, resulted in economic and, eventually political collapse.

In the early days, when the rich began fleeing the country, taking their money with them, and stocks slid along with sales of some durable goods, while the black market expanded, the Marxist government countered with some vigorous Keynesian pump-priming. This quick fix, together with establishment of a rural dole and initiation of a land-reform program, did help for a time. By September 1971, though, the inflation rate, running until then at a steady 15 percent, started to accelerate. Job creation ironically caused labor discipline to sag and in July the coal miners, railroad workers, and copper miners went on strike. These strains, as well as a one-third drop in the world demand for copper during 1971 and the government's spending spree, meant that by November nothing remained of the $350 to $450 million in foreign reserves that Allende had inherited from the years of high copper prices. The government therefore resorted to a drastic expedient: it declared a moratorium on its interest payments on the national debt.

At the heart of these problems lay nationalization. Used as a political tool by the socialist ideologues in Allende's coalition, who wanted to destroy private enterprise and the forces of reaction, it ravaged private business and industry. Forced into bankruptcy by price and credit controls, these then fell cheaply into the hands of the state. What is more, the expropriated industries, once nationalized, were mismanaged by administrators appointed for political reasons in a crony socialism at least as inefficient as its capitalist counterpart. The radical Left continued to press for nationalization even when it meant economic decline and, soon, political disorder. Within seven weeks of taking office, Allende had proposed a constitutional amendment to nationalize all of Chile's mines and on July 11, 1971, the Congress unanimously adopted his proposal. It provided for compensation within thirty years at not less than 3-percent interest. But the President could, and on September 28 did, decide that profits since 1955 had been excessive, despite the fact that the corporations had faithfully obeyed the laws of this democratic land. On October 11, a week after Davis was sworn in

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

as new Ambassador, the Chilean Comptroller announced that Kennecott and Anaconda would get no compensation at all for their huge mines.

By the beginning of 1972, therefore, the new government had shaken international confidence with its moratorium on national-debt payments, created irreconcilable disagreements with the U.S. over its nationalization-without-compensation, and begun to alienate even its own electorate through the domestic effects of its policies. In the by-elections, candidates of Unidad Popular (the leftist coalition headed by Allende) suffered substantial defeats. Inflation was negating higher wages, there were shortages in goods, land reform was making less progress than under the former government of the Christian Democrats, private industry was collapsing, and the nationalized sector was falling increasingly into the red. The national deficit expanded and the tax base shrank while the government frantically printed money in an attempt to control the political consequences of its economic policies. These worsened through 1972 as the inflation rate first doubled (in August), then jumped another 50 percent (in September), bringing the official increase in the consumer-price index to 100 percent for the first nine months of 1972. Riots and further strikes broke out, including a particularly violent and costly one by the nation's truckers.

This mess was not the fault of the U.S. At the UN later, Allende would blast ITT for having tried to prevent his inauguration, which was true, and accuse the multinational corporations generally of attempting to undermine his economy. This was less fair, for they could legitimately protest that they had not set out to do so, but rather had been forced to respond to the government's mismanagement. The bankers, too, had cut but not eliminated credit to the country because Allende had stopped servicing the national debt. His own action had increased the risk of lending capital to a regime that was weakening its economy by refusing to pay compensation to the private industries it was forcibly nationalizing. The startling fact is that, in April 1972, U.S. policy-makers, more concerned with their image than with destabilizing Chile's economy, gave the country $200 million in relief from its creditors. Indeed, it received more disbursements from public international sources under the Unidad Popular regime than in any comparable period of its history. As a result of all this help, by September 1973 when the coup came, Allende's Chile was running the highest per-capita debt in the world.

The U.S. did not need to intervene to weaken Allende's position. In November of 1972 he himself made it obvious how worried he was about the economic and political situation by inviting three military men into his cabinet. One, the Commander-in-Chief of the Army, General Carlos Prats Gonzales, he made Minister of the Interior. This man was another strict constitutionalist who was reluctant to see himself and his colleagues from the other services drawn into the political arena. Their entry seemed necessary to hold the country together and Prats ended the truckers' strike by promising not to nationalize the industry. Given the Marxist direction in which the government was moving, these actions were at best cosmetic. Allende's invitation to the officer corps to play a political role probably resulted, as Davis suggests, in overcoming the military's natural inhibition against involvement in any coup.

On the economic front, Allende was doing no better. He wanted another quick fix and the future appeared to depend on what the Communist world might do for Chile. He had announced in July that he intended to turn to Eastern Europe for loans. At the end of November, leaving Prats in charge, he set off for Moscow, stopping on the way in Algeria to declare his support for the PLO. Even this avowal did not help him secure the $500 million dollars in hard currency that he sought to shore up his crumbling economy. The Soviets, ever cautious about their investments and entanglements, advised him to seek an accommodation with the U.S. on the issue of copper compensation and offered him $200 million in credits, not cash. They evidently questioned Chile's future and, while they were willing to help, they were not about to pick up the tab.

The leftist ideologues in his government now added to Allende's difficulties. They had Chile openly tilting toward East European educational models in ways that could not possibly have been pinned on any U.S. efforts to destabilize. A reform "to inculcate the values of socialist humanism" in the schools brought the Catholic Church into the fray for the first time, as it too joined the opposition and began to thunder against the regime. In the March by-elections the opposition parties registered 56 percent of the vote, less than the two-thirds required for impeachment proceedings but enough to convince the military members of the cabinet to leave the government.

Tension had now risen so high on so many fronts that some eruption of violence seemed inevitable, even in Chile, the long-standing democracy deeply committed to constitutionalist ways. More and more people, the Christian Democrats among them, were coming to believe that their problems could not be settled at the polls. The movement to launch a coup spread very gradually through the military, beginning among officers at the colonel level and later being taken seriously by the generals and admirals. While economic and political grievances played their part, the driving force was fear. After the march elections, the military watched with growing apprehension the increased flow of arms from Cuba and Eastern Europe to the leftist paramilitary forces in areas of Chile in effect controlled by the extreme left wing, not the government: parts of the countryside, shantytowns organized into militarized hamlets, and the worker-ruled industrial belts. Seeing their enemies grow stronger, the armed forces concluded that time was against them.

Events that summer removed the constitutional obstacles to military action. The Chamber of Deputies declared that Allende was acting outside the law and seeking total power. Before the end of August, the Congress and the Supreme Court had repudiated Unidad Popular's claim to legality. Following the lead of their civilian colleages, the military also began distancing themselves from Allende's regime. On August 23 the generals expressed their dissatisfaction with the government in a vote of no-confidence against their commander-in-chief, General Prats, whom they saw as having joined the other side. Prats resigned and was replaced immediately by his deputy, General Augusto Pinochet.

Allende's political and economic troubles, inextricably entangled, came to a head during the first week of September. A second costly and violent truckers' strike had broken out in late July, and now the taxi drivers came out too, along with most professionals and about 125,000 shopkeepers. In a last-ditch effort to hang onto the reins, Allende decided privately to have a national plebiscite. On September 9, that expedient, if ever it could have worked, was compromised by a speech delivered by the Secretary General of Allende's own Socialist party, Carlos Altamirano Orrego, in which he denounced the forces of reaction, refused to deal with them, and threatened to destroy them with "the force of the people, their industrial commands, their peasant councils, their organization." Until that moment there were still those among the senior officer corps who were dragging their heels; despite his subsequent denials, evidence from impartial sources reveals that General Pinochet was one of them. The speech, however, confirmed the military's worst fears and that very day they scheduled their coup for September 11. In the early morning hours, while working on the speech that would announce the plebiscite he hoped would save him, Allende received word that the coup had begun.

From 9:30 a.m., first with guns, then with tanks, the armed forces attacked the Moneda Palace. The first aerial assault, just before noon, made further resistance impossible. The alternatives were surrender or death. One of the doctors in the President's entourage describes how Allende, as he walked in the final procession leaving the Moneda to surrender, withdrew to a separate room, placed under his chin the muzzle of an automatic rifle given him by Fidel Castro, and blew out his brains.

Within days of Allende's suicide, the Left invented and spread abroad the story that the military had murdered him. Despite her early statements to the contrary, his wife eventually joined their ranks, as did Fidel Castro. The media helped weave a tangled web of fact and fiction that reinforced the tale. With the attention to detail of a classical philologist, Davis traces the origins and course of this fabrication and makes as convincing a case as possible that the doctor's version of events is correct. He labors to reconstruct reality from the available evidence but he labors at a disadvantage. The carefully reassembled jigsaw puzzle he places before his reader lacks a central piece: Allende's body was buried the day after the coup and none of the twenty-seven photographs taken of it has ever been made public.

Does Davis convince us also of his view that the U.S. played no real role in this coup? After thorough digging, he and the Church Committee were able to unearth only one attempt at "dirty tricks" during his ambassadorship. It began just before his arrival, but came to fruition while he was in office withour his knowledge. CIA officers in Santiago sent documents, including a forged letter, to a Chilean officer outside the country in a attempt to convince the military that the police investigative forces were in league with the Cubans against them. The effects of this operation are not traceable, but both the Committee and Davis seem satisfied that it was the last of its kind.

The covert measures Ambassador Davis permitted consisted solely of funneling some $2 million a year to the moderate opposition (mostly the Christian Democrats and the National party) and to the free press. He thought it justified to work covertly to keep Chile an open society but drew the line at underhanded operations designed to destabilize or disrupt it. Even the

reader who instinctively believes that the U.S. should not bribe Congressmen, inspire violent kidnappings, or deceive its friends in a foreign country comes away from this book wondering whether Davis should not have been more troubled by the prospect of Allende, unimpeded, consolidating his Marxist grip on the country.

The Ambassador derides President Nixon's concern over the geopolitical importance of having a second Cuba in Latin America. Apparently Nixon took seriously the warning of an Italian businessman that Allende's victory would mean a "red sandwich" between Chile and Cuba. On hearing this, Davis quips, "It would have been quite a Dagwood Special: four thousand miles of heterogeneous societies and regimes would lie between those two slabs of Marxist pumpernickel"—a good line but not an adequate response to the legitimate, long-term security concerns of the U.S. and its regional allies.

It would be more difficult for Davis to take the moral position he does against covert intervention in Chile if the Chilean military had not acted and a Marxist regime with ties to the Soviet bloc were now operating in South America. What that part of the world would look like at this point is of course a matter of speculation, but Davis never confronts the issue. An elected Communist president in the U.S. sphere of influence (even one elected by only a third of his countrymen) is the nightmare of any believer in democracy. The perennial problem of how clean you can keep your hands in a dirty world endures because statesmen and administrators have a moral obligation to preserve our interests abroad, as well as to remain true to our domestic principles.

GOOD SOLDIERS IN THE WAR ON DRUGS

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. EDWARDS of California. Mr. Speaker, that nationally renowned scholar of constitutional law, the distinguished Art Buchwald, defends with eloquence the House-passed omnibus bill in his learned article of September 18, 1986.

I am reprinting it in the CONGRESSIONAL RECORD to comfort those who supported the bill.

[From the Washington Post, Sept. 18, 1986]

GOOD SOLDIERS IN THE WAR ON DRUGS

(By Art Buchwald)

The United States is celebrating the 200th anniversary of the Constitution. As part of the ceremonies, the House of Representatives just passed a bill that would require the armed forces to become involved in battling drugs in this country.

It's been a long time since the military has been assigned a role in keeping domestic order, and I for one am glad we finally are going to use them for what they are trained to do—maintain law and order at home.

Selwyn Barnaby is not as sanguine about the provision as I am.

"Who wants tanks in our streets?" he complained.

"There won't be tanks in the streets," I assured him, and if there are, their guns will only be pointed at the windows of the drug dealers."

"How will they know who the drug dealers are?" Barnaby asked.

"The Pentagon will set up a special branch of military intelligence. If the services are responsible for getting the dealers and pushers, they must gather an awful lot of information about our citizens."

"That's what I'm worried about. As soon as the military is given a police role in this country, it will open files on all of us, and then they will use them for other things besides finding dope."

"May I remind you," I said, "that this isn't Chile. Our military will not spy on innocent people—only those who are guilty."

"By whose reckoning?"

"Barnaby, this is an emergency, and we have to use every weapon in our arsenal to beat the drug dealers. If this means giving the military new powers, so be it."

"But once you use the armed forces for antidrugs enforcement, what is to prevent them from being assigned to other police duties? One of the things I have always enjoyed about this country is that we have never seen any troops in the street."

"You're overreacting. It is my impression that the services will be expected to halt penetration of illegal aircraft into the United States and monitor the U.S.-Mexican border. So it isn't as if the Marines are going to knock down your door at 4 o'clock in the morning."

"Speaking of knocking down your door," Barnaby said, "did you know the House also passed a law making it all right to introduce evidence obtained illegally and without a search warrant, as long as the officer was acting 'in good faith'?"

"What's unreasonable about that?" I demanded.

"Who knows when a cop is acting 'in good faith'?"

"Cops always act in good faith. They had their hands tied for years because they couldn't do what they wanted to do. But this is coming to an end. Once we see that illegal search and seizure works in drug cases, we can do away with search warrants once and for all."

Barnaby said, "You really believe that, don't you?"

"This is the way I see it," I told him. "The people of this country have to be prepared to give up some of their liberties, particularly during an election year. Do you know what is responsible for the drug crisis? The Constitution of the United States. There are so many loopholes in it that any narcotics dealer can crawl through it standing up. The only way to win the war on drugs is to fix the Constitution so that it no longer gives aid and comfort to the dope peddlers."

"Which means?"

"I have to report this conversation to the Pentagon."

"What are you going to report?"

"That you're soft on drugs, you don't want the military on the streets, and you have a thing about policemen knocking down your door in good faith."

REPRESENTATIVE FLORIO ON ENVIRONMENTAL POLICY

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. TORRICELLI. Mr. Speaker, I would like to commend to the attention of my colleagues an article on my distinguished friend and colleague from the State of New Jersey, Mr. FLORIO.

As head of the task force on the environment for the Democratic Policy Commission, Mr. FLORIO has issued a report of great significance for our Nation's environmental policy.

FLORIO HAS KEY ROLE IN PARTY REPORT BLASTING GOP ENVIRONMENTAL STAND

(By David Marziale)

WASHINGTON.—A Democratic Party policy report to be released next month will attack the Reagan administration's environmental policies and urge the Democrats to take a hard line on environmental protection.

The report, to be issued by the Democratic Policy Commission, will cover several national issues. Its environmental protection action was developed by an 18-member task force headed by Rep. James J. Florio, D-N.J.

Florio's task force issued a 10-page report, which will be in the general policy report, Philip Burgem, excutive director of the Democratic Policy Commission, said.

The task force report issued a blistering critique of the Reagan administration's policies, saying the Republican administration had broken the nation's commitment to environmental protection.

"In the last six years (since Reagan has been President) the tools of environmental action have rusted with disuse," the report says. "Crimes to our environment are not punished. The civil laws are not enforced.

"Mandates of Congress are not followed. Federal enforcement of the environmental laws has fallen into a Sleepy Hollow slumber."

The report says the Reagan administration has spread "the false notion that our society must choose between economic development and preservation of the environment—that we are unable to have both."

"We (Democrats) do not so grievously underestimate what America can accomplish," the task force said. "We do not believe that a developing modern society inevitably must fool its own environment. And we believe that a society that ignores its environment is a society that will perish."

The report adds that public-opinion polls have shown overwhelming support for more environmental action, rather than the Reagan policy of less action.

The task force made 11 recommendations, most of which will be included in the overall report, Burgess said.

Among them are:

Removal of cancer-causing asbestos from buildings in cases in which the material can be isolated and removed. "Like any other murderer, asbestos must not be allowed in our midst," the report says.

Stepping up action to clean the nearly 100 major toxic waste sites included on the federal Superfund list. "Each year we delay, and the problem only worsens as these waste sites contaminate ground and surface water in conmmunities throughout the country," the task force said.

Ensuring compliance with the health standards of the federal Clean Air Act. The report says the standards will not be met in 40 to 50 cities. "This is intolerable," it adds. "All Americans, whenever they live, have a right to clean and healthy air to breathe.

Protecting water resources, including the Great Lakes, the Puget Sound and the Florida Everglades. "Our nation's water resources must not be treated as if they were sewers, for the runoff from city streets and pesticide and herbicide applications, or

chemical waste dumpings or maritime spills."

Enacting "community right-to-know" legislation to inform workers and residents of nearby chemical dangers.

"We like the Florio report because it emphasizes that a clean and healthy environment is essential for economic growth," Burgess said.

He said the policy commission's report, which will be issued in mid-September, will cover a wide range of issues, including defense, foreign policy, trade, economic development and family issues.

"The report will provide new direction for the Democratic Party as it moves into the 1986 and 1987 elections," Burgess said.

He said Florio was chosen to head the environmental task force because the South Jersey congressman is "a young Democratic leader who has established himself on environmental issues."

THE ENGLISH FIRST MOVEMENT

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. GARCIA. Mr. Speaker, concern over the English as the official language movement, concern which I share, continues to grow. Once people are informed about the issue, I believe that they will see that it is an unnecessary measure that only serves as a divisive force, as in California this year. Therefore, I would like to share with my colleagues two recent articles that address this important matter.

[From the Boston (MA) Globe, Aug. 4, 1986]

LANGUAGE THAT BINDS

A one-sentence bill passed by the Massachusetts House would make English the official language of the Commonwealth of Massachusetts. Similar legislation is pending in other states and has been proposed in Congress.

The bill's sponsor, Rep. John Loring (R-Acton), says he is concerned that state and local governments are coming under increased pressure to offer government services in several languages. That these services—especially bilingual-education programs—might be curtailed is the concern of the bill's opponents, including Rep. Byron Rushing (D-South End) and Sen. Royal Bolling (D-Roxbury).

It is not clear that the bill would prohibit the offering of such services in a variety of languages—or whether the offering of such services is not a good idea, official language or no.

There are public safety and convenience arguments for the "En el caso de una emergencia" signs in T cars, which instruct passengers to follow the directions of the train crew in an emergency. If there are civil service jobs for which a non-English speaker is otherwise qualified—not including public safety jobs—ignorance of the language should not stand as a barrier to competing for the job. Since knowledge of English does not seem to make good drivers (the evidence is available on every Massachusetts highway), there is no reason why someone who does not speak English cannot get a driver's license.

It is possible that the real target of the official-language bill is bilingual education. There is now a debate over which kind of language training is best, and it should be resolved after a thoughtful review of the alternatives, not by some back-door device.

One of the bills supporter, Sen. Edward P. Kirby (R-Whitman), makes the philosophical argument that "the country needs to be held together with a common language." Foreign-speaking immigrants "did pretty well in the past." Kirby says, "and in fact did better when there was a strong sentiment that everyone should speak English."

Kirby, who has a good sense of history, is right. What he misses, however, is that this nation has held together for a good 200 years—through successive waves of foreign-language immigrants—without the need to proclaim English as the "official language.' It is the language of the country, and it needs no legal endorsement.

[From the Miami (FL) News, Aug. 27, 1986]

LANGUAGE ON THE LINE

ATTORNEY SEES CIVIL RIGHTS THREAT IN ENGLISH-ONLY EFFORTS

(By John Trasviña a legislative attorney in Washington for the Mexican American Legal Defense and Educational Fund (MALDEF), which opposes movements to declare English the official language of the United States.)

In any debate over bilingual elections and the efforts to make English the official language of the United States, the same questions are repeatedly raised.

The answers to these questions hold the key to whether English-only efforts will be defeated and the legalization of discrimination based on language proficiency thwarted.

Q. Isn't English already the nation's official language?

A. English is the language of general societal, economic and political discourse in the United States. Without proficiency in English, it is next to impossible to get ahead in this country. Latins and other language-minority citizens recognize the importance of English better than anyone. Ten thousand Latinos in Los Angeles alone are on waiting lists for adult night school English classes.

In Miami, 98 percent of Hispanic parents surveyed felt it essential for their children to read and write English perfectly. They do not need a constitutional amendment to tell them English is important; they need the opportunities and resources so they can get off the waiting lists and into classes.

Q. If English is for all intents and purposes official, why not put it into the Constitution?

A. Elevating English to constitutional status could permit language proficiency to be used as a precondition to the enjoyment of certain rights and liberties under the law. The Constitution is not the place for mere symbolism. It measures our rights and responsibilities as Americans. The present agenda of groups seeking to "constitutionalize" English is little more than an effort to make persons not yet proficient in English second-class citizens in the eyes of the law.

Q. What will the proposed English Language Amendment do?

A. Supporters of the English Language Amendment have made clear that they will use it as a legal foundation to end bilingual education and bilingual voting materials. They have already used this campaign for English to intrude upon private and commercial uses of other languages by attacking Spanish-language housing advertisements and restaurant menus in Florida, Chinese-language business and grocery signs in California and corporate advertising in Spanish by the Phillip Morris Company and others.

California's Proposition 63 on the November ballot would permit any resident to take court action against local and state government agencies he or she felt were not stopping the "erosion" of English.

Perhaps most drastically, the English Language Amendment threatens to prohibit the testimony of non-English-speaking crime victims or witnesses since court trials constitute official state proceedings.

Q. Won't the amendment force people to learn English?

A. It is unnecessary and inhumane to deprive individuals of their civil and constitutional rights so they will learn English. As the U.S. Supreme Court said in 1923, "Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means."

The use of a bilingual ballot on Election Day does not diminish the primacy of English the remaining 364 days of the year. The thousands on the night school waiting lists in communities throughout the country are a tribute to the year-round respect and need for the English language.

A more respectable solution to their needs is legislation such as the English Proficiency Act introduced by the Congressional Hispanic Caucus to provide more support for local community centers adult English programs.

Q. Has this issue ever come up before in our history?

A. Yes. In the 1920s, German-Americans were the target of laws restricting the teaching of German or making English the official language in about 20 states in the Midwest. The U.S. Supreme Court struck down these English-only laws and held, "The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue." (Meyer vs. Nebraska).

Q. What are Hispanics and other doing about the issue today?

A. The movement for English opportunity and against the English Language Amendment, which started with major Hispanic organizations, is growing to include Asian Americans and other civil rights groups, institutions and individuals nationwide.

Prominent leaders in the mainstream of both the Democratic and Republican parties have come out against the English Language Amendment.

In July, both the Christian Science Monitor and USA Today national newspapers issued warnings against the English Language Amendment. California's chief law enforcement officials, Attorney General John Van de Kamp and Los Angeles Police Chief Daryl Gates, Los Angeles Mayor Tom Bradley and San Francisco Mayor Dianne Feinstein, and California Assembly Speaker Willie Brown are leading the campaign against that state's Proposition 63.

With this expanding coalition, English-only efforts can be defeated.

STOP BASHING PUBLIC SERVICE

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Ms. OAKAR. Mr. Speaker, I would like to call to the attention of all my colleagues some

recent observations on the need to stop bashing people in the public service of this country. They came in a speech at the Brookings Institution about the quality of political appointments to Government service.

That speech focused on the needless damage being done to the value and appeal of public service by misguided and wrongheaded attitudes on the part of many political and business leaders. It asserted that such attitudes are at the heart of what is wrong with the quality of our public service. And it made clear that changing those attitudes is the key to attracting our best people to it.

The speech is all the more remarkable because of its author. He is Harry Freeman, executive vice president of the American Express Co. Private sector managers are not exactly known for their concern about the excellence of public service; in fact, they are more prone to criticize and forget it. But Mr. Freeman is not an ordinary business executive. He has served in the public sector, and drawn conclusions, at first hand, about what is required to achieve and sustain a higher level of appointments and performance. The supremely important step, he believes, is to reform the basic view of government and private sector leaders alike who discount public service as second-rate, use it as a politically convenient scapegoat and dismiss it as unworthy of talented and energetic people.

I agree. I am, Mr. Speaker, inserting Mr. Freeman's most noteworthy remarks into the RECORD in the hope that they will be widely read and pondered by interested citizens everywhere.

REMARKS OF HARRY L. FREEMAN, EXECUTIVE VICE PRESIDENT, AMERICAN EXPRESS CO.

"WHY CIVIL SERVICE REFORM WON'T REFORM THE CIVIL SERVICE: A CORPORATE PERSPECTIVE"

I'm delighted to be here. It does something for my ego to be in such distinguished and thoughtful company. I am particularly pleased to share the platform with Joe Fowler, one of America's most eminent dual career personalities.

While this conference appropriately concentrates its attention on civil service, my own comments will focus on another part of national public service. My concern, and the focus of my remarks, is directed toward political appointments, i.e. that layer of people above the civil service and below the Cabinet appointments. These include assistant secretaries, deputy assistant secretaries, and so forth.

Right up front I'm going to tell you that I am concerned that we are not getting the quality of people we should be getting to fill these critical political appointments. And why is this so? Plain and simple, I lay the responsibility at the feet of the people who have run for President over the last two decades.

In my view, these Presidential aspirants have run "against Washington" and by doing so, have discouraged a lot of creative and talented people from coming to Washington to serve their country in the public service. The flow of talent from the private sector into public service has been effectively damned and the results could be disastrous. So while I think that some of the issues set to be discussed here—such as conflict of interest rules, compensation, and business ethics as pertaining to former government employees—are important, I see them frankly as secondary issues. The primary issue that I see confronting the nation is this:

We've got to get qualified and talented people to make that important move from the private sector into the public service.

Sorry to get on my soapbox so early on, but as you can tell I feel very strongly about this issue. And again, I am grateful to have this opportunity to express my thoughts on the topic to you, and to share the platform with Joe Fowler.

A New Kind of Dual Career?

Traditionally and classically, the dual-career, dual-perspective person came into government after achieving distinction in the private sector—in business or the law, or in academic life. It helped, in fact it was essential, to have independent means, either through inheritance or business success, or through what was once called a "fortunate marriage." For such people, public service was a kind of crowning touch to an already charmed life.

In addition, there was another group that joined the ranks of public servants but for a very different reason: namely, as an alternative to unemployment. This was especially true during the Great Depression when the only jobs available were in government.

In the past few years, we've seen the emergence of a new kind of dual-perspective person: the public servant who establishes a reputation in government, then takes up a career in the private sector. Paul O'Neill, now President of International Paper Company, is one such person; Bill Ruckelshaus is another; another, to name a slightly more controversial figure, is David Stockman.

My own career has followed this model. Starting in 1966, I served for several years in the Agency for International Development and in the Overseas Private Investment Corporation—with a brief interruption to practice law and to be a "financial type" in California. My work today in the private sector depends heavily on the knowledge and the perspective that I gained while working in government.

So as someone who has worked on both sides of the fence, I can say without hesitation that I'm a great believer in dual careers and the dual perspectives that they provide. I can say with conviction that the corporate world, in its own self-interest, needs excellence in government. It needs able, professional, imaginative public servants who have some insight into the issues that are of critical interest to the business community. While I believe many corporate leaders would readily agree, I venture that but a few will do anything to help. Why?

We often imagine the interests of the public sector and the private sector to be opposed. Very often, the media is quick to highlight the points of difference and dispute, the popular stereotype being that private interest and the public interest are generally in conflict. But that stereotype, as generally is the case with stereotypes, is misleading and inaccurate.

Today the interests of the two sectors converge at least as often as they stand in conflict. A prosperous, productive private sector produces the tax revenues that Congress and the Administration need to finance defense programs, debt service and Social Security. Conversely, it serves the private sector well to have skilled and professional public servants conduct trade negotiations, issue patents, write regulations and shape tax legislation—the infrastructure and environment in which business flourishes or suffers.

To most people in professional Washington—and certainly to those of us gathered here today—it is simply accepted that the nation, including the private sector, needs and wants excellence in government and in public service. We think that point should be obvious. Unfortunately, what is not obvious to many people is how to effect this excellence. How to ensure that the right people are being considered for the right job. And more importantly, how to encourage the right people to accept the challenge of public service, especially in light of some of the disincentives that currently make that choice less than easy to make.

The Attack on Excellence

There's a great deal of complacency in our nation that excellence in government is an obvious good, and today I want to attack that complacency. It is apparent to me, from my vantage point in the corporate world, that most people today, including most senior corporate officials, put rather low priority on excellence in government, or at least do not fully understand the important role they can play in achieving this excellence.

In recent years, some have even questioned the very concept of excellence in government and in the public service.

Last May, the Wall Street Journal carried a remarkable op-ed article by Terry W. Culler, an executive recruiter who, until recently, was the Associate Director in charge of work-force effectiveness for the U.S. Office of Personnel Management.

"The government," Mr. Culler wrote, "should be content to hire competent people, not the best and most talented people. A good case can be made that those individuals are needed in the private sector, where wealth is produced rather than consumed."

"The government," Mr. Culler continued, "does not need top graduates . . ., administrative offices staffed with MBA's from Wharton, or policy shops full of the best and brightest whatevers. Government's goal should be not employee excellence, but 'employee sufficiency.' "

Only a few weeks ago journalist Don Feder weighed in with an even stronger version of this thesis in his nationally-syndicated column: "For the Record." Mr. Feder wrote, "I am adamantly opposed to the concept of excellence in government. The very idea is terrifying . . . Imagine that life would be like with a highly motivated IRS, an aggressive OSHA, and a Department of Health and Human Services driven to succeed . . . I want a government that is disorganized, lethargic, and low-performing. It's our best hope for the preservation of liberty."

To most of us with experience in Washington, such views are heresy; easily-refuted heresy. Finding cures for cancer, negotiating arms-control treaties, making trade and tax policy, are matters of great consequence—even matters of life and death. For these and a thousand other undertakings, more sufficiency will never be enough; excellence is essential.

That is our view. But it is a consensus view beyond Washington? I doubt it. As I indicated at the start of my talk, nearly two decades of government-bashing, I'm afraid, have taken their toll. The whole *ethos* of excellence in public service—the very notion that public service is a high calling, deserving of the best talents—is now a minority notion. The consensus supporting public

service, let alone excellence in public service, has been deflated.

Why Nuts-and -Bolts Reform Won't Fly

This breakdown in consensus is the reason that most proposals for civil-service reform and recruitment for public service seem to me to miss the point. To use a couple of highly accurate cliches—and to mix a metaphor in the bargain—they put the cart before the horse; they miss the forest for the trees.

I have no quarrel with proposals to improve the incentives for public service, including pay. I have no quarrel with reviewing the laws and regulations governing ethics and disclosure with an eye toward removing barriers to public service. I encourage these efforts, indeed, I have called repeatedly, most recently in an article in the New York Times, for steps to make it less burdensome and more attractive for talented leaders to make the move from the private sector into public service.

I have no quarrel with the specific proposals for reform which have been circulated for consideration at this meeting. I applaud the existence of a Center for Business and Government at Harvard, and I applaud in advance the efforts which Joe Fowler will tell us about.

My point is this: Such nuts-and-bolts reforms will not go far, perhaps nowhere, until we can rebuild a strong national consensus in support of public service as a calling. It is time to call a "time-out" to the representation of public service as a frustrating, unrewarding, no-win situation that should be avoided by all individuals of substance. Changing public attitudes about public service is not simply one of the reforms we need to achieve; it is the reform we need to achieve. Rebuilding the ethos of public service is not simply one change that is needed, along with pay reform; it is the fundamental change that will make all others possible. It is the horse; it is the forest; it is the structure into which we will fit the nuts and bolts of incremental reform.

A Place To Begin

I have no pre-wrapped, pre-tested, foolproof program that will achieve that ambitious end. But I can suggest a couple of ways in which we might begin to do it.

First, we can support, morally and materially, efforts like Joe Fowler's Public/Private Careers Project and the Center for Excellence in Government here in Washington. The Center, founded three years ago by Mark Abramson, has done many things right:

It has focused, for example, on the real key to excellence in government—attracting the best people—rather than simply on improving management systems.

It has become a forum for those dual-perspective people I mentioned earlier—people like Peter Dawkins who have lived in both cultures and can reconcile the worlds of the public interest and the private sector; and

It has devoted itself to the very cultural change that I am calling for.

We need to look at the disincentives that make the move from the private sector into the public so unattractive. The long and uncertain appointment and confirmation process needs to be streamlined—so that senior executives will not be left twisting in the wind for many months after making a major career choice. The disparity between private and public compensation needs to be rectified, with a careful look at the mandatory participation in the retirement programs that the "dual careerist" may never use. One of my colleagues argues that every citizen should be provided with, say, two years of exemption from taxation while in public service. This kind of creative thinking is necessary, if public service is to compete with the lucrative benefits of a job in the private sector.

In addition, we need to begin our educational efforts designed to change public attitudes, with special attention made toward reshaping the attitudes of senior leaders in the American business community. I suggest this for more than one reason. These leaders have great power to influence public opinion. Yet, they are often victims themselves of ignorance and false notions about government and about public servants. Moreover, these leaders with their wealth of talent and experience could serve their country well, but may be reluctant to enter public service because of the "bad press" it has received. As my friend Drew Lewis recently said, "There are highs in public and private sectors. But there is no high like a real high in the public sector."

And perhaps most importantly, we can marshal support among the Presidential candidates in 1988 for a moratorium on government-bashing. The idea that government can do nothing right is one of those false and pernicious claims that, left unchallenged, will become a self-fulfilling prophecy. Unfortunately, for some time Presidential candidates of both parties have been among the most successful spreaders of that falsehood. The leaders in this room can perform a major public service by persuading the candidates in 1988 to have no part in careless, indiscriminate attacks on government and the public service, and affirmatively, to get the candidates on a pro-excellence in government theme. An "excellence in government" theme is consistent with either a "smaller" or "bigger" government plank. A reasoned debate about the role of government, yes; mindless government-bashing, no. If necessary, we need to revive the equivalent of the old Democratic and Republican "truth squads" that followed candidates around to try and set the record straight.

Getting What We Deserve

I'd like to close with two quotations. One is from Paul O'Neill of International Paper, reflecting on the differences between public and private life:

"Leaders . . . generally don't say that their troops are lousy, bad and 'ne'er-do-wells' who couldn't work any place else. In my experience, since the Kennedy days people who work in government have been damaged, hampered and demotivated by a leadership that has said their workers are bad . . ."

That, in my judgment, ladies and gentlemen, sums up much of the problem that we face, and underscores the cultural change we need to make.

The second, and probably more widely known quote is from Adlai Stevenson. "In the end," he once said, "we get the public servants we deserve."

He was right. All of us, especially leaders in the corporate sector, need to remember that if we denigrate the calling of public service, we will not get the caliber of people that make for greatness. And we'll deserve what we get.

THE ALZHEIMER'S DISEASE AND RELATED DISORDERS RESEARCH ACT OF 1986

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Ms. SNOWE. Mr. Speaker, today I am introducing, along with my colleagues Hon. Mario Biaggi and Hon. Silvio Conte, the "Alzheimer's Disease and Related Disorders Research Act of 1986". A similar bill is being introduced in the Senate by Mr. Grassley. This legislation is designed to form a basis for the coordination of the activities of the National Institute on Aging (NIA), the National Institute on Mental Health (NIMH), and the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) as they pertain to Alzheimer's disease and related disorders. In addition, my bill will create a national clearinghouse will compile and disseminate information on Federal, State, and private sector activities in research, demonstrations, and services relating to Alzheimer's disease.

The purpose of this legislation is not to create new projects or centers. Instead, the intent of this bill is to provide needed knowledge about services-related activities for Alzheimer's disease through research by agencies with jurisdiction in this area. While I am fully aware that Alzheimer's victims and their families need assistance in reducing the emotional and financial burdens associated with this illness, we need to know, in a more systematic way, how to provide that relief.

All of us know of the devastating effect that Alzheimer's has on its victims and their families. Today between 3 to 4 million Americans are affected by disorders that cause severe and progressive deterioration of their mental capabilities. Clearly, the long-term answer is to support biomedical research that will eventually provide a solution to the cause or causes of this disease. But, in the meantime, families are struggling to provide care to their afflicted family members.

In light of the need to more fully define the kinds of support that families and individuals with Alzheimer's need, numerous of my colleagues and I sponsored a day long siminar in February on services-relevant research for Alzheimer's disease. At that workshop, it became readily apparent that there were enormous gaps in our knowledge about the effect Alzheimer's disease has on its victims and their families. That workshop cleraly showed that without more detailed information, we might fail to act in an effective way to assist those suffering from Alzheimer's. It became clear that the basic information on Alzheimer's disease and related dementias was unavailable and that more knowledge was needed regarding:

Epidemiology and risk factors;

Diagnostic and assessment instruments;

Design, delivery, staffing, mix, and coordination of services;

The interface of formal services provided by health care professionals and the informal support services provided by family, friends, and neighbors;

Relevant data, future data needs and projections on the cost of services; and

Coordination of services-relevant research at the Federal level.

All of these considerations resulted in the bill that I am introducing today. In this bill, the Secretary's Task Force on Alzheimer's Disease will assist the NIA, NIMH, and NCHSR in the development of a coordinated agenda for services-relevant research. Each of these agencies will work together to develop a plan to address gaps in information within their areas of expertise. Further, they will be required to use, to the maximum extent available, existing Federal resources, such as the National Institute on Aging's Alzheimer's Disease Research Centers, the National Institute of Mental Health's Centers on Psychopathology of the Elderly, relevant activities of the Administration on Aging, and other centers and activities which may be planned or underway by other agencies of the Federal Government, in order to accomplish their goals.

Under the provisions of this bill, NIA will undertake research stressing epidemiology and the identification of risk factors for Alzheimer's disease, and will develop diagnostic procedures and instruments aimed at more correctly identifying individuals with that disease. NCHSR will be responsible for inventorying and analyzing existing data sets and studies relevant to dementia, and for developing estimates of the costs borne by patients and families, with particular stress on isolating what is essential to the dementia patient as distinguished from other patients with long-term care needs.

NIMH will stress the assessment and treatment modalities relevant to the mental, behavioral, and psychological problems associated with dementias, and will identify the optimal range and cost effectiveness of community and institutional services, particularly as they relate to design, staffing, timing of the use of services during the progression of the disorder, service mix, and coordination with other services. NIMH will also be required to assess the efficacy of special care units which have developed around the country with respect to costs and patient outcomes; to determine how to best combine formal and informal support services; to evaluate ways to sustain family caregivers in order to reduce psychological, social and stress-included physical problems; and to identify the best methods of delivering such services as outreach, case management, home care, respite care, adult day care, and others.

In addition to their research function, NIA will be responsible for developing a clearinghouse which will organize and disseminate information on services-relevant research. In this capacity, they will compile, archive, and disseminate information on research, demonstrations, evaluations, training programs, and projects dealing with Alzheimer's and related dementias. Additionally, they will be required to coordinate with the Administration on Aging in order to assure that adequate information on services and service delivery systems is available to victims of Alzheimer's and their families, to compile information regarding State and local government and private sector initiatives, and to translate research and technical information into nontechnical terms. Finally, they will be required to make this information available through a toll-free telephone number and a yearly summary of information which will be available to interested parties.

This bill will enable us to systematize what we know, to identify what we don't know, and to use the information developed as a basis for future legislative action on Alzheimer's disease. I am sponsoring a bill of this type with the belief that if we spend a small sum of money for research and thoughtful planning now, we can better assure that future moneys spent on services for Alzheimer's disease victims and their families will be targeted on properly identified needs. In this way, we can make certain that any money spent on families and victims of Alzheimer's disease will be money well spent.

HONORING SENATOR ARTHUR DORMAN

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. HOYER. Mr. Speaker, on Saturday, September 20, 1986 the Beth Torah Congregation of West Hyattsville, MD will honor Maryland State Senator Arthur Dorman as its "Man of the Decade." Arthur Dorman is one of the most respected and accomplished citizens in all of Prince George's County.

He is not being honored, however, just for his service in this decade.

Arthur and Betty Dorman and their family have been members of the Beth Torah Congregation since 1960. His active service began in 1961 and 1962 when he served as vice president for education. Arthur Dorman's fellow congregants chose him to be president of the synagogue in 1963 and 1964. Since 1965, Arthur Dorman has served as a trustee of Beth Torah. He was instrumental as president in 1965 in developing a long-range plan which led to the congregation moving from Mount Rainier, MD to its current location in West Hyattsville. In 1984, Senator Dorman worked with the other trustees to retire the mortgage on the current location for the Beth Torah Congregation. Still a trustee, Arthur Dorman also serves as one of the congregation's substitute rabbis.

Though he is being honored specifically for his work in his congregation Art Dorman has made a significant contribution to every facet of his community.

Following service in World War II in both the merchant marine and the U.S. Army, Arthur Dorman graduated from George Washington University. He graduated from the Pennsylvania College of Optometry in 1953, and began his practice as an optometrist in Langley Park. Over the years, Dr. Dorman's practice fluorished and respect for him professionally grew to such an extent that he was named Maryland Optometrist of the Year in 1967 and National Optometrist of the Year in 1968.

In the Prince George's County community at large, Dr. Dorman may be best known as a respected political leader. He has served in political office for more than 20 years. First appointed to the house of delegates in February 1965, he was elected in his own right in 1966. He served there with distinction through 1974, including a period as speaker pro tem from 1972–74,

In 1974, the voters of the 21st legislative district elected Arthur Dorman to the State senate. He has been reelected twice and can expect to be so again in November. In the senate, Arthur Dorman serves as vice chair of the Committee on Economic Affairs. He has made significant contributions in areas as wide ranging as the environment, education and civil liberties. Arthur Dorman is considered the father of Maryland's Freedom of Information law. He floor managed senate consideration of Maryland's landmark Chesapeake Bay legislation. And, he has been instrumental in gaining needed education funds for Prince George's County schools.

In addition to his active religious, professional and political life, Arthur Dorman has participated in a wide variety of civic and service organanizations ranging from the Kiwanis to several PTA's. In almost every organization in which he has participated, he has quickly risen to a position of leadership.

Most important, Betty and Arthur Dorman are the parents of four fine children, Pam, Janet, Barbara, and Matthew.

Mr. Speaker, Arthur Dorman represents what is best about our Nation. Actively invovled in every area of community life, he stands for excellence in everything he does. The members of Beth Torah are right to honor Arthur Dorman both for his many contributions to their congregation and for his humanity. He is not just "Man of the Decade" but a man for all seasons.

PRODUCT LIABILITY CODE

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. KOSTMAYER. Mr. Speaker, I want to draw my colleagues' attention to a significant resolution passed at the recent meeting of the National Governors' Association.

The Governors unanimously passed a resolution calling on Congress to adopt a Federal Uniform Product Liability Code. This reverses a standing position of the National Governors' Association, and also reverses long-standing tradition that tort and liability law be reserved to the States.

It's obvious that reform in this area needs to be seriously considered at the Federal level. While it appears at this late date that final action either in the House or Senate this year will be impossible, I urge my colleagues to consider the position of the Governors, and pass constructive reform, as soon as possible.

NATIONAL GOVERNORS' ASSOCIATION RESOLUTION ON PRODUCT LIABILITY INSURANCE

The National Governors' Association recognizes the growing national problem of the liability insurance crisis. Affordable liability coverage has become increasingly more difficult to obtain or has simply become unavailable, resulting in a severely adverse effect on government entities, public and

private organizations, businesses, and professionals throughout the nation.

The National Governors' Association believes that the nature and extent of the problem of liability insurance requires the coordinated efforts of federal, state, and local governments and the private sector. Specifically, the National Governors' Association supports actively working to resolve this national issue through continued review and analysis of the problem, collection and dissemination of statistical and legislative data on federal and state programs and initiatives, and development of long-term policy goals that will effectively counter the escalating problems of the liability insurance crisis.

The issue of product liability reform has increasingly pointed toward federal action as a way in which to alleviate the problems faced by product manufacturers with regard to inconsistent state product liability laws. This lack of uniformity makes it impossible for insurers to predict accurately the potential liability of product manufacturers and insurers. Clearly, a national product liability code would greatly enhance the effectiveness of interstate commerce. Furthermore, the system causes inflated prices for our consumer goods, the discontinuation of necessary product lines, and adversely affects the international competitiveness of the United States. Governors urge Congress to adopt a federal uniform product liability code.

The Governors further believe that the insurance industry of America provides an important and vital public service to consumers and the private sector. As we call for the adoption of a national uniform product liability code, we believe there must also be effective oversight of the insurance industry so as to guarantee that the needs of both American businesses and American consumers are met and protected. This is especially important in light of concerns which have been raised concerning rate increases, the availability of insurance industry practices on cancellation and non-renewal of policies, coverage restriction, and reinsurance.

In establishing a uniform federal product liability code, Congress should assess the impact of a uniform code on public safety and consumer protection and, if deemed appropriate, enhance federal safety and consumer protection standards.

CRUSADE CAN'T WORK UNLESS IT DENTS DEMAND FOR DRUGS

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. EDWARDS of California. Mr. Speaker, with the recent passage of the omnibus drug bill, writers all over the country are commenting on its possible impact in the fight against illegal drugs and the tragedy sown in their paths.

Joanne Jacobs, of the San Jose Mercury News, wrote an extremely cogent article on this issue, which appeared in that excellent newspaper on September 18, 1986.

I submit this compelling article for the RECORD and I highly commend it to the attention of our colleagues.

[From the San Jose Mercury News, Sept. 18, 1986]

CRUSADE CAN'T WORK UNLESS IT DENTS DEMAND FOR DRUGS

I don't know what they're smoking in Washington these days, but it must be powerful stuff. The vote junkies have blown their minds.

Look at the bill passed overwhelmingly by the House of Representatives last week. The military will seal our 4,000-mile border by land, sea and air within 45 days. Drug smugglers who cause a death (how exactly?) will get the death penalty, second-offense dealers will get life in prison without parole. Fourth Amendment rights will be dumped for drug cases. And it'll cost $6 billion over a five-year period.

What are these guys on?

President Reagan's anti-drug brainstorm was mandatory random urine testing for perhaps 1.1 million federal workers in "sensitive" jobs, regardless of whether there's probable cause, or even improbable cause, to suspect a worker is under the influence of drugs.

Then presidential aspirant Pete DuPont chimed in with an even loonier idea: Testing 14 million high school students—again with no concern for the presumption of innocence or invasion of privacy.

This is nuts. It's dangerous. It's damned expensive. And it's motivated not by concern for "our children" or our society's values—certainly not by evidence of a genuine drug crisis—but by vote-grubbing at its very grubbiest.

The fact is that drug use is declining in the United States, according to the National Institute of Drug Abuse. The number of high school students who smoke marijuana every day has been cut in half. Heroin use has leveled off, and fewer young people are getting hooked. Even the number of cocaine users seems to have peaked.

While cocaine-related deaths have tripled, due to new and more lethal forms of the drug, cocaine's 565 victims hardly compare to 100,000 deaths a year from alcohol, and 300,000 from tobacco.

Special costs of $60 billion a year for drug use are half the estimated $117 billion costs of alcohol abuse—and drunks are more likely than drug users to injure innocent third parties.

David F. Musto, a Yale professor of psychiatry and history of medicine, writes in the Los Angeles Times that "the percentage of people who ever use a drug and eventually get into serious trouble is conservatively estimated for cocaine at 3 percent. If this were the percentage of airline passenges who, for one reason or another, never reached the plane's destination, commercial air travel would come to a halt, but in the looser and less closely observed world of drug users such a fraction of casualties is not a hinderence until after years of accumulation."

In other words, the drug abusers notice after awhile that some of their friends have been badly messed up. The smart ones quit, and the dumb ones move on to the next "in" drug.

Certainly, it would be far better if Americans gave up coke, pills, pot, booze and smokes and we all took up jogging, yoga and bean sprouts.

In particular, we need to work much harder to keep young people away from mood-altering drugs of all kinds (I'd include television in the list). By definition, teenagers don't have the maturity to decide what substances to put into their bloodstreams, and they can't handle the vital job of growing up when their minds and moods are fogged.

But a completely "drug free" society is an impossible goal that will cost us dearly in liberties and dollars.

Supply-side solutions—turning the military into a huge, overarmed border patrol, sending the boys to Bolivia, handing out ridiculously disproportionate sentences (if Susie turns in Mom and Dad on a second offense, do they go to prison for life?), suspending civil liberties to bust smugglers—won't work as long as the demand is there.

The hottest new demand-side proposal—indiscriminate drug testing—is inaccurate, intrucive and ineffective against the really dangerous drugs. And that's just the i's.

To cut demand, the anti-drug crusaders must fund rehabilitization programs for those who want to quit drugs, and develop education programs to persuade kids to live without artificial highs.

In large part, that means teaching kids to read and write so they can feel competent and confident in the straight world, and insisting on self-discipline and self-restraint in the classroom—things schools should be trying to do in any case—rather them simply lecturing on the evil effects of various drugs.

Nancy Reagan wants an "outspoken intolerance" for all drug use—no moral middle ground. Her husband, Ron, says that "drug abuse is a repudiation of everything America is."

But a society that tolerates getting high on alcohol has no moral ground from which to condemn marijuana, which doesn't get you any higher and claims far fewer victims.

And Americans have been abusing various substances since John Smith discovered tobacco. Among other things, America is a consumer society in the market for instant gratification, a fact which our feel-good President has been quick to exploit.

Drug abuse is not caused by smugglers or street pushers but by the unwillingness of too many Americans to cope with the difficulties of life, to rely on their own resources, to take the hard road instead of the shortcut.

It will not be solved by barricading our borders or locking up the men who satisfy our appetites. It is not so easy to defend us from ourselves.

FRAUDULENT DOCUMENTS USED IN IMMIGRATION

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. CRANE. Mr. Speaker, as the close of the 99th Congress draws nearer, Congress will be debating many crucial bills before the scheduled adjournment. One particular issue that is expected to be brought to the House floor is the problem of illegal immigration into the United States.

Last week the Washington Times ran a series of articles regarding this subject. Since the district I represent is north of Chicago, I had a particular interest in the September 10, 1986, article entitled "Forged Documents Are Key to Benefits for Chicago Aliens." For the past several years when Congress has considered immigration proposals, I have had

concern with granting amnesty to illegal aliens because of the likely increase in forged documents.

Granting amnesty to illegal aliens is ludicrous. An arbitrary date of 1982, or previously suggested dates, could produce a nightmarish problem for enforcement agencies. A flood of fraudulent documents could swamp the communities, making proof of entry, residence, or registration increasingly difficult. I am not persuaded that such a provision will be effective in deterring illegal immigration. However, it could create a new underground industry for forged, stolen and fraudulent documents.

There are serious problems with our immigration policies that need to be addressed. However, before enacting any legislation it must be recognized that illegal aliens are getting smarter and are taking advantage of counterfeit documents. Therefore, I would like to share with my colleagues the following article by J.H. Doyle that appeared in the Washington Times on September 10, 1986. This article clearly demonstrates that the United States is already having trouble in combating fraudulent documents by illegal immigrants.

FORGED DOCUMENTS ARE KEY TO BENEFITS FOR CHICAGO ALIENS

(By J.H. Doyle)

CHICAGO.—With a fake Social Security card or birth certificate, an illegal alien can silently join the American work force and enjoy most of the benefits of citizenship.

For $50 to $1,000 per item on Chicago's black market, a new arrival can buy a birth or marriage certificate, a driver's license, a Social Security card and an Immigration and Naturalization Service "green card."

"We're seeing the illegal alien getting much smarter," said Brian R. Perryman, assistant director for INS investigations here. "He's taking advantage of counterfeit documents. He's papering himself to fit into the system.

"There's so much bad paper out there, our identity systems are being subverted," he said. "We don't know who these people really are or where they're from."

The Chicago metropolitan area has the nation's third-largest illegal alien population, U.S. Census Bureau officials say.

There are 250,000 to 400,000 illegal aliens living in Chicago, of which some 75 percent are Mexican nationals, INS officials say. Nationwide, about 55 percent of the illegal aliens are Mexicans.

Chicago's huge Polish-American community has drawn about 30,000 undocumented Poles. The city's illegal aliens—people who entered the United States without permission or overstayed their visas—include Filipinos, Koreans, Nigerians and others.

With a local address, a new arrival here can get a Cook County voter registration card without offering proof of citizenship. He can use the card to obtain other credentials and benefits.

"If you come into the country illegally, you've got to establish false identification," said Michael T. Dyer, special agent for the Department of Health and Human Services here. "And one of the first things you need is a Social Security card.

"Almost everyone demands a Social Security number in employment, and even to cash a check if you don't have a bank account," he said. "Illegal aliens can either buy a card, or if they're not going to be here too long, they can use your number."

The city's first Mexicans arrived early in the century to work in the steel, railroad and meat-packing industries.

Pilsen—a barrio where Spanish is the primary language—remains Chicago's port of entry for Mexicans fleeing the poverty of their homeland. Neighborhood churches operate shelters for those with no money or place to stay.

"Every day, walking down the street, you see new faces," said Martha P. Obregon, a staff member at Casa Aztlan, a Pilsen community center. "And you assume they are from outside the country."

Casa Aztlan, which receives federal and private funds, offers English classes, youth programs and referral services, "We don't ask them where they're from or whether they're undocumented," Ms. Obregon said.

Pilsen has a 70 percent high school dropout rate, a 13 percent unemployment rate and a low level of literacy among its residents. Illegal aliens who work in Pilsen's shops and restaurants often get paid subminimum wages.

"I'd say that 40 percent of the people here have [legal] papers, and 60 percent don't," said Andres Macias, the owner of a grocery store in Little Village, another Mexican neighborhood in Chicago.

"They come by bus, plane, train and private car," he said. "They have friends and family here. They know people. That's how it's growing."

Some residents question the city's ability to absorb the new wave of illegal immigrants.

"The jobs are drying up," said the Puerto Rican owner of a Little Village tavern. "Industries are moving out. Factories are closing. I've been here since 1954. I've never seen it so bad."

With its tradition of ethnic neighborhoods—Czech, Greek, Jewish, Irish, Italian and Polish—Chicago has so far absorbed the newest arrivals without a political backlash.

On the issue of illegal immigration, Chicago's black and Hispanic leaders have forged a powerful alliance. In 1983, Mexican-American voters provided a critical swing vote to elect Chicago Mayor Harold Washington.

Last year, with Hispanic leaders by his side, Mr. Washington signed an order denying INS agents access to city files and ending the city's practice of asking job and license applicants about their citizenship status.

While community leaders have kept the peace, teen-age and adult gang violence is spilling onto Chicago's streets.

"We've had problems with a few gangs of older illegals, [ranging] from 25 to 35 years old," a Chicago police officer said. "They're not afraid to kill."

Some 15 percent of felony arrests in Cook County involve illegal aliens, law enforcement officers said.

A federal drug strike force here is trying to dismantle the "Durango-Chicago pipeline." Several members of the Herrera crime family, which is based in Durango, Mexico, were recently convicted on heroin and cocaine trafficking charges.

Federal prosecutors also busted several Chicago marriage fraud rings that arranged sham marriages for clients wanting permanent U.S. resident status.

A 1982 study by the Illinois attorney general showed that the state paid $66 million a year on unemployment insurance to illegal aliens, and that half of their applications were based on false immigration papers.

Last year, the Labor Department sent $1.6 million in emergency funds to Illinois school districts that are educating an estimated 20,000 illegal immigrant children.

The Cook County Hospital admits and pays for the emergency treatment of illegal aliens, but a hospital official said the cost to taxpayers is unknown because treatment records are not yet computerized.

Many of Chicago's undocumented aliens can be found working for minimum wage as busboys, maids and laborers. But area employers are hiring a growing number of them for higher wages as semi-skilled workers in light manufacturing plants.

"They need some breaking in, but they're good workers," said a foreman in a furniture factory that hires illegal aliens. "They're dependable. Some of them have been here for years. The local hires come and go."

"The undocumented workers are taking jobs that have gone wanting,"said Mario Aranda, director of the Latino Institute in Chicago. "We are finding this throughout the country."

They usually work under Spanish-speaking foremen and receive an average wage of $4.50 to $5 an hour, the INS said. The jobs are filled through a network of friends and relatives.

The INS targets those illegal aliens who have higher-paying jobs and may displace native workers, as well as those firms that repeatedly hire large numbers of them.

"We've gone into some companies and arrested their whole work force," said Mr. Perryman of the INS. "We've shut them down."

But most illegal aliens detained by the INS are back on the street within an hour by posting bond and requesting a deportation hearing. Many return to their same jobs.

Heinz Hartkopf, a vice president at IBG International Inc., a Chicago firm that makes greenhouses, acknowledged that immigration agents had raided his factory.

"It was kind of Gestapo-style the way they carried it out," he said. "But all the people they took away have since proven their legal status. To the best of my knowledge, we don't have anyone working illegally here."

Medline Industries Inc., a Chicago manufacturer of hospital supplies, has been raided by the INS five times and 140 of its workers have been detained, according to law enforcement officials. John Mills, the company's president, declined to comment.

Creative Label Inc., a Chicago engraving firm, has been raided five times by immigration agents and 38 of its workers have been apprehended, authorities said.

"[What] matters to me is that the company remains competitive by maintaining a low-wage labor force," said Gary Karil, the firm's spokesman. "I don't really care where they're from as long as they have proper identification and they're over 18.

"I cannot legally find out if they are illegal aliens," he said. "If I do that, I'm discriminating against them and I'm liable for a discrimination suit. I cannot ask certain questions."

RECOGNITION OF J. FLETCHER CREAMER, SR., FOR CIVIC ACTIVITIES

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. TORRICELLI. Mr. Speaker, I rise in honor of J. Fletcher Creamer, Sr., in recognition of his long and meritorious service to Bergen County, NJ, and our country.

As chairman and chief executive officer of J. Fletcher Creamer and in Edgewater, "Fletch," as he is known to his many friends and business associates, is widely respected throughout the State of New Jersey. He is a leader and innovator in the rapidly growing fields of real estate development and construction.

Fletch is a life-time Bergen County resident who now lives in Saddle River with his wife, Katherine. They have four sons, Fletcher, Jr., who is a partner in the family business, Glenn, Dale, and Jeffrey.

He served in the U.S. Navy in two wars, World War II in the Pacific and the Korean conflict.

His civic activities are many and varied. He has been chairman and director of the Commerce and Industry Association of New Jersey for two terms. He was a commissioner of the Hackensack Meadowlands Development Commission and of the New Jersey Sports and Exposition Authority. He has been active in the Bergen County United Fund and the Boy Scouts of America. He was a trustee of the Englewood Hospital Association and is presently on the Board of Governors, Hackensack Medical Center.

Fletch has been active in the Republican Party on a national and statewide level for many years. He served this year as vice-chairman, Friends of Tom Kean for Governor.

Among his many awards are Bergen Scout, the Boy Scouts of America; the Brotherhood Award, National Conference of Christians and Jews; and CYO Big Guy of the Year.

It is with great pleasure that I recognize the accomplishments of this outstanding citizen.

PUERTO RICANS: GROWING PROBLEMS FOR A GROWING POPULATION

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. GARCIA. Mr. Speaker, the National Committee for Full Employment, the National Puerto Rican Forum and nearly 40 other interested organizations have recently published a report on the Puerto Rican community entitled "Puerto Ricans: Growing Problems for a Growing Population." I would like to share some of the major findings and recommendations of this informative report with my colleagues:

PUERTO RICANS: GROWING PROBLEMS FOR A GROWING POPULATION

EXECUTIVE SUMMARY

More than 8 million people were out of work in August, 1986; the unemployment rate decreased slightly from 6.9 percent to 6.8 percent. However, the "Real Rate" of joblessness and underemployment stood at 12.2 percent or 14.6 million Americans, when those who have given up looking for work and those who must work part-time because they cannot find full-time jobs are included.

The official unemployment rate for Hispanics increased to 11.0 percent in August, 1986, from 10.5 percent the previous month. The "Real Rate" for Hispanics stands at 19.2 percent.

The unemployment rate for Puerto Ricans was 13.4 percent during the second quarter of 1986, higher than that for Mexican-Americans or Cuban-Americans.

Puerto Rican youth 16–19 had a lower percentage of their population group holding jobs (either full- or part-time) than any other youth population group—22 percent.

Hispanic men earn 71.2 cent for every dollar earned by white males. Hispanic women earn only 51.4 cent.

The Hispanic poverty rate rose to 29 percent in 1985, approaching more closely the black rate of 31.3 percent. In the Northeast and the West, Hispanic rates—39 percent and 26 percent—exceeded black rates—28 percent and 20 percent.

41.9 percent of Puerto Ricans were poor in 1985; 74.4 percent of Puerto Rican female headed households were poor.

The Hispanic population increased by 61 percent between 1970 and 1980, far surpassing the 9 percent increase for non-Hispanics.

Florida, Massachusetts, and Texas registered Puerto Rican population increases of over 200 percent between 1970 and 1980. Pennsylvania and Connecticut Puerto Ricans increased by over 100 percent.

The national dropout rate for Puerto Ricans and Mexican-Americans is 40 percent. In some cities 80 percent of Puerto Rican youth are dropouts.

The Adult Performance Level Study in 1975 found 56 percent of Hispanics functionally illiterate, and 26 percent only marginally literate.

Although 55 percent of U.S. Puerto Rican youth in 1980 were academically eligible to attend college, only 25 percent enrolled. Only 28 percent of those graduated.

THE NATIONAL PUERTO RICAN FORUM: RECOMMENDATIONS

Since its inception in 1957, the National Puerto Rican Forum has been at the forefront in aggressively pursuing the socio-economic improvement of the Puerto Rican community. While much has changed since its beginning, the mission of the Forum has not. It remains today, as it was then, threefold:

(a) To provide educational and economic opportunities to the Puerto Rican people;

(b) To promote research on, and analysis of, the Puerto Rican and other Hispanics' situation that would instill interest in, and contribute to, public policy for institutional changes and the advancement of the economically disadvantaged; and,

(c) To develop community leadership and create programs that would solve the needs of the community.

As the century enters the final years of what was labeled "the decades of the Hispanics," the Forum is faced with many challenges as it seeks to fulfill its mission.

As a direct service organization, the Forum sees first hand what this report illustrates statistically. Society is undergoing profound economic, social, and political changes that will drastically alter the face of the nation in the next decade.

For Puerto Ricans, and Hispanics generally, these changes are both a blessing and a curse. By the turn of the century, Hispanics are expected to be the largest single minority in the country. Sheer numbers alone will provide Hispanics with increased political and economic buying power which will force policymakers and businesses to develop marketing strategies reflecting the Hispanic experience. Evidence of that occurring can be seen in the manner in which both major political parties are courting the Hispanic vote and the heavy amount of advertising, in English and Spanish, within the Hispanic community.

Now more than ever, economic policy must reflect the current economic realities of the Puerto Rican community. As stated by the National Puerto Rican Coalition:

". . . Because of its relative poverty, the Puerto Rican community is especially sensitive to the health of the American economy and to burdens imposed by taxation. At the same time, the community's poverty necessities greater than average dependence on government sponsored social safety-net and ladder-of-opportunity programs. While government outlays for these programs have already been cut, pending deficit reduction legislation could result in further funding cuts . . ." (20).

For an organization like the Forum, this presents problems in attempting to serve its clientele. With dwindling government resources the Forum's offices in Chicago, Hartford, Cleveland, Miami, New York City, and Washington, D.C., are struggling to keep pace with the volume of demand.

If the nation truly wants to address the concerns of the Puerto Rican community, the National Puerto Rican forum believes that the following recommendations need to be acted upon:

First and foremost, Puerto Ricans and other Hispanics need to be seated at the local, state, and national decision-making tables participating in the formulation of public policy.

There needs to be an increase in funding for training and educational service within the Puerto Rican community to address the unique needs of its people. Stipends must be provided for those who need the training and cannot afford it without support for child care or transportation expenses. Organizations like the Forum are being stretched to the limit, asked to do more with less while the needs increase.

The educational system must become more sensitive to the linguistic and cultural needs of Puerto Rican children. Bilingual services, ESL classes, literacy classes and adult basic occupational skills need to be provided.

The educational system must focus a great deal on the dropout population and, in coordination with the business community and community organizations, provide dropouts with constructive alternatives to crime, drugs, and unemployment.

The Congress must continue to provide funding for the safety net programs that Puerto Ricans are heavily dependent on. Any decrease in funding for these programs should correspond with increases in training and educational opportunity programs.

There must be a greater commitment on the part of the business community to pro-

vide training and employment opportunities for Puerto Ricans. Joint partnerships like the agreements the Forum has with McDonald's, Aetna Life Insurance, Citibank, and the cities of New York and Chicago need to be duplicated by other companies. Employers need to play more of an active role in ensuring that Puerto Ricans receive the type of training that will prepare them for the available employment opportunities. More joint ventures need to be developed with Hispanic businesses as a means of promoting economic development within the community. They should provide management assistance to Puerto Rican businesses and help reduce the barriers Puerto Rican businesses face when seeking venture capital.

Due to the increasing number of people from Puerto Rico the forum is serving, Congress must address the current economic situation of Puerto Rico to alleviate the high rate of unemployment and poverty there.

One fact is very clear: The socio-economic situation of the Puerto Rican community in the United States and in Puerto Rico is at a crucial stage; unless corrective action is taken immediately, another generation of Puerto Rican youth will be left behind, forced to depend on the government to live in dignity.

COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND TRANSFER ACT

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Ms. KAPTUR. Mr. Speaker, community development credit unions [CDCU's] have proven to be essential and creative institutions in meeting the banking and financial needs of our neighborhoods and low-income communities. CDCU's offer credit union services to those communities which are often ignored by commercial banks or exploited by loan sharks and high interest financial services. To support the CDCU effort, in 1980 Congress authorized a revolving loan fund for capital expansion of these credit unions. Since then the program has helped 42 new and existing credit unions in low-income communities. CDCU's are one of the most feasible and needed financial institutions in low-income communities.

Their track record is one of success. Community development credit unions are now operating in low-income neighborhoods across this country—in San Francisco, in Chicago, and here in Washington. They give people whose neighborhoods have been redlined and denied credit an alternative. They serve people who cannot afford commercial banking services or who are denied accounts with commercial banks. They give people a source of consumer loans, sometimes even home mortgages, and a place to safely keep their money.

The Community Development Credit Union Revolving Fund Transfer Act will simply transfer these existing funds from HHS to the auspices of the National Credit Union Administration, the financial supervisory agency for credit unions. It is highly qualified and very willing to administer the program. HHS has not released any funds since 1984 because of the questionable future of its administration. Those people which most need banking services are the losers. No new funds are necessary under this bill. By reactivating this program under the NCUA, low-income individuals will once again be provided an access to funds for consumer and community development needs.

THE 25TH ANNIVERSARY OF WESTINGHOUSE FURNITURE SYSTEMS

HON. PAUL B. HENRY

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. HENRY. Mr. Speaker, I rise today to recognize Westinghouse Furniture Systems on the company's 25th anniversary. Acquired in 1961 by the Westinghouse Electric Corp., Westinghouse Furniture Systems, formerly Architectural Systems, Inc., of Grand Rapids, MI, has grown from 25 workers to over 900 employees, establishing itself as one of the top systems furniture marketers worldwide.

During the 1960's the company's original product emphasis was on floor-to-ceiling partitions. After researching the benefits of systems furniture and the tremendous growth potential of the open office market, systems furniture was added to the product line in 1970. The company continued to expand the systems furniture line to take advantage of high technology manufacturing environments.

In September 1984, President Ronald Reagan, accompanied by former President Gerald R. Ford, formally dedicated a newly renovated Westinghouse Furniture Systems' office and manufacturing facility. A portion of the remodeled building includes a showroom for the testing of its systems furniture and office technologies. The design of this "office of the future" is intended to stimulate the firm's customers to envision the office environment of the future, while showcasing Westinghouse products and technology. A unique "people mover" robot shuttles groups around the facility and is currently the only one of its kind in the world.

Russell A. Nagel, president of Westinghouse Furniture Systems, who was selected as Michigan's industrialist of the year in 1985, says of the new facility:

"We have built and equipped our new headquarters facility with keen attention to people, technology, and environment. We believe the Westinghouse workplace is the finest high-technology office facility today. And we pledge to continue our development and production of new systems and techniques to maintain the leading edge."

In addition to the Grand Rapids facility, Westinghouse Furniture Systems has offices and showrooms in 28 domestic and 19 international locations including Europe, Asia, South America, and the Middle and Far East, as well as a manufacturing facility located in Puerto Rico.

Westinghouse Furniture Systems is recognized as a pioneer in new management techniques. White-collar workers are an integral part of the production system and work closely with blue-collar workers to produce a quality product. Customer needs are first priority and an "ombudsman" reports to the president and is responsible for those activities directly influencing the customer's satisfaction with the company's products.

Productivity should not be limited to the work environment and the company's employees are encouraged to become involved in community events and programs. Westinghouse Furniture Systems and its workers regularly contribute time, money, and furniture to local organizations. Each year, the business unit of the company involves itself with at least one major community fund raising event.

Over the years, Westinghouse has taken a leadership role in developing new and innovative technology in systems furniture, and the next 25 years promises to bring exciting new concepts in office systems furniture and related products. Please join with me, Mr. Speaker and colleagues, in offering congratulations and best wishes to Westinghouse Furniture Systems—a company with a vision that makes the future a reality.

RELEASE OF REPORT FROM TASK FORCE ON TOXIC EMERGENCIES

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. VISCLOSKY. Mr. Speaker, as a member of the House Environmental and Energy Study Conference, Task Force on Toxic Emergencies, I join with other colleagues today in announcing the release of a final report on toxic emergencies. This final product is the result of a national study initiated by the congressional task force in 1985.

The project served a very useful purpose and was developed to identify what types of programs existed throughout the country to prepare for toxic emergencies.

Even more so, participating agencies, enforcement agencies, and public officials from northwest Indiana shared their ideas and plans on how to prevent these emergency situations. With the help of these local authorities, I was able to provide the task force with 72 responses with various reports on how municipalities in my congressional district prepare for such calamities. The level of cooperation between local authorities was impressive and I commend each of these parties for their hard work and responsiveness.

I firmly believe that as our society grows and develops new technologies, our local environments will require protection, and most importantly, the inhabitants will need to be protected from potentially hazardous emergencies. The report from the task force further elaborated the reasons why we should have a succinct and wide-reaching environmental policy.

This Congress has worked to protect and improve the environment by enacting measures aimed at public protection. Over the past 18 months, we have worked to create a stronger and enforceable Superfund Program, created stronger laws to protect the Nation's drinking water supply, and improve the Na-

tion's air quality standards. These policies are essential to guarantee the integrity of our Nation's environment so our citizens can work and live in safe communities.

I personally commend the staff of the task force of the Environment and Energy Conference Committee for their work on this project and believe that the results reflect the increasing importance of this issue. The direct results of these preventative programs will not only benefit millions of Americans today, but prepare for future Americans.

COMMUNITY DEVELOPMENT CREDIT UNIONS

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. GARCIA. Mr. Speaker, today I am introducing, with my colleague MARCY KAPTUR, legislation to assist low income communities nationwide to start their own Community Development Credit Unions [CDCU]. What this bill simply does is transfer funds presently administered by the Office of Community Development at HHS to the National Credit Union Administration.

The purpose of this revolving loan fund program was originally to give community groups interested in starting a community development credit union seed money at low interest rates along with technical assistance. However, no loans have been made since 1983, and those that were made carried an interest rate that was not affordable for low income communities.

No new funding is needed for this program. Because money is loaned out as it is repaid, the program is self-supporting. The administration wants to terminate this program, but I and my colleagues that have cosponsored the bill feel strongly that it is a no cost, in place community economic development program that will help low income communities nationwide meet their financial services needs—needs that are not being met by existing financial institutions.

Financial institutions are leaving low income neighborhoods, and often the residents of these neighborhoods are left with no financial services. The CDCU's in existence today have been operating successfully from San Francisco to the Bronx, because they are run by people who care—the people who live and work in those neighborhoods that many financial institutions feel are no longer sufficiently profitable to service.

This legislation will give more of our citizens an opportunity to obtain affordable financial services. It gives low income families the opportunity to save their hard earned money without having to meet outrageous minimum balance requirements, and to obtain loans that other institutions would refuse.

TRIBUTE TO JOHN D. ANDERSON

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Ms. KAPTUR. Mr. Speaker, earlier this month Ohio lost one of its most respected business and community leaders, John D. Anderson. He was a truly remarkable and generous man. Mr. Anderson was a principal partner in the Andersons, a world-renowned agribusiness headquartered in my district. His death will leave a large void in the Toledo area. He was a man of kindness, leadership, expertise, and common sense.

John D. Anderson held various leadership positions with a multitude of civic and community organizations. He was a man who could not say no to friends and neighbors. He served on the boards of numerous corporations and educational institutions and helped build the family business into a corporation dedicated to its customers, its employees, and the community at large. John was a devoted family man and an active member of St. Joan of Arc Church.

I know my colleagues in the House of Representatives join me in offering our most sincere condolences to his widow, Mary, and the entire Anderson family. It is our hope that all of your loving memories of John will sustain you through these difficult days. He touched the lives of thousands of people and they are all better for knowing him. He will be missed and it is fitting to honor his memory in the CONGRESSIONAL RECORD, the journal of the people of the United States.

PEACE CORPS

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. YATRON. Mr. Speaker, it is a great pleasure to be able to say a few words today in honor of the 120,000 men and women, including over 5,000 from my home State of Pennsylvania, who have dedicated several years of their lives to fight poverty, illiteracy, and underdevelopment as Peace Corps volunteers.

Twenty-five years after President Kennedy brought this idea to fruition, volunteers have served in more than 90 countries, helping and teaching in fields such as medicine, education, engineering, and agriculture. From Guatemala and Ghana, to Kiribati and Tonga, they have spread good will toward the United States which lasts for generations, and they have brought back to this country a deep understanding and admiration for the nations and cultures where they served.

If it were not for the Peace Corps, many people in these villages would never have the opportunity to meet a real American. Around the world, a large number of individuals form their perceptions of the people of our country by the violent portrayals of Americans by Hollywood actors. But it is estimated that the Peace Corps volunteers have had personal contact with over a million persons throughout the world.

At the 20th anniversary conference of the returned Peace Corps volunteers, Prime Minister Seaga of Jamaica, in June 1981 said, "The Peace Corps * * * is wanted, needed, and loved by so many countries of the world." Mr. Speaker, I think we should give a warm thank you to all those who have sacrificed to help make the world a better place by serving in the Peace Corps.

STATEMENT BY REPRESENTATIVE RICHARD A. GEPHARDT IN RECOGNITION OF THE 25TH ANNIVERSARY OF THE PEACE CORPS

What a milestone for international understanding. And what proof that an idea can accomplish even more than we dared hope. It is hard for me to realize that twenty-five years have passed since President Kennedy offered Americans the opportunity to share the best of our spirit and idealism through this unique people-to-people program. I salute the Peace Corps and the thousands of Americans who have participated since 1961.

As I meet former Volunteers, now working in community action programs in St. Louis, in business and industry, and even here on the floor of the House, I am always impressed with their commitment and energy. And, although we know their contributions in Asia, Africa, and Latin America were tangible and important, almost all of them say they received far more than they gave. If so, they have used their experiences to enrich us all with a greater understanding of other cultures as well as the universality of human dignity.

TOXIC EMERGENCIES

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. GREEN. Mr. Speaker, I am pleased to join with my colleagues today in announcing the publication of the final report of the Environmental and Energy Study Conference's Task Force on Toxic Emergencies. I believe that this report should be required reading for any individual interested in the issue of hazardous materials emergencies.

Founded in July of last year, the EESC Task Force on Toxic Emergencies conducted surveys in Members' congressional districts and home States. They studied the programs of the many Federal agencies now involved in toxic emergencies, the level of training of personnel actually involved in the cleanup processes, the degree of interaction and cooperation between differing jurisdictions involved in emergency preparedness, and programs now being developed by industrial concerns, environmental organizations, and governmental bodies. Four issues were covered in the surveys: emergency planning, training, equipment, and histories of past incidents involving hazardous materials.

The information received from the survey indicates that different communities vary widely in their preparations for toxic emergencies. It is scary to note, however, that less than half of the firefighters in the communities respond-

ing to the survey have been trained for handling these incidents, and police officers were reported to have far less training than needed. In addition, concerns should be raised concerning equipment purchases and jurisdictional coordination.

Overall, I would urge every Member of Congress to read the report, and to make it available to the public safety personnel in his or her congressional district. I commend those Members of Congress and their staffs who have put together this fine study, and I thank the Environmental and Energy Study Conference for its fine work in the project.

TOXIC EMERGENCIES

HON. BOB LIVINGSTON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. LIVINGSTON. Mr. Speaker, I was very pleased to be a member of the Environmental and Energy Study Conference's Task Force on Toxic Emergencies, and I would like to take this opportunity to commend Senator GORE and Representative WISE, the cochairman, as well as the other members of the task force, for their fine work on this very special and important project. I would also like to thank the staff of the committee, led by Special Projects Coordinator Jane Beal, for their hard work and assistance.

As you know, in order to study the problem of hazardous materials accidents, each task force member conducted surveys in their respective districts to assess the extent of emergency planning for dealing with toxic accidents. I was very pleased with the response that I received from our local fire and police departments, local officials, and the State agencies responsible for dealing with toxic emergencies. My surveys indicate that a high degree of thought, planning, and coordination has already taken place for dealing with this problem, and I hope that local and State officials in Louisiana will continue their efforts to protect our citizens from toxic dangers.

Now that the task force has issued its report, I urge interested officials around the country to closely examine its contents. Not only is there a wealth of valuable information about what other jurisdictions are doing to combat potential toxic emergencies, but it also provides details about Federal activities in this area. The training and information resources made available by the Federal Emergency Management Agency [FEMA], the Environmental Protection Agency [EPA], and the Department of Transportation should be looked into and taken advantage of by all local and State officials interested improving their emergency preparedness planning.

Once again, I commend the members and staff of the task force for their fine work, and I look forward to working with them on future projects.

TRIBUTE TO JAMES A. McFAUL

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. TORRICELLI. Mr. Speaker, I rise in honor of James A. McFaul in recognition of his long and meritorious service to the Bergen County park system.

James McFaul served as executive director of the Bergen County Park Commission for 26 years. During his tenure in that office, the recreation areas of the park system have increased from 10 to 26.

Facilities added during the past 26 years include a wildlife center, swimming lakes, three golf courses, a ski center, two horseback riding centers, 55 tennis courts, picnic groves, fishing lakes, hiking trails, campsites, bicycle paths, playgrounds, ball fields, a miniature railroad, and historic sites.

Chosen State Conservationist of the Year in 1967 by the New Jersey Federation of Sportmen's Clubs, Mr. McFaul received the federation's highest honor, the Governor's Trophy.

The YMCA of Bergen County in 1970 presented Mr. McFaul with a special award for service to youth.

James McFaul has been a strong advocate of wilderness preservation within the park system and of wildlife education. The zoo at Van Saun County Park is in its third renovation and is adding more natural features. There is also a zoo at the wildlife center. Both have educational programs. The park system has two wooded reservations with hiking trails and camping.

In addition to his long service to the Nation's parks, Jim served his country well during two periods of crisis. He was recalled for military service for 17 months of active duty during the Korean conflict after becoming a tank officer in Europe during World War II.

It is with great pleasure that I recognize the devotion to his community of this outstanding citizen. I wish Jim and his wife, Dorothy, a long and happy retirement.

PERSONAL EXPLANATION

HON. TOM LEWIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. LEWIS of Florida. Mr. Speaker, due to official business, I was unable to record my vote on House Resolution 536, a resolution providing for the consideration of H.R. 2482, the Federal Insecticide, Fungicide, and Rodenticide Act Amendments. Had I been present for rollcall vote 388, I would have voted "aye."

HAPPY 25TH ANNIVERSARY—PEACE CORPS

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. CLINGER. Mr. Speaker, the Peace Corps is celebrating its 25th anniversary this year, and many of those who served as volunteers with the corps over the years are in town to mark the occasion. I know I speak for all my colleagues in the House in welcoming all former and present Peace Corps volunteers to our Nation's Capital and extending to them a heartfelt thanks for the jobs they have done in the name of America while serving in outposts all over the world. Happy birthday, Peace Corps, and best wishes in your next 25 years.

FACING TOXIC EMERGENCIES—A STEP FORWARD

HON. THOMAS R. CARPER

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. CARPER. Mr. Speaker, I am delighted to participate today in the release of the report of the Environmental and Energy Study Conference Task Force on Toxic Emergencies. As a member of the 14-member task force, I was privileged to take part in this investigation of our disaster response capabilities.

The report summarizes the results of comprehensive surveys conducted by task force members in their districts and States. Aimed at local officials, fire and police departments, State agencies, and industry, the surveys evaluated emergency planning and preparedness for possible hazardous materials incidents.

The need for a review of this sort cannot be overstated—thousands of people are killed, injured, and evacuated each year, from Bhopal, India, to Mounds View, MN, as warehouses explode, trucks overturn, trains derail, and pipelines burst. As the home of many chemical industries, my State of Delaware is particularly vulnerable to accidents involving hazardous chemicals.

The task force report provides a dual benefit. On the one hand, it illuminates shortcomings in our ability to respond to toxic emergencies. On the other hand, it documents successful programs that have helped some localities and States meet the challenge of toxic emergencies. Naturally, those plusses and minuses vary in degree and detail from region to region and State by State. There are some general conclusions, however, that deserve attention at the National, State, and local levels. For example, first responders—notably firemen—need better training and equipment. To counter that problem, the State of Delaware provides, through the Delaware Fire School, elaborate and extensive training programs including several courses focusing on hazardous materials incidents. Delaware has

also established State Emergency Response Team (SERT) with equipment and expertise for handling hazardous situations that may be lacking at the local level.

Delaware, blessed by its manageable size, knowledgeable and active citizens, and responsible industry, has made great strides in addressing some of the pressing problems which still plague other areas of the country. I hope that these effective programs, coupled with positive actions taken elsewhere, will provide an inspiration and blueprint to help other States and localities improve their own toxic emergency response capabilities.

The key to solving our remaining toxic emergency challenges is cooperation between industry and those who have the responsibility to protect us from chemical disasters. This report of the Task Force on Toxic Emergencies represents a significant effort to identify problems and solutions that could set the stage for a coordinated Government/industry push for improved emergency preparedness.

STEAMTOWN U.S.A.

HON. JOSEPH M. McDADE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. McDADE. Mr. Speaker, I am pleased to introduce bipartisan legislation today, along with 25 of my colleagues, to make Steamtown U.S.A. an official component of the National Park System.

Steamtown U.S.A., located in Scranton, PA, is a unique museum and "living exhibit" to America's steam age. Steamtown contains one of the world's largest collections of steam and railroad memorabilia. The collection includes approximately 40 steam locomotives and 100 assorted pieces of other railroad rolling stock. A planned museum complex to display this memorial to the age of steam centers around a historic roundhouse, locomotive and erecting shops, and rail yards.

The "living exhibit" excursions provide visitors with an exhilarating 13-mile train ride, powered by a steam-propelled locomotive, through spectacular countryside between Scranton and Moscow, PA. A planned expansion will take the trip up to the scenic Pocono region and to the Delaware Water Gap.

The legislation I am introducing today would allow the Park Service to develop and run this steam age museum while the nonprofit Steamtown Foundation operates the trains and works on locomotive restoration.

Even in its early stages, Steamtown has shown its popular appeal by attracting over 215,000 visitors from throughout the Nation. The State of Pennsylvania recognizes the importance of Steamtown, and is providing $1 million over the next 2 years. Private contributions are also financing Steamtown, but the backing of the Federal Government through legislation I have introduced is essential to insure its continued success and expansion.

Earlier this week, I gave National Park Service Director William Penn Mott, Jr., a tour of Steamtown and joined him on a ride aboard one of Steamtown's historic locomotives. Mott shares my enthusiasm for Steamtown, calling it a "national treasure" and "an ideal location for telling the story of railroading in the United States."

I urge my colleagues to lend their support to this legislation which is designed to preserve an important part of our Nation's history for the education and enjoyment of future generations.

WELCOME PRIME MINISTER PERES

HON. RICHARD STALLINGS

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. STALLINGS. Mr. Speaker, the White House visit by Prime Minister Shimon Peres of Israel follows his successful summit meetings with President Hosni Mubarak of Egypt last week and with King Hassan II of Morocco in July. These historic meetings, coupled with the Israeli-Egyptian agreement to arbitrate their longstanding border dispute, are welcome news indeed. Further, they reflect positively on the leadership of Prime Minister Peres, who referred to both nations as being "very rich in deserts and in hope" and having "to overcome the deserts and to respond to the hopes of our two peoples."

The Prime Minister's desert analogy recalled for me my visit to Israel last year where I had the distinct pleasure of meeting him. What impressed me most, aside from the enthusiasm of the Israelis, was their success in making the deserts bloom with abundance, not unlike my own district in Idaho. The visit also furthered my understanding of Israeli hopes for a just peace with secure borders, and reinforced my support for our one democratic ally in the region. Finally, my visit renewed my belief in the wisdom of Camp David.

The Camp David accords must surely be one of the most remarkable achievements of modern diplomatic history. After 30 years of conflict and untold billions expended in fruitless warfare, the leaders of Israel and Egypt agreed at last that the time had come to say: Enough. Enough violence and destruction. Enough hate and killing. Enough madness and terrorism. In the eloquent words of Elie Wiesel, writing in the September 11 New York Times about the recent terrorist attack on a synagog, "This much we must have learned from history: When Jews are attacked, the entire human community ought to feel unsafe." This is also the message of Camp David which requires our renewed commitment.

Camp David promised the hope of peace in the Middle East. The current visit by Prime Minister Peres is a welcome sign pointing toward the return to the Camp David strategy of seeking constructive solutions to seemingly intractable problems. The path is clear. We need the courage and vision to follow it.

PEACE CORPS ANNIVERSARY

HON. JIM MOODY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. MOODY. Mr. Speaker, I would like to take a moment today to commemorate the 25th anniversary of the Peace Corps and to extend my warmest thanks and respect to all those volunteers who have given of themselves for the benefit of others. These people represent the greatest elements of the American spirit: Courage, determination, and the heartfelt desire to help those in need. They have my sincere admiration.

From Sri Lanka to Swaziland, Tanzania to Thailand, these volunteers have shared their lives and skills. In Niger, the Peace Corps taught villagers how to build windbreaks and plant trees to create productive rangeland along a sand dune. In Zaire, volunteers initiated a project to provide clean water to a local village, and later saw local health personnel expand the project to 25 villages. In Morocco, 50 Peace Corps volunteers reforested a devastated area.

While these projects may seem small in the grand scheme of things, each one has had a concrete positive impact on the community where it was developed. These projects establish the kind of person-to-person good will that massive government-to-government aid frequently does not. Each has been the product of a committed volunteer who was willing to leave his or her family, friends, and home for 2 long years in an effort to make a difference.

We can only hope that one day everyone will be willing to devote so much of their lives in a far-off place, for an unknown return, in the hopes of enriching the lives of the disadvantaged. Only then will we have realized our true potential.

REGINA HIGH SCHOOL CELEBRATES 30TH ANNIVERSARY

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. HERTEL of Michigan. Mr. Speaker, this month marks a very special event for Regina High School in Harper Woods, MI. Members of the Regina community will celebrate 30 years of dedication to quality, Catholic education for young women.

Regina High School, a Catholic, private, 4-year comprehensive high school for girls, is a dream realized by the late Cardinal Mooney and is dedicated to the Virgin Mary. Regina is owned and operated by the Sisters of St. Joseph, Third Order of St. Francis of Garfield Heights, OH.

With a student body of 1,040, Regina represents more than 80 parishes and over 90 different grade schools (public and private).

A thirst for learining and an eye toward higher education, nearly one-third of the school's very first graduating class in 1960

continued their education beyond high school. Today, 93 percent of the 217 graduates in the class of 1986 plan to continue their education by entering college or other post-secondary schools.

Regina is fully accredited by the University of Michigan, North Central Association for Secondary Schools and Colleges, and is a member of the National Catholic Education Association. Currently, the schools offers over 150 classes. In comparison, in 1956, no more than 10 courses taught by eight sisters were offered to ninth graders.

During the past 30 years, Regina has expanded with a gymnasium, chapel, auditorium, and, most recently, a complete computer lab, new offices, and two new classrooms. In addition, uniforms have been modified, and many traditions have developed, but the basic goal of providing a well-rounded education in the Catholic tradition remains at the heart of Regina's philosophy.

The spirit of Regina High School, undoubtedly, has touched the lives of many. Today, it reaches to the U.S. Congress and, in return, on behalf of the Members of the U.S. House of Representatives, I congratulate the students, faculty, Sisters of St. Joseph, administration, parents and family members, and the entire Regina community on this historic occasion.

VFW POST 4164 HONORED

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. TRAXLER. Mr. Speaker, I would like to bring to the attention of the Members of the House the extraordinary record of achievements of the Veterans of Foreign Wars Post 4164, Caro, MI, and its outstanding Commander Merkel Fader. Under Commander Fader's able leadership, Post 4164 has just been named "All State Post" at this July's State VFW Convention.

Post 4164 has been extremely active in community affairs for the past 40 years and has been an integral and most highly valued element of Caro's civic pride. This year's designation as "All State Post," in fact, is the second time that Post 4164 has been so honored.

During the tenure of Commander Merkel Fader, Post 4164 has consistently met and exceeded its annual Post membership recruitment goals. This has enabled the Post to play such a significant role in Caro and Tuscola County with its many programs to promote the spirit of Americanism, through hospital service for veterans, community services with the public schools, working to improve traffic safety and education, to name but a few.

Mr. Speaker, I know that all the Members of the House will want to join with me in commending Commander Merkel Fader and the entire membership of Caro VFW Post 4164 for their richly deserved designation as "1985–1986 All State Post." May their good works and dedication to the community continue to serve as an example for all other veteran and civic organizations to emulate.

AN OUNCE OF PREVENTION

HON. LYNN MARTIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mrs. MARTIN of Illinois. Mr. Speaker, an ounce of prevention, it is said, is worth a pound of cure. The Congressional Task Force on Toxic Emergencies has just completed an effort in prevention that will go a long way toward curing a problem all of us would like to see addressed—our ability to respond to toxic materials accidents and emergencies.

In July of last year the task force began to study the degree of emergency planning for hazardous materials incidents on both the State and local levels. The effort was broad based and extensive. Representatives of local governments, industry, and police and fire departments were surveyed about our existing capability and plans regarding toxic substances accidents. About 800 responses were received. Those responses reflect the State of readiness in a wide variety of areas that face different levels of risk including urban areas, agricultural centers, residential districts and major transportation routes.

The findings of this study indicate that our level of preparedness varies greatly, even within the same State. Some areas seem better prepared than others. I am proud to note that Illinois is credited with having addressed the task of regulating transportation of hazardous materials with an extensive program of enforcement with stiff fines for violators. The point of the study is not, however, to heap either blame or criticism—it is to assess our current plans and abilities to deal with toxic substance emergencies.

We might consider these incidents to be rare and sporadic. The terrible consequences of such accidents, however, require us to make sure that every community will be able to react appropriately if they are unlucky enough to face this dangerous situation.

The stakes are high. Ask Anaheim, CA, which had to evacuate 7,000 residents when fire struck a local pesticide warehouse. Miamisburg, OH, now knows of the importance of preparedness. A tank car derailed near there and forced the evacuation of 25,000 and the hospitalization of 400.

Just as we insure against events that we hope will never happen, we must assess our ability to deal effectively with a hazardous materials accident. The task force, on which I served with 13 other Members of Congress from both parties, has given us such an assessment. We must now take care to protect our citizens against these emergencies.

SALUTING THE PEACE CORPS AT 25

HON. BEN GARRIDO BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. BLAZ. Mr. Speaker, as a former Marine Corps officer, I am used to writing commendations and pinning medals on people. I have talked of honor and courage and selflessness in making these awards. These are the qualities we revere, for in the military it is our job to protect the Nation and preserve the peace.

Now as a representative of the people of the territory of Guam and a leader concerned with the development of the Pacific, I can see that there have been many unsung heroes, peaceful warriors, in the work of preserving the peace.

The 120,000 Peace Corps volunteers who have served our Nation around the world have made a vital contribution to maintaining the peace. Through the relationships they build, the social and economic contributions they make and the understanding they bring to the Third World and our Nation, they are building and strengthening the peace and stability we all seek in the world.

For in addition to protecting the peace of the world, our Nation has a clear responsibility to foster development, to create positive change, to encourage progressive development—to help build the future. This is especially true in the Pacific—in Micronesia, Polynesia, and Melanesia, where volunteers have worked tirelessly to help island people make the difficult transition from colonies to nationhood.

The Peace Corps volunteers, who celebrate the 25th anniversary of the corps this week, have been willing to go out into foreign lands, at great personal sacrifice, and learn foreign languages and cultures so they can more effectively work with the people of the world to build that better future.

So while I have no medals to give to the returned Peace Corps volunteers this weekend and there may never be a monument to the PCV, I want to join with my colleagues in the Congress in offering my sincere congratulations to the corps on this auspicious anniversary and my warmest thanks to the volunteers who made the dream a reality.

Above all else the Peace Corps experience is an intensely personal one—a one-on-one relationship between the brave, dedicated volunteer and the host country.

So I commend each and every volunteer. And I salute you for a job well done over the years. The Peace Corps is a tribute to the American spirit of good will and generosity. The Peace Corps volunteer is an embodiment of those virtues in active service to the Nation and the world.

THE REOPENING AND NEW LIFE OF THE HISTORIC FORT STEUBEN HOTEL

HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. APPLEGATE. Mr. Speaker, a new life has been given to the historic Fort Steuben Hotel, in Steubenville, OH. The new Fort Steuben officially reopens its doors on Friday, September 26, 1986, as an apartment complex for elderly and handicapped tenants in the community.

Built in 1919, the Fort Steuben Hotel was the resting stop for thousands of visitors in a

region of booming industrial and economic growth. The hotel closed its doors in February 1984 due to the necessity of extensive reparations. The restoration of this historic landmark assures its continued use and place in Steubenville history. The once famous ballroom, which was the location of wedding receptions, banquets, and dances, has been renovated into an elegant community room for the Fort Steuben tenants.

I am very pleased with the role of Federal funding for this project through the Housing and Urban Development Section 202 Program. The strong inititative and planning by the Diocese of Steubenville and Marian Manor, Inc., have been the impetus which has made possible this tremendous achievement. The joint effort included funding support from Federal, city, and private sources, totalling $4.1 million.

Mr. Speaker, I am pleased to recognize the reopening of the Fort Steuben as a community housing project and I know it will continue to serve as a historic landmark for the well-being of the surrounding area for several generations to come.

TASK FORCE ON TOXIC EMERGENCIES

HON. H. JAMES SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. SAXTON. Mr. Speaker, I am pleased to announce that the Task Force on Toxic Emergencies has completed and is today releasing its final report on hazardous materials incidents and the preparedness of our communities and States to deal with these accidents.

This report is the result of almost a year of work by the task force which included conducting surveys in Members' home districts. These surveys were distributed among four major groups: Fire and police departments, local officials, State agencies, and industry groups. The questions sought information on the levels of awareness and training among first responders, the coordination between State and Federal authorities and laws and the presence of any specialized programs or training for dealing with toxic emergencies.

We can all recognize the need for a coordinated response to toxic emergencies. Without a joint effort by agencies and officials trained and prepared to handle toxic emergencies, a relatively simple spill or leak can become a toxic nightmare threatening the health and welfare of area residents and the environment.

The report released today by the task force is an important first step in gauging the existing capabilities and highlighting the areas of need as well as those of example. I was pleased to participate in this report and survey and am confident it will serve as an important tool in assisting others prepare for toxic emergencies.

DOWLING COLLEGE RECEIVES FAA GRANT

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. DOWNEY of New York. Mr. Speaker, it is with great pride that I rise to pay tribute to Dowling College, located in Oakdale, NY. Today, Dowling College received an award for its outstanding program in airway science from the Federal Aviation Administration (FAA).

Dowling is a small school, but it plays a big role on Long Island. For instance, Long Island's own commercial airport, MacArthur Airport, has experienced significant growth in traffic in the past few years. However, the resulting increase in noise has been a problem for the residential neighborhoods around the airport. Nobody wants to stop the benefits of growth but nobody wants to sacrifice their quality of life either. Nor should they. Dowling's airway science program can help find the solutions we need to problems like this.

The FAA has awarded Dowling $223,300 to refurbish and expand its airway science laboratory and acquire computer equipment. Dowling has earned this award and I am confident that not just Long Island, but the Nation, at large will benefit from the research that is done as a result of the grant. To Dowling I say, keep up the good work.

HONORING RABBI MORRIS FELDMAN OF QUEENS COUNTY, NY

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today in honor of Rabbi Morris Feldman, the spiritual leader of Anshe Shalom in Kew Gardens, New York, and a source of strength for the entire Queens County community on the joyous occasion of his 70th birthday, which will be celebrated on Saturday, September 20.

Rabbi Feldman has been an active leader in over four decades of community service. Time does not permit a full listing of his accomplishments over the course of his distinguished career, but I will try to summarize his achievements. Rabbi Feldman established the first Hillel in Pittsburgh, PA, serving the four universities of that city, so that Jewish students would have the opportunity to take advantage of their rich cultural, historical, religious, and social heritage. He developed a thought-provoking television program, Moral Issues of Our Times, which captured the prestigious Peabody Award. He is active within the Rabbinic Assembly, and serves on the law committee of that important religious body.

Throughout his career, Rabbi Feldman has been involved in interfaith organizations, furthering his belief in strong ties between people of all religions. In Queens, he has been especially active in the community home for the developmently disabled, and he conducts a model seder every Passover at the home.

Mr. Speaker, Rabbi Feldman's wife, Gertrude, is also active in the New York community as the supervisor of special projects in the Jewish Community Service of Long Island. They have two daughters, Beth and Tamar. During his birthday celebration this weekend, Rabbi Feldman will also be honored as Man of the Year at Anshe Shalom, for all the dedication he has shown for that congregation, as well the wider New York community.

Mr. Speaker, people like Rabbi Feldman are much too rare in this world. The love, the care, and the commitment he gives every day have affected the lives of countless people. I call now for all of my colleagues in the United States House of Representatives to join me in wishing a hearty Mazel Tov to Rabbi Morris Feldman, and in sending him only our very best wishes for the years to come.

IN HONOR OF JUDGE JOHN M. PARKS

HON. DENNIS E. ECKART

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. ECKART of Ohio. Mr. Speaker, I rise today to pay tribute to a truly outstanding individual, Judge John M. Parks, a resident of my congressional district in Ohio. Throughout the Honorable John M. Parks' 22-year-career, he has earned the respect and admiration of his peers, receiving three outstanding and three superior awards from the Ohio Supreme Court. He has been characterized as having the unique ability to bring both wit and wisdom to the difficult task of deciding the multitude of disputes that confront a judge.

Prior to his law career, Judge Parks served as special agent in the FBI investigating countersubversive activities from 1942 to 1945, earning a special commendation from FBI Director J. Edgar Hoover.

My community will surely miss a judge of his caliber and experience. It is my pleasure and a personal honor for me to pay tribute to the Honorable Judge John M. Parks on the occasion of his retirement.

FOUR MEMBERS ARE HONORED BY ASSOCIATION OF CERTIFIED PROFESSIONAL SECRETARIES

HON. JOHN McCAIN

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. McCAIN. Mr. Speaker, it is my privilege to call to the attention of my colleagues Karen G. Crawford of Phoenix, AZ, who, as president, recently addressed the Association of Certified Professional Secretaries to honor four members for their outstanding performance on the certified professional secretaries's examination.

The certified professional secretaries' examination is developed and administered twice

annually by the Institute for Certifying Secretaries, a department of professional secretaries international [PSI]. Members of the institute are from education, management, and the secretarial profession.

Six areas of business practices are tested on the CPS examination: behavioral science in business, business law, economics, management, accounting, office administration and communication, and office technology.

Karen Crawford was educated at Utah State University and Arizona State University. She earned her CPS rating in 1970 and is a former member of the CPS Institute. She was served on the PSI seminar team for the research and educational foundation, the PSI international public and world affairs committee, and the international education and program committee. She is the past president of two Arizona chapters: Valley of the Sun in Phoenix and the Scottsdale, AZ, chapter.

Karen was a charter member and served two terms as president of the CPS Society of Arizona. She is currently the charter president of the Association of Certified Professional Secretaries—worldwide organization formed in October 1985 for those persons who have earned the CPS rating.

Presently, Karen G. Crawford is secretary/treasurer of R.M. Hobson, Inc., a Government-bond dealer in Phoenix. She is one of three owners of the company and a member of the board of directors. She is the principal of Karen Crawford Associates, a seminar firm specializing in presentations for secretaries.

I salute Karen Crawford not only for her involvement in the Arizona business community, but also for her ongoing efforts on behalf of the Association of Certified Professional Secretaries.

THE CATASTROPHE OF UNINSURED AND UNDERINSURED AMERICANS: IN SEARCH OF A U.S. HEALTH PLAN

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. ROYBAL. Mr. Speaker, most Americans would agree that the United States has among the best—if not the best—health care in the world. That is, the best health care for those who are fortunate enough to have access to it. Tragically, many Americans do not have adequate access to quality health care.

On September 12, the House Select Committee on Aging held a hearing focused on two critical access deficiencies. First is the large and growing number of Americans without any health insurance coverage. Recent studies indicate that over 31 million people are uninsured. Without the protection of insurance coverage, hospitals and other health care providers are growing more and more reluctant to provide needed care.

The second great deficiency is one of underinsurance, inadequate coverage for primary, acute, and long-term care. Young families are more and more likely to be working for employers who provide only minimal coverage. Over 200 million Americans are without long-term care protection—be it public or private—and are at major risk of financial disaster when hit by a catastrophic, chronic illness.

I am deeply saddened by the personal tragedies I have witnessed due to a lack of access to needed health care. It is unacceptable that the personal catastrophe of an illness can be accompanied by a second catastrophe—a financial disaster striking young and old alike.

Clearly, a broad-based problem exists and only a broad-based solution will provide the full health protection which Americans so desperately require. Fortunately, there is no shortage of options for dealing with this tragic problem.

In choosing among the many available options or in packaging a more comprehensive solution, certain criteria should be applied:

Are the uninsured fully insured?

Are the underinsured insured for basic health costs?

Are the underinsured insured for catastrophic acute care costs?

Are the underinsured insured for catastrophic long-term care costs?

Is the quality of health care assured?

Are costs affordable for individuals, government and employers?

By applying these criteria to all proposals, the American people and policymakers can judge the adequacy and merits of each one.

As we consider different options, it is important to keep in mind that all funding comes from the same source, the American people. How much Americans pay depends heavily on their health status and insurance coverage and, unfortunately, much less on their ability to pay. The challenge is to create an insurance system which ensures equal access even for those Americans with limited ability to pay for needed health care.

For that reason, I introduced my U.S. Health Act of 1986 (H.R. 5070), a comprehensive, national health plan to guarantee that all Americans have access to the full spectrum of necessary health care. Not only would U.S. Health dismantle existing barriers to health care, but it would slow the current health care cost spiral and improve health care quality as well.

Uncertainty may exist about the extent of public support for active Government leadership. However, the public, fostered by the growing personal experience with inadequate health care coverage, is making increasing demands that Government address this crisis.

The Federal Government, in conjunction with States and the private sector, has the responsibility and must make the commitment to act as the steward of the Nation's health care delivery system and the protector of the Nation's health.

As has been demonstrated by the Medicare Program, Government can take an active role in ensuring access to millions of Americans while working closely with the private sector. Outside of the United States, Canada has also demonstrated that Government can take the leadership role in assuring health care accessibility and affordability. So too the American Government can take the lead in and should shoulder the responsibility for ensuring equity of access for all Americans. Equal access is far too important a matter to be left to chance, to whim or to market forces.

Given the forces of change and the current inequities of access, now is the time to make the commitment to protect the uninsured and underinsured. The risk to the uninsured and underinsured is great and grows every day. High and rapidly rising health costs are hitting Americans of all ages. If costs are not controlled, health costs for everyone—individuals, employers, Government—will outdistance our ability to pay for needed health care. We no longer can afford not to act.

However, public and private sector policymakers will not solve the problem unless and until Americans of all ages demand that it be done. When public policymakers believe that elections will be won or lost on this issue, then and only then will this catastrophic problem of over 31 million uninsured and over 200 million underinsured Americans be solved.

Mr. Speaker, the Select Committee on Aging chairman's report, "America's Uninsured and Underinsured: A Nation at Risk of Inadequate Health Care and Catastrophic Costs," follows:

AMERICA'S UNINSURED AND UNDERINSURED: A NATION AT RISK OF INADEQUATE HEALTH CARE AND CATASTROPHIC COSTS

Health insurance coverage for 235 million Americans of all ages is a deep and immediate concern to Congress because it is an essential element if people are to access needed care and reduce the personal burden of catastrophic health costs.[1] Recent studies continue to document serious gaps in insurance coverage. Over 31 million persons—more than 13 percent of the U.S. population—are uninsured, highlighting the need for some type of remedial action. Of equal concern are the many millions of Americans who are underinsured—those whose insurance is inadequate. The underinsured are also not ensured access to needed health care, be it primary, acute or long term care, nor are they protected from catastrophic health costs. When faced with a catastrophic acute or long term illness, over 200 million Americans are potentially underinsured.

THE UNINSURED

Any effort to estimate the number of uninsured people is difficult due to the lack of a satisfactory data gathering system. As a result, the following current estimates of the uninsured are low since they miss significant numbers of uninsured.

The U.S. Census Bureau's Survey of Income and Program Participation (SIPP) taken during the third quarter of 1985 revealed that approximately 13.5 percent of Americans, representing 31.8 million persons, are without health insurance—public or private. The uninsured are, by and large, people under age 65, as the Medicare program provides coverage for the elderly. About 150,000 people over age 65 are uninsured. The 16 to 24 age group contains the largest proportion of uninsured with over 22 percent lacking insurance. Sixteen percent of those under the age of 16 are without insurance.

The SIPP survey shows that of those under 65 years of age, about 15.2 percent

[1] Access is defined as the ability to pay for services, the availability of services, and the absence of other barriers. This report focuses on the ability to pay issue.

are uninsured. To give some historical perspective to this statistic, 12.5 percent of people under age 65 were uninsured in 1977. (National Medical Care Expenditure Survey (NMCES), 1977) This proportion rose to a high of 17.1 percent in 1983. (SIPP, 1983)

The employment factor

Approximately 75 percent of the uninsured are employed adults or their dependents. The employed uninsured tend to be young and relatively less educated. Workers in occupations that are seasonal or transitory in nature and those in occupations requiring relatively less technical skill are also more likely to be uninsured. (National Center for Health Services Research, 1985)

The poverty factor

Although the uninsured are distributed across income levels, a disproportionately large share are economically disadvantaged. According to the 1982 Current Population Survey, 35 percent of the uninsured have a family income below the federal poverty threshold of $9,000 for a family of four; 64 percent (nearly two-thirds) of the uninsured have a family income below 200 percent of the federal poverty standard.

The geographic factor

The likelihood of being without health insurance appears, to some extent, to be a function of geographic region of residence. Two-tenths of the residents of the West South Central states are uninsured, whereas, only one in ten residents of New England are uninsured. Some of this variation is directly related to the varying adequacy of state eligibility criteria of Medicaid programs. (Congressional Research Service, 1986)

The Medicaid factor

Medicaid deserves much credit for improving the poor's access to health care. However, many poor persons are not eligible for Medicaid coverage. Poor people may not qualify for Medicaid either because they don't meet the categorical requirements (i.e. they aren't aged, blind, disabled, or eligible for Aid to Families with Dependent Children) or because they don't meet the state-determined resource and income requirements. This latter problem is exemplied by the fact that the cut-off income level for Medicaid eligibility dipped below 55 percent of the federal poverty threshold in 23 states in 1984. (Marion Lewin and Lawrence Lewin, Business and Health, September 1984)

According to a 1982 study, only 37.5 percent of those—both aged and nonaged—with incomes below the federal poverty standard are actually eligible for Medicaid. Another 13.2 percent of those with incomes below the federal cut-off level are covered by employer-provided health insurance, leaving 49.3 percent of the federally-certified poor without any form of public or private health insurance. (Thomas Joe, Judith Meltzer, and Peter Yu, Health Affairs, Spring 1985) These are the people who fall through Medicaid's cracks.

The uninsurable factor

Included in the group of persons who are uninsured are persons who are not covered by a group health plan and cannot purchase private health insurance because of preexisting medical conditions. This group also includes many insured Americans who have very restricted coverage due to one or more serious health problems. President Reagan's Health Policy Advisory Group estimates that "perhaps one million Americans are uninsurable * * * totally or for specific conditions."

THE UNDERINSURED

The many millions of Americans who have inadequate health insurance—the underinsured—are also a major public policy concern. Estimates of the underinsured are determined by examining the extent to which payments of out-of-pocket health costs affect a family's financial well-being. Even for those with some type of health care coverage, the associated out-of-pocket costs, as a result of premiums, deductibles, and copayments as well as payment for noncovered services, can reach catastrophic levels or preclude persons from seeking needed care.

A recent National Center for Health Services Research (NCHSR) study suggests that "two distinct types of families have out-of-pocket expenses that are relatively high in relation to income: (1) families which, due to high-cost illness, incur *total* health care bills so large that in spite of relatively good insurance coverage, the uncovered portion paid out-of-pocket amounts to a considerable sum; these are the intended beneficiaries of most traditional stop-loss catastrophic health insurance proposals; and (2) families for whom relatively small out-of-pocket expenses represent a high percentage of their income due to a combination of low income and inadequate health care coverage."

Depending on the way "underinsured" is defined, estimates of the proportion of the privately insured under age 65 who are inadequately insured range from 8 percent to 26 percent. In general, about 13 percent are thought to be underinsured. However, the percentage who are underinsured for catastrophic acute or long term illnesses is much higher—more than 85 percent of all Americans. According to the NCHSR report, between one-third and two-thirds of all non-group enrollees are underinsured. Group enrollees, who represent 90 percent of persons with private insurance, are still a substantial majority of the underinsured.

The catastrophic cost factor

On the problem of catastrophic health costs, the NCHSR study shows that the families with a high ratio of out-of-pocket expenses to income were found to be headed by someone under 18 or over 65 years of age, not employed, and with lower income. The proportion who are underinsured is highest when it comes to catastrophic protection—insurance against the small possibility of large uninsured expenses from a costly ilness. More than 200 million Americans—over 85 percent of Americans—lack adequate protection against catastrophic acute or long term care costs.

The high and rising cost factor

Already individuals and employers are having difficulty paying the high cost of adequate health insurance. Even for people who might be able to afford adequate insurance and most other out-of-pocket health care costs, the future presents the problem of rapidly rising out-of-pocket costs. Elderly out-of-pocket costs are projected to rise about twice as fast as their income. Even working Americans are unlikely to keep pace. Per capita health care costs are projected to grow at an 8.0 percent annual rate between 1985 and 1990 while the costs of other goods (Consumer Price Index) are projected to grow at a much slower annual rate of 4.8 percent. (Health Care Financing Review, Spring 1986)

The noncovered acute care factor

Americans over the age of 65 are in a somewhat different position than Americans under the age 65 primarily due to the availability of Medicare coverage for basic medical care. However, most elderly are still at risk, jsut as are the non-elderly. Medicare and most private insurance exclude payments for preventive examinations, eyeglasses, prescriptions, prosthetic devices, and foot care. Furthermore, both Medicare and most private insurance provide only the most minimal protection against catastrophic health care costs—the most significant of which is the enormous, unpredictable, and growing cost of long term care.

One indicator of the inadequacy of Medicare coverage is the fact that about two-thirds of the elderly have chosen to purchase supplemental insurance policies. However, the supplemental insurance policies are both expensive and generally only help pay for deductibles and coinsurance for Medicare covered services. As a result, the elderly remain unprotected from the costs of dental care, prescription drugs, and long term care. Further, neither Medicare nor the private supplemental policies provide protection for expenses resulting from longer term, acute illness.

The noncovered long term care factor

When it comes to long term care, over 85 percent of Americans are underinsured. Home care remains a relatively uncovered service for most Americans. Nursing home coverage provided by Blue Cross and Blue Shield, commercial insurance plans and Medicare is limited. Currently, only 16-25 private insurance companies offer long-term care insurance which is substantially more comprehensive than standard Medigap policies and which go beyond restrictive Medicare definitions for nursing care.

At a cost of $20,000 to $50,000 a year, nursing home care would be financially devastating to most people. According to a study conducted by Harvard and Massachusetts Blue Cross and Blue Shield for the Committee on Aging, nearly two out of three elderly persons alone will impoverish themselves after 13 weeks in a nursing home.

The age 55 to 65 factor

Inadequate private insurance is a problem particularly among those between the ages of 55 and 65. While this age group is more likely to be insured throughout the year than the rest of Americans, they face the likelihood of high medical expenditures at an age of reduced employment, reduced income and lower rates of group insurance enrollment. (NCHSR, 1985)

The uninsured and underinsured at risk

The risks and problems facing many millions of uninsured and underinsured Americans are great and growing.

The risk of inadequate access

According to a 1982 Robert Wood Johnson Foundation survey on access, one million families have at least one member who was refused care because of inadequate funds. Similarly, 5.1 percent of insured families found it difficult to obtain health care in the twelve months prior to the survey. The survey also indicated that 4.8 percent of insured families needed health care in the twelve months prior to the survey but did not obtain it. A Louis Harris survey indicated that over 8 percent of American families in 1983 did not obtain needed medical care for financial reasons.

The National Medical Care Expenditure Survey determined that utilization patters suggest that the uninsured may not have the access they need to medical care. The

insured under age 65 receive 54 percent more physician ambulatory care than the uninsured. Further, the insured under age 65 receive almost twice as much hospital care as the uninsured.

Not only do the uninsured receive less care, but they perceive themselves to be in poorer health than the insured. The Robert Wood Johnson Foundation's 1982 study shows that 20.4 percent of the uninsured believe themselves to be in fair or poor health compared to only 13.4 percent of the insured. Poorer health status of the uninsured indicates that more health care is needed for the uninsured, not less.

The risk of catastrophic health costs

Catastrophic costs refer to large, unaffordable, out-of-pocket health case expenditures that can result from illnesses requiring either acute or long term care. In determining whether or not a person's medical expenses are catastrophic, either a person's medical expenditures can be measured against a specific dollar threshold amount or measured relative to an individual's income.

A recent National Center for Health Services Research study documented the number of families with high out-of-pocket health care expenditures relative to income in 1977. Of all families, 19.9 percent incur out-of-pocket costs for personal health services exceeding 5 percent of income; 9.6 percent have health care costs in excess of 10 percent of income; and 4.3 percent have health costs in excess of 20 percent of income.

Another indicator of the inadequacy of coverage is the fact that elderly Americans will be spending just over 16 percent of their income on health care in 1986, averaging $1,850 per person. Older persons now pay a larger portion of their income for health care than they did when Medicare and Medicaid began 20 years ago. (House Selection Committee on Aging, 1986)

Since the previous figures are based solely on out-of-pocket expenses actually paid, they likely underestimate the problem. These figures fail to incorporate costs for those services that were needed but were not sought by or provided to the uninsured and underinsured.

The growing risk for the uninsured and underinsured

The impact of non-existent or inadequate insurance on access to needed care is expected to grow even stronger as health care costs continue their upward spiral. As health care costs rise rapidly, it is less likely that Americans can pay the out-of-pocket costs and more likely that access is restricted.

Rising Costs

In the case of the elderly, the House Committee on Aging estimates that out-of-pocket costs will grow from 12 percent of elderly income in 1977 to 18.5 percent in 1991. By 1991, elderly out-of-pocket cost are projected to average $2,633 per person and to amount to about 40 percent of total elderly health care costs. For the total population, the situation will also get worse as health expenditures continue to rise faster than the Gross National Product, a measure of the nation's ability to pay.

Changing Employer Behavior

Employers—the primary purchasers of private health care coverage—are increasingly becoming "prudent buyers" and are beginning to shop for the least expensive providers of health care and encourage insurance companies to do the same. Responding to this pressure to reduce prices, health care providers are beginning to scrutinize their costs, eliminate or reduce services that do not generate an adequate level of revenues, and avoid free or discounted care for the poor and near poor.

Increasing Competition

Further exacerbating the already restricted financial access to health care is the current emphasis on "competition" in our health system. Prior to this era of "market reform" in health care, private and public health care providers provided varying amounts of free and discounted care and could recover the associated "lost" charges by shifting them onto the bills of private paying patients. But this voluntary and informal pattern of cross-subsidization of free and discounted care is becoming less available as the health system becomes more price-sensitive.

Changing Hospital Behavior

Vanderbilt University survey indicates that both private and public hospitals are taking actions to limit the amount of free care provided. In 1981 and 1982, approximately 15 percent of hospitals adopted explicit policies and procedures to restrict care to nonpaying patients. (Geraldine Dallek, Health/PAC Bulletin, May/June 1985)

The growing pressure to limit the amount of care provided to non-paying patients appears to be prompting a rise in the practice of "patient dumping." While data on the number of patients transferred due to an inability to pay do not exist, a study of Chicago's Cook County Hospital revealed that the number of annual transfer patients received by the hospital increased 500 percent between 1979 and 1985. (Washington Report on Medicine and Health, July 15, 1985) Similarly, a study of Parkland Memorial Hospital in Dallas, Texas indicated a 300 percent increase in the number of transfer patients received between 1983 and 1985. (Wall Street Journal, March 8, 1985)

According to the Urban Institute, even state and local governments have reduced their direct financial support for public hospitals—what have long been considered the hospitals of last resort for the uninsured and underinsured. (Marion Lewin and Lawrence Lewin, Business and Health, September 1984) In 1985 alone, 17 state and local public hospitals closed their doors. Furthermore, the need for subsidized care is most critical in impoverished communities where local taxpayers are less able to finance care for the uninsured poor. (Urban Institute, June 1984)

INSURING THE UNINSURED AND UNDERINSURED

"Equal access" occurs when entry into the health care delivery system is based on need rather than factors such as status of health insurance coverage, ability to pay out-of-pocket costs, or place of residence. As described earlier, most Americans do not have equal access. However, most Americans would agree that the inequities should be removed and that equal access to health care should be achieved. The key questions are how and when.

Options for insuring the uninsured and underinsured

Fortunately there is no shortage of options for insuring the uninsured and underinsured. Though there are many ways to characterize the many options, much of the current debate focuses on private versus public sector options.

Private Sector Options

Some argue that private sector options should be the primary or only options used. Here the approaches might include encouraging or requiring employees to extend coverage to more employees, retirees or laid-off workers or to expand the breadth of coverage for all employees. Another option might be to encourage personal saving for medical expenses through vehicles such as medical IRAs or health savings accounts. Another route might be to allow expanded tax deductions or credits to cover expenses such as for long term care. Yet another option is to encourage insurance companies to make more insurance policies available which cover catastrophic acute and long term care expenses. What must be kept in mind is that these private sector options serve to decrease federal revenues and do not directly address the problems of the medically indigent and others with limited ability to pay.

Public Sector Options

Some argue that public sector options shoud be the primary or only options used. State and federal options might incude extending the Medicaid program to pick up all of the poor or the unemployed. A different approach for the unemployed might be to purchase private insurance for them. Another Medicaid alternative might be to allow low income individuals to "buy" into Medicaid. A similar option might be for States to develop private "risk pools" where individuals could buy insurance at group rates. States might tax hospitals to create "bad debt and charity pools" and permit hospitals to draw from these pools to cover uncompensated care. Another route might be to use grant programs such as the community health center and maternal and child health programs.

Looking only at the federal level, a wide range of options are available. Using Medicare as a base, federal approaches might include extending the eligible Medicare population or expanding coverage to include catastrophic acute and long term care. Some recent proposals to institute Medicare vouchers might be used to cover other people. The federal government might also provide the services directly as it does through the Veterans Administration and the Indian Health Service. A hospital-based option might be to mandate some minimum "fair share of free care" and provide enforcement through conditions for hospital licensure, certificate of need approval, participation in the Medicare program or eligibility for tax-exempt bonds.

A more ambitious and comprehensive federal public insurance option might protect all Americans (including the fully insured, the uninsured, and the underinsured), cover health and long term care, shield Americans from catastrophic acute and long term care expenses, upgrade the quality assurance system and contain total health care costs. One such comprehensive health protection package is the "USHealth" plan introduced by Chairman Roybal. (See attached summary of U.S. Health Act of 1986 (H.R. 5070)).

Criteria for assessing the options

As we consider the available options, it is important to keep in mind that all funding comes from the same source, the American people. Funding may come directly or indirectly from the American people through individual premiums, joint employer/employee paid premiums, individual and corporate taxes or direct out-of-pocket payments to health care providers. How much Ameri-

cans pay depends heavily on their health status and insurance coverage and, unfortunately, much less on their ability to pay. The challenge is to create an insurance system which ensures equal access even for those Americans with limited ability to pay for needed health care.

Many options are available for ensuring equal access for all Americans. In choosing among them or in packaging a more comprehensive solution, certain criteria should be applied:

Are the uninsured fully insured?

Are the underinsured insured for basic health costs?

Are the underinsured insured for catastrophic acute care costs?

Are the underinsured insured for catastrophic long term care costs?

Is the quality of health care assured?

Are costs affordable for individuals, government and employers?

By applying these criteria to all proposals, the American people and policymakers can judge the adequacy and merits of each one.

Commitment to insuring the uninsured and underinsured

Uncertainty may exist about the extent of public support for active government leadership. However, the public, fostered by the growing personal experience with inadequate health care coverage, is making increasing demands that government address this crisis.

The Federal Government, in conjunction with States and the private sector, has the responsibility and must make the commitment to act as the steward of the nation's health care delivery system and the protector of the nation's health.

As has been demonstrated by the Medicare program, government can take an active role in ensuring access to millions of Americans while working closely with the private sector. Medicare has continued to mature as a major health insurance program and continues to provide leadership on cost containment and quality assurance issues. Outside of the United States, Canada has also demonstrated that government can take the leadership role in assuring health care accessibility and affordability. So too the American government can take the lead in and should shoulder the responsibility for ensuring equal access for all Americans. Equal access is far too important a matter to be left to chance, to whim or to "market forces."

Major health care reforms as envisioned above are never easy, but they must be done. They can be done if we put aside our differences and recognize what is most important—namely, protecting the American people.

Given the forces of change and the current inequities of access, now is the time to make the commitment to protect the uninsured and underinsured. The risk to the uninsured and underinsured is great and grows every day. High and rapidly rising health costs are hitting Americans of all ages. If costs are not controlled, health costs for everyone—individuals, employers, government—will outdistance our ability to pay for needed health care. We no longer can afford not to act.

Public and private sector policymakers will not solve the problem unless and until Americans of all ages demand that it be done. When public policymakers believe that elections will be won or lost on this issue, then and only then will this catastrophic problem of over 31 million uninsured and over 200 million underinsured Americans be solved.

UNDERESTIMATING THE IMPORTANCE OF DRUG ERADICATION IN FOREIGN COUNTRIES

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. PEASE. Mr. Speaker, I am glad to see the Congress and the Reagan administration moving to adopt strong measures to deal with the drug epidemic in our midst. But in the stampede to act, I am concerned that any new Federal spending on this problem be directed at those facets of the drug problem where it is likely to do the most good.

First, I fear that too little priority and resources are being committed to eliminating drug supplies where they are produced in foreign countries; $48 million in new appropriations to be requested by the President as part of a $1.5 billion package seems woefully inadequate. I would call to the attention of my colleagues a thoughtful article by James Mills, an expert in the ways and means of the international narcotics industry, that appeared in last Friday's New York Times. I request that it be reproduced in its entirety. The gist of his argument is that international drug dealers can most effectively be affected through interdiction efforts in countries where drugs are produced.

Second, the Reagan administration has failed to enforce existing laws that are tailor made to applying real pressure on appropriate foreign governments to act against drug producers subject to their control. Under title V of the Trade Act of 1974,

The President shall not designate any country a beneficiary developing country under ths section (for trade preferences) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances produced, processed, or transported in such country from entering the United States unlawfully.

To the best of my knowledge, this prohibition has never been applied once to any of the countries that are major sources of the drugs flowing into the United States. To the contrary, in 1985, President Reagan and the U.S. Trade Representative gave duty-free treatment to $3.3 billion in products imported from precisely those countries where the international drug flow begins.

Mexico	$1,200,000,000
Peru	166,000,000
Bolivia	14,000,000
Colombia	99,000,000
Turkey	39,000,000
Pakistan	35,000,000
Jamaica	18,000,000
Burma	1,700,000
Thailand	235,000,000
India	286,000,000
Hong Kong	1,200,000,000

Source: U.S. Trade Representative.

A more cost effective means to combat drug use would be to enforce the drug laws on the books to curtail foreign supplies.

[From the New York Times, Sept. 5, 1986]

THE SIMPLEST WAY TO FIGHT DRUGS

(By James Mills)

What do the traffickers themselves think of all this drug hysteria—President Reagan's urinalysis, the first blockade of New York harbor since the War of 1812, proposals to seal the Mexican border with a 2,000-mile cocaine curtain? In a fortified mansion in Bangkok, in a Mexico City prison, in homes, hotel rooms and restaurants on four continents, I have spoken to a few of the men who run the international narcotics industry, and I am certain their reaction to the war on drugs is the same today as when I met them. They are laughing. With each desperate new response to the drug dilemma, we move further and further from the real solution, and give the narcotics tycoons every reason to celebrate.

When an intelligent person has a problem, he first examines the problem, breaks it into its components, tries to find the fundamental cause (as opposed to symptoms masquerading as causes) and then attacks that cause. He also asks himself what attacks have been made on the problem in the past, and which, if any, of those attacks have had success.

Clearly, the cause of the drug problem is drugs. If drugs had never existed, there could be no drug problem. Apparent solution: remove drugs. Without the presence of drugs, there would be no need for programs to interdict drugs, arrest drug dealers, seize drug profits, treat drug addicts or test potential drug users.

What attacks have been launched against the drug problem in the past? They include: interdiction, law enforcement, penalties, treatment, denying profits, eradication.

Which of these, if any, have worked? Only one: eradication. It worked in Turkey, and it worked, more recently and temporarily, in Mexico. None of the others has ever worked, to any significant degree, anywhere at any time.

Doesn't common sense tell us that before we throw billions of dollars and immense efforts at other recommended attacks on the problem, we should fully exhaust attempts at eradication, the only remedy that has ever worked? Not only is eradication the only remedy that has worked, it is also the only approach that directly attacks the fundamental problem—removing drugs.

Eradication also happens, fortunately, to be the cheapest and easiest approach. Ninety-five percent of the world's cocaine, for example, originates in only two countries, Peru and Bolivia. They have a combined population approximately equal to that of California. They are impoverished and desperately in need of aid. Surely, it would be relatively easy to encourage—and, if necessary, to force—those countries to stop growing coca.

Peru and Bolivia complain that eradication of coca plants would unduly upset peasants who earn their livings from coca. But when members of the Senate Select Committee on Narcotics Abuse and Control visited Peru and Bolivia in 1983 they found that many, if not most, of the coca-growing campesinos had until recently been growing legitimate food crops. Only when the campesinos abandoned food crops for the more lucrative coca plants did both those countries have to be fed by emergency international relief programs.

Bolivia further claims that since campesinos represent 60 percent of the electorate, their disfavor could topple the Government.

Well, so what—compared to the alternative of continuing cocaine abuse? Bolivian governments have been collapsing regularly for the past 30 years and will no doubt continue to collapse with or without the eradication of coca fields.

Note that Thailand has offered the peasants-will-starve argument for some 15 years, while its poppy acreage has grown and grown. Turkey said the same thing (it had 300,000 farmers growing poppies)—until President Richard M. Nixon gave the Turkish Government money for the farmers who were put out of the opium business in the early 1970's. Most of the money went into the pockets of corrupt officials. Still, there were no reports of mass starvation in Turkey.

A few weeks ago, President Victor Paz Estenssoro of Bolivia, asking for $100 million a year in anti-drug funds from the United States, was quoted as saying: "If we are going to tell the peasants not to grow coca, we have to have alternatives. Without an all-weather highway, they can't market rice, coffee, oranges, and other legal crops they could substitute for coca." I first heard those words—virtually verbatim—about a decade ago from Thailand officials. The Thais got the money they requested, they got their crop substitution programs and they got their highway. Today, the money is gone, crop substitution is still in the "demonstration" stage, poppy acreage is vastly increased and the highway has been used to transport opium and morphine base.

It is also argued that if we eradicate in one country, growers will simply shift to another. This ignores the fact that there are only a limited number of locations with the agricultural and climatic conditions necessary for the growth of coca and poppies. And once the full power of the United States comes down on Peru and Bolivia, forcing eradication, surely other countries will see the handwriting on the wall. Will they imagine that they can succeed where Peru and Bolivia failed? Would not the United States be as capable of coercing those countries into eradication as it was Peru and Bolivia? And isn't there something fundamentally unsound, and craven, about the other-countries-will-step-in argument? Is it wise not to attack one enemy for fear that others might then appear?

After having observed the international drug scene for 20 years, I am convinced that eradication is the only thing that will work, and that it would work quite easily. If President Reagan dug in his heels and became obsessive about eradication, he could reduce the availability of cocaine by 50 percent in six months, and 80 percent in a year. Heroin could be similarly reduced, though over a longer period of time.

Why, then, is eradication always at the bottom of every politician's list of "things to do?" I think because it's the least politically attractive recommendation. Surely, it is no accident that the present furor over drugs (sparked only in part by the emergence of crack) precedes the November elections by three months. (President Reagan declared his war on drugs 19 days before the 1982 elections.) Politicians appear to believe that workers are interested only in what is nearest to them. So we get domestic solutions: interdiction, testing and enforcement. Eradication—a big word that happens in distant lands—isn't so viscerally appealing as capital punishment for pushers.

We have to stop wanting to appear as if we are doing something—and do something. There is no end to the good you can accomplish if you don't care who gets the credit. Eradication could make all other approaches, from interdiction to testing, irrelevant.

I might also add that drugs are not exclusively an American problem. The war must be a world war not only in the sense that producing countries are our enemies, but in the sense that other victim countries are—or should be—our allies. We do not have the highest per capita addiction rate in the world. (Colombia is said to have three million addicts, which is one in nine citizens—almost unbelieveable.) Many countries in Asia, Latin America, and Europe have large and growing drug problems. They should be as eager as we to see to it that producing countries get out of the dope business.

Last year, 23 Americans died in terrorist attacks, and we bombed Libya. If the world's coca fields were in Libya, instead of Peru and Bolivia, President Reagan would know what to do and we would not have a cocaine problem today.

By concentrating the bulk of its efforts on domestic approaches, our Government keeps the heat off the leaders of the international narcotics industry, men whose supply, production and management teams are overseas.

So the traffickers are laughing. They know how to solve the drug problem. The war on drugs is the best thing that ever happened to them.

"HIGH FLEXIBLE" FUEL

HON. CLAUDINE SCHNEIDER

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Miss SCHNEIDER. Mr. Speaker, last year the President's Commission on Industrial Competitiveness warned of a serious shortcoming that the United States must remedy if it is to maintain a strong and vigorous competitive position in the global marketplace. While noting that the United States is preeminent in advancing scientific and technological breakthroughs, the Commission went on to point out that the United States is far less resourceful in ensuring the timely commercialization of these developments. This is quite apparent in the economic downturn of not only the smokestack industries—processing of primary metals, steelmaking, automaking—but also in the competitive threat to our "sunrise" high technology industries, where the United States is losing market shares in 7 out of 10 product areas.

If we are to ensure a strong, robust economy, then we must remain alert to innovative opportunities when they present themselves to us. A case in point is the Department of Defense's support for research and development in gas-turbine technology, which holds out extraordinary promise for commercial spinoff in the utility sector. I would like to share with my colleagues an article explaining the gains to be made from this technological innovation that recently appeared in the Wall Street Journal by Drs. Robert Williams and Eric Larson at Princeton's Center for Energy and Environmental Studies.

GAS TURBINES COULD MEET ELECTRICITY DEMAND

(By Robert H. Williams and Eric D. Larson)

Analysts from the Energy Department and private utilities often warn that unless more and more large coal and nuclear power plants are built, the U.S. will face economically crippling power shortages in the future. This is not necessarily the case. Advances in gas-turbine technology, arising in large part from Defense Department support for research and development on military-aircraft engines, make possible a more hopeful electric future.

Large, new nuclear and coal plants have proved to be very costly, accounting for much of the 60% increase in the U.S. average, inflation-corrected price of electricity since 1970. Growing concerns about nuclear safety and acid rain are likely to lead to further regulatory constraints on nuclear and coal power, which will make it difficult to reduce these costs. In addition, future growth in electricity demand is highly uncertain. Thus by investing in large plants that take at least eight years to build, utilities risk being caught up in a vicious circle. If demand grows more slowly than expected, the resulting excess capacity leads to higher customer rates, which reduce demand further, necessitating still higher rates, etc.

Consider instead new gas-turbine technologies having largely unfamiliar names (e.g., advanced combined cycles, evaporative-regenerative gas turbines, turbocharged steam-injected gas turbines, and intercooled steam-injected gas turbines), which have recently become available or could be commercialized quickly. These advanced gas turbines, like turbines now used by utilities for meeting peak electrical demands, have low capital costs. But unlike peaking turbines they are highly energy efficient, requiring 30% to 40% less fuel.

These natural gas-fired turbines can produce electricity at less total cost than coal or nuclear plants, even with gas prices much higher than at present. Having small sizes and short lead times, these gas turbines are ideal for planning in the face of uncertainty: Utilities can wait to see how demand is evolving before deciding to build. If natural gas should eventually get too costly, these plants could be shifted to synthetic gas derived from coal and still be competitive with conventional coal or nuclear plants. Using coal this way would produce much less air pollution than burning it in conventional coal power plants. For the more efficient options, the switch to coal gas could probably be delayed until well after the year 2000.

Despite such attractions, utilities are not rushing to buy advanced gas turbines nor are manufacturers rushing to build them. The bias against gas turbines began in the mid-1970s, when natural gas was being used up at a much faster rate than new supplies were being found, leading Congress to pass the Powerplant and Industrial Fuels Use Act of 1978, which put constraints on the use of natural gas by utilities. Since the deregulation of the price of new natural gas, however, the supply outlook has improved. Additions to gas reserves have been comparable to production, and there is now a gas surplus. Present law, however, perversely allows utilities to use gas inefficiently (in existing plants) but prohibits them from using it efficiently (in new plants).

While the Fuels Use Act constraints are not absolute, few utilities are interested in

getting exemptions—in part because they have not yet adapted to thinking of the gas turbine as a major power-generating option and in part because most utilities don't need new generating capacity. However, it is also worthwhile to replace existing gas-fired steam-electric plants with efficient gas turbines. This could lead to lower electrical rates and to gas savings nationwide equivalent to about 500,000 barrels of oil a day. But utilities are not adequately motivated to retire economically inefficient capacity, so no significant replacement market is developing for these new turbines.

Manufacturers are not pushing to develop and market these new turbines, because the utility market is uncertain and the Defense Department already provides a secure and profitable military-aircraft market for gas turbines. The high efficiency that could be achieved in utility applications is, to a large degree, the result of Defense Department R&D on jet engines, which averaged $425 million a year over the past decade.

Because they are not looking for new civilian markets, U.S. manufacturers are not prepared to commit the modest incremental R&D investments needed to tailor advanced gas turbines to utility needs. However, these technologies are so inherently attractive, and their development costs so low, that they will be developed somewhere. A Japanese consortium is already being organized to finance the development of utility-scale steam-injected gas turbines.

Barring immediate and politically unlikely support for new nuclear and coal plants, new gas-turbine technologies spell the end of the era of the electric behemoths. The speed of the transition to these new technologies and U.S. manufacturers' roles in marketing them are, to some extent, dependent on public policies. Ending restrictions on utility use of natural gas, providing incentives for utilities to replace economically inefficient equipment, and perhaps redirecting a modest amount of military R&D money to utility gas turbines would all help shape a formidable U.S. capability in these new gas-turbine markets. The U.S. can be a technological leader in these markets, building on its undisputed lead in jet-engine technology, or follow others, to its economic detriment.

A COMMON HERITAGE

HON. MANUEL LUJAN, JR.

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. LUJAN. Mr. Speaker, I am pleased to submit for the RECORD a speech the Honorable ESTEBAN TORRES delivered to the Congressional Hispanic Caucus Institute, Inc., dinner on Tuesday, September 16. Congressman TORRES speaks eloquently of the common heritage held by all Hispanics and the overriding wish that Hispanic-Americans be first accepted as citizens of the United States.

As our colleague says:

Our heritage provides us with a bright light to illuminate our past and a powerful beam to guide us into the future.

REMARKS OF CONGRESSMAN ESTEBAN E. TORRES BEFORE THE CONGRESSIONAL HISPANIC CAUCUS INSTITUTE, INC.

It is a high personal honor and public privilege that you have bestowed upon me this chairmanship. I pledge to you that I will work diligently to retain your confidence and trust.

As Hispanics we share a common heritage. We are of many races but we all trace our ancestors back to the Iberian Peninsula, the Spanish speaking countries of this hemisphere, the Caribbean Islands of Puerto Rico, Cuba, the Dominican Republic, the trust territories of the Virgin Islands and Guam.

We are Members of Congress, but first, and foremost, we are citizens of the United States of America.

We are Members of Congress because constituents have sent us here to act on their behalf. Thus, we represent all the people of our respective districts: be they Anglos, Blacks, Asians, Native Americans and, yes, the Hispanics. We do not represent one group to the exclusion of all others.

We did not just recently arrive on the scene. As far back as the 1820's there have been Hispanic Members of Congress. The combined service of current Hispanic Caucus members in the House of Representatives is 145 years.

We represent all areas of the country and we are strategically placed among all the major committees. We hold leadership positions and chairmanships.

As Democrats and Republicans, we are in these positions because we have worked within our state delegations and with the leadership of the House to get where we are. We will continue to seek leadership roles. Among us, to be sure, there is a future Speaker of the House of Representatives and future Senate leaders.

We know that taken as a whole, Hispanics in this country are younger than the total U.S. population, are less educated, are unemployed more often, and are much more likely to be at the lower end of the occupational scale. It is this multitude of circumstances which presents us with special problems and unique challenges. That is why we work so hard to find solutions to these problems and to meet the challenges of the future.

I believe that because of our ancestral heritage, we have a special outlook on world affairs. Our families originally came here to seek economic opportunity or political freedom or both. And when we see the squalor of poverty or the pillage of war in a foreign land, we are naturally moved to take action to provide economic assistance and achieve peace. We know better than to act unilaterally, we work in concert with our allies around the world. Dictatorships of the left or the right cannot look to us for support. The Blacks of South Africa are kin to us and we fight along side them in freedom's name. Cuban political prisoners and other prisoners of conscience throughout Latin America are welcomed to our shores unconditionally, but with one resolve: there shall be no more closed societies in this hemisphere.

Whether the problem which confronts us is domestic or foreign, we act in the best interests of our constituents and the United States. We do so as students of history, as public servants and as Americans first.

Ladies and Gentlemen, our heritage provides us with a bright light to illuminate our past and a powerful beam to guide us into the future. We need to be well grounded in our heritage during every week of the year, not only during this week. Hispanic Heritage Week is a time for collective celebration and collective planning. Our Hispanic past is an inspiration best expressed by the traditional addage that says, "people find in the greatness of their past the courage and confidence for the future".

For the most part I have been talking about the elected members of the Hispanic Caucus. We are important people, I suppose. At this hour, more important than who we are is who you are. None of this could be possible without your support. This is a family! This is a family made up of corporate, business and labor leaders. It includes our civic leadership in state houses and court houses throughout this land. It is a family of women and men in local governments, and of young women and men in uniform defending our nation. You are educators, scientists and representatives of the fourth estate . . . the media. I see the faces of abuelos and abuelitas who we will never abandon in the quest for balanced budgets. Yes, we are family, a family that represents the best of American life.

It is this extended family that allows the programs of the Congressional Hispanic Caucus Institute to set a foundation for those who will follow us: I am speaking now about the young people who are our future. Without you, we could not be as effective.

To our friends and supporters, to our family, you have my gratitude, my salute and my loyalty.

A DWINDLING OF CHOICES

HON. JIM MOODY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. MOODY. Mr. Speaker, I commend to my colleagues this article about dwindling contraceptive choices which appeared in the Wall Street Journal last week.

This article underscores the difficulties facing women—especially poor women—who wish to regulate their own fertility. I urge that we think seriously about how to encourage the contraceptive research and development necessary to reverse this regressive trend.

CANADA ATTRACTS U.S. WOMEN SEEKING IUDS

(By Peggy Berkowitz)

As contraceptive choices dwindle in the U.S. because of health and litigation problems, some women are traveling to Canada for intrauterine devices—a trend that the products' makers would like to discourage.

Canadian birth-control clinics report a steady trickel of women coming from the U.S., where IUDs' are becoming scarce.

The demand began last winter after G.D. Searle & Co. decided to stop selling its Copper-7 and Tatum-T Intrauterine Copper Contraceptives in the U.S. because of the high cost of defending hundreds of product-liability suits. The move by Searle, a unit of Monsanto Co. and maker of the most widely used IUDs, has all but eliminated the IUD market in the U.S.

FOREIGN SALES

But drug companies including Searle continue to sell IUDs in Canada and other countries, where product-liability actions aren't a big problem. Both Searle and Johnson & Johnson's Ortho Pharmaceutical (Canada) Ltd., the other major manufacturer of IUDs in Canada, insist their products are safe. (The Food and Drug Administration still approves the devices.) But the

companies show little enthusiasm for the movement of U.S. women to Canada to procure IUDs.

A spokesman for Searle says the company doesn't know how many U.S. women are making such a move, but adds, "We wouldn't condone it." He declined to be more specific. Searle is still considering the sale of its foreign IUD business, as announced last January.

In Toronto, a spokesman for Ortho Pharmaceutical says only that the company is aware of the trend but isn't promoting the practice.

Some product-liability lawyers in the U.S. say that U.S. women who obtain an IUD in Canada and develop problems could probably sue the parent companies here.

USE DROPS STEADILY

Use of the devices has dropped steadily in the U.S. in recent years, primarily because of the controversy surrounding the products. A.H. Robins Co.'s withdrawal 12 years ago of its Dalkon Shield IUD was followed by thousands of costly lawsuits against the pharmaceutical company, prompting it to file for Chapter 11 protection in 1984. U.S. users of IUDs have dropped to an estimated 1.9 million in 1985, down about 17% from three years earlier.

Despite the potential problems, significant numbers of U.S. women continue to seek doctors that will fit them with IUDs. Mary Pat Ruh, for example, a Buffalo anesthesiologist, couldn't find a local doctor who would replace her IUD after Searle took the device off the market last winter. "I tried the pill for awhile and couldn't tolerate it," she says. So this summer, Dr. Ruh called the first gynecologist listed in the Fort Erie, Ontario, phone book and traveled north 12 miles for an appointment.

Planned Parenthood, a non-profit agency that promotes birth control, is referring IUD users to its Canadian affiliates. And some U.S. doctors are sending patients to Canadian colleagues. In Vancouver, British Columbia, the Planned Parenthood clinic says it gets about two to four U.S. clients a week.

Because the plastic-based devices require replacement about every three years, the number of women traveling to Canada is expected to increase as supplies in the U.S. are used up and as more women who already have the devices seek to have them replaced.

FEAR OF LAWSUITS

Candian doctors charge Americans about $50 to $100 for the IUD, its insertion and a gynecological exam, similar to U.S. doctors' fees when copper-bearing IUDs were readily available.

Although some U.S. doctors stockpiled Searle's IUDs, others say they won't fit the devices anymore because they fear lawsuits, Robert Resink, chairman of the reproductive-medicine department at University of California, San Diego, says concerns about medical-liability suits are so great in California that he assumes that "any doctors in this department who kept a few IUDs aside are keeping them for their wives."

A hormone-secreting IUD called Progestasert is still being marketed in the U.S. by Alza Corp., based in Palo Alto, Calif. But the device must be changed annually and is much more expensive than the copper-bearing IUDs.

A trip to Canada for an IUD is still a decision mainly for the affluent. Thus, some doctors and officials in birth-control clinics expect more abortions among U.S. women who use IUDs; these women, they say, will rely on the devices beyond their useful lifespan or switch to less-effective contraceptive methods.

TRUTH IN SAVINGS LEGISLATION

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. HUBBARD. Mr. Speaker, I have just received the September 11 letter from my good friend and fellow Kentuckian, Charles Beach, Jr., president of Peoples Exchange Bank of Beattyville, KY, which I would like to share with my colleagues.

Charlie Beach has contacted me about his concerns with regard to pending legislation before our House Committee on Banking, Finance and Urban Affairs. The measure, H.R. 2282 or the Truth in Savings Act, is one to which he is greatly opposed.

I hope my colleagues will take a few minutes to read and consider his timely comments. The letter to me from Mr. Beach is as follows:

SEPTEMBER 11, 1986.

Hon. CARROLL HUBBARD, Jr.,
Rayburn Building, Washington, DC.

DEAR CONGRESSMAN HUBBARD: I wish to express my very strong opposition to H.R. 2282 (Truth in Savings Act) which has been marked up and reported out of the House Banking Financial Institution Sub-Committee and is awaiting full Committee action.

1. Having been through the Truth in Lending, the excessive compliance requirements are burdensome, time-consuming; and not only increase the ultimate cost to the borrower, but in no way can be cost justified. The proposals set forth in this Bill would place a similar burdensome regulatory requirement on all depository institutions and commercial banks.

2. H.R. 2282 addresses a single method of computing interest which would deny banking institutions flexibility of paying interest on deposits and ultimately amounts to a governmental pricing control which is not necessary in this period of deregulation. Obviously, the competitive market is going to fix price and determine those rates paid by commercial banks.

3. The Bill is obviously grossly discriminatory against commercial banks and depository institutions while our competitors, the non-bank entities, are completely ignored and enjoy immunity to this burdensome requirement.

4. The Disclosure Amendment by Congressman Schumer relating to the disclosure requirement on credit cards is acceptable; however, if it applies to banks, why should it not apply to all non-bank entities.

We have seen the disruption, the inefficiencies, the dilution of quality of service caused by deregulation of the communications, the transportation and now the financial industries. In this service recessionary period, should not Congress have a priority interest, and pass legislation preserving the safety and soundness of the commercial banking system rather than an on-going effort to pursue regulatory compliance requirements which impede our efforts to better serve our customer and result in an increase in cost of service to him?

It was great to see you at the Kentucky Bankers Association convention in Louisville, I enjoyed your remarks, and your interest in this matter will be greatly appreciated.

Sincerely,

CHARLES BEACH, Jr.,
President, Peoples' Exchange Bank.

HOW THE SOVIETS OPERATE

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. LAGOMARSINO. Mr. Speaker, many of our colleagues were bewildered by the illegal and unjustified imprisonment of journalist Nick Daniloff by Soviet authorities. However, as Mortimer Zuckerman, editor-in-chief of US News & World Report, the employer of Mr. Daniloff, notes we should not be surprised by this action because of two crucial factors in the Soviet system: the interests of the state are above all others and there is an ingnorance of public opinion. The Soviet leaders do not have to justify themselves to their public.

Mr. Zuckerman's comments provide a very insightful analysis of the way the Soviets operate. I urge my colleagues to read this very informative piece, taken from US News & World Report, September 22, 1986:

A MODICUM OF TRUST

(By Mortimer B. Zuckerman)

Americans have been outraged by the imprisonment of Nicholas Daniloff, but there has been bewilderment with the anger. Why should Gorbachev risk his campaign for arms control by such an offense? Didn't he anticipate our reaction? The bafflement arises because we assume the Soviets inhabit the same moral universe. They don't. It was the same with Chernobyl. How could the Soviets delay warning neighboring states and lie to them?

The answer is twofold. In the Soviet system, the perceived interests of the state are paramount. A society that does not cherish the individual has no scruples holding any individual hostage. Secondly, there is ignorance of public reaction. The Soviet Union is, as we know, a closed society, without a free press, where leaders do not have to justify themselves to public opinion. Totalitarian leaders who do not have to respond democratically to their own people are insulated. Their isolation is compounded by centuries of hostility to and paranoia about foreigners. Thus, they are prone to miscalculate in dealings with other countries.

The contrasts could not be greater. The Soviet Union has never known a day of democratic freedom in its history. The United States was conceived and developed as the most open society in the free world. An energetic free press provides regular feedback on public reaction. Both societies have ambitions to be the dominant world power. But the U.S., though passionate for the advancement of freedom in the world, is satisfied with peaceful, evolutionary change while the U.S.S.R. is a dissatisfied imperial power, revolutionary in its ideological outlook, expansionist in its historic urges.

The Soviet Union is prepared to do whatever is necessary to dominate. That doesn't change, whoever leads or whatever media

tune he plays. For all Gorbachev's sweet noises, witness what he does in areas of contention. The Soviets are even more intensely involved in Afghanistan, Angola, Ethiopia and South Yemen, and tightening their control of Eastern Europe, which for them is legitimized by their enormous sacrifices in World War II. Arguably, there have been differences as great as these between rivals in the past but never with such profound consequences for mankind.

By all previous historical experience, the United States and the U.S.S.R., as competing powers, should have gone to war against each other many times. They have not. Their mutual restraint is directly attributable to nuclear weapons, which negate any benefits of military "victory." The dangers are so great that both political leaderships have managed the relationship within the limits of prudence.

Sane leaders then are forced to focus not on their differences but on their few mutual interests. Concern for ecology and the environment is one such area; nuclear proliferation is another. The principal common interests are surely nuclear-arms reduction and the elimination of a first-strike capacity by either side. With 45,000 nuclear warheads, triple the number of 15 years ago, the arms race is irrational and destabilizes rather than enhances security.

Unlike the 1970s, the U.S. today can negotiate from a position of strength. Trends in the military balance of power favor the United States. The American economy is flourishing while the Soviet economy is falling further behind. Most critical is political will. The power of a leader, Clausewitz said, is the product of the extent of the means at his disposal and the strength of his will. President Reagan uniquely projects the reality and image of American strength. The Soviets are coping with the political weakness of domestic stagnation. The timing is right to negotiate a stable and verifiable agreement that truly reduces nuclear arms.

So the crucial lesson of the Daniloff affair is the ability of the Soviets to damage their own interests. There cannot be an arms deal without a modicum of mutual trust and a shared sense of civilized rational behavior. The American public will not endorse a treaty if the Soviet Union continues to respond as a hard-nosed, secret-police state. It is this kind of state that reveals itself in the Daniloff frame-up.

The modicum of trust is gravely eroded.

Only the courage of Nick Daniloff and his wife Ruth redeems a dark and ugly scene in Moscow.

THE PERES-MUBARAK SUMMIT

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. WOLPE. Mr. Speaker, a troubling and uneasy chapter in relations between Egypt and Israel has at last ended, and a new discourse begun, with the summit meeting between President Hosni Mubarak and Prime Minister Shimon Peres. For far too long, the cold peace between their countries had persisted, threatening to undermine the Treaty of Peace signed in 1979. This disturbing episode—marked by Egypt's withdrawal of its ambassador in the wake of the Lebanon war, its refusal to restore diplomatic relations even following Israel's withdrawal, and the seemingly endless bickering over the mile-square salient of Taba—is over. Taba will be resolved through binding arbitration. A new Egyptian Ambassador will assume his post in Israel. But most importantly, the dialog of peace has been renewed.

The Peres-Mubarak summit was impressive for several reasons. First, it represents continuity in diplomacy between Israel and Egypt, which now embraces the second generation of leadership following the historic breakthrough engineered by Anwar Sadat and Menachem Begin.

Second, it reflects a recommitment by both countries to work together in good faith to find solutions to Israeli-Arab issues, and to the Palestinian issue in all its aspects. Both sides are showing greater flexibility: the Egyptian, in understanding forcefulness and legitimacy of Israel's concerns; and the Israelis, in their willingness to explore an international peace conference.

Third, there exists the implicit rededication to the principles of the Treaty of Peace, foremost among them the renunciation of war. This restores a sense of confidence among the peoples of both countries and the friends of peace throughout the region. This may lead to an expansion in cultural, trade, academic and scientific ties between Israel and Egypt.

Fourth, the stage has been set, with the declaration of both leaders that 1987 should be the year for negotiations, for further diplomatic Initiatives in the Middle East over the next year.

This last achievement—which is both the promise and challenge for the future—is particularly critical to the United States. For too long, the administration has failed to exercise the needed leadership with Israel and her neighbors to capitalize on positive developments. King Hussein has broken with the PLO. King Hassan has met with Prime Minister Peres—the second Arab leader to openly do so. President Mubarak has resolved the immediate impediments to normal relations with Israel. In the next several months, it is imperative that the United States become more actively involved in order to serve as the catalyst that can bring the forces of moderation together. Without that involvement, these recent achievements will be crippled, and will wither under the onslaught of those whose goal is the failure and defeat of ourselves, the foreign policy objectives of the United States, and those we support.

This is the moment to intensify our political activity without hesitation, and I call on the President and the Secretary of State to move forward immediately to cultivate these seeds of peace.

President Mubarak and Prime Minister Peres deserve our appreciation and gratitude for refusing to live with the consequences of failure to restore full diplomatic relations. President Mubarak has made a crucial judgment in the interests of peace at a sensitive juncture. Prime Minister Peres has again shown how a leader's courage and conviction can change reality. Although he will relinquish his office in October, the entire coalition government supported his mission to Egypt, and he will be able, as foreign minister, to continue his extraordinary efforts. For the second time this summer, Shimon Peres has successfully worked with an Arab leader to make the Middle East a safer place today than it was yesterday. All of us are the beneficiaries of his triumphs.

VALUABLE NEW PUBLICATION ON COMMUNITY SERVICES FOR ALZHEIMER'S VICTIMS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. BIAGGI. Mr. Speaker, as the ranking New York member of the House Select Committee on Aging, it is my privilege to announce the release of a very special publication published by the New York City Alzheimer's Resource Center, entitled, "Agendas for Action: The Aging Network Responds to Alzheimer's Disease." This is a comprehensive, 164-page directory and summary of current services offered by 244 State and area agencies on aging in 46 States to Alzheimer's disease patients and their families.

"Agendas for Action" is an outstanding compendium which will serve and is serving now as an essential reference for programs designed to assist Alzheimer's disease victims and their families across the Nation. It successfully and efficiently demonstrates the resourcefulness, energy, and commitment of the Nation's State units on aging and area agencies on aging in their efforts to meet the great challenge of Alzheimer's disease. Alzheimer's disease can be a devastating illness, not only for the victim, but also for the victim's loved ones. Currently, it is estimated that over 2 million middle-aged and older adults are victims of this disease, sometimes known as senile dementia. In New York City alone, there are approximately 50,000 persons living in the community who are afflicted with Alzheimer's disease or similar disorders. It is estimated that 50 to 60 percent of nursing home residents have some form of dementia.

Inherently, a diagnosis of Alzheimer's disease changes the life not only of the patient, but of the entire family. Progressive deterioration of the patient and the unpredictability of symptoms force the patient and family to adjust to new problems and levels of impairment on a continual basis. Families are thus caught in the dilemma of increasing demands and decreasing resources.

"Agendas for Action" serves as both a source of information about available programs nationwide and highlights activities that can be replicated or adapted in communities across the Nation. Included in the publication are descriptions of:

Special services, programs and model projects specifically tailored for Alzheimer's families, including respite and home care, family support groups, adult day care, counseling and legal services.

State efforts on behalf of Alzheimer's disease patients and their families, with emphasis on task forces and study commissions created to investigate the impact of Alzheimer's disease, and to recommend appropriate policy and legislative action.

The 12 national demonstration projects funded by the Administration on Aging, as part of its Alzheimer's disease initiative.

The scope of the services conducted by the New York City Alzheimer's Resource Center.

Collaborative activities of State and area agencies on aging in cooperation with the Alzheimer's Disease and Related Disorders Association, government agencies, foundations, the clergy, medical and academic communities, private industry, social service agencies, and others.

"Agendas for Action" is a joint project of the Brookdale Foundation and the New York City Alzheimer's Resource Center, two institutions that are very well known to me. I have had the pleasure of working with both in various different areas, and have been very proud of the many services provided by each agency, as well as the support given by the New York City Department for the Aging. The Brookdale Foundation is to be commended for their part in this excellent document. The foundation recognized the importance of addressing the needs of Alzheimer's families. In 1983, it awarded a grant to the Department of the Aging for the establishment of an Alzheimer's Resource Center. Brookdale's intent was to have its grant matched with public and other funds, making the center a collaborative undertaking of the public, private, and voluntary sectors. With matching funds from the city of New York, the center opened its doors in March 1984. From the inception, the New York City Alzheimer's Resource Center has operated in cooperation with the Alzheimer's Disease and Related Disorders Association-New York City Chapter.

"Agenda for Action" is a product of this union, and I would like to salute Janet Sainer, commissioner of the New York City Department for the Aging for her leadership, as well as Stephen Schwartz, president of the Brookdale Foundation and last but certainly not least, Randi Goldstein, director of the New York City Alzheimer Resource Center for outstanding collaboration on this timely and vital document.

Copies of "Agendas for Action" may be obtained by writing to the New York City Alzheimer's Resource Center of the New York City Department for the Aging, 280 Broadway, New York, NY 10007.

U.S. NEWS & WORLD REPORT JOURNALIST NICHOLAS DANILOFF

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. LEVINE of California. Mr. Speaker, last week, this body unanimously passed a resolution which I sponsored condemning the Soviet Union for the unjustifiable arrest, indictment, and imprisonment of Nicholas Daniloff, a reporter for U.S. News & World Report, and urging his immediate and unconditional release.

Nick Daniloff has since been released into the custody of the American Ambassador, even though he remains a Soviet hostage. Although one cannot say for sure whether the House resolution contributed to his release from prison, we do know that it played a significant role in boosting Mr. Daniloff's morale at a time when he was, to use his words, "rotting, without legal counsel and in isolation from the outside world, in a basement cell."

Mr. Speaker, I am privileged to have here a letter which Nick Daniloff wrote to you upon learning of the House resolution on his behalf. I would like to insert the full text into the RECORD and strongly urge my colleagues to read it so that each Member can see how his or her vote contributed to Nick Daniloff's sense of having strong and United American support. One cannot help but be moved by his eloquence and by his strength of character.

U.S. NEWS & WORLD REPORT,
Washington, DC, September 16, 1986.

To the House of Representatives of the United States:

DEAR FRIENDS: I learned of the congress' joint resolution in the Daniloff case as I visited with my wife Ruth in Lefortoro Prison. I cannot express in words how your support bolstered my morale as I sat, without legal counsel and in isolation from the outside world, in a basement cell. Your resolution was all the more (touching) for me because, as a journalist, I covered your debates, your committee deliberations, your searching appraisals and your final decisions between 1974-1980.

I am today, September 16, 1986, still a hostage. Released into the custody of the American Embassy is *not* a swap. The exchange of an innocent journalist for a Lt. Col. of the KGB is extremely distasteful to me.

I realize that for the sake of U.S.-Soviet relations—to say nothing of my family—some kind of political solution must be reached. I believe this will require extraordinary diplomatic skill and may take a while.

As far as letting the Soviets get away with this outrage—I do not believe they have succeeded. They will fear the international propaganda scars for years to come!

Respectfully,

NICK DANILOFF.

A TRIBUTE TO THE TUSCOLA COUNTY ADVERTISER AND RUDY H. PETZOLD, PUBLISHER

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. TRAXLER. Mr. Speaker, I rise today to bring to the attention of our colleagues a very important event, and to pay particular tribute to a very special individual. I would like my colleagues to join me in honoring the Tuscola County Advertiser for a century of newspapering in Michigan. And I would also at this time like to recognize Mr. Rudy H. Petzold, who has been the publisher of the Advertiser for the past 25 years.

While stationed in the Army, Rudy Petzold struck up a correspondence with his predecessor, James Gallery. Mr. Gallery having learned of Petzold's possible interest in a local newspapering job. Mr. Gallery hired Rudy Petzold by mail, and the two never met until the day Petzold reported for work. This mail order journalist spent 7 years as reporter and editor before becoming involved in the ownership of the newspaper. When in 1962, Petzold bought 10 percent of the Advertiser, and then purchased the remaining 90 percent 3 years later.

Since becoming publisher in 1965, Petzold has completely renovated and remodeled the Advertiser building and its operations. This constant advancement has helped the Advertiser to continue as one of Michigan's premiere weekly newspapers.

The newspaper has moved four times during its 111 years of existence. However, the present home of the Advertiser was purchased in 1904, and had previously been a hardware store and saloon. In 1923, a single story was added to enlarge the printshop area. In the late 1930's an open area between the Advertiser and the present hardware building was closed in with a building which then housed the Cairo office of the Michigan Auto Club for many years. Today, this building is part of the Advertiser building. Since 1965, the Advertiser building has undergone almost constant remodeling; shifting to meet its rapidly growing and changing business operations.

As one of Tuscola County's oldest businesses, the Advertiser has been honored as a centennial business by the Michigan Historical Society. And on July 24, 1986, the Tuscola County Advertiser was listed on the State register of historic sites by the Michigan Historical Commission.

And as one of Michigan's most respected weekly newspapers, it has received 70 awards of excellence from the Michigan Press Association, and was honored as Michigan's outstanding weekly newspaper by the University of Michigan Press Club in 1983.

Three of its publishers have served as presidents of the Michigan Press Association. This distinct honor includes Fred Slocum in 1894, A.D. Gallery in 1916 and currently, Rudy Petzold.

I am proud to know Rudy Petzold and to claim him as a good friend and fellow supporter of Michigan State University. He is a remarkable individual, a fine human being and a marvelous community asset. I ask my colleagues to join with me today in honoring him for his dedication and achievements, and to wish him continued success in the future. And ask my colleagues to also join with me in saluting the anniversary of a most distinguished and well respected weekly newspaper, the Tuscola County Advertiser, may it grow and prosper for another 100 years.

CLAUDE PEPPER LEADS ON DEFENSE AGAINST COMMUNISM

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986,

Mr. STUMP. Mr. Speaker, by a vote of 229 to 186 the House agreed on September 17, 1986 to preserve the covert action option for the United States in meeting the Communist challenge in Angola. The leadership of one of the most respected Members of the House of Representatives, CLAUDE PEPPER, showed the way to a bipartisan approach in support of the

Angolan resistance. Mr. PEPPER's article in the New York Times of September 17, 1986 explained the vital importance of maintaining United States options in Angola. Those who follow future developments in the liberation of Angola should remember Mr. PEPPER's words.

YES: TO HELP PROMOTE PEACE

(By Claude Pepper)

WASHINGTON.—The House will make a serious mistake if it votes today to ban covert United States aid to the Angolan freedom fighters led by Jonas Savimbi. Such a ban would jeopardize our ability to restore peace to Angola, where Communist troops from around the world are fighting viciously to keep a Marxist Government in power.

Just last year, Congress achieved a major foreign policy victory by repealing the provision known as the Clark amendment, in effect since 1976, which barred all covert assistance to Angola. In 1985, Congress wisely decided that the United States should adopt the same foreign policy toward Angola that it has toward all other countries in the world. The Intelligence Authorization Act of 1987, under consideration in the House today, would undo this major achievement and once again subject Angola to special treatment.

I fought to overturn the Clark amendment and I will fight against this ill-advised attempt to bring it back. While it was law, the Soviet Union and its ally Fidel Castro sent hundreds of thousands of troops to Angola to fight for Communism while America sat idly by. A return to the principles of the Clark amendment could have only one result: the Communists would step up their support of the Marxist Government in Luanda and the forces trying to restore democracy would be imperiled.

Some of my friends in Congress, particularly my black colleagues, quiz me about my stance on Angola. They wonder how I can support the Unita guerrillas, who also receive support from South Africa. Essentially, my colleagues wonder how it is possible to be a liberal and also a champion of Jonas Savimbi.

The answer is that I am not persuaded by the argument that if South Africa helps the Angolan freedom fighters, America should not help them. In the past, when Congress voted aid to the hungry people of Africa no one rose to say, "Wait a minute, I don't want to vote for any aid to those starving people if South Africa is going to help them, too."

The Angola freedom fighters are hungry. Their villages have been bombed by Soviet aircraft. Many are wounded; many have died. Yet I am told that we should not aid these black men, women and children whom the South Africans happened to have fed.

I have opposed racism throughout my public career. I do not need to be coached about the evils of apartheid, and I have voted for as strong a sanction against it as anyone in Congress. But this is not the issue in Angola. The issue there is the onslaught of Fidel Castro's armies. And the question facing the House today is whether or not we should extend to the Angolan people the same compassion that we extend to other peoples facing the Communist menace.

In the last year, the Soviet Union has poured more than a billion dollars in military equipment into Angola to prop up a Marxist regime that is also aided by more than 35,000 Cuban troops. The Angolan regime surpasses even the Soviet Union in its vehement anti-Americanism and in its votes against us at the United Nations. Finally, Fidel Castro receives more than half a billion dollars a year from the Angolan Government—money earned in oil royalties from the Gulf Oil Company. This subsidy is a major loophole in the United States' trade embargo against Cuba.

Our policy in Angola thus effectively cancels out our efforts to fight Communism in Central America. We must be consistent. If we are as threatened by the turmoil in Central America as President Reagan says, we must not bar any kind of aid, including covert assistance, to Angola.

The Marxist regime in Angola goes out of its way to make its Cuban guests and other Soviet proxies feel at home. In the capital, a large mural of Lenin proclaims, "Under the watchful eye of Lenin, we are building the workers' party." The Government is intent on denying freedom of speech, union rights and democracy. It is also eager to spread its subversion of democratic principles to other countries.

With the Clark amendment, we lost one chance to establish a democratic Government in Angola. We must not repeat this blunder now, as Jonas Savimbi seeks to reclaim democracy there. If the United States is to be true to its principles, we must provide all possible support for that effort.

JOINT CENTER FOR POLITICAL STUDIES

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. LELAND. Mr. Speaker, I would like to bring to the attention of my colleagues an article published in the New York Times on September 12, 1986, This article, written by Mr. Kenneth B. Noble, describes the activities of the Joint Center for Political Studies.

The joint center serves an important function. It has published valuable studies concerning many political and economic issues from the point of view of blacks in America. In 16 years the center has become a highly respected source of scholarly research, conducting studies that other researchers have not attempted.

I believe my colleagues will find this an interesting topic, and I commend the article to them.

RESEARCH UNIT FOCUSES ON PROGRESS FOR BLACKS

(By Kenneth B. Noble)

WASHINGTON, Sept. 10.—For 16 years now the offices of the Joint Center for Political Studies has issued a steady outpouring of scholarly studies, books and newsletters on political and economic issues from a black perspective.

The center has filled a void, its supporters say, noting that while intensive research centers have sprouted on Washington's intellectual landscape in recent years, few have focused on how blacks are faring in the political arena.

For example, the center has sponsored research on the growing role of blacks in the armed forces and was an early voice chronicling the problems of the black family. In another area, a study by the center challenged the notion that the increasing black migration to the suburbs signaled a move into the mainstream of American life and the achievement of integration.

AN UNRIVALED VOICE, ONE SAYS

Some say the center, a nonprofit organization financed mainly by wealthy contributors, corporations and labor unions, has emerged as perhaps the nation's premier black research center.

"The Joint Center has grown into an unrivaled voice on political issues generally," said Prof. Drew S. Days of the Yale university Law School, who was assistant Attorney General for Civil Rights in the Carter Administration. "They've been able to do this not by relying upon rhetoric, but through hard work."

But the center is not resting. It is now enlarging its agenda and seeking still more influence of domestic and foreign policy issues.

"We want to be concerned about international trade, arms control or East-West tensions," said Eddie N. Williams, the center's president, who is 54 years old.

"We don't presume that there is necessarily a black point of view on these issues, but black people, especially black leaders, should be informed," he said, "And when you look around, there are no organizations that consistently reach them to any significant degree."

To that end, the center has announced plans to push beyond its earlier boundaries and put together coalitions of intellectuals and scholars who specialize on issues involving blacks, whether black voting patterns or national security.

Recently, for example, the center began a study of black philantrophy, analyzing financial contributions and voluntary activities by blacks in behalf of blacks.

The center is viewed by some as being perhaps too sober, with faintly liberal leanings, an image Mr. Williams has tried to discourage. He can pepper his conversation with allusions to a growing number of black Republican elected officials and a need for black participation across the political spectrum.

WE'RE PRETTY INDEPENDENT

"In the present vernacular, we are more on the liberal side," says Mr. Williams, a former journalist, Foreign Service official and a vice president of the University of Chicago. "But I'd like to think we're pretty independent."

Of his own views, Mr. Williams says, "I never publicly speculate about my personal political commitments."

Mr. Williams' ability to lead the center in a mostly nonpartisan direction is cited by his supporters as a strength.

"Eddie Williams has been a middle-of-the-road, main stream voice, the kind of guy who makes foundations that fund this sort entity feel comfortable," said Prof. Mary Frances Berry of Howard University a member of the United States Civil Rights Commission. "He's not going to fly off on some tangent somewhere, so while being safe, the work of the center is very good."

The center operates with a staff of 45, including 23 scholars and analysts, and a yearly budget of $2.3 million. Its donors include Adolph Coors, the Colorado brewer; the Ford Foundation; the United Automobile Workers and the Tobacco Institute. It has also received money from both the Republican and Democratic National Committees.

Its board includes Robert McCormick Adams, secretary of the Smithsonian Institution; Marian Wright Edleman, head of the Children's Defense Fund, and Bernard

Rapoport, chairman of the American Income Life Insurance Company.

Mr. Williams does not avoid tough issues. In an article in Focus, the center's monthly newsletter, he urges black voters to support, at all levels, only those candidates who are "committed to the imposition of tough sanctions against South Africa."

The center's main mission, however, continues to be charting how blacks are faring. It recently published its 15th edition of Black Elected Officials. In 1970, the chronicle notes, only 1,469 blacks held elective office; 16 years later, the number had quadrupled.

RATE OF INCREASE HAS SLOWED

Still, Mr. Williams says, those figures are no cause for rejoicing. Blacks now constitute 11 percent of the country's population of voting age but they still hold less than 1.5 percent of its elective offices. In addition, the current rate of increase is only a third of what it was from 1970, when the center began keeping statistics, to 1976.

Other recent studies include a list of all elected and appointed black judges, and a demographic political and economic breakdown on states and congressional districts. For example, the 15th Congressional District on Manhattan's East Side ranks first in the nation for highest per capita income, while the 18th Congressional district in the South Bronx ranks lowest.

Mr. Williams says the recent Georgia Congressional race in which John Lewis, the Atlanta City Council member, defeated Julian Bond, a state legislator, "represents some things we're going to see more of in the future: two strong, viable black candidates competing for the same position."

"That reflects a kind of political maturing of the black community," he said.

TRIBUTE TO PACKWOOD-UPJOHN ELEMENTARY SCHOOL OF KALAMAZOO, MI

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. WOLPE. Mr. Speaker, today I want to pay tribute to an elementary school in my district—the Parkwood-Upjohn Elementary School of the Kalamazoo Public School District. Today, September 19, 1986, the Kalamazoo community will join in celebration to honor the school for having received the prestigious National Award of Excellence. The Parkwood-Upjohn Elementary School has earned this distinction through it's ability to effectively utilize existing resources to serve it's students. Furthermore, the staff has implemented a broad curriculum that has significantly improved student citizenship skills. Moreover, the school has demonstrated strong educational leadership that has helped the student's achievement in all grade levels and has sparked a high degree of parent and community involvement.

Mr. Speaker, the Parkwood-Upjohn Elementary School is highly unique; 22 percent of its student body are physically handicapped young men and women, who have successfully entered the classroom. In addition, the school houses a uniquely successful physically handicapped preschoolers programs.

The Parkwood-Upjohn Elementary School community takes understandable pride in being recognized as one of the Nation's top elementary schools. It has received a very prestigious award that reflects the extraordinary commitment and dedication of the Parkwood-Upjohn students, their parents, and the schools administrator, support staff, and teachers. I am honored and privileged to represent such constituents who fully understand the value of education for young Americans, and who have worked so hard to develop such an outstanding school program.

A TRIBUTE TO CHIEF JOHN J. O'ROURKE—FIREFIGHTER EXTRAORDINAIRE

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. BIAGGI. Mr. Speaker, it is my privilege and pleasure to rise today to pay tribute to Chief John J. O'Rourke of the New York City Fire Department, who is retiring from the department after 33 years of dedicated service, leaving a legacy of accomplishments, achievements, and contributions to the New York community. His life reflects the community leadership, altruism, and genuine devotion to community service that are intrinsic to his nature. The New York Fire Department and the entire city of New York will sorely miss the leadership of Chief O'Rourke. Finding someone capable of filling his shoes is indeed an impossible task.

John was born in Brooklyn, NY, and spent his entire life in dedicated service to the New York community. In 1944, 1 month after he graduated from high school, John joined the U.S. Navy. There, through his work with the construction battalions—Seabees—and the Phillipine Liberation Campaign, John developed the skills he used for years to come with the fire department. For 3 years he served our country in the Pacific Theater. And, not long after he returned to the States, he decided to continue those years of service, this time with the fire department.

In 1953, John was appointed to the fire department. For 10 years he served with the rank-and-file firefighters in engine companies 215 and 250 and ladder company 105. During these years, he received four citations for personal bravery, including one for his heroic assistance when two planes collided over Brooklyn in 1960. In 1963, John was promoted to the rank of lieutenant were he led the men of ladder companies 120 and 4.

By now, the fire department had recognized the tremendous leadership ability that John possesses. He quickly climbed the ranks from lieutenant to captain, to battalion chief (of battalions 1 and 9), and then to deputy chief of the bureau of fire. During this time he attended John Jay College of Criminal Justice, where he graduated magna cum laude. This is quite a remarkable achievement. Not only was John supporting a family, rapidly climbing a difficult career ladder, he was attending school on a part-time basis and excelling in all of his courses. This portrays John's intelligence, ambition, talent, and perseverance. I trust that my colleagues share my admiration for this wonderful accomplishment.

Deputy chief was not the last rank that John attained. In March 1981, he rose to the rank of deputy assistant chief of the executive officer bureau of support services, the deputy assistant chief of operations, and chief of training. In April 1984 he assumed the position of department chief, a position he has excelled in ever since. In 1985, John was awarded the city of New York's administrative medal. This is an honor presented by the mayor of New York for administrative excellence. This year he received the New York Association of Sprinkler Contractor's Public Service Award for excellence in the field of fire protection. And now, after his long and fulfilling career, Capt. John J. O'Rourke will be retiring to spend more time with his lovely wife Helen, and their three beautiful daughters: Barbara, who is a public relations specialist; Carol, who recently graduated from Hofstra Law School; and Susan who is currently attending college. I know John will also look forward to spending time with his grandson Justin.

John, I know my colleagues join me in wishing you many healthy and happy retirement years. Through your many years of service to your fellow man, you truly deserve the best life has to offer.

NATIONAL HISPANIC HERITAGE WEEK

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. RODINO. Mr. Speaker, it is a great privilege for me to join with my friends in New Jersey's Hispanic community in recognizing and celebrating the great contributions Hispanic-Americans have made to our Nation.

This year, September 14–20 is designated National Hispanic Heritage Week, a time to call attention to the many ways in which our country has been enriched by the various Hispanic cultures. The celebrations in Newark began on September 15, with a special program featuring prominent Hispanic community leaders, including Mr. Pablo Rivera Alvarez, vice chairman of the Hispanic Employment Program Managers, Mr. Arne Tornquist, chairman of the Federal Executive Board of Northern New Jersey, Hon. Henry Martinez, president of the Newark City Council, Mr. Raul Alarcon, Sr., president of WSKQ and KSKQ Radio, and Mr. Marcial Lopez, director of Orquesta Borincana. Other prominent Hispanic-Americans who deserve special recognition are Maria Gonzalez, Joe Rosaria and the late Tony Perez. Their compassion and contributions to the community have made it a better place for all of Newark's citizens.

From the very discovery of America, right up until today, the Spanish settlers and their descendants have added invaluably to the rich diversity of our society in which all of us take great pride. These contributions span the spectrum of our Nation's endeavors: art, music, education, science, government, business, entertainment. The bravery of Hispanic

heroes in the service of their country is legendary.

There are some 16 million Hispanic citizens of the United States, and they are the fastest growing minority group in America. They are a political force to be reckoned with.

I pledge to work constantly with my colleagues to eliminate from our society the inequity and injustice that daily frustrate the Hispanic and other minorities. We and our successors cannot rest as long as the promise of our Constitution to secure the blessings of liberty to ourselves and our posterity remains, for too many citizens, a promise unfulfilled.

MIA-POW RECOGNITION DAY

HON. FRANK McCLOSKEY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. McCLOSKEY. Mr. Speaker, today we seek to recognize and honor our servicemen who are still listed as missing-in-action in Southeast Asia, those who were prisoners of war and those who still likely are captive.

Too many questions remain unanswered in our efforts to resolve the final status of those still missing in Vietnam, Laos, and Cambodia.

The position of our Government is that we "cannot rule out" the possibility that some POW's are still being held. The new Director of the DIA even says it is his own personal assessment that one day we may "walk out" a live POW from the jungles of Southeast Asia.

Over 800 live sighting reports persist. We know that the Vietnamese Communists are playing a very cruel and grisly game in releasing piecemeal the remains of U.S. servicemen.

We are concerned that the process of identification of these remains is flawed as indicated in recent hearings before the House Armed Services Investigations Subcommittee on which I serve.

We have heard too many accounts from MIA families that the remains "positively" identified as loved ones could not possibly be so.

No less a respected publication as the Wall Street Journal has carried articles indicating the likelihood that U.S. POW's still may be alive in Southeast Asia.

Mr. Speaker, the only way to effectively put to rest this issue and bring peace of mind to the American people is to establish the MIA/POW Commission called for in House Concurrent Resolution 129. We must approve this resolution before Congress adjourns so the work of review can begin. Two hundred and forty of our colleagues have cosponsored this resolution.

I returned from Vietnam in February of this year more convinced than ever that Americans POW's have been or are now being held by the Vietnamese.

More than 15,000 of my constituents signed petitions, Indiana's two Senators and myself, urging swift and favorable action on House Concurrent Resolution 129. Far from duplicating efforts or impeding progress on the MIA/POW issue, the Commission will help to clarify and expedite the process of recovering the remains of our missing and determining once and for all whether Americans are being held as POW's in Vietnam.

MIA and POW families are supporting this resolution and I believe the Congress should do likewise.

SAY YES TO MICHIGAN

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. BONIOR. Mr. Speaker, the State of Michigan is preparing to celebrate in 1987 its sesquicentennial, 150 years of statehood and 150 years of progress. Our State slogan is, "Say Yes to Michigan." Recently, I came across an article in the Washington Post which underscores the appropriateness of our State's slogan. With your permission, I would like to share that article with my colleagues here in the Congress.

[From the Washington Post, Sept. 5, 1986]

YOU WENT WHERE?

(By Judy Mann)

Some families go to the beach in the summer, some go to the mountains, and some people go camping—although why anyone would do that, I can't imagine. Our family has gone to the beach since I was a 2- or 3-year-old and we've gone to the beach ever since I had my own 2-or 3-year-olds. If it's summer, you go the the beach.

The only real question has been what beach and when. In modern times—that is to say, the last decade or so—we have always had to go to the beach sometime in the last couple of weeks of August to accommodate the swimming careers of my various offspring. That settle, family discussions focused on the burning issue of which beach to go to—North Carolina's Outer Banks or the Eastern Shore in Maryland. And, of course, we usually began these long-distance telephone discussions with various branches of the family in February or March, when family members had some notion of how their summers were shaping up, and long after all the beach houses on the East Coast had been rented for August.

This year was not much different. My sister, who lives in Bloomfield Hills, Mich., and I did our part to support the long-distance phone companies throughout the spring, debating the logistical merits of vacationing at every resort between Myrtle Beach in South Carolina and Rehoboth in Delaware.

Sometime in June, she came up with a startling suggestion. She and her husband had recently purchased a town house in a condominium development on Little Traverse Bay. She suggested our families could vacation there. I said: "Where's Little Traverse Bay?"

She said: "Northern Michigan."

Nobody spends summer vacation in Northern Michigan.

She said it wasn't rented for the last week of August and the Memorial Day weekend.

I could figure out why.

She said there was a beach, and forests and wonderful nature trails, swimming pools, and fishing. She promised they would not be frozen over in August. We could stay in the house rent-free. Michigan was sounding better by the minute. Thanks to airline deregulation, Michigan became a bargain. Who minds a little frost?

The main topic of conversation in Washington from July 4 on is where are you going on vacation.

Try saying: "Michigan."

About three-quarters of the people raise their eyebrows and mutter something sympathetic like: "Why?" Or: "Family reunion, huh?" You quickly develop a brief explanation for your aberrent vacation.

There was, however, a group of people (all of whom, it turned out, came from that part of the country) whose eyes lit up and who said: "What part of Michigan?" By mid-August I'd gotten my geography straightened out enough to be able to answer "Traverse Bay," as though I knew what I was talking about, which I didn't, since it turned out to be Little Traverse Bay. That didn't seem to matter. Eyes lit up more. "It's beautiful up there," was the unanimous verdict. But since that verdict came from midwesterners, it was, of course, suspect. What do they know from the joys of summering by the ocean and basking in the boiling sun with a trashy novel?

Nothing, perhaps. But what they do know about is scenery and views of lakes and bays and sailboats that will take your breath away. Air that is probably the purest on the continent. Magnificent homes that were built before the Depression to accommodate clan gatherings for the entire summer. In Harbor Springs, for example, huge homes were built right on the bay so residents could sit on their front porches or sweeping lawns and look directly onto the water.

It is different from the ocean beaches, no question about that. The air at night was cool so you could sleep without air conditioning. Some days were chilly, others warm. You could hike nature trails in pine forests in the morning and go the beach in the afternoon and swim if you were brave. Or you could look for Petosky stones, the fossilized coral 350 million years old that is abundant near the Great Lakes. You could visit shops in Petosky, a town infinitely more interesting and charming than any beach town with a broadwalk. You could go out on the bay in a boat or fish off the pier in Petosky. My son, the 10-year-old, went fishing on the bay in a boat with his grandpa and his uncle and caught his first big fish—a lake trout, out of season, but in his memory for a lifetime.

You could read and be with relatives and do all the things you do at the beach, but more. Northern Michigan may be one of the country's best-kept secrets and a visit there was a wonderful vacation. More than that, though, it brought home once again what a wonderfully varied country we live in.

AMERICA REMEMBERS

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. McEWEN. Mr. Speaker, today our Nation commemorates those American Servicemen and women who were prisoners of war or missing in action. POW/MIA Recognition Day serves a solemn reminder that the price of freedom is always high, but Americans have always paid it.

Now 13 years after the American involvement in the Vietnam war, the fate of the 2,430

servicemen, who are still unaccounted for, continues to haunt their families. It is the not knowing that hurts the most. When speaking of a husband, a father, or a brother, 99 percent certainly is not enough, and it will never be.

Our country deeply sympathizes with the pain and suffering experienced by the families of those servicemen. Moreover, I understand the tragic loss which each family must feel, and I want to express my strong hope and personal commitment to obtaining the fullest possible accounting of these Americans.

Mr. Speaker, if factfinding missions to Southeast Asia have taught us anything, it is that we cannot close the books on those men and their families until we have learned all that we can. We cannot rest, we cannot relent until each and every report brought before us is given a full and conclusive airing and investigation.

Mr. Speaker, as America prepares to commemorate the many sacrifices endured by its servicemen and families of those still missing-in-action, I want to extend my deepest sympathy and appreciation on behalf of a grateful Nation.

THE SIMPLEST WAY TO FIGHT DRUGS

HON. STAN LUNDINE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. LUNDINE. Mr. Speaker, I would like to share with my colleagues an article published Friday, September 5, 1986, in the New York Times. It provides an exceptionally clear description of the illegal drug problem, emphasizing eradication, rather than domestic solutions, which include interdiction, testing, and enforcement, as the most effective way to combat this international problem.

The author of this piece, James Mills, has been following the international drug world for 20 years. He argues very convincingly that eradication plans and crop substitution program do work, and that this country should devote a more serious effort to foster these programs in the Latin American countries most responsible for the cocaine trade, Peru and Bolivia.

One way in which we can accomplish this goal is to condition our foreign aid to Peru and Bolivia, as well as to other countries with drug-dependent economies, on that country's drug eradication efforts.

I am very pleased that a legislative vehicle to accomplish this goal, the Drug Eradication Act of 1986, which I introduced earlier this year, was included, in its entirety, in the omnibus drug bill which the House passed last week. It will allow the use of U.S. economic leverage through international lending institutions to achieve the eradication of drug crops in developing countries. It requires that drug eradication plans be developed within 1 year, and implemented by drug producing countries as a prerequisite for U.S. support for assistance from the multilateral development banks [MDB's].

Mr. Mills' advice should not be taken lightly. The drug problem is serious, and is here to stay. The House has taken a very important first step in approving an omnibus drug bill which includes my plan to foster eradication programs in developing countries. However, this is only the first step.

Next year, and in the years to come, Congress needs to oversee the implementation of these eradication plans. In this way we can cut off the drug supply at the roots, before it can grow into a serious international problem.

Once again, I urge my colleagues to read Mr. Mill's article and to make it required reading for Members of the new Congress entering in January.

THE SIMPLEST WAY TO FIGHT DRUGS

(By James Mills)

What do the traffickers themselves think of all this drug hysteria—President Reagan's urinalysis, the first blockade of New York harbor since the War of 1812, proposals to seal the Mexican border with a 2,000-mile cocaine curtain? In a fortified mansion in Bangkok, in a Mexico City prison, in homes, hotel rooms and restaurants on four continents, I have spoken to a few of the men who run the international narcotics industry, and I am certain their reaction to the war on drugs is the same today as when I met them. They are laughing. With each desperate new response to the drug dilemma, we move further and further from the real solution, and give the narcotics tycoons every reason to celebrate.

When an intelligent person has a problem, he first examines the problem, breaks it into its components, tries to find the fundamental cause (as opposed to symptoms masquerading as causes) and then attacks the cause. He also asks himself what attacks have been made on the problem in the past, and which, if any, of those attacks have had success.

Clearly, the cause of the drug problem is drugs. If drugs had never existed, there could be no drug problem. Apparent solution: remove drugs. Without the presence of drugs, there would be no need for programs to interdict drugs, arrest drug dealers, seize drug profits, treat drug addicts or test potential drug users.

What attacks have been launched against the drug problem in the past? They include: interdiction, law enforcement, penalties, treatment, denying profits, eradication.

Which of these, if any, have worked? Only one: eradication. It worked in Turkey, and it worked, more recently and temporarily, in Mexico. None of the others have ever worked, to any significant degree, anywhere at any time.

Doesn't common sense tell us that before we throw billions of dollars and immense effort at other recommended attacks on the problem, we should fully exhaust attempts at eradication, the only remedy that has ever worked, Not only is eradication the only remedy that has worked, it is also the only approach that directly attacks the fundamental problem—removing drugs.

Eradication also happens, fortunately, to be the cheapest and easiest approach. Ninety-five percent of the world's cocaine, for example, originates in only two countries, Peru and Bolivia. They have a combined population approximately equal to that of California. They are impoverished and desperately in need of aid. Surely, it would be relatively easy to encourage—and, if necessary, to force—those countries to stop growing coca.

Peru and Bolivia complain that eradication of coca plants would unduly upset peasants who earn their livings from coca. But when members of the Senate Select Committee on Narcotics Abuse and Control visited Peru and Bolivia in 1983 they found that many, if not most, of the coca-growing campesinos had until recently been growing legitimate food crops. Only when the campesinos abandoned food crops for the more lucrative coca plants did both those countries have to be fed by emergency international relief programs.

Bolivia further claims that since campesinos represent 60 percent of the electorate, their disfavor could topple the Government. Well, so what—compared to the alternative of continuing cocaine abuse? Bolivian governments have been collapsing regularly for the past 30 years and will no doubt continue to collapse with or without the eradication of coca fields.

Note that Thailand has offered the peasants-will-starve argument for some 15 years, while its poppy acreage has grown and grown. Turkey said the same thing (it had 300,000 farmers growing poppies)—until President Richard M. Nixon gave the Turkish Government money for the farmers who were put out of the opium business in the early 1970's. Most of the money went into the pockets of corrupt officials. Still, there were no reports of mass starvation in Turkey.

A few weeks ago, President Victor Paz Estenssoro of Bolivia, asking for $100 million a year in anti-drug funds from the United States, was quoted as saying: "If we are going to tell the peasants not to grow coca, we have to have alternatives. Without an all-weather highway, they can't market rice, coffee, oranges and other legal crops they could substitute for coca." I first heard those words—virtually verbatim—about a decade ago from Thailand officials. The Thais got the money they requested, they got their crop substitution programs and they got their highway. Today, the money is gone, crop substitution is still in the "demonstration" stage, poppy acreage is vastly increased and the highway has been used to transport opium and morphine base.

It is also argued that if we eradicate in one country, growers will simply shift to another. This ignores the fact that there are only a limited number of locations with the agricultural and climatic conditions necessary for the growth of coca and poppies. And once the full power of the United States comes down on Peru and Bolivia, forcing eradication, surely other countries will see the handwriting on the wall. Will they imagine that they can succeed where Peru and Bolivia failed? Would not the United States be as capable of coercing those countries into eradication as it was Peru and Bolivia? And isn't there something fundamentally unsound, and craven, about the other-countries-will-step-in argument? Is it wise not to attack one enemy for fear that others might then appear?

After having observed the international drug scene for 20 years, I am convinced that eradication is the only thing that will work, and that it would work quite easily. If President Reagan dug in his heels and became obsessive about eradication, he could reduce the availability of cocaine by 50 percent in six months, and 80 percent in a year. Heroin could be similarly reduced, though over a longer period of time.

Why, then, is eradication always at the bottom of every politician's list of "things to do?" I think because it's the least politically attractive recommendation. Surely, it is no accident that the present furor over drugs

(sparked only in part by the emergence of crack) precedes the November elections by three months. (President Reagan declared his war on drugs 19 days before the 1982 elections.) Politicians appear to believe that workers are interested only in what is nearest to them. So we get domestic solutions: interdiction, testing and enforcement. Eradication—a big word that happens in distant lands—isn't so viscerally appealing as capital punishment for pushers.

We have to stop wanting to appear as if we are doing something—and do something. There is no end to the good you can accomplish if you don't care who gets the credit. Eradication could make all other approaches, from interdiction to testing, irrelevant.

I might also add that drugs are not exclusively an American problem. The war must be a world war not only in the sense that producing countries are our enemies, but in the sense that other victim countries are—or should be—our allies. We do not have the highest per capita addiction rate in the world. (Colombia is said to have three million addicts, which is one in nine citizens—almost unbelieveable.) Many countries in Asia, Latin America and Europe have large and growing drug problems. They should be as eager as we to see to it that producing countries get out of the dope business.

Last year, 23 Americans died in terrorist attacks, and we bombed Libya. If the world's coca fields were in Libya, instead of in Peru and Bolivia, President Reagan would know what to do and we would not have a cocaine problem today.

By concentrating the bulk of its efforts on domestic approaches, our Government keeps the heat off the leaders of the international narcotics industry, men whose supply, production and management teams are overseas.

So the traffickers are laughing. They know how to solve the drug problem. The war on drugs is the best thing that ever happened to them.

ORGAN TRANSPLANTATION POLICY ACT OF 1986

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. STARK. Mr. Speaker, today, I am introducing for myself and Mr. ROSTENKOWSKI the Organ Transplantation Policy Act of 1986. The purpose of the bill is to ensure that U.S. residents have priority in receiving organ transplants.

Increasingly, foreign nationals are coming to America for the sole purpose of receiving a kidney transplant. Americans are forced to wait on dialysis machines as wealthy foreigners step to the head of the line for kidneys donated by Americans. We need to ensure that U.S. residents have priority in receiving these organs.

Organs for transplantation are in short supply. The problem is most acute with kidney transplantation. Between 1980 and 1985, the number of people waiting for kidney transplants has increased by 93 percent. There are approximately 8,000 to 10,000 people waiting for kidney transplants in the United States. Transplantation can improve life expectancy, and generally results in a better quality of life. In addition, transplantation is substantially less expensive than dialysis therapy.

According to a report by the Inspector General of the Department of Health and Human Services, 5 percent of the kidneys transplanted in the United States—or 1 out of 20—are given to foreign nationals. The report also shows that about 200 to 250 kidneys are exported from the United States each year. Kidney experts estimate that in northern California 560 individuals are waiting to receive a kidney transplant.

The Organ Policy Act of 1986 requires that a hospital contact the national organ procurement and transplantation network before exporting an organ or transplanting the organ into a nonresident alien. If the network determines that there is a U.S. resident who is a suitable recipient, the hospital would be required to cooperate with the network in arranging for transplantation of the organ into the U.S. resident.

This legislation will improve the health of hundreds of Americans with kidney disease and will help reduce Medicare expenditures by reducing the need for costly dialysis treatment. For these reasons, I intend to make this issue a priority.

PRESIDENT REAGAN'S DRUG INITIATIVE

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. GILMAN. Mr. Speaker, earlier this week our Nation heard the President and the First Lady speak movingly about the need for this Nation to rise up against the illicit substances that flow through our streets. Following this televised broadcast, the President submitted to the Congress a package of legislative proposals pertaining to various aspects of the drug abuse and trafficking problem. However, a major difference between the President's proposal and H.R. 5484, the Omnibus Drug Enforcement, Education, and Control Act of 1986, which overwhelmingly passed the House last week by a vote of 392–16, is that the House approach in combating narcotics trafficking and drug abuse would authorize more than $2.1 billion in new budget authority, whereas the President's proposal would redirect nearly $900 million within the existing Federal budget from other programs to certain drug programs.

The support of the House of Representatives for the omnibus drug bill was based upon years of hearings conducted by our Select Committee on Narcotics Abuse and Control, where I serve as the ranking minority member, and upon the good work of the 12 standing committees, including the Foreign Affairs Committee, on which I am a senior member. Over the years, it has become obvious that our existing law enforcement network is insufficient to cope with the massive narcotics trafficking confronting our Nation. Similarly, drug treatment and rehabilitation facilities are straining to provide services at a time when waiting lists for their programs grow longer each month.

The $900 million in the President's proposal is redirected funding, which when combined with existing resources, would total $3.2 billion. Certainly priorities for allocating scarce resources must be established and I applaud the President for elevating narcotics trafficking and drug abuse to a higher priority on his agenda and for his personal involvement and that of First Lady in this critical issue. But I also question the proposed source of the $900 million. For example, is it coming from Social Security or from Medicare or from a combination of these and other important domestic programs?

The President's effort to create a drug-free workplace and drug-free schools, to devote resources for drug treatment, for improving international cooperation, for strengthening our law enforcement capabilities, and for involving the private sector are laudable objectives.

Hopefully, the President's proposal will not be funded at the expense of domestic programs intended to help senior citizens and others on fixed incomes. In this regard, I look foward to learning in greater detail, the President's proposals for financing his program.

NATIONAL POW-MIA RECOGNITION DAY

HON. BOB CARR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. CARR. Mr. Speaker, today has been designated as National POW-MIA Recognition Day. On this day, the Prisoner of War Committee of Michigan will dedicate the first State memorial of its kind to the POW-MIA's of Michigan.

The monument, which will stand on the grounds of the 150 acre Oakland Hills Memorial Gardens in Novi, MI, is a lasting tribute to the brave men of Michigan, who have yet to return to their families from the Vietnam conflict.

Michigan will never forget its 84 sons listed as missing in action. While the Vietnam War was not a popular crusade for many, these men fulfilled the highest and most demanding duty that they could be asked to perform by their Nation. Under pressure from home and the frontline, they proved to be true patriots.

While it has been more than a decade since the United States has withdrawn from its military involvement in Southeast Asia, the scars of the conflict can never be completely healed until every MIA is accounted for.

Nationwide more than 2,500 remain missing in action or presumed prisoners of war. In Michigan we are still deprived of the presence and contributions of 84 of our citizens. We must not forget these lives. The memorial which will be dedicated today ensures that their memory endures in our steadfast for their return. Their memory is sacred and forever.

POW-MIA RECOGNITION DAY

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. BONKER. Mr. Speaker, the continuing uncertainty about the fate of the men still listed as missing in Southeast Asia is one of the most troubling legacies of the Vietnam war. Reports of live sightings perpetuate the hopes and prolong the pain for many of the families of these brave servicemen.

This day of national recognition is a special tribute to the missing, to their families, and to those who were POW's and were fortunate enough to have been released. It is my hope that we will continue the progress we have made in recent years toward providing the fullest possible accounting of the missing, both to alleviate the suffering of the families and to ensure that there are no Americans being held against their will in Vietnam.

Ten men from my district in southwest Washington State have been missing since well before the end of the Vietnam war. The families of these missing servicemen have devoted years of work in efforts to locate them. On their behalf and in recognition of the bravery of their sons, fathers, brothers, and husbands, I would like to honor them now. They are Bruce A. Berg, Gary P. Booth, Harley H. Hall, Melvin A. Holland, Roderick B. Lester, Richard A. Livingston, James R. McQuade, Lawrence F. Nyman, David S. Price, and James D. Williamson.

Determining the fate of these men has been a slow, painful, and incomplete process and, as a nation, we have a great deal more still to do. It is the responsibility of our Government to ensure that every possible clue to the fate of these men is diligently pursued. The Defense Intelligence Agency must maintain the highest degree of professionalism and dedication to this cause and the administration must exercise all diplomatic options to foster a cooperative spirit with the Vietnamese and the Laotian Govenrment in order to permit the most thorough possible investigations.

In conclusion, Mr. Speaker, I hope that we all take a moment today to think about these missing men and to consider what we can do to provide information to these families. I further hope that someday we will no longer have a need for National MIA-POW Recognition Day because we will have provided the answers the families so desperately need and deserve.

H.R. 4838, LABOR PROTECTIVE PROVISIONS IN AIRLINE MERGERS

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. FRENZEL. Mr. Speaker, on Tuesday, September 16, I was the congressional representative at GATT Ministerials in Uruguay, and therefore missed votes on bills considered under suspension that day.

One bill of particular interest to me and my district is H.R. 4838, requiring the adoption of Labor Protective Provisions [LPP's] in airline mergers where the Secretary of Transportation finds likely harm to wages or job security as a result of the merger. Had I been present, I would have voted for the bill. I am pleased that it passed as it did.

There are turbulent times for the air industry, with mergers a commonplace occurrence. Each merger necessitates difficult decisions as two labor forces are merged. H.R. 4838 will prevent airlines from taking unfair advantage of their employees by forcing concessions that could not be won without the uncertainty caused by a pending merger.

I earlier had announced my reluctance to support a bill that could infringe on the competitive posture of airlines. Upon closer consideration, however, I have concluded that the bill responsibly addresses the real concerns of employees, and does not force the Secretary of Transportation to issue provisions that will prevent an airline from improving its competitiveness. I continue to believe that employees' interests are best served when the airlines strengthen their position. I also believe, however, that this bill does not take away that ability, and that it does provide an important protection for employees.

CONGRATULATIONS TO THE NEW YORK METS

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. ACKERMAN. Mr. Speaker, in 1969, they were the miracle team. In 1973, "you gotta believe" was the cry, and everyone in New York did. But this year, they have been simple awesome.

I'm referring, or course, to the 1986 National League East champions, the New York Mets.

The outcome has been clear for months. Last night, the Mets made the inevitable a reality.

In clinching their division yesterday—the earliest the NL East has ever been won—the Mets continued their inexorable course to the world championship.

Let by Manager Davey Johnson, the Mets lineup reads like an all-star roster: Carter, Hernandez, Strawberry, Gooden, Darling, Fernandez strike fear into the hearts of opposing players. Backman, Dykstra, Teufel, Aguilera, Orosco, McDowell, Wilson, Knight—their names are already legends in New York City.

The Mets lead the league in hitting, lead the league in pitching, and now lead the East by an amazing—there's that word again—19 games.

No doubt, Mr. Speaker, you are among the skeptics, partial as you are to a gallant but obviously inferior team that sports scarlet hosiery. Heretics are found also in Houston and southern California. But elsewhere, no one can doubt that the Mets will finish in October what they began last April.

Perhaps the grim reality for the rest of baseball was summed up by a sign at Shea Stadium last night. it read: The Dynasty Begins.

BOVINE SOMATOTROPIN

HON. STEVE GUNDERSON

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. GUNDERSON. Mr. Speaker, today, I am reintroducing legislation that I previously brought to the attention of the House on June 26. The bill requires a study to be done by the U.S. Department of Agriculture on the use of bovine somatotropin and its potential impact on the dairy industry in this country, specifically, the dairy price support program and the structure of the industry as a whole.

WHAT IS BOVINE SOMATOTROPIN?

Commonly referred to as bovine growth hormone, bovine somatotropin, is a naturally occurring protein in cattle and is found in the pituitary gland. The gene responsible for natural bovine somatotropin is isolated and transferred from the animal to ordinary bacteria cells. The bacteria are used to produce, through standard fermentation procedures, large quantities of BST. The bacteria are then killed, the BST separated, highly purified and formulated for use.

THE POTENTIAL IMPACT OF BST

The changes and innovations that have occurred over the last several years have had a profound impact on the ability for a cow to produce milk. The widespread acceptance of artificial insemination and the improved feeding practices have helped to increase the average production per cow from 5,400 pounds of milk per year to 12,500 in 1984. The adoption of BST has the potential to increase milk production anywhere from 10 to 40 percent.

Studies have shown that stimulates cows to direct food energy into milk production and while there is an increase in feed intake, there is actually an increase in feed efficiency. Injected daily, greater production begins 3 or 4 days after the first injection and reaches full effects in a couple weeks. Initial research indicates that the milk from cows being injected with BST is no different than that from other cows. There is also apparently no adverse impact on the cow.

PURPOSE OF THE LEGISLATION

The bill I am introducing today simply would require USDA to analyze the impact bovine somatotropin could have on the Federal Dairy Price Support Program and the structure of the dairy industry—the number of farmers and herd size—as a whole. The studies would have to be completed by January 1, 1988.

Despite the contentions of some individuals that the development of bovine growth hormone is a step in the wrong direction, we cannot close our eyes and hope it goes away. Whether we like it or not BST is likely to be on the market soon.

While it is difficult to see any direct benefits of bovine somatotropin at present, it would be extremely irresponsible for us to ignore a new technology that has the potential to benefit the dairy farmers of this country.

REASON FOR REINTRODUCING LEGISLATION

My reasoning for reintroducing this legislation makes the bill more specific so that it would be referred solely to the House Agricul-

ture Committee, because, quite frankly, the use of bovine somatotropin and its potential impact on the dairy sector and dairy policy is an issue that is best handled by the Agriculture Committee.

WHAT'S AT STAKE?

Bovine somatotropin will eventually be on the commercial market. We have to seize the initiative and learn more about this advancement so we can be prepared for it. Bovine somatotropin has the potential to increase the efficiency of dairy farmers by lowering their costs, but, at the same time increase the surplus of milk.

The legislation I am reintroducing today does not seek to ban the commercial use of BST but rather to make sure that necessary information is available so that the proper choices can be made in the future.

NATIONAL DEFENSE STOCKPILE

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. BENNETT. Mr. Speaker, current national defense stockpile policy originated out of the experiences of World War II and the Korean conflict. That policy has been to maintain a national defense stockpile of strategic and critical materials needed to support our defense, industrial and essential civilian requirements in the event of a national emergency. However, estimated requirements for the strategic and critical materials to be maintained in the stockpile have fluctuated dramatically over the years. These fluctuations have been brought about by changes in policymakers' perceptions about the strategic threat to the United States. Since the Reagan administration took office, the United States has embarked on a costly military buildup to counter the massive Soviet buildup which has occurred in recent years. At the same time, the administration's stockpile policy is inconsistent with their stated perception concerning the Soviet threat. On July 8, 1985, the administration proposed reducing current stockpile goals from $16 billion to $700 million, largely as a result of the Office of Management and Budget's desire to use stockpile funds to reduce the Federal budget deficit.

As chairman of the subcommittee responsible for oversight of the national defense stockpile, I believe that this is a shortsighted and dangerous policy and not in the best interest of our national security.

The issues involved are not simple, but extremely complex. In this regard, I recommend that my colleagues read two recent reports by Alfred R. Greenwood of the Congressional Research Service on this complex subject. The first report was issued on February 8, 1986, and is entitled "The Reagan Administration Proposes Dramatic Changes to National Defense Stockpile Goals" (86-578 ENR). The second report was issued on August 29, 1986 and is entitled "National Defense Stockpile Policy—the Congressional Debate" (86-863 ENR).

SALUTE TO THE CAMPHILL MOVEMENT

HON. DENNIS E. ECKART

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. ECKART of Ohio. Mr. Speaker, I rise today to salute and pay special tribute to the 25th anniversary of the Camphill Movement in the United States.

The Camphill Movement, begun in this country in 1961, now consists of five communities in New York, Pennsylvania, and Minnesota. It's based upon a solid dedication to allowing developmentally disabled persons to live fully integrated, dignified, and productive lives.

In these communities, disabled persons live with nondisabled families and students from around the world, providing educational opportunities as well as the chance for shared responsibility and meaningful, constructive work.

This growing Camphill Movement was founded in 1939 by Dr. Karl Konig in Scotland. There are now over 70 Camphill centers in Great Britain, Europe, Africa, South America, and the United States. Each community upholds the common characteristic of stressing community life shared equally by disabled and nondisabled residents alike. Extended family settings help to cultivate the experience of social interdependence based upon mutual understanding and respect.

Additionally, these communities are extremely self-sufficient through carefully maintained gardens and the production of bread, cheese, maple syrup, and other food items. There are indeed many diverse opportunities for learning, and cultural and artistic activities are emphasized and integrated into daily life.

This year, the Camphill Movement is celebrating its 25th anniversary of caring and commitment in the United States. New York Gov. Mario Cuomo recently presented that State's Camphill village with a special citation, recognizing them for their outstanding accomplishments in providing high quality care for disabled residents.

I am honored to be familiar with this program and its philosophy, and I join with Governor Cuomo and all others who will be participating in this 25th anniversary celebration in expressing my respect for the Camphill Movement's efforts and contributions. It is the elements of real sharing, of dedication to small details, of commitment to caring for the land, and of working to bring out the best in each individual that make these communities so special.

It is my hope that this innovative, successful approach will expand in this country and will continue in its fine tradition of working with disabled people. Let the Camphill Movement be a model and an inspiration for other programs just now beginning as we explore alternatives to more traditional care environments.

MIA-POW: THE FINAL CHAPTER

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. BOEHLERT. America is always grateful to those who fight to defend our freedoms and our families—our soldiers. And in return, those men and families expect that America will never abandon them, or forget any who failed to return home from that defense.

Many of us know the sacrifices made by families of servicemen. To have a loved one reported as missing-in-action or possibly held prisoner certainly makes those hardships more difficult.

But in this adversity, there is strength. Our concern, our resolve deepens, as we seek a full accounting of the 2,430 military and civilians (156 of them fellow New Yorkers) as yet unaccounted for in Southeast Asia.

President Reagan has made the POW/MIA issue a top priority: For this, he is to be commended. Of Vietnam he has said that "we will write no last chapters, we will close no books, we will put away no final memories, until all your questions about the missing and possible prisoners of war have been answered." Indeed, some of those questions have finally begun to be answered, especially during this past year.

In January, the highest-level U.S. delegation ever to travel to Hanoi, led by Assistant Secretary of Defense Richard Armitage, helped to create a 2-year timetable for a final resolution of the POW/MIA along humanitarian lines. A few weeks thereafter, a congressional delegation (led by fellow New York Congressmen GERALD SOLOMON and BENJAMIN GILMAN) returned from Hanoi with a number of breakthroughs: the admission of the possibility of missing Americans still alive in Southeast Asia; an agreement by the Vietnamese to return 14 sets of American remains; and an agreement for continued negotiations. In July, another U.S. delegation (which included representatives from the Pentagon, Department of State, the National Security Council, and the National League of Families) formalized our commitment to resolving the issue, with promises of expertise and equipment to aid in the identification of remains.

After delays by the Vietnamese, the POW/MIA issue is back on track. More meetings are scheduled between our two Governments in the next month; the Vietnamese have promised "significant results" from their investigations. The cooperation is long overdue.

There is now a united front to a final resolution of the POW/MIA issue. All Americans stand with the President in his determination to write a last chapter for the book on Southeast Asia. We will not give up the quest. We must receive the fullest accounting possible of the more than 2,400 Americans who didn't come home. Until then, we must be, as in the words of the Marine Corps motto, "Semper Fidelis"—that is, "ever faithful."

WOZA AFRIKA!—A COLLECTION OF PLAYS ABOUT SOUTH AFRICA

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 19, 1986

Mr. FAUNTROY. Mr. Speaker, more than 30 South African writers and actors will be performing in Washington, DC, from September 17 through October 12 at the New Playwrights' Theatre. The WOZA Africa Festival is an unforgetable experience.

This 4-week festival of plays is written, directed and performed by South African artists.

"WOZA Afrika!," as the collection of plays is called, will be presented following its presentation at the Mitzi E. Newhouse Theatre at Lincoln Center in New York. Each play in the festival will be presented first in New York for 1 week and then the following week in Washington.

"Asinamali!" by Mbongeni Ngema will open the festival, playing September 17 through 21. "Asinamali!" which means "We have no money!" is the story of the five black men brought together in a South African prison where they tell their tales with music, dancing, laughter and joyful exuberance.

"Bopha," written and directed by Percy Mtwa, will be staged September 24 through 28. The play examines the paradoxical character of the black policeman in South Africa.

A double bill, "Children of Asazi," written and directed by Matsemela Manaka, and "Gangsters," written and directed by Maishe Maponya, will play October 1 through 5.

"Born in the U.S.A.," developed by director Barney Simon and a seven-member cast—Vanessa Cooke, Timmy Kwebulana, Neil McCarthy, Gcina Mhlophe, Terry Norton, Thoko Ntshinga and Fiona Ramsey—during an 18-month workshop, is the final attraction of the festival and will play October 8 through 12.

The five theatre companies, totaling about 30 South African actors, directors, and playwrights include the Market Theatre, Committed Artists, Earth Players, the Soyikwa Cultural Center, and the Bahumutsi Theatre.

With the presentation of these plays, for the first time American audiences will have an opportunity to learn about South African life from people who came from the townships.

Each play will be given eight performances, Wednesdays through Sundays at 8 p.m. with matinees at 2 p.m. on Thursdays, Saturdays, and Sundays.

I urge all Members to attend these compelling performances.